TITLE: FEDERAL REGISTER.

REEL NO: 4 of 8

VOLUME: 52 issues: 59-78
pages: 9793-13,624

DATE: March 27 - April 23, 1987

PUBLICATION NO: 2575

NOTES: The paper and ink used in the original material affect the quality of the micro-edition. This reproduction is made from the best copy available.

THIS PERIODICAL MAY BE COPYRIGHTED, IN WHICH CASE THE CONTENTS REMAIN THE PROPERTY OF THE COPYRIGHT OWNER. THE MICROFORM EDITION IS REPRODUCED BY AGREEMENT WITH THE PUBLISHER. DUPLICATION OR RESALE WITHOUT PERMISSION IS PROHIBITED.

UNIVERSITY MICROFILMS INTERNATIONAL, ANN ARBOR, MICHIGAN

3-27-87
Vol. 52 No. 59

# federal register

Friday
March 27, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
2
S S
9
R
7
87
MI

3-27-87
Vol. 52 No. 59
Pages 9793-10020

# Federal Register

Friday
March 27, 1987

**Briefings on How To Use the Federal Register—**
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

## THE FEDERAL REGISTER
## WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** March 31; at 9 am.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
**RESERVATIONS:** Beverly Fayson, 202–523–3517

# Contents

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

**ACTION**
PROPOSED RULES
Official seal, 9901

**Agricultural Marketing Service**
RULES
Lemons grown in California and Arizona, 9797
Oranges (navel) grown in Arizona and California, 9797
PROPOSED RULES
Onions grown in Texas, and imported onions, 9870

**Agricultural Stabilization and Conservation Service**
NOTICES
Warehouses, licensed; list availability, 9903

**Agriculture Department**
*See* Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Economic Analysis Staff

**Alcohol, Drug Abuse, and Mental Health Administration**
NOTICES
Grants and cooperative agreements:
Biological markers of alcohol consumption, 9940

**Alcohol, Tobacco and Firearms Bureau**
PROPOSED RULES
Alcohol, tobacco, and other excise taxes:
Credit against tax paid or determined on distilled spirits for alcohol derived from wine and flavors, etc., 9873

**Animal and Plant Health Inspection Service**
PROPOSED RULES
Exportation and importation of animals and animal products:
Birds, poultry, or pigeons transiting the port of Anchorage, AK, 9871

**Army Department**
*See also* Engineers Corps
NOTICES
Meetings:
Science Board, 9912

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Centers for Disease Control**
NOTICES
Cooperative agreements; awards:
National Association of County Health Officials, 9941
Grants and cooperative agreements:
Adult immunizations in health maintenance organizations program, 9941
Sexually transmitted diseases prevention and control projects, 9943
Sexually transmitted diseases research, demonstrations, public and professional education programs, 9944
Meetings:
Immunization Conference, 9944

**Coast Guard**
RULES
Anchorage regulations:
Maine, 9828

**Commerce Department**
*See* Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

**Committee for the Implementation of Textile Agreements**
NOTICES
Textile consultation; review of trade:
China, 9908

**Commodity Futures Trading Commission**
NOTICES
Meetings; Sunshine Act, 9986
(4 documents)

**Defense Department**
*See also* Army Department; Engineers Corps; Navy Department
RULES
Federal Acquisition Regulation (FAR):
Anti-Kickback Act; implementation
Correction, 9989
NOTICES
Agency information collection activities under OMB review, 9910
Meetings:
Electron Devices Advisory Group, 9910, 9911
(4 documents)
Graduate Medical Education Advisory Committee, 9911
Science Board task forces, 9912
(2 documents)

**Drug Enforcement Administration**
RULES
Schedules of controlled substances:
Chemical preparations; exemptions, 9802
Stimulant and depressant compounds; exemptions, 9802
NOTICES
*Applications, hearings, determinations, etc.:*
Acker, Gordon M., D.M.D., 9962
Janssen, Inc., 9964
Johnson Matthey, Inc., 9964
Mulvany, John H., M.D., 9964

**Economic Analysis Staff**
RULES
Organization, functions, and Freedom of Information Act; implementation, 9798

**Education Department**
RULES
Direct grant programs:
Congressional teacher scholarship program, 10006

**Employment and Training Administration**
NOTICES
Adjustment assistance:
Bass Enterprises Production Co., 9968

Cliffwood Energy Co. et al., 9968
Lee Co. et al., 9968
Lloyd Shoenheit Truck & Tractor Service, Inc., et al., 9969
Parker Drilling Co., 9969
Tractech, Inc., 9969
Alien temporary employment labor certification process:
Agriculture and logging; meal charges; annual adjustment, 9967

**Employment Standards Administration**
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 9966

**Energy Department**
*See also* Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Meetings:
International Energy Agency Industry Advisory Board, 9914

**Engineers Corps**
NOTICES
Environmental statements; notice of intent:
Mississippi River, Alton, IL and MO, 9912
Wilmington Harbour, Northeast River project, NC, 9913

**Environmental Protection Agency**
PROPOSED RULES
Water pollution control:
Ocean dumping; site designations—
Atlantic Ocean; Savannah, GA, Charleston, SC, and Wilmington, NC, 9894
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 9930
Weekly receipts, 9930
Meetings:
Science Advisory Board; correction, 9931
Pesticide programs:
Cancellation procedures, voluntary, 9937
Toxic and hazardous substances control:
Premanufacture exemption applications, 9931
Premanufacture notices receipts, 9932–9936 (3 documents)

**Equal Employment Opportunity Commission**
NOTICES
Meetings; Sunshine Act, 9986

**Executive Office of the President**
*See* Management and Budget Office; Presidential Documents

**Federal Communications Commission**
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 9937
*Applications, hearings, determinations, etc.:*
Gardner, James L., et al., 9938

**Federal Deposit Insurance Corporation**
NOTICES
Meetings; Sunshine Act, 9986, 9987 (3 documents)

**Federal Emergency Management Agency**
NOTICES
Meetings:
National Fire Academy Board of Visitors, 9938

**Federal Energy Regulatory Commission**
NOTICES
Natural gas certificate filings:
Southern Natural Gas Co. et al., 9914
Preliminary permits surrender:
Tehama Power Authority, 9920
Small power production and cogeneration facilities; qualifying status:
County of Los Angeles Facilities Management Division, 9921
Gabriel Mills Energy Co., 9921
*Applications, hearings, determinations, etc.:*
Brooklyn Interstate Natural Gas Corp., 9921
North Carolina Electric Membership Corp., 9922
Pennzoil Co. et al., 9922
Piedmont Municipal Power Agency, 9923
Southwest Gas Corp. et al., 9924
Speed, Jack P., et al., 9924
Zapata Exploration Co., 9925

**Federal Home Loan Bank Board**
RULES
Federal Savings and Loan Insurance Corporation:
Acquisitions of control of insured institutions, etc.; correction, 9799
NOTICES
Receiver appointments:
First Federal of Maryland, FSA, 9938
Vernon Savings & Loan Association, 9938
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 9938
Philadelphia Stock Exchange, Inc., 9939

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
Algemene Bank Nederland N.V., 9939
First Citizens Banc Corp., 9939
Myers, James O., 9940

**Food and Drug Administration**
PROPOSED RULES
Human drugs:
Wart remover drug products (OTC); tentative final monograph, 9992

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
Florida, 9903, 9904 (2 documents)

**General Services Administration**
RULES
Federal Acquisition Regulation (FAR):
Anti-Kickback Act; implementation
Correction, 9989
Property management:
Utilization and disposal of real property—
Disposals to public agencies, 9829
Property for correctional facilities, 9831

PROPOSED RULES
Federal Information Resources Management Regulation:
Federal telecommunications system; authorized use of long distance telephone services by Federal employees, 9900

**Health and Human Services Department**
*See also* Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration
NOTICES
Agency information collection activities under OMB review, 9940

**Health Care Financing Administration**
RULES
Medicare and medicaid programs:
Malpractice insurance for hospitals; payment for costs, 9833

**Hearings and Appeals Office, Energy Department**
NOTICES
Applications for exception:
Cases filed, 9925, 9926
(2 documents)
Decisions and orders, 9927, 9928
(2 documents)

**Housing and Urban Development Department**
RULES
Lead-based paint hazard elimination in FHA single and multifamily housing programs and in section 8 housing assistance payments programs
Correction, 9827
Mortgage and loan insurance programs:
Hawaiian home lands; single family mortgage insurance; correction, 9989

**Indian Affairs Bureau**
NOTICES
Land transfers:
Pueblo of Santa Ana, NM, et al.; correction, 9946

**Interior Department**
*See* Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

**International Trade Administration**
NOTICES
Antidumping:
Replacement parts for self-propelled bituminous paving equipment from Canada, 9904
Tapered roller bearings and parts from—
Japan, 9905

**International Trade Commission**
NOTICES
Import investigations:
Foreign protection of intellectual property rights and effect on U.S. industry and trade, 9960

**Interstate Commerce Commission**
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 9961
Railroad operation, acquisition, construction, etc.:
Maine Central Railroad Co., 9962
Railroad services abandonment:
Texas North Western Railway Co., 9962

**Justice Department**
*See also* Drug Enforcement Administration; Juvenile Justice and Delinquency Prevention Office
PROPOSED RULES
Nondiscrimination on basis of handicap; uniform Federal accessibility standards, 9885

**Juvenile Justice and Delinquency Prevention Office**
NOTICES
Meetings:
Coordinating Council, 9966

**Labor Department**
*See* Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration

**Land Management Bureau**
NOTICES
Airport leases:
Arizona, 9946
Closure of public lands:
Montana, 9947
Environmental statements; availability, etc.:
Bishop, Caliente and Bakersfield Resource Area Wilderness, CA, 9947
Dillion Resource Area Wilderness, MT, 9948
Taos Resource Area, NM, 9947
Meetings:
Richfield District Advisory Council, 9949
Safford District Advisory Council, 9950
Shoshone District Grazing Advisory Board, 9950
Motor vehicles; off-road vehicle designations:
Colorado, 9954
Realty actions; sales, leases, etc.:
Arizona, 9950–9952
(6 documents)
Colorado, 9952, 9955
(2 documents)
Nevada, 9956
(2 documents)
Survey plat filings:
Arizona, 9957
Montana, 9957
Withdrawal and reservation of lands:
New Mexico, 9953
(3 documents)
Utah, 9949

**Management and Budget Office**
NOTICES
Freedom of Information Reform Act of 1986:
Fee schedule and administrative guidelines, 10012

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
B. & B. Coal Co., 9969
Brush Creek Coal Co., 9970
Calvary Coal Co., 9970
Castle Gate Coal Co., 9971
Chapperal Coal Corp., 9971
Clinchfield Coal Co., 9971
Eastern Mingo Coal Co., 9972
J & W Coal Co., 9972

Lundberg Industries Ltd., 9973
Mid-Continent Resources, Inc., 9973, 9974
(2 documents)
Mingo Coal Co., Inc., 9974
Pickands Mather & Co., 9974
Southern Mingo Coal Co., 9975
Sunrise Construction Co., Inc., 9975
Switch Energy Corp., 9976
Western Mingo Coal Co., 9976

**Minerals Management Service**
NOTICES
Environmental statements; availability, etc.:
Hawaiian and Johnston Island exclusive economic zone—
Lease sales, 9958

**National Aeronautics and Space Administration**
RULES
Federal Acquisition Regulation (FAR):
Anti-Kickback Act; implementation
Correction, 9989
NOTICES
Meetings:
Informal Space Life Sciences Committee, 9977

**National Archives and Records Administration**
NOTICES
Agency records schedules; availability, 9977

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Humanities Panel, 9978

**National Highway Traffic Safety Administration**
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Michelin Tire Corp., 9985

**National Institute for Occupational Safety and Health**
*See* Centers for Disease Control

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
South Atlantic snapper-grouper, 9864
PROPOSED RULES
Endangered and threatened species:
Sea turtle conservation; shrimp trawl requirements
Correction, 9902
Fishery conservation and management:
Gulf of Mexico red drum, 9902

**National Park Service**
NOTICES
Boundary establishment, description, etc.:
Lowell National Historical Park, MA, 9959
Concession contract negotiations:
Smoky Mountain Riding Stables, Inc., 9960

**Navy Department**
NOTICES
Agency information collection activities under OMB review,
9913

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Duquesne Light Co. et al., 9979
Regulatory guides:
Issuance, availability, and withdrawal, 9979, 9980
(2 documents)
*Applications, hearings, determinations, etc.:*
Georgia Power Co. et al., 9980

**Personnel Management Office**
PROPOSED RULES
Adverse actions:
Other than full-time career employment, 9867

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
Greek Independence Day (Proc. 5623), 9793
ADMINISTRATIVE ORDERS
Jamaica; U.S. assistance (Presidential Determination No. 87-
11 of March 12, 1987), 9795

**Public Health Service**
*See* Alcohol, Drug Abuse, and Mental Health
Administration; Centers for Disease Control; Food and
Drug Administration

**Research and Special Programs Administration**
PROPOSED RULES
Hazardous materials:
Transportation of hazardous materials; incident reports,
9996

**Securities and Exchange Commission**
NOTICES
*Applications, hearings, determinations, etc.:*
Continental Airlines, Inc., 9981

**State Department**
NOTICES
South African parastatal organizations, 9982

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Permanent program submission:
Colorado, 9887
Kentucky, 9890
Utah, 9891
Virginia, 9892
NOTICES
Environmental statements; availability, etc.:
North Chickamauga Creek Watershed, TN, 9960

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile
Agreements

**Transportation Department**
*See also* Coast Guard; National Highway Traffic Safety
Administration; Research and Special Programs
Administration
RULES
Organization, functions, and authority delegations:
Administration, Assistant Secretary, 9863
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and
foreign air carrier permits; weekly applications, 9984

**Treasury Department**
*See* Alcohol, Tobacco and Firearms Bureau

**Separate Parts In This Issue**

**Part II**
Department of Health and Human Services, Food and Drug Administration, 9992

**Part III**
Department of Transportation, Research and Special Programs Administration, 9996

**Part IV**
Department of Education, 10006

**Part V**
Office of Management and Budget, 10012

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**
**Proclamations:**
5623.....9793
**Administrative Orders:**
Presidential Determinations:
No. 87-11 of March 12, 1987.....9795

**5 CFR**
**Proposed Rules:**
340.....9867
752.....9867

**7 CFR**
907.....9797
910.....9797
3900.....9798
3901.....9798
**Proposed Rules:**
959.....9870
980.....9870

**9 CFR**
**Proposed Rules:**
92.....9871

**12 CFR**
546.....9799
552.....9799
563.....9799
572a.....9799
574.....9799

**21 CFR**
1308 (2 documents).....9802-9806
**Proposed Rules:**
358.....9992

**24 CFR**
200 (2 documents).....9827
203.....9989
204.....9989
213.....9989
220.....9989
221.....9989
222.....9989
226.....9989
227.....9989
234.....9989
235.....9989
237.....9989
240.....9989
882.....9827
886.....9827

**27 CFR**
**Proposed Rules:**
19.....9873
197.....9873
250.....9873
251.....9873

**28 CFR**
**Proposed Rules:**
42.....9885

**30 CFR**
**Proposed Rules:**
906.....9887
917.....9890
944.....9891
946.....9892

**33 CFR**
110.....9828

**34 CFR**
653.....10006

**40 CFR**
**Proposed Rules:**
228.....9894

**41 CFR**
101-47 (2 documents).....9829-9831
**Proposed Rules:**
201-38.....9900

**42 CFR**
413.....9833

**45 CFR**
**Proposed Rules:**
1204.....9901

**48 CFR**
3.....9989

**49 CFR**
1.....9863
**Proposed Rules:**
171.....9996
175.....9996

**50 CFR**
646.....9864
**Proposed Rules:**
217.....9902
222.....9902
227.....9902
653.....9902

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

# Presidential Documents

Title 3—

## The President

**Proclamation 5623 of March 24, 1987**

## Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1987

By the President of the United States of America

A Proclamation

Among Greece's most cherished and revered contributions to mankind are the ideals of freedom and democracy, Because these ideals have played a central role in the history of our Nation, it is most fitting that we observe a day in celebration of Greek independence and of our shared love of democracy.

One hundred and sixty-six years ago, inspired by the legacy of liberty and democracy left them by their ancestors, the Greek people began a long struggle in which they regained freedom. The same legacy has inspired many peoples throughout history. Those who framed our Declaration of Independence, and the Constitution whose bicentennial we celebrate this year, drew upon the political and philosophical experience of the ancient Greeks and their followers through the centuries.

By joining in the independence celebration of the Greek people, we pay special tribute to the democratic values that we in the United States, together with our friends and allies such as Greece, are committed to defend.

The Congress, by Public Law 99–532, has designated March 25, 1987, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 25, 1987, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy, and I urge all Americans to join in appropriate ceremonies and activities to salute the Greek people and Greek independence.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-6899
Filed 3-25-87; 3:06 pm]
Billing code 3195-01-M

OL
2
S S
9
R
7
87
MI

# Presidential Documents

**Presidential Determination No. 87–11**

## Determination to Authorize Continuation of Certain Assistance to Jamaica

**Memorandum for the Secretary of State**

Pursuant to section 536 of the Foreign Assistance and Related Programs Appropriations Act, 1987 as contained in section 101(f), Title V, of Public Laws 99–500 and 99–591, I hereby determine that the Government of Jamaica is sufficiently responsive to the United States Government concerns on drug control and that the added expenditure of funds for that country is in the national interest of the United States.

You are directed to report this determination to the Congress immediately.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
*Washington, March 12, 1987.*

[FR Doc. 87–6949
Filed 3–25–87; 4:15 pm]
Billing code 3195–01–M

OL
2
S S
9
R
7
87
MI

# Rules and Regulations

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 907

[Navel Orange Reg. 653]

### Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 653 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 27, 1987, through April 2, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

**DATE:** Regulation 653 (§ 907.953) is effective for the period March 27, 1987, through April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee met publicly on March 24, 1987, in Lindsey, California, to consider the current and prospective conditions of supply and demand and recommended by an 8 to 5 vote a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

### List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

### PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.953 Navel Orange Regulation 653 is added to read as follows:

**§ 907.953 Navel Orange Regulation 653.**

The quantities of navel oranges grown in California and Arizona which may be handled during the period March 27, 1987, through April 2, 1987, are established as follows:

(a) District 1: 1,707,340 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

Dated: March 25, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–6942 Filed 3–26–87; 8:45 am]

BILLING CODE 3410–02–M

### 7 CFR Part 910

[Lemon Reg. 554]

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 554 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,000 cartons during the period March 29–April 4, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 554 (§ 910.854) is effective for the period March 29–April 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant

economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on March 24, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 1 vote (with 1 abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of Subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, Lemons.

**PART 910—[AMENDED]**

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.854 is added to read as follows:

**§ 910.854 Lemon Regulation 554.**

The quantity of lemons grown in California and Arizona which may be handled during the period March 29 through April 4, 1987, is established at 330,000 cartons.

Dated: March 25, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–6941 Filed 3–26–87; 8:45 am]

BILLING CODE 3410-02-M

---

**Economic Analysis Staff**

**7 CFR Parts 3900 and 3901**

**Organization, Functions, and Availability of Information to the Public**

**AGENCY:** Economic Analysis Staff, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule explains the organization and functions of the Economic Analysis Staff (EAS) and the procedures for requesting records from EAS under the Freedom of Information Act (FOIA). It supplements the Department's regulations at 7 CFR Part 1, Subpart A.

**EFFECTIVE DATE:** March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Laura B. Snow, Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 447–7590.

**SUPPLEMENTARY INFORMATION:** This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

**List of Subjects**

*7 CFR Part 3900*

Organization and functions (Government agencies).

*7 CFR Part 3901*

Freedom of information.

Accordingly, 7 CFR is amended by adding a new Chapter XXXIX and Parts 3900 and 3901 reading as follows:

**CHAPTER XXXIX—ECONOMIC ANALYSIS STAFF**

**PART 3900—ORGANIZATION AND FUNCTIONS**

Sec

3900.1 General.
3900.2 Organization.
3900.3 Functions.
3900.4 Authority to act for the Director.

Authority: 5 U.S.C. 301 and 552, and 7 CFR 2.89.

**§ 3900.1 General.**

The Economic Analysis Staff (EAS) was established on June 15, 1982, by Secretary's Memorandum 1020–6, entitled "Establishment of Economic Analysis Staff." The primary responsibility of EAS is to advise and assist the Assistant Secretary for Economics in fulfilling his responsibility for economic policy review and analysis in the Department of Agriculture.

**§ 3900.2 Organization.**

The central and only office of EAS is located in Washington, DC, and consists of the Director and supporting staff.

**§ 3900.3 Functions.**

EAS provides staff assistance to the Assistant Secretary for Economics in the following areas:

(a) *Policy Development.* Developing, organizing, coordinating, and synthesizing economic and statistical analyses for use as a basis for planning short- and intermediate-range agricultural policy.

(c) *Policy Analysis.* Conducting economic and statistical analyses in order to evaluate domestic and foreign agricultural problems and issues crossing agency lines. Calling attention to effects of utilizing particular courses of action under varying situations and recommending alternative actions.

(c) *Policy Evaluation.* Reviewing and evaluating recommendations submitted to USDA agencies, task forces, and study groups for their policy implication and impact upon the agricultural economy.

(d) *Legislative Analysis.* Analyzing legislative proposals concerning domestic and foreign agricultural issues

for policy implications and developing amendments to legislative proposals to further short- and intermediate-range policy objectives.

(e) *Representation.* Representing the Assistant Secretary in meetings with agriculture, industry, and consumer groups to discuss the economic impact of existing and proposed Department policies.

**§ 3900.4 Authority to act for the Director.**

When the Director is absent or temporarily unavailable, the Staff Statistician is authorized to act for the Director.

## PART 3901—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
3901.1 General.
3901.2 Public inspection, copying and indexing.
3901.3 Requests for records.
3901.4 Denials.
3901.5 Appeals.

**Authority:** 5. U.S.C. 301 and 552; 7 CFR 1.1–1.19 and Appendix A.

**§ 3901.1 General**

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1 through 1.19 of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the Economic Analysis Staff (EAS) to the public.

**§ 3901.2 Public inspection, copying, and indexing.**

5 U.S.C. 52(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. EAS does not maintain any materials within the scope of these requirements.

**§ 3901.3 Request for records.**

Requests for records of EAS shall be made in accordance with § 1.6 (a) and (b) of this title and addressed to: Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250. This official in delegated authority to make determinations regarding such requests in accordance with § 1.3(b) of this title.

**§ 3901.4 Denials.**

If the Economics Agencies FOIA Officer determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the Economics Agencies FOIA Officer shall give written notice of denial in accordance with § 1.7(a) of this title.

**§ 3901.5 Appeals.**

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be in accordance with § 1.6(e) of this title and addressed to the Director, Economic Analysis Staff, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 11th day of March 1987.

**Keith J. Collins,**

*Director, Economic Analysis Staff.*

[FR Doc. 87–6810 Filed 3–26–87; 8:45 am]

BILLING CODE 3410–19–M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Parts 546, 552, 563, 572a and 574

[No. 87–306]

### Acquisitions of Control of Insured Institutions and Delegated Merger Approvals; Technical Corrections

Dated: March 18, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule; technical corrections.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is making technical and conforming corrections to its regulations governing acquisitions of control of insured institutions and delegated merger approvals adopted by the Board on November 8, 1985, Board Res. Nos. 85–1005, 85–1006; 50 FR 48685, 48725 (Nov. 26, 1985), and to other regulations governing consolidations and combinations of insured institutions.

**EFFECTIVE DATE:** March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kevin A. Corcoran, Staff Attorney, (202) 377–6203, Neil R. Crowley, Deputy Director for Corporate, (202) 377–6962, or Julie L. Williams, Deputy General Counsel (202) 377–6459; Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The Board, as operating head of the FSLIC, is making technical and conforming corrections to its regulations governing acquisitions of control of insured institutions and consolidations and combinations of insured institutions. On November 8, 1985, the Board adopted extensive amendments to its regulations implementing the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) ("Control Act") and the acquisition provisions of the Savings and Loan Holding Company Amendments of 1967, 12 U.S.C. 1730a, ("Holding Company Act") in Resolution No. 85–1005. 50 FR 48685 (Nov. 26, 1985). Also on November 8, 1985, the Board adopted amendments to its regulations governing delegations of authority for processing applications involving interim institutions, mergers, consolidations, bulk transfers and other transfers of assets and liabilities in Resolution No. 85–1006. 50 FR 48725 (Nov. 26, 1985). Adoption of the two Resolutions resulted in complex amendments to numerous Board regulations.

The Board has become aware of several typographical errors, missing words, and potentially confusing punctuation in the regulations as published in the **Federal Register** on November 26, 1985. Some of these errors might confuse a reader into thinking that pertinent words or phrases have been inadvertently omitted. In addition, the Board is aware of several outdated regulatory citations in its regulations that should be corrected. Accordingly, the Board is taking this opportunity to make technical corrections in these respects.

In addition, the amendments adopted today at 12 CFR 546.2(d), 552.13(i)(3), 552.13(j)(3), and 563.22(d), regarding procedures for formation of interim institutions update the citations in those regulations from Part 584 to Part 574. These conforming amendments were unintentionally omitted from Board Resolution No. 85–1005, and are necessary because the regulations currently cite regulations that no longer exist. The effect of these amendments is to clarify the permissibility of certain procedures, previously available only in connection with mergers involving interim institutions created by companies, to be used in the context of mergers involving interim institutions created by other persons. The Board, in Board Resolution No. 85–1005, specifically mentioned the clarification, streamlining and expediting of various application procedures and the provision of a uniform type of public notice for holding company applications and change in control notices as being among its purposes in amending its regulations governing the acquisition of control of insured institutions. Accordingly, this correction regarding the procedures pertaining to interim institutions in the context of an

acquisition of control of an insured institution is entirely consistent with the Board's purposes in implementing Part 574.

The Board also is amending 12 CFR 574.7(g)(1)(iii), which, *inter alia*, sets forth a rebuttable presumption that an acquiror may fail to satisfy the managerial resources and future prospects tests of 12 CFR 574.7(c) or the integrity test of 12 CFR 574.7(d)(4) if a management official of the acquiror was a management official or director of a company or insured institution that was placed into receivership, conservatorship, or was placed in a management consignment program, or was liquidated during his tenure or within two years thereafter. The discussion of this presumptive disqualifier in Resolution No. 85–1005 clearly indicated that the presumptive disqualifier also was intended to be applicable to any management official of the acquiror who was a controlling shareholder of such an entity. The presumptive disqualifier as originally stated, however, inadvertently omitted mention of controlling shareholders, and this amendment corrects that oversight.

Because these changes are either nonsubstantive or relieve restrictions currently in effect, the Board finds that observance of the notice and comment procedure pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 and the 30-day delay of effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary and contrary to the public interest.

**List of Subjects in 12 CFR Parts 546, 552, 563, 572a and 574**

Administrative practice and procedure, Bank deposit insurance, Holding companies, Investments, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Parts 546 and 552, Subchapter C, Parts 563, 572a and 574, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM**

**PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION**

1. The authority citation for Part 546 continues to read as follows:

**Authority:** Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); Sec. 406, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1946–1948 Comp., p. 1071.

2. Amend § 546.2 by revising paragraphs (d)(3) and (h)(1)(i) to read as follows:

**§ 546.2 Procedure; effective date.**

* * * * * * *

(d) * * *

(3) This paragraph (d) shall not apply to mergers involving an interim Federal association or an interim state institution if the resulting institution is immediately acquired pursuant to Part 574 of this chapter, in which case the procedures set forth in § 574.6 of this chapter shall apply.

* * * * * * *

(h)(1) * * *

(i) The resulting association requests the granting of supervisory forbearances;

* * * * * * *

**PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS**

3. The authority citation for Part 552 continues to read as follows:

**Authority:** Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 406, 82 stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Amend § 552.13 by revising paragraphs (i)(3) and the first sentence of paragraph (j)(3) to read as follows:

**§ 552.13 Combinations involving Federal stock associations.**

* * * * * * *

(i) *Notice.* * * *

(3) *Procedure.* Processing of an application under this section shall follow the procedures set forth in this paragraph (i) and in §§ 543.2 (e) and (f) of this subchapter, except for applications in which the resulting institution is immediately acquired pursuant to Part 574 of this Chapter, in which case the procedures set forth in § 574.6 of this Chapter shall apply.

* * * * * * *

(j) Approval by stockholders. * * *

(3) *Exceptions for certain combinations involving an interim institution.* Stockholders of a Federal stock association need not authorize by a two-thirds affirmative vote combinations involving an interim Federal association or interim state institution when the resulting Federal stock association is acquired pursuant to Part 574 of this Chapter. * * *

* * * * * * *

5. Amend § 552.14 by revising the last sentence of paragraph (b) to read as follows:

**§ 552.14 Dissenter and appraisal rights.**

* * * * * * *

(b) * * * "Qualified consideration" means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national securities exchange or quoted on NASDAQ, or any combination of such shares of stock and cash.

* * * * * * *

**SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**

**PART 563—OPERATIONS**

6. The authority citation for Part 563 continues to read as follows:

**Authority:** Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

7. Amend § 563.22 by revising the first sentence of paragraph (b); and by revising paragraphs (d) and (e)(1)(i) to read as follows:

**§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.**

* * * * * * *

(b) No insured institution may at any time make a transfer, as defined in § 571.5(a) of this Subchapter, of assets or savings account liabilities without application to and approval by the Corporation: *Provided*, that any insured institution that must receive approval for such transfer from the Federal Deposit Insurance Corporation pursuant to section 5(o)(2)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(o)(2)(D), shall not be subject to approval by the Corporation under this paragraph. * * *

* * * * * * *

(d) The requirements of paragraph (c) of this section do not apply to any merger, consolidation, purchase of assets, or assumption of liabilities: (1) Authorized by the Corporation to be instituted for supervisory reasons, or (2) involving an interim Federal association or an interim state-chartered institution if the resulting institution is immediately acquired pursuant to Part 574 of this

chapter, in which case the procedures set forth in § 574.6 of this chapter shall apply.

(e)(1) * * *

(i) The resulting institution requests the granting of supervisory forbearances;

* * * * *

## PART 572a—VOLUNTARY ASSISTED-MERGER PROGRAM

8. The authority citation for Part 572a is revised to read as follows:

**Authority:** Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071.

9. Amend § 572a.5 by revising the second sentence of paragraph (c)(5) to read as follows:

### § 572a.5 Actions by Principal Supervisory Agent.

* * * * *

(c) *Approvals.* * * *

(5) * * * In connection with a merger or acquisition so approved, a Principal Supervisory Agent may grant the resulting institution supervisory forbearances in accordance with supervisory procedures memoranda issued by ORPOS; and

* * * * *

## PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

10. The authority citation for Part 574 continues to read as follows:

**Authority:** Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); and Sec. 408; 82 Stat. 5, as amended (12 U.S.C. 1730a).

11. Amend § 574.2 by revising paragraph (a)(2) and by revising the parenthetical clause in paragraph (k)(2) to read as follows:

### § 574.2 Definitions.

(a) * * *

(2) The acquisition of stock by a group of persons and/or companies acting in concert which shall be deemed to occur upon formation of such group. *Provided,* that an investment advisor shall not be deemed to acquire the voting stock of its advisee if the advisor: (i) Votes the stock only upon instruction from the beneficial owner, and (ii) does not provide the beneficial owner with advice concerning the voting of such stock.

* * * * *

(k) * * *

(2) * * * (other than a pension, profit-sharing, stockholders', voting, or business trust) * * *

* * * * *

12. Amend § 574.3 by revising paragraph (c)(2)(iv)(A) to read as follows:

### § 574.3 Acquisition of control of insured institutions.

* * * * *

(c) *Exempt transactions.* * * *

(2) * * *

(iv) * * *

(A) Has held power to vote 25 percent or more of any class of voting stock in such institution continuously since March 9, 1979; or

* * * * *

13. Amend § 574.4 by revising paragraph (d)(5) to read as follows:

### § 574.4 Control.

* * * * *

(d) * * *

(5) Persons or companies will be presumed to be acting in concert where they constitute a group under the beneficial ownership reporting rules under section 13 or the proxy rules under section 14 of the Securities Exchange Act, promulgated by the Securities and Exchange Commission.

* * * * *

14. Amend § 574.5 by revising paragraph (a)(1) to read as follows:

### § 574.5 Certifications of ownership and other reports.

(a) *Acquisition of stock.* (1) Upon the acquisition of beneficial ownership which exceeds, in the aggregate, 10 percent of any class of stock of an insured institution or additional stock above 10 percent of the stock of an insured institution occurring after December 26, 1985, an acquiror shall file in accordance with § 574.6(b)(7) of this Part a certification with the Corporation as described in this section.

* * * * *

15. Amend § 574.6 by revising paragraph (a)(3); by revising the second sentence of paragraph (e); and by revising the last sentence of paragraph (f)(2) to read as follows:

### § 574.6 Procedural requirements.

(a) * * *

(3) *H–(e)3.* This application shall be used for all applications filed under § 574.3(a): (i) By a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of an insured or uninsured institution or a savings and loan holding company, or (ii) by any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more insured institutions and shall be used in lieu of an application that otherwise would be required for such merger under § 546.2, § 552.13, and § 563.22 of this Chapter.

* * * * *

(e) * * * Within 20 calendar days of the date of publication (or 40 calendar days after such date if an extension is requested in writing within the initial 20-day period), anyone may file comments in favor or in protest of the application or notice, and in so doing may submit such information as he deems relevant. * * *

* * * * *

(f) *Disclosure.* * * *

(2) * * * Any such request must be substantiated in accordance with paragraph (f)(5).

* * * * *

16. Amend § 574.7 by revising paragraphs (e); (f); the introductory text of paragraph (g)(1)(ii); and paragraph (g)(1)(iii) to read as follows:

### § 574.7 Determination by the Corporation.

* * * * *

(e) *Failure to disapprove a notice.* If, upon expiration of the 60-day review period of any notice deemed to be sufficient filed pursuant to § 574.6(c), or extension thereof, the Corporation has failed to disapprove such notice, the proposed acquisition may take place; *Provided,* that it is consummated within one year and in accordance with the terms and representations in the notice and that there is no material change in circumstances prior to the acquisition.

(f) *Disapproval of a notice.* Within three business days after its decision to disapprove a notice, the Corporation or its delegate shall notify the acquiror in writing of the grounds for disapproval. If the disapproval was issued by the Principal Supervisory Agent pursuant to delegated authority, such notification shall include a statement that the acquiror may request review of the disapproval by the Corporation within 20 days of the receipt of such notification pursuant to § 574.8(a)(4). If such review is denied by the Corporation or the disapproval was issued by the Corporation, the acquiror may request an administrative hearing under paragraph (4) of the Control Act within 10 days of receipt of the notification of disapproval or notification of the Corporation's decision not to review the denial.

(g) *Presumptive disqualifiers.*

(1) * * *

(ii) Denial, or withdrawal after receipt of formal or informal notice of an intent

to deny, by the acquiror or affiliates of the acquiror, of * * *

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official, director or controlling shareholder of a company or insured institution that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his tenure or control or within two years thereafter;

* * * * *

17. Amend § 574.8 by revising paragraph (a)(3)(iv) to read as follows:

**§ 574.8 Delegations of authority.**

(a) *Actions by the Principal Supervisory Agent.* * * *

(3) *Other actions.* * * *

(iv) A grant or denial of a request for waiver of certified financial statements for an acquiror's proprietary interests required in connection with a notice filed under § 574.3(b) of this Part: Provided, that the acquiror provides the following substitute information: (A) A statement supporting the acquiror's contention that production of such certified financial statements is unduly burdensome; (B) Tables setting forth: (i) The acquiror's percent of interest in the insured institution to be acquired, the amount of investment in the insured institution and the investment as a percentage of the acquiror's regulatory capital; and (ii) the amount of each entry as a percentage of the acquiror's total assets, regulatory capital and gross income; (C) Available unaudited financial statements for each entity for which a waiver has been requested which include at least three years of statements for each entity of operations and interim statements within 90 days of the most recently filed amendment and 2 years of statements of condition and interim statements within 90 days of the most recently filed amendments; (D) A letter from an independent accountant indicating changes that would be required to reconcile the financial statements with ones prepared on a basis that would be consistent with generally accepted accounting principles; and (E) The latest available Federal income tax returns for each entity for the immediately preceding two taxable years; and

* * * * *

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-6726 Filed 3-26-87; 8:45 am]

BILLING CODE 6720-01-M

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

## Schedules of Controlled Substances; Excepted Stimulant and Depressant Compounds

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of interim rule and request for comments.

**SUMMARY:** This interim rule amends §§ 1308.31 and 1308.32 of the Code of Federal Regulations. Slight changes in the language of these sections have been made in order to incorporate amendments to the Controlled Substances Act of 1970 that were introduced by passage of the Dangerous Drug Diversion Control Act of 1984. These amendments change the term "excepted prescription drug" to "exempted prescription drug." In addition, the Table of Exempt Prescription Products (formerly the Table of Excepted Prescription Drugs) is amended by adding to the list those products that have been granted exempt status under the Controlled Substances Act since the last notice was published on November 29, 1982 (47 FR 53728), by removing from the list all products that have been discontinued and by rearranging the order of listing such that products will now be arranged alphabetically by name of manufacturer. This listing reflects a substantial change relative to the previous version of the Table of Exempted Prescription Products found in Part 1308.

**DATES:** Effective April 1, 1987. Comments must be submitted on or before April 27, 1987.

**ADDRESS:** Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

**SUPPLEMENTARY INFORMATION:** The Controlled Substances Act, as amended by the Dangerous Drug Diversion Control Act of 1984, authorizes the Attorney General at 21 U.S.C. 811(g)(3)(A) to exempt from specific provisions of the Act a preparation or mixture, if that preparation or mixture contains a nonnarcotic controlled substance, is approved for prescription use, and meets certain criteria. An exemption (previously referred to as an exception) may be granted if the nonnarcotic controlled substance is combined with one or more active medicinal ingredients which are not listed in any schedule and whose presence vitiates the potential for abuse of the nonnarcotic controlled substance. Such exemptions apply only to a specific prescription product and are only granted following suitable application to Drug Enforcement Administration per 21 CFR 1308.31.

The current Table of Excepted Prescription Drugs (to be referred hereinafter as Table of Exempt Prescription Products) found in 21 CFR Part 1308, lists those products which have been granted exempt status as of November 29, 1982 (47 FR 53728). Since that time a number of applications for exemptions have been received and reviewed by the Drug Enforcement Administration. Moreover, it has been determined through direct contact with the manufacturers that a large number of prescription products previously granted exempt status are no longer being marketed. This notice adds those prescription products which have been granted exempt status since November 29, 1982 (pursuant to 21 CFR 1308.31) to the list and removes all discontinued products from the list.

It should be noted that a large number of products have been removed from the final list for one of the following reasons:

1. Information from the manufacturer indicates that the product is no longer being marketed.

2. The manufacturer could not be located by mailing address, telephone directory, listing in the 1986 edition of the American DRUG INDEX, listing in the 1986 edition of the REDBOOK, or through use of Report Number DLS-110 (Drug Manufacturer Address File) prepared by the Food and Drug Administration.

This rule also changes the terms which are used in describing both the process and the drugs involved. The statutory amendments changed the terminology from an "exception" to an "exemption." It also changed "stimulant and depressant," to "nonnarcotic." These nomenclature changes are reflected in this amendment.

This rule is being published as an interim rule with an effective date of April 1, 1987. Comments and objections will be considered, and a final rule will be published following the comment period.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of products to the list of exempt prescription products has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and regulations.

The Office of Management and Budget has previously determined that these changes are internal agency matters which do not require formal OMB review.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(A) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control, by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

Dated: March 5, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

## PART 1308—SCHEDULE OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b).

2. The centered heading prior to § 1301.31 is revised to read as follows:

**Exempted Prescription Products**

3. Section 1308.31 is amended by revising the section title and paragraph (a), the introductory text of paragraph (b), the first five sentences of paragraph (c), and paragraph (d) to read as follows:

**§ 1308.31 Application for exemption of a nonnarcotic prescription product.**

(a) Any person seeking to have any compound, mixture, or preparation containing any nonnarcotic controlled substance listed in § 1308.12(e), or in § 1308.13 (b) or (c), or in § 1308.14, or in § 1308.15, exempted from application of all or any part of the Act pursuant to section 201(g)(3)(A), of the Act (21 U.S.C. 811(g)(3)(A). may apply to the Administrator, Drug Enforcement Administration, Washington, DC 20537, for such exemption.

(b) An application for an exemption under this section shall contain the following information:

* * * * *

(c) Within a reasonable period of time after the receipt of an application for an exemption under this section, the Administrator shall notify the applicant of his acceptance or non-acceptance of the application, and if not accepted, the reason therefor. The Administrator need not accept an application for filing if any of the requirements prescribed in paragraph (b) of this section is lacking or is not set forth so as to be readily understood. If the applicant desires, he may amend the application to meet the requirements of paragraph (b) of this section. If accepted for filing, the Administrator shall publish in the **Federal Register** general notice of this proposed rulemaking in granting or denying the application. Such notice shall include a reference to the legal authority under which the rule is proposed, a statement of the proposed rule granting or denying an exemption, and, in the discretion of the Administrator, a summary of the subjects and issues involved. * * *

(d) The Administrator may any revoke any exemption granted pursuant to section 201(g)(3)(A) of the Act (21 U.S.C. 811(g)(3)(A)) by following the procedures set forth in paragraph (c) of this section for handling an application for an exemption which has been accepted for filing.

4. Section 1308.32 is amended to read as follows:

**§ 1308.32 Exempted prescription products.**

The following compounds, mixtures, or preparations which contain a nonnarcotic controlled substance listed is § 1308.12(e), or in § 1308.13 (b) or (c), or in § 1308.14 or in § 1308.15 listed in the Table of Exempted Prescription Products have been exempted by the Administrator from the application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and §§ 1301.24, 1301.31, 1301.32, and 1301.71 through 1301.76 of this chapter for administrative purposes only. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exemption in order for the product to be exempted.

**Exempted Prescription Products**

*Explanation of Column Headings and Abbreviations*

*Company/Trade Name.* Self explanatory.

*NDC Code.* Refers to the specific National Drug Code listing for the particular formulated product.

*Form.* Refers to the type of dosage formulation:

CA=capsule
DP=drops
EL=elixir
EC=enteric coated capsule
ET=enteric coated tablet
LQ=liquid
SS=suspension
SU=suppository
TB=tablet
WA=wafer
XC=sustained release capsule
XT=sustained release tablet

*Controlled Substance (mg or mg/ml).* Refers to the type and amount of controlled substance present in the mixture. If the dosage formulation is solid (CA, EC, ET, SU, TB, WA, XC, or XT), the amount shown is milligrams per dosage unit. If the dosage formulation is liquid (DP, EL, LQ, or SS), the amount shown is milligrams per milliliter.

BILLING CODE 4410-09-M

Table of Exempt Prescription Products

| Company | Trade name | NDC Code | Form | Controlled Substance | (mg or mg/ml) |
|---|---|---|---|---|---|
| Adria Laboratories | Axotal | 00013-1301 | TB | Butalbital | 50.00 |
| Alpha Scriptics Inc | Butacet Capsules | 53121-0133 | CA | Butalbital | 50.00 |
| American Urologicals Inc | Butace | 00539-0906 | CA | Butalbital | 50.00 |
| Apotheca | Theophen | 12634-0101 | TB | Phenobarbital | 8.00 |
| Arco Pharmaceuticals | Arco-Lase Plus | 00275-0045 | TB | Phenobarbital | 8.00 |
| Arlo Interamerican | Espasmotex | 11475-0835 | TB | Phenobarbital | 20.00 |
| Ascher and Co | Anaspaz PB | 00225-0300 | TB | Phenobarbital | 15.00 |
| Ascot Pharmaceuticals | Antispasmodic Tablets | 47679-0158 | TB | Phenobarbital | 16 20 |

Table of Exempt Prescription Products—Continued

| Company | Trade name | NDC Code | Form | Controlled Substance | (mg or mg/ml) |
|---|---|---|---|---|---|
| Ascot Pharmaceuticals | Chlordiazepoxide Hydrochloride + Clidinium Bromide. | 47679-0268 | CA | Chlordiazepoxide HCl | 5.00 |
| Ayerst Laboratories | PMB-200 | 00046-0880 | TB | Meprobamate | 200.00 |
| Ayerst Laboratories | PMB-400 | 00046-0881 | TB | Meprobamate | 400.00 |
| Barre Drug Co | Barophen | 00472-0981 | EL | Phenobarbital | 3.24 |
| Barre Drug Co | Isolate Compound | 00472-0929 | EL | Phenobarbital | 0.40 |
| Beecham Laboratories | Hybephen | 00029-2360 | TB | Phenobarbital | 15.00 |
| Bioline Labs Inc | Chlordinium | 00719-1208 | CA | Chlordiazepoxide HCL | 5.00 |
| Blaine Co | Spaslin | 00165-0029 | TB | Phenobarbital | 16.20 |
| Blansett Pharm Co | Analor 300 Capsules | 51674-0009 | CA | Butalbital | 50.00 |
| Bock Pharmacal Co | Broncholate | 00563-0277 | CA | Phenobarbital | 8.00 |
| Bowman Pharmaceutical | Private Formula No 3095 | 00252-3095 | TB | Phenobarbital Sodium | 15.00 |
| Breon Labs | Isuprel Compound | 00057-0874 | EL | Phenobarbital | 0.40 |
| Caldwell & Bloor Co | Hyosital White | 00361-2131 | TB | Phenobarbital | 16.20 |
| Carnrick Labs | Phrenilin New Formulation | 00086-0050 | TB | Butalbital | 50.00 |
| Chelsea Laboratories | Chlordiazepoxide with Clidinium Bromide. | 46193-0948 | CA | Chlordiazepoxide HCL | 5.00 |
| Columbia Drug Co | Isopap Capsules | 11735-0400 | CA | Butalbital | 50.00 |
| Consolidated Midland | Bellalphen | 00223-0425 | TB | Phenobarbital | 16.20 |
| Dorasol Laboratories | Donalixir | 00471-0095 | EL | Phenobarbital | 3.24 |
| Dunhall Pharmacal Inc | Triaprin | 00217-2811 | CA | Butalbital | 50.00 |
| Everett Laboratories Inc | Repan | 00642-0162 | TB | Butalbital | 50.00 |
| Forest Pharmacal Inc | Acetaminophen 325 mg/Butalbital 50 mg. | 00456-0674 | TB | Butalbital | 50.00 |
| Forest Pharmacal Inc | Acetaminophen 500mg/Butalbital 50mg | 00456-0671 | TB | Butalbital | 50.00 |
| Forest Pharmacal Inc | Bancap | 00456-0546 | CA | Butalbital | 50.00 |
| Forest Pharmacal Inc | Esgic Capsules | 00456-0631 | CA | Butalbital | 50.00 |
| Forest Pharmacal Inc | Esgic Forte Tablets | 00456-0673 | TB | Butalbital | 50.00 |
| Forest Pharmacal Inc | Esgic Tablets | 00456-0630 | TB | Butalbital | 50.00 |
| Forest Pharmacal Inc | G.B.S. | 00456-0281 | TB | Phenobarbital | 8.00 |
| Gen-King Products | Soniphen | 00456-0429 | ET | Phenobarbital | 16.00 |
| Geriatric Pharmacal Corp | Antispasmodic | 03547-0777 | TB | Phenobarbital | 16.20 |
| Geriatric Pharmacal Corp | Bilezyme Plus | 00249-1112 | TB | Phenobarbital | 8.00 |
| Glenlawn Laboratories | Gustase Plus | 00249-1121 | TB | Phenobarbital | 8.00 |
| Halsey Drug Co | Chlordinium Sealets | 00580-0084 | CA | Chlordiazepoxide HCL | 5.00 |
| Halsey Drug Co | Clinoxide | 00879-0501 | CA | Chlordiazepoxide HCL | 5.00 |
| Halsey Drug Co | Susano | 00879-0059 | EL | Phenobarbital | 3.24 |
| Hyrex Pharmaceutical | Susano | 00879-0058 | TB | Phenobarbital | 16.20 |
| Hyrex Pharmaceutical | Panzyme | 00314-0310 | TB | Phenobarbital | 8.10 |
| Interstate Drug Exchange | Two-Dyne Revised | 00314-2229 | TB | Butalbital | 50.00 |
| Intetlab | Spastolate | 00814-7088 | TB | Phenobarbital | 16.20 |
| Kaiser Foundation Hosp | CON-TEN | 11584-1029 | CA | Butalbital | 50.00 |
| Keene Pharmacal Inc | Belladonna Alkaloids with Phenobarbital | 00179-0045 | EL | Phenobarbital | 3.24 |
| Knoll Pharmaceutical | Endolar | 00588-7777 | CA | Butalbital | 50.00 |
| Knoll Pharmaceutical | Quadrinal Suspension | 00044-4580 | SS | Phenobarbital | 2.40 |
| Kraft Pharmacal Co Inc | Quadrinal Tablets | 00044-4520 | TB | Phenobarbital | 24.00 |
| Kremers Urban Co | Digestokraft | 00796-0237 | TB | Butabarbital Sodium | 8.00 |
| Kremers Urban Co | Levsin with Phenobarbital Elixir | 00091-4530 | EL | Phenobarbital | 3.00 |
| Kremers Urban Co | Levsin with Phenobarbital Tablets | 00091-3534 | TB | Phenobarbital | 15.00 |
| Kremers Urban Co | Levsin-PB | 00091-4536 | DP | Phenobarbital | 15.00 |
| Landry Pharmacal Inc | Levsinex with Phenobarbital | 00091-3539 | XC | Phenobarbital | 45.00 |
| Lanpar Co | Febridyne Plain Capsules | 05383-0001 | CA | Butalbital | 50.00 |
| Lasalle Laboratories | PB Phe-Bell | 12908-7006 | TB | Phenobarbital | 16.20 |
| Lederle Laboratories | Pacaps Modified Formula | 48534-0884 | CA | Butalbital | 50.00 |
| Lederle Laboratories | Pathibamate-200 | 00005-5070 | TB | Meprobamate | 200.00 |
| Lemmon Pharmacal Co | Pathibamate-400 | 00005-5071 | TB | Meprobamate | 400.00 |
| Life Laboratories | Donphen | 00093-0205 | TB | Phenobarbital | 15.00 |
| Mallard Inc | Belladonna Alkaloids with Phenobarbital | 00737-1283 | EL | Phenobarbital | 3.00 |
| Mallard Inc | Anoquan Modified Formula | 00166-0881 | CA | Butalbital | 50.00 |
| Marlop Pharmacal Inc | Malatal | 00166-0748 | TB | Phenobarbital | 16.20 |
| Marlop Pharmacal Inc | Broncomar | 12939-0128 | EL | Butabarbital | 1.00 |
| Marnel Pharmacal Inc | Dolmar | 12939-0812 | CA | Butalbital | 50.00 |
| Mayrand Pharmacal Inc | Margesic Capsules | 00682-0804 | CA | Butalbital | 50.00 |
| Mayrand Pharmacal Inc | B-A-C Tablets | 00259-1256 | TB | Butalbital | 50.00 |
| Mead Johnson Pharmacal | Sedapap-10 Tablets | 00259-1278 | TB | Butalbital | 50.00 |
| Mead Johnson Pharmacal | Quibron Plus Capsules | 00087-0518 | CA | Butabarbital | 20.00 |
| Medco Supply Co | Quibron Plus Elixir | 00087-0511 | EL | Butabarbital | 1.33 |
| Mikart Inc | Phenobarbital & Hyoscyamine Sulfate | 00764-2057 | TB | Phenobarbital | 16.20 |
| | Butalbital, Acetaminophen, Caffeine Capsules. | 46672-0103 | CA | Butalbital | 50.00 |

## Table of Exempt Prescription Products—Continued

| Company | Trade name | NDC Code | Form | Controlled Substance | (mg or mg/ml) |
|---|---|---|---|---|---|
| Mikart Inc | Butalbital, Acetaminophen, and Caffeine Tablets II. | 46672-0059 | TB | Butalbital | 50.00 |
| Moore Drug Exchange | Antispasmodic Tablets | 00839-5055 | TB | Phenobarbital | 16.00 |
| Moore Drug Exchange | Theophenyllin | 00839-5111 | TB | Phenobarbital | 8.00 |
| Nejo Pharmaceutical | Spasmalones | 00653-0002 | TB | Phenobarbital | 16.00 |
| Parke-Davis & Co | Dilantin with Phenobarbital 1/2 | 00071-0531 | CA | Phenobarbital | 32.00 |
| Parke-Davis & Co | Dilantin with Phenobarbital 1/4 | 00071-0375 | CA | Phenobarbital | 16.00 |
| Parke-Davis & Co | Tedral SA | 00071-0231 | XT | Phenobarbital | 25.00 |
| Parmed Pharmaceutical | Sedapar Elixir | 00349-4100 | EL | Phenobarbital | 3.24 |
| Parmed Pharmaceutical | Sedapar Tablets | 00349-2355 | TB | Phenobarbital | 16.20 |
| Pasadena Research | Seds | 00418-4072 | TB | Phenobarbital | 16.20 |
| Poythress & Co Inc | Antrocol | 00095-0041 | CA | Phenobarbital | 16.00 |
| Poythress & Co Inc | Antrocol Elixir | 00095-0042 | EL | Phenobarbital | 3.00 |
| Poythress & Co Inc | Antrocol Tablets | 00095-0040 | TB | Phenobarbital | 16.00 |
| Poythress & Co Inc | Mudrane | 00095-0050 | TB | Phenobarbital | 8.00 |
| Poythress & Co Inc | Mudrane GG Elixir | 00095-0053 | EL | Phenobarbital | 0.50 |
| Poythress & Co Inc | Mudrane GG Tablets | 00095-0051 | TB | Phenobarbital | 8.00 |
| Private Formula Inc | Sangesic | 00511-1627 | TB | Butalbital | 30.00 |
| Redi-Med | Butalbital Compound Capsules | 53506-0103 | CA | Butalbital | 50.00 |
| Richlyn Laboratories | Aminophylline & Phenobarbital | 00115-2156 | ET | Phenobarbital | 15.00 |
| Richlyn Laboratories | Aminophylline & Phenobarbital Tablets | 00115-2154 | TB | Phenobarbital | 15.00 |
| Richlyn Laboratories | Bellophen | 00115-2400 | TB | Phenobarbital | 16.20 |
| Richlyn Laboratories | Spasmolin | 00115-4652 | TB | Phenobarbital | 15.00 |
| Robins A H Co Inc | Donnatal Capsules | 00031-4207 | CA | Phenobarbital | 16.20 |
| Robins A H Co Inc | Donnatal Elixir | 00031-4221 | EL | Phenobarbital | 3.24 |
| Robins A H Co Inc | Donnatal Extentabs | 00031-4235 | XT | Phenobarbital | 48.60 |
| Robins A H Co Inc | Donnatal No 2 | 00031-4264 | TB | Phenobarbital | 32.40 |
| Robins A H Co Inc | Donnatal Tablets | 00031-4250 | TB | Phenobarbital | 16.20 |
| Robins A H Co Inc | Donnazyme | 00031-4649 | ET | Phenobarbital | 8.10 |
| Roche Labs | Librax | 00004-0007 | CA | Chlordiazepoxide HCL | 5.00 |
| Roche Labs | Menrium 10-4 | 00004-0025 | TB | Chlordiazepoxide | 10.00 |
| Roche Labs | Menrium 5-2 | 00004-0023 | TB | Chlordiazepoxide | 5.00 |
| Roche Labs | Menrium 5-4 | 00004-0024 | TB | Chlordiazepoxide | 5.00 |
| Rondex Laboratories | Antispasmodic | 00367-4118 | TB | Phenobarbital | 16.20 |
| Rotex Pharmacal Inc | Rogesic Capsules | 31190-0008 | CA | Butalbital | 50.00 |
| Ruckstuhl Co | Sedarex No 3 | 00144-1575 | TB | Phenobarbital | 16.20 |
| Rugby Laboratories | Clindex | 00536-3490 | CA | Chlordiazepoxide HCL | 5.00 |
| Rugby Laboratories | Hexabamate #1 | 00536-3900 | TB | Meprobamate | 200.00 |
| Rugby Laboratories | Hexabamate #2 | 00536-3901 | TB | Meprobamate | 400.00 |
| Rugby Laboratories | Hyosophen Capsules | 00536-3926 | CA | Phenobarbital | 16.00 |
| Rugby Laboratories | Hyosophen Tablets | 00536-3920 | TB | Phenobarbital | 16.20 |
| Rugby Laboratories | Theodrine Tablets | 00536-4648 | TB | Phenobarbital | 8.00 |
| Russ Pharmacal Inc | Analor Capsules | 50474-0701 | CA | Butalbital | 50.00 |
| Sandoz Pharmacal Corp | Belladenal | 00078-0028 | TB | Phenobarbital | 50.00 |
| Sandoz Pharmacal Corp | Belladenal-S | 00078-0027 | XT | Phenobarbital | 50.00 |
| Sandoz Pharmacal Corp | Bellergal-S | 00078-0031 | XT | Phenobarbital | 40.00 |
| Sandoz Pharmacal Corp | Cafergot P-B Suppository | 00078-0035 | SU | Pentobarbital | 60.00 |
| Sandoz Pharmacal Corp | Cafergot P-B Tablets | 00078-0036 | TB | Pentobarbital Sodium | 30.00 |
| Sandoz Pharmacal Corp | Fioricet | 000088-616 | CA | Butalbital | 50.00 |
| Schein Henry Inc | Antispasmodic | 00364-0020 | TB | Phenobarbital | 16.00 |
| Schein Henry Inc | Antispasmodic Elixir | 00364-7002 | EL | Phenobarbital | 3.20 |
| Schein Henry Inc | Isolate Compound Elixir | 00364-7029 | EL | Phenobarbital | 0.40 |
| Schein Henry Inc | T-E-P | 00364-0266 | TB | Phenobarbital | 8.10 |
| Shoals Pharmacal Co | Tencet Capsules | 47649-0560 | CA | Butalbital | 50.00 |
| Shoals Pharmacal Co | Tencet | 47649-0370 | TB | Butalbital | 50.00 |
| Stewart-Jackson Pharmacal | Ezol | 45985-0578 | CA | Butalbital | 50.00 |
| Stuart Pharmaceutical | Kinesed | 00038-0220 | TB | Phenobarbital | 16.00 |
| Towne Paulsen & Co | T. E. P. | 00157-0980 | TB | Phenobarbital | 8.00 |
| Trimen Labs | Amaphen Capsules (reformulated) | 11311-0954 | CA | Butalbital | 50.00 |
| Truxton C O Inc | Atropine Sulfate with Phenobarbital | 00463-6035 | TB | Phenobarbital | 15.00 |
| Truxton C O Inc | Ephedrine with Phenobarbital | 00463-6086 | TB | Phenobarbital | 15.00 |
| Truxton C O Inc | Spastemms Elixir | 00463-9023 | EL | Phenobarbital | 3.24 |
| Truxton C O Inc | Spastemms Tablets | 00463-6181 | TB | Phenobarbital | 15.00 |
| UAD Laboratories Inc | Bucet Capsules | 00785-2307 | CA | Butalbital | 50.00 |
| UAD Laboratories Inc | Bucet Tablets | 00785-2307 | TB | Butalbital | 50.00 |
| UAD Laboratories Inc | Triad | 00785-2306 | TB | Butalbital | 50.00 |
| UAD Laboratories Inc | Triad Capsules | 00785-2305 | CA | Butalbital | 50.00 |
| UDL Laboratories | Belladonna Alkaloids with Phenobarbital | 51079-0168 | TB | Phenobarbital | 16.20 |
| University of Iowa | Bladder Mixture Plus Phenobarbital | 11326-1624 | LQ | Phenobarbital | 2.92 |
| Vale Chemical Co | Alkaloids of Belladonna and Phenobarbital. | 00377-0527 | TB | Phenobarbital | 16.20 |

BEST COPY AVAILABLE

Table of Exempt Prescription Products—Continued

| Company | Trade name | NDC Code | Form | Controlled Substance | (mg or mg/ml) |
|---|---|---|---|---|---|
| Vale Chemical Co | Antispas | 00377-0622 | TB | Phenobarbital | 16.20 |
| Vale Chemical Co | Barbeloid (Revised) Green | 00377-0365 | TB | Phenobarbital | 16.20 |
| Vale Chemical Co | Barbeloid Yellow | 00377-0498 | TB | Phenobarbital | 16.20 |
| Vale Chemical Co | Charspast | 00377-0500 | TB | Phenobarbital | 16.20 |
| Vale Chemical Co | Digestokraft | 00377-0460 | TB | Butabarbital Sodium | 8.00 |
| Vale Chemical Co | Ephedrine & Sodium Phenobarbital | 00377-0109 | TB | Phenobarbital Sodium | 16.20 |
| Vale Chemical Co | Panzyme | 00377-0491 | TB | Phenobarbital | 8.10 |
| Vale Chemical Co | Pulsaphen | 00377-0652 | TB | Phenobarbital | 15.00 |
| Vale Chemical Co | Truxaphen | 00377-0541 | TB | Phenobarbital | 16.20 |
| Vale Chemical Co | Wescophen S-II | 00377-0628 | TB | Phenobarbital | 30.00 |
| Vale Chemical Co | Wesmatic Forte | 00377-0426 | TB | Phenobarbital | 8.10 |
| Vortech Pharmacal Co | Donna-Sed | 00298-5054 | EL | Phenobarbital | 3.24 |
| Vortech Pharmacal Co | Hypnaldyne | 00298-1778 | TB | Phenobarbital | 16.20 |
| Vortech Pharmacal Co | Isophed | 00298-5680 | LQ | Phenobarbital | 0.40 |
| Vortech Pharmacal Co | Phedral C. T. | 00298-1173 | TB | Phenobarbital | 8.10 |
| Wallace Laboratories | Barbidonna Elixir | 00037-0305 | EL | Phenobarbital | 3.20 |
| Wallace Laboratories | Barbidonna No 2 | 00037-0311 | TB | Phenobarbital | 32.00 |
| Wallace Laboratories | Barbidonna Tablets | 00037-0301 | TB | Phenobarbital | 16.00 |
| Wallace Laboratories | Lufyllin-EPG Elixir | 00037-0565 | EL | Phenobarbital | 1.60 |
| Wallace Laboratories | Lufyllin-EPG Tablets | 00037-0561 | TB | Phenobarbital | 16.00 |
| Wallace Laboratories | Milpath-400 | 00037-5001 | TB | Meprobamate | 400.00 |
| Wallace Laboratories | Milprem-200 | 00037-5501 | TB | Meprobamate | 200.00 |
| Wallace Laboratories | Milprem-400 | 00037-5401 | TB | Meprobamate | 400.00 |
| Wallace Laboratories | Miltrate-20 | 00037-5301 | TB | Meprobamate | 200.00 |
| Wesley Pharmacal Co | Hytrophen | 00917-0244 | TB | Phenobarbital | 16.20 |
| Wesley Pharmacal Co | Pulsaphen Gray | 00917-0113 | TB | Phenobarbital | 15.00 |
| Wesley Pharmacal Co | Wescophen-S | 00917-0135 | TB | Phenobarbital | 30.00 |
| Wesley Pharmacal Co | Wesmatic Forte | 00917-0845 | TB | Phenobarbital | 8.00 |
| West-ward Inc | Belladonna Alkaloids & Phenobarbital | 00143-1140 | TB | Phenobarbital | 16.20 |
| West-ward Inc | Butalbital with Acetaminophen and Caffeine Tablets. | 00143-1787 | TB | Butalbital | 50.00 |
| West-ward Inc | Theophylline Ephedrine & Phenobarbital | 00143-1695 | TB | Phenobarbital | 8.00 |
| Winthrop Labs | Isuprel | 00024-0874 | EL | Phenobarbital | 0.40 |
| Zenith Labs Inc | Azpan | 00172-3747 | TB | Phenobarbital | 8.00 |

[FR Doc. 87-5249 Filed 3-26-87; 8:45 am]
BILLING CODE 4410-09-D

## 21 CFR Part 1308

## Exempt Chemical Preparations

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of interim rule and request for comments.

**SUMMARY:** This interim rule amends § 1308.24, of Title 21, of the Code of Federal Regulations. The below listed chemical preparations and mixtures which contain controlled substances have replaced the list of exempt chemical preparations set forth in § 1308.24(i). This action is in response to the periodic review of the exempt chemical preparation list and of applications for exemptions filed with DEA. Those preparations included in the list are exempted from the application of various provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration regulations.

**DATES:** Effective April 1, 1987. Comments must be submitted on or before April 27, 1987.

**ADDRESS:** Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

**SUPPLEMENTARY INFORMATION:** The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General at 21 U.S.C. 811(g)(3)(B) to exempt from specific provisions of the Act, a compound, mixture, or preparation which contains any controlled substance; which is not for administration to a human being or animal; and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

The Administrator of the Drug Enforcement Administration has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. These applications have been received by the Deputy Assistant Administrator, Office of Diversion Control. The Deputy Assistant Administrator hereby finds that each of the following preparations and mixtures is intended for laboratory, industry, educational, or special research purposes; is not intended for general administration to man or animal; and either: (a) Contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration, that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the

controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Deputy Assistant Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysts, and suppliers of these products.

This rule is being published as an interim rule with an effective date of April 1, 1987. Comments and objections will be considered and a final rule will be published following the comment period.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of preparations to the list of exempt chemical preparations has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and regulations.

The Office of Management and Budget has previously determined that these changes are internal agency matters which do not require formal OMB review.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(B) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

Dated: March 5, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b).

2. In § 1308.24(i) the table is revised to read as follows:

**§ 1308.24 Exempt chemical preparations.**

* * * * *

(i) * * *

BILLING CODE 4410-09-M

Exempt Chemical Preparations

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Abbott Laboratories | Digoxin I125 Imusay R Diagnostic Kit No.7649 | Kit: 100 units | 06/06/74 |
| Abbott Laboratories | 125I-Thyroxine Reagent Solution | Plastic Bottle: 25ml, 5ml | 04/22/76 |
| Abbott Laboratories | Barbital Buffer 0.05 Molar | Plastic Bottle: 25ml, 5ml | 04/22/76 |
| Abbott Laboratories | T 4 RIA (PEG) Diagnostic Kit | Kit: 500 tests, 100 tests, 50 tests | 04/22/76 |
| Abbott Laboratories | Thyroxine Antiserum (Sheep, Rabbit, or Goat) | Plastic Bottle: 200ml, 20ml | 04/22/76 |
| Abbott Laboratories | Thyroxine Binding Globulin, Thyroxine I 125 | Glass Bottle: 13ml. Plastic Bottle: 250ml | 04/22/76 |
| Abbott Laboratories | Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541.. | Plastic Bottle: 300 ml, 150 ml. | 09/21/77 |
| Abbott Laboratories | 125I Cholylglycyltyrosine Reagent Solution, No. 7816. | Plastic Bottle: 20ml | 04/07/78 |
| Abbott Laboratories | Barbital Buffer, 0.06 M Reagent Solution No. 7824. | Plastic Bottle: 2.5ml | 04/07/78 |
| Abbott Laboratories | CG RIA Diagnostic Kit No. 7815 | Kit: 100 tests | 04/07/78 |
| Abbott Laboratories | Cholylglycine Antiserum (Rabbit) Reagent Solution No. 7817. | Plastic Bottle: 20ml | 04/07/78 |
| Abbott Laboratories | TDx Phenobarbital Calibrator-0.0, 5.0, 10.0, 20.0, 40.0, and 80.0 mcg/ml. | Kit ctg: 6 vials | 08/31/81 |
| Abbott Laboratories | TDx Phenobarbital Controls- 15.0, 30.0, 50.0 mcg/ml. | Kit ctg: 3 vials | 08/31/81 |
| Abbott Laboratories | Phenobarbital Stock Standard Solution | Bottle: 1 liter | 08/12/82 |
| Abbott Laboratories | Phenobarbital Enzyme Inhibitor Stock | Vial: 2ml | 01/20/84 |
| Abbott Laboratories | TDx Amphetamine/Methamphetamine Calibrator, No. 9668-01. | Bottles: 4ml | 08/23/85 |
| Abbott Laboratories | TDx Amphetamine/Methamphetamine Controls, No. 9668-10. | Bottles: 4ml | 08/23/85 |
| Abbott Laboratories | Amphetamine Stock Standard, No. 97072 | Bottle: 125ml | 09/30/85 |
| Abbott Laboratories | TDx Cocaine Metabolite Calibrator, B-F No. 9670 | Bottle: 4ml | 10/02/85 |
| Abbott Laboratories | TDx Cocaine Metabolite Control, L and H No. 9669. | Bottle: 4ml | 10/02/85 |
| Abbott Laboratories | TDx Cocaine Metabolite Reagent Pack | Reagent well: 5ml | 10/02/85 |
| Abbott Laboratories | Spectrum Phenobarbital Calibrator II-VI, Nos. 9755, 9757, 9759, 9761, 9763.. | Bottle: 4ml | 10/03/85 |
| Abbott Laboratories | Spectrum Phenobarbital Control, Nos. 9876, 9878, 9880. (L,M,H). | Bottle: 4ml | 10/03/85 |
| Abbott Laboratories | TDx Barbiturates Calibrators, B-F No. 9669 | Bottle: 4 ml | 10/08/85 |
| Abbott Laboratories | TDx Barbiturates Control, L and H No. 9669 | Bottle: 4ml | 10/08/85 |
| Abbott Laboratories | Amphetamine Bulk Calibrators, B-F | Flask: 2 liter | 10/09/85 |
| Abbott Laboratories | TDx Phencyclidine Calibrators, B-F No. 9672 | Bottle: 4ml | 10/09/85 |
| Abbott Laboratories | TDx Phencyclidine Controls, L and H No. 9672 | Bottle: 4ml | 10/09/85 |
| Abbott Laboratories | Morphine Stock Standard, No. 97291 | Vial: 125ml | 10/16/85 |
| Abbott Laboratories | Cocaine Metabolite Bulk Calibrator, B-F No. 9670 | Flask: 2 liter | 10/28/85 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Abbott Laboratories | Cocaine Metabolite Bulk Controls, L and H No. 9670. | Flask: 2 liter | 10/28/85 |
| Abbott Laboratories | Cocaine Metabolite Bulk Tracer, No. 9670 | Flask: 4 liter | 10/29/85 |
| Abbott Laboratories | Cocaine Metabolite Stock Tracer, No. 9670 | Vial: 5ml | 10/29/85 |
| Abbott Laboratories | Benzoylecgonine Stock Standard, No, 97182 | Bottle: 125ml | 11/21/85 |
| Abbott Laboratories | Phencyclidine Stock Standard, No. 97158 | Bottle: 125ml | 11/21/85 |
| Abbott Laboratories | Secobarbital Stock Standard, No. 97171 | Bottle: 125ml | 11/21/85 |
| Abbott Laboratories | Amphetamine Bulk Controls, L and H | Flask: 2 liter | 12/09/85 |
| Abbott Laboratories | Phencyclidine Bulk Calibrator, B-F No. 9672 | Flask: 2 liter | 03/21/86 |
| Abbott Laboratories | Phencyclidine Bulk Controls, L and H No. 9672 | Flask: 2 liter | 03/21/86 |
| Abbott Laboratories | Secobarbital Bulk Calibrator, B-F No. 9669 | Flask: 2 liter | 03/21/86 |
| Abbott Laboratories | Secobarbital Bulk Controls, L and H No. 9669 | Flask: 2 liter | 03/21/86 |
| Abbott Laboratories | Benzodiazepines Bulk Calibrators, A-F No. 9674 | Flasks: 2 liter | 04/21/86 |
| Abbott Laboratories | Benzodiazepines Bulk Controls, L and H No. 9674. | Flasks: 2 liter | 04/21/86 |
| Abbott Laboratories | Nordiazepam Stock Standard, No. 97757 | Bottle: 125ml | 04/21/86 |
| Abbott Laboratories | TDx Benzodiazepines Calibrators, No. 9674-01 | Bottles: 4ml | 04/21/86 |
| Abbott Laboratories | TDx Benzodiazepines Controls, No. 9674-10 | Bottles: 4ml | 04/21/86 |
| Abbott Laboratories | Opiate Bulk Calibrators, B-F No. 9673 | Flasks: 2 liter | 05/07/86 |
| Abbott Laboratories | Opiate Bulk Controls, L and H No. 9673 | Flasks: 2 liter | 05/07/86 |
| Abbott Laboratories | Opiates Bulk Tracer, No. 97458 | Flask: 4 liter | 05/07/86 |
| Abbott Laboratories | Opiates Stock Tracer, No. 98718 | Bottle: 30ml | 05/07/86 |
| Abbott Laboratories | TDx Opiates Calibrators, B-F No. 9673 | Vials: 4ml | 05/07/86 |
| Abbott Laboratories | TDx Opiates Controls, L and H No. 9673 | Vials: 4ml | 05/07/86 |
| Abbott Laboratories | TDx Opiates Reagent, Pack No. 9673-20 | Reagent Well: 5ml | 05/07/86 |
| Abbott Laboratories | TDx Phencyclidine Control M No. 9672 | Bottle: 4ml | 09/26/86 |
| Abbott Laboratories | Phencyclidine Bulk Control M No. 9672 | Flask: 2 Liters | 09/26/86 |
| Adri/Technam | 3-Ortho-Carboxymethylmorphine | Screw Cap Vial | 05/03/73 |
| Adri/Technam | 5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid | Screw Cap Vial | 05/03/73 |
| Adri/Technam | 5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin. | Vaccine Vial: 10ml | 05/03/73 |
| Adri/Technam | 5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin. | Vaccine Vial: 10ml | 05/03/73 |
| Adri/Technam | Barbituric Acid Sensitized Red Blood Cells | Vaccine Vial: 50ml | 05/03/73 |
| Adri/Technam | Benzoyl Ecgonine Sensitized Red Blood Cells | Vaccine Vial: 50ml | 05/03/73 |
| Adri/Technam | CMM-BSA and CMM-RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin). | Vaccine Vial: 10ml | 05/03/73 |
| Adri/Technam | Morphine Sensitized Red Blood Cells | Vaccine Vial: 50ml | 05/03/73 |
| Adri/Technam | Tropinecarboxylic Acid (ecgonine) | Screw-cap Bottle:10ml | 05/03/73 |
| Adri/Technam | Benzoyl Ecgonine | Screw-cap vial:10ml | 04/18/74 |
| Adri/Technam | Benzoyl Ecgonine-BSA | Vaccine Vial | 07/21/75 |
| Adri/Technam | Benzoyl Ecgonine-RSA | Vaccine Vial | 07/21/75 |
| Adri/Technam | Barbiturate Standard | Screw-cap vial:10ml | 07/17/76 |
| Adri/Technam | Benzoyl Ecgonine Standard | Screw-cap vial:10ml | 07/17/76 |
| Adri/Technam | Methadone Standard | Screw-cap vial:10ml | 07/17/76 |
| Adri/Technam | Morphine Standard (in distilled water) | Screw-cap vial:10ml | 07/17/77 |
| Adri/Technam | Cannabuse Delta 8 THC Carboxylic Acid Standard. | Vial: 6 ml | 09/19/84 |
| Adri/Technam | Cannabuse Delta 8 THC Carboxylic Acid Standard. | Disks: 25/package | 09/19/84 |
| Adri/Technam | Cannabuse Delta 9 THC Carboxylic Acid Standard. | Vial: 6 ml | 09/19/84 |
| Adri/Technam | Cannabuse Delta 9 THC Carboxylic Acid Standard. | Disks: 25/package | 09/19/84 |
| Adri/Technam | Cannabuse Delta 9 THC Standard | Disks: 25/package | 09/19/84 |
| Adri/Technam | Cannabuse Delta 9 THC Standard | Vial: 6 ml | 09/19/84 |
| Adri/Technam | Cannabuse Cannabidiol Standard | Disks: 25/package | 05/03/85 |
| Adri/Technam | Drug Standards, Acid/ Neutral Mixture A and B | Disks: 25/package | 11/15/85 |
| Adri/Technam | Drug Standards, Basic Mixture A and B | Disks: 25/package | 11/15/85 |
| American Monitor Corporation | Qualify I | Glass Vial: 10ml | 10/09/75 |
| American Monitor Corporation | Qualify II | Glass Vial: 10ml | 10/09/75 |
| Amersham Corporation | Codeine (N-methyl-C14) Hydrochloride | Custom Preparation | 03/27/72 |
| Amersham Corporation | Morphine (N-methyl-C14) Hydrocloride No. CFA-363. | Vial:0.32 to 1.89mg | 03/27/72 |
| Amersham Corporation | [1(n)-3H] Codeine, No. TRK 448 | Ampule: 0.002mg to 0.015mg | 02/26/74 |
| Amersham Corporation | [1(n)-3H]Morphine, No. TRK-447 | Vial: 0.002 mg to 0.015 mg | 02/26/74 |
| Amersham Corporation | [1,7,8(n)-3H]Dihydromorphine, No. TRK-450 | Vial: 0.0008 mg to 0.008 mg | 02/26/74 |
| Amersham Corporation | [2(n)-3H] Lysergic Acid Diethylamide, No. TRK. 461. | Vial: 0.003mg to 0.04mg | 05/22/74 |
| Amersham Corporation | Pheno [2-14C] barbital Catalog No. CFA 537 | Vial:0.39 to 5.85mg | 11/05/74 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Amersham Corporation | [15, 16(n)-3H] Etorphine, Catalog No. TRK.476 | Vial:3.45 to 6.9 micrograms | 11/19/74 |
| Amersham Corporation | [15,16(n)-3H] Etorphine Catalog No. TRK 476 | Vial:13.8 to 27.6 micrograms | 02/17/75 |
| Amersham Corporation | [2-14C] Diazepam Catalog No. CFA.591 | Multidose Glass Vial: 56mm x 25mm | 09/28/77 |
| Amersham Corporation | [N-methyl-3H] Diazepam Catalog Code: TRK.572. | Multidose Glass Vial: 56mm x 25mm | 09/28/77 |
| Amersham Corporation | T-3 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024 | Kit: 50 tests, 100 tests, 400 tests | 02/05/79 |
| Amersham Corporation | Amerlex T-4 RIA Kit, IM 2010, IM 2011, IM 2014 | Kit: 50 tests, 100 tests, 400 tests | 02/06/80 |
| Amersham Corporation | Amerlex T-3 RIA Kit, IM 2000, IM 2001, IM 2004 | Kit: 50 tests, 100 tests, 400 tests | 02/18/80 |
| Amersham Corporation | Prolactin RIA Kit, IM 1060, 1061 | Kit: 50 tests, 100 tests | 03/28/80 |
| Amersham Corporation | Amerlex-M B-hCG Radioimmunoassay Kit IM 3091,IM 3094. | Kit: 100 tests, 400 tests | 06/19/85 |
| Amersham Corporation | Amerlex-M T4 RIA Kit, 1M.3011, 1M.3014 | Kit:100 Tests 400 Tests | 08/27/86 |
| Amersham Corporation | Amerlex-M T3 RIA Kit, 1M.3001, 1M.3004 | Kit:100 Tests 400 Tests | 08/27/86 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Toxi-Disc A Series | Plastic Vial Containing 50 Standard Discs | 05/06/75 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Toxi-Disc B Series | Plastic Vial Containing 50 Standard Discs | 05/06/75 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Special Toxi-Discs | Plastic Vial or Bottle Containing 50 Standard Discs. | 03/30/77 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Toxi-Control | Plastic Bottle Containing 50 ml | 03/30/77 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Toxi-Grams | Glass Jar Containing 50 or 100 Chromatograms. | 09/24/80 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Proficiency Sample | Plastic Bottle Containing 40 ml | 06/22/82 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Toxi-Control THC | Plastic Bottle Containing 50 ml | 10/05/83 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Toxi-Discs THC | Plastic Vial Containing 50 Standard Discs | 10/05/83 |
| Analytical Systems, Div. Marion Laboratories, Inc.. | Toxi-Lab Cannabinoid (THC) Screen | Kit: 50 tests | 10/05/83 |
| Applied Sciences Laboratories | Barbiturates, Mixture 4 | Vial: 10ml | 10/04/72 |
| Applied Sciences Laboratories | Depressants, Mixture 3 | Vial: 10ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 1-Opiates | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 2-Stimulants | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 3-Depressants | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 4-Barbiturates | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Mixture 5-Kit of Representatives | Vial: 1ml | 10/04/72 |
| Applied Sciences Laboratories | Opiates, Mixture 1 | Vial: 10ml | 10/04/72 |
| Applied Sciences Laboratories | Stimulants, Mixture 2 | Vial: 10ml | 10/04/72 |
| Applied Sciences Laboratories | Allylisobutylbarbituric Acid | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Alphenal | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Amobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Amphetamine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Aprobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Mephobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Meprobamate | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Butabarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Mescaline | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Cocaine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Methadone HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Diallybarbituric acid | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Methamphetamine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Ethinamate | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Methylphenidate | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Glutethimide | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Morphine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Hydrocodone Bitartrate | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Nalorphine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Barbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Pentobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Codeine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Phenazocine HBr | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Ethylmorphine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Meperidine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Butethal | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Ethchlorvynol | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Hexobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Phencyclidine HCL | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Phenobarbital | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Secobarbital | Vial: 1ml | 01/24/73 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Applied Sciences Laboratories | Thebaine | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Thiamylal | Vial: 1ml | 01/24/73 |
| Applied Sciences Laboratories | Delta-9-Tetrahydrocannabinol | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Ecgonine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Alphaprodine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Fenfluramine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Benzoylecgonine Tetrahydrate | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Fentanyl | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Chloral Hydrate | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Flurazepam HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Clonazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Halazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Dextropropoxyphene HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Hydromorphone HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Diazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Levorphanol Tartrate | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Dihydrocodeine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Lorazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Alprazolam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Lysergic Acid | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Chlordiazepoxide HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Lysergic Acid N-(methylpropyl) amide | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Diacetylmorphine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Dimethyltryptamine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Benzphetamine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Clorazepate Dipotassium | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Diethylpropion HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Lysergic Acid diethylamide | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Methaqualone HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Methohexital | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Methyprylon | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Norcodeine HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Normorphine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Phendimetrazine Bitartrate | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Phentermine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Oxycodone HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Prazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Paraldehyde | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Pentazocine | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Oxazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Oxymorphone HCL | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Pemoline | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Psilocybin | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Temazepam | Vial: 1ml | 04/16/85 |
| Applied Sciences Laboratories | Triazolam | Vial: 1ml | 04/16/85 |
| Armed Forces Institute of Pathology | 11-nor-9-carboxy-delta 8-THC in Ethanol Ampules. | Glass Ampule: 1mg/ml, 1ml, 5ml, 10ml | 01/25/82 |
| Astral Medical Systems | Barbital Buffer | Plastic bag: 12.2g/bag | 05/01/85 |
| Astral Medical Systems | Barbital Lactate Buffer | Plastic bag: 18g/bag | 05/01/85 |
| Astral Medical Systems | Isoenzyme Buffer | Plastic bag: 14g/bag | 05/01/85 |
| Astral Medical Systems | Tris-Barbital Sodium Barbital Buffer | Plastic bag: 18g/bag | 05/01/85 |
| BHP Diagnostix | Kodak Ektachem-DT Calibrator | Bottle: 6ml | 01/05/85 |
| Beckman Instruments, Inc. | Beckman Buffer B-2 | Packet: 18.16 g. | 04/24/71 |
| Beckman Instruments, Inc. | Beckman B-1 Buffer | Plastic Vial: 15 g. | 05/22/79 |
| Beckman Instruments, Inc. | Beckman ICS Drug Calibrators A, B, C, D, and E | Vials: 5ml | 10/29/80 |
| Beckman Instruments, Inc. | Beckman ICS Phenobarbital Conjugate | Vial: 5ml | 10/29/80 |
| Beckman Instruments, Inc. | Beckman ICS Drug Control Sera | Kit containing: 6-1ml bottles | 11/11/80 |
| Beckman Instruments, Inc. | Beckman LD Buffer | Bottle: 14.3 grams | 07/31/86 |
| Beckman Instruments, Inc. | Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit. | Plastic Tray: 3.5ml | 07/31/86 |
| Beckman Instruments, Inc. | Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit. | Plastic Tray: 3.5ml | 07/31/86 |
| Beckman Instruments, Inc. | Paragon Electrophoresis System: Protein Electrophoresis (SPE-II) Kit. | Plastic Tray: 3.5ml | 07/31/86 |
| Beckman Instruments, Inc. | Beckman LD Buffer | Bottle: 14.3 grams | 07/31/86 |
| Becton Dickinson & Company | Antibody Coated Tubes | Metallized Plastic Bag: 50 Tubes/Bag | 02/13/78 |
| Becton Dickinson & Company | T4 Tracer Solution Catalog No. 232611 | White NALGENE Polypropylene Bottle: 125 ml.. | 02/13/78 |
| Becton Dickinson & Company | Euthyroid Reference Standard, Catalog No. 237418. | Vial: 4ml | 09/27/78 |
| Becton Dickinson & Company | T3 Antibody Coated Tubes, Catalog No. 237213 | Box containing 100 tubes | 09/27/78 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Becton Dickinson & Company | T3 Tracer Solution Catalog No. 237728 | Bottle: 125ml | 09/27/78 |
| Becton Dickinson & Company | Barbital Buffer Solution, Catalog No. 246514 | Bottle: 1 ounce | 08/01/84 |
| Becton Dickinson & Company | Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit (125I)Catalog No. 258423. | Kit: 250 tubes | 08/01/84 |
| Becton Dickinson & Company | Neonatal TSH Antiserum, Catalog No. 244716 | Vial: 50 ml | 08/01/84 |
| Becton Dickinson & Company | Precipitating Antiserum, Catalog No. 247618 | Vial: 50 ml | 08/01/84 |
| Becton Dickinson & Company | TSH (125I) Tracer, Catalog No. 243621 | Vial: 50 ml | 08/01/84 |
| Becton Dickinson & Company | TSH Antiserum, Catalog No. 258431 | Vial: 50 ml | 08/01/84 |
| Becton Dickinson & Company | Simul Trac Free T4/TSH Antiserum, No. 262641 | Vial: 1 oz. | 02/21/86 |
| Becton Dickinson & Company | Simul Trac Free T4[57 Co]/TSH[125I] Radioimmunoassay Kit, No. 26[illegible]5. | Kit: 200 tubes | 02/21/86 |
| Becton Dickinson & Company | Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit [125I], Catalog No. 262994. | Kit: 200 tubes | 09/04/86 |
| Becton Dickinson & Company | TSH Antiserum Catalog No. 263001 | Clear Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard A, Catalog No. 259829 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard B, Catalog No. 259837 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard C, Catalog No. 259845 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard D, Catalog No. 259853 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard E, Catalog No. 263052 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH Standard F, Catalog No. 263061 | Amber Vial: 10ml | 09/04/86 |
| Becton Dickinson & Company | TSH [125I] Tracer, Catalog No. 259624 | Clear vial: 10ml | 09/04/86 |
| Behring Diagnostics | IEP Buffer, 793001 pH 8.2 | Foil Pouch: 6.5 g. | 09/17/79 |
| Behring Diagnostics | Immuno-tec II Agarose Plate, 839013, 850013 | Foil Pouch: >5.35> x >5.25> | 09/17/79 |
| Bio-Rad Laboratories | Quantimune Radioimmunoassay T-4 Tracer, Iodine-125. | Vial: 10 ml | 07/21/76 |
| Bio-Rad Laboratories | T-4 Competitive Binding Reagent, Iodine-125 | Bottle: 385 ml | 07/21/76 |
| Bio-Rad Laboratories | Quantimune T-4 RIA Kit | Kit: 500 tests | 07/01/77 |
| Bio-Rad Laboratories | Quantimune Thyroxine Radioimmunoassay Barbital Buffer. | Plastic Bottle with Screw cap: 1 liter | 07/01/77 |
| Bio-Rad Laboratories | Quantimune Thyroxine Radioimmunoassay T-4 125I Tracer/Dissociating Agent. | Glass Serum Vial: 10 ml | 07/01/77 |
| Bio-Rad Laboratories | Quantimune Barbital Buffer | Plastic Bottle: 1000ml, 250ml, 200ml | 05/31/78 |
| Bio-Rad Laboratories | Quantimune T-3 RIA Test Kit | Kit: 500 tests, 100 tests | 05/31/78 |
| Bio-Rad Laboratories | Quantimune T-4 RIA Test Kit | Kit: 5000 tests, 100 tests | 05/31/78 |
| Bio-Rad Laboratories | Urine Toxicology Control No. C-430-25 | Amber Vial: 50ml | 09/19/79 |
| Bio-Rad Laboratories | Quantaphase Thyroxine RIA-125I Tracer/Dissociating Reagent. | Plastic bottle: 60ml, 260ml | 05/06/81 |
| Bio-Rad Laboratories | Quantaphase Thyroxine RIA-Thyroxine Immunobeads. | Plastic bottle: 60ml, 260ml | 05/06/81 |
| Bio-Rad Laboratories | Quantimune T-3 RIA Barbital Buffer | Bottle: 220ml | 09/24/82 |
| Bio-Rad Laboratories | Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III. | Vial: 10ml | 08/20/84 |
| Bio-Rad Laboratories, (Chemical Division). | Bio-Rad Electrophoresis Buffer | Bottle: 500ml | 12/14/72 |
| Bio-Rad Laboratories, (Chemical Division). | Electrophoresis Buffer, Dry-Pack | Package:;6.15 g. | 12/14/72 |
| Bio-Rad Laboratories, (Chemical Division). | Reagent No. 3 | Bottle: 165 ml | 12/14/72 |
| Bio-Rad Laboratories, (Chemical Division). | Barbital Buffer-Dry Pack | Packages: 9.11 g., 18.21 g., 12.14 g. | 05/09/74 |
| Bio-Rad Laboratories, (Chemical Division). | Immunoelectrophoresis Barbital Buffer I, pH 8.6 | Dry-pack:;25.6 g. | 08/06/75 |
| Bio-Rad Laboratories, (Chemical Division). | Immunoelectrophoresis Barbital Buffer II, pH 8.6 | Dry-pack:;15.61 g | 08/06/75 |
| Bio-Rad Laboratories, (Chemical Division). | Immunoelectrophoresis Barbital Buffer III-a, pH 8.8. | Dry-pack:;15.07 g. | 08/06/75 |
| Bio-Rad Laboratories, (Chemical Division). | Immunoelectrophoresis Barbital Buffer III, pH 8.6 | Dry-pack:;6.82 g. | 01/22/76 |
| Bio-Rad Laboratories, (Chemical Division). | Barbital Buffer | Vial: 10ml | 07/21/76 |
| Bio-Rad Laboratories, (Chemical Division). | Barbital Buffer Powder | Plastic bottle: 250ml | 07/21/76 |
| Bio-Rad Laboratories, (Chemical Division). | Barbital Buffer Powder | Plastic bottle: 250 ml | 09/09/77 |
| Biodiagnostic International | Liqui-Ura Toxic Control | Vial: 5ml | 03/11/85 |
| Biodiagnostic International | Urine - Tox Control | Vial: 5 ml | 04/01/85 |
| Bioscientific, Corporation | ECA Buffer, Catalog No. ECA 05805 | Plastic Packet: 18.0 g., 10 packets per box. | 07/14/77 |
| California Bionuclear Corporation | Amobarbital-2-C-14, Catalog No. 72077 | Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |

Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| California Bionuclear Corporation | Cocaine (methoxy-C-14) Catalog No. 72182 | Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72078. | Screw Cap Vial: 50 microcuries , 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Meperidine (N-methyl-C-14) Hydrochloride, Catalog No. 72508. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Mescaline (aminomethylene-C-14) Hydrochloride, Catalog No. 72512. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Methadone (heptanone-2-C-14) Hydrochloride, Catalog No. 72516. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560. | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Pentobarbital-2-C-14, Catalog No. 72618 | Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries. | 01/08/75 |
| California Bionuclear Corporation | Secobarbital-2-C-14, Catalog No. 72675 | Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicuries. | 01/08/75 |
| Cambridge Medical Diagnostics, Incorporated. | 125I Human Parathyroid Hormone 44-68 | Vial: 5ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | 125I-Tetraiodothyronine | Vial: 11ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | 125I-Triiodothyronine | Vial: 11ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | Donkey Anti Goat Gamma Globulin | Vial: 5ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | Parathyroid Hormone (Human 1-84) Standard | 6 Vials: 5ml each | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | Parathyroid Hormone Assay Buffer | Vial: 10ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | T3 AntiSerum (Rabbit) | Vial: 11ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | T3 Standard | Vial: 1ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | T4 Antiserum (Rabbit) | Vial: 11ml | 03/29/85 |
| Cambridge Medical Diagnostics, Incorporated. | T4 Standard | Vial: 1ml | 03/29/85 |
| Ciba Corning Diagnostics Corp. | Reagent A- Alt 14 | Vial: 15 ml | 03/24/79 |
| Ciba Corning Diagnostics Corp. | Reagent A- Alt 7 | Vial:15 ml | 03/24/79 |
| Ciba Corning Diagnostics Corp. | Reagent A-Ammonia 10 | Vial:10 ml | 03/24/79 |
| Ciba Corning Diagnostics Corp. | Gilford Urine Control II | Vial:30ml | 05/22/85 |
| Ciba Corning Diagnostics Corp. | Gilford Bi-Level Anticonvulsant/ Antiasthmatic Control. | Kit Contains: 5 Vials each level | 10/22/85 |
| Ciba Corning Diagnostics Corp. | Gilford Bi-Level Anticonvulsant/ Antiasthmatic Control, Level I & II. | Vials:10ml | 10/22/85 |
| Ciba Corning Diagnostics Corp. | Gilford TDM Control Levels I-III | Vial:6ml | 10/22/85 |
| Ciba Corning Diagnostics Corp. | Gilford Tri Level TDM Control | Kit Contains: 5 Vials each level | 10/22/85 |
| Ciba Corning Diagnostics Corp. | Gilford Bi-Level Toxicology Control | Kit: Contains: 5 Vials each level | 12/16/85 |
| Ciba Corning Diagnostics Corp. | Gilford Bi-Level Toxicology Control,Level I & II | Vials:10ml | 12/16/85 |
| Ciba Corning Diagnostics Corp. | Gilford Urine Toxicology Control | Vial:30ml | 12/16/85 |
| Ciba Corning Diagnostics Corp. | AACC Tox | Glass Vial: 30ml | 01/20/86 |
| Cone Biotech, Inc. | RIATRAC-Three Level Ligand Assay Controls | Vials: 8ml | 02/27/84 |
| Cone Biotech, Inc. | QCM-UTI | Vial: 20ml | 03/07/85 |
| CooperBiomedical, Inc. | Buffer No. 3017 | Vial 250 ml | 08/31/71 |
| CooperBiomedical, Inc. | Diluting Fluid No. 3400 | Vial: 10ml | 08/31/71 |
| CooperBiomedical, Inc. | Partial Thromboplastin (Dried), No.3491 | Vial: 1ml and 5 ml | 08/31/71 |
| CooperBiomedical, Inc. | Agar Gel Plates No. 8794 | Plate: 25ml | 08/01/72 |
| CooperBiomedical, Inc. | Buffer No. 8793 | Vial: 250ml | 08/01/72 |
| CooperBiomedical, Inc. | Electrode Buffer, DR07172 | Bulk | 12/26/74 |
| CooperBiomedical, Inc. | LD Electrode Buffer, DR07173 | Bulk | 02/12/79 |
| CooperBiomedical, Inc. | Ligand Control I-No.4814, II-No.4824, and III-No.4834.. | Vials: 5ml | 02/24/81 |
| CooperBiomedical, Inc. | Urine Control No. 0277 | Vial:25ml | 04/14/81 |
| CooperBiomedical, Inc. | Toxicology Urine Control No. 0841 | Vial: 10ml | 06/11/82 |
| CooperBiomedical, Inc. | Toxicology Urine Control No. 0842 | Vial: 3ml | 06/11/82 |
| CooperBiomedical, Inc. | Therapeutic Monitor Level I No.4881 | Vial:3ml | 01/20/83 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| CooperBiomedical, Inc. | Therapeutic Monitor Level II No.4882 | Vial:3ml | 01/20/83 |
| CooperBiomedical, Inc. | Therapeutic Monitor Level III No.4883 | Vial:3ml | 01/20/83 |
| Corning Medical | Special Barbital Buffer Set, Catalog No. 470182 | Vial: 3 per kit | 04/17/79 |
| Corning Medical | Universal Electrophoresis Film Agarose, Catalog No. 470100. | Plates: 12 per kit | 04/17/79 |
| Corning Medical | Universal PHAB Buffer Set Catalog No. 470180 | Kit: 3 vials per kit | 09/26/79 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Serum Reagent | Bottle: 5ml (Lyophilized Material) | 08/16/71 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Stratus TDM Control Level I-Low | Bottle: 9ml (Lyophilized Material) | 01/21/82 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Stratus TDM Control Level II-Intermediate | Bottle: 9ml (Lyophilized Material) | 01/21/82 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Stratus TDM Control Level III-High | Bottle: 9ml (Lyophilized Material) | 01/21/82 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Stratus Enzyme- Labeled Phenobarbital | Bottle: 6ml | 01/25/82 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Stratus Phenobarbital Calibrators B, C, D, E, & F | Bottles: 3ml | 06/27/83 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Moni-Trol Level I.X Special Order Request B5106-5X. | Bottle: 18ml (Lyophilized Material) | 06/30/83 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Moni-Trol Level II.X Special Order Request B5106-6X. | Bottle: 18ml (Lyophilized Material) | 06/30/83 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Moni-Trol. ES Level I Chemistry Control, Assayed.. | Bottles: 9ml, 6.7ml (Lyophilized Material) | 07/15/83 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Moni-Trol. ES Level II Chemistry Control, Assayed. | Bottles:9ml, 6.7ml (Lyophilized Material) | 07/15/83 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Data-Fi Thrombin Reagent | Bottle:9 ml (Lyophilized Material) | 07/20/83 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Moni-Trol Level I Chemistry Control, Assayed, Special Order Request.. | Bottle:9ml (Lyophilzed Material) | 01/20/84 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Moni-Trol Level II Chemistry Control, Assayed, Special Order Request. | Bottle: 9ml (Lyophilized Material) | 01/20/84 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Dade Tri-Rac R Tri Level Immunoassay Controls | Bottle: 9ml 6 bottles per kit (Lyophilized Material). | 04/11/85 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Tri Rac R Immunoassay Control Level II Intermediate. | Bottle: 9 ml (Lyophilized Material) | 04/11/85 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Tri Rac R Immunoassay Control Level III High | Bottle: 9 ml (Lyophilized Material) | 04/11/85 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Tri-Rac R Immunoassay Control, Level I-Low | Bottle: 9ml (Lyophilized Material) | 04/11/85 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Bovine Chemistry Control II.X Special Order Request B5107-65XX. | Bottle: 18 ml (Lyophilized Material) | 01/29/86 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Stratus Immunoassay Control, Level I-Low | Bottle: 9ml (Lyophilized Material) | 04/25/86 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Stratus Immunoassay Control, Level II-Intermediate. | Bottle: 9ml (Lyophilized Material) | 04/25/86 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Stratus Immunoassay Control, Level III-High | Bottle: 9ml (Lyophilized Material) | 04/25/86 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Moni-Trol. ES Level I.X Special Order Request Catalog No. B5106-75AAA Catalog No. B5106-1XAAA. | Bottles: 18ml, 9ml (Lyophilized Material) | 06/27/86 |
| Dade, Baxter Travenol Diagnostics, Inc.. | Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106-85AAA Catalog No. B5106-2XAAA. | Bottles: 18ml, 9ml (Lyophilized Material) | 06/27/86 |
| Dade, Baxter Travenol Dignostics, Inc.. | Bovine Chemistry Control I.X Special Order Request B5107-55XX. | Bottle: 18ml (Lyophilized Material) | 01/29/86 |
| Dade, Travenol Laboratories, Inc. | Owren's Veronal Buffer | Bottle: 18ml | 08/16/71 |
| Dade, Travenol Laboratories, Inc. | Thrombin Reagent (Bovine) | Bottle: 5ml (Lyophilized Material) | 08/16/71 |
| Dade, Travenol Laboratories, Inc. | Data-Fi Thrombin Reagent | Bottle: 5ml (Lyophilized Material) | 05/18/81 |
| Dade, Travenol Laboratories, Inc. | Buffered Thrombin (Bovine) Catalog No. B4233-40. | Bottle: 5ml (Lyophilized Material) | 01/24/86 |
| Dade, Travenol Laboratories, Inc. | Fibrin Monomer Control Catalog Nos. B4233-30 & B4233-38. | Bottle: 5ml (Lyophilized Material) | 01/24/86 |
| Diamedix Corporation | Barbital-Acetate Buffer, Powder 709-317 | Package: 20 envelopes-10.65 g. per envelope. | 07/27/72 |
| Diamedix Corporation | CEP Plate-Amebiasis Testing 40 Test No. 730-274. | Plate: 40mm x 80mm x 2.5mm | 08/09/73 |
| Diamedix Corporation | CEP VI No. 709-339 | Plate: 40mm x 80mm x 2.5mm | 08/09/73 |
| Diamedix Corporation | EDTA (0.014M)-GVB Buffer, 753-034 | Bottle: 5ml | 08/09/73 |
| Diamedix Corporation | EDTA (0.01M)-GVB Buffer, 753-031 | Bottle: 5ml | 08/09/73 |
| Diamedix Corporation | GVB(3+) Buffer 753-037 | Bottle: 50ml | 08/09/73 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Diamedix Corporation | Glucose-GVB 1 Buffer, 753-036 | Bottle: 50ml | 08/09/73 |
| Diamedix Corporation | Counterelectrophoresis (CEP) Plates for Trichinosis Testing. | Plastic plates: 40mm x 80mm x 2.5mm | 06/16/75 |
| Duo Research, Inc. | Drug Testing Assessment Program-Quality Control Sample. | Bottle: 65ml | 02/27/86 |
| Duo Research, Inc. | Drug Testing Assessment Program-Quality Control Sample Kit. | Kit: 5-65ml bottles | 02/27/86 |
| E.I. duPont de Nemours & Co., Incorporated. | aca PHNO Analytical Test Pack | Carton: 40 tests packs | 08/25/77 |
| E.I. duPont de Nemours & Co., Incorporated. | (1) PREP Sample Preparation and Analysis Kit | Kit containing following: | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier. | Box containing following: | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (2a) PREP Liquid Chromatography Verifier | Vial: 10ml (1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (2b) PREP Buffer/Internal Standard | Vial: 100ml (3 vials/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3) PREP Calibrators | Box containing following: | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3a) PREP Calibrator-Level 1 | Vial: 10ml (1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3b) PREP Calibrator-Level 2 | Vial: 10ml (1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3c) PREP Calibrator-Level 3 | Vial: 10ml ( 1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (3d) PREP Calibrator-Level 4 | Vial: 10ml (1 vial/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (4) PREP Controls | Box containing following: | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (4a) PREP Control-Low Level | Vial: 10ml (2 vials/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | (4b) PREP Control-High Level | Vial: 10ml (2 vials/box) | 09/25/78 |
| E.I. duPont de Nemours & Co., Incorporated. | aca Thryonine Uptake Analytical Test Pack | Plastic Pack: 1 test | 08/25/83 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator. | 6 Vials: 3ml | 02/23/84 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont aca Benzodiazepine Screen Analytical Test Pack. | Plastic Packs: 25 tests | 02/23/84 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont aca Barbiturate Screen Analytical Test Pack. | Plastic Packs: 25 tests | 12/23/84 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 1 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 2 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 3 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 4 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Phenobarbital Calibrator- Level 5 | Vial: 6ml (1 vial/box) | 04/02/86 |
| E.I. duPont de Nemours & Co., Incorporated. | DuPont Drug Calibrators- Levels 1 through 5 | Vial: 6ml (1 vial and 2 vials/box) | 04/04/86 |
| E.I. duPont de Nemours & Co., Incorporated. | Thyronine (TU) Uptake Flex(tm) Reagent Cartridge. | Plastic container: 2.3ml (20 tests) | 04/28/86 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | 5-Ethyl-5-Phenylbarbituric Acid (3H(G)), Catalog No. NET-401. | Combi-Vial: 250 microcuries, 5 millicuries | 08/25/75 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Ethyl-5-(1-Methylbutyl) Barbituric Acid 5-[ring-2-14C],Catalog No. NEC-389. | Combi-Vial: 0.100 millicuries, 0.500 millicuries. | 08/25/75 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Ethyl-5-Phenylbarbituric Acid 5-[ring-2-14C], Catalog No. NEC-337. | Combi-Vial: 0.050 millicuries, 0.250 millicuries. | 08/25/75 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Mescaline Hydrobromide, Catalog No. NEC-186 | Combi-Vial: 0.050 millicuries, 0.250 millicuries. | 08/25/75 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Cyclohexenyl-3,5-Dimethyl Barbituric Acid,5-[2-14C], Catalog No. NEC-653. | Combi-Vial: 0.050 millicuries, 0.250 millicuries. | 08/25/75 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | 5-Cyclohexenyl-3,5,-Dimethyl barbituric Acid (3H(G)), Catalog No. NET-426. | Combi-Vial:250 microcuries , 1 millicurie, and 5 millicuries. | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Dihydromorphine [7,8-3H(N)] | Combi-Vial: 250 microcuries, 1 millicurie | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Glutethimide (3H(G)), Catalog No. NET-417 | Combi-Vial:250 microcuries , 1 millicurie, and 5 millicuries. | 01/04/77 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Lysergic Acid Diethylamide (2-3H (N)) Catalog No. NET-447. | Combi-Vial: 0.050 microcuries | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Methadone Hydrobromide Dextro [1-3H] Catalog No. NET-488. | Combi-Vial: 1 millicurie | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Methadone Hydrobromide levo-[2-14C] Catalog No. NEC-696. | Combi-Vial: 0.050 millicurie ,0.250 millicurie. | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Methadone Hydrobromide, Levo[1-3H] Catalog No. NET-357. | Combi-Vial: 1 millicurie | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Cocaine, Levo-[Benzoyl] [3.4-3H(N)] Catalog No. NET-510. | Combi-Vial: 100 microcuries, 250 microcuries. | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | d-Amphetamine Sulfate (3H(G)), Catalog No. NET-140. | Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries. | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Acetaldehyde (1,2-14C) as Paraldehyde, Catalog No. NEC-158. | Pyrex Glass Breakseal Tube: 250 microcuries, 1 millicurie. | 01/04/77 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Phencyclidine [Piperidyl-3,4-3H(N)], Catalog No.NET-630. | Combi-Vial: 0.250 millicurie, 1.0 millicurie | 09/06/79 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Diazepam [Methyl-3H] Catalog No. NET-564 | Combi-Vial: 0.250 millicuries, 1.0 millicurie. | 09/06/79 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | LSD [N-Methyl-3H] NET-638 | Combi-Vial: 0.250 millicuries, 1.0 millicurie. | 11/06/79 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Dihydromorphine[N-Methyl-3H] NET-658 | Combi-Vial: 0.250 millicuries, 1.0 millicurie. | 02/29/80 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Morphine [N-methyl-3H] NET-653 | Combi-Vial: 0.250 millicuries, 1.0 millicune. | 02/29/80 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Oxymorphone HCL [N-Methyl-3H] NET-666 | Combi-Vial: 0.250 millicuries, 1.0 millicurie. | 04/11/80 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | DMBB [Butyl-2,3,4-3H(N)] Catalgg No. NET690 | Combi-Vial:0.250 millicuries, 1.0 millicurie | 02/04/81 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | (+)-DMBB NET 735 | Combi-Vial: 0.250 millicuries, 1.0 millicurie. | 10/16/81 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Mazindol (4'-3H) Catalog No.NET-816 | Combi-Vial: 0.250 millicuries, 1.0 millicurie. | 05/17/84 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Methylphenidate, +/- threo[methyl-3H]NET-857 | Combi-Vial: 0.250 millicuries, 1.0 millicurie. | 06/11/84 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | N-[1-(2-Thienyl) Cyclohexyl]-3,4-Piperidine (Piperidyl-3,4-3H)NET-886. | Combi-Vial: 0.250 millicuries, 1.0 millicurie. | 06/11/84 |
| E.I. duPont de Nemours & Co.,Inc., NEN Products. | Ethyl-5-Phenylbarbituric Acid,5-[3H(G)], Catalog No. NET401. | Combi Vial:0.250 millicuries, 1.0 millicurie | 07/24/84 |
| EM Diagnostic Systems,Inc. | EMDS Antiepileptic Drug Calibrator Item No. 67630/95. | Box: 3 Vials, 5 ml each | 06/11/86 |
| EM Diagnostic Systems,Inc. | Easytest Phenobarbital Assay Item No. 67534/93 | Cuvette:1.8ml (40 cuvettes /carton) | 06/11/86 |
| EM Diagnostic Systems,Inc. | EMDS Test Packs, Phenobarbital (PHENO) Item No. 67677/95. | Carton:48 Test Packs | 09/09/86 |
| Eastman Kodak Company | Kodak Ektachem Specialty Calibrator | Vial:3ml | 09/13/85 |
| Eastman Kodak Company | Kodak Ektachem Specialty Control | Vial:3ml | 09/13/85 |
| Electro-Nucleonics Laboratories, Incorporated. | VIRGO IPA Immuno-Precipitation Assay for Phenobarbital. | Kit | 11/30/82 |
| Fisher Scientific | Electrophoretic Buffer No. 1 pH 8.60, Ionic Strength 0.05, Catalog No. E-1. | Packet: 12.14 g. | 10/27/72 |
| Fisher Scientific | Electrophoretic Buffer No. 2, pH 8.60, Ionic Strength 0.075, Catalog No. E-2. | Packet: 18.16 g. | 10/27/72 |
| Fisher Scientific | Urine Chemistry Control (Human) Level II, No. 2935-80. | Vial: 25ml | 04/06/78 |
| Fisher Scientific | Urine Toxicology Control No. 2950-61 | Vial: 25ml | 04/06/78 |
| Fisher Scientific | SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2906. | Vial: 5ml, 10ml | 04/16/82 |
| Fisher Scientific | SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905. | Vial: 5ml | 04/16/82 |
| Fisher Scientific | SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level I No. 3110. | Vial: 5ml, 10ml | 04/16/82 |
| Fisher Scientific | SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level II No. 3111. | Vial: 5ml, 10ml | 04/16/82 |
| Fisher Scientific | SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No.2907. | Vial: 5ml | 04/16/82 |
| Fisher Scientific | Serachem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2908. | Vial: 5ml, 10ml | 04/16/82 |
| Fisher Scientific | Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840-58. | Kit: 6 vials | 01/12/84 |
| Fisher Scientific | Therapeutic Drug Control, High Level, 2842-31 | Vial: 5ml | 01/12/84 |
| Fisher Scientific | Therapeutic Drug Control, Low Level, 2841-31 | Vial: 5ml | 01/12/84 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Fisher Scientific | TheraChem-Plus TDC Therapeutic Drug Controls, Tri-Level, No. 2845-94. | Kit: 9 vials | 03/19/86 |
| Fisher Scientific | Therapeutic Drug Control, High Level III, No. 2848-31. | Vial: 5ml | 03/19/86 |
| Fisher Scientific | Therapeutic Drug Control, Low Level I, No. 2846-31 | Vial: 5ml | 03/19/86 |
| Fisher Scientific | Therapeutic Drug Control, Mid-Range Level II, No. 2847-31. | Vial: 5ml | 03/19/86 |
| Fisher Scientific | Owren's Veronal Buffer, CS1094-38 | Vial:25 ml | 08/18/86 |
| Fisher Scientific | Owren's Veronal Buffer, CS1094-34 | Vial:10 ml | 08/18/86 |
| Flow Laboratories | DGV No. 28-010 | Bottle: 125 ml | 04/16/73 |
| Flow Laboratories | Human >O> DGV (Dextrose Gelatin Veronal Buffer) No. 28-080. | Glass Vial: 100 ml | 10/14/76 |
| GIBCO Laboratories | Dextrose-Gelatin-Veronal Buffer Solution NDC No.815-0566-1 and No.815-0566-2. | Bottle: 100 and 500 ml | 07/05/73 |
| GIBCO Laboratories | Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 0118115-0247-1. | Bottle: 1 liter | 01/28/74 |
| GIBCO Laboratories | Electrophoresis Buffer Solution, pH 8.6, NDC 011815-0245-1. | Bottle: 1 liter | 01/28/74 |
| GIBCO Laboratories | I.E.P. Buffer Solution pH 8.2 NDC 011815-0246-1 | Bottle: 1 liter | 01/28/74 |
| GIBCO Laboratories | Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 011815-0247-2. | Bottle:500 ml | 04/05/77 |
| Gelman Sciences, Inc. | High Resolution Buffer-Tris Barbital Buffer No 51104. | Vial: 10 dr | 12/22/71 |
| Gelman Sciences, Inc. | Drug Control Set No 51911 | Set: 3 vials of 50 ml each | 04/06/72 |
| Gelman Sciences, Inc. | Drug Standard Set, No 51910 | Set: 3 vials of 2 ml each | 04/06/72 |
| Gelman Sciences, Inc. | Hi-Phore Buffer | Glass Vial: 15 g | 02/11/82 |
| Gumm Chem. Co. | Niflow Initial Additive | Drums: 5 Gallons | 09/30/85 |
| Gumm Chem. Co. | Niflow Maintenace Additive | Drums:5 Gallons | 09/30/85 |
| Hach Chemical Co. | pH 8.3 Buffer Powder Pillows. No.898-98 | Pillow: 1 g. each | 11/30/71 |
| Helena Laboratories | Electra B1 Buffer, Catalog No.5016 | Packet:12.14 g. 10 packets/ box | 12/28/73 |
| Helena Laboratories | Electra B2 Buffer , Catalog No. 5017 | Packet: 18.2 g. 10 packets/ box | 12/28/73 |
| Helena Laboratories | Electra HR Buffer, Catalog No. 5805 | Packet: 18.1 g. 10 packets/ box | 12/28/73 |
| Helena Laboratories | Titan III Agar Catalog No. 5023 | Packet:5 g. (5 Packets/box) | 12/28/73 |
| Helena Laboratories | Titan IV IE Plate (large) | Package: plates, 3 by 4 in | 12/28/73 |
| Helena Laboratories | Titan IV IE Plate (small) | Package: plates, 1 by 3 in | 12/28/73 |
| Helena Laboratories | Titan IV IE Plate Kit | Kit:10 large (3 by 4 in.) IE Plates, 1 box B1 Buffer. | 12/28/73 |
| Helena Laboratories | Titan IV IE Plate Kit | Kit: 12 small (1 by 3 in.) IE plates,1 box B1 Buffer. | 12/28/73 |
| Helena Laboratories | Titan Gel LDH Isoenzyme Buffer | Packet: 22.7 g. | 03/07/83 |
| Helena Laboratories | Titan Gel High Resolution Protein Buffer | Packet:25.9 g. | 04/12/83 |
| Helena Laboratories | Titan Gel Serum Protein Buffer | Packet:29.1 g. | 04/12/83 |
| Helena Laboratories | HDL Electrophoresis Buffer | Packet: 36 g. | 12/18/85 |
| Helena Laboratories | Isoamylase Cathode Buffer | Packet:9.7 g. | 12/18/85 |
| Helena Laboratories | Titan Gel IFE Buffer | Packet:25.9 g. | 12/18/85 |
| Helena Laboratories | Titan Gel Iso Dot LDH Isoenzyme Plate | Plate:(90mm X 75mm) | 12/18/85 |
| Helena Laboratories | Titan Gel LDH Isoenzyme Plate | Plate:(90mm X 75mm) | 12/18/85 |
| Helena Laboratories | Titan Gel Lipoprotein Buffer | Packet:17.3 g. | 12/18/85 |
| Helena Laboratories | Titan Gel Serum Protein Plate | Plate:(90mm X 75mm) | 12/18/85 |
| Helena Laboratories | Titan Gel Silver Stain Buffer | Packet:25.9g. | 12/18/85 |
| Helena Laboratories | Titan Gel-PC LDH Isoenzyme Plate | Plate:(90mm X 75mm) | 12/18/85 |
| Helena Laboratories | Titan Gel Iso Dot LDH Buffer | Packet:19.6 g. | 01/07/86 |
| Helena Laboratories | Titan Gel LDH Isoenzyme Reagent | Vial:2ml, 10 vials/box | 01/07/86 |
| Helena Laboratories | Isoamylase Kit Catalog No. 5925 | Kit: 2 Packets Cathode Buffer | 01/24/86 |
| Helena Laboratories | Super Z-12XHDL Cholesterol Supply Kit Catalog No. 5470). | Kit:3 Packages buffer 36 g. | 01/24/86 |
| Helena Laboratories | Titan Gel Immuno Fix Kit Catalog No.3046 | Kit:10 Plates (90mm X 75mm), 2 Packets IFE Buffer. | 01/24/86 |
| Helena Laboratories | Titan Gel Iso Dot LDH Kit Catalog No.3062 | Kit:10 Plates (90mm X 75mm),1 Packet Iso Dot LDH Buffer. | 01/24/86 |
| Helena Laboratories | Titan Gel Lipoprotein Kit Catalog No.3045 | Kit:1 Packet Buffer. | 01/24/86 |
| Helena Laboratories | Titan Gel Serum Protein Kit Catalog No. 3041 | Kit:10 Plates (90mm X 75mm), 1 Packet Buffer. | 01/24/86 |
| Helena Laboratories | Titan Gel Silver Stain Kit Catalog No.3035 | Kit:10 Plates (90mm X 75mm), 2 Packets Buffer. | 01/24/86 |
| Helena Laboratories | Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053. | Kit: 10 Plates (90mm X 75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent. | 01/24/86 |
| Helena Laboratories | Titan Gel High Resolution Protein Kit Catalog No. 3040. | Kit:10 Plates (90mm X 75mm) , 2 Packages Buffer. | 03/03/86 |
| Helena Laboratories | Titan Gel High Resolution Protein Plate | Plate:(90mm X 75mm) | 03/03/86 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Helena Laboratories | Titan Gel Silver Stain Plate | Plate:(90mm X 75mm) | 03/03/86 |
| Helena Laboratories | Titan Gel IFE Plate | Plate:(90mm X 75mm) | 03/05/86 |
| Helena Laboratories | CK-LD Buffer Catalog No. 5808 | Packet:18.332 g., 10 packets/box | 03/26/86 |
| Hoffman-LaRoche,Inc. | 125I T3 (for T3 Uptake Radioassay) | Vial:15ml | 07/22/81 |
| Hoffman-LaRoche,Inc. | Anti-T3 Reagent 125I T3 (for T3 Radioimmunoassay). | Vial:15ml | 07/22/81 |
| Hoffman-LaRoche,Inc. | Anti-T4 Reagent 125I T4 (for T4 Radioimmunoassay). | Vial:15ml | 07/22/81 |
| Hoffman-LaRoche,Inc. | NSB Reagent | Vial:2ml | 07/22/81 |
| Hoffman-LaRoche,Inc. | Abuscreen 125I Tetrahydrocannabinol Reagent | Vial: 500ml, 30ml | 08/14/81 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Cannabinoids (125I). | Kit: 100 Tests 2, 500 Tests | 08/14/81 |
| Hoffman-LaRoche,Inc. | Amerifluor Florescent Immunoassay -Phenobarbital | Kit: 100 tests | 04/30/82 |
| Hoffman-LaRoche,Inc. | Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8.. | Vial:10, 20, 50, & 100ml | 01/25/83 |
| Hoffman-LaRoche,Inc. | Abuscreen (125I) Amphetamine Reagent | Vial:30ml, 500ml | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen 125I Benzoylecgonine Reagent | Vial: 30ml, 500ml | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen 125I Methaqualone Reagent | Vial:30ml, 500ml | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen 125I Morphine Reagent | Vial:30ml, 500ml | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen 125I Phencyclidine Reagent | Vial:30ml, 500ml | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen 125I Secobarbital Reagent | Vial:30ml, 500ml | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Standard (Amphetamine) 100, 500, 750, 1000, 1500,or 2000 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Standard (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Standard (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Standard (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Urine Reference Standard (Morphine) 40, 50, 100, 200, 300, 500, 600, or 1000 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Urine Reference Standard (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200,or 500 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Standard (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Amphetamine (125I). | Kit: 100 tests, 2500 tests | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Urine Reference Standard (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Urine Reference Standard (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Standard (Morphine) 40, 50, 100, 200, 300, 500, 600,or 1000 ng/ml.. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Urine Reference Standard (Amphetamine) 100, 500, 750, 1000, 1500, or 2000 ng/ml. | Vial:6.6ml, 2 oz | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Urine Reference Standard (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml. | Vial: 6.6ml, 2 oz. | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Barbiturates (125I). | Kit: 100 tests, 2500 tests | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Cocaine Metabolite (125I). | Kit: 100 Tests, 2500 Tests | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Methaqualone (125I). | Kit: 100 tests, 2500 tests | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Morphine (125I). | Kit:100 tests, 2500 tests | 02/15/83 |
| Hoffman-LaRoche,Inc. | Agglutex Amphetamine Test Kit | Kit: 20 tests, 100 tests | 02/15/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Phencyclidine (PCP)(125I). | Kit:100 tests, 2500 tests | 06/27/83 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Hoffman-LaRoche,Inc. | Agglutex Methaqualone Positive Human Urine Control. | Vial: 5ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Methaqualone Test Kit | Kit:20 tests, 100 tests | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Amphetamine Positive Human Urine Control. | Vial:5ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Morphine Latex Reagent | Vial:2ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Barbiturate Positive Human Urine Control. | Vial:5ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Methaqualone Latex Reagent | Vial:2ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Amphetamine Latex Reagent | Vial:2ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Barbiturate Latex Reagent | Vial:2ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Barbiturate Test Kit | Kit:20 tests, 100 tests | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Morphine Positive Human Urine Control | Vial: 5ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Morphine Test Kit | Kit:20 tests, 100 tests | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Phencyclidine (PCP) Test Kit | Kit:20 tests, 100 tests | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Phencyclidine Latex Reagent | Vial:2ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Agglutex Phencyclidine Positive Human Urine Control. | Vial:5ml | 06/27/83 |
| Hoffman-LaRoche,Inc. | Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A,& 8A.. | Vial:10ml, 20ml, 50ml,or 100ml | 07/12/83 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Standard Cannabinoid. | Vial:6.6ml, 2 oz | 02/20/84 |
| Hoffman-LaRoche,Inc. | Immunizing Preparation No. 9 | Vial:10ml, 20ml, 50ml,or 100ml | 07/24/84 |
| Hoffman-LaRoche,Inc. | Immunizing Preparation No. 9A | Vial:10ml, 20ml, 50ml,or 100ml | 07/24/84 |
| Hoffman-LaRoche,Inc. | Abuscreen 125I Oxazepam Reagent | Vial:30ml, 500ml | 08/15/84 |
| Hoffman-LaRoche,Inc. | Abuscreen 125I-LSD Reagent | Vial:500ml, 30ml | 08/15/84 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Benzodiazepine Metabolite. | Kit:100 tests, 2500 tests | 08/15/84 |
| Hoffman-LaRoche,Inc. | COBAS FP Phenobarbital Calibrators | Kit:6 Vials | 11/13/84 |
| Hoffman-LaRoche,Inc. | COBAS FP Reagents for Phenobarbital | Kit:100 tests | 11/13/84 |
| Hoffman-LaRoche,Inc. | COBAS FP TDM Controls | Kit:6 Vials | 11/13/84 |
| Hoffman-LaRoche,Inc. | Phenobarbital Calibrators B through F | Vials:5ml | 11/13/84 |
| Hoffman-LaRoche,Inc. | Phenobarbital Tracer Reagent | Vial:5ml | 11/13/84 |
| Hoffman-LaRoche,Inc. | TDM Controls, Levels I through III | Vials:5ml | 11/13/84 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for Amphetamine High Specificity. | Kit:100 tests, 2500 tests | 09/13/85 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Std. (LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5.0 or 10.0 ng/ml. | Vial:5ml, 60ml, & 100ml | 01/28/86 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Urine Reference Std.(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5, or 10 ng/ml. | Vial:5ml, 60ml, & 100ml | 01/28/86 |
| Hoffman-LaRoche,Inc. | Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide). | Kit: 100 tests, 2500 tests | 01/28/86 |
| Hoffman-LaRoche,Inc. | Immunizing Preparation No.10 | Vial:10ml, 20ml, 50ml,or 100ml | 04/02/86 |
| Hoffman-LaRoche,Inc. | Immunizing Preparation No.10A | Vial:10ml, 20ml, 50ml, or 100ml | 04/02/86 |
| Hoffman-LaRoche,Inc. | Cocaine Metabolite Roche EIA (Benzoylecgonine). | Kit:100 tests | 05/28/86 |
| Hoffman-LaRoche,Inc. | Cocaine Metabolite Roche EIA (Benzoylecgonine) Conjugate Reagent. | Vial:30ml | 05/28/86 |
| Hoffman-LaRoche,Inc. | Cocaine Metabolite Roche EIA (Benzoylecgonine) Positive Reference Standard 50-1200 (in increments of 50) ng/ml. | Vial:4ml | 05/28/86 |
| Hoffman-LaRoche,Inc. | Morphine Roche EIA | Kit:100 tests | 05/28/86 |
| Hoffman-LaRoche,Inc. | Morphine Roche EIA Conjugate Reagent | Vial:30ml | 05/28/86 |
| Hoffman-LaRoche,Inc. | Morphine Roche EIA Positive Reference Standard 50-1200 (in increments of 50) ng/ml. | Vial:4ml | 05/28/86 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Reference Standard (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 100) ng/ml. | Vial:5ml, 100ml | 08/28/86 |
| Hoffman-LaRoche,Inc. | Abuscreen Positive Urine Reference Std. (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 100) ng/ml. | Vial:5ml, 100ml | 08/28/86 |
| Hoffman-LaRoche,Inc. | THC Roche EIA | Kit: 100 Tests | 08/28/86 |
| Hoffman-LaRoche,Inc. | THC Roche EIA Conjugate Reagent | Vial: 30ml | 08/28/86 |
| Hoffman-LaRoche,Inc. | THC Roche EIA Positive Reference Standard 50-1200 (in increments of 50) ng of THC derivative/ml.. | Vial: 4ml | 08/28/86 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Hoffman-LaRoche,Inc. | THC Roche EIA Positive Reference Standard 50-1200 (in increments of 50) ng of THC derivative/ml.. | Vial: 4ml | 08/28/86 |
| Hoffman-LaRoche,Inc. | Barbiturate Roche EIA | Kit:100 Tests | 10/02/86 |
| Hoffman-LaRoche,Inc. | Barbiturate Roche EIA Conjugate Reagent | Vial: 30 ml | 10/02/86 |
| Hoffman-LaRoche,Inc. | Barbiturate Roche EIA Positive Reference Standard 50-1200 (in increments of 50) ng/ml. | Vial: 4 ml | 10/02/86 |
| Hoffman-LaRoche,Inc. | Barbiturate Roche EIA Conjugate Reagent | Vial: 30 ml | 10/02/86 |
| Hoffman-LaRoche,Inc. | Barbiturate Roche EIA Positive Reference Standards 50-1200 (in increments of 50) ng Secobarbital/ml. | Vial: 4 ml | 10/02/86 |
| Hoffman-LaRoche,Inc. | Barbiturate Roche EIA | Kit: 100 Tests | 10/02/86 |
| ICL Scientific | Therapeutic Drug Control I ,TDC I (High Level) | Glass Vial: 10ml | 08/14/85 |
| ICL Scientific | Therapeutic Drug Control I, II, III, Tri-Level TDC Multipack.. | Glass Vials (12): 10ml | 08/14/85 |
| ICL Scientific | Therapeutic Drug Control II, TDC II (Mid-Level) | Glass Vial: 10ml | 08/14/85 |
| ICL Scientific | Therapeutic Drug Control III, TDC III (Low Level) | Glass Vial: 10ml | 08/14/85 |
| Industrial Analytical Laboratory,Inc.. | 11-Nor-Carboxy-Delta-9-Tetrahydrocannabinol | Ampule:1ml | 09/04/85 |
| Industrial Optical | Opti-Kleen | Bottle:5 gallon | 06/24/81 |
| Janssen Pharmaceutica,Inc. | Alfentanil Radioimmunoassay Kit | Kit:200 tests | 05/13/85 |
| Janssen Pharmaceutica,Inc. | Fentanyl Radioimmunoassay Kit | Kit:200 tests | 05/13/85 |
| Janssen Pharmaceutica,Inc. | Sufentanil Radioimmunoassay Kit | Kit:500 tests | 05/13/85 |
| Kallestad Diagnostics | IEP Buffer No. 900 | Vial:7 Dram | 12/26/78 |
| Kallestad Diagnostics | Immunoelectrofilm Kit Catalog No. 912 | Kit:42 tests | 12/26/78 |
| Kallestad Diagnostics | Immunoelectrophoresis Profile Kit, Catalog No. 911. | Kit:42 tests | 12/26/78 |
| Kallestad Diagnostics | Immunoelectrofilm Catalog No.910 | 1 Film Sealed in Cardboard Container | 03/11/80 |
| Kallestad Diagnostics | Barbital Buffer 901 | Vial | 05/19/81 |
| Kallestad Diagnostics | Quanticoat 125I-T3 Uptake Kit, Catalog No. 833 | Kit:100 tests | 06/24/81 |
| Kallestad Diagnostics | Quanticoat 125I-T3 Uptake Reagent No.834 | 2 Glass Bottles: 110ml | 06/24/81 |
| Kallestad Diagnostics | Quanticoat 125I-T3 Uptake Kit Catalog No. 823 | Kit:400 Determinations | 12/16/85 |
| Kallestad Diagnostics | Quanticoat 125I-T3 Uptake Reagent Catalog No. 785. | Bottle:500ml | 12/16/85 |
| LKB Instruments,Inc. | Tris-barbiturate Buffer pH 8.6 | Packet: each 6.788 g. 20 packets/box | 05/15/78 |
| Lemmon Company | Etorphine Standard Solution | Plastic Carboy:1 Liter | 10/31/83 |
| MCI Biomedical | IEP Buffer, pH 8.2, 0.04 Ionic Strength | Package:6.510 grams | 08/28/72 |
| Mallinckrodt Inc. | Res-O-Mat ETR Solution | Vial:1.5 dram | 02/17/72 |
| Mallinckrodt Inc. | Res-O-Mat T4 Solution | Vial:1.5 dram | 02/17/72 |
| Mallinckrodt Inc. | (1) RIA-MAT Circulating T3 I125 Kit, Catalog No.501:. | KIT CONTAINS THE FOLLOWING 8 ENTRIES:. | 01/28/74 |
| Mallinckrodt Inc. | (2) RIA-MAT T3 Antiserum | Vial:2.5ml | 01/28/74 |
| Mallinckrodt Inc. | (3) RIA-MAT T3 Buffer | Bottle:100ml | 01/28/74 |
| Mallinckrodt Inc. | (4) RIA-MAT T3 Reaction Vial | Vial:1ml | 01/28/74 |
| Mallinckrodt Inc. | (5) RIA-MAT T3 Standard 0.5ng/ml | Vial:1.5ml | 01/28/74 |
| Mallinckrodt Inc. | (6) RIA-MAT T3 Standard 0ng/ml | Vial:1.5ml | 01/28/74 |
| Mallinckrodt Inc. | (7) RIA-MAT T3 Standard 1.0ng/ml | Vial:1.5ml | 01/28/74 |
| Mallinckrodt Inc. | (8) RIA-MAT T3 Standard 2.0ng/ml | Vial:1.5ml | 01/28/74 |
| Mallinckrodt Inc. | (9) RIA-MAT T3 Standard 6.0ng/ml | Vial:1.5ml | 01/28/74 |
| Mallinckrodt Inc. | Res-O-Mat ETR Solution | Bottle:16 oz and imperial gallon | 08/28/74 |
| Mallinckrodt Inc. | Res-O-Mat T4 Solution | Bottle:16 oz and imperial gallon | 08/28/74 |
| Mallinckrodt Inc. | RIA-MAT T4 I-125 Kit | Kit Containing: 100 Tests and 250 tests | 04/03/75 |
| Mallinckrodt Inc. | SPAC T4 RIA Kit | Kit:50 tests,100 tests | 02/01/77 |
| Mallinckrodt Inc. | T4 I125 Reaction Solution | Screwcap Bottle:2 ounce | 02/01/77 |
| Mallinckrodt Inc. | T4 Standard (10.0 ug pct) | Screwcap Vial: 5ml | 02/01/77 |
| Mallinckrodt Inc. | T4 Standard (2.0 ug pct) | Screwcap Vial: 5ml | 02/01/77 |
| Mallinckrodt Inc. | T4 Standard (20.0 ug pct) | Screwcap Vial: 5ml | 02/01/77 |
| Mallinckrodt Inc. | T4 Standard (40.0 ug pct) | Screwcap Vial: 5ml | 02/01/77 |
| Mallinckrodt Inc. | T4 Standard (5.0 ug pct) | Screwcap Vial: 5ml | 02/01/77 |
| Mallinckrodt Inc. | T4 Standard (5.0 ug%) | Screwcap Vial: 5ml | 09/15/77 |
| Mallinckrodt Inc. | SPAC T4 RIA Kit | Kit: 500 tests | 09/15/77 |
| Mallinckrodt Inc. | T4 Standard (10.0 ug%) | Screwcap Vial: 5ml | 09/15/77 |
| Mallinckrodt Inc. | T4 Standard (2.0 ug%) | Screwcap Vial: 5ml | 09/15/77 |
| Mallinckrodt Inc. | T4 Standard (20.0 ug%) | Screwcap Vial: 5ml | 09/15/77 |
| Mallinckrodt Inc. | T4 Standard (40.0 ug%) | Screwcap Vial: 5ml | 09/15/77 |
| Mallinckrodt Inc. | T4 I125 Reaction Solution | Screwcap Bottle: 8 ounce | 09/15/77 |
| Materials & Technology Systems .. | 5-Ethyl-5-(1 -Carboxy-N-Propyl) Barbituric Acid | Screw Cap Vial:8ml | 05/03/73 |
| Materials & Technology Systems .. | 5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin.. | Vaccine Vial:8ml | 05/03/73 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Materials & Technology Systems | 5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Sensitized RBC. | Vaccine Vial:8ml | 05/03/73 |
| Materials & Technology Systems | Carboxymethyl-Morphine | Screw Cap Vial:8ml | 05/03/73 |
| Materials & Technology Systems | Carboxymethyl-Morphine Bovine Serum Albumin or Rabbit Serum Albumin. | Vaccine Vial:8ml | 05/03/73 |
| Materials & Technology Systems | Carboxymethylmorphine Sensitized RBC | Vaccine Vial:50ml | 05/03/73 |
| Materials & Technology Systems | Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin.. | Vaccine Vial:8ml | 05/03/73 |
| Materials & Technology Systems | Ecgonine Sensitized RBC | Vaccine Vial:50ml | 05/03/73 |
| Materials & Technology Systems | Tropinecarboxylic Acid | Screw Cap Vial:8ml ,10ml | 05/03/73 |
| Materials & Technology Systems | Morphine Standard | Screw Cap Vial:10ml | 07/17/73 |
| Materials & Technology Systems | Benzoyl Ecgonine | Screw Cap Vial:25mg and 100 mg | 04/18/74 |
| Materials & Technology Systems | Barbiturate Standard | Screwcap Vial:10ml | 09/17/76 |
| Materials & Technology Systems | Benzoylecgonine Standard | Screwcap Vial:10ml | 09/17/76 |
| Materials & Technology Systems | Methadone Standard | Screwcap Vial:10ml | 09/17/76 |
| Medi-Chem,Inc. | Barbiturate Test Set (Sodium Secobarbital Standard 10mg % w/v) Catalog No.250. | Bottle: 120ml | 02/22/74 |
| Medical Analysis Systems, Inc. | ChemTrak Liquid Unassayed | Vial:15ml | 04/30/85 |
| Medical Analysis Systems, Inc. | Chemistry Control Assayed, Level 1, 2,& 3 | Vial:15ml | 04/30/85 |
| Medical Analysis Systems, Inc. | Chemistry Control, Level 1, 2,& 3 | Vial:15ml | 04/30/85 |
| Medical Analysis Systems, Inc. | ACE II Calibrator for the DuPont aca Level 1 | Glass Vial: 22 X 38mm, 5ml | 08/07/86 |
| Medical Analysis Systems, Inc. | ACE II Calibrator for the DuPont aca Level 2 | Glass Vial: 22 X 38mm, 5ml | 08/07/86 |
| Medical Analysis Systems, Inc. | ACE II Calibrator for the DuPont aca Level 3 | Glass Vial: 22 X 38mm, 5ml | 08/07/86 |
| Medical Analysis Systems, Inc. | TD Control Level 2 | Vial: 5ml | 10/08/86 |
| Medical Analysis Systems, Inc. | TD Control Level 1 | Vial: 5ml | 10/08/86 |
| Medical Analysis Systems, Inc. | TD Control Level 3 | Vial: 5ml | 10/08/86 |
| Meloy Labs,Inc. | Counterelectrophoresis Plates, G-301 | Plates:10 determinations | 09/05/73 |
| Meloy Labs,Inc. | Immunoelectrophoresis Plates, G-201 | Plates:6 / unit | 09/05/73 |
| Micromedic Systems | T3 RIA 125I Tracer Solution | Vial:30ml | 12/14/76 |
| Micromedic Systems | T3 RIA Buffer Solution | High Density Polyethylene Bottle:8 ounce | 12/14/76 |
| Micromedic Systems | T3 Uptake 125I Tracer Solution | Vial:30ml | 12/14/76 |
| Micromedic Systems | T3 Uptake Buffer Solution | High Density Polyethylene Bottle:8 ounce | 12/14/76 |
| Micromedic Systems | T4 RIA 125I Tracer Solution | Vial:30ml | 12/14/76 |
| Micromedic Systems | T4 RIA Buffer Solution | High Density Polyethylene Bottle:8 ounce | 12/14/76 |
| Micromedic Systems | Neonatal T4 125I Tracer Solution | Vial: 30ml | 05/21/80 |
| Micromedic Systems | Neonatal T4 Buffer Solution | Bottle: 8ounce | 05/21/80 |
| Miles Laboratories,Inc. | TEK-CHEK Special Urine Control (supplemental). | Vial: 25ml | 05/01/70 |
| Miles Laboratories,Inc. | Tetralute | Bottle:4.9 g. | 07/29/70 |
| Miles Laboratories,Inc. | Thyrolute I125, Reagent Kit, No.5250 | Kit: 20 columns | 12/02/74 |
| Miles Laboratories,Inc. | Thyrolute I125, Reagent Kit, No.5252 | Kit: 100 columns | 12/02/74 |
| Miles Laboratories,Inc. | Seralute Total T-4 (RIA) 125I Reagent Kit, No.3304, No.3305. | Kit: 20 columns, 100 columns | 03/28/77 |
| Miles Laboratories,Inc. | T-4 Buffer | Glass Screwtop Vial: 3/4 ounce | 03/28/77 |
| Miles Laboratories,Inc. | Cliniria T-3 Uptake Test,Kit Contains: (1)125I T-3 Uptake Reagent & (2) Separating Reagent. | 200ml Bottles | 11/10/78 |
| Miles Laboratories,Inc. | Ames Phenobarbital Assay,Kit Contains: Phenobarbital Standards; 10, 20, 40,& 60mcg/ml. | 6.1 ml Vials | 03/01/79 |
| Miles Laboratories,Inc. | Ames Phenobarbital Controls, 15mcg/ml, 30mcg/ml, 50mcg/ml. | Vial:6.1ml | 05/21/80 |
| Miles Laboratories,Inc. | Clinistat Calibrator Nos. 1 and 2 | Vial:1ml | 12/19/80 |
| Miles Laboratories,Inc. | Clinistat Control B,C,D,and E | Vial:1ml | 12/19/80 |
| Miles Laboratories,Inc. | TDA Cross-Reactivity Cocktails | Glass Vial:1ml | 02/01/83 |
| Miles Laboratories,Inc. | Seralyzer ARIS Drug Assay Control | Vial:1ml | 01/17/84 |
| Miles Laboratories,Inc. | Seralyzer ARIS Drug Assay High Calibrator | Vial:0.5ml | 01/17/84 |
| Miles Laboratories,Inc. | Seralyzer ARIS Drug Assay Low Calibrator | Vial:0.5ml | 01/17/84 |
| Miles Laboratories,Inc. | Seralyzer ARIS Phenytoin Reagent Strips | Bottle Containing 25 and 50 Strips | 05/28/86 |
| Monobind,Inc. | Monobind T3 Antibody Reagent | Test Tube w/Cap:70ml | 11/08/77 |
| Monobind,Inc. | Monobind T3 Tracer Reagent | Wheaton Glass Container: 55ml | 11/08/77 |
| Monobind,Inc. | Monobind T4 Antibody Reagent | Test Tube w/Cap:70ml | 11/08/77 |
| Monobind,Inc. | Monobind T4 Tracer Reagent | Wheaton Glass Container 55ml | 11/08/77 |
| Monobind,Inc. | Monobind TSH Antibody Reagent | Test Tube w/Cap:10.5ml | 11/08/77 |
| Monobind,Inc. | Monobind TSH Non-Specific Buffer | Wheaton Glass:1.05ml | 11/08/77 |
| Monobind,Inc. | Monobind TSH Precipitating Reagent | Plastic Container w/Cap :105ml | 11/08/77 |
| Monobind,Inc. | Monobind TSH Tracer Reagent | Wheaton Glass Container 10.5ml | 11/08/77 |
| Monobind,Inc. | TSH Radioimmunoassay Test System | Kit:100 Tests | 11/08/77 |
| Monobind,Inc. | Thyroxine Radioimmunoassay Test System | Kit:100 Tests | 11/08/77 |
| Monobind,Inc. | Triiodothyronine Radioimmunoassay Test System | Kit:100 tests | 11/08/77 |
| Monobind,Inc. | T3 Adsorbent Reagent | Glass Bottle: 110ml, 50ml Plastic Bottle: 260ml. | 05/15/78 |
| Monobind,Inc. | T3 Uptake Tracer Reagent | Glass Bottle: 55ml, 30ml Plastic Bottle: 125ml. | 05/15/78 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Nuclear Diagnostics,Inc. | TETRIA P.E.G. Reagent Catalog No. 16100 | Polypropylene Bottle: 105ml | 07/08/77 |
| Nuclear Diagnostics,Inc. | SPINSEP-TBG Reagent Catalog No. 17100 | Polypropylene bottle: 105ml | 12/15/77 |
| Nuclear Diagnostics,Inc. | TETRIA P.E.G. Antiserum Catalog No. 16100A | Polypropylene Bottle:55ml | 03/10/78 |
| Nuclear Diagnostics,Inc. | TETRIA P.E.G. Reagent Catalog No. 16100R | Polypropylene Bottle:55ml | 03/10/78 |
| Nuclear Diagnostics,Inc. | TRIA-P.E.G. Antiserum Catalog No. 12100A | Polypropylene Bottle:55ml | 03/10/78 |
| Nuclear Diagnostics,Inc. | TRIA-P.E.G. Reagent Catalog No.12100R | Polypropylene Bottle: 55ml | 03/10/78 |
| OMI International Corporation | Compound N Solution | Steel Drum:55 gallon | 10/01/75 |
| Organon Teknika Corp. | Platelin | Vial:7.3ml | 03/13/72 |
| Organon Teknika Corp. | Platelin Plus Activator | Vial:7 3ml | 03/13/72 |
| Organon Teknika Corp. | Simplastin | Vial:4.7ml, 7.3ml, and 16.5ml | 03/13/72 |
| Organon Teknika Corp. | Simplastin-A | Vial: 7.3ml | 03/13/72 |
| Organon Teknika Corp. | TGTR Set | Package:4 Tests per set | 03/13/72 |
| Organon Teknika Corp. | Russell's Viper Venom Reagent | Vial: 7.3ml containing 48 mg of powder | 07/08/74 |
| Organon Teknika Corp. | Liothyronine T3 125I | Boston Round Amber Bottle:16 ounce | 01/20/76 |
| Organon Teknika Corp. | T-4 125I Reagent | Boston Round Bottle: 2 ounce, amber bottle, 7 dr.. | 01/20/76 |
| Organon Teknika Corp. | T-4 Antiserum (rabbit) | Boston Round Bottle: 4 ounce, clear bottle, 7 dr.. | 01/20/76 |
| Organon Teknika Corp. | TETRA-TAB-RIA T4 Diagnostic Kit | Kit:40tests, 200tests | 01/20/76 |
| Organon Teknika Corp. | TRI-TAB T3 Uptake Diagnostic Kit | Kit: 200 Tests | 01/20/76 |
| Organon Teknika Corp. | Quality Assurance Serum Level I | Vial: 16.5 ml, 6 vials/ kit | 08/17/78 |
| Organon Teknika Corp. | Quality Assurance Serum Level II | Vial: 16.5 ml, 6 vials/ kit | 08/17/78 |
| Organon Teknika Corp. | Liothyronine T3 125I | Boston Round Amber Bottle: 4 ounce | 02/18/79 |
| Organon Teknika Corp. | TRI-TAB T3 Uptake Diagnostic Kit | Kit: 40 tests | 02/18/79 |
| Organon Teknika Corp. | PACP I & II | Kit: 36 vials/kit | 03/07/80 |
| Organon Teknika Corp. | Bovine QAS Clinical Study | 6 Vials/Kit (10ml/vial) | 04/28/80 |
| Organon Teknika Corp. | Owren's Veronal Buffer for FIBRIQUIK | Bottle: 37 ml | 05/07/80 |
| Organon Teknika Corp. | ASSURE, Levels I & II | Vial: 10 ml | 06/27/80 |
| Organon Teknika Corp. | Unassayed Chemistry Serum Control, Levels I & II. | Vial: 25 ml | 06/27/80 |
| Organon Teknika Corp. | PROFILE Anticonvulsant Levels I & II | Vial: 10 ml | 11/28/80 |
| Organon Teknika Corp. | Midwest/ Illinois/ New Jersey Quality Control Program, Level I & II. | Vial: 10 ml, 10 vials / kit | 04/16/81 |
| Organon Teknika Corp. | Profile General Set | Kit Ctg: 6 vials | 02/22/82 |
| Organon Teknika Corp. | Profile General- Levels I & II | Vial:5 ml | 02/22/82 |
| Organon Teknika Corp. | TETRA-TUBE RIA T4 Diagnostic Kit | Kit:100 tests, 500 tests | 06/03/83 |
| Ortho Diagnostic Systems,Inc. | Activated ThromboFAX No.721000 | Bottle: 3.2ml | 09/21/71 |
| Ortho Diagnostic Systems,Inc. | Ortho Abnormal Plasma Coagulation Control | Packet:96.5 mg | 09/21/71 |
| Ortho Diagnostic Systems,Inc. | Ortho Activated PTT Reagent | Glass Vial:30 determination size, 100 | 05/23/83 |
| Ortho Diagnostic Systems,Inc. | Ortho Abnormal Coagulation Control Level I | Glass Vial: 5ml | 10/25/83 |
| Ortho Diagnostic Systems,Inc. | Ortho Abnormal Coagulation Control Level II | Glass Vial: 5ml | 10/25/83 |
| Pacific Hemostasis | Barbital Buffered Saline | Vial:100ml | 05/24/84 |
| Pacific Hemostasis | Barbital Buffered Saline with Heparin | Vial:90ml | 05/24/84 |
| Pacific Hemostasis | Diluting Fluid | Vial:20ml | 05/24/84 |
| Pantex | Immuno T3 Kit: (1)L-Triiodothyronine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards. | Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)5ml (5)3ml. | 01/04/79 |
| Pantex | Immuno-Digoxin Kit Containing: (1)Digoxin 125I (2)1st Antiserum (3) 2nd Antiserum (4)Diluent. | Kit Containing Bottles: (1)10ml (2)20ml (3)50ml (4)5ml. | 01/04/79 |
| Pantex | Immuno-Estriol 125I Kit:2nd Antiserum | Bottle:50ml | 01/04/79 |
| Pantex | Immuno-Estriol Kit: (1)Estriol 3H RIA (2)Estriol 3H Recovery (3)1st Antiserum (4)2nd Antiserum (5)Diluent (6)Buffer (7)Standards. | Kit Containing Bottles: (1)10ml (2)5ml (3)10ml (4)20ml (5)100ml (6)50ml (7)5ml. | 01/04/79 |
| Pantex | Immuno-T4 Kit: (1)Thyroxine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards. | Kit Containing Bottles: (1)100ml,1000ml (2)50ml (3)100ml (4)5ml (5)3ml. | 01/04/79 |
| Pantex | Immuno-Testosterone 125I Kit: (1)Testosterone 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards. | Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)100ml (5)5ml. | 01/04/79 |
| Pantex | T3 Uptake Kit: L-Triiodothyronine 125I | Bottle:100ml, 1000ml | 01/04/79 |
| Quantimetrix | Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17-0303-2. | Polyethylene Dropper Bottle: 15ml | 04/16/86 |
| Quantimetrix | Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0303-1. | Polyethylene Dropper Bottle: 15ml | 04/16/86 |
| Quantimetrix | Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0305-1. | Polyethylene Dropper Bottle: 15ml | 04/16/86 |
| Quantimetrix | Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17-0305-2. | Polyethylene Dropper Bottle: 15ml | 04/16/86 |
| Quin-Tec, Inc. | Quin-Tec Brightener 402 | Plastic Pail: 5 gallons, Plastic Drum: 55 gallons. | 10/13/81 |
| Quin-Tec, Inc. | Quin-Tec Brightener 404 | Plastic Pail: 5 gallons, Plastic Drum: 55 gallons. | 10/13/81 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Research Triangle Institute | Tritium Kit for Radioimmunoassay of Delta-9 THC | Kit Containing: 20-1ml Ampules; 2- 20ml Vials; 2- 250ml Bottles. | 06/27/80 |
| Research Triangle Institute | Iodine Kit for Radioimmunoassay of Delta-9 THC | Kit Containing:20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles. | 10/20/80 |
| Research Triangle Institute | Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood. | Kit Containing: 22-1ml Ampules; 2-20ml Vials; 2-250ml Bottles. | 07/10/81 |
| Research Triangle Institute | 11-Nor-9-carboxy-delta-9 THC Blood Standards Kit.. | Kit Containing: 18-21ml Ampuls; 1-5ml Ampul. | 10/26/81 |
| Research Triangle Institute | 11-Nor-9-carboxy-delta-9 THC Plasma Standards Kit.. | Kit Containing: 18-21ml Ampuls; 1-5ml Ampul. | 10/26/81 |
| Research Triangle Institute | Delta-9 THC Blood Standards Kit | Kit Containing: 16-2ml Ampuls; 1-5ml Ampul. | 10/26/81 |
| Research Triangle Institute | Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Blood. | Kit Containing: 26-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles. | 10/26/81 |
| Research Triangle Institute | Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Plasma. | Kit Containing:24-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles. | 10/26/81 |
| Research Triangle Institute | Delta-9 THC Plasma Standards Kit | Kit Containing: 16-2ml Ampuls; 1-5ml Ampul. | 11/02/81 |
| Rowley Biochemical Institute,Inc. | Aldehyde Fuchsin Solution | Bottle: Pint, Quart, Gallon | 02/02/84 |
| Rowley Biochemical Institute,Inc. | Aldehyde Thionin Solution | Bottle:Pint, Quart, Gallon | 02/02/84 |
| Rowley Biochemical Institute,Inc. | Mayer's Hematoxylin Solution | Bottle:Pint, Quart, Gallon | 02/02/84 |
| Schering Corp. | Hepaquik | Vial:9 Dram and Plate | 07/16/72 |
| Serono Diagnostics,Inc. | rT3 Barbital Buffer | Glass Vial:120ml | 10/26/84 |
| Serono Diagnostics,Inc. | rT3-125I | Glass Vial:13ml | 10/26/84 |
| Serono Diagnostics,Inc. | rT3-Antiserum | Glass Vial:13ml | 10/26/84 |
| Sherwood Medical Company | Lancer Fibrinogen Determination,Reagent Kit Catalog No. 8889-007608. | Kit | 04/17/75 |
| Sigma Chemical Co. | LDH-P Reagent No. 125-10 | Vial:30ml | 05/29/73 |
| Sigma Chemical Co. | LDH-P Reagent No. 125-100 | Vial:100ml | 05/29/73 |
| Sigma Chemical Co. | SGOT 10 Assay Vial No. 55-10 | Vial:30ml | 05/29/73 |
| Sigma Chemical Co. | SGOT Reagent No. 155-10 | Vial:30ml | 05/29/73 |
| Sigma Chemical Co. | SGOT Reagent No. 155-100 | Vial:100ml | 05/29/73 |
| Sigma Chemical Co. | SGOT Single Assay Vial No. 55-1 | Vial:3ml | 05/29/73 |
| Sigma Chemical Co. | SGOT Single Assay Vial No. 55-5 | Vial:15ml | 05/29/73 |
| Sigma Chemical Co. | SGPT 10 Assay Vial No. 55-10P | Vial:30ml | 05/29/73 |
| Sigma Chemical Co. | SGPT Assay Vial No. 55-5P | Vial:15ml | 05/29/73 |
| Sigma Chemical Co. | SGPT Reagent No. 155-100P | Vial:100ml | 05/29/73 |
| Sigma Chemical Co. | SGPT Reagent No. 155-10P | Vial:30ml | 05/29/73 |
| Sigma Chemical Co. | SGPT Single Assay Vial No. 55-1P | Vial:3ml | 05/29/73 |
| Sigma Chemical Co. | Acid Hematoxylin Solution, No.285-2 | Bottle:25ml, 100ml | 08/06/73 |
| Sigma Chemical Co. | Mayer's Hematoxylin Solution, No. MHS-1 | Bottle:25ml, 100ml | 08/06/73 |
| Sigma Chemical Co. | LDH Electrophoresis Buffer, Stock No. 705-1 | Amber Jar:30ml | 01/04/77 |
| Sigma Chemical Co. | Trizma-Barbital Buffer,Stock No. 710-1 | Amber Jar:30ml | 01/04/77 |
| Sigma Chemical Co. | Ammonia Reagent ,Stock No. 170-10 | Vial:10ml | 02/17/77 |
| Sigma Chemical Co. | Ammonia Reagent Kit:Stock No. 170-10 | Kit:10 Vials | 02/17/77 |
| Sigma Chemical Co. | Barbital Buffer ,Product No. B-6632 | Polyethylene Vial:30ml | 05/11/77 |
| Sigma Chemical Co. | 1-Tetrahydrocannabinol, Product No. T-4764 | Sealed Ampule: 1ml | 06/30/77 |
| Sigma Chemical Co. | 5,5-Diallylbarbituric Acid, Product No. D-6013 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Amobarbital ,Product No. A-5142 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Aprobarbital , Product No. A-7023 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Barbital,Product No. B-8632 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Bufotenine Monooxalate,Product No. B-8757 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Lysergic Acid , Product No. L-5881 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Mescaline HC1 , Product No. M-5153 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Chloral Hydrate , Product No. C-6516 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Methamphetamine HC1 , Product No. M-5260 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Glutethimide, Product No. G-3134 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Ibogaine HC1, Product No. I-4630 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Butabarbital ,Product No. B-8882 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | DL-Amphetamine HCL , Product No. A-5017 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Hexobarbital, Product No. H-2007 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | N,N-Dimethyltryptamine, Product No. D-6263 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Pemoline , Product No. P-3518 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Pentobarbital , Product No. P-3393 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Phenobarbital Prod. No.P-3643 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Secobarbital , Product No. S-4006 | Sealed Ampule:1ml | 06/30/77 |
| Sigma Chemical Co. | Ammonia Reagent Stock No. 170-10 | Vial:30ml | 12/13/77 |
| Sigma Chemical Co. | Ammonia in Plasma Kit | Kit: 100 tests, 30 tests | 12/13/77 |
| Sigma Chemical Co. | ALT Reagent A, Stock No.57-10 | Vial: 30ml | 06/27/79 |
| Sigma Chemical Co. | ALT Reagent A, Stock No.57-2 | Vial: 10ml | 06/27/79 |
| Sigma Chemical Co. | AST Reagent A, Stock No.56-10 | Vial: 30ml | 06/27/79 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Sigma Chemical Co. | AST Reagent A, Stock No.56-2 | Vial: 10ml | 06/27/79 |
| Sigma Chemical Co. | Cannabidiol, Product No. C-6395 | Sealed Ampule:1ml | 08/29/79 |
| Sigma Chemical Co. | Cannabinol, Product No. C-6520 | Sealed Ampule:1ml | 08/29/79 |
| Sigma Chemical Co. | Barbital Buffer with Albumin Stock No. 880-3 | Vial: 20ml | 07/11/80 |
| Sigma Chemical Co. | 1-Tetrahydrocannabinol, Product No. T-4764 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | 6-Tetrahydrocannabinol, Product No. T-4889 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | Cannabidiol, Product No. C-6395 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | Cannabinol, Product No. C-6520 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | D-Amphetamine Sulfate, Product No. A-3278 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | Mephobarbital, Product No. M-3514 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | N,N-Diethyltryptamine, Product No. D-0392 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | Phendimetrazine, Product No. P-3524 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | Phenylacetone, Product No. P-2024 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | Tropacocaine, Product No. T-4516 | Vial: 1ml | 05/11/81 |
| Sigma Chemical Co. | Morphine-3-B-D Glucuronide, Product No. M-4266. | Ampule: 1ml | 10/21/82 |
| Sigma Chemical Co. | Paraldehyde, Product No. D-3778 | Ampule: 1ml | 10/21/82 |
| Sigma Chemical Co. | Adenosine Phosphate Substrate, Product No. 675-1. | Bottle:4 ounce | 07/25/83 |
| Sigma Chemical Co. | Glycerophosphate Substrate, Product No. 675-2 | Bottle:4 ounce | 07/25/83 |
| Sigma Chemical Co. | Glycerophosphate Substrate, Product No. 704-1 | Bottle:4 ounce | 07/25/83 |
| Sigma Chemical Co. | Butalbital, Product No. B-5514 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Cocaine Hydrochloride Product No. C-1528 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Codeine.Product No. C-1653 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Diethylpropion Hydrochloride, Product No. D-7274. | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Fenfluramine Hydrochloride, Product No. F-1884 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Methadone Hydrochloride, Product No. M-3268 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Methaqualone Hydrochloride, Product No. M-3393. | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Oxycodone Hydrochloride, Product No. O-2628 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Pentazocine Hydrochloride, Product No. P-7530 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Phentermine Hydrochloride, Product No. P-7655 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Thebaine, Product No. T-5270 | Sealed Ampule:1ml | 09/19/83 |
| Sigma Chemical Co. | Benzphetamine Hydrochloride, Product No. B-8765. | Sealed Ampule:1ml | 06/08/84 |
| Sigma Chemical Co. | Clonazepam, Product No. C-4404 | Sealed Ampule:1ml | 06/08/84 |
| Sigma Chemical Co. | Diazepam, Product No. D-9900 | Sealed Ampule:1ml | 06/08/84 |
| Sigma Chemical Co. | Flurazepam Dihydrochloride, Product No. F-9134 | Sealed Ampule:1ml | 06/08/84 |
| Sigma Chemical Co. | Methyprylon, Product No. M-1769 | Sealed Ampule:1ml | 06/08/84 |
| Sigma Chemical Co. | Thiamylal Sodium , Product No. T-6896 | Sealed Ampule:1ml | 06/08/84 |
| Sigma Chemical Co. | Alphaprodine Hydrochloride (A-1537) | Ampule:1ml | 08/27/84 |
| Sigma Chemical Co. | Meperidine Hydrochloride (M-1020) | Ampule:1ml | 08/27/84 |
| Sigma Chemical Co. | Nalorphine Hydrochloride | Ampule:1ml | 08/27/84 |
| Sigma Chemical Co. | Thiopental (T-1022) | Ampule:1ml | 08/27/84 |
| Sigma Chemical Co. | Dextropropoxyphene Hydrochloride (D-8901) | Ampule:1ml | 09/27/84 |
| Sigma Chemical Co. | Methylphenidate Hydrochloride (M-1145) | Ampule:1ml | 10/31/84 |
| Sigma Chemical Co. | Allylcyclopentylbarbituric Acid (A-7787) | Sealed Ampule:1ml | 04/10/85 |
| Sigma Chemical Co. | Allylisobutylbarbituric Acid (A-1038) | Sealed Ampule:1ml | 04/10/85 |
| Sigma Chemical Co. | Alphenal (A-1163) | Ampule:1ml | 04/10/85 |
| Sigma Chemical Co. | Ethinamate (E-8508) | Ampule:1ml | 04/10/85 |
| Sigma Chemical Co. | Chlorazepam Dipotassium Salt, (C-9531) | Ampule:1ml | 05/24/85 |
| Sigma Chemical Co. | Lorazepam (L-0140) | Ampule:1ml | 05/24/85 |
| Sigma Chemical Co. | Medazepam (M-7646) | Ampule:1ml | 05/24/85 |
| Sigma Chemical Co. | Meprobamate (M-0271) | Ampule:1ml | 05/24/85 |
| Sigma Chemical Co. | Butethal (B-7516) | Ampule:1ml | 09/05/85 |
| Sigma Chemical Co. | Chlordiazepoxide (C-4782) | Ampule:1ml | 09/05/85 |
| Sigma Chemical Co. | Diphenoxylate (D-0780) | Ampule:1ml | 09/05/85 |
| Sigma Chemical Co. | Mebutamate (M-3772) | Ampule:1ml | 09/05/85 |
| Sigma Chemical Co. | Antibody Sensitized Sheep Erythrocytes (EA7S) | Vials:2ml and 5X 2ml | 04/02/86 |
| Sigma Chemical Co. | Drug Standard Mix 1, D-3155 | Ampule:2ml | 04/18/86 |
| Sigma Chemical Co. | Drug Standard Mix 2, D-3030 | Ampule:2ml | 04/18/86 |
| Smart Chemical Company | Regal 180XL | Plastic Drum:55 gallon | 06/12/86 |
| Supelco,Inc. | Amobarbital, No.04-9170 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Amphetamine No.04-9165 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Aprobarbital No.04-9171 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Codeine No.04-9161 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Cyclobarbital No.04-9175 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Glutethimide No.04-9173 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Heroin No.04-9162 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Hexobarbital No.04-9177 | Ampule: 1ml | 12/22/72 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Supelco,Inc. | Mephobarbital No.04-9178 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Methadone No.04-9163 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Methamphetamine No.04-9168 | Ampule: 1ml | 12/22/72 |
| Supelco,Inc. | Alk Mix No. 04-9210 | Vial:1ml | 08/28/73 |
| Supelco,Inc. | Cannabidiol, No.04-9221 | Ampule:1ml | 11/27/74 |
| Supelco,Inc. | Cannabinol, No.04-9235 | Ampule:1ml | 11/27/74 |
| Supelco,Inc. | Delta-1 THC, No.04-9237 | Ampule:1ml | 11/27/74 |
| Supelco,Inc. | Delta-6 THC, No.04-9238 | Ampule:1ml | 11/27/74 |
| Supelco,Inc. | Cocaine, No.04-9188 | 1000 mcg /Glass Ampule | 06/05/75 |
| Supelco,Inc. | Methaqualone, No.04-9183 | 1000 mcg /Glass Ampule | 06/05/75 |
| Supelco,Inc. | Psilocybin, No.04-9191 | 1000 mcg /Glass Ampule | 06/05/75 |
| Supelco,Inc. | Anticonvulsant Mixture No.1; No. 04-9202 | Glass Serum Bottle:50ml | 06/16/77 |
| Supelco,Inc. | Morphine No. 04-9160 | Glass Ampule:1000mcg | 03/08/78 |
| Supelco,Inc. | Pentobarbital No. 04-9179 | Glass Ampule:1000mcg | 03/08/78 |
| Supelco,Inc. | Phenobarbital No. 04-9181 | Glass Ampule:1000mcg | 03/08/78 |
| Supelco,Inc. | Secobarbital No. 04-9180 | Glass Ampule:1000mcg | 03/08/78 |
| Supelco,Inc. | Antiepileptic Calibration Standard Kit, No.4-9259 | Kit: 3 Ampules | 05/21/80 |
| Supelco,Inc. | Antiepileptic Calibration Standards, Nos.4-9256, 4-9257, 4-9258. | Glass Ampule:5ml | 05/21/80 |
| Supelco,Inc. | Dextroamphetamine, No.4-9185 | Glass Ampule:1ml | 05/21/80 |
| Supelco,Inc. | Meprobamate, No.4-9184 | Glass Ampule:1ml | 05/21/80 |
| Supelco,Inc. | Amph. Mix Catalog No. 4-9205 | Glass Ampule:2ml | 06/09/86 |
| Supelco,Inc. | Barb. Mix 1,Catalog No. 4-9200 | Glass Ampule:2ml | 06/09/86 |
| Supelco,Inc. | Barb. Mix 2,Catalog No. 4-9201 | Glass Ampule:2ml | 06/09/86 |
| Supelco,Inc. | Barbital,Catalog No. 4-9279 | Glass Ampule:10ml | 06/09/86 |
| Syva Co. | Antiepileptic Drug Control | Vial:10ml , Lyophilized | 08/27/74 |
| Syva Co. | Emit AED-No. 1 Calibrator | Vial:3ml , Lyophilized | 08/27/74 |
| Syva Co. | Emit AED-No. 2 Calibrator | Vial:3ml , Lyophilized | 08/27/74 |
| Syva Co. | Emit AED-No. 3 Calibrator | Vial:3ml , Lyophilized | 08/27/74 |
| Syva Co. | Emit AED-No. 4 Calibrator | Vial:3ml , Lyophilized | 08/27/74 |
| Syva Co. | Emit AED-No. 5 Calibrator | Vial:3ml , Lyophilized | 08/27/74 |
| Syva Co. | Emit Phenobarbital Enzyme Reagent B | Vial:6 ml , Lyophilized | 08/27/74 |
| Syva Co. | Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B. | Bottle:3ml | 02/01/79 |
| Syva Co. | Emit d.a.u. Phencyclidine Assay Kit Containing: (1)Emit Phencyclidine Enzyme Reagent B. | Bottle:6ml | 02/01/79 |
| Syva Co. | Emit-Tox Serum Calibrators;Low and Medium | Bottle:3ml | 02/01/79 |
| Syva Co. | Emit Serum Barbiturate-Enzyme Reagent B | Bottle: 3ml | 05/22/79 |
| Syva Co. | Emit- Tox Serum Barbiturate Assay | Kit:50 tests | 05/22/79 |
| Syva Co. | Emit d.a.u. Cannabinoid Urine Calibrator Set | Kit:3 Vials, 3ml Each | 01/03/80 |
| Syva Co. | Emit-st Amphetamine Assay | Vial:3ml, 80 vials/kit | 10/03/80 |
| Syva Co. | Emit-st Barbiturate Assay | Vial:3ml, 80 vials/kit | 10/03/80 |
| Syva Co. | Emit-st Benzodiazepine Assay | Vial:3ml, 80 vials/kit | 10/03/80 |
| Syva Co. | Emit-st Opiate Assay | Kit:3ml, 80 vials/kit | 10/03/80 |
| Syva Co. | Emit-st Urine Calibrator A | Vial:1ml, 3 vials/kit | 10/03/80 |
| Syva Co. | Emit-st Urine Controls A | Vial:1ml, 6 vials/kit | 10/03/80 |
| Syva Co. | Emit-st Phencyclidine Assay | Vial:3ml, 80 vials/kit | 01/07/81 |
| Syva Co. | Emit-st Serum Barbiturate Assay | Vial:3ml, 80 vials/kit | 02/16/81 |
| Syva Co. | Emit-st Serum Benzodiazepine Assay | Vial:3ml, 80 vials/kit | 02/16/81 |
| Syva Co. | Emit-st Serum Calibrator | Vial:3ml | 02/16/81 |
| Syva Co. | Emit-st Serum Controls | Vial:3ml, 2 vials/kit | 02/16/81 |
| Syva Co. | Emit-st Serum Phencyclidine Assay | Vial:3ml, 80 vials/kit | 02/16/81 |
| Syva Co. | Emit-st Cannabinoid Calibrator | Vial:3ml, 2 vials/kit | 07/10/81 |
| Syva Co. | Emit-st Cannabinoid Controls | Vial:3ml, 2 vials/kit | 07/10/81 |
| Syva Co. | Emit-st Urine Cocaine Metabolite Assay | Vial:3 ml, 80 Vials/Kit | 03/16/82 |
| Syva Co. | Emit-st Urine Methadone Assay | Vial:3ml ,80 vials/kit | 03/22/82 |
| Syva Co. | Emit-d.a.u. Methaqualone Assay | Kit:100 tests | 04/27/82 |
| Syva Co. | Emit-st Urine Methaqualone Assay | Kit:80 Vials | 04/27/82 |
| Syva Co. | Emit-st Urine Methaqualone Calibrator | Vial:3ml | 04/27/82 |
| Syva Co. | Emit-st Urine Methaqualone Controls | Vial:3ml | 04/27/82 |
| Syva Co. | Advance T-3 Uptake Assay | Kit:100 tests | 05/11/82 |
| Syva Co. | Advance Thyroxin Assay | Kit:100 tests | 05/11/82 |
| Syva Co. | Emit-Qst Phenobarbital Assay, Catalog Number 6D819. | Kit:50 Vials | 01/18/84 |
| Syva Co. | Emit d.a.u. Low Calibrator A | Bottle:5ml | 07/20/84 |
| Syva Co. | Emit d.a.u.Medium Calibrator A | Bottle:5ml | 07/20/84 |
| Syva Co. | Emit d.a.u. Medium Calibrator B | Bottle:5ml | 08/03/84 |
| Syva Co. | Emit d.a.u.Low Calibrator B | Bottle:5ml | 08/03/84 |
| Syva Co. | Emit d.a.u. Cannabinoid Assay Catalog No. 3M019. | Kit:100 tests | 09/24/84 |

## Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Syva Co. | Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119. | Kit:100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u. Benzodiazepine Assay Catalog Nos. 3F019, 3F119. | Kit:100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119. | Kit:100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119. | Kit:100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit d.a.u.Barbiturate Assay Catalog Nos. 3D019, 3D119. | Kit:100 tests, 1000 tests | 09/27/84 |
| Syva Co. | Emit-st Cannabinoid Assay Catalog No. 3M319 | Vial:6ml, 80 Vials/Kit | 09/27/84 |
| Syva Co. | Emit 700 Calibrator A Catalog No. 3A919 | Bottle:3ml | 10/05/84 |
| Syva Co. | Emit 700 Calibrator B Catalog No. 3A969 | Bottle:3ml | 10/05/84 |
| Syva Co. | Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119. | Kit:100 tests, 1000 tests | 10/05/84 |
| Syva Co. | Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M969. | Bottle:3ml | 10/09/84 |
| Syva Co. | Emit 700 Cannabinoid Control Set Catalog No. 3M989. | 2 Bottles:3ml | 10/09/84 |
| Syva Co. | Emit 700 Control Set A Catalog No. 3A939 | 2 Bottles:3ml | 10/09/84 |
| Syva Co. | Emit 700 Control Set B Catalog No. 3A989 | 2 Bottles:3ml | 10/09/84 |
| Syva Co. | Emit 700 Amphetamine Assay Catalog No. 3C919. | Bottle:180ml | 10/12/84 |
| Syva Co. | Emit 700 Barbiturate Assay Catalog No.3D919 | Bottle:180ml | 10/12/84 |
| Syva Co. | Emit 700 Cannabinoid (100) Assay Catalog No. 3M919. | Bottle:180ml | 10/12/84 |
| Syva Co. | Emit 700 Cocaine Metabolite Assay Catalog No. 3H919. | Bottle:180ml | 10/12/84 |
| Syva Co. | Emit 700 Opiate Assay Catalog No.3B919 | Bottle:180ml | 10/12/84 |
| Syva Co. | Emit 700 Phencyclidine Assay Catalog No. 3J919 | Bottle:180ml | 10/12/84 |
| Syva Co. | Emit 700 Methaqualone Assay Catalog No. 3Q919. | Bottle:180ml | 10/19/84 |
| Syva Co. | AccuLevel Phenobarbital Test Control Stock Solution. | Flask:50ml | 10/31/85 |
| Syva Co. | Emit Qst Primidone Assay Catalog No. 60819 | Glass Vial: 6ml, 50 Vials/Kit | 11/12/85 |
| Syva Co. | AccuLevel Phenobarbital Test Kit (Catalog No.10C019) Containe: (1)AccuLevel Phenobarbital Control (2)AccuLevel Reagent I. | (1)Glass Vial:6ml; (2)Glass Vial:9ml, 12 Vials per test kit. | 01/24/86 |
| Syva Co. | Emit d.a.u. Cannabinoid 20ng Assay Catalog No. 3M619. | Kit:100 tests | 02/10/86 |
| Syva Co. | Emit d.a.u. Cannabinoid 20ng Enzyme Reagent B | Vial:10ml Lyophilized Powder | 02/10/86 |
| Syva Co. | Emit Qst Phenobarbital Bulk Powder Reagent | Steel Drum:7 gallon | 06/05/86 |
| Syva Co. | Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959. | Plastic Bottle: 180ml | 09/15/86 |
| Technicon | Ammonium Sulfate Reagent No. T01-1139 | Glass Bottle: 1 and 4 liters | 01/31/80 |
| Technicon | TQC T.D.M. Calibrator 1, No. T13-1150 | Glass Vial:15ml | 01/31/80 |
| Technicon | TQC T.D.M. Control A ,No. T13-1115 | Glass Vial:15ml | 01/31/80 |
| Technicon | Set Point RA-1000 Systems T4 Standards Product No. T03-1481-01. | Glass Bottles:5ml (Standard 1 Fill Volume=5ml) (Standards 2-6 Fill Volume=1.5ml). | 08/02/85 |
| Technicon | T4 Agglutinator Reagent No.T11-1484 | Glass Bottle:10ml | 08/02/85 |
| Tempil Division. Big Three Industries, Inc.. | Tempilaq Striped Mylar | Plastic Sheet: 6 by 12 in. 50 sheets per envelope. | 09/22/76 |
| The Theta Corp. | Allobarbital No.FP305 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Amobarbital No. FP313 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Amphetamine No. FP604 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Anileridine No. FP203 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Aprobarbital No. FP306 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Barbital No.FP314 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Butabarbital No. FP315 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Butalbital No. FP307 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Chloral Betaine No. FP502 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Chloral Hydrate No. FP501 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Cocaine No. FP601 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Codeine No. FP102 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Talbutal No. FP311 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Meprobamate No. FP402 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Thiamylal No. FP322 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Methamphetamine No. FP603 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Meperidine No.FP201 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Methohexital No. FP304 | Vial:2ml | 04/10/73 |

BEST COPY AVAILABLE

## Exempt Chemical Preparations—Continued

| Manufacturer or Suppher | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| The Theta Corp. | Vinbarbital No. FP312 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Monthly Urine Test No. FPM-103 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Weekly Urine Test (FDA) No. FPM-101 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Oxycodone No. FP109 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Weekly Urine Test (States) No. FPM-102 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Mephobarbital No. FP301 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Marker Mixture No. FPM-201 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Phenazocine No. FP213 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Marker Mixture No. FPM-104 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Phenobarbital No. FP320 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Levorphanol No. FP208 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Probarbital No. FP319 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Hydromorphone No. FP103 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Methadone No. FP206 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Hydrocodone No. FP107 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Methylphenidate No. FP605 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Hexabarbital No. FP303 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Oxymorphone No. FP104 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Heptabarbital No. FP309 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Phenmetrazine No. FP606 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Glutethimide No. FP404 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Secobarbital No. FP310 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Morphine No. FP101 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Pentobarbital No. FP318 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Piminodine No. FP202 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Metharbital No. FP302 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Fentanyl No. FP211 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Ethylmorphine No. FP106 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Ethchlorvynol No. FP508 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Diphenoxylate No. FP205 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Dihydrocodeine No. FP108 | Vial: 2ml | 04/10/73 |
| The Theta Corp. | Paraldehyde No.FP506 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Thiopental No. FP321 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Cyclobarbital No. FP308 | Vial:2ml | 04/10/73 |
| The Theta Corp. | Test Mixture TM No. 2 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture TM No. 1 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SP No. 4 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SM No. 3 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SM No. 1 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SM No. 2 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SP No. 3 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SP No. 2 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SP No. 1 | Vial:2ml | 06/19/74 |
| The Theta Corp. | Test Mixture SM No. 4 | Vial:2ml | 06/19/74 |
| The Theta Corp. | FP512 | Vial:2ml | 03/08/79 |
| The Theta Corp. | FP405 | Vial:2ml | 03/08/79 |
| The Theta Corp. | FP513 | Vial:2ml | 03/08/79 |
| The Theta Corp. | FP515 | Vial:2ml | 03/08/79 |
| The Theta Corp. | FP207 | Vial:2ml | 09/04/80 |
| The Theta Corp. | FP556 | Vial:2ml | 04/10/84 |
| The Theta Corp. | FP214 | Vial:2ml | 04/10/84 |
| The Theta Corp. | FP327 | Vial:2ml | 04/10/84 |
| The Theta Corp. | FP601A | Vial:2ml | 05/15/84 |
| The Theta Corp. | FP607 | Vial:2ml | 05/15/84 |
| The Theta Corp. | FP210 | Vial:2ml | 05/15/84 |
| The Theta Corp. | FP609 | Vial:2ml | 05/15/84 |
| The Theta Corp. | FP514 | Vial:2ml | 05/15/84 |
| The Theta Corp. | FP416 | Vial:2ml | 05/15/84 |
| The Theta Corp. | FP412 | Vial:2ml | 05/15/84 |
| The Theta Corp. | FP411 | Vial:2ml | 05/15/84 |
| Travenol Labs (Clinical Assays Division). | Assay buffer CA-742 | Polypropylene Bottle: 150ml | 03/14/77 |
| Travenol Labs (Clinical Assays Division). | Rabbit Anti-Human TSH Serum | Glass vial: 20ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-420 Anticonvulsant Drug Control, Level II | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-384 Phenobarbital 1:101 dilution of 100 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-419 Anticonvulsant Drug Control, Level I | Septem sealed glass vial: 2ml | 11/16/77 |

Exempt Chemical Preparations—Continued

| Manufacturer or Supplier | Product Name Description | Form of Product | Date of Publication |
|---|---|---|---|
| Travenol Labs (Clinical Assays Division). | CA-380 Phenobarbital Serum Standard 1:101 dilution of 1.0 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-381 Phenobarbital Serum Standard 1:101 dilution of 3.0 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | Anticonvulsant Drug Controls | Kit: 500 determinations, 50 determinations. | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | Human TSH standards, 2.0 ulU/ml, 5.0 ulU/ml, 10 ulU/ml, 20 ulU/ml, 50 ulU/ml. | Glass vials: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | (125I) Human TSH Radioimmunoassay kit | Kit: 125 determinations | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | (125I) Human TSH Tracer | Glass Vial: 6ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-382 Phenobarbital Serum Standard 1:101 dilution of 10 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Travenol Labs (Clinical Assays Division). | CA-383 Phenobarbital Serum Standard 1:101 dilution of 30 ug/ml. | Septem sealed glass vial: 2ml | 11/16/77 |
| Utak Laboratories | Toxicology Urine Control-Dried Catalog Nos. 44650, 44651, 44652, 44653. | Bottle:1 oz. | 05/24/76 |
| Utak Laboratories | Toxicology Serum Control-Dried Catalog Nos. 44610, 44612, 44632, 44635, 44636, 44637, 44642, 44645, 44646, 44647, 44658.. | In Bottles | 05/24/76 |
| Utak Laboratories | Toxicology Control-High Range Anticonvulsants No. 71910. | Bottle:10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-High Range Barbiturates No. 71916. | Bottle:10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-Mid Range Anticonvulsants No. 71911. | Bottle:10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-Mid Range Barbiturates No. 71917. | Bottle:10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-Mid Range Hypnotic Plus Salicylate, No. 71921. | Bottle:10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-Mid Range Hypnotic Plus Acetaminophem, No. 71919. | Bottle:10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-High Range Hypnotic Plus Salicylate, No. 71920. | Bottle:10ml | 04/14/80 |
| Utak Laboratories | Toxicology Control-High Range Hypnotic Plus Acetaminophem, No. 71918. | Bottle:10ml | 04/14/80 |
| Utak Laboratories | Toxicology Urine Control Dried #88100 | Bottle:20ml | 07/29/82 |
| Utak Laboratories | Toxicology Serum Control Dried #88112 | Bottle:10ml | 07/29/82 |
| Utak Laboratories | Toxicology Serum Control Dried #88113 | Bottle:10ml | 07/29/82 |
| Utak Laboratories | Toxicology Serum Control Dried #88120 | Bottle:10ml | 07/29/82 |
| Utak Laboratories | Toxicology Urine Control Dried #88121 | Bottle:10ml | 07/29/82 |
| Wien Laboratories,Inc. | Coated Charcoal Suspension No. T-5077 | Bottle:4oz | 12/22/72 |
| Wien Laboratories,Inc. | Buffer Reagent pH 8.6 Catalog No. T-5065 | Bottle:4oz | 12/22/72 |
| Wien Laboratories,Inc. | ANS Buffer pH 8.6 Catalog No. T-5144 | Plastic Bottle:100ml | 05/14/75 |
| Wien Laboratories,Inc. | T3 Buffer Reagent Catalog No. T-5156 | Plastic Vial:20ml | 09/13/78 |

[FR Doc. 87-5248 Filed 3-26-87; 8:45 am]

BILLING CODE 4410-09-D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Parts 200, 882, and 886

[Docket No. R-87-1287; FR 2223]

### Lead-Based Paint Hazard Elimination in Certain FHA Single Family and Multifamily Housing Programs; Section 8 Housing Assistance Payments Program for Substantial Rehabilitation; and Section 8 Existing Housing Certificate and Moderate Rehabilitation Programs; Correction

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule correction.

**SUMMARY:** This document corrects a final rule that appeared in the Federal Register on Thursday, January 15, 1987 (52 FR 1876) which dealt with the elimination of the hazard of lead-based paint in FHA single and multifamily mortgage insurance programs and in Section 8 housing assistance programs. There are eleven corrections made to the final rule text. Four of them (items 2, 5, 9 and 11 below) correct the date upon which requirements in the rule relating to lead-based paint testing on chewable surfaces will take effect. The corrections are necessary due to errors made at the time of publication in calculating implementation dates for certain provisions in the rule. Three corrections (items 1, 4 and 7) correct erroneous references. Four corrections (items 3, 6, 8 and 10) either correct cross references contained in the rule or make the regulatory text consistent with the Preamble rule description.

**EFFECTIVE DATE:** March 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Grant E. Mitchell, Assistant General Counsel for Fiscal Management and Energy Programs, Office of General Counsel, Room 10248, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6550. (This is not a toll-free number.)

Accordingly, the Department is correcting FR Doc. 87–998 published on January 15, 1987, as follows:

**PART 200—[CORRECTED]**

1. On page 1892, in the first column, § 200.815(d) is amended by removing the words "or the purchaser".

2. On page 1892, in the second column, the last sentence of § 200.820(a) is amended by removing the words "March 16, 1987" and substituting the words "May 1, 1987".

3. On page 1893, in the first column, § 200.825(b) is amended by removing the "(1)" and "(2)" designations, and removing "paragraph (b)(1) of this section" and substituting "this paragraph".

4. On page 1893, in the second column, at lines 21 and 22, § 200.825(c)(2) is amended by removing the words "or the purchaser".

**PART 882—[CORRECTED]**

5. On page 1893, in the third column, § 882.109(i)(1) is amended by removing the words "is made on or after May 26, 1987" in the third sentence and substituting the words "or periodic inspection under § 882.211(b) is made on or after May 1, 1987".

6. On page 1894, in the first column, § 882.109(i)(4) is revised to read as follows:

(4) *Chewable surfaces.* In the case of a unit constructed prior to 1973, for a Family which includes a child under the age of seven years with an identified EBL condition, the initial inspection under § 882.209(h)(1), or a periodic inspection under § 882.211(b), shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency or by an inspector certified by a State or local health or housing agency. Lead content shall be tested by using an X-ray flourescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-base paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate, and correction shall be completed within the time limits set forth in paragraph (i)(3) of this section.

7. On page 1894, in the second column, the second sentence in § 882.109(i)(7) is revised to read as follows:

If a unit requires testing or if the unit requires treatment of chewable surfaces based on the testing, the PHA shall keep indefinitely the test results and, if applicable, the owner certification of treatment.

8. On page 1894, in the second column, § 882.209, paragraph (c)(9) is correctly designated as paragraph (c)(10).

9. On page 1894, in the third column, at lines 12 and 13, the third sentence of § 882.404(c)(1) is amended by removing the words "is made on or after [March 16, 1987]" and substituting the words "or periodic inspection under § 882.516(b) is made on or after May 1, 1987".

10. On page 1895, in the first column, the last sentence of § 882.404(c)(4) is removed and the following is substituted:

"Where lead-based paint on chewable surfaces is identified at initital inspection, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be included in the specific work items referred to in § 882.504(a). Where lead-based paint on chewable surfaces is discovered at periodic inspection, covering or removal of the paint surface in accordance with 24 CFR 35.24 (b)(2)(ii) shall be completed within the time limits set forth in paragraph (c)(3) of this section."

**PART 886—[CORRECTED]**

11. On page 1895, in the second column, the fourth sentence of § 886.113(i)(1) is amended by removing the words "March 16, 1987" and substituting the words "May 1, 1987".

Dated: March 23, 1987

**Grady J. Morris,**

*Assistant General Counsel for Regulations.*

[FR Doc. 87–6711 Filed 3–26–87; 8:45 am]

BILLING CODE 4210–27–M

---

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 110

[01 87 02]

### Special Anchorage Area; Fore River, Portland Harbor, Portland, ME

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the description of the small-craft anchorage, located in Portland Harbor, Maine. This change will constitute a latitude and longitude coordinate description of the point marked by Anchorage Buoy "D". No other changes will be made to the anchorage. Anchorage buoy "D" serves as a point of reference in the description of the above mentioned anchorage. The buoy has recently been relocated (see Discussion below). Consequently, there is confusion as to the location of the anchorage.

The Coast Guard will remove Anchorage Buoy "D" and no longer use it as a point of reference in describing the special anchorage. This action will amend the description of the anchorage by replacing reference to Anchorage Buoy "D" with the actual geographic coordinates. This will clear up any confusion as to the location of the anchorage.

**EFFECTIVE DATE:** April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** QMC Thomas M. Hall, (617) 223–8337.

**SUPPLEMENTARY INFORMATION:** Notification of the proposed rule making was published by the First Coast Guard District in the **Federal Register** dated January 2, 1987, and the First Coast Guard District Local Notice to Mariners issues 3–87 and 5–87.

**Drafting Information**

The principal persons involved in this rule making are QMC Thomas Hall, Aids to Navigation Branch, First Coast Guard District; and LT. Dana J. St. James, Project Attorney First Coast Guard Legal Office.

**Discussion of Comments**

In the past, Anchorage Buoy "D" has marked the northernmost point of the small-craft anchorage described in Title 33 CFR, Navigation and Navigable Waters, Part 110-Anchorage Regulations, Subpart A, Special Anchorage. A floating dock has since been constructed which does not conflict with the boundaries of the anchorage, but it does conflict with the watch circle of Buoy "D". The Aids to Navigation Team stationed at USCG GROUP PORTLAND deemed it

necessary to move the buoy so as not to cause damage to the floating dock. The results of this relocation have caused confusion as to the proper boundary of the small-craft anchorage. The Coast Guard feels that by removing the buoy and changing the wording in the Code of Federal Regulations there will be no confusion as to the boundaries of the anchorage, nor will any damage be caused by the close proximity of a buoy to the floating dock. The new point of reference replacing Anchorage Buoy "D" will be described as position: 43 degrees, 39 minutes, 6 seconds of North latitude, and 70 degrees, 14 minutes, 43 seconds of West longitude. This is the same position of Buoy "D" as indicated in the **Federal Register**.

**Economic Assessment and Certification**

This proposed change is considered to be non-major under Executive Order 12291 of Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. There should be no economic impact with the removal of Buoy "D", and making the appropriate change in the Code of Federal Regulations, to reflect the change in the boundary description of the described special anchorage.

Since the impact of this change in the description of the special anchorage is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 110**

Anchorages.

**PART 110—[AMENDED]**

**Final Regulations**

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.0501(g).

2. Section 110.6a is revised to read as follows:

**§ 110.6a Fore River, Portland Harbor, Portland, Maine.**

The water area beginning at a point on the shoreline near the Coast Guard Base in Position 43–38 43″N and 070–14 49″W; thence 319 to position 43–38 55″N, 070–15 03″W; thence 50 to position 43–39 06″N: 070– 14 43″W: thence 161 to mainland; and thence southwesterly along the shore to the point of beginning.

Dated: March 23, 1987.

**R.L. Johnson,**

*Rear Admiral (Lower Half), U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 87–6577 Filed 3–26–87; 8:45 am]

BILLING CODE 4910-14-M

## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 101–47**

**[FPMR Amdt. H–161]**

**Disposals to Public Agencies**

**AGENCY:** Federal Property Resources Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the regulations concerning disposals to public agencies to incorporate the provisions of Executive Order 12372. This Executive Order provided new procedures for intergovernmental consultation on Federal programs and activities and canceled the OMB Circular A–95 procedures which required the States to establish clearinghouses to review and comment upon certain proposed Federal actions.

**EFFECTIVE DATE:** The regulation is March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Kearns, Office of Real Estate Policy and Sales, (202) 535–7052.

**SUPPLEMENTARY INFORMATION:** GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 42 CFR Part 101–47**

Surplus Government property, Government property management.

**PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY**

1. The authority citation for 41 CFR Part 101–47 continues to read as follows:

**Authority:** Sec. 205(c). 63 stat. 390: (40 U.S.C. 486(c)).

2. The table of contents for Part 101–47 is amended by revising one entry as follows:

101–47.4906–2 Sample letter to a State single point of contact.

**Subpart 101–47.3—Surplus Real Property Disposal**

3. Section 101–47.303–2 is amended by revising the introductory paragraph, paragraphs (b), (d), (e), (e)(1), (f), and (g) to read as follows:

**§ 101–47.303–2 Disposals to public agencies.**

The disposal agency shall comply with the provisions of Executive Order 12372 and 41 CFR Subpart 101–6.21, which enables a State to establish the single point of contact process or other appropriate procedures to review and comment on the compatibility of a proposed disposal with State, regional and local development plans and programs. When a single point of contact transmits a State review process recommendation, the Federal agency receiving the recommendation must either accept the recommendation; reach a mutually agreeable solution with the party(s) preparing the recommendation; or provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution. If there is nonaccommodation, the agency is generally required to wait 10 calendar days after receipt, by the single point of contact, of an explanation before taking final action. The single point of contact is presumed to have received written notification 5 calendar days after the date of mailing of such notification. The 10-day waiting period may be waived if the agency determines that because of unusual circumstances this delay is not feasible.

* * * * *

(b) Before public advertising, negotiation, or other disposal action, the disposal agency shall give notice to eligible public agencies that the property has been determined surplus. Surplus real property may be procured by public agencies under the statutes cited in § 101–47.4905. A notice to public agencies of surplus determination shall be prepared following the sample shown in § 101–47.4906. This notice shall be transmitted by a letter prepared following the sample shown in § 101–47.4906–1. A copy of this notice shall also be sent simultaneously to the State single point of contact, under a covering letter prepared following the sample

shown in § 101–47.4906–2. The point of contact shall be advised that no final disposal action will be taken for 60 calendar days from the date of notification to allow time for the point of contact to provide any desired comments. The disposal agency will wait the full 60 calendar days, even if the comments are received early, to allow time for the point of contact to send additional or revised comments.

(1) Notice for property located in a State shall be given to the Governor of the State, to the county clerk or other appropriate officials of the county in which the property is located, to the mayor or other appropriate officials of the city or town in which the property is located, to the head of any other local governmental body known to be interested in and eligible to acquire the property, and to the point of contact established by the State or under other appropriate procedures established by the State.

(2) Notice for property located in the District of Columbia shall be given to the Mayor of the District of Columbia and to the point of contact established by the District of Columbia or under other appropriate procedures established by the District of Columbia.

(3) Notice for property located in the Virgin Islands shall be given to the Governor of the Virgin Islands and to the point of contact established by the Virgin Islands or under other appropriate procedures established by the Virgin Islands.

(4) Notice for property located in the Commonwealth of Puerto Rico shall be given to the Governor of the Commonwealth of Puerto Rico and to the point of contact established by the Commonwealth of Puerto Rico or under other appropriate procedures established by the Commonwealth of Puerto Rico.

* * * * *

(d) A copy of the notice described in paragraph (b) of this section shall be furnished to the proper regional or field office of (1) the National Park Service (NPS) and the Fish and Wildlife Service of the Department of the Interior and (2) the Federal Aviation Administration and the Federal Highway Administration of the Department of Transportation concerned with the disposal of property to public agencies under the statues named in the notice.

(e) In the case of property which may be made available for assignment to the Secretary of Health and Human Services (HHS), the Secretary of Education (ED) or the Secretary of the Interior for disposal under sections 203(k)(1) or (k)(2) of the Act:

(1) The disposal agency shall inform the appropriate offices of HHS, ED or the NPS 5 workdays in advance of the date the notice will be given to public agencies, to permit similar notice to be given simultaneously by HHS, ED or NPS to additional interested public bodies. HHS and ED shall furnish notice to eligible nonprofit institutions.

* * * * *

(f) If the disposal agency is not informed within the 20 calendar-day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in § 101–47.4905, or is not notified by ED or HHS of a potential educational or public health requirement, or is not notified by the Department of the Interior of a potential park or recreation requirement, or is not notified by the Department of Justice (DOJ) of a potential correctional facilities use; it shall be assumed that no public agency or nonprofit institution desires to procure the property.

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

(1) National Park Service, Department of the Interior;

(2) Department of Health and Human Services;

(3) Department of Education;

(4) Federal Aviation Administration, Department of Transportation;

(5) Fish and Wildlife Service, Department of the Interior;

(6) Federal Highway Administration, Department of Transportation; and

(7) Office of Justice Programs, Department of Justice.

* * * * * *

**Subpart 101–47.49—Illustrations**

4. Section 101–47.4906 is revised to read as follows:

**§ 101–47.4906 Sample notice to public agencies of surplus determination.**

Notice of Surplus Determination—Government Property

_____

(Date)

_____

(Name of property)

_____

(Location)

Notice is hereby given that the

_____

(Name of property),

_____

(Location), has been determined to be surplus Government property. The property consists of _____ acres of fee land more or less and a _____ easement, together with _____.

This property is surplus property available for disposal under the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.)* and applicable regulations. The applicable regulations provide that public agencies (non-Federal) shall be allowed a reasonable period of time to submit a formal application for surplus real property in which they may be interested. Disposal of this property, or portions thereof, may be made to public agencies for the public uses stated below whenever the Government determines that the property is available for such uses and that disposal thereof is authorized by the statutes cited and applicable regulations: [1]

| Statute | Type of disposal |
|---|---|
| 23 U.S.C. 107 and 317. | Federal aid and certain other highways. |
| 40 U.S.C. 484(e)(3)(H). | Negotiated sales to public bodies for use for public purposes generally. [1] |
| 40 U.S.C. 484(k)(1)(A) . | School, classroom, or other educational purposes. |
| 40 U.S.C. 484(k)(1)(B) . | Protection of public health, including research. |
| 40 U.S.C. 484(k)(2) ..... | Public park or recreation area. |
| 40 U.S.C. 484(k)(3) ..... | Historic monument. |
| 50 U.S.C. app. 1622(g). | Public airport. |

[1] List only for properties having an estimated value of $10,000 or more.

If any public agency desires to acquire the property under the cited statutes, notice thereof in writing must be filed with

[1] List only the statutes (showing type of disposal) applicable to disposal to public bodies of the property determined to be surplus.

(Name of disposal agency),

(Address, before)

(Date).[2]

Such notice shall:

(a) Disclose the contemplated use of the property;

(b) Contain a citation of the applicable statute or statutes under which the public agency desires to procure the property;

(c) Disclose the nature of the interest if an interest less than fee title to the property is contemplated;

(d) State the length of time required to develop and submit a formal application for the property (Where a payment to the Government is required under the statute, include a statement as to whether funds are available and, if not, the period required to obtain funds); and

(e) Give the reason for the time required to develop and submit a formal application.

Any planning for a public health use of property sought to be acquired subject to a public benefit allowance must be coordinated with the Department of Health and Human Services

(Address of appropriate office)

An application form to acquire property for a public health requirement and instructions for the preparation and submission of an application may be obtained from that office.[3]

Any planning for an educational use of property sought to be acquired subject to a public benefit allowance must be coordinated with the Department of Education.

(Address of appropriate office)

An appliçation form to acquire property for an educational use and instructions for the preparation and submission of an application may be obtained from that office.[4]

Any planning for a public park or recreation area of property sought to be acquired subject to a public benefit allowance must be coordinated with the Department of the Interior.

(Address of appropriate office)

An application form to acquire property for a public park or recreation area requirement and instructions for the preparation and submission of an application may be obtained from that office.[5]

Application forms or instructions to acquire property for all other public use requirements may be obtained from

(Name of disposal agency),

(Address).

Upon receipt of such written notices, the public agency shall be promptly informed concerning the period of time that will be allowed for submission of a formal application. In the absence of such written notice, or in the event a public use proposal is not approved, the regulations issued pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 provide for offering the property for sale.

5. Section 101–47.4906–2 is added as follows:

**§ 101–47.4906–2 Sample letter to a state single point of contact.**

(Date)

(Addressee)

Dear:

On July 14, 1982, the President issued Executive Order 12372, "Intergovernmental Review of Federal Programs." This Executive order provides for State and local government coordination and review of certain proposed Federal programs and activities, including real property disposal actions of the General Services Administration.

Enclosed is a notice of surplus determination that has been sent to appropriate public bodies advising them of the availability of the described real property for public purposes. Surplus Federal real property which is not acquired for State or local governmental public purposes is generally offered for sale to the general public by competitive bidding procedures.

No final disposal action will be taken for 60 calendar days from the date of this letter to allow for the receipt of any comments from your office.

[2] This date shall be 20 calendar days after the date of this notice.

[3] Delete this paragraph wherever property is not available for transfer for a public health use.

[4] Delete this paragraph wherever property is not available for transfer for an educational use.

[5] Delete this paragraph wherever property is not available for transfer for a public park or recreation area.

Dated: March 9, 1987.

T.C. Golden,

*Administrator of General Services.*

[FR Doc. 87–6814 Filed 3–26–87; 8:45 am]

BILLING CODE [illegible]

## 41 CFR Part 101–47

**[FPMR Amdt. H–162]**

## Property for Correctional Facilities

**AGENCY:** Federal Property Resources Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the regulations concerning disposals to public agencies to implement the provisions of section 701 of Pub. L. 98–473. Pub. L. 98–473 amended section 203 of the Federal Property and Administrative Services Act of 1949, as amended, to authorize the conveyance to eligible State and local public bodies, without monetary consideration, of surplus real and related personal property for correctional facility use, provided the Attorney General has determined that the property is required and has approved an appropriate program for the care or rehabilitation of criminal offenders.

**EFFECTIVE DATE:** The regulation is effective March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Kearns, Jr., Office of Real Estate Policy and Sales, (202) 535–7052.

**SUPPLEMENTARY INFORMATION:** GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Part 101–47**

Surplus Government property and Government property management.

## PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for 41 CFR Part 101–47 continues to read as follows:

**Authority:** Sec. 205(c), 63 stat. 390, (40 U.S.C. 486(c)).

2. The table of contents for Part 101–47 is amended by adding one entry as follows:

101–47.308–9 Property for correctional facility use.

**Subpart 101–47.2—Utilization of Excess Real Property**

3. Section 101–47.203–5 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 101–47.203–5 Screening of excess real property.**

* * * * *

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested in them under the provisions of section 203(k)(1) of the Act, and for information of the Secretary of the Interior in connection with the exercise of the authority vested in him under the provisions of section 203(k)(2) of the Act or a possible determination under the provisions of section 203(k)(3) of the Act, will be sent to the offices designated by the Secretaries to serve the areas in which the properties are located. A similar notice of availability for the information of the Attorney General in connection with a possible determination under the provisions of section 203(p)(1) of the Act will be sent to the Office of Justice Programs, Department of Justice.

(c) The Departments of Health and Human Services, Education, Interior, and Justice shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application. However, these Departments are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

* * * * *

4. Section 101–47.204–1 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 101–47.204–1 Reported Property.**

* * * * *

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Attorney General will be notified of the date upon which determination as surplus becomes effective. Any Federal agency that has identified a property as being required for replacement housing for displaced persons under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will also be notified of the date upon which determination as surplus becomes effective. The Secretary of the Department of Energy will be notified when real property is determined surplus and advised of any known interest in the property for its use or development for energy facilities. Appropriate steps will be taken to ensure that energy site needs are considered along with other competing needs in the disposal of surplus real property, since such property may become available for use under sections 203(e)(3) (G) and (H) of the Federal Property and Administrative Services Act of 1949, as amended.

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

* * * * *

**Subpart 101–47.3—Surplus Real Property Disposal**

5. Section 101–47.308–9 is added as follows:

**§ 101–47.308–9 Property for correctional facility use.**

(a) Under section 203(p)(1) of the Act, the head of the disposal agency or designee may, in his/her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision or instrumentality thereof, surplus real and related personal property for correctional facility use, provided the Attorney General has determined that the property is required for correctional facility use and has approved an appropriate program or project for the care or rehabilitation of criminal offenders.

(b) The disposal agency shall provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ) of the availability of surplus properties. Included in the notification to OJP will be a copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules.

(c) With respect to real property and related personal property which may be made available for disposal under section 203(p)(1) of the Act for correctional facility purposes, OJP shall convey notices of availability of properties to the appropriate State and local public agencies. Such notice shall state that any planning for correctional facility use involved in the development of a comprehensive and coordinated plan of use and procurement for the property must be coordinated and approved by the OJP and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from OJP. The requirement for correctional facility use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (g) of this section of a determination by DOJ that identifies surplus property required for correctional facility use under an appropriate program or project for the care of rehabilitation of criminal offenders.

(d) OJP shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever OJP has notified the disposal agency within the said 20 calendar-day period of a potential correctional facility requirement for the property, OJP shall submit to the disposal agency within 25 calendar days after the expiration of the 20 calendar-day period, a determination indicating a requirement for the property and approving an appropriate program or project for the care or rehabilitation of criminal offenders, or shall inform the disposal agency, within the 25 calendar-day period, that the property will not be required for correctional facility use.

(e) Any determination submitted to the disposal agency by DOJ shall set forth complete information concerning the correctional facility use, including:

(1) Identification of the property,

(2) Certification that the property is required for correctional facility use,

(3) A copy of the approved application which defines the proposed plan of use, and

(4) The environmental impact of the proposed correctional facility.

(f) Both holding and disposal agencies shall cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(g) If, after considering other uses for the property, the disposal agency approves the determination by DOJ, it shall convey the property to the appropriate grantee. If the determination is disapproved, or in the absence of a determination from DOJ submitted pursuant to § 101–47.308–9(d), and received within the 25 calendar-day time limit specified therein, the disposal agency shall proceed with other disposal action. The disposal agency shall notify OJP 10 days prior to any announcement of a determination to either approve or disapprove an application for correctional purposes and shall furnish to OJP a copy of the conveyance documents.

(h) The deed of conveyance of any surplus real property transferred under the provisions of section 203(p)(1) of the Act shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity and that in the event such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator of General Services to be necessary to safeguard the interest of the United States.

(i) The Administrator of General Services has the responsibility for enforcing compliance with the terms and conditions of disposals; the reformation, correction, or amendment of any disposal instrument; the granting of releases; and any action necessary for recapturing such property in accordance with the provisions of section 203(p)(3) of the Act.

(j) The OJP will notify GSA upon discovery of any information indicating a change in use and, upon request, make a redetermination of continued appropriateness of the use of a transferred property.

(k) In each case of repossession under a reversion of title by reason of noncompliance with the terms of the conveyance documents, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in § 101–47.4913.

Dated: March 9, 1987.

T.C. Golden,

*Administrator of General Services.*

[FR Doc. 87–6813 Filed 3–26–87; 8:45 am]

BILLING CODE 6820–96–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 413

[BERC–340–F]

## Medicare and Medicaid Programs; Payment for the Cost of Malpractice Insurance

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Confirmation of final rule.

**SUMMARY:** In this document, we are addressing public comments received in response to the interim final rule on payment for the cost of malpractice insurance, published on April 1, 1986. (51 FR 11142.) In that interim final rule, we established a specific methodology for apportionment of hospital malpractice insurance cost (that is, the cost of premiums or self-insurance) under Medicare that relied on, in part, a "scaling factor formula." We also provided for apportionment of skilled nursing facility malpractice insurance cost on the basis of Medicare patient utilization. With respect to the Medicaid program and the Maternal and Child Health program, we deferred to the States instead of establishing payment methodologies for these programs. As a result of our consideration of timely comments on the interim final rule and reevaluation of appropriate data, we plan to specify the values of the factors used in the scaling factor formula for the hospital methodology separately for short-term acute care hospitals and other hospitals. Accordingly, we have recomputed the values of the factors in the formula and, in this document, we are establishing values for short-term acute care hospitals. The values are the same as those announced in the interim final rule for all hospitals. We will issue another **Federal Register** document as soon as possible in which, as noted above, we intend to establish the values to be used in applying the formula to other hospitals. In the interim, for these other hospitals, we will continue to use the same formula values that were established in the interim final rule. We are not changing any of the other policies established in the interim final rule.

**EFFECTIVE DATE:** The effective date of the rule that this document confirms was May 1, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Timothy Greene, (301) 594–5931—HCRIS and Other Data Sources

Bernard Truffer, (301) 594–9286—Medicaid

Paul Trimble, (301) 594–8640—All Other Issues

John Eppinger, (301) 534–5354—All Other Issues.

**SUPPLEMENTARY INFORMATION:** To assist the reader in reviewing this document, we are providing the Table of Contents below.

I. Background
- A. The pre-1979 utilization method of apportioning malpractice insurance cost
- B. March 15, 1979 proposed rule
- C. June 1, 1979 final rule
- D. June 17, 1985 proposed rule
- E. April 1, 1986 interim final rule
  - 1. Hospitals
  - 2. SNFs
  - 3. Medicaid
  - 4. The Maternal and Child Health Program

II. Public Comments and Changes to the Interim Final Rule
- A. Changes to the interim final rule made in response to public comments
  Circumstances require a May 1, 1986 effective date for, and retroactive application of, the 1986 rule
- B. Summary of issues raised in repetitive comments

III. Response to Public Comments on New Issues
- A. Medicare hospital policy
  - 1. HCRIS data
  - 2. Removing malpractice costs from the G&A cost center
    - a. The increase in malpractice costs
    - b. Number and size of claims paid to Medicare beneficiaries
    - c. The relative importance of malpractice costs in the G&A pool
    - d. Changes in other costs in the G&A pool
  - 3. Medicare hospital apportionment methodology
    - a. The premium breakdown
    - b. The scaling factor formula
    - c. Reimbursement results and statutory authority
    - d. The actuarial consultant
  - 4. Use of malpractice loss experience is a valid basis for partially determining Medicare's share of the predominant component of malpractice insurance premium cost
- B. Alternative methodologies
- C. Medicaid
- D. Retroactivity
- E. Application and implementation of the 1986 rule
- F. Other new issues

IV. Regulatory Impact Statement

V. List of Subjects

## I. Background

### *A. The Pre-1979 Utilization Method of Apportioning Malpractice Insurance Cost*

For cost reporting periods beginning before July 1, 1979, malpractice insurance costs (that is, the amount of money a provider pays to purchase malpractice insurance from an insurance company or contributes to a self-insurance fund) were apportioned to Medicare (title XVIII of the Social Security Act (the Act)) in accordance with a utilization formula applicable, at that time, to all overhead costs incurred by providers of health care services. Medicare utilization is measured by patient days for routine care areas and by departmental charges for ancillary service departments. The utilization formula, adopted at the outset of the Medicare program (31 FR 14808, November 23, 1966), treated provider overhead expenses as indirect costs, many of which were combined in the administrative and general pool of provider costs. (In the discussion below, we refer to general and administrative (G&A) costs to conform to the terminology commonly used in court opinions and employed in the interim final rule.)

Malpractice insurance costs were included in the G&A cost center, which in turn was allocated among various revenue-producing cost centers. The revenue-producing cost centers were then apportioned between Medicare and non-Medicare patients on a utilization basis in order to determine Medicare's share of the costs incurred. Thus, for example, if Medicare patients constituted 30 percent of the routine patient-days at a hospital for a given year, Medicare would reimburse the hospital for 30 percent of the portion of G&A costs, including malpractice insurance costs, that were allocated to the inpatient routine area.

### *B. March 15, 1979 Proposed Rule*

On March 15, 1979, we proposed (44 FR 15744) to discontinue the utilization method of apportioning malpractice insurance costs because we believed that Medicare was paying a disproportionate amount of providers' malpractice insurance costs This proposal was based partially on a study by a Departmental consultant, Westat, Inc. (Westat Study), which found that malpractice losses paid to, or on behalf of, Medicare patients were significantly less frequent and significantly lower in amount than losses paid for other patient populations. In response to the extraordinary increase in malpractice insurance costs and the disproportionately small amount of paid malpractice claims attributable to Medicare patients, we proposed to remove malpractice insurance costs from the G&A pool and to apportion those costs directly, based on a provider's five-year malpractice claims-paid history. (This policy applied only to hospitals and skilled nursing facilities (SNFs).) For ease of reference, we use the term "providers" when we need to refer to both types of facilities. Rules for reimbursement of the costs of malpractice insurance for other providers under Medicare are described in applicable cost report instructions contained in the Provider Reimbursement Manual (HCFA Pub. 15 2).

In the March 15, 1979 document, we proposed that if a provider paid a malpractice claim during its current cost reporting period or during its preceding four cost reporting periods, Medicare would reimburse an amount equal to the ratio of the provider's malpractice insurance losses paid to Medicare patients compared to its total malpractice losses paid to all patients during that five-year period, times total premium cost. We also proposed that providers with no loss experience during the five-year period would be reimbursed in accordance with an actuarial estimate.

### *C. June 1, 1979 Final Rule*

After consideration of public comments on the proposed rule, we published a final rule on June 1, 1979 (44 FR 31641). The final rule amended 42 CFR 405.452(b)(1) and was applicable to cost reporting periods beginning on or after July 1, 1979. Those regulations, recodified as 42 CFR 405.452(a)(1)(ii) (48 FR 39811, September 1, 1983) ("the 1979 malpractice rule"), retained the claims-paid formula for providers with malpractice losses but established use of a national ratio for providers with no malpractice losses. If a provider had no malpractice loss experience during the five-year period, Medicare's share of the provider's malpractice insurance costs for the current reporting period was determined on the basis of the national ratio of malpractice losses paid to Medicare patients compared to malpractice losses paid to all patients. The final rule established the national ratio at 5.1 percent.

### *D. June 17, 1985 Proposed Rule*

In response to criticism of the 1979 malpractice rule and newly available data on the subject, we decided to reconsider our malpractice insurance apportionment policy. We issued a notice of proposed rulemaking on June 17, 1985 (50 FR 25178) ("the 1985 NPRM" or "the 1985 proposed rule") in which we proposed to amend the 1979 malpractice rule, subject to our rules of administrative finality and reopening, effective for cost reporting periods beginning on or after July 1, 1979. We proposed to retain the claims-paid formula and to establish the national Medicare malpractice loss ratio at 11.6 percent for hospitals (based on data accumulated at that time in the Hospital Cost Report Information System (HCRIS) file).

Because we had no data to support an increase in the Medicare national ratio for SNFs, we proposed to retain the 5.1 percent figure for these providers. With respect to malpractice losses attributable to services furnished under the Medicaid program (title XIX of the Act) or the Maternal and Child Health program (title V of the Act), we indicated that we had preliminary data only and were unable to determine whether to propose a change in the national ratio of 7.5 percent applicable to those programs. Therefore, we did not propose a change in the 7.5 percent figure, but we stated that we were continuing to study the issue and invited specific comments and data concerning it.

Finally, we proposed to establish a procedural mechanism for periodically updating the national ratio on the basis of actual cost report data. We proposed to provide for public notice and comment on any proposed changes in the national ratio, in addition to publishing a subsequent notice to issue any new ratio and respond to comments received.

### *E. April 1, 1986 interim final rule*

After consideration of timely public comments on the proposed rule, we published an interim final rule with comment period on April 1, 1986 (51 FR 11142) (the "interim final rule") that is effective for cost reporting periods beginning on or after July 1, 1979. In the interim final rule, we eliminated the 1979 malpractice rule and added a new malpractice insurance cost apportionment regulation at 42 CFR 405.457 or (the "1986 rule"). The 1986 rule was redesignated as 42 CFR 413.56 as part of a redesignation of reasonable cost regulations published in the **Federal Register** on September 30, 1986 (51 FR 34790, 34808–09) and corrected on October 22, 1986 (51 FR 37398).

Subject to the rules of administrative finality and reopening as set forth in 42 CFR Part 405, Subpart R, provider

malpractice insurance premiums and self-insurance fund contributions (referred to as "premiums" in 42 CFR 413.56) are apportioned under Medicare based on the different methodologies described below for hospitals and SNFs.

1. Hospitals (§ 413.56(b))

a. *Components of the premium.* The premium is divided into an administrative component and a risk component. (*See*, 51 FR 11144–45.) The administrative component consists of 8.5 percent of the total premium amount, and accounts for an insurer's fixed general overhead expenses plus a proportionate share of premium and payroll taxes and commissions paid to insurance agents. The risk component consists of 91.5 percent of the total premium amount, and accounts for an insurer's anticipated loss experience, expenses associated with losses such as defense costs (i.e., allocated loss adjustment expenses (ALAE)) and claims department overhead costs (i.e., unallocated loss adjustment expenses (ULAE)), and the remaining share of taxes and commissions paid to insurance agents that are not included in the administrative component.

b. *Apportionment of administrative component.* Because the administrative component of the premium is, at most, only slightly affected by the frequency and amount of malpractice claims, it is reported as a G&A cost and is apportioned on the basis of utilization in accordance with § 413.53(a)(1).

c. *Apportionment of risk component.* By contrast, the risk component is significantly affected by the number and size of malpractice claims. Thus, under § 413.56(b)(3), the risk component of the premium is apportioned based on a scaling factor derived from the scaling factor formula (described below), which accounts for the hospital's specific Medicare utilization rate and the extraordinary disproportionality between, *inter alia*, the national Medicare malpractice loss ratio and the national Medicare utilization rate. The scaling factor formula effectively discounts the hospital's specific Medicare utilization rate to account for these extraordinary disproportionalities. The resultant scaling factor is multiplied by 91.5 percent of the hospital's malpractice insurance premium to determine Medicare's share of the risk component of the premium.

As explained in the interim final rule (51 FR 11148), the scaling factor is derived from the following formula:

$$\frac{u\times(R/U_1)}{[u\times(R/U_1)]+[(1-u)\times(1-R)/(1-U_2)]}$$

$U_1$ = The national Medicare hospital patient utilization rate, as adjusted for the time lag between incident and claim closure for Medicare patients.

$U_2$ = The national Medicare hospital patient utilization rate, as adjusted for the time lag between incident and claim closure for non-Medicare patients.

R = The national Medicare malpractice loss ratio, as adjusted for associated claims handling expense.

u = The hospital's own Medicare utilization rate for the cost reporting period based on a ratio of the hospital's total Medicare-covered inpatient days of care to its total inpatient days of care.

$R/U_1$ = The national Medicare malpractice loss ratio compared to the national Medicare utilization rate.

$(1-R)/(1-U_2)$ = The national non-Medicare malpractice loss ratio compared to the national non-Medicare utilization rate.

The interim final rule established the following values for the main constants in the scaling factor formula:

R = 13.2 percent
$U_1$ = 38.8 percent
$U_2$ = 38.1 percent

d. *Example.* Apportionment of the malpractice insurance costs of a hospital that averages 75 percent Medicare utilization during the applicable cost reporting period is calculated as follows:

*Step one*—The administrative component of the premium (8.5 percent) is included in the G&A cost center of the hospital and is apportioned on a utilization basis. Thus, the hospital would be reimbursed approximately .085 times .75, or 6.38 percent of its premium for the administrative component. (This figure would vary slightly depending upon the specific Medicare utilization of the hospital's patient care departments.)

*Step two*—The risk component of the premium (91.5 percent) is apportioned in accordance with the scaling factor, which is derived from the scaling factor formula, as follows:

$$\frac{.75\times(.132/.388)}{[.75\times(.132/.388)]+[(1-.75)\times(1-.132)/(1-.381)]}=.421$$

Thus, the hospital would be reimbursed .915 times .421, or 38.54 percent of its total premium cost for the risk component. This means that Medicare reimbursement would account for 6.38 percent plus 38.54 percent, or 44.92 percent of this hospital s total malpractice insurance premium.

e. *Updating of factors used in determining apportionment.* Based on actual cost report data, HCFA will periodically calculate the national average rate of Medicare patient utilization and the national Medicare malpractice loss ratio for hospitals, as appropriate. As might be warranted by changes in these factors, HCFA will publish a notice in the **Federal Register** describing the proposed changes for public comment, and in a subsequent **Federal Register** notice, update the relevant factors and respond to comments. (*See*, 51 FR 11148.)

f. *Allowable uninsured malpractice losses and related direct costs incurred by a hospital.* If a hospital pays an allowable uninsured malpractice loss to or on behalf of a Medicare beneficiary in order to comply with a deductible or coinsurance provision of its malpractice insurance policy, or as a result of an award in excess of a reasonable coverage limit, or as a governmental provider, that loss and related direct costs must be directly assigned to Medicare for reimbursement. An uninsured malpractice loss paid to or on behalf of a non-Medicare patient is not an allowable cost. (*See*, 51 FR 11148.)

2. SNFs (§ 413.56(c))

As we explained in the interim final rule (51 FR 11148–49), we were unable to develop data sufficient for determining the most appropriate apportionment method for allowable malpractice insurance costs for SNFs under Medicare. Therefore, we decided to allow SNFs to include their total allowable malpractice insurance costs in their G&A cost centers. This means that these costs are now apportioned on the basis of SNF's Medicare utilization.

3. Medicaid

We also did not have adequate data to develop a methodology for Medicaid that would be comparable to that which we adopted for Medicare. Accordingly, we provided that States may, within the flexibility allowed under section 1902(a)(30) of the Act, use whatever methodology they find to be most appropriate to pay for the costs of malpractice insurance. (*See*, 51 FR 11149.)

4. The Maternal and Child Health Program

The Maternal and Child Health program generally uses the same method of apportionment as Medicaid. Because we did not have adequate data to develop a methodology for Medicaid, we were unable to determine the most appropriate apportionment method for the costs of malpractice insurance under this program. Therefore, we deferred to the States for appropriate action. (*See*, 51 FR 11149.)

**II. Public Comments and Changes to the Interim Final Rule**

In the preamble to the interim final rule, we presented a lengthy and detailed discussion in which we exhaustively examined and addressed comments received on the 1985 NPRM. We stated that because the interim final rule was a logical outgrowth of the 1985 NPRM, additional opportunity for public comment was not necessary before the 1986 rule became effective. (*See*, 51 FR 11194.) However, because the 1986 rule embodied certain changes from the 1985 proposed rule, which were made in response to comments on that proposed rule, we provided an additional opportunity for public comment. We stated that the comment period was for the purpose of providing the public with an opportunity to comment on the changes adopted in the 1986 rule and the factual information that we gathered during the process of addressing comments on the proposed rule and implementing the 1986 rule. We further stated that comments on the interim final rule that merely reiterated comments previously made on the 1985 proposed rule and dealt with in the interim final rule would not be considered.

During the public comment period on the interim final rule, we received 21 timely items of correspondence. We also received several requests for data and information under the Freedom of Information Act (5 U.S.C. 552) (FOIA). Several of the commenters used the information and data released under the FOIA to analyze the interim final rule further, and they submitted comments concerning information and data released under the FOIA. The 21 commenters included hospitals, associations of hospitals, law firms, an insurance company, and one individual. One commenter favored the 1986 rule as it applies to SNFs. The remaining commenters were critical of various aspects of the interim final rule.

*A. Changes to the Interim Final Rule Made in Response to Public Comments*

After carefully reviewing all timely comments, we plan to establish separate sets of scaling factor formula values for:

(1) The type of hospitals that furnish short-term acute care services and either are subject to the prospective payment system (PPS) or would be subject to PPS but for the location of the hospital, in the territories (see, 42 CFR 412.23(f) or in a State subject to State cost control systems (see, 42 CFR 412.23(g)) (referred to below as "short-stay hospitals") and cancer hospitals that would be subject to PPS but for their election to be reimbursed on a reasonable cost basis under 42 CFR 412.94; and

(2) Those types of specialty hospitals that are excluded from PPS under classification requirements of 42 CFR 412.23(a) through (e), that is, psychiatric, rehabilitation, alcohol/drug, children's, and long-term care hospitals (referred to below as "hospitals excluded from PPS").

This change is primarily the result of our consideration of two comments, together with our reevaluation of the data underlying the formula values established by the interim final rule. One commenter asserted that application of the 1986 rule to hospitals excluded from PPS was improper. Another commenter stated that the scaling factor formula improperly relied on data from different databases. As explained in detail below, we essentially disagree with both of these comments. However, in the course of considering these comments we reevaluated the data underlying the formula values established by the interim final rule, and we now believe that it would be more consistent and equitable to establish separate sets of formula values for short-stay hospitals and for hospitals excluded from PPS that are based exclusively on data for short-stay and excluded facilities, respectively.

The interim final rule established a formula value for the R factor (i.e., the national Medicare malpractice loss ratio, as adjusted for associated claims adjustment expense) that was based primarily on the HCRIS data regarding Medicare malpractice losses and total malpractice losses. (51 FR 11146–47.) As explained in detail below, the HCRIS data used to determine the R factor included HCRIS loss data for both short-stay hospitals and for hospitals excluded from PPS.

The formula values established in the interim final rule for the $U_1$ and $U_2$ factors (i.e., the national Medicare patient utilization rate, as adjusted for the "claims tail" applicable to Medicare patients and non-Medicare patients, respectively) were established on the basis of program data on Medicare utilization and data from the American Hospital Association on non-Medicare utilization. (51 FR 11147–48.) By contrast with the HCRIS data underlying the value for the R factor, the $U_1$ and $U_2$ factor values were based exclusively on data for short-stay hospitals.

Thus, we believe that it would be more consistent and equitable to establish separate sets of formula values that are based exclusively on data for the two kinds of hospitals in question. Accordingly, we have recomputed the value of the R factor applicable to short-stay hospitals on the basis of HCRIS data obtained exclusively from short-term acute care hospitals. However, there is no change in the value of the R factor from the one established in the interim final rule. That is, our analysis of HCRIS data solely for short-term acute care hospitals indicates that the R factor remains unchanged from the 11.8 percent value established in the interim final rule (before being adjusted for associated claims handling expense). Of course, the values of the $U_1$ and $U_2$ factors applicable to short-stay hospitals remain the same since the values established in the interim final rule were calculated exclusively from short-stay hospital data.

Furthermore, as stated earlier, we are undertaking to develop a separate set of formula values for the $U_1$, $U_2$, and R factors for hospitals excluded from PPS, and we plan to announce them as soon as possible in a subsequent **Federal Register** document. In the interim, for these hospitals, we will continue to use the values of $U_1$, $U_2$, and R established in the interim final rule, which, as explained above, are the same as those established in this document for short-stay hospitals. We are establishing the formula values for short-stay hospitals without waiting for subsequent action concerning excluded hospitals in order to expedite the final settlement of malpractice insurance cost report determinations under the 1986 rule and the issuance of revised notices of program reimbursement under that rule. When we establish formula values for hospitals excluded from PPS, we will adjust the cost reports for these hospitals for cost reporting periods beginning before the effective date of those formula values only if such adjustments would result in additional payment.

In what follows, we clarify certain issues raised by the above-described change to the interim final rule.

• *One set of values for all units of a health care complex.*

The set of formula values applicable to a health care complex will govern reimbursement for all of the units within that complex that are subject to the 1986 rule. Malpractice loss data for a distinct-part unit within a health care complex are not reported separately but are included in the loss data for the entire complex. Loss data for a health care complex consisting of a short-term acute care hospital with a distinct-part unit excluded from PPS under 42 CFR 412.25 were included in the data used to determine formula values for short-stay hospitals. Similarly, loss data reported for a health care complex consisting of a hospital excluded from PPS with a distinct-part short-term acute care unit will be represented in the formula values we are undertaking to develop for hospitals excluded from PPS. Thus, in view of the lack of separate loss data reported for different parts of a health care complex, there is no basis to apply different sets of formula values to different parts of the complex. Accordingly, a complex consisting of a short-term acute care hospital with a distinct-part excluded unit will be paid under the set of values for short-stay hospitals, while a complex consisting of an excluded hospital with a distinct-part short-term acute care unit will be paid under the set of values we are undertaking to develop for hospitals excluded from PPS.

• *Cost report determinations and notices of program reimbursement.*

For short-term acute care hospitals, final settlements will be made and revised notices of program reimbursement (NPRs) issued on the basis of the 1986 rule as soon as possible. Hospitals excluded from PPS and that have received interim settlements under the 1986 rule (i.e., based on the set of formula values established in the interim final rule that are the same as the values now applicable to short-term acute care hospitals) will also receive final settlement and revised NPRs under the 1986 rule as expeditiously as possible. Moreover, final cost report settlements made for hospitals excluded from PPS will be subject to further adjustment only if additional reimbursement would be available based on application of the set of formula values for those hospitals that is currently under development. Any such adjustment made subsequently under a new set of formula values will result in the issuance of a new NPR which, for jurisdictional purposes, will relate back to the NPR to be issued imminently on the basis of the values established in the interim final rule.

• *A beneficial exception to the rules of administrative finality and reopening for certain hospitals excluded from PPS.*

As explained above, the interim final rule applies, subject to the rules of administrative finality and reopening, to cost reporting periods beginning on or after July 1, 1979. A hospital excluded from PPS may have had cost report determinations that could have been reopened on April 1, 1986 (the publication date of the interim final rule) but were not because it would not have been advantageous to the hospital to do so. That is, the hospital may have elected to not request reopening of a closed malpractice insurance cost report determination because it would not have received additional reimbursement under the interim final rule. However, we recognize that when the new set of formula values that are planned for hospitals excluded from PPS is published, the time period for requesting reopening may have expired while the new set of values may provide for additional reimbursement to the hospital that elected to forego reopening under the interim final rule. In order not to disadvantage such hospitals as the result of the establishment of new formula values, we will upon request reopen the applicable cost report determination, settle under the 1986 rule, and issue a revised NPR if the following conditions are satisfied:

• The cost report determination was subject to reopening (*see*, 42 CFR 405.1885) on April 1, 1986, the publication date of the interim final rule;

• Reopening the cost report determination would not have been advantageous to the hospital excluded from PPS on the basis of the formula values established by the interim final rule; and

• Reopening the cost report determination would be beneficial to the hospital on the basis of the new set of formula values planned for hospitals excluded from PPS.

*Circumstances require a May 1, 1986 effective date for, and retroactive application of, the 1986 rule.*

In the event that this document is deemed to be a final rule subject to the delayed effective date requirement of the Administrative Procedure Act, 5 U.S.C. 553(d), we have determined that, pursuant to 5 U.S.C. 553(d)(3), good cause exists for a May 1, 1986 effective date for, and retroactive application of, the 1986 Rule; and we hereby incorporate by reference 51 FR 11194–95 (sections V and VI) and section III.D of this document as our basis for this determination.

*B. Summary of issues raised in repetitive comments*

We have carefully reviewed all timely comments and have determined that many of them merely reiterate previous comments on various factual and legal issues. Consistent with the Administrative Procedure Act (APA), 5 U.S.C. 553, and the terms of the limited opportunity for comment provided in the preamble to the interim final rule (51 FR 11194–95), we are not responding to those comments.

A summary of issues raised in the main repetitive comments is presented below. (However, where a commenter, in generally reiterating a comment that we previously addressed, raised questions from new points of view, we have provided responses.) After each of these repetitive comments, we have provided the **Federal Register** page number where the comment was addressed in the interim final rule.

—Whether there is a relationship between the frequency and amount of malpractice claims for Medicare patients (as compared to non-Medicare patients) and hospital premium costs that is related to Medicare utilization rates. (51 FR 11169–70.)

—Whether the shorter "claims tail" for Medicare patients versus non-Medicare patients reduces the insurer's investment income on Medicare claims, as compared to non-Medicare claims, and thereby raises premiums for Medicare patients. (51 FR 11174–75.)

—Whether the HCRIS-derived ratio of malpractice insurance costs to the total of G&A costs and malpractice insurance costs is significant. (51 FR 11165–66.)

—Whether removing hospital malpractice insurance costs from the G&A pool distorts that pool or reestablishes its balance. (51 FR 11158–68.)

—Whether including hospital malpractice premiums in the G&A pool results in Medicare's paying a disproportionate share of non-Medicare costs. (51 FR 11162, 11163, 11164, 11166, and 11167.)

—Whether HCFA has enough information to justify removal of hospital malpractice insurance costs from the G&A pool and the use of a methodology other than one based on utilization. (51 FR 11158–68.)

—Whether the methodology for reimbursement of hospital malpractice insurance costs for hospitals is

inconsistent with insurance industry practices and the requirements of title XVIII of the Act insofar as the national Medicare claims-paid ratio does not determine the hospital's premiums for a particular cost reporting year and includes claims paid from premiums for several preceding years. (51 FR 11169–71.)

—Whether hospitals should be allowed to purchase separate policies for Medicare patients. (51 FR 11191–92.)

—Whether the 1986 rule should be applied to cost reporting periods beginning July 1, 1979, without being subject to the rules of administrative finality and reopening as set forth in 42 CFR Part 405, Subpart R. (51 FR 11187.)

—Whether retroactive application of the rule to 1979 is unfair because the courts have held the 1979 malpractice rule to be invalid. (51 FR 11151.)

—Whether the Secretary has the authority to apply the 1986 rule retroactively. (51 FR 11184–87.)

—Whether retroactive application of the 1986 rule violates due process rights of providers. (51 FR 11187.)

—Whether HCFA has exceeded its statutory authority in establishing the methodology and policies described in the interim final rule. (51 FR 11180–83.)

—Whether hospitals should be paid on the basis of Medicare utilization because courts found that promulgation of the 1979 malpractice rule violated the APA. (51 FR 11150, 11187.)

—Whether the interim final rule is contrary to the Medicare statute and disrespectful of judicial authority. (51 FR 11187 and 11150.)

—Whether the interim final rule is an attempt to deny effective judicial process and is an abuse of administrative process. (51 FR 11150, 11186–87.)

—Whether the hospital policy established by the 1986 rule violates the Medicare statute's mandate that providers be reimbursed their reasonable costs incurred on behalf of Medicare patients. (51 FR 11180–83, 11186.)

—Whether retroactive application of the 1986 rule is barred by the factors typically considered by the courts in resolving similar cases. (51 FR 11184–86.)

—Whether HCFA's contention that it has no evidence that other G&A costs are underutilized by Medicare beneficiaries is meritorious without examining all the costs that constitute the G&A pool. (51 FR 11159.)

—Whether retroactive application of the 1986 rule is authorized by section 1861(v)(1)(A) of the Act. (51 FR 11184, 11187.)

—Whether HCFA has produced evidence that malpractice insurance costs are—

• A significantly large percentage of G&A;

• Escalating more rapidly than other components of G&A; or

• Disproportionately attributable to non-Medicare patients. (51 FR 11158–68.)

—Whether the interim final rule should use any factors other than Medicare utilization in calculating Medicare payment for malpractice insurance costs. (Addressed throughout the interim final rule.)

—Whether a "reanalyzed Westat Study" shows that Medicare pays for a disproportionate share of malpractice costs. (51 FR 11165.)

—Whether HCFA has improperly justified the interim final rule by comparisons with the reimbursement results of the 1979 malpractice rule. (51 FR 11186.)

—Whether there is a supportable legal basis for retroactive application. (51 FR 11184–87.)

## III. Response to Public Comments on New Issues

In this document, we are responding to comments concerning:

• Changes in the interim final rule that were made in response to comments on the 1985 proposed rule.

• Factual information that was developed to implement those changes.

We have considered all the timely comments concerning these matters and have analyzed the data and arguments submitted by the commenters. This effort has reaffirmed our belief that the regulation and policies established in the interim final rule are consistent with the Act and all other relevant authorities, fair and equitable, and based on sound analysis of available sources of data. As explained above, the only change is to undertake to establish separate values for the main constants in the scaling factor formula for short-stay hospitals and for hospitals excluded from PPS. The comments on new issues and our responses follow.

### *A. Medicare Hospital Policy*

#### 1. HCRIS Data

*Comment:* It is improper for HCFA to use data developed after July 1, 1979 to support the 1986 rule. HCFA must base its regulation on data available before the effective date of the regulation.

*Response:* The 1986 rule became effective on May 1, 1986. (51 FR 11142.) While the 1986 rule applies to cost reporting periods beginning on or after July 1, 1979, section 1861(v)(1)(A)(ii) of the Act explicitly authorizes the Secretary to apply the new rule retroactively. Also, section 1861(v)(1)(A) of the Act affords the Secretary much discretion in determining the methods of calculating reasonable cost and does not limit the data the Secretary may consider in exercising his rulemaking authority. While some of the data may have become available subsequent to July 1, 1979, other data existed before then. In any event, all of the data underlying the 1986 rule existed before the effective date of the rule, and our reliance on that data comports fully with applicable statutory requirements.

*Comment:* One commenter, a chain provider representative, stated that HCFA made no effort to determine if providers actually incurred losses during the requisite period, but merely assumed that the absence of data reported in the cost reports meant that no losses were incurred. The commenter further stated that it cannot be assumed, as HCFA contends, that hospitals listed on the HCRIS printout as reporting no data or $0 in paid claims, had no actual paid claims. The commenter stated that it could not obtain the requisite paid claims data for its hospitals prior to May 1981. It also stated that, contrary to HCFA's assertion, its discussions with other chain provider representatives showed that most of the data for the 1975–1979 period were excluded from the cost reports because the data were unavailable from the insurers. The commenter concluded that the "R" term in the scaling factor formula is understated because the underlying HCRIS data are allegedly incomplete.

*Response:* As explained in the preamble to the interim final rule (51 FR 11152), we have no information that the availability of loss data has ever constituted a widespread problem. Previously established program policy requires that the provider have in its files written documentation to support its reported five-year malpractice loss experience (that is, for the current cost reporting period and the preceding four-year period). This documentation must include the following information:

• Name of the claimant.

• Period of services (including whether inpatient or outpatient) during which the malpractice incident occurred.

• Date the malpractice incident occurred.

• Description of the incident.

• Date the claim was paid.

• Amount of the claim.

• Coverage of claimant at the time the malpractice incident occurred (that is, whether the coverage is Medicare or non-Medicare).

• All pertinent legal documents.

• Other information that would further substantiate the provider's reported malpractice loss experience.

Because the loss data included in HCRIS were obtained from audited or settled cost reports only, as submitted by the provider's intermediary, a report of no losses is, absent specific information to the contrary, reliable. Each cost report was subjected to a Medicare intermediary's determination to settle the cost report on the basis of the loss data, including any adjustments to the data made by the intermediary. Thus, the absence of loss data or reports of $0 amounts in the HCRIS database represents factual data rather than assumptions, as alleged by the commenter.

Intermediaries are responsible for assuring the implementation of program policy, which, as explained above, requires providers to maintain necessary documentation to support the loss data submitted on the cost report. This documentation includes information specifying the coverage of the claimant at the time the malpractice incident occurred, which constitutes a basis for distinguishing Medicare losses from non-Medicare losses.

While we believe that this documentation provides adequate support for the loss data actually reported, we recognize that, to some extent, providers depend on malpractice insurers for loss data. Nevertheless, providers would certainly know if claims alleging malpractice incidents have been made, the coverage of the provider at the time, and any litigation pertaining to those incidents. Moreover, malpractice insurers would have no reason not to disclose fully and accurately upon request information on malpractice losses. The intermediaries, however, have no direct access to malpractice insurance carriers not related to providers and we have no authority to audit the records of malpractice insurance carriers.

The statements made by the commenter do not detract from the reliability of the loss data included in HCRIS. The documentation supplied by the commenter applies only to incident reports, not to paid claims. In any event, the documentation contains no specific information that would enable us to cross-check intermediary findings about losses. The commenter's statements about conversations with other chain representatives also do not undermine the reliability of HCRIS. Finally, even if there were good reason to doubt cost reports with no loss data or $0 in losses, the "R" term in the scaling factor formula would be understated only if there were numerous failures to report Medicare losses. Given the commenter s failure to document errors of this magnitude and type, the commenter's assertions do not undermine the validity of the "R" term.

*Comment:* HCFA furnished a table in the preamble to the interim final rule that illustrated "the completeness of the HCRIS data used to determine the revised ratio." (*See,* 51 FR 11154.) The table raised, according to the commenter, more questions than answers to criticisms raised previously. The table includes data, which presumably were used in developing the 1986 rule, that shows for 10 States both the number of hospitals with losses and the number of hospitals without losses. However, other data furnished in response to the commenter's request, made under the FOIA, for information about the 1985 NPRM, contain more hospitals for each State than the table shows. It appears that HCFA manipulated the data to reduce the national ratio.

*Response:* The commenter has mischaracterized the data included in the table in the preamble to the interim final rule (at 51 FR 11154). The table was based on HCRIS data as of April 16, 1985 and was used for the sole purpose of illustrating the completeness of the HCRIS data underlying the revised national ratio in the 1985 NPRM. (*See,* 51 FR 11152, 11154.) By contrast, the data underlying the revised national ratio in the 1986 rule are based on the HCRIS data file as of August 1985. (*See,* 51 FR 11152.)

State by State, the data in the table proved to be a subset of the data used in the 1986 rule. Thus, the table did not reflect the number of hospitals actually used in computing the national loss ratio in the 1986 rule. Below is a revised table that includes the number of hospitals and the corresponding malpractice loss information for each of the same 10 States, as taken from the HCRIS data used in the 1986 rule.

| | Malpractice costs | | Number of hospitals | |
|---|---|---|---|---|
| | Medicare | Total | With losses | Without losses |
| Maine | $110,934 | $244,277 | 5 | 38 |
| Maryland | 396,776 | 8,538,725 | 29 | 41 |
| Missouri | 1,479,367 | 14,284,292 | [illegible] | 77 |
| New Mexico | 388,677 | 1,500,296 | 16 | 10 |
| South Carolina | 204,146 | 1,596,297 | 13 | [illegible] |
| New York | 5,818,077 | 41,026,708 | 107 | 152 |
| Florida | 6,356,301 | 46,550,024 | 102 | 82 |
| Massachusetts | 905,220 | 5,457,780 | 60 | 75 |
| Tennessee | 877,321 | 3,754,920 | [illegible] | [illegible] |
| Oklahoma | 779,093 | 3,505,911 | 37 | 91 |

In addition, we have included below a separate table that compares the actual number of HCRIS cost reports used in computing the national ratio for the 1986 rule and the number of hospitals from the Provider of Services (POS) file for the same 10 States.

| | HCRIS [illegible] | POS [illegible] | Completion percentage |
|---|---|---|---|
| Maine | 43 | 49 | 87 7 |
| Maryland | 70 | 73 | 95 8 |
| Missouri | 159 | 175 | 90 8 |
| New Mexico | 26 | 53 | 49 0 |
| South Carolina | 81 | [illegible] | 98 7 |
| New York | 259 | 334 | 77.5 |
| Florida | 184 | 254 | 72.4 |
| Massachusetts | 135 | 162 | 83 3 |
| Tennessee | 137 | 165 | 83 0 |
| Oklahoma | 128 | 143 | 89 5 |

The foregoing tables show that the allegation of data manipulation is groundless. HCFA used all available cost reports that were either audited or settled, and passed additional edits by the intermediaries.

*Comment:* The HCRIS data demonstrate that the cost of malpractice insurance premiums is a declining portion of the G&A pool The HCRIS data described in the 1985 NPRM indicate that 1979–1983 premiums were 6.14 percent of the total G&A cost center plus malpractice expense But the preamble to the interim final rule, which includes additional data, shows that the ratio declined to 6.10 percent.

*Response:* In part, the commenter apparently misunderstands the nature of the HCRIS data For many hospitals, the same cost report was used in developing both the 1985 NPRM and the interim final rule. For many other hospitals, the 1982 cost reports were replaced, upon completion of the audit process, by their 1983 cost reports. In any case, the change cited by the commenter is so small (0.04 percent) that it cannot be viewed as statistically significant.

*Comment:* In its prospective application, the 1986 rule will apply primarily to facilities excluded from the prospective payment system (PPS): Children's hospitals, alcohol/drug facilities, rehabilitation facilities, psychiatric facilities, and outpatient

services Yet the HCRIS data, on which the 1986 rule is based, pertain only to short term acute care facilities. Thus, HCFA's analysis of the HCRIS data cannot be statistically applicable to the facilities that will be primarily affected, on a prospective basis, by the 1986 rule.

*Response:* The HCRIS data used in the interim final rule did not pertain solely to short-term acute care facilities In our studies of the HCRIS data undertaken in this rulemaking, we consistently described our research underlying calculation of the national Medicare malpractice loss ratio as pertaining to "hospitals " Although some of our basic tables for the calculations underlying the national loss ratio in the interim final rule refer to "U.S. Medicare Certified Hospitals" or "hospitals" (e.g., R.R. 2535, Table 1; R.R. 2562, Table 1; and R.R. 2563, Table 3), other tables are incorrectly titled in ways that mistakenly suggest that they present data on only "short stay hospitals" (e.g., R.R. 2562, Table 2; and R.R. 2563, Table 4). As explained below, the HCRIS data used in the interim final rule also included data on hospitals excluded from PPS.

The HCRIS data file used to determine the national Medicare malpractice loss ratio included 5,882 hospitals. (*See,* 51 FR 11155.) We subsequently examined the provider numbers of these facilities and determined that 346 providers were in the classes of facilities excluded from PPS. The 346 hospital subset of the 5,882 hospitals in the HCRIS data set used to calculate the Medicare malpractice loss ratio in the interim final rule constitutes about six percent of that particular HCRIS file.

We further determined, based on Medicare provider numbers, that the POS file used for calculating the national Medicare malpractice loss ratio in the interim final rule, includes 605 hospitals excluded from PPS for areas comparable to the HCRIS file (*i.e.,* the U.S., excluding Puerto Rico, Guam, the Virgin Islands, and American Samoa). Furthermore, although it does not present a precise count of excluded hospitals, the American Hospital Association (AHA) reports 703 nonfederal hospitals other than the 5,843 "short-term general and other special" hospitals in 1983. (AHA, *Hospital Statistics,* 1984 ed., Chicago, IL: AHA, 1984, pp. xi, 22.) Thus, while the 346 excluded hospitals on the HCRIS file were only six percent of the total HCRIS data set used to calculate the national ratio, the 346 member subset represents 49 percent or 57 percent of the universe of hospitals that are excluded from PPS—depending on whether we estimate the universe of such hospitals based on AHA or HCFA data, respectively.

The comment raises an underlying issue of whether the scaling factor formula values established by the 1986 rule should apply to hospitals excluded from PPS. In order to address this issue, we reviewed all data sources used in the scaling factor formula. Although the HCRIS data underlying the R factor included data for excluded hospitals, the values of the $U_1$ and $U_2$ factors were derived from data for short-stay hospitals only. Further analysis is required to develop a set of formula values for the $U_1$, $U_2$, and R factors for hospitals excluded from PPS. Therefore, we are establishing values only for short-stay hospitals in this rule.

As explained in section II above, in order to ensure the consistency and equitableness of the results produced by the scaling factor formula, we intend to develop separate sets of formula values for the two types of hospitals. For short-stay hospitals, we identified all hospitals on the HCRIS and POS files of the type that would be subject to PPS, based on Medicare provider numbers. We then employed the same methodology used in the interim final rule to calculate the national Medicare malpractice loss ratio for all hospitals—this time based exclusively on HCRIS and POS data for short-stay hospitals. Our calculations indicate that the national Medicare malpractice loss ratio for hospitals subject to PPS is equal, after rounding, to the 11.8 percent figure established on the basis of data from all hospitals in the interim final rule. There is, therefore, no need to change the value of the national Medicare malpractice loss ratio for short-stay hospitals from that published in the interim final rule. As indicated, any changes that may be required for the value of the "R" term for hospitals excluded from PPS will be published in a subsequent Federal Register document.

2. Removing Malpractice Costs From the G&A Cost Center is Supported by the Evidence and Does Not Result in a Distortion of Apportionment of the Costs That Remain in the G&A Pool

*Comment:* The actuarial consultant retained by the Department did not support the decision to remove hospital malpractice insurance costs from the G&A pool.

*Response:* Contrary to the commenter's claim, the actuarial consultant did not even address the issue of removing malpractice costs from the G&A pool. The consultant stated:

> I have not commented on the legal or accounting issues (e.g., is it appropriate to remove medical malpractice costs from the G&A pool) raised [by the commenters] because these are beyond my scope of expertise. (R.R. at 2820.)

*Comment:* Malpractice expense represents less than one percent of total costs for hospitals excluded from the prospective payment system—the only hospitals significantly affected by the 1986 rule on a prospective basis. Rather than trying to remedy any imbalance in the G&A pool for these hospitals, HCFA is trying to salvage the unsuccessful cost saving technique of the 1979 malpractice rule.

*Response:* In addition to its prospective application, the 1986 rule applies retroactively to hospital cost reporting periods beginning on or after July 1, 1979. Upon reconsideration of the policy established by the 1979 malpractice rule, the Secretary determined that it was necessary to remove malpractice insurance costs from the G&A pool for these periods (and for future periods) in order to restore the balance of the G&A cost center. While the 1986 rule may result in "cost savings" (*i.e.,* decreased Medicare Trust Fund expenditures), the rule was adopted in order to ensure that providers are reimbursed in accordance with statutory requirements and to prevent windfall payments under the pre-1979 utilization method.

*Comment:* There are no data in the record from which the Secretary could conclude that the G&A pool, during the period in which it included malpractice insurance costs, inequitably shifted costs from non-Medicare patients to Medicare patients.

*Response:* The Secretary's determination to remove malpractice insurance costs from the G&A pool is based on four main factors. (*See,* 51 FR 11158–68.) The commenter clearly errs in stating that none of the data relied on in the preamble to the 1986 rule is for the period in which malpractice insurance costs were included in the G&A pool. The documented extraordinary increase in malpractice insurance costs includes data from the inception of the program through 1978, and compares malpractice costs with G&A costs (including malpractice costs) from 1971 through 1978. (*See,* 51 FR 11162, Table.) The NAIC data and the HCRIS data are relied on primarily with respect to the other three factors. (*See,* 51 FR 11162–68.) The NAIC data are for the 1975–78 period. (*See,* 51 FR 11163.) While the HCRIS paid claims data are

for 1978–83, we have compared malpractice insurance expense to the totality of the G&A pool *plus* malpractice expense for the same period. (*See*, 51 FR 11152, 11165.) A similar comparison was effected for the HAS/Monitrend data for the 1979–1984 period. (*See*, 51 FR 11166; R.R. at 3697–3703.)

*Comment:* In its prospective application, the 1986 rule will apply primarily to facilities and services excluded from the prospective payment system. HCFA has presented no evidence that malpractice insurance costs are a disproportionate share of G&A costs for these excluded facilities or that malpractice insurance costs have increased rapidly for them.

*Response:* As indicated above in our discussion of the HCRIS data, the data set relied on in developing the 1986 rule actually included information on facilities excluded from PPS. The HCRIS data file used to study the relative importance of malpractice expense as a share of the total of G&A and malpractice expenses included 5,180 hospitals. (*See*, 51 FR 11155; R.R 2530.) We examined the provider numbers of these facilities and identified 236 that were not short-stay hospitals of the sort that are subject to PPS and that incurred malpractice expenses. These 236 facilities are over 39 percent of the universe of such facilities on the POS file. We found no distinct part units. Since the 5,180 hospital HCRIS file used to analyze the ratio of malpractice expense to total G&A costs (plus malpractice expense) differed from the 5,882 hospital HCRIS file used to calculate the national Medicare malpractice loss ratio, it is not surprising that we obtained a different number of excluded hospitals for this analysis than the 346 obtained for our loss ratio analysis. However, the 39 percent representation of excluded facilities in our analysis of the ratio of malpractice expense to total G&A cost (plus malpractice expense) is substantial enough for us to conclude that the pertinent HCRIS file contained an adequate representation of the universe of all hospitals excluded from PPS.

We analyzed malpractice expense as a share of total G&A expense plus malpractice for all of the 236 excluded hospitals that were in the 5,180 hospital HCRIS file. We used the same methodology that we used in analyzing the entire HCRIS file. (*See*, R.R. 2558–2584.) We estimated national totals of malpractice expense and the sum of G&A and malpractice expenses by weighting average values per bed from the HCRIS file by the number of beds of excluded facilities from the POS file. This yielded a national estimate of malpractice expense as a share of G&A plus malpractice expenses of 4.6 percent for facilities excluded from PPS. This represented an estimated national total of $36,136,944 in malpractice expense for the excluded hospitals on the 1983 POS file. Although the total dollar amount is predictably less than the $847 million total for all United States hospitals (*See*, 51 FR 11165 (col. 3)), the 4.6 percent proportion is comparable to the 6.1 percent ratio of malpractice expense to total G&A expense plus malpractice expense for all hospitals.

While we do not have separate information on the rate of change of malpractice insurance costs for hospitals excluded from PPS, we do not have any reason to believe that changes in premium costs for excluded facilities differ from such changes for all hospitals. Notably, the commenter submitted no information in support of such a supposition. (As explained below, we disagree with the commenter's related assertion that certain Insurance Services Office (ISO) data show that "malpractice rates" are lower for excluded facilities than for hospitals subject to PPS.) Thus, since malpractice insurance premium costs are a significant portion of total G&A costs (plus malpractice expense) for excluded facilities (as for all hospitals) and because we have no reason to believe that the extraordinary increase in premiums for all hospitals (*see*, 51 FR 11160–62) differs for excluded facilities, we believe that it is entirely appropriate to eliminate premium costs from the G&A pool for hospitals excluded from PPS.

*a. The Increase in Malpractice Insurance Premium Costs*

*Comment:* The AHA's Hospital Administrative Service (HAS)/Monitrend data for 1979 through 1984 show only a slight increase in malpractice insurance costs per adjusted occupied bed. Adjusted for inflation, these increases would be, according to the commenter, non-existent.

*Response:* We have presented extensive evidence on the rate of increase in malpractice premiums in the preamble to the interim final rule. (*See*, 51 FR 11160–62.) For the 1979–84 period, we primarily relied on AHA-derived data, and ISO data on premium cost increases that were "used for purposes of establishing a market basket of cost inputs for calculating increases in hospital expenditures." (51 FR 11160.) These data indicate a cumulative rate of increase of 83.3 percent for the period 1979 through 1984, with an annual rate of increase of 12.9 percent for that period. (R.R. 3549.)

It is not possible to directly compare the HAS/Monitrend data relied on by the commenter, which describe malpractice expense growth by hospital bed class, with the above-described results derived from the AHA and ISO data that were "used in the hospital input price index" for all hospitals. (*See*, 51 FR 11160.) The specific HAS/Monitrend data relied on by the commenter calculates growth rates in malpractice costs for various classes of hospitals whereas the HCFA price index describes the cost of premiums for all hospitals. We have therefore calculated a weighted average rate of increase in malpractice insurance expense per bed for all U.S. community hospitals using the original HAS/Monitrend data. (The HAS/Monitrend data, published by AHA for "Professional Liability Insurance Expense/Bed" in 1979 (R.R. 3736) and 1984 (R.R. 3706), apparently present numbers identical to those that the commenter cites for cost per adjusted bed, with differences due to rounding. We assume the original AHA-published tables are correct.) We weighted insurance expense per bed for 1979 and 1984 from the HAS/Monitrend data for short-term general hospitals (R.R. 3706 and 3736) by the number of community hospital beds in the two years (AHA, *Hospital Statistics*, 1980 edition, p. 20, and 1985 edition, p. 22, respectively). These are appropriate weights since short-term general and other special hospitals, as defined by AHA, include community hospitals and a very small number of hospital units of institutions (e.g., infirmaries). In two cases we had to combine HAS/Monitrend bed size categories and calculate mean insurance expense values in order to have bed size categories compatible with those reported in *Hospital Statistics*. Our calculations indicate that the weighted average HAS/Monitrend data show a cumulative, increase of 4.1 percent in insurance expense per bed between 1979 and 1984, with a 0.8 percent annual rate of increase.

While the results produced by our analysis of the HAS/Monitrend data are less than those described in the interim final rule, we believe that the data relied on in that rule—principally the AHA-derived and ISO data ("the HCFA data")—are superior in this context. The principal difference between the HCFA data and the HAS/Monitrend data is that the former are a price *index* while the latter are a measure of premiums paid by hospitals surveyed. HAS/

Monitrend data pertain to "accrued monthly expenses for hospital and professional liability (malpractice) insurance policies." (American Hospital Association, *Guide for Uniform Reporting: Monitrend for Hospitals*, Chicago, Ill.; AHA, 1979, p.48, at R.R. 3703). The HCFA data are based on a price index developed from AHA and ISO data "to quantify the annual percent change in hospital professional liability insurance premiums over time." (Mark S. Freeland *et al.*, "National Hospital Input Price Index," *Health Care Financing Review*, Vol. 1, No. 1 (Summer, 1979), p. 57, at R.R. 2943).

A price index such as that developed by HCFA measures the cost of the same good at different times. Thus, a price index is, by definition, standardized. It is measured as a ratio of the current period index level to the base period index level, which is usually set equal to 1.0. It is not measured in dollars or any other monetary units. However, as explained in the interim final rule (51 FR 11160, col. 3), the HCFA index is not a pure price index since to some extent it reflects quantity as well as price change. (*See also* R. R. at 2927.)

By contrast with the HCFA index, the HAS/Monitrend survey data measure the actual dollar malpractice insurance premium expenses of reporting hospitals. Since the hospitals reporting to AHA's HAS/Monitrend service vary greatly by bed size and probably in level of coverage purchased per year and per incident, it is necessary and appropriate to standardize premiums paid by some measure of hospital scale. The AHA apparently chose number of beds as the best measure of scale and publishes Monitrend data on malpractice insurance expense per bed.

The HAS/Monitrend data has certain limitations in this context. It does not standardize for level of coverage and would reflect changes in quantity as well as price of insurance. In other words, changes in HAS/Monitrend results could reflect changes in the amount of insurance bought as well as price for any given level of coverage. In addition, the sample of reporting hospitals in the HAS/Monitrend data is not a random or scientifically designed sample. It is simply the group of hospitals that subscribe to AHA's HAS/Monitrend service. As a result there are unpredictable biases in the HAS/Monitrend data on malpractice premiums

There are three additional reasons why the HAS/Monitrend data do not detract from the Secretary's determination that hospital malpractice premiums increased extraordinarily during the relevant time period. First, data from the St. Paul Fire and Marine Insurance Company from the 1979–84 period show a 113.4 percent cumulative increase, with an annual rate of increase of 16.4 percent for that period (R.R. at 3485), which are much higher increases than are indicated by the HAS/Monitrend data.

Second, a recently released study by the General Accounting Office (GAO) based on a 1986 survey of community hospitals also shows accelerated growth in hospital malpractice insurance expense. The GAO survey used a stratified random sample drawn by the AHA of 1,782 hospitals, of which 70 percent (1,248 hospitals) responded. The GAO calculated national estimates based on this sample and estimated that hospital malpractice insurance costs (including premiums, contributions to self-insurance trust funds, and uninsured losses) increased 57 percent from 1983 to 1985 (25.4 percent per year). This represented an increase of 85 percent in malpractice cost per inpatient day (36.2 percent per year) and 78 percent in malpractice cost per bed adjusted for outpatient visits (33.6 percent per year). (GAO, *Medical Malpractice: Insurance Costs Increased But Varied Among Physicians and Hospitals*, Washington, DC: GAO, September, 1986, pp. 20–23, 38–48.) These increases partially reflect increases in coverage, while the increased cost per inpatient day reflects in part a 13 percent decline in days over the period. (*Id.*, p. 50.) Nonetheless, it is clear that the cost of hospital malpractice insurance increased greatly over the 1983–1985 period. This cost also increased greatly in contrast to total hospital expenses, which increased only 12 percent, and in contrast to average expense per inpatient day, which increased only 26 percent over the period. *Id.*

Third, a recent study by the AHA reported that data from the St. Paul Insurance Companies show that "[m]alpractice liability insurance costs for hospitals rose nationally more than 50 percent during the past 5 years." (AHA, *Medical Malpractice Task Force Report on Tort Reform and Compendium of Professional Liability Early Warning Systems for Health Care Providers* (*May 1986*), n.p.: AHA, 1986, p. 11). The same AHA study cites a report prepared for the Michigan Hospital Association, which found that in Michigan premiums per hospital (including amounts set aside to cover pending claims) increased 95.3 percent from 1980 through 1984 (an 18.2 percent per year rate of increase) and then increased 87.8 percent in 1985 (calculated from data in AHA, *Ibid.*, p. 11).

*Comment:* The HAS/Monitrend data show that, for hospitals in the 100–149 bed size class, malpractice insurance cost per bed increased only eight percent from December 31, 1979 through December 31, 1984, whereas the other component cost centers increased as follows: general accounting, 79 percent; patient accounting and admitting, 108 percent; administrative, 101 percent; purchasing and stores, 136 percent; data processing, 101 percent. According to the commenter, since these are typical of increases in costs for all bed size groups from 1979 to 1984, HCFA cannot show that malpractice costs have increased at a greater rate than other G&A costs.

*Response:* The commenter has partially misstated the findings from the cited HAS/Monitrend data. In addition to making a calculation error and various minor rounding errors, the commenter presented the results for administrative costs as those for purchasing and stores and vice versa.

In any event, the commenter's criticisms do not detract from the Secretary's determination that increases in malpractice insurance costs far outstrip increases in the entire G&A pool. As explained above, we have reservations about the quality of the HAS/Monitrend data on malpractice insurance premium increases. We believe that the AHA-derived and ISO data used by HCFA in the hospital input price index are a better measure of malpractice insurance costs. The malpractice cost data used in the HCFA price index for the 1979–1984 period show an 83.3 percent cumulative increase for 1979 through 1984. This rate of increase is comparable to the rates of growth for the other component cost centers in the G&A pool cited by the commenter and exceeds that of the general accounting center. (The commenter stated that the HAS/Monitrend data for the 100–149 bed size class is typical of all hospitals, and thus we can compare these data directly with the premium cost increase data in the HCFA price index.)

In any event, the HAS/Monitrend data for 1983–85 show very significant premium increases—increases that are surpassed by the more reliable data in the HCFA price index and the GAO survey. We examined HAS/Monitrend data on professional liability insurance expense per bed in general short-term hospitals for the six month periods ending June 30, 1983 (R.R. 3715) and June, 1985 (AHA, *HAS/Monitrend Data Book for Period Ending June 30, 1985*,

Chicago, IL: AHA, 1985, p. 15). We compared the HAS/Monitrend data with data collected from the 1,248 responding community hospitals in the above-described GAO survey and with the premium cost data in the HCFA price index. The GAO survey presents data on average annual malpractice cost per bed using a measure of beds that adjusts for outpatient care. HAS/Monitrend presents six month medians of professional liability insurance expense per bed and appears to report statistics as expense per month. The HCFA measure is a price index calculated on a quarterly and annual basis. Despite definitional differences, we would expect that the rates of change of the three measures are comparable.

The HAS/Monitrend data show increases from June 1983 through June 1985 ranging from 13.4 percent to 62.4 percent, depending on the hospital bed size class considered. Most HAS/Monitrend bed size classes show increases of less than 40 percent over the period. The HCFA index shows a cumulative rate of increase of 46.7 percent for 1984 and 1985. This reflects a 16.0 percent increase in 1984 (R.R. 3549) and an increase of 26.5 percent in 1985. (While unpublished HCFA data showed an increase of 11.8 percent in 1985 (R.R. 3549), "recently updated industry data" showed a 26.5 percent increase in 1985. (*See*, 51 FR 31464 (col. 3).) The GAO reports an increase in average malpractice cost per bed of 78 percent between 1983 and 1985.

Finally, the most comprehensive study of the Medicare G&A cost center (including malpractice expense) found annual increases of 11.5 percent in cost per adjusted admission in the G&A cost center for 1971–1978, as compared with annual increases in malpractice premiums of 38.2 percent over the same period. (*See*, 51 FR 11161.)

*Comment:* Data from the St. Paul Fire and Marine Insurance Company, together with the HAS/Monitrend data, show that malpractice insurance cost increases since 1979 are not great enough to warrant direct apportionment of these costs.

*Response:* The commenter has misunderstood the full basis for the Secretary's determination to remove malpractice insurance costs from the G&A pool. The Secretary's decision to remove malpractice insurance costs from the G&A pool is based on four distinct factors—not on premium cost increases alone (51 FR 11158–68). Also, the commenter has misinterpreted the two data sources in question. As explained above, the AHA's HAS/Monitrend data present an implausible picture of the growth in hospital malpractice insurance costs.

The malpractice cost increase data relied on primarily by the Secretary were national data derived from the AHA itself and from ISO. (*See*, 51 FR 11160.) Contrary to the commenter's suggestion, the data showing malpractice cost increases from 1966 through 1979 figured in the Secretary's decision at least as much as the post-1979 data. While the St. Paul data come from the largest underwriter of malpractice insurance, they are not national data and they are limited in time to the 1977–85 period. (*See*, R.R. at 3483–3491.) Moreover, the commenter ignores the impact of the final year of St. Paul data on the cumulative increase indicated by that company. While St. Paul reported a 31 percent cumulative increase from 1977 to 1984, it "reported an additional 38 percent increase in premium rates for 1985, which brings the cumulative increase for the 1977–1985 period to 80.8 percent." (51 FR 11160.) Thus, the cumulative increase from the St. Paul data is similar to the comparable figure derived from the AHA data and the ISO data. (*See*, Table at 51 FR 11162.) Accordingly, the Secretary reasonably concluded that "the St. Paul data do not detract from the extraordinary increase in premium rates between 1977 and 1985, as shown by the national AHA-derived data and the ISO data." (*See*, 51 FR 11160.)

*Comment:* Comparison of 1985 malpractice costs to total hospital costs for 1980 indicates that malpractice costs are only 0.7 percent of total costs. At most, the interim final rule shows that providers were overreimbursed malpractice costs by 25.6 percent (*i.e.*, 38.8 percent Medicare utilization rate minus 13.2 percent Medicare paid claims rate). Thus, the 1986 rule addresses only 0.17 percent of total hospital costs, which clearly is not enough to distort the G&A pool.

*Response:* The commenter's statements rest on several methodological errors. First, the proper comparison is between total G&A costs (including malpractice expense) and malpractice costs for the same time periods—not total hospital costs and malpractice costs for different time periods. Second, the HCRIS data relied on in our determination to remove malpractice costs from the G&A pool show that the difference between Medicare utilization (*i.e.*, 42.9 percent) and the national Medicare loss ratio (*i.e.*, 11.8 percent) is 31.1 percent. (*See*, 51 FR 11167 (col. 3).) The commenter mistakenly compared values for two of the constants in the scaling factor formula (*i.e.*, $U_1$ and R), rather, than the HCRIS data actually relied on by the Secretary in this context. Contrary to the commenter's conclusion, the distortion in the G&A pool caused by malpractice insurance costs of approximately $266.0 million per annum clearly results in cost-shifting sufficient to warrant removal of those costs from the G&A pool. (*See*, 51 FR 11167.)

*Comment:* The Secretary's 1973 Commission on Medical Malpractice disputes the basis of the interim final rule (that is, that premiums have increased because of the high number of claims and large aggregate losses), and concluded instead that premiums had increased due to uncertainty as to either the number of claims that would be filed or the average loss per claim—factors that apply equally to Medicare and non-Medicare patients.

*Response:* While the preamble to the interim final rule fully documents the extraordinary increase in malpractice insurance costs during the relevant time periods (*see*, 51 FR 11160–62), the 1986 rule does not depend on whether these extraordinary increases are due to the high number of claims and large aggregate losses, as the commenter asserted, or other factors. Increases in losses, misestimations of prior premiums, and national trends in the frequency and severity of claims are some of the factors that cause premium increases. (*See*, 51 FR 11176 (column 2).) Regardless of the precise causes of increases in premium costs, we must apportion premium costs—at whatever levels—in accordance with applicable statutory requirements and in a manner that takes account of the evidence of disproportionately low Medicare utilization of the underlying services. The extraordinary increase in these costs, along with the other factors discussed in the preamble to the interim final rule, require removal of these costs from the G&A pool.

*b. Number and Size of Claims Paid ro Medicare Beneficiaries.*

*Comment:* HCFA's reliance on the lower claims costs attributable to Medicare patients is questionable because this factor ignores the difference between *claims* against hospitals by Medicare patients and the *premiums* hospitals pay to insure against malpractice claims. The problem is compounded, according to the commenter, by the fact that the 1986 rule primarily has retroactive application whereas insurers writing policies from 1979 to 1983 did not have the benefit of hindsight. Rates charged during this period were based primarily on an

"occupied bed" basis, and any adjustments stemming from the experience rating of specific providers. Finally, HCFA's reliance on the distinction between underwriting policies and fashioning an apportionment policy is to no avail because lower claim costs for the 1979–83 period were not reflected in lower premium costs, whereas the special apportionment policy established by the 1986 rule can only be justified on the basis of cost differences.

*Response:* Notably, the commenter does not question the plethora of data relied on by the Secretary in finding that Medicare patients account for a disproportionately low share of malpractice insurance costs. (*See,* 51 FR 11162–11165.) The commenter's criticisms of the relevance of these data are misconceived for two fundamental reasons. First, insurance industry premium-setting practices are partially based on a hospital's own experience, a fact which results in the premium taking into account Medicare's major underutilization of premium expense. In establishing hospital premiums (*see generally,* 51 FR 11168–11169), the insurance industry first determines an "overall state rate." Next, it uses nationally-derived loss ratios—similar to the loss ratios included in the HCRIS data— to establish "rate relativities" that divide the class of insureds into various subgroups (*e.g.,* for-profit and not-for-profit hospitals). Finally, each hospital receives its own "experience rating", which takes into account its particular malpractice loss experience. It is true that the insurance industry does not *directly* consider a hospital's Medicare utilization rate in the course of setting the premium. However, the experience rating stage of the premium-setting process automatically takes into account the disproportionately low number and amount of Medicare claims because lower premiums will eventuate for large and small hospitals with high Medicare utilization rates. (*See,* R.R. at 2869–2870.)

Second, the commenter also ignores the fact that a premium consists of numerous subcosts. Section 1861(v)(1)(A) of the Act directs the Secretary to apportion hospital costs in a manner that prevents cost-shifting between Medicare patients and non-Medicare patients. The 1986 rule meets this requirement by dividing hospital malpractice insurance cost into two components. The "administrative component," which accounts for 8.5 percent of total premium cost, is included in the G&A pool and is apportioned on the basis of the individual hospital's Medicare utilization rate. The Secretary determined that because the subcosts that constitute the administrative component are, at most, only slightly affected by the frequency and amount of malpractice claims, that portion of total premium cost is properly apportioned on a utilization basis. The "risk component," which comprises the remaining 91.5 percent of total premium cost, is apportioned on the basis of the scaling factor formula. The Secretary determined that because the subcosts that constitute the risk component are significantly affected by the frequency and amount of malpractice claims, that portion of total premium cost is properly apportioned on the special basis established by the 1986 rule. Thus, the 1986 rule rationally connects premium subcosts and apportionment policy by distinguishing subcosts that are significantly affected by Medicare's low utilization of the underlying service (i.e., the risk component) from subcosts that are largely unaffected by this low utilization (i.e., the administrative component). Similarly, the Secretary reasonably relied on information about the infrastructure of premium costs, together with the HCRIS data and the NAIC data, in finding that Medicare's disproportionately low utilization of claims-related costs, among other reasons, required the removal of malpractice insurance costs from the G&A pool.

*Comment:* Neither the HCRIS data nor the NAIC study support the Department's assertion that before 1979 Medicare was paying a "disproportionate" share of malpractice insurance costs.

*Response:* The largest subcosts in total premium cost are reserves for anticipated loss experience and loss adjustment expense (i.e., ALAE and ULAE). (*See,* R.R. at 2863.) The HCRIS data show that Medicare patients accounted for a disproportionately low share of total claims paid from 1978 through 1983. (*See,* 51 FR 11164 ) The NAIC closed claims data show that patients 65 years of age and older (principally Medicare beneficiaries) have lower average indemnities and lower ALAE than patients under 65 (generally non Medicare patients). (*See,* 51 FR 11163–11164.) The NAIC data also show that, relative to patient utilization, Medicare patients submit fewer claims than non-Medicare patients. (*See,* 51 FR 11163.) The NAIC data pertain to claims closed in the years 1975 through 1978. Thus, both the HCRIS and NAIC data provide evidence that, when Medicare reimbursed hospitals for premium expense using the pre-1979 utilization method, the program bore a disproportionate share of hospital malpractice insurance costs. Accordingly, it is rational, consistent with applicable statutory requirements, and consistent with evidence from both before and after 1979 to apportion subcosts that are significantly affected by the frequency and amount of malpractice claims on the special basis established by the 1986 rule.

*Comment:* One commenter, an insurance company, reported that its data from 1980 through 1985 do not support HCFA's claim that malpractice payments to Medicare patients are dramatically less than for other patients. The insurer reports that, in its experience, the average paid Medicare claim is 90 percent of the average paid non-Medicare claim. It concludes that there is not a significant difference in the average indemnity payments between the two classes of risk. According to the commenter, its data contradict the factual basis in the 1986 rule for using the scaling factor formula.

*Response:* Although the commenter presented a summary description of data from 1981 through 1985 concerning other issues, the commenter presented no specific information supporting its assertion that the average paid Medicare claim is 90 percent of the average paid non-Medicare claim. In addition, the information apparently stems from one State. The Secretary's decision to remove malpractice costs from the G&A pool is based, in part, on our analysis of the NAIC closed claims study data, which includes 23,386 claims from throughout the United States. (*See,* 51 FR 11144 (column 2).) The NAIC data indicate that, for claims greater than zero, the average indemnity paid to persons 65 years of age or older is 49.6 percent of that paid to persons under 65 years of age. (While the preamble to the interim final rule stated that elderly claims were 49.9 percent of awards for those under 65 (51 FR 11164, col. 1), the record shows that 49.6 percent is the proper percentage relationship. (*See,* R.R. at 2721, Table 5a and 2724.)) The disparity is even greater—41.9 percent—for total claims submitted by Medicare beneficiaries as compared to non-Medicare patients. (*See,* 51 FR 11164, col. 1.) It is clear that a large, nationally representative database such as the NAIC database is more credible with respect to this matter than the commenter's unsubstantiated assertions.

c. *The relative importance of malpractice premium costs in the G&A pool.*

*Comment:* The HAS/Monitrend data show that malpractice costs are a declining portion of the G&A pool insofar as they decreased from 5.8 percent of the total pool by December 31, 1979 to 3.0 percent by December 31, 1984 for hospitals with a 100–149 bed size.

*Response:* The results described by the commenter are predicated on the low growth rate of malpractice premium costs reported in the HAS/Monitrend data. As explained above, the premium cost data in the HCFA price index and the GAO survey are more reliable and show that malpractice expense increased greatly during the relevant time period. While a commenter stated that the HAS/Monitrend data showed an eight percent increase in malpractice expense during the 1979–84 period, the HCFA data showed an 83.3 percent cumulative increase for that period. The GAO survey showed a 78 percent increase between 1983 and 1985, with a 44.9 percent increase in 1984 alone.

As explained above, the HCFA measure of the 1979–84 increase in malpractice insurance expense is comparable to the increase in other component cost centers of the G&A pool, as measured by the HAS/Monitrend data for the 100–149 bed size class. Since the other component cost centers increased approximately 100 percent during the 1979–1984 period for the 100–149 bed size class, the HCFA and GAO survey measures of malpractice insurance expense would suggest, at most, a very slight decline in the overall share of malpractice in the G&A pool. Moreover, as explained in the preamble to the interim final rule, malpractice premiums for hospitals increased 38.2 percent per year from 1971 to 1978 while Medicare's own G&A pool (including malpractice expense) increased only 13.6 percent per year during that period. (*See,* table at 51 FR 11162.)

*Comment:* If malpractice expense is 6.10 percent of total G&A costs plus malpractice expense, then other G&A costs represent 93.90 percent of this total. At 40 percent utilization, HCFA proposes to pay 0.98 percent of total G&A costs plus malpractice expense (*i.e.,* 16.14 percent scaling factor formula times 6.10 percent malpractice costs.) According to the commenter, with all of the other G&A costs that Medicare patients incur disproportionately, even a conservative estimate of a one percent error in underpayment of the other G&A costs (*i.e.,* 93.90 percent of the total G&A costs plus malpractice expense) would be 0.94 percent of total G&A costs plus malpractice expense, which would offset any overreimbursement for malpractice insurance costs.

*Response:* Although the commenter refers to a one percent error in underpayment of the other G&A costs, we assume that he does not mean a one percentage point lower reimbursement of the costs of "other G&A costs." (The commenter apparently assumes that malpractice is part of the G&A pool, but this has not been true for the Medicare program since 1979.) Such an interpretation would be inconsistent with the calculation actually presented by the commenter. We explain below what the commenter apparently does mean by the assumed 1 percent error.

The commenter makes two basic errors in its calculations and omits the most relevant calculations and comparisons. First, while the comment is premised on the situation of a hospital with 40 percent Medicare utilization, the commenter mistakenly assumes that utilization-based reimbursement of total G&A costs (not including malpractice expense) would be 100 percent for such a hospital. As shown below (Step Three), a hospital with 40 percent Medicare utilization would be paid only 40 percent of these other G&A costs, which amounts to 38 percent of total G&A and malpractice costs. Second, we also explain below (Step Four) that the effect of an assumed one percent reimbursement error of other G&A costs plus malpractice expense would be 0.38 percent—not 0.94 percent as the commenter suggests. The following is a full presentation of the scenario suggested by the commenter, which, as we explain below, does not detract from our determination that inclusion of malpractice expense in the G&A pool imbalanced that pool.

More importantly, the commenter fails to calculate Medicare reimbursement under the pre-1979 utilization method and compare the results with the 1986 rule. As shown below (Steps Five and Six), under the scenario suggested by the commenter, the pre-1979 methodology yields a large, certain overpayment of 1.46 percent—amounting to $196 million per annum for all hospitals—for malpractice insurance costs, which far outstrips the 0.38 percent underpayment that is hypothesized by the commenter.

*Step one*—The commenter split total G&A costs (plus malpractice expense) between malpractice and "other G&A costs":

| | Percent |
|---|---|
| Total G&A costs plus malpractice expense | 100.0 |
| Malpractice costs | −6.1 |
| "Other G&A costs" | 93.9 |

*Step two*—The commenter determined total Medicare reimbursement for all G&A costs plus malpractice costs for a hospital with 40 percent Medicare utilization:

| | | |
|---|---|---|
| Risk Component | 12.74% | 0.139 (scaling factor at 40 percent Medicare utilization) × 91.5 percent |
| Administrative Component | +3.40% | 40 percent Medicare utilization × 8.5 percent. |
| | 16.14% | Medicare's total share of malpractice costs at 40 percent Medicare utilization |
| | ×6.10% | Malpractice costs as a percentage of total G&A costs plus malpractice expense |
| | 0.98% | Medicare payment for malpractice expense equals approximately one percent of total G&A costs plus malpractice expense for a hospital with 40 percent Medicare utilization |

*Step three*—Medicare reimburses 40 percent of "other G&A costs" for such a hospital, leading to the following percentage payment:

| Description | | Units of measurement |
|---|---|---|
| "Other G&A costs" | 93.9% | Percentage of total G&A and malpractice costs |
| Utilization Rate | ×40% | Percent |
| Reimbursement of "other G&A costs". | 38% | Percentage of G&A and malpractice [illegible] |

*Step four*—The commenter determined what the effect of a one percent error in Medicare reimbursement of total G&A costs—excluding malpractice costs—would be on total reimbursement for these "other G&A costs."

| Description | | Units of measurement |
|---|---|---|
| Reimbursement for "other G&A costs". | 38% | Percent of total G&A and malpractice costs |
| [illegible] reimbursement error | ×1.0% | Percent |
| Error in payment for "other G&A costs" implied by commenter's assumptions. | 0.38% | Percent of total G&A and malpractice [illegible] |

Since the effect of an assumed one percent error in Medicare reimbursement of total G&A costs—excluding malpractice expense—would be only 0.38 percent (not 0.94 percent as

BEST COPY AVAILABLE

the commenter asserted), such an assumed error would not "offset the perceived malpractice payment", which the commenter suggests is 0.98 percent. In fact, the hypothetical hospital described by the commenter would be overreimbursed 1.46 percent under the pre-1979 utilization method, which we calculate as follows:

*Step five:*

| Description | | Units of measurement |
|---|---|---|
| Malpractice expense | 6.10% | Percentage of total of G&A and malpractice costs. |
| Utilization Rate used to determine Medicare reimbursement of malpractice expense under pre-1979 utilization method | × 40% | Percent. |
| Medicare reimbursement of malpractice expense under pre-1979 utilization method. | 2.44% | Percentage of total of G&A and malpractice costs. |

*Step six:*

| Description | | Units of measurement |
|---|---|---|
| Medicare reimbursement of malpractice expense under pre-1979 utilization method | 2.44% | Percentage of total of G&A and malpractice costs. |
| Medicare payment for malpractice expense under 1986 rule | − 0.98% | Percentage of total of G&A and malpractice costs. |
| Overpayment of malpractice expense under pre-1979 method | 1.46% | Percentage of total of G&A and malpractice costs. |

Thus, a hospital with 40 percent Medicare utilization and an error of one percent in reimbursement of G&A costs other than malpractice costs would be underpaid .38 percent of total G&A costs plus malpractice expense. This amount is far less than the Medicare overpayment for malpractice costs of 1.46 percent that would have been made under the pre-1979 utilization method. Moreover, "a distortion in . . . [the G&A] cost center of 1.4 percent would equal $196.0 million per annum." (*See*, 51 FR 11167, col. 3.) In addition, overpayment of at least 1.4 percent—with its extraordinary fiscal impact—is certain to occur (*See id.* ) whereas the .38 percent underpayment is merely hypothetical. We consider a large, certain overpayment a proper basis for corrective rulemaking.

*Comment:* The Department concedes that various component cost centers in the G&A pool are larger than malpractice insurance costs. The commenter states that HCFA's attempt to distinguish these component cost centers on the grounds that they are composed of discrete costs is unavailing. The Medicare hospital apportionment policy established by the 1986 rule shows that malpractice premium cost is made up of constituent costs, too.

*Response:* As explained in the preamble to the interim final rule, the exact costs included in each of Medicare's component cost centers varies among providers. (*See*, 51 FR 11159.) To complicate matters further, the precise costs included in the overall G&A pool vary among providers as does the exact definition of particular costs included in that cost center. By contrast, malpractice insurance costs are precisely defined for Medicare cost reporting purposes. *See*, Provider Reimbursement Manual, Part II, section 1907 (February 1986). Thus, while we know that various component cost centers are larger than malpractice expense, we are unsure about the precise identity of the costs in these component centers because of the flexibility in reporting requirements. More importantly, we have no evidence that these other costs are overutilized in a manner that favors the program. But even if we had such information on discrete G&A costs, it would be difficult to locate it in a component cost center. Similar problems do not exist with respect to malpractice insurance costs, which are disproportionately underutilized by Medicare beneficiaries and precisely defined for program cost reporting purposes.

d. *Changes in other costs in the G&A pool.*

*Comment:* If the G&A pool, excluding malpractice insurance costs, is imbalanced in favor of Medicare by as little as 1.4 percent, then the rationale for removing these costs from the G&A pool fails. The commenter reaches the 1.4 percent figure as follows: 38.8 percent (*i.e.*, the average apportionment based on utilization) minus 15.6 percent (*i.e.*, the average apportionment under the 1986 rule) times 6.1 percent (*i.e.*, the HCRIS-derived ratio of malpractice costs to total G&A costs) equals 1.4 percent. According to the commenter, there is no statistical evidence justifying HCFA's reliance on this confidence level in changing the methodology applicable to the $14 billion G&A pool.

*Response:* The commenter has miscalculated the distortion caused by the inclusion of malpractice insurance costs in the G&A pool. The difference between the HCRIS-derived national Medicare utilization rate (42.9 percent) and malpractice loss ratio (11.8 percent)—not, as the commenter states, the difference between the "apportionment averages" yielded by the pre-1979 utilization method and the 1986 rule—should be multiplied by the HCRIS-derived ratio of malpractice expense to total G&A cost (plus malpractice cost) (6.1 percent). (*See*, 51 FR 11167.) Each of these three HCRIS-derived parameters is statistically reliable. (*See*, R.R. at 2558–2561.) The result is a distortion factor of 1.9 percent or $266.0 million per annum. (51 FR 11167.) While a countervailing "imbalance in favor of Medicare" would suggest that it might not be necessary to remove premiums from the G&A cost center, no reliable evidence exists of any such offsetting costs. In light of the pervasive, reliable evidence that malpractice insurance costs have distorted the presumed balance of the G&A pool, the Secretary determined that removal of those costs was necessary in order to prevent statutorily-proscribed cost-shifting between Medicare and non-Medicare patients.

*Comment:* A significant increase in malpractice insurance premiums does not support this rule. Legal fees attributable to non-Medicare claims have also significantly increased and may have more than offset malpractice premiums.

*Response:* The commenter apparently is suggesting that legal fees, which are a category of G&A cost, attributable to non-Medicare patients have increased enough in the relevant time periods to counteract the effect of increasing malpractice insurance costs. As explained in the preamble to the interim final rule (51 FR 11166–68), there is no evidence that changes in other costs in the G&A cost center offset the imbalance caused by malpractice insurance costs. Moreover, the commenter included no quantitative evidence of the magnitude or relative importance of alleged increases in legal fees related to non-Medicare claims, how such costs compare to legal fees for Medicare related claims, and how legal fees compare generally to the G&A cost center.

*Comment:* HCFA refuses to acknowledge the numerous comments from the hospital industry that Medicare pays a disproportionately low share of other G&A costs. In addition to the G&A costs commented on previously by the industry, which, according to the commenter, included cost report preparation, appeal costs, billing-related costs, and statistical recordkeeping costs, the following costs, contrary to HCFA's "programmatic experience", are disproportionately borne by non-Medicare patients:

(1) *Administrative Costs:* The commenter stated that for the relevant time periods the Medicare program has issued thousands of program changes

that have increased administrative costs tremendously. The commenter provided a copy of a report to the Secretary that suggested that compliance costs could reach $300 million. The commenter also supplied an accounting firm's description of the costs of complying with the 1979 malpractice rule alone.

(2) *Uniform Billing:* The commenter asserted that only the Medicare program requires uniform billing, which has increased hospital administrative expenses greatly. Specific major expenses cited by the commenter included:

(a) HCFA allegedly forced hospitals to bear the full cost of using the UB–82/HCFA–1450 form; and then HCFA started requiring special billing.

(b) The hospitals must pay for the implementation of new programs and the problems associated with their implementation.

(c) The commenter presented various examples of how claims processing costs for Medicare patients were shifted to providers.

(3) *The Medicare Cost Report:* The commenter furnished various attachments to support its contention that the continual changes in cost reporting requirements have been unduly burdensome to providers, including a letter from HCFA recognizing these burdens.

(4) *Computer Costs:* The commenter asserted that the program has failed to bear its share of computer costs incurred in response to major programmatic changes resulting from the Tax Equity and Fiscal Responsibility Act of 1984 (Pub. L. 97–248) (TEFRA) and the prospective payment system.

(5) *HCFA's Statements in the Interim Final Rule About Specific G&A Costs:* The commenter disputed HCFA's specific statements about credit/collection costs and the periodic interim payment system (PIP) and stated that computer claims key punching costs were unduly burdensome.

The commenter concluded that despite all of these alleged disproportionalities in favor of the program, Medicare has refused to allow discrete-costing of these costs, among other G&A costs, in order to preserve the balance of the G&A pool. According to the commenter, these disproportionalities, together with the removal of malpractice expense from the G&A pool, will upset the balance of the G&A pool.

*Response:* Although the commenter asserted that specific G&A costs are incurred only for Medicare patients, the fact is that these costs are incurred for non-Medicare patients too. Furthermore, while the commenter alleged that certain G&A costs are incurred disproportionately for Medicare patients with the result that Medicare allegedly pays a disproportionately low share of total G&A costs, neither this commenter nor any other commenter presented any evidence in support of these assertions. Thus, there is no reason to believe that any of the costs referred to by the commenter distorted the presumed balance of the G&A pool in favor of the Medicare program or contributed to the shifting of G&A costs to non-Medicare patients. The following responds to the G&A costs discussed specifically by the commenter

(1) *Administrative Costs*—The commenter asserted that several items of costs are disproportionately borne by non-Medicare payors: program changes that have increased administrative costs; compliance costs to meet health and safety standards; and costs of complying with the 1979 malpractice rule. The commenter presented no evidence that these costs are uniquely borne by Medicare patients. Similarly, the commenter submitted no evidence that these costs would offset the imbalance of the G&A pool caused by malpractice costs much less that they distorted the G&A pool in favor of the program. The commenter has merely described certain costs incurred under the Medicare program and simply concluded—without any supporting evidence—that these costs caused an imbalance in the G&A pool in favor of Medicare or resulted in shifting G&A costs to non-Medicare patients. Absent the requisite supporting evidence, we have no basis to conclude that the "administrative costs" referred to by the commenter disrupt the presumed balance of the G&A pool.

The compliance costs referred to by the commenter were described in a 103-page Final Report of the Office of Health Regulation to the Secretary of Health and Human Services, entitled, "The Reform of Regulations in the Department of Health and Human Services: Proposals for Change" (January 9, 1981) ("1981 Report"). The 1981 Report states: "Compliance costs, for the number of hospitals assumed by HSQB (Health Standards and Quality Bureau) to be out of compliance with the proposed standards, may be as high as $300 million." (1981 Report at 81.) The $300 million refers to an undefined estimate of the cost of requiring compliance with health and safety standards included in an NPRM, dated June 20, 1980, published in the **Federal Register** (45 FR 41794). A new revised proposal was published as an NPRM dated January 4, 1983 (48 FR 299). The final rule related to that proposal was published June 17, 1986 (51 FR 22010). Because the $300 million estimate was based on the January 4, 1983 NPRM and the final rule contained less stringent health and safety standards than the NPRM, the commenter's reliance on the estimated amount is no longer valid. More importantly, the commenter presented no evidence that the compliance costs under the NPRM or the final rule distorted the balance of the G&A pool in favor of the program or resulted in the shifting of the costs of the G&A pool to non-Medicare patients. Since costs incurred by providers to comply with health and safety standards benefit, in the absence of evidence to the contrary, all patients equally, we have no reason to believe that these compliance costs distorted the balance of the G&A pool or required separate apportionment.

The accounting firm's description of the 1979 malpractice rule, which the commenter supplied, contains a description of the data required to be maintained by providers under that rule (e.g., name of patient, identification number of claim, date of payment, and amount of payment). Maintaining these data would have represented a normal expectation of any provider with malpractice losses, and therefore, certainly did not create an unnecessary burden for providers. Nevertheless, the commenter presented no evidence that Medicare patients incurred more than their fair share of these costs or that the costs distorted the balance of the G&A pool in the program's favor or resulted in the shifting of costs of the G&A pool to non-Medicare patients.

(2) *Uniform Billing*—The commenter asserted that HCFA incrementally strayed from the uniform billing concept to one that requires special billing for Medicare causing one claim form to be prepared only for Medicare and another for all other payors. Examples given by the commenter are (a) detailed billing for laboratory outpatient charges, and (b) HCFA allowing each intermediary discretion to completely remove professional component charges from hospital bills. The commenter concludes that providers are now paying for claim forms that provide no advantage to the hospitals any longer.

It is not true that providers have been burdened with the cost of a useless form. Contrary to the commenter's assertion, the uniform bill continues to be effectively used by providers with some additional information required. In no way does this additional information lessen the effectiveness of the uniform billing form.

The commenter also asserted that HCFA has caused a shifting of claims processing costs to hospitals by requiring them to prove that certain questions were asked Medicare beneficiaries for the purpose of coordinating benefits among various Federal programs, such as Black Lung Benefits and programs of the Veterans Administration. The commenter also gave other examples to attempt to show how the billing process has been used to gather information without regard to the cost or reasonableness to hospitals (i.e., the abstract to be sent with all cardiac pacemaker implants and the fact that hospitals must inform intermediaries that the beneficiary is a health maintenance organization (HMO) enrollee or a hospice patient receiving care for another illness not related to why they are a hospital patient).

None of the above-described examples furnished by the commenter supports the alleged shifting of claims processing costs to non-Medicare patients or show that the costs caused an imbalance in the G&A pool in favor of Medicare. Absent evidence to the contrary, we have no basis to conclude that the costs referred to by the commenter were borne inequitably as between Medicare and non-Medicare patients.

(3) *The Medicare Cost Report*—The commenter described much of the history of the development of the Medicare cost reports and concluded that the program has failed to pay its fair share of the costs incurred by providers that are associated with these cost reports.

Because there has been a number of changes in the Medicare cost report required by changes in legislation and regulations, HCFA has explored ways to reduce the reporting burden, as was explained in the letter dated March 25, 1985 from HCFA, which was cited by the commenter. However, the commenter failed to point out that each change in the Medicare cost report does not require the development of an entire new data base. Most changes in the Medicare cost report simply involve a change in the manner in which certain data are reported, or at most, require some additional data. More importantly, the commenter presented no evidence that the costs incurred by providers to comply with Medicare cost reporting requirements distorted the G&A pool in favor of Medicare or that G&A costs were shifted to non-Medicare patients.

(4) *Computer Costs*—The commenter asserted that hospitals had to completely reprogram their computers and develop new computer programs in response to program changes required by the TEFRA rate-of-increase limits established by Pub. L. 97-248 and PPS. The commenter concluded that Medicare has failed to pay its fair share of computer costs associated with these program changes.

The commenter did not explain that most of the data elements associated with the TEFRA rate-of-increase limits and PPS computer programs were already made part of the hospital's other computer programs prior to the rate-of-increase limits and PPS. For example, the coding system used under the rate-of-increase limits *and* PPS computer programs to identify the patient's diagnosis was already in use. Although some computer program changes were necessary to accommodate the rate-of-increase limits and PPS, the commenter has not shown that these changes caused an imbalance in the G&A pool in favor of the program or resulted in shifting G&A costs to non-Medicare patients. Absent evidence to the contrary, we have no basis to conclude that the costs referred to by the commenter were not borne equitably by Medicare and non-Medicare patients.

(5) *HCFA's Statements in the Interim Final Rule About Specific G&A Costs*—The commenter disputed HCFA's position in the preamble to the interim final rule that it overpays for credit/collection costs. The commenter asserted that HCFA has no basis for its position, because hospitals are required to use the same credit/collection efforts for Medicare patients as for all other patients.

The commenter has misunderstood this program requirement. The collection effort required for Medicare patients does not have to be the same as for all non-Medicare patients. Rather, the collection effort for Medicare patients must only be the same as the collection effort for non-Medicare patients with respect to a *like amount* of money owed. Thus, a provider is not prohibited from applying greater collection effort to non-Medicare patients if the amounts involved are greater than the amounts due from Medicare patients. Many non-Medicare amounts owed are greater than Medicare amounts "because the underlying services are not covered by Medicare." (*See*, 51 FR 11166, col. 2.) That is, amounts owed by non-Medicare patients without insurance coverage by a third-party payor or with only partial insurance coverage by a third-party payor would typically be greater than the relatively small deductible and coinsurance amounts owed by Medicare patients. Accordingly, providers would apply greater collection effort, and thereby incur greater collection costs for non-Medicare patients.

The commenter also asserted that HCFA stated wrongly that providers receiving payments under PIP are not required to submit bills immediately (*see*, 51 FR 11166 (col. 2)) because providers on PIP must submit bills timely.

We maintain that there is *an* important difference between a requirement for "immediate" submission (as a condition for payment) as opposed to one for "timely" submission of bills (after payment has been made). Our purpose in referring to PIP was to highlight a payment mechanism, available for many years, that has assisted providers in more efficiently managing their bill processing by establishing level interim payments without the need for immediate submission of bills prior to payment. The timely submission of bills requirement historically relates to the need for intermediaries to monitor, on a continuous basis, the accuracy of the interim payments for specific services.

In addition, the commenter asserted that HCFA, through its intermediaries, has been forcing hospitals to do its computer claims key punching by requiring hospitals to submit paperless claims with computer terminals installed in hospitals to process Medicare claims.

The commenter's assertions in no way detract from our statements in the interim final rule about credit and collection costs and PIP. Moreover, as explained above in detail, the commenter offered no evidence that any of the foregoing costs caused an imbalance in the G&A pool in favor of the Medicare program or resulted in shifting G&A costs to non-Medicare patients. Absent evidence to the contrary, we have no basis to conclude that the specific costs discussed by the commenter disrupt the presumed balance of the G&A pool and were not borne equitably by Medicare and non-Medicare patients.

3. The Medicare Hospital Apportionment Methodology

*Comment:* It is unfair to the hospital industry to develop an apportionment methodology based upon a hypothetical insurance industry rating system.

*Response:* We are obligated to apportion malpractice insurance costs accurately between Medicare and non-Medicare patients—not to establish premium rates or actual premiums. Section 1861(v)(1)(A) of the Act requires us to take insurance industry practice into account in the course of determining the appropriate apportionment methodology. The comments and information on the 1985

NPRM convinced us that a reasonable approach to apportioning malpractice costs was to divide total premium cost into two components that, as described above, reflect Medicare utilization of the underlying services by apportioning the risk component on a special basis and returning the administrative portion to the G&A pool for apportionment on a utilization basis.

In developing this methodology, we recognized that the insurance industry does not employ a single premium-setting methodology. Rather, hospital malpractice insurance premiums are established on a variety of different bases. Nonetheless, the hospital methodology established by the 1986 rule bears certain similarities to insurance industry premium-setting practices. For example, the use of the national Medicare malpractice loss ratio in the scaling factor formula is similar to the use of experience data in the three main stages of the industry's premium-setting process. (*See*, 51 FR at 11168, col. 3.) However, such similarities between insurance industry premium-setting practices and our apportionment methodology do not mean that our methodology is impermissibly based upon a hypothetical insurance industry rating system. Rather, as explained above, we have simply complied with the statutory requirements in considering industry practice in the course of designing an apportionment policy that precludes providers from realizing a windfall under the pre-1979 utilization method.

*Comment:* In its prospective application, the 1986 rule will apply primarily to facilities excluded from the prospective payment system: Children's hospitals; psychiatric hospitals, alcohol/drug facilities, long-term care hospitals, rehabilitation facilities, and outpatient services. According to the commenter, there is no rational basis for prospective application of the 1986 rule because: (1) The HCRIS data, upon which the scaling factor formula is partially based, applies only to short-term acute care facilities; and (2) malpractice premium rates are lower for facilities excluded from the prospective payment system than for short-term acute care hospitals, and the "relativity" of the former to the latter has been dropping.

*Response:* As discussed in our response to a related comment on the HCRIS data, the 5,882 hospital HCRIS file relied on in developing the national Medicare malpractice loss ratio included data on 346 identifiable hospitals excluded from PPS, which is approximately half of the universe of such hospital in the United States. However, as explained in section II above, in order to be more consistent and equitable, we plan to develop two sets of values for the three main terms in the scaling factor formula for short-stay hospitals and for hospitals excluded from PPS. Thus, the formula values applicable to short-stay hospitals is now based on data exclusively from short-term acute care hospitals. Until we develop the separate set of values, the formula values established in the interim final rule, on the basis of data from short-stay hospitals and excluded facilities, will be applied to hospitals excluded from PPS.

The commenter submitted a summary description of ISO data that allegedly showed a "relativity" of malpractice rates, such that rates for excluded hospitals were lower than for short-stay hospitals. Subsequently, we secured the underlying ISO data from the commenter.

Based on our analysis of the ISO data, we do not believe that these data show that malpractice insurance premium rates for hospitals excluded from PPS are lower than for hospitals subject to PPS or that the alleged "relativity" of the former to the latter is dropping. The commenter submitted data based on an ISO circular of March 9, 1984 titled "Hospital Professional Liability Rate Revision Status Report" and a circular of March 13, 1986 titled "Hospitals *[sic]* Professional Liability Class Relativity Information Released." The 1984 circular revises the rate relativities calculated by ISO as a guide to subscriber company premium-setting for specific classes of facilities. The 1986 circular publishes recent ISO data on hospital malpractice insurance. The commenter accurately represents the changes in several combinations of classes from the 1984 circular, although, for reasons discussed below, we are not persuaded by the commenter's use of data from the 1986 document. To the extent that insurance companies follow ISO recommendations in setting their premiums, these relativities would reflect relative prices between classes of providers and changes in the relativities may lead to relative price changes.

However, there are several reasons to doubt the relevance and accuracy of the submitted data to the comparison of malpractice insurance costs in hospitals subject to PPS and those excluded from PPS. First, although the commenter asserts that the classes of facilities examined, are excluded hospitals, in fact one and possibly two of the three categories presented are based on ISO facility classes that do not include hospitals. Material prepared by a consultant to the commenter indicates that the commenter constructed its "Nursing Home and Long Term Care Beds" category from ISO classes for "Convalescent or Nursing Homes." The ISO definition of these classes are at best ambiguous as to whether they include hospitals. The commenter constructed its "Sanitarium and Rehabilitation Beds" category from ISO classes for "Sanitariums or Health Institutions." This appears to be an incorrect use of the data by the commenter since ISO explicitly states that institutions in these classes are "not hospitals". (ISO, "Commercial Lines Manual—Division Six—General Liability; Professional Liability Subdivision—Section II—Medical Professional," 5th ed., 1980, pp. GL–33, 34).

A second reason to doubt the relevance and accuracy of the commenter's data is the long term trend in rate relativities. The commenter derived the data from a comparison of prior year relativity data, new 1984 relativities recommended by ISO, and a seven year average relativity for the 1977–1983 period. (*See*, ISO, *Op Cit.*, 1984, Attachment III and ISO, *Op. Cit.*, 1986, Exhibit 1). However, examination of relativities for individual years shows an erratic pattern over the 1977–1983 period (*See*, ISO, *Op. Cit.*, 1986, Exhibit 2). To the extent that insurance companies set premiums based on shorter term or more current information than the ISO's long term recommendations, relative prices may not show the pattern of systematic decline suggested by the commenter.

Finally, we question the appropriateness of the commenter's comparison of ISO recommended relativities for the post–1984 period with allegedly "current" relativities calculated from the most recent ISO data. First, the ISO data underlying the "current" relativity figures in fact pertain to the 1977–1983 period and are not post–1984 data. Second, since ISO makes judgmental recommendations in setting its recommended relativities, it is inappropriate to compare the recommended values with the "indicated" values, which ISO calculates from its data. This gives a misleading impression of a statistical trend over time. In fact, when we replicated the commenter's "current" relativities for the same categories of facilities using 1977–1981 data (the data underlying the ISO 1984 recommendation) we found little difference from the "current" value, which the commenter calculated from 1977–1983 data. This suggests that,

contrary to the table submitted by the commenter, the relative price of malpractice insurance of excluded hospitals did not fall rapidly from 1984 to 1986. In fact, this comparison of indicated relativities based on data for 1977–1981 and 1977–1983, respectively, shows little change in the relative price of malpractice insurance between the categories of facilities under study and non-profit hospitals.

a. *The premium breakdown.*

*Comment:* The segregation of the "administrative" and "risk" components of the premium appears to be based on HCFA's study of one insurance carrier rather than an analysis of the entire industry. The single firm studied may not be representative of the industry, and the study was neither performed on a random basis nor is it statistically valid.

*Response:* The preamble to the interim final rule generally explains our separation of the administrative and risk components of total premium cost. (*See,* 51 FR 11144–45.) Our specific calculations are based on a study conducted by the actuarial consultant retained to aid the analysis of comments on the 1985 NPRM. (*See generally,* R.R. at 2859–65.) The consultant based his recommendations on a consideration of data from ISO, the St. Paul Fire and Marine Insurance Company (the largest writer of hospital malpractice insurance), and two hospital-owned insurers. Rather than gathering information on a random basis, the consultant secured data from companies that are nationally representative of insurance industry trends. While the consultant considered trying to secure additional data, he decided ultimately that doing so was unnecessary. (*See,* R.R. at 2862.) Because the database includes the largest hospital underwriter and two hospital-owned insurers, we believe that it is statistically valid and representative.

*Comment:* One commenter disagreed with the breakdown of the hospital premium in the 1986 rule on the grounds that certain unspecified costs were excluded and the segregation and payment methodologies applied to the two components have no relationship to insurance industry practice. The commenter suggested that if HCFA were truly interested in obtaining the actual administrative costs of insurance companies that issue malpractice insurance, then the agency should require the appropriate carriers to prepare cost reports.

*Response:* In determining the breakdown between the administrative and risk components, we took account of all of the specific insurer expenses necessary to account for total premium cost. (It is unnecessary to include an amount for profit because the return on the insurer's investment of the premium is adequate for purposes of generating the insurer's profit. *See,* 51 FR 11145 (col. 2).) While premiums ultimately are based on these subcosts, the insurance industry—unlike the Medicare program—has no need to segregate the premium explicitly into components because it does not have to establish a payment methodology that accurately apportions total cost between two classes of payors. As explained above, the breakdown established by the 1986 rule is based on reliable and representative industry data. Thus, there is no need for additional information from insurance carriers. Also, there is no basis in law or regulations that would permit HCFA to require hospital malpractice insurance carriers to prepare "cost reports" of their actual administrative costs.

b. *The scaling factor formula.*

*Comment:* The 1986 rule is highly complex and is based on a formula and assumptions that the hospitals do not understand.

*Response:* While we understand that the scaling factor formula for the risk component could be considered complex from a mathematical standpoint, any such complexity is unavoidable here, just as with any other policy or program based on actuarial concepts and statistical analyses. More importantly, the basic concepts underlying our hospital apportionment policy are straightforward. By dividing the premium into administrative and risk components, the 1986 rule distinguishes subcosts that are largely unaffected by the number and size of malpractice claims from those that are significantly affected by such factors. Because Medicare disproportionately under-utilizes the services underlying the subcosts affected by claims experience, it is appropriate to use the scaling factor formula to "discount" Medicare's share of those subcosts. Although the formula, taken as a whole, may seem complex, each of its terms was explained in detail in the preamble to the interim final rule. (*See,* 51 FR 11146–48.) Specific comments about the scaling factor formula and its terms are addressed in this document.

*Comment:* The "U" terms and the "u" term in the scaling factor formula are misstated because they include labor and delivery room days in total patient days, thus understating Medicare utilization. Two appellate courts have invalidated the program instruction that requires inclusion of labor and delivery room days in total patient days.

*Response:* Medicare program policy mandates the inclusion of labor and delivery room days in the count of inpatient days used in calculating program cost reimbursement. The "u" term of the scaling factor formula does include labor and delivery room days since the value of this term is based on a ratio of the specific hospital's total Medicare-covered inpatient days of care to its total inpatient days of care. (*See,* 51 FR 11146.)

The $U_1$ and $U_2$ terms are calculated from HCFA data on Medicare short-stay hospital days and AHA data on short-stay hospital inpatient days for all patients. (51 FR 11147–48 and R.R. at 3501, 3505.) AHA defines inpatient days as the "[n]umber of adult and pediatric days of care, excluding newborn days of care, rendered during the entire reporting period" (AHA, *Hospital Statistics,* 1981 ed., Chicago, IL: AHA, 1981, with equivalent definitions in prior and later years). Based on our understanding that hospitals do not report labor and delivery room days separately to the AHA for the AHA Annual Survey, we assume that inpatient days, as defined in the AHA Annual Survey, include labor and delivery room days. No evidence has been submitted by commenters to the contrary. Thus, the $U_1$, $U_2$, and u terms of the scaling factor formula include a consistent treatment of labor and delivery room days.

In addition, we believe that labor and delivery room days are properly included in the $U_1$, $U_2$, and "u" terms in the scaling factor formula. As numerous commenters recognized in the 1979 rulemaking and the 1985–86 rulemaking, malpractice insurance costs are incurred to protect against a hospital's overall risk of malpractice loss, and thus these costs benefit all patients. Indeed, the risk associated with the labor and delivery room days of the hospital's inpatients is particularly serious in comparison with many other departments.

Although the principle of including labor and delivery room days in the count of inpatient days used in calculating program cost reimbursement has been the subject of litigation, it still generally remains program policy. However, if a hospital has a final, nonappealable judgment that provides for the exclusion of labor and delivery room days from total routine inpatient days for a particular cost reporting period, we will also exclude labor and delivery room days from the "u" term in applying the 1986 rule to the hospital's cost reporting period.

Such an exclusion of labor and delivery room days from the "u" term would not affect the "U" terms that apply to all hospitals. Since we lack, at this time, a reliable basis to exclude labor and delivery room days from the $U_1$ and $U_2$ terms, we would have no basis for adjusting these terms for a hospital with a final, nonappealable judgment. In any event, any resulting increase in the "U" terms (albeit small) could only serve to disadvantage a hospital in the resulting application of the scaling factor formula because any reimbursement increase produced by the change in the "u" term would be diminished if "$U_1$" and "$U_2$" were increased too.

*Comment:* The scaling factor formula presumes a relationship between paid claims identified from the NAIC and HCRIS data, on the one hand, and Medicare utilization data, on the other hand. The commenter asserted that the relationship implicit between these data in the rule has several problems. First, the commenter stated that the record does not support a relationship between these data. Second, use of NAIC data from 1975–1978, HCRIS data from 1978–1983, and Medicare utilization data from 1976–1982 to develop parameters for a single formula inappropriately combines information on different patient populations. Third, possible changes in the claims tail for Medicare and non-Medicare patients subsequent to the compilation of the NAIC data make use of the NAIC data in the scaling factor formula, which is effective May 1, 1986, inappropriate especially since the claims tail is much longer than indicated by the NAIC data.

*Response:* As explained below, we believe that, in general, there is an adequate relationship between the data underlying the three main constants in the scaling factor formula. (*See generally*, 51 FR 11146–48.) However, for the reasons set forth in section II. above, we plan to develop separate sets of formula values for short-stay hospitals and for hospitals excluded from PPS, and to have each set of values based exclusively on data for the type of hospitals in question.

In the preamble to the interim final rule (51 FR 11164), we presented comparisons of the HCRIS-derived Medicare claims-paid ratio and the HCFA and AHA-derived Medicare utilization rate. These data show that the loss ratio is a stable fraction of the utilization rate for years in which comparable data are available. The loss ratio varies between 27 percent and 34 percent of the Medicare utilization rate with no apparent trend. When such a stable relationship exists, the combination of loss ratio data from HCRIS and utilization data from HCFA and AHA sources is appropriate. Since the NAIC data are the best information available on the claims tail and the ratio of average ALAE to average indemnity, and since those data pertain to a period overlapping the other data, it also is appropriate for use in the scaling factor formula.

The NAIC data are particularly valuable because they include reliable information on the different claims tails for Medicare and non-Medicare patients. The NAIC data show that the claims tail for claimants 65 years of age and over is 17 months, as compared to 31 months for claimants under 65. (*See*, 51 FR 11147.) The commenter suggests that changes in these values subsequent to the date of the NAIC data (1975–1978) make use of results from the NAIC data inappropriate in the 1986 rule. However, the commenter misunderstands the use we made of our analysis of the NAIC data. The claims tail findings, which are based on the NAIC data, were incorporated in the rule to ensure the accuracy of the $U_1$ and $U_2$ parameters of the scaling factor formula. As explained in the preamble to the interim final rule (51 FR 11147–48), the $U_1$ and $U_2$ terms are constants that represent the national Medicare patient utilization rate for years properly related to the periods underlying the HCRIS-derived adjusted national Medicare malpractice loss ratio (*i.e.*, 1978 through 1982 and 1979 through 1983). The $U_1$ term was adjusted for the claims tail for Medicare patients and the $U_2$ term was adjusted for the claims tail for non-Medicare patients. (*Id.*) Because the NAIC data are the best national evidence available on claims tails and are for a period that overlaps the 1976–1982 Medicare utilization data and HCRIS data, it is appropriate to use them. Furthermore, due to its national character the NAIC data are more representative and credible than the commenter's largely unsubstantiated claim that the claims tail is "much longer" than is indicated by the NAIC data. Finally, although the 1986 rule is effective May 1, 1986, it applies to cost reporting periods beginning on or after July 1, 1979.

*Comment:* The HCRIS data tapes show that malpractice losses, like premiums, vary significantly by State. The commenter submitted an exhibit describing the purportedly "significant differences by State between actual Medicare malpractice loss experience for the State's average Medicare utilization to the ratio developed by the scaling factor formula." The commenter concluded that the scaling factor formula, based on a national ratio of Medicare malpractice losses to total losses, fails to reimburse hospitals properly, even considering Medicare utilization.

*Response:* As explained in the preamble to the interim final rule (51 FR 11173, col. 2), the experience rating and rate relativity stages of the premium-setting process preclude a meaningful comparison of a State's overall Medicare utilization rate with its overall premium levels.

The exhibit submitted by the commenter presents the following information for each State: The State's alleged "average Medicare utilization;" a number that appears to be the ratio of Medicare malpractice losses to total malpractice losses "for the State's average Medicare utilization;" and a number which it calls "HCFA Nat'l Ratio". Sources and years for the data are not specified. The exhibit emphasizes the contrast between each State's alleged Medicare/total malpractice loss ratio and its "HCFA Nat'l Ratio" by subtracting the latter from the former and presenting the result as "Difference".

Upon examination of several States, it appears that the commenter has calculated the so-called "HCFA Nat'l Ratio" for each State by calculating the total Medicare reimbursement share of premiums (risk and administrative components) for the alleged Medicare utilization presented for the State by using Table 1 of the interim final rule (*See*, 51 FR 11189–90.) For example, the commenter asserts that Alabama has a 47 percent utilization rate and a 23 percent malpractice loss ratio. Medicare's share of total premium cost for a hospital with 47 percent utilization would be approximately 20 percent. (*See*, 51 FR 11189, Table 1.) According to the commenter, the "difference" between Alabama's alleged loss ratio (i.e., 23 percent) and its alleged "HCFA Nat'l Ratio" (i.e., 20 percent) is 3 percent.

We fail to see how the exhibit supports the commenter's claims that the 1986 rule yields inadequate Medicare reimbursement and that the pre-1979 utilization method is somehow preferable. First, the commenter did not substantiate the alleged average Medicare utilization rate and State loss ratio. Second, the commenter's contrasting of the alleged State loss ratio and the "HCFA Nat'l Ratio" suggests that the appropriate norm against which we should compare other apportionment statistics is the State-specific loss ratio. The commenter's suggestion that State-specific loss ratios

should figure in an apportionment policy is inconsistent with the commenter's apparent belief that the pre-1979 utilization method is the preferable policy.

c. *Reimbursement results and statutory authority.*

*Comment:* Excerpts from the table in the preamble to the interim final rule (51 FR 11189–90) call into question whether the methodology for reimbursement of hospital malpractice cost produces a consistent, logical relationship between premiums, Medicare utilization, and Medicare reimbursement. For example, under the 1986 rule, a hospital with a 40 percent Medicare utilization rate receives reimbursement for 16.14 percent of its premium cost while a provider with 90 percent Medicare utilization receives 70.41 percent. Another commenter stated that the 1986 rule produces absurd results because hospitals with average Medicare utilization receive much less than they would have been paid under the pre-1979 utilization method.

*Response:* The commenter apparently questions the reasonableness of the hospital methodology established by the 1986 rule because Medicare's share of the risk component does not increase at the same rate as increases in Medicare utilization. In other words, under the 1986 rule, a one percentage point increase in Medicare utilization is not associated with a constant increase in Medicare's share of the risk component. (Of course, there is a direct relationship between increases in Medicare utilization and Medicare's share of the administrative component).

We designed the scaling factor formula so that, for a hospital with a Medicare utilization rate equaling the national Medicare utilization rate, a proportion of the risk component of its total malpractice premium cost roughly equal to the adjusted national Medicare malpractice loss ratio would be apportioned to Medicare. [The proportion of the risk component *is* the scaling factor, which ranges from 0.00 percent of the risk component to 100 percent *of that component.* (*See,* 51 FR 11189–90, Table 1 (col. 2).) By contrast, Medicare reimbursement of the risk component ranges from 0.00 percent to 91.5 percent of *total premium cost* (*See,* 51 FR 11189–90, Table 1 (col. 3).) As a result, for a hospital with approximately a 38.5 percent Medicare utilization rate the formula apportions approximately 13.2 percent of the risk component to Medicare. (*See,* 51 FR 11189, Table 1 (col. 2).) Under the 1986 rule the program then reimburses 91.5 percent of this amount for the risk component, which equals approximately 12.1 percent of the total premium cost. (*See,* 51 FR 11189, Table 1 (col. 3).) Under the rule the program also reimburses, on a utilization basis, 38.5 percent of the administrative component (*i.e.,* 8.5 percent of total premium cost). This yields reimbursement equal to approximately 3.3 percent of the total premium cost (.085 × .385), for a total reimbursement of approximately 15.4 percent of premium cost for such a hospital. (*See,* 51 FR 11189 (cols. 4, 5).)

The basic rationale for this apportionment methodology (explained above) implies three requirements. First, a hospital with a zero Medicare utilization rate should not be reimbursed for its premium. Second, a hospital with a 100 percent Medicare utilization rate should be reimbursed for its entire premium. Third, a hospital with approximately the national average Medicare utilization rate (adjusted for claims tails) should be reimbursed by Medicare a proportion of its premium risk component equal to the adjusted Medicare loss ratio. It is not mathematically possible to satisfy these three requirements and still have the scaling factor increase at a constant rate. If only the first and second requirements were satisfied with a constant rate of increase, the resultant methodology would be tantamount to reimbursement on a utilization basis. If only the first and third requirements were satisfied with a constant rate of increase, then the scaling factor for hospitals with 100 percent Medicare utilization would inappropriately be less than 1.00. If only the second and third requirements were satisfied with a constant rate of increase, the scaling factor would inappropriately be zero for some hospitals with Medicare utilization greater than zero. These results would be inappropriate and inequitable.

Given these threshold requirements, the scaling factor formula recognizes that Medicare's share of the risk component should increase at a rate less than the increase in Medicare utilization from zero percent Medicare utilization up to the national Medicare utilization rate adjusted for claims tails. That is, the scaling factor would increase from only 0.00 percent and 13.2 percent during the interval between 0.00 percent utilization and 38.5 percent utilization. (*See,* 51 FR 11189, Table 1 (cols. 1, 2).) Conversely, starting from the national Medicare utilization rate, Medicare's share of the risk component should increase more rapidly than the rate of increase in Medicare utilization, culminating in 100 percent reimbursement for a hospital with 100 percent Medicare utilization. That is, the scaling factor would increase from 13.2 percent to 100 percent during the interval between 38.5 percent utilization and 100 percent utilization. *(Id.)* In this way, the scaling factor formula accounts for the major disparity between the national Medicare utilization rate and the national Medicare malpractice loss ratio, among other extraordinary disproportionalities, in a manner that satisfies applicable statutory requirements and is equitable.

Finally, we rejected previously (51 FR 11180–81) the claim that the 1986 rule produces arbitrary reimbursement results simply because the results diverge from those yielded by the pre–1979 utilization method. The commenter did not explain why it disagreed with our position, and thus our analysis remains unchanged.

*Comment:* The Department cites no authority or data to support the split of the malpractice premium into an administrative component (8.5 percent) and a risk component (91.5 percent).

*Response:* We have already summarized the data relied on to support the premium split established by the 1986 rule. Ultimately, section 1861(v)(1)(A) of the Act authorizes this division of total premium cost. The statute requires that reimbursement be limited to Medicare's share of total premium cost. The 1986 rule satisfies the statutory mandate by segregating subcosts that vary with the frequency and amount of malpractice claims (that is, risk component) and those that are relatively fixed, regardless of claims filed or paid (that is, administrative component). Examples of the former cost elements are anticipated losses themselves and the expenses of defending and processing claims. Examples of the latter are overhead costs and costs of risk management programs. Because Medicare patients disproportionately under-utilize the services underlying the risk component, the statute authorizes apportioning those costs on the special basis established by the 1986 rule.

*Comment:* One commenter asserted that hospitals must build in malpractice insurance costs to their charges and that Medicare's alleged "manipulation" of malpractice reimbursement policy results in an unfair allocation of these costs among different payors. According to the commenter, the 1986 rule will result in overcharging and undercharging other payors for these costs, depending upon the amount yielded by specific application of the formula.

*Response:* Far from "manipulating" reimbursement policy, the 1986 rule responds to the need to remove

malpractice insurance from the G&A pool. (*See*, 51 FR 11158–68.) The 1986 rule rationally connects apportionment policy to premium subcosts in a way that accounts for differences between them with respect to the effect of the frequency and size of malpractice claims and associated loss adjustment expense. (*See*, 51 FR 11144–45, 11168–69.)

Our sole intent in issuing the rule is to ensure only that Medicare pays its fair share of a provider's malpractice costs. In the preamble to the interim final rule, we explained our determination that the 1986 rule satisfies applicable statutory requirements. (*See*, 51 FR 11180–83.)

d. *The actuarial consultant.*

*Comment:* The material produced by the actuarial consultant contains endless qualifications and limitations and its accuracy has been tested only by HCFA, which knew the results it wanted before hiring the actuarial consultant.

*Response:* The caution exhibited in the consultant's materials reflects the complexity of the issues, the fact that the insurance industry does not use one method to determine premiums, and the fact that industry premium-setting practices do not determine the proper apportionment policy. Our determination that it was necessary to remove hospital malpractice insurance costs from the G&A pool and apportion them in a manner that reflects Medicare's disproportionately low utilization of some of the underlying services was reached independently of any advice received from the actuarial consultant. As explained in the preamble to the interim final rule (51 FR 11144), the actuarial consultant only provided technical assistance in three areas.

*Comment:* One commenter quoted at length from a letter written by the actuarial consultant retained by HCFA in the development of the 1986 rule. In that letter, the consultant stated that the most important point made by commenters on the 1985 NPRM was that the insurance industry does not take a hospital's Medicare utilization rate into account in the course of setting the premium. The consultant stated that the HCRIS data strongly suggest that rates should take into account a hospital's specific Medicare utilization rate. The consultant then suggested that while the problem could be ameliorated by the experience rating of specific hospitals, experience rating might not suffice in each case. The consultant concluded that "the retroactive application of a formula such as I have suggested may not produce complete equity." After expressing his opinion that the insurance industry should be encouraged to alter its premium-setting practices to reflect specific providers' Medicare utilization rates, the consultant further noted that "the formula is mathematically equivalent to the assumption that such a rating system does exist."

The commenter asserted that the consultant's statements show that: (1) Retroactive application of the scaling factor formula yields reimbursement results based on criteria that are not related to insurance industry methods in setting the premium, and (2) instead of paying hospitals' actual costs, as the Medicare statute mandates, the 1986 rule retroactively suggests how insurers should have set premium costs. The commenter concluded that, in establishing the 1986 rule, HCFA effectively ignored the recommendation of its own consultant that retroactive application of the rule would not provide equity to hospitals because the reimbursement policy differs from industry practices.

*Response:* We disagree with the commenter's interpretation of an isolated comment in a single letter written by the consultant. The commenter failed to recognize that the consultant's comment pertained essentially to the premium-setting process instead of the apportionment problem at issue in the rulemaking. Thus, the consultant specifically noted that his remarks constituted a "comment that is somewhat out of context." (*See*, R.R. at 2851.)

Put in proper perspective, the consultant actually suggested that, viewed from the standpoint of insurance industry premium-setting practices, the use of a premium breakdown and scaling formula would presuppose a hypothetical rating system that explicitly accounted for a hospital's specific Medicare utilization rate. (*See*, R.R. at 2851–2852.) Contrary to the commenter's apparent belief, however, the consultant was well aware that the specific premium breakdown and scaling factor formula actually used in the 1986 rule were designed for the purpose of apportioning premium costs (at whatever level) rather than setting premium rates. (*See*, for example, R.R. at 2816, 2822–2829, 2833, 2837–2838, 2865–2868.)

Far from expressing any concern about whether the specific premium breakdown and scaling factor formula established by the 1986 rule would produce, when properly viewed from the standpoint of the apportionment problem, fully equitable results, the consultant stated that the scaling factor would redress precisely that apportionment problem. Thus, the consultant stated:

> There is a major disproportionality between Medicare losses and non-Medicare losses. *In order to determine Medicare's proper share of the part of premium cost that is related to losses, it is necessary to take account of this disproportionality. In addressing the problem, I considered what I would do if, for purposes of establishing hospital malpractice insurance premiums, I had to establish rates that reflect the different loss levels of Medicare and non-Medicare patients. Essentially, I considered how I would construct a rate relativity that distinguishes the different degree of risk posed by Medicare and non-Medicare patients. The formula recommended in my September 13, 1985 letter accomplishes this* by multiplying, in the numerator, the hospital's own Medicare utilization rate by the relative average Medicare risk level (i.e., the Medicare rate relativity); and by dividing that product by, in the denominator, the sum of the Medicare rate relativity plus the corresponding non Medicare rate relativity (i.e., the hospital's own non Medicare utilization rate multiplied by the average non-Medicare risk level). (*See*, R.R. at 2865–2866; emphasis added.)

Clearly, *the consultant used the premium-setting process as a model for addressing the apportionment problem.* While the 1986 rule bears certain similarities to the premium-setting process (51 FR 11168–69), it does not depend logically on that process. In particular, the Medicare hospital apportionment policy established by the 1986 rule does not depend on the existence of a hypothetical rating system that explicitly takes Medicare utilization into account. While the consultant *modelled* the scaling factor formula after a rating system that included a rate relativity for Medicare utilization, the consultant nowhere stated or implied that the validity of the new apportionment policy required the existence of such a rating system. Similarly, the consultant nowhere stated or implied that the equitableness of the reimbursement results produced by the new policy presupposed such a system.

4. Use of malpractice loss experience is a valid basis for partially determining Medicare's share of the predominant component of malpractice insurance premium cost.

*Comment:* One commenter, an insurance company, contended that its own premium setting process shows that malpractice insurers do not base premiums upon a hospital's projected patient mix between Medicare and non-Medicare patients nor upon past paid claims. The commenter asserted that its premiums reflect the estimated cost of potential claims that may be asserted during the policy period, expected expenses for all claims whether or not paid, claims payments, a margin to cover random deviations between

projected and actual claims, and a credit for investment income.

*Response:* As we explained in the preamble to the interim final rule (51 FR 11168–69), in contrast to the insurance industry, it is not our purpose to set malpractice insurance premiums. Rather, we must apportion premium costs between Medicare and non-Medicare patients in a manner that is fair and consistent with statutory requirements. While the insurance industry's premium setting practices do not address the apportionment problem, we have considered those practices in developing the 1986 rule. Although the insurance industry does not employ a single methodology, we have considered the main steps in setting the premium and the role of various provider characteristics. (*See*, 51 FR 11168, 11170.) We recognize that, at the present time, the industry does not specifically consider a hospital's projected patient mix between Medicare and non-Medicare patients in setting premiums. While a hospital's paid claims ordinarily are not considered either, its incurred losses usually are taken into account in the experience rating stage of the premium-setting process.

In establishing our apportionment policy, we must distinguish Medicare and non-Medicare costs in a way that accounts for the program's disproportionately infrequent and small claims. The experience rating stage of the premium setting process will usually result in lower premiums that reflect Medicare's under-utilization of the underlying services. (*See*, 51 FR 11170 (col. 1) and R.R. at 2869–2870). In any event, we must apportion malpractice insurance costs—at whatever dollar amount—equitably and in accordance with statutory requirements. As explained in the preamble to the interim final rule (51 FR 11172), the absence of a reliable database for incurred losses makes it reasonable to distinguish Medicare and non-Medicare patients in accordance with the HCRIS-derived national ratio, which determines part of the value of the "R" constant in the scaling factor formula.

*Comment:* Neither the HCRIS data nor the NAIC data support using a claims paid basis for apportioning malpractice insurance costs between Medicare and non-Medicare patients. This commenter stated that the Department's actuarial consultant acknowledged that incurred losses rather than paid claims are the basis upon which most premiums are set.

*Response:* The HCRIS data and the NAIC data, which partially determine the values of the three main constants in the scaling factor formula, are paid-claims data. We recognize that most experience rating is based on incurred losses rather than paid losses. (51 FR 11171.) One reason for this particular insurer practice is that the incurred losses approach yields more possible claims for experience rating purposes. However, while we have considered insurance industry premium setting practices in developing the 1986 rule, those practices do not necessarily determine the proper premium cost apportionment policy. The absence of incurred losses databases comparable in relevance, representativeness, and reliability to HCRIS and NAIC, make it reasonable to rely on the HCRIS and NAIC databases in adopting the 1986 rule. (*See*, 51 FR 11171 (cols. 2, 3), 11172–73.)

*Comment:* One commenter asserted that the Department's actuarial consultant stated that paid claims understate the full costs associated with insuring Medicare patients and that ALAE would be greater for Medicare than non-Medicare patients. According to the commenter, the consultant recommended incorporating a hospital's own Medicare utilization into the methodology in order to correct any inequities. The commenter stated further that, except for saving money, HCFA provided no explanation for ignoring costs actually incurred, particularly by underestimating ALAE expenses. The commenter also stated that the consultant and the Department assumed that since premiums include a factor for experience, hospitals with higher Medicare utilization rates would on the average have lower premiums. The commenter concluded that, under these circumstances, industry rate setting practices create the result that the Department purports to seek; that is, fair reimbursement for Medicare patients' share of malpractice premiums.

*Response:* In fact, the 1986 rule accounts fully for all aspects of malpractice insurance costs, and partially determines reimbursement on the basis of the hospital's specific utilization rate. (*See*, 51 FR 11144 45.) The actuarial consultant suggested that *the ratio of ALAE to paid losses (not ALAE itself)* would be greater for Medicare patients than for non-Medicare patients. (*See*, R.R. at 2822–2823, 2829, and 2856–2857.) Our analysis of the NAIC data revealed two relevant facts about ALAE. First, contrary to the commenter's assertion, average ALAE was, by itself, much lower for Medicare patients than for non-Medicare patients. (*See*, 51 FR 11163 (column 2).) This fact, among others, supports our decision to remove hospital malpractice costs from the G&A pool and apportion them separately.

Second, the NAIC data confirmed the consultant's suggestion that the ratio of ALAE to paid losses is greater for Medicare patients than non-Medicare patients. (*See*, 51 FR 11146.) As explained in the preamble to the interim final rule, we accounted for this fact by adjusting the national Medicare malpractice loss ratio. The HCRIS data showed that the ratio of Medicare paid claims to total paid claims was 11.8 percent. In order to account for the higher ratio of average ALAE to average indemnity for Medicare patients, we then raised the national ratio to 13.0 percent. (*See*, 51 FR 11146–47.) We next made a similar adjustment for ULAE, resulting in an adjusted national Medicare malpractice loss ratio (i.e., the "R" constant) of 13.2 percent. (*See*, 51 FR 11147.) Far from "saving money," as the commenter wrongly stated, these adjustments to the national ratio resulted in increased Medicare reimbursement. (*See*, 51 FR 11189, Table.)

Primarily due to the experience rating stage of the premium setting process, providers with higher Medicare utilization rates should have lower premiums. (*See*, 51 FR 11170 (col. 1) and R.R. at 2869–2870.) However, this consequence of the premium-setting process will not, by itself, result in a fair apportionment policy. The commenter's contrary assertion rests on a conflation of the level of premium cost with the apportionment of that cost (whatever its level). Although the experience rating of a specific provider would eventually affect the amount of premium for the institution, the resultant lowering of total premium cost could not serve to apportion that cost accurately between Medicare and non-Medicare patients. For example, if a provider with a high Medicare utilization rate received a premium reduction from $100,000 annually to $75,000 annually, the provider's lower premium cost would still have to be apportioned for Medicare reimbursement purposes. Contrary to the commenter's assertion, the $25,000 premium reduction would not, by itself, "result in a fair apportionment policy." Rather, the premium reduction would be an incidental feature of the provider's predominantly Medicare patient population.

As explained in the preamble to the interim final rule, no part of the premium-setting process is intended or equipped to apportion premium cost between Medicare and non-Medicare patients. While insurance industry

premium-setting practices do not address—much less mandate—a particular result as to the proper apportionment methodology, we carefully considered those practices in the course of devising the 1986 rule.

*Comment:* Hospitals purchase malpractice insurance to protect against the risk of future claims and random fluctuations in claims, regardless of whether the claims result in payment. Even as used in the scaling factor formula, malpractice loss experience is not a valid basis for determining Medicare's share of malpractice insurance costs. The 1986 rule ignores a substantial portion of premium costs, which are established on the basis of incurred losses and at least some of which are overutilized by Medicare patients.

*Response:* In the preamble to the interim final rule, we explained why the function or purpose of hospital malpractice insurance does not detract from our use in the 1986 rule of a claims-paid determinant of Medicare reimbursement. (*See,* 51 FR 11176–78.) Moreover, as explained above, we recognize that most insurers use incurred losses (i.e., pending or open claims) to calculate experience levels instead of using paid claims (i.e., closed claims). One reason for this particular insurer practice is that the incurred losses, approach results in more possible claims for experience rating purposes. In the absence of a reliable incurred losses data base of comparable relevance, representativeness, and reliability to HCRIS, we determined that it is acceptable to use paid losses for apportioning the risk component of total premium cost. (*See,* 51 FR 11171.)

Contrary to the commenter's assertion, our use of paid claims data does not mean that we have ignored significant parts of total premium cost that supposedly are overutilized by Medicare patients. Regardless of whether a claim is open or pending, ALAE is attributable to the claim and ULAE is incurred too. (*See,* R.R. at 2856, 2861, and 2864–2865.) Under the 1986 rule, both ALAE and ULAE are included in the risk component, which is apportioned on the basis of the scaling factor formula. The NAIC data show specifically that, contrary to the commenter's unsubstantiated assertion that Medicare patients overutilize other unspecified subcosts, the average ALAE for Medicare patients is much lower than for non-Medicare patients. (*See,* 51 FR 11163.) However, as explained above, because the ratio of average ALAE to average indemnity is higher for Medicare patients, we have adjusted the national Medicare malpractice loss ratio upward and thereby increased Medicare reimbursement accordingly. (*See,* 51 FR 11146–47.) Far from ignoring the loss adjustment expense (i.e., ALAE and ULAE) parts of premium cost, the 1986 rule takes these subcosts explicitly into account. Thus, the 1986 rule fully accounts for Medicare's share of premium subcosts related to both paid and pending claims.

*Comment:* The difference between the 1985 proposed rule and the 1986 rule is that the latter uses paid claims to calculate reimbursement to all providers, rather than using the provider's own paid claims ratio. There is no evidence in the record to establish that claims paid on a purported national basis are any more appropriate than claims paid on an individual basis as a means of apportioning premium costs between Medicare and non-Medicare patients.

*Response:* The commenter mischaracterizes the hospital apportionment methodology established by the 1986 rule, which reimburses premium costs in a manner that distinguishes subcosts on the basis of whether they are significantly affected by the frequency and amount of claims. The 1986 rule apportions the administrative component of total premium cost on a utilization basis. The risk component is apportioned in accordance with the scaling factor formula, which "discounts" the hospital's own Medicare utilization rate by relating the national Medicare utilization rate to the adjusted national Medicare malpractice loss ratio. As explained in the preamble to the interim final rule (51 FR 11182), section 1861(v)(1)(A) of the Act authorizes this use of the adjusted national ratio. Furthermore, the adjusted national ratio consists of the HCRIS-derived national ratio of Medicare losses as compared to total losses, as adjusted for ALAE and ULAE in accordance with the NAIC data. In view of the reliability of the HCRIS and NAIC data, we do not accept the commenter's unfounded assertion that the preamble to the interim final rule does not justify the 1986 rule's use of the national ratio.

*Comment:* One commenter disagreed with our determination that section 1861(v)(1)(A) of the Act requires the Secretary to consider—but not necessarily to follow—insurance industry practices in the course of developing reasonable cost reimbursement principles. According to the commenter, the Secretary must consider and follow reimbursement practices of Blue Cross and others, which reimburse malpractice insurance costs on a utilization basis

*Response:* Section 1861(v)(1)(A) states that "the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment . . . to providers of services." The statute affords the Secretary broad discretion as to whether to apply specific insurance industry practices or principles. While the Secretary must consider relevant practices or principles, the statute does not require the Secretary to follow specific practices or principles, as the commenter asserted. *See, e.g., Walter O. Boswell Memorial Hospital* v. *Heckler,* 749 F. 2d 788, 801 (D.C. Cir. 1984).

The Secretary has fully complied with the requirements of section 1861(v)(1)(A) of the Act in promulgating the 1986 rule. Historically, we have carefully considered industry practices in the course of formulating program policy for paying providers for services furnished to Medicare beneficiaries. Those policies largely followed industry practices. However, after experience was gained under the Medicare program, some policies were revised when it was determined that they no longer provided for program payment in accordance with applicable statutory requirements. Thus, while the pre-1979 utilization method of apportioning provider malpractice insurance costs was in effect for 13 years after the inception of the Medicare program, it became necessary to eliminate that methodology in 1979. We have explained why, on reconsideration of the issue, reinstitution of that methodology would result in cost shifting in contravention of section 1861(v)(1)(A) of the Act. In light of the record evidence supporting our determination, we cannot reinstitute the pre-1979 methodology simply because private insurance may have continued using that methodology after our initial action in 1979.

Moreover, the malpractice insurance apportionment policy is not the only policy that has varied in some way from industry practice. For example, beginning in 1969, Medicare regulations at 20 CFR 405.430 (redesignated as 42 CFR 405.430) provided for an inpatient routine nursing salary cost differential for hospitals and SNFs, which was based on a study that indicated that, on the average, elderly patients in an institutional setting required more general routine nursing services than other patients. (*See,* 36 FR 12606 (July 2,

1971).) This policy was in effect for over 10 years before being eliminated. (*See*, 47 FR 43618 (Oct. 1, 1982).) Also, as mentioned in the interim final rule (51 FR 11162), the Medicare program permitted hospitals for a period during 1967 to determine separately, apart from the normal apportionment process, clerical billing salaries attributable to Medicare billings. This divergence from industry practice was permitted to meet a need by hospitals and was discontinued when the need no longer existed. (*See*, Bureau of Health Insurance Intermediary Letter No. 218, April 19, 1967 and the Provider Reimbursement Manual (HCFA Pub. 15–1), section 2110.2.)

*Comment:* Each of the United States Circuit Courts of Appeals that has ruled on the validity of the claims paid methodology of the 1979 malpractice rule has held that the methodology is invalid. The commenter concluded that the use of a claims paid determinant of reimbursement in the 1986 rule, albeit on a "national" rather than "institutional" basis, is contrary to these court decisions.

*Response:* While the U.S. Court of Appeals for the District of Columbia Circuit did not conclusively decide the validity of the 1979 malpractice rule, the Court did hold that the 1979 rule satisfied the requirements imposed by the Medicare statute "by definition." *Walter O. Boswell Memorial Hospital* v. *Heckler*, 749 F.2d 788, 802 (D.C. Cir. 1984). While some courts held that the claims paid methodology of the 1979 malpractice rule violated applicable statutory requirements, those decisions were based on purportedly "bizarre" reimbursement results, which stemmed from the 1979 rule's reliance on the specific malpractice loss experience of individual providers. By contrast, the particular loss experience of a hospital has no significant bearing on its reimbursement under the 1986 rule. Instead, the HCRIS-derived national loss ratio is used in the scaling factor formula for the purpose of discounting the provider's Medicare utilization rate to reflect Medicare's under utilization of the services underlying the risk component of total premium cost. Moreover, unlike in the 1979 malpractice rule, the national loss ratio is adjusted to account for associated loss adjustment expense (i.e., ALAE and ULAE). The result is the adjusted national Medicare malpractice loss ratio (i.e., the "R" term), which is only one of the three main constants in the scaling factor formula. Since no court has adjudicated the merits of the 1986 rule, which differs significantly from the 1979 rule, we must reject the commenter's assertion that extant court decisions are inconsistent with the 1986 rule.

*Comment:* One commenter, an insurance company, suggested that the use of a claims paid reimbursement determinant in the 1986 rule is flawed because the Medicare paid claims ratio: (1) Does not determine in any way the premium for a particular cost reporting year; (2) includes claims paid from premiums paid over several preceding years; and (3) does not consider the significant costs incurred on behalf of both Medicare and non-Medicare patients for claims that are never paid.

*Response:* In general, we do not believe that industry premium-setting practices determine the proper apportionment methodology. As explained above and in various parts of the preamble to the interim final rule, insurance industry premium-setting practices do not address the apportionment problem. While we considered industry practices in developing the 1986 rule and we recognize similarities between those practices and the rule, in the final analysis the insurance industry must establish premium costs while we must apportion those costs—two very different enterprises.

Furthermore, we must reject the commenter's assertion that the use of a claims-paid reimbursement determinant in the 1986 rule is flawed, for the following specific reasons.

(1) The national Medicare claims-paid ratio is the ratio of Medicare malpractice losses to total losses for the current and four preceding cost reporting periods. We recognize that insurers do not directly take the national loss ratio into account in the course of setting the premium. However, our use of the national ratio, as adjusted for ALAE and ULAE (*i.e.*, the "R" constant), in the scaling factor formula is necessary to ensure that our apportionment of total premium cost will reflect the fact that Medicare patients are responsible for far fewer and smaller malpractice claims than non-Medicare patients. The fewer and smaller claims attributable to Medicare patients will eventually result in lower premiums for hospitals with high Medicare utilization rates. (*See*, 51 FR 11170 and R.R. at 2869–2870.) In any event, our use of the adjusted national loss ratio in the scaling factor formula enables us to apportion malpractice costs in a manner that accurately accounts for Medicare's underutilization of the risk component of these costs. (*See*, 51 FR 11180–83.)

(2) While insurance industry premium-setting practices do not dictate the proper apportionment policy, our use of five years of loss data in the national ratio is similar to the experience data used by the industry. (*See*, 51 FR 11169–70.) Specifically, in setting the provider's current premium, the industry uses between three and five years of loss data in setting the statewide rate and the various rate relativities, and it always uses five years of data for the experience rating of the specific provider. (*Id.*) While the industry usually uses incurred losses data (*i.e.*, open and closed claims) for these purposes, there is no incurred losses database available that compares in relevance, representativeness, and reliability to the HCRIS-derived claims-paid ratio. (*See*, 51 FR 11171.) Moreover, since the HCRIS data used in the derivation of the national loss ratio represent a statistically weighted sample of the loss experience of more than 5,000 hospitals over a five-year period, these data are more than adequate. (*See*, R.R. at 2872–2875.) Thus, there is no reason to believe that the multiple-year character of the paid-claims HCRIS data, which underlies the national ratio, detracts from the 1986 rule.

(3) While it is true that the HCRIS-derived national ratio *per se* does not account for costs incurred on claims that are never paid, the *adjusted* national Medicare malpractice loss ratio (*i.e.*, the "R" term in the scaling factor formula) accounts for ALAE and ULAE. As explained above, the HCRIS-derived national ratio of 11.8 percent was adjusted to 13.2 percent in order to account for associated loss adjustment expense (*i.e.*, ALAE and ULAE). Furthermore, ALAE and ULAE are both accounted for in the risk component of the premium. Since loss adjustment expense does not necessarily depend on whether a claim is paid (R.R. at 2856, 2861, and 2864–2865), it is clear that the 1986 rule accounts for those costs that are incurred even though no claim has been paid.

*Comment:* One commenter, an insurance company that issues policies on a claims-made basis, stated that the projected cost of unpaid claims is a significant component in rate-setting. The commenter supplied two exhibits for the purpose of supporting its belief that many more claims are initiated than are actually paid, whereas expenses are incurred in connection with both unpaid and paid claims. The commenter stated that the interim final rule included no data relating to asserted but unpaid claims even though such claims are an important component of rate setting.

According to the commenter, if actual experience were to be used, then HCFA would have to: (a) Identify all claims made; and (b) after a majority of these claims were paid (*i.e.*, within six or seven years), identify the costs of paid and unpaid claims attributable to Medicare and non-Medicare patients, make adjustments to reflect the different periods claims were pending, and reallocate the premium on the basis of all of these costs. The commenter further stated, however, that even this procedure would not suffice because the insurer does not make such an allocation when the premium is set. Because the premium-setting process does not take a hospital's Medicare utilization rate into account, the commenter concluded that only the pre-1979 utilization method is fair and consistent with the Act, especially since Blue Cross and other private insurers have already paid premium costs on this basis from the present back to 1979 and hospitals have no basis for changing payment rates during that period.

*Response:* As explained in item (3) of our response to the preceding comment, the 1986 rule fully accounts for costs incurred for patient malpractice claims that are never paid. It is simply untrue that the 1986 rule included no data relating to asserted but unpaid claims. In adjusting the national Medicare malpractice loss ratio from 11.8 percent to 13.2 percent to take account of associated loss adjustment expense, we relied primarily on data regarding ALAE that we secured from the NAIC study and the St. Paul Insurance Company. (*See*, 51 FR 11146–47.) Our premium breakdown—including the recognition of subcosts for ALAE and ULAE in the risk component—was based on rate filings by ISO, St. Paul, and two hospital-owned insurers. (*See*, R.R. at 2834.) While closed claim data were used to adjust the national loss ratio, the rate filings underlying the premium breakdown were not limited to closed-claim data. (*See*, R.R. at 2817–2820.)

Furthermore, we believe that the adjustments made to the national loss ratio obviate the necessity of pursuing the additional research suggested by the commenter. Our use of the NAIC and HCRIS data for determining the adjusted national Medicare malpractice loss ratio effectively involved the identification of all claims closed in the period beginning July 1975 and ending December 1978 for the NAIC data. It effectively involves identification of the value of all paid claims for cost reporting periods ending in 1978 through 1982 for some hospitals and from 1979 through 1983 for other hospitals for the HCRIS data. By accounting for the different claims tails for Medicare and non-Medicare patients, we made suitable adjustments for the different time periods during which these claims were closed. (*See*, 51 FR 11147–48.) In light of these sophisticated adjustments for ALAE and ULAE (which apply to both paid and unpaid claims (R.R. at 2856, 2861, and 2864–2865), we see no need to expend the time and resources on this additional research, especially since the results probably would not diverge significantly from the data underlying our adjustment to the national Medicare loss ratio. Indeed, if we were to take the time necessary to pursue an additional, essentially redundant study, one improper result would be the payment of windfall amounts to providers under the pre-1979 utilization method. In any event, the commenter states (albeit for different reasons than those described above) that the additional suggested research would be unavailing.

Finally, we reject the commenter's assertion that because the premium-setting process does not take a hospital's Medicare utilization into account, only the pre-1979 utilization method would be fair and consistent with the Act. While Medicare utilization will affect a provider's premium costs (51 FR 11170; R.R. at 2869–2870), we must apportion those costs—at whatever level. We have determined that the pre-1979 utilization method produces inequitable results in determining Medicare's share of malpractice insurance costs. The 1986 rule reflects the applicable statutory requirements, along with the necessity that malpractice apportionment policy be tailored to account for the fact that Medicare beneficiaries submit fewer malpractice claims and receive smaller awards than non-Medicare patients, among other extraordinary disproportionalities. While private insurers may have reimbursed malpractice insurance costs on a utilization basis during the 1979–86 period, the practices of private insurers cannot compel our use of that methodology in the face of the overwhelming record evidence that the methodology leads to cost-shifting in contravention of section 1861(v)(1)(A)(i) of the Act.

*B. Alternative Methodologies*

*Comment:* While some commenters reiterated their belief that hospitals should be allowed to purchase separate policies for Medicare and non-Medicare patients, they also agreed, in some cases, with our determination that the separate policies option is impracticable. One commenter suggested that the Medicare program should "self-insure" Medicare beneficiaries.

*Response:* The issue of hospitals purchasing separate policies from insurance companies was discussed at length in the interim final rule at 51 FR 11191–92.

The commenter did not describe the methodology under which the Medicare program would "self-insure" Medicare patients. One methodology that could have been envisioned by the commenter is simply for the Medicare program to pay a hospital's malpractice losses directly to the Medicare claimants or to the hospital. This methodology would offer no financial incentive for a provider to minimize its losses to, or maintain quality care for, Medicare patients because the Medicare program would bear the full cost of malpractice losses for Medicare patients, with no financial risk to the provider for excessive losses. Thus, we do not view this methodology as an acceptable means for Medicare apportionment of malpractice insurance costs.

On the other hand, the commenter may have envisioned a type of insurance that would be equivalent to a separate malpractice insurance policy written by the Medicare program that covers Medicare patients with the contributions made by providers being fully allowable under the Medicare program. In essence, this alternative is similar to the separate policies option, which we rejected in the interim final rule, except that Medicare would insure Medicare beneficiaries rather than commercial insurers. Such an insurance fund would presumably be subject to the normal requirements for a self-insurance fund; for example, an actuary would determine the amount necessary for each provider to pay into the fund.

We believe that separate insurance for Medicare patients and non-Medicare patients would result in a combined total cost that would be greater than the cost of a single insurance policy or self-insurance fund because of inevitably duplicative administrative activities. For example, there would be duplicative administrative costs involved in establishing and updating separate premium amounts. Once again, separate insurance for Medicare patients only would offer no financial incentive for a provider to minimize its losses to Medicare patients because the contributions made by providers to the insurance fund for Medicare beneficiaries would be fully allowable under the Medicare program, with no financial risk to the provider for excessive losses.

*C. Medicaid*

*Comment:* The Secretary's statements about the applicability of the Medicare apportionment methodology to Medicaid are inconsistent.

*Response:* In the preamble to the interim final rule, we stated that "we still do not have adequate data that would support a methodology for Medicaid that is comparable to that which we are adopting for Medicare under this final rule." (51 FR 11149.) Accordingly, we determined that "States should, within the flexibility allowed under section 1902(a)(13) of the Act, use whatever methodology they find to be most appropriate." (*Id.*) Furthermore, we observed: "Twelve States follow Medicare reimbursement principles for purposes of determining Medicaid payments to providers. Unless it acts to amend its State plan and adopt some other rules, each of these States will have to implement this rule; that is, pay SNFs for malpractice expense on a strict utilization basis, and pay hospitals based on the new Medicare methodology for hospitals based on the new Medicare methodology for hospitals (adjusted appropriately for Medicaid)." (51 FR 11191.)

There is no inconsistency between our decision to defer to the States to establish a Medicaid apportionment policy and our observation that States that follow Medicare reimbursement principles will have to amend their State plans in order to avoid following the 1986 rule retroactive to July 1, 1979. While we lack adequate data to develop a Medicaid policy similar to our hospital apportionment methodology under Medicare, a State that follows Medicare reimbursement principles may wish to develop such data (perhaps on a Statewide basis) in order to adjust the methodology for use in the Medicaid program.

*Comment:* HCFA's decision concerning Medicaid reimbursement of malpractice insurance costs is inconsistent with the provisions of the 1986 rule for SNFs under Medicare. The 1986 rule provides for the payment of malpractice costs for SNFs based on the pre-1979 utilization method because sufficient data do not exist to develop an alternative methodology. In the absence of adequate data for Medicaid, treatment of these costs must be consistent with the methodology applied to SNFs. Thus, payment under Medicaid for malpractice costs should be made on the basis of the utilization method.

*Response:* Under section 1902(a)(13)(A) of the Act, States generally have leeway in developing their own methodologies for payment of specific costs. Reimbursement of malpractice insurance costs is no exception. Furthermore, the Act does not require that State Medicaid programs follow Medicare principles of reimbursement. Thus, HCFA cannot mandate application of either the 1986 rule or the utilization method under Medicaid because we cannot require a State to follow a specific payment methodology. By contrast, we are required to establish an apportionment methodology for SNFs under Medicare. Therefore, there is no inconsistency between the provisions of the 1986 rule regarding SNFs under Medicare and our decision to not require a specific methodology under Medicaid.

*Comment:* HCFA's decision to defer to the States regarding Medicaid reimbursement of malpractice insurance costs makes no sense. Retroactive application of that rule without specific guidelines for a consistent payment methodology for Medicaid creates an administrative nightmare. Prior to the implementation of the prospective payment system under Medicare, State Medicaid programs generally reimbursed malpractice costs in accordance with Medicare regulations based on the utilization method. However, since that time many State Medicaid programs have changed.

*Response:* For States that follow Medicare principles of reimbursement for malpractice insurance costs, the 1986 rule became effective on May 1, 1986, retroactive to July 1, 1979. Any of these States that wishes to deviate from the 1986 Medicare rule may do so by submitting a State plan amendment specifying the methodology it wishes to follow.

In general, under section 1902(a)(13)(A) of the Act, the States have considerable flexibility in designing payment methods and standards for their Medicaid hospital and long-term care reimbursement systems. Federal review and approval of these State systems are not directed at the methods and standards *per se*, but rather to the assurances made by the State concerning the impact and effects of the ultimate payment rates produced under the methodology adopted by the States. Thus, if a State that follows Medicare wished to implement the 1986 Medicare rule retroactively to July 1, 1979, it is free to do so and there would be no need to amend the State plan. For the reasons explained above, we do not believe that it is appropriate to require the States to adopt any specific methodology.

*D. Retroactivity*

*Comment:* Retroactive application of the 1986 rule establishes a dangerous precedent in the rulemaking process because it undermines provider's certainty in the administrative process.

*Response:* "[I]ncluded in the concept of statutory entitlement to [Medicare] reimbursement is the possibility that the statute or implementing regulations may be changed." *Germantown Hospital & Medical Center* v. *Heckler*, 590 F. Supp. 24, 31 (E.D. Pa. 1983), *aff'd*, 738 F.2d 631 (3rd Cir. 1984), *cert. denied*, 105 S. Ct. 906 (1985). Malpractice insurance costs for the reporting periods governed by the 1986 rule are not excepted from this precept simply because we have determined that it is necessary to apply the new rule retroactively. Section 1861(v)(1)(A) of the Act precludes the Secretary from reimbursing providers for costs determined to be in excess of those actual and necessary in the efficient delivery of services to Medicare patients. The Secretary has determined that a wholesale reversion to the pre-1979 utilization method would produce a windfall to providers in contravention of section 1861(v)(1)(A) of the Act. In order to prevent such a result, the Secretary, acting consistently with sections 1861(v)(1)(A)(ii) and 1871 of the Act and the common law, determined that it is necessary to apply the 1986 rule retroactively. (*See* 51 FR 11184–87.) Since providers have known that retroactive rulemaking is possible in this highly regulated field, we do not believe that this policy threatens the certainty of the administrative process.

*Comment:* HCFA is barred from applying its own regulations to costs incurred prior to the stated effective date. The rule is "new policy" and cannot be applied retroactively. In fact, HCFA refers to the rule as "new policy."

*Response:* The commenter has confused the effective date of the 1986 rule (i.e., May 1, 1986) with the cost reporting periods to which the 1986 rule applies (i.e., those beginning on or after July 1, 1979). No provision of law prohibits us from applying the 1986 rule, effective May 1, 1986, to cost reporting periods beginning on or after July 1, 1979. The fact that the 1986 rule establishes a new apportionment policy does not mean that it cannot be applied retroactively. The changes in the 1986 rule were made in response to court criticism of the 1979 malpractice rule and public comment on the 1985 NPRM. (*See*, 51 FR 11149.) Our consideration of and response to these criticisms and comments do not undermine the determination that retroactive

application of the 1986 rule is consistent with the Act and the common law.

*Comment:* Retroactive application of the 1986 rule is inconsistent with the APA, 5 U.S.C. 551(4), which defines a "rule" as the ". . . whole or part of an agency statement of general or particular applicability and future effect . . ."

*Response:* We do not believe that the APA definition of "rule" precludes retroactive application of the 1986 rule. Rather the reference to "future effect" in 5 U.S.C. 551(4) was intended to distinguish rulemaking from adjudication, and "rulemaking may, consistent with legislative intent, operate retroactively." *Colyer* v. *Harris*, 519 F. Supp. 692, 698 n.2, (S.D. Ohio 1981). This account of 5 U.S.C. 551(4) is further supported by sections 1861(v)(1)(A) and 1871 of the Act, which authorize retroactive rulemaking, and by the common law on the issue. *See, e.g., S.E.C.* v. *Chenery Corp.*, 332 U.S. 194, 203 (1947).

*Comment:* HCFA is attempting to eliminate the Medicare appeal rights of hospitals by making the 1986 rule retroactive. If the rule is applied retroactively, providers will be denied full legal redress since any appeal issue that might be won by the industry would be potentially subject to retroactive rulemaking.

*Response:* Providers' appeal rights are fully protected under the 1986 rule. Once the 1986 rule is applied to a provider's malpractice insurance costs, a notice of program reimbursement (NPR) will be issued. (For cost reporting periods beginning before May 1, 1986, revised NPRs will be issued regardless of whether a hospital receives an additional payment under the 1986 rule.) If the provider is dissatisfied with the reimbursement results produced by the 1986 rule and it satisfies applicable statutory requirements, it may appeal in accordance with section 1878 of the Act. (*See*, HCFA Ruling 86–2 (July 2, 1986).)

The spectre of a provider "prevailing" in its appeal, only to be allegedly deprived of its "victory" by rulemaking does not argue against retroactive application of the 1986 rule. Ultimately, the application of the rule is subject to adjudication by the courts. Moreover, as explained in section II above, final settlements will be made under the 1986 rule and revised NPRs issued under that rule for all hospitals as soon as possible. In the event the planned separate set of formula values for hospitals excluded from PPS results in an adjustment in such a hospital's reimbursement, the NPR issued to reflect the adjustment will relate back to the NPR to be issued imminently on the basis of the values established in the interim final rule.

*E. Application and Implementation of the 1986 Rule*

*Comment:* Interest should be paid on any additional payment made under the 1986 rule from the date of issuance of the original NPR at issue. Another commenter stated that if additional payments made under the 1986 rule cannot be made within thirty days of the publication date, then interest should be paid pursuant to 42 CFR 405.376.

*Response:* There is no authority to pay interest, under the terms of the 1986 rule, on additional payments made under that rule. Section 1878(f)(2) of the Act limits interest payments to the prevailing party in a court action, as awarded by the reviewing court. (*See also*, 42 CFR 413.64(j).) Sections 1815(d) and 1833(j) of the Act provide for the payment of interest on overpayments and underpayments to providers. *See also* 42 CFR 405.376. Payment of an additional amount under the 1986 rule does not represent an underpayment under the 1979 malpractice rule. Until May 1, 1986, the 1979 rule governed Medicare reimbursement of malpractice insurance costs. Absent a final, non-appealable court judgment to the contrary, application of the 1979 rule prior to May 1, 1986 could not have resulted in an underpayment.

Furthermore, interest is not payable beginning 30 days after publication of the interim final rule because the issuance of a final rule is not a final determination. (*See*, 42 CFR 405.376(c).) However, the provisions of § 405.376 would apply once an NPR is issued under the 1986 rule.

*Comment:* HCFA stated in the preamble to the interim final rule that intermediaries will not make adjustments to cost reports for cost reporting periods beginning before May 1, 1986, if these adjustments would result in less reimbursement to the provider than was payable under the 1979 malpractice rule. However, the text of the 1986 rule does not include this provision, but instead contains the apparently contrary provision that malpractice insurance costs must be apportioned in accordance with the 1986 rule, subject to the Medicare rules of administrative finality and reopening. HCFA should revise the text of the regulation to state that no adjustment will be made under the above-described circumstances.

*Response:* There is no inconsistency between the preamble to the interim final rule and the text of the regulation itself. For cost reporting periods beginning before May 1, 1986, the 1986 rule will be applied to all cost reports for which the malpractice insurance cost determination is open (i.e., not closed) or reopenable and for which reopening is requested. (*See*, 51 FR 11149, 11187.) If, upon recalculation under the 1986 rule, the intermediary determines that the provider would have received more under the 1979 malpractice rule, then no adjustment will be made. However, consistently with the text of § 413.56(a), the 1986 rule will have been applied to the provider's costs since a revised NPR will be issued (even though no adjustment will have been made).

We are not revising the text of the regulations because our decision not to disadvantage any providers applies only to a limited time period and thus does not properly belong in the text of the regulations. However, we have already instructed our intermediaries to implement this policy (HCFA Program Memorandums A–86–8, issued May 1986 and A–86–25, issued November 1986) so that there will be no monetary adjustments for cost reporting periods beginning before May 1, 1986, if those adjustments would have resulted in less reimbursement to the provider. The same policy also is included in HCFA Ruling 86–2 (issued July 2, 1986), which is binding on the Provider Reimbursement Review Board.

*Comment:* To deny proprietary hospitals the additional equity capital resulting from the retroactive application of the 1986 rule is contrary to historical settlement practices of Medicare fiscal intermediaries and contrary to the instructions for the Medicare cost report. Another commenter stated that retroactive application of the 1986 rule means that HCFA intended that rule to apply as if the 1979 malpractice rule never existed. The commenter concluded that, under such a supposition, the Act and regulations require a full adjustment in equity capital for proprietary providers.

*Response:* Providers have no basis in law, regulations or program policy to claim additional equity capital from the retroactive application of the 1986 rule. Moreover, denial of the additional equity capital under the provisions of the rule is not contrary to historical settlement practices of Medicare fiscal intermediaries. Providers have no basis on which to assert that payments made under the rule subsequent to the retroactive periods could have resulted in increased equity capital used for the furnishing of patient care during those periods. If the providers during the retroactive period found that the amount of their equity capital was not sufficient, and, as a result, engaged in necessary

borrowing for a purpose related to patient care, the program would have fully paid its share of interest expense on that borrowing.

The denial of additional equity capital resulting from the retroactive application of the 1986 rule is not contrary to the instructions for the Medicare cost report or the fact that the 1986 rule replaces the 1979 malpractice rule. The cost report instructions recognize that where a current underpayment of Medicare reimbursement occurred as calculated on the Medicare cost report on the basis that Medicare's liability was less than interim payments made during the cost reporting period, the provider's Medicare receivable for the underpayment would have increased the current equity capital at the beginning of the next cost reporting period.

In addition, the retroactive application of the 1986 rule to the cost reporting periods governed formerly by the 1979 malpractice rule does not entitle proprietary providers to a full adjustment of equity capital. While the 1986 rule replaces, effective May 1, 1986, the 1979 malpractice rule, the 1979 rule indisputably governed malpractice insurance-cost reimbursement between 1979 and 1986. Thus, there is no basis to recognize a Medicare receivable as of the time of a retroactive cost reporting period for an additional payment made under the 1986 rule. Any additional amount now paid under the 1986 rule was not a Medicare receivable at the time when the retroactive cost reporting period occurred because the 1979 malpractice rule governed at that time. Thus, the denial of additional equity capital for the cost reporting periods beginning before the effective date of the 1986 rule is consistent with historical settlement practices, the instructions for the Medicare cost report, and the replacement of the 1979 malpractice rule with the 1986 rule.

*Comment:* It is inconsistent to apply the 1986 rule retroactively but not retroactively adjust the hospital specific and Federal prospective payment rates. Another commenter stated that HCFA's retroactive application of the 1986 rule is indicative of its belief that that rule always applied and the 1979 malpractice rule never existed. According to the commenter, retroactive application of the 1986 rule means that the Federal rates must be adjusted to account for the additional reimbursement that should have been paid under the 1986 rule.

*Response:* The retroactive application of the 1986 rule is authorized by sections 1861(v)(1)(A)(ii) and 1871 of the Act for cost-based reimbursement. The Social Security Amendments of 1983 (Pub. L. 98-21) radically altered Medicare's reimbursement system by mandating payment in accordance with prospectively determined rates. The prospective payment rates consist of the Federal rate and the hospital-specific rate during the four-year transition from the cost-based system to the prospective payment system. (*See generally*, 42 CFR 412.70. *See also*, 51 FR 31526 (September 3, 1986) concerning the effect of the 1986 rule on the updating of the prospective payment rates for FY 1987.)

Unlike the retrospective cost-based reimbursement system, the Federal rate is not subject to retroactive change. (*See*, 42 CFR 412.62 and 412.63.) Although the 1986 rule replaces, effective May 1, 1986, the 1979 malpractice rule, the 1979 rule unquestionably existed from 1979 through 1986 and the Federal rate is based on data from cost reporting periods ending in 1981.

The hospital-specific rate is only subject to retroactive change in limited circumstances. (*See*, 42 CFR 412.72(a)(3).) Congress recognized that in order to begin the prospective payment system timely, the hospital-specific rate would have to be established rapidly, often using estimated costs and data. It was Congress' expectation that the hospital-specific rate would be based on the best data available at the time the rate is established. (H.R. Conf. Rep. No. 98-47, 98th Cong. 1st Sess. 182 (1983), *reprinted in* 1983 U.S. Code Cong. & Ad. News 404, 472.) Thus, the regulations generally limit revisions to the hospital-specific rate to cost reporting periods beginning on or after additional base-year costs are recognized. (*See*, 42 CFR 412.72(a)(3).) Revisions to the hospital-specific rate are to be given retroactive effect only if the intermediary's determination of a hospital's base-year costs was unreasonable and clearly erroneous in light of the best available data at the time the determination was made. (*See*, 42 CFR 412.72(b)(2).) Under the circumstances at the time, the 1979 malpractice rule yielded the best available data upon which to base the malpractice aspect of the hospital-specific rate. Thus, there is no inconsistency between making the 1986 rule retroactive and limiting revision of the hospital-specific rate to cost reporting periods beginning on or after May 1, 1986.

*Comment:* Even if the hospital-specific rate is not revised retrospectively, every provider should have its rate adjusted effective May 1, 1986, if its cost reporting period ordinarily would have commenced between October 1, 1985 and April 30, 1986. The commenter asserted that, due to the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), those providers' rates will have to be adjusted on or after May 1, 1986 in any event. According to the commenter, the rationale for not making a retroactive adjustment to the hospital-specific rate is to avoid administrative burden. But this rationale would not apply to hospitals with cost reporting periods beginning between October 1, 1985 through April 30, 1986, since their payment rates will be adjusted on or after May 1, 1986. The commenter concluded that the hospital-specific rate for these hospitals should be adjusted because the "freeze" created by Congress, in essence, forestalled the annual adjustment of their rates.

*Response:* The commenter is mistaken in two fundamental respects. First, as explained above, the rationale for not revising the hospital-specific rate retrospectively is Congressional intent, not administrative convenience. The regulations reflect Congress' intent that the prospective payment system be implemented immediately and that the hospital-specific rate be determined on the basis of the best available data at that time. Thus, adjustments to the hospital-specific rate to take into account newly recognized base-year costs under the 1986 rule are prospective only because that part of the rate was based on the best available data at the time.

Second, the provisions of Pub. L. 99-272 referred to by the commenter do not affect our decision to limit revisions to the hospital-specific rate to cost reporting periods beginning on or after May 1, 1986. As a result of Pub. L. 99-272 and prior legislation (*see*, 51 FR 16722-23 (May 6, 1986)), prospective payment rates for discharges occurring in Federal fiscal year 1986 were frozen through April 30, 1986. Section 9101 of Pub. L. 99-272 requires that the hospital-specific rate for the remaining five months of Federal fiscal year 1986 be increased by one-half of one percent. However, this statutorily-mandated increase does not reflect a base-year cost adjustment (resulting in a revised hospital-specific rate). Similarly, the "freeze" created by Congress was not intended to prohibit prospective adjustments to the hospital-specific rate under 42 CFR 412.72(a)(3). Thus, a hospital with a cost reporting period beginning between October 1, 1985 and April 30, 1986, which was due an adjustment based on the recognition of additional base-year costs, would be entitled to a prospective adjustment to its hospital-specific rate effective with

the first day of its cost reporting period beginning during that period.

*F. Other new issues*

*Comment:* Publication of a final rule followed by a post-promulgation comment period is inconsistent with the APA, which requires notice and opportunity to comment before the effective date of a final rule. Other commenters asserted that the interim final rule violates the APA because it differs too much from the 1985 NPRM.

*Response:* As explained above, the 1986 rule, which became effective on May 1, 1986, was promulgated in response to comments and information received on the 1985 NPRM issued at 50 FR 25178 (June 17, 1985). Since the 1986 rule is a logical outgrowth of the 1985 NPRM, the limited opportunity to comment on the interim final rule does not constitute an impermissible post-promulgation comment period.

We reject the commenters' claims that the interim final rule is different enough from the 1985 NPRM to require that the policies adopted in the 1986 rule be published in a separate NPRM. The case law is clear that significant changes in a final rule from the predecessor NPRM are consistent with the requirements of the APA, 5 U.S.C. 553. Indeed, the courts have held that such changes indicate that the administrative process is working, not that the agency has acted improperly.

The courts require that a NPRM fairly apprise the public of the subjects and issues involved in the rulemaking rather than specifying every precise proposal that the agency may ultimately adopt. Unquestionably, the 1986 rule deals with the same subjects and issues that were included in the 1985 NPRM.

Furthermore, the courts have held that even substantial changes from the NPRM are permissible as long as the final rule is in character with the original scheme and a logical outgrowth of the notice and comment provided on the NPRM. The 1986 rule clearly is a logical outgrowth of the 1985 NPRM and the comments received on the proposed rule. (*See generally*, 51 FR 11194, 11149 (col. 2).) For example, the threshold feature of the 1985 NPRM has been retained in the 1986 rule. As proposed in 1985, the Secretary determined that it was necessary to remove hospital malpractice insurance costs from the G&A pool and apportion those costs directly between Medicare and non-Medicare patients. (*Compare*, 50 FR at 25181–82, *with*, 51 FR at 11158–88.)

Moreover, the new reimbursement methodologies adopted in the 1986 rule are clearly a logical outgrowth of the 1985 NPRM. In the 1985 NPRM, the Secretary considered the alternative of reinstating the pre–1979 utilization method. (*See*, 50 FR at 25187.) The Secretary adopted precisely that alternative in the 1986 rule for reimbursement of malpractice insurance costs incurred by SNFs. (*See*, 51 FR at 11148–49, 11195–96 (*adding* 42 CFR 405.457(c), *redesignated as* 42 CFR 413.56(c) (51 FR 34808–09)).)

The 1986 rule (51 FR at 11144–48, 11195 (*adding* 42 CFR 405.457(b), *redesignated as* 42 CFR 413.56(b) (51 FR 34808–09)) reimburses hospital malpractice insurance costs by dividing total premium cost into two parts. The administrative component is included in the G&A cost center and apportioned in accordance with the pre-1979 utilization method. Thus, as with the new methodology for SNF malpractice cost, the 1986 rule's apportionment formula for the administrative component of hospital malpractice premium cost is identical to one of the alternatives considered in the 1985 NPRM.

The risk component of hospital premium cost is reimbursed in accordance with the scaling factor formula. The main terms of the formula include: the hospital's particular Medicare patient utilization rate; the national Medicare utilization rate; and the national ratio of Medicare malpractice losses as compared to total losses. (*See*, 51 FR at 11146–48, 11195.) Each of these concepts figured centrally in the 1985 NPRM, and their use in the new rule reflects the fact that the new hospital reimbursement methodology is a hybrid of the pre-1979 utilization method and the 1979 malpractice rule. (*See*, 50 FR at 25180, 25183, and 25187 (discussing, respectively, the national Medicare utilization rate, the national ratio of Medicare losses as compared to total losses, and the pre-1979 utilization method which depends on specific provider utilization rates).) Thus, the 1986 rule clearly is in character with the original scheme of the 1985 NPRM.

Finally, the 1986 rule responds comprehensively to the criticisms of the 1979 malpractice rule and the 1985 NPRM. (*See generally*, 51 FR at 11149 (col. 2).) This fact demonstrates that the administrative process was working.

*Comment:* The 1986 rule violates the rulemaking requirements of the APA because it is based on data (*e.g.*, the analysis of the NAIC data, more current HCRIS data, and data from the St. Paul Insurance Company) that were not included in the 1985 NPRM.

*Response:* The 1985 NPRM made clear that we were seeking all available data pertinent to the apportionment problem addressed by the rulemaking. For example, we requested information from insurance companies, provider organizations, and providers regarding the frequency and size of malpractice claims, along with malpractice loss data, for Medicare and Medicaid patients. (50 FR 25183.) The NAIC data, which have been publicly available since 1980 and were referred to by various commenters on the 1985 NPRM, clearly fall within the scope of our inquiry. Data from the St. Paul Insurance Company and other insurers that were used in the 1986 rule also were publicly available and within the scope of our inquiry. A primary reason for using the data in connection with the interim final rule was to implement the changes adopted in response to the comments. The HCRIS data were relied on in the 1985 NPRM, and the description of those data makes clear that HCRIS is an evolving database. (*See*, 50 FR 25179–81.) We used a different data set from HCRIS in the 1986 rule because that data set was more current and larger than the one relied on in the 1985 NPRM. (*See*, 51 FR 11154–55.) Similarly, as explained in section II. above, we used a different HCRIS data set to establish the value of the R factor for short-stay hospitals in order to ensure that the formula values for short-stay hospitals are based exclusively on data for that type of hospital. In addition to being within the scope of the data inquiry made in the 1985 NPRM and necessary to implement the changes made in response to comments, the public has been given the opportunity to comment on all of the data relied on in the interim final rule.

*Comment:* HCFA's adoption of the 1986 rule as an "interim final" rule indicates the agency's own concern that the rule violates the APA requirements for notice-and-comment rulemaking. Interim final rules typically are reserved for instances in which legislative or public urgency requires faster action than notice and comment procedures would permit. According to the commenter, these exigent circumstances do not exist in this case.

*Response:* The interim final character of the April 1, 1986 regulation involves no impropriety. While interim final rules often are used when a final rule is not preceded by a notice of proposed rulemaking, there is no reason why an interim final rule cannot follow the NPRM. In this case, the 1986 rule was a logical outgrowth of the 1985 proposed rule and comments on that rule, and thus no further opportunity to comment was required under the APA. Therefore, by affording the public an opportunity to comment on new issues pertaining to the interim final rule, we exceeded the minimal requirements of the APA. Far

from involving any impropriety, the interim final character of the regulation enabled us to consider additional comments in the course of responding to the problems associated with court decisions invalidating the 1979 malpractice rule and the windfall payments that would have resulted from a wholesale reversion to the pre-1979 utilization method. (*See*, 51 FR 11194–95.)

*Comment:* Because the 1986 rule is so complex, more than 30 days should have been allowed for comment. According to the commenter, the public was deprived of a meaningful opportunity to comment on the interim final rule in violation of the APA.

*Response:* Thirty days is ample opportunity to comment on a rulemaking document, as demonstrated by the volume and depth of the comments received in this proceeding. Moreover, the public has been involved at numerous steps.

On June 17, 1985, we published the 1985 proposed rule in the **Federal Register** (50 FR 25178) and gave interested persons 45 days in which to comment on the 1985 NPRM. During the comment period on the 1985 NPRM, certain persons secured information under the FOIA that was relevant to the NPRM. In order to insure that these FOIA requesters could meaningfully comment on matter raised in the FOIA, we gave the requesters until August 16, 1985 to comment on these materials. (*See*, 51 FR 11151 (column 1).) In fact, four additional extensive and detailed comments were submitted by various of the FOIA requesters. (*See*, 51 FR 11144 (col.1).)

Four days before the interim final rule was published, *i.e.* March 28, 1986, we held a public briefing in which interested members of the health care industry and private bar were apprised of the terms and basis of the 1986 rule. On April 1, 1986, we published the interim final rule, which, in response to comments on the 1985 NPRM and criticisms of the 1979 malpractice rule, established the 1986 rule. As explained above, the 1986 rule is in character with the original scheme of the 1985 NPRM and is a logical outgrowth of the NPRM and comments on the proposed rule. Nonetheless, we decided to give the public an additional opportunity for public comment on the changes contained in the interim final rule. (*See*, 51 FR 11194.) Shortly after the interim final rule was published, the rulemaking record was made available through the FOIA process. Indeed, various comments received in response to the interim final rule reveal a sophisticated understanding of the issues and of the details of the record. As a result of our consideration of these additional comments, we plan to develop separate sets of formula values for short-stay hospitals and for hospitals excluded from PPS.

*Comment:* The Department has not identified the material it relied upon but withheld from its response to requests under the FOIA. The identity of the actuarial consultant and his report were not made public until April 25, 1986, although public comments were due May 1, 1986. This shows disregard for the public's right to review and comment.

*Response:* The material relied upon was made available, in one form or other, for release under the FOIA as quickly as possible following receipt of a request for material. Although we were able to provide copies of the rulemaking record for the 1986 rule in a most timely manner, we have not yet been able to respond to FOIA requesters on an item by-item basis. While these responses will be provided in turn, the delay in no way indicates that we have withheld any material relied upon in the rulemaking.

The identity of the actuarial consultant was made public at the March 28, 1986 briefing on the 1986 rule, which, as explained above, occurred four days before the interim final rule was published in the **Federal Register**.

*Comment:* A commenter that made an FOIA request for the rulemaking record underlying the interim final rule complained that the HCFA contractor that analyzed the NAIC data stated that the raw data underlying the NAIC Study was not available. The commenter concluded that HCFA's reliance on data that was not made available to the public violated the APA.

*Response:* Parties that requested the rulemaking record for the interim final rule under the FOIA received two responses from HCFA. First, the printed portion of the record was released by HCFA's Office of Public Affairs, which also informed the commenters that two magnetic tapes from HCRIS and the 11-volume record for the 1979 malpractice rule were available for release under the FOIA. Second, HCFA's Office of Reimbursement Policy informed these requesters that the data tape underlying the NAIC Study could be used on the premises of the contractor that analyzed the data tape for HCFA. Each requester was informed that while the NAIC data tape was part of the rulemaking record for the interim final rule, the tape was purchased from NAIC subject to various restrictions on HCFA's use of the tape. In order to discharge our obligations to the public and NAIC, we made the raw data underlying the NAIC Study available for use through our contractor rather than releasing the NAIC data tape under the FOIA. Since this alternative procedure enabled interested parties to manipulate the raw data on the NAIC data tape at will, there clearly was no violation of the APA.

*Comment:* The rulemaking record released under the FOIA is incomplete in that, contrary to both the APA and the *Boswell* decision, the record was selectively compiled and does not contain information that was reviewed by HCFA or before the Secretary during rulemaking. The Secretary's incomplete rulemaking record prevents meaningful judicial review because courts reviewing the 1986 rule must have the full record before them.

The specific matters raised by the commenters are as follows:

(1) One commenter asserted that the rulemaking record for the interim final rule was incomplete because only part of the *Report of the Secretary's Commission on Medical Malpractice* (1973) was included. According to the commenter, the Commission's findings, taken as a whole, are contrary to the assumptions underlying the 1986 rule. One commenter made similar assertions about the inclusion in the rulemaking record of parts of the *Report on Medical Insurance Feasibility Studies* by the California Medical Association and California Hospital Association (1977) and of part of the data in *Best's Aggregates and Averages, Property—Casualty* (1984 ed.)

(2) A commenter stated that we failed to include in the record a 1978 memorandum by a departmental employee on the balance of the G&A pool.

(3) A commenter stated that the record selectively includes only part of the unpublished HCFA data regarding 1979–80 increases in premium cost

*Response:* The rulemaking record for the interim final rule was not selectively compiled. Any omissions from that record were inadvertent and will be redressed in the course of compiling the record materials pertinent to the public comments on the interim final rule. Our responses to specific comments about the rulemaking record are as follows:

(1) We included the portions of the *Report of the Secretary's Commission on Medical Malpractice* that, in our opinion, pertained directly to the issues addressed in the rulemaking. Contrary to the commenter's assertion, we do not believe that the Commission's findings, taken as a whole, are contrary to the assumptions underlying the 1986 rule. However, in light of the commenter's

claim about the overall significance of the Report, the entire Report will be included in the record. Similarly, while we originally included only those parts of the California Medical Association and California Hospital Association Report and the A.M. Best data that pertained to the 1985 NPRM and to commeats on the NPRM, the entirety of the Report and the Best publication will be included in the record in response to the commenters' assertions.

(2) The 1978 memorandum referred to by the commenter was part of the eleven-volume rulemaking record for the 1979 malpractice rule. Since one of the commenters on the 1985 NPRM submitted the whole record for the 1979 rule (51 FR 11143 (col. 3)), there was no need to include a second copy of the memorandum in the record.

(3) The unpublished HCFA data on premium cost increases for 1979–80 are derived from the AHA. These data are part of a sequence ranging from 1970 through 1980 (*see*, 51 FR 11160), all of which is included in the record. (R.R. at 2931, 3549.) The ISO-derived data for the 1981–85 period (51 FR 11160) also is in the record. (R.R. at 3549.)

*Comment:* In January 1983, HCFA Region IV issued a program validation audit report on malpractice insurance that was described as being part of a national program validation report. Although in the preamble to the interim final rule HCFA stated that no national report resulted from the Region IV report, HCFA has not denied that a national program validation report was being prepared and that the Region IV report would become a part of that national report. The commenter stated that HCFA has failed to release the material related to the national report.

*IV Participation* (1983) ("the Region IV report"), states on page three that the review was "performed in accord with national objectives established for the review of malpractice insurance cost" and the report contains a number of references to a national malpractice insurance review. In addition, a cover letter prepared by the Atlanta Regional Office states that its review was "performed as part of a national review effort," and that the Region IV report was "to be embodied in a national report."

The Region IV review was initiated as part of a national review effort. Although HCFA originally expected to evaluate the results of regional reviews and develop a national report, other priorities resulted in the termination of the planned project. As a result, no national report—either in draft form or final form—was ever prepared. Since there was no material related to a national report," there was nothing to release to the public.

## IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that implementation of the regulation would not have a significant economic impact on a substantial number of small entities.

We published analyses under E.O. 12291 and the RFA in both the June 17, 1985 proposed rule (50 FR 25178, 25188–88) and the April 1, 1986 interim final rule with comment period (51 FR 11142, 11188–94). However, in this rule, we are not making any changes that would, in themselves, have economic effects that meet the criteria of either E.O. 12291 or the RFA.

We are not able at this time to assess the impact of the planned separate scaling factor formula values for hospitals excluded from the prospective payment system. When those separate values are published, we will determine whether additional impact analyses are required.

For these reasons, we have determined that a regulatory impact analysis under E.O. 12291 is not required. Furthermore, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

## V. List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

TITLE 42—PUBLIC HEALTH

## PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Accordingly, the regulation, 42 CFR 413.56, established by the interim final rule published at 51 FR 11142–11196 (April 1, 1986) is confirmed as a final rule.

**Authority:** Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395(g), 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx.)

(Catalog of Federal Domestic Assistance Programs: No. 13.714, Medical Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 22, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: February 26, 1987.

**Don M. Newman,**

*Undersecretary.*

[FR Doc. 87–6550 Filed 3–26–87; 8:45 am]

BILLING CODE 4120–01–M

---

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 1

[OST Docket No. 1; Amdt. 1–216]

### Organization and Delegation of Powers and Duties

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment clarifies the delegation to the Assistant Secretary for Administration. The Secretary has determined that the existing delegations to the Assistant Secretary for Administration need to be updated to add an existing delegation that was inadvertently omitted when this part was published. The new provision delegates to the Assistant Secretary for Administration, subject to coordination with the General Counsel, interested administrations and other offices, authority to issue the Department's procurement regulations. These regulations govern the procurement of supplies and services (including construction and concessions) and the procurement of real property by lease.

**DATE:** The effective date of this amendment is March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Samuel E. Whitehorn, Office of the General Counsel, Department of Transportation, Washington, DC, (202) 366–9307.

**SUPPLEMENTARY INFORMATION:** Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

**List of Subjects in 49 CFR Part 1**

Authority delegations (government agencies); Organization and functions (government agencies); Transportation Department; Procurement and Contracting.

**PART 1—[AMENDED]**

1. The authority of Part 1 continues to read as follows:

**Authority:** 49 U.S.C. 322.

2. In consideration of the foregoing, § 1.59 of Part 1 of Title 49, Code of Federal Regulations, is amended by adding paragraph (q) to read as follows:

**§ 1.59 [Amended]**

* * * * *

(q) *Regulations.* Issue Department of Transportation procurement regulations, subject to the following limitation:

(1) *Coordination.* The views of the General Counsel, the interested administrations and other offices will be solicited in the development of the procurement regulations. In commenting upon proposed provisions for the procurement regulations, the administrations will indicate the nature and purpose of any additional implementing or supplementing policy guidances which they propose to issue at the administration level.

Issued in Washington, DC, on March 12, 1987.

**Elizabeth Hanford Dole,**

*Secretary of Transportation.*

[FR Doc. 87–6830 Filed 3–26–87; 8:45 am]

BILLING CODE 4910–62–M

---

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 646**

**[Docket No. 60979–7044]**

**Snapper-Grouper Fishery of the South Atlantic**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) contains a management measure that provides for designating modified habitats or artificial reefs as special management zones (SMZs). This final regulatory amendment (1) designates specific artificial reefs off the coasts of South Carolina and Georgia as SMZs; (2) prohibits fishing in these areas except with hand-held hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing gear (including powerheads and spear guns); and (3) prohibits the taking of jewfish within these areas. The intended effect is to establish the designated artificial reefs (ARs) as SMZs and to manage them to promote orderly use of the resource, to reduce user group conflicts, and to maintain the intended socioeconomic benefits of the ARs to the maximum extent practicable.

**EFFECTIVE DATE:** March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Rodney C. Dalton, 813–893–3722.

**SUPPLEMENTARY INFORMATION:** Final regulations implementing the FMP were published August 31, 1983 (48 FR 39466) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for the designation of specific modified habitats as special management zones (SMZs). This rule establishes 19 SMZs off the coasts of Georgia and South Carolina.

The proposed rule for this action (51 FR 43937, December 5, 1986) contained a discussion justifying the establishment of the SMZs. This discussion is not repeated here.

**Comments and Responses**

Comments on the proposed rule were received from eight sources. Commenters included the South Atlantic Fishery Management Council (Council), South Carolina Wildlife and Marine Resources Department (SC–W&MRD), United States Department of the Interior (DOI), a recreational fishing organization, and four fishermen. Comments received have been grouped into eight general categories.

**Council Comments**

The Council objected to the revision of the wording of objective 2 of the proposed rule and suggested that the original wording, as approved and submitted by the Council, be restored. NOAA concurs. The Council also recommended that NOAA clarify that one of the artificial reefs (Hilton Head Reef) was submitted for SMZ designation by both South Carolina and Georgia but under different names (Georgia refers to that reef as Artificial Reef T). A number of editorial corrections were also suggested. NOAA concurs with these recommendations and has modified the final rule accordingly.

**Revision of Artificial Reef Coordinates**

A representative of the SC–W&MRD provided corrections to five coordinates listed for the South Carolina reefs. NOAA has made the appropriate revisions in the final rule.

**Extension of SMZs to Other Areas**

One fisherman supported the SMZ concept, but suggested that SMZs also be established in other States. The scope of the proposed rule was limited to the specific requests submitted by South Carolina and Georgia. The FMP, which contains the provision for establishing SMZs, provides the opportunity for anyone holding an Army Corps of Engineers permit for an artificial reef to apply to the Council for an SMZ designation. Permittees with reefs in Federal waters off North Carolina, South Carolina, Georgia, and the east coast of Florida would be eligible to apply under this provision.

**Objections to Allowing Powerheads or Spearguns**

One fisherman objected to allowing divers to use powerheads or spearguns within the SMZs, because such gear was too efficient in removing fish. The Council considered prohibiting these types of gear but concluded that a general prohibition was unnecessary. Although divers comprise a small but significant user group on these reefs, no significant conflicts have occurred to date, and the principal target species for hook-and-line fishermen, black sea bass, is not targeted by divers. NOAA agrees with the Council's judgment and has made no change in the final rule based on this comment.

**Alleged Violations of National Standards**

One fisherman stated that the proposed rule would establish a precedent against commercial interests and in favor of recreational interests and would violate the national standards established in the Magnuson Act. NOAA has reviewed the proposed rule and determined that it is consistent with the national standards. The regulations restrict use of certain types of gear that are incompatible with the intended use of the artificial reefs. Commercial fishermen may fish within

the SMZs with allowable gear. Each request for an SMZ is reviewed independently and its impacts on all users are carefully evaluated. Further, the opportunity to establish SMZs is available to both the recreational and commercial sectors. NOAA does not believe there is any inherent bias associated with the SMZ concept.

**Support for the SMZ Concept**

Two fishermen submitted comments generally in support of the proposed rule. One of the fishermen also recommended adding SMZs around six additional artificial reefs. This recommendation is beyond the scope of the proposed rule, which was limited to the specific request by Georgia and South Carolina, but the permittee for these additional reefs could submit a request to the Council for future consideration.

**Potential Impacts of SMZ Designation on Development of Other Natural Resources**

A representative of DOI's Minerals Management Service expressed concern about potential impacts of SMZ designation on existing Federal natural resources programs such as mineral exploration. The Magnuson Act, which provides the ultimate authority for establishing these SMZs, regulates only fishing and fishing activities and would have no direct impact on other legitimate uses of the high seas. Further, requests for SMZ designation are considered only for artificial reefs that have been permitted by the U.S. Corps of Engineers (Corps). The Corps' permitting process includes public hearings and public comment periods where concerns could be identified and addressed. In addition, each SMZ request undergoes a structured review that requires a public comment period, which may include public hearings, prior to implementing and SMZ.

The commenter also asked for clarification of the need to establish SMZs that encompass areas substantially larger than the actual artificial reefs. The SMZs include the area permitted by the Corps plus a 500-meter buffer zone. Reef material is often placed in numerous locations within the permitted site. The 500-meter buffer was recommended to protect species throughout the range of their daily movements around the reefs. NOAA concludes that establishment of SMZs will not impact mineral exploration or related activities and that the SMZ boundaries are justified.

**Changes from the Proposed Rule**

*Section 646.2*

The definition of "Fishery conservation zone (FCZ)" has been deleted and replaced by a definition of "Exclusive economic zone (EEZ)"; "EEZ" has been substituted for "FCZ" throughout the regulations.

*Section 646.24*

Coordinates in paragraphs (a)(1), (3), (5), (7), and (12) were corrected as requested by SC–W&MRD.

The heading of paragraph (a)(12) was changed to read "Hilton Head Reef/Artificial Reef T" to reflect that this reef was constructed jointly by South Carolina and Georgia and is known by different names in these two States.

**Classification**

The Director, Southeast Region, NMFS, determined that this regulatory amendment is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

These measures are part of the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

It was previously determined, on the basis of a regulatory impact review (RIR) and regulatory flexibility analysis (RFA) summarized in the final rule implementing the FMP (48 FR 39466, August 31, 1983) that the rule is not major under Executive Order 12291. A supplemental RIR was prepared for this proposed rule; it indicates that the anticipated benefits exceed the compliance cost to the public.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA, found that it would be contrary to the public interest in effective management of the artificial reefs and their fish resources to delay for 30 days the effective date of this rule. January through April is the peak period for trap fishing which would be prohibited once the rule goes into effect. To allow trap fishing to continue into late April instead of being prohibited in late March would have a detrimental effect on the fish populations associated with the SMZs for the remainder of the year.

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal management program. Letters were sent to the appropriate States advising them of this determination.

**List of Subjects in 50 CFR Part 646**

Fisheries, Fishing.

Dated: March 24, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.*

## PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

For reasons set forth in the preamble, 50 CFR Part 646 is amended as follows:

1. The authority citation for Part 646 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In Part 646, in the Table of Contents under Subpart B, a new section title is added, to read as follows:

Sec.

* * * * *

646.24 Area limitations.

3. Section 646.2 is amended by removing the definition for *Fishery conservation zone (FCZ)* and inserting in alphabetical order the definition for *Exclusive economic zone (EEZ)* to read as follows:

**§ 646.2 Definitions.**

* * * * *

*Exclusive economic zone (EEZ)* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

* * * * *

4. Section 646.6 is amended by removing the word "or" at the end of paragraph (a)(17), changing the period at the end of paragraph (a)(18) to a semicolon, and adding new paragraphs (a)(19), (20), and (21), to read as follows:

**§ 646.6 Prohibitions.**

(a) * * *

BEST COPY AVAILABLE

(19) Fish with any type of fishing gear except hand-held hook-and-line gear or spearfishing gear as specified in § 646.24(b) (1) and (2);

(20) Possess or retain jewfish taken by any type of fishing gear or take any jewfish with spearfishing gear as specified in § 646.24(b) (3); or

(21) Fail to release immediately in the water any incidentally caught jewfish as specified in § 646.24(b)(3).

* * * * *

5. A new § 646.24 is added to Subpart B to read as follows:

**§ 646.24 Area limitations.**

(a) The following artificial reefs and surrounding areas are established as Special Management Zones (SMZs):

(1) *Little River Reef:* The area is bounded by straight lines connecting the following points:

A 33°49.60′ N., 78°30.51′ W.
B 33°48.95′ N., 78°31.30′ W.
C 33°48.92′ N., 78°29.72′ W.
D 33°48.40′ N., 78°30.50′ W.

(2) *Paradise Reef:* The area is bounded on the north by 33°31.59′ N. latitude; on the south by 33°30.51′ N. latitude; on the east by 78°57.55′ W. longitude; and on the west by 78°58.85′ W. longitude.

(3) *Ten Mile Reef:* The area is bounded on the north by 33°26.65′ N. latitude; on the south by 33°24.80′ N. latitude; on the east by 78°51.08′ W. longitude; and on the west by 78°52.97′ W. longitude.

(4) *Pauleys Island Reef:* The area is bounded on the north by 33°26.58′ N. latitude; on the south by 33°25.76′ N. latitude; on the east by 79°00.29′ W. longitude; and on the west by 79°01.24′ W. longitude.

(5) *Georgetown Reef:* The area is bounded on the north by 33°14.90′ N. latitude; on the south by 33°13.85′ N. latitude; on the east by 78°59.45′ W. longitude; and on the west by 79°00.65′ W. longitude.

(6) *Capers Reef:* The area is bounded on the north by 32°45.45′ N. latitude; on the south by 32°43.91′ N. latitude; on the east by 79°33.81′ W. longitude; and on the west by 79°35.10′ W. longitude.

(7) *Kiawah Reef:* The area is bounded on the north by 32°29.78′ N. latitude; on the south by 32°28.25′ N. latitude; on the east by 79°59.00′ W. longitude; and on the west by 80°00.95′ W. longitude.

(8) *Edisto Offshore Reef:* The area is bounded on the north by 32°15.30′ N. latitude; on the south by 32°13.90′ N. latitude; on the east by 79°50.25′ W. longitude; and on the west by 79°51.45′ W. longitude.

(9) *Hunting Island Reef:* The area is bounded on the north by 32°13.72′ N. latitude; on the south by 32°12.30′ N. latitude; on the east by 80°19.23′ W. longitude; and on the west by 80°21.00′ W. longitude.

(10) *Fripp Island Reef:* The area is bounded on the north by 32°15.92′ N. latitude; on the south by 32°14.75′ N. latitude; on the east by 80°21.62′ W. longitude; and on the west by 80°22.90′ W. longitude.

(11) *Betsy Ross Reef:* The area is bounded on the north by 32°03.60′ N. latitude; on the south by 32°02.88′ N. latitude; on the east by 80°24.57′ W. longitude; and on the west by 80°25.50′ W. longitude.

(12) *Hilton Head Reef/Artificial Reef—T:* The area is bounded on the north by 32°00.71′ N. latitude; on the south by 31°59.42′ N. latitude; on the east by 80°35.23′ W. longitude; and on the west by 80°36.37′ W. longitude.

(13) *Artificial Reef—A:* The area is bounded on the north by 30°56.4′ N. latitude; on the south by 30°55.2′ N. latitude; on the east by 81°15.4′ W. longitude; and on the west by 81°16.5′ W. longitude.

(14) *Artificial Reef—C:* The area is bounded on the north by 30°51.4′ N. latitude; on the south by 30°50.1′ N. latitude; on the east by 81°09.1′ W. longitude; and on the west by 81°10.4′ W. longitude.

(15) *Artificial Reef—G:* The area is bounded on the north by 30°59.1′ N. latitude; on the south by 30°57.8′ N. latitude; on the east by 80°57.7′ W. longitude; and on the west by 80°59.2′ W. longitude.

(16) *Artificial Reef—F:* The area is bounded on the north by 31°06.6′ N. latitude; on the south by 31°05.6′ N. latitude; on the east by 81°11.4′ W. longitude; and on the west by 81°13.3′ W. longitude.

(17) *Artificial Reef—J:* The area is bounded on the north by 31°36.7′ N. latitude; on the south by 31°35.7′ N. latitude; on the east by 80°47.0′ W. longitude; and on the west by 80°48.1′ W. longitude.

(18) *Artificial Reef—L:* The area is bounded on the north by 31°46.2′ N. latitude; on the south by 31°45.1′ N. latitude; on the east by 80°35.8′ W. longitude; and on the west by 80°37.1′ W. longitude.

(19) *Artificial Reef—KC:* The area is bounded on the north by 31°51.2′ N. latitude; on the south by 31°50.3′ N. latitude; on the east by 80°46.0′ W. longitude; and on the west by 80°47.2′ W. longitude.

(b) The following restrictions apply within the SMZs.

(1) Fishing may be conducted only with hand-held hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing gear (including powerhead).

(2) The use of fish traps, bottom longlines, gill nets, and trawls is prohibited.

(3) Jewfish may not be harvested by any type of gear. Jewfish taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

**§§ 646.1, 646.2, 646.3, 646.5, 646.6, 646.21, and 646.22 [Amended]**

6. In addition to the amendments set forth above, Part 646 is amended as follows:

A. In § 646.1(b), the words "fishery conservation zone (FCZ)" are removed and the initials "EEZ" are added in their place.

B. The initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places:

Section 646.2, in the definition for *South Atlantic;*
Section 646.3(c);
Section 646.5 (a), (e), and (f);
Section 646.6(a) (4), (5), (6), (7), (9), (16), and (18);
Section 646.21 (a), (b), and (c); and
Section 646.22(b) (4) and (5).

[FR Doc. 87-6818 Filed 3-26-87; 8:45 am]
BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 340 and 752

### Other Than Full-Time Career Employment and Adverse Actions

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulation.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to amend its regulations to reflect two decisions of the U.S. Court of Appeals for the Federal Circuit, which ruled that (1) performance-based actions may be taken under Part 752; and (2) terminating an employee's temporary promotion is not an adverse action. In addition, the regulations would define the terms "current continuous service" and "indefinite suspension" in regulation. They would provide part-time employees who experience an involuntary reduction in the number of hours in their regular schedule with advance notice and the right to contest the action, while clarifying that these actions are not reductions in pay for adverse action purposes. The regulations also would reflect recent case law that requires adverse action procedures for management actions that place employees on enforced leave for more than 14 days under certain circumstances. Also, the regulations would provide for the use of indefinite suspensions in some situations. Finally, they would make technical and clarifying changes.

**DATE:** Comments must be received on or before May 26, 1987.

**ADDRESS:** Written comments may be sent or delivered to the Chief, Appellate Policies Division; Office of Employee, Labor and Agency Relations; Office of Personnel Management; Room 7635; 1900 E Street, NW.; Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Field (202) 653–8551.

**SUPPLEMENTARY INFORMATION:**

I. *Performance-based actions.* In *Lovshine* v. *Department of the Navy*, 767 F. 2d 834 (Fed. Cir. 1985), *cert. denied*, 106 S. Ct. 1623 (1986), the U.S. Court of Appeals for the Federal Circuit held that agencies may take actions, including disciplinary actions, based solely on inefficient performance under Part 752. Furthermore, the *Lovshin* decision makes clear that agencies may take actions involving both unacceptable performance and misconduct, "relying on Chapter 43 [of Title 5 of the United States Code] for 'unacceptable performance' in a critical element with an alternative, or additional charge, under Chapter 75 [of Title 5 of the U.S. Code] for 'such cause as will promote the efficiency of the service.' In such cases, the appropriate standard of review by MSPB should be applied according to the basis for each specific charge." OPM's current regulations reflect earlier opinion that actions for unacceptable performance could only be taken under 5 CFR Part 432 and that actions based on both performance and nonperformance reasons could only be taken under 5 CFR Part 752. OPM proposes to revise the adverse action coverage statement to reflect the court's holdings and the standards for action.

II. *Termination of temporary and term promotions.* In *Phipps* v. *Department of Health and Human Services*, 767 F.2d 895 (Fed. Cir. 1985), the U.S. Court of Appeals for the Federal Circuit held that if agencies had informed employees in advance that a promotion was only temporary, they are not required to follow adverse action procedures when terminating any temporary promotion that extends past 2 years. OPM proposes to amend 5 CFR 752.401(c)(7), and (8), which concerns termination of term promotions, to reflect this holding.

III. *Reduction in schedule of a less-than full-time employee.* There has been considerable confusion about whether the involuntary reduction in schedule of other than full-time employees is a reduction in pay covered by Chapter 75 of Title 5, U.S. Code. Until the passage of the Civil Service Reform Act (CSRA) of 1978, the permanent reduction in a part-time employee's schedule was considered a reduction in pay and was therefore covered by adverse action procedures. The CSRA definition of pay for adverse action purposes (the rate of *basic* pay set for a position) resulted in questions as to whether these actions were still subject to adverse action procedures. OPM has determined that such reduction is not a reduction in *basic* pay for adverse action purposes because the annual and hourly rate of pay for a General Schedule position would remain the same and because prevailing rate employees' pay is almost uniformly set at an hourly rate. Thus, reducing the schedule would not reduce the rate of basic pay as required by Chapter 75 of Title 5 of the U.S. Code. In addition, the legislative history of the CSRA supports the conclusion that to qualify as a "reduction in pay," the pay of the *position* must be reduced.

Notwithstanding the exclusion from Chapter 75 of Title 5 of the U.S. Code, there is no intent to deny due process and procedural protections for involuntary reduction in the schedules of part-time employees. In this regard, OPM is clarifying that such actions are properly included under 5 CFR Part 340, which specifically covers other than full-time employment. Coverage under this part will require the agency to provide employees with advance notification of its proposed action, an opportunity to answer, and an appeal right similar to that provided in 5 CFR Part 752.

Actions to reduce the schedule of part-time employees should be taken for reasons related to the agency's budget or workload and not for misconduct or performance reasons. If adverse or performance-based actions are necessary with respect to these employees, the proper course of action would be to take an appropriate disciplinary action such as removal, reduction in grade, or suspension under Part 752, or a reduction in grade or removal based on unacceptable performance under either Part 432 or Part 752.

IV. *Current continuous employment or service in the same or similar positions.* Agencies and employees have raised questions about the meaning of "current continuous employment" or "service" with respect to adverse action coverage under 5 U.S.C. Chapter 75. Because there is no current regulatory definition of "current continuous service," OPM proposes to define this term in regulation tied to the actual language of the law. Currently, FPM Chapter 752 states that the method by which service is credited for adverse action coverage purposes is the same as for completion of a probationary period. This approach

is not required and has produced confusion and different interpretations among agencies, employees, and third parties. The new definition is intended to simplify the determination of whether an employee has met the legal requirement for one year of current continuous service and is thereby covered under adverse action procedures. It will do this by establishing that the employee's service, prior to the adverse action, must be continuous for one year without a break.

Similarly, there is a need to define "the same or similar positions" to clarify what 5 U.S.C. 7511(a)(l)(B) means so as to make it clear what positions are the same as or similar to the one the employee currently holds.

V. *Suspension.* OPM has become aware of some confusion concerning the definition and use of "indefinite suspensions." Currently, the only mention of indefinite suspension occurs in FPM Chapter 752 as guidance. OPM is proposing to define indefinite suspension in regulation and to provide for its use under appropriate circumstances, reflecting the recent decision of the U.S. Court of Appeals for the Federal Circuit in *Wiemers* v. *Merit Systems Protection Board,* 792 F.2d 1113 (Fed. Cir. 1986), which upheld the use of indefinite suspensions under certain circumstances, pending the outcome of criminal proceedings. That court has also issued two decision, *Thomas* v. *General Services Administration,* 756 F.2d 86 (Fed. Cir. 1985) and *Mercer* v. *Department of Health and Human Services,* 772 F.2d 856 (Fed. Cir. 1985), which held that an indefinite suspension is proper pending inquiry or where retention on duty status would be in jurious to the employee, fellow workers, or the public (whether or not the employee was ready, willing, or able to work). These decisions also held that management actions to place employees on enforced leave for more than 14 days under the above circumstances are disciplinary in nature and equate to constructive adverse actions requiring proper procedures. The Merit Systems Protection Board, in *Passmore* v. *Department of Transportation,* MSPB Dkt. No. SL07528510177 (June 13, 1986), has affirmed the holdings of the U.S. Court of Appeals for the Federal Circuit in *Thomas* and *Mercer,* holding that it has jurisdiction over involuntary actions to place employees on enforced leave during inquiry or for safety concerns because these actions constitute appealable suspensions, regardless of whether the employee is ready, willing, and able to work.

VI. *Status during the 30-day notice period.* Because of the decisions in *Thomas, Mercer,* and *Passmore* (see above), it is necessary to revise the section that provides alternatives to keeping the employee in a duty status during the 30-day notice period, to delete the provision in 5 CFR 752.404(b)(3)(iii) for the use of involuntary leave when the agency has medical documentation demonstrating the employee's physical or metal incapacitation.

VII. *Exception to 30-day notice period.* Two changes are proposed for the "crime provision" exception to the 30-day advance notice period. The first would include indefinite suspensions in the exception. The second would remove the 10-day limit on the placement of an employee in a nonduty pay status pending the effectuation of the action, paralleling OPM's earlier change to the so-called "emergency procedures" in 5 CFR 752.404(b)(3). Agencies can best determine the length of time necessary for effecting such actions.

VIII. *Editorial changes.* In addition to these substantive changes, OPM proposes to make some editorial changes for greater ease of reference (including some statements of coverage now only in FPM Chapter 752) for consistency and to correct obsolete references. Finally, we are including under 5 CFR 751.401(b) (Employees Covered) certain employees of the Department of Medicine and Surgery of the Veterans Administration who were mistakenly shown as excluded from 5 CFR Part 752.

OPM solicits comments on other aspects of 5 CFR Part 752 that the public believes would make for a more effective regulation, as well as suggestions for updating the guidance in FPM Chapter 752.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

**List of Subjects in 5 CFR Parts 340 and [illegible]**

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.
**James E. Colvard,**
*Deputy Director.*

## PART 340—OTHER THAN FULL-TIME CAREER EMPLOYMENT (PART-TIME, SEASONAL, ON-CALL, AND INTERMITTENT)

Accordingly, OPM proposes to amend Parts 340 and 752 of Title 5 of the Code of Federal Regulations as follows:

1. The authority citation for Part 340 is revised to read as set forth below; and the authority citation for Subpart D of Part 340 is removed:

**Authority:** 5 U.S.C. 3401 et seq.; Subpart D also issued under 5 U.S.C. 3301 and 3302.

2. Subpart C is added to read as follows:

**Subpart C—Reduction in Schedule of Part-time Employees**

Sec.
340.301 Coverage.
340.302 Standard for action and procedures.
340.303 Appeals.

### Subpart C—Reduction in Schedule of Part-time Employees

**§ 340.301 Coverage.**

This subpart applies to involuntary reductions in schedule of part-time employees as covered in § 752.401(c) of this chapter.

**§ 340.302 Standard for action and procedures.**

(a) An agency may involuntarily reduce the scheduled hours of work of a part-time employee in tenure group I or II only for reasons directly related to workload or budget.

(b) The following procedures are required:

(1) The employee will be given at least 30 days' advance written notice stating the specific reasons for the proposed schedule.

(2) When the schedules of some but not all employees in a given competitive level are being reduced, the notice will state the basis for selecting a particular employee.

(3) The employee will be given a reasonable time, but not less than 5 days, to answer orally and in writing. The agency will designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed action.

(4) The employee has the right to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of

interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(5) The agency will issue a written final decision with the specific reasons for it at the earliest practicable date, at or before the time the schedule reduction will be effective. The decision will advise the employee of appeal rights.

**§ 340.303 Appeals.**

An employee whose scheduled hours of work are involuntarily reduced may appeal to the Merit Systems protection Board. An employee covered by a collective bargaining agreement who elects to challenge the agency's action will utilize the procedures of the negotiated grievance procedure unless the action is specifically excluded from coverage as provided by 5 U.S.C. 7121(a).

## PART 752—ADVERSE ACTIONS

3. The authority citation for Part 752 is revised as set forth below; and all other authority citations throughout Part 752 are removed:

**Authority:** 5 U.S.C. 7504 and 7514; 5 U.S.C. 1302, Pub. L. 96–494; Section 752.401 also issued under 5 U.S.C. 3301 and 3302, and E.O. 10577; Section 752.405 also issued under 5 U.S.C. 1302 and 7513; Subpart F also issued under 5 U.S.C. 7543.

4. In § 752.201, paragraphs (b)(3) and (b)(4) are added and paragraph (c) is revised to read as follows:

**§ 752.201 Coverage.**

* * * * *

(b) * * *.

(3) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position.

(4) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3).

(c) *Definitions.* In this subpart—

(1) "Day" means a calendar day.

(2) "Current continuous employment" means a period of employment immediately preceding a suspension action in the same or similar positions without a break of a workday.

(3) "Same or similar positions" mean positions in which the duties performed require the same qualifications and would demonstrate the same degree of difficulty and responsibility.

(4) "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

* * * * *

5. In § 752.203, paragraph (d) is revised to read as follows:

**§ 752.203 Procedures.**

* * * * *

(d) *Representation.* Section 7503(b)(3) of Title 5 of the United States Code provides that an employee covered by this part is entitled to be represented in a suspension action by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

* * * * *

6. Section 752.401 is revised to read as follows:

**§ 752.401 Coverage.**

(a) *Adverse actions covered.* This subpart applies to the following actions:

(1) Removals;

(2) Suspensions for more than 14 days, including indefinite suspensions.

(3) Reductions in grade;

(4) Reductions in basic pay; and

(5) Furloughs of 30 days or less.

(b) *Actions excluded.* This subpart does not apply to actions excluded by 5 U.S.C. 7512, or the following:

(1) Actions taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from Subchapter II of Chapter 75 of Title 5, United States Code.

(2) Action that entitles an employee to grade retention under Part 536 of this chapter, and an action to terminate this entitlement;

(3) Voluntary action initiated by the employee;

(4) Action taken or directed by the Office of Personnel Management under Part 731 or Part 754 of this chapter;

(5) Involuntary retirement because of disability under Part 831 of this chapter;

(6) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(7) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, in accordance with Part 335 of this chapter.

(8) Cancellation of a promotion to a position not classified prior to the promotion;

(9) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment;

(10) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation to a rate that is required or permitted by law or regulation; or

(11) Reduction in the scheduled hours of a part-time employee.

(c) *Employees covered.* This subpart covers the following employees:

(1) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(A), including an employee of the Government Printing Office and an employee of the Administrative Office of the United States Courts;

(2) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(B);

(3) An employee with competitive status who occupies a position in Schedule B of Part 213 of this chapter;

(4) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this chapter, provided that the employee has completed a trial period of 1 year after initial appointment in such position;

(5) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and still occupies that position; or

(6) A certified respiratory therapy technician, registered respiratory therapist, licensed physical therapist, and licensed practical or vocational nurse employed under 38 U.S.C. 4104(3).

(d) *Employees excluded.* This subpart does not apply to employees excluded by 5 U.S.C. 7511(b), or the following:

(1) A reemployed annuitant;

(2) A National Guard technician; or

(3) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, who is appointed under Chapter 73 of Title 38, United States Code.

7. Section 752.402 is revised to read as follows:

**§ 752.402 Definitions.**

In this subpart—

(a) "Day" means a calendar day.

(b) "Current continuous employment" or "service" means a period of employment or service immediately preceding an adverse action in the same or similar positions without a break of a workday.

(c) "Furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work

or funds or other nondisciplinary reasons.

(d) "Grade" means a level of classification under a position classification system.

(e) "Indefinite suspension" means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, further agency action, or where retention in a duty status would likely be injurious to the employee, his or her fellow workers, or the public. Indefinite suspension under this subpart includes the involuntary placement of an employee in an indeterminate period of enforced sick leave, annual leave, or nonduty, nonpay status for the reasons set out above. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action.

(f) "Pay" means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

(g) "Same or similar" positions mean positions in which the duties performed require the same qualifications and would demonstrate the same degree of difficulty and responsibility.

(h) "Suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for more than 14 days. Pending inquiry, further agency action, or where retention in a duty status would likely be injurious to the employee, his or her fellow workers, or the public, the involuntary placement of an employee in a determinate period of enforced sick leave, annual leave, or in a nonduty, nonpay status for more than 14 days constitutes a suspension covered by this subpart.

8. In § 752.403, paragraph (a) is revised to read as follows:

**§ 752.403 Standard for action.**

(a) An agency may take an adverse action, including a performance-based adverse action, under this subpart only for such cause as will promote the efficiency of the service.

* * * * *

9. In § 752.404, the second sentence of paragraph (b)(1) is revised read as set forth below.

a. Paragraph (b)(3) is revised: paragraph (b)(3)(iii) is removed; paragraphs (b)(3)(iv) and (v) are revised and redesignated as paragraph (b)(3)(iii) and (iv) respectively; and a new paragraph (b)(3)(v) is added to read as set forth below.

b. Paragraph (d)(1) is revised to read as set forth below.

c. Paragraph (e) is revised to read as set forth below.

**§ 752.404 Procedures.**

* * * * *

(b) *Notice of proposed action.* (1) * * * The agency may not use material that cannot be disclosed to the employee or his or her representative or designated physician under § 297.204(c) of this chapter to support the reasons in the noticed.

* * * * *

(3) Under ordinary circumstances, an employee whose removal or indefinite suspension has been proposed shall remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency shall consider whether any of the following alternatives is feasible:

* * * * *

(iii) Carrying the employee on appropriate leave (annual, sick, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency;

(iv) Curtailing the notice period when the agency can invoke the provisions of § 752.404(d)(1), the "crime provision." This provision may be invoked even in the absence of judicial action if the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

(v) Placing the employee in a paid, nonduty status during all or part of the advance notice period if none of the other alternatives is available.

* * * * *

(d) *Exceptions.* (1) Section 7513(b) of Title 5 of the United States Code authorizes an exception to the 30 days' advance written notice when the agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, and is proposing a removal or indefinite suspension. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as would be reasonable, but not less than 7 days. When the circumstances require that the employee be kept away from the worksite, the agency may place him or her in a nonduty status with pay for such time as is necessary to effect the action.

* * * * *

(e) *Representation.* Section 7513(b)(3) of Title 5 of the United States Code provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

* * * * *

[FR Doc. 87-6828 Filed 3-26-87; 8:45 am]
BILLING CODE 6325-01-M

---

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 959 and 980

### Onions Grown In South Texas; Extension of Time for Receipt of Written Comments on Proposed Amendment No. 5 To Handling Regulation; Vegetable Import Regulations for Onions; Proposed Amendment

**AGENCY:** Agricultural Marketing Service. USDA.

**ACTION:** Notice rule; extension of comment period.

**SUMMARY:** Notice is hereby given that the time period for filing written comments on a proposal to amend the handling regulation for onions grown in South Texas and to make conforming changes to the import regulation for onions is extended from March 26 to April 15. The comment period extension will give interested persons additional time to analyze the proposal and submit written comments on it.

**DATE:** Comments Due: April 15, 1987.

**ADDRESSES:** Comments should be sent to: Docket clerk, F&V, AMS, Room 2085-S, U.S. Department of Agriculture, Washington, DC 20250-1400. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch,

F&V, AMS, USDA, Washington, DC 20250–1400 (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** Pursuant to Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674) a notice of proposed rulemaking was published in the March 11, 1987, issue of the **Federal Register** (52 FR 7428), regarding a proposal to amend the handling regulation for onions grown in South Texas under Marketing Order No. 959 and the onion import regulation under § 980.117.

The Department received several telephone calls and written comments stating that more time was needed to analyze the proposal and submit written comments on it.

Extending the comment period is justified to ensure that all parties are provided with an adequate amount of time to review the proposed rule and submit comments. Accordingly, the comment period is being extended by 20 days to April 15, 1987, or a total of 35 days from the date of publication on March 11, 1987. The present provisions of the handling regulation are applicable until any changes are made effective based on the proposal.

**List of Subjects 7**

*7 CFR Part 959*

Marketing agreements and orders, Onions, Texas.

*7 CFR Part 980*

Marketing agreements and orders, Imports, Onions.

1. The authority citation for 7 CFR Parts 959 and 980 continue to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: March 24, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–6943 Filed 3–26–87; 8:45 am]

BILLING CODE 3410-02-M

---

**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 85–084]**

## Import Permits for Birds, Poultry, or Pigeons Transiting the Port of Anchorage, AK

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the regulations concerning the importation of certain animals and birds into the United States, to provide that under certain circumstances importers can obtain and use a single import permit for more than one shipment of birds, poultry, or pigeons transiting the Port of Anchorage, Alaska. This action appears to be necessary to help reduce paperwork and resulting expenditures.

**DATE:** Written comments must be received on or before May 26, 1987.

**ADDRESS:** Written comments concerning this proposed rule should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in reference to Docket number 85–084. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wade Ritchie, Import-Export Operations Staff, VS, APHIS, USDA, Room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of certain animals, birds, poultry, and pigeons. Section 92.4 of these provisions requires that an importer of an importer's agent, with certain exceptions, must apply for and obtain an import permit from Veterinary Services prior to importing animals, birds, poultry, or pigeons into the United States. A separate import permit is required for each such shipment.

An analysis of shipments of birds, poultry, or pigeons in transit through the Port of Anchorage, Alaska, reveals that a large proportion of these shipments are made by a small proportion of the importers who use that port. Each of these importers sends numerous shipments of birds, poultry, or pigeons through the Port of Anchorage each year. Though these multiple shipments are similar and routine, each shipment requires a separate import permit. To obtain separate permits the importers must apply for each permit individually and Veterinary Services must process each application and issue each permit individually.

This system requires extensive paperwork, time, and effort by both Veterinary Services and the importers. It is also highly duplicative and repetitive for both the importers and Veterinary Services. It appears, however, that it would be possible to amend the regulations to reduce duplication, paperwork, and personnel requirements, without weakening the ability of Veterinary Services to prevent the introduction of disease into the United States by birds, poultry, or pigeons transiting the Port of Anchorage, Alaska. In addition, it appears that such amendments to the regulations would reduce costs for both importers and Veterinary Services, and could result in more efficient, less costly issuance of import permits.

It is therefore proposed to amend the regulations to allow importers of birds, poultry, or pigeons transiting the Port of Anchorage, Alaska, to obtain and use a single import permit for more than one shipment of birds, poultry, or pigeons through that port. An import permit issued for such multiple use would be valid only during the calendar year in which it was issued. In addition, off-loading of birds, poultry, or pigeons transiting the Port of Anchorage, Alaska, under such a permit would be prohibited.

Under the proposed amendments, the prospective importer would be required to apply for an import permit from Veterinary Service in the same basic manner as currently provided in the regulations. All general information, including the name and address of the importer, the purpose of the importation, and the port of entry into the United States, would be required to be provided at the time of application. However, information which would be different for different shipments, such as the exact number of birds, poultry, or pigeons, the port of embarkation in the foreign country, and the anticipated date of arrival, would not be required at the time of application. The importer would be required to supply this information at a later time, as explained below. After receipt and processing of the application, Veterinary Services would issue an import permit to the prospective importer. This import permit would be valid through the calender year in which it was issued, and would include only the general information provided by the importer on the permit application. Thereafter, whenever the importer had a shipment of birds, poultry, or pigeons which was to transit the Port of Anchorage, Alaska, the importer would make a copy of the import permit, complete it by inserting all information that pertained to the individual shipment but was missing from the permit, and forward one copy of the permit to the Port Veterinarian at Anchorage, Alaska, no less than two weeks prior to the anticipated date of arrival of the shipment at the port. The

importer would also be required to comply with all other applicable regulations. Finally, off-loading of birds, poultry, or pigeons transiting the Port of Anchorage, Alaska, under such a permit would be prohibited.

It is proposed that these provisions apply only to birds, poultry, or pigeons transiting the United States through the Port of Anchorage, Alaska. It is also proposed that off-loading of such birds, poultry, and pigeons at the Port of Anchorage, Alaska, be prohibited. These restrictions appear to be necessary to help minimize any risk of disease spread.

Import permits are never issued for diseased animals, regardless of the species. In addition, all animals subject to the regulations which are offered for entry into the United States must have a valid health certificate, or they are refused entry. However, beyond these basic requirements, importation requirements for different species of animals are different, and the circumstances under which import permits are issued for different species are also different. Import permits for undiseased animals in transit through the United States, other than avian species (birds, poultry, and pigeons), are issued only after ascertaining the species to be imported, the country from which it is coming, and the presence or absence in the country of specific diseases to which the particular species is susceptible or which it could transmit. In addition, other information concerning individual animals to be imported, such as sex, age, and prior medical treatment, may be needed. Depending upon these factors, an important permit may or may not be issued, and if a permit is issued, the conditions of importation may vary. Under these circumstances, it is not administratively practical or feasible to issue import permits for multiple shipments of non-avian species intended to transit the United States.

However, import permits for undiseased avian species transiting the United States are issued for all such birds, poultry, or pigeons, regardless of the country from which they are coming, the presence or absence of any particular diseases in that country, and any other factors. In addition, the conditions for importation of such birds, poultry, and pigeons do not vary. Therefore, it is administratively feasible and practical to issue permits for use for multiple shipments of birds, poultry, or pigeons intended to transit the United States.

For the above reasons it appears to be necessary to restrict use of such permits, as proposed in this document, to intransit importations through the United States of birds, poultry, and pigeons.

In addition, it appears to be necessary to limit application of the proposed provisions to the Port of Anchorage, Alaska, to help ensure that no significant disease threat is posed by birds, poultry, or pigeons transiting the United States under the proposed import permit system.

There are two reasons for this proposed restriction. First, the State of Alaska has no significant domestic commercial poultry industry, and second, most air traffic landing at Anchorage is through traffic, as opposed to terminal traffic; that is, it continues to other destinations without unloading.[1] Under these circumstances, it appears that the disease risk posed by birds, poultry, or pigeons transiting the Port of Anchorage is insignificant because there is little or no opportunity for exposure to birds, poultry, or pigeons either in the area of the port or arriving at the port for permanent entry into the United States. These circumstances do not pertain to other ports in the United States. At all other ports there is significant commerical poultry production in the area of the port, and/or the port handles significant terminal traffic in birds, poultry, or pigeons.

Therefore, for the above reasons, it appears to be necessary to limit use of the proposed import permit to birds, poultry, and pigeons transiting the port of Anchorage, Alaska.

In addition it appears to be necessary to prohibit off-loading of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, under the proposed permit system. This requirement would be an additional safeguard to minimize any possible disease risk presented by such birds, poultry, or pigeons.

Finally, it appears to be necessary, for efficient management of the proposed permit system, to issue permits which are valid only through the calendar year in which they are issued. This will ensure that the baisc information on such certificates is relatively current, while greatly reducing paperwork and its resulting expense.

It appears that adoption of these proposed provisions would have no effect on the timely availability of information necessary for Veterinary Services to monitor and control intransit shipments of birds, poultry, or pigeons through the Port of Anchorage, Alaska, or on the effectiveness of existing monitoring and control programs for birds, poultry, and pigeons in transit through that port. It also appears that adoption of the proposed provisions would help to reduce paperwork and resulting expenditures, and possibly result in more efficient, less costly issuance of import permits.

[1] Though the Port of Anchorage, Alaska, is both an ocean port and an airport, birds, poultry, or pigeons are imported through that port only by air.

### Miscellaneous

It is also proposed to make miscellaneous amendments to the regulations for the purposes of clarity.

### Executive Order 12291 and Regulatory Flexibility Act Analysis

This proposed rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and should have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If the proposed regulations are adopted, it is anticipated that fewer than one percent of shipments of birds, poultry, or pigeons transiting the United States would be affected by the proposed amendments, as compared with the number of all shipments of birds, poultry, or pigeons transiting or entering the United States through all ports of entry.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant impact on a substantial number of small entities.

### Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the information collection provisions that are included in this rule have been approved by the Office of Management and Budget and have been given OMB control numbers 0579–0040 and 0579–0060.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See CFR Part 92)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the regulations in 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would continue to read as set forth below:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, in the first sentence "§§ 92.2 (b) and (c), 92.19, 92.27, and 92.31" would be revised to read "§§ 92.2 (b) and (c), 92.4(e) 92.19, 92.27, and 92.31".

3. In § 92.4, a new paragraph (e) would be added to read as follows:

**§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by Veterinary Services.**

* * * * *

(e) Notwithstanding any other provisions in this part, importers are not required to obtain an import permit and provide the shipper with an original import permit for each individual shipment of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, if the following conditions are met:

(1) The importer applies for and obtains an import permit for multiple shipments of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, in accordance with the provisions of this section and related requirements concerning application therefore; *Provided that,* the following information shall not be required on such application:

(i) The species, breed, and number of birds, poultry, or pigeons to be imported;

(ii) The individual animal identification;

(iii) The country of origin;

(iv) The name and address of the exporter;

(v) The port of embarkation in the foreign country;

(vi) The mode of transportation and the route of travel;

(vii) The proposed date of arrival of the birds, poultry, or pigeons; and

(viii) The name and address of the person to whom the birds, poultry, or pigeons will be delivered.

(2) The importer completes a copy of the import permit obtained under paragraph (e)(1) above for each separate shipment of birds, poultry, or pigeons intended to transit the port of Anchorage, Alaska, by inserting the following information on a copy of the permit:

(i) The species, breed, and number of birds, poultry, or pigeons to be imported;

(ii) The individual animal identification (except poultry);

(iii) The country of origin;

(iv) The name and address of the exporter;

(v) The port of embarkation in the foreign country;

(vi) The mode of transportation and the route of travel;

(vii) The proposed date of arrival of the birds, poultry, or pigeons; and

(viii) The name and address of the person to whom the birds, poultry, or pigeons will be delivered.

(3) The importer, not less than 2 weeks prior to the anticipated date of arrival of each separate intransit shipment of birds, poultry, or pigeons at the port of Anchorage, Alaska, provides the Port Veterinarian with a copy of such completed import permit;

(4) A copy of such completed import permit accompanies each separate intransit shipment of birds, poultry, or pigeons to the port of Anchorage, alaska.

**§ 92.2 [Amended]**

4. In § 92.2, the first sentence in paragraph (d)(1)(ii) would be amended by changing "They are unloaded. . . " to read "Except for birds, poultry, or pigeons intransit through Anchorage, Alaska, ed under § 92.4(e) of this Part, which are not allowed to be unloaded, they are unloaded, . . . ."

Done at Washington, DC, this 24th day of March 1987.

B.G. Johnson,

*Deputy Administrator, Veterinary Services.*

[FR Doc. 87–6812 Filed 3–26–87; 8:45 am]

BILLING CODE 3410–34–M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Parts 19, 197, 250, and 251

[Notice No. 625]

### Credit Against Paid Tax; Implementation of Section Six of Public Law 96–598

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** ATF proposes to issue regulations to implement section 6 of Pub. L. 96–598 (94 Stat. 3488). This section allows a credit against the tax paid or determined on distilled spirits for alcohol derived from certain wine and flavors. This section also permits the transfer between the bonded premises of distilled spirits plants of distilled spirits bottled for industrial purposes.

**DATES:** Comments should be received on or before June 25, 1987.

**ADDRESSES:** Send written comments to Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, ATTN: Notice No. 625.

All written comments received on this notice may be inspected, during normal business hours, at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Langford or Jackie White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202–566–7531.

**SUPPLEMENTARY INFORMATION:**

**Background**

In January of 1980, the Distilled Spirits Tax Revision Act of 1979 (Subtitle A of Title VIII of the Trade Agreements Act of 1979, Pub. L. 96–39 (93 Stat. 273)) instituted a new system for imposing and administering the excise tax on distilled spirits, referred to as the *all-in-bond* method. Under this method, the tax on distilled spirits is paid or determined on the basis of alcohol content, regardless of the source of the alcohol, after completion of all distilled spirits operations. A result of the change to the all-in-bond method is that the alcohol content of distilled spirits derived from wine and flavors is subject to the distilled spirits tax.

In December of 1980, Pub. L. 96–598 (94 Stat. 3485) was enacted. Section 6 of

the law added section 5010 to the Internal Revenue Code of 1954. This provision restored to wine and flavors the tax status they enjoyed prior to institition of the all-in-bond method of tax determination. It did this by authorizing a credit against the excise tax liability paid or determined under the all-in-bond method for the wine and flavors content of distilled spirits.

The credit authorized for wine equals the difference between the distilled spirits tax and the applicable wine tax on the quantity of wine contained in distilled spirits. The credit authorized for flavors equals the distilled spirits tax on the quantity of nonbeverage flavors contained in distilled spirits to the extent that the alcohol derived from these flavors does not exceed 2½ percent (on a proof gallon basis) of the finished product.

In addition to providing a credit for the wine and flavors content of distilled spirits, section 6 of Pub. L. 96–598 amended section 5212 of the Internal Revenue Code of 1954 to allow the transfer between the bonded premises of distilled spirits plants of alcohol bottled for industrial purposes.

**Wine and Flavors Credit**

The credit for the wine and flavors content of distilled spirits poses a number of problems. Among these are the calculation of credit for wine content, the application of credit rates to the taxable removal of finished goods, and the verification of credit rates by persons other than the processor who manufactured the product. In Industry Circular 81–8, dated March 27, 1981, ATF provided various guidelines and procedures to resolve these problems. However, in retrospect, ATF believes these guidelines and procedures are unduly cumbersome. The proposed regulations, therefore, provide somewhat simplified procedures.

**Effective Tax Rates**

Industry Circular 81–8 provided a formula for the computation of a tax credit rate for each batch of distilled spirits containing wine or flavors. Because of the necessity of having to covert wine tax rates based on volume and percentage of alcohol to credit rates based on volume and proof, this formula is unwieldy and awkward to use.

To rectify this, the proposed regulations provide for the use of a formula for the computation of an effective tax rate for distilled spirits containing wine and flavors. The effective tax rate is the tax rate after reduction for any credit allowable for the wine and flavors content at which the tax imposed on distilled spirits is paid or determined.

In addition, to ensure the availability of records for the determination of effective tax rates, the proposed regulations provide that distilled spirits containing wine or flavors may be subject to distilled spirits operations only in the processing account.

**Application of Effective Tax Rates**

Under the procedures in Industry Circular 81–8, the credit rate is established when distilled spirits are mixed with wine or flavors in the processing account; however, the credit rate is determined at the time of tax determination, i.e., at the time of removal from bond. The circular therefore suggested a procedure which necessitated the tracing of taxable removals back to the applicable batch records for each product containing wine or flavors. To alleviate the cumbersome paperwork of such tracing, three alternative procedures for application of effective tax rates to taxable removals are proposed in this notice. These procedures are:

*1. Standard Effective Tax Rate.*

A standard effective tax rate may be established for any eligible distilled spirits product by computing an effective tax rate based on the least quantity and the lowest alcohol content of wine and flavors used in the manufacture of the product. A distilled spirits plant proprietor who desires to use this procedure to tax determine distilled spirits shall submit a statement to the regional director (compliance) showing the basis on which the standard effective tax rate is computed, i.e., the least quantity and the lowest alcohol content of wine and flavors. ATF recognizes that many approved formulas on ATF F 5110.38 cover products in which the quantities, proof, and alcohol content of distilled spirits, wine, and flavors vary between specified limits in arriving at the specified proof. In such case, the basis used to establish a standard effective tax rate must be within the range shown on Form 5110.38, but it need not be the least quantity or the lowest alcohol content of wine and flavors permissible on the approved foumula. However, in no case may a standard effective tax rate be less than the highest tax rate applicable to the product. In the event a lesser quantity or a lower alcohol content of wine or flavors is used in the manufacture of the product, the standard effective tax rate must be recomputed and a new statement of basis submitted to the regional director (compliance).

*2. Average Effective Tax Rate.*

An average effective tax rate may be established for any eligible distilled spirits products by computing an effective tax rate based on the batches produced during the preceding 6-month period if at least three batches were produced during that period. If this procedure is used for tax determinatin, a proprietor must also maintain for each product a record showing the average effective tax rate computation. To accurately reflect the wine and flavor content in current inventory, the average effective tax rate computed for each product is adjusted each month so as to include only the immediately preceding 6-month period.

*3. Inventory Reserve Account.*

An inventory reserve account may be established for any eligible distilled spirits product. Under this procedure, each time the product is bottled or packaged, a deposit record is entered into the inventory reserve account of the product. As the product is subsequently removed from inventory, the records in the inventory reserve account are depleted, in chronological order from the earliest entry date. All removals from inventory, including breakage and inventory losses, are chargeable against the inventory reserve account of the product. The tax rate applied to any taxable removal is determined by the effective tax rate of the record from which the removal is depleted.

**Eligible Wine and Flavors**

Credit for the wine and flavor content of distilled spirits is allowable only if the wine or flavor contained in the distilled spirits is an eligible wine or an eligible flavor. An eligible wine is a still wine which has not been subject to distillation at a distilled spirits plant after receipts in bond. An eligible flavor is a flavor of a type for which drawback of the tax imposed on distilled spirits is allowable under 26 U.S.C. 5134 which is made at other than a distilled spirits plant.

To facilitate the manufacture of eligible flavors by a distilled spirits plant proprietor, the proposed regulations provide that the premises of a distilled spirits plant may be alternately curtailed and extended to permit the use of the distilled spirits plant facilities for flavor manufacturing or other authorized purposes.

**Documentation of Wine and Flavor Content**

*1. Importers.*

Any person who imports distilled spirits containing wine or flavors on which the tax is to be paid or determined at an effective tax rate must establish the eligibility of the wine and flavor components contained in the product and provide information for verification of the effective tax rate computation. This is accomplished by submitting to ATF a sample of each wine and flavor component to be used in the computation of the effective tax rate. In addition, each time the distilled spirits are imported, a certificate of effective tax rate computation must be filed with the district director of customs or, for distilled spirits transferred under the provisions of 26 U.S.C. 5232, furnished to the distilled spirits plant proprietor. In lieu of this procedure, the importer may have a standard effective tax rate established for the product or use a standard effective tax rate previously approved for the product.

*2. Transfers in Bond.*

Distilled spirits plant proprietors who transfer in bond distilled spirits containing wine or flavors are required to record on the transfer record the eligible wine and the eligible flavors content of the distilled spirits so that the consignee proprietor may properly document the effective tax rate.

*3. Returns to Bond.*

To establish the effective tax rate at which tax was paid or determined, claims on distilled spirits containing eligible wine or eligible flavors returned to bond must set out the effective tax rate of each product and identify the applicable record of tax determination. Otherwise, such claims must be based on the lowest effective tax rate applied to the product.

*4. Distilled Spirits Brought Into the United States From Puerto Rico Without Payment of Tax.*

So that distilled spirits plant proprietors in the United States may properly document the eligible wine and the eligible flavors contents of distilled spirits shipped from Peurto Rico to the United States without payment of tax for transfer from customs custody to ATF bond, the shipper shall provide the proprietor with a certificate of effective tax rate computation.

*5. Distilled Spirits Brought Into the United States From the Virgin Islands.*

Persons brining distilled spirits containing wine or flavors into the United States from the Virgin Islands shall show the eligible wine and the eligible flavors content of the distilled spirits on the certificate obtained from the manufacturer under current regulations.

**Transfer of Bottled Distilled Spirits**

The regulations governing the transfer of bulk distilled spirits between the bonded premises of distilled spirits plants would be amended to provide for similar transfers of alcohol bottled for industrial purposes.

**Conforming Amendments**

Additionally, the regulations governing nonbeverage drawback would be amended to reflect the wine and flavors tax credit.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this notice because the proposal, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12291**

In compliance with Executive Order 12291 of February 17, 1981, ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual Industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The requirements to collect information proposed in this notice have been submitted to the Office of Management and Budget for review under 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 95–511, 44 U.S.C. Chapter 35). Comments relating to ATF's compliance with 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information, and Regulatory Affairs, attention: ATF Desk officer. Office of Management and Budget. Washington DC 20503.

**Public Participation—Written Comments**

Interested persons are invited to submit comments concerning this proposed rule. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or in inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a written request to the Director within the comment period. The request should include reasons as to why a public hearing is necessary. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing should be held.

**Drafting Information**

The principal authors of this document are Richard C. Langford and J. R. Whitley, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects**

*27 CFR Part 19*

Administrative practice and procedure, Alcohol and alcoholic beverages, Claims, Customs duties and inspection, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Virgin Islands, Wine

*27 CFR Part 197*

Administrative practices and procedure, Alcohol and alcoholic beverages, Claims, Excise taxes, Liquors, Reporting and recordkeeping requirements, Spices and flavorings, Wine.

*27 CFR Part 250*

Administrative practices and procedure, Alcohol and alcoholic beverages, Customs duties and inspection, Excise taxes, Liquors, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Virgin Islands, Wine.

*27 CFR Part 251*

Administrative practice and procedure, Alcohol and alcoholic beverages, Customs duties and inspection, Excise taxes, Imports, Liquors, Spices and flavorings, Reporting and recordkeeping requirements, Wine.

For the reasons set out in the preamble, the Director proposes the amendment of Subchapter A, Chapter I, Title 27 of the Code of Federal Regulations.

Section A. Part 19 is amended as follows:

## PART 19—DISTILLED SPIRITS PLANTS

**Paragraph 1.** The authority citation for Part 19 is revised to read as follows:

**Authority:** 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 2.** The table of sections is amended by removing § 19.27; redesignating § 19.26 and the undesignated center heading which precedes it as § 19.27 with the undesignated center heading preceding it, §§ 19.31 and 19.32 with the undesignated center heading which precedes them as §§ 19.39 and 19.40 with the undesignated center heading them; § 19.36 and the undesignated center heading which precedes it as § 19.26 with the undesignated center heading preceding it; adding § 19.28 with the undesignated center heading preceding it, §§ 19.30 and 19.31 with the undesignated center heading preceding them, §§ 19.35 through 19.38 with the undesignated center heading preceding them, §§ 19.763, 19.764, and 19.780; and revising the headings of §§ 19.205 and 19.374. As amended, the table of sections reads as follows:

Sec.

* * * * *

**Wine**

19.26 Tax.

* * * * *

**Occupational Tax**

19.27 Liquor dealer.

**Credit Against Tax**

19.28 Credit for wine and flavor content of distilled spirits.

**Effective Tax Rates**

19.30 General.
19.31 Computation of effective tax rate.

**Alternate Procedures for Application of Effective Tax Rates**

19.35 General.
19.36 Standard effective tax rate.
19.37 Average effective tax rate.
19.38 Inventory reserve account.

**Assessments**

19.39 Production not accounted for.
19.40 Assessment of tax on distilled spirits, denatured spirits, or wine in bond which are lost, destroyed, or removed without authorization.

* * * * *

19.205 Curtailment or extension of bonded premises for other operations.

* * * * *

19.374 Manufacture of nonbeverage products, intermediate products, or eligible flavors.

* * * * *

19.763 Record of average effective tax rates.
19.764 Inventory reserve records.

* * * * *

19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.

* * * * *

**Par. 3.** Section 19.11 is amended by removing the definition of *Alcoholic flavoring materials*, and by adding definitions of *Effective tax rate*, *Eligible flavor*, and *Eligible wine*, to read as follows:

**§ 19.11 Meaning of terms.**

* * * * *

*Effective tax rate.* The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined.

* * * * *

*Eligible flavor.* A flavor of a type for which drawback of the tax imposed on distilled spirits is allowable under 26 U.S.C. 5134 which is made at other than a distilled spirits plant.

*Eligible wine.* A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

**Par. 4.** Sections 19.26 through 19.40 are revised to read as follows:

**Wine**

**§ 19.26 Tax.**

(a) *Imposition of tax.* A tax is imposed by 26 U.S.C. 5041 or 7652 on wine (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported or brought into the United States. Proprietors of distilled spirits plants may become liable for wine taxes under 26 U.S.C. 5262(b)(3) in connection with wine transferred in bond to a distilled spirits plant. Wine may not be removed from the bonded premises of a distilled spirits plan for consumption or sale as wine.

(b) *Liability for tax.* Except as otherwise provided by law, the liability for tax on wine transferred in bond from a bonded wine cellar to a distilled spirits plant, or transferred in bond between distilled spirits plants, will continue until the wine is used in a distilled spirits product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1380, as amended (26 U.S.C. 5041, 5362))

**Occupational Tax**

**§ 19.27 Liquor dealer.**

A proprietor shall be subject to or exempt from occupational tax as a liquor dealer as provided in 27 CFR Part 194.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5111, 5113))

**Credit Against Tax**

**§ 19.28 Credit for wine and flavor content of distilled spirits.**

A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or eligible flavors. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**Effective Tax Rates**

**§ 19.30 General.**

The proprietor shall establish an effective tax rate for each batch of distilled spirits in the processing account on which credit against tax is desired for alcohol derived form eligible wine or eligible flavors. The effective tax rate will be computed in accordance with § 19.31 and applied to each removal or other disposition of the product. The effective tax rate will be shown on the batch record prescribed in § 19.748 and, along with the serial numbers of the cases removed at that rate, on the

record of tax determination prescribed in § 19.761.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**§ 19.31 Computation of effective tax rate.**

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), which would be imposed on the wine but for its removal to bonded premises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate will be expressed to the nearest whole cent. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

| | |
|---|---|
| Distilled spirits | 2249.1 proof gallons. |
| Eligible wine (14% alcohol by volume). | 2265.0. wine gallons. |
| Eligible wine (19% alcohol by volume). | 1020.0 wine gallons. |
| Eligible flavors | 100.9 proof gallons. |

$$\frac{2249.1\ (\$12.50)+[2265.0\ (\$.17)+1020\ (\$.67)]+16.6\ ^{1}\ (\$12.50)}{2249.1+100.9+[2265.0\ (.28)+1020.0\ (.38)]}=$$

$$\frac{\$28,113.75+[\$385.05+\$883.40]+\$207.50}{2,350.0+[634.2+387.6]}=$$

$$\frac{\$29,389.70}{3,371.8}=\$8.72,\ \text{the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9 – (2½%) 3,371.8))

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

## Alternate Procedures for Application of Effective Tax Rates

**§ 19.35 General.**

In lieu of establishing an effective tax rate for each batch of distilled spirits in the processing account, the proprietor may use the procedures prescribed in §§ 19.36, 19.37, or 19.38, for establishment of a standard effective tax rate, an average effective tax rate, or an inventory reserve account, respectively, to apply effective tax rates, computed in accordance with § 19.31, to taxable removals of distilled spirits containing eligible wine or eligible flavors.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**§ 19.36 Standard effective tax rate.**

(a) The proprietor may establish a standard effective tax rate for any eligible distilled spirits product based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product. The standard effective tax rate must equal the highest tax rate applicable to the product. Whenever there is a decrease in the quantity or the alcohol content of eligible wine or eligible flavors used in the manufacture of the product, the standard effective tax rate will be recomputed. If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of this procedure.

(b) For each product to be tax determined in accordance with this procedure, the proprietor shall submit a statement of composition to the regional director (compliance) showing the—

(1) Name of the product;

(2) Number and approval date of the formula (ATF F 5110.38) under which the product is to be manufactured;

(3) Quantity, alcohol content (percentage of alcohol by volume), and the identity of the eligible wine or flavor by kind or producer's formula number;

(4) Standard effective tax rate established for the product;

(5) Effective date of the standard effective tax rate; and

(6) Serial number of the dump/batch record covering the first dump/batch of the product to which the rate will be applied.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**§ 19.37 Average effective tax rate.**

(a) The proprietor may establish an average effective tax rate for any eligible distilled spirits product based on the total proof gallons in all batches of the same composition produced during the preceding 6-month period if at least three batches were produced during that period. At the beginning of each month, the proprietor shall recompute the average effective tax rate so as to include only the immediately preceding 6-month period. The average effective tax rate established for a product will be shown in the record of average effective tax rates prescribed in § 19.763.

(b) For each product to be tax determined in accordance with this procedure, the proprietor shall submit a notice to the regional director (compliance) listing the name of the product, and the number and approval date of the formula under which the product will be manufactured. If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative

difficulty, the proprietor shall discontinue the use of this procedure.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**§ 19.38 Inventory reserve account.**

The proprietor may establish an inventory reserve account for any eligible distilled spirits product by maintaining an inventory reserve record as prescribed by § 19.764. The effective tax rate applied to each removal or other disposition will be the effective tax rate recorded on the inventory reserve record from which the removal or other disposition is depleted. If the regional director (compliance) finds that the use of this procedure jeopardizes the revenue or causes administrative difficulty, the proprietor shall discontinue the use of this procedure.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

Assessments

**§ 19.39 Production not accounted for.**

Where the regional director (compliance) finds that all distilled spirits produced by a distiller have not been accounted for, assessment will be made for the tax on the difference between the quantity reported and the quantity found to have been actually produced.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

**§ 19.40 Assessment of tax on distilled spirits, denatured spirits, or wine in bond which are lost, destroyed or removed without authorization.**

When distilled spirits, denatured spirits, or wines in bond are lost or destroyed (except distilled spirits, denatured spirits, or wine on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 (a) or (d) or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the distilled spirits, denatured spirits, or wine fails to file a claim for remission as provided in § 19.41(a) or when the claim is denied, the tax will be assessed. In any case where distilled spirits, denatured spirits, or wine in bond are removed from bonded premises other than as authorized by law, the tax will be assessed. In the case of losses under circumstances described in 26 U.S.C. 5006(b) with respect to packages of distilled spirits or denatured spirits on bonded premises, the tax will be assessed if the tax is not paid upon the demand of the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1323, as amended, 1381, as amended (26 U.S.C. 5006, 5008, 5370))

**Par. 5.** Section 19.42 is amended by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

**§ 19.42 Claims on spirits returned to bonded premises.**

* * * * * *

(c) Claims for credit or refund of tax on spirits containing eligible wine or eligible flavors must set forth the date and serial number of the record of tax determination and the effective tax rate at which the tax was paid or determined. If this information is not determinable, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

* * * * * *

**Par. 6.** In § 19.92, paragraph (a) is revised to read as follows:

**§ 19.92 When gauges are required.**

(a) *Initial proof.* Except for a gauge required by § 19.383 or § 19.517 or in any case where the proof changes as a result of a storage or processing operation, the initial determination of proof for distilled spirits, wine, or eligible flavors may be used whenever a subsequent gauge is required by this part to be made at the same plant.

* * * * * *

**Par. 7.** Section 19.205 is amended by revising paragraphs (a) and (c)(2) to read as follows:

**§ 19.205 Curtailment and extension of bonded premises for other operations.**

(a) *General.* The bonded premises of a distilled spirits plant may be alternately curtailed and extended, as provided in this section, to permit the use of the premises for other operations authorized under this part.

* * * * *

(c) * * *

(2) Taxpaid spirits on portions of premises to be included by extension of bonded premises need not be removed if the spirits are to be immediately dumped and returned to bond under the provisions of Subpart U of this part.

* * * * * *

**Par. 8.** Section 19.374 is revised to read as follows:

**§ 19.374 Manufacture of nonbeverage products, intermediate products, or eligible flavors.**

Distilled spirits and wine may be used for the manufacture of flavors or flavoring extracts of a nonbeverage nature as intermediate products to be used exclusively in the manufacture of other distilled spirits products on bonded premises. Nonbeverage products on which drawback will be claimed, as provided in 26 U.S.C. 5131 through 5134, may not be manufactured on bonded premises. For purposes of computing an effective tax rate, flavors manufactured on the premises of a distilled spirits plant are not eligible flavors. Premises used for the manufacture of nonbeverage products on which drawback will be claimed must be separated from bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

**Par. 9.** In § 19.505, paragraph (c) is added to read as follows:

**§ 19.505 Authorized transfers.**

* * * * * *

(c) *Alcohol for industrial purposes.* Alcohol bottled for industrial purposes, as provided in § 19.398, may be transferred between the bonded premises of distilled spirits plants in accordance with the procedures prescribed in §§ 19.506 through 19.510 for bulk distilled spirits.

**Par. 10.** Section 19.682 is amended by revising paragraph (c) to read as follows:

**§ 19.682 Receipt and gauge of returned taxpaid spirits.**

* * * * * *

(c) *Supporting documents.* (1) Proprietors must have on file at the plant where spirits are returned to bond such documentation as is necessary to establish the amount of tax for which a claim for credit or refund may be allowed. Proprietors shall maintain credit memoranda or comparable financial records evidencing the return of each lot of spirits.

(2) If the spirits contain eligible wine or eligible flavors, the proprietor shall also have on file a copy of the record of tax determination prescribed by § 19.761, or other documentation which establishes the amount of tax for which a claim for credit or refund may be allowed. Where the date of removal or the effective tax rate of the product is not determinable, such as when loose bottles are returned to bond, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

**Par. 11.** Section 19.748 is amended by revising paragraphs (a)(16), (a)(17), and adding (a)(18) to read as follows:

**§ 19.748 Dump/batch records.**

(a) * * *

(16) Total quantity in proof gallons of product transferred;

(17) Gain or loss; and

(18) For distilled spirits containing eligible wine or eligible flavors, the total tax liability of all alcoholic ingredients and the effective tax rate, unless the product is to be tax determined in accordance with § 19.36.

* * * * *

**Par. 12.** Under the undesignated center heading, **Tax Records** of Subpart W, §§ 19.761 and 19.762 are revised and §§ 19.763 and 19.764 are added to read as follows:

**§ 19.761 Record of tax determination.**

A serially numbered invoice or shipping document, signed or initialed by an agent or employee of the proprietor, will constitute the record of tax determination. Sufficient information will be shown on each invoice or shipping document to enable ATF officers to determine the total proof gallons and, if applicable, each effective tax rate and the proof gallons removed at each effective tax rate. The total proof gallons calculated from each invoice or shipping document constitutes a single withdrawal.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

**§ 19.762 Daily summary record of tax determinations.**

Each proprietor of a distilled spirits plant who withdraws distilled spirits on determination of tax, but before payment of tax, shall maintain a daily summary record of tax determinations. The summary record will show, for each day on which tax determinations occur, and for each effective tax rate applied:

(a) the serial number of each record of tax determination,

(b) The total proof gallons rounded to the nearest tenth proof gallon on which tax was determined, and

(c) The total tax.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

**§ 19.763 Record of average effective tax rates.**

(a) For each distilled spirits product to be tax determined in accordance with § 19.37, the proprietor shall prepare a daily summary record showing the—

(1) Serial number of the batch record;

(2) Proof gallons derived from distilled spirits, eligible wine, and eligible flavors; and

(3) Tax liabilities determined as follows:

(i) Proof gallons of all distilled spirits (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed in 26 U.S.C. 5001;

(ii) Wine gallons of each eligible wine, multiplied by the tax rate which would be imposed on the wine under 26 U.S.C. 5041(b) (1), (2), or (3) but for its removal to bonded premises; and

(iii) Proof gallons of all distilled spirits derived from eligible flavors to the extent that such distilled spirits exceed 2½% of the proof gallons in the product, multiplied by the tax rate prescribed in 26 U.S.C. 5001.

(b) At the end of each month, during which the product is bottled or packaged, the proprietor shall determine the—

(1) Total proof gallons and total tax liabilities for all batches of the product bottled or packaged;

(2) Add the sums from paragraph (b)(1) of this section to the like sums determined for each of the preceding five months; and

(3) Divide the total tax liabilities by the total proof gallons bottled and packaged.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

**§ 19.764 Inventory reserve records.**

(a) *General.* The proprietor shall establish an inventory reserve account, as provided in this section, for each eligible distilled spirits product to be tax determined in accordance with § 19.38.

(b) *Deposit records.* For each batch of the product bottled or packaged, the proprietor shall enter into the inventory reserve account a deposit record, which may be combined with the bottling and packaging record required by § 19.749 showing the:

(1) Name of the product;

(2) Bottling and packaging record serial number;

(3) Date the bottling or packaging was completed;

(4) Total proof gallons bottled and packaged; and

(5) Effective tax rate of the product computed in accordance with § 19.31.

(c) *Depletions.* The deposit records for each product will be depleted in the same order in which they were entered into the inventory reserve account. A depletion will be recorded for each disposition (e.g., a taxable removal, an exportation, an inventory shortage or breakage) by entering on the deposit record the: Transaction date; transaction record serial number; proof gallons disposed of; and proof gallons remaining. If any depletion exceeds the quantity of product remaining on the deposit record, the remaining quantity will be depleted, the deposit record closed, and the remainder of the transaction depleted from the next deposit record.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

**Par. 13.** Section 19.770 is amended by revising paragraphs (a)(6)(iv), (a)(6)(vi), (a)(6)(vii), and adding (a)(6)(viii) to read as follows:

**§ 19.770 Transfer record.**

(a) * * *

(6) * * *

(iv) Number of packages or cases with their lot identification numbers or serial numbers and date of fill;

* * * * *

(vi) Proof gallons for distilled spirits, or wine gallons for denatured spirits or wine;

(vii) Conveyance identification; and

(viii) For distilled spirits products which contain eligible wine or eligible flavors, the elements necessary to compute the effective tax rate as follows:

(A) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(B) Wine gallons of each eligible wine and the percentage of alcohol by volume of each;

(C) Proof gallons of distilled spirits derived from eligible flavors; and

(D) The producer and the number of the formula under which produced of each eligible flavor.

* * * * *

**Par. 14.** Section 19.780 is added immediately following § 19.779 to read as follows:

**§ 19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.**

(a) *General.* Where distilled spirits are shipped to a manufacturer of nonbeverage products, the proprietor shall prepare a record of shipment, forward the original to the consignee, and retain a copy.

(b) *Form of record.* If preprinted with the name, address, and registry number of the proprietor and sequentially numbered, the record of tax determination prescribed by § 19.761, or any other document issued by the proprietor, may be used as the record of shipment. However, any document used as the record of shipment must be consistently used for that purpose.

(c) *Required information.* In addition to any other information on the document, the document used as the record of shipment must contain the following information:

(1) Date of shipment;

(2) Name and address of the consignee;

(3) Kind, proof, and quantity of the distilled spirits;

(4) Number and size of containers;

(5) Package identification numbers or serial numbers of containers;

(6) Serial number of the applicable record of tax determination; and

(7) For distilled spirits containing eligible wine or eligible flavors, the effective tax rate.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); sec. 201 Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

**§ 19.1010 [Amended]**

**Par. 15.** In § 19.1010, the table in paragraph (b) is amended by adding, in numerical order, the following:

| Section shere identified | Current OMB control number |
|---|---|
| 19.30 | 1512–_____ |
| 19.36 | 1512–_____ |
| 19.37 | 1512–_____ |
| 19.38 | 1512–_____ |
| 19.763 | 1512–_____ |
| 19.764 | 1512–_____ |
| 19.780 | 1512–_____ |

**§§ 19.91, 19.92, 19.372, 19.373, 19.731, 19.732, 19.747, 19.748 [Amended]**

**Par. 16.** In addition to the amendments set forth above, Part 19 is amended by removing the words "Alcoholic flavoring material(s)" and inserting, in their place, the words "eligible flavor(s)" in the following places:

(a) Center-heading immediately before § 19.91;
(b) § 19.91(b);
(c) § 19.92(b);
(d) Center-heading immediately before § 19.372;
(e) § 19.372(a)(4) and (b);
(f) § 19.373 and (a);
(g) § 19.731(b)(2)(iii)(A);
(h) § 19.732(e);
(i) § 19.747(a), (a)(6), (b), and (j);
(j) § 19.748(a)(6).

Section B. Part 197 is amended as follows:

## PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

**Paragraph 1.** The authority citation for Part 197 is revised to read as follows:

**Authority:** 5 U.S.C. 552; 26 U.S.C. 5131–5134, 5143, 5146, 5206, 5273, 6065, 6091, 6109, 6402, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 197.5 [Amended]**

**Par. 2.** Section 197.5 is amended by adding, in alphabetical order, the meaning of the following term:

* * * * * *

*Effective tax rate.* The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 is paid or determined.

* * * * * *

**Par. 3.** Section 197.105 is revised to read as follows:

**§ 197.105 Drawback.**

(a) Upon the filing of a claim as provided in this subpart, drawback will be allowed to any person who meets the requirements of this part. Drawback will be allowed on each proof gallon of distilled spirits (1) on which the tax has been paid or determined, and (2) which have been used in the manufacture of a nonbeverage product.

(b) Drawback will be allowed at a rate of $1 less than the tax rate at which the distilled spirits tax was paid or determined. Special tax as a manufacturer of nonbeverage products must be paid before drawback is allowed.

(c) Drawback will be allowed only to the extent that the claimant can establish, by evidence satisfactory to the regional director (compliance), the actual quantity of distilled spirits used in the manufacture of a nonbeverage product and the tax paid or determined on such distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1345, as amended (26 U.S.C. 5132))

**Par. 4.** Section 197.109 is amended by revising paragraph (b) and by adding a parenthetical paragraph referencing the OMB control number to read as follows:

**§ 197.109 Information to be shown by the claim.**

* * * * * *

(b) That the distilled spirits on which drawback is claimed are fully taxpaid or tax-determined at the distilled spirits rate applicable to the distilled spirits.

* * * * * *

(Approved by the Office of Management of Budget under control number 1512–_____

**§ 197.115 [Amended]**

**Par. 5.** In § 197.115, a sentence and a parenthetical paragraph referencing the OMB control number are added, immediately after the last sentence, reading as followings: * * * The statement accompanying each claim will separately identify distilled spirits taxpaid with an effective tax rate and show the effective tax rate of each.

(Approved by the Office of Management and Budget under control number 1512– )

**Par. 6.** Section 197.130 is amended by revising paragraph (e) to read as follows:

**§ 197.130 Nature of records.**

* * * * * *

(e) Number of proof gallons and kind of distilled spirits used in the manufacture of each product, the date of use and, if the distilled spirits contain wine or flavors, the effective tax rate.

* * * * * *

**Par. 7.** Section 197.130b is amended by revising paragraphs (a)(5) and (a)(6), adding (a)(7), and revising paragraph (b) to read as follows:

**§ 197.130b Evidence of taxpayment of distilled spirits.**

(a) * * *

(5) The serial or package identification number of the container;

(6) The kind of spirits, proof, and proof gallons in the container; and

(7) For distilled spirits which contain wine or flavors, the effective tax rate.

(b) *Imported distilled spirits.* Evidence of tax payment of imported distilled spirits (such as Customs Forms 7501 and 7505 receipted to indicate payment of tax and the certificate of effective tax rate computation (if applicable)) will be obtained from the importer and maintained by the manufacturer for inspection by ATF officers.

* * * * * *

Section C. Part 250 is amended as follows:

## PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

**Paragraph 1.** The authority citation for Part 250 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a); 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5146, 5207, 5232, 5301, 5314, 5555, 60001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 2.** The table of sections is amended by adding, in numerical order, §§ 250.50a, 250.77a, 250.79a, 250.199g, 250.204a, and 250.262, to read as follows:

Sec.

* * * * * *

250.50a Verification of eligible flavors.

* * * * * *

250.77a Credit against tax.

* * * * * *

250.79a Computation of effective tax rate.

* * * * * *

250.199g Certificate of effective tax rate computation.

* * * * * *

250.204a Verification of eligible flavors.

* * * * * *

250.262a Credit against tax.

* * * * * *

250.262b Computation of effective tax rate.

* * * * * *

**§ 250.11 [Amended]**

**Par. 3.** Section 250.11 is amended by adding, in alphabetical order, the meaning of the following terms:

* * * * *

*Effective tax rate.* The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 7652 is paid or determined.

* * * * *

*Eligible flavor.* A flavor of a type for which drawback of the tax imposed on distilled spirits is allowable under 26 U.S.C. 5134 which is made at other than a distilled spirits plant.

*Eligible wine.* A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

**Par. 4.** Section 250.50a is added to read as follows:

**§ 250.50a Verification of eligible flavors.**

(a) Any person who ships to the United States any distilled spirits on which the tax has been or is to be paid or determined at an effective tax rate based in part on the alcohol content derived from eligible flavors shall, before the first tax determination at that rate, request and receive a statement of eligibility for each flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the person shipping the distilled spirits shall submit to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample; and

(2) At statement of composition listing the—

(i) Name and percentage of alcohol by volume of the flavor; and

(ii) Name and quantity of each ingredient used in the manufacture of the flavor.

(Approved by Office of Management and Budget under control number 1512– )

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**Par. 5.** Section 250.77 is revised and § 250.77a is added to read as follows:

**§ 250.77 Subject to tax.**

Distilled spirits of Puerto Rican manufacture, and any products containing such distilled spirits, brought into the United States and withdrawn for consumption or sale are subject to a tax equal to the tax imposed in the United States by 26 U.S.C. 5001.

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

**§ 250.77a Credit against tax.**

(a) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or eligible flavors. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(b) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 250.79a. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits for consumption or sale within the United States.

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**Par. 6.** Section 250.79a is added to read as follows:

**§ 250.79a Computation of effective tax rate.**

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), which would be imposed on the wine but for its removal to bonded premises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate will be expressed to the nearest whole cent. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

| BATCH RECORD | |
|---|---|
| Distilled spirits | 2249.1 proof gallons. |
| Eligible wine (14% alcohol by volume). | 2265.0. wine gallons. |
| Eligible wine (19% alcohol by volume). | 1020.0 wine gallons |
| Eligible flavors | 100.9 proof gallons. |

$$\frac{2249.1\ (\$12.50) + [2265.0\ (\$.17) + 1020\ (\$.67)] + 16.6\ ^{1}\ (\$12.50)}{2249.1 + 100.9 + [2265.0\ (.28) + 1020.0\ (.38)]} = \$$$

$$\frac{\$28{,}113.75 + [\$385.05 + \$683.40] + \$207.50}{2{,}350.0 + [634.2 + 387.6]}$$

$$\frac{\$29{,}389.70}{3{,}371.8} = \$8.72, \text{ the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9 – (2½%) 3,371.8))

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**§ 250.98 [Removed]**

**Par. 7.** Section 250.98 is removed.

**Par. 8.** Section 250.199g is added to read as follows:

**§ 250.199g Certificate of effective tax rate computation.**

(a) Where distilled spirits of Puerto Rican manufacture which contain eligible wine or eligible flavors are to be shipped to the United States without payment of tax for transfer from customs custody to ATF bond, the consignor shall prepare a certificate of effective tax rate computation showing the:

(1) ATF Form 5110.31 serial number;

(2) Elements necessary to compute the effective tax rate in accordance with § 250.79a as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from each eligible flavor;

(3) Date of the statement of eligibility for each eligible flavor (see § 250.50a).

(4) Effective tax rate applied to the product.

(5) Signature and title of the consignor.

(b) The consignor shall forward the original to the consignee, provide one copy to the revenue agent, and file a copy.

(Approved by Office of Management and Budget under control number 1512–_____)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232); Sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**Par. 9.** Section 250.204a is added to read as follows:

**§ 250.204a Verification of eligible wines and eligible flavors.**

(a) Any person who brings into the United States from the Virgin Islands any distilled spirits on which the tax is to be paid or determined at an effective tax rate based in part on the alcohol content derived from eligible flavors or eligible wines shall, before the first tax determination at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the person bringing in the distilled spirits shall submit to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample of each distilled spirits, wine or flavor used in the product;

(2) A statement of composition of each flavor, listing—

(i) The name and percentage of alcohol by volume of the flavor; and

(ii) The name and quantity of each ingredient used in the manufacture of the flavor; and

(3) A statement of the kind and alcoholic content of each wine.

(Approved by Office of Management and Budget under control number 1512–_____)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**Par. 10.** Section 250.205 is revised to read as follows:

**§ 250.205 Certificate.**

(a) Every person bringing liquors or articles under this part into the United States from the Virgin Islands, except tourists, shall obtain a certificate in the English language from the manufacturer for each shipment showing the following information:

(1) The name and address of the consignee.

(2) The kind and brand name.

(3) The quantity thereof as follows—

(i) If distilled spirits, the proof gallons or liters and degree of proof;

(ii) If wine, the taxable grade and wine gallons;

(iii) If beer, the gallons (liquid measure) and the percentage of alcohol by volume; and

(iv) If articles, the kind, quantity, and proof of the liquors used therein.

(4) For liquors manufactured under a formula—

(i) The number and date of the approved formula;

(ii) A declaration that the liquors have been manufactured in accordance with the approved formula; and

(iii) The name and address of the person filing the formula.

(5) The name and address of the producer.

(6) For liquors and articles containing liquors produced outside of the Virgin Islands, the country of origin for each such liquor.

(7) For distilled spirits, a certification by the insular gauger as to whether they were regauged when withdrawn from the insular bonded warehouse and, if regauged, whether they were at the time of withdrawal at the proof indicated on the attached record of gauge.

(8) For distilled spirits which contain eligible wine or eligible flavors, the effective tax rate applied to the product and the elements necessary to compute the effective tax rate in accordance with § 250.262b as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each;

(iii) Proof gallons of distilled spirits derived from eligible flavors; and

(iv) Date of the statement of eligibility for each eligible flavor (see § 250.204a).

(b) The person bringing the liquors or articles into the United States shall file the certificate and record of gauge with the district director of customs at the port of entry as provided in §§ 250.260 and 250.302.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**Par. 11.** Section 250.262 is revised, and §§ 250.262a and 250.262b are added to read as follows:

**§ 250.262 Determination of tax on distilled spirits.**

If the certificate required by § 250.205 covers distilled spirits, and the distilled spirits are not being transferred under Subpart 0 or 0a of this part, the tax imposed by 26 U.S.C. 7652 equal to the tax imposed by 26 U.S.C. 5001 will be collected on each proof gallon, and fractional part thereof, contained in the shipment.

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652))

**§ 250.262a Credit against tax.**

(a) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from

eligible wine or eligible flavors. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(b) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 250.262b. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits within the United States.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec. 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**§ 250.262b Computation of effective tax rate.**

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), which would be imposed on the wine but for its removal to bonded premises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate will be expressed to the nearest whole cent. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

| Batch Record | |
|---|---|
| Distilled spirits | 2249.1 proof gallons. |
| Eligible wine (14% alcohol by volume). | 2265.0. wine gallons. |
| Eligible wine (19% alcohol by volume). | 1020.0 wine gallons |
| Eligible flavors | 100.9 proof gallons |

$$\frac{2249.1\ (\$12.50)+[2265.0\ (\$.17)+1020\ (\$.67)]+16.6\ ^{1}\ (\$12.50)}{2249.1+100.9+[2265.0\ (.28)+1020.0\ (.38)]}=$$

$$\frac{\$28,113.75+[\$385.05+\$683.40]+\$207.50}{2,350.0+[634.2+387.6]}=$$

$$\frac{\$29,389.70}{3,371.8}=\$8.72,\text{ the effective tax rate.}$$

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9 – (2½%) 3,371.8))

(Sec. Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

Section D. Part 251 is amended as follows:

## PART 251—IMPORTATION OF DISTILLED SPIRITS, WINE AND BEER

**Paragraph 1.** The authority citation for Part 251 is revised to read as follows:

**Authority:** 19 U.S.C. 1202; 26 U.S.C. 5001, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5207, 5232, 5273, 5301, 5313, 5365, 5555, 5662, 6302, 7805.

**Par. 2.** The table of sections is amended by adding, in numerical order, §§ 251.40a and 251.40b and §§ 251.76 and 251.77 with the undesignated center heading which precedes them, to read as follows:

Sec.

* * * * *

251.40a Credit against tax.
251.40b Computation of effective tax rate.

* * * * *

**Wine and Flavors Content of Distilled Spirits**

251.76 Approval and certification of wine and flavors content.
251.77 Standard effective tax rate

* * * * *

**§ 251.11 [Amended]**

**Par. 3.** Section 251.11 is amended by adding, in alphabetical order, the meaning of the following terms:

* * * * *

*Effective tax rate.* The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 is paid or determined.

* * * * *

*Eligible flavor.* A flavor of a type for which drawback of the tax imposed on distilled spirits is allowable under 26 U.S.C. 5134 which is made at other than a distilled spirits plant.

*Eligible wine.* A wine containing not more than 0.392 gram of carbon dioxide per 100 milliliters of wine which has not been subject to distillation at a distilled spirits plant after receipt in bond.

* * * * *

**Par. 4.** Section 251.40 is revised, and §§ 251.40a and 251.40b are added to read as follows:

**§ 251.40 Distilled spirits.**

A tax is imposed on all distilled spirits in customs bonded warehouses or imported into the United States at the rate prescribed by 26 U.S.C. 5001 on

each proof gallon and a proportionate tax at a like rate on all fractional parts of each proof gallon. All products of distillation, by whatever name known, which contain distilled spirits, are considered to be distilled spirits and are taxed as such. The tax will be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

**§ 251.40a Credit against tax.**

(a) A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or eligible flavors. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(b) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 251.40b. The effective tax rate established will be applied to each entry.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); sec 6, Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

**§ 251.40b Computation of effective tax rate.**

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b)(1), (2), or (3), which would be imposed on the wine but for its removal to bonded permises; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate will be expressed to the nearest whole cent. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

| | |
|---|---|
| Distilled spirits | 2249.1 proof gallons. |
| Eligible wine (14% alcohol by vol.). | 2265.0 wine gallons. |
| Eligible wine (19% alcohol by vol.). | 1020.0 wine gallons. |
| Eligible flavors | 100.9 proof gallons. |

$$\frac{2249.1(\$12.50)+[2265.0(\$.17)+1020(\$.67)]+18.8\ [1]\ (\$12.50)}{2249.1+100.9+[2265.0(.28)+1020.0(.38)]} =$$

$$\frac{\$28,113.75+[\$385.05+\$683.40]+\$207.50}{2,350.0+[634.2+387.6]} =$$

$$\frac{\$29,389.70}{3,371.8} = \$8.72, \text{ the effective tax rate.}$$

(Sec. Pub. L. 96–598, 94 Stat. 3488 (26 U.S.C. 5010))

Par. 5. Immediately after § 251.75, an undesignated center-heading and §§ 251.76 and 251.77 are added reading as follows:

**Wine and Flavors Content of Distilled Spirits**

**§ 251.76 Approval and certification of wine and flavors content.**

(a) Any person who imports into the United States distilled spirits on which the tax is to be paid or determined at an effective tax rate based in whole, or in part, on the alcohol content derived from eligible wine or eligible flavors shall, before the first tax determination at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample of each distilled spirits, wine and flavor contained in the product; and

(2) A statement of composition listing—

(i) For wine, the kind (class and type) and percentage of alcohol by volume; and

(ii) For flavors, the name and percentage of alcohol by volume, and the name and quantity of each ingredient used in the manufacture of the flavor.

(c) Each time distilled spirits containing eligible wine or eligible flavors are imported into the United States, the importer shall prepare a certificate of effective tax rate computation showing the following:

(1) Name, address, and permit number (if any) of the importer;

(2) Kind (class and type) of product;

(3) Elements necessary to compute the effective tax rate in accordance with § 251.40b as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from eligible flavors;

(4) Date of the statement of eligibility of each eligible wine and of each eligible flavor;

(5) Effective tax rate applied to the product; and

(6) Signature of the importer or other duly authorized person under the following declaration:

I declare under the penalties of perjury that this certificate of effective tax rate computation has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9 – (2½% 3,371.8))

(d) The importer shall file the certificate of effective tax rate computation with the district director of customs at the port of entry or, for distilled spirits to be withdrawn from customs custody under the provisions of Subpart L of this part, furnish a copy to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

(Approved by the Office of Management and Budget under control number 1512-_____)

(Sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

**§ 251.77 Standard effective tax rate.**

(a) In lieu of preparing a certificate of effective tax rate computation each time distilled spirits containing eligible wine or eligible flavors are imported as prescribed in § 251.76(c), an importer may have a standard effective tax rate established based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product.

(b) To have a standard effective tax rate established, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) The samples prescribed in § 251.76(b)(1) and an 8-ounce sample of the finished product;

(2) The statement of composition prescribed in § 251.76(b)(2);

(3) A statement of composition for the finished product listing the—

(i) Name of the product;

(ii) Quantity, alcohol content (percentage of alcohol by volume), and the kind (class and type) of each eligible wine or the name of each eligible flavor used in the manufacture of the product; and

(iii) Standard effective tax rate for the product computed in accordance with § 251.40(b).

(c) Where a standard effective tax rate has been previously approved for a product, an importer, in lieu of having a standard effective tax rate established, may use that rate. An importer desiring to use a previously approved standard effective tax rate shall obtain a copy of the approval from the person to whom it was issued and, over the signature of the importer or other duly authorized person, place the following declaration:

I declare under the penalties of perjury that this approval has been examined by me and, to the best of my knowledge and belief, the standard effective tax rate established for this product is applicable to all like product contained in this shipment.

(d) A standard effective tax rate may not be employed until approved by the ATF National Laboratory. The importer shall file or furnish a copy of the standard effective tax rate approval in the manner prescribed in § 251.76(d). The use of a standard effective tax rate shall not relieve an importer from the payment of any tax found to be due. The Director may at any time require an importer to immediately discontinue the use of a standard effective tax rate.

(Approved by the Office of Management and Budget under control number 1512-_____)

(Sec. 6, Pub. L. 96-598, 94 Stat. 3488 (26 U.S.C. 5010))

Signed: January 9, 1987.

**Stephen E. Higgins,**

*Director.*

Approved: January 20, 1987.

**Francis A. Keating II,**

*Assistant Secretary (Enforcement).*

[FR Doc. 87-6476 Filed 3-26-87; 8:45 am]

BILLING CODE 4810-31-M

## DEPARTMENT OF JUSTICE

### 28 CFR Part 42

### Enforcement of Nondiscrimination on the Basis of Handicap in Department of Justice Federally Assisted Programs or Activities

**AGENCY:** Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed regulation would amend the regulation issued by the Department of Justice for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, government-wide reference to UFAS would diminish potential conflict between standards enforced by the responsible funding agencies under the two statutes. In addition, compliance with UFAS by Federal agencies and States will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency and also when it is subject to State or local accessibility requirements as well.

**DATES:** To be assured of consideration, comments must be in writing and must be received on or before May 26, 1987.

**ADDRESSES:** Comments should be sent to Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530.

Comments received will be available for public inspection in Room 854 of the HOLC Building, 320 First Street NW., Washington, DC from 9:00 A.M. to 5:00 P.M., Monday through Friday except legal holidays. Copies of this notice are available on tape for persons with impaired vision. They may be obtained at the above address.

**FOR FURTHER INFORMATION CONTACT:** Irene Bowen, Supervisory Attorney, Community Services Unit, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 724-2245 [voice or TDD]; or Merrily Raffa, Attorney, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 724-2216 [voice] or 724-7678 [TDD]. These are not toll free numbers.

**SUPPLEMENTARY INFORMATION:** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) provides that

No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .

The existing Department of Justice section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It states that new construction or alteration accomplished in accordance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A 117.1-1961 (R1971)), meets the requirements of section 504. The proposed revision set forth in this document will reference the Uniform Federal Accessibility Standards (UFAS) in place of the current standard.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31528) (see discussion *infra*). This Department, as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because

BEST COPY AVAILABLE

some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, government-wide reference to UFAS would diminish potential conflict between standards enforced by the responsible funding agencies under the two statutes. In addition, compliance with UFAS by Federal agencies and States will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency and also when it is subject to State or local accessibility requirements as well.

**Background of Accessibility Standards**

The Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and of Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, *inter alia*, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting agencies. The minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued the Uniform Federal Accessibility Standards as an effort to minimize the differences among the four agencies' Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR Subpart 101–19.6 (GSA) and 24 CFR Part 40 (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1–1980, published by the American National Standards Institute (ANSI). (The 1980 ANSI standard contains few scoping provisions.) ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's original accessibility standard, ANSI A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People" was published in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1–1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

This proposed amendment would amend the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from the Department of Justice to refer to UFAS.

This Department has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

**Effect of Amendment**

The amendment could not affect the current section 504 requirement that new facilities be designed and constructed to be readily accessible and that alterations be accessible to the maximum extent feasible. It would merely provide that compliance with UFAS with respect to buildings shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," it is anticipated that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS Section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required a handicapped person to travel an extremely long distance to reach the spaces served by the inaccessible

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 330 C Street SW., Washington, DC 20201. The telephone number is (202) 472–2700 [voice/TDD]. This is not a toll free number.

entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient *bedrooms* be accessible (see Section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all *beds* in the facility to be accessible to handicapped persons. The result is that the population of handicapped persons in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for handicapped persons is therefore compromised to such a great extent, the degree of accessibility provided to handicapped persons is not substantially equivalent to that intended to be afforded by UFAS.

For correctional facilities, including jails, prisons, reformatories, and other detention facilities, UFAS requires that five percent of all residential units, or at least one unit (whichever is greater), be accessible. However, all areas of common use, visitor use, and areas in which physically handicapped persons may be employed, must be accessible (see UFAS Section 4.1.4(9)(c)).

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with the General Services Administration's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR subpart 101–19.6.

The proposed revision includes language modifying the effect of UFAS Section 4.1.6(1)(g), which provides an exception to UFAS Section 4.1.6, *Accessible buildings: alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS Section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes of this section, Section 4.1.6(1)(g) of UFAS shall be intepreted to exempt from the requirements of UFAS only spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or handicapped residents or employees.

The proposed revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

This document is an adaptation of a prototype prepared by this Department under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298.

The Architectural and Transportation Barriers Compliance Board has also been consulted in the development of this document in accordance with 28 CFR 41.7.

This regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

**List of Subjects in 28 CFR Part 42**

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Government employees, Grant programs, Handicapped, Sex discrimination, Religious discrimination.

**PART 42—[AMENDED]**

For the reasons stated in the preamble, Part 42 of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Subpart G of Part 42 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 28 U.S.C. 509, 510, 29 U.S.C. 706, 794, EO 12250.

2. In § 42.522, paragraph (b) is revised to read as follows:

**§ 42.522 New construction.**

* * * * *

(b) *Conformance with Uniform Federal Accessibility Standard.* (1) Effective as of the effective date of this amendment, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, § 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public of beneficiaries or result in the employment or residence therein of physically handicapped persons.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Dated: March 18, 1987.

Edwin Meese III,

*Attorney General.*

[FR Doc. 87–6725 Filed 3–26–87; 8:45 am]

BILLING CODE 4410–01–M

---

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 906**

**Permanent State Regulatory Program of Colorado**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing the receipt of two legal opinions submitted by Colorado to resolve two conditions which the Secretary of the Interior placed on his approval of the Colorado permanent regulatory program (hereinafter referred to as the Colorado

program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions pertain to the permit renewal process and Colorado's authority to cease underground mining operations.

This notice sets forth the times and locations that the Colorado program and legal opinions are available for public inspection, the comment period during which interested persons may submit written comments on the opinions, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments relating to Colorado's proposed modification of its program not received on or before 4:00 p.m. on April 27, 1987 will not necessarily be considered in the Secretary's decision to remove, revise or retain the conditions of program approval. A public hearing on the adequacy of the opinions will be held upon request on April 21, 1987. Any person interested in making an oral or written presentation at the public hearing should contact Mr. Robert H. Hagen at the Albuquerque Field Office by the close of business on or before April 13, 1987. If no one has contacted Mr. Hagen to express an interest in participating in the hearing by the date, the hearing will not be held. If only one person has so contacted Mr. Hagen, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "ADDRESSES".

**ADDRESSES:** Written comments should be mailed or hand-delivered to the Albuquerque Field Office of the Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Attention: Colorado Administrative Record.

Copies of the legal opinions, the Colorado program, the Administrative Record on the Colorado program and a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of Colorado Mined Land Reclamation Division listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the legal opinions by contacting the OSMRE Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, N.W., Washington, DC 20240, Telephone: (202) 343–5492

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Telephone: (505) 766–1486

Colorado Department of Natural Resources, Mined Land Reclamation Division, Room 423, Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the Colorado Program

Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent decisions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16 and are discussed in detail in the **Federal Register** published on December 16, 1982 (47 FR 56350); May 1, 1984 (49 FR 18481); November 15, 1985 (50 FR 47216); December 6, 1984 (50 FR 49925); February 5, 1986 (51 FR 4496); May 30, 1986 (51 FR 19548); July 1, 1986 (51 FR 23752); and February 5, 1987 (52 FR 3632).

## II. Discussion of the Legal Opinions

*Condition "p"*

As discussed in Finding 4(d)(xv) of the December 15, 1980 **Federal Register** (45 FR 82184), the Secretary found that the Colorado program failed to clearly provide that no holder of a valid permit could continue to mine after the term of his or her original permit expired if the State had determined that the permit should not be renewed. The State statute at CRS 34–33–109(7)(f) and the State regulations at 2.08.5(3)(f) provide that the holder of a valid permit may continue surface mining operations until a final administrative decision on renewal is rendered, provided he or she has submitted an application for renewal 180 days in advance of the permit expiration date. The conflict arises in those situations where the Division of Mined Land Reclamation ("Division") has found that the permit should not be renewed, and the operator has petitioned for administrative review of the decision. Since the final administrative decision would be made by the Mined Land Reclamation Board ("Board"), the entire process could take more than 180 days. The Federal rules applicable to such situations (30 CFR 775.11) allow continuation of mining only where the operator is granted temporary relief. Accordingly, the Secretary conditioned his approval of the Colorado program on the submission of further amendments to require that applications for renewal be submitted one year prior to expiration, or the submission of other program modifications to resolve this problem.

At a June 30, 1986 meeting attended by representatives of the Division, OSMRE's Albuquerque Field Office, and OSMRE's Division of State Program Assistance, Colorado pointed out that CRS 34–33–109(7)(a) allows only the Board to deny renewal applications: therefore, there is no administrative review process and the condition is moot. By letter dated August 14, 1986, OSMRE agreed that, if this strict interpretation of the statutory language was correct and affirmed by a legal opinion provided by the State, then the condition as such would cease to be relevant. However, the Federal regulations at 30 CFR 774.15(f) require that any person having an interest which is or may be adversely affected by the regulatory authority's decision have the right to both administrative and judicial review. The State rules at 2 C.C.R. 407–2, 2.08.5(3)(e) provide this right only for decisions rendered by the Division, not those made by the Board. Accordingly, the letter required that Colorado clarify how it would revise its program to be no less effective than the Federal rules.

In its response of December 22, 1986, Colorado submitted an opinion prepared by an assistant attorney general within the Office of the State Attorney General affirming that only the Board has the legal authority to deny permit renewal applications (Administrative Record No. CO–310). Since, under the Colorado program, the Board receives all applications for administrative review and conducts all administrative hearings, a decision of the Board constitutes final agency action from which there is no administrative appeal.

The opinion further states that the absence of any provisions for administrative review of a Board decision denying an application for permit renewal renders the State program more stringent than the Federal requirements since decisions approving permit renewal applications are still subject to administrative review and since the standards for judicial review of the decisions of Colorado

administrative agencies [CRS 24–4–106(7)] are stricter than these applicable to administrative reviews. The judicial hearing authority may reverse an administrative decision only where there is a clear error in the application of the laws to the facts established in the administrative record. By contrast, an administrative hearing authority is not so limited and may find facts *de novo*. The Federal regulations at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do SMCRA and the Federal regulations shall not be construed to be inconsistent with Federal requirements.

*Condition "oo"*

This condition concerns the circumstances under which the Division has the authority to cease underground mining operations when they create an imminent danger to persons. Section 516(c) of SMCRA requires the regulatory authority to suspend underground coal mining under urbanized areas and adjacent to industrial or commercial buildings, major impoundments or permanent streams if an imminent danger to the inhabitants exists. The Colorado statute at CRS 34–33–121(3) requires that the Division order such closures after consultation with the operator and the Division of Mines, but only if the mining activities are in violation of CRS 34–29–125 (water control in steeply pitching veins), 34–29–128 (barrier pillars at property lines) or 34–48–102 (mining under buildings), or are adjacent to perennial streams. The Colorado regulations at 2 CCR 407–2, 4.20.4(4) contain provisions similar to the statutory language, but they also (1) extend protection to major impoundments, (2) do not require that the operator first be found in violation of one of the three provisions cited in the State statute, and (3) allow a waiver of the consultation requirement.

Previous discussions of this issue have centered on the "priority of right" exception provided by CRS 34–48–102. As discussed in Finding 4(i)(v) of the December 15, 1980 **Federal Register** notice approving the Colorado program (45 FR 82192), the Secretary conditioned his approval on the future submission of a proposed program amendment disallowing any exception to the requirement that underground mining be ceased where it creates an imminent danger to persons. In subsequent correspondence, Colorado maintained that (1) the priority of right exception provided by CRS 34–48–102 deals only with liability for surface property damage and does not prevent the State from prohibiting mining where an imminent danger to personal safety exists (letter of May 26, 1983, from David Shelton to Robert Hagen), and (2) CRS 34–48–102 applies only to noncoal mines (letter of May 20, 1986, from David Getches to Jed Christensen). In addition, as noted above, the Colorado regulations at 2 CCR 407–2, 4.20.4(4) do not require that the operator first be found in violation of CRS 34–48–102 before the Division can order closure of the mine.

Accordingly, by letter of August 14, 1986, OSMRE notified Colorado that, if it would clarify by legal certification that State rule 4.20.4(4) is not limited by CRS 34–33–121(3), i.e., that the Division does not have to first find an operator in violation of one of the three cited statutory provisions prior to issuing a cessation order, condition "oo" would be removed. In response, on January 26, 1987, Colorado submitted an opinion prepared by the Office of the State Attorney General (Administrative Record No. CO–316) concluding that Rule 4.20.4(4) was indeed not limited by CRS 34–33–121(3). As stated in the opinion, the Division is required, pursuant to CRS 34–33–123(1), to order cessation of mining where any operator is in violation of any requirement of Article 33 or any permit condition, which condition, practice or violation creates an imminent danger to the health and safety of the public. This statutory language provides adequate basis for Rule 4.20.4(4). The opinion further states that the language of CRS 34–33–121(3) merely adds or explains additional statutory requirements dealing with environmental protection and public safety beyond the comprehensive protection standards in the enforcement provisions of CRS 34–33–123(1), and that it would therefore be logically inconsistent to interpret CRS 34–33–121(3) as limiting Rule 4.20.4.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the two legal opinions submitted by Colorado provide sufficient basis for the removal of the conditions placed on the approval of the Colorado program at 30 CFR 906.11 (p) and (oo). If the opinions are deemed adequate, they will become part of the Colorado program and the Secretary will remove the conditions.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Albuquerque, New Mexico will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on April 13, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

*Public Meeting*

Persons wishing to meet with OSMRE representatives to discuss the legal opinions may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

## IV. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and

Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of the Executive Order 12291 for actions directly related to approval of conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 906**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87-6754 Filed 3-26-87; 8:45 am]

BILLING CODE [illegible]

---

**30 CFR Part 917**

## Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky to modify the Kentucky permanent program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments were submitted in response to requirements codified at 30 CFR 917.16(d) in an August 27, 1986 **Federal Register** notice (51 FR 30486). The amendments pertain to stream buffer zones and to backfilling and grading of underground mine face-up areas.

This notice sets forth the times and locations that the Kentucky program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

**DATES:** Written comments not received on or before April 27, 1987 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on April 21, 1987 beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

**ADDRESSES:** Written comments should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40504.

**FOR FURTHER INFORMATION CONTACT:** W. Hord Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

**SUPPLEMENTARY INFORMATION:**

### I. Public Comment Procedures

*Availability of Copies*

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE Offices and the Office of State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, NW., Washington, DC 20240.

Bureau of Surface Mining Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington, Kentucky Field Office, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business ten working days before the date of the hearing. If no one requests to comment at the hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

*Public Meeting*

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

### II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the program. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed submission, as well as the Secretary's findings, the disposition of comments

and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice. Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17.

### III. Submission of Program Amendments

On February 27, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. The revisions are intended to address the required amendments at 30 CFR 917.16(d) that were codified in a **Federal Register** notice on August 27, 1986 (51 FR 30488). In that notice the Director required that, by February 27, 1987 Kentucky submit proposed amendments: "to provide that, in addition to the limitations imposed by 405 KAR 16:080 section 2(3) and 405 KAR 18:080 section 2(3), no exemptions to channel restoration requirements for intermittent and perennial streams shall be approved unless the NREPC finds that the environmental resources of the stream will not be adversely affected;" and to delete 405 KAR 18:190 section 2(8)(c) and 405 18:190 section 2(9). The proposed Kentucky amendments are listed briefly below.

1. Kentucky proposes to amend 405 KAR 16:060 and 18:969 section 11 subsection (1) to provide that the NREPC may authorize mining closer than 100 feet to, or through, intermittent or perennial streams only upon making certain specified findings concerning applicable water quality standards, significant long-term detrimental effects on water quality and quantity and other valuable environmental resources, and compliance of stream channel diversions with 405 KAR 16:080 or 18:080. Subsection (2) is amended to require that the area that is not to be disturbed shall be designated a buffer zone, shall be adequately shown in the permit application and shall be marked by the permittee. Subsection (3) specifies information to be included in the permit application. Subsection (4) covers applicability of the amended sections.

2. Kentucky proposes to amend 405 KAR 18:190 to address requirements for backfilling and grading of face-up areas and similar cut slopes created prior to the effective date of SMCRA, in underground mine areas.

Therefore, the Director, OSMRE, is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

### IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

### List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 1987.

**James M. Workman,**

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87-6755 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-05-M

---

## 30 CFR Part 944

## Public Comment and Opportunity for Public Hearing on Proposed Modifications to the Utah Permanent Regulatory Program.

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a progam amendment submitted by the State of Utah of modify the Utah Permanent Regulatory Program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to civil penalty assessments.

This notice sets forth the times and locations that the Utah program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

**DATES:** Written comments not received on or before 4:00 p.m., April 27, 1987, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on April 21, 1987, beginning at 10:00 a.m., at the location shown under **ADDRESSES.**

**ADDRESSES:** Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagan, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue NW., Suite 216, Albuquerque, NM 87102.

The hearing will be held at 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue NW., Suite 216, Albuquerque, NM 87102.

**SUPPLEMENTARY INFORMATION:**

### I. Public Comment Procedures

*Availability of Copies*

Copies of the Utah program, the proposed amendment to the program a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES.**

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue NW., Suite 216, Albuquerque, NM 87102.

Office of Surface Mining Reclamation and Enforcement, Room 5212A, 1100 L Street NW., Washington, DC 20240.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203 Telephone: (810) 538–5340.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the OSMRE Albuquerque, New Mexico Field Office will not ncessarily be considered and included in the Administrative Record for this proposed rulemaking.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business April 21, 1987. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those persons scheduled. The hearing will end after all persons who wish to comment have been heard.

*Public Meeting*

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in **ADDRESSES** by contacing the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

**III. Background on the Utah State Program**

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of surface coal mining operations in the State (48 FR 5899–5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program, can be found in the January 21, 1981, **Federal Register** (46 FR 5899–5915). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 944.10, 30 CFR 944.12, 30 CFR 944.15, and 30 CFR 944.16.

**III. Discussion of the Proposed Amendment**

On February 17, 1987, Utah submitted a proposed amendment to the Utah program for OSMRE's review and approval. The proposed amendment at SMC/UMC 845.15 provides that a penalty for failure to abate a violation will not be assessed for more than 30 days for each violation, after which time, if the violation remained unabated, the Utah Regulatory Authority would appeal such noncompliance to the Utah Board of Oil, Gas and Mining for resolution under 40–10–20(5), 40–10–10(6), 40–10–22(1)(d), 40–10–22(2) of the State Act or by "other appropriate means".

The above-referenced provisions of the State Act provide authority for criminal penalties against the permittee, civil and criminal penalties against individual officers or agents of a corporate permittee, injunctions or court orders, and permit suspension or revocation. The phrase "or by other appropriate means" as used under SMC/UMC 845.15(b)(2) is not defined.

The full text of the proposed program amendment submitted by Utah is available for public inspection at the locations listed under Availability of Copies, or a copy of the proposed amendment can be obtained as described under the same section.

The Director is seeking public comment on the adequacy of this proposed amendment. If OSMRE finds the amendment in accordance with SMCRA and no less effective than the Federal regulations, it will be approved and become part of the Utah program.

**IV. Procedural Matters**

1. Compliance with National Environmental Policy Act:

The Secretary has determined that, pursuant to section 702[d] of SMCRA, 30 U.S.C. 1292[d], no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act: On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 944**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 1987.

**James W. Workman.**

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–6756 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–05–M

---

**30 CFR Part 946**

**Public Comment Period and Opportunity for Public Hearing on Proposed Amendments to Virginia Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing the receipt of several proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments include (1) provisions to allow alternate water quality standards for the remining of previously mined areas, (2) regulatory revisions to limit the information required of self-bond applicants to that

information authorized by statute, and (3) regulatory revisions to the pool bond regulations to allow consideration of partial bond release after a minimum of one rather than two growing seasons after reclamation.

This notice sets forth the times and locations that the Virginia program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments relating to Virginia's proposed modification of its program not received on or before 4:00 p.m. on April 27, 1987 will not necessarily be considered in the decision process. A public hearing on the Adequacy of the amendments will be held upon request on April 21, 1987. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William R. Thomas at the Big Stone Gap Field Office by the close of business on or before April 13, 1987. If no one has contacted Mr. Thomas to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "**ADDRESSES**".

**ADDRESSES:** Written comments and requests for a hearing should be mailed or hand-delivered to: Office of Surface Mining Reclamation and Enforcement, Attention: Virginia Administrative Record, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219.

Copies of the proposed amendments, the Virginia program, the Administrative Record on the Virginia program and a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE office and the office of the Virginia Division of Mined Land Reclamation listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523–2925

**FOR FURTHER INFORMATION CONTACT:** Mr. William T. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13 and 946.15.

## II. Submission of Amendments

By letter dated January 16, 1987 (Administrative Record No. VA–591), Virginia submitted several proposed amendments to its Coal Surface Mining Reclamation Regulations (§ 480–03–19). These amendments include:

(1) Provisions allowing alternate National Pollutant Discharge Elimination System water quality standards to be set for operations proposing to remine previously mined areas with existing pollutional discharges. These provisions would also authorize release of bond if the remined area is reclaimed and water quality is improved, or if total pollutional loading is not increased and other environmental benefits are realized.

(2) Revisions to § 480–01–19.801.13 to limit the information required of applicants for underground mine permits proposing self-bonds under the Coal Surface Mining Reclamation Fund to only that information authorized by § 45.1–270.3(e) of the Code of Virginia, as set out in an opinion of the Virginia Attorney General dated October 18, 1984.

(3) Revisions to § 480–03–19.801.17(a) to allow requests for partial bond releases for operations participating in the Coal Surface Mining Reclamation Fund (Virginia's alternative pool bonding system) to be considered after a minimum of one growing season after reclamation instead of the two growing seasons now required.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Virginia satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Virginia program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Big Stone Gap, Virginia will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on April 13, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

*Public Meeting*

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

**IV. Procedural Determinations**

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 946**

Coal mining intergovernmental relations Surface mining, Underground mining.

Dated: March 23, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87-6757 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-05-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 228**

**[OW-4-FRL-3175-6]**

## Ocean Dumping; Proposed Designation of Sites

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA today proposes to designate all of the existing dredged material disposal site offshore Savannah, Georgia, and part of existing dredged material disposal sites offshore Charleston, South Carolina, and Wilmington, North Carolina, as EPA approved ocean dumping sites in the Atlantic Ocean for the dumping of dredged material from these three harbor areas, respectively. These site designations are being proposed for an indefinite period of time, but are subject to continued monitoring in order to insure that adverse environmental impacts do not occur. The decision to reduce the size of the existing Charleston and Wilmington sites is based on projected future dredged material disposal volumes and the facilitation of monitoring. In addition EPA proposes to approve, for a four-year period following final designation, the entire existing Charleston site for use only for dredged materials from the Charleston Harbor Deepening project. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of dredged material.

**DATE:** Comments must be received on or before May 11, 1987.

**ADDRESSES:** Send comments to: Sally S. Turner, Marine and Estuarine Branch, Water Management Division, EPA, 345 Courtland Street NE. Atlanta, GA 30365.

The file supporting these proposed site designations is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC

EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Chris Provost, 404/347-2126.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. These proposed site designations are within Region IV and are being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was extended on August 19, 1985 (50 FR 33338). That list established the existing Savannah, Charleston, and Wilmington sites as interim sites and extended their period of use until July 31, 1988.

**B. EIS Development**

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. [See 39 FR 16186 (May 7, 1974).]

EPA has prepared a draft and final EIS entitled "Environmental Impact Statement (EIS) for Savannah, GA, Charleston, SC and Wilmington, NC Ocean Dredged Material Disposal Sites Designation." On October 28, 1983, a notice of avialability of the final EIS for public review and comment was published in the **Federal Register** (48 FR 49918). The public comment period on the final EIS closed November 28, 1983. No comments were received on the Final EIS during the comment period. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the EIS is final designation for continuing use of the ocean dredged material disposal sites near Savannah, GA, Charleston, SC, and Wilmington, NC. The purpose of the proposed action is to provide environmentally acceptable locations for the disposal of materials dredged from the Savannah, Charleston, and Wilmington Channel Systems when ocean disposal is found to be necessary

for some dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

**C. Coastal Zone Management and Endangered Species Coordination**

The States of North Carolina and South Carolina have concurred with EPA's determination that these site designations are consistent with their approved State Coastal Zone Management Plans. The State of Georgia does not have such a plan. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of these disposal sites will not affect the endangered species under their jurisdictions.

**D. Proposed Site Designation**

Savannah, Charleston, and Wilmington are the major ports of Georgia, South Carolina, and North Carolina, respectively, and support large shipping commerce (with volumes of 11, 9.5, and 7.4 million tons, respectively, in 1978). Consequently, maintenance of these ports for navigation is vital to the economy of the Southeastern United States.

Each year the entrance channels to Savannah, Charleston, and Wilmington Harbors must be dredged because natural processes cause them to shoal. Approximately one million cubic yards of sediments are dredged annually from the entrance channels to each harbor and dumped in ocean disposal sites adjacent to the respective dredging areas. Disposal at these sites shall be limited to dredged material from the three respective Harbors. However, these materials must be shown to meet the appropriate requirements of EPA's Ocean Dumping Regulations. The existing disposal sites were used for many years prior to their interim designation in 1977. Dredging may occur at any time of the year at the three harbors.

The proposed action is for the final designation of the existing Savannah sites and two sites of reduced area within the existing Charleston and Wilmington dredged material disposal sites. The entire existing Charleston site will receive materials from the proposed deepening project for a period of four years after final designation. The Savannah site and reduced Charleston and Wilmington sites will receive operation and maintenance dredged material from the respective harbors for an indefinite period. The decision to reduce the size of the Charleston site for indefinite designation (by approximately 75 percent of the existing site's area) and the Wilmington site (by approximately 90 percent of the existing site's area) is based on past and anticipated dredging activities in the respective areas. EPA believes that the proposed reduced size of each is sufficient for the expected disposal volumes, and reducing the designated area will facilitate monitoring activities. In addition, the proposed reduction in size of these sites increases their distances from shore which reduces the associated potential impact to beaches or amenity areas.

Boundary coordinates for the Savannah, Charleston and Wilmington sites for which indefinite designation is proposed are as follows:

*Savannah*

31° 55′ 53″ N., 80° 44′ 20″ W.;
31° 57′ 55″ N., 80° 46′ 48″ W.;
31° 57′ 55″ N., 80° 44′ 20″ W.;
31° 55′ 53″ N., 80° 46′ 48″ W.

*Charleston*

32° 40′ 27″ N., 79° 47′ 22″ W.;
32° 39′ 04″ N., 79° 44′ 25″ W.;
32° 38′ 07″ N., 79° 45′ 03″ W.;
32° 39′ 30″ N., 79° 48′ 00″ W.

*Wilmington*

33° 49′ 30″ N., 78° 03′ 06″ W.;
33° 48′ 18″ N., 78° 01′ 39″ W.;
33° 47′ 19″ N., 78° 02′ 48″ W.;
33° 48′ 30″ N., 78° 04′ 16″ W.

Boundary coordinates of the Charleston Harbor deepening site (i.e. the entire existing Charleston site which will be used only to receive dredged materials from the proposed Charleston Harbor deepening project) are:

32d 38° 06″ N., 79d 41° 57″ W.;
32d 40° 42″ N., 79d 47° 30″ W.;
32d 39° 04″ N., 79d 49° 21″ W.;
32d 36° 28″ N., 79d 43° 48″ W.

**E. Regulatory requirements**

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations due to the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, sites that have been historically used as well as locations off the Continental Shelf are preferred. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. The proposed sites conform to the five general criteria. However, there are no existing historically used sites beyond the edged of the Continental Shelf in these areas. EPA has determined, based on the information presented in the EIS, that it is unlikely that any environmental benefit would be obtained by selecting a site off the Continental Shelf instead of those proposed in these actions.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA established these 11 factors to constitute an environmental assessment of the impact of the site for disposal. The criteria are used to make comparisons between the alternative sites and are the bases for final site selection. The characteristics of the existing sites are reviewed below in terms of these eleven factors.

*1. Geographical position, both of water, bottom topography, and distance from coast.* [40 CFR 228.6(a)(1).]

The boundary coordinates of the sites are given above.

The existing Savannah site is approximately 3.7 nautical miles (nmi) offshore, has an average depth of 11.4 meters and an area of 4.26 square nmi. The sandy bottom slopes gently to the east; bottom topography is characterized by large naturals and ridges.

The reduced area Charleston site is approximately 5 nmi offshore, has an average depth of 11 meters and an area of 3 square nmi. The bottom slopes gently to the southeast, and bottom sediments are composed of fine- to coarse-grained sand with shell fragments. The reduced area Charleston site is a rectangle, about 2.7 by 1.1 nmi, centered in the existing Charleston site, with the longest side approximately parallel to the entrance channel.

The entire existing Charleston site includes an area of 11.8 square nmi and has an average depth of about 11 meters. It is about 3.7 nmi offshores.

The boundary coordinates listed in the Final EIS for the reduced area Wilmington site include an area with 3 nmi of shore. The Corps of Engineers has indicated that the area within the 3 nmi limit is not being used, is not needed for future projects and therefore

should not be concluded in the final designation. The coordinates for the Wilmington site listed above for final designation reflect this change. The area described is the same as the site in the Final EIS with the exception of the area within 3 nmi from shore. The reduced area Wilmington site then is 3 nmi from shore, has an average depth of 13 meters and an area of 2.3 square nmi. The predominantly smooth sandy bottom slopes to the south. The reduced area Wilmington site is approximately square within the center of the existing Wilmington site.

*2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

Breeding, spawning, nursery, and passage activities of commercially important finfish and shellfish occur on a seasonal basis in the vicinity of each of the existing and reduced area sites. However, the most extensive breeding, spawning, and nursery activities occur either in offshore waters or in adjacent estuarine waters that is offshore or inshore of the dredged material disposal sites. In addition, the total area of the disposal sites represents only a small portion of the total breeding, spawning, and nursery areas along the southeast Atlantic coast for these species. The disposal sites are within passage areas for anadromous adult fish and larval finfish and shellfish migrating from the ocean to the estuary. However, these passage areas are not confined or geographically limited to areas coinciding with the disposal sites. The intensity of passage activities varies seasonally with peaks in spring and early fall for most commercially important finfish and shellfish species.

The impact of previous dumping on breeding, spawning, nursery, and passage activities are likely to be minimal for the reasons stated above. In addition, due to the mobility of adult finfish, it is likely that dumping will not have a significant impact on either anadromous or pelagic species. In general, increases in suspended sediment concentrations following dumping are localized and are not expected to cause adverse long-term impacts. Consequently, interference of suspended sediments on the respiratory structures of fish are minimal. Some entrainment of larval fish within the disposal plume may occur, causing a minor detrimental effect within these disposal sites; however, the population will not be adversely affected.

The existing and reduced area sites are not close to hard-bottom areas; therefore, it is improbable the dredged material disposal would interfere with the habitats and breeding areas of any hard-bottom biota. Similarly, the disposal sites are three to five nautical miles offshore and prevailing currents move away from shore; therefore, dumping should have little effect on sediment accumulation on local beaches.

*3. Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

All four sites are within 3–5 nmi of adjacent beaches and estuaries but are not close to known hard-bottom areas. Longshore, tidal, and storm-generated currents may disperse dredged materials dumped at these sites. Net sediment transport at Savannah and Charleston is southwestward, paralled to shore. Therefore, dredged material disposed of at the Savannah and Charleston sites would not be expected to move toward any beaches or amenity areas adjacent to the disposal sites.

Sediment transport at Wilmington is eastward and away from adjacent beaches. Therefore, it is unlikely that appreciable quantities of dredged material will be transported into beaches or hard-bottom areas. However, release of dredged sediments during the incoming tide may result in transport of a minimal amount of the sediments toward the mouth of the adjacent estuaries. The majority of materials released during the incoming tides would be expected to sink to the bottom before reaching any beaches or amenity areas adjacent to the disposal sites. Beaches adjacent to the Wilmington disposal sites are occasionally used as nesting areas by endangered loggerhead turtles. For the reasons stated above, the infrequent and localized disposal of dredged material is not expected to adversely impact the food source, passage or nesting areas of the loggerhead turtles.

In addition, no apparent adverse impacts to beaches have been associated with the previous dredged material disposal at these sites. Thus, use of the sites should not adversely affect recreation, coastal development, or other uses of the shoreline.

*4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* [40 CFR 228.6(a)(4).]

Dredged material dumped in ocean disposal sites must satisfy the criteria for ocean dumping permits specified in EPA's Ocean Dumping Regulations (40 CFR Part 227).

Dredged sediments from entrance channels to the three respective harbors are the only materials historically dumped at the these sites. The dredged materials have been predominantly fine to very fine-grained sands, with some silt and shell fragments, and in some cases (such as the Charleston entrance channel) with signifiant quantities of silt and organic content. Additionally, materials from other portions of these harbors with potentially high silt, clay, and organic content may be placed in the site in the future if deemed suitable after application of ocean disposal criteria to the disposal action pursuant to EPA's Ocean Dumping Regulations. Dredged materials will be transported to each of the sites by hopper dredges equipped with a subsurface release mechanism and will not be packaged in any manner. Annual disposal volumes currently average one million cubic yards at each site.

Future dredged material volumes will exceed present volumes if navigational safety of the entrance channels necessitates expanded dredging operations. For example, the Charleston Corps of Engineers is currently considering a plan to expand and deepen navigation channels within Charleston Harbor. This plan has recently been updated in a memorandum to the record (November 27, 1985) by Steve Morrison of the Corps of Engineers, Charleston District. Some or all of the estimated 18.4 million cubic yards of dredged material from the expansion project could be dumped over several years at the existing Charleston site which is being proposed for designation for this purpose. Initially about 8.8 million cubic yards of material from the harbor entrance deepening would be disposed of at the existing site over a 12–18 month period. This operation may be followed by disposal of as much as 5.1 million cubic yards of inner harbor sediment from deepening turning basins for over as much as a three-year period. The dredged material from the inner harbor may be exposed to more sources of pollution than the sediments from the channel entrance currently disposed at the disposal site; however, initial bioassay of this material completed as part of the Supplement to the Project EIS in April 1980, indicate that the materials is not toxic to the marine organisms tested. Finally, an additional volume of approximately 4.5 million cubic yards of entrance harbor expansion material similar to sediments at the disposal site may be disposed when conditions warrant over a one-year period.

The dredged material from the inner harbor is also finer-grained than the sediments at the disposal site. This change in sediment characteristics is not expected to significantly modify the

benthic community beyond the disposal site. However, if the dredged material to be disposed is significantly different in grain size or organic content than material disposed of in the past, monitoring of potential impacts on fishery or other aminity areas would be necessary. As part of the permitting process, material to be disposed at the Charleston site will be evaluated on a case-by-case basis to determine acceptability for ocean disposal. All of these three components of harbor expansion activities are contingent upon Federal funding and may not occur in immediate succession of each other.

Previous disposal volumes of dredged material at the Charleston site have been limited to about one million cubic yards per year. The volumes associated with the deepening project will be significantly larger. The anticipated disposal management strategy is to limit the area to which dredged material is placed so that acute impacts would be similarly restricted in the site and sediment dispersion (or mounding) can be detected. Also, the limited dumping area within the site is more amenable to monitoring benthic community impacts and changes in substrate composition. The area of disposal within the designated site could be increased if significant mounding or other factors dictate.

The impact of the largest volume of dredged material associated with the harbor deepening phase of the project is not expected to cause significant impacts to the site. If this volume of material were spread evenly over the site, it would add a surficial layer about six inches deep.

*5. Feasibility of surveillance and monitoring.* (40 CFR 228.69(a)(5))

The U.S. Coast Guard is not currently performing surveillance at the three sites. However, due to the proximity of the sites to shore, surveillance using shipriders or aircraft overflights would not be difficult. Monitoring is not a problem because the sites are close to shore and in shallow water. During annual dredging the Corps of Engineers is monitoring and will continue to monitor the entrance channels and dumpsite bathymetry to identify shoaling or mounding areas. If movement of material appears likely to impact a known resource or amenity, appropriate monitoring of the specific resource or amenity will be undertaken. In addition, bioassays and bioaccumulation analyses of dredged materials to be disposed using representative marine organisms will ensure that the dredged material does not adversely affect the marine biota.

Bioassay and bioaccumulation analyses and appropriate monitoring of both the site sediment and dredged material will be determined on a case-by-case basis by EPA and the Corps of Engineers, and these requirements will be included as conditions of disposal. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the sites.

*6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6))

Surface and bottom current velocities are variable, depending on the strengths of the tidal current, wind and wave current, and river discharge components. Savannah and Charleston longshore currents flow southwestward across the respective disposal sites with average velocities of 13.5 centimeters per second. During dredged material disposal and shortly thereafter, the direction and magnitude of currents will likely have a major effect on sediment dispersal; however, long-term transport will typically be southwestward, away from the mouths of the respective channel entrances. In addition, wave action at Charleston has often been shown to reach the bottom, thereby allowing greater dispersal of the disposed material, into the southwesterly transport pattern. Despite the disposal of approximately one million cubic yards of dredged material annually for many years at the existing Charleston site, no shoaling has been detected. Surface currents at the existing Wilmington site usually flow westward across the mouth of the Cape Fear River, while net eastward-flowing bottom current adjacent to Cape Fear have been indicated. Therefore, while some finer-grained materials are transported westward across and possibly into the lower Cape Fear estuary, the majority of dredged sediment, which is sand-sized, will sink rapidly within the site. In addition, winter storms can be expected to disperse accumulated sediments and transport them in a southwesterly direction at Savannah and Charleston, and an easterly direction at Wilmington.

*7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7))

Dredged material disposal at the three sites has occurred for many years and has produced only minor and reversible effects as evidenced by: Temporary increases above ambient suspended sediment concentrations, temporary localized mounding, smothering of some benthic organisms, and possible release of other trace constituents into the overlying waters.

Ambient concentrations of suspended particulates are high and seasonally variable due to river discharge and resuspension of nearshore bottom sediments. Because of high background levels, increases in turbidity from dredged material disposal are minimal. Consequently, adverse impacts on primary productivity or inhibitive effects on gills or feeding structures of marine organisms are expected to be minor. No persistent impacts of dumping on the concentrations of trace metals or organohalogens could be detected in waters overlying the respective disposal sites during site monitoring.

Discrete mounds of dumping sediments are dispersed during winter storms which precludes accumulation and eventual shoaling within the disposal sites. Persistent or cumulative effects of dumping on sediment texture or concentrations of trace metals or organics in sediments were not detected during site monitoring.

Smothering of benthic organisms is probably restricted to sediment dwellers such as tube-dwelling polychaete worms and many species of amphipod crustaceans. Specific recolonization rates by benthic organisms are unknown and may depend on sediment texture, larval recruitment, and burrowing capabilities of buried organisms.

The short-term impacts on the benthic community, the only community likely to be adversely affected due to the increased loading of dredged material from the Charleston Harbor deepending project, will be acute and severe within the existing site. However, the ability of these organisms to recolonize in similar sediments indicates that there will be no long-term impacts on the local marine food web within or beyond the site boundaries.

Motile finfish and shellfish generally are capable of escaping from released sediments. No evidence of any significant adverse impacts on macrofaunal or nekton abundances due to previous dredged material disposal was apparent during site surveys.

Results of bioassay and bioaccumulation tests using Charleston and Wilmington dredged sediments suggest that releases of trace constituents during dumping are neither directly toxic to marine organisms nor accumulated in tissues.

Bioassay tests were not conducted at the Savannah site. However, site water column analyses were performed and showed that the concentrations of

dissolved and particulate trace metals including arsenic, beryllium, chromium, copper, nickel, lead, selenium, and zinc were consistently low (below EPA marine water quality criteria) and that dissolved mercury and cadmium were comparable to levels reported from the southeast Continental Shelf waters. Analysis of Savannah site sediments revealed levels of these trace metals which were within the ranges reported for the general South Atlantic Bight. Elutriate tests conducted on this sediment showed no substantial transfer of metals from the sediment to the water column. Tissues obtained from one species of crab and two species of shrimp resident to the Savannah site showed low levels of trace metals (mercury, cadmium, lead) and persistent chlorinated organics (PCBs and DDE). Based on these findings, it is unlikely that Savannah dredged material is either directly toxic to marine organisms or contributes significant amounts of contaminants to the ecosystem.

*8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Extensive commercial shipping, commercial and recreational fishing, and other recreational, cultural, and scientific activities occur in nearshore areas throughout the South Atlantic Bight. Commercial and recreational fishing activities are generally concentrated in estuaries, areas within three nautical miles of shore and in the immediate vicinity of live-bottom areas. With the exception of the existing Wilmington site, fisheries resources within the existing and alternative sites are sparse, and dredged material disposal will not significantly affect adjacent nearshore fisheries. Nearshore areas within and adjacent to the Wilmington site are used by commercial shrimp fisheries. The most extensive fishing occurs within three nautical miles of shore; however, the shrimp fishing grounds extend up to 20 nautical miles from shore. The reduced Wilmington site is three nautical miles offshore; thus, some interferences with commercial shrimping may occur. However, the disposal site represents only a small portion of the total fishing area.

These disposal sites are adjacent to major shipping channels; however, their intermittent use should not impede commercial shipping or aggravate congestion within the shipping channel. Comments received on the draft EIS from both the Office of the Secretary of the U.S. Department of Transportation and the U.S. Coast Guard concur with the conclusions reached regarding commercial shipping impacts. The hopper dredges used in maintaining the entrance channels to Savannah, Charleston, and Wilmington Harbors do not present the same potential navigational hazard as pipeline or bucket dredges because there is no need to anchor lines. Therefore, the increased use of dredges associated with the Charleston Harbor deepening project is not expected to significantly impede or aggravate navigation. Mineral extraction, desalination, and mariculture activities do not occur within or in close proximity to the disposal sites. Recreational and scientific resources are plentiful throughout the nearshore region and are not influenced by the physical location of these near-shore disposal sites. Consequently, dumping at the three sites does not significantly interfere with other beneficial uses of the ocean.

*9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9)]

The existing water quality is primarily affected by discharges from coastal rivers and anthropogenic inputs into nearshore waters. River discharges contribute appreciable quantities of suspended particulates, and smaller quantities of nutrients and trace pollutants, to nearshore waters.

Phytoplankton near the Wilmington site consist primarily of diatoms, whose abundance and species diversity vary seasonally. High standing stocks and low species diversity occur in summer, whereas relatively low standing stocks and high diversity occur in winter. The phytoplankton at the Savannah and Charleston sites have not been investigated but, due to their oceangraphic similarity and physical proximity to the Wilmington site, they would be expected to support similar phytoplankton populations.

Copepods, larval crustaceans, and molluscs are the dominant zooplanktons at Wilmington. Dominant organisms are most abundant in summer and least abundant in fall and spring. Zooplankton at the Savannah and Charleston sites have not been previously sampled but for the same reason as above would be expected to be similar to the zooplankton of the Wilmington site.

Benthic communities near the three sites are characterized by low abundance of diverse organisms, particularly infaunal polychaete and amphipod and demersal fish such as drums, sea robins and flatfish. The diversity and biomass of benthic communities beyond this site boundaries exhibit considerable spatial and temporal variability; thus, seasonal patterns are typically unpredictable.

Site monitoring has not detected significant differences in water quality or biological characteristics between areas within or adjacent to the existing sites. Therefore, dreged material disposal at the existing sites does not appear to significantly alter existing water qualtiy or ecology. The proposed sites are either the existing historic use sites or smaller portions within the existing sites. Therefore, adverse impacts are not expected due to dredge material disposal at the proposed sites.

As discussed above, the benthic communityis the only community likely to be adversely affected in the short-term due to the increased sediment loading within the site associated with the Charleston Harbor deepening project. However, due to the natural recolonization of the benthos in similar sediments, these short-term impacts are not expected to significantly alter the ecology beyond the site boundary.

*10. Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10)]

Monitoring near these disposal areas has not detected the development or recruitment of nuisance species, and the similarity of dredged material to existing sediment suggest that the development or recruitment of nuisance species at these dumpsites is unlikely. There will be significant increases in dredged material disposal volumes during the Charleston Harbor deepening project. Howerver, the majority of the material from all three stages of the project is projected to be of lower organic content due to the dredging of deeper unimpacted sediment; therefore, nuisance species are not likely to be developed or recruited at the site. Should the results of the sediment characteristics analyses of the channel deepening dredge material indicate otherwise, monitoring of potential impacts of fishery or other ammenity areas may be necessary.

*11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).]

A large number of 18th and 19th Century shipwrecks occur within shallow-water regions of the South Atlantic Bight. Numerous charted and uncharted wrecks occur shoreward of the proposed Charleston and Wilmington sites. Several of the Wilmington shipwrecks are being

considered for nomination to the National Register of Historic Places. Ocean dumping at the proposed sites will not affect these shipwercks.

**F. Proposed Action**

Dredged material disposal has occurred at the proposed sites for the past several years. Recent monitoring associated with the site designation process has not detected any persistent or cumulative changes in the water quality or ecology at the sites. Impacts from dumping have been found to be temporary and restricted to within the site boundary. The near-shore location of the proposed sites facilitates surveillance and monitoring and decreases the impact of sediment texture/chemistry changes resulting from disposal of dissimilar sediments.

The ESI evaluated mid-shelf and shelf-break alternative sites using the general criteria and specific factors contained in the Ocean Dumping Regulations. Dredged material disposal has not occurred previously at the mid-shelf or shelf-break alternative site locations. There are significant dissimilarities between the physical and chemical characteristics of the dredged material sediments and sediments covering the mid-shelf or shelf-break regions. Altering the sediment texture and composition through the addition of finer coastal sediments may have a potential long-term adverse impact on the benthic infauna at the mid-shelf and shelf-break sites. Fishery resources are localized over the mid-shelf and shelf-break regions, especially in the vicinity of hard-botton areas and shelf-break areas. These hard-bottom areas are unique habitats, support several species of commercially and recreationally important finfish, and are sensitive to the effects of dredged material disposal. Thus, use of mid-shelf or shelf-break sites could result in a greater potential for interference with fishing activities. Moreover, use of offshore sites would be restricted to periods of calm weather and sea conditions because the hopper dredges cannot operate in rough seas. In addition, several proposed or active Bureau of Land Management oil and gas lease sites exist in the mid-shelf and shelf-break regions.

In summary, although no site-specific surveys have been conducted at the shelf-break or mid-shelf alternative site areas, their use and geographic proximity to important commercial fishery and industrial use areas make them less suitable for disposal. In addition, the greater potential at these other sites for long-term benthic impact due to the difference in sediment texture and composition supports the destination of the sites that have been historically used.

The final EIS includes the Agency's asssessment of the ten comments received during the comment period on the draft EIS. Comments correcting facts presented in the draft EIS were incorporated in the text and the changes noted in the final EIS. Specific comments which could not be appropriately treated as text changes were responded to point by point in the final EIS, following the letters of comment.

The designation of these proposed dredged material disposal sites as EPA Approved Ocean Dumping Sites is being published as proposed rulemaking. Management authority of these sites will be delegated to the Regional Administrator of EPA Region IV. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corp of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

**G. Regulatory Assessments**

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing the site designation will only have the effect of providing a disposal option for dredged material. Consequently this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently this proposed rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 228**

Water pollution control.

Dated: March 18, 1987.

**John T. Marlar,**

*Acting Regional Administrator.*

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

**PART 228—[AMENDED]**

1. The authority citation for Part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Part 228 is proposed to be amended by removing and reserving paragraph (a)(1)(ii)(C) in § 228.12 and by adding paragraphs (b) (32), (33), (34), and (35) to read as follows:

**§ 228.12 Delegation of management authority for ocean dumping sites.**

* * * * *

(b)* **

(32) Savannah, GA, Dredged Material Disposal Site—Region IV.

*Location:*

31°55'53" N., 80°44'20" W.
31°57'55" N., 80°46'48" W.
31°57'55" N., 80°44'20" W.
31°55'53" N., 80°46'48" W.

*Size:* 4.26 square nautical miles.
*Depth:* Averages 11.4 meters.
*Primary Use:* Dredged material.
*Period of Use:* Continuing use.
*Restriction:* Disposal shall be limited to dredged material from the Savannah Harbor area.

(33) Charleston, SC, Dredged Material Disposal Site—Region IV.

*Location:*

32°40'27" N., 79°47'22" W.
32°39'04" N., 79°44'25" W.
32°38'07" N., 79°45'03" W
32°39'30" N., 79°48'00" W.

*Size:* 3 square nautical miles.
*Depth:* Averages 11 meters.
*Primary Use:* Dredged material.
*Period of Use:* Continuing use.
*Restriction:* Disposal shall be limited to dredged material from the Charleston Harbor area.

(34) Charleston, SC, Harbor Deepening Project Dredged Material Disposal Site—Region IV.

*Location:*

32°38'06" N., 79°41'57" W.
32°40'42" N., 79°47'30" W.
32°39'04" N., 79°49'21" W.
32°36'28" N., 79°43'48" W.
*Size:* 11.8 square nautical miles.
*Depth:* Averages 11 meters.
*Primary Use:* Dredged material from the Charleston Harbor deepening project.
*Period of Use:* Not to exceed four years from the initiation of the Charleston Harbor deepening project.
Restriction: Disposal shall be limited to dredged material from the Charleston Harbor deepening project.

(35) Wilmington, NC. Dredged Material Disposal Site—Region IV.

*Location:*

33°49'30" N., 78°03'06" W.
33°48'18" N., 78°01'39" W.
33°47'19" N., 78°02'48" W.
33°48'30" N., 78°04'16" W.
*Size:* 2.3 square nautical miles.
*Depth:* Averages 13 meters.
*Primary Use:* Dredged material.
*Period of Use:* Continuing use.
*Restriction:* Disposal shall be limited to dredged material from Wilmington Harbor area.

[FR Doc. 87-6712 Filed 3-26-87; 8:45 am]
BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 201-38

### Proposal To Amend the Federal Information Resources Management Regulation (FIRMR) To Clarify the Policy Regarding Authorized Use of Federal Telecommunications Systems

**AGENCY:** Information Resources Management Service, GSA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation changes FIRMR provisions regarding permissible and impermissible long distance calls on Federal telecommunications systems by furnishing examples of permissible official business calls and by providing Governmentwide standards to be applied when collecting money from persons making unauthorized use of Federal telecommunications systems. Audits of telephone use have disclosed real abuse; however, narrow interpretations of what constitutes an official call have undermined efforts to eliminate abuse, and are not congruent with good management practice. The intent is to permit Federal workers to make reasonable use of Federal telecommunications systems and at the same time, to guard against abuse of telephone use.

**DATE:** Comments are due May 26, 1987.

**ADDRESS:** Comments should be submitted to the General Services Administration (KMPR) Attn: Project 87-14A, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** John J. Landers, Information Resources Management Service, telephone (202) 535-7425 or FTS, 535-7425.

**SUPPLEMENTARY INFORMATION:** (1) Section 201-38.007 is retitled and revised to furnish clearer policy regarding the use of Federal telecommunications systems. The changes being proposed by this issuance are explained in the following paragraphs.

(a) Section 201-38.007 is restated to clarify what constitutes an official business call.

(b) Section 201-38.007-1 furnishes examples of pemissible offical business calls.

(c) Section 201-38.007-2 cautions against abuse by employees.

(d) Section 201-38.007-3 furnishes guidance on prohibited calls.

(e) Section 201-38.007-4 states the policy regarding collecting money from persons making unauthorized long distance calls.

(f) Section 201-38.007-5 calls agencies attention to Office of Management and Budget (OMB) guidance on the Privacy Act as it relates to call detail records.

(g) Section 201-38.007-6 sets forth agency responsibilities.

(h) Section 201-38.007-7 authorizes delegations of authority within agencies.

(2) Comments are invited regarding the establishment of these proposed rules, particularly the examples of authorized use set forth in the chart appearing at the end of § 201-38.007-1.

(3) The General Services Administration has determined that this proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the proposed rule. The proposed rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. Therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

**List of Subjects in 41 CFR Part 201-38**

Government property management, Government procurement, Telecommunications, Information resources activities, Federal Telecommunicatons System.

Dated: March 18, 1987.

**Fred L. Sims,**

*Acting Deputy Commissioner for Federal Information Resources Management.*

## PART 201-38—MANAGEMENT OF TELECOMMUNICATIONS RESOURCES

1. The table of contents for Part 201-38 is amended by revising the entry for § 201-38.007, adding the entries for §§ 201-38.007-1 through 201-38.007-7, and revising the authority citation for the part to read as follows:


| | |
|---|---|
| 201-38.007 | Policies on the use of telecommunications services. |
| 201-38.007-1 | Authorized use of Federal telecommunications systems. |
| 201-38.007-2 | Abuse by employees. |
| 201-38.007-3 | Prohibitions. |
| 201-38.007-4 | Collections. |
| 201-38.007-5 | Privacy Act considerations. |
| 201-38.007-6 | Agency responsibilities. |
| 201-38.007-7 | Delegation of authority. |


**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 2128; 40 U.S.C. 751(f).

2. Section 201-38.007 is revised to change the title, revise the text, and add seven subsections consisting of §§ 201-38.007-1 through 201-38.007-7, to read as follows:

**§ 201-38.007 Policies on use of telecommunications services.**

The Federal Telecommunications System (FTS) and other Government-provided long distance telephone services are to be used only to conduct official business; i.e., if the call is necessary in the interest of the Government. (Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 926, Title 31 U.S.C. 1348(b).) These networks are to be used for placement of calls instead of the commercial toll network to the maximum extent practicable. All Government telephone systems represent resources; accordingly, their use must be managed just as any other resource. Supervisors are responsible for the proper management of telephone usage within their jurisdiction.

**§ 201-38.007-1 Authorized use of Federal telecommunications systems.**

(a) The use of Federal telephone systems (including calls over commercial systems which will be billed to the Government) shall be limited to the conduct of official business. Such official business calls may include

emergency calls and other calls which the agency determines are necessary in the interest of the Government. No unofficial calls may be placed (except in circumstances identified in paragraphs (b) and (c) of this § 201–38.007–1), even if the employee's intention is to reimburse the Government for the cost of the call.

(b) Examples of the circumstances in which use of Federal telecommunicatons systems properly may be approved as being necessary in the interest of the Government are set forth in the chart entitled "Examples of Authorized Use of Federal Telecommunications Systems" appearing at the end of this § 201–38.007–1.

(c) Brief personal calls over the commerical long distance network may be made, if the calls are not charged to the Government; i.e., the call is—

(1) Charged to the employee's home phone number or other non-Government number (third number call),

(2) Made to an 800 toll free number,

(3) Charged to the called party if a non-Government number (collect call), or

(4) Charged to a personal telephone credit card.

**Examples of Authorized Use of Federal Telecommunications Systems (Chart Referenced in § 201–38.007–1)**

(1) An employee is injured on the job. A call to notify family or doctor is appropriate.

(2) An employee traveling on Government business is delayed due to official business or transportation delay and must reschedule a return time. A call to notify family of a schedule change is appropriate.

(3) An employee traveling overnight on Government business may make a brief call daily to his or her residence using an FTS telephone.

(4) An employee is required to work overtime without advance notice. A telephone call to advise the employee's family of the change in schedule or to make alternate transportation or child care arrangements is appropriate.

(5) An employee makes a brief daily call to locations within the local commuting area to speak to spouse, minor children (or those responsible for them, e.g., school or day-care center) to see how they are.

(6) An employee makes brief calls within the local commuting area to his or her residence, local government agency, or physician.

(7) Use of systems as provided by a collective bargaining agreement which is either executed after the effective date of these regulations and consistent with them or executed before the effective date of these regulations.

**§ 201–38.007–2 Abuse by employees.**

Employees should be particularly sensitive to the use of Government telephone facilities under the conditions outlined in § 201–38.007–1. If possible, such calls should be made during lunch, break, or other off-duty periods. Abuse of Government telephone systems, including abuse of the privileges in § 201–38.007–1, may result in disciplinary action in accordance with applicable agency guidelines.

**§ 201–38.007–3 Prohibitions.**

The practices set forth in this § 201–38.007–3 are prohibited. A violation may result in criminal, civil or administrative action, including suspension or dismissal.

(a) Use of the following services, equipment, or facilities for other than official business, except emergency calls, and calls which the agency determines are necessary in the interest of the Government as provided in § 201–38.007–1:

(1) FTS;

(2) Government-provided long distance telephone service, other than FTS; or

(3) A commercial network where the Government is billed for the call.

(b) Use of any Government-provided telephone service, equipment or facility under circumstances that interfere with the expeditious and orderly conduct of Government business.

(c) Making an unauthorized telephone call with the intent to later reimburse the Government.

(d) Listening-in or recording of telephone conversation except as authorized by Subpart 201–6.2.

(e) Use of telephone call detail data in other than an authorized fashion. (See § 201–38.007–5.)

**§ 201–38.007–4 Collections.**

(a) Agncies should collect for any unauthorized calls made by an employee or other person where it is cost-effective to do so. Each call will be valued and collection made in accordance with paragraph (b) of this § 201–38.007–4, as implemented by the agency. However, a call not otherwise authorized may not be authorized based on expected reimbursement.

(b) Agency collections shall be composed of two parts:

(1) The value of the call based on commercial long-distance rates rounded to the nearest dollar, and

(2) An amount rounded to the nearest dollar to cover the agencies' administrative costs, for example, to determine that the call was unauthorized and to process the collection.

(c) Agencies should determine the appropriate account for depositing the monies collected.

**§ 201–38.007–5 Privacy Act considerations.**

In implementing this rule agencies shall consider the Office of Management and Budget (OMB) "Guidance on the Privacy Act Implications of 'Call Detail' Programs to Manage Employees' Use of the Government's Telecommunications Systems" (FR cite to be included).

**§ 201–38.007–6 Agency responsibilities.**

Agencies shall issue directives consistent with this § 201–38.007 governing the use of their telephone facilities and services. Such directives specifically shall provide for the further definition of calls necessary in the interest of the Government as used in § 201–38.007–1 and shall include procedures for collections.

**§ 201–38.007–7 Delegation of authority.**

The head of each agency may designate subordinates to determine and certify what constitutes a call necessary in the interest of the Government.

[FR Doc. 87–6695 Filed 3–26–87; 8:45 am]
BILLING CODE 6820–25–M

## ACTION

## 45 CFR Part 1204

### Official Seal; Proposed Revision

**AGENCY:** ACTION.

**ACTION:** Proposed rule.

**SUMMARY:** The ACTION Agency proposes to revise its official seal. The Domestic Volunteer Service Act Amendments of 1986 changed the ACTION name from "The National Volunteer Agency" to the "Federal Domestic Volunteer Agency" and the seal must be changed accordingly. In addition, the current seal is outdated and the new one will promote greater name recognition. The proposed revision will replace the old seal with the new seal.

**DATES:** Comments must be submitted on or before April 27, 1987.

**ADDRESS:** Written comments should be sent to: Director of Public Affairs, Office of Legislative, Public, and Intergovernmental Affairs, ACTION, M–200, 806 Connecticut Avenue, NW., Washington, DC 20525.

**FOR FURTHER INFORMATION CONTACT:** Jim Moore, Acting Director of Public Affairs, (202) 634–9108.

**SUPPLEMENTARY INFORMATION:** ACTION has determined that this regulation is not a major rule as defined by Executive Order 12291. The regulation will not result in:

1. Any effect on the economy;
2. Any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
3. Any adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 45 CFR Part 1204**

Official seal.

For the reasons set out in the preamble, 45 CFR Part 1204 of the Code of Federal Regulations, is proposed to be amended as shown.

**PART 1204—[AMENDED]**

1. The authority citation for Part 1204 is revised to read as follows:

Authority: Sec. 402, Pub. L. 93–113, 87 Stat. 407 (42 U.S.C. 5042).

2. In Part 1204, §§ 1204.1 and 1204.2 are revised to read as follows:

**§ 1204.1 Authority.**

Pursuant to section 402(9) of Pub. L. 93–113 the ACTION official seal and design thereof which accompanies and is made part of this document, is hereby adopted and approved, and shall be judicially noticed.

**§ 1204.2 Description.**

The official seal of ACTION is described as follows:

(a) The words "The Federal Domestic Volunteer Agency USA" are in blue capital letters and form the outer circle of the seal.

(b) Within the circle of letters, on a field of white, appears the logo-type word "ACTION" in blue, capital letters and in Italic type.

(c) The logo-type word "ACTION" is split; ACT on a higher level and ION drops down to a slightly lower level.

(d) Two red bars, also split on two levels underline the logo-type word "ACTION."

The official seal of ACTION is modified when reproduced in black and white and when embossed, as it appears below.

Signed at Washington, DC, this 23rd day of March, 1987.

**Donna M. Alvarado,**

*Director, ACTION.*

[FR Doc. 87–6828 Filed 3–26–87; 8:45 am]

BILLING CODE 6050–28–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 217, 222 and 227

[Docket No. 70227–7027]

### Sea Turtle Conservation; Shrimp Trawl Requirements; Correction.

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Public hearing time; Correction.

**SUMMARY:** On March 24, 1987, a notice of an additional public hearing in Biloxi, MS, on April 2, was published in the Federal Register (53 FR 9318). The published time was incorrect. The correct time of the public hearing is 7 p.m.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz (813/893–3366) or David Cottingham (202/377–5181).

Dated: March 24, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–6734 Filed 3–26–87; 8:45 am]

BILLING CODE 3510–22–M

### 50 CFR Part 653

### Red Drum Fishery of the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of public hearing and request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will hold public hearings on the review of the draft amendment and proposed regulations for the fishery management plan for red drum in the Gulf of Mexico.

**DATES:** The hearings will begin at 7:00 p.m., and will adjourn at 10:00 p.m., on Thursday, April 9, 1987; Monday, April 13, 1987; Tuesday, April 14, 1987; Wednesday, April 15, 1987; and Thursday, April 16, 1987.

Written public comments will be accepted until April 20, 1987.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for locations of hearings.

Written comments may be sent to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, 813–228–2815.

**SUPPLEMENTARY INFORMATION:** The hearings will take place as follows:

April 9th—Fort Myers Tourist Center, 2254 Edward Drive, Fort Myers, Florida;

April 13th—Texas A&M Research and Extension Center, Highway 44 (4 miles west of the airport), Corpus Christi, Texas;

April 13th—Ramada Inn, 5303 West Kennedy Boulevard, Tampa, Florida;

April 14th—Mobile Municipal Auditorium, 401 Auditorium Drive, Mobile, Alabama;

April 14th—Harris County Courthouse Annex, 16603 Buccanner, Clear Lake City, Texas;

April 15th—University of Southwestern Louisiana Conference Center, 2 Rex Street, USL Campus, La Fayette, Louisiana;

April 15th—Biloxi Cultural Center, Assembly Room, 217 Lameuse, Biloxi, Mississippi; and

April 16th—University of New Orleans (Auditorium BA–165), Lakefront, New Orleans, Louisiana.

(16 U.S.C. 1801 *et seq.*)

Dated: March 23, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–6733 Filed 3–26–87; 8:45 am]

BILLING CODE 3510–33–M

# Notices

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### List of Warehouses and Availability of List of Cancellations and/or Terminations

**AGENCY:** Agricultural Stabilization and Conservation Service, USDA.

**ACTION:** Notice of Publication of List of Warehouses Licensed Under the U.S. Warehouse Act and Availability of List of Cancellations and/or Terminations occurring During Calendar Year 1986.

Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1986, as required by section 26 of that Act (7 U.S.C. 266). Also available is a list of cancellations and/or terminations that occurred during calendar year 1986. A copy of the list of warehouses as of December 31, 1986, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, ASCS, Warehouse Division, Warehouse Licensing Branch, U.S. Department of Agriculture, P.O. Box 2415, Room 5968, South Agriculture Bldg., Washington, DC 20013, Telephone: 202–447–3822.

Signed at Washington, DC, March 24, 1987.

**Milton J. Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service (ASCS).*

[FR Doc. 87–6811 Filed 3–26–87; 8:45 am]

BILLING CODE 3410–05–M

## Foreign-Trade Zones Board

**[Order No. 348]**

### Resolution and Order Approving the Application of the Port of Palm Beach District, for a Foreign-Trade Zone in Palm Beach County, FL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

**Resolution and order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Palm Beach District, a Florida public corporation, filed with the Foreign-Trade Zones Board (the Board) on January 21, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Palm Beach County, Florida, within the West Palm Beach Customs port of entry, the Board, finding that the requirements of the Foreign Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

### Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Palm Beach County, Florida

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Port of Palm Beach District (the Grantee), a Florida public corporation, has made application (filed January 21, 1986, Docket No. 2–86, 51 FR 3639) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Palm Beach County, Florida, within the West Palm Beach Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 135 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued therunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for

injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the Distict Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilites.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 16th day of March 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board,
**Malcolm Baldrige,**
*Chairman and Executive Officer.*
[FR Doc. 87-6793 Filed 3-26-87; 8:45 am]
BILLING CODE [illegible]

---

**[Order No. 349]**

## Resolution and Order Approving the Application of the Canaveral Port Authority, for a Foreign-Trade Zone in Brevard County, FL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Canaveral Port Authority, a Florida public corporation, filed with the Foreign-Trade Zones Board (the Board) on January 21, 1986, requesting a grant of authority for establishing, operating, and maintaining a general purpose foreign-trade zone in Brevard County, Florida, within the Port Canaveral Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, aproves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.615 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant To Establish, Operate and Maintain a Foreign-Trade Zone in Brevard County, Florida**

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Canaveral Port Authority (the Grantee), a Florida public corporation, has made application (filed January 21, 1986, Docket No. 3–86, 51 FR 3638) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Brevard County, Florida, within the Port Canaveral Customs port of entry;

Whereas, notice of said application has been given and published and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (16 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 136 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and througout the foreign-trade zone site in the performance of their official duties.

The grant does not incude authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installment of suitable facilities.

In Witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto its Chairman and Executive Officers at Washington, DC, this 16th day of March 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board,
**Malcolm Baldrige,**
*Chairman and Executive Officer.*
[FR Doc. 87-6792 Filed 3-26-87; 8:45 am]
BILLING CODE [illegible]

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-122-057]**

## Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from Blaw Knox Construction Equipment Company, the petitioner, and from Fortress Allatt Ltd., a manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers three manufacturers/exporters of this merchandise to the United States and

the period from September 1, 1983 through August 31, 1986. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5289/5255.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 1, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43230) the final results of its last administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 44811, September 7, 1977). We began this review of the finding under our old regulations. After promulgation of our new regulations, the petitioner and one manufacturer/exporter requested, in accordance with § 353.53a(a) of the Commerce Regulations, that we complete the administrative review. We published notices of initiation on July 9, 1986 (50 FR 48825) and October 24, 1986 (51 FR 37770). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

## Scope of the Review

Imports covered by the review are shipments of replacement parts for self-propelled bituminous paving equipment. The review covers three manufacturers/exporters of this merchandise to the United States and the period from September 1, 1983 through August 31, 1986.

Two firms, General Construction Equipment Manufacturing Co. and Parker Hannifin, did not respond to our questionnaire. For those non-responsive firms the Department used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is either the most recent rate for the firm or the highest rate for any responding firm with shipments in this review.

## United States Price

In calculating United States price, the Department used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, f.o.b. price to unrelated purchasers in the Untied States. We made adjustments, where applicable, for U.S. and foreign inland freight, U.S. duty, brokerage charges, and discounts. No other adjustments were claimed or allowed.

## Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to unrelated customers. We made adjustments, where applicable, for discounts, inland freight, differences in credit costs, and differences in commissions to unrelated parties. We accounted for taxes imposed in Canada, but rebated or not collected by reason of exportation of the merchandise to the United States, by subtraction from home market price as best information available. No other adjustments were claimed or allowed.

## Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value we preliminarily determine that the following margins exist:

| Manufacturer/exporter | Period | Margin (percent) |
|---|---|---|
| Fortress Allatt Ltd. | 9/1/83–8/31/84 | 1.31 |
| | 9/1/84–8/31/85 | 0.91 |
| | 9/1/85–8/31/86 | 1.35 |
| General Construction Equipment Manufacturing Co. | 9/1/83–8/31/84 | 1.31 |
| | 9/1/84–8/31/85 | 0.91 |
| | 9/1/85–8/31/86 | 1.35 |
| Parker Hannifin | 9/1/83–8/31/86 | 20.12 |

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after August 31, 1986 and who is unrelated to any reviewed firm, or any other previously reviewed firm, a cash deposit of 1.35 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled bituminous paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: March 24, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–6794 Filed 3–26–87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A–588–604]

## Tapered Roller Bearings and Parts Thereof, Finished or Unfinished From Japan; Preliminary Determination of Sales at Less Than Fair Value

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in

BEST COPY AVAILABLE

an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 8, 1987.

**EFFECTIVE DATE:** March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp (202–377–1769) or Marie G. Kissel (202–377–3798), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Preliminary Determination

We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished, from Japan are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

### Case History

On August 25, 1986, we received a petition in proper form filed by the Timken Company, on behalf of the U.S. industry producing tapered roller bearings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on September 15, 1986 (51 FR 33286, September 19, 1986), and notified the ITC of our action.

On October 2, 1986, the ITC determined that their is a reasonable indication that imports of tapered roller bearings from Japan are materially injuring a U.S. industry (U.S. ITC Pub. No. 1899, October 1986).

On November 19, 1986, questionnaires were presented to NTN Toyo Bearing Co., Ltd. (NTN) and Koyo Seiko Co., Ltd. (Koyo), which account for approximately 90 percent of the exports to the United States during the period of investigation. To both companies we granted an extension of time in which to respond.

On January 5, 1987 we received questionnaire responses from both companies. Additions to the responses were received on January 21, 1987 and January 28, 1987, from Koyo Seiko, and from NTN on January 20, 1987 and January 26, 1987. We found that the questionnaire responses were insufficient. We sent deficiency letters to both companies on February 9, 1987. Deficiency letter responses were received from NTN on February 20, 1987 and February 23, 1987, and from Koyo Seiko on February 24, 1987 and February 27, 1987.

On January 12, 1987, we determined this case to be extraordinarily complicated and, in accordance with section 733(c)(B) of the Act, we postponed the preliminary determination to March 23, 1987 (52 FR 2125).

### Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof, currently classified under the *Tariff Schedules of the United States* (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS. Products subject to the outstanding dumping finding covering certain tapered roller bearings from Japan (T.D. 76–227, 41 FR 34974) are not included within the scope of this investigation. This investigation includes all tapered roller bearings and parts thereof, as described above, that are manufactured by NTN.

If during the course of this investigation the Department rescinds its revocation with respect to NTN and that rescission is affirmed by final judicial order, this antidumping investigation would be terminated with regard to any bearings manufactured by NTN that would be covered by the outstanding dumping finding.

### Fair Value Comparisions

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Because information received from Koyo relating to merchandise which was processed prior to sale was received too late to allow us to consider it for this preliminary determination, we have based this determination on comparisons of products which were sold in the condition in which imported. If verified, we will use the information on the sales of processed merchandise in making our final decision.

We made comparisons on approximately 90 percent of the sales of the product during the period of investigation, March, 1, 1986 through August 31, 1986.

### United States Price

For Koyo Seiko and certain sales by NTN, we based United States price on exporter's sales price (ESP) since those sales were made after importation, in accordance with section 772(c) of the Act. For those sales by NTN to the United States which were made prior to importation, we determined that the merchandise had been purchased from the manufacturer or producer and, therefore, based the United States price on purchase price in accordance with section 772(b) of the Act.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the more appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party

places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and ESP based on the packed, duty paid, f.o.b. or c.i.f., delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, as appropriate. For ESP sales, we also deducted other expenses normally incurred in selling the merchandise in the United States. Consistent with the Court of International Trade remand decision (*The Timken Co.* v. *United States,* Slip Op. 86–17) concerning NTN's sales of tapered roller bearings subject to a previous antidumping duty order on tapered roller bearings four inches and under in outside diameter, we treated certain U.S. credit and technical service expenses as directly related to the sales under consideration.

**Foreign Market Value**

As noted in the "Case History" section of this notice, petitioner alleged that home market sales were made at less than the cost of production and that constructed value should be used to compute foreign market value.

Using the respondents' submissions, we compared the home market prices to the cost of production reflecting selling expenses incurred on sales to the same level of trade. We used constructed value as the basis for calculating foreign market value where there were no, or insufficient, sales of such or similar merchandise at prices above the cost of production, as defined in § 773(b) of the Act. Koyo had sufficient sales at prices above cost to form the basis for all comparisons.

NTN's general expenses exceeded the statutory minimum of ten percent of materials and fabrication. Therefore, actual general expenses were used in calculating the constructed value. Koyo's general expenses were less than the statutory minimum, therefore, we used the 10 percent minimum. The statutory eight percent for profit was included in the constructed value for both respondents because home market profit was less than eight percent. We added U.S. packing charges.

We made a circumstance of sale adjustment for differences in credit expenses and for comparisons to ESP, for an offset to indirect selling expenses on the U.S. sales, in accordance with § 353.15(c) of Commerce's regulations, except as noted below.

Where we found sufficient sales in the home market to form the basis of comparison, we used delivered home market prices. We made deductions for foreign inland freight and discounts. We deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, we offset selling expenses incurred on home market sales up to the amount of the indirect selling expenses incurred for sales to the U.S. market, in accordance with § 353.15(c) of our regulations. We made an adjustment for differences in credit terms in accordance with § 353.15 of our regulations. NTN claimed adjustments for differences in technical service expenses, sales commissions, advertising and warehousing expenses. We denied these claims pending the outcome of verification.

NTN submitted information relative to possible comparison models which appears to be based on its catalogue of bearings rather than models actually sold in the home market during the period of investigation. Due to the number of models involved and the number of sales transactions, we were unable to refine the data and create alternative comparison groups based on sales. Accordingly, where we could not find an appropriate home market comparison, we developed constructed value on the basis of the direct manufacturing costs of the model sold to the United States. In addition, the problems relating to the establishment of comparison groups made it impossible to determine the level of home market selling expenses which would be used in the ESP offset. Therefore, for purposes of this preliminary determination we did not offset the ESP expenses in determining the foreign market value. We are requesting additional information for purposes of the final determination.

We established such or similar merchandise comparison groups on the basis of the inside and outside diameter of the bearings and, where available, the dynamic load rating. Petitioner contends that the system life of the bearings is a more accurate measure of similarity than the dynamic load rating. We received detailed information on the methodology for determining system life too late to consider it for this determination. We will consider petitioner's contention for purposes of the final determination. We will request additional information and comments on the proposed methodology as appropriate.

**Currency Conversion**

For ESP comparisons, we used the official exchange rate for the date of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of tapered roller bearings and parts thereof, finished or unfinished, from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price. This suspension of liquidation will remain in effect until further notice.

| Manufacturer / producer / exporter | Weighted-average margin percentage |
|---|---|
| Koyo Seiko Co., Ltd | 38.90 |
| NTN Toyo Bearing Co., Ltd | 17.62 |
| All Others | 18.09 |

**ITC Notification**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after the date of our preliminary affirmative determination or 45 days after we make our final affirmative determination.

**Public Comment**

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on May 19, 1987, at the U.S. Department of Commerce, Room 3708, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 12, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

March 23, 1987.

[FR Doc. 87–6795 Filed 3–26–87; 8:45 am]

BILLING CODE 3510–DS–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Requesting Public Comment on Bilateral Textile Consultations with the Government of the People's Republic of China Concerning Categories 359–D, 369–S, and 644

March 24, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 30, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consultations have been requested call (202) 377–3740.

**Background**

On February 27, 1987, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton and man-made fiber textile products in Categories 359–D (cotton diapers in TSUSA number 384.5214), 369–S (cotton shop towels in TSUSA number 366.2840) and 644 (man-made fiber suits), produced or manufactured in China and exported to the United States.

Summary market statements concerning these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 359–D, 369–S and 644 under the agreement with the People's Republic of China, or in any other aspect thereof, or to comment on domestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, Internationl Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments of information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) (relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of cotton and man-made textile products in Categories 359–D, 369–S and 644 during the ninety-day period which began on February 27, 1987 and extends through May 27, 1987 to the following levels:

| Category | Ninety-day consultation period (Feb. 27, 1987–May 27, 1987) |
|---|---|
| 359–D | 369,630 pounds. |
| 369–S | 457,275 pounds |
| 644 | 6,036 dozen. |

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation period to the following levels:

| Category | Twelve-month restraint period (May 28, 1987–May 27, 1988) |
|---|---|
| 359–D | 1,074,436 pounds. |
| 369–S | 1,248,355 pounds. |

| Category | Twelve-month restraint period (May 28, 1987–May 27, 1988) |
|---|---|
| 644 | 14,191 dozen. |

The United States Government had decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 359–D, 369–S and 644 exported during the ninety-day period at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultation with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limits established for Categories 359–D, 369–S and 644 for the ninety-day period are exceeded, such excess amounts, if allowed to enter at the end of the restraint period, shall be charged to the levels defined in the agreement for the subsequent twelve-month periods. In the letter to the Commissioner of Customs which follows periods. In the letter to the Commissioner of Customs which follows this notice, ninety-day levels are established for these categories.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**China—Market Statement**

*Category 359 Pt.—Cotton Diapers*

February 1987.

Summary and Conclusions

United States imports of cotton diapers—Category 359 Pt.—from China were 1,056 thousand pounds (894 thousand dozen) in 1986, 13 times the 82 thousand pounds (45 thousand dozen) imported a year earlier. China is the largest supplier of these diapers, accounting for 90 percent of the total imports.

The sharp and substantial increase of low-valued cotton diaper imports from China is disrupting the U.S. market.

Production and Market Share

U.S. production of cotton diapers fell from 1,306 thousand dozen in 1985 to 732 thousand in 1986, a 44 percent decline. The U.S. producers' share of the market for domestically produced and imported diapers dropped drastically, by more than half, from 96 percent in 1985 to 42 percent in 1986.

Imports and Import Penetration

U.S. imports of Category 359 Pt. diapers from all sources were 999 thousand dozens in 1986, more than 16 times the 61 thousand dozen imported in 1985. The ratio of imports to domestic production reached 137 percent in 1986, 27 times the 5 percent ratio recorded in 1985.

Import Values

Category 359 Pt. imports from China entered under TSUSA No. 384.5214, cotton diapers, not knit and not ornamented. The duty-paid landed values of these imports from China are well below the U.S. producers prices for comparable diapers.

**China—Market Statement**

*Category 369 Part—Cotton Shop Towels*

February 1987.

Summary and Conclusions

Imports of Category 369 part-cotton shop towels—from China totaled 1.3 million pounds (15.1 million units) in 1986. Although this was below the imports of a year earlier, imports for the fourth quarter of 1986 were up 49 percent from the previous quarter and double the amount imported during fourth quater of 1985. This is a sharp and substantial increase in imports. These imports from China are imported at duty-paid landed values substantially below the prices of domestically produced shop towels. The sharp and substantial increase of low-valued imports from China during the fouth quarter 1986 poses an imminent threat of market disruption in the U.S. China is the second largest supplier of cotton shop towels.

In September 1983, the U.S. International Trade Commission (USITC) determined that the U.S. shop towel industry was suffering "material injury". The USITC decision was based upon a comparison of 1980/1981 data with data from 1982/1983. The conditions that led to the finding of material injury continue to exist in 1986.

In spite of the successful antidumping action against imports of shop towels from China and successful countervailing duty actions against shop towel imports from other major suppyling countries, the "material injury" that the USITC found in 1983 has never been remedied. U.S. production remains well below 1980–1981 levels and imports are still far above the levels recorded in those years.

U.S. Production and Market Share

U.S. production of cotton shop towels dropped 18 percent in 1982–83 from its 1980–81 level. Although U.S. producers regained some of their 1982–83 production loss in the ensuing years, they continued to lose market share. Moreover, the 1986 production level remained 10 percent below the 1980–81 level. The U.S. producers' share of the market fell from an average 61 percent in 1980–81 to an average 58 percent in 1982–83 to 51 percent in 1986. The U.S. producers' share fell to 48 percent during the last half of 1986.

Imports and Import Penetration

U.S. imports of cotton shop towels increased 33 percent since 1980–81, reaching 138 million units in 1986. Imports in 1985 and 1986 remained relatively flat at 138 million units, reflecting the results of the first annual review of an antidumping order against shop towel imports from China. In its review, the U.S. Department of Commerce found dumping margins as high as 80 percent ad valorem. The Department's finding went into effect in late June, 1985. During the second half 1985 and the first half of 1986, imports from China were low and had a clear influence on the overall import levels. In the second half of 1986, China's exports of cotton shop towels began to surge again posing an imminent threat of market disruption.

The ratio of imports to domestic production increased from 64 percent in 1980–81 to 95 percent in 1986. During the second half of 1986, the ratio increased to 108 percent.

Import Values

Imports from China are entered under TSUSA No. 366.2840—cotton shop towels not ornamented and not jacquard-figured. The duty-paid landed value of these imports from China are below the U.S. producer price for comparable towels.

**China—Market Statement**

*Category 644—Women's, Girls', and Infants' Man-Made Fiber Suits*

February 1987.

Summary and Conclusions

U.S. imports of Category 644 from China were 17,247 dozen during 1986, more than two and one-half times the 6,489 dozen imported in 1985.

The U.S. market for Category 644 has been disrupted by imports. The sharp and substantial increase of imports from China has contributed to this disruption.

U.S. Production and Market Share

U.S. production of women's, girls', and infants' man-made fiber suits continues to decline. The 1984–85 average production level is 22 percent below the 1982–83 average level and 45 percent below the 1980–81 average production level. The U.S. market for domestically produced and imported women's, girls', and infants' man-made fiber suits has also been on the decline. The 1984–85 average market is 18 percent below the 1980–81 average market. Domestic manufacturers not only absorbed the contraction in the market but lost market share to imports. The domestic manufacturers' share of this market declined from an average 89 percent share during 1980–81 to an average 61 percent share during 1984–85. A further erosion of U.S. market share is anticipated in 1986.

U.S. Imports and Import Penetration

U.S. imports averaged 147 thousand dozen annually during 1980–81 with an average import-to-production ratio of 12 percent. Imports increased threefold to an average level of 442 thousand dozen during 1984–85. The import-to-production ratio increased to an average 65 percent during this period. Assuming that 1986 U.S. Category 644 production reaches the 1984–85 average level the import-to-production ratio will reach 79 percent.

Duty-Paid Value and U.S. Producer Price

Approximately 86 percent of Category 644 imports from China during 1986 entered under three TSUSA numbers: 384.9158—women's, girls', and infants' man-made fiber woven suits, of identical fabric, having a jacket with a single back panel, not ornamented; 384.9162—women's, girls', and infants' man-made fiber woven suits, of identical fabric, not ornamented; 384.9166—women's, girls', and infants' man-made fiber woven suits, not of identical fabric, not ornamented. TSUSA number 384.9162 alone represents 62 percent of Category 644 imports from China. These suits entered the U.S. at duty-paid landed

values below U.S. producers' prices for comparable suits.

March 24, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 30, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on February 27, 1987 and extends through May 27, 1987, in excess of the following levels of restraint:

| Category | Ninety-day restraint limit [1] |
|---|---|
| 359–D [2] | 369,630 pounds. |
| 369–S [3] | 457,275 pounds. |
| 644 | 6,036 dozen. |

[1] The limits have not been adjusted to account for any imports exported after February 26, 1987.
[2] In Category 359, only TSUSA number 384.5214.
[3] In Category 369, only TSUSA number 366.2840.

Textile products in Categories 359–D, 369–S and 644 which have been exported to the United States prior to February 27, 1987 shall not be subject to this directive.

Textile products in Categories 359–D, 369–S and 644 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782) July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Ronald I. Levin,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–6751 Filed 3–26–87; 8:45 am]
BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Personal Security Questionnaire (Industrial-NAC); DD Form 48, and Personnel Security Questionnaire (Updating); DD Form 48–3. (0704–0005)

Forms used to obtain personal data from a U.S. citizen being considered for a DoD Confidential/Secret Personnel Security Clearance, or a OSE determination at the Confidential/Secret level; and to obtain current/updated personal data to process a clearance action when an individual with a security clearance is transferring employment from one contractor to another within a 12-month period and requires a security clearance in new employment. Also used in converting a User Agency Clearance to an Industrial Security Clearance.

Number of respondents: DD–48—102,000; DD–48–3—57,000
Number of responses per respondent—1
Number of hours per response: DD–48—40 minutes; DD–48—10 minutes

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. Dale L. Hartig, DIS, Chief, Information and Public Affairs, 1900 Half Street, SW., Washington, DC 20324–1700, telephone (202) 475–1062.

**Linda M. Lawson,**
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87–6802 Filed 3–26–87; 8:45 am]
BILLING CODE 3810–01–M

### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Friday, May 1, 1987.

**ADDRESS:** The meeting will be held at Naval Research Laboratory, 4555 Overlook Ave., SW, Bldg. 210, Room 1212, Washington, DC 20375.

**FOR FURTHER INFORMATION CONTACT:** Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that

accordingly, this meeting will be closed to the public.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87-6803 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

## DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Friday, May 1, 1987.

**ADDRESS:** The meeting will be held at Naval Research Laboratory, 4555 Overlook Ave., SW., Bldg. 207, Room 155, Washington, DC 20375.

**FOR FURTHER INFORMATION CONTACT:** Becky Terry, AGED Secretariat, 2011 Crystal Drive Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87-6804 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

## DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Friday, May 1, 1987.

**ADDRESS:** The meeting will be held at Naval Research Laboratory, 4555 Overlook Ave., SW., Bldg. 226, Room 104, Washington, DC 20375.

**FOR FURTHER INFORMATION CONTACT:** Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The microwave device area includes programs on developments and research related to microwave, tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classifed program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87-6805 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

## DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 1300, Friday, May 1, 1987.

**ADDRESS:** The meeting will be held at Palisades Institute for Research, Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87-6806 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

## Graduate Medical Education Advisory Committee; Meeting

**AGENCY:** Department of Defense Graduate Medical Education Advisory Committee.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of Pub. L. 92-463, notice is hereby given that an open meeting of the Department of Defense Graduate Medical Education Advisory Committee has been scheduled as follows:

**DATE:** April 17, 1987, 8:00 a.m. to 5:00 p.m.

**ADDRESS:** Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Michael Herndon, Executive Secretary, DoD Graduate Medical Education Advisory Committee, Office of the Assistant Secretary of Defense (Health Affairs), Room 3E349, the Pentagon, Washington, DC, 20301 (202) 694-5355.

**SUPPLEMENTARY INFORMATION:** This will be the ninth meeting of the Committee. Presentation of the services selection

results for AY 87 will be made. The Advisory Committee will review the results of the survey of academic medical institutions in January 1987. The Committee will also review the draft Committee report.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87-6707 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

## Defense Science Board Task Force on Computer Applications to Training and Wargaming; Meetings

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Computer Applications to Training and Wargaming will meet in closed session on April 23–24, May 21–22, and June 16–17, 1987 at the Pentagon, Arlington, Virginia; the National Defense University, Washington, DC; and the Institute for Defense Analyses, Alexandria, Virginia, respectively.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study how to integrate anticipated advances in computer technology with ongoing simulation efforts, supporting training and wargaming for joint warfighting.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87-6709 Filed 3-26-87; 8:45 am]

BILLING CODE 3810-01-M

## Defense Science Board Task Force on Special Systems Subgroup, Pacific Command Air Defense; Meetings

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Pacific Command Air Defense, Special Systems Subgroup will meet in closed session on April 7 and May 7, 1987 at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine systems related to defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87-6708 Filed 3-26-87; 8:45 am]

[illegible]

## Department of the Army

## Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: 9–10 April 1987.

Times of Meeting: 0830–1630, 9 April 1987; 0830–1330, 10 April 1987.

Place: Headquarters, US Army Communications and Electronics Command 9 April 1987, and Headquarters, Joint Tactical Command, Control and Communications Agency 10 April 1987. Both agencies are located at Fort Monmouth, New Jersey.

Agenda: The Army Science Board Ad-Hoc Panel on Army Information Mission Area (IMA) Concepts and Architecture will meet to gather facts for its study. On the first day the panel will conduct a discussion with PM ACCS and various system managers to determine the current status of developmental tactical communication and information management systems. On the second day of the meeting the panel will hear briefings on tactical Information Management programs at Theater and above from the JTC3A agency. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

FR Doc. 87-6959 Filed 3-26-87; 10:11 am]

BILLING CODE 3710-08-M

## Corps of Engineers, Department of the Army

## Intent To Prepare a Supplement to the Draft Environmental Impact Statement, Second Lock at Locks and Dam 26 (Replacement); Mississippi River, Alton, IL and MO

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a supplement to a draft environmental impact statement.

**SUMMARY:**

1. *Proposed action.* The proposed action consists of constructing a 600-foot second lock at the Locks and Dam 26 (Replacement) project, on the Mississippi River near Alton, Illinois. The second lock was authorized by Congress with Pub. L. 99-88 on August 15, 1985.

2. *Background.* The St. Louis District distributed the document, Draft Environmental Impact Statement, Second Lock at Locks and Dam 26 (Replacement), Mississippi River, Alton, Illinois and Missouri, for public review in October 1986. This review, which included three public meetings, ended December 9, 1986. The majority of comments from all sources expressed the opinion that the Draft Environmental Impact Statement was deficient.

The comments identified a number of items for which additional discussion in the Draft Environmental Impact Statement is desired, including:

a. Revised Draft versus Final EIS;

b. Fish and wildlife mitigation;

c. Navigable tributaries;

d. Low probability/high impact events;

e. Actions to avoid or minimize impacts;

f. Secondary impacts;

g. Water quality impacts;

h. Cumulative impacts; and

i. Disposition of old Lock and Dam 26.

These issues have been carefully reviewed and the decision made to publish a Supplement to the Draft Environmental Impact Statement. This document will present additional information for those topics identified above.

With regard to item b., "Fish and Wildlife Mitigation", the St. Louis District will prepare a separate Mitigation Report. This Mitigation Report will evaluate various alternatives for mitigating impacts to significant resources due to the construction and operation of the Second Lock.

3. *Public involvement.* The St. Louis District will continue its coordination with involved Federal and state agencies; public interest groups, and the general public. At this time no public meetings are planned.

4. *Estimated completion date.* The Supplement to the Draft Environmental Impact Statement is scheduled for public review in September 1987. Questions about the proposed document should be addressed to: Mr. Owen D. Dutt, Chief, Environmental Analysis Branch, U.S. Army Engineer District, St. Louis, 210 Tucker Boulevard, North, St. Louis, Missouri 63101–1986, Commercial Phone: (314) 263–5711, FTS: 273–5711.

Dated: March 18, 1987.

**Daniel M. Wilson,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 87–6669 Filed 3–26–87; 8:45 am]

BILLING CODE 3710-65-M

---

## Intent To Prepare a Supplement to the Final Environmental Impact Statement (FEIS) for the Wilmington Harbor, Northeast (Cape Fear) River Project, New Hanover and Brunswick Counties, NC

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Notice of intent to prepare a supplement to the final environmental impact statement.

**SUMMARY:**

1. The proposed project was authorized by the Water Resources Development Act of 1986 (Pub. L. 99–662). The project contains the following components

a. Widening of the Fourth East Jetty Channel by 100 feet on the west side at a depth of 38 feet for a distance of about 8,000 feet.

b. Deepening of the navigation channel from 32 feet to 35 feet at a width of 400 feet between Castle Street and the N.C. 133 bridge.

c. Widening of the turning basin just upstream from the mouth of the Northeast Cape Fear River by 100 feet to a depth of 35 feet.

d. The acquisition in fee simple, or conservation easement if less costly, of 2,800 acres of wetlands, bluffs, and buffer strips for about 6 miles along the Northeast Cape Fear River, and provision for the management of acquired lands by an appropriate interest.

Authorized overdepth dredging provides for 2 feet of overdepth in areas of earth and 3 feet of overdepth in areas of rock. Partial deepening of the harbor to 35 feet between Castle Street and the N.C. 133 bridge was accomplished by local interests in 1977–78. Congressional authorization is to complete the deepening and to maintain this segment of the harbor at this new depth.

2. Althernatives to the proposed project include the retention, deletion, or modification of the project components outlined above. Also being considered is the no action alternative.

3a. All private interests and Federal, State, and local agencies having an interest in the project are hereby notified of project authorization and are invited to comment at this time. The scoping process for the project is being initiated and will involve all known interested parties.

3b. The significant issues to be analyzed in the Supplement to the FEIS are as follows: (1) The impacts of the harbor improvements on the economic development of the region; (2) impacts to commercially important fish species; (3) impacts to migratory waterfowl; (4) impacts to cultural resources; (5) impacts to endangered species; (6) project induced impacts on the large expanses of wetlands lying upstream of the proposed harbor improvements; and (7) alternative management plans and managing agencies for the environmental lands.

3c. The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, or requested by, any other agency.

3d. The Supplement to the FEIS is being prepared in accordance with the requirements of the National Environmental Policy Act and will address the project's relationship to all other applicable Federal and State law and Executive Orders.

4. A scoping letter requesting input to the study will be sent to all known interested parties. No formal scoping meetings are currently planned; however, the identification of any significant issues relating to the project by others will result in coordination with appropriate interests as needed.

5. The Supplement to the Final Environmental Impact Statement for the project is currently scheduled for distribution to the public in January 1988.

**ADDRESS:** Questions about the proposed action and reports should be directed to Mr. William Adams, Environmental Resources Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402–1890, telephone: (919) 343–4748 or FTS 671–4748.

Dated: March 13, 1987.

**Paul W. Woodbury,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 87–6670 Filed 3–26–87; 8:45 am]

BILLING CODE 3710-GN-M

---

## Department of the Navy

## Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Navy Advertising Effectiveness Study (NAES), 0703–0032.

Survey measures recruiting advertising effectiveness and provides data strategies to be used in advertising. Target market is male youth 16–21 years old.

Individuals

Responses 2,000

Burden hours 1,000

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-David Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

**FOR FURTHER INFORMATION CONTACT:** A copy of the information collection proposal may be obtained from Dr. Charles Jamison, Associate Research Director, U.S. Navy Recruiting

Command, Arlington, Virginia, telephone (212) 869–3131.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

March 24, 1987.

[FR Doc. 87–6807 Filed 3–26–87; 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF ENERGY

### Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of Subcommittee C of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on April 2 and 3, 1987, at the offices of Texaco, Inc., 2000 Westchester Avenue, White Plains, New York, beginning at 10:00 a.m. on April 2. The agenda for the meeting is as follows:

1. Opening remarks.
2. Review of draft of Second Plan of Action.
3. Future work program.

With respect to the draft plan of action referred to in the above agenda, it should be noted that section 252(d) of the Energy Policy and Conservation Act provides that before a plan of action can be made effective, it must be approved by the Attorney General, after consultation with the Federal Trade Commission, which is required to publish in the **Federal Register** its views as to whether the plan of action should be approved. Section 6(c)(1) of the existing "Voluntary Agreement and Plan of Action to Implement the International Energy Program" (2 CCH Federal Energy Guidelines, para. 15,845) further requires that the Secretary of Energy approve a plan of action, before it may be carried out.

As permitted by 10 CFR 209.32, the usual 7-day notice period has been shortened because unanticipated procedural delays prevented processing in sufficient time to provide such notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of Subcommittee C of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA.

Issued in Washington, DC, March 24, 1987.

**J. Michael Farrell,**

*General Counsel.*

[FR Doc. 87–6818 Filed 3–26–87; 8:45 am]

BILL CODE 6450–01–M

---

**[Docket Nos. CP87–235–000 et al.]**

### Natural Gas Certificate Filings; Southern Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

**1. Southern Natural Gas Co.**

[Docket No. CP87–235–000]

March 20, 1987.

Take notice that on March 9, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–235–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport natural gas on behalf of Atlanta Gas Light Company (Atlanta), acting as agent for Fort Howard Paper Company (Fort Howard), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that gas purchased by Fort Howard from SNG Trading Inc., Entrade Corporation, and Consolidated Fuel Supply, Inc., would be delivered to Southern at various existing points of receipt on Southern's contiguous pipeline system. Southern proposes to transport on an interruptible basis up to 9.865 billion Btu equivalent of gas per day for Atlanta to Atlanta's Savannah No. 4 Meter Station in Effingham County, Georgia for ultimate delivery by Atlanta to Fort Howard's plant in Effingham County, Georgia.

Southern requests that the proposed transportation be authorized for a term expiring on October 31, 1988.

Southern states that its agreement with Atlanta provides that Atlanta shall pay Southern each month the following rates for performing the proposed transportation service:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate shall be 48.2 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes shall be 77.6 cents per million Btu.

Additionally, Southern indicates that it would collect from Atlanta the GRI surcharge of 1.52 cents per Mcf, or such other GRI funding unit or surcharge as the Commission or other government authority may from time to time by order or specific applicability or otherwise prescribe or approve.

Southern states that the proposed transportation service would be conditioned upon the availability of capacity sufficient for Southern to perform the proposed services without detriment or disadvantage to Southern's obligations to its customers who are dependent on its general system supply.

*Comment date:* April 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

**2. Natural Gas Pipeline Co. of America**

[Docket Nos. CP86–108–007 and CP86–133–008]

March 20, 1987.

Take notice that on March 2, 1987, Natural Gas Pipeline Company of America (Petitioner), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket Nos. CP86–108–007 and CP86–133–008, a petition to amend the order issued May 1, 1986, in Docket Nos. CP86–133–000, and CP86–133–000, as amended pursuant to section 7 of the Natural Gas Act so as to authorize Petitioner to: (1)(a) Extend the term of its transportation for United States Steel Corporation, now known as USS, a unit of USX Corporation (USS), as authorized in Docket No. CP86–108, from April 30, 1987 until April 30, 1989; (b) increase the maximum daily volume of natural gas that may be transported under Docket No. CP86–108 to 110 billion Btu; (c) add three additional delivery points on Petitioner's Calumet line in Cook County, Illinois; and (2) extend the term of its transportation for USS, as authorized in Docket No. CP86–133, from April 30, 1987, until April 30, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In Docket No. CP86-108 Petitioner was previously authorized to transport up to a maximum of 60 billion Btu per day on an interruptible basis for USS for ultimate delivery to USS at its Gary and South Chicago Works plants, it is stated.

It is indicated that under Docket No. CP86-133 Petitioner was previously authorized to transport up to a maximum of 50 billion Btu per day on an interruptible basis for USS, which gas is ultimately delivered to USS at its Lorain and Haverhill, Ohio plants.

*Comment date:* April 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

**3. Alabama-Tennessee Natural Gas Co.**

[Docket No. CP87-231-000

March 23, 1987.

Take notice that on March 5, 1987, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP87-231-000 an application in accordance with the provisions of section 7(c) of the Natural Gas Act, and the rules and regulations of the Federal Energy Regulatory Commission for a certificate of public convenience and necessity authorizing increased sales to existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

A-T requests a certificate of public convenience and necessity authorizing it to increase the maximum contract quantity presently authorized for delivery to one direct industrial customer and six resale customers who have indicated a current need for an additional peak day gas supply. A summary of the changes is attached as an appendix. A-T states that all of these customers have indicated their desire and willingness to execute agreements for these additional volumes of gas as soon as appropriate action is taken or authorized by each municipality's governing body. It is indicated that the gas to be made available for these increases in contract volume is gas which has previously been made under a long term contract for direct industrial sale. It is indicated that the direct industrial customer, Tennessee Valley Authority (TVA), desires to eliminate its firm sales obligation. A-T states that the total volume reduction is therefore being made available on a firm basis to those customers who have requested additional volumes of firm gas. It is stated that A-T's resale customers have long-time commitments to provide natural gas service in areas where alternate fuels are being used at additional expense to the consumer.

A-T states that there is no construction of facilities necessary in connection with this application.

A-T also indicates that it is concurrently filing an application to abandon the firm sales to TVA.

APPENDIX.—ALABAMA-TENNESSEE NATURAL GAS COMPANY TABULATION OF PRESENT CONTRACT VOLUMES AND PROPOSED MAXIMUM DAILY FIRM QUANTITIES

| | Maximum daily quantities (MCF) | | |
|---|---|---|---|
| | Present firm contract | Proposed change | Proposed contract volume |
| Wholesale customers: | | | |
| Selmer, Tennessee | 1,764 | 735 | 2,499 |
| [illegible], Alabama | 3,682 | | 3,682 |
| Tuscumbia, Alabama | 4,355 | | 4,355 |
| Sheffield, Alabama | 5,940 | | 5,940 |
| Florence, Alabama | 12,121 | | 12,121 |
| Decatur, Alabama | 17,284 | | 17,284 |
| Huntsville, Alabama | 37,558 | | 37,558 |
| Athens, Alabama | 3,000 | 1,000 | 4,000 |
| Hartselle, Alabama | 1,559 | 940 | 2,499 |
| North Alabama Gas District | 8,726 | 723 | 9,449 |
| Hardin County Gas Company | 537 | | 537 |
| Iuka, Mississippi | 1,400 | 400 | 1,800 |
| Tishomingo, Mississippi | 530 | 195 | 725 |
| Cherokee, Alabama | 350 | | 350 |
| Lawrence-Colbert Counties Gas District | 1,499 | | 1,499 |
| Moulton, Alabama | 1,239 | | 1,239 |
| North Mississippi Natural Gas Company | 927 | 0 | 927 |
| Total Wholesale Sales | 102,471 | 3,993 | 106,464 |
| Direct Customers: | | | |
| Amoco Chemicals Corporation | 4,600 | | 4,600 |
| Reynolds Metals Company | 17,550 | | 17,550 |
| Tennessee Valley Authority | 5,000 | (5,000) | 0 |
| Champion International Corporation | 200 | | 200 |
| Tennessee River Pulp & Paper Company | 0 | 330 | 330 |
| Total Direct Sales | 27,350 | (4,670) | 22,680 |
| Company Use | 0 | 0 | 0 |
| Total | 129,821 | (677) | 129,144 |

*Comment date:* April 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

**4. Alabama-Tennessee Natural Gas Co.**

[Docket No. CP87-232-000]

March 23, 1987.

Take notice that on March 5, 1987, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP87-232-000 an application pursuant to section 7(b) of the Natural Gas Act, as amended, and the rules and regulations of the Federal Energy Regulatory Commission for permission and approval to abandon certain natural gas sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

A-T indicates that under a service agreement dated December 30, 1985, A-T presently sells natural gas to the Tennessee Valley Authority (TVA) on a firm basis, with a contract demand of 5,000 Mcf per day, delivered to TVA's National Fertilizer Development Center at Muscle Shoals, Alabama. A-T states that the level of sales to TVA was certificated by the Commission in *Alabama-Tennessee Natural Gas Company*, 33 FPC 1 (January 4, 1965).

It is indicated that the service agreement under which A-T sells natural gas is presently scheduled to

expire on October 1, 1987. However, A–T states that TVA has requested an earlier termination of the service to be effective on the date the instant application is approved.

A–T indicates that the abandonment of the sales herein would not result in the abandonment of any facilities presently in use, since A–T intends to provide transportation and interruptible sales services to TVA as set forth in *Alabama-Tennessee Natural Gas Company*, Docket No. CP87–46–000, filed October 30, 1986.

A–T states that the firm capacity which would be made available by the instant partial abandonment has been offered to A–T's other customers and a proposal to reallocate that capacity is being filed concurrently with this abandonment application.

It is alleged that the proposed abandonment of sales to TVA would not result in the abandonment or diminution of natural gas service presently being rendered by A–T to any of its other customers.

*Comment date:* April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

**5. Lone Star Gas Co., A Division of ENSERCH Corp.**

[Docket No. CP87–230–000]

March 23, 1987.

Take notice that on March 5, 1987, Lone Star Gas Company, a Division of ENSERCH Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87–230–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests permission and approval to abandon and retire from service the following pipeline facilities:

(1) All of Line FX–458–T, approximately 3,637 feet of 6-inch pipeline facilities in Carter County, Oklahoma;

(2) All of Line FX–576–T, approximately 3,600 feet of 2-inch pipeline facilities in Carter County, Oklahoma;

(3) All of Line FX–592–T, approximately 6 feet of 2-inch pipeline facilities in Jefferson County, Oklahoma;

(4) All of Line FX–610–T, approximately 8 feet of 2-inch pipeline facilities in Cotton County, Oklahoma;

(5) All of Line FX–616–T, approximately 9 feet of 2-inch pipeline facilities in Stephens County, Oklahoma;

(6) All of Line FX–617–T, approximately 10 feet of 2-inch pipeline facilities in Jefferson County, Oklahoma;

(7) All of Line FX–618–T, approximately 10 feet of 2-inch pipeline facilities in Carter County, Oklahoma;

(8) All of Line FX–638–T, approximately 1,335 feet of 3-inch pipeline facilities in Garvin County, Oklahoma;

(9) All of Line GN–109–T, approximately 10 feet of 3-inch pipeline facilities in Grayson County, Texas;

(10) All of Line GN–110–T, approximately 19 feet of 3-inch pipeline facilities in Grayson County, Texas;

(11) All of Line GN–117–T, approximately 18 feet of 2-inch pipeline facilities in Bryan County, Oklahoma;

(12) A portion of Line GDHB, approximately 7,103 feet of 6-inch pipeline facilities in Stephens County, Oklahoma;

(13) A portion of Line TDA, approximately 10,799 feet of 6-inch pipeline facilities in Stephens County, Oklahoma;

(14) A portion of Line GDHA, approximately 118 feet of 6-inch pipeline facilities in Stephens County, Oklahoma;

(15) A portion of Line A16, approximately 1,550 feet of 2-inch and 11,620 feet of 4-inch pipeline facilities in Wichita County, Texas;

(16) A portion of Line TF, approximately 20,307 feet of 10-inch pipeline facilities in Stephens County, Oklahoma;

(17) All of Line A28, approximately 1,145 feet of 2-inch pipeline facilities in Wilbarger County, Texas;

(18) All of Line A18, approximately 660 feet of 4-inch and 19,330 feet of 6-inch pipeline facilities in Wichita County, Texas;

(19) All of Line A18–5, approximately 878 feet of 2-inch and 2,939 feet of 3-inch pipeline facilities in Wichita County, Texas; and

(20) All of Line A18–6, approximately 56 feet of 2-inch and 5,235 feet of 4-inch pipeline facilities in Wichita County, Texas.

Applicant states that the pipeline facilities to be abandoned are no longer required due to depleted sources of supply, expired contracts, customer disconnection, or rearrangement of facilities. Also, Applicant states the abandonment and retirement from service of these lines would result in a reduction in Applicant's cost of service of its interstate facilities without reduction in service to any customer.

*Comment date:* April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

**6. Natural Gas Pipeline Co. of America**

[Docket No. CP86–134–007]

March 23, 1987.

Take notice that on March 3, 1987, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–134–007 a petition to amend the order issued May 1, 1986, in Docket No. CP86–134–000, as amended, pursuant to section 7 of the Natural Gas Act so as to authorize an increase in the maximum daily transportation volume and to extend the transportation term, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Natural states that the Commission's order of May 1, 1986, authorized Natural to transport up to a maximum of 25 billion Btu equivalent of natural gas per day for Bethlehem Steel Corporation (Bethlehem) for ultimate delivery to Bethlehem at its Burns Harbor, Indiana, plant. It is further stated that on November 7, 1986, the Commission issued an order amending the May 1, 1986, order authorizing an increase in the maximum daily volume to 45 billion Btu equivalent of gas and extending the term of the transportation service to April 30, 1987.

Natural proposes that the May 1, 1986, order be further amended to increase the maximum daily volume to 120 billion Btu equivalent of gas and to extend the term of the transportation service to December 31, 1988. Natural states the proposed increase in transportation volume would enable Bethlehem to continue to secure cheaper supplies of gas for use at the Burns Harbor plant.

*Comment date:* April 13, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**7. Northwest Pipeline Corp.**

[Docket No. CP87–224–000]

March 23, 1987.

Take notice that on February 27, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–224–000 an application pursuant to section 7(b) of the Natural Gas Act for a certificate of public convenience and necessity granting permission and approval to partially abandon its currently authorized transportation and delivery of direct sales natural gas to Chevron Chemical Company (Chevron) by immediately reducing its authorized maximum delivery volumes to Chevron's Finley, Washington, ammonia plant from 16,000 dt equivalent of gas per day of firm and 4,000 dt equivalent

of gas per day of interruptible service to a total of 5,000 dt equivalent of gas per day, which would be available on a firm basis until February 28, 1988, and on an interruptible basis thereafter, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is said that the Commission granted certificates of public convenience and necessity in Docket No. G–8934 issued on November 25, 1955, and in Docket No. CP65–178 on May 4, 1965, to Northwest's predecessor authorizing the construction and operation of delivery facilities of natural gas for direct industrial sales to Phillips Pacific Chemical Company's (Phillips) Finley ammonia plant located in Benton County, Washington. Northwest, as a successor-in-interest to these certificates is authorized to transport and deliver on a firm basis up to 16,000 dt equivalent of gas per day (Maximum Daily Quantity) and 4,000 dt equivalent of gas per day on an interruptible basis of direct sales gas for the account of Phillips to the Finley plant pursuant to a direct industrial sales contract dated July 15, 1971, as amended, for a primary term expiring October 31, 1989, it is stated.

It is stated that effective December 29, 1986, Chevron acquired Phillips' Finley plant from CEPEX, Inc. (CEPEX), who had purchased the plant from Phillips on February 28, 1986. In conjunction with the ownership changes at the Finley plant, first CEPEX and then, Chevron became successor-in-interest to the direct sales industrial contract, it is stated.

It is further stated that on March 1, 1986, Northwest and CEPEX, successor to Phillips, entered into an amendatory agreement to the direct sales contract which, *inter alia*, revised the volumes of gas subject thereto to be more consistent with expected requirements for direct sales gas. Under the amendatory agreement, the Maximum Daily Quantity for firm deliveries was decreased from 16,000 dt equivalent of gas per day to 14,000 dt equivalent of gas per day for the period from March 1, 1986, through May 31, 1986; further reduced to zero dt equivalent of gas per day from March 1, 1988, through February 28, 1994, the termination date of the direct sales contract, it is stated. Upon termination of the firm deliveries on March 1, 1988, Northwest stated that it would be obligated to deliver the 5,000 dt equivalent of gas per day on an interruptible basis only. Northwest indicates that the amendatory agreement also extends the primary term of the direct sales contract through February 29, 1994.

*Comment date:* April 13, 1986, in accordance with the Standard Paragraph F at the end of this notice.

**8. Southern Natural Gas Co.**

[Docket No. CP70–7–033]

March 23, 1987.

Take notice that on February 17, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP70–7–033 a petition pursuant to section 7 of the Natural Gas Act to amend the Commission order issued in Docket No. CP70–7 on October 29, 1969, as amended, in order to decrease the total contract demand volume of Alabama Gas Corporation (Alagasco) by 10,927 Mcf per day at Alagasco's Birmingham Area Delivery Point and to distribute said decrease in contract demand to its eligible customers who have elected to participate in the reallocation, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver to Alagasco an aggregate contract demand of 425,918 Mcf per day and that by letter dated December 12, 1986, Alagasco formally notified Southern that it desires to reduce its contract demand to 414,991 Mcf per day as permitted by section 13 of the General Terms and Conditions contained in Southern's FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff). It is stated that section 13 provides that a customer may decrease its contract demand once during a 12 month period, provided that another customer or customers increase their contract demand in the total amount equal to such decrease without constructing new facilities (other than minor delivery facilities).

Southern states that in accordance with said Section 13, it notified all of its eligible Rate Schedule OCD and G customers that they may obtain the greater of their pro rata portion of the 10,927 Mcf that Alagasco has made available or 5 Mcf. It is indicated that this minimum volume of 5 Mcf was offered since the pro rata share of several of Southern's smaller municipal customers is only one or two Mcf. It is further indicated that after all of the customers had responded to its notice, Southern offered the remainder of the contract demand not accepted by some customers on a pro rata basis to those who had subscribed for their total allocations initially and thus the entire reduction in Alagasco's contract demand was reallocated pursuant to section 13 of the Tariff.[1]

Southern states that it can deliver the additional quantities of contract demand to all of the participating customers without the construction of additional facilities. It is stated that a customer with more than one point of delivery may specify the point or points of delivery at which it would desire to take its additional gas, provided that the additional gas can be delivered at said point or points without the construction of additional facilities.

[1] See Appendix for a list of those customers who wish to increase their contract demand.

APPENDIX.—CUSTOMERS ELECTING TO PARTICIPATE IN REALLOCATION DOCKET NO. CP70–7–033

| Customer | Rate schedule | Contract Demand in Mcf | | |
|---|---|---|---|---|
| | | Present | Add'l | New |
| Washington Parish | G–1 | 1,237 | 297 | 1,534 |
| Tchula | G–1 | 730 | 182 | 912 |
| Trans Louisiana | G–1 | 130 | 40 | 170 |
| Roxie | G–1 | 885 | 75 | 960 |
| Fayette, Mississippi | G–1 | 1,818 | 429 | 2,247 |
| Artesia | G–1 | 165 | 52 | 217 |
| Columbiana | OCD–Z | 1,778 | 72 | 1,850 |
| Northwest, Alabama | G–2 | 6,819 | 1,568 | 8,387 |
| Graysville | G–2 | 6,061 | 1,395 | 7,456 |
| Marshall County | G–2 | 15,477 | 590 | 16,067 |
| Cullman-Jefferson | G–2 | 8,284 | 318 | 8,602 |
| Wilton | G–2 | 180 | 26 | 206 |
| Oneonta | G–2 | 2,884 | 672 | 3,556 |

APPENDIX.—CUSTOMERS ELECTING TO PARTICIPATE IN REALLOCATION DOCKET NO. CP70-7-033—Continued

| Customer | Rate schedule | Contract Demand in Mcf | | |
|---|---|---|---|---|
| | | Present | Add'l | New |
| Helena | G-2 | 360 | 97 | 457 |
| Chilton County | G-2 | [illegible] | [illegible] | 1,182 |
| Brookside | G-2 | [illegible] | 113 | [illegible] |
| Alabaster | G-2 | 2,551 | [illegible] | 3,147 |
| West Jefferson | G-2 | [illegible] | 152 | 753 |
| Sumiton | G-2 | 1,035 | 250 | 1,285 |
| Pickens County | G-2 | 1,525 | 362 | 1,887 |
| Parrish | G-2 | [illegible] | 147 | 727 |
| Oakman | G-2 | [illegible] | [illegible] | 419 |
| Mulga | G-2 | 1,364 | 326 | 1,690 |
| Lamar County | G-2 | 1,414 | 74 | 1,488 |
| Gordo | G-2 | [illegible] | [illegible] | [illegible] |
| Dora | G-2 | 1,102 | 26 | 1,128 |
| Berry | G-2 | 385 | 103 | [illegible] |
| Jasper | G-2 | 5,051 | 1,165 | 6,216 |
| Fultondale | G-2 | 5,606 | 1,291 | [illegible] |
| Total Reallocation | | | 10,927 | |

*Comment date:* April 13, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**9. Southern Natural Gas Co.**

[Docket No. CP87-226-000]

March 23, 1987.

Take notice that on March 3, 1987, Southern Natural Gas Company (Southern), filed in Docket No. CP87-226-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing transportation of natural gas for the City of Cartersville, Georgia (Cartersville), and Atlanta Gas Light Company (Atlanta), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of Cartersville and Atlanta, each acting as agent in arranging for the transportation of natural gas supplies for Atlantic Steel Company (Atlantic Steel) in accordance with the terms and conditions of a transportation agreement between Cartersville and Southern dated September 9, 1986, as amended November 10, 1986, and a transportation agreement between Atlanta and Southern dated July 7, 1986, as amended January 21, 1987.

Southern states that Atlantic Steel has entered into gas sales contracts to purchase natural gas from Exxon Company and SNG Trading Inc. to serve the natural gas requirements of Atlantic Steel's plants in Cartersville and Atlanta, Georgia. Southern also states that Atlantic Steel has entered into agreements with Cartersville (September 5, 1986) and Atlanta (April 2, 1986) wherein Cartersville and Atlanta have agreed to transport the gas purchased by Atlantic Steel through their facilities to Atlantic Steel's plants.

Southern proposes to transport on an interruptible basis up to 3.0 billion Btu equivalent of natural gas per day on behalf of Cartersville and up to 4.3 billion Btu equivalent of natural gas per day on behalf of Atlanta. Southern requests that the Commission issue limited-term certificates for terms expiring October 31, 1988.

The agreements provide that Cartersville and Atlanta would cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system. Southern proposes to redeliver the gas to Cartersville at the Cartersville meter station located in Floyd County, Georgia, and to Atlanta at the Atlanta delivery point.

Southern states that the agreements with Cartersville and Atlanta provide that Cartersville and Atlanta shall pay Southern the following transportation rates each month:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to the shipper, under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to the shipper, do not exceed the daily contract demand of the shipper, the transportation rate would be 48.2 cents per million Btu of natural gas; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to the shipper, under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to the shipper, exceed the daily contract demand of the shipper, the transportation rate for the excess volumes would be 77.6 cents per million Btu of natural gas.

Southern would also collect from Cartersville and Atlanta the GRI surcharge of 1.52 cents per Mcf.

Southern states that the transportation arrangements would enable Atlantic Steel to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Southern indicates that it would obtain take-or-pay relief on gas that Atlantic Steel may obtain from its suppliers.

*Comment date:* April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

**10. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.**

[Docket No. CP87-233-000]

March 23, 1987.

Take notice that on March 6, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P. O. Box 2511, Houston, Texas 77001, filed an application in Docket No. CP87-233-000 pursuant to section 7(c) of the Natural Gas Act requesting authorization to render an interruptible transportation service for Texas Eastern Transmission Corporation (Texas Eastern) pursuant to the terms of a gas transportation agreement between Applicant and Texas Eastern dated January 13, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that pursuant to the provisions of the agreement, Applicant will accept and receive daily, on an interruptible basis, up to 7,000 dt equivalent of natural gas per day from Texas Eastern's producer in South Marsh Island Block 141, offshore Louisiana. Applicant states that it would transport and deliver thermally equivalent quantities to Sea Robin

Pipeline Company (Sea Robin) for the account of Texas Eastern at the existing sub-sea interconnection between Sea Robin and Applicant in South Marsh Island Block 127, offshore Louisiana. It is stated that Sea Robin and United Gas Pipe Line Company would provide further transportation for Texas Eastern for ultimate redeliveries in Gregg County, Texas, and Ouachita Parish, Louisiana. Applicant states that the service would enable Texas Eastern to receive quantities of gas that it purchased in South Marsh Island Block 141 for its system supply for resale.

Applicant proposes to charge Texas Eastern a quantity charge equal to the product of 3.66 cents multiplied by the total quantities of gas delivered by Tennessee on behalf of Texas Eastern. Applicant also indicates it would retain 0.52 percent of the quantities received for the account of Texas Eastern for system fuel and gas lost and unaccounted for.

Applicant states that no new facilities would be required to render the proposed transportation service.

*Comment date:* April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

**11. Texas Gas Transmission Corp.**

[Docket No. CP87–222–000]

March 23, 1987.

Take notice that on February 26, 1987, Texas Gas Transmission Corporation (Texas Gas), P. O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87–222–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Texas Gas to transport natural gas on an interruptible basis for certain customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas states that the customers (see Appendix) for whom authorization is requested are customers for whom Texas Gas is presently transporting gas under section 311 of the Natural Gas Policy Act (NGPA) and for which authority to transport such gas will terminate on May 1, 1987.

Texas Gas states that it would charge the appropriate rate for each transportation service involved as it may exist from time to time, as specified in Texas Gas' appropriate transportation rate schedule as filed with the Commission. For customers receiving service under Texas Gas' TSC program, the currently effective rates can be found on Third Revised Sheet No. 12 of its FERC Gas Tariff, Original Volume No. 1, and for those customers receiving service under Texas Gas' T Rate Schedule, the appropriate rates can be found on Third Revised Sheet No. 11 of that same tariff. Texas Gas states that it would also collect the applicable GRI funding unit where appropriate.

Texas Gas also requests automatic authorization to add and/or delete receipt points to the transportation agreements for which service is requested since all customers have indicated that they may be purchasing gas from a variety of sources during the term of the subject transportation service. Further, Texas Gas states that no new facilities are necessary to effectuate transportation service involving the receipt points presently contained in the transportation agreements described in the application. However, should new facilities be necessary for any receipt points added after certification of the initial service, Texas Gas requests flexible authority to add such points to the appropriate transportation agreement and states that related facilities would be constructed and reported pursuant to Texas Gas' blanket certificate issued in Docket No. CP82–407 and § 157.208 of the Commission's Regulations.

Texas Gas states that the term of the subject transportation is proposed to commence on the date of initial deliveries after certification pursuant to this docket and continue until 30 days after Texas Gas' acceptance of a blanket certificate issued pursuant to its Docket No. CP86–521–000 (Texas Gas' 436 application).

*Comment date:* April 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

| Tab No | Contract No | Name | Contract Demand | Rate Schedule |
|---|---|---|---|---|
| 1. | 1368.01 | Indiana Gas/DePauw U | 1,000 | TSC |
| 2 | 1369.01 | Indiana Gas/Kaiser Aluminum | 4,000 | TSC |
| 3 | 1230.01 | Louisville/GE | 2,500 | TSC |
| 4. | 1380.01 | Louisville/Hershey Foods | 400 | TSC |
| 5 | 1379.01 | Louisville/Tube Turns | 2,200 | TSC |
| 6 | 1384.01 | Terre Haute/Culbro Snack. | 520 | TSC |
| 7. | 1385.01 | Terre Haute/Hercules | 1,350 | TSC |
| 8 | 1377.01 | Louisville/Ford Motors | 13,200 | TSC |
| 9 | 1398.01 | Louisville/Louisville Forge | 1,100 | TSC |
| 10 | 1396.01 | Louisville/AnaMag | 900 | TSC |
| 11 | 1400.01 | Indiana Gas/Rock-Tenn. | 3,000 | TSC |
| 12 | 1399.01 | Illinois Gas/ [illegible] | 700 | TSC |
| 13. | 1414.01 | TXG Pipeline | 40,000 | T |
| 14. | 1404.01 | Lawrenceburg/ Seagram. | [illegible] | TSC |
| 15 | 1395.01 | Ouvira Gas Co. | 100,000 | T |
| 16 | 1409.01 | Indiana Gas/AnaMag | 3,400 | TSC |
| 17. | 1410.01 | Indiana Gas/Arvin | 1,000 | TSC |
| 18 | 1407.01 | Western/Harsco Corp | 450 | TSC |
| 19 | 1408.01 | Western/Owensboro Brick | [illegible] | TSC |
| 20 | 1416.01 | EnTrade | 150,000 | T |
| 21. | 1406.01 | Western/E R Carpenter | 625 | TSC |
| 22 | 1425.01 | La. Intrastate Seg Arkla Energy | 60,000 | T |
| 23 | 1372.01 | PeopleService/ Rochester Gas | 35,000 | T |
| 24 | 1423.01 | Murray, KY | 6,851 | TSC |
| 25 | 1330.01 | Niagara Mohawk | 60,000 | T |
| 26 | 1427.01 | Memphis/Harsco | 220 | TSC |
| 27 | 1426.01 | Memphis/GNB, Inc. | 200 | TSC |
| 28 | 1429.01 | Western/Donnelley | 600 | TSC |
| 29 | 1428.01 | Western/Western State | 331 | TSC |
| 30 | 1424.01 | Carrollton/AnaMag | 1,500 | TSC |
| 31 | 1431.01 | Indiana Gas/Golden Foundry | 1,200 | TSC |
| 32 | 1371.01 | ANR Gathering | 40,000 | T |
| 33 | 1378.01 | Citizens Energy | 180,000 | T |
| 34 | 1441.01 | Memphis/Cochran | 400 | TSC |
| 35 | 1443.01 | Carrollton/M&T Chemicals | 1,000 | TSC |
| 36 | 1444.01 | Covington, TN | 3,000 | T |
| 37 | 1442.01 | Illinois Gas | 3,117 | TSC |
| 38 | 1446.01 | Western/Illinois Tool | 250 | TSC |
| 39 | 1448.01 | Carrollton, KY | 5,089 | TSC |
| 40 | 1445.01 | Indiana Gas/Manah Packing. | 740 | TSC |
| 41 | 1447.01 | Louisville/Harshaw/ Filtrol | 1,845 | TSC |
| 42 | 1434.01 | Citizens Energy. | 20,000 | T |
| 43 | 1452.01 | Ripley, TN | 2,500 | T |
| [illegible] | 1455.01 | Covington/Charms | 200 | T |
| 45 | 1454.01 | Covington/Lydall | [illegible] | T |
| 46 | 1440.01 | Ohio River/Indiana Gas/Floyd Mem. | 850 | TSC |
| 47 | 1458.01 | Indiana Gas/GE | 1,400 | TSC |
| [illegible] | 1456.01 | Ouvira Gas Co | 10,000 | T |
| 49 | 1460.01 | Indiana Gas/ Hydraulic Press. | 5,000 | TSC |
| 50 | 1471.01 | PeopleService/ Central Hudson. | 15,000 | T |
| 51. | 1472.01 | Bells, TN | 750 | T |
| 52 | 1453.01 | Brownsville/Cub Cadet | 400 | TSC |
| 53 | 1451.01 | Central Illinois/Union Carbide | 1,500 | TSC |
| 54 | 1450.01 | Elizabethtown, KY | 1,037 | TSC |
| 55 | 1464.01 | Indiana Gas/Griffin Industries | 250 | TSC |
| 56 | 1467.01 | Louisville/Standard Gravure | 1,200 | TSC |
| 57 | 1459.01 | Ohio River/Indiana Gas/Wyandot. | 300 | TSC |
| 58 | 1449.01 | Rochester Gas | 50,000 | T |
| 59 | 1470.01 | Western/Dairymen | 570 | TSC |
| 60 | 1469.01 | Western/Rockwell | 450 | TSC |
| 61 | 1474.01 | Forest Oil/Union, SC | 1,400 | T |
| 62 | 1468.01 | Indiana Gas/Roberts | 1,000 | TSC |
| 63 | 1430.01 | Louisville/Borden | 615 | TSC |
| [illegible] | 1473.01 | Eastex Gas Transmission | 42,000 | T |
| 65 | 1197.01 | Memphis/Kraft | 6,000 | TSC |
| 66 | 1477.01 | UER Marketing/Gulf South | 40,000 | T |
| 67 | 1478.01 | Midwest Natural Gas | 8,278 | TSC |
| 68 | 1483.01 | Peoples Gas & Power | 2,380 | T |
| 69 | 1481.01 | Western/GE | 500 | TSC |
| 70 | 1482.01 | Western/Shelbyville Laundry | 150 | TSC |
| 71. | 1484.01 | Western/LWD Corp. | 400 | TSC |
| 72 | 1486.01 | Halls, TN | 1,898 | T |
| 73 | 1489.01 | Community Natural Gas | 3,021 | T |
| 74. | 1485.01 | Dyersburg, TN | 13,116 | TSC |
| 75 | 1487.01 | Louisville/Interez | 1,500 | TSC |
| 76 | 1476.01 | Memphis/Cargill | 130 | TSC |
| 77 | 1492.01 | Western/Aluminum [illegible] | 200 | TSC |
| 78 | 1493.01 | Western/Seagrams | 1,025 | TSC |
| 79 | 1499.01 | TXG Gas Marketing/ LaFourche Gas Corp. | 1,130 | T |
| 80 | 1500.01 | TXG Gas Marketing/ Evangeline Gas Co. | 2,544 | T |
| 81 | 1496.01 | Elizabethtown/Flint Ink | 400 | TSC |
| 82 | 1491.01 | Ohio River/Pilot | 350 | TSC |
| 83 | 1490.01 | Ohio River/Pillsbury | 500 | TSC |

| Tab. No. | Contract No. | Name | Contract Demand | Rate Schedule |
|---|---|---|---|---|
| [illegible] | 1502.01 | TXG Gas Marketing/ Mountaineer | 30,000 | T |
| 85 | 1457.01 | Switzerland County | 1,158 | TSC |
| 86 | 1506.01 | City of Hamilton, OH | [illegible] | TSC |
| [illegible] | 1507.01 | Town of Mamou, LA | 2,035 | T |
| 88 | 1405.01 | Cheney Energy Corp | [illegible] | T |
| [illegible] | 1411.01 | Tenngasco | 3,000 | T |
| [illegible] | 1413.01 | Citizens Energy | 180,000 | T |
| 91 | 1415.01 | Memphis/Cargill Buoy | 4,000 | TSC |
| 92 | 1433.01 | Rocky Mountain Energy Exchange. | 7,500 | T |
| 93 | 1439.01 | ANR Gathering | 45,000 | T |
| 94 | 1461.01 | PGC Pipeline | 25,000 | T |
| 95 | 1463.01 | Delhi Gas Pipeline | [illegible] | T |
| 96 | 1465.01 | Citizens Energy | 180,000 | T |
| 97 | 1466.01 | Citizens Energy | 180,000 | T |
| [illegible] | 1475.01 | Union Light, Heat & Power | 100,000 | T |
| 99 | 1486.01 | TXG Gas Marketing | [illegible] | T |
| 100 | 1484.01 | Lawrenceburg Gas Co. | 25,000 | T |
| 101. | 1501.01 | ARCO Oil and Gas | 100,000 | T |
| 102 | 1502.01 | Citizens Energy | 30,000 | T |
| 103 | 1504.01 | Indiana Gas/Stone Container. | [illegible] | TSC |
| 104. | 1505.01 | Ohio River/Indiana Gas/Foam Fab. | [illegible] | TSC |
| 105. | 1508.01 | Commonwealth Gas Services | [illegible] | T |
| 106 | 1509.01 | TXG Gas Marketing | 2,000 | T |
| 107 | 1510.01 | Hoosier Gas Corp./ Essex. | 1,127 | TSC |
| 108 | 1511.01 | Brownsville, TN | 5,000 | T |
| 109 | 1512.01 | EnTrade | 15,000 | T |
| 110 | 1513.01 | TXG Gas Marketing/ Humboldt | [illegible] | T |
| 111. | 1479.01 | Boonville Natural | 5,000 | T |
| 112. | 1480.01 | Chandler Natural | 1,883 | T |
| 113. | 1488.01 | Hope Gas | 30,000 | T |
| 114. | 1514.01 | Memphis/Cargill-Nutrena Feeds. | 100 | TSC |
| 115. | 1515.01 | Memphis/Stroh Brewery. | 3,000 | TSC |
| 116 | 1516.01 | Western/Campbell Tobacco | [illegible] | TSC |
| 117 | 1517.01 | Western/Ken DEC | 310 | TSC |
| 118. | 1518.01 | Morganfield, KY | [illegible] | T |
| 119 | 1519.01 | Jena, LA | 2,595 | T |
| 120 | 1520.01 | Olive Branch/ Guardian Fiberglass | 305 | T |
| 121. | 1521.01 | Indiana Gas/Cosco | 1,500 | TSC |
| 122. | 1522.01 | Indiana Gas/Sheller-Ryobi | 1,200 | TSC |
| 123 | 1523.01 | Brownsville/Haywood | [illegible] | T |
| 124 | 1524.01 | Brownsville/Cub Cadet | [illegible] | T |
| 125 | 1525.01 | Ohio Valley Gas, Inc. | 1,200 | T |
| 126 | 1526.01 | Dome Gas Co. | 1,100 | T |
| 127 | 1527.01 | Switzerland County | 1,158 | T |
| 128 | 1528.01 | Western/SKF Tapered Bearings. | 575 | TSC |
| 129 | 1529.01 | Indiana Gas/Gold Bond Bldg | 4,000 | TSC |
| 130 | 1530.01 | Panhandle Gas Co., Loving, TX-Oasis. | 5,000 | T |
| 131. | 1531.01 | Hamilton/Hughes Memorial Hospital. | [illegible] | TSC |
| 132 | 1532.01 | Eastex Gas Transmission | 40,000 | T |
| 133. | 1533.01 | Eastex Gas Transmission | 40,000 | T |
| 134. | 1534.01 | Eastex Gas Transmission. | 40,000 | T |
| 135 | 1535.01 | Western/Thomas Industries. | 550 | TSC |
| 136 | 1536.01 | Western/Thomas Industries | [illegible] | TSC |
| 137. | 1537.01 | CIPS/E.H. Basre | 250 | TSC |
| 138 | 1538.01 | Entrade/Tennessee Gas | 150,000 | T |
| 139 | 1539.01 | Olive Branch | 3,114 | T |
| 140 | 1540.01 | TXG Gas Mktg./S.E Indiana Natural | 5,000 | T |
| 141 | 1541.01 | Lawrenceburg Gas/ CG&E | 15,571 | TSC |
| 142 | 1542.01 | Lawrenceburg Gas | 15,571 | TSC |
| 143 | 1543.01 | Terre Haute Gas/ I.M.C. Corp | 3,600 | TSC |
| 144 | 1544.01 | Shell Gas Trading Co./ANR | 7,000 | T |
| 145 | 1545.01 | [illegible] Transmission. | 17,000 | T |
| 146 | 1546.01 | Ohio River/IN Gas/ United Tech. Auto | [illegible] | TSC |
| 147. | 1547.01 | Citizens Energy Corp./Tennessee Gas | 250,000 | T |
| 148 | 1548.01 | Citizens Energy Corp./Offshore | [illegible] | T |
| 149. | 1549.01 | TXG Gas Mktg./Olive Branch | 3,900 | T |
| 150 | 1550.01 | Quivira/NGPL | 5,000 | T |

*Comment date:* April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 12. Texas Gas Transmission Corp.

[Docket No. CP86–349–003]

March 23, 1987.

Take notice that on February 24, 1987, Texas Gas Transmission Corporation (Petitioner), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86–349–003 a petition to amend the Commission's order issued September 11, 1986, as amended, pursuant to section 7(c) of the Natural Gas Act so as to extend the term of the transportation service and to authorize certain changes with respect to the transportation service to one customer, Cincinnati Gas & Electric Company (CG&E), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by the order issued September 11, 1986, it was authorized to provide interruptible transportation service for ten customers, two for a period extending until June 13, 1988 (Columbia Gas Transmission Corporation and Consolidated Gas Transmission Corporation), and until June 13, 1987, for the remaining customers. Petitioner requests authorization to extend the term of the certificate, for the customers whose certificate expires June 13, 1987, until 30 days after Petitioner accepts a blanket certificate pursuant to Order No. 436.

Petitioner states that with respect to CG&E it requests authorization (1) to increase CG&E's contract demand from 190 billion Btu equivalent of natural gas per day to 225 billion Btu equivalent of natural gas per day; (2) to add three additional points of delivery and several additional points of receipt; and (3) to charge CG&E under its TSC Rate Schedule for those volumes transported within CG&E's sales contract demand.

*Comment date:* April 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraph**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further ntoice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–6740 Filed 3–26–87; 8:45 am]

BILLING CODE 6717–01–M

---

**[Project No. 9219–002]**

### Surrender of Preliminary Permit; Tehama Power Authority

March 23, 1987.

Take notice that Tehama Power Authority, permittee for the Dippingvate Project No. 9219, located on South Fork Cottonwood Creek and Red Bank Creek, Tehama County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 7, 1986, and would have

expired on March 31, 1989. The permittee states that analysis of the Dippingvat Project indicated that the time for conducting studies would be much longer than the 36 month period of the preliminary permit.

The permittee filed the request on February 24, 1987, and the preliminary permit for Project No. 9219 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6741 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. QF87-312-000]**

## Application for Commission Certification of Qualifying Status of a Cogeneration Facility; County of Los Angeles Facilities Management Division

March 20, 1987.

On March 9, 1987, County of Los Angeles Facilities Management Division (Applicant), of 1100 N. Eastern Avenue, Los Angeles, California 90063, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Civic Center Heating and Refrigeration Plant in Los Angeles, California. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used by local government buildings for hot water, space heating and cooling. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 26,437 kW. Installation of the facility is scheduled for May 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6743 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. QF87-302-000]**

## Application for Commission Certification of Qualifying Status of a Small Power Production Facility; Gabriel Mills Energy Co.—Liberty Hill, TX.

March 20, 1987.

On March 5, 1987, Gabriel Mills Energy Company (Applicant), of 711 West 38th Street, Suite D-2, Austin, Texas 78705, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a completing filing.

The small power production facility will be located approximately two miles west of Andice, Williamson County, Texas. The facility will consist of several 200 kW to 1000 kW reciprocating engine-generator units. Applicant states that the primary energy source of the facility will be "waste" in the form of low quality natural gas produced from the Kirby Box Number 1 well located at the site. The electric power production capacity of the facility will be 2 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6742 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

---

## Federal Energy Regulatory Commission

**[Docket No. CI87-349-000]**

## Brooklyn Interstate Natural Gas Corp.; Application

March 20, 1987.

Take notice that on March 6, 1987, Brooklyn Interstate Natural Gas Corp. (BRING), 1331 Lamar, Suite 1065, Houston, Texas 77010, pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and Part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157, applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by *Bring*, and certain sales of natural gas to *Bring* for resale in interstate commerce; (2) authorizing sales for resale of natural gas in interstate commerce by others through *Bring* acting as their agent; and (3) authorizing pregranted abandonment of such sales.

In general, *Bring* seeks sale for resale authority with respect to any and all domestic and imported natural gas economically available for sale into the spot gas market. In this regard, *Bring* specifically seeks sales certificate authority involving two separate and distinct categories of NGA gas: (1) Natural gas that was previously certificated and was contractually committed to purchasers, and for which an abandonment of the previous sale has been obtained, and (2) natural gas that was never previously dedicated by contract to the interstate market and for which certificate authority still is required under the NGA.

*Bring* states that such authorizations, if granted, will enable *Bring* to expand its activities as a marketer of natural gas at competitive prices. Such authority will also enable *Bring* to act as agent for producers in the sale for resale of their gas in the spot market.

Any person desiring to be heard or to make any protest with reference to said

application should on or before April 6, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-6744 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. EL87-20-000]

## North Carolina Electric Membership Corp.; Filing

March 23, 1987.

Take notice that on March 13, 1987, North Carolina Electric Membership Corporation (NCEMC) tendered for filing a complaint and motion for summary judgment concerning violation of a filed rate schedule and motion for consolidation against Duke Power Company.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 22, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the commission and are available for public inspection. Duke's answer shall also be due on or before April 22, 1987.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-6745 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket Nos. CI87-358-000 and CI87-359-000]

## Pennzoil Co. and Pennzoil Gas Marketing Co.; Applications for Permanent Abandonment and Permanent Blanket Certificates With Pregranted Abandonment

March 23, 1987.

Take notice that on March 10, 1987, Pennzoil Company and Pennzoil Gas Marketing Company together referred to as Applicants, P.O. Box 2967, Houston, Texas 77252-2967, filed pursuant to section 7 of the Natural Gas Act, and the Commission's regulations thereunder, 18 CFR Parts 154 and 157; §§ 2.76, 2.77(a) and 2.77(b), an application of Pennzoil Company for permanent abandonment authorization and permanent blanket certificate of public convenience and necessity with pregranted abandonment authorization, and an Application of Pennzoil Gas Marketing Company for permanent blanket certificate of public convenience and necessity with pregranted abandonment authorization, all as more fully set forth in the applications on file with the Federal Energy Regulatory Commission and open to public inspection.

Applicants state that approval would authorize Applicants to make sales of natural gas released from contract by United Gas Pipe Line Company (United). All released gas will be subject to the provisions of the Natural Gas Act, and will qualify under the maximum lawful wellhead pricing provisions of the Natural Gas Policy Act.

Applicants state that Pennzoil and United executed a settlement agreement on December 8, 1986, under which Pennzoil agreed to waive all take-or-pay claims accruing against United in 1985 and 1986, which Pennzoil asserts totaled approximately $219,000,000.00. Applicants states that the 1985 take-or-pay obligations were settled in the same settlement agreement as the 1986 and subsequent take-or-pay obligations. The settlement of the 1985 take-or-pay obligations is final, but the settlement of the 1986 and subsequent take-or-pay obligations is contingent upon the approval of the Commission of these applications. Applicants further state that Pennzoil and United also agreed that, if certain conditions are fulfilled, all existing gas sales contracts executed between them prior to December 8, 1986, will terminate, so United will incur no take-or-pay obligations whatsoever in the future under any of those contracts. As to those contracts, Applicants state that Pennzoil likewise agreed to waive all monthly minimum-take claims against United. Applicants assert that in many cases, Pennzoil has the legal right under its monthly minimum-take contractual clauses to secure mandatory injunctive relief from courts of competent jurisdiction requiring United not only to pay Pennzoil for contractually specified volumes of natural gas, but also to take actual deliveries of the natural gas. The settlement agreement thus will release United from substantial take-or-pay exposure and the threat of monthly minimum-take injunctions. The settlement agreement is, however, contingent upon the granting of the applications expeditiously, and by the express terms of such agreement, the take-or-pay and minimum-take buyout will be of no force or effect if these applications are not granted expeditiously. Applicants state that all contracts would remain in effect, and Pennzoil then would be free to pursue its take-or-pay claims for 1986 and subsequent years and monthly minimum-take claims against United as if no settlement agreement had ever been executed.

Applicants state that, as stated by the Commission in Order No. 436, expeditious consideration will be appropriate in cases where the producer is subject to substantially reduced takes without payment or where the producer and pipeline have engaged in a 'buyout' as contemplated by § 2.76 of the Commission's General Policies, and that the precise situation is presented by the instant applications. Applicants state that Pennzoil is subject to substantially reduced takes without payment and has likewise engaged in a take-or-pay buyout as contemplated by § 2.76 of the Commission's General Policies.

Applicants state that the historical relationship between Pennzoil and United is unique. Pennzoil acquired United in 1968 as a wholly owned subsidiary, and as such United became the principal market for sales of natural gas produced by Pennzoil; in fact, Pennzoil committed virtually all of its natural gas produced from fields and blocks in United's purchase area to United during the years the companies were affiliated. In 1974, Pennzoil spun-off United, and proceedings were thereafter initiated before the Federal Power Commission regarding the spun-off,[1] which resulted in a settlement approved by the Commission under which, among other things, (1) Pennzoil entered into a Gas Availability Agreement with United giving it, in effect, a right of first refusal to purchase

[1] *Order Affirming Initial Decision*, 54 F.P.C. 2511 (1975).

all natural gas reserves developed by Pennzoil from leases acquired before 1980 and (2) Pennzoil agreed to spend $120,000,000.00 over a five year period to add reserves to be committed to United. Applicants state that Pennzoil expended the $120,000,000.00 over a five year period to add reserves that were committed to United, and that the Gas Availability Agreement executed between Pennzoil and United remains in effect today. Applicants state that United and Pennzoil shall file a joint motion to terminate the Gas Availability Agreement in Docket No. RP74–87. As such, Applicants state that Pennzoil's concentration on United as a market, which began with the affiliation and continued as a result of the affiliation, was thus reinforced upon disaffiliation by the settlement.

Applicants state that due to United's declining sales, Pennzoil's natural gas was largely shut-in, and United's take-or-pay obligations to Pennzoil steadily increased. Just prior to the execution of the take-or-pay/monthly minimum-take settlement agreement between United and Pennzoil, United was voluntarily taking an average of only 48 MMcf/day of natural gas from Pennzoil's total delivery capacity of 391 MMcf/day of NGA and non-NGA natural gas contracted to United. For 1986, Applicants state that United's take-or-pay obligations are estimated by Pennzoil to be $140,000,000.00. In the absence of a mutual agreement between Pennzoil and United to realign totally their relationship as seller and buyer and to allow Pennzoil to diversify its market, Applicants state that Pennzoil's natural gas would remain largely shut-in and United's take-or-pay obligations would substantially increase each year. Applicants state that upon Commission approval the settlement agreement executed between Pennzoil and United will constitute a complete take-or-pay buyout and a complete monthly minimum-take buyout. In this event, Pennzoil agreed to waive all take-or-pay claims through December 31, 1986, totaling approximately $219,000,000.00 for $15,000,000.00 in cash and certain other consideration. Applicants state that Pennzoil and United further agreed to realign their producer/pipeline relationship to correspond more closely to their future needs by terminating all of their gas sales contracts executed before the effective date of the settlement agreement. Thus, in the event the applications are granted, Applicants state that United will never again incur take-or-pay obligations under any contract executed with Pennzoil before December 8, 1986; nor will United ever incur monthly minimum-take obligations under any of those contracts. Applicants state that United and Pennzoil will have a more limited and more market responsive business arrangement.

Applicants further state that under this new arrangement, United agreed to purchase or cause to be purchased, if tendered by Pennzoil, 50 MMcf/day of natural gas at $2.00 MMBtu (subject to market-sensitive escalation) from January 1, 1987, to December 31, 1988. Moreover, the settlement agreement contemplates the possible sales of additional volumes of natural gas by Pennzoil into spot market programs. United also agreed to provide limited transportation credits and convey certain gathering facilities to Pennzoil.

Applicants also request that the Commission approve the collection of any rate that Pennzoil has established its right to collect pursuant to Parts 273, 274, or 275 of the Commission's Regulations and that the Commission approve automatic collection of the appropriate monthly adjustments from the date the Commission issues its order granting the applications. Applicants also request that the Commission waive the requirement of filing a blanket affidavit to cover such sales in accordance with § 154.94(h) of the Commission's Regulations, and, to the extent that qualification exists for collection of any applicable allowance under section 110 of the NGPA, waive the requirements of § 154.94(k) and Part 271 of the Commission's Regulations. Applicants further state that they will file any rate schedules with the Commission that may be required by the order granting the applications, but request the Commission to waive the requirement of establishment and maintenance of rate schedules under Part 154 of the Commission's Regulations.

Finally, Applicants state that a total of 255,392 MMcf of natural gas reserves are subject to the request for abandonment, and that United has executed a statement, appended to the applications, that it does not need nor will it need the natural gas to meet its market demands. Applicants state that the following depicts the total net reserve of NGA natural gas, subject to its applications:

| NGPA Category | Total MMcf |
|---|---|
| 102(d) | 64,028 |
| 104 | 175,478 |
| 107(c)(5) | 3,405 |
| 108 | 7,855 |
| Unclassified | 4,626 |
| Total | 255,392 |

Applicants state that the foregoing figures are based on Pennzoil's best estimates of proven reserves.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, persons desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–6746 Filed 3–26–87; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. EL87–18–000]**

## Piedmont Municipal Power Agency; Notice of Filing

March 23, 1987.

Take notice that on March 4, 1987, Piedmont Municipal Power Agency (PMPA) tendered for filing a complaint and motion for summary judgment concerning violation of filed Rate Schedule and motion for Consolidation submitted by Duke Power Company (Duke).

PMPA states that it seeks an order directing Duke to refund, with interest, the charges already collected and to cease the assessment of charges that are not authorized under the filed rate schedule.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 22, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the commission and are available for public inspection. Duke's answer shall also be due on or before April 22, 1987.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6747 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP87-221-000]**

## Southwest Gas Corp. Complainant vs. Northwest Pipeline Corp. Respondent; Complaint

March 18, 1987.

Take notice that on February 24, 1987, Southwest Gas Corporation (Southwest), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP87-221-000 pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), a complaint against Northwest Pipeline Corporation (Northwest) alleging that Northwest has violated certain terms and conditions related to the sale and transportation of natural gas under Northwest's Rate Schedule X-46 and the certificate which authorized such rate schedule,[1] all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Specifically, Southwest alleges that Northwest has refused to provide requested service to which Southwest is entitled under Rate Schedule X-46. Southwest states that the Commission authorized Northwest to sell and transport up to 50 billion Btu per day of excess Canadian natural gas on a best efforts basis to Southwest under Rate Schedule X-46. Southwest claims that excess Canadian gas has been available to Northwest but that Northwest has refused requested service on the grounds that X-46 service is the lowest priority on its system.

Southwest states that section 12.1(d) of Northwest's Tariff (Original Volume No. 1-A) provides that interruptible services involving the sale, exchange and/or transportation of gas south to Ignacio, Colorado, under the contracts executed after December 31, 1977, are ranked for priority purposes according to contract date. Southwest further states that Rate Schedule X-46 consists of a contract dated April 28, 1978. In particular, Southwest alleges that Northwest has allocated capacity to interruptible transportation services under agreements executed subsequent to the X-46 agreement.

Additionally, Southwest states it has been informed by Northwest that it places the X-46 service on the same priority level as a similar service (*i.e.*, off-system sale and delivery of excess Canadian gas at Ignacio) that it performs for Pacific Interstate Transmission Company (Pacific) under Northwest's Rate Schedule X-36.

Southwest alleges that there is a critical difference in the priority provisions of the two rate schedules. It is explained that, in pertinent part, section 1.01 of Rate Schedule X-36 provides:

> Except as Seller may otherwise provide, this Agreement shall not be deemed to have priority over any present *or future obligation of Seller.* (Emphasis supplied)

Southwest states that in contrast, section 1.01 of Rate Schedule X-46 provides, in pertinent part:

> Seller and Buyer represent that there is no intent to inhibit or erode full satisfaction of any obligations of Seller or Buyer *existing as of the date hereof,* which obligations shall have priority over any rights under the Agreement. (Emphasis supplied)

Southwest argues that the priority language in the X-46 Rate Schedule/contract was specifically negotiated by Southwest and that Northwest's refusal to provide such priority service when excess gas and necessary capacity have been available violates sections 4, 5, and 7 of the Natural Gas Act.

Southwest therefore requests that the Commission require Northwest to (1) comply with its tariff and certificate by providing X-46 interruptible service by a priority date of April 28, 1978, for capacity allocation purposes; (2) provide Southwest with the difference, plus interest, between (a) the price of the replacement gas Southwest purchased from El Paso Natural Gas Company (El Paso) under El Paso's Rate Schedule A-1-X as a result of Northwest's failure to provide X-46 service, and (b) the price of Northwest's X-46 gas; and (3) provide such other monetary relief as the Commission may deem proper.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before April 17, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Northwest's answer to the complaint shall also be due on or before April 17, 1987.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6748 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

[1] Best-efforts sales and transportation service to Southwest under Rate Schedule X-46 was authorized by Commission order issued October 27, 1978 (5 FERC ¶ 61,087), as amended December 4, 1985 (33 FERC ¶ 61,323) in Docket No. CP78-415.

**[Docket No. CI87-200-000 et al.]**

## Jack P. Speed et al.; Application for Abandonment

March 20, 1987.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Price Per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-220-000 B 1/5/87 [1]. | Jack P. Speed, c/o Petro Engineering, Inc., 5101 N. Classen, Suite 502, Oklahoma City, Okla. 73118. | Arkla Energy Resources, a division of Arkla, Inc., Southwest Lacey Field, Kingfisher County, Oklahoma. | [1] ..... | |
| CI87-305-000 B 2/11/87. | Jim Rutta, P.O. Box 644, Columbus, Texas 78934. | United Gas Pipe Line Company, Paul Bethke No. 1 Well, Karen Beauchamp Field, Golidad County, Texas. | [3] ..... | |

[1] Additional information filed January 20, 1987.

[2] Applicant, a small producer certificate holder in Docket No. CS84-43-000, requests authorization to abandon sales to Arkla from 8 wells located in the Southwest Lacey Field. In support of its application, Applicant states Arkla has purchased only 60% of the gas from the subject wells for the past year, that the wells have been shut in since December 17, 1986, and that there is no take-or-pay provision in the subject contract. The wells are capable of producing 900 to 1000 Mcf per day and qualify as NGPA section 106(a) interstate rollover gas. Application proposes to sell the subject gas to Hadson Gas Systems, Inc.

[3] Applicant requests authorization to abandon sales to United from the Paul Bethke No. 1 Well located in the Karen Beauchamp Field. In support of its application, Applicant states that the sale to United was previously made by Hendrik's Holding USA Ltd., that the subject well has been shut in since May of 1985, that the subject lease terminated and Applicant subsequently entered into a new oil and gas lease with the mineral owners. Applicant indicates that at such time as Hendrik's abandoned the lease and their rights thereunder terminated, United considered that such prior gas contract terminated, and that they had no further rights, duties or obligations thereunder. Applicant states that United refuses to purchase any volume of gas under the terms of such prior contract and refuses to enter into any new contract and that Applicant is subject to substantially reduced takes without payment. The subject well was producing 24 Mcf per day of section 108 stripper well gas at the time it was shut in. Applicant notes that United states it will not oppose the requested abandonment, and has agreed to transport the gas from this lease. Applicant proposes to sell the subject gas to an intrastate buyer under the terms of a new gas contract.

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 87-6749 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-340-000]

## Zapata Exploration Co.; Application of Zapata Exploration Co. for Limited-Term, Blanket Certificate of Public Convenience and Necessity and Pre-Granted Abandonment

March 23, 1987.

Take notice that on March 3, 1987, Zapata Exploration Company (Zapata) pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717(c) & 717(f) (1982) ("NGA"), Parts 157 and 284 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Parts 157 and 284 (1986), and § 2.77 of the Commission's Regulations, 18 CFR 2.77 (1986) applied for a Certificate of Public Convenience and Necessity (1) authorizing sales for resale in interstate commerce by Zapata of NGA natural gas with a maximum lawful price equal to or higher than the section 109 ceiling price as provided in the Natural Gas Policy Act of 1978, from the its interests in the East Breaks Area, Offshore Texas, Blocks 109, 110 and 154; and (2) authorizing partial abandonment and pre-granted abandonment of such sales as described therein. The gas covered by the application is not currently dedicated to any interstate pipeline purchaser. The authority is requested to be effective no later than July 1, 1987 for a three (3) year period.

Zapata states that the grant of authority applied for will further the policies and objectives of the Commission set forth in its Final Rule issued in *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Docket No. RM85-1-000 (October 9, 1985) (Order No. 436), the Commission's decision in *Felmont Oil Corporation and Essex Offshore, Inc.*, 33 F.E.R.C. (CCH) ¶ 61,333 (1985), in *Pennzoil Producing Co. et al.*, Docket No. CI86-54-000 (March 5, 1986) and *ANR Pipeline Company, et al.*, Docket No. CI86-637-000 *et al.* (issued January 21, 1987).

Any persons desiring to be heard or to make any protest with reference to said application should on or before April 7, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6750 Filed 3-26-87; 8:45 am]

BILLING CODE 6717-01-M

---

## Office of Hearings and Appeals Cases Filed; Week of January 30 Through February 6, 1987

During the week of January 30 through February 6, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

BEST COPY AVAILABLE

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 19, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 30 through February 6, 1987]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Feb. 2, 1987 | Button Oil Co., Inc., Mountaintop, PA | KEE-0117 | Exception to the reporting requirement. If granted: Button Oil Co., Inc. would be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report." |
| Feb. 3, 1987 | David R. Soler, Cranbury, NJ | KFA-0073 | Appeal of an information request denial. If granted: David R. Soler would receive access to the Personnel Audit Report for FY 1985 and all documents maintained on David R. Soler |
| Feb. 3, 1987 | Tri-City Herald, Tri-Cities, WA | KFA-0072 | Appeal of an information request denial. If granted: The January 21, 1987 and January 27, 1987 Freedom of Information Request Denials issued by the Richland Operations Office would be rescinded, and Tri-City Herald would examine the journal proposals submitted by the Westinghouse Boeing and Kaiser Engineers |
| Feb. 5, 1987 | Government Accountability Project, Washington, DC | KFA-0075 | Appeal of an information request denial. If granted: Government Accountability Project would receive all relevant records in connection with Case No. 86-ERA-15 (July 8, 1986) concerning Roger Wensil's work performance and termination. |
| Feb. 5, 1987 | OKC Corp., Washington, DC | KFX-0029 | Supplemental order. If granted: The Office of Hearings and Appeals would implement Special Refund procedures to distribute crude oil monies obtained from OKC Corporation pursuant to Consent Order No. [redacted] |
| Feb. 5, 1987 | Stone & Webster Engineering Corporation, Boston, MA | KFA-0074 | Appeal of an information request denial. If granted: The December 22, 1986 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Stone & Webster Engineering Corporation would receive documents relating to DOE's selection of REP No. DE-RP06-86 RL10900. |
| Feb. 6, 1987 | Exxon Corp., Washington, DC | KEF-0087 | Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the October 8, 1986 Consent Order entered into with Exxon Corporation. |
| Feb. 6, 1987 | Harlon Oil Company, Inc., Green Bay, WI | KEE-0120 | Exception to the reporting requirements. If granted: Harlon Oil Company, Inc. would not be required to file Form EIA-821, "Annual Fuel Oil and Kerosene Sales Report." |

## Refund Applications Received

Week of January 30 to February 6, 1987

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 01/30/87 through 02/06/87 | Getty Refund Applications | RF265-297 through [redacted] |
| 02/03/87 | J. Louis Rodriguez | RF265-14 |
| 02/03/87 | Worcester Housing Authority | RF284-6 |
| 02/03/87 | Jasco Trucking Co., Inc. | RF272-358 |
| 02/03/87 | Racetrac Petroleum, Inc. | [redacted] |
| 02/03/87 | Robert M. Eigell | RF259-28 |
| 02/03/87 | Barge Transport Co., Inc. | RF250-2702 |
| 02/03/87 | Garlick Enterprises, Inc. | RF250-2701 |
| 02/03/87 | Barge Transport, Inc. | RF225-10578 |
| 02/03/87 | Barge Transport, Inc. | RF7-169 |
| 02/03/87 | Kemp's Service | RF225-10575 |
| 02/03/87 | Jim & Jack's Service | RF225-10576 |
| 02/03/87 | Meyers Mobil Service | RF225-10577 |
| 02/03/87 | Barge Transport, Inc. | [redacted] |
| 02/04/87 | Metro. Transportation Auth. | RF272-359 |
| 02/05/87 | Leggett & Platt, Inc. | RF272-360 |
| 02/04/87 | George T. Marshall | RF265-15 |
| 02/05/87 | MacMillam Bloedel, Inc. | RF225-10589 |
| 02/05/87 | Gates Automotive | RF225-10579 |
| 02/05/87 | Gary's Mobil | RF225-10580 |
| 02/05/87 | Gallese's Mobil Service | RF225-10581 |
| 02/05/87 | Hoover's Mobil | RF225-10582 |
| 02/05/87 | M-59 Mobil | RF225-10583 |
| 02/05/87 | Shreve Mobil Service | RF225-10584 |
| 02/05/87 | Tom's Service | RF225-10585 |
| 02/05/87 | Rome's Mobil | RF225-10586 |
| 02/05/87 | Carl's Mobil Service | RF225-10587 |

## Refund Applications Received—Continued

Week of January 30 to February 6, 1987

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 02/05/87 | J.L. Sowell Dist. | RF40-3647 |
| 02/05/87 | Jeane's Gulf Service | RF40-3648 |
| 02/05/87 | Centerburg Marathon | RF250-2704 |
| 02/05/87 | Doselta Marathon | RF250-2705 |
| 02/05/87 | Golden Gate Petroleum Co. | RF258-15 |
| 02/04/87 | Randolph Electric Membership. | RF272-361 |
| 02/03/87 | Farmers Cooperative Oil Association | RF272-362 |
| 02/05/87 | Smith Oil Co. | RF161-100 |
| 02/05/87 | Bowden Oil Co. | RF204-13 |
| 01/30/87 | Kerr McGee Corp. | RF288-1 |
| 01/30/87 | Mobil Oil Corp. | RF288-2 |
| 02/04/87 | Consolidated Edison Co. of NY. | RF286-01 |

[FR Doc. 87-6819 Filed 3-26-87; 8:45 am]

BILLING CODE 6450-01-M

## Cases Filed; Week of February 6 Through February 13, 1987

During the Week of February 6 through February 13, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 19, 1987.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

## List of Cases Received by the Office of Hearings and Appeals

[Week of Feb. 6 through Feb. 13, 1987]

| Date | Name and location of applicant | Case No | Type of submission |
|---|---|---|---|
| Feb. 9, 1987 | Gulf/Venta, Inc., Washington, DC | RR40-3 | Request for modification/rescission in the Gulf Oil Corporation refund proceeding. *If Granted:* The December 31, 1986 Decision and Order (Case No. RF40-1668) issued to Venta, Inc. would be modified regarding the firm's Application for Refund submitted in the Gulf Oil Corp. refund proceeding |
| Feb 9, 1987 | R.E. Hinkley Co., Inc., Claremont, NH | KEE-0119 | Exception to the reporting requirements. *If Granted:* R.E. Hinkley Co., Inc would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report." |
| Feb 11, 1987 | Morrison Petroleum Co., Washington, DC | KRD-0350 | Motion for discovery. *If Granted:* Discovery would be granted to Morrison Petroleum Company in connection with the Statement of Objections which the firm filed in response to a Proposed Remedial Order |
| Feb 12, 1987 | Institute for Policy Studies, Washington, DC | KFA-0076 | Appeal of an information request denial. *If Granted:* The January 7, 1987 Freedom of Information Request Denial issued by the Office of Military Application would be rescinded, and the Institute for Policy Studies would receive access to information on British and French nuclear testing, nuclear weapons and personnel assigned to DOE facilities |
| Feb. 13, 1987 | Belcher Oil Co., Inc., Murray, KY | KEE-0122 | Exception to the reporting requirements. *If Granted:* Belcher Oil Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report." |
| Feb. 13, 1987 | David Rodriquez Soler, Cranbury, NJ | KFA-0078 | Appeal of information request denial. *If Granted:* The January 27, 1987 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and David Rodriquez Soler would receive access to complete Personnel/Human Resource Management Audit Reports for FY 1983 and 1984 |
| Feb. 13, 1987 | Imhoff & Lynch, Boise, ID | KFA-0079 | Appeal of an information request denial. *If Granted:* The January 6, 1987 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded and Imhoff & Lynch would receive access to documents relating to the September 26, 1984 shooting incident at the Inel facility resulting in the death of T. Brent Landon |
| Feb 13, 1987 | Richard D. Patton, Ansted, WV | KEE-0121 | Exception to the reporting requirements. *If Granted:* Richard D. Patton would not be required to file certain EIA reporting forms. |

## Refund Applications Received

[Week of Feb. 6 to Feb. 13, 1987]

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 02/12/86 | National Helium, Amoco & Charter/ Louisiana | RQ3-357, RQ21-358, RQ23-359 |
| 02/06/87 through 02/13/87 | Getty Refund Applications | RF265-369 through RF265-[illegible] |
| 12/15/86 | Wynn-Fowler Trading Co | RF239-18 |
| 02/09/87 | Waccamaw Transport, Inc | RF270-2471 |
| 02/09/87 | Federated Transport, Inc | RF270-2472 |
| 02/09/87 | A. E. Schultz Corp | RF272-363 |
| 09/26/86 | Kirtland Heights Conoco | RF220-412 |
| 12/15/86 | Wynn-Fowler Trading Co | RF220-481 |
| 12/15/86 | Griffin Petroleum, Inc | RF220-[illegible] |
| 11/18/86 | Mellon Enterprises, Inc | RF26-56 |
| 05/23/86 | Rutland Oil Co | RF225-10590 |
| 05/23/86 | Rutland Oil Co | RF225-10591 |
| 08/01/86 | George Wm. Frueh, Sons | RF225-10592 |
| 08/01/86 | Lambert Oil Co., Inc | RF225-10593 |
| 08/01/86 | Lambert/Oil Co., Inc | RF225-10594 |
| 08/01/86 | Lambert Oil Co., Inc | RF225-10595 |
| 08/01/86 | Fedenco Brothers, Inc | RF225-10596 |
| 08/01/86 | Fedenco Brothers, Inc | RF225-10597 |
| 07/29/86 | Croax Oil Co | RF225-10598 |
| 07/29/86 | Todd & Ross, Inc | RF225-10599 |

## Refund Applications Received—Continued

[Week of Feb. 6 to Feb. 13, 1987]

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 07/29/86 | Trimble Oil Co | RF225-10600 |
| 07/29/86 | George H. Blouch Fuel Service | RF225-10601 |
| 06/16/86 | Bartkus Oil Co | RF225-10602 |
| 05/02/86 | Johnson's Service Station | RF225-10603 |
| 02/03/87 | Bruce O. Hastings | RF270-2473 |
| 02/10/87 | Fedco Automotive Co | RF272-364 |
| 02/09/87 | Greater Attleboro Taunton | RF272-365 |
| 06/23/87 | Zora, Inc | RF225-10604 |
| 02/09/87 | Johnson Mobil | RF225-10605 |
| 02/09/87 | Johnson Mobil | RF225-10606 |
| 02/10/87 | Moorestown Service | RF225-10607 |
| 02/10/87 | Honeymead Products Co | RF272-366 |
| 02/09/87 | Chevron U.S.A., Inc | RF286-07 |
| 02/09/87 | General Motors Corp | RF286-06 |
| 02/05/87 | Bayside Fuel Oil Depot Corp | RF286-05 |
| 02/05/87 | Mobil Oil Corp | RF286-04 |
| 02/06/87 | Orange & Rockland | RF286-03 |
| 01/05/87 | Defense Logistics Agency | RF286-02 |
| 02/09/87 | Taylor's Tallmauge Marathon | RF250-2703 |
| 12/15/86 | Wynn-Fowler Trading Co., Inc | RF225-10588 |
| 02/12/87 | Blue Star Line Ltd | RF272-372 |
| 02/02/87 | Moore's Fuel Service | RF40-[illegible] |
| 02/11/87 | J.C. March Oil Co., Inc | RF40-3650 |

[FR Doc. 87-6820 Filed 3-26-87 8:45 am]
BILLING CODE 6450-01-M

## Issuance of Proposed Decisions and Orders; Week of February 9 Through February 13, 1987

During the week of February 9 through February 13, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any

further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 19, 1987.

*Atlantic Oil and Heating Co.; Macungie, PA; KEE-0107; reporting requirements*

Atlantic Oil and Heating Company filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Atlantic argued that it should be relieved of the reporting requirement because of its small clerical staff; and the fact that its bookkeeping month ends after the Form is due. The OHA found that although the reporting requirement imposes a burden on Atlantic, that burden is no greater than the burden to the average reporting firm. The OHA also found that Atlantic could reduce the reporting burden substantially by devising a sound method of estimating the data required by the Form. Consequently, on February 12, 1987, the OHA issued a Proposed Decision and Order tentatively denying Atlantic's request for exception relief.

*TOMCO; Big Spring, TX; KEE-0099; reporting, requirements*

TOMCO filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product sales Report." After reviewing TOMCO's application, the OHA issued a Proposed Decision and Order tentatively denying TOMCO's request for exception relief.

[FR Doc. 87-6821 Filed 3-26-87; 8:45 pm]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of February 16 Through February 20, 1987

During the week of February 16 through February 20, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Remedial Order**

*Questor Petroleum Corp., 2/18/87; HRO-0269*

Questor Petroleum Corporation (Questor) and its President, Kyle S. McAlister objected to a Proposed Remedial Order alleging that they engaged in layering amounting to $8,171,742.33 in overcharges. In 87 of the 91 audited transactions the DOE rejected the firm's contention that it had performed traditional and historical services. The DOE dismissed the alleged overcharges relating to the four remaining audited transactions based upon a finding that Questor was responsible for storing the crude oil prior to resale. The DOE also found that McAlister should be held personally liable for Questor's violations since he was the firm's President and controlling shareholder and, in many cases, Questor's principal trader. Accordingly, the PRO was issued as a final Remedial Order directing Questor and Mr. McAlister to remit $7,939,631.10 plus interest to the DOE.

**Request for Exception**

*Louisiana Crude Oil & Gas Co., 2/20/87; DEE-2130*

Louisiana Crude Oil & Gas Company filed an Application for Exception from the provisions of 6 CFR 150.354 and 10 CFR 212.73 in which the firm sought to be excused from its obligation to refund overcharges of $305,849, plus interest. In considering Louisiana Crude's request, the DOE found that the firm had not shown that it would suffer severe and irreparable injury in the absence of exception relief.

**Refund Applications**

*C.K. Smith & Co., Inc./Parker Fuel Corp., et al., 12/19/87; RF284-3, et al.*

The DOE issued a Decision and Order concerning Applications for Refund, filed by Paker Fuel Corporation, the Commonwealth of Massachusetts and the Town of Westborough, from a consent order fund made available by C.K. Smith & Company, Inc. The DOE found that Parker was a reseller of No. 2 heating oil purchased from Smith during the consent order period. Since Parker elected to limit its refund to the $5,000 small claims amount provided for in the Smith special refund proceeding, the claimant was not required to submit a detailed proof of injury. As governmental entities and end users of Smith product during the consent order period, neither the Commonwealth of Massachusetts nor the Town of Westborough was required to submit proof it was injured as a result of its purchases from Smith. The total refund granted in this proceeding was $10,325, including $5,634 in principal and $4,691 in interest.

*C.K. Smith & Co., Inc./Worcester Housing Authority, 2/20/87; RF284-6*

The DOE issued a Decision and Order concerning Applications for Refund, filed by Worcester Housing Authority, from a consent order fund made available by C.K. Smith & Company, Inc. The DOE found that Worcester was a governmental entity that was an end user of Smith No. 2 heating oil during the consent order period. Worcester was therefore not required to submit proof it was injured as a result of its purchases from Smith. Accordingly, Worcester was granted a refund representing its full volumetric share, $16,903, plus $14,171 in accrued interest.

*Circle City Cab Co., RF270-1120; The Island Cab Co., Inc., RF270-1128; Metropolitan Taxi & Limousine, RF270-1148; LaSalle Limousine Service, Inc., RF270-1153; Mon Valley Taxi, Inc., 2/20/87; RF270-1172*

The Department of Energy (DOE) issued a Decision and Order approving five taxicab and limousine companies for refunds from the Surface Transportation Escrow, established as the result of the Stripper Well Settlement Agreement. Each company applied for a refund based on its purchases of gasoline and/or motor oil between August 19, 1973 and January 27, 1981. The DOE's Decision approved four of the companies' purchase volumes and approved the fifth's volumes after adjusting for a mathematical error in its claim. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

*Gulf Oil Corp./Candor Petroleum, 2/20/87; RF40-2744*

The DOE issued a Decision and Order concerning the Application for Refund filed by Candor Petroleum (Candor) in the Gulf Oil Corporation refund proceeding. Candor was a retailer of Gulf products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Candor demonstrated that it purchased a total of 5,438,015 gallons of Gulf middle distillates, motor gasoline, and lubes and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. Accordingly, Candor will receive $6,634 in principal and $1,577 in interest.

*Gulf Oil Corp./Schaub Oil, Wald Oil Company, 2/17/87; RF40-0990, RF40-2094*

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of Schaub Oil (Schaub) and Wald Oil Company (Wald) in connection with the Gulf Oil Corporation refund proceeding. Each firm was a retailer and a consignee of Gulf motor gasoline and middle distillates during the consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Schaub and Wald demonstrated that they indirectly purchased certain volumes of covered product from Gulf through one of Gulf's direct customers. Each firm also certified that it would not have been required to reduce selling prices to pass through the amount of the refund claimed. Neither Schaub nor Wald, however, demonstrated that it had been injured in its role as a consignee of Gulf products. The DOE determined that the fact that each firm ceased receiving Gulf consignments as a result of its business decision to switch from marketing consigned Gulf products to purchasing and reselling those products did not demonstrate injury. Accordingly, refunds totaling $2,431 in principal and $578 in interest were approved for purchased gallons.

*Gulf Oil Corp./Surfside Gulf et al., 2/17/87; RF40-3329 et al.*

The DOE issued a Decision concerning 34 Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant has demonstrated that it would not have been required to pass through to customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that each applicant should receive a refund. The total amount of refunds approved in this Decision is $36,221, representing $29,263 in principal and $6,958 in interest.

*Joni Auto Rental, Inc., 2/18/87; RF270–1160*

The Department of Energy (DOE) issued a Decision and Order concerning an auto rental company's application for a Surface Transporters Refund. The DOE determined that the company's application should be denied because car rental companies are ineligible for Surface Transporters refunds under the terms of the Order Establishing Surface Transporters Escrow.

*Loomis Armored, Inc., 2/17/87; RF270–1107*

The Department of Energy (DOE) issued a Decision and Order approving an armored car company for a refund from the Surface Transporters Escrow. The company's claim for gasoline and diesel fuel was approved. The company's claim for heating oil was denied. The DOE determined that Surface Transporter refunds shall be granted for vehicle use only.

*Marathon Petroleum Company/Ace Oil Co., Inc., et al, 2/20/87; RF250–2578 et al.*

The DOE issued a Decision and Order concerning 31 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $27,567 in principal and $2,097 in interest.

*Marathon Petroleum Company/Arlington Marathon, et al., 2/20/87; RF250–2193 et al.*

The DOE issued a Decision and Order concerning 21 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $15,350 in principal and $1,167 in interest.

*Marathon Petroleum Company/Blue Grass Oils, Inc. et al., 2/20/87; RF250–2423 et al.*

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $15,484 in principal and $1,179 in interest.

*Marathon Petroleum Company/McLaughlin Oil Sales, Inc., 2/19/87; RR250–1932, RF250–1933*

The DOE issued a Decision and Order concerning two Applications for Refund filed by McLaughlin Oil Sales, Inc. (McLaughlin), a reseller of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, McLaughlin elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that McLaughlin should receive a refund of $9,921.39 in principal and $623.52 in accrued interest for a total refund of $10,544.91.

*Marathon Petroleum Company/Paul Davidson, 2/20/87; RF250–2081, RF250–2082*

The DOE issued a Decision and Order concerning Applications for refund filed on behalf of Paul Davidson, an indirect purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The applicant demonstrated the volume of its indirect purchases, and that the product originated with Marathon. The applicant was granted a refund of $837 in principal and $66 in interest, under the small claims presumption of injury.

*Marathon Petroleum Company/Settle Service, 2/20/87; RF250–1414, RF250–2090*

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Settle Service, a gasoline retailer which purchased products covered by a consent order that the agency entered into with Marathon Petroleum Company. The application filed by Walker Oil Services was denied in favor of the application filed by the owner of Settle Service during the consent order period, Mr. Green A. Settle, Jr. Mr. Settle was granted a refund of $2,257, representing $2,093 in principal and $164 in interest, under the small claims presumption of injury.

*Marathon Petroleum Company/Systems Fuels, Inc. 2/17/87; RF250–2596, RF250–2597*

The DOE issued a Decision and Order concerning Applications for Refund filed on behalf of Systems Fuels, Inc., a purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Systems Fuels is a subsidiary of four public utility corporations, and resold the Marathon product only to those companies. Systems Fuels was granted a full refund on the basis of a demonstration that the benefits of any refund would inure to the four public utilities according to their purchases, and that the public utilities would pass through the refund to their customers. The refund approved in this Decision is $11,973, representing $11,125 in principal and $848 in interest.

*Marathon Petroleum Company/W.H. Pugh Oil Company, 2/19/87; RF250–1899, RF250–1900*

The DOE issued a Decision and Order concerning two Applications for Refund filed by W.H. Pugh Oil Company (Pugh), a reseller of Marathon covered products. Although the firms's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Pugh elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Pugh should receive a refund of $18,133.25 in principal and $1,138.48 in accrued interest for a total refund of $19,271.73.

*Mobil Oil Corporation/Adelphi Mobil et al., 2/20/87; RF225–4907 et al.*

The DOE issued a Decision granting 49 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $52,331 ($43,104 principal plus $9,227 interest).

*Reese Trucking, Inc., Best Trucking Company, Inc., Reitzel Trucking Company, Inc., Crowel Trucking, Inc., Moran Trucking Company, Inc., 2/17/87; RF270–1103, RF270–1106, RF270–1109, RF270–1115, and RF270–1116*

The Department of Energy (DOE) issued a Decision and Order approving five Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The applicants, five "for hire" trucking companies, applied for refunds based on purchases of diesel fuel, gasoline, and lubricating oils between August 19, 1973 and January 27, 1981. The DOE's Decision approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

*Resources Extraction & Processing Co./Mobil Oil Corp., 2/19/87; RR228–1*

Mobil Oil Corporation filed a Motion for Reconsideration of a Decision and Order denying its Application for Refund from a consent order fund made available by Resources Extraction & Processing Company (REAPCO). In considering the Motion, the DOE found that it had correctly determined in its original Order that Mobil's purchases of NGLPs from REAPCO were indirect, that the direct purchaser of the REAPCO product had absorbed all the overcharges associated with

the sale of the REAPCO NGLPs and that Mobil had not shown it experienced any injury as a result of the REAPCO purchases. Accordingly, Mobil's Motion for Reconsideration was denied.

*Standard Oil Co. (Indiana)/Turtle Mountain Band of Chippewa Indians Belridge Oil Co./Turtle Mountain Band of Chippewa, 2/20/87; RQ21–333, RQ6–334*

The Turtle Mountain Band of Chippewa Indians filed proposed second-stage refund plans with the Office of Hearings and Appeals, pursuant to consent orders entered into with Standard Oil Co. (Indiana) and Belridge Oil Co. The Tribe proposed to implement snow removal services for its tribal members. Accordingly, the refund application was granted.

### Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

| Name | Case No. |
|---|---|
| Cities Service Oil & Gas Corp | KRJ–0073 |
| ERA Lobel, Novins, Lamont & Flug | KRJ–0064 |

### Dismissals

The following submissions were dismissed:

| Name | Case No |
|---|---|
| Anderson Meat & Provisions, Inc. | RF225–10240 |
| Button Oil Co., Inc. | KEE–0117 |
| Capitol Gulf Service | RF40–3531 |
| Costello Brothers Lithographers | RF225–6458 |
| Eufaula Gulf | RF40–3530 |
| Garden State Paper Co. | RF225–9397 |
| Gear Company of America, Inc. | RF225–6521 |
| Groth Equipment Corp. | RF225–10136, RF225–10137 |
| Honeywell Inc. | RF225–6654 |
| Jeane's Gulf Service | RF40–3648 |
| Joe's Gulf | RF40–3523 |
| John E. Jones Oil Co., Inc. | RF40–3525 |
| Ledeen Flow Control Systems, Inc. | RF225–6835 |
| Lee's Auto Service | RF40–3524 |
| Menasha Corp. | RF225–6844 |
| Monsanto Co. | RF225–9894 |
| National Gypsum Co.—Cement Division | RF225–9915 |
| Park Gulf | RF40–3518 |
| Power Systems | RF225–2644 |
| Precision Specialties | RF225–8207 |
| Rex Oil Co., Inc. | RF225–8622, RF225–8623 |
| Road Machinery Co. | RF225–6419 |
| Ron's Gulf Service | RF40–3529 |
| Sanders Oil Co., Inc. | RF225–9529 |
| Schulze & Burch Biscuit Co. | RF225–6418 |
| Scroggins Gulf Service | RF40–3522 |
| Southern Towing Co. | RF225–6425 |
| Sparkle Quick Auto Wash, Inc. | RF225–9939, RF225–9940 |
| The Sico Company | RF225–9520 |
| Tri-Con, Inc. | RF225–8865 |
| Village of Scarsdale | RF225–6473 |
| Wallace A. Morris | RF225–9510, RF225–9511 |
| William E. Flud | KEG–0003 |
| Zero-Max | RF225–6841 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 19, 1970.

[FR Doc. 87–6822 Filed 3–26–87; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–3176–2]**

### Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed March 16, 1987 Through March 20, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870096, FSuppl, IBR, UT, Bonneville Unit, Central Utah Project, Municipal and Industrial Water System, Construction and Modifications, Updated Information, Due: April 27, 1987, Contact: Jay Henrie (801) 379–1172

EIS No. 870097, Final, Adoption, CGD, FL, Blount Island Channel Coal Conveyor Bridge, Construction, Bridge Permit, St. Johns River, Duval County, Due: April 27, 1987, Contact: Gary Pruitt (305) 536–4103

EIS No. 870098, Draft, BLM, NM, Taos Resource Area, Resource Management Plan, Due: July 1, 1987, Contact: Dan Wood (505) 758–8851

EIS No. 870099, Final, BLM, MT, Dillon Resource Area, Wilderness Recommendations, Designation, Beaverhead and Madison Counties, Due: April 27, 1987, Contact: James Moorhouse (406) 494–5059

EIS No. 870100, FSuppl, BLM, WA, OR, MT, WY, Northwest Area Noxious Weed Control Program, Additional Information, Due: April 27, 1987, Contact: Lynne Hamilton (503) 231–6268

EIS No. 870101, Final, BLM, AZ, NM, Arizona Interconnection Project, El Paso 345kV Transmission Line, Construction, Right-of-Way Grants, Permits and Approval, Due: May 4, 1987, Contact: J.W. Whitney (505) 988–6565

EIS No. 870102, Final, FHW, MN, New US–10 Construction and Reconstruction, Egret Boulevard in Coon Rapids to I–35W in Mounds View, Anoka and Ramsey Counties, Due: April 27, 1987, Contact: Stephen Bahler (612) 349–5230

EIS No. 870103, Draft, BPA, OR, WA, ID, MT, New Energy Efficient Homes Program, Accessing Indoor Quality Options, Construction, Due: May 19, 1987, Contact: Anthony Morrell (503) 230–5136.

Amended Notice:

EIS No. 870088, Final, BLM, CA, NV, Benton-Owens Valley and Bodie Coleville Study Areas, Wilderness Recommendations, Walker, Bishop and Caliente Resource Areas, Due: April 27, 1987, Published FR 3–20–87—Review period reestablished

Dated: March 24, 1987.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 87–6796 Filed 3–26–87; 8:45 am]

BILLING CODE [illegible]

**[ER–FRL–3176–3]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 9, 1987 through March 13, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

### Draft EISs

ERP No. D–FHW–E40703–GA, Rating EC2, GA–371/I–85 Highway Connector, Construction, GA–371 to I–85, 404 Permit, USCG Permit, GA. Summary: EPA's concerns included predicated wetland losses and air quality and noise impacts. EPA requested a Hydrocarbon Pollutant Burden Analysis, an intersection (queuing) analysis, and additional no-build and alternative analysis. A more holistic review of the proposed action, if it is a segment of a larger proposed beltway, was also requested.

Final EISs

ERP No. F–COE–G28010–TX, Stacy Reservoir, Dam and Pump Station, Municipal and Industrial Water Supply Development, Colorado River Basin, Permit, 404 and 10 Permits, TX. Summary: The final EIS adequately responded to EPA comments issued on the draft EIS. EPA has no objections to the proposed project with proper implementation of the mitigation measures specified in Appendix G and Appendix H of the final EIS.

ERP No. F–COE–K34005–CA, Pamo Dam and Reservoir Emergency Water Supply Project, Construction, Santa Ysabel Creek, CA. Summary: EPA recommended that the Army Corps of Engineers deny a Clean Water Act (CWA) Section 404 permit for the project as proposed in the final EIS. EPA's recommendation was based on: 1) The adequacy of the alternatives analaysis in the final EIS; 2) the adequacy of mitigation measures proposed in the final EIS; and 3) the proposed project's failure to comply with CWA Section 404 Guidelines. EPA also noted that it was still evaluating information provided by the project applicant on alternative emergency water supply designs.

ERP F–FHW–F40189–MN, CSAH–18 Completion, I–494 to MN–13 and MN–101, MN. Summary: EPA is concerned about the loss of wetlands, but will not object to the proposed project provided mitigation is developed to ensure no net loss of wetland functional values. As the final EIS did not discuss specific wetland mitigation, EPA requested to be included in the coordination for its development.

ERP No. F–SCS–D36104–PA, W. Branch Brandywine Creek Watershed, Protection and Flood Prevention, PA. Summary: EPA does not object to the development and implementation of the project.

ERP No. F–UAF–L10003–AK, Alaskan Radar System, Over-the-Horizon Backscatter Radar System, Construction and Operation, Elmendorf AFB, AK. Summary: EPA is concerned that certain specifics regarding the process the Air Force will follow in conducting the next level of detailed, site-specific analysis have not been resolved. The final EIS does not establish that no practicable alternative receiving site exists; but eliminates study areas based on desirability. EPA urges the Air Force to include an alternative study area for the receiving site and believes that the next tier of site-specific analysis can be reasonably and appropriately undertaken, provided that the Air Force considers the impacts of a reasonable range of alternatives.

Dated: March 24, 1987.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 87–6797 Filed 3–26–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3176–4]

## Science Advisory Board Executive Committee; Open Meeting; Amended Notice; Correction to Earlier Notice of 2-day Meeting

Under Pub. L. 92–463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board on April 9, 1987. The meeting will be held at the U.S. Environmental Protection Agency, 401 M Street SW., in the Administrator's Conference Room, 1103. The meeting will begin on 9:00 a.m. and will adjourn at approximately 5:00 p.m. on April 9th only. The information suspersedes an earlier notice in the **Federal Register** of March 20 (52 FR 8959) announcing a two day meeting of the Executive Committee.

Issues to be discussed at the meeting include: A briefing on EPA's comparative risk study; discussion of a SAB exposure assessment concept paper; establishment of an EPA initiative for strategic research planning and the SAB's role in such an initiative; reports of committees and subcommittees; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street SW., Washington, DC 20460 or call (202) 382–4126 by close of business April 2, 1987.

Dated: March 20, 1987.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

[FR Doc. 87–6717 Filed 3–26–87; 8:45 am]

BILLING CODE [illegible]

[OPTS–59241; FRL–3176–7]

## Certain Test Market Exemption Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

**DATE:** Written comments by: April 13, 1987.

**ADDRESS:** Written comments, identified by the document control number "[OPTS–59241]" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the TME application received by EPA. The complete non-confidential application is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87–12

*Close of Review Period.* April 29, 1987.
*Manufacturer.* Confidential.
*Chemical.* (G) Ester of alkenyl succinic anhydride.
*Use/Production.* (G) Akaline sizing agent in paper processing. Prod. range: Confidential.

T 87–13

*Close of Review Period.* May 2, 1987.
*Importer.* Confidential.
*Chemical.* (G) Alkenylamide polymer with methylheteromonoacyclic alkene.
*Use/Import.* (S) Industrial paper polymer. Import range: Confidential.

Dated: March 23, 1987.

**Denise Devoe,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87–6715 Filed 3–26–87; 8:45 am]

BILLING CODE [illegible]

[OPTS-51668; FRL-3176-6]

## Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of fifty such PMNs and provides a summary of each.

**DATES:** Close of Review Period:

P 87-795, 87-796, 87-797, 87-798, 87-799, 87-800, 87-801, 87-802, 87-803, 87-804, 87-805, 87-806, 87-807, 87-808, 87-809, 87-810, 87-811, 87-812, 87-813, 87-814, 87-815, 87-816, 87-817, and 87-818—June 10, 1987.

P 87-819, 87-820, 87-821, 87-822, 87-823, 87-824, 87-825, 87-826, 87-827, 87-828, and 87-830—June 13, 1987

P 87-831, 87-832, 87-833, 87-834, 87-835, 87-836, and 87-837—June 14, 1987.

P 87-838, 87-839, 87-840, 87-841, 87-842, 87-843, 87-844, and 87-845—June 15, 1987.

Written comments by:

P 87-795, 87-796, 87-797, 87-798, 87-799, 87-800, 87-801, 87-802, 87-803, 87-804, 87-805, 87-806, 87-807, 87-808, 87-809, 87-810, 87-811, 87-812, 87-813, 87-814, 87-815, 87-816, 87-817, and 87-818—May 11, 1987.

P 87-819, 87-820, 87-821, 87-822, 87-823, 87-824, 87-825, 87-826, 87-827, 87-828, and 87-830—May 14, 1987.

P 87-831, 87-832, 87-833, 87-834, 87-835, 87-836, and 87-837—May 15, 1987.

P 87-838, 87-839, 87-840, 87-841, 87-842, 87-843, 87-844, and 87-845—May 16, 1987.

**ADDRESS:** Written comments, identified by the document control numer "[OPTS-51668]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**P 87-795**

*Importer.* Shin-Etsu Silicones of America, Incorporated.
*Chemical.* (G) Amino functional organopolysiloxane.
*Use/Import.* (S) Industrial textile finishing agent and ingredient for carwax. Import range: 5,000 to 10,000 kg/yr.

**P 87-796**

*Manufacturer.* Confidential.
*Chemical.* (G) Substituted benzothiazolesulfonic acid.
*Use/Production.* (G) Dye. Prod. Range: Confidential.
*Toxicity Data.* Acute oral: >5 g/kg; Irritation: Skin—Irritant, Eye—Corrosive.

**P 87-797**

*Manufacturer.* Dow Corning Corporation.
*Chemical.* (G) Alkoxy functional silicon hydride silyl hydrocarbon.
*Use/Production.* (S) Chemical intermediate. Prod. Range: Confidential.
*Toxicity Data.* Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Negative.

**P 87-798**

*Manufacturer.* Dow Corning Corporation.
*Chemical.* (G) Alkoxy functional silicon hydride silyl hydrocarbon.
*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Irritant, Eye—Slight; Ames test: Negative.

**P 87-799**

*Importer.* Confidential.
*Chemical.* (G) Phenolic resin.
*Use/Import.* (S) Resin is used in making inks and MK varnishes. Import range: Confidential

**P 87-800**

*Importer.* Confidential.
*Chemical.* (G) Alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

**P 87-801**

*Importer.* Confidential.
*Chemical.* (G) Polyester resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

**P 87-802**

*Importer.* Confidential.
*Chemical.* (G) Modified phenolic resin.
*Use/Import.* (G) Resin converted to ink and varnish. Import range: Confidential.

**P 87-803**

*Importer.* Confidential.
*Chemical.* (G) Modified alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

**P 87-804**

*Importer.* Confidential.
*Chemical.* (G) Alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

**P 87-805**

*Importer.* Confidential.
*Chemical.* (G) Polyester resin.
*Use/Import.* (G) Resin used in paints. Import range: Confidential.

**P 87-806**

*Importer.* Confidential.
*Chemical.* (G) Modified alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

**P 87-807**

*Importer.* Confidential.
*Chemical.* (G) Polyester resin.
*Use/Import.* (G) Paint converted to resin. Import range: Confidential.

**P 87-808**

*Importer.* Confidential.
*Chemical.* (G) Modified short oil alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

**P 87-809**

*Importer.* Confidential.
*Chemical.* (G) Acrylic modified.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

**P 87-810**

*Importer.* Confidential.
*Chemical.* (G) Alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

**P 87-811**

*Importer.* Confidential.
*Chemical.* (G) Alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

P 87–812

*Importer.* Confidential.
*Chemical.* (G) Alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

P 87–813

*Importer.* Confidential.
*Chemical.* (G) Polyurethane resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

P 87–814

*Importer.* Confidential.
*Chemical.* (G) Medium oil alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

P 87–815

*Importer.* Confidential.
*Chemical.* (G) Acrylic modified alkyd resin.
*Use/Import.* (G) Resin converted to paint. Import range: Confidential.

P 87–816

*Importer.* Disgrin Industries Corporation.
*Chemical.* (S) Polymer of poly(oxy-1,4-butanediyl), alpha-[[(3-isocyanatomethylphenyl)amino]carbonyl]-omega-[[[(3-isocyanatomethyl-phenyl)Amino]carbonyl]owy]-, pigment stanone brown; and mixture of 3,5-dimethyl thio-2,4-toluenediamine and 3,5-dimethyl-2,6-toluenediamine.
*Use/Import.* (S) Site-limited molded on site into wheels, rollers and mechanical parts for use in general industrial applications. Import range: 7,980 to 12,000 kg/yr.

P 87–817

*Manufacturer.* Confidential.
*Chemical.* (G) Terephthalate polyol esters.
*Use/Production.* (S) Industrial intermediate for component for urethane foam insulating product. Prod. range: 1,800,000 to 4,100,000 kg/yr.

P 87–818

*Manufacturer.* Confidential.
*Chemical.* (G) Oxyalkylated terephthalate polyol ester.
*Use/Production.* (S) Industrial components for urethane foam insulating products. Prod. range: 1,800,000 to 4,900,000 kg/yr.

P 87–819

*Manufacturer.* Confidential.
*Chemical.* (G) Aminofunctional polysiloxane.
*Use/Production.* (S) Site-limited and industrial intermediate radiation cured coating additive, site-limited and consumer polymer for hair shampoo and conditioner. Prod. range: Confidential.

P 87–820

*Importer.* Confidential.
*Chemical.* (G) Organo-platinum complex.
*Use/Import.* (S) Industrial catalyst for curing silicone polymers. Import range: Confidential.

P 87–821

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Aliphatic thermoplastic urethane.
*Use/Production.* (S) Industrial manufacture of plastic articles for use in: industrial; medical and transportation. Prod. range: Confidential.

P 87–822

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Modified isocyanate prepolymer.
*Use/Production.* (S) Site-limited and industrial intermediate. Prod. range: Confidential.

P 87–823

*Manufacturer.* Reichold Chemicals, Incorporated.
*Chemical.* (G) Tall oil fatty acid/tall oil rosin modified hydrocarbon resin.
*Use/Production.* (S) Industrial resin component in production of ink vehicle varnishes. Prod. range: Confidential.

P 87–824

*Manufacturer.* Reichold Chemicals, Incorporated.
*Chemical.* (G) Terpene-styrene resin.
*Use/Production.* (S) Industrial tackifier for hot melt adhesive. Prod. range: Confidential.

P 87–825

*Manufacturer.* Occidential Chemical Corporation.
*Chemical.* (G) Carboxylic acid salt.
*Use/Production.* (G) Intermediate. Prod. Range: Confidential.

P 87–826

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) Carbamido-methyl-[[chloro-[[[sulfooxyethylsulfonyl) amino]-s-triazinyl]amino]substituted] azo]-hydroxy-ethyl-pyridinone, sodium salt.
*Use/Import.* (S) Reactive dye for textiles. Import range: 40,000 kg/yr.

P 87–827

*Importer.* Confidential.
*Chemical.* (G) Silicone phenolic alkyd resin.
*Use/Import.* (S) Industrial component of electrical coating industrial. Import range: 500 to 1,100 kg/yr.

P 87–828

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) 2,2'-Stilbenedisulfonic acid, 4,4'-bis[[3-chloro-[[[hydroxy-[substituted]azo]-sulfonaphthalenyl]-s-triazinyl]amino]-, potassium salt.
*Use/Import.* (S) Reactive dye for textiles. Import range: 20,000 kg/yr.

P 87–830

*Importer.* CIBA-GEIGY Corporation.
*Chemical.* (G) Copper disalicylidine complex.
*Use/Import.* (G) Textile chemical. Import range: Confidential.
*Toxicity Data.* Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative; Skin Sensitization: Non-sensitizer; $EC_{50}$: >1,000 mg/1 (Daphnia Magna) $LC_0$: Zebra fish: >8.3 ppm, $IC_{50}$: (Inhibitory Concentration) >100 mg/1; COD=1606 . mg/g $O_2$.

P 87–831

*Manufacturer.* Confidential.
*Chemical.* (G) Polyamino polyamide.
*Use/Production.* (G) Additive in specialty formulation with open use. Prod. range: 500 to 2,100 kg/yr.

P 87–832

*Manufacturer.* Lonza, Incorporated.
*Chemical.* (G) Aromatic polyol, alkoxylated, fatty acid esters of.
*Use/Production.* (G) Additive for use in textile or industrial lubricant formulations. Prod. range: Confidential.

P 87–833

*Manufacturer.* Confidential.
*Chemical.* (G) High solids soybean oil urethane polymer.
*Use/Production.* (S) Clear and pigmented high solids architectural coatings. Prod. range: Confidential.

P 87–834

*Manufacturer.* Confidential.
*Chemical.* (G) Amino rich polyamide.
*Use/Production.* (G) Additive in specialty formulation with open use. Prod. range: 500 to 2,300 kg/yr.

P 87–835

*Manufacturer.* E. I. du Pont de Nemours and Company, Inc.
*Chemical.* (S) Benzeneacetonitrile, alpha-hydroxy-3-phenoxy-, (S)-.
*Use/Production.* (S) Industrial intermediate for use in pesticide manufacture. Prod. range: Confidential.

P 87–836

*Manufacturer.* Confidential.
*Chemical.* (G) Inert perfluorocarbon liquid.

*Use/Production.* (G) A fluid for use in heat transfer applications having in general, an open non-dispersive degree of containment. Prod. range: Confidential.

P 87–837

*Manufacturer.* Confidential.

*Chemical.* (S) Isophthalic acid, adipic acid, trimethylolpropane, silicone polymer.

*Use/Production.* (S) Industrial and commercial polyester vehicle for use in pigmented synthetic coating. Prod. range: 96,000 to 175,000 kg/yr.

P 87–838

*Manufacturer.* Confidential.

*Chemical.* (G) NCO terminated urethane.

*Use/Production.* (G) Tackifier—open, non-dispersive use in adhesives. Prod. range: Confidential.

P 87–839

*Importer.* Sherex Chemical Company, Incorporated.

*Chemical.* (G) Sulfonium borate.

*Use/Import.* (S) Polymerization inhibitor. Import range: Confidential.

P 87–840

*Manufacturer.* Confidential.

*Chemical.* (G) Isocyanate—terminated polycaprolactone polyol.

*Use/Production.* (G) Coating resin. Prod. range: Confidential.

P 87–841

*Importer.* Confidential.

*Chemical.* (S) Pyrazolo[5,1-b]quinazoline, 3-[(4-chloro-2-nitrophenyl)azo]-2-methyl.

*Use/Import.* (G) Colorant. Import range: Confidential.

*Toxicity Data.* Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Negative.

P 87–842

*Manufacturer.* Confidential.

*Chemical.* (G) Polyether polyamino polyol.

*Use/Production.* (G) Open use, industrial paint product. Prod. range: 200,000 to 3,000,000 kg/yr.

P 87–843

*Manufacturer.* Cavedon Chemical Company, Inc.

*Chemical.* (G) Carboxyfunctional zircoaluminate chloride hydroxide polymer.

*Use/Production.* (S) Industrial adhesion promoter: epoxy, rubber, acrylic industrial adhesives; adhesion promoter/pigment dispersant in industrial coatings, i.e., polyester, epoxy, urethane, alkyd, waterborne, etc; pigment dispersant, coupling agent in pigmented PE, PP and other thermoplastics. Prod. range: Confidential.

P 87–844

*Importer.* Protan Laboratories, Incorporated.

*Chemical.* (G) Chitosan, substituted hydroxyalkanoate salt.

*Use/Import.* (G) Selective absorbent in materials, fabrics and filtration membranes. Import range: Confidential.

P 87–845

*Manufacturer.* Mona Industries Inc.

*Chemical.* (S) Reaction Product of Epichlorohydrin and sodium phosphate.

*Use/Production.* (S) Site-limited intermediate for cosmetic and household raw material production. Prod. range: 9,000 to 20,000 kg/yr.

*Toxicity Data.* Irritation: Skin—Non-irritant, Eye—Non-irritant.

Dated: March 23, 1987.

**Denise Devoe,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87–6714 Filed 3–26–87; 8:45 am]

BILLING CODE 6560–50–M

---

[OPTS–51667; FRL–3175–8]

## Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two such PMNs and provides a summary of each.

**DATES:** Close of Review Period:

P 87–752, 87–753, 87–754, 87–755, 87–756, 87–757, and 87–758, June 3, 1987.

P 87–759, 87–760, 87–761, 87–762, 87–763, 87–764, 87–765, 87–766, 87–767, 87–768, 87–769, and 87–770, June 7, 1987.

P 87–771, 87–772, 87–774, 87–775, 87–776, 87–777, 87–778, 87–779, 87–780, 87–781, 87–782, 87–783, 87–784, 87–785, 87–786, and 87–787, June 8, 1987.

P 87–788, 87–789, and 87–790, June 9, 1987.

P 87–791, 87–792, 87–793, and 87–794, June 10, 1987.

Written comments by:

P 87–752, 87–753, 87–754, 87–755, 87–756, 87–757, and 87–758, May 4, 1987.

P 87–759, 87–760, 87–761, 87–762, 87–763, 87–764, 87–765, 87–766, 87–767, 87–768, 87–769, and 87–770, May 8, 1987.

P 87–771, 87–772, 87–774, 87–775, 87–776, 87–777, 87–778, 87–779, 87–780, 87–781, 87–782, 87–783, 87–784, 87–785, 87–786, and 87–787, May 9, 1987.

P 87–788, 87–789, and 87–790, 87–791, 87–792, 87–793, and 87–794, May 10, 1987.

**ADDRESS:** Written comments, identified by the document control number "[OPTS–51667]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–752

*Importer.* Toyo Soda USA, Inc.

*Chemical.* (G) Hexane-1,6-diisocyanate oligomers with polyol modification.

*Use/Import.* (S) Industrial and commercial reactive polyurethane coating. Import range: 50,000 to 150,000 kg/yr.

P 87–753

*Manufacturer.* Mazer Chemicals, Inc.

*Chemical.* (G) Amide of polycarboxylic acid.

*Use/Production.* (G) Emulsifier for an explosive mixture. Prod. range: Confidential.

P 87–754

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Modified polyacrylate polymer.

*Use/Production.* (G) Polymeric dispersant. Prod. range: Confidential.

*Toxicity Data.* Acute oral: 5 g/kg; Acute dermal: 5 g/kg; Irritation: Skin—Slight, Eye—Severe; $LC_{50}$ 96 hr (Rainbow trout): 750 mg/L, $LC_{50}$ 48 hr (Daphnia magna): 1,000 mg/L. $EC_{50}$: 16.9 mg/L.

**P 87–755**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylate functional organopolysiloxane.
*Use/Production.* (S) Industrial radiation cured coating additive. Prod. range: Confidential.

**P 87–756**

*Manufacturer.* Confidential.
*Chemical.* (G) Amines, dialkyl methyl.
*Use/Production.* (G) Site-limited and industrial intermediate for cationic production. Prod. range: Confidential.

**P 87–757**

*Manufacturer.* Confidential.
*Chemical.* (G) Copolyester urethane terpolymer.
*Use/Production.* (G) Polymer for injection molding and extrusion. Prod. range: Confidential.

**P 87–758**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyoxyethylene fatty ester.
*Use/Production.* (G) Industrial surfactant. Prod. range: Confidential.

**P 87–759**

*Importer.* Confidential.
*Chemical.* (G) Fluorinated co-telomer.
*Use/Import.* (G) Soil release and soil repellent agent highly protective product. Import range: Confidential.
*Toxicity Data.* Acute oral: 5 ml/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

**P 87–760**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylated polyurethane.
*Use/Production.* (G) Industrial polymer for specialty coatings. Prod. range: 38,000 to 76,000 kg/yr.

**P 87–761**

*Manufacturer.* Confidential.
*Chemical.* (G) Phenoxy modified epoxy ester resin.
*Use/Production.* (G) Industrial open, non-dispersive use. Prod. range: 2,272 to 9,100 kg/yr.

**P 87–762**

*Importer.* Fritzsche Dodge & Olcott.
*Chemical.* (S) 2-Butenal, 3-methyl-.
*Use/Import.* (S) Industrial and commercial sold to other chemical houses as such. Import range: 25 to 180 kg/yr.

*Toxicity Data.* Acute oral: 690 mg/kg; Acute dermal: 400 mg/kg; Irritation: Skin—Irritant; Inhalation: Irritation; Ames test: Non-mutagenic.

**P 87–763**

*Manufacturer.* H.B. Fuller Company.
*Chemical.* (G) Diphenylmethane diisocyanate 1,4-cyclohexanedimethanol, dimer acid copolymer.
*Use/Production.* (S) Industrial adhesive. Prod. range: 18,000 to 70,000 kg/yr.

**P 87–764**

*Importer.* Confidential.
*Chemical.* (G) Aliphatic diol.
*Use/Import.* (S) Industrial crosslinker for the production of polyurethane elastomers. Import range: Confidential.

**P 87–765**

*Manufacturer.* Confidential.
*Chemical.* (G) Barium salt of Joncryl 678.
*Use/Import.* (G) Extender. Import range: Confidential.

**P 87–766**

*Manufacturer.* Confidential.
*Chemical.* (G) Substituted-aryl-substituted-amino-alkyl phosphonic acid, salt.
*Use/Production.* (G) Destructive use. Prod. range: Confidential.

**P 87–767**

*Manufacturer.* Confidential.
*Chemical.* (G) Substituted alkyl phosphonic acid, salt.
*Use/Production. (G) Destructive use. Prod. range: Confidential.*

**P 87–768**

*Manufacturer.* Arizona Chemical Company.
*Chemical.* (G) Substituted tall oil polymer.
*Use/Production.* (G) Industrial coating resin. Prod. range: Confidential.

**P 87–769**

*Manufacturer.* Confidential.
*Chemical.* (G) Modified, maleated metal resinate.
*Use/Production.* (S) Industrial publication gravure printing inks. Prod. range: Confidential.

**P 87–770**

*Importer.* Fallek Chemical Company, Incorporated.
*Chemical.* (S) Acryloyl mopholine.
*Use/Import.* (S) Site-limited, industrial and commercial radiation cure vinyl pyrolidone co-polymers; industrial, commercial and consumer adhesives acrylate/methacrylate copolymers, specialty urethane/epoxy copolymers and misc. Import range: 20,000 to 100,000 kg/yr.
*Toxicity Data.* Acute oral: 588 mg/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—Mild, Eye—Non-irritant.

**P 87–771**

*Importer.* Confidential.
*Chemical.* (G) Mixed methacrylate polymer.
*Use/Import.* (S) Industrial emulsifier/dispersant. Import range: Confidential.

**P 87–772**

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) Hydroxy-[[disubstituted)phenyl]azo]-[chloro[[(sulfooxyethylsulfonyl)phenyl]amino]-s-triazinylamino]naphthalenedisulfonic acid, sodium salt.
*Use/Import.* (S) Reactive dye for textiles. Import range: 40,000 kg/yr.

**P 87–774**

*Manufacturer.* Monsanto Company.
*Chemical.* (S) Polymer of melamine; formaldehyde; methanol; and 2-ethylhexanol.
*Use/Production.* (G) Component of thermosetting paint formulations.
*Toxicity Data.* Acute oral: >5,000 mg/kg; Acute dermal: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Mild; Ames test: Non-mutagenic.

**P 87–775**

*Manufacturer.* Confidential.
*Chemical.* (G) Copolymer of acrylic and methacrylic esters.
*Use/Production.* (S) Industrial, commercial and consumer modifier for wood coatings, general purpose coating. Prod. range: Confidential.

**P 87–776**

*Manufacturer:* Pennwalt Corporation.
*Chemical.* (S) 1,3-Benzenedicarboxylic acid, disodium salt.
*Use/Production.* (S) Industrial lubricant for metal deformation. Prod. range: 11,270 to 23,575 Kg/yr.
*Toxicity Data.* Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Slight, Eye—Mild; Ames test: Non-mutagenic.

**P 87–777**

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) 4,4'-Bis(substituted)stilbene.
*Use/Import.* (G) Colorant of copying material. Import range: Confidential.
*Toxicity data.* Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-778

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) 2,5-Bis(substituted)-1,3,4-oxadiazole.
*Use/Import.* (G) Colorant of copying material. Import range: Confidential.
*Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.*

P 87-779

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) Pyrene derivative.
*Use/Import.* (G) Copying material. Import range: Confidential.
*Toxicity Data.* Acute oral: >5,000 mg/kg; Ames test: Non-mutagenic.

P 87-780

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) Phthalocyanine colorant.
*Use/Import.* (G) Colorant of printing material. Import range: Confidential.

P 87-781

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) Carbozole derivative.
*Use Import.* (G) Copying material. Import range: Confidential.
*Toxicity Data.* Acute oral: >15.0 g/kg; Ames test: Non-mutagenic.

P 87-782

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) Benzoic acid derivative.
*Use/Import.* (G) Copying material. Import range: Confidential.
*Toxicity Data.* Acute oral: 11,602 mg/kg; Ames test: Non-mutagenic.

P 87-783

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) 1,1-Bis(substituted)-3-substituted-1-propen.
*Use/Import.* (G) Copying material. Import range: Confidential.
*Toxicity Data.* Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-784

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) 2,5-Bis(substituted)-1,3,4-oxadiazole.
*Use/Import.* (G) Colorant of copying material. Import range: Confidential.
*Toxicity Data.* Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-785

*Importer.* MC Reprotechs, Incorporated.
*Chemical.* (G) Carbazole derivative.
*Use/Import.* (G) Copying material. Import range: Confidential.
*Toxicity Data.* Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-786

*Importer.* Confidential.
*Chemical.* (G) Polyester acrylate.
*Use/Import.* (S) Industrial radiation-curable coatings.
*Toxicit Data.* Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Inhalation: Negative.

P 87-787

*Importer.* Confidential.
*Chemical.* (G) Polyester acrylate.
*Use/Import.* (S) Industrial radiation-curable coatings.
*Toxicity Data.* Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Inhalation: Negative.

P 87-788

*Manufacturer.* Confidential.
*Chemical.* (S) Polymer of 1,3-benzenedicarboxylic acid; 1,3-isobenzenefuranolione; trans butenedioic acid; hexanedioic acid; 1,2-propanediol; and 2,2-dimethyl-1,3-propanediol.
*Use/Production.* (S) Industrial and commercial polymer for metal coating. Prod. range: Confidential.

P 87-789

*Manufacturer.* Confidential.
*Chemical.* (G) Reaction mixture of carbomonocyclic acid, sulfonated carbomonocyclic ester, alkylene glycol and dialkylene glycol.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

P 87-790

*Importer.* Lonza, Incorporated.
*Chemical.* (G) Methylene-bis-substituted aniline derivative.
*Use/Import.* (G) Resin intermediate. Import range: Confidential.

P 87-791

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) Hydroxy-[[disubstituted]naphthylazo]-[chloro-[[(sulfooxyethylsulfonyl)phenyl]amino] substituted naphthalenesulfonic acid, sodium salt.
*Use/Import.* (S) Reactive dye for textiles. Import range: 40,000 kg/yr.

P 87-792

*Manufacturer.* Quaker Chemical Corporation.
*Chemical.* (G) Mixed tall oil esters.
*Use/Production.* (S) Industrial hot mill lubricant. Prod. range: Confidential.

P 87-793

*Manufacturer.* Confidential.
*Chemical.* (G) Functional aluminum soaps.
*Use/Production.* (G) Cosmetic/Emollient.
*Toxicity Data.* Acute oral: 5 g/mg; Irritation: Skin—Mild, Eye—Mild.

P 87-794

*Importer.* Stockhausen, Incorporated.
*Chemical.* (G) Water soluble cationic polymer.
*Use/Import.* (G) Flocculant for retention aid. Prod. range: 250,000 to 1,000,000 kg/yr.
*Toxicity Data.* Acute oral >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Skin Sensitization: Non-sensitizer; $LC_{50}$ 24 hr (Daphnia magna): 225 mg/l, $EC_{50}$ 48 hr (Tetrahymena pyriformis): 95 mg/l, $LC_{50}$ 96 hr (Zebra fish): 8 mg/l, $EC_{50}$ (Pseudomonas putida): >5,000 mg/l, $LC_{50}$ 96 hr (Golden orfs): 1.5 mg/l.

Dated: March 17, 1987.

**Denise Devoe,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87-6555 Filed 3-26-87; 8:45 am]

BILLING CODE 6560-50-M

---

[OPTS-59809; FRL-3174-2]

## Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such polymer exemption submissions and provides a summary of each.

**DATES:** Close of Review Period:

Y 87-122 and 87-123, March 30, 1987.
Y 87-124, March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control

Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the exemption received by EPA. The complete non-confidential documents are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 87–122**

*Manufacturer.* Confidential.
*Chemical.* (G) Alkyd resin.
*Use/Production.* (S) Coatings. Prod. range, Confidential.

**Y 87–123**

*Manufacturer.* Confidential.
*Chemical.* (G) Unsaturated polyester resin.
*Use/Production.* (G) Pionite. Prod. range, Confidential.

**Y 87–124**

*Manufacturer.* Spencer Kellogg Products.
*Chemical.* (G) Alkyd resin.
*Use/Production.* (G) Open, non-dispersive use. Prod. range, Confidential.

Dated: March 17, 1987.

**Denise Devoe,**

*Acting Division Director,Information Management Division.*

[FR Doc. 87–6461 Filed 3–26–87; 8:45 am]

BILLING CODE 6560–50–M

---

[OPP–66135; FRL 3177–4]

## Pesticide Programs; New Voluntary Cancellation Procedures

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has streamlined the way it processes requests for voluntary cancellation of registered pesticide products. Instead of issuing a Notice of Voluntary Cancellation to the registrant, which notifies the registrant of the official cancellation of the affected registrations 30 days after receipt of the letter, EPA will now, upon receipt of a request for voluntary cancellation of pesticide registrations, send a cancellation order to the registrant acknowledging receipt of that request, informing the registrant that cancellation was effective immediately upon receipt of the request. This change will significantly decrease the processing time from receipt of a voluntary cancellation request to final cancellation.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Arthur Donner, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2126).

**SUPPLEMENTARY INFORMATION:** This discussion of the voluntary cancellation process is published for informational purposes only, since these procedures are not subject to rulemaking.

A voluntary cancellation is initiated by the registrant of a pesticide product. Previously, this request resulted in EPA issuing a Notice of Intent to Cancel to the registrant, which stated that the EPA had agreed to the cancellation of the product(s), effective 30 days after the registrant's receipt of the Notice, unless within the 30-day period the registrant, or an interested person with the concurrence of the registrant, requested that the registration be continued in effect. If no request for continuation of registration had been submitted at the end of the 30-day period, the product was then cancelled.

The current voluntary cancellation process is initiated upon receipt of a written request from a registrant of a product. The Agency prepares a cancellation order acknowledging receipt of the voluntary cancellation request and sends it to the registrant of the affected product(s). This notice automatically becomes a final order of cancellation. Unless there are extenuating circumstances, a notice ordinarily contains a provision permitting the registrant to sell or distribute existing stocks of the product(s) until his supply is exhausted, or for 1 year from the effective date of cancellation, whichever comes first.

To provide current information on those product(s) voluntarily cancelled, EPA intends to prepare computer reports of product cancellations on a regular basis. These reports will indicate each product's EPA registration number, product name, registrant's name, and the date on which cancellation became effective. The Agency will routinely distribute updated reports to EPA Regional Offices and the Office of Pesticide Programs Freedom of Information Office, from which these reports can be requested.

Dated: March 23, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

FR Doc. 87–6983 Filed 3–26–87; 11:57 am]

BILLING CODE 6560–50–M

---

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1648]

## Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

March 18, 1987.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed April 13, 1987. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services. (Gen. Docket No. 84–1234, RM–4247). Number of petitions received: 2

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Eagle and Lincoln, Nebraska) (MM Docket No. 86–59, RM–5082). Number of petitions received: 1

Subject: Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Anniston, Alabama) (MM Docket No. 86–101, RM–5455). Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Vero Beach, Florida) (RM–5359). Number of petitions received: 1

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–6570 Filed 3–26–87; 8:45 am]

BILLING CODE 6712–01–M

### Applications for Consolidated Hearing; James L. Gardner et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city, and State | File No. | MM Docket No. |
|---|---|---|
| A. James L. Gardner, Sparta, Missouri | BPH–851112MA | 87–61 |
| B. Sledge Communications, Sparta, Missouri | BPH–851115MK | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–6571 Filed 3–26–87; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Training and Fire Programs Directorate, Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

NAME: Board of Visitors (BOV) for the National Fire Academy (NFA)
DATES OF MEETING: April 23–24, 1987
PLACE: Holiday Inn, 1711 North University Blvd., Plantation, Florida
TIME: April 23—8:30 a.m. to 5:00 p.m.; April 24—8:30 a.m. to Agenda Completion; 4:00 p.m. to 5:00 p.m.—Field Survey Meeting
PROPOSED AGENDA: Old Business; New Business; Annual Report; Volunteer Fire Service/NFA Interface; FEMA Training Reorganization; Chamber of Commerce Award

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301–447–1123) on or before April 13, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: March 19, 1987.

**Caesar A. Roy,**

*Deputy Associate Director, Training and Fire Programs.*

[FR Doc. 87–6710 Filed 3–26–87; 8:45 am]

BILLING CODE 6718–01–M

## FEDERAL HOME LOAN BANK BOARD

### First Federal of Maryland, FSA; Hagerstown, MD; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in 5(d)(6)(A) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Federal of Maryland, FSA, Hagerstown, Maryland on March 20, 1987.

Dated: March 23, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–6728 Filed 3–26–87; 8:45 am]

BILLING CODE 6720–01–M

### Vernon Savings and Loan Association; Vernon, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Vernon Savings and Loan Association, Vernon, Texas, on March 20, 1987.

Dated: March 23, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–6729 Filed 3–26–87; 8:45 am]

BILLING CODE 6720–01–M

[No. 87–305]

### Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange

Dated: March 18, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The Midwest Stock Exchange has filed on January 2, 1987 and January 27, 1987, respectively, pursuant to section 12 (f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1, applications ("Applications") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities:

Coast Savings and Loan Association, Los Angeles, California (FHLBB No. 7046), Common Stock, No Par Value
Standard Federal Bank, Troy, Michigan (FHLBB No. 0161), Common Stock, $1.00 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, written data, views and arguments bearing upon whether the

extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Applications after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

**FOR FURTHER INFORMATION CONTACT:** John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202–377–6415) at the above address.

By the Federal Home Loan Bank Board

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–6730 Filed 3–26–87; 8:45 am]

BILLING CODE 6720–01–M

---

[No: 87–304]

## Application for Unlisted Trading Privileges and Opportunity for Hearing; Philadelphia Stock Exchange

Dated: March 18, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The Philadelphia Stock Exchange has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1, an application with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities: Columbia Savings and Loan Association, Beverly Hills, California (FHLBB No. 6325) Common Stock, $1.00 Par Value.

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the application at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

**FOR FURTHER INFORMATION CONTACT:** John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202–377–6415) at the above address.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–6731 Filed 3–26–87; 8:45 am]

BILLING CODE 6720–01–M

---

## FEDERAL RESERVE SYSTEM

### Algemene Bank Nederland N.V.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Algemene Bank Nederland N.V.*, Amsterdam, The Netherlands; to acquire Lease Plan U.S.A., Atlanta, Georgia, and thereby engage in the leasing of personal or real property pursuant to § 225.25(b)(5) and commercial financing of equipment and inventory pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–6698 Filed 3–26–87; 8:45 am]

BILLING CODE 6210–01–M

---

### First Citizens Banc Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any

questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 17, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Citizens Banc Corp.*, Sandusky, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Banking Company, Sandusky, Ohio.

Board of Governors of the Federal Reserve System, March 23, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-6699 Filed 3-26-87; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 10, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *James O. Myers*, Emporia, Kansas; to acquire 52 percent of the voting shares of Admire Bancshares, Inc., Emporia, Kansas, and thereby indirectly acquire Admire Bank in Emporia, Emporia, Kansas.

Board of Governors of the Federal Reserve System, March 23, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-6700 Filed 3-26-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 20, 1987.

**Public Health Service (PHS)**

(Call Reports Clearance Officer on 202-245-2100 for copies of Package)

*Food and Drug Administration*

Subject: Use of Impact-Resistant Lenses in Eyeglasses and Sunglasses—Revision—(0910-0182)
Respondents: Businesses or other for-profit; Small businesses or organizations

*Health Resources Services Administration*

Subject: Financial Assistance for Disadvantaged Health Professions Students Program—Application Form—NEW
Respondents: Non-profit institutions
Subject: Annual Space Utilization and Enrollment Report for Nursing and Health Professions—Extension—(0915-0056)
Respondents: State or local governments; Non-profit institutions

*Centers for Disease Control*

Subject: Fluoridation Census, 1985—NEW
Respondents: State or local governments
OMB Desk Officer: Shannah Koss

*Family Support Administration (FSA)*

(Call Reports Clearance Officer on 202-245-0652 for copies of package)
Subject: Refugee State-of-Origin Report—Extension—(0960-0336)
Respondents: State or local governments
Subject: Refugee Assistance-by-Nationality Report—Extension—(0960-0339)
Respondents: State or local governments
Subject: State Agency Statement of Financial Plan for Aid to Families With Dependent Children—Reinstatement—(0960-0225)
Respondents: State or local governments
Subject: Annual Statistical Report on Requests for Hearings—Reinstatement—(0960-0251)
Respondents: State or local governments
OMB Desk Officer: Judy Egan

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers: PHS/FDA: 202-245-2100; FSA: 202-245-0652.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: March 19, 1987.

**James F. Trickett,**

*Director, Office of Administrative and Management Services.*

[FR Doc. 87-6722 Filed 3-26-87; 8:45 am]

BILLING CODE 4150-04-M

## Alcohol, Drug Abuse, and Mental Health Administration

### Research Grants for Biological Markers of Alcohol Consumption

**AGENCY:** National Institute on Alcohol Abuse and Alcoholism, HHS.

**ACTION:** Issuance of a special program announcement for research grants on biological markers of alcohol consumption.

**SUMMARY:** The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a special program announcement for Research Grants on Biological Markers of Alcohol Consumption. These awards will support research grants for the development and application of biological markers for the objective assessment of long-term drinking. As distinct from a solely qualitative indicator of alcohol consumption, the most desirable measures would provide a quantitative estimate of alcohol use during a period of days or weeks. The influence of such factors as age and gender should be addressed in the validation of markers. Support may be requested for up to 5 years. It is estimated that up to $500,000 will be available in 1987 and future years, subject to final congressional action, to support research grants under this announcement.

*Receipt Dates for Applications:* February 1, June 1, and October 1 of

each year as provided by the regular research grant application schedule.

*For a Copy of the Announcement Contact:* The National Clearinghouse for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telphone (301) 468–2600.

**Donald Ian Macdonald,**

*Administrator, Alcohol, Drug Abuse, and Mental Health Administration.*

FR Doc. 87–6704 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–20–M

---

## Centers for Disease Control

### Cooperative Agreement To Assist Local Health Officials To Determine the Overall Performance of Local Health Departments in Carrying Out Their Increasingly Broad and Complex Responsibilities

The Center for Disease Control announces the availability of funds in Fiscal Year 1987 for a cooperative agreement with the National Association of County Health Officials (NACHO) under the stipulation that there be substantial participation in the project by the United States Conference of Local Health Officials (USCLHO), to enable local health departments to determine whether they are meeting the needs of the communities they serve, identify areas in which performance can be improved, and initiate a systematic process to improve performance. The Catalog of Federal Domestic Assistance number is 13.283.

#### Authority

This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

#### Single Source Justification

Assistance will be provided only to the National Association of County Health Officials (NACHO) for this project. NACHO is a professional organization of individuals and institutions that have a professional and legal interest in preventive health care in the community. The membership of this organization is composed of the leaders of local health agencies with the decision making authority for the direction of prevention strategies in the community. The organization is in a unique position to assist individual health departments in assessing how well the health needs of the community are being met and in what direction future resources should be allocated in order to develop a comprehensive approach contributing toward national disease prevention/health promotion efforts. This organization, as representative of the nation's local health agencies, is best suited to develop a generic self-assessment tool that can be implemented uniformly.

#### Availability of Funds

During Fiscal Year 1987, $100,000 to $175,000 will be available to support this project. The cooperative agreement will be funded initially for a 12-month budget period. Continuation awards within the 5-year project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate is subject to change.

#### Reviews

Application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

#### Information

Information may be obtained from: Luther DeWeese, Grant Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30333, Telephone—(404) 262–6575.

Technical assistance may be obtained from: Charles J. Webb, Training and Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 329–1945.

Dated: March 23, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87–6664 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–18–M

---

### Cooperative Agreement for Adult Immunizations in Health Maintenance Organizations Program Announcement and Availability of Funds for Fiscal Year 1987

#### Introduction

The Centers for disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for competitive applications for a cooperative agreement with an organization which will work effectively with the Health Maintenance Organization (HMO) industry to improve the delivery of adult immunization services to their 21 million subscribed members.

#### Authority

This project is authorized by section 301(a) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)), as amended. The Catalog of Federal Domestic Assistance is 13.283.

#### Eligible Applicants

Eligible applicants are public or private organizations, associations, institutions, and others, with (1) demonstrated capability in performing activities and achieving goals and objectives similar in scope to those of the proposed project and (2) recent experience in working with the HMO industry.

#### Program Background

HMOs are a growing and significant component of the health care industry in the United States. Presently there are nearly 500 federally qualified HMOs providing prepaid health services to approximately 21 million members.

HMOs are constantly striving to reduce costs to maintain a competitive edge in the market place. The industry recognizes that multiple strategies must be used to continue to show decreases in costs associated with physician encounters and hospitalizations. One of these major strategies is emphasis on preventive medicine, including immunizations.

However, recent studies have shown that vaccine coverage for influenza and tetanus-diphtheria in HMO populations is only about 20–40 percent. These levels indicate that in spite of access to medical care in HMOs, including immunizations at no out-of-pocket expense, desired levels of immunization are not being reached.

The HMO industry has expressed interest in improving immunization coverage of adults thereby reducing costs associated with morbidity and mortality, improving the health of their members, and promoting enrollment by offering higher quality services.

The interest of the HMO industry in prevention programs is highly consistent with current CDC programs. CDC's adult immunization activites focus on the achievement of goals by 1990 which include: 70 percent immunization levels against influenza among high risk groups; 60 percent in levels against pneumococcal disease; 50 percent immunization against hepatitis B; a 75 percent immunization level in adults against tetanus and diphtheria; zero reported cases of congenital rubella syndrome; and zero indigenous cases of measles.

Inclusion of preventive immunization services by HMOs and health insurance companies is consistent with the CDC strategy to improve the immunization status of adults.

#### Purpose

The purpose of this cooperative agreement is to assist HMOs to develop

policies, procedures, and practices of adult immunizations which will result in the reduction and prevention of unnecessary morbidity and mortality and their consequences to influenza, pneumococcal disease, hepatitis B, tetanus, diphtheria, measles, and rubella in adult populations (>15 years) served by HMOs.

**Cooperative Activities**

*1. Recipient Activities*

a. Identify three to five HMOs representing Group, Staff, and Individual Practice Association (IPA) models with appropriate resources and interests for collaboration related to adult vaccine preventable diseases to determine vaccine coverage in selected HMO models.

b. In each HMO model type, determine current policies with regard to the seven adult antigens.

c. In each HMO model type, determine the vaccine/toxoid coverage levels for members in the target population.

d. In each HMO model type, assess the impact of morbidity/mortality of the target diseases on the utilization of HMO services, including frequency and costs.

e. Implement at least one or more intervention strategies to measure and increase vaccine coverage levels.

f. Evaluate the effectiveness and efficiency of the intervention strategy(s) in increasing vaccine coverage, reducing morbidity/mortality, and reducing utilization and costs of HMO services.

g. Establish a mechanism for sharing information which fosters the benefits of adult immunization in the HMO industry, its members, and the general public.

*2. Centers for Disease Control Activities*

a. Collaborate in determining whether HMO policies and practices on adult immunizations are current.

b. Provide technical assistance in the design of the protocols for the collection and analysis of data to determine vaccine/toxoid coverage.

c. Provide technical assistance in the design of protocols for the collection and analysis of data to determine the impact of morbidity and mortality.

d. Participate in the development, implementation, and evaluation of intervention strategies including statistical analyses.

e. Provide training consultation as required to ensure successful technology transfer to the HMO industry.

f. Assist in replacing successful experiences gained in this collaboration throughout the pre-paid health care industry.

**Availability of Funds**

Approximately $83,000 is available in Fiscal Year 1987 to fund one cooperative agreement. Depending on the availability of funds, the cooperative agreement will be funded in 12 month budget periods within a 1- to 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

**Reporting Requirements**

Progress reports are required on a quarterly basis and are due 30 days after the end of each quarter. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

**Application Content**

1. *Initial Application*—The initial application for a new project period must include a narrative which details the following:

a. The background and need for support, including information that relates to factors by which the applications will be evaluated;

b. The objectives of the proposed project which are consistent with the purpose of the project and which are specific, measurable and time-phased;

c. The methods which will be used to achieve the objectives;

d. The methods which will be used to evaluate the success of the project;

e. A budget, including narrative justification, consistent with the purpose and objectives of the project; and

f. Any other pertinent information that will support the request for assistance.

2. *Continued Funding*—An application for continued funding of this activity within an approved project period should contain the following:

a. A progress report on activities performed and results achieved during the prior budget period;

b. Short-term objective for the new budget period (consistent with availability of funds);

c. A description of any change in the need for support, long-term objectives, methods of operation, and evaluation procedures compared to information provided in previous applications; and

d. A budget, including narrative justification, consistent with the availability of funds and the purpose and objectives of the project.

**Application Review and Evaluation Criteria**

1. *Initial Application*—The initial application for a new project period will be reviewed and evaluated according to the following criteria:

a. The need for support as demonstrated in the background and need section of the application narrative;

b. The adequacy of the description of the appropriate study populations;

c. The degree to which the applicant provides evidence of their commitment to carry out their part of the proposed collaboration;

d. The extent to which the applicant documents demonstrated capability in achieving functional objectives and activities similar to those of this project and provides evidence of recent experience in working with the HMO industry;

e. The degree to which objectives are stated clearly, are consistent with the purpose of this cooperative agreement, and are specific, measurable, and time-phased;

f. The degree to which the proposed methods of achieving the stated objectives are likely to be successful;

g. The adequacy of plans to evaluate program activities;

h. The extent to which professional personnel to be assigned to this project are qualified, including evidence of their commitment to this effort;

i. Adequacy of the plan for project administration; and

j. The extent to which the budget is clearly explained, reasonable, and consistent with the intended use of the cooperative agreement funds.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The degree to which accomplishments in the prior budget period show that the applicant is meeting its objectives;

b. The extent to which objectives for the new budget period are consistent with the purpose of the cooperative agreement and are specific, measurable, and time-phased;

c. The degree to which the proposed methods of achieving the stated objectives are likely to be successful;

d. The adequacy of plans to evaluate program activities;

e. The extent to which the budget is clearly explained, reasonable, and consistent with the intended use of the cooperative agreement funds.

**Application Submission and Deadline**

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia, 30305, on or before May 15, 1987.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of a timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in either 1. a or b above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Review Requirements**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where to Obtain Additional Information**

Information on application procedures, copies of application forms, and other material may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Conrad P. Ferrara, Project Officer, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–1836 of FTS 236–1836.

Dated: March 23, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support Centers for Disease Control.*

[FR Doc. 87–6663 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–18–M

## Project Grants for the Prevention and Control of Sexually Transmitted Diseases; Availability of Funds for Fiscal Year 1987

**Introduction**

The Centers for Disease Control announces the availability of funds for Fiscal Year 1987 for Project Grants for the Prevention and Control of Sexually Transmitted Diseases (STD). (Reference STD Control Program Announcement published in the **Federal Register** on June 27, 1985 (50 FR 26624).)

**Authority**

This grant program is authorized by section 318 of the Public Health Service Act (42 U.S.C. 247c), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and D. The Catalog of Federal Domestic Assistance Number is 13.977.

**Eligible Applicants**

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

**Program Objectives/Purpose**

The objective of this grant program is to reduce morbidity and mortality from sexually transmitted diseases (STD) by preventing cases and complications.

**Availability of funds**

Approximately $45,780,000 will be available in Fiscal Year 1987 to award up to 66 grants with the average award expected to be $693,600, ranging from $20,000 to $2,800,000. Depending upon the availability of funds, grants are usually funded for 12 months in a 3- to 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. No new grants are expected to be made in 1987 since current grantees are coordinating activities in all political jurisdictions in the United States. Grants may be awarded to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau in lieu of the Trust Territory of the Pacific Islands. Funding estimates outlined above may vary and are subject to change.

**Application Information**

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (30-day review for continuation applications). Application forms, information on review procedures, deadlines and the consequences of late submission, copies of the program announcement and regulations may be obtained from the appropriate Department of Health and Human Services Regional Office as set forth below.

Dated: March 20, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support Centers for Disease Control.*

**Department of Health and Human Services (HHS) Regional Offices**

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223–6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264–2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521–35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 221–2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353–1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767–3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844–6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442–0430

[FR Doc. 87–6665 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–18–M

### Immunization Conference; Meeting

**ACTION:** Notice of Meeting—21st National Immunization Conference. Federal, State, and local public health officials as well as representatives from the private sector who are involved in the organization and implementation of immunization activity will participate.

Time and Date: Registration—Monday, June 8, 1987. The Program is scheduled for 8:30 a.m.–5 p.m., Tuesday, June 9, through Thursday, June 11.

Place: Fairmont Hotel, New Orleans, Louisiana, 800/527–4727.

Status: Open to public, limited only by the space available.

Matters to be Discussed: Current status of the epidemiology, prevention, and control of vaccine-preventable diseases.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Conrad P. Ferrara, Program Support Section, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, Telephones: FTS 236–1836, Commercial: 404/329–1836.

Dated: March 20, 1987.

Elvin Hilyer,

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 87–6667 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–18–M

### Project Grants for Sexually Transmitted Diseases Research, Demonstrations, and Public and Professional Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1987

#### Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for project grants for Sexually Transmitted Diseases (STD) Research, Demonstrations, and Public Information and Education, and Professional Education, Training, and Clinical Skills Improvement Activities (formerly Venereal Disease Research, Demonstrations, and Public Information and Education). Note that public and professional education activities funded under this announcement are those which are to be national in scope and developmental in nature, and which can be carried out by a variety of agencies. Applications related to public and professional education aspects of basic STD control programs will not be considered under this announcement. These activities are included in a separate announcement for STD control grants to State and local health agencies (Reference **Federal Register** on June 27, 1985 (50 FR 26624)). Applications related to Acquired Immunodeficiency Syndrome will not be considered under this announcement.

#### Authority

This grant program is authorized by section 318(b) of the Public Health Service Act (42 U.S.C. 247c(b)) as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b, Subparts A and F. The Catalog of Federal Domestic Assistance Number is 13.978.

#### Eligible Applicants

Eligible applicants are the official public health agencies of States, political subdivisions of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa, and any other public or nonprofit private entity.

#### Program Objectives

The objectives of this grant program are to develop, improve, and evaluate methods for the prevention and control of STD through applied research and demonstrations; to develop, improve, apply, and evaluate methods and strategies for public information and education about STD; and to develop, improve, apply, and evaluate methods and strategies for improving professional (including allied health personnel) education, training, and clinical skills for the prevention and control of STD.

#### Areas of Interest—New Applications

Applications addressing any of the areas listed below will receive priority consideration for funding in Fiscal Year 1987:

A. *Evaluation of disease intervention strategies for resistant gonorrhea control*—Develop, implement, and evaluate innovative and cost-effective disease intervention strategies for the control of resistant gonorrhea that include consideration of the prime targets for counseling and sex partner referral, private health care provider counseling, and prediagnosis referral of sex partners.

B. *Evaulation of sexual behaviors and attitudes and STD acquisition among adolescents*—Evaluate sexual behaviors and attitudes and STD acquisition among adolescents by (1) comparing the prevalence of STD, the diagnostic methods most applicable, and compliance with standard treatment regimens in adolescents in different socioeconomic groups; (2) determining factors that lead toward health care seeking behavior and treatment compliance; and (3) developing and evaluating innovative techniques to increase preventive methods.

C. *Evaluation of human papilloma virus (HPV) infection, cervical neoplasia, and other STDs*—Assess HPV infection and its relationship with cervical dysplasia, neoplasia, cervical cancer, and other STDs, such as herpes simplex virus, to determine the most effective prevention factors associated with the acquisition of HPV by the "at risk" population.

D. *Development of a national program to advance Pelvic Inflammatory Disease (PID) control efforts in the hospital setting*—Design, develop, implement, and evaluate a professional education effort to ensure: (1) The ongoing orientation of medical staff in the nation's hospitals to comply with CDC protocols on the diagnosis, treatment, post treatment follow-up, and initial sex partner referral counseling of patients seen with PID; (2) the enhanced awareness of hospital medical staff of the need to refer PID patients to local health department STD programs for substantive disease intervention services; and (3) the establishment of a system to monitor hospital medical staff compliance with protocols and referral requirements.

E. *Evaluation of syphilis treatment in pregnancy and infancy*—Evaluate current recommended maternal and infant treatment regimens for syphilis in the following areas: (1) Propose and evaluate an alternative treatment regimen to erythromycin for the treatment of syphilis in penicillin-allergic pregnant women; (2) propose and evaluate alternative treatment regimens for the treatment of secondary syphilis in pregnant women and for the treatment of syphilis in third-trimester pregnant women; and (3) define and evaluate the risks in infants associated with the decrease in the use of single dose benzathine penicillin G treatment compared to 10-day daily penicillin therapy.

#### Availability of Funds

A. *New Applications*—Approximately $1,000,000 will be available in Fiscal Year 1987 to award approximately 5 new grants ranging from $100,000 to $300,000 with an average aware of $200,000. Depending upon the availability of funds, grants are usually

funded in 12-month budget periods within a 1 to 5-year project period.

B. *Continuation Applications*—Approximately $2,720,000 will be available in Fiscal Year 1987 to award 16 continuation grants ranging from $33,000 to $320,000 with an average award of $170,000. Ten of these grants are STD Prevention/Training (P/T) Center projects under the professional education component of this program. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds.

**Use of Grant Funds**

A. Grant funds may be used for the costs associated with organizing and conducting applied research, demonstrations, professional education and special public information and education programs.

B. Grant funds may be used to reimburse individuals asked to be participants in applied research. Such reimbursement, however, must be justified as necessary and reasonable. Furthermore, a schedule of reimbursements must be submitted for specific approval by the Grants Management Officer.

C. Requests for direct assistance (i.e., "in lieu of cash") for personnel and other forms of direct assistance will be considered.

D. Grant funds may not be used to supplant funds supporting existing sexually transmitted disease control services.

**Reporting Requirements**

A. Quarterly narrative reports may be required 30 days after the end of the each quarter subject to approval by the Office of Management and Budget (OMB). Narratives should address progress being made in achieving project objectives, problems which have been encountered (and methods used or changes being made to resolve problems) and other appropriate information.

B. Financial status reports must be submitted no later than 90 days after the end of each budget period.

C. Final financial status and progress reports are required no later than 90 days after the end of the project period.

D. Reports are to be submitted to the Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 324, Atlanta, Georgia 30305.

**Recipient Financial Participation Requirements**

There are no matching or cost participation requirements for this program. However, the application narrative should include information on the applicant's contribution to the overall program costs, if any.

**Application Content**

A. *Competing Applications*—Competing applications, including the initial application for a new project period, must include a narrative which details the following:

1. The background and need for project support, including information that relates to factors by which the application will be evaluated;
2. Long- and short-term objectives of the proposed project which are consistent with the purpose of the grant program and which are specific, measurable, realistic, and time-phased;
3. The methods and activities which will be undertaken to accomplish the objectives;
4. An evaluation plan to monitor the effectiveness of the project activities and the progress made toward meeting the objectives;
5. Evidence that qualified and experienced personnel are available, based upon successful outcomes from previous involvement with projects related to STD prevention and control or professional education.
6. Evidence of close collaboration with local or State STD control programs, hospitals, medical schools, laboratories, and any other agencies where joint liaison efforts would enhance the success of the project.
7. A budget and narrative justification consistent with the purpose and objectives of the project.
8. Any other information that will support the request for assistance.

B. *Continuation Funding*—An application for continued funding of these activities within an approved project period should contain the following:

1. A progress report on activities performed during the prior budget period, including a discussion of progress or lack of progress in accomplishing the objectives of the prior budget period;
2. Short-term objectives, methods of operation, and evaluation procedures for the new budget period;
3. An explanation for any changes in the need for grant support, long-term objectives, methods of operation, and evaluation procedures compared to information provided in previous applications;
4. A budget and accompanying justification consistent with the purpose and objectives of the project and the availability of funds.
5. For STD Prevention/Training Centers, evidence of compliance with the provisions of both the *Quality Assurance Guidelines for STD Clinics, 1986 and the STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training.*
6. Any other information that will support the request for assistance.

**Review and Evaluation Criteria**

A. *Competing Applications*—Competing applications, including the initial application for a new project period, will be reviewed and evaluated according to the following criteria.

1. The applicant's understanding of the purpose of the program including assessment of the timing and potential for positive impact of the project on the control of sexually transmitted diseases in the United States and on the national program of STD control.
2. The degree to which long- and short-range objectives are consistent with the National program goals and priorities, and are specific, measurable, and time-phased.
3. The quality of the plan of operation for conducting and monitoring activities designed to meet project objectives.
4. The extent to which the proposed project includes methods that are substantially different from, or are applied differently than, those included in standard STD control program operations and does not replicate prior or currently ongoing research.
5. The quality of the evaluation plan which specifies the methods and instruments of measurements to be used.
6. The extent to which qualified and experienced personnel are available, based upon successful outcomes from previous involvement with projects related to STD prevention and control or professional education.
7. The potential effectiveness of the applicant's collaboration with local or State STD control programs, hospitals, medical schools, laboratories, and any other agencies where joint liaison efforts would enhance the success of the project.
8. The potential appropriateness and feasibility of the project and the extent to which results may be transferred to other areas.

BEST COPY AVAILABLE

9. The extent to which the budget request is reasonable and consistent with the intended use of grant funds.

B. *Continuation Applications*—An application for continued funding will be reviewed and evaluated according to the following criteria:

1. Documented progress toward the achievement of established short- and long-range objectives.

2. The extent to which objectives for the new budget period are consistent with the purposes for which the grant was originally approved, and are realistic, specific, measurable, and time-phased.

3. The quality of the plan of operation for conducting and monitoring activities designed to meet project objectives.

4. The quality of the evaluation plan which specifies the methods and instruments to be used.

5. The extent to which the budget request is reasonable and consistent with the intended use of grant funds.

6. For STD Prevention/Training Centers, the extent to which the applicant has complied with the provisions of both the *Quality Assurance Guidelines for STD Clinics, 1986 and the STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training.*

**Application Submission and Deadline**

The original and two copies of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before May 15, 1987.

1. *Deadline*—Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on or before the deadline date; or,

b. Sent on or before the deadline date, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications*—Applications which do not meet the criteria in 1. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Other Submission and Review Requirements**

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (new applications—60-day review period).

**Where To Obtain Additional Information**

Information on application procedures, copies of application forms, and other material may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Pamela Chin, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–2550 or FTS 236–2550.

Dated: March 20, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87–6666 Filed 3–26–87; 8:45 am]

BILLING CODE 4160–18–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Pueblo of Santa Ana, NM; The Regents of the University of New Mexico Exchange of Lands Within Sandoval County, NM; Corrections

March 10, 1987.

In FR Doc. 86–28083 appearing on page 45062, in the issue for Tuesday, December 16, 1986, the following corrections are hereby made: Appearing on column three, under the heading Tract No. 1, the word "common" is to be inserted after "corner" in the eleventh line. In the sixteenth line, the letter "a" needs to be inserted after "to." In the eighteenth line, the letter "s" needs to be inserted on the word "section." In line twenty, the word "also" should be deleted and replaced with "along." Under the heading, "Tract No. 2," in the third line, the abbreviation "No." should be corrected to read as "N."

**Ross O. Swimmer,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 87–6671 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–02–M

### Bureau of Land Management

[AZ–940–4212–24; A–22640]

### Airport Patent Application, Mohave County, AZ

Dated: March 18, 1987.

**ACTION:** Notice of Airport Patent Application A–22640.

**FOR FURTHER INFORMATION CONTACT:** Marsha Luke, Bureau of Land Management, Arizona State Office (602) 241–5534.

**SUMMARY:** Notice is hereby given that pursuant to Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215), Lake Havasu City has applied for an airport patent for the following described public land:

**Gila and Salt River Meridian, Arizona**

A tract of land in sections 4, 9 and 10 all in Township 14 North, Range 20 West, Mohave County, Arizona, containing approximately 559.9 acres more particularly described as:

Beginning at the Northwest corner of said section 4; thence in a southerly direction along the west line of said section 4, 150 feet to the true point of beginning, thence in a southeasterly direction to a point on the south line of said section 10 said point being 1470 feet east of the southwest corner of said section 10; thence in a westerly direction along the south line of said sections 10 and 9 to a point 2500 feet west of the southeast corner of said section 9; thence in a northwesterly direction to a point on the west line of said section 4 said point being 1700 feet south of the northwest corner of said section 4; thence in a northerly direction along the west line of said section 4, 1550 feet to the true point of beginning.

The Federal Aviation Administration has determined that the land is necessary for airport purposes and has requested that the Bureau of Land Management convey title to the requested land to Lake Havasu City.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, for a period of one year from the date of publication.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit written comments to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Arizona State

Office, P.O. Box 16563, Phoenix, Arizona 85011.

**John T. Mezes,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-6672 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

---

[MT-070-07-4352-12]

## Emergency Area Closure; Montana

**AGENCY:** Butte District, Bureau of Land Management, Interior.

**ACTION:** Emergency area closure which restricts all public entry (vehicles and foot travel) from March 1 to July 15.

**SUMMARY:** This notice closes a 600-acre tract of public land to all public entry, including foot travel, from March 1 to July 15 to protect an active bald eagle breeding territory. The tract is located in T. 14 S., R. 5 W., Section 27 SW¼SW¼ and Section 34, N½, E½SW¼, SE¼.

The limited access designation will allow administrative access during the closure period only for crucial management actions, such as eagle production monitoring or authorized livestock grazing.

The area closure will remain in effect until the 1987 Interagency Travel Plan map for Southwest Montana is revised.

This action is being pursued in accordance with 43 CFR 8364.1, 43 CFR 8341.2, and to meet the requirements of the Endangered Species Act of 1973 as amended.

**FOR FURTHER INFORMATION CONTACT:** Jimmy D. Lewis, Area Manager, Dillon Resource Area, P.O. Box 1048, Dillon, Montana 59725.

**James A. Moorhouse,**

*District Manager.*

March 20, 1987.

[FR Doc. 87-6673 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-DN-M

---

[CA-930-07-4332-13; FES 87-9]

## Availability of Final Environmental Impact Statement; Bishop and Caliente Resource Areas Wilderness, Bakersfield District, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of final environmental impact statement (EIS) for the Benton-Owens Valley Bodie-Coleville Wilderness proposals.

**SUMMARY:** This EIS assesses the environmental consequences of managing 19 Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) "partial wilderness" alternatives for all of the WSAs.

The names of the 19 WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

Sacatar Meadows—18,175 acres; 11,447 acres suitable, 6,728 acres nonsuitable.

Cerro Gordo—16,102 acres; 16,102 acres nonsuitable.

Southern Inyo—36,600 acres; 27,420 acres suitable, 9,180 acres nonsuitable.

Independence Creek—6,250 acres; 6,250 acres nonsuitable.

Crater Mountain—7,260 acres; 7,260 acres nonsuitable.

Symmes Creek—8,130 acres; 8,130 acres nonsuitable.

Chicago Canyon—20,246 acres; 20,246 acres nonsuitable.

Fish Slough—14,450 acres; 14,450 acres nonsuitable.

Volcanic Tableland—11,840 acres; 11,840 acres nonsuitable.

Casa Diable—9,167 acres; 9,167 acres nonsuitable.

Excelsior—9,100 acres; 9,100 acres nonsuitable.

Granite Mountains—54,941 acres; 54,941 acres nonsuitable.

Walford Springs—12,250 acres, 12,250 acres nonsuitable.

Mormon Meadows—7,280 acres; 7,280 acres nonsuitable.

Mt. Biedeman—12,420 acres; 12,420 acres nonsuitable.

Bodie Mountains—23,360 acres; 23,360 acres nonsuitable.

Bodie—15,455 acres; 15,455 acres nonsuitable.

Masonic Mountains—6,600 acres; 6,600 acres nonsuitable.

Slinkard—6,760 acres; 6,760 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

**SUPPLEMENTARY INFORMATION:** A limited number of individual copies of the EIS may be obtained from the Area Managers, Bishop Resource Area, 873 North Main Street, Bishop, CA 93514, and Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20420

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825

or

Bureau of Land Management, Bakersfield District Office, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301.

**FOR FURTHER INFORMATION CONTACT:** Jim Jennings, Outdoor, Recreation Planner, Bakersfield District Office, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301, (805) 861-4287.

Dated: March 19, 1987.

**Bruce Blanchard,**

*Director, Office of Environmental Project Review.*

[FR Doc. 87-6425 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-40-M

---

[NM-018-07-4410-08]

## Availability of Draft Taos Resource Area Resource Management Plan/ Environmental Impact Statement (RMP/EIS)

**AGENCY:** Bureau of Land Management, Albuquerque District Taos Resource Area, New Mexico, Interior.

**ACTION:** Notice of Availability and Public Hearings.

**SUMMARY:** The Bureau of Land Management announces the availability of the Draft Taos RMP/EIS for public review and comment. This document analyzes land use planning options for approximately 564,000 acres of public land in northeast New Mexico. The BLM also recommends designation of 8 new Areas of Critical Environmental Concern (ACEC).

**DATE:** Comments on the Draft RMP/EIS will be accepted if they are submitted or post-marked no later than July 1, 1987. All comments must be sent to: Bureau of Land Management; Dan Wood, Taos Area Manager; P.O. Box 1045; Taos, New Mexico 87571-1045. There will be public hearings on the adequacy of the draft document at the following locations:

| Date and time | Meeting location |
|---|---|
| May 11, 1987—1:30 and 7:00 pm. | Taos, NM, Ramada Inn, South Santa Fe Road. |
| May 12, 1987—7:00 pm | Las Vegas, NM, PMN Conference Room, 420 Railroad |

| Date and time | Meeting location |
|---|---|
| May 13, 1987—1:30 and 7:00 pm. | Espanola, Chamisa Inn, 920 North Riverside Drive. |
| May 14, 1987—1:30 and 7:00 pm. | Santa Fe, High Mesa Inn, 3347 Cerrillos Road. |

Oral testimony at these meetings will be limited to ten minutes per person. A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies, and groups who have expressed interest in the Taos planning process.

**SUPPLEMENTARY INFORMATION:** Four alternatives for managing the public lands in the Taos Resource Area are proposed in the Draft RMP/EIS. Each alternative discusses the following issues:

1. Special Management Areas.
2. Transportation.
3. Vegetative Uses.
4. Land Ownership Adjustments.
5. Right-of-Way Exclusion Areas.

The first alternative discusses a level of management similar to the current situation. This alternative corresponds to the No-Action alternative required by NEPA. Alternative B emphasizes the protection and enhancement of natural and cultural resource values. Alternative C emphasizes the use and development of public land and resources. The Preferred Alternative provides for a combination of resource uses that would protect important environmental values and sensitive resources while at the same time allow development of certain resources which provide commercial goods and services.

**Areas of Critical Environmental Concern**

The potential ACECs which are evaluated in the Draft RMP/EIS are described below. Following the description of the values for which the area was nominated is an alphabetical listing which corresponds to major use restrictions which are summarized at the end of the ACEC discussion.

*Potential ACECs Proposed for Designation in the Preferred Alternative of the Draft RMP/EIS*

1. San Antonio/Pot Mountain (40,120 acres); nominated for its crucial winter range for elk, deer, and antelope. Major land use restriction: B, D, and E.
2. Guadalupe Mountain (4,440 acres); nominated for diverse wildlife species, varied recreational opportunities, and cultural resource sites. Major land use restrictions: B and E.
3. Ojo Caliente (13,200 acres); nominated for extensive cultural resource sites. Major land use restrictions: A, B, C, E, and F.
4. Agua Caliente (580 acres); nominated because the area has the potential for reintroduction of cutthroat trout. Major land use restrictions: B, C, F, and H.
5. Racecourse (1,080 acres); nominated because the area is an intensively used recreation area. Major land use restrictions: B, C, E, F, and H.
6. Embudo Canyon (1,840 acres); nominated for outstanding scenic, recreational, and wildlife habitat. Major land use restrictions: B, E, F, G, and H.
7. Black Mesa (6,500 acres); nominated for rare and endemic plant habitat. Major land use restrictions: B and F.
8. Sombrillo (4,480 acres); nominated for extensive paleontological resources. Major land use restrictions: B.

*Potential ACECs Evaluated but Not Proposed for Designation in the Draft RMP/EIS*

1. Rio Grande Recreation Area (7,230 acres); nominated as an intensive recreation area. Major land use restrictions: A, C, E, F, G, and H.
2. Rio Chama (4,260 acres); nominated for scenic values and intensive recreation use. Major land use restrictions: B, C, E, F, and H.
3. Sahlu Pueblo (2 acres); nominated for cultural values. Major land use restrictions: A and E.
4. Ku Pueblo (65 acres); nominated for cultural values. Major land use restrictions: A, C, E, and F.
5. Ojo del Zorro Pueblo (24 acres); nominated for cultural values. Major land use restrictions: B and C.
6. Pueblo Quemado (119 acres); nominated for cultural values. Major land use restrictions: B, C, E, and F.
7. Santa Cruz Lake (640 acres); nominated for recreational values. Major land use restrictions: B, F, and H.
8. La Caja Pueblo (85 acres); nominated for cultural resource values. Major land use restrictions: A, C, E, and F.
9. Pueblo Sarco (10 acres); nominated for cultural resource values. Major land use restrictions: A, C, E, and F.
10. La Cienega Mesa (416 acres); nominated for cultural resource values. Major land use restrictions: A, C, E, and F.
11. San Lazaro (77 acres); nominated for cultural resource values. Major land use restrictions: A, C, E, and F.
12. Fun Valley (25,500 acres); nominated for intensive recreational use area. No Major land use restrictions.
13. Sabinoso (15,760 acres); nominated for unique ecological resources and varied wildlife habitat. Major land use restrictions: B.
14. Rio Medio (560 acres); nominated because the area has important winter range for deer and elk. Major land use restrictions: C, E, F, and H.
15. Warm Springs (8,000 acres); nominated because the area has key winter range for elk and mule deer. Major land use restrictions: B, E and G.
16. Riparian areas. Nominated for important riparian and wildlife habitat. Major land use restrictions: C and F.
17. Windmill (9,450 acres); nominated for the area's grassland ecosystem. Major land use restrictions: B and E.
18. Lower Embudo (482 acres); nominated for riparian habitat and cultural resource sites. Major land use restrictions: A, C, E, and F.

*Symbols for Major Use Restrictions*

A Roads and trails limited to authorized users.
B Off-road vehicle use would be limited to existing roads and trails.
C Mineral withdrawal.
D Limit mineral sales.
E Apply special stipulations for oil and gas exploration and development.
F Restrict livestock grazing.
G Close to fuelwood gathering.
H Right-of-way exclusion area.

**FOR FURTHER INFORMATION OR COPIES OF THE DRAFT RMP/EIS, CONTACT:** Mary Zuschlag, RMP Team Leader, Taos Resource Area, P.O. Box 1045, Taos, New Mexico, 87571–1045. Telephone: (505) 758–8851.

Dated: March 20, 1987.

**Larry L. Woodard,**

*State Director.*

[FR Doc. 87–6689 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–FB

---

**[MT–930–07–4410–08; FES 87–10]**

## Environmental Impact Statement Availability; Dillon Resource Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of the final environmental impact statement for the Dillon Resource Area Wilderness planning amendment.

**SUMMARY:** The Final Dillon Resource Area Wilderness Planning Amendment and Environmental Impact Statement assesses the environmental consequences of managing eight wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area, (2) an "All Wilderness Alternative" for each wilderness study areas, and (3) a "Partial Wilderness Alternative" for four of the wilderness study areas.

The names of the wilderness study areas, their total acreages, and the

proposed actions for each are as follows:

Ruby Mountains—26,611 acres (15,615 acres suitable; 10,996 nonsuitable)
Blacktail Mountains—17,479 acres (10,586 acres suitable; 6,893 nonsuitable)
East Fork Blacktail Deer Creek—6,230 acres (all nonsuitable)
Hidden Pasture—15,509 acres (all nonsuitable)
Bell-Limekiln Canyons—9,650 acres (all nonsuitable)
Henneberry Ridge—9,806 acres (all nonsuitable)
Axolotl Lakes—7,804 acres (all nonsuitable)
Farlin Creek—1,139 acres (610 acres suitable; 529 nonsuitable)

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

**FOR FURTHER INFORMATION CONTACT:** James Moorhouse, District Manager, Butte District Office, BLM, P.O. Box 3388, Butte, Montana 59702, Telephone (406) 494–5059.

**SUPPLEMENTARY INFORMATION:** Copies of the environmental impact statement may be obtained from the District Manager, Butte District, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240
Dillon Resource Area, Bureau of Land Management, Post Office Box 1048, Dillon, Montana 59725
Montana State Office, Bureau of Land Management, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107.

Dated: March 19, 1987.

**Bruce Blanchard,**

*Director, Office of Environmental Project Review.*

[FR Doc. 87–6426 Filed 3–26–87; 8:45 am]

BILLING CODE 4310-DN-M

---

**[U–025770, U–0115811, U–0146348, U–42924]**

## Utah; Proposed Continuation of Withdrawal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation proposes that all or portions of four separate land withdrawals made for the Weber Basin Project continue for an additional 80 years. The lands would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

**ADDRESS:** Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, UT 84111.

**FOR FURTHER INFORMATION CONTACT:** Lillie Hikida, Utah State Office, (801) 524–3074.

The Bureau of Reclamation proposes that the following land withdrawals be continued for a period of 80 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands are involved:

1. U–025770, Commissioner's Order of June 12, 1957, 117.21 acres. Located in Box Elder County. T. 8 N., R. 2 W., SLM, Sec. 28.

2. U–0115811, Public Land Order 3676 dated June 10, 1965, 80 acres. Located in Morgan County. T. 2 N., R. 3 E., SLM, Sec. 10.

3. U–0146348, Public Land Order 4067 dated July 29, 1966, 643.90 acres. Located in Morgan County. T. 5 N., R. 5 E., SLM, Secs. 4 and 8., T. 6 N., R. 5 E., SLM, Sec. 34.

4. U–42924, Commissioner's Order of August 22, 1952: 93.81 acres. Located in Box Elder and Morgan Counties, T. 5 N., R. 1 E., SLM, Secs. 28 and 30., T. 2 N., R. 3 E., SLM, Sec. 14, and T. 8 N., R. 2 W., SLM, Secs. 22 and 27.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws but not the mineral leasing laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 23, 1987.

**Orval L. Hadley,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87–6668 Filed 3–26–87; 8:45 am]

BILLING CODE 4310-DQ-M

---

**[UT–050–4332–10]**

## Advisory Council Meeting and Tour

**AGENCY:** Bureau of Land Management, Richfield, Utah.

**ACTION:** Advisory Council Meeting and Tour.

**SUMMARY:** Notice is hereby given that an Advisory Council Meeting will be held in the Richfield District Office in Richfield, Utah on May 7, 1987 at 10:00 A.M. The tour is scheduled for the following day.

Agenda items include: The election of officers; the annual use fee for the Little Sahara Recreation Area; the Henry Mountain Coordinated Resource Management Plan; an update on the weed program; the Warm Springs Draft ROD/RPS; the District's Wild Horse Adoption Plan; the "Take Pride in America" program; a review of the District's environmental assessment program; the proposed Garkane powerline in Wayne County; a discussion on the Burr Trail; and a presentation on riparian management.

The tour will be along a portion of the Burr Trail and a portion of the Garkane proposed powerline route. The tour is open to the public; however, they must provide their own transportation.

The business meeting (May 7) is also open to the public. Interested persons may make oral statements to the Council from 2:00 P.M. to 3:00 P.M. Anyone wishing to make an oral statement should notify the Richfield District Manager by May 4, 1987. Records of the meeting will be available in the Richfield District Office for public inspection or copying within 30 days after the meeting.

For further information contact Bert Hart, Public Affairs Specialist, BLM, 150 East 900 North, Richfield, Utah 84701, (801)896–8221.

**Donald L. Pendleton,**

*District Manager.*

March 18, 1987.

[FR Doc. 87–6675 Filed 3–26–87; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-040-07-4212-02]

## Safford District (Arizona) Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held.

**DATE:** Friday, May 1, 1987, at 10:00 a.m.

**ADDRESS:** BLM Safford District Office, 425 E. 4th Street, Safford, Arizona.

**FOR FURTHER INFORMATION CONTACT:** Pete Zwaneveld, Public Affairs Specialist, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546. Telephone (602) 428-4040.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following items: Election of new officers; San Pedro Management Plan; Aravaipa Canyon Wilderness Management Plan; Districtwide planning update; District Wilderness EIS update; Management update; and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:30 p.m. or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must contact the Safford District Manager by April 30, 1987. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: March 20, 1987.

**Ray A. Brady,**

*District Manager.*

[FR Doc. 87-6676 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

---

[ID-050-07-4322-14]

## Shoshone District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management (BLM), Interior.

**SUMMARY:** This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

**DATE:** Thursday, April 23, 1987, at 9:00 a.m.

**ADDRESS:** BLM District Office, 400 West F. Street, Shoshone, Idaho 83352.

**FOR FURTHER INFORMATION CONTACT:** Jon Idso, DM, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208)886-2206 or FTS 554-6110.

**SUPPLEMENTARY INFORMATION:** The proposed agenda for the meeting is a field tour of proposed and completed range improvement projects.

Operation and administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The tour will be open to the public. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

**Jon H. Idso,**

*District Manager.*

[FR Doc. 87-6677 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-GG-M

---

[AZ-940-07-4212-13; A-21969]

## Realty Action, Exchange of Federal Mineral Estate; Arizona

March 16, 1987.

Notification is hereby given of the consummation of an exchange between the United States and Magma Copper Company, a Delaware Corporation. The Bureau of Land Management transferred the mineral estate in the following described land on March 16, 1987, by Patent No. 02-87-0018, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976:

**Gila and Salt River Meridian, Arizona**

T. 8 S., R. 17 E.,
Sec. 7, SE¼SE¼;
Sec. 8, SW¼SW¼, S½N½SW¼;

Containing 120 acres in Pinal County, Arizona.

In exchange the surface and mineral estates in the following described land were reconveyed to the United States:

**Gila and Salt River Meridian, Arizona**

T. 9 S., R. 18 E.,
Sec. 31, N½SE¼, SE¼SE¼;

Except a right-of-way 100 feet wide as conveyed to Phoenix and Eastern Railroad Co., by Deed dated January 4, 1905, recorded in Book 21 of Deeds, page 307, records of Pinal County, Arizona.

T. 10 S., R. 18 E.,
Sec. 5, SW¼NW¼;

Containing 160 acres more or less in Pinal County, Arizona.

The land acquired by the Federal government in this exchange will be open to entry under the public land laws, United States Mining and Mineral Leasing laws subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law, at 9:00 a.m. thirty days from publication of this notice.

All applications received prior to 9:00 a.m., thirty days from publication will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2-3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

Inquires concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

**John T. Mezes,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-6680 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

---

[AZ-020-07-4212-12; A 20346-A&B]

## Realty Action: Exchange of Public Lands, Pinal, Maricopa, and Yavapai Counties, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions of all of public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

**Gila and Salt River Meridian, Arizona**

*Pinal County*

T. 3 S., R. 7 E.,
Secs. 4, 5, 8, 14, 17, 22, 23, and 24 containing 1220 acres, more or less.

*Maricopa County*

T. 4 N., R. 1 E.,
Secs. 6, 7.
T. 7 N., R. 2 E.,
Secs. 4, 5, 8, 9, 15, 16, 17, 20, 21, 26, 27, 29, 34.
T. 8 N., R. 2 E.,
Secs. 1, 10, 11 12, 14, 22, 23, 26, 27, 28, 29, 32, 33, 34.

*Maricopa and Yavapai Counties*

T. 7 N., R. 1 E.,
Secs. 3, 4, 12.

*Yavapai County*

T. 16 N., R. 1 W.,
Sec. 1.

T. 14 N., R. 1 W.,
Secs. 28, 31, 33.
T. 16 N., R. 1 E.,
Secs. 6, 21.
T. 13 N., R. 1 E.,
Secs. 8, 13, 15, 18, 23, 26.
T. 12 N., R 1 E.,
Secs. 11, 24.
T. 9 N., R. 1 E.,
Secs. 14, 17, 18, 19, 20, 21, 28, 36.
T. 8 N., R. 1 E.,
Sec. 31.
T. 14 N., R. 2 E.,
Sec. 31.
T. 13 N., R. 2 E.,
Secs. 6, 7, 17, 18, 19, 20, 29, 30, 32.
T. 12 N., R. 2 E.,
Secs. 3, 4, 5, 8, 9, 10, 15, 18, 21, 28, 33.
T. 11 N., R. 2 E.,

Secs. 4, 5, 7, 8, 14, 17, 20, 21, 22, 23, 26, 27, 28, 29, 33, 34, 35, 36.
T. 10 N., R. 2 E.,
Secs. 1, 2, 3, 4, 9, 10, 11, 14, 15, 16, 17, 23, 26, 33, 35.
T. 9½ N., R. 2 E.,
Secs. 20, 23, 26, 34.
T. 9 N., R. 2 E.,
Secs. 3, 9, 10, 15, 22, 27, 29, 30, 31.
T. 11 N., R. 3 E.,
Secs. 1, 2, 3, 10, 11, 13, 14, 15, 19, 23, 24, 26, 27, 28, 29, 30, 31.
T. 9½ N., R. 3 E.,
Secs. 20, 21, 30.
T. 9 N., R. 3 E.,
Sec. 9, 18, 31.

*Pinal County*

T. 10 S., R. 11 E.,
Secs. 21, 28.
T. 10 S., R. 12 E.,
Sec. 22, 27, 30, 34, 35.

Aggregating 59,600 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 20, 1987.

**James E. May,**

*Acting District Manager.*

[FR Doc. 87-6681 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

**[AZ-020-07-4212-12; A-22448]**

## Realty Action; Public Lands; Arizona

This Notice of Realty Action amends the Notice of Realty Action published November 18, 1986 and amended December 11, 1986 and December 29, 1986 to include the following additional 3,114.90 acres of state lands that will be received by the United States in exchange for public lands under State Exchange A-22448.

**Gila and Salt River Meridian, Arizona**

T. 17 N., R. 12 W.,
Sec. 32, All.
T. 20 S., R. 21 E.,
Sec. 4, Lots 1-4;
Sec. 8, All;
Sec. 9, Lots 1-4, W½W½;
Sec. 17, All.
T. 21 S., R. 21 E.,
Sec. 12, S½SE¼;
Sec. 13, N½NE¼.
T. 21 S., R. 22 E.,
Sec. 7, Lots 3, & 4;
Sec. 19, N½NE¼;
Sec. 20, Lots 1-3, N½NW¼, N½SE¼;
Sec. 29, Lots 1-3.
T. 22 S., R. 21 E.,
Sec. 12, Lots 2-4, SW½SE¼.

Detailed information concerning this exchange can be obtained from Phoenix District Office. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 20, 1987.

**James E. May,**

*Acting District Manager.*

[FR Doc. 87-6682 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

**[AZ-010-07-4131-11; A-22594]**

## Realty Action; Arizona

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice.

**SUMMARY:** Recision of Notice of Realty Action Segregating lands in a proposed community mineral materials pit from appropriation under the mining and mineral leasing laws.

This notice hereby rescinds and cancels the Notice of Realty Action published February 23, 1987 in the **Federal Register**, Vol. 52, No. 35, page 5505. The land involved is 40 acres described as:

**Gila & Salt River Meridian, Mohave County, Arizona**

T. 40. N., R. 15 W.,
Sec. 9, NW¼SW¼.

**G. William Lamb,**

*Arizona Strip District Manager.*

March 18, 1987.

[FR Doc. 87-6683 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

**[AZ-020-07-4212-18; A-22627]**

## Realty Action; Lease or Conveyance of Public Lands for Public Purposes; Arizona

**SUMMARY:** The following described federal lands, located near St. Johns, Arizona, have been found suitable for disposal, via lease, to Apache County Board of Supervisors under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; U.S.C. 869 seq.) The subject lands are also suitable for disposal, via conveyance of title, to Apache County under Pub. L. 98-408.

**Gila and Salt River Meridian, Apache County, Arizona**

T. 11 N., R. 28 E.,
Sec. 18, N½SE¼.

Comprising 80 acres.

Apache County proposes to construct and operate a shelter care facility on the subject parcel. The lease of the lands would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. Road right-of-way A-18955.
3. Powerline right-of-way A-10117.
4. Telephone line right-of-way A-10023.

Conveyance of the lands under Pub. L. 98-408 would be subject only to the above listed rights-of-way.

Upon publication of this Notice in the **Federal Register**, this parcel of land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except as provided for in this order of classification. This Notice shall also serve to terminate, in part, classifications A-20346-D and A-22271 as to that part of the previous listed classifications which affect the N½SE¼ of section 18, T. 11 N., R. 28 E., G&SRM.

For a period of forty-five (45) days, from the date of publication of this Notice, interested parties may submit comments to the District Manager,

Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Further information concerning this realty action may be obtained from the Phoenix Resource Area Manager (602–863–4464).

Dated: March 18, 1987.

Henri R. Bisson,

*Acting District Manager.*

[FR Doc. 87–6684 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–32–M

---

[AZ–020–07–4212–14; A 21343]

## Realty Action; Sale of Public Land, Yavapai County, AZ

**AGENCY:** Bureau of Land Management (BLM), Interior.

**SUMMARY:** The Phoenix District proposes to sell by direct noncompetitive means to Bullwhacker Associates the following described .52 acre of public land for the appraised market value of $850.00. Minerals except oil and gas will be conveyed for an administrative fee of $50.00.

Gila & Salt River Meridian, AZ

T. 14 N., R. 1 W.,
Sec. 31, Lot 24.

Lot 24 is separated from other public land by a highway right-of-way. Its small size and location make management by BLM difficult and uneconomic. The only other adjacent landowner, the Prescott National Forest, is not interested in acquiring the subject land.

Disposal meets the criteria of the Federal Land Policy and Management Act of 1976: Surface disposal will be according to section 203 (90 Stat. 2750, 43 U.S.C. 1713) and minerals will be conveyed per section 209 (90 Stat. 2757, 43 U.S.C. 1719).

A patent will be issued subject to the following rights:

Highway right-of-way AR 033153 granted to Yavapai County Highway Department.

Telephone line right-of-way A 13912 granted to Mountain States Telephone and Telegraph Company.

A right-of-way is reserved for ditches and canals constructed by authority of the United States.

In accordance with the regulations of 43 CFR 2711.1–2(d), publication of this Notice will segregate the public lands described from appropriation under the public land laws, including the mining laws, but not from the mineral leasing laws.

The segregation of the above described lands shall terminate upon issuance of a document conveying such lands, upon publication in the Federal Register of a notice of termination of the segregation, or 270 days from the date of publication, whichever occurs first.

Detailed information concerning this public sale is available for review at the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days interested parties may submit comments to the Phoenix District Manager at the district address given above. Any comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director this realty action will become the final determination of the Department of the Interior.

Dated: March 17, 1987.

Henri R. Bisson,

*Acting District Manager.*

[FR Doc. 87–6685 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–32–M

---

[CO–070–06–4212–14; C–43105]

## Realty Actions; Noncompetitive Sale of Public Lands in Pitkin County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of noncompetitive sale.

**SUMMARY:** Pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), the Bureau of Land Management, Glenwood Springs Resource Area has identified a parcel of public land as suitable for disposal by noncompetitive sale.

**DATE:** Comments must be submitted on or before May 26, 1987.

**ADDRESS:** Additional information concerning this sale offering, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

Comments should be submitted to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Area Manager, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, Colorado 81602, or at telephone (303) 945–2341.

**SUPPLEMENTARY INFORMATION:** The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at the fair market value of $3,250.00.

Sixth Principal Meridian

T. 10 S., R. 84 W.,
Sec. 7.

Lot 35 containing 0.04 acres in Pitkin County, Colorado.

This land has not been used for and is not required for any federal purpose. The location and physical characteristics of the parcel make it difficult and uneconomical to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations as approved in the Glenwood Springs Resource Management Plan, January 1984.

This land is being offered to the Smuggler Mobile Home Owners Association, Inc., by direct noncompetitive sale at the appraised fair market value.

Minerals beneath the parcel will also be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)). On the sale date, the bidder will be required to deposit an additional $50.00 nonrefundable filing fee and application for the conveyance of offered minerals pursuant to 43 CFR 2720.1–2(c).

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

### Sale Procedures

The designated bidder, Smuggler Mobile Home Owners Association, Inc., will be required to submit payment of at least 30 percent of the appraised fair market value by cash, certified or cashier check, or money order to the Bureau of Land Management at 50629 Highway 6 & 24, Glenwood Springs, Colorado, on the 29th day of May 1987. The balance of the appraised fair market value will be due within 180 days, together with all advertising costs associated with the sale offering, payable in the same form at the same location. Failure to submit the remainder

of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit.

**Richard T. Hunter,**

*Acting District Manager, Grand Junction District.*

March 12, 1987.

[FR Doc. 87-6679 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-JB-M

---

**[NM-940-07-4220-11; NM NM 46844]**

## Proposed Continuation of Withdrawal, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture proposes that a 600.00-acre withdrawal for the Magdalena Ranger Station Administrative Site and Pasture (formerly Magdalena Ranger Station Pasture) continue for an additional 19 years. The land would remain closed to location and entry under the mining laws but would be opened to surface entry and has been and would remain open to leasing under the mineral leasing laws.

**DATE:** Comments should be received by June 25, 1987.

**ADDRESS:** Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 725 dated June 4, 1951, be continued for a period of 19 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**New Mexico Principal Meridian**

*Cibola National Forest*

Magdalena Ranger Station Administrative Site and Pasture (formerly Magdalena Ranger Station Pasture)

T. 2 S., R. 4 W.,
Sec. 33, NE¼, N½SE¼;
Sec. 34, W½NE¼, NW¼, N½SW¼, NW¼SE¼.

The area described contains 600.00 acres in Socorro County.

The withdrawal is essential for protection of substantial improvements on the site described above located within the Magdalena Ranger District, Cibola National Forest. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to such forms of disposition that may by law be made of National Forest lands other than under the mining laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 19, 1987.

**Robert L. Schultz,**

*Acting State Director.*

[FR Doc. 87-6692 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-FB-M

---

**[NM-940-07-4220-11; NM NM 070229]**

## Proposed Continuation of Withdrawal, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture proposes that a 107.00-acre withdrawal for the Gila Center Administrative Site (formerly T J Administrative Site) continue for an additional 20 years. The land would remain closed to location and entry under the mining laws and has been and would remain open to leasing under the mineral leasing laws.

**DATE:** Comments should be received by June 25, 1987.

**ADDRESS:** Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 2655 dated April 9, 1962, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**New Mexico Principal Meridian**

*Gila National Forest*

Gila Center Administrative Site (Formerly T J Administrative Site)

T. 12 S., R. 14 W.,
Sec. 25, N½SW¼NE¼, N½S½SW¼NE¼, N½SE¼NW¼, SW¼SE¼NW¼, N½SE¼SE¼NW¼, SW¼SE¼SE¼NW¼, W½NE¼NE¼SW¼, W½W½SE¼NE¼NE¼SW¼, W½NE¼SW¼, W½NE¼SE¼NE¼SW¼, W½SE¼NE¼SW¼, SE¼SE¼NE¼SW¼, S½S½S½NW¼SE¼.

The area described contains 107.00 acres in Catron County.

The withdrawal is essential for protection of substantial capital improvements on the Wilderness Ranger District, Gila National Forest. The withdrawal closed the land to mining but not mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 19, 1987.

**Robert L. Schultz,**

*Acting State Director.*

[FR Doc. 87-6693 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-FB-M

---

**[NM-940-07-4220-11; NM NM 12600]**

## Proposed Continuation of Withdrawal, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture proposes that a 1,629.96-acre withdrawal for the Canjilon Lakes and Canjilon Creek Campground and Trout Lakes Recreation Area continue for an additional 20 years. The land would remain closed to location and entry under the mining laws but has been and would remain open to leasing under the mineral leasing laws.

**DATE:** Comments should be received by June 25, 1987.

**ADDRESS:** Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504–1449.

**FOR FURTHER INFORMATION CONTACT:** Kay Thomas, BLM, New Mexico State Office, 505–988–6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 5370 of July 25, 1973, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

*Trout Lakes Recreation Area*

T. 27 N., R. 5 E.,
Sec. 1, S½SW¼NW¼;
Sec. 2, SW¼ of lot 2, lots 3, 4, N½SW¼NE¼, S½N½SE¼NE¼, S½SE¼NE¼, N½N½SW¼NW¼, NE¼SE¼NW¼, N½NW¼SE¼NW¼;
Sec. 3, E½ of lot 1, N½NE¼SE¼NE¼.
T. 28 N., R. 5 E.,
Sec. 28, lot 4;
Sec. 34, lot 1, S½ lot 2, E½ lot 3, lot 4, NW¼SE¼, S½NE¼SE¼, N½SE¼SE¼, SE¼SE¼SE¼;
Sec. 35, lot 1, NW¼SW¼NW¼, NW¼SW¼SW¼, S½SW¼SW¼, SW¼SE¼SW¼.

*Canjilon Lakes and Canjilon Creek Campground*

T. 27 N., R. 6 E. (unsurveyed),
Sec. 19, E½NE¼, SW¼NE¼, E½SW¼, SE¼;
Sec. 20, NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼, W½W½SE¼;
Sec. 29, W½E½, W½SE¼SE¼;
Sec. 30, NW¼NE¼, N½NW¼, N½S½NW¼;
Sec. 32, NW¼NE¼, W½SW¼NE½, E½NE¼NW¼.

The areas described aggregate 1,629.96 acres in Rio Arriba County.

The withdrawal is essential for protection of substantial improvements on the sites described above located within the Canjilon Ranger District, Carson National Forest. The withdrawal closed the lands to mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 19, 1987.

**Robert L. Schultz,**

*Acting State Director.*

[FR Doc. 87–6694 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–FB–M

---

[CO–070–07–4341–10]

## Colorado Off-Road Vehicle Designations

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of off-road vehicle designation decisions.

**SUMMARY:** Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

**DATE:** This plan will become effective June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard Freel, District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

**SUPPLEMENTARY INFORMATION:** The following described lands under administration of the Grand Junction District of the Bureau of Land Management are designated as closed, limited, or open to off-road motorized vehicle use.

The 1,280,060 acres of public land affected by the designations are within the Grand Junction Resource Area, which includes public land in portions of Garfield, Mesa, Delta, and Montrose Counties, Colorado, and Grand County, Utah. The designations are a result of resource management decisions made in the 1986 Grand Junction Resource Area Management Plan. Comments received from public meetings in 1984 and 1985, coordination with other federal, state, and local agencies, and comments received during a 90-day public comment period in 1986 influenced these designation decisions. These designations for public land located within the area listed below become effective immediately and will remain in effect until modified or rescinded by the Authorized Officer. This designation supesedes previous emergency off-road vehicle decisions in the Black Ridge Wilderness Study Area.

### A. Closed Designation

All motorized vehicle use is prohibited.

1. Mount Garfield—1,280 acres located 6 miles northeast of Grand Junction, Colorado.

2. Badger Wash Area of Critical Environmental Concern—1,520 acres located 8 miles northwest of Mack, Colorado.

3. Town of Palisade Municipal Watershed—3,840 acres located 3 miles east of Palisade, Colorado.

4. *Cryptantha elata* Sensitive Plant Study Site—80 acres located 7 miles southeast of Grand Junction, Colorado.

5. Fruita Paleontological Site—280 acres located 2 miles southwest of Fruita, Colorado.

6. Unaweep Seep Research Natural Area—37 acres located 8 miles northeast of Gateway, Colorado.

7. McDonald Creek Cultural Area—160 acres located 10 miles west of Mack, Colorado.

8. Black Ridge Canyons and Black Ridge Canyons West Wilderness Study Area—73,937 acres located 11 miles west of Grand Junction, Colorado.

9. Dominquez Canyon Wilderness Study Area—73,568 acres located 18 miles south of Grand Junction, Colorado.

10. Sewemup Mesa Wilderness Study Area—18,835 acres located 9 miles south of Gateway, Colorado.

11. The Palisade—1,920 acres located 2 miles north of Gateway, Colorado (within the Palisade Outstanding Natural Area).

12. Sinbad Valley Cliffs—1,920 acres located 9 miles south of Gateway, Colorado.

13. Gunnison Gravels Research Natural Area—5 acres located 13 miles south of Grand Junction, Colorado.

### B. Limited Designations

1. Limited to Designated Roads and Trails. Motorized vehicle use is

permitted only on routes signed as open for use. Cross-country vehicle travel is prohibited.

a. Pyramid Rock Research Natural Area—470 acres located 2 miles west of De Beque, Colorado.

b. South Shale Ridge—22,500 acres located 5 miles west of De Beque, Colorado.

c. Baxter/Douglas Soil Slump Areas—18,000 acres located 25 miles north of Fruita, Colorado.

d. Rabbit Valley Paleontological Area of Critial Environmental Concern—280 acres located 8 miles west of Mack, Colorado.

e. Little Book Cliffs Wild Horse Area (except that portion in Coal Canyon)—23,761 acres located 8 miles northeast of Grand Junction, Colorado.

f. The Palisade Outstanding Natural Area—17,258 acres located 2 miles north of Gateway, Colorado (does not include 1,920 acres closed to ORV).

2. Seasonal Limitations. The restrictions listed below are in effect for a specific period of the year.

a. Coal Canyon portion of the Little Book Cliffs Wild Horse Area—6,500 acres located 8 miles northeast of Grand Junction, Colorado. Between December 1 and June 30, motorized vehicle use is prohibited. Between July 1 and November 30, vehicle use is limited to designated roads and trails.

b. Dominguez Campground Road—1,280 acres located 22 miles south of Grand Junction, Colorado. Between November 15 and May 15, motorized vehicle use is prohibited. Between May 16 and November 14, vehicle use is limited to existing roads.

c. Beehive—3,200 acres located 2 miles east of Mesa, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

d. Lands End—6,400 acres located 7 miles east of Whitewater, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

e. Chalk Mountain—6,400 acres located 3 miles west of Mesa, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

f. Sunnyside—4,820 acres located 4 miles north of Mesa, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

g. Big Salt Wash, Coal Gulch—13,440 acres located 15 miles north of Fruita, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

h. Blue Mesa—3,200 acres located 12 miles south of Gateway, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

i. Demaree—21,050 acres located 12 miles north of Mack, Colorado. Between December 1 and May 1, motorized vehicle use is prohibited. Between May 2 and November 30, vehicle use is limited to existing roads and trails.

j. Big Game Winter Range in Harsh Winters—121,600 acres located throughout the Grand Junction Resource Area. Motorized vehicle use may be prohibited or restricted in these areas on an emergency basis during harsh winters.

3. Limited to Existing Roads and Trails Year Round. Motorized vehicle use is permitted only on existing roads and trails. Cross-country vehicle travel is prohibited.

a. Transect No. 7 Cultural Site—5,760 acres located 6 miles northeast of Palisade, Colorado.

b. Sinbad Valley and Dolores River Corridor—15,000 acres located 10 miles south of Gateway, Colorado.

c. Rabbit Valley—9,320 acres located 8 miles west of Mack, Colorado.

d. Hunter/Garvey Canyons—19,000 acres located 13 miles north of Fruita, Colorado.

e. South Slope Battlement Mesa—14,700 acres located 2 miles north of Collbran, Colorado.

f. Ruby Canyon—10,000 acres located 3 miles west of Loma, Colorado.

g. Bangs Canyon—40,000 acres located 4 miles south of Grand Junction, Colorado.

h. Cactus Park—1,000 acres located 13 miles south of Grand Junction, Colorado.

i. Granite Creek—15,000 acres located 10 miles north of Gateway, Colorado.

j. Grand Valley—150,000 acres located in the Grand Valley adjacent to Grand Junction, Colorado.

k. Timber Ridge—10,880 acres located 12 miles south of Fruita, Colorado.

C. Open Designations

1. Open for intensive public use. Vehicles may use roads and trails, and travel cross country in these areas, year round, subject to the operating regulations and vehicle standards set forth in the Code of Federal Regulations (43 CFR Part 8340).

a. 29 Road Area—10,240 acres located 2 miles northwest of Clifton, Colorado.

b. 25 Road Area—600 acres located 5 miles north of Grand Junction, Colorado.

c. 18 Road Area—400 acres located 6 miles north of Fruita, Colorado.

2. The remaining public land in the Grand Junction Resource Area is designated open to general motorized vehicle use, subject to the operating regulations and vehicle standards set forth in the Code of Federal Regulations (43 CFR Part 8340).

The Environmental Impact Statement for the Grand Junction Resource Area Resource Management Plan describes and analyzes the impacts of these designations. This Environmental Impact Statement and maps of the off-road vehicle designations are available at the office listed above.

Richard Freel,

*District Manager.*

March 13, 1987.

[FR Doc. 87-6678 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-JB-M

---

[CO-050-4212-13; C-42319]

## Realty Action; Exchange of Public Lands in Park County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Exchange of public and private land in Park County, Colorado, C-42319; segregation from all forms of appropriation under the public land laws.

**SUMMARY:** The exchange proposal described below would acquire non-Federal lands which have siginficant public values for wildlife habitat, recreation, and livestock grazing. The subject lands are located in South Park, Colorado.

**DATE:** Comments must be received within 45 days of publication of this notice.

**ADDRESS:** Submit comments to: District Manager, Bureau of Land Management, Canon City District Office, 3080 E. Main, P.O. Box 311, Canon City, CO 81212.

**SUPPLEMENTARY INFORMATION:** The following described public land has been determined to be suitable for exchange under the provisions of section 206 of the "Federal Land Policy and Management Act of 1976", 43 U.S.C. 1715, 1716.

Sixth Principal Meridian

T. 12 S., R. 73 W.
Sec. 5: lot 3
Sec. 17: NW¼
Sec. 18: lot 5
Sec. 19: lots 1-4

Sec. 36: N½NE¼NW¼NW¼, SW¼NE¼ NW¼NW¼, NW¼NW¼†NW¼, N½†SW¼†NW¼ NW¼
T. 13 S., R. 73 W.
Sec. 1: lots 1–4, S½NE¼, SE¼NW¼, NE¼SE¼, S½SE¼
Sec. 6: lots 6, 7, E½SW¼, W½SE¼
Sec. 8: N½NE¼, SE¼NW¼, S½SE¼
Sec. 15: SE¼SE¼
Sec. 16: W½NW¼
Sec. 17: NE¼, SW¼SW¼
Sec. 18: lots 2, 3, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼
Sec. 19: E½NE¼
Sec. 20: W½NW¼
Sec. 22: NE¼NE¼
Sec. 25: N½SW¼, SE¼SW¼
Sec. 28: S½NE¼, SW¼NW¼
Sec. 27: NE¼
Sec. 30: E½NE¼
T.12 S., R. 74 W.
Sec. 4: lot 3, SE¼SE¼
Sec. 11: SE¼SE¼
Sec. 29: N½N½
Sec. 33: NE¼SW¼, SW¼SE¼
Sec. 35: W½SW¼
T. 13 S., R. 74 W.
Sec. 1: SW¼NW¼, N½SW¼
Sec. 2: lot 4, SE¼NE¼, SE¼
Sec. 10: NW¼NE¼, SE¼
Sec. 11: S½SW¼, NW¼SE¼
Sec. 15: NW¼NW¼, NE¼SW¼
T. 12 S., R. 75 W.
Sec. 13: SW¼SW¼
Total 3,628.57 acres.

In exchange for these lands, the United States would acquire the following described private lands in Park County:

**Sixth Principal Meridian**

T. 13 S., R. 73 W.
Sec. 30: lots 3, 4, E½SW¼
Sec. 31: lots 1, 2, 3, 4, NE¼ North of Park County Rd. 116, E½W½
T. 12 S., R. 74 W.
Sec. 31: lots 1, 2, 3, NE¼ , E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼
Sec. 32: W½W½, SE¼SW¼
T. 13 S., R. 74 W.
Sec. 4: lot 3, SE¼NW¼
Sec. 13: S½SW¼, NE¼SW¼
Sec. 14: S½SE¼
Sec. 22: NE¼
Sec. 23: N½, N½S½, SE¼SE¼
Sec. 24: All
Sec. 25: All
Sec. 35: E½E½, SW¼NE¼, NW¼SE¼
Total 3,899.70 acres.

The following additional private lands will be included only if needed to equalize values:

T. 12 S., R. 74 W.
Sec. 31: lot 4, SE¼SW¼, SW¼SE¼
T. 13 S., R. 74 W.
Sec. 6: lots 2, 3, 4, 5, SW¼NE¼, SE¼NW¼
Total 360.12 acres.

The purpose of the exchange is to acquire non-Federal lands which have significant public values for wildlife habitat, recreation, and livestock grazing. Acquisition of these lands would create a more manageable public land unit in the area.

The lands to be obtained by the United States have good legal access and access to adjoining public lands will improve.

The public lands to be transferred are small, scattered parcels with limited access.

The exchange is consistent with the Bureau's planning for the lands involved. The action has been discussed with Park County officials and the governor's office.

The value of the lands to be exchanged is approximately equal; the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

All Federal mineral rights will be retained by the U.S. Government.

All existing access rights will continue to be recognized and reserved.

Publication of this notice segregates the public lands from the operation of all non-discretionary appropriations, including the mining laws, for a period of two (2) years from the date of publication.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning the exchange, including the planning amendment and the environmental assessment is available for review at the Royal Gorge Resource Area, 831 Royal Gorge Blvd., P.O. Box 1470, Canon City, CO 81212, Phone: (303) 275–7578. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

**Donnie R. Sparks,**

*District Manager.*

[FR Doc. 87–6686 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–JB–M

---

**[NV–030–07–4212–11; N–46061]**

## Realty Action; Lease or Sale of Public Lands for Recreation and Public Purposes; Washoe County, NV

The following described public land has been identified as suitable and will be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

**Mount Diablo Meridian, Nevada**

T. 18 N., R. 19 E.,
Sec. 20, W½SW¼SE¼SE¼SE¼,W½E ½SW¼SE¼SE¼SE¼.

The land contains 1.875 acres. The State of Nevada proposes to use the land for a wildland fire protection station.

The land is not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws and the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: March 20, 1987.

**Norman L. Murray,**

*Acting District Manager.*

[FR Doc. 87–6687 Filed 3–26–87; 8:45 am]

BILLING CODE 4310–HC–M

---

**[NV–930–07–4212–11; N–44983]**

## Battle Mountain District; Tonopah Resource Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Realty action, lease or sale of public lands for recreation and public purposes in Nye County, NV.

**SUMMARY:** The following described public lands have been determined to be suitable and will be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

**Mount Diablo Meridian, Nevada**

T. 2 N., R. 42 E.,

Section 1, SW¼NE¼, E½SE¼NW¼.

The areas described aggregate 60 acres.

The lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. The land will be used for the construction of a high school and vocational school complex.

The lands described in this notice will not be offered for lease or sale until the classification becomes effective, all required environmental, archaeological, and mineral clearances are completed and all application requirements are met.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands together with the right to prospect for, mine, and remove such deposits under applicable laws.

And will be subject to:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register** the above described public lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to applications under the mineral leasing laws and application under the Recreation and Public Purposes Act.

**Comments**

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

**Terry L. Plummer,**

*District Manager, Battle Mountain, Nevada.*

March 4, 1987.

[FR Doc. 87-6688 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-942-07-4520-12]

## Arizona; Notice of Filing of Plats of Survey

March 20, 1987.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A supplmental plat showing subdivisions of lots A and C, section 27, Township 7 North, Range 2 East, Gila and Salt River Meridian, Arizona, was accepted January 13, 1987, and was officially filed January 16, 1987.

A supplemental plat showing a subdivision of original lot 5, section 33, Township 12 South, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted January 5, 1987, and was officially filed January 8, 1987.

These plats were prepared at the request of Bureau of Land Management, Phoenix District Office.

A plat representing the corrective survey of a portion of the subdivision lines in section 26, Township 6 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted January 14, 1987, and was officially filed January 20, 1987.

This plat was prepared for the U.S. Forest Service Regional Office, Albuquerque, New Mexico.

A plat (in 3 sheets) representing a dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and a survey of subdivisions in sections 21 and 28, Township 13 North, Range 2 East, Gila and Salt River Meridian, Arizona, was accepted February 5, 1987, and was officially filed February 13, 1987.

A plat representing a dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and a survey of subdivisions in section 19, Fractional Township 15½ North, Range 4 West, Gila and Salt River Meridian, Arizona, was accepted January 14, 1987, and was officially filed January 20, 1987.

A plat representing a dependent resurvey of a portion of the south and west boundaries and a portion of the subdivisional lines, and a survey of subdivisions in section 31, Township 16 North, Range 4 West Gila and Salt River Meridian, Arizona, was accepted January 14, 1987, and was officially filed January 20, 1987.

These plats were prepared at the request of the U.S. Forest Service, Prescott National Forest.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

**James P. Kelley,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 87-6690 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-32-M

[MT-920-07-4520-11]

## Land Resource Management; Filing of Plat Survey; Montana

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice of filing of plats of survey.

**SUMMARY:** Plats of survey of the lands described below accepted February 10, 1987, and February 17, 1987, were officially filed in the Montana State Office effective 10 a.m. on March 16, 1987.

**Principal Meridian, Montana**

T. 13 N., R. 26 E.

The plat, in three sheets, representing the dependent resurvey of portions of the Third Standard Parallel North through Range 26 East, the Coulson Guide Meridian through Township 13 North, the east boundary, the north boundary, and the subdivisional lines; and the survey of the subdivision of sections 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 18, 20, 21, 23, 28, 29, 30, 31, 32, and 33, Township 13 North, Range 26 East, was accepted February 10, 1987. The area described is in Petroleum County.

This survey was executed at the request of the Lewistown District Office for the administrative needs of the Bureau.

**Principal Meridian, Montana**

T. 12 N., R. 6 W.

The plat representing the dependent resurvey of line 8–9, Mineral Survey No. 1002, Placer; and the survey of Tract 42 in section 36, Township 12 North, Range 6 West, was accepted February 17, 1987. The area described is in Lewis and Clark County.

**Principal Meridian, Montana**

T. 16 N., R. 3 W.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the adjusted original meanders of the left bank of the Missouri River downstream thourgh section 24; and the survey of the subdivision of section 24, Township 16

North, Range 3 West, was accepted February 17, 1987. The area described is in Lewis and Clark County.

These surveys were executed at the request of the Butte District Office for the administrative needs of the Bureau.

**EFFECTIVE DATE:** March 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: March 20, 1987.

**Dean Stepanek,**

*State Director.*

[FR Doc. 87-6691 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-DN-M

---

## Minerals Management Service

### Availability of a Draft Environmental Impact Statement (EIS) on the Proposed Marine Mineral Lease Sale in the Hawaiian Archipelago and Johnston Island Exclusive Economic Zone (EEZ)

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Minerals Management Service (MMS) and the State of Hawaii have prepared a draft EIS relating to the proposed lease sale for minerals other than oil, gas, and sulphur (minerals) of available blocks in the Hawaiian and Johnston Island EEZ for cobalt-rich manganese crusts. The proposed lease sale, authorized to be held under section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337), will offer for lease approximately 26,900 square kilometers. This Notice announces the availability of the draft EIS, a schedule of public hearings on the draft EIS, provides a list of locations where the draft EIS is available for inspection, and solicits comments concerning the draft EIS from interested parties.

**DATES:** Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the Program Director, Office of Strategic and International Minerals; or Robert G. Paul, telephone (213) 514-6140 or (FTS) 795-6140; or Dr. Charles L. Morgan, State of Hawaii EIS Coordinator, telephone (808) 942-9556, by May 22, 1987.

Written testimony from the hearings and comments on the draft EIS must be hand-delivered or postmarked by June 25, 1987.

The hearings will be held on the following dates and times indicated:

a. Wednesday, May 27, 1987, State Capitol Auditorium, State Capitol, Honolulu, HI, (corner of Punchbowl and Beretania Streets), 10:00 a.m., and 7:00 p.m.

b. Thursday, May 28, 1987, University of Hawaii at Hilo, Campus Center, Room 306, Hilo, HI, 10:00 a.m. and 7:00 p.m.

c. Friday, May 29, 1987, Kona Hilton, Resolution Room, 75-5822 Alii Drive, Kailua-Kona, HI, 7:00 p.m.

**ADDRESS:** Copies of the draft EIS may be obtained by written request or by telephone from the following:

Dr. Charles L. Morgan, State EIS Coordinator, Manganese Crust EIS Project, 1110 University Avenue, Room 411, Honolulu, Hawaii 96826, (808) 942-9556

Mr. Robert G. Paul, Federal EIS Coordinator, Office of Strategic and International Minerals, Minerals Management Service, 11 Golden Shore, Suite 260, Long Beach, California 90802, (213) 514-6140 or (FTS) 795-6140

Written testimony and comments on the draft EIS should be addressed to the Program Director, Office of Strategic and International Minerals; Minerals Management Service; 11 Golden Shore, Suite 260; Long Beach, California 90802.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Paul, Office of Strategic and International Minerals; Minerals Management Service, telephone (213) 514-6140 or (FTS) 795-6140; or Dr. Charles L. Morgan, State of Hawaii EIS Coordinator, telephone (808) 942-9556.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of the Interior, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, in conjunction with the State of Hawaii, is considering the potential economic and environmental impacts resulting from the recovery of cobalt-rich manganese crusts found in the EEZ surrounding the Hawaiian Archipelago. The MMS announced its intent to prepare an EIS on exploration for and possible recovery of cobalt-rich manganese crusts in the **Federal Register** on March 5, 1984 (49 FR 8089). Public hearings were held in Honolulu and Hilo, Hawaii, on April 30 and May 1, 1984, respectively, to assist in determining the scope of the EIS. To further delineate the areas of interest for recovery of cobalt-rich manganese crusts, a Call for Information was published in the **Federal Register** on August 28, 1984 (49 FR 34099), and amended on November 26, 1984 (49 FR 46509), to extend the comment period.

The **Federal Register** Notices dated March 5 and August 28, 1984, were amended by two other Notices on April 5, 1985 (50 FR 13673 and 50 FR 13674), to reopen the comment period and expand the applicable area to include portions of the EEZ Adjacent to Johnston Island.

Copies of the draft EIS are available for inspection at the following public libraries:

*California*

Scripps Library, University of California—San Diego, Scripps Institution of Oceanography, La Jolla, CA

Long Beach Main Library, 101 Pacific Avenue, Long Beach, CA

West Los Angeles Regional Library, 11360 Santa Monica Boulevard, Los Angeles, CA

San Francisco Public Library, Government Documents Department, Civic Center, San Francisco, CA

*Hawaii*

Aiea Library, 99-143 Moanalua Road, Aiea, HI

Ewa Beach Community School Library, 91-950 North Road, Ewa Beach, HI

Hilo Community College Library, UH-Hilo Main Library, 1400 Kapiolani Street, Hilo, HI

UH-Hilo Main Library, 1400 Kapiolani Street, Hilo, HI

HI Hilo Public Library, 300 Waianuenue Avenue, Hilo, HI

Aina Haina Library, 5246 Kalanianaole Highway, Honolulu, HI

DPED Library, 335 Merchant Street, Honolulu, HI

Hamilton Library, University of Hawaii Manoa Campus, Honolulu, HI

Hawaii Kai Library, 249 Lunalilo Home Road, Honolulu, HI

Hawaii State Library, 478 South King Street, Honolulu, HI

Honolulu Community College Library, 874 Dillingham Boulevard, Honolulu, HI

Kaimuki Regional Library, 1041 Koko Head Avenue, Honolulu, HI

Kalihi-Palama Library, 135 Kalihi Street, Honolulu, HI

Kapiolani Community College Library, 4303 Diamond Head Road, Honolulu, HI

Kapiolani Community College Library, 620 Pensacola Street, Honolulu, HI

Library for the Blind & Physically Handicapped, 402 Kapahulu Avenue Honolulu, HI

Liliha Library, 1515 Liliha Street, Honolulu, HI

Manoa Library, 2716 Woodlawn Drive, Honolulu, HI

McCully-Moiliili Library, 2211 South King Street, Honolulu, HI

Salt-Lake/Moanalua Library, 848 Ala Lilikoi Street, Honolulu, HI
Waikiki-Kapahulu Library, 400 Kapahulu Avenue, Honolulu, HI
Kahuku Community-School Library, 56–490 Kamehameha Highway, Kahuku, HI
Maui Community College Library, 310 Kaahumanu Avenue, Kahului, Maui, HI
Kailua-Kona Library, 75–138 Haalala Road, Kailua-Kona, HI
Kailua Library, 239 Kuulei Road, Kailua, HI
Mountain View Community School Library, Highway 11, Kamuela, HI
Thelma Parker Memorial Community School Library, Mamalahoa Highway, Kamuela, HI
Kaneohe Regional Library, 45–829 Kamehameha Highway, Kaneohe, HI
Windward Community College Library, 25–720 Keaahala Road, Kaneohe, HI
Bond Memorial Library, Akoni Pule Highway, Kapaau, HI
Molokai Library, Kaunakakai, HI
Keaau Community School Library, Pahoa Highway, Keaau, HI
Lanai Community School Library, Fraser Avenue, Lanai City, HI
Kauai Community College Library, 3–1901 Kaumualii Highway, Lihue, Kauai, HI
Kauai Regional Library, 4344 Hardy Street, Lihue, HI
Mililani Library, 25–1240 Meheula Parkway, Mililani, HI
Leeward Community College Library, 96–045 Ala Ike Street, Pearl City, HI
Pearl City Regional Library, 1138 Waimano Home Road, Pearl City, HI
Wahiawa Library, 820 California Avenue, Wahiawa, HI
Waialua Library, 67–068 Kealohanui Street, Waialua, HI
Waianae Library, 85–625 Farrington Highway, Waianae, HI
Maui-Wailuku Regional Library, 51 High Street, Wailuku, HI
Waimanalo Community-School Library, 41–1320 Kalanianaole Highway, Waimanalo, HI
Waipahu Library, 94–521 Farrington Highway, Waipahu, HI

In accordance with 30 CFR 256.26, MMS and the State of Hawaii will hold public hearings to receive comments and suggestions relating to the draft EIS. The hearings will provide the Secretary of the Interior with information from Government Agencies and the public which will help to evaluate the potential effects of marine cobalt-rich manganese crust mining.

At the public hearings, time limitations may make it necessary to limit the oral presentations to 10 minutes. Therefore, an oral statement may be supplemented by a more complete written statement and may be submitted to a hearing official at the time of oral presentation or by mail to the Program Director, Office of Strategic and International Minerals, at the address listed above no later than June 25, 1987. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Dated: March 23, 1987.

**David W. Crow,**

*Acting Director, Minerals Management Service.*

[FR Doc. 87–6705 Filed 3–26–87; 8:45 am]

BILLING CODE [illegible]

---

## National Park Service

### Lowell National Historical Park, MA; Boundary Change, Publication of Revised Boundary Map

Notice is given, pursuant to subsection 101(b) of the Act of June 5, 1978 (Pub. L. 95–290, 92 Stat. 290) that the boundary of the Lowell National Historical Park is hereby revised to include an additional 48,000 square feet consisting of 2,400 linear feet of rail right-of-way in the vicinity of the U.S. Post Office on French Street in Lowell, Massachusetts, as depicted on the accompanying revised boundary map. As further required by the aforementioned Act, prior notice of

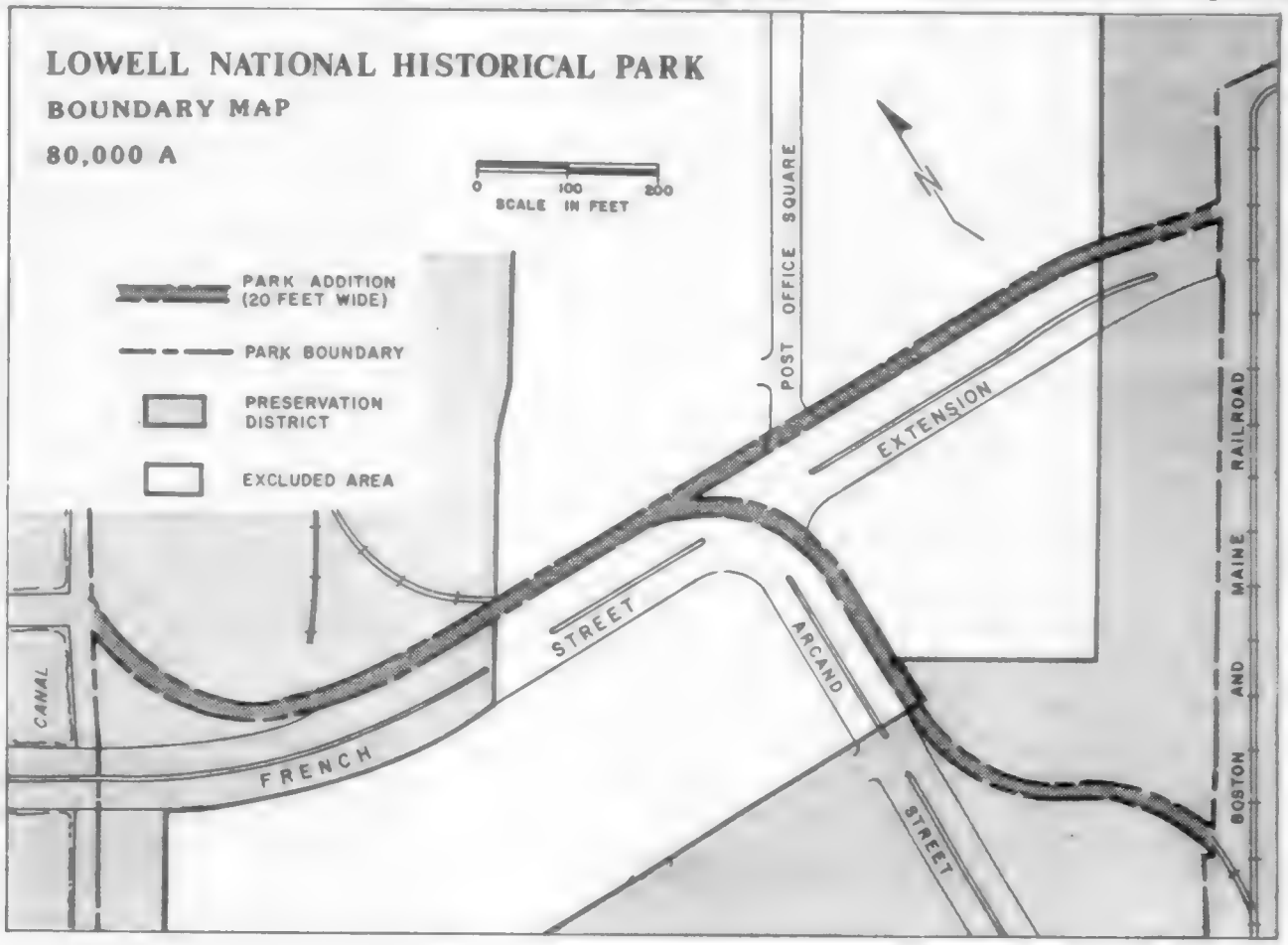

this action has been given to the Congress of the United States, and consent to the revision has been obtained from the City Manager of Lowell, the City Council of the City of Lowell, and the Lowell Historic Preservation Commission.

L. J. Hovig,

*Acting Regional Director, North Atlantic Region.*

[FR Doc. 87-6752 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-70-M

## Intention to Negotiate Concession Contract; Smoky Mountain Riding Stables, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Smoky Mountain Riding Stables, Inc., authorizing it to continue to provide saddle horse livery and guide services for the public at Great Smoky Mountains National Park, Tennessee for a period of five (5) years from January 1, 1987, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the procedural provisons of the National Environmental Policy Act and no environmental doucment will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, Atlanta, Georgia, for information as to the requirements of the proposed permit.

Dated: December 10, 1986.

Robert M. Baker,

*Regional Director, Southeast Region.*

[FR Doc. 87-6753 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-70-M

## Office of Surface Mining Reclamation and Enforcement

## North Chickamauga Creek Watershed, TN, Lands Unsuitable for Surface Mining and Reclamation Operations; Availability of Draft Petition Evaluation Document and Draft Environmental Impact Statement; Request for Comment and Hearing

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Notice of availability of the draft combined petition evaluation document/environmental impact statement (PED/EIS) for the North Chickamauga Creek watershed in Hamilton and Sequatchie Counties, Tennessee, land unsuitable for surface coal mining and reclamation operations petition. Notice of public hearing to receive comments on the North Chickamauga Creek draft PED/EIS.

**SUMMARY:** OSMRE has prepared a draft combined PED/EIS addressing the petition to designate lands within the North Chickamauga Creek watershed as unsuitable for surface coal mining and reclamation operations. The document evaluates the allegations raised in the petition, and considers the impacts of alternative unsuitability decisions for the North Chickamauga Creek watershed on the human environment, the economy, and the supply of coal. Copies of the PED/EIS are being made available today. Public comments on the PED/EIS is solicited and a public hearing will be held as described below.

**DATES:** Written comments on the PED/EIS must be received at the address given below under "**ADDRESSES**" on or before May 29, 1987, at 5:00 p.m. local time. Comments may also be presented at a public hearing starting at 7:00 p.m. on April 30, 1987, at the address given below.

**ADDRESSES:** Public hearing on the draft PED/EIS will be held at the Hixson Utility District, public meeting room, at 5005 Austin Road in Hixson, Tennessee, on Thursday, April 30, 1987, beginning at 7:00 p.m. local time.

Written comments on the draft PED/EIS must be mailed or hand delivered to Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902, to the attention of Willis L. Gainer. All comments will be on file and available for inspection at the same address.

**FOR FURTHER INFORMATION CONTACT:** Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement (telephone: 615/673-4348 or FTS 854-4348) at the address listed above.

*PED/EIS Availability:* Copies of the draft PED/EIS are available for inspection at the Sequatchie and Hamilton County Courthouses and at the OSMRE office listed above. In addition, copies of the document may be obtained, while supplies last, at the above listed office.

**SUPPLEMENTARY INFORMATION:** The public hearing on the draft PED/EIS has been scheduled for the date and address listed above. Anyone who wishes to comment will be given the opportunity to do so, but initial comments will be limited to 15 minutes of oral testimony. Time limits may be extended at the discretion of the presiding officials. Persons wishing to present testimony are encouraged to contact OSMRE at the address given below. OSMRE would appreciate receiving a written copy of the testimony four days prior to the public hearing.

The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony is encouraged as this will facilitate the job of the court reporter. The public hearing will commence at the times identified above and will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and who wish to do so will be heard at the end of the scheduled speakers.

OSMRE encourages the public to comment on the content of the draft PED/EIS. In particular, OSMRE solicits comments which identify errors, omissions, or alternatives not yet considered. Whenever possible, public comments should be supported by technical data or other source material. All comments from the public on the draft PED/EIS will be considered during preparation of the final document.

Dated: March 24, 1987.

Anetta L. Cheek,

*Acting Chief, Division of Permit and Environmental Analysis.*

[FR Doc. 87-6706 Filed 3-26-87; 8:45 am]

BILLING CODE 4310-05-M

## INTERNATIONAL TRADE COMMISSION

[332-245]

## Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade

**AGENCY:** International Trade Commission.

**ACTION:** Notice of change in date of public hearing.

**EFFECTIVE DATE:** March 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark D. Estes, General Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436 (telephone 202–724–0977).

*Public hearing:* Notice is hereby given that the date of the public hearing in connection with investigation No. 332–245 has been changed from April 21, 1987 to May 5 and 6, 1987. The hearing will be held at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, DC, beginning at 9:30 a.m. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, not later than noon, April 24, 1987. Notice of the institution of the investigation was published in the **Federal Register** of March 19, 1987 (52 FR 8656).

Issued: March 24, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–6732 Filed 3–26–87; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

### Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporation intended to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: T.J. Blackburn Syrup Works, Inc., Post Office Drawer G, Highway 49 West, Jefferson, Texas 75657, Texas is the State of Incorporation.

2. Wholly owned subsidiary which will praticipate in the operations, and state of incorporation: (i) BB&F Tuncking Company, Inc., Post Office Drawer G, Highway 49 West, Jefferson, Texas 75657, Texas is the State of Incorporation.

B.1. Parent corporation and address of principal office: Murphy Enterprises, Inc. State of incorporation: Nebraska Principal office: Murphy Enterprises, Inc., 5810 East Skelly Drive, Suite 1700, Tulsa, Oklahoma 74135

2. Wholly owned subsidiaries which will participate in the operations, and state(s) of incorporation: (i) MBE Transportation & Leasing, Inc., an Oklahoma corporation.

C.1. Parent corporation and address of principal office: Premark International, Inc., 2211 Sanders Road, Northbrook, IL 60062.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation:

A. Dart Industries Inc., Delaware.

(i) Ralph Wilson Plastics, Inc., Texas.

(ii) Tupperware Home Parties Corp., Delaware.

(iii) Dartco Manufacturing Inc., Delaware.

(iv) The West Bend Company, Inc., Wisconsin.

(v) Precor Incorporated, Delaware.

B. Hobart Corporation, Delaware.

(i) Stero Company, Delaware.

(ii) Vulcan-Hart Corporation, Delaware.

D.1. Parent corporation and address of principal office: Rohm and Haas Company, Independence Mall West, Philadelphia, Pennsylvania 19105.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

Name and State of Incorporation

(i) Rohm and Haas Connecticut, Inc., Old Brickyard Land, Kensignton, Connecticut 06037, Connecticut.

(ii) Rohm and Haas Canada, Inc., 2 Manse Road, West Hill, Ontario MIE 3T9, Canada.

E.1. Parent corporation and address of principal office: Savage Coal Service Corporation, 5295 S. 300 West, Suite 455, Salt Lake City, UT 84107.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation: Lucky Deal Trucking, Inc., Incorporated—Oklahoma.

F.1. Parent corporation and address of principal office: Texas Industries, Inc., 8100 Carpenter Freeway, Dallas, Texas 75247.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

Texas Industries, Inc., Delaware
Aggregates Railway Corporation, Louisiana
Athens Brick Company, Delaware
Brookhollow Corporation, Delaware
Chaparral Steel Company, Delaware
Creole Corporation, Delaware
Dolphin Construction Company, Louisiana
East Louisiana Railway Company, Louisiana
Fort Worth Sand & Gravel Company, Inc. (Inactive), Texas
L I Precast Company, Louisiana
Louisiana Industries, Inc., Louisiana
Louisiana Industries Prestressed Corp., Delaware
Mississippi Industries, Inc., (Inactive), Mississippi
National Concrete Industries, Inc. (Inactive), Delaware
Poway Development Corporation, Delaware
The George Rackle & Sons Company (Inactive), Ohio
TXI Transportation Company, Texas
Southern States Mining Company, Tennessee
Southwestern Financial Corporation, Delaware
Texas Industries Foundation, Texas (Non-Profit)
Texas Lightweight Aggregate Company (Inactive), Texas
Thurber Coal Company, Texas
Tri-State Industries, Inc., Tennessee
TXI Aviation, Inc., Texas
TXI Cement Company, Delaware
TXI Structural Products, Inc., Delaware
United Cement Company, Mississippi
Brookhollow of Alexandria, Inc., Louisiana
Brookhollow/Arlington, Inc., Texas
Brookhollow Hotel Corporation, (formerly The 8100 Corporation), Texas
Brookhollow of Houston, Inc., Texas
Brook Hollow Properties, Inc., Texas
Empire Central Investment Corporation, Texas
Brookhollow of North Carolina, Inc., North Carolina
Brookhollow of Virginia, Inc., Virginia
Brookhollow/Arlington Properties, Inc., Texas
Brookhollow/Arlington P.O.D. I, Inc., Texas
Brookhollow/Riverside, Inc., Texas
Brookhollow Two Restaurant Corporation, Texas
Brookhollow of Florida, Inc., Florida
Brookhollow/Greensboro Properties, Inc., North Carolina
Brookhollow/Lewisville, Inc., Texas
Ferrco Dallas, Inc., Texas
TA Joist, Inc., Delaware
Brookhollow Plaza, Inc., Texas

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–6824 Filed 3–26–87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31002]

**Maine Central Railroad Co.; Lease and Trackage Rights Exemption; Springfield Terminal Railway Co.; Exemption**

Maine Central Railroad Company (MC) and Springfield Terminal Railway Company (ST) filed a notice of exemption for MC to lease to ST the Rumford Branch, a rail line between Rumford, ME, and a connection with MC's freight main line at Leeds Jct., ME, a distance of approximately 43.4 miles. To facilitate ST's operations, MC will grant ST overhead trackage rights to operate over MC's freight main line between Leeds Jct. and South Portland, ME.

MC and ST are wholly owned subsidiaries of Guilford Transporation Industries, Inc. (GTI). GTI also owns Boston and Maine Corporation (B&M) and Delaware and Hudson Railway Company (D&H). As a result of the proposed transactions, it is anticipated that ST will provide MC's rail customers with more responsive and efficient service. MC will improve its financial viability by eliminating costly operations relative to the revenues earned. With its lower cost structure, ST should be able to perform these operations on a more profitable basis.

Since MC and ST are members of the same corporate family, both the lease and the grant of trackage rights fall within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(s)(3). The transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.[1]

Any employees affected by the lease transaction will be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978), and 360 I.C.C 653 (1980). Any employees affected by the trackage rights transaction will be protected by the labor conditions set forth in *Norfolk and Westeran Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino, surpa,* 360 I.C.C. 653 (1980). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for the respective transactions.[2]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transactions.

Decided: March 12, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–6825 Filed 3–26–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–281X]

**Texas North Western Railway Co.; Abandonment and Discontinuance of Service Exemption; Hansford and Hutchinson Counties, TX; Texas County, OK, and Seward County, KS**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** Texas North Western Railroad Company (TNW) has filed a petition seeking an exemption under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10903, *et seq.:* (1) To abandon 56-miles of its line of railroad between milepost 34 near Morse, TX and milepost 79 near Hardesty, OK, and between milepost 7 south near Pringle, TX and milepost 18 near Stinnett, TX; and (2) to discontinue service provided pursuant to trackage rights over 37 miles of rail line between milepost 79 near Hardesty, OK, and milepost 116 near Liberal, KS. The Commission has determined that there should be notice and comment because the impact of the proposed abandonment and discontinuance on shippers using these line segments cannot be ascertained from the present record. It appears that the designated agencies of Oklahoma and Kansas have not been served with a notice of environmental and energy impacts or a copy of the petition as required by 49 CFR 1105.11. TNW must serve these designated agencies within 5 days of service of our decision in this proceeding.

We are also requiring TNW to serve a copy of our decision in this proceeding on all shippers on the line within 5 days of service of our decision in this proceeding.

**DATES:** Comments must be filed with the Commission and served on petitioner's representative by April 16, 1987. Replies to the comments must be filed by April 27, 1987.

**ADDRESSES:** Send an original and 10 copies of comments and replies referring to Docket No. AB–281X to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

Send one copy to petitioner's representative:

John P. Legendre, 5831 Caladium, Dallas, TX 75230

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428.

The notice is issued pursuant to 5 U.S.C. 553 and 559 and 49 U.S.C. 10505.

Decided: March 17, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–6826 Filed 3–26–87; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 86–41]

**Gordon M. Acker, D.M.D., Revocation of Registrations and Denial of Applications**

On May 6, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to show Cause to Gordon M. Acker, D.M.D., (Respondent) of 117 Cayuga Place, Jericho, New York, seeking to revoke DEA Certificate of Registration AA2055362 previously issued to Respondent. On May 13, 1986, the Deputy Assistant Administrator directed an Order to Show Cause to Respondent at 2412 Route 71—Apartment 5H, Spring Lake Heights, New Jersey, seeking to revoke DEA Certificate of Registration AA1793822 previously issued to

[1] The grant of trackage rights also falls within another category of exempt transactions. *See* 49 CFR 1180.2(d)(7).

[2] In three other notice of exemption proceedings: (Finance Docket NO. 30965, involving a trackage rights and lease between D&H and ST; Finance Docket No. 30967, involving a lease between MC and ST; and Finance Docket NO. 30972, involving a lease between D&H and ST) the Railway Labor Executives' Association petitioned for the imposition of the labor protective conditions developed by the Commission in *New York Dock Ry.—Control—Brooklyn Eastern District,* 360 I.C.C. 60 (1979), in lieu of the *Mendocino* conditions. The Brotherhood of Locomotive Engineers has petitoned for similar relief in Finance Docket No. 30981, involving a lease between B&M and ST. A Commission decision will follow to consider these petitions.

Respondent at that address. Both Orders to Show Cause sought also to deny any pending applications for registration with DEA.

The statutory predicate under 21 U.S.C. 824(a)(2) was Respondent's conviction on March 12, 1986, in the United States District Court for the Eastern District of Pennsylvania, of conspiracy to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. 846. This is a felony relating to controlled substances.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing proceedings, a hearing was held before Judge Young in Washington, DC., on October 15, 1986. Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision on January 27, 1987. Respondent, through counsel, filed exceptions to the recommended decision of the Administrative Law Judge on February 9, 1987. The Administrative Law Judge transmitted the record to the Administrator on February 26, 1987. Having examined the record in its entirety, including the exceptions filed by Respondent, the Administrator hereby enters his final order pursuant to 21 CFR 1316.67.

Judge Young found that Respondent came to the attention of the Federal Bureau of Investigation (FBI) in Philadelphia in September, 1984, during the investigation of a major cocaine trafficking ring. Respondent had been a dental student at the University of Pennsylvania Dental School with three other dentists in the late 1970's and early 1980's. These three other dentists were also convicted for their part in the organization and have received substantial prison sentences.

Judge Young found that this cocaine ring netted, at its zenith in 1981, millions of dollars a month. It was the largest cocaine organization to be detected and prosecuted in Philadelphia history. Respondent was a social acquaintance of the day-to-day operator of the ring. Respondent's role was to purchase cocaine from the ringleaders and redistribute it to the ring's smaller customers, freeing the ringleaders to spend more time with their large customers. During 1979 and 1980, Respondent agreed to carry cocaine to customers of the organization, and made three trips to Ohio, California and Illinois for this purpose. On another occasion he accompanied an individual sent to Florida to buy cocaine.

The Administrative Law Judge further found the Respondent was taught to "break" the cocaine into individual customer's orders by mixing certain proportions of rock cocaine, powdered cocaine and a cutting agent. The proportions were expressed in a formula that Respondent learned.

The Administrative Law Judge further found that Respondent was involved in changing small bills which the ring received into large bills at the casinos in Atlantic City, New Jersey. Respondent also stored cocaine in his apartment. For his services, Respondent was paid in cash and cocaine.

Judge Young found that Respondent used cocaine in 1979 and 1980 and by early 1981 his appearance from cocaine use had become a concern to the ringleaders. Respondent's last involvement with the organization was in late 1980 or early 1981, when he terminated his relationship with the ring by mutual consent. Respondent was indicted in June, 1985, and he cooperated with the FBI in its investigation. Judge Young found that Respondent's cooperation was not indispensable to the investigation. Judge Young also found that while other participants in the organization received lengthy prison terms, Respondent was sentenced to a split sentence of six months in a work-release setting and four and one-half years probation, modified by the sentencing Judge to five years probation, the first five months to be served in a work release program. At the time of the hearing Respondent was working for his father's electrical contracting firm in New York City.

The Administrator adopts the findings of the Administrative Law Judge in their entirety.

The Administrative Law Judge recommended that the registrations previously issued to Dr. Acker be revoked. Judge Young noted the Respondent's willing participation in the multikilogram cocaine organization, his traveling to various parts of the United states to deliver the cocaine, his activities in "breaking" the cociane for distribution and his journeys to Atlantic City to trade small bills for large. The administrative Law Judge concluded, as must the Administrator, that the record is wholly barren of evidence tending to show developent of an appropriate sense of responsibility since Respondent terminated his involvement with the conspiracy and became a dentist.

The Administrator has considered the exceptions filed by counsel for Respondent and is unpersuaded by them. The exceptions correctly point out that the events took place six years ago and that the United States Attorney's Office agreed to bring the cooperation of Respondent to the attention of any Judge or licensing agency. This cooperation was brought to the attention of the Administrative Law Judge and the Administrator, who have considered it. The Administrator is struck by the absence of evidence concerning Respondent's practice of dentistry beyond respondent's assertion that he still owes $30,000 on his student loans. Surely, this cannot be a substantial enough reason to register a dentist who so clearly demonstrated that he is not to be trusted with DEA registration.

The facts in this case clearly demonstrate that Respondent's DEA registration should be revoked, even though he participated in the cocaine organization while he was a dental student and did not use a DEA registration in the commission of his felonies. In cases brought under 21 U.S.C. 823(a)(2), the Administrators of DEA have consistently held that the underlying controlled substance-related felony need not involve the DEA registration to justify revocation or denial of application. See *Paul Stepak, M.D.*, 51 FR 17556 (1986) (physician distributing LSD); *William H. Carranza, M.D.*, Dk. No. 84-23, 51 FR 2771 (1986) (physician smuggling heroin); *Coleman Preston McCown D.D.S.*, Dk. No. 82-28, 49 FR 45818 (1984) (dentist selling street cocaine to undercover Agent); *Aaron Moss, D.D.S.*, Dk. No. 80-2, 45 FR 72850 (1980) (dentist smuggling cocaine). The actions of Respondent merit the same sanction.

Having examined the record, the Administrator concludes that the registrations should be revoked and any pending applications denied, for reason that Respondent was convicted of a felony relating to controlled substances. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AA2055362 and AA1793822 be, and they hereby are, revoked, and that any pending applications for registration be, and they hereby are, denied.

This order is effective April 27, 1987.

John C. Lawn,

*Administrator.*

[FR Doc. 87-6736 Filed 3-26-87; 8:45 am]

BILLING CODE 4410-09-M

**Manufacturer of Controlled Substances; Registration; Janssen, Inc.**

By Notice dated February 12, 1987, and published in the **Federal Register** on February 19, 1987 (52 FR 5205), Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| | [illegible] |
|---|---|
| Drug: | |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 23, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–6737 Filed 3–26–87; 8:45 am]

BILLING CODE 4410–09–M

**Manufacturer of Controlled Substances Registration; Johnson Matthey, Inc.**

By Notice dated February 2, 1987, and published in the **Federal Register** on February 19, 1987 (52 FR 5205), Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| | [illegible] |
|---|---|
| Drug: | |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 23, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–6738 Filed 3–26–87; 8:45 am]

BILLING CODE 4410–09–M

**[Docket No. 86–21]**

**John H. Mulvany, M.D.; Revocation of Registration**

On March 4, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to John H. Mulvany, M.D. (Respondent) of 255 Main Street, Pawtucket, Rhode Island 02860, proposing to revoke his DEA Certificate of Registration AM3274278 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of Respondent would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

By letter dated March 25, 1986, Respondent's counsel requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. The hearing was held in Boston, Massachusetts on August 12, 13 and 14, 1986.

On January 5, 1987, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent filed exceptions to Judge Young's recommended ruling pursuant to 21 CFR 1316.66, and the Government responded to such exceptions. On February 5, 1987, the Administrative Law Judge transmitted the record in these proceedings, including Respondent's exceptions and the Government's response to the exceptions, to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in January 1966, the Rhode Island Division of Drug Control initiated an investigation into Respondent's controlled substance handling practices. This investigation was initiated as a result of information received that indicated Respondent was ordering large quantities of controlled substances from drug wholesalers. In addition, the Rhode Island Division of Drug Control had received complaints regarding Respondent's medical practice. During the course of the investigation, a State narcotics inspector went to Respondent's medical office to conduct a compliance investigation. While at Respondent's office, the inspector recognized known drug abusers in the waiting room. The inspector noted several violations of Rhode Island law relating to controlled substances, including: Failure to maintain dispensing records, failure to maintain a complete and accurate inventory of controlled substances and failure to report thefts of controlled substances to the Rhode Island Division of Drug Control.

In January 1969, the Pawtucket Police Department initiated an undercover investigation of Respondent's medical practice. This investigation was initiated as a result of information received from the Rhode Island Division of Drug Control as well as numerous complaints which the Department had received regarding Respondent's medical practice. Undercover officers of the Pawtucket Police Department went to Respondent's office on seven occasions, between January 11 and February 21, 1969, to attempt to purchase prescriptions for controlled substances from Respondent. When the officers went to Respondent's office, the waiting room was always full of people waiting to see the doctor and on more than one occasion, the undercover officers had to wait out in the hallway. On five of the seven occasions, Respondent wrote the officers prescriptions for Seconal (secobarbital), then a regulated drug under the Drug Abuse Control Amendments to the Food, Drug, and Cosmetic Act. On only one occasion did Respondent perform any sort of physical examination before prescribing the Seconal for the officers, and that was a cursory examination. Each visit lasted three to five minutes. It was evident that these drugs were not being prescribed for any legitimate medical purpose. On one occasion, as Respondent was writing a prescription for 50 dosage units of Seconal, he warned the undercover officer that he could become addicted to the Seconal. The officer told Respondent not to worry since he was not using all of the dosage units prescribed, but rather selling some of them or giving them away. Respondent then decided to give the officer more Seconal, so he changed the number five of the 50 to a six and wrote in parentheses "sixty."

In 1974, Special Agents of the Drug Enforcement Administration went to

Respondent's office to conduct an undercover investigation of Respondent's prescribing practices. One undercover agent went to Respondent's office on two occasions, May 13 and June 13, 1974. On each occasion, there were six to eight individuals in Respondent's waiting room when the agent arrived. Each individual preceded the agent into Respondent's office and each spent five to ten minutes with Respondent. During the first visit, Respondent performed a very cursory physical examination of the agent. He weighed the agent and took his blood pressure by placing the blood pressure cuff over the agent's corduroy sport coat. Respondent stated that the agent did not have to lose any weight. The agent asked Respondent for a prescription for Quaaludes (methaqualone), a Schedule II controlled substance, and a prescription for diet pills. Respondent refused to write any Schedule II prescriptions saying that, "prescriptions are watched very closely for that sort of thing." Respondent did however, issue to the agent a single prescription for Pondimin (fenfluramine), an amphetamine-like drug which had been placed in Schedule IV only a year earlier, and Noludar (methyprylon), a Schedule III controlled substance. In 1974, it was a violation of Rhode Island law to prescribe two different substances on one prescription blank.

When the undercover agent returned to Respondent's office on June 13, 1974, Respondent wrote him one prescription for Dexedrine (dextroamphetamine sulfate), a Schedule II controlled substance, and Noludar. Respondent wrote this pescription after weighing the agent. Respondent stated that the agent had lost weight since his last visit when in fact the agent had not lost any weight. The undercover agent had never told Respondent that he wished to lose weight, nor did he give any other legitimate medical need for the drugs prescribed.

In April 1985, the Drug Enforcement Administration initiated another investigation into Respondent's controlled substance prescribing and dispensing practices. This investigation was initiated as a result of information received that Respondent was ordering large quantities of Tylenol with codeine and to further update information from the earlier investigations conducted by the Drug Enforcement Administration, Rhode Island Division of Drug Control and Pawtucket Police Department. On April 30, 1985, a DEA agent went to Respondent's office in an undercover role. Two individuals preceded the agent into the examining room. Each was with Respondent for five to ten minutes. The agent told Respondent that she wanted some Tylenol with codeine. Respondent asked the agent if she were in any pain, to which she replied that she was not. Respondent then stated that Tylenol with codeine is for pain and again asked her if she were in any pain. The agent stated that she had injured her back in a motorcycle accident a year earlier, however she was not in any real pain. Respondent performed a very cursory physical examination which included taking the agent's blood pressure by placing the blood pressure cuff over her long-sleeved shirt. Respondent then wrote the agent a prescription for Tylenol with codeine. In addition, the agent told Respondent that she wanted some sleeping pills for her boyfriend and asked for Doriden (glutethimide), a Schedule III controlled substance, which is in Schedule II under Rhode Island law. Respondent refused to prescribe Doriden, writing a prescription for Dalmane, a Schedule IV controlled substance, instead. The agent was with Respondent in his office for ten to fifteen minutes.

The undercover agent returned to Respondent's office on May 21, 1985. In response to the agent's request for "something stronger than Tylenol with codeine", Respondent stated, "do you mean Percodan?" when the agent stated that she did want Percodan, Respondent refused explaining that prescriptions for Percodan were being watched very closely. Respondent further stated that he could not prescribe Percodan for her since the drugs were not really for her but were for her boyfriend. Respondent then wrote the agent a prescription for 24 dosage units of glutethimide and dispensed directly to the agent 51 dosage units of Tylenol with codeine. It is well known that drug abusers combine glutethimide with preparations of codeine to form a highly addictive and often deadly mixture.

On June 18, 1985, the undercover agent's next visit to Respondent's office, the agent again asked for something stronger than the Tylenol with codeine. Respondent stated that he felt that he should't even be prescribing what he had been prescribing, since there was no justification for what he had already given her. Nonetheless, Respondent wrote the agent a prescription for 30 dosage units of glutethimide and dispensed 50 dosage units of Tylenol with codeine directly to her. Respondent did not perform any sort of physical examination of the agent during either the May 21 visit or the June 18 visit.

On July 2, 1985 the agent returned to Respondent's office acompanied by another DEA agent, posing as her "boyfriend." While waiting to see Respondent, the agents overheard a man in the waiting room discussing with other individuals which of his many excuses he would use with the doctor on this occasion to obtain drugs. The agents observed this man go into Respondent's examining room and emerge about five minutes later carrying a package like the ones in which Respondent dispensed controlled substances. When the agents asked Respondent for some drugs, Respondent replied that he would not prescribe for either of them. Respondent stated that, "I just gave you twice as much as I should have the last time," which was only two weeks earlier. Respondent told the agents to return in a week and he would give them a prescription for controlled substances then.

On September 13, 1985, DEA investigators went to Respondent's office to serve an Administrative Inspection Warrant. The purpose of this inspection was to determine if required controlled substance records were being properly maintained and to conduct an accountability audit of Respondent's controlled substances. The investigators discovered that during the preceding nine months, Respondent had ordered large quantities of Schedule III, IV and V controlled substances. In addition, the investigators noted numerous violations of Federal regulations relating to controlled substances.

The investigators found that Respondent's controlled substances were stored in various and sundry locations around the examining room. Some were stored in mislabled containers and none were locked away or secured as required by 21 CFR 1301.75(b). The investigators also found that Respondent had not taken an initial or biennial inventory of controlled substances on hand in his office as required by 21 CFR 1304.12 and 1304.13. During the hearing in this matter, Respondent admitted that he had never taken such an inventory. Respondent failed to report thefts of controlled substances to the Drug Enforcement Administration as required by 21 CFR 1301.76(b). Finally, the investigators determined that Respondent's records of dispensing of controlled substances were not maintained in a readily retrievable fashion as required by 21 U.S.C. 827(b) and 21 CFR 1304.03. Respondent contends that by looking at his 5,000 to 6,000 patient cards, one could determine the controlled substances that he had dispensed. In

BEST COPY AVAILABLE

fact however, it would be impossible to determine how many dosage units of controlled substances Respondent had dispensed by looking at his patient cards because Respondent does not differentiate between controlled substances he prescribes for a patient and those he dispenses directly from his office stock.

The Administrative Law Judge concluded that Respondent's DEA Certificate of Registration must be revoked. Although Respondent does have legitimate patients and does dispense controlled substances to those patients in a *bona fide* therapeutic manner, it is very evident that Respondent also dispenses and prescribes controlled substances to individuals without any legitimate medical purpose. He wrote prescriptions for controlled substances or dispensed such substances directly to undercover law enforcement personnel after performing at best, a very cursory physical examination or no examination at all. On several occasions, Respondent wrote prescriptions for an undercover DEA agent after being told that the drugs were not really for the agent, but for her "boyfriend." Respondent wrote prescriptions for Seconal for an undercover policy officer after being told that he was selling some of the drugs or giving them away. Such activity is not to be taken lightly. Respondent prescribed substances for these individuals knowing that the drugs were being used for legitimate purposes.

For over twenty years, Respondent has not only prescribed and dispensed highly abused controlled substances illegitimately, but he has also consistently disregarded the recordkeeping regulations imposed to safeguard the public from the diversion of such substances. An inspection conducted in 1966, revealed a number of violations of Rhode Island controlled substance regulations then in effect, while a subsequent inspection conducted in 1985, revealed numerous violations of both state and Federal regulations. The most serious recordkeeping deficiency noted is that Respondent orders large quantities of controlled substances but then cannot account for what subsequently happens to the drugs.

The Administrative Law Judge recommended that Respondent's DEA registration be revoked, noting that for twenty years, Respondent has demonstrated a continuing determination to disregard controlled substance laws and regulations. Judge Young concluded that Respondent cannot be entrusted with a DEA registration.

The Administrator adopts the recommended ruling and decision of the Administrative Law Judge in its entirety. The Administrator concludes that Respondent's continued registration is inconsistent with the public interest and that his DEA Certificate of Registration must be revoked. It is evident that Respondent cannot fully appreciate the heavy public responsibility which accompanies DEA registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM3274278, previously issued to John H. Mulvany, M.D., be, and it hereby is revoked. Any pending applications for renewal of such registration are hereby denied. This order is effective April 27, 1987.

Date: March 23, 1987.

**John C. Lawn,**

*Administrator.*

[FR Doc. 87-6738 Filed 3-26-87; 8:45 am]

BILLING CODE 4410-09-M

---

## Office of Juvenile Justice and Delinquency Prevention

### Coordinating Council; Meeting

The second quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, DC, on April 23, 1987. The meeting will take place in Room 703A at the Department of Health and Human Services, Hubert Humphrey Building, 200 Independence Avenue SW., from 9:30 a.m. to 12:00 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the Federal effort with regard to the implementation of the Anti-Drug Abuse Act as its provisions apply to children and youth and the prevention of delinquency.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-7655.

Dated: March 24, 1987.

Approved:

**Verne L. Speirs,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 87-6809 Filed 3-26-87; 8:45 am]

BILLING CODE 4410-18-M

---

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is

received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Alabama:
- AL87-23 (Jan. 2, 1987) ..... p. 51.
- AL87-24 (Jan. 2, 1987) ..... p. 55.
- AL87-25 (Jan. 2, 1987) ..... p. 60.
- AL87-28 (Jan. 2, 1987) ..... p. 68b.

New York: NY87-1 (Jan. 2, 1987). p. 682.

Pennsylania:
- PA87-1 (Jan. 2, 1987) ..... p. 844.
- PA87-2 (Jan. 2, 1987) ..... pp. 856-857.
- PA87-4 (Jan. 2, 1987) ..... p. 874.
- PA87-5 (Jan. 2, 1987) ..... p. 884.
- PA87-7 (Jan. 2, 1987) ..... p. 906.
- PA87-8 (Jan. 2, 1987) ..... pp. 916-917, p. 921.
- PA87-9 (Jan. 2, 1987) ..... pp. 926-927.
- PA87-11 (Jan. 2, 1987) ..... p. 940.
- PA87-13 (Jan. 2, 1987) ..... p. 946.

Tennessee: TN87-3 (Jan. 2, 1987). p. 1088.

Listing by location (index)..... p. xxii.

*Volume II*

Illinois: IL87-14 (Jan. 2, 1987) ... pp. 187-188.
Indiana: IN87-2 (Jan. 2, 1987) ... p. 251.
Michigan: MI87-7 (Jan. 2, 1987). pp. 485-486.

Oklahoma:
- OK87-13 (Jan. 2, 1987)..... p. 894.
- OK87-14 (Jan. 2, 1987)..... p. 903.

Texas:
- TX87-18 (Jan. 2, 1987) ..... pp. 966-968.
- TX87-21 (Jan. 2, 1987) ..... p. 975.

Wisconsin:
- WI87-8 (Jan. 2, 1987) ..... p. 1111.
- WI87-10 (Jan. 2, 1987) ..... p. 1132.

*Volume III*

Oregon: OR87-1 (Jan. 2, 1987).. p. 284.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC, this 20th day of March 1987.

**Alan L. Moss,**

*Director, Division of, Wage Determinations.*

[FR Doc. 87-6499 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-27-M

---

## Employment and Training Administration

### Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging; Charges for Meals

**AGENCY:** U.S. Employment Service, Employment and Training Administration, Labor.

**ACTION:** Notice of annual adjustments in meal charges.

**SUMMARY:** The Director, U.S. Employment Service, announces the annual adjustment for 1987 in the allowable meal charges for furnishing three daily meals to U.S. and alien workers employed by covered agricultural and logging employers who provide such meals to their U.S. and alien workers. The adjustments are based upon Consumer Price Index (CPI) data.

**EFFECTIVE DATE:** March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Telephone: (202) 535-0163.

**SUPPLEMENTARY INFORMATION:** On August 26, 1986, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published in the **Federal Register** at 51 FR 30348 a final rule amending the temporary alien agricultural labor certification regulations at 20 CFR 655.202(b)(4) and 655.211(a) regarding the amount covered agricultural and logging employers may charge their U.S. and alien workers each day for meals. The final rule, which became effective September 25, 1986, provides for annual adjustments of allowable charges based upon Consumer Price Index (CPI) data. Each year the charge allowed by § 655.202(b)(4) is changed by the same percentage as the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food (CPI-U for Food) between December of the year just concluded and December of the year prior to that.

Sections 655.202(b)(4) and 655.211(a) provide that the appropriate Regional Administrator (RA) may permit an employer to charge workers up to a higher maximum amount for providing them with three meals per day. Section 655.211(a) further provides that each year the maximum charge allowed by paragraph (a) will be changed by the same percentage as the 12-month percent change in the CPI-U for Food between December of the year just concluded and December of the year prior to that.

The regulation requires the Director, United States Employment Service (USES), to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural or logging employers for providing three meals to their U.S. and alien agricultural or

logging workers. The last notice was published at 51 FR 39597 (October 29, 1986).

**1987 Annual Adjustment of Allowable Charges**

The 12-month percent change for the CPI–U for Food between December 1985 and December 1986 was an increase of 3.8 percent. Accordingly, the adjusted charge allowed by 20 CFR 655.202(b)(4) is now $5.26, an increase of 3.8 percent over the previously allowed charge of $5.07. The adjusted maximum charge the RA, pursuant to 20 CFR 655.211(a), may permit an employer to charge workers for providing them with three meals per day is now $6.58, an increase of 3.8 percent over the previously allowed maximum charge of $6.34.

Signed at Washington, DC, this 20th day of March 1987.

**Robert A. Schaerfl,**

*Director, U.S. Employment Service.*

[FR Doc. 87–6759 Filed 3–26–87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA–W–18,678]

**Bass Enterprises Production Co.; Fort Worth, TX; Negative Determination Regarding Application for Reconsideration**

By an application dated February 21, 1987, the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Bass Enterprises Production Company, Fort Worth, Texas. The denial notice was signed on February 2, 1987 and will soon be published in the **Federal Register.**

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners assert that they filed only for the geologists, geophysicists and landmen and not all workers as stated in the Department's negative determination. It is claimed that the decline in oil prices due to imported crude oil has adversely affected their employment at Bass Enterprises. The petitioners also claim that Bass Enterprises met the decreased sales and production criterion of the Trade Act, especially in value and question the credibility of the production and sales data furnished to the Department.

Geologists, geophysicists and landmen at Bass Enterprises perform services for the subject firm. The Department has consistently determined that the performance of services does not constitute the production of an article, as required by the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Service workers, however, may become eligible for benefits if their reduction in demand for their services is determined to have originated at a production facility related to the workers' firm by ownership, whose workers independently meet the statutory criteria for certification. The reduction in demand for services must relate directly to the products adversely affected by increased imports. Accordingly, the Department instituted the petition by the geologists and others on behalf of all workers at Bass Enterprises to determine whether they qualify for adjustment assistance.

Bass Enterprises produces and sells mainly crude oil. Some natural gas is produced and sold; however, the workers are not separately identifiable by products. The Department's denial notice is based on the fact none of the group eligibility requirements set in section 222 of the Trade Act were met. Findings in the Department's investigation show that average total employment at Bass Enterprises increased in 1985 compared with 1984 and in 1986 compared with 1985. Further, Bass Enterprises' total sales and production increased, though marginally in quantity, in 1985 compared with 1984 and in 1986 compared with 1985. According to company officials, Bass Enterprises is selling all the crude oil it can produce. Lastly, U.S. imports of crude oil decreased absolutely and relative to domestic shipments in 1985 compared to 1984 and customers accounting for a substantial portion of sales and production at Bass Enterprises decreased purchases of imported crude oil in the first half of 1986 compared with the first half of 1985.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of March, 1987.

**Harold A. Bratt,**

*Deputy Director, Office of Program Management, UIS.*

[FR Doc. 87–6760 Filed 3–26–87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA–W–18,133, et. al.]

**Cliffwood Energy Co.; Pasadena, CA; et al.; Dismissals of Applications for Reconsideration**

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Cliffwood Energy Company, Pasadena, California; Cyclops Corporation's Cytemp Division, Mount Lebanon, Pennsylvania; American Bag Corporation, Pine Knot, Kentucky; ASARCO's Amarillo Copper Refinery, Amarillo, Texas; J. I. Case Company, Racine, Wisconsin indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA–W–18,133; Cliffwood Energy Company, Pasadena, California (February 11, 1987)
TA–W–17,357; Cyclops Corporation, Cytemp Division, Mount Lebanon (December 16, 1986)
TA–W–17,879; American Bag Corporation, Pine Knot, Kentucky (February 18, 1987)
TA–W–17,886; ASARCO'S Amarillo Copper Refinery, Amarillo, Texas (December 30, 1986)
TA–W–17,887; J. I. Case Company, Racine, Wisconsin (December 31, 1986)

Signed at Washington, DC, this 19th day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87–6761 Filed 3–26–87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA–W–17,723, et al.]

**The Lee Co., et al; Dismissals of Applications for Reconsideration**

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the The Lee Company, Madison, Alabama; Eastman Kodak Company, Colorado Division, Windsor, Colorado; AT&T Information Systems'

Service Center, Milwaukee, Wisconsin; Ridge Tool Company, Elyria, Ohio; Sam's Well Service, Guymon, Oklahoma. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-17,723; The Lee Company, Madison, Alabama (March 6, 1987)
TA-W-18,729; Eastman Kodak Company, Colorado Division, Windsor, Colorado (March 9, 1987)
TA-W-18,435; AT&T Information System's Service Center, Milwaukee, Wisconsin (March 13, 1987)
TA-W-18,555; Ridge Tool Company, Elyria, Ohio (February 26, 1987)
TA-W-18,669; Sam's Well Service, Guymon, Oklahoma (March 3, 1987)

Signed at Washington, DC, this 19th day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-6762 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA-W-18,481, et al.]

## Lloyd Schoenheit Truck and Tractor Service, Inc.; Grayville, IL; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Lloyd Schoenheit Truck and Tractor Service, Inc., Grayville, Illinois; NATCO, Electra, Texas; Ekco Housewares, Incorporated, Canton, Ohio indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-18,481; Lloyd Schoenheit Truck and Tractor Service, Inc., Grayville, Illinois (December 22, 1986)
TA-W-18,960; NATCO, Electra, Texas (March 4, 1987)
TA-W-17,441A & TA-W-16,654; Ekco Housewares, Incorporated, Canton, Ohio (March 12, 1987)

Signed at Washington, DC, this 19th day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-6763 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,313]

## Parker Drilling Co.; Tulsa, OK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 9, 1987 in response to a worker petition received on March 9, 1987; and filed by the workers on behalf of employees at Parks Drilling Company, Tulsa, Oklahoma.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,312). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 19th day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-6764 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA-W-17,061]

## Tractech, Inc., Mercury Products Division; Canton, OH; Amended Revised Determination

In accordance with 29 CFR 90.18(g) and the criteria set forth in section 222 of the Trade Act, the Department issued a Revised Determination of Eligibility to Apply for Worker Adjustment Assistance on October 27, 1986 applicable to all workers in the Turret Lathe Department and Machine Shop engaged in employment related to the production of the machined clutch castings and to brake turning operations at Tractech, Incorporated, Mercury Products Division, Canton, Ohio. The revised determination notice was published in the **Federal Register** on November 25, 1986 (51 FR 42661).

Subsequent to the revised determination on reconsideration, the International Association of Machinists requested that the Department amend its revised determination for workers at the Canton facility to include all workers engaged in employment related to the production of clutches since the completed clutch is being imported by the company.

Workers producing components for the completed clutch assembly were first laid off in October, 1985 when their production was transferred to another company plant in Europe. New findings show that the completed clutch assemblies began to arrive at Canton, Ohio from Europe in November and December of 1986. All production workers at Tractech, Inc., Mercury Products Division, Canton, Ohio were laid off on March 13, 1987.

The intent of the certification is to cover all workers of Tractech Inc., Mercury Products Division, Canton, Ohio engaged in employment related to the production of machined clutch castings, brake turning operations and finished clutch assemblies. The amended revised notice applicable to TA-W-17,061 is hereby issued as follows:

All workers Tractech, Inc., Mercury Products Division, Canton, Ohio, engaged in employment related to the production of machined clutch castings, brake turning operations and clutch assemblies who became totally or partially separated from employment on or after October 1, 1985 and before May 1, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of March 1987.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-6765 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-30-M

---

# Mine Safety and Health Administration

[Docket No. M-87-31-C]

## B. and B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B. and B. Coal Company, 225 Main Street, Joliett-Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting requipment; general) to its Rock Ridge Slope (I.D. No. 36-07175) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no

emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a fact of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6766 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-46-C]**

## Brush Creek Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Brush Creek Coal Company, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-14483) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed altlernate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6767 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

**[Docket No. M-87-53-C]**

## Calvary Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Calvary Coal Company, H.C. 81 Box 1532, Hinkle, Kentucky 40953 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Ridge Mine No. 1 (I.D. No. 15-10274) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous machine mounted methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will

be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 30, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6768 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-45-C]

## Castle Gate Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Castle Gate Coal Company, P.O. Box 449, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Castle Gate Portal No. 3 Mine (I.D. No. 42-00165), and its Castle Gate Portal No. 5 Mine (I.D. No. 42-01202), both located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requiement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. Petitioner states that all of the natural conditions conducive to mountain humps are present in the Castle Gate coal reserves, i.e. mountainous terrain, thick overburden, massive sandstone members above and below the seams, stressed coal beds as a result of previous multiple seam mining, the strength of rock and coal properties, and the ability of coal pillars to store tremendous energy which result in violent pillar, roof and failure in developed entries.

3. As an alternate method, petitioner proposes to develop a two-entry system. The belt entry will be used as a return aircourse during longwall development, and as an intake during longwall extraction to insure adequate ventilation quantity to dilute and render harmless any methane or other noxious gases that may otherwise accumulate.

4. Petitioner further states that the use of a two-entry system would reduce bumps, improve roof and rib conditions, keep escapeways open, maintain airways, and improve ventilation.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6769 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-29-C]

## Chapperal Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Chapperal Coal Corporation, 441 Marion Branch Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-06257) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Elkhorn No. 3 seam, ranging from 55 to 72 inches in height with undulation.

3. Petitioner states that the use of a cab or canopy on the mine's equipment would result in a diminution of safety to the miners affected because the cab or canopy would limit the equipment operator's visibility and limit the operator's mobility. The cab or canopy would dislodge the 30" conventional type roof bolts used to support the immediate sandstone roof, thus creating a constant hazard of spot bolting and the removal of partially dislodged roof bolts.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6770 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-30-C]

## Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Moss No. 3A-2 Portal Mine (I.D. No. 44-01642) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Jawbone coalbed ranging from 24 to 96 inches in height, with undulations.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the cabs or canopies would decrease the equipment operator's visibility, create discomfort to the operator and could dislodge roof supports.

4. For these reasons, petitioner requests a modification of the standard in mining heights of 60 inches or less.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6771 Filed 3-26-87; 8:45 am]

BILLING CODE 4501-43-M

---

**[Docket No. M-87-42-C]**

**Eastern Mingo Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Eastern Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 1 (I.D. No. 46-05978) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. Petitioner states that an unusually high number of momentary power losses have been experienced. When the power blinks or an outage occurs and service is restored, a lot of people rush about to get the U.V.R. breakers put back in at the belt drives. Many times, although they are qualified, people are performing a task that is not a part of their normal routine, and a sense of urgency often contributes to a set of circumstances which places the safety of not only themselves but those around them in jeopardy.

3. As an alternate method, petitioner proposes to use contactors in lieu of circuit breakers to obtain undervoltage protection. This would reduce the sense of urgency that jeopardizes people's safety, there would be less exposure to unusual circumstances by mine personnel and the travelways would be safer.

4. In further support of this request, petitioner states that:

(a) Prior to each startup, an audible alarm will be sounded for 30 seconds that can be heard the full length of the conveyor. A sufficient number of alarms horns will be installed and maintained along each belt conveyor flight to ensure that the prestart alarm can be heard over the ambient noise level along the entire length of the belt conveyor flight. The alarms will operate on a nominal voltage of 24 volts or less and will be examined, tested, and properly maintained.

(b) All miners who are assigned to work in belt conveyor entries will be trained about the purpose of the pre-start alarm systems, and the potential hazards of working on or near belt conveyors and belt conveyor drives:

(c) Belt power contactors will be built into or permanently affixed to the transformer enclosure, properly separated and isolated from the other components of the unit;

(d) Frequent examinations will be made by a qualified person, properly recorded and made available for inspection at all times;

(e) All affected personnel will be trained in the circuit plans used at these locations, and the subject will be covered in all electrical retraining classes with records kept and available for inspection at all times;

(f) Undervoltage release will be obtained by the electrical nature of contactors and relays, which drop out at 40 to 50%; and

(g) All control voltage will be 24 volts.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6772 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-52-C]**

**J and W Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

J and W Coal Company, P.O. Box 361, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-13265) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous machine mounted methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time betweeen trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and

will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6773 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-6-M]**

## Lundberg Industries Ltd.; Petition for Modification of Application of Mandatory Safety Standard

Lundberg Industries Limited, P.O. Box 31, Carlsbad, New Mexico 88220 has field a petition to modify the application of 30 CFR 57.12013 (splices and repairs of power cables) to its Lundberg Industries Limited Mine (I.D. No. 29-00173) located in Eddy County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permanent splices and repairs made in power cables, including the ground conductor where provided, shall be mechanically strong with electrical conductivity as near as possible to that of the original; insulated to a degree at least equal to that of the original, and sealed to exclude moisture; and, provided with damage protection as near as possible to that of the original, including good bonding to the outer jacket.

2. The splices affected are in high voltage (2,300 V, 4,160 V, 12,470 V) cables transmitting power to transformers throughout the mine.

3. Petitioner states that the rebuilding of an outer jacket over the splices would result in a diminution of safety for the miners affected because the outer jacket would prevent periodic visual inspections of conductors and ground wires, and would make detection, with test equipment, of temperature rise from poorly made or loosened phase connections more difficult. The physical separation of the phase wires also would decrease the possibility of tracking or arcing between phases.

4. Petitioner further states that conditions throughout the mine are extremely dry and all such cables are suspended from either the back or rib. Coverings on individual conductor splices are dielectrically equal to or better than original insulation.

5. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6774 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-23-C]**

## Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mid-Continent Resources, Inc., 818 Colorado Avenue, Glenwood Springs, Colorado 81602 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Dutch Creek No. 1 Mine and its Rock Tunnels Project (I.D. No. 05-00301), and its Dutch Creek No. 2 Mine (I.D. No. 05-00469) all located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use the belt haulage entry to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices will be capable of giving warning of a fire for a minimum of four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The permanent stoppings separating the conveyor belt entries from the intake escapeway will be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miner affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6775 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-24-C]

**Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard**

Mid-Continent Resources, Inc., 1058 Road 100, P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1403-5(g) (belt conveyors) to its Dutch Creek No.1 Mine and its Rock Tunnels Project (I.D. No. 05-00301), and its Dutch Creek No. 2 Mine (I.D. No. 05-00469) all located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24 inches wide should be provided on both sides of all belt conveyors. Where roof supports are installed within 24 inches of a belt conveyor, a clear travelway at least 24 inches wide should be provided on the side of such support farthest from the conveyer.

2. As an alternate method, petitioner seeks a modification of the standard to permit the RTP raw coal-haulage beltine, its structures and its continuations to be constructed and operated without a 24-inch clearance on the "off-side" (the North or non-travel side of the RTP north adit beltway) of such beltline. In further support of this request, petitioner states that:

(a) The RTP coal haulage beltline, by its design, can be examined, cleaned, serviced and repaired from its south-side (the normal travel side for the limited travel which should occur in the north-adit). Because of the length of the RTP coal haulage beltline, it is important that it be vehicle accessible along its entire length in an emergency and for examination, maintenance and repair. Vehicle access can be more safely achieved by placement of the RTP coal haulage beltline closer than 24-inches to the north rib off the north adit of the RTP;

(b) The beltline is used solely for transporting mined raw coal from the connecting underground coal seams and their respective working sections;

(c) The RTP coal haulage beltline will be conspicously posted with signs prohibiting pedestrian travel on the north- or off-side of the beltline. Any area where cross-over or cross-under is permitted will be conspicuously signed; and

(d) Persons performing examinations, service or repair work will only be permitted to trave at tailpieces or belt drives.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6776 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-48-C]

**Mingo Coal Co.; Inc.; Petition for Modification of Application of Mandatory Safety Standard**

Mingo Coal Company, Inc., Route 4 Box 178, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-15213) and its Mine No. 4 (I.D. No. 15-15811) both located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternative method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of the continuous machine mounted methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will be provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6777 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-54-C]

**Pickands Mather and Co.; Petition for Modification of Application of Mandatory Safety Standard**

Pickands Mather & Company, Route 1, Box 819, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Scotts Branch Mine (I.D. No. 15-08079) located

in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that return aircourses be examined in their entirely on a weekly basis.

2. Petitioner states that due to a roof fall, a certain area of the return aircourse is not safe to travel. Due to the extreme size of the fall area, it cannot be safely cleaned up and resupported.

3. As an alternate method, petitioner proposes that:

(a) There will be adequate air flow maintained across the top of the fall area to dilute and render harmless any concentrations of methane that might accumulate;

(b) While the longwall face is retreating toward the fall area, the top end bleeder system will be used to ventilate the face and maintain a positive pressure on the gob, as well as a flow of return air outby the tailgate entry and across the top of the fall area;

(c) While mining the longwall panel adjacent to the roof fall, a 4'0 diameter steel duct will be maintained from inby the roof fall area to extend outby the full length of the fall to the outby side of the fall area; and

(d) The tailgate immediate return aircourse on the 2nd Right panel will be physically examined in its entirely from the longwall face outby to the fall area, and also from where the immediate return aircourse dumps into the main return inby to the fall area. This will enable the petitioner to monitor both air flow and methane liberation in the fall area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6778 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-43-C]

## Southern Mingo Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 1 (I.D. No. 46-06278) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. Petitioner states that an unusually high number of momentary power losses have been experienced. When the power blinks or an outage occurs and service is restored, a lot of people rush about to get the U.V.R. breakers put back in at the belt drives. Many times, although they are qualified, people are performing a task that is not a part of their normal routine, and a sense of urgency often contributes to a set of circumstances which places the safety of not only themselves but those around them in jeopardy.

3. As an alternate method, petitioner proposes to use contactors in lieu of circuit breakers to obtain undervoltage protection. This would reduce the sense of urgency that jeopardizes people's safety, there would be less exposure to unusual circumstances by mine personnel and the travelways would be safer.

4. In further support of this request, petitioner states that:

(a) Prior to each startup, an audible alarm will be sounded for 30 seconds that can be heard the full length of the conveyor. A sufficient number of alarm horns will be installed and maintained along each belt conveyor flight to ensure that the prestart alarm can be heard over the ambient noise level along the entire length of the belt conveyor flight. The alarms will operate on a nominal voltage of 24 volts or less and will be examined, tested, and properly maintained.

(b) All miners who are assigned to work in belt conveyor entries will be trained about the purpose of the pre-start alarm systems, and the potential hazards of working on or near belt conveyors and belt conveyor drives;

(c) Belt power contactors will be built into or permanently affixed to the transformer enclosure, properly separated and isolated from the other components of the unit;

(d) Frequent examinations will be made by a qualified person, properly recorded and made available for inspection at all times;

(e) All affected personnel will be trained in the circuit plans used at these locations, and the subject will be covered in all electrical retraining classes with records kept and available for inspection at all times;

(f) Undervoltage release will be obtained by the electrical nature of contactors and relays, which drop out at 40 to 50%; and

(g) All control voltage will be 24 volts.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6779 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-3-M]

## Sunrise Construction Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sunrise Construction Company, Inc., P.O. Box 1685, Rock Springs, Wyoming 82901 has filed a petition to modify the application of 30 CFR 56.12028 (testing grounding systems) to its Sunrise Crusher (I.D. No. 48-01277) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that continuity and resistance of grounding systems be tested immediately after installation, repair, and modification; and annually thereafter.

2. Petitioner requests a modification of the standard for portable or mobile plants.

3. As an alternate method, petitioner proposes to install at least two ground rods. In further support of this request, petitioner states that:

(a) When practical, all ground rods will be installed below the permanent moisture level. Each rod will be at least six feet from any other ground electrode and all electrodes will be free from any nonconductive coatings;

(b) Rod and pipe electrodes will be at least eight feet long. Electrodes of pipe or conduit will be at least ¾ inch trade size, and if iron or steel, will have a galvanized or equivalent noncorrosive coating. Electrodes of rods of steel or iron will be at least ⅝ inch in diameter. Where possible, the electrodes will be driven to a depth of at least eight feet. Where a rock bottom is encountered, the electrodes will be buried at a depth of at least four feet;

(c) The electrodes and associated conductors will be visually inspected for bonding and deterioration each time a plant move is made;

(d) Annual bed measurements will be performed when any plant remains in the same exact location for more than one year; and

(e) Equipment grounding continuity measurements will be performed after each move.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6780 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-37-C]

## Switch Energy Corp.; Petition for Modification of Application of Mandatory Safety Standard

Switch Energy Corporation, P.O. Box 550, Cornettsville, Kentucky 41731 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 1 (I.D. No. 15-11596) located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to deteriorated roof and ground conditions, certain portions of the mine are unsafe to travel and any attempt to rehabilitate these areas would be exposing miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish designated checkpoints where visual inspections can be made.

4. In further support of this request, petitioner states that there is no obstruction of airflow, and that the return is not used as nor designated as an escapeway.

5. For these reasons, petitioner requests a modification of the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 19, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6781 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-41-C]

## Western Mingo Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Western Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 1 (I.D. No. 46-05055) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. Petitioner states that an unusually high number of momentary power losses have been experienced. When the power blinks or an outage occurs and service is restored, a lot of people rush about to get the U.V.R. breakers put back in at the belt drives. Many times, although they are qualified, people are performing a task that is not a part of their normal routine, and a sense of urgency often contributes to a set of circumstances which places the safety of not only themselves but those around them in jeopardy.

3. As an alternate method, petitioner proposes to use contactors in lieu of circuit breakers to obtain undervoltage protection. This would reduce the sense of urgency that jeopardizes people's safety, there would be less exposure to unusual circumstances by mine personnel and the travelways would be safer.

4. In further support of this request, petitioner states that:

(a) Prior to each startup, an audible alarm will be sounded for 30 seconds that can be heard the full length of the conveyor. A sufficient number of alarm horns will be installed and maintained along each belt conveyor flight to ensure that the prestart alarm can be heard over the ambient noise level along the entire length of the belt conveyor flight. The alarms will operate on a nominal voltage of 24 volts or less and will be examined, tested, and properly maintained.

(b) All miners who are assigned to work in belt conveyor entries will be trained about the purpose of the pre-start alarm systems, and the potential hazards of working on or near belt conveyors and belt conveyor drives;

(c) Belt power contactors will be built into or permanently affixed to the transformer enclosure, properly separated and isolated from the other components of the unit;

(d) Frequent examinations will be made by a qualified person, properly recorded and made available for inspection at all times;

(e) All affected personnel will be trained in the circuit plans used at these locations, and the subject will be covered in all electrical retraining classes with records kept and available for inspection at all times;

(f) Undervoltage release will be obtained by the electrical nature of contactors and relays, which drop out at 40 to 50%; and

(g) All control voltage will be 24 volts.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1987. Copies of the petition are available for inspection at that address.

Dated: March 20, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-6782 Filed 3-26-87; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 87-29]**

### NASA Advisory Council (NAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, NASA announces a forthcoming meeting of the NASA Advisory Council, Informal Space Life Sciences Committee.

**DATE AND TIME:** April 29, 1987, 9:45 a.m. to 5:30 p.m., and April 30, 1987, 8 a.m. to 3:30 p.m.

**ADDRESS:** Ames Research Center (ARC), National Aeronautics and Space Administration, The Committee Room, Building 200, Moffett Boulevard, Moffett Field, CA 94035.

**FOR FURTHER INFORMATION CONTACT:** Dr. James H. Bredt, Code EBR, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1540).

**SUPPLEMENTARY INFORMATION:** The NASA Advisory Council Informal Space Life Sciences Committee was established to formulate a comprehensive strategic plan for space life sciences, identify essential efforts with appropriately phased objectives, and define efficient implementing strategies to pursue these goals. The Committee, chaired by Dr. Frederick C. Robbins, has 17 members.

This meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members and other participants).

Type of Meeting: Open.

Agenda:

April 29, 1987

9:45 a.m.—Announcements.

10 a.m.—Remarks by ARC Director and Overview of ARC Life Sciences Activities.

11:30 a.m.—Briefings by ARC staff.

5:30 p.m.—Adjourn.

April 30, 1987

8 a.m.—Briefings by Representatives of the European Space Agency and the National Space Development Agency of Japan.

9:30 a.m.—Study Group Reports and Discussion.

3:30 p.m.—Adjourn.

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

March 23, 1987.

[FR Doc. 87-6697 Filed 3-26-87; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Disposition Authority (Records Schedules)

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATE:** Requests for copies must be received in writing on or before [May 11, 1987]. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of orgin, the rights and interests of the Government and of private poersons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

**Schedules Pending Approval:**

1. Department of the Army, Information Systems Command (N1-338-86-5). Housekeeping records of Army Commands (schedule provides for

permanent retention of records reflecting substantive policies, procedures, and activities).

2. Department of the Army, N1–77–87–1. Housekeeping records of the Office of the Chief of Engineers, ca. 1940–47 (schedule provides for permanent retention of records reflecting substantive policies, procedures, and activities).

3. Department of the Navy, Chief of Naval Operations, Commander Naval Oceanography Command (N1–NU–87–1). A comprehensive schedule of all oceanographic; meteorological; hydrographic; and mapping, charting, and geodetic activity records; including records documenting overall policies and programs which are permanent.

4. Department of Agriculture, Forest Service, information Systems Staff (N1–95–87–5). Information management correspondence dealing with routine administration of the agency's information systems and information resource management plans and studies.

5. Department of Agriculture, Forest Service, Computer Sciences and Telecommunications Staff (N1–95–87–6). Systems management correspondence dealing with routine administration of the agency's computer systems.

6. Department of Agriculture, Forest Service, Timber Management Staff (N1–95–87–10). Special plans and studies.

7. U.S. Arms Control and Disarmament Agency, Office of Administration (N1–383–87–1). Comprehensive records control schedule covering all program and administrative records.

8. Department of Commerce, National Oceanic and Atmospheric Administration (NC1–370–85–2). Case files pertaining to the approved, financial administration, and payment of grants.

9. Defense Communications Agency (N1–371–87–1). Technical and administrative support records relating to the Autodin II communication system.

10. Defense Logistics Agency (N1–361–86–3). Records relating to the administration of the Model Installation Program.

11. Defense Logistics Agency, Administration Staff Director, Resources Management Division (N1–361–86–4). Internal control program records. (Data is summarized in permanent annual reports maintained by the Office of the Secretary of Defense.)

12. Department of Justice, Civil Division, Foreign Litigation Section (N1–131–86–5, –7, –12, –20, –23, and –28). Records, 1917–66, of the Office of Alien Property: audit reports, proposed determinations involving insolvent estate debt claims, case files covering sales of vested properties, the Philippine Alien Property Administration, and fiscal records relating to the control and disposition of alien property during World War I.

13. Department of Justice, Federal Bureau of Investigation (N1–65–87–11). Schedule provides for disposal of routine investigative case files lacking historical significance and permanent retention of those of historical value.

14. National Archives and Records Administration, Office of Records Administration (N1–GRS–87–9). Revision of General Records Schedule relating to contract appeals case files arising under the Contract Disputes Act.

15. Tennessee Valley Authority, Office of Power, Division of Energy Use and Distributor Relations (N1–142–87–6). Analysis study reports used in determining the reasonableness of cost and adequacy of retail rate levels and revenues.

16. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (N1–436–87–1). Claims (liquors, tobacco and firearms) on tax paid.

Dated: March 23, 1987.

**Frank G. Burke,**

*Acting Archivist of the United States.*

[FR Doc. 87–6815 Filed 3–26–87; 8:45 am]

BILLING CODE 7515–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Humanities Panel; Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 5552b of Title 5, United States Code.

1. Date: April 27–28, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to Humanities Projects in Libraries program, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

2. Date: April 30–May 1, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted to Humanities Projects in Libraries program, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

3. Date: April 22, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for College Teachers applications in English, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

4. Date: April 24, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Seminars for College Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

5. Date: April 27, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for College Teachers applications in History and Politics, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

**Stephen J. McCleary,**

*Advisory Committee Management Officer.*

[FR Doc. 87–6808 Filed 3–26–87; 8:45 am]

BILLING CODE 7536–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-412]

### Duquesne Light Company, et al, Beaver Valley Unit 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regualtory Commission (the Commission) is considering issuance of a schedular exemption from a portion of the requirements of General Design Criterion (GDC) 4 (10 CFR Part 50, Appendix A) to the applicants [1] for Beaver Valley Unit 2, located at Beaver County, Pennsylvania.

Environmental Assessment

*Identification of Proposed Action:* The schedular exemption would permit the applicants not to install the pipe whip restraints and jet impingement shields and not to consider the dynamic effects associated with postulated pipe breaks in certain Beaver Valley Unit 2 piping, on the basis of advanced calculational methods ("leak-before-break") for assuring that piping stresses would not result in rapid piping failure. All of the affected piping are inside containment and include: reactor coolant loop bypass lines, safety injection lines, accumulator injection lines, pressurizer surge line, and residual heat removal lines.

*Need for Proposed Action:* The proposed exemption is needed in order for the applicants not to consider the dynamic loading effects associated with the postulated full-flow circumferential and longitudinal pipe ruptures in certain piping. These dynamic loading effects include pipe whip, jet impingement, asymmetric pressurization transients and break-associated dynamic transients in unbroken portions of the subject piping. Therefore, the applicants would not be required to install protective devices such as pipe whip restraints and jet impingement shields related to postulated break locations for the subject piping. Analysis shows that the pipe breaks, which these devices are designed to protect against, are extremely unlikely. On the other hand, the presence of these devices increase inservice inspection time in the containment and their elimination would lessen the occupational doses to workers and facilitate inservice inspections.

GDC 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects, including the effects of discharging fluids that may result from equipment failures. In recent submittals, the applicants have provided information to show, by advanced fracture mechanics techniques, that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas. The NRC staff has reviewed and accepted the applicants' conclusion and has published the results in Safety Evaluation Report Supplement No. 4 (NUREG-1057). The NRC staff agrees that double-ended guillotine break in the piping so named above, need not be required as a design-basis accident for pipe whip restraints. Accordingly, the NRC staff agrees that schedular exemption from GDC 4 is appropriate. (The subject GDC 4 is currently being revised to permit use of "leak-before-break" technology to preclude use of pipe whip restraints. The applicant's application is in line with the rulemaking but is ahead of it).

*Environmental Impact of the Proposed Action:* The proposed exemption would not affect the environmental impact of the facility. No credit is given for the restraints and shields to be eliminated in calculating accident doses to the environment. While the jet impingement barriers and pipe whip restraints would minimize the damage from jet forces and whipping from a broken pipe, the calculated limitation on stresses required to support this exemption assures that the probability of pipe breaks which could give rise to such forces are extremely small; thus, the pipe whip restraints and jet shield would have no significant effect on the overall plant accident risk.

The exemption would not otherwise affect radiological plant effluents. Likewise, the exemption would not affect non-radiological plant effluents, and has no other environmental impact. The elimination of the pipe whip restraints would tend to lessen the occupational doses to workers inside containment. Therefore, the Commission concludes that there are no significant radiological or non-radiological impacts associated with the exemption.

The proposed exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with the exemption.

Since the staff has concluded that there are no measurable negative environmental impacts associated with this exemption, any alternatives would not provide any significant additional protection of the environment. The alternative to the exemption would be to require literal compliance with GDC 4.

*Alternative Use of Resources:* This action does not involve the use of resources not previously considered in the Final Environmental Statement (Operating License) for Beaver Valley Unit 2.

*Agencies and Persons Contacted:* The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this exemption for Beaver Valley Unit 2. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, the staff concludes that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated February 2, 1987, as supplemented February 13, 1987. These documents, used in the NRC staff's technical evaluation of the exemption request, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. The staff's technical evaluation of the request has been published in Beaver Valley Unit 2 Safety Evaluation Report, Supplement 4 (NUREG-1057, Supplement 4) and is available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 13th day of March 1987.

For the Nuclear Regulatory Commission.

**Lester S. Rubenstein,**

*Director, PWR Project Directorate #2, Division of PWR Licensing-A.*

[FR Doc. 87-6798 Filed 3-26-87; 8:45 am]

BILLING CODE 7590-01-M

[1] The applicants are Duquesne Light Company, Ohio Edison Company, the Cleveland Illuminating Company and the Toledo Edison Company.

---

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff

for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.59, "Methods for Estimating Radioactive and Toxic Airborne Source Terms for Uranium Milling Operations," provides guidance on methods, models, data, and assumptions acceptable to the NRC staff for estimating airborne emissions of radioactive and toxic materials from various steps in uranium milling.

Comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 23rd day of March 1987.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 87–6799 Filed 3–26–87; 8:45 am]

BILLING CODE 7590–01–M

## Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.60, "Design of an Independent Spent Fuel Storage Installation (Dry Storage)," provides guidance acceptable to the NRC staff for use in the design of a dry storage independent spent fule storage installation. This guide endorses, with certain exceptions and modifications, ANSI/ANS–57.9–1984, "Design Criteria for an Independent Spent Fuel Storage Installation (Dry Storage Type)."

Comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202)275–2060 or (202)275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23rd day of March 1987.

For the Nuclear Regulatory Commission.

**Denwood F. Ross,**

*Deputy Director, Office of Nuclear Regulatory Research.*

[FR Doc. 87–6800 Filed 3–26–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–321]

## Georgia Power Co., et al., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–57 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee), for the operation of the Edwin I. Hatch Nuclear Plant, Unit 1 located in Appling County, Georgia.

In accordance with the licensees' application for amendment dated March 4, 1987, the amendment would modify the Technical Specification for Hatch Unit 1 to: (1) Delete certain valves from the Table 3.7–4 that lists containment isolation valves subject to leak rate testing pursuant to the requirements of Appendix J to 10 CFR Part 50 (i.e., remove the Technical Specification requirements for leak testing these valves), (2) correct erroneous information in Table 3.7–4, and (3) change the pressure at which the main steam isolation valves are required to be leak tested.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and Commission's regulations.

By April 27, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A coopy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Bruce W. Churchill, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 4, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 20th day of March 1987.

For the Nuclear Regulatory Commission.

**Daniel R. Muller,**

*Director, BWR Project Directorate #2, Division of BWR Licensing.*

[FR Doc. 87–6801 Filed 3–26–87; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 22–12239]**

### Application and Opportunity for Hearing; Continental Airlines, Inc.

March 23, 1987.

Notice is hereby given that Continental Airlines, Inc. ("Continental") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of United States Trust Company of New York (the "Trust Company") under four indentures are not so likely to involve a material conflict of interest under the Act as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under such indentures.

Section 310(b) of the Act provides, in part, that if an indenture trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined therein) it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee is deemed to have a conflicting interest if it is acting as trustee under a qualified indenture and is trustee under another indenture of the same obligor.

Continental alleges that:

1. As of September 30, 1986, there were outstanding the following securities issued by, or in connection with aircraft financings involving, Continental:

(a) $24,487,000 principal amount of 3½% Convertible Subordinated Debentures, due May 1, 1992 (the "3½% Debentures"), issued under an Indenture dated as of May 1, 1967, as amended (the "3½% Debenture"), between Continental and the Trust Company, as successor trustee. The Debentures were registered under the Securities Act of 1933 (the "Securities Act") on Form S–1, as amended (File No. 2–16377). The Indenture was qualified under the Act.

(b) First Security Bank of Utah, National Association ("First Security"), as owner trustee, had outstanding in connection with two Continental 1980 DC–10 aircraft leveraged lease financings the following securities:

(i) $29,530,684.90 original principal amount of Loan Certificates, issued under a Trust Indenture and Security Agreement No. I dated as of August 20, 1980, between First Security, as owner trustee, and the Trust Company, as loan trustee, as supplemented by Trust Supplement No. 1 dated as of August 28, 1980, and executed by First Security, as owner trustee.

(ii) $29,542,041.41 original principal amount of loan Certificates, issued under a Trust Indenture and Security Agreement No. II dated as of August 25, 1980, between First Security, as owner trustee, and the Trust Company, as loan trustee, as supplemented by Trust Supplement No. 1 thereto dated September 25, 1980, and executed by First Security, as owner trustee.

The Loan Certificates were not registered under the Securities Act pursuant to the exemption contained in section 4(2) thereof. The related Trust Indentures and Security Agreements were not qualified under the Act in reliance on the exemption contained in section 304(b)(1) of the Act.

The obligation for payment in respect of the Loan Certificates is not the obligation of Continental, but is the obligation of First Security, as owner trustee.

The payment of each series of Loan Certificates is secured by a security interest in favor of the Trust Company, as loan trustee, in the owner trustee's right, title and interest in (A) a McDonnell Douglas DC–10–20 aircraft and (B) a lease of the aircraft between the owner trustee and Continental, including the right to receive rent. Upon

the default of Continental under either of the leases, the owner trustee has the right to take possession of and sell or relet the related aircraft and to receive liquidated damages as set forth in the leases in lieu of rent due and to become due.

(c) $17,806,200 principal amount of 11% Subordinated Debentures due 1996 (the "11% Debentures"), issued under an Indenture dated as of September 1, 1986 (the "11% Debenture Indenture") between Continental and the Trust Company, as successor trustee. The 11% Debentures, which are unsecured, were not registered under the Securities Act, as amended, in reliance on the exemptions provided by section 4(2) of the Securities Act and section 1145(b) of the Bankruptcy Reform Act of 1978. The 11% Debenture Indenture was qualified under the Act pursuant to an application on Form T-3 (Registration No. 22-15521). The 11% Debenture Indenture was filed as Exhibit T3C to that application.

2. Although Continental, as lessee, makes rental payments under the leases for the two Continental DC-10 aircraft to the owner trustee, Continental is neither the obligor nor a guarantor of the Loan Certificates. Accordingly, in its opinion, Continental is not an obligor of the Loan Certificates pursuant to the definition in section 303(12) of the Act or within the meaning of section 310(b) of the Act.

Continental has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-12239, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

*Notice is further given* that any interested person may, not later than April 13, 1987, request in writing that a hearing be held on such matter, or he may request that he be notified if the Commission orders a hearing. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact of law raised by the application which he desires to controvert. At any time after such date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corportation Finance, pursuant to delegated authority.

**Jonathan Katz,**

*Secretary.*

[FR Doc. 87-6723 Filed 3-26-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

**[Public Notice 1007]**

### South African Parastatal Organizations

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** A revised notice is given of which corporations, partnerships, and entities are deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of October 2, 1986 (Pub. L. 99-440).

**EFFECTIVE DATE:** March 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Eric Benjaminson, Office of Southern African Affairs (202) 647-8433, or Lynda Clarizio, Office of the Legal Adviser (202) 647-4110.

**SUPPLEMENTARY INFORMATION:** Section 303(a) of the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99-440), as amended, provides that no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, with certain limited exceptions. Section 314 of the Act prohibits U.S. Government procurement from parastatal organizations, except for items necessary for diplomatic and consular purposes.

Section 303(b) of the Act states that the term "parastatal organization" means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned. Regulations have been promulgated by the Department of the Treasury to implement section 303 (South African Transactions Regulations, 31 CFR Part 545, published on November 19, 1986, 51 FR 41906).

Executive Order No. 12571 of October 27, 1986 provides that the Secretary of State is responsible for determining which corporations, partnerships, or entities are parastatal organizations within the meaning of the Act. Pursuant to section 2 of the Executive Order, the Department of State published on November 19, 1986 a public notice identifying 167 firms as "parastatal organizations" within the meaning of the Act (Public Notice 983, 51 FR 41912).

As the notice indicated, this list of parastatal organizations was not all-inclusive. The list was based on information then available to the U.S. Government. The Department of State intends periodically to revise and update the list. Before making a commitment to import from South Africa, importers may wish to seek guidance from the Office of Southern African Affairs (AF/S), Department of State, Washington, DC 20520 (202-647-8433) to ascertain whether a corporation, partnership, or entity has been identified as a parastatal organization.

This notice contains a revised list of parastatal organizations for purposes of the Act. Inaccuracies in the names of firms identified in the November 19, 1986 notice have been corrected. In addition, seventy-six firms that did not appear on the November 19, 1986 list have now been identified as parastatal organizations. These additions provide information on the subsidiaries of previously-listed parastatals and are based on other information that has become available to the Department of State since the publication of the original list.

Thirteen firms identified as parastatal organizations in the November 19, 1986 notice have been removed from the list. One of these firms, the Fisheries Development Corp. of South Africa, has been liquidated. Another, the South African Dried Bean Board, has been merged into the South African Potato Board (now called the Potato, Dried Bean & Grain Sorghum Board). The remaining eleven firms have been removed from the list on the basis of information submitted in requests to reconsider their classification as parastatal organizations. Such requests were made in accordance with the procedures set forth in the November 19, 1986 notice, which provided that any person believing that a firm should be included or excluded from the list of parastatal organizations could make a request in writing that the Department of State review the particular case.

Requests were submitted to the Department to review the status of seventeen firms identified as parastatal organizations in the November 19, 1986 list. On December 23, 1986 (51 FR 45981) and February 5, 1987 (52 FR 3731), the Department published two public

notices inviting interested persons to submit any written comments relevant to the Department's review of the status of these firms. No comments were received.

The Department determined that the submissions made on behalf of the following six firms failed to establish that these firms were not owned, controlled, or subsidized by the South African Government: Bophuthatswana National Development Corp.; Council for Scientific and Industrial Research; Putco Ltd.; Rand Water Board; South Africa Wool Board; and South West African Broadcasting Corp. These firms continue to be identified as parastatal organizations.

Note.—Rand Water Board is included under the heading of "Water Boards" on the revised list.

The Department determined that the submissions made on behalf of the following eleven firms established that these firms were not owned, controlled, or subsidized by the South African Government and thus should not be identified as parastatal organizations: [K]Alein Karoo Landboukooperasie, Ltd.; Andromeda Electronic Systems (Pty) Ltd.; Computer Technology (Pty) Ltd. (Comtec); Cooperative Wine Growers (KWV); Mercedes Datakor (Pty) Ltd.; Sasol Ltd. (and subsidiaries); Siemens Ltd.; South Africa Sugar Association; Thames Wire and Cable (Pty) Ltd.; Tecnetics (Pty) Ltd.; and Transvaal Copper Rod Co. Ltd. These firms have been removed from the list of parastatal organizations. Sasol Ltd. is removed from the list with the understanding that information will be provided to the Department of State every six months on the firm's behalf as to whether Sasol Ltd. has received during that period a fuel levy rebate such as one certain Sasol Ltd. subsidiaries received prior to January 1985 so that the Department could determine whether any such payment constitutes a subsidy under the Act. Sasol Three (Pty) Ltd. remains on the list.

The Department of State will continue to accept requests to reconsider the classification of particular firms as parastatal organizations. Requests made on behalf of those firms originally identified on the November 19, 1986 list must be made within one month of the date of publication of this notice. Requests made on behalf of all other firms identified on the list below must be made within three months of this date. The Department of State will attempt to provide a response to all requests at the end of this three-month period.

All requests must be submitted in writing. The Department of State may invoke the authorities set forth in section 603(a) of the Act in reviewing submissions. Any submission should contain detailed information as to the stock ownership and composition of the board of directors of the particular firm, as well as the amount of any financial assistance received by such firm on preferential terms from the South African Government. Any person who willfully makes a false or misleading statement in such a submission will be subject to the civil and criminal penalties set forth in section 603 (b) and (c) of the Act and 18 U.S.C. 1001.

The Department of State wishes to make the following clarification concerning the list of parastatal organizations. Placement of a firm on the list is based solely on an economic judgment as to the degree of South African Government ownership, control, or subsidization of the firm. The list is not intended to be used in any way except to prohibit importation into the U.S. of articles grown, produced, manufactured by, marketed, or otherwise exported by firms identified on the list and to prohibit U.S. Government procurement from such firms.

The list of parastatal organizations below contains the heading of "Government of the Republic of South Africa." It is the intention of the Department of State that this heading include entities which are part of the Government of South Africa. Such entities are generally viewed as parastatal organizations within the meaning of the Act.

This notice involves a foreign affairs function of the United States. It is excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291. It implements a statutory requirement that entered into force on October 2, 1986, and section 2 of Executive Order 12571.

In accordance with these authorities, the following have been identified as South African parastatal organizations:

Agricultural Control Boards
- Banana Board
- Canning Fruit Board
- Chicory Board
- Citrus Board
- Cotton Board
- Dairy Board
- Deciduous Fruit Board
- Dried Fruit Board
- Egg Board
- Lucerne Seed Board
- Maize Board
- Meat Board
- Mohair Board
- Oilseeds Board
- Potato, Dried Bean & Grain Sorghum Board
- Rooisbos Tea Board
- South African Karakul Board
- South West African Karakul Board (Namibia)
- Tobacco Board
- Wheat Board
- Wool Board

Agricultural Corp. of Venda
Agricultural Development Corp. of Bophuthatswana
Altana (Pty) Ltd.
Aluminum Investment Co. (Pty) Ltd.
Aluminum Co. of South Africa (Pty) Ltd. (Alusaf)
- Alustang (Pty) Ltd.
- Richigata (Pty) Ltd.

Alzira Financial (Pty) Ltd.
Armaments Corp. of South Africa (Pty) Ltd. (Armscor)
- Atlas Aircraft Ltd.
- Eloptro (Pty) Ltd.
- Ernani Property (Pty) Ltd.
- Infloplan Ltd.
- Kentron (Pty) Ltd.
- Konchem (Pty) Ltd.
- Lyttleton Engineering Works Ltd.
- Musgrove (Pty) Ltd.
- Naschem (Pty) Ltd.
- Pretoria Metal Pressings (Pty) Ltd.
- Sonchem (Pty) Ltd.
- Swartklip Products (Pty) Ltd.

Atlantis Diesel Engines (Pty) Ltd.
- ADE Behuisings (Pty) Ltd.
- Adepart (Pty) Ltd.
- Atlantis Aluminum (Pty) Ltd.
- Atlantis Foundries (Pty) Ltd.
- Finasco (Pty) Ltd.

Atomic Energy Corp. of South Africa Ltd.
Bophuthatswana National Development Corp.
- Bophuthatswana Transport Holdings
- Fish Hoek Hotel (Pty) Ltd.
- Mankue Enterprises (Pty) Ltd.
- Heystekrand Furniture Factory (Pty) Ltd.
- T.A.B. Bophuthatswana

Central Energy Fund (Pty) Ltd.
Ciskei Agricultural Corp.
- Tainton Pineapple Estate

Ciskei People's Development Bank
- CTC Bus Company
- Indwe Commercial Enterprises (Pty) Ltd.

Ciskei Small Business Corp.
Commission for Fresh Produce Markets
Community Development Fund
Corporation for Public Deposits
Council for Mineral Technology (MINTEK)
Council for Scientific and Industrial Research
- South African Inventions Development Corp.

Department of Posts and Telecommunications
Deposit Fund for Housing
Development Bank of Southern Africa
Duntex Property (Pty) Ltd.
ESCOM (formerly Electricity Supply Commission)
Export Finance Development Corp.
First National Development Corp. of South West Africa
- Melkor (Pty) Ltd.
- Okatana Vulstasie (Pty) Ltd.
- Windhoek Wild (Pty) Ltd.

Government Motor Transport and Trading Account
Government of the Republic of South Africa

Government Printing Works
Guardians' Funds
Hooggenoeg Marketing (Pty) Ltd.
Human Sciences Research Council
Industrial Development Corp. of South Africa Ltd. (IDC)
  Industrial Selections
  Konoil (Pty) Ltd.
  National Selections
Industrial Minerals Development Co. (Pty) Ltd.
International Karakul Secretariat
KaNgwane Economic Development Corp. Ltd.
Kindoc Investments (Pty) Ltd.
Konbel (Pty) Ltd.
KwaNdebele Development Corp. Ltd.
KwaZulu Finance and Investment Corp. Ltd.
  Bambisanani Nongoma (Pty) Ltd.
  Intaba Motors Ltd.
  Isithebe Malt Factory (Pty) Ltd.
  KwaZulu Finance (Pty) Ltd.
  KwaZulu Garment Industries Ltd.
  KwaZulu Housing Company (Pty) Ltd.
  KwaZulu News Agency Ltd.
  KwaZulu Truck and Bus Ltd.
  Zululand Furniture Factory (Pty) Ltd.
Land and Agricultural Bank of South Africa (Landbank)
Land and Agricultural Bank of South West Africa
Lebowa Development Corp. Ltd.
  Dilokong Chrome Mine (Pty) Ltd.
  Lebowa Transport Company
Light Metals Investment Co. (Pty) Ltd.
Marmain (Pty) Ltd.
Mavaco (Pty) Ltd.
Motor Vehicle Assurance Fund
Nabucco Investments (Pty) Ltd.
National Building and Investment Corp. (South West Africa)
National Marketing Board
National Parks Board of Trustees
National Road Fund
National Supplies Procurement Fund
Navik (Pty) Ltd.
Oostra Inmakers (Pty) Ltd. (Eastern Packers)
Phosphate Development Corp. (Pty) Ltd. (Foskor)
  Foskem (Pty) Ltd.
  Palafos (Pty) Ltd.
Post Office Savings Bank
Public Investment Commissioners
Putco Ltd.
  African Body and Coach (Pty) Ltd.
  Crown Body and Coach (Pty) Ltd.
  Dubigeon Plastics SA (Pty) Ltd.
  Voms (Pty) Ltd.
  Voms Parts (Pty) Ltd.
QwaQwa Agricultural Co. Ltd.
QwaQwa Development Corp. Ltd.
Rehoboth Finance and Development Corp. Ltd.
Reinsurance Fund for Export Credit and Foreign Investment
Regional Water Service Corporations
Rosamond Properties (Pty) Ltd.
Rustenberg Industrial Finance (Pty) Ltd.
Saldok (Pty) Ltd.
Sapekoe (Pty) Ltd.
  Sapekoe Ngome Landgoed (Pty) Ltd.
  Sapekoe Richmond Landgoed (Pty) Ltd.
  Sapekoe Sales (Pty) Ltd.
Sasol Three (Pty) Ltd.
Satchem (Pty) Ltd.
Shangaan/Tsonga Development Corp. Ltd.
  Fumani Gold Mining Co. (Pty) Ltd.
Small Business Development Corp.
South African Abattoir Corp.
South African Abattoir Commission
South African Banknote Co. (Pty) Ltd.
South African Broadcasting Corp. (SABC)
South African Bureau of Standards (SABS)
South African Development Trust
South African Development Trust Corp. Ltd.
South African Gas Distribution Corp. Ltd.
South Africa Iron and Steel Industrial Corp. (ISCOR)
  Cape Town Iron and Steel Works (Pty) Ltd.
  Coastal Coal (Pty) Ltd.
  Dalestone (Pty) Ltd.
  Donkerhoek Quartzite (Pty) Ltd.
  Dunswart Iron and Steel Works Ltd.
  The Durban Navigation Collieries (Pty) Ltd.
  Grootegeluk Coal Mine Construction Co. (Pty) Ltd.
  Heckett SA (Pty) Ltd.
  Holbane Collery
  I Stores (Pty) Ltd.
  Imcor Tin (Pty) Ltd. (Namibia)
  Imcor Zinc (Pty) Ltd. (Namibia)
  Iscor Berlin (Pty) Ltd.
  Iscor Utility Stores (Pty) Ltd.
  Minsa (Pty) Ltd.
  Pietersburg Iron Co. (Pty) Ltd.
  Steel Sales Co. of Africa
  Suprachem (Pty) Ltd.
  Tshikondeni Mining Co. (Pty) Ltd.
  Vantin (Pty) Ltd.
  Vryheid (Natal) Railway Coal and Iron Co.
  Yskor Landgoed (Pty) Ltd.
  Yskor Newcastle Grondesit Ltd.
South African Medical Research Council
South African Mint
  Gold Reef City Mint
South African Reserve Bank
South African Tourism Board
South African Transport Services
  South African Airways
  South African Harbours
  South African Pipeline
  South African Railways
  South African Road Motor Transport Services
South Atlantic Cable Co. (Pty) Ltd.
Southern Oil Exploration Corp. (Pty) Ltd.
Southern Oil Exploration Corp. (South West Africa) (Pty) Ltd.
South West African Broadcasting Corp.
South West African Water and Electricity Corp. (Pty) Ltd.
State Alluvial Diggings
State Trust Board
Tollgate Holdings Ltd.
  Atlantis Bus Services Ltd.
  Boland Passenger Transport Ltd.
  Cape Tramways (Pty) Ltd.
  Golden Arrow Bus Service Ltd.
  Springbok Atlas Safaris (Pty) Ltd.
Transkei Broadcasting Corp.
Transkei Development Corp. Ltd.
  Albron Foundary (Pty) Ltd.
Tribal Levies and Trust Account
Tusitala (Pty) Ltd.
Union Steel Corporation of South Africa Ltd. (Usco)
  Avon Wire (Pty) Ltd.
  Hall and Pickles (Coastal) (Pty) Ltd.
  National Materials Service Corp. (Pty)
  Usco Aluminum Corp. (Pty) Ltd.
  Usco Aluminum Systems (Pty) Ltd.
  Usco Huiseienaars (Pty) Ltd.
  Usco Kabelmaatskappy (Pty) Ltd.
  Veldmaster (Pty) Ltd.
  Veldmaster Incorporated (U.S.)
United Passenger Transport Investments (Pty) Ltd.
Urban Transport Fund
Venda Development Corp. Ltd.
  Aidec Venda (Pty) Ltd.
  N.T.K. Venda (Pty) Ltd.
  Thusani Stone Crushers (Pty) Ltd.
  Venbor (Pty) Ltd.
  Vhavenda Brickworks (Pty) Ltd.
Virema (Pty) Ltd.
Water Boards (all South African Water Boards)
Water Research Commission

Dated: March 20, 1987.

**Chester A. Crocker,**

*Assistant Secretary for African Affairs.*

[FR Doc. 87-6696 Filed 3-26-87; 8:45 am]

BILLING CODE 4710-26-M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 20, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket No. 44740*

*Date Filed:* March 18, 1987

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 15, 1987

*Description:* Application of Highland Express Airways, Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in the foreign air transportation of passengers, cargo and mail between New York, New York in the United States and Prestwick/Glasgow in the United Kingdom.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

FR Doc. 87-6831 Filed 3-26-87; 8:45 am]

BILLING CODE 4910-62-M

## National Highway Traffic Safety Administration

[Docket No. IP 87-04; Notice 1]

## Michelin Tire Corporation; Receipt of Petition for Determination of Inconsequential Noncompliance

Michelin Tire Corporation, of Woodbury, New York, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3(f) of Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires*, requires the words "tubeless" or "tube type" to be permanently molded into or onto both sidewalls of tires as applicable. During the period June 27, 1986, to January 9, 1987, Michelin Tire Corporation manufactured and shipped 145,627 P185/70R13 MXL tubeless tires that are in noncompliance with Standard No. 109. These tires either lacked the word "tubeless" on both sidewalls or had the word "tubeless" molded on one sidewall. The P185/70R13 MXL is manufactured only as a tubeless tire; therefore, Michelin believes these tires will be sold and used as tubeless tires.

Interested persons are invited to submit written data, views and arguments on the petition of Michelin Tire Corporation, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: April 27, 1987.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 24, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87-6724 Filed 3-26-87; 8:45 am]

BILLING CODE 4910-59-M

BEST COPY AVAILABLE

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., April 3, 1987.

**PLACE:** 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–6849 Filed 3–25–87; 10:58 am]

BILLING CODE 6351–01–M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., April 10, 1987.

**PLACE:**: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A . Webb,

*Secretary of the Commission*

[FR Doc. 87–6850 Filed 3–25–87; 10:58 am]

BILLING CODE 6351–01–M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., April 17, 1987.

**PLACE:** 2033 K Street., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Survellance Matters

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A . Webb,

*Secretary of the Commission*

[FR Doc. 87–6851 Filed 3–25–87; 10:58 am]

BILLING CODE 6351–01–M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., April 24, 1987.

**PLACE:** 2033 K Street, N.W., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–6851 Filed 3–25–87; 10:58 am]

BILLING CODE 6351–01–M

---

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**TIME AND DATE:** 2:00 p.m. (eastern time) Monday, April 6, 1987.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

**STATUS:** Closed to the public.

**MATTERS TO BE CONSIDERED:**

*Closed*

1. Litigation Authorization; General Counsel Recommendations.

**Note.**—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.)

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued: March 25, 1987.

Cynthia C. Matthews,

*Executive Secretariat.*

[FR Doc. 87–6896 Filed 3–25–87; 2:51 pm]

BILLING CODE 6750–06–M

---

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:37 a.m. on Thursday, March 19, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the bid submitted by State Bank of De Kalb, De Kalb, Texas, an insured State nonmember bank, for the purchase of certain assets of and the assumption of the liability to pay deposits made in Red River National Bank in Clarksville, Clarksville, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, March 19, 1987; (2) approve the application of State Bank of De Kalb, De Kalb, Texas, for consent to purchase certain assets of and assume the liability to pay deposits made in Red River National Bank in Clarksville, Clarksville, Texas, and for consent to establish the two offices of Red River National Bank in Clarksville as branches of State Bank of De Kalb; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following:

(a) Sweeny Bank, Sweeny, Texas, which was expected to be closed by the Banking Commissioner for the State of Texas on Thursday, March 19, 1987;

(b) Clarks Fork National Bank, Fromberg, Montana, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, March 19, 1987;

(c) Morocco State Bank, Morocco, Indiana, which was expected to be closed by the Director of the Department of Financial Institutions for the State of Indiana on Friday, March 20, 1987; and

(d) New City Bank, Orange, California, which was expected to be closed by the Acting Superintendent of Banks for the State of California on Friday, March 20, 1987; and

(C) Discuss matters relating to the Madill Bank and Trust Company, Madill, Oklahoma, which was expected to be closed by the Acting Bank Commissioner for the State of Oklahoma on Friday, March 20, 1987.

At that same meeting, the Board also discussed matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its

consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 24, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87-6860 Filed 3-25-87; 11:25 am]

BILLING CODE 6714-01-M

---

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, March 31, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

St. George Finance, Inc., dba St. George Thrift & Loan, an operating noninsured industrial bank located at 10 North 400 East, St. George, Utah.

Application for Federal deposit insurance and for consent to exercise full trust powers:

Yasuda Bank and Trust Company (U.S.A.), a proposed new bank to be located at One World Trade Center, Suite 8833, New York City (Manhattan), New York.

Application for consent to purchase assets and assume liabilities:

Colonial Bank, Montgomery, Alabama, an insured State member bank, for consent to purchase the assets of and assume the liabilities of First Lee County Savings and Loan Association, Opelika, Alabama, a non-FDIC-insured institution.

Application for consent to purchase assets and assume liabilities and to establish one branch:

The Central Bank, Pleasureville, Kentucky, a State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the North Pleasureville Branch of Republic Savings Bank, FSB, Benton, Kentucky, a non-FDIC-insured institution, and for consent to establish that branch as a branch of The Central Bank.

Application for consent to purchase assets and assume liabilities:

Midlantic National Bank/Merchants, Neptune, New Jersey, for consent to purchase certain assets of and assume the liability to pay deposits made in three branches of Security Savings & Loan Association, Vineland, New Jersey, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,497-NR (Amendment)
Penn Square Bank, National Association, Oklahoma City, Oklahoma
Case No. 46,767-SR (Amendment)
West Coast Bank, Los Angeles (Encino), California
Case No. 46,842-L (Amendment)
United American Bank in Knoxville, Knoxville, Tennessee
Case No. 46,966-SR
Sunshine State Bank, South Miami, Florida

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications; request, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Trend Analysis Report re:
Trend Analysis of Liquidation Site Audit Results (Memo dated February 19, 1987)
Summary Audit Report re:
Continental National Bank of Kentucky, Louisville, Kentucky (2569) (Memo dated February 17, 1987)
Summary Audit Report re:
Farmers' Bank, Trimble, Tennessee (2579) (Memo dated February 13, 1987)
Summary Audit Report re:
Lubbock Consolidated Office Cost Center 403 (Memo dated February 20, 1987)
Summary Audit Report re:
LAMIS System Development Project Audit Report (Memo dated February 25, 1987)

Discussion Agenda:

Memorandum and resolution re: Proposed amendmends to Part 337 of the Corporation's rules and regulations, entitled "Unsafe or Unsound Banking Practices," which amendments, with respect to securities activities of subsidiaries of insured nonmember banks and the affiliate relationships of insured nonmember banks with securities companies, would (1) revise the existing requirement that such subsidiaries and affiliates must use separate offices from the bank that share no common entrance with the bank; (2) delete the prohibition against such subsidiaries and affiliates sharing a common name or logo with the bank; and (3) establish certain affirmative disclosure requirements to the effect that investments recommended, offered or sold by or through such subsidiary or affiliate are not FDIC-insured deposits, that the subsidiary and affiliate are separate organizations from the bank, and that the obligations of the subsidiary and affiliate are not obligations of the bank and are not guaranteed, warranted, or otherwise supported by the bank.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which amendments would (1) clarify and revise certain definitions; (2) reserve the authority of the Corporation with respect to the definitions of "primary capital" and "secondary capital;" (3) specify that the terms and conditions to which capital instruments are subject must be consistent with safe and sound banking practices; and (4) limit the circumstances in which the Corporation will not approve a proposed merger transaction solely because the resulting entity does not meet the Corporation's minimum capital requirement.

Memorandum and resolution regarding a proposal relating to risk-based capital which would (1) add a risk-based capital measure (also known as a risk asset ratio) to be used in tandem with existing capital ratios, and (2) amend the definition of primary capital for purposes of computing existing capital to total assets ratios.

Memorandum re: Proposed Statement of Policy for Minimum Disclosure by Insured State Nonmember Banks which statement of policy would set forth the various types of information an insured state nonmember bank should make available to the public upon request.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 24, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87-6861 Filed 3-25-87; 11:25 am]

BILLING CODE 6714-01-M

---

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, March 31, 1987,

the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552(b) (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceeding, terminatin-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Memorandums regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for Federal deposit insurance:

Brentwood Thrift and Loan Association, an operating noninsured industrial bank located at 12300 Wilshire Bouldevard, Los Angeles, California.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552(b) (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: March 24, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87–6862 Filed 3–25–87; 11:25 am]

BILLING CODE 6714–01–M

# Corrections

Federal Register
Vol. 52, No. 59
Friday, March 27, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE
## GENERAL SERVICES ADMINISTRATION
## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 3

[Federal Acquisition Circular 84-24]

### Federal Acquisition Regulation; Anti-Kickback Act of 1986

*Correction*

In rule document 87-4219 beginning on page 6120 in the issue of Friday, February 27, 1987, make the following corrections:

**PART 3—[CORRECTED]**

1. On page 6121, in the first column, in amendatory instruction 2, in the first line, "3.503" should read "3.502" and in the second line, "3.501-1" should read "3.502-1".

**3.502-2 [Corrected]**

2. On the same page, in the second column, in section 3.502-2(a), in the first line, "Prohibit" should read "Prohibits" and "persons" should read "person".

3. On the same page, in the same column, in section 3.502-2(d)(1), in the first line, "office" should read "officer".

4. On the same page, in section 3.502-2(d)(2), in the third column, in the second line, "subcontractor" should read "subcontract".

5. On the same page, in the same column, in section 3.502-2(e), in the sixth line, "is" should read "it".

6. On the same page, in the same column, in section 3.502-2(h), in the 11th line, "the audit" should read "audit the".

BILLING CODE 1505-01-D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 234, 235, 237, and 240

[Docket No. R-87-1294; FR 1928]

### Single Family Mortgage Insurance on Hawaiian Home Lands

*Correction*

In rule document 87-5518 beginning on page 8064 in the issue of Monday, March 16, 1987, make the following corrections:

1. On page 8064, in the third column, under **Background**, in the second paragraph, in the eighth line, insert "a" between "if" and "Federal".

2. On page 8065, in the first column, in the first paragraph, in the 20th line, "of" should read "on".

3. On the same page, in the second column, in the second complete paragraph, in the fifth line, "of" should read "on".

4. On the same page, in the third column, in the first complete paragraph, in the 12th line, "if" should read "in".

5. On the same page, in the same column, in the second complete paragraph, in the fourth line, "or" should read "of".

**PART 200—[CORRECTED]**

6. On page 8067, in the second column, in the **Authority**, in the first line, "Title" should read "Titles".

**§ 200.163 [Corrected]**

7. On the same page, in the same column, in § 200.163(a)(2), in the ninth line, "mortgage" should read "mortgagor", and in the 10th line, "in" should read "is".

**§ 203.439 [Corrected]**

8. On page 8068, in the second column, in the 15th line from the bottom, the section number should read "203.439".

BILLING CODE 1505-01-D

OL
2
S S
9
R
7
87
MI

Federal Register

Friday
March 27, 1987

Part II

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 358**

**Wart Remover Drug Products For Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 358**

**[Docket No. 80N-0238]**

## Wart Remover Drug Products for Over-The-Counter Human Use; Tentative Final Monograph

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a reproposal of the tentative final monograph (proposed rule) for over-the-counter (OTC) wart remover drug products to reflect new data and information. This reproposal is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by May 26, 1987. New data relating to this notice by March 27, 1988. Comments on the new data by May 27, 1988. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by July 27, 1987.

**ADDRESS:** Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 3, 1980 (45 FR 65609), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC wart remover drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The agency's proposed regulation, in the form of a tentative final monograph, for OTC wart remover drug products was published in the **Federal Register** of September 3, 1982 (47 FR 39102). Interested persons were invited to file by November 2, 1982, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal.

In the **Federal Register** of January 5, 1982 (47 FR 522), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advanced notice of proposed rulemaking to establish a monograph for OTC corn and callus remover drug products. The agency's proposed regulation, in the form of a tentative final monograph, for OTC corn and callus remover drug products was published in the **Federal Register** of February 20, 1987 (52 FR 5412). In developing that proposal, the agency recognized that although the etiology and pathology of corns and calluses is different from that of warts, the Category I active ingredient, salicylic acid, and its mode of action, keratolysis, is common to both rulemakings.

Because no comments were submitted to the advance notice of proposed rulemaking for OTC wart remover drug products, the agency's tentative final monograph on OTC wart remover drug products proposed only minor changes from the Panel's recommendations. However, a number of comments as well as other data and information were submitted in response to the publication of the advance notice of proposed rulemaking for OTC corn and callus remover drug products. Based on that new data and information, the agency proposed a number of changes in the tentative final monograph for OTC corn and callus drug products (52 FR 5412).

Because of the similarities and overlap between the rulemakings for OTC corn and callus remover drug products and OTC wart remover drug products, the agency is proposing modifications in the tentative final monograph for OTC wart remover drug products to be consistent with the tentative final monograph for OTC corn and callus remover drug products. Because of the number of changes, the agency is restating its position on the establishment of a monograph for OTC wart remover drug products by reproposing Subpart B of Part 358 (21 CFR Part 358 Subpart B). Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC wart remover drug products. The definition of a wart remover drug product has been revised to be consistent with the corn/callus tentative final monograph.

A summary of the proposed changes and modifications that appear in the reproposed tentative final monograph follows:

(1) The tentative final monograph has been expanded to also include the use of a plaster vehicle containing 12 to 40 percent salicylic acid. In addition, the agency is proposing the term "collodion-like" in place of "a collodion vehicle" in describing the vehicle for liquid formulations of OTC wart remover drug products. The definition of a wart remover drug product also has been revised to be consistent with the definition of a corn and callus remover drug product as proposed in § 358.503(a) of the tentative final monograph for OTC corn and callus remover drug products.

(2) A number of the warnings have been revised to conform with the warnings proposed in § 338.550(c) of the tentative final monograph for OTC corn and callus remover drug products.

(3) The directions for use of wart remover drug products have been revised to be similar to those proposed in § 338.550(d) of the tentative final monograph for OTC corn and callus remover drug products.

(4) Other changes have been made to conform to the format and content of other recent OTC drug tentative final monographs, e.g., the provision for other truthful and nonmisleading statements has been included in the indications section.

(5) Because of the changes summarized above, many of the paragraphs within the various sections have been redesignated.

Interested persons may communicate with the agency about the submission of data and information relating to this notice by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for

OTC wart remover drug products, is a major rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before May 26, 1987, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before July 27, 1987. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before March 27, 1988, may also submit in writing new data relating to this notice. Written comments on the new data may be submitted on or before May 27, 1988. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Data and comments submitted in response to the tentative final monograph for OTC wart remover drug products, published in the **Federal Register** of September 3, 1982 (47 FR 39102), have not yet been evaluated by the agency. Persons who previously submitted data and comments may wish to reevaluate them in light of this reproposed tentative final monograph.

Data and comments submitted in response to this reproposal as well as data and comments submitted in response to the tentative final monograph published in the **Federal Register** of September 3, 1982 (47 FR 39102), will be considered by the agency in establishing a final monograph. Data submitted after the closing of the administrative record on May 27, 1988, will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

**List of Subjects in 21 CFR Part 358**

Labeling, Over-the-counter drugs, Wart remover drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding Part 358 (proposed in the **Federal Register** of September 3, 1982; 47 FR 39108), Subpart B to read as follows:

## PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

* * * * *

**Subpart B—Wart Remover Drug Products**

Sec.

358.101 Scope.
358.103 Definitions.
358.110 Wart remover active ingredients.
358.150 Labeling of wart remover drug products.

**Authority:** Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

* * * * *

### Subpart B—Wart Remover Drug Products

**§ 358.101 Scope.**

(a) An over-the-counter wart remover drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each of the general conditions established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

**§ 358.103 Definitions.**

As used in this subpart:

(a) *Wart remover drug product.* A topical agent used for the removal of common or plantar warts.

(b) *Collodion-like vehicle.* A solution containing pyroxylin (nitrocellulose) in an appropriate nonaqueous solvent that leaves a transparent cohesive film when applied to the skin in a thin layer.

(c) *Plaster vehicle.* A fabric, plastic, or other suitable backing material in which medication is usually incorporated for topical application to the skin.

**§ 358.110 Wart remover active ingredients.**

The active ingredient of the product consists of any of the following when used within the specified concentration and in the dosage form established for each ingredient:

(a) Salicylic acid 12 to 40 percent in a plaster vehicle.

(b) Salicylic acid 5 to 17 percent in a collodion-like vehicle.

**§ 358.150 Labeling of wart remover drug products.**

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "wart remover."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For the removal of common warts. The common wart is easily recognized by the rough 'cauliflower-like' appearance of the surface."

(2) "For the removal of plantar warts on the bottom of the foot. The plantar wart is recognized by its location only on the bottom of the foot, its tenderness, and the interruption of the footprint pattern."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 358.110.* (i) "For external use only."

(ii) "Do not use this product if you are a diabetic or have poor blood circulation, except under the advice and supervision of a doctor."

(iii) "Do not use on irritated skin or on any area that is infected or reddened."

(iv) "If discomfort persists, see your doctor."

(v) "Do not use on moles, birthmarks, warts with hair growing from them, genital warts, or warts on the face or mucous membraces."

(2) *For any product formulated in a flammable vehicle.* (i) The labeling should contain an appropriate flammability signal word, e.g., "extremely flammable," "flammable," "combustible," consistent with 16 CFR 1500.3(b)(10).

(ii) "Keep away from fire or flame."

(3) *For any product formulated in a volatile vehicle.* "Cap bottle tightly and store at room temperature away from heat."

(4) *For any product formulated in a collodion-like vehicle.* (i) "If product gets into the eye, flush with water for 15 minutes."

(ii) "Avoid inhaling vapors."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing salicylic acid identified in § 358.110(a).* "Wash affected area and dry thoroughly." (If appropriate: "Cut plaster to fit wart.") "Apply medicated plaster. Repeat procedure every 48 hours as needed (until wart is removed) for up to 12 weeks."

(2) *For products containing salicylic acid identified in § 358.510(b).* "Wash affected area and dry thoroughly. Apply one drop at a time to sufficiently cover each wart. Let dry. Repeat this procedure once or twice daily as needed (until wart is removed) for up to 12 weeks."

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

(f) The phrase "or podiatrist" may be used in addition to the word "doctor" in any of the labeling statements in this section when a product is labeled with the indication identified in § 358.150(b)(2).

Dated: February 1, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87-6703 Filed 3-26-87; 8:45 am]

BILLING CODE 4160-01-M

Federal Register

Friday
March 27, 1987

Part III

# Department of Transportation

**Research and Special Programs Administration**

**49 CFR Parts 171 and 175**

**Detailed Hazardous Materials Incident Reports; Notice of Proposed Rulemaking**

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Parts 171 and 175**

**[Docket No. HM-36B; Notice 87-3]**

## Detailed Hazardous Materials Incident Reports

**AGENCY:** Office of Hazardous Materials Transportation, Research and Special Programs Administration, DOT.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This notice proposes several changes to the Research and Special Programs Administration's (RSPA's) system of collecting information on incidents involving the transportation of hazardous materials.

The proposed amendment would revise the hazardous materials incident report form—DOT F 5800.1—to provide more meaningful and comprehensive incident data, especially in terms of incident causation and consequent factors; and carriers would be required to maintain a copy of the incident report forms submitted to RSPA for a period of two years. In addition, the proposed amendment would expand the present requirement that RSPA be notified, at the earliest practicable moment, of the occurrence of certain events (e.g. incidents involving fatalities, suspected radioactive contamination) relating to the transportation of hazardous materials to include events resulting in evacuations, the shutdown or closure of major transportation arteries, and instances where an aircraft is forced to deviate from its planned course, or is required to make an unscheduled landing. The proposed amendment would also require that all carriers involved in a hazardous materials incident provide assistance to an authorized representative of the Department of Transportation (DOT) in any follow-up investigations or special studies which DOT might undertake in connection with the incident.

The intended effect of these actions is to enhance the Department of Transportation's capability to evaluate the effectiveness of existing regulations; and to determine the need for regulatory changes to cover new or emerging transportation safety problems.

**DATE:** Comments must be received on or before July 29, 1987.

**ADDRESS:** Address comments to: Dockets Branch, Office of Hazardous Materials Transportation, DHM-30, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped post card. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** J. S. Nalevanko, Policy Development and Information Systems Division, DHM-61, Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590, Telephone (202) 366-4484, or Irving R. Abis, Standards Division, DHM-12, Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590, Telephone (202) 366-4488.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 16, 1984, (49 FR 10042, March 16, 1984), RSPA published an Advance Notice of Proposed Rulemaking (ANPRM), Docket No. HM-36B, inviting comments on two major issues concerning the Department's collection of information on hazardous materials transportation incidents.

The first issue was whether the present criteria for submitting detailed, written reports on hazardous materials incidents should be changed and, if so, what the new criteria should be. Currently, written reports must be submitted if the incident requires a telephonic notice under § 171.15; or if, under § 171.16, there is an "unintentional release" of a hazardous material (not involving consumer commodities, batteries, paints, and related materials in packagings of five gallons or less).

The second issue was whether the current incident report form—F5800.1—should be changed and, if so, what the nature of this change should be.

In response to Docket No. HM-36B, RSPA received written comments from 27 different public and private organizations. One additional comment was entered into the Docket as a result of a public meeting on the subject, held on May 1, 1984, in Washington, DC. Each comment has been carefully considered in preparing this Notice of Proposed Rulemaking.

### Resolution of Issues Raised in the ANPRM

*Changing the current criteria for the submission of written hazardous materials incident reports.*

The ANPRM requested comments on whether it would be desirable to change the current criteria for the submission of written reports, especially for hazardous materials incidents involving non-bulk packagings (generally, with a capacity of 110 gallons or less). The ANPRM suggested the possibility that such packagings might be exempted from the current reporting requirements, except for incidents resulting in a fatality or an injury, or meeting a certain number of other criteria.

Based on an analysis of the comments received, RSPA has decided not to exempt non-bulk packaging from the requirement of written incident reports. Among the reasons for this decision are the following.

First, the current reporting criteria are an important and necessary means to enable field investigators to monitor hazardous materials shippers, carriers, and packaging manufacturers of hazardous materials packages for compliance with the hazardous materials regulations; and to determine if a specific carrier, shipper or manufacturer is having problems with a particular package. This investigatory function pertains to both large and small packages and cannot be limited to large packages alone.

Second, RSPA has a rulemaking project under Docket HM-181, entitled "Performance-Oriented Packaging Standards," (47 FR 16268, April 15, 1982) which, among other things, proposes to make the DOT hazardous materials regulations performance standards as they pertain to non-bulk packagings. This will provide greater flexibility to both manufacturers and shippers in the design and utilization of packagings for hazardous materials. The proposed standards would apply to packages with a capacity of 450 liters or less for liquids or 400 kilograms or less for solids. Exempting incidents involving small packages from a reporting requirement would disrupt the continuity of RSPA's existing data base, and limit its ability to make comparative safety analyses and evaluate the record of the proposed performance packaging standards.

Finally, the current reporting criteria do not, either in the aggregate or in terms of individual carriers, constitute an excessive economic or administrative burden to the transportation industry. The reduction in the costs to carriers that would result from eliminating the current requirement to report all incidents involving non-bulk hazardous materials packages would not exceed $336,000 annually. This is not an excessive cost when shared by the thousands of companies engaged in the

transportation of hazardous materials. Moreover, several of the commenters to the ANPRM who were opposed to changing the current reporting criteria pointed to several "benefits" that might be lost through the elimination of the current requirement to report all hazardous materials incidents. These benefits include such things as tracking the prospective performance record of the packaging standards associated with Docket HM–181; facilitating the effectiveness of the compliance and inspection programs of Federal, state and local agencies; and improving the decisionmaking process of DOT's operating administrations. These "benefits", while almost impossible to quantify in dollar terms, would not have to be very large before they would annually exceed $336,000 and the information obtained would begin to pay for itself. This figure is close to the average socioeconomic benefit RSPA associates with the avoidance of a single serious injury resulting from a hazardous materials incident. RSPA believes that the benefits of continuing with the current reporting criteria (and even incrementally strengthening its information collection efforts, as discussed later) exceed the costs.

The principal reason cited by the commenters who supported the idea that the current criteria should be changed so as to reduce the number of incidents reported is that the criteria result in the reporting of "tiny" or "insignificant" spills of hazardous materials. This viewpoint, however, misconstrues two of the primary purposes behind the current reporting criteria. In terms of the current reporting criteria, knowing that a particular package failed in transportation—regardless of whether the package resulted in the spillage of an ounce, 55 gallons, or more than 100 gallons of hazardous materials—is fundamental to RSPA's regulatory safety program. RSPA is concerned with minimizing the likelihood that packages containing hazardous materials will fail in transportation, and it is, therefore, interested in package failure rates quite apart from the amount of material spilled. On the other hand, RSPA is also interested in knowing the amount of material that is spilled; and this includes small spills. Small spills may become large and serious spills under a variety of circumstances (e.g., late discovery, or if immediate and effective remedial action is not taken), and the knowledge obtained about small spills may be used to prevent large spills from occurring. For these reasons, RSPA also has a vital interest in knowing the full spectrum of spillage rates associated with hazardous materials packagings, and it does not view "spill size" as an appropriate criterion for exempting non-bulk packages from reporting requirements.

Although RSPA has decided not to propose changes to the current § 171.16 criteria for the submission of detailed hazardous materials incident reports, RSPA is proposing in this notice to amend § 171.15 to include three additional criteria for the immediate (telephonic) notification of RSPA of certain types of hazardous materials incidents. Under § 171.16(a), any incident satisfying the following proposed new criteria also would have to be the subject of a detailed hazardous materials incident report:

(1) The evacuation of one or more properties adjacent to the property on which the incident occurs.

(2) The closure or shutdown of one or more major transportation arteries or facilities for one hour or more.

(3) The forced deviation of an aircraft from its planned course, or its unscheduled landing.

The first type of incident for which it is proposed that RSPA be given immediate notification involves a reporting criterion that originally appeared in the ANPRM. There, it was suggested that all incidents involving the evacuation of people would require the submission of a detailed written report. Three of the commenters to the ANPRM opposed this reporting criterion. They contended that "evacuation" is a subjective decision of the person in charge at the scene of the incident, and such decisions may or may not be warranted. One commenter stated that if a hazardous material is spilled in a terminal area, the initial response of supervisory personnel is to clear the area until the material is identified, and that this action can be interpreted as an "evacuation" since people are removed from the immediate scene of the incident. This commenter also stated that when "evacuation," as the term is commonly interpreted, is warranted, it is highly probable that one of the other reporting criteria of § 171.15 will also have been met. Several other commenters, while not in apparent opposition to a reporting criterion involving "evacuation," stated that this term should be more clearly defined.

RSPA believes that information concerning the foregoing three proposed criteria, including "evacuations", is of intrinsic value to the proper carrying out of its legislative responsibilities and regulatory functions. Such information enables government agency personnel to effectively respond to requests for information from elected officials, the press, and the general public. Such information is not now readily available to RSPA. This is because, under the current incident reporting requirements, there is no specific criterion whereby carriers are required to provide RSPA with immediate notification of hazardous materials transportation events involving the proposed reporting criteria. Even when there is no actual spillage of a hazardous material, the events covered by the criteria can occur and have a significant social and economic impact on the local community. In these instances, it is not probable that one of the other reporting criteria of § 171.15 will also have been met;' and even if they were met, there is no explicit requirement that information concerning evacuations be provided RSPA.

Explicitly including the events covered by the proposed criteria will also serve to add further content and meaning to § 171.15(a)(6), whereby each carrier, at the earliest practicable moment, is required to notify RSPA when a situation exists of such a nature that, in the judgment of the carrier, it should be reported as soon as practicable.

**Changing the current incident report form F 5800.1.**

The main question raised in the ANPRM concerning possible changes to the current incident report form was whether separate report forms should be developed for incidents involving bulk packages (e.g., rail tank cars, and cargo tanks) and non-bulk packages (e.g., 55 gallon drums). Roughly, half of the commenters were in favor of RSPA's developing two separate report forms; and half favored retaining the current report form but adding various new data fields. The current incident report form is designed to serve various purposes, but its main purpose is to provide a clear and concise understanding of the events characterizing an incident, especially the sequence of events leading to the failure of the package, and the resulting consequences of the packaging failure.

Those in favor of a separate incident report form for bulk and non-bulk packaging incidents noted that the current report form seems designed to reflect failure mechanisms primarily associated with small packagings. These commenters believed that a separate form should be developed for bulk packagings to more adequately reflect the accident conditions and failure mechanisms associated with bulk packagings. One commenter even

suggested that a separate incident report form might be desirable for each of the several modes, with each form tailored to describe the failure mechanisms unique to each mode.

RSPA has carefully evaluated these comments and has decided to continue to use only one report form for the reporting of incidents for all modes. RSPA does agree that there is a need for more and better descriptive statistics about hazardous materials incidents, and the causative and consequence factors involved with such incidents. RSPA believes that this objective can be best accomplished through appropriate changes in the format and information content of the current report form, and by requiring that all carriers involved in a hazardous materials incident provide assistance to DOT in any follow-up investigations or special studies which DOT might undertake in connection with the incident.

In addition to raising the question of whether a separate incident report form might be desirable for each of the several modes involved in a hazardous materials incident, the ANPRM requested comments on the clarity and usefulness of the data fields and organizational format of the current report form. While none of the commenters suggested deleting any of the information items contained in the current report form, several suggested that new data fields be added, or that existing data requirements be clarified.

Several commenters stated that data should be provided on the identity of the agencies and persons notified as a result of an incident, or the first responders arriving at the scene of an incident, including their addresses and telephone numbers. RSPA has decided not to include this data in its proposed change to the current report form. This type of information, while relevant to establishing the effectiveness of emergency response programs, is not, in itself, sufficient for this purpose. Describing all factors that characterize emergency response actions at the scene of a hazardous materials incident is more appropriately obtained through special studies specifically directed to this area.

One commenter stated that the hazardous materials identification number (i.e., UN number) and RQ (Reportable Quantity) number, if shown on the shipping paper, should be included in the report form. This suggestion has been adopted and is a part of the proposed new report form, since it will aid in the cross-referencing of hazardous materials incident reports.

One commenter stated the Environmental Protection Agency's generator, transporter, disposal facility and waste manifest numbers should be included as data fields on the report form. This information must currently be submitted along with the hazardous materials incident report form, by § 171.16(a)(1), which states that a copy of the hazardous waste manifest must be attached to the incident report form when the incident involves a hazardous waste.

One commenter suggested that the incident report form should explicitly differentiate between bulk and non-bulk packages. Although the current report form already provides a means of differentiating between bulk and non-bulk packaging (e.g., by requiring the identification of the DOT specification number of the package involved in the incident), the proposed new report form makes this differentiation even more explicit.

One commenter suggested that information be provided on the report form to indicate if the incident occurred while the package was being loaded or unloaded by shippers or consignees, as distinct from carriers; and that, in this situation, it is the shipper or consignee, rather than the carrier, who is required to submit the incident report. This suggestion represents a misunderstanding of the regulations. Section 171.16(a) requires the carrier to submit the incident report, whether or not the carrier was actually involved in the loading or unloading of the hazardous material. The incident reporting system is not intended to establish liability or facilitate settling insurance damage claims. Nor do incidents resulting from vandalism, or the negligence or actions of other parties, relieve carriers from the obligation to report incidents occurring during the course of transportation, including temporary storage incidental thereto. The current form provides, and the proposed new form would continue to provide, space for any remarks a carrier may wish to make concerning who was engaged in loading or unloading the package when the incident occurred.

One commenter suggested that the name, age, and social security number of the driver of the vehicle, or person loading or unloading the vehicle, be included in all incident reports. Although RSPA does not agree that this information is useful in all cases, the proposed change to the current incident report would capture some of this information when the incident involves a motor carrier accident.

Finally, the suggestion by one commenter that weather conditions at the time of the incident (e.g., temperature) be indicated on the report form is being adopted in part by RSPA, since many hazardous materials can be extremely sensitive to temperature variations.

**Incident Reporting Requirements: Specific Proposed Revisions.**

Sections 171.15(a) and 175.45(a) would be amended to require the immediate (i.e., as soon as practicable) notification of RSPA of incidents involving the evacuation of one or more properties adjacent to the property on which the incident occurs. If people in any residences or buildings adjacent to the private property on which the spill occurs are not evacuated, the incident does not require immediate notification.

Sections 171.15(a) and 175.45(a) would also be amended to require the immediate (i.e., as soon as practicable) notification of RSPA of incidents involving the closure shutdown of one or more major transportation arteries or facilities for one hour or more. Here, "major transportation arteries or facilities" include, at the minimum, interstate highways; bridges or tunnels providing access to interstate highways; airports where scheduled turbojet passenger operations are conducted; commercially navigable waterways; and railroad main line track.

Sections 171.15(a) and 175.45(a) would also be amended to require the immediate notification of RSPA of all incidents in which an aircraft is forced to deviate from its planned course, or is required to make an unscheduled landing.

In accordance with these proposed amendments, § 175.45(a)(7) would also be deleted. Currently, if an aircraft operator conforms to the provisions of § 175.45, the carrier requirements of § 171.15, except § 171.15(c), are deemed to have been satisfied. Under the proposed amendments, aircraft operators would be required to notify both RSPA and the Federal Aviation Administration (FAA) of those incidents meeting the proposed reporting criteria of § 171.15(a).

RSPA recognizes that the proposed wording for these reporting requirements may not exhaustively cover all situations, but believes that the information required is sufficient to include most significant incidents.

The current 15-day period for submitting incident report forms would be increased to 30 days to provide more time for gathering data and completing the report form as accurately as possible.

A new section—§ 171.21, Assistance in Investigations and Special Studies—is

proposed. This proposed section would require that all hazardous materials carriers make all records and information pertaining to any incident available to an authorized representative of the Department of Transportation upon request, and provide such representative all reasonable assistance in the investigation of any incident or studies involving such incidents. To further assist in these investigations and special studies, § 171.16 would be revised to require all carriers to maintain a copy of each incident report for a period of two years, at the carrier's principal place of business.

**Incident Report Form: Proposed Changes**

In general, RSPA has sought to retain as many features as possible of the current report form (DOT Form F 5800.1), not only because many of the data fields on the current form have been found essential and useful, but also because of the wide experience and familiarity the industry has had in its use. However, the report form has been reorganized for purposes of grouping the information into two major analytic/descriptive categories. Parts I through V of the proposed form generally pertain to conditions prevailing both immediately before and after the incident. Parts VI and VII pertain to information specific to the package or packages that failed in transportation, and the nature of that failure (a better understanding of how these parts of the proposed new incident report form interrelate can be gained by referring to Illustration 1 provided at the end of this document). The apparent increase in the length of the proposed form is largely due to an expansion of *choices* that those submitting the report have available to describe the nature of the incident. This is particularly the case with Part VII: Description of Packaging Failure. Since there are only 17 specific options available in the curent report form to describe the nature of the packaging failure, this information is often recorded in an unsystematic manner in the "Remarks" part of the report form. This has to be carefully reviewed by RSPA personnel to be sure of entering the correct data into the data base. The proposed report form provides 50 choices, systematically organized, to describe the nature of the packaging failure. Similar expansions of the choices available to describe the nature of a hazardous materials incident are contained in Part IV, item G, and Part V, items E and I of the proposed report form. RSPA believes these changes will facilitate the proper completion of the report form by carrier personnel and significantly reduce the amount of time necessary for RSPA to review and enter the data into its computerized data base. The proposed form will facilitate analyzing failure causes associated with hazardous materials incidents—which is the primary purpose behind the proposed changes to the incident report form.

It should also be noted that the proposed report form would not require information pertaining to what party issued the shipping papers accompanying the hazardous materials shipment. Also no longer required would be the trade name of the hazardous material involved in the incident; this information, while useful, is not considered essential to RSPA analysis and planning functions.

Since the majority of the information items on the proposed report form are not new and are self-explanatory, the following discussion focuses on those proposed changes RSPA considers to be significant or to require special emphasis.

In Part I, Description of Carrier, Company, or Individual Reporting, item C, information would be required on the reporting "code" or "number," if any, of the carrier submitting the incident report. In the case of motor carriers, the Federal Highway Administration (FHWA) issues each motor carrier under its jurisdiction a unique "census number," which is to be used if the carrier is involved in an accident meeting the reporting criteria for the FHWA. A similar carrier identification system (i.e., an alphabetical code) is in effect for the reporting of accidents to the Federal Railroad Administration (FRA), the U.S. Coast Guard (USCG), and the Federal Aviation Administration (FAA). This information is needed by RSPA for purposes of cross-referencing, checking and utilizing accident information on hazardous materials carriers which are also responsible for the reporting of accidents (which may or may not involve the spill of a hazardous material) to the modal administrations of DOT. Since this information is already required of carriers, no additional data burden is being imposed on the industry.

In Part III, Hazardous Material(s) Spilled, item C, information would be required on the identification number of the hazardous materials(s) spilled. For example, if the hazardous material involved in the incident is "Gasoline," the identification number of Gasoline is "UN 1203." The identification number for a hazardous material involved in an incident can be found on the shipping paper accompanying the material or from the Hazardous Materials Table at 49 CFR § 172.101, Column 3A.

In Part IV: Consequences of Spill, several things need to be emphasized. First, information would be required on the number of persons killed or injured as a result of the hazardous material(s) involved. If a fatality or injury resulted from a collision, and not from the release of the hazardous material, then "none" would be entered in the space provided. Second, concerning items E. and F. of Part IV (i.e., the number of people evacuated and estimated loss or property damage resulting from the spill), RSPA does not expect that these numbers will be exact. However, as previously mentioned, RSPA is proposing to change the current 15-day reporting period to 30-days. Within this time frame, much better estimates of the consequences of a spill should be available to carriers than was true in the past. The carriers should be able to obtain this information from police and newspaper reports and insurance and damage claim records.

Items F and G of Part V, Description of Incident, are closely related. If the spill was the result of a vehicle accident (e.g., collision with another vehicle, derailment, overturning while in transit), RSPA is proposing to require that a copy of all additional Federal report forms associated with the accident/incident be submitted, along with the hazardous materials incident report form. For example, if a motor carrier involved in a hazardous materials incident is also required to file a motor carrier accident report with the Federal Highway Administration a copy of that accident report form would have to be attached to the hazardous materials incident report form. It should be noted that this proposed requirement pertains only to vehicle accidents that result in a spill of hazardous materials. Copies of other Federal accident reports would not be required for vehicle accidents that do not result in a spill of the hazardous material. Copies of other Federal accident reports also would not be required for spills that were not the result of a vehicle accident. This proposed requirement complements the current requirement in § 171.16(a)(1) that a copy of the hazardous waste manifest must be attached to the incident report form when the incident involves a hazardous waste; and the current requirement of § 171.45(c), that a separate copy of incidents involving aircraft be sent to an FAA Civil Aviation Security Office. This information would be required, at little or no cost to the industry, in lieu of

developing a separate incident report form tailored to the hazardous materials package/incident environment unique to each mode. It will also aid in ensuring consistency and uniformity of the information obtained, and significantly benefit future safety analyses devoted to special conditions peculiar to each mode.

Part VI: Packaging Information; Part VII, Description of Packaging Failure. These two parts of the proposed report form are also closely tied together; their basic purpose is to identify the *number* and *type* of packages which resulted in a spill of hazardous materials, and the specific causes associated with each package that failed.

Other than providing more examples and clarifications of the information required, Part VI of the proposed report form is essentially the same as the current report form. As with the current form, columns a, b, and c may be used to convey a variety of information. The report form can convey the details of as many as three different types of packages that failed; or three packages of the same type but of different capacities; or three packages of the same type and size but made by three different manufacturers; or three different categories of packages involving numerous failure, with each category involving the same type of package and the same general failure mechanisms.

A brief example will serve to illustrate these matters. Suppose that an incident involved a shipment of hazardous materials in 40 DOT–12B fiberboard boxes, containing 4 glass jars per box; and due to the improper blocking of other freight, 4 boxes were crushed and 16 jars were cracked, spilling their contents. Then, in item A of Part VI, type of packaging from which material escaped, the entries would be "glass jar" in column a, and "fiberboard box" in column b. In item C, number of packages of same type which failed in identical manner, the entries would be "16" in column a, and "4" in column b. In item D, number of packages of same type in shipment, the entries would be "160" in column a, and "40" in column b. As this example indicates, columns a and b (and c, if necessary) may be used to indicate the details associated with failures involving multilayered packages (e.g., glass jars within fiberboard boxes). If columns a, b, and c are not adequate to describe the number of packages involved in the spillage of hazardous materials, then a separate sheet, or sheets, must be attached to the report form to provide the packaging information required by Parts VI and VII.

Part VII of the proposed report form expands the choices available to describe the failure mechanisms of the packages involved in an incident, and is expected to facilitate the accurate filling out of the report form, and to improve the analyses of packaging failures. With the current report form, ambiguities arise concerning the attribution of failure causes when an incident involves more than one package. The proposed form should obviate this problem.

The failure mechanisms associated with each package identified in columns a, b, and c of Part VI of the report form are to be identified in the corresponding columns a, b, and c of Part VII. Continuing with the example given above of glass bottles in 12B boxes crushed because of improper blocking, in item A.12. of Part VII, action causing packaging failure, improper blocking, the blocks under columns a and b would be marked to indicate this as a failure cause common to both packages involved in the incident; the same would be done for item B.1., object causing damage, other freight. In item C, how package(s) damaged, under column a, then block cracked would be marked, and under column b, the block crushed would be checked. Item D, where package(s) damaged may or may not be applicable in this example, and can be taken to illustrate the fact that not all the failure cause categories appearing in Part VII need be checked; nor are they intended to provide an exhaustive listing of how, where and why packagings can fail. In item E, what failed on package(s), "basic package material" seems to be the most appropriate descriptive term, and the "1" boxes under columns a and b would be checked.

Part VIII, Remarks. This part of the proposed report form is essentially the same as the current form, with one exception. Whereas the current form states that photographs and diagrams of the incident should be submitted when necessary for clarification, the proposed report form requires the submission of photographs of damage to packagings and a brief description of the incident when the incident involves bulk packaging such as portable tanks, rail tank cars or tank trucks, *and* the incident results in a fatality or an injury due to the hazardous material. The need for this type of information is based on the fact that since incidents involving fatalities and injuries requiring hospitalization are relatively rare events, it is important to obtain as much information concerning such events as is practicable. Photographs are one way to obtain such information. RSPA does not believe that this proposed requirement would impose a significant burden on industry. For one thing, incidents of such a nature usually result in photographs being produced for liability and insurance claims purposes. Furthermore, over the past 15 years, the number of incidents involving fatalities have averaged only 14 per year, with the largest number of such incidents never having exceeded 23. At the same time, RSPA currently receives approximately 75 photographs per year of incidents of all types, as a result of the present wording in the report form on this subject. Many, if not all, of these incidents include the incidents for which RSPA is now proposing that photographs be required to be submitted, in addition to the report form.

## Administrative Notices

### *A. Paperwork Reduction Act*

This proposed rulemaking contains information collection requirements in the following sections: Sections 171.15 and 171.16 and a new proposed § 171.21. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C., Chapter 35).

### *B. Executive Order 12291*

This proposed rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule; however, it is a significant rule under the regulatory procedures of the Department of Transportation (44 CFR 11034). This proposal rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Docket.

### *C. Impact on Small Entities*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires a review of certain rules proposed after January 1, 1981, for their effects on small businesses, organizations, and governmental bodies. I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modifications as a result of the review of comments received in response to this proposal.

**List of Subjects**

*49 CFR Part 171*

General information, Regulations, Definitions.

*49 CFR Part 175*

Hazardous material transportation, Air carriers.

In consideration of the foregoing, 49 CFR Part 171 and Part 175 would be amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

**Authority:** 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.15, paragraph (a)(6) would be revised and paragraphs (a)(7), (a)(8) and (a)(9) would be added to read as follows:

**§ 171.15 Immediate notice of certain hazardous materials incidents.**

(a) * * *

(6) One or more properties adjacent to the property on which the incident takes place are evacuated.

(7) One or more major transportation facilities are closed or shut down for one hour or more.

(8) An aircraft is forced to deviate from its planned course, or is required to make an unscheduled landing.

(9) A situation exists of such a nature that, in the judgment of the carrier, it should be reported in accordance with paragraph (b) of this section, even though it does not meet the criteria of paragraph (a)(1), (2), or (3) of this section; e.g., a continuing danger to life exists at the scene of the incident.

* * * * *

3. In § 171.16, paragraph (b) and the first sentence in paragraph (a) would be revised to read as follows:

**§ 171.16 Detailed hazardous materials incident reports.**

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in § 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. * * *

* * * * *

(b) Each carrier making a report under this section shall send that report to: Director, Office of Hazardous Materials Transportation (Attention: DHM-63), Research and Special Programs Administration, Department of Transportation, Washington, DC 20590; a copy of that report shall be retained at the carrier's principal place of business for a period of two years.

* * * * *

4. In Part 171, a new § 171.21 would be added to read as follows:

**§ 171.21 Assistance in investigations and special studies.**

(a) A carrier of hazardous materials must make all records and information pertaining to any incident available to an authorized representative or special agent of the Department of Transportation upon request. A carrier of hazardous materials must give an authorized representative or special agent of the Department of Transportation all reasonable assistance in the investigation of any incident.

(b) If the Department of Transportation makes an inquiry to a carrier of hazardous materials in connection with a study of incidents, the carrier must—

(1) Respond to the inquiry within 15 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide a full, true, and correct answer to any questions included in the inquiry.

5. The incident reporting form (DOT Form F. 5800.1) would be revised to read as indicated below.

**Note.**—The Hazardous Materials Incident Report form will not be shown in the Code of Federal Regulations.

BILLING CODE 4910-60-M

US Department of Transportation
Research and Special Programs Administration

# HAZARDOUS MATERIALS INCIDENT REPORT

***PURPOSE:*** The major purpose of this information is to support the assessment of hazardous materials packaging standards, and operating practices in hazardous materials transportation and temporary storage.

***REQUIREMENTS:*** The regulations requiring reporting of hazardous materials incidents are contained in the Code of Federal Regulations, Title 49 Parts 100 to 199 (governing the transport of hazardous materials by rail, air, water and highway). Failure to comply with the reporting requirements contained therein can result in a civil penalty.

***INSTRUCTIONS:*** Submit this report in duplicate to the Director, Office of Hazardous Materials Transportation, DHM-1, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590. If space provided for any item is inadequate, complete that item under Section VIII, "Remarks," keying to the entry number being completed. Copies of this form, in limited quantities, may be obtained from the Director, Office of Hazardous Materials Transportation. Additional copies in this prescribed format may be reproduced and used, if on the same size and kind of paper.

**I. DESCRIPTION OF CARRIER, COMPANY, OR INDIVIDUAL REPORTING**

A. FULL NAME: _____. B. ADDRESS: _____.

C. LIST YOUR BMCS, MOTOR CARRIER CENSUS NUMBER, REPORTING RAILROAD, ALPHABETIC CODE, OR OTHER REPORTING CODE OR NUMBER (E.G., MERCHANT VESSEL ID#) HERE: _____.

**II. SHIPMENT INFORMATION** *(From Shipping Paper or Packaging)*

A. SHIPPER/ORIGIN:

1. Name: _____.
2. Address: _____.

B. CONSIGNEE/DESTINATION:

1. Name: _____.
2. Address: _____.

C. SHIPPING PAPER IDENTIFICATION NO.: _____

**III. HAZARDOUS MATERIAL(S) SPILLED** *(NOTE: REFERENCES TO SECTIONS ARE FROM 49 CFR.)*

A. PROPER SHIPPING NAME OF ITEMS (Sec. 172.101, Col 2): _____.

B. HAZARD CLASS (Sec. 172.101, Col. 3): _____.

C. IDENTIFICATION NUMBER (e.g., UN 2764, NA 2020): _____.

**IV. CONSEQUENCES OF SPILL:**

A. ESTIMATED QUANTITY OF HAZARDOUS MATERIAL RELEASED (Indicate unit of measurement): _____.

B. NUMBER OF FATALITIES AS A RESULT OF SPILL: _____.

C. NUMBER OF INJURIES RESULTING IN HOSPITALIZATION AS A RESULT OF SPILL: _____.

D. NUMBER OF INJURIES NOT RESULTING IN HOSPITALIZATION AS A RESULT OF SPILL: _____.

E. NUMBER OF PEOPLE EVACUATED: _____.

F. ESTIMATED AMOUNT OF LOSS OR PROPERTY DAMAGE, INCLUDING COST OF DECONTAMINATION AND CLEAN-UP: _____.

1. PRODUCT LOSS: $_____.
2. CARRIER DAMAGE: $_____.
3. THIRD-PARTY PROPERTY DAMAGE: $_____.
4. DECONTAMINATION/CLEAN-UP: $_____.
5. OTHER: $_____.

G. WERE ANY OF THE FOLLOWING CONSEQUENCES ASSOCIATED WITH THE SPILL?

☐ VAPOR (GAS) DISPERSION ☐ FIRE ☐ ENVIRONMENTAL DAMAGE ☐ EXPLOSION ☐ OTHER _____

**V. DESCRIPTION OF INCIDENT**

A. TIME OF INCIDENT: Month: _____ Date: _____ Year: _____ Time: _____

B. ESTIMATED TEMPERATURE AT TIME OF INCIDENT: _____. C. LOCATION OF INCIDENT: City: _____ County: _____ State: _____ Route/Street: _____.

D. MODE: ☐ HIGHWAY-FOR-HIRE ☐ HIGHWAY-PRIVATE ☐ RAIL ☐ AIR ☐ WATER ☐ OTHER: _____

E. TRANSPORTATION PHASE DURING WHICH INCIDENT OCCURRED OR WAS DISCOVERED:

☐ ENROUTE BETWEEN ORIGIN/DESTINATION ☐ LOADING ☐ UNLOADING

☐ TEMPORARY STORAGE (E.G., TRUCK TERMINAL, CONSOLIDATION TERMINAL) ☐ OTHER: _____

F. WAS THE SPILL THE RESULT OF A VEHICLE ACCIDENT? ☐ NO (SKIP G) ☐ YES (COMPLETE G)

G. ATTACH COPY OF ALL ADDITIONAL FEDERAL REPORTS REQUIRED TO BE FILED AS A RESULT OF THE ACCIDENT.

H. ESTIMATED SPEED OF VEHICLE AT TIME OF INCIDENT: _____.

I. INDICATE TYPE(S) OF VEHICLE(S) INVOLVED: ☐ TANK TRUCK ☐ VAN TRUCK/TRAILER ☐ FLAT BED TRUCK/TRAILER ☐ RAIL TANK CAR ☐ BOX CAR ☐ BARGE ☐ OTHER MARINE VESSEL ☐ AIRCRAFT ☐ OTHER: _____

VI. **PACKAGING INFORMATION:** If the package is multilayered (e.g., glass jars within a fiberboard box), begin with Column I for information on the innermost package.

| | PACKAGE(S) a | b | c |
|---|---|---|---|
| A. TYPE OF PACKAGING INCLUDING INNER RECEPTABLES (STEEL DRUM, FIBERBOARD BOX, CYLINDER, RAIL TANK CAR, TANK TRUCK, JAR) FROM WHICH MATERIAL ESCAPED. | | | |
| B. CAPACITY OR WEIGHT PER UNIT (55 GALLONS, 65 LBS., ETC.) | | | |
| C. NUMBER OF PACKAGES OF SAME TYPE WHICH FAILED IN IDENTICAL MANNER. | | | |
| D. NUMBER OF PACKAGES OF SAME TYPE IN SHIPMENT. | | | |
| E. DOT SPECIFICATION NUMBER(S) ON PACKAGE (E.G., 11P, 17E, 3AA, MC-310, 105A100, 1A1, 1H1). IF NO SPECIFICATION NUMBER(S) CAN BE FOUND, ENTER "NONE," AND DESCRIBE PACKAGE IN REMARKS SECTION. | | | |
| F. IF SHIPPED UNDER DOT OR USCG SPECIAL PERMIT OR EXEMPTION, ENTER PERMIT OR EXEMPTION NUMBER. | | | |
| G. SHOW ALL OTHER DOT PACKAGING MARKINGS (E.G., STC, 18/16-55-80). | | | |
| H. NAME, SYMBOL, OR REGISTRATION NUMBER OF PACKAGING MANUFACTURER. | | | |
| I. SHOW SERIAL NUMBER OF CYLINDERS, CARGO TANKS, TANK CARS (E.G, GUTX 98765), PORTABLE TANKS. | | | |
| J. TYPE DOT LABEL(S)/PLACARDING APPLIED. | | | |
| K. IF RECONDITIONED OR REQUALIFIED, SHOW:<br>1. REGISTRATION NUMBER OR SYMBOL; AND<br>2. DATE OF LAST INSPECTION. | | | |

VII. **DESCRIPTION OF PACKAGING FAILURE:** *(Check all applicable boxes for the package(s), identified above.)*

A. ACTION CAUSING PACKAGING FAILURE

| a b c | |
|---|---|
| 1. ☐ ☐ ☐ | VEHICLE COLLISION |
| 2. ☐ ☐ ☐ | VEHICLE OVERTURN |
| 3. ☐ ☐ ☐ | DROPPED |
| 4. ☐ ☐ ☐ | STRUCK/RAMMED |
| 5. ☐ ☐ ☐ | METAL FATIGUE |
| 6. ☐ ☐ ☐ | CORROSION |
| 7. ☐ ☐ ☐ | INCOMPATIBLE MATERIALS |
| 8. ☐ ☐ ☐ | FIRE/HEAT |
| 9. ☐ ☐ ☐ | FREEZING |
| 10. ☐ ☐ ☐ | OVERLOADING/OVERFILLING |
| 11. ☐ ☐ ☐ | IMPROPER LOADING |
| 12. ☐ ☐ ☐ | IMPROPER BLOCKING |
| 13. ☐ ☐ ☐ | FRICTION/RUBBING |
| 14. ☐ ☐ ☐ | LOOSE FITTINGS, VALVES |
| 15. ☐ ☐ ☐ | DEFECTIVE FITTINGS, VALVES |
| 16. ☐ ☐ ☐ | VANDALISM |
| 17. ☐ ☐ ☐ | OTHER _____ |

B. OBJECT CAUSING DAMAGE

| a b c | |
|---|---|
| 1. ☐ ☐ ☐ | OTHER FREIGHT |
| 2. ☐ ☐ ☐ | FORKLIFT |
| 3. ☐ ☐ ☐ | NAIL/PROTRUSION |
| 4. ☐ ☐ ☐ | OTHER VEHICLE |
| 5. ☐ ☐ ☐ | WATER |
| 6. ☐ ☐ ☐ | GROUND/FLOOR/ROADWAY |
| 7. ☐ ☐ ☐ | ROADSIDE OBSTACLE |
| 8. ☐ ☐ ☐ | NO APPARENT DAMAGE (BY OTHER OBJECT) |
| 9. ☐ ☐ ☐ | OTHER _____ |

C. HOW PACKAGE(S) DAMAGED

| a b c | |
|---|---|
| 1. ☐ ☐ ☐ | PUNCTURED |
| 2. ☐ ☐ ☐ | CRACKED |
| 3. ☐ ☐ ☐ | BURST (FROM INTERNAL PRESSURE) |
| 4. ☐ ☐ ☐ | RIPPED |
| 5. ☐ ☐ ☐ | CRUSHED |
| 6. ☐ ☐ ☐ | RUBBED THROUGH/ABRADED |
| 7. ☐ ☐ ☐ | OTHER _____ |

D. WHERE PACKAGE(S) DAMAGED (FACING DIRECTION OF TRAVEL)

| a b c | |
|---|---|
| 1. ☐ ☐ ☐ | END, FORWARD |
| 2. ☐ ☐ ☐ | END, REAR |
| 3. ☐ ☐ ☐ | SIDE |
| 4. ☐ ☐ ☐ | BOTTOM |
| 5. ☐ ☐ ☐ | TOP |
| 6. ☐ ☐ ☐ | OTHER _____ |

E. WHAT FAILED ON PACKAGE(S)

| a b c | |
|---|---|
| 1. ☐ ☐ ☐ | BASIC PACKAGE MATERIAL |
| 2. ☐ ☐ ☐ | VALVE |
| 3. ☐ ☐ ☐ | FITTING |
| 4. ☐ ☐ ☐ | CLOSURE |
| 5. ☐ ☐ ☐ | CHIME |
| 6. ☐ ☐ ☐ | WELD |
| 7. ☐ ☐ ☐ | SEAMS |
| 8. ☐ ☐ ☐ | HOSE |
| 9. ☐ ☐ ☐ | TANK HEAD |
| 10. ☐ ☐ ☐ | INNER LINER |
| 11. ☐ ☐ ☐ | OTHER _____ |

VIII. **REMARKS:** Describe probable sequence of events that led to incident, action taken at time discovered, and action taken to prevent future incidents. Include any recommendations to improved packaging, handling, or transportation of hazardous materials. For BULK PACKAGING (PORTABLE TANKS, TANK CARS, TANK TRUCKS, ETC.) INCIDENTS RESULTING IN A FATALITY OR INJURY REQUIRING HOSPITALIZATION DUE TO THE HAZARDOUS MATERIAL, photographs of damage to packaging, and a brief description of incident sequence, cause, and results, must be submitted.

A. NAME OF PERSON PREPARING REPORT (Type or Print): _____ . B. SIGNATURE: _____ .

C. TELEPHONE NUMBER (Include Area Code): _____ . D. DATE REPORT PREPARED: _____ .

BILLING CODE 4910-60-C

## PART 175—CARRIAGE BY AIRCRAFT

6. The authority citation for Part 175 would continue to read as follows:

**Authority:** 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

7. In § 175.45, paragraphs (a)(6) and (a)(7) would be revised and paragraphs (a)(8) and (a)(9) would be added, and the first sentence of paragraph (c) would be revised to read as follows:

**§ 175.45 Reporting hazardous materials incidents.**

(a) * * *

(6) One or more properties adjacent to the property on which the incident occurs are evacuated.

(7) One or more transportation facilities are closed or shut down for one hour or more.

(8) An aircraft is forced to deviate from its planned course, or is required to make an unscheduled landing.

(9) A situation exists of such a nature that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a)(1), (2), or (3) of this section, e.g., a continuing danger to life exists at the scene of the incident.

* * * * * *

(c) Each operator who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in paragraph (a) of this section occurs or there has been an unintentional release of hazardous materials from a package.

* * *

* * * * * *

Issued in Washington, DC on March 23, 1987, under the authority delegated in 49 CFR Part 1, Appendix A.

**Alan I. Roberts,**

*Director, Office of Hazardous Materials Transportation.*

[FR Doc. 87-6702 Filed 3-26-87; 8:45 am]

BILLING CODE [illegible]

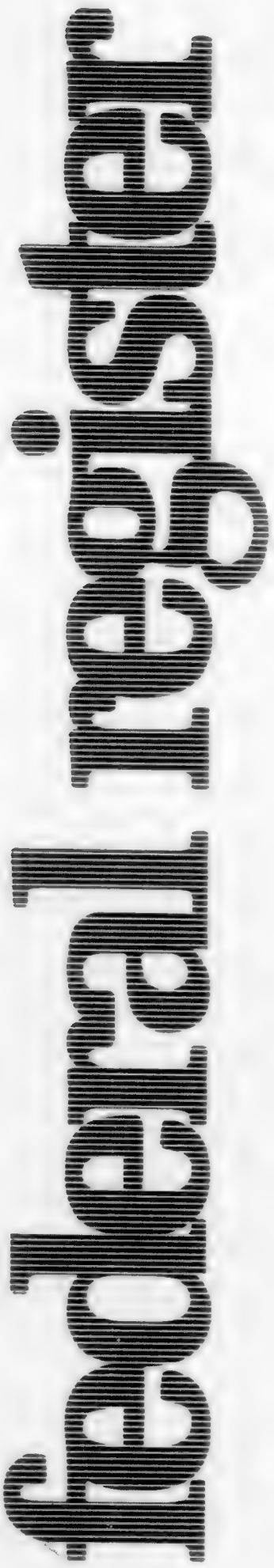

Friday
March 27, 1987

Part IV

# Department of Education

34 CFR Part 653
Congressional Teacher Scholarship Program; Final Regulations

BEST COPY AVAILABLE

**DEPARTMENT OF EDUCATION**

**34 CFR Part 653**

## Congressional Teacher Scholarship Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the actions of designated State agencies in their administration of the Congressional Teacher Scholarship Program (formerly known as the Carl D. Perkins Scholarship Program). These regulations are needed to implement the Higher Education Amendments of 1986. The Amendments changed the name of the program to "Congressional Teacher Scholarship Program" and broadened the purpose of the program to provide for assistance to individuals interested in teaching at the preschool level, as well as those interested in teaching at the elementary or secondary level. They also revised the provisions governing the teaching obligation of scholarship recipients.

**DATES:** Effective Date: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Postsecondary Education, U.S. Department of Education (Room 4018, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202, Telephone (202) 245–9720.

**SUPPLEMENTARY INFORMATION:** The purpose of the Congressional Teacher Scholarship program is to make available, through grants to the States, scholarships to outstanding high school graduates who demonstrate an interest in teaching. The new, broadened purpose of the program—to assist students interested in teaching at the preschool level as well as those interested in teaching at the elementary or secondary levels—is reflected throughout these regulations. Specific program provisions that formerly referred only to elementary and secondary level teaching now include the preschool level. For example, scholar selection criteria established by a State must now reflect its need for preschool teachers, as well as elementary and secondary school teachers.

Revisions to the teaching requirement for scholarship recipients are also reflected in these regulations. Formerly, recipients could satisfy the program's teaching obligation by teaching in public schools or private nonprofit schools located in certain districts serving large numbers of low-income individuals. Now, recipients may teach in any public or private nonprofit school. In addition, the provision that reduces the teaching obligation for certain individuals has also been revised. Formerly, recipients who taught in certain schools serving large numbers of low-income individuals and those who taught handicapped children or children with limited English proficiency were subject to a reduced teaching obligation. Now, only those recipients who teach in designated teacher shortage areas qualify for the reduced teaching provisions.

Section 653.30(a) has been revised so that program eligibility requirements for residents of the former Trust Territory of the Pacific Islands reflect the recently enacted Compact of Free Association (Pub. L. 99–239). According to the Compact, the citizens of the Marshall Islands and the Federated States of Micronesia are no longer eligible for assistance under the Congressional Teacher Scholarship Program. Since a separate compact for the Republic of Palau has not yet been put into effect, residents of these islands are still eligible for assistance. Also, since the Northern Mariana Islands recently became a Commonwealth of the United States, § 653.30(a) has been revised to reflect the new citizenship status of most residents of that area.

*Executive Order 12291*

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. State educational agencies administer the program. States and State agencies are not small entities under the Regulatory Flexibility Act.

*Intergovernmental Review*

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local governmental coordination and review of proposed Federal financial assistance. In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

*Assessment of Educational Impact*

The Secretary had determined that the regulations in this document would not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

*Waiver of Notice of Proposed Rulemaking*

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the enactment of the Higher Education Amendments of 1986 requires the Secretary to revise certain program provisions. Since these regulations merely implement statutory amendments and do not establish substantive policy, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

**List of Subjects in 34 CFR Part 653**

Education, grant programs, Education, state-administered, Education, student aid.

(Catalog of Federal Domestic Assistance Number 84.176: Congressional Teacher Scholarship Program)

Dated: March 10, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary revises Part 653 of Title 34 of the Code of Federal Regulations to read as follows:

## PART 653—CONGRESSIONAL TEACHER SCHOLARSHIP PROGRAM

### Subpart A—General

Sec.

653.1 What is the Congressional Teacher Scholarship Program?
653.2 Who is eligible to participate in this program?
653.3 What regulations apply to this program?
653.4 What definitions apply to this program?

### Subpart B—What Assistance Does the Secretary Provide Under This Program?

653.10 For what purposes may a State use its payments under this program?

**Subpart C—How Does a State Apply for Grants?**

Sec.
653.20 What must a State do to receive grants under this program?
653.21 What requirements must be met by States in the administration of this program?

**Subpart D—How Does a State Select Scholars Under This Program?**

653.30 What are the eligibility requirements?
653.31 Who selects the scholars?
653.32 What are the selection criteria and procedures?

**Subpart E—What Are the Scholarship Conditions?**

653.40 What agreement must a scholar have with the State agency?
653.41 What are the requirements for a scholar to continue to receive payments under this program?
653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

**Authority:** 20 U.S.C. 1111–1111h, unless otherwise noted.

## Subpart A—General

### § 653.1 What is the Congressional Teacher Scholarship Program?

Under the Congressional Teacher Scholarship Program the Secretary makes available, through grants to the States, scholarships to eligible individuals to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary school level.

(Authority: 20 U.S.C. 1111)

### § 653.2 Who is eligible to participate in this program?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who wish to pursue teaching careers at the preschool, elementary, or secondary level are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1111b *et seq.*)

### § 653.3 What regulations apply to this program?

The following regulations apply to the Congressional Teacher Scholarship Program:

(a) The regulations in this Part 653.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Educational Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1111–1111h *et seq.*)

### § 653.4 What definitions apply to this program?

The following definitions apply to terms used in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Elementary school
Nonprofit
Preschool
Private
Public
Secondary school
Secretary
State
State educational agency

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.

(2) Two trimesters.

(3) Three quarters.

"Act" means the Higher Education Act of 1965, as amended.

"Award year" means the period of time from July 1 of one year through June 30 of the following year.

"Full-time student" means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

"Institution of higher education" has the same meaning under this part as the same term defined in 34 CFR 668.3 of the Student Assistance General Provisions regulations.

"Scholar" means a scholarship recipient.

"Scholarship" means an award made to an individual under this part for one academic year.

(Authority: 20 U.S.C. 1111–1111h)

## Subpart B—What Assistance Does the Secretary Provide Under This Program?

### § 653.10 For what purposes may a State use its payments under this program?

A State may use its payments under the Congressional Teacher Scholarship Program, including principal and interest payments it receives from scholars under § 653.42, only for making payments to scholars.

(Authority: 20 U.S.C. 1111)

## Subpart C—How Does a State Apply for Grants?

### § 653.20 What must a State do to receive grants under this program?

(a) To receive grants under the Congressional Teacher Scholarship Program, a State shall submit an application to the Secretary for review and approval.

(b) The Secretary approves an application that—

(1) Designates as the State agency for the administration of the Congressional Teacher Scholarship Program, either—

(i) The State agency which administers the State Student Incentive Grants Program under Title IV, Part A, Subpart 3 of the Act; or

(ii) The State agency which administers the Guaranteed Student Loan Program and with which the Secretary has an agreement under section 428(b) of the Act;

(2) Identifies the panel or agency which has established criteria and procedures for the selection of scholars and will select the scholars as required by §§ 653.31 and 653.32;

(3) Describes a program of activities for carrying out the purposes set forth in § 653.1 in such detail that the Secretary may determine the degree to which the State's program will accomplish those purposes. This description must include—

(i) The selection criteria and procedures to be used by the State, in the selection of scholars, which satisfy the provisions of this part; and

(ii) The procedures by which the designated State agency intends to publicize the availability of Congressional Teacher Scholarships to secondary school students in the State;

(4) Explains how the criteria and procedures for the selections of scholars were developed and in what ways they reflect the State's present and projected needs for preschool, elementary, and secondary teachers in general and for those with training in specific academic disciplines;

(5) Provides assurances that—

(i) No changes will be made in the designations of an agency to administer the Congressional Teacher Scholarship Program, in the selection criteria and procedures to be used in the selection of scholars, or any other aspect of the program of activities described in its application without the prior written approval of the Secretary;

(ii) No one will receive a Congressional Teacher Scholarship without entering into an agreement with the designated State agency under

which he or she agrees to the terms specified in § 653.40;

(iii) The terms and conditions of the agreement which the State agency will enter into with scholars under § 653.40 will be fully disclosed in the scholarship application form;

(iv) The State agency will monitor scholars' compliance with the provisions of §§ 653.40, 653.41(b), and 653.42;

(v) The State agency will make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in schools having less than average academic results or serving large numbers of economically disadvantaged students; and

(vi) Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background; and

(6) Contains a copy of the agreement referred to in paragraph (b)(5)(ii) of this section.

(c) Upon the Secretary's approval of its application, a State need not submit additional applications in order to continue to be considered for funding under this program.

(Authority: 20 U.S.C. 1111b)

(Approved by the Office of Management and Budget under control number 1840-0578)

**§ 653.21 What requirements must be met by States in the administration of the program?**

(a) To continue to receive payments under this part, a State shall—

(1) Provide scholarship assistance only to students who meet the requirements of §§ 653.30, 653.40, and 653.41;

(2) Limit scholarship assistance to no more than four academic years for each scholar;

(3) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part;

(4) Establish and implement policies and procedures which are necessary to administer the repayment provisions of § 653.42 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(5) Except as otherwise provided in paragraph (d) of this section—

(i) Expend all funds received from the Secretary for scholarship during the award year specified by the Secretary with regard to those funds; and

(ii) Expend in that award year, for scholarships, all funds received by the State prior to that award year from principal and interest payments made under the provisions of § 653.42.

(b) A State shall award a scholarship in the amount of $5,000 for an academic year, except as otherwise provided in paragraph (c) of this section.

(c) A State shall not award a scholarship which exceeds the scholar's cost of attendance. If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Act, would otherwise exceed the scholar's cost of attendance, as defined for the National Direct Student Loan Program in 34 CFR 674.11, the State shall reduce the scholarship by the amout in which the combined awards would be in excess of the scholar's cost of attendance.

(d) After awarding all scholarships for payment during an award year, as required by paragraph (a)(5) of this section, a State may reserve for expenditures in the following award year a remaining amount of funds which is less than the amount required for a scholarship as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1111c, 1111d, 1111e)

## Subpart D—How Does a State Select Scholars Under This Program?

**§ 653.30 What are the eligibility requirements?**

To be selected as a scholar, an individual shall—

(a)(1) Be a United States citizen or National;

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b)(1) Have graduated from High school;

(2) Be scheduled to graduate from high school within 3 months of the date of the award; or

(3) Have received a certificate of high school equivalency for successfully completing the Tests of General Educational Development (GED); and

(c)(1) Rank in the top ten per cent of his or her graduating class; or

(2) Have received GED test scores recognized by the State to be equivalent to ranking in the top ten per cent of the high school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made.

(Authority: 20 U.S.C. 1111d)

**§ 653.31 Who selects the scholars?**

(a) Scholars must be selected by—

(1) A seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency;

(2) An existing grant agency designated by the chief State elected official and approved by the Secretary, or

(3) An existing panel designated by the chief State elected official and approved by the Secretary.

(b) A selection panel must be representative of school administrators, teachers, and parents.

(Authority: 20 U.S.C. 1111d)

**§ 653.32 What are the selection criteria and procedures?**

(a) The panel or agency appointed or designated by the chief State elected official in accordance with § 653.31 shall establish criteria and procedures for the selection of scholars.

(b) The selection criteria and procedures must reflect the present and projected needs of the State for preschool, elementary, and secondary teachers as required by section 553(c) of the Act and must be developed after consideration of the views of the State and local educational agencies, private educational institutions, and other interested parties as required by section 553(d) of the Act.

(c) The State shall make applications available to high schools in the State and in other locations convenient to applicants, parents, and other interested parties.

(d) The panel or agency referred to in paragraph (a) of this section shall select scholars without regard to whether applicants plan to attend publicly or privately controlled institutions.

(Authority: 20 U.S.C. 1111b, 1111d)

## Subpart E—What Are the Scholarship Conditions?

**§ 653.40 What agreement must a scholar have with the State agency?**

(a) To receive a scholarship, an individual shall enter into an agreement with the State agency under which he or she agrees, except as otherwise provided in paragraph (b) of this section—

(1) To teach on a full-time basis, as determined by the institution or agency in which he or she is teaching, for a period of not less than two years for each year for which scholarship assistance was received—

(i) In a public preschool, elementary school, or secondary school in any State;

(ii) In a public preschool, elementary, or secondary education program in any State;

(iii) In a private nonprofit preschool, elementary school, or secondary school;

(2) To fulfill the teaching obligation described in paragraph (a)(1) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(3) To provide the State agency evidence of compliance with paragraphs (a) (1) and (2) of this section and § 653.41 as required by the State agency; and

(4) To repay all or part of the scholarship plus interest and reasonable collection fees as specified in § 653.42 if the conditions of paragraphs (a) (1) and (2) of this section are not met or if the State agency determines that the individual is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level.

(b) The requirement to teach two years for each year a scholarship assistance is reduced by one-half in the case of individuals who teach on a full-time basis in a teacher shortage area that is designated by the Secretary as provided by section 428(b)(4) of the Act.

(c) The agreement referred to in paragraph (a) of this section must include—

(1) A description of the procedures under which the provisions of § 653.42 (g) through (k) will be implemented; and

(2) A description of the procedures under which a scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1111b)

(Approved by the Office of Management and Budget under control number 1840–0578)

**§ 653.41 What are the requirements for a scholar to continue to receive payments under this program?**

(a) A State agency shall continue to make payments to a scholar under this program only during the periods that the State agency finds that the scholar meets the conditions described in paragraph (b) of this section.

(b) To maintain eligibility for a scholarship, a scholar must be—

(1) Enrolled as a full-time student in an institution of higher education that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accordance with section 1201(a) of the Act;

(2) Pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the State agency but not including graduate study that is not required for initial teacher certification; and

(3) Maintaining satisfactory progress as determined by the institution of higher education the student is attending, in accordance with the criteria established in 34 CFR 668.16(e) of the Student Assistance General Provisions regulations.

(Authority: 20 U.S.C. 1111e)

**§ 653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?**

(a) A scholar found by a State to be in noncompliance with the agreement entered into under § 653.40, or to be no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, shall—

(1) Repay the amount of the scholarships received, prorated according to the fraction of the teaching obligation not completed, as determined by the State agency;

(2) Pay a simple, per annum interest charge on the outstanding principal; and

(3) Pay all reasonable collection costs as determined by the State agency.

(b) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the initial scholarship payment if the State agency has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(2) The day after that portion of the scholarship period for which the teaching obligation has been fulfilled.

(c)(1) The interest charge referred to in paragraph (a)(2) of this section is adjusted annually, except as provided for under paragraph (c)(2) of this section, and is set at a rate which is the greater of—

(i) Fourteen percent; or

(ii) Five percent above the average of the bond equivalent rates of 91-day Treasury bills auctioned during the most recent quarter ending March 31.

(2) The interest charge applicable during the repayment period is the greater of the rates described in paragraphs (c)(1) (i) and (ii) of this section as determined when the repayment schedule is established.

(d) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of the first calendar month after—

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed after the cessation of the scholar's full-time enrollment in such a course of study;

(ii) The date the scholar informs the agency he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the State agency; and

(2) Make monthly or quarterly payments to the State which—

(i) Cover principal, interest, and collection costs according to a schedule established by the State which calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (j) of this section; and

(ii) Amount annually to no less than $1200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the State's satisfaction.

(e) The State agency shall not require scholarship repayments amounting to more than $1200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (d)(2) of this section.

(f) The State agency shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (d) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

(4) Unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the State under paragraph (d)(2)(i) of this

section and is also seeking and unable to find full-time employment as a teacher in a public preschool, elementary school, or secondary school, or in a public or private nonprofit preschool, elementary, or secondary education program.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar shall notify the State agency of his or her claim to the exception and provide supporting documentation as required by the State agency.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments referred to in paragraph (d) of this section and interest does not accrue.

(j) The State agency shall extend the ten-year scholarship repayment period established under paragraph (d) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or her financial condition has been established to the State's satisfaction.

(k) The State agency shall cancel a scholar's repayment obligations if it determines—

(1) On the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or

(2) On the basis of a death certificate or other evidence, conclusive under State law, that the scholar has died.

(Authority: 20 U.S.C. 1111f, 1111g)

[FR Doc. 87-6827 Filed 3-26-87; 8:45 am]

BILLING CODE 4000-01-M

Friday
March 27, 1987

Part V

# Office of Management and Budget

**Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines**

## OFFICE OF MANAGEMENT AND BUDGET

### The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines

**AGENCY:** Office of Management and Budget.

**ACTION:** Final publication of Fee Schedule and Guidelines implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570).

**SUMMARY:** These Guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 which require the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA.

**EFFECTIVE DATE:** April 27, 1987. Agencies are required to promulgate regulations pursuant to notice and comment implementing the provisions of this schedule and guidelines by April 25, 1987. They should develop and publish proposed rules as soon as possible after publication of this OMB Fee Schedule and Guidelines. Agencies will have met the statutory deadline if they promulgate final versions of such implementing regulations in the **Federal Register** on or before that date, even though their regulations will not be effective until 30 days after the date of publication.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, Information Policy Branch, Telephone (202) 395–4814.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically required the Office of Management and Budget to develop and issue a schedule of fees and guidelines, pursuant to notice and comment.

On January 16, 1987, OMB published a proposed fee schedule and guidelines explaining how to implement the schedule. The notice invited public comment especially on the definitions of "commercial," "representative of the news media," "educational institution," "non-commercial scientific institution," "search," and "review."

At the end of the comment period, February 17, 1987, OMB had received 80 comments from 6 identifiable categories of commentator:

- The Congress (1)
- The Federal Agencies (11)
- Publishers of Newsletters (41)
- Public interest groups affiliated with the news media (11)
- Other public interest groups (12)
- Individual members of the public (4)

Although many of the commentators focused exclusively on OMB's proposed definition of "representative of the news media," a significant number provided substantive comments on other aspects of the guidelines and schedule. These comments are discussed in the sectional analysis that follows.

Several commentators urged OMB to publish a revised schedule and guidance for a second round of public comment, while acknowledging the problems presented by the statutory deadline requiring agencies to promulgate their own fee regulations by April 25, 1987. OMB has carefully considered this suggestion, but declines to adopt it. Since agencies' regulations must be published not only pursuant to (and thus following) OMB's issuance and also for notice and comment, a second round of comment would make it impossible for agencies to meet the statutory deadline. It should be noted, however, that OMB intends to follow agencies' implementation of the schedule and guidelines closely and will issue clarifications when needed.

### Section-by-Section Analysis

*Section 1. Purpose.*

Many commentators suggested that OMB's emphasis on collecting FOIA fees was contrary to the intent of the FOIA amendment which they insisted was to make information more widely and cheaply available, and they urged that we emphasize this intention. While it is true that many of the provisions of the FOIA amendments will have this effect, OMB's role in this process is limited to that of providing guidance on charging fees under the FOIA. Moreover, given OMB's budgetary responsibilities, it is quite appropriate for it to require agencies to develop and diligently carry out programs that charge, collect and deposit fees for FOIA services where such activities are clearly permitted by statute. Accordingly, no changes were made to this section.

*Section 5. Authorities.*

One commentator objected to the citation of statutory authorities other than the Freedom of Information Reform Act: specifically, the Paperwork Reduction Act of 1980 and the Budget and Accounting Act and Budget and Accounting Procedures Act. It was not OMB's intention to enlarge the scope of its authority or responsibilities in developing FOIA fee guidance by citing these Acts. Nevertheless, these Acts do provide a framework for the development and issuance of OMB policies relating to information access and dissemination policies and the collecting and disposition of fees. The Paperwork Reduction Act, for example, makes the Director of OMB responsible for developing and implementing "Federal information policies, principles, standards, and guidelines" (44 U.S.C. 3504(a)). Among these responsibilities are those for issuing guidance on the Privacy Act of 1974. These FOIA fee guidelines rely on that authority to remind agencies that the fee schedule provided herein does not apply to individuals seeking access to their own records which are filed in Privacy Act systems of records. Similarly, the budgetary authorities cited mandate that funds agencies receive for providing FOIA services are to be deposited in the general revenues of the United States rather than individual agency accounts. OMB has made one change to this section and that is to add a reference to the Privacy Act of 1974.

*Section 6. Definitions:*

*Section 6b. "Statute Specifically Providing for Setting the level of fees for particular types of records."*

A few commentators addressed this definition and suggested that it was too broad and general and could permit agencies, on a discretionary basis, to "circumvent the general FOIA policy of minimal fees for statutory access to agency records." The commentators urged that we include in the definition that a qualifying statute would have to specifically establish a level of fees and specifically identify a particular type of records for which the fees could be charged.

It was not OMB's intention to have this provision read broadly, since the legislative history relating to this provision is unambiguous in stating that it is not intended to change existing law. We have therefore revised the section to meet the concerns of the commentators. We would note only, however, that a number of commentators misquoted the plain wording of the provision by insisting that a qualifying statute must set a specific level of fees rather than specifically providing for the setting of fees by an agency. Our guidance makes it clear that a qualifying statute must require, not merely permit, an agency to establish fees for particular documents.

The commentators also objected to the first subparagraph in the definition

which refers to statutes that "serve both the general public and private sector organizations by conveniently making available government information . . .," and urged its elimination on the basis that it is "so vague and meaningless that it could probably be applied to any statute allowing disclosure of information." The objectionable paragraph is taken from the legislation establishing the National Technical Information Service (albeit somewhat condensed) and we have left it unchanged, but note that it is to be read in conjunction with the other subparagraphs in providing a generic description of such fee statutes.

*Section 6c. "Direct Costs."*

Two categories of commentators addressed the issue of charging a percentage of an employee's salary to cover benefits. Non-federal commentators thought that such charges were improper because they represented agency overhead costs rather than direct costs. Federal agency commentators, on the other hand, pointed out that the 16 percent rate the guidance attributed to benefits was inconsistent with OMB's own guidance in Circular No. A–76 which uses a much higher percentage.

As to the first point, the Freedom of Information Act permits agencies to charge only for allowable reasonable direct costs of providing certain FOIA services. Employee salaries are clearly a direct cost of providing FOIA services. The cost to the agency of conducting, for example, a search for a document is the salary that must be paid to the employee performing the search multiplied by the time he or she spends searching.

The elements used to calculate an employee's total salary are the pay grade of the employee and any fringe benefits. Because the agency is permitted to charge only "reasonable" direct costs, the inclusion of some kinds of fringe benefits would be clearly unreasonable. For example, an agency that maintains recreational facilities for employees and their families could not count the cost of operating the facility as a reasonable direct cost for FOIA fee purposes. But, an employer's contribution to a retirement system and to health and life insurance programs are concrete identifiable costs directly associated with the salary of the employee and should be counted as part of the direct costs of providing FOIA services.

As to the second point, the figure cited in OMB Circular No. A–76 was developed for a different purpose and on a different basis. The circular uses a figure, for example, of 27.9 percent as a cost factor in determining agency costs for employee retirement. The figure includes not only the direct 7 percent agency contribution, but other governmental sources of funds for the Civil Service Retirement System. While 27.9 percent may be an appropriate figure for purposes of Circular No. A–76, the "direct reasonable cost" restriction of the Freedom of Information Act precludes using more than the 7 percent agency contribution. OMB arrived at the 16 percent figure in consultation with the Office of Personnel Management, and it is retained in the final version of our guidance.

Some readers noted that the 16 percent figure was rendered 16.1 in Section 7a of the guidelines. That was a typographical error.

*Section 6d. "Search."*

Several commentators objected to the inclusion of line-by-line searches as an example of search. It is not often that an agency would need to read a document line-by-line to locate records responsive to a request, and agencies should not artificially raise search costs by unnecessarily spending time reading a document for responsive records when it would be cheaper and faster simply to reproduce the entire document. Our intention was to provide guidance on the *scope* of what constitutes FOIA search and we were careful to distinguish line-by-line search from review. We have accordingly modified the section to make it clear that agencies should not conduct line-by-line searches when whole document reproduction would be cheaper and faster.

*Section 6f. "Review."*

Several Federal agency commentators suggested that we provide greater detail on what constitutes review of documents for which agencies may charge commercial use requesters. We have therefore expanded the explanation.

*Section 6g. "Commercial Use Request."*

Athough the legislative history is in conflict on the precise meaning of this provision, it seems clear that the Congress intended to distinguish between requesters whose use of the information was for a use that furthered their business interests, as opposed to a use that in some way benefited the public. The amendment shifts some of the burden of paying for the FOIA to the former group and lessens it for the latter.

As opposed to the other fee categories created by the amendment, inclusion in this one is determined not by the identity of the requester, but the use to which he or she will put the information obtained. Because "use" is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for a commercial use. It is also possible that a non-profit organization could make a request that is for a commercial use. Moreover, because "use," not identity, controls, agencies will have to spend more time than they do now in determining what the requester intends to do with the records sought.

Both the legislative history and the comments on OMB's proposed fee guidance contain suggestions that agencies can look to the identities of requesters and automatically assign them to or exclude them from this category. Indeed, the original OMB proposal instructed agencies that a request, without further explanation, submitted on corporate letterhead could be presumed to be for a commercial use. Commentators urged that we also include a presumption that requests submitted on the letterhead of a non-profit organization be for a non-commercial purpose. We no longer think either presumption should be made automatically since both would be based upon the identity of the requester as opposed to the use to which he or she intended to put the records sought. We have therefore revised the definition to eliminate the example.

Many commentators were troubled by the breadth of OMB's proposed definition of "commercial use," arguing that by defining such a use as one which is "related to" commerce, OMB was providing too tenuous a connection to be meaningful. OMB has revised the definition to attempt to provide a more meaningful linkage. "Commercial use" is therefore defined as a use that "furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made."

*Section 6h. "Educational Institution."*

Many commentators were concerned about our definition of "educational institution." One Federal agency, for example, pointed out that it would exclude high schools from this category of FOIA requesters. The legislative history is unhelpful on this point, nowhere defining the term. One commentator recommended the definition found in Webster's *New Twentieth Century Dictionary of the English Language* (2nd. ed. 1968) in which the word "education" means providing instruction or information; an "educational institutional" is an entity organized to provide instruction or information. The problem with this suggestion is that it is not sufficiently discriminating. There are very few

organizations that do not in some way "provide information" and who would not qualify as "an entity organized to provide information."

Other commentators recommended the definition of educational institution used by the Internal Revenue Service in its regulations implementing Section 501(c)(3) of the Tax Code. Institutions meeting this definition qualify for tax exempt treatment. The commentators pointed out that since the task the FOIA Reform Act set OMB was to develop a uniform fee schedule, looking to an existing definition would be consistent with the statutory intent. After some consideration, OMB agrees that while it would be appropriate to incorporate an existing and well understood definition, neither the Tax Code nor the IRS regulations implementing the Code serve that purpose well. The statute merely provides that "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for . . . educational purposes . . .," qualify for exemption from taxation. The IRS regulations interpreting this somewhat vague statutory provision are themselves too general to be useful to the agencies in determining an institution's eligibility under the FOIA fee schedule. Moreover, OMB does not think it is appropriate to tie eligibility for inclusion in the "educational institution" fee category to an IRS interpretation of the institution's eligibility for tax exempt status.

Rather than using the IRS definition, OMB thinks it more appropriate to look to the Department of Education definition found in 20 U.S.C. 1681(c). Accordingly, the terms of that statutory definition have been adapted for use in a revised definition, but it is intended that they be given their plain meaning in the FOIA context. Moreover, these terms must be applied in conjunction with the FOIA's "scholarly research" requirement. Thus, the definition has been revised to read " 'educational institution' refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research."

As a practical matter, it is unlikely that a preschool or elementary or secondary school would be able to qualify for treatment as an "educational" institution since few preschools, for example, could be said to conduct programs of scholarly research. But, agencies should be prepared to evaluate requests on an individual basis when requesters can demonstrate that the request is from an institution that is within the category, that the institution has a program of scholarly research, and that the documents sought are in furtherance of the institution's program of scholarly research and not for a commercial use.

Agencies should ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal. Thus, for example, a request from a professor of geology at a State university for records relating to soil erosion, written on letterhead of the Department of Geology, could be presumed to be from an educational institution. A request from the same person for drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationary. Indeed, such a request could reasonably be construed to be a request that is for a commercial use.

The institutional versus individual test would apply to student requests as well. A student who makes a request in furtherance of the completion of a course of instruction is carrying out an individual research goal and the request would not qualify, although the student in this case would certainly have the opportunity to apply to the agency for a reduction or waiver of fees.

One commentator suggested that OMB should read the phrase "scholarly or scientific research" conjunctively in association with the term "educational institution" so that a request from an educational institution in furtherance of either scholarly or scientific research would qualify. OMB rejected this suggestion; the statute and the legislative history recite the formula "educational or scientific institution/ scholarly or scientific research," and it seems clear that the phrase was meant to be read disjunctively so that scholarly applies to educational institution and scientific applies to non-commercial scientific institution.

*Section 6i. "Non-Commercial Scientific Institution."*

A number of Federal agencies commented on this definition. Several suggested that qualifying institutions be limited to those conducting research in the natural sciences. OMB rejected this suggestion; there is no support in either the statute, the legislative history, or the plain meaning of the term to permit such a narrow reading.

Other agency commentators suggested that the word "non-commercial" be more fully defined so that an institution whose purpose was to further a specific product or industry would be excluded from this category. OMB has accepted this suggestion and modified the definition accordingly.

OMB has also revised the definition to ensure consistency with the definition of "commercial" in Section 6g.

*Section 6j. "Representative of the News Media."*

This definition drew the most comments of any section. Commentators generally fell into two classes. The first consisted of newsletter publishers and their representatives who were concerned that the guidelines could be read to exclude them from qualifying as "representatives of the news media." The second class had broader concerns about the definition, and were especially concerned about its perceived narrowness.

Many of the newsletter commentators pointed to their accreditation to the House and Senate press galleries as evidence of their membership in the news media category. It was not OMB's intention to exclude the publishers of newsletters from this category. The examples provided in the definition were not intended to be all-inclusive. Certainly newsletters, if they meet all of the other criteria, would qualify as "representatives of the news media" for purposes of this definition. To avoid implying any such limitation, OMB has replaced the references to "newspaper" and "magazine" in the definition with the word "periodical."

The other class of commentators criticized the narrowness of OMB's proposed definition, pointing to the words of Senator Leahy in the legislative history that "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the Act is to work as expected." Cong. Rec. S.14298 (daily ed. September 30, 1986). They asserted that including the words "established," "general circulation," "working for," and "regularly," all served to unnecessarily limit what they perceived to be the breadth of the definition's coverage.

OMB has carefully considered these comments. Our intention in this section was to provide the agencies and the public with a workable definition. We used the word "established" not to limit eligibility only to those organizations in being at the time of the issuance of the guidance, but simply to indicate that a qualifying organization must be able to show some evidence of its identity

beyond the mere assertion that it is a member of the news media. Press accreditation, guild membership, a history of continuing publication, business registration, Federal Communications Commission licensing, for example, would suffice. The word "regularly" which the legislative history shows Senator Leahy using in precisely this context, was meant to indicate that a qualifying organization would have to show that it was a continuing venture that was publishing or broadcasting news to the public. Thus, a newly established newspaper would be able to do so by demonstrating that it had held itself out for subscription and had in fact enrolled subscribers.

The phrase "general circulation" was misinterpreted by many commentators: members of the public and Federal agencies as well. OMB intended the phrase to refer to a newsworthy product that was broadcast or published in a manner that made it *available* to the general public, not that it had to have an exclusively general content or that it had to be circulated exclusively to a general audience.

In any case, OMB has sought to address these concerns by redrafting the section so that "news media" is defined generically as "an entity that is organized and operated to publish or broadcast news to the public." *The American Heritage Dictionary* (Second College Edition, 1982) defines the word "news" as ". . . Recent events and happenings, esp. those that are unusual or notable. . . . Information about recent events of general interest, esp. as reported by newspapers, periodicals, radio or television . . . A presentation or broadcast of such information: newscast. . . . Newsworthy material."

Thus, "news media" is further limited to purveyors of information that is current or would be of current interest. The Congress could easily have drafted the section to read "representative of the media" rather than "news media," but it did not; therefore, OMB thinks it is reasonable to give some weight to the term "news" when constructing a definition. The examples given cite the traditional models—radio and television stations as well as publishers of periodicals that disseminate "news,"—but also look to evolving non-traditional distributors, such as videotext. While these examples are not meant to be all-inclusive, they *are* meant to be limiting, and to give meaning to the phrase "publish or broadcast news" so that it implies something more than merely "make information available." The news media perform an active rather than passive role in dissemination. Thus, they can be distinguished, for example, from an entity such as a library which stores information and makes it available on demand.

The provision for freelancer eligibility, especially the term "solid basis for expecting publication" also drew comments. OMB's aim was to incorporate legitimate freelance representatives of the news media into the categorical definition without opening the door to anyone merely calling himself or herself a freelance journalist. Many commentators noted that while it was quite reasonable to require freelancers to show some evidence that they could expect their work to be published before granting them access to this category of requester, they were troubled by the use of the phrase "solid basis." OMB has attempted to address these concerns by adding to this section examples amplifying what solid basis means, e.g., a publication contract would be the clearest basis, but freelancer's past publication history could also be considered. In any case, freelancers who do not qualify for inclusion in the "representatives of the news media" category because they cannot demonstrate a solid basis for expecting publication could be eligible to seek a reduction or waiver of fees if they meet the statutory waiver criteria.

*Section 7. "Fees to be Charged."*

A number of commentators expressed frustration that OMB was not issuing a unitary schedule of fees which would establish one government-wide charge for each FOIA service performed. OMB is sympathetic to this position, but does not believe that the FOIA Reform Act gives it the authority to do so. Because the FOIA Reform Act requires each agency's fees to be based upon its direct reasonable operating costs of providing FOIA services, OMB is precluded from establishing a government-wide fee schedule.

Commentators urged OMB to emphasize in this section that the effect of the FOIA amendment was to minimize costs by creating categorical limitations on what fees could be charged. They asserted that OMB's direction to the agencies to "charge fees that recoup the full direct costs they incur . . ." was at the least misleading, given the statutory limitations. OMB agrees and has revised the sentence to read "full allowable direct costs" to make it clear that agencies must look to the categorical limitations in the statute and charge fees accordingly.

Commentators pointed out that OMB's encouragement of agencies to use private sector services to locate, reproduce and disseminate records in response to FOIA requests, while consistent with the policy articulated in OMB Circular No. A–130, needed some limitations. Commentator specifically wanted OMB to make it clear that the ultimate costs for requesters serviced by private sector contractors should be no different than if serviced by an agency. They also suggested that OMB clarify that there are some services that agencies may not contract out: e.g., reviewing records for the application of an exemption or the waiving of a fee. OMB has accordingly redrafted the section to accommodate these concerns.

*Section 7b. "Computer Searches for Records."*

At the suggestion of a Federal agency commentator, OMB has added a provision permitting agencies to establish agency-wide average computer processing unit operating costs and operator/programmer salaries for purposes of determining fees for computer searches where they can reasonably do so because these costs are relatively uniform across the agency. This provision is meant to encourage agencies to minimize FOIA costs by reducing the administrative steps necessary to establish a fee for a particular search. It is not meant to allow agencies to raise the prices of such searches by including in the average expensive but seldom-used equipment.

OMB has also revised this section to make it clear that agencies may only charge search costs for that portion of the operation of the central processing unit (CPU) and operator salary that is directly attributable to the FOIA search.

*Section 7c. "Review of Records."*

Several Federal agency commentators requested additional clarification of when review costs could be charged, i.e., at what point in the processing of a request were review charges permitted and could charges be made for subsequent review of materials. OMB has revised this section to address these concerns and clarify that charges may only be assessed the first time an agency reviews a record for the application of an exemption and not at the administrative appeal level of an exemption already applied.

At the suggestion of a Federal agency commentator, OMB has added a provision permitting agencies to establish an agency-wide average cost for review when review is performed by a single class of employee. The intent is to minimize agency administrative costs.

*Section 7d. "Duplication of Records."*

One commentator objected to the salary of the employee operating the duplicating machinery being included as a reasonable direct cost of duplication. Since the operation of a duplicating machine is necessary to produce a copy of a document, OMB considers this a reasonable direct cost and has not changed the section.

*Section 7e. "Other Charges."*

Several commentators objected to the inclusion of fees for normal packaging and mailing of records in this section, arguing that mailing records was a reasonable interpretation of the FOIA requirement that agencies "make . . . records promptly available . . ." They argued that an agency requiring a requester to come from Alaska to Washington, D.C. to obtain records responsible to his request could hardly be said to be making records available. Upon reflection, OMB concurs and has deleted charges for ordinary packaging and mailing as examples of allowable other charges.

*Section 7f. "Restrictions on Assessing Fees."*

OMB has revised this section to provide greater detail on how agencies should develop costs relating to the 100 free pages of reproduction and two hours of free search time the FOIA Reform Act permits certain classes of requesters. The revision also reminds agencies of the consequences of these restrictions for the use of contractors to perform search and duplication services: specifically, that contracts must incorporate free search and reproduction services when appropriate.

OMB also added an explanation of how agencies should determine what constitutes two hours of free computer search time. Since most computer searches are accomplished in seconds and fractions of seconds, it would be unreasonable to interpret the statutory free search time to mean that an individual would be entitled to require an agency to operate a computer for two hours. The cost and the disruption of an agency's normal ADP activities would be prohibitively expensive. OMB has therefore developed a formula based upon the concept of manual search, i.e., search done by an agency employee who examines records to find those that are responsive to a request. The employee performing the computer search who is most nearly like the clerical searcher is the operator. The guidance, therefore, tells agencies that a requester is entitled to two hours of operator salary translated into computer search costs (computer search consists of operator salary plus CPU operating time cost for the duration of the search).

*Section 7g. "Waiving or Reducing Fees."*

OMB has dropped this section. A number of commentators pointed out that OMB's role is limited by the plain wording of the statute to developing guidelines and a fee schedule. In looking carefully at this requirement, OMB has determined that developing a schedule providing for the charging of fees and issuing guidance on when fees should be reduced or waived are separate issues and that OMB's role does not involve the latter consideration. In developing a fee schedule and guidance on its implementation that the statute clearly contemplates, it was necessary for OMB to carefully define the categories or classes of requester and explain to the agencies what fees to charge them. Thus, for example, OMB discussed the exclusion of search fees for educational/scientific institutional requesters and representatives of the news media. This discussion was about the establishment and limitation of fees for a particular category of requester. It was not about waiving search fees since the statute gives agencies no discretion about what search fees to charge this class of requester. OMB considers the development of such definitions as required by the statute and thus squarely within its proper responsibilities.

*Section 8. "Fees to be Charged."*

OMB has added the phrase "requesters must reasonably describe the records sought" to all categories of requesters to accommodate some commentators' concerns that OMB was creating a new requirement for a particular class of requester by applying this requirement to educational/scientific institutional requesters and representatives of the news media alone.

*Section 8d. "All Other Requesters."*

OMB has revised this section to explain that the requests of record subjects asking for copies of records about themselves filed in agencies' systems of records must be processed under the Privacy Act's fee schedule.

*Section 8a. "Commercial Use Requesters."*

OMB has removed the reference to fee waivers, based upon the discussion in Section 7g. above.

*Section 9a. "Charging Interest."*

OMB has revised this section to specify that interest will accrue from the date the bill was mailed if fees are not paid by the 30th day following the billing date. To ensure that agencies do not bill interest because of defects in their own administrative procedures, the section has been revised to provide that agencies should ensure their accounting procedures are adequate to properly credit a requester who has remitted the fee within the time period. To guard against inadequate processing procedures, the guidelines require that receipt of a fee by the agency, whether processed or not, will stay the accrual of interest.

*Section 9b. "Charges for Unsuccessful Search."*

Many requesters urged OMB to delete this section. Some argued that it could be used by an agency to surprise and unwary requester with an unexpected and potentially ruinous bill. OMB thinks that an agency should be entitled to charge for unsuccessful search, but agrees that it should be done with the knowledge and consent of the requester. Thus the section has been revised to require agencies to notify requesters who have not agreed to pay fees as high as those anticipated when charges are likely to exceed $25.

*Section 9c. "Aggregating Requests."*

Requesters generally agreed that agencies should not permit a requester to make multiple requests merely to avoid paying fees. There was disagreement about what standard to use in such cases and many requesters urged that OMB adopt a 30-day limit.

The 30-day limit, while providing certainty for both the requester and the agency, does not achieve the goal of allowing an agency to identify requesters who are attempting to circumvent the fee provisions of the statute and charge accordingly. Therefore, OMB has declined to change its original proposal, a "reasonable belief" standard, but has provided examples to help agencies understand what "reasonable" means in this context. Thus, agencies could presume that multiple requests for documents that could reasonably have been the subject of a single request and which occur within a 30-day period are made to avoid paying fees. Agencies may make that presumption for requests occurring over a longer period, but should have a solid basis for doing so.

Commentators also suggested that agencies should not be able to aggregate requests from a single requester for records on unrelated subjects nor from different requesters for records about the same subject. As to the first, OMB

agrees and has revised this section to reflect this concern. As to the second, OMB does not agree that agencies should in no circumstances be able to aggregate requests from multiple users. However, such aggregation should occur rarely and only when the agency has solid evidence that multiple requesters are colluding to avoid paying FOIA fees. OMB has included cautions to this effect in the section.

*Section 9d. "Advance Payments."*

The Amendments clearly permit agencies to charge and collect advance payments in two specific circumstances: (1) When fees will exceed $250; or when a requester has previously failed to pay fees in a timely fashion. Non-federal commentators generally argued that this provision should be read as a limitation rather than an authorization: i.e., "agencies may only charge advance fees when. . . ." OMB has accordingly revised this section to incorporate the fee limitation concept and also to ensure that agencies use this provision fairly. Thus, when agencies determine the estimated fee is likely to exceed $250, they should seek satisfactory assurances of payment if the requester has a record of prompt payment. If the requester has no history of payment, they may ask for an advance payment of an amount up to the estimated cost. For requesters who have failed to pay in a timely fashion in the past, however, or who are currently delinquent, agencies are encouraged to require full prepayment of the estimated amount.

**Uniform Freedom of Information Act Fee Schedule and Guidelines**

To the Heads of Executive Departments and Establishments

1. *Purpose*—This Fee Schedule and Guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) which require the Office of Management and Budget to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA.

Data from agencies' annual FOIA reports to the Congress as well as studies by the General Accounting Office and others indicate that inconsistent application of the Act's fee provisions has sometimes resulted in inequitable treatment of users of the Act as well as substantial loss of revenues to the Treasury. While the legislative history of the 1974 amendments to the Freedom of Information Act shows that the Congress did not intend that fees be erected as barriers to citizen access, it is quite clear that the Congress did intend that agencies recover of their costs. The 1986 Amendments to the Act clarify that congressional intention further by creating specific categories of requesters and prescribing fees for each category. Therefore, these Guidelines provide a schedule of fees and related administrative procedures in order to establish a consistent government-wide framework for assessing and collecting FOIA fees.

2. *Scope*—This Fee Schedule and Guidelines apply to all agencies subject to the Freedom of Information Act (see 5 U.S.C. 552(f)).

3. *Effective Date*—This Fee Schedule and Guidelines are effective April 27, 1987.

4. *Inquires*—Inquiries should be directed to Robert N. Veeder at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–4814.

5. *Authorities*—The Freedom of Information Act (5 U.S.C. 552), as amended; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 87 et seq.).

6. *Definitions*—For the purpose of these Guidelines:

a. All the terms defined in the Freedom of Information Act apply.

b. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vii)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

c. The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

d. The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Agencies should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see subparagraph 6f below). Searches may be done manually or by computer using existing programming.

e. The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

f. The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see subparagraph 6g below) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

g. The term "'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of

the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, agencies should seek additional clarification before assigning the request to a specific category.

h. The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

i. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in 6g above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

j. The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

*7. Fees To Be Charged—General.* Agencies should charge fees that recoup the full allowable direct costs they incur. Moreover, they shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA.

Agencies are encouraged to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, agencies should ensure that the ultimate cost to the requester is no greater than it would be if the agency itself had performed these tasks. In no case may an agency contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

In addition, agencies should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in paragraph 6b above), such as the NTIS, they inform requesters of the steps necessary to obtain records from those sources.

a. Manual Searches for Records—Whenever feasible, agencies should charge at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), agencies may establish an average rate for the range of grades typically involved.

b. Computer Searches for Records—Agencies should charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. When agencies can establish a reasonable agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, they may do so and charge accordingly.

c. Review of Records—Only requesters who are seeking documents for commercial use may be charged for time agencies spend reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the *initial* review; i.e., the review undertaken the first time an agency analyzes the applicability of a specific exemption to a particular record or portion of a record. Agencies may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Where a single class of reviewers is typically involved in the review process, agencies may establish a reasonable agency-wide average and charge accordingly.

d. Duplication of Records—Agencies shall establish an average agency-wide, per-page charge for paper copy reproduction of documents. This charge shall represent the reasonable direct costs of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, agencies shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, agencies should charge the actual direct costs of producing the document(s). In practice, if the agency estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

e. Other Charges—It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of the agency. Neither the FOIA nor its fee structure cover these kinds of services. Agencies should recover the full costs of providing services such as those enumerated below to the extent that they elect to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail, etc.

f. Restrictions on Assessing Fees—With the exception of requesters seeking documents for a commercial use, Section (4)(A)(iv) of the Freedom of Information Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These

provisions work together, so that except for commercial use requesters, agencies would not begin to assess fees until after they had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, an agency would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than the cost to the agency of billing the requester and processing the fee collected, no charges would result.

The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account (or the agency's account if the agency is permitted to retain the fee). The per-transaction cost to the Treasury to handle such remittances is negligible and should not be considered in the agency's determination.,

For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

Similarly, the term "search time" in this context has as its basis, *manual search.* To apply this term to searches made by computer, agencies should determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, agencies should begin assessing charges for computer search.

8. *Fees to be Charged—Categories of Requesters.* There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

a. Commercial use requesters—When agencies receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. Agencies are reminded that they may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see section 9b below).

b. Educational and Non-commercial Scientific Institution Requesters—Agencies shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

c. Requesters who are Representatives of the News Media—Agencies shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in Section 6j above, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Thus, for example, a document request to the Department of Justice by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be request from an entity eligible for inclusion in this category and entitled to records for the cost of reproduction alone. Requesters must reasonably describe the records sought.

d. All Other Requesters—Agencies shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

9. *Administrative Actions to Improve Assessment and Collection of Fees*—Agencies shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly by all components. To do so, agencies should amend their agency-wide FOIA regulations to conform to the provisions of this Fee Schedule and Guidelines, especially including the following elements:

a. *Charging Interest—Notice and Rate.* Agencies may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Agencies should ensure that their accounting procedures are adequate to properly credit a requester who has remitted the full amount within the time period. The fact that the fee has been received by the agency, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

b. *Charges for Unsuccessful Search.* Agencies should give notice in their regulations that they may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. In practice, if the agency estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

c. *Aggregating Requests.* Except for requests that are for a commerical use, an agency may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an agency reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be

reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and agencies should have a solid basis for determining that aggregation is warranted in such cases. Agencies are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may agencies aggregate multiple requests on unrelated subjects from one requester.

d. *Advance Payments.* Agencies may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the agency should notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the agency may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

When an agency acts under subparagraphs (1) or (2) above, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the agency has received fee payments described above.

e. *Effect of the Debt Collection Act of 1982* (Pub. L. 97–365). Agencies' FOIA regulations should contain procedures for using the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

10. *Agencies' Required Implementing Actions*—Section 1804(b)(1) of the Freedom of Information Reform Act requires agencies to promulgate final regulations in conformance with OMB's schedule and guidelines no later than the 180th day following enactment: April 25, 1987.

**James C. Miller III,**

*Director.*

[FR Doc. 87–6951 Filed 3–26–87; 8:45 am]

BILLING CODE 3110-01-M

# Reader Aids

Federal Register

Vol. 52, No. 59

Friday, March 27, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, MARCH

6123-6316.....2
6317-6492.....3
6493-6768.....4
6769-6950.....5
6951-7102.....6
7103-7262.....9
7263-7396.....10
7397-7558.....11
7559-7816.....12
7817-8052.....13
8053-8222.....16
8223-8438.....17
8439-8580.....18
8581-8858.....19
8859-9106.....20
9107-9280.....23
9281-9450.....24
9451-9648.....25
9649-9792.....26
9793-10020.....27

## CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**1 CFR**

**Proposed Rules:**
Ch. III.....7814, 7879

**3 CFR**

**Proclamations:**
5612.....6123
5613.....6125
5614.....6769
5615.....6771
5616.....7263
5617.....7265
5618.....8439
5619.....8441
5620.....8443
5621.....9281
5622.....9283
5623.....9793

**Executive Orders:**
12362 (Amended by EO 12585).....6773
12473 (See EO 12586).....7103
12585.....6773
12586.....7103
12587.....7397
12588.....8859
12589.....8861

**Administrative Orders:**
Presidential Determinations:
No. 87-10 of March 5, 1987.....9107
No. 87-11 of March 12, 1987.....9795

**4 CFR**

**Proposed Rules:**
21.....9664

**5 CFR**

110.....7399
300.....7399
410.....7402
1600.....6127
1630.....8053

**Proposed Rules:**
340.....9867
752.....9867
572.....7427
930.....8909

**7 CFR**

8.....8432
52.....6129
57.....7817
68.....7817
210.....7559, 9109
215.....7559, 7560
220.....7559
227.....8223
240.....7267
271.....7554
272.....7554
273.....7554
274.....7554
278.....7554
300.....6951
301.....7562, 9285
318.....8863
403.....6775
413.....6775
418.....7818
419.....7818, 9285
420.....7818
421.....6775, 7818
424.....7818
425.....6775
427.....7818
430.....6775
432.....7818
435.....6775
436.....6775
438.....6775
446.....6775
448.....6775, 7818
452.....9287
736.....8056
800.....6493
907.....6952, 7819, 9110, 9797
908.....7820
910.....7115, 8058, 9111, 9797
911.....7115
915.....7115
925.....8865
932.....7402
944.....8865
947.....7119
948.....7268
980.....8871
985.....9451
1102.....6317
1106.....6317
1434.....6775
1806.....7998
1822.....7998
1901.....7998
1910.....6497
1924.....7998
1930.....7998
1933.....7998
1940.....7998
1942.....7998
1943.....7998
1944.....6132, 7998, 9111, 9649
1945.....7998
1951.....6132, 6319, 9111
1955.....7998
1965.....9111
1980.....6498
3900.....9798
3901.....9798

**Proposed Rules:**
53.....6577
54.....6577
55.....6162, 8404
56.....6162, 8404
59.....6162, 8404
70.....6162, 8404
272.....7158
273.....7158
275.....7158
422.....9301
795.....9302
800.....7880
810.....7880, 8455
908.....7884
912.....6980
916.....9173
917.....6165, 9173
932.....6166
946.....6167
948.....6168
959.....7428, 9870
980.....7428, 9870
1040.....8074
1097.....8075
1137.....6579
1493.....8605
1930.....8606
1944.....7584, 8606
1965.....8606
2201.....6803, 8611

**8 CFR**

3.....7369
214.....7062
242.....6132
245.....6320
249.....6320

**Proposed Rules:**
100.....8740
103.....8740
109.....8762
210.....8745
211.....8740
212.....8740
234.....8740
242.....7741, 8740
245a.....8752
264.....8740
274a.....8762
299.....8740

**9 CFR**

51.....6523
75.....7403
77.....8223
78.....6524, 9452
91.....8224
92.....8436
94.....8436
113.....9116

**Proposed Rules:**
92.....9871
94.....7885
319.....9303

**10 CFR**

19.....8225
20.....8225
21.....8225
30.....8225
35.....9292
39.....8225
40.....8225, 9649
50.....9453
51.....8225
55.....9453
70.....8225, 9649
71.....8225
73.....6310, 7821, 9649
110.....9649
150.....8225
456.....6710

**Proposed Rules:**
2.....6287
30.....7432
40.....7432
50.....6334, 6850, 6980, 7432, 7887, 8075, 8460, 8917
55.....7432, 7887
60.....7432
61.....7432
70.....7432
71.....7432
72.....7432
110.....7432
150.....7432
430.....7972
456.....6754
458.....6754

**11 CFR**

**Proposed Rules:**
110.....6580

**12 CFR**

500.....7120, 8550
505.....7120
505a.....7120
505b.....7120
508.....7120
522.....7120
523.....7120
545.....7120
546.....9799
552.....7120, 9799
555.....7120
556.....7120, 8550
561.....7120, 8242, 8550
563.....7120, 7821, 8188, 8242, 8550, 9799
563b.....7120, 8550
563c.....7120, 8550
564.....7120
569.....7120
571.....7120
572.....7120
572a.....9799
574.....7120, 9799
584.....7120
620.....8581
701.....8058
748.....8062

**Proposed Rules:**
225.....9304
332.....7442
563.....8207
564.....8611
571.....7887

**13 CFR**

121.....6133

**Proposed Rules:**
121.....8261

**14 CFR**

21.....7261, 8040
23.....7261
36.....7261
39.....6133, 6135, 6287, 6776, 6777, 6952–6956, 7405, 7564–7568, 7823, 8062, 8581, 8582, 8872, 9119, 9293, 9469, 9470
43.....6650
71.....6136, 6778, 7262, 7369, 7370, 7390, 7406, 8242, 8243, 8873, 9121, 9383
73.....7370, 8874
91.....6650, 7261, 9622, 9768
97.....8244
121.....6650, 9622
125.....6956, 9622
127.....6650
135.....6650, 7261, 9622, 9768
241.....6524, 9122

**Proposed Rules:**
Ch. I.....8078, 8918
21.....9176
23.....9176
36.....7618, 8050
39.....6170, 6804, 6987, 7443, 7619, 8079, 8081, 8082, 8263, 8265, 8612–8615, 8919, 9181
71.....6805, 6988, 6989, 7279, 7444, 7445, 8730, 8920, 8921, 9182–9184, 9312, 9313
75.....6989, 8920–8923
91.....7618
159.....7446

**15 CFR**

371.....6137, 6649
372.....6137
373.....6137, 9147
374.....6137
376.....9147
379.....6137
385.....9147
386.....6137
387.....6137
389.....6137
399.....6137, 8445
806.....8445

**Proposed Rules:**
371.....8265
374.....8265
399.....8265, 9241

**16 CFR**

13.....6540, 7407, 8446, 9294, 9655
702.....7569
801.....7066
802.....7066
803.....7066

**Proposed Rules:**
13.....6172, 6806, 8461
703.....9314
801.....7095
802.....7095
803.....7095

**17 CFR**

1.....6139
16.....6139
240.....8875, 9151
249.....9151

**Proposed Rules:**
1.....6812
15.....6812
19.....6812
140.....6588
150.....6812
230.....8268
239.....8268
240.....6340
270.....7166, 8268, 8302
274.....7166, 8268

**18 CFR**

3.....7824
271.....6545
292.....9161
375.....7824
385.....6957
388.....7824
389.....9161
1301.....7407

**Proposed Rules:**
4.....8463
11.....8463
35.....8616
271.....7891
292.....6822
375.....8463

**19 CFR**

101.....7124
113.....9784
133.....9471
134.....7825
151.....9784
178.....9784
192.....8308

**Proposed Rules:**
133.....9498

**20 CFR**

404.....8246
416.....8877

**Proposed Rules:**
416.....8309

**21 CFR**

5.....6970, 7269, 7829, 7969
74.....7261, 7829
81.....6323
101.....6971
176.....6649
178.....6323
312.....8798
314.....8798
331.....7830
332.....7830
341.....7126, 7830
344.....7830
357.....7830
436.....8550
449.....7741
455.....8550
510.....7831, 7833, 9295, 9756
511.....8798
514.....8798
520.....7831, 9756
522.....7831, 7833, 9756
524.....7831, 9756
529.....7831, 9756
558.....6649, 7261, 7833, 7834, 9295
571.....8583
1308.....6546, 7270, 9802–9806

**Proposed Rules:**
193.....6344
312.....8850
358.....9992
561.....6344
1308.....7280

**22 CFR**

33.....7528

514.....7370

**23 CFR**

655.....7126
658.....7834
777.....8250

**Proposed Rules:**

655.....7172

**24 CFR**

40.....9477
146.....7408
200.....6778, 8064, 9827
201.....7841
203.....6908, 7841, 7842, 8064, 9295, 9989
204.....6908, 8064, 9989
213.....8064, 9989
220.....8064, 9989
221.....8064, 9989
222.....8064, 9989
226.....8064, 9989
227.....8064, 9989
234.....7841, 8064, 9989
235.....8064, 9989
237.....8064, 9989
240.....8064, 9989
243.....9161
278.....6300
511.....9161, 9295
570.....6140, 6971
842.....9161
882.....9477, 9827
886.....9827
888.....9478
942.....9161

**Proposed Rules:**

203.....9666
234.....9666

**25 CFR**

249.....9655

**Proposed Rules:**

11.....9669
40.....6482
167.....6822

**26 CFR**

1.....6428, 6468, 7281, 7408, 8447, 9161
5f.....7408
5h.....8405
46.....9656
301.....6779, 9296
602.....6428, 6468, 6779, 7408

**Proposed Rules:**

1.....6467, 7449, 8471, 9185
7.....7281
20.....7281
25.....7281
53.....7281
56.....7281
602.....6467, 7449

**27 CFR**

71.....7370
178.....7132

**Proposed Rules:**

19.....9873
197.....9873
250.....9873
251.....9873

**28 CFR**

2.....7574, 8405

14.....7411
600.....7270
601.....7270, 9241

**Proposed Rules:**

2.....7620, 9382
42.....9885
44.....9274
513.....6297

**29 CFR**

860.....8448
1952.....9162
2676.....7842

**Proposed Rules:**

103.....7450, 9382
1928.....7451
1952.....9185
2200.....9187

**30 CFR**

917.....7132
935.....6796
944.....7843

**Proposed Rules:**

15.....9670
75.....9670
202.....7622
206.....7622
256.....9672
280.....9758
774.....6827
785.....9640, 9644
823.....9644
906.....9887
913.....9402
917.....9890
935.....7176, 8082
938.....6828
942.....6827
944.....9891
946.....9892
948.....9314

**31 CFR**

545.....7273–7275, 7855

**32 CFR**

706.....6546, 7136, 8583
1602.....8889
1605.....8889
1621.....8889
1630.....8889
1633.....8889
1648.....8889
1656.....8889

**Proposed Rules:**

199.....7453
231a.....6346
818a.....9499
1602.....8924
1605.....8924
1609.....8924
1618.....8924
1621.....8924
1624.....8924
1630.....8924
1633.....8924
1636.....8924
1639.....8924
1642.....8924
1648.....8924
1651.....8924
1653.....8924
1657.....8924
1698.....8924

**33 CFR**

100.....9162
110.....9828
117.....6972, 9163
147.....9656
151.....7744
158.....7744
161.....7856
165.....6142, 8584, 8892
183.....6973

**Proposed Rules:**

100.....6990, 7623–7624
110.....6347
117.....6991, 9673
165.....8622, 8623

**34 CFR**

338.....6142
653.....10006
761.....9440

**Proposed Rules:**

235.....8570
502.....7380
504.....7380
524.....7380
673.....6924

**36 CFR**

7.....7372

**37 CFR**

1.....9386
401.....8552

**Proposed Rules:**

1.....6696

**38 CFR**

17.....7575
21.....6547, 7276
36.....6547

**Proposed Rules:**

1.....8624
14.....8472

**39 CFR**

10.....6143
111.....6144
224.....7454
960.....6797
962.....7454

**Proposed Rules:**

10.....8627, 9756

**40 CFR**

52.....6145, 6324, 7862, 8070
60.....8585–8587, 9164, 9657, 9778
61.....8586–8589, 8724, 9164
65.....7863, 7864
81.....6548, 7865, 8448
131.....9102
180.....6325, 8452, 9492, 9493, 9756
260.....8072
265.....8704
270.....8072
271.....7412
716.....9662

**Proposed Rules:**

52.....6175, 7802, 8311, 8932, 9502, 9674, 9676
60.....7178, 8476
81.....7802
85.....9316
86.....9503

117.....8140
167.....9504
180.....6348, 8478, 9241
228.....9894
264.....8712
265.....8704, 8712
270.....8712
302.....8140, 8172
440.....9414
721.....9508

**41 CFR**

Ch. 61.....6674
50–201.....6146
101–6.....8893
101–40.....9382
101–47.....9829–9831

**Proposed Rules:**

50–201.....7892
101–38.....9448
201–38.....9900

**42 CFR**

37.....7866
405.....6148
413.....9833
417.....8898
418.....7412

**Proposed Rules:**

433.....6350
447.....6350

**43 CFR**

7.....9165
11.....9042
17.....6549

**Public Land Orders:**

6625 (Corrected by PLO 6640).....6557
6640.....6557

**44 CFR**

64.....6326
65.....8902, 8903
67.....8250, 8904
222.....6799

**Proposed Rules:**

65.....8933
67.....8084

**45 CFR**

97.....9494

**Proposed Rules:**

1204.....9901
1207.....8479
1208.....8480

**46 CFR**

30.....7765
98.....7765
107.....6974, 9383
109.....6974, 9383
151.....7765
153.....7765
170.....6974, 9383
172.....7765
174.....6974, 9383
221.....6329
276.....7462
502.....6330

**Proposed Rules:**

160.....6992
310.....6829
503.....8628, 9756

**47 CFR**

1.....8259
2.....6152, 7136, 7417, 8906
15.....9296
19.....7577
21.....7136
31.....6557
32.....6557, 7579
43.....8453
64.....6557
69.....8258
73.....6152, 6154, 7148–7150, 7276, 7420, 7580, 8259, 8453, 8454, 8907, 9298, 9299
74.....7136, 7420, 8259
78.....7136
80.....7417
90.....6154
94.....7136
97.....7277

**Proposed Rules:**

Ch. I.....8313
25.....6175, 8937
73.....6176, 7182–7185, 7282, 7624–7627, 8084–8086, 8314–8316, 8481, 8937, 9316
74.....7627, 7895

**48 CFR**

1.....8567
3.....7062, 9989
7.....9036
8.....9036
9.....9036
13.....9036
15.....9036
22.....9036
31.....9036
32.....9036
44.....9036
52.....9036
53.....9036
244.....8908
PHS352.....9300
507.....8589
514.....6562
515.....6562
528.....6564
533.....6562
537.....6562
552.....6562, 8589
706.....6158
715.....6158
1537.....8073
5316.....6332

**Proposed Rules:**

32.....8576
51.....9436
52.....8576, 9436
203.....9187
209.....9187
232.....8481
242.....6177
825.....6993
5315.....6590

**49 CFR**

1.....9863
171.....8590
173.....7581, 8590
174.....8590
175.....8590
176.....8590
177.....8590
394.....7277
533.....6564
571.....7150, 7867
1313.....7278

**Proposed Rules:**

171.....6591, 9996
172.....6591
173.....6178, 6591
175.....9996
176.....6591
177.....6591
178.....6591
180.....6591
192.....9189
195.....9189
219.....7185
391.....9192
571.....8317, 8482, 9194, 9316
845.....9678
1042.....8631
1059.....9201
1152.....7628
1330.....9513

**50 CFR**

17.....6651, 7369, 7424
23.....6160
258.....7532
285.....9170
301.....7582
611.....7868, 8592
646.....9864
671.....8319
672.....7868, 9171, 9495
675.....8592
681.....9496

**Proposed Rules:**

17.....7462
20.....7900
216.....7912
217.....6179, 8087, 9318, 9902
222.....6179, 8087, 9318, 9902
227.....6179, 8087, 9318, 9902
640.....8485
642.....6357, 7463
648.....9513
653.....9902
658.....7283
671.....6199

## LIST OF PUBLIC LAWS

**Last List March 25, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

**H.R. 1056/Pub. L. 100–14**

To amend the National Housing Act to limit the fees that may be charged by the Government National Mortgage Association for the guaranty of mortgage-backed securities. (Mar. 24, 1987; 101 Stat. 128; 1 page) Price: $1.00

OL
2

S S
0

R
0

87

MI

3-30-87
Vol. 52 No. 60

# Federal Register

Monday
March 30, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
2
S S
0
R
0
0
87
MI

3-30-87
Vol. 52 No. 60
Pages 10021-10212

# Federal Register

Monday
March 30, 1987

**Briefings on How To Use the Federal Register—**
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

## THE FEDERAL REGISTER
## WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

# Contents

Federal Register

Vol. 52, No. 60

Monday, March 30, 1987

**Administrative Conference of the United States**
NOTICES
Meetings:
Rulemaking Committee, 10126

**Agricultural Marketing Service**
RULES
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 10026
PROPOSED RULES
Limes grown in Florida, 10108

**Agricultural Stabilization and Conservation Service**
PROPOSED RULES
Warehouse regulations:
Grain warehouses; definitions, financial requirements and warehouse bonds, 10104

**Agriculture Department**
*See* Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Food Safety and Inspection Service; Forest Service

**Animal and Plant Health Inspection Service**
NOTICES
Meetings:
Foreign Animal and Poultry Diseases Advisory Committee, 10127

**Blind and Other Severely Handicapped, Committee for Purchase From**
*See* Committee for Purchase From the Blind and Other Severely Handicapped

**Census Bureau**
NOTICES
Voting age population; 1986, estimates, 10128

**Centers for Disease Control**
NOTICES
Grants and cooperative agreements; availability, etc.:
Occupational safety and health—
Research and demonstration projects, 10162

**Commerce Department**
*See also* Census Bureau; National Oceanic and Atmospheric Administration; National Technical Information Service
NOTICES
Agency information collection activities under OMB review, 10127

**Committee for Purchase From the Blind and Other Severely Handicapped**
NOTICES
Procurement list, 1987:
Additions and deletions, 10129

**Copyright Office, Library of Congress**
NOTICES
Child Protection Act, operating guidelines; availability, 10177
Conflicts of interest, enforcement; policy decision, 10178

**Customs Service**
RULES
Air commerce:
Private aircraft arriving from areas south of U.S.—Overflight exemptions, 10047
Financial and accounting procedure:
Harbor maintenance fee, 10198

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Toxic substances:
Asbestos abatement projects; worker protection
Correction, 10187
NOTICES
Agency information collection activities under OMB review, 10134
Meetings:
Superfund Amendments and Reauthorization Act of 1986, Title III, computerized public data base containing toxic chemical release inventory, 10135
Pesticides; emergency exemption applications:
(±)-2-(4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl)-5-ethyl-3-pyridinecarboxylic acid (Pursuit); correction, 10187
Toxic and hazardous substances control:
Premanufacture exemption approvals, 10135
Premanufacture notices receipts; correction, 10187

**Equal Employment Opportunity Commission**
RULES
Federal equal employment opportunity:
Administrative Judge; nomenclature change, 10085
NOTICES
Meetings; Sunshine Act, 10185
(2 documents)

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
RULES
Airworthiness directives:
Lockheed, 10043
Control zones, 10044
Standard instrument approach procedures, 10045
PROPOSED RULES
Aircraft products and parts, certification:
Fairchild; special conditions, 10109–10111
(2 documents)
Airworthiness directives:
Boeing, 10113
Lockheed, 10114
Transition areas, 10115
NOTICES
Meetings:
Aeronautics Radio Technical Commission, 10183
Civil powered-lift transport category aircraft; certification issues conference; location change, 10182

**Federal Communications Commission**
NOTICES
Agency information collection activities under OMB review, 10175
Common carrier services:
Satellite television signals, scrambling; home satellite dish antennas, 10136

**Federal Emergency Management Agency**
RULES
Flood insurance communities eligible for sale:
Vermont, et al., 10094

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Arkansas Power & Light Co. et al., 10129
*Applications, hearings, determinations, etc.:*
Algonquin Gas Transmission Co., 10131
(2 documents)
Commercial Pipeline Co,, Inc., 10132
Kirby Exploration Co. of Texas, 10132
Northern Natural Gas Co., 10132
Pelto Oil Co., 10132
Union Oil Co. of California, 10133
Walter Oil & Gas Corp., 10133
WTG Exploration, Inc., 10134

**Federal Home Loan Bank Board**
NOTICES
Federal home loan bank services; prices, 10137

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
Gary-Wheaton Corp., 10161
NCNB Corp. et al., 10162
Tuscon Electric Power Co. et al., 10162

**Food and Drug Administration**
NOTICES
Animal and human drugs:
J.D. Copanos & Sons, Inc., and Kanasco, Ltd.; proposed approval withdrawal for sterile injectable products; correction, 10187
Human drugs:
Export applications—
Paraplatin (Carboplatin) Injection, 10165
Virgo HTLV-III IFA, 10165
Interspecies extrapolation of dose-response data on carcinogenicity; report availability, 10166

**Food Safety and Inspection Service**
RULES
Meat and poultry inspection:
Inspection coverage in processing establishments; procedures, 10028

**Forest Service**
RULES
Youth Conservation Corps and Young Adult Conservation Corps State grant programs; CFR Parts removed, 10086

**General Services Administration**
RULES
Federal Information Resources Management Regulation:
Federal information processing standards, etc.; update, 10086

**Health and Human Services Department**
*See* Centers for Disease Control; Food and Drug Administration; National Institutes of Health; Public Health Service; Social Security Administration

**Health Resources and Services Administration**
*See* Public Health Service

**Housing and Urban Development Department**
NOTICES
Agency information collection activities under OMB review, 10169

**Immigration and Naturalization Service**
PROPOSED RULES
Immigration Reform and Control Act implementation:
Employment of aliens; controls
Correction, 10187

**Indian Affairs Bureau**
NOTICES
Land transfers:
Navajo Reservation, AZ, 10171

**Information Security Oversight Office**
RULES
National security information program; implementation, 10190

**Interior Department**
*See also* Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 10171
(2 documents)

**Internal Revenue Service**
RULES
Income taxes:
Capitalization and inclusion in inventory of costs (accounting for production costs, etc.), 10052
Elections under Tax Reform Act of 1986
Corrections, 10085
Safe harbor for installments of corporate estimated tax, 10049
PROPOSED RULES
Income taxes:
Capitalization and inclusion in inventory of costs (accounting for production costs, etc.), 10118
NOTICES
Organization, functions, and authority delegations:
Assistant Commissioner (International), 10184

**Interstate Commerce Commission**
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 10176
Rail carriers:
Cost recovery procedures; adjustment factor, 10176
Railroad operation, acquisition, construction, etc.:
Union Pacific Corp. et al., 10175

**Justice Department**
*See* Immigration and Naturalization Service

**Land Management Bureau**
NOTICES
Administrative staff manuals, indexes, 10172
Meetings:
Miles City District Grazing Advisory Board, 10173
Realty actions; sales, leases, etc.:
Nevada, 10172
Recreation management restrictions, etc.:
Arcata Resource Area, et al., CA, 10172

**Library of Congress**
*See* Copyright Office, Library of Congress

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
ODECO Oil & Gas Co., 10173
Outer Continental Shelf operations:
Oil and gas lease sales; restricted joint bidders, 10174

**National Aeronautics and Space Administration**
NOTICES
Meetings:
Space Systems and Technology Advisory Committee, 10178

**National Highway Traffic Safety Administration**
RULES
Motor vehicle safety standards:
Occupant crash protection—
Automatic restraint system; extension of one car credit for driver-only systems, etc., 10096
PROPOSED RULES
Motor vehicle safety standards:
Occupant crash protection—
Automatic restraint requirement for convertibles, etc., 10122

**National Institute for Occupational Safety and Health**
*See* Centers for Disease Control

**National Institutes of Health**
NOTICES
Meetings:
Fogarty International Center Advisory Board, 10166
National Cancer Institute, 10167
(3 documents)
National Heart, Lung, and Blood Institute, 10167
National Institute of Allergy and Infectious Diseases, 10168
National Institute of Dental Research, 10168
National Institute of General Medical Sciences, 10168
National Institute of Neurological and Communicative Disorders and Stroke, 10168
Recombinant DNA Advisory Committee, 10168

**National Oceanic and Atmospheric Administration**
PROPOSED RULES
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, 10125
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 10128
New England Fishery Management Council, 10128

**National Science Foundation**
NOTICES
Meetings:
Archaeometry Advisory Panel, 10178
Earth Sciences Proposal Review Panel, 10178
Meetings; Sunshine Act, 10185

**National Technical Information Service**
NOTICES
Patent licenses, exclusive:
Roberts Laboratories, 10128

**Nuclear Regulatory Commission**
RULES
Special nuclear material, domestic licensing:
Material control and accounting requirements for facilities processing formula quantities, 10033
NOTICES
*Applications, hearings, determinations, etc.:*
Baltimore Gas & Electric Co., 10179
Detroit Edison Co., 10180
Tennessee Valley Authority, 10180

**Personnel Management Office**
RULES
Reduction in force (RIF) procedures; function transfer, 10023
Retirement:
Survivor benefits, 10025

**Postal Rate Commission**
NOTICES
Meetings; Sunshine Act, 10185

**Presidential Documents**
EXECUTIVE ORDERS
Committees; establishment, renewals, terminations, etc.:
Drug Policy Board, National (EO 12590), 10021

**Public Health Service**
*See also* Centers for Disease Control; Food and Drug Administration; National Institutes of Health
RULES
Grants:
Nursing student loan program, 10194
Health planning and resources development:
National guidelines for health planning, health systems agencies, etc.; CFR Parts removed, 10094

**Securities and Exchange Commission**
NOTICES
Meetings; Sunshine Act, 10185
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 10180

**Small Business Administration**
NOTICES
Agency information collection activities under OMB review, 10181
Meetings; regional advisory councils:
Louisiana, 10181
Texas, 10181
West Virginia, 10182

**Social Security Administration**
PROPOSED RULES
Social security benefits:
Overpayment, recovery, etc., 10116

**State Department**
NOTICES
Meetings:
Inter-American Tropical Tuna Commission, United States National Section Advisory Committee, 10182

**Surface Mining Reclamation and Enforcement Office**
NOTICES
Surface coal mining operations; unsuitable lands; petitions designations, etc.:
Tennessee, 10174

**Tennessee Valley Authority**
NOTICES
Meetings; Sunshine Act, 10185

**Transportation Department**
*See also* Federal Aviation Administration; National Highway Traffic Safety Administration
PROPOSED RULES
Time zone boundaries, standard:
Indiana, 10119
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 10182

**Treasury Department**
*See also* Customs Service; Internal Revenue Service
NOTICES
Bank Secrecy Act; electronic filing of currency transaction reports, 10183

**United States Institute of Peace**
NOTICES
Meetings; Sunshine Act, 10186

**Veterans Administration**
NOTICES
Meetings:
Vietnam Veterans Readjustment Problems Advisory Committee, 10184

---

**Separate Parts In This Issue**

**Part II**
Information Security Oversight Office, 10190

**Part III**
Department of Health and Human Services, Public Health Service, 10194

**Part IV**
Department of the Treasury, Customs Service, 10198

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**

**Executive Orders:**

12368 (Amended by EO 12590)..... 10021
12590..... 10021

**5 CFR**

351..... 10023
831..... 10025

**7 CFR**

905..... 10026

**Proposed Rules:**

736..... 10104
911..... 10108

**8 CFR**

**Proposed Rules:**

109..... 10187
274a..... 10187

**9 CFR**

303..... 10028
381..... 10028

**10 CFR**

70..... 10033
74..... 10033

**14 CFR**

39..... 10043
71..... 10044
97..... 10045

**Proposed Rules:**

21 (2 documents)..... 10109–10111
23 (2 documents)..... 10109–10111
39 (2 documents)..... 10113, 10114
71..... 10115

**19 CFR**

4..... 10198
6..... 10047
24..... 10198
146..... 10198
178 (2 documents)..... 10047, 10198

**20 CFR**

**Proposed Rules:**

404..... 10116

**26 CFR**

1 (2 documents)..... 10049–10052
5h..... 10085
602..... 10052

**Proposed Rules:**

1..... 10118

**29 CFR**

1613..... 10085

**32 CFR**

2003..... 10190

**36 CFR**

214..... 10086
215..... 10086

**40 CFR**

763..... 10187

**41 CFR**

201–8..... 10086
201–11..... 10086
201–30..... 10086
201–34..... 10086

**42 CFR**

57..... 10194
121..... 10094
122..... 10094
123..... 10094

**44 CFR**

64..... 10094

**49 CFR**

571..... 10096

**Proposed Rules:**

71..... 10119
571..... 10122

**50 CFR**

**Proposed Rules:**

661..... 10125

OL
2
SS
0
R
0
87
MI

Federal Register
Vol. 52. No. 60
Monday, March 30, 1987

# Presidential Documents

Title 3—

## The President

### Executive Order 12590 of March 26, 1987

## National Drug Policy Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 872, 873, 1111, 1112, 1113, 1114, 1202, and 1203 of title 21 of the United States Code, and in order to coordinate the performance of all drug abuse policy functions of the Federal government, it is hereby ordered as follows:

**Section 1.** *Establishment.* (a) There is hereby established the National Drug Policy Board ("the Board").

(b) The Board shall be composed of the following members:

(1) the Attorney General, who shall serve as Chairman;

(2) the Secretary of Health and Human Services, who shall serve as Vice Chairman;

(3) the Secretary of State;

(4) the Secretary of the Treasury;

(5) the Secretary of Defense;

(6) the Secretary of the Interior;

(7) the Secretary of Agriculture;

(8) the Secretary of Labor;

(9) the Secretary of Housing and Urban Development;

(10) the Secretary of Transportation;

(11) the Secretary of Energy;

(12) the Secretary of Education;

(13) the Director of the Office of Management and Budget;

(14) the Assistant to the President for National Security Affairs;

(15) the Director of Central Intelligence;

(16) the Chief of Staff to the Vice President;

(17) the Director of the White House Drug Abuse Policy Office; and

(18) such other members as the President may, from time to time, designate.

**Sec. 2.** *Functions.* (a) The Board shall facilitate the development and coordination of national drug policy and shall coordinate activities of Executive departments and agencies to reduce the supply and use of illegal drugs, including international activities, enforcement, prevention and education, treatment and rehabilitation, and research relating to illegal drugs.

(b) In furtherance of its responsibilities, the Board shall:

(1) review, evaluate and develop United States Government policy, strategy and resources with respect to illegal drug law enforcement, prevention and education, treatment and rehabilitation, and research efforts, including budgetary priorities and national plans and strategies;

(2) facilitate coordination of efforts of all Executive departments and agencies to halt national and international trafficking of illegal drugs and to reduce drug abuse;

(3) coordinate the collection and evaluation of information necessary to implement United States policy with respect to illegal drug law enforcement and to the reduction of drug abuse; and

(4) provide policy guidance to the agencies and facilitate resolution of differences in this area concerning interagency activities and other matters affecting two or more agencies.

(c) In order to help coordinate the activities of Executive departments and agencies with responsibility for drug law enforcement and drug abuse reduction, and to supervise implementation of the determinations of the Board, the Chairman shall:

(1) advise the Board in matters concerning its responsibilities;

(2) make recommendations to the Board for the coordination of drug enforcement and drug abuse reduction activities;

(3) correlate and evaluate intelligence and other information to support the activities of the Board;

(4) act as primary advisor to the President and the Congress on national and international programs and policies and the implementation of those policies; and

(5) perform such other duties as the President may direct.

(d) The Board shall carry out all duties and responsibilities of the National Drug Enforcement Policy Board, as set forth in Chapter XIII (The National Narcotics Act) of Title II of Public Law 98–473.

(e) Nothing in this Order shall be deemed to affect the authorities or responsibilities of the Office of Management and Budget, or any Office or official thereof.

**Sec. 3.** *Coordinating Groups.* The Board shall establish a Drug Enforcement Coordinating Group and a Drug Abuse Prevention and Health Coordinating Group. The membership and chairman of each Coordinating Group shall be designated by the Chairman of the Board.

**Sec. 4.** *Conforming Amendments.* (a) Section 1 of Executive Order No. 12368 is amended to provide as follows:

"The Office of Policy Development has been assigned to assist the President and the National Drug Policy Board in the performance of the drug policy functions contained in Section 201 of Title II of the Drug Abuse Prevention, Treatment, and Rehabilitation Act, as amended (21 U.S.C. 1111). Within the Office of Policy Development, the Director of the Drug Abuse Policy Office shall be primarily responsible for assisting the President and the Board in the performance of those functions."

(b) Section 2 of Executive Order No. 12368 is amended by deleting "Director of the Drug Abuse Policy Office" and inserting in lieu thereof "National Drug Policy Board" and by deleting "he" and inserting in lieu thereof "the National Drug Policy Board."

Ronald Reagan

THE WHITE HOUSE,
*March 26, 1987.*

[FR Doc. 87-7072
Filed 3-27-87; 10:31 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 52, No. 60
Monday, March 30, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 351**

**Reduction-in-Force**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final transfer of function regulations that revise certain procedures agencies use to identify employees with a transferring function in situations when, after the function is transferred from one competitive area to another, the remaining functions in the losing competitive area are abolished. These changes will assist agencies in properly implementing the transfer of function provisions during "sunset" or comparable situations.

**EFFECTIVE DATE:** These regulations become effective on April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Donald L. Holum, (202) 632–6817.

**SUPPLEMENTARY INFORMATION:**

### Background

The transfer of function provisions found in Subpart C of Part 351 of this title are derived from section 12 of the Veterans' Preference Act of 1944, as presently codified in 5 U.S.C. 3503. Section 351.203 defines a "transfer of function" as the transfer of the performance of a continuing function from one competitive area to one or more other competitive areas (except when the transferring function is virtually identical to functions performed in the gaining competitive area(s) at the time of transfer), or the movement of the competitive area in which the function is performed to another local commuting area. OPM's regulations in Subpart C of Part 351 of this title explain when the transfer of function provisions are applicable, when employees have the right to transfer with a function, and how agencies identify employees with a transferring function. For further information on the transfer of function regulations, refer to Subpchapter 10 of Federal Personnel Manual (FPM) Chapter 351.

On June 11, 1986, OPM published proposed regulations in the **Federal Register** (51 FR 21177) that would change certain identification procedures applicable to employees who spend less than half their work time on a transferring function and whose grade is not controlled by the duties of the function. The regulations also proposed to clarify longstanding OPM policy on employees who decline to transfer with their function, or who wish to volunteer for transfer.

### Discussion of Comments

OPM requested interested parties to submit comments on the proposed transfer of function regulations through August 11, 1986. We received twelve comments concerning the proposed regulations: ten from agencies, one from a union, and one from an individual. Several comments dealt with more than one issue.

Six agencies and the union concurred with the proposed changes as published.

One agency suggested that OPM modify the transfer of function regulations to provide that the losing competitive area must identify only the number of positions needed to perform the function in the gaining competitive area. We believe that this suggestion to limit the number of positions identified for transfer based on the requirements of the gaining competitive area would conflict with 5 U.S.C. 3503. Therefore, we did not adopt the suggestion.

Two agencies suggested that OPM revise proposed § 351.302(d) to provide that the agency "may" rather than "must" use adverse action procedures to separate employees who choose not to transfer with their function. Both agencies believed that the proposed § 351.302(d) would establish a policy requiring agencies to always separate employees who decline to transfer. This was not our intention; instead, we simply wanted to clarify that an agency would use adverse action rather than reduction-in-force procedures to separate an employee who chooses not to transfer with his or her function unless the losing competitive area, at its discretion, permits the employee to compete in a concurrent reduction-in-force. In the final regulations we have revised § 351.302(d) as the two agencies suggested to explain that the agency ordinarily uses adverse action rather than reduction-in-force procedures if, in fact, it decides to separate the employee.

One agency commented that § 351.303(c) provides that a competing employee is identified under Identification Method One if "the employee performs the function during all or a *major part* of his or her work time," while § 351.303(d) provides that "Identification Method Two is applicable to employees who perform the function *during less than half* of their work time and are otherwise not covered by Method One." (Italicized for emphasis.) For consistency, the agency suggests that both references be based upon 50 percent of the employee's work time. Although the language in both §§ 351.303(c)(1) and 351.303(d) is longstanding and has never been an issue, we agree with the agency's suggestion that the transfer of function regulations should be consistent. To adopt the agency's suggestion, we have revised the final § 351.303(c)(1) to provide that a competing employee is identified under Identification Method One if "The employee performs the function during at least half of his or her work time."

One agency suggested that § 351.303(d) be revised to provide for specific timeframes that agencies would follow in determining whether to identify competing employees under Identification Method Two in the actual or the inverse order of their retention standing. For reference, OPM's longstanding transfer of function procedures required agencies to identify employees with a transferring function under Method Two in the inverse order of their retention standing. This procedure permitted employees with higher retention standing to remain in their present competitive area, which is generally a preferable alternative to transfer. However, if the remaining functions in the losing competitive area are abolished after the function is tranferred (as in a "sunset" or comparable situation), the longstanding Method Two procedure would identify those employees with the lowest rather

than the highest standing for transfer to continuing positions in the gaining competitive area. In this situation the agency would be required to request a variation from OPM to identify employees under Method Two in the actual order of their retention standing. Our revised § 351.303(d) eliminates the need for OPM variations on a case-by-case basis by giving this authority directly to each agency. Specifically, the revised § 351.303(d) adds that if the inverse retention standing procedures would result in the separation or demotion by reduction-in-force at the losing competitive area of an employee with higher retention standing who is also identified with the function under Method Two, the losing competitive area identifies competing employees for transfer in the actual order of their retention standing. Based upon our experience with requests from agencies for Method Two variations, we do not believe that it would be feasible to set forth more specific instructions in § 351.303(d). Therefore, we did not adopt this suggestion.

One agency suggested that OPM provide guidance on Identification Method Two explaining how under § 351.303(d) agencies actually determine whether an employee preforms a transferring function during less than half of his or her work time. Although the agency's suggestion focused upon the procedures in § 351.303(d) covering Method Two, it is also directed at § 351.303(c)(1), which provides that Identification Method One is applicable to a competing employee who performs the functions during at least half of his or her work time. Agencies generally rely upon official position descriptions in identifying positions, and ultimately employees, for transfer with a continuing function. However, we agree that at this time our FPM guidance should contain material explaining how agencies consider actual work time in making a transfer of function determination. Therefore, we plan to adopt the agency's suggestion and include guidance on employee work time when we incorporate these final transfer of function regulations into Subchapter 10 of FPM Chapter 351.

One agency and the individual suggested changes to proposed § 351.303(e)(2), which provides that if the agency asks for volunteers to transfer with the function and the total number of volunteers exceeds the number of employees needed to perform the function in the gaining competitive area, the losing competitive area may give preference to the volunteers with the highest retention standing. For reference, § 351.303(e)(1) provides that the losing competitive area may permit these other employees to volunteer only if no competing employee who is properly identified for transfer is separated or demoted because another employee volunteered for transfer to the gaining competitive area. The individual commenter suggested that § 351.303(e)(2) be revised to provide that the losing competitive area "must" give preference to employees with the highest retention standing; the commenter believes that this would ensure consistency in deciding which volunteer is transferred. We did not adopt this suggestion because the intention of § 351.303(e)(2) is to give the losing competitive area discretion in selecting volunteers to transfer with a function; retention standing is simply one optional procedure to limit consideration of volunteers for transfer. Consistent with the importance of flexibility in identifying volunteers for transfer, the agency suggested that we revise § 351.303(e)(2) to provide that "the losing competitive area may give preference to the volunteers with the highest retention standing *or make selections based on other appropriate criteria.*" (Added language italicized.) We concur that this language would be useful and have adopted the agency's suggestion in the final § 351.303(e)(2).

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies.

**List of Subjects in 5 CFR Part 351**

Administrative practice and procedures, Government employees.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM amends 5 CFR Part 351 as follows:

## PART 351—REDUCTION IN FORCE

1. The authority citation for Part 351 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3502, 3503; § 351.1005 also issued under 5 U.S.C. 3315.

2. Subpart C of Part 351 is revised to read as follows:

**Subpart C—Transfer of Function**

Sec.
351.301 Applicability.
351.302 Transfer of employees.
351.303 Identification of positions with a transferring function.

### Subpart C—Transfer of Function

**§ 351.301 Applicability.**

This subpart is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

**§ 351.302 Transfer of employees.**

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

(d) Except as permitted in paragraph (e) of this section, the losing competitive area must use the adverse action procedures found in 5 CFR Part 752 if it chooses to separate an employee who declines to transfer with his or her function.

(e) The losing competitive area may, at its discretion, include employees who decline to transfer with their function as part of a concurrent reduction in force.

**§ 351.303 Identification of positions with a transferring function.**

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One, a competing employee is identified with a transferring function if—

(1) The employee performs the function during at least half of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her work time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Identification Method Two is applicable to employees who perform the function during less than half of their work time and are not otherwise covered by Identification Method One. Under Identification Method Two, the losing competitive area must identify the number of positions it needed to perform the transferring function. To determine which employees are identified for transfer, the losing competitive area must establish a retention register in accordance with this part that includes the name of each competing employee who performed the function. Competing employees listed on the retention register are identified for transfer in the inverse order of their retention standing. If for any retention register this procedure would result in the separation or demotion by reduction in force at the losing competitive area of any employee with higher retention standing, the losing competitive area must identify competing employees on that register for transfer in the order of their retention standing.

(e)(1) The competitive area losing the function may permit other employees to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing, or make selections based on other appropriate criteria.

[FR Doc. 87-6898 Filed 3-27-87; 8:45 am]
BILLING CODE 6325-01-M

---

**5 CFR Part 831**

## Retirement—Survivor Benefits

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing regulations to implement section 502 of the Federal Employees Retirement System Technical Corrections Act of 1986 (FERSTCA). These regulations will give survivors of employees or Members who die in service without waiving military retired pay for civil service retirement purposes credit for the military service in the computation of their survivor benefits unless they elect to have the service excluded.

**DATES:** Interim regulations effective March 30, 1987; comments must be received on or before May 29, 1987.

**ADDRESS:** Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivery to OPM, Room 4351, 1900 E Street, NW., Washington, DC

Send applications for military service credit for employees and Members who die in service prior to April 25, 1987, to Pub. L. 99-556 Coordinator, Employee Service and Records Center, Boyers, PA 16017.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Rochester, (202) 632-4682.

**SUPPLEMENTARY INFORMATION:** On October 27, 1986, section 502 of Pub. L. 99-556 amended section 8332(c) of title 5 United States Code by adding a new paragraph (3). This provision gives the survivor of an employee or Member credit for military service that would normally have been excluded from the computation of the survivor annuity because the employee or Member did not waive his or her military retired pay prior to death. (Ordinarily, an individual must waive military retired pay for civil service retirement purposes to receive credit for a period of military service in the computation of his or her annuity. However, there are exceptions when the retired pay was awarded based on a service-connected disability incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by section 301 of title 38 of the United States Code; or the retired pay was awarded under chapter 67 of title 10, United States Code.)

Pub. L. 99-556 now requires that the survivor be given credit for such military service unless he or she elects not to be covered by the provisions of 5 U.S.C. 8332(c)(3) (see § 831.301(d)(1)). Under § 831.301(d)(2) of these interim regulations, if the military service is included in the computation of the survivor annuity, OPM must reduce the annuity "by the amount of any survivor's benefits payable to a survivor (other than a child) under a retirement system for members of the uniformed services." For purposes of these regulations, "survivors benefits under a retirement system for members of the uniformed services" means survivor benefits payable based on the decedent's retired or retainer pay.

OPM will include credit for military service in the computation of a survivor's annuity unless the survivor submits a written election not to be covered by section 8332(c)(3). The election must be postmarked within the period ending 30 calendar days after the date of the first regular monthly annuity payment. A surviving spouse and a former spouse may make contrary elections in any individual case.

Under sections 553(b)(3)(B) and 553(d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. The provisions (section 502 of Pub. L. 99-556) pertaining to employees or Members who die before April 25, 1987, require that the survivor apply to OPM for the additional service credit and the commencing date of the increased benefit, if any, is dependent upon the date of application. It is necessary to make these amendments effective immediately to avoid harming these applicants.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect retirement payments to spouses and former spouses of Government employees or Members who die in service.

**List of Subjects in 5 CFR Part 831**

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income tax, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

**PART 831—RETIREMENT**

Accordingly, OPM is amending 5 CFR Part 831 as follows:

**Subpart C—Credit for Service**

1. The authority citation for Subpart C of Part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347.

2. In § 831.301, a new paragraph (d) is added to read as follows:

* * * * *

**§ 831.301 Military service.**

* * * * *

(d) *Widow(er)s and former spouses entitled to survivor benefits based on the service of employees or Members who die in service*—(1) *Military service is included unless the survivor elects otherwise.* Unless a widow(er) or former spouse of an employee or Member who dies before being separated from service files a written election to the contrary, his or her survivor annuity will include credit for a period of military service that would ordinarily be excluded from the computation of the employee's or Member's annuity under 5 U.S.C. 8332(c)(2).

(2) *Reduction by the amount of survivor benefits payable based on the military service.* (i) In paragraph (d)(2)(ii) of this section, "survivor benefits under a retirement system for members of the uniform services" means survivor benefits attributable to a period of military service and payable to an adult applicant for CSRS survivor benefits based on the decedent's retired or retainer pay.

(ii) OPM will obtain information on the amount of any survivor benefits under a retirement system for members of the uniformed services payable (per month) to an applicant for CSRS survivor or former spouse benefits at the time of the employee's or Member's death. OPM will make a one time adjustment in the applicant's monthly CSRS benefits payable at the time of the employee's or Member's death, reducing the CSRS benefits by the amount of the applicant's monthly survivor benefits under a retirement system for members of the uniformed services payable at the time of the employee's or Member's death, if any. We will not make subsequent adjustments for increases or decreases in survivor benefits payable under the retirement system for members of the uniformed services.

(3) *Survivors of employees or Members who die on or after April 25, 1987—election not to be included.* OPM will accept a written election from a widow(er) or former spouse not to be covered by § 831.301(d) provided it is postmarked within the period ending 30 calendar days after the date of the first regular monthly payment.

(4) *Survivors of employees or Members who die before April 25, 1987—application of OPM for credit.* Survivors of employees or Members who died before April 25, 1987, must apply to OPM in writing to have credit for military service included in the survivor annuity computation. If the survivor benefits are increased by including credit for the military service, the increase in benefits will be effective on the first of the month following the 60th calendar day after the date the written application for benefits is received in OPM.

[FR Doc. 87-6897 Filed 3-27-87; 8:45 am]

BILLING CODE 6325-01-M

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 905**

**Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida Handling Requirements for Pink Seedless Grapefruit**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule relaxes for the remainder of the 1986–87 season the minimum size requirement for Florida and imported pink seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). The Florida grapefruit minimum size requirement applies to grapefruit grown in the production area in Florida shipped to the fresh domestic market (the continental United States, Canada, or Mexico). The relaxation of the minimum size requirement for Florida grapefruit recognizes the size composition of the remaining available grapefruit supply and the current and prospective demand conditions. The import regulation is applicable to pink seedless grapefruit imported into the United States, and is required under § 8e of the Act.

**EFFECTIVE DATE:** March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; telephone: (202) 447-5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601 through 674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are an estimated 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the marketing order for these citrus fruits grown in Florida, and an estimated 26 importers who import grapefruit into the United States. In addition, there are approximately 15,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, importers, and producers may be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. This final rule relaxes for the remainder of this season the minimum size requirement for Florida pink seedless grapefruit shipped from the production area to domestic markets, and for pink seedless grapefruit imported into the United States. The

relaxation of the minimum size requirement for domestic shipments of Florida pink seedless grapefruit will help ensure that minimum size requirements do no unduly restrict the available supply of such fruit, and should make additional supplies of fruit available to consumers. The relaxation of the current size requirement from size 48 to size 56 is only for the remainder of the 1986–87 season. The resumption of the 48 size requirement for 1987–88 season shipments of pink seedless grapefruit commencing August 24, 1987, is based upon the maturity, size, quality and flavor characteristics of such grapefruit early in the shipping season.

Some Florida grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to 2 standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

The Department's view is that the impact of the relaxed handling requirements upon producers, handlers, and importers would be beneficial, and that this action should improve returns to grapefruit producers. The application of minimum grade and size requirements to Florida oranges, grapefruit, tangerines, and tangelos, and to imported grapefruit over the past several years have helped to assure that only fruit of acceptable quality and size are shipped to fresh markets. Although compliance with the minimum grade and size requirements effective under this order affects costs to handlers and importers, these costs would be significantly offset when compared to the potential benefits of assuring the trade and consumers that the fruit is of acceptable quality and size.

This final rule is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), both as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Act. This action was recommended by the Citrus Administrative Committee at its February 24, 1987 meeting. The committee works with USDA in administering the marketing agreement and order program.

The handling regulation for Florida citrus fruit covered under this market order, including pink seedless grapefruit, is specified in § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (46 FR 60170, December 8, 1981). This regulation was issued on a continuing basis subject to modification, suspension, or termination upon recommendation by the committee and approval by the Secretary. Section 905.306(a) provides that no handler shall ship between the production area and any point outside that area in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet specified minimum grade and size requirements.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The final rule permits fresh domestic market shipment of size 56 (3$^{5}/_{16}$ inches in diameter) pink seedless grapefruit for the remainder of 1986–87 season on or after the effective date of this rule. Shipment of Florida pink seedless grapefruit smaller than size 48 (3$^{9}/_{16}$ inches in diameter) to such markets has not been permitted this season since August 18, 1986, so that such fruit would be left on the trees longer to mature and develop acceptable flavor and size. The committee recommended that the relaxation of the minimum size requirement from size 48 to size 56 be effective for the period March 23, 1987, through August 23, 1987. This action reflects the committee's and the Department's appraisal of the need to relax the minimum size requirement for such period, and recognizes the current supply and demand for pink seedless grapefruit.

Total Florida pink seedless grapefruit production is expected to increase over last season's level by 9 percent and fresh shipments, which are ahead of last season's pace, are also expected to increase.

Section 8e of the Act (7 U.S.C. 608e–1 provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action relaxes the minimum size requirement for domestically produced pink seedless grapefruit, this change would also be applicable to imported pink seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944) which requires that the various varieties of imported grapefruit meet the same grade and size requirements as those specified for Florida grapefruit in Table 1 of paragraph (a) in § 905.306. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed 4/5 bushel cartons exempt from the import requirements.

After consideration of the information and recommendation submitted by the committee, and other available information, it is found that amendment of § 905.306 will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public rulemaking with respect to this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on the handling of Florida pink seedless grapefruit by permitting of grapefruit of a smaller size to be shipped to fresh markets, and this action should become effective upon publication in the **Federal Register**; (2) handlers of Florida pink seedless grapefruit are aware of this action which was recommended by the committee at a public meeting, and they will need no additional time to comply with the requirements; (3) shipment of the 1986–87 season Florida grapefruit crop is currently underway; and (4) the grapefruit import requirements are mandatory under section 8e of the Act.

**List of Subjects in 7 CFR Part 905**

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, Part 905 is amended as follows:

**PART 905—[AMENDED]**

1. The authority citation for 7 CFR Part 905 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 905.306 (46 FR 60170, December 8, 1981) are amended by revising the following entry in Table I of paragraph (a), applicable to domestic shipments, to read as follows:

**§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 43**

(a) * * *

TABLE I

| Variety (1) | Regulation period (2) | Minimum grade (3) | Minimum diameter (inches) (4) |
|---|---|---|---|
| * * * March 30, 1987 | | | |
| Grapefruit: Seedless, pink | 03/31/87–08/23/87 | Improved No. 2 (External) U.S. No. 1 (Internal) | 3⅛ |
| | On & after 08/24/87 | Improved No. 2 (External) U.S. No. 1 (Internal) | 3⅛ |

* * * * *

Dated: March 24, 1987.

William J. Doyle,

*Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–6944 Filed 3–27–87; 8:45 am]

BILLING CODE 3410–02–M

## Food Safety and Inspection Service

## 9 CFR Parts 303 and 381

[Docket No. 87–002I]

## Experimentation With Procedures for Determining the Intensity of Inspection Coverage in Processing Establishments; Waivers of Provisions of the Regulations

**AGENCY:** Food Safety and Inspection Service (FSIS), USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Administrator, FSIS is initiating a period of experimentation as the first step in changing the Federal inspection system in establishments that prepare meat food products and/or process poultry products beyond slaughter and evisceration to a "discretionary inspection" (DI) system; that is, one in which the frequency and the manner of government inspection are based on considerations relevant to effective regulation of such products and protection of the public health and welfare, in accord with recent amendments to the Federal Meat Inspection Act (FMIA).

The object of this experimentation is to determine whether and, if so, to what extent the intensity of Federal inspection of meat and poultry products exceeds that which is necessary. During the period of experimentation, the level of Federal inspection may be reduced at some official establishments below the level required by current law. To the extent these reductions conflict with current provisions of the regulations, the Administrator plans to waive such provisions for the period of experimentation.

FSIS will consider relevant data, views, and arguments that are submitted during the next 30 days, and it will review the comments submitted and publish a final rule, indicating what, if any, changes it is making to this interim rule. In any event, during the period of experimentation, guidelines developed for use in making the determinations called for by these provisions may be modified if found to be infeasible or to improve effectiveness in assessing establishments or designing inspection coverage.

After this experimental step is completed, FSIS will propose new regulations that will fully implement its DI system. Interested members of the public will have an opportunity to comment on the design of the proposed DI system and specific proposed regulatory changes at that time.

**DATES:** Comments must be received on or before April 29, 1987. Effective March 30, 1987.

**ADDRESSES:** Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments on the amendments to the poultry products inspection regulations to: Judith A. Segal, Director, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6525. (See also "Comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Judith A. Segal, (202) 447–6525.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12201 and Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this interim final rule is not a major rule under Executive Order 12291. It is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Administrator also has determined that this action will not have a significant economic impact on a substantial number of small entities, in accordance with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*).

The basis for these determinations includes the fact that waiver of certain provisions of the regulations and other aspects of experimentation described herein will affect only a limited number of processing establishments subject to inspection under the FMIA and/or the PPIA for a limited period. Any economic benefits which might indirectly result from inclusion in pilot testing (e.g., reduction in payments for inspection program employees working overtime) will be relatively small and affect only a portion of the establishments in which pilot tests are conducted, and selecting all establishments within a designated site that are found to satisfy the establishment performance criteria will further reduce the opportunity for any adverse effect on competition. Both the number of establishments selected and the length of time during which they are included in a pilot test of DI procedures will not extend beyond that which is needed to test the program variables under consideration in establishments with different characteristics. While at this time FSIS can only estimate the number of establishments that could be included in such pilot tests, since it cannot predict the results of evaluations of establishment performance, the Agency plans to select approximately 15 establishments initially and not more than about 200 in all, or approximately 3 percent of the federally inspected establishments that will be subject to the fully implemented DI system. Moveover, the Agency plans to conduct pilot testing in establishments with a variety of characteristics, such as size and volume of product manufactured,

with the number of establishments increasing as the evaluation proceeds and with the conditions and methods of inspection coverage comparable in establishments as to which similar considerations apply. Finally, FSIS expects the duration of pilot tests in most establishments to vary between 3 and 6 months and that it will terminate the experimentation period within about 1 year. When pilot tests are ended, the Agency will return to pre-experimentation conditions and methods of inspection coverage until the DI system is fully implemented and, at that time, all plants (including those previously selected for pilot testing) will be evaluated.

**Comments**

Interested persons are invited to submit comments concerning this interim final rule. Such comments must be sent in duplicate to the FSIS Hearing Clerk. They should bear a reference to the docket number located in the heading of this document. Any person desiring an opportunity for oral presentation of views on the amendments to the poultry products inspection regulations must make such request to Dr. Segal so that arrangements may be made for such views to be presented. A transcript will be made of all views presented orally. All written and oral submissions made pursuant to this notice will be made available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Policy Office, Room 3168, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

**Background**

The Secretary of Agriculture's duties include implementation of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to prevent the preparation or processing and distribution of meat, meat food products, and poultry products which are adulterated or misbranded or not properly marked, labeled, and packaged (21 U.S.C. 453 (g) and (h), 457, 458, 601 (m) and (n), 607, and 610). Responsibility for exercising the functions of the Secretary contained in the FMIA and PPIA has been delegated to the Administrator, FSIS (7 CFR 2.17(g) and 2.55(a)(2)). Among those functions are administration of the inspection requirements for meat food and poultry products and sanitation practices in establishments preparing or processing such products for commerce or otherwise subject to inspection under the FMIA or PPIA (21 U.S.C. 455, 456, 605, 606, and 608) and the issuance of rules and regulations executing provisions of these Acts (21 U.S.C. 463(b) and 621).

The Congress of the United States recently amended the inspection requirements for meat food products in section 6 of the FMIA (21 U.S.C. 606). Pursuant to the Processed Products Inspection Improvement Act of 1986, Title IV of the Futures Trading Act of 1986 (FTA) (Pub. L. 99–641), rather than requiring the Secretary to cause inspectors appointed for that purpose to make "an examination and inspection of all meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment," such examination and inspection is to be:

> Conducted with such frequency and in such manner as the Secretary considers necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary considers to be appropriate . . . [FTA, section 403(a)].

Three such factors are specified in the statute: the nature and frequency of processing operations at an establishment, the adequacy and reliability of the processing controls and sanitary procedures at an establishment, and the history of compliance with inspection requirements in effect under the FMIA by the operator of an establishment or anyone responsibly connected with the business (i.e., any partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity) that operates that establishment.

By so amending the FMIA, Congress has authorized the Department, for a 6-year period,* to base the frequency with which and the manner in which meat food products are examined and inspected by program employees on considerations relevant to the effective regulation of meat food products and the protection of the public health and welfare. The legislation also reflects Congressional recognition that full implementation of a new system of government inspection of post-slaughter processing operations will take time: Title IV and the amendments made thereby became effective on the date of enactment (November 10, 1986), except that sections 6, 9, and 21 of the FMIA (21 U.S.C. 606, 609, and 621), as in effect immediately before that date, "apply with respect to establishments until the Secretary . . . first issues rules and regulations to implement the amendments made by section 403(a)" (FTA, section 408). This rulemaking initiates implementation of those amendments; however, as indicated below, it is only the first step in process intended to assure an orderly transition to the "discretionary inspection" (DI) system mandated by the recent amendments to the FMIA.

This rulemaking also initiates changes that will result in the institution of a DI system for operations processing products from poultry carcasses that have passed post mortem inspection. The PPIA authorizes the Department to vary the frequency and the manner of government inspection in establishments conducting post-slaughter and evisceration processing of poultry products based on effective regulation and public protection considerations. In particular, section 6(b) (21 U.S.C. 455(b)) requires the Secretary to cause government inspectors to make "post mortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as human food in each official establishment processing such poultry or poultry products for commerce or otherwise subject to inspection. . . ."

The Administrator of FSIS now believes that the frequency and manner of reinspection by program employees of poultry products made from poultry previously slaughtered and eviscerated and found to be not adulterated that is "deem[ed] necessary" should be varied, taking into account the same factors as those considered appropriate under the amended FMIA. To date, however, the rules and regulations and other aspects of inspection coverage have been basically comparable to those prescribed pursuant to the narrower pre-amendment authority in the FMIA. Therefore, exercising the authority to implement a DI system of inspection presents orderly transition concerns under the PPIA as well.

The Department supported the recent amendments to the FMIA, as well as administering the PPIA to institute the same approach to the inspection of comparable processing operations, because it believes that the efficiency and effectiveness of the meat and poultry inspection program in utilizing available resources to maximize the level of compliance with regulatory requirements, and thus achievement of

*Not later than 6 years after the date of enactment, Congress is to evaluate the operation and effects of the amendments made by section 403 of the FTA for the purpose of determining whether to extend or modify the operation of such amendments and enact such legislation as may be necessary to efficiently and effectively carry out the FMIA (FTA, section 407).

the purposes of the FMIA and PPIA (see 21 U.S.C. 451 and 602 and FTA, section 402), can be improved by adjusting the frequency and the manner of government inspection. However, before modifing the inspection system as a whole and fully implementing a DI system, rules regarding the frequency and the manner of government inspection should be tested in order to assess their adequacy and appropriateness and thereby protect the integrity and effectiveness of the inspection program.

In particular, although it appears that the intensity of inspection coverage in some processing establishments exceeds that which should be considered or deemed necessary under the FMIA, as amended (21 U.S.C. 606), or the PPIA (21 U.S.C. 455), the Administrator of FSIS has concluded that procedures for determining whether and, if so, to what extent this is the case and for designing the conditions and methods of inspection coverage in such establishments should be tested in a small-scale, experimental setting in order to obtain sufficient information on which to base final amendments to various portions of the Federal meat inspection and the poultry products inspection regulations. Therefore, the first rules and regulations to be issued in implementing the amendments made by section 403(a) of the FTA to section 6 of the FMIA (21 U.S.C. 606) and instituting a comparable DI system under the PPIA consist of provisions for conducting pilot tests of such DI system in establishments subject to inspection under the FMIA (9 CFR 303.2) or the PPIA (9 CFR 381.3(c) through (e)).

These provisions in the initial regulations include the factors that appear appropriate for consideration in assessing the performance of an establishment to determine whether the intensity of inspection coverage can be reduced while continuing to assure effective regulation of products and protection of the public health and welfare (9 CFR 303.2(b)(1) and 381.3(d)(1)), as well as the factors that appear appropriate for consideration in assessing the characteristics of an establishment on which to base the level of Federal inspection and other conditions and methods of government inspection during such experimentation (9 CFR 303.2(b)(2) and 381.3(d)(2)). For purposes of both meat food product and poultry product inspection, criteria are specified to take into account the factors included in section 6(a)(2) of the amended FMIA (21 U.S.C. 606(a)(2); section 403(a) of the FTA): nature and frequency of processing operations (9 CFR 303.2(b)(2) and 381.3(d)(2)), adequacy and reliability of processing controls and sanitary procedures (9 CFR 303.2(b)(1) (ii) and (iii) and 381.3(d)(1) (ii) and (iii)), and history of compliance with inspection requirements (9 CFR 303.2(b)(1)(i) and 381.3(d)(1)(i)).

Thus, the experimentation period is expected to provide information on, among other things, the adequacy of such criteria for evaluating the performance of all establishments conducting post-slaughter preparation of meat food products and/or post-slaughter and evisceration processing of poultry products. FSIS will use the information obtained to decide whether the criteria set forth in these provisions should be further refined or supplemented before their application to all such processing establishments is proposed as part of the rulemaking in which a proposal that would amend the Federal meat inspection regulations and the poultry products inspection regulations to include the new and revised provisions needed for full implementation of a DI system will be considered. FSIS currently anticipates completion of that rulemaking in early 1988. The final rule so amending the regulations also will rescind the provisions for experimentation with DI procedures set forth herein, unless such experimentation period has been terminated earlier.

FSIS plans to select establishments for inclusion in a pilot test from those the Administrator identifies for review (9 CFR 303.2(a) and 381.3(c)). Initially, a small group of establishments will be so identified, and such establishments will be ones in which there is reason to believe that the current intensity of inspection coverage exceeds that which should be considered or deemed necessary under the FMIA or PPIA. As testing proceeds, the Administrator intends to identify additional establishments to the extent appropriate in view of findings to date. FSIS expects that the number of establishments selected for pilot tests may increase from approximately 15 to as many as 200 as groups of establishments in new, limited geographical sites are phased in over the course of the experimentation period. Such sites will be designated on the basis of their suitability for generating information to satisfy evaluation needs. The length of time during which establishments are included in a pilot test will vary depending on the testing involved and is expected to be from 3 to 6 months in most establishments.

The performance of establishments so identified will be evaluated, and such an establishment may be selected for inclusion in the pilot testing of procedures for reducing the intensity of inspection coverage if, and only if, this evaluation (1) reveals, in records compiled no earlier than 10 years before, no documented instances of substantial and recent noncompliance with applicable regulatory requirements and (2) evidences the competence and control procedures needed to assure and monitor compliance with applicable regulatory requirements (9 CFR 303.2(c)(1) and 381.3(e)(1)). The "substantial and recent" criterion is intended to assure that in assessing compliance history (9 CFR 303.2(b)(1)(i) and 381.3(d)(1)(i)), both the nature and frequency of noncompliance with process, environment, and/or product requirements are taken into account for an appropriate length of time. Thus, noncompliance is to be regarded as substantial when, for example, it involves the preparation of adulterated product that could pose a serious public health threat if distributed to consumers or recurring failures that could be considered indicative of a lack of regard for the public health or welfare; and, within the 10-year time limit on record documentation, the more substantial the violation, the longer it is to be regarded as sufficiently recent for consideration. The second performance evaluation criterion reflects the assessment of both management knowledge of appropriate manufacturing practices and applicable regulatory requirements, demonstrated ability to apply that knowledge in a timely and consistent manner, and commitment to correcting deficiencies noted by inspection program employees and otherwise assuring compliance with applicable regulatory requirements (9 CFR 303.2(b)(1)(ii) and 381.3(d)(1)(ii)) and the procedures used to control the production process, environment, and resulting product in order to assure and monitor compliance with requirements of the FMIA or PPIA and rules and regulations thereunder (9 CFR 303.2(b)(1)(iii) and 381.3(d)(1)(iii)). FSIS believes that by applying these criteria, its performance evaluation will achieve the objective of only including an establishment in pilot testing if there are adequate indications that the probability of future noncompliance at such establishment is low.

In any establishment included in such a pilot test, during experimentation the conditions and methods of inspection coverage of operations other than the slaughter of livestock or the slaughter and evisceration of poultry, including the frequency of government inspection, are to be determined by the inspection

program based on (1) an evaluation of the characteristics of the particular establishment, (2) the significance of potential health consequences of noncompliance, and (3) the availability of meat and poultry inspection program employees (referred to as "Program" and "Inspection Service" employees in the Federal meat inspection and the poultry products inspection regulations, respectively) (9 CFR 303.2(c)(2) and 381.3(e)(2)). Drawing upon its experience in regulating a broad range of establishments with differing characteristics and allocating inspection program resources, FSIS has developed tentative guidelines for use in making these determinations during pilot testing. Thus, for example, in assessing processing operation complexity (9 CFR 303.2(b)(2)(i) and 381.3(d)(2)(i)), FSIS will be categorizing operations as involving product preparation or processing that is "simple", "medium", or "complex" by applying Directive 1030.2 (Documentation of Processing and Combination Assignments, 4/22/85, which is available for public inspection and copying in the Policy Office (see "**ADDRESSES**")). FSIS also plans to utilize a three category approach in assessing certain other establishment characteristics (9 CFR 303.2(b)(2) (iii), (iv), and (vi) and 381.3(d)(2) (iii), (iv), and (vi)): production volume (highest total product volume during any quarter within the preceding year as less than 60,000; 60,000 to 1,000,000; or more than 1,000,000 pounds), establishment size (less than 12,000; 12,000 to 80,000; or more than 80,000 square feet), and the scope of any livestock slaughter or poultry slaughter and evisceration operations (none, part time, or full time) also being conducted (but to which the DI system will not apply) at an establishment which makes meat food and/or poultry products that are processed further (i.e., a "combination" establishment).

The Federal meat inspection regulations (9 CFR Chapter III, Subchapter A) and the poultry products inspection regulations (9 CFR Part 381) will continue to apply to establishments in which FSIS is pilot testing except to the extent that the frequency of Federal inspection or other conditions and methods of inspection coverage determined to be appropriate for the period of experimentation are identified as conflicting with provisions of the regulations. To that extent, the Administrator plans to waive such provisions for the period of experimentation (9 CFR 303.2(c)(2) and 381.3(e)(2)). Such waivers will permit the testing of new procedures that are expected to facilitate definite improvements and will reflect a determination that prescribing alternative conditions and methods of inspection coverage is not contrary to statutory purposes or provisions. They are, therefore, consistent with Agency policy as to when the temporary suspension of provisions of the regulations comports with its responsibilities in administering the FMIA.

The Administrator believes that the Federal meat inspection regulations should address the waiver for limited periods of provisions of those regulations to provide for situations in which alternative courses of action are appropriate and do not conflict with either the purposes or the provisions of the statute. In particular, the Administrator has determined that, despite potential or actual conflicts with provisions of the regulations, such alternative courses of action should be pursued in administering the FMIA in order to permit: (1) Appropriate and necessary action in the event of a public health emergency and (2) experimentation so that new procedures, equipment, and/or processing techniques may be tested to facilitate definite improvements. In both of these classes of cases, the waiver decision reflects a judgment that certain provisions of the regulations as applied in specific situations should be temporarily suspended in order to achieve the purposes of the FMIA and that the alternative course of action pursued during such a limited period is not inconsistent with FMIA provisions. Among other things, FSIS may, as in the instant case, need to obtain additional information before it can assess the nature or scope of any amendments to be proposed or can provide sufficient description of the subjects and issues involved to give interested persons a meaningful opportunity to participate in rulemaking.

The inclusion of such a rule in the Federal meat inspection regulations (9 CFR 303.1(g)) specifies Agency policy for carrying out its statutory responsibilities and conducting the meat and poultry inspection program pursuant to the FMIA and PPIA. The poultry products inspections regulations already include such a rule (9 CFR 381.3(b)). However, the emergency situations provided for in the poultry products inspection regulations are limited to those that are "national" in scope. Since such waivers also may better enable FSIS to take appropriate and necessary action in response to an emergency in a smaller geographic area and the focus of concern here is assuring adequate public health protection, the Administrator has determined that the words "public health" should be substituted for "national" in § 381.3(b) of the regulations (9 CFR 381.3(b)).

These amendments to the Federal meat inspection regulations and the poultry products inspection regulations include rules and statements that are being issued to advise the public of the Agency's interpretation of recent amendments to the FMIA and provisions of the PPIA and to advise the public of the Agency's policy and procedures for implementing those amendments and initiating changes to institute a DI system for processing operations under the FMIA and PPIA. Notice and public procedure thereon are not required under the Administrative Procedure Act (APA) as to such rules and statements (5 U.S.C. 553(b)(A); see also 5 U.S.C. 553(d)(2)).

In addition, FSIS has concluded that in order to execute its functions in a due and timely manner while avoiding serious dislocation in the inspection program, it should begin pilot testing in the near future. Congress has directed the Department to take action to improve the efficiency and effectiveness of the inspection program in utilizing available resources in its coverage of processing operations so that, among other things, it is in a better position to respond to budgetary constraints and industry growth and development. Thus, FSIS must move as quickly as possible to institute a DI system. Yet, at the same time, it must protect the integrity and effectiveness of the inspection program in protecting the public health and welfare by assuring an orderly transition to the new system. It is the Agency's view that, given the scope and complexity of the issues and program variables involved, this can be accomplished only through a multi-stage process, with the first implementation action consisting of an experimentation period, and FSIS must act now if full implementation and the benefits anticipated by Congress are to be achieved within a reasonable time.

This approach is consistent with the Agency's policy of testing new procedures and other possible improvements affecting the inspection program in order to assure that they are feasible and will not adversely affect protection of the public health and welfare. Moreover, while the conduct of persons, firms, and corporations regulated as operators of those federally inspected establishments selected for pilot testing may be affected, any effects will be of limited scope and duration.

and restrictions may be relieved rather than imposed.

For these reasons, the Agency finds that giving advance notice and public procedure thereon beyond what is provided herein is impracticable and contrary to the public interest. Therefore, there is good cause, in accordance with the APA (5 U.S.C. 553(b)(B) and (d) (1) and (3)), for publishing an interim final rule with a request for comments which will become effective before the publication of a further notice.

**Interim Final Rule**

**List of Subjects**

*9 CFR Part 303*

Meat inspection.

*9 CFR Part 381*

Poultry products inspection.

On the basis of the foregoing, the Federal meat inspection regulations (Part 303) and the poultry products inspection regulations (Part 381) are amended as follows:

1. The authority citation for Part 303 is added to read as follows and the authority citation following § 303.1 is removed:

**Authority:** 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438 (21 U.S.C. 71 *et seq.*, 601 *et seq.*, Pub. L. 99–641, Title IV, 100 Stat. 3556, 3567–72, 33 U.S.C. 466–466k); Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*).

2. Section 303.1(g) is revised to read as follows:

**§ 303.1 Exemptions.**

* * * * *

(g) The Administrator may in specific classes of cases waive for limited periods any provisions of the regulations in this subchapter in order to permit appropriate and necessary action in the event of a public health emergency or to permit experimentation so that new procedures, equipment, and/or processing techniques may be tested to facilitate definite improvements: *Provided*, That such waivers of the provisions of such regulations are not in conflict with the purposes or provisions of the Act.

3. Part 303 is further amended by adding a new § 303.2 to read as follows:

**§ 303.2 Experimentation: Intensity of inspection coverage.**

(a) Pursuant to the Processed Products Inspection Improvement Act of 1986, Title IV of the Futures Trading Act of 1986 (Pub. L. 99–641), in establishments preparing products at which inspection under the Act and regulations is required, the frequency with which and the manner in which meat food products made from livestock previously slaughtered in official establishments are examined and inspected by Program employees is to be based on considerations relevant to effective regulation of meat food products and protection of the health and welfare of consumers. In order to test procedures for use in making such determinations, and, in particular, for determining whether and, if so, to what extent the intensity of inspection coverage exceeds that which should be considered necessary pursuant to section 6 of the Act, as amended by section 403(a) of the Futures Trading Act of 1986, the Administrator is initiating experimentation of a new system of inspection for reviewing the performance of establishments and for designing the supervision and other conditions and methods of inspection coverage. For the period of such experimentation, the Administrator shall identify establishments for review, and the frequency and the manner of inspection by Program employees shall be determined on the basis of the results of those reviews and be otherwise in accordance with this section.

(b) The determinations referred to in paragraph (a) of this section shall be made by the Program and shall reflect evaluations of the performance and the characteristics of such establishments.

(1) In assessing the performance of an establishment, the following factors are appropriate for consideration:

(i) The history of compliance with applicable regulatory requirements by the person conducting operations at such establishment or by anyone responsibly connected with the business conducting operations at such establishment, as "responsibly connected" is defined in section 401(g) of the Act,

(ii) The competence of the person conducting operations at such establishment, as indicated by;

(A) Knowledge of appropriate manufacturing practices and applicable regulatory requirements;

(B) Demonstrated ability to apply such knowledge in a timely and consistent manner, and

(C) Commitment to correcting deficiencies noted by Program employees and otherwise assuring compliance with applicable regulatory requirements, and

(iii) The procedures used in such establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with the requirements of the Act and the rules and regulations promulgated thereunder.

(2) In assessing the characteristics of an establishment, the following factors are appropriate for consideration:

(i) The complexity of the processing operation(s) conducted at such establishment,

(ii) The frequency with which each such operation is conducted at such establishment,

(iii) The volume of product resulting from each such operation at such establishment,

(iv) Whether and to what extent slaughter operations also are conducted at such establishment,

(v) What, if any, food products not regulated under this Act or the Poultry Products Inspection Act also are prepared at such establishment, and

(vi) The size of such establishment.

(c)(1) For the period of experimentation described in paragraph (a) of this section, the frequency of inspection of Program employees of operations other than slaughter may be reduced in an establishment in which the procedures referred to therein are being tested if and only if the evaluation of the performance of such establishment described in paragraph (b)(1) of this section indicates that there are:

(i) No instances, documented in records compiled no earlier than 10 years before, of substantial and recent noncompliance with applicable regulatory requirements (taking into account both the nature and frequency of any such noncompliance), and

(ii) The competence and control procedures needed to assure and monitor compliance with applicable regulatory requirements.

(2)(i) The frequency of Federal inspection and other conditions and methods of inspection coverage in any establishment in which the Federal inspection is reduced shall be based on:

(A) The evaluation of the characteristics of such establishment described in paragraph (b)(2) of this section,[2]

(B) The significance of potential public health consequences of noncompliance, and

(C) The availability of Program employees.

(ii) To the extent that such frequency of inspection or other conditions and

[2] These evaluations will be based upon guidelines developed by FSIS and the complexity categorization in FSIS Directive 1030.2 (Documentation of Processing and Combination Assignments, 4/22/85). The guidelines and Directive will be available for public inspection and copying in the Policy Office, Room 3168, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

methods of inspection coverage are identified as conflicting with provisions of the regulations in this subchapter, the Administrator will waive such provisions for the period of experimentation, in accordance with § 503.1(g) of this subchapter.

**PART 381—[AMENDED]**

4. The authority citation for Part 381 continues to read as follows:

**Authority:** 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

5. Section 381.3(b) is amended by removing the word "national" and inserting, in its place, the words "public health".

6. Section 381.3 is further amended by adding new paragraphs (c) through (e) to read as follows:

**§ 381.3 Adminstration.**

* * * * *

(c) Pursuant to section 6 of the Act, the Administrator believes that, in establishments processing poultry products at which inspection under the Act and regulations is required, the frequency with which and the manner in which poultry products made from poultry previously slaughtered and eviscerated in official establishments are reinspected by Inspection Service employees should be based on considerations relevant to effective regulation of poultry products and protection of the health and welfare of consumers. In order to test procedures for use in making such determinations and, in particular, for determining whether and, if so, to what extent the intensity of inspection coverage exceeds that which should be deemed necessary pursuant to section 6 of the Act, the Administrator is initiating experimentation of a new system of inspection for reviewing the performance of establishments and for designing the supervision and other conditions and methods of inspection coverage. For the period of such experimentation, the Administrator shall identify establishments for review, and the frequency and the manner of inspection by Inspection Service employees shall be determined on the basis of the results of those reviews and be otherwise in accordance with this section.

(d) The determinations referred to in paragraph (c) of this section shall be made by the Inspection Service and shall reflect evaluations of the performance and the characteristics of such establishments.

(1) In assessing the performance of an establishment, the following factors are appropriate for consideration:

(i) The history of compliance will applicable regulatory requirements by the person operating such establishments or by anyone responsibly connected with the business operating such establishment, as "responsibly connected" is defined in section 18(a) of the Act,

(ii) The competence of the person operating such establishment, as indicated by;

(A) Knowledge of appropriate manufacturing practices and applicable regulatory requirements,

(B) demonstrated ability to apply such knowledge in a timely and consistent manner, and

(C) Commitment to correcting deficiencies noted by Inspection Service employees and otherwise assuring compliance with applicable regulatory requirements, and

(iii) The procedures used in such establishment to control the production process, environment, and resulting product in order to assure and monitor compliance with the requirements of the Act and the rules and regulations promulgated thereunder.

(2) In assessing the characteristics of an establishment, the following factors are appropriate for consideration.

(i) The complexity of the processing operation(s) conducted at such establishment,

(ii) The frequency with which each such operation is conducted at such establishment,

(iii) The volumn of product resulting from each such operation at such establishment,

(iv) Whether and to what extent slaughter and evisceration operations also are conducted at such establishment,

(v) What, if any, food products not regulated under this Act or the Federal Meat Inspection Act also are processed at such establishment, and

(vi) The size of such establishment.

(e)(1) For the period of experimentation described in paragraph (c) of this section, the frequency of inspection by Inspection Service employees of operations other than slaughter and evisceration may be reduced in an establishment in which the procedures referred to therein are being tested if and only if the evaluation of the performance of such establishment described in paragraph (d)(1) indicates that there are:

(i) No instances, documented in records complied no earlier than 10 years before, of substantial and recent noncompliance with applicable regulatory requirements (taking into account both the nature and frequency of any such noncompliance), and

(ii) The competence and control procedures needed to assure and monitor compliance with applicable regulatory requirements.

(2)(i) The frequency of Federal inspection and other conditions and methods of inspection coverage in any establishment in which the Federal inspection is reduced shall be based on;

(A) The evaluation of the characteristics of such establishment described in paragraph (d)(2) of this section,[2]

(B) The significance of potential public health consequences of noncompliance, and

(C) The availability of Inspection Service employees;

(ii) To the extent that frequency of inspection or other conditions and methods of inspection coverage are identified as conflicing with provisions of the regulations in this part, the Administrator will waive such provisions for the period of experimentation, in accordance with paragraph (b) of this section.

Done at Washington, DC, on March 25, 1987.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 87-6866 Filed 3-27-87; 8:45 am]

BILLING CODE 3410-DM-M

---

## NUCLEAR REGULATORY COMMISSION

**10 CFR Parts 70 and 74**

**Material Control and Accounting Requirements for Facilities Licensed To Possess and Use Formula Quantities of Strategic Special Nuclear Material**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its material control and accounting (MC&A) requirements for facilities licensed to possess and use formula quantities of strategic special nuclear material (SSNM). These amendments will apply to all such fuel cycle facilities except irradiated fuel reprocessing plants,

[2] These evaluations will be based upon guidelines developed by FSIS and the complexity categorization in FSIS Directive 1030.2 (Documentation of Processing and Combination Assignments, 4/22/85). The guidelines and Directive will be available for public inspection and copying in the Policy Office, Room 3168, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC.

BEST COPY AVAILABLE

waste disposal operations, nuclear reactors, and users of nuclear materials in sealed sources. The amendments will significantly strengthen MC&A capabilities at the affected facilities by requiring more timely detection of anomalies potentially indicative of SSNM losses and by providing for more rapid and conclusive resolution of discrepancies. The amendments will be cost-effective by virtue of the fact that current requirements which are not cost-effective will be eliminated and existing process, production, and quality control information will be utilized to enhance material control and accounting capabilities.

**EFFECTIVE DATE:** April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.W. Emeigh, Safeguards Material Licensing and International Activities Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone: (301) 427–4769.

**SUPPLEMENTARY INFORMATION:**

## Background

The amended MC&A requirements are being codified in 10 CFR Part 74 which has been established for documentation of all specific domestic MC&A regulatory requirements. Requirements for general licenses have been retained in Part 70.

Four high enriched uranium processing facilities will be subject to the amended requirements: Babcock and Wilcox, Lynchburg, Virginia; GA Technologies, San Diego, California; Nuclear Fuel Services, Erwin, Tennessee; and United Nuclear Corporation, Uncasville, Connecticut. Licensees processing special nuclear material of low strategic significance will continue to be subject to § 74.31, while licensees processing special nuclear material of moderate strategic significance and potential licensees processing strategic special nuclear material in irradiated fuel reprocessing plants will continue to be subject to the MC&A requirements contained in 10 CFR Part 70.

Current domestic MC&A regulations for strategic special nuclear material require bimonthly inventories. Comparison of an inventory difference (ID) with its associated limit of error (LEID) and with percent of throughput does not occur until nearly 30 days after the beginning of the physical inventory. Consequently, a thorough investigation of any identified anomaly might not occur, in the worst case, for 90 days after the contributing event occurred. The usefulness of these bimonthly inventories in providing assurance that significant quantities of SSNM have not been diverted has been limited by the difficulty encountered in conclusively resolving large inventory differences. This has necessitated reliance on material control data, plant security records, and intelligence information for the desired assurance. Recognizing this shortcoming, on August 20, 1981, the Commission approved publication of an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on how to revise MC&A regulations for SSNM that is capable of being made into fission explosives. The ANPRM, which was published in the **Federal Register** on September 10, 1981 (46 FR 45144), included goals of the rulemaking and five options for achieving those goals. The primary goals were stated as: (1) Timely and localized detection of anomalies potentially indicative of a material loss, (2) rapid determination of whether an actual loss had occurred, and (3) availability of information to aid in the recovery of material in the event of an actual loss.

Two of the five options suggested in the ANPRM for achieving these goals retained an emphasis on periodic physical inventories. The other three options introduced requirements for the timely use of process monitoring information for safeguards purposes with de-emphasis of the importance and frequency of physical inventories. Responders to the ANPRM in some instances expressed reservations on the feasibility of using process monitoring information for safeguards purposes because of the lack of demonstrable evidence of successful application, but suggested no alternatives. Based on the comments received and on the results of continuing technical studies, a decision was made to proceed. The proposed rule that was presented to the Commission for publication included much of the substance of Options 3 and 4 of the ANPRM but was rewritten to: (1) Delete unnecessarily prescriptive requirements, (2) reduce the number of plans and programs required, (3) improve clarity, (4) incorporate capabilities to protect against certain types of inside adversary, and (5) provide flexibility for licensees to select the most cost-effective ways of achieving performance objectives. The rule gave credit for SSNM in secure containment and recognized differences with respect to safeguards vulnerability between processing SSNM in bulk form and in encapsulated form.

The proposed rule was published in the **Federal Register** on February 2, 1984 (49 FR 4091). Concurrent with the publication, copies of a Standard Format/Acceptance Criteria guide and a Regulatory Analysis were placed in the Public Document Room. Public comments were requested to be submitted by June 5, 1984. Citing technical complexity as the principal reason, the affected licensees requested an extension of the comment period. The comment period subsequently was extended to September 5, 1984 (June 19, 1984; 49 FR 25005).

### Comments on the Proposed Rule

The Commission received four letters from licensees and a memorandum from the Department of State commenting on the proposed rule. Copies of the letters are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street NW., Washington, DC 20555.

*Changes in Response to Public Comments*

1. Three respondents expressed concern over the technical feasibility of implementing an MC&A system in compliance with proposed rule requirements. One respondent pointed out that experimental projects designed to enhance near-real-time accounting failed to demonstrate the applicability of the technique in actual operating plants. A second respondent took issue with a statement in the Regulatory Analysis which indicated that the prompt accountability concept was technologically feasible and that significant benefits to MC&A systems could be achieved at moderate cost. The respondent cited results of a study performed at its site for the Commission as the basis for its skepticism. The third respondent expressed concern over the complex statistics that obviously would be involved in analyzing material control test data over space and time, as had been proposed.

The Commission has re-evaluated the in-process monitoring requirements in the proposed rule with respect to whether or not design goals could be achieved. Based on this re-evaluation the Commission concluded that the objective of upgraded material control and accounting systems could be achieved through less drastic modification of existing requirements. This change in direction has resulted in deletion of multiple time and area-wide loss detection tests from the rule and addition of requirements for quality control tests and trend analyses at the unit process level. Additionally, physical inventory requirements have been modified in the area of inventory difference evaluation criteria. The significance of an inventory difference

will be initially tested against a threshold that takes into account measurement error only. If this threshold is exceeded, an investigation will be required which must include the computation of a second threshold that takes historical ID variation into account.

2. A comment was received to the effect that research and development operations by design do not achieve the steady state conditions required for application of in-process monitoring tests for loss detection. The respondent proposed that such operations be exempted from in-process monitoring requirements and instead be subjected to either bimonthly inventories or periodic material balances coupled with item monitoring.

The Commission agrees with this assessment and has modified the rule for research and development operations to require material balances on a lot or batch basis, item monitoring, and analysis of material balance data for trends. An appropriate exemption has been added to § 74.53(a) in addition to the new requirements in paragraph (c) of the same section.

3. A respondent stated an opinion that samples should be exempt from in-process monitoring requirements on the basis that the SSNM quantities in samples are small and would require the acquisition of a large number by an adversary in order to obtain five formula kilograms. Sample control systems would rapidly detect such a removal. An additional relevant point was the fact that the total quantity of SSNM in a laboratory is typically small.

The Commission agrees with the respondent and exempted samples containing less than 0.05 formula kilograms of SSNM from in-process monitoring requirements and modified item monitoring requirements to allow for the treatment of such samples as items. Larger samples are expected to be within the scope of a material control test whether it be applied in the originating process unit or in the laboratory. In the former case, adequate administrative controls would be required to protect the integrity of the sample until it was returned to the originating process unit.

4. Two respondents expressed concern over the effect of data that is statistically non-normal on the establishment of alarm thresholds for loss detection. The respondent indicated that analyses of current process monitoring data pointed up the fact that, for some units, test data were non-normally distributed.

The Commission agrees that this is a concern, especially if the tails of a statistical distribution come into consideration. Unacceptably high false alarm rates will result when such conditions exist. To alleviate this concern, the required detection probability for losses from individual process units has been revised downward from 99 percent to 95 percent.

5. Comments were received from two licensees regarding the difficulties likely to be encountered in complying with the bias correction requirements reflected in the proposed rule. The principal difficulty lies in the fact that bias corrections are not sufficiently timely to permit record corrections to be made on the process floor. Retroactive corrections to the book records necessitate the correction of label values on individual items if the accounting system is to balance.

The Commission agrees that bias corrections are difficult to accommodate in the accounting system. However, accounting for the impact of biases is an important consideration in achieving a reliable MC&A system. Consequently, requirements for bias corrections have been retained but modified to resolve some of the associated difficulties.

6. A respondent requested that consideration be given to permitting storage of untamper-sealed items in enclosures other than vaults. The respondent provided examples of situations in which untamper-sealed containers and unencapsulated solid fuel forms were stored in controlled access areas for varying time periods during the fabrication process. It was pointed out that in many instances it was impractical to tamper-seal certain material forms and that minimal handling was important to prevent damage.

The respondent's points are considered valid. Consequently, the final rule has been modified to permit storage of untamper-sealed containers in permanently controlled access areas. As indicated in the acceptance criteria, the area should be equipped with adequate controls to preclude undetected access to the SSNM by one individual in any position. The requirement to provide protection at least equivalent to tamper-safing dictates the level of control that is expected.

7. One respondent stated that the requirements of 10 CFR 70.57 and 70.58 should be changed to performance-oriented safeguards.

The Commission agrees with the respondent's statement and has taken action to accomplish this task. The quality assurance and accounting requirements in § 70.89 of the proposed rule (§ 74.59 of the final rule) have been replaced with portions of 10 CFR 70.57 and 70.58 that have been rewritten to be performance oriented, to delete obsolete requirements, and to clarify the quality assurance and accounting requirements applicable to Category I licensees.

*Comments Not Incorporated*

1. A respondent indicated that the 0.1 percent of active inventory limit on the standard error of the inventory difference estimator was not achievable for its particular process.

This comment appears to be the result of a misconception of what is being required. The proposed limit, while somewhat more restrictive than the current limit, should be achievable without extraordinary effort. Taking into account the differences in the method of computation, the current limit (i.e., 0.5% of additions to or removals from process expressed at the two standard deviation level) would equate to one standard deviation being less than 0.125 percent of active inventory. The decrease to 0.10 percent of active inventory is considered justified on the premise that there have been significant advances in state-of-the-art measurement technology since the current limit was imposed. A review of the level of performance of current licenses supports this conclusion.

2. A respondent expressed concern over the restrictions that might be imposed on the use of its workforce if detection within administratively controlled areas were to be required.

This comment became moot when area loss detection requirements were deleted from the rule.

3. A comment was received to the effect that the proposed 0.25 gm/liter limit on the concentration of SSNM in scrap contained in 30 gallon or larger containers would have a significant impact on a licensee's storage capability. Additionally, the respondent indicated that the proposed limit would have a significant impact on the amount of SSNM per container that they could receive from offsite for scrap recovery.

The exemption documented in § 70.83(a)(2) of the proposed rule (§ 74.53(a)(2) of the final rule) is not intended to be a limit on the amount of SSNM per container. Instead the 0.25 gm/liter criterion is considered a de minimis quantity below which application of the in-process monitoring requirements of paragraph (b) of the same section is not required.

4. The necessity for including fuel fabrication facilities in the scope of rule applicability was questioned by a respondent. The contention was put forth that, unlike conversion facilities, the problems the rule is intended to

address are not present in fabrication facilities (i.e. unmeasured side streams and large inventory differences).

The Commission agrees that excessive inventory differences are less likely to occur in fuel fabrication facilities since there is minimal handling of SSNM in bulk form and the materials do not change chemical form. However, this does not preclude the possibility of a significant diversion. Consequently, the decision has been made to apply the rule to fuel fabrication as well as conversion facilities.

5. Affected licensees stated that, in their opinion, the conclusions reflected in the Regulatory Analysis were not representative of the actual cost impact likely to be experienced at their facilities.

In response, site-specific value/impact analyses were performed. Information obtained in preparing those analyses has been taken into account in the revised Regulatory Analysis prepared in support of the final rule.

6. A respondent expressed concern that drastic changes in regulatory requirements, such as those incorporated in the proposed rule, were not receiving adequate review within the Commission prior to publication for comment. In particular, the respondent indicated that there should be more involvement of licensing and inspection personnel in the rulemaking process in view of their roles in ultimately approving licensees' plans and inspecting their application.

The Commission does not agree with the respondent's position. Rulemaking procedures include scheduled milestones for review and comment by licensing, inspection, and other interested regulatory personnel during the formulation of new rules. Rules are particularly reviewed for inspectability prior to issuance.

**Other Changes**

1. Requirements of the proposed rule in §§ 70.81 through 70.89 have been redesignated §§ 74.51 through 74.59 in the final rule. This change was made to be consistent with the Commission's objective of eventually incorporating all domestic MC&A regulatory requirements in Part 74. With this action, the MC&A requirements in §§ 70.51, 70.57, and 70.58 apply only to licensees possessing and using special nuclear material of moderate strategic significance, strategic special nuclear material in irradiated fuel reprocessing plants, and special categories of licensees possessing SNM of low strategic significance who are not currently required to have an approved MC&A plan. Performance-oriented regulations subsequently are expected to be developed for those categories of licensees and incorporated in Part 74.

2. The list of definitions in § 74.4 has been expanded to include appropriate definitions from Part 70 and new definitions applicable to the subject rule. Additional definitions may be added when the rules for other categories of licensees, referenced above, are transferred to Part 74. With respect to terminology, Part 74 reflects the terms the Commission now prefers when referring to certain MC&A and statistical concepts. However, the language in Part 70 has not been changed.

3. Irradiated fuel reprocessing plants have been deleted from the applicability statement in the final rule. This action was taken because of unresolved questions as to whether a reprocessing plant could comply with all rule requirements and the negative outlook for domestic reprocessing in the near term. It is expected that by the time reprocessing becomes a viable option in the United States, there will be significant technological advances that will influence material control and accounting system design for such plants.

4. A statement has been added to § 74.51 to clarify the fact that licensees are required to follow currently approved fundamental nuclear material control plans until newly submitted plans are reviewed and approved.

5. Section 74.51(c) has been modified to provide flexibility in the timing of the implementation of the new rule by licensees. Depending upon current MC&A practices, the complexity of production operations, and advance planning by the licensees, the time within which adequate performance against rule requirements is achieved will vary from licensee to licensee. In some cases, current practices approach what would be expected under an upgraded MC&A system. Under these conditions, a licensee may be able to achieve adequate performance in less than six months. At the other extreme, the current system may bear no resemblance to an upgraded system; hence, longer than six months may be required for full implementation of the rule.

6. The deletion of irradiated fuel reprocessing plants from the scope of the rule made the exemption for SSNM exhibiting external radiation in excess of 100 rem per hour at three feet irrelevant. Therefore, this proposed exemption has been deleted. Any Category I licensee who may have occasion to handle irradiated fuel may request an exemption from the in-process monitoring requirements of § 74.53(b).

7. For SSNM having an estimated measurement uncertainty greater than five percent that is either input to or output from a unit operation that processes less than five formula kilograms in three months, a new exemption has been added to § 74.53(a). This exemption is considered appropriate on the basis of the low throughput of the unit, the unattractive nature of the material, and the high uncertainty that would be associated with any material control test results.

8. A requirement has been added to § 74.55 to detect a five formula kilogram loss within two months for items stored in a permanently controlled access area located outside of a material access area (MAA). This requirement was inadvertently omitted from the proposed rule. This oversight has been discussed with affected licensees who concurred with the need for the requirement.

9. In lieu of modifying § 74.13(b)(2) to add a technical reference to § 74.59, a requirement has been included in § 74.59(f)(1)(i) to investigate and report when the estimate of the standard error of the inventory difference exceeds 0.1 percent or more of active inventory. The requirement is essentially the same as that currently in § 74.13(b)(2) but reworded to be consistent with the terminology in the Category I Rule. It does not represent a duplication since the requirement in § 74.59(f)(1)(i) supersedes § 74.13(b)(2) in its entirety for Category I licensees.

10. Miscellaneous minor changes have been made that have no impact on the substance of the rule.

**International Considerations**

It should be noted that the performance goals for the rule, stated previously, are domestic goals and are considered to be appropriate for a subnational threat. For all U.S. licensees, the detection and response capability of the rule have been determined to be sufficient to adequately protect the public health and safety from a subnational threat. On the other hand, the International Atomic Energy Agency (IAEA), which is responsible for applying international safeguards in non-nuclear weapons states, must judge whether a significant diversion has occurred in the face of a possible national conspiracy. In order to reach its conclusion with the required level of certainty, the IAEA may find it necessary to continue to place primary reliance on periodic physical inventories as opposed to an analysis of process

monitoring data, as promulgated in this rule.

**Environmental Impact—Categorical Exclusion**

The material control and accounting (MC&A) requirements for licensees licensed to possess and use five or more formula kilograms of strategic special nuclear material will be amended in two major ways:

The first major amendment will move certain safeguards related recordkeeping and reporting requirements now found in Part 70 to Part 74 to be consistent with the Commission's objective for separating safety requirements from safeguards requirements.

Pursuant to 10 CFR 51.22(c)(3) (ii) and (iii), a categorical exclusion is granted in amendments to Commission regulations that relate to recordkeeping and reporting requirements. Moving the MC&A requirements from Part 70 to Part 74 meets the eligibility criteria for this categorical exclusion. Accordingly, no environmental impact statement or environmental assessments needs to be prepared in conjuction with the issuance of these amendments.

**Finding of No Significant Environmental Impact: Availability**

The second major amendment will modify material control and accounting requirements for licensees who possess and use formula quantities of strategic special nuclear material to achieve the following objectives:

—Prompt investigation of anomalies potentially indicative of SSNM losses,
—Timely detection of the possible abrupt loss of five or more formula kilograms of SSNM from individual unit processes,
—Rapid determination of whether an actual loss of five or more formula kilograms occurred,
—Ongoing confirmation of the presence of SSNM in assigned locations, and
—Timely generation of information to aid in the recovery of SSNM in the event of an actual loss.

The principal differences between the MC&A requirements in this rule and those in the current rules are the use of process monitoring data for material control, a longer interval between physical inventories, and an item monitoring program designed to detect a five formula kilogram loss.

For the following reasons, the Commission has determined not to prepare an environmental impact statement for the second major amendment and, in accordance with 10 CFR 51.32 and 51.34, finds that the proposed amendments have no significant impact on the environment.

1. The rule will not result in changes in the licensees' processes or manufacturing procedures and therefore will not affect or alter any release of effluents to the environment.

2. The rule will affect four high enriched uranium fuel processing facilities, all of whom have undergone individual NEPA review.

The environmental assessment upon which the foregoing determination is based is included in the Regulatory Analysis for this rulemaking action and is available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Dr. W.B. Brown, Chief, Safeguards Material Licensing and International Activities Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4165.

**Paperwork Reduction Act Statement**

This final rule amends information collection requirements that are subject to be Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0009 (for Part 70) and 3150–0123 (for Part 74).

**Regulatory Analysis**

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Single copies of the analysis may be obtained from Mr. C.W. Emeigh, Safeguards Material Licensing and International Activities Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427–4769.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects four facilities that process high enriched uranium and is expected to result in positive cost/benefit to the industry and, in addition, to provide enhanced safeguards capabilities. The facilities include: Babcock and Wilcox Company, Lynchburg, Virginia; GA Technologies, San Diego, California; Nuclear Fuel Services, Erwin, Tennessee; and United Nuclear Corporation, Uncasville, Connecticut. These companies are dominant in their service areas and do not fall within the definition of "small entities" set forth in the Regulatory Flexibility Act or by the Small Business Administration in 13 CFR Part 121.

**Backfit Analysis**

The staff has determined that a backfit analysis is not required for this rule since these amendments do not apply to 10 CFR Part 50 licensees.

**List of Subjects**

*10 CFR Part 70*

Hazardous materials-transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 74*

Accounting, Material control and accounting, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Special nuclear material.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 70 and 74.

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 is revised to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)–(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b)

and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)–(g), 70.56, 70.57(b) and (d), and 70.58(a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 70.22, paragraph (b) is revised to read as follows:

**§ 70.22 Contents of applicants.**

* * * * *

(b) Each application for a licensee to possess and use at any one time and location special nuclear material in a quantity exceeding one effective kilogram except for applications for use as sealed sources and for those uses involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter and those involved in a waste disposal operation, must contain a full description of the applicant's program for control and accounting for that special nuclear material which will be in the applicant's possession under license, to show how compliance with the requirements of § 70.58, § 74.31, or § 74.51 of this chapter, as applicable, will be accomplished.

* * * * *

3. In § 70.32, paragraph (c)(1) is revised to read as follows:

**§ 70.32 Conditions of licenses.**

* * * * *

(c)(1) Each license authorizing the possession and use at any one time and location of special nuclear material in a quantity exceeding one effective kilogram, except for use as sealed sources and those uses involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, and those involved in a waste disposal operation shall contain and be subject to a condition requiring the licensee to maintain and follow:

(i) The program for control and accounting for special nuclear material and fundamental nuclear material controls described pursuant to §§ 70.22(b), 70.58(l), 74.31(b), or 74.41(c)(1) of this chapter, as appropriate;

(ii) The measurement control program for special nuclear material control and accounting described pursuant to §§ 70.57(c), 74.31(b), or 74.59(e) of this chapter, as appropriate; and

(iii) Such other material control procedures as the Commission determines to be essential for the safeguarding of special nuclear material and providing that the licensee shall make no change which would decrease the effectiveness to the material control and accounting program prepared pursuant to §§ 70.22(b), 70.58(l), 70.51(g), 74.31(b), or 74.51(c)(1) of this chapter, and the measurement control program prepared pursuant to §§ 70.57(c), 74.31(b), or 74.59(e) of this chapter without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for amendment to its license pursuant to § 70.34.

* * * * * *

4. In § 70.51, paragraph (b) and the introductory text of paragraph (e) are revised to read as follows:

**§ 70.51 Material balance, inventory, and records requirements.**

* * * * * *

(b) Licensees subject to the recordkeeping requirements of §§ 74.31 and 74.59 of this chapter are exempt from the requirements of § 70.51(b)(1) through (5).

Otherwise:

* * * * * *

(e) Each licensee who is authorized to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of strategic special nuclear material in irradiated fuel reprocessing operations or special nuclear material of moderate strategic significance and to use such special nuclear material for activities other than as sealed sources or those activities involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter or those involved in a waste disposal operation; or as reactor irradiated fuels involved in research, development, and evaluation programs in facilities other than irradiated fuel reprocessing plants, shall:

* * * * * *

5. In § 70.57, the introductory text of paragraph (b) is revised to read as follows:

**§ 70.57 Measurement control program for special nuclear material control and accounting.**

* * * * * *

(b) In accordance with § 70.58(f), each licensee who is authorized to possess at any one time and location strategic special nuclear material in irradiated fuel reprocessing operations or special nuclear material of moderate strategic significance in a quantity exceeding one effective kilogram and to use such special nuclear material for activities other than as sealed sources or those activities involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, or those involved in waste disposal operations, shall establish and maintain a measurement control program for special nuclear material control and accounting measurements. Each program function shall be identified and assumed in the licensee organization in accordance with § 70.58(b)(2), and functional and organizational relationships shall be set forth in writing in accordance with § 70.58(b)(3). The program shall be described in a manual referenced in the Plan which shall contain the procedures, instructions, and forms prepared to meet the requirements of this paragraph, including procedures for the preparation, review, approval, and prompt dissemination of any program modifications or changes. The licensee's program shall include the following:

* * * * * *

6. In § 70.58, paragraph (a) is revised to read as follows:

**§ 70.58 Fundamental nuclear material controls.**

(a) Each licensee who is authorized to possess at any one time and location strategic special nuclear material in irradiated fuel reprocessing operations or special nuclear material of moderate strategic significance in a quantity exceeding one effective kilogram, and to use such special nuclear material except for sealed sources and those uses involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter and those involved in a waste disposal operation, shall establish, maintain, and follow written material control and accounting procedures in compliance with the fundamental nuclear material control requirements specified in paragraphs (b) through (k) of this section and such other controls as the Commission determines to be essential for the control of and accounting for special nuclear material.

* * * * *

## PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 74 is revised to read as follows:

**Authority:** Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C 2273); §§ 74.31, 74.81, and 71.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949 as amended (42 U.S.C. 2201(b), 2201(i)), and §§ 74.11, 74.13, and 74.15 are

issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Section 74.4 is amended by adding the following definitions in the proper alphabetical sequence.

**§ 74.4 Definitions.**

* * * * *

"Abrupt loss" means a loss occurring in the time interval between consecutive sequential performances of a material control test which is designed to detect anomalies potentially indicative of a loss of strategic special nuclear material from a specific unit of SSNM (i.e., a quantity characterized by a unique measurement) introduced into a process.

"Accessible location" means a process location at which SSNM could be acquired without leaving evidence of the acquisition, i.e., without tools or other equipment to obviously violate the integrity of the containment.

* * * * *

"Additions to material in process" means: (1) Receipts that are opened, except for receipts opened only for sampling and subsequently maintained under tamper-safing; (2) opened sealed sources; and (3) material removed from process for nonconformance with chemical or physical specifications that is subsequently reprocessed, measured for contained SSNM, and reintroduced to process.

"Alarm Threshold" means a predetermined quantity of SSNM calculated from the specified probability of detection for a given loss and the standard deviation associated with a material control test. An alarm threshold serves to trigger a response action.

"Bias" means the deviation of the expected value of a random variable from the corresponding correct or assigned value.

"Calibration" means the process of determining the numerical relationship between the observed output of a measurement system and the value, based upon reference standards, of the characteristic being measured.

"Category IA material" means SSNM directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least two meters in one dimension, greater than one meter in each of two dimensions, or greater than 25cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of five formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilograms) in each container requires protracted diversions in order to accumulate five formula kilograms.

"Category IB material" means all SSNM material other than Category IA.

* * * * *

"Continuous process" means a unit process in which feed material must be introduced in a systematic manner in order to maintain equilibrium conditions.

"Controlled access area" means any temporarily or permanently established area which is clearly demarcated, access to which is controlled, and which affords isolation of the material or persons within it.

* * * * *

"Element" means uranium or plutonium.

"Estimate" means a specific numerical value arrived at by the application of an estimator.

"Estimator" means a function of a sample measurement used to estimate a population parameter.

"Fissile isotope" means: (1) Uranium U–233, or (2) uranium-235 by enrichment category, (3) plutonium-239, and (4) plutonium–241.

"Formula kilogram" means SSNM in any combination in a quantity of 1000 grams computed by the formula, grams = (grams contained U–235) + 2.5 (grams U–233 + grams plutonium).

* * * * *

"License," except where otherwise specified, means a license issued pursuant to Part 70 of this chapter.

* * * * *

"Material" means special nuclear material.

"Material access area" means any location which contains special nuclear material, within a vault or a building, the roof, walls, and floor of which constitute a physical barrier.

"Material balance" means the determination of an inventory difference (ID).

"MC&A alarm" means a situation in which there is: (1) an out-of-location item or an item whose integrity has been violated, (2) an indication of a flow of SSNM where there should be none, or (3) a difference between a measured or observed amount or property of material and its corresponding predicted or property value that exceeds a threshold established to provide the detection capability required by § 74.53.

"Material control test" means a comparison of a pre-established alarm threshold with the results of a process difference or process yield performed on a unit process.

"Material in process" means any special nuclear material possessed by the licensee except in unopened receipts, sealed sources, measured waste discards, and ultimate product maintained under tamper-safing.

* * * * *

"Power of detection" means the probability that the critical value of a statistical test will be exceeded when there is an actual loss of a specific SSNM quantity.

"Process difference" (PD) means the determination of an ID on a unit process level with the additional qualification that difficult to measure components may be modeled.

"Process yield" means the quantity of SSNM actually removed from a unit process compared with the quantity predicted (based on a measured input) to be available for removal. Process yield differs from a process difference in that holdup and sidestreams are not measured or modeled.

"Produce" when used in relation to special nuclear material, means: (1) To manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

"Random error" means the deviation of a random variable from its expected value.

"Receipt" means special nuclear material received by a licensee from an off-site source.

"Reference standard" means a material, device, or instrument whose assigned value is known relative to national standards or nationally accepted measurement systems. This is also commonly referred to as a traceable standard.

"Removals" means measured quantities of special nuclear material disposed of as discards, encapsulated as a sealed source, or in ultimate product placed under tamper-safing or shipped offsite.

"Research and development" means: (1) Theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

"Scrap" means the various forms of special nuclear material generated during chemical and mechanical processing, other than recycle material and normal process intermediates, which are unsuitable for continued processing, but all or part of which will be converted to useable material by appropriate recovery operations.

"Sealed source" means any special nuclear material that is physically encased in a capsule, rod, element, etc. that prevents the leakage or escape of the special nuclear material and that prevents removal of the special nuclear material without penetration of the casing.

* * * * *

"Standard Error of the Inventory Difference" (SEID) means the standard deviation of an inventory difference that takes into account all measurement error contributions to the components of the ID.

"Standard Error of the Process Difference" means the standard deviation of a process difference value that takes into account both measurement and nonmeasurement contributions to the components of PD.

* * * * *

"Tamper-safing" means the use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previouly made measurements of special nuclear material within the container or vault.

"Traceability" means the ability to relate individual measurement results to national standards or nationally accepted measurement systems through an unbroken chain of comparisons.

"Ultimate product" means any special nuclear material in the form of a product that would not be further processed at that licensed location.

"Unit process" means an identifiable segment or segments of processing activities for which the amounts of input and output SSNM are based on measurements.

"Unopened receipts" means receipts not opened by the licensee, including receipts of sealed sources, and receipts opened only for sampling and subsequently maintained under tamper-safing.

"Vault" means a windowless enclosure with walls, floor, roof and door(s) designed and constructed to delay penetration from forced entry.

9. In § 74.8, paragraph (b) is revised to read as follows:

**§ 74.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.31, and 74.51.

* * * * *

10. Subpart E of Part 74 (§§74.51 through 74.59) is added to read as follows:

**Subpart E—Formula Quantities of Strategic Special Nuclear Material**

Sec.

74.51 Nuclear material control and accounting for strategic special nuclear material.
74.53 Process monitoring.
74.55 Item monitoring.
74.57 Alarm resolution.
74.59 Quality assurance and accounting requirements.

## Subpart E—Formula Quantities of Strategic Special Nuclear Material

### § 74.51 Nuclear material control and accounting for strategic special nuclear material.

(a) *General performance objectives.* Each licensee who is authorized to possess five or more formula kilograms of strategic special nuclear material (SSNM) and to use such material at any site, other than a nuclear reactor licensed pursuant to Part 50 of this chapter, an irradiated fuel reprocessing plant, or an operation involved with waste disposal shall establish, implement, and maintain a Commission approved material control and accounting (MC&A) system that will achieve the following objectives:

(1) Prompt investigation of anomalies potentially indicative of SSNM losses;

(2) Timely detection of the possible abrupt loss of five or more formula kilograms of SSNM from an individual unit process;

(3) Rapid determination of whether an actual loss of five or more formula kilograms occurred;

(4) Ongoing confirmation of the presence of SSNM in assigned locations; and

(5) Timely generation of information to aid in the recovery of SSNM in the event of an actual loss.

(b) *System capabilities.* To achieve the general performance objectives specified in § 74.51(a), the MC&A system must provide the capabilities described in §§ 74.53, 74.55, 74.57 and 74.59 and must incorporate checks and balances that are sufficient to detect falsification of data and reports that could conceal diversion by:

(1) An individual, including an employee in any position; or

(2) Collusion between an individual with MC&A responsibilities and another individual who has responsibility or control within both the physical protection and the MC&A systems.

(c) *Implementation dates.* Each licensee subject to the requirements of paragraph (a) of this section shall:

(1) No later than September 25, 1987, submit a fundamental nuclear material control (FNMC) plan describing how the licensee will comply with the requirements of paragraph (b) of this section; and

(2) No later than April 29, 1988, or 90 days after the plan submitted pursuant to paragraph (c)(1) of this section is approved, whichever is later, implement the approved plan. Current FNMC plans must be followed until new plans are approved by the NRC.

(d) *Exemptions.* (1) Notwithstanding paragraph (c)(2) of this section, a licensee may delay, for an additional 18 months beyond the prescribed 90 days, implementation of provisions of the plan involving process shutdown for resolution of alarms. However, during such delay, the licensee shall continue to conduct inventories at bimonthly intervals.

(2) Notwithstanding § 74.59(f)(1), licensees shall perform at least three bimonthly physical inventories after implementation of the NRC approved FNMC Plan and shall continue to perform bimonthly inventories until performance acceptable to the NRC has been demonstrated and the Commission has issued formal approval to perform semiannual inventories. Licensees who have prior experience with process monitoring and/or can demonstrate acceptable performance against all Plan commitments may request authorization to perform semiannual inventories at an earlier date.

### § 74.53 Process monitoring.

(a) Licensees subject to § 74.51 shall monitor internal transfers, storage, and processing of SSNM. The process monitoring must achieve the detection capabilities described in paragraph (b) of this section for all SSNM except:

(1) SSNM that is subject to the item loss detection requirements of § 74.55;

(2) Scrap in the form of small pieces, cuttings, chips, solutions, or in other forms that result from a manufacturing process, held in containers of 30 gallons or larger, with an SSNM content of less than 0.25 grams per liter;

(3) SSNM with an estimated measurement standard deviation greater than five percent that is either input or output material associated with a unit that processes less than five formula kilograms over a consecutive three-month period; and

(4) SSNM involved in research and development operations that process less than five formula kilograms during any seven-consecutive-day period.

(b) *Unit process detection capability.* For each unit process, a licensee shall establish a production quality control program capable of monitoring the status of material in process. The program shall include:

(1) A statistical test that has at least a 95 percent power of detecting an abrupt loss of five formula kilograms within three working days of a loss of Category IA material from any accessible process location and within seven calendar days of a loss of Category IB material from any accessible process location;

(2) A quality control test whereby process differences greater than three times the estimated standard deviation of the process difference estimator and 25 grams of SSNM are investigated; and

(3) A trend analysis for monitoring and evaluating sequences of material control test results from each unit process to determine if they indicate a pattern of losses or gains that are of safeguards significance.

(c) For research and development operations exempt from the requirements of paragraph (b) of this section, the licensee shall:

(1) Perform material balance tests on a lot or a batch basis, as appropriate, or monthly, whichever is sooner, and investigate any difference greater than 200 grams of plutonium or U–233 or 300 grams of U–235 that exceeds three times the estimated standard error of the inventory difference estimator;

(2) Evaluate material balance results generated during an inventory period for indications of measurement biases or unidentified loss streams and investigate, determine the cause(s) of, and institute corrective action for cumulative inventory differences generated during an inventory period that exceed three formula kilograms of SSNM.

### § 74.55 Item monitoring.

(a) Licensees subject to § 74.51 shall provide the detection capability described in paragraph (b) of this section for laboratory samples containing less than 0.05 formula kilograms of SSNM and any uniquely identified items of SSNM that have been quantitatively measured, the validity of that measurement independently confirmed, and that additionally have been either:

(1) Tamper-safed or placed in a vault or controlled access area that provides protection at least equivalent to tamper-safing; or

(2) Sealed such that removal of SSNM would be readily and permanently apparent (e.g., encapsulated).

(b) The licensee shall verify on a statistical sampling basis, the presence and integrity of SSNM items. The statistical sampling plan must have at least 99 percent power of detecting item losses that total five formula kilograms or more, plant-wide, within:

(1) Thirty calendar days for Category IA items and 60 calendar days for Category IB items contained in a vault or in a permanently controlled access area isolated from the rest of the material access area (MAA);

(2) Three working days for Category IA items and seven calendar days for Category BI items located elsewhere in the MAA, except for reactor components measuring at least one meter in length and weighing in excess of 30 kilograms for which the time interval shall be 30 calendar days;

(3) Sixty calendar days for items in a permanently controlled access area outside of an MAA; or

(4) Sixty calendar days for samples in a vault or permanently controlled access area and 30 calendar days for samples elsewhere in the MAA for samples each containing less than 0.05 formula kilograms of SSNM.

(c) Items containing scrap in the form of small pieces, cuttings, chips, solutions, or in other forms that result from a manufacturing process, held in containers of 30 gallon or larger, with an SSNM concentration of less than 0.25 grams per liter are exempt from the requirements of paragraph (b) of this section.

### § 74.57 Alarm resolution.

(a) Licensees subject to § 74.51 shall provide the MC&A alarm resolution capabilities described in paragraphs (b) through (f) of this section.

(b) Licensees shall resolve the nature and cause of any MC&A alarm within approved time periods.

(c) Each licensee shall notify by telephone, the appropriate NRC Regional Office listed in Appendix A of Part 73 of this chapter of any MC&A alarm that remains unresolved beyond the time period specified for its resolution in the licensee's fundamental nuclear material control plan. Notification shall occur within 24 hours except when a holiday or weekend intervenes in which case the notification shall occur on the next scheduled workday. The licensee may consider an alarm to be resolved if:

(1) Clerical or computational error is found that clearly was the cause for the alarm; or

(2) An assignable cause for the alarm is identified or it is substantiated that no material loss has occurred.

(d) If a material loss has occurred, the licensee shall determine the amount of SSNM lost and take corrective action to:

(1) Return out-of-place SSNM, if possible, to its appropriate place;

(2) Update and correct associated records; and

(3) Modify the MC&A system, if appropriate, to prevent similar future occurrences.

(e) The licensee shall provide an ability to rapidly assess the validity of alleged thefts.

(f) If an abrupt loss detection estimate exceeds five formula kilograms of SSNM:

(1) Material processing operations related to the alarm must by suspended until completion of planned alarm resolution activities, unless the suspension of operations will adversely affect the ability to resolve the alarm. Operation of continuous processes may continue for 24 hours from the time of the occurrence of the alarm during which time checks shall be made for mistakes in records or calculations that could have caused the alarm.

(2) Within 24 hours, the licensee shall notify the appropriate NRC Regional Office by telephone that an MC&A alarm resolution procedure has been initiated.

### § 74.59 Quality assurance and accounting requirements.

(a) Licensees subject to § 74.51 shall provide the quality assurance and accounting capabilities described in paragraphs (b) through (h) of this section.

(b) *Management structure.* The licensee shall:

(1) Establish and maintain a management structure that includes clear overall responsibility for planning, coordinating, and administering material control and accounting functions, independence of material control and accounting functions from production responsibilities, and separation of functions such that the activities of one individual or organizational unit serve as controls over and checks of the activities of others; and

(2) Provide for the adequate review, approval, and use of those material control and accounting procedures that are identified in the approved FNMC plan as being critical to the effectiveness of the described system.

(c) *Personnel qualification and training.* The licensee shall assure that personnel who work in key positions where mistakes could degrade the effectiveness of the material control and accounting system are trained to maintain a high level of safeguards awareness and are qualified to perform their duties and/or responsibilities.

(d) *Measurements.* The licensee shall establish and maintain a system of measurements sufficient to:

(1) Substantiate the plutonium element and uranium element and fissile

isotope content of all SSNM received, produced, transferred between areas of custodial responsibility, or inventory, or shipped, discarded, or otherwise removed from inventory;

(2) Enable the estimation of the standard deviation associated with each measured quantity; and

(3) Provide the data necessary for performance of the material control tests required by § 74.53(b).

(e) *Measurement control.* The licensee shall assure that the quality of SSNM measurement systems and material processing practices is continually controlled to a level of effectiveness sufficient to satisfy the capabilities required for detection, response, and accounting. To achieve this objective the licensee shall:

(1) Perform engineering analyses and evaluations of the design, installation, preoperational tests, calibration, and operation of all measurement systems to be used for MC&A purposes;

(2) Perform process and engineering tests using well characterized materials to establish or to verify the applicability of existing procedures for mixing and sampling SSNM and maintaining sample integrity during transport and storage. Tests must be repeated at least every three years, at any time there is a process modification that alters the physical or chemical composition of the SSNM, or whenever there is a change in the sampling technique or equipment; and

(3) Generate current data on the performance of measurement processes, including, as appropriate, values for bias corrections, uncertainties on calibration factors, and random error standard deviations. The program must include:

(i) The onging use of standards for calibration and control of all applicable measurement systems. Calibrations must be repeated whenever any change in a measurement system occurs which has the potential to affect a measurement result or when program data, generated by tests performed at a pre-determined frequency, indicate a need for recalibration. Calibrations and tests must be based on standards with traceability to national standards or nationally accepted measurement systems; and

(ii) A system of control measurements to provide current data for the estimation of the standard deviations that are significant contributors to the measurement uncertainties associated with shipper/receiver differences, inventory differences, and process differences.

(4) Utilize the data generated during the current material balance period for the estimation of the standard error of the inventory difference (SEID) and the standard error of the process differences. Calibration and measurement error data collected and used during immediately preceeding material balance periods may be combined with current data provided that the measurement systems are in statistical control and the combined data are utilized in characterizing the unknowns.

(5) Evaluate all program data and information to assure that measurement performance is so controlled that the SEID estimator is less than 0.1 percent of active inventory.

(6) Apply bias corrections by an appropriate procedure whereby:

(i) Bias corrections are applied to individual items if for any measurement system the relative bias estimate exceeds twice the standard deviation of its estimator, the absolute bias estimate exceeds 50 grams of SSNM when applied across all affected items, and the absolute bias estimate on an individual item basis exceeds the rounding error of affected items; and

(ii) All biases (regardless of significance) that are not applied as corrections to individual items are applied as a correction to the inventory difference.

(7) Investigate and take corrective action, as appropriate, to identify and reduce associated measurement biases when, for like material types (i.e., measured by the same measurement system), the net cumulative shipper/receiver differences accumulated over a six-month period exceed the larger of one formula kilogram or 0.1 percent of the total amount received.

(8) Establish and maintain a statistical control system designed to monitor the quality of each type of program measurement. Control limits must be established to be equivalent to levels of significance of 0.05 and 0.001. Control data exceeding the 0.05 limits must be investigated and corrective action taken in a timely manner. Whenever a single data point exceeds the 0.001 control limit, the measurement system in question must not be used for material control and accounting purposes until it has been brought into control at the 0.05 level.

(f) *Physical inventory.* The licensee shall:

(1) Except as required by Part 75 of this Chapter, perform a physical inventory at least every six calendar months and within 45 days after the start of the ending inventory:

(i) Calculate the inventory difference, estimate the standard error of the inventory difference, and investigate and report any SEID estimate of 0.1 percent or more of active inventory and any ID that exceeds three times the standard error and 200 grams of plutonium or uranium-233 or 300 grams of uranium-235;

(ii) If required to perform an investigation pursuant to paragraph (f)(1)(i) of this section, evaluate the significance of the inventory difference relative to expected performance as determined from an analysis of an appropriate sequence of historical inventory differences;

(iii) Investigate and report to the appropriate NRC Region Office any difference that exceeds three times the standard deviation determined from the sequential analysis;

(iv) Perform a reinventory if directed to do so by the Commission; and

(v) Reconcile and adjust the plant and subsidiary book records to the results of the physical inventory.

(2) Implement policies, practices, and procedures designed to ensure the quality of physical inventories. These must include:

(i) Development of procedures for tamper-safing of containers or vaults containing SSNM not in process that include adequate controls to assure the validity of assigned SSNM values;

(ii) Maintenance of records of the quantities of SSNM added to and removed from process;

(iii) Requirements for signed documentation of all SSNM transfers between areas with different custodial responsibility that reflect all quantities of SSNM transferred;

(iv) Means for control of and accounting for internal transfer documents;

(v) Cutoff procedures for transfers and processing so that all quantities of SSNM are inventoried and none are inventoried more than once;

(vi) Cutoff procedures for records and reports so that all transfers for the inventory and material balance interval and no others are included in the records;

(vii) Inventory procedures for sealed sources and containers or vaults containing SSNM that assure reliable identification and quantification of contained SSNM;

(viii) Inventory procedures for in-process SSNM that provide for measurement of quantities not previously measured for element and isotope, as appropriate, and remeasurement of material previously measured but whose validity has not been assured by tamper-safing or equivalent protection; and

(ix) Written instructions for conducting physical inventories that

detail assignments, responsibilities, and preparation for and performance of an inventory.

(g) *Accounting.* The licensee shall establish auditable records sufficient to demonstrate that the requirements of §§ 74.53, 74.55, 74.57, and 74.59 have been met and retain those records for at least three years unless a longer retention period is required by Part 75 of this Chapter.

(h) *Internal control.* The licensee shall:

(1) Establish procedures for shipping and receiving SSNM that provide for:

(i) Accurate identification and measurement of the quantities shipped and received;

(ii) Review and evaluation of shipper/receiver differences on an individual container or lot basis, as appropriate, on a shipment basis, and on a batch basis when required by Part 75 of this Chapter;

(iii) Investigation and corrective action when shipper/receiver differences exceed twice the estimated standard deviation of the difference estimator and the larger of 0.5 percent of the amount of SSNM in the container, lot, or shipment, as appropriate, or 50 grams of SSNM; and

(iv) Documentation of shipper/receiver difference evaluations, investigations, and corrective actions.

(2) Establish a scrap control program that assures that:

(i) Internally generated scrap and scrap from other licensees or contractors is segregated until accountability is established; and

(ii) Any scrap measured with a standard deviation greater than five percent of the measured amount is recovered so that the results are segregated by inventory period and received within six months of the end of the inventory period in which the scrap was generated except where it can be demonstrated that the scrap measurement uncertainty will not cause noncompliance with § 74.59(e)(5).

(3) Incorporate checks and balances in the MC&A system sufficient to control the rate of human errors in material control and accounting information.

(4) Perform independent assessments at least every 12 months that assess the performance of the MC&A system, review its effectiveness, and document management's action on prior assessment recommendations. Assessments must include an evaluation of the measurement control program of any outside contractor laboratory performing MC&A measurements for a licensee, unless the contractor is also subject to the requirements of § 74.59(e).

(5) Assign custodial responsibility in a manner that ensures that such responsibility can be effectively executed for all SSNM possessed under license.

Dated at Washington, DC, this 20th day of March, 1987.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

[FR Doc. 87-6945 Filed 3-27-87; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 86-NM-07-AD; Amdt. 39-5592]**

## Airworthiness Directives; Lockheed-Georgia Company Model 1329 Series Airplanes (JetStar), Equipped With Auxiliary Power Unit (APU) in Accordance With STC SA1043WE or STC SA3297WE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model 1329 series airplanes equipped with an Auxiliary Power Unit (APU) in accordance with STC SA1043WE or STC SA3297WE, which requires the replacement of the APU fuel supply shutoff valve with a modified valve. This amendment is prompted by reports of several incidents of fuel fumes entering the passenger compartment through the APU air inlet and air conditioning system from APU fuel control leaks in the APU compartment. This condition, if not corrected, could result in fuel fumes entering the passenger compartment.

**EFFECTIVE DATE:** May 1, 1987.

**ADDRESSES:** The applicable service information may be obtained from AiResearch Aviation Company, Customer Support Department, 6201 West Imperial Highway, Los Angeles, California 90045 or Lockheed-Georgia Company, 86 South Cobb Drive, JetStar Customer Support, Dept. 64-26, Zone 668, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires inspection and modification of certain Lockheed Model 1329 series airplanes in accordance with the Accomplishment Instructions of AiResearch Aviation Company Service Bulletin (S/B) No. 11.37, dated December 19, 1984, or later approved revisions, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on February 28, 1986 (51 FR 7078). The comment period for the proposal closed on April 22, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer submitted the only comments. The FAA concurs with several suggested editorial changes, including the change of address for obtaining documents from Lockheed-Georgia, and the final rule has been revised accordingly.

The manufacturer suggested that the AD should be expanded to include other STC's and other aircraft which may also be affected by this same problem. The FAA does not concur. After further investigation, the FAA has determined that the other STC's and aircraft suggested by the manufacturer are not affected.

The manufacturer also questioned the need for the inclusion of paragraph B. of the AD, as the APU is ground-operable equipment only and it does not affect the airworthiness of the airplane. The FAA notes that Paragraph B. is included to provide for the issuance of special flight permits in those cases where it is necessary to operate an aircraft to a maintenance base for accomplishment of requirements of the AD following the expiration of the compliance period specified in the AD; without this authority, unless the APU installation is deactivated, the aircraft could not be so operated legally. The FAA has determined, therefore, that inclusion of this paragraph in the AD is appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the editorial changes previously noted.

It is estimated that 77 airplanes of U.S. registry will be affected by this AD, that

it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $726 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $68,222.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($886.). A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Lockheed-Georgia Company:** Applies to Lockheed JetStar Model 1329 and JetStar Model 1329–25 series airplanes, equipped with an AiResearch Aviation Company Model GTCP 30–92 Auxiliary Power Unit (APU) in accordance with STC SA1043WE or STC SA3297WE, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for fuel fumes entering the passenger compartment, accomplish the following:

A. Within the next 600 hours time-in-service or 12 months after the effective date of this AD, whichever occurs earlier:

1. Install an improved APU fuel supply shutoff valve, Valcor P/N V4700–130, in accordance with AiResearch Aviation Company Service Bulletin No. 11.37, dated December 19, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

2. Visually inspect the sealing joint of the fuel control governor cover for fuel leaks, seal (O-ring) extrusion, and cover distortion, and replace, if necessary, prior to further flight, in accordance with the AiResearch Aviation Company Service Bulletin mentioned above.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Lockheed-Georgia Company, 86 South Cobb Drive, JetStar Customer Support, Dept. 64–26, Zone 668, Marietta, Georgia, 30063; or AiResearch Aviation Company, Customer Support Department, 6201 West Imperial Highway, Los Angeles California 90045. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective May 1, 1987.

Issued in Seattle, Washington, on March 19, 1987.

**Wayne J. Barlow,**

*Director, Northwest Mountain Region.*

[FR Doc. 87–6917 Filed 3–27–87: 8:45 am]

BILLING CODE 4910–13–M

---

**14 CFR Part 71**

**[Airspace Docket No. 87–ANM–2]**

## Alteration of Control Zone, Portland, OR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This action amends the present description of the Portland, Oregon, Control Zone. Due to a change to the Troutdale, Oregon, (Portland-Troutdale Airport) Control Zone description, action is necessary to redescribe the Portland Control Zone which abuts the Troutdale Control Zone. This action will not increase the size of the present control zone.

**DATES:** Effective 0901 UTC, June 4, 1987. Comments must be received on or before May 15, 1987.

**ADDRESSES:** Send comments on the rule to: Robert L. Brown, ANM–534, Federal Aviation Administration, Docket No. 87–ANM–2, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2534.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brown, ANM–534, Federal Aviation Administration, Docket No. 87–ANM–2, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2534.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments on the Rule**

Although this action is in the form of a final rule, which involves the redescription of the Portland, Oregon, Control Zone which abuts the Troutdale, Oregon, Control Zone and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

**The Rule**

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to redescribe the Portland, Oregon, Control Zone which was made necessary due to a change to the Troutdale, Oregon, Control Zone description. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the Portland, Oregon, Control Zone. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is

not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Portland, Oregon, Control Zone [Amended]**

Delete the word, ". . . excluding the portion within the Troutdale, Oregon, Control Zone when it is effective."

Issued in Seattle, Washington, on March 18, 1987.

**Temple H. Johnson, Jr.,**

*Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 87–6918 Filed 3–27–87; 8:45 am]

BILLING CODE 4910–13–M

---

**14 CFR Part 97**

**[Docket No. 25215; Amdt. No. 1343]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

*Incorporation by reference:* Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on March 20, 1987

**John S. Kern,**

*Director of Flight Standards.*

**Adoption of the Amendment**

**PART 14—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31, RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

**. . . Effective June 4, 1987**

Taylorville, IL—Taylorville Muni, NDB RWY 18, Amdt. 2
Sikeston, MO—Sikeston Meml Muni, VOR RWY 20, Amdt. 2
Sikeston, MO—Sikeston Meml Muni, NDB RWY 20, Amdt. 7
Utica, NY—Oneida County, ILS RWY 33, Amdt. 1
Hamilton, OH—Hamilton-Fairfield, NDB-A, Orig
Youngstown, OH—Youngstown Muni, VOR RWY 19, Amdt. 17
Youngstown, OH—Youngstown Muni, NDB RWY 32, Amdt. 17
Youngstown, OH—Youngstown Muni, ILS RWY 14, Amdt. 4
Youngstown, OH—Youngstown Muni, ILS RWY 32, Amdt. 23
Youngstown, OH—Youngstown Muni, RADAR-1, Amdt. 10
Janesville, WI—Rock County, VOR RWY 4, Amdt. 25
Janesville, WI—Rock County, VOR/DME or TACAN RWY 22, Amdt. 3
Janesville, WI—Rock County, ILS RWY 4, Amdt. 10

**. . . Effective May 7, 1987**

Pell City, AL—St Clair County, VOR-A, Amdt. 7
Madera, CA—Madera Muni, VOR RWY 30, Amdt. 6
Marathon, FL—Marathon, NDB RWY 7, Amdt. 1
New Smyrna Beach, FL—New Smyrna Beach Muni, NDB RWY 29, Orig
Pensacola, FL—Pensacola Regional, RADAR-1, Amdt. 3
St. Petersburg-Clearwater, FL—St. Petersburg-Clearwater Intl, VOR RWY 17L, Amdt. 11
St. Petersburg-Clearwater, FL—St. Petersburg-Clearwater Intl, LOC BC RWY 35R, Amdt. 14
St. Petersburg-Clearwater, FL—St. Petersburg-Clearwater Intl, NDB RWY 17L, Amdt. 20
St. Petersburg-Clearwater, FL—St. Petersburg-Clearwater Intl, ILS RWY 17L, Amdt. 19
Cairo, GA—Cairo-Grady County, NDB RWY 12, Amdt. 3
Thomasville, GA—Thomasville Muni, VOR RWY 22, Amdt. 11, Cancelled
Welsh, LA—Welsh, VOR/DME RWY 6, Amdt. 3
Bedford, MA—Laurence G. Hanscom Fld, NDB RWY 29, Amdt. 4
Pascagoula, MS—Jackson County, VOR RWY 18, Amdt. 9
Pascagoula, MS—Jackson County, NDB-A, Amdt. 1
Pascagoula, MS—Jackson County, RNAV RWY 13, Amdt. 3
St. Louis, MO—Lambert/St Louis Intl, ILS RWY 30R, Amdt. 4
Matawan, NJ—Marlboro, VOR-A, Amdt. 1
Matawan, NJ—Marlboro, RNAV RWY 9, Amdt. 1
Old Bridge, NJ—Old Bridge, VOR RWY 24, Amdt. 3
Truth or Consequences, NM—Truth or Consequences Muni, VOR-A, Amdt. 9
Lumberton, NC—Lumberton Muni, VOR RWY 13, Amdt. 7
Waxhaw, NC—Jaars-Townsend, VOR/DME-A, Amdt. 3
Wilkesboro, NC—Wilkes County, NDB RWY 24, Amdt. 6
Tulsa, OK—Tulsa Intl, RNAV RWY 17L, Amdt. 3, Cancelled
Tulsa, OK—Tulsa Intl, RNAV RWY 35R, Amdt. 2, Cancelled
Altoona, PA—Altoona-Blair County, VOR-A, Amdt. 3
Altoona, PA—Altoona-Blair County, ILS RWY 20, Amdt. 4
Greenville, SC—Greenville Downtown, ILS RWY 36, Amdt. 27
North Myrtle Beach, SC—Grand Strand, ILS RWY 23, Amdt. 8
Knoxville, TN—Knoxville Downtown Island, VOR/DME-B, Amdt. 3
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 4, Amdt. 1
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 17R, Amdt. 1
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 22, Amdt. 1
Houston, TX—Ellington Field, VOR/DME or TACAN RWY 35L, Amdt. 1
Houston, TX—Ellington Field, ILS RWY 17R, Amdt. 1
Houston, TX—Ellington Field, ILS RWY 35L, Amdt. 1
Port Isabel, TX—Port Isabel-Cameron County, VOR-A, Amdt. 4
Port Isabel, TX—Port Isabel-Cameron County, VOR/DME-B, Amdt. 1
Walla Walla, WA—Walla Walla City County, VOR RWY 2, Amdt. 10
Walla Walla, WA—Walla Walla City County, VOR RWY 16, Amdt. 11
Walla Walla, WA—Walla Walla City County, NDB RWY 20, Amdt. 5
Walla Walla, WA—Walla Walla City County, ILS RWY 20, Amdt. 5

**. . . Effective April 9, 1987**

Jefferson City, MO—Jefferson City Meml, VOR RWY 12, Amdt. 13, Cancelled
Jefferson City, MO—Jefferson City Meml, VOR RWY 30, Amdt. 10, Cancelled
Jefferson City, MO—Jefferson City Meml, LOC RWY 30, Amdt. 5
Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, NDB-A, Amdt. 15
Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, ILS RWY 4, Admt. 32
Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, RADAR-1, Admt. 11

**. . . Effective March 13, 1987**

Clarksburg, WV—Benedum, ILS RWY 21, Amdt. 11

**. . . Effective March 12, 1987**

Providence, RI—Theodore-Francis Green State, ILS RWY 5R, Amdt. 12

The FAA published an Amendment in Docket No. 25203, Amdt. No. 1342 to Part 97 of the Federal Aviation Regulations (VOL 52 FR No. 51 Page 8245; dated Tuesday, March 17, 1987) under Part 97 Effective 7 May 87 which is hereby amended as follows:

Honolulu, HI—Honolulu Intl, VOR or TACAN-A, Amdt. 1, Eff 7 MAY 87 *should read*
Honolulu, HI—Honolulu Intl, VOR or TACAN-A, Amdt. 1, Eff 9 APR 87
Honolulu, HI—Honolulu Intl, VOR/DME or TACAN-B, Amdt. 1, Eff 7 MAY 87 *should read*
Honolulu, HI—Honolulu Intl, VOR/DME or TACAN-B, Amdt. 1, Eff 9 APR 87
Honolulu, HI—Honolulu Intl, LDA/DME RWY 26L, Amdt. 5, Eff 7 MAY 87 *should read*
Honolulu, HI—Honolulu Intl, LDA/DME RWY 26L, Amdt. 5, Eff 9 APR 87
Honolulu, HI—Honolulu Intl, NDB RWY 8L, Amdt. 19, Eff 7 MAY 87 *should read*
Honolulu, HI—Honolulu Intl, NDB RWY 8L, Amdt. 19, Eff 9 APR 87
Honolulu, HI—Honolulu Intl, ILS RWY 4R, Amdt. 11, Eff 7 MAY 87 *should read*
Honolulu, HI—Honolulu Intl, ILS RWY 4R, Amdt. 11, Eff 9 APR 87
Honolulu, HI—Honolulu Intl, ILS RWY 8L, Amdt. 21, Eff 7 MAY 87 *should read*
Honolulu, HI, Honolulu Intl, ILS RWY 8L, Amdt. 21, Eff 9 APR 87

§ 97.25 [Amended]

The FAA published an Amendment in Docket No. 25203, Amdt. No. 1342 to Part 97 of the Federal Aviation Regulations (VOL 52 FR No. 51 Page 8245; dated Tuesday, March 17, 1987) under § 97.25 Effective 7 May 87 which is hereby amended as follows:

St. Mary's, AK—St. Mary's, LOC/DME RWY 16 Amdt. 1, Eff 7 MAY 87 *should read*
St. Mary's, AK, St. Mary's, LOC/DME RWY 16 Amdt. 1, Eff 24 FEB 87

[FR Doc. 87-6919 Filed 3-27-87; 8:45 am]
BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 6 and 178

[T.D. 87-42]

### Overflight Exemptions for Private Aircraft

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document sets forth interim amendments to the Customs Regulations that modify the overflight exemption program for private aircraft. If exempted, private aircraft arriving in the U.S. from foreign countries in the Eastern Hemisphere south of the U.S. may overfly a Customs designated airport along the southern U.S. border and proceed to another, typically more interior, airport where Customs inspectional services are available. The regulations provide for the continuation of overflight exemptions but with more stringent application procedures. Also, new restrictions on the actual conduct of overflights such as equipment necessary on the aircraft and minimum flying altitudes will enhance narcotic enforcement efforts by aiding in radar tracking of aircraft using overflight exemptions.

This action is being taken as part of Customs continuing efforts to interdict narcotic smuggling in the southern portion of the U.S. The principal mode of transportation used to smuggle cocaine and cocaine products into the U.S. is general aviation aircraft and the principal source of such products is South America. These regulations will close a loophole in interdiction efforts concerning a large volume of air traffic traveling from the direction of narcotic source countries. Aircraft that are allowed to bypass Customs inspection at or very near the U.S. border can be used by smugglers for illegal activities between the border and more interior inspectional sites. These regulations will simplify the tracking of aircraft, reduce the possibility of air drops or "touch and go" smuggling by aircraft with overflight exemptions, and allow the reallocation of resources now spent on processing overflight exemptions into active drug interdiction efforts.

**DATES:** Effective March 30, 1987. Written comments must be received on or before May 29, 1987.

**ADDRESS:** Written comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Dennis Benjamin, Office of Passenger Enforcement and Facilitation (202-566-5608).

**SUPPLEMENTARY INFORMATION:**

#### Background

As part of Customs effort to combat the problem of drug smuggling by air, in 1975 the Customs Regulations were amended to add a new § 6.14 (19 CFR 6.14), that provides in part that private aircraft arriving in the U.S. via the U.S.-Mexican border must provide a notice of intended arrival with Customs (T.D. 75-201, 40 FR 33203). The section further provides that these private aircraft must land at any one of the designated airports near the U.S.-Mexican border. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

In our diligence to fight the national epidemic of illegal drugs, Customs has amended § 6.14, Customs Regulations, several times since 1975. Amendments have included extending coverage to private aircraft arriving via the Pacific, Gulf of Mexico, or Atlantic coasts (T.D. 83-192; 48 FR 41381); expanding coverage by modifying the definition of private aircraft (T.D. 84-236; 49 FR 46885); and extending the coverage to include some flights arriving from Puerto Rico and all flights arriving from the U.S. Virgin Islands, increasing from 15 minutes to one hour the minimum time required for notice to be given prior to penetrating U.S. air space, and requiring aircraft seeking exemption from landing requirements to be equipped with functioning transponders (T.D. 86-72; 51 FR 11004).

Most recently Customs amended § 6.14(g) by removing San Diego International Airport (Lindbergh Field) from the list of designated airports. Customs discovered that smugglers were taking advantage of Lindbergh Field's location 15 miles from the U.S.-Mexican border to engage in smuggling after crossing the border, but before reporting for inspection at Lindbergh Field. (T.D. 86-146; 51 FR 27836).

Customs now finds it necessary to amend § 6.14(f), concerning exemptions from the landing requirements. These exemptions, called overflight exemptions, allow private aircraft arriving in the U.S. from foreign countries in the Western Hemisphere south of the U.S., to overfly a Customs-designated airport along the southern border and proceed to another, typically more interior, airport where Customs inspectional services are available.

Customs is of the opinion that the existing overflight exemption program constitutes an unnecessary loophole in our drug interdiction efforts. The principal source of cocaine and cocaine products is South America, and the principal mode of transportation used to smuggle such contraband into the U.S. is general aviation aircraft. By enhancing the overflight exemption program, Customs will achieve the tight control over air traffic coming from the direction of major drug source countries that is necessary to effectively combat the epidemic of illegal drugs afflicting the U.S. When aircraft are allowed to bypass Customs inspection at or very near the border, smugglers have excessive opportunity to engage in illegal activities between the border and more interior inspectional sites.

Smugglers can take advantage of an overflight exemption and engage in "touch and go" or air drop smuggling of illegal drugs and contraband. "Touch and go" smuggling involves aircraft crossing the U.S. border and landing and quickly unloading illegal drugs or contraband before flying to the airport at which they will report for inspection. Air drop smuggling involves flying very low over some point between the border and the airport at which they will report for inspection, pushing illegal drugs or contraband out of the aircraft to be retrieved on the ground, and continuing on to the airport.

#### Modified Procedure

The application procedure for overflight exemptions is being modified to allow only U.S. based companies or individuals to apply. This is necessary because Customs must thoroughly investigate the background of all applicants and only has access to such detailed information on those that are U.S. based. Also, individual applications

from each pilot or crewmember intended to participate in an overflight must accompany the general overflight application. To enhance enforcement efforts, applications will only be considered from applicants flying aircraft equipped with mode C transponders that will be able to conduct overflights at a minimum altitude of 12,500 feet mean sea level. This will enable accurate radar identification and tracking of overflight aircraft.

The modification of the overflight exemption program will benefit Customs in four principal ways. (1) Tracking of general aviation aircraft will be simplified. With a reduction in the number of overflight exemptions, at least 92 percent of the general aviation aircraft arriving from a foreign country crossing the southern border will have to make an initial landing for inspection at the designated airports before proceeding to their designation. (2) Parties holding an overflight exemption would no longer have a potential advantage in smuggling through the use of their overflight exemptions to air-drop illegal drugs and contraband or to "touch and go" before reporting for Customs inspection. (3) Customs would be able to concentrate its specialized aircraft inspection resources at the designated airports. (4) Customs would save a considerable number of manhours per year now spent processing overflight exemption applications since the modified overflight program will result in fewer applications. The time saved by Customs officers in not processing applications could be re-deployed to interdict narcotics smugglers.

Customs is aware of the inconvenience that these modifications will cause affected parties. However, we are of the opinion that the increasing use of general aviation aircraft to smuggle narcotics into the U.S. warrants the scope and immediacy of our actions. Accordingly, commencing on the effective date of these interim regulations, all applications will be judged by the criteria set forth in this document.

**Comments**

Before adopting the interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

**Inapplicability of Notice and Delayed Effective Date Requirements**

The severity of the drug problem in the U.S. is well documented. Customs is always looking for weak links in our drug interdiction efforts and when found, seeks to correct them as expeditiously as possible. The overflight exemption program is providing a loophole in our enforcement efforts that could be allowing illegal drugs and contraband to enter the U.S. Therefore, Customs has determined that it would be contrary to the public interest to unnecessarily delay the modifications to the overflight exemption program contained in the interim regulations. Accordingly, it has been determined that pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are contrary to the public interest. For the same reasons, a delayed effective date is being dispensed with in accordance with 5 U.S.C. 553(d)(3).

**Executive Order 12291**

This is not a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

**Regulatory Flexibility Act**

Under the provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The reporting requirements in these interim regulations are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Accordingly, the document has been submitted to and approved by the Office of Management and Budget and assigned control number 1515–0153.

**List of Subjects**

*19 CFR Part 6*

Customs duties and inspection, Imports, Air Carriers, Aircraft, Airports.

*19 CFR Part 178*

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

**Amendments to the Regulations**

Parts 6 and 178, Customs Regulations (19 CFR Parts 6, 178), are amended as set forth below:

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 et seq.

**§ 178.2 [Amended]**

2. Section 178.2 is amended by inserting ", 1515–0153", under the column headed "OMB Control No.", following the number "1515–0098", opposite the listing for § 6.14.

## PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624; 49 U.S.C. 1474, 1509.

2. Section 6.14(f) is revised to read as follows:

**§ 6.14 Private aircraft arriving from areas south of the U.S.**

* * * * *

(f) *Exemptions from the landing requirement.* (1) Companies principally headquartered in the U.S. or individuals principally residing in the U.S. that have operational control over U.S. registered aircraft required to furnish a notice of intended arrival in compliance with paragraphs (a), (b), or (c) of this section may request an exemption from the landing requirement specified in paragraph (d) of this section. Approval of the request and granting of authority to be exempted from the landing requirement specified in paragraph (d) are at the discretion of the district director. The request shall be submitted to the district director in charge of the airport at which the majority of Customs processing of overflights is desired by the applicant. Requests shall be submitted to the appropriate district director at least 30 days before the anticipated first arrival if the request is for an exemption covering a number of flights over a period of 1 year, or at least 15 days before the anticipated arrival if the request is for a single flight. The request must be signed by an officer of the company or by the individual, be witnessed by a notary public or Customs officer, and include the following information (Note—Where the Social Security number is requested, furnishing of the SSN is voluntary. The authority to collect the SSN is 19 U.S.C. 66 and 1624. The primary purpose for requesting the SSN is to assist in ascertaining the identity of the individual so as to assure that only law

abiding persons will be granted permission to land at interior airports in the U.S. without first landing at one of the airports designated in § 6.14(g). The SSN will be made available to Customs personnel on a need to know basis. Failure to provide the SSN may result in a delay in processing of the application):

(i) Aircraft U.S. registration number(s) and manufacturer's serial number(s) for all aircraft owned or operated by the applicant that will be utilizing the overflight exemption;

(ii) Identification information for each aircraft including class, manufacturer, type, number, color scheme, and type of engine (e.g., turbojet, turbofan, turboprop, reciprocating, helicopter, etc.);

(iii) A statement that the aircraft is equipped with a functioning mode C (altitude reporting) transponder which will be in use during overflight, that the overflights will be made in accord with instrument flight rules (IFR), and that the overflights will be made at altitudes at or above 12,500 feet mean sea level (unless otherwise instructed by Federal Aviation Administration controllers);

(iv) Name and address of the applicant operating the aircraft (if the applicant is a business entity, the address of the headquarters of the business [include state of incorporation if applicable], and the names, addresses, Social Security numbers, and dates of birth of the officers of the business); name, address, Social Security number, and date of birth of the company officer or individual signing the application. If the aircraft is operated under a lease, the name, address, Social Security number, and date of birth of the owner if an individual, or the address of the headquarters of the business [include state of incorporation if applicable], and the names, addresses, Social Security numbers, and dates of birth of the officers of the business;

(v) Individual, signed applications from each usual or anticipated pilot or crewmember for all aircraft for which an overflight exemption is sought stating name, address, Social Security number, Federal Aviation Administration certificate number, and place and date of birth;

(vi) A statement from the individual signing the application as specified in paragraph (f)(1)(iv) of this section that the pilot(s) and crewmember(s) responding to paragraph (f)(1)(v) of this section are those intended to conduct overflights, and that to the best of the individual's knowledge, the information supplied in response to paragraph (f)(1)(v) of this section is accurate;

(vii) Names, addresses, Social Security numbers, and dates of birth for all usual or anticipated passengers (An approved passenger must be on board to utilize the overflight exemption);

(viii) Description of the usual or anticipated baggage or cargo;

(ix) Description of the applicant's usual business activity;

(x) Name(s) of the airport(s) of intended first landing in the U.S. Actual overflights will only be permitted to specific approved airports. (See paragraph (f)(4)(iv) of this section);

(xi) Foreign place or places from which flight(s) will usually originate; and

(xii) Reasons for request for overflight exemption.

(2) If a private aircraft is granted an exemption from the landing requirement specified in paragraph (d) of this section, the aircraft must furnish notice to Customs in accordance with paragraph (d) of this section at least 60 minutes before:

(i) Crossing into the U.S. over a point on the Pacific Coast north of 33 degrees north latitude; or

(ii) Crossing into the U.S. over a point of the Gulf of Mexico or Atlantic Coasts north of 30 degrees north latitude; or

(iii) Crossing into the U.S. over the Southwestern land border (defined as between Brownsville, Texas, and San Diego, California). Southwestern land border crossings must be made while flying in Federal Aviation Administration published airways.

(iv) The notice shall be given to a designated airport specified in paragraph (g) of this section. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to paragraphs (a) and (b) of this section is unnecessary.

(3) All overflights must be conducted pursuant to an instrument flight plan filed with the Federal Aviation Administration prior to the commencement of the overflight.

(4) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirement must:

(i) Notify Customs of a change of Federal Aviation Administration registration number for the aircraft;

(ii) Notify Customs of the sale, theft, modification, or destruction of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers as specified in paragraph (f)(1)(v) of this section. Every pilot and crewmember participating in an overflight must have prior Customs approval either through initial application and approval, or through a supplemental application submitted by the new pilot or crewmember and approved by Customs before commencement of the pilot's or crewmember's first overflight.

(iv) Request permission from Customs to conduct an overflight to an airport not listed in the initial overflight application as specified in paragraph (f)(1)(x) of this section. The request must be directed to the district director who approved the initial request for an overflight exemption.

(v) Retain copies of the initial request for an overflight exemption, all supplemental applications from pilots or crewmembers, and all requests for additional landing privileges, as well as a copy of the letter from Customs of approval for each of these requests. The copies must be carried on board any aircraft during the conduct of an overflight.

(vi) The notifications specified in this paragraph must be given to Customs within 5-working days of the change, sale, theft, modification, or destruction, or before a flight for which there is an exemption, whichever occurs earlier.

(5) Applicants for overflight exemptions must agree to make the subject aircraft available for inspection by Customs to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of overflight. Inspections may be conducted during the review of an initial application or at any time during the term of an overflight exemption.

### Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**William von Raab,**

*Commissioner of Customs.*

Approved: March 12, 1987.

**Francis A. Keating II,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87-7007 Filed 3-27-87; 8:45 am]

BILLING CODE 4820-02-M

---

## Internal Revenue Service

## 26 CFR Part 1

[T.D. 8132]

## Income Tax; Safe Harbor for Certain Installments of Corporate Estimated Tax Due Before July 1, 1987

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations providing a safe harbor for certain installments of corporate estimated tax due before July 1, 1987. The temporary regulations permit a corporation to compute its installment payment or payments due before that date by reference to its taxable income for the preceding year if a subsequent installment payment brings the corporation's aggregate payments for the year up to a specified minimum amount. The regulations assist corporations in complying with the law despite the uncertainty arising from the recent enactment of the Tax Reform Act of 1986 and the Superfund Amendments and Reauthorization Act of 1986.

**EFFECTIVE DATE:** March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Cynthia E. Grigsby of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–343–0232, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

## Background

The Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085), enacted October 22, 1986, and the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, 100 Stat. 1760), enacted October 17, 1986, made changes to the Internal Revenue Code that substantially affect the determination of corporate tax liability. For example, the Tax Reform Act substantially revised Code Section 55 and added new section 263A, relating to capitalization and inclusion in inventory costs of certain expenses. The Tax Reform Act requires corporations to take the alternative minimum tax under section 55 into account in computing their estimated tax payments. The Superfund Amendments and Reauthorization Act added new Code section 59A, relating to environmental tax. That Act requires corporations to take the tax under section 59A into account in computing their estimated tax payments. Sections 55 and 59A are generally effective for taxable years beginning after December 31, 1986. Section 263A generally applies to costs incurred after December 31, 1986, in taxable years ending after that date, except that, in the case of inventory property, section 263A applies to costs incured in taxable years beginning after December 31, 1986.

Because of the substantial number of changes to the Code, corporations may be uncertain about the proper tax treatment of numerous items that they must take into account in determining their estimated tax liability for estimated tax payments due before July 1, 1987. As a result, many corporations are concerned about possible penalties under section 6655 for failure to make adequate installment payments of estimated tax ("the underpayment penalty"). Although some corporations can avoid underpayment penalties by computing their estimates tax liability on the basis of their tax or their income for the preceding year, these special rules are not available to a "large corporation," that is, a corporation with $1,000,000 or more of taxable income in any of its last three taxable years. For many "large corporations," the only practical method of computing installment payments of estimated tax that precludes an underpayment penalty is the "annualization" method.Under the "annualization" method a corporation projects its taxable income for the entire year on the basis of its taxable income for the annualization period. However, because of the substantial changes to the Code many corporations may find it difficult to compute in a timely manner their taxable income for the annualization periods in the first part of the year.

Because of the circumstances described above, the Commissioner of Internal Revenue has determined that proper administration of the tax law requires that corporations using the annualization exception be provided with a special "safe harbor" for the computation of installment payments of corporate estimated tax due before July 1, 1987.

## Explanation of Provisions

The temporary regulations provide a safe harbor for certain installment payments of corporate estimated tax due before July 1, 1987. The safe harbor is computer by reference to the regular tax to which the corporation is subject, but the safe harbor payment is treated as including any alternative minimum tax or environmental tax that the corporation is required to include in its estimated tax payments. The safe harbor is available only with respect to installment payments for taxable years beginning after December 31, 1986.

Under the safe harbor provided in the temporary regulations, a corporation using the "annualization" exception provided in section 6655(d)(3) may compute any installment payment of estimated tax due before July 1, 1987, by assuming that its annualized taxable income for the current year equals or exceeds 120 percent of the taxable income shown on its return for the preceding year (adjusted to eliminate any net operating loss deduction). The foreign tax credit for purposes of computing the amount of the safe harbor installment payment is determined on the basis of the foreign tax credit allowed on the return for the proceding year (adjusted for the reduction in tax rates for taxable years beginning after December 31, 1986, and other changes in the foreign tax credit provisions).

The safe harbor refers to the taxable income shown on the return for the preceding year. A corporation that has obtained an extension of time to file its return for the preceding year may be required to make one or two installment payments of estimate tax for the current year before it files that return. However, a corporation must estimate its taxable income to determine the tentative tax that it must show on Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return. Thus, although the corporation may not yet have filed a return, it will have the information that it needs for purposes of the safe harbor.

A corporation may use the safe harbor only if it makes a timely subsequent installment payment of estimated taxes that, when added to the earlier installment payment or payments, equals or exceeds the lesser of (i) 45 percent of the tax shown on its return for the year (67.5 percent, if the subsequent installment is the third installment payment for the year) or (ii) the amount required to satisfy the annualization exception of section 6655(d)(3) (computed without regard to the safe harbor). For purposes of the temporary regulations, the subsequent installment payment is the first installment payment of estimated tax that is not computed under the safe harbor. For example, if a calendar year corporation uses the safe harbor for the first installment payment due April 15, 1987, and does not use the safe harbor for its second installment payment due June 15, 1987, the corporation's second installment payment is required to equal or exceed:

(i) An amount equal to 45% of the tax shown on its return for the year, or

(ii) An amount sufficient to avoid an underpayment penalty under section 6655(d)(3) (applied without regard to the safe harbor).

If a calendar year corporation uses the safe harbor for both the first and second installment payments, the corporation's third installment payment due September 15, 1987, is required to equal or exceed:

(i) An amount equal to 67.5% of the tax shown on its return for the year, or

(ii) An amount sufficient to avoid an underpayment penalty under section 6655(d)(3) (applied without regard to the safe harbor).

If a corporation fails to make the necessary subsequent installment payment, it may be subject to the underpayment penalty under the usual rules for any earlier installment payment. However, § 1.6655–2T(c)(5) of the temporary regulations includes a limitation on the aggregate amount of penalty that may be assessed on any earlier installment payments. The limitation equals the penalty that would be assessed on the deficiency in the subsequent installment payment if the deficiency were treated as an underpayment of estimated tax.

**Nonapplicability of Executive Order 12291**

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

**Regulatory Flexibility Analysis**

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Drafting Information**

The principal author of these temporary regulations is Paul A. Francis, of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**List of Subjects in 26 CFR 1.6654–1—1.6696–1**

Income taxes, Administration and procedure, Penalties, Additions to tax.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 continues to read in part:

**Authority:** 26 U.S.C. 7805.* * *

**Par. 2.** New § 1.6655–2T is added immediately after § 1.6655–2 to read as follows:

**§ 1.6655–2T Safe harbor for certain installments of tax due before July 1, 1987 (temporary).**

(a) *Applicability*—(1) *Safe harbor.* The safe harbor provided by paragraph (b) of this section applies only to installment payments of corporate estimated tax required to be made before July 1, 1987, for taxable years beginning in 1987.

(2) *Subsequent payment.* The requirement that a corporation using the safe harbor provided by this section make a timely subsequent installment payment in accordance with paragraph (c) of this section applies with respect to the corporation's first installment payment ("the subsequent installment payment") of estimated tax required to be made after the last payment computed under the safe harbor rule.

(3) *Section inapplicable to new corporation.* This section shall not apply in the case of any corporation whose first taxable year began after December 31, 1986.

(b) *Safe harbor for use of annualization exception*—(1) *In general.* A corporation computing an installment payment of estimated tax using the annualization exception provided in section 6655(d)(3) will not be subject to an addition to tax under section 6655 with respect to an installment payment of estimated tax that satisfies the requirements of this paragraph (b), except as provided in paragraph (c) of this section. For purposes of this paragraph (b)—

(i) A corporation shall assume that its annualized taxable income for the current year equals or exceeds 120 percent of the taxable income shown on its return for the preceding taxable year, and

(ii) The term "tax" as used in section 6655(d)(3) shall be defined by reference to section 6655(f) without regard to section 6655(f)(1) (B) and (C) (that is, without regard to the alternative minimum tax imposed by section 55 or the environmental tax imposed by section 59A).

(2) *Special rules for determining taxable income for preceding year.* For purposes of paragraph (b)(1)(i) of this section, the taxable income shown on the return of the corporation for its preceding taxable year shall be—

(i) Adjusted to eliminate any net operating loss deduction taken into account in that preceding year, and

(ii) Annualized, if that preceding year was of less than 12 months.

(3) *Credits taken into account*—(i) *In general.* In computing the amount of an installment payment under paragraph (b)(1) of this section, the corporation may take into account any credits against tax that are permitted to be taken into account under section 6655(d)(3) for the current taxable year.

(ii) *Foreign tax credit.* For purposes of paragraph (b)(3)(i) of this section, the amount of foreign tax credit that is permitted to be taken into account for the current taxable year is equal to the foreign tax credit allowed for the preceding taxable year multiplied by the fraction specified in the following sentence. The numerator of the fraction is the highest tax rate applicable for the taxable year under section 11, as adjusted under section 15, and the denominator is 46 percent. This alternative computation of the foreign tax credit is applicable only for purposes of computing a safe harbor installment payment under paragraph (b) of this section and cannot be applied for other estimated tax purposes.

(4) *Net operating loss carryover.* A corporation that has a net operating loss carryover as of the first day of the taxable year for which the estimated tax is being paid may use that carryover to reduce the annualized taxable income referred to in paragraph (b)(1)(i) of this section. For example, if a corporation with a net operating loss carryover of $3,000 had taxable income of $10,000 in 1986, it may use the carryover to reduce its annualized taxable income to $9,000, (($10,000 × 120%) − 3,000).

(c) *Corporation must bring aggregate payments to required level through timely subsequent installment*—(1) *In general.* A corporation using the safe harbor provided by paragraph (b) of this section shall make a timely subsequent installment payment of estimated tax in an amount sufficient to satisfy the requirements of either paragraph (c)(3) or paragraph (c)(4) of this section.

(2) *Applicable percentage.* For purposes of this paragraph (c), the applicable percentage is—

(i) 45 percent (50 percent × 90 percent), if the subsequent installment payment is the second installment payment for the taxable year, or

(ii) 67.5 percent (75 percent × 90 percent), if the subsequent installment payment is the third installment payment for the taxable year.

(3) *Annualization exception.* The subsequent installment payment of a corporation satisfies the requirements of this paragraph (c)(3) if the amount of the payment is sufficient to satisfy the requirements of section 6655(d)(3) with respect to all applicable taxes specified in section 6655(f). Thus, the corporation must determine its annualized taxable income under section 6655(d)(3)(A) (ii) or (iii), whichever is applicable, and compute the resulting tax. The resulting

tax shall include the alternative minimum tax under section 55 and the environmental tax under section 59A and may take credits into account to the extent permitted under section 6655(d)(3). The sum of this subsequent installment payment and the earlier installment payment or payments of the corporation must equal or exceed the applicable percentage of the tax so computed. In determining whether the corporation has satisfied the requirements of section 6655(d)(3)(A) (ii) or (iii) with respect to the subsequent installment, the safe harbor provided in paragraph (b)(1) of this section shall not apply.

(4) *Installment payments equal to applicable percentage of tax shown on return.* The subsequent installment payment of a corporation satisfies the requirement of this paragraph (c)(4) if the sum of that payment and the earlier installment payment or payments of the corporation equals or exceeds the applicable percentage of the tax shown on the return of the corporation for the taxable year to which the installment payments relate. The tax shown on the return includes all taxes specified in section 6655(f).

(5) *Consequence of corporation's failure to satisfy requirements for subsequent installment*—(i) *In general.* If a corporation fails to satisfy the requirements set out in this paragraph (c), the corporation shall lose the benefit of the safe harbor provided by paragraph (b)(1) of this section.

(ii) *Limit on penalty.* The aggregate underpayment penalty with respect to any installment payment or payments for which a corporation loses the benefit of the safe harbor under paragraph (c)(5)(i) of this section shall be limited to the "shortfall penalty amount." The shortfall penalty amount is the penalty that would be imposed under section 6655(a) if there were an underpayment of the subsequent installment payment equal to the excess of—

(A) The amount required to be paid, as determined under this paragraph (c), on or before the due date of the subsequent installment payment, over

(B) The amount actually paid on or before such date with respect to the subsequent installment payment.

For purposes of this determination, the period of the underpayment shall run from the due date of the subsequent installment payment until the earlier of the dates specified in section 6655(c) (1) or (2).

(iii) *Example.* The provisions of this paragraph (c)(5) may be illustrated by the following example:

*Example.* Corporation M, which uses the calendar year as its taxable year, relies on the safe harbor provided by paragraph (b) of this section for its first two installment payments of estimated tax for 1987. M is required by this paragraph (c) to make a timely subsequent installment payment of $1,000,000 by September 15, 1987, but M's actual installment payment by that date is only $990,000. Because of this shortfall, M loses the benefit of the safe harbor and is subject to underpayment penalties with respect to the first two installments. The aggregate penalties with respect to those two installments, however, cannot exceed the amount of the underpayment penalty to which M would be subject if there were an underpayment of $10,000 with respect to the September 15, 1987, installment payment. Such penalties are independent of any penalty that may apply with respect to M's third installment payment under the normal rules of section 6655.

(d) *Example.* The provisions of this section may be illustrated by the following example:

*Example.* (i) Corporation X (which is not a life insurance company) uses as its taxable year a fiscal year ending on January 31 and is required to pay an installment of estimated income tax by May 15, 1987, for its taxable year beginning on February 1, 1987. On its return for the taxable year ending January 31, 1987, which was a year of 12 months, X reported taxable income of $10,000,000 ($9,000,000 of which was ordinary income and $1,000,000 of which was net capital gain) and did not claim any net operating loss deduction. As of February 1, 1987, X has no net operating loss carryforwards and no credit carryforwards. X has no credits against tax that are permitted to be taken into account under section 6655(d)(3) for 1987. If X uses the safe harbor provided in paragraph (b)(1) of this section, X must make by May 15, 1987, an installment payment of estimated tax of at least $1,037,836, computed as follows:

| | |
|---|---|
| (1) Taxable income shown on return for taxable year ending on January 31, 1987 | $10,000,000 |
| (2) Annualized taxable income for taxable year ending January 31, 1988, determined pursuant to paragraph (b)(1) of this section (Item (1)x120%) | $12,000,000 |
| (Note: 120%xordinary income of $9,000,000=$10,800,000; 120%xnet capital gain of $1,000,000=$1,200,000) | |
| (3) Tax on annualized taxable income (Item 2) using rates under section 11 and 1201, taking into account section 15, applicable to the taxable year ending January 31, 1988 | $4,612,603 |
| (4) Amount described in section 6655(d)(3)(A)(i) (Item (3)x22.5%) | $1,037,836 |

(ii) To preclude imposition of an addition to tax under section 6655 with respect to its May 15, 1987, installment payment, X must make by July 15, 1987, a second installment payment of estimated tax sufficient to bring its aggregate payments to the minimum level required under paragraph (c) of this section.

(iii) X may satisfy the requirements of paragraph (c)(3) of this section by making a second installment payment sufficient to bring X within the exception provided in section 6655(d)(3). Thus, if X determines under that section that the aggregate of X's installment payments of estimated tax by July 15, 1987, must equal at least $3,000,000, X may obtain the benefit of the safe harbor provided in paragraph (b)(1) of this section with respect to the May 15, 1987, installment payment by making a timely second installment payment of $1,962,164 ($3,000,000—$1,037,836).

(iv) Even if X fails to satisfy the requirements of paragraph (c)(3) of this section, X may obtain the benefit of the safe harbor for the May 15, 1987, installment payment if X's second installment payment, when aggregated with the first payment, equals at least 45 percent of the tax (including the alternative minimum tax under section 55 and the environmental tax under section 59A) shown on X's return for X's taxable year beginning on February 1, 1987. Thus, if the tax shown on that return is $6,000,000, X's second installment payment under paragraph (c)(4) of this section must be at least $1,662,164, computed as follows:

| | |
|---|---|
| 45 percent of $6,000,000 | $2,700,000 |
| less first payment | 1,037,836 |
| Minimum second installment | $1,662,164 |

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,
*Commissioner of Internal Revenue.*

Approved: March 24, 1987.

J. Roger Mentz,
*Assistant Secretary of the Treasury.*

[FR Doc. 87-6719 Filed 3-24-87; 3:17 pm]

BILLING CODE 4830-01-M

---

**26 CFR Parts 1 and 602**

**[T.D. 8131]**

**Income tax, Capitalization and Inclusion in Inventory of Certain Costs**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary Regulations.

**SUMMARY:** This document contains temporary regulations relating to accounting for costs incurred in producing and acquiring property for resale. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the proposed rules section of this issue of the **Federal Register**. Changes to the applicable tax law were made by the Tax Reform Act of 1986.

**DATES:** The amendments are effective for costs incurred after December 31, 1986 or, in the case of inventories, for taxable years beginning after December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Paulette C. Galanko of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566–3288, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under sections 174, 263, 263A, 446, 471, and 1502 of the Internal Revenue Code of 1986. These amendments conform the regulations to the requirements of section 803 of the Tax Reform Act of 1986 (Pub. L. 99–514), 100 Stat. 2085 (the "Act"). The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register**.

## Uniform Costing Rules

Under prior law, the type and amount of costs required to be absorbed or capitalized by taxpayers engaged in the production of property were determined under various sections of the Internal Revenue Code and regulations. As a result, different rules applied to the costs incurred in the production of property depending on the type of property produced and the intended use of the property in connection with the taxpayer's activities. In some cases, costs incurred in producing property were permitted to be deducted currently, rather than being properly matched with the future income associated with that property. Thus, for example, production costs were permitted to be deducted currently, rather than being recovered when the related property was sold or used in the course of the taxpayer's trade or business. Similarly, costs incurred in the acquiring, handling, and storage of property (including property acquired by the taxpayer for resale to others) were frequently allowed to be deducted currently rather than being properly matched with the appropriate income.

In response to this disparity in treatment, section 263A was added to the Code to provide a uniform set of rules to be applied in determining the costs required to be capitalized or included in inventory costs. (For purposes of this preamble and the regulations, the term "capitalize" shall, except as provided to the contrary, denote the capitalization of costs, i.e., the charging of costs to capital account or basis, as well as the addition or absorption of costs to items of inventory). Except as provided, these rules apply to all costs incurred in connection with the production of real and personal tangible property to be held in inventory or held for sale in the ordinary course of business. The rules also apply to the production of other property, including property or improvements to property constructed by a taxpayer for use in its trade or business or in an activity engaged in for profit. Finally, in the case of property acquired for resale, these rules generally apply to costs incurred for the storage, purchase, repackaging or processing of such property, including an allocable amount of general and administrative costs.

## Treatment of Certain Costs

The temporary regulations do not apply to intangible drilling and development costs of oil and gas or geothermal wells allowable as a deduction under section 263(c) or development costs of mineral properties allowable as a deduction under sections 616(a) and 617(a) of the Code.

Similarly, the temporary regulations generally do not apply to property produced by a taxpayer pursuant to a long-term contract. Section 460 of the Code, enacted into law under section 804 of the Act, determines the federal income tax treatment of long-term contracts. Nevertheless, these temporary regulations provide guidance with respect to two aspects of the treatment of long-term contracts. First section 460(c)(3) of the Code provides that production interest shall be allocated to long-term contracts in the same manner as interest is allocated to property produced by the taxpayer under section 263A(f). Second, these regulations apply to costs incurred by a taxpayer (*e.g.*, interest and administrative costs), with respect to property produced by a contractor for the taxpayer under a long-term contract.

Section 263A does not apply to the growing of timber as defined under prior law. For this purpose, the definition of timber includes evergreen trees that are more than six years old when severed from the roots (whether or not such trees are sold for ornamental purposes). In the case of timber, the law in effect prior to the enactment of section 263A is to continue to apply with respect to the determination of the costs that are to be treated as deductible and those that are required to be charged to capital accounts.

## Interest

Interest expense paid or incurred in the course of production is included in the costs required to be capitalized under section 263A. The temporary regulations contain general rules relating to the allocation of interest with respect to production activities under the "avoided cost" concept. Detailed regulations relating specifically to the allocation of interest expense under section 263A will be issued in a separate document.

## Tangible and Intangible Property

In the case of production activities, the rules contained in the temporary regulations apply to costs allocable to the production of real and tangible personal property. With respect to costs incurred in connection with property acquired for resale, the rules apply to both tangible and intangible property. (For example, the rules contained in the temporary regulations apply to persons acquiring securities or commodity contracts described in section 1221(1) for resale to others). For purposes of these regulations, films, recordings, video tapes, books and other similar property are treated as tangible personal property, and thus are subject to the capitalization rules regarding production of tangible personal property. These regulations are not intended to provide guidance (under prior or present law) as to whether the subject matter of a particular production activity is to be treated as a tangible or intangible asset for other purposes of the Code.

Under the new rules, the costs of producing films, recordings, video tapes, books, and other similar property must be capitalized under the provisions of section 263A. For example, as the legislative history to the Act provides, "the uniform capitalization rules apply to the costs of producing a motion picture or researching and writing a book." 2 H.R. Rep. No. 99–841 (Conf. Rep.), 99th Cong., 2d Sess. II–308, n. 1 (1986) (the "Conference Report"). The capitalization requirements of section

BEST COPY AVAILABLE

263A apply to these properties regardless of whether the costs of these properties are treated as intangible or tangible costs under other provisions of the Code (*e.g.*, the provisions regarding the availability of investment tax credit). Thus, for example, the costs of producing a book (including teaching aids, and other similar properties) which are required to be capitalized under section 263A include, without limitation, prepublication expenditures of publishers, such as payments made to the authors of literary works, as well as costs incurred by the publishers in the writing, editing, compiling, illustrating, designing, and development of books or similar property. Such costs are to be capitalized under section 263A regardless of whether such costs relate to the production of the manuscript or copyright of a book, as opposed to the physical costs (*e.g.*, paper and ink) of printing and binding a book. Moreover, although research and experimental expenditures within the meaning of section 174 are not subject to the capitalization rules of section 263A, capitalization of prepublication expenditures with respect to books and similar properties is consistent with the definition of research and experimental expenditures in the existing regulations under section 174. See § 1.174–2(a)(1) of the Income Tax Regulations, which provides that the term "research and experimental expenditures" does not include expenditures incurred for research in connection with literary, historical, or similar projects.

Section 2119 of the Tax Reform Act of 1976 (Pub. L. 94–455) (the "1976 Act") provides that any regulations issued after the date of enactment of such Act dealing with the application of various Code sections (including sections 174 and 263) to prepublication expenditures "shall apply only with respect to taxable years beginning after the date on which such regulations are issued". Section 2119 of the 1976 Act (90 Stat. 1912) was not amended in the Tax Reform Act of 1986 to expand this restriction on effective dates to include regulations applying 263A. Moreover, in enacting section 263A of the Code, Congress simultaneously repealed section 280 of the Code, which dealt with expenditures incurred by individuals and certain entities in the production of books and other properties. The repeal of section 280, the legislative history to section 263A applying the provisions of section 263A to the costs of "researching and writing a book," and the statutory requirement to capitalize the costs of producing books as if they were tangible property, clearly evidence an intent to: (i) Apply the uniform capitalization rules of section 263A to the costs of producing books (indicating that such costs are not allowable as a deduction under section 174 because section 263A is not applicable to such deductions); and (ii) expand the persons subject to these capitalization rules beyond the range of section 280 which only applied to individuals and certain entities.

If, and to the extent, that section 2119 of the 1976 Act would otherwise contravene the clear Congressional intent underlying section 263A of the Tax Reform Act of 1986 regarding the production of books, then section 263A, the more recent expression of Congressional intent, is properly viewed as the legally determinative provision and section 2119 is viewed as modified, accordingly.

Thus, based on the foregoing, section 263A is applicable to all prepublication expenditures with respect to costs incurred after December 31, 1986, in taxable years ending after such date. If such prepublication expenditures relate or pertain to inventory property, section 263A shall apply to taxable years beginning after December 31, 1986, and shall require a change in method of accounting necessitating, for example, an adjustment under section 481.

**Separate Trade or Business**

Under the regulations, taxpayers may elect the use of various simplified methods and other procedures with respect to each trade or business of the taxpayer. The regulations clarify that, for purposes of these provisions, activities of the taxpayer shall not constitute a separate trade or business solely by reason of classification as a "natural business unit" or a similar inventory pool.

**Gross Receipts Exception**

The new capitalization rules for personal property acquired for resale do not apply if the taxpayer's average annual gross receipts for the three preceding taxable years are $10 million or less. This $10 million threshold test is not available with respect to real property acquired by the taxpayer for resale. The rules in effect before the enactment of section 263A to the Code continue to apply to taxpayers with average annual gross receipts of $10 million or less. Aggregation rules to take into account the gross receipts of certain related parties are provided for purposes of this provision.

**Property Acquired for Resale**

Taxpayers acquiring real or personal property for resale are subject to the provisions of section 263A. Taxpayers acquiring such property may elect a simplified method of accounting for the costs required to be capitalized under the temporary regulations (the "simplified resale method"). The allocation rules applicable to production activities will apply to those taxpayers that acquire property for resale who do not elect to use the simplified resale method. Thus, absent the election of the simplified resale method, taxpayers acquiring property for resale are required to allocate the additional costs required to be capitalized under section 263A with the same degree of specificity as was required of manufacturers of inventory under prior law. The regulations provide, however, that such taxpayers are generally required to allocate the same types of costs (*e.g.*, costs pertaining to purchasing, handling, storage, and allocable general and administrative activities) to property acquired for resale as taxpayers electing to use the simplified resale method. Moreover, the definitions of such costs under the simplified resale method are equally applicable to taxpayers acquiring property for resale although those taxpayers may not elect the use of such method. (In addition, pursuant to the legislative history of the Act, the regulations clarify that taxpayers producing property must also capitalize purchasing, handling and storage costs under section 263A).

The costs required to be allocated to property acquired for resale under the simplified resale method relate to the costs incurred in connection with purchasing ("purchasing"), handling, processing and repackaging ("handling"), and offsite storage and warehousing ("storage") of such property. In addition, such costs include the general and administrative costs allocable to these functions. The temporary regulations provide guidelines for determining what costs are incurred in connection with these activities and the methods by which such costs are to be allocated to the property acquired and held. The temporary regulations contain examples that apply the simplified resale method to inventories in cases involving the use of both the last-in first-out ("LIFO") and the first-in first-out ("FIFO") methods.

The simplified resale method as set forth in the temporary regulations generally follows the simplified method described in the legislative history of the Act (Conference Report at II 305–08). However, the simplified resale method differs from the simplified method set forth in the Conference Report in two minor respects. The differences between the two methods concern: (i) The

inclusion of beginning inventory balances in determining certain allocation ratios under the simplified method; and (ii) the allocation ratio used to apportion general and administrative expenses.

The simplified method set forth in the Conference Report provides that the allocation ratio for apportioning storage costs and handling costs shall be determined by dividing: (i) The amount of such costs, by (ii) beginning inventory balances and gross purchases during the year. The simplified resale method as set forth in the temporary regulations provides that the denominator of the fraction, as described above, shall consist only of gross purchases during the year. Beginning inventory balances are excluded from the calculation of the allocation ratio in the simplified resale method.

This change has been made to provide consistency with the treatment of beginning inventory balances under the simplified resale method. Under both versions of the method, storage and handling costs incurred during the year are only allocated to units in ending inventory which are not viewed as being present in beginning inventory for the year in question. Thus, for example, with respect to a LIFO taxpayer, such costs are allocated to units in the LIFO "increment" for such year. Similarly, with respect to a FIFO taxpayer, such costs are allocated only to the extent that units in ending inventory are treated as being purchased during the year under the FIFO cost flow assumption. Inclusion of beginning inventory balances in the denominator of the allocation fraction would be justified only if storage and handling costs were viewed as benefitting, and being incurred by reason of, units in beginning inventory. However, such a view is inconsistent with the determination that beginning inventory balances do not accumulate accretions of annual storage and handling costs. Accordingly, the simplified resale method differs from the simplified method in the Conference Report with respect to the determination of these allocation ratios.

The simplified resale method also differs from the method provided in the Conference Report with regard to the allocation of general and administrative expenses that are allocable in part to storage, purchasing, and handling activities, and in part to activities for which capitalization is not required under the simplified method ("mixed service costs"). The Conference Report provides that mixed service costs shall be allocated to activities based on the ratio of payroll costs incurred in a particular function divided by the taxpayer's total gross payroll costs. This procedure requires the denominator of the allocation fraction to include payroll costs which are themselves mixed service costs. The inclusion of mixed service costs in the denominator would imply that costs qualifying as mixed service costs are being allocated, in part, to such mixed service costs themselves. Such a result would only be appropriate if such amounts initially allocated were eventually reallocated to either activities subject, or not subject, to capitalization. However, the mechanics of the simplified method in the Conference Report do not provide for any such reallocation procedure, but rather only require an initial allocation of service costs to the activities of the taxpayer. Based on the foregoing, the simplified resale method provides that the labor costs of mixed service functions are subtracted from the denominator of the allocation fraction which is used to determine the amount of mixed service costs allocable to activities subject to capitalization. In addition, the simplified resale method contains a "de minimis" rule to be used in determining whether the cost of a particular activity is a mixed service cost under the regulations.

The Conference Report provides that "the simplified method provided under rules or regulations generally will follow the examples . . . [contained in the Conference Report] and that, until rules or regulations are issued, taxpayers may rely on these examples." Conference Report at II–305. Additionally, the Conference Report provides, that "[t]he Treasury Department may modify the simplified method or permit the use of other methods by rules or regulations". The changes made to the simplified method in the temporary regulations are changes of a technical and minor nature that do not alter the general mechanics of the method or the simplifying assumptions underlying its use. In light of the publication of these temporary regulations, taxpayers electing to use the simplified method for property acquired for resale are required to use the simplified resale method as provided herein in determining their taxable income for their taxable years beginning after December 31, 1986, and in determining their estimated tax payments for all periods in such years. The election to use the simplified resale method shall be made separately with respect to each trade or business of the taxpayer.

**Inventories**

For taxable years beginning after December 31, 1986, the temporary regulations require a restatement or revaluation of beginning inventory balances to reflect the additional amounts required to be included in inventory costs under the uniform capitalization rules. Goods on hand as of the effective date are to be revalued as if the new capitalization rules had been in effect for all prior periods; such revaluation is treated as a change in the taxpayer's methods of accounting for inventory costs. For taxpayers using the "dollar-value" LIFO method of valuing inventories, the revalued year prior to the year of change will become the new base year for purposes of determining future indexes.

For taxpayers required to change their method of accounting under the temporary regulations, sufficient data required to make an accurate revaluation of all costs or layers in a taxpayer's inventory may be unavailable or difficult to obtain. For example, in cases where goods held in inventory are no longer produced by the taxpayer or the taxpayer is treated as having acquired or produced an item of inventory a number of years prior to the date of revaluation, the taxpayer may not have the information necessary to compute the actual amount of additional costs allocable to such inventory items. For this reason, the temporary regulations provide rules that permit certain taxpayers to estimate the costs to be used in the revaluation of inventory costs or layers that relate to prior periods.

With respect to LIFO taxpayers required to account for the costs of producing inventory or acquiring property for resale under section 263A, it is intended that the provisions of prior law be continued with respect to the circumstances whereunder a LIFO election may be disallowed or terminated. Thus, for example, in determining inventory cost for the year of a LIFO election and any subsequent year, the failure to include (or exclude) an item of cost as required by section 263A will not warrant disallowance or termination of a LIFO election. (See Revenue Procedure 79–23, 1979–1 C.B. 564). Similarly, it is intended that the allocation of costs under section 263A shall not result in a violation of the "LIFO conformity requirement" in § 1.472–2 of the Income Tax Regulations in situations where a similar allocation of production costs under § 1.471–11 of the Income Tax Regulations (the "full

absorption" regulations) would not result in any such violation.

**Simplified Production Method**

Taxpayers producing inventory property may elect a simplified method of accounting for the costs required to be allocated under the temporary regulations (the "simplified production method"). Absent the election of the simplified production method, taxpayers are required to allocate additional costs required to be capitalized under section 263A with the same degree of specificity as was required of inventoriable costs under prior law. The simplified production method shall be treated as a method of accounting under the Code. Once a taxpayer has chosen either the simplified production method, or the methods generally available to producers of property under the Code, such taxpayer may not change its method without obtaining the permission of the Commissioner.

The simplified production method is similar to the simplified resale method available to taxpayers acquiring property for resale. Under the simplified production method, a taxpayer shall determine all of the additional costs (other than interest expense) which are required to be included by the taxpayer in inventoriable costs for the year under section 263A and the regulations (the "additional section 263A costs"). (Interest, however, shall be excluded from the additional section 263A costs under the simplified production method and allocated separately). The amount of the additional selection 263A costs shall vary with respect to each taxpayer, depending on the amount and types of costs that such taxpayer included in the computation of inventoriable costs under prior law. The additional section 263A costs shall then be allocated to inventory based on the ratio (the "absorption ratio") of such costs to the taxpayer's total "section 471 costs" incurred for the year under the taxpayer's method of accounting. The taxpayer's "section 471 costs" are defined as the costs required to be included in inventoriable costs by the taxpayer under the full absorption regulations. The taxpayer shall determine the additional section 263A costs to be allocated to ending inventory by multiplying the absorption ratio by the amounts contained in the taxpayer's ending section 471 inventory balance which are treated as costs incurred during the current year under the taxpayer's method of accounting. The taxpayer's "section 471 inventory balance" is defined as the inventory balance of the taxpayer's section 471 costs at the specified point in time. The temporary regulations contain examples which provide guidance to taxpayers regarding the application of the simplified production method.

For purposes of the simplified production method, taxpayers will initially calculate their inventory balances without regard to the new uniform capitalization rules. Taxpayers will then determine the amounts of additional section 263A costs that must be capitalized, and add such amounts, along with amounts of additional section 263A costs contained in beginning inventory balances (where appropriate), to their preliminary inventory balances to determine their final balances. Thus, for example, with respect to a taxpayer using the LIFO method, the calculation of a particular year's LIFO index will be made without regard to the new capitalization rules. However, costs capitalized under the simplified production method will be added to the LIFO layers applicable to the various years for which the costs were accumulated. Although the additional section 263A costs are not included with the taxpayer's section 471 costs in calculating a particular year's LIFO index, the additional section 263A costs shall be treated as inventory costs for all purposes of the Code. Thus, for example, with respect to a FIFO taxpayer which properly elects to value its inventory at the lower of cost or market (as described in § 1.471–2(c) of the Income Tax Regulations), the additional section 263A costs which are applicable to the taxpayer's section 471 costs shall be treated as costs of inventory for purposes of determining: (i) Whether the cost of inventory exceeds its market value; and (ii) the amount of the reduction in the inventory cost which is allowed under the regulations to value the inventory at market.

The determination by a taxpayer of its section 471 costs under the simplified production method shall be made by reference to the methods of accounting used by such taxpayer immediately prior to the effective date of the Act. Any change in the determination of section 471 costs which would constitute a change in method of accounting under law prior to the Act shall be deemed to constitute a change in method of accounting under section 263A, and is thus subject to all requirements of law regarding such change.

Taxpayers may elect to use the simplified production method with respect to the production of inventory property. In addition, taxpayers may elect to use the simplified production method with respect to production of property which is held primarily for sale to customers in the ordinary course of the taxpayer's business, although that property may not qualify as inventory property under the Code (*e.g.*, houses constructed by a builder and offered for sale to customers). With respect to a taxpayer eligible to use the simplified production method, but which properly does not account for its production costs under the full absorption regulations, the term "section 471 costs" as used above, shall be defined as the costs required to be allocated to production under the taxpayer's method of accounting immediately prior to the effective date of the Act.

The simplified production method is designed to alleviate the administrative burdens of complying with the new capitalization rules in situations where mass production of assets occurs on a repetitive and routine basis, with a typically high "turnover" rate for the produced assets. Such a production process is especially amenable to the simplified production method, which essentially allows allocation of additional section 263A costs to the aggregate inventory balances of the taxpayer based on the aggregate "turnover" rate of the taxpayer's inventory. Based on the foregoing, the simplified production method is not appropriate for use in accounting for casual or occasional production of property. Thus, the simplified production method may not be utilized with respect to property constructed by a taxpayer for use in its trade or business ("self-constructed" property), or any other property produced by a taxpayer which is not described in section 1221(1). Similarly, the simplified production method is not available with respect to property produced under a long-term contract even though an inventory method may be used by the taxpayer to account for such production. Finally, the simplified production method is not available to taxpayers acquiring property for resale who do not elect to use the simplified resale method, and thus are required to use the general rules applicable to the production of property.

In the case of a single trade or business that consists of operations including both the production of property and the acquisition of property for resale, the simplified production method, if elected, must be applied with respect to all operations of that trade or business. In such a case, a taxpayer is not permitted to apply the simplified production method to only a portion of the operations of such trade or business; moreover, the taxpayer may not apply

the simplified resale method to any portion of such trade or business.

The election to use the simplified production method shall be made separately with respect to each trade or business of the taxpayer.

The temporary regulations provide a simplified method for producers of property in order to reduce the administrative costs of taxpayer compliance with the capitalization requirements of section 263A while preserving the statute's basic purpose to apply uniform capitalization rules to the costs of producing property. The Internal Revenue Service welcomes comments and suggestions as to how the simplified production method may be improved to accomplish objectives most adequately.

**General and Administrative Expenses—Simplified Method**

The temporary regulations also provide a simplified procedure (the "simplified service cost method") for determining the amount of certain indirect costs which are required to be allocated by the taxpayer to inventory production under section 263A. The simplified service cost method shall be treated as a method of accounting under the Code. Once a taxpayer has chosen either the simplified service cost method, or other methods available for allocating such costs, such taxpayer may not change its method of accounting without obtaining the permission of the Commissioner. The simplified service cost method shall only be used to determine the total amount of certain indirect costs which are required to be allocated to inventory production under section 263A ("inventoriable mixed service costs"). The allocation of such indirect costs to particular items of inventory shall be made pursuant to other methods allowed under the temporary regulations.

The amount of inventoriable mixed service costs for a particular taxable year shall be determined by multiplying: (i) The total mixed service costs of the taxpayer incurred in the particular trade or business of such year, by (ii) the ratio of: (a) (all of the taxpayer's production costs incurred during the year excluding all mixed service costs and all interest, to (b) all of the taxpayer's costs of operations incurred during such year excluding all mixed service costs and all interest). For purposes of this procedure, all of the taxpayer's production costs incurred during the year include all of the inventoriable costs incurred in the particular trade or business as determined under section 263A and this section. Thus, for example, such costs include all of the taxpayer's section 471 costs, in addition to all of the taxpayer's additional section 263A costs.

In addition, for purposes of this procedure, all of the taxpayer's costs of operations incurred during the taxable year include all of the taxpayer's production costs incurred during the year, in addition to all of taxpayer's other costs of operations incurred in the particular trade or business. Such costs include, but are not limited to: (i) Salaries and related costs of all personnel, (ii) all depreciation taken for federal income tax purposes, (iii) research and experimental expenses, and (iv) selling, marketing and distribution expenses. Such costs of operation shall not include however, federal, state, local income taxes (or taxes similar to income taxes, e.g., franchise taxes assessed on income). The regulations contain examples which provide guidance as to the application of the simplified service cost method.

The indirect costs for which the simplified service cost method may be used are indirect general and administrative costs which directly benefit, or which are incurred by reason of the performance of the inventory production activities of the taxpayer, but which also benefit other activities of the taxpayer which are not inventory production activities. For purposes of this provision, such costs shall be defined as "mixed service costs." The simplified service cost method, however, shall not be used with respect to mixed service costs which the taxpayer is properly allocating under its method of accounting (prior to the Act) to production activities under the full absorption regulations. Such general and administrative costs are outside the scope of this provision, and shall be allocated to production activities under the general provisions of this section.

In addition, mixed service costs do not include indirect costs which directly benefit or which are incurred by reason of the production activities of the taxpayer, if such costs do not benefit other activities to any extent ("production service costs"). Moreover, mixed service costs do not include indirect costs which do not directly benefit and are not incurred by reason of the taxpayer's inventory production activities to any extent ("policy service costs").

In determining whether indirect costs shall be treated as production service costs or policy service costs, the predominant nature of the indirect costs shall be the controlling factor. For purposes of this method, the predominant nature of a indirect cost shall be viewed as attributable to a particular activity if 90% or more of that cost directly benefits, or is incurred by reason of, such activity. In such a case, the taxpayer shall disregard the portion of the cost which is attributable to the activities which are not predominant. For example, assume that 90% of the costs of a particular department directly benefit, or are incurred by reason of the taxpayer's inventory production activities. For purposes of this method, the taxpayer shall treat 100% of the costs of the department as if such costs were production service costs. Similarly, assume that 90% of the costs of a particular department directly benefit, or are incurred by reason of the taxpayer's policy making activities. For purposes of this method, the taxpayer shall treat 100% of the costs of the department as if such costs were policy service costs.

Taxpayers engaged in production of inventory may incur mixed service costs which are allocable to more than one trade or business. In such a case, the amount of mixed services costs which are allocable to the particular trade or business for which the simplified service cost method has been elected, shall be determined using any reasonable allocation method generally allowed under these regulations. Similar rules shall apply to the taxpayer's cost of operations which are incurred in more than one trade or business.

A taxpayer may elect to use the simplified service cost method regardless of whether such taxpayer elects to use the simplified production method. Thus, for example, a taxpayer may determine its inventoriable mixed costs under the simplified service cost method, and then allocate such mixed service costs to its production activities under the general provisions of the regulations. In such a situation, the taxpayer shall allocate inventoriable mixed service costs based on any reasonable allocation procedure allowed under the regulations. In the case of a taxpayer that elects to use the simplified production method and also elects to use the simplified mixed service cost method, the amount of inventoriable mixed service costs shall be included with the additional section 263A costs, and allocated to ending inventory based on the procedures required under the simplified production method. Taxpayers may elect to use the simplified service cost method only with respect to production of the same types of property for which an election may be made to use the simplified production cost method, *i.e.*, inventory property and property held primarily for sale to

customers in the ordinary course of business.

The election to use the simplified service cost method shall be made separately with respect to each trade or business of the taxpayer.

**Farming Businesses**

The provisions of the temporary regulations also apply to property produced in a farming business. In general, the temporary regulations apply to costs allocable to the production of property with a "preproductive period" that exceeds two years. Taxpayers required to use an accrual method of accounting under sections 447 and 448(a)(3), however, must allocate costs under section 263A and the temporary regulations without regard to the preproductive period of the property produced. The temporary regulations permit the use of the farm-price method and the unit-livestock-price method ("unit-livestock method") in accounting for the costs allocable to property produced in a farming business. A special rule, described below, is provided for tax shelters using the unit-livestock method.

Under the unit-livestock method as currently applied under § 1.471–6 of the Income Tax Regulations, no increase in unit cost is required in the taxable year of purchase of certain animals which are purchased during the last six months of such taxable year. As a result, in some cases the use of the method may not result in an adequate allocation of costs consistent with the principles of section 263A, particularly in the case of tax shelters where anticipated tax consequences are likely to play a significant role in the determination of when to purchase livestock.

Thus, the temporary regulations provide that tax shelters using the unit-livestock method of accounting must include in inventory the annual cost increment for all animals purchased during the taxable year, including those purchased during the last six months of the taxable year. For purposes of this provision, the term "tax shelter" is defined as any tax shelter required to use an accrual method of accounting under section 448(a)(3).

Section 263A(d)(3) allows certain taxpayers to elect not to have the provisions of section 263A apply to any plant or animal produced in any farming business carried on by such taxpayer. The election procedures are described in detail in the temporary regulations relating to elections under the Tax Reform Act of 1986 (§ 5h.5(c) of the Income Tax Regulations). In addition, the temporary regulations under section 263A herein provide guidance with respect to various features of the election, including the determination of eligibility for the election, and the effect of such election of the farming businesses of the taxpayer.

Under the election procedures, taxpayers may elect to account for farming production costs under the rules in effect before the enactment of section 263A subject to certain conditions relating to the cost recovery of property used in any farming business of the taxpayer and the treatment upon disposition of the property being produced in the business. The election not to have section 263A apply is effective as to all the farming activities of the electing taxpayer.

Section 263A does not apply to costs incurred on or after October 22, 1986, by certain taxpayers for replanting edible crops lost or damaged by reason of various types of casualty. The temporary regulations provide guidance with respect to this provision. Persons, other than the taxpayer that owned the property at the time of loss or damage, are permitted to deduct costs of replanting if certain ownership and participation criteria are met.

**Practical Capacity**

Under § 1.471–11(d)(4) of the full absorption regulations applicable to manufacturers of inventory under prior law, taxpayers were permitted to use the "practical capacity concept" in determining the amounts of fixed indirect production costs which were subject to inclusion in ending inventory. Under the practical capacity concept, taxpayers were required to apportion only a percentage of their fixed indirect production costs to units of production; this percentage corresponded to the percentage of productive capacity at which the particular manufacturing facility was operating. The remaining amounts of fixed indirect production costs were then currently deducted by the taxpayer.

The temporary regulations do not provide guidance with respect to the availability of the practical capacity concept under the uniform capitalization rules of section 263A. The Internal Revenue Service is considering this issue and will provide future guidance with respect to the practical capacity concept under section 263A. It is possible that the forthcoming regulations will prohibit the use of the practical capacity concept under section 263A, subject to the effective date provisions of section 803 (d)(2) of the Act generally applicable to inventory property.

The fact that these temporary regulations provide no guidance with respect to the practical capacity concept under section 263A creates no inference as to the availability of the concept in accounting for costs under a long-term contract under sections 451 or 460 of the Code.

**Pension Costs—Past Service Costs**

Under the temporary regulations, contributions paid to or under a pension or annuity plan which are allowable under section 404 (and section 404A if applicable), are not subject to the capitalization requirements of section 263A to the extent that such contributions represent "past service costs". Until otherwise provided to the contrary, past service costs shall be determined, for purposes of section 263A, with reference to the allocation between "normal costs" and "past service costs" under the funding standards of section 412. With respect to an actuarial method which does not distinguish between normal costs and past service costs, none of the amount allowable as a deduction under section 404 shall be treated as past service costs.

The legislative history of the Act evidences a Congressional concern with the utilization of the funding standards under section 412 in determining the nature of pension costs for purposes of section 263A. (*See* S. Rep. No. 99–313, 99th Cong., 2d Sess. at 142–43 (1986)). Accordingly, the Internal Revenue Service is presently considering this matter, and may revise, at some future date, the regulations under section 263A defining past service costs for purposes of the uniform capitalization rules. Alternative provisions under consideration include the utilization, in whole or in part, of financial reporting standards in determining past service costs. Any amendments to these regulations which alter the determination of past service costs under section 263A will be applied in a prospective manner, i.e., with respect to costs incurred after the publication of such amendments (or, in the case of inventory property, with respect to taxable years beginning after the publication of such amendments).

**Allocation Methods**

In accordance with the legislative history of the Act, the temporary regulations provide cost capitalization rules that are consistent with the rules contained in § 1.451–3 of the Income Tax Regulations and permit the use of cost allocation methods similar to those described in §§ 1.451–3 and 1.471–11 of the regulations. In general, the temporary regulations provide that

indirect costs are to be allocated to property using methods that result in a reasonable allocation of costs to and among activities, including the specific identification method, the standard cost method, and methods using burden rates. Allocations of administrative, service, or support costs that benefit or are incurred by reason of an activity are to be made on the basis of a factor or relationship that reasonably relates such costs with the benefit provided to the activity. The temporary regulations permit the use of any reasonable method of allocating general and administrative costs that is consistently applied.

**Allocations Between Related Parties**

The temporary regulations provide guidance with respect to the providing of any good or service ("item") between related parties if such item is required to be capitalized by the recipient taxpayer under section 263A and if such item is provided at a price which is less than an "arm's length" charge. The temporary regulations require that both the taxpayer and the related person account for the transaction as if the taxpayer purchased the item in question for its arm's length charge from the related person. Thus, for example, the taxpayer would capitalize an amount equal to the arm's length charge for the item, and the related person would typically include in income an amount equal to such arm's length charge.

The temporary regulations provide exceptions to the required accounting treatment of these transactions in situations where the principles of section 263A would not be contravened by the accounting treatment used by the taxpayer and the related person.

For purposes of this provision, the term "related persons" shall mean two or more organizations, trades, or businesses, owned or controlled directly by the same interests, within the meaning of section 482. The rules under section 482 shall apply in determining the arm's length charge of an item, and the various correlative adjustments which shall occur by virtue of the required accounting treatment of these transactions. The Internal Revenue Service invites comments with respect to this provision.

**Substantial Construction**

In general, the rules contained in the temporary regulations apply to costs incurred after December 31, 1986. These rules do not apply, however, to costs incurred in connection with property constructed by the taxpayer for use in its trade or business if substantial construction had occurred with respect to the property before March 1, 1986.

The temporary regulations provide that, for purposes of section 263A, substantial construction will be deemed to have occurred if the lesser of: (i) 10 percent of the total estimated costs of construction, or (ii) (the greater of $10 million or 2 percent of the total estimated costs of construction), was incurred before March 1, 1986. The temporary regulations provide an example to illustrate the application of this rule. For purposes of this rule, construction costs are those costs incurred during the actual physical construction of the property. Costs incurred for preliminary activities such as project engineering and architectural design activities, do not constitute costs incurred for construction.

**Natural Gas**

Pursuant to the legislative history of the Act, the temporary regulations provide that the provisions of section 263A regarding the capitalization of indirect costs with respect to property acquired by the taxpayer for resale shall not apply to "cushion gas." For this purpose, cushion gas is defined as natural gas stored in an underground storage facility or reservoir which is necessary to maintain the level of pressure within such reservoir to allow for its operation. (Cushion gas which is not recoverable upon the abandonment or termination of the storage facility is a capital expenditure recoverable through depreciation. Revenue Ruling 75–233, 1975–1 C.B. 95.) No inference is intended by this exception of cushion gas from the capitalization rules of section 263A as to the federal income tax treatment of other matters (*e.g.*, the treatment of "line pack gas" contained within a natural gas pipeline). Similarly, the exception for cushion gas from the capitalization rules of section 263A does not affect the treatment of cushion gas under other sections of the Code, where applicable.

The legislative history of the Act also provides that the Treasury Department "may" issue regulations providing that "emergency gas" (or a portion thereof), may be similarly excepted from the capitalization rules of section 263A. Conference Report at II–305. For this purpose, emergency gas is defined as natural gas stored in an underground storage facility or reservoir which is not cushion gas, but which nevertheless may be stored by the taxpayer in order to be available for periods of unusually heavy customer demand. After careful consideration of the matter, the temporary regulations, in keeping with the principles of uniformity and neutrality underlying the Act, do not provide a special exception for emergency gas. Accordingly, the capitalization rules of section 263A regarding property acquired for resale are applicable to emergency gas, which is regarded as part of the taxpayer's inventory under the Code.

**Application of Section 263A to Foreign Persons**

The provisions of section 263A (including the effective dates thereof) are applicable to all persons engaging in the production of property, or the acquisition of property for resale, including, for example, certain foreign persons which may be organized and operated exclusively outside the United States. Regulations contained in a separate document will be issued to provide further detailed guidance with respect to the application of the rules under section 263A for purposes of making certain determinations of the earnings and profits of all foreign corporations including, for example, determinations of the earnings and profits for purposes of sections 316, 902, 964, and 1248.

**Transfers of Inventory Between Related Parties**

Section 263A(h)(1) of the Code provides that the Secretary of the Treasury shall prescribe rules to carry out the purpose of section 263A, including regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section. It has come to the attention of the Internal Revenue Service that certain taxpayers using the LIFO method of accounting may have contributed (or may contribute) inventory properties to subsidiaries (also using the LIFO method) in transactions described in section 351, shortly before the effective date of section 803 of the Act (i.e., taxable years beginning after December 31, 1986). Such transactions, although conducted for legitimate business purposes, could have the inadvertent effect of allowing the transferee to avoid (practically speaking) the necessity to restate beginning inventory balances under the change in method of accounting required under section 263A. Such avoidance could take place because, under certain authorities, the transferee would regard the transferred properties as newly acquired. Thus, under these authorities the transferee would not be required to restate those beginning inventory balances with reference to the transferor's production history, leading to an avoidance of the rules of section 263A which would have otherwise applied if such transfer had not taken place.

The regulations prevent this avoidance of section 263A by requiring that the inventory restatement be calculated by assuming that the inventory properties were still in the hands of the transferor on the restatement date. This provision of the regulations is effective for transfers of property occurring after September 18, 1986 (the date of filing with respect to the Conference Report of H.R. 3838).

**Transitional Rules**

With respect to taxpayers accounting for the costs of producing inventory, the change in accounting method resulting from the inclusion under section 263A of additional costs in inventory for the year of change will generally be treated as an automatic change in accounting method, initiated by the taxpayer and approved by the Commissioner. Thus, for example, no diminution in the amount of the section 481(a) adjustment shall occur by reason of amounts attributable to years preceding the effective date of the Internal Revenue Code of 1954.

The temporary regulations provide guidance to taxpayers regarding the changes in accounting methods required under section 263A and the amount and timing of the section 481(a) adjustment. Except as modified by the temporary regulations, the timing of the section 481(a) adjustment shall be determined under the administrative procedures applicable to a voluntary change in method of accounting in effect on January 1, 1987, i.e., Revenue Procedure 84–74, 1984–2 C.B. 736. The difference between the inventory as valued under prior law and the revalued inventory (*i.e.*, the increase in beginning inventory balances for the year of change) will represent the amount of adjustment to be taken into account under section 481 of the Code. The section 481(a) adjustment is allocated over a period not to exceed four years. In the case of property which is not inventory in the hands of the taxpayer, the temporary regulations apply to costs incurred after December 31, 1986, with no restatement of basis or capital account and no corresponding adjustment under section 481(a). Thus, for example, a real estate developer that holds homes for sale in the ordinary course of business would not restate the balance in its capital accounts or calculate a section 481(a) adjustment because such homes are not treated as merchandise includable in inventory. *See*, e.g., *W.C. and A.N. Miller Development v. Commissioner*, 81 T.C. 619 (1983).

The Internal Revenue Service intends to amend the general rules applicable to changes in methods of accounting to ensure that taxpayers failing to comply with the transitional provisions of section 263A will not receive more favorable treatment under the rules generally applicable to voluntary changes in methods of accounting.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–.

**Drafting Information**

The principal author of these regulations is Paulette C. Galanko of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation with respect to matters of both substance and style.

**List of Subjects**

*26 CFR 1.441–1—1.483–2*

Income taxes, Accounting, Deferred compensation plans.

*26 CFR 602*

Reporting and recordkeeping requirements.

**Amendments to the Regulations**

For the reasons set out in the preamble, Subchapter A, Part 1 and Subchapter H, Part 602 of Title 26, Chapter 1 of the Code of Federal Regulations are amended as set forth below:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.263A–1T also issued under 26 U.S.C. 263A.

**Par. 2.** New § 1.263A–1T is added at the appropriate place to read as follows:

**§ 1.263A–1T Capitalization and inclusion in inventory costs of certain expenses (temporary).**

(a) *Introduction and effective date*—(1) *In general.* Except as otherwise provided, all costs that are incurred with respect to real or tangible personal property which is produced, or property which is acquired for resale, are to be capitalized with respect to such property. Rules are provided herein for the capitalization and allocation of costs among the various activities of the taxpayer. This section applies to costs incurred for the production of real property and tangible personal property. In the case of costs incurred with respect to property acquired for resale, this section applies to tangible and intangible property. Costs that are not treated as capitalized with respect to property produced or acquired for resale shall be accounted for under a proper method of accounting. See section 446 (c) and § 1.446–1.

(2) *Property produced in a farming business.* See paragraph (c) of this section for definitions and special rules applicable to costs incurred in a farming business.

(3) *Property acquired for resale.* See paragraph (d) of this section for rules relating to accounting for the costs of property acquired for resale.

(4) *Effective date.* In general, this section is effective for costs incurred after December 31, 1986, in taxable years ending after such date. In the case of property that is inventory in the hands of the taxpayer, this section is effective for taxable years beginning after December 31, 1986. See paragraph (e) of this section regarding the requirement that taxpayers change their method of accounting for inventory property.

(5) *Definitions and special rules*—(i) *Capitalize; allocate.* For purposes of this section, the term "capitalize" means, in the case of property that is inventory in the hands of the taxpayer, to include in inventory costs and, in the case of other property, to charge to capital accounts or basis. The term "allocate" means to apportion costs to various activities including production and resale activities with respect to which such costs will be capitalized. Capitalized costs are to be recovered through depreciation, amortization, cost of goods sold, as an adjustment to basis, or otherwise, at such time as the property is used, sold, or otherwise disposed of by the taxpayer. The recovery of such capitalized costs shall be in accordance with the rules in the applicable sections of the Code relating to such use, sale, or disposition.

(ii) *Produce.* For purposes of this section, the term "produce" includes construct, build, install, manufacture, develop, improve, create, raise or grow. Property produced for the taxpayer under a contract with the taxpayer is treated as property produced by the taxpayer to the extent that the taxpayer makes payments or otherwise incurs costs with respect to such property.

(iii) *Tangible personal property.* (A) *General rule.* For purposes of this section, the term "tangible personal property" includes films, sound recordings, video tapes, books and other similar property containing words, ideas, concepts, images or sounds. A sound recording is a work that results from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material objects, such as discs, tapes or other phonorecordings, in which such sounds are embodied. The requirements of this section apply to the production of tangible personal property within the meaning of this paragraph (a)(5)(iii) without regard to whether such property is treated as tangible or intangible under other sections of the Code. Thus, the requirements of this section apply to the costs of the properties enumerated in this paragraph (a)(5)(iii) although such costs may consist of copyrights, licenses, manuscripts, and other items which may be treated as intangible for other purposes of the Code. For example, the costs of producing a book (including teaching aids and other similar property) required to be capitalized under this section include prepublication expenditures incurred by publishers of books and other similar property, including payments made to authors of literary works, as well as costs incurred by such publishers in the writing, editing, compiling, illustrating, designing and development of books or similar property. Such costs are required to be capitalized under this section without regard to whether such costs are determined to relate to the production of a manuscript or copyright of a book, as opposed to the physical costs (e.g., paper and ink) of printing and binding a book. See § 1.174–2 (a)(1) which provides that the term "research or experimental expenditures" does not include expenditures incurred for research in connection with literary, historical, or similar projects.

(B) *Clarification of effective date.* The provisions of this section as applied to the production of tangible personal property as defined herein (including prepublication expenditures of publishers), shall apply to such production activities under the effective date provisions of paragraph (a)(4) of this section.

(iv) *Trade or business.* For purposes of this section, activities of the taxpayer shall not constitute a separate trade or business solely by reason of classification as an inventory pool or a business unit (such as a "natural business unit" as defined in § 1.472–8(b)).

(6) *Exceptions for certain costs.* This section does not apply to:

(i) Any property produced by the taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit.

(ii) Any intangible drilling and development costs of oil and gas or geothermal wells allowable as a deduction under section 263(c), or any development or exploration costs of mineral property allowable as a deduction under sections 616(a) or 617(a) of the Code.

(iii) Any costs incurred for the production of property by the taxpayer pursuant to a long-term contract as defined in section 460, regardless of whether the taxpayer uses an inventory method to account for such production. (However, this section shall apply to property produced for the taxpayer under contract with the taxpayer to the extent that the taxpayer makes payments or otherwise incurs costs with respect to such property.)

(iv) Any amount allowable as a deduction under section 174.

(v) Any costs incurred for the production of property for use by the taxpayer in its trade or business if substantial construction of the property had occurred before March 1, 1986. For purposes of this section, substantial construction is deemed to have occurred if the lesser of—

(A) 10 percent of the total estimated costs of construction, or

(B) The greater of—

(*1*) $10 million or

(*2*) 2 percent of the total estimated costs of construction,

was incurred before March 1, 1986. For purposes of this provision, the total estimated costs of construction shall be determined by reference to a reasonable estimate, on or before March 1, 1986, of such amount. Assume, for example, that on March 1, 1986, the estimated costs of constructing a facility were $150 million. Assume that before March 1, 1986, $12 million of construction costs had been incurred. Based on the above facts, substantial construction would be deemed to have occurred before March 1, 1986, because $12 million (the costs of construction incurred before such date) is greater than $10 million (the lesser of $15 million or (the greater of $10 million or $3 million)). For purposes of this provision, construction costs are defined as those costs incurred after construction has commenced at the site of the property being constructed (unless the property will not be located on land and, therefore, the initial construction of the property must begin at a location other than the intended site). For example, in the case of a building, construction commences when work begins on the building, such as the excavation of the site, the pouring of pads for the building, or the driving of foundation pilings into the ground. Preliminary activities such as project engineering and architectural design do not constitute the commencement of construction, nor are such costs considered construction costs, for purposes of this paragraph (a)(6)(v).

(vi) Any costs incurred by a taxpayer with respect to natural gas acquired for resale to the extent that such costs would otherwise be allocable to "cushion gas". "Cushion gas" is the portion of gas stored in an underground storage facility or reservoir that is required to maintain the level or pressure necessary for operation of the facility. Costs incurred in connection with cushion gas are to be accounted for under the rules in effect before the enactment of section 263A to the Code.

(vii) Any costs incurred with respect to personal property acquired for resale by a taxpayer with average annual gross receipts that do not exceed $10 million. See paragraph (d)(2) of this section for rules and definitions.

(viii) Any costs incurred in raising, growing, or harvesting trees (including the costs associated with the real property underlying such trees), other than trees bearing fruit, nuts, or other crops, or ornamental trees. For purposes of this section, ornamental trees do not include evergreen trees that are more than six years old when severed from the roots. See paragraph (c) of this section for the treatment of costs incurred in connection with trees not covered by this exception.

(b) *Capitalization of costs*—(1) *In general.* Except as otherwise provided, the following rules shall apply in determining what costs are properly capitalized with respect to property which is produced or acquired for resale. (Hereinafter, the activities attributable to such property may be referred to as "production or resale activities".)

(2) *Types of costs*—(i) *Direct costs.* Direct material costs and direct labor costs must be capitalized with respect to a production or resale activity. "Direct

material costs" include the cost of those materials which become an integral part of the subject matter and the cost of those materials which are consumed in the ordinary course of the activity. "Direct labor costs" include the cost of labor which can be identified or associated with a particular activity. The elements of direct labor costs include such items as basic compensation, overtime pay, vacation and holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983), shift differential, payroll taxes and payment to a supplemental unemployment benefit plan paid or incurred on behalf of employees engaged in direct labor.

(ii) *Indirect costs—general description.* The term "indirect costs" includes all costs other than direct material costs and direct labor costs. All costs that directly benefit or are incurred by reason of the performance of a production or resale activity must be capitalized with respect to the property produced or acquired unless otherwise provided in paragraph (b)(2)(v) of this section. Certain types of costs may directly benefit, or be incurred by reason of the performance of a particular activity of the taxpayer even though the same types of costs also benefit other activities of the taxpayer. Accordingly, such costs require a reasonable allocation to determine the portion of such costs that are attributable to each activity of the taxpayer.

(iii) *Examples of indirect costs.* Indirect costs that must be capitalized with respect to production or resale activities include amounts incurred for:

(A) Repair of equipment or facilities;

(B) Maintenance of equipment or facilities;

(C) Utilities, such as heat, light, and power, relating to equipment or facilities;

(D) Rent of equipment, facilities, or land;

(E) Indirect labor and contract supervisory wages, including basic compensation, overtime pay, vacation and holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983), shift differential, payroll taxes and contributions to supplemental unemployment benefit plans;

(F) Indirect materials and supplies;

(G) Tools and equipment the costs of which are not otherwise capitalized:

(H) Quality control and inspection;

(I) Taxes otherwise allowable as a deduction under section 164 (other than State, local, and foreign income taxes) that relate to labor, materials, supplies, equipment, land or facilities, other than taxes described in section 164 that are paid or accrued by a taxpayer in connection with the acquisition of property described in paragraph (b)(2)(iii)(J) of this section and which are treated as part of the cost of such acquired property);

(J) Depreciation, amortization and cost recovery allowance on equipment and facilities (to the extent allowable as deductions under Chapter 1 of the Code);

(K) Depletion (whether or not in excess of cost);

(L) Administrative costs, whether or not performed on a job-site, but not including any cost of selling, or any return on capital;

(M) Direct and indirect costs incurred by any administrative, service, or support function or department to the extent such costs are allocable to particular activities pursuant to paragraph (b)(4) of this section;

(N) Compensation paid to officers attributable to services performed in connection with particular activities (but not including any cost of selling);

(O) Insurance, such as insurance on plant, machinery or equipment, or insurance on the subject matter of the activity;

(P) Contributions paid to or under a stock bonus, pension, profit-sharing or annuity plan, or other plan deferring the receipt of compensation whether or not the plan qualifies under section 401(a) (except for amounts described in paragraph (b)(2)(v)(H) of this section), and other employee benefit expenses paid or accrued on behalf of labor, to the extent such contributions or expenses are otherwise allowable as deductions under chapter 1 of the Code. "Other employee benefit expenses" include (but are not limited to): worker's compensation; amounts deductible or for whose payment reduction in earnings and profits is allowed under section 404A and the regulations thereunder; payments pursuant to a wage contribution plan under section 105(d) as it existed prior to its repeal in 1983; amounts includible in the gross income of employees under a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing or annuity plan, or other plan deferring receipt of compensation or providing deferred benefits; premiums on life and health insurance; and miscellaneous benefits provided for employees such as safety, medical treatment, recreational and eating facilities, membership dues, etc.;

(Q) Rework labor, scrap and spoilage;

(R) Bidding expenses incurred in the solicitation of contracts, (including contracts pertaining to property acquired for resale) ultimately awarded to the taxpayer. For purposes of this section the term "bidding expenses" does not include any research and experimental expenses described in section 174 and the regulations thereunder. The taxpayer shall defer all bidding expenses paid or incurred in the solicitation of a particular contract until the contract is awarded. If the contract is awarded to the taxpayer, the bidding costs become part of the indirect costs allocated to the costs of the subject matter of the contract. If the contract is not awarded to the taxpayer, bidding costs become deductible in the taxable year the contract is awarded, or in the taxable year the taxpayer is notified in writing that no contract will be awarded and that the contract (or a similar or related contract) will not be re-bid, or in the taxable year that the taxpayer abandons its bid or proposal, whichever occurs first. Abandoning a bid does not include modifying, supplementing, or changing the original bid or proposal. If the taxpayer is awarded only part of the bid (for example, the taxpayer submitted one bid to build each of two different types of products and the taxpayer was awarded a contract to build only one of the two products), the taxpayer shall deduct the portion of the bidding expense related to the portion of the bid not awarded to the taxpayer. In the case of a bid or proposal for a multi-unit contract, however, all the bidding expenses shall be included in the costs allocated to the subject matter of the contract awarded to the taxpayer to produce or acquire for resale any of such units (for example, where the taxpayer submitted one bid to produce three similar turbines and the taxpayer was awarded a contract to produce only two of the three turbines);

(S) Engineering and design expenses (to the extent that such amounts are not research and experimental expenses as described in section 174 and the regulations thereunder); and

(T) To the extent not previously described as a direct or indirect cost subject to capitalization, the following items incurred with respect to production or resale activities:

(*1*) Storage and warehousing costs;

(*2*) Purchasing costs;

(*3*) Handling, processing, assembly, and repackaging costs; and

(*4*) A portion of general and administrative costs allocable to these functions.

(See paragraph (d)(3)(ii) of this section for definitions of these various types of costs with respect to property acquired for resale. Principles which are similar to the provisions of paragraph (d)(3)(ii) of this section shall apply in defining these various types of costs with respect to production activities).

(iv) *Allocation of interest expense to production activities*—(A) *In General.* Interest on debt incurred or continued to finance the production of real or tangible personal property to which this section otherwise applies must be capitalized, as provided in this paragraph. (Interest on debt incurred or continued to finance the acquisition and holding of property for resale is not required to be capitalized under this section). Interest paid or incurred during the production period must be capitalized if the property produced is:

(*1*) Real property;

(*2*) Personal property determined under section 168 to have a class life of 20 years or more;

(*3*) Personal property with an estimated production period in excess of 2 years; or

(*4*) Personal property with an estimated production period in excess of 1 year if the estimated cost of production exceeds $1 million.

For purposes of this paragraph, the production period begins on the date production of the property begins and ends on the date the property is ready to be placed in service or ready to be held for sale.

(B) *Avoided cost method.* The determination of the amount of debt that is treated as incurred or continued to finance production is based on the amount of interest expense that would have been avoided if production expenditures had not been made and the amount of such expenditures were used to repay the indebtedness of the taxpayer. Debt that can be specifically traced to a production activity must first be allocated to that activity. To the extent that production expenditures exceed the amount of debt specifically traceable to that production activity, other debt of the taxpayer is to be treated as allocable to the production activity. The interest rate to be applied to such additional allocable debt is the weighted average of the interest rates on the taxpayer's debt outstanding during the production period, other than debt specifically traced to a production activity. For purposes of this paragraph (b)(2)(iv)(b), production expenditures are those costs, including interest expense capitalized during the production period, required to be capitalized with respect to production under the rules of this section, without regard to whether such costs are incurred during the production period of the property to which the costs relate. (*E.g.*, production expenditures include planning and design activities which are generally incurred before the production period commences, as well as the costs of raw land and materials acquired before the production period commences).

(C) *Advance payments.* If production is undertaken for a customer who agrees to make progress payments or advance payments (or any other payments serving a similar purpose), for property to be held for sale to customers, or used in a trade or business or activity conducted for profit, the customer is treated as producing the property to the extent such progress payments or advance payments are made. (See paragraph (a)(5)(ii) of this section.) Moreover, the customer is treated as producing the property to the extent that the taxpayer incurs other costs (e.g., general and administrative costs) with respect to the property under production. Thus, interest on indebtedness incurred or continued during the production period to finance the payments made (and costs incurred) by the customer must be capitalized by the customer if such property is described in paragraph (b)(2)(iv)(A) of this section. In addition, the taxpayer producing the property for the customer must capitalized interest costs with respect to the property produced under the provisions of this paragraph to the extent that the production expenditures incurred by the taxpayer exceed the accumulated payments received from the customer with respect to such property.

(D) *Property used in production process.* Interest on debt incurred or continued to finance any asset (e.g., manufacturing equipment and facilities) that is used in the production or property described in paragraph (b)(2)(iv)(A) of this section shall be capitalized to the extent that such interest is paid or incurred during the production period of the property. The determination of the amount of debt that is treated as incurred or continued to finance any asset, and the interest attributable to such debt, shall be determined under the provisions of paragraph (b)(2)(iv)(B) of this section. Where an asset is used in the production of property and for other purposes, only the portion of such interest properly allocable to the production activity shall be capitalized.

(v) *Costs not capitalized.* Costs which are not required to be capitalized with respect to production or resale activities include amounts incurred for:

(A) Marketing, selling, advertising and distribution expenses;

(B) Bidding expenses incurred in the solicitation of contracts not awarded to the taxpayer;

(C) General and administrative expenses (but not including any cost described in paragraph (b)(2)(iii) (L) or (M) of this section), and compensation paid to officers attributable to the performance of services that do not directly benefit or are not incurred by reason of a particular production activity;

(D) Research and experimental expenses (described in section 174 and the regulations thereunder);

(E) Losses under section 165 and the regulations thereunder;

(F) Depreciation, amortization and cost recovery allowances on equipment and facilities that have been placed in service but are temporarily idle (for this purpose, an asset is not considered to be temporarily idle on non-working days, and an asset used in construction is considered to be idle when it is not enroute to or located at a job-site);

(G) Income taxes;

(H) (*1*) Contributions paid to or under a pension or annuity plan allowable as a deduction under section 404 (and section 404A if applicable) to the extent such contributions represent past service costs as determined under the particular funding method established for the plan for the period in question under the provisions of section 412;

(*2*) [Reserved.]

(I) Cost attributable to strikes; and

(J) Repair expenses that do not relate to the manufacture, or production of property.

(vi) *Costs provided by a related person.* (A) Any taxpayer engaging in production or resale activities shall capitalize any direct or indirect costs properly allocable to such activities although the materials, labor, or services (the "items") constituting the costs in question are provided to the taxpayer by a related person for a price which is less than the arm's length charge for such items. In such a situation, both the taxpayer and the related person shall account for the transaction for federal income tax purposes as if the taxpayer purchased the items in question for their arm's length charge from the related person. Thus, for example, the taxpayer shall capitalize an amount equal to the arm's length charge for such items and the related person shall include in income an amount equal to such arm's length charge.

(B) The provisions of this paragraph (b)(2)(vi) shall not apply if, and to the extent, the transaction is properly accounted for in such a manner as to result in the capitalization (or deferral of the deduction) of the costs of the items by the related party, and the related party does not deduct such costs earlier than the time that the costs would have been deducted by the taxpayer had the costs been initially capitalized by the taxpayer. Thus, for example, the provisions of this paragraph (b)(2)(vi) shall not apply if, and to the extent, that the transaction is treated as a deferred intercompany transaction under § 1.1502–13, and the gain or loss is deferred by the selling member under that section. In addition, the provisions of this paragraph (b)(2)(vi) shall not apply if, and to the extent, it would not be appropriate under the principles of section 482 for the Commissioner to adjust the income of the taxpayer or the related person with respect to the transaction at issue.

(C) For purposes of this paragraph (b)(2)(vi), an "arm's length charge" for an item shall mean the arm's length charge (or other appropriate charge, where applicable) established under the principles of section 482. Thus, for example, the term "arm's length charge" may refer to the cost of an item, if such treatment is allowed under the principles of section 482. In addition, the principles of section 482 shall apply in determining the various correlative adjustments which shall occur by reason of the required accounting treatment of these transactions. For purposes of this paragraph (b)(2)(vi), a taxpayer shall be related to another person if the taxpayer and such person are described in section 482 of the Code.

(vii) *Practical capacity.* [Reserved.]

(viii) *Examples.*

*Example* (1). The taxpayer A, owns and operates a manufacturing facility which produces tangible personal property, the costs of which are subject to the capitalization rules of this section. Normally, two separate shifts of production workers are employed at the facility during a typical work day. However, for various business reasons, during a particular period of time, none of the production workers report for work at the facility, and the facility is not used during any of the normally scheduled work days in such period. Under this section, the facility is considered to be temporarily idle for purposes of paragraph (b)(2)(v)(F) of this section, and thus A is allowed to expense depreciation, amortization, and cost recovery allowances on the facility and the equipment contained therein with respect to the normally scheduled work days for which the facility and equipment are completely idle.

*Example* (2). Assume the same facts as in example (1), except that, for various business reasons during a particular period of time, only one shift of production workers report for work at the facility, and the facility is not used for the duration of the remaining work day. Under this section, the facility is not considered to be temporarily idle for purposes of paragraph (b)(2)(v)(F) of this section.

*Example* (3). The taxpayer B, owns and operates a manufacturing facility which produces tangible personal property, the costs of which are subject to the capitalization rules of this section. The facility normally runs 24 hours a day, and typically produces 1000 units of product for each day's operations. However, for various business reasons, during a particular period of time, the facility continues to operate 24 hours a day, but only produces 700 units of product for each day's operations. The same result occurs as in example (2), *i.e.*, the facility is not considered to be temporarily idle for purposes of paragraph (b)(2)(v)(F) of this section.

(3) *Allocation methods*—(i) *Direct labor.* Direct labor costs incurred during the taxable year shall generally be allocated to or among activities using a specific identification (or "tracing") method. However, direct labor costs may be allocated to or among particular activities using any method, provided that the method employed reasonably allocates direct labor costs among such activities. For the purpose of allocating elements of direct labor cost (other than basic compensation) to particular activities, all such cost elements may be grouped together and then allocated to or among activities in proportion to the charge for basic compensation. Under this paragraph, a taxpayer must capitalize all of its direct costs. Nevertheless, a taxpayer will not be treated as using an incorrect method of accounting if the taxpayer treats any direct costs as indirect costs, provided such costs are capitalized to the extent provided by paragraph (b)(3)(iii) of this section. Thus, for example, a taxpayer may treat direct labor costs as part of indirect costs (for example, by use of the conversion cost method), provided all such costs are capitalized as provided by paragraph (b)(3)(iii) of this section.

(ii) *Direct materials.* The cost of direct materials shall generally be allocated to the activity for that year, using the taxpayer's method of accounting for the inventories containing such materials (e.g., specific identification, FIFO, LIFO). Direct materials which are not accounted for under the provisions of the preceding sentence shall be allocated to an activity using a tracing method or any other method which reasonably allocates such direct material costs among activities.

(iii) *Indirect costs*—(A) *In general.* (*1*) The indirect costs required to be allocated to or among production or resale activities under paragraph (b)(2) of this section shall be allocated to particular activities using either a specific identification (or "tracing") method, the standard cost method, or a method using burden rates (such as ratios based on direct costs, hours, or other items, or similar formulas), so long as the method employed for such allocation reasonably allocates indirect costs among production or resale activities. Indirect costs may ordinarily be allocated to production and resale activities on the basis of direct labor and material costs, direct labor hours, or any other basis which results in a reasonable allocation of such indirect costs.

(*2*) An allocation method under this paragraph (b)(3) will not be considered to be reasonable if such method does not result in the capitalization of all costs that directly benefit or are incurred by reason of the performance of production or resale activity as described in paragraph (b)(2)(ii) of this section. However, an allocation method that fails to meet these requirements may be used by the taxpayer if, with respect to the taxpayer's production or resale activities taken as a whole—

(*i*) The total amounts of such costs which the taxpayer capitalizes during the taxable year do not differ significantly (with appropriate consideration being given to the volume of the taxpayer's production or resale activities) from the total amounts which would be capitalized under the requirements of the preceding sentence; and

(*ii*) The allocation method is applied consistently by the taxpayer, and does not result in a significantly disproportionate allocation of costs to production or resale activities in such a manner as to circumvent the principles of this section.

The principles of this paragraph (b)(3)(iii)(A)(*2*) shall also be applicable with respect to the use of the simplified production method (as described in paragraph (b)(5) of this section), the simplified service cost method (as described in paragraph (b)(6) of this section), and the simplified resale method (as described in paragraph (d)(3) of this section). Thus, the use of various allocation procedures under those methods shall be permitted although such procedures may otherwise fail to meet the respective requirements of those methods, if the procedures satisfy the requirements of this paragraph (b)(3)(iii)(A)(*2*).

(*3*) In the event that the allocation methods (such as burden rates, or the standard cost method) utilized by a taxpayer under its method of accounting

prior to the effective date of the Tax Reform Act of 1986 do not result in the allocation of sufficient amounts of indirect costs to production or resale activities under this section:

(*i*) The taxpayer shall change its burden rates, standard costs, or other methods, to increase the amount of indirect costs being allocated to production or resale activities; or

(*ii*) The taxpayer may retain the use of its present burden rates, standard costs, or other methods, but shall adopt further methods (including, but not limited to, additional burden rates or standard costs), to ensure that adequate amounts of indirect costs are allocated to production or resale activities.

(B) [Reserved.]

(C) *Burden rates.* (*1*) *In general.* Burden rates may be developed in accordance with acceptable accounting principles and applied in a reasonable manner. If a taxpayer chooses, it may allocate different indirect costs on the basis of different burden rates. Thus, for example, the taxpayer may use one burden rate for allocating rent and another burden rate for allocating utilities. Any change in a burden rate which is merely a periodic adjustment to reflect current operating conditions, such as increases in automation or changes in operation, does not constitute a change in method of accounting under section 446. However, a change in the concept under which such rates are developed does constitute a change in method requiring the consent of the Commissioner, except as provided in paragraph (e) of this section. The taxpayer shall maintain adequate records and working papers to support all burden rate calculations.

(*2*) *Development of burden rates.* The following factors, among others, may be taken into account in developing burden rates:

(*i*) The selection of an appropriate level of activity and period of time upon which to base the calculation of rates which will reflect operating conditions for purposes of unit costs being determined;

(*ii*) The selection of an appropriate statistical base such as direct labor hours, direct labor dollars, or machine hours, or a combination thereof, upon which to apply the overhead rate to determine costs; and

(*iii*) The appropriate budgeting, classification and analysis of expenses (for example, the analysis of fixed and variable costs).

(*3*) *Operation of the burden rate method.* The purpose of the burden rate method is to allocate an appropriate amount of indirect costs to production or resale activities through the use of predetermined rates intended to approximate the actual amount of indirect costs incurred. Accordingly, the proper use of the burden rate method under this section requires that any net negative or net positive difference between the total predetermined amount of costs allocated to property and the total amount of indirect costs actually incurred and required to be allocated to such property (i.e., the under or over-applied burden) must be treated as an adjustment to the taxpayer's ending inventory or capital account (as the case may be) in the taxable year in which such difference arises. However, if such adjustment is not significant in amount in relation to the taxpayer's total indirect costs incurred with respect to production or resale activities for the year, then such adjustment need not be allocated to the property produced or acquired for resale unless such allocation is made in the taxpayer's financial reports. The taxpayer must treat both positive and negative adjustments consistently.

(D) *Standard cost method.* (*1*) *In general.* A taxpayer may use the "standard cost" method of allocating costs, provided that variances are treated in accordance with the procedures prescribed. For purposes of this section, a "net positive overhead variance" shall mean the excess of total standard indirect costs over total actual indirect costs and a "net negative overhead variance" shall mean the excess of total actual indirect costs over total standard indirect costs.

(*2*) *Treatment of variances.* The proper use of the standard cost method requires that a taxpayer must reallocate to property a pro rata portion of any net negative or net positive overhead variances and any net negative or net positive direct cost variances. The taxpayer must apportion such variances to or among the property to which the costs are allocable. However, if such variances are not significant in amount in relation to the taxpayer's total indirect costs incurred with respect to production and resale activities for the year, then such variances need not be allocated to property produced or acquired for resale unless such allocation is made in the taxpayer's financial reports. The taxpayer must treat both positive and negative variances consistently.

(4) *Allocation of administrative, service, or support costs to activities*—(i) *Introduction.* If a function or department of the taxpayer incurs costs that directly benefit particular production or resale activities of the taxpayer, the costs of such function or department are allocable to such activities. See paragraph (b)(3) of this section. However, if a function or department incurs costs that do not directly benefit particular production or resale activities but rather, for example, benefit only the overall management or policy guidance functions of the taxpayer, the costs incurred by such function or department are not allocable to production or resale activities. In some cases, the costs incurred by a function or department may directly benefit particular production or resale activities as well as the taxpayer's other functions, such as overall management or policy guidance functions. In such cases, the taxpayer shall reasonably allocate the costs of such function or department between the taxpayer's production or resale activities and the taxpayer's other functions. Paragragh (b)(3)(iii) and (4)(iii) of this section provide guidance as to what constitutes a reasonable method of allocating these costs.

(ii) *General rule.* The total direct and indirect costs ("service costs") of administrative, service, or support functions or departments ("service departments") that directly benefit a particular production or resale activity shall be directly allocated to such activity; if service costs directly benefit more than one production or resale activity, then such costs shall be allocated to particular activities under the principles of this paragraph. The service costs that benefit production or resale activities as well as other functions ("mixed service costs") shall be allocated to particular activities or functions on the basis of a factor or relationship that reasonably relates the incurring of the service cost to the benefits received by the activity. In general, the direct costs of a service department include costs that can be identified specifically with the services provided by the department, and the indirect costs of a service department include costs not identified specifically with the services provided by the function or department, but incurred by reason of the direct costs of the function or department. Such direct and indirect costs include, but are not limited to, compensation (including compensation referred to in paragraph (b)(2)(i) of this section) of employees directly engaged in performing the services provided by the department, travel, materials and supplies consumed by the department, supervisory and clerical compensation, occupancy costs (rents or an allocable share of depreciation and property taxes), depreciation or rent of office machines, utilities, telephone, and other department overhead. The types of

activities that are administrative, service or support functions or departments are not predetermined, but depend upon the facts and circumstances of each taxpayer's activities and business organization. In a decentralized business organization, all costs incurred at higher levels, for example, at a parent corporation or organization or at the headquarters of a subsidiary corporation or division, are not necessarily general and administrative expenses (as described in paragraph (b)(2)(v)(C) of this section) with respect to particular activities.

(iii) *Rules for allocation of service costs.* The taxpayer shall allocate the total direct and indirect costs of a service department to activities by applying consistently any reasonable method of cost allocation as described in paragraph (b)(3)(iii) of this section. (However, for purposes of this section, a method shall not be considered to be reasonable if such method effectively allocates service department costs to other service departments in such a manner as to avoid the eventual reallocation of such costs to production and resale activities if such reallocation would be otherwise required under the principles of this section). The following methods are provided as examples of reasonable methods for allocating service department costs under this section. Any other reasonable method, as described in paragraph (b)(3)(iii) of this section, may also be used to allocate such service department costs under this section.

(A) *Direct reallocation method.* The direct reallocation method, whereby the total costs (direct and indirect) of all service departments are allocated only to departments or cost centers engaged in production or resale activities and then from those departments to particular activities. This direct reallocation method ignores benefits provided by one service department for other service departments, and also excludes such other service departments from the base used to make the allocation; or

(B) *Step-allocation.* The step-allocation method, whereby a sequence of allocations is made beginning with the allocation to other service departments and to departments engaged in the performance of production or resale activities, of the total costs (direct and indirect) of the service departments, and ending with the allocation of the total costs (including the costs allocated to it from the other service departments) of the service department that provides benefits to the least number of other service departments. Under this allocation method, the cost of service departments allocated properly to functions or departments that are not service departments or departments performing the production or resale activities (for example, payroll costs allocated to a financial planning function or department) are not reallocated to any other service department or department performing the activities. The taxpayer shall then allocate the costs of the departments performing the activities (including the reallocated service department costs) to particular production or resale activities.

(iv) *Relationship of service costs to benefits received.* Factors or relationships that relate the incurring of service costs to the benefits received by particular production or resale activities include measures based upon the total output of the service department (for example, the approximate amount of service hours or the approximate number or the dollar value of transactions provided to an activity as a fraction of the total amount of service hours or the total amount or the total dollar volume of transactions provided by the department), or measures based upon the relative size of the production or resale activity to the size of the taxpayer's other activities (for example, the number of direct labor employees or direct labor hours or direct labor costs (as referred to in paragraph (b)(2)(i) of this section) incurred in connection with a particular activity as a fraction of the total amount of direct labor costs incurred by the taxpayer in all activities).

(v) *Additional requirements.* (A) The amount of administrative, service, or support costs required to be allocated under this section include the costs of purchasing such services from a third person. In the case of services performed by a related party, see paragraph (b)(2)(vi) of this section for the accounting treatment required of such transactions. In addition, if pursuant to section 482 and the regulations thereunder the district director makes an allocation of income or deductions between members of a group of controlled entities to reflect the performance of services or the provision of materials, equipment or facilities at other than an arm's length charge, any taxpayer that is affected by such allocation is required to take such allocation into account in making the taxpayer's allocation to production and resale activities of the costs of administrative service or support functions or departments.

(B) If the taxpayer establishes to the satisfaction of the district director that all of a particular type of administrative, service or support function is performed only at a particular jobsite or location (that is, at the offices of a production plant, warehouse, storage facility, or at a construction site), then all the direct and indirect costs of such function incurred at the jobsite or location shall be directly allocated to each particular activity performed at that jobsite or location, and no further allocation of that type of cost shall be required.

(C) Regardless of the particular allocation method being used by the taxpayer to allocate service costs, the taxpayer shall maintain the records used to make service cost allocations so that the allocations may be readily examined and verified by the district director. The taxpayer shall also maintain records describing the types of costs that the taxpayer has deducted currently under paragraph (b)(2)(v)(C) of this section (general and administrative expenses), so that the amount, nature, and allocation of such costs may be verified readily by the district director. A change in the method or base used in allocating such service costs (such as changing from an allocation base using direct labor cost to a base using direct labor hours), or a change in the taxpayer's determination of what functions or departments of the taxpayer are required or not required to be allocated is a change in method of accounting to which section 446(e) and the regulations and procedures thereunder apply. See § 1.446–1 (e) and paragraph (e)(11) of this section.

(vi) *Illustration of types of activities with respect to which costs ordinarily are required to be allocated.* Costs incurred by the following types of functions or departments ordinarily are required to be allocated among production or resale activities:

(A) The administration and coordination of production and resale activities (wherever performed in the business organization of the taxpayer);

(B) Personnel operations, including the cost of recruiting, hiring, relocating, assigning, and maintaining personnel records or employees;

(C) Purchasing operations, including purchasing materials and equipment, scheduling and coordinating delivery and return of materials and equipment to or from factories or jobsites, and expediting and follow-up;

(D) Materials handling and warehousing and storage operations;

(E) Accounting and data services operations, including cost accounting,

accounts payable, disbursements, billing, accounts receivable and payroll;

(F) Data processing;

(G) Security services; and

(H) Legal departments.

(vii) *Illustration of types of activities with respect to which costs ordinarily are not required to be allocated.* Costs incurred by the following types of functions or departments ordinarily are not required to be allocated to particular activities:

(A) Functions or departments responsible for overall management of the taxpayer, or for setting overall policy for all of the taxpayer's activities or trades or businesses (such as the board of directors (including their immediate staff), and the chief executive, financial, accounting and legal officers (including their immediate staffs) of the taxpayer, provided that no substantial part of the cost of such departments or functions directly benefit a particular production or resale activity;

(B) General business planning;

(C) Financial accounting (including the accounting services required to prepare consolidated reports, but not including any accounting for particular production or resale activities);

(D) General financial planning (including general budgeting) and financial management (including bank relations and cash management);

(E) General economic analysis and forecasting;

(F) Internal audit;

(G) Shareholder, public and industrial relations;

(H) Tax department;

(I) Other departments or functions that are not responsible for day-to-day operations but are instead responsible for setting policy and establishing procedures to be used with respect to all of the taxpayer's activities or trades or businesses, as described in paragraph (b)(4)(viii) of this section; and

(J) Marketing, selling, or advertising.

(viii) *Policy and overall management services.* Examples of such departments or functions that are responsible for setting policy and establishing procedures applicable to all of the taxpayer's activities or trades or businesses (see paragraph (b)(4)(vii)(I) of this section) are:

(A) Personnel policy (such as establishing and managing personnel policy in general, developing general wage, salary and benefit policies, developing employee training programs unrelated to particular activities, negotiations with labor unions and relations with retired workers);

(B) Quality control policy;

(C) Safety engineering policy;

(D) Insurance or risk management policy (but not including bid or performance bonds or insurance related to particular activities); and

(E) Environmental management policy. However, the cost of establishing any system or procedure that will only benefit a particular production or resale activity shall be directly allocated to such activity.

(F) [Reserved.]

(ix) *Costs not described.* The costs of any administrative, service or support function or department of the taxpayer not described in paragraph (b)(4) of this section are required to be allocated to particular production or resale activities to the extent that the nature of the benefits provided by such function or department more closely resembles the type of benefits described in paragraph (b)(4)(vi) of this section than the type of benefits described in paragraph (b)(4)(vii) of this section.

(x) *Illustrations of the allocations required by this paragraph (b)(4).* The following illustrate the types of considerations that are to be taken into account in making the allocations required by paragraph (b)(4)(iii) of this section. The Taxpayer need not use the same method to allocate a particular type of administrative, service or support cost as the method described in these illustrations provided that the method used by the taxpayer is reasonable. See paragraph (b)(4) of this section. In addition, the particular allocation methods illustrated herein may be used to allocate other types of services costs not illustrated in this paragraph.

(A) *Security services.* The cost of security or protection services benefit all areas covered by the services and should be allocated to each physical area that receives the service in proportion either to the size of the physical area, number of employees in the area, or the relative fair market value of assets located in the area, or on any other reasonable basis applied consistently. That part of the total cost allocable to a factory, warehouse, or jobsite where only one activity is performed shall be directly allocated to that activity. The treatment of the cost of security services allocable to other service departments depends upon the method of allocation adopted by the taxpayer under paragraph (b)(4)(iii) of this section.

(B) *Legal services.* The cost of a legal department to include rent (or an allocation of building depreciation and occupancy costs), travel, office machines, supplies, telephone, library, and other overhead and the compensation of the attorneys and other employees assigned to the department. For this purpose compensation described in paragraph (b)(2) of this section. These costs only benefit activities of the taxpayer which require legal services. These costs are generally allocable directly to a particular activity on the basis of the approximate number or hours of legal service (including research) performed in connection with the activity, including bidding, negotiating, drafting, or reviewing a contract (including subcontracts and supply contracts), obtaining necessary licenses and permits, and in resolving disputes, termination claims or disputes arising from the performance of the activity. Different hourly rates may be appropriate for different services. In determining the number of hours allocable to any activity, approximations are appropriate, detailed time records need not be kept, and insubstantial amounts of services provided to an activity by senior legal staff as an administrator or a reviewer may be ignored The taxpayer shall also allocate directly to an activity the cost of any outside legal services provided. Instead of an allocation based upon total hours of legal services provided to an activity, the taxpayer may choose to allocate the costs of a legal department to particular activities on the basis of total direct costs (as described in paragraph (b)(2)(i) of this section) incurred with respect to each activity as a fraction of the total direct costs incurred with respect to all production or resale activities. Legal activities relating to general corporate functions, financing, securities law, compliance, antitrust law compliance, tax compliance, industrial relations, compliance with laws and regulations not related to particular activities, after-the-fact review of contracts to insure compliance with company policies, patents and licensing unrelated to particular activities, and similar general legal functions are not required to be allocated to particular activities.

(C) *Centralized payroll department.* The cost of a payroll department includes rent (or an allocation of building depreciation and occupancy costs), office machines, supplies, telephones and other overhead and compensation of employees assigned to the department. The department cost may also include the cost of data processing and file maintenance, or this cost may be incurred by a separate data processing or records department and allocated to the payroll department. Payroll service costs benefit any department, including other service departments, incurring labor costs. The

cost of payroll department is generally allocated on the basis of the gross amount of payroll processed.

(D) *Centralized data processing.* The cost of a data processing department includes rent or depreciation of data processing machines, supplies, rent (or an allocation of building depreciation and occupancy costs), power, telephone and other overhead, and the compensation of employees assigned to the department. These costs benefit all departments that require data processing services. Data processing costs are generally allocated based upon the number of data processing hours supplied. Other reasonable bases, such as an allocation based upon total direct cost, may also be used. The costs of data processing systems developed for a particular activity shall be directly allocated to such activity.

(E) *Engineering and design services.* The cost of an engineering or design department includes rent (or an allocation of building depreciation and occupancy costs), travel, office machines, supplies, telephones, library, and other overhead, and compensation of employees assigned to the department. Unless the engineering and design services are properly accounted for separately, the cost of engineering or design service departments generally is directly allocable to an activity on the basis of the approximate number of hours or work performed with respect to a particular activity as a fraction of the total hours of engineering or design work performed for all activities. Different services may be allocated at different hourly rates. Engineering and design services may also be treated as direct costs of an activity, provided that the taxpayer also treats all engineering and design overhead as direct or indirect costs of the activity.

(F) *Safety engineering.* The cost of a safety engineering department includes the compensation paid to employees assigned to the department, rent (or an allocation of building depreciation and occupancy costs), travel, office machines, supplies, telephones, library, and other overhead. These costs benefits all activities of the taxpayer and should be allocated to particular activities on the basis of the approximate number of safety inspections made in connection with a particular activity as a fraction of total inspections, or on basis of the number of employees assigned to an activity as a fraction of total employees or on the basis of total labor hours worked in connection with an activity as a fraction of total hours, whichever is most reasonable. The cost of a safety engineering department responsible only for setting safety policy and establishing safety procedures to be used in all of the taxpayer's activities is not required to be allocated. However, in determining the total costs of safety engineering department to be allocated, costs attributable to providing a safety program only for a particular activity shall be directly assigned to such activity.

(5) *Simplified method of accounting for production costs*—(i) *In general.* Taxpayers may elect to use the "simplified production method" permitted under this paragraph (b)(5) to account for the additional costs required to be capitalized under this section with respect to property produced by the taxpayer that is:

(A) Stock in trade of the taxpayer or other property that is properly includable in the inventory of the taxpayer; or

(B) Property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

The simplified production method is not available with respect to property acquired for resale, property constructed by a taxpayer for use in its trade or business, property produced under a long-term contract, or any other property produced by a taxpayer that is not described in section 1221(1) of the Internal Revenue Code. In the case of a single trade or business that consists of operations including both production of property and the acquisition of property for resale, the simplified production method, if elected, must be applied with respect to all operations of the particular trade or business. In such a case, a taxpayer is not permitted to apply the simplified production method to only a portion of the operations of such trade or business. In addition, the taxpayer may not apply the simplified resale method to any portion of such trade or business.

(ii) *Allocation of additional section 263A costs.* Under the simplified production method, additional section 263A costs are to be allocated to inventory or other property based on the ratio of the taxpayer's total additional section 263A costs incurred during the taxable year to the taxpayer's total section 471 costs incurred during the taxpayer's total year (the "absorption ratio"). (See paragraph (b)(5)(iii) of this section for definitions of the certain terms used in this paragraph (b)(5)(ii)). The amount of additional section 263A costs required to be capitalized is computed by multiplying the absorption ratio times the amount of section 471 costs remaining in the taxpayer's ending "section 471 inventory balance" that are treated as costs incurred during the taxable year under the taxpayer's method of accounting (e.g., the last-in, first-out method or "LIFO"). Thus, in the case of a taxpayer using the LIFO method of accounting, the absorption ratio is applied to the increase (LIFO increment), if any, in the taxpayer's ending section 471 balance for the taxable year. In the case of a taxpayer using the first-in, first-out ("FIFO") method of accounting, the absorption ratio is applied to the amounts of section 471 costs remaining in the taxpayer's ending section 471 balance that are treated as having been incurred in the taxable year.

(iii) *Definitions.* Additional section 263A costs are those costs, other than interest, that were not capitalized or included in inventory costs under the taxpayer's method of accounting immediately prior to the effective date of this section, but that are required to be capitalized under this section. (See paragraph (b)(2)(iv) of this section for the rules relating to the allocation of interest expense.) Although such additional section 263A costs are allocated under the simplified production method permitted in this paragraph (b)(5), such costs shall otherwise be treated as inventory costs for all purposes of the Code except as provided herein. For purposes of this paragraph (b)(5), the costs capitalized or included in inventory costs under the taxpayer's method of accounting immediately prior to the effective date of this section shall be referred to as "section 471 costs". Thus, if a taxpayer included a particular cost described in § 1.471–11(c)(2)(iii) in inventory, such cost is also required to be included in the taxpayer's inventory as a section 471 cost for purposes of this paragraph (b)(5). For purposes of this paragraph (b)(5), the taxpayer's section 471 inventory balance is the balance of section 471 costs, determined without the inclusion of any additional section 263A costs. Moreover, the term "section 471 costs" shall include any cost includable in production costs under the taxpayer's prior method regardless of whether such prior method required the absorption of costs to inventories under § 1.471–11).

(iv) *LIFO indexes.* In the case of a taxpayer using the LIFO method of accounting for inventories, the calculation of a particular year's index is to be made without regard to the additional section 263A costs. Similary, the taxpayer shall disregard the additional section 263A costs in

adjusting current year costs by the applicable indexes, in determining whether there has been an inventory increment or decrement for the current year in question for the particular LIFO pool. If the taxpayer determines that there has been an inventory increment, then the taxpayer shall state the amount of the increment in current year dollars, and then multiply the resulting amount by the absorption ratio, as previously described. The resulting product is equal to the amount of the additional section 263A costs which the taxpayer is required to capitalize in ending inventory. If the taxpayer determines that there has been an inventory decrement, then the taxpayer shall state the amount of the decrement in dollars applicable to the particular year for which the LIFO cost or layer has been invaded. The additional section 263A costs, incurred in prior years, which are applicable to the decrement shall be charged to cost of goods sold. The additional section 263A costs which are applicable to the decrement are determined by multiplying the total amount of such section 263A costs allocated to the layer of the particular pool in which the decrement occurred, by the ratio of the decrement to the total section 471 costs (excluding, therefore, additional section 263A costs) in the layer for such pool.

(v) *Examples.* The operation of the simplified production method is illustrated in the following examples:

*Example* (1). The taxpayer A, uses the first-in, first-out (FIFO) method of accounting for inventories. A includes in inventoriable costs under its section 471 method of accounting (i) direct production costs as described in § 1.471–11(b)(2) ("full absorption direct costs"), and (ii) indirect production costs described in § 1.471–11(c)(2)(i) ("category 1 costs"). All other costs incurred by A are excluded from section 471 costs under A's method of accounting, including costs described in § 1.471–11(c)(2) (ii) and (iii) ("category 2" and "category 3" costs respectively). A determines, pursuant to this section, that it incurred $1 million of additional section 263A costs during the taxable year. Furthermore, assume that A had a beginning section 471 inventory balance (consisting of its full absorption direct costs and category 1 costs) of $2 million, incurred $10 million of such section 471 costs during the year, and had an ending section 471 inventory balance of $3 million. The absorption ratio for the year is equal to 10 percent, i.e., additional section 263A costs of $1 million, divided by section 471 costs incurred during the taxable year of $10 million. All of A's costs in ending inventory are viewed as section 471 costs incurred during the taxable year. Thus, for each dollar in the ending section 471 inventory balance, A must capitalize 10 cents of additional section 263A costs. Ending inventory for the taxable year would be increased by $300,000. The balance of the taxpayer's additional section 263A costs would be viewed as included in cost of goods sold.

*Example* (2). The taxpayer B uses the last-in, first-out (LIFO) method of accounting for inventories. B includes in inventoriable costs under its section 471 method of accounting: (i) full absorption direct costs, (ii) category 1 costs, and (iii) certain category 3 costs. B determines, pursuant to this section, that it incurred $1 million of additional section 263A costs during the taxable year. Furthermore, assume that B had a beginning section 471 inventory balance (consisting of full absorption direct costs, category 1 costs, and certain category 3 costs) of $2 million, incurred $10 million of such section 471 costs during the year, and had an ending balance of section 471 costs of $3 million. The absorption ratio for the year is equal to 10 percent, *i.e.*, additional section 263A costs of $1,000,000, divided by section 471 costs incurred during the taxable year of $10 million. The increase in B's section 471 inventory balance for the taxable year is $1 million. Thus, B must capitalize $100,000 of additional section 263A costs in ending inventory (*i.e.*, .10 times $1,000,000). The balance of B's additional section 263A costs would be included in cost of goods sold for the taxable year. Assume that in the following taxable year, B is viewed as disposing of inventory acquired in the preceding year having section 471 costs of $500,000. B would be required to include, in cost of goods sold, a proportional amount of its additional section 263A costs for such preceding year, i.e., $50,000 (.10 times $500,000).

*Example* (3). The taxpayer R begins its trade or business in Year 1, and uses the LIFO method of accounting for inventories. R includes in inventoriable costs under its section 471 method of accounting: (i) full absorption direct costs, and (ii) category 1 costs. R determines, pursuant to this section, that it incurred $1,000 of additional section 263A costs during the taxable year. Furthermore, assume that R had no beginning section 471 inventory balance (due to entering the trade or business in Year 1), incurred $10,000 of such section 471 costs during the year, and had an ending balance of section 471 costs of $3,000, contained in three LIFO pools (A, B, and C). R allocates its additional section 263A costs for taxable Year 1 in the following manner:

Year 1

Additional section 263A costs, $1,000 divided by Section 471 costs, $10,000 equals 10% absorption ratio

| | Total | A | B | C |
|---|---|---|---|---|
| Year 1 | | | | |
| Ending section 471 balance | $3,000 | $1,600 | [illegible] | [illegible] |
| Absorption ratio | .10 | .10 | 10 | 10 |
| Current additional section 263A costs | 300 | 160 | [illegible] | 80 |
| Final ending inventory balance | 3,300 | 1,760 | [illegible] | [illegible] |

In Year 2, R incures $400 of additional section 263A costs and $2,000 of section 471 costs. Moreover, R has $1,000 of section 471 cost of goods sold in pools A, B, and C. R computes its final inventory for Year 2 as follows:

Year 2

Additional section 263A costs, $400 divided by Section 471 costs, $2,000 equals 20% absorption ratio

| | Total | A | B | C |
|---|---|---|---|---|
| Year 2 | | | | |
| Beginning section 471 balance | [illegible] | $1,600 | [illegible] | [illegible] |
| Current section 471 costs | 2,000 | 1,500 | [illegible] | 200 |
| Section 471 cost of goods sold | (1,000) | (300) | (300) | (400) |
| Ending section 471 balance | 4,000 | 2,800 | [illegible] | [illegible] |
| Prior period additional section 263A costs | [illegible] | 160 | [illegible] | [illegible] |
| Included in cost of goods sold | (20) | | | (20) |
| Remaining prior period additional section 263A costs | [illegible] | 160 | 60 | [illegible] |
| Current additional section 263A costs | 240 | 240 | | |
| Final ending inventory balance | 4,520 | 3,200 | [illegible] | [illegible] |

Pool C is reduced by $200 in Year 2. A portion of the additional 263A costs contained in that pool that are attributable to Year 1 must be included in cost of goods sold in Year 2. The amount is determined by dividing the decrement in pool C by the total costs accumulated in the Year 1 layer of pool C; the resulting fraction is then multiplied by the additional section 263A costs contained in pool C which are attributable to Year 1. Thus, the amount of additional section 263A costs which is included in cost of goods sold from pool C, attributable to Year 1, is $20, i.e., $200 divided by $800, multiplied by $80.

(vi) *Change in method of accounting.* The election to use the simplified production method shall be made separately for each trade or business of the taxpayer on a timely filed income tax return for the taxpayer's first taxable year for which this section becomes effective. For taxable years subsequent to such taxable year of the taxpayer, a change in method to, or

from, the simplified production method requires the consent of the Commissioner. In addition, any change in the determination of the taxpayer's section 471 costs which would constitute a change in method of accounting under the law in effect before the enactment of section 263A, shall be deemed to constitute a change in method of accounting under this section.

(6) *Simplified procedure for allocating mixed service costs*—(i) *In general.* This paragraph provides a simplified method (the "simplified service cost method") for allocating administrative, support and service costs that directly benefit or are incurred by reason of the performance of production activities but also benefit other activities of the taxpayer ("mixed service costs"). The simplified service cost method provided under this paragraph (b)(6) may be used to determine the aggregate portion of mixed service costs which are required to be capitalized as production costs ("inventoriable mixed service costs"). For purposes of this method, mixed service costs do not include administrative, support, and service costs that directly benefit or are incurred by reason of the performance of the production activities of the taxpayer ("production service costs"), if such costs do not benefit other activities in the taxpayer's trade or business, or if such costs are properly allocated to production activities under the taxpayer's method of accounting prior to the effective date of the Tax Reform Act of 1986. In addition, mixed service costs do not include costs ("policy service costs") that do not benefit the production activities of the taxpayer, but rather, benefit only the types of non-production activities described in paragraph (b)(4)(vii) of this section (*e.g.*, overall management or policy guidance functions). See paragraph (b)(4) of this section for explanations and illustrations of the types of mixed service costs that are required to be allocated among the production activities of the taxpayer.

(ii) *Availability.* The simplified service cost method of this paragraph (b)(6) may be used to determine the inventoriable mixed service costs with respect to the production of real or personal property that is:

(A) Stock in trade of the taxpayer or other property that is properly includable in the inventory of the taxpayer, or

(B) Property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

The simplified service cost method is not available with respect to property acquired for resale (except as provided in paragraph (b)(5)(i) of this section, relating to a single trade or business engaged in both production and resale activities). Moreover, the simplified service cost method is not available with respect to property constructed by a taxpayer for use in its trade or business, property produced under a long-term contract, or any other property produced by a taxpayer that is not described in section 1221(1) of the Internal Revenue Code. The inventoriable mixed service costs determined under the simplified service cost method shall generally be allocated to specific properties produced by the taxpayer in accordance with the rules relating to the allocation of indirect costs under paragraph (b)(3)(iii) of this section. If the taxpayer elects to use the simplified production method under paragraph (b)(5) of this section, then the inventoriable mixed service costs shall be allocated under that method.

(iii) *Determination of inventoriable portion.* (A) The inventoriable mixed service costs required to be capitalized with respect to the taxpayer's production activities shall be determined by multiplying the total mixed service costs incurred in the taxpayer's trade or business during the taxable year by the ratio of—

(*1*) The total production costs incurred in the taxpayer's trade or business under this section (excluding mixed service costs and interest) for the taxable year, to—

(*2*) The total of all costs incurred in the operation of the taxpayer's trade or business (excluding mixed service costs and interest) for the taxable year.

(B) For example, assume that Taxpayer A incurs $1,000 of mixed service costs in the taxable year. The total of A's production costs incurred for the taxable year, excluding mixed service costs and interest, is $10,000. The total costs incurred for all of A's operations (exclusive of mixed service costs and interest) for the taxable year is $20,000. The total inventoriable mixed service costs allocable to A's production activities is $500 for the taxable year *i.e.*, ($1,000 × ($10,000 divided by $20,000)).

(C) For purposes of this method, the cost of operations consists of all direct and indirect costs of production, and all other costs of the taxpayer's operations, including but not limited to salaries and other labor costs of all personnel, all depreciation taken for federal income tax purposes, research and experimental costs, and selling, marketing and distribution costs. Such costs of operations shall not include, however, federal, state, local or foreign income taxes (or taxes measured by income such as franchise taxes assessed on income).

(D) If (*1*) the taxpayer's mixed service costs, or (*2*) the total costs incurred in the taxpayer's operations, are allocable to more than one trade or business, then the taxpayer shall determine the amount allocable to a particular trade or business by using any reasonable method of allocation (consistently applied) otherwise permitted under this section.

(E) In determining the total mixed service costs incurred in a taxpayer's trade or business during the taxable year for purposes of the formula described in paragraph (b)(6)(iii)(A) of this section (the "allocation formula"), the taxpayer shall utilize the total costs of the various departments or functions in the taxpayer's trade or business that perform mixed service activities (*e.g.*, the departments or functions described in paragraph (b)(4)(x) of this section). The total costs of such departments or functions shall then be included for purposes of the allocation formula in determining the inventoriable mixed service costs that are required to be capitalized as production costs. For purposes of the simplified service cost method, it shall not be permissible to exclude policy service costs (or other non-production costs) which are otherwise included in the total costs of departments or functions performing mixed service activities, and then include only the remainder of the costs of such departments or functions for purposes of the allocation formula. For example, assume that the accounting department of the taxpayer performs mixed service activities pertaining to production and non-production activities. For purposes of the simplified service cost method, the costs of personnel in the accounting department that perform services relating to non-production activities (*e.g.*, accounts receivable clerks which only account for the selling activities of the taxpayer) are not permitted to be excluded from the mixed service costs incurred by the accounting department which are subject to the allocation formula. Instead, under the simplified service cost method, the entire cost of the accounting department shall be included for purposes of applying the allocation formula. Similarly, the labor costs of administrative and managerial personnel that are incurred with respect to both production and non-production activities shall be accounted for in the

same manner, *i.e.*, the total costs of such personnel shall be included for purposes of applying the allocation formula, without first reducing such costs by the amounts therein pertaining to non-production activities.

(iv) *De minimis rule.* For purposes of the simplified service cost method of this paragraph (b)(6), the determination of whether service costs are to be treated as costs solely allocable to production ("production service costs") or as costs solely allocable to other non-production functions of the taxpayer such as functions relating to overall management and policy ("policy service costs"), is to be based on the predominant nature of such service costs. For purposes of this paragraph (b)(6)(iv), the predominant nature of a service cost shall be treated as solely allocable to a particular activity if 90 percent or more of that cost directly benefits or is incurred by reason of such activity. In such a case, the total of such costs shall be treated as allocable to such activity. For example, assume that 90 percent of the costs of a particular department directly benefit or are incurred by reason of the taxpayer's inventory production activities. For purposes of the simplified service cost method of this paragraph (b)(6), the taxpayer shall treat 100 percent of the costs of the department as if such costs are production service costs. Similarly, assume that 90 percent of the costs of a particular department directly benefit or are incurred by reason of the taxpayer's overall policy making activities. For purposes of the simplified mixed service cost method of this paragraph (b)(6), the taxpayer shall treat 100 percent of the costs of that department as policy service costs that are not required to be allocated to production.

(v) *Change in method of accounting.* The election to use the simplified service cost method shall be made separately for each trade or business of the taxpayer on a timely filed income tax return for the taxpayer's first taxable year for which this section becomes effective. For taxable years subsequent to such taxable year of the taxpayer, a change in method to, or from, the simplified service cost method requires the consent of the Commissioner.

(c) *Special rules for property produced in a farming business*—(1) *General rule.* In general, this section applies to property produced in a farming business if such property has a preproductive period of more than 2 years, or if such farming business is described in paragraph (c)(2) of this section. This section does not apply, however, if the property is described in paragraph (c)(3) of this section or if the taxpayer has made the election described in paragraph (c)(6) of this section. In addition, this section does not apply to animals produced in a farming business if such animals are held primarily for slaughter (regardless of the preproductive period of such animals), except that this section shall apply to the production of such animals by a farming business if such business is described in paragraph (c)(2) of this section. For purposes of this section, an animal is held primarily for slaughter regardless of whether the taxpayer itself will slaughter the animal or instead will sell the animal to others for slaughter.

(2) *Taxpayers required to use the accrual method.*

(i) This section applies to property produced in a farming business (including all animals held primarily for slaughter) without regard to the preproductive period of such property in the case of a:

(A) Corporation or partnership required to use an accrual method of accounting under section 447 in computing its taxable income from farming, or

(B) Tax shelter required to use an accrual method of accounting under section 448(a)(3).

Thus, for example, this section applies to an enterprise involving the feeding of cattle held for slaughter regardless of the preproductive period of such cattle, if the enterprise is required to use an accrual method of accounting under section 447 or section 448(a)(3).

(ii) For purposes of this section, a farming business shall be considered a tax shelter, and thus required to use an accrual method of accounting under section 448(a)(3), if that farming business is:

(A) A farming syndicate as defined in section 464(c); or

(B) A tax shelter within the meaning of section 6661(b)(2)(C)(ii), defined as—

(*1*) A partnership or other entity,

(*2*) Any investment plan or arrangement, or

(*3*) Any other plan or arrangement, if the principal purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.

(iii) For purposes of this section, marketed arrangements in which persons carry on farming activities utilizing the services of a common managerial or administrative service will be presumed to have the principal purpose of tax avoidance if such persons prepay a substantial portion of their farming expenses with borrowed funds.

(3) *Exception*—(i) *In general.* This section does not apply to costs incurred on or after October 22, 1986, that are attributable to the replanting, cultivation, maintenance, and development of any plants bearing an edible crop for human consumption (including, but not limited to, plants which constitute a grove, orchard, or vineyard) that were lost or damaged while in the hands of the taxpayer by reason of freezing temperatures, disease, drought, pests, or casualty. Such replanting or maintenance costs may be incurred with respect to property other than the property on which the damage or loss occurred if the acreage of the property with respect to which the replanting or maintenance costs are incurred is not in excess of the acreage of the property on which the damage or loss occurred. Plants bearing crops for human consumption are those crops that are normally eaten or drunk by humans. Thus, for example, costs incurred with respect to replanting plants bearing jojoba beans do not qualify for the exception provided in this paragraph (c)(3)(i) because that crop is not normally eaten or drunk by humans.

(ii) *Ownership; in general.* Replanting, cultivation, maintenance, and development costs described in paragraph (c)(3)(i) of this section generally must be incurred by the taxpayer owning the property at the time the plants were lost or damaged. Paragraph (c)(3)(i) of this section will apply, however, to costs incurred by a person other than the taxpayer owning the plants at the time of damage or loss if—

(A) The taxpayer who owned the plants at the time the damage or loss occurred owns an equity interest of more than 50 percent in such plants or crops, and

(B) Such other person owns any portion of the remaining equity interest and materially participates in the replanting, cultivating, maintenance or development of such plants or crops.

A person will be treated as materially participating for purposes of this provision if such person would otherwise meet the requirements with respect to material participation within the meaning of section 2032A of the Code.

(4) *Definitions*—(i) *Farming business.* (A) For purposes of this section, a farming business means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include the trade or business

of operating a nursery or sod farm; the raising or harvesting of crops; the raising or harvesting of trees bearing fruit, nuts or other crops; the raising of ornamental trees; and the raising, shearing, feeding, caring for, training, and management of animals.

(B) For purposes of this section, an evergreen tree that is more than 6 years old at the time it is severed from its roots is not treated as an ornamental tree regardless of the purpose for which it is sold.

(C) For purposes of this section, the term "farming business" does not include the processing of commodities or products beyond those activities which are normally incident to the growing, raising or harvesting of such products. Thus, for example, assume the taxpayer, a C corporation, is in the business of growing and harvesting wheat and other grains. The taxpayer processes grains which it has harvested in order to produce breads, cereals, and other similar food products which it then sells to customers in the course of its business. Although the taxpayer is in the farming business with respect to the growing and harvesting of grain, the taxpayer is not in the farming business with respect to the processing of such grains to produce food products which it sells to customers. Similarly, assume the taxpayer is in the business of raising poultry or other livestock. The taxpayer then uses such livestock in a meat processing operation in which the livestock are slaughtered, processed, and packaged or canned in preparation for their sale to customers. Although the taxpayer is in the farming business with respect to the raising of livestock, the taxpayer is not in the farming business with respect to the meat processing operation.

(ii) *Preproductive period.* (A) For purposes of this section, the preproductive period of property produced in a farming business means—

(*1*) In the case of a plant or animal which will have more than one crop or yield, the period before the first marketable crop or yield from such plant or animal, or

(*2*) In the case of any other plant or animal, the period before such plant or animal is reasonably expected to be disposed of.

(B) The preproductive period of a plant begins when the plant or seed is first planted or acquired by the taxpayer. The preproductive period ends when the plant becomes productive in marketable quantities or when the plant is reasonably expected to be sold or otherwise disposed of.

(C) The preproductive period of an animal begins at the time of acquisition, breeding, or embryo implantation. The preproductive period ends at the time the animal is ready to perform the primary function intended to be performed by that animal (*e.g.*, when the animal becomes productive in marketable quantities), or when the animal is reasonably expected to be sold or otherwise disposed of. For example, in the case of a cow used for breeding purposes, the preproductive period with respect to the cow ends on the date the first calf is dropped.

(D) The preproductive period of plants grown in commercial quantities in the United States shall be based on the weighted average preproductive period for such plant, determined on a nationwide basis.

(5) *Inventory methods*—(i) *In general.* Except as otherwise provided, the costs required to be allocated to any plant or animal under this section may be determined using reasonable inventory valuation methods such as the farm-price method or the unit-livestock-price method. See section 1.471–6.

(ii) *Availability to tax shelters.* Tax shelters, as defined in paragraph (c)(2)(i)(B) of this section, using the unit-livestock-price method of accounting for inventories must include in inventory the annual standard unit price for all animals which are acquired during the taxable year, regardless of whether such purchases are made during the last 6 months of the taxable year.

(6) *Election not to have this section apply.*—(i) *Introduction.* This paragraph (c)(6) permits certain taxpayers to make an election not to have the rules of this section apply to any plant or animal produced in a farming business conducted by the electing taxpayer.

(ii) *Availability of the election.* The election described in this section is available to any farmer except that no election may be made by a corporation, partnership or tax shelter required to use an accrual method of accounting under section 447 or 448(a)(3). Moreover, no election may be made with respect to the planting, cultivation, maintenance or development of pistachio trees. In addition, the election described in this section does not apply to any costs incurred for the planting, cultivation, maintenance or development of any citrus or almond grove (or any part thereof) to the extent that such costs are incurred within the first four years in which such trees were planted. If a citrus or almond grove is planted in more than one taxable year, the portion of the grove planted in any one taxable year is treated as a separate grove for purposes of determining the year of planting.

(iii) *Time and manner of making the election.* Unless consent is obtained from the Commissioner, the election described in this section may only be made for the taxpayer's first taxable year that begins after December 31, 1986, and during which the taxpayer engages in a farming business. The election shall be made on the schedule E, F, or other schedule required to be attached to the income tax return for the first taxable year for which the election is effective. In the case of a partnership or S corporation, the election must be made by the partner or shareholder.

(iv) *Election treated as if made if certain requirements satisfied.* A taxpayer eligible to make the election under paragraph (c)(6) of this section shall be treated as having made the election if such taxpayer does not capitalize the costs of producing property in a farming business as the provisions of this section would otherwise require.

(v) *Revocation.* Once the election is made, it is revocable only with the consent of the Commissioner.

(vi) *Special rules for treatment of expenses.* (A) If the election is made, the plant or animal produced by the taxpayer is treated as section 1245 property and any gain resulting from any disposition of such property is recaptured (*i.e.*, treated as ordinary income) to the extent of the total amount of the deductions which, but for the election, would have been required to be capitalized with respect to the plant or animal. In calculating the amount of gain which is recaptured under this paragraph (c)(6)(vi), the taxpayer may use the farm-price or unit-livestock methods in determining the deductions which otherwise would have been capitalized with respect to the plant or animal.

(B) If the taxpayer or a related person makes the election, the alternative depreciation system (as defined in section 168(g)(2)), shall be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. The requirement to use the alternative depreciation system by reason of any election under paragraph (c)(6) of this section shall not prevent any taxpayer from making an election under section 179 to expense certain depreciable business assets.

(C) For purposes of this paragraph (c)(6), the term "related party" means—

(*1*) The taxpayer and members of the taxpayer's family (defined, for this purpose, to include the spouse of the taxpayer and any of his or her children

who have not reached the age of 18 as of the last day of the taxable year in question),

(*2*) Any corporation (including an S corporation) if 50 percent or more of the stock (in value) is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family,

(*3*) A corporation and any other corporation which is a member of the same controlled group (within the meaning of section 1563(a)(1)), and,

(*4*) Any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family.

(vii) The operation of the election not to have this section apply is illustrated in the following examples:

*Example* (1) Assume that A, an individual, is engaged in the trade or business of farming. A raises cattle for breeding and dairy purposes. In addition, A grows and harvests wheat and other grains. Assume further, that the preproductive period of certain of the cattle raised by A is more than two years, as defined in paragraph (c)(4)(ii) of this section, and that A elects under paragraph (c)(6) of this section not to have the rules of this section apply to the costs of raising such cattle. A is required to use the alternative depreciation system described in section 168(g) of the Code with respect to all property used predominantly in any farming business of A (including the growing and harvesting of wheat) if such property is placed in service during a year for which the election is in effect. Thus, for example, all assets and equipment (including any dairy cattle which A treats as depreciable property, and any equipment used to grow and harvest wheat) placed in service during a year for which the election is in effect must be depreciated using the straight line method over the applicable number of years, as provided in section 168(g).

*Example* (2) Assume the same facts as in example 1, except that A and members of A's family (as defined in paragraph (c)(6)(vi)(C)) also own 51% (in value) of the interests in a partnership P, which is engaged in the trade or business of growing and harvesting corn. P is a related person to A under the provisions of paragraph (c)(6)(i)(F) of this section. Thus, the requirements to use the alternative depreciation system under section 168(g) also apply to any property used predominantly in a trade or business of farming which P places in service during a year for which the election made by A is in effect.

(d) *Definitions and special rules relating to property acquired for resale*—(1) *General rule*—(i) Unless an election is made to use the simplified resale method provided in paragraph (d)(3) of this section, the rules of this section applicable to the production of property shall apply to costs incurred with respect to property acquired for resale in a trade or business or activity conducted for profit. For purposes of this section, property acquired for resale includes stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Property acquired for resale may be real property or personal property (whether such personal property is of a tangible or intangible nature). Thus, property held for sale may include—

(A) Literary, musical or artistic compositions; stocks, certificates, notes, bonds, debentures, or other evidence of indebtedness;

(B) An interest in, or right to subscribe to or purchase any of the foregoing; and

(C) Other intangible properties.

Thus, for example, a dealer in securities must properly capitalize costs, as required by this section, with respect to the securities acquired by the dealer for resale.

(ii) Any taxpayer that does not elect to use the simplified resale method with respect to property acquired for resale, shall capitalize the costs which are required to be capitalized in paragraph (d)(3)(ii) of this section with respect to such method, using the definitions of such costs as are provided therein. Thus, for example, taxpayers not electing to use the simplified resale method shall be required to capitalize offsite storage costs, as defined under the simplified resale method; moreover, the definition of distribution costs as provided under the simplified resale method shall apply to such taxpayers as well.

(iii) Taxpayers not electing the use of the simplified resale method may not utilize the various allocation methods or expedited procedures provided under such method, but rather must use such methods and procedures as are allowed with respect to the production of property under this section. Thus, for example, in determining the total amount of general and administrative expenses allocable to offsite storage, purchasing, and handling costs, such taxpayers shall not use the fraction for allocating such expenses which is based on labor costs incurred in the various activities, unless such method would be otherwise allowed to producers of property. Similarly, in determining the costs which are attributable to purchasing activities, such taxpayers shall not use the procedure provided in the simplified resale method whereunder certain activities may be disregarded if they comprise less than one-third of the aggregate activities being performed.

(2) *Exception for taxpayers with gross receipts of $10 million or less*—(i) *In general.* This section does not apply in the case of personal property acquired for resale by a taxpayer whose average annual gross receipts (determined under this paragraph (d)(2)) for the 3 taxable years preceding the taxable year (or, if less, the number of preceding taxable years the taxpayer and any predecessor has been in existence) do not exceed $10 million. This section does apply, however, in the case of real property acquired for resale by a taxpayer, regardless of the taxpayer's gross receipts.

(ii) *Aggregation of gross receipts.* For purposes of determining the gross receipts of the taxpayer, all persons treated as a single employer under section 52 (a) or (b), or section 414 (m) or (o) shall be treated as one person. Thus, gross receipts attributable to transactions between such persons treated as a single employer shall not be taken into account for purposes of this provision.

(iii) *Treatment of short taxable year.* In the case of any taxable year of less than 12 months (a short taxable year), the gross receipts shall be annualized by (A) multiplying the gross receipts for the short taxable year by 12, and (B) dividing the result by the number of months in the short taxable year.

(iv) *Determination of gross receipts*—(A) *In general.* The term "gross receipts" means the total amount, as determined under the taxpayer's method of accounting, received from all trades or businesses carried on by the taxpayer (e.g., revenue derived from the sale of inventory before reduction for cost of goods sold).

(B) *Amounts excluded.* For purposes of this paragraph (d)(2), gross receipts shall not include amounts representing—

(*1*) Returns or allowances,

(*2*) Interest, dividends, rents, royalties, or annuities, not derived in the ordinary course of a trade or business,

(*3*) Receipts from the sale or exchange of capital assets, as defined in section 1221, and

(*4*) Receipts from sales or exchanges not in the ordinary course of business, such as the sale of a trade or business, or the sale of property used in a trade or business as defined under section 1221(2).

(3) *Simplified method of accounting for resale costs*—(i) *In general.* Except as otherwise provided, taxpayers may elect to use the simplified method of this paragraph (d)(3) (the "simplified resale

BEST COPY AVAILABLE

method") for allocating costs to property acquired for resale. The simplified resale method must be applied separately to each trade or business of the taxpayer. (See paragraph (b)(5) of this section which provides that only the simplified production method and not the simplified resale method shall be available in the case of a single trade or business that consists of both production and resale activities.) Under the simplified resale method, preliminary inventory balances are to be calculated without the inclusion of the additional costs required to be allocated in paragraph (d)(3)(ii) of this section. The amount of additional costs attributable to prior periods and the amount of additional costs determined to be allocable under paragraph (d)(3)(ii) of this section for the current period are then taken into account with the inventory balances as initially calculated in order to arrive at an ending inventory balance.

(ii) *Costs required to be capitalized.* The following categories of costs are required to be capitalized with respect to property acquired for resale, regardless of whether a taxpayer elects the simplified resale method. This paragraph (d)(3)(ii) provides illustrative examples of particular items of cost which are required to be capitalized under this section. For example, costs of handling generally consist of direct and indirect labor costs, tools, vehicles, and other enumerated items. These examples are not exhaustive in nature; to the extent that other particular items of costs incurred by the taxpayer benefit or are incurred by reason of the particular activity in question, such costs shall be capitalized accordingly.

(A) *Off-site storage or warehousing—*(*1*) *Definition.* Costs attributable to the operation of off-site storage or warehousing facilities ("off-site storage facilities") under this section are required to be capitalized with respect to inventory. For purposes of this section, an off-site storage facility is defined as any storage or warehousing facility which is not an on-site storage facility. An on-site storage facility is a facility which is physically attached to, and an integral part of, a retail sales facility where the taxpayer sells merchandise stored at the facility to customers physically present at the facility ("on-site sales"). Thus, for example, a catalog or mail order center which stores merchandise for shipment to customers who purchase such merchandise through orders placed over the telephone, or orders delivered in the mail, is not an on-site storage facility, and thus is treated as an off-site storage facility. Similarly, a "pooled stock facility" which functions as a "back-up" regional storage facility for particular retail sales outlets in the nearby area is not an on-site storage facility, and is thus treated as an off-site storage facility. Moreover, a storage or warehousing area operated by a person mailing sales of goods "wholesale" to persons who in turn resell the goods to others, is not an on-site storage facility because such facility is not an integral part of a retail sales facility.

(*2*) *Dual-function facilities.* Except as provided in paragraph (d)(3)(ii)(A)(*3*) of this section, if a storage facility serves as both an on-site and off-site storage facility, a percentage of the facility shall be treated as an on-site storage facility equal to the ratio of—

(*i*) Gross on-site sales of the facility, i.e., gross sales of the facility made to retail customers visiting the premises in person and purchasing merchandise stored therein, to—

(*ii*) Total gross sales of the facility. The portion of the facility which is not treated as an on-site facility under the preceding sentence shall be treated as an off-site facility. For example, assume a catalog center conducts on-site sales which are equal to 40 percent of the total sales made by the facility. For purposes of this section, 40 percent of the facility shall be viewed as an on-site storage facility; the remaining 60 percent shall be viewed as an off-site storage facility.

(*3*) *De minimis rule for dual function facilities.* If 10 percent or less of the gross sales of a facility are attributable to on-site sales, then the entire storage facility located at the site shall be deemed to be an off-site storage facility for purposes of this section. If, in contrast, 90 percent or more of the gross sales of a facility are attributable to on-site sales, then the entire storage facility located at the site shall be deemed to be an on-site storage facility.

(*4*) *Allocation of costs; off-site facilities.* To the extent that costs are incurred at an off-site storage facility which do not directly benefit, or are not incurred by reason of, the storage functions of such facility, then such costs shall not be accounted for as costs of an off-site facility. Thus, for example, assume that a catalog store incurs costs (e.g., labor cost of clerical personnel) attributable to receiving and processing customer orders which will be filled by directly shipping the merchandise to the customer's address. Costs attributable to these functions will be treated as costs allocable to the selling function of the taxpayer's business, and thus not treated as off-site storage costs.

(*5*) *Costs attributable to off-site facilities.* Cost attributable to an off-site storage facility generally consist of direct and indirect labor costs (including the costs of pension plans and other "fringe benefits" as described in paragraphs (b)(2) (ii) and (iii) of this section); occupancy expenses including rent, depreciation, insurance, security, taxes, utilities and maintenance; materials and supplies; tools and equipment; and, general and administrative costs that directly benefit or are incurred by reason of the off-site storage activities of the taxpayer.

(B) *Purchasing.* (*1*) Costs attributable to purchasing activities under this section are required to be capitalized with respect to inventory. Purchasing activities include functions associated with a purchasing department or office, and personnel such as buyers, assistant buyers, and clerical workers, whose function relates to the activities of the selection of merchandise, maintenance of stock assortment and volume, placement of purchase orders, establishment and maintenance of vendor contacts, or comparison and testing of merchandise.

(*2*) The determination of whether a person is engaged in purchasing activities shall be based upon the actual activities performed by such person and not upon that person's title or job classification. Thus, for example, although a particular employee may be described as a "buyer" in the employer's job classification system, activities performed by such person shall not be considered as purchasing activities unless such treatment is appropriate based on an analysis of the actual responsibilities of the employee.

(*3*) Similarly, although a person's job function may be described in such a way as to denote activities outside the area of purchasing (e.g., a "marketing representative"), such activities shall be accounted for under this section as purchasing activities if such treatment is appropriate based upon an analysis of the actual responsibilities of the employee.

(*4*) *In general.* (*i*) If a person performs more than one function, a reasonable allocation of the labor costs attributable to such person shall be made between the purchasing and non-purchasing functions of such person.

(*ii*) For purposes of this paragraph (d)(3)(ii)(B)(*4*), the following formula may be applied by a taxpayer with respect to all personnel directly performing purchasing functions in a trade or business in allocating the labor costs of such personnel to the functions of the taxpayer. (This formula may not

be used with respect to personnel providing general and administrative services which benefit or are incurred by reason of purchasing functions).

(*A*) If less than one-third of a person's activities relate to a purchasing function, none of the labor costs attributable to that person shall be allocated to a purchasing function.

(*B*) If more than two-thirds of a person's activities relate to a purchasing function, all of the labor costs attributable to that person shall be allocated to a purchasing function.

(*C*) In all other cases, an allocation of costs between functions must be made.

(*iii*) For example, assume that A, B, and C are employed by taxpayer M in a retail business. Employee A performs activities, 25 percent of which are direct purchasing functions. Employee B performs activities, 70 percent of which are direct purchasing functions. Employee C performs activities, 50 percent of which are direct purchasing functions. As a result of the application of the formula provided in this paragraph, M will treat none of the labor costs of employee A as allocable to purchasing costs; all of the labor costs of employee B as allocable to purchasing costs; and 50 percent of the labor costs of employee C as allocable to purchasing costs and 50 percent as allocable to nonpurchasing labor costs.

(*5*) Costs attributable to purchasing activities generally consist of direct and indirect labor costs (including the costs of pension plans and other "fringe benefits" as described in paragraphs (b)(2) (ii) and (iii) of this section), office machines, supplies, telephone, travel, and the general and administrative costs that directly benefit or are incurred by reason of the purchasing activities of the taxpayer.

(C) *Handling, processing, assembly, and repackaging*—(*1*) *Definition.* Costs attributable to handling, processing, assembly, repackaging and other similar activities ("handling costs") under this section are required to be allocated to inventory. Handling costs include, for example, all costs incurred in transporting goods (including loading and unloading costs):

(*i*) From the place of purchase to the taxpayer's storage facility (to the extent not already capitalized by the taxpayer),

(*ii*) From storage facility to storage facility, and

(*iii*) From a storage facility to a store or outlet where the sale of the delivered item occurs. Similarly, handling costs include the costs of processing, assembling, and repackaging goods. To the extent that such processing activities would be required, under the law prior to the effective date of the Tax Reform Act of 1986, to be accounted for as the costs of manufactured inventory under section 1.471–11, then the taxpayer shall account for such costs under the rules applicable to production of property rather than the rules of this paragraph (d)(3). (Also, see paragraph (b)(5) of this section for rules relating to the simplified method available for a single trade or business that consists of both production and resale activities).

(*2*) *Exception for repackaging costs after sale occurs.* For the purpose of this paragraph (d)(3), handling costs shall not include the costs of repackaging goods in preparation for imminent shipment or delivery directly to a particular customer, if such repackaging occurs after the customer has ordered the specific identifiable goods in question.

(*3*) *Exception for distribution costs.* For the purpose of this paragraph (d)(3), handling costs shall not include distribution costs. Distribution costs are defined as the costs of delivering goods directly to the customer, e.g., costs incurred in delivering an item from a storage facility to a customer's home. Except as provided in paragraph (d)(3)(ii)(C)(*4*) of this section, distribution costs do not include costs of transporting an item from a storage facility to a store or outlet where the sale of the item occurs.

(*4*) *Custom delivery of ordered items.* Costs incurred in delivering goods from a storage facility to a store where the sale of the goods occurs are presumed to be handling costs allocable to the property and not distribution costs incurred for delivery of goods directly to the customer. This presumption can be overcome only if the taxpayer can demonstrate that a delivery to the store or other selling location is made to fill an identifiable order of a particular customer (placed by such customer before the delivery of the goods occurs) for the particular goods in question. Factors that may demonstrate the existence of a specific, identifiable delivery include the following:

(*i*) The customer has paid for the item in advance of delivery;

(*ii*) The customer has submitted a written order for the item;

(*iii*) The item is not normally available at the retail store for on-site customer purchases; or

(*iv*) The item will be returned to the storage facility (and not held for sale at the store or selling location) if the customer cancels an order.

(*5*) *Costs attributable to handling.* The costs attributable to handling activities generally consist of direct and indirect labor (including the costs of pension plans and other fringe benefits as described in paragraphs (b)(2) (ii) and (iii) of this section); tools; vehicles and equipment; maintenance of vehicles and equipment; rent, depreciation, and insurance of vehicles and equipment; materials; supplies; and the general and administrative costs that directly benefit or are incurred by reason of such activities of the taxpayer.

(D) *General and administrative expenses.* A portion of direct and indirect costs incurred by any administrative, service or support functions or departments ("service departments"), that directly benefits or is incurred by reason of both off-site storage, purchasing, or handling activities, as defined in this section, and the taxpayer's other activities ("mixed service costs") is to be included in inventory costs under this paragraph (d)(3)(ii)(D). The determination of the aggregate portion of such mixed service costs required to be allocated to the off-site storage, purchasing, and handling activities described in this paragraph (d)(3) is to be made pursuant to the rules contained in paragraph (d)(4) of this section.

(4) *Allocation methods under the simplified resale method*—(i) *In general.* The costs that are incurred with respect to the categories described in paragraph (d)(3)(ii) of this section (i.e., activities pertaining to off-site storage, purchasing, handling, and mixed service costs) ("additional section 263A resale costs") are to be allocated to inventory in the manner provided in this paragraph (d)(4). In making all computations under this paragraph (d)(4), initial inventory balances shall be determined without regard to any additional section 263A resale costs allocated under this paragraph (d)(4).

(ii) *Offsite storage, purchasing and handling costs—In general.* The additional section 263A resale costs of the taxpayer for the taxable year are to be allocated to inventory based on the ratio of such costs to the taxpayer's purchases for the year (the "allocation ratio"). The taxpayer shall determine the additional section 263A resale costs to be capitalized in ending inventory by multiplying the allocation ratio times the amounts in the taxpayer's ending inventory which are treated as purchases made during the current year under the taxpayer's method of accounting. Taxpayers will initially calculate their inventory balances without regard to the additional costs required to be capitalized under paragraph (d)(3)(ii) of this section. Taxpayers will then determine the amounts of additional section 263A resale costs that must be capitalized

under this paragraph (d)(4)(ii) of this section, and take into account such amounts, along with amounts of additional costs contained in beginning inventory balances where appropriate, with the preliminary inventory balances to determine their final balances.

(iii) *Determination of mixed service costs*—(A) *In general.* The amount of mixed service costs which is to be included as additional section 263A costs for purposes of calculating the allocation ratio as provided in paragraph (d)(4)(ii) of this section is determine in the following manner. The amount of mixed service costs which is included in additional section 263A resale costs shall be determined by multiplying the total amount of mixed service costs incurred by the taxpayer in the trade or business for the taxable year, by the ratio of—

(*1*) The sum of the labor costs allocable to the off-site storage, purchasing, and handling activities, described in paragraph (d)(3)(ii) of this section, to—

(*2*) The total of all labor costs incurred in the taxpayer's trade or business, excluding the total amount of labor costs included in the mixed service costs incurred by the taxpayer in the trade or business for the taxable year.

To the extent that mixed service costs and labor costs are incurred in more than one trade or business, the taxpayer shall determine the amounts allocable to the particular trade or business in issue by using any reasonable method consistent with the principles of this section.

(B) *Example.* The determination of mixed service costs under this provision is illustrated by the following example.

*Example.* Taxpayer T incurs $1 million in mixed service costs in its trade or business for the taxable year. The labor costs allocable to T's purchasing, handling and off-site storage activities are $5 million. The labor costs of T's trade or business as a whole (including the labor costs allocable to purchasing, handling and off-site storage activities, but excluding the labor costs contained in the $1 million in mixed service costs) are $25 million. The mixed service costs that T must treat as additional section 263A resale costs are equal to $200,000 (*i.e.*, $5 million divided by $25 million, multiplied by $1 million). The $200,000 in mixed service costs are included in additional section 263A resale costs, and are allocated to ending inventory using the procedures described in paragraph (d)(4)(ii) of this section.

(C) In determining whether the costs of a department or function are mixed service costs under this paragraph (d)(4)(iii), the taxpayer shall apply the principles contained in paragraph (b)(6) of this section relating to the simplified mixed service cost method applicable to the production of inventory. Thus, for example, the taxpayer shall apply the de minimis rule described in paragraph (b)(6)(iv) of this section in determining whether service costs are solely allocable to resale activities, or whether service costs are solely allocable to non-resale activities. Moreover, the taxpayer shall apply the principles of paragraph (b)(6)(iii)(E) of this section in determining the total costs of departments or functions which are to be included as mixed service costs under this paragraph (d)(4)(iii). Thus, for example, in determining the total costs of departments or functions performing mixed service activities for purposes of this paragraph (d)(4)(iii), the taxpayer shall not exclude non-resale related costs which are otherwise included in the total costs of such departments performing mixed service activities. See the examples relating to the costs of an accounting department and the labor costs of administrative and managerial personnel which are contained in paragraph (b)(6)(iii)(E) of this section.

(iv) *Examples.* The application of the simplified resale method is illustrated in the following examples:

*Example* (1). Taxpayer A, using the first-in, first-out (FIFO) method of accounting for inventories, incurred $400,000 of storage costs, $500,000 of purchasing costs, $300,000 in handling and processing costs, and $200,000 of mixed service costs during the taxable year (a total of $1.4 million in additional section 263A resale costs). A's beginning inventory balance (excluding additional section 263A resale costs) was $2 million. A made $8 million in gross purchases during the taxable year, and A's ending inventory (excluding additional section 263A resale costs) was $3 million. The amounts in ending inventory which are viewed as consisting of purchases made during the year, under the FIFO method, are $3 million. The ratio of additional section 263A resale costs to purchases made during the taxable year (the allocation ratio) is 17.5 percent *i.e.*, $1.4 million divided by $8 million. The additional section 263A resale costs required to be capitalized in ending inventory are equal to $525,000, i.e., the product of the allocation ratio (17.5 percent) multiplied by the amount of purchases for the year which are viewed as being held in ending inventory ($3,000,000).

*Example* (2). Taxpayer B uses the last-in, first-out method (LIFO) of accounting for inventories. Assume the same facts as Example (1). The amounts in ending inventory which are viewed as consisting of purchases made during the taxable year, under the LIFO method, are $1 million. The ratio of additional section 263A resale costs to purchases made during the taxable year is 17.5 percent. The additional section 263A resale costs required to be capitalized in ending inventory are equal to $175,000, i.e., the product of the allocation ratio (17.5 percent) multiplied by the amount of purchases for the year which are viewed as being held in ending inventory ($1,000,000).

*Example* (3). Taxpayer X begins its trade or business in Year 1, and uses the LIFO method of accounting for inventories. X had no beginning inventory balance for the year (due to entering the trade or business in Year 1). X incurred a total of $1,000 in additional section 263A resale costs in Year 1, and made $10,000 in gross purchases. The amounts in ending inventory which are viewed as consisting of purchases made during the taxable year, under the LIFO method, are $3,000. Such ending inventory amounts are contained in pools A, B, and C. X allocates its additional section 263A resale costs for Year 1 as follows:

Year 1

Additional section 263A resale costs, $1,000 divided by Purchases, $10,000 equals 10% allocation ratio

| | Total | A | B | C |
|---|---|---|---|---|
| Year 1 | | | | |
| Ending balance | $3,000 | $1,600 | [illegible] | [illegible] |
| Allocation ratio | .10 | .10 | .10 | .10 |
| Current additional section 263A costs | [illegible] | 160 | 30 | [illegible] |
| Final ending inventory bala...e | 3,300 | 1,760 | [illegible] | [illegible] |

In Year 2, X incurs $400 of additional section 263A costs. Purchases for Year 2 are $2,000, distributed among pools A, B, and C. Cost of sales for Year 2 are $1,000. X computes its final inventory for Year 2 as follows:

Year 2

Additional section 263A costs, $400 divided by Purchases, $2,000 equals 20% allocation ration

| | Total | A | B | C |
|---|---|---|---|---|
| Year 2 | | | | |
| Beginning balance | $3,000 | $1,600 | [illegible] | [illegible] |
| Current purchases | 2,000 | 1,500 | 300 | [illegible] |
| Costs of sales | 91,000 | (300) | (300) | (400) |
| Ending balance | 4,000 | 2,800 | [illegible] | 600 |
| Prior period additional section 263A costs | [illegible] | 160 | 60 | 80 |
| Included in costs of sales | (20) | | | (20) |
| Remaining additional section 263A costs | 280 | 160 | 60 | [illegible] |
| Current additional section 263A costs | 240 | 240 | | |
| Final ending inventory balance | 4,520 | 3,200 | [illegible] | 660 |

Pool C is reduced by $200 in Year 2. A portion of the additional 263A resale costs contained in pool C which is attributable to Year 1 must be included in cost of goods sold in Year 2. The amount is determined by dividing the decrement in pool C by the total costs accumulated in the Year 1 layer of pool C; the resulting fraction is then multiplied by the additional section 263A costs contained in pool C that are attributable to Year 1. Thus, the amount of additional section 263A costs that is included in cost of goods sold from pool C, attributable to Year 1, is $20, *i.e.*, $200 divided by $800, multiplied by $80.

(v) *LIFO indexes.* Under the simplified resale method, a taxpayer using the LIFO method of accounting for inventories must calculate each particular year's index without regard to the additional section 263A resale costs required to be allocated under this section. Similarly, the taxpayer shall disregard the additional section 263A resale costs in adjusting current year costs by the appropriate indexes, in determining whether there has been an inventory increment or decrement for the current year in question for the particular pool. If the taxpayer determines that there has been an inventory increment, then the taxpayer shall state the amount of the increment in current year dollars, and then multiply the resulting amount by the allocation ration, as previously described. The resulting product is equal to the amount of the additional section 263A resale costs which the taxpayer is required to capitalize in ending inventory. If the taxpayer determines that there has been an inventory decrement, then the taxpayer shall state the amount of the decrement in dollars applicable to the particular year for which the LIFO cost or layer has been invaded. The additional section 263A resale costs incurred in prior years which are applicable to the decrement shall be charged to cost of goods sold. The additional section 263A resale costs which are applicable to the decrement are determined by multiplying the total amount of such section 263A resale costs allocated to the layer of the particular pool in which the decrement occurred, by the ratio of the decrement to the total costs (excluding section 263A resale costs) in the layer for such pool.

(5) *Section 481 (a) adjustment.* Taxpayers using the simplified resale method to allocate costs must apply the simplified method in revaluing their inventories for purposes of the change in method of accounting required under this section. See paragraph (e) of this section for rules relating to the methods permitted for inventory revaluations and the calculation of the adjustment under section 481(a).

(6) *Election.* The election to use the simplified resale method shall be made separately for each trade or business of the taxpayer on a timely filed income tax return for the taxpayer's first taxable year for which this section becomes effective beginning after December 31, 1986. For taxable years subsequent to such taxable year of the taxpayer, and election to use the simplified resale method requires the consent of the Commissioner. In addition, taxpayers are required to obtain the consent of the Commissioner to change from the simplified resale method to the general method of this section.

(e) *Inventories.* (1) *In general.* Under this section, taxpayers are required to change their method of accounting with respect to inventory property, effective for taxable years beginning after December 31, 1986. The required change in method of accounting applies to inventory produced by the taxpayer, as well as to inventory acquired by the taxpayer for resale. The change in method of accounting is to be made by revaluing the items or costs included in beginning inventory in the year of change as if the new capitalization rules of section 263A and this section has been in effect during all prior periods. In revaluing inventory costs under this procedure, all of the capitalization provisions of this section (*e.g.*, the requirement to capitalize the entire amount of tax depreciation and cost recovery allowances with respect to equipment and facilities), shall apply to all inventory costs accumulated in prior periods. The necessity to revalue beginning inventory as if the new capitalization rules had been in effect for all prior periods includes, for example, the revaluation of costs or layers incurred in taxable years preceding the transition period to the full absorption method of inventory costing as described in § 1.471–11(e), regardless of whether a taxpayer employed a "cut-off" method under those regulations. The difference between the inventory as originally valued and the inventory as revalued by applying the new capitalization rules is equal to the amount of the ajustment required under section 481(a). For example, with respect to inventories of films, sound recordings, video tapes, books, and other similar property, the taxpayer shall revalue the costs of such items (including, for example, the costs of a copyright and manuscript of a book) under the principles of this paragraph (e)(1).

(2) *Section 481(a) adjustment.* In the case of any taxpayer required by this section to change its method of accounting for any taxable year, such change shall be treated as initiated by the taxpayer. (In addition, such change shall be treated as made with the consent of the Commissioner, subject to the provisions of paragraph (e)(11) of this section). Thus, for example, the adjustment required under section 481(a) with respect to the change in method of accounting for such taxpayer shall not be reduced in any manner by any amount pertaining to taxable years preceding the effective date of the Internal Revenue Code of 1954. The adjustment arising from the change in method of accounting is to be taken into account over a period not to exceed 4 years.

(3) *Timing of section 481(a) adjustment.* (i) Any taxpayer required to change its method of accounting under this section shall take into account the adjustment required under the administrative procedures applicable to a voluntary change in method of accounting in effect on January 1, 1987, subject to the following modifications:

(ii) If 75 percent or more of the section 481(a) adjustment is attributable to the 1-taxable year period, 2-taxable year period, or 3-taxable year period immediately preceding the year of change, the highest percent attributable to the 1, 2, or 3-taxable year period is to be taken into account ratably over a 3-taxable year period beginning with the year of change. The remaining balance is to be taken into account in the 4th taxable year (the "75 percent rule"). The 75 percent rule of this paragraph shall only apply if the taxpayer has used its present method of accounting for more than 3 taxable years.

(iii) If paragraph (e)(3)(ii) of this section does not apply, the section 481(a) adjustment is to be taken into account ratably over the number of tax years (not to exceed 4) the taxpayer has used its present method of accounting.

(iv) If the taxpayer is a cooperative within the meaning of section 1381(a), the section 481(a) adjustment may be taken into account entirely in the year of change or, at the taxpayer's election, may be taken into account under the

general procedures applicable to other taxpayers, as modified by the rules of this paragraph.

(v) The use of the expedited procedure described in pargraph (e)(4) of this section may be elected by a taxpayer in applying the 75 percent rule described in paragraph (e)(3)(ii) of this section.

(vi) Any net operating loss and tax credit carryforwards will be allowed to offset any positive section 481(a) adjustment.

(vii) For purposes of determining estimated tax payments, the section 481(a) adjustment will be recognized in taxable income ratably throughout the year in question.

(4) *Expedited procedure for applying the 75-percent rule.* (i) *In general.* Any taxpayer required to change its method of accounting under this section may elect to use the expedited procedure of this paragraph (e)(4)(i) in determining the appropriate period for taking into account the section 481(a) adjustment under the provisions of the 75-percent rule contained in paragraph (e)(3)(ii) of this section. Under the 75-percent rule, the period for taking the section 481(a) adjustment into account may be accelerated if 75 percent or more or the adjustment is attributable to either the 1-taxable year period, 2-taxable year period, or 3-taxable year period immediately preceding the year of change. In order to determine whether the 75-percent rule applies to a taxpayer, the taxpayer is required to compute the section 481(a) adjustment which would have been required had the change in method of accounting occurred in each of the three years preceding the actual year of change. Under the procedure provided in this paragraph (e)(4), in computing the amount of the section 481(a) adjustment that would have been required in the three taxable years preceding the year of change, a taxpayer may—

(A) Compute the percentage increase in the balance of beginning inventory resulting from the change in method of accounting for the taxable year beginning after December 31, 1986, and

(B) Multiply that percentage increase by the beginning inventory balance for each of the three preceding taxable years in issue.

The resulting product shall be the amount of the section 481(a) adjustment for each of the preceding taxable years, respectively. Any taxpayer electing to apply this procedure is required to use such procedure for each of the three taxable years in issue. The election to use this procedure may be made automatically by the taxpayer, without obtaining the consent of the Commissioner, by adopting such procedure in determining the timing of its section 481(a) adjustment under this section.

(ii) *Example illustrating procedure.*

*Example.* B, a calendar year taxpayer, is required to change its method of accounting for its taxable year beginning January 1, 1987. B's beginning inventory balance as of January 1, 1987, before the change in method of accounting, is $1,000. The revalued inventory balance after applying the change in method of accounting required by this section is $1,100 (a ten percent increase). B's beginning inventory balance as of January 1, 1986, was $900. Under this procedure, for applying the 75-percent rule, B may assume that the amount of the section 481(a) adjustment applicable to a change in method of accounting for the taxable year beginning January 1, 1986, would be $90 (ten percent multiplied by $900).

(5) *General examples.* The following examples illustrate the provisions of this paragraph.

*Example* (1). Y is required to change its method of accounting under this section for its taxable year beginning January 1, 1987. The adjustment required by section 481(a) to effect such change is $1,000. Y has been using its prior method of accounting for inventories for the 4-year period preceding the year of change. The highest percent of the section 481(a) adjustment attributable to either the 1-taxable year period, 2-taxable year period, or 3-taxable year period preceding the year of change is 67%. Based on the above facts, Y is required to include ratably the section 481(a) adjustment in taxable income for its four consecutive taxable years beginning with 1987, i.e., $250 of the section 481(a) adjustment should be included in taxable income for each of the four years.

*Example* (2). Assume the same facts as in example 1, except that the highest percent of the section 481(a) adjustment attributable to either the 1-taxable year period, 2-taxable year period, or 3-taxable year period, immediately preceding the year of change is 90%. Based on the above facts, Y is required to include 30% of the total section 481(a) adjustment into taxable income for each of its three consecutive taxable years beginning with 1987. The remaining 10 percent of the section 481(a) adjustment shall be included in income for the fourth taxable year, i.e., 1990.

*Example* (3). Assume that Y is required under this section to change its method of accounting for its taxable year beginning January 1, 1987. In addition, assume that in accordance with paragraph (e)(3)(iii), Y is required to include the section 481(a) adjustment in income over 4 years beginning with its 1987 taxable year. On December 31, 1987, the aggregate balance of Y's inventory to which the section 481(a) adjustment relates is reduced by more than 33⅓ percent of the aggregate balance at January 1, 1987. Further, the inventory is so reduced by at least such percentage on December 31, 1988. Y must include the remaining balance of the 481(a) adjustment in its income for December 31, 1988.

(6) *Revaluation of inventory*—(i) *In general.* Generally, in revaluing the costs of inventory under the change in method of accounting, taxpayers are required to make a determination, based on all of the facts and circumstances, of the direct and indirect costs which are to be assigned to each time of inventory under the capitalization rules of this section (the "facts and circumstances revaluation"). The facts and circumstances revaluation shall be required for every prior period which is relevant in determining the total restated balance as of the year of change. Paragraph (e)(6)(ii) of this section describes the facts and circumstances revaluation, including the degree of precision and accuracy which is necessary under that method. Paragraph (e)(6) (iii) and (iv) of this section permit the use of certain methods which determine the revaluation of inventory costs through processes of estimation and extrapolation which are not based on a determination of the facts and circumstances of a particular year's data. The methods prescribed in this paragraph (e)(6) (ii), (iii), and (iv) are available with respect to taxpayers producing property, or acquiring property for resale, regardless of whether those taxpayers elected to use the simplified methods available for such activities under this section.

(ii) *Facts and circumstances revaluation*—(A) *In general.* Under the facts and circumstances revaluation, taxpayers generally are required to revalue inventories by applying the capitalization rules of this section to the production and resale activities of the taxpayer, with the same degree of specificity as required of inventory manufacturers under the law immediately prior to the effective date of the Tax Reform Act of 1986. Thus, for example, with respect to any prior period which is relevant in determining the total amounts of the revalued balance as of the year of change, the taxpayer must analyze the production and resale data for that particular period, and apply the rules and principles of this section to determine the appropriate revalued inventory costs. However, under the facts and circumstances revaluation, taxpayers may utilize reasonable estimates and procedures in valuing inventory costs if:

(*1*) Taxpayers lack (and are not able to reconstruct, from their books and records), actual financial and accounting data which is required to apply the capitalization rules of this section to the relevant facts and circumstances

surrounding a particular item of inventory or cost; and

(*2*) The total amounts of costs for which reasonable estimates and procedures are employed are not significant in comparison to the total restated value (including costs previously capitalized under the taxpayer's prior method of accounting) of the items or costs for the period in question.

Taxpayers who are not able to comply with the latter requirement of the preceding sentence because of the existence of a significant amount of costs which would require the use of estimates and procedures, shall revalue their inventories under the procedures provided in paragraph (e)(6) (iii) and (iv) of this section.

(B) *Estimates and procedures allowed.* The estimates and procedures of this paragraph (e)(6)(ii) include—

(*1*) The use of available information from more recent periods to estimate the amount and nature of inventory costs applicable to earlier periods; and

(*2*) The use of available information with resepct to comparable items of inventory produced or acquired during the same period in order to estimate the costs associated with other items of inventory.

(C) *Examples.* The provisions of this paragraph (e)(6)(ii) are illustrated by the following examples. The principles set forth in these examples are applicable both to production and resale activities.

*Example* (1). Taxpayer X lacks information for the years 1973 and earlier, regarding the amount of costs incurred in transporting finished goods from X's factory to X's warehouse and in storing those goods at the warehouse until their sale to customers. X determines that, for 1974 and subsequent years, such transportation and storage costs constitute 4 percent of the total costs of comparable goods under X's method of accounting for such years (the "section 471 costs"), before revaluation under this section. Under this paragraph (e)(6)(ii), X may assume that transportation and storage costs for the years 1973 and earlier constitute 4 percent of the total section 471 costs of such goods.

*Example* (2). Assume the same facts as in example (1), except that for the year 1973 and earlier, taxpayer X used a different method of accounting for inventory costs whereunder significantly fewer costs were capitalized under section 471 than amounts capitalized in later years. Thus, the application of transportation and storage based on a percentage of costs for 1974 and later years would not constitute a reasonable estimate for use in earlier years. X may use the information from 1974 and later years, if appropriate adjustments are made to reflect the differences in inventory costs for the applicable years, including, for example: (*i*) increasing the percentage of costs which are intended to represent transportation and storage costs to reflect the aggregate differences in capitalized amounts under the two methods of accounting; or (*ii*) taking the absolute dollar amount of transportation and storage costs for comparable goods in inventory and applying that amount (adjusted for changes in general price levels, where appropriate) to goods associated with 1973 and prior periods.

*Example* (3). Taxpayer Y lacks information for 1976 and earlier years regarding the amount of tax depreciation applicable to equipment used to manufacture inventories. For such years Y capitalized the amount of depreciation on such equipment equal to the depreciation which was treated as an inventoriable cost for "book" purposes, i.e., for purposes of financial reports. For years 1977 through 1980, Y determines that the requirement to capitalize the total amount of depreciation allowable for tax purposes under this section, results in additional capitalized depreciation equal to 5 percent of the total section 471 costs of the inventory property. Y may assume that the requirement to capitalize tax depreciation for the years 1976 and earlier constitutes as additional 5 percent of the total section 471 cost of such goods.

*Example* (4). Assume the same facts as in example (3), except that for 1976 and earlier years, taxpayer Y generally did not treat depreciation of equipment and facilities as an inventoriable cost for book purposes. Thus, for reasons similar to those set forth in example (2), Y may not use the revaluation percentages for tax depreciation in 1977 through 1980, in determining the amount of such depreciation for 1976 and earlier years. However, Y may use the available information for 1977 through 1980, if appropriate adjustments, similar to the adjustments prescribed in example (2), are made in determining the applicable amounts for 1976 and earlier years.

*Example* (5). Taxpayer Z lacks information for certain years with respect to factory administrative costs, subject to capitalization under this section, incurred in the production of inventory in factory A. Z does have sufficient information to determine factory administrative costs with respect to production of inventory in factory B, wherein inventory items were produced during the same years as factory A. Z may use the information from factory B to determine the appropriate amount of factory administrative costs to capitalize as inventory costs for comparable items produced in factory A during the same years.

(iii) *Weighted average method*—(A) *In general.* Taxpayers using the FIFO method of accounting or the specific goods LIFO method of accounting for inventories may use the weighted average method as provided in this paragraph (e)(6)(iii), to estimate the amount of additional costs that must be allocated to inventories for prior years. The weighted average method under paragraph (e)(6)(iii) is only available to taxpayers who lack sufficient data to revalue their inventory costs under the facts and circumstances revaluation method provided for in paragraph (e)(6) of this section. Moreover, taxpayers who qualify for the use of the weighted average method under this paragraph (e)(6)(iii) shall utilize such method only with respect to items or costs for which they lack sufficient information to revalue under the capitalization rules of this section. Particular items or costs must be revalued under the facts and circumstances revaluation method of this paragraph (e)(6)(ii), if sufficient information exists to make such a revaluation. If a taxpayer lacks sufficient information to otherwise apply the weighted average method under this paragraph (e)(6)(iii) (*e.g.*, the taxpayer is unable to revalue the costs of any of its items in inventory due to a lack of information), then the taxpayer shall use reasonable estimates and procedures, as described in the facts and circumstances revaluation method under paragraph (e)(6)(ii) of this section, to whatever extent is necessary to allow the taxpayer to apply the weighted average method.

(B) *Weighted average method for specific goods LIFO taxpayers.* (*1*) This paragraph (e)(6)(iii)(B) sets forth the mechanics of the weighted average method as applicable to LIFO taxpayers using the specific goods methods of valuing inventories. Under the weighted average method, the inventory layers with respect to an item for which data is available are revalued under this section and the increase in amount for each layer is expressed as a percentage of change from the cost in the layer as originally valued. A weighted average of the percentage of change for all layers for each type of good is computed and applied to all earlier layers for each type of good which lack sufficient data to allow for revaluation. In the case of earlier layers for which sufficient data exists, such layers are to be revalued using actual data. In cases where sufficient data is not available to make a weighted average estimate with respect to a particular item of inventory, a weighted average increase is to be determined using all other inventory items revalued by the taxpayer in the same pool; this percentage increase is then used to revalue the cost of the item for which data is lacking. If the taxpayer lacks sufficient data to revalue any of the inventory items contained in a pool, then the weighted average increase of "substantially similar" items (as determined by principles similar to the rules applicable to dollar-value LIFO taxpayer in § 1.472–8(b)(3)) shall be applied in the revaluation of the items in such pool. If insufficient data exists with respect to all the items in a pool and to

all items which are substantially similar (or such items do not exist), then the weighted average for all revalued items in the taxpayer's inventory shall be applied in revaluing items for which data is lacking.

(2) *Example.*

*Example.* Taxpayer M, a manufacturer, produces two different parts. Work-in-process inventory is recorded in terms of equivalent units of finished goods. M's records show the following at the end of 1986 under the specific goods LIFO inventory method:

| LIFO product and layer | Number | Cost | Carrying values |
|---|---|---|---|
| Product No. 1: | | | |
| 1983 | 150 | $5.00 | $750 |
| 1984 | 100 | 6.00 | 600 |
| 1985 | 100 | 6.50 | 650 |
| 1986 | 50 | 7.00 | 350 |
| Total | | | 2,350 |
| Product No. 2: | | | |
| 1983 | 200 | 4.00 | 800 |
| 1984 | 200 | 4.50 | 900 |
| 1985 | 100 | 5.00 | 500 |
| 1986 | 100 | 6.00 | 600 |
| Total | | | 2,800 |

Note: Total carrying value of Product No. 1 and No. 2—5,150

M has sufficient data to revalue the unit costs of product #1 under the new capitalization rules of this section to $7.00 in 1984, $7.75 in 1985 and $9.00 in 1986. The available data for product #1 results in a weighted average percentage change for product #1 of 20.31 percent [(100 x ($7.00 − $6.00)) + (100 x ($7.75 − $6.50)) + (50 x ($9.00 − $7.00)) divided by (100 x $6.00) + (100 x $6.50) + (50 x $7.00)]. *M* has sufficient data to revalue the unit costs of product #2 to $6.00 on 1985 and $7.00 in 1986. The available data for product #2 results in a weighted average percentage change of 18.18 percent [(100 x ($6.00 − $5.00)) + (100 × ($7.00 − $6.00)) divided by (100 × $5.00) + (100 x $6.00)]. The revalued costs for product #1 for 1983 can be estimated by applying the weighted average increase determined for product #1 (20.31 percent) to the unit costs originally carried on the taxpayer's records for 1983. The estimated revalued unit cost in the case of product #1 would be $6.02 ($5.00 x 1.2031). The costs of product #2 are redetermined in a similar manner for 1983 and 1984 by applying the weighted average increase determined for product #2 of 18.18 percent to the unit costs of $4.00 and $4.50 for 1983 and 1984, yielding revalued unit costs of $4.73 and $5.32 respectively. M's inventory would be revalued as follows:

| LIFO product and layer | Number | Cost | Carrying values |
|---|---|---|---|
| Product No. 1: | | | |
| 1983 | 150 | $6.02 | $903 |
| 1984 | 100 | 7.00 | 700 |
| 1985 | 100 | 7.75 | 775 |
| 1986 | 50 | 9.00 | 450 |
| Total | | | 2,828 |
| Product No. 2: | | | |
| 1983 | 200 | 4.73 | 946 |
| 1984 | 200 | 5.32 | 1,064 |
| 1985 | 100 | 6.00 | 600 |
| 1986 | 100 | 7.00 | 700 |
| Total | | | 3,310 |

Notes:
Total of carrying value of Products No. 1 and No. 2 under section 263A—$6,138
Total amount of adjustment required under section 481(a)—$988

(C) *Weighted average method for FIFO taxpayers.* (1) This paragraph (e)(6)(iii)(C) sets forth the mechanics of the weighted average method as applicable to FIFO taxpayers. Under the weighted average method, an item in ending inventory for which sufficient data is not available for revaluation under this section shall be revalued by using the weighted average percentage increase with respect to such item for the first subsequent year for which sufficient data is available. With respect to an item for which no subsequent data exists, such item shall be revalued by using the weighted average percentage increase with respect to all reasonably comparable items in the taxpayer's inventory for the same year or the first subsequent year for which sufficient data is available.

(2) *Example.*

*Example.* Taxpayer A uses the FIFO method of valuing inventories. A maintains inventories of bolts, two types of which it no longer produces. Bolt A was last produced in 1984 and 1985. The revaluation of the costs of Bolt A under this section for bolts produced in 1984 results in a 20 percent increase of the costs of Bolt A. A portion of the inventory of bolt A, however, is attributable to 1983. A does not have sufficient data for revaluation of the 1983 layer for Bolt A. With respect to bolt A, A may apply the 20 percent increase determined for 1984 to the 1983 production as an acceptable estimate. Bolt B was last produced in 1982 and no data exists which would allow revaluation of the inventory cost of bolt B pursuant to the rules of this section. The inventories of all other bolts for which information is available are attributable to 1984 and 1985 production. Revaluation of the costs of these other bolts using available data results in an average increase in inventory costs of 15 percent for 1984 production. With respect to bolt B, the overall 15 percent increase for W's inventory for 1984 may be used in revaluing the cost of bolt B.

(iv) *3-year average method*—(A) *In general.* Taxpayers using the dollar-value LIFO method of accounting for inventories may revalue all existing LIFO layers of a trade or business based on the 3-year average method as provided in this paragraph (e)(6)(iv). The 3-year average method is based on the weighted average percentage change (the "3-year revaluation factor") in the current costs of inventory for each LIFO pool based on the three most recent taxable years for which the taxpayer has sufficient information (typically, the three most recent taxable years of such trade or business). The 3-year revaluation factor is applied to all layers for each pool in beginning inventory in the year of change. The 3-year average method is available to dollar-value taxpayers who comply with the requirements of this paragraph (e)(6)(iv) regardless of whether such taxpayers lack sufficient data to revalue their inventory costs under the facts and circumstances revaluation method prescribed in paragraphs (e)(6)(ii) of this section. The 3-year average method must be applied with respect to all inventory in a taxpayer's trade or business. Taxpayers are not permitted to apply the method for the revaluation of some, but not all, inventory costs on the basis of pools, business units, or other measures of inventory amounts which do not constitute a separate trade or business. Under the 3-year average method, for purposes of determining future indexes, the year prior to the year of change becomes a new base year, and all costs are restated in new base year costs for purposes of extending such costs in future years. However, costs associated with old layers retain their separate identity within the base year, with such layers being merely restated in terms of the new base year index. For example, for purposes of determining whether a particular layer has been invaded, each layer shall retain its separate identity; thus, if a decrement in an inventory pool occurs, layers accumulated in more recent years shall be viewed as invaded first, in order of priority. If a taxpayer lacks sufficient information to otherwise apply the 3-year average method under this paragraph (e)(6)(iv) (*e.g.*, the taxpayer is unable to revalue the costs of any of its LIFO pools for three years due to a lack of information), then the taxpayer shall use reasonable estimates and procedures, as described in the facts and circumstances revaluation method under paragraph (e)(6)(ii) of this section, to whatever extent is necessary to allow the taxpayer to apply the 3-year average method.

(B) *Consecutive year requirement.* Under the 3-year average method, if sufficient production data is available to

calculate the revaluation factor for more than three years, the taxpayer may use data from such additional years in determining the average percentage increase only if the additional years are consecutive years prior to the year of change. The requirement under the preceding sentence to use consecutive years is applicable under this method regardless of whether any inventory costs in beginning inventory as of the year of change are viewed as incurred in, or attributable to, those consecutive years under the LIFO method. Thus, the requirement to use data from consecutive years may result in using information from a year in which no LIFO increment occurred. For example, if a taxpayer has sufficient data to revalue its inventory for the years 1981 through 1986, the taxpayer may calculate the revaluation factor using all six years. If, however, the taxpayer has sufficient data to revalue its inventory for the years 1980 through 1982, and 1984 through 1986, only the years consecutive to the year of change (*i.e.*, 1984 through 1986) may be used in determining the revaluation factor. Similarly, for example, a taxpayer with LIFO increments in 1985, 1983, and 1982 may not calculate the revaluation factor based on the data from those years alone, but instead must use the data from consecutive years for which the taxpayer has information.

(C) *Example.*

*Example. G*, a calendar year taxpayer, first adopted the dollar value LIFO method in 1981, using a single pool and the double extension method. *G's* beginning LIFO inventory for the year of change is as follows:

| | Base year [illegible] | Index | LIFO carrying value |
|---|---|---|---|
| Base layer | $14,000 | 1.00 | $14,000 |
| 1981 layer | 4,000 | 1.20 | 4,800 |
| 1982 layer | 5,000 | 1.30 | 6,500 |
| 1983 layer | 2,000 | 1.35 | 2,700 |
| 1984 layer | 0 | 1.40 | 0 |
| 1985 layer | 4,000 | 1.50 | 6,000 |
| 1986 layer | 5,000 | 1.60 | 8,000 |
| Total layer | 34,000 | | 42,000 |

*G* is able to recompute total inventoriable costs incurred under the rules of this section for the three preceding taxable years as follows:

| Current year | Current cost [illegible] (prior) law | Current cost as adjusted (263A) | Weighted percentage change |
|---|---|---|---|
| 1984 layer | $35,000 | $45,150 | 0.29 |
| 1985 layer | 43,500 | 54,375 | .25 |
| 1986 layer | 54,400 | 70,720 | .30 |
| Total | 132,900 | 170,245 | .28 |

Applying the average revaluation factor of .28 to each layer, the inventory is restated as follows:

| | Base year [illegible] | Index | LIFO carrying value |
|---|---|---|---|
| Base layer | $17,920 | 1.00 | $17,920 |
| 1981 layer | 5,120 | 1.20 | 6,144 |
| 1982 layer | 6,400 | 1.30 | 8,320 |
| 1983 layer | 2,560 | 1.35 | 3,456 |
| 1984 layer | [illegible] | 1.40 | [illegible] |
| 1985 layer | 5,120 | 1.50 | 7,680 |
| 1986 layer | 6,400 | 1.60 | 10,240 |
| Total | 43,520 | | 53,760 |

The adjustment required by section 481(a) is the difference between (*i*) the revalued costs of the taxpayer's inventory under the new capitalization rules, and (*ii*) the costs of the taxpayer's inventory before the revaluation required under this section. Based on these facts, the adjustment required by section 481(a) would be equal to $11,760 ($53,760–$42,000). In addition, the year prior to the year of change in method of accounting shall be treated as a new base year for the purposes of determining the LIFO index in future years. This requires that layers in years prior to the base year be restated in terms of the new base year index. With respect to G, the restated inventory would be as follows:

| | Restated base year costs | Index | LIFO carrying [illegible] |
|---|---|---|---|
| Old base layer | $28,672 | 0.625 | $17,920 |
| 1981 layer | 8,192 | .75 | 6,144 |
| 1982 layer | 10,272 | .81 | 8,320 |
| 1983 layer | 4,114 | .84 | 3,456 |
| 1984 layer | 0 | .875 | 0 |
| 1985 layer | 8,188 | .938 | 7,680 |
| New base layer (1986) | 10,240 | 1.00 | 10,240 |
| Total | 69,678 | | 53,760 |

(7) *Adjustments to inventory costs from prior years.* (i) *General rule.* (A) The use of the revaluation factor, based on current costs, to estimate the revaluation of prior inventory layers under the 3-year average method as described in paragraph (e)(6)(iv) of this section, may result in an allocation of costs that include amounts attributable to costs not incurred during the year in which the layer arose. To the extent that a taxpayer can demonstrate that costs which contributed to the determination of the revaluation factor could not have affected a prior year, the revaluation factor as applied to that year may be adjusted, under the restatement adjustment procedure, as described in paragraph (e)(9) of this section. Except as provided in paragraph (e)(7)(iii) of this section, the determination that a cost could not have affected a prior year shall be made by a taxpayer only upon showing that the type of cost incurred during the years used to calculate the revaluation factor (the "revaluation years"), was not present during such prior year. An item of cost will not be eligible for the restatement adjustment procedure simply by reason of the fact that the cost varies in amount from year to year or that the same type of cost is described or referred to by a different name from year to year. Thus, the restatement adjustment procedure allowed under paragraph (e)(9) of this section shall not be available in a prior year with respect to a particular cost if the same type of cost was incurred in both the revaluation years and in such prior year, although the amount of such cost (and the name or description thereof) may vary.

(B) The provisions of this paragraph (e)(7) shall also be applicable to taxpayers using the weighted average method in revaluing inventories under paragraph (e)(6)(iii) of this section. Thus, to the extent that a taxpayer can demonstrate that costs which contributed to the determination of the restatement of a particular year or item could not have affected a prior year or item, the taxpayer may adjust the revaluation of that prior year or item accordingly under the weighted average method. All the requirements and definitions, however, applicable to the restatement adjustment procedure under this paragraph (e)(7) shall fully apply to a taxpayer using the weighted average method to revalue inventories.

(ii) *Examples of costs eligible for restatement adjustment procedure.*

*Example* (1). Assume the taxpayer, A, introduced a defined benefit pension plan in 1984, and made the plan available to personnel whose labor costs were (directly or indirectly) properly allocable to production or resale activities. A determines the revaluation factor based on data available for the years 1984 through 1986, for which the pension plan was in existence. Based on these facts, the costs of the pension plan in the revaluation years are eligible for the restatement adjustment procedure for years prior to 1984.

*Example* (2). Assume the same facts as in example (1), except that a defined contribution plan was available, during prior years, to personnel whose labor costs were properly allocable to production or resale activities. The defined contribution plan was terminated before the introduction of the defined benefit plan in 1984. Based on these facts, the costs of the defined benefit pension plan in the revaluation years are not eligible for the restatement adjustment procedure with respect to years for which the defined contribution plan existed.

*Example* (3). Assume that the taxpayer, B established a service department in 1981, substantially all of the activities of which were devoted to administering the taxpayer's compliance with certain governmental regulations which were first issued and made effective for the year 1981. The governmental regulations issued in 1981 dealt with certain activities of the taxpayer which, under prior law, had not been regulated by any governmental body. B determines the

revaluation factor based on data available for the years 1984 through 1986, for which the service department was in existence. Based on these facts, the costs of the service department in the revaluation years are eligible for the restatement adjustment procedure for 1980 and prior years.

*Example* (4). Assume that the taxpayer, C, established a security department in 1976, to patrol and safeguard the production and warehouse areas used in C's trade or business. Prior to 1976, C had not been required to utilize security personnel in its trade or business; C established the security department in 1976 in response to increasing vandalism and theft at its plant locations. Based on these facts, the costs of the security department are eligible for the restatement adjustment procedure for years prior to 1976.

*Example* (5). Assume that the taxpayer, D, established a payroll department in 1978 to process the company's weekly payroll. In the years 1974 through 1977, D engaged the services of an outside vendor to process the company's payroll. Prior to 1974, D's payroll processing department was done by D's accounting department, which was responsible for payroll processing as well as for other accounting functions. Based on these facts, the costs of the payroll department are not eligible for the restatement adjustment procedure. D was incurring the same type of costs in earlier years as D was incurring in the payroll department in 1978 and subsequent years, although these costs were designated by a different name or description.

*Example* (6). Assume that the taxpayer, E, established a legal department in 1976 to provide the company with legal services on a variety of matters. Prior to 1976, E engaged the services of outside counsel to obtain any necessary legal services. Based on these facts, the costs of the legal department are not eligible for the restatement adjustment procedure.

*Example* (7). Assume that the taxpayer, F, establishes a computer services department in 1977 in order to automate the processing and recordkeeping activities of the company. Prior to 1977, the processing and recordkeeping activities of the company had been performed by bookkeepers and other personnel in the company's accounting department. Based on these facts, the costs of the legal department are not eligible for the restatement adjustment procedure.

(iii) *Exception from general rule.* Costs which are described in this paragraph (e)(7)(iii) shall be eligible for the restatement adjustment procedure under paragraph (e)(9) of this section, even though such costs do not otherwise meet the requirements for such eligibility under the provisions of paragraph (e)(7)(i) of this section. Except as provided in this paragraph (e)(7)(iii), no other costs shall be eligible for the restatement adjustment procedure unless those costs satisfy the requirements of paragraph (e)(7)(i) of this section. Costs described in this paragraph which are eligible for the restatement adjustment procedure are costs attributable to different depreciation and cost recovery ("depreciation") methods used for federal income tax purposes, except that no adjustment shall be made for "applicable pre-cutoff years" as defined in paragraph (e)(8) of this section.

(iv) [Reserved.]

(v) *Example.*

*Example.* Assume that taxpayer, A, depreciated its equipment and facilities using the accelerated cost recovery system (ACRS) for the taxable years 1981 through 1986. A determines the revaluation factor based on data available for the years 1984 through 1986. With respect to taxable years prior to 1981, A used depreciation methods for federal income tax purposes which were less accelerated in nature than the ACRS system. Due to the requirement under this section that all tax depreciation (including the accelerated component thereof) incurred with respect to production equipment and facilities be capitalized, the use of the revaluation factor determined by reference to years 1984 through 1986 results in a higher revaluation factor than the factor which would be applicable for years prior to 1981 based on the facts and circumstances of those years. Although the differences in depreciation methods reflect only varying amounts of the same type of costs, such differences are eligible for the adjustment prescribed in paragraph (e)(9) of this section, subject to the requirements of this paragraph (e)(8) regarding any applicable pre-cutoff years.

(8) *Applicable pre-cutoff years.* A taxpayer may not adjust the revaluation factor by reason of the difference between depreciation methods used for federal income tax purposes, with respect to an applicable pre-cutoff year, as defined in this paragraph. A year will be considered as an applicable pre-cutoff year if (i) for such year, the taxpayer included in inventoriable costs under its method of accounting, less than 10 percent of "book" depreciation taken for that year with respect to the taxpayer's equipment and facilities used for production purposes; and (ii) with respect to the revaluation years, the taxpayer included in inventoriable costs under its method of accounting substantially all (i.e., at least 80 percent) of "book" depreciation taken for that year with respect to the taxpayer's equipment and facilities used for production purposes. Book depreciation, for this paragraph, shall mean the total depreciation taken for such year with respect to equipment and facilities for financial reporting purposes, regardless of whether such book depreciation was treated as an inventoriable cost for such financial reporting purposes. A year may be treated as an applicable pre-cutoff year under this paragraph (e)(8) if the taxpayer utilized either of the cut-off methods described in § 1.471–11(e)(3)(ii)(B) (*1*) or (*2*) (*i.e.*, cut-off methods available under the transition rules to the full absorption method of accounting) and the year otherwise qualifies as an applicable cut-off year under this paragraph. Similarly, a year may be treated as a pre-cut-off year under this paragraph, if the taxpayer changed its method of accounting for inventoriable costs and utilized a cut-off method to effectuate such change, regardless of whether the change in method of accounting was allowed under the Code, or was approved by the Commissioner. Although a particular year may be an applicable pre-cutoff year under this paragraph, the taxpayer will not be precluded from adjusting the revaluation factor with respect to differences between depreciation methods used for federal income tax purposes, for years subsequent to the applicable pre-cutoff year.

(9) *Restatement Adjustment Procedure.* (i) *In general.* (A) This paragraph (e)(9) provides a restatement adjustment procedure whereunder taxpayers may adjust the restatement of inventory costs in prior taxable years in order to produce a different restated value than the value that would otherwise occur through application of the revaluation factor to such prior taxable years.

(B) Under the restatement adjustment procedure as applied to a particular prior year, a taxpayer shall determine the particular items of cost which are eligible for the restatement adjustment with respect to such prior year. The taxpayer shall then recompute, by using reasonable estimates and procedures, the total inventoriable costs which would have been incurred for each revaluation year under—

(*1*) The taxpayer's previous method of accounting for inventories used during the revaluation year, and

(*2*) The capitalization rules of this section as applied to production activities in the revaluation year,

by making appropriate adjustments in the data for such revaluation year to reflect the particular costs eligible for adjustment.

(C) The taxpayer shall then compute the total percentage change with respect to each revaluation year, using the revised estimates of total inventoriable costs for such year as described in this paragraph (e)(9)(i)(B). The percentage change shall be determined by calculating the ratio of:

(*1*) The revised total of the inventoriable costs for such revaluation year under the capitalization rules of this section, to—

(2) The revised total of the inventoriable costs for such revaluation year under the prior method of accounting used for such year.

(D) A weighted average of the resulting percentage change for all revaluation years would then be calculated, and the resulting average would then be applied to the prior year in issue.

(ii) *Examples of restatement adjustment procedure*

*Example* (1). Assume that taxpayer A is eligible to make a restatement adjustment by reason of the costs of a defined benefit pension plan which was introduced in 1984, during the revaluation period. The revaluation factor, before adjustment of data to reflect the pension costs, is as provided in the example in paragraph (e)(6)(iv)(C) of this section. Thus, for example, with respect to the year 1984, the total inventoriable costs under prior law were $35,000 the total inventoriable costs under this section were $45,150, and the percentage restatement change for that year was .29. Under the prior method of accounting used by A during 1984, none of the pension costs were included as inventoriable costs. Thus, the total inventoriable cost un 'er prior law would remain at $35,000 if the pension plan had not been in existence. Under the restatement adjustment procedure, A determines that the total inventoriable costs under this section for 1984, if the pension plan had not been in existence, would have been $42,000. The restatement adjustment for 1984 determined under this paragraph (e)(9) would then be equal to .20. A would make similar calculations with respect to 1985 and 1986. The weighted average of such amounts for each of the three years in the revaluation period would then be determined as in the example in paragraph (e)(6)(iv)(C) of this section. Such weighted average would be used to revalue cost layers for years for which the pension plan was not in existence. Such revalued layers would then be viewed as restated in compliance with the requirements of this paragraph. With respect to cost layers incurred during years for which the pension plan was in existence, no adjustment of the revaluation factor would occur, *i.e.*, the revaluation factor would be equal to .29.

*Example* (2). Assume the same facts as in example (1), except that a portion of the pension costs were included as inventoriable costs under the prior method of accounting used by A during 1984. Under the restatement adjustment procedure, A determines that the total inventoriable costs under the prior method of accounting for 1984, if the pension plan had not been in existence, would have been $34,000. Similarly, A determines that the total inventoriable costs under this section for 1984, if the pension plan had not been in existence, would have been $42,000. The restatement adjustment for 1984 determined under this paragraph (e)(9) would then be equal to .24. A would make similar calculations with respect to 1985 and 1986. The weighted average of such amounts for each of the three years in the revaluation period would then be determined as in the example in paragraph (e)(6)(iv)(C) of this section. Such weighted average would be used to revalue cost layers for years for which the pension plan was not in existence.

*Example* (3). Assume that taxpayer A is eligible to make a restatement adjustment by virtue of using ACRS depreciation during the revaluation period. With respect to certain taxable years before 1981, A used the asset depreciation range and class life system (ADR) of depreciation. The revaluation factor before adjustment of data to reflect the different depreciation methods is the same factor as provided in example (1), i.e., a percentage restatement change for 1984 of .29. Under the restatement adjustment procedure, A determines, using reasonable assumptions and estimates, the total amount of ADR depreciation which would have been allowable with respect to A's equipment and facilities in 1984, had the ADR system been in effect for such year (and for all relevant prior years), and had the ACRS system and deductions thereunder not been available. Assuming that only ADR depreciation had been used in 1984 for all of A's equipment and facilities, A determines the total inventoriable costs which would have been incurred under the capitalization rules of this section, *i.e.* rules which require the capitalization of all tax depreciation taken with respect to equipment and facilities. A determines that such amount is equal to $40,000. The restatement adjustment determined under this paragraph (e)(9) would then be equal to .14. The .14 restatement adjustment would be used to revalue costs layers for years for which only the ADR system had actually been used by A. With respect to cost layers incurred during years for which ACRS depreciation was actually taken by A, no adjustment of the revaluation factor would occur.

(10) *Anti-abuse rule*—(i) *In general.* Section 263A(h)(1) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 263A, including regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section. One way in which the application of section 263A and this section would be otherwise avoided is through the use of entities described in the preceding sentence in such a manner as to effectively avoid the necessity to restate beginning inventory balances under the change in method of accounting required under this section.

(ii) *Deemed avoidance of this section*—(A) *Scope.* For purposes of this paragraph, the avoidance of the application of section 263A and this section will be deemed to occur if a taxpayer using the LIFO method of accounting for inventories, transfers inventory property to a related corporation in a transaction described in section 351, and such transfer occurs:

(*1*) On or before the beginning of the transferor's taxable year beginning in 1987; and

(*2*) After September 18, 1986.

(*B*) *General rule.* Any transaction described in paragraph (e)(10)(ii)(A) of this section shall be treated in the following manner:

(*1*) Notwithstanding any provision to the contrary (*e.g.*, section 381), the tranferee corporation shall be required to revalue the inventories acquired from the transferor under the provisions of this paragraph (e) relating to the change in method of accounting and the section 481(a) adjustment, as if the inventories had never been transferred and were still in the hands of the transferor; and

(*2*) Absent an election as described in paragraph (e)(10)(iii) of this section, the transferee shall account for the inventories acquired from the transferor by treating such inventories as if they were contained in the transferee's LIFO layer(s).

(iii) *Election to use transferor's LIFO layers.* If a transferee described in paragraph (e)(10)(ii) of this section so elects, the transferee shall account for the inventories acquired from the transferor by allocating such inventories to LIFO layers corresponding to the layers to which such properties were properly allocated by the transferor, prior to their transfer. The transferee shall account for such inventories for all subsequent periods with reference to such layers to which the LIFO costs were allocated. Any such election shall be made on a statement attached to the timely filed federal income of the transferee for the first taxable year for which this section applies to the transferee.

(iv) *Tax avoidance intent not required.* The provisions of paragraph (e)(10)(ii) of this section shall apply to any transaction described therein, without regard to whether such transaction was consummated with an intention to avoid federal income taxes.

(v) *Related corporation.* For purposes of this paragraph (e)(10), a taxpayer is related to a corporation if (A) the relationship between such persons is described in section 267(b)(1), or (B) such persons are engaged in trades or businesses under common control (within the meaning of paragraphs (a) and (b) of section 52).

(vi) *Cross reference.* See § 1.142–2T(h) regarding certain limitations on changes in taxable years that may apply, in some circumstances, to transactions described in this paragraph (e)(10).

(11) *Change in methods in accounting.* (i) *In general.* Taxpayers who are required to change their method of

accounting under this section may automatically change such method under the provisions of this paragraph (e)(11). The Commissioner may require such change in method of accounting under this paragraph (e)(11) to be made in accordance with such additional procedures as the Commissioner may prescribe, including the filing of an application to effect such change, at such time and in such a manner as the Commissioner may determine.

(ii) *Only certain changes allowed.* This paragraph shall only apply to changes in method of accounting required under this section. Taxpayers desiring to change their method of accounting, other than with respect to changes in method of accounting described in the preceding sentence, shall submit an application for change in accounting method under the administrative procedures applicable to such taxpayers at such time, including the applicable procedures regarding the time and place of filing the application for change in method of accounting.

(iii) *Definition of changes in method required.* For purposes of this paragraph (e)(11), a change in method of accounting is required under this paragraph (e)(11) if such change is necessary in order for the taxpayer to properly capitalize and allocate costs with respect to production and resale activities in the manner prescribed in this section. A change in method of accounting is not required under this paragraph (e) (11) if such change primarily relates to factors other than those described in the preceding sentence. For example, a required change in method of accounting does not include a change from one inventory valuation method to another inventory valuation method, such as—

(A) A change from LIFO (or FIFO) to FIFO (or LIFO);

(B) A change from an erroneous application of the lower of cost or market method to a correct method; or

(C) A change in accounting method for an inventory of securities from market value to cost.

In addition, a required change in method of accounting does not include a change within inventory valuation methods, such as a change from the "double-extension" method to the "link-chain method", or a change in the method used for determining the number of pools.

(iv) *Noncompliance with this provision.* Taxpayers who are required to change their method of accounting under this section and who fail to comply with the requirements of this paragraph (e)(11) shall be considered as using an improper method of accounting under the Code *Cf.*, section 446(f).

(f) *Cross reference.* See § 1.6001–1(a) regarding the duty of taxpayers to keep such records as are sufficient to establish the amount of gross income, deductions, etc.

**Par. 3.** Section 1.174–2 is amended by adding a sentence to the end of paragraph (a)(1) to read as follows:

**§ 1.174–2 Definition of research and experimental expenditures.**

(a) *In general.* * * *

(1) * * * See section 263A and the regulations thereunder for cost capitalization rules which apply to expenditures paid or incurred for research in connection with literary, historical or similar projects involving the production of property, including the production of films, sound recordings, video tapes, books, or similar properties.

* * * * * *

**Par. 4.** Section 1.263(a)–1 is amended by adding a sentence to the end of paragraph (b) to read as follows:

**§ 1.263(a)–1 Capital expenditures; in general.**

* * * * * *

(b) * * * Section 263A and the regulations thereunder for cost capitalization rules which apply to amounts referred to in paragraph (a) of this section with respect to the production of real and tangible personal property (as defined in § 1.263A–1T (a)(5)(iii)), including films, sound recordings, video tapes, books, or similar properties.

* * * * * *

**Par. 5.** Section 1.263(a)–2 is amended by adding a sentence to the end of paragraph (b) to read as follows:

**§ 1.263(a)–2 Examples of capital expenditures.**

* * * * * *

(b) * * * See section 263A and the regulations thereunder for capitalization rules which apply to amounts expended in securing and producing a copyright and plates in connection with the production of property, including films, sound recordings, video tapes, books, or similar properties.

* * * * * *

**Par. 6.** Section 1.446–1 is amended by revising the last sentence in paragraph (a)(4)(i) to read as follows:

**§ 1.446–1 General rule for methods of accounting.**

(a) *General rule.* * * *

(4) * * *

(i) * * * (For rules relating to computation of inventories, see section 263A, 471, and 472 and the regulations thereunder.)

* * * * *

**Par. 7.** Section 1.471–3 is amended by revising the last sentence of paragraph (c) to read as follows:

**§ 1.471–3 Inventories at cost.**

* * * * *

(c) * * * See § 1.263A–1T for more specific rules regarding the treatment of production costs.

* * * * *

**Par. 8.** Section 1.471–5 is amended by adding a sentence to the end of such section to read as follows:

**§ 1.471–5 Inventories by dealers in securities.**

* * * See § 1.263A–1T for rules regarding the treatment of costs with respect to property acquired for resale.

**Par. 9.** Section 1.471–6 is amended by adding a sentence to the end of paragraph (f) to read as follows:

**§ 1.471–6 Inventories of livestock raisers and other farmers.**

* * * * *

(f) * * * See § 1.263A–1T for rules regarding the computation of costs for purposes of the unit livestock-price method.

* * * * *

**Par. 10.** Section 1.471–8 is amended by adding a sentence to the concluding text of paragraph (a) to read as follows:

**§ 1.471–8 Inventories of retail merchants.**

(a) * * *

* * * See § 1.263A–1T for rules regarding the computation of costs with respect to property acquired for resale.

* * * * *

**Par. 11.** Section 1.471–11 is amended by adding a sentence to the end of paragraph (a) to read as follows:

**§ 1.471–11 Inventories of manufacturers.**

(a) *Use of the full absorption method of inventory costing.* * * * See § 1.263A–1T with respect to the treatment of production costs with respect to taxable years beginning after December 31, 1986.

* * * * *

**Par. 12.** Section 1.1502–13 is amended by revising the last sentence of paragraph (c)(2) to read as follows:

**§ 1.1502–13 Intercompany transactions.**

* * * * *

(c) *Deferral of gain or loss on deferred intercompany transactions.* * * *

(2) *Determination of amount of deferred gain or loss.* * * * See

§ 1.263A–1T for costs properly includible in cost of goods sold.

* * * * *

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 13.** The authority citation for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

### § 602.101 [Amended]

**Par. 14.** Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 1.263A–1T . . . 1545–0987", "§ 1.263A–1T . . . 1545–0987".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: March 20, 1987.

**J. Roger Mantz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87–6720 Filed 3–24–87; 3:17 pm]

BILLING CODE 4830–01–M

---

**26 CFR Part 5h**

**[T.D. 8124]**

## Certain Elections Under the Tax Reform Act of 1986; Corrections

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Corrections to temporary regulations.

**SUMMARY:** This document contains corrections to Treasury Decision 8124, which was published in the **Federal Register** for Thursday, February 5, 1987 (52 FR 3623). T.D. 8124 issued temporary regulations relating to the time and manner of making certain elections under the Tax Reform Act of 1986. The rules also provided guidance to persons making these elections.

**FOR FURTHER INFORMATION CONTACT:** Joel S. Rutstein, 202–566–3297 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The temporary regulations that are the subject of these corrections relate to certain elections under various sections of the Internal Revenue Code of 1986 and the Tax Reform Act of 1986 (the Act). These rules were added to the Temporary Regulations—Elections Under Various Public Laws (26 CFR Part 5h).

### Need for Corrections

As published, Treasury Decision 8124 contains three typographical errors and one error of omission within the table under regulations § 5h.5. The three typographical errors fall under the heading "Availability of Election" on page 3625. The first error appears in printed line 20, the second error in printed line 39, and the third error in printed line 43.

The error of omission occurs under the heading "Section of Act" on page 3626 and appears in printed line 20.

Three additional typographical errors appear in the following locations: Page 3627, third column, first paragraph, line 20; page 3627, third column, third paragraph, line one; and page 3629, second column, fourth paragraph, line one.

### Corrections of Publication

Accordingly, the publication of Treasury Decision 8124, which was the subject of FR Doc. 87–2219, is corrected as follows:

## PART 5h—[CORRECTED]

### § 5h.5 [Corrected]

**Paragraph 1.** In the table, on page 3625, under the heading "Availability of Election", printed line 20, the upper-case letter "S" is removed from the word "Section" and the lower-case letter "s" is added in its place.

**Par. 2.** In the table, on page 3625, under the heading "Availability of Election", printed line 39, the misspelled word "occuring" is removed and the correct spelling of the word "occurring" is added in its place.

**Par. 3.** In the table, on page 3625, under the heading "Availability of Election", printed line 43, the word "the" is added immediately following the word "on".

**Par. 4.** In the table, on page 3626, under the heading "Section of Act", printed line 20, the letter "1" is added within the parenthesis immediately following the act section number "1810".

**Par. 5.** In § 5h.5, paragraph (a) (3) (iv), page 3627, third column, line 20, the word "paragraph" is removed and the word "paragraphs" is added in its place.

**Par. 6.** In § 5h.5, paragraph (a) (3) (vi), page 3627, third column, line one, the word "the" is added immediately following the word "making".

**Par. 7.** In § 5h.5, paragraph (e) (3), page 3629, second column, line one, the word "Partnership" is removed and the word "Partnerships" is added in its place.

**Donald E. Osteen,**

*Director, Legislation and Regulations Division.*

[FR Doc. 87–6927 Filed 3–27–87; 8:45 am]

BILLING CODE 4830–01–M

---

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**29 CFR Part 1613**

## Equal Employment Opportunity Commission in the Federal Government; Nomenclature Change

**AGENCY:** Equal Employment Opportunity Commission (EEOC).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Equal Employment Opportunity Commission is changing the organizational title of its Complaints Examiner to Administrative Judges. The change is being made to reflect more accurately the nature of the position. The authority and duties of these positions remain the same as indicated in the current EEOC regulations.

**EFFECTIVE DATE:** March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Assistant Legal Counsel, or James M. Lager, Staff Attorney, at (202) 634–6690.

For the Commission.

**Clarence Thomas,**

*Chairman.*

## PART 1613—[AMENDED]

1. The authority citation for Part 1613 continues to read as follows:

**Authority:** 5 U.S.C. secs. 1301, 3301, 3302, 7151–7154, 7301, E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306, E.O. 11478, 3 CFR, 1969 Comp., p. 133, unless otherwise noted.

### § 1613.218 [Amended]

2. Section 1613.218(a) is amended by removing the words "a complaints examiner" and inserting, in their place, the words "an Administrative Judge or complaints examiner," and by removing the words "complaints examiner" and inserting, in their place, the words "Administrative Judge."

### § 1613.220 [Amended]

3. Section 1613.220(c) is amended by removing the words "a complaints examiner" and inserting, in their place, the words "an Administrative Judge."

**§§ 1613.222, 1613.604, 1613.608 and 1613.612 [Amended]**

4. Sections 1613.222, 1613.604(i), 1613.608(b)(2), and 1613.612(b) are amended by removing the words "complaints examiner's" and inserting, in their place, the words "Administrative Judge's."

5. Elsewhere in 29 CFR Part 1613, the Part is amended by removing the words "complaints examiner" and "complaints examiner's", wherever they appear and inserting in their place the words "Administrative Judge" or "Administrative Judge's", respectively.

[FR Doc. 87-6953 Filed 3-27-87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Parts 214 and 215

### Youth Conservation Corps and Young Adult Conservation Corps State Grant Programs

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** As a result of its continuing review of existing regulations as required by E.O. 12291, the Department of Agriculture hereby removes its regulations at 36 CFR Part 214 and Part 215 governing State Grant Programs for the Youth Conservation Corps and Young Adult Conservation Corps.

**EFFECTIVE DATE:** This rule is effective March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** L. Wayne Bell, Human Resource Programs Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013-6090. (202) 535-0927.

**SUPPLEMENTARY INFORMATION:** The State grant portion of the Youth Conservation Corps program has not received appropriated funds since fiscal year 1981 and no funds are anticipated for this program in the future. Therefore, the regulations are obsolete and should be removed. The enabling legislation for the Young Adult Conservation Corps (29 U.S.C. 801 et. seq.) has expired. Accordingly, the regulations at 36 CFR Part 215 governing grants to States for Young Adult Conservation Corps programs are no longer viable and are being removed.

This action results from prior decisions of the Administration and the Congress, and does not represent any discretionary action on the part of the Department. Therefore, this amendment is deemed to be a technical administrative action outside the scope of, and exempt from, the regulatory clearance provisions of E.O. 12291.

Since the regulations are obsolete, there is good cause of promulgating this rulemaking action without opportunity for public comment.

Therefore, for the reasons set forth above, Title 36 of the Code of Federal Regulations is amended by removing Parts 214 and 215 in their entirety.

**PART 214-[REMOVED]**

**PART 215-[REMOVED]**

Dated: March 20, 1987.

**Douglas W. MacCleery,**

*Deputy Assistant Secretary for Natural Resources and Environment.*

[FR Doc. 87-6931 Filed 3-27-87; 8:45 am]

BILLING CODE 3410-11-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 201-8, 201-11, 201-30, and 201-34

**[FIRMR Amdt. 9]**

### Implementation of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED-STDS), and Acquisition Policies in the Federal Information Resources Management Regulation (FIRMR)

**AGENCY:** Information Resources Management Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This regulation updates and implements FIRMR provisions for thirteen Federal Information Processing Standards (FIPS) and one Federal Telecommunications Standard (FED-STD) to provide associated standard terminology to be used in solicitation documents and requirements documents as applicable. The general terminology of FIPS PUBS 21, 68, 69, and 111 is updated; FIPS PUBS 104-1, 109, 112 through 119, and FED-STD 1033 are added; and, FIPS PUBS 46 and 81 are relocated to a new section that reflects the National Bureau of Standards' categorization of ADP operations standards. This regulation also identifies the statutory authority citation required for the justification permitting other than full and open competition for specific make and model information resources acquisitions, as required by FAR Subpart 6.3. This regulation also reflects the transfer of compiler validation testing from the General Services Administration to the National Bureau of Standards. The intended effect of this regulation is to enhance economy and efficiency in the acquisition of automatic data processing and telecommunications resources (information resources).

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Phillip R. Patton, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566-0194 or FTS, 566-0194.

**SUPPLEMENTARY INFORMATION:** 1. Ten new sections, with the related text material, are being added to FIRMR Part 201-8 in order to implement the following new standards: FIPS PUBS 109, 112, 113, 114, 115, 116, 117, 118, 119, and FED-STD 1033. In addition, four sections are being revised in FIRMR Part 201-8 in order to update FIPS PUBS 21, 68, 69, and 111.

2. The changes being made to FIRMR Part 201-8 by this issuance are explained in the following paragraphs.

a. Section 201-8.101-1 is revised to inform agencies of the existence of Interim Federal Standards for optional use.

b. Section 201-8.103-5 is added to incorporate the definition of ADP Operations Standards.

c. Section 201-8.104 is revised to inform agencies that under Pub. L. 94-168, the Metric Conversion Act of 1975, that the policy is to coordinate and plan for the increasing use of the metric system by expressing standards in both inch and metric units.

d. Section 201-8.105-15 is revised by relocating coverage of FIPS PUB 46 to section 201-8.111-1 and reserving this section.

e. Section 201-8.105-24 is revised by relocating coverage of FIPS PUB 81 to section 201-8.111-2 and reserving this section.

f. Section 201-8.105-37 is amended to make minor changes to paragraphs (a), (b), and (d).

g. Section 201-8.105-38 is added to incorporate FIPS PUB 114, 200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange.

h. Section 201-8.105-39 is added to incorporate FIPS PUB 115, 200 mm (8 in) Flexible Disk Cartridge Track Format Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange.

i. Section 201-8.105-40 is added to incorporate FIPS PUB 116, 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange.

j. Section 201–8.105–41 is added to incorporate FIPS PUB 117, 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange.

k. Section 201–8.105–42 is added to incorporate FIPS PUB 118, Flexible Disk Cartridge Labelling and File Structure for Information Interchange.

l. Section 201–8.107 is revised to stipulate the provisions to follow for high level languages, unless a waiver has been approved, and to provide a NBS contact point for resolving questions on FIPS programming languages and requirements.

m. Section 201–8.107–1 is amended to update the terminology and to change the standards reference from FIPS PUB 21–1, Federal Standard COBOL to FIPS PUB 21–2, COBOL.

n. Section 201–8.107–2 is amended to change references to FIPS PUB 68–1 as Federal Standard Minimal BASIC to Minimal BASIC.

o. Section 201–8.107–3 is amended to change references to FIPS PUB 69–1 as Federal Standard FORTRAN to FORTRAN.

p. Section 201–8.107–4 is added to incorporate FIPS PUB 109, Pascal.

q. Section 201–8.107–5 is added to incorporate FIPS PUB 119, Ada.

r. Section 201–8.108 is revised by relocating coverage of "Development or acquisition of application programs" to section 201–8.108–1 and changed to incorporate the caption and text that was previously located in section 201–8.111.

s. Section 201–8.108–1 is added to incorporate the caption and text that was in section 201–8.108.

t. Section 201–8.109 is amended to change paragraphs (b), (c), (d), (e), (g), (h), (i), (j), and (k) to update the terminology with information on current practices in compiler validation. The section is also amended to reflect the transfer of the compiler validation testing function from the Federal Software Testing Center of the General Services Administration to the Institute of Computer Sciences and Technology of the National Bureau of Standards.

u. Section 201–8.110–1 is revised to add FIPS PUB 104–1, American National Standard Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange, to the list of FIPS PUBS contained in this section.

v. Section 201–8.111 is revised by relocating coverage of "application standards requirement statements" and changed to incorporate a new category of standards entitled "ADP operations standards."

w. Section 201–8.111–1 is added to relocate (from § 201–8.105–15) with minor modifications FIPS PUB 46, Data Encryption Standard (DES).

x. Section 201–8.111–2 is added to relocate (from § 201–8.105–24) FIPS PUB 81, Data Encryption Standard (DES) Modes of Operations.

y. Section 201–8.111–3 is added to incorporate FIPS PUB 112, Password Usage.

z. Section 201–8.111–4 is added to incorporate FIPS PUB 113, Computer Data Authentication.

aa. Section 201–8.112–17 is added to incorporate FED–STD 1033, Telecommunications: Data Communication Systems and Services—User-Oriented Performance Parameters.

3. Section 201–11.002–1, Use and documentation of specific make and model specifications, is amended by adding two sentences to paragraph (b). FAR 6.303–2(a)(4) requires that agency justifications for other than full and open competition identify the statutory authority permitting the action. The two added sentences identify the statutory authority for information resources acquisitions.

4. A new § 201–30.019 has been added to Part 201–30 to reflect the transfer of the complier validation testing function from the Federal Software Testing Center of the General Services Administration to the Institute of Computer Sciences and Technology of the National Bureau of Standards. Additionally, § 201–30.018–3 is modified by removing the text and reserving the section.

5. To further reflect the change in compiler validation testing responsibility, a new § 201–34.003, Compiler validation testing, is being added to Part 201–34 to include that function as a supporting ADP activity.

6. A notice of proposed rulemaking for this amendment was published in the **Federal Register** (51 FR 23248, June 26, 1986) indicating the availability of the proposed final rule for review and comment by interested parties. All comments received have been considered.

7. The General Services Administration (GSA) has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

**List of Subjects in 41 CFR Parts 201–8, 201–11, 201–30, and 201–34**

Computer technology, Telecommunications, Information resources activities, Standards for information resources, Government procurement, Government property management, Competition.

## PART 201–8—IMPLEMENTATION AND USE OF FEDERAL STANDARDS

1. The table of contents for Part 201–8 is changed by amending, reserving or adding the following entries and the authority citation for the part is revised to read as follows:


Sec.

201–8.103–5 ADP operations standards.

201–8.105–15 [Reserved]

201–8.105–24 [Reserved]

201–8.105–38 FIPS PUB 114, 200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange.

201–8.105–39 FIPS PUB 115, 200 mm (8 in) Flexible Disk Cartridge Track Format Modified Frequency Modulation Recording at 13282 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange.

201–8.105–40 FIPS PUB 116, 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange.

201–8.105–41 FIPS PUB 117, 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange.

201–8.105–42 FIPS PUB 118, Flexible Disk Cartridge Labelling and File Structure for Information Interchange.

201–8.107–1 FIPS PUB 21–2, COBOL.

201–8.107–2 FIPS PUB 68–1, Minimal BASIC.

201–8.107–3 FIPS PUB 69–1, FORTRAN.

201–8.107–4 FIPS PUB 109, Pascal.

201–8.107–5 FIPS PUB 119, Ada.

201–8.108 Applications standards requirement statements.

201–8.108–1 Development or acquisition of application programs.

201–8.111 ADP operations standards requirement statements.

201–8.111–1 FIPS PUB 46, Data Encryption Standard (DES).

201–8.111–2 FIPS PUB 81, Data Encryption Standard (DES) Modes of Operations.

201–8.111–3 FIPS PUB 112, Password Usage.

201–8.111–4 FIPS PUB 113, Computer Data Authentication.

Sec.
201–8.112–17 FED–STD 1033, Telecommunications: Data Communication Systems and Services—User-Oriented Performance Parameters.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 2128; 40 U.S.C. 751(f).

2. Section 201–8.101–1 is revised to read as follows:

**§ 201–8.101–1 Implementation.**

(a) *Mandatory use of Federal standards.* Agencies shall implement Federal standards for the acquisition and use of automatic data processing and telecommunications equipment, services, and related software as prescribed by this subpart.

(b) *Optional use of interim standards.* Certain Federal standards are published as "interim" (INT–FED–STD). Agencies are not required, but are encouraged to implement these standards for acquisition and use in appropriate situations. Standard terminology for these interim standards is not provided. Agencies shall develop requirements statements for use in requirements documents consistent with their intended use of the interim standard.

3. Section 201–8.103–5 is added to read as follows:

**§ 201–8.103–5 ADP operations standards.**

"ADP operations standards" is that category of standards which includes areas of standardization such as benchmarking, computer performance management, computer security, and management of multivendor ADP systems.

4. Section 201–8.104 is amended by adding paragraph (c) to read as follows:

**§ 201–8.104 Application of standards to requirements.**

* * * * *

(c) Pub. L. 94–168 (Metric Conversion Act of 1975) provided that the policy of the United States shall be to coordinate and plan for the increasing use of the metric system of measurement. Standard terminology for standards implemented in this Subpart 201–8.1 is expressed in both inch and metric units, as applicable.

5. Section 201–8.105–15 is removed and reserved to read as follows:

**§ 201–8.105–15 [Reserved]**

6. Section 201–8.105–24 is removed and reserved to read as follows:

**§ 201–8.105–24 [Reserved]**

7. Section 201–8.105–37 is revised to read as follows:

**§ 201–8.105–37 FIPS PUB 111, Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces).**

(a) FIPS PUB 111 defines the mechanical, electrical, and functional requirements for attaching disk drives to their control unit. This resulting interface will facilitate the interconnection of disk drives and the control unit, as part of a storage module subsystem. It provides a common interface specification for both controller and disk subsystems that are employed with small to medium sized computer systems. These systems are generally excluded from the provisions of FIPS PUBS 60–2, 61–1, 63–1, and 97. Its use is particularly encouraged with small computer systems which are excluded from having to conform to those FIPS PUBS.

(b) This standard adopts American National Standard X3.91M–1982, Storage Module Interfaces, for the acquisition of magnetic disk drives or magnetic disk subsystems and may be used as an alternative to FIPS PUBS 60–2, 61–1, and either 63–1 or FIPS PUB 97 for those instances when FIPS PUB 60–2 would otherwise be applicable. When FIPS PUB 111 is employed, FIPS PUB 60–2 need not be used. However, any waiver of FIPS PUB 60–2 is also a waiver of FIPS PUB 111. Waivers from this standard are not required when FIPS PUB 60–2 does not apply.

(c) While it is not economical or practical to require extensive verification of storage module drive (SMD) products offered to the Government, procuring agencies may, at their option, require that correct operation of all interfaces conforming to FIPS PUB 111 be verified through demonstration or other means acceptable to the Government before accepting the applicable equipment. In special cases, NBS may assist agencies in evaluating conformance to the SMD interface. Arrangements for verification assistance can be made by contacting the Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

(d) The standard terminology for use in requirements documents including solicitations, is:

**Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces)**

(DEC 86 FIRMR)

Unless a waiver is granted following the waiver procedures specified in FIPS PUB 111, or unless this requirement requires conformance with FIPS PUB 60–2, ADP systems and disk storage subsystems that may result from this requirement must conform to FIPS PUB 111. At the option of the Government, the correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment.

(End of requirement statement)

8. Section 201–8.105–38 is added to read as follows:

**§ 201–8.105–38 FIPS PUB 114, 200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange.**

(a) FIPS PUB 114 prescribes a set of physical track format specifications for single-sided, single-density, 200 mm (8 in) flexible disk cartridges with a data density of 6631 bits per radian (bprad) and 77 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). The track format specifications contained in this standard are only for one type of flexible disk cartridge recording technology. Other FIPS PUBS specify physical track formats for other major types of flexible disk cartridge recording technology.

(b) FIPS PUB 118 specifies the labelling and file structure specifications for use with the flexible disk cartridge covered by this standard and the standard terminology for FIPS PUB 118 should also be included with the standard terminology for FIPS PUB 114 to aid in ensuring data file interchange.

(c) The standard terminology for use in requirements documents, including solicitations, is:

**200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange**

(DEC 86 FIRMR)

All recording and reproducing equipment employing 200 mm (8 in) flexible disk cartridges with two-frequency recording at 6631 bprad on one side and 77 tracks at a track density of 1.9 tpmm (48 tpi), including associated software, shall provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in FIPS PUB 114.

(End of requirement statement)

9. Section 201–8.105–39 is added to read as follows:

**§ 201–8.105–39 FIPS PUB 115, 200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange.**

(a) FIPS PUB 115 prescribes a set of physical track format specifications for two-sided, double-density, 200 mm (8 in) flexible disk cartridges with a data density of 13262 bits per radian (bprad) and 77 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks

per inch (tpi)). The track format specifications contained in this standard are only for one type of flexible disk cartridge recording technology. Other FIPS PUBS specify physical track formats for other major types of flexible disk cartridge recording technology.

(b) FIPS PUB 118 specifies the labelling and file structure specifications for use with the flexible disk cartridge covered by this standard and the standard terminology for FIPS PUB 118 should also be included with the standard terminology for FIPS PUB 115 to aid in ensuring data file interchange.

(c) The standard terminology for use in requirements documents, including solicitations, is:

**200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange**

(DEC 86 FIRMR)

All recording and reproducing equipment employing 200 mm (8 in) flexible disk cartridges with modified frequency modulation recording at 13262 bprad on two sides and 77 tracks at a track density of 1.9 tpmm (48 tpi), including associated software, shall provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in FIPS PUB 115.

(End of requirement statement)

10. Section 201–8.105–40 is added to read as follows:

**§ 201–8.105–40 FIPS PUB 116, 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange.**

(a) FIPS PUB 116 prescribes a set of physical track format specifications for single-sided, single-density, 130 mm (5.25 in) flexible disk cartridges with a data density of 3979 bits per radian (bprad) and 35 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). The track format specifications contained in this standard are only for one type of flexible disk cartridge recording technology. Other FIPS PUBS specify physical track formats for other major types of flexible disk cartridge recording technology.

(b) FIPS PUB 118 specifies the labelling and file structure specifications for use with the flexible disk cartridge covered by this standard and the standard terminology for FIPS PUB 118 should also be included with the standard terminology for FIPS PUB 116 to aid in ensuring data file interchange.

(c) The standard terminology for use in requirements documents, including solicitations, is:

**130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange**

(DEC 86 FIRMR)

All recording and reproducing equipment employing 130 mm (5.25 in) flexible disk cartridges with two-frequency recording at 3979 bprad on one side and 35 tracks at a track density of 1.9 tpmm (48 tpi), including associated software, shall provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in FIPS PUB 116.

(End of requirement statement)

11. Section 201–8.105–41 is added to read as follows:

**§ 201–8.105–41 FIPS PUB 117, 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange.**

(a) FIPS PUB 117 prescribes a set of physical track format specifications for two-sided, double-density, 130 mm (5.25 in) flexible disk cartridges with a data density of 7958 bits per radian (bprad) and 40 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). The track format specifications contained in this standard are only for one type of flexible disk cartridge recording technology. Other FIPS PUBS specify physical track formats for other major types of flexible disk cartridge recording technology

(b) FIPS PUB 118 specifies the labelling and file structure specifications for use with the flexible disk cartridge covered by this standard and the standard terminology for FIPS PUB 118 should also be included with the standard terminology for FIPS PUB 117 to aid in ensuring data file interchange.

(c) The standard terminology for use in requirements documents, including solicitations, is:

**130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange**

(DEC 86 FIRMR)

All recording and reproducing equipment employing 130 mm (5.25 in) flexible disk cartridges with modified frequency modulation recording at 7958 bprad on two sides and 40 tracks at a track density of 1.9 tpmm (48 tpi), including associated software, shall provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in FIPS PUB 117.

(End of requirement statement)

12. Section 201–8.105–42 is added to read as follows:

**§ 201–8.105–42 FIPS PUB 118, Flexible Disk Cartridge Labelling and File Structure for information Interchange.**

(a) FIPS PUB 118 prescribes a set of logical track format specifications for use with those flexible disk cartridges described in FIPS PUBS 114, 115, 116, and 117. The standard terminology for FIPS PUB 118 should be cited along with the standard terminology for FIPS PUBS 114, 115, 116, and 117 as applicable to aid in ensuring that interchange of data files among information processing systems is reliable.

(b) The standard terminology for use in requirements documents, including solicitations, is:

**Flexible Disk Cartridge Labelling and File Structure for Information Interchange**

(DEC 86 FIRMR)

All recording and reproducing equipment and systems employing flexible disk cartridges described by FIPS PUBS 114, 115, 116, and 117, including associated software, shall provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in FIPS PUB 118.

(End of requirement statement)

13. Section 201–8.107 is revised to read as follows:

**§ 201–8.107 Federal Information Processing Standards (FIPS) programming languages requirement statements.**

(a) Whenever a Federal agency has a requirement for a programming language for which a FIPS PUB has been issued, the provisions of the related subsection of this section shall apply unless a waiver from the procurement of a compiler for that language has been approved by the agency head. In addition, in the absence of a waiver, agencies shall ascertain that the compiler meets the requirements of the applicable FIPS programming language in accordance with FIRMR § 201–8.109.

(b) The National Bureau of Standards provides instructions for obtaining interpretations of FIPS programming languages in each such FIPS. Instructions in each FIPS should be followed when an interpretation for that FIPS is required. General questions concerning interpretations should be addressed to:

Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Md. 20899–0999

14. Section 201–8.107–1 is revised to read as follows:

**§ 201–8.107–1 FIPS PUB 21–2, COBOL.**

(a) FIPS PUB 21–2 specifies the use of American National Standard

Programming Language COBOL, X3.23–1985, as a FIPS.

(b) The standard terminology for use in requirements documents, including solicitations, is:

**Acquisition of COBOL Language Compilers**

(DEC 86 FIRMR)

COBOL compilers offered as a result of the requirements of which this is a part shall conform to the requirements in COBOL (FIPS PUB 21–2) and shall implement all of the language elements of the level of COBOL specified elsewhere in this requirements document [insert reference] as well as any additional language elements specified elsewhere in this document [insert reference].

(End of requirement statement)

15. Section 201–8.107–2 is revised to read as follows:

**§ 201–8.107–2 FIPS PUB 68–1, Minimal BASIC.**

(a) FIPS PUB 68–1 specifies the use of American National Standard Minimal BASIC, X3.60–1978, as a FIPS.

(b) The standard terminology for use in requirements documents, including solicitations, is:

**Acquisition of BASIC Language Compilers**

(DEC 86 FIRMR)

BASIC compilers offered as a result of the requirements of which this is a part shall implement Minimal BASIC (FIPS PUB 68–1), as well as any additional language elements as specified elsewhere in this requirements document [insert reference here].

(End of requirement statement)

16. Section 201–8.107–3 is recaptioned and revised to read as follows:

**§ 201–8.107–3 FIPS PUB 69–1, FORTRAN.**

(a) FIPS PUB 69–1 specifies the use of American National Standard Programming Language FORTRAN, X3.9–1978, as a FIPS.

(b) The standard terminology for use in requirements documents, including solicitations, is:

**Acquisition of FORTRAN Language Compilers**

(DEC 86 FIRMR)

FORTRAN compilers offered as a result of the requirements of which this is a part shall conform to the requirements in FORTRAN (FIPS PUB 69–1) and shall implement all of the language elements of the level of FORTRAN specified elsewhere in this requirements document [insert reference here], and shall require validation in accordance with FIRMR § 201–8.109, as well as any additional language elements as specified elsewhere in this document [insert reference here].

(End of requirement statement)

17. Section 201–8.107–4 is added to read as follows:

**§ 201–8.107–4 FIPS PUB 109, Pascal.**

FIPS PUB 109 specifies the use of American National Standard Pascal, ANSI/IEE770X3.97–1983, as a FIPS. The standard terminology for use in requirements documents, including solicitations, is:

**Acquisition of Pascal Language Compilers**

(DEC 86 FIRMR)

Pascal compilers offered as a result of the requirements of which this is a part shall implement Pascal (FIPS PUB 109) and shall require validation in accordance with FIRMR § 201–8.109, as well as any additional language elements as specified elsewhere in this requirements document [insert reference here].

(End of requirements statement)

18. Section 201–8.107–5 is added to read as follows:

**§ 201–8.107–5 FIPS PUB 119, Ada.**

FIPS PUB 119 specifies the use of American National Standard Reference Manual for the Ada Programming Language, ANSI/MIL–STD–1815A–1983, as a FIPS. The standard terminology for use in requirements documents, including solicitations, is:

**Acquisition of Ada Language Compilers**

(DEC 86 FIRMR)

Ada compilers offered as a result of the requirements of which this is a part shall implement all of the language features of Ada (FIPS PUB 119) and shall require validation in accordance with FIRMR § 201–8.109.

(NOTE—Ada is a registered trademark of the U.S. Government, Ada Joint Program Office. All users of this standard are encouraged to contact the Ada Joint Program Office, Department of Defense, OUSD (R&E), Washington, DC 20301.)

(End of requirements statement)

19. Section 201–8.108 is revised to read as follows:

**§ 201–8.108 Applications standards requirement statements.**

This section provides standard terminology for use in requirements documents, including solicitations, for FIPS PUBS which have been implemented by GSA in the areas of standardization listed in § 201–8.103–3.

20. Section 201–8.108–1 is added to read as follows:

**§ 201–8.108–1 Development or acquisition of application programs.**

(a) Requirements documents for the development or acquisition of application programs shall specify the use of FIPS programming languages unless the agency determines under procedures established by its Senior Official designated under the Paperwork Reduction Act of 1980 (see 44 U.S.C. 3506(b)) that the purpose of economy and efficiency in the use of ADP will not be served through the use of a FIPS.

(b) The standard terminology for use in requirements documents, including solicitations, when application programs are to be developed or acquired using FIPS programming languages is:

**Development or Acquisition of Application Programs**

(DEC 86 FIRMR)

When computer application programs are developed or acquired as a result of the requirements of which this is a part, and one of the FIPS programming languages is specified elsewhere in this requirements document [insert reference here], only the language elements of that FIPS, as well as any additional language elements as specified elsewhere in this document [insert reference] shall be used. In these cases, compilers used in developing such programs shall be validated in accordance with FIRMR § 201–8.109.

(End of requirements statement)

21. Section 201–8.109 is revised to read as follows:

**§ 201–8.109 Validation of compilers.**

(a) The party offering a compiler asserted to conform to one of the FIPS languages shall be responsible for securing validation of the compiler when it is offered to the Government for purchase, lease, or use in connection with ADP services. The party offering application programs written in one of the FIPS languages shall be responsible for securing validation of the compiler used in developing such programs when the programs are offered to the Government for purchase, lease, or use in connection with ADP services.

(b) A compiler, which is offered or used by vendors as a result of requirements set forth by Federal agencies in requirements documents, including solicitations, shall meet the language elements of the designated FIPS PUB. To confirm that the specifications of the designated FIPS have been met, separate Compiler Validation System (CVS) routines (compiler test cases) for each FIPS language have been developed and approved for use. A list of approved CVS's is maintained by the Institute for Computer Sciences and Technology (ICST) at the National Bureau of Standards' (NBS) located in Building 225, Room A266 at Gaithersburg, MD.

(c) Federal agencies shall use the test results from the CVS to confirm that the compiler meets the language specifications of that FIPS. When an agency has indicated in a requirements document that a waiver applies to a FIPS language specification, only the portions of the language that have been

waived are excluded from the validation requirements.

(d) The ICST will provide for compiler validations, as specified in the Compiler Testing Procedures. Validations normally shall be conducted annually. Extension of the effective dates of a previous validation may be authorized in place of a new validation (at the discretion of the ICST) if no errors were identified during the previous validation and if no change has been made to the compiler, its supporting system software, or the CVS in the interim.

(e) The requestor is responsible for providing the test facilities necessary to perform the validation. A validation test using the appropriate CVS is conducted and a Validation Summary Report is produced summarizing the test results. If the validation results warrant, a Certificate of Validation is issued by the ICST.

(f) Validation is performed on a cost-reimbursable basis. The ICST will send the requestor an estimate of validation cost that must be approved before beginning the validation process.

(g) Unresolved questions and/or any ambiguities resulting from the validation process shall be referred to NBS for resolution in accordance with FIPS PUB 29–1, Interpretation Procedures for Federal Information Processing Standard Languages.

(h) Requests for, and questions on, validation services should be addressed to:

Director, Institute for Computer Sciences and Technology, Attention: Validation Service, National Bureau of Standards, Gaithersburg, MD 20899, Telephone: (301) 975–3247 or FTS, 975–3247

(i) When an agency determines that the nature of the requirement is such that a compiler may be offered that has not yet been validated, the requirement statement in paragraph (j) of this section shall be included in requirements documents, including solicitations. This alternative allows a vendor to be responsive to the document if a request for validation of the offered compiler has been made. However, if an agency determines that it is essential for a compiler to be validated before being offered, such as a requirement for a validated compiler for performance evaluation or benchmarking, the alternative requirement statement in paragraph (k) of this section, shall be included in the document. This latter alternative may tend to restrict competition.

(j) The standard terminology for use in requirements documents, including solicitations, when allowing delayed validation is:

**Delayed Validation of Compilers**

(DEC 86 FIRMR)

In addition to the compiler requirements specified elsewhere in this requirements document, all compilers for FIPS programming languages brought into the Federal inventory as a result of this document and those compilers used by vendors to develop programs or provide services shall be tested using the official Compiler Validation System (CVS). Validation shall be in accordance with FIRMR § 201–8.109.

The results of the validation shall be used to confirm that the compiler meets the requirements of the applicable FIPS specified elsewhere in this document. To be considered responsive, the offeror shall:

(1) Certify in the offer that all FIPS programming language compilers offered in response to this document have been submitted for validation or have been previously validated and listed in the latest Institute for Computer Sciences and Technology (ICST) Certified Compiler List as set forth in § 201–8.109. Proof of current validation will be provided in the form of a Certificate of Validation from the ICST. Unless specified elsewhere in the requirements document, proof of submission for validation will be in the form of a letter from the ICST scheduling the validation.

(2) Agree to correct all deviations from the applicable FIPS reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations must be corrected within 12 months from the date of contract award unless otherwise specified elsewhere in this document. If an interpretation of the FIPS is required that will invoke the procedures set forth in FIPS PUB 29–1, such a request for interpretation shall be made within 30 calendar days after contract award. Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29–1 shall be completed within 12 months of the date of formal notification to the contractor of the approval of the interpretation. Proof of correction in either case will be in the form of a Certificate of Validation from the ICST for the corrected compiler. Failure to make required corrections within the time limits set forth above shall be deemed a failure to deliver required software. The liquidated damages as specified for failure to deliver the operating system or other software shall apply.

(End of requirement statement)

(k) The standard terminology for use in requirements documents, including solicitations, when requiring prior validation is:

**Prior Validation of Compilers**

(DEC 86 FIRMR)

In addition to the compiler requirements specified elsewhere in this requirements document, all compilers for FIPS programming languages brought into the Federal inventory as a result of this document and those compilers used by vendors to develop programs or provide services shall have been tested using the official Compiler Validation System (CVS). Validation shall be in accordance with FIRMR § 201–8.109.

The results of the validation shall be used to confirm that the compiler meets the requirements of the applicable FIPS specified elsewhere in this document. To be considered responsive, the offeror shall:

(1) Certify in the offer that all FIPS programming language compilers offered in response to this document have been previously validated as set forth in § 201–8.109 and listed in the latest Institute for Computer Sciences and Technology (ICST) Certified Compiler List. Proof of current validation will be provided in the form of a Certificate of Validation from the ICST.

(2) Agree to correct all deviations from the applicable FIPS reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations must be corrected within 12 months from the date of contract award unless otherwise specified elsewhere in this document. If an interpretation of the FIPS is required that will invoke the procedures set forth in FIPS PUB 29–1, such a request for interpretation shall be made within 30 calendar days after contract award. Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29–1 shall be completed within 12 months of the date of formal notification to the contractor of the approval of the interpretation. Proof of correction in either case will be in the form of a Certificate of Validation from the ICST for the corrected compiler. Failure to make required corrections within the time limits set forth above shall be deemed a failure to deliver required software. The liquidated damages as specified for failure to deliver the operating system or other software shall apply.

(End of requirement statement)

(l) If the party offering the compiler is an activity of the U.S. Government, the Federal agency shall be responsible for securing the validation of the compiler in accordance with this § 201–8.109.

22. Section 201–8.110–1 is amended to add FIPS PUB 104–1 as follows:

**§ 201–8.110–1 FIPS PUBS applicable to the interchange of machine processable data between and among agencies.**

(a) * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

**Interchange of Machine Processable Data**

(DEC 86 FIRMR)

All application programs resulting from this requirement that have been identified as those that will be interchanged, or that will record data that will be interchanged with Federal agencies, State and local governments, industry, and the public must implement the following applicable approved Federal Information Processing Standards (FIPS):

FIPS PUB 4, Calendar Date.

FIPS PUB 5–1, States and Outlying Areas of the United States.

FIPS PUB 6–3, Counties and County Equivalents of the States of the United States and the District of Columbia.

FIPS PUB 8–5, Metropolitan Statistical Areas (Including CMSAs, PMSAs and NECMAs).

FIPS PUB 9, Congressional Districts of the United States.

FIPS PUB 10–3, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

FIPS PUB 58, Representations of Local Time of the Day for Information Interchange.

FIPS PUB 59, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

FIPS PUB 66, Standard Industrial Classification (SIC) Codes.

FIPS PUB 70–1, Representation of Geographic Point Locations for Information Interchange.

FIPS PUB 95, Code for the Identification of Federal and Federally-Assisted Organizations.

FIPS PUB 103, Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas.

FIPS PUB 104–1, Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange.

(End of requirement statement)

23. Section 201–8.111 is revised to read as follows:

**§ 201–8.111 ADP operation standards requirement statements.**

This section provides requirement statements for use in requirements documents, including solicitations, for FIPS PUBS which have been implemented by GSA in the area of standardization listed in § 201–8.103–5.

24. Section 201–8.111–1 is added to read as follows:

**§ 201–8.111–1 FIPS PUB 46, Data Encryption Standard (DES).**

(a) FIPS PUB 46 specifies an algorithm to be implemented in computer or related data communication devices using hardware (not software) technology. This standard shall be used by Federal agencies for the cryptographic protection of computer data when:

(1) A department or agency decides that cryptographic protection is required; and

(2) The data are not classified according to the National Security Act of 1947, as amended; or the Atomic Energy Act of 1954, as amended.

(b) Federal agencies using cryptographic devices for protecting data classified according to either the National Security Act or the Atomic Energy Act may use these devices for protecting unclassified data in lieu of the standard.

(c) Technical specifications are included with FIPS PUB 46.

(d) The standard terminology for use in requirements documents, including solicitations, is:

**Data Encryption**

(DEC 86 FIRMR)

When an unclassified data encryption requirement is specified elsewhere in this requirement, such encryption will be accomplished in accordance with FIPS PUB 46. Implementations of the standard embodied in products or services offered as a result of this requirement that are asserted to have an encryption capability in conformance with FIPS PUB 46 must have the capability validated by the National Bureau of Standards prior to being proposed. Arrangements for validation may be made with the Systems Component Division, National Bureau of Standards, Institute for Computer Science and Technology, Gaithersburg, MD 20899–0999.

(End of requirement statement)

(e) FED–STD 1027, General Security Requirements for Equipment Using the Data Encryption Standard (§ 201–8.112–13), contains security requirements in telecommunications equipment and systems used by the U.S. Government when a need exists for encryption of unclassified information during transmission using the Data Encryption Standard (DES) algorithm described in FIPS PUB 46.

(f) The following documents provide additional information in this regard: FIPS PUB 31, Guidelines for ADP Physical Security and Risk Management; FIPS PUB 39, Glossary for Computer Systems Security; FIPS PUB 41, Computer Security Guidelines for Implementing the Privacy Act of 1974; FIPS PUB 65, Guidelines for ADP Risk Analysis; FIPS PUB 73, Guidelines for Security of Computer Applications; FIPS PUB 74, Guidelines for Implementing and Using the NBS Data Encryption Standard; FIPS PUB 83, Guideline on User Authentication Techniques for Computer Network Access Control; FIPS PUB 87, Guidelines for ADP Contingency Planning; and FIPS PUB 102, Guideline for Computer Security Certification and Accreditation.

25. Section 201–8.111–2 is added to read as follows:

**§ 201–8.111–2 FIPS PUB 81, Data Encryption Standard (DES) Modes of Operations.**

(a) FIPS PUB 81 defines four modes of operation that shall be used with the Data Encryption Standard (DES) described in FIPS PUB 46. These modes specify how sensitive computer data will be encrypted (cryptographically protected) and decrypted (returned to original form). This standard shall be used by Federal agencies when acquiring equipment or services that implement the DES in accordance with the provisions of § 201–8.105–15(a).

(b) FIPS PUB 81 specifies the recommended modes of operation for the DES but does not contain requirements for their secure implementation in particular applications. This standard anticipates the development of a set of application standards to achieve this objective.

(c) The standard terminology for use in requirements documents, including solicitations, issued on or after the effective date of FIPS PUB 81 is:

**Modes of Operation—Data Encryption**

(APR 84 FIRMR)

Equipment and services offered as a result of this requirement that implement the Data Encryption Standard (FIPS PUB 46) and that are intended for use in the cryptographic protection of sensitive but unclassified computer data, shall use one or more of the modes of operation specified in FIPS PUB 81.

(End of requirement statement)

26. Section 201–8.111–3 is added to read as follows:

**§ 201–8.111–3 FIPS PUB 112, Password Usage.**

(a) FIPS PUB 112 specifies basic criteria for two different uses of passwords in an ADP system: personal identity authentication and data access authorization. The standard does not require the use of passwords in an ADP system for either purpose, but establishes the criteria for the design, implementation, and use of a password system in those systems where passwords are used. When passwords are used, they should be used in accordance with the standard.

(b) The agency's designated security officer is responsible for the security of a computer system, and shall specify any additional security criteria for a computer system over and above the criteria in the standard. The security officer shall prepare a Password Usage Compliance Document, as set forth in FIPS PUB 112, for each system requiring the use of a password system. The use of cryptography to generate or transmit passwords for access to, or authentication of, classified information requires prior review and approval of the National Security Agency.

(c) The standard terminology for use in requirements documents, including solicitations, is:

**Computer Systems Password Usage**

(DEC 86 FIRMR)

If a requirement is set forth elsewhere in this requirements document for the use of passwords to authenticate users of an ADP

system or to authorize access to data in the system, the systems, equipment, and/or services provided to satisfy that requirement must be in conformance with FIPS PUB 112.

(End of requirement statement)

27. Section 201–8.111–4 is added to read as follows:

**§ 201–8.111–4 FIPS PUB 113, Computer Data Authentication.**

(a) FIPS PUB 113 specifies a Data Authentication Algorithm (DAA) which may be used to detect unauthorized modifications of data both intentional and accidental. The standard is based on the algorithm specified in FIPS PUB 46, (Data Encryption Standard) and is compatible with both the Department of the Treasury's Electronic Funds and Security Transfer Policy and the ANSI Standard for Financial Institution Message Authentication, ANSI X9.9–1982.

(b) FIPS PUB 113 shall be used by Federal organizations whenever a determination is made that cryptographic authentication is needed for the detection of intentional modifications of data, unless the data is classified according to the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended. Equipment approved for the cryptographic authentication of classified data may be used in lieu of equipment meeting this standard. Approval of a waiver is not required in this case; however, the authorizing agency official shall determine that the alternative cryptographic authentication system used for classified data and being substituted for the provisions of FIPS PUB 113 performs at least as well as those specified in this standard.

(c) The standard terminology for use in requirements documents, including solicitations, is:

**Computer Data Authentication**

(DEC 86 FIRMR)

If a requirement is set forth elsewhere in this requirements document that cryptographic authentication is required for the detection of unauthorized modification of data and that data is not classified according to the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended, the systems, equipment, and/or services provided to satisfy this requirement must be in compliance with FIPS PUB 113.

If, as the result of requirements set forth elsewhere in this requirements document, a separate capability is offered to provide cryptographic authentication for the detection of unauthorized modification of data classified according to the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended, and this separate capability is also to be used for the detection of unauthorized modification of unclassified data, the systems, equipment, and/or services provided to satisfy that requirement must perform as comprehensively as those specified in FIPS PUB 113.

(End of requirement statement)

28. Section 201–8.112–17 is added to read as follows:

**§ 201–8.112–17 FED STD 1033, Telecommunications: Data Communication Systems and Services—User-Oriented Performance Parameters.**

(a) FED–STD 1033 adopts American National Standard ANSI X3.102–1983 that defines 21 data communication performance parameters that are applicable to all classes of data communication systems independent of topology, protocol, code, or other design characteristics. The standard establishes a uniform means of specifying, assessing and comparing the performance of data communication systems and services.

(b) FED STD 1033 shall be used by all Federal departments and agencies in specifying the performance of data communication systems and services as perceived by end users. User specifications may define values either for all ANSI X3.102–1983 parameters or for a subset determined by the user application and the expected system or service characteristics. Use of the standard in performance measurement is not required in applications where the expected cost of measuring the parameter values exceeds the expected benefits.

(c) The standard terminology for use in requirements documents, including solicitations, is:

**Applicability of FED–STD 1033**

(DEC 86 FIRMR)

Performance specifications and equipment, systems, and services acquired to measure, evaluate, or monitor systems performance based on the parameters specified elsewhere in this requirements document [insert reference here] shall comply with FED–STD 1033.

(End of requirement statement)

## PART 201–11—COMPETITION

1. The authority citation for the part is revised to read as follows:

**Authority:** Sec. 205 (c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 2128; 40 U.S.C. 751(f).

2. Section 201–11.002–1 is amended by revising the introductory statement in paragraph (b) to read as follows:

**§ 201–11.002–1 Use and documentation of specific make and model specifications.**

* * * * *

(b) The use of a specific make and model specification is considered to be other than full and open competition and must be certified, justified, and approved in accordance with FAR 6.303 and 6.304, notwithstanding the existence of more than one responsible source. The identification of the statutory authority permitting other than full and open competition is required to be included in the justification (see FAR 6.303–2(a)(4)). For these information resources acquisitions, the statutory authority citation is: 40 U.S.C. 759(g), as amended by Pub. L. 99–500.

* * * * *

## PART 201–30—MANAGEMENT OF ADP RESOURCES

1. The table of contents of Part 201–30 is amended by reserving § 201–30.018–3, adding an entry for § 201–30.019; and the authority citation for the part is revised to read as follows:

Sec.
201–30.018–3 [Reserved]
201–30.019 Compiler validation testing.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 2128; 40 U.S.C. 751(f).

2. Section 201–30.018–3 is removed and reserved to read as follows:

**§ 201–30.018–3 [Reserved]**

3. Section 201–30.019 is added as follows:

**§ 201–30.019 Compiler validation testing.**

The Institute for Computer Sciences and Technology (ICST) of the National Bureau of Standards validates compilers which are acquired by the Federal Government, utilized in the performance of ADP services for the Federal Government, or are used to develop computer programs for the Federal Government. The validation tests determine whether the compiler being tested implements the elements of the Federal processing standard language to which the compiler relates (see § 201–8.109). Agencies should contact the ICST for further information, telephone (301) 975–3247 or FTS, 975–3247. Address: National Bureau of Standards, Institute for Computer Sciences and Technology, Software Standards Validation Group, Building 225, Room A266, Gaithersburg, MD 20899.

## PART 201–34—ADP SUPPORTING ACTIVITIES

1. The table of contents of Part 201–34 is amended by revising § 201–34.003; and the authority citation for the part is revised to read as follows:

BEST COPY AVAILABLE

**§ 201-34.003 Compiler validation testing.**

**Authority:** Sec. 205 (c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 2128; 40 U.S.C. 751(f).

2. Section 201-34.003 is revised as follows:

**§ 201-34.003 Compiler validation testing.**

(a) The Institute for Computer Sciences and Technology (ICST) of the National Bureau of Standards validates compilers which are acquired by the Federal Government, utilized in the performance of ADP services for the Federal Government, or used to develop computer programs for the Federal Government.

(b) On behalf of Federal agencies, vendors, and the public, the ICST publishes a quarterly Certified Compiler List of those compilers that are currently validated for Federal processing standard languages. The latest list may be obtained by contacting the ICST at (301) 975-3247 or FTS, 975-3247.

(c) Section 201-8.109 provides guidance relative to compiler validation policies and procedures. Section 201-30.019 reminds Federal ADP resource managers of the need for compiler validation.

Dated: March 9, 1987.

**T.C. Golden,**

*Administrator of General Services.*

[FR Doc. 87-6835 Filed 3-27-87; 8:45 am]

BILLING CODE 6820-25-M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Parts 121, 122, and 123

### National Guidelines for Health Planning; Health Systems Agencies; State Health Planning and Development Agencies

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule rescinds Parts 121, 122, and 123 of Title 42 Code of Federal Regulations. These three Parts are rendered obsolete by Pub. L. 99-660 which repeals Title XV of the Public Health Service Act, effective January 1, 1987. Provisions of the Hollings Amendment which govern the expenditure of health planning carryover funds will remain in effect through September 30, 1987. Section 701 (b) of Pub. L. 99-660 indicates congressional intent that the "Hollings Amendment" continue to have effect, notwithstanding the repeal of Title XV. Grantees operating under the terms of the "Hollings Amendment" will continue to be governed by the regulations in effect at the time the grants were awarded.

**EFFECTIVE DATE:** Rescission is effective on March 30, 1987.

**ADDRESS:** Bureau of Resources Development, 5600 Fishers Lane, Room 8A-52, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roger McClung, (301) 443-4273.

**List of Subjects in 42 CFR Parts 121, 122, and 123**

Health planning, Health care.

Accordingly, the Assistant Secretary for Health of the Department of Health and Human Services, with approval of the Secretary, is rescinding 42 CFR Parts 121, 122, and 123.

Dated: February 6, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: March 17, 1987.

**Otis R. Bowen,**

*Secretary.*

For the reasons set forth in the preamble, 42 CFR Chapter I, Subchapter K is revised as follows:

1. The heading of 42 CFR Subchapter K is revised to read:

**Subchapter K—Health Resources Development**

**PART 121—[REMOVED]**

2. Part 121 is removed.

**PART 122—[REMOVED]**

3. Part 122 is removed.

**PART 123—[REMOVED]**

4. Part 123 is removed.

(Pub. L. 99-600, 100 Stat. 3354 et seq.)

[FR Doc. 87-6901 Filed 3-27-87; 8:45 am]

BILLING CODE 4160-15-M

---

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA 6747]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of non-compliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

**EFFECTIVE DATES:** The third date ("Susp.") listed in the third column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the

flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) my legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance may of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

**PART 64—[AMENDED]**

1. The authority citation for Part 64 continues to read as follows:

**Authority** 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

**§ 64.6 List of eligible communities.**

| State and location | Community No | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified | Date [1] |
|---|---|---|---|---|
| **Region I** | | | | |
| Vermont: Johnson, village of, Lamoille County | 500232D | June 10, 1975, Emerg.; Feb. 1, 1979, Reg.; Apr. 3, 1987, Susp. | Apr. 5, 1974, Feb. 1, 1979 and Apr. 3, 1987 | Apr. 3, 1987 |
| **Region II** | | | | |
| New York: | | | | |
| Essex, town of, Essex County | 361149C | Feb. 14, 1977, Emerg.; Apr. 3, 1987, Reg., Apr. 3, 1987, Susp. | Dec. 20, 1977, Apr. 3, 1987 | Do |
| Fremont, town of, Sullivan County | 360821D | Apr. 11, 1975, Emerg.; May 25, 1984 Reg.; Apr. 3, 1987, Susp. | May 31, 1974, Sept. 19, 1975 and Apr. 3, 1987 | Do |
| Puerto Rico: Commonwealth of Puerto Rico | [illegible] | July 16, 1971, Emerg.; Aug. 15, 1978, Reg.; Apr. 3, 1987, Susp. | Aug. 1, 1978, Aug. 15, 1980, July 2, 1981, July 19, 1982, Sept. 16, 1982, Apr. 3, 1984 and Aug. 5, 1986 | Do |
| [illegible] | | | | |
| Delaware: | | | | |
| New Castle, city of, New Castle County | 100026B | June 6, 1970, Emerg.; Dec. 26, 1975, Reg.; Apr. 3, 1987, Susp. | Dec. 26, 1975, July 1, 1974 and Apr. 3, 1987 | Do |
| Newport, town of, New Castle County | 100054C | May 28, 1974, Emerg.; June 15, 1978, Reg., Apr. 3, 1987, Susp. | Dec. 20, 1974, June 15, 1978 and Apr. 3, 1987 | Do |
| Pennsylvania: Northampton, township of, Somerset County | 422520C | Feb. 10, 1976, Emerg.; Sept. 24, 1984, Reg.; Apr. 3, 1987 Susp. | Jan. 3, 1975, Aug. 22, 1980, Sept. 24, 1984 and Apr. 3, 1987 | Do |
| West Virginia: Elkins, city of, Randolph County | 540177D | Nov. 8, 1974, Emerg.; Apr. 3, 1987, Reg., Apr. 3, 1987, Susp. | Feb. 15, 1974, Apr. 9, 1976 and Apr. 3, 1987 | Do |
| **Region VI** | | | | |
| Arkansas: Bald Knob, city of, White County | 050222D | Sept. 19, 1975 Emerg., Apr. 3, 1987, Reg., Apr. 3, 1987, Susp. | Mar. 8, 1974, Jan. 16, 1976 and Apr. 3, 1987 | Do |
| **Region VII** | | | | |
| Missouri: Miner, village of, Scott County | 290687C | July 24, 1975, Emerg.; Dec. 21, 1984, Reg.; Apr. 3, 1987, Susp. | July 30, 1976, Jan. 9, 1979, Dec. 21, 1984 and Apr. 3, 1987 | Do |
| **Region I—Minimal Conversions** | | | | |
| Maine, Somerville, town of, Lincoln County | 230512A | Apr. 25, 1975, Emerg.; Apr. 3, 1987, Reg.; Apr. 3, 1987, Susp. | Apr. 3, 1987 | Apr. 3, 1988 |
| **Region VII** | | | | |
| Kansas: Council Grove, city of, Morris County | 200234B | Mar. 7, 1975, Emerg.; Apr. 3, 1987, Reg.; Apr. 3, 1987, Susp. | Dec. 26, 1973, Oct. 31, 1975 and Apr. 3, 1987 | Apr. 3, 1987 |

[1] Certain federal assistance no longer available in special flood hazard areas.
Code for reading fifth column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension

**Harold T. Duryee,**
*Administrator, Federal Insurance Administration.*

[FR Doc. 87–6863 Filed 3–27–87; 8:45 am]

[illegible]

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. 74–14; Notice 50]**

## Federal Motor Vehicles Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** Standard No. 208, *Occupant Crash Protection*, provides for the phased-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars, beginning on September 1, 1986, with full implementation to take place on September 1, 1989. To encourage the development of a variety of automatic restraint systems, the standard provides that a manufacturer that installs a non-belt automatic restraint system, such as an air bag system, at the driver's seating position and a manual lap/shoulder belt at the front right passenger seating position will receive credit for producing one automatic restraint-equipped passenger car ("one car credit") during the phase-in period.

In response to a petition from the Ford Motor Company, NHTSA proposed amending Standard No. 208, *Occupant Crash Protection*, to extend the current one car credit beyond the phase-in period. Today's final rule amends Standard No. 208 to provide, until September 1, 1993, a one car credit to a manufacturer that produces a car with a non-belt automatic restraint system for the driver and a dynamically-tested manual lap/shoulder belt for the right front passenger.

The limited extension adopted in today's final rule will not affect the requirement that all cars have automatic restraints beginning September 1, 1989. It only means that manufacturers can meet that requirement by installing a non-belt system for the driver position, where almost three-quarters of the front seat fatalities occur, and a dynamically-tested manual lap/shoulder belt for the right front passenger in vehicles that receive a one car credit beyond September 1, 1989.

The agency believes that a several year extension is warranted by the various technical, engineering and supplier resource problems, identified by Ford and other vehicle manufacturers and automatic restraint system suppliers, that currently hinder the widespread installation of full-front (driver and passenger) air bag systems. Today's final rule will encourage the orderly development and production of passenger cars with full-front air bag systems. The agency decided that the availability of the one car credit should be limited to the time necessary to complete the development and installation of passenger side air bag systems, which the agency believes should be September 1, 1993. (Readers are referred to a termination of a rulemaking document concerning the automatic restraint requirements for convertibles published elsewhere in today's **Federal Register**)."

**DATES:** *Effective dates:* March 30, 1987. This rule effects vehicles manufactured on or after September 1, 1989, and until September 1, 1993. Petitions for reconsideration must be filed with the agency by April 29, 1987.

**ADDRESS:** Petitions for reconsideration should refer to the docket and notice numbers of this notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Strombotne, Chief, Crashworthiness Division, National Highway Traffic Safety Administration, Room 5320, NRM–12, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2264).

**SUPPLEMENTARY INFORMATION:**

### Background

On July 11, 1984 (49 FR 28962), the Department of Transportation announced its decision on occupant crash protection. The decision provided for the phased-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars, beginning on September 1, 1986, with full implementation to take place on September 1, 1989. To encourage the development of innovative automatic restraint systems, the July 1984 decision also provided that manufacturers that installed a non-belt automatic restraint system, such as an air bag system, for the driver and any type of automatic restraint for the right front passenger during the phase-in period, would receive credit for producing 1.5 automatic restraint-equipped vehicles. The decision also provided that if two-thirds of the population of the United States were covered by effective safety belt use laws, which meet certain minimum requirements, by April 1, 1989, then the automatic restraint requirement would be rescinded. Subsequently, on August 30, 1985 (50 FR 35233), NHTSA adopted an amendment providing a new one car credit (versus a 1.5 car credit) for a driver-only, non-belt system to encourage the early introduction of those systems.

On November 25, 1986 (51 FR 42598), in response to a petition for rulemaking from Ford Motor Co., NHTSA proposed to amend Standard No. 208 to continue temporarily the one car credit for driver-only, non-belt automatic restraint systems after September 1, 1989. The notice also proposed that the manual lap/shoulder safety belt installed for the right front passenger seat in those vehicles would have to pass the requirements of Standard No. 208 in a 30 mph frontal barrier test.

After evaluating the issues raised by the commenters, NHTSA has decided to adopt the proposed amendments. The information provided by vehicle manufacturers and automatic restraint system suppliers, which is discussed in detail below, shows that adoption of a limited extension will promote the widespread introduction of non-belt automatic restraint systems, such as air bags, for both the driver and the passenger. That information provided by the commenters shows that there are a number of technical issues that still need to be resolved before widespread installation of passenger-side air bag systems will occur. In addition, there is a need for additional time for suppliers to increase their production capabilities for both driver and passenger air bag systems.

The limited extension adopted today will provide the additional time to resolve those technical and supply issues. NHTSA emphasizes that adoption of today's amendments does not change the fundamental requirement of Standard No. 208 that all passenger cars must have automatic restraints by September 1, 1989. Today's amendment means that manufacturers can meet that requirement by installing a non-belt system for the driver position, where almost three-quarters of the front seat fatalities occur. To provide safety belt-wearing passengers in the front seat of vehicles receiving a one car credit the same level of protection as a passenger in an automatic belt equipped car, the agency has also adopted a requirement that vehicles must pass a 30 mph barrier test in which a test dummy seated at the right front passenger is restrained by a lap/shoulder belt.

**Comments on the Proposed Extension**

There was widespread support among the commenters for the proposed extension of the one car credit. The commenters favoring the extension represented a wide-range of interests that consisted of:

- restraint systems suppliers (Bendix Safety Restraint Division of Allied/Automotive, Breed Corp., Romeo-Kojyo, Talley Industries, and the TRW Vehicle Safety Division),
- insurance companies and their trade associations (Aetna, American Insurance Association, National Association of Independent Insurers, Nationwide Insurance, State Farm Mutual Automobile Insurance Co. and its outside legal counsel, The Travelers, and United Services Automobile Association),
- research and other organizations and individuals, (Insurance Institute for Highway Safety, National Association of Governors' Highway Safety Representatives, Motor Voters, National Safety Council, New Jersey's Insurance Commissioner, and Professor Susan Baker of the School of Hygiene and Public Health of the Johns Hopkins University),
- vehicle manufacturers and their trade associations (American Motors, Automobile Importers of America, Chrysler, Ford, General Motors, Honda, Jaguar, Mercedes-Benz, Motor Vehicle Manufacturers Association, Nissan, Porsche, Saab, Volkswagen, and Volvo).

The proposed extension was opposed by the Center for Auto Safety and Robert Phelps, a private citizen. The Pennsylvania Department of Transportation's Center for Highway Safety expressed concern about providing protection to passengers in cars equipped with driver-only air bags and urged adoption of a requirement that cars produced beyond September 1, 1989 have automatic safety belts for the right front passenger. Finally, the Massachusetts-based Committee to Repeal the Mandatory Seatbelt Law filed comments asking the agency to reconsider the provision in Standard No. 208 that the automatic restraint requirements will be rescinded if two-thirds of the U.S. population is covered by effective safety belt laws. The issues raised by all of the commenters are discussed below.

**Availability of Information**

In its comments, the Center for Auto Safety (CFAS) raised questions about whether the public had adequate information about the Ford petition to be able to file meaningful comments. CFAS said that comments could not analyze the leadtime issue raised by Ford because NHTSA "has refused to release the bulk of information filed by Ford in support of its petition." CFAS's statement is not correct. After Ford filed its original petition, NHTSA identified a number of issues that needed further clarification, including the technical problems faced by Ford and the leadtime necessary to provide passenger-side non-belt automatic restraints. As explained in the NPRM for this rule, the agency questioned Ford about these issues and Ford provided the agency with additional information. The "bulk" of all the information provided by Ford in its original petition and its subsequent filings is in the public record. Of the more than 20 pages of information filed by Ford in all of its submissions to the agency on this rulemaking action, only the equivalent of a few short paragraphs have been withheld by the agency as confidential information.

The limited information withheld from the record concerns the specific production volumes and models on which Ford plans to introduce driver-side non-belt automatic restraints. Since this information concerns Ford's future product plans, it is entitled to confidential treatment. The other material in the public docket adequately describes the basis for Ford's petition to allow the public to comment. The agency notes that none of the other commenters to this notice raised any objection about the adequacy of the information available to the public.

CFAS also urged the agency to seek additional information from automatic restraint system suppliers about leadtime and engineering problems. CFAS said that NHTSA should act as the Environmental Protection Agency did in 1975 when EPA obtained additional information from catalytic converter suppliers about efforts by vehicle manufacturers to meet the air pollution standard. According to CFAS, EPA did not grant any claim for confidentiality and required the sworn testimony of suppliers. NHTSA does not believe that such action is necessary. In this case, suppliers of automatic restraint systems representing the majority of the restraint system market have already voluntarily filed comments with the agency on the Ford petition. It is in the economic interest of those suppliers to ensure that passenger-side air bag systems are installed as soon as possible. All of the suppliers supported grant of the Ford petition, saying that providing additional leadtime will ensure the orderly introduction of passenger-side, non-belt automatic restraint systems. NHTSA also notes that Ford, in its latest comments, has provided additional information on its contractual arrangements with its air bag suppliers. Ford said that it "has committed to purchase its planned 1989 and 1990 model year restraint needs from its suppliers, and has authorized expenditures for long lead tooling." Based on the information that is already in the public record, NHTSA does not believe there is any need to take the action suggested by CFAS.

**Credit Promotes Orderly Introduction of Air Bags**

The commenters supporting adoption of the proposed amendment repeatedly cited the value of the one car credit in promoting the orderly introduction of air bag systems. Commenters noted that the amendment would encourage the installation of air bags for both the driver and the pasenger. For example, in addressing the beneficial effect of the proposed amendment on increasing driver-side air bags, GM said that, "Currently, a manufacturer contemplating airbag technology in the near term must concurrently develop other passenger passive restraint technology if he is to avoid the risk that passenger airbag technology may not be available by the end of the passive restraint phase-in period. With the proposed extension, manufacturers can move forward with the development of driver airbags even though there might be uncertainty regarding the availability of a passenger airbag design by September of 1989." GM also addressed the effect of the proposal on development and installation of passenger-side air bags. It said, as did many of the other commenters, that "(a)dditional development time will greatly increase the potential for an orderly phase-in of passenger airbags. The additional time will enable manufacturers to use technical resources efficiently in addressing passenger airbag performance issues. With this incentive, the prospects for the wider use of passenger airbags in the 1994 time frame will be increased significantly."

In the November 1986 notice, NHTSA noted Ford's plans to install driver-side air bag systems "in the majority of its North American-designed car production" if the proposed extension is adopted. The agency asked manufacturers to provide information on their plans for adopting non-belt systems if the proposed extension of the one car credit was adopted. Two domestic and six foreign manufacturers provided such information in their comments.

Chrysler said that it has re-evaluated its automatic restraint plans, in part because of the agency's proposed extension of the one car credit, and now plans to "install driver air bags in most of our car lines by the 1990 model year." Chrysler emphasized that to meet that goal it is "making the largest commitment of manpower and resources that we have ever made to a single safety program." GM explained that it was engaged in "an on-going review of current and future marketing strategies" and has "every expectation that our review will lead to a significant increase in the use of inflatable restraint technology," if the agency adopts the proposed extension. In its comments, GM said it has two current air bag programs; one to develop an optional air bag for the 1988 model Oldsmobile 88 and another program, the details of which are confidential. GM subsequently filed supplemental information with the agency concerning its automatic restraint plans. GM said that it now plans to produce more than 500,000 driver air bag systems during the 1990 model year. GM also said that it is conducting engineering and resource studies on the feasibility of installing driver-only air bag systems in additional models. It said that, "If these additional programs prove to be feasible and are eventually approved, General Motors' production of driver-air bag equipped vehicles during the 1992 model year could approach 3,000,000."

In its comments, Honda said it planned to introduce driver-side air bags on some models if the credit is extended. Honda has subsequently announced that it will offer a driver-side air bag as an option on one of its Acura models beginning in June 1987. In its comments, Honda also said that it intended to introduce passenger-side air bag systems as soon as the technical problems are solved. Jaguar said that the proposed amendment would allow it to place more effort on its driver and passenger side air bag programs. In response to an inquiry from the agency, both Mercedes-Benz and Porsche indicated that they were proceeding with their passenger-side air bag programs. Saab said that it had a program underway to develop a driver-side air bag in one version of its 900 line and plans to develop driver and passenger air bag systems for both of its car lines. Volvo said that its plans to install a driver side air bag plus a lap/shoulder belt for the right front passenger side on all its cars sold in the U.S. after September 1, 1989, if the one car credit extension is adopted.

In the November 1986 notice, NHTSA also asked manufacturers to comment on whether adoption of the proposed extension would delay the introduction of passenger-side systems. No vehicle manufacturer or restraint system supplier indicated that adoption of the proposal would slow the development of the passenger system. Instead, manufacturers indicated they were moving forward with passenger side programs and extension of the one car credit would assist their efforts. CFAS, however, asserted that adoption of the extension would discourage efforts by Mercedes, Porsche and Jaguar to provide full-front systems. CFAS asked the agency to provide an incentive to the adoption of passenger-side systems by phasing-in an automatic restraint requirement for the passenger side. CFAS's claim that adoption of the proposal would discourage efforts by Mercedes, Porsche, and Jaguar to offer full front air bag systems is contradicted by the comments filed by those companies. All of them supported adoption of the proposal and indicated they were proceeding with their passenger side air bag programs. Porsche is already offering a full-front air bag system on its 1987 model of the 944 Turbo.

Volkswagen urged the agency to base its decision on a policy of promoting a variety of restraint systems. Volkswagen expressed concern that a decision to extend the one car credit should not be seen as the agency favoring a specific restraint system design. Such a position would work to discourage development of innovations in other passive restraint devices, Volkswagen said.

The purpose of today's amendment is not to favor one restraint system design over another. As discussed in the July 1984 final rule adopting the automatic restraint requirement, the purpose of the original 1.5 car credit and the subsequently adopted one car credit is, as Volkswagen suggested, to promote the installation of a variety of automatic restraint systems. The incentive provided by these credits will mean that a range of different automatic restraint systems such as, detachable and non-detachable automatic safety belts, air bags, and potentially, built-in safety or other new technologies, will be available to the consumer. The agency emphasizes that the one car credit extended today is available to any non-belt technology that can meet the performance requirements of the standard. The temporary extension of this credit should further serve to encourage the development of a variety of automatic restraint systems. Ultimately, the type or types of automatic restraints that prevail in the marketplace will be determined by the choices made by consumers.

### Technical Issues

The November 1986 notice requested manufacturers to comment on a number of technical issues concerning passenger air bag systems that Ford said needed further study. In their comments, vehicle manufacturers and restraint system suppliers agreed that there are a number of technical issues that need to be resolved. They also said that extension of the one car credit will assist them in solving those technical issues. For example, Breed, GM, Honda, Nissan, and Volvo said that the inflation of an air bag system, particularly for the passenger, must be carefully controlled so as not to create any undue hazard to out-of-position occupants. GM said that it is "hopeful that inflation risks to out-of-position occupants will be solvable given the opportunity to proceed in an orderly manner to gain experience with passenger side airbag technology."

In its comments, Breed, which is an air bag component supplier, said that it did not anticipate technical problems associated with the sensors used to trigger the inflation of a passenger-side air bag. Breed did, however, point out the difficulties associated with developing and producing an inflator for a passenger-side air bag. Breed said "there are no existing passenger side inflators in production at this time. In general, driver side inflators will be almost identical regardless of car models. However, passenger side inflators will have to have substantially different capacities depending on particular car model." Breed also said that the design of the fabric and cover for the air bag are also important technical issues since the proper design of those components can reduce risks to out-of-position occupants.

Volvo and Honda said that additional time is needed to address the noise level associated with a full-front air bag system. The level that occurs when two air bags are inflated is higher than that for one air bag. In addition, the passenger-side bag is larger and thus more gas must be generated to inflate the bag.

Finally, a number of the manufacturers said that installation of passenger-side air bag systems will bring about a number of instrument panel changes that will require additional leadtime to complete. Volvo said that installation of an air bag system in the instrument panel may

mean that the glove compartment will have to be relocated. Honda referred to the need to optimize the design of the knee bolster and match the design and material of the deployment door and instrument panel.

NHTSA emphasizes that, as noted by the commenters, the technical issues identified by Ford and others are solvable, if manufacturers have sufficient time to design and develop approaches to each of the issues. As the commenters also noted, the additional leadtime provided by an extension of the one car credit will assist them in addressing those issues.

**Safety Effects**

The November 1986 notice and the accompanying preliminary regulatory evaluation contained a detailed discussion of the safety effects of the proposal. The notice discussed three independent analyses, one by NHTSA, and the others by Ford and IIHS, all of which demonstrated that a driver-side, non-belt automatic restraint system combined with a manual lap/shoulder belt for the passenger provides substantial safety benefits. No commenter disagreed with the methodology or conclusions of the different analyses. In supporting the analyses, Volvo noted that the analyses showed that the usage rate for automatic safety belts would have to be at least 60–70 percent to exceed the benefits of a driver-only air bag system. Volvo said that "(i)t appears unlikely that such high usage rates will be achieved for detachable automatic belts, at least initially. Consequently, a continuing 'one car credit' appears to present no negative societal safety effects," Volvo concluded. Since there was no objection to the methodology or conclusions of the agency's analysis, NHTSA has adopted the results of that analysis in its final regulatory evaluation.

Although it did not address the agency's safety analysis, the Pennsylvania Department of Transportation's Center for Highway Safety (CHS) expressed concern about providing protection to passengers in cars equipped with driver-only air bags. It urged adoption of a requirement that cars produced beyond September 1, 1989, have automatic safety belts for the right front passenger. Thus, in effect, CHS urged rejection of the Ford petition since CHS wants automatic protection for both the driver and the passenger after September 1, 1989.

NHTSA shares CHS' concern about protecting both the driver and right front passenger. Before proposing an extension of the one car credit, NHTSA carefully examined the safety effects of the proposal, including the effect on front seat passengers. Both the agency's preliminary and now the final regulatory evaluation show that a driver-only air bag system can have substantial safety benefits. In fact, safety belt usage in cars equipped with automatic safety belts for the driver and the passenger must exceed 60 percent, before the benefits of that system equal the benefits of a driver-only air bag and a manual lap/shoulder belt for the right front passenger.

As discussed in more detail in the section of this preamble on leadtime, the information provided by the manufacturers shows conducting simultaneous engineering programs to develop two different types of automatic restraints for the same seating position is difficult to do with their available restraint system engineering resources. The agency believes that the limited extension adopted today will allow the industry to concentrate its resources on designing and developing full front air bag systems, which when used with lap/shoulder belts, have the greatest estimated effectiveness of any of the automatic restraint systems studied by the agency. Thus, because a driver-only non-belt automatic restraint system will provide a substantial level of safety benefits during the limited extension, and because the extension will promote the development of even more effective full front automatic restraint systems, the agency believes that the overall safety benefits justify a limited extension. Thus, CHS's request to require automatic safety belts for the passenger during the extension is denied.

NHTSA does not, however, agree with Volvo that the agency's safety analysis justifies an indefinite extension. The primary purpose of the limited extension is to provide manufacturers with more time to design, develop, and produce passenger side air bag systems. The agency's analysis shows that a full-front air bag system provides additional benefits than does a driver-only system. Thus, the agency wants to limit the extension of the one car credit to the shortest time necessary to produce those systems.

**Consumer Acceptance of Dual Systems**

One issue raised in the November 1986 notice was whether it was a viable option for manufacturers to provide driver-side air bags and passenger-side automatic belts. As discussed in that notice, Ford said that such an option is not viable for two reasons. First, it does not have the engineering resources to conduct parallel air bag and automatic belt programs for the same seating position. In addition, Ford raised the issue of possible market resistance to such a combination. The notice requested other commenters to address this issue.

As discussed in more detail in the section of this notice on leadtime issues, the manufacturers addressing the engineering resource problem all expressed concerns similar to Ford's. The commenters also provided additional information on potential consumer resistance problems to dual automatic restraint systems in a car. Only Chrysler said that it was planning to install driver air bags and passenger automatic safety belts. Chrysler said that although it believes such "mixed systems will be acceptable in the marketplace," it is "concerned that some prospective vehicle purchasers may not like having two different types of restraints for the front seat." GM said that while it has not conducted any market research on the public acceptability of dual restraint systems, it believes that "where the non-symmetry is obvious or intrusive," consumers will not respond favorably. AMC also agreed that for esthetic, styling, and other reasons a manufacturer would not offer a dual system. Honda said it is not considering a dual system since the optimum vehicle body structure for each type of restraint system is different.

**Leadtime Issues**

*A. Establishing a Supplier Base*

In the November 1986 notice, NHTSA noted Ford's concerns about the need for suppliers to increase their production capacities and to gain additional experience with the mass production of air bags. In their comments, vehicle manufacturers and equipment suppliers expressed the same concern. As mentioned in the November notice, Talley Industries, which has been involved in developing and producing air bag inflators, expressed support for the proposed extension. Allied Automotive also supported the proposal commenting that a prompt decision on whether to adopt the proposal "will greatly facilitate engineering and manufacturing capacity planning for future passive restraint systems beyond the scheduled phase-in period since significant differences exist between belt and non-belt occupant restraint systems technology." Volvo commented that there will be only three or possibly four suppliers of air bag inflators that have the capacity to produce large scale production before 1989. Volvo said that, "There are indications that even these

suppliers will not have enough production capacity to supply inflators for more than a minor part of the total number of cars produced for the U.S. market."

*B. Engineering Resource Problems*

The November 1986 notice discussed Ford's concerns about the engineering resource problems it faces in having to conduct parallel programs to develop passenger-side air bag systems and automatic safety belts. In its comment, Ford provided new information on the issue of its engineering resources. Ford explained that since filing its petition, it has been conducting parallel restraint system programs. Ford further explained that "because of the acute shortage of knowledgeable and experienced engineers and test and development facilities available to Ford and its suppliers, and because Ford wants to be able to provide properly designed driver-side supplemental air bags if the extension is granted, Ford has now discontinued any further work on non-air bag passive restraint alternatives for those cars which would be equipped with driver-side supplemental air bag systems if the agency were to grant the extension."

Other manufacturers commenting on this issue cited similar engineering resource problems. AMC said that it could not divide its engineering resources between two simultaneous restraint system development programs. Chrysler said that while it has currently been engaged in a dual development program—driver air bags and passenger automatic belts—the program "is taxing our resources beyond our capability." Chrysler said that there is a shortage of trained design/development people and it has had to use an outside contractor to meet its crash testing needs. In its comments, IIHS said that it has "for months been in contact with suppliers of air bag components across the country, and they confirm that the capacity is not enough at present to provide large numbers of air bags (especially for the passenger side) to meet a 1991 deadline."

Among the foreign manufacturers, Jaguar said that because of the difficulty in allocating its engineering resources, it will have to concentrate its efforts on developing automatic safety belts. It said that adoption of the proposed extension would enable Jaguar to place more efforts on its driver and passenger air bag systems. Saab said that it does not have the resources to develop driver and passenger air bags simultaneously. Citing the need to develop different systems for its two models, Saab also said that it is unlikely that it can introduce passenger air bags by the 1990 model year. Finally, Volvo said that it agreed with Ford about the difficulties of concurrently carrying out parallel restraint system development programs. Volvo observed that the development of a driver side air bag system and a motorized automatic belt could require more development resources than developing a full-front air bag system.

*C. Length of the Extension*

1. Support for Extension Until September 1, 1993

There was wide-spread support for the proposal to extend the one car credit until September 1, 1993. The commenters supporting the proposed four-year extension were: the American Insurance Association, Automobile Importers of America, American Motors, Breed, Honda, IIHS, Mercedes-Benz, Motor Vehicle Manufacturers Association, National Association of Independent Insurers, National Association of Governors' Highway Safety Representatives, Nationwide Insurance, National Safety Council, Nissan, Romeo-Kojyo, Saab, State Farm Mutual Automobile Insurance Company, The Travelers, United Services Automobile Association, Volvo, and Volkswagen.

Although it supported the four year leadtime proposal, the Automobile Importers of America urged the agency "to monitor the development of passenger air bags closely and be prepared to give additional leadtime, if some unforeseen problems arise." Likewise, Honda said it supported the proposal, but said that it could not presently estimate whether a four year period is sufficient to complete the development and installation of passenger-side air bags. Honda said, however, that it "will make every effort to accomplish this goal." Volvo, while supporting the proposed extension, said that the one car credit should be retained beyond 1993.

Several of the commenters provided information supporting the need for an additional four year period to develop and mass produce passenger-side air bag systems. In its comments, Breed identified what it views as the two major leadtime issues associated with passenger-side air bag systems. Breed said that the first issue is the redesign of the instrument panel to accommodate an air bag. Breed said that it "may be impractical to attempt modification of at least some existing car models to accept passenger side air bags. As a consequence, we believe the installation of a passenger side airbag may have to coincide with the coming out of new car models." The second issue is the time to design and mass produce passenger-side systems. Breed said that it needed approximately one to two years to design an air bag system and needed another two years to tool and prepare production components.

GM repeated its prior estimate that it would take at least 36 months to incorporate either a driver-only or full front (driver and right front passenger) air bag system into existing or new vehicle lines that could accommodate an existing air bag design. GM said that its 36 month estimate did not include the time necessary to develop the design. GM further noted that the bulk of its restraint system developers are currently working on automatic safety belt designs and the remainder are working on its driver air bag program. GM said because of this commitment of resources, "no significant development of a passenger airbag could be implemented prior to 1990."

IIHS also addressed the design and development issue involved in determining leadtime. IIHS said that "Air bags aren't modular components that can simply be tacked on a wide range of car models. Each individual model with an air bag system requires a separate engineering development and crash testing program. It wouldn't be responsible to place the phase-in of air bags ahead of these constraints."

Finally, State Farm addressed the concern that the extension represents a "delay" in the phase-in. Referring to what it termed "false starts" in the implementation of automatic restraints, State Farm said "it is understandable that the contemplated modification of the passive restraint standard may be viewed as the forerunner of yet another delay in full implementation of the standard. Although we share that concern, we believe that we are in a new era of awareness, by the public and the manufacturers, of the importance of safety generally and the desirability and utility of airbags specifically. This has led the management of a number of manufacturers, and we believe will lead the management of other manufacturers to conclude that airbags will meet with public approval and thus lead to widespread use at quite reasonable unit costs."

2. Requests for Indefinite Extension

Several vehicle manufacturers urged the agency not to place a time limit on the extension of the one car credit. Ford said that, in conjunction with its supplier, it had "recently defined in concept an innovative design approach to passenger-side supplemental air bags," but it added it has "no basis now

for saying with any certainty that all design and supply system issues will be resolved by the fall of 1993." Thus, Ford requested an indefinite extension of the one car credit.

Ford said that if NHTSA decided to adopt the proposed 1993 effective date, the agency should "also provide for a review of the 1993 passive restraint requirement to take place during the 1990 calendar year. A review during 1990 would permit inclusion of real world passenger-side air bag experience, yet allow time to complete design work, and permit the construction of facilities and tooling necessary to produce passenger-side supplemental air bags in high volume by September 1993." In its comments, Chrysler also supported adopting an indefinite delay at this time and urged NHTSA to re-examine the termination date issue "in the 1990 time frame."

NHTSA does not believe that Ford and Chrysler have provided a sufficient justification to adopt an indefinite extension of the one car credit. NHTSA believes that there are sufficient technical issues, engineering resource, and supplier capacity problems to justify a *limited* extension of the one car credit. However, all of those issues are potentially solvable by September 1993, and manufacturers and suppliers uniformly have committed themselves to making their best efforts to introduce full front air bag systems by that date. The agency will continue to monitor the progress of vehicle manufacturers and suppliers in designing, developing, and mass producing full front air bag systems. As new issues and concerns arise, NHTSA fully expects that manufacturers and suppliers will bring them to the agency's attention. At that point, if there is additional information available about the nature and extent of any problems and their solutions, the agency can determine whether additional action is appropriate.

3. Request for Earlier Effective Date

New Jersey's Insurance Commissioner supported the proposed extension of the one car credit. He did, however, express concern about the proposed September 1993 effective date and suggested adopting a shorter leadtime. He also suggested the agency phase-in a passenger-side air bag requirement to ensure that vehicle manufacturers steadily increase the production of those systems. Motor Voters made a similar request. It urged that manufacturers receiving a one car credit be required to provide full-front air bag systems for vehicles manufactured after September 1, 1991. Robert Phelps, a private citizen, urged the agency not to adopt the proposed extension, arguing that manufacturers have the technology to install automatic safety belt or air bag systems by September 1, 1989.

CFAS raised a number of issues related to the leadtime necessary for producing passenger-side automatic restraint systems. CFAS first said that the Department's July 1984 decision provided sufficient leadtime to produce non-belt automatic restraint systems, such as air bags. In addition, CFAS said that historically passenger-side systems have been developed before driver-side air bag systems and thus an extension is not needed. In support of its position that passenger-side systems are available now, CFAS cited early 1970's research into passenger-side air bag systems and noted that the first GM and Ford air bag fleet vehicles had full front air bag systems. CFAS said that the supplier problems result from a prior lack of commitment to air bags by the industry and government. It specifically cited the decisions by Allied Chemical and Eaton to leave the air bag market in the 1970's as examples of how government and industry indecision has resulted in supplier problems. CFAS also said that because of marketplace pressures, Ford will proceed with its air bag program, regardless of whether an extension is granted. Finally, CFAS said that if an extension is adopted, NHTSA should phase-in the requirement for a passenger-side air bag.

NHTSA agrees with CFAS that the requirement that all cars have automatic restraints by September 1989 provides manufacturers sufficient time to install some types of automatic restraints, such as automatic safety belts. NHTSA believes, as discussed in detail earlier in this notice, that manufacturers and suppliers have raised valid issues concerning their ability to provide for the wide-spread introduction of passenger-side air bags by September 1989. There is a substantial difference between the supplier base and engineering resources needed for the limited introduction of full-front air bags on full size cars in the 1970's and the planned wide-spread introduction of full-front air bags on a wide variety of car sizes. Whatever the historical reasons for the lack of a supplier base, the issue that faces the agency is that the supplier capacity does not currently exist. The agency has been presented with good faith assurances from manufacturers and suppliers that they have begun to develop the necessary production capabilities. For example, Ford in its latest comments indicated that it has already made commitments for its suppliers to begin expending funds on long leadtime tooling. NHTSA does not believe that these commitments would be made unless the agency had proposed extending the one car credit. The limited extension adopted today will further promote the wide-spread introduction of both driver and passenger-side air bag systems and other non-belt systems.

NHTSA does not believe it is necessary to adopt a new phase-in requirement for passenger-side non-belt systems and, as discussed in detail below, does not believe the one car credit should be limited to cars equipped with air bags. The information provided by the vehicle manufacturers and suppliers indicates that those manufacturers that plan to introduce passenger-side non-belt systems have already begun the initial stages of the design work. The commitment of the financial and engineering resources to the necessary design and development work and the production of manufacturing facilities will serve as a sufficient incentive for manufacturers to ensure that the final products resulting from those efforts will be placed in cars as quickly as possible.

**Limit Extension to Air Bags Only**

CFAS urged the agency to limit the one vehicle credit to cars that meet the automatic restraint requirements with an air bag system. In particular, CFAS said the one vehicle credit should not be available to passive interiors, which CFAS labeled as "unproven." (Passive interiors or built-in safety is an occupant restraint approach that GM is examining. The approach uses structural changes in the vehicles and increased padding as a means to reduce occupant injury.) Motor Voters also requested the agency to limit the one car credit to cars that have driver-side air bags.

NHTSA agrees with CFAS and Motor Voters that air bag systems, when used in conjunction with manual lap/shoulder belts, are an effective restraint system. However, Standard No. 208 sets performance requirements which can be met by a variety of different technologies, including automatic safety belts, air bags and built-in safety. If built-in safety or other types of non-belt systems can meet the performance requirements of the standard, then manufacturers can use those systems at the driver's position to obtain a one vehicle credit. The agency believes there is no reason to limit the ability of manufacturers to pursue alternative automatic restraint systems, such as built-in safety, that can meet the performance requirements of the standard. Thus, NHTSA is not adopting

the limitation suggested by CFAS and Motor Voters.

The agency notes that as a practical matter, air bags appear to be the only non-belt system that presently meet the performance requirements of the standard. In its comments, GM said that "built-in" safety "is not practicable for certifying a vehicle or any seat position to the current FMVSS 208 passive restraint requirements." GM said, however, it will "continue to implement this important safety concept in its vehicle design program."

**Dynamic Testing of Manual Lap/ Shoulder Belts**

As a part of the November 1986 notice, NHTSA proposed that manual lap/shoulder safety belts installed at the front right passenger's seat after September 1, 1989, must be dynamically tested. Only a few commenters specifically addressed this proposed requirement. Noting its prior support for dynamic testing of manual lap/shoulder belts, GM urged the agency to adopt the proposed requirement. GM said that, "While uncertainties exist regarding the correlation of the laboratory dynamic test with the real world, with such testing the consumer will have the assurance that his or her manual belt system will have met the same level of laboratory performance as an automatic belt which might otherwise have been provided in the vehicle." CFAS, Chrysler, and Motor Voters also supported the proposed dynamic test requirement.

In its comments, Ford urged the agency not to adopt a dynamic test requirement for cars equipped with manual lap/shoulder belts. Ford said that the agency has relied primarily on New Car Assessment Program (NCAP) data to justify the need for dynamic testing. Although Ford agreed that a dynamic test requirement might compel manufacturers to design their safety belt systems to obtain better results in the NCAP test, Ford said that NHTSA has not shown that safer vehicles would result from the requirement.

NHTSA believes that the proposed test has the obvious safety benefit, cited by GM, of ensuring that a passenger in a manual belt equipped car will receive the same level of protection, when he or she wears the safety belt, as a passenger in an automatic belt equipped car. The agency recognizes that there are disagreements about the precise correlation of the results obtained in NCAP and other laboratory tests to real world crashes. One of the reasons it is difficult to correlate the results is the relative lack of data on real world crashes at 35 mph involving drivers and passengers wearing safety belts. As usage increases due to safety belt use laws, data on that type of crash should become more available. In addition, because of the wide variety of differing crashes in which a vehicle can be involved in the real world, the agency always cautions users of NCAP test results that those results cannot be used to predict the results in an actual crash. At the same time, the NCAP tests do measure the ability of vehicles to provide important head, chest, and leg protection in a standardized frontal crash test. The types of changes made to safety belt systems and vehicle structure to meet the proposed 30 mph barrier test, such as using energy-absorbing safety belt webbing and ensuring that safety belt retractors lock quickly to hold an occupant in place, should also help reduce injuries in the real world. The agency is thus adopting the proposed dynamic test requirement.

**Denial of Two Car Credit**

As a part of the November 1986 notice, NHTSA announced its decision to deny separate petitions filed by Porsche and IIHS that asked the agency to provide a two car credit to manufacturers that install driver and passenger-side air bag systems during the phase-in period. In denying the petitions, NHTSA requested manufacturers to provide additional information to the agency indicating how they would make use of a two car credit. The agency said that if manufacturers provided sufficient information to refute NHTSA's reasons for denying the petition, the agency would reconsider its denial.

Only two manufacturers specifically addressed the two car credit issue. Chrysler said that it had no plans to install passenger-side air bags during the phase-in period and the grant of the Porsche/IIHS petition would not cause Chrysler to change its plans. Ford was the only other manufacturer to comment on this issue. Ford said that it plans to offer a passenger-side air bag on one car line during the 1989 model year. Ford said that its plans "are independent of whether such cars would receive a 1.5 or 2.0 credit." Since there is no new information indicating that a two car credit would promote the introduction of full-front air bag systems, NHTSA stands by it denial of the Porsche-IIHS petition.

**Public Information**

In its comments, the National Association of Governors' Highway Safety Representatives urged the vehicle industry and the Department of Transportation to market aggressively the availability and benefit of air bag protection. In addition, NAGHSR urged manufacturers, dealers, and the Department to disseminate information to the public about automatic restraint systems.

NHTSA recognizes the importance of providing consumers with information about the wide range of available automatic restraint systems. To that end, NHTSA has prepared and made available to the public, brochures and other information describing the benefits of different types of automatic restraint systems and explaining how they work. For example, NHTSA has already distributed more than 150,000 copies of two new pamphlets on automatic restraints and 350,000 copies of a pamphlet showing parents how to use child safety seats with the new restraints.

NHTSA is also aware of manufacturer and dealer programs to promote awareness of automatic restraints. For example, Ford has been sponsoring "safety days" at dealerships around the country to publicize the availability of air bags and their new automatic belts. These events have resulted in dealer orders for thousands of air bag-equipped cars. The agency encourages manufacturers and dealers to continue with these activities during the automatic restraint phase-in period.

**Rescind Safety Belt Use Law Provision**

The Massachusetts-based Committee to Repeal the Mandatory Seatbelt Law filed comments asking the agency to reconsider the provision in Standard No. 208 that the automatic restraint requirements will be rescinded if two-thirds of the U.S. population is covered by effective safety belt laws. In essence, the Committee said that safety belt use laws are unpopular because they place a burden on the freedom of private citizens and thus the agency should not encourage the adoption of those laws. The agency, on August 30, 1985 (50 FR 35233), has already reviewed and rejected requests such as the Committee's. For the reasons stated in that notice, the agency is rejecting this request as well.

**Regulatory Impacts**

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291, but is significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a final regulatory evaluation describing the economic and

other effects of this rulemaking action, which is available in the docket.

As mentioned earlier in this notice, the preliminary and now the final regulatory evaluation shows that a driver-only air bag system with a manual lap/shoulder belt for the right front passenger can have substantial safety benefits. In fact, safety belt usage in cars equipped with automatic safety belts for the driver and the passenger must exceed 60 percent, before the benefits of that system equal the benefits of a driver-only air bag.

NHTSA's analysis further shows that automatic belt usage would have to be greater than 75 percent to exceed the benefits of a driver and passenger side air bag system. Thus, the agency believes that a temporary extension of the one car credit for driver-only systems will not have an adverse safety effect and will provide additional time for the orderly development and installation of driver and passenger air bag systems. Furthermore, the agency believes that the amendments adopted today can result in higher levels of safety. The agency notes that vehicle manufacturers that are currently offering driver-only air bag systems are voluntarily installing lap/shoulder safety belts for the driver, even though they could install only a lap safety belt. The Final Regulatory Impact Analysis done for the Department's July 1984 occupant protection decision estimated that the combination of a lap/shoulder safety belt and an air bag system would provide the highest level of effectiveness in reducing fatal and moderate-to-critical injuries of all the restraint systems studied.

**Regulatory Flexibility Act**

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a full regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities and the proposed change in the credit provision should not have a substantial effect on small manufacturers. The changes adopted today will provide vehicle man facturers and restraint system suppliers with additional leadtime to develop passenger-side non-belt systems. The additional leadtime should have the effect of reducing a manufacturer's costs. Small organizations and governmental units that purchase cars with non-belt automatic restraint systems would be affected by this final rule. However, the cost effect of this final rule should not significantly affect them, since the potential cost reductions associated with the changes adopted today should not be significant.

**National Environmental Policy Act**

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

**Paperwork Reduction Act**

This rulemaking action does not contain any information collection requirements that must be submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, § 571.208 of Title 49 of the Code of Federal Regulations is amended as follows:

**PART 571—[AMENDED]**

1. The authority citation for Part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.208 Standard No. 208, Occupant Crash Protection.**

2. S4.1.4 is revised to read as follows:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.* Except as provided in S4.1.5, each passenger car manufactured on or after September 1, 1989, shall comply with the requirements of S4.1.2.1. Until September 1, 1993, each car whose driver's designated seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front designated seating position is equipped with a manual Type 2 seat belt that meets the requirements of S5.1, with the Type 2 seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

Issued on: March 25, 1987.

**Diane K. Steed,**

*Administrator.*

[FR Doc. 87-6893 Filed 3-25-87; 4:37 pm]

BILLING CODE 4910-59-M

# Proposed Rules

Federal Register
Vol. 52, No. 60
Monday, March 30, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 736

[Amendment No. 3]

### Grain Warehouses; Definitions, Financial Requirements and Warehouse Bonds

**AGENCY:** Agricultural Stabilization and Conservation Service, USDA.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This rule would amend the regulations at 7 CFR Part 736 relating to gain warehouses licensed under the United States Warehouse Act to: (1) Add definitions; (2) increase the total net asset requirements; (3) require warehousemen to have and maintain total current assets equal to or exceeding total current liabilities; (4) allow the Secretary to accept a letter of credit for a deficiency in total net assets above the minimum requirement; (5) permit a warehouseman to deposit with the Secretary for the protection of depositors, United States public debt obligations as security in lieu of a bond furnished by a corporate surety; (6) allow a waiver of the requirements for an individual financial statement from a warehouseman wholly-owned by another business entity which other entity is willing to furnish an acceptable financial statement and guarantee the storage obligations of the licensed warehouseman; (7) accept certain appraisals of real and personal property to supplement financial statements; and (8) provide for the acceptance of a continuous form of bond from a surety company.

**DATE:** Written comments should be received on or before April 29, 1987 to assure consideration.

**ADDRESS:** Written comments should be sent to Paul W. King, Director, Warehouse Division, Room 5968-South Agriculture Building, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Department of Agriculture, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** R. Ford Lanterman, 202–475–4032.

**SUPPLEMENTARY INFORMATION:**

#### Rulemaking Matters

This rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "non-major." This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. A complete review is in process.

Milton J. Hertz, Administrator, ASCS, has determined that this action is not a major rule since implementation of the proposed rule will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographic region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements proposed by this rule will not become effective until they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration. Comments concerning the information collection requirements contained in these proposed rules may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer ASCS/USDA, Washington, DC 20503, Telephone (202) 395–7340.

Milton J. Hertz, Administrator, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities because: (i) This action imposes only moderate economic costs on small entities; and (ii) the use of the service is voluntary. Therefore, no regulatory flexibility analysis was prepared.

This rule is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as wildlife habitat, water quality, or land use and appearance. Accordingly, neither an environmental assessment nor an environmental impact statement is required and none was prepared.

This action will not have a significant impact specifically upon area and community development, therefore review as established by Executive Order 12291 (February 17, 1981) was not used to assure that units of local government are informed of this action.

#### Background

The U.S. Warehouse Act [7 U.S.C. 241 *et seq.*] [the "Act"] provides that warehousemen who apply to the Secretary of Agriculture and who meet certain statutory and regulatory standards may be federally licensed. The primary objectives of the Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title, thereby facilitating trading of agricultural commodities in interstate commerce; and (3) set and maintain a standard for sound warehouse operations.

The Department of Agriculture has sought to attain these objectives by: research and development of basic standards for good warehousing practices; requiring original and continuing examinations of applicants and licensees; establishing financial and bonding requirements; and establishing licensing and regulatory requirements.

The issuance of a warehouse receipt by the warehouseman and its delivery to the depository is the best legal evidence that the bailment contract, i.e., the storage obligation exists. However, a warehouse receipt is acceptable only when it has integrity. "Integrity" means that the original depositor or a subsequent holder of a receipt must have reasonable assurance that the product covered by the warehouse receipt will be returned upon surrender of the receipt and a valid request for delivery. If the depositor or holder of the receipt fails to receive return of the product, they must have the assurance that the warehouseman is able to compensate them for this breach of contract.

Historically, the responsibility of licensed warehousemen to fulfill their obligations to depositors has been supported by requiring the warehousemen to have and maintain a certain level of allowable total net

assets and a corporate surety bond. The levels of both the assets and the bonds have been generally fixed by the maximum number of bushels of licensed capacity. This is true since most, if not all, licensed grain warehousemen also operate a grain marketing business which buys grain from producers through the same facilities used for the storage of grain. The businesses of storing and marketing often become inseparable and funds available to the total business often cannot be segregated. These situations create continuous, dual and at times uncertain obligations leading to a commingling of grain assets and liabilities. The use of "delayed price" and "deferred payment" contracts as a marketing tool also has contributed to the possibility of increased losses.

The present asset and bonding requirements have served their purpose. However, in recent years there has been an increasing number of individual firms experiencing financial difficulties as reflected by bankruptcies, liquidations, and receiverships. For example, in the warehouse industry in general, while only two bankruptcies were recorded in 1974, over the years the numbers have increased to 18 in 1979, 48 in 1984, and 76 in 1985.

In addition to this increase in the frequency of bankruptcies, changes in the marketing operations of warehousemen also increase the risk of loss to depositors of grain.

This proposed rule would continue to protect depositors despite these changes in the nature of the warehouse industry. This proposed rule would increase the minimum net worth requirements of warehousemen and would require a minimum level of working capital.

Recognizing that increases in financial capacity requirements will require adjustments in the operations of some warehousemen and seeking to prevent undue hardship on any warehousemen, this rule proposes to add some flexibility to the bonding and net worth requirements. These proposed changes are summarized below.

*1. Definitions*

This proposed rule would add definitions for: (a) Net assets, (b) warehouse capacity, (c) current assets, and (d) current liabilities.

*2. Changes in Net Asset Requirements for Licensing and Continuation of License*

This proposed rule would require moderate increases in net asset requirements for licensing and continuation of license.

Total net assets generally are associated with the ability to withstand losses and carry the business through seasonal fluctuations. Current net assets, as compared with current liabilities, are a measure of the company's ability to carry on day-to-day operations (cash flow). When either total net assets or current net assets are too low or impaired, the risk of insolvency increases.

Significant changes in net asset requirements were last made in December 1974 when the rate was raised from 15 cents to 20 cents per bushel of licensed capacity and the minimum from $10,000 to $20,000. (The minimum was subsequently raised from $20,000 to $25,000 in June 1982.)

A new paragraph is proposed to be added to § 736.6 (d) requiring warehousemen to have and maintain total current assets equal to or exceeding total current liabilities (working capital) in addition to total net asset (net worth) requirements.

Further, this rule proposes that the minimum total net asset requirement be raised from $25,000 to $50,000 and that the per bushel rate used to compute total net asset requirements be increased to 25 cents per bushel of licensed capacity.

*3. Acceptable Form of Bond*

Surety bonds are becoming increasing difficult to obtain. Where available, the costs of bonding have increased substantially to the point where the cost is a major financial obligation. The United States Treasury Department (31 CFR Part 225) allows the deposit of security with the bond-approving officer in lieu of bond. United States bonds, Treasury notes or other public debt obligations of the United States or obligations which are unconditionally guaranteed as to both interest and principal by the United States are acceptable.

Agricultural Stabilization and Conservation Service (ASCS) proposes to amend 7 CFR 736.13 to permit acceptance by the Secretary of a deposit of United States debt obligations in lieu of the bond. The use of such a deposit would eliminate the cumulative protection presently provided by the surety bond.

The deposit will not be released until one year after the license is terminated and the storage obligations of the warehouse have been liquidated or otherwise satisfied. The deposit could be released earlier if the warehouseman is able to show that all storage obligations of the warehouse have been satisied and that no depositors object. In the event that the amount of deposit required is reduced, the obligation will be released to the extent of the reduction after the next satisfactory warehouse examination which confirms the reduction of obligation. Interest on the obligations will accrue to the benefit of the warehouseman.

At the present time it is possible to make claim against more than one bond if the loss occurred in more than one bond period.

ASCS further proposes to amend 7 CFR 736.13 to accept a continuous form of surety bond. This would remove the cumulative protection presently provided by the surety bond since the aggregate liability of the principal and surety under this bond for any one or more defaults of the principal during the bond year will not exceed the face amount of the bond. However, the bond will continue to protect to the extent of the amount of the bond for each loss or occurrence.

Experience has shown that claims against more than one bond are the exception and the acceptance of these forms of surety would not be expected to adversely affect depositors. This is particularly true in view of the examination cycle.

*4. Letter of Credit*

This proposed rule would permt acceptance of a Letter of Credit for a deficiency in net assets but only to the extent that the warehouseman's net asset requirement exceeds $50,000. A surety bond would still be required for the regular performance bond amount. The Letter of Credit must be issued for not less than 2 years and coincide with the warehouseman's bond. The Letter of Credit must be irrevocable; issued by a national bank or a member bank of the Federal Reserve System; payable to the Secretary by sight draft; and insured as a deposit by the Federal Deposit Insurance Corporation.

*5. Waiver of Requirements for Individual Financial Statements*

The regulations require that each warehouseman making application for a license and each warehouseman licensed under the regulations shall provide a financial statement meeting the requirements of 7 CFR 736.6 (b) and (c) and further shall have total net assets and working capital equal to the minimums set out in 7 CFR 736.6(d). Some warehousemen applying for a license and some holding licenses are wholly owned by other business entities (parent). These warehousemen may have difficulty producing a statement meeting the financial requirements of the regulations, while the "parent"

entity is willing to guarantee all storage obligations of the warehouseman and could produce and supply an acceptable statement on behalf of the wholly owned subsidiary. Under these circumstances, preparing individual statements and maintaining required assets by each individual warehouseman would be a costly and unnecessary duplication of effort. This rule proposes to accept on behalf of the warehouseman financial statements of the "parent" entity when such statements are supported by a guaranty of all storage obligations that the licensed warehouseman may incur.

*6. Appraisals of Real or Personal Property*

Generally accepted accounting principles preclude valuing depreciable fixed assets at other than cost less depreciation values. Present regulations require that all financial statements be prepared in accordance with generally accepted accounting principles. Because of the age of many warehouses and the attendant depreciation schedules, oftentimes fixed assets are listed in the financial statement at less than the value that could be realized upon the sale of the asset on the open market. To remedy this, this rule proposes to accept appraisals which give warehousemen credit for the actual market values of the fixed assets.

To be acceptable, narrative market value appraisals of land, buildings, and equipment must be made and prepared by independent appraisers certified by a recognized appraisal society or by a professional appraisal organization. This rule also proposes to accept land only, value appraisals which are prepared by local professional realtors provided that the appraisal report includes a minimum of two citations of recent sales of similar properties in the near geographical area and is accompanied by a statement of the appraiser's qualifications.

Acceptance of appraised values of all fixed assets would be subject to the following limitations:

(1) Appraisal values for depreciable fixed assets would be limited to values actually insured;

(2) Appraisal surpluses would be discounted 30 percent;

(3) Warehousemen would be required to have a positive working capital position; and

(4) Current acquisition of assets by warehousemen through arms length contracts between disinterested parties would not be eligible for consideration at appraised values (the transaction itself is the best indication of value).

*7. Continuous Bond and License*

ASCS proposes to amend 7 CFR 736.16 to issue a continuous form of license provided that the warehouseman files a bond with the Secretary which meets the requirements outlined in 7 CFR 736.13(a), i.e., required amount and with the approval of the Secretary. Failure of a warehouseman to provide such bond will result in revocation of the warehouseman's license.

**List of Subjects in 7 CFR Part 736**

Definitions, Warehouse licenses, Financial requirements, Warehouse bonds.

**Proposed Rule**

Accordingly it is proposed to amend 7 CFR Part 736 as follows:

## PART 736—GRAIN WAREHOUSES

1. The authority citation for 7 CFR Part 736 continues to read as follows:

Authority: Section 28, 39 Stat. 490 (7 U.S.C. 268)

2. Section 736.2 is amended by adding paragraphs (w), (x), (y), and (z) to read as follows:

**§ 736.2 Terms defined.**

* * * * *

(w) *Net assets* The difference remaining when liabilities are subtracted from allowable assets as determined by the Secretary after review of the warehouseman's financial statement. In determining total net assets, credit may be given for insurable property such as buildings, machinery, equipment, and merchandise inventory only to the extent that such property is protected by insurance against loss or damage by fire, lightning, and tornado. Such insurance shall be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in suits brought in the State in which the warehouse is located.

(x) *Warehouse capacity* Warehouse capacity is defined as the maximum number of bushels of grain that the warehouse could accommodate when stored in the manner customary to the grain for the warehouse, as determined by the Secretary.

(y) *Current assets* Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

(z) *Current liabilities* Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

3. Section 736.6 is amended by revising paragraphs (d) and (f), and by adding a paragraph (i) to read as follows.

**§ 736.6 Financial requirements.**

* * * * *

(d) Each warehouseman conducting a warehouse which is licensed under the regulations in this part, or for which application for such a license has been made, shall have and maintain:

(1) Total net assets liable and available for the payment of any indebtedness arising from the conduct of the warehouse of at least 25 cents multiplied by the warehouse capacity in bushels, however, no person may be licensed as a warehouseman under this part unless that person has allowable net assets of at least $50,000, (Any deficiency in net assets above the $50,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with §736.14(c) of this part.); and

(2) Total current assets equal to or exceeding total current liabilities or assurance that funds will be available to meet current obligations.

* * * * *

(f) Subject to such terms and conditions as the Secretary may prescribe and for the purposes of determining allowable assets and liabilities under paragraphs (d) and (e) of this section:

(1) Capital stock shall not be considered a liability,

(2) Appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by warehousemen to conform with paragraphs (b) and (c) may be allowed by the Secretary if prepared by independent appraisers acceptable to the Secretary;

(3) Financial statements of a parent company which separately identifies the financial position of a wholly owned subsidiary and which meets the requirements of paragraphs (b), (c), and (d) may be accepted by the Secretary in lieu of the warehouseman meeting such requirements; and

(4) Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Secretary as meeting the requirements of paragraphs (b), (c), and (d).

* * * * *

(i) When a warehouseman files a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are

unconditionally guaranteed as to both interest and principal by the United States as provided for in § 736.13(c):

(1) The obligation deposited shall not be considered a part of the warehouseman's assets for purposes of § 736.6(d) (1) and (2);

(2) A deficiency in total allowable net and current assets as computed for § 736.6(d) (1) and (2) may be offset by the licensed warehouseman furnishing a corporate surety bond for the difference;

(3) The deposit may be replaced or continued in the required amount from year to year; and

(4) The deposit shall not be released until one year after termination (cancellation or revocation) of the license which it supports unless the warehouseman offers evidence acceptable to the Secretary that all obligations the deposit protects have been fulfilled.

Nothing in these regulations shall prohibit a person other than the licensed warehouseman from furnishing such bond or additions thereto on behalf and in the name of the licensed warehouseman subject to provisions of § 736.13(c).

* * * * *

**§ 736.7 [Amended]**

4. Section 736.7 is amended by changing "$25,000" to "$50,000."

**§ 736.9 [Amended]**

5. Section 736.9(a) is amended by changing "$25,000" to "$50,000."

6. Section 736.13 is revised to read as follows:

**§ 736.13 Bond required; time of filing.**

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall faithfully perform during the period of one year commencing _____, or until the termination of said license(s) in the event of termination prior to the end of the one year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products.

This bond shall be effective for one year from the date last entered above, and shall be construed as being renewed on each anniversary thereafter unless otherwise terminated as herein provided.

The principal and surety shall only be obligated to the obligee to the extent of the face amount of the bond for each loss, however, the aggregate liability of the principal and surety under this bond for any one or more defaults of the principal during the bond year shall in no event exceed the face amount of the bond.

This obligation shall be and remain in full force and effect from date of issue until one hundred twenty (120) days after notice in writing of cancellation shall have been received by the Secretary from the principal or surety. If said notice shall be given by the surety, a copy thereof shall be mailed on the same day to the principal. No cancellation of this bond and no cancellation of any of its provisions shall affect any liability accrued thereon at the time of said notice or which may accrue thereon during the one hundred twenty (120) days after such notice.

A bond in this form shall be subject to 7 CFR 736.6, and 736.14 through 736.17, and 31 CFR Part 25, or

(b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraph (a) of this section. Such certificate of participation shall not be subject to §§ 736.14 and 736.15, or

(c) In the form of a deposit with the Secretary as security, United States bonds, Treasury notes, or other public debt obligations of the United States or obligations which are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal to their par value to the amount of the penal bond required to be furnished, together within irrevocable power of attorney and agreement in the form prescribed, authorizing the Secretary to collect or sell, assign and transfer such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. A bond in this form shall be subject to 7 CFR 736.6 and 736.14 through 736.17 and 31 CFR Part 225.

7. Section 736.14 is amended by revising paragraph (c) to read as follows:

**§ 736.14 Amount of bond; additional amounts.**

* * * * *

(c) In case of a deficiency in net assets about the $50,000 minimum required under § 736.6(d)(1), there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency or a letter of credit in the amount of the deficiency issued to the Secretary for a period not less than one year to coincide with the warehouseman's bond. Any letter of credit must be clean, irrevocable, unconditional, issued by a national bank or a member of the Federal Reserve System, payable to the Secretary by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation. In any other case in which the Secretary, or his designated representative, finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as detemined under the other provisions of this section, a further amount to meet such conditions.

8. Section 736.16 is revised to read as follows:

**§ 736.16 New bond required each year.**

A continuous form of license shall remain in force for more than one year from its effective date or any subsequent extension thereof, provided that the warehouseman has on file with the Secretary a bond meeting the terms and conditions as outlined in 7 CFR 736.13(a). Such bond must be in the amount required by the Secretary and approved by him or his designated representative. Failure to provide or renew a bond shall result in immediate termination of the warehouseman's license.

Signed at Washington, DC, March 25, 1987.

**Milton J. Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 87-6929 Filed 3-27-87; 8:45 am]

BILLING CODE 3410-05-M

**Agricultural Marketing Service**

**7 CFR Part 911**

## Limes Grown in Florida; Proposed Amendment No. 6 to Rules and Regulations; Daily Pack-Out Reports

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would require lime handlers to report to the Florida Lime Administrative Committee the daily pack-out of selected sizes of limes during the entire twelve-month season. Handlers already are required to report this information to the committee during the March through June period of each season. The collection and dissemination of such information is necessary to assist growers and handlers in making better harvesting and marketing decisions.

**DATE:** Comments due April 29, 1987.

**ADDRESSES:** Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085 South Building, Washington, DC 20250. Comments will be available for public inspection in the office of the Docket Clerk during regular business hours.

Comments on the information collection and recordkeeping requirements contained in this proposed regulation should be sent to Marina Gatti, Desk Officer for USDA, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250. Telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1220) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information and collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to Marina Gatti, Desk Officer for the Agricultural Marketing Service, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, as amended (the Act, 7 U.S.C. 601 through 674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The production area of Marketing Order No. 911 consists of all of the State of Florida except the area west of the Suwannee River. Production for the 1985–86 season totaled about 64,000 tons or 2.3 million bushels, of which 39,000 tons or 1.4 million bushels went to fresh market. The remaining 25,000 tons were processed for juice. Total production value was $21 million. It is estimated that 26 handlers of Florida limes under the marketing order for limes grown in Florida will be subject to regulation during the course of the current season. In addition, there are approximately 263 lime producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000 and agricultural service firms which would include handlers are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Pursuant to the requirements set forth in the RFA the Administrator of AMS has considered the economic impact on small entities. The proposed rule would require lime handlers to report to the committee the daily pack-out of certain sizes of limes for the entire twelve-month season. The current rule requires daily reports for March through June of each year. The collection and dissemination of such information for the entire season should assist growers and handlers in making better harvesting and marketing decisions. This action was unanimously recommended by the committee which is composed of representatives of growers and handlers.

Florida lime handlers already keep daily pack-out information for the entire season for use in paying growers. Extension of the reporting requirements for the entire season is expected to have little effect on handler costs or their reporting burdens under the program. The added benefits of disseminating this additional information throughout the industry are expected to outweigh any increased cost experienced by handlers. Committee administrative personnel gather this information by telephone from individual handlers. In addition, many handlers are currently supplying such information voluntarily to the committee. The total time expenditure required of handlers to report this information should not exceed a few minutes per day.

Based on available information, it has been determined that this proposed rule would have no significant economic impact on a substantial number of small entities.

This proposed rule would amend § 911.111 of Subpart—Rules and Regulations, requiring handlers to report specific pack-out information on a daily basis to the committee during the entire twelve-month season. This action would help growers make better harvesting decisions and handlers to make better marketing decisions. A final rule requiring handlers to report daily pack-out information of selected sizes during March through June each season was published in the **Federal Register** on January 9, 1987 (52 FR 758). This rule is pursuant to the marketing agreement and Order No. 911, both as amended, regulating the handling of limes grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674). The committee, established under the order, is responsible for its local administration.

Weekly pack-out information is tabulated by size of the fruit on a total industry basis and disseminated along with the volume shipped and price report distributed to growers and handlers by the committee. It has been and will continue to be helpful to producers in planning harvesting to obtain the sizes desired in the marketplace. This helps assure packers and shippers of the desired sizes and helps them talior shipments to market needs. By harvesting the sizes desired in the marketplace growers should be able to improve their returns. At the same time, shippers and packers should be able to maximize shipments with the sizes desired in the marketplace.

**List of Subjects in 7 CFR Part 911**

Marketing agreements and orders, Limes, Florida.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 911 be amended as follows:

## PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.111 is proposed to be revised (51 FR 10535, March 27, 1986; 52 FR 758, January 9, 1987) to read as follows:

**§ 911.111 Pack-out reports.**

Each handler shall, at the end of each day's operation, report to the committee the percent of that day's pack-out in the following five size categories:

(a) Sizes 28 and 36,
(b) Size 42,
(c) Size 48,
(d) Size 54, and
(e) Sizes 63 and 72.

Dated: March 24, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–6865 Filed 3–27–87; 8:45 am]

BILLING CODE 3410–02–M

---

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Parts 21 and 23**

**[Docket No. 032CE, Notice No. 23–ACE–30]**

## Special Conditions; Fairchild Models SA227–AT and SA227–TT Airplanes [Type Certificate No. A5SW], Incorporating Emergency Lighting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Special Conditions.

**SUMMARY:** This notice proposes special conditions for the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT Airplanes incorporating an emergency lighting system as an aid for emergency evacuation. The applicable requirements for these airplanes do not contain adequate or appropriate safety standards for these systems. These proposed special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATE:** Comments must be received on or before April 30, 1987.

**ADDRESS:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 032CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 032CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ervin Dvorak, Aerspace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374–5688.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to particpate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking further action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested persons both before and after the closing date for submission of comments.

### Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227–AT Airplane is as follows: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendments 3–1 through 3–8;§ 23.511 amended by Amendment 23–7, effective September 14, 1969; § 23.175(d) as amended by Amendment 23–14, effective Decembr 20, 1973; Special Conditions outlined in FAA letters dated November 19, 1965, August 19, 1967, February 5, 1968, and April 4, 1968; Amendment B of SFAR NO. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853 (a), (b), (b–1), b–2), and (b–3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36–1 through 36–6; special conditions number 23–ACE–12, effective September 8, 1986 and the special conditions that may result from this proposal.

The type certification basis for the Fairchild Aircraft Corporation Model SA227–TT Airplane is as follows: Part 3 of the Civil Air Regulations (CAR), effective May 15, 1956, as amended by Amendments 3–1 through 3–8; § 23.903(b) as amended by Amendment 23–17 effective February 1, 1977; Special Conditions outlined in FAA letters dated November 19, 1965, August 22, 1967, February 5, 1968, and April 4, 1968; SFAR No. 23.27; Amendment B of SFAR 41, including paragraph 4(c) and the compartment interior requirements of § 25.853 (a), (b), (b–1), (b–2), and (b–3) effective September 26, 1978; Part 36, Appendix F effective December 1, 1969, as amended by Amendments 36–1 through 36–6; special condition number 23–ACE–12, effective September 8, 1986 and the special conditions that may result from this proposal.

### Background

On August 6, 1986, Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, made application to the FAA for approval of type design changes necessary to incorporate an emergency lighting system on the Fairchild Aircraft Corporation Model SA227 Series Airplane.

Fairchild Aircraft Corporation has certified a 19-place airplane which complies with SFAR 41 and incorporates three window exits and a main cabin door for egress from the airplane. Fairchild proposes to change the interior configuration such that one window emergency exit is eliminated and passenger capacity is decreased from 19 to 10–12. Fairchild Aircraft Corporation proposes to install an emergency lighting system for use during emergency evacuation. Since the airplane certification basis includes SFAR–41, an emergency evacuation demonstration is required, but an emergency lighting system is not required.

Past emergency evacuation demonstrations on these airplanes have shown that the most critical aspect of the evacuation is for the passengers to find the location of emergency exits. The passenger cabin length is approximately 25 feet with the entrance door at one end of the cabin and the window exits about in the middle of the cabin.

### Discussion

The intallation of emergency lighting systems in small airplanes was not

envisioned when the applicable requirements for the subject airplanes were promulgated.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

An emergency evacuation demonstration is required for the affected airplanes. The applicable requirements do not contain a requirement for emergency lighting to aid in emergency evacuation, nor do these requirements include design criteria should the applicant choose to include such features. If Fairchild Aircraft Corporation chooses to install emergency lighting in the Model SA227 Series Airplane in order to improve emergency evacution, and use such lighting during the required evacuation demonstration, appropriate standards should be adopted.

Because emergency lighting is not required, when an applicant chooses to provide such lighting, the FAA must evaluate such lighting relative to its intended function. If that intended function would affect the showing of compliance with an existing requirement, the FAA must assure that the additional system performs its function when the critical event occurs, in this case, an actual emergency evacuation. The FAA concluded that specific criteria is necessary.

Experience with such systems in other categories of airplanes leads the FAA to conclude a source of emergency lighting may be proposed that is common to the normal airplane lighting system. Due to the routine use of the normal lighting system, both in flight and on the ground, the source of energy for the emergency lighting system could be depleted if it were available for routine operations. Because the normal electrical system could be deactivated during emergencies, a source of energy for the emergency lighting system must be available that is independent of the source for the normal lighting system.

In a survivable crash, the cockpit crew may be disabled and unable to turn on the emergency lights. Therefore, in addition to having cockpit controls for turning on the lights, a control must also be available in the cockpit to arm the emergency light system. To assure activation of the emergency lighting system, automatic activation must occur when the engine-driven electrical generator power is lost or an impact sensor must be provided to turn the armed system on.

The emergency lighting system should only be armed during flight operations. Because crew action is required to arm the system, there must be a caution light to alert the crew if normal electical power is on in the airplane and the emergency lighting system is not armed.

Emergency evacuation must be demonstrated and accomplished in 90 seconds or less; however, in a survivable crash where injuries occur, significantly longer evacuation times may be necessary. Therefore, the energy supply for the emergency light energy must be adequate for ten minutes.

Common practice is to use rechargeable batteries, but non-rechargeable batteries may be used. Regardless of which type battery is used, the design must provide warning of charging circuit faults or inadequate battery charge.

The emergency lighting system must be functional after being subjected to the inertia forces expected in survivable crashes. Those forces are set forth in § 23.561(b).

During the survivable crash, various modes of system damage will occur, up to and including single transverse vertical separation of the fuselage. Any such single occurrence must not render the total emergency lighting system inoperative.

The minimum level of illumination is optional because providing any lighting at all is optional. However, the maximum illumination used during the emergency evacuation demonstration must be the minimum available after any single probable failure.

The FAA has considered the features proposed by Fairchild Aircraft Corporation for the emergency lighting installation in the Fairchild Model 227 Series Airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes which did not envision the use of such systems, special conditions should be promulgated for such systems, in addition to the applicable requirements, that will provide the necessary level of safety. Accordingly, special conditions are proposed.

**List of Subjects in 14 CFR Parts 21 and 23**

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these Special Conditions is as follows:

**Authority:** Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT Airplanes when equipped with an emergency lighting system intended for use during emergency evacuation of the affected airplanes.

**Emergency Lighting**

1. If an emergency lighting system is installed and used as an aid in showing compliance with any applicable regulatory requirement, including emergency evacuation demonstrations, the following special conditions apply:

(a) The source of illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(b) There must be a caution light which illuminates in the cockpit when power is on in the airplane and the emergency lighting control device is not armed.

(c) The emergency lights must be operable manually from the flightcrew station and be provided with automatic activation. The cockpit control device must have an "on", "off", and "armed" position so that, when armed in the cockpit, the lights will operate by automatic activation. For automatic activation of the system, the sensor must:

(1) Activate when engine-driven electrical generator power is lost, or

(2) Activate when subjected to a force of 5.0, +2, −0 g. and greater for a duration of 11; +5, −0 milliseconds and greater in the direction of the longitudinal axis of the airplane; must not be activated under conditions less severe; and, after activation, must remain activated when subsequently subjected to shock forces in any direction of up to 50 g and having durations up to 11, +5, −0 milliseconds; or

(3) Activate when subjected to an alternate crash forces, approved by FAA and

(4) Regardless of sensor type, must be capable of being reset by the flightcrew

if activated by any occurrence other than a survivable crash.

(d) The energy supply to each emergency lighting unit must provide the required level of illumination for at least 10 minutes at the critical ambient condition after emergency landing.

(e) If rechargeable batteries are used as the energy supply for the emergency lighting system, the charging circuit must be designed to preclude inadvertent battery discharge into charging circuit faults. If the emergency lighting system does not include a charging circuit, then battery condition monitors are required.

(f) Components of the emergency lighting system, including batteries, wiring relays, lamps, and switches must be capable of normal operation after having been subjected to the inertia forces listed in § 23.561(b).

(g) The emergency lighting system must be designed so that a single probable failure, or probably system damage following a survivable crash, will not render the entire emergency lighting system inoperative. Single transverse vertical separation of the fuselage is considered a probable event during a survivable crash. The minimum emergency illumination, after a single probable failure, must be specified by the applicant and during an emergency evacuation demonstration the maximum emergency illumination must be equal to or less than the specified level.

Issued in Kansas City, Missouri, on March 12, 1987.

**Donald J. Schneider,**

*Acting Director Central Region.*

[FR Doc. 87-6923 Filed 3-27-87; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Parts 21 and 23

**[Docket No. 034CE, Notice No. 23-ACE-31]**

## Special Conditions; Fairchild Model SA227-AC Airplanes [Type Certificate No. A8SW], Incorporating Emergency Lighting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Fairchild Aircraft Corporation Model SA227-AC Airplanes incorporating an emergency lighting system as an aid for emergency evacuation. The applicable requirements for these airplanes do not contain adequate or appropriate safety standards for these systems. These proposed special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATE:** Comments must be received on or before April 30, 1987.

**ADDRESS:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 034CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 034CE Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ervin Dvorak, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

**SUPPLEMENTARY INFORMATION**

### Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking further action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested persons both before and after the closing date for submission of comments.

### Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227-AC Airplane is as follows: Part 23 of the Federal Aviation Regulations, effective February 1, 1965, as amended by Amendments 23-1 through 23-6; § 23.175(d) amended by Amendment 23-14, effective December 20, 1973; Special Conditions outlined in FAA letters dated November 19, 1965, August 19, 1967, February 5, 1968, and April 4, 1968; SFAR 23; Amendment B of SFAR No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853 (a), (b), (b-1), (b-2), and (b-3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36-1 through 36-6; special conditions number 23-ACE-15, effective October 1, 1986 and the special conditions that may result from this proposal.

### Background

On August 6, 1986, Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, made application to the FAA for approval of type design changes necessary to incorporate an emergency lighting system on the Fairchild Aircraft Corporation Model SA227 Series Airplane.

Fairchild Aircraft Corporation has certified a 19-place airplane which complies with SFAR 41 and incorporates three window exits and a main cabin door for egress from the airplane. Fairchild proposes to change the interior configuration such that one window emergency exit is eliminated and passenger capacity is decreased from 19 to 10-12. Fairchild Aircraft Corporation proposes to install an emergency lighting system for use during emergency evacuation. Since the airplane certification basis includes SFAR-41, an emergency evacuation demonstration is required, but an emergency lighting system is not required.

Past emergency evacuation demonstrations on these airplanes have shown that the most critical aspect of the evacuation is for the passengers to find the location of emergency exits. The passenger cabin length is approximately 25 feet with the entrance door at one end of the cabin and the window exits about in the middle of the cabin.

### Discussion

The installation of emergency lighting systems in small airplanes was not envisioned when the applicable requirements for the subject airplanes were promulgated.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

An emergency evacuation demonstration is required for the

affected airplanes. The applicable requirements do not contain a requirement for emergency lighting to aid in emergency evacuation, nor do these requirements include design criteria should the applicant choose to include such features. If Fairchild Aircraft Corporation chooses to install emergency lighting in the Model SA227 Series Airplane in order to improve emergency evacuation, and use such lighting during the required evacuation demonstration, appropriate standards should be adopted.

Because emergency lighting is not required, when an applicant chooses to provide such lighting, the FAA must evaluate such lighting relative to its intended function. If that intended function would affect the showing of compliance with an existing requirement, the FAA must assure that the additional system performs its function when the critical event occurs, in this case, an actual emergency evacuation. The FAA concluded that specific criteria is necessary.

Experience with such systems in other categories of airplanes leads the FAA to conclude a source of emergency lighting may be proposed that is common to the normal airplane lighting system. Due to the routine use of the normal lighting system, both in flight and on the ground, the source of energy for the emergency lighting system could be depleted if it were available for routine operations. Because the normal electrical system could be deactivated during emergencies, a source of energy for the emergency lighting system must be available that is independent of the source for the normal lighting system.

In a survivable crash, the cockpit crew may be disabled and unable to turn on the emergency lights. Therefore, in addition to having cockpit controls for turning on the lights, a control must also be available in the cockpit to arm the emergency light system. To assure activation of the emergency lighting system, automatic activation must occur when the engine-driven electrical generator power is lost or an impact sensor must be provided to turn the armed system on.

The emergency lighting system should only be armed during flight operations. Because crew action is required to arm the system, there must be a caution light to alert the crew if normal electrical power is on in the airplane and the emergency lighting system is not armed.

Emergency evacuation must be demonstrated and accomplished in 90 seconds or less; however, in a survivable crash where injuries occur, significantly longer evacuation times may be necessary. Therefore, the energy supply for the emergency light energy must be adequate for ten minutes.

Common practice is to use rechargeable batteries, but non-rechargeable batteries may be used. Regardless of which type battery is used, the design must provide warning of charging circuit faults or inadequate battery charge.

The emergency lighting system must be functional after being subjected to the inertia forces expected in a survivable crash. Those forces are set forth in § 23.561(b).

During a survivable crash, various modes of system damage will occur, up to and including single transverse vertical separation of fuselage. Any such single occurrence must not render the total emergency lighting system inoperative.

The minimum level of illumination is optional because providing any lighting at all is optional. However, the maximum illumination used during the emergency evacuation demonstration must be the minimum available after any single probable failure.

The FAA has considered the features proposed by Fairchild Aircraft Corporation for the emergency lighting installation in the Fairchild Model SA227 Series Airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes which did not envision the use of such systems, special conditions should be promulgated for such systems, in addition to the applicable requirements, that will provide the necessary level of safety. Accordingly, special conditions are proposed.

**List of Subjects in 14 CFR Parts 21 and 23**

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Fairchild Aircraft Corporation Model SA227-AC Airplanes when equipped with an emergency lighting system intended for use during emergency evacuation of the affected airplanes.

**Emergency Lighting**

1. If an emergency lighting system is installed and used as an aid in showing compliance with any applicable regulatory requirement, including emergency evacuation demonstrations, the following special conditions apply:

(a) The source of illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(b) There must be a caution light which illuminates in the cockpit when power is on in the airplane and the emergency lighting control device is not armed.

(c) The emergency lights must be operable manually from the flightcrew station and be provided with automatic activation. The cockpit control device must have an "on", "off", and "armed" position so that, when armed in the cockpit, the lights will operate by automatic activation. For automatic activation of the system, the sensor must

(1) Activate when engine-driven electrical generator power is lost, or

(2) Activate when subjected to a force of 5.0, +2, −0 g. and greater for a duration of 11, +5, −0 milliseconds and greater in the direction of the longitudinal axis of the airplane; must not be activated under conditions less severe; and, after activation, must remain activated when subsequently subjected to shock forces in any direction of up to 50 g and having durations up to 11, +5, −0 milliseconds; or

(3) Activate when subjected to an alternate crash forces, approved by FAA and

(4) Regardless of sensor type, must be capable of being reset by the flightcrew if activated by any occurrence other than a survivable crash.

(d) The energy supply to each emergency lighting unit must provide the required level of illumination for at least 10 minutes at the critical ambient condition after emergency landing.

(e) If rechargeable batteries are used as the energy supply for the emergency lighting system, the charging circuit must be designed to preclude inadvertent battery discharge into charging circuit faults. If the emergency lighting system does not include a charging circuit, then battery condition monitors are required.

(f) Components of the emergency lighting system, including batteries, wiring relays, lamps, and switches must be capable of normal operation after having been subjected to the inertia forces listed in § 23.561(b).

(g) The emergency lighting system must be designed so that a single probable failure, or probable system damage following a survivable crash, will not render the entire emergency lighting system inoperative. Single transverse vertical separation of the fuselage is considered a probable event during a survivable crash. The minimum emergency illumination, after a single probable failure, must be specified by the applicant and during an emergency evacuation demonstration the maximum emergency illumination must be equal to or less than the specified level.

Issued in Kansas City, Missouri on March 12, 1987.

**Donald J. Schneider,**

*Acting Director, Central Region.*

[FR Doc. 87-6922 Filed 3-27-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 39**

**[Docket No. 87-NM-22-AD]**

## Airworthiness Directives; Boeing Models 727 and 737 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Models 727 and 737 series airplanes, which currently requires either incorporation of an electrical ground fault protection system or replacement of the hydraulic pumps with new or upgraded hydraulic pumps. This action would require reinstating the visual inspection and pressure check of the case drain system which was inadvertently omitted from the AD when it superseded an earlier AD on the same subject.

**DATES:** Comments must be received no later than April 20, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-22-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alvin Habbestad, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-22-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

*Discussion:* On December 19, 1986, FAA issued AD 87-02-05, Amendment 39-5501 (51 FR 47209; December 31, 1986), to require either incorporation of an electrical ground fault protection system or replacement of certain hydraulic pumps with new or improved hydraulic pumps. AD 87-02-05 superseded AD 76-22-08, Amdt. 39-2762, which required repetitive inspections and pressure tests of the cavity drain system components until a ground fault protection was incorporated into the hydraulic pump electrical wiring.

Since issuance of AD 87-02-05, it was discovered that the requirement of AD 76-22-08 to accomplish periodic visual inspections of the fuel cavity drain system for the Models 727 and 737 series airplanes, and the pressure leak check of those components on the Model 727, had inadvertently been omitted from AD 87-02-05. The FAA has determined that it is necessary to continue these inspections and tests until the hydraulic pumps are replaced or the ground fault protection system is installed in accordance with AD 87-02-05 to prevent a fire caused by a burn-through failure of a pump in the presence of flammable liquids.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require reinstating the visual inspections and pressure leakage checks that were required by AD 76-22-08.

It is estimated that 186 Model 727 and 94 Model 737 airplanes of U.S. registry would be affected by this AD; that it would take approximately 5 manhours per Model 727 series airplane, and 1 manhour per Model 737 series airplane to accomplish the required actions; and that the average labor cost would be $40 per manhour. Based on these figures, the total additional cost impact of the AD on U.S. operators is estimated to be $39,200 for Model 727 series airplanes and $3,760 for Model 737 series airplanes.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Models 727 and 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

BEST COPY AVAILABLE

§ 39.13 [Amended]

2. By revising AD 87-02-05, Amendment 39-5501 (51 FR 47209; December 31, 1986), to read as follows:

**Boeing:** Applies to Boeing Models 727, 737-100, and 737-200 series airplanes, equipped with hydraulic system "B" Abex P/N 57186 pump motor, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent a hydraulic system "B" Abex P/N 57186 pump motor internal wiring fault from burning a hole in the case and igniting the escaping hydraulic fluid, which could ignite fuel leakage, accomplish the following:

A. Within the next 300 hours time in service after the effective date of this AD, and thereafter at intervals not to exceed 1,000 hours, unless already accomplished, accomplish 1. or 2., as applicable:

1. Perform a visual inspection of the cavity drain system components in the left wing-body fairing area for fuel leakage in all Model 727 series airplanes in accordance with Boeing Service Bulletin 727-29-A52, dated October 22, 1976, or later FAA-approved revision. Any evidence of leakage or conditions that could lead to leakage, must be corrected prior to further flight in accordance with approved maintenance procedures.

2. Perform a visual inspection of all fuel system components and associated plumbing installed in the main wheel wells of all Model 737 series airplanes in accordance with Boeing Service Bulletin 737-29-A1033 dated October 22, 1976, or later FAA-approved revisions. Inspect for evidence of leakage, damage and security of installations. Any evidence of leakage or conditions that could lead to leakage, must be corrected prior to further flight in accordance with approved maintenance procedures.

B. Within the next 1000 hours after the effective date of this AD, and thereafter at intervals not to exceed 1000 hours, accomplish a pressure leakage check of cavity drain system components in the left wing-body fairing area in all Model 727 series airplanes in accordance with Boeing Service Bulletin 727-29-A52, dated October 22, 1976, or later FAA-approved revisions.

C. Prior to February 2, 1988, either:

1. Install the ground fault protection systems in the hydraulic system "B" Abex pump motor electric power circuits in accordance with Boeing Service Bulletin 727-29-47, Revision 2, dated October 8, 1976, or 737-29-1029, Revision 2, dated October 1976, as applicable, or later FAA-approved revisions; or

2. Install the hydraulic "B" system motor driven pumps, either new or upgraded, in accordance with Boeing Service Bulletin 727-29-55 dated April 30, 1980, or 737-29-1036 dated April 30, 1980, or later FAA-approved revisions.

This action terminates the repetitive inspection requirements of paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 20, 1987.

**Wayne J. Barlow,**

*Director, Northwest Mountain Region.*

[FR Doc. 87-6920 Filed 3-27-87; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Part 39

[Docket No. 87-NM-21-AD]

## Airworthiness Directives; Lockheed-Georgia Company Model 1329 Series Airplanes (JetStar), Equipped With an Auxiliary Power Unit (APU) in Accordance With STC SA1043WE or STC SA3297WE; and Israel Aircraft Industries Aero Commander Model 1121 Series Airplanes, Equipped With an APU in Accordance With STC SA1356WE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Lockheed Model 1329 series airplanes, equipped with an Auxiliary Power Unit (APU) in accordance with STC SA1043WE or STC SA3297WE, and to Israel Aircraft Industries Aero Commander Model 1121 series airplanes, equipped with an APU in accordance with STC SA1356WE, which would require installation of fuel line shrouds and associated drains. This proposal is prompted by reports of several incidents of ingestion of fuel vapors into the compressor of the APU. This condition, if not corrected, could lead to fuel fumes entering the cockpit and passenger compartment through the APU air inlet and air conditioning system from APU fuel leaks in the APU compartment.

**DATES:** Comments must be received no later than May 18, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-21-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from AiResearch Aviation Company, Customer Support Department, 6201 West Imperial Highway, Los Angeles, California 90045; or Lockheed-Georgia Company, 86 South Cobb Drive, JetStar Customer Support, Dept. 64-26, Zone 668, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-21-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**Discussion**

There have been at least seven reports of fuel fumes entering the cockpit and passenger compartment through the APU air inlet and air conditioning system from APU fuel leaks in the APU compartment. Five incidents have been due to failures of components on the APU fuel control unit, which have allowed fuel to leak into the APU compartment.

The FAA has reviewed and approved AiResearch Aviation Company Service Bulletin 11.39, Revision A, dated November 20, 1986, which describes the installation of APU fuel line shrouds and associated drains. The shrouds and drains are intended to prevent fuel leaks into the APU compartment.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the installation of APU fuel line shrouds and associated drains in accordance with the service bulletin previously mentioned.

It is estimated that 83 airplanes of U.S. registry would be affected by this AD, that it would take approximately 32 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. It is estimated that the cost of parts is $2178 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $287,014.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($3458). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Lockheed-Georgia Company and Israel Aircraft Industries:** Applies to Lockheed JetStar Model 1329 and Model 1329-25 series airplanes, equipped with AiResearch Aviation Company Model 30-92 APU in accordance with STC SA1043WE or STC SA3297WE; and to Israel Aircraft Aero Commander Model 1121 series airplanes, equipped with the AiResearch Aviation Company Model 30-92 APU in accordance with STC SA1356WE, certificated in any category.

Compliance required as indicated, unless previously accomplished.

To minimize the potential for fuel fumes entering the cockpit and passsenger compartment, accomplish the following:

A. Within the next 600 hours time-in-service or 12 months after the effective date of this AD, whichever occurs earlier, install fuel line shrouds and associated drains in accordance with the accomplishment instructions of AiResearch Aviation Company Service Bulletin No. 11.39, Revision A, dated November 20, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Lockheed-Georgia Company, 86 South Cobb Drive, JetStar Customer Support, Dept. 64-25, Zone 668, Marietta, Georgia 30063; or AiResearch Aviation Company, Customer Support Department, 6201 West Imperial Highway, Los Angeles, California 90045. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on March 19, 1987.

**Wayne J. Barlow,**

*Director, Northwest Mountain Region.*

[FR Doc. 87-6921 Filed 3-27-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 87-ASW-5]**

## Proposed Amendment of Transition Area; Graham, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise a transition area at Graham, TX. The intended effect of the proposed action is to provide necessary controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Graham Municipal Airport. This action is necessary since the nondirectional radio beacon (NDB) is being relocated and additional airspace is needed to encompass the new SIAP. This proposal would increase the amount of controlled airspace at and above 700 feet around the Graham Municipal Airport to accommodate the types of aircraft now utilizing the airport under instrument flight rules (IFR) conditions.

**DATE:** Comments must be received on or before May 6, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwast Region, Docket No. 87-ASW-5, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Wheeler, Airspace and Procedures Branch, ASW-534, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–5."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Forth Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concened with this relemaking will be filed in the docket.

**Availability of NPRM'S**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the existing 700-foot transition area at Graham, TX. To enhance airport usage, a new SIAP is being developed for the Graham Municipal Airport, utilizing the relocated Graham NDB as a navigational aid. The development of a new SIAP, based on this relocated navigational aid, entails revision of the existing transition area at Graham, TX, at and above 700 feet above ground level within which aircraft are provided air traffic control services. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, Control zones, Transition areas.

**The Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**Graham, TX [Revised]**

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Graham Municipal Airport (latitude 33°06'38" N., longitude 98°33'16" W.).

Issued in Fort Worth, TX, on March 17, 1987.

**Larry L. Craig,**

*Assistant Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 87–6924 Filed 3–27–87; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Part 404**

**Federal Old-Age, Survivors, and Disability Insurance Benefits; Recovery of Overpayments**

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** In this proposed rule we expand the definition of what we consider to be "against equity and good conscience" in deciding whether or not to recover an overpayment of Social Security benefits from a contingently liable individual to include the situation where the contingently liable individual was living in a separate household from the overpaid individual at the time of the overpayment. A contingently liable individual is one who is entitled to benefits on the same earnings record as the individual who actually received the overpayment of benefits. The new definition would provide a more liberal policy for waiving overpayments under certain conditions.

**DATE:** We will consider your comments if we received them no later than May 29, 1987.

**ADDRESSES:** Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Duane Heaton, Office of Regulations, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7951.

**SUPPLEMENTARY INFORMATION:**

**General**

Section 204(b) of the Social Security Act (the Act) provides that the Social Security Administration (SSA) shall not adjust benefits or make recovery because of an overpayment from any individual who is without fault if adjustment or recovery from the individual would defeat the purpose of the title or be against equity and good conscience. Section 204(a) directs us to

issue regulations regarding our overpayment and underpayment policies.

Our current regulations, § 404.509, define "against equity and good conscience." In addition, there are examples of how we apply the definition in making determinations on requests to waive recovery of overpayments. Our policy, as contained in the definition of "against equity and good conscience", provides that recovery of an overpayment will be considered inequitable if an individual who is without fault, as defined in § 404.510, relinquished a valuable right or changed his or her position for the worse because of a notice that we would make payment or because of the actual payment. The individual's financial circumstances are irrelevant to our determination of whether recovery would be against equity and good conscience. Those circumstances are considered, however, in determining whether recovery would defeat the purpose of the title (see § 404.508).

We hold the overpaid individual as primarily liable for repayment of the overpayment. If we are unable to obtain repayment from the primarily liable individual, we then seek recovery by withholding benefits due from any other individual entitled to benefits on the same record of earnings as the overpaid individual. These other individuals are considered contingently liable.

Beneficiaries and others have pointed out to us that contingently liable individuals living in separate households usually have little or no contact with the overpaid individual or that individual's household. As a result, they often do not know the cause or amount of the overpayment. (Some contingently liable individuals do not learn of the overpayment and their liability until they file for benefits years later.) Additionally, they probably do not derive financial benefit from the overpayment amounts because they lived in a separate household from the overpaid individual at the time the overpayment was made.

We agree with the comments that our current policy of recovering an overpayment from a contingently liable individual who lived in a separate household at the time the overpayment was made should be changed.

For the reasons stated above, we propose to expand the definition at § 404.509 of "against equity and good conscience" in recovery of an overpayment to include a contingently liable individual living in a separate household at the time of the overpayment. In addition, we will add an example (example 4) of a contingently liable individual who is granted waiver of recovery of an overpayment because the individual is without fault and did not live in the same household as the overpaid individual at the time of the overpayment.

In addition to the expanded definition and the new example, we have deleted one example that is not longer correct due to statutory changes affecting entitlement and, after editing the remaining examples to reorder or make them clearer, reprinted them for ease of updating.

*Executive Order 12291*

These proposed regulations would change the definition of what we consider to be "against equity and good conscience" in recovering an overpayment. The new definition would implement a more in recovering an overpayment. The new definition would implement a more equitable policy of waiving recovery of overpayments under certain conditions. We estimate the cost to be minor (less than $4 million per year). Therefore, these regulations do not meet the criteria specified in Executive Order 12291 for a major rule and regulatory impact analysis is not required.

*Paperwork Reduction Act*

These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

*Regulatory Flexibility Act*

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because these regulations affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.082—Social Security Disability Insurance; 13.803—Social Security Retirement Insurance; 13.805—Social Security Survivors' Insurance)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors and disability insurance.

Dated: August 18, 1986.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

Approved: August 22, 1986.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

**PART 404—[AMENDED]**

For the reasons set out in the preamble, Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 404, Subpart F is revised to read as follows:

**Authority:** Secs. 204, 205, 227, and 1102, Social Security Act; 49 Stat. 624, 53 Stat. 1368, 79 Stat. 379, 49 Stat. 647, 67 Stat. 18, 631; sec. 5, Reorganization Plan No. 1 of 1953; 42 U.S.C. 404, 405, 427, 1302.

2. Section 404.509 is revised to read as follows:

**§ 404.509 Against equity and good conscience; defined.**

(a) Recovery of an incorrect payment is "against equity and good conscience" (under title II and title XVIII) if an individual—

(1) Changed his or her position for the worse (Example (1)) or relinquished a valuable right (Examples (2) and (3)) because of reliance upon a notice that a payment would be made or because of the incorrect payment itself; or

(2) Was living in a separate household from the overpaid person at the time of the overpayment and derived no benefit from the overpayment (Example (4)).

(b) The individual's financial circumstances are not material to a finding of against equity and good conscience.

*Example 1.* A widow, having been awarded benefits for herself and daughter, entered her daughter in private school because the monthly benefits made this possible. After the widow and her daughter received payments for almost a year, the deceased worker was found to be not insured and all payments to the widow and child were incorrect. The widow has no other funds with which to pay the daughter's private school expenses. Having entered the daughter in private school and thus incurred a financial obligation toward which the benefits had been applied, she was in a worse position financially than if she and her daughter had never been entitled to benefits. In this situation, the recovery of the payments would be inequitable.

*Example 2.* After being awarded old-age insurance benefits, an individual resigned from employment on the assumption he would receive regular monthly benefit payments. It was discovered 3 years later

that (due to a Social Security Administration error) his award was erroneous because he did not have the required insured status. Due to his age, the individual was unable to get his job back and could not get any other employment. In this situation, recovery of the overpayments would be against equity and good conscience because the individual gave up a valuable right.

*Example 3.* In June 1985, H filed for hospital insurance benefits and submitted evidence, which he believed was correct, showing he was 65 years old. He was subsequently notified that he was entitled to hospital insurance coverage effective July 1, 1985. At the same time, H was notified that he was entitled to monthly Social Security benefits, but because he was working regularly and earning in excess of $20,000 a year, no payment would be made until his work status changed. On the basis of the notice of entitlement to hospital insurance coverage, H allowed his private insurance policy, which provided for full reimbursement of hospital expenses in each calendar year, to lapse as of July 1, 1985. In August 1985, H was an inpatient at a hospital for 20 days and incurred $4,500 of hospital expenses. For the services received by H, the hospital was paid $4,100 ($4,500 minus the $400 deductible) under the hospital insurance program. Later that year, H became aware of and submitted other evidence showing beyond doubt that he was 63 years old in August 1985. Based on this new evidence, the Social Security Administration determined that H was not entitled under the hospital insurance program and the hospital had been incurrectly paid $4,100 (no monthly benefits had been paid). With respect to H's liability for the incorrect payment of $4,100, unless waiver applied, this amount would be adjusted against futue payment (if any) of monthly Social Security or Railroad Retirement benefits or would be recovered from H. Under the facts presented, however, adjustment or recovery of the incorrect payment from H is considered against equity and good conscience because in reliance on the award notice advising him of his entitlement to hospital insurance coverage, H relinquished a valuable right when he allowed his private health insurance to lapse.

*Example 4.* M divorced K and married L. M died a few years later. When K files for benefits as a surviving divorced widow, she learns that L had been overpaid $3,200 also on M's earnings record. Because K is receiving benefits on the same record of earnings, K is contingently liable. K was living in a separate household from L at the time of the overpayment and derived no benefit from the overpayment. K requests waiver of recovery of the $3,200 overpayment from benefits due her. In this situation, it would be against equity and good conscience to recover the overpayment from K.

[FR Doc. 87-6902 Filed 3-27-87; 8:45 am]
BILLING CODE 4190-11-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[LR-168-86]

### Capitalization and Inclusion in Inventory of Certain Costs

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to accounting for production costs incurred in producing property and acquiring property for resale. Changes to the applicable tax law were made by the Tax Reform Act of 1986. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered by May 29, 1987. In general, the amendments are proposed to be effective for costs incurred after December 31, 1986.

**ADDRESS:** Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-168-86) Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Paulette C. Galanko of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20334 (Attention: CC:LR:T), (202) 566-3288, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

#### Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. These amendments are proposed to conform the regulations to the requirements of section 803 of the Tax Reform Act of 1986 (Pub. L. 99-514), 100 Stat. 2085. For the text of the temporary regulations, see FR Doc. 87-6720 (T.D. 8131) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules. The final regulations, which this document proposes to base on those temporary regulations, would amend Part 1 of Title 26 of the Code of Federal Regulations.

#### Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations propose herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

#### Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted comments. If a public hearing is held, Notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

#### Drafting Information

The principal author of these regulations is Paulette C. Galanko of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation on matters of both substance and style.

**List of Subject in 26 CFR 1.441–1–1.483–2**

Income taxes, Accounting, Deferred compensation plans.

Lawrence B. Gibbs,

*Commissioner of Internal Revenue.*

[FR Doc. 87–6721 Filed 3–24–87; 3:17 pm]

BILLING CODE 4830–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 71

**[Docket No. 6 Notice No. 87–7]**

### Standard Time Zone Boundary in the State of Indiana; Termination of Rulemaking

**AGENCY:** Department of Transportation, Office of the Secretary.

**ACTION:** Withdrawal of proposal and termination of rulemaking.

**SUMMARY:** The Department is withdrawing a proposal to relocate the boundary between eastern and central time in the State of Indiana, which would have moved Starke and Jasper counties from the central time zone to the eastern time zone. Making the change would not have satisfied the primary statutory standard of "the convenience of commerce.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Room 10424, Washington, DC 20590. (202) 366–9306.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

*Time observance in Indiana: current situation.* The State of Indiana is unique in the pattern of its observance of standard time and daylight saving time. Although twelve other States are in two time zones, only Indiana has three distinct areas of time observance. In the northwest near Chicago, Illinois, and including the cities of Gary and Hammond, Indiana, are six Indiana counties in the central zone. They include Starke and Jasper counties, the subjects of this action. In the southwest, including Evansville, Indiana, but not touching the six northwestern counties, are five counties in the central zone. The rest of the state (81 counties) is in the eastern zone, including the area between the two central zone areas.

To compound the uniqueness of time observance in Indiana, the state has an exemption from daylight saving time for the eastern time zone portion. As a consequence, during the period of the year when DST is in effect, despite the difference in time zones, the entire state observes a uniform clock time.

*Time observance in Indiana: history.* The appropriate time zone for Indiana has been the subject of much debate since time zones were first established. When time zones were first adopted by the Federal Government in 1918, all of Indiana was in the central zone. In 1961, the Interstate Commerce Commission (DOT's predecessor in this regard) moved the eastern half of the State (including Indianapolis, the capital) to the eastern zone, but denied requests to include more of the state in eastern time.

In 1967, DOT proposed to rescind the ICC action and restore the entire State to central time. That proposal—issued at the request of the Governor of Indiana—was overwhelmingly unpopular with the people of Indiana. Consequently, in 1968, DOT amended its 1967 proposal by proposing to include in the eastern zone all of the state except six counties in the northwest near Chicago, Illinois, and seven counties in the southwest. That amended proposal met with great support, with one modification: there was support for leaving only six of the southwestern counties in the central zone. Effective April 27, 1969, therefore, all of the State was put in the eastern zone except six in the northwest and six in the southwest.

In 1977, at the requst of the Board of County Commissioners of Pike County, one of the six southwestern counties in the central zone, DOT conducted a proceeding similar to this one that resulted in Pike County being moved from central to eastern time. In 1981, at the request of the Board of County Commissioners of Starke County, DOT conducted a proceeding similar to this one, but decided at the end of the proceeding not to move Starke County from central to eastern time. In 1985, the Department rejected a request from the remaining 5 central time zone counties in southwestern Indiana to be moved into the eastern time zone.

*Impact on observance of daylight saving time.* The relationship between time zone boundaries and the observance (or nonobservance) of daylight saving time can sometimes be confusing. One comment to the docket in this proceeding, for example, said that the commenter wanted daylight time, not central time. It should be emphasized that this proceeding concerns only whether the eastern/central time zone boundary should be moved. The application of daylight saving time within the State of Indiana is not at issue.

*The proposals.* The Board of County Commissioners of Starke County and the Board of County Commissioners of Jasper County made separate, formal requests to the Department of Transportation to move each county from central to eastern time. The Department determined that these proposals made a *prima facie* case for opening a proceeding to determine whether the changes should be made. The Department published a notice of proposed rulemaking (NPRM) on this subject on December 3, 1986 (51 FR 43644) and held public hearings in Starke and Jasper counties on January 6 and 7, 1987. The Department received approximately 400 comments on the proposal, and a total of 50 persons spoke at the two public hearings.

**Starke County**

*Comments*

Public sentiment in Starke County appears to be rather evenly divided on whether it makes more sense for the county to be in the eastern or the central time zone. Of the 66 written comments the Department received concerning Starke County, 33 favored central time and 33 favored eastern time. Both proponents and opponents of the time zone change included petitions signed by local residents with their submissions. A majority of the petition signatures oppose the proposed change. Of the 14 persons who spoke at the Starke County hearing, nine favored eastern time and five favored central time.

The principal arguments made by proponents of changing the county to eastern time were the following:

- County residents do not commute to jobs in the Chicago, Gary, and other central time areas to the extent that they used to. Rather, commuting patterns now take county residents to St. Joseph and Pulaski counties and the South Bend area, which are in the eastern time zone.
- Most of the rest of the state, and particularly the state capital, Indianapolis, is on eastern time. It would be beneficial for the county to be on the same time zone as most of the

rest of the state. For state and local government offices in Starke County (as well as for some Federal officies, like the Postal Service), it would reduce confusion and ease communications with government offices in Indianapolis if the county were on eastern time.

- Many businesses have suppliers or customers primarily in the eastern time zone. It would make customer service, deliveries, and other commercial relationships easier if the county were on eastern time. Some professional services (e.g., medical specialists) are more readily available in South Bend than in central time areas.
- Television stations in South Bend are more relevant for Starke County viewers than are Chicago stations.
- Changing to eastern time would permit the county to remain on standard time all year round, which is desirable for people who don't like to change their clocks in April and October.
- Supporters of changing to eastern time argue that the change would not have an adverse effect on farm work or schoolchildren's safety.
- An official of Ancilla College in Marshall County, an eastern time zone jurisdiction adjacent to Starke County, said the schedules of her institution's Starke County students and their families are complicated by the difference in time zones.

The principal arguments made by those persons who favored remaining on central time were the following:

- Changing to eastern time would mean that schoolchildren would have to go to school in the dark in the morning, increasing safety risks.
- Most commuters still go to central time zone areas to work. The county judge and court commissioner presented information derived from jury rolls that showed that of Starke County residents in their jury records who commuted out of the county in recent years, over 75 percent still went to work in central time zone areas.
- Most of the actions transferred into the county court from other jurisdictions under Indiana's change of venue statute come from central times areas. Changing the county's time zone would complicate court scheduling significantly.
- More people watch Chicago TV than South Bend TV; in any event, it is more convenient to watch South Bend TV while our own clocks are on central time (e.g., 11:00 news comes on at 10:00).
- There are as many business and professional relationships with central time as with eastern time areas.
- People are more likely to go shopping at malls in central time areas than to go to South Bend or other eastern time zone areas for this purpose.
- While there is some inconvenience for people attending Ancilla College in the current situation, as many people go to a Purdue University branch in a central time area. They would be inconvenienced if the time were changed.

In addition to these comments, there was a petition signed by approximately 600 persons, most of them from Starke County, who said that they wanted the entire State of Indiana to be in the central time zone, with year-round daylight saving time. Time zones should be by states, not counties, the peitition said.

The people signing this petition clearly did not favor putting Starke County on eastern time. It is beyond the scope of this proceeding to consider any action having statewide effect, however. To be considered by the Department, any request to realign the State of Indiana's time zones so that the entire state was in the central time zone would have to come from the state government level.

*Discussion and Decision*

In 1981, Starke County petitioned the Department to move the county from the central to the eastern time zone. In an October 16, 1981, decision, the Department denied the petition. The primary reason for this decision was that commuting patterns for county residents were such that far more commuters would be inconvenienced by changing the county to eastern time than would be helped by making the change. Because the principal commuting direction for Starke County residents was from the county to central time areas, the Department concluded, it would not serve the convenience of commerce to move the county into the eastern time zone.

Proponents of the current petition to move Starke County into the eastern time zone alleged that, because of declining employment opportunities in heavy industry in the Illinois/Indiana "rust belt," these commuting patterns had changed. More commuters, they said, now went to eastern time zone areas.

While several commenters said that it was their impression that this shift in commuting patterns had taken place, they were unable to present any statistical evidence on the point. The 1980 census data relied upon in the Department's 1981 Starke County remain the most recent comprehensive data relevant to this issue. The jury statistics presented by the court commissioner, while not as comprehensive or conclusive as census data or state employment statistics, were the only post-1981 data presented to the Department. This information indicated that commuting patterns had not changed significantly since the Department's 1981 decision.

The Department regards the proponents' case for there having been a shift in employment and commuting patterns as unproven. Consequently, the main basis for the Department's 1981 conclusion that the proposed shift of Starke County to eastern time would not serve the convenience of commerce remains valid.

The Department does not believe that opponents' concerns about the effect of making the time zone change on the safety of school transportation for children are well-founded. As the Department pointed out in the 1981 decision concerning Starke County, schoolbus pickups in rural areas tend to be at the children's homes. Second, nearby eastern zone counties already have a very similar time/light situation for morning pickups to what Starke County would have if it moved to the eastern time zone. These counties do not appear to have experienced unusual safety problems in morning school transportation related to the time when it gets light outside.

The Department regards the other arguments by opponents and proponents of the change as inconclusive. Making the change would reduce inconvenience for some individuals, businesses, educational institutions and government offices. The change would create greater inconvenience for others. Living near a time zone border always creates inconvenience, which the Department cannot eliminate by shifting a jurisdication from one time zone to another. The close division of opinion among commenters on the Starke County petition appears to reflect a rather even balance of inconvenience, on issues other than commuting patterns, between the merits of leaving the county in the central zone or moving it to the eastern zone. These arguments do not lead to a conclusion that the convenience of commerce would be, on the whole, better served by granting the county's petition than by denying it.

For these reasons, the Department concludes that it would not serve the convenience of commerce to grant the petition to move Starke County into the eastern time zone. The county's petition is therefore denied, and the rulemaking with respect to Starke County is terminated.

**Jasper County**

*Comments*

In contrast to the situation in Starke County, comments relating to the proposed time zone change in Jasper County were not evenly divided. Among the written comments, 39 favored moving the county to eastern time, while 273 opposed the change. The comments of both proponents and opponents included petitions signed by numbers of local residents. The opponents of the change obtained many more petition signatures for their positions, including one petition with over 2000 signatures. Of the 36 individuals who spoke at the public hearing, 33 opposed the change.

There was a strong geographical pattern evident in the comments. Commenters from the northern part of the county (i.e., DeMotte, Wheatfield and the surrounding area) were almost unanimously against the proposed change. A substantial portion of all negative comments on the proposal came from persons in the northern part of the county. On the other hand, there were few commenters from the southern part of the county (i.e., the Remington area). These commenters appeared not to have strong feelings about the issue, at least in part because many individuals and businesses in this portion of the county appear to observe eastern time on an informal basis, regardless of the official time zone for the county. Most of the support for the proposed change came from the central part of the county (i.e., the Rensselaer area). Even from this part of the county, however, there were nearly as many comments opposing the proposal as favoring it.

Comments favoring moving Jasper County from central to eastern time made the following principal arguments:

- It would be beneficial to put the county on the same time as most of the rest of the state and its capital, Indianapolis. This would be especially helpful for state and local government offices and the Postal Service, which deal principally with offices in Indianapolis or Lafayette.
- Many businesses, at least in the central and southern portions of the county, have their main supply and customer relationships with persons and firms in the eastern time zone areas of the state.
- People in the central and southern part of the county go to Lafayette for shopping and professional services.
- With the opening in a few years of a new Japanese motor vehicle plant in the Lafayette area, work opportunities in the eastern time zone for Jasper county residents will increase.
- St. Joseph's College (a significant employer in the south central part of the county) has its business relationships primarily in the eastern time zone areas of the state, and most of its employees live in eastern time zone areas.

Comments opposing moving Jasper County from the central to the eastern time zone made the following principal arguments:

- Most businesses' supply and marketing relationships, especially in the northern part of the county, are with businesses and individuals located in central time zone areas. For example, a branch bank in DeMotte serves many customers in central time zone counties; many employees at a steam-electric generating plant, the county's largest employer, commute from central time zone areas; another plant with 300 employees reports to a headquarters in Chicago; and grain farmers tend to use elevators in central time zone areas. Many comments from small businesses in the northern part of the county made similar points.
- Most radio and TV stations received are from Chicago and other central time zone areas. There are no TV stations received or same-day newspaper service from Indianapolis.
- 1980 data shows that a significant majority of Jasper County residents who commute to work outside the county commute to the Chicago area and other central time zone locations. This situation still appears to exist, even though there are not updated statistics on the point.
- The northern part of the county is growing economically because it is on the southern fringe of the Chicago exurban area. People and business locate there whose jobs or markets relate to the greater Chicago area. The additional inconvenience of being in the eastern time zone would likely give people incentives to locate in adjacent parts of central time zone counties, harming economic growth in Jasper County.
- The northern part of the county is more populous than the southern part of the county (approximately 18,000 population compared to 10,000). Moving the county to eastern time would, therefore, inconvenience more people than it would help.
- For air transportation, Jasper County residents are much more likely to use Chicago than Indianapolis or Lafayette airports.
- Changing the time zone would create school-related problems. In addition to the concern about children waiting for school buses in the dark, commenters expressed concern about problems in scheduling athletic events and other activities. The change would also complicate life for students (and their families) who go to school in Jasper County but live in nearby central time zone counties.
- There are plenty of stores (e.g.,malls in Lake County) and professional services (e.g., emergency medical facilities) in Jasper County and nearby central time zone areas for people to use.
- Lake County lawyers like to move cases to Jasper County courts under the Indiana venue law. This would be less convenient if the time zone were changed.

In addition to the comments for and against making the requested time zone change for the whole county, 13 written comments and four speakers at the hearing favored splitting the county at the school district boundary (with the portion of the county served by the Kankakee Valley School Corporation remaining on central time and the rest of the county being changed to eastern time). This approach, its proponents said, would satisfy the people in the northern end of the county who wanted to stay on central time while giving people in the southern and central part of the county the opportunity to use eastern time.

Nine written comments and one speaker at the hearing opposed this suggestion. Their basic argument was that splitting the county would produce more confusion and inconvenience than leaving it as a unit. This was particularly true, they said, for purposes of the delivery of local government services.

*Discussion and Decision*

The written comments and hearing statements of persons from the northern part of Jasper County made a convincing case for the proposition that it would ill serve the convenience of commerce to move at least that part of the county from eastern to central time. That the case is convincing is not due solely to the fact that comments from that part of the county were both numerous and virtually unanimous.

The arguments described above concerning economic growth trends, employment and commuting patterns, and business relationships with suppliers and customers were uncontroverted. They suggest strongly that existing commercial patterns, which have bolstered the economy in a portion of Indiana which otherwise has had considerable economic difficulty in recent years, could be disrupted by a time zone change. Even more than the apparently strong personal preferences

of residents of the area to remain on central time, these factors lead to a conclusion that moving the northern part of the county to eastern time would not serve the convenience of commerce. This necessarily implies a decision against moving the entire county into the eastern time zone.

There remains the question of whether it would serve the convenience of commerce to split the county along school district boundary lines. Splitting counties between two different time zones is not unprecedented. At the present time, 11 counties in seven states (none of them in Indiana) are split. The Department concludes that it would not be appropriate to split Jasper County however.

In part, this conclusion is based on the general proposition that it is inadvisable to split governmental jurisdictions, except when there is a compelling reason to do so. Many commenters in both Starke and Jasper counties mentioned their sense that it would be better for everyone concerned if the entire state was in only one time zone; the considerations that underlie that sentiment apply with even greater force to keeping local jurisdictions in one piece for time purposes.

In addition to this general consideration, the Department relies on a number of other factors in deciding not to split the county. First, the Department is persuaded that there is merit in the argument made by commenters that splitting the county would create confusion in the provision of local government services. If the section of the county with the majority of the county's population is on central time, while the county seat and offices are on eastern time, the inconvenience for residents of the northern portion of the county would be substantial. In addition, this situation would probably make it more difficult for county agencies and employees to carry out their functions.

Second, the comments favoring moving even the central and southern portions of the county to the eastern time zone were not compelling. It is true that county offices would benefit from being on the same time as state government offices in Indianapolis, but it is doubtful that this convenience would offset the inconvenience of being in a different time zone from the majority of the county's residents.

Third, businesses and educational institutions in the southern part of the county may, indeed, find it more convenient to be on eastern time. (As mentioned above, a number of commenters mentioned that many businesses and individuals in the Remington area already observe eastern time on an unofficial basis.) On balance, however, the Department believes that the inconvenience caused by splitting the county (including that caused businesses in central and southern Jasper County in dealing with northern Jasper County businesses and individuals and vice-versa in a split county) would outweigh this benefit. The coming of a new Japanese motor vehicle plant to the Lafayette area may influence employment and commuting patterns in the future, but it would not be a good idea to base a decision in this proceeding on speculation about such future effects.

Finally, the views of commenters suggest that there is neither broad nor deep local support for splitting the county. As mentioned above, while virtually all of the support for moving any part of the county into the eastern time zone came from the central and southern part of the county, there were nearly as many comments from those areas opposed to the change as favoring it. A number of the comments from businesses or other organizations counted as favoring eastern time did not strongly express a desire to change. Rather, they simply said that a change, if it came, would not cause problems for them. As also noted above, only a small number of comments explicitly discussed the idea of splitting the county.

For these reasons, the Department concludes that it would not serve the convenience of commerce to grant the petition to move Jasper County into the eastern time zone. The county's petition is therefore denied, and the rulemaking with respect to Jasper County is terminated.

Issued at Washington, DC, this 25th day of March 1987.

**Rosalind A. Knapp,**

*Deputy Genreal Counsel.*

[FR Doc. 87-6950 Filed 3-27-87; 8:45 am]

BILLING CODE 4910-62-M

---

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. 74-14; Notice 51]**

## Federal Motor Vehicles Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Termination of Rulemaking.

**SUMMARY:** This notice announces the agency's decision to retain the automatic restraint requirement for convertibles manufactured after September 1, 1989. NHTSA has concluded that it is reasonable and practicable for manufacturers to install driver-only air bag systems or automatic safety belts in convertibles. One of the primary reasons for the agency's decision is the anticipated wide-spread availability of driver-side air bag systems for passenger cars, including convertibles. The increased availability of air bag systems will be a result of a final rule, published elsewhere in today's **Federal Register**, which amends Standard No. 208, *Occupant Crash Protection*, to provide, until September 1, 1983, that a car meeting the performance requirements in the standard with a non-belt automatic restraint, such as an air bag, for the driver and a manual lap/shoulder belt at the right front passenger seating position will be considered in compliance with Standard No. 208. The increased production of driver-side systems which will result from that rulemaking action will decrease the cost of those systems, thus making it financially easier for manufacturers to install those systems in cars that are produced in low volumes, such as convertibles.

**DATE:** Petitions for reconsideration must be filed with the agency by April 29, 1987.

**ADDRESS:** Petitions for reconsideration should refer to the docket and notice numbers of this notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Strombotne, Chief, Crashworthiness Division, National Highway Traffic Safety Administration, Room 5320, NRM-12, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

**SUPPLEMENTARY INFORMATION:**

### Background

On July 11, 1984 (49 FR 28962), the Department of Transportation announced its decision on occupant crash protection. The decision provided for the phased-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars, including convertibles, beginning on September 1, 1986, with full implementation to take place on September 1, 1989. The decision also announced that the agency was considering whether to rescind the automatic restraint requirement for convertibles and would specifically

address that issue in a subsequent rulemaking action.

On April 12, 1985 (50 FR 14589), NHTSA published a notice that proposed, among other things, alternative occupant crash protection requirements for convertibles. On October 17, 1986 (51 FR 37028), NHTSA published a final rule that amended Standard No. 208 to provide manufacturers with the option of excluding convertibles from the automatic restraint requirements during the phase-in period. The agency also announced that it would determine, in a separate rulemaking action, whether to retain the automatic restraint requirements for convertibles manufactured on or after September 1, 1989, or whether the agecny should apply a dynamic test requirement to the manual safety belts installed in those vehicles. Subsequent to publication of the October 1986 final rule, seven interested parties filed timely petitions for reconsideration. After reviewing the issues raised by the petitioners, NHTSA has decided to retain the automatic restraint requirement for convertibles manufactured on or after September 1, 1989. The issues raised by the petitioners and the reasons for the agency's decision are discussed below.

**Adopt Permanent Exclusion for Convertibles**

Six of the petitioners (Chrysler, Ford, Mazda, Rolls-Royce, Toyota, and Volkswagen) requested NHTSA to adopt a permanent exclusion for convertibles from the automatic restraint requirement. In addition, those six petitioners urged the agency to make its decision promptly, saying that vehicle manufacturers need to know the final requirements for convertibles since they are currently making their design decisions for convertibles that will be manufactured after September 1, 1989.

The petitioners raised a number of reasons why the automatic restraint requirement should not be retained for convertibles. Chrysler said that while "an air bag might provide a technical solution for the driver's side, we know of no passive system which can be employed on the passenger side and still retain the open character of the convertible." Ford and Volkswagen said that, based on the information relied on by the agency in the October 1986 final rule, a requirement for automatic restraints in convertibles manufactured after September 1, 1989, would be unreasonable, impracticable, and inappropriate. They referred to the agency's comment in the October 1986 final rule that automatic belts are not reasonable for some models because of the structural changes that would have to be made to attach the upper torso portion of the belt. They also referred to the agency's comment in the same final rule that further research and development work must be accomplished before an effective, low-cost air bag system is available for convertibles. Finally, they also pointed out that the practicability of using "built-in" safety (i.e., the use of interior padding and structural changes to provide protection to unrestrained occupants) in convertibles is uncertain at this time. Ford repeated its prior comment that failure to rescind the September 1, 1989 automatic restraint requirement for convertibles "would likely prevent Ford from offering convertibles in the 1990 model year." Volkswagen also said it might have to discontinue its convertible models if the automatic restraint requirement is retained for those vehicles.

Ford also said that, even a practicable automatic belt system were available, it could not design and tool an automatic belt system in time for the 1990 model year. Ford also said that "to introduce a driver air bag into convertibles built after August 31, 1989, Ford would have to initiate immediately a unique engineering program with engineering resources that do not currently exist within Ford or at key suppliers." Further, Ford said that if it had to divert its limited engineering resources to an accelerated design and development program for convertibles, it would have to delay its long term program to develop passenger-side air bags.

Rolls-Royce said that its convertible is a separate vehicle model and is not a convertible version of its four door sedan. It said that the current exclusion of convertibles from the automatic restraint requirement during the phase-in allows Rolls-Royce to "devote our limited resources to the development and installation of passive restraints in our four door sedans in the short term." Rolls-Royce said it plans to install an air bag system in its convertible models in the future, but it may not be able to develop a driver and passenger-side air bag system for the 1990 model.

**Apply Requirement to Convertibles**

The Insurance Institute for Highway Safety strongly opposed excluding convertibles manufactured after September 1, 1989, from the automatic restraint requirement. IIHS referred to its prior comments on the convertible issue and said that air bags can be installed in those vehicles. IIHS further said that the use of air bags will not "significantly affect car prices because, by the 1990 model year, they will be produced in large enough quantities to keep their cost reasonable."

**Agency Decision**

After considering the information provided by the commenters, the agency has decided to retain the automatic restraint requirement for convertibles manufactured on or after September 1, 1989. One primary reason for NHTSA's decision is the anticipated wide-spread availability of driver-side air bag systems for use in convertibles and other passenger cars that will result from another rulemaking action taken today by the agency. To encourage the development of a variety of automatic restraint systems, Standard No. 208 currently provides that a manufacturer that installs a non-belt automatic restraint system, such as an air bag system, at the driver's seating position and a manual lap/shoulder belt at the front right passenger seating position will receive credit for producing one automatic restraint-equipped passenger car ("one car credit") during the phase-in period. In a final rule published elsewhere in today's **Federal Register**, the agency has decided, in response to a petition from the Ford Motor Company, to extend this provision temporarily beyond the phase-in period. That final rule amends Standard No. 208 to provide, until September 1, 1993, that a car meeting the performance requirements in the standard with a non-belt automatic restraint system for the driver and a dynamically-tested manual lap/shoulder belt for the right front passenger will be considered in compliance with Standard No. 208.

At the time of the October 1986 final rule that excluded convertibles from the automatic restraint phase-in requirement, the agency expressed concern about the availability of low cost air bag systems for convertibles. NHTSA said that the cost of air bag systems, particularly when used in low volume installations such as convertibles, could be substantial and thus result in significant increases in the price of convertibles. However, information provided by vehicle manufacturers and suppliers in response to the notice of proposed rulemaking on the one-car credit indicates that the prospects for the wide-spread availability of driver-side air bag systems by September 1, 1989, are now substantially greater. With the anticipated increase in production of driver-only systems, the costs of those systems will decrease. Thus, it will be possible for manufacturers to install driver-side air bag systems in their convertibles without having to

substantially raise the price of those vehicles.

The agency also believes that manufacturers have sufficient time to allocate their resources to provide driver air bag systems for convertibles, if they do not wish to use an automatic safety belt. The basic components used in an air bag system, such as the inflators and crash sensors, are fundamentally the same regardless of whether the components are used in sedans or in convertibles. For example, according to information obtained by the agency, the air bag components used by Mercedes-Benz in its convertibles and sedans are generally interchangeable. Thus, manufacturers should be able to use driver air bag design and development work done for a line of sedan vehicles and be able to apply it in preparing similar installations in its convertible lines.

The agency also has additional information indicating that it is possible to install automatic safety belts in some types of convertibles without having to make significant structural changes, such as the addition of pylons or other vehicle structures, to allow the safety belt to be anchored to the vehicle. Alfa Romeo has presented information to the agency concerning an automatic safety belt system it has developed for its two-seat convertible model. The Alfa Romeo system uses a motorized automatic belt in which the belt is anchored, at the one end, in a motorized track that is located in the vehicle's side door sill. It is anchored at the other end in the center of the floor behind the front seats. The belt runs from those anchorage points through a guide located on the inboard, top side of the front seat. Although it is possible that this system might not be suitable for at least some convertibles with rear seats, it is available for use in other convertibles.

Based on information presented by General Motors in its comments on the proposed one-car credit rule, it appears that "built-in" safety is still not practicable for convertibles or other passenger cars. Although manufacturers may not have the choice of using "built-in" safety at this time, they can use driver-only air bags and automatic belt designs, such as Alfa's. Because of the availability of these automatic restraint alternatives, the agency believes it is appropriate to retain the automatic restraint requirement for those vehicles.

### Competition Among Air Bag Suppliers

In commenting on the agency's decision to exclude convertibles from the automatic restraint requirement during the phase-in, Mazda noted that the agency referred to the Breed Corporation's air bag system as one possible system that would reduce the cost of air bags. Mazda criticized the agency for what it termed the "creation and approval of the NHTSA of a monopoly of the air bag market by the Breed Corporation." As discussed below, the Mazda criticism is not accurate.

NHTSA has been engaged in a research effort with the Breed Corporation to explore the use of one type of technology—the use of a mechanical as opposed to an electronic sensor—in air bag systems. NHTSA entered into this research effort since it holds the promise of resulting in an air bag system that is potentially simpler and less costly than current systems. That research, if successful, will not create a monopoly for the Breed Corporation. As shown by a review of the companies that commented on the agency's November 25, 1986 (51 FR 42598) notice of proposed rulemaking on the Ford petition, there are a number of restraint system suppliers, other than Breed, that have been involved in past air bag development programs and are currently involved in new programs to develop new air bag systems. The future availability of those systems, and availability of systems currently being produced by other companies will ensure that there is a competitive market for air bag systems.

### Definition of Convertible

In the October 1986 final rule, NHTSA set out the criterion it has used in determining whether a vehicle is a convertible. The agency said that a convertible is a vehicle whose A-pillar or windshield peripheral support is not joined at the top with the B-pillar or another rear roof support rearward of the B-pillar by a fixed rigid structural member. Applying this criterion, the agency said that a vehicle with a so-called "Targa" roof—a roof in which an entire section of the structure over the driver and front seat passenger can be easily removed and replaced by a vehicle owner—would be considered a convertible since it does not have any fixed structural member connecting the tops of the A and B-pillars when the targa roof is removed. However, a vehicle with a T-bar roof—a roof which can be only partially removed by the vehicle's owner—would *not* be considered a convertible since there is a fixed structural member in the vehicle's roof which connects the A and B-pillars when the partial sections of the roof are removed.

In its petition for reconsideration, Toyota requested the agency to exclude T-bar roof vehicles from the automatic restraint requirement. Toyota said that "due to the lack of a door frame or a roof side rail structure, it is impossible to install an automatic belt that is acceptable to customers to the T-bar roof vehicles in view of current technology." Toyota said it will have to discontinue T-bar roof vehicles after September 1, 1989, unless those vehicles are excluded from the automatic restraint requirement.

NHTSA has decided to retain its current interpretation of the term convertible and thus, is not adopting the proposed revision requested by Toyota. As discussed earlier in this notice, driver-side air bags and automatic safety belt systems will be available for use in convertibles. Since those systems are available for convertibles, Toyota and other manufacturers of cars with T-bar roofs can use those same systems to comply with the peformance requirements of the standard.

### Cost and Benefits

NHTSA has examined the impacts of this rulemaking action and determined that the action is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a regulatory evaluation that examines the economic and other impacts of this rulemaking action.

The agency anticipates that most manufacturers initially will choose to install driver-only air bag systems in their convertible models. As discussed earlier in this notice, NHTSA believes that because of the agency's decision to extend temporarily the provision that a car meeting the performance requirements in the standard with a non-belt automatic restraint system for the driver, air bag systems will become readily available in large numbers by the September 1, 1989 effective date. With the increase in air bag production, the cost of the system should decrease significantly. NHTSA estimated that, assuming high volume production, a driver only air bag system will cost from $250 to $350. Thus, installing them in convertibles should not have a significant effect on vehicle prices. As discussed in the agency's regulatory evaluation, the long-term benefits of driver-only air bag systems in convertibles range from 19 to 38 fatalities prevented and from 295 to 533 moderate to serious injuries prevented annually. The agency has also examined the costs and benefits for automatic belt systems. NHTSA estimates that a motorized automatic safety belts would

have a liftime cost of from approximately $290 to $490. The agency also examined the effectiveness of automatic safety using an range of assumed usage rates. At 40 percent usage, automatic safety belts would prevent up to 5 fatalities and 71 moderate to serious injuries. At 70 percent usage, automatic safety belts would save from 21 to 36 lives and prevent from 337 to 562 moderate to serious injuries.

**Regulatory Flexibility Act**

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a full regulatory flexibility analysis.

Few, if any, passenger car manufacturers qualify as small entities. Small organizations and government units should not be affected since the number of convertibles purchased by those entities should be small. As discussed below, persons engaged in the business of converting passenger cars from sedans to convertibles may be affected.

Under the agency's certification regulation, a person that alters a previously certified new vehicle must certify that the vehicle, as altered, conforms with all applicable safety standards. The agency has said that when a vehicle is altered from one vehicle type to another, the alterer must certify that the vehicle conforms to the safety standards that apply to the new vehicle type, in this case a convertible. Since the agency has decided to retain the automatic restraint requirement for convertibles, a person converting a new hard-top car into a convertible would have to ensure that the altered car complied with the automatic restraint requirement. If a hard-top vehicle were equipped with automatic safety belts, a converter would have to either find a way to re-install the automatic safety belts or have to install an air bag or other type of automatic restraint system.

The information NHTSA has obtained about the passenger car conversion industry indicates that, at present, there are only a few businesses engaged in large-scale conversions of passengers cars for manufacturers and dealers and the businesses that the agency has identified would not qualify as small businesses. In addition, there may be a number of small businesses that do a few conversions each year. The effect on those businesses will depend on the automatic restraint system installed in the vehicles that they are converting. If the car is equipped with an air bag system, the converter may not have to make any significant changes to the car to ensure that it still complies with the standard. However, if the car has an automatic belt, the converter may have to make more significant structural changes to either re-install the automatic belt or install an air bag system. The converter would also have to do testing or prepare an engineering analysis to show that the converted vehicle complied with the requirements of the standard.

**Environmental Effects**

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

(15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.)

Issued on March 25, 1987.

Diane K. Steed,

*Administrator.*

[FR Doc. 87-6892 Filed 3-25-87; 4:37 pm]

BILLING CODE 4910-59-M

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 661

### Ocean Salmon Fisheries off the Coast of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of public hearings and request for comments.

**SUMMARY:** The Pacific Fishery Management Council will hold public hearings on the proposed 1987 ocean salmon fishery management options off the coasts of Washington, Oregon, and California.

**DATES:** The hearings will begin at 7:00 p.m. on Tuesday, March 31, 1987; Wedenesday, April 1, 1987; and Monday, April 6, 1987.

Written public comments will be accepted until April 3, 1987.

**ADDRESSES:** See *Supplementary Information* for locations of hearings.

Written comments may be sent to Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201. Copies of the 1987 salmon stock abundance report, the Council's regulation options, and their impact analysis are available at this address and at the hearings.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Greenley, 503-221-6352.

**SUPPLEMENTARY INFORMATION:** The hearings will take place as follows:

March 31—California Dept. of Fish & Game, 1416 Ninth Street, Sacramento, California, First Floor Auditorium, Resource Building.

March 31—Thunderbird Motor Inn, 1313 North Bayshore Drive, Coos Bay, Oregon, North & South Umpqua Rooms.

April 1—Astoria Middle School, 1100 Klaskanine Avenue, Astoria, Oregon, Cafeteria.

April 1—Red Lion Motor Inn, 1929 Fourth Street, Eureka, California, Redwood Ballroom.

April 6—Seattle Airport Hilton, 17620 Pacific Hwy. S., Seattle, Washington, Horizon/Alpine Rooms.

The Council will meet April 7-10 at the Seattle Airport Hilton to consider the input from the public hearings and written comments received, and to hear additional comments from its advisors and the public. By April 10, the Council will adopt its final recommendations for the 1987 ocean salmon fishery management measures for submission to the Secretary of Commerce.

(16 U.S.C. 1801 *et seq.*)

Dated: March 24, 1987.

Richard B. Roe,

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-6938 Filed 3-27-87; 9:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 60
Monday, March 30, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### OSHA Rulemaking Committee; Public Meeting and Request for Comments

**AGENCY:** Administrative Conference of the United States, Committee on Rulemaking.

**ACTION:** Notice of public meeting; Request for comments.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States to be held on Tuesday, April 14, 1987. The committee has scheduled this meeting to consider a draft recommendation on OSHA rulemaking (below) and any agency or public comments received on it.

**DATES:** The meeting will be held on Tuesday, April 14, 1987, at 9:45 a.m. Written comments must be received by noon on Monday, April 13, to be considered by the committee at the meeting. (Comments received after that date will be sent to the committee and considered to the extent possible.)

**ADDRESSES:** The committee meeting will be in Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

Written comments should be sent to Michael W. Bowers, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

**SUPPLEMENTARY INFORMATION:** The Committee on Rulemaking met on March 13, 1987, and tentatively adopted the following draft recommendation, on which it now invites comment:

### Committee on Rulemaking—Draft Recommendation on OSHA Rulemaking: Priority Setting, Internal Management and Interagency Coordination

The Administrative Conference has undertaken, at the request of the Occupational Safety and Health Administration (OSHA), a comprehensive study of OSHA's procedures for promulgating health and safety standards. In this Recommendation, the Conference advises OSHA on ways it can improve its process for setting regulatory priorities and its internal management of rulemaking. The Conference also recommends additional steps that health and enviromental agencies should undertake for better coordination of their regulatory actions.

**Draft Recommendation**

*1. Setting of Priorities*

a *Regulatory Priorities Committee.* The Occupational Safety and Health Administration (OSHA) should establish a permanent charged with developing a list of regulatory priorities to which the agency will presumptively adhere in undertaking rulemaking initiatives.

(1) This committee should include high-level management officials and experienced health professionals from OSHA and representatives from the National Institute for Occupational Safety and Health (NIOSH) and the Enviromental Protection Agency (EPA). To provide continuity, committee members should be appointed for staggered three-year terms and be eligible for reappointment. To be effective, however, the committee should be limited in size, taking into account necessary membership requirements.

(2) OSHA should provide staff support for the committee and additional resources to enable it to gather information of potential rulemaking topics and, where appropriate, to perform risk assessments and priority-setting exercises.

(3) The committee should establish an initial priority list and, thereafter, meet regularly to consider additions, deletions or revisions of the list, as well as to conduct periodic reviews.

(i) In developing the initial priority list, the committee should use existing data, including risk assessments and other technical and policy considerations. The committee should avoid elaborate risk assessments or weighting systems, and it should not incorporate by reference lists prepared by other agencies for other purposes.

(ii) It may be appropriate, however, for the committee to utilize more sophisticated risk assessments or weighting systems when it conducts a periodic review of the list or considers modifications to it.

(4) OSHA should work closely with NIOSH in developing its initial priority list and in revising the list. In addition, OSHA and NIOSH should establish procedures that will permit NIOSH to respond rapidly with information on projects that OSHA assigns to the expedited decision process.

b. *Public Participation.* (1) Prior to establishing an initial priority list, OSHA should hold public workshops at which interested parties are invited to review and make recommendations on a list (or partial list) of priorities.

(2) The results of meetings of the Regulatory Priorities Committee should be made public after the Assistant Secretary has had an opportunity to review any proposed decisions made by the committee.

(3) The Assistant Secretary should publish for public comment a proposed initial priority list of rulemaking topics. The list should either rank the topics individually or assign them to classes This proposed list should be identified as a policy statement and not a rule for which judicial review would be appropriate.

c. *Expedited action on proposed amendments.* OSHA should establish a procedure for expediting priority decisions on topics that are presented by referrals from EPA under the Toxic Substances Control Act, rulemaking petitions, or special requests from Congress or the President. While

separate from the agency's routine priority process, this expedited process should be coordinated with it. The outcome of the expedited process should be the placement of the topic on the priority list or a determination not to place the project on the list, with a public explanation for the action.

*2. Management*

a. *Action Tracking System.* OSHA should establish a computer status system to set deadlines for meeting established milestones in rulemaking and to provide for systematic review of the progress of ongoing rulemaking through use of a "due or late" list.[1] Under this system, management officials, representing all interested agency components, should meet at regular intervals with the Assistant Secretary or a Deputy Assistant Secretary to discuss progress toward designated milestones.

b. *The Team Approach.* OSHA should reinstate, on a formal basis, the team concept in rulemaking. A team for each individual rulemaking, consisting of representatives of all potentially interested components of OSHA and the Department, should be appointed early in the rulemaking process to gather and analyze information, draft documents, respond to comments and advise the Assistant Secretary. Successfully functioning teams should be assigned to additional rulemakings as appropriate.

c. *Options Review Process.* OSHA should implement an "options review" process to provide policy guidance to teams working on designated, important health and safety rulemaking. This system (such as that employed by EPA) would provide that at least once in the early development of such rules, the rulemaking team will identify and analyze regulatory options for consideration by an upper-level agency policymaking official. The options review meeting could be held in conjunction with the regular action tracking meetings recommended above (paragraph 2.a.). This options review meeting should consider alternative approaches for rulemaking and narrow the range of options to be considered in the future; any decisions should be memorialized in a memorandum that is available to the team.

*3. Interagency Coordination*

a. *Coordination with OSHA.* OSHA, EPA and the National Toxicology Program should establish an agreement through which OSHA's needs for testing of toxic substances in the workplace are communicated to those agencies. This agreement also should coordinate the exercise of the agencies' authorities to promote the protection of employees from workplace risks.

b. *Interagency Group.* OSHA, EPA, the Food and Drug Administration, the Food Safety and Inspection Service (Department of Agriculture), the Consumer Product Safety Commission, and other health and environmental agencies should form a high-level group to explore ways of coordinating agency policies and the production and sharing of information relevant to regulating health and environmental hazards.

Dated: March 25, 1987.

Jeffrey S. Lubbers,

*Research Director.*

[FR Doc. 87-6877 Filed 3-27-87; 8:45 am]

BILLING CODE 6110-01-M

[1] Such systems currently are used by other agencies, including the EPA which refers to its system as the "Action Tracking System."

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 87-030]

### Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

**SUMMARY:** The purpose of this document is to give notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

**PLACE, DATES, AND TIME OF MEETING:** The meeting will be held at Room 743A of the Federal Building, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, Maryland, April 21, 1987, from 8 a.m to 4:30 p.m., and April 22, 1987, from 7:30 a.m. to 12 noon.

**FOR FURTHER INFORMATION CONTACT:** Dr. Wesley Garnett, Senior Staff Officer, VS, APHIS, USDA, Room 747, Federal Building, Hyattsville, MD 20782, (301) 436-8091.

**SUPPLEMENTARY INFORMATION:** The purpose of the Committee is to advise the Secretary on means to prevent, suppress, control or eradicate an outbreak of foot-and-mouth disease or other destructive foreign animal or poultry diseases in the event such disease should enter the United States.

The meeting will be open to the public. Written statements concerning these matters may be filed with the committee before or at the time of the meeting.

Written statements concerning the meeting may be forwarded to Dr. Wesley Garnett, Senior Staff Officer, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8091.

Dated: March 24, 1987.

Bert W. Hawkins,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 87-6930 Filed 3-27-87; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census
*Title:* Survey of Income and Program Participation—1986 Panel Wave 6; 1987 Panel Wave 3
*Form number:* Agency—SIPP 7300, SIPP-6600, SIPP-66/7305(L); OMB—NA
*Type of request:* Revision of a currently approved collection
*Burden:* 47,880 respondents; 23,940 reporting hours
*Needs and uses:* The objective of this survey is to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs. Changes in status and participation will be measured over time. The data will support policy and program planning.
*Affected public:* Individuals or households
*Frequency:* One time
*Respondent's Obligation:* Voluntary
*OMB Desk Officer:* Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: March 24, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87-6855 Filed 3-27-87; 8:45 am]

BILLING CODE 3510-07-M

## Bureau of the Census

### Estimates of the Voting Age Population for 1986

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, 2 U.S.C. 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1986, for each state, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam, and the Virgin Islands are as shown in the following table.

I have certified these estimates to the Federal Election Commission.

Dated: March 23, 1987.

**Malcolm Baldrige,**

*Secretary of Commerce.*

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE, THE DISTRICT OF COLUMBIA AND SELECTED OUTLYING AREAS: JULY 1, 1986

[In thousands]

| Area | Population 18 and over |
|---|---|
| UNITED STATES | 177,807 |
| Alabama | 2,938 |
| Alaska | [illegible] |
| Arizona | 2,405 |
| Arkansas | 1,728 |
| California | 19,949 |
| Colorado | 2,396 |
| Connecticut | 2,438 |
| Delaware | 475 |
| District of Columbia | 495 |
| Florida | 9,071 |
| Georgia | 4,422 |
| Hawaii | 773 |
| Idaho | [illegible] |
| Illinois | 8,471 |
| Indiana | 4,013 |
| Iowa | 2,095 |
| Kansas | 1,792 |
| Kentucky | 2,715 |
| Louisiana | 3,150 |
| Maine | 871 |
| Maryland | 3,359 |
| Massachusetts | 4,480 |
| Michigan | 6,675 |
| Minnesota | 3,075 |
| Mississippi | 1,842 |
| Missouri | 3,733 |
| Montana | [illegible] |
| Nebraska | 1,154 |
| Nevada | 740 |
| New Hampshire | 769 |
| New Jersey | 5,761 |
| New Mexico | 1,023 |
| New York | 13,437 |
| North Carolina | 4,740 |
| North Dakota | [illegible] |
| Ohio | 7,905 |
| Oklahoma | 2,379 |
| Oregon | 1,990 |
| Pennsylvania | 9,031 |
| Rhode Island | 751 |
| South Carolina | 2,460 |
| South Dakota | [illegible] |
| Tennessee | 3,572 |
| Texas | 11,792 |
| Utah | 1,046 |
| Vermont | 401 |
| Virginia | 4,337 |
| Washington | 3,271 |
| West Virginia | 1,415 |
| Wisconsin | 3,508 |
| Wyoming | [illegible] |
| OUTLYING AREAS | |
| Puerto Rico | 2,038 |
| Guam | 75 |
| Virgin Islands | [illegible] |
| American Samoa | 19 |

[FR Doc. 87-6932 Filed 3-30-87; 8:45 am]

BILLING CODE [illegible]

## National Oceanic and Atmospheric Administration

### Mid-Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fishery Service, NOAA, Commerce

The Mid-Atlantic Fishery Management Council will convene a public meeting, April 1–2, 1987, at the Quality Inn, 2015 Penrose Avenue, Philadelphia, PA; telephone: (215) 755–6500, to discuss the Summer Flounder Fishery Management Plan and other fishery management and administrative matters. The meeting may be lengthened or shortened depending upon progress of the agenda. The Council also may go into closed session to discuss personnel and/or national security matters.

For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, DE 19901; telephone: (302) 674–2331.

Dated: March 25, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-6939 Filed 3-27-87; 8:45 am]

BILLING CODE 3510-22-M

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, April 7, 1987, to discuss reports of the enforcement, groundfish, lobster and scallop oversight committees; discuss the status of the large pelagics and fluke fisheries; discuss research priorities, as well as other fishery management and administrative matters.

The meeting will convene at 8:30 a.m., adjourn the same day at approximately 5 p.m., and will take place at the King's Grant Inn, Danvers, MA. For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA; telephone: (617) 231–0422.

Dated: March 25, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-6940 Filed 3-27-87; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Intent to Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, having a place of business in Eatontown, NJ, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "1,2-Diaminocyclohexane Platinum II Complexes Having Antineoplastic Activity Against L1210 Leukemia," U.S. Patent Applications S.N. 5–719,689, U.S. Patent 4,115,418 and S.N. 5–855,910, U.S. Patent 4,175,133. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent

Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Office of the Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.*

[FR Doc. 87-6933 Filed 3-27-87; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Additions and Deletions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to and deletions from procurement list.

**SUMMARY:** This action adds to and deletes from Procurement List 1987 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** April 30, 1987.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** C.W. Fletcher, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On November 21, 1986, September 12, 1986, December 29, 1986 and January 20, 1987, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (51 FR 32516, 42130, 46908 and 52 FR 2145) of proposed additions to and deletions from Procurement List 1987, November 3, 1986 (51 FR 39945).

### Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity and services listed.

c. The action will result in authorizing small entities to produce the commodity and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1987:

*Commodities*

Stool
- P.S. Item #127-A
- P.S. Item #127-B
- P.S. Item #127-C
- P.S. Item #127-D

Aerosol Paint, Lacquer
- 8010-00-958-8147
- 8010-00-958-8148
- 8010-00-958-8151

Aerosol Paint, Primer Coating
- 8010-00-067-5434
- 8010-00-616-9181

Enamel, Lacquer
- 8010-00-664-1914
- 8010-00-702-1053
- 8010-00-582-4743
- 8010-00-851-5525
- 8010-00-941-8712
- 8010-00-133-5901
- 8010-00-181-7791
- 8010-00-935-6609
- 8010-00-935-7064
- 8010-00-935-7075
- 8010-00-935-7079
- 8010-00-935-7085

Enamel, Primer Coating
- 8010-00-584-2426
- 8010-00-159-4518

*Service*

Machining Parts
(Requirements of the Naval Supply Center, Charleston, South Carolina only)
Operation of the Postal Service Center, Sheppard Air Force Base, Texas
Repair of Tool Box and Rollaway, Robins Air Force Base, Georgia

### Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodities and services are hereby deleted from the Procurement List 1987:

*Commodities*

Cap, Operating, Surgical
- 6532-00-299-9614
- 6532-00-299-9613
- 6532-00-299-9612

Mat, floor
- 7220-01-023-9487
- 7220-01-023-9490
- 7220-01-023-9491
- 7220-01-023-9493
- 7220-01-023-9494
- 7220-01-023-9495
- 7220-01-023-9496
- 7220-01-023-5997

*Services*

Commissary Shelf Stocking and Custodial Service, Hanscom Air Force Base, Massachusetts
Janitorial/Custodial, U.S. Federal Building and Post Office, Bangor, Maine

**C.W. Fletcher,**

*Executive Director.*

[FR Doc. 87-7049 Filed 3-27-87; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER87-202-001 et al.]**

### Arkansas Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

March 24, 1987.

Take notice that the following filings have been made with the Commission:

**1. Arkansas Power & Light Company**

[Docket No. ER87-202-001]

Take notice that Arkansas Power & Light Company (AP&L) filed on March 16, 1987, revisions to a proposed First Amendment to Peaking Power Agreement amending the Peaking Power Agreement dated September 10, 1985 which is a supplement to the Power Coordination, Interchange & Transmission Agreement between City of West Memphis, Arkansas and Arkansas Power & Light Company, dated June 25, 1982. The revisions were in response to a deficiency letter from the Commission.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**2. Georgia Power Company**

[Docket No. ER87-27-000]

Take notice that on March 16, 1987, Georgia Power Company (the Company) tendered for filing additional information concerning a Scheduling Services Agreement with Oglethorpe Power Corporation.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**3. Gulf States Utilities Company**

[Docket No. ER87-538-003]

Take notice that on March 13, 1987, Gulf States Utilities Company tendered for filing a compliance report showing a

summary of the total refund, including interest, which resulted from the acceptance by the Commission of the executed Settlement Agreement in Docket No. ER85–538–001 filed on October 15, 1986.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**4. Iowa Power and Light Company**

[Docket No. ER87–326–000]

Take notice that Iowa Power and Light Company, Des Moines, Iowa, (Iowa Power), on March 17, 1987 tendered for filing a Generation Services Agreement (Agreement) between Iowa Power and Union Electric Company, St. Louis, Missouri (Union Electric) dated as of March 13, 1987, with schedules reflecting charges for Iowa Power providing a generation service to Union Electric.

The Agreement is proposed effective as of March 18, 1987. Wavier of the Commission's notice requirements have been requested by the parties.

Iowa Power states a complete copy of the filing has been mailed to Union Electric, and Iowa State Utilities Board, the Illinois Commerce Commission, and the Missouri Public Service Commission.

Iowa Power states that the Agreement (and its Exhibits) provides that Iowa Power (during the period March 18, 1987 to December 31, 1987) will convert into electricity, at the Council Bluffs Generating Stations near Council Bluffs, Iowa operated and owned in part by Iowa Power, coal purchased by Union Electric which has been delivered to the Council Bluffs Power Station. Exhibit B to the Agreement sets forth the charge for providing the generation service.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this document.

**5. Minnesota Power & Light Company**

[Docket No. ER87–324–000]

Take notice that on March 16, 1987 Minnesota Power & Light Company tendered for filing a Firm Power Service Agreement between Minnesota Power & Light Company (MP) and Otter Tail Power Company (OTP). Under this Agreement, MP an OTP will sell 30 MW of firm power service to each other on a seasonal diversity basis in accordance with the Mid Continent Power Pool Agreement, Service Schedule J. Service under this Agreement will be supplied during the period from May 1, 1987 to April 30, 1988.

The parties request an effective date of the date next following the Commission's 60 day filing period for this Agreement.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**6. New York State Electric Corporation**

[Docket No. ER87–370–002]

Take notice that on March 13, 1987, New York State Electric Corporation (NYSEG) tendered for filing a report and schedules showing the calculation of the refund of excess revenues collected by NYSEG, plus applicable interest, as set forth in § 35.19(a) of the Commission's Regulations; monthly billing determinants; revenue receipt dates and revenues under the prior, present and settlement rates; the monthly revenue refund and the monthly interest computed; and a summary of such information for the total refund period.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Niagara Mohawk Power Corporation**

[Docket No. ER87–325–000]

Take notice that Niagara Mohawk Power Corporation ("Niagara Mohawk"), on March 13, 1987, tendered for filing an agreement between Niagara Mohawk and Central Hudson Gas & Electric Corporation ("CHGE") dated February 4, 1987, providing for certain transmission services to CHGE. This agreement supersedes and amends Niagara Mohawk FERC Rate Schedule No. 88.

The February 4, 1987 agreement provides for the addition of the new service of the transmission and delivery to CHGE of energy generated at the Nine Mile Point Unit #2 plant ("Nine Mile #2) and for a change in the rate charged CHGE for the transmission and delivery to CHGE of certain power and energy generated at the Nine Mile #2 plant and at the Authority's FitzPatrick Nuclear Plant. CHGE has consented to both changes.

The proposed changes would increase revenues from jurisdictional services by $1,374,219 based on the twelve months ending August 31, 1988. Effective dates of February 4, 1987 (for the commencement of transmission and delivery of Nine Mile #2 energy) and September 1, 1987 (for the change in rates) are proposed. Niagara Mohawk states that waiver of the notice requirements of 18 CFR 35.3 is warranted because CHGE, the only customer under Rate Schedule No. 88, has requested the additional service, has consented to the effective dates, and the practice of CHGE and Niagara Mohawk has been to make rate changes under Rate Schedule 88 effectice September 1.

Copies of the filing were served upon CHGE and the New York State Public Service Commission.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this document.

**8. Pacific Gas and Electric Company**

[Docket No. ER87–327–000]

Take notice that on March 18, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing changes to FERC Rate Schedule No. 84. This Rate Schedule covers services that are rendered by PGandE under the agreement entitled the "Interconnection Agreement Between Pacific Gas and Electric Company and the Northern California Power Agency, City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiahn and Plumas Sierra Rural Electric Cooperative" (Interconnection Agreement). This filing tenders a revised Exhibit A–1 to the Interconnection Agreement. The revision does not change the level of any rate.

The current Exhibit A–1 lists the Partial Requirements Power and Capacity Reserve amounts that the Northern California Power Agency (NCPA) is obligated to purchase from PGandE during 1986. The revised Exhibit A–1 establishes: (a) the Partial Requirements Power Contract Demand obligation and the associated transmission obligation at 18.394 MW for 1987 and (b) establishes the Capacity Reserve sales from PGandE to NCPA at 4.064 MW/month for 1987. These amounts are subject to the resolution of a number of disputes between PGandE and NCPA.

PGandE requests, pursuant to the Commission's Regulations (18 CFR 35.11), waiver of the Commission's usual notice requirement so as to permit the revised Exhibit to become effective on January 1, 1987. No customers under any other rate schedules will be affected if such waivers are granted.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**9. Wisconsin Electric Power Company**

[Docket No. ER87–67–001]

Take notice that on March 17, 1987, Wisconsin Electric Power Company (the Company) tendered for filing its cost support data justifying the wholesale rate revisions filed October 31, 1986, in Docket No. ER87–67–000, in accordance with the Commission's order issued January 30, 1987.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**10. Pacific Power & Light Company, an assumed business name of PacifiCorp**

[Docket No. ER87-328-000]

Take Notice that Pacific Power & Light Company (Pacific), as assumed business name of PacifiCorp, on March 18, 1987, tendered for filing, in accordance with Section 35 of the Commission's Regulations, a Revised Exhibit B, dated October 1, 1986, to the May 29, 1981 Transmission Agreement (Pacific's Rate Schedule FERC No. 213) between Pacific, Deseret Generation & Transmission Co-operative (Deseret) and Bridger Valley Electric Association, Inc. (Bridger Valley).

Exhibit B to the Transmission Agreement is revised annually in accordance with Article 12(ii) of the Agreement, and specifies the projected maximum integrated demand in kilowatts which Deseret desires to have transmitted to Bridger Valley for a four year rolling period.

Pacific respectfully requests, pursuant to § 35.11 of the Commission's Regulations, that a waiver of prior notice be granted and an effective date of October 1, 1986, be assigned. This date being consistent with the effective date shown on Exhibit B.

Copies of the filing were supplied to Deseret, Bridger, Valley, and the Wyoming Public Service Commission.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs:**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6904 Filed 3-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-654-021]

## Algonquin Gas Transmission Co.; Compliance Filing

March 24, 1987.

Take notice that on March 18, 1987, Algonquin Gas Transmission Company (Algonquin) tendered for filing revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. The following sheets were filed pursuant to the December 18, 1986 and February 17, 1987 orders issued in Docket No. CP84-654 to be effective November 1, 1986:

Third Substitute Seventh Revised Sheet No. [illegible]
First Revised Sheet No. 381
Second Substitute Original Sheet No. 383
Second Substitute Original Sheet No. 385
First Revised Sheet No. 794

In addition, in compliance with the Commission's July 1, 1985 order in Docket No. CP84-654-000, *et al.*, Algonquin has filed the following tariff sheets cancelling the necessary tariff sheets to effectuate the termination of service under Rate Schedule F-4 Interim to be effective December 4, 1986:

Eighth Revised Sheet No. 100
Eighth Revised Sheet No. 300
First Revised Sheet No. 387

Pursuant to the provisions of section 7 of its Rate Schedule F-4, Algonquin submits the following sheets to be effective as proposed. Such tariff sheets are being filed to flow through Texas Eastern Transmission Corporation's revised DCQ Contract Adjustment Demand Rate.

Revised Substitute Ninth Revised Sheet No. 205 effective December 4, 1986
Revised Tenth Revised Sheet No. 205 effective January 1, 1987
Revised Eleventh Revised Sheet No. 205 effective February 1, 1987

Algonquin has served copies of this filing upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before April 1, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 6905 Filed 3-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-50-000]

## Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 24, 1987.

Take Notice that Algonquin Gas Transmission Company ("Algonquin") on March 17, 1987, tendered for filing a proposed change in its FERC Gas Tariff, Second Revised Volume No. 1 consisting of First Revised Tariff Sheet No. 634 which reflects a change other than in rate level, as defined in 18 CFR 154.63.

Algonquin states that the revised tariff sheet is being filed to eliminate from Algonquin's unrecovered purchase gas cost account (Account 191) the provision requiring a credit adjustment for revenues received from miscellaneous transportation services under Volume 2 of its FERC Gas Tariff previously set forth in section 17.5 of its General Terms and Conditions. Algonquin states that revenues from such Volume 2 transportation instead will receive review in Algonquin's general rate cases on a consistent basis with Volume 1 transportation.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 31, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6906 Filed 3-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-44-000, 001]

## Commercial Pipeline Co., Inc.; PGA Filing

March 24, 1987.

Take notice that on March 20, 1987, Commercial Pipeline Co., Inc. ("Commercial") tendered for filing its 51st Revised Sheet No. 3A, to its FERC Gas Tarriff, First Rev. Vol. 1, reflecting Purchased Gas Adjustment and Total Rate as shown below.

| | Current adjustment | Cumulative adjustment | Surcharge adjustment | Total rate |
|---|---|---|---|---|
| (Base) | $1.0121 | $1.3026 | $(.5166) | $4.2564 |
| (Excess) | 1.0285 | 1.3142 | (.5166) | 4.3794 |

The effective date of Commercial's filing is April 23, 1987.

Commercial states that this filing reflects adjustments in its purchased gas cost to provide for the tracking of a corresponding PGA adjustment by Commercial's sole supplier, Williams Natural Gas Company. The filing also reflects surcharge adjustments in accordance with Commercial's PGA.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC., 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 1, 1987. Protestants will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection.

**Kenneth F. Plumb.**

*Secretary.*

[FR Doc. 87-6907 Filed 3-27-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-374-000]

## Kirby Exploration Company of Texas; Application for Abandonment

March 24, 1987.

Take notice that on March 13, 1987, Kirby Exploration Company of Texas (Kirby), P.O. Box 1745, Houston, Texas 77251, filed an application under section 7(b) of the Natural Gas Act.

Kirby states that there is currently one well on the leases dedicated to ANR Pipeline Company (ANR) that is capable of production, the Mathers No. 1-74 well, North Thorndike Area, Gray County, Texas. The Mathers No. 1-74 is an oil well that has suffered a significant drop in its flowing tubing pressure such that the small volume of natural gas production cannot enter ANR's facilities. The gas purchase contract dated August 7, 1967, between Kirby and ANR requires ANR to provide compression. Since this is an oil well, Kirby has been forced to flare the natural gas production. By letter dated December 18, 1986, ANR elected not to add compression and released the well. This release is further evidenced by an amendment dated February 17, 1987, to the subject gas purchase contract. Kirby requests that the Commission issue an order granting Kirby authorization to abandon sales to ANR from acreage attributable to the Mathers No. 1-74 well.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it is determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Kirby to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-6908 Filed 3-27-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. RP87-51-000]

## Northern Natural Gas Company, Division of Enron Corp.; Tariff Filing

March 24, 1987.

Take Notice that on March 20, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1.

Sixth Revised Sheet No. 17
Second Revised Sheet No 24b

These pages consist of revisions to paragraph 6.23 of Northern's CDO-1 and CD-1 Rate Schedules to allow for group billing at the operational zone rate in which the excess volumes are delivered rather than at the operational zone rate in which the excess volumes originated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 1, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection

**Kenneth F. Plumb.**

*Secretary.*

[FR Doc. 87-6909 Filed 3-27-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-337-000]

## Pelto Oil Co.; Notice of Application for Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Limited-Term Abandonment and Pre-Granted Abandonment

March 24, 1987.

Take notice that on February 27, 1987, Pelto Oil Company (hereinafter referred to as Pelto) filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (GNA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking (i) a certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of certain natural gas produced by Pelto and its joint interest owners in offshore Louisiana, and (ii) limited-term abandonment and pre-granted permanent abandonment of certain sales as described therein, to effectuate the short-term and spot sale and purchase of gas, as more fully described in the Application which is on

file with the Commission and open for public inspection. The term of the authorizations requested by Pelto is four years. Pelto also requests that said authorizations be made effective on or before April 1, 1987, the expiration date of its current authorizations.

Pelto states that the authority requested is consistent with the Commission's rules and regulations and is necessary for Pelto to continue making short-term and spot gas sales. Further, Pelto states that, absent said authorization, the flexibility and efficiency necessary for successful operation in the current gas market would be hindered.

Specifically, Pelto requests that the Commission authorize Pelto, effective on or before April 1, 1987:

(i) To make sales for resale in interstate commerce for a period of four years, without supply or market limitations, of gas subject to the Commission's NGA jurisdiction that is produced from various interests owned by Pelto;

(ii) To make sales for resale in interstate commerce for a period of four years, without supply or market limitations, of gas subject to the Commission's NGA jurisdiction, produced by other owners having interests in the same wells as Pelto, to the extent that such joint interest owners agree to same;

(iii) To abandon for a four-year term sales for resale of gas subject to the Commission's NGA jurisdiction and previously certificated by the Commission, to the extent that such gas is released by interstate pipelines for resale in the spot market or on a short-term basis to third parties; and

(iv) To abandon permanently (pre-granted abandonment) any sale for resale authorized pursuant to Pelto's small producer certificate or the certificate requested by Pelto's Application herein.

Sales proposed to be made by Pelto on behalf of itself and its joint interest owners will not involve a dedication of reserves. The sales volumes, prices, purchasers, delivery points, transporters, and supply source will vary. Pelto proposes to sell and deliver to various short-term and spot gas purchasers all or a portion of the gas Pelto determines is available for sale at terms acceptable to Pelto for a particular month. Pelto will not be obligated to sell gas until the exact volumes, terms and conditions, and prices are agreed to by Pelto and a purchaser. All contracts entered into by Pelto and the short-term and spot gas purchaser will be subordinate to the requirements of Pelto's current pipeline purchasers. Pelto is agreeable to affording take-or-pay credit to its current purchasers for gas released and sold under the authorities requested by Pelto.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 7, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-6910 Filed 3-27-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket Nos. CI87-168-000 and CI87-169-000]

## Union Oil Company of California; Notice of Application

March 24, 1987.

Take notice that on December 9, 1986, Union Oil Company of California (Union) of P.O. Box 7600, Los Angeles, California 90051 filed an application pursuant to §§ 2.77 and 157.30 of the Commission's Regulations under the Natural Gas Act in Docket No. CI87-168-000 for abandonment of service to El Paso Natural Gas Company (El Paso) from the Red Hills Field located in Lea County, New Mexico, authorized in Docket No. CI65-485, and Docket No. CI87-169-000 for a blanket Certificate of Public Convenience and Necessity authorizing sales of gas in interstate commerce for resale with blanket, pregranted abandonment authorization for a three year period.

In support of its proposed abandonment, Union states that the rollover agreement between the parties expired December 31, 1986. Union has asked the purchaser for a new contract but has received no response. Union is seeking abandonment authorization to permit sales to a new purchaser. Union indicates that its interest in production still subject to the Natural Gas Act consists of approximately 700 Mcf/day of NGPA Section 106(a) interstate rollover gas.

In support of its request for blanket certificate authorization with pregranted abandonment, Union states that it proposes to sell the gas proposed from the Red Hills Field to a new purchaser and that such authorization would permit Union to respond promptly to sudden changes in the market for this gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 7, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-6911 Filed 3-27-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-346-000]

## Walter Oil & Gas Corp.; Notice of Application of Walter Oil & Gas Corporation for Expedited Producer Abandonment With Pre-Granted Abandonment

March 24, 1987.

Take notice that on March 4, 1987, Walter Oil & Gas Corporation (Walter), pursuant to Section 7(b) of the Natural Gas Act, 15 U.S.C. 717(f)(b) (1982), and Section 2.77 of the General Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 2.77 (1986), filed an application requesting expedited producer abandonment with pre-granted abandonment of service through February 28, 1989 for certain volumes of natural gas produced from Vermilion Block 164 Unit, Offshore Louisiana. Walter states that the application pertains only to "excess volumes" that are or will be shut-in and which Texas Eastern Transmission Corporation, the current purchaser, states that it cannot purchase due to

BEST COPY AVAILABLE

market constraints. Texas Eastern will have the right to recall released excess volumes on 60-days' notice. Walter also states that the excess volumes are subject to the maximum lawful price applicable to "post-1974" NGPA Section 104 natural gas. Estimated deliverability of the excess volumes is up to 10 MMcf per day. Walter requests that the Commission authorize limited-term abandonment with pre-granted abandonment of the released excess volumes through February 28, 1989 so that Walter may sell the volumes on the spot market to other purchasers pursuant to Walter's blanket small producer certificate.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–6912 Filed 3–27–87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CI87–319–000]**

## WTG Exploration, Inc.; Notice of Application for Adandonment

March 24, 1987.

Take notice that on February 17, 1987, as supplemented on March 5, 1987, WTG Exploration, Inc., 3100 North "A", Bldg. E, Suite 202, Midland, Texas 79705 (WTG), a small producer certificate holder in Docket No. CS83–65–000, filed an application for abandonment to its sale to El Paso Natural Gas Company (El Paso) under a November 9, 1966, contract which WTG states is scheduled to expire on March 31, 1987. The gas is NGPA section 104 small producer flowing and post 1974, 108 and 109 gas produced from Howard Draw and Howard Draw, N.E. (Multi-Pay) Fields, Crockett County, Texas.

In support of its application WTG states it is subject to substantially reduced takes without payment. The estimated volume requested to be abandoned is 350 Mcf/d. El Paso sold the mainline system and treating facility to Apache Gas Company, effective September 1, 1986. El Paso released the NGPA gas production by letter agreement dated December 1, 1986, and WTG executed a one-year contract to sell such NGPA gas to Apache for resale in various spot markets. The gas requires treating for removal of sour gas and currently available facilities will not handle the total estimated central point delivery volume. The jurisdictional gas has therefore been shut in without takes other than lease protection. Curtailment to approximately one day per month began in June 1986.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–6913 Filed 3–27–87; 8:45 am]

BILLING CODE 6717-01-M

---

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–3176–9]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U. S. C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Patricia Minami, (202) 382–2712 (FTS 382–2712) or Jackie Rivers, (202) 382–2740 (FTS 382–2740).

**SUPPLEMENTARY INFORMATION:**

### Office of Policy, Planning and Evaluation

*Title:* Pretest of Section 312 Forms under SARA, Title III (EPA ICR #1358). (This is a new collection.)

*Abstract:* Facilities in Standard Industrial Classification codes 20–39 must submit an emergency and hazardous chemical inventory form estimating amounts and location of the hazardous chemical. This limited pretest of selected facilities subject to Tier I and II reporting under section 312 of SARA should produce information identifying otherwise unforeseen problems in reading, understanding, and completing the forms.

*Respondents:* Voluntary participation of facilities in SIC codes 20–39.

*Estimated annual burden:* 220 hours.

### Agency PRA Clearance Requests Completed by OMB

*EPA ICR #0107,* Source Compliance and State Action Reporting, was approved 2/19/87 (OMB #2060–0096; expires 2/29/90).

*EPA ICR #1191,* National Survey of Pesticides in Drinking Water Wells (Pilot Study), was approved 2/18/87 (OMB #2040–0046; expires 8/31/87).

*EPA ICR #1241;* Suspended/ Cancelled Products: Claim for Indemnification, Request for Federal Disposal; was aoproved 2/18/87 (OMB #2060–0048; expires 2/29/90).

*EPA ICR #1331*, Reporting on Accidental Release Causes and Preventive Techniques, was approved 3/8/87 (OMB #2050-0065; expires 3/31/88).

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: March 24, 1987.

Daniel J. Fiorino,

*Director, Information and Regulatory Systems Division.*

[FR Doc. 87-6885 Filed 3-27-87; 8:45 am]

BILLING CODE 6560-50-M

---

[OPTS-400004; FRL-3177-2]

## Title III of the Superfund Amendments and Reauthorization Act of 1986; Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** The EPA has scheduled a public meeting to discuss the planning and development of a computerized public data base containing a toxic chemical release inventory under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986.

**DATE:** The meeting will be held on Monday, April 20, 1987, from 9 a.m. to 3 p.m.

**ADDRESS:** The meeting will be held in: EPA's South Conference Room #4, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, 401 M St., SW. Washington, DC 20460, Telephone: (202) 554-1404.

**SUPPLEMENTARY INFORMATION:** EPA has scheduled a public meeting to obtain information on user needs and accessibility requirements of a computerized data base as mandated under section 313 of Title III.

Title III of the recently enacted Superfund amendments contains chemical information-gathering provisions of widespread interest to the public, the industry, and to State and local governments. The EPA's Office of Toxic Substances (OTS) has specific responsibility for implementing section 313 of Title III. Under section 313, owners and operators of certain industrial facilities which manufacture, process, or otherwise use any of over 300 listed toxic chemicals must report annually their releases of such chemicals to all environmental media. The information gathered under this section must be made available to the public. In particular, EPA must develop a national computerized data base containing this "toxic chemical release inventory." Further, the information must be made accessible to the public through means of computer telecommunications.

Under Title III, EPA must publish the section 313 Toxic Chemical Release Inventory reporting form by June 1, 1987. The first reports are due by July 1, 1988, for calendar year 1987 data, and annually thereafter on July 1, for the previous calendar year. Current estimates are for up to 140,000 forms to be submitted on or before July 1 of the first reporting period. In order to develop a data base that is useful and publicly accessible, EPA is seeking extensive early involvement in the planning and development of this data base. EPA is particularly interested in learning how the public will use the information, how the public currently locates and gathers like information, how frequently the data may likely be used, and the types of products and services the public would most likely use. EPA is also investigating other methods of data dissemination, based on needs; for example, hardcopy, microfiche, etc. To assist public input, EPA has made copies of (1) "Superfund Amendments and Reauthorization Act of 1986," Title III, sections 313 and 322; (2) the draft document: Options for Making the Toxic Release Inventory (TRI) Data Base Available to the Public; and (3) a preliminary draft: Discussion Topics for the Public Regarding Search and Access Requirements for the Toxic Release Inventory.

A public meeting is scheduled for April 20, 1987 to discuss the development of the public data base under section 313. Persons interested in attending this meeting and/or in obtaining copies of the review materials should call the TSCA Assistance Office (TAO) at the telephone number listed under **FOR FURTHER INFORMATION CONTACT.** EPA encourages anyone interested in attending the public meeting to review the draft documents in advance. Written comments also may be submitted to: Margo Oge, Project Manager, Toxic Release Inventory, Office of Toxic Substances (TS-779), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Dated: March 23, 1987.

Michael Shapiro,

*Director, Economics and Technology Division.*

[FR Doc. 87-6886 Filed 3-27-87; 8:45 am]

BILLING CODE 6560-50-M

---

[OPTS-59236A; FRL-3177-1]

## Certain Chemical Approval of Test Marketing Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-87-7. The test marketing conditions are described below.

**EFFECTIVE DATE:** March 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dayton Eckerson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613C, 401 M St. SW., Washington, DC 20460, (202-475-8994).

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-87-7. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The import volume must not exceed that specified in the application. All other conditions and restrictions described in

the application and in this notice must be met.

The following additional restrictions apply to TME–87–7. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

4. The applicant must maintain records of any determination that gloves are impervious to the test market substance, as required below.

T 87–7

*Date of Receipt:* January 16, 1987.

*Notice of Receipt:* February 6, 1987 (52 FR 3861).

*Applicant:* Burton Plastics, Inc.

*Chemical:* (S) Phosphine oxide diphenyl (2,4,6-trimethylbenzoyl).

*Use:* (S) Crosslinking agent for ultraviolet curable polyester resins.

*Import Volume:* Confidential.

*Number of Customers:* Confidential.

*Worker Exposure:* Confidential.

*Test Marketing Period:* One year.

*Commencing on:* March 11, 1987.

*Risk Assessment:* EPA identified a potential neurotoxicity concern for the test market substance based on health testing data on an analogous substance, triphenylphosphine oxide. However, EPA has determined that, under the conditions outlined above, and the restrictions outlined below, the estimated exposures to the test market substance will not be significant. Therefore, the test market substance will not present any unreasonable risk of injury to human health. The Agency did not identify potential adverse effects of the test market substance on aquatic organisms and no water releases of the substance are expected. Therefore, the test market substance will not present any unreasonable environmental risk.

*Additional Restrictions:* During processing of the test market substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be exposed to the TME substance shall use the following protective equipment:

For dermal exposure: 1. Gloves determined by the Company to be impervious to the PMN substance under the conditions of exposure, including the duration of exposure. The Company shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances.

2. Clothing which covers any other exposed areas of the arms, legs, and torso.

3. Chemical safety goggles or equivalent eye protection.

For inhalation exposure: National Institute for Occupational Safety and Health approved, category 23C respirators, excluding single-use or disposable and air purifying respirators, in accordance with 30 CFR Part 11 Subpart L. The respirators shall be equipped with combination cartridges approved for paints, enamels, and lacquers, unless air-supplied respirators are selected. Use of the respirators shall be according to 29 CFR 1910.134 and 30 CFR Part 11. If full-face type respirators are selected and worn, the chemical safety goggles requirement in paragraph 3 is waived.

*Public Comments:* None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 11, 1987.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 87–6889 Filed 3–27–87; 8:45 am]

BILLING CODE 6560-50-M

---

## FEDERAL COMMUNICATIONS COMMISSION

[General Docket No. 86–336; FCC 87–62]

### Inquiry Into the Scrambling of Satellite Television Signals and Access to, by Owners of Home Satellite Dish Antennas

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Report.

**SUMMARY:** This item reports on an inquiry initiated in response to Congressional requests made at a June 12, 1986 House subcommittee hearing. The report, which was prepared in cooperation with the National Telecommunications and Information Administration, concludes that there is no current need for government intervention in the home satellite dish (HSD) marketplace. The FCC will, however, monitor this market for one year and report again to Congress at the end of that time.

**FOR FURTHER INFORMATION CONTACT:** Jonathan D. Levy, Telephone: (202) 653–5940.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report* in General Docket 86–336, FCC 87–62, Adopted February 12, 1987 and Released March 23, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Report**

1. The Report on satellite television signals scrambling, which was prepared in cooperation with the National Telecommunications and Information Administration (NTIA), and adopted by the Commission on February 12, 1987, concludes that there is no current need for government intervention in the HSD marketplace. The provision of service to HSD households is still in the early stages of development. While it appears to be developing in a competitive fashion, it is appropriate for the Commission to monitor developments there for the next year. Therefore, our staff will provide quarterly reports to the Commission and to NTIA for the next year. The Commission will report to Congress if any remedial action is necessary and will deliver a final report to the Congress no later than one year after the adoption of this Report.

2. At the present time, 34 of the roughly 70 satellite cable services have announced plans to scramble their signals. Five premium channels and four basic cable services, plus two pay per view channels and one "adult" channel, have actually begun scrambling. All of the American satellite cable programmers with scrambling plans have chosen the Videocipher II system.

Thus, it appears that the marketplace has settled on that system as a *de facto* standard. While attempts have been made to break the Videocipher II code, they are being combatted both by legal and technical means.

3. The Report finds that signal scrambling serves to protect programmers from commercial theft of their services and allows them to receive compensation from all who view their copyrighted product. This serves the public interest in maintaining the incentives to produce new programming.

4. With regard to program distribution, several programmers are selling directly to HSDs on a national basis, and some of them have also acquired non-exclusive rights to market other services nationally. Programmers are also licensing cable operators on a non-exclusive basis to distribute to HSDs in their franchise areas. This structure allows for head-to-head competition among programmers on a national basis. At present, little information is available on HSD program packages, but as more basic channels scramble, it is anticipated that more discounted program packages will develop. In the meantime, the sequence of price reductions made by the movie channels over the past several months suggests a competitive process at work.

5. The Report finds that the broadcast networks are legally entitled to scramble their network feeds and to decline to sell them to HSDs. While this would limit service to a small fraction of television households, it would protect the exclusivity provisions of the network-affiliate distribution system that efficiently serves the preponderance of households. Satellite services, including news and entertainment, are available to households without over-the-air services.

6. The Report concludes that no action is warranted at this time with respect to superstation scrambling and notes that compulsory licensing issues are the subject of a separate Commission inquiry. The Report denies a request by the Satellite Television Viewing Rights Coalition, Inc. for a full evidentiary hearing on scrambling.

**Ordering Clauses**

7. *Accordingly it is ordered,* that the motions of ABC and CBS requesting acceptance of late-filed pleadings are granted.

8. *It is further ordered,* that the "Request for Full Evidentiary Hearing" by the Satellite Television Viewing Rights Coalition, Inc. *Is denied.*

9. *It is further ordered,* that the Secretary *shall forward* copies of this *Report* to the appropriate Committees and Subcommittees of the House of Representatives and the Senate.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-6853 Filed 3-27-87; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL HOME LOAN BANK BOARD

### Prices for Federal Home Loan Bank Services

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice of prices for Federal Home Loan Bank Services.

**SUMMARY:** The Office of District Banks and the Office of Policy And Economic Research of the Federal Home Loan Bank Board ("Board") are publishing, pursuant to delegated authority, the prices charged by the Federal Home Loan Banks (FHLBanks) for (1) processing and settlement of items (negotiable order of withdrawal or NOW) and (2) demand deposit accounting (DDA) and other services offered to member institutions.

**EFFECTIVE DATE:** March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Hotaling, (202) 377-6715, or William J. Carey, (202) 377-6656, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** Section 11(e) of the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1431(e)) authorizes the Federal Home Loan Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C 1431(e)(2)(B)) requires the Federal Home Loan Banks to charge fees for services authorized in that section, which fees are "to be determined and regulated by the Board consistent with the principles set forth in section 11A(c) of the Federal Reserve Act." Board regulations at 12 CFR 534.6 require that the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research (or their designees) review, approve, and publish these fees at least annually. The regulations require the FHLBanks to follow four basic pricing principles as follows:

(1) Services must be priced explicitly.

(2) Services must be available to member and nonmember depository institutions on an equal basis.

(3) Over the long run, fees must cover direct and indirect costs and must also cover an imputed cost that includes taxes paid and the return on capital that would have been provided if the services had been furnished by a private firm.

(4) Interest on float must be charged at the Federal Funds rate.

In 1980, the Bank Board developed a methodology to determine compliance with these four principles, which is based on discounted cash flows from the NOW and DDA services. Since the FHLBanks had very few assets employed in the provision of these services and only projections of future income from NOW services, the methodology adopted at that time was appropriate. Compliance with the pricing principles focused on a five-year time span to recover all direct and indirect costs of these services.

At the end of 1985, the FHLBanks completed five years of NOW processing services. Both NOW services and DDA are mature activities with an asset base and normal income flows. In recognition of this evolution, the Bank Board developed an up-to-date methodology substantially similar to that adopted by the Federal Reserve Board to monitor pricing of these services.

The following section summarizes the adopted methodology, which will continue to ensure that FHLBank NOW and DDA services are not priced in a manner that would provide unfair competition to private firms.

**Methodology**

Two major issues arise in determining appropriate pricing methodology. First, competitor firms must be identified. Second, adjustment must be made for the taxes and return on capital that prices of competitor firms must cover. This adjustment is sometimes referred to as a Private Sector Adjustment Factor (PSAF).

The methodology was developed based on bank holding companies as competitor firms. Although firms in other industries could be chosen as competitors, commercial banks are generally the most frequent competitors in item processing and related services. Similarly, the Federal Reserve Bank also has chosen bank holding companies as competitors for development of

adjustments for taxes and the imputed cost of capital.

**Adjustment for Taxes and Return on Capital**

In order to compare competitor data to the FHLBanks, several broad assumptions were established as follows:

(A) NOW and DDA services may be combined under the Bank Board's pricing approval methodology.

(B) Compliance with NOW/DDA pricing guidelines is on an individual FHLBank basis.

(C) One set of bank holding company data will be applied to FHLBanks, rather than applying regional competitor data to regional FHLBanks.

(D) Federal Home Loan Bank data, which is required for the NOW/DDA pricing methodology, may be determined on an individual FHLBank basis as follows: (1) NOW/DDA prices; (2) earnings on balances generated from item processing; (3) direct and indirect costs; and (4) assets employed in NOW/DDA services.

Based on the previous assumptions, appropriate bank holding company data and FHLBanks data can be incorporated into the pricing methodology. The pricing methodology is as follows:

(A) Federal Home Loan Bank NOW/DDA costs are adjusted (increased) for the cost of financing the assets (primarily plant and equipment) employed in the provision of NOW/DDA services.

(B) NOW/DDA costs are increased for sales taxes that would have been paid if subject to such tax.

(C) NOW/DDA costs are adjusted for the cost of float at the Fed Funds rate.

(D) Imputed income taxes are applied to pre-tax NOW/DDA income using a three-year average from bank holding company data (33.5% rate).

(E) The after tax rate of return on capital from NOW/DDA services is compared to the after tax return on capital of bank holding companies (12.33% rate).

These adjustment factors ensure that the NOW/DDA services are priced in a competitive manner. Also, the factors are similar to the adjustments made by the Federal Reserve Board and represent a conservative approach consistent with the intent of Congress, that pricing encourage competition and efficiency in the provision of these services.

In accordance with these principles, the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research have reviewed and approved the current prices for Federal Home Loan Bank services, which are published herewith. The services and their prices are divided into two categories: (1) NOW Services involved in the processing and settlement of items drawn on or issued by member institutions (Schedule A); and (2) services relating to demand deposit accounts and other services maintained by member institutions with the Banks (Schedule B).

The services described in the attached schedules are not identical for any two Banks, as each Bank's program is tailored to meet the needs of the member institutions in the Bank's district. Furthermore, the volume of services rendered varies significantly among the districts, with the result that the costs of providing the services also vary from district to district. In light of these considerations, the Board continues its practice of approving separate district fee structures rather than adopting a uniform pricing scheme. This policy is consistent with the congressional intent that pricing encourage competition.

It is not required that each processing step or transaction performed by a Bank be specifically priced. This policy permits the Banks to establish fee schedules that are in line with the marketing practices of providers of correspondent services in each district.

The directors of the Office of District Banks and the Office of Policy and Economic Research of the Federal Home Loan Bank Board hereby give notice of the following fee schedules for Federal Home Loan Bank services:

**Schedule A: Item Processing and Settlement Services (1986 NOW Services)**

District 1.—Federal Home Loan Bank of Boston (services not provided).

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1986 NOW SERVICES)

| Service | Fee |
|---|---|
| Settlement (per month) | $100.00 |
| Minimum Monthly Fee | 100.00 |
| Standard Intercept (per item) | .035 |
| Standard Intercept-Delayed Check (per item) | .025 |
| Check Safekeeping: | |
| First 100,000 items/month (per item) | .020 |
| 100,001 plus items/month (per item) | .010 |
| Bulk Filing: | |
| First 100,000 items/month (per item) | .025 |
| 100,001 plus items/month (per item) | .015 |
| Statement Rendering: | |
| Bulk Filing with items (per statement) | .30 |
| Check Safekeeping without items (per statement) | .02 |
| Item Returns (per item) | 3.00 |
| Item Returns without entry (per item) | 6.00 |
| Late Return Premium | 2.50 |
| FRB Large Dollar Notification | 4.250 |
| Photocopies (per copy) | 2.50 |
| Original Item Retrieval (per item) | 4.00 |
| Datafax High Dollar Items—Front only (per item) | 1.50 |
| Datafax High Dollar Items—Both Sides (per item) | 2.00 |
| Counter Item Filming (per item) | .025 |
| Counter Item Sorting (per item) | .010 |
| Notices or Advertising Inserts (per insert) | .010 |
| Monthly History Microfiche (per 100,000 items) | 5.00 |
| Monthly History Microfiche—Additional Copies (per fiche card) | 1.00 |
| Held Paid Item Filming (per item) | .03 |

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1986 NOW SERVICES)

(For members located in the Third and Fourth Federal Reserve Districts)

| Services | Fee |
|---|---|
| Processing: | |
| First 50,000 items/month (per item) | $0.0380 |
| 50,001–100,000 items/month (per item) | .0362 |
| 100,001–150,000 items/month (per item) | .0344 |
| 150,001–200,000 items/month (per item) | .0326 |
| Over 200,000 items/month (per item) | .0308 |
| Retail Truncated Checks (per item) | .039 |
| Retail Non-truncated Checks (per item) | .049 |

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1986 NOW SERVICES)—Continued

(For members located in the Third and Fourth Federal Reserve Districts)

| Services | Fee |
|---|---|
| Over-the-Counter Checks (per item) | .15 |
| Return Call (per item) | .75 |
| Late Return Call (per item) | .66 |
| Items Over $2,500 Returned to FRB (per item) | 4.25 |
| Check Copies (per copy) | 3.00 |
| Check Retrieval (per item) | 1.50 |
| Statement & Report Postage | (1) |
| Statement Envelopes: | |
| Small (per envelope) | .05 |
| Customized (per envelope) | .07 |
| Large (per envelope) | .46 |
| MICR Sort Option (monthly fixed fee per customer of thrift) | 25.00 |
| (per item) | .03 |
| Mid-cycle statement rendering: | |
| Purged Statement (per item—minimum charge of $2.50) | .50 |
| Non-purged Statement (per statement) | 2.50 |
| Minimum Charge: (per month) | 200.00 |

[1] Actual.

NOTES: Transportation of checks or reports between Federal Home Loan Bank's designated distribution points and the individual financial institution is at the expense of the financial institution.

Until July 31, 1986, this fee schedule will be applicable for members located in the Third and Fourth Federal Reserve Districts, which include the states of Delaware and Pennsylvania and the West Virginia counties of Brooke, Hancock, Marshall, Ohio, Tyler and Wetzel. Effective August 1, 1986, this fee schedule will be applicable for all member institutions of the Federal Home Loan Bank of Pittsburgh.

(For members located in the Fifth Federal Reserve District)

| Items/month | Daily return unsorted | Daily return sorted | Trunca-tion | Bulk filing without stuffing | Bulk with stuffing |
|---|---|---|---|---|---|
| First 10,000 | $.0375 | $.0500 | $.0500 | $.0575 | $.0875 |
| Next 20,000 | .0325 | .0450 | .0450 | .0525 | .0825 |
| Next 20,000 | .0300 | .0425 | .0425 | .0500 | .0800 |
| 50,001-Over | .0225 | .0350 | .0350 | .0425 | .0725 |

| Special services | Fee |
|---|---|
| Check Retrieval or Inspection of Original Item | $1.50 |
| Photocopy | 2.50 |
| Advertising Insertion (per item) | .01 |
| Posted—"On-us" (per item) | .03 |
| Statement Stuffing for Truncated Statements (per statement) | .01 |
| Statement Stuffing of Deposit Tickets and Dishonored Notices (per item) | .09 |
| Return Items Processed by Bank (per item) | 2.50 |
| Additional Sorting Upon Request: | |
| Fine Sorting (per item) | .005 |
| Cycle Sorting (per item) | .005 |

NOTE: The Fifth Federal Reserve District includes all West Virginia Counties, with the exception of counties of Brooke, Hancock, Marshall, Ohio, Tyler and Wetzel. Effective August 1, 1986, this fee schedule will be applicable for all member institutions of the Federal Home Loan Bank of Pittsburgh.

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1986 NOW SERVICES)

| Services | Fee |
|---|---|
| Settlement Only (per month) | $100.00 |
| Daily Delivery (Same Day and Next Day): | |
| 1st 50,000 (per item) | .040 |

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1986 NOW SERVICES)—Continued

| Services | Fee |
|---|---|
| Over 50,000 (per item) | .035 |
| Bulk Filing: | |
| 1st 50,000 (per item) | .045 |
| 2nd 50,000 (per item) | .040 |
| 3rd 50,000 (per item) | .030 |
| Over 150,000 (per item) | .025 |
| Statement Matching: | |
| 1st 50,000 (per item) | .070 |
| 2nd 50,000 (per item) | .065 |
| 3rd 50,000 (per item) | .055 |
| Over 150,000 (per item) | .050 |
| —Special Statements (IRA, Savings, etc.) | [3] .020 |
| —Multiple Statement Inserts [1] | [3] .010 |
| Truncation: | |
| 1st 50,000 (per item) | .030 |
| 2nd 50,000 (per item) | .025 |
| 3rd 50,000 (per item) | .020 |
| Over 150,000 (per item) | .015 |
| Return Items | 3.00 |
| Large Dollar Return Items | 4.00 |
| Facsimile: | |
| —Large Dollar (per item) | 2.50 |
| —On Request (per item) | 2.00 |
| —Bookkeeping and Acc't No. Rejects (per item) | 2.50 |
| Over-the-Counter Items (per item) | .035 |
| Photocopies (per item) | 2.50 |
| Without Entry Items [2] | 3.50 |
| Finesort (Check Number)—Special Accounts | .02 |
| Custom Coding (for mergers, branch acquisitions and sales, etc.) | [4] 100.00 |
| Special Requests (i.e., 50 or more photocopies per request or customer account, etc.) | [4] 25.00 |
| Special Handling (if required by 2 or more account number formats resulting from mergers, conversions branch acquisitions, etc; *charging will begin four months after effective date if still required*) | [5] 500.00 |

[1] More than one insert per statement (first insert per statement is free).

[2] A Without Entry Item is a check which is sent back to the depositing institution to secure proper endorsement or obtain a refund for a forged endorsement or signature.

[3] Statement.

[4] Hour.

[5] Month.

NOTES.—The minimum monthly billing for service options (other than Settlement Only) is $100.00.

Prices for all options include data transmission to on-line or in-house processors.

Actual item delivery expense will be charged to the institution as incurred, including postage under "Statement Matching" above.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1986 NOW SERVICES)

[Service]

| Items/Month | Daily return unsorted | Daily return sorted | Truncation | Bulk filing w/out stuffing | Bulk filing with stuffing |
|---|---|---|---|---|---|
| 0–50,000 | $.0375 | $.0400 | $.0400 | $.0425 | $.0775 |
| 50,001–100,000 | .0225 | .0250 | .0250 | .0275 | .0625 |
| 100,001–150,000 | .0125 | .0150 | .0125 | .0175 | .0525 |
| 150,001–over | .0065 | .0080 | .0080 | .0115 | .0465 |

| Special services | Fee |
|---|---|
| Settlement Only (per month—flat fee) | $100.00 |
| Check Retrieval or Inspection of Original Item (per item) | 1.50 |
| Photocopy (per copy) | 1.00 |
| Advertising Inserting (per item) | .02 |
| Posted "on-us" (per item) | .03 |

| Special services | Fee |
|---|---|
| Statement Stuffing Service for Truncated Statements (per statement) | .01 |
| Statement Stuffing of Deposit Tickets and Dishonored Notices (per item) | .09 |
| Return Items Processed by Bank (per item) | 2.75 |
| Additional Sorting Upon Request: | |
| Fine Sorting (per item) | .005 |
| Cycle Sorting (per item) | .005 |
| Large Dollar Return Notification (per item) | 2.00 |

## DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1986 NOW SERVICES)

[Service]

| Items per/month | Safe-keeping | Turn-around (daily cycled) | Com-plete |
|---|---|---|---|
| 0 to 5,000 | $.045 | $.053 | $.077 |
| 5,001 to 10,000 | .037 | .048 | .075 |
| 10,001 to 15,000 | .036 | .044 | .073 |
| 15,001 to 25,000 | .031 | .037 | .072 |
| 25,001 to 50,000 | .030 | .033 | .070 |
| 50,001 to 75,000 | .026 | .030 | .066 |
| 75,001 to 100,000 | .023 | .027 | .065 |
| 100,001 to 125,000 | .021 | .024 | .064 |
| 125,001 to 150,000 | .019 | .022 | .063 |
| 150,001 to 175,000 | .017 | .020 | .062 |
| 175,001 and up | .014 | .016 | .059 |

| Ancillary service | Fee |
|---|---|
| Settlement Only (per month) | [1] $100.00 |
| Minimum Processing Fee (per month) | 40.00 |
| Over-the-Counter Items (per item) | .035 |
| No MICR/OTC | .50 |
| Exception Accounts | .50 |
| Photocopies and Facsimiles | 2.00 |
| Facsimile Items for Signature Verification on Day of Presentment | ([2]) |
| Return Items | 2.50 |
| Certified Checks | 1.00 |
| Late Returns | .25 |
| Invalid Returns | .50 |

[1] Plus $2.00/transaction.
[2] No charge.

## DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1986 NOW SERVICES)

[Service]

| Items per month | Daily returns | 24-hour delay | Bulk file | Trun-cation |
|---|---|---|---|---|
| 0 to 50,000 | $.025 | $.024 | $.023 | $.020 |
| 50,001 to 100,000 | .024 | .023 | .022 | .019 |
| 100,001 to 200,000 | .023 | .022 | .021 | .018 |
| 200,001 to 300,000 | .022 | .021 | .020 | .017 |
| 300,001 to 400,000 | .021 | .020 | .019 | .016 |
| 400,001 and over | .020 | .019 | .018 | .015 |

Note: (10% discount per item when monthly volumes exceed 500,000 items.)

| Ancillary Service | Fee |
|---|---|
| Counter Items (per item) | $0.01 |
| Return Items (per item) | 4.00 |
| Statement Preparation (per item) | .025 |
| Photocopies (per item) | 3.00 |
| Facsimile of items (per page) | 2.00 |
| Cash Letter Facsimile (per page) | 2.00 |
| Special Sorts (per item) | .0075 |
| Monthly Recap (per item) | .0025 |
| Data Transmission (per item): | |
| 0–10,000 items ($10 month minimum) | .004 |
| 10,001–50,000 items ($50 month minimum) | .004 |
| 50,001–100,000 items (no minimum) | .003 |
| 100,001 or more items (no minimum) | .002 |
| NOW settlement only (per month) | [1] 200.00 |
| Dial-A-Statement: | |
| (per month) or | 25.00 |
| (per year) or | 250.00 |
| (per statement) | 1.00 |

[1] Settlement service included in item processing fee.

## DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1986 NOW SERVICES)

[Services]

| Item processing monthly volume level | Basic fee (truncated) | Daily cycle[1,2] | Cycle/Monthly[2] | Return Items | |
|---|---|---|---|---|---|
| | | | | Monthly Volume Level | Fee |
| 1 to 25,000 | $.021 | $.017 | $.020 | 1–2,000 | $2.50 |
| 25,001 to 50,000 | .017 | .013 | .016 | 2,001–3,000 | 2.00 |
| 50,001 to 75,000 | .015 | .011 | .014 | 3,001–4,000 | 1.50 |
| 75,001 to 175,000 | .013 | .009 | .012 | 4,001–7,500 | 1.00 |
| 175,001 to 400,000 | .012 | .008 | .011 | 7,501 and over | .75 |
| 400,001 to 750,000 | .010 | .007 | .010 | | |
| 750,001 to 1,100,000 | .009 | .006 | .009 | | |
| 1,100,001 to 1,500,000 | .008 | .005 | .008 | | |
| 1,500,001 and over | .006 | .004 | .007 | | |

[1] 15% surcharge for same day daily return.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

### OTHER SERVICES

| Service | Fee |
|---|---|
| Posting File (per item) | $.0005 |
| Reject Re-entry (per reject) | .04 |
| Stop Payments (per stop) | 5.00 |
| Large Dollar Notification (per notification) | 3.00 |
| Photocopies/Microfilm Copies (per copy) | 2.75 |
| Counter Items With Microfilm (per item) | .04 |
| Counter Items Without Micr Encoding (per item) | .10 |
| Original Item Return (per item) | 2.75 |
| Certified Checks (per item) | .50 |
| Signature Verification (per page) | 1.00 |
| Fascimile Transmission (per transmission) | 1.50 |
| Telephone Advice on Missing Account No. (per item) | .50 |
| Telephone Check Inquiry (per inquiry) | 1.00 |
| Daily Settlement Reporting (per month) | 25.00 |
| Microfiche—Monthly Reports (per month) | 25.00 |
| Microfilm (per item) | .01 |
| Research/Audit (per hour) | 20.00 |

Minimum charge of $250.00 per month will apply for total NOW services.

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1986 NOW Services)

| Basic service—items/month | Service | |
|---|---|---|
| | Cycle-daily [1] | Truncated |
| Tier 1: 0 to 50,000 | $0.0375 | $0.0315 |
| Tier 2: 50,001 to 100,000 | .0300 | .0250 |
| Tier 3: 100,001 to 150,000 | .0250 | .0200 |
| Tier 4: 150,001 to 200,000 | .0200 | .0150 |
| Tier 5: 200,001 and Over | .0140 | .0100 |
| Commercial Accounts (additional per item) | | .0200 |
| Counter item integration | | .0375 |

[1] An additional $.006 for month end.

| Return | Items/month | |
|---|---|---|
| Tier 1 | 1–500 | $3.00 |
| Tier 2 | 501–1,000 | 2.00 |
| Tier 3 | 1,001 & over | 1.50 |

No extra charge for high dollar return item notification under Reg J or for the Dallas Federal Reserve Bank's $0.50 return item charge under its pilot program.

| Special Services (per item) | Fee |
|---|---|
| Photocopies or original check retrieval | $1.50 |
| Account number rejects (effective 10/1/86) | 1.00 |
| Large dollar facsimile (per page) | 1.00 |
| Settlement only (non-processing customers per month) | 50.00 |

DISTRICT 10.—FEDERAL HOME LOAN BANK OF TOPEKA (1986 NOW SERVICES)

| Return items per month | Fee per item |
|---|---|
| Processing fees: | |
| 1 to 50 | $2.50 |
| 51 to 2500 | 1.00 |
| 2501 to 4000 | .75 |
| 4001 to 5000 | .50 |
| 5001 to 6000 | .50 |
| 6001 to 8000 | .25 |
| 8001 to 12000 | .20 |
| 12001 & over | .15 |

| Items per month (per item) | Truncated | Cycled |
|---|---|---|
| 1 to 10,000 | $.020 | $.035 |
| 10,001 to 25,000 | .018 | .034 |
| 25,001 to 50,000 | .015 | .031 |
| 50,001 to 100,000 | .013 | .026 |
| 100,001 to 200,000 | .011 | .020 |
| 200,001 to 250,000 | .011 | .020 |
| 250,001 to 300,000 | .010 | .015 |
| 300,001 to 500,000 | .010 | .015 |
| 501,001 to 750,000 | .009 | .013 |
| 750,001 to 1,000,000 | .008 | .011 |
| 1,000,001 & over | .007 | .010 |

| | Fee |
|---|---|
| Other services: | |
| Minimum Monthly Processing Fee | $500.00 |
| Settlement—(w/FHLB processing) | (1) |
| Settlement Only (per month) | 100.00 |
| Item Retrieval (Photocopy—per item) | 2.00 |
| Mass Photocopy Requests: | |
| (per hour) | 12.00 |
| (per item) | .015 |
| Over-the-counter items (Microfilmed and Filed—per item) | .03 |
| Facsimile transmissions (listing of paid items—per transmission) | 1.50 |
| Large item return notification (per item over $2500 | 3.00 |

[1] No charge.

## DISTRICT 11—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1986 NOW SERVICES)

| Service | Volume price based on total items per month | | | |
|---|---|---|---|---|
| | 0 to 49,999 | 50,000 to 500,000 | 500,001 to 750,000 | 750,000 plus |
| Basic capture service (min. charge $500/mo.): | | | | |
| Capture/finesort/microfilm | $0.042 | $0.037 | $0.032 | $0.024 |
| Return item processing | 2.00 | 1.75 | 1.50 | 1.25 |
| Comprehensive NOW service (min. charge $750/mo.): | | | | |
| Capture/file/microfilm/fine sort | .042 | .037 | .032 | .024 |
| Statement preparation (truncated) | .15 | .14 | .13 | .12 |
| Statement preparation (standard) | .35 | .30 | .28 | .26 |
| Return item processing | 2.00 | 1.75 | 1.50 | 1.25 |
| Over-the-counter items | .045 | .045 | .045 | .045 |
| Statement inserts | .03 | .03 | .03 | .03 |

| Miscellaneous services | Fee |
|---|---|
| Late return item transmission—after 2:00 p.m. (per item) | $0.25 |
| Second request on previously reconciled adjustment (per occurrence) | 10.00 |
| Truncated item retrieval (per item) | 3.00 |
| Generic envelopes (each) | .025 |
| Reconciliation of member books—special research (per hour) | 25.00 |
| Microfilm: | |
| Second copy of film daily (per month) | 75.00 |
| Special request copy (per copy) | 5.00 |
| Same day microfiche: | |
| 2 copies with hardcopy processed item listing and exceeded dollar report (per month) | 75.00 |
| Hardcopy exceeded dollar report only (per month) | 65.00 |
| Additional microfiche (per copy) | 1.00 |
| Special fine sort (per item) | .04 |
| Photocopies (per copy) | 2.50 |
| Non-standard statement inserts (per insert) | .05 |
| MICR line alterations (per item) | 4.00 |
| Suplementary Service Fees | |
| Thirty day advance notice is required on all branch sales, branch mergers, branch acquisitions or service bureau changes. | |

| Miscellaneous services | Fee |
|---|---|
| Custom Programming: | |
| 1. Breakout of items by routing transit number and/or branch number (incl. listing) | 2,000.00 |
| 2. Breakout and capture of items (Processed items list/microfilm/commingled with other items for service bureau) | 3,000.00 |
| 3. Breakout, capture, and separate tape produced, including above items | 4,500.00 |
| 4. Selective account programming (miximum 50 accounts) in addition to regular programming requirements | 1,500.00 |
| 5. One-half of the original programming fee will be assessed in the event of a cancellation notice given less than 7 days in advance of effective date. | |
| Statement Handling: | |
| Set-up fee/branch outsort of items | 250.00 |
| Standard statement rendition (close-out statements) (each) | .50 |
| Non-standard statement rendition: | |
| First 90 days (each) | .75 |
| After 90 days (each) | 1.00 |

## DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1986 NOW SERVICES)

| Service item | Fee |
|---|---|
| Base Per Item Fees: | |
| Daily Return of Items to Member (per item) | $0.025 |
| Truncation of all Items by Bank (per item) | .025 |
| Bulk File of Items, Returned to Member (per item) | .030 |
| Bulk File of Items with Statement Handling (per item) | .050 |
| Truncated Account Statement Handling (per statement) | .060 |
| Volume Credits Per Item: | |
| 25,001 to 50,000 items per month (per item) | .0025 |
| 50,001 to 75,000 items per month (per item) | .0025 |
| 75,001 to 100,000 items per month (per item) | .0025 |
| 100,001 to 200,000 items per month (per item) | .0025 |
| 200,001 to 400,000 items per month (per item) | .0050 |
| 400,001 to 600,000 items per month (per item) | .0050 |
| 600,001 or more items per month (per item) | .0025 |
| Other Fees: | |
| Large Dollar Amount and Other Special Verifications (each) | .75 |
| Return (overdraft, etc.) Item Handling (each) | .80 |
| Photocopy Requests (NOW User) (each) | 1.00 |
| Research Requests (NOW User) (each) | 1.00 |
| Photocopy Requests (non-user) (each) | 5.00 |
| Research Requests (non-user) (each) | 5.00 |
| Special Fine Sorts (per item) | .01 |
| Burst or Fold only for Statements (per statement) (Minimum of $30.00 per month) | .005 |

Schedule B: Demand Deposit and Other Services (1986 DDA Services)

## DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

| Services | Fee |
|---|---|
| Checks and Items Paid (per item) | $.13 |
| Deposits (per item) | .20 |
| Debit/Credit Memos: | |
| Federal Reserve Settlement (per item) [1] | .40 |
| Internal Transfers and Zero Balance Transfers | ([2]) |
| Others (per item) | .10 |
| Wire Transfer: | |
| In (per item) | 3.50 |
| Out (per item) | 5.00 |
| International Wire Transfers | ([3]) |
| Account Maintenance (per month) | 6.50 |
| Special Statements (per statement) | 2.50 |
| Stop Payment Orders (per item) | 8.50 |
| Account Reconciliation: | |
| Paper Issues (per item) | .065 |
| Magnetic Tape Issues (per item) | .035 |
| Voided Items Input | ([2]) |
| Look-up and Photocopies of Checks (per item) | 2.50 |

[1] Federal Reserve Settlements include ACH, Series E-Bond Redemption, Cash Letter Settlements (Inclearings and Outclearings), Regulation D Reserve Pass-Throughs, Treasury Tax and Loan Settlements.
[2] No charge.
[3] Fee varies based on current international rates and cable remittance fees.
NOTES.—All collected IDEAL WAY deposits earn immediate interest paid in hard dollars monthly via credit to the member's account at month end.
Interest Rates are set daily.
Fees for services are paid in hard dollars monthly via a debit to the member's account.

## DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1986 DDA SERVICES)

| Service | | Fee |
|---|---|---|
| **DEPOSIT SERVICES** | | |
| Per Item Fees | Unencoded | Encoded |
| First 100,000 items/month | $0.070 | $0.050 |
| 100,001 to 300,000 items/month | .065 | .045 |
| 300,001 plus items/month | .060 | .040 |
| Special Service Fees: | | |
| Saturday Premium (per item) | | $0.01 |
| Cash Letter Deposit (per deposit) | | .50 |
| Return Item (per item) | | 1.25 |
| Return Item (unendorsed) (per return) | | 8.75 |
| Non Cash Collection (per item) | | 3.50 |
| Security Coupon Collection (per envelope) | | 3.50 |

## DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1986 DDA SERVICES)—Continued

| Service | | Fee |
|---|---|---|
| Photocopies (per copy) | | 5.00 |
| Lockbox Service: [2] | | |
| Remittance Processing (per item) | | .125 |
| Check Deposit (per check) | | .050 |
| Return Item (per check) | | 1.250 |
| Exception Item (per item) | | .100 |
| Photocopies (per copy) | | 5.000 |
| Coupon Format Set Up (one-time fee) (per format) | | 250.000 |
| Coin & Currency Service: | | |
| Shipments | | ([1]) |
| Cash Order [2] (per order) | | 6.50 |
| Cash Return (per return) | | 3.00 |
| Rolled Coin (per roll) | | .05 |
| Deposits: | | |
| Currency Verification (per $1,000) | | .35 |

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1986 DDA SERVICES)—Continued

| Service | | Fee |
|---|---|---|
| Coin Verification (loose coin) (per bag) | | .35 |
| Coin Verification (rolled coin) (per bag) | | 10.00 |
| **DISBURSEMENT SERVICES** | | |
| Checks and Money Orders: | | |
| First 10,000 items/month (per item) | | .22 |
| 10,001 plus items/month (per item) | | .17 |
| Zero Reconcilement Premium: | | |
| Issuance reported via magnetic tape (per item) | | .03 |
| Issuance reported via paper (per item) | | .05 |
| **FUNDS TRANSFER** | | |
| Wires In (per wire) | | 1.50 |
| Wires Out (per wire) | | 7.00 |
| Safekeeping Services: | | |
| Maintenance: | | |
| Less than 25 securities (per month) | | 33.00 |
| More than 25 securities (per month) | | 75.00 |
| Per Item Charge: | | |
| Physical securities (per month) | | 5.00 |
| Book entries (per month) | | 2.50 |
| Purchases and Sales (per transaction) | | 30.00 |
| Marturities (per transaction) | | 10.00 |
| Coupons (per transaction) | | 4.00 |
| **MISCELLANEOUS CORRESPONDENT SERVICES** | | |
| Depository Transfer Checks (per check) | | 3.00 |
| Savings Bond Redemption (per transmittal) | | 3.00 |
| Federal Recurring Payments (per transaction) | | 3.00 |
| Automated Clearing House Transactions (per transaction | | 3.00 |
| Treasury TAX and Loan Accounts (per transaction) | | 3.00 |
| Electronic Balance Reporting (Consolidated Balances and Transaction Detail) | | [4] |

[1] Price varies by location.
[2] Cash orders must be placed and funded one day prior to delivery.
[3] A minimum monthly service charge of $250 applies to the Lockbox Service.
[4] Fees for special services will be negotiated based on the number of transactions.

DISTRICT 3.—Federal Home Loan Bank of Pittsburgh (1986 DDA Services)

| Service | Fee |
|---|---|
| *Deposit Processing Service:* | |
| Deposit Ticket Entry (per entry) | [1] |
| Deposit Transfer Voucher (per entry) | $1.75 |
| Mail Deposit Ticket Entry (per entry) | 2.25 |
| Deposit Item Processing (per item) | [1] |
| Deposit Item Encoding (per item) | [1] |
| Deposit Item Return (per item) | [1] |
| Deposit Item Photocopy (per item) | [1] |
| Deposit Pickup (per pickup) | [1] |
| *Check and Money Order Clearing Service:* | |
| Clearing Item Processing (per item) | .11 |
| Clearing Item Reconciliation Copy Processing By Manual Input (per item) | .06 |

DISTRICT 3.—Federal Home Loan Bank of Pittsburgh (1986 DDA Services)—Continued

| Service | Fee |
|---|---|
| By Magnetic Tape Input (per item) | .03 |
| Clearing Item Fine Sorting for Return with Bank Statements (per item) | .06 |
| Stop Payment Orders (per entry) | 9.75 |
| Imprinting Checks and Money Orders | [2] |
| Standard Earnings Checks (per item) | [1] |
| *Wire Transfer of Funds:* | |
| Outgoing Wires: | |
| Receiving Bank On-line (Federal Reserve) (per transfer) | 6.00 |
| Receiving Bank Off-line (Federal Reserve) (per transfer) | 8.25 |
| Incoming Wires (per transfer) | 3.50 |
| ACH Debit/Credit (per item) | .05 |
| *Lockbox Service:* | |
| Lockbox Item Processing (per item) | [1] |
| Deposit Item Processing (per item) | [1] |
| Deposit Ticket Entry (per entry) | [1] |
| Transportation (per month) (per institution) | [1] |
| *Account Maintenance* (per acct./month) | 8.00 |
| *Account Overdraft Penalty* | [3] |

[1] No charge.
[2] Direct cost pass-through from supplier.
[3] Greater of $75 or interest for one day on the amount of the overdraft at the highest advance rate plus 3%.

| Service | Fee |
|---|---|
| *Collection Service:* | |
| Foreign Items | |
| West (drawee bank charges) | [1] |
| East (drawee bank charges) | [1] |
| Bonds (East Only) (per bond) | [2] |
| Bond Coupons | |
| West (per envelope) | [2] |
| East (per envelope) | [2] |
| *Eastern Coin and Currency Service:* | |
| *Requisition* | |
| Currency (per strap) | [2] |
| Coin (per box) | [2] |
| (per bag) | [2] |
| *Deposit* | |
| Currency/Food Coupons (per $1,000 or part thereof) | [2] |
| Coin (per bag) | [2] |
| *Transportation* | |
| Zone 1 (per stop) | [2] |
| Zone 2 (per stop) | [2] |
| *Western Coin and Currency Service:* | |
| *Requisition* | |
| Currency (per $1,000 or part thereof) | [2] |
| Coin (per box) | [2] |
| *Deposit* (per $1,000 or part thereof) | |
| Currency | [2] |
| Coin | |
| Unsorted | [2] |
| Sorted | [2] |
| Food Coupons | |
| Unsorted | [2] |
| Sorted | [2] |
| *Transportation* | |
| Western Pennsylvania (per stop) | [2] |
| *Western Virginia* | |
| Zone 1 (per stop) | [2] |
| Zone 2 (per stop) | [2] |

[1] No Item Charge, But Drawee Bank Charges are assessed.
[2] No charge.

| Service | Fee |
|---|---|
| *Safekeeping and Investment Service*: | |
| Trade Executed (per transaction) | $10.00 |
| Receipt of Security | |
| Physical Form (per transaction) | 14.00 |
| DTC (per transaction) | [1] |
| Book Entry (per transaction) | 8.00, |
| Delivery of Security | |
| Physical Form (per transaction) | 14.00 |
| DTC (per transaction) | [1] |
| Book Entry (per transaction) | 8.00 |
| Redemption at Maturity | |
| Physical Form (per transaction) | 14.00 |
| DTC (per transaction) | [1] |
| Book Entry (per transaction) | 8.00 |
| Income Collection | |
| Physical form (per collection, per issue) | [1] |
| DTC (per collection, per issue) | 4.00 |
| Book entry (per collection, per issue) | [1] |
| Safekeeping Account Maintenance (per month) | 10.00 |
| Switch Account/Pledge | |
| Physical Form (per transaction) | 12.00 |
| Book Entry (per transaction) | [1] |
| Retail-Repo Custodial Service (per month) | [1] |
| *Safekeeping Charge for Advance Collateral*: | |
| Assignment of Outstanding Advances, Advance Commitments, Letters of Credit, and Interest Rate Swaps | [2] |
| Physical Delivery of Outstanding Advances, Advance Commitments, Letters of Credit, and Interest Rate Swaps | [3] |

[1] No charge.
[2] Greater of $2.00 per million or $10.00 per month.
[3] Greater of $4.00 per million or $10.00 per month.

## DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1986 DDA SERVICES)

| Service | Fee |
|---|---|
| Checks paid [1] (per item): | |
| Monthly statement with items fine sorted | $0.12 |
| Monthly statement with items truncated | .08 |
| Photocopies (non-truncated accounts only) (per item) | 2.00 |
| Stop payment (per item) | 8.00 |
| Without Entry Items | [2] 3.50 |
| Deposit Transfer Checks (DTC) (per item) | 4.00 |
| Wire Transfers: | |
| In (per item) | [3] 3.00 |
| Out (per item) | [3] 4.00 |
| Phone advice (per item) | [3] 2.50 |
| Account Reconciliation Service: | |
| Full reconciliation—magnetic tape ($20.00 min./mo.) (per issue) | .0325 |
| Full reconciliation—paper issue ($20.00 min./mo.): | |
| —Encoded amounts (per issue) | .0475 |
| —Unencoded amounts (per issue) | .07 |
| Partial reconciliation ($10.00 min./mo.) (per paid item) | .03 |
| Deposit Processing: | |
| Unencoded checks (per item) | [3].06 |
| Encoded checks (per item) | [3].04 |
| Foreign checks (per item) | 3.50 |
| Bond coupons (per envelope) | 3.50 |
| Deposited checks returned (per entry) | 2.50 |
| Automated Clearinghouse (ACH) Service: | |
| Originating—$15.00 per tape plus (per item) | .07 |
| Receiving—$100.00 settlement per month plus (per item) | .05 |
| Settlement Only Services: | |
| Automated Clearinghouse (ACH) (per month) | 100.00 |
| Currency and Coin (per month) | 100.00 |
| Treasury Tax and Loan (TT&L) (per entry) | 3.50 |
| Savings Bonds (per entry) | 3.50 |
| Deposit of items at Fed (per month) | 100.00 |
| Non-cash collections (per entry) | 3.50 |
| Currency and Coin Service (Full): $100.00 settlement/month plus (per order) | 3.50 |

[1] The Checks paid charge includes at no additional charge: monthly account maintenance, internal transfers, special statement drops, and return of items not paid.

[2] A "Without Entry Item" is a check which is sent back to the depositing institution to secure proper endorsement or to obtain a refund for a forged endorsement or signature.

[3] Federal Reserve charges are reflected in these prices. Any changes in Federal Reserve prices may result in adjustments to these prices.

NOTES.—Overdrafts incur a penalty calculated at 4% over the current short-term variable advance rate, with a minimum charge of $50.00 per occurrence.

Check printing costs are charged directly to the institution, with no additional fee.

Special services will be charged on an hourly basis.

Magnetic tapes sent to members and not returned to the Bank within 90 days will be billed at $12.00 per tape.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1986 DDA SERVICES)

| Demand deposit account services | Per item charge |
|---|---|
| Reconciled Paid Items | $.070 |
| Magnetic Tape Reconciliation | .045 |
| Advice Reconciliation | .045 |
| Fine Sorting | .005 |
| Check and Money Order Safekeeping | ([1]) |
| Stop Payments | 5.00 |
| Wire Transfer-In | 2.00 |
| Wire Transfer-In—Telephone Confirmation | 3.00 |
| Wire Transfer-Out | 5.00 |
| Charges | .11 |
| Credits | .11 |
| Photocopies | 1.00 |
| Large Dollar Return Notification | 2.00 |
| Settlement Agent with Federal Reserve: | |
| ACH (per active month) | 100.00 |
| Treasury Tax and Loan (per active month) | 50.00 |
| Bond Redemption (per active month) | 50.00 |
| Currency and Coin (per active month) | 75.00 |
| Check Deposits (per active month) | 200.00 |

[1] No charge.

NOTE.—IFTS Interest: Members' daily collected funds in excess of their compensating balance automatically earn IFTS interest.

(Check Deposit Service)

| Cincinnati operations center | Fee | |
|---|---|---|
| | Unencoded | Encoded |
| Cincinnati City | $.025 | $.015 |
| Cincinnati RCPC (Special) | .025 | .015 |
| U.S. Treasury | .025 | .015 |
| Cincinnati RCPC | .045 | .035 |
| Columbus City/RCPC | .045 | .035 |
| Louisville City/RCPC | .045 | .035 |
| Other FRB (1-Day) | .080 | .070 |
| Other FRB (2-Day) | .090 | .080 |

Volume discounts on all items when total deposited items fall within below listed categories.

| Discount | Monthly volume range |
|---|---|
| 7.5% | 100,001–200,000 |
| 15.0% | 200,001+ |

| Additional services | Per item charge |
|---|---|
| Photocopy (per item) | $1.00 |
| Dishonored Items: | |
| Returned to Association (per item) | 1.00 |
| Automatically Re-deposited | (1) |
| Non-Cash Collection Service—Minimum: | |
| Non-Cash Item (per item) | 3.50 |
| Security Coupon Collection (per envelope) | 3.50 |
| Coupon Return Item (per item) | 5.00 |
| Foreign Item (per item) | 2.50 |
| U.S. Treasury and Gov't Agency Coupons | (2) |
| Depository Transfer Checks (DTC) (per item) | 3.00 |
| Cash Letter Fee (per letter) | (3).50 |

[1] Check deposit per item fee.
[2] No charge.
[3] $.25 per "Cash Letter" when depositing over 100,000 items per month.

(Check Deposit Service)

| Cleveland Operations Center | Fee | |
|---|---|---|
| | Unencoded | Encoded |
| Cleveland City | $.025 | $.015 |
| Cleveland RCPC (Special) | .025 | .015 |
| U.S. Treasury | .025 | .015 |
| Cleveland RCPC | .045 | .035 |
| Columbus City/RCPC | .045 | .035 |
| Other FRB | .080 | .070 |

Volume discounts on all items when total deposited items fall within below listed categories.

| Discount | Monthly volume range |
|---|---|
| 7.5% | 100,001–200,000 |
| 15.0% | 200,001+ |

| Additional services | Per item charge |
|---|---|
| Photocopy (per item) | $1.00 |
| Dishonored Items: | |
| Returned to Association (per item) | 1.00 |
| Automatically Re-deposited | (1) |
| Non-Cash Collection Service—Minimum: | |
| Non-Cash Item (per item) | 3.50 |
| Security Coupon Collection (per envelope) | 3.50 |
| Coupon Return Item (per item) | 5.00 |
| Foreign Item (per item) | 2.50 |
| U.S. Treasury and Gov't Agency Coupons | (2) |
| Depository Transfer Checks (DTC) (per item) | 3.00 |
| Cash Letter Fee (per letter) | (3).50 |

[1] Check deposit per item fee.
[2] No charge.
[3] $.25 per "Cash Letter" when depositing over 100,000 items per month.

(Check Deposit Service)

| Nashville operations center | Fee | |
|---|---|---|
| | Unencoded | Encoded |
| Nashville City | $.035 | $.025 |
| Nashville RCPC | .045 | .035 |
| U.S. Treasury | .025 | .015 |
| Nashville NOW On-Us | .025 | .015 |
| DDA On-Us | .025 | .015 |
| Other FRB | .075 | .065 |

Volume discounts on all items when total deposited items fall within below listed categories.

| Discounts | Monthly volume range |
|---|---|
| 7.5% | 100,001-200,000 |
| 15.0% | 200,001+ |

| Additional services | Per item charge |
|---|---|
| Photocopy (per item) | $1.00 |
| Dishonored Items: | |
| Returned to Association (per item) | 1.00 |
| Automatically Re-deposited | (1) |
| Non-Cash Collection Service—Minimum: | |
| Non-Cash Item (per item) | 3.50 |
| Security Coupon Collection (per envelope) | 3.50 |
| Coupon Return Item (per item) | 5.00 |
| Foreign Item (per item) | 2.50 |
| U.S. Treasury and Gov't Agency Coupons | (2) |
| Depository Transfer Checks (DTC) (per item) | 3.00 |
| Cash Letter Fee (per letter) | (3).50 |

[1] Check deposit per item fee.
[2] No charge.
[3] $.25 per "Cash Letter" when depositing over 100,000 items per month.

(Currency and Coin Service)

| Preparation Charge | Fee |
|---|---|
| *Members in Kentucky & Ohio:* | |
| Currency (per order) | $7.50 |
| Wrapped coin (per box) | 1.50 |
| Pick-up of Coin and Currency: | |
| Strapped currency (per strapped deposit) | $5.00 |
| Currency (per mixed or unfilled straps) | 6.00 |
| Coin (same denomination) (per bag) | 2.00 |
| Coin (mixed denomination) (per bag) | 4.00 |

Transportation Charge.—Please contact the Bank for the specific fee relative to your area.

| Preparation Charge | Fee |
|---|---|
| *Members in Nashville Federal Reserve Territory:* | |
| Currency and/or loose coin (per order) | $2.00 |
| Wrapped coin (per roll) | .0355 |
| Pick-up Currency and Coin (per occurence) | 1.00 |

Transportation Charge.—Please contact the Bank for the specific fee relative to your area.

| | |
|---|---|
| *Safekeeping Service:* | |
| Receive or Deliver (Per Transaction): | |
| Book Entry | $12.00 |
| Physical | 25.00 |
| Redemption (Per Transaction): | |
| Book Entry | $15.00 |
| Physical | 25.00 |
| Interest Coupons (Per Transaction) | $2.50 |
| Pledges (Per Transaction): | |
| Book Entry | $15.00 |
| Physical | 25.00 |
| Account Maintenance (per month) | 15.00 |
| Safekeeping Account Maintenance (per month) | $25.00 |
| Retail Repurchase Account Maintenance (per month) | $15.00 |
| Contemporaneous Reserve Settlement (per month) | $75.00 |
| *Lockbox Services:* | |
| OCR Standard Item Fee | $.15 |
| Includes.—Courier pickup at lockbox, Microfilming of check and document, Transmission to service bureau, Management reports, Check deposit fee (encoding & clearing), Certain exception handling: | |
| *Additional Services/Fees:* | |
| Lockbox rental | (1) |
| Photocopies (per copy) | $1.00 |
| Hot File Update (Add or Delete) (per update) | .50 |
| Hot File Update (Magnetic Tape) (per tape) | 10.00 |
| Courier/postage | (2) |
| Dishonored Check Item: | |
| a. Returned to Association (per item) | 1.00 |
| b. Automatically Re-deposited (per item) | (3) |
| Reject or Unmatched Item | (4) |
| Other desired services | (2) |

[1] Actual cost prorated among users.
[2] Actual cost.
[3] The per item check processing fee for the member's region.
[4] No fee.

NOTE.—The Bank will allow members to be charged implicitly or explicitly in the same form and manner as other correspondent services.

District 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1986 DDA SERVICES)

| Cash management service | Paid check charge | Advices | |
|---|---|---|---|
| | | Paper | Tape |
| Quarterly transaction volume: | | | |
| First 3,750 | $.13 | $.05 | $.025 |
| Next 9,000 | .11 | .04 | .02 |
| Next 12,250 | .09 | .04 | .02 |
| Next 25,000 | .08 | .03 | .015 |
| All over 50,000 | .07 | .02 | .01 |
| Stop payments—$2.00 | | | |

| Other services | Detroit | Indianapolis |
|---|---|---|
| *Transit Item Deposit Program:* | | |
| Pre-encoded: | | |
| City Items | $.021 | $.02 |
| RCPC Items | .02 | .02 |
| Other District Items | .052 | .05 |
| Encoding Errors | .30 | .30 |
| Unencoded: | | |
| City Items | .068 | .06 |
| RCPC Items | .068 | .06 |
| O.D. Items | .068 | .06 |
| Return Items | .75 | .75 |
| *Demand Deposit Services:* | | |
| Transaction Charges | | (1) |
| *Lockbox Services:* | | |
| Per Deposit Item Received | | $.18 |
| Truncation of Coupons | | .02 |

BEST COPY AVAILABLE

| Other services | Detroit | Indianapolis |
|---|---|---|
| *Coin and Currency Program:* | | |
| Metropolitan areas of Indianapolis & Detriot—per delivery by armored truck service | | $25.00 |
| Outside Metropolitan areas: Fees vary depending upon the distances involved | | |
| *Wire Transfer Services:* | | |
| In (per transfer) Domestic | | 2.00 |
| Out (per transfer) Domestic | | 4.00 |
| International Wires | | 17.00 |
| Depository Transfer Checks: (per check) | | 2.00 |
| Automated Clearinghouse (ACH) Service: | | |
| Per Tape | | 5.00 |
| Per Item (Originator) | | .02 |
| Settlement Only | | [illegible] |
| Treasury Tax and Loan Settlement Service: (per transaction) | | 2.00 |

[1] Fee.

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1986 DDA SERVICES)

| Services—monthly volume | Fee | |
|---|---|---|
| | Nontruncated accounts | Truncated accounts |
| *A. Demand Accounts* | | |
| Items Processed: | | |
| 0 to 7,500 | $0.110 | [illegible] |
| 7,501 to 10,000 | .100 | .08 |
| 10,001 to 12,500 | .090 | .070 |
| 12,501 to 15,000 | .080 | .060 |
| 15,001 to 25,000 | .075 | .055 |
| 25,001 and over | .070 | .050 |
| Alternative Demand Disbursement Service: | | |
| 800 Series—Next Day Remittance | | [1] |
| 900 Series—Three Day Remittance (per item issued) | | .050 |
| Ancillary Services Fees: | | |
| Special Sorts (per item) | | .0075 |
| Recons: | | |
| —Non-Encoded Items (per item) | | .055 |
| —Encoded Items (per item) | | .020 |
| —Magnetic Tape Items (per item | | .020 |
| Stop Payments (per stop placed) | | 7.00 |
| Photocopies (per item) | | 3.00 |
| Account Maintenance (per account per month) | | 10.00 |
| Additional Statements (per statement) | | 5.00 |
| Request for Money Order Forms | | [2] |
| Postage/Courier | | [2] |
| ACH Services | | [2] |
| Dial-A-Statement: | | |
| per month or | | 25.00 |
| per year or | | 250.00 |
| per statement | | 1.00 |
| *B. Deposit Processing* | | |
| Checks Deposit Drawn on: | | |
| Federal Home Loan Bank of Chicago, FHLB Intercept Customers, Postal Money Orders | | .015 |
| U.S. Treasury Check | | .015 |
| City of Chicago Financial Institutions: | | |
| 0–10,000 | | .032 |
| 10,001–25,000 | .030 | |
| 25,001 and over | | .028 |
| Non-Federal Reserve Chicago RCPC (clearinghouse items): | | |
| 0–10,000 | | .037 |
| 10,001–25,000 | | .035 |
| 25,001 and over | | .033 |
| Chicago RCPC Financial Institutions (Routing Numbers 0711, 0712, 0719, 2711, 2712, 2719): | | |
| 0–10,000 | | .049 |

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1986 DDA SERVICES)—Continued

| Services—monthly volume | Fee | |
|---|---|---|
| | Nontruncated accounts | Truncated accounts |
| 10,001–25,000 | | .047 |
| 25,001 and over | | .045 |
| Transit Items—Other Federal Reserve Office Financial Institutions: | | |
| 0-10,000 | | .079 |
| 10,001-25,000 | | .077 |
| 25,001 and over | | .075 |
| Selected High Dollar ($10,000 and over) End Points | | .035 |
| Ancillary Service Fees: | | |
| Check Encoding (per item) | | .035 |
| Return Items: | | |
| Re-Deposits | | (1) |
| Charge Backs (per item) | | 1.00 |
| Food Stamps Deposited (per item) | | .02 |
| Noncash Collection Items (coupons and foreign items) (per item) | | 2.50 |
| Coin and Currency Orders (per order/per branch) | | 2.00 |
| Visa/Mastercard Deposits | | 2.00 |
| Quick Deposit Drafts | | 2.00 |
| *C. Money Transfers:* | | |
| Wire Transfers: | | |
| In | | 2.00 |
| With Telephone Advice | | 4.00 |
| Out | | 4.00 |
| With Telephone Advice | | 6.00 |
| Quick Deposit Drafts | | 2.00 |
| *D. Safekeeping* | | |
| Receipt or Delivery: | | |
| Books Entry Item | | 30.00 |
| Physical Item | | 40.00 |
| Coupon Collection | | 5.00 |
| Collection at Maturity | | (1) |
| Annual Maintenance (billed quarterly): | | |
| Par Amount Under $5 million | | 150.00 |
| Par Amount $5 million or Over (per million) | | 40.00 |
| Monthly Reports | | (1) |
| Registration Fees | | (2) |
| Transfer to or from Pledge Status | | 60.00 |
| Maintenance of Collateral for FHLB Advances: | | |
| Place Note and Mortgage in Vault: | | |
| Deliver with listing only | | 1.00 |
| Deliver with listing and computer tape | | .75 |
| Remove Note and Mortgage from Vault | | .75 |
| Annual Maintenance Charge (per quarter) | | .30 |

[1] No Charge.
[2] Actual cost.

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1986 DDA SERVICES)

| DDA Service activity | Fee |
|---|---|
| Account Maintenance | $5.00 |
| Account Reconciliation | 5.00 |
| Check Printing Costs | (1) |
| Drafts Paid: | |
| Truncated | .04 |
| Non-Truncated | .05 |
| Stop Payments | 5.00 |
| Ledger Credits | .20 |
| Ledger Debits | .10 |
| Bankwires in: | |
| —Without Phone Advice | 2.50 |
| —With Phone Advice | 3.50 |

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1986 DDA SERVICES)—Continued

| DDA Service activity | Fee |
|---|---|
| Bankwires Out: | |
| —Without Phone Advice | 4.00 |
| —With Phone Advice | 5.00 |
| Special Cut-off Statements | 3.00 |
| Account Reconciliation Tape Issues | .32 |
| Issue Encoding | .04 |
| Safekeeping Transactions | 10.00 |
| Retail Repurchase Transactions, (per page) plus $25.00 Main. Fee | .25 |
| Microfilm Processing | 4.00 |
| Microfilm Duplication | 5.00 |
| ACH Transaction | [1] |
| Miscellaneous Charges/Special Processing | [1] |
| Controlled Disbursement Drafts | .055 |
| Pre-encoded Issues | .03 |
| Pledge Agreements | 20.00 |
| ACH Settlement Charges | .50 |

[1] Actual cost.

| Proof of deposit service | Fee |
|---|---|
| Entry Fee for all items | $.003 |
| Re-enter Rejects | .04 |
| Encoding Fee (Des Moines, Minneapolis & St. Louis) | .0225 |
| Encoding Fee (Kansas City) | .025 |
| Data Transmission (per transmission) | 1.50 |
| Fine Sort "on-us" items | .005 |
| Printed Reports—Standard (per report) | 1.00 |
| plus (per page) | .05 |
| Optional | [1] |
| plus (per page) | .05 |
| Minimum monthly biling | 40.00 |
| Facsimile Transaction (per transmission) | 1.50 |
| Account Transaction Info. (per call) | 1.00 |
| Miscellaneous Charges/Special Processing | [2] |
| Food Stamps Deposited (Des Moines, Kansas City, and St. Louis) | .02 |
| Food Stamps Deposited (Minneapolis) | 2.04 |
| Coupons/Per Envelope | 2.50 |

[1] At a quoted rate.
[2] Actual cost.

| | Minne-apolis | Des Moines | St. Louis | Kansas City |
|---|---|---|---|---|
| Deposited Item Charges: | | | | |
| Local | $.020 | $.025 | $.025 | $.019 |
| Regional | .0375 | .035 | .030 | ..... |
| Regional Premium | .050 | .04 | .035 | ..... |
| Country | .045 | ..... | .0325 | .029 |
| Out of State | .080 | .0525 | .067 | .079 |

DEPOSIT PROCESSING FEE SCHEDULE

| Check clearing fees | En-coded | Unen-coded |
|---|---|---|
| a. Des Moines Center [1] | | |
| Local | $.025 | $.0475 |
| Regional | .035 | .0575 |
| Regional—Premium | .040 | .0625 |
| Transit | .0525 | .075 |

[1] At a quoted rate.
[2] Actual cost.
[3] A 10% discount per item on processing fees only is given when monthly volume exceeds 200,000 items.

| Check clearing fees | En-coded | Unen-coded |
|---|---|---|
| b. Minneapolis Center (1) | | |
| Local | $.020 | $.0425 |
| Regional | .0375 | .060 |
| Regional—Premium | .050 | .0725 |
| Country | .045 | .0675 |
| Transit | .080 | .1025 |
| c. Kansas City Center (1) | | |
| Local | .019 | .044 |
| Country | .029 | .054 |
| Transit | .079 | .104 |
| d. St. Louis Center (1) | | |
| Local | .027 | .0495 |
| Regional | .030 | .0525 |
| Regional—Premium | .035 | .0575 |
| Country | .0325 | .055 |
| Transit | .067 | .0895 |

[1] A 10% discount per item on processing fees only is given when monthly volume exceeds 200,000 items.

| Other Fees at the Four | Fee |
|---|---|
| Regional Processing Centers: | |
| Return Items | $.75 |
| Food Coupons | .02 |
| Bond Coupons (per envelope) | 2.50 |
| Large Dollar Notification (Reg. J)(per item) | 3.00 |
| Return Items—Special Handling: | |
| Subtotal by office | 1.50 |
| Individual Entries (per entry) | .50 |
| Telephone Notification Less Than $2,500 (per item) | [illegible] |
| Balance/Availability Reporting (per month) | 30.00 |
| Endpoint Analysis (per day) | 20.00 |
| Non-Processable Items (Pre-Encoded) (per item) | .15 |
| Photocopies (per copy) | 2.75 |
| Research (per hour) | 20.00 |
| Currency/Coin Orders | 2.00 |
| Foreign Currency Deposits (per deposit) | 5.00 |
| Foreign Currency Orders (per order) | 2.50 |
| Per Cash Deposit (Credit Tickets): | |
| Standard Packaging | .50 |
| Non-Standard Packaging | 10.00 |
| Special Cash Orders/Deposits | (1) |
| Collection Item (Non-Local Banks) (per item) | 3.50 |
| Federal Reserve Bank Settlement Entries (per entry) | .50 |
| **Additional Services (St. Louis Center)** | |
| Package Sort I: | |
| (Pre-encoded items representing 100% of association's daily work) | |
| Local | $.0195 |
| Regional | .023 |
| Country | .029 |
| Transit | .067 |
| Package Sort II: | |
| (Pre-encoded items that do not represent 100% of association's daily work) | |
| Local | .024 |
| Regional | .024 |
| Country | .029 |
| Transit | .0675 |
| Package Sort III: | |
| (Deposits containing only pre-encoded transit items) | |
| (items not payable in the St. Louis Fed. zone) | |
| Pre-encoded Transit items | .0725 |

[1] Standard order fee plus actual charges.

| Lockbox Service | Fee |
|---|---|
| 1. Basic Service | $.13 |
| 2. Transmit via user supplied equipment | .01 |
| 3. Transmit via FHLBank supplied equipment | .015 |
| 4. Data prep. for transmission | .04 |
| 5. Re-enter/Reprocess item | .08 |
| 6. Keypunch or MICR encode from handwritten document | .05 |
| 7. Keypunch or MICR encode from pre-printed document | .04 |
| 8. Photocopies | .20 |
| 9. Microfilm copies | 2.75 |
| 10. Storage | N/A |
| 11. Due on sale edit | .005 |
| 12. Write loan account number on check (per item) | .02 |
| 13. Write check number, amount and/or loan number on envelope and return (per item) | .05 |
| 14. Pull selected checks to be non-processed (per item) | .001 |
| 15. Check postmark/sort by date | .001 |
| 16. Call L.B. totals posted (daily) | 1.00 |
| 17. Telephone verification of account number, etc. (per item) | .50 |
| 18. Process additions to savings or checking accounts | .25 |
| 19. Process additions to principal, escrow, etc. (per item) | .05 |
| 20. Sort and batch envelopes by type of return in sequence (per item) | .001 |
| 21. Batch payments by type in processing (per item) | .001 |
| 22. Process multiple payments (per transaction) | .01 |
| 23. Process late fees/delinquents, when total amount due not shown (per transaction) | .01 |
| 24. Process "certified funds required" (per item) | .01 |
| 25. Screen envelope for attention line (per item) | .001 |
| 26. Sort and package output (daily) | 1.00 |
| 27. Date stamp checks, coupons, etc. (per item) | .005 |
| 28. Microfilm checks, coupons, etc. (per item) | .01 |
| 29. Courier/postage | (1) |
| 30. Post Office box rental | (1) |
| 31. Local messenger service | (1) |
| 32. Minimum monthly billing | 40.00 |
| 33. Modified processing; open and screen performed by member | .08 |
| 34. Pull system rejects/hot file rejects (per item) | .02 |
| 35. Update hot file (manual) (per addition) | .50 |
| 36. Update hot file (data transmission) (per addition) | .015 |
| 37. Process payments top hot file (per item) | (2).004 |

[1] Actual cost.
[2] Over 5,000 items processed, the per item price is $.002.

| Automated clearing house (ACH) and Electronic funds transfer (EFT) services | Fee |
|---|---|
| ACH Pass-Through (Receiving): | |
| 1. Pick up ACH tape from local FRB and transmit/deliver to data processor | |
| (per tape) | $1.00 |
| (plus per item) | .01 |
| 2. Process multiple tapes from FRB and transmit/deliver one consolidated tape to data processor | |
| (per tape) | 1.00 |
| (plus per item) | .01 |
| 3. Receive properly formatted ACH transmission from data processor and deliver to local FRB | |
| (per tape) | 1.00 |
| (plus per item) | .01 |
| 4. Produce system output tape (without processing any input) (per tape) | 1.00 |
| ACH Origination File: | |
| Receive properly formatted ACH data entry tape from data processor for entry into Federal Reserve ACH system | |
| (per tape) | 5.00 |
| (plus per item) | .05 |
| Reformat ACH File For Transmission: | |
| Receive ACH tape from local FRB or data processor and reformat for data transmission (i.e., change blocking function) (per tape—additional charge) | 1.50 |
| ACH File Creation: | |
| Receive unformatted source data from financial institution or data processor, create ACH file and enter into Federal Reserve ACH system. (Includes data conversion; i.e., keypunching) | |
| (per tape) | 5.00 |

| Automated clearing house (ACH) and Electronic funds transfer (EFT) services | Fee |
|---|---|
| (plus per item) | .10 |
| Surcharges For Next-Day Settlement: | |
| (Credits & debits originated) (per item) | .06 |
| *Warehouse entries for future settlement* (per item) | .0025 |
| *Telephone advice* (per day) | 2.00 |
| *Messenger/delivery* | (1) |
| *Miscellaneous* | (1) |

| Visa/Mastercard processing service | Fee |
|---|---|
| Monthly Settlement (Merchant Program, Cardholder Program, or both) | $55.00 |
| Sales Drafts and Cash Advance Tickets Deposited | .01 |
| Adjustments, Returns, Corrections, Income Distributions (All Entries) | .50 |
| Note: Fees will be charged through the members' account analysis. | |

[1] Actual/negotiated rate.

## DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1986 DDA SERVICES)

| Demand deposit account service | Fee |
|---|---|
| Checks/Money Orders paid: | |
| Checks Returned (per item) | $.15 |
| Checks Truncated (per item) | .13 |
| Reconciliation of Check/Money Order: | |
| Magnetic tape (per item) | .02 |
| MICR (per item) | .07 |
| Fine Sort (per item) | .006 |
| Credit/Adjustments (per item) | (1) |
| Wire Transfer: | |
| In | 2.00 |
| Out | 4.00 |
| Stop Payments (per item) | 5.00 |
| Exception Item Return (per item) | 2.50 |
| Depository Transfer Checks (per item) | 4.00 |
| Photocopy (per item) | 4.00 |
| Account Maintenance (for accounts with more than 1,000 transactions per month) (per association) | 25.00 |
| Voids | (1) |
| Account Activity Reporting | (2) |
| Checks/Money Order Forms (above standard check) | (3) |
| Paid Items Mailed to Association | (3) |
| Overdrafts (per daily occurrence and interest at special variable advance rate plus 3%) | 50.00 |

[1] No charge.
[2] Toll free by telephone.
[3] Actual costs.

[Deposit Processing Fees]

| | Dallas Processing Center—Texas (except Southeast), Northern Louisiana, New Mexico | New Orleans Processing Center—Southern Louisiana, Southern Mississippi | Little Rock Processing Center—Arkansas, Northern Mississippi | Houston Processing Center—Southeast Texas |
|---|---|---|---|---|
| Deposit Items: | | | | |
| Postal Money Orders, U.S. Treasury Checks (per items) | $.022 | $.025 | $.025 | $.025 |
| Processing Center City Items (per item) | .022 | .025 | .025 | .025 |
| Regional RCPC Items (per item) | .026 | .025 | .035 | .040 |
| Other Fed Items (per item) | .065 | .060 | .0625 | .065 |
| Encoding Charge (per item) | .025 | .025 | .020 | .025 |
| Returned Items (per item) | 1.50 | 1.50 | 1.50 | 1.50 |
| Non-Cash Collection Services: | | | | |
| Security Coupons (per envelope) | 2.75 | 2.50 | 2.50 | 2.75 |

[Deposit Processing Fees]

| | Dallas Processing Center—Texas (except Southeast), Northern Louisiana, New Mexico | New Orleans Processing Center—Southern Louisiana, Southern Mississippi | Little Rock Processing Center—Arkansas, Northern Mississippi | Houston Processing Center—Southeast Texas |
|---|---|---|---|---|
| Food Stamps and Coupons (per deposit) | $1.50 | $1.50 | $1.50 | $1.50 |
| Foreign Item (per item) | 6.50 | 6.50 | 2.50 | 6.50 |
| All Others (Drafts, etc.) (per item) | 2.75 | 2.50 | 2.50 | 2.75 |

NOTE.—Fees incurred in the process of collecting non-cash items will be passed through to the depositing institution. These charges will be added to the service fees shown above.

DISTRICT 10.—FEDERAL HOME BANK OF TOPEKA (1986 DDA SERVICES)

| DDA service | Fee |
|---|---|
| Full Service Demand Plus Accounting (includes Automatic Branch control reconciliation, reporting of full account activity) (per item)—Cycle | $.15 |
| —Truncated | .12 |
| Basic Demand Plus Accounting (standard summary statement, must be able to process magnetic tapes) (per item)—Cycle | .11 |
| —Truncated | .08 |
| Large Item Return Notification ($2,500 & Over) (per item) | 3.00 |
| *Treasury:* | |
| Wire Transfers: | |
| Incoming (per item) | 2.00 |
| Outgoing (per item) | 4.00 |
| Pass-Through Reserves (per month) | 25.00 |
| Safekeeping Charges: | |
| Book-Entry Security Transactions (per transaction) | 20.00 |
| Physical Transactions (per transaction) | 30.00 |
| Account Maintenance Fee (per month) | [1] |
| Segregated Account Maintenance (per association—per month) | 50.00 |
| Joint Custody Service (per receipt) | 20.00 |
| Pledge or Segregated Service (per receipt pledged or released) | 10.00 |

[1] A monthly charge of 1/12 of 1/100 of 1% of par balance of portfolio.

| Processing fees | Kansas City | Oklahoma City | Tipeka | Omaha | Wichita |
|---|---|---|---|---|---|
| | Enc/Unenc | Enc/Unenc | Enc/Unenc | Enc/Unenc | Enc/Unenc |
| *Deposit Processing:* | | | | | |
| Local | $.025/.05 | $.025/.038 | $.02/.033 | $.025/.038 | $.02/.04 |
| RCPC & Country | .035/.06 | .038/.051 | .039/.052 | .038/.051 | .025/045 |
| Transit | .085/.11 | .067/.08 | .067/.08 | .067/.08 | .075/.095 |

| Service | Fee |
|---|---|
| *Deposit Processing:* | |
| Returns (per item) | $.80 |
| Collections (per item) | 2.50 |
| Coin and Currency (per phone call) | 2.50 |
| Courier and Armored Car Costs | [1] |
| Mass Photocopy Requests (per item) | 12.00 |
| (Plus per item) | .15 |
| *Statement Matching:* | |
| Truncated Statement | .05 |
| Cycled Statement (per check up to 50 checks plus .01 per check thereafter) | .15 |
| Insert | .01 |

[1] Actual cost.

NOTES.—FHLBank provides postage at cost and associations will provide latex envelopes. FHLBank provides deposit tickets at no charge and has no reserve requirements for DDA account balances.

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1986 DDA SERVICES)

| Depository services | Fee |
|---|---|
| Deposit Processing Services: | |
| Depository Service Charges (minimum charge) | $300.00 |
| Deposit Processing: | |
| 5:30 P.M. Deposit Deadline: | |
| Encoded items deposited: | |
| Mixed (per item) | .095 |
| Group Sort (per item) | .13 |
| Encoding Fee (per item) | .02 |
| 8:30 P.M. Deposit Deadline: | |
| Encoded Items Deposited (per item) | 0.05 |
| Encoding Fee (per item) | 0.015 |
| 10:30 P.M. Deposit Deadline: | |
| Encoded Items Deposited (per item) | 0.05 |
| Encoding Fee (per item) | 0.02 |
| Other Charges: | |
| Deposit Ticket (per ticket) | 1.00 |
| Commercial Deposits (per ticket) | 1.00 |
| Returned Items (per item) | 1.00 |
| End-Point Deposit Analyses Reports (per month) | 25.00 |
| Monthly Account Maintenance (per account) | 10.00 |
| Collection Services: | |
| Clean Collection (per item) | 4.00 |
| Documentary Collection (per item) | 10.00 |
| Savings Bonds (per transmittal) | [illegible] |
| Coupon Collection (per envelope) | 6.50 |
| Foreign Drafts (per item) | 7.50 |
| Food Coupons (per item) | .05 |
| Coin and Currency: | |
| Currency Ordered/Deposited (per $1,000) | 0.75 |
| Coin Ordered/Deposited (per roll) | 0.06 |
| Coin/Currency Deposited (per deposit) | 1.25 |
| Coin/Currency Ordered (per order) | 3.00 |
| Coordination of Transportation (per branch/per month) | 10.00 |
| Basic Account Services: | |
| Monthly Account Maintenance: | |
| Regular Accounts (per account) | 10.00 |
| Zero Balance Accounts (per account) | 25.00 |
| Checks Paid (per item) | 0.09 |
| Checks Deposited (per item) | 0.25 |
| Items Returned (per item) | 1.00 |
| Stop Payments (per item) | 6.00 |
| Daily Statements | (1) |
| Photocopies (per copy) | 2.00 |
| ACH Debits/Credits (per settlement transaction) | 0.25 |
| Incoming Wires (per wire) | 4.50 |
| Outgoing Wires (per wire) | 7.00 |
| Book Transfers (per transaction) | 4.00 |
| Overdraft Charges (minimum charge) | (2) |
| Special Research (per hour) | 25.00 |

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1986 DDA SERVICES)—Continued

| Depository services | Fee |
|---|---|
| Account Reconcilement Services: | |
| Full Reconciliation: | |
| Monthly Account Maintenance (per account) | 25.00 |
| Checks Paid (per item) | 0.09 |
| Truncated Checks (per item) | 0.06 |
| Issue Input Method: | |
| MICR (per item) | 0.09 |
| Tape (per item) | 0.03 |
| Partial Reconciliation: | |
| Monthly Account Maintenance (per account) | 10.00 |
| Checks Paid (per item) | 0.09 |
| Truncated Checks (per item) | 0.06 |
| Miscellaneous Services: | |
| Fine Sort (per item) | 0.01 |
| Microfilm (per roll) | 10.00 |
| Magnetic Tape Output (paid checks) (per tape) | 25.00 |
| Data Transmission: per transmission | 5.00 |
| Plus per item | 0.005 |
| Stop Payment (per item) | 6.00 |
| Microfiche Reports (per fiche) | 2.00 |

[1] No charge.
[2] Bank's Overnight Cash Needs Rate plus 2% (rate published by Bank's Credit Service Department). Minimum charge is $50.00.

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1986 DDA SERVICES)

| Service | Fee |
|---|---|
| Demand Accounts: | |
| Account Maintenance (per month) (per account) | $4.00 |
| Wire Transfers Out (per wire) | 3.00 |
| Wire Transfers In (per wire) | 2.00 |
| International Wire Transfers (per wire) | 22.50 |
| Pre-Authorized Deposit Transfers (drafts) | 1.50 |
| Stop Payments (per stop) | 3.50 |
| Credit or Debit Received via ACH or Mail (per entry) | .25 |
| Unreconciled Item Posting (per item) | .0775 |
| Reconciled Item Posting with Mag Tape Input (per item) | .085 |
| Reconciled Item Posting with Paper Input (per item) | .105 |
| Substandard MICR Item Manual Posting (per item) | .25 |
| Audit Request Item Research (per item) | .25 |
| Mag Tape Output for Outside Reconcilment (per tape) | 25.00 |
| Additional Services: | |
| Account transfers | (1) |
| Signature and/or endorsement verifications | (1) |
| Individual photocopy or research requests | (1) |

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1986 DDA SERVICES)—Continued

| Service | Fee |
|---|---|
| Member Securities Services: | |
| Account Maintenance: | |
| Safekeeping Account (per month) | 10.00 |
| Collateral Account (per month) | 20.00 |
| Custody—Book Entry (per security) (per month) | .75 |
| Custody—Definitive (per security) (per month) | 1.75 |
| Receipt/Delivery/Redemption—Book Entry (per transaction) | 10.50 |
| Receipt/Delivery/Redemption—Definitive (per transaction) | 20.00 |
| Account Switch—Book Entry (per transaction) | 10.50 |
| Account Switch—Definitive (per transaction) | 20.00 |
| Audit Verification (per inquiry) | 8.00 |
| Income Collection (per transaction) | 4.00 |
| Eurodollar Transactions (per transaction) | 25.00 |
| Custody—Stripped Coupons (per $1,000/month) | .02 |

[1] No charge.

By the Federal Home Loan Bank Board.
**Jeff Sconyers,**
*Secretary.*
[FR Doc. 87-6727 Filed 3-27-87; 8:45 am]
BILLING CODE 6720-01-M

## FEDERAL RESERVE SYSTEM

### Gary-Wheaton Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gary-Wheaton Corporation,* Wheaton, Illinois; to acquire G-W Life Insurance Company, Phoenix, Arizona, and thereby expand its credit life and credit accident and health insurance, that is directly related to extensions of credit to include involuntary unemployment credit insurance which will be directly related to extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 24, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-6856 Filed 3-27-87; 8:45 am]

BILLING CODE 6210-01-M

## NCNB Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 17, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation,* Charlotte, North Carolina; to acquire 100 percent of the voting shares of CentraBank, Inc., Baltimore, Maryland, which engages in the sale of credit life and credit accident and health insurance and has contracted with an independent insurance agency to provide insurance to the bank and to the bank's customers.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Bancorp of Louisiana, Inc.,* West Monroe, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of West Monroe, West Monroe, Louisiana.

Board of Governors of the Federal Reserve System, March 24, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-6857 Filed 3-27-87; 8:45 am]

BILLING CODE 6210-01-M

## Tucson Electric Power Co. et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 14, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Tucson Electric Power Company,* through its wholly-owned subsidiary, Santa Cruz Resources, Inc., Tucson, Arizona; to acquire up to an additional 11.04 percent of the voting shares of Union Planters Corporation, Memphis, Tennessee, and thereby indirectly acquire Union Planters National Bank, Memphis, Tennessee.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The John R. Tester Revocable Trust and The John R. Tester Qualified Terminable Interest Property Irrevocable Trust; to acquire 99.45 percent of the voting shares of Gibbon Bancshares, Inc., Gibbon, Minnesota, and thereby indirectly acquire Citizens State Bank of Gibbon, Incorporated, Gibbon, Minnesota.

Board of Governors of the Federal Reserve System, March 24, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-6858 Filed 3-27-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Research and Demonstration Grants Relating to Occupational Safety and Health; Availability of Funds for Fiscal Year 1987

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds in Fiscal Year 1987 for research and demonstration project grants relating to occupational safety and health. The objective of this program is to award funds to eligible institutions or agencies to establish, discover, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems. The Catalog of Federal Domestic Assistance number is 13.262.

#### Authority

This program is authorized under section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 501(c) of the

Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951). Program regulations applicable to these grants are in Part 87, "National Institute for Occupational Safety and Health Research and Demonstration Grants," of Title 42, Code of Federal Regulations.

**Eligibility Requirements**

Eligible applicants include non-profit and for-profit organizations. Thus universities, colleges, research institutions and other public and private organizations including State and local governments and small, minority and/or woman-owned businesses are eligible for these research and demonstration grants.

**Availability of Funds**

There is $6,501,000 available in Fiscal Year 1987 to fund individual (research, demonstration, and program) project grants, Special Emphasis Research Career Award (SERCA) grants, small grants, and Small Business Innovation Research (SBIR) grants. For individual project grants, it is expected that 27 continuation grants will be awarded totaling approximately $3.306 million and that about 17 new and competing renewal project grants will be awarded totaling approximately $2.16 million and ranging from approximately $50,000 to $200,000 with the average award being approximately $125,000. For SERCA grants, it is expected that approximately $130,000 will be awarded for 4 continuation grants and $370,000 for 11 new grants. For small grants, it is expected that approximately $92,000 will be awarded for 4 continuation grants and $333,000 for 15 new grants. For SBIR grants, the total available funds for phase I and II awards is approximately $110,000.

Grants are usually funded for 12 months in project periods of up to 5 years for individual project grants, 3 years for SERCA grants, and 2 years for small grants. Continuation awards within the project period are made on the basis of satisfactory progress and on the availability of funds.

**Program Requirements**

*A. Research Project Grants*

A research project grant application should be intended and designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of underlying causes and mechanisms.

*B. Demonstration Grants*

A demonstration grant application should address, either on a pilot or full-scale basis, the technical or economic feasibility or application of: (1) A new or improved occupational safety or health procedure, method, technique, or system, or (2) an innovative method, technique, or approach for preventing occupational safety or health problems.

*C. Special Emphasis Research Career Award (SERCA) Grants*

The SERCA is designed to enhance the research capability of individuals in the formative stages of their careers who have demonstrated outstanding potential for contributing as independent investigators to health-related research. Candidates must have had two or more years of relevant post-doctoral experience prior to the submission date. The application must document accomplishments in this period that demonstrate research potential; it must also present a plan for additional experience in a productive scientific environment at domestic institutions that will foster development of a career of independent research in the area of occupational safety and health. The SERCA is not intended for untried investigators, or for productive, independent investigators with significant numbers of publications of high quality, or for persons of senior academic rank (above associate professor or tenured). Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research, nor is it intended to be a mechanism for providing institutional support. The application must demonstrate that the award will make a difference in and enhance the candidate's development as an independent investigator.

Candidates must indicate a commitment of at least 60 percent time (not necessarily 60 percent salary) devoted to research under the SERCA grant, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. While working closely with one or more advisers, the awardee is expected to develop capabilities in fundamental, applied, and/or clinical research in one of the areas listed under Programmatic Interests. At the end of the award period, evidence of independent investigative capability should be present such that the individual is better able to compete in traditional NIOSH research grant activities.

The total grant award may comprise direct costs of up to $30,000 per year and up to 8 percent additional indirect costs. Direct costs may include salary plus fringe benefits, technical assistance, equipment, supplies, consultant costs, domestic travel, publication, and other costs. If the awardee already holds a small grant on the same research topic, the amount of the SERCA may be reduced up to the amount of the small grant. Awards may be up to 3 years and will not be renewable.

*D. Small Grants*

A small grant application is intended to provide financial support to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. This small grant program is intended for predoctoral graduate students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training) and junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, the application should specify that the funds are for the use of a particular student or junior-level person and should include appropriate justification for this arrangement. Though biographical sketches are required only for the person actually doing the work, the application should indicate who would be supervising the research. Small grant applications should be identified as such on the application form.

The total small grant award may comprise direct costs of up to $15,000 per year and additional indirect costs, as appropriate. The grants may be awarded for a project period of up to 2 years. Salary of the principal investigator as well as that of the junior investigator, if university policy requires a senior person to be listed as the principal investigator, will not be allowed on a small grant, though salaries can be requested for necessary support staff such as laboratory technicians, interviewers, etc.

*E. Program Project Grants*

NIOSH will also accept applications for program project grants, but only after discussion with the individuals listed in this announcement. A program project grant is intended to support a broadly-based, multidisciplinary, often long-term research program which has a specific major objective or a basic theme. It should be directed toward a range of

problems having a central research focus in contrast to the usually narrower thrust of the traditional research project. This type of grant generally involves the organized efforts of a group of established investigators, each of whom is conducting research projects designed to elucidate the various aspects or components of the overall objective.

**Programmatic Interests**

NIOSH program priorities, listed below, are applicable to all of the above types of grants. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health. Applications responding to this announcement will be reviewed by staff for their responsiveness and relevance to occupational safety and health. Assignment to NIOSH for funding consideration will be according to established referral guidelines. Potential applicants with questions concerning the acceptability of their proposed work should contact the individuals listed in this announcement under "**FOR FURTHER INFORMATION CONTACT.**"

1. Occupational lung disease: asbestosis, byssinosis, silicosis, coal workers' pneumoconiosis, lung cancer, occupational asthma.

2. Musculoskeletal injuries: disorders of the back, trunk, upper extremity, neck, lower extremity: traumatically induced Raynaud's phenomenon.

3. Occupational cancers (other than lung): leukemia; mesothelioma; cancers of the bladder, nose, and liver.

4. Severe occupational traumatic injuries: amputations, fractures, eye loss, and lacerations.

5. Cardiovascular diseases: hypertension, coronary artery disease, acute myocardial infarction.

6. Disorders of reproduction: infertility, spontaneous abortion, teratogenesis.

7. Neurotoxic disorders: peripheral neuropath, toxic encephalitis, psychoses, extreme personality changes (exporsure-related).

8. Noise-induced loss of hearing.

9. Dermatologic conditions: dermatoses, burns (scalding), chemical burns, contusions (abrasions).

10. Psychologic disorders: neurosis, personality disorders, alcoholism, drug dependency.

11. Engineering control systems: new technology prformance evaluation, preconstruction review, equipment redesign, containment of hazards at the source, fundamental dust generation mechanism, machine guarding/avoidance methods, explosion control, removal of emissions after generation, dispersion models, monitoring and warning techniques, technology transfer.

12. Respirator research: new and innovative respiratory protective devices, techniques to predict performance, effectiveness of respirator programs, physiologic and ergonomic factors, medical surveillance strategies, psychological and motivational aspects, effectiveness of sorbents and filters, including chemical and physical properties.

**Criteria for Review**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Applications will be evaluated by a dual review process. The primary (peer) review is based on scientific merit and significance of the project, competence of the proposed staff in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, and appropriateness of the budget request. A program project application will also be evaluated for adequacy of methods for coordinating activities toward the central focus.

Demonstration grant applications will be reviewed additionally on the basis of the following criteria:

- Degree to which project objectives are clearly established, obtainable, and for which progress toward attainment can and will be measured.
- Availability, adequacy, and competence of personnel, facilities, and other resources needed to carry out the project.
- Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis.
- Extent of cooperation expected from industry, unions, or other participants in the project, where applicable.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will consider the applicant's scientific achievements, evidence of demonstrated commitment to a reserch career in occupational safety and health, and supportive nature of the research environment (including letter(s) of reference from adviser(s) which should accompany the application).

Small grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will take into consideration the fact that the applicants do not have extensive experience with the grant process.

A secondary review will also be conducted. Factors considered in the secondary review will include:

- The results of the initial review.
- The significance of the proposed study to the research programs of NIOSH.
- National needs and program balance.
- Policy and budgetary considerations.

**Applications and Award**

Applications should be submitted on Form PHS–398 (revised May 1982) or PHS–5161–1 for State and local government applications. Forms should be available from the institutional business offices or from: Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building—Room 449, 5333 Westbard Avenue, Bethesda, Maryland 20205.

The original and six copies of the application must be submitted to the address below on or before the specified receipt dates in accordance with the instructions in the PHS–398 packet: Division of Research Grants, National Institutes of Health, Westwood Building—Room 240, Bethesda, Maryland 20205.

In developing the application please note that the conventional presentation for grant applications should be used and the points identified under "CRITERIA FOR REVIEW" must be fulfilled.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies for the application that are made available to outside reviewing groups. If the applicant's organization elects to exercise this option, use asterisks on the original and six copies of the application to indicate those individuals for whom salaries and fringe benefits are being requested; the subtotals must still be shown. In addition, submit an additional copy of page four of Form PHS–398, completed in full with the asterisks replaced by the amount of the salary and finge benefits requested for each individual listed. This budget page will be reserved for internal PHS staff use only.

The instructions in the Form PHS–398 packet should be followed concerning deadlines for either delivering or mailing the applications. The application should

be sent or delivered using the mailing label in the Form PHS-398 packet.

The proposed timetable for receiving applications and awarding grants is as follows except for the SBIR Program, which has a separate Public Health Service announcement and a separate receipt date. Applications for the SBIR Program have a receipt date of December 15.

NEW AND COMPETING RENEWAL APPLICATIONS

| Application deadline | Primary review group meeting | Secondary review meeting | Earliest possible beginning |
|---|---|---|---|
| February 1 | June | September | December 1 |
| June 1 | Oct./Nov. | January | April 1 |
| October 1 | Feb./Mar. | May | July 1 |

[1] Competing renewal deadlines are 1 month later.

EXCEPTIONS: CAREER DEVELOPMENT AND SMALL GRANTS

| Application deadline | Primary review group meeting | Secondary review meeting | Earliest possible beginning |
|---|---|---|---|
| March 1 | June | September | December 1 |
| July 1 | Oct./Nov. | January | April 1 |
| November 1 | Feb./Mar. | May | July 1 |

Awards will be made based on results of the initial and secondary reviews, balance among areas of programmatic interest, emphasis areas, and availability of funds.

**FOR FURTHER INFORMATION CONTACT:**

For Technical Informaton Contact: Roy M. Fleming, Sc.D, Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control, 1600 Clifton Road, NE., Bldg. 1, Room 3053, Atlanta, Georgia 30333, Telephone: (404) 329-3343.

For Business Information Contact: Leo A. Sanders, Grants Management Officer, Centers for Disease Control, 255 E. Paces Ferry Rd., NE., Room 321, Atlanta, Georgia 30335, Telephone: (404) 262-6575.

Larry W. Sparks,

*Executive Officer, National Institute for Occupational Safety and Health.*

[FR Doc. 87-6834 Filed 3-27-87; 8:45 am]

BILLING CODE 4160-19-M

---

## Food and Drug Administration

**[Docket No. 87N-0072]**

### Drug Export; Paraplatin™ (Carboplatin) Injection, 50 Milligrams, 150 Milligrams, and 450 Milligrams

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Bristol-Meyers Co. has filed an application requesting approval for the export of the human drug Paraplatin™ (Carboplatin) Injection, 50 milligrams (mg) 150 mg, and 450 mg to Belgium, Canada, Ireland, Switzerland, and the United Kingdom.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Bristol-Meyers Co., 345 Park Ave., New York, NY 10154, has filed an application requesting approval for the export of the drug Paraplatin™ (Carboplatin) Injection, 50 mg, 150 mg, and 450 mg, to Belgium, Canada, Ireland, Switzerland, and the United Kingdom. The application was received and filed in the Center for Drugs and Biologics on February 27, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 9, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: March 19, 1987.

Daniel L. Michels,

*Director, Office of Compliance, Center for Drugs and Biologics.*

[FR Doc. 87-6841 Filed 3-27-87; 8:45 am]

BILLING CODE 4160-31-M

---

**[Docket No. 87N-0075]**

### Drug Export; Virgo™ HTLV-111 IFA

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Electro-Nucleonics, Inc., has filed an application requesting approval for the export of the biological product Virgo™ HTLV-III IFA kits to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Italy, Japan, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and West Germany.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person

identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Center for Drugs and Biologics (HFN–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Electro-Nucleonics, Inc., 7101 Riverwood Dr., Columbia, MD 21046–1297, has filed an application requesting approval for the export of the biological product Virgo™ HTLV–III IFA kits to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Italy, Japan, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and West Germany. The application was received and filed in the Center for Drugs and Biologics on February 27, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 9, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: March 19, 1987.

**Daniel L. Michels,**

*Director, Office of Compliance, Center for Drugs and Biologics.*

[FR Doc. 87–6842 Filed 3–27–87; 8:45 am]

BILLING CODE 4160–01–M

---

[Docket No. 85N–0473]

## Interspecies Extrapolation of Dose-Response Data on Carcinogenicity; Availability of Report

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the final report of the Federation of American Societies for Experimental Biology (FASEB) on extrapolation of dose-response data on carcinogenicity is available to the public.

**DATE:** The final report was publicly available on January 23, 1987.

**ADDRESSES:** Requests for a copy of the final report should be sent to FASEB's Special Publication Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, along with $25 to cover the cost. In the near future, the report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield, VA 22161. Copies are on display at the Life Sciences Research Office (LSRO), FASEB (address above), and at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** W. Michael Rogers, Division of Regulations Policy (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 1, 1985 (50 FR 45669), FDA announced that the LSRO of FASEB, under FDA contract 223–83–2020, was undertaking a study to examine certain scientific issues related to the interspecies extrapolation of dose-response data on carcinogenicity. The Scientific Steering Group that FASEB established under this contract recommended that FASEB conduct a symposium and workshop to study the matter. The symposium was conducted on January 6, 1986, and the workshop, which was limited to those invited by FASEB, was held on January 7, 1986.

In its final report FASEB presents a series of invited papers and a synopsis of discussions at the workshop. The report summarizes the strengths and weaknesses of several approaches for interspecies extrapolation and suggests considerations for future research.

Dated: March 23, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–6840 Filed 3–27–87; 8:45 am]

BILLING CODE 4160–01–M

---

## National Institutes of Health

## John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Fogarty International Center (FIC) Advisory Board, May 19, 20, 1987, in the Stone House (Building 16), at the National Institutes of Health.

The meeting will be open to the public on May 19 from 8:30 a.m. to 5 p.m., and on May 20 from 8:30 a.m. to 12 noon. On May 19, the agenda will include an Overview Report by Dr. Craig K. Wallace, Director of the FIC; a report from the Advisory Committee to the NIH Director; and from the Advanced Studies, Research Awards, and Resources Working Groups of the FIC Advisory Board. There will be presentations of FIC's program accomplishments and activities on both days.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., the meeting will be closed to the public on May 19, from 5 p.m. to adjournment for the review, discussion, and evaluation of individual research fellowship applications. These applications contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center (Executive Secretary) Building 38A, Room 609,

telephone 301–496–1491, will provide substantive program information.

Dated: March 18, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–6874 Filed 3–27–87; 8:45 am]

BILLING CODE 4140–01–M

---

**National Cancer Institute; Meeting; Biometry and Epidemiology Contract Review Committee**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, April 24, 1987, Bethesda Marriott Hotel, Potomac Room, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on April 24 from 9 a.m. to 10:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 24 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will furnish summaries of the meeting and roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, 5333 Westbard Avenue, Room 804, Bethesda, Maryland 20892 (301/496–7030) will provide other information pertaining to the meeting.

Dated: March 18, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–6876 Filed 3–27–87; 8:45 am]

BILLING CODE 4140–01–M

---

**Meeting; Board of Scientific Counselors, Division of Cancer Biology and Diagnosis**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, National Cancer Institute, June 2, 1987, Building 31A, Conference Room 4, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public on June 2 from 9 a.m. to adjournment for concept review of proposed NCI research projects. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496–3251) will provide substantive program information.

Dated: March 20, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–6875 Filed 3–27–87; 8:45 am]

BILLING CODE 4140–01–M

---

**National Cancer Institute; Meeting Clinical Trials Committee**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Trials Committee, National Cancer Institute, National Institutes of Health, May 19, 1987, Building 31C, Conference Room 9, Bethesda, Maryland 20892.

This meeting will be open to the public on May 19 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 19 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will furnish summaries of the meeting and roster of committee members upon request.

Dr. Gordon L. Johnson, Executive Secretary, 5333 Westbard Avenue, Room 803, Bethesda, Maryland 20892 (301/496-0118) will provide other information pertaining to the meeting.

Dated: 18, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–6872 Filed 3–27–87; 8:45 am]

BILLING CODE 4140–01–M

---

**National Heart, Lung, and Blood Institute; Pulmonary Diseases Advisory Committee; Meeting**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute on May 9, 1987, at the New Orleans Marriott, La Galerie 2, Canal and Chartres Streets, New Orleans, Louisiana 70140.

The entire meeting, from 8:30 a.m. to adjournment on May 9, will be open to the public. During the morning session, 8:30 a.m. to 1:00 p.m., the Committee will discuss the current status of the Division of Lung Diseases' programs and plans for fiscal year 1988. In the afternoon session, from 2:00 p.m. to 5:00 p.m., the Committee will attend a symposium of presentations by ten Clinical Investigator/Physician Scientists supported by the Division. Attendance by the public to this NHLBI/NIH Centennial Event will be limited to the space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: March 20, 1987.

Betty J. Beveridge,

*Committee Management Officer.*

[FR Doc. 87–6868 Filed 3–27–87; 8:45 am]

BILLING CODE 4140–01–M

**National Institute of Allergy and Infectious Diseases; Meetings; Advisory Council; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on May 18-19, 1987, at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The meeting will be open to the public on May 18 from approximately 9 a.m. to 9:30 a.m. for opening remarks of the Institute Director and again from 1:30 p.m. to approximately 5 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussion will be on the Inflammatory Process. On May 19 the meeting will be open to the public from approximately 8:30 a.m. to 9:30 a.m. for the reports of the Director, Acquired Immunodeficiency Syndrome Program, Director, Microbiology and Infectious Diseases Program and the Director of the Immunology, Allergic and Immunologic Diseases Program.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the NAAIDC Allergy and Immunology Subcommittee and of the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for the review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 9:30 a.m. until approximately 12:30 p.m. on May 18. The meeting of the full Council will be closed from approximately 9:30 a.m. until adjournment on May 19 for the review, evaluation, and discussion of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301-496-7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: March 18, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87-6873 Filed 3-27-87; 8:45 am]

BILLING CODE 4140-01-M

**National Institute of Dental Research; Meeting of National Advisory Dental Research Council**

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on May 19-20, 1987, Conference Room 4, Building 31A, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on May 19 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on May 20 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Marie U. Nylen, Executive Secretary, National Advisory Dental Research Council, and Director, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20892 (telephone 301-496-7723), will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes; National Institutes of Health)

Dated: March 18, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87-6871 Filed 3-27-87; 8:45 am]

BILLING CODE 4140-01-M

**National Institute of General Medical Sciences; National Advisory General Medical Sciences Council; Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 13, 14, and 15, 1987, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on May 13, 1987, from 1:00 p.m. to 6:00 p.m. for opening remarks; report of the Director, NIGMS; a scientific presentation; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 14 from 8:30 a.m. to 6:00 p.m., and on May 15, 1987, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496-7301 will provide a summary of the meeting, roster of council members. Dr. Elke Jordan, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 926, Bethesda, Maryland 20892, Telephone: 301, 496-7891 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13-821, Biophysics and Physiological Sciences; 13-859, Pharmacological Sciences; 13-862, Genetics Research; 13-863, Cellular and Molecular Basis of Disease Research; and 13-880, Minority Access to Research Careers [MARC])

Dated: March 18, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87-6870 Filed 3-27-87; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Neurological and Communicative Disorders and Stroke; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee.

Date: May 13, 1987 (Planning Subcommittee).

Place: National Institutes of Health, Building 31, Conference Room 8A49, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: 1 p.m.-3 p.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: 3 p.m.-5 p.m.

Closure Reason: For review of grant applications.

Dates: May 14-15, 1987 (Council).

Place: National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: May 14, 9 a.m.-1 p.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: May 14, 1 p.m.—recess; May 15, 8:30 a.m.—adjournment.

Closure Reason: For review of grant applications.

Executive Secretary: John C. Dalton, Ph.D., Director, NINCDS-EAP, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9248.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: June 8-10, 1987.

Place: Capitol Holiday Inn, The Federal Center Plaza, Washington, DC 20024.

Open: June 8, 8 p.m.-8:30 p.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: June 8, 8:30 p.m.—recess; June 9, 8 a.m.—recess; June 10, 8 a.m.—adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. A. Beau White, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

Name of Committee: Communicative Disorders Review Committee.

Dates: June 11-12, 1987.

Place: Hyatt Rsgency-Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 11, 8:30 a.m.-9 a.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: June 11, 9 a.m.—recess; June 12, 8 a.m.—adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. Marilyn Semmes, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

Name of Committee: Neurological Disorders Program Project Review A Committee.

Dates: June 18-20, 1987.

Place: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: June 18, 8 p.m.-8:30 p.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: June 18, 8:30 p.m.—recess; June 19, 8:30 a.m.—recess; June 20, 8 a.m.—adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. Herbert Yellin, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: March 18, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87-6869 Filed 3-27-87; 8:45 am]

BILLING CODE 4140-01-M

## Recombinant DNA Advisory Committee Working Group on Human Gene Therapy; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Human Gene Therapy Subcommittee at the National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, on April 24, 1987, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss scientific issues and review submission of preclinical data for information purposes. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Human Gene Therapy Subcommittee, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770-0131.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: March 20, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87-6867 Filed 3-27-87; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N-87-1687]

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirement described below have been submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John F. Morrall, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

*Proposal:* Title I Claim for Loss.
*Office:* Administration.
*Description of the need for the information and its proposed use:* Lenders in the Title I Insurance Program execute and submit this form to receive insurance benefits for claims filed on defaulted Title I property improvements and manufactured home loans. The information provided on this form is analyzed in determining the claim amount to be disbursed to the lender.
*Form number:* HUD–637–A.
*Respondents:* Businesses or Other For-Profit.
*Frequency of respondents:* On Occasion.
*Estimated burden hours:* 15,000.
*Status:* Extension.
*Contact:* Lucy B. Matthews, HUD, (202) 755–5640; John F. Morrall, OMB, (202) 395–6880.

*Proposal:* Single Family Mortgage Insurance Premium Remittance Summary.
*Office:* Administration.
*Description of the need for the information and its proposed use:* This information is used to insure compliance on the part of the mortgagee and to insure HUD receives all income due. Without the form, HUD could not insure compliance nor could HUD insure that all income due the Government was being remitted.
*Form number:* HUD–2748.
*Respondents:* Small Businesses or Organizations.
*Frequency of response:* Monthly.
*Estimated burden hours:* 60,000.
*Status:* Extension.
*Contact:* Luther C. Thomas, HUD, (202) 755–1857; John F. Morrall, OMB, (202) 395–6880.

*Proposal:* Notice to Proceed, 24 CFR 841.
*Office:* Public and Indian Housing.
*Description of the need for the information and its proposed use:* The Notice is the official PHA order directing the contractor to commence construction on a public housing project. It establishes the date construction started, the number of days for construction, the completion date, and the name of the project contracting officer.
*Form Number:* None.
*Respondents:* State or Local Governments and Non-Profit Institutions
*Frequency of response:* On Occasion.
*Estimated burden hours:* 55.
*Status:* Extension.
*Contact:* William C. Thorson, HUD, (202) 755–6460; John F. Morrall, OMB, (202) 395–6880

*Proposal:* Implementation of the Equal Access to Justice Act in Administrative Proceedings (FR–2156).
*Office:* General Counsel.
*Description of the need for the information and its proposed use:* The information will be used by the Adjudicative Officer in administrative proceedings covered by the Equal Access to Justice Act to determine whether the applicant, who has prevailed over the Federal Government, is eligible to receive an award of attorney fees and other expenses under the Act, and what amount should be awarded.
*Form Number:* None.
*Respondents:* Individuals or Households, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.
*Frequency of response:* On Occasion.
*Estimated burden hours:* 18.
*Status:* Reinstatement.
*Contact:* Grant E. Mitchell, HUD, (202) 755–6550; John F. Morrall, OMB, (202) 395–6880

*Proposal:* Substantial Equivalency Review Questionnaire.
*Office:* Fair Housing and Equal Opportunity.
*Description of the need for the information and its proposed use:* The questionnaire is needed to provide HUD with current information regarding a State or Local Government's ability to satisfactorily administer the laws or ordinances required by the Office of Fair Housing and Equal Opportunity. The information enables Regional staff to conduct on-site performance assessments.
*Form Number:* None.
*Respondents:* State or Local Governments.
*Frequency of response:* On Occasion.
*Estimated burden hours:* 150.
*Status:* Extension.
*Contact:* John H. Waller, HUD, (202) 755–0455; John F. Morrall, OMB, (202) 395–6880.

*Proposal:* Certificate of Completion—Consolidated, 24 CFR 841.
*Office:* Public and Indian Housing.
*Description of the need for the information and its proposed use:* The certificate is needed to transmit information from the PHAs to HUD concerning the completion of construction contracts so that HUD may authorize payment of funds due the contractor or developer. The information is supplied by the project architect, assembled and forwarded by the PHA.
*Form number:* None.
*Respondents:* State or Local Governments and Non-Profit Institutions.
*Frequency of respondents:* On Occasion.
*Estimated burden hours:* 418.
*Status:* Extension.
*Contact:* William C. Thorson, HUD, (202) 755–6460; John F. Morrall, OMB, (202) 395–6880.

*Proposal:* Contract for Inspection Services—Turnkey.
*Office:* Public and Indian Housing.
*Description of the need for the information and its proposed use:* This contract affects Public Housing Agencies (PHAs) and architects/engineers selected to inspect Turnkey projects. PHAs use this contract to

establish legal obligations and conditions relating to services of the architect/engineer.

*Form number:* HUD–5084.

*Respondents:* State or Local Governments and Non-Profit Institutions.

*Frequency of response:* On Occasion.

*Estimated burden hours:* 251.

*Status:* Extension.

*Contact:* William C. Thorson, HUD, (202) 755–6460; John F. Morrall, OMB, (202) 395–6880.

*Proposal:* Program Utilization for Use in the Section 8 Existing Housing and Housing Voucher Programs.

*Office:* Housing.

*Description of the need for the information and its proposed use:* The form provides data to HUD to monitor the use of Certificates of Family Participation and Housing Vouchers, the number of families under a HAP contract and Housing Voucher contract, and the degree of success experienced by program participants in locating and leasing suitable rental housing.

*Form number: HUD–52683.*

*Respondents:* State or Local Governments.

*Frequency of response:* Monthly, Quarterly, and Annually.

*Estimated burden hours:* 8,840.

*Status:* Revision.

*Contact:* Gwendolyn S. Carter, HUD, (202) 755–6477; John F. Morrall, OMB, (202) 395–6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: March 19, 1987.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

[FR Doc. 87–6839 Filed 3–27–87; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau Clearance Officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs of the Department of the Interior, 43 CFR Part 17 Subpart B.

Abstract: Section 504 of the Rehabilitation Act requires that all recipients perform a self-evaluation of their programs in order to achieve compliance with the Act. Recipients employing fifteen (15) or more employees must maintain records of persons consulted and a description of areas examined, problems identified, and corrective actions taken. The regulation also requires recipients to provide assurances or certification as to their civil rights compliance status.

Bureau Form Number: 1084–0021.

Frequency: One-time requirement.

Description of Respondents: State and local governments receiving Federal financial assistance from the Department of the Interior.

Annual Responses: 12,414.

Annual Burden Hours: 6,207.

Bureau Clearance Officer: Melvin C. Fowler (202) 343–3455.

Dated: March 18, 1987.

**Carmen R. Maymi,**

*Director, Office for Equal Opportunity.*

[FR Doc. 87–6882 Filed 3–27–87; 8:45 am]

BILLING CODE 4310–10–M

### Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau Clearance Officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Nondiscrimination on the Basis of Race, Color, or National Origin in Federally-Assisted Programs of the Department of the Interior, 43 CFR Part 17 Subpart A.

Abstract: The Department of the Interior's Title VI regulation provides authority for the Department to require recipients to keep and report civil rights information. The regulation also requires recipients to provide assurances or certification as to their civil rights compliance status. In addition, the regulation provides for written complaints from persons who believe unlawful discrimination has occurred in a Federal assistance program of the Department.

Bureau Form Number: 1084–0009.

Frequency: On occasion.

Description of Respondents: State and local governments receiving Federal financial assistance from the Department of the Interior, and any person who believes unlawful discrimination has occurred in a Federal assistance program of the Department.

Annual Responses: 95.

Annual Burden Hours: 380.

Bureau Clearance Officer: Melvin C. Fowler (202) 343–3455.

Dated March 18, 1987.

**Carmen R. Maymi,**

*Director, Office for Equal Opportunity.*

[FR Doc. 87–6883 Filed 3–27–87; 8:45 am]

BILLING CODE 4310–10–M

### Bureau of Indian Affairs

### Navajo Tribe of Indians, Navajo Reservation, AZ; Transfer of Excess Federal Facilities

This Notice is published in the exercise of authoirty delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

On November 6, 1986, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Pub. L. 93–599 dated January 2, 1975 (88 Stat. 1954), the below described property was transferred by the San Francisco Regional (9) Administrator of the General Services Administration, to the Secretary of the Interior, without reimbursement, to be held in trust for the benefit and use of the Navajo Indian Tribe of Arizona.

One hundred fifty-two (152) buildings located at the Toyei Boarding School, Ganado, Arizona, GSA Control No. 9–I–AZ–585.

These improvements are to be treated as and receive the same benefits and protection as other facilities held for the benefit and use of the Navajo Tribe. Appropriate notation will be made in the records of the Bureau of Indian Affairs.

**Ross O. Swimmer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 87–6934 Filed 3–27–87; 8:45 am]

BILLING CODE 4310–02–M

## Bureau of Land Management

[AA-850-87-4830-16-2410]

### Indexes of Administrative Staff Manuals Administrative Determination

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice Concerning Requirement to Publish Indexes of Administrative Staff Manuals.

**SUMMARY:** Under section (a)(2) of the public information section of the Administrative Procedure Act (5 U.S.C. 552), commonly known as the Freedom of Information Act, each agency is required to make available for public inspection and copying indexes to administrative staff manuals and instructions that affect any member of the public. Also, each agency is required to promptly publish, quarterly or more frequently, and distribute (by sale or otherwise), copies of the indexes or supplements thereto unless it determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable in which case the agency shall nonetheless provide copies of such indexes on request at a cost not to exceed the direct cost of duplication.

Upon reexamination of the material and indexes contained in the Departmental Manual and the administrative manuals of those bureaus which have issued such documents, it was determined the majority of the directives prescribe policies and procedures that are primarily for internal use and do not affect the public. These manuals provide guidelines or procedures necessary for the accomplishment of required day-to-day operations or detailed instructions on limited technical subjects. Additionally, the contents of indexes change infrequently and requests for copies and manual indexes are extremely rare, reflecting negligible interest in such indexes.

It has been a long standing policy of the Department of the Interior that any policies and procedures which affect the public must be promulgated and published in the **Federal Register** and incorporated in the Code of Federal Regulations, when appropriate. Both of these documents are offered for sale by Superintendent of Documents, Government Printing Office, Washington, DC. 20402.

After full consideration of the provisions of 5 U.S.C. (a)(2)(C), for the foregoing reasons and consideration of economy, it is determined administratively unnecessary and impractical to publish manual indexes identified in the appendix of this Notice quarterly or more frequently and distribute (by sale or otherwise) copies of such indexes or supplements thereto. Copies of indexes will nonetheless be provided upon request at a cost not to exceed the direct cost of duplication by contacting the appropriate bureau or office as provided in 43 CFR 2.3

**Robert F. Burford,**

*Director.*

Appendix

The following administrative manuals or instructions are exempt from the quarterly index publication requirements of 5 U.S.C. 552(a)(2)(C):

*Bureau of Land Management*

BLM Manual
Instruction Memorandana
Information Bulletins

[FR Doc. 87-6845 Filed 3-27-87; 8:45 am]

BILLING CODE 4310-84-M

---

[NV-903-06-4212-11; N-37137]

### Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

The following described public land in Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et Seq.). The lands will not be offered for lease/puchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

**Mount Diablo Meridian, Nevada**

T. 16 S., R. 68 E.,
Sec. 20, NW¼NW¼, SE¼NW¼.

This parcel of land contains approximately 80 acres. The Clark County Sanitation District intends to use the land for expansion of the existing Overton sewage treatment facility. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State District. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: August 25, 1986.

**Ben F Collins,**

*District Manager, Las Vegas, NV.*

[FR Doc. 87-6937 Filed 3-27-87; 8:45 am]

BILLING CODE 4310-HC-M

---

[CA-050-4333-12]

### Camping Stay Limit, Recreation Use Fees, and Camping Closure; Arcata Resource Area et al.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notices.

**SUMMARY:** Pursuant to 43 CFR 8365.1-2(a), persons may camp within designated campgrounds or on public lands not closed to camping within the Arcata Resource Area and Clear Lake Resource Area for a total period of not more than fourteen days during any calendar year. The fourteen day limit may be reached either through a number of separate visits or through a period of continuous occupation of the public lands. Under special circumstances and upon request, the Area Manager may give written permission for extensions to the fourteen day limit.

Pursuant to 36 CFR, a user fee of $5.00 (five dollars) per campsite per night will be charged at the Wailaki Recreation Site, Nodelos Recreation Site, Tolkan Recreation Site, and Horse Mountain Recreation Site, all within the King Range National Conservation Area, California.

Pursuant to 43 CFR 8364.1, the 300 acre area know as Samoa Peninsula Off-Road Vehicle Recreation Area, California (T.5N., R.1W., Section 31; T.4N., R.1W., Section 6, H.M.) located at the north jetty of Humboldt Bay, Humboldt County, California, is closed to overnight camping. Under special circumstances and upon request, the Area Manager may give written permission to camp overnight in this area.

**DATE:** These restrictions and fees become effective April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** John T. Lloyd, Arcata Resource Area Manager, 1125 16th Street, P.O. Box 1112, Arcata, California 95521 (telephone (707) 822–7648) or Gretchen Smyth, Clear Lake Resource Area Manager, 555 Leslie Street, Ukiah, California 95482 (telephone (707) 462–3873).

**SUPPLEMENTARY INFORMATION:** This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping, both within campgrounds and on undeveloped public lands in the Arcata and Clear Lake Resource Areas.

During the thirteen years that the King Range National Conservation Area has been in existence, recreation use fees ($2.00 a night per campsite) have remained the same while the costs of maintaining the four developed recreation sites have more than doubled. By increasing user fees, the overall costs to the Federal Government will be reduced. To determine the amount of increase, comparisons of use fees were made of other Federal agencies, non-Federal public agencies and the private sector located within the service area of the King Range National Conservation Area.

The reasons for the camping closure in Samoa are:

1. Many campers have continuously extended their visits beyond the 14 day limit, causing problems with sanitation, littering, vandalism, and vegetative control;

2. These extended visits have reduced the opportunity for other recreationists to camp overnight in the area;

3. Bureau personnel have spent considerable time documenting each campers' length of stay, but the cost effectiveness of this approach is questionable;

4. The area is becoming known to many "transients" and "squatters" as a free place to live.

Maps showing the area closed to overnight camping are available at the Arcata Resource Area Office, 1125 16th Street, Arcata, California 95521. Maps are also posted within the area to show which closure applies.

Dated: March 17, 1987.

**Edwin G. Katlas,**

*Acting District Manager.*

[FR Doc. 87–6936 Filed 3–27–87; 8:45 am]

BILLING CODE 4310-[illegible]

---

[MT–020–07–4322–02]

## Montana; Miles City District Grazing Advisory Board Meeting Notice

**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

**ACTION:** Grazing Advisory Board meeting notice.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92–463 that the Miles City District Grazing Advisory Board will meet May 1, 1987. The meeting will begin at 10 a.m. in the conference room of the Big Dry/Powder River Resource Area Office, Bureau of Land Management, Miles City Plaza, Miles City, Montana 59301.

The agenda for the meeting includes:

—Review of the status of the range improvement program
—Review of the status of the range monitoring effort
—Update on the BLM weed control EIS
—Update on the District riparian management program
—Public comment opportunity
—Next meeting arrangements

The meeting is open to the public. The public may make oral statements before the Advisory Board or file written statements for the Board's consideration. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Dated: March 19, 1987.

**Arnold E. Dougan,**

*Acting District Manager.*

[FR Doc. 87–6884 Filed 3–27–87; 8:45 am]

BILLING CODE 4310–DN–M

---

## Minerals Management Service

## Development Operations Coordination Document; ODECO Oil and Gas Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0818, Block 167, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 18, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978. that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 20, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–6836 Filed 3–27–87; 8:45 am]

BILLING CODE 4310–MR–M

BEST COPY AVAILABLE

**Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders; Chevron U.S.A. Inc.**

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1987, through October 31, 1987. The List of Restricted Joint Bidders published in the **Federal Register** on October 17, 1986, at 51 FR 37088 covered the bidding period of November 1, 1986, through April 30, 1987.

Group I. Chevron U.S.A. Inc.; Chevron Corp.

Group II. Exxon Corp.

Group III. Texaco Inc.; Getty Oil Co.; Texaco Producing Inc.

Group IV. Shell Offshore Inc.; Shell Oil Co.; Shell Western E&P Inc.

Group V. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North American Inc.

Dated: March 24, 1987.

**David W. Crow,**

*Acting Director, Minerals Management Service.*

[FR Doc. 87-6890 Filed 3-27-87; 8:45 am]

BILLING CODE 4310-MR-M

## Office of Surface Mining Reclamation and Enforcement

**Availability of Decision and Statement of Reasons for Decision on Rock Creek Unsuitability Petition**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Availability of decision and statement of reasons for decision on Rock Creek unsuitability petition.

**SUMMARY:** The Director of the Office of Surface Mining Reclamation and Enforcement (OSMRE) has reached a decision on a petition to designate lands as unsuitable for surface coal mining operations in the Rock Creek area of Tennessee.

**ADDRESS:** Copies of the Statement of Decision and the Statement of Reasons for the Decision may be obtained from Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902.

**FOR FURTHER INFORMATION CONTACT:** Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902; telephone 615/673-4348.

**SUPPLEMENTARY INFORMATION:** The Legal Environmental Assistance Foundation filed a petition with OSMRE on October 10 1984, to designate approximately 22,858 acres of land in the Rock Creek watershed area in Hamilton and Bledsoe Counties, Tennessee, as unsuitable for surface coal mining operations. The petition was filed in accordance with section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its implementing regulations at 30 CFR 842.709. The petition alleged: (1) That reclamation of the area was not technologically and economically feasible; (2) that lands within the area were fragile lands, as defined at 30 CFR 942.762.5; (3) that such operations would adversely affect renewable resource lands; and (4) that such operations would be incompatible with State and local land-use plans or programs. Pursuant to 30 CFR Part 942.764, OSMRE analyzed the allegations of the petition and, on May 8, 1986, held a public hearing. OSMRE published the final petition evaluation document and environmental impact statement (PED/EIS) in September 1986 (51 FR 35570).

A copy of the Statement of Decision signed by the Director appears as an appendix to this notice. Additional copies of the Statement of Decision and copies of the Statement of Reasons (not attached to this notice) are available at no cost from the offices listed above under **ADDRESSES.** OSMRE has sent copies of these documents to all interested parties of record.

Additional information on the petition can be found in **Federal Register** notices of December 7, 1984 (Receipt of a Complete Petition for Designation of Lands as Unsuitable for Surface Coal Mining Operations); December 10, 1985, (Notice of Intent To Prepare a Draft Combined Petition Evaluation Document and Environmental Impact Statement, including Holding a Scoping Meeting, 50 FR 50351); and March 24, 1986. (Notice of Availability of Draft PED/EIS and Public Hearing, 51 FR 10119).

Dated: March 24, 1987.

**James W. Workman,**

*Acting Director, Office of Surface Mining Reclamation and Enforcement.*

**Appendix—Petition To Designate Certain Lands in the Rock Creek Watershed, TN as Unsuitable for Surface Coal Mining Operations**

*Decision*

Under section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the Office of Surface Mining Reclamation and Enforcement (OMSRE) has been petitioned by the Legal Environmental Assistance Foundation, Knoxville, Tennessee, to designate certain private lands in the Rock Creek watershed, Hamilton and Bledsoe Counties, Tennessee, as unsuitable for all surface coal mining operations.

As required by sections 522(c) and 522(d) of SMCRA, public comment on the Rock Creek unsuitability petition was sought, a public hearing was held near the petition area in Pikeville, Tennessee, and a detailed statement, evaluating the unsuitability petition, the potential impacts from a proposed surface mining operation in the petition area, and alternative decisions available to the decisionmaker, were prepared by OSMRE.

I have considered the following information in the course of making my decision on the petition allegations: The draft and final evaluation documents, the allegations of the petitioners, and the comments in the form of oral testimony at the public hearing and written submissions received up to the close of the comment period from members of the public and industry. On the basis of all information, which is in the administrative record of this proceeding, I have reached the following decision:

1. I designate:

a. All surface minable reserves of the Sewanee coal seam within the Rock Creek watershed, Tennessee as unsuitable for coal mining operations using conventional overburden mixing techniques for reclamation;

b. The Hall, Middle, and Rock Creek gorges as unsuitable for all surface coal mining operations and surface disturbance incident to underground mining.

My Statement of Reasons, which includes a topographic description of the designation of the gorges, explains the basis for my conclusion to designate parts of the Rock Creek watershed petition area as unsuitable for surface coal mining operations.

Copies of this decision will be sent by certified mail to all parties in this proceeding. Copies of the Statement of Reasons are available at no cost from the Offices listed under **ADDRESSES** in this notice. The decision will become final on the date my Statement of Reasons is issued. Any appeal from this decision must be filed within 60 days from that date in the United States District Court for the District of Tennessee, as required by SMCRA Section 526(a)(1).

Dated: March 24, 1987.

**Jed D. Christensen,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87-6854 Filed 3-27-87; 8:45 am]

BILLING CODE 4310-05-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

March 23, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0009
Title: Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License, or Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License (Short Form)
Form No.: FCC 316
Action: Extension (renewal)

Estimated Annual Burden: 1,108 Responses; 3,324 Hours.

Needs and Uses: Required to apply for authority for voluntary/involuntary assignment of a broadcast license or construction permit, or transfer of control of corporation holding license or permit. The data is used to determine applicant's qualifications and whether public interest would be served.

OMB No.: 3060-0055
Title: Application for Cable Television Relay Service Station
Form No.: FCC 327
Action: Revision

Estimated Annual Burden: 1,400 Responses; 4,200 Hours.

Needs and Uses: Required of cable TV owners and operators to apply for CARS authorization. The data is used to determine whether applicant meets basic statutory requirements and to assure that public interest is served.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-6895 Filed 3-27-87; 8:45 pm]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 30800; [1] Decision No. 12]**

### Union Pacific Corporation, et al.; Control of Missouri-Kansas-Texas Railroad Co.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Abandonment requests related to control applications accepted for consideration.

**SUMMARY:** The Commission is accepting for consideration abandonment applications, exemption notices and a petition for exemption related to the application for approval of Union Pacific Corporation and its wholly-owned subsidiaries Union Pacific Railroad Company and Missouri Pacific Railroad Company, to control the Missouri-Kansas-Texas Railroad Company. The Commission will decide the abandonment requests as an integral part of its decision on the control application.

**DATES:** Verified statements opposing abandonment requests must be filed by June 15, 1987. Rebuttal evidence must be filed by July 13, 1987. Oral hearing in this consolidated proceeding will begin on August 3, 1987. Documents should refer to Finance Docket No. 30800 as well as the applicable abandonment docket number.

**FOR FURTHER INFORMATION CONTACT:**

Joseph H. Dettmar, (202) 275-7245

or

Alan Greenbaum, (202) 275-7322

**ADDRESSES:** Unless otherwise indicated, an original and 20 copies of all documents should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding should be sent to:

(1) Rail Section, Interstate Commerce Commission, Washington, DC 20423.

(2) All active parties of record on the Commission's revised service list to be issued shortly.

In addition, one copy of all verified statements in opposition should be sent to applicants' representatives as applicable:

Michael E. Roper, Missouri-Kansas-Texas Railroad Company, Oklahoma, Kansas and Texas Railroad Company, 701 Commerce Street, Dallas, TX 75202

Joseph D. Anthofer, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179

**SUPPLEMENTARY INFORMATION:** The following control-related abandonment applications have been filed under 49 U.S.C. 10903, *et seq.*:

1. Docket No. AB-3 (Sub-No. 62), *Missouri Pacific Railroad Company—Abandonment—In Butler County, KS*—MP 454.7 near El Dorado, KS to MP 474.4 near Whitewater, KS (19.7 miles);

2. Docket No. AB-3 (Sub-No. 63), *Missouri Pacific Railroad Company—Abandonment—In Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka and Bryan Counties, OK*—MP 174.0 near Henryetta, OK, to MP 297.6 near Durant, OK (123.6 miles);

3. Docket No. AB-102 (Sub-No. 16), *Missouri-Kansas-Texas Railroad Company—Abandonment—In Pettis and Henry Counties, MO*—MP 227.7 at Sedalia, MO to MP 262.6 at North Clinton, MO (34.9 miles);

4. Docket No. AB-102 (Sub-No. 17), *Missouri-Kansas-Texas Railroad Company—Abandonment—In Bourbon, Crawford, Neosho, and Labette Counties, KS*—MP 340.5 at Griffith, KS to MP 383.8, at Parsons, KS (43.3 miles); and

5. Docket No. AB-102 (Sub-No. 20), *Missouri-Kansas-Texas Railroad Company—Abandonment—In Williamson County, TX*—MP U-907.40, at Granger, TX, to MP U-923.70, at Georgetown, TX (16.3 miles).

The following control-related abandonment notices of exemption have been filed under 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights:*

[1] Embraces Finance Docket Nos. 30800 (Sub-Nos. 1-5) and No. MC-F-17938.

1. Docket No. AB–3 (Sub-No. 64X), *Missouri Pacific Railroad Company—Abandonment Exemption—In Sumner County, KS*—(14.4 miles);

2. Docket No. AB–102 (Sub-No. 19X), *Missouri—Kansas—Texas Railroad Company—Abandonment Exemption—In Montgomery County, KS and Nowata County, OK*—MP A–168.7 at Coffeyville, KS to MP A–170.9 at South Coffeyville, OK (2.2 miles);

3. Docket No. AB–102 (Sub-No. 21X), *Missouri—Kansas—Texas Railroad Company—Abandonment Exemption—In Grayson County, TX* MP P–622.54 at Dension, TX, to MP P673.05, at Sherman, TX (10.51 miles);

4. Docket No. AB–102 (Sub-No. 22X), *Missouri—Kansas—Texas Railroad Company—Abandonment Exemption—In Grayson County, TX*—MP D–659.5 at Denison, TX, to MP D–674.3, at Bells, TX (14.8 miles);

5. Docket No. AB–102 (Sub-No. 23X), *Missouri—Kansas—Texas Railroad Company—Abandonment Exemption—In Fannin and Hunt Counties, TX*—MP D–688.1 at Trenton, TX, to MP D–173.6 at Greenville, TX (25.5 miles);

6. Docket No. AB–244 (Sub-No. 1X), *Oklahoma, Kansas and Texas Railroad Company—Abandonment Exemption—In Dickenson County, KS*—MP S–172.8 at North Herington, KS, to MP S–180.3 at Woodbine, KS (7.5 miles).[2]

The following control-related abandonment petition for exemption has been filed under 49 U.S.C. 10505:

1. Docket No. AB–102 (Sub-No. 18X), *Missouri—Kansas—Texas Railroad Company—Abandonment Exemption—In Comal County, TX*—MP M–995.9 at Hunter, TX, to MP M–1012.6 at Ogden, TX (16.7 miles).

Additional information is contained in the Commission's decision. Copies of the decision are available from the T.S. Infosystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Dated March 23, 1987.

By the Commission, Chairman Gradison, Vice Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee**

*Secretary*

[FR Doc. 87–6878 Filed 3–27–87; 8:45 am]

BILLING CODE 7035–01–M

[2] Missouri—Kansas—Texas Railroad Company controls Oklahoma, Kansas and Texas Railroad Company.

## Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: March 25, 1987.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Dairymen, Inc.
(2) 10140 Linn Station Road, Louisville, KY 40223.
(3) Georgia Division—Recreation Road—Box 910, Eatonton, GA 31024.
(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223.

(1) Flav-O-Rich, Inc.
(2) 10140 Linn Station Road, Louisville, KY 40223.
(3) 2537 Catherine Street, Bristol, VA 24201
(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223.

(1) Gold Kist Inc.
(2) 244 Perimeter Center, Pkwy. NE., Atlanta, GA 30346
(3) 244 Perimeter Center, Parkway. NE., Atlanta, GA 30346
(4) G.H. Glover, 244 Perimeter Center Parkway NE, Atlanta, GA 30346

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–6879 Filed 3–27–87; 8:45 am]

BILLING CODE 7035–01–M

---

**[Ex Parte No. 290 (Sub-No. 2)]**

## Railroad Cost Recovery Procedures

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of approval of rail cost adjustment factor and decision.

**SUMMARY:** The Commission has decided to approve the cost index and RCAF filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* Application of the index, as adjusted for fourth quarter 1986 forecast error, provides for a second quarter 1987 RCAF of 1.068. Since there is a bank of credits sufficient to offset any increase in maximum RCAF rate levels maximum adjusted base rates may not exceed the current ceiling of 1.057. No rate actions are ordered.

**DATE:** Effective April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** William T. Bono, (202) 275–7354.

**SUPPLEMENTARY INFORMATION:** By decision served January 2, 1985 (50 FR 87, January 2, 1985) we outlined the procedures for the calculation of the all inclusive index of railroad input costs and the methodology for the computation of the RCAF. These procedures replaced an interim methodology which was formerly used. AAR is required to calculate the forecasted index on a quarterly basis and submit it on the fifth day of the last month of each calendar quarter.

We have reviewed AAR's calculations of the index for the second quarter of 1987 and find that these calculations comply with the rules.

In our decision served December 27, 1985, we restated a lump sum payment to certain members of the United Transportation Union by amortizing it over the life of the present union contract with interest calculated using the three-month Treasury Bill rate. We instructed AAR to continue this calculation by amortizing the principal balance over the remaining quarters using a three-month Treasury Bill interest rate available seven days prior to the submission date of the quarterly index. A new contract with the American Train Dispatchers Association has become effective during the first quarter of 1987. This contract also contained a lump sum provision. We have verified the calculation of this and other lump sum payments and find that they comply with our instructions.

Our decision served September 19, 1986 requested AAR to quantify the effect of new labor contract conditions on the wage rates used in the labor portion of the index. Since that time AAR has established a special committee to quantify the effect of work rule savings on the hourly wage rate

which is the major component of the labor index. The committee has conducted a survey of AAR member railroads and quantified several additional work rule savings. The results of that survey are reflected in a second quarter 1987 reduction of 21.9 cents in the hourly wage rate.

AAR has also included a wage increase adjustment for exempt employees (those not covered by either an expired labor contract or a current one) as a part of its second quarter submission. The adjustment was calculated using a weighted average of the increases (including lump sums and less work rule savings) granted to employees who had signed new contracts. The calculation of non-union staff wage increases on the above basis complies with our rules served January 2, 1985 and it is appropriate to include those increases in the index.

We find the RCAF for the second quarter of 1987 to be 1.068. This figure was calculated by adjusting the preliminary second quarter 1987 RCAF for the fourth quarter 1986 forecast error. Since there is a bank of credits sufficient to offset any increase in maximum RCAF rate levels, adjusted base rates may not exceed the current ceiling of 1.057. No rate actions are ordered.

The indices and RCAF derived from AAR's second quarter 1987 calculations are shown in Table A of the Appendix to this decision. The adjustment for fourth quarter 1986 forecast error is also shown in Table A. Table B shows the fourth quarter 1986 index and RCAF calculated on both an actual basis and a forecasted basis for comparative purposes. Table C shows our calculation of the bank credits (including the application of an opportunity cost adjustment) used to offset increases in the RCAF.

Finally, we observe that since the published second quarter 1987 RCAF of 1.068 is higher than the current maximum RCAF rate level of 1.057, the bank of credits will be reduced slightly. If the published quarterly RCAF level remains above 1.057 in future quarters further reductions in the bank will occur. We will continue to calculate the size of the bank of credits and include that information in each quarterly decision as long as there are any remaining credits.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify a formerly complex and burdensome rate increase procedure.

**Authority:** 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: March 17, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in part and dissented in part with a separate expression.

**Noreta R. McGee,**

*Secretary.*

TABLE A.—EX PARTE NO. 290 (SUB-NO. 2)

[All Inclusive Index of Railroad Input Costs]

| Line No. and index component | 1985 weights (percent) | First quarter 1987 forecast | Second quarter 1987 forecast |
|---|---|---|---|
| 1. Labor | 48.6 | 163.3 | 163.7 |
| 2. Fuel | 9.7 | 49.2 | 51.6 |
| 3. Materials and Supplies | 7.6 | 102.9 | [illegible] |
| 4. Equipment Rents | 9.0 | 145.1 | 139.6 |
| 5. Depreciation | 8.7 | 117.0 | 116.5 |
| 6. Other Items [1] | 16.4 | 121.3 | 122.3 |
| 7. Weighted Average | 100.0 | 135.1 | 134.8 |
| 8. Linked Index [2] | | 129.5 | 129.2 |
| 9. Preliminary Rail Cost Adjustment Factor [3] (10/1/82=100) 120.9 | | 1.071 | 1.069 |
| 10. Adjustment for Fourth Quarter 1986 Forecast Error [4] | | (.009) | (.001) |
| 11. First Quarter 1987 RCAF | | 1.062 | 1.068 |

[1] Other items are a combination of Purchased Services, Casualties and Insurance, General and Administrative, Other Taxes and Loss and Damage, all of which are measured by the Producer Price Index for Industrial Commodities, less Fuel and Related Products and Power

[2] Linking is necessitated by a change to 1985 weights beginning with the fourth quarter 1986. The following formula was used for the third quarter 1986 index

$$\frac{\text{2nd Quarter 1987 Index (1985 Weights)}}{\text{1st Quarter 1987 Index (1985 Weights)}} \times \text{1st quarter 1987 Index (Linked Index)} = \text{Linked Index (1980 Weights to 1985 Weights)}$$

or:

$$\frac{134.8}{135.1} \times 129.5 = 129.2$$

[3] The denominator was rebased to an October 1, 1982 level in accordance with the requirements of the Staggers Rail Act of 1980

[4] Fourth quarter 1986 forecast error adjustment is calculated as follows

| | |
|---|---|
| 1. Fourth quarter 1986 RCAF calculated using forecasted data | 1.044 |
| 2. Fourth quarter 1986 RCAF calculated using actual data | 1.043 |
| 3. Difference (line 1 minus line 2.). Since the actual fourth quarter 1986 RCAF was lower than the forecast the difference will be subtracted from the second quarter 1987 preliminary RCAF | .001 |

TABLE B.—EX PARTE NO. 290 (SUB-NO. 2)

[Comparison of Fourth Quarter 1986 Index—Calculated on Both a Forecasted and an Actual Basis]

| Line No. and index component | 1985 weights (percent) | Fourth quarter 1986 forecast | Fourth quarter 1986 actual |
|---|---|---|---|
| 1. Labor | [illegible] | 156.2 | 156.2 |
| 2. Fuel | 9.7 | 49.2 | 48.2 |
| 3. Materials and Suppliers | 7.6 | 104.2 | 104.2 |
| 4. Equipment Rents | 9.0 | 145.6 | 145.0 |
| 5. Depreciation | 8.7 | 117.2 | 116.3 |
| 6. Other Items | 16.4 | 120.9 | 121.4 |
| 7. Weighted Average | 100.0 | 131.7 | 131.6 |
| 8. Linked Index | | 126.2 | 126.1 |
| 9. Rail Cost Adjustment Factor | | 1.044 | [1] 1.043 |

[1] For comparative purposes only, an RCAF for the fourth quarter 1986 has been calculated using actual data. The published RCAF for the fourth quarter 1986 was computed using forecasted data

TABLE C.—EX PARTE NO. 290 (SUB-NO. 2)

[Calculation of RCAF Credits and Application of Opportunity Cost Adjustment]

| | |
|---|---|
| 1. Bank of RCAF credits 12–31–86 | 100 |
| 2. Maximum RCAF rate level, first quarter 1987 | 1.057 |
| 3. Published RCAF first quarter 1987 | 1.062 |
| 4. Reduction ( ) or addition to bank of credits for first quarter 1987 (Line 1. minus line 4.) | (.005) |
| 5. Bank of RCAF credits 3–31–87 (Line 1. minus Line 4.) | .095 |
| 6. First quarter allowance for opportunity cost (Three-month Treasury Bill rate for sale of 2–23–87 (5.4 percent) divided by 4) | 1.35% |
| 7. Bank of RCAF credits 3–31–87 adjusted for opportunity cost (line 5 × (1.0 + Line 6)) | .096 |

[FR Doc. 87–6430 Filed 3–27–87; 8:45 am]

BILLING CODE 7035–01–M

## LIBRARY OF CONGRESS

### Copyright Office

### Operating Guidelines Regarding the Child Protection Act; Public Availability

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of public availability of guidelines.

The Copyright Office has prepared operating guidelines to assist the staff in applying the Child Protection Act, title 18 U.S.C. 2251–2255 in processing claims to copyright pursuant to title 17 United States Code. These Guidelines are available for public inspection and copying in the Public Office of the Copyright Office, Room LM–401 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE., Washington, DC.

Dated: March 20, 1987.

**Ralph Oman,**

*Register of Copyrights.*

Approved by:

**Daniel J. Boorstin,**

*The Librarian of Congress.*

[FR Doc. 87-6916 Filed 3-27-87; 8:45 am]

BILLING CODE 1410-07-M

## Policy Decision: Enforcement of Conflicts of Interest Policies

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of policy decision.

**SUMMARY:** The Copyright Office has recently issued an internal policy statement to the Staff reaffirming the application of Library of Congress regulations that prohibit staff from engaging in certain kinds of outside employment. The general purposes of the Library of Congress regulations is to avoid conflicts of interest, both apparent and real, between an employee's duty to his or her government employer and the duty to an outside client or principal. The rules also prevent corruption and abuses of inside information.

Although the policy statement is an internal, personnel document not required to be made available to the public, the Copyright Office hereby notifies the public of one way in which the internal policy will be enforced. The Office will refuse to process any application, document, letter, or other request if either (1) it is signed by an employee of the Office as paid agent for another person, or (2) the Office has reason to believe that a Copyright Office employee has participated in providing a copyright-related service for monetary value. In such cases, the application, document, letter, or other request will be returned to the *copyright claimant* with an explanation of the Office's conflicts of interest policy. The claimant will be asked to resubmit the item without any paid or remunerated assistance from a Copyright Office employee as agent.

Dated: March 17, 1987.

**Ralph Oman,**

*Register of Copyrights.*

Approved by:

**Daniel J. Boorstin,**

*The Librarian of Congress.*

[FR Doc. 87-6915 Filed 3-27-87; 8:45 am]

BILLING CODE 1410-07-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-30)]

## NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

**DATE AND TIME:** April 15, 1987, 8:30 a.m. to 4:30 p.m.

**ADDRESS:** National Aeronautics and Space Administration, Federal Building 10B, Room 425, 600 Independence Avenue, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Joanne O. Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-1887.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Committee, chaired by Mr. Norman Augustine, is comprised of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Committee members and other participants).

Type of meeting: Open.

**Agenda**

April 15, 1987

8:30 a.m.—Opening Remarks.
9 a.m.—Discussion of Agency Strategic Planning.
10 a.m.—Briefing on Long-Range Space Technology Plans.
1 p.m.—University Space Engineering Program Plans.
1:30 p.m.—Ad Hoc Team Reports.
3 p.m.—Discussion of Action Summary from SSTAC/Aerospace Research and Technology Subcommittee meeting.
4 p.m.—Summary Session.
4:30 p.m.—Adjourn.

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

March 19, 1987.

[FR Doc. 87-6880 Filed 3-27-87; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL SCIENCE FOUNDATION

## Advisory Panel for Archaeometry (Anthropology Program); Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeometry (Anthropology Program).

Date & Time: April 13, 1987; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 628, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. John Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550; (202) 357-7804.

Purpose of meeting: To provide advice and recommendations concerning support for archaeometry.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information, concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

March 23, 1987.

[FR Doc. 87-6843 Filed 3-27-87; 8:45 am]

BILLING CODE 7555-01-M

## Earth Sciences Proposal Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel.

Date: April 8, 9 and 10, 1987.

Time: 8:00 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 543, 1800 G Street, NW., Washington, DC 20550.

Ttpe of meeting: Closed.

Contact person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550 Telephone: (202) 357-7958.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of meeting: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and

(6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
*Committee Management Officer.*
March 23, 1987.

[FR Doc. 87-6844 Filed 3-27-87; 8:45 am]
BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

### Baltimore Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-53 and DPR-69 issued to the Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would decrease the frequency of performance of the steam generator (SG) tube inservice inspections (ISI) by modifying the Units 1 and 2 Technical Specifications (TS) Surveillance Requirements 4.4.5.3.a and b.

Currently TS 4.4.5.3.a requires that subsequent ISI's be performed at intervals of not less than 12 nor more than 24 calendar months after the previous inspection. This application proposes to change the SG tube ISI frequency to at least once per refueling interval where a refueling would be defined as 24 months. In addition, the interval between performances of consecutive SG tube ISI's could be extended by 6 months to a total interval of 30 months as long as the combined time interval for three consecutive ISI intervals does not exceed 78 months. Currently, this combined interval cannot exceed 72 months.

This application also proposes to modify the SG tube ISI frequency requirement of TS 4.4.5.3.b by making this requirement only applicable to any Category C-3 results for SG tube ISI's conducted at 40-month intervals. The 40-month interval is permitted by TS 4.4.5.3.a when two consecutive ISI's demonstrate that no further or new tube degradation has occurred. This application additionally proposes the extension of the TS 4.4.5.3.b required punitive inspection frequency to at least once per refueling interval. The refueling interval (24 months) may be extended by 6 months over one ISI interval (total of 30 months) as well as 6 months over three consecutive ISI intervals (combined total of 78 months).

Currently, the inspection frequency requirement of TS 4.4.5.3.b is applicable to all ISI's, regardless of the interval at which they were performed, if that ISI required a third sample inspection whose results were Category C-3. The current punitive inspection frequency required is at least once per 20 months with no extensions permitted. This requirement is more restrictive than the normal SG tube ISI frequency of up to 24 months. The proposed punitive ISI frequency is identical to the proposed normal ISI frequency. For each, the ISI interval may be extended up to 30 months.

The proposed TS revision is in partial response to the licensee's application for amendments dated October 17, 1986. The remaining issues associated with the October 17, 1986 application will be addressed in separate actions.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 29, 1987, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ashok C. Thadani: (petitoner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to D.A. Brune, Jr., Genral Counsel, Baltimore Gas & Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated October 17, 1986 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 23rd day of March 1987.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Director, PWR Project Directorate #8, Division of PWR Licensing-B.*

[FR Doc. 87-6946 Filed 3-27-87; 8:45 am]

BILLING CODE 7590-01-M

---

**[Docket No. 50-341; FERMI-2]**

**Detroit Edison Co., Wolvering Power Supply Cooperative Inc.; Withdrawal of Application for Amendment to Facility Operating License NPF-43**

The United States Nuclear Regulatory Commission (Commission or the NRC) has granted the request of the Detroit Edison Compnay (DECo or the licensee) for wihdrawal of part of an application for proposed amendment to Facility Operating License No. NPF-43 for Fermi-2 located in Monroe County, Michigan. The Commission issued a Notice of Consideration of Issuance of Amendment which was published in the **Federal Register** on October 22, 1986 (51 FR 37508).

By letter dated January 29, 1987, the licensee withdrew a portion of the application for the amendment requested on June 19, 1986, and supplemented on July 31, 1986. The licensee submitted a proposed license amendment which would have extended the required date for submittal of the Detailed Control Room Design Review (DCRDR) summary report.

The DCRDR summary report was submitted with the letter dated November 30, 1986, as required in Operating License No. NPF-43, Attachment 2, Item 1(a). Hence, the proposed portion of the license amendment is not needed.

For further details see the application for amendment dated June 19, 1986, and July 31, 1986, the licensee's letter dated January 29, 1987, withdrawing a portion of the application. All of these documents are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555 and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Bethesda, Maryland, this 23rd day of March 1987.

**Elinor G. Adensam,**

*Director, BWR Project Directorate No, 3 Division of BWR Licensing.*

[FR Doc. 87-6947 Filed 3-27-87; 8:45 am]

BILLING CODE 7590-01-M

---

**[Dockets Nos. 50-259/260/296]**

**Tennessee Valley Authority; Withdrawal of Application for Amendments to Facility Operating Licenses**

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (the licensee) to withdraw its January 20, 1986 application for proposed amendments to Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68 for the Browns Ferry Nuclear Plant, Units 1, 2, and 3 located in Limestone County, Alabama. The proposed amendments would have revised the Technical Specifications relating to the requirement for taking milk samples. The Commission issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on March 26, 1986 (51 FR 10470). By letter dated January 20, 1987 the licensee withdrew its application for the proposed amendments.

For further details with respect to this action, see (1) the application for amendments dated January 30, 1986 and (2) the licensee's letter dated January 20, 1987, withdrwing the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room in the Athens Public Library, South and Forrest, Athens, Alabama 35611.

Dated this 9th day of February, 1987.

For the Nuclear Regulatory Commission.

**Daniel R. Muller,**

*Director, BWR Project Directorate #2, Division of BWR Licensing.*

[FR Doc. 87-6948 Filed 3-27-87; 8:45 am]

BILLING CODE 7590-01-M

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 24239; File No. SR-NYSE-87-07]**

**Self-Regulatory Organizations; Filing and Summary Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.; 2½ point strike price intervals in NYSE Composite Index Options**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 18, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Last August, the Exchange amended Rule 703.30 to provide for 2½ point strike price intervals for NYSE Composite Index Options. (*See* SR-NYSE-86-25, as amended by the August 27, 1986 letter to Jonathan G. Katz, Secretary, SEC, from James E. Buck, Secretary, NYSE (the "Temporary Rule Change") and Securities Exchange Act Release No. 23618 (September 12, 1986).) The Temporary Rule Change contains a "sunset" provision effective upon the March expiration. The proposed rule change extends the "sunset" to May 17 (i.e., the May expiration).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Please see Exhibit 1 to SR–NYSE–86–25.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Please see Exhibit 1 to SR–NYSE–86–25.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The NYSE did not submit this filing to its members for comments, however, see Exhibit 1 to SR–NYSE–86–25 concerning any comments received on the original establishment of the 2½ point strike price intervals.

*III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

The Exchange requests that the Commission summarily approve the proposed rule change pursuant to section 19(b)(3)(B) of the Act. The Exchange currently has trading NYSE Composite Index Options contracts with "2½ point" strike prices. Summary approval will permit these contracts to continue trading, and permit the Exchange to open new contracts with "2½ point" strike prices, pending the Exchange's filing of a proposed rule change making the amendments to Rule 703.30 permanent. The Exchange anticipates making that filing shortly.

The Commission believes that summary effectiveness is necessary to enable the Exchange to continue the pilot program without interruption while it prepares to file for permanent approval of 2½ point strike price intervals in its Composite Index Options. The proposed rule change will provide continuity to investors in this class of options and will thereby assist in the maintenance of fair and orderly markets. Accordingly, the foregoing rule change has been put into effect summarily, pursuant to section 19(b)(3) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Section 19(b)(3)(B) of the Act requires that any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with the provisions of section 19(b)(1) of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 20, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

March 20, 1987.

[FR Doc. 87–6881 Filed 3–27–87; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATE:** Comments should be submitted on or before April 29, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–6623

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, (202) 395–7340.

Title: Statement of Personal History.

Frequency: Each time assistance or temporary office employment is applied for.

Description of Respondents: This form is used to collect information needed to make character determinations with respect to applicants.

Annual Responses: 87,100.

Annual Burden Hours: 7,258.

Type of Request: Extension.

**Elizabeth M. Zaic,**

*Deputy Director, Office of Administrative Services Small Business Administration.*

March 25, 1987.

[FR Doc. 87–6852 Filed 3–27–87; 8:45 am]

BILLING CODE 8025–01–M

### Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting at 2:00 p.m. Thursday, April 23, 1987, at the Sheraton Hotel, 4728 Constitution Avenue—near I–10 at College Drive, Room 254, Baton Rouge, Louisiana 70808, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert J. Crochet, District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112–2990, (504) 589–2744.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

March 24, 1987.

[FR Doc. 87–6847 Filed 3–27–87; 8:45 am]

BILLING CODE 8025–01–M

### Region VI—Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, Texas, will hold a public

meeting at 9:00 a.m., on Thursday, May 7, 1987 at Dallas County Community College District, 701 Elm Street, Dallas, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce, Room 3C36, Dallas, Texas, 75242, telephone (214) 767–0600.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

March 24, 1987.

[FR Doc. 87–6848 Filed 3–27–87; 8:45 am]

BILLING CODE 8025–01–M

---

### Mid-Atlantic Regional Advisory Council; Public Meeting

The Small Business Administration Regional Advisory Council of the Mid-Atlantic Region of SBA will hold a joint public meeting beginning Thursday, April 30, 1987 at 12:00 Noon at the Cliffside Inn, located on Route 340 one mile west of Harpers Ferry, West Virginia to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information, write or call Robert H. Miller, Regional Administrator, U.S. Small Business Administration, One Bala Cynwyd Plaza, West Lobby, Bala Cynwyd, PA 19004 or phone (215) 596–5901.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

March 24, 1987.

[FR Doc. 87–6846 Filed 3–27–87; 8:45 am]

BILLING CODE 8025–01–M

---

## DEPARTMENT OF STATE

### Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission; Partially Closed Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92–463, that a meeting of the Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission will be held on April 22, 1987 from 9:00 a.m. to 4:30 p.m. in the auditorium of the Southwest Fisheries Center of the National Marine Fisheries Service at 8604 La Jolla Shores Drive, La Jolla, California. The Advisory Committee meets annually to discuss the conservation and management of tuna fisheries in the eastern Pacific Ocean and U.S. preparations for meetings of the Inter-American Tropical Tuna Commission. The 44th meeting of the IATTC is scheduled for May 5–7, 1987 in Panama City, Panama.

The morning session will be open to the public and the public may participate in the discussions subject to the instructions of the Committee Chair. Subjects to be discussed include an evaluation of the 1986 fishery experience, assessment of tuna stocks, a preliminary outlook for the 1987 fishery, and the IATTC tuna-porpoise program.

The Advisory Committee will meet in closed session on the afternoon of April 22. At this session, documents classified in accordance with Executive Order 12356 of April 12, 1982 will be circulated and discussed and matters will be considered which the public interest requires be withheld from disclosure. Accordingly, a determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, s.10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Brian Hallman, OES/OFA, Room 5806, Department of State. He may be reached by telephone at (202) 647–2335.

Dated: March 18, 1987.

**Edward E. Wolfe,**

*Deputy Assistant Secretary for Oceans and Fisheries Affairs.*

[FR Doc. 87–6837 Filed 3–27–87; 8:45 am]

BILLING CODE 4710–09–M

---

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ending March 20, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

**Docket No. 44739 R–1 & R–2**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 17, 1987.
*Subject:* Increase ex-Australia Rates.
*Proposed Effective Date:* May 1, 1987.

**Docket No. 44743 R–1 & R–2**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 18, 1987.
*Subject:* Ex-Scandinavian Rate Increases.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44744 R–1—2**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 19, 1987.
*Subject:* 1987 Canada-Europe Rates.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44745 R–1—R–10**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 19, 1987.
*Subject:* Mid Atlantic-Europe Fares.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44746 R–1—R–7**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 19, 1987.
*Subject:* 1987 PAC Resolutions.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44647 R–1—R–47**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 20, 1987.
*Subject:* TC1 Longhaul.
*Proposed Effective Date:* May 1, 1987.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87–6914 Filed 3–27–87; 8:45 am]

BILLING CODE 4910–62–M

---

## Federal Aviation Administration

### Certification Issues Conference; Civil Powered-Lift Transport Category Aircraft

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of conference; change of location.

**SUMMARY:** A notice announcing a conference to discuss civil certification issues for powered-lift aircraft that may arise from the entry of such an aircraft into the civil aviation system was published in the **Federal Register** on February 2, 1987 (52 FR 3192). Since that notice was issued, the FAA has changed the location of the conference. The FAA is also asking for preregistration of conference attendees. Preregistration information and draft airworthiness criteria have been mailed to all known interested persons. Persons who have not received a preregistration package by May 1, 1987, should contact the person listed under "For Further Information Contact."

**DATES:** May 1, 1987: Last day for receipt of agenda items submitted to the FAA Rotorcraft Standards Staff to facilitate establishing the conference agenda/special requirements.

June 23, 1987: Conference will begin at 9 a.m. (registration will begin at 8 a.m.) and continue through succeeding days until coverage of all issues is complete.

**ADDRESSES:** The new location for the conference is the Holiday Inn North/Conference Center, 2540 Meacham Boulevard, Fort Worth, Texas, telephone (817) 625–9911.

Agenda items may be mailed to FAA, Regulations Program Management, ASW–111, P.O. Box 1689, Fort Worth, Texas, 76101, or delivered to the FAA Southwest Regional Office, Rotorcraft Standards Staff, Building 3B, Room 166, 4400 Blue Mound Road, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** For technical issues/agenda items contact Mr. Jim S. Honaker, Regulations Program Management, ASW–111, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624–5109 or FTS 734–5109.

For preregistration information/special requirements contact Ms. Debra H. Myers, Regulations Program Management, ASW–111, same address as above, telephone (817) 624–5118 or FTS 734–5118.

**SUPPLEMENTARY INFORMATION:**

**Background**

Powered-lift aircraft fly at the higher speeds of conventional airplanes and may also have a zero airspeed (hover) capability. This capability may be provided by aircraft configuration changes (tilt-wing, tilt-rotor, tilt-propeller), by thrust vectoring, by direct-lift engines, or by other powered-lift concepts. Powered-lift aircraft include some characteristics of rotorcraft and some characteristics of airplanes and, as a result, constitute a unique category.

Several designs of power-lift aircraft are currently being considered by various industry and government groups, and the FAA recently received an application for civil certification of one of the designs. In that regard, the FAA is seeking the identification and discussion of certification issues that could arise as a result of the development of such a design.

Interested persons are invited to identify issues for civil certification of a powered-lift aircraft. Issues submitted will be used to prepare a formal conference agenda.

**Conference Procedures**

Persons who plan to attend the conference should be aware of the following procedures to facilitate the workings of the conference.

1. Registration will begin at 8 a.m. on June 23, 1987.

2. Conference sessions will be open to all persons who register.

3. The FAA will consider all material presented at the conference by participants. Handout materials may be accepted at the discretion of the chairperson; however, enough copies should be provided for distribution to all conference participants.

4. Statements made by the FAA will be made to facilitate discussion and should not be taken as expressing a final FAA position.

5. The Holiday Inn North/Conference Center has blocked rooms for attendees that identify themselves as FAA Powered-Lift Conference participants at a rate of $39 per night. Room reservation information is included in the preregistration information package.

Issued in Fort Worth, Texas, on March 16, 1987.

**C.R. Melugin, Jr.,**

*Director, Southwest Region.*

[FR Doc. 87–6925 Filed 3–27–87; 8:45 am]

BILLING CODE 4910–13–M

## Radio Technical Commission for Aeronautics (RTCA); Special Committee 163—Anti-Blocking Device and Stuck Microphone Circuitry for Two-Way Voice Communication Radios, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 163 on Anti-Blocking Device and Stuck Microphone Circuitry for Two-Way Voice Communication Radios to be held on April 23–24, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Opening Remarks; (2) Review of Committee Terms of Reference; (3) Review of Prior RTCA Activities; (4) Discuss Facts Bearing on the Problem; (5) Establish Plan to Develop Criteria and Guidance Information for Methods to Eliminate Blocked Frequences; (6) Develop Committee Work Program and Schedule; (7) Assignment of Tasks; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time

Issued in Washington, DC on March 23, 1987.

**Wendie F. Chapman,**

*Designated Officer.*

[FR Doc. 87–6926 Filed 3–27–87; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

## Bank Secrecy Act; Electronic Filing of Currency Transaction Reports

**AGENCY:** Department of the Treasury, Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury is planning to conduct a pilot program in which participating financial institutions may report on magnetic media currency transactions as required by the Bank Secrecy Act. Such magnetic media filing must include all the information currently required to be provided on the paper forms.

**DATE:** Requests for copies of the specifications for participation in the program, which include the required application forms, must be submitted by June 15, 1987.

**ADDRESS:** Requests for specifications should be addressed to Chief, Currency and Banking Division, Internal Revenue Data Center, 1300 John Lodge Drive, Detroit, MI 48226, Attn: Phyllis A. Goldsworthy, CTR Magnetic Filing Coordinator.

**FOR FURTHER INFORMATION CONTACT:** Phyllis A. Goldsworthy, CTR Magnetic Filing Coordinator, (313) 226–3293.

**SUPPLEMENTARY INFORMATION:** Under a provision of the Bank Secrecy Act, 31 U.S.C. 5313, and the regulations thereunder, the Department of the Treasury requires designated financial institutions to file reports of currency transactions over $10,000 on a form prescribed by the Secretary of the Treasury. 31 CFR 103.22 and 103.26(a). Until this time, the only form of reporting prescribed by the Secretary has been paper filing on the Currency Transaction Report (IRS Form 4789). However, Treasury will conduct a pilot program in which participating financial institutions may report currency transactions on magnetic media (tape filing). Interested financial institutions should immediately request a copy of specifications for participation from the above address. A financial institution may apply to participate in the program for only some of its branches or offices. The non-participating branches or offices would continue to file paper Currency Transaction Reports as usual.

Based on the results of this pilot program, Treasury will consider authorizing non-paper filing of Currency Transaction Reports on a permanent basis for those financial institutions that wish to file in this manner. We hope that non-paper filing will provide cost and other advantages to the government and participating financial institutions.

Treasury will not furnish the software required for magnetic media filing. Treasury will accept magnetic media Currency Transaction Reports only from financial institutions that have applied to participate in the pilot test and whose participation has been approved by the Internal Revenue Service Data Center, Detroit, Michigan. Approval is contingent upon successful completion of an acceptance test to be administered by the Data Center. Information regarding the acceptance test, including the date by which it must be completed, is contained in the specifications.

Magnetic media reports filed during the pilot program must contain all the information currently required on paper Currency Transaction Report forms and must be in the format prescribed in the specifications. All magnetic media submissions filed during the filing test must be accompanied by a transmittal document containing the signature of an official of the financial institution attesting to the completeness and accuracy of the information transmitted.

The magnetic media filing test will merely affect the form in which financial institutions file Currency Transaction Reports; requirements of 31 CFR Part 103 will continue to be applicable in their entirety to participating financial institutions. The pilot test or an individual financial institution's participation in the test may be terminated at any time at the option of Treasury. At the conclusion of the pilot program or upon termination of a financial institution from the program, participants must immediately recommence filing paper Currency Transaction Reports.

Dated: March 18, 1987.

**Francis A. Keating, II,**

*Assistant Secretary (Enforcement).*

[FR Doc. 87-6864 Filed 3-27-87; 8:45 am]

BILLING CODE 4810-25-M

## Internal Revenue Service

**[Delegation Order No. 223]**

## Delegation of Authority

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Delegation of authority.

**SUMMARY:** This delegation order redelegates to the Assistant Commissioner (International) authority to certify that corporations are excluded from the definition of "foreign personal holding company."

The text of the delegation order appears below.

**EFFECTIVE DATE:** March 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gerald Morris, Chief, Quality Review Staff, Room 4415, 950 L'Enfant Plaza, South SW., Washington, DC 20024, (202) 447-1099.

**Gerald Morris,**

*Chief, Quality Review Staff.*

Order No. 223.

Effective Date: March 26, 1987.

Authority to certify that corporations are not foreign personal holding companies under section 552(b) of the Internal Revenue Code.

Pursuant to the authority vested in the Commissioner of the Internal Revenue by 26 CFR 1.552-4(a), there is hereby delegated to the Assistant Commissioner (International) the authority to certify that certain corporations are excluded from the definition of a "foreign personal holding company."

This authority may be redelegated no lower than Chief, Quality Review Staff, Examination Branch, Office of Compliance.

To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

Dated: February 5, 1987.

Approved:

James I. Owens,

*Deputy Commissioner.*

[FR Doc. 87-6928 Filed 3-27-87; 8:45 am]

BILLING CODE 4830-01-M

## VETERANS ADMINISTRATION

## Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held April 9 and 10, 1987, in the Omar Bradley Conference Room of Veterans Administration Central Office, 810 Vermont Avene, NW., Washington, DC, 20420. Both meetings will begin at 8:00 a.m. and conclude at 4:30 p.m.

These meetings will be open to the public up to the seating capacity of the room. Anyone having questions concerning the meetings may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office (phone number (202) 233-3317/3303).

Dated: March 18, 1987.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 87-6891 Filed 3-27-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 60
Monday, March 30, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Volume 52, No. 54, FR 9005, Friday, March 20, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9:30 a.m. (eastern time) Tuesday, March 31, 1987.

**CHANGES IN THE MEETING:**

The meeting has been canceled.

Item #2—Report on Commission Operations (Optional) has been rescheduled for the April 6, 1987, open portion of the meeting.

Item #3—Formal Opinion Letter Request from Congressman Claude Pepper Regarding Coverage under ADEA for Appointed State Court Judges will be considered under the Commission's Regular Notation Voting Procedure and announced in accordance with the Government in the Sunshine Act at the April 6, 1987, Commission Meeting.

Closed portion of the agenda has been rescheduled April 6, 1987.

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748

This Notice Issued March 26, 1987.

Dated: March 26, 1987.

**Johnnie L. Johnson, Jr.,**

*Attorney Advisor, Executive Secretariat.*

[FR Doc. 87–7013 Filed 3–26–87; 2:28 pm]

BILLING CODE 6750-06-M

---

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Volume 52, Friday, March 27, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Monday, April 6, 1987.

**CHANGE IN THE MEETING:**

*Open*

1. Announcement of Notation Votes
2. A Report on Commission Operation (Optional)

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

This Notice Issued March 26, 1987.

Dated: March 26, 1987.

**Johnnie L. Johnson, Jr.,**

*Attorney Advisor, Executive Secretariat.*

[FR Doc. 87–7014 Filed 3–26–87; 2:28 pm]

BILLING CODE 6750-06-M

---

**NATIONAL SCIENCE BOARD**

**DATE AND TIME:** March 20, 1987 8:30 a.m. Closed Session.

**PLACE:** National Science Foundation, Washington, DC.

**STATUS:** Change to Previously Published Announcement.

The following additional item was added to the Friday, March 20, Closed Session Agenda, which was published in the **Federal Register**, 52 FR 7259 on Monday, March 9, 1987:

NSF Personnel Practices

All Board members present voted in favor of adding this item to the Closed Session Agenda. No earlier announcement of the change was possible.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas Ubois, Executive Officer (202) 357–9582.

**Thomas Ubois,**

*Executive Officer.*

[FR Doc. 87–6975 Filed 3–26–87; 10:57 am]

BILLING CODE 7555-01-M

---

**POSTAL RATE COMMISSION**

**TIME AND DATE:** 10:00 a.m. on Thursday, April 2, 1987.

**PLACE:** Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

**STATUS:** Closes.

**MATTERS TO BE CONSIDERED:** To discuss an Opinion and Recommended Decision in Docket No. MC87–1.

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

**Charles L. Clapp**

*Secretary.*

[FR Doc. 87–6956 Filed 3–26–87; 9:09 am]

BILLING CODE 7715-01-M

---

**SECURITIES AND EXCHANGE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [52 FR 8549 March 18, 1987].

**STATUS:** Closed meetings.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Friday, March 13, 1987.

**CHANGE IN THE MEETING:** Additional meetings.

The following items were considered at a closed meeting on Monday, March 16, 1987, at 2:00 p.m.:

Settlement of administrative proceeding of an enforcement nature.
Formal order of investigation.
Settlement of injunctive action.
Report of investigation.

The following item was considered at a closed meeting on Thursday, March 19, 1987, at 2:00 p.m.:

Formal order of investigation.

The following item was considered at a closed meeting on Friday, March 20, 1987, at 10:30 p.m.:

Settlement of injunctive action.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–2468.

**Jonathan G. Katz,**

*Secretary.*

March 23, 1987.

[FR Doc. 87–7048 Filed 3–26–87; 3:52 pm]

BILLING CODE 8010-01-M

---

**TENNESSEE VALLEY AUTHORITY**

(Meeting No. 1383)

**TIME AND DATE:** 10 a.m. (EST), Wednesday, April 1, 1987.

**PLACE:** TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

**STATUS:** Open.

AGENDA

Approval of minutes of meeting held on March 11, 1987.

Discussion Item

1. Control of Livestock Waste to Improve Water Quality.

Action Items

*Old Business*

1. Proposal to Revise the Economy Surplus Power Program which is Currently Being Offered to TVA's Directly Served Customers on an Experimental Basis.

2. Supplement No. 3 to Contract No. TV-68516A with U.S. Department of Energy Covering Arrangements for Cooperation in a Project to Determine Influence of Ozone, Acidic Precipitation, and Soil Magnesium Level on the Growth of Loblolly Pine Under Field Conditions.

*New Business*

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1987 Series B Power Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers to Take Further Action Relating to Issuance and Sale of 1987 Series B Power Bonds.

B—Purchase Awards

B1. Amendment to Contract No. TV-64742A with Norfolk Southern Corporation for Transportation of Coal to John Sevier Steam Plant.

C—Power Items

C1. Renewal Power Contract with City of Paris, Tennessee.

C2. Lease and Amendatory Agreement with City of Dickson, Tennessee, Covering Arrangements for Lease of TVA's Pomona 161-kV Substation.

D—Personnel Items

D1. Supplement No. 4 to Personal Services Contract No. TV-64851A with Nationwide Advertising Services, Inc., Cleveland, Ohio, for Assistance in Advertising for and Recruiting Personnel, Requested by the Office of Employee Relations.

D2. Personal Services Contract with Gilbert/Commonwealth, Inc., Reading, Pennsylvania, for Engineering, Design, Drafting and Related Engineering, Construction, and Operations Support Services, Requested by the Office of Power.

D3. Supplement No. 8 to Personal Services Contract No. TV-53532A with Hartford Steam Boiler Inspection and Insurance Company, Atlanta, Georgia, for Nuclear Inspection Services at TVA Nuclear Plants, Requested by Office of Nuclear Power.

D4. Supplement No. 3 to Personal Services Contract No. TV-67404A with General Physics Corporation, Columbia, Maryland, for Engineering and Related Support to the Technical Services Group at Browns Ferry Nuclear Plant, Requested by Office of Nuclear Power.

D5. Employee Loan Agreement No. TV-71871A with Seehuus & Hart Associates, Inc.

E—Real Property Transactions

E1. Sale at Public Auction of Lease of Coal Underlying Approximately 784 Acres of the Red Bird Coal Reserve Located in Bell and Harlan Counties, Kentucky—Tract No. XEKCR-16L.

E2. Sale of Permanent Sewerline Easement to Harpeth Valley Utility District, Affecting a 1.5-acre Portion of TVA's Davidson 500-kV Substation Property, Located in Davidson County, Tennessee—Tract No. DVDSS-1.

E3. Grant of Permanent Easement to Clinton Utilities Board for a Sewerline, Affecting Approximately 0.8 Acre of Melton Hill Reservoir Land Located in Anderson County, Tennessee—XTMHR-16PS.

E4. Reconveyance of Land to TVA from Commonwealth of Kentucky and Grant of Permanent Easement to the Commonwealth of Kentucky for a Research Station, Affecting 3.7 Acres of Kentucky Reservoir Land Located in Calloway County, Kentucky—Tract No. XTGIR-132RS.

E5. Filing of Condemnation Cases.

F—Unclassified

F1. Contract No. TV-71222A with the State of Tennessee, Department of Conservation, Division of Land Reclamation, Covering Arrangements for Cooperation in a Land Reclamation Project Located near Double Top Community in Fentress County, Tennessee.

F2. Contract No. TV-71261A with Tennessee Eastman Company, Division of Eastman Kodak Company, Covering Arrangements for Adjustment in Operation of TVA Dams which Affect the Minimum Average Daily Flow in South Fork Holston River at Kingsport, Tennessee.

F3. Contract No. TV-71296A with The Swedish Society for Ethanol Development Covering Arrangements for TVA to Make its Specialized Services Available to Conduct Tests Related to Production of Ethanol and other Chemicals from Biomass.

F4. Project Order Under Memorandum of Understanding (TV-71249A) Between TVA and Directorate of Engineering and Housing, Fort McPherson, Georgia, for TVA Support to the United States Army Forces Command in Connection with Energy Resources Management.

F5. Supplement No. 3 to Interagency Agreement No. TV-66369A with United States Army Engineers Waterways Experiment Station, Corps of Engineers, for Continuation of Work by TVA on the Repair, Evaluation, Maintenance and Rehabilitation Research Testing Program To Evaluate Polyester Resins, Expoxies, and Cementitious Anchorage Grouting Systems.

F6. Supplement No. 3 to Interagency Agreement No. TV-66099A with the United States Department of Energy, Western Area Power Administration, Covering Arrangements for TVA to Continue Providing Equipment Inspection Services.

**CONTACT PERSON FOR MORE INFORMATION:** Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 245-0101.

Dated: March 25, 1987.

**John G. Stewart,**

*Manager of Corporate, Administration and Planning.*

[FR Doc. 87-6955 Filed 3-26-87; 9:08 am]

BILLING CODE 8120-01-M

---

**UNITED STATES INSTITUTE OF PEACE**

**TIME AND DATES:**

9:00 a.m.-5:00 p.m., Thursday, April 2, 1987
9:00 a.m.-5:00 p.m., Friday, April 3, 1987

**PLACE:** National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW, Washington, DC 20035.

**STATUS:** Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

**AGENDA (TENTATIVE):** Meeting of Board of Directors convened. Committee Reports. Consideration of minutes of the eleventh meeting. Consideration of grant applications.

**CONTACT:** Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: March 25, 1987.

**Robert F. Turner,**

*President, United States Institute of Peace.*

[FR Doc. 87-7015 Filed 3-26-87; 2:47 pm]

BILLING CODE 3155-01-M

# Corrections

Federal Register
Vol. 52, No. 60
Monday, March 30, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 763**

**[OPTS-62050; FRL 3104-1]**

### Asbestos Abatement Projects; Worker Protection

*Correction*

In rule document 87-3645 beginning on page 5618 in the issue of Wednesday, February 25, 1987, make the following corrections:

**§ 763.121 [Corrected]**

1. On page 5623, in the third column, in § 763.121(b), in the 12th line, "cummingtonit" should read "cummingtonite".

2. On page 5629, in the first column, in Appendix A to § 763.121, in the heading, the reference "6" after "To" should read "§ ".

3. On page 5631, in the third column, in Appendix C to § 763.121, in "paragraph 8.", in the third line, after "i. e." insert "1".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-180722; FRL-3166-4]**

### Delaware Department of Agriculture; Receipt of Applications for Emergency Exemptions To Use (±)-2-[4,5-Dihydro-4-Methyl-4-(1-Methylethyl)-5-Oxo-1H-Imidazol-2-yl]-5-Ethyl-3-Pyridinecarboxylic Acid; Solicitation of Public Comment

*Correction*

In notice document 87-4976 beginning on page 7307 in the issue of Tuesday, March 10, 1987, make the following corrections:

1. On page 7307, in the third column, in the **SUMMARY**, in the eighth line, "ethly" should read "ethyl" and, in the ninth line, "Pursuit)" should read "(Pursuit™)".

2. On page 7308, in the first paragraph, in the fifth line, "methly" should read "methyl"; in the sixth line, "ethly" should read "ethyl", and the eighth line should read: "5), manufactured as Pursuit™), by".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**[OPTS-59708; FRL-3166-3]**

### Certain Chemicals Premanufacture Notices

*Correction*

In notice document 87-4977 appearing on page 7307 in the issue of Tuesday, March 10, 1987, make the following correction:

1. On page 7307, in the first column, in the **SUPPLEMENTARY INFORMATION**, in the fifth line, "or" should read "on".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Food and Drug Administration**

**[Docket No. 87N-0078]**

### J.D. Copanos and Sons, Inc. and Kanasco, Ltd.; Proposal To Withdraw Approval of New Drug Applications and New Animal Drug Applications for Sterile Injectable Products; Opportunity for a Hearing

*Correction*

In notice document 87-5160 beginning on page 7311 in the issue of Tuesday, March 10, 1987, make the following corrections:

1. On page 7312, in the first column, under **DATES**, in the fourth line, "Mar" should read "May".

2. On the same page, in the second column, in the fifteenth line of the last complete paragraph, between "with" and "FDA" insert "another".

3. On page 7316, in the third column, in the first line, "files" should read "fills".

4. On page 7318, in the first column, in the 10th line of the list of drug applications, "Ampicillin G sodium" should read "Ampicillin sodium".

BILLING CODE 1505-01-D

## DEPARTMENT OF JUSTICE

**Immigration and Naturalization Service**

**8 CFR Parts 109 and 274a**

### Control of Employment of Aliens

*Correction*

In proposed rule document 87–5839 beginning on page 8762 in the issue of Thursday, March 19, 1987, make the following correction:

**§ 274a.2 [Corrected]**

On page 8764, in the third column, in § 274a.2 (b)(1)(v)(A)(*5*), in the second line, "I-15" should read "I-151".

BILLING CODE 1505-01-D

OL
2
S S
O
R
O
87
MI

federal register

Monday
March 30, 1987

Part II

# Information Security Oversight Office

32 CFR Part 2003

National Security Information; Standard Forms; Final Rule

## INFORMATION SECURITY OVERSIGHT OFFICE

**32 CFR Part 2003**

## National Security Information; Standard Forms

**AGENCY:** Information Security Oversight Office (ISOO).

**ACTION:** Final rule.

**SUMMARY:** This amendment to 32 CFR Part 2003 provides for the use within the executive branch of the following standard forms that pertain to national security information: TOP SECRET Label: SF 706; SECRET Label: SF 707; CONFIDENTIAL Label: SF 708; CLASSIFIED Label: SF 709; UNCLASSIFIED Label: SF 710; and DATA DESCRIPTOR Label: SF 711. The purpose of the standard forms prescribed in Subpart B is to promote the implementation of the government-wide information security program.

**EFFECTIVE DATE:** March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ethel R. Theis or Laura Kimberly at 202–535–7251 (FTS 535–7251).

**SUPPLEMENTARY INFORMATION:** Section 5.2(b)(7) of Executive Order 12356 authorizes the Director of ISOO to prescribe the use of standard forms that will promote the implementation of the government-wide information security program. ISOO has developed these forms in coordination with those agencies that will be primarily affected by them. The information collection requirements contained in this rule (Subpart B) are not subject to Office of Management and Budget clearance under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

### List of Subjects in 32 CFR Part 2003

Classified information, Executive orders, Information, National security information, Security information.

## PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b) (7) of E.O. 12356.

### Subpart A—General Provisions

2. Section 2003.3 is revised to read as follows:

**§ 2003.3 Waivers.**

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in Subpart B may be granted only by the Director of ISOO.

### Subpart B—Prescribed Forms

**§2003.20 [Amended]**

3. In § 2003.20(e) remove the following cross reference: "(Also see 32 CFR 2003.3 and 41 CFR 201–45.5.)"

4. Subpart B is amended by adding § 2003.27 through 2003.32 to read as follows:

**§ 2003.27 TOP SECRET Label SF 706.**

(a) SF 706 is used to identify and protect automatic data processing (ADP) media and other media that contain TOP SECRET information. SF 706 is used instead of the SF 703 for media other than documents.

(b) SF 706 shall be used in all situations that call for the use of a TOP SECRET Label. Agency-wide use of SF 706 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 706 is affixed to the medium containing TOP SECRET information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed.

(d) Only the Director of ISOO may grant a waiver from the use of SF 706. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 706 is 7540–01–207–5536.

**§ 2003.28 SECRET Label SF 707.**

(a) SF 707 is used to identify and protect automatic data processing (ADP) media and other media that contain SECRET information. SF 707 is used instead of the SF 704 for media other than documents.

(b) SF 707 shall be used in all situations that call for the use of a SECRET Label. Agency-wide use of SF 707 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 707 is affixed to the medium containing SECRET information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed.

(d) Only the Director of ISOO may grant a waiver from the use of SF 707. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 707 is 7540–01–207–5537.

**§ 2003.29 CONFIDENTIAL Label SF 708.**

(a) SF 708 is used to identify and protect automatic data processing (ADP) media and other media that contain CONFIDENTIAL information. SF 708 is used instead of the SF 705 for media other than documents.

(b) SF 708 shall be used in all situations that call for the use of a CONFIDENTIAL Label. Agency-wide use of SF 708 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 708 is affixed to the medium containing CONFIDENTIAL information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed.

(d) Only the Director of ISOO may grant a waiver from the use of SF 708. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 707 is 7540–01–207–5538.

**§ 2003.30 CLASSIFIED Label SF 709.**

(a) SF 709 is used to identify and protect automatic data processing (ADP) media and other media that contain classified information pending a determination by the classifier of the specific classification level of the information.

(b) SF 709 shall be used in all situations that require the use of a CLASSIFIED Label. Agency-wide use of SF 709 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 709 is affixed to the medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed. When a classifier has made a determination of the spedific level of classification of the information contained on the medium, either SF 706, SF 707, or SF 708 shall be affixed on top of SF 709 so that only the SF 706, SF 707, or SF 708 is visible.

(d) Only the Director of ISOO may grant a waiver from the use of SF 709. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 709 is 7540–01–207–5540.

**§ 2003.31 UNCLASSIFIED Label SF 710.**

(a) In a mixed environment in which classified and unclassified information are being processed or stored, SF 710 is used to identify automatic data processing (ADP) media and other media that contain unclassified information. Its function is to aid in distinguishing among those media that contain either classified or unclassified information in a mixed environment.

(b) SF 710 shall be used in all situations that require the use of an UNCLASSIFIED Label. Agency-wide use of SF 710 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 710 is affixed to the medium containing unclassified information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed. However, the label is small enough so that it can be wholly covered by a SF 706, SF 707, SF 708 or SF 709 if the medium subsequently contains classified information.

(d) Only the Director of ISOO may grant a waiver from the use of SF 710. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 710 is 7540–01–207–5539.

**§ 2003.32 DATA DESCRIPTOR Label SF 711.**

(a) SF 711 is used to identify additional safeguarding controls that pertain to classified information that is stored or contained on automatic data processing (ADP) or other media.

(b) SF 711 shall be used in all situations that require the use of a DATA DESCRIPTOR Label. Agency-wide use of SF 711 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 711 is affixed to the ADP medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. SF 71 is ordinarily used in conjunction with the SF 706, SF 707, SF 708 or SF 709, as appropriate. Once the Label has been applied, it cannot be removed. The SF 711 provides spaces for information that should be completed as required.

(d) Only the Director of ISOO may grant a waiver from the use of SF 711. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 711 is 7540–01–207–5541.

Dated: March 25, 1987.

**Steven Garfinkel,**

*Director.*

[FR Doc. 87–6903 Filed 3–27–87; 8:45 am]

BILLING CODE 6820–AF–M

OL
2
S S
0
R
0
87
MI

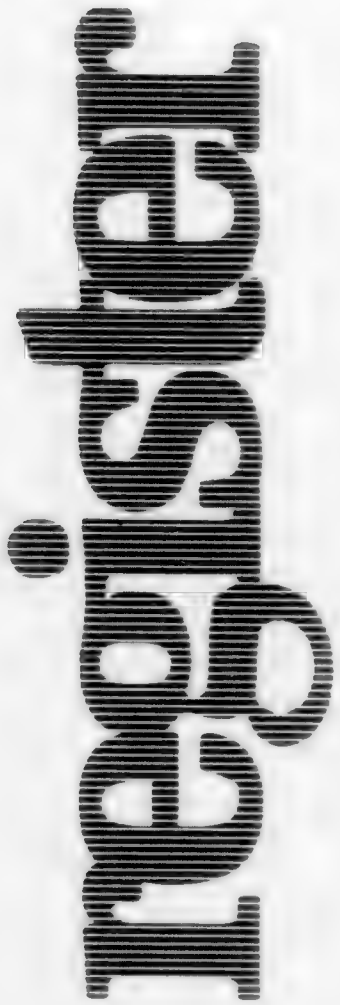


Monday
March 30, 1987

Part III

# Department of Health and Human Services

**Public Health Service**

**42 CFR Part 57**

**Nursing Student Loan Program; Final Regulations**

BEST COPY AVAILABLE

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 57**

**Nursing Student Loan Program**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulations.

**SUMMARY:** This rule revises existing regulations governing the Nursing Student Loan (NSL) program to conform those regulations with amendments made to the Public Health Service Act by Pub. L. 99–92, the Nurse Education Amendments of 1985.

**EFFECTIVE DATE:** These regulations are effective March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

**SUPPLEMENTARY INFORMATION:** Pub. L. 99–92, the Nurse Education Amendments of 1985, made numerous amendments to the NSL statute, sections 835–842 of the Public Health Service Act (the Act). These final regulations incorporate into the existing NSL regulations those changes necessary to conform the regulations with amendments made by Pub. L. 99–92 (and technical corrections made by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985), and therefore do not require public comment before implementation. The amendments are described below according to the section of the NSL regulations which they affect.

*Section 57.302 Definitions.*

The Secretary is adding to this section of the regulations definitions for "default" and "grace period." These definitions are consistent with amendments to the Act made by Pub. L. 99–92 and Pub. L. 99–129.

*Section 57.305 Nursing student loan funds.*

The Secretary is deleting references to the previous authority which allowed a school to transfer a portion of its NSL money to the Nursing Scholarship fund, since Pub. L. 99–92 repealed the transfer provision (former section 841 of the Act).

*Section 57.310 Repayment and collection of nursing student loans.*

The Secretary is amending paragraph (b)(2) of this section to include the revised late charge provision in Pub. L. 99–92 [section 836(f) of the Act], which provides that, for loans made on or after October 1, 1985, the school must charge a penalty not to exceed 6 percent of the installment payment on any loan that is more than 60 days past due, but is prohibited from charging a penalty on any loan that is 60 days or less past due. In response to some confusion regarding the calculation of the late charge under this provision, the regulations clarify that the charge cannot exceed 6 percent of the amount due at the time the charge is calculated. The regulatory provision gives the school discretion, in accordance with the statute, in determining the amount of the charge within the 6 percent maximum, and thus allows the school to decide:

(1) Whether to assess the charge on a percentage basis, as a flat dollar amount, or as a combination of the two; and

(2) Whether to calculate the charge on the total amount due at the time the charge is calculated or on a portion of the amount due.

As authorized by an amendment made to section 6103(m) of the Internal Revenue Code of 1954 by Pub. L. 99–92, the Secretary is also adding a new paragraph (b)(5) which states that the Secretary may request from the Internal Revenue Service (IRS) the address of a defaulted NSL borrower. This information may be disclosed by the Secretary to the school from which the borrower received the NSL loan for the purpose of locating the defaulted borrower to collect the loan. This provision also requires that any school which requests address information from IRS records must comply with the requirements of the Secretary and the IRS regarding the safeguarding and proper handling of this information.

*Section 57.316a Performance standard.*

In accordance with Pub. L. 99–92 (section 835(c) of the Act), the Secretary is amending this section to include the statutory default formula.

Since these regulations include only revisions necessary to conform the NSL regulations with statutory amendments, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures.

**Regulatory Flexibility Act and Executive Order 12291**

The Department believes that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of nursing schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of nursing schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

**Paperwork Reduction Act**

These regulations do not affect the recordkeeping, reporting, or disclosure/notification requirements for the NSL program.

**List of Subjects in 42 CFR Part 57**

Dental health, Grant programs-health, Education of disadvantaged, Health facilities, Educational facilities, Health professions, Educational study programs, Loan programs-health, Emergency medical services, Medical and dental schools, Grant programs-education, Scholarships and fellowships, Student aid.

Dated: January 22, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: March 13, 1987.

**Otis R. Bowen,**

*Secretary.*

(Catalog of Federal Domestic Assistance, No. 13.364, Nursing Student Loan Program)

**PART 57—[AMENDED]**

Accordingly, Subpart D of 42 CFR Part 57 is amended as follows:

**Subpart D—Nursing Student Loans**

1. The authority for Subpart D is revised to read as follows:

**Authority:** Sec. 215, Public Health Service Act, 58 Stat. 690, 67 Stat. 631, (42 U.S.C. 216); sections 835–842 Public Health Service Act, 78 Stat. 913–916, as amended, 99 Stat. 397–400, 536–537 (42 U.S.C. 297a–h).

2. Section 57.302 is amended by adding definitions for "default" and "grace period" as follows:

**§ 57.302 Definitions.**

* * * * *

"Default" means the failure of a borrower of a loan made under this subpart to make an installment payment when due, or comply with any other term of the promissory note for such loan, except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan.

* * * * *

"Grace period" means the period of 9 months beginning on the date upon which a student ceases to be a full-time or half-time student at a school of nursing.

* * * * *

3. Section 57.305 is amended by revising paragraph (a) to read as follows:

**§ 57.305 Nursing student loan funds.**

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain moneys representing the institutional capital contribution. This fund is to be used by the school only for:

(1) Nursing student loans to full-time and half-time students;

(2) Capital distribution as provided in section 839 of the Act or as agreed to by the school and the Secretary; and

(3) Costs of litigation, costs associated with membership in credit bureaus, and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans.

* * * * *

4. Section 57.310 is amended by revising paragraph (b)(2) and adding paragraph (b)(5) to read as follows:

**§ 57.310 Repayment and collection of nursing student loans.**

* * * * *

(b)* * *

(2) *Late charge.* (i) For any nursing student loan made after June 30, 1969, but prior to October 1, 1985, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment under section 836(b)(2) of the Act, or cancellation or repaypment under section 836(b)(3) of the Act, for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed $1 for the first month or part of a month by which the installment or evidence is late and $2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(ii) For any nursing student loan made on or after October 1, 1985, the school shall assess a charge for failure of the borrower to pay all or any part of an installment when the loan is more than 60 days past due and, in the case of a borrower who is entitled to deferment under section 836(b)(2) of the Act, for any failure to file satisfactory evidence of the entitlement within 60 days of the date payment would otherwise be due. No charge may be made if the loan is less than 61 days past due. The amount of this charge may not exceed an amount equal to 6 percent of the amount due at the time the charge is calculated. The school may elect to add the amount of this charge to the principal amount of the loan as of the day on which the charge is calculated, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

* * * * *

(5) *Disclosure of taxpayer identity information.* Upon written request by the Secretary, the Secretary of the Internal Revenue Service (IRS) may disclose the address of any taxpayer who has defaulted on a nursing student loan, for use only by officers, employees, or agents of the Department, to locate the defaulted borrower to collect the loan. Any such mailing address may be disclosed by the Secretary to any school from which the defaulted borrower received a nursing student loan, for use only by officers, employees, or agents of the school whose duties relate to the collection of nursing student loan funds, to locate the defaulted borrower to collect the loan. Any school which requests and obtains such address information must comply with the requirements of the Secretary and the IRS regarding the safeguarding and proper handling of this information.

5. Section 57.316a is amended by revising the introductory text and paragraphs (a), (b), and (c)(3) as follows:

**§ 57.316a Performance standard.**

On June 30, 1986, and on each June 30 thereafter, except as provided in paragraph (b) of this section, each school must have a default rate (as calculated under paragraph (a) of this section) of not more than 5 percent.

(a) The default rate for each school shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of the school bears to the matured loans of the school. For this purpose:

(1) The term "defaulted principal amount outstanding" means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or canceled) on loans in default for more than 120 days; and

(2) The term "matured loans" means the total principal amount of all loans made by a school under this subpart minus the total principal amount of loans made by the school to students who are:

(i) Enrolled in a full-time or half-time course of study at the school; or

(ii) In their grace period.

(b) Any school that has a default rate greater than 5 percent on June 30, 1986, or on June 30 of any year thereafter will be required to:

(1) Reduce its default rate by 50 percent (or a school with a default rate below 10 percent must reduce its rate to 5 percent) by the close of the following 6-month period; and

(2) By the end of each succeeding 6-month period, reduce its default rate to 50 percent of the required rate for the previous 6-month period, until it reaches 5 percent.

(c) * * *

(3) By the end of the succeeding 6-month period, reduce its default rate to 50 percent of the rate it failed to achieve under paragraph(b) of this section, or 5 percent. A school that meets this requirement will be permitted to resume the use of its nursing student loan funds, but must continue to comply with the requirements of paragraph (b)(2) of this section if its default rate is still greater than 5 percent.

* * * * *

[FR Doc. 87-6900 Filed 3-27-87; 8:45 am]
BILLING CODE 4160-15-M

OL
2
S S
0
R
0
87
MI

Federal Register

Monday
March 30, 1987

Part IV

# Department of the Treasury

## Customs Service

19 CFR Parts 4, 24, 146 and 178
Harbor Maintenance Fee; Interim Regulations

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 4, 24, 146 and 178**

**[T.D. 87-44]**

## Harbor Maintenance Fee

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim regulations.

**SUMMARY:** This document amends the Customs Regulations to implement provisions of the Water Resources Development Act of 1986 (the Act) which authorizes the Customs Service to assess a harbor maintenance fee of 0.04 percent (.0004) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port within the definition of the Act. The harbor maintenance fee applies to port uses by commercial vessels which load or unload merchandise or passengers unless specifically exempted from the fee.

The proceeds of the harbor maintenance fee collected by Customs, together with the U.S. portion of the St. Lawrence Seaway tolls collected by the St. Lawrence Seaway Development Corporation, will be deposited in the Harbor Maintenance Trust Fund, which the Act established in the Treasury of the U.S. Amounts in the fund will be made available, subject to appropriations, to the U.S Army Corps of Engineers for the improvement and maintenance of U.S. ports and harbors, as well as to the St. Lawrence Seaway Development Corporation for operation and maintenance of the St. Lawrence Seaway, and to the Department of the Treasury for rebate of the U.S. portion of St. Lawrence Seaway tolls. The amendments are being made on an interim basis due to the limited period of time available to initiate these changes before the law becomes effective. However, any written comments received will be considered before a final rule is issued.

**DATE:** The interim regulations are effective concerning any port use occurring on or after April 1, 1987. Written comments must be received by May 29, 1987.

**ADDRESS:** Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Jean F. Maguire, Director, User Fee Task Force, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, Room 2216 (202-566-5868).

**SUPPLEMENTARY INFORMATION:**

### Background

Federal expenditures for development and operations and maintenance of harbors and ports have historically been financed from general revenues. However, the Water Resources Development Act of 1986 (Pub. L. 99-662) (the Act), establishes a Harbor Maintenance Trust Fund to be used to contribute to up to 40 percent of the eligible operation and maintenance of ports and harbors in the U.S. This fund is to be supported by a new harbor maintenance fee assessed on port use by vessels carrying water-borne commercial cargo. By assessing a charge for port use, the Act causes those shippers and importers who benefit from the maintenance of a Federal port or harbor to share in the cost of that maintenance.

The harbor maintenance fee, which will apply to port use associated with imports, exports, and movements of cargo and passengers between identified ports become effective on April 1, 1987. While the Act states the charge is for "port use," liability ensues, according to the statute, only if commercial cargo is either loaded or unloaded from a commercial vessel at a non-exempt port within the definition of the Act.

The Trust Fund, which is established in the Treasury of the U.S., is to receive amounts equivalent to revenues from the port use fees, together with the U.S. portion of the St. Lawrence Seaway tolls collected by the St. Lawrence Seaway Development Corporation. Amounts in the fund will be made available, subject to appropriations, to the U.S. Army Corps of Engineers for the improvement and maintenance of U.S. ports and harbors, as well as to the St. Lawrence Seaway Development Corporation for operation and maintenance of the St. Lawrence Seaway, and to the Department of the Treasury for rebate of the U.S. portion of St. Lawrence Seaway tolls.

The Act provides, with certain exceptions, that whenever there is a port use, a tax should be imposed in an amount equal to 0.04 percent (.0004) of the value of the commercial cargo involved. The tax shall be paid by the importer in the case of cargo entering the U.S., the exporter in the case of cargo being exported from the U.S., and the shipper, in any other case. While the word "tax" is used in the statute, section 4462(f) of the Act provides that the tax imposed shall not be treated as a tax for purpose of any provision of law relating to the administration and enforcement of the internal revenue tax, and that all administrative and enforcement provisions of Customs laws and regulations shall apply in respect of the tax as if such tax were a Customs duty.

The Act authorizes the Customs Service to assess and collect the amount charged for port use because of Customs strong presence at ports of entry and experience with the appraisement and valuation of imported merchandise, as well as the collection of Customs duties and other fees. All collections Customs makes will be deposited in the Harbor Maintenance Trust Fund. The Secretary of the Treasury is authorized by the Act to prescribe regulations as may be necessary to collect the fee.

A public meeting was held on March 11, 1987, pursuant to a Federal Register notice published on February 19, 1987 (52 FR 5237), in which Customs discussed its plans for the collection of the fee. Interim regulations are set forth in this document providing procedures for fee collection. A summary of the provisions in this new regulation, § 24.24, Customs Regulations (19 CFR 24.24), follows.

### The Fee

Generally, commercial cargo loaded on or unloaded from a commercial vessel is subject to the fee of 0.04 percent. The fee is based on the value of the cargo that is loaded or unloaded. If the cargo is unloaded after being moved domestically (from one U.S. port to another), the value of the cargo will be determined based on the standard commercial documentation available. If no such documentation is available, the Customs appraised value of the shipment pursuant to 19 U.S.C. 1401a will be used. The Customs appraised value under 19 U.S.C. 1401a will also be the basis for valuing imports. If the cargo is loaded for export, the value of the cargo will be that which is required to be indicated on the Shipper's Export Declaration or on equivalent documentation authorized under 15 CFR 30.39(b). The fee applies to passengers as well as merchandise. For passengers, vessel operators are to be assessed a fee based on the value of the actual charge for transportation paid by each passenger who boards or disembarks from a commercial vessel at a port or, if no actual charge is paid, on the prevailing charge for comparable service.

There are certain exemptions from the fee. Bunker fuel, ship's stores, sea stores, vessel equipment, and fish or other aquatic animal life caught and not previously landed on shore are exempt

from the fee. While commercial vessel is defined as any vessel used in transporting commercial cargo by water for compensation or hire, or in transporting commercial cargo by water in the business of the owner, lessee or operator of the vessel, an exemption is carved out for ferries engaged primarily in the transport of passengers and their vehicles between points within the U.S. or between the U.S. and contiguous countries.

**Ports at Which Fee is Required**

The Act defines port generally as any channel or harbor or component thereof in the U.S., which is not an inland waterway, is open to public navigation, and at which Federal funds have been used since 1977 for construction, maintenance or operation. If deauthorized by Federal law before 1985, it is not a port within the Act. Customs, in conjunction with the U.S. Army Corps of Engineers, took this definition and established the list of ports which is set forth in § 24.24(b)(1). Commercial ports with depths of less than nine feet were not included on this list. Any loading or unloading of commercial cargo at one of the ports listed subjects the cargo to the harbor maintenance fees unless it is otherwise exempt. The list is subject to change, and the regulations will be amended, if necessary, to reflect money spent by the U.S. Army Corps of Engineers for construction, maintenance or operation of any port not on the list. It is anticipated that the list may be modified to include commercial ports with depths of less than nine feet.

All ports that have been included are within the customs territory of the U.S. Accordingly, ports in Puerto Rico are among those on the list, while ports in Guam, American Samoa and other U.S. possessions are not.

**Treatment of Alaska, Hawaii and U.S. Possessions**

Certain loadings and unloadings of cargo in Alaska, Hawaii or the U.S. possessions are not subject to the fee. Because of the high dependence of the economies of Alaska, Hawaii and the possessions on waterborne commerce, the Act provides that the fee generally should not apply to the loading of cargo in these areas for shipment to the U.S. mainland for use on the U.S. mainland, or loadings of cargo on the U.S. mainland for shipment to the possessions, Hawaii or Alaska. Cargo loaded on a vessel in Alaska, Hawaii or a possession and unloaded in the state or possession in which loaded is also exempt from the fee. These exemptions are set forth in § 24.24(c)(4). It should be noted that the exemptions in paragraph (c)(4) only apply to the loadings or unloadings of merchandise. Cruise vessel operators still would have to pay the fee if passengers embark or disembark at a port within Alaska, Hawaii or Puerto Rico. It should also be noted that Puerto Rico is considered a possession for the purpose of this section as well as Guam, American Samoa, U.S. Virgin Islands, the Northern Mariana Islands and the Pacific Trust Territories. As indicated above, however, ports in possessions other than Puerto Rico are not considered U.S. ports for the purpose of this Act. Thirdly, it should be noted that loadings or unloadings of crude oil from Alaska are still subject to the harbor maintenance fee. Lastly, regarding this exemption, it should be clear that the exemption in paragraph (c)(4) does not exempt from the fee merchandise shipments from a foreign country unloaded in Alaska, Hawaii or Puerto Rico, or merchandise loaded in Alaska, Hawaii or Puerto Rico that is exported to a foreign country or another possession.

**Other Exemptions**

Certain other loadings and unloadings of cargo are not subject to payment of the fee. No fee is charged with respect to the loading or unloading of cargo on or from a vessel if any fuel used to move the cargo is subject to the Inland Waterway Fuel Tax (section 4042, Internal Revenue Code of 1954, as amended by Pub. L. 95–502 and Pub. L. 99–662). This is set forth in § 24.24(c)(5).

Cargo entering the U.S. under bond for transportation and direct exportation to a foreign country is also not subject to the fee. However, there are two caveats regarding this exemption concerning cargo entering the U.S. under bond for transportation and exportation to either Canada or Mexico. This exemption will not apply if the Secretary of the Treasury determines that Canada or Mexico has imposed a similar fee on commercial vessels or their cargo. This exemption also will not apply if a cargo diversion study mandated by the Act shows that the fee is not likely to result in a significant diversion of cargo or that the non-applicability of the fee to a given U.S. port would cause economic harm to another U.S. port. This exemption and its caveats for cargo destined under bond for Mexico and Canada is set out in § 24.24(c)(6).

Finally, § 24.24(c)(7) exempts cargo and vessels of any agency or instrumentality of the U.S. from the fee.

**Special Rules**

The Act sets forth two special rules. Under the authority of the Secretary of the Treasury to exempt any transaction or class of transactions from the fee where the fee is not administratively feasible, two other special rules regarding deminimis transactions, have been set forth in the regulations.

The two special rules in the Act which are set forth in § 24.24 (d)(1) and (d)(2) are the "intraport" rule and "same vessel, same cargo" rule, respectively. According to the "intraport" rule, the fee is not to be assessed on the mere movement of commercial cargo within a port.

The "same vessel, same cargo" rule, which is described in the Act as the "Tax Imposed Only Once" rule provides that if a fee is assessed when cargo is loaded on a vessel, the unloading of the same cargo from the vessel is not subject to the fee. Further, if a fee is assessed when cargo is unloaded from a vessel, the reloading of the same cargo on that vessel is not subject to the fee.

The de minimis rules are set forth in § 24.24(d) (3) and (4). One rule concerns individual shipments and the other concerns a de minimis accumulated amount for quarterly payments. The individual shipment de minimis rule states that the fee shall not be assessed on loadings or unloadings of imported cargo if the shipment would be entitled to be entered under informal entry procedures as provided for in § 143.21, Customs Regulations (19 CFR 143.21); for exported cargo, if the shipment does not require either the filing of a Shipper's Export Declaration as provided for in § 4.63, Customs Regulations (19 CFR 4.63) or equivalent documentation as authorized under 15 CFR 30.39(b); and for domestic cargo movements, if the value of the individual shipment does not exceed $1000.

The de minimis rule for accumulated shipments states that if the total value of all shipments for which a fee was assessed for the quarter does not exceed $10,000, quarterly payment is not required. In other words, if individual shipments for export, domestic movement or admission into foreign trade zones determined not to be subject to an exemption or any of the first three special rules, including the individual shipment de minimis rule, add up to $10,000 or less for a quarter, declaration and payment are not necessary. The de minimis rule for accumulated fees is also applicable to cruise vessel movements.

**Collections**

The regulations establish separate procedures for collections on cargo being domestically transported (moved between ports), cargo being exported, cargo imported for admission into foreign trade zones, cargo otherwise imported, and passengers transported from or to U.S. ports.

Four of the procedures involve quarterly payments. The only port use for which quarterly payments may not be made is the unloading at a U.S. port of imported cargo which is not to be admitted into a foreign trade zone. As stated in § 24.24(e)(3), the importer of cargo for which formal entry is required, including warehouse entries and temporary importations under bond entries, is liable for the payment of the harbor maintenance fee at the time of unloading and must pay the fee in accordance with normal Customs collection procedures. The U.S. Customs Entry Summary Form (Customs Form 7501) is to be completed with the amount of the fee shown and identified on the form, and the importer is to pay the fee by adding it to any normal duty, tax or fee payable at the time of formal entry.

When imported cargo is admitted directly into a foreign trade zone, quarterly payment is to be the collection method pursuant to § 24.24(e)(3)(iii). Liability still ensues at the time of unloading. However, the applicant for admission of cargo into a foreign trade zone (the person or corporation responsible for bringing merchandise into the zone) is to send in quarterly payment for all shipments unloaded and admitted to the zone during the quarter, or in the case of direct deliveries under §§ 146.39 and 146.40, Customs Regulations (19 CFR 146.39, 146.40), all shipments received in the zone under the bond of the foreign trade zone operator. A check or money order for the accumulated fees is to be sent to Customs along with a summary sheet of all of the applicant's shipments admitted into a foreign trade zone subject to the fee during the quarter.

When cargo that has been transported between ports in the U.S. is unloaded at a port and is subject to the harbor maintenance fee, § 24.24(e)(1) provides that the shipper (the person or corporation who pays the freight) is liable at the time of unloading. The vessel operator must complete the Vessel Operation Report (Army Corps of Engineers Form 3925) and submit it to the Army Corps of Engineers in accordance with that agency's procedures (33 CFR Ch. II, Part 207). The shipper's name, either the Internal Revenue Service or Social Security number of the shipper and the tax exemption code (as it appears in the Vessel Operation Report instructions) claimed for the shipment are to be included on the Vessel Operation Report. The shipper whose name appears on the Vessel Operation Report shall pay the accumulated fees for the quarter by mailing a check or money order to Customs with a summary sheet of the fees.

Section 24.24(e)(2) provides the procedures for harbor maintenance fee collection when cargo is loaded on a vessel for export. The exporter becomes liable for the fee at the time of loading. The Shipper's Export Declaration (SED) or equivalent documentation authorized under 15 CFR 30.39(b) is to be completed and submitted in accordance with § 4.63, Customs Regulations (19 CFR 4.63), and the pertinent Department of Commerce Regulations (15 CFR Part 30). The exporter whose name appears on the SED or equivalent documentation shall pay the accumulated fees for the quarter by mailing a check or money order to Customs. Accompanying the payment shall be either a summary sheet of the fees, or if the exporter files Automated Summary Monthly Shipper's Export Declarations with the Bureau of Census in accordance with Foreign Trade Statistics Regulations, a cover letter identifying the exporter, his exporter identification number (EIN), Census Bureau reporting symbol and the quarter for which the payment is being made.

The final collection procedure is for passengers. Pursuant to § 24.24(e)(4), when a passenger boards or disembarks a commercial vessel at a U.S. port, the operator of that vessel is liable for the payment of the fee. On each cruise, even if a passenger boards or disembarks more than once at ports subject to the fee, the vessel operator is liable only once for that passenger. The operator of the vessel shall pay the accumulated fees for a quarter by mailing a check or money order payable to Customs for all fees for which he is liable and a summary sheet of the fees.

All collections that are to be made on a quarterly basis must be received no later than 31 days after the close of the quarter being paid. Quarterly periods end on the last day of March, June, September and December. Examples of summary sheets to be sent in for each quarterly payment are set out in § 24.24.

Procedures regarding overpayments or underpayments of the fee are being studied and will be the subject of future instructions.

**Records Maintenance**

Each importer, exporter, applicant for admission of cargo into a foreign trade zone, shipper and cruise vessel operator must maintain the documentation necessary for Customs to verify the accuracy of fee computations. Documentation is to be maintained for 5 years from the date of fee calculation and shall be maintained and made available for inspection, copying, reproduction or other official use by Customs.

**Penalties**

If the harbor maintenance fee is not paid or the summary sheet not filed as required by these regulations, a penalty shall be assessed equal to the amount of liquidated damages assessable for late filing of an entry summary pursuant to the provisions of § 142.15, Customs Regulations (19 CFR 142.15). The usual Customs procedures for filing an application for relief set forth in Part 171, Customs Regulations (19 CFR Part 171), and mitigation set forth in § 172.22(d)(1), Customs Regulations (19 CFR 172.22(d)(1)), shall apply.

**Bonds**

Section 4462(h)(2) of the Act provides that the Secretary of the Treasury may prescribe regulations providing for the posting of bonds to secure payment of the harbor maintenance fee. It has been decided that at this time no additional bonds will be required. However, after the fee has been in force for a period of time, bonds may be required if payment of the fee and submission of summary sheets are not regularly submitted as required.

**St. Lawrence Seaway**

There is no reference in § 24.24 to the St. Lawrence Seaway. The harbor maintenance fee will not be assessed on commercial vessels by reason of traversing the U.S. portion of the St. Lawrence Seaway. Any rebates of tolls issued by the Secretary of the Treasury pursuant to § 805 of the Act will not be issed by Customs, but by the Financial Management Service, U.S. Treasury Department.

**Other Amendments**

Minor changes are made in this document to Parts 4, 146, and 178, Customs Regulations (19 CFR Parts 4, 146, 178), to cross-reference the harbor maintenance fee.

**Comments**

Before adopting the interim regulations as a final rule, Customs will give consideration to any written

comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

**Inapplicability of Notice and Delayed Effective Date Provisions**

The statutory effective date of the harbor maintenance fee is April 1, 1987. In light of the limited deadline imposed upon Customs to implement these changes, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure is impracticable. For the same reason, pursuant to 5 U.S.C. 553(d)(3), we are dispensing with delayed effective date. However, before adopting final regulations, consideration will be given to all written comments timely submitted.

**E.O. 12291 and Regulatory Flexibility Act**

Because the amendments do not meet the criteria for a "major rule" within the meaning of E.O. 12291, Customs has not prepared a regulatory impact analysis.

Because no notice of proposed rulemaking is required for these interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), do not apply.

**Paperwork Reduction Act**

The collections of information contained in the interim regulations have been cleared by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and assigned control number 1515–0158.

**List of Subjects**

*19 CFR Part 4*

Cargo vessels, Customs duties and inspection, Imports, Passenger vessels, Vessels, Yachts.

*19 CFR Part 24*

Accounting, Customs duties and inspection, Imports, Taxes.

*19 CFR Part 146*

Customs duties and inspections, Imports, Exports, Imports, Foreign Trade Zones.

*19 CFR Part 178*

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

**Drafting Information**

The principal author of this document was Harold M. Singer, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**Amendments to the Regulations**

Parts 4, 24, 146, and 178, Customs Regulations (19 CFR Parts 4, 24, 146, 178), are amended as set forth below:

## PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority for Part 24, Customs Regulations, is revised to read as follows:

**Authority:** 19 U.S.C. 66, 1202, 1624, 31 U.S.C. 9701; Pub. L. 99–272, Pub. L. 99–509, Pub. L. 99–662.

2. Part 24 is amended by adding a new § 24.24 to read as follows:

**§ 24.24 Harbor maintenance fee.**

(a) *Fee.* Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.04 percent (.0004) of its value if the loading or unloading occurs at a port within the definition of this section, unless exempt under paragraph (c) of this section or one of the special rules in paragraph (d) of this section is applicable.

(b) *Definitions.* For the purpose of this section:

(1) *Port* means any channel or harbor (or component thereof) in the customs territory of the United States which is not an inland waterway and is open to public navigation and at which Federal funds have been used since 1977 for construction, maintenance or operation. It does not include channels or harbors deauthorized by Federal law before 1985. A complete list of the ports subject to the harbor maintenace fee is set forth below:

| Port Code, Port Name, and [illegible] | [illegible] |
|---|---|
| 3126—Anchorage, AK | |
| 3106—Dalton Cache, AK | |
| 3102—Ketchikan, AK | |
| 3127—Kodiak, AK | |
| 3112—Petersburg, AK | |
| 3125—Sand Point, AK | |
| 3115—Sitka, AK | |
| 1901—Mobile, AL | |
| 2813—Alameda, CA | Movement between Alameda-Oakland are intraport. |
| 2830—Carquinez Strait, CA | Movements between this port and Crockett, Martinez and Selby are intraport. |
| 2815—Crockett, CA | See notation for Carquinez [illegible]. |
| 2802—Eureka, CA | Includes Crescent City |
| 2709—Long Beach, CA | Includes Dana Point Hbr., movements between Long Beach-Los Angeles are intraport. |
| 2704—Los Angeles, CA | Do. |
| 2820—Martinez, CA | See notation under Carquinez Strait. |
| 2811—Oakland, CA | Movements between Oakland-Alameda are intraport. |
| 2713—Port Hueneme, CA | Includes Channel Island Hbr |
| 2821—Redwood City, CA | |
| 2812—Richmond, CA | |
| 2816—Sacramento, CA | |
| 2501—San Diego, CA | Includes Oceanside Hbr |
| 2809—San Francisco, CA | |
| 2826—San Joaquin, CA | [illegible] between San Joaquin-Stockton are intraport. |
| 2707—San Luis, CA | |
| 2829—San Pablo Bay, CA | Includes Napa River |
| 2827—Selby, CA | See notation under Carquinez Strait |
| 2810—Stockton, CA | Movements between Stockton-San Joaquin are intraport. |
| 2831—Suisun Bay, CA | |
| 0601—Bridgeport, CT | Includes Housatonic River and Stamford Hbr |
| 0602—Hartford, CT | |
| 0603—New Haven, CT | |
| 0604—New London, CT | |
| 5401—Washington, DC | |
| 1103—Wilmington, DE | |
| 1807—Boca Grande, FL | |
| 1806—Carabelle, FL | |
| 1805—Fernandia Beach, FL | |
| 5205—Fort Pierce, FL | |
| 1803—Jacksonville, FL | |
| 5202—Key West, FL | |
| 5201—Miami, FL | |
| 1818—Panama City, FL | |
| 1819—Pensacola, FL | |
| 1816—Port Canaveral, FL | |
| 5203—Port Everglades, FL | |
| 1820—Port St. Joe, FL | |
| 1814—St. Petersburg, FL | |
| 1801—Tampa, FL | |
| 5204—West Palm Beach, FL | |
| 1701—Brunswick, GA | Includes St. Mary River |
| 1703—Savannah, GA | |
| 3202—Hilo, HI | |
| 3201—Honolulu, HI | |
| 3203—Kahului, HI | Includes Kaunakakai Hbr |
| 3204—Nawiliwili-Port Allen, HI | |
| 3901—Chicago, IL | |
| 3904—East Chicago, IL | Includes Indiana Hbr., does not include Buffington Hbr |
| 3905—Gary, IN | Only Michigan City and Burns Hbr |
| 2012—Avondale, LA | Movements between all ports in LA are intraport except movements from or to Lake Charles or Morgan City, or from or to Baton Rouge-Gramercy and other LA ports. |
| 2004—Baton Rouge, LA | Movements between Baton Rouge-Gramercy are intraport. |
| 2009—Destrahan, LA | |
| 2010—Gramercy, LA | Movements between Gramercy-Baton Rouge are intraport. |
| 2014—Goodhope, LA | |
| 2017—Lake Charles, LA | |
| 2001—Morgan City, LA | Includes Houma |
| 2002—New Orleans, LA | |
| 2005—Port Sulphur, LA | |
| 2013—St. Rose, LA | |
| 0401—Boston, MA | |
| 0407—Fall River, MA | |
| 0404—Gloucester, MA | |
| 1303—Baltimore, MD | Includes Susquehanna River and Havre de Grace |
| 1302—Cambridge, MD | [illegible] |
| 0102—Bangor, ME | |
| 0111—Bath, ME | |
| 0132—Belfast, ME | |
| 0101—Portland, ME | |
| 3843—Alpena, MI | Not Stoneport, MI. |
| 3801—Detroit, MI | |

| Port Code, Port Name, and [illegible] | Notations |
|---|---|
| 3844—Ferrysburg, MI | |
| 3816—Grand Haven, MI | |
| 3809—Marquette, MI | |
| 3815—Muskegon, MI | Includes Pentwater Hbr. and South Haven Hbr. |
| 3802—Port Huron, MI | Includes Harbor Beach |
| 3842—Presque Isle, MI | |
| 3804—Saginaw-Flint-Bay City, MI | Not Alabaster, MI |
| 3803—Sault St. Marie, MI | Not Port Dolomite or Port Inland, MI.; includes Manistique, Black River Hbr. and Grand Marais Hbr. |
| 3601—Duluth, MN | |
| 3614—Silver Bay, MN | Only Grand Marais. |
| 1902—Gulfport, MS | |
| 1903—Pascagoula, MS | |
| 1511—Beaufort-Morehead City, NC. | |
| 1501—Wilmington, NC | |
| 0131—Portsmouth, NH | |
| 1107—Camden, NJ | |
| 1113—Gloucester, NJ | |
| 1103—Newark, NJ | Or Port Code 4601; see notation for NY. |
| 1105—Paulsboro, NJ | |
| 1004—Perth Amboy, NJ | Or Port Code 4602; see notation for NY. |
| 1002—Albany, NY | |
| 0901—Buffalo-Niagara Falls, NY | Includes Cattaraugus. |
| 0706—Cape Vincent, NY | |
| 1001—New York, NY | Movement between NY, Newark and Perth Amboy are intraport. |
| 0701—Ogdensburg, NY | |
| 0904—Oswego, NY | |
| 0903—Rochester, NY | |
| 0905—Sodus Point, NY | Includes Little Sodus Bay Hbr. |
| 4108—Ashtabula, OH | Or Port Code 4122 |
| 4101—Cleveland, OH | |
| 4109—Conneaut, OH | Or Port Code 4122 |
| 4111—Fairport, OH | |
| 4117—Huron, OH | |
| 4121—Loran, OH | |
| 4105—Toledo-Sandusky, OH | |
| 2901—Astoria, OR | |
| 2903—Coos Bay, OR | Includes Port Orford |
| 2902—Newport, OR | Includes Tillamook Bay |
| 2904—Portland, OR | |
| 1102—Chester, PA | |
| 4106—Erie, PA | |
| 1118—Marcus Hook, PA | |
| 1101—Philadelphia, PA | |
| 4907—Mayaguez, PR | |
| 4908—Ponce, PR | |
| 4909—San Juan, PR | |
| 0502—Providence, RI | |
| 1601—Charleston, SC | |
| 1602—Georgetown, SC | |
| 2104—Beaumont, TX | |
| 2301—Brownsville, TX | |
| 5312—Corpus Christi, TX | |
| 5311—Freeport, TX | |
| 5310—Galveston, TX | Includes Port Bolivar |
| 5301—Houston, TX | |
| 2101—Port Arthur, TX | |
| 5313—Port Lavaca, TX | |
| 2103—Orange, TX | |
| 2102—Sabine, TX | |
| 5306—Texas City, TX | |
| 5402—Alexandria, VA | |
| 1406—Cape Charles, VA | |
| 1408—Hopewell, VA | |
| 1402—Newport News, VA | Movement between Newport News and Norfolk are intraport. |
| 1401—Norfolk, VA | |
| 1404—Richmond-Petersburg, VA | |
| 3003—Aberdeen, WA | |
| 3005—Bellingham, WA | |
| 3006—Everett, WA | |
| 2909—Kalama, WA | |
| 2905—Longview, WA | |
| 3026—Olympia, WA | |
| 3007—Port Angeles, WA | |
| 3001—Seattle, WA | |
| 3002—Tacoma, WA | |
| 2908—Vancouver, WA | |
| 3602—Ashland, WI | Includes Port Wing |
| 3703—Green Bay, WI | |
| 3706—Manitowoc, WI | Includes Two Rivers Hbr. and [illegible] |
| 3702—Marinette, WI | Includes Oconto |
| 3701—Milwaukee, WI | |
| 3708—Racine, WI | |
| 3707—Sheboygan, WI | |
| 3608—Superior, WI | |

(2) *Commercial cargo* means, unless exempted by paragraphs (c) (1) and (2) of this section, merchandise transported on a commercial vessel and passengers transported for compensation or hire. Whenever the term "cargo" is used, it means merchandise, but not passengers.

(3) *Commercial vessel* means, unless exempted by paragraph (c)(3) of this section, any vessel used in transporting commercial cargo by water for compensation or hire, or in transporting commercial cargo by water in the business of the owner, lessee or operator of the vessel.

(4) *Ferry* means any vessel which arrives in the U.S. on a regular schedule during its operating season at intervals of at least once each business day.

(c) *Exemptions.* The following are not subject to the fee:

(1) Bunker fuel, ship's stores, sea stores and vessel equipment.

(2) Fish or other aquatic animal life, caught and not previously landed on shore.

(3) Ferries engaged primarily in the transport of passengers and their vehicles between points within the U.S. or between the U.S. and contiguous countries.

(4) Certain loadings and unloadings of cargo in Alaska, Hawaii, or the possessions of the U.S. as defined in this paragraph.

(i) Descriptions of exempt loadings/unloadings:

(A) Cargo loaded on a vessel in a port in the U.S. mainland for transportation to Alaska, Hawaii, or any possession of the U.S. for ultimate use or consumption in Alaska, Hawaii, or any possession of the U.S.

(B) Cargo loaded on a vessel in Alaska, Hawaii, or any possession of the U.S. for transportation to the U.S. mainland for ultimate use or consumption in the U.S. mainland.

(C) Cargo described in paragraph (c)(4)(i)(A) of this section unloaded in Alaska, Hawaii, or any possession of the U.S.

(D) Cargo described in paragraph (c)(4)(i)(B) of this section unloaded in the U.S. mainland.

(E) Cargo loaded on a vessel in Alaska, Hawaii, or a possession of the U.S. and unloaded in the state or possession in which loaded.

(ii) For purposes of paragraph (c)(4) of this section:

(A) *Cargo* does not include crude oil with respect to Alaska.

(B) *U.S. mainland* means the continental U.S. excluding Alaska.

(C) *Possessions* of the U.S. means Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, the Northern Mariana Islands and the Pacific Trust Territories.

(5) Commercial vessels, if any fuel used to move the cargo is subject to the Inland Waterway Fuel Tax (See section 4042, Internal Revenue Code of 1954, as amended by Pub. L. 95-502 and Pub. L. 99-662).

(6) Cargo entering the U.S. in bond for transportation and direct exportation to a foreign country, unless, with respect to cargo exported to Canada or Mexico:

(i) The Secretary of the Treasury determines that Canada or Mexico has imposed a substantially equivalent port use fee or commercial vessels or commercial cargo using ports of their countries; or

(ii) A study made pursuant to the Water Resources Development Act of 1986 (Pub. L. 99-662) finds that the fee is not likely to cause significant economic loss to a U.S. port or diversion of a significant amount of cargo to a port in a contiguous country.

(7) Cargo or vessels of the U.S. or any agency or instrumentality of the U.S.

(d) *Special rules.*—(1) *Intraport.* The fee is not to be assessed on the mere movement of commercial cargo within a port.

(2) *Same vessel, same cargo.* If a fee is assessed when cargo is loaded on a vessel, the unloading of the same cargo from that vessel is not subject to the fee. If a fee is assessed when cargo is unloaded from a vessel, the reloading of the same cargo on that vessel is not subject to the fee.

(3) *De minimis for individual shipments.* The fee shall not be assessed on loadings or unloadings of cargo in which:

(i) *For imported cargo:* The shipment would be entitled to be entered under informal entry procedures as provided for in § 143.21 of this chapter.

(ii) *For exported cargo:* The shipment does not require either the filing of a Shipper's Export Declaration (SED) as provided for in § 4.63 of this chapter or equivalent documentation as authorized under 15 CFR 30.39(b).

(iii) *For domestic cargo:* The value of the shipment does not exceed $1,000.

(4) *De minimis for quarterly payments.* Quarterly payment is not required if the total value of all

shipments for which a fee was assessed for the quarter does not exceed $10,000.

(e) *Collections.*—(1) *Domestic vessel movements.*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when cargo is loaded on a commercial vessel at a port within the definition of this section to be transported between ports in the U.S. or is unloaded from a commercial vessel at a port within the definition of this section after having been transported between ports in the U.S., the shipper (the person or corporation who pays the freight) of that cargo is liable for the payment of the port use fee at the time of unloading. The fee will be imposed only once on a movement pursuant to paragraph (d)(2) of this section. The fee is to be based upon the value of the cargo as determined by standard commercial documentation where such documentation is available. Otherwise, the value is to be determined under 19 U.S.C. 1401a as if it were imported merchandise. The Vessel Operation Report (Army Corps of Engineers Form 3925) is to be completed and submitted to the Army Corps of Engineers in accordance with the procedures set forth in 33 CFR Ch. II, Part 207. The shipper's name, either the internal revenue service or social security number of the shipper and the tax exemption code (as it appears in the Vessel Operation Report instructions) claimed for the shipment are to be included on the Vessel Operation Report.

(ii) *Fee payment.* The shipper whose name appears on the Vessel Operation Report shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter and a summary sheet of the fees to U.S. Customs Service, P.O. Box 70904, Chicago, Illinois 60673–0904. The summary sheet should be in the following format:

BILLING CODE 4820–02–M

**DOMESTIC VESSEL MOVEMENT SUMMARY SHEET FOR QUARTER DATED FROM _____ TO _____**

(Name of Shipper listed on Vessel Operation Report)

(Shipper's IRS or SS # appearing on Vessel Operation Report. Note whether it is SS or IRS #)

| Date Unloaded | Origin of Shipment | Destination of Shipment | Commodity Type (Code) Shipped | Value of Shipment |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

SEND TO:

U.S. Customs Service
P.O. Box 70904
Chicago, Illinois 60673-0904

Collection Class Code 503

Value of Total Shipments for Quarter _____

Total Fee Paid _____
(Total Value x.0004)

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding domestic shipments subject to the harbor maintenance fee for the quarter ending _____ is complete and accurate to the best of my knowledge.

_____
(Signature of Shipper)

_____
(Date)

BILLING CODE 4820-02-C

(2) *Export vessel movements*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when cargo is loaded on a commercial vessel for export at a port within the definition of this section, the exporter of that cargo (the name that appears on the SED or equivalent document authorized under 15 CFR 30.39(b)) is liable for the payment of the port use fee at the time of loading. The fee is based upon the value of the shipment loaded as required to be indicated on the SED or equivalent documentation. The SED or equivalent documentation is to be completed and submitted in accordance with the procedures set forth in § 4.63 of this chapter and 15 CFR Part 30.

(ii) *Fee payment.* The exporter whose name appears on the SED or equivalent documentation shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915. Accompanying the payment shall be either a summary sheet of all the fees, or if the exporter files Automated Summary Monthly Shipper's Export Declarations with the Bureau of Census in accordance with Foreign Trade Statistics Regulations (15 CFR 30.39), a cover letter identifying the exporter, his exporter identification number (EIN), Census Bureau reporting symbol and the quarter for which the payment is being made. If a summary sheet is used, it should be in the following format:

BILLING CODE 4820-02-M

**EXPORT VESSEL MOVEMENT SUMMARY SHEET FOR QUARTER DATED FROM _____ TO _____**

(Name of Exporter Listed on SED) | (EIN # Appearing on SED. Note whether it is IRS or SS #

| Origin of Shipment | Destination of Shipment | Date of Origin of Shipment | Commodity Type (Code) Shipped* | Value of Shipment |
|---|---|---|---|---|
| | | | | |
| | | | | |

SEND TO:

U.S. Customs Service
P.O. Box 70915
Chicago, Illinois 60673-0915

Total Value of Shipments for Quarter _____

Collection Class Code 502

Total Fee Paid (Total Value x.0004) _____

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding cargo loaded for export subject to the harbor maintenance fee for the quarter ending _____ is complete and accurate to the best of my knowledge.

_____
(Signature of Exporter)

_____
(Date)

*Show Schedule B number for first line item on SED only.

BILLING CODE 4820-02-C

(3) *Import vessel movements*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when imported cargo is unloaded from a commercial vessel at a port within the definition of this section, and destined for either consumption, warehousing, or foreign trade zone admission, the importer of that cargo, or in the case of foreign trade zones, the person or corporation responsible for bringing merchandise into the zone, is liable for the payment of the port use fee at the time of unloading. The fee is based on the U.S. Customs appraised value of the shipment pursuant to 19 U.S.C. 1401a, the same basis as that used for duty payment. The fee shall be collected on all formal entries, including warehouse entries and temporary importation under bond entries, and admissions into foreign trade zones.

(ii) *Fee payment.* The port use fee on unloading of imported cargo shall be paid in accordance with the normal Customs collection procedures set forth in §§ 24.1 and 141.1 of this chapter, except as provided for merchandise admitted into foreign trade zones in paragraph (e)(2)(iii) of this section. The U.S. Customs Entry Summary Form (Customs Form 7501), is to be completed with the amount of the fee shown and identified on the form. The fee shall be paid by the importer by adding it to any normal duty, tax or fee payable at the time of formal entry processing.

If no other duty, tax, or fee is imposed on the shipment, and the fee exceeds $3, a check or money order for the amount of the fee shall be attached to the Customs entry forms submitted.

(iii) *Foreign trade zones.* In cases where imported cargo is unloaded from a commercial vessel at a port within the definition of this section and admitted into a foreign trade zone, the applicant for admission (the person or corporation responsible for bringing merchandise into the zone) who becomes liable for the fee at the time of unloading pursuant to paragraph (e)(3)(i) of this section, shall pay all fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for the quarter and a summary sheet of the fees to U.S. Customs, P.O. Box 70981, Chicago, Illinois 60673–0981. Fees shall be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator. The summary sheet should be in the following format:

BILLING CODE 4820–02–M

FOREIGN TRADE ZONE ADMISSIONS SUMMARY SHEET FOR QUARTER DATED FROM_____ TO_____

(Name of Applicant Listed on CF 214)

(Applicant's IRS or SS #. Note whether it is IRS or SS #)

Zone # or Subzone #_____

Dated Unloaded | Origin of Shipment | Commodity | Value of Shipment

_____

_____

_____

SEND TO:

U.S. Customs Service
P.O. Box 70981
Chicago, Illinois 60673-0981

Total Value of Shipments for Quarter_____

Collection Class Code 505

Total Fee Paid (Total Value x.0004)_____

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding importations into foreign trade zones subject to the harbor maintenance fee for the quarter ending _____ is complete and accurate to the best of my knowledge.

_____
(Signature of Applicant for Admission)

_____
(Date)

BILLING CODE 4820-02-C

(4) *Passengers*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when a passenger boards or disembarks a commercial vessel at a port within the definition of this section, the operator of that vessel is liable for the payment of the port use fee. The fee is to be based upon the value of the actual charge for transportation paid by the passenger or on the prevailing charge for comparable service if no actual charge is paid. The vessel operator on each cruise is liable only once for the port use fee for each passenger.

(ii) *Fee payment.* The operator of the passenger-carrying vessel shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter and a summary sheet of the fees to U.S. Customs Service, P.O. Box 70969, Chicago, Illinois 60673–0969. The summary sheet should be in the following format:

BILLING CODE 4820–02–M

CRUISE VESSEL SUMMARY SHEET FOR QUARTER
DATED FROM _____ TO _____

(Name of Carrier)
(Name of Vessel Operator)

(Vessel Operator's IRS or SS #. Note whether it is IRS or SS #)

| Dates of Cruise | Number of Passengers on Cruise | Total Eligible Charges for Passengers on Cruise |
|---|---|---|
| | | |
| | | |
| | | |

SEND TO:

U.S. Customs Service
P.O. Box 70969
Chicago, Illinois 60673-0969

Collection Class Code 504

Total Eligible Charges for Passengers for Quarter _____

Total Fee Paid
(Total Charges x.0004) _____

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding passengers transported during the quarter ending _____ subject to the harbor maintenance fee is complete and accurate to the best of my knowledge.

_____
(Signature of Vessel Operator)

_____
(Date)

BILLING CODE 4820-02-C

(f) *Quarterly payments.* All quarterly payments required by this section must be received no later than 31 days after the close of the quarter being paid. Quarterly periods end on the last day of March, June, September, and December.

(g) *Maintenance of records.* Each importer, exporter, applicant for admission of cargo into a foreign trade zone, shipper and cruise vessel operator affected by this section shall maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 5 years from the date of fee calculation. The affected parties shall advise the Director, National Finance Center, Attn: Billings and Collections, P.O. Box 68903, Indianapolis, Indiana 46268, of the name, address, and telephone number of a responsible officer who shall be able to verify any records required to be maintained under this paragraph. The Director, National Finance Center, shall be promptly notified of any changes in the identifying information submitted. The records shall be maintained and made available for inspection, copying, reproduction or other official use by Customs in accordance with the provisions of §§ 162.1a through 162.1i of this chapter.

(h) *Penalties for failure to pay harbor maintenance fee and file summary sheet.*—(1) *Amount of penalty.* Any party (including the importer, exporter, or shipper) who fails to pay the harbor maintenance fee and file the summary sheet at the time specified by regulation shall incur a penalty equal to the amount of liquidated damages assessable for late filing of an entry summary pursuant to the provisions of § 142.15 of this chapter.

(2) *Application for relief.* The party shall follow the procedures set forth in Part 171 of this chapter in filing an application for relief.

(3) *Mitigation.* Any penalty assessed under this provision shall be mitigated in a manner consistent with guidelines published pursuant to the provisions of § 172.22(d)(1) of this chapter relating to cancellation of claims for liquidated damages for late filing of entry summaries.

(i) *Privacy Act notice.* Whenever an identification number is requested on the summary sheets provided for in paragraph (e) of this section, the disclosure of the social security number is mandatory when an internal revenue service number is not disclosed. Identification numbers are solicited under the authority of Executive Order 9397 and Pub. L. 99–662. The identification number provides unique identification of the party liable for the payment of the harbor maintenance fee. The number will be used to compare the information on the summary sheets with information submitted to the government on other forms required in the course of shipping, exporting or importing merchandise, which contain the identification number, *e.g.*, the SED, Vessel Operation Report, to verify that the information submitted is accurate and current. Failure to disclose an identification number may cause a penalty pursuant to paragraph (h) of this section. The above information is set forth pursuant to the Privacy Act of 1974 (Pub. L. 93–579).

**Conforming Amendments; Parts 4, 146, and 178, Customs Regulations**

To conform the Customs Regulations to the changes made by the amendments to Part 24, Customs Regulations (19 CFR Part 24), Parts 4, 146, and 178 (19 CFR Parts 4, 146, 178), are amended in the following manner:

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as following:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 2, 3.

2. Part 4 is revised by adding a new paragraph (j) to § 4.98 to read as follows:

**§ 4.98 Navigation fees.**

* * * * *

(j) The loading or unloading of merchandise or passengers from a commercial vessel at a U.S. port may cause the harbor maintenance fee set forth in § 24.24 of this chapter to be assessed.

## PART 146—FOREIGN TRADE ZONES

1. The authority citation for Part 146 continues to read as follows:

**Authority:** 19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnote 11), 1623, 1624, § 146.5 also issued under 31 U.S.C. 9701.

2. Part 146 is amended by adding a new paragraph (e) to § 146.22 to read as follows:

**§ 146.22 Admission of merchandise to a zone.**

* * * * *

(e) *Harbor maintenance fee.* When imported cargo is unloaded from a commercial vessel at a U.S. port and admitted into a foreign trade zone, the applicant for admission of that cargo into the zone may be subjet to the harbor maintenance fee as set forth in § 24.24 of this chapter.

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3510 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the columns indicated:

**§ 178.2 Listing of OMB control numbers.**

| 19 CFR Section | Description | OMB Control No |
|---|---|---|
| § 24.24 | Harbor maintenance fee | 1515–0158 |

**Michael H. Lane,**

*Acting Commissioner of Customs.*

Approved:

**Francis A. Keating II,**

*Assstant Secretary of the Treasury.*

March 24, 1987.

[FR Doc. 87–7006 Filed 3–27–87; 8:45 am]

BILLING CODE 4820–02–M

OL
2
S S
0
R
0
87
MI

# Reader Aids

Federal Register

Vol. 52, No. 60

Monday, March 30, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws**

523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, MARCH

6123-6316.....2
6317-6492.....3
6493-6768.....4
6769-6950.....5
6951-7102.....6
7103-7262.....9
7263-7396.....10
7397-7558.....11
7559-7816.....12
7817-8052.....13
8053-8222.....16
8223-8438.....17
8439-8580.....18
8581-8858.....19
8859-9106.....20
9107-9280.....23
9281-9450.....24
9451-9648.....25
9649-9792.....26
9793-10020.....27
10021-10212.....30

## CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**1 CFR**

Proposed Rules:
Ch. III.....7814, 7879

**3 CFR**

Proclamations:
5612.....6123
5613.....6125
5614.....6769
5615.....6771
5616.....7263
5617.....7265
5618.....8439
5619.....8441
5620.....8443
5621.....9281
5622.....9283
5623.....9793

Executive Orders:
12362 (Amended by EO 12585).....6773
12368 (Amended by EO 12590).....10021
12473 (See EO 12586).....7103
12585.....6773
12586.....7103
12587.....7397
12588.....8859
12589.....8861
12590.....10021

Administrative Orders:
Presidential Determinations:
No. 87-10 of March 5, 1987.....9107
No. 87-11 of March 12, 1987.....9795

**4 CFR**

Proposed Rules:
21.....9664

**5 CFR**

110.....7399
300.....7399
351.....10023
410.....7402
831.....10025
1600.....6127
1630.....8053

Proposed Rules:
340.....9867
752.....9867
572.....7427
930.....8909

**7 CFR**

8.....8432
52.....6129
57.....7817
68.....7817
210.....7559, 9109
215.....7559, 7560
220.....7559
227.....8223
240.....7267
271.....7554
272.....7554
273.....7554
274.....7554
278.....7554
300.....6951
301.....7562, 9285
318.....8863
403.....6775
413.....6775
416.....7818
419.....7818, 9285
420.....7818
421.....6775, 7818
424.....7818
425.....6775
427.....7818
430.....6775
432.....7818
435.....6775
436.....6775
438.....6775
446.....6775
448.....6775, 7818
452.....9287
736.....8056
800.....6493
905.....10026
907.....6952, 7819, 9110, 9797
908.....7820
910.....7115, 8058, 9111, 9797
911.....7115
915.....7115
925.....8865
932.....7402
944.....8865
947.....7119
948.....7268
980.....8871
985.....9451
1102.....6317
1106.....6317
1434.....6775
1806.....7998
1822.....7998
1901.....7998
1910.....6497
1924.....7998
1930.....7998
1933.....7998
1940.....7998
1942.....7998
1943.....7998
1944.....6132, 7998, 9111, 9649
1945.....7998

BEST COPY AVAILABLE

1951..... 6132, 6319, 9111
1955..... 7998
1965..... 9111
1980..... 6498
3900..... 9798
3901..... 9798

**Proposed Rules:**
53..... 6577
54..... 6577
55..... 6162, 8404
56..... 6162, 8404
59..... 6162, 8404
70..... 6162, 8404
272..... 7158
273..... 7158
275..... 7158
422..... 9301
736..... 10104
795..... 9302
800..... 7880
810..... 7880, 8455
908..... 7884
911..... 10108
912..... 6980
916..... 9173
917..... 6165, 9173
932..... 6166
946..... 6167
948..... 6168
959..... 7428, 9870
980..... 7428, 9870
1040..... 8074
1097..... 8075
1137..... 6579
1493..... 8605
1930..... 8606
1944..... 7584, 8606
1965..... 8606
2201..... 6803, 8611

**8 CFR**

3..... 7369
214..... 7062
242..... 6132
245..... 6320
249..... 6320

**Proposed Rules:**
100..... 8740
103..... 8740
109..... 8762, 10187
210..... 8745
211..... 8740
212..... 8740
234..... 8740
242..... 7741, 8740
245a..... 8752
264..... 8740
274a..... 8762, 10187
299..... 8740

**9 CFR**

51..... 6523
75..... 7403
77..... 8223
78..... 6524, 9452
91..... 8224
92..... 8436
94..... 8436
113..... 9116
303..... 10028
381..... 10028

**Proposed Rules:**
92..... 9871
94..... 7885
319..... 9303

**10 CFR**

19..... 8225
20..... 8225
21..... 8225
30..... 8225
35..... 9292
39..... 8225
40..... 8225, 9649
50..... 9453
51..... 8225
55..... 9453
70..... 8225, 9649, 10033
71..... 8225
73..... 6310, 7821, 9649
74..... 10033
110..... 9649
150..... 8225
456..... 6710

**Proposed Rules:**
2..... 6287
30..... 7432
40..... 7432
50..... 6334, 6650, 6980, 7432, 7887, 8075, 8460, 8917
55..... 7432, 7887
60..... 7432
61..... 7432
70..... 7432
71..... 7432
72..... 7432
110..... 7432
150..... 7432
430..... 7972
456..... 6754
458..... 6754

**11 CFR**

**Proposed Rules:**
110..... 6580

**12 CFR**

500..... 7120, 8550
505..... 7120
505a..... 7120
505b..... 7120
508..... 7120
522..... 7120
523..... 7120
545..... 7120
546..... 9799
552..... 7120, 9799
555..... 7120
556..... 7120, 8550
561..... 7120, 8242, 8550
563..... 7120, 7821, 8188, 8242, 8550, 9799
563b..... 7120, 8550
563c..... 7120, 8550
564..... 7120
569..... 7120
571..... 7120
572..... 7120
572a..... 9799
574..... 7120, 9799
584..... 7120
620..... 8581
701..... 8058
748..... 8062

**Proposed Rules:**
225..... 9304
332..... 7442
563..... 8207
564..... 8611
571..... 7887

**13 CFR**

121..... 6133

**Proposed Rules:**
121..... 8261

**14 CFR**

21..... 7261, 8040
23..... 7261
36..... 7261
39..... 6133, 6135, 6287, 6776, 6777, 6952–6956, 7405, 7564–7568, 7823, 8062, 8581, 8582, 8872, 9119, 9293, 9469, 9470, 10043
43..... 6650
71..... 6136, 6778, 7262, 7369, 7370, 7390, 7406, 8242, 8243, 8873, 9121, 9383, 10044
73..... 7370, 8874
91..... 6650, 7261, 9622, 9768
97..... 8244, 10045
121..... 6650, 9622
125..... 6956, 9622
127..... 6650
135..... 6650, 7261, 9622, 9768
241..... 6524, 9122

**Proposed Rules:**
Ch. I..... 8078, 8918
21..... 9176, 10109–10111
23..... 9176, 10109–10111
36..... 7618, 8050
39..... 6170, 6804, 6987, 7443, 7619, 8079, 8081, 8082, 8263, 8265, 8612–8615, 8919, 9181, 10113, 10114
71..... 6805, 6988, 6989, 7279, 7444, 7445, 8730, 8920, 8921, 9182–9184, 9312, 9313, 10115
75..... 6989, 8920–8923
91..... 7618
159..... 7446

**15 CFR**

371..... 6137, 6649
372..... 6137
373..... 6137, 9147
374..... 6137
376..... 9147
379..... 6137
385..... 9147
386..... 6137
387..... 6137
389..... 6137
399..... 6137, 8445
806..... 8445

**Proposed Rules:**
371..... 8265
374..... 8265
399..... 8265, 9241

**16 CFR**

13..... 6540, 7407, 8446, 9294, 9655
702..... 7569
801..... 7066
802..... 7066
803..... 7066

**Proposed Rules:**
13..... 6172, 6806, 8461
703..... 9314
801..... 7095
802..... 7095
803..... 7095

**17 CFR**

1..... 6139
16..... 6139
240..... 8875, 9151
249..... 9151

**Proposed Rules:**
1..... 6812
15..... 6812
19..... 6812
140..... 6588
150..... 6812
230..... 8268
239..... 8268
240..... 6340
270..... 7166, 8268, 8302
274..... 7166, 8268

**18 CFR**

3..... 7824
271..... 6545
292..... 9161
375..... 7824
385..... 6957
388..... 7824
389..... 9161
1301..... 7407

**Proposed Rules:**
4..... 8463
11..... 8463
35..... 8616
271..... 7891
292..... 6822
375..... 8463

**19 CFR**

4..... 10198
6..... 10047
24..... 10198
101..... 7124
113..... 9784
133..... 9471
134..... 7825
146..... 10198
151..... 9784
178..... 9784, 10047, 10198
192..... 8308

**Proposed Rules:**
133..... 9498

**20 CFR**

404..... 8246
416..... 8877

**Proposed Rules:**
404..... 10116
416..... 8309

**21 CFR**

5..... 6970, 7269, 7829, 7969
74..... 7261, 7829
81..... 6323
101..... 6971
176..... 6649
178..... 6323
312..... 8798
314..... 8798
331..... 7830
332..... 7830
341..... 7126, 7830
344..... 7830
357..... 7830
436..... 8550
449..... 7741
455..... 8550
510..... 7831, 7833, 9295, 9756
511..... 8798
514..... 8798
520..... 7831, 9756

522..... 7831, 7833, 9756
524..... 7831, 9756
529..... 7831, 9756
558.....6649, 7261, 7833, 7834, 9295
571..... 8583
1308.....6546, 7270, 9802–9806

**Proposed Rules:**
193..... 6344
312..... 8850
358..... 9992
561..... 6344
1308..... 7280

**22 CFR**
33..... 7528
514..... 7370

**23 CFR**
655..... 7126
658..... 7834
777..... 8250

**Proposed Rules:**
655..... 7172

**24 CFR**
40..... 9477
146..... 7408
200..... 6778, 8064, 9827
201..... 7841
203.....6908, 7841, 7842, 8064, 9295, 9989
204..... 6908, 8064, 9989
213..... 8064, 9989
220..... 8064, 9989
221..... 8064, 9989
222..... 8064, 9989
226..... 8064, 9989
227..... 8064, 9989
234..... 7841, 8064, 9989
235..... 8064, 9989
237..... 8064, 9989
240..... 8064, 9989
243..... 9161
278..... 6300
511..... 9161, 9295
570..... 6140, 6971
842..... 9161
882..... 9477, 9827
886..... 9827
888..... 9478
942..... 9161

**Proposed Rules:**
203..... 9666
234..... 9666

**25 CFR**
249..... 9655

**Proposed Rules:**
11..... 9669
40..... 6482
167..... 6822

**26 CFR**
1.....6428, 6468, 7281, 7408, 8447, 9161, 10049–10052
5f..... 7408
5h..... 8405, 10085
46..... 9656
301..... 6779, [redacted]
602.....6428, 6468, 6779, 7408, 10052

**Proposed Rules:**
1.....6467, 7449, 8471, 9185, 10118
7.....7281
20..... 7281
25..... 7281
53..... 7281
56..... 7281
602..... 6467, 7449

**27 CFR**
71..... 7370
178..... 7132

**Proposed Rules:**
19..... 9873
197..... 9873
250..... 9873
251..... 9873

**28 CFR**
2.....7574, 8405
14..... 7411
600..... 7270
601..... 7270, 9241

**Proposed Rules:**
2.....7620, 9382
42..... 9885
44..... 9274
513..... 6297

**29 CFR**
860..... 8448
1613..... 10085
1952..... 9162
2676..... 7842

**Proposed Rules:**
103..... 7450, 9382
1928..... 7451
1952..... 9185
2200..... 9187

**30 CFR**
917..... 7132
935..... 6796
944..... 7843

**Proposed Rules:**
15..... 9670
75..... 9670
202..... 7622
206..... 7622
256..... 9672
280..... 9758
774..... 6827
785..... 9640, 9644
823..... 9644
906..... 9887
913..... 9402
917..... 9890
935..... 7176, 8082
938..... 6828
942..... 6827
944..... 9891
946..... 9892
948..... 9314

**31 CFR**
545.....7273–7275, 7855

**32 CFR**
706..... 6546, 7136, 8583
1602..... 8889
1605..... 8889
1621..... 8889
1630..... 8889
1633..... 8889
1648..... 8889
1656..... 8889
2003..... 10190

**Proposed Rules:**
199..... 7453
231a..... 6346
818a..... 9499
1602..... 8924
1605..... 8924
1609..... 8924
1618..... 8924
1621..... 8924
1624..... 8924
1630..... 8924
1633..... 8924
1636..... 8924
1639..... 8924
1642..... 8924
1648..... 8924
1651..... 8924
1653..... 8924
1657..... 8924
1698..... 8924

**33 CFR**
100..... 9162
110..... [redacted]
117..... 6972, 9163
147..... 9656
151..... 7744
158..... 7744
161..... 7856
165..... 6142, 8584, 8892
183..... 6973

**Proposed Rules:**
100.....6990, 7623–7624
110..... 6347
117..... 6991, 9673
165..... 8622, 8623

**34 CFR**
338..... 6142
653..... 10006
761..... 9440

**Proposed Rules:**
235..... 8570
502..... 7380
504..... 7380
524..... 7380
673..... 6924

**36 CFR**
7.....7372
214..... 10086
215..... 10086

**37 CFR**
1.....9386
401..... 8552

**Proposed Rules:**
1.....6696

**38 CFR**
17..... 7575
21.....6547, 7276
36..... 6547

**Proposed Rules:**
1.....8624
14..... 8472

**39 CFR**
10..... 6143
111..... 6144
224..... 7454
960..... 6797
962..... 7454

**Proposed Rules:**
10.....8627, 9756

**40 CFR**
52.....6145, 6324, 7862, 8070
60.....8585–8587, 9164, 9657, 9778*
61.....8586–8589, 8724, 9164
65.....7863, 7864
81.....6548, 7865, 8448
131..... 9102
180.....6325, 8452, 9492, 9493, 9756
260..... 8072
265..... 8704
270..... 8072
271..... 7412
716..... 9662
763..... 10187

**Proposed Rules:**
52.....6175, 7802, 8311, 8932, 9502, 9674, 9676
60.....7178, 8476
81..... 7802
85..... 9316
86..... 9503
117..... 8140
167..... 9504
180..... 6348, 8478, 9241
228..... 9894
264..... 8712
265..... 8704, 8712
270..... 8712
302..... 8140, 8172
440..... 9414
721..... 9508

**41 CFR**
Ch. 61..... 6674
50–201..... 6146
101–6..... 8893
101–40..... 9382
101–47..... 9829–9831
201–8..... 10086
201–11..... 10086
201–30..... 10086
201–34..... 10086

**Proposed Rules:**
50–201..... 7892
101–38..... 9448
201–38..... 9900

**42 CFR**
37..... 7866
57..... 10194
121..... 10094
122..... 10094
123..... 10094
405..... 6148
413..... 9833
417..... 8898
418..... 7412

**Proposed Rules:**
433..... 6350
447..... 6350

**43 CFR**
7.....9165
11..... 9042
17..... 6549

**Public Land Orders:**
6625 (Corrected by PLO 6640)..... 6557
6640..... 6557

**44 CFR**
64..... 6326, 10094
65.....8902, 8903
67.....8250, 8904
222..... 6799

**Proposed Rules:**
65..... 8933

67.....8084

**45 CFR**

97.....9494

**Proposed Rules:**

1204.....9901
1207.....8479
1208.....8480

**46 CFR**

30.....7765
98.....7765
107.....6974, 9383
109.....6974, 9383
151.....7765
153.....7765
170.....6974, 9383
172.....7765
174.....6974, 9383
221.....6329
276.....7462
502.....6330

**Proposed Rules:**

160.....6992
310.....6829
503.....8628, 9756

**47 CFR**

1.....8259
2.....6152, 7136, 7417, 8906
15.....9296
19.....7577
21.....7136
31.....6557
32.....6557, 7579
43.....8453
64.....6557
69.....8258
73.....6152, 6154, 7148–7150, 7276, 7420, 7580, 8259, 8453, 8454, 8907, 9298, 9299
74.....7136, 7420, 8259
78.....7136
80.....7417
90.....6154
94.....7136
97.....7277

**Proposed Rules:**

Ch. I.....8313
25.....6175, 8937
73.....6176, 7182–7185, 7282, 7624–7627, 8084–8086, 8314–8316, 8481, 8937, 9316
74.....7627, 7895

**48 CFR**

1.....8567
3.....7062, 9989
7.....9036
8.....9036
9.....9036
13.....9036
15.....9036
22.....9036
31.....9036
32.....9036
44.....9036
52.....9036
53.....9036
244.....8908
PHS352.....9300
507.....8589
514.....6562
515.....6562
528.....6564
533.....6562
537.....6562
552.....6562, 8589
706.....6158
715.....6158
1537.....8073
5316.....6332

**Proposed Rules:**

32.....8576
51.....9436
52.....8576, 9436
203.....9187
209.....9187
232.....8481
242.....6177
825.....6993
5315.....6590

**49 CFR**

1.....9863
171.....8590
173.....7581, 8590
174.....8590
175.....8590
176.....8590
177.....8590
394.....7277
533.....6564
571.....7150, 7867, 10096
1313.....7278

**Proposed Rules:**

71.....10119
171.....6591, 9996
172.....6591
173.....6178, 6591
175.....9996
176.....6591
177.....6591
178.....6591
180.....6591
192.....9189
195.....9189
219.....7185
391.....9192
571.....8317, 8482, 9194, 9316, 10122
845.....9678
1042.....8631
1059.....9201
1152.....7628
1330.....9513

**50 CFR**

17.....6651, 7369, 7424
23.....6160
258.....7532
285.....9170
301.....7582
611.....7868, 8592
646.....9864
671.....8319
672.....7868, 9171, 9495
675.....8592
681.....9496

**Proposed Rules:**

17.....7462
20.....7900
216.....7912
217.....6179, 8087, 9318, 9902
222.....6179, 8087, 9318, 9902
227.....6179, 8087, 9318, 9902
640.....8485
642.....6357, 7463
646.....9513
653.....9902
658.....7283
661.....10125
671.....6199

## LIST OF PUBLIC LAWS

**Last List March 27, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

**S.J. Res. 19/Pub. L. 100–15**

To designate March 20, 1987 as "National Energy Education Day." (Mar. 25, 1987; 101 Stat. 129; 1 page) Price: $1.00

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

| Title | Price | Revision Date |
|---|---|---|
| 1, 2 (2 Reserved) | $9.00 | Jan. 1, 1987 |
| 3 (1985 Compilation and Parts 100 and 101) | 14.00 | [1] Jan. 1, 1986 |
| 4 | 14.00 | Jan. 1, 1987 |
| **5 Parts:** | | |
| 1–1199 | 18.00 | Jan. 1, 1986 |
| 1200–End, 6 (6 Reserved) | 6.50 | Jan. 1, 1986 |
| **7 Parts:** | | |
| 0–45 | 24.00 | Jan. 1, 1986 |
| 46–51 | 16.00 | Jan. 1, 1986 |
| 52 | 18.00 | Jan. 1, 1986 |
| *53–209 | 18.00 | Jan. 1, 1987 |
| 210–299 | 21.00 | Jan. 1, 1986 |
| *300–399 | 10.00 | Jan. 1, 1987 |
| 400–699 | 19.00 | Jan. 1, 1986 |
| 700–899 | 17.00 | Jan. 1, 1986 |
| 900–999 | 20.00 | Jan. 1, 1986 |
| 1000–1059 | 12.00 | Jan. 1, 1986 |
| 1060–1119 | 13.00 | Jan. 1, 1987 |
| 1120–1199 | 8.50 | Jan. 1, 1986 |
| 1200–1499 | 13.00 | Jan. 1, 1986 |
| *1500–1899 | 9.50 | Jan. 1, 1987 |
| 1900–1944 | 23.00 | Jan. 1, 1986 |
| 1945–End | 23.00 | Jan. 1, 1986 |
| 8 | 9.50 | Jan. 1, 1987 |
| **9 Parts:** | | |
| 1–199 | 14.00 | Jan. 1, 1986 |
| 200–End | 14.00 | Jan. 1, 1986 |
| **10 Parts:** | | |
| 0–199 | 22.00 | Jan. 1, 1986 |
| 200–399 | 13.00 | Jan. 1, 1986 |
| 400–499 | 14.00 | Jan. 1, 1987 |
| 500–End | 23.00 | Jan. 1, 1986 |
| 11 | 7.00 | Jan. 1, 1986 |
| **12 Parts:** | | |
| 1–199 | 11.00 | Jan. 1, 1987 |
| 200–299 | 22.00 | Jan. 1, 1986 |
| 300–499 | 13.00 | Jan. 1, 1987 |
| 500–End | 26.00 | Jan. 1, 1986 |
| 13 | 19.00 | Jan. 1, 1986 |
| **14 Parts:** | | |
| 1–59 | 20.00 | Jan. 1, 1986 |
| 60–139 | 19.00 | Jan. 1, 1986 |
| 140–199 | 7.50 | Jan. 1, 1986 |
| 200–1199 | 14.00 | Jan. 1, 1986 |
| 1200–End | 8.00 | Jan. 1, 1986 |
| **15 Parts:** | | |
| 0–299 | 10.00 | Jan. 1, 1987 |
| 300–399 | 20.00 | Jan. 1, 1986 |
| 400–End | 14.00 | Jan. 1, 1987 |

| Title | Price | Revision Date |
|---|---|---|
| **16 Parts:** | | |
| 0–149 | 9.00 | Jan. 1, 1986 |
| 150–999 | 10.00 | Jan. 1, 1986 |
| 1000–End | 19.00 | Jan. 1, 1987 |
| **17 Parts:** | | |
| 1–239 | 26.00 | Apr. 1, 1986 |
| 240–End | 19.00 | Apr. 1, 1986 |
| **18 Parts:** | | |
| 1–149 | 15.00 | Apr. 1, 1986 |
| 150–399 | 25.00 | Apr. 1, 1986 |
| 400–End | 6.50 | Apr. 1, 1986 |
| 19 | 29.00 | Apr. 1, 1986 |
| **20 Parts:** | | |
| 1–399 | 10.00 | Apr. 1, 1986 |
| 400–499 | 22.00 | Apr. 1, 1986 |
| 500–End | 23.00 | Apr. 1, 1986 |
| **21 Parts:** | | |
| 1–99 | 12.00 | Apr. 1, 1986 |
| 100–169 | 14.00 | Apr. 1, 1986 |
| 170–199 | 16.00 | Apr. 1, 1986 |
| 200–299 | 6.00 | Apr. 1, 1986 |
| 300–499 | 25.00 | Apr. 1, 1986 |
| 500–599 | 21.00 | Apr. 1, 1986 |
| 600–799 | 7.50 | Apr. 1, 1986 |
| 800–1299 | 13.00 | Apr. 1, 1986 |
| 1300–End | 6.50 | Apr. 1, 1986 |
| 22 | 28.00 | Apr. 1, 1986 |
| 23 | 17.00 | Apr. 1, 1986 |
| **24 Parts:** | | |
| 0–199 | 15.00 | Apr. 1, 1986 |
| 200–499 | 24.00 | Apr. 1, 1986 |
| 500–699 | 8.50 | Apr. 1, 1986 |
| 700–1699 | 17.00 | Apr. 1, 1986 |
| 1700–End | 12.00 | Apr. 1, 1986 |
| 25 | 24.00 | Apr. 1, 1986 |
| **26 Parts:** | | |
| §§ 1.0–1.169 | 29.00 | Apr. 1, 1986 |
| §§ 1.170–1.300 | 16.00 | Apr. 1, 1986 |
| §§ 1.301–1.400 | 13.00 | Apr. 1, 1986 |
| §§ 1.401–1.500 | 20.00 | Apr. 1, 1986 |
| §§ 1.501–1.640 | 15.00 | Apr. 1, 1986 |
| §§ 1.641–1.850 | 16.00 | Apr. 1, 1986 |
| §§ 1.851–1.1200 | 29.00 | Apr. 1, 1986 |
| §§ 1.1201–End | 29.00 | Apr. 1, 1986 |
| 2–29 | 19.00 | Apr. 1, 1986 |
| 30–39 | 13.00 | Apr. 1, 1986 |
| 40–299 | 25.00 | Apr. 1, 1986 |
| 300–499 | 14.00 | Apr. 1, 1986 |
| 500–599 | 8.00 | [2] Apr. 1, 1980 |
| 600–End | 4.75 | Apr. 1, 1986 |
| **27 Parts:** | | |
| 1–199 | 20.00 | Apr. 1, 1986 |
| 200–End | 14.00 | Apr. 1, 1986 |
| 28 | 21.00 | July 1, 1986 |
| **29 Parts:** | | |
| 0–99 | 16.00 | July 1, 1986 |
| 100–499 | 7.00 | July 1, 1986 |
| 500–899 | 24.00 | July 1, 1986 |
| 900–1899 | 9.00 | July 1, 1986 |
| 1900–1910 | 27.00 | July 1, 1986 |
| 1911–1919 | 5.50 | [3] July 1, 1984 |
| 1920–End | 29.00 | July 1, 1986 |
| **30 Parts:** | | |
| 0–199 | 16.00 | [4] July 1, 1985 |
| 200–699 | 8.50 | July 1, 1986 |
| 700–End | 17.00 | July 1, 1986 |
| **31 Parts:** | | |
| 0–199 | 11.00 | July 1, 1986 |
| 200–End | 16.00 | July 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| **32 Parts:** | | |
| 1–39, Vol. I | 15.00 | [5] July 1, 1984 |
| 1–39, Vol. II | 19.00 | [5] July 1, 1984 |
| 1–39, Vol. III | 18.00 | [5] July 1, 1984 |
| 1–189 | 17.00 | July 1, 1986 |
| 190–399 | 23.00 | July 1, 1986 |
| 400–629 | 21.00 | July 1, 1986 |
| 630–699 | 13.00 | July 1, 1986 |
| 700–799 | 15.00 | July 1, 1986 |
| 800–End | 16.00 | July 1, 1986 |
| **33 Parts:** | | |
| 1–199 | 27.00 | July 1, 1986 |
| 200–End | 18.00 | July 1, 1986 |
| **34 Parts:** | | |
| 1–299 | 20.00 | July 1, 1986 |
| 300–399 | 11.00 | July 1, 1986 |
| 400–End | 25.00 | July 1, 1986 |
| 35 | 9.50 | July 1, 1986 |
| **36 Parts:** | | |
| 1–199 | 12.00 | July 1, 1986 |
| 200–End | 19.00 | July 1, 1986 |
| 37 | 12.00 | July 1, 1986 |
| **38 Parts:** | | |
| 0–17 | 21.00 | July 1, 1986 |
| 18–End | 15.00 | July 1, 1986 |
| 39 | 12.00 | July 1, 1986 |
| **40 Parts:** | | |
| 1–51 | 21.00 | July 1, 1986 |
| 52 | 27.00 | July 1, 1986 |
| 53–60 | 23.00 | July 1, 1986 |
| 61–80 | 10.00 | July 1, 1986 |
| 81–99 | 25.00 | July 1, 1986 |
| 100–149 | 23.00 | July 1, 1986 |
| 150–189 | 21.00 | July 1, 1986 |
| 190–399 | 27.00 | July 1, 1986 |
| 400–424 | 22.00 | July 1, 1986 |
| 425–699 | 24.00 | July 1, 1986 |
| 700–End | 24.00 | July 1, 1986 |
| **41 Chapters:** | | |
| 1, 1–1 to 1–10 | 13.00 | [6] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | 13.00 | [6] July 1, 1984 |
| 3–6 | 14.00 | [6] July 1, 1984 |
| 7 | 6.00 | [6] July 1, 1984 |
| 8 | 4.50 | [6] July 1, 1984 |
| 9 | 13.00 | [6] July 1, 1984 |
| 10–17 | 9.50 | [6] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | 13.00 | [6] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | 13.00 | [6] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | 13.00 | [6] July 1, 1984 |
| 19–100 | 13.00 | [6] July 1, 1984 |
| 1–100 | 9.50 | July 1, 1986 |
| 101 | 23.00 | July 1, 1986 |
| 102–200 | 12.00 | July 1, 1986 |
| 201–End | 7.50 | July 1, 1986 |
| **42 Parts:** | | |
| 1–60 | 15.00 | Oct. 1, 1986 |
| 61–399 | 10.00 | Oct. 1, 1986 |
| 400–429 | 20.00 | Oct. 1, 1986 |
| 430–End | 15.00 | Oct. 1, 1986 |
| **43 Parts:** | | |
| 1–999 | 14.00 | Oct. 1, 1986 |
| 1000–3999 | 24.00 | Oct. 1, 1986 |
| 4000–End | 11.00 | Oct. 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| 44 | 17.00 | Oct. 1, 1986 |
| **45 Parts:** | | |
| 1–199 | 13.00 | Oct. 1, 1986 |
| 200–499 | 9.00 | Oct. 1, 1986 |
| 500–1199 | 18.00 | Oct. 1, 1986 |
| 1200–End | 13.00 | Oct. 1, 1986 |
| **46 Parts:** | | |
| 1–40 | 13.00 | Oct. 1, 1986 |
| 41–69 | 13.00 | Oct. 1, 1986 |
| 70–89 | 7.00 | Oct. 1, 1986 |
| 90–139 | 11.00 | Oct. 1, 1986 |
| 140–155 | 8.50 | [7] Oct. 1, 1985 |
| 156–165 | 14.00 | Oct. 1, 1986 |
| 166–199 | 13.00 | Oct. 1, 1986 |
| 200–499 | 19.00 | Oct. 1, 1986 |
| 500–End | 9.50 | Oct. 1, 1986 |
| **47 Parts:** | | |
| 0–19 | 17.00 | Oct. 1, 1986 |
| 20–39 | 18.00 | Oct. 1, 1986 |
| 40–69 | 11.00 | Oct. 1, 1986 |
| 70–79 | 17.00 | Oct. 1, 1986 |
| 80–End | 20.00 | Oct. 1, 1986 |
| **48 Chapters:** | | |
| 1 (Parts 1–51) | 21.00 | Oct. 1, 1986 |
| 1 (Parts 52–99) | 16.00 | Oct. 1, 1986 |
| 2 | 15.00 | Oct. 1, 1985 |
| 3–6 | 17.00 | Oct. 1, 1986 |
| 7–14 | 13.00 | Oct. 1, 1986 |
| 15–End | 22.00 | Oct. 1, 1986 |
| **49 Parts:** | | |
| 1–99 | 10.00 | Oct. 1, 1986 |
| 100–177 | 24.00 | Oct. 1, 1986 |
| 178–199 | 19.00 | Oct. 1, 1986 |
| 200–399 | 17.00 | Oct. 1, 1986 |
| 400–999 | 21.00 | Oct. 1, 1986 |
| 1000–1199 | 17.00 | Oct. 1, 1986 |
| 1200–End | 17.00 | Oct. 1, 1986 |
| **50 Parts:** | | |
| 1–199 | 15.00 | Oct. 1, 1986 |
| 200–End | 25.00 | Oct. 1, 1986 |
| CFR Index and Findings Aids | 27.00 | Jan. 1, 1987 |
| Complete 1987 CFR set | 595.00 | 1987 |
| Microfiche CFR Edition: | | |
| Complete set (one-time mailing) | 155.00 | 1985 |
| Complete set (one-time mailing) | 125.00 | 1984 |
| Complete set (one-time mailing) | 115.00 | 1985 |
| Subscription (mailed as issued) | 185.00 | 1986 |
| Subscription (mailed as issued) | 185.00 | 1987 |
| Individual copies | 3.75 | 1987 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

The authentic text behind the news . . .

# The Weekly Compilation of **Presidential Documents**

## Administration of Ronald Reagan

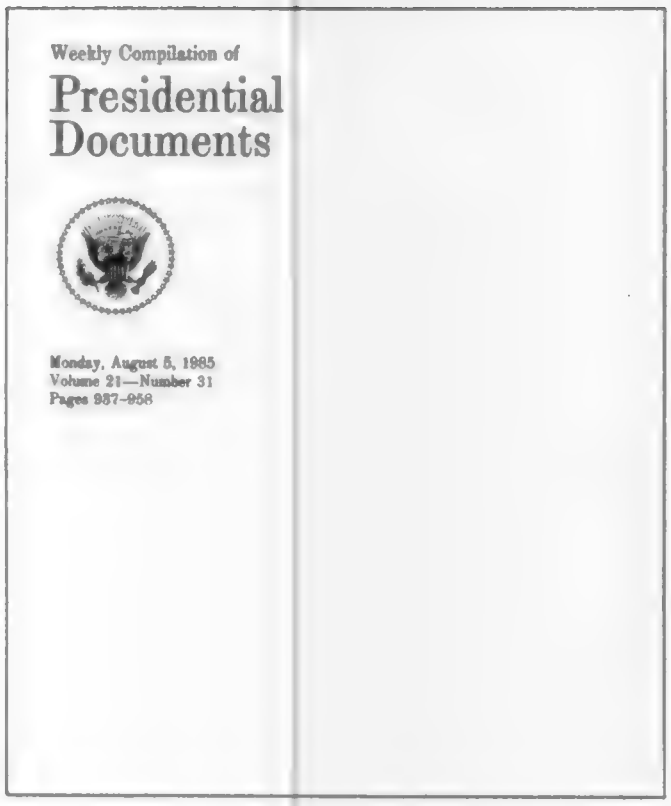


This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President and of nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration

## Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No. _____

**MasterCard and VISA accepted.**

**Credit Card Orders Only**
Total charges $ _____
Fill in the boxes below.

Customer's Telephone Nos
Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

**ENTER MY SUBSCRIPTION FOR 1 YEAR TO: WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)**

**$64.00 Domestic: $80.00 Foreign**
**$105.00 if Domestic first-class mailing is desired.**

**PLEASE PRINT OR TYPE**

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

(Rev 10-1-85)

(Rev. 10-1-85)

OL
2
S S
0
R
0
87
MI

OL
2

S S
1

R
1

87

MI

3-31-87
Vol. 52 No. 61

# Federal Register

Tuesday
March 31, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
2

S S
1

R
1

87

MI

3-31-87
Vol. 52 No. 61
Pages 10213-10356

# Federal Register

Tuesday
March 31, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 61

Tuesday, March 31, 1987

**Agency for International Development**
NOTICES
Agency information collection activities under OMB review, 10271

**Agricultural Marketing Service**
NOTICES
Meetings:
Tobacco Inspection Services National Advisory Committee, 10243

**Agriculture Department**
*See* Agricultural Marketing Service; Animal and Plant Health Inspection Service; Cooperative State Research Service; Food and Nutrition Service; Forest Service; Soil Conservation Service

**Alcohol, Tobacco and Firearms Bureau**
RULES
Technical amendments
Correction, 10224

**Animal and Plant Health Inspection Service**
PROPOSED RULES
Animal welfare standards:
Definition of terms, 10292
Revision, 10298

**Army Department**
NOTICES
Meetings:
Science Board, 10252

**Blind and Other Severely Handicapped, Committee for Purchase From**
*See* Committee for Purchase From the Blind and Other Severely Handicapped

**Bonneville Power Administration**
NOTICES
Environmental statements; availability, etc.:
Direct service industry options; proposed IP-PF rate link, 10254

**Centers for Disease Control**
NOTICES
Meetings:
Uniform proficiency testing program for laboratories covered by medicare and the Clinical Laboratory Improvement Act, 10265

**Commerce Department**
*See* Foreign-Trade Zones Board; International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration

**Committee for Purchase From the Blind and Other Severely Handicapped**
NOTICES
Procurement list, 1987:
Additions and deletions, 10251

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Brazil, 10250

**Cooperative State Research Service**
NOTICES
Meetings:
National Agricultural Research and Extension Users Advisory Board, 10243

**Customs Service**
RULES
Merchandise entry:
Steel; special summary invoices, 10221
NOTICES
Tariff rate quotas:
Tuna fish, 10287
Trade name recordation applications:
Continental Foods, Inc. (S.A), 10287

**Defense Department**
*See also* Army Department
RULES
Directives, instructions, publications, and changes; annual index availability to public, 10225
PROPOSED RULES
Archaeological resources protection; uniform regulations, 10342
NOTICES
Meetings:
Defense Policy Board Advisory Committee, 10252

**Economic Regulatory Administration**
NOTICES
Natural gas exportation and importation:
Brooklyn Union Gas Co., 10259

**Education Department**
NOTICES
Grants; availability, etc.:
Handicapped children, severely, program, 10346
Funding priorities, 10349
Indian education programs—
Formula grants, 10252

**Employment and Training Administration**
NOTICES
Adjustment assistance:
American Standard Inc., 10271

**Energy Department**
*See also* Bonneville Power Administration; Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements:
Switzerland and European Atomic Energy Community, 10252
Conflict of interests:
Divestiture requirements; supervisory employee waivers, 10254

Environmental statements; availability, etc.:
Weldon Spring, MO, 10253
Meetings:
International Energy Agency Industry Advisory Board, 10253

**Energy Information Administration**
NOTICES
Forms; availability, etc.:
Nuclear and uranium data reporting forms, 10259

**Environmental Protection Agency**
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 10239
Ohio, 10241
NOTICES
Air programs; fuel and fuel additives:
E.I. Dupont de Nemours & Co., Inc., 10261
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region II, 10261
Region IX, 10260
Meetings:
Science Advisory Board, 10262
Water pollution; discharge of pollutants (NPDES):
Gulf of Mexico OCS operations, 10262

**Equal Employment Opportunity Commission**
RULES
Procedural regulations:
Deferral jurisdictions; timely filing of charges, 10224

**Executive Office of the President**
*See* Trade Representative, Office of United States

**Farm Credit Administration**
NOTICES
Meetings; Sunshine Act, 10288

**Federal Aviation Administration**
RULES
Airworthiness directives:
Boeing, 10217
Lockheed, 10218, 10219
(2 documents)
PROPOSED RULES
Airworthiness directives:
Am-Safe, Inc., 10236
British Aerospace, 10237
General Dynamics, 10238
NOTICES
Airport noise compatibility program:
Medford-Jackson County Airport, OR, 10284

**Federal Communications Commission**
RULES
Practice and procedure:
Fee collection program, 10226

**Federal Energy Regulatory Commission**
RULES
Natural Gas Policy Act:
Incremental pricing—
Acquisition cost thresholds, 10220

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 10264

**Federal Mine Safety and Health Review Commission**
NOTICES
Meetings; Sunshine Act, 10288

**Federal Reserve System**
PROPOSED RULES
Freedom of Information Reform Act; implementation, 10233
NOTICES
Meetings; Sunshine Act, 10288
*Applications, hearings, determinations, etc.:*
First of America Bank Corp., 10264
First Peterborough Bank Corp., 10265

**Food and Drug Administration**
RULES
Food additives:
Adjuvants, production aids and sanitizers—
Incorporation by reference, update; technical amendment, 10222
NOTICES
Animal drugs, feeds, and related products:
J.D. Copanos & Sons, Inc., and Kanasco, Ltd.; proposed approval withdrawal for sterile injectable drug products, 10266

**Food and Nutrition Service**
NOTICES
Food stamp program:
Striker provisions, 10243

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
Illinois
Power Packaging, Inc., 10246
Wisconsin
Ambrosia Chocolate Co., 10247

**Forest Service**
PROPOSED RULES
Archaeological resources protection; uniform regulations, 10342
NOTICES
National Forest System lands:
Electronic communication sites—
Rocky Mountain Region; proposed rental fee schedule, 10245

**Health and Human Services Department**
*See* Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

**Health Resources and Services Administration**
NOTICES
Grants; availability, etc.:
Emergency medical services for children, 10266

**Interior Department**
*See also* Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Archaeological resources protection; uniform regulations, 10342

**Internal Revenue Service**
RULES
Excise taxes:
Crude oil windfall profit tax—
Removed from premises; definition; correction, 10224
Income taxes:
Partnerships; allocations of loss and deduction attributable to nonrecourse debt; correction, 10223
Unisex annuity tables; correction, 10223
PROPOSED RULES
Excise taxes:
Crude oil windfall profit tax—
Production from unitized property of imputed stripper well crude oil, etc.; correction, 10290
Income taxes:
Domestic International Sales Corp. (DISCS); interest charge
Correction, 10290

**International Development Cooperation Agency**
*See* Agency for International Development

**International Trade Administration**
NOTICES
Countervailing duties:
Pectin from Mexico, 10250
Short supply determinations:
Semi-finished steel slabs, 10247
*Applications, hearings, determinations, etc.:*
Georgia Institute of Technology et al., 10248
Masters, Mates, and Pilots MATES Program, 10248
Michigan Technological University et al., 10249
Thomas Jefferson University et al.; correction, 10290
University of Hawaii, 10249
University of Tennessee, 10249
Woods Hole Oceanographic Institution et al.; correction, 10290

**Interstate Commerce Commission**
NOTICES
Meetings; Sunshine Act, 10288

**Labor Department**
*See* Employment and Training Administration; Mine Safety and Health Administration; Pension and Welfare Benefits Administration

**Land Management Bureau**
RULES
Oil and gas leasing:
Onshore operations; site security, noncompliance provisions, etc.
Correction, 10225
Public land orders:
Alaska, 10225
NOTICES
Oil and gas leases:
Alaska, 10269
Montana, 10269
Realty actions; sales, leases, etc.:
California, 10267
Recreation management restrictions, etc.:
Medford District, OR, 10268
Withdrawal and reservation of lands:
New Mexico, 10268

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
Meshach Coal Co., 10272
Montana Resources, Inc., 10272

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
Chevron U.S.A. Inc., 10269
Hall-Houston Oil Co., 10269
Samedan Oil Corp., 10270

**National Bureau of Standards**
NOTICES
Information processing standards, Federal:
C programming language
Correction, 10290

**National Institute for Occupational Safety and Health**
*See* Centers for Disease Control

**National Oceanic and Atmospheric Administration**
RULES
Administrative practice and procedure:
Civil procedures; permit sanctions and denials, 10324

**National Park Service**
NOTICES
Environmental statements; availability, etc.:
Upper Delaware Scenic and Recreational River, NY and PA, 10270
Meetings:
Statue of Liberty-Ellis Island Centennial Commission, 10270
National Register of Historic Places:
Pending nominations—
California et al., 10271

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Florida Power & Light Co., 10273
Florida Power Corp. et al., 10274
Meetings; Sunshine Act, 10288

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Pacific Northwest Electric Power and Conservation Planning Council**
NOTICES
Meetings; Sunshine Act, 10289

**Pension and Welfare Benefits Administration**
NOTICES
Meetings:
Employee Welfare and Pension Benefits Plans Advisory Committee, 10273

**Personnel Management Office**
RULES
Absence and leave:
Temporary leave transfer program, 10213

Health benefits, Federal employees:
Nongroup coverage conversion, 10216
Retirement:
Survivor annuity benefits election; medical examination cost, 10215

**Postal Service**
NOTICES
Meetings; Sunshine Act, 10289

**Public Health Service**
*See* Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

**Securities and Exchange Commission**
NOTICES
Meetings; Sunshine Act, 10289
*Applications, hearings, determinations, etc.:*
Counsellors Tandem Securities Fund, Inc., et al., 10278
E.F. Hutton Life Insurance Co. Variable Life Program Separate Account et al., 10279
Prudential Insurance Co. of America et al., 10281
Union Carbide Corp., 10283

**Small Business Administration**
NOTICES
Disaster loan areas:
Mississippi, 10284
Texas, 10284
Organization, functions, and authority delegations:
Associate Deputy Adminstrator for Management and Administration et al., 10284

**Soil Conservation Service**
NOTICES
Environmental statements; availability, etc.:
Pasture Creek Watershed, MT, 10245

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Federal surface coal mining programs:
Georgia et al., 10352

**Tennessee Valley Authority**
PROPOSED RULES
Archaeological resources protection; uniform regulations, 10342

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Trade Representative, Office of United States**
NOTICES
Japan; semiconductor arrangement; possible U. S. actions; hearing, 10275
Poland; Tariff Schedule rates of duty and Polish products; hearing, 10274

**Transportation Department**
*See* Federal Aviation Administration

**Treasury Department**
*See also* Alcohol, Tobacco and Firearms Bureau; Customs Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 10286
(2 documents)
Boycotts, international:
Countries requiring cooperation; list, 10285

**Veterans Administration**
NOTICES
Agency information collection activities under OMB review, 10287

---

**Separate Parts in This Issue**

**Part II**
Department of Agriculture, Animal and Plant Health Inspection Service, 10292

**Part III**
Department of Commerce, National Oceanic and Atmospheric Administration, 10324

**Part IV**
Department of the Interior; Department of Agriculture, Forest Service; Tennessee Valley Authority; Department of Defense, 10342

**Part V**
Department of Education, 10346

**Part VI**
Department of the Interior, Surface Mining Reclamation and Enforcement Office, 10352

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**5 CFR**
630 ..... 10213
831 ..... 10215
890 ..... 10216

**9 CFR**
**Proposed Rules:**
1 ..... 10292
2 ..... 10298

**12 CFR**
**Proposed Rules:**
261 ..... 10233

**14 CFR**
39 (3 documents) ..... 10217–10219
**Proposed Rules:**
39 (3 documents) ..... 10236–10238

**15 CFR**
904 ..... 10324

**18 CFR**
282 ..... 10220
**Proposed Rules:**
1312 ..... 10342

**19 CFR**
141 ..... 10221
178 ..... 10221

**21 CFR**
178 ..... 10222

**26 CFR**
1 (2 documents) ..... 10223
51 ..... 10224
**Proposed Rules:**
1 ..... 10290
51 ..... 10290

**27 CFR**
9 ..... 10224

**29 CFR**
1601 ..... 10224

**30 CFR**
**Proposed Rules:**
700 ..... 10352
736 ..... 10352

**32 CFR**
269 ..... 10225
**Proposed Rules:**
229 ..... 10342

**36 CFR**
**Proposed Rules:**
296 ..... 10342

**40 CFR**
**Proposed Rules:**
52 (2 documents) 10239, 10241

**43 CFR**
3160 ..... 10225
**Public Land Orders:**
6641 ..... 10225
**Proposed Rules:**
7 ..... 10342

**47 CFR**
0 ..... 10226
1 ..... 10226
21 ..... 10226
22 ..... 10226
23 ..... 10226
61 ..... 10226
68 ..... 10226
73 ..... 10226
76 ..... 10226
78 ..... 10226
80 ..... 10226
90 ..... 10226
94 ..... 10226
95 ..... 10226

**50 CFR**
219 ..... 10324
621 ..... 10324

OL
2
S S
1
R
1
87
MI

# Rules and Regulations

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

### Absence and Leave; Temporary Leave Transfer Program

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is establishing a temporary leave transfer program that permits Federal employees to donate annual and sick leave for the use of other Federal employees for medical or family emergency or other hardship situations *in not more than three cases*. This rule sets forth procedures under which nominations of potential leave recipients may be submitted to the Office and establishes rules for administering the program. The Office will make a study of the desirability, feasibility, and cost of permitting employees to donate annual and sick leave to other employees during the period of this temporary program. This program will terminate when a report concerning voluntary leave transfer policy is submitted to Congress.

**DATES:** This interim rule will become effective on March 31, 1987; comments must be received on or before April 30, 1987.

**ADDRESS:** Comments may be sent to Barry E. Shapiro, Acting Assistant Director for Pay Programs, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 3353, 1900 E Street, NW., Washington, DC. Nominations of potential leave recipients may be sent or delivered to the same address.

**FOR FURTHER INFORMATION CONTACT:** Clarence Mathews, (202) 632–5056.

**SUPPLEMENTARY INFORMATION:** Public Laws 99–500 and 99–591, Making Continuing Appropriations for Fiscal Year 1987, authorized the President to prescribe regulations under which the unused accrued leave of one officer or employee of the Federal Government may be transferred for use by another officer or employee of the Federal Government *in not more than three cases of personal emergency*, as defined in such regulations. This authority will terminate upon the issuance of a report in Congress concerning voluntary leave transfer policy.

Executive Order 12589 of March 18, 1987, delegated to the Office of Personnel Management the authority to publish implementing regulations and to prepare a report to Congress concerning voluntary leave transfer policy. This rule sets forth the procedures under which Federal agencies and employees and other interested parties may submit nominations of potential leave recipients to the Office, which will make the final selection of up to three leave recipients for participation in this temporary program.

This temporary program has very limited applicability and scope and is experimental in nature. Given the narrow scope of this program, the Office will select participants so as to include individuals representing a variety of situations in an effort to evaluate the concept of shared leave in different contexts. For example, the Office will consider personal emergencies involving employees who are required to care for ill family members, as well as those involving employees with serious medical or other hardship situations. Nonselection for participation in this program should not in any way be construed as representing a determination that an employee's medical or family emergency or other hardship situation does not constitute a "personal emergency."

The temporary leave transfer program will test the concept of providing income protection to an employee affected by a personal emergency that requires the employee's abence from duty for a prolonged period of time and that would result in a substantial loss of income to the employee because of the unavailability of paid leave. Therefore, leave transferred under this interim rule will be available for use on a current basis or may be retroactively substituted for leave without pay or used to liquidate advanced annual or sick leave granted to the leave recipient on or after October 30, 1986 (the date of enactment of Pub. L. 99–591), in response to the personal emergency.

Leave donors may transfer annual and/or sick leave to the leave accounts of a leave recipient, subject to the procedures established by the employing agency. The leave recipient may use the transferred leave for the same purposes as if he or she had accured the leave. However, the transferred annual leave will not be the basis for a lump-sum payment upon separation of the recipient, nor will the transferred sick leave be available for recredit upon reemployment by the Federal Government or for use in computing a civil service retirement annuity for such recipient. Any transferred leave remaining to the credit of the leave recipient will be restored to the accounts of the leave donors on a prorated basis when the agency determines that the personal emergency no longer exists, or the leave recipient's employment by the employing agency terminates.

Pursuant to section 553(b)(3)(B) and (d)(3) of Title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because of the need to facilitate the nomination of potential leave recipients and the final selection of leave recipients by the Office.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

### List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management,
**Constance Horner,**
*Director.*

Accordingly, the Office is amending Title 5 of the Code of Federal Regulations as follows:

## PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 is revised to read as set forth below, and all other authority citations in Part 630 are removed:

**Authority:** 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under Pub. Laws 99–500 and 99–591 and E.O. 12589.

2. In Part 630, a new Subpart I is added to read as follows:

* * * * *

### Subpart I—Temporary Leave Transfer Program

Sec.
630.901 Purpose and applicability.
630.902 Definitions.
630.903 Nominations of potential leave recipients.
630.904 Selection of leave recipients.
630.905 Transfer of annual and sick leave.
630.906 Use of transferred annual leave.
630.907 Use of transferred sick leave.
630.908 Termination of personal emergency.
630.909 Restoration of transferred annual and sick leave.
630.910 Records and reports.
630.911 Termination of temporary leave transfer program.

### Subpart I—Temporary Leave Transfer Program

#### § 630.901 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to set forth procedures and requirements for a temporary leave transfer program under which the unused accrued annual and sick leave of one agency officer or employee may be transferred for use by another agency officer or employee in not more than three cases of personal emergency.

(b) *Applicability.* This subpart applies to officers and employees to whom Subchapter I of Chapter 63 of Title 5, United States Code, applies.

#### § 630.902 Definitions.

"Employing agency" means the agency in which the leave recipient is employed.

"Leave donor" means an employee of an employing agency whose voluntary written request for transfer of annual or sick leave to the leave accounts of a leave recipient is granted by the employing agency.

"Leave recipient" means an employee of an employing agency who has a personal emergency and is selected to receive annual or sick leave from the leave accounts of one or more leave donors.

"Personal emergency" means a medical or family emergency or other hardship situation that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

#### § 630.903 Nomination of potential leave recipients.

(a) Federal agencies employees, and other interested parties may submit nominations of potential leave recipients to the Office of Personnel Management. Such nominations must be received on or before April 30, 1987.

(b) All nominations shall be accompanied by the following information concerning each potential leave recipient:

(1) The name, employing agency, position title, and grade or pay level of the potential leave recipient; and

(2) A brief description of the nature, severity, and anticipated duration of the medical, family, or other hardship situation affecting the potential leave recipient.

#### § 630.904 Selection of leave recipients.

In consultation with the employing agency of the potential leave recipient and following receipt of any additional information it may require, the Office of Personnel Management may select not more than three leave recipients for participation in the temporary leave transfer program from among the potential leave recipients nominated under § 630.903. The selections of the Office are final, and there is no administrative or judicial appeal of the selections.

#### § 630.905 Transfer of annual and sick leave.

(a) An employee of an employing agency (or organizational unit thereof, as determined by the employing agency) may voluntarily request, in writing, that a specified number of hours of his or her accrued annual and/or sick leave be transferred from his or her annual or sick leave account to the annual or sick leave account, respectively, of a leave recipient.

(b) Under procedures established by the employing agency, the employing agency may transfer all or any portion of the annual leave requested under paragraph (a) of this section to the annual leave account of the leave recipient, and all or any portion of the sick leave requested under paragraph (a) of this section to the sick leave account of the leave recipient.

(c) Annual and/or sick leave transferred under this section may be substituted retroactively for periods of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after October 30, 1986, or a later date fixed by the employing agency as the beginning of the period of personal emergency for which LWOP or advanced annual or sick leave was granted.

#### § 630.906 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.905 in the same manner and for the same purposes as if he or she had accrued the annual leave under section 6303 of Title 5, United States Code. However, annual leave that accrues to the account of the leave recipient shall be used before any transferred annual leave.

(b) The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by Chapter 63 of Title 5, United States Code, Part 630 of this chapter, and the employing agency on the approval and use of annual leave accrued under section 6303 of Title 5, United States Code, except that transferred annual leave may accumulate without regard to the limitation imposed by section 6304(a) of Title 5, United States Code.

(c) Transferred annual leave remaining to the credit of a leave recipient when the leave recipient's employment terminates may not be transferred to another Federal agency or included in a lump-sum payment under section 5551 or 5552 of Title 5, United States Code, and may not be available for recredit under section 6306 of that title upon reemployment by the Federal Government.

#### § 630.907 Use of transferred sick leave.

(a) A leave recipient may use sick leave transferred to his or her sick leave account under § 630.905 in the same manner and for the same purposes as if he or she had accrued the sick leave under section 6307 of Title 5, United States Code. However, sick leave that accrues to the account of the leave recipient shall be used before any transferred sick leave.

(b) The approval and use of transferred sick leave shall be subject to all of the conditions and requirements imposed by Chapter 63 of Title 5, United States Code, Part 630 of this chapter,

and the employing agency on the approval and use of sick leave accrued under section 6307 of Title 5, United States Code.

(c) Transferred sick leave remaining to the credit of a leave recipient when the leave recipient's employment by the employing agency terminates may not be transferred to another Federal agency or recredited under § 630.502 upon reemployment by the Federal Government and may not be included in the leave recipient's total service for retirement annuity computation purposes under section 8339(m) of Title 5, United States Code.

**§ 630.908 Termination of personal emergency.**

(a) The personal emergency affecting a leave recipient shall terminate when—

(1) The employing agency determines that the personal emergency no longer exists; or

(2) The leave recipient's employment by the employing agency terminates.

(b) The employing agency shall continuously monitor the status of the personal emergency affecting the leave recipient and establish procedures to ensure that the leave recipient is not permitted to receive or use transferred annual or sick leave after the personal emergency ceases to exist.

(c) When the personal emergency affecting a leave recipient terminates, the employing agency may not grant any further requests for transfer of annual or sick leave to the leave accounts of the leave recipient.

**§ 630.909 Restoration of transferred annual and sick leave.**

(a) Under procedures established by the employing agency, any transferred annual or sick leave remaining to the credit of a leave recipient when the personal emergency affecting the leave recipient terminates shall be restored on a prorated basis by transfer to the accounts of the leave donors.

(b) Transferred annual leave restored to the account of a leave donor under paragraph (a) of this section before the beginning of the third biweekly pay period before the end of the leave year shall be subject to the limitation imposed by section 6304(a) of Title 5, United States Code.

(c) Transferred annual leave restored to the account of a leave donor under paragraph (a) of this section after the beginning of the third biweekly pay period before the end of the leave year shall not be subject to the limitation imposed by section 6304(a) of Title 5, United States Code, until the end of the leave year following the leave year in which the transferred annual leave was restored.

**§ 630.910 Records and reports.**

The Office of Personnel Management may require employing agencies to maintain records and report pertinent information to the Office concerning the administration of the temporary leave transfer program for the purpose of evaluating the desirability, feasibility, and cost of a voluntary leave transfer program.

**§ 630.911 Termination of temporary leave transfer program.**

(a) The temporary leave transfer program shall terminate upon submission of a report to Congress on voluntary leave transfer policy.

(b) If the temporary leave transfer program terminates before the termination of the personal emergency affecting a leave recipient, any annual or sick leave transferred to the accounts of the leave recipient before the termination of the temporary leave transfer program shall remain available for use by the leave recipient until the termination of the personal emergency.

[FR Doc. 87-7060 Filed 3-30-87; 8:45 am]

BILLING CODE 6325-01-M

---

**5 CFR Part 831**

## Retirement Survivor Annuity Benefit Elections (Medical Examination)

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulation.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations concerning election of survivor annuity benefits. This regulation will require a retiree to pay the cost of a medical examination when electing to provide a survivor benefit to an individual who has an insurable interest in the retiree. This survivor benefit election is provided for under section 8339(k)(1) of Title 5, United States Code.

**EFFECTIVE DATE:** April 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Rod Meader, (202) 632-5582.

**SUPPLEMENTARY INFORMATION:** On June 13, 1986, OPM published a proposed regulation (51 FR 21560) to require a retiree to pay the cost of a medical examination when electing a survivor benefit for a person having an insurable interest in the retiree. We received eight comments on the proposed regulation—one from an agency, one from a professional organization, two from employee organizations, and four from individuals. One commenter agreed with the proposed regulation. The remainder of the commenters registered their opposition to the proposed regulation.

Some of the commenters appear to be confused about the survivor benefit elections available under the civil service retirement law. There are two types of survivor benefit elections that a retiree can make. One is an election to provide a survivor benefit for a spouse or former spouse. The other is an election to provide a survivor benefit to a person having an insurable interest in the retiree. Only those retirees wishing to make an insurable interest-type survivor election are required to undergo a medical examination.

Other commenters objected in principle to requiring a retiree to pay for the medical examination. This change to require a retiree to pay for a medical examination is consistent with existing practice for other personnel management actions requiring medical examinations. It is a well established principle that applicants for retirement bear the burden of proof on all questions concerning entitlement. Thus, they must show that they are entitled to the benefit requested. Because the applicant has this responsibility, he or she should also bear the cost of providing the necessary evidence.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies.

**List of Subjects in 5 CFR Part 831**

Administrative practice and procedures, Claims, Fire fighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management,
**James E. Colvard,**
*Deputy Director.*

Accordingly, OPM is amending 5 CFR Part 831 as follows:

## PART 831—RETIREMENT

1. The authority citation for Subpart F of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347

2. In § 831.606, paragraph (d) is revised to read as follows:

**§ 831.606 Election of insurable interest annuity.**

* * * * *

(d) To elect an insurable interest annuity, an employee or Member must indicate the intention to make the election on the application for retirement; submit evidence to demonstrate that he or she is in good health; and arrange and pay for the medical examination that shows that he or she is in good health. A report of the medical examination, signed and dated by a licensed physician, must be furnished to OPM on such forms and at such time and place as OPM may prescribe through the Federal Personnel Manual system or other issuances.

[FR Doc. 87-7034 Filed 3-30-87; 8:45 am]
BILLING CODE 6325-01-M

---

**5 CFR Part 890**

## Federal Employees Health Benefits Program; Revised Timeframes for Conversion Purposes

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is revising its Federal Employeers Health Benefits (FEHB) Program regulations to amend the timeframe for conversion to nongroup coverage when an FEHB enrollment is terminated. This change will ensure that all employees have a sufficient amount of time to convert, regardless of whether or not receipt of the conversion notice was delayed.

**EFFECTIVE DATE:** April 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Barbara Myers, (202) 632-4634.

**SUPPLEMENTARY INFORMATION:** On October 16, 1986, OPM published proposed regulations in the **Federal Register** (51 FR 36810) to amend the timeframe for conversion to nongroup coverage when an FEHB enrollment is terminated. These regulations require agencies to produce a notice of the right to convert and give it to the individual within 60 days of the date the enrollment terminates. They also require that individuals whose group coverage terminates request conversion information from the carrier within 31 days from the date of the notice but no later than 91 days from the date the enrollment terminates. The regulations include a mechanism for belated conversion if the individual is unable to request conversion information within the required timeframe.

We received written comments from a Federal agency, two FEHB carriers, and a national association representing certain carriers. All were generally in favor of the new provision requiring agencies to issue a conversion notice and suggested that we issued further instructions on the new procedures required by these regulations. We plan to provided agencies and FEHB carriers with additional guidance in the near future. We also plan to continue in our efforts to remind individuals that they have a conversion right if their enrollment terminates, and to remind agencies of their obligation to issue a conversion notice upon termination of an enrollment.

One commenter expressed concern that extending the time limit for conversion from 15 days to 31 days of the date of the notice and from 75 days to 91 days of the date the enrollment terminates could increase the carriers' administrative burden and conversion risk. We do not expect that the additional time provided by the new regulation will significantly affect the carriers.

This carrier is also concerned that the provision concerning belated conversion opportunities will require greater carrier involvement with employing agencies to verify enrollee statements. Because these new rules place the burden of proof on the individual, we do not anticipate a great increase in the need for carrier-agency contact.

The carrier also requests that we include regulatory guidance on the legal; recourse for individuals if they are dissatified with a final decision by OPM. Because this information is already provided in § 890.107, we do not believe it is necssary to repeat it in these regualtions.

Another commenter supports the provisions making a belated conversion contract retroactive to the day after the end of the 31-day temporary extension of group coverage. However, this commenter is concerned that § 890.401(c)(3) could create an additional period of group coverage of up to 6 months if the agency fails to provide notice of the right to convert within 60 days of the date the enrollement terminates. The new rules do not change the existing 31-Day temporary extension of *group* coverage, which ends on the 32d day after the enrollment terminates (except for those confined to a hospital on the 31st day (see § 890.401(b))). Group coverage does *not* continue through the date that the carrier makes a determination on the individual's eligibility to convert. If the carrier permits conversion, the individual is responsible for full payment of the individual conversion policy beginning on the 32d day after the enrollment terminates and the carrier will pay claims for that period according to the provisions of the conversion contract.

This commenter is also concerned that prepaid plans face a serious risk of loss because alleged FEHB members who lose group coverage could receive care for up to 6 months as a result of an unresolved conversion option notification. The carrier fears that if these individuals neither convert nor pay for care, the plan could suffer financially, and suggests that carriers who experience an unusual amount of loss be permitteed to negotiate a compensatory loading to future rates. Rather than a loading against the Federal group's rates, which would penalize the entire Federal group covered by a contract, we believe it would be more equitable for carriers to pursue recovery against those few individuals who might continue to use their group coverage even though their enrollment has terminated. We anticipate that these regulations, which for the first time are *requiring* agencies to issue a notice of termination of group coverage and the right to convert to nongroup coverage within a specific timeframe, will help reduce the number of cases in which agencies fail to do so. (Prior to this regulation, FPM guidance merely instructed agencies to issue an SF 2810 upon termination of an enrollment.)

Two commenters believe that 60 days is too long a time period to give agencies to produce a notice of termination and the right to convert. One recommended that we require agencies to give enrollees this notice on the day the enrollment terminates, and the other recommended that we require them to give enrollees the notice within 15 days of the enrollment termination date. While we agree with these recommendations in principle, we must consider the Federal Government's uniqueness as an employer. Although many non-Federal organizations may be able to issue immediate conversion notices, most of these have more centralized personnel services. Within the Federal Government, however, employees may be stationed in different cities or countries from their personnel offices. Furthermore, agency personnel offices and payroll offices are not always in the same location. In many cases, the office that issues SF 2810 is not notified that one is needed until long after the enrollment has terminated. We recognize the necessity of the prompt issuance of conversion notices and will

emphasize this point in our additional guidance to agencies.

Another FEHB insurance carrier telephoned to request that we distinguish the initial loss of group coverage from the end of the 31-day temporary extension of group coverage that is provided when an enrollment terminates. We have therefore substituted the words "termination of enrollment" for "loss of group coverage" in paragraphs (c) (1), (2), and (3) of § 890.401. "Termination of enrollment" refers to the date the individual loses eligibility to participate in the FEHB Program, *not* to the end of the 31-day temporary extension of group coverage. We have also made a minor clarifying change to § 890.401)c)(2).

In addition to amending the conversion timeframe, OPM is adding paragraph (g) to § 890.306. This paragraph was formerly designated as paragraph (f) and was inadvertently deleted in a previous revision to the regulations.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office Of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

Accordingly, OPM is amending 5 CFR Part 890 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; § 890.301 also issued under 5 U.S.C. 8905(b); § 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); § 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251.

2. In § 890.201, paragraph (a)(4) is amended by revising the third sentence and adding a sentence immediately after the third sentence to read as follows:

**§ 890.201 Minimum standards for health benefits plans.**

(a) * * *

(4) * * * When an employing office gives an employee, annuitant, or former spouse written notice of his or her privilege of conversion, the carrier shall permit conversion at any time before 31 days after the date of notice, or 91 days after the enrollment is terminated, whichever is earlier. Belated conversion opportunities as provided in § 890.401(c) shall also be, permitted by the carrier. * * *

* * * * *

3. Section 890.306 is amended by adding a new paragraph (g) to read as follows:

**§ 890.306 Effective dates.**

* * * * *

(g) *Generally.* The effective date of any other enrollment or change of enrollment is the first day of the first pay period that begins after the health benefits registration form is received by the employing office and that follows a pay period during any part of which the employee or annuitant is in pay or annuity status except that enrollment under § 890.301(s) may be effective (1) on a prospective basis, namely the first day of the month after the date of receipts by OPM of registration forms; or (2) on a retroactive basis, namely the date of restoration of survivor annuity or October 1, 1976, whichever is later.

4. Section 890.401 is amended by adding a new paragraph (c) to read as follows:

**§ 890.401 Temporary extension of coverage and conversion.**

* * * * *

(c)(1) The employing agency must notify the employee, annuitant, or former spouse of the termination of the enrollment and of the right to convert to an individual policy within 60 days of the date the enrollment terminates.

(2) The individual whose enrollment terminates must request conversion information from the losing carrier within 31 days of the date of the agency notice of the termination of the enrollment and of the right to convert.

(3) When an agency fails to provide the notification required in paragraph (c)(1) of this section within 60 days of the date the enrollment terminates, or the individual fails for other reasons beyond his or her control to request conversions as required in paragraph (c)(2) of this section, he or she may request conversion to an individual policy by writing directly to the carrier. Such a request must be filed within 6 months after the individual became eligible to convert his or her group coverage and must be accompanied by verification of termination of the enrollment; e.g., an SF 50, showing the individual's separation from the service. In addition, the individual must show that he or she was not notified of the termination of the enrollment and of the right to convert, and was not otherwise aware of it, or that he or she was unable, for cause beyond his or her control, to convert. The carrier will determine if the individual is eligible to convert; and when the determination is affirmative, the individual may convert within 31 days of the determination. If the determination by the carrier is negative, the individual may request a review of the carrier's determination from OPM.

(4) When an individual converts his or her coverage anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the temporary extension of group coverage ended. The individual must pay the premiums due for the retroactive period.

(5) An individual who fails to exercise his or her rights to convert to an individual policy within 31 days after receiving notice of the right to convert from the carrier is deemed to have declined the right to convert unless the carrier, or, upon review, OPM determines the failure was for cause beyond his or her control.

[FR Doc. 87–7035 Filed 3–30–87; 8:45 am]

BILLING CODE 6325–01–M

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 87–NM–18–AD; Amdt. 39–5593]

### Airworthiness Directives; Boeing Model 757 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, equipped with Rolls Royce RB 211–535E4 engines, which requires inspection and repair, if necessary, of the thrust reverser C-duct thermal blankets. This amendment is prompted by reports that the blankets have exhibited degradation in the form of ballooning, holing, and discoloration in service. This condition, if not corrected, could result in holing or missing sections of the blanket in the

upper 45 degree section, which would compromise the fire integrity of the C-ducts.

**EFFECTIVE DATE:** April 16, 1987.

**ADDRESSES:** The applicable service information may be obtained from the Boeing Commercial Airplane Co., P.O. Box 3707, Seattle, Washington 98168. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Pasion, Aerospace Engineer, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The inner surface of the Rolls Royce RB211-535E4 engine thrust reverser C-duct is lined with a thermal blanket which protects the bonded structure of the C-duct from the heat generated by the engine and provides a fire barrier in the upper 45 degrees of each C-duct half. The blanket is manufactured from two sheets of nickel chromium steel sandwiching a sheet of fiber filler insulating material. In service, the blanket has exhibited degradation in the form of ballooning, holing, and discoloration. Holing or missing sections of the thermal blanket in the upper 45 degree section compromises the fire integrity of the C-ducts.

The FAA has reviewed and approved Boeing Service Bulletin 757-78-0010, dated December 23, 1986, which describes inspection and repair procedures of the C-duct thermal blankets.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and repair or replacement, if necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Service experience indicates that the normal inspection interval for inspecting the C-duct thermal blankets may be too long, since it allows degradation of the blankets to progress to an unsafe condition. The FAA is considering further action to require reducing the interval for normal maintenance inspections.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Boeing:** Applies to Model 757 series airplanes equipped with Rolls Royce RB211-535E4 engines, as listed in Boeing Service Bulletin 757-78-0010, dated December 23, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To maintain the fire integrity of the thrust reverser C-ducts, accomplish the following within the next 250 flight hours after the effective date of this AD:

A. Inspect and repair, if necessary, the thermal blanket in the upper 45 degree section of the C-ducts, as described in Boeing Service Bulletin 757-78-0010, dated December 23, 1986, or later FAA-approved revision. Any damage to the thermal blanket (such as holes, splits, and tears) must be repaired prior to further flight.

B. Inspect and repair, if necessary, the thermal blanket in the lower section of the C-ducts and engine components, as described in the Boeing Service Bulletin 757-78-0010, dated December 23, 1986, or later FAA-approved revisions. Any damage discovered must be repaired within the next 250 flight hours.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or repair required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 16, 1987.

Issued in Seattle, Washington, on March 24, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-7017 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 39**

**[Docket No. 86-NM-94-AD; Amdt. 39-5594]**

## Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes Equipped With Dynamic Controls Corporation Part Numbers 11035-2 and 11035-3

**AGENCY:** Federal Aviation, Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model L-1011-385 series airplanes, which requires modification of the passenger oxygen initiator sequencer timer switches (sequencers). This amendment is prompted by a recent incident wherein the passenger oxygen system on an L-1011-385-3 airplane failed to activate, automatically and manually, after the loss of cabin pressure during descent. The failure was attributed to two shorted transient suppression capacitors in the sequencer. This condition, if not corrected, could result in depriving passengers of needed oxygen.

**EFFECTIVE DATE:** May 5, 1987.

**ADDRESSES:** The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region,

17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Y. Mabuni, Aerospace Engineer, Systems & Equipment Branch, ANM–132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6323.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires modification of the passenger oxygen initiator sequencer timer switches, was published in the **Federal Register** on May 14, 1986 (51 FR 17650) and amended on November 3, 1986 (51 FR 39865). The second comment period for the proposal closed on December 22, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received. The commentor had no objections to the proposed rule.

During the second comment period, Lockheed informed the FAA and the L–1011 operators that the modified sequencers are identified by the word "MOD 2," but this was incorrectly identified as "MOD 1" in Lockheed Service Bulletin (S/B) 093–35–041, Revision 2, which was referenced in the amended NPRM. Thereafter, Lockheed issued S/B 093–35–041, Revision 3, dated November 6, 1986, with the correct modification identification. Since Revisions 2 and 3 of S/B 093–35–041 are identical except for the modification identification, the AD has been revised to reflect the P/N's 11035–2 and –3 sequencers in accordance with Part II of the Accomplishment Instructions of Lockheed S/B 093–35–041, Revision 3, instead of Revision 2. This is merely an editorial change and will impose no additional economic burden on any operator.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the change previously noted.

It is estimated that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per Lockheed Model L–1011–385–1 series airplane and 14 manhours per Lockheed Model L–1011–385–3 series airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model L–1011–385 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Lockheed-California Company:** Applies to Lockheed Model L–1011–385 series airplanes, equipped with Dynamic Controls Corporation oxygen initiator sequence timer switch(es), P/N's 11035–2/–3, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent malfunction of the passenger oxygen system due to dormant shorted electromagnetic interference filter capacitors in the oxygen initiator sequencer timer switch(es), accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), modify P/N's 11035–2 and –3 oxygen initiator sequencer timer switches in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093–35–041, Revision 3, dated November 6, 1986, or later revisions approved by the Manager, Los Angles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65–33, U–33, B–1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 5, 1987.

Issued in Seattle, Washington, on March 24, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87–7018 Filed 3–30–87; 8:45 am]

BILLING CODE 4910–13–M

---

**14 CFR Part 39**

**[Docket No. 86–NM–122–AD; Amdt. 39–5595]**

## Airworthiness Directives; Lockheed-California Company Model L–188A and L–188C Airplanes

**AGENCY:** Federal Aviation, Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that requires a modification to the wing air start access door of Lockheed L–188A and L–188C airplanes. This action is prompted by numerous reports of an open wing air start access door. This condition, if not corrected, can result in severe structural vibration during flight. This AD requires a modification of the wing air start access door to reduce it in size and, thus, reduce the vibration effect of an open door during flight.

**EFFECTIVE DATE:** May 5, 1987.

**ADDRESSES:** The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L–188, Commercial Support Contracts, Dept. 63–11 Unit 33. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM–121L,

FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require modification of the wing air start access door of Lockheed L-188A and L-188C airplanes was published in the Federal Register on June 30, 1986 (51 FR 23557).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The first commenter, the manufacturer, suggested that the statement, ". . . numerous reports of severe structural vibration . . . .," which was used in the preamble to the Notice, was incorrect, and questioned the FAA's source of data. In response, the FAA notes Lockheed's Electra Operating Information, dated May 30, 1985, which described "strong airplane vibration and buffeting," "heavy vibration," and "a number of previously unreported vibration/buffeting incidents of a similar nature." In addition, the FAA has received reports from one airline stating that several severe vibration problems have occurred; this situation resulted in the decision of that airline to modify the wing air start access door on the Model L-188 series airplanes in its fleet. From this information the FAA has determined that the statements used in the preamble to the Notice are justified.

The manufacturer also suggested that the AD should apply only to airplanes which have the P/N 826035 door installed. The FAA does not concur with the commenter's suggestion. The FAA has determined that there may be other doors in service which must be modified as required by the AD.

The other commenter, the National Transportation Safety Board, supported the proposed action.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 man-hours per airplane to accomplish the required actions, and that the average labor cost will be $40 per man-hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model L-188A and L-188C airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Lockheed-California Company:** Applies to Lockheed Model L-188A and L-188C airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent airframe vibration from an open wing air start access door, accomplish the following:

A. Within 500 hours time-in-service after the effective date of this AD, modify the air start door in accordance with Lockheed Drawing 842715, dated February 18, 1986, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to accomplish the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L-188, Commercial Support Contracts, Dept. 63-11, Unit 33. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 5, 1987.

Issued in Seattle, Washington, on March 24, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-7019 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

---

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 282**

**[Docket No. RM79-14]**

**Incremental Pricing Regulations; Natural Gas Policy Act; Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order prescribing incremental pricing thresholds.

**SUMMARY:** The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard P. O'Neill, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

**Publication of Prescribed Incremental Pricing Acquisition Cost Threshold of the NGPA of 1987; Order of the Director, OPPR**

Issued: March 25, 1987.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to the mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month April, 1987 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for April, 1987 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

**List of Subjects in 18 CFR Part 282**

Natural gas.

Richard P. O'Neill,

*Director, Office of Pipeline and Producer Regulation.*

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

| | Jan. | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct. | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Calendar Year 1986** | | | | | | | | | | | | |
| Incremental Pricing Threshold | [illegible] | $2.467 | $2.474 | $2.481 | $2.487 | $2.493 | [illegible] | $2.504 | [illegible] | $2.514 | [illegible] | $2.530 |
| NGPA section 102 Threshold | 4.166 | 4.191 | 4.216 | 4.241 | 4.264 | 4.287 | 4.310 | 4.332 | 4.354 | 4.376 | 4.403 | 4.431 |
| NGPA section 109 Threshold | 2.539 | 2.546 | 2.553 | 2.560 | 2.566 | 2.572 | 2.578 | 2.583 | 2.588 | 2.593 | 2.601 | 2.609 |
| 130% of No. 2 Fuel Oil in New York City Threshold | 7.370 | 7.930 | 5.040 | [illegible] | 4.680 | 3.980 | [illegible] | 3.190 | 3.310 | 4.020 | 3.320 | 3.240 |
| **Calendar Year 1987** | | | | | | | | | | | | |
| Incremental Pricing Threshold | $2.538 | $2.541 | $2.544 | $2.547 | | | | | | | | |
| NGPA section 102 Threshold | 4.459 | 4.478 | 4.497 | 4.516 | | | | | | | | |
| NGPA section 109 Threshold | 2.617 | 2.620 | 2.623 | 2.626 | | | | | | | | |
| 130% of No. 2 Fuel Oil in New York City Threshold | 4.090 | 4.660 | 4.620 | 4.120 | | | | | | | | |

[FR Doc. 87-7043 Filed 3-30-87; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

**19 CFR Parts 141 and 178**

[T.D. 87-43]

### Merchandise Entry; Customs Regulations Amendments Concerning Special Summary Steel Invoices

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by adding several articles to the list of steel products subject to the requirements of the Special Summary Steel Invoice (SSSI). The U.S. Trade Representative has negotiated Voluntary Restraint Agreements (VRA) with several countries. These VRA's dictate that basic steel products from these countries cannot be entered into the U.S. for consumption without an export license. Therefore, the Department of Commerce has requested that Customs add fabricated structurals, wire rope, wire strand, and rigid conduit to the list of articles subject to the requirements of the SSSI to facilitate the collection of statistical data necessary for monitoring compliance with the VRAs.

**EFFECTIVE DATE:** April 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** William Wagner, Commercial Compliance Division, (202-566-8121).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 141.86, Customs Regulations (19 CFR 141.86), sets forth the general information required by the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), to be on each invoice of imported merchandise. In addition to this information, § 141.89, Customs Regulations (19 CFR 141.89), lists certain classes of merchandise for which additional invoice information is required. One such class of merchandise is certain steel products imported in shipments with an aggregate purchase price of $10,000 or over, or if from a contiguous country, $5,000 or over, listed in § 141.89(b)(2).

The extra information required concerning steel products is provided by completing the Special Summary Steel Invoice (SSSI) (Customs Form 5520). The SSSI must be submitted to Customs in duplicate at the time of filing the entry summary for each shipment of steel determined by the district director to be subject to § 141.89(b). The information which must be supplied on a SSSI, such as date of the sales agreement and price data, is used to administer and enforce antidumping laws (19 U.S.C. 1671 *et seq.*), as well as compliance with Voluntary Restraint Agreements (VRA).

The U.S. Trade Representative has negotiated VRAs with Australia, Finland, South Africa, Spain, Brazil, Mexico, the European Community, South Korea, Czechoslovakia, East Germany, Hungary, Japan, Venezuela, Poland, Romania and Portugal. The agreements dictate that basic steel products from these countries cannot be entered into the U.S. for consumption unless accompanied by a valid export certificate. Therefore, the International Trade Administration of the Department of Commerce has requested that Customs extend SSSI coverage to include fabricated structurals, wire rope, wire strand, and rigid conduit. Therefore, Customs is adding these 4 articles to the other 32 articles of steel listed in § 141.89(b)(2) that require a SSSI for shipments with an aggregate purchase price of $10,000 or over, or if from a contiguous country $5,000 or over. The necessity for filing a SSSI is determined by what article of steel is being shipped and what its purchase price is; the country where the shipment originated is not a factor. Currently, Customs must provide copies of actual invoices to Commerce to account for these products, a task requiring additional work for Customs import specialists. The addition of these steel commodities to the list of articles subject to the requirements of the SSSI would greatly ease the process of collecting the necessary statistical information.

### Discussion of Comments

Five comments were received in response to the notice published in the Federal Register on August 7, 1986 (51 FR 28390), proposing this change. The commenters agreed that the amendment will facilitate the collection of statistical data necessary for monitoring compliance with VRA's and did not recommend any change.

### Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the amendment

will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

The collection of information requirements contained in § 141.89(b) are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501) and have been cleared by the Office of Management and Budget (OMB). Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include OMB control number 1515–0083.

**Drafting Information**

The principal author of the document was Bruce J. Friedman, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**List of Subjects**

*19 CFR Part 141*

Customs duties and inspections, Imports.

*19 CFR Part 178*

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

**Amendments to the Regulations**

Parts 141 and 178, Customs Regulations (19 CFR Parts 141, 178), are amended as set forth below.

## PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1448, 1484, 1624. Subpart G also issued under 19 U.S.C. 1505. Section 141.89 also issued under 19 U.S.C. 1202 (Gen. Hdnote 11), 1481.

2. Section 141.89(b)(2) is amended by adding the following commodities in proper numerical order to the list of articles of steel subject to special invoice requirements:

**§ 141.89 [Amended]**

* * * * *

(b) * * *

(2) * * *

(38) Fabricated structurals.

(43) Wire rope.

(44) Wire strand.

(51) Rigid conduit.

(**Note.**—Although not in sequence with existing numbers in § 141.89(b)(2), the numbers listed are those assigned to these articles by the American Iron and Steel Institute.)

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the columns indicated:

**§ 178.2 Listing of OMB Control Numbers.**

| 19 CFR Section | Description | OMB control No. |
|---|---|---|
| | . . . . . | |
| § 141.89(b) | Information on steel articles subject to special invoice requirements. | 1515–0083 |
| | . . . . . | |

**William von Raab,**

*Commissioner of Customs.*

Approved: March 12, 1987.

**Francis A. Keating II,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87–7008 Filed 3–30–87; 8:45 am]

BILLING CODE 4820–02–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 84N–0025]**

### Incorporation by Reference; Updating of Text; Technical Amendment

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting an error in § 178.3910 (21 CFR 178.3910) that was inadvertently introduced into that regulation in 1984. At that time to comply with 1 CFR Part 51, FDA amended the text of its regulations on color additives and food with regard to materials incorporated by reference in those regulations (49 FR 10087; March 19, 1984). In modifying § 178.3910, FDA converted a temperature listed in the regulation from fahrenheit to centigrade. However, in doing so, FDA inadvertently listed that temperature as 240 °C, rather than as 24 °C. This document corrects that error.

**DATES:** Effective March 31, 1987; written objections by April 30, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John E. Thomas, Center for Food Safety and Applied Nutrition (HFF–314), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0232.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 15, 1977 (42 FR 14633), FDA published a final rule (21 CFR 178.3910(a)(4)(i)(*a*)) that established specifications for light petroleum hydrocarbons that may be used as surface lubricants in the manufacture of metallic articles that contact food. The specifications included an initial boiling point in degrees fahrenheit, i.e., 75 °F minimum. In the **Federal Register** of March 19, 1984 (49 FR 10087), FDA amended 21 CFR 178.3910(a)(4)(i)(*a*) by converting the initial boiling point specification from degrees fahrenheit to degrees centigrade. In that final rule, however, FDA inadvertently listed this initial boiling point as 240 °C, instead of as 24 °C.

The agency is amending 21 CFR 178.3910(a)(4)(i)(*a*) by correcting the initial boiling point specification for light petroleum hydrocarbons from 240 °C to 24 °C.

Any person who will be adversely affected by this regulation may at any time on or before April 30, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents

shall be submitted and shall be indentified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs. Part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10, 5.61.

**§ 178.3910 [Amended]**

2. Section 178.3910 *Surface lubricants used in the manufacture of metallic articles* is amended in paragraph (a)(4)(i)(*a*) by changing "240 °C" read "24 °C."

Dated: March 26, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–7011 Filed 3–30–87; 8:45 am]

BILLING CODE 4160–01–M

---

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[T.D. 8099]

### Allocations of Loss and Deduction Attributable to Nonrecourse Debt

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Corrections to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, September 9, 1986 (51 FR 32061) as Treasury Decision 8099. The rules relate to allocations of loss and deduction attributable to nonrecourse debt of the partnership.

**FOR FURTHER INFORMATION CONTACT:** John G. Schmalz, 202–566–3297 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of these corrections conform the regulations to section 213(d) of the Tax Reform Act of 1976.

**Need for Corrections**

As published, Treasury Decision 8099 contains several typographical errors. This document corrects those errors.

**Corrections of Publication**

**PART 1—[AMENDED]**

Accordingly, the publication of final regulations (T.D. 8099), which was the subject of FR Doc. 86–20100, is corrected as follows:

**§ 1.704–1 [Amended]**

**Paragraph 1.** In § 1.704–1, paragraph (b)(5), part (iv) of Example (20), page 32065, first column, the second sentence of part (iv) is corrected by adding the language "interest expense of $80,000," immediately following the language "operating expenses of $10,000,".

**Par. 2.** In § 1.704–1, paragraph (b)(5), part (iii) of Example (22), page 32067, second column, in the third sentence of part (iii) the language "distributes $3,333 of cash to each partner." is corrected to read "distributes $5,000 of cash to each partner."

**Par. 3.** In § 1.704–1, paragraph (b)(5), part (iii) of Example (22), page 32067, third column, in the seventh sentence of part (iii) the language "Nevertheless, pursuant to the second sentence" is corrected to read "Nevertheless, pursuant to the third sentence".

**Par. 4.** In § 1.704–1, paragraph (b)(5), part (iv) of Example (22), page 32068, first column, in the last sentence the language that reads "the partnership's third taxable year" is corrected to read "the partnership's fourth taxable year".

**Par. 5.** On page 32070, second column, instructional paragraph number 19, the language "Paragraph (b)(3)(iii)" is corrected to read "Paragraph (b)(3)(ii)".

**Donald E. Osteen,**

*Director, Legislation and Regulations Division.*

[FR Doc. 87–7026 Filed 3–30–87; 8:45 am]

BILLING CODE 4830–01–M

---

### 26 CFR Parts 1

[T.D. 8115]

### Unisex Annuity Tables; Corrections

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Corrections to final regulation.

**SUMMARY:** This document contains corrections to Treasury Decision 8115, which was published in the **Federal Register** for Friday, December 19, 1986 (51 FR 45690). T.D. 8115 issued final regulations relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income.

**FOR FURTHER INFORMATION CONTACT:** Annette J. Guarisco, 202–566–3238 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of these corrections relate to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income under section 72 of the Internal Revenue Code of 1954.

**Need For Corrections**

As published, Treasury Decision 8115 contains a typographical error on page 45692, third column, in line 16 from the bottom of the page.

A second error is located on page 45701 second column, in lines 13 and 14 from the bottom of the page.

**Corrections of Publication**

**PART 1—[AMENDED]**

Accordingly, the publication of Treasury Decision 8115, which was the subject of FR Doc. 86–28455, is corrected as follows:

**§ 1.72–4 [Corrected]**

**Paragraph 1.** In § 1.72–4, paragraph (d)(3)(ii), page 45692, third column, in line 16 from the bottom of the page, the reiteration of the word "and" is removed.

**§ 1.72–6 [Corrected]**

**Par. 2.** In § 1.72–6, paragraph (d)(3)(iii)(D), page 45701, second column, in lines 13 and 14 from the bottom of the page, the language "this section" is removed and the reference "§ 1.72–7" is added in its place.

**Donald E. Osteen,**

*Director, Legislation and Regulations Division*

[FR Doc. 87–7027 Filed 3–30–87; 8:45 am]

BILLING CODE 4830–01–M

BEST COPY AVAILABLE

26 CFR Part 51

[T.D. 8103]

## Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980; Definition of "Removed From the Premises"

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Corrections to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** for Tuesday, September 23, 1986 (51 FR 33741) as Treasury Decision 8103. The rules concern the definition of "removed from the premises" for purposes of the windfall profit tax.

**FOR FURTHER INFORMATION CONTACT:** Beverly A. Baughman, 202–566–3297.

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations that are the subject of these corrections clarify when domestic crude oil is removed from the premises under the Crude Oil Windfall Profit Tax Act of 1980. The rules provide the public with guidance needed for determining when the taxable event occurs for purposes of the imposition of the windfall profit tax under section 4986 of the Internal Revenue Code.

### Need for Corrections

As published, Treasury Decision 8103 contains two typographical errors. This document corrects those errors.

### Corrections of Publication

Accordingly, the publication of Treasury Decision 8103, which was the subject of FR Doc. 86–21439, is corrected as follows:

### PART 51—[AMENDED]

**Paragraph 1.** On page 33743, first column, in the authority citation for Part 51, the reference to "§ 51.4966–1(d)" is corrected to read "§ 51.4996–1(d)".

**§ 51.4996–1 [Amended]**

**Par. 2.** In § 51.4996–1, paragraph (d)(3)(iv), page 33744, third column, the parenthetical citation that reads "(47 FR 50275) 1982))" is corrected to read "(47 FR 50215 (1982))".

**Donald E. Osteen,**

*Director, Legislation and Regulations Division.*

[FR Doc. 87–6718 Filed 3–30–87; 8:45 am]

BILLING CODE 4830–01–M

**Bureau of Alcohol, Tobacco and Firearms**

27 CFR Part 9

[T.D. ATF–249; correction]

## Technical Amendments; Correction

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Final rule, correction.

**SUMMARY:** This document makes a correction in rule document 87–4000 beginning on page 5954 in the issue of Friday, February 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lori Weins, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566–7626

### PART 9—[AMENDED]

On page 5959, in the second column in amendatory instruction 31, "Section 9.75(c)(43)" should read "Section 9.74(c)(43)".

Signed: March 23, 1987.

**Stephen E. Higgins,**

*Director.*

[FR Doc. 87–6838 Filed 3–30–87; 8:45 am]

BILLING CODE 4810–13–M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

## Filing of Charges

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is clarifying § 1601.13(a) of its procedural regulations. Subparagraph (a)(3) concerning the filing of charges which are apparently untimely under state or local law is being deleted. Such charges will be filed and processed for deferral purposes in accordance with the deferral policy set forth in subparagraphs (a)(4) and (a)(5). Subparagraphs (a)(4) and (a)(5) are being revised to omit any references to the timeliness of charges under state or local law and renumbered to reflect the deletion of subparagraph (a)(3).

**EFFECTIVE DATE:** March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Assistant Legal Counsel, or Thomas J. Schlageter, Staff Attorney, at (202) 634–6592.

**SUPPLEMENTARY INFORMATION:** Section 1601.13 of the EEOC's procedural regulations, entitled "Filing; deferrals to State and local agencies," was completely revised in 1981. In subparagraph (a)(3), the Commission distinguished the filing and deferral of charges which are apparently untimely under State or local law from the filing and deferral of charges which are apparently timely under State and local law. The Commission intended to communicate three things by this distinction: (1) Its interpretation of Title VII that complainants in deferral jurisdictions are entitled to the extended, 300-day, Federal filing period regardless of whether their State or local charges were timely filed, (2) its policy of securing advance waivers from State and local agencies of their rights under section 706 with respect to charges which are apparently untimely under State or local law, and (3) its practice, based upon these advance waivers, of filing such charges upon receipt. Because the Commission's intent in promulgating this subparagraph has been misconstrued, the Commission has decided to clarify the regulation by eliminating the "apparently timely" and "apparently untimely" categorizations. The Commission's deferral policy as currently set forth in § 1601.13(a) (4) and (5) is not being changed and will be applied to all charges arising in jurisdictions having a 706 agency with subject matter jurisdiction over the charges without regard to their timeliness under State or local law.

### List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovermental relations.

Accordingly, 29 CFR Part 1601 is amended as follows:

### PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

**Authority:** Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–12(a), unless otherwise noted.

2. Section 1601.13 is amended as follows:

a. Paragraph (a)(3) is removed.

b. Paragraphs (a)(4) introductory text, (a)(5) introductory text, and (a)(5)(ii) introductory text are revised to read as follows:

**§ 1601.13 Filing; deferrals to State and local agencies.**

(a) * * *

(4) Charges arising in jurisdictions having a 706 Agency with subject matter jurisdiction over the charges are to be processed in accordance with the Commission's deferral policy set forth

below and the procedures in paragraph (a)(4) of this section.

* * * * *

(5) The following procedures shall be followed with respect to charges which arise in jurisdictions having a 706 Agency with subject matter jurisdiction over the charges:

* * * * *

(ii) Such charges are deemed to be filed with the Commission as follows:

* * * * *

c. Paragraphs (a)(4) and (a)(5) are redesignated as (a)(3) and (a)(4) respectively.

For the Commission.

**Clarence Thomas,**

*Chairman.*

[FR Doc. 87-6954 Filed 3-30-87; 8:45 am]

BILLING CODE 6750-06-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 289

### Availability of DoD Directives, DoD Instructions, DoD Publications, and Changes

**AGENCY:** Office of the Secretary, DOD.

**ACTION:** Amendment to final rule.

**SUMMARY:** This amendment is to notify interested persons that DoD 5025.1-I, "DoD Directives System Quarterly Index" has been changed to "DoD Directives System Annual Index." The Annual Index will be issued each January followed by three quarterly change installments. All previous editions of the Quarterly Index are hereby superseded. The first publication date for the Annual Index is January 1987.

**SUPPLEMENTARY INFORMATION:** On Thursday November 20, 1986 (51 FR 41962), the Office of the Secretary of Defense published the Availability of DoD Directives, Instruction, Publications, and Changes. Any reference to the DoD Directives System "Quarterly" Index should be changed to read "Annual" Index. All other information remain unchanged.

**EFFECTIVE DATE:** January 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda M. Lawson, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (202) 697-4111.

**List of Subjects in 32 CFR Part 289**

DoD Directives System issuances, Availability to the public, Freedom of Information.

**PART 289—[AMENDED]**

Accordingly, 32 CFR Part 289 is amended to read as follows:

1. The authority citation for Part 289 continues to read as follows:

**Authority:** 10 U.S.C. 133, 31 U.S.C. 483a.

**§§ 289.1, 289.2, 289.3 and 289.4 [Amended]**

2. In §§ 289.1 (a) and (b), 289.2(a), 289.3(a), and 289.4(b) change "DoD Directives System Quarterly Index" to read "DoD Directives System Annual Index."

March 26, 1987.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87-6998 Filed 3-30-87; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AA-630-07-4111-02]

### 43 CFR Part 3160

### Onshore Oil and Gas Operations; Correction Notice

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** A final rulemaking revising the existing regulations on site security; noncompliance with Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation, order or notice issued thereunder; or the terms of any lease or permit issued thereunder; the assessments and penalties for such noncompliance and abatement, and the procedures for notice, review, or relief was published in the **Federal Register** on February 20, 1987 (52 FR 5384). Several errors resulted from the publication of the final rulemaking and are corrected as set forth below.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Bruce, (202) 343-8735.

**SUPPLEMENTARY INFORMATION:**

**PART 3160—[AMENDED]**

**§ 3163.1 [Corrected]**

1. On page 5393, first column, § 3163.1(a)(3), in the third sentence, remove from where it appears the phrase "Shut-in actions or other" and replace it with the phrase "Shut-in actions for other".

**§ 3163.2 [Corrected]**

2. On page 5393, third column, § 3163.2(a), in the first sentence, remove the phrase "terms of any issue or permit" and replace it with the phrase "terms of any lease or permit".

**§ 3163.4 [Corrected]**

3. On page 5394, third column, § 3163.4, in the first sentence, remove the phrase "the 90-day period provided by § 3165.3(d)(2)" and replacing it with the phrase "the 90-day period provided by § 3165.4(e)".

**§ 3163.5 [Corrected]**

4. On page 5393, third column, item 18, §§ 3163.2 and 3163.3 were removed in their entirety because their provisions were incorporated into § 3163.1 of the final rulemaking. On page 5394, third column, item 22, is corrected by removing the period at the end and adding "; the citation "3163.3" is removed from where it appears in paragraphs (a) and (c) of § 3163.5 and replaced in both places with the citation "3163.1"."

**§ 3165.3 [Corrected]**

6. On page 5394, third column, in the heading of § 3165.3, add a comma immediately after the word "Notice", in the second sentence of paragraph (a) of § 3165.3, remove the phrase "or proposed plenalty" and replace it with the phrase "or proposed penalty", and on page 5395, first column, in the third sentence of paragraph (b) of § 3165.3, remove the phrase "supporting date may be" and replace it with the phrase "supporting data may be".

**§ 3165.4 [Corrected]**

7. On page 5395, third column, § 3165.4(d), in the second sentence, remove the phrase "under § 3163.3 of this title" and replace it with the phrase "under § 3163.2 of this title".

March 25, 1987.

**James E. Cason,**

*Acting Assistant Secretary of the Interior.*

[FR Doc. 87-7005 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-84-M

### 43 CFR Public Land Order 6641

[AK-960-07-4220-10; A-023175]

### Alaska; Partial Revocation of Public Land Order No. 1094

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes a public land order insofar as it affects 8.08 acres of national forest land withdrawn for the Cat Island Administrative Site. This action will also classify the land as suitable for selection by the State of Alaska, if the land is otherwise available. If the land is not selected by the State it will be opened to mining.

**EFFECTIVE DATE:** March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5060.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2571; 43 U.S.C. 1714, and by subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 1094, dated March 5, 1955, which withdrew lands in the Tongass National Forest for the Cat Island Administrative Site, is hereby revoked as to the following described lands:

Tongass National Forest

*Cat Island Administrative Site*

Beginning at a point on the line of mean high tide, on the south shore of Cat Island, Hollis Anchorage, from which corner No. 4, U.S.S. 3150 bears N. 45°30′ W., thence south, 10.00 chains; west, 12.05 chains; north 7.85 chains to a point on line of mean high tide of Hollis Anchorage from which corner No. 4, U.S.S. 3150 bears N. 30°15′ W., easterly, along line of mean high tide of Hollis Anchorage to point of beginning.

The area described contains approximately 8.08 acres.

2. Subject to valid existing rights, the land described above are hereby classified as suitable for and opened to selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21.

3. As provided by subsection 6(g) of the Alaska Statehood Act, the State of Alaska, is provided a preference right of selection for the lands described above for a period of three-hundred and sixty six (366) days from the date of publication of this order, if the land is otherwise available. Any land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest and any other withdrawals of record.

4. At 10 a.m. on April 4, 1988 subject to valid existing rights, the provisions of existing withdrawals and the requirement of applicable laws, the land described in paragraph 2 above will be opened to location and entry under the United States mining laws. Appropriation of any land described in this order under the general mining laws prior to the date and the time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local Courts.

March 19, 1987.

J. Steven Griles,

*Assistant Secretary of the Interior.*

[FR Doc. 87–6965 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–JA–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 0, 1, 21, 22, 23, 61, 68, 73, 76, 78, 80, 90, 94, 95**

**[General Docket No. 86–285; FCC 87–99]**

### Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action creates new rules for implementing the Schedule of Charges and other provisions established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272). In particular, the Order establishes new official mailing addresses and receipt locations for all applications and filings subject to fees. The Commission emphasizes that applications or filings received at the wrong location will be returned to the sender without processing. Several of the Commission's procedural rules concerning filing locations, hours of operation, and application processing policies are amended to conform with fee processing procedures. The Order also determines that only those Hearing Designation Orders adopted on or after April 1, 1987 will trigger the hearing fee requirement.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Brent Weingardt, Office of the Managing Director (202) 632–3906, or Marilyn McDermett (202) 632–5316.

**SUPPLEMENTARY INFORMATION:**

**Supplemental Order**

Adopted: March 24, 1987.

Released: March 30, 1987.

By the Commission.

1. By this action, the Commission amends its rules to conform its official mailing addresses and filing locations with the decisions made in the Report and Order in this proceeding.[1] In this Report and Order,[2] the Commission determined that the Deficit Reduction Act of 1984 required the Commission to modify its receipt locations in order to meet the cash management principles established by the law.[3] The public will continue to submit applications or other filings not requiring fees at the current locations.[4]

2. In particular, this Order completely revises § 0.401 of the rules, which sets forth the filing addresses and locations of the Commission, to clarify for the public where a particular submission may be filed. New § 0.401(a) of the rule is not meant to supersede the particular filing directives contained elsewhere in the rules. Rather, it provides the current addresses and locations that may be referenced by other rules. Therefore, except for § 0.401(b) of the rule—which mandates the locations for filing fees, the public should determine the correct location for filing any particular document by referencing those parts of the rules dealing with the particular radio service or procedure.

3. The Order establishes new official receipt locations for chargeable submissions. Mass media and common carrier applications and filings will continue to be accepted for filing at the Commission's headquarters in Washington, DC. Applications and filings requiring fees in these services may be either mailed or hand-delivered to the new locations set forth in § 0.401(b). Equipment approval applications, now sent to the Commission's laboratory in Columbia, Maryland, will be accepted for filing only at the Washington, DC, headquarters. Private radio applications for which a fee is required, now sent to the Commission's office in Gettysburg,

[1] The Order makes several other technical changes and clarifications to the rules to conform them with the fee collection procedures established in this proceeding.

[2] *Report and Order* in General Docket 86–285, 2 FCC Rcd. 897 (1987), 52 FR 5285 (February 20, 1987).

[3] *Report and Order* at paragraph 25.

[4] The mailing address for the Commission's laboratory was recently changed and the change is reflected in this Order.

Pennsylvania, will be accepted for filing only by the Treasury Department's lockbox bank in Pittsburgh, Pennsylvania. Submissions to this location may be either mailed or hand-delivered. Land mobile applications requiring frequency coordination should continue to be submitted first to the appropriate frequency coordinator. The frequency coordinator will in turn forward the application to the lockbox bank, or to the Commission as appropriate, after coordination is completed and the statutory fee, if required, is attached.[5] (See §§ 1.1102 through 1.1105 of the rules for the list of applications and filings requiring fees.)

4. We wish to remind the public that under current policies applications and other filings received at the wrong location will be returned to the sender without processing. For purposes of determining receipt dates and conformance with filing deadlines, the submission will not be considered received by the Commission until received at the designated location.

5. This Order also modifies several other procedural rules concerning filing locations, Commission hours of operation, and application processing policies. Secton 0.11 is amended to permit the Secretary to designate deputy custodians of documents at any of the Commission's locations, and, § 0.403 of the rules is modified to permit certain of the Commission's filing locations to maintain varied hours of operation. A technical amendment is made to § 1.4 to indicate that a "holiday" occurs, for the purposes of extending filing deadlines, whenever that particular Commission office closes prior to the published time of its operations. Language is added to clarify that a "holiday," as defined by § 1.4(d), may occur at one or more of the Commission's locations and not at others.[6] In addition, § 1.959 is clarified to indicate that returned private radio applications that are resubmitted to the Private Radio Bureau later than the established time frames will require a new fee. Sections 90.360 and 90.611 of the rules are also clarified to indicate that private radio applications requiring fees will be processed in the order of receipt at the Pittsburgh filing location. Several other rules are amended to cross-reference the filing locations listed in § 0.401(b). Finally, we wish to make clear which hearing designation orders (HDOs) will require fees during this transition period.[7] No hearing charge is payable where the HDO designating pending applications for comparative hearing is adopted by the Commission, or the bureau acting on delegated authority, prior to April 1, 1987.

6. Because these amendments only concern matters of agency organization and procedure, compliance with the notice and comment procedure of the Administration Procedure Acts is not required.[8] Furthermore, because these are nonsubstantive rule changes, the Administrative Procedure Act requirement that rules be published thirty days before they become effective is inapplicable.[9]

7. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.[10]

8. Accordingly, *it is hereby ordered that,* pursuant to authority contained in section 5002(e) of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985, and in sections 4(i), 4(j), 8(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 158(f) and 303(r), Parts 0, 1, 21, 22, 23, 61, 68, 73, 76, 78, 80, 90, 94, and 95 of the Commission's rules *are amended* as set forth below. These rules and regulations are effective as of April 1, 1987 in order for the Commission to meet the congressional mandate to collect fees no later than April 2, 1987.

**List of Subjects**

*47 CFR Part 0*

Organization and functions.

*47 CFR Part 1*

Administrative practice and procedure.

*47 CFR Part 21*

Communications common carriers.

*47 CFR Part 22*

Communications common carriers.

*47 CFR Part 23*

Communications common carriers.

*47 CFR Part 61*

Tariffs.

*47 CFR Part 68*

Communications equipment.

*47 CFR Part 73*

Radio broadcasting.

*47 CFR Part 76*

Cable television.

*47 CFR Part 78*

Cable television relay service.

*47 CFR Part 80*

Radio.

*47 CFR Part 90*

Common carriers.

*47 CFR Part 94*

Operational fixed microwave radio.

*47 CFR Part 95*

Radio.

**Rule Amendments**

47 CFR Parts 0, 1, 21, 22, 23, 61, 68, 73, 76, 78, 80, 90, 94, and 95 are amended as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303 unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 0.11 is amended by revising paragraph (b) to read as follows:

**§ 0.11 Functions of the office.**

* * * * *

(b) The Secretary is the official custodian of the Commission's documents and shall have authority to appoint deputies for purposes of custody and certification of documents located in the Commission's other processing and storage locations.

3. 47 CFR 0.401 is revised in its entirety to read as follows:

**§ 0.401 Location of Commission offices.**

The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations set forth below will be returned to the applicant without processing. The appropriate receipt location for an application or other filing, consistent with one of these addresses or locations, is established elsewhere in the rules for the various

[5] Frequency coordination procedures are set out in the *Report and Order* at paragraphs 32–37.

[6] For example, the Commission's offices in Washington may close earlier than 5:30, and therefore be in holiday status, due to snow storm or other circumstances. This would not necessarily cause the Commission's offices in Gettysburg, Columbia, Pittsburgh, or any of the Field Offices to be ir holiday status on that day.

[7] The types of mass media hearings requiring fees are discussed in the *Report and Order* at paragraphs 137 through 145.

[8] 5 U.S.C. 553(b)(A). In addition, the underlying substantive decisions that necessitate these additional rule changes were subject to notice and comment procedures. See, Notice of Proposed Rule Making in General Docket 86–285, 51 FR 25792 (July 16, 1986).

[9] 5 U.S.C. 553(d).

[10] 5 U.S.C. 603 and 604.

types of submissions made to the Commission. The public should identify the correct filing location by reference to these rules.

(a) General correspondence, as well as applications and filings not requiring the fees set forth at Part 1, Subpart G of the rules (or not claiming an exemption, waiver or deferral from the fee requirement), should be delivered to one of the following locations.

(1) The main office of the Commission is located at 1919 M Street, NW., Washington, DC.

(i) Documents submitted by mail to this office should be addressed to: Federal Communications Commission, Washington, DC 20554.

(ii) Hand-carried documents should be delivered to the Secretary's Office, 1919 M Street, NW., Room 222, Washington, DC.

(2) The Commission's laboratory is located near Columbia, Maryland. The mailing address is: Authorizations and Evaluation Division, Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD 21045.

(3) The Commission also maintains offices at Gettysburg, PA.

(i) The mailing address of the Private Radio Bureau Licensing Division is: Federal Communications Commission, Gettysburg, PA 17326.

(ii) The mailing address of the International Telecommunications Section of the Finance Branch is: Federal Communications Commission, P.O. Box IT–70, Gettysburg, PA 17326.

(4) The locations of the field offices of the Field Operations Bureau are listed in § 0.121.

(b) Applications or filings requiring the fees set forth at Part 1, Subpart G of the rules, or claiming an exemption, waiver or deferral from the fee requirement, shall be delivered to the addresses and locations set forth below with the appropriate fees attached to the application or filing, unless otherwise directed by the Commission. In the case of any conflict between this rule and other rules establishing filing locations for actions subject to a fee, this rule shall govern.

(1) *Mass media:* (i) Applications and filings submitted by mail shall be addressed to: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554–1800.

(ii) Hand-carried applications and filings shall be delivered to the Federal Communications Commission, 1919 M Street NW., Room L–18, Washington, DC.

(2) *Common carrier:* (i) Applications and filings submitted by mail shall be addressed to: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554–1600.

(ii) Hand-carried applications and filings shall be delivered to the Federal Communications Commission, 1919 M Street, NW., Room L–18, Washington, DC.

(3) *Equipment approval:* (i) Applications and filings submitted by mail shall be addressed to: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554–1300.

(ii) Hand-carried applications and filings shall be delivered to the Federal Communications Commission, 1919 M Street, NW., Room L–18, Washington, DC.

(4) *Private radio:*

**Note:** Land mobile applications requiring frequency coordination must be submitted to the appropriate certified frequency coordinator, *not* to the addresses set forth below ( See §§ 90.127 and 90.175 of the rules).

(i) Applications and filings submitted by mail shall be addressed to one of the following:

**Land Transportation Radio Service (FCC Form 574 only):**

Federal Communications Commission, Land Transportation Service, P.O. Box 360200M, Pittsburgh, PA 15251–6200

**Business Radio Service (FCC Form 574 only):**

Federal Communications Commission, Business Radio Service, P.O. Box 360291M, Pittsburgh, PA 15251–6291

**Other Industrial Radio Services (FCC Form 574 only):**

Federal Communications Commission, Other Industrial Services, P.O. Box 360354M, Pittsburgh, PA 15251–6354

**General Mobile Radio Service (FCC Form 574 only):**

Federal Communications Commission, General Mobile Service, P.O. Box 360373M, Pittsburgh, PA 15251–6373.

**800 Megahertz Radio Service and 900 Megahertz Paging Radio Service (FCC Form 574 only):**

Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251–6416

**900 Megahertz Radio Service (FCC Form 574 only):**

Federal Communications Commission, 900 Megahertz Service, P.O. Box 360497M, Pittsburgh, PA 15251–6497

**Land Mobile Renewal (FCC Form 574R only):**

Federal Communications Commission, 574R Land Mobile Renewal, P.O. Box 360559M, Pittsburgh, PA 15251–6559

**405A Station Renewal (FCC Form 405A only):**

Federal Communications Commission, 405A Station Renewal, P.O. Box 360703M, Pittsburgh, PA 15251–6703

**Private Operational Fixed Microwave Service (FCC Form 402 only):**

Federal Communications Commission, Microwave Service, P.O. Box 360850M, Pittsburgh, PA 15251–6850

**Private Operational Fixed Microwave Service Renewal (FCC Form 402R only):**

Federal Communications Commission, Microwave Service Renewal, P.O. Box 371147M, Pittsburgh, PA 15251–7147

**Aviation Ground Service (FCC Form 406 only):**

Federal Communications Commission, Aviation Ground Service, P.O. Box 371632M, Pittsburgh, PA 15251–7632

**Aviation Ground Renewal (FCC Form 405A only):**

Federal Communications Commission, 405A Station Renewal, P.O. Box 360703M, Pittsburgh, PA 15251–6703

**Marine Coast Service (FCC Form 503 only):**

Federal Communications Commission, Marine Coast Service, P.O. Box 371706M, Pittsburgh, PA 15251–7706

**Marine Coast Renewals (FCC Form 405A):**

Federal Communications Commission, 405A Station Renewal, P.O. Box 360703M, Pittsburgh, PA 15251–6703

(ii) Hand-carried or couriered applications and filings shall be delivered to:

Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor Room 153–2713, Pittsburgh, PA. 15259

(Attention: Wholesale Lockbox Shift Supervisor)

Each application delivered in-person must be in an envelope clearly marked for the "Federal Communications Commission" and identified with the appropriate Post Office Box address. Applications must be enclosed in a separate envelope for each Post Office Box.

(iii) Hand-carried or couriered applications and filings will be accepted between *9 a.m. and 3 p.m.*, Monday through Friday, excluding legal holidays.

4. 47 CFR 0.403 is revised to read as follows:

**§ 0.403 Office hours.**

The main offices of the Commission are open from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, unless otherwise stated.

5. 47 CFR 0.455 is amended by revising paragraph (a)(3) to read as follows:

**§ 0.455 Other locations at which records may be inspected.**

(a) * * *

(3) Applications for equipment authorization (type acceptance, type approval, certification, or advance

approval of subscription television systems) following the effective date of the authorization. See § 0.457 (d)(1)(ii). (Application files are maintained at the Commission's laboratory in Columbia, MD.)

* * * * *

6. 47 CFR 0.482 is revised to read as follows:

**§ 0.482 Application for waiver of private radio rules.**

Except for waiver requests attached to applications requiring fees, requests for waiver of the rules governing the Private Radio Services shall be submitted to the Commission's offices in Gettysburg, Pennsylvania. Requests for waiver attached to applications requiring fees must be submitted in accordance with § 0.401(b) of the rules and requests for waiver attached to applications requiring frequency coordination must first be submitted to the certified frequency coordinator in accordance with § 1.912(b) of the rules. Applicants submitting a request for waiver, whether or not attached to an application, who require expeditious processing of their request for waiver shall clearly caption both the request for waiver and the envelope containing it with the words "WAIVER-TIMELY ACTION REQUESTED."

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 1.4 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 1.4 Computation of time.**

* * * * *

(c) All petitions, pleadings, tariffs, or other documents filed with the Commission must be tendered for filing in complete form before 5:30 p.m., in the Office of the Secretary. Documents requiring the fees set forth in Part 1, Subpart G of this Chapter must be tendered for filing in accordance with § 0.401(b) of the rules prior to the established closing time.

(d) For purposes of this section, the term "holiday" shall include Saturdays, Sundays, federal holidays, and any other day on which the applicable Commission office closes prior to the time established by rule. The determination of a "holiday" will apply only to the specific Commission location(s) designated as on "holiday" on that particular day. The term "business day" shall refer to all other days, including days when the Commission opens later than the time specified in Rules § 0.401 and § 0.403.

* * * * *

3. 47 CFR 1.227 is amended by revising paragraph (b)(4) to read as follows:

**§ 1.227 Consolidations.**

* * * * *

(b) * * *

(4) This paragraph applies when mutually exclusive applications subject to section 309(b) of the Communications Act are filed in the Private Radio Services or when there are more such applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (See § 1.972) is the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at Part 1, Subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. An application which is substantially amended (as defined by § 1.962(c)) will, for the purpose of this section, be considered to be a newly filed application as of the receipt date of the amendment.

* * * * *

4. 47 CFR 1.742 is revised to read as follows:

**§ 1.742 Place of filing, fees, and number of copies.**

Except as specified in § 22.6 or elsewhere in this chapter, all applications shall be tendered for filing at the Commission's main office in Washington, DC. Hand-delivered applications will be dated by the Secretary or Fees Section upon receipt (mailed applications will be dated by the Mail Branch or Fees Section) and then forwarded to the Common Carrier Bureau. The number of copies required for each application and the processing fee (see Part 1, Subpart G) which may be required to accompany that application in order to qualify it for processing are set forth in the rules. However, if an application is not of the types covered by this chapter, an original and two copies of each such application shall be submitted.

5. 47 CFR 1.912 is amended by revising paragraphs (b), (d), and (e) as follows:

**§ 1.912 Where applications are to be filed.**

* * * * *

(b) All applications for private land mobile licenses which require both frequency coordination and fees as set forth at Part 1, Subpart G of this chapter shall first be sent to the certified coordinator for the radio service or frequency group concerned. After the appropriate frequency coordination and attachment of the statutory fee, such applications shall be forwarded to the appropriate address in accordance with § 0.401(b) of the rules.

(1) All applications for private land mobile licenses that require frequency coordination but not a fee shall be sent to the certified frequency coordinator for the radio service or frequency group concerned. After appropriate frequency coordination, such applications shall be forwarded to the Federal Communications Commission, Gettysburg, PA 17326.

(2) All applications for private land mobile licenses that require a fee but not frequency coordination shall be sent to the appropriate address in accordance with § 0.401(b) of the rules.

(3) All applications for private land mobile licenses that do not require either frequency coordination or a fee shall be sent to the Federal Communications Commission, Gettysburg, PA 17326.

* * * * *

(d) Formal applications for ship station licenses (FCC Forms 506 and 405–B) shall be submitted to the Commission's office, Box 1040, Gettysburg, PA 17326. Formal applications for aircraft station licenses (FCC Forms 404 and 405–B) shall be submitted to the Commission's office, Box 1030, Gettysburg, PA 17326. Applications for Maritime Coast and Aviation Ground Stations requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

(e) All other applications that do not require fees shall be filed with the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326. Applications requiring fees as set forth at Part 1, Subpart G of of this chapter must be filed in accordance with § 0.401(b) of the rules.

6. 47 CFR 1.931 ia amended by revising paragraph (a) to read as follows:

**§ 1.931 Requests for waiver of private radio rules.**

(a) All requests for waiver of the rules governing the Private Radio Services

shall be submitted to the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326. Requests for waiver attached to applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules. See also § 0.482 of the rules.

* * * * *

7. 47 CFR 1.959 is revised to read as follows:

**§ 1.959 Resubmitted applications.**

Any application for frequencies below 470 MHz which has been returned to the applicant for correction will be processed in its original position in the processing line if it is resubmitted and received by the Commission's offices in Gettysburg, PA within 60 days from the date on which it was returned to the applicant. Otherwise it will be treated as a new application and require an additional fee as set forth in Part 1, Subpart G of this chapter. An application for frequencies above 470 MHz which has been returned to the applicant will be processed in its original position in the processing line if it is resubmitted and received by the Commission's offices in Gettysburg, PA within 30 days (45 days outside the continental United States) from the date on which it was returned to the applicant. Otherwise it will be treated as a new application and require an additional fee as set forth in Part 1, Subpart G of this chapter.

8. 47 CFR 1.1109 is revised to read as follows:

**§ 1.1109 Filing locations.**

Applications or other filings, with attached fees, must be submitted to the locations and addresses set forth in § 0.401(b) of the Commission's rules. These materials must be submitted as one package. The Commission cannot take responsibility for matching forms, fees, or applications submitted at different times or locations.

## PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303.

2. 47 CFR 21.6 is amended by revising paragraph (b) to read as follows:

**§ 21.6 Filing of applications, fees, and number of copies.**

* * * * *

(b) Applications for radio station authorizations shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

## PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154 (303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. 47 CFR 22.6 is amended by revising paragraph (b)(1) to read as follows and by removing paragraph (b)(2):

**§ 22.6 Filing of applications, fees, and number of copies.**

* * * * *

(b)(1) Applications for radio station authorizations shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

(2) [Reserved]

* * * * *

## PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

1. The authority citation for Part 23 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

2. 47 CFR 23.50 is amended by revising paragraph (b) to read as follows:

**§ 23.50 Place of filing application; fees and number of copies.**

* * * * *

(b) Every application for a radio station authorization and all correspondence relating thereto shall be submitted to the Commission's office at Washington, DC 20554. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

## PART 61—TARIFFS

1. The authority citation for Part 61 continues to read:

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. 47 CFR 61.32 is revised to read as follows:

**§ 61.32 Method of filing publications.**

Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." (Tariff publications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.) Two copies of tariff publications must be filed under a letter of transmittal. The date on which the publication is received by the Secretary of the Commission or the Fees Section (or the Mail Room where submitted by mail) is considered the official filing date. Simultaneously with filing of the publications and by the same means, the issuing carrier must send a copy of the publication, supporting information specified in § 61.38, and transmittal letter to the commercial contractor (at its office on Commission premises) and the Chief, Tariff Review Branch. The latter should be clearly labeled as the "Public Reference Copy." The copies of supporting information required here are in addition to those required by § 61.38(c).

3. 47 CFR 61.153 is revised to read as follows:

**§ 61.153 Method of filing applications.**

A carrier applying for special permission must submit two copies of the application (including illustrative tariff pages, associated amendments and exhibits) to the Secretary, Federal Communications Commission, Washington, DC 20554 (Special permission applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules). Simultaneously, and by the same means, a carrier must furnish a separate copy with all attachments to the Chief, Tariff Review Branch. If a carrier applies for special permission to revise joint tariffs, the application must state that it is filed on behalf of all carriers participating in the affected service. Applications must be numbered consecutively in a series separate from the FCC tariff numbers, bear the signature of the officer or agent of the carrier, and be in the following format:

Application No. _____
(Date) _____

Secretary
Federal Communications Commission
Washington, DC 20554
Attention: Common Carrier Bureau (here provide the statements required by § 61.152)

(Exact name of carrier)— _____
(Name of officer or agent)— _____

(Title of officer or agent)— ————————

## PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read:

**Authority:** Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. 47 CFR 68.200 introductory text is revised to read as follows:

**§ 68.200 Application for equipment registration.**

An original and two copies of an application for registration of terminal equipment and protective circuitry shall be submitted on FCC Form 730 to the Federal Communications Commission, Washington, DC 20554 (Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules). An application for original approval of an equipment type directly connected to the network on May 1, 1976 may be submitted as a short form application (unless the Commission specifically requests the filing of complete information). All other applications shall have all questions answered and include the following information:

* * * * *

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

2. 47 CFR 73.3512 is revised to read as follows:

**§ 73.3512 Where to file; number of copies.**

All applications for authorizations required by § 73.3511 shall be filed at the FCC in Washington, DC (Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.) The number of copies required for each application is set forth in the FCC Form which is to be used in filing such application.

## PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 1454, 301, 303, 307, 308, 309, unless otherwise noted.

2. 47 CFR 76.7 is amended by revising paragraph (c)(3) to read as follows:

**§ 76.7 Special relief.**

* * * * *

(c) * * *

(3) An original and two (2) copies of the petition and all subsequent pleadings shall be filed. Special relief petitions requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

## PART 78—CABLE TELEVISION RELAY SERVICE

1. The authority citation for Part 78 continues to read:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 1454, 301, 303, 307, 308, 309.

2. 47 CFR 78.15 is amended by revising paragraph (a) to read as follows:

**§ 78.15 Contents of applications.**

(a) Applications for authorization in the Cable Television Relay Service shall be submitted on FCC Form 327, and shall contain the information requested therein. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

3. 47 CFR 78.20 is amended by revising paragraph (a) to read as follows:

**§ 78.20 Acceptance of applications; public notice.**

(a) Applications which are tendered for filing in Washington, DC, are dated upon receipt and then forwarded to the Mass Media Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete, are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

2. 47 CFR 80.23 is amended by revising paragraph (c) to read as follows:

**§ 80.23 Filing of applications.**

* * * * *

(c) Each application must be filed with the Federal Communications Commission, Gettysburg, PA 17326 unless otherwise noted on the application form. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

* * * * *

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read:

**Authority:** Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.127 is amended by revising paragraph (a) to read as follows:

**§ 90.127 Filing of applications.**

(a) All applications for private land mobile licenses that require both frequency coordination and fees as set forth at Part 1, Subpart G of this chapter shall first be sent to the certified coordinator for the radio service or frequency group concerned. After the appropriate coordination and attachment of the statutory fee, such applications shall be forwarded to the appropriate address in accordance with § 0.401(b) of the rules. A list of the certified frequency coordinators may be obtained from the Federal Communications Commission, Gettysburg, PA 17326.

(1) All applications for private land mobile licenses that require frequency coordination but not a fee shall be sent to the certified coordinator for the radio service or frequency group concerned. After the appropriate coordination, such applications shall be forwarded to Federal Communications Commission, Gettysburg, PA 17326.

(2) All applications for private land mobile licenses that require a fee but not frequency coordination shall be sent to the appropriate address in accordance with § 0.401(b) of the rules.

(3) All applications for private land mobile licenses that do not require either frequency coordination or a fee shall be sent to the Federal Communications Commission, Gettysburg, PA 17326.

* * * * *

3. 47 CFR 90.135 is amended by adding a new paragraph (f) to read as follows:

**§ 90.135 Modification of license.**

(f) Any change that requires a fee as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 1.912 (b) or § 1.912 (b)(2) of the rules.

4. 47 CFR 90.151 is amended by revising paragraph (d) to read as follows:

**§ 90.151 Requests for waiver.**

* * * * *

(d) Requests for waiver of the rules not related to a specific application shall be submitted to the Federal Communications Commission, Gettysburg, PA 17326. (Waiver requests associated with and attached to specific applications that require a fee as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules. See also § 0.482 of the rules.)

5. 47 CFR 90.354 is revised to read as follows:

**§ 90.354 Forms to be used.**

Applications for trunked radio facilities shall be submitted on FCC Forms 574 and 574–A, and such applications shall be filed with the Federal Communications Commission, Gettysburg, PA 17326, unless a fee is required. Applications requiring a fee as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules.

6. 47 CFR 90.360 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 90.360 Processing of applications.**

* * * * *

(b) All applications in pending status will be processed in the order in which they are received, determined by the date on which the application acceptable for filing was received by the Commission, in its Gettysburg, PA Office, 17326 (or the address set forth at § 0.401(b) for applications requiring the fees established by Part 1, Subpart G of this chapter).

(c) Each application will then be reviewed to determine whether it can be granted. Frequencies may be specified by the applicant pursuant to the applicable provisions of § 90.621 of the rules or the applicant may elect to have the Commission select the frequencies. Frequencies will be selected in accordance with the Commission's assignment policies and loading criteria. If the application cannot be granted due to lack of available frequencies the application will be placed in queue on a waiting list. Applications will be ranked in two groups of descending priority. The first group will be comprised of all licensees of trunked systems with 70 or more mobile units per channel. Only those licensees whose systems are licensed to at least 80 mobiles per channel will be assigned additional frequencies. The second group will be comprised of all other applicants. Each application will be placed in its appropriate group in the order it was received at the Licensing Division in Gettysburg, Pennsylvania (or the address set forth at § 0.401(b) for applications requiring the fees established by Part 1, Subpart G of this chapter). When frequencies become available they will be assigned to the highest ranking applicant which is eligible to use them based on channel loading, the site specified, the Commission's mileage separation standards, and other applicable standards. Trunked systems which have had authorized channels reclaimed due to failure to meet the loading requirements in § 90.366 or § 90.631 will not be permitted on the waiting list for a period of 6 months from the date of the issuance of the superseding license.

* * * * *

7. 47 CFR 90.611 is amended by revising paragraph (b) to read as follows:

**§ 90.611 Processing of applications.**

* * * * *

(b) All applications in pending status will be processed in the order in which they are received, determined by the time and date on which the application was received by the Commission in its Gettysburg, PA Office (or the address set forth at § 0.401(b) for applications requiring the fees established by Part 1, Subpart G of this chapter.

* * * * *

## PART 94—PRIVATE OPERATIONAL FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read:

**Authority:** Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 94.25 is amended by revising paragraph (b) to read as follows:

**§ 94.25 Filing of applications.**

* * * * *

(b) For applications requiring a fee as set forth at Part 1, Subpart G of this chapter, the completed application package must be filed in accordance with § 0.401(b) of the rules. Applications not requiring a fee shall be filed with the Commission's offices in Gettysburg, PA and shall be addressed to: Federal Communications Commission, Gettysburg, PA 17326.

* * * * *

## PART 95—PERSONAL RADIO SERVICES

1. The authority citation continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 95.71 is amended by revising paragraph (a) to read as follows:

**§ 95.71 Applying for a new or modified license.**

(a) An entity (see § 95.5(a)) applies for a license for a new GMRS system by filling out an application form, attaching all additional information required, and sending it to the FCC. A licensee applies to modify a license for an existing GMRS system using the same forms and in the same manner as applying for a new GMRS system. Applications requiring a fee as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b). Application not requiring a fee must be sent to: Federal Communications Commission, Attention: GMRS, Gettysburg, PA 17326.

* * * * *

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–6894 Filed 3–30–87; 8:45 am]

BILLING CODE 6712–01–M

# Proposed Rules

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 261

[Docket No. R-0597]

### Rules Regarding Availability of Information; Freedom of Information Reform Act

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board of the Federal Reserve System ("Board") proposes to amend its Rules Regarding Availability of Information to implement the Freedom of Information Reform Act ("FOI Reform Act"), Pub. L. 99-570, by revising the schedule of fees applicable to requests for Board records pursuant to the Freedom of Information Act ("FOIA").

**DATE:** Comments on this proposal should be received by April 20, 1987.

**ADDRESS:** Interested parties are invited to submit written comments to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or to deliver such comments to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.). Written comments should refer to Docket No. R-0597. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays, except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information. (12 CFR 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202)/452-3920); Elaine M. Boutilier, Senior Attorney, Legal Division (202/452-2418); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The FOI Reform Act requires each agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the Freedom of Information Act . . .". This schedule must conform to the guidelines promulgated by the Office of Management of Budget ("OMB"). OMB published proposed guidelines on January 16, 1987 (52 FR 1992). The fee schedule included in this proposal conforms to the proposed guidelines published by OMB. Any changes made by OMB in its final guidelines will be incorporated into the Board's final rule.

Pursuant to the FOI Reform Act and the proposed OMB guidelines, the Secretary has set fees to recover the full direct costs incurred by the Board in searching for, reviewing, and duplicating documents in response to FOIA requests. This proposal sets forth the schedule of fees and the procedures for requesting a waiver of the fees. The fees are set forth in Appendix A. In compliance with the FOI Reform Act, requesters are classified into four different categories for fee assessment purposes: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

Commercial use requesters—A commercial use request is defined as a request from or on behalf of one who seeks information for a use of purpose that is related to commerce, trade or profit as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA. When the Board receives a request for documents appearing to be for commercial use, fees will be assessed for the total search time, review time, and all duplication of the documents. Requesters should note that the Board may assess fees for the search for and review of documents even if no documents are ultimately released.

Educational noncommercial scientific institution requesters—An "educational institution" is defined as an accredited institution of higher learning engaged in scholarly research. A "noncommercial scientific institution" is defined as an independent non-profit institution whose purpose is to conduct scientific research. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for this reduction in fees, the requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are in furtherance of scholarly or scientific research. To be eligible for free search time, the requester must reasonably describe the records sought.

Representatives of the news media—This term is defined as any representative of established news media outlets, *i.e.*, any organization such as a television or radio station, or a newspaper or magazine of general circulation, or a person working for an organization which regularly publishes information for dissemination to the general public whether electronically or in print. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100

pages. To be eligible for free search time, the requester must reasonably describe the records sought.

All other requesters—The Board will assess fees for search and duplication to all requesters who do not fit in the above categories, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge.

To prevent abuse of the provisions granting 100 pages of duplication and two hours of search time free of charge, this rule incorporates the proposed OMB guidelines permitting aggregation of requests that are reasonably believed to have been broken down to evade fees.

Subpart (g) provides that the Board may require advance payment of fees if the total fees are estimated to exceed $250, or where a requester has previously failed to make timely payment of fees due. This subpart also incorporates proposed OMB guidelines permitting interest to be charged on fees over 30 days past due at the rate prescribed in 31 U.S.C. 3717 for an outstanding debt on a U.S. Government claim. This rate is set annually by the Secretary of the Treasury equal to the average 12-month investment rate on Treasury tax and loan accounts.

The FOI Reform Act requires that fees shall be waived or reduced where the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Subpart (h) sets forth the required contents of a request for a waiver or reduction of fees and the factors the Secretary will consider in determining whether to grant the request.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

**List of Subjects in 12 CFR Part 261**

Freedom of Information Act, Federal Reserve System.

For the reasons set out in this notice, and pursuant to the Board's authority under section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) to delegate functions to members and employees of the Board and to the Reserve Banks, the Board proposes to amend its Rules Regarding Availability of Information (12 CFR 261) as follows:

**PART 261—[AMENDED]**

1. The authority citation for Part 261 continues to read as follows:

Authority: 5 U.S.C. 552.

**§ 261.4 [Amended]**

2. The Board proposes to amend Part 261 by removing § 261.4(g) and adding § 261.8 to read as follows:

**§ 261.8 Fee schedules; waiver of fees.**

(a) *Fee schedules.* Records of the Board available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See Appendix A for Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the direct costs of search, duplication, and review, and may be adjusted from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the direct costs of search, duplication, or review.

(1) "Direct costs" mean those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under § 261.4 of this part. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Duplication" refers to the process of making a copy of a document necessary to respond to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(3) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or profit as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act.

(3) In determining whether a requester properly belongs in this category, the Secretary shall look first to the use to which a requester will put the documents requested. Where a requester does not explain its purpose, or where its explanation is insufficient, the Secretary may draw reasonable inferences from the requester's identity and charge fees accordingly. For example, the Secretary may presume that a document request written on corporate letterhead stationery that merely recites a list of the documents wanted is for a commercial use.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) "Educational institution" refers to an accredited institution of higher learning engaged in scholarly research.

(3) "Noncommercial scientific institution" refers to an independent nonprofit institution whose purpose is to conduct scientific research.

(4) "Representative of the news media" refers to any representative of established news media outlets, *i.e.*, any organization such as a television or radio station, or a newspaper or magazine of general circulation, or person working for such organization which regularly publishes information for dissemination to the general public whether electronically or in print. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests accordingly.

(g) *Payment procedures.*—(1) *Fee payment.* The Secretary may assume that a person requesting records pursuant to section 261.4 of this Part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay fees in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under § 261.4(d) of this part, the running of the time period will begin only after the Secretary receives the required payment.

(3) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(h) *Waiver or reduction of fees.*—(1) *Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined that disclosure of the information is in the public interest because it is lilely to contribute significantly to public understanding of the operations or activities of the Board and is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees. In detemining whether disclosure is in the public interest, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Board;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(2) *Contents of request for waiver.* the Secretary will normally deny a request for a waiver of fees that does not include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(4) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act) are $50 or less; but the Secretary may waive fees in excess of the amount.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if not responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

**Appendix A to § 261.8—Freedom of Information Fee Schedule**

Duplication:

| | |
|---|---|
| Photocopy, per standard page | $ .08 |
| Paper copies of microfiche, per frame | $ .07 |
| Duplicate microfiche, per microfiche | $ .10 |

Search and review:

| | |
|---|---|
| Clerical (Grades FR4–FR7), hourly rate | $ 8.50 |
| Technical (Grades FR8–FR11), hourly rate | $12.80 |
| Management/professional, hourly rate | $25.90 |

Computer search and production:

For each request the Secretary will separately determine the actual direct cost of providing the service, including computer search time, tape or printout production, and operator salary.

Special services:

The Secretary of the Board may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information, packaging and mailing records, and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate per-page fees reflecting the cost of operation and maintenance of those machines.

Fee waivers:

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Board will waive in full fees that total less than $4.

The Secretary of the Board will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Board and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, former employees, and applicants for employment who request records for use in prosecuting a grievance of complaint of discrimination against the Board.

By order of the Board of Governors, effective March 25, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87–6960 Filed 3–30–87; 8:45 am]

BILLING CODE 6210–01–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 87-NM-19-AD]**

## Airworthiness Directives; Am-Safe, Incorporated, Restraint System Assemblies

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Am-Safe, Inc., restraint systems, which would require inspection and replacement, if necessary, of incorrectly manufactured lap belt connectors. This proposal is prompted by a report that some connectors were installed which were not manufactured to the correct dimensions. This condition, if not corrected, could lead to the inadvertent unbuckling of the restraint system, with the resultant lack of occupant restraint under either flight loads or crash loads.

**DATE:** Comments must be received no later than May 20, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-19-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Am-Safe, Inc., 240 North 48th Avenue, Phoenix, Arizona 85043. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walter Eierman, Aerospace Engineer, Western Aircraft Certification Office, ANM-173W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297-1388.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Dockets for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-19-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### *Discussion*

The FAA has recently received a report of a restraint system assembly becoming unlatched during flight. Investigation revealed that, under some conditions, the connector may become dislodged from the buckle if a side load is placed on the assembly. Inspection of the connector involved, and other connectors from the same lot number, revealed that the connector dimensions were incorrect. This condition, if not corrected, could lead to the inadvertent unbuckling of a restraint system assembly, with the resultant lack of restraint of the occupant under either flight loads or crash loads.

The FAA has reviewed and approved Am-Safe, Inc., Service Bulletin AS001, dated November 5, 1986, which describes how the identify and replace the connectors from the unsatisfactory lot.

Since this condition is likely to exist on any Am-Safe, Inc., restraint system assembly using the incorrectly manufactured lap belt connectors, an airworthiness directive (AD) is proposed which would require inspection and replacement of the incorrectly manufactured lap belt connectors, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 1250 connectors would be affected by this AD, that it would take approximately one-half manhour per connector to inspect, remove and replace an unsatisfactory connector, and that the average labor cost would be $40 per manhour. Am-Safe, Inc., will supply replacement connectors at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($20). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**AM-SAFE, Incorporated:** Applies to Am-Safe, Inc., occupant restraint system assemblies, Part Numbers 501825-403, 501907-401, 501907-403, 501907-405, 502061-401, 502147-401, and 502147-403. (Seat belt portion approved under Technical Standard Order C22f). Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To eliminate restraint system connectors with the incorrect dimensions, which could allow inadvertent opening of occupant restraint system assemblies, accomplish the following:

A. Inspect the affected restraint system assemblies in accordance with Am-Safe, Inc., Service Bulletin No. AS001, dated November 5, 1986, or later FAA-approved revisions, to determine the Lot number of the connector. If the connector is not of Lot 04, no further action is required. If the connector is found to be of Lot 04, the connector must be removed and replaced with a connector of a different lot number before further flight.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager,

Western Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Am-Safe, Incorporated, 240 North 48th Avenue, Phoenix, Arizona 85043. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on March 24, 1987.

Frederick M. Issac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-7020 Filed 3-30-87; 8:45 am]

BILLING CODE [illegible]

---

**14 CFR Part 39**

**[Docket No. 87-NM-17-AD]**

## Airworthiness Directives; British Aerospace (BAe) Model BAC 1-11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to BAe Model BAC 1-11 200 and 400 series airplanes, which currently requires repetitive inspections and repairs, if necessary, of the tailplane center section top skin assembly for cracks in the reinforcing plate. Significant cracks have been reported in the reinforcing plate prior to the time an inspection is required by the existing AD. This action would reduce the initial compliance time from 40,000 to 30,000 landings.

**DATES:** Comments must be received no later than May 20, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-17-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospae Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-17-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

*Discussion*

AD 85-12-05, Amendment 39-5075 (50 FR 21585; May 28, 1985), requires inspections for cracking of the horizontal stabilizer center section upper skin reinforcing plate on BAC 1-11 200 and 400 series airplanes. The inspections are required to commence upon the accumulation of 40,000 landings. Recent inspections have found cracks on stabilizers on airplanes with fewer than 40,000 landings. To ensure the continued airworthiness of these airplanes, the manufacturer revised BAe BAC 1-11 Service Bulletin 55-A-PM5873 (Issue 3, dated July 1, 1986) to specify the initial inspection at 30,000 landings. In addition, repetitive inspections are now specified for stabilizers modified to the PM 1253 standard. The United Kingdom Civil Aviation Authority (CAA) has classified this issue as mandatory.

Since this condition may exist or develop on airplanes of this type design registered in the U.S., the FAA is proposing to supersede the existing AD with a new AD to require inspection and repair, if necessary, in accordance with the issue of the service bulletin previously mentioned.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have s signifcant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($100). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. By superseding AD 85-12-05, Amendment 39-5075 (50 FR 21585; May 28, 1985), with the following new airworthiness directive:

**British Aerospace:** Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the integrity of the tailplane center section top skin assembly

due to cracks in reinforcing plates, accomplish the following prior to the accumulation of 30,000 landings or within the next 2,000 landings after the effective date of this AD, whichever occurs later:

A. Visually inspect the tailplane center section top skin assembly for cracks in the reinforcing plate in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Service Bulletin 55-A-PM5873, Issue 3, dated July 1, 1986:

1. If no cracks are found, repeat the visual inspection specified above at intervals not to exceed 7,500 landings;

2. If cracks are found, repair in accordance with the accomplishment instructions of the service bulletin before further flight. Reinspect in accordance with paragraph 2.2 of the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This supersedes AD-85-12-05, Amendment 39-5075.

Issued in Seattle, Washington, on March 24, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-7021 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 39**

**[Docket No. 86-NM-199-AD]**

## Airworthiness Directives; General Dynamics Models 340, 440, and C-131 (Military) Series Airplanes, Including Those Modified for Turbopropeller Power

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes, including turbopropeller coversions, which would require repetitive inspections of the main landing gear drag strut pivot bolt and replacement, if necessary. This proposal is prompted by reports of one fractured and several cracked main landing gear drag strut pivot bolts. This condition, if not corrected, could lead to failure of the main landing gear drag strut pivot bolt and collapse of the main landing gear.

**DATE:** Comments must be received no later than May 20, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration (FAA), Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Don Dirian, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297-1167.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administration before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

*Discussion*

The FAA has received a report that, during a walk-around inspection, one operator found a main landing gear drag strut pivot bolt assembly, Part Number (P/N) 340-5110105 (consisting of the -7 bolt and two lubrication fittings), protruding approximately 1.5 inches from the drag strut. The bolt had fractured at the transverse lubrication holes. The main landing gear would have collapsed if this bolt had worked its way completely out of the drag strut. Since then, operators have removed 32 subject bolts from service for inspection. Thirteen of these bolts were not airworthy due to crack indications emanating from the lubrication holes. The total time-in-service for the subject bolts cannot be determined.

The FAA has reviewed and approved General Dynamics, Convair Division, Service Bulletin 640(340D)32-14, dated October 10, 1986, which describes action required to detect and replace cracked or broken bolts and requires bolt inspection using magnetic particle inspection procedures.

There are General Dynamics (GD) (Convair) 340 and 440 airplanes that have been modified by installation of turbopropeller engines in accordance with various supplemental type certificates. Unofficial model numbers of the GD Models 340 and 440 have been adopted by the public to denote the particular engine installation, i.e., Model 640 denotes installation of Rolls Royce-Dart engines. This AD would apply to all GD 340 and 440 airplanes, including those modified with turbopropeller engines.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive (AD) is proposed which would require inspection of the main landing gear drag strut pivot bolt, and replacement, if necessary, in accordance with the General Dynamics service bulletin previously mentioned.

It is estimated that 350 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average

labor cost would be $40 per manhour. Two bolts are required per airplane; each bolt is estimated to cost $600. Based on these figures, the total cost impact of the AD on the U.S. operator is estimated to be $644,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities because few, if any, General Dynamics Model 340, 440, or C-131 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2 By adding the following new airworthiness directive:

**General Dynamics (Convair):** Applies to Models 340, 440, and C-131 (Military) series airplanes, including all such model airplanes converted to turbopropeller power, equipped with main landing gear drag strut pivot bolt assembly Part Numbers (P/N) 340-5110105, or 340-5110105-1, or 340-5110105-3, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the main landing gear drag strut pivot bolt and possible subsequent main landing gear collapse, within 500 hours time-in-service after the effective date of this AD, accomplish the following:

A. Inspect the main landing gear drag strut pivot bolt assembly P/N 340-5110105 or 340-5110105-1 or 340-5110105-3, using magnetic particle inspection procedures, in accordance with Paragraph 2., "Accomplishment Instructions" of General Dynamics, Convair Division, Service Bulletin 640(340D)32-14, dated October 10, 1986, or later revisions approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

1. If no cracks are found, reinstall the bolt and repeat the bolt inspection in accordance with paragraph A., above, at intervals not to exceed 500 hours time-in-service since last bolt inspection.

2. If any crack is found, before further flight, replace main landing gear drag strut pivot assembly with P/N 340-5110105, 340-5110105-1 or 340-5110105-3 or equivalent approved by Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

a. If a new 340-5110105 or 340-5110105-1 main landing gear drag strut pivot bolt assembly is used as a replacement, repeat the bolt inspection in accordance with paragraph A., above, within 3,000 hours time-in-service after bolt installation and thereafter at intervals not to exceed 500 hours time-in-service since last bolt inspection.

b. If a new main landing gear drag strut pivot bolt assembly P/N 340-5110105-3 is used as a replacement part, repeat the bolt inspection in accordance with paragraph A., above, within 8,000 hours time-in-service after bolt installation, and thereafter at intervals not to exceed 500 hours time-in-service since last bolt inspection.

B. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

C. Alternate means of compliance which provide an acceptable level of safety, may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to a base to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. Attn: Chief, Aircraft Logistical Support, Mail Zone 92-2920. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on March 24, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region*

[FR Doc. 87-7022 Filed 3-30-87; 8:45 am]

BILLING CODE 4910-13-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[A-8-FRL-3177-8]**

## Approval and Promulgation of State Implementation Plans; Revisions to Regulation No. 3, Visibility Protection; Colorado

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This notice proposes to approve a revision in the Colorado Air Quality Control Commission Regulation No. 3, of the Colorado State Implementation Plan (SIP) which was submitted by the Governor on May 13, 1986. This revision adds New Source Review (NSR) visibility protection in mandatory Class I areas for sources locating in nonattainment areas. Colorado's Prevention of Significant Deterioration (PSD) regulation containing visibility protection for mandatory Class I areas for sources locating in attainment areas was submitted on April 12, 1983. EPA is proposing to approve both the attainment and nonattainment new source review procedures for visibility protection for source categories regulated by the Colorado NSR and PSD regulations, which have previously been approved by EPA. These regulations will replace the Federal visibility regulations now in effect.

**DATES:** Comments are due June 1, 1987.

**ADDRESSES:** Copies of the documents relevant to this proposed action are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices: Air Programs Branch, Environmental Protection Agency, Region VIII, Denver Place, 999 18th Street, Denver, Colorado, 80202-2405.

**FOR FURTHER INFORMATION CONTACT:** Dale Wells, Air Programs Branch, Environmental Protection Agency, Denver Place, 999 18th Street, Denver, Colorado, 80202-2405, (303) 293-1773.

**SUPPLEMENTARY INFORMATION:** Section 169A of the Clean Air Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400 through 81.437). Section 169A specifically requires EPA

to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* It required the States to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified in 40 CFR 51.302(a)(1)). That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to propose to incorporate Federal regulations in States where SIPs were deficient with respect to the 1980 visibility new source review (NSR) and monitoring regulations, 40 CFR 51.307 and 51.305, respectively. However, the settlement allows a state an opportunity to avoid Federal promulgation if it submits a SIP by May 6, 1985. Colorado is one of the states listed in 49 FR 42670 as having an inadequate NSR and monitoring plan for visibility protection.

The final promulgation of the Federal visibility regulations for all States having deficient SIPs was effective on July 12, 1985 (49 FR 28544). Colorado was one of the States that did not meet the May 6, 1985, deadline for submitting a SIP containing visibility protection.

On May 13, 1986, the Governor of Colorado submitted a revision to Regulation 3, which contains the PSD and NSR Regulations for visibility protection of mandatory Class I areas. The following areas in Colorado are mandatory Class I areas where visibility is an important value:

Black Canyon of the Gunnison Wilderness
Eagles Nest Wilderness
Flat Tops Wilderness
Great Sand Dunes Wilderness
La Garita Wilderness
Maroon Bells-Snowmass Wilderness
Mesa Verde National Park
Mount Zirkel Wilderness
Rawah Wilderness
Rocky Mountain National Park
Weminuche Wilderness
West Elk Wilderness

**New Source Review**

40 CFR 51.307 requires states to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any visibility protection area, regardless of the quality status of the area in which the source is located. That is, sources locating in attainment areas and nonattainment areas must underdo visibility new source review (See 40 CFR 51.307(a) and (b)(2), respectively). These requirements ensure that (1) the visibility impact review is conducted in a timely and consistent manner, (2) the reviewing authority considers any timely FLM analysis demonstrating that proposed source would have an adverse impact on visibility, and (3) public availability of the permitting authority's conclusion.

There are two parts to visibility NSR: PSD major stationary sources and major sources in nonattainment areas.

For all major PSD stationary sources:

(1) The State must notify the FLM in writing not more than 30 days after receiving a permit application or advance notification of application from a proposed source that may impact a visibility protection area.

(2) This notification must take place at least 60 days prior to the public hearing on the application and must contain any analysis of the potential impact of the proposed source on visibility.

(3) The State must consider any analysis concerning visibility impairment performed by the FLM and received not more than 30 days after the notification.

(4) If the State does not concur with the FLM's analysis that adverse visibility impairment will result from the proposed source, the State must provide in its notice of public hearing on the application an explanation of its decision or give notice as to where the explanation can be obtained.

(5) The State must have the ability to require a permit applicant to monitor visibility in or around the visibility protection areas.

For major sources in nonattainment areas:

(1) A major source or modification that may impact a visibility protection area must provide a visibility impact analysis.

(2) The State must ensure that the sources' emissions are consistent with the national visibility goal. The State may consider the cost of compliance, the time for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

(3) The State must follow the same procedures outlined in the PSD items 1–5 above in conducting nonattainment area visibility reviews.

Items 1 through 5 for major PSD stationary sources and items 1 through 3 for major sources in nonattainment areas are the procedural steps in visibility review as defined in 40 CFR 52.27(d) and 52.28(c) and (d), respectively. (40 CFR 52.27 and 52.28 were proposed in 49 FR 42670 and finalized in 50 FR 28544.)

The Colorado visibility SIP has incorporated into the NSR section its existing permit requirements for any source locating in an attainment or nonattainment area. The Colorado Air Quality Control Commission (AQCC) Regulation No. 3 specifies the standard requirements for any permit application and permit approval.

Section XVI. of Colorado Regulation No. 3 requires any emission permit applicant to demonstrate that emissions from the proposed source will not adversely impact visibility in a Class I area. The demonstration must be reviewed by the Federal Land Manager (FLM), and any determination by the FLM must be considered by the Colorado Air Pollution Control Division in its decision to grant or deny the permit. The permit will be denied for sources proven to cause a potential impact.

The SIP commits to the notification time frame requirements to the FLM. Section XIV.A. allows the Air Pollution Control Division or the Air Quality Hearings Board (if applicable) to determine independently if there is an adverse impact to visibility in Class I areas, if the FLM fails to make such determination or such determination is in error. The Division commits to provide an explanation of its decision should it disagree with the FLM's assessment on a proposed source's impact on visibility and to give notice as to where that explanation can be obtained.

**FLM Coordination**

Under section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within a Class I area. The visibility regulations allow the FLM the opportunity to identify visibility impairment and to identify elements for inclusion in monitoring strategies. The FLM must maintain these areas consistent with congressional land use goals.

The State of Colorado has accorded the FLM (through the National Park

Service (NPS)) opportunities to participate and comment on its visibility SIP and regulations. Comments by the NPS were considered and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. Further, the State recognizes the expertise of the FLM (i.e., the NPS) in monitoring and new source applicability analyses for visibility and has agreed to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

Colorado's PSD Regulation, submitted on April 18, 1983, contains visibility protection from sources locating in attainment areas. EPA is proposing to approve both the attainment and nonattainment NSR procedures for visibility protection for source categories regulated by the Colorado PSD and NSR regulations which have previously been approved by EPA. However, as described below, Colorado's NSR and PSD Regulations have been disapproved for certain sources. The EPA promulgated visibility regulations will remain in effect for these sources.

On April 30, 1981, EPA approved Colorado's New Source Review Regulations for nonattainment areas (40 FR 21180), except for the following portions:

(1) Section IV.D.2(b)(ii)(G), which exempts from "major modification" a change of an existing oil-fired or gas-fired boiler to the use of a coal/oil mixture, shale oil, or coal-derived fuels, provided that such change would not interfere with reasonable further progress toward attainment of any National Ambient Air Quality Standard.

(2) Section IV.D.2.(b)(iii), "major modification" and the definition of "major stationary source" in the Common Provisions Regulation that provides that fugitive emissions of particulate matter from any of the 26 listed source categories will be excluded in determining whether the source is major, even though quantifiable, if the owner or operator of the source demonstrates to the satisfaction of the Colorado Air Pollution Control Division that such emissions are of a size and substance that will not adversely affect public health or welfare.

(3) Section IV.H.6., that allows the Division to grant an applicant a period of greater than six months to bring a source into compliance.

(4) Regulation No. 3 did not include a provision for "reconstruction", and certain fugitive emissions may escape review since they were not included in Colorado Regulations No. 6 and No. 8, but were regulated under Federal New Source Performance Standards or National Emission Standards for Hazardous Pollutants. Any source which escapes review because of these deficiencies in Regulation No. 3 will be subject to federal enforcement actions. The proposed visibility protection requirements relating to those disapproved portions of the Colorado NSR are not effective with this action.

Likewise, Colorado's Prevention of Significant Deterioration (PSD) regulation was approved on September 2, 1986, except for the following portions:

(1) The following industrial source categories:

Kraft Pulp Mills
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric, Sulfuric, and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (Furnace Process)
Primary Lead Smelters
Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants

(2) Sources that would avoid any Federal PSD requirements due to exemptions in the Colorado PSD Regulation relating to fugitive emissions.

(3) Sources that would not need a Colorado permit due to an exemption for modification of oil or gas boilers to burn coal, shale oil, or coal-derived fuels (Regulation 3.I.B.2.c.viii).

(4) Sources that would be exempted from a Colorado permit due to the State definition of Stationary Source (Common Provisions Regulation) which reads "except those properties which are or will be used only for right-of-way, transmissions, gathering, transportation, communication, pipeline, or similar purposes shall not be considered contiguous or adjacent."

(5) Sources that would avoid compliance with their permits due to that portion of Regulation 3.IV.H.4 allowing an administrative compliance waiver for as long as six months to a new source which violates a term of its permit.

(6) Sources that would receive a Colorado permit based upon the provision covering Time Constraints on Division Action found in Regulation 3.IV.F. The proposed visibility protection regulation will not be in effect for the disapproved sources listed above.

**Proposed Action**

EPA is proposing to approve the amendments to Colorado's Regulation No. 3 as they apply to New Source Review for visibility protection and to remove federally promulgated visibility new source regulations in Colorado, except as they apply to categories of sources for which the Colorado NSR and PSD regulations have been disapproved.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

**Authority:** 42 U.S.C. 7401–7642.

Dated: December 18, 1986.

**John G. Welles,**

*Regional Administrator.*

[FR Doc. 87–6985 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

---

**40 CFR Part 52**

**[A–5–FRL–3177–9]**

## Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** USEPA is proposing to approve a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Huffy Corporation Bicycle Assembly Plant (Huffy Corporation) in Celina, Ohio. The proposed revision would exempt the spray coating lines at the Huffy Corporation from the requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1) of the Ohio ozone SIP. USEPA's action is based upon an April 9, 1986, revision request that was submitted by the State.

**DATE:** Comments on this revision and on the proposed USEPA action must be received by April 30, 1987.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5 AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

**SUPPLEMENTARY INFORMATION:** On April 9, 1986, the Ohio Environmental Protection Agency (OEPA) submitted, as a revision to its ozone SIP, a request to exempt the Huffy Corporation Bicycle Assembly Plant in Celina, Ohio from the requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1) of the Ohio ozone SIP. The current rule requires Huffy Corporation to comply by meeting emission limits between 3.5 and 4.3 pounds of volatile organic compound (VOC) per gallon of coating, excluding water (depending upon the coating used). The request for a revision was submitted in the form of a change to Ohio's VOC rules. OAC Rule 3745–21–(U)(2)(j) contains this exemption for Huffy Corporation. This revision became effective in the State of Ohio on May 9, 1986

USEPA approved the Ohio's VOC rules as part of the ozone SIP as meeting the reasonably available control technology (RACT) Part D requirements of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097). Although RACT VOC regulations are required by Part D in all ozone nonattainment areas, Ohio's rules are applicable to both attainment and nonattainment areas. Therefore, the State is now requesting that USEPA approve this relaxation for the Huffy Corporation because it is located in an attain-area (Mercer County), and RACT-level control is not required by the Clean Air Act in such areas.

**Air Quality**

The Huffy Corporation is located in Mercer County, which is a rural attainment area for ozone. In 1982 OEPA monitored the ambient ozone concentration in Mercer County. No exceedances of the ozone standard were observed.

Because Mercer county has always been classified as attainment for ozone USEPA can approve a relaxation from RACT for sources in that area so long as it can be demonstrated that such relaxation will not jeopardize continued attainment. This relaxation will not result in any increase in actual emissions from the Huffy facility. Consequently, it will no interfere with continued maintenance of the ozone standard.

This rulemaking relaxes a stationary source reasonably available control technology (RACT) emission limitation in an area that has always been designated as attainment/unclassifiable for ozone. Originally, this RACT limitation was imposed by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. The original principle of this accommodative ozone SIP for areas classified as attainment/unclassifiable was to require RACT-level controls on existing sources in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required of new major sources in attainment/unclassifiable areas under USEPA's prevention of significant deterioration regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas. Therefore, this action, when promulgated, will cancel the accommodative SIP for Mercer County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas. All sources wishing to locate in nonattainment areas must comply with the State's federally approved Part D new source review program.

**Technical Feasibility**

Huff indicated that it experimented with water based coating, but such coating did not meet the company's specification for color and durability. Powder and high solid coatings were rejected by the company because they require different set of application equipment and spray booths, the turnaround time for color changes takes longer, and the quality of the coatings does not meet the company's specification.

Cost-effectiveness ratios based on the data submitted are within the range which USEPA's Control Techniques Guideline document for this source category indicates is cost-effective for spray coating of miscellaneous metal parts and products Therefore, USEPA considers the existing emission limitations to represent RACT for this sources. USEPA does not require this source to meet RACT because it is located on an attainment area.

**Proposed Action**

USEPA is proposing to approve this SIP revision for the following reasons: (1) The Huffy Corporation is in Mercer County, which is a rural attainment area for ozone. The Clean Air Act does not require RACT level VOC control in attainment areas; and

(2) Approval of this proposed SIP revision will not increase the historical VOC emission level from this source. Therefore, it will not interfere with the attainment and maintenance of the ozone National Ambient Air Quality Standard (NAAQS) in Mercer County.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

**Authority:** 42 U.S.C. 7401–7642.

Dated: September 17, 1986.

Valdas V. Adamkus,

*Regional Administrator.*

[FR Doc. 87–6989 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

# Notices

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following Committee meeting:

*Name:* National Advisory Committee for Tobacco Inspection Services.

*Date:* April 21, 1987.

*Time:* 1 p.m.

*Place:* U.S. Department of Agriculture, Agricultural Marketing Service, Tobacco Division, Training Laboratory, Room 402, 333 Waller Avenue, Lexington, Kentucky 40504.

*Purpose:* To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. *511 et seq.*), to hear persons. who have asked to address the Committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the Committee will address the pairing or grouping of burley markets and the distribution of the graders among markets for the 1987–88 selling season.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee chairperson. Persons, other than members, who wish to address the Committee at the meeting should contact Lioniel Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Washington, DC 20250, (202) 447–2567, prior to the meeting.

Dated: March 23, 1987.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 87–6994 Filed 3–30–87 8:45 am]

BILLING CODE 3410–02–M

### Cooperative State Research Service

### National Agricultural Research and Extension Users Advisory Board, Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

*Name:* National Agricultural Research and Extension Users Advisory Board

*Date:* May 6–8, 1987

*Time:* 8:00 a.m.–5:30 p.m., May 6–8, 1987

*Place:* Iowa State University, Ames, Iowa; Thompson Farm, Boone, Iowa; National Animal Disease Center, Ames, Iowa; Pioneer Hi-Bred International, Inc., Johnston, Iowa.

*Type of Meeting:* Open to the public. Persons may participate in the meeting and site visits as time and space permit.

*Comments:* The public may file written comments before or after the meeting with the contact person below.

*Purpose:* The Board will be reviewing agricultural research and extension programs at ISU, low-input farming at Thompson Farms, animal disease research at NADC, and biotechnology research at Pioneer HI-Bred.

*Contact Person for Agenda and More Information:* Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447–3684.

Done in Washington, D.C., this 20th day of March 1987.

**John Patrick Jordan,**

*Administrator, Cooperative State Research Service.*

[FR Doc. 87–6995 Filed 3–30–87; 8:45 am]

BILLING CODE 3410–02–M

### Food and Nutrition Service

### Food Stamp Program; Striker Provisions

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** By order dated December 22, 1986, Judge Louis Oberdorfer of the United States District Court for the District of Columbia has enjoined the Secretary of Agriculture from enforcing the striker provisions in section (6)(d)(3) of the Food Stamp Act of 1977, as amended, (7 U.S.C. s2015(d)(3)) and § 273.1(g) of the Food Stamp Program regulations (7 CFR s273.1(g)) for all United Auto Worker (UAW) and United Mine Workers of America (UMWA)-represented strikers and their households.

**DATES:** By order of the court, this notice is effective January 2, 1987. State agencies must implement the provisions of this notice retroactive to January 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Pinto, Supervisor, Certification Policy and Quality Control Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302 (703)(765–3471).

**SUPPLEMENTARY INFORMATION:** State agencies must implement this action on January 2, 1987 by order of the U.S. District Court of the District of Columbia. The Court further ordered the Department to publish the provisions of the court order as a notice in the **Federal Register.**

#### Classification

*Executive Order 12991*

This action has been reviewed under Executive Order 12291 and Secretay's Memorandum 1512–1. This action will not have significant adverse effects upon competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major."

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

BEST COPY AVAILABLE

**Regulatory Flexibility Act**

S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households are affected to the extent that they contain a member who is on strike and who is represented by either UAW or UMWA. Some currently ineligible households may become eligible for program benefits. Other households could receive increased benefits.

**Paperwork Reduction Act**

The Department is in the process of obtaining approval from the Office of Management and Budget under the Paperwork Reduction Act of 1980 (40 U.S.C. 3507) for the reporting requirements contained in this notice. State agencies in states where there is a UAW or UMWA-represented strike will be required to report monthly on the amount of benefits issued to the affected strikers and their households to which they would not be entitled absent the court order.

**Background**

Judge Louis Oberdorfer of the U.S. District Court for the District of Columbia, in the case of *International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, United Auto Workers (UAW) and United Mine Workers of America (UMWA), et al., v. Richard A. Lyng, Secretary, U.S. Department of Agriculture,* Civil Action No. 84–3303, has enjoined the Secretary from enforcing the striker provisions in section (6)(d)(3) of the Food Stamp Act of 1977, as amended, and § 272.1(g) of the Food Stamp regulations for all UAW and UMWA-represented strikers and their households. The injunction is effective January 2, 1987. In order to be eligible for benefits, affected households must apply for benefits on or after January 2, 1987. For those households which apply after January 2, 1987, benefits must begin with the date of application. Benefits must be based on the household's current, not pre-strike, income. This court order applies only to strikers represented by UAW or UMWA. The statutory and regulatory striker provisions cited above continue to apply to all strikers represented by other unions and their households.

The United States is considering appeal of the court's order. The UAW and UMWA have posted a bond to reimburse the Secretary the value of benefits issued to their members pursuant to this court order pending a decision on appeal. If the government prevails on appeal, the bond will be used to reimburse the value of benefits issued as a result of the court's order. In order to monitor the amount of benefits issued pursuant to the court order, State agencies are required to maintain records on the amount of benefits issued to the affected striker households and the amount of benefits which would have been issued to such households if the provisions of § 273.1(g) of the Food Stamp regulations had been applied. Certification offices must to do two benefit calculations for each affected household in order to determine the amount of benefits being given to each striker household to which it would not be entitled absent the court order. Reports of amounts of benefits issued under the court's order must be provided by each State agency to FNS on a monthly basis. Instructions on how these reports should be submitted will be issued separately by FNS to the State agencies.

The court required that its order be published as part of this notice. Accordingly, the court order follows:

**United States District Court for the District of Columbia**

[Civil Action No. 84–3303]

*International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, et al., Plaintiffs, v. Richard A. Lyng, Secretary, U.S. Department of Agriculture, Defendant; Order Granting Interim Relief.*

Upon motion of the plaintiffs' pursuant to Rule 59(e) and the defendant's response thereto, and for reasons stated in the accompanying Memorandum Re Relief Pending Appeal, it is this 22d day of December, 1986, hereby

*Ordered:* that, for the purpose of effectuating relief pending appeal, a class (narrower than that certified in a Memorandum and Order Certifying Class, filed this date) is certified and defined as follows:

All UAW and UMWA-represented strikers and their households who are otherwise eligible for Food Stamps but for the application of the striker disqualification of the Food Stamp Act (7 U.S.C. 2015(d)(3) and its implementing regulations and who file applications for Food Stamps as provided in this Order.

And it is further

*Ordered:* that the defendant Secretary of Agriculture is enjoined, pending further orders of this Court or the Supreme Court, from enforcing the provisions of 7 U.S.C. 2015(d)(3) and its implementing regulations to disqualify class members from participant in the Food Stamp program when they are determined by a State or local Food Stamp agency to meet the other eligibility requirements of the Food Stamp Act, 7 U.S.C. 2011 *et seq.*, and its implementing regulations; and it is further

*Ordered:* that the retroactive payment of Food Stamps to class members prior to the date on which applications are first taken pursuant to this Order is stayed pending the outcome of the defendant's appeal and further orders of this Court; and it is further

*Ordered:* that the defendant Secretary will notify the appropriate State Food Stamp agencies as soon as practicable that they and their subordinate local agencies are required to accept and process the applications of the members of the plaintiff class and promptly to determine their eligibility for Food Stamps beginning with the date of their application (but in no event, prior to January 2, 1987) and for each subsequent month for which their respective applications for Food Stamps are filed; and it is further

*Ordered:* that the defendant Secretary will reimburse State and local Food Stamp agencies for the administrative costs associated with these payments as provided by 7 U.S.C. 2025. Such reimbursements shall be handled in the same fashion as they are normally handled under the Food Stamp Act and its implementing regulations; and it is further

*Ordered:* that the defendant Secretary will, at the earliest practicable date, publish appropriate notice in the **Federal Register** for, among others, the relevant Federal, State, and local Food Stamp agencies, including in that notice a copy of this Order; and it is further

*Ordered:* that the plaintiff shall, within seven (7) business days of the date of this Order, furnish surety or corporate bonds totalling $400,000, which bond the Court finds to be a sufficient amount at this time to protect the defendant's costs of Food Stamps (other than administrative costs) incurred pursuant to this Order and subject to future adjustments in an amount as agreed to by the parties or ordered by this Court. Such bond shall be due and payable to the defendant in the event that this Court's order of November 14, 1986 is reversed on appeal, and defendant's role recourse for satisfaction of any additional costs of Food Stamps paid under this Order shall be against the plaintiff unions without recourse to recoupment for collection action directed to individual class members; and it is further

*Ordered:* that the parties will work to resolve all questions of compliance with this Order in good faith and will not resort to formal enforcement proceedings in this Court without first providing twenty-one (21) days written notice of the specific compliance problem to the opposing party; and it is further

*Ordered:* that the defendant Secretary will give twenty-one (21) days written notice to the plaintiffs of any intent to adjust the

amount of bond, before moving this Court for any such adjustment.

December 22, 1986.

Signed by:

Louis Oberdorfer,

*United States District Judge.*

**Implementation**

As stated above, this court order is effective retroactive to January 2, 1987. State agencies were notified of the provisions of this court order by means of a telegram issued on December 31, 1986.

**S. Anna Kondratas,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 87-6993 Filed 3-30-87; 8:45 am]

BILLING CODE 3410-30-M

## Forest Service

### Rocky Mountain Region; Revision of Procedures; Rental Fees; Electronic Sites

**AGENCY:** USDA, Forest Service.

**ACTION:** Notice of Revision of Procedures governing determination of rental fees for most electronic sites and request for public comment.

**SUMMARY:** The Regional Forester of the Rocky Mountain Region is revising procedures governing determination of rental fees for most electronic uses. We welcome your comments on the following proposed fee schedule:

**DATE:** Comments must be in writing and received on or before June 1, 1987.

**ADDRESS:** Mail your comments to Gary E. Cargill, Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 W. Eighth Avenue, Lakewood, CO 80225.

**SUPPLEMENTARY INFORMATION:** Forest Officers in the Rocky Mountain Region administer approximately 150 electronic sites in Kansas, Nebraska, South Dakota, Wyoming and Colorado.

Currently fees are based upon 0.2 percent of the permit holders total investment in facilities and equipment and 5 percent of the rental income from building tenants and/or equipment users served by the holder.

The Federal Land Policy and Management Act of 1976 (FLPMA) requires that fees be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles.

At the discretion of the Regional Forester, fees for most electronic uses will be based upon a Regional fee schedule developed as a result of appraisal. This fee schedule will be updated annually by application of the Urban Consumer Price Index and every five (5) years by application of new market data. Fees for existing electronic use authorizations will be adjusted at the beginning of the 1988 payment year.

This Notice and a copy of the fee schedule will be mailed to all entities currently authorized to use National Forest System lands for an electronic purpose. The final schedule will be published no sooner than 60 days after publication of this notice.

**Proposed Electronic Use Fee Schedule—the Rocky Mountain Region, USDA, Forest Service**

| Use category | Fair market rent |
|---|---|
| Television and Radio Broadcast | $2,000 |
| Commercial Communications | 1,400 |
| Common Carrier Microwave Relay | 1,500 |
| Cable TV and Radio-TV Translator | 1,000 |
| Industrial and Governmental Microwave or Radio Repeater | 1,000 |
| Passive Microwave Reflector | 500 |

*Television and radio broadcast use*

This use group broadcasts audio and/or video signals for general public reception. User revenues are generally derived from commercial advertising, but may also come from contributions and subscriptions. Broadcast areas often overlap state boundaries.

*Commercial communications use*

This use group includes operators who provide equipment and service and allow third party use on a contract basis to users who are not required to hold additional authorizations from the Forest Service and who may or may not hold an FCC license or necessary frequency authorization.

*Common carrier microwave relay use*

This group typically includes longline carriers who relay intra and interstate telephone, television, information, and data transmissions using point to point microwave networks or systems. These users are regulated by state public utility commissions and must provide service to any consumer with the ability to pay.

*CATV receiver and radio-TV translator use*

This use group includes cable TV head-end antenna or satellite dish receivers and low watt FM translator uses. Users typically receive a signal and rebroadcast it on a different frequency to a receiver that could not receive the original broadcast.

*Industrial and governmental microwave or radio repeater use*

This group includes private, corporate, or governmental entities who are not in the communications business, but who have their own internal telecommunications systems or networks. Users in this group include pipeline and power companies, railroads, logging companies, ranch owners or managers, and land and resource management agencies or firms. Facilities generally include microwave relay and/or mobile two-way radio repeaters. These internal communications systems constitute an operating expense and generally contribute to revenue very indirectly. Need for the internal communication capability is sometimes safety related. The communication service is not sold and is limited to the user.

*Passive microwave reflector use*

Microwave reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and terminal. The reflector requires point-to-point line-of-site with the connecting relay stations but does not require electric power. Maintenance is minimal and reflectors seldom require visitation.

**FOR FURTHER INFORMATION CONTACT:** Eugene Ecker (303) 236-9512, P.O. Box 25127, Lakewood, CO 80225.

**S.H. Hanks,**

*Deputy Regional Forester.*

[FR Doc. 87-6957 Filed 3-30-87; 8:45 am]

BILLING CODE 3410-11-M

## Soil Conservation Service

### Pasture Creek Watershed, MT; Environmental Impact Statement

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pasture Creek Watershed, McCone County, Montana.

**FOR FURTHER INFORMATION CONTACT:** Glen H. Loomis, State Conservationist, Soil Conservation Service, 10 East Babcock, Bozeman, Montana 59715, telephone (406) 587–6813.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Glen H. Loomis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for agricultural flood prevention. The planned works of improvement include a 12-foot high diversion dam, 1,400 feet of bypass channel, and a pipe drop structure to control flooding on a 1,160 acre, 100-year flood plain.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Wallace A. Jolly.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: March 20, 1987.

**Glen H. Loomis,**

*State Conservationist.*

[FR Doc. 87–6958 Filed 3–30–87; 8:45 am]

BILLING CODE 3410–16–M

---

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 347]

### Resolution and Order Approving the Application of the Illinois International Port District, for Three Special-Purpose Subzones in the Chicago Customs Port of Entry Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Illinois International Port District, grantee of FTZ 22, filed with the Foreign-Trade Zones Board (the Board) on December 20, 1985, requesting special-purpose subzone status for three sugar-product processing plants of Power Packaging, Inc. (PPI) in the Chicago, Illinois area, adjacent to the Chicago Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application for two years from the commencement of subzone operations subject to the following conditions:

(1) Authority for the subzone may be extended after a review by the Board;

(2) Power Packaging must elect domestic or privileged foreign status, as appropriate, with respect to foreign sugar that is used to manufacture products that are not covered by U.S. sugar program import quotas as designated in Presidential Proclamation 5294, as revised in Presidential Proclamation 5340 (TSUS Nos. 958.16, 958.17, and 958.18);

(3) Because of the special circumstances of this case, this action will not be considered a precedent for other FTZ Board actions involving sugar or sugar-containing products.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant of Authority to Establish Foreign-Trade Subzones in Du Page and Kane Counties, IL, Adjacent to the Chicago Customs Port of Entry**

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Illinois International Port District, formerly the Chicago Regional Port District, grantee of Foreign-Trade Zone No. 22, has made application (filed December 20, 1985, Docket 45-85, 51 FR 774) in due and proper form to the Board for authority to establish special-purpose subzones at the three food processing plants of Power Packaging, Inc., located at sites in Du Page and Kane Counties, Illinois, adjacent to the Chicago Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution accompanying this action;

*Now, therefore,* in accordance with the application filed December 20, 1985, the Board hereby authorizes the establishment of subzones at three plants of Power Packaging, Inc., in the Chicago area, designated on the records of the Board as Foreign-Trade Subzone Nos. 22C, 22D, and 22E at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations;

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

*In witness whereof,* the Foreign-Trade Zones Board has caused its name to be

signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 23rd day of March 1987 pursuant to Order of the Board.

**Paul Freedenberg,**

*Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. DaPonte, Jr.,**

*Executive Secretary.*

[FR Doc. 87-6977 Filed 3-30-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[Order No. 346]

## Resolution and Order Approving the Application of the Foreign-Trade Zone of Wisconsin, Ltd., for a Special-Purpose Subzone in Milwaukee, WI

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign-Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, filed with the Foreign-Trade Zones Board (the Board) on March 29, 1985, requesting special-purpose subzone status for the chocolate manufacturing plant of Ambrosia Chocolate Company in Milwaukee, Wisconsin, within the Milwaukee Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application for two years from the commencement of subzone operations subject to the following conditions:

(1) Authority for the subzone may be extended after a review by the Board;

(2) Ambrosia must elect domestic or privileged foreign status, as appropriate, with respect to foreign sugar that is used to manufacture products that are not covered by U.S. sugar program import quotas as designated in Presidential Proclamation 5294, as revised in Presidential Proclamation 5340 (TSUS Nos. 958.16, 958.17, and 958.18);

(3) Because of the special circumstances of this case, this action will not be considered a precedent for other FTZ Board actions involving sugar or sugar-containing products.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant of Authority To Establish a Foreign-Trade Subzone in Milwaukee, WI**

*Whereas,* by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

*Whereas,* the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

*Whereas,* the Foreign-Trade Zone of Wisconsin, Ltd., grantee of Foreign-Trade Zone No. 41, has made application (filed March 29, 1985, Docket 6–85, 50 FR 16118) in due and proper form to the Board for authority to establish a special-purpose subzone at the chocolate products manufacturing plant of Ambrosia Chocolate Company in Milwaukee, Wisconsin;

*Whereas,* notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

*Whereas,* the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution accompanying this action;

*Now, therefore,* in accordance with the application filed March 29, 1985, the Board hereby authorizes the establishment of a subzone at the plant of Ambrosia Chocolate Company, Milwaukee, designated on the records of the Board as Foreign-Trade Subzone No. 41F at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations;

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

*In witness whereof,* the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 23rd day of March 1987 pursuant to Order of the Board.

**Paul Freedenberg,**

*Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. DaPonte, Jr.,**

*Executive Secretary.*

[FR Doc. 87-6978 Filed 3-30-87; 8:45 am]

BILLING CODE 3510-DS-M

---

## International Trade Administration

## Short Supply Review on Certain Semi-Finished Steel Slabs; Request for Comments

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, with respect to certain low carbon semi-finished steel slabs.

**DATE:** Comments must be submitted on or before April 10, 1987.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S.

Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377–0159.

**SUPPLEMENTAL INFORMATION:** Article 8 of the U.S.-EC Arrangement, the U.S.-Mexico Understanding, the U.S.-Brazil Arrangement, and the U.S.-Republic of Korea Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . . ."

We have received a short supply request for low carbon (AISI grades 1006, 1008, and 1010) semi-finished steel slabs, ranging from 6 to 6.750 inches in thickness, and ranging from 35 to 53 inches in width, for use in producing hot-rolled and cold-rolled sheet and strip, and galvanized sheet and strip.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Dated: March 19, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–6979 Filed 3–30–87; 8:45 am]

BILLING CODE 3510–05–M

---

## Georgia Institute of Technology et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86–333. Applicant: Georgia Institute of Technology, Atlanta, GA 30322. Instrument: Mass Spectrometer, Model MM7070S with Accessories. Manufacturer: VG Analytical, United Kingdom. Intended Use: See notice at 51 FR 37623, October 23, 1986. Reasons for This Decision: The foreign instrument provides a resolution of 50 000 (10% valley), a moving belt liquid chromatograph interface and an alternating FAB probe. Advice Submitted By: National Institutes of Health, January 15, 1987.

Docket No.: 87–002. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Mass Spectrometer, Model VG 70–SE with Accessories. Manufacturer: VG Instruments Inc., United Kingdom. Intended Use: See notice at 51 FR 40243, November 5, 1986. Reasons for This Decision: The foreign instrument provides resolution to 50 000 (10% valley), scan speeds to 0.1 seconds per decade, and an alternating FAB probe. Advice Submitted By: National Institutes of Health, February 17, 1987.

Docket No.: 87–016. Applicant: University of California, Berkeley, CA 94720. Instrument: Electronic Visual Display Unit with Raster Rotation. Manufacturer: Joyce Electronics, United Kingdom. Intended Use: See notice at 51 FR 41379, November 14, 1986. Reasons for This Decision: The foreign instrument provides a luminance of 500 candelas per square meter, and raster rotation through 360 degrees. Advice Submitted By: National Institutes of Health, February 17, 1987.

Docket No.: 87–028. Applicant: National Bureau of Standards, Gaithersburg, MD 20899. Instrument: Surface Forces Apparatus, Model Mk II with Accessories. Manufacturer: Anutech Pty., Ltd., Australia. Intended Use: See notice at 51 FR 42126, November 21, 1986. Reasons for This Decision: The foreign instrument can measure forces between surfaces with a sensitivity of 10.0 nanonewtons and a distance resolution of about 0.1 nanometers. Advice Submitted By: National Institutes of Health, February 17, 1987.

Docket No.: 87–037. Applicant: University of Arizona, Tucson, AZ 85721. Instrument: GC/Mass Spectrometer, Model MAT–90. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 51 FR 44651, December 11, 1986. Reasons for This Decision: The foreign instrument provides resolution to 50 000 (10% valley), scan speed to 0.1 seconds per decade, and capability for GC operation in the chemical ionization (CI) mode at normal pressures. Advice Submitted By: National Institutes of Health, February 17, 1987.

Docket No.: 87–047. Applicant: National Bureau of Standards, Gaithersburg, MD 20899. Instrument: High Temperature Microhardness Tester, Model QM. Manufacturer: Nikon, Japan. Intended Use: See notice at 51 FR 44825, December 12, 1986. Reasons for This Decision: The foreign instrument can test the hardness of ceramics from room temperature to over 1400 degree centigrade in vacuum or selected (e.g. inert) atmosphere. Advice Submitted By: National Institutes of Health, February 17, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

The National Institutes of Health and National Bureau of Standards advise in the respectively cited memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc 87–7038 Filed 3–30–87; 8:45 am]

BILLING CODE 3510–05–M

---

## Masters, Mates, and Pilots MATES Program; Rescission of Decision on Application for Duty-Free Entry of Scientific Instrument

The denial of the application for duty-free entry of a scientific instrument in Docket Number 82–00194, 51 FR 35019 (October 1, 1986), as corrected in 51 FR 46892 (December 29, 1986) and 52 FR 656 (January 7, 1987), has been rescinded. The Department of Commerce has reopened its review of that application.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–7039 Filed 3–30–87; 8:45 am]

BILLING CODE 3510–05–M

**Michigan Technological University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments**

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC

Docket No.: 87–069. Applicant: Michigan Technological University, Houghton, MI 49931. Instrument: Electron Probe X-Ray Microanalyzer System, Model JXA–8600. Manufacturer: Joel Inc., Japan. Intended Use: See notice at 52 FR 2125, January 20, 1987. Reasons For This Decision: The foreign instrument is capable of image analysis combining x-ray, electron and cathodoluminescence signals.

Docket No.: 87–080. Applicant: Harvard University, Cambridge, MA 01238. Instrument: Atmospheric Gas Analyzer, Model LMA–3. Manufacturer: Scintrex, Canada. Intended Use: See notice at 52 FR 2251, January 21, 1987. Reasons For This Decision: The foreign instrument provides in situ measurements of $NO_2$ concentration directly (without preconversion to NO) with a detection limit of 5.0 parts per trillion.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–7040 Filed 3–30–87; 8:45 am]

BILLING CODE 3510–DS–M

**University of Hawaii; Decision of Application for Duty-Free Entry of Scientific Instrument**

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–079. Applicant: University of Hawaii, Honolulu HI 96822. Instrument: Thermal Ionization Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: See notice at 52 FR 2251, January 21, 1987.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (November 5, 1986).

Reason: The foreign instrument is equipped with a fully automated multiple collector system capable of providing an external precision on Neodymium (200 ng) of 0.001%. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonably delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the only known domestic manufacturer, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–7041 Filed 3–30–87; 8:45 am]

BILILNG CODE 3510–DS–M

**University of Tennessee; Decision on Application For Duty-Free Entry of Scientific Instrument**

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–070. Applicant: University of Tennessee, Knoxville, TN 37996–1600. Instrument: Mass Spectrometer, Model ZAB–E. Manufacturer: VG Analytical Instruments Ltd., United Kingdom. Intended Use: See notice at 52 FR 2126, January 20, 1987.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (September 5, 1986).

Reasons: The foreign instrument provides a resolution up to 125,000, a mass range of 10,000 amu at 8 keV and 8000 at 10 keV in the fast atom bombardment mode. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instrument of the same general category shall be taken into account, as well as other factors which

in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response or "no bid" responses to a formal request for quotation sent to domestic manufacturers it is apparent that a domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 87-7045 Filed 3-30-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[C-201-007]

## Pectin From Mexico; Final Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On February 26, 1987, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico. The review covers the period April 1, 1983 through December 31, 1984 and 12 programs.

We gave interested parties on opportunity to comment on the preliminary results. We received no comments. Based our our analysis, the final results of the review are the same as the preliminary results.

**EFFECTIVE DATE:** March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephen Nyschot or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 26, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 5806) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico (47 FR 54987, December 7, 1982). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of Review

Imports covered by the review are shipments of Mexican pectin, used as an ingredient in food and drugs. Such merchandise is currently classifiable under item 455.0400 of the Tariff Schedules of the United States Annotated.

The review covers the period April 1, 1983 through December 31, 1984 and 12 programs: (1) CEPROFI; (2) FONEI; (3) NDP preferential discounts; (4) CEDI; (5) FOMEX; (6) FOGAIN; (7) state tax incentives; (8) import duty reductions and exemptions; (9) Article 94 of the Banking Law; (10) BANCOMEXT loans; (11) delay of payments on loans; and (12) delay of payment of fuel charges to PEMEX.

The review covers the only known exporter of pectin to the United States, Grindsted de Mexico, S.A. de C.V. Grindsted took over Pectina de Mexico, S.A., the signatory to the suspension agreement, in January 1984.

### Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine that the signatory to the agreement has complied with its terms during the period of review. Therefore, the suspension agreement for pectin from Mexico will remain in effect.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: March 25, 1987.

Gilbert B. Kaplan,

*Deputy Assistant Secretary Import Administration.*

[FR Doc. 87-7037 Filed 3-30-87; 8:45 am]

BILLING CODE 3510-DS-M

---

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 25, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 31, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Report which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

### Background

On October 31, 1986, the Government of the United States requested consultations with the Government of the Federative Republic of Brazil with respect to men's and boys' wool suit-type coats in Category 433. This request was made on the basis of the agreement, effected by exchange of notes dated August 7 and 29, 1985, as amended, between the Governments of the United States and the Federative Republic of Brazil relating to trade in cotton, wool and man-made fiber textile products.

This notice is to advise the public that in recent consultations between the two governments, agreement was reached on this category for the period which began on December 1, 1986 and extends through March 31, 1987. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of textile products in Category 433, produced or manufactured in Brazil and exported during the prorated four-month period which began on December 1, 1986 and extends through March 31, 1987 at a prorated limit of 5,470 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14,

1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 25, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 7 and 29, 1985, as amended, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 31, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 433, produced or manufactured in Brazil and exported during the prorated four-month period which began on December 1, 1986 and extends through March 31, 1987, in excess of 5,470 dozen.[1]

Also effective on March 31, 1987, you are directed to deduct 3 dozen from the charges to Category 433 made to the group limit for Categories 300–369 and 600–670 established in the directive of March 18, 1986 for the period April 1, 1986 through March 31, 1987. This same amount should be charged to the limit for Category 433 for the period December 1, 1986 through March 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Impiementation of Textile Agreements.*

[FR Doc. 87–7036 Filed 3–30–87; 8:45 am]

BILLING CODE 3510–DR–M

[1] The limit has not been adjusted to account for any imports exported after November 30, 1986.

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to and deletions from procurement list.

**SUMMARY:** The Committee has received proposals to add to and delete from Procurement List 1987 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

**DATE:** Comments must be received on or before: April 30, 1987.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** C. W. Fletcher, (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

**Commodities**

*Lacquer, Cellulose (Nitrate)*

8010–00–598–5455

*Enamel Gloss*

8010–01–598–4519
8010–01–598–4520
8010–01–598–4521
8010–01–598–4522

**Military Resale Commodities**

*No. 506*

Air Deodorizer, Push-UP Type, Floral Spring.

*No. 507*

Air Deodorizer, Push-Up Type, Lemon.

### Deletion

It is proposed to delete the following services and commodities from Procurement List 1987, November 3, 1986 (51 FR 39945):

**Services**

*Repair of Rubberized Items*

Mattress Pneumatic
(Noninsulated 8465–00–254–8887)
(Insulated 8465–00–518–2781)
Ponchos
(8465–00–935–3257)
Bag Clothing, Waterproof
(8465–00–261–6909)
Fort Bliss, TX

*Repair Service of the following items at Fort Bliss, TX only*

Bag, Sleeping
8465–00–242–7855
8465–01–049–0088
Case, Sleeping Bag
8465–00–237–8719
Liner, Field Jacket
8415–00–782–2888
Liner, Trousers, Field
8415–00–782–2926
Bag, Barracks
8465–00–530–3692
Bag, Duffel
8465–00–141–0932
Commissary Shelf Stocking, Naval Station, Long Beach, California
Commissary Shelf Stocking and Custodial, Columbus Air Force Base, Mississippi
Grounds Maintenance, Recreation Areas, Naval Air Station, Lemoore, California
Janitorial Service, USDA Forest Service, Sequoia National Forest, Porterville, California, at:
Supervisor's Office, Smith Building, 900 W. Grand Avenue, Warehouse Complex, 480 N. Henrahan Avenue
Shrink Wrapping Gift Packages, U.S. Postal Service, Washington, DC

**Commodities**

*Cable Assembly, Power*

6150–00–935–8799
6150–00–507–8852

**C. W. Fletcher,**

*Executive Director.*

[FR Doc. 87–7054 Filed 3–30–87; 8:45 am]

BILLING CODE 6820–33–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Policy Board Advisory Committee; Meeting

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Policy Board Advisory Committee will meet in closed session on 23–24 April 1987 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independents informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with military requirements in space, strategic offensive forces, and regional conflicts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

P.H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

March 25, 1987.

[FR Doc 87–6997 Filed 3–30–87; 8:45 am]

BILLING CODE 3810–01–M

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 14–15 April 1987.

Times of Meeting:

0830–1700, 14 April 1987
0830–1500, 15 April 1987

Place: Fort McClellan, Alabama.

Agenda: The Army Science Board's Ad Hoc Subgroup for the Army Biological Defense Program will meet to discuss vulnerability, doctrine, training, material requirements, medical/chemical issues and program structure issues. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc 87–7076 Filed 3–30 87; 8:45am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Indian Education Programs; Formula Grants; Local Educational Agencies and Tribal Schools

**AGENCY:** Department of Education.

**ACTION:** Notice of extension of closing date for transmittal of new applications for Fiscal Year 1987 assistance under the Formula Grants—Local Educational Agencies and Tribal Schools Program.

**SUMMARY:** This notice extends the closing date of February 13, 1987, to April 24, 1987, for the transmittal of new applications under the Formula Grants—Local Educational Agencies and Tribal Schools Program (84.060A). The application notice for this program published in the **Federal Register** on September 17, 1986 (51 FR 33005), provides detailed information concerning this program.

**SUPPLEMENTARY INFORMATION:** To assure that awards under this formula grant program are issued in sufficient time to inform grantees of the amount of their grants for the following school year, closing dates are established annually for submission of applications. These dates are published in the **Federal Register.** As a courtesy, the Department also mails application packages to all current grantees under the program. In addition, newsletters announcing the closing date are sent to current grantees by the five Resource and Evaluation Centers established by the Indian Education Program office to provide technical assistance to grantees and potential applicants for Indian Education Act funds. The notice establishing the closing date for applications for fiscal year 1987 grants was published on September 17, 1986. Application packages were mailed on November 14, 1986.

In February 1987, the Department received 1,072 grant applications, although 1,112 LEAs are currently participating in the program. The Department has determined that this reduction in school district participation, representing approximately 2,300 eligible Indian students enrolled in these districts, was the result of districts being unaware of the closing date. Many school districts that need the financial assistance provided under this program cannot afford to subscribe to the **Federal Register.** Further, while the Department has attempted in the past two years to establish annual closing dates in February so that LEAs may plan accordingly and request application packages if they have not received them reasonably in advance of that month, the dates were extended in those years due to special circumstances. As a result, many LEAs may have expected a closing date later in the year.

The extension of the closing date to April 24, 1987, will enable all eligible applicants to apply or to amend their applications at their discretion. This extension will not substantially alter the schedule for issuance of grant awards.

**FOR FURTHER INFORMATION:** Inquiries concerning this extension should be addressed to Mr. Ervin Keith, Deputy Director, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177 (Mail Stop 6267), Washington, DC 20202. Telephone (202) 732–5042.

(20 U.S.C. 241aa–241ff)

(Catalog of Federal Domestic Assistance Number 84.060, Formula Grants—Local Educational Agencies and Tribal Schools)

Dated: March 26, 1987.

Lawrence F. Davenport,

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 87–7059 Filed 3–30–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Office of Assistant Secretary for International Affairs and Energy Emergencies

### International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subseuent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers:

RTD/EU (SD)–64, for the retransfer of 0.008 grams of uranium enriched to 2.77 percent in the isotope uranium-235 and 0.000024 grams of plutonium contained in an irradiated fuel pin sample for burnup analysis, from Switzerland to Belgium. RTD/EU (SD)–65, for the retransfer of 12 grams of uranium enriched to 2.77 percent in the isotope uranium-235 and 0.04 grams of plutonium contained in irradiated fuel pin samples for burnup analysis, from Switzerland to Belgium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 25, 1987.

For the Department of Energy.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 87–7044 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

## Announcement of Change in Location of Public Hearing on Draft Environmental Impact Statement, Remedial Action at Weldon Spring Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of change in location of public hearing.

**SUMMARY:** The Department of Energy (DOE) has changed the location of the public hearing to be held with respect to the draft environmental impact statement.

**DATE AND TIME:** The public hearing is scheduled for April 10, 1987, at 7:30 p.m.

**ADDRESS:** Hollenbeck Junior High School Gymnasium, 4555 Central School Road, St. Charles, Missouri.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of Monday, March 9, 1987, on page 7190 (FR Doc. 87–4822), DOE announced the availability of the draft Environmental Impact Statement (DOE/EIS–117D), Remedial Action at the Weldon Spring Site and the intent to conduct a public hearing on April 10, 1987, 7:30 p.m. at Lindenwood College, St. Charles, Missouri. In recent weeks there has been a strong indication of concern from the local community that the proposed hearing location at the Lindenwood College would have neither the capacity, nor the parking facilities, to adequately handle the possible attendance for the public hearing. In order to be more responsive to the local community's concerns, the DOE is changing the hearing location to Hollenbeck Junior High School Gymnasium, a facility that more than triples the seating capacity and provides more than adequate parking. Notices will be posted at Lindenwood College indicating the change in location for the hearing. Local news releases and advertisements, as well as radio public service announcement will be sent out well in advance to advise the local community of the change in location.

**FOR FURTHER INFORMATION CONTACT:** Rodney R. Nelson, Project Manager, (314–441–8978).

**William R. Voight, Jr.,**

*Director, Office of Remedial Action and Waste Technology.*

[FR Doc. 87–7045 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

## Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on April 7, 1987, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The agenda for the meeting is follows:

1. Opening remarks.

2. Approval of Record Note of IAB Meeting of October 14, 1986.

3. Correspondence and Communications with IEA and Reporting Companies.

4. Report from Subcommittee C.

5. Papers in Preparation for Governing Board Meeting:

a. IEA Emergency Response Systems—Background Paper for the Governing Board Meeting at Ministerial Level.

b. Quality of Stocks.

6. Emergency Stocks:

a. Emergency Reserves and Accessible Stocks—Terms and Calculations.

b. Emergency Minimum Operating Requirements—Draft Terms of Reference.

7. Other Emergency Preparedness Issues:

a. Progress on Procedures for Consultations on Coordinated Stockdraw and Other Measures.

8. Other Topics:

a. Middle East Oil Supply—the Hormuz Factor.

b. Demand Restraint and Deliveries of International Aviation Fuels.

c. End March Oil Market Report.

d. Base Period Final Consumption (1Q86–4Q86).

9. IAB Organization, Leadership and Succession.

10. Date of Next Meeting and Future Business.

II. A meeting of the IAB will be held on April 8, 1987, at the offices of the IEA at the aforesaid address beginning at 10:00 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the aforesaid location on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda.

2. Summary Record of the 55th Meeting.

3. Preparation for Governing Board Meeting at Ministerial Level.

—IEA Emergency Response Systems Background Paper for the Governing Board Meeting at Ministerial Level.

—Quality of Stocks.

4. Emergency Stocks.

—Emergency Reserves and Accessible Stocks—Terms and Calculations.

—Emergency Minimum Operating Requirements—Draft Terms of Reference.

5. Other Emergency Preparedness Issues.

—Workshop on Practical Aspects of Oil Consumption Reduction Measures—Status of Preparations.

—Progress on Procedures for Consultations on Coordinated Stockdraw and Other Measures.

—Review of Member Countries' Emergency Response Programs:
Greece
Luxembourg
Norway
Turkey

—Summary of Member Countries' Emergency Response Program Reviews.

—Questionnaire for Next Cycle of Emergency Response Program Reviews.

6. Other Topics.

—Middle East Oil Supply—The Hormuz Factor.

—Status of EUROILSTOCK.

—Demand Restraint and Deliveries of International Aviation Fuels.

—End March Oil Market Report.
—Base Period Final Consumption (1Q86–4Q86).

7. Any other business.
8. Date of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meeting is open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, and invitees of the SEQ.

Issued in Washington, DC, March 26, 1987.

**J. Michael Farrell,**

*General Counsel.*

[FR Doc. 87–7046 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

## Conduct of Employees; Waiver; Compensation; Supervisory Employee

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Dr. Iran L. Thomas is under consideration for the position of Director of Materials Sciences in the Office of Energy Research of the Department of Energy. Dr. Thomas has an interest in the Retirement Program Plan for Employees of Martin Marietta Energy Systems, Inc., as a result of his past employment at Oak Ridge National Laboratory. He also has an interest in the Occidental Petroleum Corporation Retirement Plan as the result of his past employment with that company.

It has been established to my satisfaction that requiring Dr. Thomas to divest his interests in the Retirement Program Plan for Employees of Martin Marietta Energy Systems, Inc., and in the Occidental Petroleum Corporation Retirement Plan would impose an exceptional hardship on him, and that such interests are vested pension interests within the meaning of section 602(c) of the Act. Accordingly, I have granted Dr. Thomas a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interests in the Retirement Program Plan for Employees of Martin Marietta Energy Systems, Inc., and in the Occidental Petroleum Corporation Retirement Plan.

In accordance with section 208, Title 18, United States Code, Dr. Thomas will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon either Martin Marietta Energy Systems, Inc., or its parent, Martin Marietta Corporation, or upon Occidental Petroleum Corporation unless his supervisor and the Counselor agree that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: March 20, 1987.

**John S. Herrington,**

*Secretary of Energy.*

[FR Doc. 87–7000 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

## Bonneville Power Administration

## Record of Decision on Proposed IP–PF Rate Link; Direct Service Industry Options Environmental Impact Statement

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Record of decision.

**SUMMARY:** BPA has decided to adopt a formalized link between the rates charged its direct-service industry (DSI) customers and the rates charged its public body and cooperative (preference) customers. BPA's proposed rate link, referred to as the IP–PF rate link, establishes a methodology for determining the level of the DSI rates for future rate filings.

BPA sells power to the DSIs under the Industrial Firm Power (IP) rate schedule and, for those aluminum smelter DSIs electing to participate, the Variable Industrial Power (VI) rate schedule. The charges contained in the VI rate schedule are tied to the IP rate schedule. The current IP rate schedule contains three rate options: The IP Premium rate, the IP Standard rate, and an Incentive rate. The IP Premium rate developed for the current rate period recognizes that contract service to the entire DSI load is essentially firm given the projected availability of BPA's firm surplus to be used, if necessary, to serve the DSI load. The IP Standard rate provides for a lower quality of service to the first quartile (one-fourth) of the DSI load relative to that quality of service provided under the IP Premium rate. An Incentive rate is also available at the Administrator's discretion. BPA's preference customers purchase power under the Priority Firm Power (PF) rate schedule and, potentially, under the New Resource Firm Power (NR) rate schedule.

The IP–PF rate link is proposed as a long-term rate methodology that would be used in future wholesale rate adjustment proceedings as part of the determination of the level of the IP Standard and IP Premium rates (or their successor rates) and, thus, the parameters of VI rate. The IP–PF rate link is proposed to be effective for the period commencing July 1, 1985 (the effective date of the 1985 rates), through the last rate period commencing before June 30, 1990.

Section 7(c)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) provides that DSI rates after June 30, 1985, should be based on the applicable wholesale rates to BPA's preference customers plus a margin based on the typical margins, in addition to power and transmission costs, that preference customers include in the rates to their industrial consumers. Section 7(c)(2) also requires that this margin-based IP rate be subject to a "floor rate" test, which provides for a minimum DSI rate level. Section 7(c)(3) provides for a credit to the DSIs for the value of reserves that the DSIs provide by allowing BPA to restrict portions of their loan under certain conditions.

BPA implemented the post-1985 rate directives of the Pacific Northwest Power Act for the first time in its 1985 wholesale power rate filing. Although the current IP rates were defined by the floor rate, the IP Premium margin (the margin for determining the margin-based IP Premium rate), the IP Standard margin (the margin for determining the margin-based IP Standard rate), and the value of reserves (VOR) credit derived for the 1985 rate filing provide a basis for defining the relationship between the IP and PF rates in future rate filings. This current relationship is comprised of a net Premium margin of 0.92 mill per kilowatthour (IP Premium margin less VOR credit) and a net Standard margin of 0.38 mill per kilowatthour (IP Standard margin less VOR credit).

Under the proposed IP–PF rate link, the net Premium margin and the net Standard margin derived for the 1985 wholesale rate filing will be adjusted for inflation in the development of the IP rates for future rate filings.

IP rate levels determined by the IP–PF rate link will continue to be subject to the DSI floor rate test. DSIs purchasing power under the IP rate will be subject to adjustment clauses, which may result in annual surcharges and/or credits during a rate period, that are applicable to preference customers, assuming that the levels of the IP Premium and the IP Standard rates (or their successor rates) are defined by the IP–PF rate link rather than by the floor rate.

For the duration of the IP–PF rate link, BPA will continue to make available to the DSIs, under the IP Premium rate (or its successor rate), the quality of service to which they are entitled under their Power Sales Contracts with BPA. Under the IP Standard rate (or its successor rate), quality of service to the DSIs for the duration of the IP–PF rate link will be that quality of service specified by the Variable Rate Contract for service under the Variable Industrial Power (VI–86) discounted rate.

Implementation of an IP–PF rate link is one of three options, or actions, that BPA considered for the purpose of stabilizing DSI loads and thereby improving BPA's revenue stability and facilitating resource operational planning. BPA has already implemented the VI rate to aluminum smelting DSIs and currently is in the process of implementing another option, a conservation/modernization (Con/Mod) program directed at aluminum smelting DSIs.

BPA prepared the Direct Service Industry Options Environmental Impact Statement (EIS) (DOE/EIS–0123F) to analyze the alternatives for each of the three options, the no action alternative, and the cumulative impacts of implementing more than one option.

BPA considered two alternative periods of duration, through Fiscal Year (FY) 1991 and through June 30, 2001, for the IP–PF rate link in the EIS. The alternative of duration through FY 1991 corresponds closely with the effective IP–PF rate link period included in BPA's final decision. BPA also considered two alternative methods of implementation, contract modification and policy implementation. BPA selected the policy alternative.

BPA based its decision to implement the IP–PF rate link on legal requirements; ability to meet the need (that is, to stabilize DSI loads in order to facilitate BPA's resource operational planning and to stabilize BPA revenues); BPA's rate design objectives; and consideration of physical and socioeconomic impacts.

A 5-year duration is environmentally preferred over no action and duration through June 30, 2001. The policy alternative is environmentally preferred over contract modification. The 5-year duration alternative with policy implementation, a combination which closely corresponds to the proposed IP–PF rate link, is superior to no action, the alternative having contract modification, and duration through June 30, 2001, when evaluated on the basis of all the decision factors.

BPA does not plan any programs to monitor environmental effects of the proposed IP–PF rate link and is not undertaking any specific mitigation or monitoring.

**FOR FURTHER INFORMATION CONTACT:**
Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, OR 97208, telephone (503) 230–5136.

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Department of Energy, Bonneville Power Administration, has considered three options to help stabilize the electrical load of BPA's DSI customers in order to enhance BPA's revenue stability and facilitate resource operational planning. The three options were: (1) A variable rate to the aluminum smelter DSIs based on market prices for aluminum; (2) a conservation/modernization (Con/Mod) program directed toward the aluminum smelter DSIs; and (3) a formalized link between the rates charged the DSIs and the rates charged BPA's preference customers (the IP–PF rate link). The three types of options, or actions, are not alternatives to each other since each could be implemented independently. BPA already has implemented the Variable Industrial Power (VI–86) rate for aluminum smelter DSIs and is in the process of implementing the Con/Mod program.

Sections 7(c)(2) and 7(c)(3) of the Pacific Northwest Power Act provide that DSI rates after June 30, 1985, shall be based on the applicable wholesale rates to BPA's preference customers, plus a margin based on the typical margins included in preference customers' rates to their industrial consumers, less a credit for the value of reserves that the DSIs provide by allowing BPA to restrict portions of their load under certain conditions. Section 7(c)(2) also provides for a minimum DSI rate level, or a floor rate, based on the DSI rates in effect for the 12-month period preceding July 1, 1985.

BPA sells power to the DSIs under the IP rate schedule and, for those aluminum smelting DSIs electing it, the VI rate schedule. The charges contained in the VI rate schedule are tied to the IP rate schedule. The IP rate schedule contains three rate options: The IP Premium rate, the IP Standard rate and an Incentive rate. The IP Premium rate developed for the current rate period recognizes that contract service to the entire DSI load is essentially firm given the availability of BPA's unsold firm surplus. The IP Standard rate provides for a lower quality of service to the DSI first quartile relative to the quality of service provided under the IP Premium rate. The Incentive rate is available for implementation at the Administrator's option. BPA's preference customers purchase power under the PF rate schedule and, potentially, under the NR rate schedule.

For the 1985 wholesale power rate filing, the IP rate level defined by the floor rate provisions of section 7(c)(2) of the Pacific Northwest Power Act was higher than the margin-based rate levels defined by the applicable wholesale rate and the results of BPA's section 7(c)(2) Industrial Margin Study. Therefore, the current IP rates are defined by the floor rate. BPA's proposed IP–PF rate link provides a methodology for determining IP rate levels, which also will be subject to the floor rate test, for future rate filings.

BPA prepared an EIS to analyze the potential environmental impacts of a no action alternative and alternatives for each of the three DSI options. The EIS also evaluated the cumulative effects of implementing more than one option. The major effects examined included aluminum smelter operations, resource operations and development, and physical and socioeconomic environmental impacts.

This Record of Decision pertains only to the IP–PF rate link, and does not resolve issues relating to the Variable rate or the Con/Mod program. However, in making its decision on the IP–PF rate link, BPA considered the potential impacts identified in the EIS of implementing an IP–PF rate link alone or in combination with one or both of the other two options.

The Draft EIS was circulated to the public for review in January 1986, and comments were accepted through February 21, 1986. The Final EIS, which was based on the Draft EIS and comments received on the Draft EIS, was distributed on May 8, 1986. Copies of the Draft and Final EISs are available

upon request from the BPA Environmental Manager (address above).

**Decision**

BPA has decided to adopt a formalized rate link between the rates charged its DSI customers and the rates charged its preference customers. This link is referred to as the IP–PF rate link. The IP–PF rate link is proposed to be effective for the period commencing July 1, 1985 (the effective date of the 1985 rates), through the last rate period commencing before June 30, 1990.

BPA implemented the post—1985 rate directives of the Pacific Northwest Power Act for the first time in its 1985 wholesale power rate filing. Although the current IP rates were defined by the floor rate, the IP Premium margin (the margin for determining the margin-based IP Premium rate), the IP Standard margin (the margin for determining the margin-based IP Standard rate), and the value of reserves (VOR) credit derived for the 1985 rate filing provide a basis for defining the relationship between the IP and PF rates in future rate filings. This current relationship is comprised of a net Premium margin of 0.92 mill per kilowatthour (IP Premium margin less VOR credit) and a net Standard margin of 0.38 mill per kilowatthour (IP Standard margin less VOR credit). Under the proposed IP–PF rate link, the net Premium margin and the net Standard margin derived for the 1985 wholesale rate filing be adjusted for inflation in the development of the IP rates for future rate filings.

The applicable wholesale rate will be determined for each separate rate filing. The margin-based IP Standard rate developed for future rate filings will continue to be subject to the DSI floor rate test.

DSIs purchasing power under the IP rate schedule will be subject to the same automatic adjustment clauses that are applicable to BPA's preference customers, assuming that the levels of the IP Standard and the IP Premium rates (or their successor rates) are defined by the IP–PF rate link rather than the DSI floor rate. For the duration of the IP–PF rate link, BPA will continue to make available to the DSIs, under the IP Premium rate (or its successor rate) the quality of service to which they are entitled under their Power Sales Contracts with BPA. Under the IP Standard rate (or its successor rate), the quality of service to the DSIs for the duration of the IP—PF rate link will be the quality of service specified by the Variable Rate Contract for the service under the VI–86 discounted rate.

**Alternatives**

Relative to the IP–PF rate link, a no—action alternative, two IP–PF rate link duration alternatives, and two implementation alternatives were considered in the EIS. BPA based its conclusions regarding environmental impacts of the proposed IP–PF rate link on the analysis of the 5-year duration alternative and the policy alternative in the EIS, since these alternatives closely correspond to features of the proposed IP–PF rate link.

*A. No-Action Alternative*

The no-action alternative assumed continuation of DSI rate provisions that were in effect prior to implementation of the VI–86 rate. That is, it assumed that the IP rate schedule provided for an IP Premium rate, an IP Standard rate, and when BPA revenues would be increased by an incentive rate offering, a discretionary Incentive rate. The no-action alternative also assumed a continuation of current BPA procedures for development of the IP rate schedule. Specifically, it assumed that the values of the IP Premium margin, the IP Standard margin, and the VOR credit would be determined in each rate proceeding rather than being predetermined for an extended period through a formalized rate link.

*B. Duration Alternatives*

The two duration alternatives analyzed for the EIS were: (1) A 5-year duration; and (2) duration through June 30, 2001.

The 5-year duration alternative assumed that the IP–PF rate link would be in effect through FY 1991. This alternative closely corresponds to the duration under the IP–PF rate link which BPA is proposing to adopt. Under this alternative, rate uncertainty perceived by the DSIs would be less than under the no action alternative (DOE/EIS–0123F, p. 26).

The second alternative would extend the period of the IP–PF rate link through the expiration date of the DSI Power Sales Contracts, through June 30, 2001. The DSI, may regard long-term rate uncertainty associated with this alternative to be less than the uncertainty associated with a 5-year duration (DOE/EIS–0123F, p. 26).

*C. Implementation Alternatives*

The two implementation alternatives analyzed for the EIS were: (1) The policy alternative; and (2) the contract modification alternative.

Under the policy alternative, the IP–PF rate link would be implemented through a long-term policy. Conceivably, a rate link policy could be subject to changes, prior to the end of the originally specified expiration date for the rate link, following ratemaking procedures provided under section 7(i) of the Pacific Northwest Power Act (DOE/EIS–0123F, p. 26). The policy alternative corresponds to BPA's proposed means of implementating the IP–PF rate link.

Under the contract modification alternative, the IP–PF rate link would be implemented contractually. Implementation through contract modification would provide less flexibility for BPA to modify, if necessary, the IP–PF rate link provisions relative to the flexibility provided under the policy alternative. However, the contract modification alternative would provide somewhat greater rate certainty and, therefore, planning certainty to the DSIs than the policy alternative (DOE/EIS–0123F, p. 26).

**Decision Factors**

BPA based its decision on legal requirements, ability to meet the need, rate design objectives, and a consideration of environmental impacts.

*A. Legal Requirements*

Section 7(a) of the Pacific Northwest Power Act requires BPA to set rates "in accordance with sound business principles" to produce revenues tht recover the Administrator's costs and allow BPA to meet its obligations to the U.S. Treasury. Section 7(a) directs that these rates be set in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act of 1974 (Transmission Act), 16 U.S.C. section 838; section 5 of the Flood Control Act of 1944; and the other provisions of the Pacific Northwest Power Act. Section 9 of the Transmission Act requires that rates be established "with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles," while having regard to recovery of costs and repayment to the U.S. Treasury. Substantially the same requirements are set forth in section 5 of the Flood Control Act.

Section 7(c)(1)(B) of the Pacific Northwest Power Act directs that rates to the DSIs be established after July 1, 1985, at a level the Administrator determines to be equitable in relation to the retail rates charged by public bodies to their industrial customers. The process for making that determination is outlined in section 7(c)(2). The determination is to be based on the rate BPA charges its preference customers

plus an industrial margin, taking into account numerous cost and load characteristic factors. Section 7(c)(2) also states that the rates shall not be less than rates "in effect for the contract year ending June 30, 1985" (the floor rate). The rates in effect for the contract year ending June 30, 1985, were set to recover a revenue level determined by the cost recovery requirements of section 7(c)(1)(A). Finally, section 7(e) states that nothing in the Pacific Northwest Power Act prohibits the Administrator from establishing any particular rate form.

Policy implementation of the IP–PF rate link with a 5-year duration could enhance BPA's revenues compared to no action, because it would reduce planning uncertainty facing the DSIs. It also could facilitate increased load stability and possibly augment the benefits of the Variable rate (DOE/EIS–0123F, pp. 26, 115, 122).

Implementation of the rate link through contract modification or extending the rate link duration to June 30, 2001, contains greater risks compared to policy implementation for a 5-year period. Extending the duration of the rate link to June 30, 2001, would increase the risk that the rate link could become "outdated." That is, there is greater risk under a longer duration that IP rates defined by an updated calculation of the margin and the VOR credit in some future rate period would be significantly different from IP rate levels determined by an extended IP–PF rate link. This potentially would result in IP rate levels inconsistent with the post-1985 rate directives of section 7(c) of the Pacific Northwest Power Act. Therefore, a 5-year duration with policy implementation is superior to no action and the other alternatives in meeting BPA's legal requirements.

*B. Ability to Meet the Need.*

BPA evaluated the ability of the no-action alternative and of each of the IP–PF rate link alternatives under consideration to meet the underlying need; that is, to stabilize the DSI load in order to facilitate resource operational planning and to stabilize BPA's revenues (DOE/EIS–0123F, p. 1).

The no-action alternative does not meet the need for stabilizing the DSI load. Under no action, BPA would continue to recalculate the margin and the VOR credit for each rate filing. This would perpetuate the rate uncertainty perceived by the DSIs, undermining their ability to plan and, potentially, undermining DSI load stability.

A 5-year duration for the rate link would provide the DSIs with more rate certainty compared to no action. A longer duration, through June 30, 2001, would further reduce rate uncertainty to the DSIs and could result in slightly more DSI load stability than a 5-year duration (DOE-EIS–0123F, p. 26). Implementation of the rate link through a policy would reduce rate uncertainty relative to no action, but would result in slightly greater rate uncertainty than if the IP–PF rate link were implemented contractually.

In summary, the no-action alternative would not provide sufficient rate predictability to stabilize the DSI load. Policy implementation with a 5-year duration adequately meets the need for increasing rate predictability necessary for stabilizing the DSI load. Contractual implentation and duration through June 30, 2001, would further reduce rate uncertainty facing the DSIs and could result in lightly more DSI load stability than policy implementation for a 5-year period. All of the IP–PF rate link alternatives would enhance the benefits of the VI rate and a Con/Mod program to DSI load stability and BPA revenue stability.

*C. Rate Design Objectives.*

In addition to meeting legal requirements, BPA's rates are designed to: (1) Meet BPA's revenue requirement while distributing the burden in an equitable manner among recipients of the service; (2) encourage conservation and minimize environmental impacts; and (3) encourage efficient use of resources by reflecting costs incurred and benefits received. Consideration also is given to rate continuity, ease of administration, revenue stability, customer acceptability, and ease of understanding.

Policy implementation of the IP–PF rate link and a 5-year duration potentially provide greater revenue stability than the no action alternative, and would not expose BPA to long-term risk of revenue underrecovery that may occur under the no action alternative. Also, policy implementation with a 5-year duration would receive greater acceptance among BPA'a non-DSI customers than any alternative involving duration through June 30, 2001, or contract modification. All the rate link alternatives provide more rate continuity than does the no action alternative. With respect to the other rate design objectives, there is no significant difference among alternatives.

*D. Environmental Impacts.*

The environmetnal impacts of the IP–PF rate link stem from the perception by the aluminum companies of the degree of future rate and planning certainty provided. It was not possible to develop a quantitative analysis of how the aluminum companies might modify their business and operational decisions in response to a rate link. This is because the rate link involves the issue of rate predictability and its effect on DSI loads, which is difficult to estimate quantitatively. Therefore, the environmental and socioeconomic impacts of the IP–PF rate link alternatives were analyzed qualitatively in the EIS.

The IP–PF rate link is not likely to affect operations, and therefore environmental impacts, of the least or most efficient aluminum smelters since rate certainty alone would not affect their plant investment or closure decisions. For those smelters intermediate in efficiency, the additional rate and planning certainty provided by an IP–F rate link could encourage investment in plant modernization and forestall plant closures because of greater assurance of investment recovery (DOE/EIS–0123F, p. 115). Thus, the physical environmental impacts of some plants may continue with an IP–PF rate link when otherwise the plants would have closed and the impacts ceased. However, the physical impacts of the aluminum smelters are regulated. Operation of the smelters, in general, does not result in environmental damage which has been found unacceptable by the responsible regulatory agencies. The environmental problems which have been associated with the smelters already have been addressed. Continued operation of smelters which otherwise would close would preclude or forestall significant, localized adverse socioeconomic effects.

To the extent that aluminum smelter electrical demands may be higher because some smelters choose not to close, or lower because some smelters choose to modernize and improve their electrical efficiency as a consequence of an IP–PF rate link, the environmental impacts associated with the generation of electricity would be affected accordingly (DOE/EIS-0123F, p. 115).

The IP–PF rate link is not likely to significantly affect the non-aluminum DSIs, since electricity costs are, for most of those industries, less important in their business decisions than for the aluminum companies (DOE/EIS–0123F, p. 28). However, the IP–PF rate link is expected to have a generally beneficial, stabilizing effect on the rates of all nonaluminum customers of BPA (DOE/EIS–0123F, p. 115), and thus may have positive regional socioeconomic benefits.

BPA has implemented the Variable rate for aluminum smelters and is in the process of implementing its Con/Mod program for aluminum smelters. Both of these options also were addressed in the DSI Options EIS. Implementing an IP–PF rate link will slightly augment the cumulative impacts of these other actions, both of which are also directed at stablizing aluminum smelter load (DOE/EIS–0123F, p. 122).

Maintaining the IP–PF rate link through FY 2001 would enhance aluminum smelters DSIs' planning certainty throughout the term of the DSIs' current power sales contracts, and could therefore lead to a greater degree of plant modernization. At the same time, maintaining the link for a long period of time increases the risk that the aluminum customers, or BPA's other customers, would experience inequities if the initial formulation of the link were no longer appropriate for determining the IP rate (i.e., if the true values of the margin and/or VOR credit change over time in a manner inconsistent with the rate link). Limiting the duration of the link to 5 years carries less risk of error but, relative to a longer duration, also provides somewhat less long-term planning certainty to the aluminum companies. The means of implementing the IP–PF rate link, through a policy or a contract, also carries a similar tradeoff between planning certainty for the aluminum companies and risk of rate inequity. Thus, contract modification with a longer duration ultimately could result in higher rates to the aluminum companies and/or BPA's other customers in the future than would result with policy implementation for a 5-year period. Therefore, there may be a greater risk of adverse long-term socioeconomic impacts under contract modification with a longer duration than under policy implementation with a 5-year duration.

**Conclusion Supported by the Decision Factors**

Of the alternatives considered, the 5-year duration alternative with policy implementation is superior to no action and the other alternatives in fulfulling BPA's legal requirements and accomplishing BPA's rate design objectives. Policy implementation with a 5-year duration meets the need for enhancing BPA revenue stability and resource planning certainty. Furthermore, policy implementation with a 5-year duration provides for positive socioeconomic impacts associated with more stable DSI loads relative to no action. Those positive socioeconomic impacts would tend to outweigh any negative physical impacts associated with increased DSI operations. Finally, policy implementation of the IP–PF rate link with a 5-year duration could carry less risk of negative socioeconomic impacts than could occur if the rate link were extended to June 30, 2001, and/or implemented contractually. Therefore, policy implementation of the IP–PF rate link with a 5-year duration is superior to no action, contract modification, and duration through June 30, 2001, when evaluated on the basis of all the decision factors.

**Environmentally Preferred Alternatives**

Policy implementation of the IP–PF rate link and a 5-year duration are environmentally preferred over no action and the other alternatives. A 5-year duration with policy implementation minimizes the possibility that either the DSI customers or BPA's other customers will experience rates higher than they would have without the rate link. Relative to no action, a rate link incorporating these two alternatives would provide greater cut predictability to the DSIs, and would be in effect for a sufficient duration to enhance the chances of continued operations at those smelters which are at risk of closure under no action. Such a rate link would allow them to recoup investments in smelter modernization, especially when combined with the Variable rate and Con/Mod. Furthermore, there is less risk of adverse rate impacts to either the DSIs or other BPA customers under policy implementation with a 5-year duration than under contract modification or duration through June 30, 2001. Thus, an IP–PF rate link incorporating policy implementation and a 5-year duration has the best potential for avoiding adverse socioeconomic impacts in both the communities where smelters are located and elsewhere in the region. To the extent that a 5-year duration with policy implementation would result in higher smelter operating levels, physical enviromental impacts which would have ceased under no action would continue to occur. These physical impacts are closely regulated, however, and would be outweighed by the positive socioeconomic effects of a 5-year duration with policy implementation.

**Mitigation**

Significant adverse socioeconomic impacts are not likely to result from BPA's proposed IP–PF rate link or cumulatively from the IP–PF rate link with the Variable rate and Con/Mod.

Differences in physical impacts could result if aluminum plants remain in operation or modernize which otherwise would close. However, all of the aluminum plants are required to comply with Federal and State laws and regulations for protection of the environment. Air pollution control equipment already has been installed in the plants to comply with regulatory requirements. Existing groundwater pollution problems from past practices at some smelters are being addressed by State and Federal environmental agencies. Facilities for storage of spent potliners have been improved at some of the plants, reducing chances for further contamination from cyanide-containing leachate. Plant modernization measures are not expected to result in substantial adverse environmental impacts. They are more likely to reduce the smelters' impacts and, in any event, are subject to regulatory control (DOE/EIS–0123F, pp. 102–105). Therefore, specific mitigation measures for the IP–PF rate link are not needed.

BPA conducts fish and wildlife and conservation programs independent of any decision on an IP–PF rate link. These programs mitigate any potential impacts related to electric power supply and to BPA's power marketing activities generally.

BPA's existing conservation programs, begun in 1981, are targeted toward all consumer sectors in the region and will help mitigate any need for additional generating resources.

Any changes in hydroelectric resource generation that might occur as a result of changes in aluminum smelter loads will be limited by factors constraining river operations. These factors include flood control, navigation, recreation, and mitigation for fish. Under the terms of the Pacific Northwest Power Act, BPA is required to protect, mitigate, and enhance fish and wildlife to the extent affected by development and operation of hydroelectric projects on the Columbia River or its tributaries. BPA, the U.S. Army Corps of Engineers, and the Northwest Power Planning Council will continue to develop and implement effective spill, bypass, and transportation programs to facilitate passage of downstream migrating smolts.

Implementation of specific conservation and fish and wildlife plans, programs, and projects will be undertaken independent of BPA's decision on the IP–PF rate links and will undergo separate decisionmaking processes. Furthermore, impacts of the IP–PF rate link would be indistinguishable from impacts arising from many other factors. Because of the complexity of these factors, any monitoring to assess impacts

specifically arising from the rate link, to enable improved impact analysis for similar actions, or to carry out mitigation would be speculative and impractical. Therfore, no monitoring or enforcement programs are adoped.

Issued in Portland, Oregon, on March 20, 1987.

**James J. Jura,**
*Administrator.*

[FR Doc. 87-6999 Filed 3-30-87; 8:45 am]
BILLING CODE 6450-01-M

## Economic Regulatory Administration

**[ERA Docket No. 87-12-NG]**

### The Brooklyn Union Gas Co.; Application for Blanket Authorization to Import Natural Gas

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** Notice of application for blanket authorization to import natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 5, 1987, of an application from The Brooklyn Union Gas Company (Brooklyn Union) for blanket authorization to import natural gas, primarily for its own system supply and sales at retail. Authorization is requested to import up to 50 Bcf for a two-year period beginning 60 days after ERA receipt of the application, or upon ERA approval of the application, whichever is later. Brooklyn Union proposes to import natural gas from reliable producer, pipeline or marketer sources in Canada, and from other foreign locations if available on competitive terms. The imported gas would be purchased at rates which, when delivered, would be competitive with comparable domestic gas supplies available to Brooklyn Union. Existing pipeline facilities will be used for the transportation of the requested imports and Brooklyn Union proposes to submit quarterly reports giving details of individual transactions within thirty days following the end of each calendar quarter.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 30, 1987.

**FOR FURTHER INFORMATION:**

Lot Cooke, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The application asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., April 30, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are unncessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official, record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Brooklyn Union's application is available for inspection and copying in the Natural Gas Division Docket Room GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 24, 1987.

**Barton R. House,**
*Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-7001 Filed 3-30-87; 8:45 am]
BILLING CODE 6450-01-M

## Energy Information Administration

### Uranium Industry Annual, EIA-858; Domestic Uranium Mining Production Report, EIA-851; Semiannual Report on Status of Reactor Construction, EIA-254

**AGENCY:** Energy Information Administration, U.S. Department of Energy.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) solicits comments on the extension of its Nuclear and Uranium Data Reporting Forms. In accordance with the Paperwork Reduction Act of 1980, the EIA conducts an assessment to provide

the general public with an opportunity to comment on current nuclear and uranium data forms. This assessment will ensure the EIA that current data collection systems provide the respondents with clear instructions on completing the forms, that respondent burden is minimized to the extent possible, and that survey questionnaires are designed in the proper format for ease in reporting.

**DATE:** Written comments must be submitted on or before April 30, 1987.

**ADDRESS:** Comments should be submitted to William Liggett, Data Collection Project Manager, Energy Information Administration, EI–531, Mail Stop 2G–090, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION OR COPIES OF FORMS AND INSTRUCTIONS:** Copies of Forms EIA–858, EIA–851 and EIA–254 and instructions can be obtained from Mr. William Liggett or Ms. Theresa Payne at the above address or by calling (202) 586–6242 or (202) 586–1018, respectively.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Action
III. Request for Comments

## I. Background

In keeping with the provisions stated in the Department of Energy Organization Act (Public Law 95–91), the Energy Information Administration is responsible for collecting, publishing, and otherwise providing to the Congress, the Executive Branch, and the public, quality statistical data on the status of the domestic uranium and nuclear industries.

Form EIA–858, "Uranium Industry Annual Survey," is a comprehensive study on the uranium industry in the United States. This form collects data on domestic uranium exploration, reserves, production, mining, milling, and marketing. It also collects financial data form every company engaged in any aspect of the above-mentioned activities. The purpose of collecting these data is to provide a comprehensive statistical picture of recent activities of the industry for members of Congress, Federal and State agencies, the uranium and utility industries, and the general public. Further, the data collected on this form are used by the Secretary of Energy to make an annual assessment of the viability of the uranium industry as required by Section 170b of the Atomic Energy Act of 1954, as amended in 1983 by Pub. L. 97–415.

Form EIA–851, "Domestic Uranium Mining Production Report," collects data on uranium concentrate production. These data are used by the Department of Energy to monitor the status of the major domestic uranium producers.

Form EIA–254, "Seminannual Report on Status of Reactor Construction," collects data on the status, labor, construction milestones, and actual and estimated costs of nuclear power plants under construction in the United States. These data are collected for each nuclear power plant under construction until the unit reaches commercial operation. The information provided from this survey is intended primarily for analysts to assist in assessing nuclear power plant construction costs and schedules, for determining the current status of nuclear generating capacity, and for determining potential future requirements for uranium production and enrichment facilities.

The EIA is proposing a 3-year extension through December 31, 1990, of these three forms to continue its nuclear and uranium data collection responsibilities.

## II. Current Action

At this time, the EIA proposes to make no revisions to Forms EIA–858, EIA–851, or EIA–254. Public comments on this proposal will be taken into consideration before a final decision is made.

## III. Request for Comments

The following general guidelines are provided to assist in the preparation of responses. When commenting, please indicate the form(s) to which your comments apply.

*As a Potential Respondent*

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, would you require to complete and submit the required form(s)?

E. What is the estimated cost of completing the form(s), including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

*As a Potential Data User*

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purposes would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in these forms.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these data surveys; they also will become a matter of public record.

### Statutory authority

Secs. 5(a) and (b), 13(a) and (b), and 52 of Pub. L. 93–275, Federal Energy Administration Act of 1974, as amended (15 U.S.C. 764(a) and (b), 772(a) and (b), and 790a).

Issued in Washington, DC on March 24, 1987.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 87–7002 Filed 3–30–87; 8:45 am]

BILLING CODE 6450–01–M

---

## ENVIRONMENTAL PROTECTION AGENCY

[A–9–FRL–3178–3]

### Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to GWF Power Systems Co. (EPA Project Number SJ 86–08); Hanford, Kings County, CA

**AGENCY:** Environmental Protection Agency (EPA), Region 9.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on January 28, 1987 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 25 MW atmospheric fluidized bed cogeneration facility to be located in Hanford, Kings County, California. The permit is subject to certain conditions, including an allowable emission rate (2-hour average) as follows: for $SO_2$—the more stringent of 10.2 lbs/hr or 20.2 ppm at 3% $O_2$, for $NO_x$—the more stringent of 10.2 lbs/hr or 28 ppm at 3% $O_2$, and for CO—the more stringent of 4.1 lbs/hr or 200 ppm at 3% $O_2$.

**FOR FURTHER INFORMATION CONTACT:** Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

**SUPPLEMENTARY INFORMATION:** Best Available Control Technology (BACT) requirements include the use of limestone injection for $SO_2$ control, and the use of low bed temperature, staged combustion, and ammonia injection for the control of $NO_x$ emissions.

**DATE:** The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 1, 1987.

Dated: March 16, 1987.

**David P. Howekamp,**

*Director, Air Management Division, Region 9.*

[FR Doc. 87–6988 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

---

**[Docket No. A–10–FRL 3177–6]**

## Fuels and Fuel Additives

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On November 13, 1986, E.I. DuPont de Nemours and Company, Inc. (DuPont) submitted a request to additionally modify the fuel waive granted to it on January 10, 1985 (50 FR 2615) and subsequently reconsidered and modified on October 31, 1986 (51 FR 39800). The request seeks approval of an alternative corrosion inhibitor, DMA–67, to be used in DuPont's gasoline-alcohol fuel. EPA considers this to be a request for modification of the waiver under section 211(f) of the Clean Air Act (Act).

**DATE:** Comments should be submitted on or before April 30, 1987.

**ADDRESS:** Copies of the information relative to this request are available for inspection in public docket EN–84–06 at the Central Docket Section (LE–131A) of the EPA, Gallery I—West Tower, 401 M Street, SW., Washington, DC, (202) 382–7548, between the hours of 8:00 a.m. and 4:00 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Sylvia I Correa, Attorney-Advisor, Field Operations and Support Division (EN–397F), U.S. E.P.A., 401 M Street SW., Washington, DC 20460, (202) 382–2635.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DuPont submitted a waiver application for a gasoline-alcohol blend on July 16, 1984. On January 10, 1985, the Administrator granted the waiver, subject to certain conditions. 50 FR 2615. On March 18, 1985, the Oxygenated Fuels Association (OFA), on behalf of its member companies, filed petitions for reconsideration. On April 22, 1986 (51 FR 15064), EPA granted OFA's petition for consideration and requested comments on several conditions which OFA had suggested should be rescinded or modified.

On October 31, 1986 (51 FR 39800) EPA decided to rescind one condition of the waiver and to modify certain other conditions. One of the conditions that was modified concerned which corosion inhibitor formulation could be used in the waived fuel. In that notice, EPA allowed the use of a corrosion inhibitor, Petrolite's TOLAD MFA–10, as an alternative to the inhibitor originally allowed under the waiver (DuPont's DGOI–100). At the same time, EPA invited other corrosion inhibitor manufacturers to submit test data to the Agency to establish, on a case-by-case basis, whether their formulations are environmentally acceptable.

### II. Today's Announcement

DuPont is requesting that EPA allow the use of its corrosion inhibitor, DMA–67, in its gasoline-alcohol fuel blend which otherwise would not be allowed under the waiver. DMA–67 is a formulation consisting of a corrosion inhibitor and a carburetor detergent. The physical properties of DMA–67 are shown in Table 1 in the DuPont Docket EN–84–06, document No. VII–A–3.

Section 211(f)(1) of the Act, 42 U.S.C. 7545(f)(1), states that effective upon March 31, 1977, is shall be unlawful for any manufacturer or any fuel or fuel additive to first introduce into commerce or to increase the concentration of any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act.

Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4) provides that the Administrator may waive the prohibitions of section 211(f)(1) if the applicant has established that the fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act within 180 days or receipt of the application, the waiver shall be treated as granted.

Pursuant to section 211(f)(4), therefore, EPA will examine the date submitted by DuPont to determine whether this corrosion inhibitor formulation, DMA–67, would cause or contribute to such failures by vehicles using the DuPont waiver fuel.

Dated: March 19, 1987.

**Don R. Clay,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 87–6984 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

---

**[A–2–FRL–3178–2]**

## Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

**AGENCY:** United States Environmental Protection Agency.

**ACTION:** Notice of final actions.

**SUMMARY:** The purpose of this notice is to announce that between November 1, 1986 and January 31, 1987, the United States Environmental Protection Agency (EPA), Region II Office, issued one final determination, the New Jersey Department of Environmental Protection (NJDEP) issued one final determination, and the New York State Department of Environmental Conservation (NYSDEC) issued two final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

**DATES:** The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264–4711.

**SUPPLEMENTARY INFORMATION:** Pursuant to the PSD regulations, the EPA Region II Office, the NJDEP, and the NYSDEC have made final determinations relative to the sources listed below:

| Name of applicant | Location | Project description | Reviewing agency | Final action | Date of final action |
|---|---|---|---|---|---|
| To-Ricos, Inc | Aibontio, Puerto Rico. | Replacement of an existing 250 HP boiler with a 500 HP boiler. | EPA Region II | PSD Non-applicability Determination. | 11/4/86 |
| Jones Black River Services, Inc. | Fort Drum, New York. | Construction of a high temperature water cogeneration facility which consists of three 217 million BTU/hour coal and wood-fired boilers. | NYSDEC | PSD Applicability Determination. | 12/24/86 |
| American Ref-fuel [1] Company. | Newark, New Jersey. | Construction of three 758 tons per day municipal waste incinerators. | NJDEP | PSD Permit | 1/9/87 |
| Adirondack Resource Recovery Associates. | Hudson Falls, New York. | Installation of two 200 tons per day mass burning municipal solid waste combustion units. | NYSDEC | PSD Permit | 1/19/87 |

[1] This project was proposed for approval on November 15, 1984. A public hearing was held on December 17 and 18, 1984. The permit was issued on December 11, 1985. The issuance of the permit was appealed to the EPA Administrator for review on January 28, 1986, but was denied by the Administrator on October 28, 1986. (Although the NJDEP was delegated authority to administer the PSD program (issue permits), it was not delegated the authority to hear appeals of PSD permits; this authority was retained by the EPA Administrator.) Since the appeal did not result in any modification of the permit issued by the NJDEP, the December 11, 1985 permit is in effect as issued.

This notice lists only the sources that have received final PSD determinations. Anyone wishing to review these determinations and related materials should contact the following offices:

**EPA Region II Action**

United States Environmental Protection Agency, Region II Office, Permits Administration Branch, 26 Federal Plaza, Room 432, New York, New York 10278

**NJDEP Action**

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering & Technology, 401 East State Street, CN 027, Trenton, New Jersey 08625

**NYSDEC Actions**

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register.** Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: March 12, 1987.

**Christopher J. Daggett,**

*Regional Administrator.*

[FR Doc. 87–6987 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3178–1]

## Science Advisory Board; Environmental Health Committee; Halogenated Organics Subcommittee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a one-day meeting of the Halogenated Organics Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on Monday, April 20, 1987, in Room 2034 of Breidenthal Hall at the University of Kansas; 2002 39th Street; Kansas City, Kansas 66103. The meeting will start at 9:00 a.m. and adjourn no later than 5:00 p.m.

The principal purpose of the meeting will be to review the scientific adequacy of a draft Criteria Document for Dichlorobenzene prepared by the Criteria and Standards Division in Office of Drinking Water and dated October, 1987. To obtain copies of (or further information about) the draft document, write to Dr. Edward Ohanian, Criteria and Standards Division [WH–550D], U.S. EPA, 401 M Street, SW, Washington, DC 20460, or call (202) 382–7571.

The meeting will be open to the public. Any member of the public desiring to attend or to provide comments to the Subcommittee should contact either Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW, Washington, DC 20460 or call (202) 382–4126 by c.o.b. April 16, 1987.

Dated: March 23, 1987.

**Kathleen Conway,**

*Acting Director, Science Advisory Board.*

[FR Doc. 87–6986 Filed 3–30–87; 8:45 am]

BILLING CODE 6560–50–M

[OW–4–FRL–3174–7]

## Proposed Issuance of Demonstration Permits DP0601 and DP0602 to Conoco Inc.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice and fact sheet.

**SUMMARY:** EPA Region VI is proposing to issue demonstration permits to Conoco Inc. for the discharge of treated drill cuttings to the Outer Continental Shelf of the Gulf of Mexico. The permits will allow demonstration of a newly developed technology for removing oil and grease from drill cuttings from oil-based and inversion emulsion drilling fluids. EPA intends to use data generated under the permits to propose a modification to general NPDES Permit GMG280000 and in connection with the continuing development of effluent limitations and guidelines for the offshore segment of the oil and gas extraction point source category.

**DATE:** Public Comments on the proposed demonstration permits will be received until April 30, 1987.

**ADDRESSES:** Written comments or requests for further information should be sumitted to Ms. Ellen Caldwell, Water Permits Branch (6W–PS), EPA Region VI, Allied Bank Tower, 1448 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 655–7190.

**SUPPLEMENTARY INFORMATION:** EPA Regions IV and VI (the Regions) issued a general National Pollutant Discharge Elimination System permit (the General Permit) regulating oil and gas exploration, development, and production activities in the Gulf of Mexico seaward of the outer boundary of the territorial seas of the States of Florida, Alabama, Mississippi,

Louisiana, and Texas. See 51 FR 24897 (July 9, 1986). Among other things, the General Permit prohibits the discharge of drill cuttings from oil-based or inverse emulsion fluids, both of which will be referred to as "oil-based" hereinafter.

Drill cuttings are the "shavings" created when a drill bit cuts through earth or rock. They are carried to the surface by the drilling fluids (also known as drilling "muds"), then removed by various types of solids control equipment. When oil-based drilling fluids are used, the initial separation of fluids and cuttings is normally performed mechanically by a shale shaker, leaving substantial amounts of oily drilling fluid on the cuttings. Historically, operators used cuttings washers in an attempt to remove this oil before discharging the cuttings. Nevertheless, cutting washers left about 10 percent by weight oil in the cuttings, much of which was apparently trapped in their porous components, e.g., shale particles. Long after the cuttings were discharged, this oil would occasionally work its way out of the cuttings and float to the surface, causing a visual sheen and violating the applicable "no discharge of free oil" standard.

There were no means, however, for predicting whether a specific batch of washing cuttings would result in such a violation. When the Regions drafted the General Permit, some operators were still discharging washed cuttings from oil-based muds, but most were barging them ashore for disposal. Faced with the apparent choice of allowing continued use of inadequate currings washers or requiring all operators to dispose of their cuttings ashore, the Agency implemented the "no discharge of free oil" standard by prohibiting the discharge of *any* drill cuttings removed from oil-based muds. This choice was not without adverse effects. As the Regions stated at 51 FR 24911:

> In response to the comment that this limitation will not encourage the development of cuttings treatment technology research, the Regions acknowledge this may be the case. However, until such time as the Regions have adequate information to demonstrate cuttings can be cleaned to achieve the no discharge of free oil limitation, the Regions do not believe they can authorize the discharge of cuttings from oil-based muds.

At the time, the Regions did not appreciate the degree to which cuttings treatment technology had advanced. During the comment period on the draft General Permit, SEDSCO, Inc. claimed it had developed a treatment technology which would remove oil better than cuttings washers. It did not, however, supply the Regions with sufficient data on the new technology for adoption of an alternative effluent limitation in the final General Permit. Subsequently, on July 25, 1986, Sedsco, Inc.'s successor, Thermal Dynamics, Inc. (TDI) filed a petition for review of the General Permit in the United States Court of Appeals for the Fifth Circuit. In an August 13, 1986 letter, TDI asked that the Regions administratively stay the prohibition on the discharge of drill cuttings removed from Oil-based drilling fluids. Two days later, on August 15, 1986, TDI filed a Motion for Stay of the same General Permit limitation in the Fifth Circuit. In connection with its requests for administrative and judicial stays, TDI argued that, in view of its newly developed technology, the general Permit's oil-based cuttings discharge prohibition was unnecessarily stringent for implementing a "no discharge of free oil standard" and that the Regions were thus subjecting OCS operators to unnecessary expense (estimated at $5,400 per drilling day) for shore disposal of cuttings.

EPA Region VI met with TDI on August 16 and 20, 1986, to discuss the stay request and solicit additional information on the new tehnology. At those meetings and in subsequent communications with TDI, the Agency has obtained new information on the treatment efficiency of TDI's newly developed thermal recovery process, new information on cost savings which may result from using it instead of shore disposal, and clarification of information submitted by SEDSCO during the comment period on the draft General Permit. The Regions are now reconsidering the permit prohibition on the discharge of cuttings removed from oil-based drilling fluids, but are maintaining it in effect for the present. TDI has withdrawn its Motion to Stay pending final agency action on the reconsideration.

TDI's process essentially entails exposing drill cuttings to controlled heat sufficient to incinerate and/or vaporize residual oils, then condensing the exhaust gases to recapture vaporized oils, which are then returned to the mud system. Greatly reduced in volume, the treated cuttings emerge from the process as a dry clay-like material. Although the process' efficiency is still under investigation, it is clearly superior to cuttings washers and the Regions agree it unlikely that discharging cuttings which have been treated to the level possible with TDI's new technology would constitute a "discharge of free oil." Hence, implementing that requirement through a total prohibition on such discharges may be inappropriate. At the same time, however, the Regions do not wish to allow the discharge of unmonitored or inadequately treated cuttings.

In view of both concerns, the Regions now believe the best means of regulating the discharge of drill cuttings removed from oil-based muds is through both specific and general effluent limitations. They intend to propose a modification to the General Permit which would allow the discharge of treated drill cuttings have less than a specified percentage of oil and grease by weight. Even though they met that limitation, however, the discharged cuttings would also be required to meet the General Permit's "no discharge of free oil" limitation. This would allow operators to choose between treatment technologies, including TDI's which allow discharges, or the more common disposal method of transportation to shore for disposal. The effect of allowing the discharge of treated cuttings would be the continued development of cuttings treatment technology, reduced compliance costs for the offshore oil and gas industry, and reduced disposal pressure in coastal areas.

TDI suggests that the discharge of cuttings containing 2.5% or less oil-by-weight would not cause a visible sheen and that such a figure should accordingly constitute the numerical equivalent to "no discharge of free oil." The regions do not, however, believe that there is an exact threshold percentage of oil in drill cuttings which would cause a visible sheen after discharge. There are simply too many potentially variable factors, such as the surface area, porosity, and chemical composition of the cuttings. Hence, the Regions believe it more appropriate to base the limitation on the removal efficiency of the new technology.

TDI has provided the Regions two sets of data on the concentrations of oil on cuttings after treatment with the thremal oil recovery process. This limited data base suggests that cuttings treated with TDI's thermal recovery process may consistently contain only 1 to 1.5% oil and grease by weight. The data contains apparent anomalies suggesting that process efficiency may be affected by unknown operational factors, however, and the Regions desire additional data before they propose a specific numerical limitation. Hence, Region VI proposes to issue demonstration permits to Conoco Inc. EPA also wishes to use the data generated under the proposed demonstration permit in connection with its continuing development of effluent limitation guidelines and standards for

BEST COPY AVAILABLE

the offshore segment of the oil and gas extraction point source category.

If issued, the demonstration permits will allow Conoco to discharge treated drill cuttings from one fixed platform and one mobile rig under test requirements developed by EPA Region VI and EPA's Industrial Technology Division. This will allow recovery of data from several drilling operations using TDI prototypes of somewhat different physical configurations. The permits will require Conoco to analyze the cuttings for oil and grease, priority organics, and toxicity, both before and after treatment. Process air emissions must also be tested and feed rates must be monitored and reported.

The fixed platform is number 55A in lease block South Pass 55. The mobile rig will be discharging in either the West Delta or Grand Isle lease areas. There are no areas of biological concern located in these areas. Except for the prohibitions on discharge of drill cuttings and trace drilling fluids adhering to them, all discharges from those rigs will be subject to the limitations of the General Permit. Under those circumstances and based on a review of the Ocean Discharge Criteria evaluation prepared for the General Permit, Region VI finds that the permitted discharges will not cause unreasonable degradation of the marine environment. See 40 CFR Part 125, Subpart M.

In addition to this **Federal Register** Notice, EPA Region VI is providing individual notice of the proposed permits to each party on its NPDES permit mailing list. Requests for hearing, comments on the proposed demonstration permits, and/or suggestions for conditions thereto will be acepted by EPA Region VI until April 30, 1987. If Region VI issues final demonstration permits, it will provide copies thereof to any party requesting them.

**Authority:** 33 U.S.C. 1342.

Dated: March 16, 1987.

**Myron O. Knudson, P.E.,**

*Director, Water Management Division, EPA Region VI.*

[FR Doc. 87-6990 Filed 3-30-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004067-004
Title: Oakland Terminal Agreement
Parties: City of Oakland, Stevedoring Services of America (SSA)
Synopsis: The proposed amendment would extend the term of the agreement to August 31, 1987 with possible month-to-month continuation after that time. The amendment would also provide for additional compensation to SSA for services rendered.

Agreement No.: 202-010776-015
Title: Asia North America Eastbound Rate Agreement
Parties: American President Lines, Ltd., Barber Blue Sea, Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Lines, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Line, Inc., Sea-Land Service, Inc., Showa Line, Ltd., United States Lines, Inc., Yamashita-Shinnihon Steamship Co., Ltd., Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendment would eliminate the right of independent action on Canadian destination cargoes to the extent the independent action reduces a rate or service item below minima reflected in the Agreement's Canadian tariffs. The parties have requested a shortened review period.

Agreement No.: 202-010776-016
Title: Asia North America Eastbound Rate Agreement
Parties: American President Lines, Ltd., Barber Blue Sea, Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Lines, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Line, Inc., Sea-Land Service, Inc., Showa Line, Ltd., United States Lines, Inc., Yamashita-Shinnihon Steamship Co., Ltd., Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendment would clarify the existing authority of the agreement with respect to the compensation payable to connecting carriers involved in transshipment arrangements with the agreement parties.

Agreement No.: 224-011081
Title: Charleston Terminal Agreement
Parties: South Carolina State Ports Authority (Port), Orient Overseas Container Line Inc. (OOCL)
Synopsis: The proposed agreement would permit OOCL to use 1796 container slots at the Port's Wando Terminal for an initial period of three years. The parties have requested a shortened review period.

Agreement No.: 224-011082
Title: Baltimore Terminal Agreement
Parties: Maryland Port Administration (Port), The Goodyear Tire & Rubber Company (Goodyear)
Synopsis: The proposed agreement would permit the Port to lease 38,000 square feet of space in the Pier 3 Shed at its North Locust Point Marine Terminal and 300 feet of adjacent railroad track to Goodyear for an initial five-year term.

Agreement No.: 224-011083
Title: Fednav-Canmar RoRo Coordinated Service
Parties: Canada Maritime Limited, Fednav Lakes Services, a division of Fednav (USA), Inc.
Synopsis: The proposed agreement would form a joint service between the parties in the trade between U.S. and Canadian Great Lakes and St. Lawrence River ports and Canadian East Coast ports and ports in North Europe and the United Kingdom. The agreement applies only to the carriage of commercial cargo on roll-on roll-off vessels within the scope of the agreement.

By Order of the Federal Maritime Commission.

Dated: March 26, 1987.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-7016 Filed 3-30-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### First of America Bank Corp.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan and First of America Bancorporation-Illinois, Inc., Kalamazoo, Michigan, to engage *de novo* through their subsidiary, First of America Trust Company, Bannockburn, Illinois, in offering personal and institutional trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y. This activity will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, March 25, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-6961 Filed 3-30-87; 8:45 am]

BILLING CODE 6210-01-M

**First Peterborough Bank Corp. et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the applicatcn has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 20, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Peterborough Bank Corp.*, Peterborough, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Peterborough, Peterborough, New Hampshire.

2. *Hartford National Corporation*, Hartford, Connecticut; to acquire 100 percent of the voting shares of Chester Bank, Chester, Connecticut. Comments on this application must be received by April 17, 1987.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First Empire State Corporation*, Buffalo, New York; to acquire 100 percent of the voting shares of Bank of Richmondville, Richmondville, New York.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *McLachlen Bancshares Corporation*, Washington, DC; to become a bank holding company by acquiring 100 percent of the voting shares of McLachlen National Bank, Washington, DC.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CBE, Inc.*, Elkhorn, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Elkhorn, Elkhorn, Wisconsin. Comments on this application must be received by April 16, 1987.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *NW Bancshares, Inc.*, Chippewa Falls, Wisconsin; to become a bank holding company by acquiring at least 90 percent of the voting shares of The Northwestern Bank, Chippewa Falls, Wisconsin.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Kansas National Bancorporation, Goodland, Kansas; to acquire 100 percent of the voting shares of Peoples State Bank, Sharon Springs, Kansas. Comments on this application must be received by April 10, 1987.

Board of Governors of the Federal Reserve System, March 25, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-6962 Filed 3-30-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Uniform Proficiency Testing Program; Consideration; Meeting

**AGENCY:** CDC, HHS.

**ACTION:** Notice of meeting—Consideration of a proposal for a Uniform Proficiency Testing Program for Laboratories Covered by Medicare and the Clinical Laboratory Improvement Act of 1967.

Time and Date: 9:00 a.m.–4:00 p.m.—May 4, 1987.

Place: Auditorium A, Centers for Disease Control (CDC), 1600 Clifton Road, NE, Altanta, Georgia 30333

Status: Open to the public for participation, comment, and observation, limited only by the space available.

Matters to be Discussed: The Health Care Financing Administration (HCFA) has asked CDC to develop a proficiency testing program that would be applicable to laboratories that are Medicare certified and/or licensed under the Clinical Laboratories Improvement Act (CLIA) of 1967. In response to this request, CDC has developed a proposal for a uniform proficiency testing program that includes recommendations for program content, frequency of challenge, degree of challenge, and evaluation schemes for individual laboratory performance. Prior to submission of a final proposal to HCFA, CDC is holding this meeting to solicit comments on all aspects of this proposal.

Copies of CDC's draft proposal will be available on request after April 1. Interested persons may file written statements or may make an oral statement at the meeting. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the Meeting Director. Anyone wishing to make an oral statement or file a written statement must notify the contact person by May 1, for inclusion in the meeting schedule.

Contact Person for More Information: To obtain a copy of the Uniform Proficiency Testing Proposal or for additional information concerning the meeting contact: D. Joe Boone, Ph.D., Training and Laboratory Program Office, CDC, 1600 Clifton Road, NE., Atlanta, GA 30333, Commercial: 404/329–1967, Telephones: FTS 236–1967.

Dated: March 25, 1987.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 87–6963 Filed 3–30–87; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

**[Docket No. 87N–0078]**

### J.D. Copanos and Sons, Inc. and Kanasco, Ltd.; Proposal To Withdraw Approval of New Drug Applications and New Animal Drug Applications for Sterile Injectable Products; Amendment

**AGENCY:** Food and Drug Administration

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is amending a previous notice of opportunity for hearing that proposed to withdraw approval of the new drug applications (NDA's) and new animal drug applications (NADA's) for sterile injectable drug products manufactured by J.D. Copanos and Sons, Inc. and Kanasco, Ltd. (affiliated corporations hereinafter referred to collectively as Kanasco). This amendment rescinds the notice of opportunity for hearing with respect to two NDA's held by Elkins-Sinn, Inc. The notice incorrectly listed the two Elkins-Sinn NDA's as providing for sterile injectable drug products manufactured by Kanasco. Elkins-Sinn's products are not manufactured by Kanasco.

**DATE:** The rescission is effective March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Douglas I. Ellsworth, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

**SUPPLEMENTARY INFORMATION:** In a notice of opportunity for hearing published in the **Federal Register** of March 10, 1987 (52 FR 7311), FDA proposed to withdraw approval of the NDA's and NADA's for sterile injectable drug products manufactured by Kanasco. The basis for the proposal was that the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the sterile injectable drugs are inadequate to assure their identity, strength, quality, and purity, and were not made adequate within a reasonable time after receipt of written notice specifying the inadequacies. The notice incorrectly listed the following NDA's as providing for sterile injectable products manufactured by Kanasco:

NDA 80–515; Cyanocobalamin; Elkins-Sinn, Inc., 2 Easterbrook Ln., P.O. Box 5483, Cherry Hill, NJ 08034.

NDA 83–165; Prednisolone acetate; Elkins-Sinn, Inc.

These products are not manufactured by Kanasco. Accordingly, the Acting Director of the Center for Drugs and Biologics hereby rescinds the March 10, 1987 notice of opportunity for hearing with respect to the above listed NDA's.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 505, 52 Stat. 1052 as amended (21 U.S.C. 355)) and under authority delegated to the Acting Director of the Center for Drugs and Biologics (21 CFR 5.82).

Dated: March 25, 1987.

**Gerald F. Meyer,**

*Acting Director, Center for Drugs and Biologics.*

[FR Doc. 87–7012 Filed 3–30–87; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Availability of Funds for Demonstration Grants for Projects of Emergency Medical Services for Children

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that up to $4 million is available for grants under section 1910 of the Public Health Service (PHS) Act, 42 U.S.C. 300w–9, which authorizes the Department to make grants to States or accredited schools of medicine in States to support demonstration projects for the expansion and improvement of emergency medical services (EMS) for children. Up to eight awards will be made under this notice. HRSA, through this notice, invites eligible applicants to apply for these grants.

**DATE:** To receive consideration, applications for the EMS for Children grants must be received by the close of business June 29, 1987, by the Chief, Grants Management Branch, at the address below.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date, and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

**ADDRESS:** Application for grants is made on PHS form 5161–1 (approved under OMB #0348–0006). Specific grant application guidelines, application forms and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Waddell Avery, Chief, Grants Management Branch, Bureau of Health Care Delivery and Assistance (BHCDA), HRSA, Room 7A–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–1440.

**FOR FURTHER INFORMATION CONTACT:** States or accredited medical schools wishing to inquire about the programmatic aspects of the EMS for children activity should address their inquiries, in writing, to the Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery

and Assistance, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2170.

**SUPPLEMENTARY INFORMATION:** Section 1910 of the PHS Act, as amended, the EMS for children statute, establishes a program of grants to States and accredited medical schools for demonstration projects for the expansion and improvement of EMS for children who need treatment for critical illnesses and injuries. The term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, The Northern Mariana Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. In light of recent developments regarding the status of the entities that previously comprised the Trust Territory of the Pacific Islands, we are viewing the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia each as a State for purposes of this grant program. The term "school of medicine" for purposes of this program is defined as having the same meaning as set forth in section 701(4) of the PHS Act (42 U.S.C. 292a(4)). "Accredited" in this context has the same meaning as set forth in section 701(5) of the PHS Act (42 U.S.C. 292a(5)).

By statute, the grant period is for one year; however, the grant may be renewed for a second year if it is determined that renewal will provide significant benefits through the collection, analysis and dissemination of information and data which will be useful to other States. Also, by statute, only one grant is to be made within a State—either to the State or an accredited medical school—in any given year. Another statutory provision limits the number of grants which may be made in any fiscal year to four (4). However, because both fiscal year 1986 and 1987 funding is available at this time, up to eight (8) grants will be made under this notice. (Fiscal year 1986 funding is still available because when Congress appropriated fiscal year 1986 funding for this program in Pub. L. 99–349, it expressly provided that the funding will remain available until September 30, 1987).

It is the intent of this grant program to stimulate the initiation or expansion of ongoing efforts in the States to reduce the problems of life threatening pediatric trauma and critical illness. The Department does not intend to award demonstration grants which would duplicate the former categorical EMS grant program funded by this agency, or which would be used simply to increase the availability of EMS funds allotted to the State under the Preventive Health Services Block grants.

**Eligible applicants**

Applications for funding under section 1910 will be accepted from States and accredited schools of medicine. Applicants are encouraged to seek the participation and support of other entities within the State, such as local governments and health and medical organizations in the private sector, in developing the proposed demonstration project.

**Application evaluation criteria**

An application will be evaluated by consideration of the following factors:

(1) The adequacy of the applicant's description of the problem of pediatric trauma and critical illness in the State. The adequacy of sections of the application devoted to the special problems of (a) handicapped children and families; and (b) minority children and families (including Native Americans).

(2) The appropriateness of project outcome objectives in relation to the specific nature of the problems identified by the applicant.

(3) The soundness (in relation to the state of the art) appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.

(4) The soundness of the plan for evaluating progress in achieving project outcome objectives.

(5) The extent of collaboration and coordination with other appropriate organizations involved in health care and public health (e.g., injury prevention activities, community support services, rehabilitation programs) and the degree of involvement of the "community" (e.g., private sector, voluntary organizations).

(6) The soundness of the proposal, as set forth in the application, in terms of fiscal management, effective use of personnel, and ability to complete the proposal within the one year grant period.

(7) The extent to which the applicant's work under the grant is likely to demonstrate approaches to the reduction of the consequences of the pediatric life-threatning trauma and critical illness that will be useful and broadly applicable in other communities.

This program is subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in those States for the review. Since States are allowed 60 days for this review, applicants are advised to discuss projects with, and provide copies of their applications to, State contact points as early as possible. At latest, an applicant should provide the application to the State for review at the same time it is submitted to the Grants Management Branch, BHCDA.

**OMB Catalog of Federal Domestic Assistance**

This program is listed at No. 13.127 in the OMB Catalog of Federal Domestic Assistance.

Dated: March 24, 1987.

**David N. Sundwall,**

*Administrator.*

[FR Doc. 87–6974 Filed 3–30–87; 8:45 am]

BILLING CODE 4160–15–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–060–07–7122–10–1018, CA–19164]**

### Realty Action; Exchange of Public and Private Lands in Riverside County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action—exchange of public and private lands, CA 19164.

**SUMMARY:** The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

**San Bernardino Meridian, California**

T. 3 S., R. 6 E.
Sec. 24, All
T. 3 S., R. 7 E.
Sec. 20: Lots 1 & 2, SW¼SW¼
Sec. 30: Lots 5–16 inclusive, N½N½NE¼, N½NE¼NW¼, SW¼NE¼NW¼, NW¼SE¼NW¼
Containing 845.34 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands in Riverside County from The Nature Conservancy:

**San Bernardino Meridian, California**

T. 4 S., R. 7 E
Sec. 9: SW¼
Containing 160 acres, more or less.

**SUPPLEMENTARY INFORMATION:** The purpose of the exchange is to acquire a portion of the non-federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard.

The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6700 acres within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other state and federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of federal ownership.

Lands being transferred out of federal ownership will be subject to the following reservations, terms, and conditions:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States: Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

2. All the geothermal steam and associated geothermal resources shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for review at this BLM office.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, contact John Sullivan, BLM Indio Resource Area Office, 1900 E. Tahquitz-McCallum Way, Suite B–1, Palm Springs, California 92262–7061.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: March 20, 1987.

**H.W. Riecken,**

*Acting District Manager.*

[FR Doc. 87–6966 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–40–M

---

[OR–118–07–4212–17; GP7–147]

## Public Lands, Establishment of Camping Study Limit for Campgrounds and Undeveloped Public Lands, Medford District, OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Establishment of camping stay limit for campgrounds and undeveloped public lands in the Medford District, Oregon.

**SUMMARY:** Persons may camp within designated campgrounds or on public lands not closed to camping within the Medford District for a total period of not more than fourteen days during any 90 day period. The 90 day period will begin the first full day the site is occupied following a previous 90-day period. The fourteen-day limit may be reached either through a number of separate visits or through a period of continuous occupation of the public lands. Under special circumstances and upon request, the authorized officer may give written permission for extensions to the fourteen-day limit.

Additionally, no person may leave personal property unattended in designated day use areas for a period of more than 24 hours or in designated campgrounds or recreation developments for a period of more than 72 hours, or elsewhere on public lands within the Medford District for a period of more than 10 days without written permission from the authorized officer.

**DATE:** This camping stay limit is effective May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Harold Bellisle, Grants Pass Area Manager, 3040 Biddle Road, Medford Oregon 97504. Telephone (503) 776–4325.

**SUPPLEMENTARY INFORMATION:** This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long term unauthorized occupancy being conducted under the guise of camping within campgrounds and on undeveloped public lands in the Medford District.

Authority for this stay limit is contained in CFR Title 43, Chapter II, Part 8360, Subparts 8364.1, 8365.1+2, and 8365.2–3.

**David Jones,**

*District Manager.*

[FR Doc. 87–6967 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–33–M

---

[NM–940–07–4220–11; NM 0301943]

## Proposed Continuation of Withdrawal, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture proposes that a 20.00-acre site for the Beartrap Forest Campground (formerly Beartrap Forest Camp) continue for an additional 19 years; and three sites totaling 80.00 acres for the Capilla Peak Administrative Site, Capilla Peak Forest Camp, and Red Canyon Forest Camp continue for an additional 20 years. The land would remain closed to location and entry under the mining laws.

**DATE:** Comments should be received by June 29, 1987.

**ADDRESS:** Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504–1449.

**FOR FURTHER INFORMATION CONTACT:** Kay Thomas, BLM, New Mexico State Office, 505–988–6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 2923 dated January 30, 1963, be continued for a period of 19 years for the Beartrap Forest Campground; and the Capilla Peak Administrative Site, Capilla Peak Forest Camp, and Red Canyon Forest Camp continue for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**New Mexico Principal Meridian**

*Cibola National Forest Magdalena Ranger District Beartrap Forest Campground (formerly Beartrap Forest Camp)*

T. 5 S., R. 7 W.,
Sec. 12, SW¼NW¼SE¼, NW¼SW¼SE¼.

**Mountainair Ranger District**

*Capilla Peak Administrative Site*

T. 6 N., R. 5 E.,
Sec. 34, S½SW¼SE¼.

*Capilla Peak Forest Camp*

T. 6 N., R. 5 E.,
Sec. 34, E½SW¼SE¼.

*Red Canyon Forest Camp*

T. 5 N., R. 5 E.,
Sec. 33, N½NE¼NE¼.
Sec. 34, W½NW¼NE¼.

The area described aggregates 100.00 acres in Torrance and Socorro Counties.

The purpose of the withdrawal is for the protection of substantial capital improvements on the Magdalena and Mountainair Ranger Districts, Cibola National Forest. The withdrawal closed the described lands to mining but not to surface entry or mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 20, 1987.

**Monte G. Jordan,**

*State Director Associate.*

[FR Doc. 87-6968 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-FB-M

## Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48632-AF has been received covering the following lands:

**Copper River Meridian, Alaska**

T. 12 N., R. 3 W.,
Sec. 6, NW¼NE¼.

(33.71 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48632-AF as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1986, subject to the terms and conditions cited above.

Dated: March 18, 1987.

**Sue A. Faught,**

*Acting Chief, Branch of Mineral Adjudication.*

[FR Doc. 87-7047 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-JA-M

[MT-920-07-4111-13; MTM 62845]

## Proposed Reinstatement of Terminated Oil and Gas Lease; Montana

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 62845, Carbon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease had been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: March 19, 1987.

**Karen L. Skauge,**

*Chief, Leasing Unit.*

[FR Doc. 87-7003 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-DN-M

# Minerals Management Service

## Development Operations Coordination Document; Chevron U.S.A., Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Chevron U.S.A. Inc. has submitted DOCD describing the activities it proposes to conduct on Lease OCS 0462, Block 135, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 23, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmond Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Services makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 24, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-6969 Filed 3-30-87; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Hall-Houston Oil Co.

**AGENCY:** Minerals Management services.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7835, Block 31, Chandeleur Area, offshore Louisiana. Propsed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Hopedale, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 20, 1987. Comments

must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minearls Management Service.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 23, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–6970 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–MR–M

## Development Operations Coordination Document; Samedan Oil Corp.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5669, Block 18, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 20, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 23, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–6971 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–MR–M

## National Park Service

**[FES 87–13]**

## Availability of Final Environmental Impact Statement; Upper Delaware Scenic and Recreational River, NY and PA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of final environmental impact statement for the proposed river management plan, Upper Delaware Scenic and Recreational River.

**DATES:** This notice announces the availability of the final environmental impact statement for the proposed river management plan for the Upper Delaware Scenic and Recreational River. No action will be taken on the alternatives contained in this statement for 30 days following the notice of availability filed with the Environmental Protection Agency.

**ADDRESS:** Copies of the final environmental impact statement and proposed river management plan are available from the National Park Service, Mid-Atlantic Regional Office, 143 South Third Street, Philadelphia, PA 19106. Copies may also be obtained at Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764–0159; and Conference of Upper Delaware Townships, P.O. Box 41, Fosterdale, NY 12735.

**Bruce Blanchard, Director,**

*Environmental Project Review.*

March 26, 1987.

[FR Doc. 87–7030 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–70–M

## Statue of Liberty-Ellis Island Centennial Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a forthcoming meeting of the Statue of Liberty-Ellis Island Centennial Commission meeting. The purpose of this meeting is to discuss possible upcoming reports on the development of the northern and southern portions of Ellis Island and a report from the Statue of Liberty-Ellis Island Foundation. Other additional business which may properly be brought before the Commission may also be considered at this meeting.

**TIME AND DATE:** 10:30 am to 3:00 pm, Friday, April 24, 1987.

Place: Secretary's Conference Room (Room 5160), Department of the Interior,

18 and C Streets, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Tracey Harbaugh, Staff Assistant, Office of the Assistant Secretary for Fish and Wildlife and Parks, Room #3152, 18 And C Streets, NW., Washington DC 20240, (202) 343–8928.

Dated: March 24, 1987.

**P. Daniel Smith,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–7031 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–70–M

---

## National Register of Historic Places, Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 21, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 15, 1987.

**Carol D. Shull,**

*Chief of Registration, National Register.*

CALIFORNIA

**San Diego County**

San Diego, *Sweet, A. H., Residence and Adjacent Small House,* 435 W. Spruce St. and 3141 Curlew St.

**Santa Cruz County**

Capitola, *Old Riverview Historic District,* Blue Gum Ave., Capitola Ave., Riverview Ave., Riverview Dr., and Wharf Rd.
Capitola, *Six Sisters-Lawn Way Historic District,* Lawnway, Capitola Ave., San Jose Ave., and Esplanade

DISTRICT OF COLUMBIA

**Washington**

*Cleveland Park Historic District,* Roughly between Wisconsin Ave. on the west, Connecticut Ave. on the east, Tilden St. to the north, and Klingle Rd. to the south.
*Kalorama Triangle Historic District,* Roughly bounded by Connecticut Ave., Columbia Rd., and Calvert St.

FLORIDA

**Brevard County**

*Windover Archeological Site (8BR246)*

KENTUCKY

*Pike County*

Pikeville, *Chesapeake and Ohio Passenger Depot,* (Pikeville MRA) Hellier Ave.

MARYLAND

*Baltimore (Independent City)*

*Cathedral Hill Historic District,* Charles, Cathedral, Hamilton, Saratoga and St. Paul Sts.

MINNESOTA

*Kandiyohi County*

Lake Lillian vicinity, *Bosch John, Farmstead,* CR 4
Willmar vicinity, *District School No. 55,* CR 3 and US 71

MISSISSIPPI

**Adams County**

Natchez vicinity, *Hillside,* Hutchins Landing Rd.

MONTANA

**Big Horn County**

Crow Agency, *Custer Battlefield Historic District (Custer Battlefield National Monument MRA),* East bank of the Little Bighorn River
Crow Agency, *Reno-Benteen Battlefield (Custer Battlefield National Monument MRA),* 5 mi. S of Custer Battlefield

VIRGINIA

**Buckingham County**

New Canton vicinity, *Mount Ida,* VA 610
*Richmond (Independent City)*
*Trinity Methodist Church,* 2000 E. Broad St.
*Suffolk (Independent City)*
*Suffolk Historic District,* Roughly Bounded by RR tracks, Hill St., Cepteral Ave., Holladay St., Washington St., N. Saratoga St. and Pine St.

[FR Doc. 87–6973 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–70–M

---

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than (ten days after publication). Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, IRM/PE, Room 1109, SA–14, Washington, DC 20523.

Date Submitted: March 25, 1986.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0520.

Type of Submission: Renewal.

Title: Information Collection Elements in the A.I.D. Acquisition Regulations (AIDAR).

Purpose: A.I.D. is authorized to make contracts with any corporation, international organization, or other body of persons whether within or without the United States in furtherance of the purposes and within the limitations of the Foreign Assistance Act (FAA). Information collections and recordkeeping requirements placed on the public by the A.I.D. Acquisition Regulation (AIDAR), are published as 48 CFR Part 7. These are all A.I.D. unique procurement requirements which have not otherwise been submitted to OMB for approval. The preaward requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information during the post-award period are based on the need to administer public funds prudently.

Respondents will have a submission burden of three responses and an estimated annual recordkeeping burden of 12 hours per recordkeeper

Reviewer: Francine Picoult (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: March 23, 1987.

**Fred D. Allen,**

*Planning and Evaluation Division.*

[FR Doc. 87–6964 Filed 3–30–87; 8:45 am]

BILLING CODE 6116–01–M

---

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–17,139]**

### Union Switch and Signal Division American Standard Inc.; Swissvale, PA; Public Hearing

Pursuant to a court order from the U.S. Court of International Trade (USCIT) in *United Electrical Radio & Machine Workers of America* v. *Secretary of Labor* (USCIT 86–11–01409) on March 10, 1987, a public hearing is scheduled for 7:00 pm on April 16, 1987 at the Swissvale Municipal Building in Swissvale, Pennsylvania. The public hearing is for petitioners or any other persons showing a substantial interest in the proceedings to furnish additional testimony and evidence of a relevant

and material nature bearing upon the investigation regarding petition TA–W–17,139 filed on behalf of workers and former workers at Union Switch and Signal Division, American Standard Incorporated, Swissvale, Pennsylvania.

Such individuals who desire to furnish additional testimony as evidence should inform the Director, Office of Trade Adjustment Assistance, Department of Labor, of their intention to appear not later than Tuesday, April 14, 1987. Mr. Marvin M. Fooks, Director, OTAA, can be reached in Washington, DC, at (202) 376–2646. The Director's Office is in Room 6434, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of March, 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87–7087 Filed 3–30–87; 8:45 am]

BILLING CODE 4510–30–M

---

## Mine Safety and Health Administration

**[Docket No. M–87–50–C]**

### Meshach Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Meshach Coal Company, HC 81 Box 1532, Hinkle, Kentucky 40953 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15–14028) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous machine mounted methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapsed time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 30, 1987. Copies of the petition are available for inspection at that address.

Dated: March 24, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–7032 Filed 3–30–87; 8:45 am]

BILLING CODE 4510–43–M

---

**[Docket No. M–87–4–M]**

### Montana Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Montana Resources, Inc., 600 Shields Avenue, Butte, Montana 59701 has filed a petition to modify the application of 30 CFR 56.14001 (moving machine parts) to its Continental Mine (I.D. No. 24–00338) located in Silver Bow County, Montana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

2. As an alternate method, petitioner seeks a modification of the standard that will allow each agitator and drive shaft within the floatation process of the Concentrator, not to be guarded. In further support of this request, petitioner states that:

(a) The agitator and drive assembly are located more than six feet above the floor and are offset slightly more than one foot on either side from the walkway. Since pinch points are inaccessible, accidental exposure is highly unlikely;

(b) All mechanical and electrical work on flotation machines calls for the use of a lock-put procedure. By locking out equipment at the main disconnect, adequate protection is provided. When employees perform such work, the entire row of agitators is shut down; thus, adjacent cells do not present a hazard;

(c) The "Three grove poly V-Belts", which rotate the agitator, are made of three strands bounded by one backing. The belts rarely break, but if they do, broken belts drop to the side presenting no hazard to employees;

(d) The entire flotation division is staffed by two persons per shift. Each division is operated and monitored by a Control Room Supervisor. Because of the remote control capabilities, the work required on the flotation floor is reduced and potential exposures are therefore minimal; and

(e) There are no congested areas within the flotation division and spare parts are kept free of all aisleways. The entire division is adequately lighted.

3. Petitioner also states that additional guards could obscure operators vision of the process and may congest some of the work areas, especially during maintenance and repairs.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 30, 1987. Copies of the petition are available for inspection at that address.

Dated: March 24, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7033 Filed 3-30-87; 8:45 am]

BILLING CODE 4510-43-M

## Pension and Welfare Benefits Administration

### Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Fiduciary Liabilities of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:30 a.m., Tuesday, April 28, 1987, in Room N-3437C, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This eight-member work group was formed by the Advisory Council to study various ERISA issues relating to fiduciary liabilities.

The purpose of the April 28 meeting is to determine problems pension funds are having in obtaining fiduciary liability insurance coverage, as well as problems insurance companies have in providing such insurance. The work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before April 20, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 22, 1987.

Signed at Washington, DC, this 26th day of March, 1987.

**Dennis M. Kass,**

*Assistant Secretary for Pension and Welfare Benefits Administration.*

[FR Doc. 87-6996 Filed 3-30-87; 8:45 am]

BILLING CODE 4510-29-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-335]

### Florida Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to the Florida Power & Light Company (the licensee), for the St. Lucie Plant, Unit No. 1, located at the licensee's site in St. Lucie County, Florida.

**Environmental Assessment**

*Identification of Proposed Action*

The requested exemption is related to Section III of Appendix J to 10 CFR Part 50. Section III contains containment leakage testing requirements. Specifically, the licensee has requested an exemption from paragraph III.D.2(b)(ii) which states "air locks opened during periods when containment integrity is not required by the plant's Technical Specification shall be tested at the end of such periods at not less than Pa."

The proposed exemption is responsive to the licensee's letter dated October 10, 1986, as supplemented by letter dated January 9, 1987, requesting the exemption.

*The Need for the Proposed Action*

The existing air lock doors are so designed that a full pressure test at the calculated peak containment internal pressure (Pa) of an entire air lock can only be performed after strongbacks (structural bracing) have been installed on the inner door. Strongbacks are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. The strongbacks are extremely difficult to install and the outer door must be opened to remove the strongbacks. As a result, approximately 14 hours are required to complete a full pressure test of an air lock. Therefore, the licensee proposes an alternative test to be conducted during those periods when containment vessel integrity is not required by the Plant Technical Specifications and prior to entering Mode 4. The alternative test consists of testing the seals of the inner and outer doors by pressurizing the area between the seals and verifying an acceptable leakage rate. If, however, maintenance has been performed on the air lock since the last successful test performed pursuant to paragraph III.D.2(b)(i), an overall air lock test will be performed. The licensee contends that this proposal will provide adequate assurance of air lock integrity without imposing undue delays on return to power operation.

*Environmental Impacts of the Proposed Action*

Our evaluation of the proposed exemption from Appendix J to 10 CFR Part 50 indicates that the granting of the exemption will not impact containment integrity for the following reasons. If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Appendix J are current, there should be no reason to expect an air lock to leak excessively just because it has been opened during cold shutdown or refueling.

Therefore, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there is no significant radiological environmental impact associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemptions involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed exemption.

*Alternative Use of Resources*

This action involves no use of resources not previously considered in the Final Environmental Statement (for the construction permit and operating license) for the St. Lucie Plant, Unit No. 1.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the letter requesting the exemption dated October 10, 1986, and the supplemental letter dated January 9, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida.

Dated at Bethesda, Maryland, this 23rd day of March 1987.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

*Director, PWR Project Directorate #8, Division of PWR Licensing-B.*

[FR Doc. 87-7055 Filed 3-30-87; 8:45 am]

BILLING CODE 7590-01-M

---

[Docket No. 50-302]

## Florida Power Corp. et al. and Crystal River Unit No. 3 Nuclear Generating Plant; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (the licensee), for operation of the Crystal River Unit No. 3 Nuclear Generating Plant (Crystal River Unit 3), located in Citrus County, Florida.

*Identification of Proposed Action*

The amendment would extend the expiration date of the operating license for Crystal River Unit 3 from September 25, 2008 to December 3, 2016. The license amendment is responsive to the licensee's application dated February 17, 1986, as supplemented on November 19 and 25, 1986, and February 17, 1987. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR-72, Florida Power Corporation, et al., Crystal River Unit No. 3 Nuclear Generating Plant, Docket No. 50-302", dated March 26, 1987.

*Summary of Environmental Assessment*

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the operating license for Crystal River Unit 3. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to the Proposed Crystal River Unit 3" (FES), May 1973, and more recent NRC policy.

*Radiological Impacts*

Based on current and projected populations, the Commission's staff concludes that the Low Population Zone and the nearest population center distances will likely be unchanged from those used for licensing the unit. Therefore, the conclusion reached in the staff's Safety Evaluation in 1974 that Crystal River Unit 3 meets the requirements of 10 CFR Part 100 remains unchanged. The staff further concluded that overall conclusions of the FES concerning radiological consequences following accidents would not change.

Principal factors associated with an additional period of operation which could potentially change the probability or consequences of an accident were examined, and the staff has determined that the proposed extension would not cause a significant increase in the radiological consequences or in public risk from reactor accidents, and would not change any conclusions reached by the Commission in the FES.

With regard to normal plant operation, the licensee complies with Commission guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate. Estimated doses from effluent releases have been well below projected values and dose design objectives, and increases due to extended plant operation will not be significant. Occupational exposures are expected to remain about as estimated in the FES. Accordingly, the Commission's staff has concluded that radiological impacts on man, both onsite and offsite, due to extended plant operations will not be signficant and that our previous cost-benefit conclusions remain valid.

With regard to transportation of fuel and waste, estimated doses to individuals per reactor year will not increase beyond Table S-4 of 10 CFR 51.52, and environmental impacts will not be signficantly different from those previously assessed in the FES.

*Non-Radiological Impacts*

The Commission has concluded that the proposed extension will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

**Finding of No Significant Impact**

The Commission's staff has reviewed the proposed change to the expiration date of the Crystal River Unit 3 Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the Commission's staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The application for amendment dated February 17, 1986, as supplemented on November 19 and November 25, 1986, and February 17, 1987, (2) the FES issued May 1973, and (3) the Environmental Assessment dated March 26, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, DC 2055 and at the Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida 32629.

Dated at Bethesda, Maryland, this 26th day of March, 1987.

For the Nuclear Regulatory Commission.

John F. Stolz,

*Director, PWR Project Directorate #6, Division of PWR Licensing-B.*

[FR Doc. 87-7056 Filed 3-30-87; 8:45 am]

BILLING CODE 7590-01-M

---

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Trade Policy Staff Committee; Public Hearings on Restoration of the Application of Column 1 Rates of Duty of the Tariff Schedules of the United States to Products of Poland

**SUMMARY:** This publication gives notice that the Trade Policy Staff Committee (TPSC) will conduct public hearings on the application of column 1 Rates of Duty of the Tariff Schedules of the United States to the products of Poland.

**1. Public Hearings**

In conformity with the Trade Expansion Act of 1962, as amended and the Trade Act of 1974, including section 125 thereof, the Trade Policy Staff Committee (TPSC) has scheduled a hearing on April 28, 1987 to provide an opportunity for public comments on Proclamation 5610, which restores the application of column 1 rates of duty of the Tariff Schedules of the United States to the products of Poland.

**2. Requests to Participate in the Public Hearings**

Hearings will be held on Tuesday, April 28, 1987, beginning at 10:00 a.m. in Room 403, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (to be continued on April 29 if necessary). Parties wishing to testify orally at the hearing must provide written notification of their intention by April 20, 1987 to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trtade Representative, 600 17th Street, NW., Room 521, Washington, DC 20506. In addition, parties must provide the following information.

(1) Their names, addresses and telephone numbers; and

(2) A brief summary of their presentation, including the product(s), with TSUS numbers, to be discussed.

Those parties presenting oral testimony must submit a complete written statement in 20 copies by noon, Thursday, April 23. Remarks at the hearing should be limited to no more than a 10 minute summary of the written statement, to allow time for possible questions from the Chairman and the interagency panel.

Persons not wishing to participate in the hearings may submit a written statement in 20 copies by April 29, 1987 to Carolyn Frank at the address noted above. Any business confidential material must be accompanied by a nonconfidential summary thereof.

Parties are referred to section 2003 of Title 15 of the Code of Federal Regulations for the Committee's rules concerning oral testimony, the submission of written briefs, the treatment of business confidential information and other procedures related to TPSC hearings.

**3. Background**

On February 19, 1987 the President signed Proclamation No. 5610 (52 FR 5425 February 23, 1987), revoking Proclamation No. 4991 which had suspended the application of the rates of duty provided in Column 1 of the Tariff Schedules of the United States (TSUS) to the products of Poland. The President's Proclamation of February 19, 1987 followed from his determination that the Polish Government had taken steps that led him to believe that Poland should be given a renewed opportunity to address its trade obligations with the benefit of most-favored-nation tariff treatment. The President determined that the national interest required expeditious action in this case. The Proclamation took effect on February 23, 1987.

For further information, contact Carol Thompson, Office of Europe and the Mediterranean, Office of the United States Trade Representative, 600 17th Street NW., Room 317, Washington DC 20506, telephone: 395–3211.

**Donald M. Phillips,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 87–7071 Filed 3–30–87; 8:45 am]

BILLING CODE 3190–01–M

## U.S.-Japan Semiconductor Arrangement; Request for Public Comments on Possible U.S. Actions in Response to Acts by the Government of Japan Apparently Inconsistent With the Arrangement

**SUMMARY:** The section 301 Committee will conduct a public hearing on April 13, 1987, on possible U.S. actions in response to the apparent failure by the Government of Japan to fulfill its obligations under the U.S.-Japan Semiconductor Arrangement.

**FOR FURTHER INFORMATION CONTRACT:** Jim Gradoville, (202) 395–3475 (for technical and policy issues); Chris Parlin (202) 395–3432 (for legal issues).

**SUPPLEMENTARY INFORMATION:** On September 2, 1986, the governments of Japan and the United States of America signed the Arrangement concerning Trade in Semiconductor Products ("U.S.-Japan Semiconductor Arrangement"). In the Arrangement, the Government of Japan Joined the Government of the United States in declaring its desire to enhance free trade in semiconductors on the basis of market principles and the competitive positions of the semiconductor industries in the two countries. The Government of Japan committed: (1) To impress upon Japanese semiconductor producers and users the need to aggressively take advantage of increased market access opportunities in Japan for foreign-based semiconductor firms; and (2) to provide further support for expanded sales of foreign-produced semiconductors in Japan through establishment of a sales assistance organization and promotion of stable long-term relationships between Japanese purchasers and foreign-based semiconductor producers. Finally, both Governments agreed that the expected improvement in access by foreign-based semiconductor producers would be gradual and steady over the period of the Arrangement.

Although the Government of Japan has taken a few steps toward satisfying these obligations, they have been inadequate; there have not been concerted efforts to fulfill the Arrangement's obligations to increase market access opportunities in the Japanese market for foreign-based semiconductor producers.

In the Arrangement the Government of Japan also committed: (1) To monitor costs and export prices on semiconductor products exported by Japanese semiconductor firms from Japan in order to prevent "dumping" (circumvention of antidumping measures taken in the United States); and (2) to encourage Japanese simiconductor producers to conform to this principle.

Again, the Government of Japan has taken a few steps toward satisfying these obligations, but they have been inadequate; there have not been concerted efforts to fulfill the Arrangement's obligations.

In response to the apparent failure by the Government of Japan to fulfill its obligations under the U.S.-Japan Semiconductor Arrangement, the United States is considering increasing customs duties on products imported from Japan having a value comparable to the effect on United States commerce of Japan's failure to fullfill its obligations under the Arrangement.

Under section 301 of the act, the President is authorized to take all appropriate and feasible action within his power to enforce U.S. rights under a trade agreement or to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that denies U.S. benefits under a trade agreement or is unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce. Section 301(b) specifically authorizes the President, *inter alia,* to suspend or withdraw the benefit of trade agreement concessions and impose duties or other import restrictions on the products or services of a foreign country for such time as he deems appropriate. Measures under section 301 may be taken on a discriminatory or nondiscriminatory basis at the discretion of the President.

**Public Hearings**

The Section 301 Committee will hold a hearing at 10:00 a.m. on Monday, April

13, 1987, regarding products of Japan that may be subject to increased U.S. customs duties for the reasons explained above. The Executive Branch will consider public comments in recommending any action to the President under section 301. In particular, the section 301 Committee seeks interested persons' assessment of: (1) The appropriateness of the products being considered for possible retaliation; (2) the levels at which U.S. customs duties should be set; and (3) the degree to which increased duties might have an adverse impact on U.S. consumers of the products concerned.

The hearing will be held in Room 403, Office of the U.S. Trade representative, 600 17th Street, NW., Washington, DC 20506. Interested persons wishing to testify orally at the hearing must provide written notice of their intention by 12:00 noon, Wednesday, April 8, 1987, to Carolyn Frank, Office of the U.S. Trade Representative, Room 521, 600 17th Street, NW., Washington, DC 20506. In addition, they must provide the following information:

(1) Their names, addresses and telephone numbers; and

(2) A summary of their presentation, including the products, with Tariff schedules of the United States (TSUS) item numbers, to be discussed.

Those persons presenting oral testimony must submit as complete written statement in 20 copies by 12:00 noon, Friday, April 10 to Carolyn Frank at the above address. Remarks at the hearing should be limited to no more than a 10-minute summary of the written statement, to allow time for possible questions from the Section 301 Committe.

Persons not wishing to participate in the hearing must submit a written statement in 20 copies by noon, Monday, April 13, 1987, to Carolyn Frank at the above address.

All written comments should be filed in accordance with 15 CFR 2006.8.

**Proposed U.S. Actions**

The Administration has calculated that Japan's apparent failure to fulfill its obligations under the U.S.-Japan Semiconductor Arrangement effects sales by U.S.-based semiconductor firms valued at approximately $300 million. Therefore, the Administration is considering imposing increased customs duties, to a level of 100 percent *ad valorem*, on the products listed in the Annex to this notice which are imported from Japan so as to result in a comparable reduction in such imports. The Administration further is considering making these increases effective as of the date this notice is published.

**Alan F. Holmer,**

*General Counsel.*

March 27, 1987.

**Annex**

Articles, the product of Japan, classified in the following provisions of the Tariff Schedules of the United States (TSUS) arae being considered for increased duties:

| TSUS or TSUSA [1] item No. | Article |
|---|---|
| | [The bracketed language in this list is included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.] |
| | Pumps for liquids, whether or not fitted with measuring devices; liquid elevators of bucket, chain, screw, band, and similar types; all the foregoing whether operated by hand or by any kind of power unit, and parts thereof: |
| | [Fuel injection pumps for compression-ignition engines, and parts thereof] |
| | [Stock pumps, and parts thereof, imported for use with machines for making cellulosic pulp, paper or paperboard] |
| 660.97 | Other |
| | Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity of air, and parts thereof: |
| | Window or wall-type air-conditioners: |
| 661.2003 | Under 10,000 BTU per hour |
| 661.2006 | 10,000 to 16,999 BTU per hour |
| 661.2009 | 17,000 BTU per hour and over |
| 661.35 | Refrigerators and refrigerating equipment, whether or not electric, and parts thereof |
| | Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines, and similar machines, all the foregoing incorporating a calculating mechanism: |
| | Accounting, computing, and other data-processing machines |
| 676.15 pt. | Having a calculating mechanism accommodating words of 16 bit to 63 bit in length |
| | Office machines not specially provided for: |
| | Data-processing machines: |
| | Display units: |
| | [With monochrome CRT; with color CRT] |
| 676.3046 | Other |
| | Disc drive units: |
| 676.3055 | Hard magnetic disc drives |
| | Machines not specially provided for, and parts thereof: |
| | Combination machines containing tape players: |
| | Radio-tape player combinations: |
| | [Designed exclusively for motor-vehicle installation] |
| | Other: |
| | [Not capable of battery operation] |
| | Other: |
| | [Without speakers other than headphones, earphones and headsets] |
| 678.5061 | Other |
| | Phonograph-tape player combinations and radio-phonograph-tape player combinations: |
| | [Radio-phonograph-tape player combinations] |
| | [Cartridge type] |
| 678.5068 | Other |

| TSUS or TSUSA [1] item No. | Article |
|---|---|
| | Generators, motors, motor-generators, converters (rotary or static), transformers, rectifiers and rectifying apparatus, and inductors; all the foregoing which are electrical goods, and parts thereof: |
| | Motors: |
| | Of under 1/40 horsepower: |
| 682.20 | Synchronous, valued not over $4 each |
| 682.25 | Other |
| 683.20 | Hand-directed or -controlled tools with self-contained electric motor, and parts thereof |
| 684.80 | Communications satellites (however provided for in part 5 of schedule 6 of the TSUS) and parts thereof |
| | Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof: |
| | Television apparatus, and parts thereof: |
| | Television receivers and parts thereof: |
| | Having a picture tube: |
| | Complete television receivers: |
| 684.9230–684.9245 | Monochrome receivers containing in a single housing apparatus for receiving and displaying from off-the-air each standard U.S. broadcast channel, with or without external speakers, having a single picture tube intended for direct viewing |
| | Color receivers containing in a single housing apparatus for receiving and displaying off-the-air each standard U.S. broadcast channel, with or without external speakers, having a single picture tube intended for direct viewing, with a video display diagonal of: |
| 684.9246 | 8 inches and under |
| 684.9248 | 9 and 10 inches |
| 684.9250 | 11 and 12 inches |
| 684.9252 | 13 inches |
| 684.9258 | 18 and 19 inches |
| | Electrical measuring, checking, analyzing, or automatically-controlling instruments and apparatus, and parts thereof |
| | [Optical instruments or apparatus, and parts thereof] |
| | Other: |
| | [Ships' logs, and depth-sounding instruments and apparatus, and parts thereof] |
| | [Instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or similar radiations, and parts thereof] |
| | [Automatic flight control instruments and apparatus designed for use in aircraft, and parts thereof] |
| | Other: |
| | [Surveying, (including photogrammetrical surveying), hydrographic, navigational, meteorological, hydrological, and geophysical instruments and parts thereof] |
| | [Balances of a sensitivity of 5 centigrams or better, with or without their weights, and parts thereof] |
| | [Machines and appliances for determining the strength of articles or materials under compression, tension, torsion, or shearing stress, and parts thereof] |
| | [Hydrometers and similar floating instruments; thermometers, pyrometers, barometers, hygrometers, and psychrometers, whether or not recording instruments; any combination of the foregoing instruments; and parts thereof] |
| | [Pressure guages, thermostats, level guages, flow meters, heat meters, automatic ovendraught regulators, and other instruments and apparatus for measuring, checking, or automatically controlling the flow, depth pressure or other variables of liquids or gases, or for automatically controlling temperature, all the foregoing and parts thereof, not specially provided for] |
| | [Polarimeters, refractometers, spectrometers, gas analysis apparatus and other instruments or apparatus for physical or chemical analysis; viscometers, porosimeters, expansion meters and other instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension, or similar properties; photometers (except photographic light meters), calorimeters, and other instruments or apparatus for measuring or checking quantities or heat, light, or sound; all the foregoing, and parts thereof] |
| 712.4971 | Instruments and apparatus to measure or check electrical quantities, and parts thereof |
| 712.4975 | Other |
| | Photographic film, sensitized by not exposed: |
| 723.15 pt. | Other than motion-picture film: |
| | X-ray film |
| | Microfilm and microfiche |
| | Graphic arts film (for lithography, photoengraving, rotoengraving, and silk-screen printing) |
| | Magnetic recording media not having any material recorded thereon: |
| | [For audio recording; for video or video and audio recording] |
| | Other: |
| 724.4565 | Tape suitable for use with computers |

[1] Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

[FR Doc. 87-7178 Filed 3-30-87; 8:45 am]
BILLING CODE 3190-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15636; 812-6569]

## Counsellors Tandem Securities Fund, Inc. and Warburg, Pincus Counsellors, Inc.; Application for Order Declaring Richard Cooper To Be a Disinterested Director

March 24, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* Counsellors Tandem Securities Fund, Inc. (the "Fund") and Warburg, Pincus Counsellors, Inc. (the "Advisor").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of section 2(a)(19).

*Summary of Application:* Applicants seek an order declaring that Richard Cooper ("Mr. Cooper") shall not, solely by reason of his status as an outside director of Phoenix Mutual Life Insurance Company ("Phoenix Mutual") be deemed to be an "interested person," as defined by section 2(a)(19) of the 1940 Act, of the Fund, or of the Advisor, or of any principal undewriter of the Fund, or of any other investment company for which the Adviser acts or may act as investment adviser or underwriter ("Other Sponsored Funds") on whose Board of Directors Mr. Cooper may serve.

*Filing Date:* The application was filed on December 19, 1986, and amended on March 5, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secrtary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 466 Lexington Avenue, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney (202) 272-3037 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants' Representations

1. The Fund, a Maryland corporation, is registered as a closed-end, diversified, management investment company under the 1940 Act. The Fund's investment objectives are long-term capital appreciation consistent with the preservation of capital, and stability and dependability of income, which it attempts to achieve by investing primarily in common and preferred stocks of utility companies.

2. The Fund's Board of Directors currently consistes of six individuals, three of which are not "interested persons" of the Fund ("Disinterested Directors"). One of the Fund's Disinterested Directors serves as such in reliance upon Rule 2a19-1, which provides an exemption from the definition of interested person contained in section 2(a)(19) for affiliated persons of registered brokers or dealers. Mr. Cooper has constented to serve as the Fund's fourth Disinterested Director upon receipt of the exemptive order sought by this application. Mr. Cooper may also, but currently does not, serve as a Disinterested Director of Other Sponsored Funds.

3. Mr. Cooper is a director, but not an officer, of Phoenix Mutual. Phoenix Mutual has one indirect wholly-owned subsidiary that is a special purpose broker-dealer registered under the Securities Exchange Act of 1934 (the "1934 Act")—Phoenix Equity Planning Corp. ("Broker-Dealer"). The Broker-Dealer's activities are limited to the sale of shares in investment companies (as defined in the 1940 Act) and limited partnerships, and unsolicited brokerage transactions, on an agency basis, in securities other than products under the 1940 Act. The Broker-Dealer also owns 4.3% of Advest, Inc., which is also a registered broker-dealer.

4. By virtue of his status as a director of Phoenix Mutual, Mr. Cooper is an affiliated person (as defined by section 2(a)(3) of the 1940 Act) of Phoenix Mutual, which by virtue of controlling five percent or more of the outstanding voting securities of the Broker-Dealer, is an affiliated person of the Broker-Dealer. Therefore, Mr. Cooper is an affiliated person of an affiliated person of the Broker-Dealer and, thus, he might be deemed to be an interested person of the Fund, the Adviser, or the Fund's principal underwriter within the meaning of sections 2(a)(19)(A)(v) and 2(a)(19)(B)(v) of the 1940 Act.

5. Without admitting that Mr. Cooper is an interested person of the Fund, the Adviser, or any principal underwriter of the Fund by virtue of being an affiliated person of an affiliated person of the Broker-Dealer, the Applicants have filed an application to eliminate the risk of that conclusion by seeking an order declaring that Mr. Cooper shall not, solely by reason of such indirect connection with the Broker-Dealer, be deemed to be such an interested person of the Fund, the Adviser, any principal underwriter of the Fund, or any Other Sponsored Fund on whose Board of Directors Mr. Cooper may serve. It is not possible for the Fund to avail itself of Rule 2a19-1 with respect to Mr. Cooper because it has already done so with respect to one of its three existing Disinterested Directors. The Fund cannot have four Disinterested Directors, two of whom would be "Disinterested" by virtue of Rule 2a19-1, because the rule provides that no more than a minority of the Fund's Disinterested Directors may be affiliated persons of registered brokers or dealers.

6. Applicants submit that the order requested herein is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Moreover, the technical provisions of the 1940 Act and the rules thereunder ought not outweigh the benefit the Applicants expect from Mr. Cooper's counsel and experience. In support of the requested order, Applicants state that the Fund would greatly benefit from Mr. Cooper's strong financial expertise. For the past six years, Mr. Cooper has been a Maurits C. Boas Professor of International Economics at Harvard University. From 1977 to 1981, he served as a senior official in the U.S. government under the Secretary of State. From 1966 to 1977, he was a Professor of Economics and Provost at Yale University. Mr. Cooper currently serves as a director of two public interest, non-profit organizations: Institute for International Economics in Washington, DC and Center of Economic Policy Studies in Brussels, Belgium.

7. In addition, for 1985, the net income of the Broker-Dealer represented less than one percent of Phoenix Mutual's consolidated net income. The brokerage activity conducted through the Broker-Dealer constitutes a small part of Mr. Cooper's attention as a director of Phoenix Mutual. Further, Mr. Cooper plays an insignificant role in the Broker-Dealer's daily operations. Mr. Cooper is not a director or officer of any direct or indirect Phoenix Mutual subsidiary and does not own stock in Phoenix Mutual, a mutual company, or any of the corporate subsidiaries of Phoenix Mutual.

8. Furthermore, the Broker-Dealer was not a principal underwriter of the Fund or any other investment company advised by the adviser, and it has not executed portfolio transactions for or engaged in principal transactions with the Fund, the Adviser (including accounts over which the Adviser has brokerage placement discretion), or any investment company advised by the Adviser.

9. Also, Mr. Cooper's position as director of the Fund, Other Sponsored Funds and Phoenix Mutual would not present the potential for conflict of interest against which the provisions of the 1940 Act relating to interested persons were designed to guard. Applicants represent that they will not carry on any business with the Broker-Dealer, whether it involves the execution of transactions or the sales of shares of the Fund. Applicants also represent that the Fund's Board of Directors has determined that the Fund and its shareholders will not be adversely affected if the Fund does not engage in any business with the Broker-Dealer.

10. Finally, the Applicants believe that Mr. Cooper is well qualified to be and would be, in fact, an independent director and that his relationship with the Fund, Other Sponsored Funds and the Adviser would in no way be altered by his affiliation with Phoenix Mutual.

**Applicants' Condition**

If the requested order is granted, the Applicants agree to the following condition:

1. The Applicants undertake to comply with all provisions of Rule 2a19-1 of the 1940 Act with respect to Mr. Cooper other than the requirement of subsection (a)(3) thereunder, that not more than a minority of the Fund's Disinterested Directors be perosns who are brokers, dealers, or affiliates of a broker or dealer.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-7050 Filed 3-30-87; 8:45 am]

BILLING CODE 8010-01-M

---

[Release No. IC-15635; File No. 812-6507]

## E.F. Hutton Life Insurance Co. Variable Life Program; Separate Account et al.; Application for Exemption

March 24, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* Variable Life Program Separate Account of E.F. Hutton Life Insurance Company ("VLP Separate Account") and E.F. Hutton Life Insurance Company ("Hutton Life").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 9(a), 13(a), 15(a), 15(b), 22(c), 26(a), 27(c)(1), and 27(c)(2), Rule 22c-1, and paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iv), (b)(15), (c)(1), and (c)(4) of Rules 6e-2.

*Summary of Application:* Applicants seek an order to permit the offering of a single premium variable life insurance policy containing provisions for a deferred sales load, charges against the assets of the separate account for the cost of a minimum death benefit guarantee, state and local premium tax as well as the cost of insurance based on the 1980 CSO Table, allocations of the premium to the fixed account as well as the variable account of the separate account, the separate account to hold shares of the Fund under an open account arrangement without a formal trustee, and the separate account to purchase such securities from a fund offering its securities to affiliated or unaffiliated life insurers offering variable annuity contracts or scheduled or flexible premium variable life insurance contracts.

*Filing Dates:* The application was filed on October 20, 1986, and amended on February 6, 1987 and March 11, 1987.

*Hearing of Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicant, c/o Allan S. Mostoff, Esq., 1730 Pennsylvania Avenue, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney, Jeffrey M. Ulness at (202) 272-3027 or Special Counsel, Lewis B. Reich at (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 253-4300).

**Applicant's Representations**

1. Hutton Life is a stock life insurance company organized under the laws of the State of California and was authorized to conduct business as a life insurance company on January 18, 1963. VLP Separate Account is a separate investment account of Hutton Life used only to support the variable death benefits and account values of variable life insurance policies. It was established by a resolution of the Board of Directors of Hutton Life under California Law adopted on March 15, 1984. VLP Separate Account registered with the SEC as a unit investment trust and a registration statement on Form S-6 has been filed with the SEC.

2. The VLP Separate Account is divided into subaccounts called "Variable Accounts." Each Variable Account will invest in shares of a designated Series of the Hutton VLP Fund (the "Fund") which is a diversified, open-end management investment company. The Fund registered with the SEC as an open-end management investment company and filed a registration statement on Form N-1A. The Fund is a series-type mutual fund that contains five series, each of which will pursue different investment objectives and policies.

3. E.F. Hutton and Company Inc. ("E.F. Hutton") will serve as Investment Adviser to each Series of the Fund. E.F. Hutton is a wholly-owned subsidiary of The E.F. Hutton Group Inc. Pursuant to a Distribution Agreement between Hutton

Life and E.F. Hutton, E.F. Hutton will act as Distributor of the Policies. E.F. Hutton will distribute the Policies through salepersons who are licensed to sell securities and insurance products. The offering of the Policies will be continuous.

4. Hutton Life intends to issue the Hutton Variable Life Program—a single premium variable life insurance policy (the "Policy" or "Policies"). The Policy is designed to provide lifetime insurance protection on an insured in return for a single premium payment. The minimum single premium to purchase a policy will be $10,000. The maximum premium which will be routinely accepted is $500,000, although larger premiums may be accepted on a case-by-case basis subject to approval by Hutton Life. The single premium may be allocated at the policyholder's discretion to one or more of the Variable Accounts of the Separate Account or to the Fixed Account of Hutton Life.

5. The death benefit under a Policy will be the greater of a Policy's Minimum Guaranteed Death Benefit or the account value times the applicable Death Benefit Multiplier on the preceding monthly processing day. Whether the death benefit will be higher than the Minimum Guaranteed Death Benefit will depend in part upon the investment performance of the variable accounts.

6. The total account value will be the amount that a Policy provides for investment at any time. The cash value will equal the account value less any unrecovered deferred load, which includes several charges and is collected in equal monthly installments in policy years two through ten. The number of voting rights held by a policyowner will be determined on the basis of that policyowner's account value, not cash value.

7. A Policy's account value in the Separate Account will vary to a degree that depends upon several factors, including investment performance of the Variable Accounts to which account value has been allocated, the amount of any outstanding policy loan, and the charges assessed in connection with a Policy. There will be no guaranteed minimum account value and the policyowner will bear the entire investment risk relating to the investment performance of the Variable Accounts.

8. A policyowner will be permitted to allocate all or a portion of his or her account value to the Fixed Account. Account values allocated to the Fixed Account will be combined with all general account assets of Hutton Life and investment in assets chosen by Hutton Life and allowed by applicable law.

9. A policyowner will be permitted to borrow money from Hutton Life using a Policy as the only security for the loan. A loan may be taken any time a Policy is in force but not prior to the end of the "free look" period. The owner may repay all or part of the loan at any time while the policy is in force.

10. Provided that there is no outstanding policy loan, Hutton Life will guarantee that the Policy will stay in force until the earliest of: (i) The insured's 100th birthday; (ii) full cash surrender of the Policy; or (iii) death of the insured. The policy will not be cancelled during the guarantee period unless the policy loan plus deductions and charges for the policy month exceed the policy's cash value. On the monthly processing date after which there is no remaining net cash value in the Policy, Hutton Life may convert the Policy to a paid-up term policy to age 100.

11. A policyowner will be permitted to fully surrender a Policy at any time during the life of the insured. In addition, a policyowner will be permitted to partially surrender a Policy at any time after the first policy year during the life of the insured. In the event of a partial surrender, the account value will be reduced by the amount of the partial surrender plus a partial surrender charge equal to a pro rata portion of the unrecovered deferred loading.

12. Certain charges called the "deferred load" will be assessed in connection with issuance of the Policy and deducted from account value in policy years two through ten. These charges, which will be based on the amount of the single premium and will consist of: sales load, administrative charge, state and local premium tax charge, and minimum guaranteed death benefit charge. A charge for the cost of life insurance will be deducted from the account value on the policy date and on each monthly processing day thereafter.

13. Other charges from variable accounts will consist of a policy maintenance charge, mortality and expense risk charge, charges for income taxes, and other charges.

14. Applicants request exemption from paragraph (c)(1) of Rule 6e–2 to the extent necessary to permit, in connection with the Policies, the allocation of single premiums and the transfer of account value to the Fixed Account of Hutton Life. The Policy provides for allocation of the premium to the Fixed Account as well as the Variable Accounts of the Separate Account. Amount allocated to the Fixed Account will be combined with all assets in the general account of Hutton Life. The account value held in a Variable Account may be transferred to the Fixed Account and under certain conditions, vice versa. The charges against the Fixed Account and the Variable Account will be the same, except that the mortality and expense risk charge and the Variable Account operating expenses are applicable only against the Variable Accounts.

15. Appilcants state that Rule 6e–2(b)(13)(iii) provides a limited exemption from the custodianship requirements under sections 26(a)(1), 26(a)(2), and 27(c)(2) of the Act if the life insurer complies, to the extent applicable, with all other provisions of section 26 as if it were a trustee, depositor, or custodian for the separate account, and meets the conditions enumerated in paragraphs (A), (B), and (C) of Rule 6e–2(b)(13)(iii). Hutton Life will comply with section 26 of the Act and paragraphs (A), (B), and (C) of Rule 6e–2(b)(13)(iii), except that the Separate Account will hold shares of the Fund under an open account arrangement without the use of stock certificates and Hutton Life will not be acting as trustee or custodian pursuant to a trust indenture or other document, in order to comply with California Code, Insurance Code, section 10506. Applicants submit that the exemptive relief requested herein is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

16. Applicants represent that Hutton Life proposes to make no front-end deduction from the single premium for sales load. However, Hutton Life will incure expenses related to the sale of the Policy, including commissions paid to sales personnel and the costs of promotion and sales administration. Hutton Life proposes to deduct a sales load to compensate Hutton Life solely for expenses related to the sale of the Policy, including commissions, costs of promotional activity, sales administration, and like expenses. The sales load, along with certain other charges, would be deducted on a deferred basis from a policyowner's account value so that they would be collected in equal monthly installments during policy years two through ten. In addition, prior to the end of the tenth policy year, any unrecovered portion of the deferrd load would be collected from account value in the event of a full surrender and a pro rata portion would be deducted in the event of a partial surrender.

17. Applicants submit that imposition of the sales load in the form of an

"asset-based" deferred charge is more favorable to a policyowner than a charge that is deducted from the premium. Applicants submit that a deferred sales load is in the best interests of policyowners because the deferred sales load and surrender charge will result in greater amounts of money being available for investment on a policyowner's behalf and generally higher account values under the Policy.

18. Section 27(c)(1) of the Act requires that a periodic payment plan certificate issued by an investment company be a "redeemable security." Rule 22c–1 prohibits a registered investment company issuing a redeemable security from selling, redeeming, or repurchasing any such security except a price based on the current net asset value of such security. Applicants submit that sections 2(a)(32) and 27(c)(1) and Rule 6e–2(b)(13)(iv) could be read so as not to contemplate that a redeemable security would include a security that provides for imposition of a surrender charge upon redemption or surrender. Sections 2(a)(32) and 22(c) and Rules 22c–1 and 6e–2(b)(12) could be read so as not to contemplate deduction of a surrender charge upon redemption or surrender of a redeemable security. Applicants believe that the assessment of the surrender charge upon certain redemptions is not and should not be construed as a restriction on redemption that would prevent the Policy from qualification as a "redeemable security." Applicants state that the surrender charge is designed to recover the unrecovered amount of the deferred load under the Policy upon a full or partial surrender. Assessing the deferred load on a deferred basis is beneficial to policyowners in that it permits the entire single premium paid to be invested in the Variable Accounts from the time the Policy is issued.

19. Applicants request an exemption from section 26(a)(2)(C) and 27(c)(2) to permit the deduction of deferred sales load from a Policyowner's account value. Applicants submit that imposition of the deferred charge is consistent with the protection of investors in that imposition of the sales load in the form of an "asset-based" deferred charge is more favorable to a policyowner than a charge that is deducted from the premium.

20. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to permit deduction of charges for the cost of insurance and state and local premium tax from a policyowner's account value. Applicants believe that it would be more equitable and beneficial to policyowners to deduct the cost of insurance and the charge for state and local premium tax as an asset-based charge from policyowner account value rather than deduct these charges from the single premium. This would permit a greater amount of assets to be invested in the Variable Accounts, thereby increasing a policyowner's account value and perhaps increasing the death benefit and therefore exemptive relief from sections 27(c)(2) and 26(a)(2) is appropriate.

21. Applicants propose to deduct from a policyowner's account value a charge for the Minimum Guaranteed Death Benefit equal to 1.0% of the single premium for Policies classified as preferred (non-smoker) standard and preferred (non-smoker) substandard risks and 1.5% of the single premium for Policies classified as standard or substandard risks. Applicants also propose to assess a mortality and expense risk charge against the Variable Accounts equal to an annual rate of 0.60% of the daily assets in the Variable Accounts. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit these deductions.

Applicants submit that such charges are consistent with the standards that the Commission has proposed to paragraph (b)(13)(iii) of Rule 6e–2 in the proposed conforming amendments.

22. Applicants propose to satisfy the sales load requirements of Rule 6e–2(b)(13)(i) by using cost of insurance charges based on the 1980 CSO Table and life expectancies of insureds based on that Table. Applicants believe that use of the 1980 CSO Table is consistent with the general purposes of the 1940 Act, does not present any of the issues or abuses that the 1940 Act is designed to prevent, and will permit investors to receive the benefit of lower cost of insurance charges. Applicants request an exemption from the provisions of Rule 6e–2(b)(13)(i) and (c)(4) to the extent necessary to allow Hutton Life to deduct cost of insurance charges based on the 1980 CSO Table and to comply with sales load limitations by using both life expectancies and cost of insurance charges based on the 1980 CSO Table.

23. Applicants request an exemption from paragraph (b)(15) of Rule 6e–2 and section 9(a), (13)(a), (15)(a), and (15)(b) of the Act to the extent necessary to permit Applicants, as well as any future separate accounts that invest in the same underlying management company as Applicants and the sponsors of which agree to stated conditions, to rely on the relief provided under Rule 6e–2(b)(15), even though shares of the underlying fund may in addition to the Separate Account, be offered to separate accounts of Hutton Life or other affiliated or unaffiliated life insurers offering variable annuity contracts or scheduled or flexible premium variable life insurance contracts. Mixed and shared funding should benefit owners of variable contracts by eliminating a singinficant portion of the costs of establishing and administering separate funds. Granting the requested relief should result in an increased amount of assets available for investment by the Fund as well as any future underlying funds in which the Separate Account may invest along with other separate accounts. As a result of mixed and shared funding, the underlying fund will not be managed with the intent to favor one variable life or annuity product over another or to favor or adversely affect one insurance company over another. Applicants submit that no regulatory purpose would be served by applying the eligibility restrictions to all persons covered by sections 9(a) and not granting the exemption otherwise provided under Rule 6e–2(b)(15) simply because of mixed or shared funding. Granting the exemption would in no way alter the investment company's exposure to person disqualified under section 9(a).

**Applicants' Condition**

In order to comply with sections 9(a), 13(a), 15(a) and 15(b) of the Act, Applicants consent to several conditions to the order granting the exemptions requested.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7053 Filed 3–30–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–15637; 812–6651]**

## The Prudential Insurance Co. of America et. al.; Application for Exemption

March 24, 1987.

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* The Prudential Insurance Company of America and The Prudential Variable Contract Account–24.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 22(d) and Rule 11a–2(e).

*Summary of Application:* Applicants seek an order to permit them to make certain offers of exchange to holders of certain group variable contracts.

*Filing Date:* The application was filed on March 13, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Prudential Insurance Company of America and The Prudential Variable Contract–24, Prudential Plaza, Newark, NJ 07101.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Jeffrey M. Ulness (202) 272–3027 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

**Applicant's Representations**

1. The Prudential Insurance Company of America ("Prudential") and The Prudential Variable Contract Account–24 ("VCA–24"), both located at Prudential Plaza, Newark, NJ 07101, are, respectively, a mutual life insurance company organized under New Jersey law and a separate account of Prudential established for the purpose of funding certain group variable contracts (the "Contracts") issued by Prudential. VCA–24 is registered under the Act as a unit investment trust.

2. The Contracts are issued to employers and associations ("Contractholders"). No sales charge is deducted from participants' contributions under the Contracts as they are made. A deferred sales charge will in some circumstances be assessed in the event of a full or partial withdrawal of contributions from participants' VCA–24 accumulation accounts. The deferred sales charge assessed at the time of each such withdrawal is a specified percentage of the lesser of: (i) The participant's total contributions (not previously withdrawn) to the account from which the withdrawal is made or (ii) the amount withdrawn. Amounts not previously withdrawn are calculated on a first-in, first-out basis. The specified percentages vary depending on the number of years the participant has participated in the program of which the Contracts are a part and the different kinds of retirement arrangements funded by the Contracts.

3. The deferred sales charge is designed to reimburse Prudential for sales expenses, such as compensation paid to sales personnel, costs of advertising and sales promotions, prospectus costs, and costs of sales administration. Traditionally, these expenses are recouped through a sales load deducted from contributions when they are made, but the deferred sales charge is preferable from the standpoint of the investor because it permits investment of the entire contribution and, in many cases, permits withdrawal without the imposition of any sales charge whatsoever.

4. Prudential has since 1968 offered variable contracts providing for participation in the Prudential Variable Contract Account–2 ("VCA–2"), which is registered under the Act as an open-end management investment company. Contracts providing for participation in VCA–2 have been issued to employers and associations in connection with tax-deferred annuities. Contracts providing for participation in VCA–2 have generally been issued along with a separate, companion fixed-dollar annuity contract and are collectively referred to as Prudential's Group Tax-Deferred Annuity Program (the "TDA Program"). Prudential deducts a sales charge from contributions to VCA–2 on behalf of participants in the TDA Program before those contributions are invested in VCA–2. The maximum sales charge is 4%, which may drop to 2.5% under terms described in the application. Applicants propose to offer to TDA Program participants employed by TDA Contractholders who also purchase the Contracts, the opportunity to exchange their interests in the TDA Program for interests in the Contracts.

5. The Commission has previously granted the relief requested in the application to two other Prudential separate accounts which will participate in making the offers of exchange. Release No. IC–15449 (December 2, 1986). VCA–24 was organized since the granting of those exemptions and seeks the same relief.

6. The proposed exchanges would be made without any charge to the TDA Program participants. Participants' interests withdrawn from VCA–2 and any companion fixed-dollar annuity contract in connection with the exchange would be invested at net asset value in VCA–24. Amounts invested in the Contracts as a result of the exchange would be considered to be contributions to VCA–24 for purposes of calculating the contingent deferred sales load upon subsequent withdrawals from the Contracts. However, because a front-end sales load would already have been paid on such amounts, Applicants would not charge any contingent deferred sales load on withdrawals until the participant had withdrawn an amount equal to the amount the participant had transferred from the TDA Program. Because contributions are computed to be withdrawn on a first-in, first-out basis, and amounts transferred from the TDA Program will be considered to be withdrawn first, no deferred sales load will be charged on appreciation attributable to purchase payments made for interests in VCA–2 which may be exchanged for interests in VCA–24.

7. For Participants who transfer all or a part of their interests in the TDA Program to the Contracts, the calculation of the defered sales load would be made using as a starting date the date of their first contribution to the TDA Program. This adjustment would apply to withdrawals of all contributions made under the Contracts which are in excess of and are made after the initial transfer of the participant's interest from the TDA Program to the program of which the Contracts are a part.

8. Exemption from the provisions of Rule 11a–2(e) is sought to the extent necessary to make the proposed offers because the language of the rule might be read to require that the offering account track, in each instance where a withdrawal is made after the exchange, whether any of the withdrawal is attributable to purchase payments made for the exchanged security (or appreciation thereon) transferred in connection with the exchange. Applicants will allow TDA Program participants to withdraw from the program of which the Contracts are a part of the total amount transferred from the TDA Program, without payment of deferred sales charges that might otherwise be charged upon such withdrawals. All withdrawals of contributions under the program of which the Contracts are a part, regardless of where those withdrawals may be traced to purchase payments

transferred in connection with the exchange or to subsequent contributions, would be made without imposition of a deferred sales charge until the total amount withdrawn equalled the amount transferred.

9. Applicants purpose to institute the foregoing procedure because TDA participants who exchange their interests will always be assured that their first withdrawals from the program of which the Contracts are a part will be free of any deferred sales charge, as long as those withdrawals do not exceed the amount transferred in connection with the exchange, even though the withdrawals might actually consist of contributions made subsequent to the exchange transfer.

10. Applicants state that their system comports with the policies underlying Rule 11a–2, which are to prevent charging duplicative sales loads as the result of an exchange from a separate account with a front-end sales load to one with a deferred sales load. Applicants' procedure might in some instances result in the charging of a sales load on the withdrawal of contributions traceable to the exchange of interests in VCA–2, but this will only happen where the participant in question has already received an earlier and offsetting benefit in the form of a waiver of sales loads which otherwise would have been payable to previous withdrawals consisting of contributons made subsequent to the change.

11. Applicants assert that the objectives of section 22(d) would not be impaired if Applicants are permitted to give participants who transfer all or part of their TDA interests to the Contracts credit for their years of participation in TDA Programs. Applicants' proposal would not unfairly discriminate against other Contract owners or participants since transferring TDA Program participants are properly distinguishable from other Contract participants. Applicants further state their belief that sales expense related to contributions from transferring TDA Program participants should be lower than those related to future contributions from other Contract participants.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7051 Filed 3–30–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16404]

## Union Carbide Corp.; Application and Opportunity for Hearing

March 20, 1987.

*Notice is hereby given* that Union Carbide Corporation, a New York corporation (the "Company"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities Exchange Commission (the "Commission") that the trusteeship of Manufacturers Hanover Trust Company ("Manufacturers") under the indentures set forth below, which have been qualified under the Act, and the trusteeship of Manufacturers under an indenture dated as of December 1, 1986, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides, *inter alia*, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture of the same obligor.

In support of its application, the Company states as follows:

1. The Company has entered into an indenture with Manufacturers as trustee, dated as of January 1, 1986 as supplemented by a First Supplemental Indenture dated as of June 9, 1986, and a Second Supplemental Indenture dated as of December 10, 1986, which was qualified under the Act pursuant to an application on Form T–3 filed with the Commission (File No. 22–14590), pursuant to which were issued thereunder:

(a) 13¼% Senior Notes due January 31, 1993;

(b) 14¼% Senior Notes due January 31, 1996; and

(c) 15% Debentures Due 2005, some of which are presently outstanding.

2. The Company has entered into an indenture, with Manufacturers as trustee, dated as of August 15, 1979, which was qualified under the Act, and filed with the Commission as an Exhibit to the Registration Statement (Registration No. 2–651114) pursuant to which 9.35% Debentures Due 2009, some of which are presently outstanding, were issued.

3. The Company entered into an indenture, with Morgan Guaranty Trust Company, under which Manufacturers is successor trustee, dated as of January 15, 1975, which was qualified under the Act, and filed with the Commission as an Exhibit to the Registration Statement (Registration No. 2–52546), pursuant to which 8½% Debentures Due 2005, some of which are presently outstanding, were issued.

4. The Company has entered into an indenture, dated as of December 1, 1986, with Manufactures as trustee, which will initially not be qualified under the Act, pursuant to which $200,000,000 principal amount of the Company's 8.60% Senior Notes due December 15, 1989, and 9.10% Senior Notes due December 15, 1990 were issued. Pursuant to the terms of the certain Note Purchase Agreements between the Company and the purchasers of said Notes, the Company has convenanted to effect registration of said Notes within 90 days of issuance, and if such registration is effected, the Company is required to qualify simultaneously said indenture under the Act.

5. The Company is not in default under any of the aforementioned indentures. The Company's obligations under all such indentures are wholly unsecured and unsubordinated.

6. The provisions of all the aforementioned indentures are not so likely to involve a material conflict of interest as to make necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as Trustee under any of said indentures.

7. The Company has waived notice of hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with the matters referred to herein.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document (File No. 22–16404) on file in the offices of the Commission at the Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

*Notice is further given* that any interested person may, not later than April 13, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed:

BEST COPY AVAILABLE

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting this application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-7052 Filed 3-30-87; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[Delegation of Authority No. 1-A; Rev. 14]**

### Delegation of Authority; Associate Deputy Adminstrator for Management and Administration et al.

Delegation of Authority No. 1-A (Revision 13) is hereby revised to read as follows:

(a) Pursuant to authority vested in me by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, authority is hereby delegated to the following officials in the following order:

(1) Associate Deputy Administrator for Management and Administration
(2) Associate Deputy Administrator for Special Programs
(3) General Counsel

to perform, in the event of the absence or incapacity of the Administrator and the Deputy Administrator any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under sections 9(d) and 11 of the Small Business Act, as amended.

(b) An individual acting in any of the positions in paragraph (a) remains in the line of succession only if he or she has been designated acting by the Administrator or Acting Administrator due to a vacancy in the position.

(c) This delegation is not in derogation of any authority residing in the above-listed officials relating to the operations of their respective programs nor does it affect the validity of any delegations currently in force and effect and not revoked or revised herein.

Effective Date: March 31, 1987.

Dated: March 19, 1987.

**Charles L. Heatherly,**

*Acting Administrator.*

[FR Doc. 87-7029 Filed 3-30-87; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2269]**

### Mississippi; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 5, 1987, I find that Jones County in the State of Mississippi constitutes a disaster loan area because of severe storms, tornadoes and flooding occuring on February 28, 1987. Eligible persons, firms, and organizations may file applications for physcial damage until the close of business on May 4, 1987, and for economic injury until the close of business on December 7, 1987, at:

Disaster Area 2 Office, Small Business Administration 120 Ralph McGill Boulevard, 14th Floor Atlanta, Georgia 30308

or other locally announced locations. The interest rates are:

| | |
|---|---|
| Homeowners with credit available elsewhere | 8.000% |
| Homeowners without credit available elsewhere | 4.000% |
| Businesses with credit available elsewhere | 7.500% |
| Businesses without credit available elsewhere | 4.000% |
| Businesses (EIDL) without credit available elsewhere | 4.000% |
| Other (non-profit organizations including charitable and religious organizations) | 9.500% |

The number assigned to this disaster is 226912 for physical damage and for economic injury the number is 651000.

(Catalog of Federal Domestic Assistance Programs Nos. 59001 and 59008).

Note: Reissued to correct address of Disaster Area 2 Office Replaces 52 FR 8697, published March 19, 1987.

Dated: March 24, 1987.

**Bernard Kulik.**

*Deputy Associate Administator for Disaster Assistance.*

[FR Doc. 87-7024 Filed 3-30-87; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #6514]**

### Texas; Declaration of Disaster Loan Area

Calhoun, Jackson, and Matagorda Counties in the State of Texas constitute a disaster area because of the closure of the oyster grounds in San Antonio Bay on December 20, 1986, due to flooding of the Guadalupe and San Antonio Rivers which began on or about December 18, 1986. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere my file applications for economic injury assistance until the close of business on December 28, 1987, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9.5 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 25, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87-7025 Filed 3-30-87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Medford-Jackson County Airport, Medford, OR; Noise Exposure Map, Receipt of Noise Compatibility Program and Request for Review

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice..

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Medford-Jackson County Airport (MFR) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for MFR under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before September 15, 1987.

**EFFECTIVE DATES:** The effective date of the FAA's determination on the MFR noise exposure maps and of the start of its review of the associated noise compatibility program is March 20, 1987. The public comment period ends April 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dennis Ossenkop, FAA, Airports

Division, ANM–611, 17900 Pacific Hwy S., C–68966, Seattle, WA 98168.

Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps for MFR are in compliance with applicable requirements of Part 150, effective March 20, 1987. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 15, 1987. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

MFR submitted to the FAA noise exposure maps, descriptions, and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by MFR. The specific maps under consideration are Figures 5c and 5d in the submission. The FAA has determined that these maps for MFR are in compliance with applicable requirements. This determination is effective on March 20, 1987. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for MFR, also effective on March 20, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 15, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue SW., Room 615, Washington, DC

Federal Aviation Administration, Airports Division, ANM–600, 17900 Pacific Hwy. S., C–68966, Seattle, Washington 98168

Medford-Jackson County Airport, Medford, Oregon

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, March 20, 1987.

Cecil C. Wagner,

*Acting Manager, Airports Division.*

[FR Doc. 87–7023 Filed 3–30–87; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen,

Arab Republic, Yemen, Peoples Democratic Republic of.

J. Roger Mentz,

*Assistant Secretary for Tax Policy.*

[FR Doc. 87-6982 Filed 3-30-87; 8:45 am]

BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Dated: March 24, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

### U.S. Customs Service

*OMB Number:* 1515-0145
*Form Number:* None
*Type of Review:* Reinstatement
*Title:* Cargo Container and Road Vehicle Certification for Transport Under Customs Seal
*Description:* This information is used in a voluntary program to receive internationally recognized Customs certification that intermodal containers/road vehicles meet construction requirements of international Customs conventions. Such certification facilitates international trade by reducing intermediate international controls.
*Respondents:* Businesses
*Estimated Burden:* 3,124 hours
Clearance Officer: B.J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Ave., NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

### Alchol, Tobacco and Firearms

*OMB Number:* 1512-0185
*Form Number:* ATF 5400.5
*Type of Review:* Extension
*Title:* Report of Theft or Loss of Explosives
*Description:* This form is used by any person who has knowledge of theft or loss of explosive materials. The form identifies respondents; location of theft or loss; amount; type; size of explosives; and any other details available at the time of the report. The form is used by ATF and others for investigative purposes.
*Respondents:* Businesses
*Estimated Burden:* 450 hours
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Ave., NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

*Departmental Reports, Management Officer.*

[FR Doc. 87-6980 Filed 3-30-87; 8:45 am]

BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

Dated: March 25, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

### U.S. Customs Service

*OMB Number:* 1515-0069
*Form Number:* CF 3461
*Type of Review:* Revision
*Title:* Entry Immediate/Delivery (CF 3461 and CF 3461 Alternate)
*Description:* This form will be used by importers and brokers to provide Customs with the necessary information in order to examine and release imported cargo.
*Respondents:* Businesses
*Estimated Burden:* 908,413 hours
*OMB Number:* 1515-0052
*Form Number:* CF 4609
*Type of Review:* Extension
*Title:* Petition for Remission or Mitigation of Forfeitures and Penalties Incurred
*Description:* Persons who violate provisions of the Tariff Act are entitled to seek mitigation of any penalties and forfeitures incurred. Many cases are solved by inspectors on the line. This form gives the violator the opportunity to claim mitigation and provides a record for appeals.
*Respondents:* Individuals
*Estimated Burden:* 1,166 hours
Clearance Officer: B.J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Ave., NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

### Comptroller of the Currency

*OMB Number:* 1557-0162
*Form Number:* None
*Type of Review:* Extension
*Title:* Capital Changes (Equity Capital and Subordinated Debt)
*Description:* 12 U.S.C. 51, 51a, 57 and 59 require that banks obtain Office approval prior to changing capital. The letter of intent requests only the minimum information needed for the Office to render a decision. The Notice of completion of change represents the bank's conformity to statute and Office policy.
*Respondents:* Businesses
*Estimated Burden:* 600 hours
*OMB Number:* 1557-0147
*Form Number:* None
*Type of Review:* Extension
*Title:* National Bank Lending Limits
*Description:* The regulation, in part, imposes certain recordkeeping requirements that will permit national banks to expand their lending to foreign governments and their related entities.
*Respondents:* Businesses
*Estimated Burden:* 12,000 hours
Clearance Officer: Eric Thompson (202) 447-1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503

### Internal Revenue Service

*OMB Number:* 1545-0044
*Form Number:* 973
*Type of Review:* Revision
*Title:* Corporation Claim for Deduction for Consent Dividends
*Description:* Internal Revenue Code section 565 allows a corporation to treat as a dividend certain amounts consented to as dividends by its shareholders. The corporation uses Form 973 as an attachment sheet for the shareholders' Form 972 and attaches Forms 973 and 972 to the corporation's income tax return to claim the deduction for consent dividends.
*Respondents:* Businesses
*Estimated Burden:* 358 hours

Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 87–6981 Filed 3–30–87; 8:45 am]

BILLING CODE 4810–25–M

## Customs Service

### Application for Recordation of Trade Name; Continental Foods, Inc. (S.A.)

**ACTION:** Notice of Application for Recordation of Trade Name.

**SUMMARY:** Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Continental Foods, Inc. (S.A.)," a corporation organized under the laws of the State of Delaware, located at 800 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

The application states that the trade name is used in connection with soups and bouillon cubes, manufactured in the United States and the Dominican Republic.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

**DATE:** Comments must be received on or before June 1, 1987.

**ADDRESS:** Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: March 25, 1987.

**Steven Pinter,**

*Chief, Entry, Licensing and Restricted Merchandise Branch.*

[FR Doc. 87–7010 Filed 3–30–87; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 1987; 87–41]

### Tuna Fish; Tariff-Rate Quota; Calendar Year 1987

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Announcement of the quota quantity for tuna for calendar year 1987.

**SUMMARY:** Each year the tariff-rate quota for tuna fish described in item 112.30, TSUS, is based on the United States pack of canned tuna during the preceding calendar year.

**EFFECTIVE DATES:** The 1987 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Cooper, Quota Program Manager, Admissibility Requirements Section, Commercial Compliance Division, Office of Commercial Operations, U.S. Customs Service, Washington, DC 20229, (202/566–8592).

It has now been determined that 91,538,769 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1987, at the rate of 6 percent ad valorem under item 112.30, TSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 112.30, TSUS.

(QUO–2–CO:T:C:C:A)

Dated: March 3, 1987.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

[FR Doc. 87–7009 Filed 3–30–87; 8:45 am]

BILLING CODE 4820–02–M

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

**SUMMARY:** The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 24, 1987.

By direction of the Administrator.

**Raymond S. Blunt,**

*Director, Office of Program Analysis and Evaluation.*

**Reinstatement**

1. Department of Medicine and Surgery.
2. Application for Employment—Professional Nurse.
3. VA Form 10–2850a.
4. VA officials will use the information to evaluate education, professional experience and credentials in support of employment decision in hiring nurses.
5. On occasion.
6. Individuals or households.
7. 51,600 responses.
8. 17,200 hours.
9. Not applicable.

[FR Doc. 87–6976 Filed 3–30–87; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FARM CREDIT ADMINISTRATION

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for April 7, 1987.

**DATE AND TIME:** The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 7, 1987, from 8:30 a.m. until 10:30 a.m.

**FOR FURTHER INFORMATION CONTACT:** Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703–883–4010).

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Approval of Minutes of March Meeting.
2. Final Regulations:
   Part 611—Farm Credit System Capital Corporation; Organization
   Part 614—Borrower Rights
3. Uniform Financial Institution Rating System
4. Liquidations—Recommendations for Final Closings and Charter Cancellations [1]

Dated: March 27, 1987.

**Kenneth J. Auberger,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87–7081 Filed 3–27–87; 11:21 am]

BILLING CODE 6705–01–M

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 24, 1987.

**TIME AND DATE:** 10:00 a.m., Thursday, March 26, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

[1] Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

**MATTERS TO BE CONSIDERED:** In addition to the previously announced item, the Commission will consider and act upon the following:

2. Rushton Mining Company, Docket Nos. PENN 85–253–R, etc. (Consideration of a petition for discretionary review; and
3. Western Fuels-Utah, Inc., Docket Nos. WEST 86–108–R, etc.

It was determined by a unanimous vote of Commissioners that these items be added to the agenda and no earlier announcement of the addition was possible.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653–5629.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 87–7073 Filed 3–27–87; 10:37 am]

BILLING CODE 6735–01–M

## FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 11:00 a.m., Monday, April 6, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any item carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 27, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–7062 Filed 3–27–87; 3:39 pm]

BILLING CODE 6210–01–M

## INTERSTATE COMMERCE COMMISSION

**TIME AND DATE:** 10:00 a.m., Tuesday, April 7, 1987.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

**STATUS:** Open Special Conference.

**PURPOSE:** The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item(s). Although the conference is open for public observation, no public participation is permitted.

**MATTER TO BE DISCUSSED:**

Finance Docket No. 28272

*Star Lake Railroad Company—Rail Construction and Operation in McKinley County, New Mexico*

**CONTACT PERSON FOR MORE INFORMATION:** Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275–7252.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7095 Filed 3–27–87; 12:22 pm]

BILLING CODE 7035–01–M

## NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of March 30, April 6, 13, and 20, 1987.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of March 30**

*Friday, April 3*

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

**Week of April 6—Tentative**

*Monday, April 6*

2:00 p.m.
Briefing on NRC Strategic Planning (Public Meeting)

*Thursday, April 9*

2:30 p.m.
Discusion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

4.00 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

*Friday, April 10*

10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

**Week of April 13—Tentative**

*Wednesday, April 15*

10:00 a.m.
Briefing by Office of Special Project (Public Meeting)

2:00 p.m.

Briefing by DOE on the TMI–2 Core Examination Program (Public Meeting)

*Thursday, April 16*

11:00 a.m.
Periodic Meeting with the Advisory Panel for the Decontamination of TMI–2 (Public Meeting)
2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2, 5, 6, & 7)
4:00 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

**Week of April 20—Tentative**

*Thursday, April 23*

4:00 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)** (202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** Robert McOsker (202) 634–1410.

**Robert B. McOsker,**

*Office of the Secretary.*

March 26, 1987.

[FR Doc. 87–7159 Filed 3–27–87; 3:29 pm]

BILLING CODE 7590–01–M

---

**PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL**

**NOTICE OF MEETING:**

**STATUS:** Open. The Council may hold an executive session after its meeting on April 9 to discuss civil litigation matters with counsel.

**TIME AND DATE:** 9:00 a.m., April 9, 1987.

**PLACE:** Village Red Lion, 100 Madison Street, Missoula, Montana.

**MATTERS TO BE CONSIDEREED:**

1. Introduction to the Western Electricity Study.
2. Status Report on Bonneville Power Administration's In-region Marketing Program.
3. Council Review of Bonneville Power Administration's Work Plans to Implement the Northwest Conservation and Electric Power Plan.
4. Status Report on Federal Appliance Efficiency Legislation.
5. Report on the Council's Congressional Testimony Regarding FY 88 Federal Agency Budgets.
6. Council Business.
7. Public Comment.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bess Atkins at (503) 222–5161.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 87–7089 Filed 3–27–87; 11:48 am]

BILLING CODE 0000–00–M

---

**POSTAL SERVICE**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 52 FR 9755, March 26, 1987.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** April 6, 1987.

**CHANGE:** Addition of the following agenda item:

Consideration of court ruling in *Active Fire Sprinkler Corporation* v. *USPS.*

**AUTHORITY:** By telephone vote on March 26, 1987, the Board determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirements of the Government in the Sunshine Act because it is likely to specifically concern the Postal Service in a civil action or proceeding.

In accordance with section 552b(f)(1) of Title 5, United States Code and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel has certified that in his opinion the additional agenda item of the meeting may properly be closed to the public for the reason cited above.

**CONTACT PERSON FOR MORE INFORMATION:** David F. Harris, (202) 268–4800.

**David F. Harris,**

*Secretary.*

[FR Doc. 87–7061 Filed 3–27–87; 10:21 am]

BILLING CODE 7710–12–M

---

**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 6, 1987:

A closed meeting will be held on Tuesday, April 7, 1987, at 3:00 p.m. An open meeting will be held on Thursday, April 9, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 7, 1987, at 3:00 p.m., will be:

Formal order of investigation.
Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive action.
Chapter 11 proceeding.
Consideration of amicus participation.

The subject matter of the open meeting scheduled for Thursday, April 9, 1987, at 10:00 a.m., will be:

Consideration of whether to issue a release proposing an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate as an exempted security, solely for purposes of futures trading thereon, foreign government debt (a) issued by any country the sovereign debt of which is rated in one of the two highest rating categories of two nationally recognized rating agencies or (b) issued by the governments of Australia, France and New Zealand. For further information, please contact David L. Underhill at (202) 272–2375.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272–2091.

**Jonathan G. Katz,**

*Secretary.*

March 27, 1987.

[FR Doc. 87–7174 Filed 3–27–87; 3:56 am]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 52, No. 61
Tuesday, March 31, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientic Instruments; Thomas Jefferson University

*Correction*

In notice document 87-5984 beginning on page 8634 in the issue of Thursday, March 19, 1987, make the following correction:

On page 8635, in the first column, in the first complete paragraph, in the next to the last line, "Commission" should read "Commissioner".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientifc Instruments; Woods Hole Oceanographic Institution et al.

*Correction*

In notice document 87-5836 beginning on page 8494 in the issue of Wednesday March 18, 1987, make the following corrections:

1. On page 8495, in the first column, in the second complete paragraph, in the next to the last line, the date should read, "February 25,".

2. On the same page, in the second column, in the 10th line, "SC-51" should read "SF-51".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Bureau of Standards

[Docket No. 60117-6212]

### Proposed Federal Information Processing Standard_____, C

*Correction*

In notice document 87-412 beginning on page 851 in the issue of Friday, January 9, 1987, make the following correction:

On page 853, in the first column, in paragraph 11.1, the first sentence is corrected to read, "This publication is effective [6 months after date of publication of final document in the Federal Register].".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[INTL-43-86]

### Interest Charge; Domestic International Sales Corporation (DISCs)

*Correction*

In proposed rule document 87-2015 beginning on page 3256 in the issue of Tuesday, February 3, 1987, make the following corrections:

**§ 1.991-1 [Corrected]**

1. On page 3259, in the third column, in § 1.991-1(e), in the 18th line, remove "and the Act".

**§ 1.995-8 [Corrected]**

2. On page 3266, in the first column, in § 1.995-8(e), in the *Example*, in paragraph (iii), in the first column entry, in the fourth line, "$150" should read "$150,000".

**§ 1.995(f)-1 [Corrected]**

3. On page 3287, in § 1.995(f)-1, in the third column, in paragraph (d)(2)(i)(A), in the second line, "(3)" should read "(e)"; and in paragraph (d)(2)(iii), in the eighth line, "(3)" should read "(e)".

4. On page 3268, in the first column, in the same section, in paragraph (d)(4)(ii), in *Example (1)*, in the 16th line, "new" should read "net"; and in the second column, in the 5th, 6th, and 7th lines, remove "loss deduction of $10,000 of ordinary income, plus $5000 of deferred DISC income, less the net operating".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 51

[LR-225-81]

### Windfall Profit Tax; Rules Relating to Production From a Unitized Property of Imputed Stripper Well Crude Oil, Imputed Heavy Crude Oil, and Imputed Newly Discovered Crude Oil

*Correction*

In proposed rule document 86-21957 beginning on page 34653 in the issue of Tuesday, September 30, 1986, make the following corrections:

**§ 51.4996-5 [Corrected]**

1. On page 34657, in the second column, in § 51.4996-5(d)(2)(iii), in the fourth line, "or" should read "an".

2. On page 34658, in the second column, in the same section, in paragraph (e)(3)(ii), in the next to the last line before the formula, insert "to" between "equal" and "A"; and in the formula move the "D" so that it appears as a numerator above the "E".

3. On page 34660, in the same section, in paragraph (e)(7), in the first column, in *Example (3)*, in the 13th line, "(e)(1)(i)" should read "(e)(3)(i)"; and in the second column, in the last line of the *Example*, insert "imputed" between "percent" and "newly".

4. On the same page, in the same section and same paragraph, in the third column, in *Example (7)*, in the 7th and 8th lines, remove "unitization, N qualified as a stripper well property, but all".

5. On page 34661, in the same section, in paragraph (f) in the second column, in the 12th line, insert "unitized" between "separate" and "property".

BILLING CODE 1505-01-D

Federal Register

Tuesday
March 31, 1987

Part II

# Department of Agriculture

**Animal and Plant Health Inspection Service**

**9 CFR Parts 1 and 2**
**Animal Welfare; Proposed Rules**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Part 1**

**[Docket No. 84-027]**

## Animal Welfare; Definition of Terms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend Part 1—"Definition of Terms." The changes comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131 et seq.) contained in Pub. L. 99-198, "The Food Security Act of 1985" enacted December 23, 1985. This proposal would also expand the list of definitions in order to facilitate enforcement of the Act and the regulations and to inform the public of the Act's requirements. These proposed amendments complement the changes the Agency is proposing to Parts 2 and 3, some of which are also required by Pub. L. 99-198.

**DATE:** Written comments must be received on or before June 1, 1987, and should refer to Docket 84-027.

**ADDRESS:** Written comments concerning this proposal should be submitted to Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 756 of the Federal Building, 8 a.m. to 4 p.m., Monday to Friday except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone (301) 436-7833.

**SUPPLEMENTARY INFORMATION:**

### Background

This document proposes to amend and expand 9 CFR Part 1, entitled "Definition of Terms" which provides the definitions for the regulations in 9 CFR Part 2, and the standards in 9 CFR Part 3 for the humane handling, care, treatment, and transportation of regulated animals used for research or exhibition purposes, sold as pets, or transported in commerce. The Definitions, Regulations, and Standards are established pursuant to the authority in the Animal Welfare Act, as amended (U.S.C. 2131 *et seq.*). This law requires the Secretary to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. The standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, and other matters specified in section 13 of the Act (7 U.S.C. 2143). These definitions will provide proper guidance to the public, licensees, and registrants in their responsibilities under the Act.

Many of the presently existing definitions have been expanded, reworded, or revised based on the experience the Agency has gained in administering the Act. The Department solicits comments and recommendations concerning these proposed definitions.

The definitions proposed in this document have been organized alphabetically so users may more easily locate a particular term.

The proposed amendments to the "Definitions" are as follows:

The term "ambient temperature" has been added to define better the areas of temperature restrictions for animal housing and transportation.

The term "animal" has been reworded to include the term "teaching." All warmblooded animals are covered by the Act, however, the Department will still exclude from regulation poultry and birds, laboratory-bred species of rats and mice, farm animals, and other animals used solely for food or fiber (fur), or as pack or work animals.

The term "animal act" has been added to identify and differentiate exhibitors with performing animals from mere exhibited animals.

The term "attending veterinarian" has been reworded to indicate that the veterinarian has direct or delegated responsibilities for activities involving animals at licensed and registered facilities. This includes not only the treatment of sick or injured animals, but also programs of nutrition, preventive medicine (vaccinations), internal and external parasite control, euthanasia, and general sanitation and animal husbandry practices. In the case of research facilities, he/she is also responsible for evaluating the type and amount of anesthetic, analgesic, and tranquilizing drugs used on animals during actual research, testing, or experiments, including pre- and post-procedural care, where appropriate, to relieve unnecessary pain and distress in the subject animals. It is also proposed that the "attending veterinarian" demonstrate the acquisition of training or experience in the care and management of the species being attended, and that the veterinarian be accredited by the U.S. Department of Agriculture in accordance with regulation to be issued under the Animal Welfare Act.

The term "business hours" has been added as that term is used in the standards. This term will apply to all licensees and registrants regardless of their type of operation (part-time, full-time, or seasonal operation).

The term "cat" has been reworded so as to include hybrid crosses.

The term "class 'A' dealer" has been reworded to clarify the limitations of a class A license. The term "class 'B' licensee" has been reworded to clarify the requirements for a class B licensee. A class "B" licensee includes those persons who operate as brokers and as operators of auction sales. Although a broker or an operator of an auction sale does not usually take actual physical possession of the animals and does not usually hold animals in any facilities, he does negotiate or arrange for their sale in commerce and is, therefore, a class "B" licensee. A class "B" licensee is also allowed to exhibit animals as a minor part of the business. The term "class 'C' licensee" has been reworded to clarify the requirements for a class C exhibitor's license and to indicate that a class "C" exhibitor is allowed to buy and sell animals, as a minor part of his business, or to maintain his animal collection. The type of license (B or C) is determined by the applicant's primary business.

The term "commerce" has been reworded to indicate that intrastate activities are considered to be in commerce for the purposes of the Act.

The term "committee" has been added and describes the Institutional Animal Care and Use Committee required by the 1985 amendments to the Act.

The term "dealer" has been reworded to define those persons requiring a dealer's license and to specify certain areas and operations which are excluded or exempted from licensing requirements. The term "dealer" includes brokers and operators of auction sales selling animals other than domestic livestock (horses, cattle, sheep, goats, and pigs) and poultry. The term "dealer" also includes anyone selling any parts of an animal, such as unborn animals, organs, limbs, blood, serum, or other parts. This term is not intended to include the following types of operations: (1) Any retail outlet which meets the definition of a "retail pet store" as defined in this part; or (2) any person who sells no more than $500 worth of animals other than dogs or cats

or wild or exotic animals in any calendar year.

In addition, APHIS has determined that the following persons derive less than a substantial portion of their income from dealer activities and thus need not obtain a license: (1) Any person who maintains a total of three (3) or fewer breeding female dogs or cats per household or premises and who sells the offspring of such dogs or cats, which were born and raised on their premises, for pets or exhibition purposes; or (2) any person who sells fewer than 25 dogs or cats per year, which were born and raised on their premises, for research purposes or to any research facility; or (3) any person who arranges for transportation or transports animals only for the purposes of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment; or (4) any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber (fur); or (5) any person who breeds and raises domestic pet animals (as indicated in the definition of retail pet store) for direct retail sales to others for their own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (such as a purebred dog or cat fancier); or (6) any person who buys animals only for his own use or enjoyment and does not sell or exhibit animals or otherwise qualify for licensing. These exclusions will be included in the licensing regulations in 9 CFR Part 2. The sale of wild or exotic animals or the wholesale of other animals always requires a license.

The term "dog" has been reworded to include dog hybrid crosses.

A definition of "endangered species" has been added.

The term "euthanasia" has been changed to define humane destruction of an animal. The method of euthanasia used should be one which is consistent with the recommendations of the American Veterinary Medical Association's current Panel on Euthanasia or one which is approved, in writing, by the Area Veterinarian in Charge for specific instances. Exceptions to these recommended methods of euthanasia in research facilities would have to be justified in the research protocol and approved by the attending veterinarian and the Institutional Animal Care and Use Committee.

The definition of "exhibitor" has been reworded to identify those persons who are required to obtain a license as an exhibitor. Although the definition of exhibitor includes certain exemptions in regard to State and county fairs and the advancement of agricultural arts and sciences, any animal exhibits at State and county fairs, livestock shows, rodeos, or the like, that are not domestic livestock and do not have the purpose of advancing agricultural arts and sciences, such as petting zoos utilizing dogs, cats, guinea pigs, or rabbits, for example, or clown acts with dogs or monkeys and animal prizes given by games of chance, must obtain a license as an exhibitor under the Act. The term "exhibitor," as defined in the Act, also has an exclusion for retail pet stores. A "retail pet store" has been defined in this part. Any pet store which exhibits any animal(s) other than pet animals will be required to obtain a license as an exhibitor. If such animals are sold, the pet store will be required to have a dealer's license.

The term "exotic animal" has been added to indicate that these are animals which are not normally found in the United States, either as domesticated or wild animals. Dealers and exhibitors of exotic animals must obtain a license under the Act.

The term "farm animal" has been reworded to identify what animals are farm animals and specifically to include certain animals if used for purposes of food, fiber, or work only.

The terms "Federal agency," "Federal award," and "Federal research facility," were defined by the 1985 amendments to the Act and have been added to the definitions.

The term "handling" is being removed from Part 3, Subparts E and F (§§ 3.111 and 3.135), and added to the definitions in this part and to the Regulations in Part 2. This is being done in order to apply the same requirements to all covered animals and to eliminate repetitive standards from each of the subparts in Part 3.

The term "housing facility" has been added to define the areas covered by such term which are subject to inspection and compliance with the regulations and standards. This definition is broad in scope and covers the land immediately surrounding an animal facility and any accumulation of junk, trash, or weeds thereon that might harbor or conceal various pests such as rats, mice, mosquitoes, and flies or that might be potentially harmful to the animals.

Over the past few years, new types of animal dealer operations have become more prevalent whereby domestic animals are crossed with wild or exotic animals, such as dogs crossed with wolves and buffalo crossed with domestic cattle, with the offspring being sold for various purposes. There has been discussion between the Agency and the industry whether such hybrid cross animals should be considered wild or domestic animals for purposes of the Act. The general consensus within the Agency has been that such hybrid cross animals should be considered to be domesticated animals. An additional problem is that there is no way to prove if an animal is ¾ or ½ wild or domestic, nor can such a decision be made by observing the animal. Even if such categories could be proven, the problem would still remain as to where the line should be drawn between a wild animal and a domestic animal. Therefore, for the purposes of the Act, the term "hybrid cross" has been added to the definitions and such a cross is determined to be a domestic animal.

The standards require impervious surfaces in animal facilities but do not define this term. APHIS has issued memorandums explaining and defining this term, but these have not always received wide distribution in the field and are not generally available to the public. The term "impervious surface" has now been added to the definitions. In order for building surfaces and enclosure surfaces to be impervious to moisture, the construction material must be composed of, or treated with, a material which is nonpermeable, nonporous, and is incapable of being penetrated by moisture or fluids. Nontoxic paints, varnish, shellac, plastic type coatings, sealed cement, metal and plastics are acceptable surfaces if maintained in good condition. Untreated wood or wood coated with whitewash or linseed oil is not acceptable nor are any substances that do not cause such surfaces to be impervious or that are not well maintained so as to be impervious. Exceptions to these provisions may be permitted if provided for in an approved protocol, e.g., for simulation of a natural environment.

Whether an animal facility should be classified as an indoor housing facility or an outdoor housing facility has not been completely understood. To correct this situation, the term "indoor housing facility" has been reworded to spell out the requirements that must be met in order to be classified as such a facility. The term "outdoor housing facility" has also been reworded to define this type of facility. Outdoor housing facilities would be restricted to: (1) Outside pens or runs with dog houses; (2) outside pens or paddocks with enclosed or partly enclosed sheds or shelters; or (3) animals maintained on a tether with a shed or dog house available. In addition

a third type of animal housing facility, "sheltered housing facility," has been added to the definitions and will be added to the standards in Part 3. A "sheltered housing facility" will have requirements that will fall between those of an "indoor housing facility" and an "outdoor housing facility." The inside or sheltered part of the facility should be able to maintain temperatures above 35° F (1.7° C); must provide additional ventilation, such as fans, when temperatures in the sheltered area exceed 95° F (35° C); and the shelter part must be available to the animals at all times. This type of facility would include runs or pens in a totally enclosed barn or building or connecting inside/outside runs or pens with the inside pens in a totally enclosed building. This definition is intended to assist the public in understanding how an animal housing facility should be classified.

The term "intermediate handler" has been revised. The new definition is not intended to include any person who transports or arranges for transportation of animals solely for the purposes of: (1) Purebred breeding, (2) dog and cat shows, (3) boarding not in association with transport in commerce, (4) grooming, or (5) veterinary care. All other aspects of transportation are regulated.

The veterinary care standards and acceptable husbandry practices for marine mammals require isolation of new or sick animals from resident animals; however, isolation was not defined in the regulations or standards. The term "isolation" has, therefore, been added to the definitions in regard to marine mammals.

The term "licensed veterinarian" has been reworded so as to include the requirement that the veterinarian must be licensed in a State and has received formal training.

The 1985 amendments restrict the number of times that an animal may be used for survival surgery in major operative experiments. In order to effect this requirement, the term "major operative experiment" has been added to the definitions.

The 1985 amendments to the Act require that steps be taken to reduce or eliminate the use of painful procedures in research animals. In the next to last paragraph of the "Joint Explanatory Statement of the Committee of Conference," as published in the House Congressional Record on December 17, 1985, the conferees indicated that their intent was to reduce or eliminate pain other than slight or momentary pain, such as that caused by injections or other minor procedures. The 1985 amendments to the Act reflect Congressional concern with the infliction of pain and the use of painful procedures on laboratory animals. They require that research facility personnel seriously review painful procedures to determine if they are necessary to obtain the scientific objective. Accordingly, the term "painful procedure" has been added to the list of definitions.

APHIS is defining the term "pet animal" as animals which have normally been kept by households in the United States as family pets and are considered to be easily handled and relatively nondangerous. Pet stores which sell any animal not deemed to be a "pet animal" must obtain a dealer's license.

Over the years there has been some disagreement over what constitutes the term "primary enclosure." This term has been reworded and includes some examples.

The term "protocol" has been defined as the investigator's plan for the use of animals in the context of the investigator's research. The 1985 amendments provide for exceptions to the regulations and standards if such exceptions are justified in the protocol and approved by the Committee. The 1985 amendments to the Act require research facilities to establish Institutional Animal Care and Use Committees and set certain responsibilities and duties for the committees. The amendments state that a quorum is required for all formal actions of the committee and define "quorum" as "a majority of committee members." The term "quorum" is, therefore, added to the list of definitions as defined in the amendments.

The term "random source" has been added to the definitions to differentiate dogs and cats obtained from pounds, shelters, and persons who did not breed and raise them, from dogs and cats bred specifically for use in research facilities and those that are obtained from a known legal source. This definition is intended to facilitate enforcement of the Act against dealers and research facilities unlawfully buying or selling such animals. The term "random source" is, therefore, defined and added to the list of definitions.

The term "research facility" has been reworded to clarify the structure and meaning of the paragraph and the permitted exemption from registration. The use of animals for teaching has also been included in the definitions to clarify the intent of Congress that animals used for teaching purposes are regulated under the Act as are those used for testing, experiments, or research. The committee hearings for the original Laboratory Animal Welfare Act in 1966 (Pub L. 89–544) and the amendments in 1970 (Pub. L. 91–579) specifically indicated that animals used for teaching were to be included under the term research. The term "teaching" was never made part of the definition of a research facility but the intent has been carried out in program enforcement. This has caused some confusion over the years which would be corrected by this new definition.

The Animal Welfare Act, as amended, (7 U.S.C. 2131 *et seq.*) provides for certain exemptions for a "retail pet store" under the definitions of a dealer and an exhibitor. The term "retail pet store" has been revised to clarify the circumstances under which such a store must obtain a license. Any retail pet store selling or exhibiting any animal(s) other than those listed as a "pet animal" would require a license as a class "B" dealer or a class "C" exhibitor.

The term "transporting vehicle" has been added to the definitions in regard to the transportation of animals. Although the term "primary conveyance" means basically the same thing, the term "transporting vehicle" has been added to assist the public in understanding the regulations.

The term "wild animal" has been added, along with the term "exotic animal," to define better those animals regulated under the Act. The habitat for some animals in the wild state is rapidly diminishing and many of these animals are more readily found in captivity than in nature. These definitions are an effort to adapt to changing circumstances and to clarify the types of animals included under each definition.

The Act specifies, under the definition of "exhibitor," that carnivals, circuses, and zoos exhibiting animals must be licensed whether operated for profit or not. The term "zoo" has been added to the list of definitions. This definition is broad in scope and is intended to include any stationary or semistationary display of animals to the public regardless of compensation.

## Comments

Written comments are solicited for 60 days after publication of this document in the **Federal Register** and should refer to Docket number 84–027.

## Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12291 and Regulatory Flexibility Act**

This proposed rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined not to be a "major rule." Based on information available to the Department, it has been determined that this proposal would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; and would not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Alternatives were considered with respect to this proposal.

Consideration was given to add only the definitions mandated by the amendments to the Animal Welfare Act as indicated in Pub. L. 99–198, the "Food Security Act of 1985." It was determined that new definitions should be added and existing definitions reworded and revised, so as to assist the public in understanding the requirements of the regulations and standards.

It is not anticipated that the adoption of the proposed changes would have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Many of the proposed changes would ease the burden and lessen the impact of regulation on all small entities within the regulated industry.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 9 CFR Part 1**

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

Accordingly, we propose to amend 9 CFR as follows:

Part 1 is revised to read as follows:

## PART 1—DEFINITION OF TERMS

**Authority:** 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 1.1 Definitions.**

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

*Act* means the Act of August 24, 1966 (Pub. L. 89–544), (commonly known as the Laboratory Animal Welfare Act), as amended by the Act of December 24, 1970 (Pub. L. 91–579), (the Animal Welfare Act of 1970), the Act of April 22, 1976 (Pub. L. 94–279), (the Animal Welfare Act Amendments of 1976), and the Act of December 23, 1985 (Pub. L. 99–198), (the Food Security Act of 1985), and as it may be subsequently amended.

*Administrator* means the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom authority has been delegated to act in his stead.

*Ambient temperature* means the air temperature surrounding the animal.

*Animal* means any live or dead dog, cat, monkey (nonhuman primate), guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats, and mice and horses and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

*Animal act* means any performance of animals where such animals are trained to perform some behavior or action or are part of a show, performance, or exhibition.

*Area Veterinarian in Charge* means a veterinarian or his designee employed by APHIS, Veterinary Services, who is assigned by the Deputy Administrator to supervise and perform the official work of Veterinary Services in a given State or States. As used in Part 2 of this subchapter, the Area Veterinarian in Charge shall be deemed to be the person in charge of the official work of Veterinary Services in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.

*Attending veterinarian* means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, has received training and/or experience in the care and management of the species being attended, and who has direct or delegated responsibility for activities involving animals at a registered or licensed facility. The veterinarian must be accredited by the U.S. Department of Agriculture in accordance with regulations issued under the Animal Welfare Act.

*Business hours* means the hours between 7 a.m. and 7 p.m., Monday through Friday, except for legal Federal holidays, each week of the year.

*Business year* means the 12-month period during which business is conducted, and may be either on a calendar or fiscal-year basis.

*Carrier* means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire.

*Cat* means any live or dead cat (Felis catus) or any cat-hybrid cross.

*Class "A" licensee* (breeder) means a person subject to the licensing requirements under Part 2 whose business involving animals consists only of animals that are bred and raised on the premises in a closed or stable colony and those animals acquired for the sole purpose of maintaining or enhancing the breeding colony.

*Class "B" licensee* (dealer) means a person subject to the licensing requirements under Part 2 and meeting the definition of a "dealer" (§ 1.1(q)) and whose business includes the purchase and/or resale of any animal. This term includes brokers, and operators at an auction sale, as such individuals negotiate or arrange for the purchase, sale, or transport of animals in commerce. Such individuals do not usually take actual physical possession or control of the animals, and do not usually hold animals in any facilities. A class "B" licensee may also exhibit animals as a minor part of the business.

*Class "C" licensee* (exhibitor) means a person subject to the licensing requirements under Part 2 and fitting the definition of an "exhibitor" (§ 1.1(x)) whose business involves the showing or displaying of animals to the public. A class "C" licensee may buy and sell animals as a minor part of the business in order to maintain or add to his animal collection.

*Commerce* means trade, traffic, transportation, or other commerce—

(1) Between a place in a State and any place outside of such State, including any foreign country, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or

(2) Which affects the commerce described in this part.

*Committee* means the Institutional Animal Care and Use Committee established under section 13(b) of the Act. It shall consist of at least three (3) members, one of whom is the attending veterinarian of the research facility and one of whom is not affiliated in any way with the facility other than as a member of the committee. The research facility shall establish the Committee for the purpose of evaluating the care, treatment, housing, and use of animals, and for certifying compliance with the Act by the research facility.

*Dealer* means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

*Department* means the U.S. Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Veterinary Services or any other official of Veterinary Services to whom authority has been delegated to act in his stead.

*Dog* means any live or dead dog (Canis familiaris) or any dog-hybrid cross.

*Dwarf hamster* means any species of hamster such as the Chinese and Armenian species whose adult body size is substantially less than that attained by the Syrian or Golden species of hamsters.

*Endangered species* means those species defined in the Endangered Species Act (16 U.S.C. 1531 *et seq.* and as it may be subsequently amended).

*Euthanasia* means the humane destruction of an animal accomplished by a method which produces instantaneous unconsciousness and immediate death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent which causes painless loss of consciousness and subsequent death.

*Exhibitor* means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

*Exotic animal* means any animal that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, llamas, antelope, anteaters, kangaroos, and water buffalo. Species of foreign domestic cattle, such as, Ankole, Gayal, Yak are included in this group.

*Farm animal* means any domestic species of cattle, sheep, swine, goats, or horses, which are normally and have historically, been kept and raised on farms in the United States, and used or intended for use as food or fiber. This term also includes animals such as rabbits, mink, and chinchilla, when they are used solely for purposes of meat or fur, and animals such as horses and llamas when used solely as work or pack animals.

*Federal agency* means an Executive agency as such term is defined in section 105 of Title 5, United States Code, and with respect to any research facility means the agency from which the research facility receives a Federal award for the conduct of research, experimentation, or testing involving the use of animals.

*Federal award* means any mechanism (including a grant, award, loan, contract, or cooperative agreement) under which Federal funds are used to support the conduct of research, experimentation, or testing, involving the use of animals. The permit system established under the authorities of the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act, are not considered to be Federal awards under the Animal Welfare Act.

*Federal research facility* means each department, agency, or instrumentality of the United States which uses live animals for research or experimentation.

*Handling* means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal.

*Housing facility* means any land, premises, shed, barn, building, trailer, or other structure or area housing or intended to house animals.

*Hybrid cross* means an animal resulting from the crossbreeding between two different species or types of animals. Crosses between wild animal species, such as lions and tigers, are considered to be wild animals. Crosses between wild animal species and domestic animals, such as dogs and wolves or buffalo and domestic cattle, are considered to be domestic animals.

*Impervious surface* means a surface that does not permit the absorption of fluids. Fluids on such surfaces will bead or run off, and such surfaces will allow thorough and repeated cleaning and disinfecting, and will not retain odors.

*Indoor housing facility* means any structure or building with environmental controls housing or intended to house animals and meeting the following three requirements:

(1) It must be capable of controlling the temperature within the building or structure within the limits set forth for that species of animal, of maintaining humidity levels of 30 to 70 percent and of rapidly eliminating odors from within the building; and

(2) It must be an enclosure created by the continuous connection of a roof, floor, and walls (a shed or barn set on top of the ground does not have a continuous connection between the walls and the ground unless a foundation and floor are provided); and

(3) It must have at least one door for entry and exit that can be opened and closed (any windows or openings which provide natural light must be covered

with a transparent material such as glass or hard plastic).

*Intermediate handler* means any person, including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier), who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce.

*Isolation* in regard to marine mammals means the physical separation of animals to prevent contact and a separate, noncommon, water circulation and filtration system for the isolated animals.

*Licensed veterinarian* means a Doctor of Veterinary Medicine who has graduated from an accredited school of veterinary medicine and who has a valid license to practice veterinary medicine in some State.

*Licensee* means any person licensed according to the provisions of the Act and the regulations in Part 2 of this subchapter.

*Major operative experiment* means any surgical intervention that penetrates and exposes a body cavity or that has the potential for producing a permanent disability.

*Minimum horizontal dimension* (MHD) means the diameter of a circular pool of water, or in the case of a square, rectangle, oblong, or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

*Nonconditioned animals* means animals which have not been subjected to special care and treatment for sufficient time to stabilize, and where necessary, to improve their health.

*Nonhuman primate* means any nonhuman member of the highest order of mammals including prosimians, monkeys, and apes.

*Operator of an auction sale* means any person who is engaged in operating an auction at which animals are purchased or sold in commerce.

*Outdoor housing facility* means any structure, building, land, or premise, housing or intended to house animals, which does not meet the definition of an indoor housing facility or a sheltered housing facility and in which temperatures cannot be controlled within set limits.

*Painful procedure* as applied to any animal means any procedure that would reasonably be expected to cause more than slight or momentary pain or distress in a human being to which that procedure was applied, that is, pain in excess of that caused by injections or other minor procedures.

*Person* means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

*Pet animal* means any animal that has commonly been kept as a pet animal in family households in the United States.

*Primary conveyance* means the main method of transportation used to convey an animal from origin to destination, such as a motor vehicle, plane, ship, or train.

*Primary enclosure* means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or chain. In the case of animals restrained by a chain (e.g., dogs on chains), it includes the shelter and the area within reach of the chain.

*Protocol* means an investigator's plan for the use of animals in a study of a biomedical problem.

*Quorum* means a majority of the Committee members.

*Random source* means dogs and cats obtained from animal pounds or shelters, auction sales, or from any person who did not breed and raise them on their premises.

*Registrant* means any research facility, carrier, intermediate handler, or exhibitor not required to be licensed under section 3 of the Act, registered pursuant to the provisions of the Act and the regulations in Part 2 of this subchapter.

*Research facility* means any school (except an elementary or secondary school), institution, organization, or person who uses or intends to use live animals in research, tests, experiments, or teaching, and that: Purchases or transports live animals in commerce, or receives funds under a grant, award, loan, or contract from a Department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, experiments, or teaching. A school, institution, organization, or person who does not use or intend to use live dogs or cats may be exempted by the Administrator, upon application to him in specific cases and upon his determination that such exemption does not vitiate the purpose of the Act. The Administrator will not exempt any school, institution, organization, or person who, in the opinion of the Administrator, uses substantial numbers of live animals where the principal function of such school, institution, organization, or person, is biomedical research, testing, or teaching.

*Retail pet store* means any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gopher, mink, chinchilla, domestic ferrets, domestic farm animals, birds, and coldblooded species. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security or breeding purposes;

(2) Establishments or persons selling or offering to sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as, skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; and

(4) Any establishment wholesaling any animals (except birds, rats and mice).

*Sanitize* means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

*Secretary* means the Secretary of Agriculture of the United States or his representative who shall be an employee of the Department.

*Sheltered housing facility* means a housing facility which provides the animals with shelter; protection from the elements; and protection from temperature extremes at all times. A sheltered housing facility may consist of runs or pens totally enclosed in a barn or building, or of connecting inside/outside runs or pens with the inside pens in a totally enclosed building.

*Standards* means the requirements with respect to the humane housing, exhibition, handling, care, treatment, temperature, and transportation of animals by dealers, exhibitors, research facilities, carriers, intermediate handlers, and operators of auction sales as set forth in Part 3 of this subchapter.

*State* means a State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

*Transporting device* means an interim vehicle or device, other than man, used to transport an animal between the primary conveyance and the terminal facility or in and around the terminal facility of a carrier or intermediate handler.

*Transporting vehicle* means any truck, car, trailer, airplane, ship, or railroad car used for transporting animals.

*Veterinary Services* means the office of the Animal and Plant Health Inspection Service to which responsibility is assigned for the performance of functions under the Act.

*Veterinary Services representative* means any inspector or other person employed by the Department who is

responsible for the performance of a function under the Act.

*Weaned* means that an animal has become accustomed to take solid food and has so done, without nursing, for a period of at least 5 days.

*Wild animal* means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions. This term includes, but is not limited to, animals such as: Buffalo, deer, skunk, opossum, raccoon, armadillo, coyote, squirrel, fox, wolf.

*Wild state* means living in its original, natural condition; not domesticated.

*Zoo* means any park, building, cage, enclosure, or other structure or premise in which a live animal or animals are kept for public exhibition or viewing, regardless of compensation.

Done at Washington, DC, this 24th day of March, 1987.

**B.G. Johnson,**

*Deputy Administrator, Veterinary Services.*

[FR Doc. 87-6832 Filed 3-30-87; 8:45 am]

BILLING CODE 3410-34-M

---

**9 CFR Part 2**

**[Docket No. 84-010]**

## Animal Welfare Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend Part 2—"Regulations" to comply with the amendments to the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) ("ACT") contained in Pub. L. 99-198, "The Food Security Act of 1985," enacted December 23, 1985. This document also proposes to amend, revise, and expand the regulations in order to update the regulations and standards based on our experience enforcing the Act and the regulations and standards. We have added new sections on (1) Institutional Animal Care and Use Committees; (2) Attending Veterinarians and Veterinary Care; (3) Holding Facilities; and (4) Handling to comply with the requirements of the 1985 amendments to the Act. These requirements will apply to all regulated animals and thus obviate the need to repeat them in each section of Part 3. Other sections in the regulations have been revised in content and/or format so as to aid the public in better understanding and using the regulations for the humane care, treatment, handling, and transportation of regulated animals.

**DATE:** Written comments must be received on or before June 1, 1987.

**ADDRESS:** Written comments concerning this proposal should be submitted to Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that they respond to Docket Number 86-010. Written comments received may be inspected at Room 756 of the Federal Building between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone (301) 436-7833.

**SUPPLEMENTARY INFORMATION:**

### Background

This document proposes to amend, revise, and expand the "Regulations" contained in 9 CFR 2.1 through 2.132. These regulations pertain to the licensing and registration of facilities; the recordkeeping and identification of animals; holding periods and facilities; inspections; Institutional Animal Care and Use Committees; Adequate Veterinary Care; and other areas relating to the humane care, handling, treatment, and transportation of animals. These changes are promulgated under the authority of the Animal Welfare Act, as amended (7 U.S.C 2131 *et seq.*) including some specific new requirements mandated by the 1985 amendments to the Act. The Act requires the Department to promulgate regulations and standards governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. Such standards and regulations must include minimum requirements with respect to handling, housing, feeding, sanitation, veterinary care, the use of pain relieving drugs, exercise for dogs, recordkeeping, and other matters specified in section 13 of the Act (7 U.S.C. 2143) as amended.

These proposed regulations contain a general rewriting and reorganization of the current regulations based on our experience in enforcing the Act. These proposed regulations also contain the regulations required by the 1985 amendments to the Act, including regulations setting forth the responsibilities of the Institutional Animal Care and Use Committee; requirements for Committee approval of research protocols; training by research facilities; use of pain relieving drugs; and inspection of animal use areas by the Committee.

*Licensing*

Section 2.1 sets forth the requirements and application procedure for licensing under the Act. To be licensed, dealers and exhibitors must agree to abide by the regulations and standards. A licensee's failure to comply with these requirements may subject him to civil penalties and a license suspension or revocation following formal legal proceedings. The Department, therefore, proposes to require licensees to be at least 18 years of age to avoid any problems that might arise in attempting to enforce the Act against a minor.

The Department proposes that applicants and licensees must provide a valid mailing address through which they can be reached at all times, and a valid premise's address where animals, animal facilities, equipment, and records can be inspected for compliance with the regulations and standards. In the past, many licensees have failed to provide an accurate and current address for contact and inspections. This has resulted in automatic termination of their license as they could not be contacted at renewal time. This change is intended to facilitate enforcement and to prevent the situation of someone "unknowingly" operating without a license. As before, if an applicant or licensee operates in more than one State, they must apply for a license in the State in which they have their principal place of business. Additionally, all premises or sites where such person operates or keeps animals must be indicated on the application form. The Department also proposes to increase the application fee from $5 to $10.

Sections 2 and 3 of the Act allow for certain exemptions from licensing. This proposal sets forth those persons exempted from licensing and defines the criteria a dealer must meet to be exempt from licensing. In previous years, the Department licensed animal auction sales where dogs or cats were sold but did not license auction sales that sold animals other than dogs or cats. The 1976 amendments to the Act changed the definition of a "dealer" to include those persons who negotiate the purchase or sale of animals in commerce. This definition includes brokers and operators of auction sales as dealers under the Act. Although such persons do not usually take physical possession of the animals and do not usually have holding facilities for animals, they are required to keep records and comply with the regulations and standards. The effect of this change in the definition of a dealer has not

previously been incorporated into the regulations. The Department is, therefore, proposing that all brokers, and all operators of auction sales, where regulated animals are sold, or purchased, must be licensed as class "B" dealers.

A number of States and local communities have passed laws which restrict or prohibit the ownership of certain animals, such as wild or exotic animals, that are considered dangerous. Some of these laws made allowances for people who had a USDA license as an exhibitor or a dealer. Department regulations currently allow for voluntary licenses to be issued to persons who desire them and that comply with the standards and regulations. This voluntary license procedure has the potential to allow some individuals to escape or circumvent local or State laws prohibiting or regulating the keeping of such animals, and has added considerable burden to the Department's expenditures of manpower and money by requiring licensing and inspection of individuals who do not otherwise qualify as dealers or exhibitors under the Act. Therefore, the Department proposes to eliminate voluntary licenses, except as intended by Congress, i.e., for those persons who sell dogs or cats for research and do not qualify for licensing. Furthermore, no one may obtain more than one license and only those persons meeting the definition of a dealer or an exhibitor will be licensed, subject to the above exemption.

Sections 2.2 and 2.3 require that applicants acknowledge the receipt of the regulations and standards, and that they demonstrate compliance with such regulations and standards before a license will be issued. The applicant must make his premises, equipment, and records available for inspection during business hours, as defined each week of the year. If an applicant does not pass a prelicense inspection, a license will be denied until the facilities are in full compliance with the regulations and standards.

The present § 2.4 "Issuance of License," has been incorporated into §§ 2.1 and 2.6 and will be deleted as a separate section. Section 2.5 has been revised to cover duration and termination of licenses. As before, a license will be valid for 1 year unless terminated before the anniversary date. The reasons for termination are set forth in § 2.5. The provision that license and application fees are not refundable if the license is terminated before its expiration date has now been added to § 2.5.

Difficulties have occurred in the past where licensees either refused to accept delivery of registered or certified mail concerning their license renewal, or such mail was undeliverable. This has resulted in the expenditure of considerable time and effort to locate the licensee before their license was terminated. The Department proposes to require that licensees must accept registered or certified mail delivery at the valid address required in § 2.1 or have their license automatically terminate.

Licensees thàt move to another location or State, or enlarge their animal business into another location without notification to the Area Veterinarian in Charge have also been an ongoing enforcement problem. Such premises are quite often the subject of legal action for noncompliance with standards even though the original premise was in compliance. In order to correct this problem and to assist licensees in complying with the standards, the Department is proposing that licenses will be issued to persons for specific premises and will not be transferable upon change of location or ownership without notice to the Area Veterinarian in Charge and a satisfactory compliance inspection. Licensees who operate without giving the Area Veterinarian in Charge proper notice and without passing an inspection will be deemed to be operating without a license at that site.

The annual license fees indicated in § 2.6 have not changed in over 10 years for dealers and exhibitors despite considerable inflation. Although many licensees have gone out of business, new ones have entered so that the number of licensees has remained relatively constant over the past 10 to 15 years. The Department is proposing to increase the annual license fees in addition to the application fee. The Department proposes to increase the minimum annual license fee for dealers from $5 to $50 and the maximum fee from $500 to $1,000. For exhibitors, the Department proposes to increase the minimum fee from $5 to $50 and the maximum fee from $100 to $500. No changes have been made in the manner in which such fees are calculated for "A" dealers and "B" dealers. Brokers and operators of auction sales will be licensed as class "B" dealers.

The regulations presently allow persons applying for a license, or license renewal, to pay their fees by certified check, cashier's check, money order, or by personal check. The National Finance Center has advised APHIS that they have a continuing problem with a number of personal checks being returned for nonsufficient funds. Such returned checks are usually in the range of $25 or less, and create a considerable burden both in bookkeeping procedures and personnel time spent in trying to collect such fees. The returned checks also place the applicant or licensee in the position of doing business without a license, as no one is considered licensed until they have satisfied all the requirements indicated in Part 2, which includes the payment of the appropriate fees. Serious consideration was given to eliminating personal checks for payment of fees. We felt that such a restriction would not be fair to the majority of applicants and licensees whose checks are not returned for insufficient funds. The Department will, therefore, retain the option of paying fees by personal check but is proposing that a penalty fee of $15 be charged for each returned check. Additionally, the Department proposes that no license be issued until the check has cleared normal banking procedures, and that once a check has been returned all subsequent fees paid by that person must be by certified check, cashier's check, or money order. If a person meets the requirements for more than one type of license he will be licensed, and required to pay the fee, for his predominant business.

Section 2.7, Annual report by licensees, has been reorganized in format, but retains basically the same requirments as before with two exceptions. Over the past several years, animal leasing operations have become more common. The Department, therefore, proposes that licensees must include any leased animals, along with animals which they own, when calculating their yearly fees. This will apply to both the lessor and the lessee, as both persons may receive compensation attributable to the same animal.

Problems have also been apparent for many years in the area of adequate veterinary care. Some licensees do not provide adequate veterinary care as required by the Act and the regulations and standards. Some change veterinarians every few months and others pick a veterinarian's name out of the telephone book and indicate that he or she is providing the care without consulting the veterinarian named. In order to correct this problem, the Department proposes that each licensee have his attending veterinarian sign a statement on the annual report which certifies that the veterinarian has read and understands the regulations and standards under the Act and that he or she actually visits the licensees'

premises in order to carry out the required programs of adequate veterinary care. The Department further proposes in a new § 2.40, that each licensed or registered dealer, exhibitor, or research facility must have an attending veterinarian and must submit a written program of adequate veterinary care to the Area Veterinarian in Charge on a yearly basis. This requirement is discussed in detail in the section on the attending veterinarian.

Section 2.8, has been slightly revised in wording but is basically the same as before. The Department proposes in § 2.8 that licensees and registrants must notify the Area Veterinarian in Charge of any change in name, address, management, ownership, or other material fact by certified mail.

Section 2.10, Licensees whose licenses have been suspended or revoked, has been revised in both format and content to make it stronger and more effective. The Department proposes removing references to termination of licenses from this section and including them in § 2.5. The Department proposes that license revocations be permanent.

Section 2.11, Denial of license, has been revised in both format and content. As before, no one will be licensed who has not made proper application, paid the appropriate fees, and demonstrated compliance with the regulations and standards. Due to past enforcement problems with some licensees, the Department proposes to add three other additional bases for denying a license. The first would be to deny a license to any person who has been fined, sentenced to jail, or pleaded nolo contendere (no contest) under local or State cruelty to animal laws within 1 year of application for license. Second, a license would be denied to any person who has made any false or fraudulent statements, or provided any false or fraudulent records to the Department. Third, a license would be denied to any person who has interfered with, threatened, abused, or harassed any Veterinary Services inspector in the course of carrying out his or her duties under the Act. This would include verbal abuse as well as physical abuse. Any applicant denied a license would have the right to request a hearing to show why the license should not be denied, but such license denial would remain in effect until the final legal decision has been rendered. After a 1-year period any person who was denied a license could again apply for a license.

**Registration**

All research facilities, carriers, and intermediate handlers must register under the Act. Since the Act was first passed in 1966, registration has been on a one time only basis, whereas licensing is on a yearly basis. This system has created some recordkeeping and enforcement problems. In the 20 years since the Act was first passed, there has been considerable turnover of executive personnel at most research facilities as well as many changes in their operations and structure, so that the original registration forms are no longer current or accurate. Intermediate handlers and carriers have been registered since the amendments of 1976 and there have been similar problems with these facilities. The Department proposes, therefore, that registrants must update their registration every 3 years. This 3-year time period will correspond with other Federal recordkeeping requirements and will keep information current for each registrant without requiring yearly registration. Section 2.25(a) has been revised to require that each research facility, carrier, intermediate handler, and each exhibitor not required to be licensed under section 3 of the Act shall complete and file a registration form every 3 years. Such registration form is to be signed by the Chief Executive Officer (CEO) or some other official who has the legal authority to bind the parent organization. Registration is to be completed at a level sufficiently elevated to bind the institution, which usually means the University or college level of a research facility rather than the school, or department level. For corporations, a subsidiary will be registered unless the subsidiary is under direct control of the parent corporation, as determined by the Secretary.

Section 2.27 deals with Notification of Change of Operation. The Department proposes that registrants notify the Area Veterinarian in Charge, by certified mail, of any change in address, operations or management. Lack of such notification in the past has resulted in inaccurate records and a waste of time and money when such facilities have gone out of business or changed operations. The Department also proposes to establish a procedure whereby a registrant can be placed in an inactive status, after a period of 2 years, during which no animals have been used, handled, or transported, and to establish a procedure to cancel the registration of a registrant which ceases to operate as a research facility, carrier, intermediate handler, or exhibitor, or that goes out of business. When a registrant goes out of business, or becomes inactive, it must notify the Area Veterinarian in Charge in writing and is responsible for reregistration and compliance with the regulations and standards should it become active again.

Section 2.28, Annual report of research facilities, has been revised so as to incorporate the requirements of the 1985 amendments to the Act. The Department proposes that the annual report be certified by (1) the attending veterinarian, (2) the chairman of the Institutional Animal Care and Use Committee, (3) the Chief Executive Officer of the facility. Present regulations require certification by the attending veterinarian or by the Committee, and by a legally responsible official. The report will include a statement that the unaffiliated member concurs or does not concur with the report.

The word "teaching" has been included in the definition of a research facility as it was the intent of Congress in the original Act of 1966 to include "teaching" as part of research. This was carried out in practice, but the term was never placed into the regulations.

The Department further proposes that the annual report of a research facility must show the following: (1) That professionally acceptable standards governing the care, treatment, and use of animals, including the use of appropriate drugs, are used during pre- and post-surgical care and during actual research; (2) assurances that the principal investigator has considered alternatives to such painful or distressful procedures; (3) that the facility is adhering to the standards and regulations under the Act, and an explanation for any deviation from such standards and regulations as an attachment to the report; (4) the location of all facilities where animals were used or kept by the facility; (5) the common names and numbers for all animals: (i) Being bred or held for use but not yet used, (ii) used for purposes involving no pain or distress, (iii) used for purposes which involve pain or distress and received pain relieving drugs, (iv) used for purposes involving pain or distress and did not receive pain relieving drugs. In this latter case, the facility shall attach to the annual report information on the procedures producing pain or distress in these animals, including a detailed explanation why pain relieving drugs were not used. The Department also proposes that the Chief Executive Officer must certify that the attending veterinarian and the Institutional Animal Care and Use Committee have the authority to enter any animal area at any reasonable time and that they have satisfactorily carried out their responsibilities under the Act. In addition such annual report would have

to be certified by the attending veterinarian and the Committee chairman. The annual report would be submitted on or before December 1 of each calendar year by each research facility.

*Institutional Animal Care and Use Committee and Other Requirements for Research Facilities*

The 1985 amendments to the Act require that the Department promulgate standards for research facilities to ensure that animal pain and distress are minimized and to restrict the multiple use of animals in major operative experiments. In addition, each research facility is required to establish an Institutional Animal Care and Use Committee. The Department is, therefore, proposing a new § 2.30, Additional Requirements for Research Facilities, which implements these requirements. Each research facility would be required to establish a written policy ensuring that it will fulfill its statutory responsibilities with respect to the use of animals in practices that could cause pain or distress to the animals.

Present regulations refer to an institutional committee of at least three members, one of whom is a Doctor of Veterinary Medicine, for evaluating the care, treatment, and use of all warmblooded animals held or used for research, teaching, testing, or experimentation and for certifying that the type and amount of certain drugs used on animals during actual research, teaching, testing, or experimentation was appropriate to relieve pain and distress in the animals. Additionally, the Annual Report of Research Facility (VS Form 18–23) required to be submitted yearly by each research facility currently must be signed by the attending veterinarian or by a member of the Animal Care Committee.

The general public and the research community have all indicated that the evaluation, oversight, and review of the care and treatment of animals used for research is the proper responsibility of such a committee due to the other workload and responsibilities of the attending veterinarian. It is also felt that the committee should be responsible for approving research protocols utilizing animals falling under Categories 3 and 4 of § 2.35(b)(3)(ii) and should also be responsible for inspecting the animal facilities in order to certify compliance with the Act.

The 1985 amendments to the Act require the establishment of an Institutional Animal Care and Use Committee and provide definite requirements with regard to the establishment, composition, and duties of the Committee. Past and present enforcement efforts and the requirements of the 1985 amendments have convinced the Department that stronger requirements and more specific responsibilities are required for such Committees so as to ensure the humane care and treatment of animals used for research purposes. The Department is, therefore, proposing a new § 2.35, Institutional Animal Care and Use Committee, setting forth the requirements for, and the composition of, such Committee, and indicating the duties and responsibilities of the Committee. The registered research facility will be responsible for providing both an attending veterinarian and an Animal Care and Use Committee and for ensuring that they have the necessary authority to carry out their functions and responsibilities as required by the 1985 amendments and by the regulations and standards.

**Section 2.35 Institutional Animal Care and Use Committee (Committee).**

The Department proposes that each research facility must establish and maintain at least one Committee. The Committee shall consist of at least three persons; the chairman, the attending veterinarian of the research facility, and an outside member who is not affiliated in any way with the research facility other than as a member of the Committee. The outside member should not be a member of the family of any one connected with the research facility, nor should he or she be a former employee or member of the facility, or a supplier or vendor to the facility. All Committee members should possess sufficient ability to assess animal care, treatment, and practices, and the outside member is intended to provide general representation of the community for the proper care and treatment of animals at the facility. If the Committee consists of more than three members, not more than three members shall be from the same administrative unit of the facility. The members of the Committee are to be appointed by the Chief Executive Officer of the research facility. In the case of universities, the Department intends that this be the President or his designee (who shall not be in the Department which is conducting the research). The Department proposes that the research facility maintain an up-to-date list of Committee members, indicating the name, degree, position, qualifications, address, and telephone number of each member. A copy of the current list is to be maintained by the attending veterinarian.

Section 13(b)(2) of the 1985 amendments to the Act requires that, "A quorum shall be required for all formal actions of the Committee, including inspections under paragraph (3)." The amendments define "Quorum" as "a majority of the Committee members." The amendments then specify in 13(b)(2) that the Committee shall inspect all animal study areas and animal facilities at least semiannually, shall review certain areas as part of the inspections, and shall file certain reports and take certain actions in regard to any deficiencies noted. The Department invites comments in regard to the Committee's inspection of animal facilities and study areas and how such inspections might be carried out in facilities with large Committees and a large number of animal sites. The Department is proposing that the Committee inspect all animal sites and study areas at least twice a year, no more than 6 months apart, and that the Committee, in its inspection, review all practices and procedures involving pain to the animals, and the condition of all animals, so as to minimize pain and distress to the animals. The Regulations and Standards issued under the Act (9 CFR, Subchapter A) are to be used as the basis for the inspection of animal areas and facilities. The 1985 amendments to the Act provide for exceptions to the inspection requirement when animals are studied in their natural environment and the study area prohibits easy access. Rather than providing for a blanket exemption for such studies, the Department proposes that requests for such exemptions be addressed to the Deputy Administrator, and the reasons why inspections cannot be made in these instances be clearly set forth in the request. A decision shall then be given as to whether such study area will be exempted from the Committee inspection process.

The 1985 amendments to the Act require that after the Committee makes its inspection, it shall file a certification report on its findings. The Department proposes that such report be filed at a central location at the research facility and that the reports shall be available to APHIS officials and to officials of any funding Federal agencies for inspection and copying, and shall be retained for at least 3 years by the facility. The report is to include: The date the inspection was made; the signature of a majority of the Committee members; any minority views; reports of any violations or deficiencies of the regulations and standards; any deviations from approved research protocols that adversely affect the animals; any

notification to the facility concerning such deviations or conditions; any other information or concerns of the Committee on the status or conditions of the animals or the facility; and any corrections made by the facility. The Committee is to provide an assurance statement that as part of its inspection all painful procedures using animals have been reviewed and approved as required in section 2.35 and found to be in accordance with the approved protocols and procedures, and if not in accordance with approved protocols and procedures, that the investigator has been instructed to cease such activities and to comply with approved procedures.

The 1985 amendments to the Act require that the Committee notify the administrative representative of the research facility of any deviations from the provisions of the Act, regulations, or standards found on inspection and that the facility be given an opportunity to correct such problems. The Department is proposing that if, 30 days after such notification and opportunity for correction, such deficiencies or deviations remain uncorrected, that the Committee shall notify the Deputy Administrator and any funding Federal agency, in writing. Copies of such reports and notification shall be provided to Veterinary Services inspectors and any funding agency.

The 1985 amendments also require the establishment of a reporting procedure whereby laboratory or research facility personnel can report deficiencies, deviations, or questionable practices concerning animal housing, care, or use, without fear of reprisal. The Department is proposing that the research facility establish such a reporting procedure and that Committee responsibilities include the review and, if warranted, investigation of all such reports involving the care and use of animals at the facility. The research facility is to prepare a report including the nature of the concern, the Committee's findings, and any action taken. This report will be made available to Veterinary Services inspectors and funding Federal agency officials upon request. The regulations are very clear that no individual in the employ of the research facility is to be subject to any reprisal or discrimination for reporting any problems.

In accordance with the 1985 amendments, the Department proposes that the research facility, through the Committee, make all research protocols involving animals and all assurance statements required by the U.S. Public Health Service (PHS) available to USDA inspectors upon the request of the Deputy Administrator. Such inspection would be to review for compliance with the provisions of the Act, including compliance with requirements that assurances be made, and to confirm that areas of noncompliance with the standards are fully justified in the research protocol and approved by the Committee. Areas of noncompliance which are not justified in the research protocol and approved by the Committee will be documented for additional action. The USDA inspector shall maintain the confidentiality of all research protocols and assurances.

Additionally, the Department proposes that Committee approval shall be required for all research, testing, or teaching protocols falling under Categories 3 and 4 of § 2.35(b)(3)(ii) involving the use of live warmblooded animals at the facility, or other locations by facility personnel, before such research, testing, or teaching is started. The Department invites comments with regard to the approval of such protocols. The Department proposes that Categories of Animal Use in Research and Teaching be incorporated into regulations. These categories are listed by the increasing amount of pain or distress likely to be caused to the animals and examples are given for each category. These categories are for the guidance of the investigator in planning the research protocol and for the Committee in determining the level of pain or distress to be allowed and the necessity of such pain or distress when approving the protocol. In approving protocols and procedures falling into the area of Categories 3 and 4, the Committee shall ensure that all possible steps have been taken to reduce or eliminate as much pain and distress as possible, and that the proper level of animal care and treatment has been planned for and carried out using acceptable practices and methods. The list of examples is not all inclusive but is provided as guidance for where a particular protocol might be classified in relation to the pain or distress involved. Those protocols or procedures which do not adequately protect the animals from pain or distress should not be approved by the Committee unless written justification, with objective substantiating documentation, is provided and the Committee agrees that such procedures are scientifically necessary.

Protocol approval by the Committee has a number of important functions and areas of consideration. Prior to approving protocols, the Committee shall: (1) Ensure that animal pain, distress, and functional or sensory impairment are minimized; (2) ensure that all survival surgery is performed using aseptic procedures; (3) ensure that adequate veterinary care is planned for and provided; (4) ensure that the type and number of animals are appropriate and necessary as an essential part of the protocol or to preserve an endangered species or marine mammals; (5) ensure the appropriate use of anesthetics, analgesics, tranquilizers, or euthanasia when necessary, and that such use is in accordance with established or accepted veterinary procedures and usage. The use of such drugs is expected to be in accordance with the instructions of the attending veterinarian.

The Department proposes that the basic guideline for the use of pain relieving drugs shall be that pain relieving drugs shall be used whenever an animal is subjected to any procedure that would reasonably be expected to cause pain or distress in a human being. Exceptions to the use of pain relieving drugs may be made if fully explained and justified in the research protocol and approved by the Committee.

Before approving any protocol, the Committee is to require: (1) Written assurance from the principal investigator that alternative procedures have been considered, and (2) assurance that the experiment is not unnecessarily duplicative. In any procedure which could be expected to cause pain or distress, the Committee must: (1) Require that the principal investigator consult with the attending veterinarian in the planning of such procedure and during the procedure; (2) require that the principal investigator provide for the use of pain relieving drugs in accordance with the attending veterinarian's recommendations and established or accepted veterinary procedures, including the training of laboratory personnel in the proper methods and techniques for minimizing pain and distress; (3) require that the principal investigator provide for pre- and post-surgical care by laboratory personnel and for any training that might be needed to carry out such care; (4) require that all aseptic surgery be conducted only in facilities intended for that purpose and that such facilities are operated and maintained under aseptic conditions, and that surgery be performed or directly supervised by trained and experienced personnel. The Committee shall not approve protocols which permit the withholding of pain relieving drugs or euthanasia except when scientifically necessary and then only for the shortest necessary period of time, nor protocols allowing the use of paralytic drugs without anesthesia.

The Department further proposes that in approving research protocols, the Committee shall ensure that no animal is used in more than one major operative experiment from which it is allowed to recover, unless such use: (1) Is scientifically necessary; (2) is required by protocol or other surgical procedures in the protocol; (3) is required to reduce the number of endangered species used; (4) is required to protect the health or well-being of the animal as determined by the attending veterinarian, or (5) involves a routine, elective veterinary surgical or diagnostic procedure. Other special circumstances will be determined by the Secretary on an individual basis. Written requests and supporting data should be sent to the Deputy Administrator, APHIS, for situations not covered above. The Department wishes to stress to the research facilities, and to the Committee, that cost savings alone is not adequate reason to justify multiple survival major surgical procedures on animals.

The law allows for exceptions to compliance with the standards, and prohibits the Secretary from directly interfering with actual research methods and procedures. The Department, therefore, proposes that such exemptions for noncompliance shall be made only when the noncompliance is necessary for the accomplishment of the proposed research, and: (1) Are specified in the research protocol; (2) are explained in detail; and (3) are approved by the Committee. The principal investigator is to file a report with the Committee explaining the reasons for such noncompliance in detail, and a copy of this report is to be kept on file at the facility and available for inspection by USDA inspectors or officials of funding agencies.

The 1985 amendments to the Act require that persons subject to the Act, including research facilities, provide for the exercise of dogs and for a physical environment promoting the psychological well-being of nonhuman primates. The Department proposes that, for research facilities, programs to meet the Department's standards be developed and implemented through the Committee. The Committee shall also maintain a record system indicating that such procedures are being carried out.

The 1985 amendments do not require registration of Federal research facilities or inspection by USDA. The amendments do require that each Federal research facility must have an Institutional Animal Care and Use Committee. The Department proposes that Federal research facilities shall establish Institutional Animal Care and Use Committees as set forth in § 2.35 and that such Committees shall have the same composition, duties, and responsibilities required of nonfederal research facility committees with two exceptions: (1) The Committee will report all deficiencies or deviations to the head of the Federal agency conducting the research, instead of reporting such to APHIS, and (2) the head of the Federal agency conducting the research will be responsible for all corrective actions to be taken by the facility and will grant all exceptions to compliance with standards.

The 1985 amendments to the Act also require that research facilities provide training for scientists, animal technicians, and other laboratory personnel in the handling of regulated animals. The Department proposes that such training be provided through the Committee and the attending veterinarian and be as often as necessary. The Department also proposes that the Committee review, at least once a year, the status of training and the qualifications of researchers who use animals and identify those personnel who require such training. The training system or procedure is to be available for review by USDA inspectors and shall include instruction in at least the following areas: (1) Humane methods of animal maintenance and experimentation; (2) methods that will minimize or eliminate the use of animals, or limit animal pain or distress; (3) utilization of the information service at the National Agricultural Library; (4) how and to whom deficiencies in animal care and treatment can be reported; (5) instruction on the basic needs of each species of animal; (6) familiarization of researchers and laboratory personnel with the intent and requirements of the Animal Welfare Act and other Federal requirements; (7) how to handle and care properly for the various species of animals used by the facility; (8) proper pre- and post-surgical care of animals; (9) proper use of tranquilizers and pain relieving drugs in animals used by the facility; (10) acceptable aseptic surgical procedures and methods, and (11) any other training or procedures the Committee, or the Secretary, may feel is necessary.

The 1985 amendments specify and broaden the responsibilities and duties of the Committee, and the membership of the Committee. In order to carry out the intent of Congress in this regard, the Department proposes that the chairman of the Committee must sign an assurance statement on the annual report certifying that the Committee has carried out its responsibilities and that the facility is following the standards during actual research.

*Attending Veterinarian and Adequate Veterinary Care*

Since the Animal Welfare Act was originally passed in 1967, there has been a continual problem in regards to licensees and registrants providing adequate veterinary care to the animals covered under the Act. Some facilities have not provided required veterinary care and others have switched veterinarians every few months causing confusing situations that are difficult to trace.

Some facilities have indicated the names of veterinarians who had not even been contacted by the facility. Some veterinarians stated that their only contact was on an emergency basis or when animals were brought into their office.

Many other veterinarians had told APHIS that even though they had been contacted by the licensee or registrant they did not know what the Act requires attending veterinarians to do. Most of them indicated that they felt their efforts were a waste of time as their recommendations concerning the health care of the animals were ignored, and they had no authority to see that such recommendations were carried out.

Veterinarians at many research facilities indicated that often they did not have the authority to enter the animal facilities of certain Departments or investigators and thus could not certify what conditions might be at those animal sites. Many of these veterinarians also indicated that due to various local political or managerial systems, their jobs would be in serious jeopardy if they tried to force adequate veterinary care in certain instances or if they refused to certify that all was in compliance at the facility when they, in fact, had no such knowledge.

For these reasons, as well as the mandate of the 1985 amendments to the Act, the Department is proposing a new section, § 2.40 covering the attending veterinarian and adequate veterinary care.

These proposed regulations will require the facility to provide a written program of veterinary care to the Department and will set forth the responsibilities of the veterinarian in regard to the health care of the animals. It is also proposed that the attending veterinarian must be trained and/or experienced in the care and management of the species being attended and accredited by the

BEST COPY AVAILABLE

Department in accordance with regulations issued by the Secretary under the Animal Welfare Act. In the case of research facilities, more specific duties and responsibilities will be required and the facility will be required to provide the attending veterinarian with the authority to enter all animal sites at any time in order for the attending veterinarian to ascertain and certify the facility's compliance with the Act.

Additionally, at the present time, veterinary care requirements are located in each subpart of Part 3. This is duplicative and unwieldy as each subsection must be consulted for the veterinary requirements. A new section, § 2.40, Attending Veterinarian and Adequate Veterinary Care, is therefore being added to the regulations in Part 2 and will apply to all animals. This new section will simplify the location of veterinary requirements, will eliminate duplicative sections in Part 3, will correct problems of enforcement, and will include the requirements mandated by the 1985 amendments to the Animal Welfare Act.

The Department proposes that each licensed or registered research facility, dealer, or exhibitor shall have an attending veterinarian to care for the animals and to provide guidance and supervision in programs of disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and the health care of all animals on the premises of the dealer, exhibitor, or research facility. A written program of adequate veterinary care between the facility and the veterinarian will be drawn up and reviewed yearly and will include a schedule of visits if a part-time or consulting veterinarian is used. A copy of the written program will be on file at the facility and a copy will be provided to the Area Veterinarian in Charge with the license renewal or annual report. Dealers and exhibitors will not be licensed without such a written program, and research facilities will be cited for violations if they do not have a written program. Each animal is to be observed daily by the dealer, exhibitor, veterinarian, animal caretaker in charge, or someone under the direct supervision of such person and any animals needing care must be provided with such care.

In the case of research facilities, additional requirements are being proposed for the attending veterinarian. First, the attending veterinarian shall be a member of the Institutional Animal Care and Use Committee and shall have the authority to enter all animal rooms, sites, facilities, and animal use areas at any time. Second, the veterinarian is to provide consultation and guidance to principal investigators, and others, during protocol planning, and during actual research, whenever any procedure is likely to produce pain and distress. Such consultation and guidance shall include at least: (1) Assurance of the proper use of tranquilizers or pain relieving drugs; (2) provision for adequate pre-surgical and post-surgical care by laboratory workers; (3) agreement to the withholding of drugs or euthanasia when scientifically necessary and only for the necessary time; and (4) evaluation and approval of all animal surgical areas and the qualifications of personnel involved with animal surgery. Third, the veterinarian is to establish a record system and standard operating procedure to indicate and assure the proper use of drugs; and that proper pre- and post-surgical care are being carried out.

Additionally, the veterinarian will be required to sign a statement on the annual report certifying: (1) That he/she has the authority to enter all animal areas; (2) that he/she has carried out the requirements of § 2.40; and (3) that he/she has read and understands the regulations and standards in Parts 2 and 3.

*Identification of Animals*

Section 2.50 deals with the time and method of identification of animals and has been reorganized in format and content. Paragraph (a) pertains to class "A" dealers (breeders). As before, whenever live dogs or cats leave the premises, they must be identified by: (1) An official tag: or (2) an approved tattoo. Live puppies or kittens less than 16 weeks of age are to be identified by: (1) An official tag; (2) an approved tattoo; or (3) a plastic type collar which contains the information required by § 2.51. The present regulations do not specifically mention how the breeding stock on the premises are to be identified. An attempt was made to handle this problem by policy memorandum, but this has not received wide distribution or uniform enforcement, and the problem of identification of breeding stock remains. In order to correct this, the Department is proposing that all live dogs or cats on the premises must be identified by: (1) An accurate and distinctive description; (2) a tattoo marking; or (3) an official tag. Thus, if there are two or more animals of similar description, marking, and color, they will have to be identified by tags or tattoos. If the color, markings and description of an animal are distinctive enough to differentiate the animal from the others, then a description alone can be used.

Paragraph (b) pertains to class "B" dealers. Only one change was made in this paragraph. The present regulations allow for dogs or cats not purchased or acquired in a manner affecting commerce to be identified only when they leave the premises. In order to correct this situation, the Department will consider all dogs or cats obtained by a class "B" dealer to be obtained affecting commerce, and proposes that all dogs and cats must be identified by an official tag or tattoo, or by a plastic type collar if less than 16 weeks of age. The dealer may still use a tag that was on an animal when he acquired it to maintain the animals identity or may replace it with his own tag. Also, any cat which exhibits distress from the attachment of a collar and tag can still be kept in a cage with the tag affixed to the door, but no more than one untagged cat may be kept in a cage.

Paragraph (c) deals with class "C" licensees (exhibitors). Exhibitors have been separated from dealers in order to simplify the regulations. There is also usually much less turnover in dogs and cats with exhibitors than with dealers. Exhibitors may identify dogs or cats with tags or tattoos, or they may use the following alternative method: (1) Keep an official USDA sequentially numbered tag on the door at the animal's cage or run; (2) keep a record book containing the animal's number, a written description of the animal, the data required by § 2.75(a), and a clear photograph of each animal; and (3) keep a second, duplicate tag which is to accompany each dog or cat whenever it leaves the premises. This alternative was allowed at the request of exhibitors using animals for movie and television work. Their concern that tattoos could be picked up on cameras and that collars caused enough damage to the hair around the animals neck to be objectionable for filming was considered reasonable and the Agency therefore proposes the suggested alternative.

Paragraph (e) pertains to dogs and cats obtained by research facilities. This paragraph has been reorganized to indicate that all dogs and cats, regardless of where they were obtained, must be identified by a tag or tattoo. The research facility may use an official tag or tattoo that came on the animal to maintain identification in the records, or they may apply their own tag or tattoo for identification. The Department wishes to advise research facilities that the identification of dogs and cats in many facilities has been very lax and

haphazard. It is the intent of the Department to require proper identification on dogs and cats in research facilities at all times, and this will be strictly enforced.

Section 2.51 deals with the form of the official tag. At the request of several licensed dealers, a second type of tag is being proposed. The present regulations allow a circular tag not less than 1¼ inches in diameter and containing the dealer number, the animal number, and the letters "USDA". The Department proposes to allow also a flat, oblong, tag not less than 2 inches by ¾ inch which is riveted to an acceptable collar. This tag would also contain the information required on the circular tag. Certain dealers believe that such a tag will properly identify the dogs or cats without the possibility of becoming caught in the wire or other parts of the enclosure and would not be readily torn off or lost.

Since the regulations were first written in 1967, it has been prohibited to use any number more than once. Over that period, some dealers have sold a considerable number of animals, and the numbers on their tags are becoming quite large and difficult to place on the tag. In order to correct this situation, the Department is proposing to allow animal identification numbers to be repeated after 5 consecutive years have elapsed. It is possible that a small number of animals from the same dealer or at the same research facility could have the same numbers if kept for over 5 years. The number of such cases would be small however, and there would be at least 5 years difference in their ages, which would serve to differentiate such animals. We do not feel this would cause unresolvable problems with animal identification and are therefore proposing the 5-year limit.

Sections 2.52, 2.53, and 2.54 were not changed except to add the term "research facility," and to indicate the 5-year time period for repeating identification numbers. The wording in § 2.55 (a) and (d) has been rearranged and the 5-year limit on repeating numbers included. No other changes were made in this section.

*Stolen Animals*

In the past few years there have been several instances of dealers buying and selling obviously stolen animals and of a few research facilities obtaining animals under questionable circumstances. One of the major purposes of the Act is to protect the owners of animals from the theft of their animals, and to prevent the sale or use of animals which have been stolen. The Department is, therefore, proposing a new § 2.60 prohibiting the purchase, sale, use, or transportation of stolen animals.

*Records*

Section 2.75 deals with records for dealers and exhibitors. This section has been revised in both format and content. In addition to the information presently required to be maintained for all dogs and cats purchased or otherwise acquired, the Department proposes to require that the vehicle license number and State and the driver's license number and State also be recorded in the records. This proposal is being made due to several recent instances where unscrupulous dealers were deliberately obtaining dogs and cats either by fraudulent means or that were known to have been stolen. By requiring a vehicle license number and driver's license number, such individuals can be traced and the source of the animals better determined. Only editorial or format changes were made in the rest of § 2.75.

Section 2.76 deals with records for research facilities. This section has also been revised in content and format for easier reading. As with the records for dealers above, the Department proposes that when research facilities purchase or otherwise acquire a dog or cat that they also record the vehicle license number and State and the driver's license number and State of the person from whom the animal was obtained. Other changes in this section are editorial in nature.

Section 2.77 deals with records for operators of auction sales. This section has been revised in format. The term "broker" has been added to this section. A "broker" negotiates the sale of animals much like the operator of an auction sale; and may also arrange for their transportation. There are a growing number of "brokers" and auction sales in the country. Under the expanded definition of a "dealer" in the 1976 amendments to the Animal Welfare Act, both "brokers," and "operators of auction sales," are required to obtain licenses as dealers. This type of operator usually does not take possession of the animals nor have holding facilities for animals. Inspections of records must be made by APHIS inspectors, however, to determine the sources and destinations of such animals and whether any unlicensed dealers are involved in animal transactions. We have, therefore, included the term "broker" with the "operator of an auction sale" for recordkeeping purposes.

Section 2.79 deals with health certification and identification of dogs, cats, and nonhuman primates. This section has been revised in format for easier readability and the term "broker" has been added to paragraph (a). The Animal Welfare Act, in section 13(b), provides for an exemption from health certificates for research facilities. This exemption is not presently in the regulations and a new paragraph (b) is added to provide this exemption for research facilities when required. Other changes in this section are editorial in nature. In § 2.81 dealing with the disposition of records, the first sentence in paragraph (b) has been revised to indicate that records must be held for at least 1 year after an animal is euthanized or otherwise disposed.

*Compliance With Standards and Holding Period*

Section 2.100 deals with compliance with the standards in Part 3. This section has been revised to include the requirement to comply with the regulations in Part 2. Due to the 1985 amendments to the Act, a new section on Institutional Animal Care and Use Committees has been added to Part 2. Also, the requirements for adequate veterinary care and for the humane handling of animals have been moved from Part 3 to Part 2. It is therefore necessary to include the requirement for compliance with Part 2 in this section, and this is proposed. The proviso that nothing in the rules, regulations, or standards shall affect or interfere with the design, outlines, guidelines, or performances of actual research or experimentation by a research facility, has been deleted and the proviso has been reworded to indicate the intent of Congress and the requirements of the 1985 amendments. The proposed proviso now states that exceptions to the standards in Part 3 may be made for research facilities only when such exceptions are specified in the research protocol; are explained in detail in a report filed with the Institutional Animal Care and Use Committee; and are approved by the Committee.

Section 2.101 deals with holding periods for dogs and cats by dealers and exhibitors, and approval of holding facilities for dealers and exhibitors. Paragraph (a) of this section requires a 5-day holding period for dogs and cats with two exceptions. One allows for a 1-calendar day holding period if the dogs or cats are obtained from another licensed dealer and have previously completed the 5-day holding period; the second allows for the humane destruction of any sick or injured dog or cat prior to the completion of the 5-day holding period. The Department proposes to retain the 5-day holding period for dogs and cats but to allow

several more exceptions to the holding period. As with the present regulations, a dealer or exhibitor who obtains a dog or cat from another licensed dealer or exhibitor must hold such dog or cat for 1-calendar day, excluding time in transit. This requirement is to be kept, but it is proposed to change the 1-calendar day holding time to a minimum period of 24-hours holding by each subsequent dealer or exhibitor. This would allow the dogs and cats a period of rest for food and water between dealers. The Department also proposes that any live dogs or cats that are obtained from a governmentally owned and operated pound or shelter, that have completed at least a 5-day holding period at the pound or shelter, need only be held by the dealer or exhibitor for a 24-hour period. The pound or shelter must be totally under city or county control and operated by city or county shelters do not qualify for this exception. Additionally, it is proposed that if a dealer or exhibitor obtains a dog or cat 120 days of age or less, from the person who bred and raised the dog or cat, then such animals would only have to be held for a 24-hour period, excluding time in transit. Dogs and cats must still be unloaded from any truck or car for the holding period to begin.

The Department proposes to delete paragraph (c) of this section, which deals with the approval of holding facilities for dealers and exhibitors, and proposes to add a new § 2.102, Holding Facility. Any dealer or exhibitor that wished to have a separate holding facility would still have to make an application to the Area Veterinarian in Charge and both parties would have to agree to comply with the regulations and standards and to allow inspections by Veterinary Services inspectors. Animals at such facilities would remain under the total control of the dealer or exhibitor and no dealer or exhibitor shall be approved as a holding facility for another dealer or exhibitor.

The Department also proposes to add a paragraph (b) to this section which would allow research facilities to apply for approval of holding facilities by the same process as dealers and exhibitors. This capability is not in the present regulations and many research facilities do have animals which are maintained at other locations. Establishing a holding facility approval system for research facilities would give the Department more control over such locations and would correct a field enforcement problem, plus clarify the procedure for establishing such holding facilities for research facilities.

Intermediate handlers and carriers have been added to § 2.125 pertaining to the furnishing of business information, as this section was not revised after the 1976 amendments to the Act. The same addition has been made to § 2.126 which pertains to the access and inspection of records and property. In addition, § 2.126 has been revised in format to make it very plain as to what each licensee and registrant is required to allow and provide. The taking of photographs as part of the inspection process is specifically addressed and made a part of the requirements. Although the Department has always had the authority to take photographs and inspect facilities as the inspector deems necessary, such wording was not plainly written into the regulations and this sometimes became a point of contention between the licensees or registrants and the inspector. The provision that USDA inspectors will take photographs as part of their inspection whenever it is deemed necessary is now to be in the regulations. Changes have been made in § 2.128 which deals with inspection for missing animals. The section has been revised in format, certain editorial changes have been made, and the terms "intermediate handler" and "carrier" have been added as this was not done after the 1976 amendments.

Section 2.129, which deals with the confiscation and destruction of animals, has been given certain editorial changes to improve its readability, and also has been revised to include intermediate handlers and carriers. The Department also proposes to delete the term "adequate veterinary care be given" and to replace it with the term "adequate care be given." This is due to the fact that some instances of animal neglect, which could lead to possible confiscation by the Department, may not technically be veterinary care deficiencies. Such situations as excessive filth or lack of cleaning, lack of proper food or water, or excessive parasites, all lead to a need for veterinary care but are a direct result of poor management and husbandry. The word "veterinary" is being deleted so as to give a broader scope to the concept of lack of adequate care, distress, and suffering. The present regulations require the Department to destroy any confiscated animals if their suffering cannot be corrected by veterinary care, with the licensee or registrant responsible for any costs which may be incurred. The Department intends to charge the licensees and registrants for costs incurred in making such confiscations and in caring for the animals. We do not, however, feel that the unnecessary destruction of animals should be required if suitable facilities can be found in which to place them. The Department, therefore, proposes that any confiscated animals not euthanized may be placed with other licensees or registrants which comply with the standards and regulations, and which can provide proper care. This would allow the Department some latitude in dealing with and disposing of confiscated animals. Paragraph (c) deals with the confiscation of endangered species of animals and requires that certain notifications be made before making any decision as to the destruction of such animals. The Department proposes to add marine mammals in this paragraph.

Handling of animals has been defined under § 1.1(dd) of 9 CFR to cover most instances of human contact with animals. When Congress amended the Animal Welfare Act in 1970 (Pub. L. 91–579) to include all warmblooded animals used for research or exhibition purposes or sold as pets, a paragraph concerning "handling" was incorporated into the new subsection in Part 3-Standards, which pertained to animals other than dogs, cats, rabbits, hamsters, guinea pigs, and nonhuman primates. This handling paragraph pertained to the humane treatment of "other animals" by human beings. A similar paragraph was not added to the existing four subsections covering the above named species. In 1979, standards covering marine mammals were added with a handling paragraph to cover the humane treatment of marine mammals. Again, a similar paragraph was not added to the original four subsections.

During the period since the Amendments of 1970, the Department's efforts to enforce the Animal Welfare Act and to prosecute inhumane handling and animal abuse cases by licensees and registrants in regard to dogs, cats, rabbits, guinea pigs, hamsters, and nonhuman primates has been hampered due to a lack of handling requirements for these animals. Some serious occurrances of animal abuse have occurred with nonhuman primates and dogs by licensees and registrants, and the Department has been unable to take appropriate corrective action. This clearly does not satisfy the intent of Congress in passing the Animal Welfare Act.

A new § 2.131 Handling, is therefore proposed to be added to the regulations in Part 2. In the present regulations and standards only subparts E and F in Part 3 contain requirements on handling. Similar requirements are not found in

the other subparts. Handling requirements pertain to the humane treatment, care, working, training, and transporting, concerning warmblooded animals. Animals must be protected form unnecessary discomfort, harm, trayma or distress, and may not be physically abused or deprived of food or water in order to work, train, or handle the animals. The Department intends that animals should be exhibited only under conditions consistent with their good health, and should have rest periods; that a knowledgeable uniformed attendant must be present at all times during public contact with the animals; that when dangerous animals are allowed to have public contact they must be under the direct control and supervision of an experienced handler; and that if public feeding is allowed the facility must provide the feed which must be appropriate to the type of animal and its needs. There must also be sufficient barriers or distance between the animals and the public so as reasonably to assure the safety of both, and drugs are not to be used to facilitate or allow public handling.

Rather than adding similar sections to each of the subparts in Part 3, it was decided to place the handling requirements in Part 2 so that it would apply to all regulated animals. This would simplify the regulations and standards, would make the requirements more easily found for reference, and would allow the Department to take appropriate action when such instances were discovered.

In the past few years there have been several instances of licensed dealers obtaining dogs and cats by fraudulent means and apparently knowingly purchasing stolen animals. These dealers were all class "B" dealers who buy and sell animals and the dogs and cats were all random source type animals, that is, they were not purchased from the persons who bred and raised the animals. The Department has also noted an increase in licensed dealers buying dogs and cats at flea markets or trade-day type sales. These animals are purchased from anyone and are usually purchased one, two, or three dogs or cats at a time. Many times the sellers have just recently acquired the dogs or cats and they are not what one would consider a family pet and have not been bred and raised by the persons who sold them. The net effect of the above types of activity is to encourage animal theft for profit. The theft of dogs and cats to supply the needs of research facilities is one of the basic reasons that the original Animal Welfare Act was passed. The above type of activity is, therefore, not in keeping with the original intent of Congress to protect animal owners from the theft of their pets. We certainly do not believe that a research facility would knowingly purchase stolen animals, but after such animals have gone through a dealer, there is no way to tell if such animals were possibly stolen.

In order to carry out the intent of Congress, and to attempt to stop the types of activity illustrated above, the Department is proposing that a new § 2.132, Procurement of random source dogs and cats by dealers be added to the regulations. It is proposed that class "B" dealers may obtain live random source dogs and cats only from State, county, or city owned and operated pounds or shelters. The class "B" dealer would not be able to obtain random source dogs and cats from nongovernment, contract, or humane pounds or shelters, or from individuals who did not breed and raise the dogs or cats on their own premises. Dealers could obtain nonrandom source dogs or cats from the person who bred and raised them, and could also breed their own dogs and cats for sale to research facilities and other concerns. It is believed that this restriction, plus the proposed requirement in § 2.75 whereby dealers must record the vehicle license number and State, and the drivers license number and State, for whomever they obtain animals from, would effectively block the growing activity in stolen and in fraudulently obtained dogs and cats.

### Comments

Written comments are solicited for 60 days after publication of this document in the **Federal Register** and should refer to Docket Number 84–010.

### Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

### Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information available to the Department, it has been determined that this proposal would not have significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; and would not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Alternatives were considered for this proposal. Consideration was given to developing only the regulations and standards required by the 1985 amendments to the Act. A review of 9 CFR, Chapter 1, Subchapter A—Animal Welfare, had recently been completed however. There was a need for revision and updating of Parts 1, 2, and 3 and reorganization of many sections for clarification and easier reading were desirable. It was, therefore, decided to incorporate a general revision and reorganization of Parts 1, 2, and 3 with the development of regulations and standards required by the 1985 amendments. Such a course of action would cause minimal disruption to program operations, and would shorten the period of uncertainty for the regulated industry. It would also allow for the publication of Parts 1, 2, and 3 in their entirety, as sections or subsections, rather than the publication of changes by paragraph at several different times. This would provide field personnel with a complete set of requirements in one document instead of spreading them through two or three documents. The only other alternative was to make no revisions or changes. This option was not viable as it would not comply with the requirements of the 1985 amendments, and it would not provide the needed reorganization, clarification and corrections that were necessary in the existing regulations and standards.

It is not anticipated that the adoption of these proposed changes would have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Some of the proposed changes would ease the burden and lessen the impact of regulation on licensed dealers and exhibitors. Some of the proposed changes, as required by

the 1985 amendments to the Animal Welfare Act, will increase the regulatory burden on research facilities and will increase the cost of doing research on animals. Some of the proposed changes will ease the workload on USDA inspectors and other changes will require an increase in inspection time for inspectors.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

**List of Subjects in 9 CFR Part 2**

Licensing, Registration, Identification of animals, Records, Institutional animal care and use committees and adequate veterinary care, miscellaneous.

Accordingly, we propose to amend 9 CFR as follows:

Part 2 is revised to read as follows:

## PART 2—REGULATIONS

**Subpart A—Licensing**

Sec.

2.1 Requirements and application.
2.2 Acknowledgement of regulations and standards.
2.3 Demonstration of compliance with standards and regulations.
2.5 Duration of license and termination of license.
2.6 Annual license fees.
2.7 Annual report by licensees.
2.8 Notification of change of name, address, control, or ownership of business.
2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.
2.10 Licensees whose licenses have been suspended or revoked.
2.11 Denial of license.

**Subpart B—Registration**

2.25 Requirements and procedures.
2.26 Acknowledgement of regulations and standards.
2.27 Notification of change of operation.
2.28 Annual report of research facilities.

**Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities**

2.30 Additional requirements for research facilities.
2.35 Institutional Animal Care and Use Committee.

**Subpart D—Attending Veterinarian and Adequate Veterinary Care**

2.40 Attending veterinarian and veterinary care.

**Subpart E—Identification of Animals**

2.50 Time and method of identification.
2.51 Form of official tag.
2.52 How to obtain tags.
2.53 Use of tags.
2.54 Lost tags.
2.55 Removal and disposal of tags.

**Subpart F—Stolen Animals**

2.60 Prohibition on the purchase, sale, or transportation of stolen animals.

**Subpart G—Records**

2.75 Dealers and exhibitors.
2.76 Research facilities.
2.77 Operators of auction sales and brokers.
2.78 Carriers, and intermediate handlers.
2.79 Health certification and identification.
2.80 C.O.D. shipments.
2.81 Records, disposition.

**Subpart H—Compliance With Standards and Holding Period**

2.100 Compliance with standards.
2.101 Holding period.
2.102 Holding facility.

**Subpart I—Miscellaneous**

2.125 Information as to business; furnishing of same by dealers, exhibitors, operators of auction sales, research facilities, intermediate handlers, and carriers.
2.126 Access and inspection of records and property.
2.127 Publication of names of persons subject to the provisions of this part.
2.128 Inspection for missing animals.
2.129 Confiscation and destruction of animals.
2.130 Minimum age requirements.
2.131 Handling of animals.
2.132 Procurement of random source dogs and cats, dealers.

**Authority:** 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, and 371.2(d).

### Subpart A—Licensing

**§ 2.1 Requirements and application.**

(a)(1) Any person, 18 years of age or older, operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a license. Such person shall apply for a license on a form which will be furnished by the Area Veterinarian in Charge in the State in which such person operates or intends to operate. The applicant shall provide the information requested on the application form which shall include a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where animals, animal facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the Area Veterinarian in Charge.

(2) If an applicant for a license operates in more than one State, he/she shall apply in the State in which he/she has the principal place of business. All premises, facilities, or sites where such person operates or keeps animals shall be indicated on the application form or on a separate sheet attached to it. The completed application form, along with the application fee indicated in paragraph (d) of this section, and the annual license fee indicated in Table 1 or 2 of § 2.6 shall be filed with the Area Veterinarian in Charge.

(3) The following persons are exempt from the licensing requirements under section 2 or section 3 of the Act:

(i) Retail pet stores which sell nondangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, mink, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only. *Provided that:* Anyone wholesaling any animals or selling any wild or exotic animals or other nonpet animals retail, or selling any animals for research or exhibition requires a license;

(ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of such animals to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license;

(iii) Any person who maintains a total of three (3) or fewer breeding female dogs or cats and who sells the offspring of these dogs or cats, which were born and raised on their premises, for pets or exhibition, and is not otherwise required to obtain a license;

(iv) Any person who sells fewer than 25 dogs or cats per year which were born and raised on his premises, for research purposes or to any research facility and does not otherwise qualify for licensing. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

(v) Any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment, and is not otherwise required to obtain a license;

(vi) Any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any

animals used only for the purposes of food or fiber (including fur);

(vii) Any person who breeds and raises domestic pet animals for direct retail sales to others for their own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., a purebred dog or cat fancier) and does not otherwise qualify for licensing;

(viii) Any person who buys animals solely for his own use or enjoyment and does not sell or exhibit animals, or otherwise qualify for licensing.

(b) Any person who sells fewer than 25 dogs or cats per year, for research or teaching purposes, and who does not otherwise qualify for licensing may obtain a voluntary license, provided the animals were born and raised on such person's premises. Such person shall comply with the requirements for dealers set forth in this part and the Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats set forth in Part 3 and shall agree in writing on a form furnished by Veterinary Services to comply with all the requirements of the Act and this subchapter. Voluntary licenses will not be issued to any other persons.

(c) No person shall have more than one license.

(d) A license will be issued to any applicant, except as provided in §§ 2.10 and 2.11, when the applicant has met the requirements of this section and of §§ 2.2 and 2.3, and has paid the application fee of $10 and the annual license fee indicated in § 2.6 to the Area Veterinarian in Charge and the payment has cleared normal banking procedures. The applicant may pay such fees by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by a bank will be charged a fee of $15 for each returned check and will be required to pay all subsequent fees by certified check, money order, or cashier's check. A license will not be issued until payment has cleared normal banking procedures.

(e) On or before the termination date of the license, a licensee who wishes a renewal shall submit to the Area Veterinarian in Charge the application fee of $10, plus the annual license fee indicated in § 2.6 by certified check, cashier's check, personal check, or money order. An applicant whose check is returned by the bank will be charged a fee of $15 for each returned check. One returned check will be deemed nonpayment of fees and will result in denial of license. Payment of fees must then be made by certified check, cashier's check, or money order. An applicant will not be licensed until his or her payment has cleared normal banking procedures.

(f) The failure of any person to comply with any provision of the Act, or any of the provisions of the regulations or standards in this subchapter, shall constitute grounds for denial of license, or for its suspension or revocation by the Secretary, as provided in the Animal Welfare Act.

### § 2.2 Acknowledgement of regulations and standards.

A copy of the applicable regulations and standards will be supplied to the applicant with each request for a license application. The applicant shall acknowledge receipt of such standards and agree to comply with them by signing the application form before a license will be issued.

### § 2.3 Demonstration of compliance with standards and regulations.

(a) Each applicant must demonstrate that his/her premises and any animals, facilities, vehicles, equipment, or other premises used or intended for use in the business comply with the regulations and standards set forth in Parts 2 and 3 of this subchapter before a license will be issued. The applicant must make his/her animals, premises, facilities, vehicles, equipment, other premises, and records available for inspection, during business hours and/or at other times mutually agreeable to the applicant and Veterinary Services, to ascertain the applicant's compliance with the standards and regulations.

(b) If the applicant's animals, premises, facilities, vehicles, equipment, other premises, or records do not meet the requirements of this subchapter, the applicant will be advised of existing deficiencies and the corrective measures that must be completed to come into compliance with the standards and regulations. Issuance of the license will be denied until the animals, premises, facilities, vehicles, equipment, other premises and records are in compliance with all standards and regulations in this subchapter.

### § 2.5 Duration of license and termination of license.

(a) A license issued under this part shall be valid and effective for 1 year unless:

(1) Said license has been revoked or suspended pursuant to section 19 of the Act.

(2) Said license is voluntarily terminated upon request of the licensee, in writing, to the Veterinarian in Charge.

(3) Such license has been terminated under this part.

(4) The applicant has failed to pay the application fee and the annual license fee as required in §§ 2.1 and 2.6.

There will be no refund of fees if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license and annual report form (VS Form 18–3) as required by § 2.7, and pay the required fees, on or before the termination date of the present license or the license shall automatically terminate on its anniversary date. The licensee will be notified by mail at least 60 days prior to the termination date of the license. Failure to comply with the annual reporting requirements, or to pay the required license fees prior to the termination date of the license, shall result in automatic termination of such license on the anniversary date of the license.

(c) Licensees must accept delivery of registered mail or certified mail notice and provide the Area Veterinarian in Charge notice of their address in conformity with the requirements in § 2.1.

(d) Any person who seeks the reinstatement of a license which has been automatically terminated must follow the procedure applicable to licensees set forth in § 2.1.

(e) Licenses are issued to persons for specific premises and do not transfer upon change of ownership or location.

(f) A license which is invalid under this part shall be surrendered to the Area Veterinarian in Charge. If the license cannot be found, a written statement so stating shall be provided to the Area Veterinarian in Charge.

### § 2.6 Annual license fees.

(a) In addition to the application fee of $10 required to be paid upon the application for a license under § 2.1, each licensee shall submit to the Area Veterinarian in Charge the annual license fee prescribed in this section. Paragraph (b) of this section indicates the method used to calculate the appropriate fee. The amount of the fee is determined from Table 1 or 2 of this section.

(b)(1) *Class "A" license.* Except as provided in paragraphs (b) (4) and (5) of this section, the annual license fee for a Class "A" dealer shall be based on 50 percent of the total gross amount, expressed in dollars, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, by the dealer or

applicant during his or her preceding business year (calendar or fiscal) in the case of a person who operated during such a year. If animals are leased, the lessor shall pay a fee based on 50 percent of any compensation received from such animals and the lessee shall pay a fee based upon the net compensation received from such leased animals, as indicated for dealers in Table 1 of this section.

(2) *Class "B" license.* Except as provided in paragraphs (b) (4) and (5) of this section, the annual license fee for a Class "B" dealer shall be established by calculating the total amount received from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale, during the preceding business year (calendar or fiscal) less the amount paid for such animals, by the dealer or applicant. This net difference, exclusive of other costs, shall be the figure used to determine the license fee of a Class "B" dealer or an applicant for a Class "B" license. If animals are leased, the lessor and lessee shall each pay a fee based on the net compensation received from such animals calculated from Table 1 of this section.

(3) Except as provided in paragraphs (b) (4) and (5) of this section, the annual license fee for a broker or an operator of an auction sale shall be that of a class "B" dealer and shall be based on the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals, or negotiating the sale of animals, by brokers, or by the operator of an auction sale to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, during the preceding business year (calendar or fiscal).

(4) In the case of an applicant for a license as a dealer who operated at least 6 months of his preceding business year but not the entire year, the annual license fee shall be computed by estimating the yearly volume of business on the basis of the business done during the period of operation.

(5) In the case of an applicant for a license as a dealer who did not operate for at least 6 months during his preceding business year, the annual license fee will be based on the anticipated yearly dollar amount of business, as provided in paragraphs (b) (1), (2), and (3) of this section, derived from the sale of animals to research facilities, dealers, exhibitors, retail pet stores, and persons for use as pets, directly or through an auction sale.

(6) The amount of the annual fee required to be paid upon application for a class "C" license as an exhibitor under this section shall be based on the number of animals which the exhibitor owned, held, or exhibited at the time the application is signed and dated or during the previous year, whichever is greater, and will be the amount listed in Table 2. Animals which are leased shall be included in the number of animals being held by both the lessor and the lessee when calculating the annual fee. An exhibitor shall pay his/her annual license fee on or before the termination date of the license and the fee shall be based on the number of animals which the exhibitor is holding or has held during the year (both owned and leased).

(c) The license fee shall be computed in accordance with the following tables:

TABLE 1.—DEALERS, BROKERS, AND OPERATORS OF AN AUCTION SALE, CLASS "A" AND "B" LICENSE

| Over | But not over | Fee |
|---|---|---|
| 0 | $500 | $50 |
| $500 | 2,000 | 100 |
| 2,000 | 10,000 | [illegible] |
| 10,000 | 25,000 | 400 |
| 25,000 | 50,000 | [illegible] |
| 50,000 | 100,000 | [illegible] |
| 100,000 | | 1,000 |

TABLE 2.—EXHIBITORS—CLASS "C" LICENSE

| | Fee |
|---|---|
| Number of animals: | |
| 1 to 5 | $50 |
| 6 to 25 | 125 |
| 26 to 50 | [illegible] |
| 51 to 500 | 375 |
| 501 and up | [illegible] |

(d) If a person meets the licensing requirements for more than one class of license, he shall be required to pay the fee for the type business which is predominant for his operation, as determined by the Secretary.

(e) In any situation in which a licensee shall have demonstrated in writing to the satisfaction of the Secretary that he has good reason to believe that the dollar amount of his business for the forthcoming business year will be less than the previous business year, then his estimated dollar amount of business shall be used for computing the license fee for the forthcoming business year: *Provided, however:* That if such dollar amount, upon which the license fee is based, for that year does in fact exceed the amount estimated, the difference in amount of the fee paid and that which was due based upon such actual dollar business upon which the license fee is based, shall be payable in addition to the required annual license fee for the next subsequent year, on the anniversary date of his license as prescribed in this section.

**§ 2.7 Annual report by licensees.**

(a) Each year, within 30 days prior to the termination date of his/her license, a licensee shall file with the Area Veterinarian in Charge an application for license and annual report upon a form which will be furnished to him upon request to the Area Veterinarian in Charge. When the requirements of §§ 2.1, 2.2, 2.3, and 2.6 have been met, the license will be issued subject to the exceptions in §§ 2.5, 2.10, and 2.11.

(b) A person licensed as a dealer shall set forth in his/her license application and annual report the dollar amount of business, upon which the license fee is based, from the sale of animals, directly or through an auction sale, to research facilities; dealers; exhibitors; retail pet stores; and persons for use as pets, by the licensee during the preceding business year (calendar or fiscal) and such other information as may be required thereon.

(c) A licensed dealer who operates as a broker or an operator of an auction sale shall set forth in his/her license application and annual report the total gross amount, expressed in dollars, derived from commissions or fees charged for the sale of animals by the licensee to research facilities, dealers, exhibitors, retail pet stores, and persons, for use as pets, during the preceding business year (calendar or fiscal), and such other information as may be required thereon.

(d) A person licensed as an exhibitor shall set forth in his/her license application and annual report the number of animals which are owned, held, or exhibited by him or her, including those which are leased, during the previous year or at the time he signs and dates the report, whichever is greater.

(e) The licensee shall have his/her attending veterinarian sign a statement on the annual report certifying that the attending veterinarian has read and understands the regulations and standards under the Animal Welfare Act, and that he/she has visited the premises and has carried out the responsibilities as indicated in the regulations and in the written program of adequate veterinary care.

**§ 2.8 Notification of change of name, address, control, or ownership of business.**

A licensee shall promptly notify the Area Veterinarian in Charge by certified mail of any change in the name, address, management, or substantial control or ownership of his business or operation.

or by any additional sites, within 10 days after such change.

**§ 2.9 Officers, agents, and employees of licensees whose licenses have been suspended or revoked.**

Any person who has been or is an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the violation upon which the order of suspension or revocation was based will not be licensed within the period during which the order of suspension or revocation is in effect.

**§ 2.10 Licensees whose licenses have been suspended or revoked.**

(a) Any person whose license has been suspended for any reason shall not be licensed in his/her own name or in any other manner within the period during which the order of suspension is in effect. No partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, will be licensed during such period.

(b) Any person whose license has been revoked shall not be eligible to apply for a license in his/her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be eligible to apply for a license.

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during such period of suspension or revocation.

**§ 2.11 Denial of license.**

(a) A license will not be issued to any applicant who:

(1) Has not complied with the requirements of §§ 2.1, 2.2, or 2.3, or has not paid the fees indicated in § 2.6;

(2) Is not in compliance with any of the regulations or standards in this subchapter;

(3) Has had a license suspended or revoked as set forth in § 2.10;

(4) Has been fined, sentenced to jail, or pled nolo contendere (no contest) under State or local cruelty to animal laws within 1 year of application;

(5) Has made any false or fraudulent statements, or provided any false or fraudulent records to the Department; or

(6) Has interfered with, threatened, abused (including verbal abuse), or harassed any Veterinary Services inspector in the course of carrying out his/her duties.

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. Such license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, or if his/her license has been suspended, after the end of the suspension period.

(c) No partnership, firm, corporation, or other legal entity in which a person whose license has been suspended or denied, has a substantial interest, financial or otherwise, will be licensed within 1 year of such license denial or until the license suspension period has been completed.

## Subpart B—Registration

**§ 2.25 Requirements and procedures.**

(a) Each research facility, carrier, and intermediate handler and each exhibitor not required to be licensed under section 3 of the Act and the regulations of this subchapter, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the Area Veterinarian in Charge. Such registration form shall be filed with the Area Veterinarian in Charge for the State in which the registrant has his principal place of business, and shall be updated every 3 years by the completion and filing of a new registration form which will be provided by the Area Veterinarian in Charge. Where a school or department of a university or college uses or intends to use animals for research, tests, experiments, or teaching, the university or college rather than the school or department will be considered the research facility and will be required to register with the Secretary. An official who has the legal authority to bind the parent organization shall sign the registration form.

(b) In any situation in which a school or department of a university or college is a separate legal entity and its operations and administration are independent of those of the university or college, upon proper showing thereof to the Secretary, the school or department will be registered rather than the university or college.

(c) A subsidiary of a business corporation, rather than the parent corporation, will be registered as a research facility or exhibitor unless the subsidiary is under such direct control of the parent corporation that to effectuate the purposes of the Act, the Secretary determines that it is necessary that the parent corporation be registered.

**§ 2.26 Acknowledgment of regulations and standards.**

A copy of the regulations and standards in this Subchapter will be supplied with each registration form. The registrant shall acknowledge receipt of such regulations and standards and agree to comply with them by signing a form provided for such purpose by Veterinary Services. Such form shall be filed with the Area Veterinarian in Charge.

**§ 2.27 Notification of change of operation.**

(a) A registrant shall notify the Area Veterinarian in Charge by certified mail of any change in the name or address, or any change in the operations or business, which would affect its status as a research facility, exhibitor, carrier, or intermediate handler, within 10 days after making such change.

(b)(1) A registrant which has not used, handled, or transported animals for a period of at least 2 years may be placed in an inactive status by making a written request to the Area Veterinarian in Charge. A registrant shall file an annual report of its status (active or inactive). A registrant shall notify the Area Veterinarian in Charge in writing at least 10 days before using, handling, or transporting animals again after being in an inactive status.

(2) A registrant which goes out of business or which ceases to function as a research facility, carrier, intermediate handler, or exhibitor, or which changes its method of operation so that it no longer uses, handles, or transports animals, and which does not plan to use, handle, or transport animals again at any time in the future, may have its registration canceled by making a written request to the Area Veterinarian in Charge. Such facility is responsible for reregistering and demonstrating its compliance with the Act and regulations should it start using, handling, or transporting animals at any time after such registration is canceled.

**§ 2.28 Annual report of research facilities.**

(a) The reporting facility shall be that segment of the research facility, or that department, agency, or instrumentality of the United States, that uses or intends to use live animals in research, tests, experiments, or for teaching. Each reporting facility shall submit an annual report to the Area Veterinarian in Charge for the State where the facility is located on or before December 1 of each calendar year. The report shall be signed by the attending veterinarian, the Institutional Animal Care and Use Committee Chairman, and the Chief Executive Officer of the facility, and

shall cover the previous Federal fiscal year of October 1 through September 30.

(b) Such report shall:

(1) Show that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, during pre- and post-surgical care, and during actual research, teaching, testing, surgery, or experimentation were followed by the research facility;

(2) Assure that the principal investigator has considered alternatives to painful procedures;

(3) Assure that the facility is adhering to the standards and regulations under the Animal Welfare Act. An explanation for any deviation from the standards and regulations shall be attached to the report;

(4) State the location of the facility or facilities where animals were housed or used in actual research, testing, teaching, or experimentation;

(5) State the common names and the numbers of animals upon which teaching, research, experiments, or tests were conducted involving no pain, distress, or use of pain-relieving drugs. Routine procedures (e.g., injections, tattooing, blood sampling) should be reported with this group;

(6) State the common names and the numbers of animals upon which experiments, teaching, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which appropriate anesthetic, analgesic, or tranquilizing drugs were used;

(7) State the common names and the numbers of animals upon which teaching, experiments, research, surgery, or tests were conducted involving accompanying pain or distress to the animals and for which the use of appropriate anesthetic, analgesic, or tranquilizing drugs would adversely affect the procedures, results, or interpretation of the teaching, research, experiments, surgery, or tests. A detailed statement on the procedures producing pain or distress in these animals and explaining the reasons such drugs were not used shall be attached to the annual report;

(8) State the common names and the numbers of animals being bred, conditioned or held for use, teaching, testing, experiments, research, or surgery but not yet used for such purposes; and

(9) Include a statement by the Chief Executive Officer of the facility that the attending veterinarian and the Institutional Animal Care and Use Committee have the authority to enter any animal area, at any reasonable time, in order to carry out their responsibilities as set forth under §§ 2.35 and 2.40; and that the Committee has satisfactorily carried out its responsibilities; and that the facility complies with the Act, regulations, and standards.

(c) Such annual report shall be certified by the attending veterinarian of the research facility and by the Institutional Animal Care and Use Committee Chairman as indicated in §§ 2.35(g) and 2.40(e)(2)(iii). This report will also indicate whether the nonaffiliated member concurs or does not concur with the report.

## Subpart C—Institutional Animal Care and Use Committee and Other Requirements for Research Facilities

### § 2.30 Additional requirements for research facilities.

(a) Each research facility using or holding animals for research, testing, or teaching shall ensure:

(1) That animal pain and distress are minimized;

(2) That adequate veterinary care including the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia, are provided for at all times; and

(3) That animals are housed and cared for according to this subchapter and that any deviations are fully explained and approved by the Committee.

(b) Each research facility shall establish and maintain an Institutional Animal Care and Use Committee (Committee).

(c) Each research facility shall provide the Committee and the attending veterinarian with the authority to enter all animal areas at any reasonable time in order to carry out their responsibilities.

(d) Each research facility shall require that all research protocols falling under Categories 3 and 4 of § 2.35(b)(3)(ii) which use live warmblooded animals must be approved by the Committee, including the attending veterinarian, prior to the start of any such research, testing, or teaching; that the principal investigator shall consider alternatives to any procedure likely to produce pain or distress in an experimental animal; and that the principal investigator will document such considerations in a written statement to the Committee as required by § 2.35.

(e) Each research facility, in any practice which might reasonably be expected to cause pain to an animal, shall establish a written policy:

(1) Ensuring that the attending veterinarian is consulted in the planning of such procedures and during the procedure;

(2) Providing for the proper use of anesthetics, analgesics, and tranquilizers in accordance with the directions of the attending veterinarian and the accepted or common veterinary usage of such drugs;

(3) Ensuring that all pre-surgical, surgical, and post-surgical care by laboratory workers is in accordance with established veterinary medical and nursing procedures, and that such care, surgical rooms, and qualifications of surgical personnel have been evaluated and approved by the attending veterinarian;

(4) Prohibiting the use of paralytic drugs without anesthesia.

(f) The research facility shall establish procedures which assure that no animal is used in more than one major operative experiment from which it is allowed to recover except as provided in § 2.35.

(g) Exceptions to the requirements of paragraphs (e) and (f) of this section may be made only when specified by the research protocol and approved by the Committee. The withholding of anesthetics, analgesics, tranquilizers, or euthanasia shall be done only when scientifically necessary and shall continue only for the necessary period of time. Exceptions to any of the requirements of paragraphs (e) and (f) of this section shall be detailed and explained by the principal investigator in a written report filed with the Committee. A copy of such report approved by the Committee shall be attached to the facility's annual report to the Department.

### § 2.35 Institutional Animal Care and Use Committee.

(a) *Membership.* (1) Each research facility shall establish and maintain an Institutional Care and Use Committee;

(2) The members of each Committee shall be appointed by the Chief Executive Officer of the research facility;

(3) The Committee shall be composed of a chairman and at least two additional members;

(4) Committee members shall possess sufficient ability to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility.

(5) Of the members of the Committee: (i) At least one shall be a Doctor of Veterinary Medicine who is the attending veterinarian for the research facility and who is accredited by the U.S. Department of Agriculture in accordance with regulations issued by

the Secretary under the Animal Welfare Act;

(ii) At least one shall not be affiliated in any way with such facility other than as a member of the Committee and shall not be a member of the immediate family of a person who is affiliated with such facility. The Secretary intends that such person will provide representation for general community interests in the proper care and treatment of animals;

(6) If the Committee consists of more than three members, not more than three members shall be from the same administrative unit of such facility;

(7) The research facility shall maintain an up-to-date list of Committee members and shall indicate for each member his/her name, degrees, position, qualifications, address, and telephone number. A copy of the current list of Committee members shall be maintained by the attending veterinarian for the facility and shall be made available for inspection by APHIS officials.

(b) *Duties and responsibilities*—(1) *Inspections.* (i) The Committee shall inspect at least twice a year, no more than 6 months apart, all animal study areas and animal facilities of the research facility and shall review as part of the inspection:

(A) All practices and procedures involving pain to animals, and

(B) The condition of all animals, in order to ensure compliance with the provisions of the Act and to minimize pain and distress to the animals.

(ii) The Committee shall use Title 9, Chapter 1, Subchapter A—*Animal Welfare*, as a basis of its inspection of animal areas and facilities.

(iii) Exceptions to the requirement of inspection of animal study areas may be made by the Secretary if the animals are studied in their natural environment and the study area prohibits easy access. Requests for such exemption shall be addressed to the Deputy Administrator, APHIS, Room 756, 6505 Belcrest Road, Hyattsville, MD 20782, and shall clearly set forth the reasons why such inspections cannot be made.

(2) *Reports.* (i) After each inspection is completed, the Committee shall file an inspection certification report at a central location at the research facility. Such reports shall be available to APHIS officials and to officials of funding Federal agencies for inspection and copying. Such reports shall contain at least the following:

(A) The date the inspection was made;

(B) The signature of a majority of the Committee members and any minority views of the Committee;

(C) Reports of:

(*1*) Any violations of the regulations, standards, or assurances required by the Secretary, including any deficient conditions of animal care or treatment and any findings and recommendations of the Committee;

(*2*) Any deviations of research practices from the originally approved proposals (protocols) that adversely affect animal welfare;

(*3*) Any notification to the facility regarding such conditions, deviations, or deficiencies;

(*4*) Any corrections made by the facility; and

(*5*) Any other information pertinent to the activities of the Committee and the status or condition of the animal facilities; and

(D) An assurance statement by the Committee that its members have reviewed all painful procedures using animals and that such procedures: (1) Are in accordance with the research protocols, procedures, and practices approved by the Committee, (2) are in accordance with any changes or special procedures approved by the Committee, or (3) are not in accordance with the approved protocols, procedures, or practices, and that the investigator(s) has been instructed to cease such methods and procedures immediately and to comply with the protocols, procedures, and practices approved by the Committee.

(ii) The Committee: (A) Shall notify the administrative representative of the research facility of any deficiencies in complying with the Act, regulations, or standards found on inspection. If, 30 days after notification and opportunity for correction, such deficiencies remain uncorrected, the Committee shall notify the Deputy Administrator and any funding Federal agency of such deficiencies in writing and shall provide a copy of its report and notification to the administrative representative of the facility; and

(B) Shall provide a copy of any report showing deficiencies in complying with the regulations or standards to the Veterinary Services inspector(s) and any funding Federal agency of the project with respect to which uncorrected deficiencies occurred.

(iii) The Committee shall establish a reporting procedure whereby laboratory or research facility personnel or employees can report violations of any regulation or standard established under the Act including problems, deviations, or deficiencies with animal housing, care, or use. The Committee shall review and, if warranted, investigate any such reports, in addition to the biyearly inspections, and shall prepare and file a report at the central location specified in paragraph (b)(2)(i) of this section, indicating the nature of the problem or complaint; the Committee's findings; and any corrective actions taken. No facility employee, Committee member, or laboratory personnel shall be discriminated against or be subject to any reprisal for reporting violations of any regulation or standard under the Act.

(iv) Any reports required by this section shall remain on file for at least 3 years at the research facility and shall be available for inspection and review by APHIS inspectors and any funding Federal agency.

(3) *Reviews.* (i) Upon the request of the Deputy Administrator, the Committee shall make available for review to assure compliance with the provisions of the Act all research protocols involving animals and all assurance statements required by the U.S. Public Health Service (PHS) or any other funding Federal agency. The USDA inspectors shall maintain the confidentiality of such information.

(ii) No research, testing, or teaching involving protocols falling under Categories 3 and 4 in this paragraph performed by a facility's personnel at any location shall commence prior to approval by the Committee. Prior to granting approval, the Committee shall ensure that protocols in any of the categories listed below contain provisions for acceptable and proper animal care, treatment, practices, methods, and use of pain-relieving drugs.

CATEGORIES OF ANIMAL USE IN RESEARCH AND TEACHING

| Category | Examples |
|---|---|
| Category 1<br>The use of animals in teaching, testing, or experimental procedures that would be expected to produce little or no pain or [illegible]. | 1. Holding animals for use in research or teaching.<br>2. Simple procedures such as injections, blood sampling, and tattooing.<br>3. Physical examinations.<br>4. Standard, approved methods of euthanasia.<br>5. Simple, group behavioral ob-[illegible].<br>6. Procedures on anesthetized animals which do not regain consciousness. |
| Category 2<br>The use of animals in procedures that involve minor pain or distress of short duration. | 1. Exposure of blood vessels or implantation of chronic cath-[illegible].<br>2. Behavioral studies or procedures that involve short term [illegible].<br>3. Food/water deprivation for short periods.<br>4. Noxious stimuli from which escape is possible.<br>5. Surgical procedures that may result in some minor post-surgery pain or distress.<br>6. Diagnostic procedures such as laparoscopy or needle biopsies. |

CATEGORIES OF ANIMAL USE IN RESEARCH AND TEACHING—Continued

| Category | Examples |
|---|---|
| Category 3<br>The use of animals in procedures that involve significant but unavoidable pain or distress to the animals. | 1. Deliberate induction of behavioral stress, loss of sight, or similar debilitation to test its effect.<br>2. Major surgical procedures such as the invasion and exposure of body cavities, orthopedics, or major dental work, and those that result in significant post-operative pain or distress.<br>3. Induction of an anatomic or physiological defect that will result in pain or distress.<br>4. Application of noxious stimuli from which escape is impossible or prolonged periods of physical restraint.<br>5. Deprivation studies.<br>6. Induction of aggressive or self-mutilating behavior.<br>7. Procedures that produce pain or distress in which anesthetics are not used, such as toxicity studies, radiation sickness, certain infections, and stress or shock research.<br>8. Infliction of minor burns or trauma. |
| Category 4<br>The use of animals in procedures that involve the inflicting of severe pain or distress or chronic, unrelieved pain or distress, or death. | 1. Infliction of severe burns or trauma without anesthetics.<br>2. Attempts to induce psychotic-like behavior.<br>3. Killing by inhumane means.<br>4. Inescapable severe stress, terminal stress, or long-term or permanent physical restraints.<br>5. Performing any major surgical procedure without anesthetics. |

(iii) The Committee shall approve Such protocols only when animal pain, distress, and functional or sensory impairment are minimized; all survival surgery is performed using aseptic procedures; adequate veterinary care is planned for and provided; multiple use of such animal(s) is justified for the purpose of conserving an endangered species or marine mammals or as an essential related component of a particular project or protocol; and the appropriate use of anesthetics, analgesics, tranquilizing drugs, or euthanasia, when necessary, and that the use of such drugs is in accordance with established or accepted veterinary medical procedures and usage. The use of such drugs shall be in accordance with the instructions of the attending veterinarian.

(iv) The Committee shall ensure that pain relieving drugs are used whenever an animal is subjected to any procedure that would reasonably be expected to cause pain or distress in a human subject were that procedure applied to a human being: *Provided, however:* That the use of pain relieving drugs may be minimized or exempted if fully explained and justified in the research protocol and agreed to by the Committee and the attending veterinarian.

(v) The Committee shall require written assurance from the principal investigator that:

(A) Alternative procedures have been considered for any procedure likely to produce pain or distress in an experimental animal and that no other procedures are suitable;

(B) The experiment does not unnecessarily duplicate previous experiments. The assurance is to indicate what information sources were consulted, what other procedures were considered, and what techniques will be used to minimize pain and discomfort to the animals;

(vi) The Committee shall in any practice which could be expected to cause pain to animals:

(A) Require that the principal investigator consult with the attending veterinarian in the planning of such procedure and during the procedure;

(B) Require that the principal investigator provide for the use of tranquilizers, analgesics, and anesthetics in accordance with the attending veterinarian's recommendations and established or accepted veterinary procedures, including the training of laboratory personnel to properly carry out these procedures so as to minimize pain and distress;

(C) Require that pre-surgical and post-surgical care be provided by laboratory workers, in accordance with the instructions of the attending veterinarian, and in accordance with established veterinary medical and nursing procedures;

(D) Require that all aseptic survival surgeries be conducted only in facilities intended for that purpose, that such facilities be operated and maintained under aseptic conditions, and that any surgery be performed or directly supervised by trained, experienced personnel;

(E) Prohibit the use of paralytic drugs without anesthesia; and

(F) Prohibit the withholding of tranquilizers, anesthesia, analgesia, or euthanasia except when scientifically necessary and approved by the Committee and the attending veterinarian. When the withholding of such drugs are approved, it shall continue for only the shortest necessary period of time.

(vii) The Committee shall assure that no animal is used in more than one major operative experiment from which it is allowed to recover. *Provided, however:* That exceptions may be made to limiting the number of survival surgical procedures on an animal under the following circumstances:

(A) When scientifically necessary and approved by the Committee;

(B) When required by other surgical procedures or related by protocol and approved by the Committee;

(C) When required to reduce or conserve the number of marine mammals or endangered species of animals used and approved by the Committee;

(D) When required to protect the health and well-being of the animal as determined by the attending veterinarian;

(E) When the procedure is a routine, elective veterinary surgical or diagnostic procedure;

(F) In other special circumstances as determined by the Secretary on an individual basis. Written requests and supporting data should be sent to the Deputy Administrator, USDA, APHIS, VS, 6505 Belcrest Road, Federal Building, Room 756, Hyattsville, MD 20782.

(G) Cost savings alone is not adequate reason for performing multiple survival surgical procedures.

(c) *Exceptions.* Exceptions to compliance with the standards and regulations as set forth under Title 9 CFR, Chapter 1, Subchapter A—*Animal Welfare,* shall be made by the Committee only when such areas of noncompliance are necessary for the accomplishment of the research design, and are specified in the research protocol, and are explained in detail. The principal investigator shall file a report explaining such areas of noncompliance in detail with the Committee. A copy of such report shall be kept on file by the facility and shall be available for inspection by USDA inspectors or officials of granting agencies.

(d) *Exercise for dogs and psychological well-being of primates.* The Committee shall establish, in consultation with the attending veterinarian, written procedures and systems for the exercise of dogs and for the psychological well-being of primates in accordance with the regulations and standards, and a record system indicating that such a procedure or system is being carried out.

(e) *Federal research facilities.* Each Federal research facility shall establish an Institutional Animal Care and Use Committee which shall have the same composition, duties, and responsibilities required of nonfederal research facilities by this section with the following exceptions:

(1) The Committee shall report deficiencies to the head of the Federal agency conducting the research rather than to the Animal and Plant Health Inspection Service;

(2) The head of the Federal agency conducting the research shall be responsible for all corrective action to be taken at the facility and for the granting of all exceptions to inspection protocol.

(f) *Training.* (1) Each research facility shall provide for the training and continuing education of scientists, research technicians, animal technicians, and other personnel involved with animal use, care, and treatment at the facility.

(2) Such training shall be reviewed by the Committee and the attending veterinarian and shall be made available annually or as appropriate to the individuals and their responsibilities.

(3) The Committee shall review the status of the training and qualifications of researchers to use animals at least once a year, and shall review the list of research personnel and shall designate those who require additional training.

(4) This training shall be available for review by Department inspectors. Such training shall include instruction in at least the following areas:

(i) Humane methods of animal maintenance and experimentation and animal ethics;

(ii) Research or testing methods that minimize or eliminate the use of animals or limit animal pain or distress;

(iii) Utilization of the information service at the National Agricultural Library;

(iv) Methods whereby deficiencies in animal care and treatment should be reported;

(v) The basic needs of each species of animal;

(vi) Familiarization with the intent and requirements of the Animal Welfare Act;

((vii) How to handle and care properly for the various species of animals used by the facility;

(viii) Proper pre-surgical and post-surgical care of animals;

(ix) Proper use of anesthetics, analgesics, and tranquilizers in the species of animals used by the facility, including the common or accepted use of such drugs in those species for which the drug is not licensed;

(x) Acceptable aseptic surgical methods and procedures;

(xi) Other training, techniques, or procedures the Committee, or the Secretary, may feel is necessary.

(g) *Annual report of research facility.* The Committee Chairman shall sign an assurance statement on the Annual Report of Research Facility (VS Form 18–23) certifying—

(1) That the Committee has carried out the responsibilities and requirements of this section;

(2) That the facility is following the standards required by the Animal Welfare Act governing the care, treatment, and use of animals during actual research or experimentation;

(3) That it has required a detailed explanation to be provided by the principal investigator when drugs are not used to alleviate pain or distress, and that all such explanations are attached to the Annual Report of Research Facility, and

(4) That it has required that all other exceptions to the standards have been specified by the protocols and approved by the Committee.

## Subpart D—Attending Veterinarian and Adequate Veterinary Care

### § 2.40 Attending veterinarian and veterinary care.

(a) Each licensed or registered research facility, dealer, or exhibitor shall have an attending veterinarian who is accredited by the U.S. Department of Agriculture in accordance with regulations issued by the Secretary under the Animal Welfare Act and who shall provide adequate veterinary care to their animals in compliance with this section.

(b) The attending veterinarian shall establish, maintain, and supervise programs of disease control and prevention, pest and parasite control, pre- and post-procedural care, nutrition, euthanasia, and adequate veterinary care for all animals on the premises of the dealer, exhibitor, or research facility. Such programs shall include the proper and appropriate use of anesthetics, analgesics, tranquilizers, and euthanasia when indicated.

(c) A written program of adequate veterinary care between the dealer, exhibitor, or research facility and the Doctor of Veterinary Medicine shall be drawn up and reviewed on a yearly basis. If a part-time or consulting veterinarian is utilized, such program shall include regularly scheduled visits appropriate to the facility's needs. The facility will keep a copy of the written program on file at the facility and shall provide a copy to the Area Veterinarian in Charge each year. Such written program shall include at least the following:

(1) The facility name and address;

(2) The veterinarian's name and address;

(3) How the programs are to be established and reviewed;

(4) The frequency of visits to be made to the premises by the veterinarian to assure adequate veterinary care and supervision of required programs;

(5) The method or system of euthanasia to be utilized, by species, and who shall be authorized to perform it; and

(6) The dated signature of the attending veterinarian and of a legally responsible official of the research facility, dealer, or exhibitor.

(d) Each animal shall be observed daily by the dealer, exhibitor, veterinarian, the animal caretaker in charge, or someone under their direct supervision. The facility shall provide veterinary care or humanely dispose of sick, diseased, injured, lame, or blind animals unless such action is inconsistent with the research purposes for which such animal was obtained and is being held: *Provided, however,* That this provision shall not affect compliance with any State or local law requiring the holding, for a specified period, of animals suspected of being diseased.

(e) *Research facilities.* (1) The attending veterinarian of each research facility shall be a member of the Institutional Animal Care and Use Committee and shall have the authority to enter all animal rooms, sites, facilities, and animal use areas, at any time.

(2) In addition to the requirements set forth in paragraphs (a) through (d) of this section, the attending veterinarian of a research facility shall:

(i) Provide consultation and guidance to principal investigators and other laboratory personnel during protocol planning and development, and during actual research, whenever any procedure is likely to produce pain or distress in an animal. Such consultation and guidance shall include at least the following areas:

(A) The proper use of tranquilizers, analgesics, anesthetics, and euthanasia according to the accepted, or common veterinary practice procedures;

(B) Provision for adequate pre-surgical and post-surgical care by laboratory workers in accordance with current established veterinary medical and nursing procedures;

(C) Agreement to the withholding of tranquilizers, anesthesia, analgesia, or euthanasia only when scientifically necessary and only for the necessary period of time; and

(D) Evaluation and approval of all animal surgical areas and qualifications

of personnel involved with animal surgery.

(ii) Establish a recordkeeping system and standard operating procedure, which indicates and assures that the proper drugs are being used and that proper pre-surgical and post-surgical care are being carried out on a daily basis;

(iii) Sign an assurance statement on the Annual Report of Research Facility (VS Form 18–23) each year certifying—

(A) That he/she has the authority to enter all animal areas;

(B) That he/she has carried out the requirements of this section;

(C) That he/she has read and understands the regulations and standards in Parts 2 and 3.

## Subpart E—Identification of Animals

### § 2.50 Time and method of identification.

(a) A class "A" dealer (breeder) shall identify all live dogs and cats on the premises as follows:

(1) When the class A dealer sells or otherwise removes live dogs or cats from the premises for delivery to a research facility or exhibitor or to another dealer, or for sale, through an auction sale or to any person for use as a pet, each such live dog or cat shall be identified by an official tag of the type described in § 2.51 affixed to the animal's neck by means of a collar made of material generally considered acceptable to pet owners as a means of identifying their pet dogs or cats,[1] or shall be identified by a distinctive and legible tattoo marking acceptable to and approved by the Deputy Administrator.

(2) Live puppies or kittens, less than 16 weeks of age, shall be identified by—

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Deputy Administrator, or

(iii) A plastic-type collar acceptable to the Deputy Administrator which has the information required for an official tag pursuant to § 2.51 legibly placed thereon.

(3) All other live dogs or cats on the premises must be identified in the records by an accurate and distinctive description, or by a distinctive and legible tattoo marking, or by an official tag pursuant to § 2.51.

(b) A class "B" dealer shall identify all live dogs and cats under his control, on his premises as follows:

(1) When live dogs or cats are purchased or otherwise acquired, they shall be immediately identified by—

(i) Affixing to the animal's neck an official tag as set forth in § 2.51 by means of a collar made of material generally acceptable to pet owners as a means of identifying their pet dogs or cats,[1] or

(ii) By a distinctive and legible tattoo marking approved by the Deputy Administrator.

(2) If any live dog or cat is already identified by an official tag or tattoo which has been applied by another dealer or exhibitor, the dealer or exhibitor who purchases or otherwise acquires such animal may maintain identification of the dog or cat by the previous identification number, or may replace such previous tag with his own official tag or approved tattoo. In either case, the class B dealer or class C exhibitor shall correctly list both official tag numbers or tattoos in his records of purchase which shall be maintained in accordance with §§ 2.75 and 2.77. Any new official tag or tattoo number shall be used on all records of the subsequent sales of such dog or cat.

(3) Live puppies or kittens, less than 16 weeks of age, shall be identified by—

(i) An official tag as described in § 2.51;

(ii) A distinctive and legible tattoo marking approved by the Deputy Administrator, or

(iii) A plastic-type collar acceptable to the Deputy Administrator which has the information required for an official tag pursuant to § 2.51 legibly placed thereon.

(4) When any dealer has made a reasonable effort to affix an official tag to a cat, as set forth in paragraphs (a) and (b) of this section, and has been unable to do so, or when the cat exhibits serious distress from the attachment of a collar and tag, the dealer shall attach the collar and tag to the door of the primary enclosure containing the cat and take proper measures to maintain the identity of the cat in relation to the tag. Each primary enclosure shall contain no more than one weaned cat without an affixed collar and official tag, unless such cats are identified by a distinctive and legible tattoo or plastic-type collar approved by the Deputy Administrator.

(c) A class "C" exhibitor shall identify all live dogs and cats under his control or on his premises, purchased, or otherwise acquired:

(1) As set forth in (b)(1) or (b)(3) of this section, or

(2) May identify each dog or cat with—

(i) An official USDA sequentially numbered tag kept on the door of the animals cage or run;

(ii) A record book containing each animal's number, a written description of the animal, the data required by § 2.75(a), and a clear photograph of each animal; and

(iii) A second, duplicate tag to accompany each dog or cat whenever it leaves the compound or premises.

(d) Unweaned puppies or kittens need not be individually identified as required by paragraphs (a) and (b) of this section while they are maintained as a litter with their dam in the same primary enclosure provided the dam has been so identified.

(e) (1) All live dogs or cats delivered for transportation, transported, purchased or otherwise acquired, sold, or disposed of by a research facility, shall be identified at the time of such delivery for transportation, purchase, sale, disposal, or acquisition by the official tag or tattoo which was affixed to the animal at the time it was acquired by the research facility, as required by this section, or by a tag, tattoo, or collar, applied to the live dog or cat by the research facility and which individually identifies such dog or cat by description or number. Both official tag or tattoo numbers shall be correctly listed in the records of purchase, acquisition, disposal, or sale which shall be maintained in accordance with § 2.76.

(2) All live dogs or cats delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of from any exempt source, shall be identified at the time of such delivery, purchase, sale, disposal, or acquisition, by an official tag or tattoo affixed by the research facility and maintained in the records in accordance with § 2.76.

(f) (1) All animals, except dogs and cats, delivered for transportation, transported, purchased, sold, or otherwise acquired or disposed of, by any dealer or exhibitor shall be identified by the dealer or exhibitor at the time of such delivery for transportation, purchase, sale, acquisition or disposal, as provided for in this paragraph and records maintained as required in §§ 2.75 and 2.77.

(2) When one or more animals, other than dogs or cats, are confined in a container, the animal(s) shall be identified by—

(i) A label attached to the container which shall bear a description of the

---

[1] In general, well fitted collars made of leather or plastic will be acceptable under this provision. The use of certain types of chains presently used by some dealers may also be deemed acceptable. A determination of the acceptability of a material proposed for usage as collars from the standpoint of humane considerations will be made by Veterinary Services on an individual basis in consultation with the dealer or exhibitor involved. The use of materials such as wire, elastic, or sharp metal that might readily cause discomfort or injury to the dogs or cats is not acceptable.

animals in the container, including (A) the number of animals, (B) the species of the animals, (C) any distinctive physical features of the animals, and (D) any identifying marks, tattoos, or tags attached to the animals;

(ii) Marking the container with a painted or stenciled number, which number shall be recorded in the records of the dealer or exhibitor together with (A) a description of the animal(s), (B) the species of the animal(s), and (C) any distinctive physical features of the animal(s); or

(iii) A tag or tattoo applied to each animal in the container by the dealer or exhibitor and which individually identifies such animal by description or number.

(3) When any animal, other than a dog or cat, is not confined in a container, it shall be identified on a record, as required by § 2.75 which shall accompany the animal at the time it is delivered for transportation, transported, purchased, or sold, and shall be kept and maintained by the dealer or exhibitor as part of his records.

**§ 2.51 Form of official tag.**

(a) The official tag shall be made of a durable alloy such as brass, bronze, or steel or of a durable plastic. Aluminum of a durable thickness may also be used. Such tag shall be one of the following shapes:

(1) Circular in shape and not less than 1¼ inches in diameter, or

(2) Oblong and flat in shape, not less than 2 inches by ¾ inch and riveted to an acceptable collar.

(b) Each tag shall have the following information embossed or stamped on it which is easily readable—

(1) The letters "USDA";

(2) Numbers identifying the State and dealer, exhibitor, or research facility (i.e. 39–AB); and

(3) Numbers identifying the animal (i.e. 82488).

(c) Such tags shall be serially numbered and there shall be no duplication of numbers by any one dealer, exhibitor, or research facility, within a consecutive 5-year period.

**§ 2.52 How to obtain tags.**

Dealers, exhibitors, or research facilities may obtain, at their own expense, official tags from commercial tag manufacturers.[2] At the time the dealer, exhibitor, or research facility is issued a license or is registered, the Department will assign identification letters and numbers and inform them of the identification letters and numbers to be used on the official tags.

**§ 2.53 Use of tags.**

Official tags obtained by a dealer, exhibitor, or research facility, shall be applied to dogs or cats in the manner set forth in § 2.50 and in as near consecutive numerical order as possible. No tag number shall be used to identify more than one animal. No number shall be repeated within a consecutive 5-year period.

**§ 2.54 Lost tags.**

Each research facility, dealer, or exhibitor shall be held accountable for all official tags acquired. In the event an official tag is lost from the neck of a dog or cat while in the possession of a research facility, dealer, or exhibitor, a diligent effort shall be made to locate and reapply such tag to the proper animal. If the lost tag is not located, the research facility, dealer, or exhibitor shall affix another official tag to the animal in the manner prescribed in § 2.50, and make a notation of the tag number on the official records.

**§ 2.55 Removal and disposal of tags.**

(a) When a dog or cat wearing or identified by an official tag arrives at a research facility, the facility may continue to use such tag to identify the dog or cat or the research facility may replace the tag as indicated in § 2.50(e). All tags removed by a research facility shall be retained and disposed of as indicated in this section.

(b) If a dealer, exhibitor, or research facility finds it necessary to euthanize a live dog or cat to which is affixed or which is identified by an official tag, or upon the death of such dog or cat from other causes, the dealer, exhibitor, or research facility shall remove and retain such tag for the required period.

(c) All official tags removed and retained by a dealer, exhibitor, or research facility shall be held until called for by a Veterinary Services representative or for a period of 1 year.

(d) When official tags are removed from animals for disposal such tags must be disposed of in a manner to preclude their reuse as animal identification. No animal identification number shall be used within any consecutive 5-year period following its previous use.

## Subpart F—Stolen Animals

**§ 2.60 Prohibition on the purchase, sale, use, or transportation of stolen animals.**

Any person subject to the Act shall not buy, sell, exhibit, use for research, transport, or offer for transportation, any stolen animal.

## Subpart G—Records

**§ 2.75 Dealers and exhibitors.**

(a)(1) Every dealer and exhibitor shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning each dog or cat purchased or otherwise acquired, owned, held, or otherwise in his possession or under his control, or which is transported, euthanized, sold, or otherwise disposed of by such dealer or exhibitor. Such records shall include any offspring born of any animal while in his possession or under his control:

(i) The name and address of the person from whom such dog or cat was purchased or otherwise acquired whether or not such person is required to be licensed or registered under the Act;

(ii) The USDA license or registration number of such person if licensed or registered under the Act;

(iii) The vehicle license number and State, and the drivers license number and State of such person if they are not licensed or registered under the Act;

(iv) The name and address of the person to whom such dog or cat was sold or otherwise disposed of and their license or registration number if licensed or registered under the Act;

(v) The date such dog or cat was acquired or disposed of, including by euthanasia;

(vi) The official USDA tag number or tattoo assigned to such dog or cat pursuant to §§ 2.50 and 2.54;

(vii) A description of each dog or cat which shall include:

(A) The species and breed or type;

(B) The sex;

(C) Date of birth (if known) or approximate age;

(D) The color and any distinctive markings;

(viii) The method of transportation including the name of the initial commercial carrier or intermediate handler or if a privately owned conveyance is used to transport the dog or cat, the name of the owner of such privately owned conveyance.

(ix) The date and method of disposition of such dog or cat, e.g., sale, death, euthanasia, or donation.

---

[2] A list of the commercial manufacturers who produce such tags and are known to the Department may be obtained from the Area Veterinarian in Charge. Any manufacturer who desires to be included in such a list should notify the Deputy Administrator.

(2) Record of Dogs and Cats on Hand (VS Form 18–5) and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by dealers and exhibitors upon which to make, keep, and maintain the information required by paragraph (a)(1) of this section concerning dogs and cats except as provided in § 2.79.

(3) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used by dealers and exhibitors to make, keep, and maintain the information required by paragraph (a)(1) of this section and § 2.79.

(4) One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat sold or otherwise disposed of by a dealer or exhibitor: *Provided, however:* That information which indicates the source and date of acquisition of such dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by (a)(1) of this section shall be retained by the dealer or exhibitor.

(b)(1) Every dealer and exhibitor shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, leased, or otherwise in his possession or under his control, including any offspring born of such animals while in his possession or under his control, transported, or sold, euthanized, or otherwise disposed of:

(i) The name and address of the person from whom such animals were purchased or otherwise acquired;

(ii) The USDA license or registration number if licensed or registered under the Act;

(iii) The name and address of the person to whom sold or otherwise disposed of;

(iv) The date of such purchase, acquisition, sale, or disposal of such animal(s);

(v) The species of such animal(s);

(vi) The number of such animals.

(2) Record of Animals on Hand (other than dogs and cats) (VS Form 18–19) and Record of Acquisition, Disposition, or Transport of Animals (other than dogs and cats) (VS Form 18–20) are forms which may be used by dealers and exhibitors upon which to keep and maintain the information required by paragraph (b)(1) hereof concerning animals other than dogs and cats except as provided in § 2.79.

(3) One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal(s) other than a dog or cat purchased or otherwise acquired by a dealer or exhibitor. One copy of the record containing the information required by paragraph (b)(1) of this section shall accompany each shipment of any animal other than a dog or cat sold or otherwise disposed of by a dealer or exhibitor; *Provided, however:* That information which indicates the source and date of acquisition of any animal other than a dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraph (b)(1) of this section shall be retained by the dealer or exhibitor.

**§ 2.76 Research facilities.**

(a) Every research facility shall make, keep, and maintain systems of records or forms which fully and correctly disclose the following information concerning each live dog or cat purchased or otherwise acquired, owned, held, or otherwise in their possession or under their control, transported, euthanized, sold, or otherwise disposed of by such research facility. Such records shall include for any offspring born of any animal while in the research facility's possession or under its control:

(1) The name and address of the person from whom such dog or cat was purchased or otherwise acquired whether or not such person is required to be licensed or registered under the Act;

(2) The USDA license or registration number if such person is licensed or registered under the Act;

(3) The vehicle license number and State and the driver's license number and State of such person if they are not licensed or registered under the Act;

(4) The date of acquisition of each dog or cat;

(5) The official USDA tag number or tattoo assigned to each dog or cat pursuant to §§ 2.50 and 2.54;

(6) A description of each dog or cat which shall include:

(i) The species and breed or type of animal;

(ii) The sex;

(iii) The date of birth (if known) or approximate age;

(iv) The color and any distinctive markings.

(7) Any identification number or mark assigned to each dog or cat by such research facility.

(b) In addition to the information required to be kept and maintained by every research facility concerning each live dog or cat, pursuant to paragraph (a) of this section, every research facility transporting, selling, or otherwise disposing of any live dog or cat to another person, shall make and maintain systems of records or forms which fully and correctly disclose the following information.

(1) The name and address of the receiver to whom such live dog or cat is transported, sold, or otherwise disposed of;

(2) The date of such transportation, sale, euthanasia, or other disposition; and

(3) The method of transportation, including the name of the initial commercial carrier or intermediate handler, or if a privately owned conveyance is used to transport the dog or cat, the name of the owner of such privately owned conveyance.

(c)(1) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) and Record of Dogs and Cats on Hand (VS Form 18–5) are forms which may be used by research facilities upon which to keep and maintain the information required by paragraph (a) of this section.

(2) The USDA Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1), and Record of Disposition of Dogs and Cats (VS Form 18–6) are forms which may be used by research facilities upon which to keep and maintain the information required by paragraph (b) of this section.

(d) One copy of the record containing the information required by paragraphs (a) and (b) of this section shall accompany each shipment of any live dog or cat sold or otherwise disposed of by a research facility: *Provided, however:* That information which indicates the source and date of acquisition of any dog or cat is not required to appear on the copy of the record accompanying the shipment. One copy of the record containing the information required by paragraphs (a) and (b) of this section shall be retained by the research facility.

**§ 2.77 Operators of auction sales and brokers.**

(a) Every operator of an auction sale or broker shall make, keep, and

maintain systems of records or forms which fully and correctly disclose the following information concerning each animal consigned for auction or sold, whether or not a fee or commission is charged:

(1) The name and address of the person who owned or consigned the animal(s) for sale;

(2) The name and address of the buyer or consignee who received the animal;

(3) The USDA license or registration number of the persons selling, consigning, buying, or receiving the animals if licensed or registered under the Act;

(4) The date of the consignment;

(5) The official USDA tag number or tattoo assigned to the animal pursuant to §§ 2.50 and 2.54;

(6) A description of the animal which shall include:

(i) The species and breed or type of animal;

(ii) The sex of the animal;

(iii) The color and any distinctive markings on the animal.

(7) The auction sales number or records number assigned to the animal.

(b) One copy of the record containing the information required by paragraph (a) of this section shall be given to the consignor of each animal, one copy of the record shall be given to the purchaser of each animal: *Provided, however:* That information which indicates the source and date of consignment of any animal is not required to appear on the copy of the record given the purchaser of any animal. One copy of the record containing the information required by paragraph (a) of this section shall be retained by the operator of such auction sale, or broker, for each animal sold by the auction sale or broker.

**§ 2.78 Carriers and intermediate handlers.**

(a) In connection with all live animals accepted for shipment on a C.O.D. basis or other arrangement or practice under which the cost of such animal or the transportation of such animal is to be paid and collected upon delivery of the animal to the consignee, the accepting carrier or intermediate handler, if any, shall keep and maintain a copy of the guarantee in writing of the consignor of such shipment for the payment of transportation charged for any animal not claimed as provided in § 2.80, including, where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for out-of-pocket expenses incurred for the care, feeding, and storage of such animal. The carrier or intermediate handler at destination shall also keep and maintain a copy of the shipping document containing the time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee, as provided in § 2.80.

(b) In connection with all live dogs, cats, or nonhuman primates delivered for transportation, in commerce, to any carrier or intermediate handler, by any dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government, the accepting carrier or intermediate handler shall keep and maintain a copy of the health certification completed as required by § 2.79, tendered with each such live dog, cat, or nonhuman primate.

**§ 2.79 Health certification and identification.**

(a) No dealer, research facility, exhibitor, operator of an auction sale, broker, or department, agency, or instrumentality of the United States or of any State or local government shall deliver to any intermediate handler or carrier for transportation, in commerce, any dog, cat, or nonhuman primate unless such dog, cat, or nonhuman primate shall be accompanied by a health certificate executed and issued by a licensed veterinarian. Such health certificate shall state that—

(1) The licensed veterinarian inspected such dog, cat, or nonhuman primate on a specified date which shall not be more than 10 days prior to the delivery of such dog, cat, or nonhuman primate for transportation; and

(2) When so inspected that such dog, cat, or nonhuman primate appeared to the licensed veterinarian to be free of any infectious disease or physical abnormality which would endanger the animal(s) or other animals or endanger public health.

(b) The Secretary may provide exceptions to the health certification requirement on an individual basis for animals shipped to a research facility for purposes of research, testing, or experimentation when the research facility requires animals not eligible for such certification. Such request should be addressed to the Deputy Administrator, USDA, APHIS, VS, Room 756, FCB, 6505 Belcrest Road, Hyattsville, MD 20782.

(c) No intermediate handler or carrier to whom any live dog, cat, or nonhuman primate is delivered for transportation by any dealer, research facility, exhibitor, broker, operator of an auction sale, or department, agency, or instrumentality of the United States or any State or local government shall receive such live dog, cat, or nonhuman primate for transportation, in commerce, unless and until it is accompanied by a health certificate issued by a licensed veterinarian pursuant to paragraph (a) of this section, or an exemption issued by the Secretary pursuant to paragraph (b) of this section.

(d) The U.S. Interstate and International Certificate of Health Examination for Small Animals (VS Form 18–1) may be used for health certification by a licensed veterinarian as required by this section.

**§ 2.80 C.O.D. shipments.**

(a) No carrier or intermediate handler shall accept any animal for transportation, in commerce, upon any C.O.D. or other basis where the cost of the animal or the cost for any such transportation or any other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee, unless the consignor guarantees in writing the payment of all transportation, including any return transportation, if such shipment is unclaimed or the consignee cannot be notified in accordance with paragraphs (b) and (c) of this section, including reimbursing the carrier or intermediate handler for all out-of-pocket expenses incurred for the care, feeding, and storage or housing of such animal.

(b) Any carrier or intermediate handle receiving any animal at destination on a C.O.D. or other basis where the cost of the animal or the cost for any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee shall attempt to notify such consignee for a period of 24 hours after arrival of the animal at the animal holding area of the terminal cargo facility, at least once every 6 hours during that period. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded by the carrier or intermediate handler on the shipping document and a copy thereof, accompanying the C.O.D. shipment. If the consignee cannot be notified of the C.O.D. shipment within 24 hours after arrival of the shipment, the carrier or intermediate handler shall return the animal to the consignor, or to whomever the consigner has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and so notify the consignor. Any carrier or intermediate handler which has notified a consignee of the arrival of a C.O.D. or other

shipment of an animal, where the cost of the animal, or the cost for any transportation, or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal to the consignee, which is not claimed by such consignee within 48 hours from the time of such notification, shall return the animal to the consignor, or to whomever the consignor has designated, on the next practical available transportation, in accordance with the written agreement required in paragraph (a) of this section and so notify the consignor.

(c) It shall be the responsibility of any carrier or intermediate handler to provide proper care, feeding, and storage or housing for any animal accepted for transportation, in commerce, under a C.O.D. or other arrangement where the cost of the animal or the cost of any transportation or other incidental or out-of-pocket expense is to be paid and collected upon delivery of such animal until the consignee accepts shipment at destination or until returned to the consignor or his designee should the consignee fail to accept delivery of the animal or the consignee could not be notified as prescribed in paragraph (b) of this section.

(d) Nothing in this section shall be construed as prohibiting any carrier or intermediate handler from requiring any additional guarantee than that required in paragraph (a) of this section for the payment of the cost of any transportation or out-of-pocket or other incidental expenses incurred in the transportation of any animal.

**§ 2.81 Records, disposition.**

(a) No dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler shall, within a period of one year from the making thereof, destroy or dispose of, without the consent in writing of the Deputy Administrator, any books, records, documents, or other papers required to be kept and maintained under this part.

(b) The records required to be kept and maintained under this part shall be held for at least one year after such animal is euthanized or disposed of and for such period in excess of this period as necessary to comply with any other Federal, State, or local law. Whenever the Deputy Administrator notifies a dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler in writing that specified records shall be retained pending completion of an investigation or proceeding under the Act, such dealer, exhibitor, broker, operator of an auction sale, research facility, carrier, or intermediate handler shall hold such records until their disposition is authorized by the Deputy Administrator.

## Subpart H—Compliance With Standards and Holding Period

**§ 2.100 Compliance with standards.**

(a) Each dealer, exhibitor, operator of an auction sale and research facility shall comply in all respects with the regulations set forth in Part 2 and the standards set forth in Part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals: *Provided, however:* That exceptions to the standards in Part 3 may be made for research facilities only when such exceptions are specified in the research protocol; are explained in detail in a report filed with the Institutional Animal Care and Use Committee; and are approved by the Committee.

(b) Each carrier and intermediate handler shall comply in all respects with the regulations in Part 2 and the standards in Part 3 setting forth the conditions and requirements for the humane transportation of animals in commerce and their handling, care, and treatment in connection therewith.

**§ 2.101 Holding period.**

(a) Any live dog or cat acquired by a dealer [3] or exhibitor shall be held by him, under his supervision and control, for a period of not less than 5 business days after acquisition of such animal: *Provided, however:* That live dogs or cats which have completed a 5-day holding period with another licensed dealer or exhibitor may be sold or otherwise disposed of by subsequent dealers or exhibitors after a minimum holding period of 24 hours by each subsequent dealer or exhibitor, excluding time in transit; live dogs or cats obtained from governmentally owned and operated pounds or shelters (i.e., city or county pounds or shelters) and that have completed at least a 5-day holding period at such pound or shelter, may be sold or otherwise disposed of by subsequent dealers or exhibitors after a minimum holding period of 24 hours by each subsequent dealer or exhibitor, excluding time in transit; any dog or cat suffering from disease, emaciation, or injury may be destroyed by euthanasia prior to the completion of the holding period required by this section; any live dog or cat, 120 days of age or less, that was obtained from the person that bred and raised such dog or cat, may be exempted from the 5-day holding requirement and may be disposed of by dealers or exhibitors after a minimum holding period of 24 hours, excluding time in transit. Each subsequent dealer or exhibitor must also hold each such dog or cat for a 24 hour period excluding time in transit.

(b) During the period in which any dog or cat is being held as required by this section, such dog or cat shall be unloaded from any means of conveyance in which it was received, for feed, water, and rest, and handled, cared for, and treated in accordance with the standards set forth in Part 3, Subpart A, of this subchapter.

**§ 2.102 Holding facility.**

(a) If any dealer or exhibitor obtains the prior approval of the Area Veterinarian in Charge, he may arrange to have another person hold animals for the required period provided for in paragraph (a) of § 2.101: *Provided:* That such other person agrees in writing to comply with the regulations in Part 2 and the standards in Part 3 of this subchapter and to allow inspection of his premises by a Veterinary Services representative during business hours; and the animals remain under the total control and responsibility of the dealer or exhibitor. Approval will not be given for a dealer or exhibitor holding a license as set forth in § 2.4 to have animals held for purposes of this section by another licensed dealer or exhibitor. Veterinary Services Form 18–9 shall be used for such approval.

(b) If any research facility or intermediate handler obtains prior approval of the Area Veterinarian in Charge, it may arrange to have another person hold animals: *Provided:* That, such other person agrees in writing to comply with the regulations in Part 2 and the standards in Part 3 of this subchapter and to allow inspection of the premises by a Veterinary Services representative during business hours; the animals remain under total control and responsibility of the research facility or intermediate handler; and in the case of a research facility, a legally responsible official of the research facility agrees in writing that such other person or premises is a recognized animal site under their research facility registration. Veterinary Services Form 18–9 shall be used for such approval.

[3] An operator of an auction sale is not considered to have acquired a dog or cat which is sold through the auction sale.

## Subpart I—Miscellaneous

### § 2.125 Information as to business; furnishing of same by dealers, exhibitors, operators of auction sales, research facilities, intermediate handlers, and carriers.

Each dealer, exhibitor, research facility, intermediate handler, and carrier shall furnish to any Veterinary Services representative, any information concerning the business of the dealer, exhibitor, operator of an auction sale, research facility, intermediate handler or carrier which may be requested by such representative in connection with the enforcement of the provisions of the Act, the regulations and the standards in this subchapter. Such information shall be furnished within such reasonable time as may be specified in the request for such information.

### § 2.126 Access and inspection of records and property.

Each dealer, exhibitor, research facility, intermediate handler, or carrier, shall, during business hours, permit U.S Department of Agriculture representatives to enter its place of business, examine records required to be kept by the Act and the regulations in this part, make copies of such records, inspect such facilities, property and animals, as such representatives consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter, and take photographs to document conditions and/or areas of noncompliance in the facility. The use of a room, table, or other facilities necessary for the proper examination of such records and inspection of such property or animals shall be extended to such authorized representatives of the Secretary by the dealer, exhibitor, research facility, intermediate handler or carrier, or his agents and employees.

### § 2.127 Publication of names of persons subject to the provisions of this part.

Lists of persons licensed or registered, pursuant to the provisions of this part, shall be published periodically by Veterinary Services in the **Federal Register**. Such lists may be obtained upon request from the Area Veterinarian in Charge.

### § 2.128 Inspection for missing animals.

(a) Each dealer, exhibitor, research facility, intermediate handler and carrier shall, upon request, during business hours, permit, under the following conditions, police or other officers of law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations) to enter his/her place of business to inspect animals and records for the purpose of seeking animals that are missing:

(1) The police or other law officer shall furnish to the dealer, exhibitor, research facility, intermediate handler or carrier a written description of the missing animal and the name and address of its owner before making such search.

(2) The police or other law officer shall abide by all security measures required by the dealer, exhibitor, research facility, intermediate handler or carrier to prevent the spread of disease, including the use of sterile clothing, footwear, and masks where required, or to prevent the escape of an animal.

(b) Such inspection for missing animals by law enforcement officers shall not extend to animals that are undergoing actual research or experimentation by a research facility as determined by such research facility.

### § 2.129 Confiscation and destruction of animals.

(a) If an animal being held by a dealer, exhibitor, intermediate handler, carrier, or by a research facility when it is no longer required by such research facility to carry out the research, test, or experiment for which it has been utilized, is found by a Veterinary Services representative to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, carrier, or operator of an auction sale, or research facility to comply with any provision of the regulations or the standards set forth in this subchapter, the Veterinary Services representative shall make a reasonable effort to notify the dealer, exhibitor, intermediate handler, carrier, or research facility of the condition of such animal(s) and request that the condition be corrected and that adequate care be given when necessary to alleviate the animal's suffering or distress, or that the animal(s) be destroyed by euthanasia. In the event that the dealer, exhibitor, intermediate handler, carrier, or research facility refuses to comply with such request, the Veterinary Services representative may confiscate such animal(s) for care, treatment, or disposal as indicated in paragraph (b) of this section, if in the opinion of the Deputy Administrator the circumstances indicate such animal is in danger of harm.

(b) In the event that the Veterinary Services representative is unable to locate or notify the dealer, exhibitor, intermediate handler, carrier, or research facility as required in this section, the Veterinary Services representative shall contact a local police or other law officer to accompany him to the premises and shall provide for adequate care when necessary to alleviate the animal's suffering. If in the opinion of the Deputy Administrator, the condition of the animal(s) cannot be corrected by such temporary care, the Veterinary Services representative shall confiscate the animals. Such confiscated animals may be placed with other licensees or registrants which comply with the standards and regulations, and can provide proper care, by sale or donation, or may be euthanized. Such costs as may be incurred shall be borne by the dealer, exhibitor, intermediate handler, carrier, or research facility from whom the animals were confiscated.

(c) Prior to making any decision regarding the destruction of any marine mammal, or of any species designated by the Department of the Interior or the International Union for the Conservation of Nature and Natural Resources as an endangered species, the Deputy Administrator shall, when possible, consult with representatives of the Fish and Wildlife Service, Department of the Interior, the National Marine Fisheries Service, Department of Commerce, and the International Union for the Conservation of Nature and Natural Resources.

### § 2.130 Minimum age requirements.

No dog or cat shall be delivered by any person to any carrier or intermediate handler for transportation, in commerce, except to a registered research facility, unless such dog or cat is at least eight (8) weeks of age and has been weaned.

### § 2.131 Handling of animals.

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, trauma, overheating, excessive cooling, behavioral stress, or physical harm.

(2) Care shall be exercised to avoid harm to the handlers of such animals and to avoid unnecessary harm to the animals.

(3) Physical abuse or deprivation of food or water shall not be used to train, work, or otherwise handle animals.

(b)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible and knowledgeable uniformed employee or attendant must be present at all times during periods of public contact.

(3) At a minimum, when dangerous animals such as lions, tigers, wolves, bears, or elephants are allowed to have contact with the public, the animals must be under the direct control and supervision of a knowledgeable and experienced animal handler.

(4) If public feeding of animals is allowed, the food must be provided by the animal facility and shall be appropriate to the type of animal and its nutritional needs and diet.

(c)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure safety to the animals and to the public.

(2) Performing animals shall be allowed a rest period between performances at least equal to the time for one performance.

(3) Young or immature animals shall not be exposed to rough or excessive public handling or exhibited for periods of time which would be detrimental to their health or well-being.

(4) Drugs, such as tranquilizers, shall not be used to facilitate, allow, or provide for public handling of the animals.

**§ 2.132 Procurement of random source dogs and cats, dealers.**

A class "B" dealer may obtain live random source dogs and cats only from State, county, or city owned and operated pounds or shelters. Class "B" dealers may not obtain live random source dogs and cats from nongovernment pounds or shelters, or from individuals who have not bred and raised such dogs and cats on their own premises. Nonrandom source dogs and cats may be obtained from persons who have bred and raised such dogs and cats on their own premises.

Done at Washington, DC, this 24th day of March 1987.

B.G. Johnson,

*Deputy Administrator, Veterinary Services.*

[FR Doc. 87-6833 Filed 3-30-87; 8:45 am]

BILLING CODE 3410-34-M

Federal Register

Tuesday
March 31, 1987

Part III

# Department of Commerce

**National Oceanic and Atmospheric Administration**

**15 CFR Part 904**
**50 CFR Parts 219 and 621**
**Civil Procedure Regulations; Final Rule**

BEST COPY AVAILABLE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

50 CFR Parts 219 and 621

[Docket No. 41157-6187]

## Civil Procedure Regulations

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA publishes final regulations revising and consolidating its procedures governing administrative proceedings for the assessment of civil penalties, for the imposition of permit sanctions and permit denials for enforcement-related reasons, for the review and appeal of written warnings, and for the release or forfeiture of seized property. The regulations revise those published as interim final rules on December 18, 1981 (46 FR 61644), as amended on May 10, 1982 (47 FR 19990); January 6, 1984 (49 FR 1036); January 11, 1984 (49 FR 1464); and April 1, 1985 (50 FR 12781). These revisions will make it easier for members of the public to use the regulations.

**EFFECTIVE DATE:** March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Linda I. Marks, 202-673-5220.

**SUPPLEMENTARY INFORMATION:**

### Discussion

These regulations revise and consolidate NOAA's civil procedure regulations previously published as interim final rules. The regulations govern civil penalty, property forfeiture, and permit sanction proceedings conducted under the various statutes NOAA enforces, including the Magnuson Fishery Conservation and Management Act, the Lacey Act Amendments of 1981, the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Northern Pacific Halibut Act of 1982.

New Subpart A of Part 904 sets forth the scope of the regulations, defines a number of terms used throughout the Part, and consolidates procedures governing the filing and service of documents that were previously scattered throughout Subparts B through E. "Permit holder" and "vessel owner" are defined and used throughout the regulations; the definitions for "affected permit" and "affected vessel" are deleted since the terms are no longer used. In § 904.3(a) (former § 904.100(b)(1)), language was added to state that service of a document is effective when mailed to a last-known address; in § 904.3(c) (former §§ 904.100(b)(1) and 904.220(d)), provision is made for service and/or filing by electronic mail. A provision was added to § 904.3(e) (former § 904.100(b)(2)) to exclude Saturdays, Sundays, and legal holidays from time periods less than 11 days. This rule is identical to Rule 6(a) of the Federal Rules of Civil Procedure. Former § 904.100(d), regarding exceptions to particular regulations, is removed.

Subpart B sets forth procedures applicable to civil penalty assessments. Language was added to § 904.102(e) to state that NOAA ("Agency") counsel will promptly forward to the Office of Administrative Law Judges requests for hearing. In § 904.105, a clause was removed concerning when payment of a penalty is due in situations where the respondent seeks judicial review. Section 904.106(b) was revised to provide that requests to compromise, modify, remit, or mitigate a penalty should be sent to Agency counsel. The first two sentences of paragraph (c) of § 904.106 were removed, as was former paragraph (d). Section 904.107 is replaced with a section on joint and several respondents. In § 904.108, concerning ability to pay, a requirement was added to submit financial information to NOAA counsel 15 days before a scheduled hearing.

Subpart C governs the conduct of hearings and appeals. Section 904.202 (Use of gender and number) is removed. New § 904.202 provides that discovery requests and answers need not be filed with the Administrative Law Judge (ALJ). In § 904.204 (former § 904.206), a subsection was added as notice to respondents that an ALJ has the power to assess a penalty *de novo*. Five days were added to answer motions or other pleadings, and to reply to answers. Sections 904.240 through 904.245 were rewritten to spell out discovery procedures with more particularity. However, the primary discovery method will be a submission on issues ordered by the ALJ, and parties will have to apply to the ALJ for all other forms of discovery. Section 904.250 was amended to extend the time for notice of hearing to 20 days. Provision was also made for testimony to be taken via telephone. Paragraphs (d) and (e) in § 904.251 are from former § 904.252, and add the requirement that a party having documents translated into English must provide the opposing party with the name of the translator. Paragraph (f), on proof of foreign law, is new and is taken from the Federal Rules of Civil Procedure. In § 904.252, a provision is added that whenever possible, interpreters used at hearings should be certified by the federal courts. Section 904.262 is former § 904.263, and adds paragraph (c) on retention of physical evidence by other than the ALJ. Paragraph (c) was added to § 904.270 (Record of decision) to clarify that post-hearing exhibits are not part of the record unless specifically admitted. Section 904.272 (Petition for reconsideration) is the former § 904.261; the time to reply to a petition for reconsideration is increased from 10 to 15 days. Section 904.273 is the former § 904.272, with additions. In paragraph (d), a sentence is added specifying that no new evidence may be submitted on review. In paragraph (f), the time to reply was increased from 21 to 30 days. Paragraph (h) was amended to specify that the Administrator, if he grants a petition for review, must allow briefs to be filed before deciding the case. Paragraph (i) was added on service and the effective date of the Administrator's decision.

Subpart D covers procedures for permit sanctions and denials for enforcement-related reasons. Section 904.306 was deleted due to a revised delegation of authority within NOAA that makes permit sanction proceedings parallel with civil penalty proceedings. This means the ALJ will now issue an Initial Decision, which will be subject to discretionary review by the Administrator of NOAA. In § 904.322, the standard for interim action was modified to "protect" marine resources instead of to "prevent substantial harm" to the resources.

Subpart E governs the issuance, review, and appeal of written warnings. Section 904.403 (former § 904.420) was amended so that a written warning issued by an enforcement agent may be appealed first to a Regional Attorney, then to the Assistant General Counsel for Enforcement and Litigation (AGC/EL); however, a written warning issued by a Regional Attorney (or Staff attorney) may be appealed directly to the AGC/EL.

Subpart F provides procedures for the disposition of seized property. One revision permits a certified check to be used instead of a bond when a person files a claim for seized property (§ 904.504(b)(3)(ii)). New § 904.508 is the former Subpart C of 50 CFR Part 219, and governs the disposal of forfeited or abandoned property.

### Response to Public Comments

Public comments were received when Subparts D and E were first published in

the Federal Register. NOAA responds to them as follows:

*Subpart D—Permit Sanctions and Denials.* One commenter stated that § 904.301(b) (former § 904.302(b)) is unfair and of "questionable legality under due process." NOAA disagrees. That section provides that a permit sanction may be imposed against another NOAA permit held or applied for by the same holder. This provision notifies all NOAA permit holders and applicants that their conduct with regard to all of NOAA's programs will be considered in making a determination on whether to sanction or deny a permit. Section 904.301(b) does not require NOAA to sanction or deny a permit because a permit holder violated a regulation or failed to pay a penalty, it merely gives NOAA the option to do so. This is consistent with NOAA's policy of considering the entire violation history of a permit holder, much like a judge looks at a criminal defendant's record at sentencing.

The comment was made that § 904.303 (former § 904.304), which authorizes the Agency to issue notice to a permit applicant that NOAA intends to deny a permit, is invalid because section 204(b)(12) of the Magnuson Fishery Conservation and Management Act (MFCMA) (16 U.S.C. 1824(b)(12)) does not authorize denial of permits as a sanction. Express statutory authority to grant permits provides implicit authority to deny them. NOAA's permits are not granted as a matter of right, and are issued under many statutes other than the MFCMA.

Comment was also made that the interim action procedures found at § 904.322 are unconstitutional because the standard of proof (probable cause) and the method of submitting information to the ALJ do not meet due process requirenents. It is constitutional to require only a showing of probable cause in order to take interim, or emergency action. This procedure would only be used in limited circumstances and not in lieu of a full-fledged "trial-type" hearing. A more complete administrative hearing on the Notice of Permit Sanction or Notice of Intent to Deny Permit would still occur, and in fact, would be expedited under § 904.322(c).

The same commenter noted that NOAA cannot extend use of Subpart C to permit sanction proceedings because under the MFCMA, subpoenas (authorized under § 904.245) only apply to civil penalty proceedings. Section 904.245 clearly states that subpoenas may be issued "as authorized by . . . statute. . . ." NOAA has not attempted to set forth all situations in which subpoenas are authorized all the statutes it enforces.

*Subpart E—Written Warnings.* NOAA received two comments when Subpart E was published. One commenter was concerned with the regulations' "additive approach." This comment apparently refers to § 904.401 (former § 904.410), which provides that a written warning *may* be used "as a basis for dealing more severely with a subsequent offense." The suggestion was made to treat warnings as prior offenses only for a period of one year, and only for subsequent incidents at the same location. NOAA rejected this suggestion. Treating a written warning as a prior offense is within NOAA's discretion, and NOAA does not wish to place limits on its discretionary power.

Another commenter urged that the time afforded to seek review of a written warning (90 days) and for NOAA to withdraw the warning and commence civil or criminal proceedings (120 days) be made the same. NOAA has retained the ability to upgrade a warning to a more serious sanction because very often at the time a violation is detected an enforcement officer does not have before him a violator's enforcement record, or may discover additional facts that show a written warning is not warranted. Having different time limits is not unfair. Should NOAA withdraw a written warning and then issue a Notice of Violation and Assessment based on the same set of facts, the respondent has the opportunity to present information to challenge the Notice.

## Classification

Under Executive Order 12291, NOAA has decided these regulations are not "major" because they are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investments, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required, and no preliminary or final analysis has been prepared.

Section 553(b)(A) of the Administrative Procedure Act (APA) exempts rules of agency practice and procedure such as this Part from the requirements of notice and opportunity for public comment. Therefore, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final Regulatory Flexibility Analysis has been prepared.

These regulations have been categorically determined to have no significant effect on the quality of the human environment under NOAA Directive 02-10. Therefore, no Environmental Assessment has been prepared.

Regulations governing civil and administrative actions are exempt from the requirements of the Paperwork Reduction Act (5 CFR 1320.3(c)). They contain no information collection requests that are subject to the Act.

Under section 553(d) of the APA, procedural rules such as this part may be and are being made effective upon publication.

**List of Subjects**

*15 CFR Part 904*

Administrative practice and procedure, Seizures, Forfeitures, Penalties, Fisheries, Fishing, Fishing vessels, Permits, Sanctions.

*50 CFR Part 219*

Administrative practice and procedure, Seizures, Forfeitures.

*50 CFR Part 621*

Administrative practice and procedure.

Dated: March 24, 1987.

**William E. Evans,**

*Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.*

For the reasons set out in the preamble, 15 CFR Chapter IX, and 50 CFR Chapters II and VI are amended as follows.

1. 15 CFR Part 904 is revised to read as follows:

## PART 904—CIVIL PROCEDURES

**Subpart A—General**

Sec.

904.1 Purpose and scope.
904.2 Definitions.
904.3 Filing and service of documents.

**Subpart B—Civil Penalties**

904.100 General.
904.101 Notice of Violation and Assessment (NOVA).
904.102 Procedures upon receipt of a NOVA.
904.103 Hearing and administrative review.
904.104 Final administrative decision.
904.105 Payment of final assessment.
904.106 Compromise of civil penalty.
904.107 Joint and several respondents.
904.108 Factors considered in assessing penalties.

**Subpart C—Hearing and Appeal Procedures**

*General*

Sec.
904.200 Scope and applicability.
904.201 Case docketing.
904.202 Filing of documents.
904.203 Appearances.
904.204 Duties and powers of Judge.
904.205 Disqualification of Judge.
904.206 Pleadings, motions, and service.
904.207 Amendment of pleadings or record.
904.208 Extensions of time.
904.209 Expedited proceedings.
904.210 Summary decision.
904.211 Failure to appear.
904.212 Dismissal for failure to prosecute or defend.
904.213 Settlements.
904.214 Stipulations.
904.215 Consolidation.
904.216 Prehearing conferences.

*Discovery*

904.240 Discovery generally.
904.241 Depositions.
904.242 Interrogatories to parties.
904.243 Admissions.
904.244 Production of documents and inspection.
904.245 Subpoenas.

*Hearings*

904.250 Notice of time and place of hearing.
904.251 Evidence.
904.252 Witnesses.
904.253 Interlocutory appeals.
904.254 Ex parte communications.

*Post-Hearing*

904.260 Official transcript.
904.261 Post-hearing briefs.
904.262 Documents, copies, and exhibits.

*Decision*

904.270 Record of decision.
904.271 Decision.
904.272 Petition for reconsideration.
904.273 Administrative review of decision.

**Subpart D—Permit Sanctions and Denials**

*General*

904.300 Scope and applicability.
904.301 Bases for sanctions or denials.
904.302 Notice of permit sanction (NOPS).
904.303 Notice of intent to deny permit (NIDP).
904.304 Opportunity for hearing.

*Sanctions for Nonpayment of Penalties*

904.310 Nature of sanctions.
904.311 Compliance.

*Sanctions for Violations*

904.320 Nature of sanctions.
904.321 Reinstatement of permit.
904.322 Interim action.

**Subpart E—Written Warnings**

904.400 Purpose and scope.
904.401 Written warning as a prior offense.
904.402 Procedures.
904.403 Review and appeal of a written warning.

**Subpart F—Seizure and Forfeiture Procedures**

904.500 Purpose and scope.
904.501 Notice of seizure.
904.502 Bonded release.
904.503 Appraisement.
904.504 Administrative forfeiture proceedings.
904.505 Summary sale.
904.506 Remission and mitigation of forfeiture.
904.507 Petition for restoration of proceeds.
904.508 Recovery of certain storage costs.
904.509 Abandonment.
904.510 Disposal of forfeited or abandoned items.

**Authority:** 16 U.S.C. 1801–1882; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1407; 16 U.S.C. 3371–3378; 16 U.S.C. 1431–1439; 16 U.S.C. 773–773k; 16 U.S.C. 951–961; 16 U.S.C. 1021–1032; 16 U.S.C. 3631–3644; 42 U.S.C. 9101 *et seq.;* 30 U.S.C. 1401 *et seq.;* 16 U.S.C. 971–971i; 16 U.S.C. 781 *et seq.;* 16 U.S.C. 2401–2412; 16 U.S.C. 2431–2444; 16 U.S.C. 972–972h; 16 U.S.C. 916–916*l*; 16 U.S.C. 1151–1175; 16 U.S.C. 3601–3608; 16 U.S.C. 1851 note; 15 U.S.C. 4201 *et seq.*

## Subpart A—General

### § 904.1 Purpose and scope.

(a) This part sets forth the procedures governing NOAA's administrative proceedings for assessment of civil penalties, suspension, revocation, modification, or denial of permits, issuance and use of written warnings, and release or forfeiture of seized property.

(b) This subpart defines terms appearing in the part and sets forth rules for the filing and service of documents in administrative proceedings covered by this part.

(c) The following statutes authorize NOAA to assess civil penalties, impose permit sanctions, issue written warnings, and/or seize and forfeit property in response to violations of those statutes:

(1) Antarctic Conservation Act of 1978, 16 U.S.C. 2401–2412;

(2) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431–2444;

(3) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601–3608;

(4) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;

(5) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971i;

(6) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.;*

(7) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972–972h;

(8) Endangered Species Act of 1973, 16 U.S.C. 1531–1543;

(9) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151–1175;

(10) Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378;

(11) Land Remote-Sensing Commercialization Act of 1981, 15 U.S.C. 4201 *et seq.;*

(12) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801–1882;

(13) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1407;

(14) Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431–1439;

(15) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773–773k;

(16) North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1032;

(17) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.;*

(18) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631–3644;

(19) Sponge Act, 16 U.S.C. 781 *et seq.;*

(20) Tuna Conventions Act of 1950, 16 U.S.C. 951–961; and

(21) Whaling Convention Act of 1949, 16 U.S.C. 916–916*l*.

The procedures set forth in this part are intended to apply to administrative proceedings under these and later-enacted statutes administered by NOAA.

### § 904.2 Definitions.

Unless the context otherwise requires, or as otherwise noted, terms in this part have the meanings prescribed in the applicable statute or regulation. In addition, the following definitions apply:

*Administrator* means the Administrator of NOAA or a designee.

*Agency* means the National Oceanic and Atmospheric Administration (NOAA).

*Applicable statute* means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

*Applicant* means any person who applies or is expected to apply for a permit.

*Citation* means a written warning (see section 311(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773j(c)).

*Decision* means an initial or final decision of the Judge.

*Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling, and status.

*Final administrative decision* means an order or decision of NOAA assessing a civil penalty or permit sanction which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

*Forfeiture* includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the Government by court order or by order of the Administrator under a statute.

*Initial decision* means a decision of the Judge which, under applicable statute and regulation, is subject to review by the Administrator, but which becomes the final administrative decision in the absence of such review.

*Judge* means Administrative Law Judge.

*NOAA* (see *Agency*) means either the Administrator or a designee acting on behalf of the Administrator.

*Party* means the respondent and the Agency as represented by counsel; if they enter an appearance, a joint and several respondent, vessel owner, or permit holder; and any other person allowed to participate under § 904.204(a).

*Payment agreement* means any promissory note, security agreement, settlement agreement, or other contract specifying the terms according to which a permit holder agrees to pay a civil penalty.

*Permit* means any license, permit, certificate, or other approval issued by NOAA under an applicable statute.

*Permit holder* means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

*Sanction* means suspension, revocation, or modification of a permit (see § 904.320).

*Vessel owner* means the owner of any vessel that is liable *in rem* for any civil penalty under this Part, or whose permit may be subject to sanction as a result of civil penalty proceedings under this part.

*Written warning* means a notice in writing to a person that a violation of a minor or technical nature has been documented against the person or against the vessel which is owned or operated by the person.

### § 904.3 Filing and service of documents.

(a) Whenever this part requires service of a document or other paper, such service may effectively be made on the agent for service of process or on the attorney for the person to be served or other representative. Refusal by the person to be served, or his or her agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. Service will be considered effective when the document is mailed to an addressee's last known address.

(b) Any documents or pleadings filed or served must be signed: (1) By the person or persons filing the same, (2) by an officer thereof if a corporation, (3) by an officer or authorized employee if a government instrumentality, or (4) by an attorney or other person having authority to sign.

(c) A pleading or document will be considered served and/or filed as of the date of the postmark (or as otherwise shown for government-franked mail); or (if not mailed) as of the date actually delivered in person; or as shown by electronic mail transmission.

(d) Time periods begin to run on the day following the date of the document, paper, or event that begins the time period. Saturdays, Sundays, and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday, or Federal holiday, such period will be extended to include the next business day. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays will be excluded in the computation.

(e) If an oral or written application is made to NOAA within 10 days after the expiration of a time period established in this part for the required filing of documents or other papers, NOAA may permit a late filing if NOAA finds reasonable grounds for an inability or failure to file within the time period. All extensions will be in writing. Except as specifically provided in this part, or by order of an Administrative Law Judge (Judge) under this part, no requests for an extension of time may be granted.

## Subpart B—Civil Penalties

### § 904.100 General.

This subpart sets forth the procedures governing NOAA administrative proceedings for the assessment of civil penalties under the statutes cited in § 904.1(c).

### § 904.101 Notice of Violation and Assessment (NOVA).

(a) A NOVA will be issued by NOAA and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA will similarly be served upon the permit holder or the vessel owner, if the holder or owner is not the respondent. The NOVA will contain: (1) A concise statement of the facts believed to show a violation; (2) a specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated; (3) the findings and conclusions upon which NOAA bases the assessment; and (4) the amount of the civil penalty assessed. The NOVA will also advise of the respondent's rights upon receipt of the NOVA, and will be accompanied by a copy of the regulations in this part governing the proceedings.

(b) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute require.

(c) The NOVA may also contain a proposal for compromise or settlement of the case. NOAA may also attach documents that illuminate the facts believed to show a violation.

### § 904.102 Procedures upon receipt of a NOVA.

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended, modified, or rescinded under paragraph (b) of this section;

(3) Request a hearing under paragraph (e) of this section;

(4) Request an extension of time to respond under paragraph (c) of this section; or

(5) Take no action, in which case the NOVA becomes final in accordance with § 904.104. The procedures set forth in paragraphs (a)(2), (3), (4), and (5) may also be exercised by the permit holder or vessel owner.

(b) The respondent, the permit holder, or the vessel owner may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying Agency counsel at the telephone number or address specified in the NOVA. If amendment or modification is sought, Agency counsel will either amend the NOVA or decline to amend it, and so notify the respondent, permit holder, or vessel owner, as appropriate.

(c) The respondent, permit holder, or vessel owner may, within the 30-day period specified in paragraph (a) of this section, request an extension of time to respond. Agency counsel may grant an extension of up to 30 days unless he or

she determines that the requester could, exercising reasonable diligence, respond within the 30-day period. If Agency counsel does not respond to the request within 48 hours of its receipt, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48-hour period is considered an effective response, and will be followed by written confirmation.

(d) Agency counsel may, for good cause, grant an additional extension beyond the 30-day period specified in paragraph (c) of this section.

(e) If the respondent, the permit holder, or the vessel owner wishes a hearing, the request must be dated and in writing, and must be served either in person or mailed to the address specified in the NOVA. The requester must either attach a copy of the NOVA or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges.

(f) Any denial, in whole or in part, of any request under this section that is based upon untimeliness will be in writing.

(g) Agency counsel may, in his or her discretion, treat any communication from a respondent, a permit holder, or vessel owner as a request for a hearing under paragraph (e) of this section.

**§ 904.103 Hearing and administrative review.**

(a) Any hearing request under § 904.102(e) is governed by the hearing and review procedures set forth in Subpart C.

(b) In any hearing held in response to a request under § 904.102(e), the Administrative Law Judge (Judge) will render an initial decision. Any party to the hearing may seek the Administrator's review of the Judge's initial decision, subject to the provisions of Subpart C.

**§ 904.104 Final administrative decision.**

(a) If no request for hearing is timely filed as provided in § 904.102(e), the NOVA becomes effective as the final administrative decision and order of NOAA on the 30th day after service of the NOVA or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with § 904.102(e), the date of the final administrative decision is as provided in Subpart C.

**§ 904.105 Payment of final assessment.**

(a) Respondent must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of NOAA under § 904.104 or Subpart C. Payment must be made by mailing or delivering to NOAA at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the "Treasurer of the United States," or as otherwise directed.

(b) Upon any failure to pay the civil penalty assessed, NOAA may request the Justice Department to recover the amount assessed in any appropriate district court of the United States, or may act under § 904.106.

**§ 904.106 Compromise of civil penalty.**

(a) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed, or which is subject to imposition, except as stated in paragraph (d) of this section.

(b) The compromise authority of NOAA under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of NOAA or in response to a request by the alleged violator or other interested person. Any such request should be sent to Agency counsel at the address specified in the NOVA.

(c) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which an assessment is final or payable.

(d) *Exception.* NOAA will not compromise, modify, or remit a civil penalty imposed, or subject to imposition, under the Deep Seabed Hard Mineral Resources Act while an action to review or recover the penalty is pending in a court of the United States.

**§ 904.107 Joint and several respondents.**

(a) A NOVA may assess a civil penalty against two or more respondents jointly and severally. Each respondent is liable for the entire penalty, but no more than the amount finally assessed may be collected from the respondents.

(b) A hearing request by one respondent is considered a request by the other respondents. Agency counsel, having received a hearing request from one respondent, will send a copy of it to the other joint and several respondents in the case.

(c) A decision by the Judge or the Administrator after a hearing requested by one joint and several respondent is binding on all parties and on all other joint and several respondents, whether or not they entered an appearance.

**§ 904.108 Factors considered in assessing penalties.**

(a) Factors to be taken into account in assessing a penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior offenses, and ability to pay; and such other matters as justice may require. NOAA will take into account a respondent's ability to pay when assessing a civil penalty for a violation of any of the statutes NOAA administers.

(b) NOAA may, in consideration of a respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by the other relevant factors. A penalty may be increased if a respondent's ability to pay is such that a higher penalty is necessary to deter future violations, or for commercial violators, to make a penalty more than a cost of doing business. A penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(c) If a respondent asserts that a penalty should be reduced because of an inability to pay, the respondent has the burden of proving such inability by providing verifiable, complete, and accurate financial information to NOAA. NOAA will not consider a respondent's inability to pay unless the respondent, upon request, submits such financial information as Agency counsel determines is adequate to evaluate the respondent's financial condition. Depending on the circumstances of the case, Agency counsel may require the respondent to complete a financial information request form, answer written interrogatories, or submit independent verification of his or her financial information. If the respondent does not submit the requested financial information, he or she will be presumed to have the ability to pay the penalty.

(d) Financial information relevant to a respondent's ability to pay includes, but is not limited to, the value of respondent's cash and liquid assets, ability to borrow, net worth, liabilities, income, prior and anticipated profits, expected cash flow, and the respondent's ability to pay in installments over time. A respondent will be considered able to pay a penalty even if he or she must take such actions as pay in installments over time, borrow money, liquidate assets, or reorganize his or her business. NOAA's consideration of a respondent's ability to pay does not preclude an assessment of a penalty in an amount that would

cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(e) Financial information regarding respondent's ability to pay should be submitted to Agency counsel as soon after receipt of the NOVA as possible. If a respondent has requested a hearing on the offense alleged in the NOVA and wants his or her inability to pay considered in the initial decision of the Judge, verifiable financial information must be submitted to Agency counsel at least 15 days in advance of the hearing. In deciding whether to submit such information, the respondent should keep in mind that the Judge may assess *de novo* a civil penalty either greater or smaller than that assessed in the NOVA.

(f) Issues regarding ability to pay will not be considered in an administrative review of an initial decision if the financial information was not previously presented by the respondent to the Judge at the hearing.

## Subpart C—Hearing and Appeal Procedures

*General*

### § 904.200 Scope and applicability.

(a) This Subpart sets forth the procedures governing the conduct of hearings and the issuance of initial and final decisions of NOAA in administrative proceedings involving alleged violations of the laws cited in § 904.1(c) and regulations implementing these laws, including civil penalty assessments and permit sanctions and denials. By separate regulation, these rules may be applied to other proceedings.

(b) Subject to the administrative direction of the Chief Administrative Law Judge, each Administrative Law Judge (Judge) assigned by the Chief Administrative Law Judge is delegated authority to make the initial or final decision of the Agency (whichever is made appropriate by regulation outside this subpart) in proceedings subject to the provisions of this subpart, and to take actions to promote the efficient and fair conduct of hearings as set out in this subpart. The Judge has no authority to rule on challenges to the validity of regulations promulgated by the Agency.

(c) This subpart is not an independent basis for claiming the right to a hearing, but instead prescribes procedures for the conduct of hearings, the right to which is provided by other authority.

### § 904.201 Case docketing.

Each request for hearing promptly upon its receipt for filing in the Office of Administrative Law Judges will be assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

### § 904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed in conformance with § 904.3 directly with the Judge, with copies served on all other parties. Pleadings, papers, and other documents pertaining to administrative review under § 904.273 must be filed with the Administrator, with copies served on all other parties.

(b) Unless otherwise ordered by the Judge, discovery requests and answers will be served on the opposing party and need not be filed with the Judge.

### § 904.203 Appearances.

A party may appear in person or by or with counsel or other representative.

### § 904.204 Duties and powers of Judge.

The Judge has all powers and responsibilities necessary to preside over the parties and the proceeding, to hold prehearing conferences, to conduct the hearing, and to make the decision in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to do the following:

(a) Rule on a request to participate as a party in the proceeding by allowing, denying, or limiting such participation (such ruling will consider views of the parties and be based on whether the requester could be directly and adversely affected by the decision and whether the requester can be expected to contribute materially to the disposition of the proceedings);

(b) Schedule the time, place, and manner of conducting the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the decision, all in the Judge's discretion, having due regard for the convenience and necessity of the parties and witnesses;

(c) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to close the hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, and confidential commercial or financial information; and strike testimony of a witness who refuses to answer a question ruled to be proper;

(d) Administer oaths and affirmations to witnesses;

(e) Rule on discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.240(d);

(f) Rule on motions, procedural requests, and similar matters;

(g) Receive, exclude, limit, and otherwise rule on offers of proof and evidence;

(h) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(i) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(j) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(k) Take official notice of any matter not appearing in evidence that is among traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a non-privileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; *Provided, that* the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(l) For stated good reason(s), assess a penalty *de novo* without being bound by the amount assessed in the NOVA;

(m) Prepare and submit a decision or other appropriate disposition document and certify the record;

(n) Award attorney fees and expenses as provided by applicable statute or regulation; and

(o) Grant preliminary or interim relief.

### § 904.205 Disqualification of Judge.

(a) The Judge may withdraw voluntarily from a particular case when the Judge deems himself/herself disqualified.

(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification must file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the

Judge will rule on the matter. If the Judge rules against disqualification, the Judge will place all matters relating to such claims of disqualification in the record.

**§ 904.206 Pleadings, motions, and service.**

(a) The original of all pleadings and documents must be filed with the Office of Administrative Law Judges and a copy served upon each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(a).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, the original signed in ink or as otherwise verified for electronic mail; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, pica type, if possible, except that quotations may be single spaced and indented.

(c) Motions must normally be made in writing and must state clearly and concisely the purpose of and relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after date of service thereof. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20-day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

(e) A response to an answer will be called a reply. A short reply restricted to new matters may be served within 15 days of service of an answer. The Judge has discretion to dispense with the reply. No further responses are permitted.

**§ 904.207 Amendment of pleadings or record.**

The Judge, upon his or her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading. The Judge has discretion to permit either party to amend its pleadings upon conditions fair to both parties. Harmless errors may be corrected (by deletion or substitution of words or figures), and broad discretion will be exercised by the Judge in permitting such corrections.

**§ 904.208 Extensions of time.**

If appropriate and justified, and as provided in § 904.3(e), the Judge may grant any request for an extension of time. Requests for extensions of time must, except in extraordinary circumstances, be made in writing.

**§ 904.209 Expedited proceedings.**

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite the proceeding. A motion of a party to expedite the proceeding may, in the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. If a motion for an expedited hearing is granted, the hearing on the merits may not be scheduled with less than three days' notice, unless all parties consent to an earlier hearing.

**§ 904.210 Summary decision.**

(a) At any time after a proceeding begins, a party may move for or the Judge on his or her own motion may grant a summary decision disposing of all or part of the issues.

(b) A summary decision may be rendered if the entire record shows as to the issue(s) under consideration: (1) That there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law.

**§ 904.211 Failure to appear.**

(a) If a party fails to appear after proper service of notice, the hearing may proceed. A notation of failure to appear will be made in the record, and the hearing may be conducted with the parties then present, or may be terminated if the Judge determines that proceeding with the hearing will not aid the decisional process.

(b) The Judge will place in the record all the facts concerning the issuance and service of the notice of time and place of hearing.

(c) The Judge may deem a failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision on the record.

**§ 904.212 Dismissal for failure to prosecute or defend.**

Whenever the record discloses the failure of either party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of either party not to participate further in the proceeding, the Judge may issue an order to show cause why the case should not be dismissed or disposed of adversely to that party's interest, or make such order as is necessary for the just and expeditious resolution of the case, including dismissal of the matter from the docket for failure to prosecute or defend. Such dismissal or other order is subject to §§ 904.272 and 904.273.

**§ 904.213 Settlements.**

If settlement is reached before the Judge has certified the record, the Judge may require the submission of a copy of the settlement agreement to assure that the Judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

**§ 904.214 Stipulations.**

The parties may, by stipulation, agree upon any matters involved in the proceeding and include such stipulations in the record with the consent of the Judge. Written stipulations must be signed and served upon all parties.

**§ 904.215 Consolidation.**

The Judge may order two or more proceedings that involve substantially the same parties or the same issues consolidated and/or heard together.

**§ 904.216 Prehearing conferences.**

(a) Prior to any hearing or at other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, arrange a telephone conference and, where appropriate, record such telephone conference, or direct the parties to appear for a conference to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the hearing;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing;

(7) Such other matters as may aid in the disposition of the proceeding.

(b) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference.

*Discovery*

**§ 904.240 Discovery generally.**

(a) *Preliminary Position on Issues and Procedures.* Prior to hearing the Judge will ordinarily require from the parties a written submission stating their preliminary positions on legal and factual issues and procedures, listing potential witnesses and summarizing their testimony, and listing exhibits. This document, which must be served on all other parties, will normally obviate the need for further discovery. Failure to provide the requested information may result in the exclusion of witnesses and/or exhibits at the hearing. See also § 904.212. A party has the affirmative obligation to supplement the submission as new information becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission.

(c) *Time limits.* Motions for depositions, interrogatories, admissions, or production of documents or things may not be filed within 20 days of hearing except on order of the Judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(d) *Oppositions.* Oppositions to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.

(e) *Scope of discovery.* The Judge may limit the scope, subject matter, method, time, or place of discovery. Unless otherwise limited by order of the Judge, the scope of discovery is as follows:

(1) *In general.* As allowed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of any respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Hearing preparation: Materials.* A party may not obtain discovery of materials prepared in anticipation of litigation except upon a showing that the party seeking discovery has a substantial need for the materials in preparation of his or her case, and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party are not discoverable under this section.

(3) *Hearing preparation: Experts.* A party may discover the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion. A party may also discover facts known or opinions held by an expert consulted by another party in anticipation of litigation but not expected to be called as a witness upon a showing of exceptional circumstances making it impracticable for the party seeking discovery to obtain such facts or opinions by other means.

(f) *Failure to comply.* If a party fails to comply with any subpoena or order concerning discovery, the Judge may, in the interest of justice:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that the matter or matters covered by the order or subpoena are established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon, in support of any claim or defense, testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Strike part or all of a pleading, a motion or other submission by the party, concerning the matter or matters covered by the order or subpoena;

(6) Render a decision of the proceeding against the party.

**§ 904.241 Depositions.**

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the Judge, the party taking the deposition of any person must serve on that person, and each other party, written notice at least 15 days before the deposition would be taken (or 25 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name and mailing address of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

(b) *Taking the deposition.* Depositions may be taken before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held, or before a person appointed by the Judge. Each deponent will be sworn, and any party has the right to cross-examine. Objections are not waived by failure to make them during the deposition unless the ground of the objection is one that might have been removed if presented at that time. The deposition will be recorded, transcribed, signed by the deponent, unless waived, and certified by the officer before whom the deposition was taken. All transcription costs associated with the testimony of a deponent will be borne by the party seeking the deposition. Each party will bear its own expense for any copies of the transcript. See also § 904.252(c).

(c) *Alternative deposition methods.* By order of the Judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions or depositions upon written questions. Objections to the form of written questions are waived unless made within five days of service of the questions.

(d) *Use of depositions at hearing.* (1) At hearing any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then testifying, may be used against any party who was present or represented at the taking of the deposition, or had reasonable notice.

(2) The deposition of a witness may be used by any party for any purpose if the Judge finds: (i) That the witness is unable to attend due to death, age, health, imprisonment, disappearance or distance from the hearing site; or (ii) that exceptional circumstances make it desirable, in the interest of justice, to allow the deposition to be used.

(3) If only part of a deposition is offered in evidence by a party, any party may introduce any other part.

**§ 904.242 Interrogatories to parties.**

(a) *Use at hearing.* If ordered by the Judge, any party may serve upon any other party written interrogatories. Answers may be used at hearing in the same manner as depositions under § 904.241(d).

(b) *Answers and objections.* Answers and objections must be made in writing under oath, and reasons for the objections must be stated. Answers

must be signed by the person making them and objections by the attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of the interrogatories.

(c) *Option to produce records.* Where the answer to an interrogatory may be ascertained from the records of the party upon whom the interrogatory is served, it is sufficent to specify such records and afford the party serving the interrogatories an opportunity to examine them.

**§ 904.243 Admissions.**

(a) *Request.* If ordered by the Judge, any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the request, including the genuineness of any relevant document described in the request. Copies of documents must be served with the request. Each matter of which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is served within 20 days of service of the request, or within such other time as the Judge may allow. The answering party must specifically admit or deny each matter, or state the reasons why he or she cannot truthfully admit or deny it.

(c) *Effect of admission.* Any matter admitted is conclusively established unless the Judge on motion permits withdrawal or amendment of it for good cause shown.

**§ 904.244 Production of documents and inspection.**

(a) *Scope.* If ordered by the Judge, any party may serve on any other party a request to produce a copy of any document or specifically designated category of documents, or to inspect, copy, photograph, or test any such document or tangible thing in the possession, custody, or control of the party upon whom the request is served.

(b) *Procedure.* The request must set forth: (1) The items to be produced or inspected by item or by category, described with reasonable particularity, and (2) a reasonable time, place, and manner for inspection. The party upon whom the request is served must serve within 20 days a response or objections, which must address each item or category and include copies of the requested documents.

**§ 904.245 Subpoenas.**

(a) *In general.* Subpoenas for the attendance and testimony of witnesses and the production of documentary evidence for the purpose of discovery or hearing may be issued as authorized by the statute under which the proceeding is conducted.

(b) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition.

(c) *Motions to quash.* Any person to whom a subpoena is directed or any party may move to quash or limit the subpoena within 10 days of its service or on or before the time specified for compliance, whichever is shorter. The Judge may quash or modify the subpoena.

(d) *Enforcement.* In case of disobedience to a subpoena, NOAA may request the Justice Department to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

*Hearings*

**§ 904.250 Notice of time and place of hearing.**

(a) The Judge will promptly serve on the parties notice of the time and place of hearing. The hearing will not, except in extraordinary circumstances, be held less than 20 days after service of the notice of hearing.

(b) In setting a place for hearing, the Judge will consider the convenience and costs of the parties, including but not limited to transportation costs and living expenses of witnesses, attorneys, and the Judge; place of residence of the respondent(s); scheduling of other hearings within the same region; and availability of facilities and court reporters.

(c) The Judge may order that all or part of a proceeding be heard on submissions or affidavits if it appears that substantially all important issues of material fact may be resolved by means of written materials and that efficient disposition of the proceeding can be made without oral hearing. For good cause, the Judge may also order that testimony of witnesses be taken by telephone.

**§ 904.251 Evidence.**

(a) At the hearing, every party has the right to present oral or documentary evidence in support of its case or defense, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. This paragraph may not be interpreted to diminish the powers and duties of the Judge under this subpart.

(b) All evidence that is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, is admissible at the hearing. Formal rules of evidence do not necessarily apply to the proceedings, and hearsay evidence is not inadmissible as such.

(c) Formal exceptions to the rulings of the Judge are unnecessary. It is sufficient that a party, at the time of the ruling, makes known the action that it desires the Judge to take or its objection to an action taken, and the grounds therefor. Rulings on each objection must appear in the record.

(d) In any case involving a charged violation of law in which the party charged has admitted an allegation, evidence may be taken to establish matters of aggravation or mitigation.

(e) Exhibits in a foreign language must be translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits, along with the name of the translator, must be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

(f) A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The Judge, in determining foreign law, may consider any relevant material or source, whether or not submitted by a party.

**§ 904.252 Witnesses.**

(a) Any witness not a party may have personal counsel to advise him or her as to his or her rights, but such counsel may not otherwise participate in the hearing.

(b) Witnesses who are not parties may be excluded from the hearing room prior to the taking of their testimony.

(c) Witnesses other than NOAA employees subpoenaed under these rules, including § 904.245, will be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken are entitled to the same fees as are paid for like services in the courts of the United States. Fees and any other related expenses for NOAA emoloyees as authorized by the NOAA travel handbook will be paid by the party at whose instance the witness appears or the deposition is taken.

(d) If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must provide for the services of an interpreter and advise opposing counsel 10 days prior to the hearing concerning the extent to which interpreters are to be used. When available, the interpreter must be court certified under 28 U.S.C. 1827.

**§ 904.253 Interlocutory appeals.**

(a) At the request of a party or on the Judge's own initiative, the Judge may certify to the Administrator for review a ruling that does not finally dispose of the proceeding, if the Judge determines that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(b) Upon certification by the Judge of the interlocutory ruling for review, the parties have 10 days to serve any briefs associated with the certification. The Administrator will promptly decide the matter.

(c) No interlocutory appeal lies as to any ruling not certified by the Judge.

**§ 904.254 Ex parte communications.**

(a) Except to the extent required for disposition of ex parte matters as authorized by law, after issuance of a NOVA, NOPS, or NIDP and until the final decision of the Agency is effective under these regulations, no ex parte communication relevant to the merits of the proceeding may be made, or knowingly caused to be made:

(1) By the Judge or by an Agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce or to any Agency employee involved in the investigation or prosecution of the case;

(2) By any Agency employee involved in the investigation or prosecution of the case to the Judge or to any Agency employee involved in the decisional process of the proceeding; or

(3) By an interested person outside the Department of Commerce to the Judge or to any Agency employee involved in the decisional process of the proceeding.

(b) An Agency employee or Judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the Judge or Administrator, as appropriate, may take action consistent with these rules, the applicable statute, and 5 U.S.C. 556(d) and 557(d).

(c) Agency counsel may not participate or advise in the decision of the Judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with this subpart. In addition, the Judge may not consult any person or party on a fact in issue unless notice and opportunity for all parties to participate is provided.

(d)(1) Paragraphs (a) and (b) of this section do not apply to communications concerning national defense or foreign policy matters. Such ex parte communications to or from an Agency employee on national defense or foreign policy matters, or from employees of the United States Government involving intergovernmental negotiations, are allowed if the communicater's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) Ex parte communications subject to this paragraph will be made a part of the record to the extent that they do not include information classified under an Executive Order. Classified information will be included in a classified portion of the record that will be available for review only in accordance with applicable law.

*Post-Hearing*

**§ 904.260 Official transcript.**

(a) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, will be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any proceeding and will be supplied to the parties upon the payment of fees at the rate provided in the agreement with the reporter.

(b) The Judge may determine whether "ordinary copy," "daily copy," or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the proceeding.

**§ 904.261 Post-hearing briefs.**

(a) Unless a different schedule is established in the discretion of the Judge, including the procedure in paragraph (b) of this section, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 calendar days from service of the hearing transcript. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond, unless the Judge sets a different schedule.

(b) In cases involving few parties, limited issues, and short hearings, the Judge may require that any proposed findings and conclusions and reasons in support be presented orally at the close of the hearing. In such case, the Judge will advise the parties in advance of hearing.

**§ 904.262 Documents, copies and exhibits.**

(a) If original documents have been received in evidence, a true copy thereof, or of such part as may be material or relevant, may be substituted in lieu of the original during the hearing or at its conclusion. The Judge may, in his or her discretion, and after notice to the other parties, allow the withdrawal of original exhibits or any part thereof by the party entitled thereto for the purpose of substituting copies. The substitution of true copies of exhibits, or any part thereof, may be required by the Judge in his or her discretion as a condition of granting permission for withdrawal of the original.

(b) Photographs may be substituted for physical evidence in the discretion of the Judge.

(c) Except upon the Judge's order, or upon request by a party, physical evidence will be retained after the hearing by the authorized enforcement officer responsible for the case.

*Decision*

**§ 904.270 Record of decision.**

(a) The exclusive record of decision consists of the official transcript of testimony and proceedings; exhibits admitted into evidence; briefs, pleadings, and other documents filed in the proceeding; and descriptions or copies of matters, facts, or documents officially noticed in the proceeding. Any other exhibits and records of any ex parte communications will accompany the record of decision.

(b) The Judge will arrange for appropriate storage of the records of any proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

(c) Exhibits offered after the close of a hearing will not be admitted, unless the Judge specifically keeps open or reopens the record to admit them.

**§ 904.271 Decision.**

(a) After expiration of the period provided in § 904.261 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge will render a written decision upon the record in the case, setting forth:

(1) Findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and the ruling on any proposed findings or conclusions presented by the parties;

(2) A statement of any facts noticed or relied upon in the decision; and

(3) Such other matters as the Judge considers appropriate.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written decision under paragraph (a) of this section. The Judge may in such case direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge will serve the written decision on each of the parties by registered or certified mail, return receipt requested, and will promptly certify to the Administrator the record, including the original copy of the decision, as complete and accurate.

(d) Unless the Judge orders a stay under § 904.272, or unless a petition for discretionary review is filed or the Administrator issues an order to review upon his/her own initiative, an initial decision becomes effective as the final administrative decision of NOAA 30 days after service, unless otherwise provided by statute or regulations.

**§ 904.272 Petition for reconsideration.**

Unless an order of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided and the alleged errors or relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or decision. Neither the filing nor the granting of a petition for reconsideration may operate as a stay of an order or decision or its effectiveness date (including for purposes of § 904.273) unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the proceeding may file an answer in support or in opposition. In the Judge's discretion, the hearing may be reopened to consider matters raised in a petition that could not reasonably have been foreseen prior to issuance of the order or decision.

**§ 904.273 Administrative review of decision.**

(a) Subject to the requirements of this section, any party may petition for review of an initial decision of the Judge within 30 days after the date the decision is served. The petition shall be addressed to the Administrator and filed at the following address: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Room 5128, 14th Street and Constitution Avenue NW., Washington, DC 20230.

(b) Review by the Administrator of an initial decision is discretionary and is not a matter of right. A petition for review must be served upon all parties. If a party files a timely petition for discretionary review, or action to review is taken by the Administrator upon his or her own initiative, the effectiveness of the initial decision is stayed until further order of the Administrator.

(c) Petitions for discretionary review may be filed only upon one or more of the following grounds:

(1) A finding of a material fact is clearly erroneous based upon the evidence in the record;

(2) A necessary legal conclusion is contrary to law or precedent;

(3) A substantial and important question of law, policy, or discretion is involved (including the amount of the civil penalty); or

(4) A prejudicial procedural error has occurred.

(d) Each issue must be separately numbered, concisely stated, and supported by detailed citations to the record, statutes, regulations, and principal authorities. Issues of fact or law not argued before the Judge may not be raised on review unless they were raised for the first time in the initial decision, or could not reasonably have been foreseen and raised by the parties during the hearing. The Administrator will not consider new or additional evidence that is not a part of the record before the Judge.

(e) No oral argument on petitions for discretionary review will be allowed.

(f) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. No further replies are allowed.

(g) If the Administrator declines to exercise discretionary review, such order will be served on all parties personally or by registered or certified mail, return receipt requested, and will specify the date upon which the Judge's decision will become effective as the final decision of NOAA. The Administrator need not give reasons for declining review.

(h) If the Administrator grants a petition for discretionary review, he or she will issue an order specifying issues to be briefed and a briefing schedule. Such issues may constitute one or more of the issues raised in the petition for discretionary review and/or matters the Administrator wishes to review on his or her own initiative. Only those issues specified in the order may be argued in the briefs and considered by the Administrator. No oral argument will be permitted.

(i) After expiration of the period for filing briefs under paragraph (h) of this section, the Administrator will render a written decision on the issues under review. The Administrator will transmit the decision to each of the parties by registered or certified mail, return receipt requested. The Administrator's decision becomes the final administrative decision on the date it is served, unless otherwise provided in the decision.

## Subpart D—Permit Sanctions and Denials

*General*

**§ 904.300 Scope and applicability.**

(a) This Subpart sets forth policies and procedures governing the suspension, revocation, modification, and denial of permits for reasons relating to enforcement of the statutes cited in § 904.1(c), except for the statutes listed in paragraph (b) of this section. These reasons include nonpayment of civil penalties or criminal fines, and violations of statutes, regulations, or permit conditions. Nothing in this subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this subpart, the provisions of Subparts A, B, and C apply to this subpart.

(b) Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR Part 970, under the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), at 15 CFR Part 981.

**§ 904.301 Bases for sanctions or denials.**

(a) Unless otherwise specified in a settlement agreement, or otherwise provided in this Subpart, NOAA may take action under this subpart with respect to any permit issued under the statutes cited in § 904.1(c). The bases for an action to sanction or deny a permit are as follows:

(1) The commission of any offense prohibited by any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under Subparts B and C of this part; or

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA.

(b) A sanction may be imposed or a permit denied under this subpart with respect to the particular permit pertaining to the offense or nonpayment, and may also be applied to any NOAA permit held or sought by the permit holder, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in the same or a different fishery. NOAA may withhold that permit until the sanction against vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA may impose a condition on the permits of Country Y's vessels that they may not fish in the fishery conservation zone with Captain X aboard. (See § 904.320(c).)

(c) Sanction not extinguished by sale. [Reserved]

**§ 904.302 Notice of permit sanction (NOPS).**

(a) A NOPS will be served personally or by registered or certified mail, return receipt requested, on the permit holder. When a foreign fishing vessel is involved, service will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the sanction to be imposed, the bases for the sanction, and any opportunity for a hearing. It will state the effective date of the sanction, which will ordinarily not be earlier than 30 calendar days after the date of receipt of the NOPS (see § 904.322).

(c) Upon demand by an authorized enforcement officer, a permit holder must surrender a permit against which a sanction has taken effect. The effectiveness of the sanction, however, does not depend on surrender of the permit.

**§ 904.303 Notice of intent to deny permit (NIDP).**

(a) NOAA may issue an NIDP if the applicant has been charged with a violation of a statute, regulation, or permit administered by NOAA.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.302(a).

(c) NOAA will not refund any fee(s) submitted with a permit application if an NIDP is issued.

(d) An NIDP may be issued in conjunction with or independent of a NOPS. Nothing in this section should be interpreted to preclude NOAA from initiating a permit sanction action following issuance of the permit, or from withholding a permit under § 904.310(c) or § 904.320.

**§ 904.304 Opportunity for hearing.**

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing. The hearing may be combined with any other hearing under this part.

(b) There will be no opportunity for a hearing if, with respect to the violation that forms the basis for the NOPS or NIDP, the permit holder had a previous opportunity to participate as a party in a judicial or administrative hearing, whether or not the permit holder did participate, and whether or not such a hearing was held.

(c) If entitled to a hearing under this section, the recipient of a NOPS or NIDP will have 30 calendar days from receipt of the notice to request a hearing. A request for hearing must be dated and in writing. Failure to request a hearing within 30 days constitutes a waiver of the opportunity for a hearing.

(d) Even if no hearing is requested, NOAA may order a hearing if it will serve the interests of justice. This paragraph does not create any right to a hearing in addition to the right provided in paragraph (a) of this section.

*Sanctions for Nonpayment of Penalties*

**§ 904.310 Nature of sanctions.**

(a) NOAA may suspend a permit if

(1) A civil penalty has been assessed against the permit holder under Subparts B and C of this part, but the permit holder has failed to pay the penalty, or has defaulted on a payment agreement; or

(2) A criminal fine or other liability for violation of any of the statutes administered by NOAA has been imposed against the permit holder in a judicial proceeding, but payment has not been made.

(b) NOAA will suspend any permit issued to a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act under the circumstances set forth in paragraph (a) of this section.

(c) NOAA will withhold any other permit for which the permit holder applies if either condition in § 904.310(a) is applicable.

**§ 904.311 Compliance.**

If the permit holder pays the fine or penalty in full or agrees to terms satisfactory to NOAA for payment:

(a) The suspension will not take effect;

(b) Any permit suspended under § 904.310 will be reinstated by affirmative order of NOAA; or

(c) Any application by the permit holder may be granted if the permit holder is otherwise qualified to receive the permit.

*Sanctions for Violations*

**§ 904.320 Nature of sanctions.**

Subject to the requirements of this subpart, NOAA may take any of the following actions or combination of actions if a permit holder or permitted vessel violates a statute administered by NOAA, or any regulation promulgated or permit condition prescribed thereunder:

(a) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(b) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of any permit until the requirements are met.

(c) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

**§ 904.321 Reinstatement of permit.**

(a) A permit suspended for a specified period of time will be reinstated automatically at the end of the period.

(b) A permit suspended until stated requirements are met will be reinstated only by affirmative order of NOAA.

**§ 904.322 Interim action.**

(a) To protect marine resources during the pendency of an action under this subpart, in cases of willfulness, or as otherwise required in the interest of public health, welfare, or safety, an Administrative Law Judge may order immediate suspension, modification, or withholding of a permit until a decision is made on the action proposed in a NOPS or NIDP.

(b) The Judge will order interim action under paragraph (a) of this section, only after finding that there exists probable cause to believe that the violation charged in the NOPS or NIDP was committed. The Judge's finding of

probable cause, which will be summarized in the order, may be made:

(1) After review of the factual basis of the alleged violation, following an opportunity for the parties to submit their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Judge will expedite any hearing requested under § 904.304.

## Subpart E—Written Warnings

### § 904.400 Purpose and scope.

This Subpart sets forth the policy and procedures governing the issuance and use of written warnings by persons authorized to enforce the statutes administered by NOAA, and the review of such warnings. A written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution for violation of any of the laws cited in § 904.1(c).

### § 904.401 Written warning as a prior offense.

A written warning may be used as a basis for dealing more severely with a subsequent offense, including, but not limited to, a violation of the same statute or an offense involving an activity that is related to the prior offense.

### § 904.402 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.1(c) who finds a violation of one of the laws may issue a written warning to a violator in lieu of other law enforcement action that could be taken under the applicable statute.

(b) The written warning will (1) state that it is a "written warning"; (2) state the factual and statutory or regulatory basis for its issuance; (3) advise the violator of its effect in the event of a future violation; and (4) inform the violator of the right of review and appeal under § 904.403.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the violator previously committed a similar offense for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other civil or criminal proceedings.

(e) For written warnings under the Magnuson Fishery Conservation and Management Act or the Northern Pacific Halibut Act of 1982, the enforcement officer will note the warning, its date, and reason for its issuance on the permit, if any, of the vessel used in the violation. If noting the warning on the permit of the vessel is impracticable, notice of the written warning will be served personally, or by registered or certified mail, return receipt requested, on the vessel's owner, operator, or designated agent for service of process, and such service will be deemed notation on the permit.

### § 904.403 Review and appeal of a written warning.

(a) If a person receives a written warning from an enforcement agent, the person may, within 90 days of receipt of the written warning, seek review by the appropriate NOAA Regional Attorney. The request must be in writing and must present the facts and circumstances that explain or deny the violation described in the warning. The Regional Attorney will review the information and notify the person of his or her decision.

(b) If a person receives a written warning from a Regional Attorney or staff attorney, or receives a decision from a Regional Attorney affirming a written warning, the person may appeal the warning or decision to the NOAA Assistant General Counsel for Enforcement and Litigation. The appeal must be brought within 30 days of receipt of the warning or decision from the Regional Attorney. The Assistant General Counsel for Enforcement and Litigation may, in his or her discretion, affirm, expunge, or modify the written warning and will notify the person of the decision. The decision constitutes the final agency action.

(c) The addresses of the NOAA Regional Attorneys are:

Regional Counsel, Office of General Counsel, NOAA, 14 Elm Street, Federal Building, Gloucester, MA 01930
Regional Counsel, Office of General Counsel, NOAA, 9450 Koger Blvd., Suite 102, St. Petersburg, FL 33702
Regional Counsel, Office of General Counsel, NOAA, Bin C15700, 7600 Sandpoint Way, NE., Seattle, WA 98115
Regional Counsel, Office of General Counsel, NOAA, 300 South Ferry Street, Room 2013, Terminal Island, CA 90731
Regional Counsel, Office of General Counsel, NOAA, P.O. Box 1668, Juneau, AK 99802

The address of the Assistant General Counsel for Enforcement and Litigation is 1825 Connecticut Avenue NW., Suite 607, Washington, DC 20235.

## Subpart F—Seizure and Forfeiture Procedures

### § 904.500 Purpose and scope.

(a) This subpart sets forth procedures governing the release or forfeiture of seized property (except property seized and held solely as evidence) that is subject to forfeiture under the various statutes administered by NOAA.

(b) Except as provided in this subpart, these regulations apply to all seized property subject to forfeiture under the statutes listed in Subpart A. This subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of property seized under these statutes.

### § 904.501 Notice of seizure.

Except where the owner, consignee, or other party that the facts of record indicate has an interest in the seized property is personally notified, or where seizure is made under a search warrant, NOAA will, as soon as practicable following the seizure or other receipt of seized property, mail notice of the seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. The notice will describe the seized property and state the time, place and reason for the seizure. The notice will inform each interested party of his or her right to apply for remission or mitigation of the forfeiture (including any agreement that may be required under § 904.506(b)(2)(vii)). The notice may be combined with a notice of the sale of perishable fish issued under § 904.505.

### § 904.502 Bonded release.

NOAA may, in its sole discretion, release any seized property upon deposit with NOAA of the full value of the property or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. The deposit will be held in a NOAA suspense account, or deposited with the appropriate court, pending the outcome of forfeiture proceedings. In

addition, NOAA may, in its sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The bond will contain such conditions as NOAA deems appropriate. The provisions of § 904.506(f) apply to NOAA's determination whether to release the property. The deposit or bond will for all purposes be considered to represent the property seized and subject to forfeiture.

**§ 904.503 Appraisement.**

NOAA will appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisement in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, the value in the principal market nearest the place of appraisement will be used. If the seized property may not lawfully be sold in the United States, its domestic value will be determined by other reasonable means.

**§ 904.504 Administrative forfeiture proceedings.**

(a) *When authorized.* This section applies to property that is determined under § 904.503 to have a value of $100,000 or less, and that is subject to administrative forfeiture under the applicable statute. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) *Procedure.* (1) NOAA will publish a notice of proposed forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the Federal judicial district in which the property was seized. However, if the value of the seized property does not exceed $1,000, the notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, United States District Court, or the United States Customs House nearest the place of seizure, with the date of posting indicated on the notice. In addition, a reasonable effort will be made to serve the notice personally, or by registered or certified mail, return receipt requested, on each person whose whereabouts and interest in the property are known or easily ascertainable.

(2) The notice of proposed forfeiture will (i) describe the seized property, including any applicable registration or serial numbers; (ii) state the time, place and reason for the seizure; and (iii) describe the rights of an interested person to file a claim to the property (including the right to file a motion to stay administrative forfeiture proceedings and to petition to remit or mitigate the forfeiture).

(3)(i) Except as provided in paragraph (b)(4) of this section, any person claiming the seized property may file a claim with NOAA, at the address indicated in the notice, within 20 days of the date the notice was first published or posted. The claim must state the claimant's interest in the property.

(ii) Except as provided in paragraph (b)(3)(v) or (b)(4) of this section, a bond for costs in the penal sum of $5,000 or 10 per cent of the appraised value of the property, whichever is lower, but not less than $250, with sureties satisfactory to the Administrator, must be filed with the claim for seized property. The bond may be posted on Customs form 4615 or a similar form provided by NOAA. There must be endorsed on the bond a list or schedule in substantially the following form, signed by the claimant in the presence of witnesses, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond; to wit:

_____

_____

The foregoing list is correct.

_____

Claimant

Attest:

_____

_____

A certified check may be substituted for a bond.

(iii) Filing a claim and posting a bond does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(iv) If the claim and bond are filed timely in accordance with this section, NOAA will refer the matter to the Attorney General to institute forfeiture proceedings in the appropriate United States District Court.

(v) Upon satisfactory proof of financial inability to post the bond, NOAA may waive the bond requirement for any person claiming an interest in the seized property.

(4) Instead of, or in addition to, filing a claim and bond under paragraph (b)(3) of this section, any person claiming the seized property may file with NOAA within 20 days after the date of first publication or posting of the notice of proposed forfeiture, a motion to stay administrative forfeiture proceedings. The motion must contain: (i) the claimant's verified statement showing the claimant's absolute title to the seized property, free of all liens or other third party interests; and (ii) the claimant's offer to pay in advance all reasonable costs anticipated for storage and maintenance of the property. NOAA, in its discretion, may grant the stay and impose any conditions deemed reasonable, including but not limited to length of the stay, factors that would automatically terminate the stay, and any requirement for a bond to secure payment of storage or maintenance costs. If NOAA denies or terminates the stay, the claimant, if he or she has not already done so, has 20 days from receipt of the denial or termination order to file a claim and bond in accordance with paragraph (b)(3) of this section. Failure to file the claim and bond within that 20 days will result in summary forfeiture under paragraph (b)(5) of this section.

(5) If a claim and bond are not filed within 20 days of notice in accordance with this section, or if a motion for a stay under paragraph (b)(4) is pending, NOAA will declare the property forfeited. The declaration of forfeiture will be in writing and will be served on each person whose whereabouts and prior interest in the seized property are known or easily ascertainable. The forfeited property will be subject to disposition as authorized by law and regulations of NOAA.

(6) If the appraised value of the property is more than $100,000, or a timely and satisfactory claim and bond for property appraised at $100,000 or less are submitted to NOAA, the matter will be referred to the Attorney General to institute *in rem* proceedings in the appropriate United States District Court.

**§ 904.505 Summary sale.**

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section must deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) NOAA will give notice of the sale by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the

owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the safe manner as the seized fish would have been, including an action *in rem* for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court. The proceeds will not be subject to release under § 904.502 or § 904.506(f).

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

**§ 904.506 Remission and mitigation of forfeiture.**

(a) *Application of this section.* (1) This section establishes procedures for filing with NOAA a petition for relief from forfeitures incurred, or alleged to have been incurred, under any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) Although NOAA may properly consider a petition for relief from forfeiture along with other consequences of a violation, the remission or mitigation of a forfeiture is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless NOAA expressly so states. Remission or mitigation of a forfeiture is in the nature of executive clemency and is granted in the sole discretion of NOAA only when consistent with the purposes of the particular statute involved and this section.

(3) NOAA will not consider a petition for remission or mitigation while a forfeiture proceeding is pending in federal court. Once such a case is referred to the Attorney General for institution of judicial proceedings, and until the proceedings are completed, any petition received by NOAA will be forwarded to the Attorney General for consideration.

(b) *Petition for relief from forfeiture.* (1) Any person having an interest in property seized and subject to forfeiture may file a petition for relief from forfeiture. Unless otherwise directed in a notice concerning the seized property, the petition shall be addressed to NOAA and filed with the Regional Attorney nearest to the place where the property is held (addresses in § 904.403(c)). NOAA will consider a petition filed after a declaration or decree of forfeiture only if the petitioner demonstrates that he or she did not previously know of the seizure and was in such circumstances as prevented him or her from knowing of it, except that NOAA will not consider a petition filed more than three months from the date of such declaration or decree. (See § 904.507 regarding the right of certain claimants to petition for restoration of proceeds from the sale of forfeited property.)

(2) The petition need not be in any particular form, but must set forth the following:

(i) A description of the property seized;

(ii) The date and place of the seizure;

(iii) The petitioner's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(iv) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation;

(v) Any request for release under paragraph (f) of this section pending final decision on the petition, together with any offer of payment to protect the United States' interest that petitioner makes in return for the release, and the facts and circumstances relied upon by petitioner in the request;

(vi) The signature of the petitioner, his or her attorney, or other authorized agent; and

(vii) An express agreement to defer administrative or judicial forfeiture proceedings until completion of all other related judicial or administrative proceedings (including any associated civil penalty or permit sanction proceedings).

A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* NOAA will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Decision on petition.* (1) After investigation under paragraph (c) of this section, NOAA will decide the matter and notify the petitioner. NOAA may remit or mitigate the forfeiture, on such terms and conditions as under the applicable statute and the circumstances are deemed reasonable and just, upon a finding:

(i) That the forfeiture was incurred without willful negligence and without any intention on the part of petitioner to violate the applicable statute; or

(ii) That other circumstances exist that justify remission or mitigation of the forfeiture.

(2) Unless NOAA determines no valid purpose would be served, NOAA will condition a decision to remit or mitigate a forfeiture upon the petitioner's submitting an agreement, in a form satisfactory to NOAA, to hold the United States and its officers or agents harmless from any and all claims based on loss of or damage to the seized property or that might result from grant of remission or mitigation. If the petitioner is not the beneficial owner of the property, or if there are others with a proprietary interest in the property, NOAA may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. NOAA may also require that the property be promptly exported from the United States.

(e) *Compliance with the decision.* A decision by NOAA to remit or mitigate the forfeiture upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the decision. If the petitioner does not comply with the conditions within that period in the manner prescribed by the decision, or make arrangements satisfactory to NOAA for later compliance, the remission or mitigation will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Release of seized property pending decision.* (1) Upon request in the petition for relief from forfeiture, NOAA may in its discretion order the release, pending final decision on the petition, of all or part of the seized property upon payment by the petitioner of the full value of the property to be released or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. The following, however, will not be released:

(i) Property in which NOAA is not satisfied that the petitioner has a substantial interest;

(ii) Property whose entry into the commerce of the United States is prohibited;

(iii) Live animals, except in the interest of the animals' welfare;

(iv) Proceeds from the sale of seized property sold under § 904.505 (see § 904.507 regarding petitions for restoration of proceeds from the sale of property declared forfeited); or

(v) Property whose release appears to NOAA not to be in the best interest of the United States or serve the purposes of the applicable statute.

(2) If NOAA grants the request, the amount paid by the petitioner will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the

property seized and subject to forfeiture, and payment of the amount by petitioner constitutes a waiver by the petitioner of any claim arising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA, order of a court, or disposition by applicable administrative proceedings.

**§ 904.507 Petition for restoration of proceeds.**

(a) The general provisions of § 904.506 on petitions for remission or mitigation of forfeitures apply to petitions for restoration of proceeds from the sale of forfeited property, except as modified by this section.

(b) In addition to any evidence required under § 904.506, the petition for restoration of proceeds must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him or her from knowing of it.

(c) If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the government will be regarded as sale for the purposes of this section.

(d) No petition for restoration of proceeds will be considered unless it is submitted within three months of the declaration or decree of forfeiture.

(e) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds NOAA may use the proceeds of sale to reimburse the government for any costs that by law may be recovered or to pay any reward that by law may be paid from such sums.

**§ 904.508 Recovery of certain storage costs.**

If any fish, wildlife, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 through 1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371 through 3378, or any property is seized in connection with a violation of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, NOAA will send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement of the applicable costs, and instructions on the time and manner of payment. Payment must be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with NOAA at the address stated in the bill. NOAA will promptly review the written objections and within 30 days mail the final decision to the party who filed them. NOAA's decision will constitute final agency action on the matter.

**§ 904.509 Abandonment.**

(a) The owner of a seized item may abandon it to NOAA by various means, including, but not limited to, expressly waiving any claim to the item, refusing or otherwise avoiding delivery of mail concerning the seizure (as by giving a false name or address), or failing for more than 180 days to make or maintain a claim to the item.

(b) The owner of a seized item waives a claim to it by failing to respond within 120 days of issuance of a Government notice concerning the seizure, or by voluntarily relinquishing any interest in an item by written agreement, or otherwise.

(c) An item will be declared finally abandoned, without recourse, upon a finding of abandonment.

**§ 904.510 Disposal of forfeited or abandoned items.**

(a) *Delivery to Administrator.* Upon forfeiture of any fish, wildlife, parts or products thereof, or other property to the United States, or the abandonment or waiver of any claim to any such property, it will be delivered to NOAA for storage or disposal according to the provisions of this section.

(b) *Purposes of disposal.* Disposal procedures may be used to alleviate overcrowding of evidence storage facilities, and to avoid the accumulation of seized items where disposal is not otherwise accomplished by court order, as well as to address the needs of governmental agencies and other institutions and organizations for such items for scientific, educational, and public display purposes. In no case will items be used for personal purposes, either by loan recipients or government personnel.

(c) *Disposal of evidence.* Items that are evidence may be disposed of only after authorization by the NOAA Office of General Counsel. Disposal approval usually will not be given until the case involving the evidence is closed, except that perishable items may be authorized for disposal sooner.

(d) *Loans*—(1) *To institutions.* Items approved for disposal may be loaned to institutions or organizations requesting such items for scientific, educational, or public display purposes. Items will be loaned only after execution of a loan agreement which provides, among other things, that the loaned items will be used only for noncommercial scientific, educational, or public display purposes, and that they will remain the property of the United States government, which may demand their return at any time. Parties requesting the loan of an item must demonstrate the ability to provide adequate care and security for the item. Loans may be made to responsible agencies of foreign governments in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) *To individuals.* Items generally will not be loaned to individuals not affiliated with an institution or organization unless it is clear that the items will be used in a noncommercial manner, and for scientific, educational, or public display purposes which are in the public interest.

(3) *Selection of loan recipients.* Recipients of items will be chosen so as to assure a wide distribution of the items throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any item offered for disposal. The Administrator may solicit applications, by publication of a notice in the **Federal Register**, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific items for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.

(4) *Loan agreement.* Items will be transferred under a loan agreement executed by the Administrator and the borrower. Any attempt on the part of the borrower to retransfer an item, even to another institution for related purposes, will violate and invalidate the loan

agreement, and entitle the United States to immediate repossession of the item, unless the prior approval of the Administrator has been obtained under § 904.510(d)(5). Violation of the loan agreement may also subject the violator to the penalties provided by the laws governing possession and transfer of the item.

(5) *Temporary reloans; documents to accompany items.* Temporary reloans by the borrower to another qualified borrower (as for temporary exhibition) may be made if the Administrator is advised in advance by the borrowers. Temporary loans for more than thirty days must be approved in advance in writing by the Administrator. A copy of the original loan agreement, and a copy of the written approval for reloan, if any, must accompany the item whenever it is temporarily reloaned or is shipped or transported across state or international boundaries.

(e) *Destruction of items.* This paragraph and other provisions relating to the destruction of property apply to items (1) which have not been handicrafted, or (2) which have been handicrafted and are of less than one hundred dollars ($100) value, and (3) for which no acceptable applications have been received, or for which publication in the Federal Register of the availability of similar items in the past has resulted in the receipt of no applications. Such items may be destroyed if they have been in government ownership for more than one year. Perishable items which are not fit for human consumption may be destroyed sooner, if the authorization required by § 904.510(c) has been obtained. Destruction of items will be witnessed by two persons, one of whom may be the disposing officer.

(f) *Food items.* Food items will, if possible, be disposed of by gift to nonprofit groups providing public welfare food services.

(g) *Record-keeping.* A "fish and wildlife disposal" form will be completed each time an item is disposed of pursuant to the policy and procedure established herein, and will be retained in the case file for the item. These forms will be available to the public.

## TITLE 50—WILDLIFE AND FISHERIES

## PART 219—SEIZURE, FORFEITURE, AND DISPOSAL PROCEDURES—[REMOVED]

2. Part 219 of Title 50 is removed.

## PART 621—CIVIL PROCEDURES

3. The authority citation for Part 621 continues to read as follows:

**Authority:** 16 U.S.C. 1801–1882.

§ 621.3 [Removed]

§ 621.4 [Redesignated as § 621.3]

4. Part 621 is amended by removing § 621.3, and by redesignating § 621.4 as § 621.3.

[FR Doc. 87–6859 Filed 3–30–87; 8:45 am]
BILLING CODE 3510–22–M

Federal Register

Tuesday
March 31, 1987

Part IV

# Department of the Interior

Office of the Secretary

# Department of Agriculture

Forest Service

# Tennessee Valley Authority

# Department of Defense

43 CFR Part 7
36 CFR Part 296
18 CFR Part 1312
32 CFR Part 229

**Protection of Archaeological Resources; Uniform Regulations; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**43 CFR Part 7**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 296**

**TENNESSEE VALLEY AUTHORITY**

**18 CFR Part 1312**

**DEPARTMENT OF DEFENSE**

**32 CFR Part 229**

## Protection of Archaeological Resources; Uniform Regulations

**AGENCIES:** Departments of the Interior, Agriculture, and Defense and Tennessee Valley Authority.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the standard for civil penalty amounts in the final uniform regulations to include determinations of archaeological value. The Archaeological Resources Protection Act of 1979 mandates that the archaeological or commercial value and the cost of restoration and repair of the archaeological resource involved be taken into account in assessing civil penalties for violations of the Act. The purpose of the amendments is to implement this provision of the Act in the final uniform regulations.

**DATE:** Written comments will be accepted until April 30, 1987.

**ADDRESS:** Comments may be mailed to Bennie C. Keel, Departmental Consulting Archeologist, P.O. Box 37127, Room 4318, 1100 L Street NW., Washington, DC 20013–7127.

**FOR FURTHER INFORMATION CONTACT:** Bennie C. Keel, National Park Service, Department of the Interior, Washington, DC, 202–343–4101; Lars Hanslin, Office of the Solicitor, Department of the Interior, Washington, DC., 202–343–7957; Evan I. DeBloois, U.S. Forest Service, Department of Agriculture, Washington, DC, 202–382–9425; Christina Ramsey, Office of the Assistant Secretary for Acquisition and Logistics, Department of Defense, Washington, DC., 202–695–7820; or Maxwell D. Ramsey, Office of Natural Resources, Tennessee Valley Authority, Norris, Tennessee, 615–632–1585.

**SUPPLEMENTARY INFORMATION:**

### Background

This proposed rule would amend the regulations implementing the provisions for civil penalty amounts in the Archaeological Resource Protection Act of 1979 ("Act"; Pub. L. 96–95; 93 Stat. 721; 16 U.S.C. 470aa–11). It was prepared by representatives of the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority, as directed in section 10(a) of the Act.

The first purpose of the Act is to protect irreplaceable archaeological resources on public lands and Indian lands from unauthorized excavation, removal, damage, alteration, or defacement. As one of the enforcement provisions available to Federal land managers, the Act prescribes civil penalties for unauthorized use of archaeological resources. The civil penalties are to be based on standard determinations of archaeological or commercial value and the costs of restoration and repair (section 7(2)(A) of the Act).

The final uniform regulations (43 CFR Part 7, 36 CFR Part 296, 32 CFR Part 229, and 18 CFR Part 1312) omit consideration of archaeological value in section—.16 Civil penalty amounts, paragraphs (a)(1) and (2). The amendment in this proposed rule would revise those paragraphs to implement the provisions of the Act. Because consideration of this additional factor in assessing civil penalty amounts is mandated by the Act, no alternative approach is feasible.

The effect of the proposed rule would be to provide consistent, standard enforcement regulations by which Federal land managers can fully exercise their authority pursuant to the Act. It would affect persons who make unauthorized use of archaeological resources by providing clear guidance to Federal land managers in assessing civil penalties appropriate to the extent of violations.

### Statement of Effects

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on findings that the rulemaking is directed toward Federal resource management, with no economic impact on the public.

### Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### Amendment Proposal

The Departments of the Interior, Agriculture, and Defense and the Tennessee Valley Authority are proposing identical amendments to the uniform regulations for protection of archaeological resources and are codifying these amendments in their respective titles of the Code of Federal Regulations. Since the regulations are identical, the text of the amendments is set out only once at the end of this document.

### Department of the Interior (43 CFR Part 7)

*List of Subjects in 43 CFR Part 7*

Penalties.

## PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 43 CFR Part 7 continues to read as follows:

**Authority:** Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–11) (sec. 10(a)) Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

### § 7.16 [Amended]

2. Section 7.16 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below.

**William P. Horn,**

*Assistant Secretary for Fish and Wildlife and Parks.*

### Department of Agriculture, Forest Service (36 CFR Part 296)

*List of Subjects in 36 CFR Part 296*

Penalties.

## PART 296—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 36 CFR Part 296 continues to read as follows:

**Authority:** Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–11) (sec. 10(a)) Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat.

3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

**§ 296.16 [Amended]**

2. Section 296.16 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below.

**George S. Dunlop,**

*Assistant Secretary for Natural Resources and Environment.*

**Department of Defense (32 CFR Part 229)**

*List of Subjects in 32 CFR Part 229*

Penalties.

## PART 229—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation of 32 CFR Part 229 continues to read as follows:

**Authority:** Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–11) (sec. 10(a)) Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976); 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

**§ 229.16 [Amended]**

2. Section 229.16 in 32 CFR Part 229 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below.

**Patricia Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

**Tennessee Valley Authority (18 CFR Part 1312)**

*List of Subjects in 18 CFR Part 1312*

Penalties.

## PART 1312—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

1. The authority citation for 18 CFR Part 1312 continues to read as follows:

**Authority:** Pub. L. 96–95, 93 Stat. 721 (16 U.S.C. 470aa–11) (sec. 10(a)) Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976); 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996).

**§ 1312.16 [Amended]**

2. Section 1312.16 in 18 CFR Part 1312 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below.

**C.H. Dean, Jr.**

*Chairman, Tennessee Valley Authority.*

**§ —.16 Civil Penalty amounts.**

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § —.4 or of any term of condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resource damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition § —.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

* * * * *

[FR Doc. 87–6972 Filed 3–30–87; 8:45 am]

BILLING CODE 4310–70, 3410–11, 3810–01, 8120–01

BEST COPY AVAILABLE

OL
2
S S
1
R
1
87
MI

Federal Register

Tuesday
March 31, 1987

Part V

# Department of Education

**Program for Severely Handicapped Children; Announcement of Final Funding Priorities and Invitation of Applications for Fiscal Year 1987; Notices**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Program for Severely Handicapped Children; Announcement of Final Funding Priorities

**AGENCY:** Department of Education.

**ACTION:** Notice of final annual funding priorities.

**SUMMARY:** The Secretary announces annual funding priorities for the Program for Severely Handicapped Children.

**EFFECTIVE DATE:** These final annual funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these final annual priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** R. Paul Thompson, Severely Handicapped Branch, Office of Special Education Programs, Department of Education, 330 C Street SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

**SUPPLEMENTARY INFORMATION:** The Program for Severely Handicapped Children, authorized by section 624 of the Education of the Handicapped Act (EHA), supports research, development or demonstration, training, and dissemination activities which meet the unique educational need of severely handicapped children and youth. In accordance with this authority, the Secretary will fund projects under the following priorities for fiscal year 1987. These priorities address the needs of deaf-blind and severely handicapped children which have been identified by professionals, paraprofessionals, and parents as being those most critical at this time. Projects will be funded for up to 36 months, except where otherwise indicated, subject to annual reveiw of progress, the availability of Federal funds, and other factors (see 34 CFR 75.251 through 75.253).

### Summary of Comments and Responses

A notice of proposed annual funding priorities was published in the **Federal Register** on September 2, 1986 (51 FR 31190). The public was given thirty days in which to comment. Comments were received from five individuals and one professional organization in response to the notice of proposed annual funding priorities. The comments and the Department's responses are summarized below:

*Comment.* One commenter expressed concern that projects funded under Priority (a), "Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment;" (b), "Statewide systems change;" and (c), "Inservice training—services for severely handicapped children and youth," assumed that it is generally preferred and always least restrictive for a deaf-blind child to be served in a totally integrated, mainstreamed environment within the local public school.

*Response.* No change has been made. The EHA requires that the determination of the appropriate placement for each handicapped child must be made on an individual basis. These priorities are intended to expand the options for integration of severely handicapped children and youth into a variety of environments. In the past, less restrictive options have often not been widely available.

*Comment.* One commenter questioned whether all projects funded under Priority (a), "Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment," must make provision to include deaf-blind children and youth.

*Response.* No change has been made. This priority has been designed to ensure that all projects make provisions to include deaf-blind children and youth. The purpose of the priority is to provide a greater number and variety of placement options for deaf-blind children and youth along with other severely handicapped children. Deaf-blind children and youth have frequently been excluded from integration projects such as these because of the additional challenge presented to a grantee to demonstrate a capacity to serve them effectively in such a placement.

*Comment.* One commenter suggested that "the severely communicatively handicapped" be added to the list of handicapped childen and youth served by personnel eligible to benefit under Priority (c), "Inservice training—services for severely handicapped children and youth."

*Response.* No change has been made. The types of severely handicapped children described in the regulations at 34 CFR 315.4(c) are used only as examples of the types of children with severe handicaps who are eligible to participate in this project. Severely communicatively handicapped children who meet the program's definition of "severely handicapped children and youth" are consequently eligible for project participation.

*Comment.* Two commentes addressed Priority (e), "Model projects for the most severely handicapped children and youth." One commenter suggested a modification in the statement, "Projects must reflect ongoing planning between relevant health and educational agencies." The commenter was concerned that this statement did not address situations where a single agency provides health-related as well as educational services. Another commenter expressed concern that this priority requires validated education procedures to be included in these model projects, and pointed out that most of these procedures have not been demonstrated to be effective with students who have the most severe and multiple handicapping conditions.

*Response.* Changes have been made. The priority has been modified to stress coordination of health and educational services planning, and for the adoption or adaptation of educational procedures found to be effective with other severely handicapped children and youth.

*Comment.* One commenter expressed concern that projects funded under Priority (g), "Transition skills development for deaf-blind or other severely multi-sensory impaired youth," may not adequately promote communication skills training for severely handicapped youth in transition.

*Response.* A change has been made. This priority has been modified to include the provision of communication skills training in each transition project.

*Comment.* One commenter expressed the concern that projects funded under Priority (f), "Communication skills development for deaf-blind children and youth" and Priority (h), "Supported employment for deaf-blind youth," restricted participation in these projects to the deaf-blind, and suggested that the need of other severely handicapped childen and youth for such training also be addressed.

*Response.* No change has been made. The reason participation is limited to deaf-blind children is because funds for these two priorities come exclusively from the Services for Deaf-Blind Children and Youth program, (CFDA 84.025).

*Comment.* Two commenters pointed out that projects funded under Priority (*d*), "Nondirected demonstration projects for severely handicapped (other than deaf-blind) children and youth," and Priority (i), "Non-directed demonstration projects for deaf-blind children and youth", were limited to

demonstration activities to the exclusion of research activities. Each commenter urged the expansion of these priority statements to provide opportunities for research projects which would provide innovative and effective approaches to the education of these children and youth.

*Response.* Changes have been made. Both Priority (d) and Priority (i) have been modified to encourage the submission of research projects which would produce or apply new knowledge. The critical need for research in this field pointed out by the two commenters in this area, has been strongly endorsed in recent months at national meetings of professional providers of services to children with severe handicaps.

**Other Changes**

Changes have been made in Priority (b), "State-wide systems change," to: (1) Assist applicants in preparing applications by describing information that is needed in order for their applications to be properly evaluated, and (2) increase the length of time and funding level for the projects in order to allow applicants to propose an effective State-wide change system. The changes to this priority have been made because of concerns that some State-wide systems grants awarded in the past have not resulted in effective State-wide systems change. Because the priority has been revised to provide better direction and guidance and to ensure more effective development and implementation, the pool of applicants has been expanded to include all States that have a demonstrated need, including States that have received a similar grant in the past.

**Priorities**

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75–105(c)(3), the Secretary will give an absolute preference to applications submitted under the Program for Severely Handicapped Children in fiscal year 1987 that respond to one of the priorities described below.

(a) *Education of Severely Handicapped (Including Deaf-Blind) Children and Youth in the Least Restrictive Environment.*

This priority supports projects which, on a districtwide basis (local educational agency) or cross-district basis, design, implement, and evaluate innovative approaches to meet the needs of severely handicapped (including deaf-blind) children and youth in the least restrictive and least segregated environments. Projects supported under this priority must provide for and demonstrate the capacity to serve effective by deaf-blind children and youth. Projects under this priority must:

(1) Develop new approaches for delivery of integrated educational services, which includes providing severely handicapped children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(2) Demonstrate through the provision of project services the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(3) Demonstrate the delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community reference skills, and employment skills;

(4) Promote acceptance of severely handicapped children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults;

(5) Demonstrate effective involvement of families in the planning and delivery of services to their severely handicapped children or youth.

It is expected that awards will be made at approximately $100,000 per year for up to three years under this competition.

*(b) State-Wide Systems Change*

(l) Projects proposed under this priority must:

(i) Develop, in conjunction with the EHA Part B State plan, activities to improve the quality of special education and related services in the State of severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated environments to integrated environments;

(ii) Significantly increase the number of severely handicapped children in the State who are served in regular school settings alongside their same-aged nonhandicapped peers;

(iii) Implement the planned services;

(iv) Evaluate the effectiveness of the implementation, including collecting and reporting each year on the number of severely handicapped children in the State in each type of educational setting and showing changes from previous years; and

(v) Disseminate information about project outcomes.

(2) Planning for improved services under this priority must:

(i) Identify resources available in the State to provide the needed services to the severely handicapped children and youth;

(ii) Establish procedures to improve the EHA Part B State plan child-find activities pertaining to all severely handicapped children and youth in the State;

(iii) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, nonsegregated, least restrictive environments. These services must at a minimum contain the components specified in paragraphs (1) through (5) of Priority (a)—Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment;

(iv) Establish a project advisory board having representation of parents of project children and youth, providers of services to this population, and State and professional organizations, which is responsible for providing significant input on project management procedures; and

(v) Formulate and implement formal, written policies and procedures with relevant State, local and professional organizations for coordinating services provided to the target population, including the elimination of overlapping and redundant services.

It is expected that awards will be made at approximately $250,000 a year for up to five years under this competition.

*(c) Inservice Training—Services for Severely Handicapped Children and Youth.*

This priority supports projects which utilize effective inservice training activities which meet the needs of qualified personnel to provide services to severely handicapped children and youth such as those who are deaf-blind, profoundly handicapped, traumatically head injured, medically dependent, multi-sensory impaired, motorically impaired, and severely behaviorally disordered. Personnel receiving inservice training under this priority must be either:

(1) Currently providing educational service to these severely handicapped children and youth; or

(2) Committed by signed contract or other such agreement to provide educational services to these severely handicapped children and youth for at least a one-year period following the completion of the inservice training provided under this priority.

The inservice training provided must be based on innovative practices for the education of these children and youth in least restrictive school and community environments. These practices could include, for example, training sequences for development of job-related skills determined to be critical for retention of students in supported work placements; use of augmentative communication devices for deaf-blind children placed in least restrictive environments parental involvement in monitoring the progress of their severely handicapped children; and application of research project findings with severely handicapped children in normalized, least restrictive environments.

Training may be made available for professionals and paraprofessionals in educational, vocational, health, social services and other related service fields. All inservice training projects must be planned in consideration of the comprehensive system of personnel development required under Part B of the EHA (*See* 34 CFR 300.139) and demonstrate ongoing coordination and cooperation between universities and State agencies. Projects could provide for release time of participants, options for academic credit, salary step credit, certification renewal, or updating professional skills. Funds made available under this priority may not be used for payment of stipends or allowances for travel and other expenses for trainees or their dependents.

It is expected that awards will be made at approximately $68,000 per year for up to three years under this competition.

*(d) Nondirected Demonstration and Research Projects for Severely Handicapped (Other Than Deaf-Blind) Children and Youth*

This priority supports nondirected demonstration projects and nondirected research projects.

(1) Nondirected demonstration projects are to be designed to demonstrate specific, viable procedures for meeting significant educational needs including vocational needs of severely handicapped (other than deaf-blind) children and youth. These projects must focus on direct services to these children and youth, applying research findings, or otherwise exemplifying innovative, effective approaches to their education.

Applicants proposing to conduct a project under paragraph (d)(1) of this section must fully describe and justify the particular approach to be demonstrated, citing, where relevant, any pertinent research upon which the demonstration's approach is based.

(2) Nondirected research projects are to be designed to conduct research to identify and meet specific educational needs of severely handicapped (other than deaf-blind) children and youth. These projects must be designed to generate new knowledge that has the potential for contributing significantly to the field.

It is expected that awards under paragraph (d) (1) and (2) of this section will be made at approximately $111,000 per year for up to three years under these competitions.

*(e) Model Projects for the Most Severely Handicapped Children and Youth*

This priority supports projects which design, implement, and evaluate innovative approaches for educating the most severely handicapped children and youth, among whom are those who are traumatically head injured, medically dependent, multi-sensory impaired, motorically impaired, or severely behaviorally disordered. Projects must reflect on-going coordinated planning among providers of relevant health and educational services. Project activities must emphasize the active integration of the participating children and youth with nonhandicapped peers in least restrictive environments. Services provided in these projects must evidence awareness and, where appropriate, adoption or adaptation of educational procedures found to be effective with other severely handicapped children and youth.

It is expected that awards will be made at approximately $125,000 per year for up to three years under this competition.

*(f) Communication Skills Development for Deaf-Blind Children and Youth*

This priority supports projects which identify critical educational problems in developing communication skills in deaf-blind children and youth, design and demonstrate innovative programs to effectively resolve those problems, and disseminate information about project findings and recommendations. Projects must address one of the following issues:

(1) Appropriate communication modes;

(2) Standardized procedures for communication (language) sampling within a range of social contexts;

(3) The sequence of communicative behaviors that follow the presymbolic stage and are predictive of later linguistic or communicative functioning;

(4) Procedures for assessment of communicative exchanges between deaf-blind persons and others (parents, siblings, peers, teachers, etc.);

(5) Effective intervention strategies that facilitate effective communicative exchanges between deaf-blind persons and others; or

(6) Procedures for selecting and evaluating technological aids with attention to the vocabulary and linguistic features appropriate to each device and its individual user.

It is expected that awards will be made at approximately $95,000 per year for up to three years under this competition.

*(g) Transition Skills Development for Deaf-Blind or Other Severely Multisensory Impaired Youth*

This priority supports projects which design, implement, and disseminate information about innovative practices which facilitate the transition of deaf-blind or other severely multisensory impaired youth from education to employment and other service options, in preparation for their integration into regular community environments as adults. Emphasis in these projects must be placed on the development of job related skills, peer interactions, orientation and mobility, personal grooming, independent living skills, communication skills, and the development of a positive self concept. Projects must include specific activities directed toward development of skills identified as those most needed by project participants in order to facilitate their effective transition. Each project must include procedures for initiating and maintaining an on-going coordination and cooperation with State educational and rehabilitative agencies in the State where the project is located.

It is expected that awards will be made at approximately $73,600 per year for up to three years under this competition.

*(h) Supported Employment for Deaf-Blind Youth*

This priority supports projects which design, implement, and disseminate information about innovative practices in the job placement, job site training and follow-up of deaf-blind youth. The practices must extend beyond, expand upon, complement, or supplement existing successful practices. These projects are to focus on on-the-job skills and adaptations, employee-employer relations, job acquisition, retention skills, and where appropriate, supplemental support for the employment of deaf-blind youth on a long-term basis. These projects may also include feasible applications of techniques still in the development stage

in research and other experimental programs.

These projects are to include the provision of services for severely handicapped deaf-blind youth who typically have not been eligible for vocational rehabilitation services.

The overall objective of these projects should be to provide an employment focus directed toward the achievement by these deaf-blind youth of the same goals (security, mobility, quality of life, and appropriate income level) sought for nonhandicapped workers.

The following provisions which distinguish these projects from traditional vocational education programming for deaf-blind youth must be incorporated into these projects:

(1) Paid employment in regular job settings such as assisted competitive employment, mobile work crews, and work stations in industry;

(2) Opportunities for integration of these deaf-blind youth with nonhandicapped coworkers in their job setting and with relevant others in typical living environments external to the job;

(3) Financial and social services support for these deaf-blind youth throughout the course of the project; and

(4) A plan cooperatively developed with related State and local agencies for the continuation of those services for an appropriate period of time following termination of the project.

It is expected that awards will be made at approximately $100,000 per year for up to three years under this competition.

*(i) Nondirected Demonstration and Research Projects for Deaf-Blind Children and Youth.*

This priority supports nondirected demonstration projects and nondirected research projects for deal-blind children and youth:

(1) Nondirected demonstration projects are to be designed to demonstrate specific, variable procedures for meeting significant educational needs including vocational needs for deaf-blind children and youth. These projects must focus on direct services to these children and youth applying research findings, or otherwise exemplifying innovative effective approaches to their education. Applicants proposing to conduct a project under paragraph (i)(1) of this section must fully describe and justify the particular approach to be demonstrated, citing where relevant any pertinent research upon which the project is based.

(2) Nondirected research projects are to be designed to conduct research to identify and meet specific educational needs of deaf-blind children and youth. These projects must be designed to generate new knowledge that has the potential for contributing significantly to the field.

It is expected that awards under paragraphs (i)(1) and (i)(2) of this section wil be made at approximately $112,000 per year for up to three years under this competition.

**Program Authority**

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance Number 84.086; Program for Severely Handicapped Children)

Dated: March 18, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–7057 Filed 3–30–87; 8:45 am]

BILLING CODE 4000–01–M

---

[CFDA 84.086]

## Notice Inviting Applications for New Awards Under the Program for Severely Handicapped Children for Fiscal Year 1987

**Purpose**

This program provides grants and cooperative agreements to public or private, profit or nonprofit, organizations or institutions to support projects demonstrating innovative approaches for meeting the unique educational needs of children with severe handicaps.

**Deadline for Transmittal of Applications**

June 12, 1987.

**Applications Available**

April 15, 1987.

| CFDA No | Priority title | Available funds | Estimate average award | Estimate number of awards | Anticipated project period |
|---|---|---|---|---|---|
| 84.086C | Nondirected demonstration and research projects for severely handicapped (other than deaf-blind) children and youth | 445,000 | 111,000 | 4 | 36 months |
| 84.086E | Supported employment for deaf-blind youth | 300,000 | 100,000 | 3 | 36 months |
| 84.086H | Nondirected demonstration and research projects for deaf-blind children and youth | 560,000 | 112,000 | 5 | 36 months |
| 84.086J | State-wide Systems Change | 1,300,000 | 250,000 | 5 | 60 months |
| 84.086K | Communication skills development for deaf-blind children and youth | 380,000 | 95,000 | 4 | 36 months |
| 84.086M | Transition skills development for deaf-blind or other severely multisensory impaired youth | 736,000 | 73,000 | 10 | 36 months |
| 84.086N | Education of severely handicapped (including deaf-blind) children and youth in the least restrictive environment | 500,000 | 100,000 | 5 | 36 months |
| 84.086R | Inservice training—services for severely handicapped children and youth | 900,000 | 69,000 | 13 | 36 months |
| 84.086W | Model projects for the most severely handicapped children and youth | 250,000 | 125,000 | 2 | 36 months |

**Applicable Regulations**

(a) The Program for Severely Handicapped Children Regulations, 34 CFR 315,

(b) The Education Department General Administrative Regulations, 34 CFR 74, 75, 77 and 78,

(c) The Final Annual Funding Priorities, Program for Severely Handicapped Children, as published in this issue of the **Federal Register.**

**For Applications or Information Contact**

R. Paul Thompson, Severely Handicapped Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4615 Switzer Building), Washington, DC 20202. Telephone (202) 732–1177.

**Program Authority**

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance No. 84.086; Program for Severely Handicapped Children)

Dated: March 26, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–7058 Filed 3–30–87; 8:45 am]

BILLING CODE 4000–01–M

OL

2

S S

1

R

1

87

MI

Federal Register

Tuesday
March 31, 1987

Part VI

# Department of the Interior

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 700 and 736**

**Permanent Regulatory Program; Federal Program for Georgia et al.; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 700 and 736**

**Permanent Regulatory Program; Federal Program for Georgia et al.; Public Notice, Comment and Hearing Procedures**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to amend its rules governing the promulgation and revision of a Federal program for a State for coal exploration and surface coal mining operations on non-Federal and non-Indian lands. The proposed rule would revise the existing public notice, comment and hearing procedures. In addition, the rule would add to the general provisions in Part 700 a definition of the terms *OSM* and *OSMRE*.

**DATES:**

*Written Comments:* OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern Time on June 1, 1987.

*Public Hearing:* Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC, at 9:30 a.m. local time on May 26, 1987. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern Time on April 30, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under "For Further Information Contact" beforehand to verify that the hearing will be held.

**ADDRESSES:**

*Written Comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

*Public Hearings:* Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC.

*Request for public hearings:* Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–5241 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

## I. Public Comment Procedures

*Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") or delivered to addresses other than those listed above may not be considered or included in the administrative record for the final rule.

*Public Hearing*

OSMRE will hold a public hearing on the proposed rule on request only. The time, date and address scheduled for the hearing is specified previously in this notice (see "**DATES**" and "**ADDRESSES**").

Any person interested in participating at the hearing should inform Mr. DeVito (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing by 5:00 p.m. Eastern Time on April 30, 1987. If no one has contacted Mr. DeVito to express an interest in participating in the hearing by that date, the hearing will not be held. It only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If the hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at the hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

## II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, establishes a nationwide program for the regulation of surface coal mining and reclamation operations. To provide a consistent regulatory framework for this nationwide program, section 501(b) of the Act, 30 U.S.C. 1251(b), requires the Secretary of the Interior (the Secretary) to promulgate a permanent regulatory program (the permanent program). This permanent program, which currently is in force, includes performance standards for surface coal mining and reclamation operations, and procedures for establishing State and Federal programs.

Section 503 of the Act, 30 U.S.C. 1253, allows a State to establish an individual State program. A State program, with certain exceptions, gives a State exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within its borders. Where a State does not establish a State program, section 504 of the Act, 30 U.S.C. 1254, requires the Secretary to establish a Federal program for that State.

Regulations that provide a general introduction to the permanent program appear at 30 CFR Part 701. The permanent program regulations that govern State and Federal programs are grouped in 30 CFR Chapter VII Subchapter C. Standards and procedures that govern Federal programs and their promulgation appear in Subchapter C at 30 CFR Part 736.

Under Part 736 of the permanent program OSMRE has promulgated Federal programs for ten States: Georgia (August 19, 1982; 47 FR 36393); Idaho (April 14, 1983; 48 FR 16218); Massachusetts (September 12, 1983; 48 FR 41000); Michigan (October 22, 1982; 47 FR 47162); North Carolina (June 30, 1983; 48 FR 30298); Oregon (November 2, 1982; 47 FR 49818); Rhode Island (September 12, 1983; 48 FR 40990); South Dakota (April 19, 1983; 48 FR 16818); Tennessee (October 1, 1984; 49 FR 38874); and Washington (February 24, 1983; 48 FR 7870). As provided by 30 CFR 900.13, the rules for each of these Federal programs are codified in 30 CFR Chapter VII Subchapter T under separate parts for each State.

To take full advantage of the existing permanent program performance standards, while avoiding unnecessary repetition, most of the rules that make up each Federal program do not themselves set out detailed requirements, but instead cross-reference a corresponding part in the permanent program. In situations where a cross-reference to the permanent program does not meet the needs of a particular State, the Federal program rule for that State also includes an additional paragraph or paragraphs with appropriate detailed requirements.

For example, the Federal program for the State of Georgia is codified at 30 CFR Part 910. Section 910.842, which governs Federal inspections, in paragraph (a) cross-references the corresponding Part 842 of the permanent program. In addition, paragraph (b) requires OSMRE to furnish to the Georgia Department of Natural Resources upon request a copy of any inspection report or enforcement action taken.

One consequence of this cross-referencing from the Federal programs to the permanent program is that whenever a permanent program rule is revised directly, each Federal program rule which cross-references that permanent program rule also is revised indirectly in a similar way. Thus, in addition to the public notice, comment and hearing procedures that apply to the permanent program, when revising a cross-referenced permanent program rule OSMRE also must comply with the public notice, comment and hearing procedures that apply to each affected Federal program.

For the promulgation or revision of the permanent program regulations there are no OSMRE rules governing public notice, comment and hearing procedures. OSMRE follows the requirements of section 501 of the Act, 30 U.S.C. 1251, and section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. Generally, section 501 requires OSMRE to provide a 30-day public comment period, and at least one public hearing on a proposed rule. In appropriate cases a longer comment period is provided by OSMRE, and additional public hearings at different locations are scheduled in advance or held on request.

For the promulgation or revision of a Federal program, the public notice, comment and hearing procedures are governed by section 504(c) of the Act, and the existing OSMRE permanent program rules at 30 CFR 736.12 and 736.13. Section 504(c) requires simply that "[p]rior to the promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State."

The OSMRE rules at §§ 736.12 and 736.13, which implement section 504(c), are far more detailed. They include requirements for a public hearing in the affected State; notice in the **Federal Register** at least 60 days before the hearing; placing a copy of the administrative record in an appropriate OSMRE office and a public office in the capital city of the affected State; specified hearing procedures; and notice at least once a week for 3 weeks within the 30 days before the hearing in at least one newspaper of general circulation in the coal mining area of the affected State.

Because most of the permanent program rules are cross-referenced by the ten Federal programs, OSMRE must follow these detailed procedures for most revisions of the permanent program. Since there are ten Federal programs, the existing procedures require OSMRE to distribute copies of the administrative record for the revision to ten different States, and to publish at least 30 accurately-timed newspaper notices. Since the permanent program rules continually are undergoing revision, this process, if continued, would consume considerable time, money and manpower.

OSMRE believes that procedures far simpler than those of existing §§ 736.12 and 736.13 would give the public adequate opportunity to participate fully in the rulemaking process. OSMRE has reevaluated the procedures in §§ 736.12 and 736.13 and tentatively has concluded that most of them are too elaborate, that they do not produce benefits to the public commensurate with the costs of compliance, and that simpler procedures would not lessen the ability of either OSMRE or the public to meet the requirements and achieve the goals of the Act. Accordingly, OSMRE proposes to revise §§ 736.12 and 736.13 as described in the following discussion of the proposed rule.

In addition to the revision of Part 736, OSMRE proposes to add a new definition to 30 CFR 700.5. Although the term *OSM* is used throughout existing 30 CFR Chapter VII, it is defined only in § 870.5, which applies only to Parts 870 through 888. Therefore, OSMRE proposes to revise 30 CFR 700.5 by adding a definition of *OSM* that would apply throughout Chapter VII. OSMRE also proposes to revise § 700.5 by adding a definition of *OSMRE*, the preferred acronym for the Agency.

## III. Discussion of Proposed Rule

*Definitions—Section 700.5.* The proposed rule would revise existing 30 CFR 700.5 by adding a definition of the term *OSM* and *OSMRE* to mean the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act. The definition would apply throughout 30 CFR Chapter VII. The existing regulations in Chapter VII would continue to use the term *OSM* until they are otherwise revised.

*Federal Program Notice, Comment and Hearing Procedures—Section 736.12.* This proposed rule would amend the public notice, comment and hearing procedures OSMRE must follow when promulgating or revising a Federal regulatory program for a State. It would simplify the existing procedures, while continuing to give the public adequate opportunity to participate effectively in the rulemaking process.

Proposed § 736.12 incorporates, with varying degrees of revision, the majority of the procedures currently found in existing §§ 736.12 and 736.13. The revisions and the procedures in existing §§ 736.12 and 736.13 that are omitted from proposed § 736.12, are discussed subsequently in their relevant contexts.

*Section 736.12(a) Federal Register Notice.* Prior to the promulgation or revision of a Federal program for a State, proposed § 736.12(a) would require OSMRE to publish in the **Federal Register** a notice which at a minimum would include five specified items of information.

Proposed paragraph (a)(1) would require that the notice include the basis, purpose and substance of the proposed Federal program or revision. It would correspond with the existing § 736.12 (a)(1) and (a)(2), which require that the **Federal Register** notice include "the bases and purposes of" and "the proposed text of" the Federal program or revision. The term "substance" would be substituted for "proposed text" in accordance with section 553(b)(3) of the APA, which requires that a **Federal Register** notice of proposed rulemaking include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." In the context of the promulgation or revision of a Federal program, the term "substance" is the more apt of these APA alternatives.

Propose paragraph (a)(2) would require that the notice offer the public an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice. This would correspond with portions of existing § 736.12(a)(7). However, the mandatory comment period would be reduced from the present 60 days to the 30 days specified in the APA. This change would afford OSMRE flexibility in instances where the nature of the rulemaking did not justify an extended comment period. When the complexity of a proposed rule or its impact justified an extended comment period, OSMRE could still provide a 60-day comment period as it presently does.

The term data in existing § 736.12(a)(7) was deleted from the proposed rule because it is included implicitly in the more general term *comments*. A commenter may submit to

*OSMRE* any written information which he or she believes is relevant to the promulgation or revision of a Federal program, including data.

Proposed paragraph (a)(3) would require that in the notice OSMRE offer to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period, only upon request. This would correspond with portions of existing §§ 736.12(a)(5) and 736.13(c). While section 504(c) of the Act requires OSMRE to hold a public hearing when promulgating a Federal program, this obviously does not include a hearing which no member of the public plans to attend. Existing § 736.13(c) requires OSMRE to hold a public hearing for the promulgation of a Federal program, but only upon request for a revision. The proposed rule would require the public to request a hearing under either circumstance. In addition, there would no longer be any requirement to publish the **Federal Register** notice at least 60 days before the date of the hearing, as the existing rules now require. OSMRE believes that the mandatory 60-day period is unnecessarily long and that it prolongs the rulemaking process without any corresponding public benefit.

Proposed paragraph (a)(4) would require that the notice specify the address of an appropriate place where any person may inspect and copy during normal business hours, a copy of the administrative record for the proposed Federal program or revision. This corresponds with portions of existing §§ 736.12(a)(4) and 736.13(f).

While the existing rules require OSMRE to make available "the text of the proposed program or revision and any supporting information" and "[c]opies of all written comments received and the transcripts of the public hearings," this proposed rule would specify only "a copy of the administrative record." This would not limit the information available to the public, but merely would substitute a more general term that includes all of the information now specified by the existing rules.

For the promulgation of a Federal program, the existing rules require OSMRE to make certain information available at both an OSMRE office and a public office in the capital city of the affected State. Paragraph (a)(4) would substitute for these two offices the term "an appropriate place." This might be either an OSMRE office, a State or other public office, a library, or other appropriate facility. This paragraph also differs from the existing requirement in that the location would not have to be in the affected State. This would relieve OSMRE from having to lodge copies of the administrative record for a Federal program revision, which essentially is the administrative record for the underlying permanent program revision, in all Federal program States, which currently are 10 in number. OSMRE believes that for the promulgation or revision of a Federal program the administrative record located in OSMRE headquarters in Washington, DC, generally is adequate to meet the needs of the public. In cases where there appeared to be sufficient demand for a copy of the administrative record in a particular State, OSMRE would consider making one available at an appropriate place in the State. By not specifying any particular office the proposed rule gives OSMRE maximum flexibility to lodge a copy of the administrative record at the place where there is the greatest interest in the Federal program or revision.

Proposed paragraph (a)(5) would require for the indirect revision of a Federal program that the **Federal Register** notice state that the affected provision of the permanent program is cross-referenced by the Federal program, and thus that the proposed permanent program revision also would revise the Federal program.

*Section 736.12(b) Newspaper notice.* Prior to the initial promulgation of a Federal program for a State, proposed § 736.12(b) would require OSMRE to publish in a newspaper of general circulation in the coal mining area of the affected State a notice like the **Federal Register** notice required by proposed paragraph (a)(1) of this section.

This proposed section corresponds with existing § 736.12(b). For the substance of the proposed Federal program the proposed rule would authorize OSMRE to substitute a brief description in order to avoid the cost of publishing a lengthy newspaper notice. Any person interested in the full text of the proposed Federal program could consult the **Federal Register** notice.

Unlike the existing procedures which require newspaper notice at least once a week for 3 weeks, proposed § 736.12(b) would require only a single notice. OSMRE believes that the multiple notice required by the existing rule is unnecessary and that a single notice is adequate to inform the public about, and provide an opportunity to comment on, a proposed Federal program.

While the existing procedures require OSMRE to publish the newspaper notice at least 30 days before the hearing, this proposed rule would require only that OSMRE publish a newspaper notice. The time element would be removed in order to accommodate the reduced public comment period being proposed. OSMRE would publish the newspaper and **Federal Register** notices as concurrently as practicable.

A major difference in proposed § 736.12(b) as compared to existing § 736.12(b) is the lack of a requirement for newspaper notice of a proposed revision of a Federal program. OSMRE proposes to delete the requirement for newspaper notice for a revision of a Federal program because it tentatively has concluded that for a revision a **Federal Register** notice is sufficient. There are two reasons for this conclusion: First, after a Federal program is promulgated for a State any person in that State who is interested in the regulation of surface coal mining is aware of the Federal presence and reasonably can be expected to rely on the **Federal Register** for notice of a revision. And second, for a revision of the Federal program which is in effect a revision of the permanent program, the nationwide scope of the underlying permanent program revision would insure widespread public involvement. Under these circumstances it is unlikely that a newspaper notice would reach any interested persons who were not already aware of the proposed revision.

In addition, OSMRE routinely issues a press release for any rule that is likely to generate public interest. The result is that those persons most interested in, and most likely to comment on a proposed rule revising a Federal program are aware of the proposal. Even though there presently are ten states with full Federal programs, only Tennessee and Washington have active coal mining. Consequently, outside of these two states there has been little interest in the revision of a Federal program, and in only one state has a hearing on the promulgation or revision of a Federal program ever been requested.

*Section 736.12(c) Federal agency comment.* Prior to the promulgation or revision of a Federal program for a State, proposed § 736.12(c) would require OSMRE, as appropriate, to solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed Federal program or revision. This corresponds with existing § 736.13(a).

The existing procedures require OSMRE to solicit comments from the heads of these agencies in all cases, while this proposed rule would require OSMRE to do so only "as appropriate". Under this proposed rule OSMRE would solicit comments from only those

agencies which reasonably might be expected to have comments, and only on those issues of apparent interest to them. OSMRE has proposed this change to eliminate unproductive correspondence with agencies that are neither concerned with nor have any expertise revelant to a proposed Federal program or revision.

There is no proposed procedure corresponding to existing § 736.12(a)(3), which requires that the **Federal Register** notice include the proposed effective date of the Federal program or revision. OSMRE believes that because of the numerous variables in the rulemaking process, it seldom is possible to predict the effective date of a rule with sufficient accuracy to benefit the public at the proposal stage. To avoid the uncertainties resulting from proposing an inaccurate effective date, OSMRE has omitted this requirement from the proposed rule.

*Section 736.13 Public comment (Removed).* The proposed rule would remove existing § 736.13. A number of the procedures currently in that section would be relocated in proposed § 736.12, either with or without additional revision. Other procedures would be eliminated entirely. An explanation of what would happen in each paragraph of this section follows.

*Section 736.13(a).* Existing § 736.13(a) requires OSMRE, when proposing to promulgate or revise a Federal program, to solicit comments from the heads of various Federal agencies. A similarly-worded, revised version of this paragraph would appear in proposed § 736.12(c). The revised version would require OSMRE to solicit Federal-agency comments only "as appropriate." For more information on these changes, see the preceding discussions of proposed § 736.12(c).

*Section 736.13(b).* Existing § 736.13(b) requires OSMRE to give the public an opportunity to submit written data and comments on a proposed Federal program or revision within 60 days after publication of a notice in the **Federal Register**. A similarly worded, revised version of this paragraph would appear in proposed § 736.12(a)(2). The principal difference in the proposed rule are that the comment period would be reduced from 60 to 30 days, and the term *data* would be deleted as superflous. For more information on the these changes, see the preceding discussions of proposed § 736.12(a)(2).

*Section 736.13(c).* Existing § 736.13(c) requires OSMRE to hold a public hearing prior to promulgating a Federal program for a State, and upon request prior to revising a Federal program. For promulgation and revision, these procedures are relocated in proposed § 736.12(a)(3). Unlike existing paragraph (c) the proposed section requires OSMRE to hold a hearing for both promulgation or revision only upon request. For more information on these changes, see the preceding discussion of proposed § 736.12(a)(3).

*Section 736.13(d).* Existing § 736.13(d) authorizes OSMRE to hold additional hearings or to solicit additional public comment when appropriate. There is no corresponding procedure in the proposed rule. This paragraph was removed as superflous because notwithstanding the existing rule OSMRE has sufficient authority to do either of these things. Even though the paragraph is being removed to simplify the rule, OSMRE would continue to hold additional hearings or to solicit additional public comment when the public interest in a particular rule warrants.

*Section 736.13(e).* Existing § 736.13(e) requires OSMRE to transmit to the Director all public comments, hearing transcripts and related materials. This requirement is implicit in existing § 736.14(a), which requires the Director to consider such information in deciding whether to promulgate or revise a Federal program. Therefore, OSMRE proposes to remove this paragraph as superfluous.

*Section 736.13(f).* Existing § 736.13(f) requires OSMRE to make available for public inspection and copying at the appropriate OSMRE office, and at a public office in the capital city of the affected State, copies of all written comments and hearing transcripts. A revised version of these procedures is relocated in proposed § 736.12(a)(4), which unlike existing paragraph (f) would require OSMRE to make "a copy of the administrative record" available only at "an approporiate place." For more information on these changes, see the preceding discussion of proposed § 736.12(a)(4).

*Section 736.14 Director's decision.* This proposed rule also would make a technical change in § 736.14, which governs the Director's decision on a proposed Federal program or revision. The reference to § 736.13 would be changed to § 736.12 to conform with the changes the proposed rule would make in the referenced sections. This would not have any substantive effect on § 736.14, itself, which except for this technical change would remain the same.

## IV. Procedural Matters

*Federal Paperwork Reduction Act*

The proposed rule includes no information collection requirements requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

*Executive Order 12291*

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The procedures the rule would amend are strictly administrative and do not involve any major economic costs.

*Regulatory Flexibility Act*

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would amend administrative procedures which have no significant economic impact.

*National Environmental Policy Act*

The proposed rule has been reviewed by OSMRE and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with DOI Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

**List of Subjects**

*30 CFR Part 700*

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 736*

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 700 and 736 as follows:

Dated: March 3, 1987.

**J. Steven Griles,**

*Assistant Secretary for Land and Minerals Management.*

## PART 700—GENERAL

1. The authority citation for Part 700 is revised to read as follows:

**Authority:** Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

2. Section 700.5 is amended by adding in alphabetical order a new definition as follows:

**§ 700.5 Definitions.**

* * * * *

*OSM* and *OSMRE* means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

* * * * *

## PART 736—FEDERAL PROGRAM FOR A STATE

3. The authority citation for Part 736 is revised to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

4. Section 736.12 is revised to read as follows:

**§ 736.12 Notice, comment and hearing procedures.**

Prior to the promulgation or revision of a Federal program for a State, OSMRE shall:

(a) Federal Register Notice. Publish in the Federal Register a notice which:

(1) Includes the basis, purpose and substance of the proposed Federal program or revision;

(2) Offers any person an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice;

(3) Offers to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period if requested by any person;

(4) Gives the address of an appropriate place where any person, during normal business hours, may inspect and copy a copy of the administrative record for the proposed Federal program or revision;

(5) For an indirect revision of a Federal program, states that the affected provision of the permanent program is cross-referenced by the Federal program, and thus the proposed permanent program revision also would revise the Federal program;

(b) *Newspaper notice.* For the initial promulgation of a Federal program for a State, publish in a newspaper of general circulation in the coal mining area of the affected State a notice concerning the proposed rulemaking which includes the information required by paragraph (a) of this section, except that for the substance of the proposed Federal program or revision OSMRE may substitute a brief description; and

(c) *Federal agency comment.* As appropriate, solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed Federal program or revision.

**§ 736.13 [Removed]**

5. Section 736.13 is removed.

6. In § 736.14, paragraph (a) is revised to read as follows:

**§ 736.14 Director's decision.**

(a) After considering all relevant information received under § 736.12, the Director shall decide whether to promulgate or revise a Federal program for the State.

* * * * *

[FR Doc. 87–7004 Filed 3–30–87; 8:45 am]
BILLING CODE 4310–05–M

# Reader Aids

Federal Register

Vol. 52, No. 61

Tuesday, March 31, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, MARCH

6123-6316.....2
6317-6492.....3
6493-6768.....4
6769-6950.....5
6951-7102.....6
7103-7262.....9
7263-7396.....10
7397-7558.....11
7559-7816.....12
7817-8052.....13
8053-8222.....16
8223-8438.....17
8439-8580.....18
8581-8858.....19
8859-9106.....20
9107-9280.....23
9281-9450.....24
9451-9648.....25
9649-9792.....26
9793-10020.....27
10021-10212.....30
10213-10356.....31

## CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**1 CFR**

**Proposed Rules:**
Ch. III.....7814, 7879

**3 CFR**

**Proclamations:**
5612.....6123
5613.....6125
5614.....6769
5615.....6771
5616.....7263
5617.....7265
5618.....8439
5619.....8441
5620.....8443
5621.....9281
5622.....9283
5623.....9793

**Executive Orders:**
12362 (Amended by EO 12585).....6773
12368 (Amended by EO 12590).....10021
12473 (See EO 12586).....7103
12585.....6773
12586.....7103
12587.....7397
12588.....8859
12589.....8861
12590.....10021

**Administrative Orders:**
Presidential Determinations:
No. 87-10 of March 5, 1987.....9107
No. 87-11 of March 12, 1987.....9795

**4 CFR**

**Proposed Rules:**
21.....9864

**5 CFR**

110.....7399
300.....7399
351.....10023
410.....7402
630.....10213
831.....10025, 10215
890.....10216
1600.....6127
1630.....8053

**Proposed Rules:**
340.....9867
752.....9867
572.....7427
930.....8909

**7 CFR**

8.....8432
52.....6129
57.....7817
68.....7817
210.....7559, 9109
215.....7559, 7560
220.....7559
227.....8223
240.....7267
271.....7554
272.....7554
273.....7554
274.....7554
276.....7554
300.....6951
301.....7562, 9285
318.....8863
403.....6775
413.....6775
416.....7818
419.....7818, 9285
420.....7818
421.....6775, 7818
424.....7818
425.....6775
427.....7818
430.....6775
432.....7818
435.....6775
436.....6775
438.....6775
446.....6775
448.....6775, 7818
452.....9287
736.....8056
800.....6493
905.....10026
907.....6952, 7819, 9110, 9797
908.....7820
910.....7115, 8058, 9111, 9797
911.....7115
915.....7115
925.....8865
932.....7402
944.....8865
947.....7119
948.....7268
980.....8871
985.....9451
1102.....6317
1106.....6317
1434.....6775
1806.....7998
1822.....7998
1901.....7998
1910.....6497
1924.....7998
1930.....7998
1933.....7998
1940.....7998
1942.....7998
1943.....7998
1944.....6132, 7998, 9111,

9649
1945.....7998
1951.....6132, 6319, 9111
1955.....7998
1965.....9111
1980.....6498
3900.....9798
3901.....9798

**Proposed Rules:**
53.....6577
54.....6577
55.....6162, 8404
56.....6162, 8404
59.....6162, 8404
70.....6162, 8404
272.....7158
273.....7158
275.....7158
422.....9301
736.....10104
795.....9302
800.....7880
810.....7880, 8455
908.....7884
911.....10108
912.....6980
916.....9173
917.....6165, 9173
932.....6166
946.....6167
948.....6168
959.....7428, 9870
980.....7428, 9870
1040.....8074
1097.....8075
1137.....6579
1493.....8605
1930.....8606
1944.....7584, 8606
1965.....8606
2201.....6803, 8611

**8 CFR**

3.....7369
214.....7062
242.....6132
245.....6320
249.....6320

**Proposed Rules:**
100.....8740
103.....8740
109.....8762, 10187
210.....8745
211.....8740
212.....8740
234.....8740
242.....7741, 8740
245a.....8752
264.....8740
274a.....8762, 10187
299.....8740

**9 CFR**

51.....6523
75.....7403
77.....8223
78.....6524, 9452
91.....8224
92.....8436
94.....8436
113.....9116
303.....10028
381.....10028

**Proposed Rules:**
1.....10292
2.....10298
92.....9871
94.....7885
319.....9303

**10 CFR**

19.....8225
20.....8225
21.....8225
30.....8225
35.....9292
39.....8225
40.....8225, 9649
50.....9453
51.....8225
55.....9453
70.....8225, 9649, 10033
71.....8225
73.....6310, 7821, 9649
74.....10033
110.....9649
150.....8225
456.....6710

**Proposed Rules:**
2.....6287
30.....7432
40.....7432
50.....6334, 6650, 6980, 7432, 7887, 8075, 8460, 8917
55.....7432, 7887
60.....7432
61.....7432
70.....7432
71.....7432
72.....7432
110.....7432
150.....7432
430.....7972
456.....6754
458.....6754

**11 CFR**

**Proposed Rules:**
110.....6580

**12 CFR**

500.....7120, 8550
505.....7120
505a.....7120
505b.....7120
508.....7120
522.....7120
523.....7120
545.....7120
546.....9799
552.....7120, 9799
555.....7120
556.....7120, 8550
561.....7120, 8242, 8550
563.....7120, 7821, 8188, 8242, 8550, 9799
563b.....7120, 8550
563c.....7120, 8550
564.....7120
569.....7120
571.....7120
572.....7120
572a.....9799
574.....7120, 9799
584.....7120
620.....8581
701.....8058
748.....8062

**Proposed Rules:**
225.....9304
261.....10233
332.....7442
563.....8207
564.....8611
571.....7887

**13 CFR**

121.....6133

**Proposed Rules:**
121.....8261

**14 CFR**

21.....7261, 8040
23.....7261
36.....7261
39.....6133, 6135, 6287, 6776, 6777, 6952–6956, 7405, 7564–7568, 7823, 8062, 8581, 8582, 8872, 9119, 9293, 9469, 9470, 10043, 10217–10219
43.....6650
71.....6136, 6778, 7262, 7369, 7370, 7390, 7406, 8242, 8243, 8873, 9121, 9383, 10044
73.....7370, 8874
91.....6650, 7261, 9622, 9768
97.....8244, 10045
121.....6650, 9622
125.....6956, 9622
127.....6650
135.....6650, 7261, 9622, 9768
241.....6524, 9122

**Proposed Rules:**
Ch. I.....8078, 8918
21.....9176, 10109–10111
23.....9176, 10109–10111
36.....7618, 8050
39.....6170, 6804, 6987, 7443, 7619, 8079, 8081, 8082, 8263, 8265, 8612–8615, 8919, 9181, 10113, 10114, 10236–10238
71.....6805, 6988, 6989, 7279, 7444, 7445, 8730, 8920, 8921, 9182–9184, 9312, 9313, 10115
75.....6989, 8920–8923
91.....7618
159.....7446

**15 CFR**

371.....6137, 6649
372.....6137
373.....6137, 9147
374.....6137
376.....9147
379.....6137
385.....9147
386.....6137
387.....6137
389.....6137
399.....6137, 8445
806.....8445
904.....10324

**Proposed Rules:**
371.....8265
374.....8265
399.....8265, 9241

**16 CFR**

13.....6540, 7407, 8446, 9294, 9655
702.....7569
801.....7066
802.....7066
803.....7066

**Proposed Rules:**
13.....6172, 6806, 8461
703.....9314
801.....7095
802.....7095
803.....7095

**17 CFR**

1.....6139
16.....6139
240.....8875, 9151
249.....9151

**Proposed Rules:**
1.....6812
15.....6812
19.....6812
140.....6588
150.....6812
230.....8268
239.....8268
240.....6340
270.....7166, 8268, 8302
274.....7166, 8268

**18 CFR**

3.....7824
271.....6545
282.....10220
292.....9161
375.....7824
385.....6957
388.....7824
389.....9161
1301.....7407

**Proposed Rules:**
4.....8463
11.....8463
35.....8616
271.....7891
292.....6822
375.....8463
1312.....10342

**19 CFR**

4.....10198
6.....10047
24.....10198
101.....7124
113.....9784
133.....9471
134.....7825
141.....10221
146.....10198
151.....9784
178.....9784, 10047, 10198, 10221
192.....8308

**Proposed Rules:**
133.....9498

**20 CFR**

404.....8246
416.....8877

**Proposed Rules:**
404.....10116
416.....8309

**21 CFR**

5.....6970, 7269, 7829, 7969
74.....7261, 7829
81.....6323
101.....6971
176.....6649
178.....6323, 10222
312.....8798
314.....8798

331.....7830
332.....7830
341.....7126, 7830
344.....7830
357.....7830
436.....8550
449.....7741
455.....8550
510.....7831, 7833, 9295, 9756
511.....8798
514.....8798
520.....7831, 9756
522.....7831, 7833, 9756
524.....7831, 9756
529.....7831, 9756
558.....6649, 7261, 7833, 7834, 9295
571.....8583
1308.....6546, 7270, 9802–9806

**Proposed Rules:**
193.....6344
312.....8850
358.....9992
561.....6344
1308.....7280

**22 CFR**

33.....7528
514.....7370

**23 CFR**

655.....7126
658.....7834
777.....8250

**Proposed Rules:**
655.....7172

**24 CFR**

40.....9477
146.....7408
200.....6778, 8064, 9827
201.....7841
203.....6908, 7841, 7842, 8064, 9295, 9989
204.....6908, 8064, 9989
213.....8064, 9989
220.....8064, 9989
221.....8064, 9989
222.....8064, 9989
226.....8064, 9989
227.....8064, 9989
234.....7841, 8064, 9989
235.....8064, 9989
237.....8064, 9989
240.....8064, 9989
243.....9161
278.....6300
511.....9161, 9295
570.....6140, 6971
842.....9161
882.....9477, 9827
886.....9827
888.....9478
942.....9161

**Proposed Rules:**
203.....9666
234.....9666

**25 CFR**

249.....9655

**Proposed Rules:**
11.....9669
40.....6482
167.....6822

**26 CFR**

1.....6428, 6468, 7281, 7408, 8447, 9161, 10049–10052, 10223
5f.....7408
5h.....8405, 10085
46.....9656
51.....10224
301.....6779, 9296
602.....6428, 6468, 6779, 7408, 10052

**Proposed Rules:**
1.....6467, 7449, 8471, 9185, 10118, 10290
7.....7281
20.....7281
25.....7281
51.....10290
53.....7281
56.....7281
602.....6467, 7449

**27 CFR**

9.....10224
71.....7370
178.....7132

**Proposed Rules:**
19.....9878
197.....9878
250.....9878
251.....9878

**28 CFR**

2.....7574, 8405
14.....7411
600.....7270
601.....7270, 9241

**Proposed Rules:**
2.....7620, 9382
42.....9885
44.....9274
513.....6297

**29 CFR**

860.....8448
1601.....10224
1613.....10085
1952.....9162
2676.....7842

**Proposed Rules:**
103.....7450, 9382
1928.....7451
1952.....9185
2200.....9187

**30 CFR**

917.....7132
935.....6796
944.....7843

**Proposed Rules:**
15.....9670
75.....9670
202.....7622
206.....7622
256.....9672
280.....9758
700.....10352
736.....10352
774.....6827
785.....9640, 9644
823.....9644
906.....9887
913.....9402
917.....9890
935.....7176, 8082
938.....6828
942.....6827
944.....9891
946.....9892
948.....9314

**31 CFR**

545.....7273–7275, 7855

**32 CFR**

289.....10225
706.....6546, 7136, 8583
1602.....8889
1605.....8889
1621.....8889
1630.....8889
1633.....8889
1648.....8889
1656.....8889
2003.....10190

**Proposed Rules:**
199.....7453
229.....10342
231a.....6346
818a.....9499
1602.....8924
1605.....8924
1609.....8924
1618.....8924
1621.....8924
1624.....8924
1630.....8924
1633.....8924
1636.....8924
1639.....8924
1642.....8924
1648.....8924
1651.....8924
1653.....8924
1657.....8924
1698.....8924

**33 CFR**

100.....9162
110.....9828
117.....6972, 9163
147.....9656
151.....7744
158.....7744
161.....7856
165.....6142, 8584, 8892
183.....6973

**Proposed Rules:**
100.....6990, 7623–7624
110.....6347
117.....6991, 9673
165.....8622, 8623

**34 CFR**

338.....6142
653.....10006
761.....9440

**Proposed Rules:**
235.....8570
502.....7380
504.....7380
524.....7380
673.....6924

**36 CFR**

7.....7372
214.....10086
215.....10086

**Proposed Rules:**
296.....10342

**37 CFR**

1.....9386
401.....8552

**Proposed Rules:**
1.....6696

**38 CFR**

17.....7575
21.....6547, 7276
36.....6547

**Proposed Rules:**
1.....8624
14.....8472

**39 CFR**

10.....6143
111.....6144
224.....7454
960.....6797
962.....7454

**Proposed Rules:**
10.....8627, 9756

**40 CFR**

52.....6145, 6324, 7862, 8070
60.....8585–8587, 9164, 9657, 9778
61.....8586–8589, 8724, 9164
65.....7863, 7864
81.....6548, 7865, 8448
131.....9102
180.....6325, 8452, 9492, 9493, 9756
260.....8072
265.....8704
270.....8072
271.....7412
716.....8662
763.....10187

**Proposed Rules:**
52.....6175, 7802, 8311, 8932, 9502, 9674, 9676, 10239, 10241
60.....7178, 8476
81.....7802
85.....9316
86.....9503
117.....8140
167.....9504
180.....6348, 8478, 9241
228.....9894
264.....8712
265.....8704, 8712
270.....8712
302.....8140, 8172
440.....9414
721.....9508

**41 CFR**

Ch. 61.....6674
50–201.....6146
101–6.....8893
101–40.....9382
101–47.....9829–9831
201–8.....10086
201–11.....10086
201–30.....10086
201–34.....10086

**Proposed Rules:**
50–201.....7892
101–38.....9448
201–38.....9900

**42 CFR**

37.....7866

57.....10194
121.....10094
122.....10094
123.....10094
405.....6148
413.....9833
417.....8898
418.....7412

**Proposed Rules:**
433.....6350
447.....6350

**43 CFR**

7.....9165
11.....9042
17.....6549
3160.....10225

**Public Land Orders:**
6625 (Corrected by PLO 6640).....6557
6640.....6557
6641.....10225

**Proposed Rules:**
7.....10342

**44 CFR**

64.....6326, 10094
65.....8902, 8903
67.....8250, 8904
222.....6799

**Proposed Rules:**
65.....8933
67.....8084

**45 CFR**

97.....9494

**Proposed Rules:**
1204.....9901
1207.....8479
1208.....8480

**46 CFR**

30.....7765
98.....7765
107.....6974, 9383
109.....6974, 9383
151.....7765
153.....7765
170.....6974, 9383
172.....7765
174.....6974, 9383
221.....6329
276.....7462
502.....6330

**Proposed Rules:**
160.....6992
310.....6829
503.....8628, 9756

**47 CFR**

0.....10226
1.....8259, 10226
2.....6152, 7136, 7417, 8906
15.....9296
19.....7577
21.....7136, 10226
22.....10226
23.....10226
31.....6557
32.....6557, 7579
43.....8453
61.....10226
64.....6557
68.....10226
69.....8258
73.....6152, 6154, 7148-7150, 7276, 7420, 7580, 8259, 8453, 8454, 8907, 9298, 9299, 10226
74.....7136, 7420, 8259
76.....10226
78.....7136, 10226
80.....7417, 10226
90.....6154, 10226
94.....7136, 10226
95.....10226
97.....7277

**Proposed Rules:**
Ch. I.....8313
25.....6175, 8937
73.....6176, 7182-7185, 7282, 7624-7627, 8084-8086, 8314-8316, 8481, 8937, 9316
74.....7627, 7895

**48 CFR**

1.....8567
3.....7062, 9989
7.....9036
8.....9036
9.....9036
13.....9036
15.....9036
22.....9036
31.....9036
32.....9036
44.....9036
52.....9036
53.....9036
244.....8908
PHS 352.....9300
507.....8589
514.....6562
515.....6562
528.....6564
533.....6562
537.....6562
552.....6562, 8589
706.....6158
715.....6158
1537.....8073
5316.....6332

**Proposed Rules:**
32.....8576
51.....9436
52.....8576, 9436
203.....9187
209.....9187
232.....8481
242.....6177
825.....6993
5315.....6590

**49 CFR**

1.....9863
171.....8590
173.....7581, 8590
174.....8590
175.....8590
176.....8590
177.....8590
394.....7277
533.....6564
571.....7150, 7867, 10096
1313.....7278

**Proposed Rules:**
71.....10119
171.....6591, 9996
172.....6591
173.....6178, 6591
175.....9996
176.....6591
177.....6591
178.....6591
180.....6591
192.....9189
195.....9189
219.....7185
391.....9192
571.....8317, 8482, 9194, 9316, 10122
845.....9678
1042.....8631
1059.....9201
1152.....7628
1330.....9513

**50 CFR**

17.....6651, 7369, 7424
23.....6160
219.....10324
258.....7532
285.....9170
301.....7582
611.....7868, 8592
621.....10324
646.....9864
671.....8319
672.....7868, 9171, 9495
675.....8592
681.....9496

**Proposed Rules:**
17.....7462
20.....7900
216.....7912
217.....6179, 8087, 9318, 9902
222.....6179, 8087, 9318, 9902
227.....6179, 8087, 9318, 9902
640.....8485
642.....6357, 7463
646.....9513
653.....9902
658.....7283
661.....10125
671.....6199

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 30, 1987

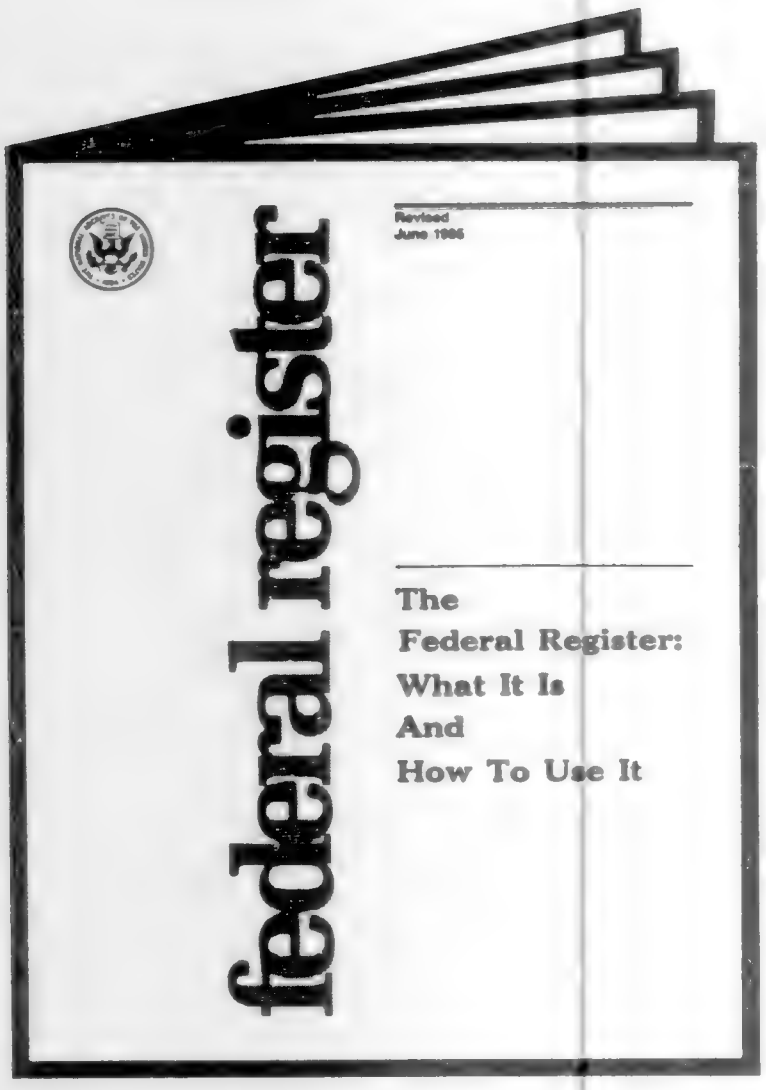


**Announcing the Latest Edition**

# The Federal Register: What It Is and How to Use It

**A Guide for the User of the Federal Register—Code of Federal Regulations System**

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

**Price $4.50**

---

## Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐☐ – ☐

Order No. _____

**Master Card and VISA accepted.**

VISA MasterCard

**Credit Card Orders Only**

Total charges $ _____

Fill in the boxes below.

Customer's Telephone Nos.

Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month / Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday - Friday (except holidays)

---

Please send me _____ copies of **The Federal Register - What It Is and How To Use It,** at $4.50 per copy, Stock No. 022-003-01116-1

**Please Print or Type**

Name - First, Last

Company name or additional address line

Street address

City State ZIP Code

(or Country)

(Rev. 11 – 85)

OL
2
S S
1
R
1
87
MI

THIS PERIODICAL MAY BE COPYRIGHTED, IN WHICH CASE THE CONTENTS REMAIN THE PROPERTY OF THE COPYRIGHT OWNER. THE MICROFORM EDITION IS REPRODUCED BY AGREEMENT WITH THE PUBLISHER. DUPLICATION OR RESALE WITHOUT PERMISSION IS PROHIBITED.

UNIVERSITY MICROFILMS INTERNATIONAL,
ANN ARBOR, MICHIGAN

4-1-87
Vol. 52 No. 62

# Federal Register

Wednesday
April 1, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-1-87
Vol. 52 No. 62
Pages 10357-10556

# Federal Register

Wednesday
April 1, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 62

Wednesday, April 1, 1987

**Agriculture Department**
*See also* Animal and Plant Health Inspection Service; Cooperative State Research Service; Federal Grain Inspection Service; Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 10390

**Animal and Plant Health Inspection Service**
RULES
Interstate transportation of animals and animal products (quarantine):
Brucellosis—
State and area classifications, 10554
Overtime services relating to imports and exports:
Commuted traveltime allowances, 10364
Plant-related quarantine, domestic:
Mediterranean fruit fly, 10357

**Antitrust Division**
NOTICES
National cooperative research notifications:
Metal Castings Technology, Inc., 10420
Southwest Research Institute, 10421

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Commerce Department**
*See* Foreign-Trade Zones Board; International Trade Administration; National Bureau of Standards

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Jamaica, 10398

**Community Services Office**
NOTICES
Grants; availability, etc.:
Discretionary program, 10534

**Cooperative State Research Service**
NOTICES
Meetings:
Committee of Nine, 10390

**Defense Department**
*See* Navy Department

**Drug Enforcement Administration**
NOTICES
*Applications, hearings, determinations, etc.:*
Smithkline Chemicals, 10428

**Education Department**
NOTICES
Special education and rehabilitative services:
Blind vending facilities; arbitration panel decision under Randolph-Sheppard Act, 10400

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Fenarimol, 10376
Oxytetracycline, 10376
Permethrin, 10375
Toxic substances:
Testing requirements:
Chlorinated benzenes, 10377
NOTICES
Pesticides; emergency exemption applications:
Clofentezine, 10406, 10407 (2 documents)
Iprodione, 10408
Toxic and hazardous substances control:
Interagency Testing Committee—
Chemicals for review; meeting, etc., 10409
Premanufacture notices; monthly status reports, 10550

**Executive Office of the President**
*See* Management and Budget Office

**Federal Communications Commission**
RULES
Radio stations; table of assignments:
Texas, 10381
Television stations; table of assignments:
Michigan, 10382
PROPOSED RULES
Radio services, special:
Private operational-fixed microwave service—
Multiple address system operations, 10389
NOTICES
Agency information collection activities under OMB review, 10410
*Applications, hearings, determinations, etc.:*
Big Island Broadcasting Co., Ltd., et al., 10411
Dad's Clipping Service et al., 10411
Oberdorfer, Richard L., et al., 10411
Saltzman, Charles J., et al., 10411
Stevens Point Communications Corp. et al., 10412

**Federal Emergency Management Agency**
PROPOSED RULES
Freedom of Information Reform Act and Privacy Act; implementation, 10385

**Federal Energy Regulatory Commission**
RULES
Fees applicable to producer mattters, natural gas pipeline rate matters, etc., 10366
NOTICES
Electric rate and corporate regulation filings:
Tucson Electric Power Co. et al., 10400
Small power production and cogeneration facilities; qualifying status:
Overland Energy Corp. et al., 10402
*Applications, hearings, determinations, etc.:*
Connecticut Yankee Atomic Power Co., 10403

Vermont Yankee Nuclear Power Corp., 10404
Yankee Atomic Electric Co., 10405

**Federal Grain Inspection Service**
NOTICES
Agency designation actions:
Georgia and Indiana, 10391
Iowa, 10392
Oregon and Illinois, 10391
Tennessee, 10390

**Federal Highway Administration**
NOTICES
Environmental statements; notice of intent:
Sacramento County, CA, 10436

**Federal Reserve System**
RULES
Home mortgage disclosure (Regulation C):
New York; exemption terminated, 10365

**Fish and Wildlife Service**
NOTICES
Endangered and threatened species permit applications, 10420

**Food and Drug Administration**
NOTICES
Food additive petitions:
Economics Laboratory, Inc., 10412
Medical devices:
Surgical simplex P antibiotic bone cement; hearing, 10413

**Foreign Claims Settlement Commission**
NOTICES
Meetings; Sunshine Act, 10439

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
California, 10393
Texas, 10393

**General Services Administration**
RULES
Federal Information Resources Management Regulation:
ADP protests; GSA Board of Contract Appeals, 10379
NOTICES
Procurement:
Lighting fixtures and lamps, household and quarters use; multiple award schedule, 10412

**Health and Human Services Department**
*See* Community Services Office; Food and Drug Administration; Human Development Services Office

**Housing and Urban Development Department**
NOTICES
Grants; availability, etc.:
Housing development grant program
Designated eligible areas list, 10442
Organization, functions, and authority delegations:
Assistant Secretary for Housing—Federal Housing Commissioner et al; transitional housing demonstration program; correction, 10440

**Human Development Services Office**
NOTICES
Grants; availability, etc.:
Developmental disabilities basic support, protection and advocacy programs; Federal allotment to States, 10415
Meetings:
President's Committee on Mental Retardation, 10416

**Interior Department**
*See also* Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 10416, 10417
(3 documents)

**Internal Revenue Service**
RULES
Income taxes:
Information reporting for tax-exempt bond issues
Correction, 10368
NOTICES
Fuel credit, nonconventional source; inflation adjustment factor and reference price
Correction, 10440

**International Trade Administration**
NOTICES
Antidumping:
Color picture tubes from—
Canada, Japan, Korea, and Singapore, 10394
Meetings:
Telecommunications Equipment Technical Advisory Committee, 10394
(2 documents)
*Applications, hearings, determinations, etc.:*
Harbor Branch Foundation, Inc., et al., 10395
Parkland College, 10396

**International Trade Commission**
NOTICES
Meetings; Sunshine Act, 10439

**Interstate Commerce Commission**
RULES
Accounts, uniform system:
Motor carriers of property, accounting and reporting requirements elimination, 10382

**Justice Department**
*See* Antitrust Division; Drug Enforcement Administration; Foreign Claims Settlement Commission; Justice Programs Office; Prisons Bureau

**Justice Programs Office**
NOTICES
Grants; availability, etc.:
Crime victim assistant grant program; guideline revisions, 10421

**Labor Department**
*See* Workers' Compensation Programs Office

**Land Management Bureau**
NOTICES
Agency information collection activities under OMB review, 10417
Oil and gas leasing:
National Petroleum Reserve—Alaska, 10417
Opening of public lands:
Oregon, 10418
Realty actions; sales, leases, etc.:
Arizona, 10418, 10419 (2 documents)
California, 10419

**Management and Budget Office**
NOTICES
Freedom of Information Reform Act of 1986:
Fee schedule and administrative guidelines; correction, 10440

**National Bureau of Standards**
NOTICES
National Fire Codes:
Fire safety standards, 10397
Technical Committee reports, 10396

**National Foundation on the Arts and the Humanities**
NOTICES
Agency information collection activities under OMB review, 10428

**National Park Service**
NOTICES
Meetings:
National Park System Advisory Board, 10420

**Navy Department**
RULES
Navigation, COLREGS compliance exemptions:
USS Thomas S. Gates, 10374
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 10399
Health Care Advisory Committee, 10399
Naval Research Advisory Committee, 10399 (2 documents)

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Indiana & Michigan Electric Co., 10428
*Applications, hearings, determinations, etc.:*
Arizona Public Service Co. et al., 10429

**Office of Management and Budget**
*See* Management and Budget Office

**Peace Corps**
NOTICES
Agency information collection activities under OMB review, 10430

**Pension Benefit Guaranty Corporation**
RULES
Multiemployer plans:
Withdrawal liability; notice and collection; interest rates, 10368

**Postal Service**
RULES
International Mail Manual:
Express Mail Service—
Indonesia, 10375

**Prisons Bureau**
RULES
Inmate control, custody, care, etc.:
Inmate financial responsibility program, 10528
PROPOSED RULES
Inmate control, custody, care, etc.:
Autopsies; authority to conduct, 10531

**Public Health Service**
*See* Food and Drug Administration

**Railroad Retirement Board**
PROPOSED RULES
Freedom of Information Reform Act; implementation, 10384
NOTICES
Agency information collection activities under OMB review, 10430

**Securities and Exchange Commission**
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 10430
Boston Stock Exchange, Inc., 10431
Chicago Board Options Exchange, Inc., 10432, 10433 (3 documents)
Pacific Stock Exchange, Inc., 10434
Philadelphia Stock Exchange, Inc., 10434
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 10436
Midwest Stock Exchange, Inc., 10435
Pacific Stock Exchange, Inc., 10435
Philadelphia Stock Exchange, Inc., 10435

**Soil Conservation Service**
NOTICES
Environmental statements; availability, etc.:
West Branch of Brandywine Creek Watershed, PA, 10393

**Surface Mining Reclamation and Enforcement Office**
RULES
Permanent program submission:
Indiana, 10369, 10373 (2 documents)

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Federal Highway Administration

**Treasury Department**
*See also* Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 10437

**United States Information Agency**
NOTICES
Exchange-visitor program:
Skills list, 10437

**Veterans Administration**
NOTICES
Meetings:
Educational Allowances Station Committee, 10438
(2 documents)

**Workers' Compensation Programs Office**
RULES
Federal employees:
Compensation claims, 10486

**Separate Parts In This Issue**

**Part II**
Housing and Urban Development Department, 10442

**Part III**
Department of Labor, Workers' Compensation Programs Office, 10486

**Part IV**
Department of Justice, Prisons Bureau, 10528

**Part V**
Department of Health and Human Services, Community Services Office, 10534

**Part VI**
Environmental Protection Agency, 10550

**Part VII**
Department of Agriculture, Animal and Plant Health Inspection Service, 10554

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
301..... 10357
354..... 10364

**9 CFR**
78..... 10554

**12 CFR**
203..... 10365

**18 CFR**
381..... 10366

**20 CFR**
10..... 10486
**Proposed Rules:**
200..... 10384

**26 CFR**
1..... 10368
5f..... 10368
602..... 10368

**28 CFR**
545..... 10528
**Proposed Rules:**
549..... 10531

**29 CFR**
2644..... 10368

**30 CFR**
914 (2 documents)..... 10369, 10373

**32 CFR**
706..... 10374

**39 CFR**
10..... 10375

**40 CFR**
180 (3 documents)..... 10375, 10376
799..... 10377

**41 CFR**
201-32..... 10379

**44 CFR**
**Proposed Rules:**
5..... 10385
6..... 10385

**47 CFR**
73 (2 documents)..... 10381, 10382
**Proposed Rules:**
90..... 10389

**49 CFR**
1207..... 10382
1249..... 10382

L
2
S
2
P
87
M I

# Rules and Regulations

Federal Register
Vol. 52, No. 62
Wednesday, April 1, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

[Docket No. 87-037]

### Mediterranean Fruit Fly; Interim Rule

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the "Domestic Quarantine Notices" by adding a new Subpart 301.78, captioned "Mediterranean Fruit Fly." These regulations quarantine portions of Dade County in Florida because of the Mediterranean fruit fly, and restrict the interstate movement of regulated articles from the quarantined portions of Dade County. This action is necessary on an emergency basis to prevent the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States.

**DATES:** Interim rule effective March 26, 1987. Comments must be received on or before June 1, 1987.

**ADDRESSES:** Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-037. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Milton C. Holmes, Acting Assistant Director, Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

**SUPPLEMENTARY INFORMATION:**

### Emergency Action

William F. Helms, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Due to the possibility that Mediterranean fruit fly could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to prevent the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. Its short life cycle permits the rapid development of serious outbreaks.

Recent trapping surveys by inspectors of the Florida Department of Agriculture and Consumer Services and by inspectors of Plant Protection and Quarantine (PPQ), a unit within the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that Hialeah in Dade County, Florida, is infested with the Mediterranean fruit fly. Specifically, on March 2, 1987, inspectors collected five fruit flies in a Jackson trap in a Calamondin tree at 201 East 48th Street in Hialeah. On March 3, 1987, they were positively identified as male Mediterranean fruit flies. Since then, one mature Mediterranean fruit fly larva was found at a location one block from the original site. The Mediterranean fruit fly is not known to occur anywhere else in the United States, except in Hawaii.

Officials of USDA and State agencies of Florida have begun an intensive Mediterranean fruit fly eradication program in the quarantined area in Florida. Also, as explained below, Florida has taken action to impose restrictions on the intrastate movement of certain articles from the quarantined area in order to prevent the artificial spread of the Mediterranean fruit fly within Florida. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the quarantined area in order to prevent the artificial spread of the Mediterranean fruit fly to noninfested areas in other States. Accordingly, it is necessary as an emergency measure to establish Federal regulations for the purpose of preventing the artificial spread of the Mediterranean fruit fly. These regulations are described below by section.

### Restrictions on Interstate Movement of Regulated Articles (Section 301.78)

Section 301.78(b) prohibits any common carrier or other person from moving interstate from any quarantined area any regulated article except in accordance with conditions prescribed in § 301.78-4. A footnote has been added for informational purposes. This footnote (footnote 1) references the authority of an inspector to stop and inspect, seize, quarantine, treat, and otherwise dispose of regulated articles in accordance with the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) and the Plant Quarantine Act (7 U.S.C. 164a).

*Definitions (Section 301.78-1)*

Sections 301.78-1 contains, for informational purposes, definitions of the following terms: "Certificate," "Compliance Agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Limited permit," "Mediterranean fruit fly," "Moved," "Person," "Plant Protection and Quarantine," "Quarantined Area," "Regulated article" and "State." These terms are defined in accordance with definitions and authority set forth in the Plant Quarantine Act (7 U.S.C. 161, 162) and the Federal Plant Pest Act (7 U.S.C.

150dd, 150ee). These definitions are the same definitions that are used in other plant quarantine regulations under this chapter.

*Regulated Articles (Section 301.78–2)*

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading Mediterranean fruit fly if moved without restrictions from quarantined areas into or through noninfested areas. Such articles are designated as regulated articles. Regulated articles are prohibited from moving interstate from quarantined areas except in accordance with conditions specified in §§ 301.78–4 through 301.78–10.

Section 301.78–2 designates as regulated articles a number of fruits, nuts, vegetables, and berries, soil within the drip line of plants that produce the fruits, nuts, vegetables, or berries, and any other product, article, or means of conveyance, when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession of the article has actual notice that the product, article, or means of conveyance is subject to the restrictions in the regulations. This last provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading Mediterranean fruit fly (e.g., a truck with Medfly pupae in cracks in the floorboards) to regulate the affected articles on the spot, by informing the person in possession of the articles that they are being regulated.

Articles that are canned, dried, or frozen below −17.8°C. (0°F.) are not included as regulated articles since the Mediterranean fruit fly could not survive under those conditions. Otherwise, based on research and experience, the articles listed in § 301.78–2(a) and (b) as regulated articles are articles that are likely to cause the artificial spread of the Mediterranean fruit fly. In addition, since other products, articles, or means of conveyance could, under certain circumstances, be found to present a risk of spreading the Mediterranean fruit fly, these articles are regulated by paragraph (c). These articles would have to be determined to present a risk by an inspector on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any, would present a risk. There is authority to regulate nonlisted products, articles, or means of conveyance as set forth in § 301.78–2(c) on an emergency basis in sections 105 and 106 of the Federal Plant Pest Act. If it appears that these additional products, articles, or means of conveyance generally present a risk of spreading Mediterranean fruit fly, we will consider an amendment to this rule to include these items in the list of regulated articles.

*Quarantined Areas (Section 301.78–3)*

As stated in § 301.78–3(a), it is necessary to designate as quarantined areas, areas in which the Mediterranean fruit fly has been found, areas in which the Deputy Administrator has reason to believe the Mediterranean fruit fly is present, and areas deemed necessary to regulate because of their proximity to the Mediterranean fruit fly or their inseparability for quarantine enforcement purposes from localities where Mediterranean fruit flies have been found.

Section 301.78–3(a) further provides that less than an entire State will be designated as quarantined area only if the Deputy Administrator determines that (1) the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by Federal regulations on the interstate movement of these articles; and (2) the designation of less than the entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the Mediterranean fruit fly. If these determinations are made, it appears unnecessary to designate the entire State as a quarantined area in order to protect against the spread of the Mediterranean fruit fly. It appears that these activities would confine infestations to the quarantined areas.

Section 301.78–3(b) provides that the Deputy Administrator or an inspector may designate an area as a quarantined area temporarily without publication in the **Federal Register** if there is a basis for listing the area as a quarantined area under § 301.78–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent artificial spread of the Mediterranean fruit fly before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

On March 3, 1987, an infestation of Mediterranean fruit fly was determined to exist in Hialeah, Florida. This area in Dade County remains infested. The area to be quarantined because of this infestation is specifically described in § 301.78–3 and is designated as a "quarantined area." The area in Dade County designated as a quarantined area is described as follows:

*Dade County*—That portion of the County beginning at a point where NW 7th Avenue intersects with Biscayne Canal; then south along NW 7th Avenue (also known as US 441 and State Road 7) (and including premises that adjoin both sides of NW 7th Avenue) to the intersection of NW 54th Street; then west along NW 54th Street (and including premises that adjoin both sides of NW 54th Street) to the intersection of NW 17th Avenue; then south along NW 17th Avenue (and including premises that adjoin both sides of NW 17th Avenue) to the intersection of NW 36th Street; then west along NW 36th Street, continuing when it becomes NW 36th Street extension, to the intersection with Palmetto Expressway (State Road 826); then north along Palmetto Expressway (State Road 826) to the intersection of NW 58th Street; then west along NW 58th Street (and including premises that adjoin both sides of NW 58th Street) to the intersection of the western section line of sec. 16, T. 53 S., R. 40 E.; then north along the western section lines of secs. 16, 9 and 4, T. 53 S., R. 40 E., and sec. 33, T. 52 S., R. 40 E. to the intersection of the Gratigny Canal; then north and then east along the Gratigny Canal to the intersection of NW 87th Avenue; then north along NW 87th Avenue to the intersection of the SW corner of sec. 15, T. 52 S., R. 40 E.; then north along the western section line of sec. 15, T. 52 S., R. 40 E., to the NW corner of sec. 15, T. 52 S., R. 40 E.; then east along the north section line of sec. 15, T. 52 S., R. 40 E. to the NE corner of sec. 15, T. 52 S., R. 40 E.; then south along the eastern section line of sec. 15, T. 52 S., R. 40 E. to its intersection with the Palmetto Expressway (State Road 826); then east along the Palmetto Expressway (State Road 826) to the intersection of Red Road (NW 57th Avenue); then north along Red Road (NW 57th Avenue) to the intersection of Miami Gardens Drive (NW 183rd Street); then east along Miami Gardens Drive (NW 183rd Street) to the intersection of NW 37th Avenue; then south along NW 37th Avenue to the intersection of Palmetto Expressway (State Road 826); then east along Palmetto Expressway (State Road 826) to the intersection of NW 22nd Avenue; then south along NW 22nd Avenue (and including premises that adjoin both sides of NW 22nd Avenue) to the intersection with the Biscayne Canal; then east along the Biscayne Canal to the point of beginning.

It is necessary to designate this portion of Dade County as a quarantined area because it is an area in which the Mediterranean fruit fly has been found, or in which the Deputy Administrator has reason to believe the Mediterranean fruit fly is present, or an area necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

Florida has adopted and is enforcing regulations imposing restrictions on the

intrastate movement of the regulated articles that are substantially the same as those imposed by Federal regulations on the interstate movement of these articles; in addition, there does not appear to be any reason for designation of any area in Florida as quarantined areas other than those areas specified above.

*Conditions Governing the Interstate Movement of Regulated Articles from Quarantined Areas (Sections 301.78–4 Through 301.78–10)*

*Section 301.78–4*

Section 301.78–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.78–5 through 301.78–10 or unless moved as prescribed in § 301.78–4(b).

Specifically, § 301.78–4(b) allows a regulated article to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, if it is moved directly through the quarantined area without stopping, except for brief refueling or for normal traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by Mediterranean fruit flies, if the point of origin is clearly indicated by shipping documents, and if the identity of the article is maintained.

Also, § 301.78–4(c) allows the Department to move interstate regulated articles without a certificate or limited permit for experimental or scientific purposes. However, they must be moved in accordance with a permit issued by the Deputy Administrator to prevent dissemination of Mediterranean fruit fly.

In § 301.78–4, a footnote (number 2) is added to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met during an interstate movement.

*Section 301.78–5*

Under Federal domestic plant quarantine programs there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by the Department that, because of certain conditions (e.g. the article is free of Mediterranean fruit fly), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when the Department has determined that, because of a possible pest risk, such articles may be safely moved interstate only subject to further restrictions, e.g., movement to limited areas and movement for limited purposes. Section 301.78–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.78–5(a) provides that a certificate shall be issued by an inspector for the movement of a regulated article if: (1) The inspector determines that the article has been treated under direction of an inspector in accordance with § 301.78–10, or if it comes from a premise of origin which is free from Mediterranean fruit fly or the inspector determines that the regulated article is free of Mediterranean fruit fly; and (2) the inspector determines that it will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act; and (3) the inspector determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

A footnote (number 3) is added which explains that USDA can, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions against any article moving into or through the United States or interstate which is believed to be infested or infected by plant pests.

Section 301.78–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if, after consultation with the Deputy Administrator, it is determined that such article is to be moved to a specified destination for specified handling, utilization or processing, and upon evaluation of all of the circumstances involved, the movement will not result in the spread of Mediterranean fruit fly.

Section 301.78–5(c) allows any person who has entered into and is operating under a compliance agreement to execute and issue a certificate or limited permit for the interstate movement of a regulated article once an inspector has made an initial determination that such article is eligible for a certificate or limited permit in accordance with § 301.78–5 (a) or (b). Because of their nature and complexity, these initial determinations concerning the eligibility of articles for issuance of a certificate or limited permit are limited to inspectors.

Also, § 301.78–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

*Section 301.78–6*

Section 301.78–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in the business of growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart 301.78 and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from quarantined areas and are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of subpart 301.78 and have agreed to comply with them.

Section 301.78–6 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions of the regulations. The holder of the compliance agreement shall be notified of the reasons for cancellation and shall be given an opportunity for a hearing to resolve a conflict as to any material fact. A footnote (number 5) is added to explain where compliance agreement forms can be obtained.

*Sections 301.78–7, 301.78–8 and 301.78–9*

Section 301.78–7 provides that any person who desires a certificate or limited permit to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement). A footnote (number 4) is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.78–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement. These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.78–9 explains the Department's policy that services of an inspector which are needed to comply with the provisions of the quarantine and regulations in subpart 301.78 are provided without cost during normal business hours, but that any other incidental costs or charges will not be the responsibility of the Department.

*Section 301.78–10*

Section 301.78–10 sets forth treatments and treatment schedules for certain regulated articles that must be met if the articles are to be certified through treatment prior to movement as provided in § 301.78–5(a)(1)(i). Research has determined that any of these treatments—hot water vapor or methyl bromide for certain fruits and vegetables, or diazinon for soil—would be adequate to destroy the Mediterranean fruit fly with little or no effect on the regulated article. Treatment schedules have not been developed for all regulated articles; however, an individual may obtain a certificate or limited permit for the interstate movement of some regulated articles by complying with the inspection provisions of § 301.78–5(a)(1)(ii) or (iii), as an alternative to treatment of those articles.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This amendment affects the interstate movement of regulated articles from a portion of Dade County, Florida. It appears that there is very little commercial activity affected by this rule that occurs in the quarantined area. Specifically, the quarantined area is comprised of private residences and small shops. The small entities in the quarantined area that may be affected by this regulation appear to consist of approximately 70 nurseries, 40 retail stores, 90 street vendors and open fruit stands, and 20 premises with orchards and vegetable plots (ranging in size from ¼ acre to ten acres). Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate, movement. Also, many of the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, that this regulation will have on these entities appears to be minimal. Further, the number of affected entities mentioned above is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in Florida and many more thousands of small entities that move them interstate from other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Mediterranean Fruit Fly Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart-Mediterranean Fruit Fly" to read as follows:

**Subpart—Mediterranean Fruit Fly**

Sec.

301.78–Restrictions on interstate movement of regulated articles.
301.78–1 Definitions.
301.78–2 Regulated articles.
301.78–3 Quarantined areas.
301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.78–5 Issuance and cancellation of certificates and limited permits.
301.78–6 Compliance agreement and cancellation thereof.
301.78–7 Assembly and inspection of regulated articles.
301.78–8 Attachment and disposition of certificates and limited permits.
301.78–9 Costs and charges.
301.78–10 Treatments.

**Subpart—Mediterranean Fruit Fly**

**§ 301.78 Restrictions on interstate movement of regulated articles.[1]**

No common carrier or other person shall move interstate from any quarantined area any regulated article except in accordance with the conditions prescribed in this subpart.

**§ 301.78–1 Definitions.**

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this supart, shall be construed, respectively, to mean:

*Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement to any destination.

*Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

*Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his or her stead has been or may hereafter be delegated.

*Infestation.* The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

*Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator in accordance with law to enforce the provisions of this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

eligible for interstate movement in accordance with § 301.78–5(b).

*Mediterranean fruit fly.* The insect known as Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)) in any stage of development.

*Moved.* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

*Movement or move.* The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a common carrier, or carrying, transporting, moving, or allowing to be moved by any means.

*Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

*Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

*Quarantined area.* Any State, or any portion thereof, listed in § 301.78–3(c) or otherwise designated as a quarantined area in accordance with § 301.78–3(b).

*Regulated article.* Any article listed in § 301.78–2 or otherwise designated as a regulated article in accordance with § 301.78–2(c).

*State.* Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

**§ 301.78–2 Regulated articles.**

(a) The following fruits, nuts, vegetables and berries are regulated articles, except that the list does not include any fruits, nuts, vegetables, or berries that are canned or dried or have frozen below −17.8°C. (0°F.):

Akee (*Blighia sapida*)
Almond with husk (*Prunus dulcis P. amygdalus*))
Apple (*Malus sylvestris*)
Apricot (*Prunus armeniaca*)
Argan tree (*Argania sideroxylon* (*A. spinosa*))
Avocado (*Persea americans*)
Barbados cherry (*Malpighia glabra*)
Bourbon organge (*Ochrosia elliptica*)
Canistel (*Pouteria campechiana*)
Cattley guava (*Psidium cattleianum*)
Ceylon gooseberry (*Dovyalis herbecarpa*)
Chanar (*Geoffroea decorticans*)
Cherimoya (*Anonna cherimola*)
Cherries (*sweet and sour*( Prunus avium, P. cerasus)
Citrus citron (*Citrus medica*)
Coffee (*Coffee arabica*)
Custard apple (*Annona reticulata*)
Dat (*Phoenix dactylifera*)
Dwarf papaya (*Carica quercifolia*)
Fig (*Ficus carica*)
Golden plum (*Prunus americana x P. salicina*)
Gourka (*Garcinia xanthochymus*)
Grape (*Vitis* spp.)
Grapefruit (*Citrus paradisi*)
Guava (*Psidium guajava*)
Hawthorne (*Crataegus* spp.)
Hog plum (*Spondias mombin*)
Japanese persimmon (*Diospyros kaki*)
Japanese plum (*Prunus salicina*)
Jocote (*Spondias purpurea*)
Kei apple (*Dovyalis caffra*)
Kiwi (*Actinidia chinensis*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)
Lima, sweet (*Citrus limetioides*)
Longan (*Euphoria longan*)
Loquat (*Eriobotrya japonica*)
Lychee nut (*Lychee chinensis*)
Mammee, sapote (*Pouteria sapota*)
Mandarin orange (*Citrus reticulata*) (tangerine)
Mango (*Mangifera indica*)
Mock orange (*Murraya paniculata*)
Mombin (*Spondias* spp.)
Mountain apple (*Syzigium malaccense* (*Eugenia malaccensis*))
Myrobalan nut (*Terminalia cherbula*)
Natal plum (*Carissa grandiflora*)
Nectarine (*Prunus persica* var. *nectarina*)
Olive (*Olea europea*)
Opuntia cactus (*Opuntia* spp.)
Orange, calamondin (*Citrus riticulata* x. *Fortunella*)
Orange, Chinese (*Fortunella japonica*)
Orange, king (*Citrus reticulata* x. *C. sinensis*)
Orange, sweet (*Citrus sinensis*)
Orange, Unshu (*Citrus reticulata* var. *Unshu*)
Papaya (*Carica papaya*)
Passionfruit (*Passiflora edulis*) (yellow lilikoi)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Pepper (*Capsicum frutescens, C. annuum*)
Pineapple guava (*Feijoa sellowiana*)
Plum (*Prunus americana*)
Pomegranate (*Punica granatum*)
Pomiform guajava (*Psidium guajava Pomiform*)
Pond apple (*Annona glabra*)
Prune (*Prunus domestica*)
Pummelo (*Citrus grandis*)
Pyriform guajava (*Psidium guajava Pyriform*)
Quince (*Cydonia oblonga*)
Red mombin (*Spondias purpurea*)
Rose apple (*Eugenia jambos*)
Sapodilla (*Manilkara zapota*)
Sour orange (*Citrus aurantium*)
Soursop (*Annona muricata*)
Spanish cherry Medlar (*Mimusops elengi*)
Spanish cherry (Brazilian plum) (*Eugenia dombeyi* (*E. brasiliensis*))
Spanish plum (*Spondias mombin*)
Star apple (*Chrysophyllum cainito*)
Strawberry guava (*Psidium cattleianum*)
Sugar apple (*Annona squamosa*)
Sugarplum (*Arenga pinata*)
Surinam cherry (*Eugenia uniflora*)
Tomato (sweet and red ripe) (*Lycopersicon esculentum*)
Tree tomato (*Cyphomandra betacea*)
Tropical almond (*Terminalia catappa*)
Walnut with husk (*Juglans* spp.)
White sapote (*Casimiroa edulis*)
Yellow oleander (Bestill) (*Thevetia peruviana*)

(b) Soil within the drip area of plants which produce the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section; and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) or (b) of this section, when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

**§ 301.78–3 Quarantined areas.**

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion thereof, in which the Mediterranean fruit fly has been found by an inspector, or in which the Deputy Administrator has reason to believe that the Mediterranean fruit fly is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly occurs. Less than an entire State will be designated as a quarantined area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of these articles; and

(2) The designation of less than the entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the Mediterranean fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonquarantined area, and, thereafter, the interstate movement of

any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as quarantined areas:

**Florida**

*Dade County*—That portion of the county beginning at a point where NW. 7th Avenue intersects with Biscayne Canal; then south along NW. 7th Avenue (also known as US 441 and State Road 7) (and including premises that adjoin both sides of NW. 7th Avenue) to the intersection of NW. 54th Street; then west along NW. 54th Street (and including premises that adjoin both sides of NW. 54th Street) to the intersection of NW. 17th Avenue; then south along NW. 17th Avenue (and including premises that adjoin both sides of NW. 17th Avenue) to the intersection of NW. 36th Street; then west along NW. 36th Street, continuing when it becomes NW. 36th Street extension, to the intersection with Palmetto Expressway (State Road 826); then north along Palmetto Expressway (State Road 826) to the intersection of NW. 58th Street; then west along NW. 58th Street (and including premises that adjoin both sides of NW. 58th Street) to the intersection of the western section line of sec. 16, T. 53 S., R. 40 E.; then north along the western section lines of secs. 16, 9 and 4, T. 53 S., R. 40 E., and sec. 33, T. 52 S., R. 40 E. to the intersection of the Gratigny Canal; then north and then east along the Gratigny Canal to the intersection of NW. 87th Avenue; then north along NW. 87th Avenue to the intersection of the SW. corner of sec. 15, T. 52 S., R. 40 E.; then north along the western section line of sec. 15, T. 52 S., R. 40 E., to the NW. corner of sec. 15, T. 52 S., R. 40 E.; then east along the north section line of sec. 15, T. 52 S., R. 40 E. to the NE. corner of sec. 15, T. 52 S., R. 40 E.; then south along the eastern section line of sec. 15, T. 52 S., R. 40 E. to its intersection with the Palmetto Expressway (State Road 826); then east along the Palmetto Expressway (State Road 826) to the intersection of Red Road (NW. 57th Avenue); then north along Red Road (NW. 57th Avenue) to the intersection of Miami Gardens Drive (NW. 183rd Street); then east along Miami Gardens Drive (NW. 183rd Street) to the intersection of NW. 37th Avenue; then south along NW. 37th Avenue to the intersection of Palmetto Expressway (State Road 826); then east along Palmetto Expressway (State Road 826) to the intersection of NW. 22nd Avenue; then south along NW. 22nd Avenue (and including premises that adjoin both sides of NW. 22nd Avenue) to the intersection of the Biscayne Canal; then east along the Biscayne Canal to the point of beginning.

**§ 301.78–4 Conditions governing the interstate movement of regulated articles from quarantined areas.[2]**

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78–5 and 301.78–8;

(b) Without a certificate or limited permit, if:

(1) The article originated outside of any quarantined area and is moved directly through (without stopping except for brief refueling, or for normal traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, or

(2) The article is part of a shipment originating outside of any quarantined area which is moved into the quarantined area for packing or processing at a facility which an inspector has determined will not expose the article to Mediterranean fruit flies, and the article is moved to and from the facility under the conditions of paragraph (b)(1) of this section.

(3) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

(c) Without a certificate or limited permit, if:

(1) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(2) Moved pursuant to a permit issued by the Deputy Administrator;

(3) Moved in accordance with conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the dissemination of the Mediterranean fruit fly, i.e., conditions of treatment, processing, shipment, disposal, and

(4) Moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

**§ 301.78–5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate shall be issued by an inspector for the interstate movement of a regulated article if such inspector;

(1)(i) Determines that it has been treated under the direction of an inspector in accordance with § 301.78–10; or

(ii) Determines, based on inspection of the premises of origin, that the premises are free from Mediterranean fruit fly and the article has not been exposed to Mediterranean fruit fly; or

(iii) Determines, based on inspection of the article, that it is free of Mediterranean fruit fly; and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); [3] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

(b) A limited permit shall be issued by an inspector [4] for the movement of a regulated article if such inspector;

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, or processing (such destination and other conditions to be specified in the limited permit), and when upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Mediterranean fruit fly because

---

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not therefore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest; or which has moved into the United States or interstate, and which he has reason to believe was infested or infected by or contained any such plant pest at the time of such movement.

[4] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland, 20782.

life stages of the pest will be destroyed by such specified handling, utilization, or processing;

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Mediterranean fruit fly pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd); and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

(c) Certificates and limited permits for use for movement of regulated articles may be issued by an inspector [4] or person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. Any such person may execute and issue a limited permit for interestate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector orally or in writing, if such inspector determines that the holder thereof has not complied with all conditions under the regulations for the use of such document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reason for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Deputy Administrator.

**§ 301.78–6 Compliance agreement and cancellation thereof.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.[5] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Deputy Administrator.

**§ 301.78–7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78–5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector [4] to take necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

**§ 301.78–8 Attachment and disposition of certificate and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the container containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided however,* that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

**§ 301.78–9 Costs and charges.**

The services of the inspector during normal business hours shall be furnished without cost. The United States Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the regulations in this subpart, other than for the services of the inspector.

**§ 301.78–10 Treatments.**

The treatment schedules for regulated articles are as follows:

(a) Avocado: Fumigation with methyl bromide at normal atmospheric pressure with 32/gm$^3$ for 2½ hours at 21°C. (70°F.) or above followed by refrigeration for 7 days at 7.22°C. (45°F) or below. The 7 day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(b) Tomato: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m$^3$ for 3½ hours at 21°C. (70°F.) or above.

(c) Bell pepper and tomato: Heat the article by saturated water vapor at 44.44°C. (112°F.) until approximate center of article reaches 44.44°C. (112°F.), and maintain at 44.44°C. (112°F.) for 8¾ hours, then immediately cool.

**Note:** Commodities should be tested by the shipper at the 44.44°C. (112°F.) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is

[5] Compliance agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine (Local offices are listed in telephone directories).

optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning.

(d) Apple, apricot, cherry, grape, peach, pear, and plum: Fumigation with 32 g/m³ methyl bromide at 21°C. (70°F.) or above (chamber load not to exceed 80 percent of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth below.

| Fumigation exposure time | Refrigeration |
|---|---|
| 2 hours | 4 days at 0.55°–2.7°C. (33°–37°F.); or 11 days at 6.11°–8.3°C. (43°–47°F.) |
| 2½ hours | 4 days at 3.33°–4.44°C. (38°–40°F.); or 6 days at 5.0°–8.33°C. (41°–47°F.); or 10 days at 8.88°–13.33°C. (48°–56°F.) |
| 3 hours | 3 days at 6.11°–8.33°C. (43°–47°F.); or 6 days at 8.88°13.33°C. (48°–56°F.) |

Minimum concentrations for above fumigations:
(25 g minimum gas concentration at ½ hr.)
(18 g minimum gas concentration at 2 or 2½ hrs.)
(17 g minimum gas concentration at 3 hrs.)

Aerate all fruit at least 2 hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

**Note:** Some varieties of fruit may be injured by the 3-hour exposure. Shippers should test treat before making commercial shipments.

(e) Bell peppers: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21°C (70°F) or above.

**Note:** Bell peppers have been found marginally tolerant to methyl bromide fumigation. Shelf life after treatment is reduced to between 5 to 7 days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem calyx.

(f) Apple, apricot, Calamondin orange, cherry, citrus citron, grape, grapefruit, kiwi, mandarin orange, nectarine, peach, pear, plum, prune, sour orange, and sweet orange: Cold treat the article according to one of the following:

10 days at 0°C. (32°F.) or below
11 days at 0.55°C. (33°F.) or below
12 days at 1.11°C. (34°F.) or below
14 days at 1.66°C. (35°F.) or below
16 days at 2.22°C. (36°F.) or below.

(g) Almond with husk, grape, kiwi, opuntia cactus, and walnut with husk.

Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 3½ hours at 21°C (70°F) or above.

Minimum concentration for above fumigations:
26 g minimum gas concentration at first ½ hours
22 g minimum gas concentration at 2 or 2½ hours
21 g minimum gas concentration at 3½ hours.

(h) Grape: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ for 4 hours at 18°C (65°F) or above.

Minimum concentration for above fumigations:
26 g minimum gas concentration at first ½ hour
22 g minimum gas concentration at 2 or 2½ hours
19 g minimum gas concentration at 4 hours.

(i) Soil: Soil within the drip line of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.78–2(a): Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip line of host plants. The diazinon is to be mixed with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour on treatment procedures are acceptable. Soil treated with diazinon shall be eligible for certification only during the first 7 days following treatment.

Done at Washington, DC, this 26th day of March, 1987.

D. Husnik,
*Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.*

[FR Doc. 87–7092 Filed 3–31–87; 8:45 am]
BILLING CODE 3410-34-M

---

## 7 CFR Part 354

[Docket No. 86–350]

## Commuted Traveltime Periods

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations in 7 CFR Part 354, which prescribe commuted traveltime allowances, by adding or removing commuted traveltime periods in Georgia, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Nebraska, New Hampshire, Oklahoma, Pennsylvania, and Puerto Rico. Commuted traveltime periods reflect the time necessarily spent in reporting to, and returning from, the place at which an employee of Plant Protection and Quarantine performs Sunday, holiday, or unscheduled overtime duty.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Eggert, Director, National Administrative Planning Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7250.

**SUPPLEMENTARY INFORMATION:**

### Background

We are amending the regulations in 7 CFR Part 354, entitled "Overtime Services Relating to Imports and Exports" (referred to below as the regulations), which set forth provisions for obtaining inspection, laboratory testing, certification, or quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal products, or other commodities during Sundays, holidays, or other times outside the regular tour of duty of Plant Protection and Quarantine (PPQ) employees who perform these services.

The regulations provide that, under certain circumstances, the charges for services of a PPQ employee shall include charges for a commuted traveltime period. Section 354.2 of the regulations contains administrative instructions prescribing commuted traveltime periods, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel to, and return from, the place where he or she performs the Sunday, holiday, or unscheduled overtime duty.

We are amending § 354.2 of the regulations by adding or removing commuted traveltime periods in Georgia, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Nebraska, New Hamsphire, Oklahoma, Pennsylvania, and Puerto Rico. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public where PPQ employees are available to perform Sunday, holiday, or unscheduled overtime duty and to inform the public of the commuted traveltime periods for this travel.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic

regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of articles and commodities requiring inspection and other services of a PPQ employee on a Sunday, holiday, or unscheduled overtime basis at the affected locations represents an insignificant portion of the total number that requires these services at locations in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Effective Date

The commuted traveltime periods appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find for good cause that this rule be made effective less than 30 days after publication of this document in the **Federal Register**.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

### List of Subjects in 7 CFR Part 354

Agricultural commodities, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

## PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Under the circumstances described above, 7 CFR Part 354 is amended as follows:

1. Authority citation for Part 354 continues to read as follows:

**Authority:** 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing or adding in alphabetical order, the information as shown below:

**§ 354.2 Administrative instructions prescribing commuted traveltime.**

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

(In hours)

| Location covered | Served from— | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Remove: | | | |
| Arkansas | | | |
| Little Rock AFB | Little Rock | 1 | |
| Iowa: | | | |
| Des Moines | Boone | | 3 |
| Massachusetts | | | |
| Westover AFB | Hadley | | 1 |
| Missouri: | | | |
| Kansas City International Airport. | Boone, IA | | 6 |
| Oklahoma: | | | |
| Port of Muskogee | Tulsa | | 1 |
| Undesignated ports | Tulsa | | 3 |
| Pennsylvania: | | | |
| Undesignated ports | Dallas, GAP, or Sybertsville | | 3 |
| Puerto Rico | | | |
| Aguirre | Ponce | | 2 |
| Guayama | Ponce | | 2 |
| Add | | | |
| Arkansas | | | |
| Little Rock, AFB | | | 2 |
| Georgia | | | |
| Brunswick | | | 2 |
| St. Mary's | Brunswick | | 3 |
| Hawaii | | | |
| Barking Sands NAS | Lihue | | 3 |
| Kaanapali, Lahaina (Maui) | Honolulu | | 6 |
| Kailua-Kona | Keahole | 1 | |
| Kapaa | Lihue | | 2 |
| Keahole | Honolulu | | 5 |
| Lihue Airport | Lihue | 1 | |
| Mahaiula | Keahole | | 2 |
| Napili-Kapalua | Maui | | 3 |
| Nawiliwili | Lihue | 1 | |
| Poipu | Lihue | | 3 |
| Port Allen | Lihue | | 3 |
| Princeville | Lihue | | 3 |
| Wailea-Makena | Maui | | 2 |
| Iowa | | | |
| Des Moines | | 1 | |

COMMUTED TRAVELTIME ALLOWANCES—Continued

(In hours)

| Location covered | Served from— | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Kentucky | | | |
| Louisville | Erlanger | | 4 |
| Greater Cincinnati Airport. | Louisville | | 4 |
| Louisiana | | | |
| Barksdale AFB | Shreveport | | 1½ |
| Massachusetts | | | |
| Westover AFB | Hadley | | 1½ |
| Missouri | | | |
| Johnson County Industrial | Kansas City | | 2 |
| Topeka | Kansas City | | 3 |
| Topeka | Wichita | | 6 |
| Wichita | | 1½ | |
| Nebraska | | | |
| Omaha (including Offutt AFB) | Lincoln | | 3 |
| New Hampshire. | | | |
| Lebanon | Manchester | | 5 |
| Undesignated ports | Manchester | | 3 |
| Oklahoma. | | | |
| Oklahoma City | Tulsa | | 6 |
| Port of Muskogee | Tulsa | | 2 |
| Tulsa | | 1 | |
| Undesignated ports | | | 3 |
| Pennsylvania | | | |
| Allentown/Bethlehem | Dallas | | 5 |
| Easton Airport | Gap | | 5 |
| Harrisburg International Airport. | Dallas | | 6 |
| Harrisburg International Airport. | Gap | | 4 |
| Wilkes-Barre/Scranton International Airport | Dallas | | 2 |
| Undesignated ports | Dallas or Gap | | 3 |
| Puerto Rico. | | | |
| Aguirre | Ponce | | 3 |
| Guayama | Ponce | | 3 |

Done at Washington, DC, this 26th day of March, 1987.

**D. Husnik,**

*Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.*

[FR Doc. 87-7093 Filed 3-31-87; 8:45 am]

BILLING CODE 3410-34-U

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 203

**[Reg. C; Docket No. R-0598]**

## Home Mortgage Disclosure; Order Terminating New York Exemption

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Order.

**SUMMARY:** In 1976, the Board granted state-chartered depository institutions that were subject to the New York mortgage disclosure law an exemption from the federal Home Mortgage Disclosure Act. The exemption was based on a determination that the state law and regulations (Supervisory Procedure G107) provided for substantially similar disclosures and adequately provided for enforcement. In 1982, the Board continued the exemption, following changes to both the federal and the state law.

The Board has learned that Supervisory Procedure G107 expired and was not renewed by the New York State Banking Department; the Board has therefore issued an order formally terminating the New York exemption.

**EFFECTIVE DATE:** March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Heather Hansche, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System Washington, DC 20551, (202–452–2412).

For the hearing-impaired *only*, Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544), Board of Governors.

**SUPPLEMENTARY INFORMATION:** (1) *Introduction.* The Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as implemented by Regulation C (12 CFR Part 203), requires depository institutions that have more than $10 million in assets and that are located in metropolitan statistical areas or primary metropolitan statistical areas to compile and disclose information on the geographic distribution of their mortgage and home improvement loans.

Under the act and regulation, the Board may grant exemptions to state-chartered institutions that are subject to state mortgage disclosure laws that are substantially similar to the federal law and that contain adequate provision for enforcement.

In response to an application by the New York State Banking Department, on December 8, 1976, the Board granted an exemption from the disclosure requirements of the act and Regulation C to New York chartered financial institutions that were subject to similar New York law. The exemption was based on the requirements of Supervisory Procedure G107, which the Board determined to be substantially similar to the requirements imposed under the Home Mortgage Disclosure Act. The exemption was renewed in 1982 following changes in the federal act and regulation and corresponding changes in the state law.

An exemption is subject to revocation if the Board determines that state law does not impose requirements substantially similar to the Federal law or does not adequately ensure enforcement. Supervisory Procedure G107 is no longer in effect. Accordingly, revocation of the New York exemption is mandated by the act and regulation.

Notice of this action has not been published for comment. Under paragraph (e)(5) of Appendix B to Regulation C, the Board may omit procedures it finds unnecessary. Publication for comment is unnecessary in this case since Supervisory Procedure G107 has expired and there is no longer any basis for the exemption.

(2) *Order of termination.* The following order sets forth the termination of the New York exemption.

### Order

The Board granted an exemption to New York-chartered depository institutions from the federal Home Mortgage Disclosure Act in 1976 based on the existence of substantially similar requirements imposed by state law. The exemption was supplemented by an order in 1977 and renewed in 1982 following changes in the federal act and regulation and corresponding changes in the state law.

Because the New York State Banking Department's Supervisory Procedure G107 has expired, there is no longer a state law basis for the New York exemption. The Board is therefore terminating the New York exemption. New York-chartered depository institutions previously exempted from the federal law shall comply with the federal act and regulation, beginning with the data required by the act and Regulation C for loans originated or purchased in calendar year 1986.

By order of the Board of Governors of the Federal Reserve System, March 26, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87–7063 Filed 3–31–87; 8:45 am]

BILLING CODE 6210–01–M

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 381

**[Docket Nos. RM82–25–000 et al.]**

## Fees Applicable to Producer Matters, Natural Gas Pipeline Matters, etc.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; update of Commission filing fees.

**SUMMARY:** In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update by using data under the Commission's Time Distribution Reporting System to calculate the new fees.

**EFFECTIVE DATE:** May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kenneth F. Plumb, Secretary, (202) 357–8400.

**SUPPLEMENTARY INFORMATION:**

In the matter of Fees Applicable to Producer Matters Under the Natural Gas Act, Docket No. RM82–25–000.

Fees Applicable to Natural Gas Pipeline Rate Matters, Docket No. RM83–2–000.

Fees Applicable to the Natural Gas Policy Act, Docket No. RM82–30–000.

Fees Applicable to General Activities, Docket No. RM82–35–000.

Fees Applicable to Natural Gas Pipelines, Docket No. RM82–31–000.

Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, Docket No. RM82–38–000; Notice of Update of Commission Filing Fees.

March 27, 1987.

Under § 381.104 of the Commission's regulations,[1] the Commission by its designee the Executive Director is updating its filing fees. This notice provides the yearly update by using data under the Commission's Time Distribution Reporting System (TDRS) to calculate the new fees.

The new fee schedule is as follows:

Fees Applicable to Producer Matters Under the Natural Gas Act (NGA), RM82–25–000

1. Review of Application for a Blanket Certificate for a Small Producer.....$500
2. Application for Large Producer Certificate of Public Convenience and Necessity.....$2,400
3. Change in Producer Rate Schedule..... $400

Fees Applicable to Natural Gas Pipeline Rate Matters, RM83–2–000

1. Tariff Filings for General Changes in Rates and for Changes other than Rates.....$4,700
2. Tariff Filings—Tracking.....$5,100

Fees Applicable to the Natural Gas Policy Act, RM82–30–000

1. Staff Adjustments.....$3,500
2. Jurisdictional Agency Determinations.....$35
3. Petitions for Rate Approval Pursuant to Section 284.123(b)(2).....$4,900
4. Initial or Extension Reports for Title III Transactions.....$600
5. Interpretations of the NGPA by the Office of the General Counsel.....$35

[1] 18 CFR 381.104 (1985).

Fees Applicable to General Activities, RM82–35–000

1. Petitions for Issuance of Declaratory Orders (except under Part I of the Federal Power Act)..... $4,000
2. Review of Department of Energy Denial of Adjustment,

| Amount in Controversy | = | Fee |
|---|---|---|
| $0–9,999 | = | $100 |
| $10,000–29,999 | = | [illegible] |
| $30,000–above | = | 5,800 |

3. Review of Department of Energy Remedial Order,

| Amount in Controversy | = | Fee |
|---|---|---|
| $0–9,999 | = | $100 |
| $10,000–29,999 | = | 600 |
| $30,000–above | = | 7,300 |

4. Requests for Written Interpretations by the Office of Chief Accountant..... $100

Fees Applicable to Natural Gas Pipelines, RM82–31–000

1. Pipeline Certificates (applications for authorization under NGA, Section 311(a); and application for declaration of Hinshaw exemption under NGA, Section 1(c)..... $15,000
2. Curtailment Filings..... $7,200
3. Request under Blanket Certificate..... $1,500

Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, RM82–38–000

1. Rate Schedule Filings with no Rate Impact or a Decrease..... $1,100
2. Rate Schedule Filings with Rate Impact, but not Supported by Period II..... $3,100
3. Rate Schedule Filings Involving Rate Increases, and Supported by Period II..... $8,900
4. Certification of Qualifying Status..... $1,300
5. Extension of Equipment Test Period Filings..... $1,900
6. Authorization to Issue Equity or LongTerm Debt Securities Competitively or to Issue Short-Term Debt Securities..... $1,200
7. Authorization for the Negotiated Placement Securities or Authorization to Assume an Obligation or Liability as a Guarantor..... $2,900
8. Review of Corporate Application Involving One or More Jurisdictional Utilities Under Section 203 of the FPA..... $10,300
9. Authorization to Hold Interlocking Positions..... $2,700

In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

**List of Subjects in 18 CFR Part 381**

General fees.

**Vincent E. Mason,**

*Acting Executive Director.*

1. The authority citation for Part 381 is revised to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 C.F.R. 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

## PART 381—[AMENDED]

2. Part 381 is amended as follows:

**§ 381.201 [Amended]**

(a) Section 381.201 is amended by removing the number "$600" and inserting, in its place, the number "$500".

**§381.202 [Amended]**

(b) Section 381.202 is amended by removing the number "$2,800" and inserting, in its place, the number "$2,400".

**§ 381.204 [Amended]**

(c) Section 381.204 is amended by removing the number "$3,400" and inserting, in its place, the number "$4,700".

**§ 381.205 [Amended]**

(d) Section 381.205 is amended by removing the number "$4,000" and inserting, in its place, the number "$5,100".

**§ 381.207 [Amended]**

(e) Section 381.207(b) is amended by removing the number "$12,100" and inserting, in its place, the number "$15,000".

**§ 381.208 [Amended]**

(f) Section 381.208 is amended by removing the number "$1,400" and inserting, in its place, the number "$1,500".

**§ 381.209 [Amended]**

(g) Section 381.209(b) is amended by removing the number "$5,200" and inserting, in its place, the number "$7,200".

**§ 381.302 [Amended]**

(h) Section 381.302(a) is amended by removing the number "$1,700" and inserting, in its place, the number "$4,000".

**§ 381.303 [Amended]**

(i) Section 381.303(a) is amended by removing the number "$4,600" and inserting, in its place, the number "$7,300".

**§ 381.304 [Amended]**

(j) Section 381.304(a) is amended by removing the number "$4,900" and inserting, in its place, the number "$5,800".

**§ 381.401 [Amended]**

(k) Section 381.401 is amended by removing the number "$3,200" and inserting, in its place, the number "$3,500".

**§ 381.402 [Amended]**

(l) Section 381.402 is amended by removing the number "$25" and inserting, in its place, the number "$35".

**§ 381.403 [Amended]**

(m) Section 381.403 is amended by removing the number "$2,600" and inserting, in its place, the number "$4,900".

**§ 381.405 [Amended]**

(n) Section 381.405 is amended by removing the number "$400" and inserting, in its place, the number "$35".

**§ 381.505 [Amended]**

(o) Section 381.505 is amended by removing the number "$1,400" and inserting, in its place, the number "$1,300".

**§ 381.506 [Amended]**

(p) Section 381.506 is amended by removing the number "$2,400" and inserting, in its place, the number "$1,900".

**§ 381.507 [Amended]**

(q) Section 381.507 is amended by removing the number "$3,400" and inserting, in its place, the number "$2,900".

**§ 381.508 [Amended]**

(r) Section 381.508 is amended by removing the number "$1,300" and inserting, in its place, the number "$1,200".

**§ 381.509 [Amended]**

(s) Section 381.509 is amended by removing the number "$4,400" and inserting, in its place, the number "$10,300".

**§ 381.510 [Amended]**

(t) Section 381.510 is amended by removing the number "$1,700" and inserting, in its place, the number "$2,700".

[FR Doc. 87–7064 Filed 3–31–87; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1, 5f and 602

[T.D. 8129]

### Information Reporting for Tax-Exempt Bond Issues; Income Tax Regulations Under TEFRA 1982; OMB Control Numbers; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Corrections to temporary regulations and final regulations.

**SUMMARY:** This document contains corrections to temporary regulations and final regulations that were published in the **Federal Register** on Wednesday, March 11, 1987 (52 FR 7408) as Treasury Decision 8129. The rules affect issuers and purchasers of tax-exempt bonds.

**FOR FURTHER INFORMATION CONTACT:** Robert Beatson, 202–566–3459 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations that are the subject of these corrections reflect rules implementing the provisions of section 1301(a) of the Tax Reform Act of 1986, which added section 149(e) to the Internal Revenue Code of 1986.

#### Need For Corrections

As published, Treasury Decision 8129 contains several typographical errors that, if not corrected, might cause confusion to taxpayers and practitioners.

#### Corrections of Publication

Accordingly, the publication of Treasury Decision 8129, which was the subject of FR Doc. 87–4980, is corrected as follows:

**Paragraph 1.** References to "sections 103(1)" and "section 103(1)" are corrected to read "sections 103(l)" and "section 103(l)", respectively, in the following locations:

1. On page 7409, first column, in the first sentence of the second and third paragraphs under the "Explanation of Provisions" heading.

**§ 1.149 [Corrected]**

2. In § 1.149(e)–1T, paragraph (e)(3)(iii), page 7411, second column.

**Par. 2.** On page 7409, first column, in the third paragraph under the "Explanation of Provisions" heading, the last sentence of that paragraph, the reference "Section 1.103A–2(1)" is corrected to read "Section 1.103A–2(l)".

**Par. 3.** In § 1.149(e)–1T, paragraph (e)(3)(ii), page 7411, second column, the reference to "paragraph (d)(2) (ii) and (iii)" is corrected to read "paragraph (e)(2) (ii) and (iii)".

**Par. 4.** On page 7411, second column, the instructional paragraphs that are numbered 3, 4, 4 (sic) and 5 are redesignated 4, 5, 6 and 7, respectively.

**§ 601.101 [Corrected]**

**Par. 5.** On page 7411, second column, immediately preceding redesignated instructional paragraph 7, the heading that reads "§ 601.101 [Amended]" is corrected to read "§ 602.101 [Amended]".

**Par. 6.** On page 7411, second column, in redesignated instructional paragraph 7, the language "Section 601.101(c)" is corrected to read "Section 602.101(c)".

**Donald E. Osteen,**

*Director, Legislation and Regulations Division.*

[FR Doc. 87–7132 Filed 3–31–87; 8:45 am]

BILLING CODE 4830–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 2644

### Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from April 1, 1987, to June 30, 1987.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Foster, Attorney, Regulations Division, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 7½ percent, which will be effective from April 1, 1987, through June 30, 1987. This rate is the same rate as was in effect for the first quarter of 1987. See 52 FR 256 (January 5, 1987). This rate is based on the prime rate in effect on March 16, 1987.

The appendix to 29 CFR Part 2664 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of the public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects in 29 CFR Part 2644**

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

## PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

**Authority:** Secs. 4002(b)(3) and 4219(c), Pub. L. 93–496, as amended by secs. 403(1) and 104 (respectively), Pub. L. 96–364, 94 Stat. 1208, 1302 and 1236–1238 (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

**Appendix A—[Amended]**

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

| From | To | Date of quotation | Rate (percent) |
|---|---|---|---|
| . | . | . | . |
| 04/01/87 | 06/30/87 | 03/16/87 | 7.50 |

Issued at Washington, DC, on this 26th day of March 1987.

**Kathleen P. Utgoff,**

*Executive Director.*

[FR Doc. 87–7167 Filed 3–31–87; 8:45 am]

BILLING CODE 7708–01–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 914

### Approval of Permanent Program Amendment From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Final rule.

**SUMMARY:** OSMRE is announcing the approval of amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On June 11, 1986, Indiana submitted amendments to its program consisting of Senate Enrolled Act No. 41 which amends the Indiana Surface Mining Law and House Enrolled Act No. 1339, the new State Administrative Adjudication Act which will replace the current law at IC 4–22–1.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSMRE, has determined that the amendments meet the requirements of SMCRA and the Federal regulations with the exception of two provisions, discussed in the Findings below. Accordingly, the Director is approving the amendments but deferring action on the two deficient provisions. The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Room, 300, Minton-Capehart Federal Building, 575 Pennsylvania Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Information regarding the general background on the Indiana State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071–32108). Subsequent actions concerning the Indiana program are identified in 30 CFR 914.15 and 30 CFR 914.16.

### II. Discussion of Proposed Amendment

On June 11, 1986, the Indiana Department of Natural Resources submitted to OSMRE pursuant to 30 CFR 732.17, proposed State program amendments for approval. The amendments are contained in Senate Enrolled Act No. 41, which makes a number of changes to the Indiana Surface Mining Law at IC 13–4.1; and in House Enrolled Act No. 1339, which establishes the new State Administrative Adjudication Act at IC 4–21.5.

On July 3, 1986, OSMRE published a notice in the **Federal Register** announcing receipt of the proposed program amendments and procedures for the public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendments (51 FR 24388). The public comment period ended August 4, 1986. The public hearing scheduled for July 28, 1986, was not held because no one requested the opportunity to testify.

On October 6, 1986, OSMRE sent a letter to Indiana identifying some concerns with certain provisions of the amendments. Indiana responded on November 7, 1986, by submitting additional information and explanation concerning the proposed amendments. On December 15, 1986, OSMRE reopened the comment period for 15 days ending December 30, 1986, to provide for public comments on the additional information (51 FR 44926). In response to a request for additional response time from a commenter, OSMRE again reopened the comment period for an additional 15 days ending January 28, 1987 (January 13, 1987, 52 FR 1339.

### III. Director' Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Indiana on June 11, 1986, and modified on November 7, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII with the exception of two provisions on which action is being deferred. Only those areas of particular interest are discussed below in the specific findings. Discussion of only those provisions for which findings are made does not imply any deficiency in any provision not discussed.

*Senate Enrolled Act No. 41*

Senate Enrolled Act No. 41 amends various sections of the Indiana Code (IC).

1. IC 13–4–6–9 is amended to delete the language concerning operator appeals and to add language to apply IC 4–22–1, the Indiana Administrative Adjudication Act, to the Chapter. The Director finds that the deleted language is adequately covered in IC 4–22–1 which has previously been approved by the Director as part of the Indiana program. Therefore, the Director finds the amendment no less effective than the Federal rules for hearings and appeals at 43 CFR Part 4.

2. The definition of "surface coal mining operations" at IC 13–4.1–1–3(12) is amended to clarify that these operations include the extraction of coal

BEST COPY AVAILABLE

from coal refuse piles. A minor editorial change is also made. Although the Federal definition of "surface coal mining operations" in section 701(28) of SMCRA does not specifically list extraction from coal refuse piles, such operations are not excluded by the Federal definition. The Director, therefore, finds the amendment consistent with and no less stringent than the Federal definition.

3. IC 13–4.1–1–5 is amended to delete language which stated that article 13–4.1 was not applicable unless approved by the Office of Surface Mining or if SMCRA was held unconstitutional or invalid. It is also amended to delete language concerning applicability of the 1981 amendments to article 13.4–1 in regard to changes to corresponding Federal requirements. The Director finds that deletion of these provisions does not lessen the effectiveness or stringency of the program nor does it change the applicability of program provisions.

4. IC 13–4.1–3–3 is amended to require, in paragraph (a)(15)(E) that permit applications include a chemical analysis down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. The Director finds the amended language no less stringent than section 507(b)(15) of SMCRA and no less effective than the Federal permitting requirements in 30 CFR 780.22(b) and 784.22(b) which require such chemical analysis.

The section is further amended in paragraph (a)(20) to require the permit application to contain a listing of all notices of violation, and their final resolution, of Federal and State statutes and regulations incurred by the applicant or any subsidiary, affiliate, or person controlled by or under common control with the applicant for the three year period prior to the date of application. The Director finds the amended language consistent with and no less effective than the Federal requirements for listing of violation notices at 30 CFR 778.14(c).

IC 13–4.1–3–3 is further amended in paragraph (b) to add "the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (16 U.S.C. 470)" to the types of permit information to be kept confidential. The Director finds the amended provision to be consistent with and no less effective than the Federal rules at 30 CFR 773.13(d)(3) which include "information on the nature and location of archeological resources . . ." in the listing of confidential information.

5. A new section, IC 13–4.1–3–6, is added to the Indiana Code to provide that the regulatory authority shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, the Fish and Wildlife Coordination Act, the Migratory Bird Treaty Act of 1918, the National Historic Preservation Act, and the Bald Eagle Protection Act. The Director finds the amendment no less effective than 30 CFR 773.12 which similarly provides for coordination of review.

6. IC 13–4.1–4–1 is amended in paragraph (b) to require the director, IDNR, upon receipt of a permit application to give notice to Federal and State agencies with authority to issue permits and licenses applicable to the proposed operation in accordance with IC 13–4.1–3–6 and agencies with an interest in the proposed operations including the U.S. Department of Agriculture Soil Conservation Service, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer. The Director finds the amendment to be consistent with and no less effective than the Federal requirements at 30 CFR 773.13(a)(3)(ii).

7. Indiana has amended IC 13–4.1–4–3(a) (6), (7), (8) and (9) to modify the requirements for permit findings. Paragraph (a)(6) is modified to require that the operator demonstrate and the regulatory authority find that any operation owned or controlled "by either the applicant or a person who owns or controls the applicant" is not currently in violation of applicable State and Federal laws. The Director finds this amended provision no less effective than the Federal provision at 30 CFR 773.15(b) which contains similar requirements.

Paragraph (a)(7) requires a finding in the permit review that the applicant has satisfied requirements for approval of a long term, intensive agricultural postmining land use, if applicable. The Director finds this added provision no less effective than the Federal rule requiring this finding at 30 CFR 773.15(c)(9).

Paragraph (a)(8) of IC 13–4.1–4–3 requires a finding that the applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR Part 870 (Abandoned Mine Land fees). The Director finds this provision no less effective than the Federal rule at 30 CFR 773.15(c)(7) which contains this requirement.

Paragraph (a)(9) of IC 13–4.1–4–3 requires a finding that the operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973. This is the same as the Federal requirement at 30 CFR 773.15(c)(10); therefore, the Director finds it no less effective than the Federal rule.

8. Paragraph IC 13–4.1–4–3(c) is amended to add violations to SMCRA and any State statute enacted in response to SMCRA, to the list of violations for which a pattern of violations may be found to prohibit permit issuance. The Director finds the amended provision consistent with pattern-of-violations provisions in section 521(a)(4) of SMCRA and no less effective than the permit application violation information requirements at 30 CFR 778.14(c).

9. IC 13–4.1–4–7 is added to provide that permits are subject to conditions imposed by the regulatory authority including at a minimum the requirement for the operator to pay OSMRE all fees owed under 30 CFR 870 (Abandoned Mine Land fees). The Director finds the amended provision consistent with and no less effective than the Federal rule at 30 CFR 773.17(g) which establishes a similar permit condition.

10. IC 13–4.1–7–1 is amended to require that coal exploration operations comply with the revegetation requirements of IC 13–4.1–8–1 concerning all lands disturbed. The Federal rules at 30 CFR 815.15(e) establish standards for revegetation for all areas distrubed by coal exploration activities. The Director finds the Indiana amendment consistent with and no less effective than the Federal rule.

11. IC 13–4.1–7–5 is amended to require that persons engaged in coal exploration are subject to IC 13–4.1–11 and IC 13–4.1–12 as if they were permittees. The referenced sections contain statutory provisions for inspections, monitoring and enforcement of coal mining operations and for fines and penalties. The Director finds the amended provisions no less stringent that those in section 512 of SMCRA and no less effective than the Federal rules at 30 CFR Part 815 for coal exploration.

12. IC 13–4.1–7–6 is added to the statutory requirements for coal exploration to provide that habitats of unique or unusually high value for fish and wildlife and other related environmental values and critical

habitats of threatened or endangered species shall not be disturbed during coal exploration. The Director finds the added provision to be similar to and no less effective than the Federal provision in 30 CFR 815.15(a).

13. IC 13–4.1–8–1 is amended in paragraph (25) to provide that nothing in the article "shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, the person's interest in water resources affected by a surface coal mining operation." This amended provision reflects language in section 717(a) of SMCRA and the Director finds if no less stringent than the Federal provision.

14. IC 13–4.1–11–5 is amended in paragraph (c)(3) to provide that the effectiveness of a cessation order may be more or less than the prescribed 30 days if an informal public hearing is held. The Director finds this amendment consistent with section 521(a)(5) of SMCRA and no less effective than the rule at 30 CFR 843.15(b) which provides that the cessation order shall not expire at 30 days if the informal public hearing is held later than 30 days after service of the order.

15. IC 13–4.1–11–6 is amended to delete language which states that a person may request the director to grant temporary relief under IC 13–4.1–11–8(c) pending completion of a hearing. In a letter to Indiana dated October 6, 1986, OSMRE expressed concern that this deletion would be inconsistent with section 525(c) of SMCRA which provides the opportunity to request such temporary relief. In its response of November 7, 1986, Indiana stated that the deleted language applies only to temporary relief from show cause orders and that the deletion therefore would not be inconsistent with Federal requirements. The Director agrees that the deletion is not inconsistent with Federal requirements since the opportunity for temporary relief continues to be provided in IC 13–4.1–11–8(e), for notice of violation and cessation orders.

16. IC 13–4.1–11–8 contains editorial changes in paragraph (a) which clarify the rule concerning the request for review of notices of violation and cessation orders within 30 days from the date issued. The amendment does not change the effect of the provision, which the Director continues to find no less effective than 30 CFR 843.16(a) and no less stringent than section 525(a)(1) of SMCRA.

17. IC 13–4.1–11–8 is amended in paragraph (d) to provide that the director of the IDNR is required to issue a decision on a review of a cessation order within 30 days of receipt of the application for review, only if the cessation order has directly or indirectly ordered the ceasing of mining activities. The Director finds that the amendment is consistent with and no less stringent than section 525(b) of SMCRA.

18. Section 12 is added to IC 13–4.1–11 to provide intervention rights to persons who have a right to request a hearing under IC 4–22–1 or who have an interest that may be adversely affected by the outcome of a hearing under IC 4–22–1. This amendment is submitted in response to a requirement at 30 CFR 914.16(c)(1) which required an amendment to Indiana's regulatory provision at 310 IAC 0.5–1.14(a) to allow intervention by a person who has an interest which is or may be adversely affected by the outcome of the proceeding. The Director finds that the statutory changes are consistent with the amendment required by 30 CFR 914.16(c)(1), and provide statutory authority for Indiana to promulgate the required rule change.

19. Changes are made to IC 13–2–2.5–2, IC 13–2–2.5–3 and IC 4–21–7–1, and IC 14–4–2 is repealed. These changes do not pertain directly to the approved Indiana surface coal mining regulatory program and, therefore, do not require the Director's approval.

*House Enrolled Act No. 1339*

House Enrolled Act No. 1339 establishes Indiana's new Administrative Adjudication Act, IC 4–21.5, and will replace the current law, IC–22–1. The statute will take effect July 1, 1987.

20. Chapter 1 of Article 21.5 would establish definitions to apply throughout the article. The following terms are defined: administrative law judge, agency, agency action, court, final agency action, law, license, order, party, person, political subdivision, proceeding, rule and ultimate authority. The Director finds that these definitions do not conflict with the Federal rules for hearings and appeals procedures at 43 CFR Part 4.

21. Chapter 2 of Article 21.5 provides application provisions and creates minimum procedural rights and imposes minimum procedural duties. It provides for waiver of rights conferred by the article upon a person, by that person. It applies the article to an agency except where specifically provided otherwise.

The Chapter exempts the following agencies from the article: the governor, the State board of accounts, the State educational institutions, the employment security division and its review board, the industrial board, military officers or boards, the public service commission of Indiana, the department of State revenue and the State board of tax commissioners. It excludes certain agency actions and determinations from the article.

The Director finds that the applicability of the article is consistent with and no less effective than the applicability of 43 CFR Part 4 insofar as it applies to hearings and appeals under SMCRA.

22. Chapter 3 of IC 4–21.5 establishes adjudicative proceedings. Section 1 establishes requirements for the giving of any notice and the service of motions, rulings, orders or other filed items in an administrative proceeding under the article. Section 2 sets forth the manner in which time periods will be computed. Section 3 of the chapter requires agencies to give notice concerning an order under sections 4, 5, 6 or 8 of the chapter. It describes when an order becomes effective. Sections 4, 5 and 6 of Chapter 3 cover when notice shall be given and include such requirements as: what the notice shall include, when it becomes effective, procedures for petition for review of an order or stay of effectiveness of an order, and preliminary hearing to determine whether an order should be stayed. Section 7 of Chapter 3 establishes actions necessary to petition for review under sections 4, 5 or 6 of the chapter. Section 8 provides that an agency may issue a sanction or terminate a legal right or interest only after conducting the prescribed proceedings. The provision does not preclude an agency from issuing emergency or temporary orders.

Section 9 discusses who may act as an administrative law judge. It sets restrictions on who may serve as an administrative law judge and how he or she may qualify or be disqualified. Section 10 of Chapter 3 establishes factors that would disqualify a person to serve as administrative law judge. Section 11 establishes restrictions on ex parte communication by an administrative law judge. Section 12 lists actions of an administrative law judge that may result in disqualification. Section 13 further defines who may or may not serve as administrative law judge. Section 14 requires an administrative law judge to keep a record of proceedings, and discusses burden of proof for an affirmative defense.

Section 15 discusses who may participate in a proceeding. Section 16 covers interpreters for persons who cannot speak English. Section 17 of Chapter 3 concerns opportunity to file pleadings, motions and objections and

to submit offers of settlement. Sections 18 and 19 of Chapter 3 cover prehearing conferences.

Section 20 sets forth requirements for setting a time and place for a hearing and for giving notice of a hearing. Section 21 establishes procedures for granting intervention. Section 22 covers issuance of subpoenas, discovery orders and protective orders by the administrative law judge. Section 23 establishes provisions for motions for summary judgment and opposing affidavits. Section 24 covers default or dismissal orders. Sections 25 and 26 govern the conduct of any hearing held by an administrative law judge. Section 27 sets forth requirements for final orders. Section 28 sets requirements for conduct of proceedings under section 29, 30 and 31. Section 29 specifies actions for the ultimate authority, following an administrative law judge order. Section 30 covers review of final order of an agency, by another agency. Section 31 concerns agency jurisdiction to modify a final order. Section 32 covers public availability of records; section 33, agency requirements to maintain records. Section 34 encourages agencies to adopt procedures. Section 35 allows an agency to grant procedural rights to other persons than those conferred by the article. Sections 36 and 37 concerns Class A misdemeanors in connection with the article.

With the exception of certain provisions to be discussed below, the Director finds the chapter to be consistent with no less effective than counterpart or similar provisions of 43 CFR Part 4 as regards hearings and appeals under SMCRA.

In a letter to Indiana dated October 6, 1986, OSMRE raised some concerns with certain provisions of Chapter 3, as discussed in Findings 23–25 below.

23. Paragraph (d) of Chapter 3, section 6 provides that an order described in subsection (a) of the section becomes effective 15 days after the order is served, unless a petition for review of the order has been filed, in which case it becomes effective after all petitions filed for review have been denied. The orders described in subsection (a) would include notices of violations and cessation orders written on coal mine operations under the Indiana program. In its letter to Indiana, OSMRE noted that section 521(a)(3) of SMCRA and 30 CFR Subchapter L do not provide for such time lapse between the discovery of a violation and the issuance of a notice of violation. Indiana responded that it agreed with OSMRE's assessment and had already prepared preliminary draft legislation to correct the problem.

In order to allow Indiana to process this corrective legislation and submit it for OSMRE approval, the Director is deferring action on the provision at IC 4–21.5–3–6(d). When Indiana submits an amendment to modify the requirements, the comment period will be reopened on this provision.

24. In the same letter OSMRE expressed concern that Section 21 of Chapter 3 of House Enrolled Act No. 1339 established intervention rights that may be more exclusionary than those in 43 CFR 4.1110. In its November 7, 1986 response to OSMRE's concerns, Indiana said that "Chapter 3, section 21 of House Enrolled Act No. 1339 does not subtract from, or alter in any other way, the intervention provision already enacted by the General Assembly, IC 13–4.1–11–12."

The Director finds that Indiana's response adequately addresses OSMRE's concern. The amendment at IC 13–4.1–11–12 is discussed in Finding 18 above.

25. In its October 6, 1986 letter, OSMRE indicated concern with House Enrolled Act No. 1339, IC 4–21.5, section 25(d). This section allows the administrative law judge to impose conditions upon the parties to avoid unreasonably burdensome or repetitious presentations. Paragraph (d)(2) of the section allows the limitation of "the party's use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding." Under 43 CFR 4.1121, although the administrative law judge has great latitude during pre-trial procedures, such latitude would not extend to the trial itself and a Federal administrative law judge could not limit cross-examination. Since cross-examination is itself limited to matters raised during direct examination, attempts to further limit the right to cross-examination may infringe on a party's right to due process, resulting in reversible error.

Further, paragraph (d)(3) authorizes a State administrative law judge to order two or more parties to combine their presentations of evidence and argument, cross-examination, discovery and other participation in a proceeding. By doing so, the judge could adversely affect the due process rights of the litigants, thereby also creating reversible error. Under the Federal procedures, although a judge may limit the presentation time of the parties involved, he does not have the authority to force litigants to combine their arguments and presentations (See 43 CFR 4.1121).

In its November 7 response, Indiana agreed to "seek an amendment to remedy the problem," and submitted a copy of draft proposed language to address it. Therefore, the Director is deferring action on provisions in IC 4–21.5–3–25(d) to allow Indiana to submit further amendments to the provision. When the amendments are submitted, the comment period will be reopened for consideration of the amended provisions.

26. Chapter 4 of IC 4–21.5 establishes requirements for special proceedings and emergency and other temporary orders. Chapter 5, Judicial Review, "establishes the exclusive means for judicial review of an agency action." Chapter 6 establishes means to pursue civil enforcement of orders issued under the article. The Director finds these provisions consistent with 43 CFR Part 4.

27. Section 2 of House Enrolled Act No. 1339 repeals IC 4–22–1, the existing administrative adjudication act. The Director finds that article IC 4–21.5 added by section 1 of House Enrolled Act No. 1339 provides a replacement for IC 4–22–1 that is consistent with Federal provisions 43 CFR Part 4.

28. Section 3 of House Enrolled Act No. 1339 provides that the act "governs all proceedings, and all proceedings for judicial review or civil enforcement of agency action, commenced after June 30, 1987." The Director finds no conflict with this effective date.

29. Section 4 of the act provides that, after June 30, 1987, references to IC 4–22–1 shall be construed as references to IC 4–21.5. Section 5 provides for the introduction of legislation to correct certain references and to revise any statute that is inconsistent with the act. Section 6 establishes a committee to study the effects of pooling administrative law judges in a single agency. Section 7 establishes the effective date of sections 1 through 4 of the act as July 1, 1987, and for sections 5 and 6 as May 1, 1986. the Director finds no conflict with Federal requirements.

## IV. Public Comments

There were no comments received on the proposed amendments.

## V. Director's Decision

The Director, based on the above findings, is approving the Indiana statutory amendments as submitted on June 11, 1986, and modified on November 7, 1986, under the provisions of 20 CFR 732.17. The Federal rules at 30 CFR Part 914 are being amended to implement this decision. As noted in Findings 23 and 25 above, the Director is deferring action on two provisions: IC 4–21.5–3–6(d) and IC 4–21.5–3–25(d).

**VI. Procedural Matters**

*1. Compliance with the National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*3. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 914**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services.*

**PART 914—INDIANA**

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

**Authority:** Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 914.15 is amended by adding a new paragraph (p) as follows:

**§ 914.15 Approval of regulatory program admendments.**

* * * * *

(p) the following amendments are approved effective April 1, 1987: revisions to the Indiana Code as contained in Senate Enrolled Act No. 41 and House Enrolled Act No. 1339 submitted June 11, 1986, as modified on November 7, 1986, with the exception of the provisions at IC 4–21.5–3–6(d) and IC 4–21.5–3–25(d) on which action is deferred. Senate Enrolled Act No. 41 amends provisions at IC 13–4–6–9, IC 13–4.1–1–3, IC 13–4.1–1–5, IC 13–4.1–3–3, IC 13–4.1–3–4, IC 13–4.1–3–6, IC 13–4.1–4–1, IC 13–4.1–4–3, IC 13–4.1–4–7, IC 13–4.1–7–1, IC 13–4.1–7–5, IC 13–4.1–7–6, IC 13–4.1–8–1, IC 13–4.1–11–5, IC 13–4.1–11–6, IC 13–4.1–11–8, IC 13–4.1–11–12 and IC 13–4.1–14–1. House Enrolled Act No. 1339, effective July 1, 1987, replaces IC 4–22–1 with the new State Administrative Adjudication Act at IC 4–21.5.

[FR Doc. 87–7143 Filed 3–31–87; 8:45 am]
BILLING CODE 4310–05–M

---

**30 CFR Part 914**

## Approval of Permanent Program Amendment From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Final rule.

**SUMMARY:** OSMRE is announcing the approval of an amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On December 29, 1986, Indiana submitted an amendment to its program to amend the Indiana regulations covering applications and renewals for certification for blasters, and accompanying fees.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSMRE, has determined that the amendment meets the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the amendment. The Federal rules at 30 CFR Part 914 which codify decisions concerning the Indiana program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Room 300, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Information regarding the general background on the Indiana State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071–32108). Subsequent actions concerning the Indiana program are identified in 30 CFR 914.15 and 30 CFR 914.16.

**II. Discussion of Proposed Amendment**

On December 29, 1986, the Indiana Department of Natural Resources (IDNR) submitted to OSMRE pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The amendment modifies the Indiana regulations at 310 IAC 12–8–4 to require that an application for certification as a certified blaster be accompanied by a non-refundable fee of $80, and at 310 IAC 12–8–8 to require that blaster certification renewals be accompanied by a $25 fee. Other minor changes are made for clarification.

OSMRE published a notice in the **Federal Register** on February 10, 1987, announcing receipt of the proposed program amendments and procedures for the public comment period and for requesting a public hearing on the substantive adequacy of the proposed amendments (52 FR 4156). The public comment period ended March 12, 1987. There was no request for a public hearing and the hearing scheduled for March 9, 1987, was not held.

**III. Director's Findings**

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Indiana on December 29, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII. Indiana has amended its rules at 310 IAC 12–8–4 to provide that an application for certification as a certified blaster shall be accompanied by a non-refundable fee of $80. Indiana has amended 310 IAC 12–8–8 to provide that a certified blaster's request for renewal of certification shall be accompanied by a non-refundable fee of $25. Other changes are made in both rules, but the changes are of an editorial nature and do not change the requirements of the rules. The Director finds the addition of fee requirements

does not lessen the effectiveness of the rules; therefore, the rules remain no less effective than the Federal rules at 30 CFR 850.15(a) and (c) which concern certification and recertification of blasters.

### IV. Public Comment

No comments were received in response to the Director's request for comments.

### V. Director's Decision

The Director, based on the above findings, is approving the Indiana regulatory amendment as submitted on December 29, 1986, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 914 are being amended to implement this decision.

### VI. Procedural Matters

*1. Compliance with the National Environmental Policy Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*2. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

### List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services.*

### PART 914—INDIANA

30 CFR Part 914 is amended as follows:

1. The authority citation for Part 914 continues to read as follows:

**Authority:** Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 914.15 is amended by adding a new paragraph (q) as follows:

**§ 914.15 Approval of regulatory program amendments.**

* * * * * *

(q) Amendments to the Indiana regulations at 310 IAC 12–8–4 and 12–8–8 concerning blaster certification application and renewal, submitted by the Indiana Department of Natural Resources to OSMRE on December 29, 1986, are approved effective April 1, 1987.

[FR Doc. 87–7142 Filed 3–31–87; 8:45 am]

BILLING CODE 4310–05–M

---

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS THOMAS S. GATES (CG–51) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** March 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS THOMAS S. GATES (CG–51) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

### List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

### PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

TABLE 5

| Vessel | Number | Forward masthead light less than the required height above hull Annex I, section 2(a)(i) | Aft masthead light less than 4.5 [illegible] forward masthead light. Annex I, section 2(a)(ii) | Masthead lights not over all other lights and [illegible] Annex I, section [illegible] | [illegible] separation of masthead lights used when towing less than required by Annex I, section 2(a)(i) | Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, section 2(b) | Forward masthead light not in forward quarter of ship Annex I, section 3(a) | [illegible] masthead light less then ½ ship's length aft of forward masthead light. Annex I, section (3)(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|---|---|---|---|
| USS THOMAS S. GATES | CG-51 | | | | | | X | X | 38 |

Dated: March 18, 1987.

Approved:

**John Lehman,**

*Secretary of the Navy.*

[FR Doc. 87-7086 Filed 3-31-87; 8:45 am]

BILLING CODE 3810-AE

## POSTAL SERVICE

### 39 CFR Part 10

### Express Mail; International Service to Indonesia

**AGENCY:** Postal Service.

**ACTION:** Final action on Express Mail International Service to Indonesia.

**SUMMARY:** Pursuant to an agreement with the postal administration of Indonesia, the Postal Service intends to begin Express Mail International Service with Indonesia at postage rates indicated in the tables below. Service is scheduled to begin on May 1, 1987.

**EFFECTIVE DATE:** May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Leon W. Perlinn, [202] 268-2673.

**SUPPLEMENTARY INFORMATION:** By a notice published in the **Federal Register** on February 25, 1987 [52 FR 5551], the Postal Service announced that it was proposing to begin Express Mail International Service to Indonesia. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1], and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin Express Mail International Service with Indonesia on May 1, 1987 at the rates indicated in the table below.

**Lists of Subjects in 39 CFR Part 10**

Postal Service, Foreign relations.

### PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

**Authority:** 5 U.S.C. 552[a], 39 U.S.C. 401, 404, 407, 408.

INDONESIA—EXPRESS MAIL INTERNATIONAL SERVICE

| Custom designed service [1] [2] up to and including— | | On demand service [2] up to and including— | |
|---|---|---|---|
| Pounds | Rate | Pounds | Rate |
| 1 | $31.00 | 1 | $23.00 |
| 2 | 36.90 | 2 | 28.90 |
| 3 | 42.80 | 3 | 34.80 |
| 4 | 48.70 | 4 | 40.70 |
| 5 | 54.60 | 5 | 46.60 |
| 6 | 60.50 | 6 | 52.50 |
| 7 | 66.40 | 7 | 58.40 |
| 8 | 72.30 | 8 | 64.30 |
| 9 | 78.20 | 9 | 70.20 |
| 10 | 84.10 | 10 | 76.10 |
| 11 | 90.00 | 11 | 82.00 |
| 12 | 95.90 | 12 | 87.90 |
| 13 | 101.80 | 13 | 93.80 |
| 14 | 107.70 | 14 | 99.70 |
| 15 | 113.60 | 15 | 105.60 |
| 16 | 119.50 | 16 | 111.50 |
| 17 | 125.40 | 17 | 117.40 |
| 18 | 131.30 | 18 | 123.30 |
| 19 | 137.20 | 19 | 129.20 |
| 20 | 143.10 | 20 | 135.10 |
| 21 | 149.00 | 21 | 141.00 |
| 22 | 154.90 | 22 | 146.90 |

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the **Federal Register** as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87-7062 Filed 3-31-87; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[PP 5F3271/R862; FRL-3176-5]**

### Pesticide Tolerance for Permethrin

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for the combined residues of the insecticide permethrin and its metabolites in or on the raw agricultural commodity cherries. This regulation to establish a maximum permissible level for the combined residues of permethrin was requested pursuant to petitions by FMC Corp.

**EFFECTIVE DATE:** Effective on April 1, 1987.

**ADDRESS:** Written objections, identified by the document control number [PP 5F3271/R862], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2400.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of August 21, 1985 (50 FR 33840), which announced that FMC Corp., Agricultural Chemical Group, 2000 Market Street, Philadelphia, PA 19103, had submitted pesticide petition 5F3271 proposing to establish tolerances in or on the raw agricultural commodities cherries and plums, respectively, for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and

its metabolites (±)-*cis, trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid (DCVA) and 3-phenoxyphenyl methanol (3-PBA). On May 21, 1986, the company withdrew the request for a tolerance on plums.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted and other relevant material have been evaluated and discussed in detail in a final rule document on permethrin published in the **Federal Register** of October 13, 1982 (47 FR 45008).

Granting this tolerance will increase the theoretical maximum residue contribution from 0.028854 to 0.028904 milligrams/kg per day. This increase is slight, and thus the discussion of the toxicological concerns applies without revision to the newly listed commodity. The percentages of the acceptable daily intake used will increase from 57.71 to 57.81.

The metabolism of permethrin is adequately understood, and an adequate analytical method, gas-liquid chromatography with an electron capture detector or a mass spectrometer detector, is available for enforcement purposes. No actions are pending against continued registration of permethrin, nor are any other considerations involved in establishing the tolerances.

The tolerance established by amending 40 CFR 180.378 will be adequate to cover residues in cherries. There are no feed items associated with cherries, and label restrictions preclude the grazing of livestock in treated orchards or the feeding of cover crops from treated orchards to livestock. There is no reasonable expectation of secondary residues in meat, milk, poultry, and eggs as a result of this use.

The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance will protect the public health, and it is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 16, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.378(b) is amended by adding and alphabetically inserting the following commodity, to read as follows:

**§ 180.378 Permethrin; tolerances for residues.**

* * * * *

(b) * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | * |
| Cherries | 3.0 |
| * * * * * | * |

[FR Doc. 87-6716 Filed 3-31-87; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

**[PP 4F3108/R856A; FRL 3178-7]**

**Pesticide Tolerances for Fenarimol**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** This rule confirms the effective date for tolerances for the fungicide fenarimol in or on certain raw agricultural commodities published in the **Federal Register** of October 30, 1986.

**EFFECTIVE DATE:** Effective on December 1, 1986.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule in 40 CFR 180.421, published in the **Federal Register** of October 30, 1986 (51 FR 39660), which established tolerances for the fungicide fenarimol [alpha(2-chlorophenyl)-alpha-(4-chloro-phenyl)-5-pyrimidinemethanol] in or on certain raw agricultural commodities.

In that document, the Agency stated that because the proposed tolerance for milk at .003 part per million petitioned by Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285 was inadvertently omitted in the proposed rulemaking published in the **Federal Register** of August 8, 1984 (49 FR 31756), the Agency deferred the effective date of the regulation to December 1, 1986 to give interested parties the opportunity to comment or file objection to the regulation.

There were no comments or objections filed in response to the regulation and accordingly the final rule is effective as of December 1, 1986.

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87-7125 Filed 3-31-87; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

**[PP 5E3244/R874; FRL 3178-6]**

**Pesticide Tolerance for Oxytetracycline**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule amends the currently established tolerance regulation for residues of the

oxytetacycline calcium complex and oxytetracycline hydrochloride in or on pears. This amendment removes the 0.1 part per million (ppm) tolerance for residues of oxytetracycline complex in or on pears resulting from application of the pesticide up to 60 days before harvest and retains a 0.35 ppm tolerance for residues of oxytetracycline in or on pears. This regulation was requested by the Interregional Research Project No. 4 (IR–4).

**EFFECTIVE DATE:** Effective on April 1, 1987.

**ADDRESS:** Written objections, identified by the document control number [PP 5E3244/R874], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460.

Office location and telephone number: Rm. 718, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2310).

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the **Federal Register** of January 29, 1987 (52 FR 2955), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 5E3244 to EPA on behalf of Dr. Robert Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations of California and Washington which proposed that the established tolerance for residues of the pesticide oxytetracycline calcium complex in or on the raw agricultural commodity pears be amended by deleting reference to the minimum number of days the pesticide may be applied prior to harvest. The tolerance is currently established in 40 CFR 180.337 at a level of 0.1 ppm in or on the raw agricultural commodity pears from spray applications of the pesticide up to 60 days before harvest. 40 CFR 180.337 also lists a tolerance for residues of oxytetracycline on pears at 0.35 ppm resulting from application of oxytetracycline hydrochloride as a tree infusion after harvest and prior to formation of new blooms. The petitioner proposed that the preharvest interval (i.e., "up to 60 days prior to harvest") be deleted from the tolerance expression and instead be regulated as part of the pesticide product labeling. The Agency concludes that it is not necessary to include the method of application and the time at which treatment may occur in the tolerance rule for oxytetracycline since these limitations are regulated as part of the labeling for the pesticide product. Additionally, the Agency concludes that the tolerance should be expressed as residues of oxytetracycline rather than oxytetracycline hydrochloride and the oxytetracycline complex as currently expressed. The modification which revises the manner in which residues are expressed obviates the need for two separate tolerances for pears. Consequently, only the higher tolerance level of 0.35 ppm will be retained. The existing tolerance for peaches is expressed as residues of oxytetracycline, thus, such a revision would make 40 CFR 180.337 more consistent.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the regulation will protect the public health. Therefore the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 1987.

**Edwin F. Tinsworth,**

*Acting Director, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.337 is revised to read as follows:

**§ 180.337 Oxytetracycline; tolerances for residues.**

Tolerances are established for residues of the pesticide oxytetracycline in or on the following raw agricultural commodities:

| Commodities | Parts per million |
|---|---|
| Peaches | 0.1 |
| Pears | 0.35 |

[FR Doc. 87–7126 Filed 3–31–87; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 799**

**[OPTS–47002G; FRL–3178–8]**

**Chlorinated Benzenes; Final Test Rule; Modification**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In accordance with 40 CFR 790.55, EPA is modifying the test rule reporting requirements for submission of study plans for the reproductive effects testing of 1,2- and 1,4-dichlorobenzene and the reporting requirements for submission of the final test data for the developmental toxicity testing of 1,2,4,5-tetrachlorobenzene promulgated under section 4 of the Toxic Substances Control Act (TSCA).

**EFFECTIVE DATE:** Effective on April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202) 554–1404.

**SUPPLEMENTARY INFORMATION:** EPA promulgated a final test rule in the **Federal Register** of July 8, 1986 (51 FR 24657) requiring health effects testing of certain chlorinated benzenes. EPA is

modifying the reporting requirements for the dichlorobenzenes (DCBs) test rule at 40 CFR 799.1052 and for the 1,2,4,5-tetrachlorobenzene (1,2,4,5-TCB) test rule at 40 CFR 799.1054.

## I. Dichlorobenzenes

On November 7, 1986, the Chlorobenzene Producers Association (CPA) and the Chemical Manufacturers Association Chlorobenzenes Program Panel (CMA–CPP) petitioned EPA under section 21 of TSCA to reconsider and withdraw the July 8, 1986 test rule for reproductive effects testing of 1,2- and 1,4-dichlorobenzene (Ref. 1). The Agency denied the CPA and CMA–CPP petition. The basis for the Agency's decision was published in the **Federal Register** of February 13, 1987 (52 FR 4622).

The petitioners also requested an extension of the reporting deadline for submission of test data (Ref. 1). The petitioners suggested that the Agency delay the deadline date for submission of final reports until a date 29 months after a decision was reached on the petition, thereby preserving the original period between the effective date of the rule and the deadline for final reports. The Agency believes that there is sufficient time to conduct the reproductive studies on the DCBs and to submit the final reports by the existing reporting deadline of January 21, 1989. Therefore, in the notice denying the petition, EPA also denied the petitioners' request for an extension of the reporting deadline for submission of test data for the reproductive effects studies on the DCBs. However, the Agency decided to waive the requirement that the study plans be submitted no later than 45 days before the start of the studies in order to allow the test sponsors to begin the studies immediately. Instead, the study plans would be submitted no later than the start of the studies.

Because the modification to the reporting requirements for submission of the study plans for the reproductive effects studies for the DCBs clearly does not pose any substantive issues, the Agency in accordance with the procedures in 40 CFR 790.55 approved this modification without public comment so as not to delay the conduct of the testing. In accordance with the procedures in 40 CFR 790.55, EPA is publishing the modification to the reporting requirements for submission of the study plans for the reproductive effects studies for the DCBs in the **Federal Register** through this document.

## II. 1,2,4,5-Tetrachlorobenzene

On August 18, 1986, a letter on behalf of Standard Chlorine Chemical Co., Inc. was submitted to EPA requesting reconsideration of the July 8, 1986 test rule for developmental toxicity and reproductive effects testing of 1,2,4,5-TCB (Ref. 2). On January 7, 1987, EPA responded by letter that the Agency had decided not to reopen the rulemaking for 1,2,4,5-TCB (Ref. 3).

Standard Chlorine also requested an extension of the reporting deadlines for submission of the final test data from the date of EPA's decision on its reconsideration request (Ref. 4). Because of the time necessary to respond to their letter, the Agency stated in its January 1987 letter that EPA had decided to extend the reporting deadline for submission of the final report for the developmental toxicity study for 1,2,4,5-TCB by 4 months (i.e., to December 21, 1987) to allow sufficient time for conduct of this study and submission of the final report. EPA believes that there is sufficient time for the conduct of the reproductive effects study for 1,2,4,5-TCB and submission of the final report by the existing deadline of January 21, 1989, and therefore decided not to extend the reporting deadline for this study.

The Agency determined that obtaining comment on the modification to the reporting requirement for submission of the final test data for the developmental toxicity study for 1,2,4,5-TCB would be impracticable and would further delay the start of testing. Therefore, the Agency approved this modification without public comment. In accordance with the procedures in 40 CFR 790.55, EPA is publishing in this **Federal Register** notice the modification to the reporting requirements for submission of the final test data from the developmental toxicity study on 1,2,4,5-TCB.

## III. Public Record

### *A. Supporting Documentation*

EPA has established a public record for this rulemaking [docket number OPTS–47002G]. The record includes the information considered by the Agency in developing this decision.

### *B. References*

(1) Chlorobenzene Producers Association and the Chemical Manufacturers Association Chlorobenzenes Program Panel. Petition for reconsideration and partial withdrawal of final test rule for 1,2- and 1,4-dichlorobenzene. (November 7, 1986).

(2) Paul, Hastings, Janofsky and Walker. Letter from Charles A. Patrizia to Edwin Tinsworth, U.S. EPA. (August 18, 1986).

(3) U.S. Environmental Protection Agency. Letter from Charles L. Elkins to Charles A. Patrizia of Paul, Hastings, Janofsky and Walker. [January 7, 1987).

(4) Paul Hastings, Janofsky and Walker. Letter from R. Bruce Dickson to Charles Elkins, U.S. EPA. (October 11, 1986)

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. G–004, NE Mall, 401 M St., SW., Washington, DC 20460.

### List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals Recordkeeping and reporting requirements.

Dated: March 24, 1987.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

## PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, 2625.

2. In § 799.1052 by adding new paragraph (d)(1)(ii)(C), to read as follows:

**§ 799.1052 Dichlorobenzenes.**

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(C) Study plans shall be submitted to the Agency no later than the initiation of each of the tests.

* * * * *

3. In § 799.1054 by revising paragraph (c)(2)(ii)(A), to read as follows:

**§ 799.1054 1,2,4,5-Tetrachlorobenzene.**

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) The developmental toxicity testing shall be completed and the final results submitted to the Agency within 16 months of the effective date of the test rule.

* * * * *

[FR Doc. 87–7127 Filed 3–31–87; 8:45 am]

BILLING CODE 6560–50–M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 201-32

[FIRMR Amendment 3]

### GSA Board of Contract Appeals ADP Protests

**AGENCY:** Information Resources Management Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This regulation prescribes policies and procedures for all Federal agencies involved with GSA Board of Contract Appeals (GSBCA) automatic data processing (ADP) protests authorized under Pub. L. 98–369 as amended by Pub. L. 99–500 (40 U.S.C. 759(f), as amended). The regulation addresses responsibilities of all Federal agencies in GSBCA ADP protest cases. The intent is to provide policies and procedures applicable to all Federal agencies involved with GSBCA ADP protests.

**EFFECTIVE DATE:** June 1, 1987, but may be observed earlier.

**FOR FURTHER INFORMATION CONTACT:** William R. Loy, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566–0194 or FTS, 566–0194.

**SUPPLEMENTARY INFORMATION:** (1) Section 2713 of the Competition in Contracting Act of 1984 (Pub. L. 98–369), as amended by Pub. L. 99–500 (40 U.S.C. 759(f), as amended), provided that protests involving certain procurements for ADP resources may be filed by interested parties with the GSBCA. The GSBCA issued its "Rules of Procedure" which govern proceedings for ADP protest cases in 48 CFR Part 6101.

(2) General procurement and contracting implementation provisions covering all protests against Executive agencies were published in the Federal Acquisition Regulation (FAR) at 48 CFR Part 33.

(3) A new Subpart 201–32.4, GSA Board of Contract Appeals ADP Protests, is added to the FIRMR. The FIRMR contains the special procurement and contracting provisions governing all procurements by Federal agencies for ADP resources that are subject to GSBCA protest resolution. It is therefore appropriate that the FIRMR also contain the provisions applicable to all Federal agencies regarding GSBCA protests involving these procurements. The special provisions of the new FIRMR subpart are necessary notwithstanding the general provisions regarding GSBCA protests in FAR 33.105 which are applicable only to Executive agencies (see § 201–32.400).

(4) A notice of proposed rulemaking for this Amendment was published in the **Federal Register** (50 FR 43258, October 24, 1985) indicating the availability of the issuance for review and comments by interested parties. No comments were received.

(5) Explanation of the provisions being added by this issuance follows:

a. The table of contents of Part 201–32 is amended by adding entries for Subpart 201–32.4 and §§ 201–32.400 through 201–32.404.

b. Section 201–32.400 sets forth the scope of the new subpart, notwithstanding the provisions in FAR 33.105 which are applicable only to Executive agencies.

c. Section 201–32.401 references the GSBCA authorization.

d. Section 201–32.402, with five subsections, incorporates the GSBCA "Rules of Procedure" by reference and provides brief outlines regarding the parties, conference, suspension hearing, merits hearing, and decision.

e. Section 201–32.403, with eight subsections, addresses agency responsibilities regarding protest notice, conference participation, suspension decision, protest file, protest answer, merits hearing participation, merits decision, and costs award.

f. Section 201–32.404 outlines the GSBCA rule regarding GSA participation in the protest procedure.

(6) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

### List of Subjects in 41 CFR Part 201–32

Information resources activities, Government procurement, Hearing and appeal procedures, Computer technology, Competition. Chapter 201 of Title 41 of the Code of Federal Regulations is amended as set forth below:

## PART 201–32—CONTRACTING FOR ADP RESOURCES

1. The table of contents of Part 201–32 is amended by adding entries for Subpart 201–32.4 and §§ 201–32.400 through 201–32.404; and the authority citation for the part is revised to read as follows:

**Subpart 201–32.4 GSA Board of Contract Appeals ADP Protests**

201–32.400 Scope of subpart.
201–32.401 GSBCA authorization.
201–32.402 GSBCA rules.
201–32.402–1 Parties.
201–32.402–2 Conference.
201–32.402–3 Suspension hearing.
201–32.402–4 Merits hearing.
201–32.402–5 Decision.
201–32.403 Agency responsibilities.
201–32.403–1 Protest notice.
201–32.403–2 Conference participation.
201–32.403–3 Suspension decision.
201–32.403–4 Protest file.
201–32.403–5 Protest answer.
201–32.403–6 Merits hearing participation.
201–32.403–7 Merits decision.
201–32.403–8 Costs award.
201–32.404 GSA participation.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 99 Stat. XXX; 40 U.S.C. 751(f).

2. Part 201–32 is amended by adding Subpart 201–32.4 to read as follows:

## Subpart 201–32.4—GSA Board of Contract Appeals ADP Protests

### § 201–32.400 Scope of subpart.

This subpart prescribes policies and procedures applicable to all Federal agencies involved with ADP protests filed by interested parties with the GSA Board of Contract Appeals (GSBCA), notwithstanding the general provisions in FAR 33.105 which are applicable only to Executive agencies.

**Note:** Other general procurement and contracting rules in the FAR pertaining to protests apply (including use of the provision at FAR 52.233–2 and the clause at FAR 52.233–3).

### § 201–32.401 GSBCA authorization.

Under Pub. L. 98–369, as amended (40 U.S.C. 759(f) as amended), the GSBCA is authorized to hear and decide protests by interested parties involving any procurements for ADP resources by Federal agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), including procurements subject to GSA delegations of procurement authority (see also § 201–1.102 and Subpart 201–23.1).

### § 201–32.402 GSBCA rules.

The GSBCA "Rules of Procedure," applicable to all parties concerned with a GSBCA protest case, appear in 48 CFR Part 6101. The GSBCA rules are incorporated herein by reference.

**§ 201-32.402-1 Parties.**

(a) Within specified time limits, an interested party may file a protest with the GSBCA before or after award of a contract for ADP resources. The GSBCA is authorized (40 U.S.C. 759(f)(1)) to review any decision by a Federal agency contracting officer that is alleged to violate a statute or regulation (see GSBCA Rules 3, 5, 7, and 8—48 CFR 6101.3, 6101.5, 6101.7, and 6101.8).

(b) On the same day a protest is filed with the GSBCA, the protester must serve a copy of the protest on the contracting officer whose decision or action is being protested.

(c) Other potential parties may also participate in the protest case by filing for intervention with the GSBCA within specified time limits.

(d) The GSBCA may dismiss a protest that it determines is frivolous, untimely filed, or fails to state a valid basis for protest.

**§ 201-32.402-2 Conference.**

The GSBCA will ordinarily hold a conference of the parties within 6 working days after the protest is filed (see GSBCA Rules 10 and 15—48 CFR 6101.10 and 6101.15).

**§ 201-32.402-3 Suspension hearing.**

An interested party may request the GSBCA, within specified time limits, to hold a hearing on suspension of procurement authority pending a decision on the merits of a protest. The suspension hearing will be held within 10 calendar days after the protest is filed (see GSBCA Rules 19 and 21—48 CFR 6101.19 and 6101.21).

**§ 201-32.402-4 Merits hearing.**

Within specified time limits, a party may request the GSBCA to hold a hearing on the merits of a protest. The merits hearing will be held within 25 working days after the protest is filed (see GSBCA Rules 9, 19 and 21—48 CFR 6101.9, 6101.19, and 6101.21).

**§ 201-32.402-5 Decision.**

(a) The GSBCA decision on the merits of a protest will be issued within 45 working days after the protest is filed. However, the GSBCA Chairman may determine that circumstances require a longer period (see GSBCA Rules 29—48 CFR 6101.29).

(b) The GSBCA is authorized (40 U.S.C. 759(f)(5)(B)) to decide that a protested Federal agency action violates a statute, regulation, or the conditions of a GSA delegation of procurement authority.

(c) The GSBCA is also authorized (40 U.S.C. 759(f)(5)) to award protest costs, including reasonable attorney fees and bid and proposal preparation costs, to an appropriate interested party (see GSBCA Rules 35 and 36—48 CFR 6101.35 and 6101.36).

(d) A GSBCA decision may be appealed to the United States Court of Appeals for the Federal Circuit (see GSBCA Rule 37—48 CFR 6101.37).

**§ 201-32.403 Agency responsibilities.**

(a) The GSBCA Rules of Procedures provide the specific responsibilities of a Federal agency involved with a GSBCA protest case. A single copy is available upon request to the GSBCA, telephone (202) 566-0116 or FTS, 566-0116. The GSBCA rules require expeditious agency responses to an ADP protest case.

(b) When a Federal agency files a document with the GSBCA, it must serve a copy on every other party within 1 working day after the document is filed. Documents filed *in camera* need not be served on other parties (see GSBCA Rules 3 and 12—48 CFR 6101.3 and 6101.12).

**§ 201-32.403-1 Protest notice.**

(a) Within 1 working day after receipt of a copy of the protest, the Federal agency contracting officer shall give oral or written notice of the protest to other potential parties in the case (see GSBCA Rule 5—48 CFR 6101.5).

(b) Within 1 working day after receipt of a copy of the protest, the contracting officer shall also give oral written notice of the protest to the General Services Administration, Attention: Director, Authorizations and Management Reviews Division (KMA), 18th and F Streets, NW, Washington, DC 20405, telephone (202) 566-1126 or FTS, 566-1126. (The GSBCA rules also provide that this notice may alternatively be given to the GSA official delegating procurement authority to the agency.)

(c) Within 5 working days after receipt of the protest, the contracting officer shall give the GSBCA written notification as to whether the required protest notice was provided. A list of all parties notified shall be included.

**§ 201-32.403-2 Conference participation.**

The Federal procuring agency is responsible for participating in any conference of the parties that the GSBCA will ordinarily hold within 6 working days after the protest is filed (see GSBCA Rules 10 and 15—48 CFR 6101.10 and 6101.15).

**§ 201-32.403-3 Suspension decision.**

(a) Upon request of an interested party, the GSBCA is authorized (40 U.S.C. 759(f)(2)(b)) to suspend procurement authority unless the Federal procuring agency establishes (at the suspension hearing held within 10 calendar days after the protest is filed) that: (See GSBCA Rules 19 and 21—48 CFR 6101.19 and 6101.21.)

(1) Absent GSBCA action, contract award (if already made) is likely to occur within 10 calendar days; and

(2) Urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the GSBCA decision.

(b) The GSBCA suspension decision may be oral, to be reduced to writing as soon as practicable.

(c) Upon a GSBCA decision to suspend procurement authority pending a decision on the merits of a protest, the Federal procuring agency is responsible for taking any necessary actions to fully comply with the GSBCA's suspension decision including, as appropriate:

(1) Withholding contract award; or

(2) Suspending contract performance. (Under 40 U.S.C. 759(f)(3)(B), procurement authority shall be suspended for any ADP resources under a contract which are not previously delivered and accepted before the GSBCA suspension decision.)

**§ 201-32.403-4 Protest file.**

(a) The Federal agency contracting officer is responsible for submitting a protest file to the GSBCA within 10 working days after the protest is filed. The protest file exhibits shall consist of all documents (and other tangible things) relevant to the protest and the contracting officer's decision which has been protested. The GSBCA may postpone or dispense with the submission of any or all protest file exhibits (see GSBCA Rules 4 and 12—48 CFR 6101.4 and 6101.12).

(b) The protest file exhibits shall include:

(1) The contracting officer's decision, if any, from which the protest is taken;

(2) The contract, if any, including modifications, specifications, plans, drawings;

(3) All correspondence between or among the parties that is relevant to the protest, if any;

(4) Affidavits or statements of any witnesses on the matter under protest, and transcripts of any testimony taken before the filing of the protest;

(5) All documents and other tangible things which the contracting officer relied in making the decision or in taking the action protested, including a copy of the agency procurement request, the GSA delegation of procurement authority (if any) and any correspondence relating thereto;

(6) The abstract of bids, if any;

(7) A copy of the solicitation, protester's offer (submit *in camera* as necessary), and a copy of any bid relevant to the protest if bid opening has occurred and no contract has been awarded;

(8) In a protest of a negotiated procurement when no award has been made, a copy of any offer being considered for award and which is relevant to the protest (ordinarily, these documents will be submitted *in camera*);

(9) Any existing additional evidence or information deemed necessary to determine the merits of the protest; and

(10) A list identifying the specific documents filed with the GSBCA giving sufficient details necessary for their recognition. (However, the list must not reveal the number and identity of the offerors whose proposals are filed *in camera* and should include an identifying statement, e.g., "Proposal(s) being considered for award.")

(c) The contracting officer is responsible for serving a copy of the protest file on all other parties at the same time it is filed with the GSBCA. A copy of the protest file exhibit listing documents filed with the GSBCA shall be included. However, copies of documents submitted *in camera* to the GSBCA or documents previously furnished need not be served on other parties.

**§ 201-32.403-5 Protest answer.**

The Federal procuring agency is also responsible for filing its agency protest answer with the GSBCA within 15 working days after the protest is filed. The protest answer shall contain the agency's defenses, findings, actions, and recommendations in the matter. At the same time, the Federal agency shall serve a copy of the protest answer on all other parties (see GSBCA Rule 7—48 CFR 6101.7).

**§ 201-32.403-6 Merits hearing participation.**

The Federal procuring agency is responsible for participating in any hearing on the merits of a protest held within 25 working days after the protest is filed (see GSBCA Rules 9, 19 and 21—48 CFR 6101.9, 6101.19, and 6101.21).

**§ 201-32.403-7 Merits decision.**

(a) The Federal procuring agency will receive a copy of the GSBCA decision on the merits of the protest. This decision will ordinarily be issued within 45 working days after the protest is filed (see GSBCA Rule 29—48 CFR 6101.29).

(b) The Federal procuring agency is responsible for taking any necessary actions to fully comply with the GSBCA decision including, as appropriate:

(1) Amendment or cancellation of a solicitation; or

(2) Modification or termination of a contract. (Under 40 U.S.C. 759(f)(6)(B), a contract shall be presumed valid as to all ADP resources delivered and accepted under the contract before the GSBCA decision.)

**§ 201-32.403-8 Costs award.**

(a) The GSBCA is authorized (40 U.S.C. 759(f)(5)) to award protest costs to an appropriate interested party. Within 30 calendar days after a decision sustaining a protest, an interested party may submit a motion for payment to the GSBCA. The Federal procuring agency will have 20 calendar days after this submission for a response (see GSBCA Rules 35 and 36—48 CFR 6101.35 and 6101.36).

(b) The GSBCA will issue its determination for the amount of protest costs allowed. Payment of these GSBCA awards may be made in accordance with 31 U.S.C. 1304.

**§ 201-32.404 GSA participation.**

(a) GSA may make a request to the GSBCA to participate in a protest case against any Federal procuring agency. GSA is eligible to intervene on the question of whether a delegation of procurement authority (DPA) is required, or whether the Federal procuring agency has failed to meet any condition of a DPA granted by specific request or by regulation (see GSBCA Rule 5—48 CFR 6101.5).

(b) When GSA procures ADP resources for another Federal agency, the requiring agency may be permitted by the GSBCA to participate in a protest case against that GSA procurement action.

(c) Information and asistance regarding the GSBCA ADP protest process covered by this Subpart 201-32.4 may be obtained by contacting GSA's Information Resources Management Service (KMA), Washington, DC 20405, telephone (202) 566-1126 or FTS, 566-1126.

Dated: February 24, 1987.

**T.C. Golden,**

*Administrator of General Services.*

[FR Doc. 87-7110 Filed 3-31-87; 8:45 am]

BILLING CODE 6820-25-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 86-268; RM-5265]**

## Radio Broadcasting Services; Livingston, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 222C2 for Channel 221A at Livingston, Texas, and modifies the license of Station KETX-FM to specify operation on the new frequency, at the request of Polk County Broadcasting Company. A site restriction 4.3 kilometers (2.7 miles) west of the community is required. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-268, adopted February 26, 1987, and released March 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

## PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel "221A" to read "222C2" for Livingston.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-7147 Filed 3-31-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-108; RM-5008]

## Television Broadcasting Services; Bad Axe, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document assigns UHF Television Channel 41– to Bad Axe, Michigan, in response to a petition filed by Bad Axe Broadcasting. There is a site restriction 4 miles northeast of the community to prevent a conflict with Station WUHQ–TV, Battle Creek, Michigan. Since Bad Axe is located within 250 miles of the common U.S.-Canadian border, Canadian concurrence has been obtained. Assignment of UHF Channel 41– to Bad Axe could provide the community with its first commercial television channel.

With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–108, adopted February 10, 1987, and released March 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Television broadcasting.

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C 154, 303.

### § 73–606(b) [Amended]

2. In § 73.606, the Table of Assignments, the entry for Bad Axe, Michigan, is revised to add Channel 41–.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–7148 Filed 3–31–87; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1207 and 1249

[No. 38904]

## Elimination of Accounting and Reporting Requirements for Motor Carriers of Property

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** Subsequent to Notice of Proposed Rulemaking (50 FR 7201, February 21, 1985) and comment, the Commission has decided to adopt new accounting and reporting regulations for motor carriers of property. The Uniform System of Accounts (49 CFR Part 1207) will remain in the Code of Federal Regulations for reference purposes but no longer will be prescribed as the basis for motor carrier accounting. The quarterly report form will be reduced to a one page format with only summary data elements. The annual report form will be reduced to only ten pages. Motor carriers which are not Instruction 27 carriers will not be required to complete the expense matrix schedule.[1] Only Class I motor carriers will be required to file the new report forms with the Commission. Class I contract motor carriers that derive 100 percent of their operating revenues from contract carriage shall be exempt from reporting. Nonreporting motor carriers shall notify the Commission when annual operating revenues reach the Class I level and when conditions change to subject them to Commission reporting.

The effect of these changes is to assure that financial information used regularly and frequently by the Commission are reported. This should result in significant cost savings and the reduction of over 535,000 burden hours annually in Commission reporting.

**DATES:** The rules are effective for the reporting year beginning January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Lee, (202) 275–7510.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

[1] Instruction 27 motor carriers (49 CFR 1207, Instruction 27) are those which derive 75 percent or more of their revenues from intercity transportation of general commodities.

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

This revision will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20503.

### List of Subjects in 49 CFR Parts 1207 and 1249

Motor carriers, Uniform System of Accounts, Reporting and Recordkeeping Requirements.

Authority: 49 U.S.C. 11142 and 11145; and 5 U.S.C. 553.

Decided: March 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Chairman Gradison concurred in the decision and commented with a separate expression. Vice Chairman Lamboley and Commissioner Simmons dissented with separate expressions.

Noreta R. McGee,

*Secretary.*

Parts 1207 and 1249 of Title 49 of the Code of Federal Regulations are amended as follows:

### PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

1. In 49 CFR Part 1207, the authority citations following Definitions; Class I and Class II Motor Carrier Instructions, numbers 2, 8, 15, 19, 22, 23, 28, 29, 30, 31, 35, and 36; Class I and Class II Motor Carrier Balance Sheet Account Explanations, numbers 1170, 1321, 1449, 1520, 2010, 2021, 2161, 2190, 2311, 2321, 2331, 2332, 2334, 2420, 2511, 4400, 4690, 4810, 4830, 4840, 4890, 7990, 8660, 8690, 8700, 8720, and 8400/9400 are removed, and the authority citation for Part 1207 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10751, 11142 and 11145; 5 U.S.C. 553.

2. The existing text of Part 1207 is designated as new § 1207.2 *Uniform System of Accounts for common and contract motor carriers of property.*

3. New § 1207.1 *Uniform System of Accounts for motor carriers of property not prescribed,* is added to Part 1207 as follows:

**§ 1207.1 Uniform System of Accounts for common and contract motor carriers of property not prescribed.**

The Uniform System of Accounts for motor carriers of property found at § 1207.2, *Uniform System of Accounts for common and contract motor carriers of property*, shall not be prescribed for regulated motor carriers. The Uniform System of Accounts is herein left in place for reference purposes only for motor carrier accounting. Motor carriers may follow generally accepted accounting principles for all accounting matters. For the reporting requirements for regulated motor carriers, see §§ 1249.1 and 1249.2 of Title 49, Code of Federal Regulations. This provision is effective beginning January 1, 1987 and thereafter.

## PART 1249—REPORTS OF MOTOR CARRIERS

1. The authority citation for Part 1249 is revised to read as follows:

**Authority:** 49 U.S.C. 10311, 10321, 11144, and 11145 and 5 U.S.C. 553.

2. Section 1249.1 is revised to read as follows:

**§ 1249.1 Annual and quarterly reports of Class I motor carriers of property, Class I motor carriers of household goods, and Class I dual authority carriers.**

(a) All Class I motor carriers of property shall complete and file Motor Carrier Quarterly Report Form QFR (Form QFR) and Annual Report Form M (Form M) as required. This shall apply to Class I motor carriers of property, including household goods and dual authority carriers. Class I contract motor carriers of property that derive 100 percent of operating revenues from contract carriage shall be exempt from filing Form M. Class II and Class III motor carriers of property are not required to file Form M or Form QFR.

(b) Motor Carrier Annual Report Form M shall be used to file annual selected motor carrier data. Motor Carrier Quarterly Report Form QFR shall be used to file quarterly summary data. The quarterly accounting period shall end on March 31, June 30, September 30, and December 31. The quarterly report shall be filed within 30 days after the end of the reporting quarter. The annual report shall be filed on or before March 31 of the year following the year to which it relates. The annual accounting period shall be based either (1) on the 31st day of December in each year, or (2) an accounting year of thirteen 4-week periods ending at the close of the last seven days of each calendar year. A carrier electing to adopt an accounting year of thirteen 4-week periods shall file with the Commission a statement showing the day on which its accounting year will close. A subsequent change in the accounting period may not be made except by authority of the Commission.

(c) Form M and Form QFR shall be filed in duplicate to The Bureau of Accounts, Interstate Commerce Commission, Washington, DC 20423.

3. Section 1249.2 is revised to read as follows:

**§ 1249.2 Classification of carriers—motor carriers of property, household goods carriers, and dual property carriers.**

(a) Common and contract motor carriers of property subject to the Interstate Commerce Act are grouped into the following three classes:

*Class I.* Carriers having annual carrier operating revenues (including interstate and intrastate) of $5 million or more after applying the revenue deflator formula shown in Note A.

*Class II.* Carriers having annual carrier operating revenues (including interstate and intrastate) of $1 million but not more than $5 million after applying the revenue deflator formula in Note A.

*Class III.* Carriers having annual carrier operating revenues (including interstate and intrastate) of less than $1 million after applying the revenue deflator formula in Note A.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after applying the revenue deflator formula in Note A. Upward and downward reclassification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.

(2) Any carrier which begins new operations by obtaining operating authority not previously held or extends its existing authority by obtaining additional operating rights shall be classified in accordance with a reasonable estimate of its annual carrier operating revenues after applying the revenue deflator formula shown in Note A.

(3) When a business combination occurs such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective as of January 1 of the next calendar year on the basis of the combined revenues for the year when the combination occurred after applying the revenue deflator formula shown in Note A.

(4) Carriers shall notify the Commission of any change in classification or when their annual operating revenues exceeds the Class I limit by writing to the Bureau of Accounts, Interstate Commerce Commission, Washington, DC 20423. In extraordinary extenuating circumstances, where the classification regulations will unduly burden the carrier, such as partial services, the carrier may request the Commission for a waiver from these regulations. This request shall be in writing specifying the conditions justifying the waiver. The Commission shall notify carriers of any change in classification.

(c) For classification purposes, the Commission shall publish in the Federal Register annually an index number which shall be used for adjusting gross annual operating revenues. The index number (deflator) is based on the Producer Price Index of Finished Goods and is used to eliminate the effects of inflation from the classification process. See Note A that follows:

**Note A**—Each carrier's operating revenues will be deflated annually using the Producers Price Index (PPI) of Finished Goods before comparing them with the dollar revenue limits prescribed in paragraph (a). The PPI is published monthly by the Bureau of Labor Statistics. The foumula to be applied is as follows:

$$\text{Current Year's annual operating revenues} \times \frac{\text{1980 average PPI}}{\text{Current year's average PPI}} = \text{Adjusted annual operating revenues.}$$

**§ 1249.3 [Removed and Reserved]**

4. Section 1249.3 is removed and reserved for future use.

5. Section 1249.5, Records, is added to read as follows:

**§ 1249.5 Records.**

Books, records and carrier operating documents shall be retained as prescribed in 49 CFR Part 1220, Preservation of Records.

**§ 1249.12 [Removed]**

6. Section 1249.12 is removed.

[FR Doc. 87-7094 Filed 3-31-87; 8:45 am]
BILLING CODE 7035-01-M

# Proposed Rules

Federal Register
Vol. 52, No. 62
Wednesday, April 1, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 200

### Regulation To Implement the Provisions of the Freedom of Information Reform Act of 1986; Fees

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board proposes to amend its regulations on FOIA fees because the Freedom of Information Reform Act of 1986 requires that agencies publish final rules of fees, subject to public notice and comment, by April 25, 1987.

**DATE:** Comments must be submitted on or before April 13, 1987.

**ADDRESS:** Send written comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois, 60611.

**FOR FURTHER INFORMATION CONTACT:** LeRoy Blommaert, Privacy Act/FOIA Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois, 60611, (312) 751–4548 (FTS 387–4548).

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 requires agencies to amend their regulations on FOIA fees in accordance with OMB guidelines on uniform FOIA fees issued pursuant to this Act. This proposed rule provides for compliance by the Railroad Retirement Board with this Act.

The Railroad Retirement Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, this part does not impose any requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980. Because the Freedom of Information Reform Act of 1986 requires that agencies publish final rules of fees, subject to public notice and comment, by April 25, 1987, the Board is claiming an exemption to the OMB prior review provisons of Executive Order 12291. The Board has determined that allowing a 10 day OMB review period before publication in the **Federal Register** would jeopardize the agency's ability to meet the April 25, 1987, statutory deadline.

**List of Subjects in 20 CFR Part 200**

Railroad retirement, Railroad unemployment insurance, Freedom of Information.

**PART 200—[AMENDED]**

Title 20 CFR Part 200 is proposed to be amended as follows:

1. The authority citation for Part 200 continues to read as follows:

**Authority:** 445 U.S.C. 231f and 45 U.S.C. 362, unless otherwise noted.

2. The authority citation for § 200.4 continues to read as follows:

**Authority:** 5 U.S.C. 552.

3. Section 200.4(g) is revised to read as follows:

**§ 200.4 Protection of privacy of records maintained on individuals.**

* * * * *

(g) The RRB may charge the person or persons making a request for records under paragraph (f) of this section a fee in an amount not to exceed the costs actually incurred in complying with the request and not to exceed the cost of processing a check for payment. Depending on the category into which the request falls, a fee may be assessed for the cost of searching for documents, reviewing documents to determine whether any portion of any located documents is permitted to be withheld, duplicating documents, and the cost of postage if the documents are mailed to the requester.

(1) *Fee Schedule.* To the extent that the following are chargeable, they are chargeable according to the following schedule:

(i) The charge for making a manual search for records shall be $8.00 per hour;

(ii) The charge for reviewing documents to determine whether any portion of any located document is permitted to be withheld shall be $21.00 per hour;

(III) The charge for making photocopies of any size document shall be $.10 per copy per page.

(iv) The charge for computer generated listings or labels shall include the direct cost to the RRB of analysis and programming, where required, plus the cost of computer operations to produce the listings or labels. The maximum computer search charge shall be $268.00 per hour ($4.50 per minute). Search time shall not include the time expended in analysis or programming where these operations are required.

(2) *Categories of requesters.* For the purpose of assessing fees, requesters shall be classified into one of the following four groups:

(i) *Commercial use requesters.* Commercial use requesters are requesters who seek information for a use or purpose that is related to commerce, trade, or profit as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act. For such requesters, the RRB will fully charge for the cost of searching, reviewing and copying and shall not consider a requester for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest; however, the RRB will not charge a fee if the total cost for searching, reviewing, and copying is less than $10.00.

(ii) *Educational and Non-Commercial Scientific Institution Requesters.* Educational requesters are accredited institutions of higher learning engaged in scholarly research. Non-commercial scientific institutions are independent non-proft institutions whose purpose is to conduct scientific research. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. For requesters in this category, the RRB shall charge for the cost of reproduction alone, excluding the first 100 pages, for which no charge will be made. If after excluding the cost of the first 100 pages of reproduction, there remain costs to be assessed, the RRB will not charge for such costs if such costs total less than $10.00. If the cost is $10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute

significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. To be eligible for free search time, these requesters must reasonably describe the records sought.

(iii) *Requesters who are Representatives of the News Media.* The term "representative of the news media" refers to any representative of established news media outlets, i.e., any organization such as a television or radio station, or a newspaper or magazine of general circulation, or person working for such organization which regularly publishes information for dissemination to the general public whether electronically or in print. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. For requesters in this category the RRB shall charge for the cost of reproduction alone excluding the cost of the first 100 pages, for which no charge will be made. If, after excluding the cost of the first 100 pages of reproduction, there remain costs to be assessed, the RRB will not charge for such costs if such costs total less than $10.00. If the cost is $10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. To be eligible for free search time, these requesters must reasonably describe the recrod sought.

(iv) *All other requesters.* For requesters who do not fall within the purview of paragraphs (g)(2) (i), (ii), or (iii) of this section, the RRB will charge the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be provided without charge. If, after excluding the cost of the first 100 pages of reproduction and the first two hours of search time, there remain costs to be assessed for either or both of these operations, the RRB will not charge for such costs if the total is less than $10.00. If the total cost is $10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(3) *Charges for unsuccessful searches.* Where search time is chargeable, the RRB may assess charges for time spent searching, even if the RRB fails to locate the records, or if located, the records are determined to be exempt from disclosure.

(4) *Aggregating requests.* When the RRB reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the RRB will aggregate any such requests and charge accordingly.

(5) *Advance payments.*

(i) When the RRB estimates or determines that the allowable charges that a requester may be required to pay are likely to exceed $250.00, the RRB may require the requester to make an advance payment of the entire fee before continuing to process the request.

(ii) Where the requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the RRB shall require the requester to pay the full amount owed plus any applicable interest as provided for in these regulations and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(iii) When the Board acts under paragraphs (g)(5) (i) or (ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act (5 U.S.C. 552(a)(6)) (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after the Board has received the fee payments described in said paragraphs (g)(5) (i) or (ii) of this section.

(6) *Charging interest.* Interest may be charged to any requester who fails to pay fees charged within 30 days of the date of billing. Interest will be assessed on the 31st day following the day on which the bill for fees was sent. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code Annotated.

(7) *Collection of fees due.* Whenever it is appropriate in the judgment of the Board in order to encourage repayment of fees billed in accordance with these regulations, the Board will use the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies.

**David D. Lucci,**

*Legislative Counsel.*

[FR Doc. 87–7198 Filed 3–31–87; 8:45 am]

BILLING CODE 7905–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Parts 5 and 6

### Implementation of Freedom of Information Reform Act; Changes to Freedom of Information Act and Privacy Act Fee Schedules

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule and request for public comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) proposes to amend its Freedom of Information Act (FOIA) regulations to incorporate the recent changes to the FOIA regarding requests for agency enforcement records and regarding establishments of fees to be charged for search, review and duplication of records in response to FOIA requests. These proposed rules follow the guidelines established by the Office of Management and Budget. In addition, FEMA proposes to amend its Privacy Act regulations regarding fees to ensure consistency with appropriate changes proposed to the FOIA fee regulations.

**DATES:** Comments are due on or before April 17, 1987, so that FEMA can meet its statutory requirements to publish revised FOIA fee regulations in final form no later than April 25, 1987. FEMA would normally provide a 60-day public comment period. However, the FEMA Director has determined that a shorter comment period is appropriate in light of the fact that FEMA's regulations directly follow, almost verbatim, the OMB final guidance. The affected public received notice through OMB's proposed guidance that agencies would be required to issue implementing regulations based on OMB's final guidance. OMB provided a 30-day public comment period to address the specific issues raised in their proposed guidance and did, in fact, receive 80 comments which were considered prior to publication of OMB's final guidance.

**ADDRESS:** Address comments to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Room 840, Washington, DC 20472. Comments received will be available for public inspection at the above address

from 8:30 a.m. to 3:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Linda M. Keener, FOIA/Privacy Specialist, (202) 646–3840.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Reform Act) requires the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees that are applicable to all agencies. On January 16, 1987, OMB published a notice of proposed guidance on the establishment of fees under the Freedom of Information Act (FOIA) in the **Federal Register**, 52 FR 1992. On March 27, 1987, OMB published a final publication of fee schedule and guidelines implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–370). The final guideline incorporated changes deemed appropriate as a result of public comments received. The purpose of this notice is to issue proposed implementing regulations in conformance with OMB's final guidance to fulfill the mandate of the Reform Act requiring that each agency's regulations must be issued in final form no later than April 25, 1987.

FEMA has determined that this document is not a major rule under E.O. 12291 since it has no significant economic effect upon the economy, nor does it affect prices of economic competition. This document has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

This proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The publication of this notice is made in accordance with the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.

**List of Subjects in 44 CFR Parts 5 and 6**

Freedom of Information Act, Production or disclosure of information, Privacy Act.

Accordingly, for reasons set out in the preamble it is proposed to amend 44 CFR Chapter I, Subchapter A, as set forth below:

**PART 5—[AMENDED]**

1. The authority citation for Part 5 is revised to read as follows:

**Authority:** 5 U.S.C. 552 as amended by sections 1801–1804 of the omnibus Anti-Drug Abuse Ac tof 1988 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); Reorganization Plan No. 3 of 1978; and E.O. 12127.

2. Section 5.42 is revised to read as follows:

**§ 5.42 Fees to be charged—categories of requesters.**

(a) There are four categories of FOIA requesters: commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall only begin upon receipt of a proper request which reasonably identifies records being sought and which identifies the specific category of the requester. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of FEMA is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents nor waiver or reduction of fees based on an assertion that disclosure would be in the public interest. The full allowable direct cost of searching for and reviewing records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, FEMA will look to the use to which a requster will put the documents requested. Where a requester does not explain his/her purpose, or where his/her purpose is insufficient, FEMA shall require the requester to provide information regarding the use to be made of the information prior to accepting the request for processing and the time limits for processing and response shall not begin until such information is adequately received. Requesters must reasonably describe the records sought.

(2) When records are being requested by representatives of the news media, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Representatives of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for puchase or subscription by the general public. These examples are not in tended to be all-inclusive. As traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but FEMA may also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section and his or her request must not be made for a commercial use basis as that term is defined under paragraph (a)(1) of this section. Requesters must reasonably describe the records sought.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters must reasonably describe the records sought.

(4) For any other request which does not meet the criteria contained in paragraphs 5.42(a) (1) through (3) of this

section, the fee policy of FEMA is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. The first two hours of computer search time is based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, FEMA shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in FEMA's systems of records shall continue to be treated under the provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(b) Except for requests that are for a commercial use, FEMA may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When FEMA believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, FEMA may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, FEMA must have a solid basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, FEMA must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may FEMA aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, FEMA shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commerical use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed $30.00, FEMA shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and noncommercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed $30.00, FEMA shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed $30.00, FEMA shall not charge the requester any costs.

3. Section 5.43 is revised to read as follows:

**§ 5.43 Waiver or reduction of fees.**

(a) FEMA may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(b) A fee waiver request shall indicate how the information will be used, to whom it will be provided, whether the requester intends to use the information for resale at a fee above actual cost, any personal or commercial benefits that the requester reasonably expects to receive by the disclosure, provide justification to support how release would benefit the general public, the requester's and/or intended user's identity and qualifications, expertise in the subject area and ability and intention to disseminate the information to the public.

4. Section 5.44 is revised to read as follows:

**§ 5.44 Prepayment of fees over $250.**

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owned plus any applicable interest as provided in § 5.46(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under paragraph (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments under paragraph (a) or (b) of this section.

5. Section 5.46 is revised to read as follows:

**§ 5.46 Fee schedule.**

(a) *Manual Searches for Records.* FEMA will charge at the salary rate(s), (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search. FEMA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer Searches for Records.* FEMA will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication Costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, FEMA shall charge the actual cost, including

operator time, of production of the tape or printout. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charge to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) FEMA shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. FEMA may choose to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, FEMA will inform requesters of the steps necessary to obtain records from those sources.

6. Section 5.71 is amended by revising paragraph (g) and adding a new paragraph (j) to read as follows:

**§ 5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.**

* * * * *

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

(j) Whenever a request is made which involves access to records described in paragraph (g)(1) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, FEMA may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

## PART 6—[AMENDED]

1. The authority citation for Part 6 continues to read as follows: Authority: 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978; and E.O. 12127.

**§ 6.82 [Amended]**

2. In § 6.82, remove "50" and add "300" in place thereof.

3. Section 6.83 is revised to read as follows:

**§ 6.83 Prepayment of fees over $250.**

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) when a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 6.85(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under § 5.44(a) or (b), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under § 5.44(a) or (b).

4. Section 6.85 is revised to read as follows:

**§ 6.85 Reproduction fees.**

(a) *Duplication Costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay

fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(b) Interest may be charge to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A.

Dated: March 27, 1987.

**Julius W. Becton, Jr.,**

*Director.*

[FR Doc. 87-7224 Filed 3-31-87; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[PR Docket No. 87-5]

### Private Operational-Fixed Microwave Radio Service; Multiple Address Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed Rule; extension of comment/reply comment period.

**SUMMARY:** The Commission has received a motion from Motorola, Inc. seeking an extension of time to comment on the *Notice of Proposed Rulemaking*, Docket No. 87-5, 52 FR 4161 (February 10, 1987), concerning Multiple Address Systems. By this action the Commission has granted the motion.

**EFFECTIVE DATE:** Comments are now due on April 7, 1987, and reply comments on April 22, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554

**FOR FURTHER INFORMATION CONTACT:** Molly Nichols or Herb Zeiler, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634-2443.

Federal Communications Commission.

**Richard J. Shiban,**

*Acting Chief, Private Radio Bureau.*

[FR Doc. 87-7163 Filed 3-31-87; 8:45 am]

BILLING CODE 6712-01-M

BEST COPY AVAILABLE

# Notices

Federal Register
Vol. 52, No. 62
Wednesday, April 1, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

March 27, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Food and Nutrition Service.

Food Stamp Program: Striker Provisions.
Monthly.
State or local governments; 636 responses; 93,516 hours; not applicable under 3504(h)
Margaret Werts Batko (703) 756–3471.

Extension

- National Agricultural Statistics Service.

June and December Enumerative Surveys—
Annually.
Farms; 155,340 responses; 53,937 hours; not applicable under 3504(h)
Larry Gambrell (202) 447–7737.

Revision

- Farmers Home Administration.

7 CFR 1924–C, Planning and Performing Site Development Work,
FmHA 1924–20
On occasion.

Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 4,300 responses; 18,012 hours; not applicable under 3504(h).

Jack Holston (202) 382–9736.

- Farmers Home Administration.

7 CFR 1924–B, Management Advice to Individual Borrowers and Applicants, FmHA 431–1, –2, –4; 432–1, –2, and 10—
On occasion.

Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 281,500 responses; 2,332,305 hours; not applicable under 3504(h).

Jack Holston (202) 382–9736.

**Larry K. Roberson,**
*Acting Departmental Clearance Officer.*
[FR Doc. 87–7090 Filed 3–31–87; 8:45 am]
BILLING CODE 3410–01–M

## Cooperative State Research Service

### Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date, Time, & Place: May 20, 1987, 8:30 a.m.–5:00 p.m., Rm. 104A Admin. Bldg., May 21, 1987, 8:30 a.m.–3:00 p.m., Rm. 107A Admin. Bldg., Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. Edward M. Wilson, Executive Secretary, U. S. Department of Agriculture, Cooperative State Research Service, Room 223 Justin Smith Morrill Building, Washington, DC 20251–2200 Telephone: 202/447–4587.

Done at Washington, DC, this 23rd day of March 1987.

**John Patrick Jordan,**
*Administrator, Cooperative State Research Service.*
[FR Doc. 87–7091 Filed 3–31–87; 8:45 am]
BILLING CODE 3410–22–M

## Federal Grain Inspection Service

### Designation Renewal of the Chattanooga Agency (TN)

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the designation renewal of Chattanooga Grain Inspection Company, Inc., as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

**EFFECTIVE DATE:** May 1, 1987.

**ADDRESS:** James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and

Departmental Regulation 1512.1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Chattanooga's designation terminates on April 30, 1987, and requested applications for official agency designation to provide official services within a specified geographic area in the November 3, 1986, **Federal Register**, (51 FR 39881). Applications were to be postmarked by December 3, 1986. Chattanooga was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant name in the January 2, 1987, **Federal Register** (52 FR 118) and requested comments on the designation renewal of Chattanooga. Comments were to be postmarked by February 16, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Chattanooga is able to provide official services in the geographic area for which the Service is renewing its designation. Effective May 1, 1987, and terminating April 30, 1990, Chattanooga will provide official inspection and Class X or Class Y weighing services in its entire specified geographic area, previously described in the November 3 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agency at the following address: Chattanooga Grain Inspection Company, Inc., Judd Road, P.O. Box 16711, Chattanooga, TN 37416.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: March 24, 1987.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 87–7105 Filed 3–31–87; 8:45 am]

BILLING CODE 3410–EN–M

## Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the State of Georgia and Schneider Agency (IN)

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to the Georgia Department of Agriculture (Georgia) and Schneider Inspection Service, Inc. (Schneider).

**DATE:** Comments to be postmarked on or before May 18, 1987.

**ADDRESS:** Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

*Telemail* users may respond to [IRSTAFF/FGIS/USDA] telemail.

*Telex* users may respond as follows: TO: Lewis Lebakken, TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., telephone (202) 382–1738.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the February 3, 1987, **Federal Register** (52 FR 3300). Applications were to be postmarked by March 5, 1987. Georgia and Schneider were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency. Georgia is currently designated for inspection and weighing services; however, there have been no requests for official weighing services for the past few years. Accordingly, Georgia applied for designation renewal for inspection services only. Based upon available information, it has been determined there is no need for weighing services within the State of Georgia.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants and the official services to be provided within the State of Georgia. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: March 24, 1987.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 87–7106 Filed 3–31–87; 8:45 am]

BILLING CODE 3410–EN–M

## Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the State of Oregon and Southern Illinois Agency (IL)

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Oregon Department of Agriculture and Southern Illinois Grain Inspection Service, Inc.

**DATE:** Applications to be postmarked on or before May 1, 1987.

**ADDRESS:** Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at this address during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and

determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Oregon Department of Agriculture (Oregon), Agriculture Building, 635 Capitol St., NE., Salem, OR 97310–0110, and Southern Illinois Grain Inspection Service, Inc., 5900 North Illinois Street, P.O. Box 3099, Fairview Heights, IL 62208, were each designated under the Act as an official agency to provide inspection functions on October 1, 1984.

Each official agency's designation terminates on September 30, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Oregon, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: The entire State of Oregon, except export port locations within the State.

The geographic area presently assigned to Southern Illinois in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North along a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines; the northern and eastern Jasper County lines south to State Route 33; State Route 33 east-southeast to U.S. Route 50; U.S. Route 50 east to the eastern Lawrence County line;

Bounded on the East by the eastern Lawrence, Wabash, Edwards, White, and Gallatin County lines;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and

Bounded on the West by the Mississippi River north to Interstate 270; Interstate 270 east to Interstate 70; Interstate 70 east to State Route 4; State Route 4 north to Macoupin County; the southern and eastern Macoupin County lines.

The following location, outside of the foregoing contiguous geographic area, is presently assigned to Southern Illinois and is part of this geographic area assignment: Sigel Elevator Company, Inc., Sigel, Shelby County.

Interested parties, including Oregon and Southern Illinois are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning October 1, 1987, and ending September 30, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: March 24, 1987.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 87–7107 Filed 3–31–87; 8:45 am]

BILLING CODE 3410–EN–M

---

## Cancellation of Designation Issued to Cedar Rapids Grain Service, Inc., and Request for Designation Applicants (IA)

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Cedar Rapids Grain Service, Inc., has requested the cancellation of its designation, effective September 31, 1987. A request for designation applicants is also included in this notice.

**DATE:** Applications to be postmarked on or before May 1, 1987.

**ADDRESS:** Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at this address during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

This notice announces that the Cedar Rapids Grain Service, Inc., has requested the cancellation of its designation, effective September 31, 1987. A request for designation applicants is also included in this notice.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area in the State of Iowa, which is available for assignment to the applicant selected for designation, is as follows:

Bounded on the North by the northern Blackhawk County line; the northern and eastern Buchanan County lines; the northern Linn County line; the northern Jones County line;

Bounded on the East by the eastern Jones County line; the eastern Cedar County line south to State Route 130;

Bounded on the South by State Route 130 west to State Route 38; State Route 38 south to Interstate 80; Interstate 80 west to U.S. Route 63; and

Bounded on the West by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to State Route 297; State Route 297 north to V49; V49 north to Blackhawk County.

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d)

of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning October 1, 1987, not to exceed a 3-year period. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: March 24, 1987.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 87–7408 Filed 3–31–87; 8:45 am]

BILLING CODE 3410–EN–M

---

## Soil Conservation Service

### West Branch of Brandywine Creek Watershed; PA

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of availability of a record of decision.

**SUMMARY:** James H. Olson, State Conservationist, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Pennsylvania, is hereby providing notification that a record of decision to proceed with the installation of the West Branch of Brandywine Creek Watershed project is available. Single copies of this record of decision may be obtained from James H. Olson, State Conservationist, at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** James H. Olson, State Conservationist, Soil Conservation Service, 228 Walnut Street, Room 850, Box 985 Federal Square Station, Harrisburg, Pennsylvania 17108, telephone (717) 782–4453.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for of federal and federally assisted programs and projects are applicable)

Dated: March 24, 1987.

**James H. Olson,**

*State Conservationist.*

[FR Doc. 87–7109 Filed 3–31–87; 8:45 am]

BILLING CODE 3410–16–M

---

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[Order No. 341]

### Approval for Expansion of Foreign-Trade Zone No. 50, for a Site in Santa Ana, CA, Within the Los Angeles-Long Beach Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (The Board) adopts the following order:

*Whereas*, the Board of Harbor Commissioners of the City of Long Beach, California, Grantee of Foreign-Trade Zone No. 50, has applied to the Board for authority to expand its general-purpose zone to include an industrial park site in Santa Ana, California, within the Los Angeles-Long Beach Customs port of entry;

*Whereas*, the application was accepted for filing on March 27, 1985 (Docket No. 5–85, 50 FR 14000, 4/9/85) and was amended on April 2, 1986 (51 FR 12189, 4/9/86);

*Whereas*, notice of said application has been given, and full opportunity has been afforded all interested parties to be heard;

*Whereas*, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

*Whereas*, the expansion is necessary to improve and expand zone services in the greater Los Angeles area; and

*Whereas*, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed March 27, 1985, and amended on April 2, 1986. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 25th day of March 1987.

**Paul Freedenberg,**

*Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 87–7136 Filed 3–31–87; 8:45 am]

BILLING CODE 3510–DS–M

---

[Order No. 340]

### Approval for Amendment of Zone Plan of Foreign-Trade Zone No. 84, Harris County, Texas, Within the Houston Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

*Whereas*, the Port of Houston Authority (PHA), Grantee of Foreign-Trade Zone No. 84, has applied to the Board for authority to amend its zone plan by adding 5 new private sites, located in Harris County, Texas, within the Houston Customs port of entry;

*Whereas*, The application was accepted for filing on March 7, 1986, and notice inviting public comment was given in the **Federal Register** on April 22, 1986 (Docket No. 13–86, 51 FR 15029);

*Whereas*, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

*Whereas*, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied if approval is given subject to the conditions stated below;

*Now, Therefore*, the Board hereby orders:

That the Grantee is authorized to amend its zone plan in accordance with the application filed March 7, 1986, subject to the conditions in Board Order 214, July 15, 1983 (48 FR 34792), including the same time limitation (July 15, 1988), and the numbering system assigned by the Board, as amended (Table I, amended January 12, 1986. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the

District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 25th day of March 1987.

**Paul Freedenberg,**

*Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 87-7137 Filed 3-31-87; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

**[A-122-605, A-588-609, A-580-605, and A-559-601]**

### Postponement of Preliminary Antidumping Duty Determinations; Color Picture Tubes From Canada, Japan, Korea, and Singapore

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received a request from the petitioners in these investigations to postpone the preliminary determinations as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determinations of whether sales of color picture tubes from Canada, Japan, Korea, and Singapore have occurred at less than fair value until not later than May 26, 1987.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-3965.

**SUPPLEMENTARY INFORMATION:** On December 22, 1986 (51 FR 45785, Canada; 51 FR 45786, Japan; 51 FR 45787, Korea; and 51 FR 45787, Singapore) we published the initiations of antidumping duty investigations to determine whether color picture tubes from Canada, Japan, Korea, and Singapore are being, or are likely to be, sold in the United States at less than fair value. The notices stated that we would issue our preliminary determinations by May 5, 1987.

As detailed in the notices, the petition alleged that imports of color picture tubes from Canada, Japan, Korea, and Singapore are being, or are likely to be sold in the United States at less than fair value. On March 23, 1987, counsel for petitioners, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers (AFL-CIO/CLC), the United Steelworkers of America (AFL-CLO), and the Industrial Union Department (AFL-CIO), requested that the Department extend the period for the preliminary determinations until not later than 180 days after the date of receipt of the petition in accordance with section 733(c)(1) of the Act. Accordingly, the period for determinations in these cases is hereby extended. We intend to issue preliminary determinations not later than May 26, 1987.

This notice is published pursuant to section 733(c)(2) of the Act.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

March 26, 1987.

[FR Doc. 87-7144 Filed 3-31-87; 8:45 am]

BILLING CODE 3510-05-M

## Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held April 21, 1987, 1:30 p.m. Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377-4959.

Dated: March 26, 1987.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology & Policy Analysis.*

[FR Doc. 87-7138 Filed 3-31-87; 8:45 am]

BILLING CODE 3510-DT-M

## Telecommunications Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held April 21, 1987, 9:30 a.m. Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

*Agenda:*

1. Introduction of attendees and opening remarks by the Chairman.
2. Review and approval of the minutes of March 10, 1987.
3. Presentation of papers or comments by the public.
4. Consideration of additional responses to **Federal Register** notice of December 5, 1987, requesting comments on the annual review of the Commodity Control List.

*Executive Session*

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may

be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Dated: March 26, 1987.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 87–7139 Filed 3–31–87; 8:45 am]

BILLING CODE 3510–DT–M

---

## Applications for Duty-Free Entry of Scientific Instruments; Harbor Branch Foundation, Inc., et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 AM., and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 86–312R. Applicant: Harbor Branch Foundation, Inc., RR 1, Box 196, Fort Pierce, FL 33450. Instrument: Remotely Operated Vehicle System, HYSUB–40. Manufacturer: I.S.E. Gulf Inc., Canada. Original notice of this resubmitted application was published in the **Federal Register** of September 30, 1986.

Docket number: 87–010R. Applicant: The University of Oklahoma, 660 Parrington Oval, Room 321, Norman, OK 73019. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of November 5, 1986.

Docket number: 87–114. Applicant: University of Missouri-Columbia, Department of Geology, Columbia, MO 65211. Instrument: Mass Spectrometer System, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended use: The instrument is intended to be used for studies of high-temperature materials including carbonates, sulfates, sulfides, silicates, hydrous minerals and waters. Investigations will be conducted to determine the source of fluids involved in the formation of metallic ore deposits and to determine the extent of water-rock interaction as it relates to ore-formation. In addition, the instrument will be used for educational purposes in the courses: Geology 340—Economic Geology, Geology 414—Stable Isotope Geochemistry and Geology 428—Trace Element Geochemistry. Application received by Commissioner of Customs: February 27, 1987.

Docket number: 87–121. Applicant: Yale University, Deparment of Geology and Geophysics, P.O. Box 6666, New Haven, CT 06511. Instrument: Mass Spectrometer, Model MAT 251 EM and Accessories. Manufacturer: Finnigan MAT, West Germany. Intended use: The instrument is intended to be used for stable isotopic analyses on petrologically defined samples in order to trace the fluid and fluid-rock interactions histories in hydrothermal systems, metamorphic rock systems and in deformed rock systems. The overall objective is to determine the nature of fluid-rock interactions in rock systems. Microsample studies will determine whether different fluids were present in a given rock and their relative timing. The instrument will also be used for educational objectives in the courses: G&G 618b Petrology of Light Stable Isotopes, G&G 930 Research in Geochemistry, Petrology or Mineralogy and G&G 302a/502a Principles and Systematics of Isotope Petrology. Application received by Commissioner of Customs: March 4, 1987.

Docket number: 87–123. Applicant: Case Western Reserve University, School of Medicine, 2119 Abington Road, Cleveland, OH 44106. Instrument: Electon Microscope, Model JEM–1200EX/SEG/DP/DP. Manufacturer: JEOL, Japan. Intended Use: The instrument is intended to be used for the study of the following: (1) Structure and function of synapses and astrocytes in mammalian brain, prepared for freeze-fracture or thin-sectioning, (2) Development of neurotransmitter-related properties, using thin-sectioned material, (3) Distribution of motility-related proteins in algae, protozoa, and higher animal cells and (4) Characteristics of blood vessels in mammalian brains. Application received by Commissioner of Customs: March 9, 1987.

Docket number: 87–124. Applicant: The University of Texas Health Science Center at San Antonio, Department of Biochemistry, 7703 Floyd Curl Drive, San Antonio, TX 78284–7760. Instrument: Accessories for Nanosecond Fluorometer System 2000. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: The instruments are accessories to an existing fluorometer system produced by the same manufacturer, Fluorescence probes will be used in chemical solutions and lipids, membranes and proteins. The enzyme rhodanese will be labelled and fluoroescence measurements of functionally related flexibilty will be measured. Studies will be conducted to obtain a basic understanding of molecular processes in this experiment. Application received by Commissioner of Customs: March 9, 1987.

Docket number: 87–125. Applicant: University of Chicago, 5841 S. Maryland, Box 420, Chicago, IL 60637. Instrument: Electron Microscope, Model JEM–100CX and Assessories. Manufacturer: JEOL Ltd., Japan. Intended Use: Research and teaching in the general areas of thrombosis and hemostasis and cancer research. Specific areas of research include: (1) Studies of the topographic relationship and vertical organization of adhesive proteins in three model systems (i) isolated cytoskeletons of aggregated platelets, (ii) platelets stimulated in suspension and (iii) platelets allowed to adhere to a variety of solid supports. (2) Evaluation of the distribution of retained membrane and adhesive glycoproteins in isolated cytoskeletons and intact, aggregated platelets. (3) Visualization of the vertical organization of platelet attachments to various substrata including: collagen, Fn, laminin, and exposed endothelial cell matrix by examining immunolabelled, perpendicular sections of adherent platelets. Educational purposes consist of training postdoctoral students and Hematology fellows in specialized research techniques using transmission electron microscopy. Application received by Commissioner of Customs: March 9, 1987.

Docket number: 87–127. Applicant: University of Washington, Materials Science and Engineering, Roberts Hall, FB–10, Seattle, WA 98195. Instrument: Electron Microscope, Model EM 430T and Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument is intended to be used for studies of microstructural properties of advanced ceramics, advanced ceramic-metal composites, advanced metals, organic and inorganic polymers, ceramic-polymer composites and biocrystals. The experiments to be conducted involve conventional imaging of the microstructure for morphological analysis, diffraction experiments for crystallographic information, contrast experiments for defect analysis, and experiments involving spectroscopy compositional and chemical state information. In addition, the instrument will be used for educational purposes in the course Theory and Application of Transmission Electron Microscopy and Advanced Transmission Electron Microscopy Techniques. Application received by Commissioner of Customs: March 11, 1987.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–7140 Filed 3–31–87; 8:45 am]

BILLING CODE 3510–DS–M

## Withdrawal of Application for Duty-Free Entry of Scientific Instruments; Parkland College

Parkland College has withdrawn Docket Number 87–075, an application for duty-free entry of a planetarium projector system. We have discontinued processing in accordance with section 301.5(g) of 15 CFR Part 301.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–7141 Filed 3–31–87; 8:45 am]

BILLING CODE 3510–DS–M

## National Bureau of Standards

[Notice 1]

## National Fire Codes: Request for Comments on NFPA Technical Committee Reports

**AGENCY:** National Bureau of Standards, DOC.

**ACTION:** Notice of request for comments.

**SUMMARY:** The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 1987 Annual Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATE:** The technical committee reports were available as of February 13, 1987 for distribution. Comments received on or before May 1, 1987, will be considered by the NFPA before final action is taken on the proposals.

**ADDRESS:** *The 1987 Annual Technical Committee Reports* is available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

**SUPPLEMENTARY INFORMATION:**

### Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 522(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its technical committee reports.

### Request for Comments

Interested persons may participate in the revisions of these reports by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the *The 1987 Annual Technical Committee Reports*.

Each person submitting a comment should include his or her name and address, identify the document and give reasons for any recommendations.

Comments received on or before May 1, 1987 will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as *The Technical Committee Documentation* by September 25, 1987, prior to the Fall Meeting.

A copy of *The Technical Committee Documentation* will be sent automatically to each commentor. Action by NFPA members on the technical committee reports (adoption or rejection) will be taken at the Fall Meeting, November 9–12, 1987, at the Red Lion Inn Lloyd Center, Portland, Oregon, by NFPA members.

**Ernest Ambler,**

*Director, National Bureau of Standards.*

### 1987 Fall Meeting Technical Committee Reports

Documents and the action proposed on each document follow:

Action code: C–Complete revision; P–Partial amendments; N–New; T–Tentative adoption; R–Reconfirmation; W–[illegible]

| | | |
|---|---|---|
| NFPA 10 | Portable Fire Extenguishers | P |
| NFPA 10L | Model Enabling Act for the Sale or Leasing & of Portable Fire Extinguishers. | R |
| NFPA 11 | Low Expansion Foam & Combined Agent Systems. | C |
| NFPA 11A | Medium & High Expansion Foam Systems. | P |
| NFPA 40 | Cellulose Nitrate Motion Picture Film | C |
| NFPA 68 | Explosion Venting | C |
| NFPA 72H | Testing Procedures for Signaling Systems. | P |
| NFPA 92A | Mechanical Smoke Control System. | N |
| NFPA 97M | Standard Glossary of Terms Relating to Chimneys, Vents & Heat-Producing Appliances | P |
| NFPA 101 | Life Safety Code | P |
| NFPA 101M | Systems Approach to Life Safety. | N |
| NFPA 110 | Emergency and Standby Power Systems. | C |
| NFPA 130 | Fixed Guideway Transit Systems. | P |
| NFPA 211 | Chimneys, Fireplaces, Vents & Solid Fuel Burning Appli[illegible] | P |
| NFPA 214 | Water-Cooling Towers | P |
| NFPA 306 | Control of Gas Hazards on Vessels. | P |
| NFPA 701 | Standard Methods of Fire Tests for Flame-Resistant Textiles & films | C |
| NFPA 1002 | Fire Apparatus Driver/Operator Professional Qualifications | C |
| NFPA 1221 | Installation, Maintenance and Use of Public Fire Service Communication Systems | C |
| NFPA 1410 | Training Standard on Initial Fire Attack | C |
| NFPA 1452 | Training Fire Dept Personnel to Make Dwelling Fire Safety Surveys | C |
| NFPA 1962 | Care, Use, & Maintenance of Fire Hose Including Connections & Nozzles | P |
| NFPA 1964 | Fire Stream Nozzles | N |

[FR Doc. 87–7179 Filed 3–31–87; 8:45 am]

BILLING CODE 3510–13–M

[Notice 2]

## National Fire Codes; Request for Proposals for Revisions of Standards

**AGENCY:** National Bureau of Standards, DOC.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Interested persons may submit proposals on or before the dates listed with the standards.

**ADDRESS:** Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Cote, P.E., Secretary, Standards Council, at the above address, (617) 770–3000.

**SUPPLEMENTARY INFORMATION:**

### Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

### Request for Proposals

Interested persons may submit amendments supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Proposals should be submitted on forms available from the NFPA Standards Administration Office. Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 E.D.S.T. on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date each NFPA technical committee will issue a report that will include a copy of written proposals that have been received and an account of their disposition. Each person who has submitted a written proposal will receive a copy of the report.

Dated: March 27, 1987.

Ernest Ambler,

*Director, National Bureau of Standards.*

### Committees Soliciting Proposals

The following Committees are planning to meet to begin preparation of their respective reports. In accordance with the regulations governing committee projects, Committees are now accepting proposals for recommendations on document content on the documents listed below. Proposals received by 5:00 E.D.S.T. on the closing date indicated will be acted on by Committee, and that action will be published in the Committee's Report. Proposals must be submitted to Arthur E. Cote, Assistant Vice President/ Standards, on proposal forms available from the NFPA Standards Administration Office.

NFPA 12–1985, Carbon Dioxide...July 17, 1987.
NFPA 13–1987, Installation of Sprinkler Systems.....July 17, 1987.
NFPA 13D–1984, Sprinkler Systems for One & Two Family Dwellings & Mobile Homes.....July 17, 1987.
NFPA 13E–1984, Fire Department Operations in Properties Protected by Sprinkler and Standpipe...July 17, 1987.
NFPA 36–1985, Solvent Extraction Plants.....March 1, 1987.
NFPA 50A–1984, Gaseouers Hydrogen Systems at Consumer Sites...May 29, 1987.
NFPA 50B–1985, Liquefied Hydrogen Systems at Consumer Sites...May 29, 1987.
NFPA 51A–1984, Acetylene Cylinder Charging Plants.....May 29, 1987.
NFPA 58–1984, Liquefied Petroleum Gases.....Sept 25, 1987.
NFPA 59–1984, Liquefied Petroleum Gases at Utility Gas Plants...Sept 25, 1987.
NFPA 61A–1984, Manufacturing & Handling Starch.....July 17, 1987.
NFPA 61C–1984, Fire & Dust Explosions in Feed Mills.....July 17, 1987.
NFPA 61D–1984, Fire & Dust Explosions in the Milling of Agricultural Commodities for Human Comsumption.....July 17, 1987.
NFPA 70–1987, National Electrical Code.....Nov 6, 1987.
NFPA 72F–1985, Emergency Voice/ Alarm Communication Systems...July 17, 1987.
NFPA 72G–1985, Notification Appliances for Protective Signaling Systems.....July 17, 1987.
NFPA 75–1987, Electronic Computer/ Data Processing Equipment...July 17, 1987.
NFPA 80–1986, Fire Doors & Windows.....July 17, 1987.
Proposed NFPA 85H, Prevention of Combustion Hazards in Atmospheric Fluidized Bed Combustion Systems.....July 17, 1987.
Proposed NFPA 851, Stoker Operations.....July 17, 1987.
NFPA 90A–1985, Air Conditioning & Ventilating Systems.....July 17, 1987.
NFPA 90B–1984, Warm Air Heating & Air Conditioning Systems.....July 17, 1987.
NFPA 105–1985, Smoke & Draft Control Door Assemblies.....July 17, 1987.
NFPA 120–1984, Coal Preparation Plants.....March 1, 1987.
Proposed NFPA 264, Heat Release Rates Using Oxgen Consumption Calorimeter.....July 17, 1987.
Proposed NFPA 298, Chemicals & Wildland Fire Control.....July 17, 1987.
Proposed NFPA 299, Fire Hazard Assessment & Development Standards for Wildland Fire Areas.....July 17, 1987.
NFPA 302–1984, Motor Craft.....July 17, 1987.
NFPA 395–2984, Storage of Flammable & Combustible Liquids on Farms and Isolated Construction Project...March 1, 1987.
NFPA 402M–1984, Aircraft Rescue Fire Fighting Procedures.....Oct 1, 1987.
NFPA 407–1985, Aircraft Fuel Servicing.....Oct 1, 1987.
NFPA 408–1984, Aircraft Hand Fire Extinguishers.....Oct 1, 1987.
NFPA 409–1985, Aircraft Hangers...Oct 1, 1987.
NFPA 414–1984, Aircraft Rescue & Fire Fighting Vehicles.....Oct 1, 1987.
NFPA 422M–1984, Aircraft Fire Investigators Manual.....Oct 1, 1987.
Proposed NFPA 471, Professional Competence for Hazardous Materials Response Personnel...July 17, 1987.
Proposed NFPA 472, Hazardous Materials Management.....July 17, 1987.
Proposed NFPA 473, Hazardous Materials Incident Management...July 17, 1987.
NFPA 496–1986, Purged and Pressurized Enclosures for Electrical Equipment in Hazardous Locations.....July 17, 1987.
Proposed NFPA 820, Waste Water Treatment Plants.....July 17, 1987.
NFPA 1231–1984, Water Supplies for Suburban & Rural Fire Fighting...July 17, 1987.
NFPA 1401–1983, Training Reports and Records.....July 17, 1987.

[FR Doc. 87–7180 Filed 3–31–87; 8:45 am]
BILLING CODE 3510-13-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textiles and Textile Products From Jamaica

March 27, 1987.

The Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs, effective April 2, 1987. For further information, contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota reopenings, please call (202) 377–3715.

**Background**

On November 21, 1986, a notice was published in the **Federal Register** (51 FR 42128) announcing import limits for certain cotton and man-made fiber textile products, produced or manufactured in Jamaica and exported during the period which began on September 1, 1986 and extends through December 31, 1987.

A further notice was published in the **Federal Register** on February 27, 1987 (52 FR 6049) announcing guaranteed access levels in accordance with the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986 and under the Special Access Program for certain properly certified textile products assembled in Jamaica from fabric formed and cut in the United States.

During recent consultations between the Governments of the United States and Jamaica, agreement was reached to amend the bilateral textile agreement to delete Categories 338/339 and 347/348 and to create combined Categories 338/339/638/639 and 347/348/647/648.

New designated consultation levels were established for cotton and man-made fiber textile products in combined Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987.

The two governments further agreed to establish new guaranteed access levels for the newly combined Categories 338/339/638/639 and 347/348/647/648 for properly certified textile products assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987.

Textile products in Categories 338/339/638/639 and 347/348/647/648 exported from Jamaica before March 1, 1987, shall not be denied entry for lack of a visa or certification. Exports from Jamaica of products in Categories 338/339/638/639 and 347/348/647/648, qualifying for the Special Access Program for entry under TSUSA 807.0010, exported on or after September 1, 1986 must be accompanied by a properly completed CBI Export Declaration (Form ITA–370P).

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648 at the designated consultation levels and to establish new guaranteed access levels for properly certified textile products assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica in Categories 338/339/638/639 and 347/348/647/648.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987)*.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 27, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you by the Chairman for the Implementation of Textile Agreements on November 17, 1986 and February 19, 1987, which established import restraint limits and guaranteed access levels for certain cotton and man-made fiber textile products from Jamaica.

Effective on April 2, 1987, the directive of November 17, 1986 is hereby amended to combine Categories 338/339 and 347/348 with Categories 638/639 and 647/648, respectively, and to establish the following new limits for combined Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987.[1]

| Category | 16-mo restraint limit |
|---|---|
| 338/339/638/639. | 500,000 doz. |
| 347/348/647/648. | 695,000 doz. |

Also effective on April 2, 1987, you are directed to charge the following amounts to the import restraint limits established in this directive for Categories 338/339/638/639 and 347/348/647/648. These charges are for merchandise imported during the period September 1, 1986 through January 31, 1987.

| Category | Charges |
|---|---|
| 638 | 0 |
| 639 | 1,887 doz. |
| 647 | 28,900 doz. |
| 648 | 10,947 doz. |

Merchandise charged to the import restraint limits for Categories 338/339 and 347/348 are to be charged to the limits established in this directive.

Also effective on April 2, 1987, the directive of February 27, 1987 is hereby amended to combine categories 338/339 and 347/348 with categories 638/639 and 647/648, respectively, and to establish the following guaranteed access levels for textile products properly certified textile products assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during the period September 1, 1986 through December 31, 1987:

| Category | Guaranteed access level |
|---|---|
| 338/339/638/639. | 850,000 doz. |
| 347/348/647/648. | 1,547,000 doz. |

[1] These limits have not been adjusted to account for imports exported after August 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7135 Filed 3-31-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Training Task Force will meet April 14–15, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting will include an examination of Navy training to assess how best to organize and manage training to accommodate future requirements, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: March 26, 1987.

Harold L. Stoller,

*Commander, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.*

[FR Doc. 87-7082 Filed 3-31-87; 8:45 am]

BILLING CODE 3810-AE-M

### Secretary of the Navy Health Care Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Secretary of the Navy Health Care Advisory Committee will meet April 21, 22 and 23, 1987 from 8 a.m. to 4 p.m. in the conference room at the Naval Medical Command, Mid-Atlantic Region, Norfolk, Virginia. All sessions will be open to the public.

The purpose of the meeting is to provide guidance concerning resource management in the Navy Medical Department. The agenda for the meeting will consist of a series of briefings from the Naval Medical Command concerning Graduate Medical Education and fiscal and personnel resources in Navy medicine today.

For further information concerning this meeting, contact Captain Joseph J. Smith, MC, USN, (202) 653-1730.

Dated: March 23, 1987.

Harold Stoller,

*Commander, JAGC, U.S. Navy Federal Register Liaison Officer.*

[FR Doc. 87-7083 Filed 3-31-87; 8:45 am]

BILLING CODE 3810-AE-M

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Marine Corps Command and Control Systems Interoperability will meet on April 29 and 30, 1987, at the Arlington Annex, Columbia Pike and South Gate Road, Arlington, Virginia. The meeting will commence at 9:00 A.M. and terminate at 3:30 P.M. on April 29; and commence at 9:00 A.M. and terminate at 3:00 P.M. on April 30, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review interservice command and control systems requirements for naval forces in the near and mid-term, and identify future communications and command and control systems architecture features with a view toward improving interoperability. The agenda will include executive sessions to discuss technical briefings received to date which addressed development programs and interoperability procedures, and begin preparation of a final report. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: March 26, 1987.

Harold L. Stoller, Jr.,

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87-7084 Filed 3-31-87; 8:45 am]

BILLING CODE 3810-AE-M

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Clothing and Textile Research and Facility (NCTRF) Review Team of the Naval Research Advisory Committee Panel on Laboratory Oversight will meet on April 30 and May 1, 1987, at the Naval Clothing and Textile Research Facility, 21 Strathmore Road, Natick, Massachusetts. The meeting will commence at 8:00 A.M. and terminate at 4:00 P.M. on April 30; and commence at 8:30 A.M. and terminate at 3:30 P.M. on May 1, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NCTRF. The agenda for the meeting will consist of technical briefings and tours conducted by functional sponsors and laboratory management related to the scientific, technical and engineering health of the facility. These briefings and tours will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval

Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: March 26, 1987.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87–7085 Filed 3–31–87; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on February 25, 1986, an arbitration panel rendered a decision in the matter of Geraldine Jackson, vendor, vs the State of Massachusetts, Massachusetts Commission for the Blind, State Licensing Agency (Docket No. R–S 85–7). This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner Geraldine Jackson on March 19, 1985.

Under this section of the Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the State Licensing Agency. If the licensee is dissatified with the State Agency decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

A synopsis of the panel's decision is appended. The full text of the decision can be obtained from the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Arroyo, Acting Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3232, Mary E. Switzer Building, Department of Education, 330 C Street SW., Washington, DC 20201, Area Code (202) 732–1303 or TTY (202) 732–1298.

Dated: March 27, 1987.

**Madeleine Will,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

### Synopsis of Arbitration Panel Decision

A blind vendor, Geraldine Jackson, grieved a determination by the Massachusetts Commission for the Blind, State Licensing Agency (SLA). The issue was whether the Massachusetts Commission for the Blind (MCB), in its decision of November 29, 1984 had properly determined that the seniority of Ms Jackson ceased accruing as of September 7, 1984.

The vendor, licensed by MCB, began operating a vending facility on June 11, 1983 at the Sears retail store in Natick, Massachusetts under a contract between MCB and Sears. The contract gave Sears the right to request a new vendor at any time—a right exercised by Sears on August 7, 1984. On August 8, MCB informed the vendor claimant of Sears' request at which time she gave thirty days oral notice that she would vacate the facility on September 7, 1984. This notice was later confirmed in writing on August 24, 1984. MCB requested that she stay until a new vendor took over, but she declined, citing the need to take care of personal and business matters before October 1984, the effective date for her assignment to a new facility. Ms. Jackson advised MCB that she saw no reason for any interruption of seniority.

MCB reiterated in a letter of August 29, 1984 that Sears wanted a smooth transition between the claimant and the new vendor and estimated that this would extend into late September or early October. MCB further advised calimant that vacating the Sears facility on September 7, 1984 would constitute abandonment without giving the thirty (30) day written notice required by MCB's regulations. MCB suggested to Ms. Jackson that she could protect her seniority status by sending a second notice to vacate and remain at Sears until she became the vendor of record at her new facility. The grievant, however, did not do this and vacated the Sears facility on September 7, 1984.

On November 29, 1984, the Commissioner of MCB ruled that Ms. Jackson's seniority as a vendor ceased accruing as of September 7, 1984 and would begin again only when she started to operate another facility. Claimant appealed this decision and argued before the arbitration panel that MCB should have applied regulations at 111 CMR Section 3.07(11) to her situation—regulations which protect the seniority status of a vendor who "is operating a vending facility that is lost to the Vending Facilities Program through no fault of the vendor—." The panel rejected her argument, finding that her facility was not in fact lost to the program. The panel further found that MCB had correctly applied the regulation at Section 3.07(10) which provides, except in certain instances not applicable to Ms. Jackson's situation, that vendor seniority is gained "only by the number of days that the vendor has actually operated a vending facility. . . ." The panel stated that Ms. Jackson's complaint had considerable equitable appeal, noting that MCB's regulations "fail to protect a vendor who is involuntarily terminated by the owner of a program vending facility through no fault of the vendor."

The panel therefore upheld the November 29, 1984 decision rendered by the Commissioner of MCB.

[FR Doc. 87–7177 Filed 3–31–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER87–329–000 et al.]

### Tucson Electric Power Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

**1. Tucson Electric Power Company**

[Docket No. ER87–329–000]

March 24, 1987.

Take notice that on March 19, 1987, Tucson Electric Power Company ("Tucson") tendered for filing a Notice of Cancellation of the Loop Flow Agreement between the Western Systems Coordinating Council ("WSCC") and its participating members and Tucson, FERC Rate Schedule No. 51.

Tucson requests termination of said Agreement as of August 31, 1985 as the date when said Agreement expired pursuant to its terms, and also requests waiver of the notice requirements of 18 CFR 35.15.

Copies of this filing have been served upon all of WSCC's participating members.

Comment date: April 7, 1987, in accordance with Standard Paragraph E at the end of this notice.

**2. Bangor Hydro-Electric Company**

[Docket No. ER87–334–000]

March 26, 1987.

Take notice that the Bangor Hydro-Electric Company ("BHE") on March 20, 1987, tendered for filing as an initial rate schedule, a Unit Exchange and Energy Banking Agreement ("Agreement") dated as of December 23, 1986 among BHE, Boston Edison Company ("BECO"), and Down East Peat L.P.

("DEP"). For administering the Agreement, BHE would receive approximately $48,000 per year.

Under the Agreement, beginning on or after the commencement date of operation of the DEP Qualifying Facility located in Deblois, Maine, BHE will mitigate that the risks to DEP of revenue interruptions in DEP's power sales contract with BECO, which interruptions or other cost penalties may otherwise result from transmission constraints on the north-south transmission path between DEP's qualifying small power production facility in Deblois, Maine and BECO. Copies of the filing have been served upon BECO and DEP.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**3. The Dayton Power and Light Company and The Ohio Edison Company**

[Docket No. ER87-333-000]

March 26, 1987.

Take notice that The Dayton Power and Light Company (on March 20, 1987, tendered for filing, on its own behalf, and on behalf of The Ohio Edison Company, revisions to their Interconnection Agreement. The proposed changes incorporate individual schedules for Emergency Power, Short-Term Power, Economy Power and Non-Displacement Power, revise the Short-Term Power rate, incorporate a demand charge in Non-Displacement Power transactions and introduce a minimum charge on Emergency Power. These changes are being made to introduce flexibility in demand rates to meet market conditions.

This filing was served upon the Public Utilities Commission of Ohio.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**4. Duke Power Company**

[Docket No. ER87-228-000]

March 26, 1987.

Take notice that on March 23, 1987, Duke Power Company (Duke) tendered for filing an amendment to the January 23, 1987 filing in this docket, concerning the Interconnection Agreement between Duke and Carolina Power and Light Company, which provides for general interconnection services between Duke and CP&L.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**5. Florida Power & Light Company**

[Docket No. ER87-332-000]

March 26, 1987.

Take notice that on March 20, 1987, Florida Power & Light Company ("FPL") tendered for filing a document entitled Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Utility Board of the City of Key West, Florida ("City") and documents entitled Schedule TF Operating Agreement Between Florida Power & Light Company and Utility Board of the City of Key West, Florida, and Schedule TX Operating Agreement Between Florida Power & Light Company and Utility Board of the City of Key West, Florida which documents supplement the Agreement to Provide Specified Transmission Service.

FPL states that under the Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Utility Board of the City of Key West, Florida ("Agreement"), FPL will transmit power and energy for City as is required in implementation of its interchange agreements with Florida Municipal Power Agency, Florida Power Corporation; Fort Pierce Utilities Authority; City of Gainesville, Florida; City of Homestead, Florida; Jacksonville Electric Authority; Kissimmee Utility Authority; City of Lakeland, Florida; City of Lake Worth; Utilities Commission, City of New Smyrna Beach; Orlando Utilities Commission; Sebring Utilities Commission; Seminole Electric Cooperative, Inc.; City of St. Cloud; City of Starke; Tampa Electric Company and City of Vero Beach, Florida.

FPL further states that the Schedule TF Operating Agreement and Schedule TX Operating Agreement define the methodology used to determine the additional incremental cost under sections F.4 and F.4 of the Agreement.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Agreement be made effective on the in-service date of the 138 kV transmission line connecting the City to the mainland, estimated to be on or about April 1, 1987. FPL is authorized to represent that the City supports this request for a waiver. FPL states that copies of the filing were served on City.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**6. Monongahela Power Co., et al**

[Docket No. ER87-330-000]

March 26, 1987.

Take notice that on March 19, 1987, Allegheny Power Service Corporation submitted for filing under Part 35.12 of the Commission's regulations three related agreements concerning (1) long-term capacity and energy service among Monongahela Power Company, West Penn Power Company and The Potomac Edison Company (the APS Group) and Potomac Electric Power Company (Pepco), (2) equivalent long-term capacity and energy service among Ohio Edison Company and Pennsylvania Power Company (the OE Group) and the APS Group, and (3) sale of the long-term capacity and energy entitlement underlying the foregoing transactions by the OE Group to Pepco.

The agreements together provide for the purchase by Pepco through APS Group of firm capacity and associated energy, initially 200 megawatts commencing June 1, 1987, increasing in 1989 to 450 megawatts, for a total of nearly nineteen years of such service (through 2005).

The parties state that the agreements are beneficial to all parties and their customers and are in the public interest, and that charges for the aforesaid services were negotiated at arms' length in a competitive environment and are mutually advantageous. The parties request an effective date of June 1, 1987, and request waiver of the Commission's notice requirements if necessary therefor.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Montaup Electric Company**

[Docket No. ER85-106-006]

March 26, 1987.

Take notice that on February 25, 1987, Montaup Electric Company (the Company) tendered for filing a compliance report as specified by the Commission's order of January 30, 1987.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**8. Montaup Electric Company**

[Docket No. ER85-106-005]

March 26, 1987.

Take notice that on February 10, 1987, Montaup Electric Company (the Company) tendered for filing revised sheets implementing the settlement in this docket accepted by the Commission on January 30, 1987. The Company states that the revised sheets provide for (1) a one-time credit applied to the

power bills for January 1987, (2) a reduction in M–11 base demand charge of $0.06224 to be effective from January 1, 1987 through June 30, 1987, and (3) effective July 1, 1987 a further reduction in the base demand charge of $0.04868 takes place until either the M–11 rate is superseded or Seabrook No. 2 losses are recovered per settlement.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**9. Montaup Electric Company**

[Docket No. ER85–106–008]

March 26, 1987.

Take notice that on February 17, 1987, Montaup Electric Company (Montaup) tendered for filing compliance reports in support of credits issued to Montaup's M–Rate customers, pursuant to article 1–2 of the subject Settlement Agreement. Montaup states that credits for the second adjustment period from March 1, 1986 through December 31, 1986, including interest accrued through January 31, 1987 were applied to M–Rate customers billings for the month of January 1987 on February 12, 1987.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**10. Nantahala Power and Light Company**

[Docket No. EL82–20–003]

March 26, 1987.

Take notice that on March 18, 1987, Nantahala Power and Light Company (the Company) tendered for filing a revised PL–(COSAC) rate tariff conforming with Opinion No. 255, issued by the Commission on November 25, 1986 in Docket No. EL82–20–000, by eliminating the normalization adjustment for wartime accelerated depreciation.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**11. Utah Power & Light Company**

[Docket No. ER87–331–000]

March 26, 1987.

Take notice that on March 20, 1987, Utah Power & Light Company (Utah) tendered for filing new Service Agreements providing for sales under Service Schedules UTAH–1B and UTAH–1C of Volume 2 of Utah's FERC Electric Tariff under which Utah sells and delivers non-firm energy to electric utilities. The new Service Agreements are with the following:

City of Anaheim, Public Utilities Department
City of Burbank, Public Service Department
Deseret Generation & Transmission Cooperative
City of Glendale, Public Service Department
City of Pasadena
City of Provo
City of Vernon

Utah requests that the agreements under Schedule UTAH–1B with City of Burbank, Deseret Generation & Transmission Cooperative, City of Glendale, City of Pasadena, and City of Provo be made effective retroactively as of December 16, 1986, August 19, 1986, October 13, 1986, December 16, 1986, and October 3, 1986, respectively, the dates of first delivery under such agreements, and that the notice requirements of § 35.3 be waived. Utah also requests that the agreements under Schedule UTAH–1C with City of Burbank, City of Glendale, and City of Pasadena be made effective retroactively as of November 10, 1986, October 17, 1986, and December 17, 1986, respectively, the dates of first delivery under such agreements, and that the notice requirements of section 35.3 be waived. No sales have been made under any of the other agreements not specifically stated above, and Utah requests that those agreements be made effective either May 19, 1987, or the date service actually commences, whichever occurs first.

Copies of this filing were served on the parties listed above, and upon the Pacific Service Commission of Utah.

Comment date: April 9, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87–7155 Filed 3–31–87; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. QF87–320–000 et al.]

## Overland Energy Corporation et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

March 26, 1987

Take notice that the following filings have been made with the Commission.

**1. Overland Energy Corporation**

[Docket Nos. QF87–320–000]

On March 10, 1987, Overland Energy Corporation (Applicant), of P.O. Box 967, Keokuk, Iowa 52632 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hannibal, Missouri. The facility will consist of two natural gas fired engine generators. Heat recovered from the jacket cooling water and exhaust will be used by the Great River Gas Company during the winter for space heating, and during the summer, via an absorption chiller for building air conditioning. The net electric power production capacity of the facility will be 1,210 kW. Installation of the facility will begin approximately in May 1987.

**2. The Ralph M. Parsons Company**

[Docket Nos. QF87–293–000]

March 26, 1987.

On March 9, 1987, The Ralph M. Parsons Company (Applicant), of 100 West Walnut Street, Pasadena, California submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located at Saugus, California. The facility will consist of a combustion turbine generation unit, a heat recovery steam generator and an extraction/condensing steam turbine generating unit. Steam produced by the facility will be used for process, cooling and space heating. The maximum net electric power production capacity of the facility will be 27,168 kW. The primary energy source will be natural gas. Installation of the facility will begin in March 1988.

**3. Solar Turbines Incorporated**

[Docket No. QF87–321–000]

March 26, 1987.

On March 12, 1987, Solar Turbines Incorporated (Applicant), of 2200 Pacific Highway, San Diego, California 92138–5376 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Albany, New York. The facility will consist of three (3) combustion turbine generator sets, three (3) heat recovery steam generating units and a single extraction/condensing steam turbine-generator. The steam extracted from the turbine will be delivered to the Albany Medical Center for air conditioning and space and domestic water heating. The primary energy source will be natural gas. The net electric power production capacity will be 15.46 megawatts. Installation of the facility will begin in July 1987.

**4. Cogeneration Technology and Development Company**

[Docket No. QF85–284–001]

March 26, 1987.

On March 9, 1987, Cogeneration Technology and Development Company (Applicant), of 257 East 200 South, Suite 800, Salt Lake City, Utah 84111, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Recertification of the facility is requested due to an increase in the size of the greenhouse complex from 6 acres to 12 acres, and a change in crop from roses to tomatoes and other vegetable crops. All of the other facility's characteristics remain the same as originally proposed and certified (Docket No. QF85–284–000, 31 FERC ¶ 61,299).

**5. Long Island Cogeneration Limited Partnership**

[Docket No. QF87–322–000]

March 26, 1987.

On March 17, 1987, Long Island Cogeneration Limited Partnership (Applicant), of 187 Mountain Avenue, Summit, New Jersey 07901, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Suffolk County, New York. The facility will consist of a combustion turbine generating unit, a waste heat recovery steam generator and a steam turbine generator. Steam recovered from the facility will be used for heating, drying and sanitizing in an industrial process and, also, for heating and cooling buildings. The electric power production capacity will be 79 MW. The primary energy source will be natural gas. Installation of the facility will be in 1988.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–7156 Filed 3–31–87; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. EL87–23–000]**

## Connecticut Yankee Atomic Power Co. Order Instituting Compliant and Establishing Hearing Procedures

Issued March 26, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Connecticut Yankee Atomic Power Company (Connecticut Yankee) has on file with the Commission a formula rate [1] for service from a nuclear generating unit to sponsoring utility companies which own stock in Connecticut Yankee. The formula rate includes a rate of return on common equity component. The equity return component is currently set at 17%.

During the last year, the cost of capital has declined significantly.[2] As a result, the Commission believes that the current 17% equity return reflected in Connecticut Yankee's formula rate may result in rates which are unjust and unreasonable.

In the circumstances, the Commission believes that it is appropriate to institute a proceeding pursuant to section 206 of the Federal Power Act to determine whether Connecticut Yankee's formula rate results in rates which are unjust and unreasonable and, if such a finding is made, to establish rates which are just and reasonable. Since any change to the equity return component will be possible only on a prospective basis, we shall direct the presiding judge to expedite the hearing and briefing so that an initial decision may be issued no later than July 10, 1987. We shall also direct Commission trial staff to file its direct testimony within 10 days of issuance of this order. A prehearing conference to establish all other procedural dates by the presiding judge shall be held within 5 days of the filing of staff's testimony. We shall also direct the parties to submit briefs on exceptions within 14 days of the initial decision and briefs opposing exceptions within 14 days from the filing of briefs on exceptions. Finally, we note that once the record is before the Commission, it is our intent to expedite our review of the issues raised in order that a final resolution of this case can be made at the earliest date possible.

Under current Commission precedent, formula rates may be designed to automatically track all cost changes, except changes to the equity return, without the necessity of a filing pursuant to Part 35 of the Commission's regulations. 18 CFR Part 35 (1986). Automatic changes in the equity return component have not been allowed because this aspect of a utility's rates requires an assessment of market conditions.[3] However, this results in formula rates not properly tracking equity costs. In view of this and of the fact that rate relief with respect to the equity return component of formula rates is available only on a prospective basis under section 206 of the Federal Power Act, a modification in formula rates may be appropriate. Since formula rates require waiver of the notice and review provisions of the Federal Power

[1] Connecticut Yankee Rate Schedule FPC No. 1.

[2] For example, the Commission's Generic Rate of Return on Common Equity has decreased from 13.68% to 11.2%.

[3] *See* New England Power Company, 31 FERC ¶ 61,378 (1985); Southwestern Electric Power Company, 31 FERC ¶ 61,389 (1985).

Act, the Commission wishes to consider, in the hearing ordered herein, whether it should henceforth condition the use of Connecticut Yankee's formula rate upon a requirement that the utility periodically justify its equity component under a procedure which affords refund protection. Accordingly, the parties shall also address this issue.

Any person desiring to be heard should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 and 385.214 (1986)). All such protests or motions should be filed within 10 days of issuance of this order.

**The Commission Orders**

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR., Chapter I), a public hearing shall be held concerning the justness and reasonableness of Connecticut Yankee's formula rate.

(B) The Commission's trail staff shall file testimony concerning the appropriate rate of return on common equity and appropriate modifications to connecticut Yankee's formula rate regarding the periodic filings described above within 10 days of the date of this order.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding within approximately 5 days of the date of the filing of staff's testimony, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The Presiding Judge is authorized to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure. The Presiding Judge is hereby directed to establish a procedural schedule which will permit an initial decision to be issued no later than July 10, 1987.

(D) The parties are hereby directed to file briefs on exceptions within 14 days of the initial decision and briefs opposing exceptions within 14 days of the filing of briefs on exceptions.

(E) Subdocket 000 of Docket No. EL87-23 is hereby terminated. Docket No. EL87-23-001 is hereby assigned to the evidentiary proceeding ordered herein.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7085 Filed 3-31-87; 8:45am]

BILLING CODE 6717-01-M

---

[Docket No. EL87-22-000]

## Vermont Yankee Nuclear Power Corp; Order Instituting Complaint and Establishing Hearing Procedures

Issued March 26, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Vermont Yankee Nuclear Power Corporation (Vermont Yankee) has on file with the Commission a formula rate [1] for service from a nuclear generating unit to sponsoring utility companies which own stock in Vermont Yankee. The formula rate includes a rate of return on common equity component. The equity return component is currently set at 15%.

During the last year, the cost of capital has declined significantly.[2] As a result, the Commission believes that the current 15% equity return reflected in Vermont Yankee's formula rate may result in rates which are unjust and unreasonable.

In the circumstances, the Commission believes that it is appropriate to institute a proceeding pursuant to section 206 of the Federal Power Act to determine whether Vermont Yankee's formula rate results in rates which are unjust and unreasonable and, if such a finding is made, to establish rates which are just and reasonable. Since any change to the equity return component will be possible only on a prospective basis, we shall direct the presiding judge to expedite the hearing and briefing so that an initial decision may be issued no later than July 10, 1987. We shall also direct Commission trial staff to file its direct testimony within 10 days of issuance of this order. A prehearing conference to establish all other procedural dates by the presiding judge shall be held within 5 days of the filing of staff's testimony. We shall also direct the parties to submit briefs on exceptions within 14 days of the initial decision and briefs opposing exceptions within 14 days of the filing of briefs on exceptions. Finally, we note that once the record is before the Commission, it is our intent to expedite our review of the issues raised in order that a final resolution of this case can be made at the earliest date possible.

Under current Commission precedent, formula rates may be designed to automatically track all cost changes, except changes to the equity return, without the necessity of a filing pursuant to Part 35 of the Commission's regulations. 18 CFR Part 35 (1986). Automatic changes in the equity return component have not been allowed because this aspect of a utility's rates requires an assessment of market conditions.[3] However, this results in formula rates not properly tracking equity costs. In view of this and of the fact that rate relief with respect to the equity return component of formula rates is available only on a prospective basis under section 206 of the Federal Power Act, a modification in formula rates may be appropriate. Since formula rates require waiver of the notice and review provisions of the Federal Power Act, the Commission wishes to consider, in the hearing ordered herein, whether it should henceforth condition the use of Vermont Yankee's formula rate upon a requirement that the utility periodically justify its equity component under a procedure which affords refund protection. Accordingly, the parties shall also address this issue.

Any person desiring to be heard should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 and 385.214(1986)). All such protests or motions should be filed within 10 days of issuance of this order.

**The Commission Orders**

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the

[1] Vermont Yankee Rate Schedule FPC No. 1.

[2] For example, the Commission's Generic Rate of Return on Common Equity has decreased from 13.68% to 11.2%.

[3] *See* New England Power Company, 31 FERC ¶ 61,378 (1985); Southwestern Electric Power Company, 31 FERC ¶ 61,389 (1985).

Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Vermont Yankee's formula rate.

(B) The Commission's trial staff shall file testimony concerning the appropriate rate of return on common equity and appropriate modifications to Vermont Yankee's formula rate regarding the periodic filings described above within 10 days of the date of this order.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding within approximately 5 days of the date of the filing of staff's testimony, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The Presiding Judge is authorized to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure. The Presiding Judge is hereby directed to establish a procedural schedule which will permit an initial decision to be issued no later than July 10, 1987.

(D) The parties are hereby directed to file briefs on exceptions within 14 days of the initial decision and briefs opposing exceptions within 14 days of the filing of briefs on exceptions.

(E) Subdocket 000 of Docket No. EL87-22 is hereby terminated. Docket No. EL87-22-001 is hereby assigned to the evidentiary proceeding ordered herein.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7066 Filed 3-31-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. EL87-21-000]

## Order Instituting Complaint and Establishing Hearing Procedures; Yankee Atomic Electric Co.

(Issued March 26, 1987.)

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Yankee Atomic Electric Company (Yankee Atomic) has on file with the Commission a formula rate [1] for service from a nuclear generating unit to sponsoring utility companies which own stock in Yankee Atomic. The formula rate includes a rate of return on common equity component. The equity return component is currently set at 14.5%.

During the last year, the cost of capital has declined significantly.[2] As a result, the Commission believes that the current 14.5% equity return reflected in Yankee Atomic's formula rate may result in rates which are unjust and unreasonable.

In the circumstances, the Commission believes that it is appropriate to institute a proceeding pursuant to section 206 of the Federal Power Act to determine whether Yankee Atomic's formula rate results in rates which are unjust and unreasonable and, if such a finding is made, to establish rates which are just and reasonable. Since any change to the equity return component will be possible only on a prospective basis, we shall direct the presiding judge to expedite the hearing and briefing so that an initial decision may be issued no later than July 10, 1987. We shall also direct Commission trial staff to file its direct testimony within 10 days of issuance of this order. A prehearing conference to establish all other procedural dates by the presiding judge shall be held within 5 days of the filing of staff testimony. We shall also direct the parties to submit briefs on exceptions within 14 days of the initial decision and briefs opposing exceptions within 14 days of the initial decision and briefs opposing exceptions within 14 days from the filing of briefs on exceptions. Finally, we note that once the record is before the Commission, it is our intent to expedite our review of the issues raised in order that a final resolution of this case can be made at the earliest date possible.

Under current Commission precedent, formula rates may be designed to automatically track all cost changes, except changes to the equity return, without the necessity of a filing pursuant to Part 35 of the Commission's regulations. 18 CFR Part 35 (1986). Automatic changes in the equity return component have not been allowed because this aspect of a utility's rates requires an assessment of market conditions.[3] However, this results in formula rates not properly tracking equity costs. In view of this and of the fact that rate relief with respect to the equity return component of formula rates is available only on a prospective basis under section 206 of the Federal Power Act, a modification in formula rates may be appropriate. Since formula rates require waiver of the notice and review provisions of the Federal Power Act, the Commission wishes to consider, in the hearing ordered herein, whether it should henceforth condition the use of Yankee Atomic's formula rate upon a requirement that the utility periodically justify its equity component under a procedure which affords refund protection. Accordingly, the parties shall also address this issue.

Any person desiring to be heard should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 and 385.214 (1986)). All such protests or motions should be filed within 10 days of issuance of this order.

### The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Yankee Atomic's formula rate.

(B) The Commission's trial staff shall file testimony concerning the appropriate rate of return on common equity and appropriate modifications to Yankee Atomic's formula rate regarding the periodic filing described above within 10 days of the date of this order.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding within approximately 5 days of the date of the filing of staff's testimony, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The Presiding Judge is authorized to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure. The Presiding Judge is hereby directed to establish a procedural schedule which will permit an initial decision to be issued no later than July 10, 1987.

(D) The parties are hereby directed to file briefs on exceptions within 14 days of the initial decision and briefs on exceptions.

[1] Yankee Atomic Rate Schedule FPC No. 1.

[2] For example, the Commission's Generic Rate of Return on Common Equity has decreased from 13.68% to 11.2%.

[3] *See* New England Power Company, 31 FERC ¶ 61,378 (1985); Southwestern Electric Power Company, 31 FERC ¶ 61,389 (1985).

(E) Subdocket 000 of Docket No. EL87–21 is hereby terminated. Docket No. EL87–21–001 is hereby assigned to the evidentiary proceeding ordered herein.

(F) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87–7067 Filed 3–31–87; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–180728; FRL–3.77–5]**

### Receipt of Applications for Specific Exemptions To Use Clofentezine; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received specific exemption requests from the Michigan, Ohio, and West Virginia Departments of Agriculture and the Virginia Department of Agriculture and Consumer Services (hereafter referred to individually by State or collectively as "Applicants") for use of the unregistered pesticide product Apollo to control European red mites on apples. Apollo, manufactured by Nor-Am Chemical Company, contains the unregistered active ingredient clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine). EPA is soliciting comment before making the decision whether or not to grant these specific exemption requests.

**DATE:** Comments must be received on or before April 16, 1987.

**ADDRESS:** Three copies of written comments, bearing the identifying notation "OPP–180728," should be submitted by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jack E. Housenger, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7889).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions to permit the use of the unregistered pesticide product Apollo to control European red mites on apples. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Virginia and West Virginia have requested authorization to make one complete or two "alternate row middle spray" applications with Apollo. A maximum of four ounces of formulated product (0.125 pound active ingredient) is proposed to be applied per acre by ground equipment as a dilute or concentrate spray. The time of treatment extends from "tight cluster" until 45 days before harvest.

Michigan and Ohio have requested authorization to make a maximum of two applications using up to eight ounces of formulated product (0.25 pound active ingredient) per acre per application. Ground or aerial application is proposed. The times of treatment are from delayed dormant through petal fall as an early season control or before population levels exceed three mites per leaf as a summer mite control. No treatment would be allowed 45 days prior to harvest.

Michigan proposes to treat a maximum of 45,000 acres of apples primarily in the western portion of the state. A maximum of 5625 gallons of product would be needed under the proposed exemption.

Ohio proposes to treat a maximum of 7,500 acres of apples throughout the state. A maximum of 937.5 gallons of Apollo will be needed.

Virginia proposes to treat a maximum of 18,000 acres of apples in Frederick, Nelson, Clarke, Rockingham, Shenandoah, Albemarle, Rappahannock, Franklin, Smyth, Carroll, Botetourt, Patrick, Bedford, Warren, Madison and Roanoke Counties. A maximum of 562.5 gallons of Apollo will be needed.

West Virginia proposes to treat a maximum of 7,500 acres of the counties of Morgan, Hampshire, Berkeley, and Jefferson. A maximum of 437.5 gallons of Apollo will be needed.

All applications are proposed to be made by or under the direct supervision of certified applicators. The Applicants have requested authorization to make treatments through July 1987, except Michigan which expects the need for treatments to continue until September 15, 1987.

The Applicants claim that European red mites developed resistance to Plictran (cyhexatin) which historically has been used for control of mites. Dicofol has also been used in the past, however, resistance appears to have developed to this pesticide as well. Additionally, dicofol contains DDT-related contaminants making its use undesirable. Other acaricides such as formetanate hydrochloride, oxamyl and propargite are not effective, toxic to beneficials or otherwise not appropriate for mite control at various times. The Applicants additionally expect extremely severe European red mite populations because of the need to control the periodical cicada this year. The pesticides usually applied for cicada control decimate natural enemies of the mite.

The Applicants state that the result of not having an effective control of the European red mite would be decreased fruit size, loss of fruit set and reduced fruit quality. Michigan, Virginia, and West Virginia estimate that losses of up to $165 per acre for fresh market apples and $100 per acre for processing apples can be expected using the registered alternatives. The use of Apollo would reduce these losses to $40 and $25 per acre, respectively. Ohio estimates the benefits from the use of Apollo to be $2.25 million for the 1987 growing season.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and solicit public comment on applications involving an unregistered active ingredient. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address

above. The comments must be received on or before April 16, 1987, and should bear the identifying notation "OPP-180728." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by Michigan, Ohio, Virginia and West Virginia.

Dated: March 23, 1987.

Edwin F. Tinsworth,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87-6887 Filed 3-31-87; 8:45 am]

BILLING CODE 6560-50-M

---

[OPP-180726; FRL-3178-5]

## Receipt of Applications for Specific Exemptions To Use Clofentezine; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received specific exemption requests from the Oregon, Pennsylvania, and Delaware Departments of Agriculture (hereafter referred to individually by State or collectively as "Applicants") for use of the unregistered product Apollo to control spider mites on apples and pears in Oregon and European red mites on apples in Pennsylvania and Delaware. Apollo, manufactured by Nor-Am Chemical Company, contains the unregistered active ingredient clofentezine (3,6-bis (2-chlorophenyl)-1,2,4,5-tetrazine). EPA is soliciting comment before making the decision whether or not to grant these specific exemption requests.

**DATES:** Comments must be received on or before April 16, 1987.

**ADDRESSES:** Three copies of written comments, bearing the identifying notation "OPP-180726," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7889).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions to permit the use of the unregistered product, Apollo. Delaware and Pennsylvania are requesting exemptions to control European red mites on apples and Oregon is requesting an exemption for control of spider mites on pears and on pears interplanted with apples. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Delaware and Pennsylvania have requested authorization to make one complete or two "alternate row middle spray" applications with Apollo. A maximum of four ounces of formulated product (0.125 pound active ingredient) is proposed to be applied per acre as a ground application using an airblast sprayer. Either dilute or concentrate sprays are proposed. The time of treatment extends from "tight cluster" until 45 days before harvest.

Oregon has requested authorization to make a maximum of two applications using up to eight ounces of formulated product (0.25 pound active ingredient) per acre per application. Ground application using an airblast sprayer is proposed. The time of treatment extends from the first sign of mite activity until 45 days before harvest for interplanted pear and apple orchards and 21 days before harvest for pear orchards.

Delaware proposes to treat a maximum of 750 acres of apples in Delaware, Kent and Sussex Counties. A maximum of 23.4 gallons of Apollo will be needed.

Oregon proposes to treat a maximum of 18,000 acres of pears and 500 acres of pears interplanted with apples. A maximum of 2,312.5 gallons of product would be needed under the proposed exemption.

Pennsylvania proposes to treat a maximum of 23,270 acres of apples in 55 counties. A maximum of 727 gallons of Apollo will be needed.

All applications are proposed to be made by or under the direct supervision of certified applicators. The Applicants have requested authorization to make treatments through July 1987.

Oregon claims that spider mites developed resistance to cyhexatin and later to hexakis due to the extensive use of these pesticides through the 1970's. This resistance was measured at between 100- to 2000-fold by 1983 when compared to nonresistant strains. According to Oregon, the carbamate acaricides (i.e., formetanate hydrochloride and oxamyl) provide for rapid knockdown of spider mites followed by a rapid resurgence in numbers. These pesticides are also very toxic to predaceous mites which further contributes to the control problems exhibited by these materials.

In an effort to obtain control of spider mites, Oregon growers started combining one of the organotin acaricides (i.e., cyhexatin or hexakis) with a carbamate acaricide in 1983. This proved to be effective until last year. Other pesticides registered for spider mite control on apples and pears will not provide adequate control, are not compatible with an integrated pest control program, or are otherwise inappropriate for use, according to Oregon.

Delaware and Pennsylvania make similar claims regarding the ineffectiveness of registered pesticides. Specifically, resistance and/or high toxicity to predatory mites are the main reasons these states claim that registered pesticides will not effectively control the European red mite. Additionally, Delaware and Pennsylvania expect extremely severe European red mite populations because of the need to control the periodical cicada this year. The pesticides usually

applied for cicada control decimate natural enemies of the mite.

The Applicants state that the result of not having an effective control of spider mites would be decreased fruit size, loss of fruit set and reduced fruit quality. Oregon's loss estimates range up to $2 million for decreased fruit size to $3.5 million due to quality reduction. Delaware and Pennsylvania estimate losses of over $100 per acre.

This notice does not constitute a decision by EPA on the application itself. It is the Agency's policy to solicit public comment on applications involving an unregistered active ingredient. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before April 16, 1987, and should bear the identifying notation "OPP–180726." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the the Delaware, Oregon and Pennsylvania Departments of Agriculture.

Dated: March 10, 1987.

**James W. Akerman,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–6992 Filed 3–31–87; 8:45 am]

BILLING CODE 6560–50–M

---

[OPP–180729; FRL–3177–3]

## Receipt of Application for Specific Exemption To Use Iprodione; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the California Department of Food and Agriculture (hereafter referred to as "Applicant") for use of the product Rovral to control postharvest fruit decay on sweet cherries. Rovral, manufactured by Rhone-Poulenc, Inc., contains the active ingredient iprodione. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

**DATE:** Comments must be received on or before April 16, 1987.

**ADDRESS:** Three copies of written comments, bearing the identifying notation "OPP–180729," should be submitted by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jack E. Housenger, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7889).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of iprodione to control postharvest fruit decay on sweet cherries. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant has requested a maximum of one postharvest treatment using up to one pound of active ingredient per 100 gallons of water. Application to fruit will be made as a spray or dip without rinsing. Rovral may be tank mixed with an appropriately EPA-labeled DCNA product. A maximum of 30,000 tons of sweet cherries are proposed to be treated.

The Applicant has requested that applications under the exemption be allowed from April 23 until August 1.

The Applicant claims that emergency conditions exist due to postharvest fruit decay caused by *Monilinia laxa, Monilinia fructicola,* and *Botrytis cinerea.* These fungi severely shorten the storage and shelf-life of cherries which do not receive protective treatments.

The historical means of controlling fruit decay was through the use of benomyl. However, this use was deleted from the product label by the manufacturer in 1985 due to the development of resistant strains of the causal organisms of fruit decay. Thiophanate-methyl, also registered for this use, is a benzimidazole fungicide like benomyl and has experienced similar resistance problems. Captan is also registered for this use, however, potential health concerns from use of this fungicide by Canada, which imports sweet cherries from California, have precluded this use, according to the Applicant. Significant losses can be expected to occur without the use of iprodione.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice in the **Federal Register** and provide an opportunity for public comment when an emergency exemption has been requested or granted for that use for any previous three years and a complete application for registration of that use and/or a petition for a tolerance for residues in or on the commodity has not been submitted to the Agency. This use of iprodione on sweet cherries has been requested and authorized under section 18 to California since 1984 and no application for registration/petition for tolerance has been submitted. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before April 16, 1987, and should bear the identifying notation "OPP–180729." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Food and Agriculture.

Dated: March 23, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87-6888 Filed 3-31-87; 8:45 am]

BILLING CODE 6560-50-M

---

[OPTS-41026; FRL-3178-9]

## Chemicals To Be Reviewed by the Toxic Substances Control Act Interagency Testing Committee; Public Meeting and Request for Information

**AGENCY:** Toxic Substances Control Act Interagency Testing Committee.

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) will hold a public meeting to review comments and information on a new list of chemicals selected for review by the ITC. The method of scoring and selecting chemicals for inclusion on the list will be described. The public is also invited to submit to the ITC, after the meeting, written comments and technical data on the listed chemicals. The chemicals on the list are candidates for possible recommendation to the Administrator of the U.S. Environmental Protection Agency (EPA), to be given priority consideration for the promulgation of testing rules pursuant to section 4(a) of TSCA.

**DATES:** The meeting will be held on June 18, 1987, at 10:30 a.m.

Oral comments may be presented at the meeting. Written comments, data, and information should be sent to the Executive Secretary, ITC, no later than June 1, 1987.

**ADDRESSES:**

The meeting will be held at: EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC 20460.

Written comments and information by mail to: Robert H. Brink, Executive Secretary, TSCA Interagency Testing Committee (TS-792), Environmental Proection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. E-535, (202-382-3820)

**FOR FURTHER INFORMATION CONTACT:** Robert H. Brink, (202-382-3820).

**SUPPLEMENTARY INFORMATION:** The TSCA Interagency Testing Committee will hold a public meeting to receive comments and gather information on a new list of chemical substances for review under section 4(e) of TSCA

### I. Background

The Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.* (TSCA), authorizes the Administrator of the Environmental Protection Agency to require testing of chemicals in commerce if the Administrator makes certain findings that are set forth in section 4(a) of TSCA. Section 4(e) established the TSCA Interagency Testing Committee. The ITC is charged with recommending to the EPA Administrator chemical substances or mixtures (chemicals) to which EPA should give priority consideration for promulgating health and environmental effects testing rules under section 4(a) of TSCA. The EPA Administrator must respond to the ITC recommendations by initiating a proceeding under section 4(a) of TSCA for the recommended chemicals or publishing in the **Federal Register** the reasons for not doing so.

Eight Federal agencies are specified in section 4(e)(2)(A) of TSCA as statutory members of ITC. The agencies are: Council on Environmental Quality, Department of Commerce, Environmental Protection Agency, National Cancer Institute, National Institute of Environmental Health Sciences, National Institute for Occupational Safety and Health, National Science Foundation, and Occupational Safety and Health Administration.

The ITC has invited six other Federal agencies and one national program, with activities related to the control of toxic substances, to participate in a liaison capacity. They are: Consumer Product Safety Commission, Department of Agriculture, Department of Defense, Department of the Interior, Food and Drug Administration, National Library of Medicine, and National Toxicology Program. Staff support is provided by the Environmental Protection Agency.

In developing its recommendation the ITC is directed by section 4(e)(1)(A) of TSCA to consider, together with all other relevant information, the following priority factors with respect to chemicals under consideration:

1. Quantities that are or will be manufactured.
2. Quantities which are entering or will enter the environment.
3. Occupational exposure.
4. Non-occupational human exposure.
5. Similarity in chemical structure to other substances which are known to present an unreasonable risk of injury to health or the environment.
6. Existence of data concerning health and environmental effects.
7. The extent to which testing will develp useful data on the risk of injury to health or the environment.
8. The reasonably foreseeable availability of testing facilities and personnel.

The ITC is also directed by section 4(e)(1)(A) of TSCA to give priority attention, in establishing its list of recommended chemicals, to those chemicals which are known to cause or contribute to or which are suspected of causing or contributing to cancer, gene mutations or birth defects.

Section 4(e) requires that the ITC revise its list of recommended chemicals as necessary at least once ever 6 months. The initial report of the ITC to the EPA Administrator was published in the **Federal Register** of October 12, 1977 (42 FR 55026). This report contains a description of the Committee's scoring and review processes, together with the initial list of recommended chemicals. Eighteen subsequent reports have been issued by the ITC.

The ITC completed its Sixth Scoring Exercise in January 1987. This exercise was designed to select additional chemicals which warrant detailed review to determine which should be recommended to the EPA Administrator for priority consideration. This scoring exercise produced a list of 40 chemicals to be reviewed by the ITC during the next 12 to 18 months. The chemicals are listed in the following Table 1:

TABLE 1.—1987 LIST OF CHEMICALS SELECTED FOR REVIEW BY TSCA INTERAGENCY TESTING COMMITTEE

| CAS No | Chemical name |
|---|---|
| 78-85-3 | Methacrolein |
| 88-53-9 | 2-Amino-5-chloro-4-methylbenzenesulfonic acid |
| 96-48-0 | Butyrolactone. |
| 98-16-8 | 3-(Trifluoromethyl) aniline |
| 101-80-4 | 4,4'-Oxybisaniline |
| 101-86-0 | 2-(Phenylmethylene)octanal |
| 107-13-1 | Acrylonitrile |
| 107-20-0 | Chloroacetaldehyde |
| 111-44-4 | Dichloroethyl ether. |
| 112-26-5 | Triethylene glycol dichloride. |
| 112-57-2 | Tetraethylenepentamine |
| 115-96-8 | Phosphoric acid, tris(2-chloroethyl) ester |
| 119-93-7 | o-Tolidine |
| 120-71-8 | p-Cresidine |
| 121-50-6 | 2-Chloro-5-(trifluoromethyl) aniline. |
| 123-38-6 | Propionaldehyde |
| 134-32-7 | 1-Naphthalenamine |
| 143-23-7 | Dihexylenetriamine |
| 298-06-6 | Phosphorodithioic acid, o,o-diethyl ester |
| 534-52-1 | 2-Methyl-4,6-dinitrophenol |
| 611-19-8 | 1-Chloro-2-(chloromethyl) benzene |
| 623-36-9 | 2-Methyl-2-pentenal |
| 756-80-9 | Phosphorodithioic acid, o,o-dimethyl ester |
| 836-30-6 | 4-Nitro-N-phenylbenzenamine |
| 842-07-9 | 1-(Phenylazo)-2-naphthalenol |
| 847-51-8 | N-(4-amino-2-hydroxyphnyl)-2,2,3,3,4,4,4-heptafluorobutanamide |
| 872-50-4 | 1-Methyl-2-pyrrolidinone |
| 1616-88-2 | 2-Methoxyethanol carbamate |
| 2051-18-5 | 1-(Chloromethyl)-4-(1-methylethyl) benzene |
| 2253-43-2 | Phosphorodithioic acid, o,o-dipropyl ester |
| 2253-52-3 | Phosphorodithioic acid, o,o-bis(2-methylpropyl) ester |
| 2760-98-7 | 1,3-Benzenedicarboxylic acid, dihydrazide |
| 4097-89-6 | Triaminetrinethylamine |
| 4170-30-3 | Crotonaldehyde |
| 5810-88-8 | Phosphorodithioic acid, o,o-bis (2-ethyl hexyl) ester |
| 6375-47-9 | N-(3-amino-4-methoxyphenyl) acetamide |
| 7722-73-8 | 1,1',1''-(1,3,5-Benzenetriyltricarbonyl) tris [2-ethylaziridine]. |

BEST COPY AVAILABLE

TABLE 1.—1987 LIST OF CHEMICALS SELECTED FOR REVIEW BY TSCA INTERAGENCY TESTING COMMITTEE—Continued

| CAS No | Chemical name |
|---|---|
| 17741-62-7 | 4-[4-[(2,6-Dichloro-4-nitrophenyl) azo]-phenyl] thiomorpholine, 1,1-dioxide. |
| 25026-97-5 | 2-Amino-5-nitrobenzenecarbothioamide. |
| 33125-86-9 | Phosphoric acid, 1,2-ethanediyl tetrakis (2-chloroethyl)ester |
| 39638-32-9 | 2,2'-oxybis(2-chloropropane) |
| 59191-99-0 | N-(5-amino-2-chlorophenyl)-4,4-dimethyl-3-oxopentanamide |

## II. Public Meeting and Request For Comments

A public meeting of the ITC will be held in Washington, DC, at the time and place designated under DATES. At this meeting a representative of the ITC will describe the chemical-scoring and selection process used by the Committee. Interested persons are invited to present relevant oral comments on the process and on chemicals listed in Table 1. Additional comments and information may be submitted in writing to the Executive Secretary, TSCA Interagency Testing Committee, at the address shown at the beginning of this notice. The kinds of information that would be most helpful to the ITC in assessing the need for testing are those related to the eight priority factors listed in Part I and those noted in the following:

1. Technical bulletins.
2. Material safety data sheets.
3. Current annual production data and trends.
4. Number of workers exposed, concentrations, controls, use of open versus closed systems, etc.
5. Use data (types of uses, percent of production by use, etc.).
6. Environmental release data (waste control procedures, pollution potential, fraction released to the environment, route of environmental entry).
7. Chemical fate data such as water solubility, vapor pressure, density, melting/boiling point, octanol/water partition coefficient, potential transformation processes and rates.
8. Toxicological data (for example, metabolism and toxicokinetics, acute effects, oncogenicity, neurotoxicity, epidemiology).
9. Ecological effects data (for example, acute, subchronic and chronic effects on non-human biota, behavioral effects, ecosystem processes effects, bioconcentration and food-chain transport).
10. For some of the chemicals listed in Table 1, the ITC believes that it needs only certain kinds of health or ecological effects data for its review. Those chemicals and the effects data being requested are listed in the following Table 2:

TABLE 2.—CHEMICALS FOR WHICH ONLY CERTAIN KINDS OF HEALTH OR ECOLOGICAL EFFECTS DATA ARE BEING REQUESTED

| CAS No | Effects information being requested | |
|---|---|---|
| | Health effects | Ecological effects |
| 96-45-0 | None | All. |
| 101-80-4 | Chronic effects other than oncogenicity and mutagenicity. | All. |
| 107-13-1 | None | All |
| 107-20-0 | None | All. |
| 111-44-4 | Chronic effects other than oncogenicity | All. |
| 115-96-8 | Neurotoxicity only | All |
| 119-93-7 | None | All. |
| 120-71-8 | None | All. |
| 121-50-6 | All | None. |
| 134-32-7 | None | All |
| 842-07-9 | None | All. |
| 872-50-4 | None | All |
| 4170-3 | None | All. |
| 33125-86-9 | None | All |

While the kinds of effects information specified in Table 2 are believed to be those needed for the ITC review of the listed chemicals, interested persons are welcome to provide other effects information to the ITC for its review and consideration.

The ITC would appreciate receiving notification if a listed chemical is no longer being manufactured or disturbed.

The information submitted will become part of the public record of the ITC review process unless it is clearly designated as Confidential Business Information (CBI). Submitters should separate CBI from other information and mark such information clearly as "TSCA-CBI." It will be treated in accordance with procedures outlined in the "TSCA Confidential Business Information Security Manual."

Any person wishing to make an oral presentation at the June 18, public meeting should notify the Executive Secretary, ITC not later than June 1, at the address or telephone number set forth in this notice. Respondents are requested to provide the CAS registry number and the name of any chemical they wish to comment on. Oral presentation will be limited to 10 minutes per person.

Written comments, data, and information on chemicals should be submitted to the Executive Secretary, ITC, not later than June 1, in order to be assured timely review by the ITC.

Dated: March 20, 1987.

**James K. Selkirk,**

*Chairperson, TSCA Interagency Testing Committee.*

[FR Doc. 87-7128 Filed 3-31-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 25, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0321
Title: Section 73.68, Sampling Systems for Antenna Monitors
Action: Revision
Respondents: AM radio broadcast stations
Frequency of Response: On occasion
Estimated Annual Burden: 200 Responses; 400 Hours
Needs and Uses: The Commission requires the licensee of an existing AM radio broadcast station with a directional antenna system to obtain approval of the antenna sampling system by submitting an informal request to the Commission. The request must contain enough information to demonstrate compliance with the Commission's requirements for antenna sampling systems. The information is used to ensure compliance with the Commission's Rules and to ensure that the system will not cause interference to other broadcast facilities.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-7149 Filed 3-31-87; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Big Island Broadcasting Company, Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/State | File No. | MM Docket No |
|---|---|---|---|
| A Big Island Broadcasting Company, ltd | Hilo, Hawaii | BPH-841011IA | 87-63 |
| B Carmen D. Dwght. | Hilo, Hawaii | BPH-850531ME | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| 1. Environmental Impact | A |
| 2. Air Hazard | B |
| 3. Comparative | A, B |
| 4. Ultimate | A, B |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC. 20037. (Telephone (202) 857-3800).

**W. Jan Gey,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87-7150 Filed 3-31-87; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Dad's Clipping Service et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City and State | File No | MM Docket No |
|---|---|---|
| A. Dad's Clipping Service, Sac City, IA | BPH-860313MU | [illegible] |
| B. Iowa Radio Associates, Sac City, IA. | BPH-860317NE | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading Applicant(s)*

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87-7151 Filed 3-31-87; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Richard L. Oberdorfer et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City and State | File No | [illegible] |
|---|---|---|
| Richard L. Oberdorfer, Bend OR | BPH-850710MJ | 87-62 |
| B. Louise Alda McCourtney, Bend OR | BPH-850711NK | |
| C. John Jay Spillane & Sara Jane Spillane, A General Partnership, Bend OR | BPH-850711QG | |
| D. Deschutes Broadcasting, Ltd., An Oregon Limited Partnership, Bend, OR. | BPH-850712QG | |
| E. Clearwater Broadcasting Company, Bend OR | BPH-850712QJ | |
| F. Suzanne Marie McLain, Bend, OR | BPH-850712QM | |
| G. Kitsap Communications Corporation, Bend, OR. | BPH-850712QO | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading Applicant(s)*

1. Environmental Impact, B, C, D, E, F, G
2. Comparative, All.
3. Ultimate, All.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87-7152 Filed 3-31-87; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Charles J. Saltzman et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City and State | File No | MM Docket No |
|---|---|---|
| A. Charles J. Saltzman, Smyrna, DE | BPH-851223MM | 87-65 |
| B. A.P. Communicatons Limited Partnership, Smyrna, DE | BPH-85123OMO | |
| C. Smyrna Radio Limited Partnership, Smyrna, DE | BPH-851231MU | |
| D. Kenneth L. Brennan & Pennsylvania Communications, Corp. d/b/a, Delaware Communication Co., Smyrna, DE | BPH-860102NR | |

| Applicant, City and State | File No. | MM Docket No. |
|---|---|---|
| E. The Baltimore Radio Show, Inc., Smyrna, DE | BPH-860102NT | |
| F. Genesis Communications, Inc., and Judith L. Randolph, Smyrna, DE | BPH-860102NU | |
| G. Benjamin Macwan, Smyrna, DE | BPH-860102NV | |
| H. Jeffrey M. Vadalan & Patricia J. Clarke d/b/a Radio Smyrna Partners, Smyrna, DE | BPH-860102NW | |
| I. First State Broadcasting, Inc., Smyrna, DE | BPH-860102NX | |
| J. C.G. Associates of Smyrna, a limited partnership, Smyrna, DE | BPH-860102NY | |
| K. Cynthia Johnson Richardson, Smyrna, DE | BPH-860102NZ | |
| L. Smyrna Broadcasters Limited Partnership, Smyrna, DE | BPH-860102OA | |
| M. Central Delaware Broadcasting Co., Smyrna, DE. | BPH-860102OB | |
| N. Smyrna Radio, Inc., Smyrna, DE. | BPH-860102OC | |
| O. Rick A. Gold, Smyrna, DE | BPH-851230MP | (Dismissed). |
| P. Daniel L. Henning, Smyrna, DE | BPH-860102NS | (Dismissed). |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading Applicants*

1. Environmental Impact, A, B, C, D, E, F, G, H, I, J, K, L, M, N
2. Air Hazard, A, B, C, D, E, F, G, H, I, J, K, L, M, N
3. Comparative, A, B, C, D, E, F, G, H, I, J, K, L, M, N
4. Ultimate, A, B, C, D, E, F, G, H, I, J, K, L, M, N

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–7153 Filed 3–31–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearings; Stevens Point Communications Corporation; et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City and State | File No. | MM Docket No. |
|---|---|---|
| A. Stevens Point Communications Corporation, Stevens Point, WI | BPH-850711OY | 87–64 |
| B. Altcom of Wisconsin, Inc., Stevens Point WI | BPH-850712YN | |
| C. Peosa Satellite Radio Corporation, Stevens Point, WI | BPH-850712YP | |
| D. Marylyn P. Kotas, Stevens Point, WI. | [illegible] (Dismissed) | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading Applicants*

1. Air Hazard, A,B
2. Comparative, A,B,C
3. Ultimate, A,B,C

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–7154 Filed 3–31–87; 8:45 am]

BILLING CODE 6712–01–M

## GENERAL SERVICES ADMINISTRATION

### Proposing To Change the Method of Procurement

**ACTION:** Notice.

The General Services Administration is proposing to change the method of procurement under Federal Supply Schedule 62, Part I, "Lighting Fixtures and Lamps: Household and Quarters Use", from a single award to a multiple award schedule. The proposed implementation date will be November 1, 1987. 179 lamp styles would be affected. Industry and agency comments are welcome and should include consideration of the potential impact on small business concerns. Comments are requested within 30 calendar days from date of this publication, and should be forwarded to: Ms. Norma Carey, Contracting Officer, General Services Administration, Furniture Commodity Center, FCNH–A, Washington, DC 20406.

Dated: March 17, 1987.

Patricia A. Gooding-Luper,

*Director, Household and Industrial Furniture, Procurement Division, Furniture Commodity Center, Federal Supply Service.*

[FR Doc. 87–7111 Filed 3–31–87; 8:45 am]

BILLING CODE 6820–24–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 83F–0409]

### Economics Laboratory, Inc.; Amended Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Economics Laboratory, Inc., to provide for the safe use of the sodium methyl and dimethyl naphthalene sulfonates in sanitizing solutions for use on food-contact surfaces. The previous filing notice is amended to make clear that the sanitizing solution contains decanoic acid, octanoic acid, and a mixture of (1) the sodium salt of naphthalene sulfonic acid; (2) the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalene sulfonic acid; and (3) a mixture of the sodium salt of

naphthalene sulfonic acid, and the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalene sulfonic acid alkylated at 3 percent by weight with $C_8$–$C_9$ linear olefins. The methyl and dimethyl substituted derivatives (described in (2) above) constitute no less than 70 percent by weight of the mixture of naphthalene sulfonates.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 26, 1984 (49 FR 18044), FDA published a notice that a petition (FAP 3H3756) had been filed by Economics Laboratory, Inc., Osborn Bldg., St. Paul, MN 55102, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended in paragraphs (b)(27) and (c)(22) to provide for the safe use of sodium mono- and dimethyl naphthalene sulfonates for use on food-contact surfaces. Subsequently, Economics Laboratory, Inc., amended the petition to correct the chemical name of this additive to a mixture of (1) the sodium salt of naphthalene sulfonic acid; (2) the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalene sulfonic acid; and (3) a mixture of the sodium salt of naphthalene sulfonic acid, and the methyl, dimethyl, and trimethyl derivatives of the sodium salt of naphthalene sulfonic acid alkylated at 3 percent by weight with $C_8$–$C_9$ linear olefins. The methyl and dimethyl substituted derivatives (described in (2) above) constitute no less than 70 percent by weight of the mixture of naphthalene sulfonates.

The previous notice is also being amended to include decanoic and octanoic acid as components of the sanitizing solution and to omit the specific amendment of paragraphs (b)(27) and (c)(22).

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857 between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Dated: March 24, 1987.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–7070 Filed 3–31–87; 8:45 am]

BILLING CODE [illegible]

---

[Docket No. 84P–0346]

## Surgical Simplex™ P Antibiotic Bone Cement; Hearing Before an Ad Hoc Advisory Committee

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the date, time, and location of the first hearing before an ad hoc Public Advisory Committee, established under 21 U.S.C. 360e(g)(2), to review the agency's denial of approval of an application for premarket approval (PMA) for Howmedica, Inc.'s, Surgical Simplex™ P Antibiotic Bone Cement. This notice also summarizes the procedures for the hearing and the methods by which interested persons may participate in the hearing.

**DATES:** The hearing will begin on April 27, 1987, at 9 a.m.; notices of participation by April 15, 1987.

**ADDRESSES:** The hearing will be held in Conference Rm. J, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857; notices of participation to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Timothy C. Sottek, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** By order dated June 29, 1984, the Director of the Office of Device Evaluation of FDA's Center for Devices and Radiological Health (CDRH) denied approval of a PMA for the Surgical Simplex™ P Antibiotic Bone Cement filed by Howmedica, Inc., 235 East 42d St., New York, NY 10017. This device, which includes two antibiotics, is intended for use in attaching prostheses to living bone in orthopedic surgical procedures and in pathological fractures. The addition of antibiotics to the bone cement is proposed to help reduce the risk of localized infection during the intraoperative and postoperative period. CDRH's denial was based on the applicant's failure to satisfy the safety and effectiveness requirements of section 515(d)(2) (A) and (B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(2) (A) and (B)).

In response to CDRH's order, the applicant filed a petition, under section 515(g) of the act, for administrative review of the decision. The petitioner requested that the Commissioner of Food and Drugs refer CDRH's denial of approval of the PMA to an advisory committee of experts established under section 515(g)(2)(B) of the act, for a report and recommendation with respect to the denial. Accordingly, in the **Federal Register** of May 30, 1986 (51 FR 19610), FDA announced that it intended to establish such an advisory committee and invited interested persons to nominate to the committee individuals with expertise in the technical fields associated with the scientific issues relating to CDRH's order.

In the **Federal Register** of February 6, 1987 (52 FR 3865), FDA announced the establishment by the Commissioner of the Ad Hoc Public Advisory Committee to Review the Denial of Premarket Approval for Surgical Simplex™ P Antibiotic Bone Cement. In the February 6 notice, FDA advised that the agency would announce in a future issue of the **Federal Register** the date, time, and place for the hearing in the matter.

On March 27, 1987, under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), section 515(g)(2) of the act, and 21 CFR Part 14 of FDA's regulations governing public hearings before a public advisory committee, the Commissioner appointed the following individuals to serve as members of the advisory committee: C. McCollister Evarts, M.D. (Chairperson), David J. Schurman, M.D., Carmelita V. Tuazon, M.D., John Wanzer Drane, P.E., Ph.D., and Raphael Dolin, M.D. Under § 14.40(f)(4) of FDA's regulations, the Executive Secretary and the Alternate Executive Secretary for the committee are FDA employees, Timothy Sottek and James Weixel, respectively.

In accordance with § 14.20 of FDA's regulations, FDA advises that the Ad Hoc Public Advisory Committee to Review the Denial of Premarket Approval for Surgical Simplex™ P Antibiotic Bone Cement will hold a public hearing beginning at 9 a.m., on April 27, 1987, in Conference Rm. J, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. The hearing will be transcribed and will be open to the public in accordance with § 14.22(e). If time is not sufficient to complete the public hearing and for the committee to conduct its deliberations on April 27, 1987, it will be continued on April 28,

1987, at a time designated by the chairperson of the committee.

The function of the committee is to provide to the Commissioner a report and recommendation on whether CDRH, in denying premarket approval for Surgical Simplex™ P Antibiotic Bone Cement, was correct in its determination in this case that an adequate and well-controlled investigation in humans is necessary to satisfy the safety and effectiveness requirements of section 515(d)(2) (A) and (B) of the act. The committee's report and recommendation should be based on consideration of the following questions:

1. Is a well-controlled clinical investigation in humans necessary in this case to demonstrate a reasonable assurance that the device is safe and effective as labeled?

2. Assuming that a well-controlled investigation in humans is necessary, what parameters should be investigated in such a study to demonstrate a reasonable assurance that the device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the device's labeling?

3. Can clinical studies in humans (reported in the literature or in an individual surgeon's case reports) of bone cement with concentrations of antibiotic different from the concentrations of antibiotic in the device subject to the PMA demonstrate a reasonable assurance of safety and effectiveness to support a PMA approval?

4. Does the PMA contain studies that adequately demonstrate that the device will fix prostheses to living bone in orthopedic surgical procedures in humans?

5. Does the PMA contain studies that adequately demonstrate that the leaching out of antibiotic from the bone cement will not adversely affect the cement's long-term function in humans?

6. Does the PMA contain studies or evidence that adequately demonstrate that when the product is used as recommended in the labeling, adequate amounts of antibiotic will be delivered to the operative site in humans to eliminate those bacteria commonly found to cause infections associated with implant surgery?

7. Does the PMA adequately demonstrate that a reasonable assurance of safety and effectiveness is present for those persons most likely to be exposed to the device (e.g., the elderly) when the device is used as labeled?

In short, the task of the advisory committee is to decide whether CDRH's order is consistent with the scientific evidence that was before the Center at the time that it made the decision embodied in the order.

The parties to the hearing are Howmedica, Inc., and CDRH. Under § 14.35 of FDA's regulations, the parties are each requested to provide to the Dockets Management Branch by April 6, 1987, 10 copies of a concise, well-organized, written summary of relevant information for review by the committee members. One copy of the summary along with a proposed agenda outlining the topics to be covered during the hearing and identifying the participating staff members or consultants that will present each topic is to be submitted directly to the Executive Secretary (address above). Insofar as practical, each party will be provided 90 minutes during the first portion of the hearing to present relevant information or views orally. The parties may use the allotted time as desired, consistent with an orderly hearing, and may be accompanied by additional persons, who may present such relevant information or views.

Following presentations by the parties, other interested persons may, at the discretion of the chairperson, be permitted to present relevant information or views orally or in writing.

Any interested person who wishes to make an oral presentation is requested to file a written notice of participation with the Dockets Management Branch (address above) April 15, 1987. Such a notice shall include the docket number appearing in the heading of this notice, the name of the participant, address, phone number, affiliation, if any, general nature of the presentation, and the approximate amount of time requested for the presentation. To facilitate identification, the envelope containing any notice of participation submitted by mail should be clearly labeled "Surgical Simplex Advisory Committee Hearing." All written information to be discussed by that person at the hearing should be furnished to the Dockets Management Branch together with the notice of participation. This material will be distributed by FDA to the committee members in advance of the hearing. In accordance with § 14.35, 10 copies of all written submissions are to be provided.

Before the hearing, the Executive Secretary will determine the amount of time allocated to each person who has filed a notice of participation for oral presentation and the time that the presentation is to begin. Each person will be so informed in writing, if time permits, or by telephone. FDA may require persons with common interests to make joint presentations.

If a person is absent at the time specified for that person's presentation, the persons following will appear in order. An attempt will be made to hear the person at the conclusion of the hearing. Interested persons attending the hearing who did not request an opportunity to make an oral presentation may be given an opportunity to do so at the discretion of the chairperson.

The chairperson and other members of the committee may question any person concerning the information or views presented by the person or concerning any other information relevant to the matter pending before the committee. No other person, however, may question the person. The chairperson may allot additional time when it is in the Public interest, but may not reduce the time allotted without consent of the person.

Participants may question a committee member only with that member's permission and only about matters before the committee.

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), 21 U.S.C. 360e(g)(2), and FDA's regulations (21 CFR Part.14) on advisory committees.

Dated: March 27, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–7173 Filed 3–27–87; 4:10 pm]

BILLING CODE 4160–01–M

**Office of Human Development Services**

## Fiscal Year 1988 Federal Allotment Percentages to States for Development Disabilities Basic Support and Protection and Advocacy Formula Grant Programs

**AGENCY:** Administration on Developmental Disabilities, Office of Human Development Services, Department of Health and Human Services.

**ACTION:** Notification of Fiscal Year 1988 federal allotment percentages for States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

**SUMMARY:** This notice sets forth the individual allotment percentages for States for Fiscal Year 1988 pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). This notice assumes that Congress will reauthorize this Act. Current authorization for these programs expires on September 30, 1987. The allotment percentages for the States published herein are based upon the Fiscal Year 1987 funding levels, and are contingent upon Congressional appropriation action for Fiscal Year 1988. (Data for Fiscal Year 1987 are shown for comparative purposes only.) If Congress appropriates and the President approves an amount different from the Fiscal Year 1987 funding level, adjustments will be made accordingly. For example, should the funding level change, the statutory minimum funding provision would require changes to the percentages for individual States.

**EFFECTIVE DATE:** October 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bettye Mobley, Chief, Formula Grants Management Branch, Division of Grants and Contracts Management, Office of Human Development Services, Department of Health and Human Services, 200 Independence Avenue, SW., Room 341F–4, Washington, DC 20201, telephone (202) 245–7220.

**SUPPLEMENTARY INFORMATION:** Section 125(a)(2), of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities has updated the data for issuance of Fiscal Year 1988 formula grants. The data elements used in the update are:

A. The Number of Beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1984, are from Table 132 of the "Social Security Bulletin: Annual Statistical Supplement 1986" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Marshall Islands, and Palau), included under 'Abroad' in the Table, were obtained from the Social Security Administration.

B. State data on Average Per Capita Income, 1983–85, are from Table 2, page 25, of the "Survey of Current Business", August 1986, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Trust Territories also were obtained from that Bureau; and

C. State data on Total Population and Working Population (ages 18–64) as of July 1, 1985, are from Table 4 of "Current Population Reports: Population Estimates and Projections," Series P–25, Number 998, issued December 1986 by the Bureau of the Census, U.S. Department of Commerce. The Territories' estimated total populations are from Table 1 of "Current Population Reports: Population Estimates and Projections," Series P–25, Number 997, issued November 1986 by the Bureau of the Census, U.S. Department of Commerce. New data elements are not available for the Trust Territory of the Pacific Islands since each of the three areas contained therein (The Federated States of Micronesia, The Marshall Islands, and Palau) have either negotiated compacts of free association with the United States or severed their previous relationship with the Trust Territory. Therefore, the FY 1987 data base was used as the basis for the FY 1988 allocation.

The above data are the most recent satisfactory data available at this time. The adjusted percentages are set forth below.

FISCAL YEAR 1988 FEDERAL ALLOTMENT PERCENTAGES—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

| | Basic support | | |
|---|---|---|---|
| | Fiscal year 1987 | | Fiscal year 1988 percent |
| | Amount | Percent | |
| Total | $56,500,000 | 100.0000 | 100.0000 |
| Alabama | 1,147,505 | 2.0310 | 2.0438 |
| Alaska | 300,000 | 0.5310 | 0.5310 |

FISCAL YEAR 1988 FEDERAL ALLOTMENT PERCENTAGES—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

| | Basic support | | |
|---|---|---|---|
| | Fiscal year 1987 | | Fiscal year 1988 percent |
| | Amount | Percent | |
| Arizona | 622,859 | 1.1024 | 1.1343 |
| Arkansas | 667,674 | 1.1807 | 1.1754 |
| California | 4,512,401 | 7.9866 | 7.9966 |
| Colorado | 533,643 | 0.9434 | 0.9438 |
| Connecticut | 586,689 | 1.0384 | 1.0436 |
| Delaware | 300,000 | 0.5310 | 0.5310 |
| District of Columbia | 300,000 | 0.5310 | 0.5310 |
| Florida | 2,204,123 | 3.9011 | 3.9379 |
| Georgia | 1,407,259 | 2.4907 | 2.5179 |
| Hawaii | 300,000 | 0.5310 | 0.5310 |
| Idaho | 300,000 | 0.5310 | 0.5310 |
| Illinois | 2,322,179 | 4.1101 | 4.1181 |
| Indiana | 1,301,182 | 2.3030 | 2.3140 |
| Iowa | 703,968 | 1.2460 | 1.2629 |
| Kansas | 500,585 | 0.8860 | 0.9019 |
| Kentucky | 1,078,564 | 1.9090 | 1.9221 |
| Louisiana | 1,130,054 | 2.0001 | 1.9977 |
| Maine | 309,705 | 0.5482 | 0.5475 |
| Maryland | 816,300 | 1.4448 | 1.4439 |
| Massachusetts | 1,187,240 | 2.0836 | 2.0616 |
| Michigan | 2,094,991 | 3.7079 | 3.7017 |
| Minnesota | 880,296 | 1.5580 | 1.5812 |
| Mississippi | 822,822 | 1.4563 | 1.4603 |
| Missouri | 1,176,101 | 2.0816 | 2.0596 |
| Montana | 300,000 | 0.5310 | 0.5310 |
| Nebraska | 359,321 | 0.6370 | 0.6450 |
| Nevada | 300,000 | 0.5310 | 0.5310 |
| New Hampshire | 300,000 | 0.5310 | 0.5310 |
| New Jersey | 1,406,440 | 2.4893 | 2.4426 |
| New Mexico | 349,263 | 0.6182 | 0.6273 |
| New York | 3,742,915 | 6.6246 | 6.4993 |
| North Carolina | 1,607,863 | 2.8458 | 2.8629 |
| North Dakota | 300,000 | 0.5310 | 0.5310 |
| Ohio | 2,507,674 | 4.4384 | 4.4407 |
| Oklahoma | 725,200 | 1.2906 | 1.2920 |
| Oregon | 578,436 | 1.0238 | 1.0047 |
| Pennsylvania | 2,822,225 | 4.9951 | 4.8935 |
| Rhode Island | 300,000 | 0.5310 | 0.5310 |
| South Carolina | 900,829 | 1.5944 | 1.6165 |
| South Dakota | 300,000 | 0.5310 | 0.5310 |
| Tennessee | 1,275,736 | 2.2579 | 2.2583 |
| Texas | 3,178,822 | 5.6262 | 5.6994 |
| Utah | 407,563 | 0.7214 | 0.7116 |
| Vermont | 300,000 | 0.5310 | 0.5310 |
| Virginia | 1,189,333 | 2.1050 | 2.1054 |
| Washington | 838,727 | 1.4845 | 1.4723 |
| West Virginia | 642,124 | 1.1365 | 1.1287 |
| Wisconsin | 1,108,327 | 1.9616 | 1.9702 |
| Wyoming | 300,000 | 0.5310 | 0.5310 |
| Puerto Rico | 2,039,763 | 3.6102 | 3.6398 |
| American Samoa | 160,000 | 0.2832 | 0.2832 |
| Guam | 160,000 | 0.2832 | 0.2832 |
| No. Mariana Islands | 160,000 | 0.2832 | 0.2832 |
| Trust Territories | 279,897 | 0.4954 | 0.4900 |
| Virgin Islands | 160,000 | 0.2832 | 0.2832 |

FISCAL YEAR 1988 FEDERAL ALLOTMENT PERCENTAGES—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

| | Protection and Advocacy | | |
|---|---|---|---|
| | Fiscal year 1987 | | Fiscal year 1988 percent |
| | Amount | Percent | |
| Total | $15,550,000 | 100.0000 | 100.0000 |
| Alabama | 284,185 | 1.8335 | 1.8456 |
| Alaska | 150,000 | 0.9677 | 0.9677 |
| Arizona | 169,117 | 1.0911 | 1.1184 |
| Arkansas | 165,280 | 1.0663 | 1.0601 |
| California | 1,118,991 | 7.2202 | 7.2320 |
| Colorado | 154,192 | 0.9948 | 0.9963 |
| Connecticut | 156,845 | 1.0119 | 1.0151 |
| Delaware | 150,000 | 0.9677 | 0.9677 |
| District of Columbia | 150,000 | 0.9677 | 0.9677 |
| Florida | 546,598 | 3.5264 | 3.5610 |
| Georgia | 348,707 | 2.2497 | 2.2750 |
| Hawaii | 150,000 | 0.9677 | 0.9677 |
| Idaho | 150,000 | 0.9677 | 0.9677 |
| Illinois | 575,344 | 3.7119 | 3.7202 |

FISCAL YEAR 1988 FEDERAL ALLOTMENT PERCENTAGES—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

| | Protection and Advocacy | | |
|---|---|---|---|
| | Fiscal year 1987 | | Fiscal year 1988 percent |
| | Amount | Percent | |
| Indiana | 322,407 | 2 0800 | 2 0906 |
| Iowa | 174,327 | 1 1247 | 1 1404 |
| Kansas | 150,000 | 0 9677 | 0 9677 |
| Kentucky | 267,011 | 1.7227 | 1 7351 |
| Louisiana | 279,921 | 1 8059 | 1 8041 |
| Marine | 150,000 | 0 9677 | 0 9677 |
| Maryland | 202,302 | 1 3052 | 1 3047 |
| Massachusetts | 291,473 | 1 8805 | 1 8610 |
| Michigan | 518,815 | 3 3472 | 3 3422 |
| Minnesota | 218,105 | 1 4071 | 1 4285 |
| Mississippi | 203,838 | 1 3151 | 1 3191 |
| Missouri | 291,314 | 1 8794 | 1 8601 |
| Montana | 150,000 | 0 9677 | 0 9677 |
| Nebraska | 150,000 | 0 9677 | 0 9677 |
| Nevada | 150,000 | 0 9677 | 0 9677 |
| New Hampshire | 150,000 | 0 9677 | 0 9677 |
| New Jersey | 348,335 | 2 2473 | 2 2056 |
| New Mexico | 150,000 | 0 9677 | 0 9677 |
| New York | 926,544 | 5 9777 | 5 8656 |
| North Carolina | 398,323 | 2 5698 | 2 5863 |
| North Dakota | 150,000 | 0 9677 | 0 9677 |
| Ohio | 621,055 | 4 0068 | 4 0099 |
| Oklahoma | 180,739 | 1.1661 | 1 1677 |
| Oregon | 154,800 | 0 9987 | 0 9825 |
| Pennsylvania | 698,751 | 4 5081 | 4.4173 |
| Rhode Island | 150,000 | 0 9677 | 0 9677 |
| South Carolina | 223,212 | 1 4401 | 1 4606 |
| South Dakota | 150,000 | 0 9677 | 0 9677 |
| Tennessee | 316,023 | 2 0389 | 2 0400 |
| Texas | 788 366 | 5 0862 | 5 1545 |
| Utah | 150,000 | 0 9677 | 0 9677 |
| Vermont | 150,000 | 0 9677 | 0 9677 |
| Virginia | 249,643 | 1 9009 | 1 9018 |
| Washington | 208,014 | 1 3420 | 1 3312 |
| West Virginia | 169,303 | 1 0923 | 1 0487 |
| Winsconsin | 274,475 | 1 7708 | 1 7791 |
| Wyoming | 150,000 | 0 9677 | 0 9677 |
| Puerto Rico | 505,534 | 3 2615 | 3 2893 |
| American Samoa | 80,000 | 0 5161 | 0.5161 |
| Guam | 80,000 | 0 5161 | 0 5161 |
| No Mariana Island | 80,000 | 0 5161 | 0 5161 |
| Trust Terntones | 83,111 | 0 5362 | 0 5314 |
| Virgin Islands | 80,000 | 0 5161 | 0.5161 |

Dated: March 25, 1987.

**Robert E. Stovenour,**

*Acting Commissioner, Administration on Developmental Disabilities.*

Approved: March 26, 1987.

**Jean K. Elder,**

*Assistant Secretary for Human Development Services-Designate.*

[FR Doc. 87–7129 Filed 3–27–87; 8:45 am]

BILLING CODE 4130–01–M

## President's Committee on Mental Retardation; Notice of Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation

Time and Date:

Executive Committee—Sunday May 3, 1987

1:00 p.m.–5:00 p.m.

Full Committee—May 4, 1987

9:00 a.m.–5:00 p.m., May 4, 1987

9:00 a.m.–5:00 p.m., May 5, 1987

9:00 a.m.–5:00 p.m., May 6, 1987

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Susan Gleeson, R.N., M.S.N., 330 Independence Ave., SW., Room 4725—North, Washington, DC 20201, (202) 245–7635.

Dated: March 25, 1987.

**Susan Gleeson,**

*R.N., M.S.N., Executive Director, PCMR.*

[FR Doc. 87–7130 Filed 3–31–87; 8:45 am]

BILLING CODE 4130–01–M

## DEPARTMENT OF THE INTERIOR

### Office of Acquisition and Property Management

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department's clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: "Brand Name or Equal" Provision.

Abstract: The provision requires bidders to provide a description of their "or equal" products if they are proposing them in response to a "Brand Name or Equal" solicitation. The information will be used to ensure the Department's needs are satisfied.

Bureau Form Number: None.

Frequency: One time, with bid.

Description of Respondents: Contractors bidding on solicitations utilizing "Brand Name or Equal" specifications or purchase descriptions.

Annual Responses: 300.

Annual Burden Hours: 300.

Office of the Secretary Clearance Officer: John Strylowski, (202) 343–6191.

Dated: March 20, 1987.

**Colonel C. Armstrong,**

*Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management.*

[FR Doc. 87–7112 Filed 3–31–87; 8:45 am]

BILLING CODE 4310–10–M

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department's clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Indian Preference Program—Department of the Interior.

Abstract: Respondents with contracts over $50,000 provide a semiannual report on activities under the preference program including the number and types of positions filled and the dollar amount of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

Bureau Form Number: None.

Frequency: Semi-annual.

Description of Respondents: Contractors with contracts in excess of $50,000 awarded pursuant to Pub. L. 93–638, Indian Education and Self-Determination Act.

Annual Responses: 2,500.

Annual Burden Hours: 5,000.

Office of the Secretary Clearance Officer: John Strylowski, (202) 343–6191.

Dated: March 20, 1987.

**Colonel C. Armstrong,**

*Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management.*

[FR Doc. 87–7113 Filed 3–31–87; 8:45 am]

BILLING CODE 4310–10–M

---

**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department's clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: Buy American Act Notice—Department of the Interior.

Abstract: The provision requires bidders to provide information and cost of foreign materials proposed for use in Government construction contracts. The information will be used to determine the reasonableness of the cost of domestic materials.

Bureau Form Number: None.

Frequency: One time, with bid.

Description of Respondents: Contractors bidding on construction contracts subject to the Buy American Act.

Annual Responses: 250.

Annual Burden Hours: 250.

Office of the Secretary Clearance Officer: John Strylowski, 202–343–6191.

Dated: March 20, 1987.

**Colonel C. Armstrong,**

*Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management.*

[FR Doc. 87–7114 Filed 3–31–87; 8:45 am]

BILLING CODE 4310–10–M

## Bureau of Land Management

[AA–620–4211–12–24–10]

**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be contained by contacting the Bureau's clearance officer and to the Office of Management and Budget desk office, at (202) 395–7340.

Title:

Information Collection Requirements under 43 CFR 3000–3120 OMB No. 1004 0145

Information Collection Requirements under 43 CFR 3200 OMB No. 1004 0074

Abstract: Respondents supply information which will be used to determine the eligibility of an applicant to hold, explore for, and produce oil and gas and geothermal resources on Federal lands. The information supplied allows the Bureau of Land Management to determine whether an applicant is qualified to hold a lease to obtain a benefit under the terms of the Mineral Leasing Act of 1920.

Bureau Form Number: N/A.

Frequency: On Occasion.

Description of Respondents: General public, small businesses, and oil companies.

Annual Responses 0004–0145: 1,476.

Annual Responses 0004–0074: 443.

Annual Burden Hours 0004–0145: 1,476.

Annual Burden Hours 0004–0074: 886.

Bureau Clearance Officer: Rick Iovine (202) 653–8853.

Dated: March 20, 1987.

**Robert H. Lawton,**

*Director.*

[FR Doc. 87–7115 Filed 3–31–87; 8:45 am]

BILLING CODE 4310–84–M

---

[AK–060–07–4111–10]

**Realty Action; Request for Public Comments on Competitive Leasing; National Petroleum Reserve in Alaska**

The public is requested to give comments on its interest in competitive leasing in the National Petroleum Reserve in Alaska (NPR–A) during the calendar year 1989 for the purpose of determining a general and relative level of interest. Specific public comments are requested regarding future NPR–A lease sales, in addition to current lease terms and stipulations:

1. If a 1989 lease sale were scheduled in the NPR–A, would you submit a bid at such a sale?

2. Please comment on whether any of the tracts selected to be offered in the 1985 sale, which was not held, should be deleted from consideration from a 1989 lease sale, and identify any additional tracts of specific interest which have not been previously offered or you would like to have re-offered in 1989.

3. What is your timing preference for the next NPR–A lease sale?

a. If not in the year 1988 or 1989, when might leasing in the NPR–A be most preferable?

b. Past lease sales have been scheduled during the summer (usually July). The summer lease sale date was selected to provide sufficient sale preparation time for both industry and the Bureau of Land Management. Present policy is to notify industry of preliminary lease tracts and proposed stipulations 7 months prior to a sale (December), in the belief that this timing will provide sufficient opportunity for gathering and analyzing geophysical data specific to the proposed tracts. Does this practice provide such an opportunity or should BLM's NPR–A leasing process be adjusted to reflect a different schedule?

4. What other leasing opportunities in Alaska or the Alaska Outer Continental Shelf (OCS) are you considering during 1989? Please identify these leasing opportunities.

5. What priority would you place on NPR–A leasing relative to other leasing opportunities in Alaska?

6. Are there any terms, conditions, stipulations or other factors currently imposed on NPR–A lease sales and leases that you would like to see changed if a sale were offered in 1989?

Comments that contain proprietary information should be so marked, and, to the extent possible under the Freedom of Information Act, will be treated confidentially.

Comments should be submitted by May 1, 1987.

Direct questions and responses to: M. Thomas Dean, Arctic District Office, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, Tel: (907)356–5130.

**M. Thomas Dean,**

*Manager, Arctic District.*

[FR Doc. 87–6935 Filed 3–31–87; 8:45 am]

BILLING CODE 4310–JA–M

[OR-38215; OR-943-07-4220-11: GP-07-136]

## Conveyance of Public Land; Order Providing for Opening of Land in Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action informs the public of the conveyance of 480 acres of public land out of Federal ownership. This action will also open 156.40 acres of reconveyed land to surface entry, mining and mineral leasing.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

**SUPPLEMENTARY INFORMATION:** 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 480 acres of land in Lake County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 40 S., R. 24 E.,
Sec. 25, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼, excepting 3.6 acres deeded to Lake County for roadway purposes.

The area described contains 156.40 acres in Lake County.

3. At 8:30 a.m., on May 4, 1987, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on May 4, 1987, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on May 4, 1987, the land described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on May 4, 1987, the land described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Dated: March 20, 1987.

Robert E. Mollohan,
*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87–7116 Filed 3–31–87; 8:45 am]
BILLING CODE 4310–33–M

[AZ–020–07–4212–13; A–21015]

## Realty Action; Public Land Exchange in Mohave County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action—Exchange, Public Land, Mohave County, Arizona.

**SUMMARY:** The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 22 N., R. 17 W.,
Sec. 2, lots 1 and 2, S½NE¼, E½SW¼, and SE¼ (all lands lying east of centerline of Stockton Hill Road).
T. 24 N., R. 15 W.,
Sec. 28, all.

Containing 944.00 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Claude K. and Rita B. Neal, Trustees, Claude K. Neal Family Trust of Kingman, Arizona:

Gila and Salt River Meridian

T. 23 N., R. 17 W.,
Sec. 5, lot 3, SW¼NE¼, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 7, NE¼NE¼;
Sec. 8, NW¼SE¼, S½SE¼NE¼ (portion);
Sec. 9, SW¼;
Sec. 29, SE¼NE¼.

Containing 739.58 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals pursuant to the Act of August 30, 1890; and (b) all the oil and gas and with it the right to prospect for, mine, and remove same (Sec. 28, only).

2. Subject to: (a) A right-of-way to the Mohave County Board of Supervisors for Stockton Hill Road (A–20910; Sec. 2, only); (b) A reservation of all minerals to the State of Arizona (Sec. 2, only); and (c) Restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84–10 adopted on December 3, 1984.

Private lands to be acquired by the United States will be subject to the following reservations:

1. All minerals to the Santa Fe Pacific Railroad Company together with the right to prospect for, mine, and remove same (affects sections 5,7,9 and 29).

2. Such rights for transmission line purposes as the Mountain States Telephone and Telegraph Company may have under the Act of March 4, 1911.

3. An easement for ingress, egress and utilities (undefined).

The purpose of the exchange is twofold: (1) Acquire lands for the consolidation of federal ownership in the Cerbat Mountains; and (2) Acquire a developed spring for the benefit of mule deer and wild horses.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of publication of this Notice in the Federal Register or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 24, 1987.

Henri R. Bisson,
*Acting District Manager.*

[FR Doc. 87–7077 Filed 3–31–87; 8:45 am]
BILLING CODE 4310–32–M

[AZ-020-07-4211-11; A-22653]

## Notice of Realty Action; Lease or Conveyance of Public Lands for Public Purposes

**SUMMARY:** The following described lands located in the city of Nogales, Santa Cruz County, Arizona, have been found suitable for lease or conveyance to Santa Cruz County Board of Supervisors under the Recreation and Public Purposes Act of June 14, 1926 as amended (44 Stat. 741; U.S.C. 869 et seq.). The transfer is in accordance with Public Law 99-632 November 7, 1986. These lands are currently withdrawn by Executive Order No. 1398, dated August 15, 1911. This withdrawal will be revoked in its entirety, effective the date of patent.

**Gila and Salt River Meridian, Arizona**

T. 24 S., R. 14 E.,
Sec. 5, S½NW¼;
Sec. 6, Lots 10 and 11.
Comprising 94.8 acres.

Santa Cruz County Board of Supervisors proposes to construct and operate a new county government and recreational/cultural complex approved by the citizens of the county in an election held November 4, 1986. The lease or conveyance of the lands would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All terms of the agreement entered into by and between Santa Cruz County and the U.S. Forest Service.

3. Relinquishment of R&PP Lease No. A-18083 from the city of Nogales, Arizona.

4. Transmission Line right-of-way A-6482 (50 ft centerline).

5. Telephone and Telegraph Line right-of-way A-1071 (10 ft centerline).

6. Electric and Gas Distribution Pipeline right-of-way A 16468 (5 ft. centerline).

7. Highway right-of-way A-758.

Upon publication of this notice in the **Federal Register**, this parcel of land will be segregated from all forms of appropriation under the public land laws, including general mining laws, except as provided for in this notice.

For a period of forty-five (45) days from the date of publication of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. Further information concerning this realty action may be obtained from the Phoenix Resource Area Manager (602-863-4464).

Dated: March 24, 1987.

**Henri R. Bisson,**

*Acting District Manager.*

[FR Doc. 87-7117 Filed 3-31-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-07-4212-13; CA 18105]

## California; Exchange of Public and Private Lands in San Bernardino County

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of issuance of land exchange conveyance document.

**SUMMARY:** The purpose of this exchange was to acquire the non-Federal lands for use in Federal recreation programs in the Southern California Desert. The exchange was consistent with the Bureau's planning for the lands involved. The public interest was well served through completion of this exchange.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, California State Office, (916) 978-4815.

The United States issued an exchange conveyance document to the Southern Pacific Land Company on December 30, 1986, under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described lands:

**San Bernardino Meridian, California**

T. 4 N., R. 14 E.,
Sec. 2, All;
Sec. 3, All;
Sec. 4, All;
T. 5 N., R. 14 E.,
Sec. 8, All;
Sec. 18, All;
Sec. 19, All;
Sec. 20, All;
Sec. 22, All;
Sec. 23, All;
Sec. 24, All;
Sec. 26, NE¼, W½, and N½SE¼;
Sec. 27, All;
Sec. 28, All;
Sec. 32, All;
Sec. 34, All;
Sec. 35, All;
T. 5 N., R. 15 E.,
Sec. 8, All;
Sec. 18, All;

containing 11,389.22 acres of public land.

In exchange for these lands the United States acquired the following described lands from the Southern Pacific Land Company.

**San Bernardino Meridian, California**

T. 2 N., R. 15 E.,
Sec. 1, All;
T. 2 N., R. 16 E.,
Sec. 5, All;
Sec. 9, All;
Sec. 17, N½, SW¼;
T. 3 N., R. 15 E.,
Sec. 13, All;
Sec. 25, All;
T. 5 N., R. 11 E.,
Sec. 1, All;
T. 8 N., R. 13 E.,
Sec. 1, All;
T. 8 N., R. 14 E.,
Sec. 5, All;
T. 9 N., R. 11 E.,
Sec. 1, Lot 1 of NW¼, SW¼, S½SE¼;
Sec. 5, All;
Sec. 9, All;
Sec. 13, All;
Sec. 17, All;
Sec. 21, All;
T. 9 N. R. 12 E.,
Sec. 7, Lots 1-4, E½SW¼, W½SE¼;
Sec. 17, W½NW¼, SW¼, W½SE¼;
T. 9 N., R. 13 E.,
Sec. 25, All;
T. 9 N., R. 14 E.,
Sec. 5, Lots 1, 2, 5, 6, 7, W½SW¼, SE¼, S½NE¼;
Sec. 7, Lots 2, 3, 4, E½;
Sec. 21, E½, SE¼NW¼, E½SW¼;
Sec. 33, All;
T. 10 N., R. 11 E.,
Sec. 19, Lots 1 and 2 of NW¼, Lots 1 and 2 of SW¼, W½NE¼, SE¼NE¼, SE¼;
Sec. 21, SW¼SW¼;
Sec. 27, W½SW¼;
Sec. 29, All;
Sec. 33, All;
Sec. 35, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼;
T. 10 N., R. 14 E.,
Sec. 1, Lots 1 and 2;
T. 10 N., R. 15 E.,
Sec. 5, Lots 1-4;
Sec. 9, All;
Sec. 17, All;
T. 11 N., R. 15 E.,
Sec. 13, (Tract 38);
Sec. 25, (Tract 41);
Sec. 29, Lot 1, S½NE¼, S½SW¼, NE¼SE¼, W½SE¼;
T. 11 N., R. 21 E.,
Sec. 5, (Tract 37);
T. 12 N., R. 17 E.,
Sec. 9, (Tract 67);
Tract 79;

containing 19,214.89 acres of non-Federal land.

The values of the public lands and non-Federal lands in this exchange were equal.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: March 23, 1987.

**Sharon N. Janis,**

*Chief, Branch of Adjudication and Records.*

[FR Doc. 87-7079 Filed 3-31-87; 8:45 am]

BILLING CODE 4310-40-M

## Fish and Wildlife Service

### Receipt of Applications for Endangered Species Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT-716431

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase in foreign commerce two male and one female brown hyenas (*Hyaena brunnea*) all born in captivity at the de Wildt Cheetah Research Center, De Wildt, South Africa, to sell in foreign commerce and ship to the Taipei Municipal Zoo in Taipei, Taiwan. The applicant contends that these hyenas will be used in unspecified conservation education activities and propagation, and thereby enhance the survival of the species.

PRT-716510

*Applicant:* Raymond Allison, Springville, CA

The applicant requests a permit to import a trophy of a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F. Bowker, Grahamstown, South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT-716508

*Applicant:* Michael David Larson, Porterville, CA

The applicant requests a permit to import a trophy of a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F. Bowker, Grahamstown, South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT-716770

*Applicant:* Sunset Zoological Park, Manhattan, KS

The applicant requests a permit to import two 5-month old female ocelot (*Felis pardalis*) kittens that were taken from the wild after their mother was found dead. These cats are to be included in a breeding program in the United States upon reaching maturity.

PRT-702631

*Applicant:* U.S. Fish & Wildlife Service, Regional Director—Region 1, Portland, OR

The applicant requests an amendment to their current permit for take (live-trap) and translocation of the desert pupfish (*Cyprinodon macularius*) for scientific purposes and the enhancement of propagation or survival in accordance with procedures outlined in the Desert Pupfish Management Plan

PRT-716913, 716914, 716917

*Applicant: George Carden Circus Int'l Inc., Willard, MO*

The applicant requests a permit to export and reimport three female Asian elephants (*Elephas maximus*) for the purpose of enhancement of survival through public display and conservation education. These three elephants were imported into the U.S. prior to December of 1973 and have been held in captivity since their importations.

PRT-716519

Applicant: National Zoological Park, Washington, DC

The applicant requests a permit to import 2 female Great Indian 1-horned rhinoceros (*Rhinoceros unicornis*) taken from the wild in Nepal for the purposes of captive propagation, scientific research and conservation education through public exhibition. The 2 females would be bred with a male currently at the Zoo.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4: 15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated March 27, 1987.

**R. K. Robinson,**

*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 87-7134 Filed 3-31-87; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### National Park System Advisory Board; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247), that a meeting of the National Park System Advisory Board will be held near Marco, Florida April 7-10, 1987.

The general business session will start at 8:00 am, Thursday morning, April 9; and conclude about noon on Friday, April 10. It will be held in the Egret Room of Port of the Islands Resort, Route 41, Marco, Florida (telephone 813-394-3101 or toll-free 1-800-237-4173). The Advisory Board will consider potential National Historic Landmark nominations, plus a variety of matters relating to the National Park System. The meeting will follow an orientation tour and briefings on issues at Everglades National Park and Big Cypress National Preserve.

The business meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Advisory Board a written statement concerning this meeting or who wish to submit written statements may contact Mr. David L. Jervis, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-2163).

Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting in Room 3328 Interior Building, 18th and C Street, NW., Washington, DC.

**James W. Stewart,**

*Acting Associate Director, Planning and Development, National Park Service.*

[FR Doc. 87-7131 Filed 3-31-87; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF JUSTICE

## Antitrust Division

### Metal Casting Technology, Inc.; Filing of Notification

Notice is herby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.*, ("the Act"), Metal Castings Technology, Inc. ("MCT") has filed a written notification simultaneously with the Attorney General and the Federal

Trade Commission disclosing: (1) The identities of the parties of MCT and (2) the nature and objectives of MCT. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to MCT and its general areas of planned activity are given below.

The parties to MCT are General Motors Corporation and Hitchiner Manufacturing Co., Inc.

The purpose of MCT is to engage in the development of cost effective, advanced metal casting technology to promote improved precision and near-net-shape castings with superior appearance, increased strength-to-weight ratios, and reduced weight. MCT will develop: (1) New and existing processes; (2) materials and equipment for the commercial implementation of such processes; and (3) new product applications for such processes, including such products and automotive exhaust manifolds, valve bodies, camshafts, and connecting rods as well as super alloy gas turbine engine components. Research will initially center upon countergravity casting techniques and include such projects as: (1) Developing melting techniques for the countergravity casting of titanium; (2) developing countergravity process for manufacturing directionally solidfied airfoils; and (3) developing processes for casting superthin walls and passages.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 87-7164 Filed 3-31-87; 8:45 am]

BILLING CODE 4410-01-M

## National Cooperative Research Act of 1984; Southwest Research Institute; Notification

Notices is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.*, ("the Act"), Southwest Research Institute has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of Allied Signal, Garrett Turbocharger Division; Degussa Corporation; Stemco, Inc. and Volkswagenwerk AG Wolfsburg as parties to the group research project.

The notification identifying the original parties to the project, and describing the nature and objectives of that project, is published at 51 FR 5813 (February 18, 1986).

The additional notification was filed for the purpose of extending the protections of the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the current identities of the parties to the group research project are given below.

The parties to this group research project are:

Cummins Engine Company
Isuzu Motors, Ltd.
Volvo Truck Corporation
Nissan Diesel Motor Co.
NGK Insulators, Ltd.
John Deere Company
Nippon Shokubai Kagaku Kogyo Company, Ltd.
Babcock & Wilcox
Caterpillar Tractor Company
Mitsubishi Motors
Corning Glass Works
Hino Motors Ltd.
Saab-Scania
General Motors Corporation (AC Spark Plug Division)
Ford Tractor Operations
Exxon Chemical Company
International Harvester
Donaldson Company
Isolite Babcock Refractories Company, Ltd.
Tsuchiya Seisakusho
Fuel Tech Inc.
Mitsui Mining & Smelting Co., Ltd.
Chevron Corporation
Fiat Research Center
Allied Signal, Garrett Turbocharger Division
Degussa Corporation
Stemco, Inc.
Volkswagenwerk AG Wolfsburg

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 87-7165 Filed 3-31-87; 8:45 am]

BILLING CODE 4410-01-M

## Office of Justice Programs

## Crime Victim Assistance Grants

**AGENCY:** Office of Justice Programs, Justice.

**ACTION:** Final Guidelines (Revised).

**SUMMARY:** The Office of Justice Programs, Office for Victims of Crime is publishing guideline revisions for the crime victim assistance grant provisions of the Victims of Crime Act of 1984.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Hollis, Program Manager, Office for Victims of Crime, (202) 724-5947. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** On October 23, 1985, the Office of Justice Programs (OJP) published in the **Federal Register** a Program Guideline for crime victim assistance grants. The guideline implemented the crime victim assistance grant provisions of the Victims of Crime Act of 1984, Pub. L. 98-473, Title II, Chap. XIV, 42 U.S.C. 10601, *et seq.*, which was signed into law by President Reagan on October 12, 1984.

The Act authorizes the Attorney General to make annual grants from a Crime Victims Fund established in the United States Treasury. In 1986 the Victims of Crime Act (VOCA) was amended by the Children's Justice and Assistance Act, Pub. L. 99-401. Under the provisions of the Act, as amended, 49.5 percent of the amount in the Fund is allocated for grants to State crime victim compensation programs. Funds permitting, compensation programs will receive 35% of their prior year's victim compensation awards. The remainder of the Fund is allocated for grants to the States for crime victim assistance programs (45%), The Children's Justice Act (4.5%) and 1% of the Fund can be expended it for the purpose of providing training and technical assistance to eligible applicants and also services to victims of Federal crimes.

In addition to wrttten comments on the guideline, OJP solicited and received oral comments at four regional meetings attended by representatives of crime victim compensation boards, other units of State and local government, and victims assistance organizations. All of these comments were considered by OJP in preparing the final guideline.

This notification revised, in part, the FY86 Final Guideline. The revisions are based on the experience of the first year of program implementation. These experiences include four (4) regional technical assistance meetings conducted by OJP during the summer of 1986 which were attended by State VOCA Administrators and program staff. Analysis of the issues raised at the TA meetings and of the many questions directed to OJP staff by the States during the first phase of implementation of the Victim Assistance Grant Program underscores the need to define and clarify areas which have proven to be troublesome to the States.

Also during this first cycle of grant funding, OJP has conducted an initial review of the funding patterns. Our preliminary analysis of available data from the State indicates that significant areas of victim services have not been included in the States' distribution of VOCA grant funds.

The collective experiences of the first cycle of grant funding and the issues raised by the States suggest a need to consider and discuss in more detail the legislative rationales of the Victims of Crime Act of 1984. The revisions in this guideline are not intended to impose any new or additional requirements on the States, nor to interfere with the States' discretion to determine which projects

should receive VOCA funding; rather, they reflect the efforts of OJP to respond to requests from the States to discuss and explain further the intent of the Act to enhance their planning and project funding decisions efforts.

**Discussion of The Intent and Purpose of the Act**

The Crime Victim Assistance Program of the Victims of Crime Act of 1984 has as a primary objective to provide hands-on assistance directly to victims of crime by assisting local units of government and private non-profit organizations to enhance or expand direct services to victims of crime, to encourage the States to improve their assistance to crime victims and to promote the development of comprehensive services to all victims of crime across the Nation.

The Act gives primary responsibility for the selection of programs to be funded to the States, with only minimal Federal requirements, to assure the delivery of quality services by responsible, experienced victim assistance organizations.

A review of the Indexed Legislative History of the Victims of Crime Act of 1984, (U.S. Department of Justice, Office of Justice Programs, Office of the General Counsel, hereafter referred to as Legislative History) is helpful in understanding Congressional intent with respect to victim assistance. Among the stated purposes, the Act is intended to address the devastating psychological and emotional consequences experienced by the victims of crime and their families; to establish a safe, welcome environment for victims within the criminal justice system, thus increasing the public's respect for the law and willingness to participate in the criminal justice process; and to improve the Federal Government's assistance to Victims of Federal Crime.

**Priority Programs**

The Victims of Crime Act requires each State to certify that "priority" will be given to program serving victims of sexual assault, spousal abuse, and child abuse.

While there is significant guidance in the Legislative History of the "priority" provision to indicate the intent of Congress that the priority programs would receive special emphasis, there is equally significant indication that Congress recognized the compelling needs of elderly victims, survivors of homicide, victims of Federal crimes, victims of violence and their families. There is no discussion in the legislative history to suggest it was the intent of Congress to imply that the needs or suffering of one category of crime victim is greater than the other; rather, the history indicates that the problems of the priority victims are exacerbated by societal attitudes or vulnerability which require special attention. In determining the funding needs of programs serving priority victims, the State should consider other funding options that may be available or in place for these priority program areas, as well as the needs and availability of services in their State for other categories of crime victims. These three victim service areas should be accorded the funding priority to which the statute entitles them, but not to the degree to which other crime victims would be denied the availability of a minimum level of service.

**Training**

Prior to publishing the Victim Assistance Final Guideline, the Office of Justice Programs (OJP) amended the Draft Guidelines to include training and reasonable related expenses as an allowable cost for VOCA subgrant recipients. The rationale for including training was to provide skill development to project staff to enable them to effectively and directly assist individual crime victims, a rationale that is within the Congressional intent of the Act to "assure the delivery of quality services" to crime victims.

After consideration of the experience of the first year and careful review of the Legislative History, OJP has modified the guidelines to delete "training" under Section III(d)(6) as an "eligible service", while expanding Section V.C. to retain financial support for staff development as an *allowable* cost for the individual projects receiving Victim Assistance subgrant funds.

To include training as a "service" is not justified under the provisions of the Act or its legislative history. As currently stated in the guidelines, the language may be interpreted to allow the development of costly training programs requiring a substantial and disproportionate amount of a State's grant funding as compared to the intended, more limited use of VOCA grant funds for staff development of direct service providers in individual projects. The provision allowing for the necessary and reasonable travel expenses related to staff participation in eligible training programs has been retained.

Although this subject was discussed at each of the technical assistance workshops for state administrators conducted by OJP, there continues to be some ambiguity in the application of program guidelines to this type of activity as an allowable cost to be charged to a victim assistance grant.

The program guidelines provide that training can be supported by victim assistance grant funds. This is intended to be training for direct service providers in individual programs, to enhance their skills directly relating to the services they provide to crime victims. To make such training cost effective, the guidelines provide for training activities to be held on a state-wide basis or on a similar geographical basis, i.e., attend a training session at a site in a bordering state that may be closer (less expensive) than a site within a project's "home" state. Expenses related to travel beyond this geographical scope are outside the program guidelines.

While the guidelines are less than clear on what constitutes "training", we stated at each of our workshops the rationale used for including training in the final victim assistance program guidelines, i.e., "provide skill development to project staff to enable them to effectively and directly assist individual crime victims." In our view, the use of victim assistance grant funds to support the attendance of a project director and perhaps one or more staff members at national conferences and meetings is not consistent with the intent of the guidelines, i.e., to support skill development training activities for *all* volunteer and paid project staff who are direct service providers. Correspondingly, the awarding of a victim assistance subgrant solely for the purpose of supporting a training activity or program is not consistent with the intent of the Act.

While the program guidelines clearly set geographical limitations on grant supported travel for training purposes, the determination as to what activities constitute "training" is left to the determination of the State Administrator. OJP strongly suggests that all requests for charges to subgrants related to travel, per diem and conference fees be carefully reviewed and justified as conforming to the program guideline for training prior to approval by the States.

We believe this revision to the program guideline will provide an appropriate balance between use of VOCA funds for direct services to victims and resources needed for the training and development of the direct service providers in eligible projects who are subgrant recipients. Section V.C.(2) has been revised as follows:

"Training: An eligible subgrantee of crime victim assistance grant funds may include as a budget item the cost of staff

development for those persons (salaried or volunteer staff) who provide direct services to crime victims. Also included as allowable costs are the necessary and reasonable travel expenses related to the participation of direct service staff in eligible training programs. Such costs are, however, permitted only within the State or a comparable geographic region."

Similarly, the "printing and distribution of brochures and similar announcements" has been deleted under Section III(d)(7) as an "eligible service". The reasonable costs of printing for eligible projects receiving VOCA funds however is an allowable project cost. Section V.C.(3) discusses this allowable cost item.

**Project Selection**

In determining whether a project is eligible for funding as a victim assistance project the States should consider whether direct services to crime victims is the primary mission of the project within the context of the following discussion:

Generally, a victim assistance or victim witness project is a separate, self-contained unit established exclusively to provide services directly to crime victims generally or to any specific category of crime victims generally or to a specific category of crime victims. The services provided, e.g. crisis intervention, assistance to victims in determining the status of, and participating in criminal justice proceedings, and assistance in securing victims compensation benefits must be related to the effect of the criminal event on the victim and to support on behalf of the victim in the criminal justice process. Criminal Justice support must be primarily directed to the needs of the victim and not to the system.

Agencies or organizations whose only function is administrative or legislative oversight, or coordinaton, or groups defined as coalitions were no direct services are a part of the organization's function, are not eligible to receive funding under the Act. If the designated State agency uses one of the above-described organizations as a "conduit" for the Federal crime victim assistance funds to aid in the selection of qualified recipients or to reduce their administrative costs, the "conduit" agency may not be the subgrantee and may not receive reimbursement for related costs from the State VOCA grant. The designated State agency is still responsible for all programmatic and financial requirements pursuant to this Guidelines.

As second factor in establishing selection criteria that the States may consider is the immediacy of the criminal event to the services being provided. The legislative history provides significant guidance as to the intent of Congress to provide appropriate assistance to victims of crime as soon as possible after the crime occurs in order to reduce the severity of the psychological consequences, to improve the victims willingness to cooperate with the criminal justice process, and to restore the victims' faith in the criminal justice system.

This type of early intervention to all victims of crime should be the most critical component of a comprehensive system of services in every community, the results of which benefit both the victim and the criminal justice system. Appropriate crisis intervention services are a major factor in reducing the need for services in later stages of the victimization process and are a major factor in lessening the victims' trauma.

A third factor which may be considered in establishing selection criteria in a State is the availability of a comprehensive "system" of services for crime victims, i.e., the coordinated, cooperative efforts of several agencies and/or organizations to provide a continuum of services and support to all crime victims from the time the crime occurs throughout the criminal justice process.

Whatever funding criteria are selected by the States to guide their planning process, the legislative history clearly supports the autonomy of the States to choose which direct service projects should be funded within the requirements and intent of the Act.

**Other Revisions**

Under Program Requirements, Section III. (5), we have included the Federal Victim Witness Coordinators in the United States Attorneys' Offices as an integral part of the coordinated, community efforts to provide services to crime victims. Many local service providers routinely provide assistance to victims of Federal crimes; however, the essential link between local victim assistance programs and the Federal justice system is the Federal Victim Witness Coordinator. This cooperative effort on behalf of victims of Federal Crimes is entirely consistent with the intent of the Act.

An explanatory note has been added to the discussion of the confidentiality provison, clarifying that the clause is not intended to override or repeal, in effect, a State's existing law governing the disclosure of information that is supportive of the Act's fundamental goal of helping crime victims. Finally, minor organizational changes have also been made at several places in the guideline.

*Guideline for Crime Victim Assistance Grants*

I. General Provisions

*Eligible Applicants:* All States, (including the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions), are eligible to apply for and receive grants. Section 1404(d)(1).

*State Office:* The chief executive of each participating State shall designate or establish a State office for the purpose of preparing an application for funds and administering the funds received including fund accounting and disbursement, monitoring, reporting, and audit.

II. Allocation of Funds

*Fund Availability:* Section 1404(a)(1) of the Victims of Crime Act provides that crime victim assistance grants shall be made from the portion of the Fund not used for crime victim compensation grants or reserved for training and technical assistance activities, or for financial support to victims of Federal crime (Section 1404(c)(1) or for grants under the Childrens Justice Act (Section 1404A). Funds are available for expenditures in the Federal fiscal year of award and in the next succeeding fiscal year.

*Allocation to States:* Each State, the District of Columbia and Puerto Rico, shall receive a base amount of $100,000. Each State, the District of Columbia, Puerto Rico, and all territories and possessions shall receive a portion of the available remaining monies based on its share of total population using the most recent data of the U.S. Bureau of the Census.

*Allocation of Funds within the States:* Funds granted to the States are further subgranted to the State to eligible crime victim services programs. The State has sole discretion as to which programs providing services to victims receive funds, so long as the eligibility requirements set out in the Act and enumerated in this guideline are met.

III. Program Requirements

(a) Under the Act, the chief executive of the State must certify that the State will give priority to eligible crime victim assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse. Section 1404(a)(2)(A). To meet this requirement, the State must adopt one of the following practices with respect to the subgranting of crime victim assistance funds and must inform the Office of

Justice Programs (OJP) in its application of the practice adopted. The State may select a different option in their FY87 application for funds. Regardless of the option selected, the State must include in its semi-annual performance report to OJP a statement describing how the State has assured that priority has been given to programs that serve victims of sexual assault, spousal abuse or child abuse. The three options are:

(1) Allocate at least ten percent of the total crime victim assistance funds granted to the State to each of the three priority categories, unless the State convincingly demonstrates that (A) a particular category is receiving significant amounts of financial assistance from the State or other fund sources and (B) a smaller amount of financial assistance or no assistance for that category is needed from the crime victim assistance grant funds. A program should be included in a priority category only if a principal mission of the program is to serve that particular category of priority victims.

(2) Develop criteria for allocating funds that assure that programs serving each category of victims receive a share of crime victim assistance funds commensurate with: the special needs of the crime victims in question; the level, quality, and availability of existing services to them; and the overall distribution of victim services funding from all sources within the State. In addition, described in the semi-annual performance report to OJP the amount of funds awarded to priority programs; changes in the level, quality or availability of services; and any continuing unmet needs.

(3) Require every program receiving crime victim assistance funds to include, as a principal mission or component of its program, services to at least one category of priority victims unless and to the extent the State determines that other programs are providing adquate services of a similar nature to priority victims in the community in question.

(b) The chief executive of the State must certify that crime victim assistance grant funds will not be used to supplant State and local funds that would otherwise be available for crime victim assistance services. Section 1404(a)(2)(B). Grant funds are intended to enhance or expand services, not substitute for other sources of support.

(c) States must use crime victim assistance grant funds to support programs that provide services to crime victims. Each individual victim assistance project receiving a crime victim assistance subgrant must meet the following eligibility requirements:

(1) Be operated by a public agency or non-profit organization, or a combination thereof, that provides services to crime victims.

(2) If it is an existing program, have a record of providing effective services to victims of crime and financial support from other sources. In determining whether or not a program has a "record of providing effective services," the State shall consider whether the program has been providing services to victims for a minimum of one year, the support and approval of its services by the community, and whether or not an analysis of its activities and financial history shows that it achieves its intended results in a cost-effective manner. An existing program shall be considered to have "financial support from other sources" if at least one-fourth of its support (including in-kind contributions) is from sources other than the State's crime victim assistance grant. Section 1404(b)(1)(B)(i).

(3) If it is a new program that has not yet demonstrated a record of effective services as required under (2) above, it may be eligible for funding if it demonstrates substantial financial support from other sources. "Substantial financial support" means that at least fifty percent (50%) of its budget is in the form of cash from sources other than the Federal crime victim assistance grant. Section 1404(b)(1)(B)(ii).

(4) Utilize volunteers unless and to the extent the State chief executive determines compelling reasons exist to waive this requirement. A "compelling reason" may include statutory or contractual provisions that bar the use of volunteers for certain positions or a lack of persons volunteering after a sustained and aggressive recruitment effort has been conducted.

(5) Promote within the community served coordinated public and private efforts to aid crime victims. Section 1404(b)(1)(D). Because of the various kinds of services needed by victims of crime, services are usually provided by a variety of agencies. Therefore, it is essential that these services be coordinated to insure continuity of support to the victim. In determining whether or not a program meets this requirement, the State shall consider the extent to which the program demonstrates that it will coordinate its activities with other service providers in the community, including Federal victim witness coordinators, so that the best interests of the crime victim are served and interagency communication enhanced.

(6) Assist victims in seeking available crime victim compensation benefits. Section 1404(b)(1)(E). Such assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with application forms and procedures. An eligible program must demonstrate that it will coordinate its activities with the State compensation program, where one exists.

(d) Crime victim assistance funds shall be used only to provide services to victims of crime. Section 1404(b)(2). "Services to victims of crime" means those activities that directly benefit individual crime victims, including the required and necessary coordination of such activities, i.e., coordination of volunteers and/or coordination of services to the victim which must be provided by other community agencies. Activities unrelated or only tangentially related to the provision of direct services to victims are not eligible for support.

Examples of ineligible activities include:

(1) Crime prevention programs (other than those prevention efforts specifically included in providing emergency assistance after a victimization incident).

(2) Lobbying for particular victim legislation or administrative reform. Programs that are focused primarily on legislative advocacy or raising public awareness concerning a particular issue or cause or programs that focus primarily on general community/state victim education programs do not qualify as "direct services to crime victims."

(3) General criminal justice agency improvements or programs where crime victims are not the sole or primary beneficiaries.

(4) Witness management or notification programs. Victim/witness assistance programs which provide both victim services and witness notification services can receive funding support only for that portion of the program that provides direct services to crime victims.

(5) Programs that are primarily focused on counseling the perpetrator of the crime. "Services to victims of crime" includes, but is not limited to, the following:

(1) Crisis intervention services that meet urgent emotional or physical needs of crime victims. Crisis intervention services may include the operation of a 24-hour hotline that provides counseling or referral for crime victims.

(2) Emergency services that provide temporary shelter for crime victims who cannot safely remain in their current lodgings; offer measures such as repair of locks or boarding up of windows to

prevent the immediate reburglarization of a home or an apartment; or provide crime victims petty cash for meeting immediate needs related to transportation, food, shelter, and other necessities.

(3) Support services that include follow-up counseling (for other than crisis reactions), reassurance and empathetic listening, and guidance for resolving practical problems created by the victimization experience; acting on the crime victim's behalf vis a vis other social services and criminal justice agencies; assistance in obtaining the swift return of property being kept by police as evidence; intervention, as appropriate, with landlords or employers; and referral to other sources of assistance, as needed.

(4) Court-related services that assist crime victims in participating in criminal justice proceedings including transportation to court, child care, and escort services.

(5) Payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are not otherwise reimbursed or paid by third parties. Funds may only be used to pay for those forensic medical examinations that conform to standards adopted by the State or meet the evidentiary requirements of the local prosecutor.

(e) As stated in section (d) above, crime victim assistance funds shall be used only to provide services to victims of crime. Section 1404(b)(2). A State may not use assistance funds to pay for costs it incurs in applying for, administering or auditing grant funds. The State must establish procedures to assure that funds subgranted to an eligible crime victim assistance program are expended only for providing services to victims of crime. These procedures shall require a program to demonstrate to the State that the assistance funds it requests are directly related to the delivery of services to crime victims. Any costs not directly related to service delivery for victims must not be charged to the subgrant. Programs that serve both victims and non-victims must reasonably prorate their costs to assure that crime victim funds are used only for victims services.

IV. Application Requirements

(a) Applications from the State for FY 1987 crime victim assistance grants must be submitted on Standard Form 424, Application for Federal Assistance, no later than August 31, 1987. The Office of Justice Programs will provide an "Application Kit" to the States that includes SF 424, a list of assurances, a table of fund allocations, and additional guidance on how to prepare and submit an application for crime victim assistance grants. Applications should be submitted to the following address: Control Desk, Office of the Comptroller, Office for Victims of Crime, OJP, 633 Indiana Avenue, NW., Washington, DC 20531.

(b) Applications from the State need not specify the subgrants the State intends to make with the Federal crime victim assistance funds it receives. However, the application must contain the following certifications and assurances:

(1) A certification that the State shall give priority to programs aiding victims of sexual assault, spousal abuse, or child abuse and a statement of the practice the State will adopt in allocating funds to assure that this requirement is met;

(2) A certification that funds will be awarded only to eligible crime victim assistance programs and will not be used to supplant State and local funds that would otherwise be available for crime victim assistance;

(3) An assurance that the State will provide for accounting, auditing, and monitoring procedures, and keep such records as prescribed in these guidelines so as to assure fiscal control, proper management, and efficient disbursement of Federal funds;

(4) An assurance that the State will comply with all applicable non-discrimination requirements and that in the event a Federal or State court or Federal or State administrative agency make a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex or handicap against the State, it will forward a copy of the finding to the Office of Justice Programs, Office of Civil Rights Compliance (OCRC);

(5) An assurance that the State will comply with all Federal laws and regulations applicable to Federal assistance programs and with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 11, Applicability of Office of Management and Budget Circulars; and

(6) An assurance that the State will comply, and its subgrantees will comply, with the applicable provisions of the Victims of Crime Act, the guidelines for crime victim assistance grants, and the requirements of the "Financial and Administrative Guide for Grants," Guideline Manual OJP M7100.1C, Office of Justice Programs.

(c) Applications from the State must include the name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with the Office of Civil Rights Compliance.

(d) Applications from the State must include the date of the last audit of the State agency, the anticipated date of the next audit, and the date that audit will be filed with the cognizant Federal agency.

(e) The State is required to notify the Office of Justice Programs immediately upon the award of a subgrant and provide the following information: the name of the subgrantee and the address; the title of the program; the amount of Federal crime victim assistance funds awarded; the amount of financial support from other sources; the subgrant period; classification of the program by service category; and a summary description of the subgrant objectives and services. This information is required on each individual project which receives Federal crime victim assistance funds.

V. Financial Requirements

A. *Payment of Grant Funds.*

1. *Annual Requirement Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a REQUEST FOR ADVANCE OR REIMBURSEMENT, H-3, Report (Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirement Over $120,000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and not by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance financing and require

the grantee organization to finance its operations with its own working capital. Payments to the grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that grantee organizations maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursement.

B. *Financial Status Report.* A Financial Status Report (Form H–1) is required for all grants. This report shall be submitted by the grantee within 45 days after the end of the calendar quarter. Final reports are due 90 days after the end of the grant. Failure to comply with this requirement may result in administrative action such as the withholding of payments, cancellation of a Letter of Credit, or noncertification of new grant awards. In lieu of using the standard H–1 Report, grantees may satisfy the financial reporting requirements by completing an H–1 turnaround document. This document is a facsimile of the H–1 extracted from the grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name and address, grant number and the previously submitted financial information (if any) is printed on the form by the computer.

C. *Cost Allowability.* (For guidance see, Office of Justice Programs, "Financial and Administrative Guide for Grants," Guideline Manual OJP M7100.1C, Chapter 5.) The Victims of Crime Act specifically states that Crime Victims Assistance grant funds may be used only for providing services to victims of crime. Only those costs directly related and essential to providing direct service to crime victims can be charged to VOCA funded subgrant. The following items require specific discussion.

(1) *Audit costs:* Although under OMB Circular A–128 audit costs are generally allowable charges under Federal grants, audit costs incurred at the grantee (state) level are determined to be an administrative expense and therefore cannot be paid for with crime victim assistance grant funds. Reasonable audit costs incurred at the subgrantee level are, however, considered directly related and essential to the operation of the program and may be reimbursed as allowable costs.

(2) *Training:* An eligible subgrantee of crime victim assistance grant funds may include as a budget item the reasonable cost of staff development for those persons (salaried or volunteer staff) who provide direct services to crime victims. Also included as allowable costs are the necessary and reasonable travel expenses related to the participation of direct service staff in eligible training programs. Such costs are, however, permitted only within the State or a comparable geographic region.

(3) *Printing:* An eligible subgrantee of crime victim assistance grant funds may include as a budget item reasonable costs of printing and distribution of brochures and similar announcements to describe their program's victim services and how to obtain these services.

D. *Audit Responsibilities.* Pursuant to Office Management and Budget Circular A–128, "Audits of State and Local Governments", grantees, subgrantees and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Grantees, as well as their subgrantees, contractors or other organizations under cooperative agreements or purchase of service contracts are to arrange for examinations in the form of independent audits in conformance with OMB Circular A–128.

These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards governing financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

(1) The auditor's report on financial statements of the recipient organization, and a schedule of financial assistance, showing the total expenditures for each Federal assistance program;

(2) The auditor's report on compliance containing: (A) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements; (B) a negative assurance of those items not tested, and a summary of all instances of noncompliance; and (C) the auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulation. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

E. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

(1) Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulation; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

F. *Audit Implementation.* Grantees are required to specify their arrangement for complying with the provision of OMB Circular A–128 and include in their grant application, to the extent possible, the following information:

(1) The identity of the organization that will conduct the audit;

(2) Approximate timing of when the audit will be performed;

(3) Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedure must describe the specific arrangements for obtaining audit services that will meet the requirements;

(4) An identification of the audit standards, if any, with which the grantees will not comply;

(5) Receipt and appropriate distribution of the resultant audit report; and

(6) Audit resolution policies and procedures to be followed in resolving the audit report.

G. *Fund Suspension or Termination.* If, after notice and opportunity for a hearing, OJP finds that a State has failed to substantially comply with the Victims of Crime Act or any implementing regulations or guidelines, OJP must suspend or terminate funding to the State, or take other appropriate action. Only States may request a hearing; subgrantees in the State may not.

VI. Civil Rights

A. *General.* The Act provides that no person shall be excluded from

participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, age, color, religion, national origin, handicap, or sex. Section 1407(e). Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), Section 504 of the Rehabilitation Act of 1973, 2 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq., and the Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts, C, D, and G.

B. *Required Assurances and Information.* To be eligible for funding under the Act, a crime victim assistance program must submit the following assurances and information:

(1) An assurance that the program will comply with all applicable nondiscrimination requirements;

(2) An assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, sex, age or handicap against the program, the program will forward a copy of the finding to the OJP office of Civil Rights Compliance (OCRC); and

(3) The name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCRC.

(4) An assurance that programs will maintain information on victim services provided by race, national origin, sex, age, and handicap.

VII. Confidentiality of Research Information

No recipient of monies under the Victims of Crime Act shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this program and Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. Section 1407(d). This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to crisis intervention counselors working for victim services programs receiving funds provided under this Act. Whatever the scope of application given this provision, it is clear that there is nothing in the Act or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information which is supportive of the Act's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of suspected child abuse. *See Pennhurst State School and Hospital v. Halderman, et al,* 451 U.S.1 (1981).

VIII. Reporting Requirements

Each victim assistance program receiving funds under the Act is required to submit a semi-annual performance report to the State Victim Assistance Office. The State Office is responsible for compiling the information and submitting a report to OJP on the effect the Federal funds have had on services to victims of crime in its State. OJP has prepared a form for the semi-annual report for the purpose of soliciting the information required in the most convenient manner possible. The reports are due in OPJ each *November 1,* for the preceding April 1–September 30 reporting period, and each *May 1,* for the preceding October 1–March 31 reporting period.

A. Each victim assistance program will be asked to provide the following information to the State:

1. Service jurisdiction (County, City, Circuit, etc.).

2. Type of program (Rape Crisis Center (non-medical), Rape Treatment Center (medical); Domestic Violence—Shelter; Domestic Violance Program (non-shelter) Victim Services-Law Enforcement; Victim Witness-Prosecutor; Victim Assistance-Community; Other (specify)).

3. Summary Program Statement (Purpose, Goals, Objectives).

4. Amount and each source of funding for the program.

5. Victim statistics (Total number of victims served by program; by type of crime; by type of services provided; by criminal justice status; e.g., reporting/non-reporting, prosecution/non-prosecution).

6. Staff information (Number of hours contributed during reporting period by professional and clerical staff, paid and volunteer; interns; number of hours of training received by staff by type of training program).

7. Program information and activities (Number and source of referrals to program; number of referrals to other agencies by type of agency; number of hours of training presented by type of training and type of audience; numbers of hours of public information and education programs presented).

8. Changes which have been made in the program since receiving the Federal grant which will benefit victims of crime.

9. A short description of how the programs funded have coordinated their activities with other service providers in the community.

10., A short description of how the programs funded have assisted crime victims in seeking available crime victim compensation benefits.

*Optional*

Program evaluation results, case histories, victim satisfactory surveys, anecdotal information.

B. Each State Victim Assistance Office will be required to provide the following information to OJP:

1. The amount and each source of funding for victim assistance in the State, including other Federal grant programs.

2. Numbers of awards by type of program and amount of money awarded to each type of program, (Rape Crisis Center (non-medical); Rape Treatment Center (medical; Domestic Violence-Shelter; Domestic Violence Program (non-shelter); Victim Services—Law Enforcement; Victim Witness-Prosecutor; Victim Assistance-Community; Other (specify)).

3. Changes in victim services in the State as a result of Victims of Crime Act funds.

4. The aggregate of items 4,5,6, and 7 under Section A by type of program.

5. Total number of victims who are directly assisted by the State Office (where applicable).

6. Statement describing how the State has given priority to programs that serve victims of sexual assualt, spousal abuse, or child abuse and indicting the number of amount of crime victim assistance subgrants awarded to programs that provide services to a category of priority victim as a principle component of their operations.

*Optional*

States are encouraged to submit a brief narrative report containing anecdotal information, accomplishments, unmet needs, or other

information which may be helpful to OJP in evaluating the effectiveness of Victims of Crime Act funding. Of particular interest to OJP are the achievements of local programs whose use of funds have resulted in significant changes in the treatment of crime victims in their community.

Richard B. Abell,

*Acting Assistant Attorney General Office of Justice Programs.*

[FR Doc. 87-7171 Filed 3-31-87; 8:45 am]

BILLING CODE 4410-18-M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 19, 1987, Smithkline Chemicals, Division Smithkline Beckman Company, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| | Schedule |
|---|---|
| Drug: | |
| 4-Methoxyamphetamine (7411) | I |
| Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100) | II |
| Phenylacetone (8501) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 1, 1987.

Dated: March 25, 1987.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-7068 Filed 3-31-87; 8:45 am]

BILLING CODE 4410-09-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted on or before May 1, 1987.

**ADDRESSES:** Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) and Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

**FOR FURTHER INFORMATION CONTACT:** Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision

Title: Applications and Instruction Forms of the Conferences Category.

Form Number: Not applicable.

Frequency of Collection: Twice a year.

Respondents: Humanities researchers and institutions.

Use: Application for funding.

Estimated Number of Respondents: 114 per year.

Estimated Hours for Respondents to Provide Information: 60 per respondent.

Susan Metts,

*Assistant Chairman for Administration.*

[FR Doc. 87-7166 Filed 3-31-87; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316]

### Indiana and Michigan Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.J, Emergency Lighting, to the Indiana and Michigan Electric Company (the licensee) for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located at the licensee's site in Berrien County, Michigan. The exemption was requested by the licensee by letter dated March 6, 1987.

Environmental Assessment

*Identification of Proposed Action*

The exemption would permit the outdoor yard area adjacent to the nitrogen regulator valves to be lighted during a postulated fire emergency by the backup security diesel generator. The Appendix R, Section III.J requires eight-hour battery powered emergency lighting for fire protection. The emergency remote shutdown procedures at the D.C. Cook Nuclear Plant include provisions for operating the steam generator power-operated relief valves during a postulated Appendix R fire and the backup power for the valves is the nitrogen tanks located in the yard area. Manual control of the nitrogen regulator valves should not be necessary but some monitoring may be required.

*The Need for the Proposed Action*

The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

*Environmental Impact of the Proposed Action*

The proposed exemption is from the specific requirement for eight hour battery power to meet the emergency lighting provision of Appendix R, Section III.J. There is no change proposed for the nitrogen source or control system or for the operation to the steam generator power-operated relief valves. In the case of an electrical

black-out in the area of the nitrogen source, the emergency security diesel will provide power for outdoor lighting and security systems. The security emergency lighting system already exists and no changes are necessary to continue providing the lighting for the nitrogen source area. There are no changes in plant operation or effluents to be considered with the proposed exemption. Therefore, in consideration of the above, the exemption does not involve a significant environmental impact.

*Alternative To Proposed Action*

Because the staff has concluded that there is no significant impact associated with the proposed exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact. The installation of an eight hour battery lighting system would result in an additional cost to the licensee without adding any benefits already available from the emergency security lighting system.

*Alternative Use of Resources*

The proposed exemption is on the basis of an acceptable alternative use of resources; the security emergency lighting system. This alternative will save the licensee and consumers the cost of the eight hour battery system and the cost of maintenance/surveillance. The level of protection will be maintained with the existing systems and the intent of the specific requirement of Appendix R, Section III.J, Emergency Lighting, will be met.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated March 6, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Maude Preston Polenske Memorial Library, 500 Market Street, Saint Joseph, Michigan 49085.

Dated at Bethesda, Maryland, this 26th day of March 1987.

For the Nuclear Regulatory Commission.

**B.J. Youngblood,**

*Director, PWR Project Directorate #4, Division of PWR Licensing—A.*

[FR Doc. 87-7160 Filed 3-31-87; 8:45 am]

BILLING CODE 7590-01-M

---

[Docket No. STN 50-530]

## Palo Verde Nuclear Generating Station, Unit 3; Arizona Public Service Co. et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operation License No. NPF-65 (License), to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority. This License authorizes operation of the Palo Verde Nuclear Generating Station, Unit 3 (facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. However, the License contains one condition which currently limits operation to five percent of full power (190 megawatts thermal). Authorization to operate at greater than five percent will require specific Commission approval. In addition, operation above Mode 5 is restricted until successful testing and operability of Emergency Diesel Generators in accordance with 10 CFR Part 50, Appendix A, General Design Criterion 17, is achieved.

Palo Verde Nuclear Generating Station, Unit 3 is a pressurized water reactor which utilizes a CESSAR standard plant design and is located at the licensees' site in Maricopa County, Arizona approximately 36 miles west of the city of Phoenix.

The application for the license, as amended, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on July 11, 1980 (45 FR 46941) as clarified in a notice published July 25, 1980 (45 FR 49732).

The Commission has determined that the issuance of this License will not result in any environmental impact other than those evaluated in the Final Environemtnal Statement since the activity authorized by the License is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-65, with Technical Specifications (NUREG-1248) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards dated December 15, 1981; (3) the Commission's Safety Evaluation Report on Palo Verde dated November 1981; Supplement Nos. 1 through 11, dated February 1982, May 1982, September 1982, March 1983, November 1983, October 1984, December 1984, May 1985, December 1985, April 1986 and March 1987, respectively; (4) the Commission's related Safety Evaluation Report on CESSAR dated November 1981; Supplement No. 1 dated March 1983; Supplement No. 2 dated September 1983; (5) the Final Safety Analysis Report and amendments thereto; (6) the Environmental Report and supplements thereto; (7) the Draft Environmental Statement dated October 1981, (8) the Final Environmental Statement dated March 1982; and (9) the Initial Decision and Order Dismissing Proceeding issued by the Atomic Safety and Licensing Board, dated December 30, 1982, and July 22, 1985, respectively and the Decision issued by the Atomic Safety and Licensing Appeal Board, dated February 15, 1983.

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. A copy of Facility Operating License No. NPF-65 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B. Copies of the Safety Evaluation Report and its Supplements 1 through 11 (NUREG-0857), the Final Environmental Statement (NUREG-0841) and the Technical Specifications (NUREG-1248) may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. NUREG-0857 may also be purchased from the National Technical Information

BEST COPY AVAILABLE

Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, the 25th day of March 1987.

For the Nuclear Regulatory Commission.

**George W. Knighton,**

*Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.*

[FR Doc. 87-7161 Filed 3-31-87; 8:45 am]

BILLING CODE 7590-01-M

## PEACE CORPS

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Peace Corps.

**ACTION:** Notice of submission of public use form review request to the Office of Management and Budget.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Cops has submitted to the Office of Management and Budget, a request to approve the use of the Decline Information Card through June 30, 1990. The card is completed voluntarily by those invited to Peace Corps training who permanently decline the invitation. The card provides information concerning the reasons for declining an invitation as well as suggestions as to how the Volunteer Delivery System could be improved. This information is necessary for Peace Corps to evaluate the effectiveness of the Volunteer Delivery System. The information provided will not/cannot be used to identify specific individuals who have filled out the card. Information about the form:

Agency Address: Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526.

Title: Decline Information Card.

Type of Request: Extension of a Currently Approved Collection.

Frequency of Collection: On occasion.

General Description of Respondent: Individuals who were extended invitations to Peace Corps Volunteer training, who permanently declined the invitations.

Estimated Number of Responses: 300 annually, Estimated Hours for

Respondents to Furnish information: Fifteen (15) minutes each.

Respondents' Obligation to reply: Vountary

Comments: Comments on this form request should be directed to Francine Picoult, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. A copy of the form may be obtained from Phillip Seder, Office of Placement, Peace Corps, 806 Connecticut Avenue, NW., Room 906, Washington, DC 20526. Mr. Seder may be called at 202-632-6596.

This is not a request to which 44 U.S.C. 3504(h) applies. This notice is issued in Washington DC on March 26, 1987.

**Linda Rae Gregory,**

*Associate Director for Management*

[FR Doc. 87-7157 Filed 3-31-87; 8:45 am]

BILLING CODE 6051-01-M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s):**

(1) Collection title: Representative Payee Monitoring.

(2) Form(s) submitted: G-99a, G-99c.

(3) Type of request: Revision of a currently approved collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 6,725.

(7) Annual reporting hours: 1,111.

(8) Collection description: Under Section 12(a) of the RRA, the Board is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to determine if a representative is handling benefit payments in the best interests of the annuitant.

**Additional Information or Comments**

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy Egan (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Pauline Lohens,**

*Director of Information and Data Management.*

[FR Doc. 87-7118 Filed 3-31-87; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-24240; File No. SR-Amex-87-6]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc., Relating to an Extension of the Rule 126(g) Precedence Based on Size Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1987, the American Stock Exchange ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to extend the Rule 126(g) precedence based on size pilot program, set forth in SR-Amex-86-14, until May 1, 1987.[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

[1] The Commission approved the Exchange's size precedence pilot program for a three month period in Securities Exchange Act Release No. 23693, October 9, 1986, 51 FR 37358.

On March 11, 1987, the Amex filed Amendment No. 1 to File No. SR-Amex-87-6 changing the date of the requested extension of the Amex size precedence pilot program from April 1, 1987 to May 1, 1987.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

In October 1986, the Amex adopted a three-month pilot program under Rule 126(g) during which orders to cross blocks of 50, shares or more would be permitted to have precedence over other bids and offers.[2]

When the Commission approved the pilot program, the Exchange agreed to monitor trading under the pilot and to compile information such as the number of bids and offers accorded size precedence under the pilot, the number of shares in those bids and offers and their dollar value; the types of bids and offers which the subject block orders took precedence over, including the number of shares of these bids and offers and their dollar value; the number and type of block orders which were sent to Amex but which, during the period of this pilot, continued to be rerouted for execution at regional exchanges, including their size and dollar value; and data providing some indication of the impact of the pilot on the number of block orders which are sent to Amex and then rerouted to regional exchanges. The Amex agreed to submit this data to the Commission for its review and assessment of the pilot program.

Dues to relatively infrequent use of the new precedence procedures, there is insufficient data for analysis of the pilot program at present. Therefore, extension of the pilot program for an additional two months will enable the Exchange's Trading analysis Division to study the pilot program for a period of time sufficient to adequately assess the effectiveness of the program.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)5 in particular in that it is intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and to facilitate transactions in securities.

[2] *See* note 1.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-87-6 and should be submitted by April 22, 1987.

**IV. Commission Findings and Order Granting Accelerated Approval**

As noted above, the Amex is conducting a pilot program under Rule 126(g) that allows orders to cross blocks of 50,000 shares or more to have precedence over other bids and offers.[3]

This pilot program was developed in response to Amex's concern that an increasing number of block transactions in Amex listed securities were being conducted on regional exchanges rather than on the Amex. In the release approving the pilot program,[4] the Commission noted that Amex indicated that it would carefully monitor the pilot program and provide the Commission with information regarding the operation of the pilot and its impact on the routing of block orders from Amex to regional exchanges.

[3] Under the Amex pilot program, size precedence is only a factor in determining the sequence of execution where no other bid or offer has price or time priority.

[4] *See* note 1.

Amex has stated, due to the relatively infrequent use of the pilot program's procedures, that it currently does not have sufficient information to enable it to evaluate the effectiveness of the pilot program. For this reason, the Amex has requested an extension of the pilot program until May 1, 1987 to give the Exchange additional time to collect information, assess the effectiveness of the pilot program and provide the Commission with the agreed upon information.

The Commission believes that it is appropriate to extend, until May 1, 1987, the Amex size precedence pilot program in order to allow the Exchange to collect additional information regarding the operation and effectiveness of the pilot, thereby enabling the Exchange to adequately assess the effectiveness of the program.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Amex's pilot program under Rule 126(g) may continue on an uninterrupted basis.

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 20, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7175 Filed 3-31-87; 8:45 am]

[illegible] CODE [illegible]

---

**[Release No. 24254; File No. SR-BSE-87-3]**

## Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc., Relating to Amendments to Boston Stock Exchange Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1987, the Boston Stock Exchange, Incorporated ("BSE") or ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed changes as described in Items I, II, and III below,

which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change**

(a) The proposed rules introduce additional requirements for Alternate Specialists concerning their registration and dealings on the Exchange. The proposed rules establish guidelines and procedures for: (1) Alternate Specialist registration (including eligibility and capital requirements, factors to be considered by the Exchange's Market Performance Committee in reviewing applications for Alternate Specialist registration, and withdrawal of Alternate Specialist registration); (2) mergers between Regular Specialists registered as Alternate Specialists and other member organizations; (3) expansion of the list of stocks in which an Alternate Specialist is registered; and (4) permissible margin levels for Alternate Specialists. In addition, the proposed rule defines gross negligence in connection with the performance of a Regular or Alternate Specialist and subjects such negligence to penalties and/or disciplinary action.

(b) With regard to Regular Specialists, the proposed rule change will permit Regular Specialists, under certain conditions, to facilitate the execution of orders in the specialty stocks of other Regular Specialists in order to contribute toward the maintenance of price continuity with reasonable depth and to minimize the effects of temporary disparities between supply and demand.[1]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The exact text of the proposed rule changes is available from the Commission, at the address noted in Section IV below, and the BSE.

*(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change*

(a) The purpose of the proposed rules is to increase the effectiveness of Alternate Specialists by introducing additional requirements relative to their registration and dealings. In addition, the proposed rule change will permit Regular Specialists to facilitate the execution of orders in the stocks of other Regular Specialists, under certain conditions, in order to contribute toward the maintenance of price continuity with reasonable depth and to minimize the effects of temporary disparities between supply and demand.

(b) The basis under the Act for the proposed rule changes is Section 6(b)(5) in that the rules encourage cooperation among specialists in facilitating transactions in securities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

No burden on competition is perceived by the adoption of the proposed rules.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments have neither been solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the file number in the caption above and should be submitted by April 22, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 24, 1987.

Jonthan G. Katz,

*Secretary.*

[FR Doc. 87-7104 Filed 3-31-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24246; File No. SR-CBOE-87-04]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval To Proposed Rule Change

On February 20, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the index option escrow receipt pilot through June 30, 1987.

The index option escrow receipt program is intended to provide a workable mechanism through which index call options can be written in a cash account.[3] The Commission approved the market index option escrow receipt subject to a one year pilot, which ended on August 19, 1986. The pilot was subsequently extended to February 20, 1987, in order to provide sufficient time for the Exchange to review the data compiled during the pilot period. A report on the pilot was submitted to the Commission by the CBOE on February 6, 1987. Based on the experience of the pilot, the Exchange believes that the pilot should be made a permanent program and has requested

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] *See* Securities Exchange Act Release No. 22323, 50 FR 33439 (August 19, 1985) for a description of the pilot.

that the pilot be approved on a permanent basis.[4] The present filing is made to continue the pilot for an interim period until the Commission acts on the CBOE's proposal for permanent approval of the program.

In order to permit the Commission to conclude its evaluation of the CBOE report on the operation of the pilot to date, the Commission is extending the pilot program through June 30, 1987. The Commission notes that it appears that the pilot program has been successful in reducing the operational difficulties of banks and trust companies in preparing escrow receipts for short index options cash accounts.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that the pilot has operated effectively to date and has benefited many market participants.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: March 23, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7176 Filed 3-31-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Rel. No. 34-24252; File No. SR-CBOE-86-40]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change

On December 30, 1986, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] submitted to the Securities and Exchange Commission ("Commission") a proposal to amend its rules relating to disciplinary procedures.

The proposal was published for comment in Securities Exchange Act Release No. 24031 (January 28, 1987), 52 FR 3724. No comments were received on the proposed rule change.

The first amendment would prohibit ex parte communications between members of the Business Conduct Committee ("BCC") and CBOE members or their associated persons concerning a pending disciplinary proceeding. According to CBOE, this amendment would codify a longstanding policy of the Exchange.

The second amendment would authorize the CBOE Board of Directors to review a decision of the BCC not to initiate formal disciplinary proceedings against a member. Board review would occur upon application of the president made within 30 days of the BCC's decision. Any Board review would be based on the record of the proceedings before the BCC and the minutes relating to the BCC's reasons for not initiating charges, supplemented by whatever statement the BCC submits in justification of its decision. The Board would be empowered to remand the matter to the BCC with an instruction to initiate charges.

The Commission believes that the proposed amendments will enhance the administration of the Exchange. The first amendment will eliminate any conflict of interest or appearance of impropriety that could arise from allowing ex parte communications between BCC members and CBOE members concerning a pending disciplinary proceeding. The second amendment will establish an important review procedure necessary to ensure the validity of BCC decisions not to initiate charges. The amendment will allow the CBOE president to ensure that erroneous BCC decisions can be reviewed and, where appropriate, remanded for a new hearing. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 24, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7099 Filed 3-31-87; 8:45 am]

BILLING CODE [illegible]

---

**[Rel. No. 34-24253; File No. SR-CBOE-87-03]**

## Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Index Option Escrow Receipt Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 20, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Text of the Proposed Rule Change

The index option escrow receipt pilot program, set forth in Exchange Rule 24.11(d), is made a permanent program.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The purpose and statutory basis for the proposed rule change were to provide a workable mechanism through which index call options could be written in a cash account. See SR-CBOE-84-28, SEC Release 34-22323, 50 FR 33439 (August 19, 1985) in which the Commission approved the market index option escrow receipt ("MIOER") for a one year pilot program. The pilot was subsequently extended through February 20, 1987 in order to provide sufficient time for the Exchange to review the data compiled during the pilot period. Under separate cover, on February 6, 1987, the Exchange submitted its report on the pilot program. An additional extension to June 30, 1987 has been sought to allow consideration of this proposed rule change to make the program permanent. See SR-CBOE-87-04.

---

[4] *See* File No. SR-CBOE-87-03.

[5] 15 U.S.C. 78s(b)(2)(1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

[1] 15 U.S.C. § 78s(b)(1) (1984)

[2] 17 CFR § 240.19b-4 (1986).

[3] 15-U.S.C. F 78f (1984).

[4] 15 U.S.C. 78s(b)(2) (1984).

To summarize, the MIOER may be collateralized by cash; cash equivalents; one or more marginable equity securities; or any combination thereof, provided the customer maintains a diversified securities portfolio.

The MIOER concept provides a custodian bank with flexibility in identifying specific escrow receipt collateral and through its monitoring and notification provisions insures that assignment will be met on a timely basis.

After a thorough review of the pilot data, the Exchange has determined that the MIOER is a successful and workable concept, and should be approved for use on a permanent basis with the Options Clearing Corporation remaining the sole valid distributor of MIOER agreements.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that this proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Though solicited, no formal comments were received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 22, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 24, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7098 Filed 3-31-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Rel. No. 34-24251; File No. SR-PSE-86-33]**

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc., Order Approving Proposed Rule Change

On December 22, 1986, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] submitted to the Securities and Exchange Commission ("Commission") a proposal to amend its rule relating to recording and reporting options transaction to the Exchange.

The proposal was published for comment in Securities Exchange Act Release No. 24032 (January 28, 1987), 52 FR 3725. No comments on the proposed rule change were received.

The proposed rule change would amend PSE's transaction reporting rule to require buyers from multiple sellers to time-stamp and submit trading tickets. Currently, Exchange rules require that the seller in a transaction time-stamp and submit trade tickets. This procedure has proved cumbersome when a floor broker buys from several market makers. Floor tickets used by market makers to record transactions for their own accounts differ significantly from those used by floor brokers acting in an agency capacity. Specifically, a market maker's ticket can show only one contra side to a trade. A floor broker's ticket, however, can show multi-party contra sides. Consequently, in a multi-party transaction involving a floor broker buying from numerous selling market makers, the floor broker can record all selling contra sides on his/her ticket. The PSE believes that in such transactions, it is more efficient to have the floor broker collect the tickets from the contra sides, match them with his/her ticket and submit them to the Exchange. To do otherwise would require the floor broker to write up separate "partial" tickets and hand them to each of the selling market makers. In turn, each of the selling market makers would then have to match up each partial transaction and hand all of the tickets in to the Exchange.

The proposed amendment will promote efficiency in the reporting of options transactions on the Exchange floor, thereby facilitating transactions in securities. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 24, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7100 Filed 3-31-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24255; File No. SR-Phlx-86-47]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc; Order Approving Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted on December 10, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78(b)(1) and Rule 19b-4 thereunder to establish a six month pilot program to attract additional equity specialist interest to the Phlx. The proposal would permit the Exchange to assemble and circulate, for a thirty day period, a list of stocks available for allocation and reallocation to Exchange specialists.[1]

---

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b-4 (1986).

[3] 15 U.S.C. 78f (1984).

[4] 15 U.S.C. 78s(b)(2) (1984).

[1] The list of available stocks would be compiled from (i) stocks listed on other exchanges for which the Phlx has yet to seek unlisted trading privileges; (ii) Phlx cabinet stocks; (iii) Phlx stocks currently allocated to equity specialists but not included on PACE; and (iv) PACE stocks that specialists would volunteer to make available to new specialists.

Under the proposal, a specialist would be permitted to apply for new stock from the list of eligible stocks. In addition, during the thirty day circulation period, specialists with non-PACE committed stock would be permitted to place those stocks onto the PACE system. Failure to do so within the thirty day period would result in reallocation of the non-PACE committed stock.[2] The specialist would be entitled to appeal the reallocation of the stock to the Exchange Board of Governors under Phlx Rule 11–1(a).

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 24050, February 3, 1987) and by publication in the **Federal Register** (52 FR 4553, February 12, 1987). No comments were received regarding the proposal.

According to the Phlx, the pilot should increase the number of stocks eligible for automatic execution on the Phlx's PACE system, which should benefit public investors. Phlx believes the pilot will facilitate a broader and deeper inter-market competition. By increasing the number of stocks eligible for allocation, the pilot should also attract additional equity specialists to the Phlx floor.

After careful review, the Commission has concluded that the proposed rule change is a reasonable effort by the Phlx to attract more specialists to the Exchange, expand its capital base, and increase the volume of equity issues traded on the Exchange consistent with the public interest and investors and its PACE system. As a pilot program, the Exchange will be better able to analyze the rule to determine its effectiveness and to discover any weaknesses in the application of the rule and make the necessary adjustments thereto prior to requesting permanent approval of the proposal. Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved for a six month pilot period.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 24, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7103 Filed 3–31–87; 8:45 am]

BILLING CODE 8010–01–M

[2] During the thirty day circulation period, another specialist could challenge his competitor and take away the stock if he is willing to place the stock onto the PACE system. However, the specialist to which the stock was originally allocated can escape such a loss if he agrees to put the stock onto the PACE system when the challenge occurs.

---

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 26, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Colonial Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–9862)

Valero Natural Gas Partners L.P.
Preference Units Representing Limited Partner Interest (File No. 7–9863)

Applied Magnetics Corporation (Delaware)
Common Stock, $0.10 Par Value (File No. 7–9864)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 16, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7097 Filed 3–31–87; 8:45 am]

BILLING CODE 8010–01–M

---

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 26, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Consolidated Rail Corporation—
Common Stock, $1.00 Par Value (File No. 7–9861)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 16, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7096 Filed 3–31–87; 8:45 am]

BILLING CODE 8010–01–M

---

## Self-Regulatory Organizations; Applications of Philadelphia Stock Exchange, Inc., for Unlisted Trading Privileges and of Opportunity for Hearing

March 25, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American International Group, Inc.
Common Stock, $2.50 Par Value (File No. 7–9853)

Conston Corporation
Class A Common Stock, $.12½ Par

Value (File No. 7–9854)
Fruit of the Loom, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–9855)
MCorp
Common Stock, $5.00 Par Value (File No. 7–9856)
Measurex Corporation
Common Stock, No Par Value (File No. 7–9857)
MFS Multimarket Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–9858)
Paco Pharmaceutical Services, Inc.
Common Stock, $.01 Par Value (File No. 7–9859)
The United States Shoe Corporation
Common Stock, No Par Value (File No. 7–9860)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 15, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7101 Filed 3–31–87; 8:45 am]

BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications of Cincinnati Stock Exchange, Inc., for Unlisted Trading Privileges and of Opportunity for Hearing

March 25, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

CTS Corp.
Common Stock, No Par Value (File No. 7–9838)
Commonwealth Mortgage Association
Common Stock, No Par Value (File No. 7–9839)
Decision/Capital Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9840)
Ferror Corp.
Common Stock, $1.00 Par Value (File No. 7–9841)
Harland (J.H.) Co.
Common Stock, $1.00 Par Value (File No. 7–9842)
Harper & Row Publishers Inc.
Common Stock, $.10 Par Value (File No. 7–9843)
Imo Delaval Inc.
Common Stock, $1.00 Par Value (File No. 7–9844)
LLC Corp.
Common Stock, $1.00 Par Value (File No. 7–9845)
National Mine Service Co.
Common Stock, $1.00 Par Value (File No. 7–9846)
Smucker (J.M.) Co.
Common Stock, No Par Value (File No. 7–9847)
SOO Line Corp.
Common Stock, $1⅓ Par Value (File No. 7–9848)
Todd Shipyards Corp.
Common Stock, $1.00 Par Value (File No. 7–9849)
Tosco Corp.
$0.44 Cumulative A Preferred Votlng, $1.00 Par Value (File No. 7–9850)
Fairmont Financial Inc.
Common Stock, No Par Value (File No. 7–9851)
Intelligent System Master L.P.
Common Stock, $.05 Par Value (File No. 7–9852)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 15, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7102 Filed 3–31–87; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Sacramento County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice Of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Sacramento County, California.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Cook, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone (916) 551–1307.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation (CALTRAN$) and the City of Sacramento will prepare an EIS on a proposal to construct the following projects:

(1) Proposed Truxel Road Interchange on Interstate 80 and the extension of Truxel Road to San Juan Road.

(2) Proposed North Market Blvd. Interchange on Interstate 5.

(3) Three new overcrossings on Interstate 5.

(4) Improvements to existing interchanges at Del Paso Road on Interstate 5, and Northgate Blvd. on Interstate 80.

The proposal will improve safety and traffic service by providing access to the Interstate highway system for the North and South Natomas areas of the City of Sacramento which were recently approved for urbanization by the City Council.

Alternatives for this project presently consist of: (1) No project; (2) alternative locations; (3) alternative designs.

An informal public meeting was held in Sacramento, California on March 16, 1987, to receive comments from public and private organizations and from individuals.

Additional scoping meetings will be arranged with all responsible/cooperating agencies and with special interest groups upon request. In addition

at the time of Draft EIS circulation, a public hearing will be held. Public notice will be given as to the time and place of the hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: March 20, 1987.

**Michael A. Cook,**

*District Engineer, Sacramento, California.*

[FR Doc. 87-7119 Filed 3-31-87; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: March 26, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0160.
*Form Number:* 3520-A.
*Type of Review:* Extension.
*Title:* Annual Return of Foreign Trust with U.S. Beneficiaries.
*Description:* Internal Revenue Code 6048 requires that foreign trusts with one or more U.S. beneficiaries file an annual information return. Regulation section 404.6048-1 states that the information should be submitted on Form 3620-A. IRS uses the information to determine if any of the U.S. beneficiaries of the foreign trust have to report income from the trust.
*Respondents:* Businesses.
*Estimated Burden:* 500 hours.
*OMB Number:* 1545-0240.
*Form Number:* 6118.
*Type of Review:* Extension.
*Title:* Claim of Income Tax Return Preparers.
*Description:* Form 6118 is used to file for refund of penalties overpaid by preparers. The information enables the Service to process the claim and have the refund issued to the tax return preparers.
*Respondents:* Businesses.
*Estimated Burden:* 8,000 hours.
*OMB Number:* 1545-0678.
*Form Number:* 637A.
*Type of Review:* Extension.
*Title:* Registration for Tax-Free Sales and Purchases of Fuel Used in Aircraft.
*Description:* Certain sellers and purchasers are exempt from the Internal Revenue Code section 4041(c) excise tax on aviation fuel if they use this form to register for tax-free transactions. The data collected is used to determine if the applicants qualify for exemption from excise taxes.
*Respondents:* Individuals, Farms, Businesses.
*Estimated Burden:* 2,829 hours.

Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 87-7088 Filed 3-31-87; 8:45 am]

BILLING CODE 4810-25-M

**Internal Revenue Service**

### Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 1986; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to announcement.

**SUMMARY:** This document contains corrections to the publication of adjustment factor and reference price for calendar year 1986, which was announced in the **Federal Register** for Tuesday, March 10, 1987 (52 FR 7365). The inflation adjustment factor and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

**FOR FURTHER INFORMATION CONTACT:** Robert O'Keefe, 202-376-0720 (not a toll-free number).

**Need For Corrections**

As announced, the publication of the inflation adjustment factor and reference price for calendar year 1986 incorrectly includes the word "information" instead of "inflation" in one location and includes an incorrect telephone number for one of the contact persons.

**Correction of Publication**

Accordingly, the publication of the announcement that was the subject to FR Doc. 87-4982 is corrected as follows:

Paragraph 1. In the first line below the caption that reads "**FOR FURTHER INFORMATION CONTACT**", the word "information" is corrected to read "inflation".

Paragraph 2. In the text of the paragraph that is captioned "*For the reference price*", the telephone number is corrected to read "202-566-3928".

**Donald E. Osteen,**

*Director, Legislation and Regulations Division.*

[FR Doc. 87-7133 Filed 3-31-87; 8:45 am]

BILLING CODE 4830-01-M

## UNITED STATES INFORMATION AGENCY

### Exchange Visitor Program

**AGENCY:** United States Information Agency.

**ACTION:** Amendment to Exchange Visitor Skills List.

**SUMMARY:** The amendment to our Exchange Visitor Skills List, published in the **Federal Register** at 52 FR 8700, March 19, 1987, contained an incorrect date.

**DATES:** This notice is effective immediately upon publication in the **Federal Register**.

**ADDRESS:** Comments and requests for further information should be addressed to: Richard L. Fruchterman, Assistant General Counsel, Office of the General Counsel and Congressional Liaison, USIA, Suite 700, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-7976.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), the Secretary of State designated on April 25, 1972, a list of fields of specialized knowledge or skill (referred to as the Exchange Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was

a national resident of one of those countries and obtained an exchange visitor visa and/or became a participant in an Exchange Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the 2-year foreign residence (home-country physical presence) requirement of section 212(e) of said Immigration and Nationality Act as provided by said section and 22 CFR 41.65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of United States Information Agency Authorization Act of August 24, 1982 (Pub. L. 97–241) and Executive Orders Nos. 12048 (March 27, 1978) and 12388 (October 14, 1982) the Director, United States Information Agency, on June 12, 1984 further amended the 1972 Exchange Visitor Skills List, as revised in 1978, to increase the designated fields of specialized knowledge of skills. The 1984 amendment gave notice of the addition of China and the deletion of Cambodia, Iran and Viet-Nam from the skills list as well as the indefinite suspension of Afghanistan. The Exchange Visitor Skills List, as amended in 1984, is used in conjunction with the two prior existing lists.

The Exchange Visitor Skills List, as amended in 1984, is further amended by the following changes:

1. South Africa is deleted from the list. Since South Africa was erroneously placed in the list in 1984, the change will take effect retroactively. Those exchange visitors from that country who entered the United States after July 12, 1984, are not subject to the residence requirement pursuant to the skills list. (Note: this date was formerly listed as June 12, 1984).

2. With regard to the deletion of South Africa and the corrections in the Chinese skills list for the Peoples's Republic of China, this notice shall be retroactive to July 12, 1984. (Note: this date was formerly listed as June 12, 1986).

This notice amends Public Notice No. 356–37, 37 FR 8099–8177, April 25, 1972, Public Notice No. 591, 43 FR 5910–5912, February 10, 1978, Public Notice No. 49 FR 24194–24242, June 12, 1984, 51 FR 34701, September 30, 1986, and 52 FR 8700, March 19, 1987.

Dated: March 24, 1987.

**C. Normand Poirier,**

*Acting General Counsel and Congressional Liaison.*

[FR Doc. 87–7078 Filed 3–31–87; 8:45 am]

BILLING CODE 8230–01–M

## VETERANS ADMINISTRATION

### Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances, that a hearing is scheduled for April 16, 1987 at 10:00 a.m. at the Denver Regional Office for Station Committee on Educational Allowances, in the Adjudication Hearing room, Room 504, of the Denver Veterans Administration Regional Office, 44 Union Boulevard, Denver, Colorado, to determine whether Veterans Administration benefits for all eligible persons enrolled in the Accounting Clerk Course offered by R.C.L. Companies, Inc., 1009 Grant Street #203, Denver, CO 80203, should be discontinued as provided in 38 CFR 21.4134, because a requirement of the law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: March 24, 1987.

**Donald M. Twitty,**

*Director, VA Regional Office.*

[FR Doc. 87–7074 Filed 3–31–87; 8:45 am]

BILLING CODE 8320–01–M

### Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances, that a hearing is scheduled for April 14, 1987 at 8:30 a.m. at the Denver Regional Office for Station Committee on Educational Allowances, in the Adjudication Hearing room, Room 504, of the Denver Veterans Administration Regional Office, 44 Union Boulevard, Denver, Colorado, to determine whether Veterans Administration benefits for all eligible persons enrolled in the Management Training Program offered by Broadway Publishing Associates, 38 Broadway, Denver, CO 80203, should be discontinued as provided in 38 C.F.R. 21.4134, because a requirement of the law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: March 24, 1987.

**Donald M. Twitty,**

*Director.*

[FR Doc. 87–7075 Filed 3–31–87; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 62
Wednesday, April 1, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FOREIGN CLAIMS SETTLEMENT COMMISSION**

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

*Date and Time, Subject Matter*

Tues., April 14, 1987 at 10:00 a.m.—Oral Hearing on objection to decision issued under the Ethiopian Claims Program:
E-010, E-044—Federal Motorship Corporation, et. al.

Tues., April 14, 1987 at 2:00 p.m.—Consideration of Proposed Decisions on claims under the Ethiopian Claims Program and Final Decisions on objections filed to Proposed Decisions on claims under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111–20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111–20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC, on March 30, 1987.

**Judith H. Lock,**

*Administrative Officer.*

[FR Doc. 87–7245 Filed 3–30–87; 2:04 pm]

BILLING CODE 4410-01-M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Monday, April 6, 1987 at 2:30 p.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain dental prophylaxis equipment and methods (Docket Number 1383).
5. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 523–0161.

**Kenneth R. Mason,**

*Secretary.*

March 26, 1987.

[FR Doc. 87–7186 Filed 3–30–87; 9:42 am]

BILLING CODE 7020-02-M

# Corrections

Federal Register
Vol. 52, No. 62
Wednesday, April 1, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing–Federal Housing Commissioner

[Docket No. N–1668; FR–2299]

### Transitional Housing Demonstration Program; Proposed Guidelines

*Correction*

In notice document 87–3761 beginning on page 5587 in the issue of Wednesday, February 25, 1987, make the following corrections:

1. On page 5590, in the second column, in the first complete paragraph, in the 12th line "D.2.(ii)" should read "D.2.(iii)".

2. On page 5592, in the second column, in the fifth through seventh lines remove "HUD would consider to be, available to them. In making this determination,".

3. On page 5596, in the third column, in the second complete paragraph, in the seventh line, "operating" should read "operations" and "commended" should read "commenced".

BILLING CODE 1505–01–D

## OFFICE OF MANAGEMENT AND BUDGET

### The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines

*Correction*

In notice document 87-6951 beginning on page 10012 in the issue of Friday, March 27, 1987, make the following correction:

On page 10017, in the first column, in the last line, insert "certain" between "recover" and "of".

BILLING CODE 1505-01-D

Federal Register

Wednesday
April 1, 1987

Part II

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**Housing Development Grant Program; List of Designated Eligible Areas; Notice**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

[Docket No. N-87-1669; FR-2324]

**Housing Development Grant Program; List of Designated Eligible Areas**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In accordance with the 24 CFR 850.13, this notice lists those political jurisdictions that the Secretary has determined meet the minimum standards for designated eligible areas under the Housing Development Grant Program. It also provides an appeals process for jurisdictions that were previously designated as eligible areas but failed to meet the vacancy rate thresholds imposed by HUD's appropriations Act for fiscal year 1987. This notice is being published at this time to enable jurisdictions made ineligible by the new thresholds to appeal HUD's determination, if they so choose. HUD will publish any additions to this list of eligible areas with the Invitation for Applications.

**FOR FURTHER INFORMATION CONTACT:** Jessica Franklin, Director, Housing Development Grant Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 755–6142. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 301 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, approved November 30, 1983) added a new section 17 to the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437(o)) which, among other things, established the Housing Development Grant Program.

Under the Program, HUD is authorized to make grants to cities, counties and other general purpose political subdivisions of a State, or to a State, acting on behalf of units of general local government, to be used to support the new construction or substantial rehabilitation of primarily residential rental projects. An application must fall within one of three categories to receive consideration for funding. The application must either (1) be from an applicant located in a designated eligible area, (2) meet a special housing need, or (3) advance a particular neighborhood preservation purpose. This Notice concerns designated eligible areas, which section 17(d)(2) of the 1937 Act defines as an area determined by HUD to be experiencing a severe shortage of decent rental housing opportunities for families and individuals without other reasonable and affordable housing alternatives in the private market.

Section 17(d)(2) of the 1937 Act requires HUD to establish minimum standards for determining designated eligible areas, taking into account certain statutory conditions and other objectively measurable conditions specified by the Secretary. These conditions are set out in 24 CFR 850.13, which also provides that from time to time HUD will publish a notice in the **Federal Register** listing those areas that have been so determined. This notice is published in accordance with this requirement.

In addition to the standards in 24 CFR 850.13, HUD's FY 1987 appropriations Act (see section 101(g) of Pub. L. 99–590, approved October 18, 1986) adds a new threshold test for determining a Designated Eligible Area for the 1987 HDG funding round. The new threshold test (§ 850.13 as modified by Pub. L. 99–590) requires that an eligible area have both an overall rental vacancy rate and a duration of vacancy rate (units vacant more than two months) which are less than the national average rates.

The List of Designated Eligible Areas published with this notice was developed by applying vacancy rate thresholds (developed as described below) to jurisdictions that were included in the List of Designated Eligible Areas published June 5, 1986, at 51 FR 20581. The national average overall rental vacancy rate and the national average duration of vacancy rate thresholds were derived from the Bureau of the Census H–111 surveys for the most recent four quarters (4th quarter, 1985 through 3rd quarter, 1986). Overall rental vacancy rates and duration of vacancy rates were determined for each of the jurisdictions based upon 1980 Census data (the most recent generally available data). The national thresholds were determined to be 7.10 percent for the overall rental vacancy rate and 3.73 percent for the duration of vacancy rate. Only jurisdictions which, according to the 1980 Census data, have overall rental vacancy rates and duration of vacancy rates below the respective thresholds are on this List of Designated Eligible Areas.

**Appeal Procedures**

Because the vacancy rates for all jurisdictions were derived from 1980 Census data, they may be higher or lower than if they had been derived from more current data. Therefore, those jurisdictions that were previously designated as eligible areas, but failed to meet the new threshold, may submit to HUD more recent information to show that their current overall rental vacancy and duration of vacancy rates are less than the respective national averages. If the HUD review of this information determines that the appealing jurisdiction meets both the overall rental vacancy and vacancy duration test, HUD will redesignate the jurisdictions as eligible before publishing the Invitation for Applications for Fiscal Year 1987.

A jurisdiction must appeal its threshold results no later than May 1, 1987 so that it can be placed on the List of Designated Eligible Areas. All final determinations will be made by HUD Headquarters. The local analysis, however, must be addressed to the Field Office Manager, ATTENTION: Field Office Economic Market Analysis Staff. This notice includes a listing of the addresses of HUD's local field offices.

A jurisdiction appealing its threshold overall rental vacancy and duration of vacancy rates must provide the following:

(1) The overall rental vacancy rate from the 1980 Census;

(2) The locally calculated current overall rental vacancy rate;

(3) The rental vacancy rate for units vacant two or more months, from the 1980 Census; and

(4) The locally calculated current rental vacancy rate for units vacant two or more months.

A jurisdiction that believes it should be included on the List of Designated Eligible Areas may also include any other information on current rental market conditions or trends in rental housing construction or absorption that would indicate that the vacancy rates have declined since 1980 to the levels claimed by the jurisdictions.

A jurisdiction must calculate its 1980 vacancy rates using the 1980 Census HCI–A Volume for the applicable State and the following table for the type of jurisdiction: for places of 50,000 or more population—Table 18, for places of 10,000 to 50,000—Table 29 or 29a, for places of 2,500 to 10,000—Table 36 or 36a, and for counties—Table 46.

The 1980 vacancy rates must be calculated as follows:

(1) Overall Rental Vacancy Rate:

| Vacant Housing Units for Rent | ... |
|---|---|

Renter Occupied Housing Units + Vacant Housing Units For Rent

(2) Duration of Vacancy Rate:

Total Vacant Housing Units For Rent—Vacant For Rent Housing Units Less Than 2 Months

---

Renter Occupied Housing Units + (Total Vacant Housing Units For Rent—Vacant For Rent Housing Units Less Than Two Months)

The locally calculated current overall rental vacancy rate must be derived using either (1) current local source data for a substantial portion of the units in the rental inventory (including a cross section of units of all types and sizes) that would be representative of the market conditions in the jurisdiction as a whole, or (2) a historical series of local source data on the trend in overall rental vacancy rate from 1980 to the present which would, using the 1980 Census rental vacancy rate as the benchmark, show a reduction to the locally calculated current rate. The current rental vacancy rate must represent the rate for all rental units, not just the rate for any one type of unit, e.g., multifamily structures.

Jurisdictions are encouraged to discuss their data and methods of updating the overall rental vacancy and duration of vacancy rates with the local field office prior to preparation. The locally calculated duration of vacancy rate for units vacant two or more months should be derived by either (1) determining the ratio of the 1980 duration of vacancy rate to the 1980 overal rental vacancy rate and multiplying this ratio by the current locally calculated overall rental vacancy rate or (2) using current local source data on the length of time both new and existing units remain vacant that would indicate a decrease in the number or percent of units vacant for two or more months.

In order to be redesignated as an eligible area the jurisdiction must demonstrate that it meets both of the national thresholds, namely, it must have less than a 7.10 percent overall rental vacancy rate and less than a 3.73 percent duration of vacancy rate.

This appeal procedure does not exempt applicants from providing vacancy and market information required under Section G, "Shortage of Housing" in an HDG application, nor does HUD's approval of the area as a Designated Eligible Area constitute prior approval of a specific vacancy rate for purposes of technical processing and the selection of actual applications.

Jurisdictions that fail to be redesignated as eligible areas are not precluded from submitting applications. They may still submit applications under the special housing needs or neighborhood preservation criteria as specified in 24 CFR 850.15.

The information collection requirements concerning this appeals procedure have been approved by the Office of Management and Budget under OMB Control Number 2502–0363.

## How To Read The Designated Eligible Area List

With the exception of eligible counties, all eligible areas may be found by identifying first the State, second the county in which the desired area is located and finally the community (city, town, village, etc.). Eligible counties, by State, are found on a separate listing at the end of the list for all other areas.

Dated March 17, 1987.

**James E. Schoenberger,**

*Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

**List of Designated Eligible Areas Other Than Eligible Counties**

**State of Alabama**

*Autauga County*

Autaugaville

*Baldwin County*

Bay Minette
Daphne
Foley
Summerdale

*Barbour County*

Blue Springs
Clio

*Bibb County*

Brent

*Blount County*

Blountsville
Cleveland
County Line
Nectar
Rosa
Snead

*Butler County*

Georgiana
McKenzie

*Calhoun County*

Blue Mountain
Ohatchee

*Chambers County*

Five Points

*Cherokee County*

Gaylesville

*Chilton County*

Maplesville
THorsby

*Choctaw County*

Gilbertown
Needham
Pennington
Silas
Toxey

*Clarke County*

Fulton

*Cleburne County*

Edwardsville
Fruithurst

*Coffee County*

New Brockton

*Colbert County*

Sheffield

*Coosa County*

Goodwater
Rockford

*Covington County*

Carolina
County Line
Red Level
Sanford

*Crenshaw County*

Luverne

*Cullman County*

Colony
Garden City
Hanceville
West Point

*Dale County*

Ariton
Grimes

*Dallas County*

Orrville
Selma

*DeKalb County*

Hammondville
Mentone
Pine Ridge
Valley Head

*Elmore County*

Eclectic

*Escambia County*

Flomaton
Pollard

*Etowah County*

Mountainboro
Reece City

*Fayette County*

Berry
Glen Allen

*Franklin County*

Hodges
Vina

*Geneva County*

Black
Coffee Springs
Malvern
Samson

*Greene County*

Boligee
Forkland
Union

*Hale County*

Greensboro

*Henry County*

Haleburg

*Houston County*

Cottonwood
Kinsey
Webb

*Jackson County*

Langston

*Jefferson County*

Adamsville
Birmingham
Brighton
Maytown
Mulga
North Johns
Trafford
Warrior

*Lamar County*

Detroit

*Lauderale County*

Anderson
Waterloo

*Lowrence County*

Hillsboro
North Courtland

*Lee County*

Auburn

*Limestone County*

Lester
Mooresville

*Lownes County*

Benton
Mosses

*Macon County*

Franklin

*Madison County*

Owens Cross Roads

*Marengo County*

Dayon
Linden
Myrtlewood
Providence
Sweetwater

*Marshall County*

Douglas

*Mobile County*

Bayou La Batre
Prichard
Satsuma

*Monroe County*

Vredenburgh

*Montgomery County*

Montgomery

*Morgan County*

Somerville

*Perry County*

Marion

*Pickens County*

Ethelsville
Memphis

*Pike County*

Brundidge
Goshen

*Randolph County*

Wadley
Wedowee

*Russell County*

Hurtsboro

*St Clair County*

Springsville
Whites Chapel

*Shelby County*

Helena

*Sumter County*

Emelle
Gainesville
Geiger

*Talladega County*

Oak Grove
Sylacauga
Talladega
Talladega Springs

*Tallapoosa County*

Daviston
Goldville
Jackson's Gap
New Site

*Walker County*

Carbon Hill
Dora

*Wilcox County*

Oak Hill
Pine Hill

*Winston County*

Addison

**State of Alaska**

*Aleutian Islands Census*

King Cove
Unalaska

*Bethel Census Area*

Akiachak
Akiak
Nunapitchuk
Atmautluak
Chefornak
Chuathbaluk
EEK
Goodnews Bay
Kasigluk
Lower Kalskag
Napaskiak
Newtok
Nightmute
Quinhagak
Toksook Bey
Tuluksak
Tununak

**Dillingham Census Area**

Clark's Point
Ekwok
Manokotak
Newhalen
New Stuyahok
Port Heiden
Togiak

**Kenai Peninsula Borough**

Kachemak

**Kobuk Census Area**

Ambler
Deering
Kiana
Kivalina
Kobuk
Noorvik
Selawik
Shungnak

**Kodiak Island Borough**

Akhiok
Old Harbor
Ouzinkie
Port Lions

**Nome Census Area**

Brevig Mission
Diomede
Elim
Gambell
Golovin
Koyuk
St Michael
Savoonga
Shaktoolik
Shishmaref
Stebbins
White Mountain

*North Slope Borough*

Nuiqsut

*Prince of Wales-Outer Ke*

Kasaan

*Skagway-Yakutat-Angoon C*

Hoonah

**Southeast Fairbanks Census Area**

Eagle

*Wade Hampton Census Area*

Fortuna Ledge
Hooper Bay
Kotlik
Russian Mission
Scammon Bay
Sheldon Point

*Yukon-Koyukuk Census Area*

Allakaket
Anvik
Holy Cross
Kaltag
Koyukuk
Nikolai
Tanana

**State of Arizona**

*Maricopa County*

Buckeye
Gilbert
Goodyear

*Navajo County*

Holbrook

*Pima County*

Marana

*Pinal County*

Kearny
Superior

*Santa Cruz County*

Nogales

*Yuna County*

Somerton

**State of Arkansas**

*Arkansas County*

De Witt
St Charles

*Ashley County*

Hamburg
Parkdale
Portland

*Baxter County*

Big Flat

*Benton County*

Avoca

*Boone County*

Bergman
Omaha
South Lead Hill

*Bradley County*

Hermitage

*Calhoun County*

Hampton
Harrell
Thornton

*Carroll County*

Beaver
Blue Eye

*Chicot County*

Eudora

*Clark County*

Gum Springs
Okolona

*Clay County*

Corning
Peach Orchard

*Cleveland County*

Rison

*Conway County*

Oppelo

*Craighead County*

Brookland
Cash
Lake City
Monette

*Crawford County*

Alma
Rudy
Van Buren

*Crittenden County*

Earle
Edmondson
West Memphis

*Cross County*

Hickory Ridge
Parkin
Wynne

*Dallas County*

Sparkman

*Desha County*

Dumas
Watson

*Drew County*

Monticello

*Faulkner County*

Enola
Greenbrier
Guy
Mount Vernon
Vilonia

*Fulton County*

Mammoth Spring

*Garland County*

Lonsdale
Mountain Pine

*Grant County*

Leona
Poyen
Prattsville

*Greene County*

Lafe
Oak Grove Heights

*Hempstead County*

Fulton
Ozan
Patmos

*Hot Spring County*

Malvern
Perla
Rockport

*Independence County*

Cushman
Newark
Oil Trough

*Izard County*

Melbourne
Mount Pleasant
Pineville

*Jackson County*

Beedeville
Campbells Station
Grubbs
Jacksonport
Tupelo

*Jefferson County*

Pine Bluff
Sherrill
Wabbaseka

*Johnson County*

Clarksville

*Lafayette County*

Bradley
Lewisville

*Lawrence County*

Alicia
Minturn
Portia
Powhatan
Sedgwick
Smithville

*Lee County*

Aubrey
Haynes
Marianna
Moro
Kunulu

*Little River County*

Winthrop

*Logan County*

Morrison Bluff
Ratcliff
Scranton
Subiaco

*Lonoke County*

Austin
Carlisle
Coy
Keo

*Madison County*

St Paul

*Mississippi County*

Burdette
Dyess
Leachville
Marie
Wilson

*Monroe County*

Clarendon
Roe

*Montgomery County*

Black Springs
Mount Ida
Oden

*Nevada County*

Bluff
Bodcaw
Emmet
Rosston

*Newton County*

Jasper
Western Grove

*Ouachita County*

Camden
Louann

*Perry County*

Adona
Casa
Houston
Perry

*Phillips County*

Elaine
Lake View
Marvell
West Helena

*Pike County*

Antoine
Daisy
Delight
Murfreesboro

*Poinsett County*

Lepanto

*Polk County*

Cove

*Prairie County*

De Valls Bluff
Biscoe Town
Ulm

*Randolph County*

Biggers
Maynard
O'Kean
Reyno

*St Francis County*

Caldwell
Forrest City
Hughes
Widener

*Saline County*

Bauxite
Haskell
Traskwood

*Scott County*

Waldron

*Searcy County*

Gilbert
Leslie

*Sebastian County*

Midland

*Sharp County*

Evening Shade

*Stone County*

Fifty Six

*Union County*

Strong

*Van Buren County*

Damascus

*Washington County*

Farmington

*White County*

Beebe
Garner
Higginson
Kensett
Letona
McRae
Russell
West Point

*Woodruff County*

Augusta
Hunter
McCrory

*Yell County*

Belleville
Havana

**State of California**

*Alameda County*

Berkeley
Newark
Oakland

*Amador County*

Plymouth

*Butte County*

Biggs

*Colusa County*

Williams

*Contra Costa County*

Brentwood
Richmond
San Pablo

*Fresno County*

Firebaugh
Fowler
Huron
Kingsburg
Mendota
Orange Cove
Parlier
Reedley
Sanger
Selma

*Imperial County*

Calexico

*Kern County*

Arvin
Delano
Tehachapi
Wasco

*Kings County*

Corcoran
Hanford

*los Angeles County*

Artesia
Azusa
Baldwin Park
Bell
Bell Gardens
Carson
Commerce
Compton
Cudahy
El Monte
Gardena
Hawaiian Gardens
Huntington Park
Industry
Inglewood
Irwindale
Lawndale
Los Angeles
Lynwood
Maywood
Montebello
Monterey Park
Norwalk
Paramount
Pasadena
Pico Rivera
Pomona
Rosemead
San Fernando
San Gabriel
Santa Fe Springs
South El Monte
South Gate

*Modera County*

Chowchilla

*Marin County*

Ross

*Mendocino County*

Fort Bragg
Point Arena

*Monterey County*

Gonzales
King City
Marina
Sand City
Seaside
Soledad

*Nevada County*

Nevada City

*Orange County*

Buena Park
Garden Grove
Placentia
Stanton

*Riverside County*

Blythe
Coachella

*San Benito County*

Hollister
San Juan Bautista

*San Diego County*

Imperial Beach
National City
San Diego

*San Francisco County*

San Francisco

*San Joaquin County*

Ripon

*San Luis Obispo County*

Grover City

*San Mateo County*

Daly City
Redwood City
South San Francisco

*Santa Barbara County*

Guadalupe

*Santa Clara County*

Gilroy
Milpitas
San Jose

*Santa Cruz County*

Santa Cruz
Scotts Valley

*Siskiyou County*

Fort Jones

*Stanislaus County*

Newman
Patterson

*Tulare County*

Dinuba
Exeter
Tulare
Woodlake

*Ventura County*

Fillmore
Oxnard
Santa Paula

*Yolo County*

Winters

**State of Colorado**

*Adams County*

Brighton

*Alamosa County*

Alamosa
Hooper

*Baca County*

Pritchett
Vilas

*Boulder County*

Lyons
Superior
Ward

*Conejos County*

Antonito
La Jara
Sanford

*Costilla County*

Blanca

*Crowley County*

Sugar City

*Custer County*

Silver Cliff
Westcliffe

*Delta County*

Orchard City

*Douglas County*

Larkspur
Parker

*Elbert County*

Elizabeth

*El Paso County*

Ramah

*Fremont County*

Brookside
Coal Creek
Prospect Heights
Rockvale
Williamsburg

*Kiowa County*

Haswell

*Las Animas County*

Starkville

*Phillips County*

Haxtun
Paoli

*Prowers County*

Hartman

*San Miguel County*

Sawpit

*Weld County*

Fort Lupton
Frederick
Keenesburg
La Salle
Milliken

**State of Connecticut**

*Fairfield County*

Bridgeport

*Hartford County*

Hartford
Hartland Town

*Litchfield County*

North Canaan Town
Salisbury Town

*Middlesex County*

Deep River Town

*New Haven County*

New Haven
Woodbridge Town

*Tolland County*

Union Town
Vernon Town

**State of Delaware**

*Kent County*

Clayton
Frederica
Little Creek
Magnolia
Smyrna

*New Castle County*

Arden
Ardencroft
Odessa
Townsend

*Sussex County*

Frankford
Greenwood
Laurel

**District of Columbia**

**Washington, DC–MD–VA MSA**

*Washington*

District of Columbia

**State of Florida**

*Alachua County*

Archer
La Crosse

*Baker County*

Glen St Mary

*Bradford County*

Hampton

*Brevard County*

Palm Shores

*Broward County*

North Lauderdale

*Calhoun County*

Altha
Blountstown

*Collier County*

Everglades

*Dade County*

Hialeah
Indian Creek
Medley
Miami
Miami Beach
South Miami
Sweetwater
West Miami

*Escambia County*

South Flomaton

*Flagler County*

Bunnell

*Gadsden County*

Havana

*Gulf County*

Port St Joe
Ward Ridge

*Hamilton County*

Jennings

*Hardee County*

Zolfo Springs

*Hernando County*

Brooksville

*Highlands County*

Avon Park

*Hillsborough County*

Tampa

*Holmes County*

Noma

*Jackson County*

Alford
Bascom
Campbellton
Cottondale
Grand Ridge
Greenwood
Malone
Marianna

*Lake County*

Astatula
Mascotte
Montverde

*Levy County*

Otter Creek

*Martin County*

Ocean Breeze Park

*Nassau County*

Callahan

*Orange County*

Bay Lake
Eatonville

*Palm Beach County*

Mangonia Park
South Bay
West Palm Beach

*Pasco County*

St Leo

*Polk County*

Mulberry
Polk City

*Putnam County*

Interlachen
Welaka

*Sumter County*

Bushnell

*Volusia County*

Oak Hill
Pierson

**State of Georgia**

*Baker County*

Newton

**Barrow County**

Auburn
Carl
Winder

*Bartow County*

Euharlee
Taylorsville
White

*Berrien County*

Alapaha

*Bibb County*

Macon
Payne

*Brantley County*

Hoboken

*Brooks County*

Morven
Quitman

*Bulloch County*

Brooklet
Portal
Register

*Burke County*

Sardis
Waynesboro

*Butts County*

Jenkinsburg

*Calhoun County*

Edison
Leary
Morgan

*Candler County*

Metter

*Carroll County*

Villa Rica

*Chatham County*

Savannah

*Chattooga County*

Lyerly

*Cherokee County*

Ball Ground
Canton
Holly Springs
Waleska

*Clarke County*

Athens
Winterville

*Cobb County*

Powder Springs

*Coffee County*

Nicholls

*Colquitt County*

Doerun
Norman Park

*Cook County*

Cecil
Lenox

*Coweta County*

Grantville
Newnan
Turin

*Crawford County*

Roberta

*Crisp County*

Cordele

*Dawson County*

Dawsonville

*Decatur County*

Attapulgus
Bainbridge
Brinson

*De Kalb County*

Lithonia
Pine Lake

*Dodge County*

Chauncey

*Dooly County*

Pinehurst
Vienna

*Dougherty County*

Albany

*Early County*

Damascus
Jakin

*Effingham County*

Guyton

*Elbert County*

Elberton

*Emanuel County*

Nunez
Summertown

*Fayette County*

Brooks
Fayetteville

*Forsyth County*

Cumming

*Franklin County*

Lavonia

*Gilmer County*

East Ellijay
Ellijay

*Glascock County*

Edge Hill
Mitchell

*Gordon County*

Calhoun
Resaca

*Grady County*

Whigham

*Greene County*

Woodville

*Gwinnett County*

Dacula
Lawrenceville
Rest Haven

*Habersham County*

Baldwin

*Hall County*

Clermont
Lula

*Haralson County*

Buchanan

*Hart County*

Bowersville

*Heard County*

Franklin

*Houston County*

Perry

*Jackson County*

Arcade
Jefferson

*Jasper County*

Shady Dale

*Jeff Davis County*

Denton
Hazlehurst

*Jefferson County*

Avera
Bartow
Wadley

*Jones County*

Gray

*Lamar County*

Aldora
Milner

*Laurens County*

Dudley
Montrose

*Lee County*

Leesburg

*Liberty County*

Gumbranch City
Riceboro
Walthourville

*Lowndes County*

Hahira
Lake Park
Remerton

*McDuffie County*

Dearing
Thomson

*Macon County*

Ideal
Marshallville
Montezuma

*Madison County*

Comer
Ila

*Marion County*

Buena Vista

*Meriwether County*

Gay
Manchester

*Mitchell County*

Camilla
Pelham
Sale City

*Monroe County*

Forsyth

*Montgomery County*

Higgston
Uvalda

*Morgan County*

Bostwick
Buckhead
Madison
Rutledge

*Murray County*

Eton

*Newton County*

Covington
Newborn
Porterdale

*Oconee County*

Bishop
North High Shoals

*Oglethorpe County*

Maxeys

*Peach County*

Fort Valley

*Pickens County*

Talking Rock

*Pierce County*

Patterson

*Pike County*

Concord
Meansville

*Polk County*

Aragon
Cedartown
Rockmart

*Pulaski County*

Hawkinsville

*Randolph County*

Cuthbert
Shellman

*Schley County*

Ellaville

*Screven County*

Oliver
Rocky Ford

*Spalding County*

Griffin
Orchard Hill
Sunny Side

*Stewart County*

Omaha

*Sumter County*

Americus
De Soto

*Talbot County*

Geneva
Junction City
Woodland

*Taliaferro County*

Sharon

*Tattnall County*

Collins

*Telfair County*

Jacksonville
Scotland

*Terrell County*

Dawson

*Thomas County*

Coolidge
Meigs
Pavo

*Tift County*

Omega
Tifton
Ty Ty

*Towns County*

Young Harris

*Troup County*

Hogansville
La Grange
West Point

*Turner County*

Ashburn
Rebecca

*Twiggs County*

Jeffersonville

*Union County*

Blairsville

*Upson County*

The Rock
Thomaston
Yatesville

*Walker County*

La Fayette
Linwood

*Walton County*

Loganville
Monroe
Social Circle
Walnut Grove

*Warren County*

Norwood
Warrenton

*Washington County*

Harrison
Ocohee
Riddleville
Tennille

*Wheeler County*

Alamo

*White County*

Cleveland
Helen

*Whitfield County*

Cohutta
Tunnel Hill
Varnell

*Wilcox County*

Pitts

*Wilkes County*

Rayle
Washington

*Wilkinson County*

McIntyre

*Worth County*

Sylvester

**State of Hawaii**

**State of Idaho**

*Adams County*

Council

*Bannock County*

Arimo

*Benewah County*

Plummer

*Bonner County*

Kootenai

*Cassia County*

Oakley

*Franklin County*

Clifton
Oxford

*Fremont County*

Newdale
Teton

*Idaho County*

Stites

*Jefferson County*

Lewisville

*Jerome County*

Eden

*Kootenai County*

Dalton Gardens
Hayden Lake
Huetter

*Latah County*

Onaway

*Lemhi County*

Leadore

*Lewis County*

Reubens

*Minidoka County*

Acequia

*Owyhee County*

Marsing

*Twin Falls County*

Hollister

*Valley County*

Donnelly

**State of Illinois**

*Adams County*

Beverly Township
Concord Township
Columbus
Liberty Township
La Prairie

*Bond County*

Mulberry Grove
Old Ripley
Old Ripley Township
Sorento
Pierron

*Boone County*

Spring Township

*Brown County*

Buckhorn Township
Cooperstown Township
Pea Ridge Township
Ripley Township
Versailles
Versailles Township

*Bureau County*

Arispie Township
Dover
Buda
Ladd
Wheatland Township

*Calhoun County*

Hamburg
Hardin

*Carroll County*

Cherry Grove-Shannon Tow
Elkhorn Grove Township
Wysox Township
Thomson

*Cass County*

Arenzville
Arenzville Township
Newmansville Township
Philadelphia Township
Sangamon Valley Township

*Champaign County*

Broadlands
Ayers Township
Crittenden Township
Ivesdale
Royal
Sadorus
Stanton Township

*Christian County*

Palmer
Bear Creek Township
Greenwood Township
King Township
Mosquito Township
Mount Auburn Township
Ricks Township
Jeiseyville

*Clark County*

Douglas Township
Johnson Township
Parker Township

*Clay County*

Bible Grove Township
Flora

*Clinton County*

Albers
Wheatfield Township

*Coles County*

Ashmore
Ashmore Township
Hutton Township
Morgan Township
Seven Hickory Township

*Cook County*

Chicago
Franklin Park
Willow Springs
Hodgkins
Summit
Robbins
Maywood
Stone Park

*Crawford County*

Licking Township
Martin Township
Montgomery Township
Stoy

*Cumberland County*

Cottonwood Township
Crooked Creek Township

*DeKalb County*

Pierce Township
Somonauk Township
South Grove Township

*DeWitt County*

Creek Township
Rutledge Township

*Douglas County*

Hindsboro
Sargent Township

*Edgar County*

Edgard Township
Shiloh Township
Metcalf
Young America Township

*Edwards County*

Bone Gap

*Effingham County*

Shumway

*Fayette County*

Bear Grove Township
Carson Township
Hurricane Township
Loudon Township
Ramsey
Seminary Township
Shafter Township
Bingham
South Hurricane Township

*Ford County*

Pella Township

*Franklin County*

Hanaford
Royalton

*Fulton County*

Banner
St David
Joshua Township
Lee Township
Liverpool
Orion Township

*Gallatin County*

Bowlesville Township
Eagle Creek Township
Omaha
Omaha Township
Old Shawneetown

*Greene County*

Kane Township
Hillview
Wilmington
Patterson Township
Walkerville Township
White Hall Township

*Grundy County*

Carbon Hill
Goose Lake Township
Kinsman
Highland Township
Nettle Creek Township

*Hamilton County*

Belle Prairie City
Knight Prairie Township
Macedonia
South Plannigan Township

*Hancock County*

Bear Creek Township
Durham Township
Bently
Rock Run Township
West Point
Plymouth
St Mary Township

*Hardin County*

Rosiclare

*Henderson County*

Lomax Township
Rozetta Township

*Henry County*

Alba Township
Andover
Andover Township
Annawan
Cornwall Township
Loraine Township
Bishop Hill
Weller Township
Yorktown Township

*Iroquois County*

Ash Grove Township
Ashkum
Concord Township
Iroquois Township
Love Joy Township
Papineau
Papineau Township

*Jackson County*

Ava
Degognia Township
Grand Tower
Grand Tower Township
Kinkaid Township
Levan Township

*Jasper County*

Hidalgo
Hunt City Township
Wheeler
Smallwood Township

*Jefferson County*

Blissville Township
Grand Prairie Township

*Jersey County*

RuyleTownship

*JoDaviess County*

Apple River
Apple River Township
Berreman Township
Council Hill Township
Rice Township
Stockton
Wards Grove Township

*Johnson County*

New Burnside

*Kane County*

Burlington
Elburn
Pingree Gorove

*Kankakee County*

Aroma Park
Sun River Terrace
Reddick

*Kendall County*

Plano

*Knox County*

Chestnut Township
Elba Township
Henderson
Victoria
Maquon
Maquon Township
Victoria Township

*Lake County*

Hainesville
Long Grove
Newport Township

*LaSalle County*

Leland
Dimmick Township
Freedom Township
Grand Rapids Township
Meriden Township
North Utica
Utica Township

*Lawrence County*

Allison Township
[redacted]
Bond Township
Sumner
Christy Township
Russellville
Russell Township

*Lee County*

Bradford Township
East Grove Township
Hamilton Township
South Dixon Township
Viola Township

*Livingston County*

Fayette Township
Reading Township
Waldo Township

*Logan County*

Eminence Township
Hartsburg

*Mclean County*

Cropsey Township
Downs Township
Lawndale Township
West Township

*Macon County*

Oakley Township

*Macoupin County*

Barr Township
Wilsonville
Dorchester
Mount Clare
Royal Lakes
Honey Point Township
Scottville
Scottville Township

*Madison County*

Alhambra
South Roxana
Foster Township
Pontoon Beach
Nameoki Township
New Douglas
New Douglas Township
Williamson

*Marion County*

Alma
Alma Township
Central City
Foster Township
Kinmundy
Kinmundy Township
Stevenson Township

*Marshall County*

Hopewell Township
La Prairie Township
Whitefield Township

*Mason County*

Allen Grove Township
Havana
Havana Township
Kilbourne Township
Pennsylvania Township
Topeka
Sherman Township

BEST COPY AVAILABLE

*Mercer County*

Duncan Township
Keithsburg
Keithsburg Township
Joy
Millersburg Township
Perryton Township
Sherrard

*Monroe County*

Columbia
Maeystown
Valmeyer
Waterloo

*Montgomery County*

Ohlman
Fillmore Township
Donnellson
Grisham Township
Irving
Irving Township
Witt
Walshville
Witt Township

*Morgan County*

Chapin
Woodson

*Moultrie County*

Sullivan
Gays
Whitley Township

*Ogle County*

Brookville Township
Grand Detour Township
Leaf River
Leaf River Township
Lincoln Township
Adeline
Monroe Township
Davis Junction

*Peoria County*

Mapleton
Hollis Township
Bartonville
Millbrook Township
Trivoli Township

*Perry County*

St Johns

*Pike County*

Atlas Township
Chambersburg Township
Derry Township
Detroit
Florence
Valley City
Flint Township
Hadley Township
Time
Hardin Township
Montezuma Township
Perry
Perry Township
New Canton
Ross Township
Nebo

*Pope County*

Eddyville

*Pulaski County*

Mound
Olmstead

*Randolph County*

Rockwood

*Richland County*

Claremont

*Rock Island County*

Bowling Township
Buffalo Prairie Township
Carbon Cliff
Rural Township

*St Clair County*

Prairie Du Long Township
Brooklyn
East Carondelet

*Saline County*

Cottage Township
Independence Township
Long Beach Township
Mountain Township
Raleigh
Rector Township

*Sangamon County*

Illiopolis
Illiopolis Township
Berlin
Grandview

*Schuyler County*

Brooklyn Township
Browning
Camden
Browing Township
Camden Township
Huntsville Township
Littleton Township
Oakland Township
Woodstock Township

*Scott County*

Alsey

*Shelby County*

Cold Spring Township
Holland Township
Penn Township

*Stark County*

Valley Township

*Stephenson County*

Winslow

*Tazewell County*

Malone Township

*Union County*

Alto Pass

*Vermilion County*

Carroll Township
Muncie
Pilot Township
Henning

*Warren County*

Roseville
Swan Township
Tompkins Township

*Washington County*

Bolo Township
New Minden
Lively Grove Township

*Wayne County*

Berry Township
Keith Township
Mount Erie

*Whiteside County*

Coleta
Genesee Township
Deer Grove
Hahnaman Township
Portland Township
Tampico Township
Ustick Township

*Will County*

Custer Township
Florence Township
Romeoville
Godley

*Williamson County*

Bush
Colp
Creal Springs

*Winnebago County*

Durand
Durand Township
Machesney Park

*Woodford County*

Kansas Township
Bay View Gardens

**State of Indiana**

*Adams County*

Blue Creek Township
Wabash Township

*Allen County*

Springfield Township

*Bartholomew County*

German Township

*Benton County*

Ambia
Parish Grove Township
Earl Park
Richland Township
Union Township

*Boone County*

Advance
Washington Township

*Carroll County*

Camden

*Clark County*

Washington Township

*Clay County*

Harmony
Washington Township

*Clinton County*

Kirklin Township
Owen Township

*Crawford County*

Alton
Carefree
Ohio Township
Milltown
Whiskey Run Township

*Daviess County*

Cannelburg
Montgomery
Barr Township
Bogard Township
Elnora
Elmore Township
Alfordsville
Reeve Township
Van Buren Township

*Dearborn County*

West Harrison
Harrison Township
Jackson Township
Greendale
Manchester Township
Moores Hill

*Decatur County*

Milford
Clay Township
Jackson Township
Newpoint

*De Kalb County*

Butler Township
Newville Township
Corunna
Richland Township
Stafford Township

*Delaware County*

Muncie

*Dubois County*

Boone Township

*Fountain County*

Hillsboro
Kingman
Newtown
Wabash Township

*Franklin County*

Bath Township
Oldenburg
Mount Carmel
Springfield Township

*Fulton County*

Fulton
Kewanna
Wayne Township

*Gibson County*

Patoka

*Grant County*

Green Township
Upland

*Greene County*

Newberry
Cass Township
Switz City
Smith Township
Stafford Township

*Hancock County*

Jackson Township

*Harrison County*

Boone Township
Mauckport
Taylor Township
New Amsterdam
Washington Township

*Hendricks County*

Pittsboro

*Henry County*

Mooreland
Straughn
Dudley Township
Greensboro
Cadiz

*Huntington County*

Polk Township
Union Township
Wayne Township

*Jackson County*

Driftwood Township
Grassy Fork Township
Owen Township
Salt Creek Township

*Jasper County*

Barkley Township
Hanging Grove Township
Walker Township

*Jay County*

Bear Creek Township
Noble Township
Pennville
Wabash Township

*Jefferson County*

Graham Township
Brooksburg

*Jennings County*

Bigger Township
Center Township
Lovett Township
Marion Township
Sand Creek Township

*Knox County*

Oaktown
Johnson Township
Wheatland
Vincennes
Vincennes Township
Bruceville
Widner Township

*Kosciusko County*

Claypool
Burket

*Lagrange County*

Clearspring Township
Newbury Township

*Lake County*

Lowell
St John

*La Porte County*

Johnson Township

*Lawrence County*

Bond Township
Perry Township
Spice Valley Township

*Marion County*

Castleton

*Martin County*

Lost River County

*Miami County*

Union Township

*Monroe County*

Bloomington Township
Polk Township

*Montgomery County*

Brown Township
New Market
Alamo

*Morgan County*

Adams Township
Bethany

*Newton County*

Mount Ayr
McClellan Township

*Ohio County*

Union Township

*Orange County*

Northeast Township
Orangeville Township
Stampers Creek Township

*Owen County*

Franklin Township
Harrison Township
Marion Township
Morgan Township
Gosport
Wayne Township

*Porke County*

Greene Township
Mecca
Judson

*Perry County*

Oil Township
Troy
Union Township

*Pike County*

Clay Township
Lockhart Township
Madison Township

*Porter County*

Kouts

*Posey, County*

Griffin
Bethel Township
Point Township

*Pulaski County*

Beaver Township
Franklin Township
Harrison Township
Jefferson Township
Rich Grove Township
Medaryville
White Post Township

*Randolph County*

Jackson Township

*Rush County*

Jackson Township
Noble Township
Glenwood
Richland Township
Walker Township
Washington Township

*St Joseph County*

Indian Village
Roseland

*Scott County*

Lexington Township

*Shelby County*

Morristown

*Starke County*

Railroad Township

*Steuben County*

Orland
Richland Township
Hudson

*Sullivan County*

Fairbanks Township

*Switzerland County*

Pleasant Township
Patriot

*Tippecanoe County*

Battle Ground
West Lafayette

*Union County*

Brownsville Township
Harmony Township
Harrison Township

*Vermillion County*

Fairview Park
Universal
Vermillion Township

*Warren County*

Adams Township
Medina Township

*Warrick County*

Campbell Township

*Washington County*

Gibson Township
Howard Township
Madison Township
Monroe Township
Vernon Township

*Wayne County*

Greene Township
Harrison Township
Mount Auburn
Fountain City
Economy
Perry Township

*Wells County*

Liberty Township

*White County*

West Point Township

*Whitley County*

Union Township

**State of Iowa**

*Adams County*

Carbon

*Allamakee County*

Harpers Ferry
Waterville

*Appanoose County*

Cincinnati
Exline
Moulton
Mystic
Numa
Rathbun
Udell
Unionville

*Benton County*

Norway
Shellsburg

*Black Hawk County*

Evansdale

*Boone County*

Fraser
Pilot Mound

*Bremer County*

Janesville
Plainfield
Waverly

*Buchanan County*

Aurora
Brandon
Lamont
Stanley

*Butler County*

New Hartford

*Calhoun County*

Farnhamville
Knierim
Pomeroy
Rinard
Somers
Yetter

*Carroll County*

Ralston
Willey

*Cass County*

Griswold

*Cerro Gordo County*

Rock Falls
Swaledale

*Cherokee County*

Quimby
Washta

*Chickasaw County*

New Hampton

*Clay County*

Peterson

*Clayton County*

Strawberry Point
Volga

*Clinton County*

Andover
Toronto
Welton
Wheatland

*Crawford County*

Buck Grove
Ricketts
Schleswig

*Davis County*

Drakesville
Floris
Pulaski

*Decatur County*

Decatur City
Garden Grove
Weldon

*Delaware County*

Delhi
Dundee
Edgewood
Hopkinton
Manchester

*Dickinson County*

West Okoboji

*Dubuque County*

Farley
Graf
Luxemburg
New Vienna
Sherrill
Zwingle

*Emmet County*

Dolliver

*Floyd County*

Marble Rock

*Franklin County*

Alexander
Pope Joy

*Fremont County*

Sidney

*Greene County*

Paton

*Guthrie County*

Bagley

*Hardin County*

Steamboat Rock

*Harrison County*

Dunlap

*Henry County*

Hillsboro
Rome

*Humboldt County*

Bradgate
Hardy
Renwick

*Ida County*

Arthur

*Iowa County*

Marengo

*Jackson County*

Andrew
Baldwin
Green Island
Hurstville
Springbrook

*Jasper County*

Valeria

*Johnson County*

Shueyville

*Jones County*

Morley
Onslow

*Keokuk County*

Hayesville
Richland
Thornburg

*Kossuth County*

Swea City

*Linn County*

Coggon
Prairieburg

*Louisa County*

Columbus City
Cotter
Oakville

*Lucas County*

Derby
Lucas
Williamson

*Lyon County*

Doon

*Madison County*

Winterset

*Mahaska County*

University Park

*Marion County*

Bussey
Hamilton
Marysville

*Marshall County*

St. Anthony

*Mills County*

Henderson
Pacific Junction

*Mitchell County*

Osage

*Monona County*

Castana

*Montgomery County*

Coburg
Elliott
Grant

*Muscatine County*

Conesville
Nichols

*Page County*

Coin
Northboro

*Palo Alto County*

Curlew
Cylinder

*Pocahontas County*

Palmer

*Polk County*

Runnells

*Pottawattamie County*

Carson
Oakland

*Poweshiek County*

Brooklyn

*Ringgold County*

Beaconsfield
Delphos
Diagonal
Tingley

*SAC County*

Auburn

*Scott County*

Buffalo
Donahue
Maysville
New Liberty
Plain View

*Shelby County*

Westphalia
Chatsworth

*Sioux County*

Collins

*Story County*

Elberon
Maxwell

*Tama County*

Conway
Gravity
Vining

*Taylor County*

Afton
Arispe
Cromwell
New Market
Sharpsburg

*Union County*

Birmingham
Milton
Kent
Shannon City
Thayer

*Van Buren County*

Kirkville
Mount Sterling

*Wapello County*

Lacona
New Virginia

*Warren County*

Ainsworth
St Marys

*Washington County*

Millerton
Crawfordsville

*Wayne County*

Callender
Promise City

*Webster County*

Scarville
Clare

*Winnebago County*

Ossian

*Winneshiek County*

Bronson
Hornick

*Woodbury County*

Kensett
Lawton

*Worth County*

Galt

*Wright County*

**State of Kansas**

*Allen County*

Bassett

*Anderson County*

Lincoln Township
Monroe Township
North Rich Township
Reeder Township

*Atchinson County*

Muscotah
Kapioma Township
Huron
Lancaster

*Barber County*

Deerhead Township
Eagle Township
Elm Mills Township
Lake City Township
Moore Township
Nippawalla Township
Sun City

*Barton County*

Beaver Township
Cheyenne Township
Clarence Township
Eureka Township
Lakin Township
Logan Township
North Homestead Township
Albert
Walnut Township
Wheatland Township

*Bourbon County*

Fulton
Freedom Township
Redfield
Marmaton Township
Pawnee Township
Mapleton
Timberhill Township

*Brown County*

Horton
Padonia Township
Robinson Township
Fairview
Walunt Township

*Bulter County*

Bloomington Township
Chelsea Township
Hickory Township
Lincoln Township
Logan Township
Murdock Township
Cassoday

*Chase County*

Bazaar Township
Cedar Township
Cottonwood Township
Elmdale
Homestead Township
Toledo Township

*Chautauqua County*

Harrison Township
Elgin
Lafayette Township
Niotaze
Little Caney Township

*Cherokee County*

Cherokee Township
Lowell Township
Neosho Township
Ross Township
Salamanca Township
Scammon
Spring Valley Township
Weir

*Cheyenne County*

Calhoun Township
Cherry Creek Township
Jaqua Township
Orlando Township

*Clay County*

Athelstane Township
Blaine Township
Bloom Township
Chapman Township
Clay Center Township
Goshen Township
Oak Hill
Oakland Township
Sherman Township
Union Township

*Cloud County*

Arlon Township
Lawrence Township
Lyon Township
Meredith Township
Oakland Township
Sibley Township

*Coffey County*

Lebo
Lincoln Township
Pleasant Township
Waverly
Spring Creek Township
Star Township

*Cowley County*

Cedar Township
Fairview Township
Grant Township
Harvey Township
Richland Township
Tisdale Township
Cambridge
Windsor Township

*Crawford County*

Cherokee
Arma

*Decatur County*

Allison Township
Bassettville Township
Beaver Township
Center Township
Custer Township
Dresden
Dresden Township
Finley Township
Logan Township
Lyon Township
Roosevelt Township
Sappa Township
Sherman Township

*Dickinson County*

Cheever Township
Holland Township
Sherman Township
Union Township
Wheatland Township
Willowdale Township

*Doniphan County*

Troy
Independence Township
Denton
Union Township
Wayne Township
Leona
Serverance

*Douglas County*

Lecompton Township

*Edwards County*

Belpre
Belpre Township
Franklin Township
Lincoln Township
South Brown Township
Lewis
Wayne Township

*Elk County*

Liberty Township
Oak Valley Township
Painterhood Township

*Ellis County*

Buckeye Township
Catherine Township
Ellis Township
Wheatland Township

*Ellsworth County*

Ash Creek Township
Black Wolf Township
Clear Creek Township
Columbia Township
Garfield Township
Lincoln Township
Sherman Township

*Finney County*

Terry Township

*Ford County*

Royal Township
Sodville Township

*Franklin County*

Hayes Township
Richmond
Williamsburg
Williamburg Township

*Geary County*

Jackson Township
Smoky Hill Township

*Gove County*

Gaeland Township
Grinnell

*Graham County*

Bryant Township
Happy Township
Morlan Township
Nicodemus Township
Pioneer Township

*Gray County*

Ingalls
Ingalls Township

*Greenwood County*

Fall River Township
Hamilton
Janesville Township
Otter Creek Township
Pleasant Grove Township
Quincy Township
Fall River
Salt Springs Township
South Salem Township
Spring Creek Township

*Hamilton County*

Bear Creek Township
Coolidge
Coolidge Township
Kendall Township

*Harper County*

Township No. 2
Danville

*Harvey County*

Garden Township
Highland Township
Lake Township

*Haskell County*

Lockport Township

*Hodgeman County*

Benton Township
Sterling Township
Valley Township

*Jackson County*

Adrian Township
Mayetta
Hoyt
Denison
Circleville

*Jewell County*

Allen Township
Browns Creek Township
Calvin Township
Erving Township
Esbon Township
Highland Township
Ionia Township
Jackson Township
Montana Township
Vicksburg Township
White Mound Township

*Johnson County*

MacCamish Township

*Kearny County*

Deerfield
Kendall Township
Southside Township
West Hibbard Township

*Kingman County*

Allen Township
Norwich
Bennett Township
Dale Township
Dresden Township
Eagle Township
Galesburg Township
Cunningham
Kingman Township
Peters Township
Richland Township
Zenda
Rochester Township
Union Township
Valley Township

*Labette County*

Canada Township
Fairview Township
Labette
Liberty Township

*Lane County*

Alamota Township
Cleveland Township
White Rock Township

*Lincoln County*

Battle Creek Township
Cedron Township
Franklin Township
Grant Township
Hanover Township
Highland Township
Madison Township
Orange Township

*Linn County*

Paris Township
Prescott
Sheridan Township
Stanton Township
Valley Township

*Logan County*

Elkader Township
McAllister Township
Russell Springs
Russell Springs Township

*Lyon County*

Bushong
Waterloo Township

*McPherson County*

Battle Hill Township
Harper Township
Hayes Township
New Gottland Township
Spring Valley Townsbip

*Marion County*

Clark Township
Lincolnville
Clear Creek Township
Colfax Township
Durham
Durham Park Township
Grant Township
Liberty Township
Logan Township
Lost Springs

*Marshall County*

Bigelow Township
Clear Fork Township
Elm Creek Township
Herkimer Township
Logan Township
Axtell
Vermillion
Summerfield
Rock Township
St Bridget Township
Walnut Township
Wells Township

*Meade County*

Logan Township
Mertilla Township

*Miami County*

Richland Township
Stanton Township

*Michell County*

Center Township
Hunter

Custer Township
Tipton
Pittsburg Township
Salt Creek Township
Solmon Rapids Township
Turkey Creek Township

*Montgomery County*

Cherryvale Township
Tyro
Drum Creek Township
Elk City
Louisburg Township

*Morris County*

Dunlap
Township No. 8

*Morton County*

Richfield

*Nemaha County*

Adams Township
Center Township
Clear Creek Township
Goff
Harrison Township
Corning
Mitchell Township
Neuchatel Township
Red Vermillion Township
Beilly Township
Richmond Township
Wetmore
Wetmore Township

*Neosho County*

Ladore Township
Mission Township
Shiloh Township

*Ness County*

Eden Township
Highpoint Township

*Norton County*

Harrison-District 6 Town

*Osage County*

Arvonia Township
Barclay Township
Grant Township
Olivet
Olivet Township
Scranton
Scranton Township

*Osborne County*

Bloom Township
Corinth Township
Delhi Township
Hawkeye Township
Liberty Township
Round Mound Township
Winfield Township

*Ottawa County*

Blaine Township
Chapman Township
Concord Township
Fountain Township
Garfield Township
Grant Township
Sherman Township
Stanton Township

*Pawnee County*

Ash Valley Township
Conkling Township
Keysville Township
Lincoln Township
Morton Township
Orange Township
Pawnee Township
Sawmill Township

*Phillips County*

Arcade Township
Bow Creek Township
Crystal Township
Dayton Township
Deer Creek Township
Glenwood Township
Granite Township
Greenwood Township
Mound Township
Rushville Township
Glade
Solomon Township
Sumner Township
Towanda Township
Valley Township

*Pottawatomie County*

Center Township
Clear Creek Township
Havensville
Grant Township
Onaga
Mill Creek Township
Pottawatomie Township
St Clere Township
St George
Sherman Township

*Rawlings County*

Achilles Township
Jefferson Township

*Reno County*

Albion Township
Bell Township
Castleton Township
Partridge
Center Township
Enterprise Township
Grove Township
Hayes Township
Turon
Miami Township
Plevna
Roscoe Township
Troy Township
Abbyville

*Republic County*

Narka
Farmington Township
Grant Township
Liberty Township
White Rock Township

*Rice County*

Bell Township
Center Township
East Washington Township
Galt Township
Mitchell Township
Odessa Township
Sterling Township
Alden
Wilson Township

*Riley County*

Center Township
Fancy Creek Township
Randolph
Jackson Township
Madison Township
May Day Township
Swede Creek Township

*Rooks County*

Township No 4
Palco
Township No 8
Zurich

*Rush County*

Alexander
Alexander-Belle Prairie
Bison
Lone Star Township
Pleasantdale Township
Union Township

*Russell County*

Fairfield Township
Grant Township
Luray
Luray Township
Waldo
Winterset Township

*Saline County*

Assaria
Solomon Township
Washington Township

*Scott County*

Beaver Township
Michigan Township

*Seward County*

Seward Township

*Sheridan County*

Adell Township
Prairie Dog Township
Solomon Township
Union Township

*Sherman County*

Logan Township
Smoky Township
Kanorado

*Smith County*

Beaver Township
Cora Township
Dora Township
Garfield Township
Martin Township
Pawnee Township
Pleasant Township
Swan Township

*Stafford County*

Byron Township
Cleveland Township
Richland Township
Rose Valley Township
Union Township
West Cooper Township
York Township

*Sumner County*

Avon Township
Bluff Township
Chikaskia Township
Creek Township
Falls Township
Hunnewell
Valverde Township
Wellington Township

*Thomas County*

Barrett Township
Menlo
Menlo Township
North Randall Township
Rexford
Smith Township

*Wabaunsee County*

Mission Creek Township

*Wallace County*

Harrison Township
Weskan Township

*Washington County*

Charleston Township
Coleman Township
Franklin Township
Grant Township
Kimeo Township
Lincoln Township
Logan Township
Palmer
Sherman Township
Mahaska

*Wilson County*

Altoona
Cedar Township
Chetopa Township
Buffalo
Clifton Township
Duck Creek Township
Fredonia
Benedict
Guilford Township
Coyville
Webster Township

*Woodson County*

Eminence Township
Liberty Township
Owl Creek Township

**State of Kentucky**

*Adair County*

Columbia

*Ballard County*

Kevil

*Barren County*

Hiseville

*Bath County*

Owingsville
Sharpsburg

*Boyd County*

Catlettsburg

*Boyle County*

Junction City

*Bracken County*

Augusta
Brooksville

*Breckinridge County*

Hardinsburg

*Calloway County*

Hazel

*Campbell County*

Bellevue
California
Dayton

*Carlisle County*

Arlington

*Carroll County*

Sanders
Worthville

*Clark County*

Winchester

*Edmonson County*

Brownsville

*Elliott County*

Sandy Hook

*Estill County*

Irvine
Ravenna

*Fleming County*

Ewing
Flemingsburg

*Floyd County*
Martin

*Gallatin County*
Warsaw

*Grant County*
Corinth

*Graves County*
Mayfield

*Green County*
Greensburg

*Hardin County*
Upton

*Harlan County*
Evarts

*Hart County*
Bonnieville

*Hickman County*
Columbus

*Hopkins County*
Dawson Springs, Earlington

*Jefferson County*
Middletown City, Minor Land Heights

*Jessamine County*
Nicholasville

*Kenton County*
Latonia Lakes, Ludlow, Visalia

*Larue County*
Hodgenville

*Lee County*
Beattyville

*Letcher County*
Whitesburg

*Lincoln County*
Stanford

*Livingston County*
Salem

*Logan County*
Adairville

*McLean County*
Calhoun, Sacramento

*Martin County*
Inez, Warfield

*Mason County*
Sardis, Washington

*Meade County*
Ekron

*Mercer County*
Harrodsburg

*Montgomery County*
Camargo, Jeffersonville, Mount Sterling

*Morgan County*
West Liberty

*Muhlenberg County*
Bremen, Central, Drakesboro, Powderly

*Nelson County*
Bloomfield, Fairfield, New Haven

*Nicholas County*
Carlisle

*Ohio County*
Beaver Dam, Fordsville, Hartford, McHenry

*Owen County*
Owenton

*Pike County*
Elkhorn City

*Powell County*
Clay City

*Pulaski County*
Eubank, Science Hill

*Robertson County*
Mount Olivet

*Rockcastle County*
Brodhead, Livingston

*Russell County*
Russell Springs

*Scott County*
Stamping Ground

*Simpson County*
Franklin

*Warren County*
Bowling Green, Oakland

*Washington County*
Mackville, Springfield, Willisburg

*Webster County*
Clay, Wheatcroft

*Woodford County*
Midway

**State of Louisiana**

*Acadia Parish*
Crowley, Rayne

*Allen Parish*
Reeves

*Ascension Parish*
Sorrento

*Avoyelles Parish*
Bunkie, Cottonport, Evergreen, Mansura

*Bienville Parish*
Bryceland, Castor, Lucky, Saline

*Caddo Parish*
Gilliam, Hosston, Oil City

*Caldwell Parish*
Columbia

*Catahoula Parish*
Jonesville

*Claiborne Parish*
Lisbon

*De Sota Parish*
Longstreet, Mansfield, South Mansfield, Stanley

*East Feliciana Parish*
Clinton, Slaughter

*Evangeline Parish*
Basile

*Franklin Parish*
Winnsboro

*Grant Parish*
Dry Prong, Pollock

*Iberia Parish*
Jeanerette, New Iberia

*Iberville Parish*
Grosse Tete, Maringouin, White Castle

*Jefferson Davis Parish*
Fenton, Jennings

*Lafayette Parish*
Carencro, Duson, Youngsville

*LaFourche Parish*
Lockport, Thibodaux

*La Salle Parish*
Olla

*Livingston Parish*
Springfield

*Natchitoches Parish*
Clarence, Goldonna, Natchez, Rodeline

*Orleans Parish*
New Orleans

*Pointe Coupee Parish*
Livonia

*Rapides Parish*
Alexandria

*St Helena Parish*
Greensburg

*St James Parish*
Lutcher

*St Landry Parish*
Grand Coteau, Melville, Opelousas

*St Mary Parish*
Baldwin, Franklin, Morgan City, Patterson

*St Tammany Parish*

Covington

*Tangipahoa Parish*

Independence
Ponchatoula

*Tensas Parish*

Newellton

*Terrobonne Parish*

Houma

*Union Parish*

Marion

*Vermilion Parish*

Delcambre
Gueydan
Kaplan

*Vernon Parish*

Anacoco

*Webster Parish*

Heflin
Shongaloo

*West Carroll Parish*

Pioneer

*West Feliciana Parish*

St Francisville

**State of Maine**

*Androscoggin County*

Sabattus Town

*Aroostook County*

Bancroft Town
Blaine Town
Bridgewater Town
Caribou
Cary Plantation
Crystal Town
Cyr Plantation
Easton Town
Fort Fairfield Town
Frenchville Town
Garfield Plantation
Haynesville Town
Hersey Town
Linneus Town
Ludlow Town
Merrill Town
Monticello Town
Moro Plantation
Nashville Plantation
New Canada Town
New Limerick Town
Oakfield Town
Orient Town
Reed Plantation
St Agatha Town
St John Plantation
Smyrna Town
Washburn Town
Westfield Town
Westmanland Plantation
Winterville Plantation

*Cumberland County*

Brunswick Town
Freeport Town
Harrison Town
Pownal Town
Westbrook

*Franklin County*

Chesterville Town
Madrid Town
Phillips Town
Strong Town
Temple Town

*Hancock County*

Amherst Town
Aurora Town
Frenchboro Town
Mariaville Town
Osborn Plantation
Sedgwick Town
Surry Town
Tremont Town
Waltham Town

*Kennebec County*

Chelsea Town
Windsor Town

*Knox County*

Appleton Town
Camden Town
Cushing Town
Hope Town
Isle Au Haut Town
Owls Head Town
Rockland
Vinalhaven Town

*Lincoln County*

Alna Town
Bristol Town
Edgecomb Town
Jefferson Town
Monhegan Plantation
Somerville Town
Waldoboro Town

*Oxford County*

Byron Town
Greenwood Town
Hebron Town
Mexico Town
Newry Town
Upton Town

*Penobscot County*

Burlington Town
Chester Town
Corinna Town
Drew Plantation
Edinburg Town
Howland Town
Kenduskeag Town
Lagrange Town
Lakeville Plantation
Lee Town
Levant Town
Mount Chase Plantation
Orono Town
Patten Town
Penobscot Indian Island
Prentiss Plantation
Springfield Town
Stetson Town
Webster Plantation
Winn Town

*Piscataquis County*

Abbot Town
Blanchard Plantation
Lake View Plantation
Medford Town
Parkman Town
Wellington Town
Willmantic Town

*Sagadahoc County*

Arrowsic Town
Bowdoin Town
Phippsburg Town

*Somerset County*

Brighton Plantation
Cambridge Town
Caratunk, Plantation
Embden Town
Harmony Town
Highland Plantation
New Portland Town
Ripley Town
St Albans Town
Starks Town
West Forks Plantation

*Waldo County*

Frankfort Town
Jackson Town
Knox Town
Monroe Town
Northport Town
Palermo Town
Prospect Town
Troy Town

*Washington County*

Alexander Town
Beals Town
Beddington Town
Centerville Town
Charlotte Town
Crawford Town
Cutler Town
Deblois Town
Dennysville Town
Grand Lake Stream Planta
Harrington Town
Machiasport Town
Marshfield Town
Northfield Town
Pembroke Town
Plantation No 21
Wesley Town
Whitneyville Town

*York County*

Newfield Town
Parsonsfield Town

**State of Maryland**

*Allegany County*

Barton
Midland

*Calvert County*

North Beach

*Caroline County*

Denton
Greensboro
Marydel
Ridgely

*Carroll County*

Manchester
Mount Airy

*Dorchester County*

Cambridge
Church Creek
East New Market

*Garrett County*

Deer Park

*Kent County*

Chestertown

*Montgomery County*

Laytonsville

*Prince George's County*

Colmar Manor
District Heights
Morningside
Seat Pleasant

*Queen Anne's County*

Queen Anne

*Somerset County*

Crisfield

*Talbot County*

St Michaels
Trappe

*Washington County*

Hancock
Keedysville
Smithsburg

*Wicomico County*

Fruitland

*Independent City*

Baltimore

**State of Massachusetts**

*Berkshire County*

Lanesborough Town
Lenox Town
North Adams
Sandisfield Town
Savoy Town
Sheffield Town
Washington Town

*Bristol County*

Dighton Town
Fall River
New Bedford
Swansea Town

*Essex County*

Essex Town
West Newbury Town

*Franklin County*

Leverett Town
Shelburne Town
Sunderland Town
Warwick Town

*Hampden County*

Russell Town
Springfield

*Hampshire County*

Amherst Town
Hadley Town
Hatfield Town
Middlefield Town
Northampton

*Middlesex County*

Cambridge

*Norfolk County*

Holbrook Town

*Plymouth County*

Brockton
Marion Town

*Suffolk County*

Chelsea

*Worcester County*

Hardwick Town
Millbury Town
Paxton Town

**State of Michigan**

*Alcona County*

Caledonia Township
Curtis Township
Lincoln
Hawes Township
Haynes Township

*Allegan County*

Canges Township
Douglas
Heath Township
Trowbridge Township
Manlius Township
Wayland Township

*Alpena County*

Long Rapids Township

*Antrim County*

Central Lake
Bellaire
Chestonia Township
Jordan Township
Echo Township
Torch Lake Township

*Arenac County*

Adams Township
Deep River Township
Arenac Township
Lincoln Township
Au Gres Township
Twining
Sterling

*Baraga County*

Spurr Township

*Barry County*

Barry Township
Woodland
Freeport

*Bay County*

Bay City
Mount Forest Township
Gibson Township

*Benzie County*

Blaine Township
Thompsonville
Honor
Joyfield Township

*Berrien County*

Bainbridge Township
Oronoko Township
Galien Township

*Branch County*

Gilead Township
Sherwood

*Calhoun County*

Springfield

*Cass County*

La Grange Township
Vandalia
Marcellus

*Charlevoix County*

Chandler Township
Norwood Township
Hudson Township
St James Township
Marion Township
Wilson Township

*Cheboygan County*

Forest Township
Hebron Township
Grant Township
Munro Township

*Chippewa County*

Drummond Township

*Clare County*

Redding Township

*Clinton County*

Fowler
Riley Township
Eagle
St Johns
Lebanon Township

*Crawford County*

Maple Forest Township

*Delta County*

Cornell Township
Maple Ridge Township
Ensign Township
Masonville Township
Garden
Nahma Township
Garden Township

*Dickinson County*

Breen Township

*Eaton County*

Benton Township
Sunfield
Chester Township
Sunfield Township

*Genesee County*

Atlas Township

*Gladwin County*

Bourrett Township
Gladwin Township
Gladwin
Grim Township

*Gogebic County*

Erwin Township

*Grand Traverse County*

Mayfield Township
Paradise Township
Kingsley
Whitewater Township

*Gratiot County*

Emerson Township
North Shade Township
Perrinton
Pine River Township
New Haven Township
St Louis

*Hillsdale County*

Adams Township
Fayette Township
Camden
Litchfield Township
Montgomery
Moscow Township
Camden Township
Pittsford Township
Jonesville
Woodbridge Township

*Houghton County*

Duncan Township
Laird Township
Houghton
Quincy Township

*Huron County*

Ubly
Meade Township
Bingham Township
Paris Township
Bloomfield Township
Port Hope
Owendale
Rubicon Township
Brookfield Township
Sand Beach Township
Chandler Township
Sebewaing
Dwight Township
Sebewaing Township
Gore Township
Sheridan Township
Kinde
Verona Township

*Ingham County*

Aurelius Township
Locke Township
Bunker Hill Township
Stockbridge
Webberville
Stockbridge Township
Leslie Township
White Oak Township

*Ionia County*

Danby Township
Lake Odessa
Keene Township
Odessa Township
Pewamo

*Iosco County*

Reno Township
Whittemore

*Iron County*

Gaastra
Mansfield Township

*Isabella County*

Denver Township
Wise Township
Gilmore Township

*Jackson County*

Hanover
Henrietta Township
Hanover Township
Leoni Township

*Kalamazoo County*

Galesburg
Vicksburg
Kalamazoo

*Kalkaska County*

Blue Lake Township
Orange Township
Kalkaska
Springfield Township

*Kent County*

Courtland Township
Nelson Township
Gaines Township
Sparta
Lowell Township

*Keweenaw County*

Ahmeek
Sherman Township
Grant Township

*Lake County*

Pinora Township
Yates Township

*Lapeer County*

Clifford
Columbiaville
Marathon Township
Rich Township

*Leelanau County*

Centerville Township

*Lenawee County*

Clayton
Medina Township
Madison Township
Raisin Township
Cement City
Britton

*Livingston County*

Handy Township

*Luce County*

Columbus Township
Pentland Township

*Mackinac County*

Bois Blanc Township
Hudson Township
Hendricks Township
Marquette Township

*Macomb County*

Ray Township

*Manistee County*

Copemish
Stronach Township

*Marquette County*

Ewing Township
Wells Township
Turin Township

*Mason County*

Eden Township
Sherman Township

*Mecosta County*

Big Rapids
Millbrook Township
Fork Township

*Menominee County*

Faithorn Township
Carney
Gourley Township
Powers
Meyer Township
Stephenson Township

*Midland County*

Geneva Township
Porter Township

*Missaukee County*

Aetna Township
Lake Township
Butterfield Township
Norwich Township
Clam Union Township
Riverside Township

*Monroe County*

Carleton
Maybee
Dundee
La Salle Township
Dundee Township

*Montcalm County*

Bloomer Township
Edmore
Bushnell Township
Pierson
McBride
Richland Township
Day Township
Winfield Township
Evergreen Township

*Montmorency County*

Rust Township

*Muskegon County*

Blue Lake Township
Dalton Township
Moorland Township
Casnovia
Muskegon Heights
Ravenna
Ravenna Township

*Newaygo County*

Beaver Township
Ensley Township
Goodwell Township
Troy Township

*Oakland County*

Leonard
Ortonville

*Oceana County*

Colfax Township
Crystal Township
Rothbury
New Era
Walkerville
Leavitt Township
Otto Township
Shelby
Shelby Township

*Ogemaw County*

Goodar Township
Klacking Township
Logan Township
Prescott
Rose Township
Rose City
West Branch

*Ontonagon County*

Matchwood Township

*Osceola County*

Burdell Township
Marion
Marion Township

*Otsego County*

Chester Township

*Ottawa County*

Allendale Township
Holland Township
Wright Township
Zeeland
Zeeland Township

*Presque Isle County*

Millersburg
Krakow Township
Metz Township
Moltke Township
Ocqueoc Township
Pulawski Township

*Roscommon County*

Gerrish Township
Nester Township
Richfield Township

*Saginaw County*

Chapin Township
Fremont Township
Lakefield Township
Marion Township
St Charles Township
Swan Creek Township

*St Clair County*

Berlin Township
Capac
Mussey Township
Port Huron
Port Huron Township
Wales Township

*St Joseph County*

Burr Oak Township
Colon
Florence Township
Centreville
Nottawa Township
White Pigeon

*Sanilac County*

Austin Township
Flynn Township
Fremont Township
Greenleaf Township
Lamotte Township
Maple Valley Township
Deckerville
Minden City
Minden Township
Melvin
Speaker Township
Applegate

*Schoolcraft County*

Doyle Township
Thompson Township

*Shiawassee County*

Fairfield Township
New Haven Township
Rush Township
Bancroft
Vernon

*Tuscola County*

Arbela Township
Unionville
Akron
Elkland Township
Ellington Township
Gagetown
Kingston Township
Kingston
Millington Township

*Van Buren County*

Almena Township
Breedsville
Decatur
Decatur Township
Gobles
Hamilton Township
Hartford Township
Porter Township

*Washtenaw County*

Bridgewater Township
Ypsilanti

*Wayne County*

Grosse Ile Township

*Wexford County*

Hanover Township
Slagle Township
Wexford Township

**State of Minnesota**

*Aitkin County*

Balsam Township
Glen Township
Haugen Township
Hill
Kimberly Township
Lee Township
Libby Township
McGregor
Malmo Township
Palisade
Rice River Township
Salo Township
Spalding Township
Tamarack
Turner Township
Verdon Township
White Pine Township
Williams Township
Workman Township

*Anoka County*

Bethel
Burns Township

*Becker County*

Atlanta Township
Callaway
Callaway Township
Carsonville Township
Evergreen Township
Green Valley Township
Ogema
Pine Point Township
Riceville Township
Richwood Township
Runeberg Township
Savannah Township
Shell Lake Township
Spring Creek Township
Spruce Grove Township
Walworth Township
White Earth Township
Wolf Lake
Wolf Lake Township

*Beltrami County*

Battle Township
Bemidji
Bemidji Township
Benville Township
Blackduck
Buzzle Township
Corment Township
Eckles Township
Hornet Township
Jones Township
Kelliher
Kelliher Township
Lee Township
Maple Ridge Township
Moose Lake Township
Northern Township
O'Brien Township
Roosevelt Township
Spruce Grove Township
Steenerson Township
Tenstrike
Turtle River
Turtle River Township
Woodrow Township

*Benton County*

Alberta Township
Gilman
Gilmanton Township
Graham Township
Granite Ledge Township
Mayhew Lake Township
Maywood Township
St George Township

*Big Stone County*

Akron Township
Artichoke Township
Beardsley
Correll
Foster Township
Johnson
Moonshine Township
Odessa
Odessa Township
Otrey Township
Prior Township

*Blue Earth County*

Cambria Township
Ceresco Township
Danville Township
Decoria Township
Judson Township
Le Ray Township
McPherson Township
Mapleton Township
Pleasant Mound Township
Shelby Township
Vernon Center

*Brown County*

Bashaw Township
Burnstown Township
Cobden
Evan
Home Township
Leavenworth Township
Mulligan Township
Prairieville Township
Sigel Township
Stately Township

*Carlton County*

Atkinson Township
Automba Township
Beseman Township
Blackhoof Township
Carlton
Holyoke Township
Silver Township
Split Rock Township
Wright

*Carver County*

Cologne
Hancock Township

*Cass County*

Ansel Township
Becker Township
Bena
Blind Lake Township
Boy River
Boy River Township
Bull Moose Township
Bungo Township
Byron Township
Cass Lake
Fairview Township
Federal Dam
Gould Township
Hiram Township
Home Brook Township
Inguadona Township
Loon Lake Township
McKinley Township
Maple Township
May Township
Meadow Brook Township
Pine River
Pine River Township
Ponto Lake Township
Poplar Township
Remer
Rogers Township
Salem Township
Slater Township
Torrey Township
Trelipe Township
Turtle Lake Township
Wahnena Township
Wilkinson Township

*Chippewa County*

Big Bend Township
Havelock Township
Kragero Township
Lone Tree Township
Louriston Township
Mandt Township
Maynard
Rosewood Township
Stoneham Township
Tunsberg Township
Woods Township

*Chisago County*

Amador Township
Fish Lake Township
Shafer Township
Sunrise Township

*Clay County*

Elmwood Township
Georgetown Township
Goose Prairie Township
Hagen Township
Humboldt Township
Keene Township
Kragnes Township
Parke Township
Tansem Township
Ulen Township
Viding Township

*Clearwater County*

Bear Creek Township
Clearbrook
Clover Township
Dudley Township
Eddy Township
Holst Township
Itasca Township
La Prairie Township
Leon Township
Moose Creek Township
Popple Township
Rice Township
Shevlin Township

*Cottonwood County*

Ann Township
Carson Township
Dale Township
Germantown Township
Jeffers
Midway Township
Mountain Lake Township
Springfield Township
Storden
Storden Township

*Crow Wing County*

Dean Lake Township
Gail Lake Township
Garrison
Irondale Township
Long Lake Township
Manhattan Beach
Nokay Lake Township
Perry Lake Township
Platte Lake Township
Ross Lake Township
St Mathias Township
Timothy Township
Trommald

*Dakota County*

Castle Rock Township
Douglas Township
Hampton
Marshan Township
New Trier
Randolph Township

*Dodge County*

Canisteo Township
Ellington Township
Mantorville Township
Milton Township
Vernon Township

*Douglas County*

Brandon Township
Evansville Township
Hudson Township
Leaf Valley Township
Lund Township
Millerville
Miltona
Moe Township
Osakis
Solem Township

*Faribault County*

Barber Township
Clark Township
Delavan
Dunbar Township
Rome Township
Seely Township
Verona Township

*Fillmore County*

Arendahl Township
Bloomfield Township
Carimona Township
Carrolton Township
Forestville Township
Fountain Township
Jordan Township
Mabel
Norway Township
Preston Township
Rushford (Village)
Wykoff

*Freeborn County*

Conger
Freeborn Township
Hartland Township
Manchester Township
Mansfield Township
Moscow Township
Newry Township
Riceland Township
Shell Rock Township

*Goodhue County*

Bellchester
Belle Creek Township
Belvidere Township
Dennison
Goodhue
Hay Creek Township
Holden Township
Roscoe Township
Wanamingo Township

*Grant County*

Elbow Lake Township
Elk Lake Township
Erdahl Township
Land Township
Norcross
Pelican Lake Township
Wendell

*Hennepin County*

Corcoran
Dayton
Minnetrista

*Houston County*

Brownsville
Brownsville Township
Caledonia Township
Jefferson Township
Mayville Township
Mound Prairie Township
Sheldon Township
Spring Grove
Spring Grove Township
Wilmington Township
Yucatan Township

*Hubbard County*

Akeley
Badoura Township
Clover Township
Fern Township
Guthrie Township
Hart Lake Township
Hubbard Township
Lake George Township
Lake Hattie Township
La Porte
White Oak Township

*Isanti County*

Maple Ridge Township
Oxford Township

*Itasca County*

Alvwood Township
Bearville Township
Bovey
Carpenter Township
Deer River
Feeley Township
Good Hope Township
Grattan Township
Iron Range Township
Lawrence Township
Moose Park Township
Nore Township
Oteneagen Township
Stokes Township
Third River Township
Wabana Township

*Jackson County*

Alba Township
Alpha
Belmont Township
Delafield Township
Des Moines Township
Ewington Township
La Crosse Township
Round Lake Township
Sioux Valley Township
Welmer Township
Wisconsin Township

*Kanabec County*

Ann Lake Township
Grass Lake Township
Hay Brook Township
Kanabec Township
Kroschel Township
Quamba
South Fork Township
Whited Township

*Kandiyohi County*

Arctander Township
Colfax Township
East Lake Lillian Twp
Fahlun Township
Lake Elizabeth Township
Lake Lillian Township
Regal
Roseland Township
Roseville Township
St Johns Township
Sunburg
Whitefield Township

*Kittson County*

Arveson Township
Caribou Township
Donaldson
Granville Township
Hazelton Township
Hill Township
McKinley Township
Norway Township
Pelan Township
Percy Township
Poppleton Township
Richardville Township
St Joseph Township
Spring Brook Township
Tegner Township

*Koochiching Township*

Mizpah

*Lac Qui Parle County*

Arena Township
Augusta Township
Cerro Gordo Township
Garfield Township
Hantho Township
Louisburg
Manfred Township
Marietta
Maxwell Township
Nassau
Providence Township
Walter Township

*Lake of the Woods County*

Williams

*Le Sueur County*

Cleveland Township
Kasota
Kilkenny
Kilkenny Township
Ottawa Township
Sharon Township
Waterville Township

*Lincoln County*

Diamond Lake Township
Drammen Township
Hendricks Township
Limestone Township
Marble Township
Marshfield Township
Verdi Township

*Lyon County*

Coon Creek Township
Custer Township
Eidsvold Township
Florence
Grandview Township
Lucas Township
Monroe Township
Rock Lake Township
Sodus Township
Stanley Township
Westerheim Township

*McLeod County*

Bergen Township
Collins Township
Glencoe Township
Hutchinson Township
Rich Valley Township
Round Grove Township

*Mahnomen County*

Beaulieu Township
Chief Township
Clover Township
Heier Township
Lake Grove Township
Mahnomen
Marsh Creek Township
Rosedale Township
Twin Lakes Township
Waubun

*Marshall County*

Bloomer Township
Cedar Township
Como Township
Comstock Township
East Valley Township
Eckvoll Township
Espelie Township
Excel Township
Fork Township
Holt Township
Huntly Township
Linsell Township
Moylan Township
Nelson Park Township
New Maine Township
Parker Township
Spruce Valley Township
Veldt Township
Wanger Township
Whiteford Township
Wright Township

*Martin County*

Center Creek Township
East Chain Township
Elm Creek Township
Fairmont Township
Fraser Township
Galena Township
Lake Fremont Township
Nashville Township
Pleasant Prairie Township
Rolling Green Township
Silver Lake Township
Waverly Township
Westford Township

*Meeker County*

Acton Township
Cedar Mills
Cedar Mills Township
Danielson Township
Forest Prairie Township
Kingston Township
Manannah Township

*Mille Lacs County*

Bock
Dailey Township
Hayland Township
Lewis Township
Pease
Wahkon

*Morrison County*

Agram Township
Bellevue Township
Bowlus
Buh Township
Culdrum Township
Darling Township
Elmdale
Elmdale Township
Flensburg
Genola
Harding
Hillman
Hillman Township
Lastrup
Little Falls
Morrill Township
Mount Morris Township
Pierz Township
Pike Creek Township
Platte Township
Pulaski Township
Richardson Township
Sobieski
Swan River Township
Swanville Township
Two Rivers Township

*Mower County*

Austin Township
Brownsdale
Le Roy Township
Mapleview
Marshall Township
Nevada Township
Pleasant Valley Township
Taopi

*Murray County*

Belfast Township
Bondin Township
Des Moines River Twp
Ellsborough Township
Fenton Township
Holly Township
Lake Sarah Township
Leeds Township
Lowville Township
Mason Township
Murray Township
Skandia Township
Slayton Township

*Nicollet County*

Brighton Township
Courtland Township
Granby Township
Nicollet Township
Ridgely Township
Traverse Township
West Newton Township

*Nobles County*

Adrian
Bloom Township
Dundee
Elk Township
Grand Prairie Township
Hersey Township
Kinbrae
Larkin Township

Lismore
Lismore Township
Little Rock Township
Lorain Township
Ransom Township
Seward Township
Summit Lake Township
Westside Township
Worthington Township

*Norman County*

Anthony Township
Bear Park Township
Flom Township
Fossum Township
Green Meadow Township
Hegne Township
Home Lake Township
Lake Ida Township
McDonaldsville Township
Mary Township
Perley
Pleasant View Township
Rockwell Township
Shelly
Shelly Township
Strand Township
Sundal Township
Waukon Township

*Olmsted County*

Eyota Township
Pleasant Grove Township

*Otter Tail County*

Aastad Township
Bluffton
Bluffton Township
Candor Township
Carlisle Township
Clitherall
Corliss Township
Deer Creek Township
Dent
Dora Township
Eagle Lake Township
Eastern Township
Effington Township
Elizabeth
Elmo Township
Erhard
Folden Township
Henning
Henning Township
Inman Township
Leaf Lake Township
Lida Township
Maplewood Township
Nidaros Township
Norwegian Grove Township
Parkers Prairie Township
Richville
Rush Lake Township
St Olaf Township
Star Lake Township
Tordenskjold Township
Tumuli Township
Vergas
Vining
Western Township
Woodside Township

*Pennington County*

Clover Leaf Township
Goodridge
Goodridge Township
Mayfield Township
Numedal Township
Polk Centre Township

*Pine County*

Arlone Township
Birch Creek Township
Bremen Township
Brook Park Township
Bruno Township
Chengwatana Township
Clover Township
Dell Grove Township
Denham
Fleming Township
Henriette
Nickerson Township
Norman Township
Park Township
Pine City Township
Pine Lake Township
Rock Creek
Royalton Township
Sturgeon Lake Township
Willow River

*Pipestone County*

Aetna Township
Altona Township
Burke Township
Eden Township
Edgerton
Elmer Township
Grange Township
Gray Township
Hatfield
Jasper
Holland
Ihlen
Ruthton

*Polk County*

Belgium Township
Beltrami
Brandsvold Township
Brandt Township
Brislet Township
Bygland Township
Columbia Township
Fanny Township
Fisher Township
Garfield Township
Godfrey Township
Grand Forks Township
Grove Park Township
Gully
Hill River Township
Hubbard Township
Johnson Township
King Township
Lengby
Lessor Township
McIntosh
Mentor
Parnell Township
Queen Township
Reis Township
Rhinehart Township
Rosebud Township
Russia Township
Sandsville Township
Sletten Township
Sullivan Township
Tilden Township
Tynsid Township
Winger
Winger Township

*Pope County*

Barsness Township
Blue Mounds Township
Cyrus
Farwell
Gilchrist Township
Grove Lake Township
New Prairie Township
Nora Township
Reno Township
Rolling Forks Township
Sedan
Walden Township
Westport
Westport Township

*Ramsey County*

Falcon Heights

*Red Lake County*

Browns Creek Township
Equality Township
Garnes Township
Gervais Township
Lambert Township
River Township
Terrebonne Township
Wylie Township

*Redwood County*

Brookville Township
Delhi
Gales Township
Johnsonville Township
Kintire Township
Lamberton Township
North Hero Township
Paxton Township
Redwood Falls Township
Sheridan Township
Springdale Township
Sundown Township
Swedes Forest Township
Vesta Township

*Renville County*

Boon Lake Township
Cairo Township
Camp Township
Hector Township
Henryville Township
Kingman Township
Martinsburg Township
Melville Township
Norfolk Township
Palmyra Township
Wang Township
Wellington Township

*Rice County*

Dundas
Morristown Township
Warsaw Township
Wells Township
Wheatland Township
Wheeling Township

*Rock County*

Battle Plain Township
Kanaranzi Township
Kennett
Luverne Township
Magnolia Township
Martin Township

*Roseau County*

Barnett Township
Cedarbend Township
Dewey Township
Falun Township
Hereim Township
Huss Township
Jadis Township
Laona Township
Lind Township
Mickinock Township
Nereson Township
Pohlitz Township
Polonia Township
Poplar Grove Township
Reine Township
Soler Township
Strathcona

*St Louis County*

Alborn Township
Angora Township
Arrowhead Township
Bassett Township
Beatty Township
Cook
Culver Township
Ellsburg Township
Field Township
Gnesen Township
Halden Township
Mckinley
Meadowlands Township
Morcom Township
Northland Township
Payne Township
Prairie Lake Township
Stoney Brook Township
Van Buren Township

*Scott County*

Belle Plaine
New Market Township

*Sherburne County*

Becker
Clear Lake
Santiago Township
Zimmerman

*Sibley County*

Alfsborg Township
Bismarck Township
Cornish Township
Green Isle
Green Isle Township
Henderson Township
Jessenland Township
Kelso Township
Severance Township
Sibley Township
Washington Lake Township

*Stearns County*

Ashley Township
Cold Spring
Crow River Township
Farming Township
Getty Township
Grove Township
Krain Township
Lake George Township
Lake Henry Township
Luxemburg Township
Maine Prairie Township
Meire Grove
New Munich
North Fork Township
Oak Township
Rockville Township
Roscoe
St Anthony
St Martin
St Rosa
Sauk Centre
Spring Hill
Zion Township

*Steele County*

Berlin Township
Blooming Prairie Township
Lemond Township

*Stevens County*

Donnelly Township
Eldorado Township
Everglade Township
Pepperton Township
Rendsville Township
Scott Township
Synnes Township

*Swift County*

Appleton Township
Benson Township
Camp Lake Township
Clontarf Township
Danvers
De Graff
Edison Township
Fairfield Township
Hayes Township
Holloway
Kerkhoven
Marysland Township
Murdock
Pillsbury Township
Swenoda Township
West Bank Township

*Todd County*

Bartlett Township
Bruce Township
Burnhamville Township
Fawn Lake Township
Germania Township
Hartford Township
Iona Township
Staples
Reynolds Township
Stowe Prairie Township
Villard Township
Ward Township
West Union

*Traverse County*

Arthur Township
Browns Valley
Leonardsville Township
Monson Township
Tara Township
Walls Township
Windsor Township

*Wabash County*

Chester Township
Elgin Township
Glasgow Township
Millville
Pepin Township
Plainville Township
West Albany Township
Zumbro Falls

*Wadena County*

Aldrich
Leaf River Township
Lyons Township
Meadow Township
Nimrod
Red eye Township

*Waseca County*

Alton Township
Byron Township
Freedom Township
St Mary Township
Vivian Township
Waldorf
Woodville Township

*Washington County*

Bayport
Lake Elmo

*Watonwan County*

Antrim Township
Butterfield
Butterfield Township
La Salle
Lewisville
Long Lake Township
Riverdale Township
Rosendale Township
South Branch Township

*Wilkin County*

Akron Township
Atherton Township
Bradford Township
Connelly Township
Deerhorn Township
Foxhome
Foxhome Township
Meadows Township
Mitchell Township
Nashua
Nordick Township
Sunnyside Township
Tanberg Township

*Winona County*

Altura
Norton Township
Pleasant Hill Township
St Charles Township
Saratoga Township
Whitewater Township
Wiscoy Township

*Wright County*

Middleville Township

*Yellow Medicine County*

Burton Township
Echo
Fortier Township
Hammer Township
Lisbon Township
Minnesota Falls Township
Omro Township
Oshkosh Township
Posen Township
St Leo
Stony Run Township
Swede Prairie Township
Wergeland Township

**State of Mississippi**

*Adams County*

Natchez

*Alcorn County*

Rienzi

*Amite County*

Gloster

*Attala County*

Ethel
McCool
Sallis

*Benton County*

Ashland

*Bolivar County*

Alligator
Beulah
Duncan
Merigold
Rosedale
Shaw
Shelby

*Calhoun County*

Big Creek
Bruce
Calhoun City
Derma
Pittsboro
Vardaman

*Chickasaw County*

Woodland

*Choctaw County*

Ackerman
French Camp

*Clarke County*

Enterprise
Pachuta
Quitman

*Coahoma County*

Clarksdale
Coahoma
Lyon

*Copiah County*

Beauregard

*Covington County*

Seminary

*De Soto County*

Horn Lake
Newport
Olive Branch

*Greene County*

State Line

*Hinds County*

Terry

*Holmes County*

Cruger
Goodman
West

*Humphreys County*

Isola
Silver City

*Jasper County*

Louin
Montrose

*Jefferson County*

Fayette

*Jefferson Davis County*

Bassfield

*Kemper County*

De Kalb

*Lamar County*

Sumrall

*Lauderdale County*

Marion
Meridian

*Lawrence County*

Silver Creek

*Leake County*

Lena

*Leflore County*

Greenwood
Itta Bena
Morgan City
Schlater

*Lincoln County*

Brookhaven

*Lowndes County*

Columbus
Crawford

*Monroe County*

Gattman
Hatley

*Noxubee County*

Macon

*Oktibbeha County*

Sturgis

*Panola County*

Batesville
Como
Courtland
Pope
Sardis

*Perry County*

Richton

*Pike County*

McComb
Summit

*Pontotoc County*

Thaxton

*Prentiss County*

Baldwyn

*Quitman County*

Falcon
Sledge

*Rankin County*

Florence
Flowood
Puckett

*Simpson County*

Braxton

*Smith County*

Mize
Sylarena

*Sunflower County*

Doddsville
Drew
Indianola
Moorhead
Sunflower

*Tallahatchie County*

Charleston
Glendora
Sumner
Webb

*Tate County*

Senatobia

*Tippah County*

Dumas

*Tishomingo County*

Tishomingo

*Tunica County*

Tunica

*Union County*

Blue Springs
New Albany

*Washington County*

Greenville

*Webster County*

Eupora
Mantee

*Wilkinson County*

Crosby

*Yazoo County*

Eden
Yazoo City

**State of Missouri**

*Adair County*

Millard

*Andrew County*

Cosby
Rea

*Audrain County*

Rush Hill

*Barton County*

Barton City Township
Doylesport Township
Golden City
Leroy Township
Milford
Milford Township
Burgess
Mindenmines
Union Township

*Bates County*

East Boone Township
Elkhart Township
Hume
Lone Oak Township
West Boone Township

*Benton County*

Ionia

*Bollinger County*

Zalma

*Boone County*

Hartsburg

*Buchanan County*

Agency

*Caldwell County*

Gomer Township
Mirabile Township

*Callaway County*

Auxvasse

*Camden County*

Macks Creek
Stoutland
Sunrise Beach

*Cape Girardeau County*

Delta
Pocahontas
Whitewater

*Carroll County*

Cherry Valley Township
Hill Township
Hale
Leslie Township
Prairie Township
Bosworth
Ridge Township
Rockford Township
Stokes Mound Township
Trotter Township
Wakenda Township

*Carter County*

Grandin

*Cass County*

Lake Annette
Strasburg

*Chariton County*

Bee Branch Township
Dalton
Chariton Township
Clark Township
Cockrell Township
Triplett
Triplett Township
Wayland Township

*Clark County*

Alexandria
Kahoka
Luray

*Clay County*

Birmingham
Glenaire
Holt
Mosby

*Clinton County*

Turney

*Cole County*

Centertown

*Cooper County*

Prairie Home

*Dade County*

Grant Township
Pilgrim Township
Smith Township
South Greenfield

*Daviess County*

Colfax Township
Altamont
Liberty Township
Coffey
Salem Township

*De Kalb County*

Osborn
Colfax Township

*Dunklin County*

Hornersville
Arbyrd
Holcomb
Kennett
Independence Township

*Franklin County*

Berger

*Gentry County*

Darlington
Howard Township
Wilson Township

*Greene County*

Brookline

*Grundy County*

Harrison Township
Jackson Township
Jefferson Township
Liberty Township
Lincoln Township
Brimson
Laredo

*Harrison County*

Butler Township
Clay Township
Blythedale
Colfax Township
Jefferson Township
Sherman Township
Washington Township
New Hampton
White Oak Township

*Henry County*

Bethlehem Township
La Due
Deer Creek Township
Urich
Honey Creek Township
Brownington
Springfield Township
Tebo Township
Walker Township

*Hickory County*

Cross Timbers
Hermitage

*Holt County*

Corning

*Howard County*

Franklin

*Jackson County*

Lone Jack
Sibley

*Jasper County*

Aville
Carytown
La Russell
Neck City
Oakland Park
Oronogo
Reeds

*Jefferson County*

Kimmswick

*Knox County*

Baring
Hurdland
Novelty

*Lafayette County*

Concordia
Corder
Waverly

*Lawrence County*

Freistatt
Halltown
Hoberg
Marionville

*Lewis County*

Lewistown

*Lincoln County*

Hawk Point

*Linn County*

Grantsville Township
Jackson Township
Linneus
Locust Creek Township
North Salem Township

*Livingston County*

Fairview Township
Jackson Township
Medicine Township
Ludlow
Monroe Township
Mooresville Township
Sampsel Township

*McDonald County*

Lanagan

*Macon County*

Elmer
Ethel

*Madison County*

Cobalt City
Fredericktown
Marquand

*Mercer County*

Lindley Township
Madison Township
Mercer
South Lineville
Marion Township
Medicine Township

*Miller County*

Bagnell
Lakeside
St Elizabeth

*Mississippi County*

Charleston

*Moniteau County*

Clarksburg
Lupus

*Monroe County*

Holliday
Stoutsville

*Morgan County*

Stover
Syracuse

*New Madrid County*

Catron

*Newton County*

Diamond
Newtonia
Ritchey
Shoal Creek Drive

*Nodaway County*

Green Township
Clyde
Lincoln Township
White Cloud Township

*Osage County*

Westphalia

*Permiscot County*

Hayward
Pascola

*Perry County*

Lithium

*Pettis County*

Houstonia

*Platte County*

Northmoor
Weatherby Lake

*Polk County*

Aldrich
Halfway

*Pulaski County*

Dixon

*Putnam County*

Grant Township
Livonia
Lincoln Township
Sherman Township
Powersville
York Township

*Ralls County*

Center

*Randolph County*

Clark
Higbee

*Ray County*

Lawson

*Reynolds County*

Ellington

*Ripley County*

Doniphan

*St. Charles County*

Augusta
New Melle

*St. Clair County*

Appleton City
Roscoe
Vista

*Ste. Genevieve County*

Bloomsdale
St. Mary's

*St. Francois County*

Elvins
Esther
Fairview Acres
Flat River
Leadwood

*St. Louis County*

Kinloch
Pagedale
Sycamore Hills
Valley Park

*Saline County*

Blackburn
Emma
Grand Pass
Miami
Mount Leonard

*Schuyler County*

Lancaster

*Scotland County*

Rutledge
South Gorin

*Scott County*

Diehlstadt
Kelso
Vanduser

*Shelby County*

Leonard

*Stoddard County*

Dudley
Bell City
Fenaimon

*Stone County*

Lakeview

*Sullivan County*

Duncan Township
Morris Township
Green City
Milan
Polk Township
Taylor Township

*Texas County*

Boone Township
Summersville
Jackson Township
Ozark Township
Sherrill Township

*Vernon County*

Harwood
Schell City
Bacon Township
Blue Mound Township
Dover Township
Milo
Stotesbury
Lake Township
Metz
Metz Township
Montevallo Township
Osage Township
Richards
Richland Township
Virgil Township
Walker
Washington Township

*Washington County*

Irondale
Potosi

*Wayne County*

Mill Spring

*Worth County*

Allendale

*Wright County*

Elk Creek Township
Gasconade Township
Union Township
Van Buren Township
Wood Township

**State of Montana**

*Big Horn County*

Hardin

*Custer County*

Ismay

*Dawson County*

Richey

*Fallon County*

Plevna

*Fergus County*

Winifred

*Glacier County*

Browning

*Golden Valley County*

Ryegate

*Hill County*

Hingham

*Lake County*

St Ignatius

*Lincoln County*

Rexford
Troy

*Musselshell County*

Melstone

*Roosevelt County*

Poplar

*Sheridan County*

Outlook

*Butte-Silver Bow County*

Walkerville

*Yellowstone County*

Broadview

**State of Nebraska**

*Adams County*

Holstein
Hanover Township
Ayr
Kenesaw
Little Blue Township
Logan Township
Silver Lake Township

*Antelope County*

Cedar Township
Eden Township
Elgin Township
Brunswick
Ellsworth Township
Elm Township
Frenchtown Township
Neligh Township
Oakdale
Royal
Royal Township
Sherman Township
Verdigris Township
Willow Township

*Arthur County*

Arthur

*Boone County*

Primrose

*Boyd County*

Lynch
Lynch Township
Morton Township

*Buffalo County*

Miller
Armanda Township
Beaver Township
Cherry Creek Township
Gardner Township
Garfield Township
Amherst
Grant Township
Harrison Township
Platte Township
Schneider Township
Scott Township
Sharon Township
Thornton Township

*Burt County*

Arizona Township
Logan Township
Riverside Township
Summit Township
Tekamah

*Butler County*

Octavia
Bone Creek Township
Center Township
Franklin Township
Olive Township
Surprise
Dwight
Bruno
Skull Creek Township
Summit Township
Union Township

*Cass County*

South Bend

*Cedar County*

Belden
Hartington
Obert
St Helena

*Cherry County*

Crookston
Merriman

*Cheyenne County*

Lodgepole

*Clay County*

Deweese
Inland Township
Lewis Township
Lone Tree Township
Spring Ranch Township

*Colfax County*

Richland

*Cuming County*

Bancroft
Bancroft Township
Bismarck Township
Blaine Township
Cleveland Township
Cuming Township
Garfield Township
Lincoln Township
Logan Township
Monterey Township

*Custer County*

Mason City
Algernon Township
Broken Bow Township
Corner Township
Callaway
East Custer Township
Elk Creek Township
Garfield Township
Grant Township
Loup Township
Milburn Township
Myrtle Township
Ryno Township
Triumph Township
Wayne Township
West Union Township

*Dakota County*

Hubbard
Jackson

*Dawes County*

Whitney

*Dixon County*

Dixon
Daily Township
Maskell
Hooker Township
Logan Township
Newcastle
Newcastle Township
Silver Creek Township
Wakefield Township

*Dodge County*

Uehling
Logan Township
Pleasant Valley Township
Union Township

*Douglas County*

Boys Town

*Fillmore County*

Strang
Belle Prairie Township
Bennett Township
Chelsea Township
Exeter
Exeter Township
Glengary Township
Grafton
Grafton Township
Madison Township
Momence Township
West Blue Township

*Franklin County*

Upland
Antelope Township
Grant Township
Lincoln Township
Macon Township
Riverton
Washington Township

*Frontier County*

Curtis

*Furnas County*

Hendley
Wilsonville

*Gage County*

Barneston Township
Elm Township
Barneston
Glenwood Township
Grant Township
Hanover Township
Pickrell
Holt Township
Island Grove Township
Liberty
Liberty Township
Logan Township
Paddock Township
Virginia
Sherman Township
Sicily Township

*Greeley County*

Greeley Center

*Hall County*

Cameron Township
Jackson Township
Lake Township
Mayfield Township
Prairie Creek Township

*Harlan County*

Albany Township
Alma Township
Eldorado Township
Fairfield Township
Ragan
Republican City Township
Scandinavia Township
Turkey Creek Township

*Hitchcock County*

Stratton

*Holt County*

Antelope Township
Cleveland Township
Coleman Township
Conley Township
Deloit Township
Dustin Township
Francis Township
Golden Township
Green Valley Township
Holt Creek Township
Iowa Township
McClure Township
Rock Falls Township
Scott Township
Shamrock Township
Sheridan Township
Steel Creek Township
Swan Township
Willowdale Township
Wyoming Township

*Jefferson County*

Reynolds

*Johnson County*

Sterling

*Kearney County*

Liberty Township
Norman
May Township
Wilcox
Oneida Township
Sherman Township

*Knox County*

Addison Township
Central Township
Columbia Township
Creighton Township
Dolphin Township
Harrison Township
Logan Township
Winnetoon
Santee
Santee Township
Spade Township
Sparta Township
Union Township
Valley Township
Verdigre
Verdigre Township
Walnut Grove Township
Western Township

*Lancaster County*

Davey

*Madison County*

Tilden

*Merrick County*

Central Township
Lone Tree Township
Palmer
Loup Township
Milland Township
Prairie Creek Township

*Nance County*

Beaver Township
Cedar Township
Cottonwood Township
East Newman Township
Genoa
Genoa Township
Loup Perry Township

*Nemaha County*

Nemaha

*Nuckolls County*

Hardy

*Otoe County*

Burr
Douglas
Lorton

*Pawnee County*

Burchard

*Phelps County*

Anderson Township
Center Township
Cottonwood Township
Union Township
Williamsburg Township

*Pierce County*

McLean

*Platte County*

Tarnov
Burrows Township
Grand Prairie Township
Granville Township
Humphrey Township
Joliet Township
Monroe Township
Lindsay

*Red Willow County*

Indianola

*Richardson County*

Dawson

*Saunders County*

Bohemia Township
Weston
Chapman Township
Chester Township
Memphis
Prague
Douglas Township
Malmo
Mariposa Township
Morse Bluff Township
Valparaiso
Oak Creek Township
Rock Creek Township
Ithaca

*Scotts Bluff County*

Terrytown

*Seward County*

Garland
Staplehurst
Utica

*Sherman County*

Ashton
Elm Township
Hazard
Rockville
Rockville Township
Scott Township

*Sioux County*

Harrison

*Stanton County*

Pilger

*Thayer County*

Chester

*Thomas County*

Halsey

*Thurston County*

Anderson Township
Bryan Township
Rosalie
Merry Township
Winnebago
Winnebago Township

*Valley County*

Geranium Township

*Washington County*

Kennard
Herman

*Wayne County*

Sholes
Winside

*Webster County*

Cowles
Guide Rock

*Wheeler County*

Ericson

*York County*

Bradshaw
Lushton

**State of Nevada**

**State of New Hampshire**

*Belknap County*

Center Harbor Town

*Carroll County*

Brookfield Town
Eaton Town
Sandwich Town

*Cheshire County*

Gilsum Town
Nelson Town
Sullivan Town
Surry Town
Troy Town

*Coos County*

Columbia Town
Dalton Town
Pittsburg Town

*Grafton County*

Bath Town
Benton Town
Dorchester Town
Groton Town
Hanover Town
Lyman Town
Piermont Town

*Hillsborough County*

Francestown Town
Mont Vernon Town
Sharon Town
Wilton Town

*Merrimack County*

Allenstown Town
Chichester Town
Hill Town
Pittsfield Town
Sutton Town

*Rockingham County*

North Hampton Town
Sandown Town

*Strafford County*

Durham Town

*Sullivan County*

Claremont
Lempster Town
Newport Town
Springfield Town

**State of New Jersey**

*Atlantic County*

Buena
Egg Harbor City
Mullica Township

*Bergen County*

Wyckoff Township

*Burlington County*

Beverly
Fieldsboro
New Hanover Township
Springfield Township

*Cumberland County*

Bridgeton
Commercial Township
Greenwich Township
Maurice River Township
Upper Deerfield Township

*Essex County*

Belleville Township
Bloomfield Township
East Orange
Irvington Township
Newark
North Caldwell
Township

*Gloucester County*

Clayton
National Park
South Harrison
Township
Woolwich Township

*Hudson County*

Harrison
Hoboken
Kearny
Union City
Weehawken Township
West New York

*Hunterdon County*

Clinton Township

*Middlesex County*

New Brunswick
Perth Amboy
South Amboy

*Monmouth County*

Keyport
Millstone Township
Union Beach

*Morris County*

Dover
Montville Township
Rockaway
Victory Gardens

*Ocean County*

Eagleswood Township
Ocean Gate
South Toms River

*Passaic County*

Haledon
Passaic
Paterson

*Somerset County*

Bedminster Township

*Sussex County*

Andover
Hamburg
Ogdensburg

*Union County*

Elizabeth

*Warren County*

Hardwick Township
Washington

**State of New Mexico**

*Bernalillo County*

Tijeras

*Chaves County*

Lake Arthur

*Curry County*

Grady

*Eddy County*

Hope

*Lea County*

Jal
Tatum

*Lincoln County*

Capitan

*McKinley County*

Gallup

*Roosevelt County*

Dora
Floyd

*Union County*

Des Moines
Folsom
Grenville

**State of New York**

*Albany County*

Green Island
Green Island Town
Altamont

*Allegany County*

Alfred
Allen Town
Bolivar
Bolivar Town
Caneadea Town
Centerville Town
Grove Town
Richburg
Independence Town
Rushford Town
Ward Town

*Broome County*

Binghamton

*Cattaraugus County*

Cold Spring Township
Conswango Town
South Dayton
Dayton Town
East Otto Town
Farmersville Town
East Randolph
Portville Town
Randolph
Randolph Town

*Cayuga County*

Part Byron
Mentz Town
Throop Town
Victory Town

*Chautauqua County*

Arkwright Town
Clymer Town
Dunkirk Town
French Creek Town
Panama
Harmony Town
Fredonia
Pomfret Town
Brocton
Portland Town
Cassadaga

*Chemung County*

Catlin Town
Erin Town
Van Etten Town

*Chenango County*

Coventry Town
Lincklaen Town
McDonough Town
Pharsalia Town
Preston Town

*Clinton County*

Chazy Town
Plattsburgh
Saranac Town

*Columbia County*

Taghkanic Town

*Cortland County*

Cortland
McGraw
Homer
Lapeer Town
Solon Town

*Delaware County*

Andes Town
Margaretville

*Dutchess County*

Poughkeepsie

*Erie County*

East Aurora
Springville
Hamburg

*Essex County*

Minerva Town

*Franklin County*

Bangor Town
Bombay Town
Brandon Town
Burke
Burke Town
Constable Town
Malone
Malone Town

*Fulton County*

Broadalbin Town
Ephratah Town
Oppenheim Town

*Genesee County*

Byron Town

*Greene County*

Athens
Halcott Town

*Herkimer County*

Ilion
German Flatts Town
Herkimer
Ohio Town
Webb Town

*Jefferson County*

Adams
Dexter
Ellisburg
Philadelphia Town
Watertown
Deferiet
Herrings
Worth Town

*Kings County*

New York

*Lewis County*

Groghan Town
Greig Town
Pinckney Town
Turin

*Livingston County*

Geneseo
Geneseo Town
Leicester Town
Dansville

*Madison County*

Georgetown Town
Lincoln Town

*Monroe County*

Brockport
Churchville

*Montgomery County*

Ames
Charleston Town
Glen Town
Nelliston
Palatine Town

*Nassau County*

Freeport
Great Neck Estates
Russell Gardens
Muttontown

*Niagara County*

Cambria Town
Wheatfield Town

*Oneida County*

Oriskany Falls
Bridgewater
Bridgewater Town
Camden Town
Marshall Town
Clayville
Waterville
Oriskany
Whitesboro

*Onondaga County*

Camillus
Fabius Town
Skaneateles

*Orange County*

Cornwall on Hudson
Crawford Town
Middletown
Kiryas Joel
Monroe Town

*Orleans County*

Clarendon Town

*Oswego County*

Boylston Town
Cleveland
Hannibal
Redfield Town
Phoenix

*Otsego County*

Exeter Town
Oneonta

*Rensselaer County*

Rensselaer

*Rockland County*

Haverstraw — Grand View-on-Hudson
Haverstraw Town — Hillburn

*St Lawrence County*

Richville — Lisbon Town
De Kalb Town — Macomb Town
De Peyster Town — Madrid Town
Edwards — Massena Town
Gouverneur — Ogdensburg
Gouverneur Town — Heuvelton
Hopkinton Town — Rossie Town

*Schoharie County*

Blenheim Town

*Schuyler County*

Burdett — Montour Town
Montour Falls

*Seneca County*

Junius Town — Tyre Town

*Steuben County*

Bath — Rathbone Town
Bath Town — Thurston Town
Cameron Town — Troupsburg Town
Caton Town — West Union Town
Riverside — Woodhull

*Suffolk County*

Patchogue — Shoreham

*Sullivan County*

Cochecton Town — Wurtsboro

*Tompkins County*

Caroline Town — Ithaca

*Washington County*

Cambridge Town — Putnam Town
Dresden Town — Salem Town
Hebron Town

*Wayne County*

Huron Town — Savannah Town
Rose Town — Sodus

*Westchester County*

Buchanan — New Rochelle
Elmsford — Port Chester
Larchmont — Rye Town
Mount Vernon

*Wyoming County*

Eagle Town — Pike

*Yates County*

Italy Town — Milo Town
Penn Yan

**State of North Carolina**

*Alamance County*

Alamance

*Alexander County*

Taylorsville

*Anson County*

Lilesville — Peachland
McFarlan — Wadesboro

*Avery County*

Elk Park — Newland

*Beaufort County*

Aurora — Pantego

*Bertie County*

Askewville — Windsor
Powellsville

*Bladen County*

Clarkton — Dublin

*Brunswick County*

Navassa

*Burke County*

Glen Alpine

*Catawba County*

Newton

*Cherokee County*

Andrews — Murphy

*Chowan County*

Edenton

*Cleveland County*

Fallston — Shelby
Grover

*Columbus County*

Brunswick — Fair Bluff

*Craven County*

Dover — New Bern
Havelock

*Cumberland County*

Godwin — Wade
Linden

*Duplin County*

Teachey — Warsaw

*Edgecombe County*

Pinetops

*Franklin County*

Bunn

*Gaston County*

McAdenville — Mount Holly

*Graham County*

Robbinsville

*Granville County*

Creedmoor — Oxford

*Greene County*

Walstonburg

*Halifax County*

Enfield — Roanoke Rapids

*Harnett County*

Angier — Dunn
Coats

*Hertford County*

Cofield — Murfreesboro
Como

*Iredell County*

Statesville

*Johnston County*

Benson — Princeton
Four Oaks — Selma
Pine Level — Smithfield

*Jones County*

Pollocksville

*Lenoir County*

Pink Hill

*Madison County*

Hot Springs

*Martin County*

Hamilton — Oak City
Hassell — Robersonville

*Montgomery County*

Biscoe — Mount Gilead

*Moore County*

Cameron — Vass
Robbins

*Nash County*

Castalia — Spring Hope
Middlesex

*Northampton County*

Conway — Seaboard
Garysburg — Severn
Jackson — Woodland

*Orange County*

Hillsborough

*Pamlico County*

Alliance — Stonewall
Bayboro — Vandemere
Mesic

*Pasquotank County*

Elizabeth City

*Pitt County*

Ayden — Falkland

*Randolph County*

Archdale — Staley

*Richmond County*

Ellerbe — Norman

*Robeson County*

Fairmont — Raynham
Orrum — Rennert
Proctorville — Rowland

*Rockingham County*

Reidsville

*Rowan County*

Landis — Rockwell

*Rutherford County*

Bostic — Spindale

*Sampson County*

Autryville — Turkey
Roseboro

*Scotland County*

East Laurinburg — Gibson

*Stokes County*

Walnut Cove

*Surry County*

Mount Airy

*Union County*

Marshville — Monroe

*Vance County*

Kittrell
Middleburg

*Wake County*

Holly Springs
Zebulon

*Warren County*

Norlina
Warrenton

*Washington County*

Roper

*Wayne County*

Eureka
Mount Olive

*Wilkes County*

Ronda

*Wilson County*

Saratoga
Wilson

*Yadkin County*

East Bend

**State of North Dakota**

*Adams County*

Clermont Township
Gilstrap Township
Holden Township
North Lemmon Township
Orange Township
Scott Township
Taylor Butte Township
Whetstone Township
Wolf Butte Township

*Barnes County*

Ashtabula Township
Dazey Township
Getchell Township
Grand Prairie Township
Greenland Township
Hemen Township
Lake Town Township
Meadow Lake Township
Nelson Township
Nome
Oakhill Township
Oriska Township
Pierce Township
Potter Township
Rogers Township
Rosebud Township
Sanborn
Sibley Trail Township
Skandia Township
Spring Creek Township
Stewart Township
Valley Township
Weimer Township

*Benson County*

Albert Township
Arne Township
Aurora Township
Beaver Township
Brinsmade
Butte Valley Township
East Fork Township
Impark Township
Knox Township
Lake Ibsen Township
Lallie Township
Normania Township
Oberon Township
Rich Valley Township
Rock Township
South Viking Township
Twin Tree Township
Warwick Township
West Antelope Township
West Bay Township
York

*Bottineau County*

Amity Township
Antler Township
Bentinck Township
Blaine Township
Cecil Township
Cordelia Township
Dalen Township
Elms Township
Elysian Township
Gardena
Haram Township
Hastings Township
Kane Township
Kramer
Landa
Lewis Township
Newborg Township
Oak Creek Township
Oak Valley Township
Pickering Township
Renville Township
Sergius Township
Sherman Township
Tacoma Township
Wayne Township
Wellington Township
Whitby Township

*Bowman County*

Amor Township
Boyesen Township
Buena Vista Township
Gem Township
Goldfield Township
Haley Township
Hart Township
Minnehala Township
Rhame Township
Scranton Township
Star Township
Talbot Township

*Burke Township*

Bowbells Township
Cleary Township
Dale Township
Flaxton
Garness Township
Harmonous Township
Kandiyohi Township
Lakeview Township
Larson
Lignite
North Star Township
Portal Township
Powers Lake
Richland Township
Roseland Township
Soo Township
Vale Township
Ward Township

*Burleigh County*

Canfield Township
Clear Lake Township
Cromwell Township
Estherville Township
Florence Lake Twp
Frances Township
Ghylin Township
Gibbs Township
Grass Lake Township
Harriett Township
Hazel Grove Township
Lein Township
Logan Township
Long Lake Township
McKenzie Township
Menoken Township
Missouri Township
Morton Township
Painted Woods Township
Rock Hill Township
Sibley Butte Township
Steiber Township
Taft Township
Telfer Township
Wild Rose Township

*Cass County*

Addison Township
Alice
Arthur Township
Ayr Township
Buffalo
Buffalo Township
Clifton Township
Dows Township
Durbin Township
Eldred Township
Gardner
Highland Township
Hill Township
Lake Township
Leonard
Leonard Township
Maple River Township
Noble Township
Pontiac Township
Rich Township
Rush River Township
Watson Township

*Cavalier County*

Alma Township
Alsen
Billings Township
Calio
Cypress Township
Dresden Township
Easby Township
East Alma Township
Fremont Township
Glenila Township
Gordon Township
Grey Township
Hannah
Hay Township
Hope Township
Langdon Township
Loam Township
Milton
Minto Township
Moscow Township
Sarles
Mount Carmel Township
Nekoma Township
North Loma Township
North Olga Township
Osford Township
Perry Township
Seivert Township
South Dresden Township
Waterloo Township

*Dickey County*

Ada Township
Albertha Township
Clement Township
Divide Township
Ellendale Township
Elm Township
Fullerton
German Township
Hamburg Township
Hudson Township
Kentner Township
Keystone Township
Lovell Township
Monango
Port Emma Township
Porter Township
Riverdale Township
Valley Township
Wright Township
Young Township

*Divide County*

Ambrose Township
Blooming Valley Township
Coalfield Township
Fillmore Township
Gooseneck Township
Hayland Township
Palmer Township
Smoky Butte Township
Stoneview Township
Troy Township
Westby Township

*Eddy County*

Cherry Lake Township
Columbia Township
Eddy Township
Gates Township
Hillsdale Township
Lake Washington Township
Munster Township
New Rockford Township
Rosefield Township
Sheldon Township
Tiffany Township

*Emmons County*

Braddock
Buchanan Valley Township
Campbell Township
Danbury Township
Hague
Harding Township
Hazelton Township
Lincoln Township
Prairie View Township

*Foster County*

Birtsell Township
Bordulac Township
Bucephalia Township
Eastman Township
Florance Township
Glenfield Township
Haven Township
Grace City
McHenry Township
McKinnon Township
Nordmore Township
Rolling Prairie Township
Rose Hill Township
Wyard Township

*Golden Valley County*

Delhi Township
Golva
Lone Tree Township
Saddle Butte Township

*Grand Forks County*

Agnes Township
Chester Township
Elm Grove Township
Falconer Township
Gilby Township
Grace Township
Hegton Township
Inkster
Levant Township
Lind Township
Moraine Township
Niagara Township
Oakville Township
Strabane Township
Turtle River Township
Walle Township
Washington Township
Wheatfield Township

*Grant County*

Elm Township
Fisher Township
Lark Township
Leipzig Township
Minnie Township
Otter Creek Township
Pretty Rock Township
Raleigh Township
Rock Township
Schultz Township
Winona Township

*Griggs County*

Ball Hill Township
Bartley Township
Bryan Township
Hannaford
Helena Township
Kingsley Township
Lenora Township
Mabel Township
Romness Township
Sverdrup Township
Tyrol Township
Washburn Township

*Hettinger County*

Acme Township
Alden Township
Berry Township
Black Butte Township
Campbell Township
Cannon Ball Township
Chilton Township
Farina Township
Highland Township
Madison Township
Merrill Township
Mott Township
Odessa Township
Rifle Township
St Croix Township
Steiner Township
Wagendorf Township

*Kidder County*

Allen Township
Atwood Township
Baker Township
Buckeye Township
Bunker Township
Clear Lake Township
Crystal Springs Township
Dawson
Excelsior Township
Frettim Township
Graf Township
Haynes Township
Kickapoo Township
Lake Williams Township
Manning Township
Merkel Township
Peace Township
Petersville Township
Pettibone Township
Pleasant Hill Township
Sibley Township
Tappen
Tappen Township
Tuttle Township
Valley Township
Vernon Township
Weiser Township
Westford Township
Williams Township
Woodlawn Township

*La Moure County*

Berlin
Black Loam Township
Dickey City
Glen Township
Glenmore Township
Grand Rapids Township
Greenville Township
Henrietta Township
Mikkelson Township
Nora Township

Norden Township
Pearl Lake Township
Pomona View Township
Roscoe Township
Russell Township
Ryan Township
Saratoga Township
Wano Township

*Logan County*

Bryant Township
Dixon Township
Fredonia
Gutschmidt Township
Haag Township
Red Lake Township
Sealy Township

*McHenry County*

Anamoose Township
Balfour Township
Bantry
Berwick Township
Bjornson Township
Brown Township
Cottonwood Lake Township
Deep River Township
Deering Township
Denbigh Township
Egg Creek Township
Falsen Township
Karlsruhe
Karlsruhe Township
Kief
Kottke Valley Township
Lake George Township
Lake Hester Township
Land Township
Layton Township
Mouse River Township
Newport Township
Normal Township
North Prairie Township
Odin Township
Olivia Township
Pratt Township
Rose Hill Township
Schiller Township
Spring Grove Township
Strege Township
Villard Township
Voltaire
Wagar Township

*McIntosh County*

Zeeland

*McKenzie County*

Alex Township
Alexander
Arnegard
Bear Den Township
Charbon Township
Elk Township
Elm Tree Township
Grail Township
Northfork Township
Randolph Township
Sioux Township
Twin Valley Township
Wilbur Township

*McLean County*

Amundsville Township
Andrews Township
Blackwater Township
Blue Hill Township
Butte Township
Byersville Township
Deepwater Township
Dogden Township
Douglas Township
Gate Township
Horseshoe Valley Township
Lake Williams Township
Loquemont Township
McGinnis Township
Malcolm Township
Max
Medicine Hill Township
Roseglen Township
Rosemont Township
St. Mary Township
Snake Creek Township
Turtle Lake
Victoria Township
Wise Township

*Morton County*

Almont
Engelter Township

*Mountrail County*

Alger Township
Austin Township
Burke Township
Clearwater Township
Cottonwood Township
Crane Creek Township
Crowfoot Township
Debing Township
Fertile Township
Howie Township
Kickapoo Township
Lowland Township
McAlmond Township
Model Township
Mountrail Township
Osloe Township
Palermo
Palermo Township
Powers Lake Township
Ross Township
Sidonia Township
Sikes Township
Sorkness Township
Spring Coulee Township
Van Hook Township

*Nelson County*

Adler Township
Bergen Township
Field Township
Forde Township
Lakota
Lakota Township
McVille
Melvin Township
Nesheim Township
Ora Township
Petersburg Township
Rugh Township
Sarnia Township

*Pembina County*

Advance Township
Beaulieu Township
Crystal
Crystal Township
Elora Township
Hamilton Township
Joliette Township
Midland Township
Neche Township
Park Township
Pembina Township
Thingvalla Township

*Pierce County*

Alexander Township
Antelope Lake Township
Balta
Barton
Elling Township
Hagel Township
Jefferson Township
Meyer Township
Reno Valley Township
Truman Township
White Township

*Ramsey County*

Bartlett Township
De Groat Township
Dry Lake Township
Fancher Township
Freshwater Township
Harding Township
Klingstrup Township
Lawton Township
Lillehoff Township
Minnewaukan Township
Noonan Township
Northfield Township
Odessa Township
Overland Township
Royal Township
South Minnewaukan Township
Starkweather
Triumph Township

*Ransom County*

Aliceton Township
Alleghany Township
Big Bend Township
Casey Township
Coburn Township
Elliott
Fort Ransom
Fort Ransom Township
Greene Township
Hanson Township
Isley Township
Liberty Township
Moore Township
Owego Township
Preston Township
Rosemeade Township
Sandoun Township
Scoville Township
Shenford Township
Springer Township
Sydna Township

*Renville County*

Brandon Township
Eden Valley Township
Fairbanks Township
Grassland Township
Grover Township
Hamlet Township
Hurley Township
Ivanhoe Township
Lockwood Township
McKinney Township
Muskego Township
Prosperity Township
Rockford Township
Stafford Township
Tolley

*Richland County*

Abercrombie Township
Belford Township
Brightwood Township
Center Township
Danton Township
Devillo Township
Dexter Township
Duerr Township
Elma Township
Freeman Township
Garborg Township
Grant Township
Great Bend
Greendale Township
Homestead Township
Ibsen Township
Mantador
Moran Township
Sheyenne Township
Viking Township

*Rolette County*

Maryville Township
Mylo
Shell Valley Township
South Valley Township

*Sargent County*

Cogswell
Dunbar Township
Hall Township
Harlem Township
Herman Township
Rutland Township
Sargent Township
Shuman Township
Southwest Township
Tewaukon Township

*Sheridan County*

Berlin Township
Boone Township
Denhoff Township
Fairview Township
Goodrich Township
Highland Township
Holmes Township
Lincoln Dale Township
Martin
Martin Township
Mauch Township
New Germantown Township
Pickard Township
Strasburg Township

*Sioux County*

Selfridge
Solen

*Slope County*

Connor Township
Sand Creek Township

*Stark County*

Richardson City
South Heart City

*Steele County*

Beaver Creek Township
Colgate Township
Edendale Township
Franklin Township
Greenview Township
Hugo Township
Melrose Township
Primrose Township
Sharon Township

*Stutsman County*

Alexander Township
Ashland Township
Corinne Township
Cusator Township
Eldridge Township
Gerber Township
Glacier Township
Griffin Township
Hidden Township
Jim River Valley Township
[redacted]
Kensal Township
Lenton Township
Lowery Township
Lyon Township
Marston Moor Township
Medina
Montpelier Township
Paris Township
Peterson Township
Pingree
Pingree Township
Pipestem Valley Township
Rose Township
Severn Township
Sharlow Township
Stirton Township
Strong Township
Valley Spring Township
Walters Township
Weld Township
Ypsilanti Township

*Towner County*

Armourdale Township
Atkins Township
Coolin Township
Dash Township
Grainfield Township
Hansboro
Lansing Township
Mount View Township
Paulson Township
Rocklake Township
Sidney Township
Smith Township
Springfield Township
Teddy Township
Twin Hill Township
Victor Township

*Traill County*

Belmont Township
Clifford
Garfield Township
Herberg Township
Norman Township
Portland
Stavanger Township
Viking Township

*Walsh County*

Acton Township
Adams Township
Ardoch Township
Cleveland Township
Dewey Township
Dundee Township
Eden Township
Edinburg
Fairdale
Farmington Township
Fertile Township
Fordville
Forest River Township
Glenwood Township
Golden Township
Grafton Township
Kensington Township
Lampton Township
Latona Township
Martin Township
Norton Township
Perth Township
Prairie Center Township
Pulaski Township
Rushford Township
St. Andrews Township
Sauter Township
Shepherd Township
Silvesta Township
Tiber Township
Walshville Township

*Ward County*

Brillian Township
Carbondale Township
Carpio Township
Denmark Township
Elmdale Township
Freedom Township
Greely Township
Greenbush Township
Lund Township
Mandan Township
Maryland Township
Mayland Township
Ree Township
Rolling Green Township
Rushville Township
Sauk Prairie Township
Sawyer Township
Shealey Township
Torning Township
Vang Township
Waterford Township
Willis Township

*Wells County*

Berlin Township
Bilodeau Township
Bowdon
Bull Moose Township
Cathay
Chaseley Township
Crystal Lake Township
Delger Township
Fairville Township
Hamberg
Hawksnest Township
Heimdal Township
Hillsdale Township
Lynn Township
Manfred Township
Norway Lake Township
Pony Gulch Township
St. Anna Township
Sykeston Township
Valhalla Township
Western Township
West Norway Township
W. Ontario Township
Woodward Township

*Williams County*

Alamo
Big Meadow Township
Big Stone Township
Blue Ridge Township
Bonetraill Township
Climax Township
Dry Fork Township
East Fork Township
Equality Township
Farmvale Township
Hardscrabble Township
Hebron Township
Lindahl Township
Mont Township
Round Prairie Township
Scorio Township
Springbrook Township
Strandahl Township
Truax Township
View Township
West Bank Township
Wheelock

**State of Ohio**

*Adams County*

Franklin Township
Green Township
Jefferson Township
Peebles
Meigs Township
West Union
Oliver Township
Tiffin Township

*Allen County*

Sugar Creek Township

*Ashland County*

Clear Creek Township
Jackson Township
Sullivan Township
Troy Township

*Ashtabula County*

Pierpont Township
Richmond Township
Windsor Township

*Athens County*

Athens
Canaan Township
Carthage Township
Dover Township
Jacksonville
Trimble
Trimble Township
Buchtel

*Auglaize County*

Salem Township

*Belmont County*

Colerain Township
Flushing
Holloway
Flushing Township
Bridgeport
Washington Township
Wayne Township
Wheeling Township

*Brown County*

Hamersville
Russellville
Jefferson Township
Fayetteville
Perry Township
Georgetown
Pleasant Township
Scott Township
Ripley
Washington Township

*Butler County*

Hamilton
Liberty Township
Somerville
New Miami
Jacksonburg

*Carroll County*

Dellroy
Washington County

*Champaign County*

Harrison Township

*Clark County*

Lawrenceville

*Clermont County*

Batavia
Chilo
Felicity
Franklin Township

*Clinton County*

Adams Township
New Vienna
Green Township
Midland
Jefferson Township
Port William
Sabina
Richland Township
Washington Township

*Columbiana County*

Summitville
Franklin Township
Washingtonville
East Palestine

*Coshocton County*

Clark Township
Linton Township
Newcastle Township
Perry Township
Tiverton Township
Tuscarawas Township
Washington Township

*Crawford County*

Tiro
Auburn Township
Chatfield
Chatfield Township
Dallas Township
Tod Township
Vernon Township

*Cuyahoga County*

Cleveland Heights
East Cleveland

*Darke County*

Gettysburg
Castine
Butler Township
Union City
Jackson Township
Palestine
Arcanum
York Township

*Defiance County*

Mark Township

*Delaware County*

Harlem Township
Ostrander
Sunbury

*Erie County*

Margaretta Township

*Fairfield County*

Amanda
Amanda Township
Stoutsville
Richland Township
Pleasantville
Millersport

*Fayette County*

Green Township
Milledgeville
Jasper Township
Jeffersonville
Madison Township
Paint Township
Bloomingburg
Washington

*Franklin County*

Lockbourne
Harrisburg

*Fulton County*

Chesterfield Township
Wauseon
Franklin Township
York Township

*Gallia County*

Harrison Township
Ohio Township

*Geauga County*

Troy Township

*Greene County*

Cedarville
Cedarville Township
Bowersville
Yellow Springs
Miami Township
Ross Township
Spring Valley

*Guernsey County*

Jefferson Township
Kimbolton
Liberty Township
Fairview
Londonderry Township
Quaker City
Salesville
Millwood Township
Monroe Township
Lore City
Oxford Township
Senecaville
Richland Township
Cumberland
Spencer Township
Valley Township
Washington Township
Wheeling Township

*Hamilton County*

Elmwood Place
Lincoln Heights
Cleves
Miami Township
St Bernard
Woodlawn

*Hancock County*

Vanlue
Blanchard Township
Cass Township
Arlington
Portage Township
Jenera
Van Buren Township

*Hardin County*

Goshen Township
Mount Victory
Lynn Township
McDonald Township
Taylor Creek Township
Washington Township

*Harrison County*

New Athens
Deersville
German Township
Hopedale
Green Township
Nottingham Township
Washington Township

*Henry County*

Flatrock Township

*Highland County*

Concord Township
Jackson Township
Greenfield
Madison Township
Marshall Township
Salem Township
Mowrystown

*Hocking County*

Laurelville
Perry Township

*Holmes County*

Berlin Township
Millersburg
Killbuck
Monroe Township
Paint Township
Prairie Township
Walnut Creek Township

*Huron County*

Clarksfield Township
Ripley Township
Sherman Township
Wakeman
Wakeman Township

*Jackson County*

Coalton
Coal Township
Hamilton Township
Jackson Township
Oak Hill
Madison Township
Milton Township
Washington Township

*Jefferson County*

Irondale
Saline Township
Amsterdam
Bloomingdale

*Knox County*

Butler Township
Harrison Township
Hilliar Township
Miller Township

*Lawrence County*

Decatur Township
Elizabeth Township
Hanging Rock
Lawrence Township
Mason Township

*Licking County*

Bowling Green Township
Kirkersville
Harrison Township
Hartford
Hartford Township
Hopewell Township
Alexandria

*Logan County*

West Liberty
Huntsville
Quincy
Miami Township
Perry Township
Pleasant Township
Union Township

BEST COPY AVAILABLE

*Lorain County*

Kipton
South Amherst
LaGrange Township
Sheffield

*Lucas County*

Harbor View
Spencer Township

*Madison County*

Canaan Township
Darby Township
Pike Township
Pleasant Township
South Solon
Stokes Township
Union Township

*Mahoning County*

Craig Beach

*Marion County*

Grand Township
Pleasant Township
Morral
Salt Rock Township

*Medina County*

Homer Township
Spencer

*Meigs County*

Bedford Township
Chester Township
Columbia Township
Letart Township
Olive Township
Orange Township
Rutland
Rutland Township
Pomeroy
Racine
Syracuse

*Mercer County*

Burkettsville
Montezuma
Hopewell Township

*Miami County*

Elizabeth Township
Pleasant Hill
Newton Township
Potsdam

*Monroe County*

Benton Township
Bethel Township
Stafford
Franklin Township
Miltonsburg
Perry Township
Seneca Township
Beallsville
Washington Township
Wayne Township

*Morgan County*

Penn Township
Union Township
York Township

*Morrow County*

Franklin Township
Peru Township

*Muskingum County*

Adams Township
Blue Rock Township
Cass Township
Gratiot
Madison Township
Meigs Township
Rich Hill Township
South Zanesville
Norwich

*Noble County*

Sarahsville
Center Township
Elk Township
Dexter City
Jefferson Township
Summerfield
Marion Township
Belle Valley
Stock Township

*Paulding County*

Blue Creek Township
Melrose
Broughton

*Perry County*

Clayton Township
Junction City
Jackson Township
Madison Township
Roseville
Rendville
New Lexington
Pike Township
Hemlock
Shawnee

*Pickaway County*

Circleville
Williamsport
Deer Creek Township
Madison Township
Perry Township
Tarlton
Wayne Township

*Pike County*

Beaver
Perry Township

*Preble County*

Dixon Township
Verona
West Elkton
Jefferson Township
Camden

*Putnam County*

Cloverdale
Dupont
Union Township
Belmore

*Richland County*

Blooming Grove Township
Butler Township
Lucas

*Ross County*

South Salem
Deerfield Township
Green Township
Harrison Township
Liberty Township
Bainbridge
Paxton Township

*Sandusky County*

Fremont
Riley Township

*Scioto County*

Bloom Township
Brush Creek Township
Madison Township
Morgan Township
Nile Township
Portsmouth
Rarden
Rarden Township
Rush Township
Valley Township
Washington Township

*Seneca County*

Bloomville
Hopewell Township

*Shelby County*

Russia
Turtle Creek Township
Kettlersville
Lockington

*Stark County*

Navarre
Wilmot

*Summit County*

Clinton

*Trumbull County*

West Farmington
Johnston Township
Orangeville

*Tuscarawas County*

Bucks Township
Clay Township
Barnhill
Gnadenhutten
Midvale
Salem Township
Union Township
Warren Township
Washington Township
Wayne Township

*Union County*

Richwood
Magnetic Springs
Millcreek Township
Union Township

*Van Wert County*

Scott
Elgin

*Vinton County*

Brown Township
Hamden
Harrison Township
Jackson Township
Knox Township
Swan Township

*Warren County*

Pleasant Plain
Harlan Township
Harveysburg
Massie Township
Morrow
Salem Township

*Washington County*

Macksburg
Barlow Township
Decatur Township
Matamora
Grandview Township
Independence Township
Ludlow Township
Palmer Township
Warren Township
Waterford Township
Wesley Township

*Wayne County*

Marshallville
Sugar Creek Township

*Williams County*

Blakeslee
Northwest Township

*Wood County*

Jerry City
Custar
Bradner
Portage Township

*Wyandot County*

Jackson Township
Kirby
Marseilles
Marseilles Township
Harpster
Pitt Township
Ridge Township
Sycamore
Sycamore Township

**State of Oklahoma**

*Adair County*

Stilwell

*Alfalfa County*

Aline
Burlington
Goltry
Jet

*Atoka County*

Wardville

*Beaver County*

Knowles

*Bryan County*

Bennington
Hendrix
Kemp

*Coddo County*

Bridgeport
Eakly

*Carter County*

Dickson
Ratliff City
Wilson

*Cherokee County*

Hulbert

*Choctaw County*

Soper

*Coal County*

Centrahoma
Phillips

*Craig County*

Big Cabin

*Creek County*

Kiefer
Oilton

*Custer County*

Aarpaho

*Delaware County*

Kansas
Oaks
West Siloam Springs

*Ellis County*

Gage

*Garfield County*

Carrier

*Garvin County*

Erin Springs
Stratford

*Grady County*

Norge

*Grant County*

Manchester
Pond Creek

*Greer County*

Granite

*Harmon County*

Gould

*Harper County*

May

*Haskell County*

Whitefield

*Hughes County*

Lamar

*Jackson County*

Elmer
Olustee

*Jefferson County*

Cornish

*Johnston County*

Mannsville
Ravia

*Kingfisher County*

Dover
Okarche

*Kiowa County*

Cooperton
Gotebo
Mountain Park

*Le Flore County*

Arkoma
Bokoshe
Cowlington
Howe
Shady Point

*Lincoln County*

Agra
Fallis
Tryon
Warwick

*Logan County*

Coyle
Crescent
Meridian
Mulhall
Orlando

*Love County*

Leon

*McClain County*

Rosedale
Washington

*McCurtain County*

Broken Bow
Garvin
Harris
Valliant

*McIntosh County*

Hanna
Stidham

*Major County*

Cleo

*Marshall County*

Kingston
Woodville

*Mayes County*

Adair

*Muskogee County*

Council Hill
Fort Gibson
Porum
Taft
Wainwright
Webbers Falls

*Noble County*

Marland

*Nowata County*

Delaware
Lenapah
New Alluwe
Wann

*Oklahoma County*

Harrah
Smith Village

*Okmulgee County*

Bryant
Dewar
Grayson

*Ottawa County*

Peoria

*Pawnee County*

Blackburn
Skedee
Terlton

*Payne County*

Glencoe

*Pittsburg County*

Ashland

*Pontotoc County*

Francis
Roff

*Pottawatomie County*

Brooksville
Earlsboro
Johnson
St Louis
Tribbey

*Pushmataha County*

Albion
Clayton
Rattan

*Rogers County*

Foyil

*Seminole County*

Sasakwa

*Sequoyah County*

Gans
Gore

*Stephens County*

Loco

*Tillman County*

Hollister
Manitou

*Tulsa County*

Glenpool

*Wagoner County*

Tullahassee

*Washington County*

Ramona

*Washita County*

Foss

*Woods County*

Dacoma

*Woodward County*

Quinlan

**State of Oregon**

*Baker County*

Haines

*Clackamas County*

Molalla

*Columbia County*

Prescott
Vernonia

*Douglas County*

Yoncalla

*Gilliam County*

Lonerock

*Grant County*

Monument

*Jefferson County*

Culver
Metolius

*Klamath County*

Merrill

*Linn County*

Sodaville

*Marion County*

Gervais
Jefferson
Scotts Mills
Woodburn

*Polk County*

Falls City

*Umatilla County*

Echo

*Wallowa County*

Joseph

*Washington County*

Gaston
North Plains

*Wheeler County*

Fossil

*Yamhill County*

Amity
Dayton

**State of Pennsylvania**

*Adams County*

Bendersville
Bonneauville
Conewago Township
Hamilton Township
Hamiltonban Township
Littlestown
Menallen Township
Oxford Township

*Allegheny County*

Dravosburg
Edgeworth
Glenfield
Rankin
Sharpsburg
South Versailles Township
Whitaker

*Armstrong County*

Apollo
Atwood
Bradys Bend Township
Burrell Township
Dayton
Ford City
Manor Township
North Apollo
Perry Township
Rayburn Township
Redbank Township
Valley Township

*Beaver County*

Eastvale
Fallston
Frankfort Springs
Hanover Township
Patterson Heights

*Bedford County*

Bloomfield Township
Coaldale
Colerain Township
Hopewell
Hopewell Township
Londonderry Township
Manns Choice
Pleasantville
Woodbury Township

*Berks County*

District Township
Hamburg
Lyons
Pike Township
Upper Tulpehocken Township

*Blair County*

Huston Township
Newry
Tyrone
Williamsburg

*Bradford County*

Armenia Township
Athens Township
Le Raysville
Monroe
Monroe Township
New Albany
Overton Township
Pike Township
Sayre
South Creek Township
Springfield Township
Standing Stone Township
Sylvania
Terry Township
Troy Township
West Burlington Township

*Bucks County*

Hulmeville
Langhorne
Tinicum Township

*Butler County*

Cherry Township
Cherry Valley
Donegal Township
Eau Claire
Jackson Township
Muddy Creek Township
Oakland Township
Venango Township

*Cambria County*

Ashville
Chest Township
Croyle Township
Elder Township
Gallitzin Township
Summerhill Township
Susquehanna Township
Wilmore

*Carbon County*

Lower Towamensing Township
Summit Hill
Towamensing Township

*Centre County*

Curtin Township
Penn Township
State College
Unionville

*Chester County*

Modena
New Garden Township
Upper Oxford Township
Upper Uwchlan Township
West Nottingham Township
West Sadsbury Township
West Vincent Township

*Clarion County*

Ashland Township
Foxburg
Hawthorne
Knox
Licking Township
Perry Township
Piney Township
Shippenville
Toby Township

*Clearfield County*

Bell Township
Bigler Township
Bloom Township
Chest Township
Girard Township
Irvona
Jordan Township
Karthaus Township
Lumber City
Mahaffey
Newburg
Ramey
Wallaceton

*Clinton County*

Beech Creek Township
Colebrook Township
Gallagher Township
Greene Township
Leidy Township
West Keating Township

*Columbia County*

Beaver Township
Benton Township
Bloomsburg
Catawissa Township
Locust Township
Madison Township
Mount Pleasant Township

*Crawford County*

Athens Township
Centerville
Conneaut Township
Greenwood Township
North Shenango TWP
Pine Township
Rome Township
Sparta Township
Titusville Township

*Cumberland County*

Lower Frankford Township
West Fairview

*Dauphin County*

East Hanover Township
Wiconisco Township

*Delaware County*

Lower Chichester Township
Tinicum Township
Trainer
Upland

*Elk County*

Highland Township
Johnsonburg

*Erie County*

Concord Township
Le Boeuf Township
North East
Platea

*Fayette County*

Brownsville Township
Connellsville
Connellsville Township
Dunbar
Everson
Fairchance
Masontown
Menallen Township
Perry Township
Redstone Township
Saltlick Township
Smithfield
Springfield Township
Springhill Township
Stewart Township

*Forest County*

Hickory Township
Kingsley Township
Tionesta

*Franklin County*

Fannett Township

*Fulton County*

Ayr Township
Belfast Township
Taylor Township

*Greene County*

Gray Township
Jefferson
Monongahela Township
Morris Township
Perry Township
Springhill Township
Washington Township
Wayne Township
Whiteley Township

*Huntingdon County*

Brady Township
Broad Top City
Carbon Township
Cassville
Clay Township
Coalmont
Cromwell Township
Dudley
Franklin Township
Marklesburg
Mill Creek
Morris Township
Saltillo
Shade Gap
Shirley Township
Shirleyburg
Tell Township
Three Springs
Tod Township

*Indiana County*

Black Lick Township
Conemaugh Township
East Wheatfield Township
Ernest
Grant Township
Green Township
Indiana
Marion Center
Pine Township
Plumville
Washington Township

*Jefferson County*

Clover Township
Porter Township
Timblin
Washington Township

*Juniata County*

Beale Township
Susquehanna Township
Turbett Township

*Lackawanna County*

Archbald
Elmhurst Township
Jefferson Township
La Plume Township

*Lancaster County*

Brecknock Township
Colerain Township
East Cocalico Township
Eden Township
Leacock Township
Lititz
Sadsbury Township
Salisbury Township
Strasburg Township
Terre Hill
Warwick Township
West Earl Township

*Lawrence County*

Enon Valley
Hickory Township
New Beaver
New Wilmington
Plain Grove Township
Volant
Wilmington Township

*Lebanon County*

Millcreek Township
North Londonderry TWP

*Luzerne County*

Butler Township
Courtdale
Dorrance Township
Nescopeck Township
Pittston
Rice Township

*Lycoming County*

Anthony Township
Bastress Township
Brown Township
Casade Township
Limestone Township
McHenry Township
McNett Township
Muncy Township
Plunketts Creek Township
Porter Township

*McKean County*

Liberty Township

*Mercer County*

Deer Creek Township
Delaware Township
Mill Creek Township
Salem Township
Sheakleyville
Wolf Creek Township

*Mifflin County*

Bratton Township
Kistler
Lewistown
Menno Township
Oliver Township
Wayne Township

*Montgomery County*

Green Lane
Telford
Upper Salford Township

*Montour County*

Anthony Township
Liberty Township
Limestone Township

*Northampton County*

East Bangor

*Northumberland County*

Delaware Township
Jordan Township
Lewis Township
Lower Mahanoy Township
Mount Carmel Township
Snydertown
West Cameron Township

*Perry County*

Blain
Centre Township
Landisburg
Liverpool Township
Miller Township
Northeast Madison TWP
Southwest Madison Township
Toboyne Township

*Pike County*

Milford

*Potter County*

Bingham Township
Hector Township
Keating Township
Oswayo
Roulette Township
Sharon Township
Shinglehouse
Summit Township
Sylvania Township
Wharton Township

*Schuylkill County*

Butler Township
Eldred Township
Foster Township
Gilberton
Gordon
Hegins Township
Hubley Township
Middleport
New Ringgold
Port Clinton
Reilly Township
South Manheim Township
Tremont
Tremont Township
Union Township
Upper Mahantonga Township

*Snyder County*

Adams Township
Center Township
McClure
Spring Township
Washington Township

*Somerset County*

Addison
Addison Township
Allegheny Township
Benson
Boswell
Casselman
Larimer Township
Lincoln Township
Middlecreek Township
Northampton Township
Shanksville
Somerset Township
Stonycreek Township
Ursina
Wellersburg

*Sullivan County*

Forks Township
Forksville

*Susquehanna County*

Apolacon Township
Brooklyn Township
Ararat Township
Forest Lake Township
Jessup Township
Lathrop Township

*Tioga County*

Bloss Township
Duncan Township
Elk Township
Gaines Township
Hamilton Township
Rutland Township
Union Township

*Union County*

Lewis Township
Limestone Township
White Deer Township

*Venango County*

Allegheny Township
Barkeyville
Emlenton
Pinegrove Township

*Warren County*

Bear Lake
Clarendon
Columbus Township
Sugar Grove Township
Youngsville

*Washington County*

Blaine Township
Cokeburg
Cross Creek Township
Deemston
Donora
Elco
Ellsworth
Finleyville
North Bethlehem Township
Smith Township
Washington
West Bethlehem Township
West Pike Run Township

*Wayne County*

Dyberry Township
Hawley
Lebanon Township
Manchester Township
Oregon Township
Scott Township

*Westmoreland County*

Allegheny Township
Arona
Bell Township
Donegal
Latrobe
Upper Burrell Township
Washington Township

*Wyoming County*

Clinton Township
Mehoopany Township
Meshoppen
Nicholson

*York County*

Fawn Township
Hallam
Lower Chanceford Township
Seven Valleys
Warrington Township
West Manheim Township
Wrightsville
York Haven

**State of Rhode Island**

*Providence County*

Foster Town

**State of South Carolina**

*Abbeville County*

Abbeville
Lowndesville

*Aiken County*

Burnettown

*Anderson County*

Anderson
Belton
Honea Path
Starr

*Bamberg County*

Ehrhardt
Govan
Olar

*Barnwell County*

Elko
Hilda
Kline
Snelling

*Berkeley County*

Jamestown
Moncks Corner

*Calhoun County*

Cameron
St Matthews

*Charleston County*

Charleston
Hollywood
Ravenel

*Chester County*

Fort Lawn
Richburg

*Chesterfield County*

Cheraw
Patrick

*Clarendon County*

Manning
Turbeville

*Colleton County*

Lodge
Williams

*Darlington County*

Darlington
Hartsville
Society Hill

*Dillon County*

Dillon

*Dorchester County*

Harleyville
St George

*Fairfield County*

Winnsboro

*Florence County*

Florence
Lake City
Scranton

*Georgetown County*

Andrews
Georgetown

*Greenville County*

Greer

*Greenwood County*

Greenwood
Hodges
Troy

*Hampton County*

Brunson
Gifford
Varnville

*Jasper County*

Ridgeland

*Kershaw County*

Camden

*Laurens County*

Waterloo

*Lexington County*

Gilbert
Leesville
Swansea

*Marion County*

Marion
Mullins
Sellers

*Marlboro County*

Blenheim
Clio
Tatum

*Newberry County*

Chappells
Silverstreet

*Oconee County*

West Union

*Orangeburg County*

Eutawville
Rowesville
Vance

*Pickens County*

Easley
Norris

*Saluda County*

Monetta

*Spartanburg County*

Pacolet
Spartanburg

*Sumter County*

Mayesville
Pinewood
Sumter

*Union County*

Carlisle

*Williamsburg County*

Lane

*York County*

Clover
Fort Mill
McConnells

**State of South Dakota**

*Aurora County*

Aurora Township
Belford Township
Bristol Township
Center Township
Cooper Township
Crystal Lake Township
Eureka Township
Firesteel Township
Gales Township
Lake Township
Plankinton Township
Pleasant Lake Township
Truro Township
Washington Township
White Lake Township

*Beadle County*

Allen Township
Altoona Township
Banner Township
Bonilla Township
Broadland
Burr Oak Township
Carlyle Township
Cavour Township
Clifton Township
Dearborn Township
Fairfield Township
Grant Township
Hartland Township
Iowa Township
Lake Byron Township
Nance Township
Pearl Creek Township
Richland Township
Theresa Township
Valley Township
Vernon Township
Virgil
Wessington Township
Wessington
Whiteside Township
Wolsey Township

*Brookings County*

Alton Township
Elkton Township
Eureka Township
Lake Hendricks Township
Laketon Township
Oak Lake Township
Oakwood Township
Preston Township
Sterling Township
Volga Township
Winsor Township

*Brown County*

Bath Township
Brainard Township
Cambria Township
Carlisle Township
Columbia Township
East Hanson Township
East Rondell Township
Franklyn Township
Frederick Township
Garden Prairie Township
Garland Township
Greenfield Township
Groton Township
Hecla Township
Henry Township
Highland Township
Lansing Township
Liberty Township
Lincoln Township
North Detroit Township
Oneota Township
Ordway Township
Osceola Township
Palmyra Township
Portage Township
Richland Township
Savo Township
Shelby Township
Weat Hanson Township
Westport
Westport Township
West Rondell Township

*Brule County*

America Township
Chamberlain Township
Cleveland Township
Eagle Township
Highland Township
Kimball
Kimball Township
Lyon Township
Ola Township
Plainfield Township
Pleasant Grove Township
Plummer Township
Red Lake Township
Richland Township
Smith Township
Torrey Lake Township
Union Township
Waldo Township
West Point Township
Wilbur Township
Willow Lake Township

*Buffalo County*

Elvira Township

*Butte County*

Nisland
Union Township

*Campbell County*

Artas
Herreid
Mound City
Pollock

*Charles Mix County*

Carroll Township
Choteau Creek Township
Darlington Township
Forbes Township
Goose Lake Township
Hamilton Township
Highland Township
Howard Township
Jackson Township
Kennedy Township
La Roche Township
Moore Township
Plain Center Township
Ree Township
Rhoda Township

*Clark County*

Ash Township
Bradley
Clark
Cottonwood Township
Darlington Township
Elrod Township
Fordham Township
Garden City
Garfield Township
Hague Township
Lake Township
Lincoln Township
Merton Township
Mount Pleasant Township
Naples
Pleasant Township
Raymond Township
Richland Township
Rosedale Township
Spring Valley Township
Thorp Township
Warren Township
Washington Township

*Clay County*

Glenwood Township
Spirit Mound Township
Star Township
Vermillion Township

*Codington County*

Dexter Township
Eden Township
Fuller Township
Graceland Township
Kampeska Township
Kranzburg Township
Leola Township
Phipps Township
South Shore
Wallace

*Corson County*

Custer Township
McLaughlin Township
Mahto Township
Mission Township
Morristown
Rolling Green Township
Sherman Township
Wakpala Township

*Custer County*

Hermosa
Pringle

*Davison County*

Badger Township
Baker Township
Beulah Township
Blendon Township
Lisbon Township
Mitchell Township
Tobin Township
Union Township

*Day County*

Butler
Butler Township
Grenville
Grenville Township
Highland Township
Homer Township
Independence Township
Kidder Township
Liberty Township
Lynn Township
Morton Township
Nutley Township
Oak Gulch Township
Racine Township
Raritan Township
Scotland Township
Valley Township
Webster Township
Wheatland Township
York Township

*Deuel County*

Altamont
Altamont Township
Blom Township
Brandt
Gary
Glenwood Township
Goodwin
Goodwin Township
Herrick Township
Hidewood Township
Lowe Township
Norden Township
Portland Township
Rome Township
Toronto

*Douglas County*

East Choteau Township
Garfield Township
Grandview Township
Holland Township
Indpendence Township
Iowa Township
Lincoln Township
Valley Township
Washington Township

*Edmunds County*

Belle Township
Bowdle Township
Bryant Township
Clear Lake Township
Cleveland Township
Cloyd Valley Township
Cortlandt Township
Cottonwood Lake Township
Glen Township
Glover Township
Hillside Township
Hosmer Township
Hudson Township
Huntley Township
Ipswich Township
Kent Township
Liberty Township
Madison Township
Modena Township
Montpelier Township
Odessa Township
Pembrook Township
Rosette Township
Union Township
Vermont Township

*Fall River County*

Antelope Township
Harmony Township

*Faulk County*

Arcade Township
Centerville Township
Clark Township
Devoe Township
Ellisville Township
Enterprise Township
Fairview Township
Lafoon Township
Myron Township
Orient
Orient Township
Pioneer Township
Seneca
Union Township
Wesley Township

*Grant County*

Adams Township
Blooming Valley Township
Grant Center Township
Kilborn Township
Lura Township
Madison Township
Marvin
Mazeppa Township
Osceola Township
Stockholm Township
Troy Township
Twin Brooks Township

*Gregory County*

Bonesteel
Burke Township
Carlock Township
Dallas
Dickens Township
Dixon Township
Edens Township
Ellston Township
Fairfax
Herrick
Jones Township
Landing Creek Township
Lone Star Township
St Charles Township
Schriever Township
Spring Valley Township
Star Valley Township
Whetstone Township

*Hamlin County*

Castlewood Township
Cleveland Township
Estelline Township
Florence Township
Garfield Township
Hayti Township
Norden Township

*Hand County*

Alden Township
Alpha Township
Bates Township
Burdette Township
Campbell Township
Carlton Township
Cedar Township
Como Township
Florence Township
Gilbert Township
Glendale Township
Grand Township
Greenleaf Township
Hiland Township
Holden Township
Howell Township
Hulbert Township
Linn Township
Logan Township
Ohio Township
Ontario Township
Park Township
Pearl Township
Plato Township
Pleasant Valley Township
Riverside Township
Rockdale Township
Rose Hill Township
St Lawrence Township
Spring Hill Township
Wheaton Township
York Township

*Hanson County*

Beulah Township
Fairview Township
Hanson Township
Plano Township
Pleasant Township
Rosedale Township
Taylor Township
Worthen Township

*Harding County*

Camp Crook

*Hughes County*

Logan Township
Raber Township

*Hutchinson County*

Clayton Township
Fair Township
Foster Township
Grandview Township
Kaylor Township
Pleasant Township
Sharon Township
Starr Township
Susquehanna Township
Tripp
Wolf Creek Township

*Jackson County*

Interior

*Jerauld County*

Alpena Township
Anina Township
Blaine Township
Cherry Township
Crow Township
Crow Lake Township
Dale Township
Franklin Township
Harmony Township
Lane
Logan Township
Viola Township

*Jones County*

Draper
Dunkel Township
Kolls Township
Morgan Township
Williams Creek Township

*Kingsbury County*

Manchester Township
Mathews Township
Spirit Lake Township
Whitewood Township

*Lake County*

Badus Township
Concord Township
Farmington Township
Franklin Township
Nunda
Nunda Township
Ramona
Summit Township
Wentworth Township
Winfred

*Lawrence County*

St Onge Township

*Lincoln County*

Eden Township
Fairview Township
Grant Township
Highland Township
La Valley Township
Lincoln Township
Norway Township

*Lyman County*

Bailey Township
Butte Township
Earling Township
Iona Township
Lund Township
Morningside Township
Oacoma Township
Presho Township
Reliance
Reliance Township
Rose Township

*McCook County*

Benton Township
Bridgewater Township
Canistota Township
Emery Township
Grant Township
Ramsey Township
Richland Township
Salem Township
Spring Valley Township

*McPherson County*

Hoffman Township
Weber Township

*Marshall County*

Buffalo Township
Dumarce Township
Eden
Fort Township
Hamilton Township
Lake City
McKinley Township
Newark Township
Nordland Township
Pleasant Valley Township
Sisseton Township
Stena Township
Veblen Township
Waverly Township
White Township
Wismer Township

*Meade County*

Lakeside Township
Union Township
Upper Red Owl Township

*Mellette County*

Bad Nation Township
Blackpipe Township
Corn Creek Township
Fairview Township
Mosher Township
Riverside Township
Rosebud Township
Running Bird Township
Surprise Valley Township
White River

*Miner County*

Beaver Township
Belleview Township
Canova Township
Carthage Township
Green Valley Township
Howard Township
Rock Creek Township
Roswell Township

*Minnehaha County*

Burk Township
Edison Township
Garretson
Logan Township
Palisade Township
Red Rock Township
Sherman
Split Rock Township
Sverdrup Township
Valley Springs Township
Wall Lake Township
Wellington Township

*Moody County*

Colman Township
Grovena Township
Ward Township

*Pennington County*

Ash Township
Cedar Butte Township
Huron Township
Lake Flat Township
Owanka Township
Peno Township
Rainy Creek Township
Scenic Township
Wasta
Wasta Township

*Perkins County*

Antelope Township
Bison
Bison Township
Burdick Township
Cash Township
Castle Butte Township
Chance Township
Clark Township
DeWitt Township
Flat Creek Township
Grand River Township
Horse Creek Township
Independence Township
Liberty Township
Lodgepole Township
Lone Tree Township
Meadow Township
Rainbow Township
Scotch Cap Township
Strool Township
Viking Township
Whitney Township
Wilson Township

*Roberts County*

Agency Township
Alto Township
Bossko Township
Bryant Township
Dry Wood Lake Township
Enterprise Township
Lawrence Township
Lee Township
Lien Township
Minnesota Township
Norway Township
One Road Township
Ortley
Ortley Township
Sisseton
Springdale Township
Summit Township
Wilmot

*Sanborn County*

Afton Township
Artesian Township
Benedict Township
Butler Township
Floyd Township
Letcher Township
Oneida Township
Silver Creek Township
Twin Lake Township
Union Township
Warren Township

*Spink County*

Antelope Township
Belle Plaine Township
Belmont Township
Benton Township
Beotia Township
Buffalo Township
Capitola Township
Clifton Township
Conde Township
Exline Township
Garfield Township
Great Bend Township
Harmony Township
La Prairie Township
Lincoln Township
Lodi Township
Mellette Township
Prairie Center Township
Richfield Township
Sumner Township
Tetonka Township
Three Rivers Township
Tulare Township
Turton Township
Union Township

*Tripp County*

Black Township
Carter Township
Condon Township
Curlew Township
Dog Ear Township
Elliston Township
Huggins Township
Irwin Township
King Township
Lake Township
Lone Tree Township
McNeely Township
New Witten
Plainview Township
Rames Township
Rosedale Township
Roseland Township
Star Prairie Township
Stewart Township
Valley Township
Weaver Township
Willow Creek Township
Wilson Township
Witten Township

*Turner County*

Dolton Township
Germantown Township
Home Township
Marion Township
Middleton Township
Monroe Township
Salem Township
Spring Valley Township
Turner Township
Viborg

*Union County*

Alcester
Big Springs Township
Virginia Township

*Walworth County*

Glenham

*Yankton County*

Gayville Township
Jamesville Township
Mayfield Township
Mission Hill
Utica

*Ziebach County*

Dupree

**State of Tennessee**

*Anderson County*

Lake City

*Campbell County*

Caryville
Jellico

*Cannon County*

Woodbury

*Carroll County*

Atwood
Huntingdon

*Cheatham County*

Pegram

*Chester County*

Enville

*Claiborne County*

Tazewell

*Crockett County*

Alamo
Gadsden

*Cumberland County*

Crab Orchard

*Davidson County*

Nashville-Davidson

*Fayette County*

La Grange
Oakland
Somerville
Williston

*Fentress County*

Allardt

*Franklin County*

Huntland
Winchester

*Gibson County*

Gibson
Milan
Yorkville

*Giles County*

Elkton
Minor Hill
Pulaski

*Greene County*

Baileyton
Mosheim

*Grundy County*

Altamont
Gruetli-Laager

*Hardeman County*

Hickory Valley
Toone

*Hawkins County*

Surgoinsville

*Haywood County*

Stanton

*Henderson County*

Lexington
Scotts Hill

*Henry County*

Henry

*Hickman County*

Centerville

*Houston County*

Erin

*Jackson County*

Gainesboro

*Johnson County*

Mountain City

*Lake County*

Ridgely
Tiptonville

*Lauderdale County*

Henning

*Loudon County*
Greenback Loudon

*McMinn County*
Englewood Niota

*McNairy County*
Finger Ramer

*Macon County*
Red Boiling Springs

*Madison County*
Denmark

*Marion County*
Powells Crossroads

*Maury County*
Columbia Spring Hill
Mount Pleasant

*Monroe County*
Vonroe

*Morgan County*
Oakdale

*Obion County*
Rives

*Perry County*
Lobelville

*Polk County*
Benton Ducktown

*Putnam County*
Monterey

*Robertson County*
Cedar Hill Orlinda
Cross Plains Springfield

*Scott County*
Oneida

*Shelby County*
Collierville Memphis

*Tipton County*
Burlison Gilt Edge
Garland Mason

*Warren County*
Centertown

*Wayne County*
Clifton

*Weakley County*
Sharon

*White County*
Sparta

*Williamson County*
Fairview

**State of Texas**

*Andrews County*
Andrews

*Angelina County*
Diboll

*Austin County*
Bellville Sealy

*Bastrop County*
Elgin

*Bexar County*
Elmendorf Grey Forest

*Blanco County*
Johnson City

*Bosque County*
Cransfills Gap

*Brazoria County*
Brazoria Clute City

*Burnet County*
Bertram

*Caldwell County*
Luling

*Calhoun County*
Seadrift

*Callahan County*
Cross Plains

*Cameron County*
Brownsville La Feria
Combes Port Isabel
Indian Lake Rio Hondo

*Camp County*
Rock Mound

*Cass County*
Bloomburg Douglasville

*Castro County*
Nazareth

*Cherokee County*
Alto Reklaw
Jacksonville Wells
New Summerfield

*Clay County*
Byers Dean

*Coleman County*
Coleman Novice

*Collin County*
Anna Lowery Crossing
Farmersville Westminister
Josephine

*Colorado County*
Columbus Weimar

*Comanche County*
Gustine

*Cooke County*
Valley View

*Coryell County*
Evant Oglesby

*Dallas County*
Sunnyvale Wilmer

*Denton County*
Aubrey Northlake
Hickory Creek

*De Witt County*
Cuero Nordheim

*Dickens County*
Spur

*Donley County*
Howardwick

*Eastland County*
Carbon

*Ellis County*
Bardwell Maypearl
Ferris Midlothian
Garrett

*El Paso County*
Anthony El Paso
Clint

*Fannin County*
Ector Trenton

*Fayette County*
Fayetteville Round Top

*Floyd County*
Lockney

*Fort Bend County*
Arcola Richmond
Fulshear Thompsons

*Freestone County*
Kirvin Streetman

*Goliad County*
Goliad

*Gonzales County*
Nixon Waelder

*Gray County*
McLean

*Grayson County*
Collinsville Tioga

*Gregg County*
Easton

*Guadalupe County*
Marion Seguin
New Berlin

*Hale County*
Edmonson Petersburg

*Hall County*
Lakeview

*Hardeman County*
Chillicothe

*Harris County*
Morgan's Point

*Harrison County*
Marshall Scottsville
Nesbitt

*Haskell County*
O'Brien Rule
Rochester Weinert

*Hays County*
Buda Kyle

*Henderson County*

Chandler
Coffee City
Malakoff
Moore Station
Murchison
Poynor

*Hidalgo County*

Alton
Donna
Edinburg
Elsa
Hidalgo
Pharr
Progreso Lakes
Weslaco

*Hill County*

Abbott
2Aquilla
Bynum
Covington
Malone
Mertens
Mount Calm

*Hockley County*

Ropesville

*Hopkins County*

Como
Tira

*Houston County*

Grapeland
Kennard

*Hudspeth County*

Dell City

*Hunt County*

Campbell
Celeste
Lone Oak
Neylandville
Wolfe City

*Jack County*

Bryson

*Jefferson County*

Nome

*Jim Wells County*

Alice
Orange Grove

*Johnson County*

Alvarado
Rio Vista
Venus

*Karnes County*

Falls City
Runge

*Kaufman County*

Kaufman
Mabank
Oak Ridge

*Kinney County*

Spofford

*Lamar County*

Roxton
Toco

*Lamb County*

Springlake

*Lavaca County*

Moulton
Shiner

*Lee County*

Giddings
Lexington

*Leon County*

Jewett
Leona

*Liberty County*

Kenefick

*Limestone County*

Tehuacana

*McLennan County*

Crawford
Hallsburg
Lorena
McGregor
Mart

*Mason County*

Mason

**Maverick County**

Eagle Pass

*Milam County*

Buckholts

*Mills County*

Mullin

*Mitchell County*

Westbrook

*Montgomery County*

Cut and Shoot

*Moore County*

Sunray

*Nacogdoches County*

Cushing
Garrison

*Navarro County*

Blooming Grove
Corsicana
Goodlow
Rice

*Nueces County*

Agua Dulce
Corpus Christi
Robstown

*Orange County*

Rose City

*Parker County*

Reno

*Parmer County*

Farwell

*Pecos County*

Iraan

*Polk County*

Seven Oaks

*Rains County*

Emory

*Real County*

Camp Wood

*Red River County*

Annona
Avery
Clarksville

*Refugio County*

Austwell
Woodsboro

*Robertson County*

Bremond
Calvert
Hearne

*Rockwall County*

Fate

*Runnels County*

Ballinger

*Rusk County*

New London

*Sabine County*

Pineland

*San Jacinto County*

Oakhurst

*San Patricio County*

Gregory
Lake City
Mathis
Sinton
Taft

*Schleicher County*

Eldorado

*Shelby County*

Timpson

*Smith County*

Whitehouse

*Starr County*

La Grulla
Roma

*Stonewall County*

Aspermont

*Swisher County*

Kress

*Tarrant County*

Blue Mound
Briar
Haslet

*Terry County*

Wellman

*Travis County*

Pflugerville

*Van Zandt County*

Fruit Vale

*Victoria County*

Victoria

*Walker County*

Riverside

*Waller County*

Hempstead
Pattison

*Ward County*

Barstow

*Washington County*

Burton

*Webb County*

Laredo

*Wharton County*

El Campo

*Willacy County*

Lyford
Raymondville
San Perlita

*Williamson County*

Taylor
Thrall

*Wilson County*

Floresville
Poth
Stockdale

*Winkler County*

Wink

*Wise County*

Aurora
Boyd
Chico
Lake Bridgeport
Newark
Rhome

**State of Utah**

*Box Elder County*

Deweyville
Portage
Snowville
Willard
Yost

*Cache County*

Lewiston
Millville
Newton
Providence
Richmond

*Davis County*

Farmington
West Point

*Duchesne County*

Myton

*Emery County*

Clawson
Cleveland
Elmo

*Garfield County*

Antimony
Hatch

*Iron County*

Brian Head
Kanarraville

*Juab County*

Mona

*Kane County*

Alton

*Millard County*

Hinckley
Lynndyl
Meadow
Oak City
Scipio

*Piute County*

Kingston

*Salt Lake County*

Alta
Bluffdale
South Jordan

*Sanpete County*

Fayette
Mount Pleasant
Spring City
Sterling
Wales

*Sevier County*

Aurora

*Tooele County*

Ophir
Vernon

*Uintah County*

Ballard

*Utah County*

Highland
Provo

*Wasatch County*

Charleston
Wallsburg

*Washington County*

Hildale
Toquerville
Virgin

*Weber County*

Harrisville

**State of Vermont**

*Addison County*

Bridport Town
Bristol
Lincoln Town
Orwell Town
Panton Town
Waltham Town
Weybridge Town
Whiting Town

*Bennington County*

Landgrove Town
Peru Town
Sandgate Town

*Caledonia County*

Barnet Town
Kirby Town
Newark Town
Sheffield Town
Stannard Town
Waterford Town
Wheelock Town

*Chittenden County*

Burlington
Huntington Town
Milton
Richmond Town
Williston Town
Winooski

*Essex County*

Canaan Town
East Haven Town
Granby Town
Lemington Town
Maidstone Town
Norton Town
Victory Town

*Franklin County*

Bakersfield Town
Enosburg Falls
Fairfax Town
Fairfield Town
Sheldon Town
Swanton
Swanton Town

*Orange County*

Thetford Town
Tunbridge Town

*Orleans County*

Albany
Albany Town
Barton
Barton Town
Craftsbury Town
Derby Center
Derby Town
Holland Town
Irasburg Town
Lowell Town
Morgan Town
Westmore Town

*Rutland County*

Brandon Town
Fair Haven Town
Ira Town
Middletown Springs Town
Mount Holly Town
Mount Tabor Town
Sudbury Town

*Washington County*

Duxbury Town
Roxbury Town
Worcester

*Windham County*

Brattleboro Town
Grafton Town
Marlboro Town
Westminster

*Windsor County*

Pomfret Town

**State of Virginia**

*Accomack County*

Hallwood
Onancock
Saxis
Tangier

*Albemarle County*

Scottsville

*Alleghany County*

Iron Gate

*Charlotte County*

Charlotte Court House

*Craig County*

New Castle

*Fauquier County*

The Plains

*Fluvanna County*

Columbia

*Giles County*

Glen Lyn

*Grayson County*

Troutdale

*Greene County*

Standardsville

*Halifax County*

Clover
Virgilina

*Lee County*

Pennington Gap
St Charles

*Loudoun County*

Lovettsville

*Lunenburg County*

Kenbridge

*Mecklenburg County*

Chase City
La Crosse
South Hill

*Northampton County*

Nassawadox

*Nottoway County*

Burkeville

*Pittsylvania County*

Chatham

*Rockingham County*

Mount Crawford

*Scott County*

Clinchport

*Shenandoah County*

Edinburg
Mount Jackson

*Southampton County*

Branchville
Capron
Newsoms

*Sussex County*

Waverly

*Tazewell County*

Cedar Bluff

*Washington County*

Glade Spring

*Wise County*

Appalachia
Pound

*Wythe County*

Wytheville

*Independent Cities*

Covington
Franklin
Petersburg
Richmond
Winchester

**State of Washington**

*Adams County*

Hatton

*Asotin County*

Clarkston

*Douglas County*

Rock Island

*Grays Harbor County*

Montesano

*King County*

Duvall
Seattle
Skykomish

*Kittitas County*

South Cle Elum

*Klickitat County*

Bingen

*Lincoln County*

Harrington

*Okanogan County*

Tonasket
Twisp

*Pend Oreille County*

Cusick

*Pierce County*

Carbonado
Roy
South Prairie

*Skagit County*

Sedro Woolley

*Snohomish County*

Granite Falls

*Thurston County*

Yelm

*Walla Walla County*

Prescott

*Whitman County*

Colton
Malden
Pullman
Tekoa

*Yakima County*

Grandview
Mabton

**State of West Virginia**

*Berkeley County*

Hedgesville

*Boone County*

Danville

*Braxton County*

Burnsville
Flatwoods
Gassaway

*Calhoun County*

Grantsville

*Clay County*

Clay

*Fayette County*

Ansted
Meadow Bridge
Thurmond

*Gilmer County*

Glenville
Layopolis

*Grant County*

Bayard

*Greenbrier County*

Falling Springs

*Hampshire County*

Capon Bridge
Romney

*Hardy County*

Wardensville

*Harrison County*

Lost Creek

*Jackson County*

Ripley

*Jefferson County*

Charles town
Ransen
Shepherdstown

*Kanawha County*

Cedar Grove
Clendenin

*Lewis County*

Weston

*Lincoln County*

Hamlin

*McDowell County*

Bradshaw
Iaeger

*Marion County*

Fairview

*Mason County*

Henderson

*Mercer County*

Bramwell
Oakvale

*Mineral County*

Elk Garden

*Mingo County*

Delbarton
Matewan
Williamson

*Monongalia County*

Blacksville

*Monroe County*

Peterstown

*Ohio County*

West Liberty

*Pocahontas County*

Cass
Durbin

*Preston County*

Albright
Reedsville
Tunnelton

*Randolph County*

Beverly
Womelsdorff

*Ritchie County*

Cairo
Pullman

*Roane County*

Reedy

*Taylor County*

Flemington
Grafton

*Tucker County*

Davis
Parsons

*Upshur County*

Buckhannon

*Webster County*

Camden-on-Gauley
Cowen

*Wirt County*

Elizabeth

**State of Wisconsin**

*Adams County*

Colburn Town
Friendship
Leola Town
Lincoln Town
Richfield Town
Springville Town

*Ashland County*

Ashland Town
Sanborn Town
Shanagolden Town
White River Town

*Barron County*

Bear Lake Town
Chetek Town
Crystal Lake Town
Dallas
Doyle Town
Maple Plain Town
Sioux Creek Town
Stanfold Town
Sumner Town
Turtle Lake Town
Vance Creek Town

*Bayfield County*

Delta Town
Eileen Town
Kelly Town
Lincoln Town
Mason
Oulu Town
Tripp Town

*Brown County*

Green Bay Town
Morrison Town

*Buffalo County*

Buffalo Town
Canton Town
Cross Town
Lincoln Town
Maxville Town
Mondovi Town
Naples Town
Nelson

*Burnett County*

Blaine Town
Daniels Town
La Follette Town
Scott Town
Siren Town
Webster

*Calumet County*

Brothertown Town
Charlestown Town

*Chippewa County*

Brich Creek Town
Cleveland Town
Cornell
Edson Town
Howard Town
Sigel Town
Tilden Town
Woodmohr Town

*Clark County*

Butler Town
Colby Town
Fremont Town
Granton
Green Grove Town
Hixon Town
Hoard Town
Mayville Town
Mentor Town
Neillsville
Reseburg Town
Seif Town
Unity Town
Weston Town

*Columbia County*

Caledonia Town
Courtland Town
Fountain Prairie Town
Lewiston Town
Scott Town
Springvale Town

*Crawford County*

Bell Center
Bridgeport Town
Clayton Town
Eastman Town
Eastman
Freeman Town
Gays Mills
Haney Town
Utica Town

*Dane County*

Primrose Town

*Dodge County*

Beaver Dam
Chester Town
Hubbard Town
Leroy Town
Shields Town
Trenton Town

*Douglas County*

Brule Town
Dairyland Town
Hawthorne Town
Highland Town
Solon Springs Town

*Dunn County*

Colfax Town
Grant Town
Knapp
Peru Town
Sheridan Town
Tiffany Town

*Eau Claire County*

Clear Creek Town
Otter Creek Town
Wilson Town

*Florence County*

Fence Town

*Fond Du Lac County*

Ashford Town
Calumet Town
Metomen Town
Oakfield Town

*Forest County*

Caswell Town
Crandon Town
Ross Town

*Grant County*

Beetown Town
Blue River
Boscobel Town
Harrison Town
Hazel Green Town
Liberty Town
Little Grant Town
Millville Town
Mount Hope Town
Muscoda Town
North Lancaster Town
Paris Town
Patch Grove Town
Platteville
Potosi Town
Smelser Town
Waterloo Town
Watterstown Town
Woodman Town
Wyalusing Town

*Green County*

Exeter Town
Jordan Town

*Green Lake County*

Berlin Town
Kingston Town
Kingston
Mackford Town
Manchester Town
Marquette Town
Marquette
Princeton

*Iowa County*

Avoca
Clyde Town
Eden Town
Moscow Town
Rewey
Ridgeway Town

*Iron County*

Gurney Town
Sherman Town

*Jackson County*

Adams Town
Albion Town
Alma Town
Bear Bluff Town
Cleveland Town
Franklin Town
Garfield Town
Irving Town
Knapp Town
Komensky Town
Manchester Town
Melrose Town
Millston Town
Springfield Town

*Jefferson County*

Aztalan Town
Ixonia Town
Milford Town
Sumner Town
Waterloo Town

*Juneau County*

Clearfield Town
Cutler Town
Fountain Town
Germantown Town
Hustler
Kildare Town
Kingston Town
Marion Town
Necedah
Summit Town

*La Crosse County*

Barre Town
Burns Town
Rockland

*Lafayette County*

Belmont Town
Benton
Blanchardville
Darlington Town
Seymour Town
Shullsburg
South Wayne
White Oak Springs Town
Willow Springs Town

*Langlade County*

Ackley Town
Ainsworth Town
Antigo Town
Evergreen Town
Langlade Town
Parrish Town
Peck Town
Polar Town
Rolling Town
Summit Town
Upham Town
Vilas Town
White Lake
Wolf River Town

*Lincoln County*

Harrison Town
Scott Town
Skanawan Town
Somo Town

*Manitowoc County*

Centerville Town
Eaton Town
Franklin Town
Two Creeks Town

*Marathon County*

Bern Town
Brighton Town
Cassel Town
Day Town
Eau Pleine Town
Elderon
Emmet Town
Frankfort Town
Green Valley Town
Guenther Town
Halsey Town
Hamburg Town
Hatley
Hull Town
McMillan Town
Norrie Town
Reid Town

*Marinette County*

Niagara Town
Peshtigo
Porterfield Town
Pound Town
Pound

*Marquette County*

Buffalo Town
Crystal Lake Town
Endeavor
Mecan Town
Montello
Moundville Township
Neshkoro Town
Neshkoro
Shields Town
Springfield Town

*Menominee County*

Menominee Town

*Milwaukee County*

Milwaukee

*Monroe County*

Angelo Town
Clifton Town
Grant Town
Greenfield Town
New Lyme Town
Oakdale Town
Ridgeville Town
Scott Town
Sheldon Town
Tomah Town
Warrens
Wellington Town
Wells Town
Wilton Town

*Oconto County*

Armstrong Town
Breed Town
How Town
Lena Town
Little River Town
Oconto Falls Town
Spruce Town
Stiles Town

*Oneida County*

Monico Town
Nokomis Town

*Outagamie County*

Bear Creek
Hortonville
Maine Town
Maple Creek Town
Nichols

*Pepin County*

Waubeck Town

*Pierce County*

Clifton Town
Elmwood
El Paso Town
Oak Grove Town
River Falls
Rock Elm Town
Salem Town
Union Town

*Polk County*

Alden Town
Balsam Lake Town
Laketown Town
Luck
Milltown
St Croix Falls Town
Sterling Town

*Portage County*

Almond Town
Nelsonville
New Hope Town

*Price County*

Catawba Town
Catawba
Emery Town
Georgetown Town
Hackett Town
Kennan Town
Ogema Town
Prentice Town
Prentice

*Richland County*

Akan Town
Cazenovia
Dayton Town
Orion Town
Richwood Town
Rockbridge Town
Willow Town

*Rock County*

Bradford Town
Harmony Town
Plymouth Town
Spring Valley Town

*Rusk County*

Atlanta Town
Conrath
Hawkins Town
Hawkins
Hubbard Town
Ladysmith
Lawrence Town
Richland Town
Rusk Town
Sheldon
Tony
True Town
Weyerhaeuser
Willard Town
Wilson Town

*St Croix County*

Baldwin Town
Cady Town
Cylon Town
Eau Galle Town
Emerald Town
Erin Prairie Town
Glenwood Town
Pleasant Valley Town
Rush River Town
Springfield Town

*Sauk County*

Fairfield Town
Honey Creek Town
Reedsburg Town
Spring Green Town
Troy Town
Washington Town
Westfield Town

*Sawyer County*

Bass Lake Town
Couderay Town
Hunter Town
Lenroot Town
Meadow Brook Town
Meteor Town
Ojibwa Town

*Shawano County*

Almon Town
Aniwa Town
Bartelme Town
Bowler
Fairbanks Town
Germania Town
Grant Town
Maple Grove Town
Mattoon
Seneca Town

*Sheboygan County*

Herman Town

*Taylor County*

Browning Town
Chelsea Town
Ford Town
Hammel Town
Little Black Town
Lublin
McKinley Town
Maplehurst Town
Pershing Town
Taft Town

*Trempealeau County*

Albion Town
Arcadia Town
Caledonia Town
Strum
Sumner Town
Trempealeau Town
Unity Town

*Vernon County*

Christiana Town
Clinton Town
De Soto
Greenwood Town
Hamburg Town
Harmony Town
Hillsboro Town
Kickapoo Town
La Farge
Liberty Town
Ontario
Readstown
Stark Town
Stoddard
Union Town
Viroqua Town
Webster Town
Whitestown Town

*Walworth County*

Darien Town
Richmond Town
Sharon Town
Whitewater

*Washburn County*

Beaver Brook Town
Birchwood Town
Frog Creek Town
Minong Town
Shell Lake
Stone Lake Town
Trego Town

*Waupaca County*

Dupont Town
Larrabee Town
Little Wolf Town
Royalton Town
Wyoming Town

*Waushara County*

Aurora Town
Bloomfield Town
Coloma Town
Hancock Town
Leon Town
Plainfield
Richford Town
Warren Town

*Winnebago County*

Nekimi Town
Rushford Town

*Wood County*

Arpin Town
Auburndale Town
Hiles Town
Lincoln Town
Marshfield Town
Pittsville
Port Edwards Township
Remington Town
Richfield Town
Rudolph Town

**State of Wyoming**

*Big Horn County*

Frannie

*Fremont County*

Hudson

*Goshen County*

La Grange
Yoder

*Commonwealth of Puerto Rico*

Aibonito Municipio
Arroyo Municipio
Catano Municipio
Coama Municipio
Guanica Municipio
Guayama Municipio
Las Marias Municipio
Las Piedras Municipio
Maricao Municipio
Quebradillas Municipio
San German Municipio
Santa Isabel Municipio
Toa Alta Municipio

List of Designated Eligible Areas That are Counties

*State of Alabama*

Dallas County
Greene County
Lamar County
Perry County

*State of Alaska*

Aleutian Islands Census

*State of Arizona*

Santa Cruz County

*State of Arkansas*

Arkansas County
Crittenden County
Cross County
Fulton County
Jefferson County
Johnson County
Lee County
Mississippi County
Pike County
St Francis County
Stone County
Yell County

*State of California*

Colusa County
Kings County
Los Angeles County
San Benito County
San Francisco County

*State of Colorado*

Custer County

*State of Florida*

Dade County

*State of Georgia*

Butts County
Candler County
Chattooga County
Cherokee County
Clay County
Colquitt County
Coweta County
Crisp County
Dawson County
Dooly County
Dougherty County
Echols County
Franklin County
Gilmer County
Gordon County
Habersham County
Jeff Davis County
Madison County
Marion County
Miller County
Mitchell County
Monroe County
Morgan County
Murray County
Oglethorpe County
Schley County
Spalding County
Sumter County
Tift County
Troup County
Turner County
Upson County
Walton County
White County
Wilkes County

*State of Idaho*

Adams County

*State of Illinois*

Cook County
Johnson County

*State of Indiana*

Jennings County
Knox County

*State of Iowa*

Delaware County
Fremont County
Lucas County

*State of Kansas*

Clay County

*State of Kentucky*

Bath County
Clark County
Estill County
Fleming County
Leslie County
Lyon County
McCreary County
McLean County
Montgomery County
Muhlenberg County
Nelson County
Nicholas County
Ohio County
Owsley County
Powell County
Rockcastle County
Spencer County
Woodford County

*State of Louisiana*

Acadia Parish
Avoyelles Parish
Iberia Parish
LaFourche Parish
Orleans Parish
St James Parish
St Landry Parish
Terrebonne Parish
West Feliciana Parish

*State of Maine*

Knox County

*State of Maryland*

Kent County

*State of Minnesota*

Beltrami County
Cottonwood County
Jackson County
Morrison County

*State of Mississippi*

Adams County
Attala County
Lauderdale County
Leflore County
Lincoln County
Lowndes County
Noxubee County
Pike County
Quitman County
Sunflower County
Tallahatchie County
Tate County
Washington County
Yazoo County

*State of Missouri*

Clark County
Reynolds County
Washington County

*State of Montana*

Glacier County
Golden Valley County

*State of Nebraska*

Arthur County
Banner County
Stanton County
Wheeler County

*State of Nevada*

Eureka County
Pershing County

*State of New Jersey*

Essex County
Hudson County
Passaic County

*State of New Mexico*

McKinley County

*State of New York*

Tompkins County
Yates County

*State of North Carolina*

Camden County
Franklin County
Gates County
Granville County

*State of Ohio*

Athens County
Clinton County
Holmes County
Jackson County
Meigs County
Vinton County

*State of South Carolina*

Abbeville County
Calhoun County
Chesterfield County
Georgetown County
Greenwood County
Marion County

*State of South Dakota*

Buffalo County
Campbell County

*State of Tennessee*

Cannon County
Chester County
Hancock County
Hickman County
Lawrence County
Lewis County
Maury County
Moore County
Robertson County
Scott County
Shelby County
White County

*State of Texas*

Anderson County
Andrews County
Crosby County
De Witt County
Dickens County
Ellis County
El Paso County
Gaines County
Goliad County
Hopkins County
Hudspeth County
Jim Hogg County
Jim Wells County
Kenedy County
King County
Lavaca County
Lee County
Lynn County
Martin County
Maverick County
Morris County
Navarro County
Parmer County
San Patricio County
Schleicher County
Sterling County
Stonewall County
Washington County
Webb County
Willacy County
Wilson County
Wise County

*State of Utah*

Morgan County
Utah County

*State of Vermont*

Chittenden County

*State of Virginia*

Accomack County
Bland County
Buckingham County
Carroll County
Charles City County
Dinwiddie County
Fluvanna County
Grayson County
Madison County
Richmond County
Southampton County

*State of West Virginia*

Boone County
Doddridge County
Gilmer County
Harrison County
Jefferson County
Lewis County
Mingo County
Monroe County
Pendleton County
Upshur County
Wetzel County

*State of Wisconsin*

Langlade County
Menominee County
Rusk County

**Appendix A—HUD Field Offices**

*REGION I*

Boston Regional Office

John F. Kennedy Federal Building, Room 800, Boston, Massachusetts 02203–0801, (617) 223–4066

Hartford Office

One Hartford Square West, Suite 204, 2943 Hartford, Connecticut 06106–2943, (203) 722–3638

Manchester Office

Norris Cotton Federal Building, 275 Chesnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681

Providence Office

John O. Pastore Federal Building and U.S. Post Office-Kennedy Plaza, Room 330, Providence, Rhode Island 02903, (401) 528–5351

*REGION II*

New York Regional Office

26 Federal Plaza, Rm. 32130, New York, New York 10278–0068, (212) 264–2401

Buffalo Office

Statler Building, Mezzanine, 107 Delaware Avenue, Buffalo, New York 14202–2986, (716) 846–5755

Caribbean Office

Federico Degetau Federal Building, U.S. Courthouse, Room 428, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918–2276, (809 753–4201

Newark Office

Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662

*REGION III*

Philadelphia Regional Office

Liberty Square Building, 105 S 7th St., Philadelphia, Pennsylvania 19106–3392, (215) 597–2560

Baltimore Office

The Equitable Building, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202–1865, (301) 962–2121

Charleston Office

405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000

Pittsburgh Office

412-Old Post Office Courthouse, Building, 7th Ave. & Grant St., Pittsburgh, Pennsylvania 15219–1906, (412) 644–6428

Richmond Office

701 East Franklin Street, Richmond, Virginia 23219–2591, (804) 771–2721

Washington, D.C. Office

HUD Building, 451 Seventh Street, Room 3156, Washington, DC 20410–4500, (202) 453–4534

*REGION IV*

Atlanta Regional Office

Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, (404) 331–5136

Birmingham Office

Daniel Building, 15 South 20th Street, Birmingham, Alabama 35233–2096, (205) 254–1817

Columbia Office

Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592

Greensboro Office

415 North Edgeworth Street, Greensboro, North Carolina 27401–2107, (919) 333–5361

Jackson Office

Doctos A.H. McCoy, Federal Building, 100 W. Capitol Street, Suite 1096, Jackson, Mississippi 39269–1096, (601) 965–4702

Jacksonville Office

325 West Adams Street, Jacksonville, Florida 32202, (904) 791–2626

Knoxville Office

One Northshore Building, 1111 Northshore Drive, Knoxville, Tennessee 37919–4090, (615) 558–1384

Louisville Office

601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251

Nashville Office

One Commerce Place, Suite 1600, Nashville, Tennessee 37239–1600, (615) 736–5213

*REGION V*

Chicago Regional Office

300 South Wacker Drive, Chicago, Illinois 60606–6765, (312) 353–5680

Cincinnati Office

Federal Office Building, 550 Main Street, Rm. 9002, Cincinnati, Ohio 45202, (513) 684–2884

Cleveland Office

One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, Ohio 44114–1670, (216) 522–4065

Columbus Office

200 North High Street, Columbus, Ohio 43215–2499, (614) 469–7345

Detroit Office

McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–7900

Grand Rapids Office

2922 Fuller Avenue, NE., Grand Rapids, Michigan 49505–3409, (616) 456–2216

Indianapolis Office

151 North Delaware Street, P.O. Box 7047, Indianapolis, Indiana 46204–2526, (317) 269–6303

Milwaukee Office

Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2290, (414) 291–1493

Minneapolis-St. Paul Office

220 Second Street, South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 349–3000

*REGION VI*

Fort Worth Regional Office

1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401

Houston Office

National Bank of Texas Bldg., 221 Norfolk, Suite 300, Houston, Texas 77098–4096, (713) 229–3950

Little Rock Office

Savers Building, 320 West Capitol, Suite 700, Little Rock, Arkansas 72201, (501) 378–5931

New Orleans Office

1661 Canal Street, P.O. Box 70288, New Orleans, Louisianna 70172–0288, (504) 569–2300

Oklahoma City Office

Murrah Federal Building, 200 NW., 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4181

San Antonio Office

Washington Square Building, 800 Dolorosa, P.O. Box 9163, San Antonio, Texas 78285, (512) 229–6781

*REGION VII*

Kansas City Regional Office

Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64104, (816) 374–2661

Des Moines Office

Federal Building, 210 Walnut Street, Room 259, Des Moines, Iowa 50309, (515) 284–4512

Omaha Office

Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102–1622, (402) 221–3703

St. Louis Office

210 North Tucker Boulevard, St Louis, Missouri 63101–1997, (314) 425–4761

*REGION VIII*

Denver Regional Office

Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–4513

*REGION IX*

San Francisco Regional Office

Federal Building, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Honolulu Office

300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96850–4991, (808) 546–2136

Los Angeles

1615 W. Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122

Phoenix Office

One North First Street, 3rd Fl., Post Office Box 13468, Phoenix, Arizona 85002–3468, (602) 261–4434

Sacramento Office

777–12th Street, Suite 200, P.O. Box 1978, Sacramento, California 95809–1978, (916) 551–1351

*REGION X*

Seattle Regional Office

Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101–2054, (206) 442–5414

Anchorage Office

701 C Street, Box 64, Module G, Anchorage, Alaska 99513–0001, (907) 271–4170

Portland Office

Cascade Building, 520 Southwest Sixth Avenue, Portland, Oregon 97204–1596, (503) 221–2561

[FR Doc. 87–6217 Filed 3–31–87; 8:45 am]

BILLING CODE 4210–27–M

L
2
S
2
P
87
M I

Federal Register

Wednesday
April 1, 1987

Part III

# Department of Labor

**Office of Workers' Compensation Programs**

**20 CFR Part 10**

**Claims for Compensation Under the Federal Employees' Compensation Act, as Amended; Final Rule**

**DEPARTMENT OF LABOR**

**Office of Workers' Compensation Programs**

**20 CFR Part 10**

**Claims for Compensation Under the Federal Employees' Compensation Act, as Amended**

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Department of Labor is revising the regulations governing the administration of the Federal Employees' Compensation Act (FECA), which provides benefits to Federal employees injured or killed in the performance of duty. The final rule covers special categories of employees not previously addressed by regulation, amends sections which have proven ineffective, makes current the terminology used in the regulations, and updates provisions governing the release of information (Privacy Act and Freedom of Information Act). The chief effects of the final rule will be to make the claims process clearer and more orderly, to standardize the application of the Federal Employees' Compensation Act to classes of employees not previously expressly covered and to make more specific the duties and responsibilities of the various parties in the claims process. Major new provisions include restricting the procedures for using continuation of pay (COP), defining the term "subluxation," establishing procedures for reducing monetary compensation for failure or refusal to participate in vocational rehabilitation plan development efforts, defining the procedures for declaring and waiving overpayments, and establishing specific periods within which an injured worker may request reconsideration of a decision and submit medical bills for payment.

**EFFECTIVE DATE:** June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Markey, Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523–7552.

**SUPPLEMENTARY INFORMATION:** Proposed regulations were published in the **Federal Register** on June 6, 1986 (51 FR 20736) and provided for a 45-day period for comment. On July 28, 1986 (51 FR 26903), the comment period was reopened and extended through August 27, 1986, to allow additional time for comment. During the comment period, the Department of Labor received comments from twenty interested parties, including twelve Federal employing agencies, one Federal Executive Board, six labor organizations which represent Federal employees, and one Department of Labor employee.

This final rule is applicable to cases where the injury or death occurred prior to the effective date, but the provisions of those sections revised by this final rule are applicable only to initial decisions made on and after the effective date. The provisions of those sections revised by this final rule are not applicable to intital decisions made prior to the effective date, even where such decision is being reviewed under administrative appeal procedures, i.e., hearing before an OWCP representative, reconsideration under 5 U.S.C. 8128(a), or appeal to the Employees' Compensation Appeals Board.

On charge to the regulations which did not result from the comments received is the elimination of all references to Form CA–4, Claim for Compensation on Account of Occupational Disease. Form CA–4 will no longer be reprinted and will no longer be included in the inventory of "CA" forms. Form CA–7, renamed "Claim for Compensation Due to Traumatic Injury or Occupational Disease," is to be used in lieu of Form CA–4 in cases of occupational disease. The title of Form CA–2 was revised slightly during the most recent revision of the form. Section 10.20(b) is revised accordingly. One Federal agency questioned whether the title of Form CA–12, a form used exclusively by OWCP in death cases, should be "Claim for Continuing Compensation on Account of Death." The title as shown in the regulation is that on the form itself, and revision of the title is not considered necessary.

The Department's analysis of the comments received are set forth below by sections on which comment was received. Unless otherwise indicated, section references refer to the sections of the regulations as revised.

*Section 10.1.* One Federal agency suggested that the term "reasonable expense" as used in § 10.1(b), which is used instead of the previous language "full range of medical benefits and services," be defined. The term "reasonable expense" was used to avoid any misinterpretation that medical and related services would be furnished without regard to cost. For a large number of medical services, "reasonable expense" is defined by the schedule of maximum allowable medical charges used by the Office of Workers' Compensation Programs (OWCP) under the provisions of § 10.411.

A labor organization commented that the word "compensable" as used in the same subsection implied that medical and related services are payable only where compensation benefits are payable. The use of the term "compensable condition" does not represent a change in the earlier language of this subsection. However, recognizing the possibility of misinterpretation, § 10.1(b) is revised to refer to the "medical condition or conditions accepted as being employment related."

One labor organization noted the deletion of the language in § 10.1(d) (previously § 10.1(c)) concerning the payment of benefits to the victim of an employment-related latent or progressive disease or disability, and opposed such deletion if it was intended to signal a change in policy for handling occupational disease cases. The deletion of the language in question is not intended to signal a change in policy and should not be interpreted as such. The language was deleted for the reason that the FECA defines injury to include any employment-related latent or progressive disease or disability (e.g., asbestos-related diseases), and that regulatory language that "the provisions of the Act shall be construed to permit the payment of benefits" in such situations is unnecessary. Further, retention of such language could lead to the erroneous interpretation that the applicability of the FECA in such situations is dependent upon the regulations rather than the FECA itself.

*Section 10.5.* With regard to definitions under § 10.5, requests for additional definitions were received from three Federal agencies. The terms or phrases for which definitions were sought were "diagnosis," "in the performance of duty", "reasonable expenses" (as used in § 10.1(b) and which is discussed above), and "reasonable or justified" (as used in § 10.124). One of the Federal agencies also requested "a workable definition of medical evidence." The word "diagnosis" as used in the regulations has no connotation other than its common-use meaning. Therefore, definition of "diagnosis" by regulation is not viewed as necessary. The phase "in the performance of duty" embraces a large portion of the body of workers' compensation law and principles. There are a significant number of general rules concerning performance of duty, and the vast majority of these rules have significant exceptions. Whether an

injury occurred "in the performance of duty" is dependent upon the facts and circumstances in a given case and requires the application of the various rules and exceptions on a case-by-case basis. Therefore, a clear, concise regulatory definition of the phrase which would encompass all general rules and all possible exceptions to those rules is not feasible.

Section 10.124 provides that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that the refusal or failure to work was reasonable or justified. Whether the reason for the refusal or failure to accept the offered work is reasonable or justified must be evaluated in the light of the circumstances which exist in the particular case. A reason which is found to be sufficient justification in one case may not be found to be sufficient in another. Thus, defining "reasonable or justified" by regulation is not practical. However, general guidelines concerning "reasonable or justified" have been established. As examples, refusal of an offer of employment would be considered reasonable or justified if there was a medically documented worsening of the employee's condition since initiation of the reemployment effort, if the employee had found other work which fairly and reasonably represents his or her earning capacity (in which case compensation would be adjusted or terminated based on the employee's actual earnings), if a medical condition of the claimant or a family member contraindicates return to the area of residence at the time of injury (in a case in which the employee had moved subsequent to termination from the employing agency's employment rolls), or if the employee is retired and is receiving a schedule award for permanent impairment at the time of the job offer. A refusal would not be considered reasonable or justified, for example, if based on the employee's personal dislike of the position or location offered or the work hours scheduled. Again, these examples are general and may not cover every reason or explanation given in justification of a refusal of offered employment. Thus, a determination as to whether a refusal of offered suitable work is reasonable or justified is made on a case-by-case basis.

With regard to a definition of "medical evidence," the information which may be required in a medical report is defined in § 10.410. A more specific definition of medical evidence based on completeness, timeliness, and proper authentication, as suggested by the commentator, is not practical. The required content of medical evidence changes as the circumstances and issues in the case change. The timely submission of medical evidence, while not inconsequential, is not as important as its content in determining its probative value. Further, as noted by other commentators, the submission of medical evidence is not generally within the total control of the injured employee. Thus, medical evidence which failed to meet a regulatory time standard for submission could result in an unnecessary and unjustified series of terminations and reinstatements of benefits. Finally, where a question arises as to the authenticity of medical evidence, appropriate actions are taken. However, to require authentication by actual signature in every instance is not realistic in today's medical community where the use of signature stamps is a common practice.

A Federal agency noted that the Environmental Science Services Administration, referenced at § 10.5(a)(11)(xx)(C), was replaced by the National Oceanic and Atmospheric Administration. The regulation is revised accordingly.

In response to one commentator's observation that the definition of "occupational disease or illness" is confusingly worded, § 10.5(a)(16) has been revised to make the wording clearer. However, the revision in no way indicates any change in the way we view or define occupational disease cases.

One Federal agency noted the deletion of the definition of "price index" (previously at § 10.5(a)(17)), and questioned the implication. At the time the proposed regulation was drafted, the price index to be used to compute cost-of-living increases was under review. Although the price index to be used was not changed, it is felt that inclusion of the definition in the regulations is unnecessary since the term is specifically defined by statute at 5 U.S.C. 8101(18).

A Federal agency opined that "disability" as defined at § 10.5(a)(17) should not be limited to the position held at the time of injury. We agree that the proposed language is, but was not intended to be, inconsistent with established law. Therefore, the paragraph has been revised to accurately reflect the intent of the FECA (see *Michael L. Shediwy*, 31 ECAB 1156).

It was suggested by one Federal agency that the definition of "pay rate for compensation purposes" include a brief explanation of what is included and excluded from the computation. Rather than establishing what is to be included and excluded by regulatory definition, further explanation will be provided through the Federal Personnel Manual issuance system.

A labor organization suggested that the definition of "representative" be revised to include a person designated by a claimant's legal guardian in the case where the claimant is physically or mentally incapable of making such a designation. Recognizing the potential for the situation described, § 10.5(a)(23) is revised consistent with the suggestion.

Definition of the term "reasonable cause" as used in § 10.5(a)(24) was requested by one Federal agency. The determination as to whether a husband or wife was living apart for reasonable cause is dependent on the circumstances which exist in a particular case. Accordingly, a clear, concise definition by regulation is not feasible.

*Sections 10.10 and 10.12.* With regard to § 10.10 and § 10.12, two Federal agencies requested guidance on the retention and disposition of copies of claims-related documents retained by Federal employing agencies for the purpose of monitoring the claims of their employees. The Office of Personnel Management (OPM) has recently issued final regulations and interim procedures concerning the establishment of an Employee Medical File System (EMFS) and an Employee Medical Folder (see 51 FR 33233, published September 19, 1986). In the supplementary information for those final regulations, OPM specifically commented on agency retention of copies of FECA claims-related documents and the EMFS, and thus agencies should be guided by those comments.

Three labor organizations commented that § 10.12 should be revised to make clear that an employing agency may provide an employee or beneficiary, or the representative, with copies of records pertaining to that employee's or beneficiary's claim under the FECA. We agree that, with the exceptions provided by 29 CFR 70a (e.g., the exception for direct release of medical records which may be harmful to the employee), an employee or beneficiary is entitled to a copy of the OWCP records pertaining to him or her, and that such right includes obtaining copies from the employing agency which has retained copies of records previously submitted to OWCP. Therefore, § 10.12 is revised by redesignating subsection (b) as subsection (c), and adding a new

subsection (b) in accordance with the above stated position.

*Section 10.23.* Two labor organizations suggested that the authority for the increased penalties provided for in § 10.23(a) be cited. The penalty previously cited in this section has its basis in 18 U.S.C. 1920. However, criminal prosecution for fraud may be sought under other appropriate Federal statutes, such as 18 U.S.C. 287 or 1001, which carry penalties as cited in the revised regulation. Since a person may be subject to prosecution under such other statutes, the intent of the revision is to advise of the possible maximum penalty. For the sake of clarification, the regulation is revised to include 18 U.S.C. 287 and 1001 as examples of "appropriate U.S. Criminal Code provisions."

Two Federal agencies recommended that the penalty should also apply to official superiors and other persons who knowingly make or certify to a false statement. We agree that the regulation should advise of the possible penalty for fraudulent activity by an official superior, representative, or any other person in connection with a claim under the FECA. Therefore, § 10.23(a) is revised to apply to any person who knowingly makes or certifies to a false statement in connection with a claim under the FECA. Also, 18 U.S.C. 286, which concerns conspiracy to defraud the Government with respect to claims, provides for a fine of not more than $10,000 or imprisonment for not more than ten years, or both. In view of this greater penalty, § 10.23 is further revised by redesignating subsection (b) as subsection (c) and deleting the reference to filing a false report, and by inserting a new subsection (b) concerning conspiracy in connection with a fraudulent claim under the FECA.

One Federal agency also suggested that any person who files a false claim should not receive any compensation on account of such claim, and that any compenstion already paid be declared an overpayment of compensation and subject to collection. Where a claim is false from its beginning, i.e., there is no entitlement to benefits under the FECA, compensation would not be payable, and any compensation already paid would be declared an overpayment of compensation and subject to collection. Similarly, a false claim for a period within an otherwise legitimate claim would not be payable, and any compensation already paid for that period would be declared an overpayment and subject to collection. However, in this latter situation, the Department has no authority to deny compensation for any period, past or future, for which no false claim has been filed or false statement submitted and for which period compensation is legitimately paid or payable.

*Section 10.101.* Clarification of the statement in § 10.101(a) that the failure to give notice of injury within 30 days "may" result in a loss of compensation rights was requested by one Federal agency and one labor organization. A second agency suggested the failure to give notice within 30 days should not result in loss of compensation rights where good cause is shown for the delay. The provisions of 5 U.S.C. 8119 do not provide for excusing the failure to meet the written notice requirement on the basis of good cause shown. However, the failure to file written notice within 30 days will not necessarily result in the loss of compensation rights. As provided by 5 U.S.C. 8122, the right to compensation would not be affected by the failure to file written notice of injury or death within 30 days if (1) a claim for compensation is filed within 3 years of the injury or death, or (2) the immediate supervisor had timely actual knowledge of the on-the-job injury or death. Therefore, given these provisions, it cannot be categorically stated that the failure to file written notice as required by 5 U.S.C. 8119 "will" result in the loss of compensation rights. On the other hand, if claim for compensation was not made within 3 years and the immediate supervisor did not have actual knowledge within 30 days, then the failure to give written notice within 30 days of the injury or death could result in the loss of compensation rights.

Because a claim for continuation of pay (COP) as provided by 5 U.S.C. 8118 is included in the notice of traumatic injury (i.e., Form CA–1), it may appear that the failure to file written notice within 30 days would deny the injured employee a compensation right, i.e., the right to COP. However, the claim for COP is contained in the CA–1 for the purposes of timeliness and convenience and not because written notice is a prerequisite to the receipt of COP. Under the provisions of 5 U.S.C. 8118, continuation of pay shall be authorized to an employee who has "filed a claim for a period of wage loss" within 30 days. The filing of Form CA–7 or CA–8 within 30 days would satisfy this requirement. Therefore, even with respect to COP, it would be incorrect to state that the failure to file written notice of injury or death within 30 days "will" result in the loss of compensation rights.

For the above reasons, § 10.101 states that the failure to file timely written notice "may" (not necessarily "will") result in a loss of compensation rights. To clarify the use of the word "may," each subjection of § 10.101 is revised to make reference to the provisions of 5 U.S.C. 8122 and § 10.105 concerning the timely filing of a claim for compensation.

Another Federal agency recommended that the time for filing notice be shortened from 30 days to 10 days. The 30-day period for filing written notice is established by statute (5 U.S.C. 8119) and is not subject to change by regulation.

Two labor organizations noted that each subsection should specify that written notice is necessary. Since 5 U.S.C. 8119(c) provides that notice of injury or death shall be in writing, this revision is appropriate. However, with regard to filing a claim for compensation, as was stated above, 5 U.S.C. 8122(a) provides that compensation may be payable even if written notice is not filed within 30 days, provided that the original claim is filed within three years of the date of injury or death, or the immediate superior had actual knowledge of the injury or death within 30 days.

Finally, the advice that failure to timely file written notice of injury may result in a loss of compensation rights is also appropriate in cases of occupational disease, but was inadvertently omitted. Subsection (b) is revised to correct this omission.

*Section 10.102.* Numerous comments were received regarding § 10.102. Two Federal agencies noted that Federal Personnel Manual Letter 293–20, issued August 13, 1984, requires agencies to establish and maintain an Employee Medical Folder (EMF), and identifies the CA–1 and CA–2 forms not submitted to the Department as records to be retained in the EMF rather than the employee's Official Personnel Folder. See also the final OPM regulations published in the **Federal Register** on September 19, 1986 (51 FR 33233–37). Thus, § 10.102(a) is revised to refer to the Employee Medical Folder.

Four labor organizations commented that the 10-day time frame for agency submission of the written report of injury is excessive, while one Federal agency remarked that the period was too short. Another Federal agency asked for clarification of the term "prolonged treatment." The four labor organizations also stated that the regulations should call attention to the official superior's responsibility to furnish the employee with the "Receipt of Notice of Injury" (or

Occupational Disease or Illness) which is attached to Forms CA–1 and CA–2, and suggested that the official superior should be authorized or required to furnish a copy of the completed claim form to the employee or the employee's representative. Previously, the Department had used a guideline of two days for agency submission of the notice of injury. However, the completion and submission of the report of injury by the employing agency frequently involves coordination between the employee's immediate supervisor and the agency's injury compensation specialist and/or other functions within the agency. Our experience has shown that two days was an unrealistically short period. We believe that 10 working days is a more realistic period for agency submission of the notice of injury. On occasion, an employee may sustain an injury which does not result in a loss of time from work and, because medical treatment may be provided at an agency medical facility, no medical expense may be incurred. However, if such injury results in "prolonged treatment," reporting of the injury to OWCP is required because continuing treatment is indicative of more than the most minor of injuries. Therefore, § 10.102(a) is revised to define "prolonged treatment" as more than two instances of medical treatment (i.e., initial examination and treatment and one follow-up examination to confirm full recovery). With respect to the "Receipt of Notice of Injury," subsection (a) is revised to make specific reference to the employing agency's responsibility to complete the receipt and furnish it to the employee. The addition of § 10.102(e) reflects the Department's agreement with the suggestion that it be made clear that the employing agency is authorized to furnish the employee or beneficiary, or their representative, with a copy of any notice, claim form, or other document concerning that employee or beneficiary completed and submitted to OWCP by the employing agency. This includes any notice, claim form, or document previously submitted to OWCP, a copy of which was retained by the employing agency. While the Department wishes to clarify that the employing agency is authorized to furnish such copies, it is not the intent of the Department to require such action on a routine basis in every case, although the employing agency may do so if it desires. However, where the employee or beneficiary, or their representative, makes a written request, the employing agency must furnish a copy of any such document, or copy thereof in its possession.

Two Federal agencies pointed out that where there is disagreement with any particular of the injury as reported by the employee, 10 days for submission of a written explanation of the disagreement by the official superior is not realistic, especially in cases of occupational disease. The intent of requiring the submission of a written explanation of disagreement at the same time as the CA–1 or CA–2 was to obtain such information and supporting documentation as promptly as possible. In the vast majority of traumatic injury cases, we believe that the explanation of disagreement can be submitted with the CA–1. However, we agree that in occupational disease cases the submission of the explanation with the CA–2 is less feasible, since many such cases involve activities such as researching past records of testing to establish exposure levels. Therefore, § 10.102(b) is revised to allow up to 30 days for the submission of an explanation of disagreement in occupational disease cases. However, this modification does not change the requirement that Form CA–2 is to be submitted to the Office within 10 working days following receipt from the employee. This subsection also revised to reflect our agreement with the comment of a labor organization that any such agency disagreement with the particulars of the injury as reported by the employee may not be used to delay the submission of the claim to OWCP or to pressure the claimant to change the claim.

A labor organization stated that the requirement in § 10.102(c) that the employing agency provide "statements from each co-worker who has firsthand knowledge about the employee's condition and its cause" is an unreasonable and unnecessary burden and should be deleted. This has been an instruction to the employing agency on Form CA–2 for a number of years, and is based on the fact that statements from witnesses with firsthand knowledge is very helpful in determining the conditions or factors of employment under which the claimant worked. Therefore, deletion of the requirement is not desirable. However, we expect that reasonableness would be exercised in complying with this requirement. For example, in cases of occupational diseases with long latency periods, the agency is not required to obtain statements from co-workers who have retired or otherwise left the employing agency. While not agreeing to deletion of the requirement, the regulation is revised to apply to co-workers with such firsthand knowledge who are currently employed by the agency.

*Section 10.104.* In commenting of § 10.104 concerning the report on the attending physician, one labor organization stated that because of OWCP's medical report forms do not specifically provide for the attending physician's medical reasons for his or her opinion, many employees' claims are jeopardized when no rationale is provided by the physician. Two of the more frequently used forms, CA–16 and CA–20, do provide space for the physician to make explanation where the relationship of the diagnosed condition to the history of injury is doubtful or not clear. However, the medical report forms in question are used primarily in connection with traumatic injury cases which frequently do not require significant rationale in support of an initial affirmative statement by the physician concerning the relationship between the diagnosed condition and the employment injury. For example, no rationale is necessary to explain an affirmative opinion that a broken leg is causally related to a fall down a flight of stairs. Where there is a need for rationalized medical opinion, the claimant is advised of such need and provided an opportunity to submit the evidence (see § 10.110(b) concerning advising the claimant of the defects of his or her claim). Thus, a claim is not jeopardized by the structure of the medical report forms. Another labor organization acknowledged that the injured employee has the burden of proof, but suggested that claimants be clearly advised of their responsibility to submit supporting medical evidence. Such advice will be included in various OWCP forms and pamphlets at the time of their next revision.

A Federal agency recommended that subsection (a) of § 10.104 be revised to provide that the report of the attending physician be submitted to OWCP through the employing agency within two days after the medical examination or treatment is received, and that subsection (b) be revised to provide that additional reports be submitted through the employing agency within seven days. The Department does not agree with the suggested requirement that medical reports be routed through the employing agency because such routing will inevitably lead to unnecessary delays in OWCP's receipt of the evidence with corresponding delays in the adjudication of the claim. However, the disagreement with the suggested requirement does not infer that employing agencies may not request medical evidence related to FECA

BEST COPY AVAILABLE

claims of their employees. An employing agency may request copies of such medical evidence from OWCP. Where the employing agency furnishes the medical report form to be used (as it frequently does with Form CA–16), the agency may, if it so desires, provide two copies of the form with a request that the original be forwarded directly to OWCP with the copy returned to the agency. Subsection (c) is added to § 10.104 to more clearly reflect the above stated positions.

*Section 10.105.* In commenting on § 10.105(e), one labor organization argued that there is no statutory justification for the non-survivability of a claim for compensation not filed by an employee while living, and that this subsection "would deny survivor benefits granted by law and . . . should be deleted." Survivor benefits are enumerated in 5 U.S.C. 8133 and disability benefits are not included. Specific exception is made at 5 U.S.C. 8109 for the balance of a schedule award. However, even here the law requires that the employee have "filed a valid claim in his lifetime." Therefore, the provisions of subsection (e) do not deny survivor benefits "granted by law" and are within the statutory provisions of the FECA. Further, the Employees' Compensation Appeals Board in the case of *Anna M. Hooper,* Docket No. 86–712, issued April 29, 1986, stated the following:

> The record shows that prior to his death, the employees did not file a claim for compensation. The Board has held that an award of disability compensation is personal to the recipient. There is no property right in an award of compensation which can survive in favor of heirs. Thus, only compensation accrued, but unpaid before death survives as an asset of the estate like any other debt. Appellant, as an eligible beneficiary under 5 U.S.C. 8133 is entitled to file for benefits on account of the death of her husband, however, she is excluded from filing for compensation owing to him since no claim for compensation was filed by him before his death.

*Sections 10.106 and 10.122.* One commentator noted that the provisions of § 10.106 and § 10.122 appear to make the official superior responsible for obtaining medical support for the claim, and that the instruction to separate the medical report form from the claim form results in the medical report form being in danger of being lost, misrouted, misfiled, or otherwise delayed. One Federal agency commented that the period within which the employing agency is to submit the claim as stated in § 10.106 should be changed from 5 days to 10 days, while one labor organization stated that the similar time frame in § 10.122 should be changed from 5 days to 2 or 3 days. We agree that the sections referred to could be interpreted as placing a responsibility on the official superior which in fact he or she does not have. The responsibility for submitting, or arranging for the submission of, medical evidence concerning the period claimed rests with the employee. However, the employing agency does have a responsibility to advise the employee of his or her responsibility to submit that evidence. The comments concerning the specific instructions for separating the medical report form from the claim form are also well taken. Whether or not a completed medical report form should be submitted with the CA–7 or CA–8 is often dependent on the circumstances which exist in a given case, e.g., whether medical evidence concerning the period of wage loss claimed has already been submitted to OWCP. Specific instruction by regulation concerning whether or not the medical report form should remain attached to the CA–7 or CA–8 is not considered necessary or appropriate. Therefore, § 10.106 and § 10.122 are revised by deleting the specific instructions concerning the medical report form and by adding a statement as to the employee's responsibility for the submission of medical evidence. With regard to the period within which the employing agency is to submit the claim to OWCP, previous regulations provided for submission within 2 work days; however, experience has shown that this is unrealistic. On the other hand, prompt submission by the employing agency is essential if income interruption is to be held to a minimum. The 5-day period is considered a more realistic time frame. Where existing agency procedures for completion of the agency's portion of the claim form consume significantly more than five work days, we believe it is more appropriate for the agency to take steps to streamline its process than the extend the period for submission. Also, in addition to holding income interruption of a minimum, the period within which an agency is to submit a claim for compensation is shorter than the 10-day period allowed by § 10.102(a) for submission of the notice of injury because, generally, the completion of the claim form is less time-consuming than exploration of the circumstances of an injury and completion of the notice, but more time-consuming than the 2 work days previously provided.

*Section 10.107.* Concerning § 10.107 which addresses application for augmented compensation, i.e., additional compensation payable on account of dependents, four labor organizations stated that the 30-day requirement for response to an OWCP request for information as to any dependents cited in subsection (c) was unreasonable and should be 45 or 60 days. The Department does not agree with the assessment made. The information requested concerning dependents should be readily known by the employee and easily provided. The 30-day period for response is considered more than adequate. No loss is sustained by the employee in the event of a late submission since augmented compensation will be paid for the entire period of eligibiltiy.

One Federal agency suggested that OWCP should be authorized to require proof of dependents by way of birth certificates or other authentication. Where the information provided by the employee concerning dependents is inconclusive additional documentation in support of the claim for augmented compensation is requested. Subsection (c) of § 10.107 is revised to reflect this procedure.

One Federal agency suggested that reinstatement of augmented compensation suspended under the provisions of § 10.107(c) should be made retroactive only to the date the requested information was received, while two agencies suggested that reinstatement should be made retroactive to the date of suspension only if satisfactory reasons for the delay are shown. We do not believe the suggested course of action is necessary or appropriate. The penalty of suspension of compensation for failure to timely furnish information relative to augmented compensation was proposed on order to minimize instances of claimants simply failing to respond to the request. The objective is to obtain the needed information, not to penalize the claimant where the evidence submitted supports the payment of augmented compensation but is submitted beyond 30 days from the request. Thus, where information supporting such benefit is received after 30 days, the benefit is properly reinstated retroactive to the date of suspension. The forfeiture of augmented compensation is too serve a penalty for late submission where the submission establishes entitlement to the benefit for the period in question.

Two Federal agencies stated that the right to recover overpayments of augmented compensation as provided by § 10.107(d) should not be limited to that provided by 5 U.S.C. 8129. The Department does not rely solely on the provisions of 5 U.S.C. 8129 in recovering overpayments, but makes use of other

appropriate statutes such as the Debt Collection Act. Subsection (d) is therefore revised to reflect this fact.

*Section 10.110.* With regard to § 10.110, three labor organizations commented that the 30-day period specified in subsection (b) for submitting additional evidence in support of the claim is unreasonable and should be 45 or 60 days. One organization noted further that the provision should be made for notification to the claimant whenever subsequent submissions of evidence are deemed insufficient to carry the burden of proof because to not so provide could result in injustice and an appearance of unfairness. The practice of allowing 30 days for submission of needed information at the time of initial adjudication has been followed by the OWCP for some time. Rather than hold up the issuance of a decision pending receipt of the evidence (which in some cases is never submitted), a decision denying the claim based on the failure of the claimant to meet his or her burden is issued. Often, the information is subsequently received and the claim is accepted. Where the evidence is not received, the decision denying the claim stands as is. The practice has not proven to be detrimental to the claimant, but has in our opinion, resulted in employees being more aware of their responsibilities and meeting them in a more timely manner. To provide notice of the same defect with an additional 30 days for response whenever subsequent submissions continue to be insufficient perpetuates a non-decision status and is viewed as unnecessary. This procedure differs from the where OWCP has the burden of justifying modification or termination of benefits. In those cases, the burden has shifted because the case has been accepted and compensation paid. However, in those cases which are the subject of § 10.110, the burden of proof still rests with the claimant. In summary, based on our experience, we believe the procedure being followed, and now formalized by regulation, is both reasonable and appropriate.

In commenting on § 10.110(c), two Federal agencies took the position that it is wrong for the burden of proof to shift to OWCP, contending that the burden should always be on the employee. The Employees' Compensation Appeals Board has held on numerous occasions that once a claim has been accepted and compensation paid, the OWCP has the burden of justifying termination or modification of that compensation. While one of the commentators suggested that a change in the regulation would cause a change in the decisions of the Appeals Board, we do not believe this to be necessarily true. Further, the position is not based solely on the decisions of the Appeal Board, but represents adherence to general workers' compensation principles. We see no sufficient reason or basis to act directly counter to these principles.

*Section 10.120.* One Federal agency found § 10.120 to be confusing in that Forms CA–1 and CA–2 do not provide appropriate spaces for days used and monies paid for continuation of pay and makes it appear that Form CA–3 is an optional form. There may be circumstances under which the use of Form CA–3 is not necessary, and § 10.120 is worded in an attempt to account for such circumstances. For example, if an employee sustained an injury which resulted in a medical expense but no loss of time beyond the date of injury, the date of return to work could be reported on Form CA–1. Since no continuation of pay would be involved in an occupational disease case, return to work following a short period of disability could be reported on Form CA–2. Also, where information concerning continuation of pay was previously provided to OWCP, subsequent return to work could be reported on Form CA–8. Therefore, if all needed information can be furnished through the use of other required forms, repetitious submission using Form CA–3 is unnecessary, and to that extent the use of Form CA–3 is optional.

*Section 10.122.* It was suggested by a Federal agency that § 10.122(e) should be revised to provide that the claim form and medical report must be submitted "to the Office, with a copy to the employing agency," before compensation may be paid. As previously stated, these regulations are in no way intended to prohibit or prevent employing agencies from obtaining copies of medical evidence submitted in connection with the claims from their employees. However, it is also not the intent of the regulations to establish a requirement that the employing agency must receive a copy of the medical evidence. Further, the commentator's proposal could be interpreted as requiring the agency to receive a copy of the claim and the medical evidence before compensation could be paid. There is not, and there should not be, any such requirement associated with the payment of compensation.

*Section 10.123.* Four labor organizations stated that the advice which is to be provided to the employee under § 10.123(a) concerning his or her obligation to return to work as soon as medically possible should be in writing, and two of the organizations suggested that this subsection require employee acknowledgment of receipt and understanding of the instruction. Written notification of an employee's basic responsibility concerning return to work is currently provided by various forms and letters. Additional information consistent with the responsibilities contained in these revised regulations will be provided through modification of existing forms when such forms are next revised or by other appropriate means. However, we do not believe that a regulatory requirement for employee acknowledgment of receipt and understanding of the notification is necessary. Pending appropriate forms revision, the official superior does have a responsibility to verbally advise the employee of his or her responsibilities with respect to returning to work.

Two of the labor organizations also stated that § 10.123 should clearly state what medical evidence must go to OWCP, and what, if any, other than CA–17, goes to the employing agency, as well as who at the employing agency is authorized and/or qualified to see such personal and private data. These two organizations went on to suggest that the regulations should state that employing agencies have no authority to conduct medical examinations for the purpose of verifying an employment-related disability, or for creating medical conflict or otherwise contesting the merit of an on-the-job injury claim. As previously indicated, all medical evidence from the employee's physician should be submitted directly to OWCP. While the Department has not adopted a commentator's suggested requirement that the medical evidence be submitted to OWCP through the employing agency, the employing agency may request copies of submitted medical evidence from OWCP. With regard to who at the employing agency can see the medical evidence, each agency has its own organizational structure with respect to processing injury claims. Thus, appropriate individuals could include the immediate supervisor, injury compensation specialists, personnel staff, medical staff, and even other supervisors who would be involved as a result of a reemployment effort. Therefore, medical evidence can be provided to any person within the agency having some responsibility for the processing of a claim for compensation or who has a need for such information in the fulfillment of their official duties. Finally, agency authority to conduct medical

examinations is provided by regulations issued by the Office of Personnel Management (see 5 CFR 339.301–339.304). These regulations provide limited authority for agency-conducted examinations of employees receiving workers' compensation benefits (see 5 CFR 339.301(b)), and provide no authority for the employing agency to require such employees to submit to medical examinations for the purpose of verifying the medical condition for which compensation is being paid (see the Supplementary Information at 49 FR 1323–4 (January 11, 1984)). Neither the FECA nor these revised regulations for the administration and enforcement of the FECA provide any further authority for agency-conducted medical examinations. In view of these facts, a negative statement in these regulations as suggested by the commentator is not necessary.

It was suggested by one Federal agency that the term "return to work" as used in § 10.123(c)(2) should be amplified so that it does not imply or require a return to the normal worksite, but could include other alternate locations. The term as used in § 10.123 was not intended to limit return to work to the normal worksite, and the section has been revised to reflect this fact.

*Section 10.124.* A number of comments were received from both Federal agencies and labor organizations concerning § 10.124. One Federal agency commented that more authority needs to be provided to OWCP to enforce § 10.124, such as routine scheduling of medical second opinion physicals and a routine scheduling of consultations with vocational rehabilitation counselors. Additional regulatory authority is not needed since sufficient authority to obtain medical examinations and vocational rehabilitation services is provided by the FECA at 5 U.S.C. 8123 and 8104, respectively. Further, the frequency with which such examinations and services are to be obtained is best determined based on a case-by-case basis, rather than on a fixed-time schedule.

Revision has been made to § 10.124(b) in response to comments from three labor organizations that the description of available alternative positions which the employee is to furnish to his or her attending physician should include the physical requirements of those positions. The phrase "description of such alternative positions" was intended to include the physical requirements since they are essential to the physician's assessment of the employee's ability to perform those positions. The revision is made to more clearly reflect the intent.

Concern was expressed by two Federal agencies that § 10.124 could be interpreted as meaning that communications with the physician are controlled by the employee, and that the employing agency may not communicate with the physician regarding possible job assignments and work limitations and restrictions. The intent of § 10.123 and § 10.124 is to equitably allocate the responsibilities for returning the injured employee to gainful employment as soon as possible, and to assure that both the employee and the employing agency are involved in preserving the injured worker's position as a Federal employee while permitting the healing process to continue without detrimental effect on the employee. Any interpretation that § 10.123 prohibits or prevents the employing agency from communicating with the employee's physician to request medical information needed to proceed with an effort to return the employee to suitable gainful employment would be inconsistent with this intent. While the comments arose in connection with § 10.124, it is believed that needed clarification is more appropriately made at § 10.123(b).

The limitations and restrictions to be taken into account in determining the suitability of offered employment as described in § 10.124(c) were the subject of comments from two labor organizations. Both organizations stated that an offer of suitable employment must also take into account limitations and restrictions which are incurred following the employment injury. While taking into account subsequently incurred limitations and restrictions in determining the suitability of offered employment may appear logical and reasonable, we have chosen not to specifically include such limitations and restrictions in § 10.124(c) because of the potential for the involvement of other principles which come into play in establishing an injured employee's wage-earning capacity for the purposes of 5 U.S.C. 8106(a) and 8115 which concern compensation for partial disability. In determining an injured employee's wage-earning capacity, limitations and restrictions incurred subsequent to the employment injury are not considered. Thus, an offer of employment which is within the employee's pre-existing and injury-related limitations and restrictions, but which does not take into account subsequently incurred limitations and restrictions, may be found to be representative of the employee's wage-earning capacity. Should an employee refuse such offered employment, the subsequently incurred limitations and restrictions may serve as reasonable explanation for refusal so as to preclude the application of the penalty provided by 5 U.S.C. 8106(c)(2). However, reduction of compensation to reflect partial disability may still be accomplished. We recognize that the frequency of occurrence of such circumstances is not great since most employers will not devote considerable effort to offering employment which is beyond the employee's actual limitations and restrictions. However, we have chosen not to eliminate the possibility by requiring by regulation that the offered employment take into account subsequently incurred limitations and restrictions.

An addition to § 10.124(c) was suggested by one Federal agency which would allow an employing agency to contact a current or former employee who is receiving compensation for purposes of extending a job offer and/or extending rehabilitation counseling services to such employee that meets the employee's current medical restrictions. With regard to extending a job offer, direct agency contact with the employee is the general practice being followed, and is within the scope of the procedures contained in § 10.123. With regard to extending rehabilitation counseling services, these services are currently provided by OWCP under the authority given to the Department by 5 U.S.C. 8104. It is not necessary to provide for direct furnishing of such services by the employing agency, although such may be offered by the agency if it is otherwise equipped to provide such counseling. However, this is in no way intended to discourage agency referrals to OWCP where the agency believes that a permanently disabled employee may benefit from the vocational rehabilitation services.

Another Federal agency suggested that § 10.124(d) be revised to require the employee to provide on a regular basis (e.g., monthly, quarterly, or semi-annually) proof of efforts to obtain suitable employment and, if suitable employment is refused, to state the reasons for such refusal. We believe that such information should be obtained, but that a regulatory requirement as described is not necessary. Where OWCP-furnished rehabilitation services are being provided, the needed information is readily obtained through the rehabilitation counselor involved in the reemployment effort. Where such services are not being provided, OWCP obtains the information in those cases and at those times as indicated by the

circumstances which exist in each case. Placement by regulation of a regular periodic reporting requirement on each employee is not viewed as necessary.

A labor organization noted that subsections (d) and (e) of § 10.124 require the partially disabled employee to seek and accept suitable work, or risk losing his or her benefits. It was suggested that these claimants should have the opportunity to show that any neglect or refusal to seek and accept suitable work was reasonable or justified before benefits are terminated. Such opportunity is currently provided under existing procedures. However, to make this clear, subsections (c) and (e) of § 10.124 are revised to reflect this opportunity. Subsection (e) is further revised in response to comments from three labor organizations requesting clarification concerning entitlement to medical benefits and to compensation for subsequent periods of total disability. Medical benefits under 5 U.S.C. 8103 are not affected by the neglect or refusal to seek and accept suitable work and were not included in subsection (e). However, in light of the request for clarification, medical benefits are now specifically addressed. With respect to periods of total disability following termination of entitlement, no compensation is payable for such periods. Once entitlement has been terminated under the provisions of 5 U.S.C. 8106(c), such termination is permanent regardless of any subsequent change in the extent of the employee's disability. Therefore, a partially disabled employee who refuses suitable work and whose benefits are terminated for that reason is not entitled to further compensation even if the employee subsequently becomes totally disabled as a result of the injury. This is reflected in the language that the employee "is not entitled to further compensation" for total or partial disability, or for permanent impairment.

Several comments were received concerning § 10.124(f). One Federal agency stated that an employee's failure or refusal without good cause to undergo vocational rehabilitation should result in termination of compensation rather than reduction of compensation. A labor organization stated that the penalty provided by 5 U.S.C. 8113(b) is applicable where an individual without good cause fails to apply for and undergo rehabilitation when so required, but should not be applicable for failure to participate in the early stages of a rehabilitation effort. In response to the comment suggesting termination of compensation, the penalty provided by 5 U.S.C. 8113(b) calls for prospective reduction of monetary compensation, and the Department does not believe it appropriate to invoke by regulation a penalty greater than that provided by statute. With regard to the applicability of the provisions of 5 U.S.C. 8113(b) to the early stages of rehabilitation, rehabilitation has been construed to include not only the actual job placement effort and/or formalized training program, but to also include essential preparatory efforts (e.g., interviews, testing, counseling, and work evaluations). These early stages are an integral part of the total vocational rehabilitation effort, and the failure or refusal to participate in the early stages when so directed constitutes failure to undergo vocational rehabilitation.

Two Federal employing agencies suggested the addition of a paragraph to § 10.124 which would provide that after the first anniversary of the commencement of compensation an employee is obligated to accept an offer of suitable employment by the employing agency at his or her former duty station, even if he or she no longer lives in the commuting area of the position.

Further, the suggested paragraph would deem the payment of relocation expenses by the agency as part of the "reasonable effort to place" obligation in 5 U.S.C. 8151. A commitment to pay such relocation expenses would be required prior to obligating the employee to accept the work. The suggestions concerning relocation expenses arise from the fact that current travel regulations do not appear to allow the employing agency to pay relocation expenses for returning a former employee to his or her prior duty station. With regard to obligating the employee to return to his or her former duty station, the suggested position is unnecessarily narrow and restrictive in that it does not take into account situations in which the refusal of offered employment may be reasonable or justified. There may exist legitimate explanation for a former employee's refusal of suitable work at the prior duty station, for example, return to that geographic area being medically contraindicated. By acknowledging and taking into account the realities of a given situation, a reasonable and fair obligation has been placed on the partially disabled employee to return to suitable employment, especially in light of the severity of the penalty for refusal of such employment (i.e., termination of entitlement to compensation). Appreciating both the disruptive efforts on the injured worker and the costs incurred in relocating to accept suitable work offered by the former employing agency, employing agencies are encouraged to offer reemployment in the area where the former employee currently resides. Where this is not practical, the agency may, of course, offer reemployment at the prior duty station or other alternate location. This raises the issue of relocation expenses as an obstacle to successful reemployment in such situations. The commentator suggested that the payment of relocation expenses by the employing agency be authorized under the provisions of 5 U.S.C. 8151 which is concerned with retention rights. Due to the subject matter of section 8151, it has been agreed by the Department and the Office of Personnel Management (OPM) that all issues involving that section come under the authority of OPM. Thus, it would not be appropriate for the Department to establish regulations authorizing agencies to pay relocation expenses under the provisions of section 8151. However, recognizing that relocation expenses is an issue requiring resolution, it has been determined that where the acceptance of an agency offer of suitable reemployment made to a former employee would result in the employee incurring relocation expenses, reasonable and necessary relocation expenses may be paid out of the Employees' Compensation Fund and, as with all such payments, charged back to the employing agency. In determining whether an expense is reasonable and necessary, OWCP will use as a guide the Federal travel regulations concerning permanent change of duty station. As now stated in subsection (f) of § 10.123, the regulation is consistent with the basic intent of the commentators' suggestions.

*Section 10.125.* In commenting on the 30-day period for response to a request for earnings in § 10.125(a), two labor organizations stated that the period is unreasonable and should be 45 or 60 days. As previously stated in response to a similar comment concerning § 10.107, we view the information requested as being readily known and easily provided by the employee, and we consider the 30-day period to be reasonable and adequate. Three Federal employing agencies commented that requiring a report of earnings from the employee under the provisions of subsection (a) should be mandatory rather than discretionary as indicated by the language, and one of these agencies also suggested that the frequency of these reports should be specified. In actuality, current procedures require that a report of earnings be periodically obtained in the

vast majority of disability claims. Therefore, in light of actual practice, the suggested change is not inappropriate. However, as recognized by the language of 5 U.S.C. 8106(b), there are situations in which discretion should be exercised in terms of whether and when such a report is to be required. Giving consideration to both actual practice and the need to account for exceptions, subsection (a) of § 10.125 is revised to require the periodic reporting of earnings, except where it is found that such report is unnecessary or inappropriate. One of these agencies also suggested that where compensation is suspended, reinstatement should be made retroactive only to the date the requested information was received. Another agency suggested that OWCP reserve the right to forfeit payments when non-compliance is either flagrant or repeated. Again referring to similar comments made with respect to § 10.107, the penalty of suspension of compensation is intended to prompt a timely response to a request for earnings information. Where the information received supports the continuation of compensation, there is insufficient reason to declare compensation forfeit for a period otherwise payable. Further, we are confident that the suspension of compensation once applied is sufficient incentive to prompt a timely response to future requests. One Federal agency went on to suggest that subsection (a) should be further revised to provide that a false statement with respect to employment or earnings may also subject the employee to disciplinary or adverse action. The taking of disciplinary or adverse action in such a situation is a personnel matter within the purview of the Office of Personnel Management and does not properly come within the scope of these regulations.

Three labor organizations and two Federal agencies suggested that § 10.125(c) should address the issue of penalties that may be imposed if an employee fails to furnish written consent to obtain wage information from the Social Security Administration. The subsection is silent with respect to penalties for failure to provide written consent because it is our position that no penalty is applicable. Providing such consent is not a condition of eligibility for compensation or a requirement for receipt of compensation. Another Federal agency suggested that this subsection be revised to provide that OWCP may obtain wage information from the Social Security Administration "and the Internal Revenue Service." The inclusion of the suggested language is viewed as unnecessary. While wage information in the possession of the Social Security Administration (SSA) is protected by Internal Revenue Service (IRS) regulations, the information may, with the claimant's consent, be obtained directly from SSA.

*Sections 10.126 and 10.127.* Three Federal agencies commented on the provisions of § 10.126 and § 10.127. In summary, these comments suggested that an additional 15 days be provided when requested by the beneficiary, that the date of retroactive reinstatement be the date the requested information is received, and that forfeiture be applied for flagrant or repeated non-compliance or when good cause is not shown for non-compliance. These suggestions are similar to those made in conection with § 10.107(c) and § 10.125(a) and our responses are correspondingly similar. Thus, no further revision is made to either § 10.126 or § 10.127.

*Section 10.130.* Two Federal agencies suggested that § 10.130 be revised to provide that the employing agency receive a copy of the decision at the time it is issued. We agree with the suggested change and § 10.130 is revised accordingly.

*Section 10.131.* Several comments were made with respect to § 10.131. One Federal agency felt that a large number of decisions are reversed once the employee submits the needed evidence through the review process provided by 5 U.S.C. 8128(a) and § 10.138 of these regulations. Since review is less costly than a hearing, the commentator suggested that review should be the first step in the process, and that obtaining such review should not result in the forfeiture of the employee's right to a hearing. Although review under 5 U.S.C. 8128(a) is the avenue most frequently used by employees in contesting a decision, the Department has no authority to establish by regulation a hearing/review sequence different from that provided by statute at 5 U.S.C. 8124(b)(1). Another Federal agency suggested that subsection (a) provide that a representative from the employing agency may attend the hearing to observe and/or present pertinent evidence relative to the claim. It has been and continues to be the Department's position, as stated in § 10.140, that proceedings conducted with respect to claims filed under the FECA are nonadversary in character. We believe that active agency participation at the hearing, including activities such as presenting evidence (other than at the request of the employee) or questioning the employee or other witnesses, creates an adversary proceeding. Therefore, while a representative of the employing agency may attend the hearing as an observer (as provided by § 10.135), the employing agency may not present evidence at the hearing unless requested to do so by the employee. However, this is in no way intended to inhibit or discourage the employing agency from submitting, prior to or after the hearing, any evidence which it believes relevant.

With regard to § 10.131(b), two labor organizations basically stated that this subsection and § 10.135 allow for agency participation in the claims adjudication process, and are in direct conflict with § 10.140 which limits such participation. Another labor organization commented that a "hearing on the written record," aside from being oxymoronic, only differs from reconsideration under § 10.138(b) in that reconsideration requires the introduction of new evidence. Rather than a "hearing on the written record," the commentator suggested that claimants be offered the opportunity to request reconsideration on the basis of new argument rather than only new evidence. A total of four labor organizations stated that the claimant should be allowed to change an initial choice of a hearing on the written record to an oral hearing if the claimant or representative finds it in his or her best interests. One Federal agency commented that 15 days for the agency to submit relevant evidence following a hearing is too short a period, and one labor organization, in commenting on § 10.135, stated that § 10.131(b) should be revised to allow the claimant the opportunity to review and comment on any agency submission.

Agency attendance at hearings in the role of an observer does not equate to active participation in the claims adjudication process since no party status is conferred on the agency. It is also our view that agency attendance at a hearing with the opportunity to subsequently submit relevant evidence does not establish and should not create the appearance of an adversary process. Attendance without the right to actively participate allows the employing agency to become aware of the issue in question and to hear the employee's statements in support of the claim. Allowing the agency to subsequently submit evidence which it believes relevant simply facilitates a prompt decision based on as complete a record as possible. In response to the comment that opportunity for reconsideration should be allowed on the basis of new argument rather than only new evidence, such opportunity is already

provided by § 10.138(b)(1) (A) and (B). However, in light of the comment, further explanation appears to be warranted. In some cases, a claimant may request a hearing prior to reconsideration in order to protect the right to a hearing with subsequent opportunity for reconsideration. If the claimant lives in a relatively remote area, it may be several months before a representative designated by the Director of OWCP visits that area. Rather than having the claimant wait for this period of time, the Department found it appropriate to offer claimants the right to choose a review of the record by such representative in lieu of an oral hearing in order to speed the decision while preserving the right to subsequently request reconsideration. We agree that the claimant, or the claimant's representative, may change an initial choice of review of the record to oral hearing. However, to allow such change without limitation simply creates an open-ended situation of indefinite changing of choice. Therefore, § 10.131 is revised to allow the claimant to change his or her initial choice, provided such request for change is made in writing within 30 days after the date of acknowledgment by OWCP's Branch of Hearings and Review of receipt of the claimant's initial request for hearing or review of the written record. With regard to the time allowed for agency comment on the claimant's request for review of the record, we believe 15 days is sufficient and does not significantly delay issuance of a decision to the claimant. Finally, appropriate revision is made to reflect the opportunity for the claimant to review and comment on any agency submission.

*Section 10.132.* Three labor organizations commented that the 10-day notice requirement for a hearing in § 10.132 is insufficient and should be 20 days or at least 15 days. One of these organizations stated that the decision whether or not to schedule a pre-hearing conference should not be left solely to the discretion of the hearing representative, and that guidelines and the right to review by higher authority should be provided. A Federal agency suggested that the employing agency should also receive a copy of the notice of hearing. The 10-day notice requirement for hearing does not represent a revision of the regulations. Currently, notice of the time and place of hearing is sent to the claimant approximately 30 days prior to the hearing. In view of this practice, it is appropriate to revise § 10.132 to provide that written notice of the hearing shall be sent to the claimant at least 15 days prior to the hearing. With regard to the scheduling of a pre-hearing conference, the hearing representative is in the best position to determine whether the reason for requesting a pre-hearing conference will assist in narrowing the issues or deciding the case. Thus, the granting of a pre-hearing conference is appropriately left to the hearing representative's discretion. Sending a copy of the hearing notice to the employing agency is needed to accomplish the provisions of § 10.135; therefore, making specific reference to that procedure in § 10.132 is appropriate.

*Section 10.133.* Four labor organizations objected to the provision in the last sentence of § 10.133 that the recording of a hearing be preserved either on magnetic tape or by transcript, and stated that the original copy of the typed transcript should always be available for review by the claimant, representative, or others, including the Employees' Compensation Appeals Board. One of these organizations noted that it is unfair to make the claimant have a magnetic tape transcribed at personal expense so his or her representative can refer to the record in an appeal. When requested by the claimant, the claimant's representative or the employing agency, or where necessary because of an appeal, a transcription of the magnetic tape will be made available at no expense to the claimant.

*Section 10.134.* One Federal agency commenting on § 10.134 stated that an employing agency should be given the opportunity to challenge a subpoena it considers too broad, too burdensome, or inappropriate. As stated by the regulation, a request for subpoena will be granted by OWCP only where the testimony or materials are relevant to the matter in issue at the hearing. Therefore, we do not believe that providing for challenge of a subpoena by regulation is necessary.

A Federal agency commented that the provision in § 10.134(b) that non-government witnesses be paid "the same fees and mileage as are paid for like services in the District Court" could be interpreted as meaning that expert witnesses such as physicians will not be paid their prevailing rate. The commentator went on to state that, as a practical matter, forcing a doctor to testify for a small fee is courterproductive. We agree with this comment, and § 10.134 (b) and (c) are revised to provide for fees for expert witnesses not to exceed the local customary charges for such service. One labor organization suggested that § 10.134(c) concerning the payment of witness fees by the claimant should state that it refers to non-government witnesses as does subsection (b). Employees of the United States subpoenaed by OWCP in connection with a claim under the FECA are considered to be in an active duty status while attending the hearing and while traveling to and from the hearing. Therefore, the payment of fees for such witnesses by the injured employee is not appropriate, and § 10.134(c) is further revised to apply only to non-government witnesses.

*Section 10.135.* In commenting on § 10.135, four Federal agencies stated that the employing agency should be allowed to present testimony or evidence at the hearing, or at least at the invitation of the OWCP hearing representative. Two of these commentators also suggested that the employing agency be given the right to request a hearing. On the other hand, a labor organization stated that there is no need to provide for the specific involvement of employing agencies in hearings. The regulation provides for agency attendance in the role of an observer so that the agency may become aware of the issues and contentions in order to determine whether the submission of additional relevant evidence is indicated. Agency attendance without the right to actively participate in the hearing does not, in our view, create an adversarial process, but does further the development of a complete record. However, as has been stated earlier, it is the position of the Department that allowing the agency to activiely participate in the hearing process, other than by specific request of the claimant, equates to the establishment of an adversarial proceeding, which is contrary to the intent of Congress in enacting the FECA. The provisions of § 10.135 will enable the Department to render a decision on as complete a record as possible without entering into an adversarial process. With regard to the right of an agency to request a hearing, 5 U.S.C 8124 does not provide the employing agency with such right. The language of 5 U.S.C. 8124(b)(1) is specific as to who has the right to request a hearing, and the specificity of the language reflects the intent to provide the right to request a hearing only to the claimant.

*Section 10.136.* Two labor organizations stated that § 10.136 should provide for issuance of a hearing decision within 30 days of the actual hearing or the date granted for the submission of additional evidence. The Department recognizes the need for the prompt issuance of decisions and

attempts to do so. However, it must be recognized that evidence submitted during or after the hearing may require additional development or clarification before a proper decision can be issued. To establish a time frame for issuance of a decision could result in bypassing such necessary development in order to meet such time standard. Clearly, this is contrary to the basic purpose of the adjudication process. Therefore, establishment of a time standard for issuance of hearing decision is viewed as potentially counterproductive.

*Section 10.137.* Three labor organizations questioned the Department's authority to impose costs on the claimant for the unexcused failure to appear at a hearing as provided by § 10.137, and suggested that the provision be deleted. Costs are incurred by the government without corresponding benefit where the claimant without good cause shown fails to appear at the hearing. Such cost should not be assumed by the goverment or by the tax-paying public, but should be borne by the individual who necessitated such cost, i.e., the claimant who requested the hearing but failed to appear. We believe there is sufficient authority under 5 U.S.C. 8149 for such provision. Another labor organization stated that there is no justification given for reducing the time before a scheduled hearing during which the claimant could request postponement. The regulation provides that written request for postponement must be received at least three days prior to the scheduled date of hearing. Previously, requests for postponement could be made up to 48 hours before the scheduled hearing. Practical considerations for possible rescheduling of other hearings and other support service requirements were the basis for requiring additional time between receipt of the request for cancellation and the previously scheduled date of the hearing. Finally, two Federal agencies suggested that the unexcused failure to appear at the first hearing should be deemed to waive the right to a hearing, and a decision should then be made on the written record. Since a claimant should not be denied the right to a hearing where good cause is shown for the failure to appear at the first scheduled hearing, a second hearing will be scheduled. However, if good cause is not shown, another hearing will not be scheduled, no decision on the written record will be provided, and the decision which was the subject of the hearing request will, therefore, remain in force without modification. Thus, the regulation, as revised, has the effect of denying a hearing for the unexcused failure to appear at the first hearing as suggested by the commentators.

*Section 10.138.* The provisions of § 10.138 relating to the review of decisions under 5 U.S.C. 8128(a) elicited numerous comments. One Federal agency commented that the one-year time limitation for requesting reconsideration is important and should be retained, while another commentator suggested the limitation should be 6 months rather than one year. However, five labor organizations objected to this limitation characterizing it as unnecessary, overly restrictive, or beyond the authority of the Department. One labor organization also objected to the provision that a denial of application for review is not itself subject to further review under this section or to hearing under § 10.131, contending that, since the request is made for merit review, a refusal to do so is therefore viewed as part of an award for or against the payment of compensation. One labor organization objected to the involvement of the employing agency in the review process since it not only delays case action but creates the appearance of adversary involvement, while another suggested that the claimant should have the right to review and comment on any agency submission. In response, the one-year time limitation is an effort to curtail the open-ended reconsideration process currently provided, and to eliminate frivolous or repetitious requests for review made years after the issuance of a decision which may well have been previously reviewed or subject to hearing and/or appeal. Section 8128(a) of the FECA authorizes the Secretary to exercise discretion in determining whether review will be provided. Some limitations, based upon applicable decisions of the Employees' Compensation Appeals Board, already exist (and are also formalized in this regulation) with respect to the evidence which must be submitted in order to obtain review. A limitation on the time for making such request is equally appropriate.

With regard to not subjecting a denial of application to further review or hearing, the claimant has the responsibility for showing that a review of the merits of a decision is warranted by meeting the requirements specified in § 10.138(b)(1) (i)–(iii). Where such showing is not made, the denial of the application for review in no way constitutes a decision on the merits of the original decision in question. It should be noted that the denial of application for review does not prohibit or prevent a claimant from obtaining review of the original decision where a subsequent request which meets the requirements of § 10.138(b)(1) (i)–(iii) is made within one year of the original decision. As far as employing agency involvement is concerned, allowing the agency to become aware of the issues and arguments involved in the request for review and providing an opportunity to submit relevant comment and/or evidence is not viewed as establishing an adversary process, but rather is viewed as developing as complete a record as possible on which to base a decision. With this full development in mind, the comment concerning claimant review of an agency submission is well taken, and similar to the provisions associated with hearings, § 10.138(b)(2) is revised to provide such opportunity to the claimant.

*Section 10.139.* Two labor organizations commented that decisions concerning the amounts payable for medical services should not be excluded from review by the Employees' Compensation Appeals Board. That exclusion is set forth in § 10.139 and was added to the regulations in 1984 (49 FR 18976, May 3, 1984). No proposal is made to further modify this section, nor is one appropriate. As stated in the supplemental information contained in the 1984 issuance, issues concerning the amount payable out of the Employees' Compensation Fund for medical services are questions more properly reserved for final decision by the Director, OWCP.

*Section 10.140.* One Federal agency commented that § 10.140 should include specific time frames within which OWCP must render a decision on agency contested claims. The time taken to render a decision in agency contested cases is dependent on the extent to which OWCP needs additional information in order to properly resolve issues in the claim. The extent to which additional information is needed and the time consumed in obtaining that information cannot be regulated by establishment of a time standard for rendering a decision. If a mandatory time frame was established, decisions might be issued which would not be based on full and necessary development of the evidence. It is expected, however, that one of the objectives of this regulatory revision, i.e., more complete and timely submission of evidence by the employee and employer, will result in prompt decisons.

One labor organization commented that providing the employing agency with the right to investigate employee activities goes well beyond investigation

of criminality and would likely foster employer abuses leading to invasions of privacy. In the past, employing agencies have made investigations which have produced evidence not usually readily available to OWCP on which OWCP can take further action. Prior regulations have been silent on such investigations, but such investigative activity was implicit in the employing agencies' obligation to monitor the progress of their injured employees and, where appropriate, submit relevant evidence. Since several agencies have engaged in these activities, it is appropriate that the matter be addressed in the regulations. While an agency investigation may result in evidence of less than total disability, it may show criminal fraud. However, to attempt to limit investigations to only criminal activity would in many cases result in relevant information never coming to light. The provision is reasonable and justifiable since it merely confirms the employing agency's obligations to monitor the progress of its injured employees and submit relevant evidence, especially since the employing agency may only collect and present the facts and may not take action with regard to reduction or termination of the claimant's benefits. Another labor organization suggested that any material submitted by the employing agency should be given to the claimant with the opportunity for rebuttal before any action is taken on the claimant's benefits. To do so for every submission, including those where the submission has no effect on the claimant's benefits, is viewed as unnecessary. However, it should be noted that, beyond the claimant's basic right to review his or her file at any time, several regulations specifically provide for the claimant to review agency submissions. For example, § 10.102 authorizes the official superior to furnish an employee with a copy of any notice of injury, claim forms, or other documents completed and submitted to OWCP by the employing agency, and requires the official superior to do so where the employee makes a written request for those documents. Also § 10.131(b), § 10.135, and § 10.138(b) provide the employee with the opportunity to review and comment on any employing agency submission made in connection with a hearing or reconsideration. Further, a procedure has recently been implemented whereby a notice of proposed termination or reduction is sent to the claimant where evidence received provides a basis for such termination or reduction. The evidence together with an explanation of the basis for the proposed action is furnished to the claimant who is also provided with an opportunity to submit comment, evidence or argument in response to the notice of proposed action. We believe this procedure and the above-referenced regulations address the concerns expressed by the commentator.

One Federal agency also noted that the last sentence of § 10.140 provides that in contested claims the employing agency will be notified "of the rationale for approving the claim," and suggested that the language be changed to require "the setting forth the basis therefor" as used in § 10.136. We believe the language used adequately expresses the intent to provide the employing agency with the reason for accepting a contested claim. Finally, one Federal agency stated that it was pursuing the possibility of contracting out for investigative services, and urged that there should be no bar to such action. Whether an agency conducts an investigation with its own personnel or through contract is not viewed as a matter for these regulations. However, regardless of who provides investigative services, the provisions of § 10.11 concerning confidentiality of claim-related material must be followed.

*Section 10.141.* A labor organization suggested that § 10.141 should be revised to provide for Department assistance to injured employees on appeals where employees cannot secure and/or pay for an attorney. There is no provision within the FECA for providing injured employees with such representation.

*Section 10.145.* Two Federal agencies suggested that § 10.145 be revised to provide that the employing agency be notified routinely when representative fees are applied for. Representative fees are paid for by the claimant and not by OWCP or the employing agency. Therefore, no reason exists for agency involvement in the process of reviewing the representative's fee request. One labor organization suggested that, because of the possibility of intimidation, OWCP should secure an employee's comments on the representative's requested fee directly, rather than having the representative arrange for employee review and comment prior to submission to OWCP. The regulation reflects a procedure used by OWCP for several years. The purpose of the procedure was to obtain the needed information in one submission so as to facilitate a prompt decision with respect to the requested fee. Our experience with this procedure has not revealed the situation with which the commentator is concerned.

*Section 10.201.* Three Federal agencies stated with respect to § 10.201 that they supported the reduction from 6 months to 90 days for the period within which continuation of pay (COP) may be used; however, another commentator stated that COP should not be allowed unless the employee reports the injury within 3 work days, with allowance for extenuating circumstances. This latter comment is inconsistent with the provisions of 5 U.S.C. 8118 which, by incorporating the time limitation set forth in section 8122(a)(2) of the Act, provides 30 days. On the other hand, four labor organizations strongly opposed changing the time for using COP and stated their belief that there was no justification shown for this change. The above comments are also applicable to § 10.203(a)(7) and § 10.208(b)(3). As shown by the statutory limitation to "traumatic injury," the COP provision was intended to minimize income interruption in cases where the relationship of the disability to the injury is relatively clear cut. The Department believes that initial disability occurring more than 90 days after the injury makes the relationship of the disability to the injury much less clear in the vast majority of cases, and casts doubt upon the immediate granting of such a benefit. The shortening of the time will not result in the denial of compensation entitlement since compensation would be payable for any disability occurring after 90 days. Further, the significant delays encountered by injured employees prior to 1974 in receiving compensation payments was also a major factor in the establishment of the COP provision. However, OWCP is currently able to adjudicate cases and make payment in a much more timely manner than it did twelve years ago, thus reducing the need for a 6-month period for the use of COP.

One Federal agency pointed out that the provisions of § 10.201(c) are not consistent with those of § 10.204(a)(4) with respect to termination of COP with the termination of employment. We agree that further revision is necessary. Where an injured employee is otherwise entitled to COP, pay is not to be interrupted because of a disciplinary action. In the case of a disciplinary action of suspension without pay, the claimant's right to COP as provided by statute supercedes the right of the employing agency to interrupt that pay, especially since such suspension could be accomplished after the employee returns to work. With regard to termination of employment and

continuation of pay, we recognize that our earlier position had required employing agencies to continue the pay and deductions of individuals who were no longer on the agency's employment rolls. Since the provisions of 5 U.S.C. 8118(b) establish only a maximum period for continuation of pay (i.e., for a period not to exceed 45 days) and not a minimum period, termination of COP with the termination of employment is appropriate and proper. However, the termination of employment as a result of a disciplinary action where the employee is given final notice of the termination after an employment injury raises the possibility of accusations that employment was terminated because of the employment injury. To avoid such possible inference, § 10.201(c) is revised to provide for termination of COP with the termination of employment as a result of a disciplinary action, provided the final notice of termination of employment for cause is issued to the employee prior to the date of injury. Since termination of COP is directly related to the term of employment (i.e., the date employment is to end), another situation also deserves mention, and that is where an employee is hired on a "not-to-exceed" basis. Again, the term of employment, i.e., the ending date of employment, as established prior to the date of injury is the determinative factor. For example, if an employee is hired for a period not to exceed 180 days and is injured on the 150th day, COP may not be terminated before the 180th day. However, if the period of employment had been changed prior to the date of injury to 160 days because, for example, of a lack of work for the last 20 days, then COP could be terminated after the 160th day. Section 10.204(a)(4) is similarly revised.

A Federal agency suggested the addition of two paragraphs to § 10.201. One paragraph would require the employee to submit medical documentation to substantiate disability and causal relationship between the injury and factors of employment prior to the authorization of COP; and the other would, in cases of serious doubt as to the legitimacy of the alleged injury, require the employee to furnish medical evidence supporting disability prior to the commencement of COP. While the employee does have the burden of establishing his or her entitlement to COP, both suggestions would not permit the payment of COP until detailed medical evidence is submitted. This approach is not consistent with the basic intent of 5 U.S.C. 8118, which is minimization of income interruption. Also, one Federal agency suggested that, in the interest of expediting approval of short-term and uncontested claims, the Department should explore methods of delegating authority for agencies to give final approval to traumatic injury claims unless a claimant is appealing a disapproval of COP, or a claim was not filed within 30 days from the date of injury, or COP time allowed has exceeded 30 days. Under 5 U.S.C. 8145, the Secretary of Labor is authorized to "administer and decide all questions arising under" the FECA. The statute further provides that the Secretary may delegate that authority only to employees of the Department of Labor. For this reason, the Department cannot delegate its decision making authority to any other official of the United States Government.

Lastly, § 10.201(b) is revised to make clear that where an injury results in the employee being changed to a different work schedule which results in a loss of salary or premium pay, such as Sunday pay or night or shift differential, the employee is entitled to continuation of pay for such loss, regardless of whether a personnel action was taken to change the employee's work schedule.

*Section 10.202.* With regard to § 10.202, one Federal agency stated that advanced leave is at the discretion of an agency and any implication that § 10.202 authorizes such leave should be clarified. It was not the intent of the regulation to require an employing agency to advance leave in this situation. Therefore, the section is revised accordingly. Two labor organizations questioned why it is left to the discretion of the employing agency to permit retroactive conversion of leave to COP. Initially, it was the Department's position that the restoration of leave was a matter for the employing agency. However, after reviewing these comments and the statutory provisions involved, it is concluded that an injured employee has a statutory right of entitlement to COP, and that such right supercedes the authority of the employing agency with respect to leave restoration. Administratively, however, the requirement to retroactively convert and restore previously used leave cannot be without limitation. Therefore, a request to convert previously used leave to COP must be made by the employee within one year of the date the leave was used or the date of OWCP's approval of the claim, whichever is later. Section 10.202 is revised to reflect these changes. Also, in light of the ability of an employee to choose to receive COP (rather than to lose the sick or annual leave he or she in fact used) within the one-year period as discussed, § 10.201(a)(3) is revised by eliminating the requirement that COP be claimed within 30 days and substituting therefor the statutory requirement that a claim for wage loss be filed within 30 days.

One of the labor organizations also stated that the last two sentences of the section are unnecessarily restrictive and should be deleted. We do not agree with this assessment. As provided by § 10.201(b), the 45-day COP period starts with the first day or shift following the day or shift of injury during which the claimant is disabled. Section 10.202 goes on to clarify that leave may not be used to delay the start of the COP period, or to extend it beyond the 45th day of disability. To do otherwise would allow for the employee to timely file Form CA–1, choose to use leave for an extended period, e.g., 60 days, submit no medical evidence to OWCP or the employing agency while on leave, and then on the sixty-first day choose to immediately be placed on COP for an additional 45 days. Aside from the practical concerns related to the lack of medical evidence for the first 60 days of disability, there is no clear advantage to the employee of following this course of action. The employee may use, if he or she so desires, the 60 days of leave after the COP period has ended. Since the suggested change has no clear advantage, the regulation is not unnecessarily restrictive.

While not specifically commented upon, we wish to make clear that the term "buy back" as used in § 10.202 refers to the use of compensation payments to repurchase leave used during a period for which COP was otherwise payable. It does not refer to the conversion of leave to COP as discussed above.

*Section 10.203.* A Federal agency suggested that portions of § 10.203(a)(5) relating to intoxication being the proximate cause of an injury be revised to to read ". . . was proximately caused by the employee's use of alcohol or other drugs." The Department believes that the term intoxication includes not only alcohol but also drugs. However, in terms of denying COP or compensation, the term "other drugs" is too broad. For example, the diminishment of physical or mental control due to the use of a drug prescribed by a physician, or the use of an over-the-counter medication, is not sufficient basis for denial of compensation for an injury resulting from such use. Further, the Department realizes that legal levels of intoxication have not been established for most drugs as it has for alcohol. However, it is reasonable to anticipate that such

levels will be established over time. Since the term "other drugs" is overly broad, the term intoxication is defined as including intoxication by alcohol or illegal drugs. The term "illegal drugs" means controlled substances obtained and used without proper medical prescription. It must be pointed out that simple use of alcohol or illegal drugs does not warrant denial of COP or compensation as both 5 U.S.C. 8102 and this regulation require that the injury or death be "proximately caused" by the intoxication. Further, the inclusion of illegal drugs as a basis for denying a claim under the FECA in no way provides an employing agency with any additional authority to test employees for drugs beyond any authority which may otherwise exist. Another Federal agency suggested that § 10.203(a)(6) be revised by putting "on Form CA–1" at the end of the paragraph. The statutory requirement under 5 U.S.C. 8118 is for the employee to file "a claim for a period of wage loss due to a traumatic injury . . . on a form approved by the Secretary of Labor." Form CA–2 constitutes a claim for wage loss on a form approved by the Secretary. Thus, where an employee sustained a traumatic injury but erroneously filed form CA–2, the statutory requirement would be satisfied. We see no reason to establish a regulation which would deny COP simply on the basis that a form other than CA–1 was used. Similar to the comments made with regard to § 10.201, this Federal agency also suggested that controversion and termination of pay be allowed where the employee fails to submit medical documentation to substantiate that the injury occurred and is job-related. As stated in response to those previous comments, requiring the submission of supporting medical evidence before initiating COP is not consistent with the intent of 5 U.S.C. 8118. However, it should be noted that these regulations allow for termination of COP after 10 work days if prima facie medical evidence of a traumatic disabling injury is not provided within that time, subject to reinstatement if later submitted.

*Section 10.204.* Many comments were received concerning § 10.204 and particularly concerning the termination of COP after 10 calendar days where the employee does not provide prima facie medical evidence of a traumatic disabling injury. One Federal agency stated that the period should be 2 days rather than 10 days, while another stated that after the first 10 days the employee should be required to submit supporting medical evidence at 7-day intervals. Two labor organizations, however, stated that a time limitation for the submission of medical evidence is unreasonable since the employee often does not have control over the medical evidence and late submissions usually occur because of the physician or medical facility. However, the employee has the burden to establish his or her entitlement to the benefits under the FECA. The establishment of a time requirement for the submission of prima facie medical evidence encourages the employee to obtain medical examination and/or treatment for the injury and to do so in a prompt manner, and minimizes the potential for abuse of a benefit which is immediately payable prior to a formal decision on entitlement. Thus, there is sufficient reason for the establishment of a time requirement for the submission of supporting prima facie medical evidence. We recognize that the time of submission of medical evidence is not always under the direct control of the employee. Therefore, § 10.204(a)(1) is revised to require the submission of such medical evidence within 10 working days rather than 10 calendar days. This provides the employee with additional time to arrange for the submission of the evidence but does not go so far into the 45-day COP period as to significantly lessen the effectiveness of the requirement.

One labor organization requested clarification of the status of the employee where COP is terminated after 10 days, but the medical evidence is subsequently provided. Where COP is terminated after 10 work days, the employee may request sick or annual leave from that point onward. If supporting medical evidence is subsequently submitted, the employing agency is required to convert any leave used to COP and restore that leave to the employee's account. There is no basis for requiring the employee to remain in an annual or sick leave status for that period where entitlement to COP has been established.

One commentator suggested that the prima facie medical evidence include a description of the physical limitations imposed by the injury. The presence in the report of specific physical limitations, while possibly useful to the employing agency in terms of determining whether suitable work could be made available, is not a requirement for establishing the right to COP, and is, therefore, not specifically required.

One Federal agency stated that the ability of the employing agency to terminate COP under § 10.204(a)(3) can be circumvented where a partially disabled employee simply refuses to respond to an offer of suitable work. The agency suggested that the employee be required to respond to such offer within 2 working days. The concerns of the commentator are recognized. It is reasonable to expect that an employee respond to such offer within a reasonable time. However, 2 working days is considered too short a period given that the employee should have the opportunity to take the description of the offered employment to his or her physician for review and comment. We believe 5 working days is a reasonable time for the employee to respond to the offer and that failure to do so within that period is sufficient reason for the termination of COP. Section 10.204(a)(3) is revised accordingly.

A Federal agency suggested that the reasons for agency termination of COP be expanded to include the failure of the employee to submit medical evidence of continuing disability, the lack of submission of Form CA–17 after several requests have been made to the employee, the submission of conflicting medical evidence by an employee who changes physicians without prior approval, and the submission of medical evidence which appears to be unsupportive and inconsistent. The authority to make determinations concerning an employee's entitlement to benefits of the FECA, including the entitlement to COP, rests with the Department. However, given the nature and immediacy of COP and the need to minimize the inappropriate payment of the COP benefit, employing agencies may, under the provisions of § 10.204, take certain preliminary actions with respect to continuing the employee's pay. Such actions are permitted where the circumstances are clear and straightforward, such as where the employee's attending physician finds the employee no longer disabled, where the employee refuses an offer of employment which is consistent with the work restrictions cited by the attending physician, or where the period of employment expires. The circumstances cited by the commentator, however, are less clear and straightforward in terms of the employee's continuing entitlement to COP. Once the entitlement is established, the lack of receipt by the agency of certain information or the receipt of evidence which appears to be unsupportive or inconsistent does not establish that the disability has ceased or that the employee is no longer entitled to the benefit. Such circumstances often require the development of additional information

before a proper determination can be made. Further, preliminary agency determinations based on incomplete or inconclusive evidence increased the potential for inappropriate terminations of COP and unnecessary financial hardship being placed on the injured employee. Thus, judgemental determinations as to an employee's continuing entitlement to COP under the circumstances described by the commentator are clearly within the purview of and properly retained by OWCP.

Lastly, a labor organization questioned the legality of applying the "compensation" penalty in 5 U.S.C. 8123 to COP which is not compensation. The penalty provision of 5 U.S.C. 8123(d) is not being extended to include COP. Rather, under the authority provided by 5 U.S.C. 8118(b)(3), a reasonable penalty similar to that provided by section 8123(d) of the FECA is being established. The reference to 5 U.S.C. 8123 in the regulation is to subsection (a) of that statute and describes the type of examination invloved, i.e., an examination required by OWCP.

*Sections 10.207 and 10.208.* Comments and responses on other sections of the regulations are also applicable to portions of §§ 10.207 and § 10.208, such as the 10 days (now revised to read 10 work days) for the submission of prima facie medical evidence of a traumatic disabling injury and the shortening of the period for using COP from 6 months to 90 days. These comments and responses will not be repeated for these sections. One Federal agency suggested that § 10.207(c) be revised to allow for contact with the attending physician by an "appropriate official." The term "appropriate official" is without sufficient definition. However, it is appropriate for a supervisor of the injured employee (and not limited to the immediate supervisor) to contact the attending physician for the purpose stated in the regulation. Therefore, § 10.207(c) is revised to allow such contact by an appropriate supervisory official.

*Section 10.209.* In response to the comment of a Federal agency that the employee's responsibility to submit prima facie medical evidence of a traumatic disabling injury within the prescribed time limits should be specifically addressed, § 10.209 is further revised by redesignating subsections (b)–(f) as (c)–(g), and inserting a new subsection (b) which states the employee's responsibility to submit to the employing agency prima facie medical evidence of a traumatic disabling injury within 10 work days of claiming COP, and advises of the possible consequences for failure to do so.

*Section 10.303.* Two labor organizations suggested that the "availability of suitable employment" as used in § 10.303(a) should be expanded by the phrase "in the employee's commuting area." The suggested language is too restrictive. Based on decisions of the Employee's Compensation Appeals Board (e.g., *Romeo Micallef,* 29 ECAB 213), the determination as to availability of suitable employment in a case where the employee has voluntarily moved to an "isolated area" (i.e., an area of limited job opportunity) may be made using the area where the claimant was employed at the time of injury. Adopting the suggested language would not allow a suitable LWEC determination in these cases where it is clearly appropriate.

*Section 10.304.* A federal agency suggested that § 10.304(c) be expanded to include a provision that compensation under the schedule be "payable proportionately in cases of aggravation to a previous existing impairment only if the degree (percent) of impairment, resulting from the employment, is greater than the degree of impairment caused prior to the employment." The commentator also suggested that a new subsection (f) be added which would basically reduce the compensation payable for permanent impairment by reducing the percentage of impairment by that percentage of impairment for which the employee received or is entitled to receive compensation under a state or local workers' compensation law for an earlier injury to the same member or function. Consideration was given to such a provision at the time revision of these regulations was initially undertaken, and it was decided inclusion of such provision is not feasible or possible. The Employees' Compensation Appeals Board has held that, in determining the amount of a schedule award for a member that sustained an employment-related impairment, preexisting impairments are to be included (see *Raymond E. Gwynn,* 35 ECAB 247), and that the language in 5 U.S.C. 8108 concerning reduction of a schedule award for an "earlier injury" means an earlier injury in Federal civilian employment (see *Frances Marie Kral,* 24 ECAB 157). Thus, absent a legislative amendment, the suggested revision of the regulation would not be consistent with well-established workers' compensation principles or 5 U.S.C. 8108. Further, even if the suggested revision was not inconsistent with such principles and statutory provisions, in order to implement the suggestion, the record would clearly have to establish the percentage of impairment which pre-existed Federal employment. This information is not available in usable form in the vast majority of cases. To have the needed information available for the future, pre-employment physical examinations would have to include a full evaluation of all scheduled members (hearing tests, eye examinations, pulmonary function tests, etc.) and the establishment of the percentage of impairment, where appropriate, using the guidelines used by OWCP. The cost of implementing this would be prohibitive.

*Section 10.310.* Three labor organizations took issue with the provision in § 10.310 which precludes the repurchase of leave taken during the 45-day COP period. As provided by 5 U.S.C. 8118(c), compensation is not payable until after the COP period ends. Therefore, compensation cannot be used to repurchase leave used during that period. However, the revision of § 10.202 to require conversion of leave to COP with restoration of the leave used makes this issue moot.

*Section 10.313.* A labor organization commented that the language in § 10.313 concerning "Federally funded or Federally assisted benefits" is an "overbroad fishing expendition" that has no basis in statute and should be deleted. The provisions of subsection (c) are not intended to apply only to other benefits which may create a prohibited dual situation, but also to benefits which may affect an employee's entitlement to compensation or to other benefits provided by OWCP. For example, employees are requested to provide information concening the receipt of benefits under the Black Lung Benefits Act (BLBA) which is also administered by OWCP. While there is no prohibition to the concurrent receipt of FECA and BLBA benefits, there is a requirement for the reduction of BLBA benefits to reflect the receipt of Federal or State workers' compensation benefits (See 30 U.S.C. 932(g)). Since both programs are administered by OWCP, it is reasonable and administratively desirable to query FECA beneficiaries about the receipt of BLBA benefits. Therefore, to more clearly reflect actual practice, § 10.313 is revised to apply to the receipt of certain benefits as identified by OWCP for the purpose of determining a beneficiary's entitlement to compensation or to benefits of other programs administered by OWCP. Further, with the passage of the Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, and the amendment of 5 U.S.C. 8116 by that

Act, § 10.313(a) is revised to address prohibited dual receipt of compensation under the FECA and certain benefits under the Federal Employees' Retirement System.

Some of the comments and responses on portions of § 10.107, § 10.125, and § 10.126 are also applicable to portions of § 10.313, such as those concerning the 30-day period for submission of requested information, the date of retroactive restoration of benefits, and the forfeiture of benefits during the period of suspension where good cause for non-compliance is not shown. These comments and responses will not be repreated for this section.

*Section 10.314.* A labor organization stated that, under § 10.314(b), use of the pay rate in the case of a recurrence of disability in the year prior to a cost-of-living allowance (COLA) would remove the COLA entitlement. The commentator stated that this may not be legal and that a plain reading of the FECA indicates entitlement to both recurrent pay rate and applicable COLA. It is assumed that the commentator means the removal of entitlement to COLAs occurring prior to and within one year after the date of recurrent disability, since the regulation clearly does not remove the entitlement to COLAs occurring more than one year after the disability recurs. This regulation is a formal statement of a long-standing OWCP policy. The use of a recurrent pay rate for compensation purposes generally raises the employee's compensation commensurate with salary increases which occurred since the date of injury. The application of all cost-of-living increases occurring more than one year after date of injury to this already-increased compensation amount is not reasonable and not in keeping with the intent of 5 U.S.C. 8146a. The point of establishing and using a recurrent pay rate is to account for just such increases in wages from the date of injury to the beginning of recurrent disability.

*Section 10.321.* In commenting on § 10.321, a Federal agency requested that a copy of the final decision concerning an overpayment be sent to the employing agency at the same time it is sent to the employee. We agree with the suggestion, and § 10.321(i) is added to show that a copy of such decision will be sent to the overpaid individual, the individual's representative, and the employing agency. One labor organization stated that while § 10.321 extensively discusses the procedures for recovery of an overpayment, it does not specifically provide that the claimant first be allowed an opportunity to discuss a repayment schedule before action is taken to recover the overpayment. In cases of an overpayment not resulting from a forfeiture (see below) where there is no continuing entitlement to compensation, the claimant is provided with an opportunity to discuss a repayment schedule. In cases where there is continuing entitlement to compensation, deductions are made from the continuing compensation in order to recover the overpayment. An opportunity to discuss a repayment plan in many of these cases is not specifically provided since consideration is given to several factors, including the claimant's financial circumstances and needs in determining the amount to be withheld. Further, should the claimant's financial circumstances change, the claimant may present a different repayment schedule based on that change in circumstances.

The review of the regulations concerning overpayments made as a result of the comments received revealed that clarification is required with respect to recovery of overpayments resulting from forfeited compensation. It has been and continues to be the position of the Department that forfeiture of the right to compensation, such as that provided in § 10.125(a), is a penalty, and that compensation already paid for a period of forfeiture must be recovered. Where the beneficiary is entitled to further compensation payments, recovery of the previously paid but forfeited compensation shall be made by reducing further payments to zero if necessary, until the forfeited amount is collected. Thus, the entire net amount of subsequent periodic payments may be applied against the overpayment until full recovery is made. However, § 10.321(a) as proposed, which provided for consideration of a number of factors in establishing the amount of reduction of subsequent compensation payments, including the individual's financial circumstances, did not clearly reflect this position and could have been misinterpreted as being applicable to any overpayment. To eliminate any possible confusion as to its applicability, § 10.321(a) is revised to specifically exclude overpayments resulting from the forfeiture of the right to compensation, and § 10.125(b) is revised to more clearly enunciate the Department's position with regard to the extent of deductions from subsequent compensation payments.

*Section 10.322.* Two Federal agencies stated that the standards for waiving overpayments at § 10.322 are very generous and the requirements to recoup overpayments are very burdensome. These agencies also questioned whether the due process provided by the requlations, which they viewed as greater than required by the Debt Collection Act, is necessary. These regulations and the procedures of OWCP concerning overpayments are consistent with 5 U.S.C. 8129, the Supreme Court decision in *Califano* v. *Yamasaki*, 442 U.S. 682 (1979), and the Federal Claims Collection Act. Lastly, a Federal agency commented that § 10.321(b) should be revised to permit the employing agency to proceed to recover the overpayment. With the exception of the involvement of the employing agency in recovery of an overpayment by salary offset, the authority and responsibility for recovering an overpayment of compensation rests with OWCP and not the employing agency.

*Section 10.413.* A labor organization commented that the one-year time limitation for submission of medical bills for payment as provided by § 10.413 is unreasonable since it would exclude payment of a bill which was submitted by the employee to the employing agency but not submitted by the employer to OWCP, or which was lost through administrative error. Two other labor organizations stated that exception to the time limitation should be made for good cause shown. With regard to bills not submitted by the employer or lost through administrative error, the commentator's statements appears to be based on the assumption that there is, and will be, only one billing by the medical provider. This is an unrealistic assumption given monthly or at least quarterly billings for unpaid balances by the vast majority of providers. It is reasonable to assume that an employee will become aware of the lack of payment of a bill well within the time limitation established by § 10.413, and would take appropriate action to resubmit the bill. With regard to establishing an exception for good cause shown, the 1987 plans for six major Federal health benefit insurance carriers were reviewed with respect to billing requirements, and the majority of these plans have no exceptions to their time limitations for the submission of bills for payment. Thus, § 10.413 is consistent with the requirements of most of these Federal health benefit insurance carriers.

*Section 10.452.* A technical revision is made to § 10.452(a). Subparagraph (h) was added to § 10.450 effective June 9, 1986 (see 51 FR 8276–8282); however, § 10.452(a) was not revised to reflect this addition. The reference in § 10.10.452(a) to subparagraphs (c)

through (g) of § 10.450 is changed to refer to subparagraphs (c) through (h).

*Section 10.500.* A Federal agency suggested an addition to § 10.500 which would provide that when third party claims occur, the employee should be required, at the time of submission of notice of injury, to sign a statement that they are required to file suit against any liable party no matter when or what the costs are or are expected to be. Such a requirement is inconsistent with 5 U.S.C. 8131. The Department is authorized by section 8131 to exercise discretion in determining whether to require an employee to file claim against a responsible third party on a case by case basis.

*Section 10.503.* A Federal agency suggested that the language in § 10.503(c) should be changed from "There shall then be remitted. . ." to "The beneficiary shall then remit. . ." Since a remittance may be made directly by the insurance carrier for the responsible third party or by the attorney representing the injured employee or beneficiary, specific reference to the beneficiary is unnecessarily restrictive. However, further revision is made to subsection (c), not as a result of any comment submitted, but in order to clarify the involvement of continuation of pay under 5 U.S.C. 8118 in third party recoveries. Under the provisions of 5 U.S.C. 8131 and 8132, a refund of "compensation" already paid is to be made from the proceeds of a third party settlement. However, as provided by 5 U.S.C. 8118, continuation of pay is not compensation, and thus is not subject to the provisions of § 8131 and § 8132 of the FECA (see *Paul L. Dion,* ECAB Docket No. 85–44). Further, in the case of *Janakes* v. *United States Postal Service,* 768 F.2d 1091 (1985,) the court held that the employing agency did not have common-law rights to reimbursement apart from those embodied in 5 U.S.C. 8131 and 8132. In view of the statutory language and the decision in *Janakes,* subsection (c) is revised to make clear that continuation of pay is not included in "any other payments made under the Act on account of the injury of death" which would be subject to refund under the subrogation provisions of the FECA.

*Section 10.612.* Another revision which did not result from specific comment in response to the proposed regulations involves § 10.612 concerning conditions of coverage for non-Federal law enforcement officers under 5 U.S.C. 8191–8193. A review of the regulations revealed the need for clarification of the conditions of eligibility since the regulation, as proposed, did not clearly reflect the Department's position with respect to members of the Non-Uniformed Division of the U.S. Secret Service covered under the District of Columbia Policemen and Firemen's Retirement and Disability Act. Therefore, so as to more clearly and accurate reflect the Department's position, § 10.612(e) is revised to provide that such members are considered to be engaged in the types of activities specified in 5 U.S.C. 8191(1)–(3), and are covered by the provisions of 5 U.S.C. 8191–8193 during the performance of all official duties. It should be noted that effective January 1, 1987, certain members of the U.S. Park Police and U.S. Secret Service hired after December 31, 1983, will come under the provisions of the FECA (5 U.S.C. 8101–8151) rather than the District of Columbia Policemen and Firemen's Retirement and Disability Act, and will not be entitled to benefits as non-Federal law enforcement officers under the provisions of 5 U.S.C. 8191–8193.

*Section 10.622.* A labor organization questioned the restricted definition of performance of duty for Federal grand and petit jurors under § 10.622. The conditions of coverage for such jurors are specifically enumerated in 28 U.S.C. 1877 (Pub. L. 97–463, approved January 12, 1983). The provisions of § 10.622 are consistent with the statutory provisions.

**Classification—Executive Order 12291**

The Department of Labor does not believe that this final rule constitutes a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

**Paperwork Reduction Act**

The information collection requirements entailed by this final rule do not differ significantly from those previously in effect. No new forms are required. All forms that are referenced have been submitted previously for approval by the Office of Management and Budget where required.

**Regulatory Flexibility Act**

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The final rules apply primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities, in this case, medical providers and physicians. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

**List of Subjects in 20 CFR Part 10**

Claims, Government employees, Archives and records, Health records, Freedom of Information, Privacy, Penalties, Health profession, Workers' compensation, Employment, Administrative practices and procedures, Wages, Health facilities, Dental health, Medical devices, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney diseases, Lung diseases, and Tort claims.

Accordingly, 20 CFR Part 10 is amended as set forth below.

1. The authority citation for 20 CFR Part 10 continues to read as follows:

**Authority:** 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 6–84, 49 FR 32473; Employment Standards Order 78–1, 43 FR 51469.

2. The table of contents of Part 10 is amended by adding entries for New Subpart H to read as follows:

**PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED**

**Subpart H—Special Category Employees**

**Peace Corps Volunteers**

10.600 Definition of volunteer.
10.601 Applicability of the Act.
10.602 When disability compensation commences.
10.603 Monthly pay for compensation purposes.
10.604 Period of service as a volunteer.
10.605 Conditions of coverage while serving outside the United States and the District of Columbia.

**Non-Federal Law Enforcement Officers**

10.610 Definition of a law enforcement officer.
10.611 Applicability.
10.612 Conditions for eligibility.
10.613 Time for filing a claim.
10.614 How to file a notice of injury or death.
10.615 Benefits.
10.616 Computation of benefits.

10.617 Responsibilities of the claimant, the employing agency and the Office.
10.618 Consultation with Attorney General and other agencies.
10.619 Cooperation with State and local agencies.

Federal Grand and Petit Jurors

10.620 Definition of juror.
10.621 Applicability.
10.622 Performance of duty.
10.623 When disability compensation commences.
10.624 Pay rate for compensation purposes.

3. By revising § 10.1 to read as follows:

**§ 10.1 Statutory provisions.**

(a) The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The Act has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol (5 U.S.C. 8141), members of the Reserve Officer Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers In Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees (see 5 U.S.C. 5351, 8144), employees of the Panama Canal Commission and certain employees of the Alaska Railroad (see 5 U.S.C. 8146), certain law enforcement officers not employed by the United States (see 5 U.S.C. 8191–8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The Act provides for the payment of compensation for wage loss and for permanent impairment of specified members and functions of the body incurred by employees as a result of an injury sustained while in the performance of their duties in service to the United States. In addition to monetary compensation, eligible employees are entitled to receive, at reasonable expense to the United States, medical and related services made necessary by the medical condition or conditions accepted as being employment related. In appropriate cases, vocational rehabilitation services shall be provided to eligible beneficiaries.

(c) The Act also provides for the payment of monetary compensation to specified survivors of an employee whose death is the result of an employment-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) Each of the types of benefits and conditions of eligibility enumerated in this section is subject to the applicable provisions of the Act and the provisions of this part. This section shall not be construed to modify or enlarge upon the provisions of the Act.

4. By revising § 10.2(b) to read as follows:

**§ 10.2 Administration of the Act and this chapter.**

* * * * *

(b) In the case of employees of the Panama Canal Commission, the Federal Employees' Compensation Act is administered by the Panama Canal Commission and inquiries pertaining to such coverage should be directed to that Commission.

5. By amending § 10.3 to add a new paragraph (i) which reads as follows:

**§ 10.3 Purpose and scope of this part.**

* * * * *

(i) Subpart H of this part contains rules for particular groups of employees whose status requires special application of the provisions of the Act.

6. By revising § 10.4 to read as follows:

**§ 10.4 Applicability of other parts within this chapter.**

This revised Part 10 is applicable to Part 25 of this chapter except as modified by Part 25.

7. In § 10.5, paragraphs (a)(6), (a)(11)(iv) through (xx), (a)(12), and (a)(14) through (a)(20) are revised; paragraphs (a)(21) through (a)(26) are added; paragraph (b) is revised, and paragraphs (c) and (d) are removed, to read as follows:

**§ 10.5 Definitions.**

(a) * * *

(6) "Benefits" or "Compensation" means the money paid or payable under the Act to the employee on account of loss of wages or loss of wage-earning capacity and to enumerated survivors on account of the employee's death, and includes any other benefits paid for from the Employee's Compensation Fund such as scheduled compensation under 5 U.S.C. 8107, medical diagnostic and treatment services supplied pursuant to the Act and this part, vocational rehabilitation services, additional money for services of an attendant or for vocational rehabilitation under 5 U.S.C. 8111, and funeral expenses under 5 U.S.C. 8134, but does not include continuation of pay as provided by 5 U.S.C. 8118.

* * * * *

(11) * * *

(iv) An individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(v) An individual selected pursuant to Chapter 121 of Title 28, United States Code, and serving as a petit or grand juror;

(vi) Members of the Reserve Officers Training Corps;

(vii) Civil Air Patrol Volunteers;

(viii) Peace Corps Volunteers and volunteer leaders;

(ix) Job Corps enrollees;

(x) Youth Conservation Corps enrollees;

(xi) Volunteers in Service to America;

(xii) Members of the National Teachers Corps;

(xiii) Members of the Neighborhood Youth Corps;

(xiv) Student employees as defined in 5 U.S.C. 5351;

(xv) Employees of the Panama Canal Commission;

(xvi) Certain employees of the Alaska Railroad;

(xvii) Law enforcement officers not employees of the United States and Federal law enforcement officers who are pensioned or pensionable under sections 521–535 of Title 4, District of Columbia Code;

(xviii) An individual covered under the provisions of section 105(e)(1) of Pub. L. 93–638 (Indian Self-Determination and Education Assistance Act of 1975); and,

(xix) Other persons performing service for the United States within the purview of the Act and all acts in amendment, substitution or extension thereof;

(xx) But does not include:

(A) A commissioned officer of the Regular Corps of the Public Health Service;

(B) A commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(C) A commissioned officer of the National Oceanic and Atmospheric Administration.

(12) "Official Superior" means officers and employees having responsibility for the supervision, direction or control of employees, or other employees of the agency designated by the employing agency to carry out the responsibilities vested in the agency under the Act and this subpart.

* * * * *

(14) "Injury" means a wound or condition of the body induced by accident or trauma, and includes a disease or illness proximately caused by the employment for which benefits are provided under the Act. The term "injury" includes damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired; except that eyeglasses and hearing aids shall not be replaced, repaired, or otherwise compensated for, unless the damage or destruction is incident to a personal injury requiring medical services.

(15) "Traumatic injury" means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work day or work shift.

(16) "Occupational disease or illness" means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates, or radiation, or other continued or repeated conditions or factors of the work environment.

(17) "Disability" means the incapacity, because of employment injury, to earn the wages the employee was receiving at the time of injury.

(18) "Temporary aggravation" means that factors of employment have directly caused an underlying or pre-existing condition, disease or illness to be more severe for a definite limited period of time and thereafter leaves no greater impairment than existed prior to the employment injury.

(19) "Impairment" means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(20) "Pay rate for compensation purposes" means the employee's pay, as determined under section 8114 of the Act, at the time of injury, or at the time disability begins, or at the time compensable disability recurs if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under section 8113 of the Act with respect to any period.

(21) "Organ" means a part of the body that performs a special function, and for purposes of this part excludes the brain, heart and back.

(22) "United States Medical Officers and Hospitals" includes medical officers and hospitals of the Army, Navy, Air Force, Veterans Administration, and United States Public Health Service, and any other medical officers or hospitals designated as a United States medical officer or hospital by the Secretary.

(23) "Representative" means a person authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the Act or this part. Where a claimant is physically or mentally incapable of making such a designation, it may be made by the claimant's legal guardian.

(24) "Surviving spouse" means the husband or wife living with or dependent for support on a deceased employee at the time of his or her death, or living apart for reasonable cause or because of his or her desertion.

(25) "Student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(i) A school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof; or

(ii) A school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body; or

(iii) A school or college or university not so accredited but whose credits are accepted on transfer by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an accredited institution; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof providing courses of not less than 3 months duration, that prepares the individual for a livelihood in a trade, industry, vocation, or profession.

An individual continues to be a student during any interim between school years if the interim does not exceed 4 months and the individual shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately after the interim, or during periods of reasonable duration during which, in the judgment of the Office, the individual is prevented by factors beyond his or her control from pursuing his or her education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(26) "A year beyond the high school level" means—

(i) The 12-month period beginning the month after the individual graduates from high school, provided he or she has indicated an intention to continue schooling within 4 months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of compensation based on student attendance, or

(ii) If the individual has indicated that he or she will not continue schooling within 4 months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on student status.

(b) *Dependents and survivors.* In addition to basic disability benefits for employees the Act provides in section 8133 that certain monthly benefits shall be payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty. Section 8110 of the Act provides that any employee who is found eligible for a basic benefit shall be entitled to have such a basic benefit augmented at a specified rate for certain persons living in the beneficiary's household or who are dependent upon the beneficiary for support. The provisions of 5 U.S.C. 8101, 8110, and 8133 defining the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or augmented benefit shall be applicable as appropriate to the provisions of this part.

8. By revising § 10.10 to read as follows:

**§ 10.10 Custody of records relating to Federal Employees' Compensation Act matters.**

All records, medical and other reports, statements of witnesses and other papers relating to the injury or death of a civil employee of the United States or other persons entitled to compensation or benefits from the United States under the Act and all amendments and extensions thereof, are the official

records of the Office and are not records of the agency, establishment or department making or having the care or use of such records.

9. By revising § 10.11 to read as follows:

**§ 10.11 Confidentiality of records relating to Federal Employees' Compensation Act matters.**

Records of the Office pertaining to an injury or death are confidential, and are exempt from disclosure to the public under section 552(b)(6) of Title 5, United States Code. No official or employee of an agency, establishment or department who has investigated or secured statements from witnesses and others pertaining to a claim for benefits, or any person having the care or use of such reports, shall disclose information from or pertaining to such records to any person, except in accordance with applicable regulations (see 29 CFR 70 and 70a).

10. By adding new § 10.12 as follows:

**§ 10.12 Protection, release, inspection and copying of records.**

(a) The protection, release, inspection and copying of records of the Office pertaining to an injury or death shall be accomplished in accordance with the rules, guidelines and provisions contained in Part 70 and Part 70a of Title 29 of the Code of Federal Regulations and the annual notice of systems of records and routine uses as published in the **Federal Register.** However, since the records of the Office are contained within a government-wide system of records under the control of the Department of Labor, § 70a.1(b)(3) of Title 29 of the Code of Federal Regulations provides that the regulations of the agency in possession of such records shall govern the procedure for requesting access to, or amendment of the records, including initial determinations on such requests, while the Department of Labor regulations shall govern all other aspects of safeguarding these records established by the Privacy Act. Where requested to amend such records in possession of the agency is received, the agency shall so advise the Office and shall provide the Office with a copy of any amended record.

(b) Records of the Office pertaining to an employee or beneficiary which are in the possession of the employing agency may be released by the employing agency to that employee or beneficiary, or their representative, in accordance with the provisions contained in Part 70a of Title 29 of the Code of Federal Regulations. This includes copies retained by the employing agency of records previously submitted to and in the possession of the Office.

(c) When an employee or beneficiary is prosecuting an action for damages under 5 U.S.C. 8131, records may be released as provided for in Part 70a of Title 29 of the Code of Federal Regulations.

11. By amending § 10.20(b) table by revising entry (2) and entries (5) through (14) to read as follows:

**§ 10.20 Forms.**

* * * * *

(b) * * *

| Form No | Title |
|---|---|
| * * * * * | |
| (2) CA–2 | Notice of Occupational Disease and Claim for Compensation |
| * * * * * | |
| (5) CA–5 | Claim for Compensation by Widow, Widower and/or Children. |
| (6) CA–5B | Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren. |
| (7) CA–6 | Official Superior's Report of Employee's Death |
| (8) CA–7 | Claim for Compensation Due to Traumatic Injury of Occupational Disease |
| (9) CA–8 | Claim for Continuing Compensation on Account of Disability |
| (10) CA–12 | Claim for Continuance of Compensation |
| (11) CA–16 | Authorization of Examination and/or Treatment |
| (12) CA–17 | Duty Status Report. |
| (13) CA–20 | Attending Physician's Report. |
| (14) CA–20a | Attending Physician's Supplemental Report. |

12. Section 10.23 is amended by revising and redesignating paragraph (b) as paragraph (c) revising paragraph (a), and adding a new paragraph (b), to read as follows:

**§ 10.23 Penalties.**

(a) Any employee, beneficiary, official superior, representative, or other person who knowingly makes, or knowingly certifies to, any false statement, misrepresentation, concealment of fact, or any other act of fraud with respect to a claim under the Act, or who knowingly accepts compensation to which that person is not entitled, is subject to criminal prosecution and may, under appropriate U.S. Criminal Code provisions (e.g., 18 U.S.C. 287 and 1001), be punished by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(b) Any employee, beneficiary, official superior, representative, or other person who, with respect to a claim under the Act, enters into any agreement, combination, or conspiracy to defraud the United States by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim is subject to criminal prosecution and may, under appropriate U.S. Criminal Code provisions (e.g., 18 U.S.C. 286), be punished by a fine of not more than $10,000 or imprisonment for not more than ten years, or both.

(c) Any person charged with the responsibility of making reports in connection with an injury who willfully fails, neglects, or refuses to do so; induces, compels, or directs an injured employee to forego filing a claim; or willfully retains any notice, report, or paper required in connection with an injury, is subject to a fine of not more than $500 or imprisonment for not more than one year, or both.

13. By revising § 10.100 to read as follows:

**§ 10.100 How to file a notice of injury or death.**

(a) *Traumatic injury.* An employee who sustains a traumatic injury which the employee believes occurred while in the performance of duty shall give written notice of the injury on Form CA–1 to the official superior. If the employee is unable to give written notice, it may be given by any person acting on the employee's behalf.

(b) *Occupational disease or illness.* An employee who has a disease or illness which the employee believes to be employment-related shall give written notice of the condition on Form CA–2 to the official superior. If the employee is unable to give written notice, it may be given by any person acting on the employee's behalf. If it is impractical to give written notice to the employee's official superior, it may be given to any official of the employing agency, or directly to the Office. Form CA–2 must be accompanied by a statement from the employee to include:

(1) A detailed history of the disease or illness with identification of part(s) of the body affected;

(2) Complete details of types of substances or conditions of employment believed responsible for the disease or illness;

(3) A description of specific exposures to substances or stressful conditions including locations, frequency and duration, and

(4) Whether the employee ever suffered a similar condition and, if so, full details of onset, history and medical care received with names and addresses of physicians rendering treatment.

(c) *Death.* If an employee dies because of a traumatic injury believed to have been sustained in the performance of duty or because of a disease or illness believed to have been employment-related, the employee's survivor(s), or any person acting on behalf of the survivor(s), shall notify the official

superior of the death. If it is impractical to give notice to the employee's official superior, it may be given to any official of the employing agency, or directly to the Office.

14. By redesignating § 10.102 as § 10.101 and revising it to read as follows:

**§ 10.101 When a notice of injury or death must be given.**

(a) *Traumatic injury.* Written notice of a traumatic injury or death due to a traumatic injury shall be given as soon as possible but, pursuant to 5 U.S.C. 8119, no later than 30 days from the date on which the injury or death occurred. Given the provisions of 5 U.S.C. 8122 and § 10.105 of this part concerning the timely filing of a claim for compensation, the failure to give notice within 30 days may result in a loss of compensation rights.

(b) *Occupational disease or illness.* Written notice of disease or illness believed to be employment related shall be given as soon as possible but no later than 30 days from the date on which the employee was first aware, or by the exercise of reasonable diligence should have been aware, of a possible relationship between the disease or illness and the conditions or factors of employment. Given the provisions of 5 U.S.C. 8122 and § 10.105 of this part concerning the timely filing of a claim for compensation, the failure to give notice within 30 days may result in a loss of compensation rights.

(c) *Death.* In the case of death, notice shall be given as soon as possible but no later than 30 days from the date of death or the date the employee's survivor first became aware, or by the exercise of reasonable diligence should have been aware, of a possible relationship between the death and the conditions or factors of employment. Given the provisions of 5 U.S.C. 8122 and § 10.105 of this part concerning the timely filing of a claim for compensation, the failure to give notice within 30 days may result in a loss of compensation rights.

15. By redesignating § 10.103 as § 10.102 and revising it to read as follows:

**§ 10.102 Report of injury by the official superior.**

(a) As soon as possible but no later than 10 working days after receipt of written notice of injury from the employee, the official superior shall submit to the Office a written report of every injury or occupational disease or illness which is likely to:

(1) Result in a medical charge against the Office;

(2) Result in disability for work beyond the day or shift of injury;

(3) Require prolonged treatment (i.e., more than two instances of medical examination and/or treatment);

(4) Result in future disability;

(5) Result in permanent impairment or;

(6) Result in a continuation of pay pursuant to 5 U.S.C 8118.

Portions of Forms CA–1 or CA–2 are provided for this purpose. If the injury does not come under any of the categories enumerated in this paragraph, the Form CA–1 or CA–2 need not be submitted to the Office but shall be retained as a permanent record in the Employee Medical Folder in accordance with the guidelines established by the Office of Personnel Management. Regardless of whether the Form CA–1 of CA–2 is forwarded to the Office or retained by the employing agency, immediately upon receipt of the written notice of injury the official superior shall complete the "Receipt of Notice of Injury" and return it to the employee.

(b) If the official superior has reason to disagree with any particular of the injury as reported by the employee, the official superior or other agency official shall explore the circumstances of the injury and submit to the Office a full written explanation specifying the areas of disagreement and the findings upon which the disagreement is based. The report may be accompanied by supporting documentation such as witness statements, medical reports or records, or any other relevant information. Any written explanation of disagreement shall be submitted to the Office at the same time as Form CA–1 in cases of traumatic injury, and within 30 calendar days from the date Form CA–2 is received from the employee in occupational disease cases. If written explanation in support of the disagreement is not submitted, the Office may accept as factual the report of injury made by the employee. Disagreement with the particulars of the injury as reported by the employee may not be used by the employing agency to delay the forwarding of the claim to the Office or to compel or induce the employee to change the claim.

(c) In cases of disease or illness, Form CA–2 must be accompanied by the following from the official superior:

(1) A detailed description of the employee's duty assignments including the nature, extent and duration of exposure to fumes, chemicals, or other irritants or situations;

(2) Copies of all physical examination reports, including x-ray reports and laboratory data, on file for the employee;

(3) A record of the employee's absences from work showing the reason for the absence in each instance, if known;

(4) Statements from each co-worker currently employed by the agency who has firsthand knowledge about the employee's condition and its cause, and;

(5) The official superior's comments on the accuracy of the employee's statement required by § 10.100(b) of this part.

(d) Other reports shall be submitted by the official superior as described elsewhere in this part or as may be required by the Office.

(e) The official superior is authorized to furnish an employee or beneficiary, or the representative, with a copy of any notice of injury, claim form, or other document pertaining to that employee or beneficiary which has been completed and submitted to the Office by the employing agency. This includes any notice of injury, claim form, or other document previously submitted to the Office, a copy of which was retained by the employing agency. While furnishing a copy of such forms and documents is not required on a routine basis in every case, the official superior shall furnish a copy of such forms and documents upon receipt of a written request from the employee or beneficiary, or the representative.

16. By redesignating § 10.101 as § 10.103 and revising it to read as follows:

**§ 10.103 Report of death by the offical superior.**

If an employee dies because of a traumatic injury or a disease or illness sustained in the performance of duty, the official superior shall immediately report the death to the Office by telephone or telegram. As soon as possible but no later than 10 working days after receipt of knowledge of death, the official superior shall complete and send Form CA–6 to the Office.

17. By adding a new § 10.104 immediately after § 10.103 to read as follows:

**§ 10.104 Report of the attending physician.**

(a) In all cases reported, the employee must submit, or arrange for the submission of, a medical report to the Office from the attending physician. This report should include: dates of examination and treatment; history given by the employee; findings; results of x-rays and laboratory tests; diagnosis; course of treatment; and the physician's opinion, with medical reasons, regarding

causal relationship between the diagnosed condition(s) and the factors or conditions of the employment. This report may be made:

(1) On Part B of Form CA–16;

(2) On Form CA–20 or CA–20a; or

(3) By narrative report on the physician's letterhead stationery.

The report shall be submitted to the Office as soon as possible after medical examination or treatment is received. (See also § 10.204(a)(1).)

(b) Additional reports shall be submitted by the attending physician as described elsewhere in this part or as may be required by the Office.

(c) Medical reports from the attending physician are to be submitted directly to the Office. However, the employing agency may request copies of these reports from the Office.

18. By revising paragraph (a) and adding paragraph (e) to § 10.105 to read as follows:

**§ 10.105 Time for filing a claim for compensation.**

(a) Claim for disability compensation. An injured employee is required to file a written claim for compensation within 3 years after the injury before compensation may be paid. If, however, the official superior had actual knowledge of the injury within 30 days, or if written notice was given within 30 days, compensation may be allowed regardless of whether a written claim was made within 3 years after the injury. Actual knowledge must be such as to put the official superior reasonably on notice of an on-the-job injury.

* * * * *

(e) If no claim is filed by an injured employee or by someone acting on the employee's behalf prior to his or her death, the right to claim compensation for disability other than medical expenses ceases and does not survive.

19. By revising § 10.106 and adding the OMB control number to read as follows:

**§ 10.106 How to file a claim for disability compensation.**

(a) Whenever an employee, as a result of an injury in the performance of duty, is disabled with loss of pay for more than 3 calendar days or has a permanent impairment or serious disfigurement as described in 5 U.S.C. 8107, the official superior shall furnish the employee with Form CA–7 for the purpose of claiming compensation and shall advise the employee of his or her rights under the Act.

(b) The employee, upon termination of wage loss if the period of wage loss is less than 10 calendar days, or at the expiration of 10 calendar days from the date pay stops if the period of wage loss will be 10 calendar days or more, should file Form CA–7 with the Office or with any person designated by the Office to receive claims. The employee's official superior is so designated to receive claims on behalf of the Office. The employee, or someone acting on the employee's behalf, must complete the front of Form CA–7 and, unless special circumstances require otherwise, submit the form to the official superior for completion and transmission to the Office. The employee is responsible for submitting, or arranging for the submission of, medical evidence in support of the claim. Form CA–20 is attached to Form CA–7 for this purpose.

(c) Upon receipt of Form CA–7 from the employee (or from someone acting on the employee's behalf), the official superior shall complete the appropriate portions of the claim form. As soon as possible, but not later than 5 working days after its receipt from the employee, the official superior shall forward the completed Form CA–7 and any accompanying medical report to the Office.

(Approved by the Office of Management and Budget under control number 1215–0103)

20. By revising § 10.107 to read as follows:

**§ 10.107 Application for augmented compensation.**

(a) While the employee has one or more dependents as defined in 5 U.S.C. 8110, the employee's basic compensation for wage loss as provided in section 8105 or 8106(a), or for permanent impairment as provided in section 8107(a), shall be augmented as provided in section 8110. Form CA–7 includes an application for such augmented compensation.

(b) Augmented compensation payable while an employee has an unmarried child as defined by 5 U.S.C. 8110, which would otherwise terminate because the child reaches the age of 18, may be continued while the child is a student as defined by the Act and in § 10.5(a)(25) of this part.

(c) The Office may require an employee to submit an affidavit or statement as to any dependents, or to submit necessary supporting documentation such as birth or marriage certificates or court orders, in the manner and at the times the Office specifies, in order to determine the employee's entitlement to augmented compensation. If an employee when required, fails within 30 days of the date of the request to submit such affidavit, statement, or supporting documentation the employee's right to augmented compensation otherwise payable shall be suspended until such time as the requested affidavit, statement, or supporting documentation is received, at which time augmented compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such augmented compensation.

(d) An employee entitled to or receiving augmented compensation shall promptly notify the Office of any event which would terminate the employee's continued entitlement to augmented compensatioin. Any checks or payments received after such event shall be returned to the Office as soon as possible. Where augmented compensation is paid by the Office beyond the date entitlement terminated, the Office shall make proper adjustment and any difference between actual entitlement and the amount already paid is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129 and other appropriate statutes.

21. By revising § 10.109 to read as follows:

**§ 10.109 Claims for balance of schedule awards unpaid at death when death is due to other causes.**

(a) If an employee who has sustained compensable impairment within the meaning of 5 U.S.C. 8107, and has filed a valid claim during his or her lifetime, dies from causes other than the injury which resulted in the compensable impairment before the entire amount due for the schedule was paid, a claim for the unpaid balance may be made on a form approved by the Office by the surviving spouse or child in accordance with 5 U.S.C. 8109(a)(3)(D). If there is no surviving spouse or child, then a claim for the unpaid balance may be made by any other survivors pursuant to 5 U.S.C. 8109(a)(3)(D) and benefits shall be paid in the proportions and under the conditions and in the order as follows:

(1) To the parent or parents wholly dependent for support upon the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(2) To the parent or parents partially dependent for support upon the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(3) To the parent or parents partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), share and share alike.

(b) Any survivor referred to in paragraph (a) of this section must be alive to receive any payment and any such survivor shall not have a vested right to any such payment. Claims for continuation of payments under 5 U.S.C. 8109 shall be made in the manner described by § 10.126 of this subpart.

(c) The entitlement of any survivor to payment under 5 U.S.C. 8109 shall cease upon the happening of any event which would terminate such right under 5 U.S.C. 8133. The termination of such right and any necessary reapportionment shall be governed by § 10.128 of this subpart.

(d) The disposition of any balance not paid under the foregoing paragraphs shall be made in accordance with 5 U.S.C. 8109(a)(D)(v).

22. By redesignating § 10.110 as § 10.125 and revising it to read as follows:

**§ 10.125 Affidavit or report by employee of employment and earnings.**

(a) While in receipt of compensation for partial or total disability, and unless found by the Office to be unnecessary or inappropriate, an employee shall periodically be required to submit an affidavit or other report of earnings from employment or self-employment on either a part-time or full-time basis. If an employee when required, fails within 30 days of the date of the request to submit such an affidavit or report, the employee's right to compensation for wage loss under section 8105 or 8106 is suspended until such time as the requested affidavit or report is received by the Office, at which time compensation will be reinstated retroactive to the date of suspension. If, in making an affidavit or report, an employee knowingly omits or understates any earnings or remuneration, the employee shall forfeit the right to compensation with respect to any period for which the affidavit or report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment or earnings in a required affidavit or report may, in addition to forfeiture, subject the employee to criminal prosecution.

(b) Where the right to compensation is forfeited, any compensation already paid for the period of forfeiture shall be recovered by deducting the amount from compensation payable in the future. The amount deducted shall equal the total compensation payable until the full amount forfeited has been recovered. If further compensation is not payable, the compensation already paid may be recovered pursuant to 5 U.S.C. 8129 and the Federal Claims Collection Act (31 U.S.C. 952)(c).

(c) Earnings from employment referred to in this section or elsewhere in this part means gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses, or any other advantages received in kind as part of the wages or remuneration. In general, earnings from self-employment means a reasonable estimate of the rate of pay it would cost the employee to have someone else perform the work or duties the employee is performing. Where self-employment is in the form of a corporation, partnership, or sole-proprietorship, a lack of profits for such entity does not remove the employee's obligation to report the employment or the rate of pay.

(d) For the purpose of administering the Act, including the making of proper determinations as to an employee's entitlement to benefits, the Office may, with the written consent of the employee, obtain from the Social Security Administration wage information concerning that employee to include the names and addresses of employers for whom the employee worked during a specified period of time, the periods employed, and the gross amount of wages earned.

23. By adding a new § 10.110 to read as follows:

**§ 10.110 Burden of proof.**

(a) A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the claimed condition and the disability, if any, was caused, aggravated, or adversely affected by the claimant's Federal employment. As a part of this burden, the claimant must specify the employment incident or the factors or conditions of employment to which the injury, disease or disability is attributed, and must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing causal relationship between the claimed condition and the Federal employment. The fact that a condition or disease manifests itself during a period of Federal employment by itself does not raise an inference that there is causal relationship between the two. Neither the fact that the condition or disease became manifest during a period of Federal employment, nor the belief of the claimant that the condition or disease was caused or aggravated by employment conditions or factors, is sufficient in itself to establish causal relationship.

(b) If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. Subsequent submissions of evidence still not sufficient to carry the burden of proof will not require another notification of defects. The Office may, in its discretion, undertake to develop either factual or medical evidence for determination of the claim. For example, when the claim is based on exposure to hazardous material or noise at work, or when relevant evidence is in the possession of the Federal government and not accessible to the claimant (e.g., a deactivated employing agency facility), the Office will undertake to develop the necessary evidence.

(c) Once the Office has accepted a claim and paid compensation, it has the burden, before terminating or reducing compensation, of establishing by the weight of the evidence that the disability for which compensation was paid has ceased, or that the disabling condition is no longer causally related to the employment, or that the claimant is only partially disabled, or that its initial decision was in error.

24. By revising § 10.111 to read as follows:

**§ 10.111 Submission of other evidence.**

The responsibilities of the official superior and the claimant to submit evidence are specified elsewhere in this part. A claimant, a person acting on the claimant's behalf, or the employing agency may submit to the Office any other evidence which is deemed relevant and pertinent to the initial and ongoing determination of the claim.

25. By revising § 10.120 to read as follows:

**§ 10.120 Report of termination of disability or return to work.**

In all cases reported to the Office the official superior shall notify the Office immediately upon the injured employee's return to work or termination of disability. Form CA–3 is provided for this purpose. It shall be used unless a report of termination of disability is made to the Office on Form CA–1 or CA–2, or CA–7 as appropriate, or in some other manner.

26. By revising § 10.121 to read as follows:

**§ 10.121 Recurrence of disability.**

(a) The official superior shall notify the Office if, after the employee returns to work, the original injury causes the employee to stop work again. Form CA–2a is provided for this purpose. If the original injury was not previously reported to the Office, notice of the original injury shall be made on Form CA–1 or CA–2, as appropriate, and attached when Form CA–2a is submitted. Medical reports concerning the original injury should also be attached if not previously submitted. The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(b) When the employee has received medical care as a result of the recurrence, he or she should arrange for a detailed medical report to be submitted by the attending physician. The report should include: dates of examination and treatment; history given by the employee; findings; results of x-ray and laboratory tests; diagnosis; course of treatment; the physician's opinion, with medical reasons, regarding causal relationship between the employee's condition and the original injury; work limitations or restrictions, and prognosis. The employee should also submit, or arrange for the submission of, similar medical reports for any examination and/or treatment received subsequent to returning to work following the original injury.

(c) The employee must also give the reasons for believing the recurrence of disability is related to the original injury. A statement from the employee must accompany Form CA–2a describing the employee's duties upon return to work after the original injury, stating whether there were any other injuries or illness, and giving a general description of the employee's physical condition during the intervening period. The official superior may submit comments concerning the employee's statement.

(d) If the injured employee does not return to duty prior to the date Form CA–2a is submitted to the Office, the return to duty or termination of disability shall be reported to the Office on Form CA–3 unless otherwise reported on Form CA–7 or Form CA–8.

(e) Claim for compensation as a result of the recurrence of disability should be made using Form CA–7, unless such form was previously filed after the original injury. If Form CA–7 was previously filed, compensation must be claimed using Form CA–8. A completed claim form plus a medical report on Form CA–20 or CA–20a (or in narrative form) must be submitted before compensation may be paid.

27. By revising § 10.122 and adding the OMB control number to read as follows:

**§ 10.122 Claim for continuing compensation for disability.**

Form CA–8 is provided to claim compensation for additional periods of time after Form CA–7 is submitted to the Office. It is the responsibility of the employee to submit Form CA–8. Without receipt of such claim, the Office has no knowledge of continuing wage loss. Therefore, while disability continues, a claim on Form CA–8 should be submitted every 2 weeks until the employee is otherwise instructed by the Office. The employee shall complete and sign the face of the form, and the official superior shall complete the reverse side. The employee is responsible for submitting, or arranging for the submission of, medical evidence in support of the claim. Form CA–20a is attached to Form CA–7 for this purpose. The official superior shall forward the completed Form CA–8 and any accompanying medical report to the Office within 5 working days of receipt from the employee.

(Approved by the Office of Management and Budget under control number 1215–0103)

28. By redesignating § 10.124 as § 10.126 and revising it to read as follows:

**§ 10.126 Claims for continuing compensation for death.**

A beneficiary to whom an award of compensation has been made on account of an employee's death shall submit additional claims for continuing compensation to the Office once each year, or when required by the Office. Form CA–12 is provided by the Office for this purpose and will be sent to the beneficiary when an additional claim is required. If a beneficiary when required, fails within 30 days of the date of request to submit the form (or an equivalent written statement), the beneficiary's right to compensation, including compensation payable to that beneficiary for or on behalf of another (e.g., compensation payable to a widow on behalf of a child), shall be suspended until such time as the requested form or equivalent written statement is received, at which time compensation will be reinstated at the appropriate rate retroactive to the date of suspension.

29. By redesignating § 10.123 as § 10.124 and revising it to read as follows:

**§ 10.124 Employee's obligation to return to work or to seek work when able.**

(a) An employee whose disability has ceased and who is able to resume regular Federal employment has the obligation to do so. No further compensation for wage loss is payable once the employee has recovered from the employment injury to the extent that he or she could perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) Where an employee has been advised by the employing agency in writing of the existence of specific alternative positions within the agency, the employee shall furnish the description and physical requirements of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties. Where an agency has advised the employee of its willingness to accommodate, where possible, the employee's work limitations and restrictions, the employee shall so advise the attending physician and request the physician to specify the limitations and restrictions imposed by the injury. The employee has the responsibility to advise the employing agency immediately of the limitations and restrictions imposed.

(c) Where an employee has been offered suitable employment (or reemployment) by the employing agency (i.e., employment or reemployment which the Office has found to be within the employee's educational and vocational capabilities, within any limitations and restrictions which pre-existed the injury, and within the limitations and restrictions which resulted from the injury), or where an employee has been offered suitable employment as a result of job placement efforts made by or on behalf of the Office, the employee is obligated to return to such employment. An employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified, and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation as provided by 5 U.S.C. 8106(c)(2) and paragraph (e) of this section.

(d) When a permanently disabled employee who cannot return to the position held at the time of injury due to the residuals of the employment injury has recovered sufficiently to be able to perform some type of work, the employee must seek suitable work either

BEST COPY AVAILABLE

in the Government or in private employment. Such an employee must report the efforts made to obtain suitable employment at such times and in such manner as the Office may require including the names and addresses of the persons or establishments to whom the employee has applied for work.

(e) A partially disabled employee who, without showing sufficient reason or justification, refuses to seek suitable work or refuses or neglects to work after suitable work has been offered to, procured by, or secured for the employee, is not entitled to further compensation for total disability, partial disability, or permanent impairment as provided by sections 8105, 8106, and 8107 of the Act, but remains entitled to medical benefits as provided by section 8103 of the Act. An employee shall be provided with the opportunity to make such showing of sufficient reason or justification before a determination is made with respect to termination of entitlement to compensation as provided by 5 U.S.C. 8106(c).

(f) Pursuant to 5 U.S.C. 8104(a), the Office may direct a permanently disabled employee to undergo vocational rehabilitation. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in a vocational rehabilitation effort when so directed, the Office will, in accordance with 5 U.S.C. 8113(b), reduce prospectively the employee's monetary compensation based on what would probably have been the employee's wage-earning capacity had there not been such failure or refusal. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue participation in the early but necessary stages of a vocational rehabilitation effort (i.e., interviews, testing, counseling, and work evaluations), the Office cannot determine what would have been the employee's wage-earning capacity had there not been such failure or refusal. It will be assumed, therefore, in the absence of evidence to the contrary, that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and the Office will reduce the employee's monetary compensation accordingly. Any reduction in the employee's monetary compensation under the provisions of this paragraph shall continue until the employee in good faith complies with the direction of the Office.

30. By adding a new § 10.123 to read as follows:

**§ 10.123 Employing agency's responsibilities in returning the employee to work.**

(a) Upon authorization of medical care, the official superior shall provide the employee with written notification of his or her obligation to return to work as soon as possible and, with respect to alternative work, shall

(1) Advise the employee in the same manner as provided by § 10.207(b); and

(2) Advise the employee of his or her responsibilities under § 10.124 of this subpart.

The term "return to work" as used in this section is not limited to return to work at the employee's normal worksite, but may include return to work at other alternate locations.

(b) The employing agency shall monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA–17 is provided for this purpose. To facilitate an injured employee's return to suitable employment, the employing agency may correspond in writing with the employee's physician concerning the work limitations and restrictions imposed by the effects of the injury and possible job assignments. The employing agency shall concurrently send a copy of any such correspondence to the Office and the claimant, as well as a copy of the physician's response when received.

(c) Where the employing agency is notified in writing that the attending physician has found the employee to be partially disabled, and the employee is able to:

(1) Perform in a specific alternative position which is available within the agency and for which the agency has furnished the employee with a written description of the specific duties and physical requirements, the agency shall notify the employee immediately of the date of availability. To facilitate early return to work, the agency may inform the employee of the offer and its availability by telephone, but must provide written confirmation of the offer as soon as possible thereafter.

(2) Perform restricted or limited duties, the agency shall determine whether necessary accommodation can be made, and if so, advise the employee in writing of the duties, their physical requirements and availability. To facilitate early return to work, the agency may inform the employee of the offer by telephone, but must provide written confirmation of the offer as soon as possible thereafter.

(d) Where the nature and extent of injury prohibit the employee from returning to the duties of the position held at the time of injury, and the agency is unable to accommodate the restrictions and limitations imposed on the employee by the injury, and employment is consequently terminated, the agency may, in cooperation and coordination with the Office, subsequently determine the former employee's current physical condition and offer reemployment in a position suitable to the former employee's capabilities. Such reemployment offer must be in writing and include a description of the duties of the position being offered, the physical requirements of those duties, and the date the former employee is to return to work or, in the alternative, the date by which the former employee must notify the agency of his or her decision with respect to acceptance or refusal of the reemployment offer.

(e) A complete copy of any agency offer of employment or reemployment should be sent to the Office at the same time as it is sent to the employee.

(f) Where an injured employee relocates after having been terminated from the agency's employment rolls, the Office encourages employing agencies to offer suitable reemployment in the location where the former employee currently resides. If this is not practical, the agency may offer suitable employment at the employee's former duty station or other alternate location. Where acceptance of the offered reemployment would result in relocation expenses being incurred by the former employee, such expenses as are considered reasonable and necessary may be paid by the Office from the Employees' Compensation Fund. In determining whether a relocation expense is reasonable and necessary, the Office shall use as a guide the Federal travel regulations pertaining to permanent change of duty station.

31. By adding a new § 10.127 immediately after § 10.126 to read as follows:

**§ 10.127 Continuation of death compensation for a child, brother, sister or grandchild who has reached the age of 18.**

Compensation payable on behalf of a child, brother, sister, or grandchild under 5 U.S.C. 8133, which would otherwise be terminated because such individual has reached 18 years of age, shall be continued if and for so long as he or she is not married and is physically or mentally incapable of self-support, or if he or she is a student as defined in § 10.5(a)(25) for so long as he or she is not married and continues as a student. An individual in receipt of compensation under the provisions of 5 U.S.C. 8133 shall furnish, when so

required by the Office, proof of continuing entitlement to such compensation, including certification of school enrollment. If a beneficiary when required, fails within 30 days of the date of the request to submit such proof, the beneficiary's right to compensation shall be suspended until the requested information is received, at which time compensation will be reinstated retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

32. By adding a new § 10.128 immediately after § 10.127 to read as follows:

**§ 10.128 Termination of right to compensation for death; reapportionment of compensation.**

(a) When a beneficiary who is receiving compensation on account of death ceases to be entitled to such compensation by reason of death, remarrying before age 60, marrying, reaching the age of 18, ceasing to be dependent, ceasing to be student, or becoming capable of self-support, the beneficiary or someone acting on the beneficiary's behalf shall immediately notify the Office of such event. If the beneficiary, or someone acting on the beneficiary's behalf, receives a check which includes payment of compensation for any period after the date when entitlement ceased for any of the above reasons, the check shall be promptly returned to the Office. The terms marrying and remarrying include common law marriage as recognized and defined by state law in the state where the beneficiary resides.

(b) An event as described in paragraph (a) of this section which results in the termination of compensation to a beneficiary may also result in a reapportionment of the amount of compensation payable to one or more of the remaining beneficiaries. Similarly, the birth of a posthumous child of the deceased employee may also result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify the Office of the birth and submit a certified copy of the birth certificate.

33. By revising § 10.130 to read as follows:

**§ 10.130 Processing of claims.**

Claims for compensation for disability and death are processed by claims examiners of the Office, whose duty it is to apply the law to the facts as reported, received, or obtained upon investigation. The Federal Employees' Compensation Act, as amended, requires that a decision with respect to entitlement contain findings of fact and be based on consideration of the claim presented by the claimant, the report by his or her immediate official superior, and the completion of such investigation as the Office may deem necessary. There is no required procedure for the production of evidence but the evidence should be in written form. The final authority in the Office in the determination of a claim is vested in the Director of the Office. The decision shall contain findings of fact and a statement of reasons. A copy of the decision, together with information as to the right to a hearing, to a reconsideration, and to an appeal to the Employees' Compensation Appeals Board, shall be mailed to the claimant's last known address. If the claimant is represented before the Office, a copy of the decision will also be mailed to such representative. At the time the decision is issued, a copy will also be sent to the claimant's employing agency.

34. By revising §10.131 to read as follows:

**§ 10.131 Request for a hearing.**

(a) Any claimant not satisfied with a decision of the Office shall be afforded an opportunity for an oral hearing before an Office representative designated by the Director. A hearing must be requested in writing within 30 days of the date of issuance of the decision and be made to the Office as set forth in the decision. A claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing, or if review of the written record as provided by paragraph (b) of this section has been obtained. At an oral hearing, the claimant shall be afforded the opportunity to present oral testimony and/or written evidence in further support of the claim. A claimant may change his or her selection of an oral hearing to a review of the written record as provided by paragraph (b) of this section; however, such written request for change must be made within 30 days after the date of the Office's acknowledgment of receipt of the initial request.

(b) In lieu of an oral hearing, a claimant shall be afforded an opportunity for a review of the written record by an Office representative designated by the Director. Such review will not involve oral testimony or attendance of the claimant; however, the claimant may submit any written evidence or argument which he or she believes relevant. A review of the written record must be requested in writing within 30 days of the date of issuance of the decision, specify the decision and/or issue which is the subject of the request, and be made to the Office as set forth in the decision. A claimant is not entitled to a review of the written record if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request, or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. 8128(a) and § 10.138(b) of this subpart prior to requesting a review of the written record, or if an oral hearing has been obtained as provided by paragraph (a) of this section. A claimant may change his or her selection of a review of the written record to an oral hearing as provided by paragraph (a) of this section; however, such written request for change must be made within 30 days after the date of the Office's acknowledgment of receipt of the initial request. Where timely request for a review of the written record is received, the Office shall furnish the employing agency with a copy of the claimant's request and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in question. Any comments or documents submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant. Following a review of the record and any evidence submitted, the Office representative shall decide the claim and inform the claimant, the claimant's representative and the employing agency of the decision.

35. By revising § 10.132 to read as follows:

**§ 10.132 Time and place of hearing; prehearing conference.**

The Office representative shall set the time and place of the hearing and shall mail written notice thereof to the claimant, the claimant's representative, and the employing agency at least 15 days prior to the hearing. When practicable, the hearing will be set at a time and place convenient for the claimant. At the request of the claimant, the Office representative may schedule a prehearing conference to further define or clarify the issues. Request for such a conference must be made to the Office representative in writing at least 5 days prior to the scheduled date of the hearing. The decision whether or not to

schedule a prehearing conference shall be solely within the discretion of the Office representative.

36. By revising § 10.133(a) to read as follows:

**§ 10.133 Conduct of hearing.**

(a) In conducting the hearing, the Office representative shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 5 of the Administrative Procedure Act, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as the representative may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded. The recording, either by magnetic tape or by transcription, shall be made a part of the case record.

* * * * *

**§ 10.139 [Redesignated From § 10.137]**

37. By redesignating § 10.137 as § 10.139 without revision.

38. By redesignating § 10.136 as new § 10.138 and revising it to read as follows:

**§ 10.138 Review of decision.**

(a) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation at any time on its own motion and may, as a result of that review, affirm, reverse or modify the previous decision and inform the claimant, the claimant's representative and the employing agency of the decision.

(b)(1) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation on application of the claimant. No formal application for review is required, but the claimant must make a written request identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider, and give the reasons why the decision should be changed. Where the decision or issue cannot be reasonably determined from the claimant's application for review, the application will be returned to the claimant for clarification without further action by the Office with respect to the application. The claimant may obtain review of the merits of the claim by—

(i) Showing that the Office erroneously applied or interpreted a point of law, or

(ii) Advancing a point of law or a fact not previously considered by the Office, or

(iii) Submitting relevant and pertinent evidence not previously considered by the Office.

(2) Any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i)–(iii) of this section will be denied by the Office without review of the merits of the claim. Such a denial of application is not subject to review under this section or to hearing under § 10.131. Further, the Office will not review under this subsection a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision. Where proper application is submitted and the Office finds that merit review of the claim is warranted, the Office shall furnish the employing agency with a copy of the claimant's application for reconsideration and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in question. Any comments or materials submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant. The Office shall then review the decision and any agency submission, decide the claim, and inform the claimant, the claimant's representative and the employing agency of the decision.

39. By redesignating § 10.135 as § 10.137 and revising it to read as follows:

**§ 10.137 Postponement; withdrawal or abandonment of request for hearing.**

(a) A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least 3 days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in the assessment of costs against such claimant.

(b) A claimant may withdraw a request for a hearing at any time by written notice to the Office representative before the hearing is held, or on the record at the hearing.

(c) A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, another hearing will be scheduled. Unless extraordinary circumstances such as hospitalization, a death in the family, or similar circumstances which prevent the claimant from appearing are demonstrated, failure of the claimant to appear at the third scheduled hearing shall constitute abandonment of the request for a hearing.

40. By redesignating § 10.134 as § 10.136 and revising it to read as follows:

**§ 10.136 Termination of hearing; release of decision.**

The Office representative shall fix the time within which evidence will be received and shall terminate the hearing by mailing a copy of the decision, setting forth the basis therefor, to the claimant's last known address and to the claimant's representative, if any. A copy of the decision will also be mailed to the employing agency.

41. By adding a new § 10.135 as follows:

**§ 10.135 Employing agency attendance at hearings and submission of evidence.**

The employing agency does not have the right to request a hearing pursuant to 5 U.S.C. 8124. However, the employing agency has an interest in the outcome of the hearing and frequently possesses information pertinent to issues raised at the hearing. Therefore, the employing agency shall be afforded the opportunity to have an agency representative in attendance at the hearing and/or to request that it receive a copy of the hearing transcript. Where the employing agency sends a representative, the representative will attend primarily in the role of an observer without the right to question the claimant or make any argument. However, since the claimant is entitled to present evidence in support of the claim, the agency representative may, upon the specific request of the claimant, be called upon by the Office representative to give oral testimony. Where the employing agency requests that it receive a copy of the hearing transcript, the agency will be allowed 15 days following release of the transcript to submit comments or additional material for inclusion in the record. Any

comments or materials submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant.

42. By adding a new § 10.134 to read as follows:

**§ 10.134 Subpoenas; witness fees.**

(a) When reasonably necessary for full presentation of a case, an Office hearing representative may upon his or her own motion, or upon request of the claimant, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. A claimant who desires the issuance of a subpoena shall, not less than 20 days prior to the date fixed for the hearing, file with the Office representative a written request therefor, designating the witness or documents to be produced, and describing the address and location thereof with sufficient particularity to permit such witness or documents to be found. The request for a subpoena shall state the pertinent facts which the claimant expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. A subpoena issued under the provisions of this section shall be issued in the name of the Office hearing representative, and shall be served either in person by an authorized representative of the Office or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. Where service is made in person by an authorized Office representative, such representative shall make an affidavit stating that he or she personally served a copy of the subpoena upon the person named therein. Where service is by certified mail, the signed returned post office receipt shall serve as proof of service.

(b) Non-government witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the Office shall be paid the same fees and mileage as are paid for like services in the District Court of the United States where the subpoena was returnable. However, in the case of an expert witness, the witness fee shall not exceed the local customary fee for such service. Fees and mileage requested by such witnesses shall be paid by the Office.

(c) Non-government witnesses subpoenaed under this section who have submitted evidence into the case record at the request of the claimant or who have not submitted evidence into the case record but have testimony which is relevant and material to the issue in question and were subpoenaed at the request of the claimant, shall be paid the same fees and mileage as are paid for like services in the District Court of the United States where the subpoena was returnable. However, in the case of an expert witness, the witness fee shall not exceed the local customary fee for such service. Fees and mileage requested by such witnesses shall be paid by the claimant.

43. By revising § 10.140 to read as follows:

**§ 10.140 Participation in claims process by employing agency.**

Proceedings conducted with respect to claims filed under the Act are nonadversary in character. Accordingly, a claimant's employing agency shall not have the right, except as provided in Subpart C of this part, to actively participate in the claims adjudication process. However, the employing agency may, under circumstances other than that described in § 10.102(b), investigate the circumstances surrounding an injury to an employee and the extent of disability (e.g., an agency may investigate an employee's activities where it appears the employee alleging total disability may be performing other employment or may be engaging in activities which would indicate less than total disability). Further, the agency has the responsibility to submit to the Office at any time all relevant and probative factual and medical evidence in its possession or which it may acquire through investigation or other means. All evidence submitted will be considered and acted upon by the Office as appropriate, and the Office will inform the claimant, the claimant's representative and the employing agency of such action. In those instances where an employing agency contests a claim at time of initial submission and the claim is subsequently approved, the Office will notify the agency of the rationale for approving the claim.

44. By revising § 10.141 to read as follows:

**§ 10.141 Representation of the Director.**

The Director shall be represented in proceedings with respect to any claim conducted before the Employees' Compensation Appeals Board (ECAB) by attorneys from the Office of the Solicitor of Labor.

45. By revising § 10.144 to read as follows:

**§ 10.144 Authority of representative.**

A representative, appointed and qualified as provided in this part, may make or give on behalf of the claimant any request or notice relative to any proceeding before the Office under the Act, including hearing and review. A representative shall be entitled to present or elicit evidence and to make allegations as to facts and law in any proceeding affecting the claimant and to obtain information with respect to the claim to the same extent as the claimant. Notice to any claimant of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative, and the notice or request shall have the same force and effect as if it has been sent to the claimant.

46. By revising paragraphs (c) introductory text, (d), (g), (h) and (i) of § 10.145 and by adding the OMB control number to read as follows:

**§ 10.145 Fees for services.**

* * * * *

(c) In every case where a representative's fee is desired, an application for approval of the fee shall be made to the Office. The application should be made when the representative has submitted the final piece of information believed necessary for the adjudication of the claim. Each request for approval of a fee shall be accompanied by a complete itemized statement, in duplicate, describing the services rendered. Such itemization shall contain the following information:

* * * * *

(d) The representative shall arrange for the claimant to review the request for a fee and to comment as to the services provided and as to the reasonableness of the fee. The claimant's written comments should accompany the application for approval of a fee submitted to the Office.

* * * * *

(g) Any claimant aggrieved or adversely affected by an award of a fee may request a hearing or reconsideration by the Office, or may request review by the Employees' Compensation Appeals Board.

(h) A representative aggrieved or adversely affected by an award of a fee may request review by the Employees' Compensation Appeals Board.

(i) Any person who receives a fee, other consideration or gratuity on account of services rendered with respect to a claim under this part, unless approved by the Office, or who solicits employment for himself or another in

respect to a case or claim under (or to be brought under) this Act shall be guilty of a misdemeanor under 18 U.S.C. 292 and upon conviction of each offense, will be punished by a fine of not more than $1,000 or imprisoned not to exceed 1 year, or both. Utilization of an escrow deposit of funds by a representative for the deposit of a client's funds, prior to approval by the Office of the representative's fee, is not considered receipt or collection of a fee by the representative; provided, the escrow deposit of funds is one made by the claimant/client into the hands of a third party to be held by that third party until receipt of the Office's approval of the representative's fee, and then delivered by the third party to the representative in accordance with the decision of the Office and the provisions of the escrow agreement.

(Approved by the Office of Management and Budget under control number 1215–0115)

47. By adding new § 10.160 through § 10.166 under the subheading Representative Payment under Subpart B as follows:

**Representative Payment**

**§ 10.160 Indications for designation of a representative payee.**

When the Office determines that a beneficiary is incapable of managing or directing the management of benefits either because of a mental or physical disability, or because of legal incompetence, or because the individual is under 18 years of age, the Office in its sole discretion may approve an individual designated or appointed to serve as the representative payee for funds due the eligible beneficiary.

**§ 10.161 Selection of a payee.**

(a) In approving a payee, the Office shall approve the person, agency, organization or institution which, in its judgment, will best serve the interest of the beneficiary. In making its decision the Office shall consider:

(1) The relationship of the person to the beneficiary;

(2) The amount of interest that the person shows in the welfare of the beneficiary;

(3) Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary;

(4) Whether the potential payee has custody of the beneficiary;

(5) Whether the potential payee is in a position to know of and to look after the needs of the beneficiary.

(b) For beneficiaries 18 years old or older, the general order of preference subject to the provisions of paragraph (a) of this section, shall be

(1) A legal guardian, spouse or other relative who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for a beneficiary.

(c) For beneficiaries under age 18, the general order of preference subject to the provisions of paragraph (a) of this section shall be—

(1) A biological or adoptive parent who has custody of the beneficiary, or a legal guardian;

(2) A biological or adoptive parent who does not have custody of the beneficiary, but is contributing to the beneficiary's support and is demonstrating strong concern for the beneficiary's well-being;

(3) A biological or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support, but is demonstrating strong concern for the beneficiary's well-being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well-being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well-being; and

(7) An authorized social agency or custodial institution.

**§ 10.162 Responsibilities of a representative payee.**

A representative payee has a responsibility to—

(a) Spend or invest payments received only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines to be in the best interests of the beneficiary, subject to the guidelines contained in §10.163;

(b) Notify the Office of any event that would affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;

(c) Submit to the Office, upon its request, a written report accounting for the benefits received; and

(d) Notify the Office of any change in the payee's circumstances that would affect performance of the payee's responsibilities.

**§ 10.163 Use of benefit payments.**

To assure that the general welfare of the beneficiary is properly served, benefit payments received by a representative payee shall be used in the following manner, and in the prescribed order:

(a) Current maintenance, including costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

(b) Institutional care, including the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution.

(c) Support of the beneficiary's legal dependents after current maintenance needs or institutional care of the beneficiary are met; and

(d) Claims of creditors only if the current and reasonably foreseeable needs of the beneficiary are met.

**§ 10.164 Conservation and investment of benefit payments.**

If payments either in whole or in part are not needed for any of the purposes listed in § 10.163 of this part, they shall be conserved or invested on behalf of the beneficiary in non-speculative accounts. Conserved funds should be invested in accordance with rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. The account should provide for withdrawal upon demand without penalty. The interest and dividends, as well as all other profits, which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

**§ 10.165. Termination of representation.**

The services of a representative payee may be terminated when:

(a) The payee has not used the funds in the interests of the beneficiary as stipulated in this subpart;

(b) The payee has not discharged other responsibilities described in this subpart, or has not done so in a timely manner;

(c) The payee dies, wishes to be discharged from responsibility, or is unable to carry out the responsibilities of payee;

(d) The Office, after receipt of competent evidence, determines that the beneficiary is capable of managing his or her own funds; or

(e) A minor beneficiary attains majority.

**§ 10.166 Accounting for benefit payments.**

A representative payee is accountable for the use of benefit payments. The Office may require periodic written reports from the representative payee, and in certain cases, verification of how the funds were used. The representative payee shall keep records of how the funds were used so as to be able to furnish the following information to the Office:

(a) The amount of benefit payments on hand at the beginning of the accounting period;

(b) A description of how the benefit payments were used;

(c) An accounting of the amounts of payments which were saved or invested;

(d) The place(s) of residence of the beneficiary during the accounting period; and

(e) The amount of the beneficiary's income from other sources during the accounting period so as to assist the Office in evaluating the use of the benefit payments.

48. By revising § 10.200 to read as follows:

**§ 10.200 Statutory provisions.**

(a) Pub. L. 93–416, approved September 7, 1974, significantly revised the Act to provide that specified employees who file a claim for a period of wage loss caused by a traumatic injury shall be entitled, under certain circumstances, to have their regular pay continued for a period not to exceed 45 days.

(b) Continuation of pay shall be considered regular income and not compensation and unlike compensation, shall be subject to all taxes and other payroll deductions applicable to regular income.

49. By revising § 10.201 to read as follows:

**§ 10.201 Right to continuation of pay.**

(a) An employee is not entitled to continuation of pay unless:

(1) The employee is one of the types of employees listed in § 10.5(a)(11)(i), (iii), or (v), except that an individual selected pursuant to Chapter 121 of Title 28 and serving as a petit or grand juror but who is not otherwise an employee of the United States is not entitled to continuation of pay;

(2) The employee sustains a traumatic job-related injury;

(3) The employee files claim for a period of wage loss, as required by 5 U.S.C. 8118(a), within 30 days of the injury on a form approved by the Secretary. (Form CA–1 may be used for this purpose.); and

(4) The employee's disability begins within 90 days of the date of injury.

(b) An employee entitled to continuation of pay shall have regular pay continued without a break in time for a period not to exceed 45 calendar days of disability, unless the right to continuation of pay is controverted and pay is terminated under § 10.203 or is terminated under § 10.204. Where the employee stops work due to the disabling effects of the injury, the 45-day period starts with the first day or shift following the date or shift of injury during which the claimant is disabled, provided the disability begins within 90 days of the occurrence of the injury. With regard to the date of injury, the employing agency will keep the employee in a pay status for any fraction of the day or shift of injury for which the employee was disabled with no "charge" to the 45-day period. If the employee stops work for a part of a day or shift other than the day or shift of injury, that day or shift will be considered one calendar day for the purpose of counting 45 days. If a disabled employee returns to work with duties other than the duties performed at the time of injury, continuation of pay is chargeable only when there has been a formal assignment to an established job which is normally paid at a lower salary and would otherwise result in loss of income to the employee. Continuation of pay must be charged against the employee's 45-day entitlement when, due to the effects of the injury upon the employee, (1) a personnel action has been taken to assign or detail the employee to an identified position for which a position description exists which is classified at a lower salary level than that earned by the employee when injured; or (2) a personnel action has been taken to change the employee to a lower grade, or to a lower rate of basic pay. When, due to the effects of the injury, an employee is changed to a different schedule of work which results in loss of salary or premium pay (e.g., Sunday pay or night differential) authorized for the employee's normal administrative workweek, the employee is entitled to continuation of pay for such wage loss. If the employee's job-related disability continues after entitlement to continuation of pay ceases, the employee shall be entitled to receive compensation subject to the provisions of 5 U.S.C. 8117.

(c) Where an employee's pay is continued under this subpart, it shall not be interrupted as a part of a disciplinary action, nor shall it be terminated as a result of a disciplinary action which terminates employment unless final written notice of termination of employment for cause was issued to the employee prior to the date of injury.

(d) The administration and interpretation of the Act, including section 8118 of the Act, is the function of the Office. While the employing agency shall make certain preliminary decisions with respect to an employee's entitlement to pay continuation under this subpart, final determinations as to such entitlement are a function of the Office.

(e) If the Office finds that the employee is not entitled to continuation of pay after it has been paid, the payments, at the employee's option, shall be charged to annual or sick leave or considered overpayments of pay under 5 U.S.C. 5584.

(f) If the Office determines that pay has been continued at an incorrect rate, the Office shall notify the employing agency and the employee of the correct rate of pay, and the employing agency shall make the necessary adjustment.

**§ 10.203 [Removed]**

50. By removing § 10.203.

51. By redesignating § 10.202 as § 10.203 and revising it to read as follows:

**§ 10.203 Controversion by employing agency.**

(a) With respect to continuation of pay under 5 U.S.C. 8118, the employing agency shall, on the basis of information submitted by the employee, or secured on investigation, controvert a claim and terminate an employee's pay only if:

(1) The disability is caused by an occupational disease or illness; or

(2) The employee is the type employee defined by § 10.5(a)(11) (ii) or (iv), or is an individual selected pursuant to Chapter 121 of Title 28 and serving as a petit or grand juror and who is not

otherwise an employee of the United States;

(3) The employee is neither a citizen nor a resident of the United States or Canada; or

(4) The injury occurred off the employing agency's premises and the employee was not performing official duties; or

(5) The injury was caused by the employee's willful misconduct, or the employee's intent to kill or injure himself or herself or another person, or was proximately caused by the employee's intoxication by alcohol or illegal drugs; or

(6) A written claim for wage loss required by 5 U.S.C. 8118(a) was not filed within 30 days after the date of injury; or

(7) The employee first stopped work as a result of the injury more than 90 days following the injury; or

(8) The employee reports the injury after employment has terminated; or

(9) The employee is enrolled in the Civil Air Patrol, Peace Corps, Job Corps, Youth Conservation Corps, Work Study Programs, or another similar group.

(b) If for reasons other than those listed in paragraph (a) of this section, the agency believes the employee is not entitled to continuation of pay, the agency may controvert an employee's right to continuation of pay; however, the employee's regular pay must be continued and may not be interrupted during the 45-day period unless the controversion is sustained by the Office and the agency is so notified, or unless entitlement ceases under the provisions of § 10.204 of this subpart.

(c) To controvert a claim for continuation of pay, the employing agency shall complete the appropriate section of Form CA–1 and submit detailed information in support of the controversion to the Office.

(d) If the Office determines that the employing agency has incorrectly controverted and terminated the employee's pay, the Office shall notify the agency and the employee's pay shall be continued for a period not to exceed 45 days or as otherwise directed by the Office, and the Office shall notify the agency to convert periods of sick or annual leave or leave without pay to COP.

52. By redesignating § 10.210 as § 10.202 and revising it to read as follows:

**§ 10.202 Election of annual or sick leave.**

An employee may use accumulated annual or sick leave, or such leave as may be advanced by the employing agency, instead of claiming continuation of pay; however, the time provisions of 5 U.S.C. 8117, governing the date upon which an employee's entitlement to compensation begins, do not begin to run until the use of annual or sick leave ends. The "buy back" provisions specified in § 10.310 may not be used to repurchase the leave taken while an employee was otherwise eligible for pay continuation as provided by this subpart. An election to use annual or sick leave is not irrevocable and an employee may subsequently request continuation of pay in lieu of previously requested annual or sick leave; however, such request must be made within one year of the date the leave was used or the date of the Office's approval of the claim, whichever is later. Where an employee is eligible, the employing agency shall, subject to the 45-day limitation, convert and restore the leave previously used and, if any of the 45 days of COP remains unused, shall continue pay prospectively. The use of leave may not be used to delay or extend the 45-day continuation of pay period or to otherwise affect the time limitations as provided by section 8117. Therefore, where leave is used during a period when COP is otherwise payable, and the employee does not request that such leave be converted and restored, the 45 days will be counted as though the employee had been in a continuation of pay status.

53. By revising § 10.204 to read as follows:

**§ 10.204 Termination and forfeiture of continuation of pay.**

(a) Where pay is continued after an employee stops work due to a disabling traumatic injury, such pay shall be terminated if:

(1) Within 10 work days after the date the employee submits claim for continuation of pay, including such claim for a recurrence of disability, the employing agency has not received prima facie medical evidence that the employee sustained a disabling traumatic injury, except that pay shall be continued without interruption in the absence of such medical evidence if investigation shows to the official superior's satisfaction that the employee sustained a disabling traumatic injury. Where medical evidence is received by the agency more than 10 work days after claim is made for continuation of pay, the agency shall continue the employee's pay retroactive to date of termination provided the medical evidence supports injury-related disability beyond the 10 work-day period, and restore to the employee's account any annual or sick leave the employee may have used during that period. The provisions of this paragraph also apply to periods of recurrent disability as described in § 10.208; or

(2) The employing agency receives evidence that the attending physician has found the employee no longer disabled (i.e., the employee can perform the duties of the position held at the time of injury); or

(3) The employing agency receives evidence that the attending physician has found the employee to be partially disabled and the employee refuses suitable work which has been offered by the agency in accordance with § 10.207, or fails to respond to such offer within 5 work days of receipt of the offer; or

(4) The employee's scheduled period of employment expires or employment is otherwise terminated, provided the date of termination of employment is established prior to the date of injury. (See also § 10.201(c)); or

(5) The employing agency receives notification from the Office that pay should be terminated; or

(6) The 45-day continuation of pay period expires.

(b) When an employee refuses to submit to or obstructs an examination required by the Office under the provisions of 5 U.S.C. 8123(a), the right to continuation of pay under this subpart may be suspended until the refusal or obstruction stops. Pay otherwise paid or payable under this subpart for the period of the refusal or obstruction may be forfeited and, where already paid, is subject to the provisions of § 10.201(e).

(c) If the Office determines that the employing agency has incorrectly terminated the employee's pay or selected an incorrect date of termination, the Office shall instruct the agency to take appropriate corrective action.

54. By revising § 10.205 to read as follows:

**§ 10.205 Pay defined for continuation of pay purposes.**

(a) For a full or part-time worker, either permanent or temporary, who works the same number of hours each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the hourly pay rate on the date of injury multiplied by the number of hours worked each week, excluding overtime.

(b) For a part-time worker, either permanent or temporary, who does not work the same number of hours each week but who does work each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the average

weekly earnings established by dividing the total earnings during the one year immediately preceding the date of injury, excluding overtime, by the number of weeks worked during the one year period. For the purposes of this computation, if the employee worked only a part of a workweek, such week is counted as one week.

(c) For all WAE (when actually employed), intermittent and part-time workers, either permanent or temporary, who do not work each week of the year, or each week of the period of appointment if less than one year, the weekly pay rate shall be the average weekly earnings established by dividing the total earnings during the one year immediately preceding the date of injury, excluding overtime, by the number of weeks worked during that one year period. For the purposes of this computation, if the employee worked only a part of a workweek, such week is counted as one week. However, the average weekly earnings may not be less than 150 times the average daily wage earned in the employment during the days employed within the one year period immediately preceding the date of injury divided by 52 weeks.

(d) Premium, Sunday and holiday pay, night and shift differential, or other extra pay shall be included when computing wages for continuation of pay, but overtime pay shall not be included.

(e) Changes in pay or salary which would have otherwise occurred during the 45-day period (e.g., promotion, within-grade increase, demotion, termination of a temporary detail, etc.) are to be reflected in the continuation of an employee's pay under this subpart, and are to take effect at the time the event would otherwise have occurred.

55. By revising § 10.206(a) to read as follows:

**§ 10.206 Agency accounting and reporting of continuation of pay.**

(a) Pending development of a system within the Office for directly capturing and tabulating data on continuing payments to employees under 5 U.S.C. 8118, each agency and instrumentality of the United States having an employee who is in a continuation of pay status during the calendar quarter shall submit a report to the Office within 30 days after the end of each quarter (address: Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210).

* * * * *

56. By revising § 10.207 and by adding the OMB control number to read as follows:

**§ 10.207 Official superior's responsibility in continuation of pay cases.**

(a) Upon receiving notice that an employee has suffered an employment-related traumatic injury, an official superior shall:

(1) Promptly authorize medical care in accordance with Subpart E of this part;

(2) Provide the employee with Form CA–1 for reporting the injury and upon receipt of the completed form, return to the employee the "Receipt of Notice of Injury";

(3) Fully advise the employee of the right to elect continuation of regular pay or use annual or sick leave, if the injury is disabling;

(4) Advise the employee that prima facie medical evidence of a disabling traumatic injury must be submitted to the official superior within 10 work days of the date disability begins or pay may be terminated in accordance with § 10.204(a)(1);

(5) Inform the employees whether continuation of pay will be controverted, and, if so, whether pay will be terminated and the basis for the controversion and termination of pay;

(6) Submit Form CA–1, completed by the employee and official superior, and all other available pertinent information to the Office as soon as possible, but no later than 10 work days after the official superior has received Form CA–1. If the claim is controverted, the official superior will provide an explanation on Form CA–1 or in a separate narrative statement or both.

(b) Upon authorization of medical care, the official superior shall advise the employee of his or her obligation to return to work as soon as possible and:

(1) Where the agency has specific alternative positions available for partially disabled employees, the agency shall furnish the employee with a written description of the specific duties and physical requirements of those positions;

(2) Where, in addition to any specific alternative positions, the agency is willing to accommodate the limitations and restrictions imposed on the employee by the injury, shall so advise the employee; and

(3) Shall advise the employee of his or her responsibilities under § 10.209 of this subpart.

(c) The employing agency shall monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA–17 is provided for this purpose. Additional information or clarification may be obtained by the agency through telephone contact with the employee's attending physician provided such contact is by a physician or nurse who is an employee of the agency, or by an appropriate supervisory official.

(d) Where the employing agency is notified that the attending physician has found the employee to be partially disabled, and the employee is able to:

(1) Perform one of the specific alternative positions referred to in § 10.207(b)(1), the employing agency shall notify the employee immediately of the description of the job and its physical requirements and of the date the job will be available. To facilitate early return to work, the agency may contact the employee by telephone, but must provide written confirmation of availability as soon as possible thereafter. A complete copy of the offer, including the description of the duties of the job, the physical requirements and the date of availability, should be sent to the Office at the same time as it is sent to the employee.

(2) Perform restricted or limited duties referred to in § 10.207(b)(2), the employing agency shall determine whether duties suitable to the employee's limitations and restrictions are available, and if so, advise the employee in writing of the duties, their physical requirements and availability. To facilitate early return to work, the agency may contact the employee by telephone, but must provide written confirmation of the offer as soon as possible thereafter. A complete copy of any offer made to the employee should also be sent to the Office at the same time as it is sent to the employee.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1215–0103)

57. By revising § 10.208 to read as follows:

**§ 10.208 Recurrence of disability.**

(a) If an employee claims a recurrence of disability, the official superior shall promptly complete Form CA–2a. The employee shall request on Form CA–2a to continue to receive regular pay or to charge the absence to sick or annual leave.

(b) Where the employee requests continuation of pay, the official superior shall continue pay if:

(1) The original claim of disability has not been denied by the Office; and

(2) Pay has not been continued for the entire 45 days; and

(3) The disability recurs within 90 days of the date the employee first

returned to work following the initial period of disability.

(c) If the employee's pay has been continued for 45 days, or disability recurs more than 90 days after the employee first returns to work, the employee is entitled to compensation only, provided the claim is approved by the Office, and the employing agency may not continue regular pay. An employee who is no longer entitled to continuation of pay should file a claim for compensation on Form CA–7 or CA–8.

58. By revising § 10.209 to read as follows:

**§ 10.209 Employee's responsibilities in continuation of pay cases.**

(a) An employee who sustains a traumatic job-related injury, or someone acting on the employee's behalf, shall complete and submit the employee's portion of Form CA–1 to the official superior as soon as possible but no later than 30 days after the date of injury. An employee shall elect on Form CA–1 either to receive continuation of pay or use sick or annual leave while disabled for work as a result of the injury. (See § 10.201 and § 10.202.)

(b) An employee has the responsibility of submitting, or arranging for the submission of, prima facie medical evidence of a traumatic disabling injury to the employing agency within 10 work days after claiming continuation of pay. Under the provisions of § 10.204(a)(1) of this subpart, the lack of receipt of such evidence by the employing agency within that time may serve as sufficient reason for termination of continuation of pay, subject to reinstatement upon receipt of such evidence.

(c) Where the agency has advised of the existence of specific alternative positions, the employee shall furnish the description of such alternative positions to the attending physician and inquire whether and when the employee will be able to perform such duties. The employee must furnish the employing agency with a copy of the physician's response.

(d) Where the agency has advised of its willingness to accommodate where possible the employee's work limitations and restrictions, the employee shall so advise the attending physician and request the attending physician to specify the limitations and restrictions imposed by the injury. The employee has the responsibility to advise the employing agency immediately of the limitations and restrictions imposed.

(e) Where an employee has been offered duties within the limitations and restrictions imposed by the physician, the employee is obligated to return to duty. Where an employee refuses such an offer of suitable work, entitlement to continuation of pay ceases as of the effective date of availability of such work.

(f) Where the Office determines that, due to the failure of the employee to meet his or her obligations and responsibilities under this section, pay was continued beyond the date it would otherwise have terminated, the Office will advise the official superior and the employee of the period of disability which is approved, and the official superior may require the employee to resolve any overpayment in accordance with § 10.201(e) of this subpart.

(g) Where return to suitable work results in a loss of pay such as premium pay, Sunday pay, holiday pay, night or shift differential, etc., continuation of pay will be granted for the lost elements of pay (see § 10.205(d) of this subpart).

59. By revising § 10.301(a) to read as follows:

**§ 10.301 Temporary total disability rate.**

(a) Compensation based on loss of wages is payable, subject to the provisions of 5 U.S.C. 8117, after the expiration of continuation of pay as provided by Subpart C of this part or from the beginning of pay loss in all other cases.

* * * * *

60. By revising § 10.302 to read as follows:

**§ 10.302 Permanent total disability rate.**

When the injury causes permanent total disability, an injured employee is entitled to total disability compensation until death unless the employee is medically or vocationally rehabilitated to either full or partial earning capacity. The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes is prima facie evidence of permanent total disability. However, the presumption of permanent total disability as a result of such loss is rebuttable by evidence to the contrary, such as evidence of sustained work and earnings despite the loss. Compensation for permanent total disability is payable at the rate of 66⅔ percent of the pay rate established for compensation purposes, or at 75 percent when where is a dependent (see § 10.301(b) of this section).

61. By revising § 10.303 to read as follows:

**§ 10.303 Partial disability rate.**

(a) An injured employee who is unable to return to the position held at the time of injury (or to earn equivalent wages) but who is not totally disabled for all gainful employment is entitled to compensation computed on loss of wage-earning capacity. Compensation for partial disability is payable at 66⅔ percent (or at 75 percent if the employee has a dependent) of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. A narrative description of the formula used by the Office to compute the compensation payable is contained in paragraph (b) of this section. In determining the compensation payable for partial disability, an employee's wage-earning capacity is determined by the employee's actual earnings if those earnings fairly and reasonably represent the wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or if the employee has no actual earnings, the employee's wage-earning capacity shall be determined by the Office by selection of a job after having given due regard to the nature of the employee's injury, the degree of physical impairment, the employee's usual employment, the employee's age, the employee's qualification for other employment, the availability of suitable employment, and other factors or circumstances which may affect the employee's wage-earning capacity in his or her disabled condition. The salary of such a job shall be considered the employee's wage-earning capacity. The Office will not secure employment for the claimant in the position selected for establishing an earning capacity.

(b) For the purpose of describing the formula utilized by the Office for computing the compensation payable for partial disability, the following terms are defined: pay rate for compensation purposes is as defined in § 10.5(a)(20) of this part; current pay rate means "current" salary or pay rate for the job held at the time of injury; and earnings means the claimant's actual earnings, or the salary or pay rate of the job selected by the Office as representative of the employee's wage-earning capacity. An employee's wage-earning capacity in terms of percentage is obtained by dividing the employee's earnings by the current pay rate. The comparison of earnings and "current" pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. Any convenient date may be chosen by the Office for making the comparison as long as the two wage rates are in effect on the date used for comparison. The employee's wage-earning capacity in terms of dollars is

computed by multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity and the resulting dollar amount is subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity. Compensation for partial disability is payable at the rate of 66⅔ percent (or at 75 percent if the employee has a dependent) of this loss of wage-earning capacity. The compensation payable shall be increased by applicable cost-of-living adjustments.

62. By revising § 10.304 to read as follows:

**§ 10.304 Schedule compensation rate.**

(a) Compensation is provided for specified periods of time for the permanent loss or loss of use (referred to as impairment) of each of certain members, organs and functions of the body. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. The compensation for scheduled awards will equal 66⅔ percent of the employee's pay or 75 percent of the pay when there is a dependent. Compensation for loss of wage-earning capacity may be paid after the schedule expires. Proper and equitable compensation not to exceed $3,500 may be paid for serious disfigurement of the face, head or neck if of a character likely to handicap a person in securing or maintaining employment.

(b) Authority is provided under 5 U.S.C. 8107(c)(22) to add other internal and external organs to the compensation schedule. Pursuant to this authority, the following is added:

| | Weeks |
|---|---|
| Breast (one) | 52 |
| Kidney (one) | 156 |
| Larynx | 160 |
| Lung (one) | 156 |
| Penis | 205 |
| Testicle (one) | 52 |
| Tongue | 160 |

(c) Compensation under this schedule is:

(1) Payable regardless of whether the cause of the impairment originates in part of the body other than the impaired member or organ;

(2) Payable regardless of whether the disability also involves another impairment of the body; and

(3) Payable in addition to but, with the exception of compensation for serious disfigurement of the face, head or neck, not concurrently with compensation for temporary total or temporary partial disability.

(d) The period of compensation payable under the schedule in 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts or the same member of function or for disfigurement; and

(2) The Office finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(e) Where compensation is reduced as provided by paragraph (d) of this section, compensation for continuing wage loss starts on expiration of the schedule period as reduced.

**§10.307 [Redesignated from § 10.306]**

63. By redesignating § 10.306 as § 10.307 without revision.

64. By redesignating § 10.305 as § 10.306 and revising it to read as follows:

**§ 10.306 Eligibility for death benefits and death benefit rates.**

(a) If there is no child entitled to compensation, the employee's surviving spouse shall receive compensation equal to 50 percent of the employee's pay until death or remarriage before reaching 60 years of age. Upon remarriage, the surviving spouse will be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage. If remarriage occurs at age 60 or older, the lump sum payment will not be paid and compensation shall continue until death.

(b) If there is a child entitled to compensation, the compensation for the surviving spouse equal 45 percent of the employee's pay plus 15 percent for each child, but the total percentage may not exceed 75 percent.

(c) If there is a child entitled to compensation and no surviving spouse, compensation for one child equals 40 percent of the employee's pay. Fifteen percent will be awarded for each additional child, not to exceed 75 percent, the total amount to be shared equally among all children.

(d) Parents, brothers, sisters, grandparents and grandchildren dependent upon the deceased employee at the time of death may be entitled to compensation as provided by 5 U.S.C. 8133.

(e) A child, brother, sister or grandchild may be entitled to receive death benefits until death, marriage, or the attainment of age 18. Regarding entitlement after reaching age 18, refer to § 10.127 of this part.

65. By adding a new § 10.305 to read as follows:

**§ 10.305 Attendant allowance**

An employee who has been awarded compensation may receive an additional sum of not more than $500 a month, as the Office considers necessary to pay for the service of an attendant, when the Office finds that the service of an attendant is necessary constantly because the employee is totally blind or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of any impairment resulting from the injury making the employee so helpless as to require constant attendance.

66. By revising § 10.310 to read as follows:

**§ 10.310 Buy back of annual or sick leave.**

(a) An employee who sustains a job-related disability may use sick or annual leave or both to avoid interruption of income. If the employee uses leave during a period of disability caused by an occupational disease or illness, and a claim for compensation is approved, the employee may, with the approval of the employing agency, "buy back" the used leave and have it recredited to the employee's account. If the employee uses leave during a period of disability caused by a traumatic injury and a claim is approved by the Office, the employee may "buy back" leave taken after the 45-day continuation of pay period. The employee may not repurchase leave taken during the 45-day continuation of pay period unless the employee was not entitled to receive continuation of pay. The computation of the amount due the agency to effect the leave repurchase is the responsibility of the employing agency and is to be done in accordance with the accounting principles and practices of that agency.

(b) If the employing agency does not approve a repurchase of leave, then no compensation may be paid for the period leave was used. Where the agency agrees to the leave repurchase, the employee may elect to have the compensation payable for the period paid directly to the employing agency to be applied against the amount due the agency to effect the repurchase.

67. By revising § 10.311 (b) and (c) to read as follows:

**§ 10.311 Lump sum awards.**

* * * * *

(b) The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health and Human Services, which shall be updated from time to time, but the lump sum payment to a surviving spouse of the deceased employee may not exceed 60 months compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(c) On remarriage before age 60, a surviving spouse entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage.

* * * * *

68. By revising paragraph (a) and adding paragraph (c) to § 10.313 to read as follows:

**§ 10.313 Dual benefits.**

(a) Except as otherwise provided by law, a person may not concurrently receive compensation pursuant to the Act and a retirement or survivor annuity under the U.S. Civil Service Retirement Act, the Federal Employees' Retirement System Act, or a retirement or survivor annuity which stands in lieu of either of these Acts, such as Foreign Service or Central Intelligence Agency disability and retirement programs. Such beneficiary shall elect the benefit which he or she wishes to receive, and such election, once made, is revocable.

* * * * *

(c) The Office may require an employee to submit an affidavit or statement as to the receipt of any Federally funded or Federally assisted benefits, as identified and in the manner and at the times specified by the Office, in order to determine the employee's entitlement to compensation or to determine whether the employee is receiving benefits under other programs administered by the Office. If an employee when required, fails within 30 days of the date of the request to submit such affidavit or statement, the employee's right to compensation otherwise payable shall be suspended until such time as the requested affidavit or report is received, at which time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

69. By removing § 10.314 and adding a new § 10.314 to read as follows:

**§ 10.314 Cost-of-living adjustments.**

(a) Cost-of-living adjustments shall be made from time to time in accordance with 5 U.S.C. 8146a.

(b) Compensation payable on account of disability or death which occurred more than one year before the effective date of the cost-of-living adjustment shall be increased as determined in accordance with 5 U.S.C. 8146a. In disability cases, a beneficiary is eligible for cost-of-living adjustments where injury-related disability began more than one year prior to the effective date of the adjustment without regard to the fact that for any part of that period of disability the beneficiary may have elected to receive continuation of pay as provided by 5 U.S.C. 8118, or to use sick or annual leave. Where an injury does not result in disability but compensation is payable pursuant to 5 U.S.C. 8107 for permanent impairment of a covered member or function of the body, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the effective date of the award for such impairment. In the case of a recurrence of disability where the pay rate for compensation purposes is the pay rate at the time disability recurs, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the disability recurs. In death cases, entitlement to cost-of-living adjustments begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

70. By adding new § 10.320 through § 10.324 under the centerheading Overpayments to read as follows:

**Overpayments**

**§ 10.320 Definitions.**

(a) "Fault" as used in the term "without fault" in 5 U.S.C. 8129(b) and § 10.321(c) of this subpart applies only to the individual who has received a payment in his or her own name or on behalf of a beneficiary. Although the Office may have been at fault in making the overpayment, that fact does not relieve the overpaid individual or any other individual from whom the Office seeks to recover the overpayment from liability for repayment if such individual is not without fault.

(b) "With fault." In determining whether an individual is with fault, the Office will consider all pertinent circumstances, including age, intelligence, education, and physical and mental condition. An individual is with fault in the creation of an overpayment who:

(1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or

(2) Failed to furnish information which the individual knew or should have known to be material; or

(3) With respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect.

(c) "Without fault." Whether an individual is "without fault" depends on all the circumstances surrounding the overpayment in the particular case. The Office will consider the individual's understanding of any reporting requirements, the agreement to report events affecting payments, knowledge of the occurrence of events that should have been reported, efforts to comply with the reporting requirements, opportunities to comply with the reporting requirements, understanding of the obligation to return payments which were not due, and ability to comply with any reporting requirements (e.g., age, comprehension, memory, physical and mental condition). Although "without fault" is not limited to the overpayment circumstances described below, an individual is "without fault," except as provided in paragraph (b) above, if it is established after consideration of all the factors stated above that failure to report an event that would affect compensation benefits or acceptance of an incorrect payment was due to one of the following:

(1) The individual relied on misinformation given to him or her (or his or her representative) by an official source within the Office (or other governmental agency which the individual had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the Act or the regulations pertaining thereto; or

(2) The Office erred in calculation of cost-of-living increases, schedule award length and/or percentage, and loss of wage earning capacity, unless the

claimant had knowledge of the calculation errors.

(d) "Degree of care." An individual will be "with fault" if the Office has evidence which shows either a lack of good faith or failure to exercise a high degree of care in reporting changes in circumstances which may affect entitlement to or the amount of benefits. As indicated in paragraphs (b) and (c) of this section, the degree of care expected of an individual may vary with the complexity of the circumstances giving rise to the overpayment and the capacity of the particular payee to realize that he or she is being overpaid. Accordingly, variances in the personal circumstances and situations of individual payees are to be considered in determining whether the individual exercised the degree of care necessary to warrant a finding of "without fault."

**§ 10.321 Recovery of overpayments.**

(a) Except for an overpayment resulting from forfeiture of previously paid compensation, such as provided in § 10.125, whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any resulting hardship upon such individual. In the event such individual dies before such adjustment has been completed, a similar adjustment shall be made by decreasing subsequent payments, if any, payable under this Act with respect to such individual's death.

(b) Where there are no further payments due and an overpayment has been made to an individual by reason of an error of fact or law such individual, as soon as the mistake is discovered or his attention is called to same, shall refund to the Office any amount so paid or, upon failure to make such refund, the Office may proceed to recover the same.

(c) There shall be no adjustment or recovery under paragraphs (a) or (b) of this section by the United States in any case when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.

(d) Before adjusting future payments or otherwise seeking to recover an overpayment, the Office shall provide the individual with written notice of:

(1) The fact and amount of overpayment;

(2) Its preliminary finding of whether the individual is at fault in the creation of the overpayment;

(3) The individual's right to inspect and copy Government records relating to the overpayment;

(4) The individual's right to request a pre-recoupment hearing within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary finding of fault, or for the purpose of requesting waiver;

(5) The individual's right to submit additional written evidence within 30 days of the date of written notice of overpayment for the purpose of challenging the fact or amount of the overpayment, the preliminary fault finding, or for the purpose of requesting waiver.

(e) Additional evidence must be submitted, or a pre-recoupment hearing requested, within 30 days of the Office's written notice to the individual. Failure to exercise the right to a pre-recoupment hearing within 30 days of the date of notice of overpayment shall constitute a waiver of that right.

(f) Pre-recoupment hearings shall be conducted in all matters in exactly the same manner as provided in § 10.131 through § 10.137.

(g) When an overpayment exists because a claim was accepted in error, or because benefits were otherwise denied or terminated, the Office representative shall determine any and all issues raised at the pre-recoupment hearing, including those regarding the correctness of the decision to deny or terminate compensation. If an employee requests a pre-recoupment hearing as provided by this section with respect to an overpayment, and also requests a hearing as provided by 5 U.S.C. 8124(b) with respect to the decision denying or terminating benefits and resulting in the overpayment, both requests for a hearing shall be combined and one hearing held on any and all issues.

(h) If additional written evidence is not submitted, or a hearing requested, within the 30-day period, the Office will issue a final decision based on the available evidence and will initiate appropriate collection action. The final decision concerning an overpayment, whether rendered subsequent to a pre-recoupment hearing or in the absence of the submission of additional written evidence, is not subject to the hearing provision of 5 U.S.C. 8124(b) nor the reconsideration provision of 5 U.S.C. 8128(a). An individual aggrieved or adversely affected by a decision concerning an overpayment may request review by the Employees' Compensation Appeals Board.

(i) A copy of the final decision concerning an overpayment will be sent to the individual from whom recovery is sought, the individual's representative, and the employing agency.

**§ 10.322 Waiver of recovery—defeat the purpose of the subchapter.**

(a) *General.* Recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving a presently or formerly entitled beneficiary of income and resources needed for ordinary and necessary living expenses under the criteria set out in this section. Recovery will defeat the purpose of this subchapter to the extent that:

(1) The individual from whom recovery is sought needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(2) The individual's assets do not exceed the resource base of $3000 for an individual or $5000 for an individual with a spouse or one dependent plus $600 for each additional dependent. This base includes all of the claimant's assets not exempted from recoupment in paragraph (d) of this section. The first $3000 or more depending on the number of the claimant's dependents is also exempted from recoupment.

(b) *Income.* The individual's total income includes any funds which may be reasonably considered available for his or her use, regardless of the source. Income to a spouse will not be considered available to the individual unless the spouse was living in the household both at the time the overpayment was incurred and at the time waiver is considered. Types of income include but are not limited to:

(1) Government benefits such as Black Lung, Social Security, and Unemployment Compensation benefits;

(2) Wages and self-employment income;

(3) Regular payments such as rent or pensions; and

(4) Investment income.

(c) Ordinary and necessary living expenses. An individual's ordinary and necessary living expenses include:

(1) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, transportation, insurance (e.g., life, accident, and health insurance);

(2) Medical, hospitalization, and other similar expenses;

(3) Expenses for the support of others for whom the individual is responsible.

(4) Church and charitable contributions made on regular basis. (This shall not include large one-time gifts made after receipt of the preliminary notice of overpayment); and

(5) Miscellaneous expenses (e.g., newspaper, haircuts) not to exceed $25.00 per month.

(d) *Assets.* An individual's assets include:

(1) Liquid Assets—cash on hand, the value of stocks, bonds, savings accounts, mutual funds, and the like; and

(2) Non-Liquid Assets—the fair market value of property such as a camper, second home, extra automobile, jewelry, etc.

Assets for these purposes shall not include the value of household furnishings, wearing apparel, family automobile, burial plot or prepaid burial contract, a home which the person maintains as the principal family domicile, or income producing property if the income from such property has been included in comparing income and expenses.

**§ 10.323 Waiver of recovery—against equity and good conscience.**

(a) Recovery of an overpayment is considered to be "against equity and good conscience" when an individual presently or formerly entitled to benefits would experience severe financial hardship in attempting to repay the debt. The criteria to be applied in determining severe financial hardship are the same as in § 10.322.

(b) Recovery of an overpayment is considered to be inequitable and against good conscience when an individual, in reliance on such payments or on notice that such payments would be made, relinquished a valuable right or changed his position for the worse. In making such a decision, the individual's present ability to repay the overpayment is not considered. To establish that a valuable right has been relinquished, it must be shown that the right was in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the payments or on the notice of payment. To establish that the individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss. An example of such "detrimental reliance" would be a decision to enroll in college based on the award of benefits. The funds have been spent and cannot be recovered nor can the purchase be liquidated.

**§ 10.324 Responsibility for providing financial information.**

In requesting waiver of an overpayment, either in whole or in part, the overpaid individual has the responsibility for providing the financial information described in § 10.322, as well as such additional information as the Office may require to make a decision with respect to waiver. Failure to furnish the information within 30 days of request shall result in denial of waiver, and no further requests for waiver shall be entertained until such time as the requested information is furnished.

71. By revising § 10.400(e) to read as follows:

**§ 10.400 Physician and medical services, etc. defined.**

* * * * *

(e) The term "medical services" as used in subparts E and F of this part includes services and supplies provided by or under the supervision of physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, within the scope of their practices as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-rays to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and x-rays performed by or required by a chiropractor to diagnose a subluxation of the spinal column. The term "subluxation" means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section.

* * * * *

72. By adding a new § 10.413 as follows:

**§ 10.413 Time limitation on payment of bills.**

The Office will reimburse claimants and providers promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the calendar year in which the claim was first accepted as compensable by the Office, whichever is later.

73. By revising § 10.452(a) to read as follows:

**§ 10.452 Initiation of exclusion procedures.**

(a) *General provision.* Upon receipt of information indicating that a physician, hospital or provider of medical support services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 10.450, the Assistant Regional Administrator, after completion of inquiries he/she deems appropriate, may initiate procedures to exclude the provider from participation in the FECA program. For the purposes of this section, "Assistant Regional Administrator" may include any officer designated to act on his or her behalf.

* * * * *

74. By revising § 10.500 to read as follows:

**§ 10.500 Prosecution of third party action by a beneficiary.**

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon some person or persons other than the United States to pay damages, the Office may require the beneficiary to prosecute an action for damages against the third party. When so required, the cause of action shall be prosecuted in the name of the beneficiary.

75. By amending § 10.503 by revising the introductory text, and revising paragraphs (b), (c), and (d) to read as follows:

**§ 10.503 Distribution of damages recovered by a beneficiary.**

If an injury or death for which benefits are payable under the Act is caused under circumstances creating a legal liability upon a person or persons other than the United States to pay damages and, as a result of claim brought by or settlement made by the beneficiary or by someone acting on the beneficiary's behalf, the beneficiary recovers damages or receives money or other property in satisfaction of the liability on account of that injury or death, the proceeds of the recovery shall be applied as follows:

* * * * *

(b) The beneficiary is entitled to retain one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted.

(c) There shall then be remitted to the Office the benefits which have been

paid on account of the injury including payments made on account of medical treatment, transportation costs, funeral expenses, and any other payments made under the Act on account of the injury or death, but not including continuation of pay as provided by 5 U.S.C. 8118. If an attorney was employed, the amount to be remitted to the Office shall be reduced by an amount equivalent to a reasonable attorney's fee proportionate to any refund to the United States.

(d) Any surplus remaining after proper refund has been made to the Office may be retained by the beneficiary but shall be credited by the Office against future payment of benefits to which the beneficiary may be entitled under the Act on account of the same injury or death.

76. By adding a new § 10.506 to read as follows:

**§ 10.506 Official superior's responsibility in cases involving potential third party liability.**

If it appears that an injury or death for which benefits are payable under the Act was caused under circumstances creating a legal liability upon a person or persons other than the United States to pay damages, the official superior or other agency official shall investigate the third party aspect of the injury or death and submit a report of the findings with related documents to the Office.

77. By adding a new § 10.507 to read as follows:

**§ 10.507 Satisfaction of the interest of the United States.**

No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or the beneficiary's designee the proceeds of any suit or settlement without first satisfying or assuring satisfaction of the interest of the United States.

78. By adding a new Subpart H to read as follows:

## Subpart H—Special Category Employees

### Peace Corps Volunteers

**§ 10.600 Definition of volunteer.**

The term "volunteer" means—

(a) A volunteer enrolled in the Peace Corps under 22 U.S.C. 2504;

(b) A volunteer leader enrolled in the Peace Corps under 22 U.S.C. 2505; and

(c) An applicant for enrollment as a volunteer or volunteer leader during a period of training under 22 U.S.C. 2507(a) before enrollment.

**§ 10.601 Applicability of the Act.**

Except as provided by 5 U.S.C. 8142 and elsewhere in this subpart, the provisions of the Act are applicable to Peace Corps volunteers.

**§ 10.602 When disability compensation commences.**

Pursuant to 5 U.S.C. 8142(b), entitlement to disability compensation payments does not commence until the day after the date of termination of the volunteer's service.

**§ 10.603 Pay rate for compensation purposes.**

(a) The pay rate of a volunteer is the lowest step of grade 7 of the General Schedule.

(b) The pay rate of a volunteer leader is the lowest step of grade 11 of the General Schedule.

(c) The pay rate of a volunteer with one or more minor children as defined in 22 U.S.C. 2504 is the lowest step of grade 11 of the General Schedule.

(d) The pay rate for compensation purposes is defined as the pay rate in effect on the date following separation, provided that it is equal to or greater than the pay rate on the date of injury, and is not subject to the provisions of 5 U.S.C. 8101(4).

**§ 10.604 Period of service as a volunteer.**

The period of service of an individual as a volunteer includes any period of training under 22 U.S.C. 2507(a) before enrollment as a volunteer and the period between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

**§ 10.605 Conditions of coverage while serving outside the United States and the District of Columbia.**

(a) Any injury suffered by a volunteer during any time when the volunteer is located abroad shall be presumed to have been sustained in the performance of duty and any disease or illness contracted during such time shall be presumed to be proximately caused by the employment, except the presumption will be rebutted by evidence that:

(1) The injury or disease or illness was caused by the volunteer's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured volunteer; or

(2) The disease or illness is shown to have pre-existed the period of service abroad; or

(3) The disease or illness or condition claimed is either a manifestation of symptoms of or consequent to a pre-existing congenital defect or abnormality.

(b) If an injury is not presumed to have been sustained in the performance of duty as provided by paragraph (a) of this section, the volunteer has the burden of proving by the submission of substantial and probative evidence that the injury was sustained in the performance of duty with the Peace Corps.

(c) If a disease or illness or claimed condition, or episode thereof, comes within exception paragraph (a)(2) or (a)(3) of this section, the volunteer has the burden of proving by the submission of substantial, probative and reasoned medical evidence that it was proximately caused by the factors of conditions of Peace Corps service, or that the condition was materially aggravated, or accelerated or precipitated by factors of Peace Corps Service.

### Non-Federal Law Enforcement Officers

**§ 10.610 Definition of a law enforcement officer.**

For purposes of this subpart, a law enforcement officer is defined as an employee of a State or local government including the governments of U.S possessions and territories, or an employee of the United States pensioned or pensionable under Sections 521–535 of Title 4, District of Columbia Code, whose functions include one or more of the following:

(a) The apprehension of persons sought for the commission of crimes, including those sought by a law enforcement agency for such commission, as well as material witnesses sought in connection with criminal cases; or

(b) The protection or guarding of persons held for the commission of crimes or as such material witnesses; or

(c) The prevention of the commission of crimes.

**§ 10.611 Applicability.**

Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this subpart, the provisions of the Act and subparts A, B, and D through G are applicable to law enforcement officers, as defined in § 10.610.

**§ 10.612 Conditions for eligibility.**

(a) The benefits of the Act are available as provided in 5 U.S.C. 8191 *et seq.* and this subpart to a law enforcement officer as defined in § 10.610 and his or her survivors if the Office determines that an individual on any given occasion was—

(1) A law enforcement officer and to have been engaged on a given occasion in the apprehension or attempted apprehension of any person:

(i) For the commission of a crime against the United States, or

(ii) Who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or

(iii) Who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or

(2) A law enforcement officer and to have been engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such crime; or

(3) A law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States;

and to have been on that occasion not an employee as defined in 5 U.S.C. 8101 (1) and to have sustained on that occasion a personal injury for which the United States would be required under 5 U.S.C. 8101 to pay compensation if the individual has been on that occasion an employee within the meaning of 5 U.S.C. 8101 (1) engaged in the performance of duty.

(b) The mere fact that an injury to a law enforcement officer is in some way related to the commission of a Federal crime does not in itself bring the injury within the scope of this subpart. For the purpose of this subpart, being engaged in the apprehension or attempted apprehension of a person for the commission of a crime against the United States requires that the specific criminal activity which caused the officer's response was an actual Federal crime. Further, where the actions which result in an injury to an officer are based solely on a local police matter, the later discovery (i.e., discovery after the arrest has been made) of a Federal crime or potential Federal crime does not in itself bring the injury within the meaning of 5 U.S.C. 8191. For example, coverage under this subpart would extend to an officer who responded to an armed robbery and who was shot by the suspect. (For the purpose of this example, the suspect must be illegally in possession of a firearm in violation of Federal law.) With the officer's knowledge of an armed robbery (and/or the actual viewing of a firearm in the possession of the suspect), the firearm would be both an integral part of a Federal crime and a part of the specific criminal activity to which the officer was reacting. Coverage would be extended in this situation even though the officer may not have been aware at the time that the suspect was in fact in violation of Federal law. However, coverage under this subpart would not be extended to an officer injured while apprehending an individual for a violation of local law where it is discovered during a search of the individual (i.e., after the arrest has been made) that the individual was in violation of Federal law due to illegal possession of a controlled substance. In this situation, even though the individual was in violation of Federal law, the existence of the controlled substance was not a part of the specific criminal activity to which the officer was responding and thus did not play a part in the apprehension. Coverage would be extended in this situation if the officer had been aware of the existence of the substance prior to the arrest being made. To be considered a part of the criminal activity, it would not be necessary for the officer to know the nature of the substance, but only that the officer had reason to believe it was a controlled substance. If later investigation showed that the substance was not in fact a controlled substance, coverage would not be extended since no Federal crime had in fact been committed. Similarly, an officer injured while responding to an alarm of a robbery at a federally insured bank would be entitled to benefits as provided by this subpart. However, coverage would not be extended where the alarm was false since no Federal crime had actually occurred.

(c) Coverage for injuries or death while a law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States shall not attach unless a Federal crime had been committed or was about to be committed. Whether or not a Federal crime was about to be committed cannot be open to speculation. The threat must be actual and imminent. However, in situations where the officer is detailed by a competent State or local authority to assist a Federal law enforcement authority in the protection of the President of the United States, or any other individual entitled to be provided or actually provided protection by the United States Secret Service pursuant to 18 U.S.C. 3056(a), 3 U.S.C. 202–209, and the regulations promulgated pursuant to the latter provisions at 13 CFR 13.1–13.8, coverage will be extended for injury or death sustained in such activity, because the threat of Federal crime in those circumstances is presumed to be always imminent.

(d) No person otherwise eligible to receive a benefit under this subpart because of the disability or death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commission of a crime against a sovereignty other than the United States.

(e) Coverage for members of the United States Park Police and those members of the Uniformed Division of the United States Secret Service who are covered under the District of Columbia Policemen and Firemen's Retirement and Disability Act is limited to specific activities involving crimes against the United States, and does not include numerous tangential activities of law enforcement, such as reporting for work, changing clothing etc., even though the laws enforced in the job deal solely with crimes against the United States. However, members of the Non-Uniformed Division of the United States Secret Service who are covered under the District of Columbia Policemen and Firemen's Retirement and Disability Act are considered to be engaged in the types of activities specified in 5 U.S.C. 8191 (1)–(8), and are covered by the provisions of 5 U.S.C. 8191–8193 during the performance of all official duties.

### § 10.613 Time for filing a claim.

A claim for benefits under the Act must be received by the Office within 5 years after the injury or death. The five-year limitation is maximum and mandatory and is not subject to waiver.

### § 10.614 How to file a notice of injury or death.

(a) A claim for benefits due to the injury or death of an eligible officer shall be made by—

(1) Any eligible officer or survivor of an eligible officer,

(2) Any guardian, personal representative, or other person legally authorized to act on behalf of an eligible officer, his or her estate, or any of his or her survivors, or

(3) Any association of law enforcement officers which is acting on behalf of an eligible officer or any of his or her survivors.

(b) The form provided for filing a claim for injury or occupational disease is CA–721.

(c) The form provided for filing a claim for death is CA–722.

(d) A claim for benefits should be submitted to the officer's employing agency for completion and forwarding to

the Office of Workers' Compensation Programs.

**§ 10.615 Benefits.**

(a) In the event of injury the Office shall furnish to any eligible officer the benefits, except for Continuation of Pay, to which he or she would have been entitled under subparts A through H of this Part if, on the occasion giving rise to eligibility, the officer had been an employee as defined in 5 U.S.C. 8101(1) engaged in the performance of duty. However, such benefits shall be reduced or adjusted as the Secretary in his discretion may deem appropriate to reflect comparable benefits, if any, received by the officer (or which the officer would have been entitled to receive but for this subpart) by virtue of actual employment on that occasion. When an eligible officer has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.

(b) In the event of death the Secretary shall pay to any survivor of an eligible officer the difference, as determined by the Secretary in his discretion, between the benefits to which that survivor would be entitled if the officer had been an employee defined in 5 U.S.C. 8101(1) engaged in the performance of duty on the occasion giving rise to eligibility, and the comparable benefits, if any, received by the survivor (or which that survivor would have been entitled to receive but for this subpart) by virtue of the officer's actual employment on that occasion. When an eligible officer has contributed to a survivor's benefit fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of survivors' benefits coverage for the eligible officer.

**§ 10.616 Computation of benefits.**

(a) In determining the amount of benefits payable to an eligible officer or survivors of an eligible officer, the Office shall compute the beneficiaries' entitlement under the Act including applicable cost-of-living adjustments under 5 U.S.C. 8146a, then reduce the amounts by any comparable benefits payable by a State or local entity for the same injury or death.

(b) Benefits payable under the Public Safety Officers' Benefit Act (42 U.S.C. 3796) for the same death constitute a prohibited dual benefit and any benefits payable under the Act will be reduced commensurate with the amounts payable under 42 U.S.C. 3796. Where a lump sum benefit is paid under 42 U.S.C. 3796, no benefits under the Act will be paid to a beneficiary until the entire amount, or the individual beneficiaries' portions of the entire amount, has been fully recovered.

(c) Where one or more beneficiaries in a death claim is not eligible to receive compensation due to the fact that comparable benefits from a State or local program or benefits payable under another Federal program exceed what is payable to the individual(s) under the Act, no adjustment shall be made to the percentage(s) upon which compensation is computed for other beneficiaries until the happening of an event which would otherwise change the criteria for determining entitlement under the Act, e.g., death or remarriage of a spouse, a child turning 18 or marrying, or the birth of a posthumous child.

**§ 10.617 Responsibilities of the claimant, the employing agency and the Office.**

(a) The claimant, or someone acting on his or her behalf as specified in § 10.614(a), shall be responsible for fully completing all forms, or portions thereof, which require information of the claimant, as well as for providing any supporting documentation or statements requested in support of the claim for benefits.

(b) The employing law enforcement agency is responsible for fully completing all necessary portions of claim forms designated for the employing agency and for submitting evidence necessary to the Officer's determination of coverage under 5 U.S.C. 8191 including police reports, investigative reports, and records providing or disproving the involvement of a Federal crime or Federal felony.

(c) The Office is responsible for evaluating a claim, advising of the deficiencies in a claim and requesting supportive information of the claimant and employing agency. Nothing in this subpart shall be construed as placing the burden on the Office to secure the information needed to discharge the responsibilities of the claimant(s) or the employing agency.

**§ 10.618 Consultation with Attorney General and other agencies.**

The Secretary may refer any application received pursuant to this subpart to the Attorney General for assistance, comments and advice as to any determination required to be made pursuant to 5 U.S.C. 8191. The Secretary may request any Federal department or agency to supply any statistics, data or any other materials deemed necessary to carry out the functions of this subpart. Each such department or agency shall cooperate with the Secretary and, to the extent permitted by law, furnish such materials to him or her.

**§ 10.619 Cooperation with State and local agencies.**

The Secretary shall cooperate fully with the appropriate State and local officials, and shall take all other practicable measures, to assure that the benefits of this subpart and the Act are made available to eligible officers and their survivors with a minimum of delay and difficulty.

**Federal Grand and Petit Jurors**

**§ 10.620 Definition of juror.**

The term "juror" means an individual selected pursuant to Chapter 21 of Title 28, United States Code, and serving as a petit or grand juror.

**§ 10.621 Applicability.**

Except as provided by 28 U.S.C. 1877 and elsewhere in the subpart, the provisions of the Act and subparts A, B C, and D through G are applicable to Federal grand or petit jurors as defined in § 10.620.

**§ 10.622 Performance of duty.**

(a) Performance of duty as a juror includes that time when a juror is

(1) In attendance at court pursuant to a summons,

(2) In deliberation,

(3) Sequestered by order of a judge, or

(4) At a site, by order of the court, for the taking of a view.

(b) For the purposes of this subpart, a juror is not in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs (a)(1)–(4) of this section.

**§ 10.623 When disability compensation**

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

**§ 10.624 Pay rate for compensation purposes.**

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for grade GS–2 of

the General Schedule unless his or her actual pay as a Government employee while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

Signed at Washington, DC, this 23rd day of March, 1987.

**William E. Brock,**

*Secretary of Labor.*

**Susan R. Meisinger,**

*Deputy Under Secretary for Employment Standards.*

**Richard Staufenberger,**

*Acting Director, Office of Workers' Compensation Programs.*

[FR Doc. 87-6817 Filed 3-31-87; 8:45 am]

BILLING CODE 4510-27-M

federal register

Wednesday,
April 1, 1987

Part IV

# Department of Justice

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Financial Responsibility Program; Final Rule

28 CFR Part 549

Control, Custody, Care, Treatment, and Instruction of Inmates; Authority to Conduct Autopsies; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

**Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Financial Responsibility Program**

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is publishing a final rule on its Inmate Financial Responsibility Program. The rule describes the Bureau's policy on encouraging inmates to satisfy legitimate financial obligations by providing inmates with the opportunity to develop a financial plan.

**EFFECTIVE DATE:** April 1, 1987.

**ADDRESS:** Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is publishing a final rule on its Inmate Financial Responsibility Program. A proposed rule on this subject was published in the **Federal Register** on November 21, 1986 (at 51 FR 42167). Interested persons were invited to submit comments on the proposed rule.

The Bureau of Prisons initiated a pilot project on inmate financial responsibility in December 1985. The results of the pilot project indicated that, during a 12-month period, inmates at the designated institutions paid approximately 1.5 million dollars in court-ordered restitution, special assessments, fines and child support. Based on the pilot project results and the favorable responses received during the extended public comment period of the proposed rule, the Bureau of Prisons is implementing this program on April 1, 1987.

A period of several months will be required to review the financial status of all inmates. During that time, some inmates will complete their sentences or become eligible for parole. Favorable parole decisions and release of inmates with committed fines depend, in part, on the inmate's demonstrated financial responsibility. The public interest in collecting court-imposed payments and in assisting inmates in developing a plan to make those payments requires immediate implementation of this rule.

Delay in implementing this rule would thwart the public expectation that inmates of the Bureau of Prisons who have income or outside resources, will pay amounts imposed by the courts as punishment, compensation to crime victims, or just debts. Delay would also cause some inmates not to receive helpful assistance in meeting obligations which delay release or which may be burdensome after release. Therefore, the Bureau of Prisons finds good cause under 5 U.S.C. 553(d) to finalize this rule without delay in the effective date.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

**Summary of Changes/Comments**

1. *Section 545.11*—A commenter suggested that, to make the operation of the Bureau's rule on financial responsibility fairer, in light of the consequences of non-compliance, the rule should allow for legitimate indigency claims. We do not believe the use of an indigency standard is necessary. A financial plan ordinarily can be developed for most inmates because they are eligible for, and receive, compensation for work performed within the institution. In the event an inmate is determined to be without institution earnings or outside resources, no payment plan will be required. One example would be a medically unassigned inmate (unable to work within the institution due to permanent or temporary medical impairment) with no community resources. While the inmate's financial obligations would be identified and documented by unit staff, no payments would be required. If, at some future time, the inmate is able to obtain paid employment in an institution work assignment, or outside resources are identified, a payment plan would then be developed.

A comment to § 545.11(a)(2) suggests that the Bureau's rule on court-ordered restitution does not provide for deferred payments where the judgment and commitment order directs payment as part of a parole plan or upon release from custody. This concern is addressed in the Bureau's internal guidelines implementing the provisions of this rule. These guidelines state that, where the court specifies that the court-ordered payment is to follow the period of incarceration, the financial plan should address any other financial obligations, while encouraging a savings plan to help meet future obligations.

We agree with several commenters who suggested the Bureau add family financial obligations and child support to its priority list of obligations. Based on public comment, and because court-ordered child support or alimony or other court-ordered judgments against an inmate are financial obligations similar to those in the proposed rule, the Bureau of Prisons is adding new § 545.11(a)(6), other court-ordered obligations.

A commenter to § 545.11(b) expressed concern over whether the Bureau had included safeguards to insure that inmates are not allowed to correspond directly with crime victims, and that inmates do not have access to any identifying data, including addresses, of victims. Restitution payments will be made in accordance with the court order. Ordinarily, such payments are made directly to the United States Attorney's Office or to the court. While court-ordered payments made directly to the U.S. Attorney or the court can eliminate the need for unwanted contact with victims, in instances where the court orders direct payment to the victim, the Bureau of Prisons will permit the inmate to comply.

A commenter to § 545.11(b) stated that inmates are in a "survival mode" of existence while incarcerated and that they are "concerned with immediate gratification". Because of this, the commenter suggested the Bureau's rule exempt from an inmate's financial plan an amount of money equal to the monthly commissary spending limitation, for inmates to use in purchasing personal use items from the institution commissary. We do not agree. While the Bureau recognizes that commissary privileges are important to inmates, it is equally important for inmates to recognize, and to accept, responsibility for their legitimate financial obligations. We do not find it appropriate to re-enforce self-gratification as the only outlet for use of an inmate's funds. An inmate's participation in the commissary program may be affected by his financial plan, but in most cases the effect will be minimal.

The third sentence in proposed § 545.11(b) is deleted. The sentence stated that "The minimum amount of payment that may be made by a participant will be set by the Assistant Director, Correctional Programs Division." After careful consideration, the Bureau has decided that it is not necessary, nor practical, to have minimum payments set at this high a

level of administrative authority. Instead, as provided in §§ 545.10 and 545.11, staff who review an inmate's financial plan will have the flexibility to develop with the inmate a schedule to meet his financial obligations. In situations where the inmate disagrees with the payments required in the plan, an administrative remedy appeal can be filed.

In § 545.11(c) the phrase "but not limited to" is added to clarify the first sentence which now states, "An inmate's participation in the financial responsibility plan will be reviewed each time staff assess the inmate's demonstrated level of responsible behavior, including, [but not limited to,] when determining security/custody classification level, eligibility for community activities, good time status, housing assignments, and work assignments." The term "etc." is deleted. These changes do not alter the intent of the paragraph.

A commenter to § 545.11(c) suggested that the Bureau's rule is not clear regarding whether the U.S. Probation Office will be appraised of an inmate's performance in meeting his financial obligations or whether the program will continue for inmates afforded pre-release CTC opportunities. In the Bureau's implementing instructions, staff are required to report an inmate's progress on the financial plan under the "Institutional Adjustment" section of the inmate's progress report. Staff must include, in each progress report prepared for release purposes, a statement as to how the inmate will continue the financial plan upon release from custody. The Probation Office in the sentencing jurisdiction and any other Probation Office that has an active interest in the inmate, are already receiving informational copies of all inmate progress reports. An inmate's participation in the financial responsibility program can therefore be monitored by the Probation Office on a continued basis.

A commenter suggested the Bureau either eliminate the provision for removing an inmate from UNICOR for failure to demonstrate financial responsibility, or simply make failure to meet financial commitments a factor in determining promotions or demotions within UNICOR. The commenter's suggestion is essentially what the Bureau's rule states. An inmate who fails to demonstrate financial responsibility, if not already in a UNICOR assignment, may not be hired by UNICOR and may not be assigned to a performance pay position above the maintenance pay level. An inmate already in UNICOR or in a performance pay position who fails to demonstrate financial responsibility, will be considered for removal from UNICOR, or reduction to the maintenance pay level in a performance pay position. Each case will be handled by unit staff on an individual basis, and appropriate action will be taken where non-compliance is indicated.

**List of Subjects in 28 CFR Part 545**

Prisoners.

**Conclusion**

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: March 28, 1987.

**Norman A. Carlson,**

*Director, Bureau of Prisons.*

In consideration of the foregoing, amend Subchapter C of 28 CFR, Chapter V, by adding a new Subpart B consisting of §§ 545.10 and 545.11 to Part 545.

**SUBCHAPTER C—INSTITUTION MANAGEMENT**

**PART 545—WORK AND COMPENSATION**

Part 545, Subpart B is added to read as follows:

**Subpart B—Inmate Financial Responsibility Program**

Sec.
545.10 Purpose and scope.
545.11 Procedures.

**Subpart B—Inmate Financial Responsibility Program**

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3013, 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

**§ 545.10 Purpose and scope.**

The Bureau of Prisons encourages each sentenced inmate to satisfy his legitimate financial obligations. As part of the initial classification process, Bureau staff will provide the inmate with the opportunity to develop a financial plan for satisfying these obligations. At subsequent program reviews, Bureau staff shall consider the inmate's efforts to meet these financial obligations as indicative of the inmate's acceptance of responsibility.

**§ 545.11 Procedures.**

Unit staff shall meet with each inmate with an identified financial obligation(s) to develop a plan for meeting the obligation(s) by using the inmate's outside resources or institution earnings for payment.

(a) *Developing a Financial Plan*—At initial classification, the unit team will review an inmate's financial obligations. All documentation should be considered, including, but not limited to, the Pre-Sentence Report and the Judgment and Commitment Order(s). A financial plan shall be developed and documented and will include the following obligations, in priority order:

(1) Special assessments imposed under 18 U.S.C. 3013;

(2) Court-ordered restitution;

(3) Fines and court costs;

(4) Judgments in favor of the United States;

(5) Other debts owed the federal government; and

(6) Other-court ordered obligations.

(b) *Payment:* The inmate is responsible for making all payments required by the financial responsibility plan, and for providing documentation to staff. Payments may be made from earnings of the inmate within the institution or from outside resources.

(c) *Monitoring:* An inmate's participation in the financial responsibility plan will be reviewed each time staff assess the inmate's demonstrated level of responsible behavior, including, but not limited to, when determining security/custody classification level, eligibility for community activities, good time status, housing assignments, and work assignments. Progress on the financial responsibility plan will be reported to the United States Parole Commission. An inmate who fails to demonstrate financial responsibility may neither secure a UNICOR work assignment, nor receive performance pay above the maintenance pay level. An inmate already in a UNICOR work assignment or receiving performance pay who fails to make adequate progress on the financial plan will be considered for removal from UNICOR, or reduction to the maintenance pay level of performance pay.

[FR Doc. 87–7120 Filed 3–31–87; 8:45 am]
BILLING CODE 4410–05–M

BEST COPY AVAILABLE

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 549**

**Control, Custody, Care, Treatment, and Instruction of Inmates; Authority To Conduct Autopsies**

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons is publishing a proposed rule implementing the provisions of 18 U.S.C. 4045. This section sets forth the conditions under which a Warden, pursuant to rules prescribed by the Director, Bureau of Prisons, may order an autopsy under his own authority, and those conditions requiring the written consent of another party. This proposed rulemaking is primarily intended to meet the statutory rulemaking requirement of 18 U.S.C. 4045.

**DATE:** Comments on the proposed rule must be received on or before May 15, 1987.

**ADDRESS:** Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

**FOR FURTHER INFORMATION CONTACT:** Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

**SUPPLEMENTARY INFORMATION:** Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** a proposed rule on the Bureau's authority to conduct autopsies. This authority is codified in 18 U.S.C. 4045.

Section 4045 authorizes the Warden, pursuant to rules prescribed by the Director, Bureau of Prisons, to order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death. The autopsy may be ordered in one of these situations only when the Warden determines that the autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility. An autopsy or post-mortem operation not meeting the conditions specified above requires the written consent of a person authorized to permit such an autopsy or post-mortem operation.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534. Comments received will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

**List of Subjects in 28 CFR Part 549**

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows: In Subchapter C, amend Part 549 by adding a new Subpart G to read as follows:

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

**PART 549—MEDICAL SERVICES**

1. The authority citation for Part 549 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 4001, 4005, 4042, 4045, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In Part 549, add a new Subpart G consisting of § 549.80 to read as follows:

**Subpart G—Authority To Conduct Autopsies**

**§ 549.80 Authority to conduct autopsies.**

(a) The Warden may order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death. The autopsy or tests may be ordered in one of these situations only upon the Warden determining that the autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility.

(1) The authority of the Warden under this section may not be delegated below the level of Acting Warden.

(2) Where the Warden has the authority to order an autopsy under this provision, no non-Bureau of Prisons authorization (e.g., from either the coroner or from the inmate's next-of-kin) is required. A decision on whether to order an autopsy is ordinarily made after consultation with the attending physician, and a determination by the Warden that the autopsy is in accordance with the statutory provision. Once it is determined that an autopsy is appropriate, the Warden shall prepare a written statement authorizing this procedure. The written statement is to include the basis for approval.

(b) In any situation other than as described in paragraph (a) of this section, the Warden may order an autopsy or post-mortem operation, including removal of tissue for transplanting, to be performed on the body of a deceased inmate of the facility with the written consent of a person (e.g., coroner, or next-of-kin, or the decedent's consent in the case of tissue removed for transplanting) authorized to permit the autopsy or post-mortem operation under the law of the State in which the facility is located.

(1) The authority of the Warden under this section may not be delegated below the level of Acting Warden.

(2) When the conducting of an autopsy requires permission of the family or next-of-kin, the following message is to be included in the telegram notifying the family or next-of-kin of the death: "Permission is requested to perform a complete autopsy". Also inform the family or next-of-kin that they may telegraph the institution *collect* with their response. Where permission is not received from the person (e.g., coroner or next-of-kin) authorized to permit the autopsy or post-mortem operation, an autopsy or post-mortem operation may not be performed under the conditions of this paragraph (b).

(c) In addition to the provisions of paragraphs (a) and (b) of this section, each institution also is expected to abide by the following procedures.

(1) Staff are to ensure that the state laws regarding the reporting of deaths are followed.

(2) Time is a critical factor in arranging for an autopsy, as this ordinarily must be performed within 48 hours. While a decision on an autopsy is pending, no action should be taken that will affect the validity of the autopsy results. Therefore, while the body may be released to a funeral home, this should be done only with the understanding from the funeral home that no preparation for burial, including

embalming, should be performed until a final decision is made on the need for an autopsy.

(3) Medical staff is to arrange for the approved autopsy to be performed.

(4) To the extent consistent with the needs of the autopsy or of specific scientific or medical tests, provisions of state and local laws protecting religious beliefs with respect to such autopsies are to be observed.

Dated: March 27, 1987.

**Norman A. Carlson,**

*Director, Federal Bureau of Prisons.*

[FR Doc. 87-7121 Filed 3-31-87; 8:45 am]

BILLING CODE 4410-05-M

L
2
S S
2
P
87
M I

federal register

Wednesday
April 1, 1987

Part V

# Department of Health and Human Services

## Office of Community Services

## Announcement of Availability of Funds and Request for Applications Under the Discretionary Authority of the Office of Community Services for the Community Food and Nutrition Program (CFN); Notice

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Community Services**

**[Program Announcement No. OCS-87-2]**

# Availability of Funds and Request for Applications Under the Discretionary Authority of the Office of Community Services for the Community Food and Nutrition Program (CFN)

**AGENCY:** Office of Community Services, Family Support Administration, Department of Health and Human Services.

**ACTION:** Announcement of the availability of funds and request for applications under the Office of Community Services Community Food and Nutrition (CFN) Discretionary Authority. The Administration budget request may propose rescission of these discretionary funds. However, should funds remain available for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent wth the requirements of the program. This notice requesting applications does not reflect any change in policy.

**SUMMARY:** The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681A(b)(2) of the Community Services Block Grant Act of 1981 as amended by section 406 of the Human Services Reauthorization Act of September 30, 1986. This program announcement consists of three parts. Part I describes the CFN program initiative, and indicates who is eligible to apply, the funding available and duration of awards. Part II outlines application requirements, including the required contents of a complete application, how and where the application should be submitted and the deadline for receipt of applications. Part III describes the review, selection and award process.

**DATE:** The closing date for receipt of applications is May 13, 1987. Applicants must meet this deadline either by delivering the application or by mailing it sufficiently in advance of the deadline to assure its timely receipt. Late applications will be returned to the senders without consideration in the competition.

**FOR FURTHER INFORMATION CONTACT:** Department of Health and Human Services, Family Support Administration, Office of Community Services, Office of State and Project Assistance, 330 C Street, SW., Room 2054, Washington, DC 20201; telephone (202) 475-0342.

## Part I—General information

### *A. Purpose of the Community Food and Nutrition Program*

Section 681A(b)(2) of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available for grants to be awarded on a competitive basis to eligible agencies for local and statewide programs (1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas, and (3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income people.

Under this FY 1987 program initiative, grants will be awarded competitively in any or all of the above three legislatively-authorized program areas, subject to the following policy direction:

1. No grant shall be considered for an amount below $25,000 or in excess of $50,000.

2. Proposals may focus on one or more of the above three activities, but must also provide outreach or public education activity designed to inform low-income individuals and displaced workers of the nutrition services available to them under the various Federally-assisted programs.

3. In recognition of the special needs of Indian tribes, migrants and seasonal farmworkers, the Department has established a $150,000 set-aside to afford priority consideration to proposals which assist these populations. Applications which are not funded within this limited set-aside will also be considered competitively within the larger pool of eligible applications.

4. No match is required. However, rating preference will be accorded to applicants whose proposals build on existing outreach activity, and mobilize or leverage additional resources which increase the potential impact of the program. In particular, preference will be given to projects addressing problems that can be met by one-time OCS funding, or which can be continued without future Federal funding.

5. Applicants not proposing to charge any administrative expenses to the OCS grant will receive rating preference.

### *B. Eligible Applicants*

State and local public and private non-profit agencies with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above are invited to submit applications.

### *C. Available Funds*

The Office of Community Services expects to award $1,000,000 in approximately 30 grants during the third quarter of Fiscal Year 1987 under the provisions of this announcement.

### *D. Duration of Awards*

In most cases, OCS will award funds for one year. However, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal, a grant may be made for a longer or shorter period of time, e.g., six months or two years. Regardless of the time provided in a grant, it must be clearly demonstrated that the project work plan will achieve measurable results and can be successfully completed within the funding period requested.

### *E. Proposals*

All proposed projects must meet the basic criteria of being activities that (a) are designed and intended to provide nutrition benefits to a targeted low-income group of people, (b) provide outreach or public education designed to inform low-income individuals and displaced workers of the services available to them under the various Federally-assisted nutrition programs, and (c) focus on one or more of the legislatively-mandated program activities stated in Paragraph A, above.

### *F. Definitions*

For the purposes of this program announcement, the following definitions apply:

A "displaced worker" is an individual who is in the labor market but has been unemployed for six months or longer.

An "underserved area" as pertains to child nutrition programs is a locality in which less than one-half of the low-income children eligible for assistance participate in *any* child nutrition program.

A "migrant farmworker" is an individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of residence in order to secure such employment.

A "seasonal farmworker" is an individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her

place of permanent residence while employed.

An "Indian tribe" means any tribe, band, or other organized group of Indians recognized in the State in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

*G. Applicability of Poverty Income Guidelines*

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people, including displaced workers and at-risk teenagers. The applicant's attention is directed to Appendix A, an excerpt from the most recent Annual Revision of Poverty Income Guidelines published in the **Federal Register**, Vol. 52, No. 34, dated February 20, 1987, pp. 5340–5341.

In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, applicants must assure that the preponderance of beneficiaries assisted under this program announcement are within the official poverty income guidelines.

*H. General Grant Terms*

1. Grantees are subject to the provisions of Office of Management and Budget Circulars A–102, A–110, and A–122, the last of which prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level, and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

2. Grantees will be required to submit quarterly financial reports, a final narrative report, and a final audit for any project that receives OCS funds. Where applicable, grantees are subject to the provisions of the Single Audit Act (Pub. L. 502) and OMB Circular A–128. Costs associated with fulfillment of the audit requirement may be charged to the grant. In lieu of submitting quarterly narrative reports, grantee project directors will be required to attend a two-day program conference at OCS, travel costs for which may be charged to the grant budget.

**Part II—Application Requirements**

*A. Availability of Forms*

Applications for awards under this program must be submitted on the Standard Form (SF) 424 provided for that purpose. The appendix to this announcement contains all forms and instructions required for submittal of applications. Additional copies of the announcement may be obtained by writing or telephoning: Department of Health and Human Services, Family Support Administration, Office of Community Services, Office of State and Project Assistance, 330 C Street, SW., Room 2054, Washington, DC 20201, RE: OCS 87–2–CFN, Telephone: (202) 475–0342.

*B. Submission*

The closing date for receipt of applications submitted for consideration under this program announcement is May 13, 1987. Applicants must meet this deadline either by hand-delivering their proposal during the normal working hours of 8:45 a.m. to 5:30 p.m., Monday through Friday, or by mailing it sufficiently in advance of the deadline to insure its timely receipt. Late applications will be returned to the senders without consideration in the competition.

Applicants may be mailed or delivered by hand to: Department of Health and Human Services, Family Support Administration, Office of Grants Management, Room 2222 Switzer Building, 330 C Street, SW., Washington, DC 20201.

*Applications once submitted are considered final, and no additions will be accepted by OCS.*

*C. Application Package*

Each application must include:

1. A signed original and two copies of the application. The original must bear an original signature of the certifying representative of the applicant organization. Do not include extraneous materials such as agency promotional brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. The notation *"Set-Aside Request"*, entered in the lower right-hand corner of the application cover page by those applicants seeking consideration under the set-aside provision for Indian tribes, migrants and seasonal farmworkers.

3. A self-addressed, franked postcard so that acknowledgment of receipt can be provided. This requirement applies even if the application is accompanied by a "Return Receipt Requested" card. All applications will be assigned an identification number which will be noted on the acknowledgment. This number and, if applicable, the suffix SAR (set-aside request) must be referred to in all subsequent communication with OCS concerning the application. Please note that, since applications will be filed serially by this identification number, it will not be possible for OCS staff to respond promptly to specific inquiries unless this number is provided as well as the applicant's name. Applicants who have not received an acknowledgment card and thus lack an identification number three weeks after the application deadline date are requested to notify OCS by telephone at (202) 475–0342.

*D. Application Content*

All applications must include a cover page followed by a Table of Contents with page numbers for each major section and subsection of the proposal and each section of the Appendix. Each page in the application, including those in any appendix, must be numbered consecutively. (This will facilitate review as well as future referencing once the application becomes part of the OCS permanent files.)

The Table of Contents should list the following and the applications should present material in the following order:

1. Standard Form 424, Parts I through IV, accompanied by:

(a) Justification for indicating in Part I a grant period of more than or less than 12 months;

(b) A Detailed Budget Breakdown for Part III, Section B, which includes travel costs for the project director to attend a two-day grant-related CFN confeence at OCS.

2. Project Narrative

(a) Analysis of Need

(1) Description of target area and population to be served;

(2) Nature and extent of problem to be solved;

(3) Project priorities and rationale for selecting them.

(b) Work Program

(1) Goals and Objectives;

(2) Project Activities.

(c) Significant and Beneficial Impact

(1) Description of how project will significantly improve or increase nutrition services for low-income people;

(2) Statement as to how project will significantly leverage or mobilize other resources;

(3) Description of project outreach and/or public education activity.

(d) Ability of Applicant to Perform

(1) Statement of applicant's experience in CFN program area plus a written self-assessment or third-party evaluation of past nutrition-related activities.

(2) Statement describing management and programmatic experience of staff, and a description of who will do what in the proposed project. This statement

should be supported by resumes and job descriptions.[1]

(3) Information about the legal structure of the applicant, including if applicable the organization's charter and by-laws.[1]

*E. Intergovernmental Review*

This program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the States in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by applicants prior to submittal of their proposals to OCS. These initial actions must be reported on Form SF–424, Page 1 when it is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS.

*F. Application Length and Format Restrictions*

1. *The text of this application may not exceed 15 single-spaced typewritten pages.* This excludes the Standard Form 424 and its attachments as well as any appendices to the application. While applications must be comprehensive, they should also be concise, and OCS cautions you to avoid unnecessary duplication of information.

2. Applications must be uniform in composition. They must be submitted on 8-½ × 11 inch paper only.

3. Applications must be submitted in binders that will allow for easy separation and reassembly.

4. Failure to comply with these requirements may result in the disqualification and return of an application.

**Part III—Review, Selection and Award Process**

All applications that meet the published deadline for receipt at FSA will be screened to determine completeness and conformity to the requirements of this announcement. Only complete and conforming applications will then be reviewed and rated competitively. Following the final review by the Director, OCS, it is anticipated that awards under this Announcement will be made in the third quarter of FY 1987.

[1] Asterisked items may be included in an appendix to the Application.

*A. Screening Requirements*

In order for an application to be processed under this announcement, it must meet all of the following requirements:

1. Length Limitation:

It must not exceed 15 pages in total, excluding Form 424 and its attachments, and any appendices.

2. Standard Form 424:

This form must be completed according to its instructions, and Item 23b of Part I must be signed by an official of the applicant organization having legal authority to obligate the applicant.

3. Number of Copies:

A signed original application and two copies must be submitted.

*B. Pre-Rating Review*

Applications which pass the initial screening will be reviewed by the program office to verify that they comply with this program announcement in the following areas:

1. OCS Target Population:

The application must clearly target the specific outcomes and benefits of the project to low-income participants and beneficiaries eligible under the DHHS Annual Revision of Poverty Income Guidelines (see Part I–G, above).

2. Outreach:

Project proposal must include outreach or public education activity designed to inform low-income individuals and displaced workers of nutrition services available to them under various Federally-assisted nutrition programs.

3. Program Focus:

Project proposal must focus on at least one of the three basic program activities authorized under the Community Food and Nutrition Program: coordination of existing food assistance resources; initiation of new child nutrition program; and/or the development of innovative approaches to meet the nutritional needs of low-income people (see Part I–E, above).

4. Grant Amount:

No grant shall be considered for OCS funding in excess of $50,000 or less than $25,000.

5. Project Duration:

No grant shall be considered for a period of other than twelve months unless justification is presented for the alternative funding period.

Applicants must meet all of the above requirements to be considered for funding.

*C. Rating Criteria*

Applications which pass initial screening and the above review will be rated on a competitive basis by FSA employees (other than staff assigned to the CCS Division of Discretionary Grants) to conduct a formal review of the proposals.

Each reader will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement. An overall rating will include the reviewer's judgment of each application.

This review and rating process will use the following criteria.

1. Analysis of Needs/Priorities (Maximum: 20 points)
(a) Target area and population to be served are adequately described (0-5 points)
(b) Nature and extent of problem is adequately described and documented (0-15 points)
2. Adequacy of Work Program (Maximum: 20 points)
a. Goals are appropriately related to needs and are specific and measurable (0-10 points)
b. Activities are adequately described and appropriately related to goals (0-10 points)
3. Significant and Beneficial Impact (Maximum: 25 points)
a. Applicant proposes to significantly improve or increase nutrition services to low-income people (0-10 points)
b. Project will significantly leverage or mobilize other community resources (0-5 points)
c. Project builds on an existing outreach activity (0-5 points)
d. Proposal addresses a problem which can be resolved by one-time OCS funding, or demonstrates that non-Federal funding is available to continue the project without Federal support (0-5 points)
4. Coordination (Maximum: 10 points)
Other appropriate organizations will be involved in project implementation so as to avoid duplication and to achieve an improved delivery system (0-10 points)
5. Ability of Applicant to Perform (Maximum: 18 points)
a. A written self-assessment or third party evaluation of past nutrition-related activities undertaken by

applicant indicates good ability to operate proposed project (0–10 points)
b. Quality of staff is such that applicant will be able to operate the project effectively and efficiently (0-8 points)
6. Adequacy of Budget (Maximum: 7 points)
a. Budget is adequate, administrative costs are appropriate in relation to the services proposed, and reflect the items discussed in Part I–H.2, above (0-5 points)
b. Administrative costs are fully assumed by applicant (0-2 points)

*D. Selection and Award Process*

The results of the screening review and rating process will be used to assist the Director and OCS staff in considering competing applications. Rating scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in rank order of the mean scores assigned by raters. However, highly ranked applications are not guaranteed funding.

The Director may also consider other factors deemed relevant, including but not limited to comments of staff rating panels and public officials; program staff quality review; geographical distribution of funding; prior program performance of applicants, especially those that have had previous OCS grants; audit reports and investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal grants.

The Office of Community Services reserves the option to discuss CFN applications with other Federal or non-Federal funding sources to determine applicants' performance records.

The official award document is the Notice of Grant Award, which sets forth in writing to the recipient the amount of OCS funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is approved, and the total recipient financial participation required.

**David J. Kirker,**

*Director, Office of Community Services.*

APPENDIX A

This notice provides the 1987 update of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). As required by the statute, this unpdate reflects last year's change in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. The guidelines are a simplified version of the poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The *poverty income guidelines* issued by the Department of Health and Human Services (formerly by the Community Services Administration) are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The *poverty thresholds* are used primarily for statistical purposes.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty income guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given below are applicable to both farm and nonfarm families.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P–60, No. 152 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions.

*(a) Family*

A family is a group of two or more persons related by birth, marriage, or adoption who reside together; all such related persons are considered as members of one family. (If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not to the household as a whole.)

*(b) Family unit of size one.*

In conjunction with the poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—that is, a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

*(c) Income.*

Refers to total annual cash receipts before taxes from all sources (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent received in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following types of money received: Capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car, tax refunds, gifts, lumpsum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, Food Stamps, School lunches, and housing assistance.

1987 POVERTY INCOME GUIDELINE FOR ALL STATES (EXCEPT ALASKA AND HAWAII), AND THE DISTRICT OF COLUMBIA

| Size of family unit | Poverty guideline |
|---|---|
| 1 | [illegible] |
| 2 | 7,400 |
| 3 | 9,300 |
| 4 | 11,200 |
| 5 | 13,100 |
| 6 | 15,000 |
| 7 | [illegible] |
| 8 | 18,800 |

For family units with more than 8 members, add $1,900 for each additional members.

POVERTY INCOME GUIDELINES FOR ALASKA

| Size of family unit | Poverty guideline |
|---|---|
| 1 | [illegible] |
| 2 | [illegible] |
| 3 | 11,620 |
| 4 | 14,000 |
| 5 | [illegible] |
| 6 | 18,760 |
| 7 | 21,140 |
| 8 | 23,520 |

For family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

| Size of family unit | Poverty guideline |
|---|---|
| 1 | $6,310 |
| 2 | 8,500 |
| 3 | 10,690 |
| 4 | 12,880 |
| 5 | 15,070 |
| 6 | 17,260 |
| 7 | 19,450 |
| 8 | 21,640 |

For family units with more than 8 members, add $2,190 for each additional member.

APPENDIX B

BILLING CODE 4150-04-M

OMB Approval No. 0348-0006

# FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE *Year month day*

3. STATE APPLICATION IDENTIFIER *NOTE: TO BE ASSIGNED BY STATE*
- a. NUMBER
- b. DATE ASSIGNED *Year month day*

*Leave blank*

**SECTION I—APPLICANT/RECIPIENT DATA**

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code
- h. Contact Person *(Name & Telephone No.)*

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
- a. NUMBER
- MULTIPLE ☐
- b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other *(Specify)*.
*Enter appropriate letter* ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
*Enter appropriate letter(s)* ☐☐

12. PROPOSED FUNDING

| | |
|---|---|
| a. FEDERAL | $ .00 |
| b. APPLICANT | |
| c. STATE | .00 |
| d. LOCAL | .00 |
| e. OTHER | .00 |
| f. Total | $ .00 |

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
*Enter appropriate letter* ☐

15. PROJECT START DATE *Year month day*
19

16. PROJECT DURATION

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other *(Specify)*.
*Enter appropriate letter(s)* ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ► *Year month day*
19

19 FEDERAL AGENCY TO RECEIVE REQUEST

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

a. ORGANIZATIONAL UNIT (IF APPROPRIATE)

b. ADMINISTRATIVE CONTACT (IF KNOWN)

c. ADDRESS

21. REMARKS ADDED ☐ Yes ☐ No

**SECTION II—CERTIFICATION**

THE APPLICANT CERTIFIES THAT ►

To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23 CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

**SECTION III—FEDERAL AGENCY ACTION**

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

| | |
|---|---|
| a. FEDERAL | $ .00 |
| b. APPLICANT | .00 |
| c. STATE | .00 |
| d. LOCAL | .00 |
| e. OTHER | .00 |
| f. TOTAL | $ |

29. ACTION DATE ► *Year month day*

30. STARTING DATE *Year month date* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month date* 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
*Prescribed by OMB Circular A-102*

DETACH AND, AS NECESSARY, STAPLE TO ABOVE SHEET.

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

OMB NO. 0348-0006

## PART III
## PROJECT APPROVAL INFORMATION

Item 1
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided

## PART III - BUDGET INFORMATION

### SECTION A - BUDGET SUMMARY

| Grant Program, Function or Activity (a) | Federal Catalog No. (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

### SECTION B - BUDGET CATEGORIES

| 6. Object Class Categories | - Grant Program, Function or Activity | | | | Total |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

OMB NO. 0348-0006

| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) APPLICANT | (c) STATE | (d) OTHER SOURCES | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (YEARS) | | | |
| | (b) FIRST | (c) SECOND | (d) THIRD | (e) FOURTH |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS | $ | $ | $ | $ |

**SECTION F - OTHER BUDGET INFORMATION**
**(Attach Additional Sheets if Necessary)**

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

**PART IV PROGRAM NARRATIVE (Attach per instruction)**

BILLING CODE 4150-04-C

## GENERAL INSTRUCTIONS FOR THE SF–424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A–102. It will be used by Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process have been given an opportunity to review the applicant's submission.

## APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I with the exception of Box 3, "State Application Identifier." If an item is not applicable, write "NA." If additional space is needed, insert an asterisk "*," and use Section IV. An explanation follows for each item:

*Item*

1. Mark appropriate box. Preapplication and application are described in OMB Circular A–102 and Federal agency program instructions. Use of this form as a Notice of Intent is at State option. Federal agencies do not require Notices of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared (at applicant's option).

3a. Number assigned by State.

3b. Date assigned by State.

4a–4h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance (CFDA) number assigned to program under which assistance is requested. If more than one program (e.g., joint funding), check "multiple" and explain in Section IV. If unknown, cite Public Law or U.S. Code.

6b. Program title from CFDA. Abbreviate if necessary.

7. Use Section IV to provide a summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

10. Estimated number of persons directly benefiting from project.

11. Check the type(s) of assistance requested.

A. Basic Grant—an original request for Federal funds.

B. Supplemental Grant—a request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

E. Other. Explain in Section IV.

12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 12a—amount requested from Federal Government. 12b—amount applicant will contribute. 12c—amount from State, if applicant is not a State. 12d—amount from local government, if applicant is not a local government. 12e—amount from any other sources, explain in Section IV.

13b. The district(s) where most of action work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."

14. A. New. A submittal for project not previously funded.

B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project with a projected completion date.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

16. Estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augmentations (item 14e).

18. Date preapplication/application must be submitted to Federal agency in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise, write "NA."

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

## APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

## FEDERAL AGENCY PROCEDURES FOR SECTION III

Applicant completes only Sections I and II. Section III is completed by Federal agencies.

25. Use to identify award actions.

27. Use Section IV to amplify where appropriate.

28. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 28a—amount awarded by Federal Government. 28b—amount applicant will contribute. 28c—amount from State, if applicant is not a State. 28d—amount from local government, if applicant is not a local government. 28e—amount from any other sources, explain in Section IV.

29. Date action was taken on this request.

30. Date funds will become available.

31. Name and telephone number of agency person who can provide more information regarding this assistance.

32. Date after which funds will no longer be available for obligation.

33. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

BILLING CODE 4150–04–C

☆ GPO : 1984 O - 421-526 (140)

Part V—Assurances

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A–102, A–110 and applicable cost principles, (Circulars: A–21, "Educational Institutions"; A–87, "Cost Principles for State and Local Governments"; and A–122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with the requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Pub. L. 91–646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not aemployed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate of compensation paid in the area to persons paroviding substantially comparable services: or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in thier files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposd by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, diaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93–234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistnce for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 U.S.C. 469a-1 *et seq.*) by a consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94–135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regualtion (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto. which prohibits dicrimination on the basis of handicap in programs and activities receiving Federal finacial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) which prohibits discrimination on the basis of sec in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93–348 as implemented by Part of Title 45 (45 CFR Part 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246 as amended and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulaions at 41 CFR Part 60.

19.It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprenticies, and trainees) if the contract exceeds $2,500.

BILLING CODE 4150-04-M

## ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
Name of Applicant (type or print)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____ _____
Applicant (type or print)

By _____
Signature and Title of Authorized Official

_____

_____
Applicant's mailing address

**NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201**

HHS-441 (Rev. 12/82)

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. (  ) employs fewer than fifteen persons;

b. (  ) employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

_____
Name of Designee(s) (Type or Print)

_____
Name of Recipient (Type or Print)

_____
Street Address or P.O. Box

_____
(IRS) Employer Identification Number

_____
City

_____
State Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____
Date

_____
Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

**NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.**

HHS-641 (Rev. 12 82)

[FR Doc. 87-7168 Filed 3-31-87; 8:45 am]
BILLING CODE 4150-04-C

Federal Register

Wednesday
April 1, 1987

Part VI

# Environmental Protection Agency

## Premanufacture Notices; Monthly Status Report for November 1986

BEST COPY AVAILABLE

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53091 (FRL-3167-3)]

## Premanufacture Notices; Monthly Status Report for November 1986

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for November 1986.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

**ADDRESS:** Written comments, identified with the document control number "[OPTS-53091]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, S.W., Washington, D.C. 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The monthly status report is published in the **Federal Register** pursuant to section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)). Effective with this notice, the following nonsubstantive change in format is being initiated: the chemical identity listings, the **Federal Register** citations, and the review period expiration date are being eliminated from categories I (PMNs received during the month) and V (PMNs for which the review period has been suspended). This change does not significantly affect the quantity of information presented in this monthly status report.

Dated: March 3, 1987.

**Denise Devoe,**

*Acting Director, Information Management Division.*

### Premanufacture Notices Monthly Status Report November 1986

I. 156 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

| PMN No. | |
|---|---|
| P 87-163 | P 87-231 |
| P 87-164 | P 87-232 |
| P 87-165 | P 87-233 |
| P 87-166 | P 87-234 |
| P 87-167 | P 87-235 |
| P 87-168 | P 87-236 |
| P 87-169 | P 87-237 |
| P 87-170 | P 87-238 |
| P 87-171 | P 87-239 |
| P 87-172 | P 87-240 |
| P 87-173 | P 87-241 |
| P 87-174 | P 87-242 |
| P 87-175 | P 87-243 |
| P 87-176 | P 87-244 |
| P 87-177 | P 87-245 |
| P 87-178 | P 87-246 |
| P 87-179 | P 87-247 |
| P 87-180 | P 87-248 |
| P 87-181 | P 87-249 |
| P 87-182 | P 87-250 |
| P 87-183 | P 87-251 |
| P 87-184 | P 87-252 |
| P 87-185 | P 87-253 |
| P 87-186 | P 87-254 |
| P 87-187 | P 87-255 |
| P 87-188 | P 87-256 |
| P 87-189 | P 87-257 |
| P 87-190 | P 87-258 |
| P 87-191 | P 87-259 |
| P 87-192 | P 87-260 |
| P 87-193 | P 87-261 |
| P 87-194 | P 87-262 |
| P 87-195 | P 87-263 |
| P 87-196 | P 87-264 |
| P 87-197 | P 87-265 |
| P 87-198 | P 87-266 |
| P 87-199 | P 87-267 |
| P 87-200 | P 87-268 |
| P 87-201 | P 87-269 |
| P 87-202 | P 87-270 |
| P 87-203 | P 87-271 |
| P 87-204 | P 87-272 |
| P 87-205 | P 87-273 |
| P 87-206 | P 87-274 |
| P 87-207 | P 87-275 |
| P 87-208 | P 87-276 |
| P 87-209 | P 87-277 |
| P 87-210 | P 87-278 |
| P 87-211 | P 87-279 |
| P 87-212 | P 87-280 |
| P 87-213 | P 87-281 |
| P 87-214 | P 87-282 |
| P 87-215 | P 87-283 |
| P 87-216 | P 87-284 |
| P 87-217 | Y 87-21 |
| P 87-218 | Y 87-22 |
| P 87-219 | Y 87-23 |
| P 87-220 | Y 87-24 |
| P 87-221 | Y 87-25 |
| P 87-222 | Y 87-26 |
| P 87-223 | Y 87-27 |
| P 87-224 | Y 87-28 |
| P 87-225 | Y 87-29 |
| P 87-226 | Y 87-30 |
| P 87-227 | Y 87-31 |
| P 87-228 | Y 87-32 |
| P 87-229 | Y 87-33 |
| P 87-230 | Y 87-34 |
| Y 87-35 | Y 87-45 |
| Y 87-36 | Y 87-46 |
| Y 87-37 | Y 87-47 |
| Y 87-38 | Y 87-48 |
| Y 87-39 | Y 87-49 |
| Y 87-40 | Y 87-50 |
| Y 87-41 | Y 87-51 |
| Y 87-42 | Y 87-52 |
| Y 87-43 | Y 87-53 |
| Y 87-44 | Y 87-54 |

II. 147 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

| PMN No. | |
|---|---|
| P 87-1 | P 87-67 |
| P 87-2 | P 87-68 |
| P 87-3 | P 87-69 |
| P 87-4 | P 87-70 |
| P 87-5 | P 87-71 |
| P 87-6 | P 87-72 |
| P 87-7 | P 87-73 |
| P 87-8 | P 87-74 |
| P 87-9 | P 87-75 |
| P 87-10 | P 87-76 |
| P 87-11 | P 87-77 |
| P 87-12 | P 87-78 |
| P 87-13 | P 87-79 |
| P 87-14 | P 87-80 |
| P 87-15 | P 87-81 |
| P 87-16 | P 87-82 |
| P 87-17 | P 87-83 |
| P 87-18 | P 87-84 |
| P 87-19 | P 87-85 |
| P 87-20 | P 87-86 |
| P 87-21 | P 87-87 |
| P 87-22 | P 87-88 |
| P 87-23 | P 87-89 |
| P 87-24 | P 87-90 |
| P 87-25 | P 87-91 |
| P 87-26 | P 87-92 |
| P 87-27 | P 87-93 |
| P 87-28 | P 87-94 |
| P 87-29 | P 87-95 |
| P 87-30 | P 87-96 |
| P 87-31 | P 87-97 |
| P 87-32 | P 87-98 |
| P 87-33 | P 87-99 |
| P 87-34 | P 87-100 |
| P 87-35 | P 87-101 |
| P 87-36 | P 87-102 |
| P 87-37 | P 87-103 |
| P 87-38 | P 87-104 |
| P 87-39 | P 87-105 |
| P 87-40 | P 87-106 |
| P 87-41 | P 87-107 |
| P 87-42 | P 87-108 |
| P 87-43 | P 87-109 |
| P 87-44 | P 87-110 |
| P 87-45 | P 87-111 |
| P 87-46 | P 87-112 |
| P 87-47 | P 87-113 |
| P 87-48 | P 87-114 |
| P 87-49 | P 87-115 |
| P 87-50 | P 87-116 |
| P 87-51 | P 87-117 |
| P 87-52 | P 87-118 |
| P 87-53 | P 87-119 |
| P 87-54 | P 87-120 |
| P 87-55 | P 87-121 |
| P 87-56 | P 87-122 |
| P 87-57 | P 87-123 |
| P 87-58 | P 87-124 |
| P 87-59 | P 87-125 |
| P 87-60 | P 87-126 |
| P 87-61 | P 87-127 |
| P 87-62 | P 87-128 |
| P 87-63 | P 87-129 |
| P 87-64 | P 87-130 |
| P 87-65 | P 87-131 |
| P 87-66 | P 87-132 |

P 87-133
P 87-134
P 87-135
P 87-136
P 87-137
P 87-138
P 87-139
P 87-140
P 87-141
P 87-142
P 87-143
P 87-144
P 87-145
P 87-146
P 87-147

III. 194 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)

PMN No.

P 85-1373
P 86-473
P 86-500
P 86-501
P 86-502
P 86-503
P 86-562
P 86-628
P 86-658
P 86-704
P 86-872
P 86-873
P 86-940
P 86-1147
P 86-1176
P 86-1315
P 86-1452
P 86-1461
P 86-1462
P 86-1463
P 86-1464
P 86-1465
P 86-1466
P 86-1467
P 86-1468
P 86-1469
P 86-1470
P 86-1471
P 86-1472
P 86-1473
P 86-1474
P 86-1475
P 86-1476
P 86-1477
P 86-1478
P 86-1479
[illegible]
P 86-1481
P 86-1482
P 86-1483
P 86-1484
P 86-1485
P 86-1486
P 86-1487
P 86-1488
P 86-1489
P 86-1490
P 86-1491
[illegible]
P 86-1492
P 86-1493
P 86-1494
P 86-1495
P 86-1496
P 86-1497
P 86-1498
P 86-1499
P 86-1500
P 86-1501
P 86-1502
P 86-1503
P 86-1504
P 86-1505
P 86-1506
P 86-1507
P 86-1508
P 86-1509
P 86-1510
P 86-1511
P 86-1512
P 86-1513
P 86-1514
P 86-1515
P 86-1516
P 86-1517
P 86-1518
P 86-1519
P 86-1520
P 86-1521
P 86-1522
P 86-1523
P 86-1524
P 86-1525
P 86-1526
P 86-1527
P 86-1528
P 86-1529
[illegible]
P 86-1531
P 86-1532
P 86-1533
P 86-1534
P 86-1535
P 86-1536
P 86-1537
[illegible]
[illegible]
P 86-1540
P 86-1541
P 86-1542
P 86-1543
P 86-1544
P 86-1545
P 86-1546
P 86-1547
P 86-1548
P 86-1549
P 86-1550
P 86-1551
P 86-1552
P 86-1553
P 86-1554
P 86-1555
P 86-1556
P 86-1557
P 86-1558
P 86-1559
P 86-1560
P 86-1561
P 86-1562
P 86-1563
P 86-1564
P 86-1565
P 86-1566
P 86-1567
P 86-1568
P 86-1569
P 86-1570
P 86-1572
P 86-1573
P 86-1574
P 86-1575
P 86-1576
P 86-1577
P 86-1578
P 86-1579
P 86-1580
P 86-1581
P 86-1582
P 86-1583
P 86-1584
P 86-1585
[illegible]
P 86-1587
P 86-1588
P 86-1589
P 86-1590
P 86-1591
P 86-1592
P 86-1593
P 86-1594
P 86-1595
P 86-1596
P 86-1597
P 86-1598
P 86-1599
P 86-1600
P 86-1601
P 86-1602
P 86-1603
[illegible]
[illegible]
P 86-1606
P 86-1607
P 86-1608
P 86-1609
P 86-1610
P 86-1611
P 86-1612
P 86-1613
Y 87-5
Y 87-6
Y 87-7
Y 87-8
Y 87-9
Y 87-10
Y 87-11
Y 87-12
Y 87-13
Y 87-14
Y 87-15
Y 87-16
Y 87-17
Y 87-18
Y 87-19
Y 87-20
Y 87-21
Y 87-22
Y 87-23
Y 87-24
Y 87-25
Y 87-26
Y 87-27
Y 87-28
Y 87-29

IV. 65 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

| PMN No | Identity/generic name | Date of [illegible] |
|---|---|---|
| P 83-18 | Generic name: Di(disubstituted naphthyl) polyheterocycle | Oct. 1, 1986 |
| P 83-825 | Generic name: Disubstituted pyridinium bromide | Oct. 6, 1986 |
| P 83-1033 | Generic name: $C_{8-9}$ carboxylic acid | Mar. 15, 1985 |
| P 85-115 | Generic name: Aromatic polyisocyanate adduct | Sept. 30, 1986 |
| P 85-167 | Generic name: Organo sulfur compound | Oct. 27, 1986 |
| P 85-415 | Generic name: Acrylic ester | Sept. 11, 1986 |
| P 85-932 | Generic name: Disubstituted alkyltriazine | Mar. 7, 1986 |
| P 85-933 | Generic name: Disubstituted alkyltriazine | Mar. 10, 1986 |
| P 85-934 | Generic name: Acrylated alkyd | Sept. 24, 1986 |
| P 85-1139 | Generic name: Isocyanate-modified alkyd resin | Nov. 5, 1986 |
| P 85-1360 | Generic name: Esterified polyamic acid | Nov. 1, 1986 |
| P 85-1407 | Generic name: Phosphorodithioic acid, dialkyl ester, alkylammonium salt | Oct. 15, 1986. |
| P 85-1439 | Generic name: Reaction product of a substituted nitril E with a halogenated unsaturated compound | Oct. 27, 1986 |
| P 85-1447 | Polymer of: methyl methacrylate, ethyl acrylate, 2-hydroxy ethyl acrylate | Nov. 3, 1986 |
| P 86-50 | 3-Carboxypyridinium-4-methylbenzenesulfonate | Oct. 20, 1986. |
| P 86-89 | Generic name: Amidoamine expoxy resin adduct | Oct. 1, 1986 |
| P 86-164 | Generic name: Caprolactone modified by hydroxyethyl methacrylate | June 17, 1986 |
| P 86-168 | Polymer of: phthalic anhydride; 2,2,4-trimethyl-1,3-pentanediol; 2,2'-oxybis(ethanol); 2-ethyl hexanol; triphenylphosphite, and Fascat 4100 | Feb. 10, 1986. |
| P 86-218 | Polymer of: 1,4-butanediol; adipic acid; 1,15-dodecane dioic acid; dicyclohexyl methyl 4,4'-diisocyanate | Oct. 1, 1986 |
| P 86-351 | Generic name: Carboxyoxyamide sulfate polymer | Oct. 11, 1986 |
| P 86-423 | Mixed thiodiphenol oligomers | Oct. 15, 1986 |
| P 86-544 | Butanedioic acid, sulfo-,1,4-bis(3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)ester, sodium salt | Aug. 26, 1986 |
| P 86-638 | Generic name: Epoxy containing acrylic polymer | Oct. 2, 1986 |
| P 86-653 | Generic name: Mixed glycol and oligoesters of aromatic and aliphatic dicarboxylic acids | Oct. 6, 1986 |
| P 86-722 | Generic name: Polyesteramide | Oct. 8, 1986 |
| P 86-724 | Generic name: Polymer of styrene, acrylonitrile, and mixed acrylates | Oct. 23, 1986 |
| P 86-693 | Generic name: Modified triazine-formaldehyde polymer | Oct. 7, 1986 |
| P 86-911 | Amine adduct of epoxy resin | Oct. 24, 1986 |
| P 86-912 | Amine adduct of epoxy resin | Oct. 24, 1986 |
| P 86-926 | 1 H-isoindole-5-carboxylic acid, 2,2'-(methylene di-4, 1-phenylene)bis[2,3-dihydro-1,3-dioxo-] | Sept 22, 1986. |
| P 86-942 | Generic name: Copolymer of methacrylic and acrylic esters | Oct. 20, 1986 |
| P 86-1018 | Generic name: Unsaturated polyester resin from dibasic and polyol | Sept. 26, 1986 |
| P 86-1064 | Generic name: Alkyl methacrylate copolymer | Sept. 19, 1986 |
| P 86-1065 | Generic name: Vinyl heterocycle alkyl methacrylate copolymer | Sept. 19, 1986 |
| P 86-1072 | Generic name: Substituted alkyl phosphine | Oct. 6, 1986 |
| P 86-1121 | Poly(oxy-1,4-butanediyl), alpha-(4-nitrobenzoyl)-omega-(4-nitrobenzoyl)oxy)- | Oct. 20, 1986 |
| P 86-1128 | Generic name: Polyurethane prepolymer | Sept. 18, 1986 |
| P 86-1141 | Generic name: Alkyl anhydride adduct | Oct. 20, 1986 |
| P 86-1201 | Generic name: Substituted poly(oxyalkylene)amine, carboxylic acid ester | Sept. 22, 1986 |
| P 86-1216 | Generic name: Polymer of polyethyleneamines with formaldehyde monobasic fatty acid dibasic fatty acid, a lactam, substituted phenol and a substituted oxirane | Oct. 13, 1986 |
| P 86-1275 | Generic name: Mixed polyol ester of normal and branched chain monocarboxylic acids | Oct. 17, 1986 |
| P 86-1291 | Generic name: Derivative of amines, polyethylene poly-compounds with (polybutenyl) succinic anhydride | Nov 3, 1986 |
| P 86-1306 | Generic name: Reaction product of polyalkenyl acid anhydride with amine | Nov 17, 1986 |

IV. 65 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture—Continued

| PMN No | Identity/generic name | Date of commencement |
|---|---|---|
| P 86-1307 | Generic name: Reaction product of polyalkenyl acid anhydride with amine | Nov. 17, 1986. |
| P 86-1324 | Generic name: Copolymer of methacrylic esters | Nov. 6, 1986 |
| P 86-1425 | Generic name: Unsaturated polyester | Oct. 30, 1986 |
| P 86-1464 | Generic name: Aliphatic polyurethane polyester | Nov. 5, 1986 |
| P 86-1468 | Generic name: Substituted phenyldiethanolamine | Nov. 7, 1986. |
| P 86-1469 | Generic name: Substituted phenylethanolamine | Nov. 9, 1986. |
| P 86-1470 | Generic name: (Substituted phenyl)-di-(polyoxyethylene polyoxy-propylene)amine | Nov. 7, 1986. |
| P 86-1471 | Generic name: Chlorocarboheterocycleazo substituted phenyl-amino(hydroxyalkylpolyoxyalkylene) | Nov. 7, 1986. |
| P 86-1479 | Generic name: Aliphatic esters | Nov. 10, 1986. |
| P 86-1504 | Generic name: Water reducible epoxy ester copolymer resin | Nov. 7, 1986. |
| P 86-1513 | Generic name: Amphotenic surface active polymer solution | Nov. 10, 1986. |
| P 86-1529 | Generic name: Tertiary amine adduct with epoxy resin | Nov. 17, 1986. |
| P 86-1560 | Generic name: Sorbitan ester | Nov. 19, 1986. |
| P 86-1561 | Generic name: Polyoxyethylene sorbitan ester | Nov. 19, 1986. |
| Y 85-68 | Generic name: Alkyd | Sept. 22, 1986 |
| Y 86-83 | Generic name: Alkyd copolymer | Sept. 18, 1986. |
| Y 86-129 | Generic name: Linear saturated polyester resin containing hydroxyl groups | Oct. 14, 1986. |
| Y 86-225 | Ethene polymer with 2-propenoic acid,1,1-dimethy ethyl ester and 2-propenoic acid | Oct. 17, 1986. |
| Y 86-251 | Generic name: Solvent-thinned alkyd resin | Oct. 9, 1986 |
| Y 86-259 | Generic name: Styrene, acrylic modified alkyd | Oct. 23, 1986. |
| Y 86-4 | Generic name: Solvent-thinned long oil alkyd resin | Oct. 31, 1986. |
| Y 87-7 | Generic name: Acrylic polymer | Nov. 10, 1986. |

V. 20 Premanufacture Notices for Which the Period Has Been Suspended

| PMN No. | |
|---|---|
| P 85-463 | P 86-1525 |
| P 85-1189 | P 86-1526 |
| P 86-1299 | P 86-1530 |
| P 86-1491 | P 86-1573 |
| P 86-1492 | P 86-1593 |
| P 86-1493 | P 86-1602 |
| P 86-1516 | P 86-1603 |
| P 86-1604 | P 86-1659 |
| P 86-1616 | P 86-1742 |
| P 86-1657 | P 86-1749 |

[FR Doc. 87-5286 Filed 3-31-87; 8:45 am]

BILLING CODE [illegible]

Federal Register

Wednesday
April 1, 1987

Part VII

# Department of Agriculture

**Animal and Plant Health Inspection Service**

**9 CFR Part 78**

**Brucellosis in Cattle; State and Area Classifications; Interim Rule**

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87-042]

# Brucellosis in Cattle; State and Area Classifications

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the regulations governing the interstate movement of cattle because of brucellosis by classifying the State of Texas as Class B. Texas has been divided into two areas for brucellosis, Class B and Class C. We have determined that the State of Texas as a whole meets the standards for Class B status. Classifying the entire State of Texas as Class B for brucellosis relieves certain restrictions on the interstate movement of cattle from Texas.

**EFFECTIVE DATE:** April 1, 1987. We will consider written comments received on or before June 1, 1987.

**ADDRESSES:** Send your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-042. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-5965.

**SUPPLEMENTARY INFORMATION:**

## Backgound

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free Classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis, with Class A and Class B in between. Restrictions are more stringent for movements of cattle from Class A States or areas compared with movements from Class Free States or areas, and are more stringent for movements from Class B States or areas compared with movements from Class A States or areas, and so on.

The basic standards for the different classifications of States or areas concern maintaining: (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after notification of brucellosis in a herd; and (4) minimum procedural standards for administering the program.

In most instances, brucellosis classification is by State. However, because some large States may have distinctly different rates of infection in different parts of the State, we established, in a document published in the Federal Register on December 13, 1982 (47 FR 55636-55656), that States may be divided into two areas for brucellosis classification, with movement between the two areas controlled by the States. The two-area Class B and Class C) classification for Texas was established in the same document.

Approval for a two-area classification within a State is granted when a State requests it and according to the following criteria: (1) The State must have legislative and regulatory authority for maintaining separate areas; (2) The State must have resources committed to enforce the maintainance of separate areas; (3) The State must have a creditable and effective method for monitoring and controlling movement of cattle across the boundary between the two areas; (4) The State must define the boundary between the two areas by county lines or by recognizable geographic features, such as a river or highway; and (5) Each area of the State must meet the standards for the brucellosis classification for which it is applying.

Since December 13, 1982, we have allowed the Class B and Class C areas of Texas (and the areas of other States divided for brucellosis) to change as follows: When a county or part of a county in the lower class area and contiguous with a county in the higher class area meets the requirements for classification at the higher level, that county or part of a county may become part of the higher class area. In this manner, 14 counties in Texas have moved from the Class C area to the Class B area.

Other counties in Texas also have reduced their rate of brucellosis infection since December 13, 1982, and Texas recently requested that the entire State be classified as Class B for brucellosis. Texas's request is based on the fact that the State as a whole meets the requirements for Class B status.

To attain and maintain Class B status, the regulations require a State or area to maintain: (1) A cattle herd infection rate, based on the number of herds found to have brucellosis reactors within the State or area during any 12 consecutive months due to field strain *Brucella abortus*, of 1.5 percent or 15 herds per 1,000, except in States with 1,000 or fewer herds; (2) a rate of infection in the cattle population, based on the percentage of brucellosis reactors found in the MCI program, not to exceed 3 brucellosis reactors per 1,000 cattle tested (0.30 percent); (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within 45 days after notification of brucellosis in a herd; and (4) minimum procedural standards for administering the program.

Until the effective date of this interim rule, Texas was divided into a Class C area and a Class B area as follows. Class C: Counties of Anderson, Angelina, Aransas, Atascosa, Austin, Bee, Bexar, Bowie, Brazoria, Brazos, Brooks, Burleson, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Dallas, Delta, DeWitt, Duval, Ellis, Fannin, Fayette, Fort Bend, Franklin, Freestone, Galveston, Goliad, Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hopkins, Houston, Hunt, Jackson, Jasper,

Jefferson, Jim Hogg, Jim Wells, Karnes, Kaufman, Kenedy, Kleberg, Lamar, LaSalle, Lavaca, Leon, Liberty, Limestone, Live Oak, McLennan, McMullen, Madison, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wood, and Zapata); Class B: All other Counties in Texas.

The State of Texas as a whole now meets the criteria for classification as Class B for brucellosis. We are therefore reclassifying Texas in the regulations as a single area consisting of the entire State, and we are classifying Texas as Class B for brucellosis.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved between the Class B and Class C areas of Texas were required under Texas law and regulations to meet standards equivalent to the regulations in Part 78 for movements between Class B and Class C States. However, Texas still requires most cattle to be tested for brucellosis before intercounty movements and sharply restricts the intercounty movements of brucellosis reactor, suspect, and exposed cattle. Consequently, this interim rule will not have a significant effect on market patterns or a significant economic impact on those persons involved in the movement of cattle within Texas.

Classifying the entire State of Texas as Class B for brucellosis also reduces certain testing and documentation requirements for cattle moved interstate from the area of Texas previously classified as Class C. However, the requirements for moving cattle interstate to recognized slaughtering establishments or quarantined feedlots, for moving cattle from certified brucellosis-free herds, and for moving cattle interstate to and from two premises owned, leased, or rented by the same individual remain unchanged. Consequently, we anticipate that this interim rule will not have a significant effect on market patterns or a significant economic impact on those persons involved in the interstate movement of cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

**Emergency Action**

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movements of certain cattle from Texas and on movements of certain cattle within Texas.

Further, in accordance with the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and we find good cause for making this interim rule effective less than 30 days after publication in the **Federal Register**. We will consider comments received on or before June 1, 1987. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible.

**List of Subjects in 9 CFR Part 78**

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

## PART 78—BRUCELLOSIS

Accordingly, we are amending 9 CFR Part 78 as follows:

1. The authority citation for Part 78 continues to read as follows:

**Authority:** 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.41, paragraphs (c) and (d) are revised to read as follows:

**§ 78.41 State/area classification.**

* * * * *

(c) *Class B*—Arkansas, Florida (Counties of Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Pasco, Pinellas, Putnam, Saint Johns, Santa Rosa, Seminole, Sumter, Suwanee, Taylor, Union, Volusia, Wakulla, Walton, and Washington), Kentucky, Mississippi, Oklahoma, and Texas.

(d) *Class C*—Florida (Counties of Brevard, Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, Saint Lucie, and Sarasota) and Louisiana.

Done in Washington, DC, this 31st day of March, 1987.

**J. K. Atwell,**

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87–7322 Filed 3–31–87; 10:52 am]

BILLING CODE 3410–34–M

L
2
S S
2
P
87
M I

# Reader Aids

Federal Register

Vol. 52, No. 62

Wednesday, April 1, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

| | |
|---|---|
| **Laws** | 523-5230 |

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

| | |
|---|---|
| **United States Government Manual** | 523-5230 |

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1

## List of Public Laws

**Last List March 30, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 63/Pub. L. 100-16**

To designate March 21, 1987, as Afghanistan Day. (Mar. 27, 1987; 101 Stat. 130; 2 pages) Price: $1.00

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1987

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| April 1 | April 16 | May 1 | May 18 | June 1 | June 30 |
| April 2 | April 17 | May 4 | May 18 | June 1 | July 1 |
| April 3 | April 20 | May 4 | May 18 | June 2 | July 2 |
| April 6 | April 21 | May 6 | May 21 | June 5 | July 6 |
| April 7 | April 22 | May 7 | May 22 | June 8 | July 6 |
| April 8 | April 23 | May 8 | May 26 | June 8 | July 7 |
| April 9 | April 24 | May 11 | May 26 | June 8 | July 8 |
| April 10 | April 27 | May 11 | May 26 | June 9 | July 9 |
| April 13 | April 28 | May 13 | May 28 | June 12 | July 13 |
| April 14 | April 29 | May 14 | May 29 | June 15 | July 13 |
| April 15 | April 30 | May 15 | June 1 | June 15 | July 14 |
| April 16 | May 1 | May 18 | June 1 | June 15 | July 15 |
| April 17 | May 4 | May 18 | June 1 | June 16 | July 16 |
| April 20 | May 5 | May 20 | June 4 | June 19 | July 20 |
| April 21 | May 6 | May 21 | June 5 | June 22 | July 20 |
| April 22 | May 7 | May 22 | June 8 | June 22 | July 21 |
| April 23 | May 8 | May 26 | June 8 | June 22 | July 22 |
| April 24 | May 11 | May 26 | June 8 | June 23 | July 23 |
| April 27 | May 12 | May 27 | June 11 | June 26 | July 27 |
| April 28 | May 13 | May 28 | June 12 | June 29 | July 27 |
| April 29 | May 14 | May 29 | June 15 | June 29 | July 28 |
| April 30 | May 15 | June 1 | June 15 | June 29 | July 29 |

## CFR ISSUANCES 1987
## January 1987 Editions and Projected April, 1987 Editions

This list sets out the CFR issuances for the January 1987 editions and projects the publication plans for the **April, 1987** quarter. A projected schedule that will include the **July, 1987** quarter will appear in the first **Federal Register** issue of July.

**For pricing information on available 1986–1987 volumes consult the CFR checklist which appears every Monday in the Federal Register.**

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

### Titles revised as of January 1, 1987:

**Title**

**CFR Index**

**1–2**

**3 (Compilation)**

**4**

**5 Parts:**
1–1199*
1200–End*

**6 [Reserved]**

**7 Parts:**
0–45
46–51
52
53–209
210–299*
300–399
400–699
700–899*
900–999*
1000–1059*
1060–1119
1120–1199
1200–1499*
1500–1899
1900–1944*
1945–End*

**8**

**9 Parts:**
1–199*
200–End

**10 Parts:**
0–199
200–399*
400–499
500–End*

**11 (Revised as of July 1, 1987)**

**12 Parts:**
1–199
200–299*
300–499
500–End*

**13**

**14 Parts:**
1–59*
60–139*
140–199
200–1199*
1200–End

**15 Parts:**
0–299
300–399*
400–End

**16 Parts:**
0–149*
150–999*
1000–End

### Projected April 1, 1987 editions:

**Title**

**17 Parts:**
1–199
200–239
240–End

**18 Parts:**
1–149
150–279
280–399
400–End

**19 Parts:**
1–199
200–End

**20 Parts:**
1–399
400–499
500–End

**21 Parts:**
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

**22 Parts:**
1–299
300–End

**23**

**24 Parts:**
0–199
200–499
500–699
700–1699
1700–End

**25**

**26 Parts:**
1 (§§ 1.0–1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.1000)
1 (§§ 1.1001–1.1400)
1 (§§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599
600–End

**27 Parts:**
1–199
200–End

# Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected),* the *Federal Register Index,* or both.

**LSA • List of CFR Sections Affected**

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.

$24.00 per year

**Federal Register Index**

The Index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

$22.00 per year

*A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register*

*Note to FR Subscribers:*
*FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.*

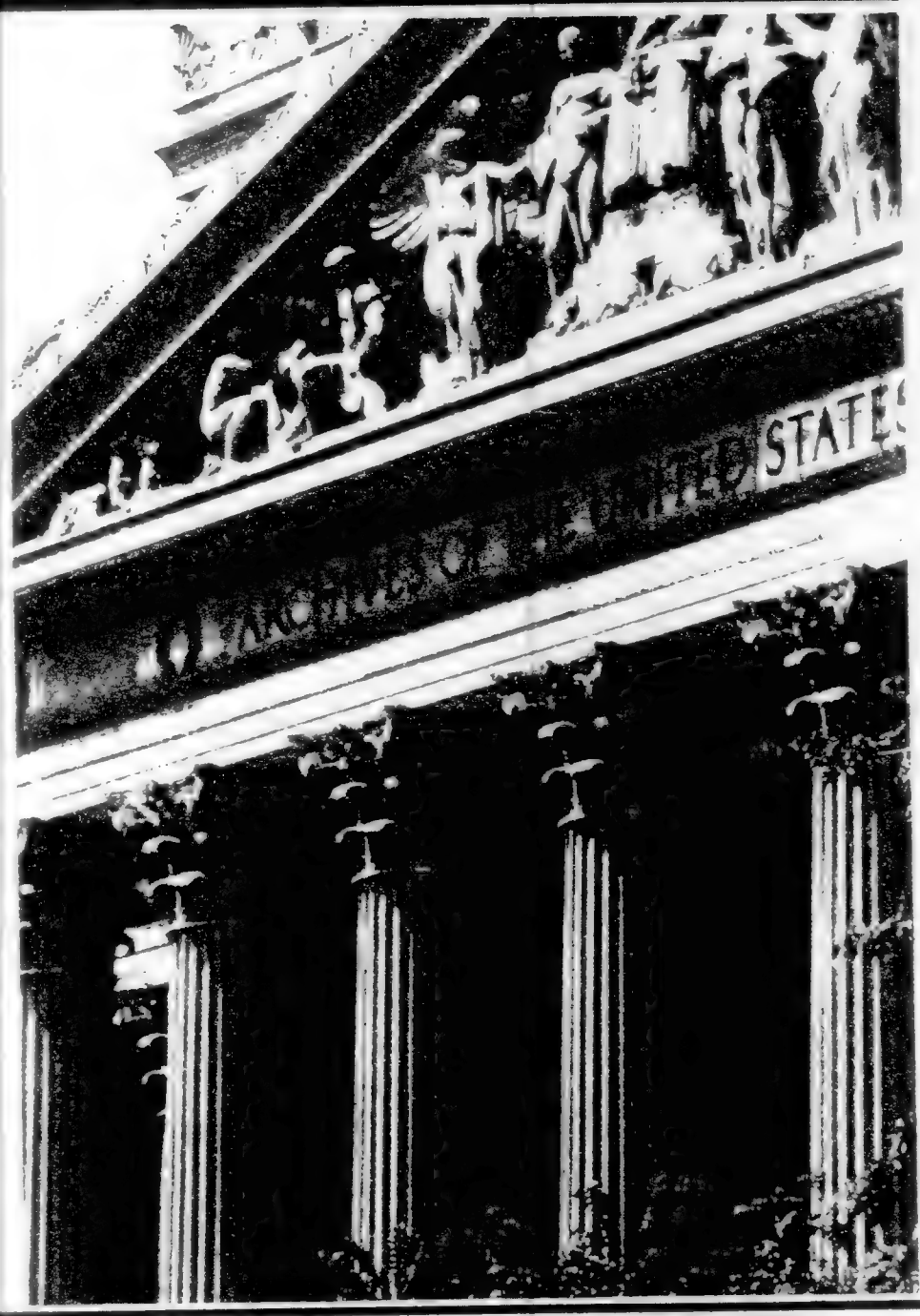


## Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

**Credit Card Orders Only**

Total charges $_____

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone Nos.

Area Code Home Area Code Office

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please enter the subscription(s) I have indicated: ___ **LSA** List of CFR Sections Affected $24.00 a year domestic, $30.00 foreign ___ **Federal Register Index** $22.00 a year domestic; $27.50 foreign

**PLEASE PRINT OR TYPE**

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

(Rev 10-1-85)

OL
2

SS
3

P
2

87

MI

4-2-87
Vol. 52 No. 63

# federal register

Thursday
April 2, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-2-87
Vol. 52 No. 63
Pages 10557-10724

# Federal Register

Thursday
April 2, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 63

Thursday, April 2, 1987

**Agency for International Development**
NOTICES
Agency information collection activities under OMB review, 10640

**Agriculture Department**
*See* Farmers Home Administration; Forest Service

**Air Force Department**
NOTICES
Meetings:
Scientific Advisory Board, 10606
(2 documents)

**Army Department**
NOTICES
Meetings:
Science Board, 10606
(2 documents)

**Coast Guard**
PROPOSED RULES
Dangerous cargoes:
Bulk liquefied gases carried on self-propelled vessels; safety standards, 10598
Regattas and marine parades:
Barnegat Bay Classic, 10593
Children's Liver Foundation Trophy Race, 10594

**Commerce Department**
*See* International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

**Commission on Education of the Deaf**
NOTICES
Educational programs for the deaf, 10722

**Committee for the Implementation of Textile Agreements**
NOTICES
Export visa requirements; certification, etc.:
Singapore; correction, 10605
Tariff classification; correct citation for yarn dyed shirts and blouses, 10605

**Commodity Futures Trading Commission**
NOTICES
Meetings; Sunshine Act, 10667
(5 documents)

**Conservation and Renewable Energy Office**
NOTICES
Consumer products, energy conservation program:
Residential energy sources, average unit costs, 10606

**Customs Service**
RULES
Financial and accounting procedure:
Calculation of interest on overdue accounts and refunds—
Current rates, 10561

Trademarks, trade names, and copyrights:
Copyrights; recordation and importations in violation of law
Correction, 10668

**Deaf, Commission on Education of the**
*See* Commission on Education of the Deaf

**Defense Department**
*See* Air Force Department; Army Department

**Economic Regulatory Administration**
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
Champion International Corp., 10608
Ensearch Development Corp., 10609

**Education of the Deaf Commission**
*See* Commission on Education of the Deaf

**Energy Department**
*See* Conservation and Renewable Energy Office; Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration

**Environmental Protection Agency**
RULES
Hazardous waste program authorizations:
Oregon, 10568
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Clopyralid, 10565
Lactofen, 10567
Pesticides; tolerances in foods:
Clopyralid, 10562
Iprodione, 10561
Toxic substances:
Polychlorinated biphenyls (PCBs)—
Spill cleanup policy, 10688
Water pollution control:
Oil discharge (sheen regulation), 10712
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 10596
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region VI, 10629
Meetings:
Superfund Amendments and Reauthorization Act of 1986, Title III; emergency systems review, 10630

**Equal Employment Opportunity Commission**
PROPOSED RULES
Age discrimination in employment:
Employee benefit plans, 10584

**Farmers Home Administration**
PROPOSED RULES
Program regulations:
Property management and security servicing, 10577

**Federal Aviation Administration**
RULES
Airworthiness directives:
Sikorsky, 10558
Restricted areas, 10559, 10560
(2 documents)
Transition areas, 10559
PROPOSED RULES
Airworthiness directives:
EMBRAER, 10581
Control zones and transition areas, 10582

**Federal Communications Commission**
RULES
Common carrier services:
Public land mobile services—
Revision and update, 10571
Radio and telelvision broadcasting:
Oversight; clarifications and editorial corrections, etc., 10568

**Federal Election Commission**
NOTICES
Meetings; Sunshine Act, 10667

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Florida Power Corp. et al., 10609
Natural Gas Policy Act:
Well category determinations, etc., 10610
Preliminary permits surrender:
Buckley Associates, 10610
New York State Energy Research & Development Authority, 10611
Small power production and cogeneration facilities; qualifying status:
AES Shady Point, Inc., et al., 10611
*Applications, hearings, determinations, etc.:*
Alabama-Tennessee Natural Gas Co., 10611
Cimarron Transmission Co. et al., 10612
Mississippi River Transmission Corp., 10612
Producer's Gas Co. et al., 10612
Williston Basin Interstate Pipeline Co., 10613
Zapata Exploration Co., 10613

**Federal Highway Administration**
NOTICES
Driver's record of duty status; exemption requests, 10664

**Federal Home Loan Bank Board**
RULES
Federal Savings and Loan Insurance Corporation:
Recordkeeping requirements; technical amendment, 10557
Organization, functions, and authority delegations:
Public-use forms, 10557

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 10631

**Federal Railroad Administration**
RULES
Railroad operating rules:
Alcohol and drug use control; designation of laboratory to conduct post-accident toxicological testing, 10575

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
1st American Bancorp, Inc., et al., 10632
Hardwick Holding Co. et al., 10632
Westdeutsche Landesbank Girozentrale et al., 10632
Wilkinson, R. W., et al., 10633

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Schering Corp. et al.; correction, 10668
NOTICES
Human drugs:
Export applications—
Drug Export Amendments Act; implementation, 10633
Regulatory review period determinations—
Choletec, 10634

**Forest Service**
RULES
Mineral materials disposal; noncompetitive sales of materials in excess of volume limitations, 10564

**Health and Human Services Department**
*See* Food and Drug Administration; National Institutes of Health

**Hearings and Appeals Office, Energy Department**
NOTICES
Applications for exception:
Cases filed, 10618
Decisions and orders, 10614–10619
(3 documents)
Remedial orders:
Objections filed, 10619

**Housing and Urban Development Department**
PROPOSED RULES
Public and Indian housing:
Indian housing program and comprehensive improvement assistance program; cost containment
Correction, 10668
NOTICES
Agency information collection activities under OMB review, 10635

**Interior Department**
*See* Land Management Bureau; Minerals Management Service; National Park Service

**Internal Revenue Service**
RULES
Excise taxes:
Payment on reversion of qualified plan assets to employer, 10563
PROPOSED RULES
Excise taxes:
Payment on reversion of qualified plan assets to employer; cross reference, 10583

**International Development Cooperation Agency**
*See* Agency for International Development

**International Trade Administration**
NOTICES
Antidumping:
Birch 3-ply doorskins from Japan, 10599
Sorbitol from France, 10600
Synthetic methionine from Japan, 10600
Cheese, quota; foreign government subsidies:
Quarterly update, 10602
Export privileges, actions affecting:
McKee, Milldred E., et al., 10602
Short supply determinations:
Steel products, 10603

**International Trade Commission**
NOTICES
Import investigations:
Cold-rolled carbon steel plates and sheets from Argentina, 10640
Copier toner from Japan, 10641
Potassium chloride from Canada, 10641
Sickle guards, 10642
Welded carbon steel pipes and tubes from—Taiwan, 10642

**Interstate Commerce Commission**
NOTICES
Railroad operation, acquisition, construction, etc.:
Great Walton Rail Co., 10643
Southern Railway Co., 10643

**Justice Department**
NOTICES
Pollution control; consent judgments:
Iowa Asbestos Co. et al., 10643
Kleer Kast, Inc., et al., 10644

**Labor Department**
*See* Occupational Safety and Health Administration

**Land Management Bureau**
NOTICES
Environmental statements; availability, etc.:
Coal lease readjustments in wilderness study areas, UT, 10637
Meetings:
Prineville District Grazing Advisory Board, 10637
Motor vehicles; off-road vehicle designations:
California, 10638
Oil and gas leases:
Alaska, 10636, 10638
(3 documents)
Opening of public lands:
Montana, 10638
Realty actions; sales, leases, etc.:
Arizona, 10638
Arizona; correction, 10668
Montana, 10636
Survey plat filings:
New Mexico, 10639

**Maritime Administration**
NOTICES
Meetings:
Potential for general cargo in offshore barges and river ocean vessels; seminar, 10665
*Applications, hearings, determinations, etc.:*
Margate Shipping Co. et al., 10665
United States Lines, Inc., 10664

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
Hall-Houston Oil Co., 10639
Hughes-Denny Offshore Exploration, Inc., 10640

**National Institutes of Health**
NOTICES
Meetings:
Newborn screening for sickle cell disease and other hemoglobinopthies; conference, 10635

**National Oceanic and Atmospheric Administration**
NOTICES
Permits:
Marine mammals, 10604
(3 documents)

**National Park Service**
RULES
Vehicles and traffic safety, 10670

**National Science Foundation**
NOTICES
Meetings:
Sensory Physiology and Perception Advisory Panel, 10644
Social and Developmental Psychology Advisory Panel, 10644
Systematic Biology Advisory Panel, 10645

**National Technical Information Service**
NOTICES
Patent licenses, exclusive:
Diversified Textile Machinery Corp., 10605
Xoma Corp., 10605

**Nuclear Regulatory Commission**
NOTICES
Committees; establishment, renewals, terminations, etc.:
Medical Uses of Isotopes Advisory Committee, 10645
Petitions; Director's decisions:
Babcock & Wilcox, 10645
*Applications, hearings, determinations, etc.:*
Southern California Edison Co. et al., 10645

**Occupational Safety and Health Administration**
PROPOSED RULES
Health and safety standards:
2-Methoxyethanol, 2-ethoxyethanol and their acetates: occupational exposure, 10586

**Pacific Northwest Electric Power and Conservation Planning Council**
NOTICES
Power plan amendments:
Northwest conservation and electric power plan, 10646

**Physician Payment Review Commission**
NOTICES
Meetings, 10647

**Public Health Service**
*See* Food and Drug Administration; National Institutes of Health

**Railroad Retirement Board**
NOTICES
Agency information collection activities under OMB review, 10647

**Securities and Exchange Commission**
NOTICES
Agency information collection activities under OMB review, 10648
Self-regulatory organizations:
Options disclosure document; Options Clearing Corp., 10651
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 10648, 10649
(2 documents)
Options Clearing Corp., 10651
*Applications, hearings, determinations, etc.:*
Aetna Life Insurance & Annuity Co., et al., 10652
E.F. Hutton Mortgage Capital Inc., 10653
First Variable Life Insurance Co., et al., 10656
Public utility holding company filings, 10657
Residential Resources, Inc., 10659
RXR U.S. Government Fund, Inc., 10661
Texas America Energy Corp. of America, 10662

**Selective Service System**
NOTICES
Agency information collection activities under OMB review, 10662

**Small Business Administration**
NOTICES
Meetings; regional advisory councils:
Indiana, 10663
Ohio, 10663
South Carolina, 10663

**State Department**
NOTICES
Meetings:
International Radio Consultative Committee, 10663
International Telegraph and Telephone Consultative Committee, 10663

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; Maritime Administration

**Treasury Department**
*See* Customs Service; Internal Revenue Service

**Veterans Administration**
NOTICES
Agency information collection activities under OMB review, 10665

**Western Area Power Administration**
NOTICES
Power marketing plans, etc.:
Salt Lake City Area Integrated Projects; post 1989 allocations, 10620

**Separate Parts In This Issue**

**Part II**
Department of the Interior, National Park Service, 10670

**Part III**
Environmental Protection Agency, 10688

**Part IV**
Environmental Protection Agency, 10712

**Part V**
Commission on Education of the Deaf, 10722

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
Proposed Rules:
1955 ..... 10577
1965 ..... 10577

**12 CFR**
500 ..... 10557
564 ..... 10557

**14 CFR**
39 ..... 10558
71 ..... 10559
73 (2 documents) ..... 10559, 10560
Proposed Rules:
39 ..... 10581
71 ..... 10582

**19 CFR**
24 ..... 10561
133 ..... 10668

**21 CFR**
193 (2 documents) ..... 10561, 10562
510 ..... 10668
520 ..... 10668
522 ..... 10668
524 ..... 10668
529 ..... 10668
561 ..... 10562

**24 CFR**
Proposed Rules:
905 ..... 10668
968 ..... 10668

**26 CFR**
54 ..... 10563
602 ..... 10563
Proposed Rules:
54 ..... 10583
602 ..... 10583

**29 CFR**
Proposed Rules:
1625 ..... 10584
1910 ..... 10586

**33 CFR**
Proposed Rules:
100 (2 documents) ..... 10593, 10594

**36 CFR**
1 ..... 10670
2 ..... 10670
4 ..... 10670
7 ..... 10670
34 ..... 10670
228 ..... 10564

**40 CFR**
110 ..... 10712
180 (2 documents) ..... 10565, 10567
271 ..... 10568
761 ..... 10688
Proposed Rules:
52 ..... 10596

**46 CFR**
Proposed Rules:
154 ..... 10598

**47 CFR**
2 ..... 10568
22 ..... 10571
73 ..... 10568
74 ..... 10568
78 ..... 10568

**49 CFR**
219 ..... 10575

# Rules and Regulations

Federal Register
Vol. 52, No. 63
Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 500

[No. 87-369]

### Public-Use Forms; Technical Amendment

Dated: March 27, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is amending its final regulation concerning Public-Use Forms published in the **Federal Register** on Friday, February 27, 1987 (52 FR 5942) in order to correct typographical and other technical errors contained in the Board's regulation.

**EFFECTIVE DATE:** April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Colleen Devine, Chief, Management Analysis Staff, Administration Office (202) 377-6025, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of this corrective amendment, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

### List of Subjects in 12 CFR Part 500

Organization and functions (government agencies).

Accordingly, the Board hereby amends Part 500, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

### SUBCHAPTER A—GENERAL

### PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for Part 500 continues to read as follows:

**Authority:** Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

**§ 500.31 [Amended]**

2. In § 500.31, on page 5943, in the second column, remove line 37, and revise lines 38 to the end of the same column, excluding footnote #2, to read as follows:

AC—Application for Preliminary Approval for Conversion from Mutual to Stock Form (insured institutions).
PS—Proxy Statement in Connection with Conversion from Mutual to Stock Form (insured institutions).
OC—Offering Circular in Connection with Conversion from Mutual to Stock Form (insured institutions).

(2) Savings and Loan Holding Company forms (described more fully in § 584.10 of this chapter):

Form
H-(b)3—Registration Statement (Corporation as Trustee).
H-(b)4—Registration Statement (Creditor as savings and loan holding company).
H-(b)5—Registration Statement (Voting Trust).
H-(b)10—Registration Statement.
H-(b)11—Annual Report.
H-(b)12—Current Report.
H-(c)1—Notice Filing (Pursuant to § 584.2-1).
H-(d)2—Application under § 584.4.
H-(e)1—Application under § 584.4.

* * * * *

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Acting Secretary.*

[FR Doc. 87-7169 Filed 4-1-87; 8:45 am]

BILLING CODE 6720-01-M

### 12 CFR Part 564

[No. 87-368]

### Recordkeeping Requirements; Technical Amendment

Dated: March 27, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule; technical and clarifying amendment.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), has adopted a technical amendment and clarification to its regulation concerning the insurance coverage of joint accounts. The amended regulation clarifies that the signature card requirement of § 564.9(b) does not apply to any jointly held certificate of deposit account ("joint certificate accounts") evidenced by a negotiable instrument. In this regard, the amended regulation substitutes a general reference to joint certificate accounts issued in negotiable instrument form for the current reference to accounts issued pursuant to former §§ 545.1-5 and 563.3-3.

On March 3, 1987, the Board adopted a miscellaneous conforming and technical amendment to 21 parts of its regulations. (52 FR 7120 (March 9, 1987)). One of the sections amended was 12 CFR 564.9(b) (52 FR at 7124). Inadvertently the text of the regulatory language of the amendment to § 564.9(b) contained an incorrect reference to a section of the Code of Federal Regulations. By its action today the Board hereby revises § 564.9(b) to correct that error.

**EFFECTIVE DATE:** April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kathy Kresch, Attorney, (202) 377-6417 or Carol J. Johnson, Attorney, (202) 377-6357; Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** Section 564.9(b) of the Board's Rules and Regulations for the FSLIC (the "Insurance Regulations") provides that, for a joint account to qualify for separate insurance coverage, each co-owner of the account must personally execute an account signature card and possess withdrawal rights. 12 CFR 564.9(b) (1986). However, in that section, the Board has exempted from the account signature card requirement "any account evidenced by a certificate of deposit which was issued pursuant to § 545.1-5 of this chapter or evidenced by a certificate which was issued pursuant to approval granted by § 563.3-3 of this chapter." *Id. See* 12 CFR 545.1-5 and 563.3-3 (1975). This reference is outdated because former §§ 545.1-5 and 563.3-3 of the Insurance Regulations, which prescribed certain terms for marketable certificate of deposit accounts issued by Federal associations and FSLIC-insured institutions, respectively, were deleted by Board Resolution No. 82-193 in 1982

as unnecessary. *See* 47 FR 13776 (1982). Since that time, however, references to §§ 545.1–5 and 563.3–3 in § 564.9(b) inadvertently have been left in place. Therefore, the Board is amending § 564.9(b) of its regulations to state that the signature card requirement of that section does not apply to any joint certificate account evidenced by a negotiable instrument.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the technical and clarifying nature of this amendment, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

**List of Subjects in 12 CFR Part 564**

Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 564, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**

**PART 564—SETTLEMENT OF INSURANCE**

1. The authority citation for Part 564 continues to read as follows:

**Authority:** Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071. § 564.9 [Amended].

2. Revise the text of § 564.9(b) to read as follows:

**§ 564.9 Joint accounts.**

* * * * *

(b) *Qualifying joint accounts.* A joint account shall be deemed to exist for the purpose of insurance of accounts only if each co-owner has personally executed an account signature card and possesses withdrawal rights. The foregoing provisions of this paragraph (b) shall not be applicable with respect to any account evidenced by a certificate of deposit which was issued in negotiable instrument form.

* * * * *

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

*Acting Secretary.*

[FR Doc. 87–7170 Filed 4–1–87; 8:45 am]

BILLING CODE [illegible]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 86–ASW–33, Amdt. 39–5590]**

**Airworthiness Directives; Sikorsky Aircraft Model S–61 Series Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Sikorsky Model S–61 series helicopters certificated in any category by individual priority letters. The AD requires a reduction of the Sikorsky S–61 main rotor hub lower plate replacement time to 27,000 hours' time in service. The AD is needed to prevent cracking of the main rotor hub lower plate which could result in the loss of the helicopter.

**DATES:** *Effective Date:* April 21, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86–23–08, issued November 17, 1986, which contained this amendment.

Compliance: As stated in the body of the AD.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Thompson, Boston Aircraft Certification Office, ANE–152, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 723–7113.

**SUPPLEMENTARY INFORMATION:** On November 17, 1986, priority letter AD No. 86–23–08 was issued and made effective immediately as to all known U.S. owners and operators of certain Sikorsky Model S–61 series helicopters. The AD was prompted by examination of additional data. The AD is needed to reduce the main rotor hub lower plate service life to 27,000 hours' total time in service. Specifically, any lower hub plate with more than 27,000 hours' time in service must be removed prior to further flight, unless previously accomplished, and thereafter removed on or before 27,000 hours' total time in service. This action is necessary to prevent operating with a main rotor lower hub plate which could develop cracks leading to the failure of the component.

Since it was found that immediate corrective action was required, it was determined that notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued November 17, 1986, to all known U.S. owners and operators of certain Sikorsky Model S–61 series helicopters. These conditions still exist and the AD is hereby published in the **Federal Register**, with one minor editorial change, as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Sikorsky Aircraft:** Applies to Model S–61 series helicopters, certified in any category, with main rotor hub lower plate, P/N S6110–23009–6 or –8, installed.

For helicopters with main rotor hub plates with more than 27,000 hours' time in service on the effective date of this AD, compliance is required prior to further flight, unless

already accomplished, and thereafter at intervals not to exceed 27,000 hours' time in service.

For helicopters with main rotor hub lower plate with 27,000 or less hours' time in service on the effective date of this AD, compliance is required prior to the accumulation of 27,000 hours' time in service, unless already accomplished, and thereafter at intervals not to exceed 27,000 hours' time in service.

To prevent cracking of the main rotor hub lower plate, accomplish the following:

(a) Remove and replace the main hub lower plate, P/N S6110–23009–6 or –8, with a new or an airworthy part of the same part number that has less than 27,000 hours' time in service.

(b) In accordance with FAR Sections 21.197 and 21.199, the helicopter may be flown to a base where compliance may be accomplished.

(c) An alternate method of compliance or adjustment of the initial compliance time which provides an equivalent level of safety may be approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective April 21, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86–23–08, issued November 17, 1986, which contained this amendment.

Issued in Fort Worth, Texas, on March 18, 1987.

**Don P. Watson,**

*Acting Director, Southwest Region.*

[FR Doc. 87–7201 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

---

## 14 CFR PART 71

**[Airspace Docket No. 86–AGL–35]**

## Establishment of Transition Area—Mora, MN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to establish the Mora, Minnesota, transition area to accommodate a new NDB Runway 35 Standard Instrument Approach Procedure (SIAP) to Mora Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**EFFECTIVE DATE:** 0901 UTC, June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, January 16, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Mora, Minnesota, transition area (52 FR 1925).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Mora, Minnesota, transition area to accommodate aircraft utilizing an NDB Runway 35 SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

**Mora, MN [New]**

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Mora Municipal Airport (lat. 45°53'05"N., long. 93°16'20"W.); and within 3 miles each side of the 177° bearing from the Mora NDB (lat. 45°53'25"N., long. 93°16'04"W.) extending from the 5 mile radius to 8.5 miles south of the airport.

Issued in Des Plaines, Illinois, on March 18, 1987.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 87–7204 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

---

## 14 CFR Part 73

**[Airspace Docket No. 86–ANE–37]**

## Amendment to Times of Designation for Restricted Areas R–4102A and B, Fort Devens, MA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the times of designation for Restricted Areas R–4102A and R–4102B, Fort Devens, MA, by reducing the published hours to more accurately reflect real time utilization of the airspace as a result of changing mission requirements of the using agency. Further, the Notice to Airmen (NOTAM) requirement is reduced from 48 hours in advance to 24 hours in advance for activation of R–4102A and R–4102B at other than the specified times.

**EFFECTIVE DATE:** 0901 UTC, June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9253.

**SUPPLEMENTARY INFORMATION:**

### History

On December 3, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to change the times of designation for Restricted Areas R–4102A and R–4102B, Fort Devens, MA (51 FR 43616). Interested parties were invited to participate in this rulemaking proceeding by submitting written

comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.41 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

**The Rule**

This amendment to Part 73 of the Federal Aviation Regulations reduces the times of designation for Restricted Areas R–4102A and R–4102B.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 73**

Aviation safety, Restricted areas.

**Adoption of the Amendment**

**PART 73—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 73.41 [Amended]**

2. Section 73.41 is amended as follows:

**R–4102A Fort Devens, MA [Amended]**

By removing the words "0000 Friday to 2359 Saturday local time; other times as specified by NOTAM issued 48 hours in advance." and substituting the words "0800 to 2200 Saturday local time; other times by NOTAM issued 24 hours in advance."

**R–4102B Fort Devens, MA [Amended]**

By removing the words "0000 Friday to 2359 Saturday local time; other times as specified by NOTAM issued 48 hours in advance." and substituting the words "0800 to 2200 Saturday local time; other times by NOTAM issued 24 hours in advance."

Issued in Washington, DC, on March 24, 1987.

**Daniel J. Peterson,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87–7202 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

---

**14 CFR Part 73**

**[Airspace Docket No. 87–AWP–3]**

## Alteration of Restricted Areas R–2531 A and B, Tracy, CA, and R–4809, Tonopah, NV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the using agency for Restricted Areas R–2531 A and B located near Tracy, CA, and R–4809 located near Tonopah, NV. This action is necessary to reflect the change in name for the agency conducting energy and development research.

**EFFECTIVE DATE:** 0901 UTC, June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9245.

**SUPPLEMENTARY INFORMATION:**

**The Rule**

This amendment to Part 73 of the Federal Aviation Regulations is to designate the Department of Energy as the using agency for R–2531 A and B and R–4809. The change in using agency does not alter the assignment of airspace or the type of activities conducted in the restricted areas. Since this amendment is procedural in nature and has no affect on airspace users, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Sections 73.25 and 73.48 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 73**

Aviation safety, Restricted areas.

**PART 73—[AMENDED]**

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§73.23 [Amended]**

2. Section 73.23 is amended as follows:

**R–2531A Tracy, CA [Amended]**

By removing the present using agency and substituting the following: Using agency. Department of Energy, San Francisco Operations Office, CA.

**R–2531B Tracy, CA [Amended]**

By removing the present using agency and substituting the following: Using agency. Department of Energy, San Francisco Operations Office, CA.

**§73.48 [Amended]**

3. Section 73.48 is amended as follows:

**R–4809 Tonopah, NV [Amended]**

By removing the present using agency and substituting the following: Using agency. Department of Energy, Albuquerque Operations Office, NM.

Issued in Washington, DC, on March 24, 1987.

**Daniel J. Peterson,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87–7203 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 24

### Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of Calculation of Interest.

**SUMMARY:** The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rate, as set by the Internal Revenue Service, will be 9 percent for underpayments and 8 percent for overpayments for the quarter beginning April 1, 1987. It is being published for the convenience of the importing public and Customs personnel.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert Hamilton, Revenue Branch, National Finance Center, U.S. Customs Service, P.O. Box 68901, Indianapolis, IN 46268, (317) 298–1245.

**SUPPLEMENTARY INFORMATION:**

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99–514), amended 26 U.S.C. 6621 mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter. The notice of January 5, 1987, provided that the rate of interest for the period of January 1, 1987–April 1, 1987, was 9 percent for underpayments and 8 percent for overpayments. The Internal Revenue Service has announced that the interest rates will remain unchanged for the second quarter of 1987.

Determination

It has been determined that the rate of interest for the period of April 1, 1987–July 1, 1987, is 9 percent for underpayments and 8 percent for overpayments. This rate will remain in effect until July 1, 1987, when it is subject to change. These rates will remain in effect until changed by another notice in the **Federal Register**. Appropriate amendments will be made to the Customs Regulations in a future document.

Dated: March 27, 1987.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

[FR Doc. 87–7197 Filed 4–1–87; 8:45 am]

BILLING CODE 9104–25–M

## ENVIRONMENTAL PROTECTION AGENCY

### 21 CFR Part 193

**[FAP 6H5504/R870; FRL 3180–2]**

### Pesticide Tolerance for Iprodione

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a food additive regulation for the combined residues of the fungicide iprodione, its isomer and metabolite in or on the food commodity dried ginseng, when present therein as a result of application of the fungicide to the growing crop. The regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

**EFFECTIVE DATE:** Effective on April 2, 1987.

**ADDRESS:** Written objections, identified by the document control number (FAP 6H5504/R870) may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of November 12, 1986, (51 FR 41004) that announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted food additive petition 6H5504 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations of Kentucky and North Carolina proposinge to establish a regulation to permit the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethy)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine-carboxamide in or on the food commodity dried ginseng at 4 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document [PP 6E3428/R410] proposing a tolerance for iprodione in or on ginseng, published in the **Federal Register** of February 11, 1987 (52 FR 4356).

The metabolism of iprodione is adequately understood and an adequate analytical method, gas liquid chromatography using an electron capture detector, is available for enforcement purposes. An analytical enforcement method is currently available in the Pesticide Analytical Manual (PAM) Volume II. The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the fungicide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 135(a) et seq.). Therefore, the food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if

the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food additive levels or conditions for safe use of additives, or raising such food additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

**List of Subjects in 21 CFR Part 193**

Food additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: March 16, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

**PART 193—[AMENDED]**

Therefore, 21 CFR Part 193 is amended as follows:

1. The authority citation for Part 193 continues to read as follows:

**Authority:** 21 U.S.C. 348.

2. Section 193.253 is amended by adding and alphabetically inserting the food commodity dried ginseng to read as follows:

**§ 193.253 Iprodione.**

* * * * *

| Foods | Parts per million |
|---|---|
| Ginseng, dried | 4.0 |

* * * * *

[FR Doc. 87–7259 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–M

**21 CFR Parts 193 and 561**

**[FAP 1H5280/R879; FRL 3180–3]**

## Pesticide Tolerances for Clopyralid

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** These rules establish food and feed additive regulations to permit residues of the herbicide clopyralid, in or on certain food and feed commodities. These regulations, to establish maximum permissible levels for residues of clopyralid, were requested by Dow Chemical Co., USA.

**EFFECTIVE DATE:** Effective on April 2, 1987.

**ADDRESS:** Written objections, identified by the document control number [FAP 1H5280/R879], may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1830).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of December 24, 1980 (45 FR 85153), which announced that Dow Chemical Co., USA, P.O. Box 1706, Midland, MI 48640 submitted food/feed petition 1H5280 proposing to amend 21 CFR Parts 193 and 561 by establishing regulations permitting residues of clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the commodity milling fractions (except flour) of wheat at 5 parts per million (ppm).

Dow Chemical Co. subsequently amended the petition (48 FR 32078; July 13, 1983) by proposing tolerances in or on the commodities milling fractions (except flour) of barley, wheat, and oats at 12 ppm.

There were no comments received in response to the notices of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the tolerances were discussed in the final rule document [PP 1F2439, 4F3054/R878], appearing elsewhere in this issue of the **Federal Register.**

Based on the NOEL of 15 milligrams/kilogram (mg/kg) in a 2-year rat chronic feeding/oncogenicity feeding study and a 100-fold safety factor, the provisional acceptable daily intake (PADI) has been set at 0.15 mg/kg/day. These tolerances and those established in [PP 1F2439, 4F3054/R878] final rule document, have a theoretical maximum residue contribution of 0.0075 mg/kg/day and will utilize 5.06 percent of the PADI.

The nature of the residue is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead-time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual Volume II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW,

Office location and telephone number: Room 223, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Adequate tolerances for secondary residues in meat, milk, poultry, and eggs resulting from this use of the pesticide are established in the final rule document cited in the preceeding paragraph. There are currently no regulatory actions pending against the pesticide.

The pesticide is considered useful for the purpose for which the regulations are sought. It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) et seq.) and is established as set forth below.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

**List of Subjects in 21 CFR Parts 193 and 561**

Food additives, Animals feeds, Pesticides and pests.

Dated: March 23, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 21 CFR, Chapter I, is amended as follows:

**PART 193—[AMENDED]**

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. Section 193.472 is added to Subpart A to read as follows:

**§ 193.472 Clopyralid.**

Tolerances are established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following foods:

| Foods | Parts per million |
|---|---|
| Barley, milled fractions (except flour) | 12.0 |
| Oats, milled fractions (except flour) | 12.0 |
| Wheat, milled fractions (except flour) | 12.0 |

## PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. Section 561.439 is added to read as follows:

**§ 561.439 Clopyralid.**

Tolerances are established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following feeds:

| Feeds | Parts per million |
|---|---|
| Barley, milled fractions (except flour) | 12.0 |
| Oats, milled fractions (except flour) | 12.0 |
| Wheat, milled fractions (except flour) | 12.0 |

[FR Doc. 87-7261 Filed 4-1-87; 8:45 am]
BILLING CODE 6560-50-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 54 and 602

[T.D. 8133]

## Payment of Excise Tax on Reversion of Qualified Plan Assets to Employer

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations regarding the payment of the excise tax by employers receiving (directly or indirectly) reversions of qualified plan assets required by the Tax Reform Act of 1986. The regulations would provide the public with guidance needed to file the appropriate returns and would affect all employers maintaining qualified plans who receive reversions of qualified plan assets. The text of the temporary regulations set forth in this document serves as the comment document for the notice of propose rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** These amendments are applicable for reversions occurring after December 31, 1985.

**FOR FURTHER INFORMATION CONTACT:** Suzanne K. Tank of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3938, not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains temporary regulations regarding the payment of the excise tax on reversions of qualified plan assets imposed by section 4980 of the Internal Revenue Code of 1986. Since the excise tax added by section 1132 of the Tax Reform Act of 1986 applies to reversions occurring after December 31, 1985, there is a need for immediate guidance relating to the manner and time for paying the excise tax so that employers maintaining qualified plans can comply. These regulations will remain in effect until superseded by final regulations on this subject.

### Explanation of Provisions

Section 1132 of the Tax Reform Act of 1986 adds section 4980 to the Internal Revenue Code of 1986. Section 4980 imposes a tax of 10 percent of the amount of any employer reversion from a qualified plan. The tax imposed shall be paid by the employer maintaining the plan.

This Treasury decision provides that employers shall pay this tax quarterly and the tax will be due not later than the last day of the second month following the calendar quarter in which the reversion occurs.

### Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

### Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The requirements have been approved by OMB under control number 1545-0575.

### Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### Drafting Information

The principal author of this regulatory amendment is Suzanne K. Tank of Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

### List of Subjects

*26 CFR Part 54*

Pensions.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

### Adoption of amendments to the regulations

Accordingly, 26 CFR Parts 54 and 602 are amended as follows:

## PART 54—PENSION EXCISE TAXES

**Paragraph 1.** The authority for Part 54 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 2.** New § 54.6011-1T is added immediately after § 54.6011-1 to read as follows:

**§ 54.6011-1T General requirement of return, statement, or list (temporary).**

Every employer liable for the tax imposed under section 4980(a) with respect to an employer reversion (as defined in section 4980(c)(2)) shall file a quarterly return on Form 5330 and shall include therein the information required by such form and the instructions issued with respect thereto. The quarterly return on Form 5330 shall be filed with respect to employer reversions from each qualified plan (as defined in section 4980(c)(1)).

**Par 3.** New § 54.6071-1T is added immediately after § 54.6011-1T to read as follows:

**§ 54.6071-1T Time for filing returns (temporary).**

(a) *In general.* Each quarterly return required by § 54.6011-1T shall be filed not later than the last day of the second

month following the calendar quarter in which the reversion occurs.

(b) *Extension of time for filing with respect to certain reversions.* All returns required by § 54.6011–1T for reversions occurring on or before March 31, 1987 shall be filed not later than May 31, 1987.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par 4.** The authority citation for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

### § 602.101(c) [Amended]

**Par 5.** Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 54.6011–1T. . . . . .1545–0575" and "§ 54.6071–1T. . . . . .1545–0575".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it would be impractical to issue it first under the notice and comment procedure provided in 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: March 18, 1987.

**J. Edger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87–7306 Filed 4–1–87; 8:45 am]

BILLING CODE 4830–01–M

---

## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 228

### Disposal of Mineral Materials

**AGENCY:** Forest Service, USDA.

**ACTION:** Interim rule; request for public comment.

**SUMMARY:** Existing regulations at 36 CFR Part 228, Subpart C authorize the noncompetitive sale of mineral materials up to 100,000 cubic yards in any one sale or 200,000 cubic yards in any one State for the benefit of any applicant in any period of twelve consecutive calendar months. This interim rulemaking would authorize the noncompetitive sale of larger amounts of mineral materials upon a determination by the Chief of the Forest Service that disposal of mineral materials in excess of the volume limitations is necessary to respond to emergency situations, to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product, or to respond to a critical public need for the prompt development of mineral leases or mining claims on federal lands. The agency is also requesting comments on the interim rule which it will consider in developing a final rule.

**DATES:** This rule is effective April 2, 1987. Comments on this rule are due on or before June 1, 1987.

**ADDRESS:** Send comments or inquiries to: F. Dale Robertson, Chief, (2850), Forest Service, USDA, P.O. Box 96090, Washington DC 20013–6090. The public may inspect comments received at the office of the Minerals and Geology Management Staff located in Room 606, 1621 North Kent Street, Arlington, VA, during regular business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Steve Marshall, Minerals and Geology Staff, Forest Service, USDA, (703) 235–3142.

**SUPPLEMENTARY INFORMATION:** The Materials Act of July 31, 1947 [30 U.S.C. 601 et seq.] allows the Secretary of Agriculture to sell mineral materials noncompetitively where their competitive sale would be impracticable. Existing regulations at 36 CFR Part 228, Subpart C covering sales of mineral materials limit the noncompetitive sale of mineral materials to 200,000 cubic yards or weight equivalent to any entity per year per State. These regulations require that the United States receive the appraised fair market value for any mineral materials sold noncompetitively. The existing regulations do not provide for situations where the disposal of larger quantities of mineral materials is necessary to respond to emergency situations affecting public health, safety, or property, to prevent the curtailment of locatable mineral operations which generate large volumes of mineral materials as a by-product, or to respond to a critical public need for the prompt development of mineral leases issued by the United States or mining claims located under the United States mining laws.

A situation has arisen in California wherein a claimant mining locatable minerals on a National Forest may be forced to periodically cease its operations because of the 200,000 cubic yard limitation currently in effect. The claimant has a mining operation for locatable minerals where sand and gravel are produced as a by-product. Until now, this sand and gravel has been disposed of through noncompetitive sales to the claimant. It has been impractical to offer the material competitively. This impracticality is brought on by the sand and gravel production being an integral part of the mining operation. The production rate of sand and gravel is determined by the production schedule for locatable minerals. Previously, by-product sand and gravel has been of small enough volumes that the yardage limitation has not posed a problem. Now, however, increased production of locatable minerals is scheduled. This will result in more sand and gravel being produced than can be accommodated noncompetitively under the existing regulations. This situation has convinced the Agency that it needs the flexibility to meet such rare needs in the future, wherever they may arise.

In addition to the current situation, future emergency need for disposal of this class of materials may not permit the time-consuming competition required by 36 CFR 228.58. Emergencies might include such situations as large volumes of sand and gravel being needed for constructing dikes during floods. The Agency has determined that it cannot meet a current or future emergency need without amending the existing regulations in Part 228.

This interim rulemaking will give the Forest Service the flexibility to meet a request for the noncompetitive sale of large amounts of mineral materials and to meet situations where property, health and safety are threatened. This authority will be equally applicable to all entities, whether large or small. It is similar to a rulemaking made by the Bureau of Land Management in June of 1986 (43 CFR Part 3610; 51 FR 22079; June 18, 1986).

Immediate provision for authorizing noncompetitive sales of mineral materials in excess of the volume limitations presently set forth at 36 CFR 228.59 is necessary to ensure that environmental damage and safety hazards on National Forest System Lands are prevented. If this authority is not effective immediately, the Forest Service also may be unable to respond to emergencies affecting public health, safety and property that may occur in the short-term. Therefore, in accordance with the exception in the rulemaking procedures 5 U.S.C. 553(b) and Department of Agriculture policy (36 FR 13804), it has been found upon good public cause that prior notice and other public procedures with respect to this interim rule are both impracticable and contrary to the public interest. Making the interim rule effective immediately upon publication also is consistent with the exception in the rulemaking procedures at 5 U.S.C. 553(d) which

allows a rule to take effect without thirty days prior public notice when the rule relieves a restriction such as the unconditional volume limitation set forth at 36 CFR 228.59. The Forest Service invites the public to comment on the interim rule. These comments will be considered in development of a final rule.

Based on both past experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

This rule has been reviewed under Executive Order 12291 and USDA procedures and it has been determined that this rule is not a major rule. Additionally, it will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The interim rulemaking contains no information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

**List of Subjects in 36 CFR Part 228**

Administrative practice and procedure, Environmental protection, Mines, National forests, Public lands—mineral resources, Rights of way, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Therefore, for the reasons set forth above, Subpart C of Part 228 of Title 36 of the Code of Federal Regulations is amended as follows:

## PART 228—[AMENDED]

1. The Authority citation for Part 228 continues to read as follows:

**Authority:** 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551), and 94 Stat. 2400.

2. Amend § 228.59 by adding a new paragraph (e) to read as follows:

**§ 228.59 Negotiated or noncompetitive sales.**

* * * * *

(e) *Exceptions.* (1) The Chief of the Forest Service may authorize the noncompetitive sale of mineral materials in excess of the volume limitations in paragraphs (a), (b), and (d) of this section when necessary to:

(i) Respond to an emergency affecting public health, safety or property;

(ii) prevent the curtailment of operations conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.) which generate large volumes of mineral materials as a by-product; or

(iii) respond to a critical public need for the prompt development of a mineral lease issued by the United States or a mining claim located under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.).

(2) Any noncompetitive sale of mineral materials in excess of the volume limitations in paragraphs (a), (b), and (d) shall be subject to such restrictions as the Chief of the Forest Service determines to be in the public interest.

(3) Nothing in this paragraph shall otherwise alter the requirements of paragraphs (a) through (d) of this section.

Dated: March 27, 1987.

**Douglas W. MacCleery,**

*Deputy Assistant Secretary for Natural Resources and Environment.*

[FR Doc. 87-7304 Filed 4-1-87; 8:45 am]

BILLING CODE 3410-11-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[PP 1F2439, 4F3054/R878; FRL 3180-1]**

### Pesticide Tolerances for Clopyralid

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for residues of the herbicide clopyralid, in or on certain raw agricultural commodities. This regulation, to establish maximum permissible levels for residues of clopyralid in or on the commodities, was requested by Dow Chemical Co., USA.

**EFFECTIVE DATE:** Effective on April 2, 1987.

**ADDRESS:** Written objections, identified by the document [PP 1F2439, 4F3054/R878], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

**SUPPLEMENTARY INFORMATION:** EPA issued notices which announced the filing and/or amendment of pesticide petition (PP) 1F2439 by Dow Chemical Co., USA, P.O. Box 1706, Midland, MI 48640, proposing tolerances for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on certain raw agricultural commodities in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

The following chart shows a summary of actions on PP 1F2439 for various raw agricultural commodities, from the initial filing notice (45 FR 85153; December 24, 1980) to the amendments in 52 FR 8528 of March 18, 1987. The series of amendments during the period July 13, 1983 to March 18, 1987, consist of increasing the tolerance levels and/or proposing additional tolerances.

| Commodities | 45 FR 85153 Dec 24, 1980 | 48 FR 32078 Jul 13, 1983 | 51 FR 30542 Aug 17 1986 | 51 FR 36853 Oct 16, 1986 | 52 FR 8528 Mar 18, 1987 |
|---|---|---|---|---|---|
| Barley | | | | | |
| Forage | 5.0 | 9.0 | | | |
| Grain | 1.5 | 3.0 | | | |
| Straw | 8.0 | 9.0 | | | |
| Cattle | | | | | |
| Fat | 0.05 | 0.1 | 0.2 | 1.0 | |
| Meat | 0.05 | 0.1 | 0.2 | 1.0 | |
| Mbypt | 0.05 | 0.1 | 0.2 | *1.0 | |
| Kidney | 0.10 | | 5.0 | 12.0 | |
| Eggs | 0.05 | | | | |
| Goats | | | | | |
| Fat | | | 0.2 | 1.0 | |
| Meat | | | 0.2 | 1.0 | |
| Mbyp | | | 0.2 | *1.0 | |
| Kidney | | | 5.0 | 12.0 | |
| Hogs | | | | | |
| Fat | 0.05 | 0.1 | | | 0.2 |
| Meat | 0.05 | 0.1 | | | 0.2 |
| Mbyp | 0.05 | 0.1 | | | 0.2 |
| Horses | | | | | |
| Fat | 0.05 | | 0.2 | 1.0 | |
| Meat | 0.05 | | 0.2 | 1.0 | |
| Mbyp | 0.05 | | 0.2 | *1.0 | |
| Kidney | | | 5.0 | 12.0 | |
| Milk, whole | 0.05 | | | | |

| Commodities | 45 FR 85153 Dec 24, 1980 | [illegible] Jul 13, 1[illegible] | 51 FR 30542 Aug 17, 1[illegible] | 51 FR 36853 Oct 16, [illegible] | 52 FR [illegible] Mar 18, 1987 |
|---|---|---|---|---|---|
| Oats: | | | | | |
| Forage | 5.0 | 9.0 | | | |
| Grain | 2.0 | 3.0 | | | |
| Straw | 5.0 | 9.0 | | | |
| Poultry | | | | | |
| Fat | 0.05 | | | | 0.2 |
| Meat | 0.05 | | | | 0.2 |
| Mbyp | 0.05 | | | | 0.2 |
| Sheep | | | | | |
| Fat | 0.05 | 0.1 | 0.2 | 1.0 | |
| Meat | 0.05 | 0.1 | 0.2 | 1.0 | |
| Mbyp | | | 0.2 | *1.0 | |
| Kidney | 0.05 | 0.1 | 5.0 | 12.0 | |
| Wheat | | | | | |
| Forage | 5.0 | 9.0 | | | |
| Grain | 1.5 | 3.0 | | | |
| Straw | 8.0 | 9.0 | | | |

† Meat byproducts.
*Tolerance for liver withdrawn.

In the **Federal Register** of April 18, 1984 (49 FR 15267) EPA announced that Dow Chemical Co., USA filed PP 4F3054 proposing a tolerance for residues of the herbicide clopyralid in or on forage grasses at 100 ppm, subseqently amended in 51 FR 36853, October 16, 1986, by increasing the tolerance level to 500 ppm and changing the commodity description to "grasses, forage and hay".

There were no comments received in response to the notices of filing.

A related document (FAP 1H5280/R879), establishing regulations permitting residues of clopyralid in or on certain food and feed items, appears elsewhere in this issue of the **Federal Register.**

The Agency has evaluated the data submitted in the petition and other relevant material. The data considered include:

1. Plant and animal metabolism studies.
2. A rat oral lethal dose (LD50) with an LD50 of 4,300 milligrams/kilogram (mg/kg) of body weight.
3. A 13-week mouse feeding study with a no-observed-effect level (NOEL) of 750 mg/kg/day.
4. A 180-day feeding study with a NOEL greater than (>) 150 mg/kg/day, the highest dose tested (HDT).
5. A pilot rabbit teratology and a rabbit teratology study with a developmental NOEL >250 mg/kg/day (HDT).
6. A rat teratology study with a developmental NOEL of 250 mg/kg/day (HDT) and a maternal toxicity NOEL of 75 mg/kg/day.
7. A 2-generation rat reporoduction study with a reproductive NOEL of >1,500 mg/kg/day.
8. A 1-year dog feeding study with a NOEL of 100 mg/kg/day.
9. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 50 mg/kg/day with no observed oncogenic potential under conditions of the study up to and including 150 mg/kg/day (HDT).
10. A repeat 2-year rat chronic feeding/oncogenicity study with a NOEL of 15 mg/kg/day with no observed oncogenic potential under conditions of the study up to 1,500 mg/kg/day (HDT).
11. A 2-year mouse oncogenicity study with no observed oncogenic potential under conditions of the study up to and including 2,000 mg/kg/day (HDT).
12. A dominant lethal assay, negative.
13. *In vivo* rat cytogenic study, negative.
14. *In vitro Salmonella* and *Saccharomyces* assay, negative.
15. An *in vivo* mouse host mediated assay, negative.

Based on a NOEL of 15 mg/kg/day in the repeat 2-year chronic feeding oncogenicity study and a 100-fold safety factor, the provisional acceptable daily intake (PADI) has been set at 0.15 mg/kg/day. These tolerances, and those established elsewhere in this issue of the **Federal Register,** have a theoretical maximum residue contribution of 0.0075 mg/kg/day and would utilize 5.06 percent of the PADI.

There are no regulatory actions pending against the registration of clopyralid. The metabolism of clopyralid in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead-time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual Volume II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Service Branch, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Room 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

The tolerances are adequate to cover residues that would result in meat, milk, poultry, and eggs. The Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subject in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commmodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.431 is added to Subpart C to read as follows:

**§ 180.431 Clopyralid; tolerances for residues.**

Tolerances are established for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the following raw agricultural commodities:

| Commodities | Parts per million |
|---|---|
| Barley, forage | 9.0 |
| Barley, grain | 3.0 |
| Barley, straw | 9.0 |
| Cattle, fat | 1.0 |
| Cattle, kidney | 12.0 |
| Cattle, meat | 1.0 |
| Cattle, meat byproducts (except kidney) | 1.0 |
| Eggs | 0.1 |
| Goats, fat | 1.0 |
| Goats, kidney | 12.0 |
| Goats, meat | 1.0 |
| Goats, meat byproducts (except kidney) | 1.0 |
| Grasses, forage and hay | 500.0 |
| Hogs, fat | 0.2 |
| Hogs, meat | 0.2 |
| Hogs, meat byproducts | 0.2 |
| Horses, fat | 1.0 |
| Horses, Kidney | 12.0 |
| Horses, meat | 1.0 |
| Horses, meat byproducts (except kidney) | 1.0 |
| Milk | 0.1 |
| Oats, forage | 9.0 |
| Oats, grain | 3.0 |
| Oats, straw | 9.0 |
| Poultry, fat | 0.2 |
| Poultry, meat | 0.2 |
| Poultry, meat byproducts | 0.2 |
| Sheep, fat | 1.0 |
| Sheep, kidney | 12.0 |
| Sheep, meat | 1.0 |
| Sheep, meat byproducts (except kidney) | 1.0 |
| Wheat, forage | 9.0 |
| Wheat, grain | 3.0 |
| Wheat, straw | 9.0 |

[FR Doc. 87-7260 Filed 4-1-87; 8:45 am]
BILLING CODE 6560-50-M

## 40 CFR Part 180

**[PP 5F3299/R877; (FRL-3179-8)]**

## Pesticide Tolerance for Lactofen

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the herbicide lactofen in or on soybeans. This regulation to establish the maximum permissible level for residues of lactofen in or on soybeans was requested by PPG Industries, Inc.

**EFFECTIVE DATE:** Effective on April 2, 1987.

**ADDRESS:** Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of November 6, 1985 (50 FR 46178), which announced that PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272, had submitted a pesticide petition (5F3299) to EPA proposing that 40 CFR Part 180 be amended by establishing tolerances for the herbicide lactofen, 1-(carboethoxy) ethyl-5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate, in or on the commodity soybeans at 0.01 part per million (ppm).

PPG Industries subsequently amended the petition, and notice was published in the Federal Register of March 25, 1987 (52 FR 9535), proposing that 40 CFR Part 180 be amended by establishing tolerances for combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate and its associated metabolites containing the diphenyl ether linkage expressed as lactofen in or on the commodity soybeans at 0.05 ppm.

There were no comments received in response to the original notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include plant and animal metabolism studies; a rat oral lethal dose ($LD_{50}$) with an $LD_{50}$ of 5,960 milligrams/kilogram (mg/kg) of body weight; a 90-day rat feeding study with a no-observed-effect level (NOEL) of 10 mg/kg/day (200 ppm); a rat teratology study with a maternal and developmental NOEL of 50 mg/kg/day with no terata up to and including 150 mg/kg/day (highest dose); a rabbit teratology study with a maternal NOEL of 4 mg/kg/day with no developmental toxicity up to and including 20 mg/kg/day (highest dose); a two-generation rat reproduction study with a NOEL of 2.5 mg/kg/day (50 ppm); a 1-year dog feeding study with a NOEL of 5 mg/kg/day (200 ppm); an 18-month mouse oncogenicity study with a statistically significant increased combined incidence of liver adenomas and carcinomas in both sexes at 37.5 mg/kg/day (250 ppm, highest dose) and a systemic Lowest Effect Level (LEL) of 1.5 mg/kg/day based on increased liver weight and hepatocytomegaly; a 2-year rat chronic feeding/oncogenicity study with a systemic NOEL of 25 mg/kg/day (500 ppm) and a statistically significant increased incidence of neoplastic nodules and foci of cellular alteration in the liver of both sexes at 100 mg/kg/day (2,000 ppm, highest dose); a rat hepatocyte unscheduled DNA synthesis assay, negative; a DNA Covalent Binding in mouse liver suggests a very low binding capacity; a chromosomal aberration study in Chinese hamster ovary cells (CHO), negative; an Ames test, negative; a second Ames test, positive in strain TA 1538 of *Salmonella typhimurium* at 5,000 and 7,500 ug/plate (precipitates formed in plates); and a mouse hepatocyte primary culture/DNA repair assay, negative.

The Agency has evaluated dietary exposure to lactofen residues for the commodity proposed. Assuming that 100 percent of the soybean crop will have residues at the tolerance level (0.05 ppm), using a multistage model the "worst case" incremental dietary oncogenic risk is calculated to be 2.9 incidences in one million ($2.9 \times 10^{-6}$). Actual risk will be less, since not all of the soybean crop will be treated, and those crops treated and sold will have residues less than 0.05 ppm. The 0.05 ppm level is based on a very conservative assumption that the herbicide and four metabolites could each be present in an amount just below the level of detection of the individual compounds (0.01 ppm).

Based on the LEL at the lowest dose tested of 1.5 mg/kg/day in the mouse oncogenicity study and a thousandfold safety factor, the acceptable daily intake (ADI) has been set at 0.0015 mg/kg/day with a maximum permissible intake of 0.09 mg/day for a 60-kg person. These tolerances have a theoretical maximum residue contribution of 0.000017 mg/day in a 1.5 kg diet and would utilize 1.13 percent of the ADI.

There are no regulatory actions pending against the registration of lactofen. The metabolism of lactofen in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, electron capture gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the "Pesticide Analytical Manual Volume II," the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 223, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

There is no expectation of secondary residues in meat, milk, poultry, and eggs.

Based on the information cited above, the Agency has determined that establishing the tolerances for residues of the pesticide in or on the listed commodity will protect the public health. Therefore, tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objection must state the issues for the hearing and the grounds for the objection. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Section 408(e), 68 Stat. 514 (21 U.S.C. 346(e)))

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 18, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.431 is added to read as follows:

**§ 180.431 Lactofen; tolerance for residues.**

Tolerances are established for the combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate and its associated metabolites containing the diphenyl ether linkage expressed as lactofen in or on soybeans at 0.05 part per million.

[FR Doc. 87–7258 Filed 4–1–87; 8:45 am]

BILLING CODE [illegible]

**40 CFR Part 271**

[FRL–3179–2]

## Oregon; Schedule of Compliance for Modification of Oregon's Hazardous Waste Program

**AGENCY:** Environmental Protection Agency, Region 10.

**ACTION:** Notice of Oregon's compliance schedule to adopt program modifications.

**SUMMARY:** On September 22, 1986, EPA promulgated amendments to deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Oregon to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

**FOR FURTHER INFORMATION CONTACT:** David Hanline (HW–112), Waste Management Branch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442–2858.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the state program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Sec. 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

### B. Oregon

Oregon received final authorization of its hazardous waste program on January 31, 1986 (51 FR 3779, Thursday, January 30, 1986). Today EPA is publishing a compliance schedule for Oregon to obtain program revisions for the following Federal program requirement:

*3006(f)—Availability of Information*

The Oregon Department of Environmental Quality has agreed to obtain the needed program revisions according to the following schedule.

Regulations drafted by 2/27/87
Regulations submitted to EPA for review by 3/6/87
Public hearing on regulations by 4/17/87
Regulations submitted to the Oregon Environmental Quality Commission for adoption by 5/29/87

Oregon expects to submit an application to EPA for authorization of the above mentioned program revisions by July 1, 1987.

**Authority**

This notice is issued under the authority of Sec. 2022(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: March 20, 1987.

**Robie G. Russell,**

*Regional Administrator.*

[FR Doc. 87–7257 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 2, 73, 74, and 78**

## Oversight of the Radio and TV Broadcast Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Order amends regulations in 47 CFR Parts 2, 73, 74 and 78. Amendments are made to correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for clarity and ease of understanding.

**EFFECTIVE DATE:** April 2, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Steve Crane, Policy and Rules Division, Mass Media Bureau: (202) 632–5414.

**SUPPLEMENTARY INFORMATION:**

**Order**

Adopted: February 26, 1987.
Released: March 12, 1987.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) In § 73.37, Applications for broadcast facilities, showing required, there are cross references to paragraph (o) of § 73.182. The references appear in

paragraphs (e) and (f). Both references should read § 73.182(1), and are corrected to so state herein. (See rule change item 3).

(b) Section 73.40 was removed from the rules in the Report and Order in Mass Media Docket 85–125 (51 FR 2704, January 21, 1986).

Cross references to it remain in three rule sections: 2.983, Application for type acceptance; 73.51, Determining operating power and 73.1690, Modification of transmission systems.

Deletion of references to § 73.40, and adding new cross references, as appropriate, are accomplished in this Order. (See rule change items 2, 4 and 11).

(c) In § 73.51, Determining operating power, paragraph (c)(2)(ii) incorrectly cross references § 73.1590(b)(1) (i) through (v), and § 73.40. (The amendment to § 73.51 to remove the § 73.40 reference is addressed in paragraph (b) above).

Section 73.1590, Equipment performance measurements, was amended in February and May, 1986. Those amendments substantially revised paragraph (b) of the section. It presently states that "measurements for spurious and harmonic emissions must be made to show compliance with transmission system requirements of § 73.44 for all AM stations. . . .", thereby directing the rule user to "AM transmission system emission limitations" found in that section.

We change § 73.51 herein to directly reference § 73.44 without detouring via § 73.1590. (See rule change item 4).

(d) The term "Hertz", as a synonym for cycle per second, has been used internationally for some years along with its derivatives kilohertz (kHz), megahertz (MHz), etc.

The Commission previously adopted an Order making the change from cycles per second to Hertz wherever appropriate in our rules. Several cycles per second designations still remain in Parts 73 and 74. Via this Order corrective changes are made. (See rule change items 5, 7, 8 and 14).

(e) The opening sentence of § 73.186 refers to the requirements of § 73.45, mentioning specifically minimum height and field strength requirements. Section 73.45, in turn, directs the rule user to see § 73.189 for this information. The opening reference in § 73.186 is changed to directly refer to § 73.189 rather than § 73.45. (See rule change item 6).

(f) The FCC's multiple broadcast station ownership rules were formerly in the separate service subparts for AM, FM and TV: Subparts A, B and E respectively. In the Report and Order in the multiple ownership proceeding (BC Docket 78–239, MM Docket 83–46; 49 FR 19482, May 8, 1984) the Commission eliminated the separate rule sections in Subparts A, B and E and adopted a single new rule, § 73.3555, Multiple ownership, and located it in Subpart H—Rules Applicable to All Broadcast Stations.

Cross references to the eliminated rule sections remain in three rules in Parts 73 and 74: Sections 73.311, 74.732 and 74.1232. Revisions are made herein to correct the cross references to read § 73.3555. (See rule change items 9, 13 and 15).

(g) By Order, adopted March 4, 1986 (51 FR 9963, March 24, 1986), the Commission added a Note to § 73.315, Transmitter location, following paragraph (a). The Note clarified that minimum field strengths specified in § 73.315(a) did "not apply to noncommercial educational FM broadcast stations." However, this exclusion is only applicable if the noncommercial FM station operates on reserved channels. Some operate on commercial channels. The Note is clarified herein to grant exclusion as originally intended to the field strength requirements of § 73.315(a) only if the noncommercial FM station *operates on reserved channels 200 through 220.* (See rule change item 10).

(h) In the Report & Order, BCD 81–497 (47 FR 9214, March 4, 1982) the Commission added a new paragraph (e) to § 74.633.

In the Report & Order in BCD 81–793 (47 FR 55931, Dec. 14, 1982) the text of paragraph (e) was inadvertently eliminated from § 74.633 designating it paragraph "(e) RESERVED".

In an Order adopted May 17, 1985, (50 FR 23697, June 5, 1985), amendments were made to convert distance and measurement designations to the metric system. One such conversion was in § 74.633(c); however the Order incorrectly redesignated paragraph (f) as (e), removing what was assumed to be a meaningless "RESERVED" designation from the rule section.

Via *this* Order we will re-insert the missing text of paragraph (e), which was originally added to the rule to conform it to §§ 74.433 and 74.833 which pertain to special temporary authority. The present text of paragraph (e) will simultaneously be moved to its former (and correct) location as paragraph (f). (See rule change item 12).

(i) Section 78.18, Frequency assignments, shows the assignments of the bands of frequencies for the Cable TV Relay Service (CARS). Errors appear in the channel tables and in the footnotes thereto. Cross references to paragraph (m) of this section; which was redesignated paragraph (l) in an earlier proceeding, is corrected; and the footnotes, which tend to be confusing as now presented, are repositioned after *each* Group Channel Table for clarity. (See rule change item 16).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Accordingly, it is ordered, That pursuant to section 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 2, 73, 74 and 78 of the FCC Rules and Regulations are amended as set forth below, effective on the date of publication in the **Federal Register.**

6. For further information on this *Order,* contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission

**James C. McKinney,**

*Chief, Mass Media Bureau.*

**List of Subjects**

*47 CFR Part 2*

Frequency allocations, Radio.

*47 CFR Part 73*

Radio broadcasting.

*47 CFR Part 74*

Radio broadcasting, Television broadcasting.

*47 CFR Part 78*

Cable television, Relay service.

47 CFR Parts 2, 73, 74 and 78 are amended as follows:

1. The authority citation for Parts 2, 73, 74 and 78 continues to read as follows:

**PART 2—[AMENDED]**

**Authority:** 47 U.S.C. 154 and 303.

2. Section 2.983 is amended by revising paragraph (j) to read as follows:

**§ 2.983 Application for type acceptance.**

* * * * *

(j) An application for type acceptance of an AM broadcast stereophonic exciter-generator intended for interfacing with existing type-accepted transmitters shall include measurements made on a complete stereophonic transmitter. The instruction book required under paragraph (d)(8) of this section shall include complete specifications and circuit requirements for interconnecting with existing transmitters. The instruction book must also provide a full description of the equipment and measurement procedures for making equipment performance measurements and modulation monitoring to determine that the combination of stereo exciter-generator and transmitter meet the minimum specifications given in 73.1590.

**PART 73—[AMENDED]**

3. Section 73.37 is amended by revising paragraphs (e) and (f)(2) introductory text to read as follows:

**§ 73.37 Applications for broadcast facilities, showing required.**

* * * * *

(e) In addition to a demonstration of compliance with the requirement of paragraphs (a), and as appropriate, (b), (c) and (d) of this section, an application for a new AM broadcast station, or for a major change (see § 73.3571(a)(1) of this Chapter) in an authorized AM broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class II or Class III station is proposed, that objectionable interference will not result to an authorized station as determined pursuant to § 73.182(1) of this chapter.

* * * * *

(f) * * *

* * * * *

(2) Unlimited time operation, by other than a Class IV facility, will not cause objectionable skywave interference at night to an existing station, pursuant to § 73.182(1). In addition, each proposal for unlimited time operation (including Class IV proposals) shall meet at least one of the following conditions:

* * * * *

4. Section 73.51 is amended by revising paragraph (c)(2)(ii) to read as follows:

**§ 73.51 Determining operating power.**

* * * * *

(c) * * *

(2) * * *

(ii) Where the proposed transmitter power output level(s) is less than 90% of the rated power of the transmitter, equipment performance measurements must be made to confirm that the station transmissions conform to the emission limitation specified in § 73.44, under all conditions of program operation.

* * * * *

5. Section 73.182 is amended by revising paragraph (a) introductory text to read as follows:

**§ 73.182 Engineering standards of allocation.**

(a) Sections 73.21 to 73.34, inclusive, govern allocation of facilities in the AM broadcast band of 535 to 1605 kHz. Section 73.21 establishes three classes of channels in this band, namely, clear channels for the use of high-powered stations, regional channels for the use of medium-powered stations, and local channels for the use of low-powered stations. The classes and power of AM broadcast stations which will be assigned to the various channels are set forth in § 73.21. The classifications of the AM broadcast stations are as follows:

* * * * *

6. Section 73.186 is amended by revising paragraph (a) introductory text to read as follows:

**§ 73.186 Establishment of effective field at one kilometer.**

(a) Section 73.189 provides that certain minimum field strengths are acceptable in lieu of the required minimum physical heights of the antennas proper. Also, in other situations, it may be necessary to determine the effective field. The following requirements shall govern the taking and submission of data on the field strength produced:

* * * * *

7. Section 73.189 is amended by revising paragraph (b)(6) to read as follows:

**§ 73.189 Minimum antenna heights or field strength requirements.**

* * * * *

(b) * * *

(6) The main element or elements of a directional antenna system shall meet the above minimum requirements with respect to height or effective field strength. No directional antenna system will be approved which is so designed that the effective field of the array is less than the minimum prescribed for the class of station concerned, or in case of a Class I station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of § 73.190 for operation on frequencies below 1000 kHz, and in the case of a Class II or III station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of § 73.190 for operation on frequencies below 750 kHz.

8. Section 73.201 is amended by revising the introductory text to read as follows:

**§ 73.201 Numerical designation of FM broadcast channels.**

The FM broadcast band consists of that portion of the radio frequency spectrum between 88 MHz and 108 MHz. It is divided into 100 channels of 200 kHz each. For convenience, the frequencies available for FM broadcasting (including those assigned to noncommercial educational broadcasting) are given numerical designations which are shown in the table below:

* * * * *

9. Section 73.311 is amended by revising paragraph (b)(2) to read as follows:

**§ 73.311 Field strength contours.**

* * * * *

(b) * * *

(2) In connection with problems of coverage arising out of application of § 73.3555.

* * * * *

10. Section 73.315 is amended by revising the Note following paragraph (a) to read as follows:

**§ 73.315 Transmitter location.**

(a) * * *

Note.—The requirements of paragraph (a) of this section do not apply to noncommercial educational FM broadcast stations operating on reserved channels. (Channels 200 through 220)

* * * * *

11. Section 73.1690 is amended by revising paragraph (e)(6)(i) to read as follows:

**§ 73.1690 Modification of transmission systems.**

* * * * *

(e) * * *

(6) * * *

(i) The combination of the utility load management exciter and transmitter conforms to the requirements of § 73.44.

* * * * *

**PART 74—[AMENDED]**

12. Section 74.633 is amended by redesignating paragraph (e) as paragraph (f); and by adding new paragraph (e) to read as follows:

**§ 74.633 Temporary authorizations.**

* * * * *

(e) When the transmitting equipment utilized is not licensed to the user, the user shall nevertheless have full control

over the use of the equipment during the period it is operated.

* * * * *

13. Section 74.732 is amended by revising paragraph (b) to read as follows:

**§74.732 Eligibility and licensing requirements.**

* * * * *

(b) More than one low power TV or TV translator station may be licensed to the same applicant whether or not such stations serve substantially the same area. Low power TV and TV translator stations are not counted for purposes of § 73.3555, concerning multiple ownership.

* * * * *

14. Section 74.961 is amended by revising paragraph (a) to read as follows:

**§ 74.961 Frequency tolerance.**

(a) The frequency of the visual carrier shall be maintained within 60 kHz of the assigned frequency at all times when the station is in operation.

* * * * *

15. Section 74.1232 is amended by revising paragraphs (b) and (f) to read as follows:

**§ 74.1232 Eligibility and licensing requirements.**

* * * * *

(b) More than one FM translator may be licensed to the same applicant. whether or not such translators serve substantially the same area, upon an appropriate showing of need for such additional stations. FM translators are not counted as FM stations for the purpose of § 73.3555, concerning multiple ownership.

* * * * *

(f) No numerical limit is placed upon the number of FM booster stations which may be licensed to a single licensee. A separate application is required for each FM booster station. FM broadcast booster stations are not counted as FM broadcast stations for the purposes of § 73.3555, concerning multiple ownership.

* * * * *

## PART 78—[AMENDED]

16. Section 78.18 is amended by adding new footnotes following Group Channel Tables A, C, D and E; by revising existing footnotes following Group Channel Tables B, F and K; and by revising the entries for channel boundaries for B11 and B12 in Table B and F10 and F11 in Table F to read as follows:

**§ 78.18 Frequency assignments.**

(a) * * *

(1) * * *

**Group A Channels**

* * * * *

[1] Appropriate polarization designation:

H=Horizonally polarized propagated radio wave.

V=Vertically polarized propagated radio wave.

R=Right-handed (clockwise) elliptically polarized propagated radio wave.

L=Left-handed (counter-clockwise) elliptically polarized propagated radio wave.

[2] See paragraph (1) of this section.

**Note.**—Polarization designations shall be in accordance with IEEE standard 100–1972 as amended.

| Designation | Channel boundaries (GHz) |
|---|---|
| GROUP B CHANNELS | |
| B11 [1] | 12.9625–12.9875 |
| B12 [1] | 12.9875–13.0125 |

[1] See footnote 1 following GROUP A CHANNELS.
[2] See paragraph (1) of this section.

Note.—Polarization designations shall be in accordance with IEEE standard 100–1972 as amended.

GROUP C CHANNELS

[1] See footnote 1 following GROUP A CHANNELS.
[2] For transmission of pilot subcarriers or other authorized narrow band signals

GROUP D CHANNELS

[1] See footnote 1 following GROUP A CHANNELS.
[2] See footnote 2 following GROUP C CHANNELS.

GROUP E CHANNELS

[1] See footnote 1 following GROUP A CHANNELS
[2] See footnote 2 following GROUP C CHANNELS.
[3] See paragraph (1) of this section

GROUP F CHANNELS

| | |
|---|---|
| F10 [1] | [2]13.0645–13.0665 |
| F11 [1] | [2]13.0665–13.0725 |

[1] See footnote 1 following GROUP A CHANNELS.
[2] See footnote 2 following GROUP C CHANNELS.
[3] See paragraph (1) of this section

GROUP K CHANNELS

[1] See footnote 1 following GROUP A CHANNELS.
[2] See paragraph (1) of this section

[FR Doc. 87–7268 Filed 4–1–87; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 22

**[CC Docket No. 80–57]**

## Revision and Update of Part 22 of the Public Mobile Service Rules

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rules.

**SUMMARY:** The Commission has determined that the Public Mobile Radio Service Rules revised in 1983 need subsequent revision. The rules were also partially revised in 1985 due to petitions for reconsideration which had been filed. The Commission now also had petitions for reconsideration before it which have been partially granted. The Commission determined that other rules besides the ones petitioned about needed clarification or corrections. The rules have been amended to rewrite them into plain language, bringing their text up to date consistent with existing technology. In addition, revisions were made to eliminate or reduce government regulations where possible, in favor of self-regulation and a competitive marketplace.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Carmen Borkowski, Mobile Services Division, Common Carrier Bureau, tele: (202) 632–6450.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order on Further Reconsideration* in CC Docket No. 80–57, FCC 87–81, Adopted March 5, 1987 and Released March 26, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Summary of Order on Further Reconsideration

1. In this Order on Further Reconsideration we are considering various petitions for reconsideration and requests for clarification of the Order on Reconsideration. 101 FCC2d 799 (1985).

2. We find merit to the petitions filed and are granting them in part. In addition, we have found that other rules need further clarifications and have proceeded to amend them. Moreover, we are taking this opportunity to correct typographical or other errors in the rules. We are granting in part a petition requesting a change in the time frame for filing Form 489 to notify completion of construction. Licensees will be able to start operating on the day they mail to the FCC the Form 489. We have also clarified the procedures for applying for fill-in transmitters in the 43 MHz band. Applicants need to file a Form 489 with a schedule B on Form 401.

3. Rules §§ 22.502(b) and 22.15(b)(2) are being amended to further clarify when interference studies are required for stations which exceed the height/power limitations. All proposed stations must do interference studies to all co-channnel stations within 125 miles when one of the eight radials within a 45 degree arc of the direction of that co-

BEST COPY AVAILABLE

channel station exceeds the height/power limitations of § 22.505. We are also clarifying that the only way a construction permit can be extended is by filing an FCC Form 489 which specifies circumstances why the period should be extended. If a major modification at an existing location, is filed during a construction period, a Form 489 should be filed with the Form 401 if additional time to construct is needed. If both forms are not timely filed or if a Form 489 is not filed in conjunction with the 401 the original construction permit will automatically expire on the date specified in the authorization. We wish applicants to take note of the fact that the Form 489 for an extension of time should be timely filed. If the extension is denied and the construction period has expired the authorization will automatically be cancelled. However, if the modification is for a relocation, the filing of a Form 401 for a major modification, prior to the expiration date of the construction permit, extends the underlying construction permit, pending disposition of the modification application. If the modification application is granted, a new construction permit will be issued to replace the previous authorization. If the modification application is denied, the underlying construction permit would simultaneously expire.

4. The following amendments which clarify our rules are non-substantive, therefore, the notice and comments provisions of the Administrative Procedure Act (APA) are inapplicable. *See* 5 U.S.C. 553. These amendments are: Sections 22.9(b)(2); 22.15(b)(1) (i), (ii), (iii) and (b)(2)(i); 22.16(a); 22.39(b)(5)(ii); 22.40; 22.43(a)(3); 22.43(c)(1), (2) and (4); 22.44; 22.104; 22.106; 22.516; 22.917 and 22.920.

5. Additionally, while we believe the remaining alterations are non-substantive, even assuming *arguendo* that they are substantive, we believe good cause exists for dispensing with the APA's requirements. In light of the generally beneficial and non-controversial nature of these rule changes, notice and public comment on these changes is unnecessary and not in the public interest. These rule changes are: Sections 22.9(b)(1); 22.9(d); removal of § 22.9 (e) and (f); revision of §§ 22.43(b)(1)(i), (ii); 22.43(c)(3) and (5); 22.110; 22.117; 22.501 and 22.502.

**Ordering Clauses**

6. Accordingly, it is ordered, that the petitions for reconsideration filed in CC Docket 80–57 are granted to the extent indicated herein and otherwise denied.

7. It is further ordered, that pursuant to the authority found in section 4, and 303(r) of the Communications Act of 1934, as amended, Part 22 of the Commission's Rules and Regulations are amended effective May 4, 1987.

**List of Subjects in 47 CFR Part 22**

Communications common carriers, Radio.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

**Rules**

47 CFR Part 22 is amended as follows:

## PART 22—PUBLIC MOBILE RADIO SERVICES

1. The authority citation for Part 22 continues to read:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.2 is amended by adding the following definition in alphabetical order to read as follows:

**§ 22.2 Definitions.**

* * * * *

*Cardinal Radials.* Those eight radials at 0, 45, 90, 135, 180, 225, 270 and 315 degrees of azimuth with respect to true north.

* * * * *

3. Section 22.9 is amended by redesignating existing paragraph (b)(2) as (b)(3); adding new paragraph (b)(2); removing paragraphs (e) and (f) and by revising paragraphs (b)(1) and (d) to read as follows:

**§ 22.9 Standard application forms and permissive changes or minor modifications for Public Land Mobile, Rural Radio, Domestic Public Cellular Radio Telecommunications, and Offshore Radio Services.**

* * * * *

(b)(1) *Notification of status of facilities (FCC Form 489).* When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

(2) *Extensions of time and reinstatement.* When a licensee has not completed construction in accordance with the provisions of § 22.43 of this part, a timely application for extension of time (FCC Form 489) must be filed. Form 489 shall also be used for requests for reinstatements of authorizations if filed within 30 days after the authorization expired (§ 22.44(a)(2)).

* * * * *

(d) *Permissive changes or minor modifications of authorization.* The following changes do not require prior Commission authorization but merely notification. A Form 489 must be filed to notify of any permissive change and the licensee may commence service the day Form 489 is postmarked.

* * * * *

4. Section 22.15 is amended by revising paragraphs (b)(1) (i), (ii), (iii) and (b)(2)(i) to read as follows:

**§ 22.15 Technical content of application.**

* * * * *

(b) * * *

(1) * * *

(i) One-way facilities from 35 to 162 MHz—within 67 miles.

(ii) Two-way facilities:

(A) From 152 to 162 MHz—within 84 miles.

(B) From 450 to 460 MHz—within 67 miles.

(iii) Co-channel facilities within 125 miles when the bearing to the co-channel facility is within 22.5 degrees of a cardinal radial, where the effective radiated power exceeds the limits indicated in § 22.505 for the center of radiation height above average elevation in that radial direction.

(2) *Interference studies.* (i) The application shall contain interference studies demonstrating that the proposed facilities will not cause harmful electrical interference to those co-channel facilities (existing or proposed) identified in response to paragraph (b)(1) of this section: Provided, however, that interference studies are not required for stations which meet the minimum distance requirements established in § 22.502 and § 22.503. A notation must be made for each station meeting these requirements. The interference studies must use procedures consistent with § 22.504 and FCC Report No. R–6404, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service," by Roger B. Carey.

* * * * *

5. Section 22.39 is amended by revising paragraph (b)(5)(ii) to read as follows:

**§ 22.39 Transfer of control or assignment of station authorization.**

* * * * *

(b) * * *

(5) * * *

(ii) By the assignor: On FCC Form 489.

* * * * *

7. Section 22.40 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 22.40 Considerations involving transfer or assignment applications.**

(a) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses or construction permits whenever applications (except those involving *pro forma* assignment or transfer of control and those for exclusive paging frequencies) for consent to assignment of a common carrier authorization, or for transfer of control of a permittee or licensee, involve facilities that were:

(1) Authorized following a comparative hearing and have been operated less than one year, or;

(2) Involve facilities that have not been constructed,

(i) At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the grant of the authorization, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(b) *Cellular systems:* The sale of a cellular construction permit will only be permitted after a showing that the transferor is not speculating in cellular licenses. The burden of proof is on the transferor. See also § 22.920.

8. Section 22.43 is amended by adding new paragraphs (b)(1) (i) and (ii) and by revising paragraphs (a)(3) and (c) to read as follows:

**§ 22.43 Period of construction.**

(a) * * *

(3) If construction is not completed within the time period set forth in this rule the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. *See* subsection (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489. An application for reinstatement will only be considered if the application demonstrates that the failure to file a timely application for extension or notification of completion of construction was due to causes beyond the applicant's control.

(b)(1) * * *

(i) An application for modification of an authorization (under construction) at the existing location, does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted in conjunction with the FCC Form 401 requesting modification.

(ii) If an FCC Form 401 construction permit modification application is filed to relocate a base station, prior to the expiration date of the construction permit, because of a loss of a site or other involuntary reasons due to causes beyond the applicant's control, the underlying construction permit will automatically be extended pending disposition of the modification application.

(c) *Cellular base stations.* (1) Cellular base stations, which will provide coverage over 75% of the cellular geographic service area, as defined in § 22.903 of these rules, shall be completed and the station ready for operation within 36 months from the date the radio station authorization is granted.

(2) For systems beyond the top-90 markets, construction of an initial phase of the system, which may consist of one or more cells, must be completed, and a notification on Form 489 that the system is ready to commence service to the public must be filed, within 18 months from the date the radio station authorization is granted.

(3) Subsequent modifications to any initial authorizations in a market (partially constructed or unconstructed facilities) are granted for a period of one year or if more than one year remains in the initial authorization the remaining construction period of the original authorization will be assigned to the modification.

(4) Failure to begin service in a timely manner in accordance with this rule will result in the termination of the authorization; unless a station is constructed and the failure to commence service is for reasons of inability to obtain state certification in a state that permits construction before certification is obtained. The licensee is required to show proof of state law requirements.

(5) If a licensee fails to provide 75% coverage of the CGSA within 36 months of the initial license grant; the licensee will be required to reduce the CGSA to meet the 75% coverage.

9. Section 22.44 is amended by revising paragraph (a)(1) and (a)(2) to read as follows:

**§ 22.44 Termination of authorization.**

(a)(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions.

* * * * *

10. Section 22.104 is amended by revising paragraph (a)(1) to read as follows:

**§ 22.104 Emission types.**

(a)(1) *General.* Stations in the public land mobile, rural radio, and offshore radio services are automatically authorized the following emission designators: 15K0F2D, 16K0F3E, 16K0F3C, 16K0F1D, and 16K0F1E. Stations in the Domestic Public Cellular Radio Telecommunications Service are automatically authorized 40K0F3E and 40K0F1D emission designators. Equipment must be type-accepted for the specific emission-designators utilized. Requests for emissions other than those listed in this section require prior Commission authorization.

* * * * *

11. Section 22.106 is amended by revising paragraph (b)(1)(ii) to read as follows:

**§ 22.106 Emission limitations.**

* * * * *

(b) * * *

(1) * * *

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 10 KHz up to and including 250 percent of the authorized bandwidth: At least 29 Log10 fd2/11 decibels or 50 decibels, whichever is the lesser attenuation;

* * * * *

12. Section 22.110 is amended by adding paragraphs (a)(5) and (e) to read as follows:

**§ 22.110 Antenna polarization.**

(a) * * *

(5) Control and repeater stations in the 900 MHz Band.

* * * * *

(e) Control frequencies listed in § 22.501(g) (1) and (2) may use either horizontal or vertical polarization.

13. Section 22.117 is amended by revising paragraph (b) introductory text and (b)(1) to read as follows:

**§ 22.117 Transmitters.**

* * * * *

(b) *Additional transmitters.* Licensees may construct and operate additional transmitter locations on the same frequency without obtaining prior Commission approval, except licensees operating on one way paging frequencies in the 900 MHz band, provided:

(1) The Commission is notified of the new transmitter(s), through the filing of a Form 489 along with a completed Schedule B from Form 401. The Form 489 shall include a certification that the reliable service area contour and predicted interference contour of the proposed station are totally encompassed within the reliable service area contour and predicted interference contour of the existing station(s). The currently authorized reliable service area contour and predicted interference contour of the station or other commonly owned stations are not enlarged in any direction. Cellular licensees certify that the 39 dBu contours of each cell remain within the CGSA.

(i) "Additional transmitters" in the 43 MHz band will be permitted only on a developmental basis, subject to the conditions set forth in Public Notice, *Developmental Common Carrier Paging Base Station Authorizations Assigned in the 43 MHz Spectrum*, Mimeo 4591, released May 16, 1985. Licensees must file a Form 489 along with a schedule B from Form 401 to notify the Commission of any additional 43 MHz transmitters To request authority to operate on a permanent basis licensees must file a Form 489 for the original base facility and include all subsequent fill-in transmitters, with the same time frame testing period.

(ii) Licensees must retain a copy of a completed table MOB III found in FCC Form 401 as part of the licensees' records and this shall be made available to the Commission's staff upon request.

* * * * *

14. Section 22.501 is amended by revising paragraphs (a)(5) (ii), (iii), and (iv), and paragraphs (d) and (f)(1)(ii) to read as follows:

**§ 22.501 Frequencies.**

(a) * * *

(5) * * *

(ii) Due to interference potential the frequencies listed in (a)(4) will only be granted on a developmental basis for two years subject to the provisions of § 22.403 (a) and (c). The provisions of § 22.404(d) are waived to permit licensees to offer service for hire. Licensees shall inform customers that service on these channels is developmental and therefore subject to cancellation at any time. When construction is completed a Form 489 shall be filed. Prior to the expiration of the developmental authorization a Form 489 shall be filed to request permanent authorization.

(iii) In accordance with § 22.406 semi-annual surveys of possible interference with television and video recorder reception in the geographic area within a two-mile radius of the base station(s) authorized herein shall be made during the first year of operation. For each survey, a different sample of at least 25 television viewers distributed approximately evenly throughout the geographic area described above shall be contacted to determine whether they have experienced TV or video recorder interference. The data should not be distorted by surveying few or no viewers within the geographic area proximate to the antenna. Therefore, for each report, the 25 television viewers geographically nearest the base station who have not previously been surveyed, shall be surveyed. In the event that all viewers within two miles have been surveyed, TV viewers shall be surveyed again, starting with those nearest the base station. If interference complaints are received either as a result of the interviews or in the normal course of business, the licensee shall determine the source and extent of such interference. The licensee shall promptly report all interference complaints and act to correct any problems, or follow official instructions.

(iv) The licensee shall submit a written report soon after the completion of each reporting period, fully evaluating the continued existence of interference. Quarterly reports shall include but shall not be limited to the following information:

(*1*) Call sign.

(*2*) Authorization file number.

(*3*) Site location number.

(*4*) No. of report (1 to 4).

(*5*) Survey date(s).

(*6*) Method (telephone/on-site/other).

(*7*) Names, addresses and telephone numbers of persons contacted.

(*8*) Time of day survey conducted (morning/ afternoon/night).

(*9*) Technical solutions tested and results

(*10*) Names and telephone numbers of technical representatives consulted and/or employed.

* * * * *

(d) For assignment to base stations of communication common carriers for use exclusively in providing a one-way paging service.

| MHz | |
|---|---|
| 35.20 | 43.20 |
| 35.22 | 43.22 |
| 35.24 | 43.24 |
| 35.56 | 43.56 |
| 35.58 | 43.58 |
| 35.60 | 43.60 |

Whenever feasible, the frequencies 35.22 MHz, 35.24 MHz, 35.56 MHz, 35.58 MHz and 35.60 MHz shall be assigned for use in any area prior to assignment of the frequencies 35.20 MHz, 43.20 MHz, 43.22 MHz, 43.24 MHz, 43.56 MHz, 43.58 MHz and 43.60 MHz. The frequencies 43.20, 43.22, 43.24, 43.56, 43.58 and 43.60 shall be granted on a developmental basis and subject to the same interference reporting conditions specified in 22.501(a)(5)(ii) to 22.501(a)(5)(iv).

* * * * *

(f) * * *

(1) * * *

(ii) Less than 10 miles. Applications for use of 72–76 MHz band frequencies less than 10 miles from Channel 4 or 5 television stations will be granted developmental authority pursuant to § 22.400 *et seq.* After successful developmental testing an application for a radio station authorization must follow the requirements of Section 22.501(f)(1)(i). Where the proposed transmitter is co-located with the television transmitter the application will be processed according to the 10–80 mile standard. Applicants must identify by call sign, all channel 4 and 5 stations within 10 miles of the proposed transmitter sites.

* * * * *

15. Section 22.502 is revised to read as follows:

**§ 22.502 Classification of base stations.**

(a) Base stations in the public land mobile service shall be classified according to antenna height above average terrain and effective radiated power in the relevant direction. This classification is not applicable to base stations in the frequency bands 454.6625—455.000 MHz, 459.6625—460.000 MHz, 470–512 MHz and 929–932 MHz.

(Antenna height above average terrain (feet))

| | Class of station | | | | |
|---|---|---|---|---|---|
| 400 to 500 | C | B | B | A | A |
| 300 to 400 | C | C | B | B | A |

[Antenna height above average terrain (feet)]

| | | | | | |
|---|---|---|---|---|---|
| 200 to 300 | D | C | C | B | B |
| 100 to 200 | D | D | C | C | B |
| 0 to 100 | E | D | D | C | C |
| | Effective radiated power (watts) | | | | |
| [1] | 30 | 60 | 120 | 250 | 500 |

[1] ERP's falling anywhere between those listed above will use the next higher figure

(b) Any station with antenna height more than 500 feet above average terrain, but with an effective radiated power within the limits prescribed in Rules § 22.505 shall be considered to be a Class A station.

16. Section 22.516 is amended by revising paragraph (b)(2) to read as follows:

**§ 22.516 Usage showing for additional channels.**

* * * * *

(b) * * *

(2) The survey shall state (i) the channel occupancy reported separately for the busiest hour on each of three days, for all frequencies, both VHF and UHF; (ii) the number of two-way mobile stations, tone-only pagers, tone-plus-voice pagers, and tone digital readout pagers; (iii) the specific assignment of each channel to specific trunk groups, if any; (iv) the date and time of the survey.

* * * * *

17. Section 22.913 is amended by removing paragraph (a)(10) and revising and redesignating existing paragraph (a)(11) as paragraph (a)(10).

**§ 22.913 Content and form of applications.**

(a) * * *

(10) An exhibit setting forth the information required by § 22.13(a)(1). In addition, all applicants other than publicly-traded corporations must disclose those parties with any ownership interest in the applicant who also hold any ownership interest in another cellular application for the same market.

* * * * *

18. Section 22.917 is amended by revising paragraph (b)(1)(ii) to read as follows:

**§ 22.917 Demonstration of financial qualifications.**

* * * * *

(b) * * *

(1) * * *

(ii) An applicant relying on internal financing must submit the information required by § 22.917(a)(3), current within 90 days of the submission date of the financial information, in conformance with generally accepted accounting principles, to demonstrate its financial ability.

19. Section 22.920 is amended by revising paragraph (a) to read as follows:

**§ 22.920 Considerations involving transfer or assignment applications for cellular authorizations.**

(a) The provisions of § 22.40 of this part shall apply to transfers or assignments of cellular authorizations except as provided in § 22.920(b).

* * * * *

[FR Doc. 87-7145 Filed 4-1-87; 8:45 am]

BILLING CODE 6712-01-M

---

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 219

**[FRA Docket No. RSOR-6, Notice No. 17]**

### Technical Amendments; Control of Alcohol and Drug Use in Railroad Operations

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FRA is making technical amendments to its rules on alcohol and drug use in railroad operations. The amendments designate a new laboratory for analysis of samples under the program of post-accident toxicological testing.

**DATE:** The amendments are effective on April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety, FRA (Telephone: 202-366-0897) or Renee M. Marler, Attorney, Office of Chief Counsel (Telephone: 202-366-0628).

**SUPPLEMENTARY INFORMATION:**

In order to facilitate the prompt and complete analysis of samples provided in connection with mandatory post-accident testing under Subpart C, Part 219, title 49 of the Code of Federal Regulations, FRA has designated a new laboratory to be responsible for this analysis. Accordingly, in the future samples collected under this program are *not* to be submitted to the Federal Aviation Administration's Civil Aeromedical Institute laboratory in Oklahoma City, but instead are required to be submitted to the following:

Center for Human Toxicology, University of Utah, Room No. 38, Skaggs Hall, Salt Lake City, Utah 84112

The Center operates a reference-quality forensic toxicology laboratory that will analyze samples for identified controlled substances and alcohol.

Other details of the mandatory post-accident testing program, and other elements of the FRA rule on control of alcohol and drug use in railroad operations (49 CFR Part 219) remain unchanged. (FRA is reviewing the implementation of the alcohol/drug rule in a pending safety inquiry (52 FR 2116; Jan. 20, 1987), for which the comment deadline has been extended to April 6, 1987 (52 FR 7185).)

**Regulatory Procedures**

The Administrator finds that notice and opportunity for comment are not required because the subject amendments involve rules of agency organization, procedure and practice. The Administrator further finds that there is good cause for making the rule effective in less than 30 days from the date of publication, since designation of a laboratory is a matter within the administrative judgment of the agency and since prompt designation of a new laboratory is important to the efficient conduct of the post-accident testing program.

This amendment to the final rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures. The amendment does not have any paperwork or economic impact. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Therefore, in consideration of the foregoing, Part 219, title 49, Code of Federal Regulations is amended as follows:

## PART 219—[AMENDED]

1. The authority for Part 219 continues to read as follows:

**Authority:** Secs. 202 and 209, Pub. L. No. 91-458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438), and 49 CFR 1.49. Subpart C also issued under sec. 208, Pub. L. 91-458, 84 Stat. 974, as amended (45 U.S.C. 437).

**§ 219.5 [Amended]**

2. Section 219.5 is amended by removing the text of paragraph (b) and inserting in lieu thereof "[Reserved]"

3. Section 219.205 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 219.205 Sample collection and handling.**

* * * * *

(c) *Shipping kit.* (1) FRA and the laboratory designated in Appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples shall be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and the Field Manual. Specifications for kits are contained in the Field Manual.

(2) Kits may be ordered directly from the laboratory designated in Appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples shall be shipped by pre-paid air freight (or other means adequate to ensure delivery within twenty-four (24) hours) to the laboratory designated in Appendix B to this part. If courier pickup is not available at the medical facility where the samples are collected, the railroad shall promptly transport the shipping kit holding the samples to the nearest point of shipment via air freight or equivalent means.

4. Section 219.11 is amended by revising paragraph (a)(1) to read as follows:

**§ 219.211 Analysis and follow-up.**

(a) (1) The laboratory designated in Appendix B to this Part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report.

* * * * *

5. Part 219 is further amended by adding a new Appendix B to read as follows:

**Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing**

The following laboratory is currently designated to conduct post-accident toxicological analysis under Subpart C of this Part:

Center for Human Toxicology, University of Utah, Room No. 38, Skaggs Hall, Salt Lake City, Utah 84112, Telephone No. (801) 581–5117

Issued in Washington, DC, and March 30, 1987.

**John H. Riley,**

*Federal Railroad Administrator.*

[FR Doc. 87–7360 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–06–M

# Proposed Rules

Federal Register
Vol. 52, No. 63
Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Parts 1955 and 1965

### Property Management and Security Servicing

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** FmHA proposes to amend its regulations on disposal of inventory property and security servicing to (1) increase the amount and shorten the intervals for administrative price reductions on inventory property (2) reduce downpayment requirements on ineligible terms financing (3) extend the time period suitable inventory property is retained exclusively for purchase by program applicants (4) modify 'Decent, Safe and Sanitary' (DSS) clauses to include only those items that render the property not to meet DSS standards (5) expand the Agency's ability to assign its security instruments as a loan servicing action (6) authorize payment of a real estate broker's commission on inventory property sales in additional instances and (7) clarify Agency policy on auctions of suitable inventory property. This action is being taken to expand the Agency's regulations on disposal of inventory property and security servicing. The intended effect is to provide the Agency with more responsive terms to accomplish these objectives.

**DATE:** Comments must be submitted on or before June 1, 1987.

**ADDRESSES:** Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David J. Villano, Senior Realty Specialist, Single Family Housing, Servicing and Property Management Division, FmHA, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, Telephone (202) 382-1452.

**SUPPLEMENTARY INFORMATION:** This proposed rulemaking has been reviewed under USD4 procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

During the period of June 1, 1986, through August 29, 1986, FmHA conducted a "Summer Sale" on unsuitable inventory property (see 51 FR pages 18435 and 18436 dated May 20, 1986.) During this timeframe, FmHA reduced sales prices and downpayment requirements on unsuitable inventory property. FmHA took this action to reduce the consistently increasing number of properties which could not feasibly be used for program purposes in FmHA inventory and relieve the Government of tremendous financial and administrative costs of retaining these properties in inventory. The "Summer Sale" was highly successful with FmHA not only experiencing its first net reduction in inventory in 5 years but gaining valuable insight into the effective use of more aggressive marketing tools to assist the Agency in inventory reduction.

Almost 60 percent of the unsuitable inventory property that was offered under the "Summer Sale" program was sold. FmHA estimates, even after considering the authorized price reductions, that the "Summer Sale" saved the Government in excess of § 500,000. Savings resulted in reduced time in inventory with related personnel and administrative expenses, reduced maintenance costs and recovery of the Government's original investment in the property.

As previously mentioned, the "Summer Sale" was held from June 1, 1986, through August 29, 1986. Time-limiting revisions were made to the appropriate portions of Subpart C of Part 1955 of the 7 CFR series. FmHA now proposes to make permanent changes to its regulations adopting successful aspects of the "Summer Sale."

1. Section 1955.113(a) is revised to increase the amount and shorten the time intervals for administrative price reductions. Current FmHA regulations provide for a five percent administrative price reduction every 120 days. The "Summer Sale" authorized unsuitable inventory property to be offered for sale at 70 percent of market value or other percentage authorized by the State Director. FmHA now proposes to increase the administrative price reduction to 10 percent and shorten the time interval between reductions to 45 days for unsuitable property and 75 days for suitable property, with a maximum of two reductions.

This decision is based upon feedback from field personnel, field visits and results of the "Summer Sale." FmHA recognizes that a larger administrative price reduction and shorter time interval between same is essential to ensure timely sales of inventory property and reduce the Government's costs of retaining these houses in inventory. Since FmHA, unlike a typical seller,

does not negotiate sales prices under regular sales, nor will FmHA accept an offer for less than the listed sales price, we believe this method provides a viable alternative for selling inventory property in an orderly and timely manner.

2. Section 1955.118(b) is revised to reduce the downpayment requirement for ineligible terms financing on credit sales of inventory property. Current FmHA regulations require a 10 percent downpayment from both nonoccupant/investor and owner/occupant applicants requesting financing on ineligible terms. The "Summer Sale" reduced the downpayment required from nonoccupant/investors to 5 percent and waived the downpayment for owner/occupants. FmHA now proposes to reduce the downpayment required from nonocccupant/investors to 5 percent and 2 percent from owner/occupants. This decision is similarly based upon feedback from field personnel, field visits and results of the "Summer Sale." FmHA has recognized that the 10 percent downpayment requirement has hampered sales of inventory property on ineligible terms, especially to owner/occupant applicants. The 1983 Amendment to the Housing Act of 1949 removed authority to extend program assistance to persons with incomes above the moderate income level. These persons were formerly considered program-eligible with "above-moderate income" and were able to purchase inventory property with no downpayment. Currently, these same persons must have a 10 percent downpayment. FmHA desires to give these persons who do not own adequate housing and are unable to secure other credit the opportunity to become a homeowner. FmHA believes that reducing the downpayment requirements will enhance the Agency's ability to sell inventory property without significantly diminishing the value of the Government's security interest in the property.

3. Section 1965.126(d) is similarly revised to reduce the paydown on the loan balance required when an existing FmHA loan is assumed on ineligible terms. Current FmHA regulations require a 10 percent paydown on existing loans assumed on ineligible terms. The "Summer Sale" did not affect this regulation. FmHA proposes to reduce the required paydown to 2 percent for owner/occupants and 5 percent for nonoccupant/investors. These requirements are parallel with the downpayment requirements proposed for credit sales of inventory property on ineligible terms.

This decision is based upon feedback from field staffs that the 10 percent lump-sum payment is a deterrent to assumptions on ineligible terms and will ensure consistency in the required paydown/downpayment on ineligible terms financing. There are two categories of purchasers on ineligible terms who generally become owner/occupants: (1) Those who purchase a program—suitable house and have an adjusted income above the moderate-income limit for the area. These were formerly "eligible with above-moderate income" until the 1983 Amendment to the Housing Act of 1949 removed authority to extend program assistance to this category. (2) Those who purchase a house determined to be unsuitable for retention in FmHA's housing program and which is, therefore, no longer appropriate to be financed on eligible terms. It is much more difficult for a borrower to find a buyer when FmHA is not willing to provide financing on reasonable terms and in many of these situations the borrower conveys the property to FmHA in lieu of being able to consummate a sale. FmHA believes reducing the lump-sum payment amount will enhance a borrowers' ability to sell and, thereby save FmHA many costs associated with acquiring and selling inventory property.

In addition, the following areas which are not a direct offshoot of the "Summer Sale" are proposed:

4. Section 1955.114(a) is revised to extend the time period for which suitable property is retained exclusively for purchase by applicants requesting assistance on eligible terms. Current FmHA regulations authorize a 30-day retention period. FmHA proposes to increase the retention period to 45 days. This decision is based upon the Agency's desire to sell suitable property to program applicants and suggestions from the public that this time period be extended.

5. Section 1955.116 is revised to more prudently inform purchasers of unsuitable property which do not meet the Agency's definition of "Decent, Safe and Sanitary" (DSS) housing of the items which cause the property not to meet DSS standards. Current FmHA regulations require that all listing notices, advertisements, sales agreements and quitclaim deeds contain standard all-encompassing language which states that FmHA has determined the property to be inadequate for residential purposes until the property is ". . . structurally sound and habitable, has a potable water supply, has functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems, and meets the Thermal Performance Standards . . ." In many instances, inventory properties which do not meet DSS standards may only be lacking one or two of the aforementioned items. This standard all-encompassing language unnecessarily creates a stigma against the property making it difficult to sell and often times adversely affecting the market value of the property. FmHA proposes to include in listing notices, advertisements, sales agreements and quitclaim deeds only those items which render the property to not meet DSS standards. This decision is based upon feedback from field personnel and field visits that the standard all-encompassing language hampers sales ability, especially as previously noted, as it will be in the deed to the property. This action would clearly identify those items which must be repaired/replaced/renovated to make the property meet DSS standards and remove the negative stigma which detracts from sales and market values of these houses. As well as assist FmHA personnel in determining at a later date whether or not the restrictive covenant can be removed.

6. Sections 1955.147(b) and 1955.148 are expanded to clarify the Agency's policy on the sale of suitable inventory property by sealed bid or auction. Current FmHA regulations provide the Assistant Administrator for Housing the authority to authorize the sale of suitable inventory property by sealed bid or auction. This authority has been granted on an extremely limited basis when documentaton exists that all reasonable efforts to sell the property have been exhausted. As previously mentioned in Item Number 4, it is Agency policy to sell suitable property to program applicants (those requesting credit on eligible terms). A retention period is provided for program applicants in which they have the exclusive right to purchase suitable property before it is offered to the general public. Even when offered to others, program applicants are always given preference over nonprogram applicants or cash offers. With the proposed administrative price reduction schedule outlined in Item Number 1 of this proposed rule, program applicants will have approximately 8 months with exclusive or preferential rights. A problem arises in an auction or sealed bid setting on how to handle bids from program applicants versus other bidders. Since FmHA has made all reasonable efforts to sell the property to program applicants including the aforementioned 8 month priority period, no preference will be given to program

applicants in an auction setting. Such preference would preclude the effectiveness of an auction since program applicants would only have to match the highest bid of another bidder to be the successful bidder. There would be no incentive for potential bidders other than program applicants to participate in an auction. Since the Agency has already provided an extensive time period for program applicants to purchase the property, it would be impractical to provide further preference. In a sealed bid setting since all bidders have a fair and equal chance of being the successful bidder, preference will only be given to program applicants when two equal high bids have been received. We believe this policy provides the program applicant with every reasonable opportunity to purchase suitable property while setting forth equitable rules on handling auctions and sealed bids.

7. Section 1965.128 represents a substantial change in Agency policy from the longstanding regulation previously found in § 1872.22 of Subpart A of Part 1872, which was superseded with the issuance of Subpart A of Part 1965 of this chapter last year. Section 1965.128 is more restrictive as to instances in which assignment of notes and security instruments is authorized than was provided for in Part 1872, which provided that the State Director could assign loan instruments when it was determined to be to the financial advantage of the Government or when the borrower had failed to refinance after an appropriate request (graduate to other credit). The language presently in § 1965.128 makes this section useless to the Government unless the borrower is willing to request an assignment. It has, for instance, made it impossible in loss situations for FmHA to accept payment in full from an insurance company in exchange for assignment of the loan instruments. Therefore, it has been administratively determined to institute a policy which allows assignment to benefit the Government's financial interest and yet gives specific guidance on situations where such assignment is authorized so there is no danger of indiscriminate use of the authority.

8. Section 1955.130(f) is revised to authorize payment of a real estate broker's commission on inventory property sales where the sale is to a broker, the broker's salesperson(s), to persons living in their immediate household or to legal entities in which they have an interest provided the sale is not contingent upon receiving FmHA credit. Current FmHA regulations do not permit payment of a real estate commission in these instances. This policy is inconsistent with the private sector and the Department of Housing and Urban Development (HUD) and Veterans Administration (VA). FmHA has received many complaints regarding this issue from real estate brokers and field personnel and believes it may hamper the sales of inventory property.

Our goal in property management is to sell inventory property as prudently and expeditiously as possible. This relieves the Agency of the tremendous costs of retaining property in inventory and rightfully returns the property to the public. We recognize, like any other seller of property, that real estate agents are professionals in this area and that payment of a real estate commission is a necessary cost of achieving our goal. Therefore, FmHA proposes to permit payment of a commission in these instances, except where FmHA financing is being extended. A commission would not be paid where financing is requested since the payment of a commission would offset any required downpayment thus defeating the purpose of the downpayment. We feel this change would bring the Agency in line with other private and public sector sellers of property and increase our ability to sell inventory property.

**List of Subjects**

*7 CFR Part 1955*

Government acquired property, Sale of government property, Surplus government property.

*7 CFR Part 1965*

Administrative practice and procedure, Loan programs, Housing and community development, Low and moderate income housing—Rental, Rural areas.

Therefore, as proposed, Chapter XVII of Title 7, Code of Federal Regulations, is amended as follows:

## PART 1955—PROPERTY MANAGEMENT

1. The authority citation for Part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart C—Disposal of Inventory Property

2. Section 1955.113(a) is revised to read as follows:

**§ 1955.113 Price (housing).**

* * * * *

(a) *SFH price reduction.* SFH inventory will be reappraised at any time additional market data indicates this action is warranted. If SFH inventory has not sold after being actively marketed, the price will be administratively reduced. An administrative price reduction will be made without changing the SFH appraisal. The following schedule of administrative price reductions will be followed:

(1) *Suitable property.* If suitable property has not sold after being actively marketed at the current appraised value for 45 days to applicants requesting credit on eligible terms, plus an additional 30 days to any offeror, the price will be administratively reduced by 10 percent of the appraised value. If the property remains unsold after active marketing to applicants requesting credit on eligible terms for an additional 45 days plus an additional 30 days to any offeror, one further price reduction of 10 percent of the appraised value will be made.

(2) *Unsuitable property.* If unsuitable property has not sold after being actively marketed for 45 days, the price will be administratively reduced by 10 percent of the current appraised value. If the property remains unsold after an additional 45 day period of active marketing, one further price reduction of 10 percent of the appraised value will be made.

* * * * *

**§ 1955.114 [Amended]**

3. Section 1955.114(a) is amended to change all references to "30-day" and "30 days" located in the fifth, sixth, and seventh sentences to "45-day" or "45 days" as appropriate.

4. Section 1955.116 is revised to read as follows:

**§ 1955.116 Requirements for sale of property not meeting decent, safe, and sanitary (DSS) standards (housing).**

(a) *Notices and advertising.* If the inventory housing property has a single-family dwelling or a MFH unit which does not meet DSS standards as defined in § 1955.103(f) of this subpart, but which could meet such standards through the repair or renovation activities of the future owner(s), any "Notice of Real Property for Sale," "Notice of Sale," or any other advertisement used in conjunction with advertising the sale must contain the following notice:

This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed will contain a covenant restricting the residential unit(s) on the property from being used for residential occupancy until the dwelling unit is repaired or renovated. This

restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e). The property must be repaired and/or renovated as follows: *

*Insert those items which are necessary to make the dwelling unit(s) meet DSS standards. Examples are:

—Replace flooring and floor joists in kitchen and bath.
—Drill new well to provide for an adequate and potable water supply.
—Hook-up to community water and sewage system now being installed.
—Have a functionally adequate, safe and operable ** system.
**Insert heating, plumbing, electrical and/or sewage disposal, etc., as appropriate.
—Install ***.
***Insert new roof, foundation, sump pump, bathroom fixtures, etc., as appropriate.
—Install **** insulation in basement walls or ceiling, **** insulation in attic, and storm windows and doors throughout.
****Insert appropriate R values to meet Thermal Performance Standards.

(b) *Sales Agreements.* If a housing structure in inventory does not meet DSS standards, Forms FmHA 1955–45 or 1955–46 used in conjunction with the sale must include the same language contained in § 1955.116(a).

(c) *Quitclaim Deed.* The following or similar restrictive clause adopted for use in an individual State pursuant to a State supplement approved by OGC must be added to the quitclaim deed for properties which do not meet DSS standards at the time of sale but which could through the repair or renovation activities of the future owner(s):

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. § 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as an equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the property complies with the following standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and this covenant will thereafter be of no further force or effect. The property must be repaired and/or renovated to: *. * Insert the same items referenced in the listing notices and sales agreement which are necessary to make the dwelling unit(s) meet DSS standards.

(d) *Release of restrictive covenant.* A State Supplement outlining the procedure for releasing the DSS covenant will be issued with the advice and approval of OGC.

5. Section 1955.118(b) is revised to read as follows:

**§ 1955.118 Processing cash sales or credit sales on ineligible terms (housing).**

* * * * *

(b) *Downpayment.* For credit sales, a downpayment will be collected at closing and remitted by the servicing official in accordance with FmHA Instruction 1951–B (available in any FmHA office). For purchasers who fall into the category specified in § 1955.118(d)(i)(A) of this subpart (owner/occupants), a downpayment of not less than 2 percent is required. For purchasers who fall into the category specified in § 1955.118(d)(i)(B) of this subpart (nonoccupant/investors), a downpayment of not less than 5 percent is required. For MFH property, a downpayment of not less than 10 percent is required.

* * * * *

**§ 1955.130 [Amended]**

6. Section 1955.130(f) is amended by removing the period at the end of the second sentence and adding the following "* * * if the sale is contingent upon receiving FmHA credit. If credit is not being extended in these instances (a cash sale) a commission will be paid."

7. Section 1955.147(b) is revised to read as follows:

**§ 1955.147 Sealed bid sales.**

* * * * *

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. For suitable SFH inventory property, no preference will be given to bids from applicants requesting credit on eligible terms unless two identical high bids are received in which case the bid from the applicant requesting credit on eligible terms will take preference. Preference will be given to a cash offer which is at least ____* percent of the highest offer requiring credit on ineligible terms [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage]. Otherwise equal bids will be selected by public lot drawing. The successful bid will be accepted by signing Form FmHA 1955–46. The approval official will give a copy of the form to the successful bidder or his/her representative. If the bidder or his/her representative is not present at the bid opening, the form will be sent by certified mail, return receipt requested, to the bidder. The bid deposit of the successful bidder will be used at closing to be applied first to the purchaser's closing costs with any balance then applied to the downpayment or in the case of a cash sale to be deducted from the funds required from the successful bidder at closing.

**§ 1955.148 [Amended]**

8. Section 1955.148 is amended by adding the following sentence after the seventh sentence: "* * * For auctions of suitable SFH inventory property, no preference will be given to bidders who will be requesting credit on eligible terms."

## PART 1965—REAL PROPERTY

9. The authority citation for Part 1965 continues to read as follows:

**Authority:** 7 U.S.C. 1989, 41 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

### Subpart C—Security Servicing for Single Family Rural Housing Loans

10. Section 1965.126(d) is revised to read as follows:

**§ 1965.126 Transfer of property with assumption of indebtedness.**

* * * * *

(d) *Assumption on ineligible terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suitable for retention in the housing program, the debt may be assumed on ineligible terms if the assuming party has repayment ability, is creditworthy, and it is advantageous to the Government to allow the assumption. If the purchaser does not assume the debt, the loan must be liquidated. After assumption on ineligible terms, the loan will be classified as an NP loan. The assumption agreement will bear interest at the SFH-Ineligible. rate in effect on the date the assumption is approved. The term of the assumption may not exceed the period for which the property will serve as adequate security for the debt. Other terms are as follows:

(1) When the purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years. A payment on the debt of not less than 2 percent of the unpaid balance (including any subsidy recapture due) must be

made at closing to reduce the amount assumed.

(2) When the purchaser does not meet the criteria in paragraph (d)(1) of this section, the amortization period will be not more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. A payment on the debt of not less than 5 percent of the unpaid balance (including any subsidy recapture due) must be made at closing to reduce the amount assumed.

* * * * *

11. Section 1965.128 is revised to read as follows:

**§ 1965.128 Assignment of promissory notes and security instruments.**

With the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a nonrecourse basis as outlined in this section. For loans subject to recapture of subsidy, recapture must be calculated and any recapture due must be considered as a part of the indebtedness at the time of the assignment. The assignment will be made using a form approved by OGC on an individual-case basis or on a State form approved by OGC and prescribed in a State supplement. The State Director is authorized to execute the assignment instrument, and this authority may not be redelegated. Assignment is authorized in following instances:

(a) A borrower has requested it in writing when FmHA is being paid in full.

(b) An insurance company is paying FmHA in full following a property loss.

(c) A junior lienholder has foreclosed its lien and is paying FmHA in full.

Dated: February 18, 1987.

**Vance L. Clark,**

*Administrator, Farmers Home Administration.*

[FR Doc. 87-7172 Filed 4-1-87; 8:45 am]

BILLING CODE 3410-07-M

---

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 87-CE-09-AD]**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new Airworthiness Directive (AD), applicable to EMBRAER Models EMB-110P1 and EMB-110P2 airplanes, which would require incorporation of Revision 29 to the Pilot's Operating Handbook (POH). This revision deletes the Configuration Deviation List (CDL) issued by Revision 28 to the POH. The proposed action will preclude operations which are contrary to the FAA approved Airplane Flight Manual/Pilot's Operating Handbook (AFM/POH) "LIMITATIONS" section.

**DATE:** Comments must be received on or before June 1, 1987.

**ADDRESSES:** EMBRAER Publication No. T.P.-110P1/176, Revision 29, dated November 3, 1986, applicable to the AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343-CEP, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil. This information may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis A. Jackson, ACE-120A, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 991-2910.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

### Discussion

EMBRAER issued Revision No. 28 to Publication No. T.P.-110P1/176 on September 12, 1986. This revision incorporated Supplement No. 36 to Pilot's Operating Handbook and the Brazilian Civil Airworthiness Authority, the Centro Tecnico Aerospacial (CTA) approved Airplane Flight Manual Supplement for EMBRAER EMB-110P1/P2 airplanes. This Supplement contained limitations for operation of the EMB-110P1 and EMB-110P2 airplanes without certain secondary airframe and engine parts.

The FAA has determined that provisions do not exist in the Federal Aviation Regulations for approving a CDL for small airplanes, since it alters the FAA approved AFM/POH "LIMITATIONS" section on a flight by flight basis. The EMBRAER-issued CDL contains such limitations which differ from those contained in the FAA approved AFM/POH "LIMITATIONS" section. EMBRAER was advised of this and EMBRAER issued Revision No. 29 to Publication No. T.P.-110P1/176 on November 29, 1986. This revision deleted Supplement No. 36 from the POH. Based on the foregoing, the FAA considers that an AD is required to ensure that all operators have removed Supplement No. 36 from their Flight Manuals.

The FAA has determined there are approximately 124 airplanes affected by the proposed AD. The cost of complying with the proposed AD is negligible to all operators and, therefore, will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**The Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

2. By adding the following new AD:

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Applies to Models EMB–110P1 and EMB–110P2 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To preclude operations with configurations which are contrary to the FAA approved Airplane Flight Manual/Pilot's Operating Handbook (AFM/POH) "LIMITATIONS" section, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the EMB–110 AFM/POH by incorporating Revision 29, dated November 3, 1986, to EMBRAER Publication No. T.P.–110P1/176, "Pilot's Operating Handbook and CTA Approved Airplane Flight Manual Supplement for EMBRAER EMB–110P1/P2."

(b) The requirement of paragraph (a) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplane owned or operated by him. The person accomplishing this action must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(c) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; Telephone (404) 991–2910.

All persons affected by this directive may obtain the documents referred to herein upon request to EMBRAER, P.O. Box 343–CE, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 18, 1987.

**Paul K. Bohr,**

*Director, Central Region.*

[FR Doc. 87–7205 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

---

**14 CFR Part 71**

**[Airspace Docket No. 87–AWP–10]**

## Proposed Establishment of a Control Zone and Transition Area at Kapalua, HI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a control zone and transition area at Kapalua, Hawaii. A new airport has been constructed at lat. 20°57'58"N., long. 156°40'38"W. to serve the West Maui area. This proposed action will provide controlled airspace for instrument flight rules (IFR) arrivals and departures at the Kapalua Airport. A special instrument approach procedure has been approved for IFR arrivals. Communication lines and weather reporting services will be provided by Hawaiian Airlines. The control zone will be effective only when weather information is available.

**DATE:** Comments must be received on or before April 17, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP–530, Docket No. 87–AWP–10, Air Traffic Division, P.O. Box 90027, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:** Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260, telephone (213) 297–1648.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AWP–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone and transition area at Kapalua, Hawaii. This proposed action will provide controlled airspace for IFR departures and arrivals at the new Kapalua Airport. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation

Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones, Transition areas.

**The Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Kapalua, Hawaii [NEW]**

Within a 5-mile radius of Kapalua West Maui Airport (lat. 20°57'58"N, long. 156°40'38"W). This control zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Pacific Chart Supplement.

3. Section 71.181 is amended as follows:

**Kapalua, Hawaii [NEW]**

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Kapalua West Maui Airport (lat. 20°57'58"N, long. 156°40'38"W).

Issued in Los Angeles, California, on March 17, 1987.

**Wayne C. Newcomb,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 87–7206 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–13–M

---

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 54 and 602

**[EE–151–86]**

## Payment of Excise Tax on Reversion of Qualified Plan Assets to Employer

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross reference to temporary regulations.

**SUMMARY:** This document provides regulations regarding the payment of the excise tax by employers receiving (directly or indirectly) reversions of qualified plan assets required by the Tax Reform Act of 1986. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the payment of the excise tax; the text of these temporary regulations also serves as the comment document for this notice of proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by June 1, 1987. These amendments are proposed to be aplicable to reversions occurring after December 31, 1985.

**ADDRESS:** Please mail or deliver comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE–151–86), 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Suzanne K. Tank of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3938, not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 54 of the Code of Federal Regulations. New § 54.6011–1T and new § 54.6071–1T are added to Part 54 of Title 26 of the Code of Federal Regulations. When § 54.601–1T is promulgated as final regulations, § 54.6011–1 will be revised to reflect the new provision. For the text of the temporary regulations, see FR Doc. 87–7306 (TD 8133) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains this addition to the Pension Excise Tax Regulations.

**Nonapplicability of Executive Order 12291**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

**Regulatory Flexibility Act**

The Secretary of the Treasury has certified that this rule will not have a significant impact on a substantial number of small entities. First, most small businesses maintain defined contribution plans. The regulations do not generally affect defined contribution plans. Hence, small businesses would not generally be affected by the regulation. Second, very few businesses with defined benefit plans will be terminating their plans and receiving a reversion in any calendar quarter or year. A Regulatory Flexibility Analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

**Paperwork Reduction Act**

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent of the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on the requirements to OMB also send copies of these comments to the Service.

**Drafting Information**

The principal author of these proposed regulations is Suzanne K. Tank of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

**Comments and Requests for a Public Hearing**

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 87-7307 Filed 4-1-87; 8:45 am]

BILLING CODE 4830-01-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**29 CFR Part 1625**

**Employee Benefit Plans**

**AGENCY:** Equal Employment Opportunity Commission (EEOC, Commission).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action replaces the interpretations of the Age Discrimination in Employment Act of 1967, as amended (ADEA, Act), 29 U.S.C. 621 *et seq.*, at 29 CFR 860.120(f)(1)(iv)(B), rescinded by Court Order on March 18, 1987, 52 FR 8448, which provided that section 4(f)(2) of the ADEA permits employers to cease contributions and accruals to pension and retirement plans for employees who continue to work beyond normal retirement age, with substantive rules to be codified at 29 CFR 1625.21 requiring employers to continue contributions and accruals for such workers.

This rulemaking is done pursuant to an Order entered on February 26, 1987 by Judge Harold Greene in *American Association of Retired Persons, et al.* v. *Equal Employment Opportunity Commission,* Civil Action No. 86-1740, United States District Court for the District of Columbia. Final rules must be published by May 18, 1987. The Order is now under appeal.

**DATE:** Written comments must be received by May 2, 1987, and must be submitted in quadruplicate.

**ADDRESS:** Comments may be mailed to: Executive Secretariat, Equal Employment Opportunity Commission, Room 507, 2401 E Street NW., Washington, DC 20507.

**FOR FURTHER INFORMATION CONTACT:** Paul E. Boymel or Joseph N. Cleary, Office of Legal Counsel, Room 214, EEOC, 2401 E Street NW., Washington, DC 20507, (202) 634-6423.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Impact Analysis**

Because of the economic impact of the rules, the Commission has prepared a Preliminary Regulatory Impact Analysis of this rule. The Preliminary Regulatory Impact Analysis examines the various alternatives that the Commission considered in preparing this rule and considers the cost and program implications of certain alternatives. A copy of the Preliminary Regulatory Impact Analysis has been placed in the docket of this rulemaking and is available for public inspection.

**Regulatory Flexibility Act Certification**

The Chairman, Equal Employment Opportunity Commission, hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on findings developed in the Commission's Regulatory Impact Analysis (RIA) that indicate as follows:

(1) Increased annual costs to employers will be in the range of 1.2 to 2.4% of pension costs (and therefore less than 1% of salary costs);

(2) Any increased costs will be directly proportional to the number of older employees participating in a pension plan;

(3) The percentage of older employees employed by small entities is assumed to be approximately the same as the percentage employed by large entities;

(4) Small entities will incur the same percentage cost increases as large entities;

(5) The rules do not establish significant overhead costs; any overhead costs will be directly proportional to the number of employees;

(6) Employers with fewer than twenty employees are exempt from the rules.

Accordingly, the Commission is not required to prepare an initial or final regulatory flexibility analysis of the proposed rule.

**Background**

This rulemaking is done pursuant to an Order entered on February 26, 1987 by Judge Harold Greene in *American Association of Retired Persons, et al.,* v. *Equal Employment Opportunity Commission,* Civil Action No. 86-1740, United States District Court for the District of Columbia. Final rules must be published by May 18, 1987. The Order is now under appeal.

By way of background, the Commission voted on March 5, 1985 to circulate draft rules to other affected agencies under Executive Order 12067. As the result of technical comments received from the Internal Revenue Service, the draft rules were restructured in 1986. The Commission was prepared to vote at its November 10, 1986 meeting regarding the publication of the proposed rules in the **Federal Register** for public comment.

On October 17, 1986, however, Congress passed the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509. In sections 9201-9204 of that statute, Congress amended the ADEA to require continuing contributions and accruals in a pension plan regardless of an employee's age. In section 9204, Congress set forth the effective date of such rules. The amendments will be effective "only with respect to plan years beginning on or after January 1, 1988 . . ." with special rules for collectively bargained plans.

As the result of the passage of Pub. L. 99-509, the Commission decided, at its meeting of November 10, 1986, that it would not be appropriate to continue the rulemaking begun in 1985 since: (1) Congress, in setting a 1988 effective date, had set forth its clear desire to grant a grace period to allow employees time to implement a complex change to their pension programs; (2) the draft rules of March 1985, as modified in 1986, imposed an "equal cost" requirement (see discussion, below), while the new statute imposed an "equal benefit" rule, a significant difference that would require employers to amend their plans twice within a one- or two-year period; (3) reviewing two sets of amendments within such a short period of time would prove to be an intolerable burden for the Internal Revenue Service, which has the responsibility for approving the tax aspects of such changes; and (4) since the Commission was required under Pub. L. 99-509 to issue final regulations under that statute prior to February 1, 1988, the Commission's resources would best be spent in preparing the Pub. L. 99-509 rules rather than the rules developed in 1985-1986, which would be rescinded in 1988.

**Discussion**

The ADEA was amended in 1978 (*see* Pub. L. 95-256, 92 Stat. 198, April 6, 1978) to preclude mandatory retirement of covered employees and to raise the upper age limit for coverage under the Act from 65 to 70. Because these amendments potentially affected pension plans covered by the Employee Retirement Income Security Act

(ERISA), Pub. L. 93–406, 29 U.S.C. 1001 *et seq.*, and at the urging of Congress, in 1979 the Department of Labor (DOL) published the "Employee Benefit Plans; Amendment to Interpretative Bulletin," 29 CFR 860.120, 44 FR 30648 (May 25, 1979), which provided comprehensive guidance on employee benefit plans covered under the ADEA. The Interpretative Bulletin contains "Special Rules" that allow employers to cease contributions and accruals to pension and retirement plans for employees who continue to work beyond normal retirement age.

Congress, in section 4(a) of the Act, 29 U.S.C. 623(a), described the employer conduct that is prohibited. However, Congress also recognized that the cost to employers of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers. Congress feared that requiring equal benefits for employees regardless of age would discourage the employment of older workers contrary to the purposes expressed in section 2(b) of the Act, 29 U.S.C. 621(b). *See* S. Rep. No. 723, 90th Cong., 1st Sess. 13–14 (1967) (views of Sen. Javits); 113 Cong. Rec. 31254–55 (1967). To avoid this result, Congress fashioned an exception to the general prohibitions in section 4(a) of the Act. That exception in section 4(f)(2), 29 U.S.C. 623(f)(2), reads:

It shall not be unlawful for an employer, employment agency, or labor organization—

* * * * *

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual.

In recognition of the purposes of the Act and the legislative concern that increased benefit costs might lead to decreased employment opportunities for older workers, section 4(f)(2) was interpreted in 1969 as follows:

[A]n employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers, where the plan is not a subterfuge to evade the purposes of the Act. A *retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred in behalf of an older worker is equal to that made or incurred in behalf of a younger worker,* even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage. Further, an employer may provide varying benefits under a bona fide plan to employees within the age group protected by the Act, when such benefits are determined by a formula involving age and length of service requirements.

29 CFR 860.120(a), 34 FR 9709 (June 21, 1969) (emphasis added).

While the 1979 Interpretative Bulletin generally follows this "equal cost principle," the "Special Rules," which were promulgated regarding pension and retirement plans, allowed an employer to cease contributions and accruals for employees who continued in service beyond the normal retirement age specified in their plans, without a cost justification. The "Special Rules" applicable to pension and retirement plans covered by section 4(f)(2) of the ADEA, were rescinded under Judge Greene's Order. The rules under 29 CFR 1625.21 are premised on the principle that a retirement or pension plan will be considered in compliance with the Act where the actual amount of payment made, or cost incurred, on behalf of an older worker is equal to that made or incurred on behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits. This "equal cost principle" has been the Commission's position throughout the entire rulemaking process.

Although age is not a significant cost factor in a defined contribution plan, since DOL's "Special Rules" addressed defined contribution plans, these rules make clear that defined contribution plans must provide for contributions regardless of an employee's age.

**Section-by-Section Analysis of Proposed Changes**

*29 CFR 1625.21(a)* The Commission solicits public comment regarding the effective date of these rules.

*Section 1625.21(b)(1).* Subsection 860.120(f)(1)(iv)(B)(1) of the Interpretative Bulletin permitted the cessation of contributions to a defined contribution plan with respect to participants who have attained normal retirement age under the plan. The proposed rule would not permit the cessation or reduction of employer contributions to a defined contribution plan on the basis of the age of the participant, regardless of whether or not the participant has attained normal retirement age. (Target benefit plans are not considered defined contribution plans for purposes of this paragraph)

*Section 1625.21(b)(2).* Subsection 860.120(f)(1)(iv)(B)(2) of the Interpretative Bulletin required the allocation of investment gains and losses and termination forfeitures in defined contribution plans to the individual account in a nondiscriminatory manner. It is proposed that this requirement be maintained.

*Section 1625.21(b)(3).* Subsections 860.120(f)(1)(iv)(B) (5) and (7) of the Interpretative Bulletin permitted a defined benefit plan to cease the accrual of benefits and to disregard salary increases and benefit improvements for an employee who continues to work after the plan's normal retirement age. The proposed rule reverses the approach of those subsections and provides that a defined benefit plan or target benefit plan shall provide for such accruals and that such plans shall not require or permit the cessation of benefit accruals or the reduction in the rate of benefit accruals on account of the age of the participant, except to the extent permitted as the result of age-related cost considerations. Further, the proposed rule would require a defined benefit plan or target benefit plan to credit years of service up to the maximum specified in the plan (unless such maximum operates as a subterfuge to evade the purposes of the Act), salary increases, and benefit improvements which occur after a participant attains normal retirement age. The proposed rule does not require actuarial adjustment of such benefits.

In light of the "equal cost" concept (employers must expend equal costs on younger and older workers but need not always provide equal benefits to older workers), the Commission welcomes specific comments on how best to define "equal cost."

*Section 1625.21(b)(4).* Wherever it has been possible to harmonize these regulations with or to avoid direct conflict with the specific provisions of ERISA, the Commission has sought to do so. Accordingly, this subsection makes clear that a pension plan will not be required to exceed the limits provided in Internal Revenue Code section 415 when complying with the section 1625.21 rules.

The Commission has decided tentatively to issue substantive rules to replace the DOL interpretative rules. The Commission welcomes specific comments on the issue of whether the section 1625.21 rules should be substantive or interpretative.

**List of Subjects in 29 CFR Part 1625**

Advertising, Aged, Employee benefit plans, Equal employment opportunity, Retirement.

**Substantive Rules**

**PART 1625—[AMENDED]**

Therefore, it is proposed that 29 CFR Part 1625 is amended as follows:

1. The authority citation for Part 1625 continues to read as follows:

**Authority:** 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68, and sec. 2; Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. Section 1625.21 is added to Subpart B to read as follows:

**§ 1625.21 Benefits under retirement and pension plans—Application of section 4(f)(2) of the Act.**

(a) *Effective date.* [Reserved]

(b) *Benefits.* (1) A defined contribution plan shall not permit the cessation or reduction of employer contributions on the basis of the age of a participant, whether or not the participant has attained the plan's normal retirement age. For purposes of this subsection, a target benefit plan shall not be treated as a defined contribution plan.

(2) In defined contribution plans and target benefit plans in which investment gains and losses and (where appropriate) forfeitures are allocated to individual accounts, such allocations shall be made no less favorably on the basis of age to older employees, including those who continue to work past normal retirement age, than to younger employees.

(3) A defined benefit plan or target benefit plan shall not cease the accrual of benefits based on the age of a participant, whether or not the participant has attained the plan's normal retirement age. With respect to all employees, the plan must credit:

(i) Years of service (up to the maximum number of years specified in the plan);

(ii) Benefit improvements under the plan; and

(iii) Salary increases.

(4) Nothing contained in this section shall compel the payment or accrual of benefits or the making of contributions in excess of the limitations provided in Internal Revenue Code section 415.

Dated: March 27, 1987.

**Clarence Thomas,**

*Chairman, Equal Employment Opportunity Commission.*

[FR Doc. 87–7210 Filed 4–1–87; 8:45 am]

BILLING CODE 6370–06–M

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**[Docket No. H–044]**

**Health and Safety Standards; Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Advance Notice of Proposed Rulemaking (ANPR).

**SUMMARY:** This notice announces the initiation of action by OSHA with respect to reducing occupational exposure to 2-Methoxyethanol, 2-Ethoxyethanol, 2-Methoxyethanol Acetate and 2-Ethoxyethanol Acetate (2-ME, 2-EE, 2-MEA, and 2-EEA, respectively) under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)). This regulatory action follows: (a) OSHA's review of scientific studies indicating that 2-ME, 2-EE and their acetates cause adverse reproductive, developmental and hematologic effects in several animal species, and (b) OSHA's acceptance of the Environmental Protection Agency's (EPA's) referral (50 FR 41393) of these chemicals under the authority of section 9(a) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2608).

This notice summarizes information currently available to OSHA concerning production and use of 2-ME, 2-EE and their acetates, health effects, estimates of employee exposure and risk assessments. This notice invites interested parties to submit comments, recommendations, data, and information on several important issues. Based on the information expected to be gathered as a result of this notice, OSHA will decide upon the appropriate action.

**DATE:** Comments in response to this Advance Notice should be submitted by July 31, 1987.

**ADDRESS:** Comments should be submitted in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H–044, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Office of Information, Room N–3649, Washington, DC 20210. Telephone (202) 523–8151.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*1. Chemical Identification and Properties*

The chemicals, 2-Methoxyethanol (2-ME), 2-Methoxyethanol acetate (2-MEA), 2-Ethoxyethanol (2-EE), and 2-Ethoxyethanol acetate (2-EEA) are members of a class of chemicals known as ethylene glycol ethers which are, in turn, members of a broader class of chemicals known as glycol ethers. In this document the term ethylene glycol ethers will refer to 2-ME, 2-MEA, 2-EE and 2-EEA. The term glycol ethers will refer to these as well as other glycol ethers. The respective Chemical Abstracts Service (CAS) Registry numbers for the subject ethylene glycol ethers are 109–86–4, 110–49–6, 110–80–5, and 111–15–9. All four compounds are completely miscible with water and many organic solvents. At room temperature and atmospheric pressure, these compounds are colorless liquids that are highly reactive in the presence of strong oxidizers: 2-MEA and 2-EEA are also highly reactive in the presence of nitrates and strong acids. Decomposition products during combustion or fire include toxic gases and vapors such as carbon monoxide.

2-ME, chemical formula $CH_3OCH_2CH_2OH$, has a molecular weight of 76.1, a boiling point at 760mm Hg of 124 °C, a vapor pressure at 20 °C of 6mm Hg, a flash point of 42 °C and possesses a mild non-residual odor with odor threshold warning properties around 60 ppm. 2-MEA, chemical formula $CH_3COOCH_2OCH_3$, has a molecular weight of 118, a boiling point of 145 °C, a vapor pressure of 2mm Hg, a flash point of 44 °C and possesses a mild ether-like odor with an odor threshold at approximately 50 ppm. 2-EE, chemical formula $C_2H_5OCH_2CH_2OH$, has a molecular weight of 90.1, a boiling point of 135 °C, a vapor pressure of 4mm Hg, a flash point of 49 °C and possesses a sweetish odor that is slight at low concentrations and strong at high concentrations. 2-EEA has a chemical formula $C_2H_5OCH_2CH_2OCOCH_3$, a molecular weight of 132, a boiling point of 156 °C, a vapor pressure of 2mm Hg, a flash point of 47 °C and possesses a mild non-residual odor with odor threshold warning properties at approximately 100 ppm.

*2. Production and Use*

Ethylene glycol ethers are produced by the reaction of ethylene oxide and an alcohol. The type of ethylene glycol ether is determined by the type of alcohol employed. Methyl alcohol produces ethylene glycol monomethyl

ether (2-ME) and ethyl alcohol produces ethylene glycol monoethyl ether (2-EE). The corresponding acetates, 2-MEA and 2-EEA, are produced by reacting 2-ME and 2-EE with acetic acid.

Over 420 million pounds of the four substances were produced in the U.S. in 1981, with domestic consumption accounting for approximately 80%. Approximate 1981 consumption in the United States for each substance was: 90 million pounds of 2-ME, 170 million pounds of 2-EE, three million pounds of 2-MEA, and 100 million pounds of 2-EEA.

Domestic consumption of these chemicals falls into five major categories: chemical intermediates, industrial coatings, industrial solvents, solvents and coatings used in trade industries, and jet fuel additives: The major chemical intermediate use is in the production of the glycol ether acetates, 2-MEA and 2-EEA. Another chemical intermediate application is in the production of plasticizers. Industrial coating use includes finishes for cars, trucks, heavy equipment, appliances, metal furniture, steel sheet and metal cans. Electric circuit board manufacture, semiconductor manufacture, photographic applications, textile dyeing and various industrial cleaning solvents are among the many industrial solvent application. The major trade industry uses are in commercial printing as solvents and as components of inks, and in auto refinishing and maintenance painting. Glycol ethers are used in jet fuels to prevent freezing. Military uses dominate this category. However, small private planes represent a small portion of the total use.

*3. History of the Standard*

OSHA's current Permissible Exposure Limits (PELs) for 2-ME, 2-MEA, 2-EE and 2-EEA are 25 ppm, 25 ppm, 200 ppm, and 100 ppm, respectively. All are time weighted averages (TWAs) for an 8-hour workshift (29 CFR 1910.1000 Table Z–1). In the Z–1 Table, 2-ME, 2-MEA, 2-EE and 2-EEA are listed under the names Methyl Cellosolve, Methyl Cellosolve Acetate, 2-Ethoxyethanol and 2-Ethoxyethyl Acetate, respectively. The OSHA standards bear a skin notation, indicating the potential contribution to the overall exposure by the cutaneous route, including mucous membranes and eye, either by airborne or more particularly, by direct contact with the substance.

The current standards were adopted in 1971 pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The source of these standards was the American Conference of Governmental Hygienists (ACGIH) and they are based primarily on blood, kidney, liver and central nervous system toxicity.

Private firms, under section 8(e) of TSCA, submitted the results of animal studies to EPA indicating that inhalation and dermal exposure to low levels of 2-ME and 2-EE may pose a serious risk of fetotoxic affects and a risk of adverse reproductive effects in males. As a result of the testicular effects observed in animal studies, the ACGIH, in its notice of Intended Changes (for 1982), proposed TWAs of 5 ppm for 2-ME, 2-EE and their acetates which were subsequently adopted in 1984. Likewise, NIOSH published, on May 2, 1983, a Current Intelligence Bulletin recommending that 2-ME and 2-EE be regarded in the workplace as having the potential to cause adverse reproductive effects in male and female Workers (Ex. 5–001).

On January 24, 1984, EPA published an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 2921) in which it determined that adverse reproductive and developmental effects are associated with these glycol ethers at concentrations to which humans may be exposed. As a result of information received in response to the ANPR and other information developed by EPA, EPA determined that the risks associated with exposure to 2-ME, 2-EE and their acetates may be reduced to a sufficient extent by action taken under the OSH Act. Following these findings, EPA, in accordance with section 9(a) of TSCA, on May 20, 1986, referred 2-ME, 2-EE, and their acetates to OSHA to give this Agency an opportunity to regulate the chemicals under the OSH Act (51 FR 18488). EPA requested OSHA to determine whether the risks described in the EPA report may be prevented or reduced to a sufficient extent by action taken under the OSH Act. If such a determination was made, then OSHA was requested to issue an order declaring whether the manufacture and use described in the EPA report present the risk therein described. EPA requested OSHA to respond within 180 days.

On December 11, 1986, OSHA published a notice (51 FR 42257) responding to the EPA referral report by making a preliminary determination that a revised OSHA standard limiting occupational exposure to 2-ME, 2-EE and their acetates could prevent or reduce the risks due to exposure to a sufficient extent and that such a risk had been accurately described by EPA in the report.

With this notice, OSHA is initiating action within the meaning of section 9(a) of TSCA.

## II. Health Effects

The effects of exposure to the ethylene glycol ethers on the reproductive system and on fetal development have been studied in several animal species. The results uniformly show developmental toxicity, including increases in the incidences of fetal malformations and resorptions, and testicular damage. Studies have also shown adverse hematologic effects and adverse behavioral effects in offspring. Data are limited on mutagenicity and potential carcinogenicity. A summary of OSHA's preliminary review of the experimental studies is presented below.

*A. Absorption and Metabolism*

Ethylene glycol ethers are readily absorbed following oral, dermal or inhalation exposure. Measurements made on excised human skin show an extremely rapid absorption of 2–ME, 2–EE and 2–EEA (Ex. 4–115). After 2–ME and 2–EE are taken into the body, they are metabolized to methoxyacetic acid and ethoxyacetic acid, respectively, by alcohol and acetaldehyde dehydrogenases. The acetate esters, 2-MEA and 2-EEA, are also metabolized to the same alkoacetic acids as their parent compounds. Current evidence suggests that the acid metabolites of these glycol ethers may be the actual toxicants (Exs. 4–102, 4–133, and 4–192).

*B. Reproductive and Developmental Effects*

Studies of inhalation exposures to 2–ME and 2–EE have shown that these exposures produce adverse reproductive and developmental effects in several animal species. A reproductive effect refers to alterations in the reproductive or sexual functioning of the adult from sexual maturation through adulthood (e.g., impotence or infertility). Developmental effects refer to adverse effects on the developing organism that may result from toxic exposures to either parent prior to conception, during prenatal development, or postnatally to the time of sexual maturation (e.g., death, structural abnormality, or functional deficiency of the developing organism). The effects observed from exposure to 2–ME and 2–EE include testicular damage, reduced fertility, maternal toxicity and developmental abnormalities of the fetus.

Available data show that 2-ME is developmentally toxic in rabbits and rats exposed by inhalation (Ex. 4–042a). Fetotoxic effects (embryo/fetal death or resorptions) were observed after exposures of 10 ppm in rabbits and 50 ppm in rats. The No Observed Effect

Levels (NOELs) were 3 ppm and 10 ppm, respectively. Other fetal effects such as skeletal and soft tissue abnormalities occurred at higher doses of 50 ppm and above in rats and rabbits. In addition, fetotoxic effects were observed in mice after inhalation exposure to 2-ME at 50 ppm (Ex. 4–106). The NOEL was 10 ppm. In a one-dose behavioral study, neurochemical imbalances and behavioral changes in rat offspring were observed after maternal *or* paternal exposures of 25 ppm 2–ME (Ex. 4–136).

Testicular damage was observed in rats and rabbits after inhalation exposures to 2–ME (Ex. 4–045). At 100 ppm, degenerative changes occurred in the germinal epithelium of rabbit testicles. The NOEL was 30 ppm. In the rat, decreased testicular weight and testicular epithelial degeneration were observed at 300 ppm, and the NOEL was 100 ppm. Testicular damage was also observed in a study in rabbits exposed orally to 100 mg/kg/day (Ex. 4–110). In particular in this study, a one-time exposure of 250 mg/kg resulted in testicular damage. These results are verified by the findings of a cross-sectional study of men engaged in the production of 2–ME, where workers with the highest potential exposures exhibited decreases in testicular size, when compared to unexposed controls (Ex. 5–002).

2–EE has been shown to be developmentally toxic in laboratory animals after inhalation exposure. In rabbits (Ex. 4–039), fetal skeletal abnormalities were observed at 175 ppm. In rats (Ex. 4–038) exposed at 250 ppm, the fetal effects included decreased mean live weight, increased resorptions and increased external and skeletal effects. The NOEL in both species was 50 ppm. In addition, 2–EE has also been shown to be developmentally toxic after dermal exposure in the rat (Ex. 4–121): doses totaling 1 ml/day caused resorptions and visceral and skeletal abnormalities. In behavioral testing of offspring, separate maternal and paternal exposures to 2–EE both resulted in neurotoxic effects, including impaired neuromuscular ability and neurochemical imbalances in the brain (Ex. 4–138).

Testicular damage was observed in rabbits after inhalation of 2–EE (Ex. 4–108) at exposures of 400 ppm; decreases in testicular weight and degeneration of seminiferous tubules were observed. The NOEL was 100 ppm. Rats similarly exposed did not exhibit any adverse reproductive effects (Ex. 4–109). Thus, in rats in this study, the NOEL was measured at 400 ppm. A recent human study has ovaluated the semen quality of men exposed to 2–EF during the preparation of ceramic shells in metal casting (Ex. 5–003). Workers exposed by inhalation to 2–EE at airborne levels ranging from non detectable to 33.8 ppm exhibited a decrease in average sperm count compared to the counts of in-plant controls.

2–MEA and 2–EEA are expected to show developmental and reproductive toxicity similar to their parent compounds 2–ME and 2–EE. This is based on the fact that each glycol ether and its acetate are metabolized to the same acid metabolite (methoxyacetic acid and ethoxyacetic acid, respectively) and the fact that the metabolite is believed to be toxic. For example, data suggest that 2–ME, through its metabolite methoxyacetic acid, has an adverse effect on the testis (Ex. 4–133). Intraperitoneal injections of methoxyacetic acid have induced developmental toxicity, lending support to the idea that methoxyacetic acid is the active agent (Ex. 4–102). Because 2–EE is metabolized in a manner similar to which 2–ME is metabolized. 2–EE's metabolite, ethoxyacetic acid, is also believed to be a toxic agent.

*C. Hematologic Effects*

Data from laboratory animals have demonstrated that exposure to 2–ME may result in a variety of hematologic effects including hemolysis, bone marrow depression, and immunosuppression. (Exs. 4–017, 4–042a and 4–077). The effects observed have resulted from exposures similar to those producing reproductive or developmental effects. Limited data from mouse studies suggest that 2–EE, 2–EEA and 2–MEA may also produce adverse effects on the peripheral blood. (Ex. 4–135).

Adverse hematologic effects including anemia, lowered white blood cell counts and bone marrow depression have also been observed in humans exposed to 2–ME, and possibly 2–EE. After dermal exposure to an undetermined quantity of 2–ME, workers in an electroplating facility exhibired bone marrow injury and pancytopenia as well as encephalopathy (Ex. 4–139). Air concentrations during the use of 2–ME averaged 8 ppm. 2–ME had been substituted temporarily for acetone due to a shortage. Clinical recovery followed cessation of exposure to 2–ME. One death from aplastic anemia, three cases of bone marrow injury, and four cases with non-specific bone marrow changes were observed in lithographers exposed dermally and by inhalation to multiple solvents including 2–EE and dipropylene glycol monomethyl ether (DPME) (Ex. 5–004). However, this study is difficult to interpret because the exposure situations. 2–EE concentrations and concentrations of other chemicals were not well characterized. Exposure measurements were made for DPME only, as the authors considered this the most likely etiologic agent. Thus it is uncertain whether 2–EE could be implicated.

**III. Risk Assessment**

The EPA has prepared a risk assessment (Ex. 4–004) for 2-ME, 2-MEA, 2-EE and 2-EEA. This assessment estimated human risk on the basis of the most sensitive end point(s) observed in the animal studies. To estimate this risk, EPA calculated the margins of safety. The margin of safety is defined as the No Observed Effect Level (NOEL), in the most sensitive species studied, divided by the estimated human exposure level.

The NOELs for testicular toxicity utilized by the EPA in calculating margins of safety were 30 ppm for 2-ME and 100 ppm for 2-EE. For developmental toxicity, the NOELs were 3 ppm for 2-ME and 50 ppm for 2-EE. Because the acetates are thought to rapidly hydrolyze to acetate and glycol ether in the body, the effects of 2-MEA and 2-EEA were assumed to be the same as those of 2-ME and 2-EE, respectively. Therefore, the NOEL for each acetate was assumed to be the same as that for the respective glycol ether.

Exposure data for various segments of industry where glycol ethers are produced or used were obtained and used to calculate margins of safety for worker exposures in each segment. An exposure level with a 100-fold margin of safety is considered unlikely to produce adverse effects in humans. However, for many uses of these glycol ethers, the occupational exposure levels were so high that only a small or non-existent margin of safety would be provided to workers. The EPA estimated that between 206,000 and 350,000 workers are exposed to these four glycol ethers at air concentrations that provide less than a 100-fold margin of safety, while approximately 46,000 workers are exposed with less than a 10-fold margin of safety. The EPA risk assessment (Ex. 4–004) considered only inhalation exposures; a risk assessment that accounted for absorption through the skin of exposed workers could considerably increase the assessed risks of exposure and the population at risk.

From the testicular effects observed in experimental studies, it was possible to further estimate the risks of human exposure. EPA estimated that a six to seven percent reduction in fertility could

occur among males exposed to 2-ME at levels between 1 and 5 ppm. Furthermore, EPA observed that, because hematologic effects have been found at exposure levels producing developmental effects, controlling the risks of developmental toxicity will also reduce the risks of hematologic effects.

In its risk assessment, EPA has relied primarily on a qualitative method, the use of a margin of safety approach, to estimate the risk of reproductive hazards. Although the use of margins of safety is a generally accepted methodology, OSHA has often relied on a more quantitative approach to risk assessment in order to establish significant risks. To date, only a few attempts have been made to develop methodology to quantitatively assess the risks associated with reproductive and developmental hazards. Therefore, OSHA is currently searching for methods to quantify these risks and the Agency welcomes any information with respect to this issue.

## IV. Occupational Control Measures

Currently, the primary source of occupational exposure data is the Pedco Environmental, Inc. (PEI) report prepared for EPA (Ex. 4–007). PEI based estimates of occupational exposure on data from OSHA and NIOSH. The exposure data show that in most large industries (manufacturing, formulation and industrial solvent uses), the majority of exposures are below 0.03 ppm for 2-ME and below 1 ppm for 2-EE. However, the trade industries involved in the application of surface coatings and inks are characterized by higher exposures (exposures above 3 ppm for 2-ME and above 10 ppm for 3-EE).

The exposure data collected by PEI were obtained from published reports, unpublished data maintained by OSHA and NIOSH, and several industry trade groups. Most of these data represent exposures occurring in the late 1970's and early 1980's. In addition, these data sources contained little information on current industry practices with regard to the use of engineering and work practice controls and personal protective equipment. OSHA is currently gathering additional data to broaden and update its data base on airborne exposure levels and current industry practices.

The exposure data in the PEI report are based solely on inhalation exposure to glycol ethers. Dermal absorption can be a major contributor to the total exposure. OSHA is currently gathering additional exposure information, including data on the contribution of dermal exposure, which will permit the Agency to develop a more accurate profile of the current exposure situation.

OSHA's preliminary evaluation of available information indicates that exposures can be controlled by instituting engineering controls, improving work practices or requiring employees to use personal protective equipment wherever engineering controls fail to reduce the exposure to the desired level. The use of engineering controls, such as enclosing the operation and using local exhaust ventilation, would contribute to the reduction of exposure levels in the workplace. Using personal protective equipment such as goggles, gloves, aprons and respirators (where necessary) and substituting for the chemical (if feasible) could also further decrease worker exposure.

## V. Technological Feasibility and Economic Analysis

Industrial Economics, Incorporated (IEc) prepared a draft regulatory impact analysis for EPA (Ex. 4–008) that has assessed the cost of installing engineering equipment to control glycol ether exposures. They estimate that if all workplaces, industrial and trade, installed engineering controls and used personal protective equipment, the capital costs to attain a 0.1 or 0.5 ppm exposure level, would be $86.6 million and $42.8 million, respectively, and the operating costs would be about $1.25 billion for either exposure level. EPA suggests that many firms, due to high costs, will opt for substitution. Therefore, assuming a move by firms to substitutions, EPA estimated that the annualized cost of revising the current PELs for all workers would be $83 million.

OSHA's preliminary evaluation of the available information suggests that it would be technologically and economically feasible to implement engineering controls and other protective measures which may be necessary in order to reduce the current PEL. OSHA intends to develop a more detailed regulatory assessment on the feasibility of reducing the PELs.

## VI. Scope of Regulation

In the past OSHA has typically regulated chemicals under the 6(b) rulemaking process by developing health standards for one substance at a time. However EPA, under section 9(a) of TSCA, has referred, as a group, four ethylene glycol ethers to OSHA. These four substances have been treated as a group by EPA, NIOSH and the ACGIH because of their industrial, significance (volume of production and length of use), their similar chemical properties and uses, and because of the available toxicity data for 2–ME and 2–EE. Thus, in its response to EPA's referral and in this notice, OSHA is considering these four ethylene glycol ethers for a single rulemaking.

However OSHA is considering whether it may be best to treat 2–E. 2–EE and their acetates as a group or to treat each substance separately. There are data which suggest that different PELs would be appropriate. For example toxicity data have established that 2–ME is a more potent reproductive toxin than 2–EE. Thus there is a potential tisk differential between 2–ME and 2–EE and similar differences between their respective acetates.

OSHA is also considering the possibility of expanding the scope of its rulemaking to cover other glycol ethers. The glycol ethers family, of which the ethylene glycol ethers 2–ME. 2–EE and their acetates are a subset, contains hundreds of compounds, many of which have not been tested. It is reasonable to assume that, based on structural similarities and similar metabolic pathways, that the adverse effect of at least some of these compounds may be similar to those already tested. Some preliminary studies being conducted by NIOSH suggest that exposure to some higher order glycol ethers may present reproductive risks similar to those for ethylene glycol ethers. The industrial and trade users who employ substitutes for 2–ME, 2–EE and their acetates to reduce employee risk from exposure to ethylene glycol ethers, may choose other glycol ethers which are potentially as toxic as these four. Therefore, it may be appropriate to include other glycol ethers within the scope of a possible standard.

Adopting a more generic approach to regulating glycol ethers might also lead to more efficient rulemaking. In the past regulating chemicals on a substance by substance basis has involved major commitments of the Agency's time to one substance. Including more than one substance in a single rulemaking, where those substances show many similarities in their chemical properties and uses, would enable OSHA to make a more efficient use of its resources, saving both time and effort which could be utilized on standards for other toxic substances.

OSHA solicits information and comments with respect to this issue. Specifically, is a generic approach feasible or appropriate for glycol ethers, or should OSHA continue to regulate substance by substance? Also if a generic approach is feasible how might such an approach be implemented, given the fact that the observed adverse effects for different substances may occur at different exposure levels?

**References Cited**

4–004 USEPA, OPTS, ECAD. *Risk Assessment of Glycol Ethers 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates.* Draft Report. (December 12, 1984):60pp

4–007 USEPA, OPTS, ETD. *Control of Occupational Exposure to Two Glycol Ethers and Their Acetates.* (April 25, 1984):142pp. prepared under Contract #68–02–3935 by PEDCo.

4–008 USEPA, OPTS, ETD. *Draft Regulatory Impact Analysis of Proposed Regulation of Glycol Ethers.* (June 1985):229pp. Prepared by Industrial Economics, Inc.

4–038 Tinston, DJ et al. *Ethylene Glycol Monoethyl Ether (EE): Teratogenicity Study in Rats.* (April 14, 1983):54pp. prepared under Contract to ICI, Center Toxicology Lab Report. #CTL/P/761.

4–039 Tinston, DJ et al. *Ethylene Glycol Monoethyl Ether (EE): Inhalation Teratogenicity Study in Rabbits.* (April 21, 1983):54PP. Prepared under Contract to ICI, Center Toxicology Lab Report. #CTL/P/776

4–042a Hanley, TR et al. *Ethylene Glycol Monomethyl Ether: Inhalation Teratology Study in Rats and Rabbits. (September 20, 1982.):*91pp. Prepared under contract # G–2–0–Ter–Ihl–Dow. Dow Chemical.

4–045 Miller, RR et al. Ethylene Glycol Monomethyl Ether: 13 Week Vapor Inhalation Study in Rats and Rabbits. (January 19, 1982) Follow-up. 8(e) Submission to EPA by Dow Chemical Co.

4–077 USEPA, OPTS, HERD. Memo from JJ Murphy to H Teitelbaum. Subject: Review of Hematologic Effects of 2-Methoxyethanol (12/28/84):9pp

4–102 Brown, NA et al."Teratogenicity of Methoxyacetic Acid in the Rat." *Toxicology Letters* 22. (1984):93–100.

4–106 Hanley, TR et al. *Ethylene Glycol Monomethyl Ether: Inhalation Teratology Probe Study in Mice.* (April 22, 1982):18pp. Toxicology Res Lab, Dow Chemical, Midland, MI.

4–107 Hanley, TR et al. *Ethylene Glycol Monomethyl Ether: Inhalation Teratology Probe Study in Rats and Rabbits.* (January 29, 1982):33pp. Toxicology Res. Lab, Dow Chemical, Midland, MI.

4–108 Terrill, JB. Biodynamics Inc. *13-Week Inhalation Toxicity Study of Ethylene Glycol Monoethyl Ether in the Rabbit.* Project No. 82.7589. (10/24/83):116pp.

4–109 Ackerman, LJ. Biodynamics Inc. 13-Week Inhalation Toxicity Study of Ethylene Glycol Monoethlyl Ether in the Rat. Final Report Vol 1. Project No. 82–7588. (October 21, 1983):122pp.

4–110 Creasy, DM and PMD Foster."Morphological Development of Glycol Ether-Induced Testicular Atrophy in the Rat." *Experimental & Molecular Pathology* 40(1984):169.176.

4–115 Dugard, PH et al."Absorption of Some Glycol Ethers Through Human Skin in Virto." *Environmental Health Perspectives* 57 (1984):193–197.

4–121 Hardin, BD et al."Teratogenicity of 2-Ethoxyethanol by Dermal Application." *Drug and Chemical Toxicology* 5:3 (1982):277 294.

4–133 Miller, RR et al."Toxicity of Methoxyacetic Acid in Rats." *Fund and Appl Toxicol* 2(1982):158 160.

4–135 Nagano, K et al."Mouse Testicular Atrophy Induced by Ethylene Glycol Monoalkyl Ethers. *Jap. J. Ind. Health 20:1* (1979):29–35.

4–136 Nelson, BK et al."Behavioral and Neurochemical Alterations in the Offspring of Inhalations Exposure to the Industrial Solvent 2-Methoxethanol." *Pharmacol Biochem and Behav* 20 (1984):269–279.

4–138 Nelson, BK."Ethoxyethanol Behavioral Teratology in Rats." *Neurotoxicology* 2:2(1981):231 247.

4–139 Ohi, G and DH Wegman."Transcutaneous Ethylene Glycol Monomethyl Ether Poisoning in the Work Setting." *J Occup Med* 20:10 (October 1978):675–676.

4–192 Yonemoto, J. et al."Effects of Dimethoxyethyl Phthalate, Monomethoxy-Ethyl Phthalate, 2-Methoxyethanol and Methoxyacetic Acid on Post Implantation Rat Embryos in Culture." *Toxicology Letters* 21(1984):97–102.

5–001 NIOSH. Current Intelligence Bulletin 39. Glycol Ethers; 2-Methoxyethanol and 2-Ethoxyethanol. (May 2, 1983).

5–002 Cook, R.R. et al. "A Cross-Sectional Study of Ethylene Glycol Monomethyl Ether Process Employees." *Arch. Envr. Health* (1982) 37(6):346–51.

5–003 NIOSH. Ratcliffe, J. et al. Health hazard evaluation determination Report no. 84–415–1688, Precision Castparts Corporation, Portland, Oregon (1986). Cincinnati: U.S. Dept. of Health and Human Services.

5–004 Cullen, Mark R. et al."Bone Marrow Injury in Lithographers Exposed to Glycol Ethers and Organic Solvents Used in Multicolor Offset and Ultraviolet Curing Printing Processes." *Arch. Envr. Health* (1983) 38(6):347–54.

5–005 OSHA Analytical Laboratory, Organic Methods Evaluation Branch, Salt Lake City Utah. Analytical Methods for Monitoring 2-Methoxyethanol, 2-Methoxyethyl Acetate, 2-Ethoxyethanol, and 2-Ethoxyethyl Acetate.

## Request for Comments

OSHA solicits information and comments relevant to the effects and controls of exposure to 2–ME, 2–EE and their acetates. OSHA is also considering whether to broaden the scope of the rulemaking to include glycol ethers other than those referred by EPA. Thus, OSHA is also interested in information on other glycol ethers. Interested parties are invited to express opinions as to what provisions, including those which set the permissible exposure limit(s), should be included in a revised standard for these ethylene glycol ethers. OSHA is specifically interested in methods, costs, and effectiveness of control strategies that have already been employed to reduce exposure to 2–ME, 2–EE, and 2–MEA and 2–EEA. The questions below will provide specific guidance on OSHA's request for information. Please provide the rationale that supports your submissions.

Information on glycol ethers that has already been submitted to EPA (Docket No. OPTS–62030) is part of the OSHA record (Docket No. H–044) and need not be resubmitted. Comments and data previously submitted to OSHA remain part of this record and likewise need not be resubmitted.

Comments should be sent in quadruplicate to the Docket Officer, at the address noted above, where they will be available for inspection and copying. The data received will be carefully reviewed by OSHA to determine appropriate action.

A. *Health Effects.*

(1) What studies should OSHA consider to assess potential health risks, especially the reproductive and developmental effects, of 2–ME, 2–EE, 2–MEA, and 2–EEA?

(a) What available data, such as medical records or unpublished studies not now in the record, should be included in OSHA's decision making?

(b) In light of the reproductive, developmental, and hematotoxic effects shown by the animal studies, what human data show such effects?

(c) What recent animal toxicity data for glycol ethers other than 2–ME, 2–EE and their acetates exist?

(2) What dermal absorption studies are available and what is the extent of potential adverse health effects resulting from such dermal exposure?

(3) What studies and other evidence are available indicating the combined effects of inhalation and dermal exposures?

(4) How should OSHA estimate the significance of risk at the current exposure levels for the 4 subject glycol ethers?

Specifically:

(a) What mathematical models are most appropriate to quantify the risk of reproductive and developmental effects or other adverse health effects from exposure to glycol ethers?

(b) What approaches, other than quantitative risk assessment, are available for assessing reproductive or developmental risks?

(c) Is EPA's use of margins of safety an appropriate method? Why? What are its advantages and/or disadvantages?

(d) Which studies should be used for a quantitative risk assessment for glycol ethers?

(e) Which health effects in which animal species, by which route(s) of administration and at which dose level(s), should be selected for use?

(f) How should dose levels in experimental animal studies be converted to equivalent doses for occupationally exposed persons? How should the dose levels be expressed?

(g) What exposure duration other than working lifetime, i.e., gestation period, first trimester, etc., should be incorporated into a risk assessment model?

(h) Should corrections be made for species to species extrapolation and for combined routes of exposure (i.e., dermal and inhalation)? How should these extrapolations be done?

(i) Are there data available to indicate a "dose response" effect for glycol ether exposure?

(j) What is the relationship between frequency and duration of exposure to glycol ethers and risk of reproductive developmental effects?

(k) What quantitative methods are available for estimating risks other than reproductive or developmental risks that are associated with glycol ether exposures (e.g., hematological effects, neurological effects)?

(l) What methods are available to measure the health risks from dermal contact with the glycol ethers?

B. *Permissible exposure limits.*

2–ME and 2–MEA have been found to be more toxic than 2–EE and 2–EEA. Therefore, it may be necessary to set four permissible exposure limits within one standard. The development of four separate standards may not be as efficient as one standard for the group because of the similarities in the adverse effects observed, because it may be necessary to consider their combined effects, and because exposure data indicate that in many workplaces more than one of them are in use simultaneously.

(1) Should OSHA set 4 separate PELs within one standard or set one PEL for all 4 substances?

(2) Would compliance with limits for these four chemicals be facilitated by the promulgation of a single limit for all four chemicals, based on the hazards associated with the most toxic chemical (i.e., 2–ME)?

(3) Should the glycol ethers 2–ME, 2–MEA, 2–EE, and 2–EEA be treated separately or as a group in terms of rulemaking?

(4) Should OSHA take a generic approach to the regulation of the family of glycol ethers and include other gylcol ethers in the scope of its rulemaking?

(5) Should a revised standard for 2–ME, 2–EE and their acetates include an 8-hour time weighted average, a short term exposure limit (STEL), a ceiling level, and an action level or some combination of these limits?

(6) What permissible exposure limits should be proposed and what health evidence is available to support these limits?

(7) What are the limits of detection and accuracy of the available methods of monitoring for each of the four glycol ethers under consideration?

(8) What data support the technological feasibility of achieving the permissible limits under consideration for the various job categories?

C. *Production and Control Systems.*

(1) What current production processes and their associated engineering controls are utilized.

(2) What data are there indicating the efficiency of the currently employed control techniques?

(3) Is there any industrial process or trade use for which engineering controls are not adequate to control workers' exposure to levels at or below the current limits?

(4) What are the potential modifications in process or production technologies that are available or can be implemented for reducing workers exposures?

(5) What level of exposure reduction can be expected from emplóying specific process modifications or installing specific engineering controls?

D. *Substitution Availability.*

(1) What substitutes are there for 2–ME, 2–EE and their acetates and what are their limitations?

(2) For any available substitute are there studies available documenting potential adverse health effects?

(3) Are there unique situations, industrial operations or trade uses where substitutes have been determined to be either unavailable or infeasible to use for controlling worker exposures?

(4) Where are there industrial uses where substitutes can replace only a part of 2–ME, 2–EE, 2–MEA or 2–EEA in a mixture?

(5) What is the extent and the impact of such partial substitution?

(6) How efficient are substitutes as compared to 2–ME, 2–EE and their acetates in specific industrial uses?

(7) What non-chemical substitutes are there for uses that now employ glycol ethers?

(8) What costs are involved in reformulating products or redesigning processes so that substitutes can be used.

(9) Are there improvements in productivity or other economic advantages to be gained from substituting other chemicals for glycol ethers?

E. *Protective Equipment and Respirators.*

(1) What types of respirators are currently being supplied by employers for protection against glycol ethers? In what processes?

(2) What are the costs associated with the use of respiratory protection? In particular, if chemical cartridges are being used, how often are they replaced?

(3) What data are available for the glycol ethers on breakthrough times of organic vapor-cartridges?

(4) What other types of protective equipment, such as gloves and aprons, are currently being supplied by employers?

(5) OSHA is aware that butyl rubber may provide the best 8-hour protection against dermal contact with 2–ME, 2–EE and their acetates and that nitrile rubber is effective in splash (short term) situations.

(a) Have any other materials been tested and been found to be equally protective?

(b) In what processes or job categories is it current practice to use protective gloves? aprons?

(c) How often must these gloves be replaced to ensure that there is no dermal contact with glycol ethers?

(d) Are there processes that have the potential for dermal contact where it is not desirable to wear protective gloves because their use will interfere with productivity or product quality?

(e) What are the costs of these gloves per employee per year?

(6) What is the durability or resistivity of this protective equipment?

(7) Under what conditions (e.g., exposure level, type of operation, duration of exposure) do employers presently provide protective equipment and respirators to their exposed employees?

F. *Exposure and Monitoring.*

(1) What proportion of the workforce in each of the following sectors is exposed to 2–ME, 2–EE and/or their acetates? At what levels?

(a) Chemical production and intermediates?

(b) Industrial coatings and formulation?

(c) Ink formulation?

(d) Electronics manufacture?

(e) Metal fabrication?

(f) Coatings application (e.g. for appliances, automobiles machinery and equipment)?

(g) Commercial printing?

(h) Maintenance painting?

(2) In what other industry sectors are workers exposed to glycol ethers? At what levels?

(3) What are the job categories in each of the affected sectors in which

BEST COPY AVAILABLE

workers are potentially exposed to glycol ethers? For each job category, please provide a brief description of the operation.

(4) What is the distribution, by age and sex, of the exposed populations in each of the affected sectors?

(5) How many workers are exposed or have the potential for exposure to glycol ethers in each job category?

(6) What are the frequency, duration and levels of exposures to glycol ethers for each job category? Please include the analytical method and type of samples used for determining exposure levels.

(7) What engineering controls and types of protective equipment are available or in use for each job category.

(8) What is the extent to which occupational exposure in formulation or trade uses is "mixed" i.e., involves exposure to more than one glycol ether or acetate, either concurrently or serially? Are employees involved in the following processes exposed to one or more chemicals in the glycol ethers family?

(a) Coatings application.
(b) Automobile refinishing.
(c) Maintenance painting.
(d) Print shops.
(e) Metal fabrication.
(f) Coatings application formulation.
(q) Ink formulation.

(9) OSHA s current method for monitoring glycol ethers and their acetates is based on the use of charcoal tubes and gas chromatographic analysis. The limits of detection for 2–ME, 2–MEA, 2–EE, and 2–EEA are 0.1, 0.01. 0.02. and 0.01 ppm, respectively. Recently, silica gel and passive dosimeters have been tested and found to be adequate for monitoring under some circumstances.

(a) What other methods are available to monitor for 2–ME, 2–EE and their acetates which have lower limits of detection than current analytical methods?

(b) What are the limitations that apply to the use of these methods? Please provide details on the accuracy and precision of the sampling method, the range and limits of detection, and the method of validation of sampling and analyses.

(c) What methods can be used to monitor short-term exposures to 2–ME, 2–EE and their acetates?

(d) Can passive dosimeters or charcoal tubes distinguish among the glycol ethers and their acetates in situation where there is mixed exposure?

(10) OSHA has evidence that suggests that exposure to glycol ethers may not be insignificant among airline and refinery employees.

(a) Under what circumstances might airline employees be exposed to glycol ether vapors.?

(b) What are the points of employee exposure in the blending of glycol ether de-icing additives into jet fuel?

(c) What are the job categories, number of employees, and frequency and duration of exposure among employees involved in the blending process?

G. *Worker Training.*

(1) Describe the training that workers currently receive for the purpose of reducing the risk associated with glycol ethers exposure (e.g. length of course, topics covered, frequency, and availability of audio visual aids, and written operating instructions).

(2) Is there any evidence documenting the effectiveness of the training being received by the employee (e.g. decreased absenteeism, decreased medical/insurance costs, a decrease in accident/illness rates/severity, an increase in productivity?

(3) What are the basic elements which should be considered in developing or revising the training given to workers exposed to glycol ethers in the various industry sectors?

(4) OSHA's Hazard Communication standard requires that manufacturers label their products to provide information on hazardous material contained in these products.

(a) At what volume percent do labels on products containing glycol ethers currently identify glycol ethers as an ingredient.

(b) What products are currently labeled as containing glycol ethers?

H. *Medical Surveillance.*

(1) What illnesses or conditions attributable to glycol ethers have been observed?

(2) What elements are appropriate for inclusion in medical and clinical examinations performed to identify overexposed workers and/or to indicate the status of workers health?

(3) Are semen analyses included in medical surveillance programs for male workers exposed to glycol ethers.

(4) Is it current practice for reproductive history to be given special emphasis in the medical surveillance of glycol ethers exposed employees?

(5) Do employers currently provide specific tests or procedures as part of medical surveillance for glycol ether exposed employees? What is the basis for selecting or choosing these tests or procedures? At what frequency are these tests performed?

(6) What are the exposure levels encountered by workers (including their job categories and/or job classifications) who are covered by medical surveillance programs?

(7) What evidence is available indicating risk reduction due to implementation of medical surveillance programs?

I. *Costs of Control Measures.*

(1) What are the costs of implementing engineering controls or modifications to production and process equipment (either currently in place or planned to be installed for reducing workers' exposures)? How much reduction in employee exposure can be achieved by each particular control measure? What are the service life and maintenance costs for this equipment?

(2) In what sectors is it current practice to remove pregnant workers from jobs involving exposure to glycol ethers?

(3) What is the cost of the personal protective equipment currently in use or projected for future use? Which employees or job descriptions would be required to wear what type of equipment? (Please indicate the type of protective equipment as well as process descriptions).

(4) What is the cost of the currently employed and/or projected medical surveillance program?

(5) What is the cost of the currently instituted and/or projected training program?

(6) What is the cost of the currently employed and/or projected personnel exposure monitoring and sampling analyses?

(7) What values can be determined for benefits of reduced glycol ether exposure, such as projected reductions in medical treatment, insurance premiums, and workers compensation payments, decreased absenteeism and employment turnover, and increased productivity?

J. *Environmental Effects.*

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) regulations (49 CFR part 1500, 43 FR 55978, November 29, 1978), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR Part 11); (45 FR 51187 *et seq.*, August 1, 1980) require that Federal agencies give appropriate consideration to environmental issues and impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that may occur outside of the workplace as a direct or indirect result of promulgation of a revised standard for occupational exposure to glycol ethers. Such

information should include any negative or positive environmental effects that could be expected to result from a revised regulation. Specifically, OSHA requests comments and information on the following:

(1) How might a revised regulation for glycol ether exposure affect the environment?

(2) What is the potential direct or indirect impact on water and air pollution, energy usage, solid waste disposal and land use.

(3) How would glycol ether substitutes (if available) alter the ambient air quality, water quality, solid waste disposal and land use?

K. *Impact on Small Business Entities.*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), agencies are required to assess the impact of proposed and final rules on small entities. In that regard, OSHA solicits the following information:

(1) How many and what kind of small businesses or other small entities would be affected by revising the standard for 2-ME, 2-EE and their acetates.

(2) Could difficulties be encountered by small business entities when attempting to comply with specific provisions of a glycol other regulation covering such areas as exposure monitoring, exposure limits, methods of compliance, medical surveillance, respirators, protective clothing, hygiene facilities, recordkeeping, housekeeping information and training and labels and signs?

(3) Could such provisions be modified for small business entities which would assure equivalent protection of the health of their employees?

L. *Duplication/Overlapping/ Conflicting Rules.*

(1) Are there other federal regulations which may duplicate, overlap or conflict with an OSHA regulation concerning glycol ethers?

(2) Are there critical federal programs (defense, energy,) which may be impacted by an OSHA regulation concerning glycol ethers?

M. *Financial and Economic Profile.*

(1) For the producers of glycol ethers, what are the total annual volumes and dollar values (for the last 5 years) of production, shipments, inventories, imports and exports of 2–ME, 2–EE and their acetates? Are these expected to increase or decrease in future years? How much glycol ether is manufactured by companies for their own use as a raw material or product?

(2) For companies engaged in glycol ether production, distribution and/or use, what are the total annual investments categorized as replacement, expansion, modernization and health and safety protection programs.

(3) For the last 5 years. What are total assets, stockholders equity, net worth, depreciation charges, debt-equity ratios and rate of return on assets and equity for companies engaged in glycol ether production, distribution and/or use?

(4) For each glycol ethers production facility, what was the date it began operation and how much longer is it expected to remain in operation?

(5) How would the balance of trade in products produced with glycol ethers be affected by a more stringent U.S. occupational regulation or health atandard for glycol ethers?

(6) What were the annual labor turnover rates over the last five years for each of the affected industry sectors?

(7) Are there any unique characteristics in any of the affected industry sectors (e.g., rental of capital equipment, unique employee skills) that could affect the ability to achieve compliance with a glycol ether standard? What are these unique characteristics?

(8) What is the degree of market concentration (including the role of small business) and the approximate number of firms in each of the affected industry sectors?

(9) What are the availability, price and serviceability of substitutes for products containing 2 ME, 2–EE and their acetates?

(10) Assuming no change in regulation, what are the projected trends in the use of 2–ME, 2–EE and their acetates?

(11) If the market price of 2–ME, 2–EE and their acetates were to increase by 1%, 5%, or 10% as a result of regulation, what would be the magnitude of the impact on the production and consumption of these glycol ethers?

(12) How profitable are the production processes which either produce or consume glycol ethers? What are the most profitable processes in production?

(13) What is the gross annual consumption of 2–ME, 2/EE and their acetates? What is the approximate annual consumption of these glycol ethers per plant?

(14) Do companies in each of the affected industry sectors purchase glycol ethers from one or several suppliers of the product? What is the geographic distribution of the industry and its customers? Where are these suppliers located geographically with respect to the facilities that use or process it?

(15) For products in which glycol ethers are used, what portion of the cost could be accounted for by the use of glycol ethers?

(16) For a firm using glycol ethers, what other chemicals covered by OSHA standards are currently used in the plant? How would engineering controls or process modification for glycol ethers affect exposure to these other chemicals?

**Statutory Authority**

This Advance Notice of Proposed Rulemaking was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act [84 Stat. 1593: 29 U.S.C. 655].

**List of Subjects in 29 CFR Part 1910**

Chemicals, 2-Ethoxyethanol, 2-Ethoxyethanol acetate, Glycol ethers, 2-Methoxyethanol, 2-Methoxyethanol acetate, Occupational safety and health, Reproductive and developmental toxicity.

Signed at Washington, DC, this 25th day of March 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

[FR Doc. 87–7028 Filed 4–1–87; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CGD3 87–09]

### Regatta; Barnegat Bay Classic, Toms River, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The Coast Guard is proposing to amend the Special Local Regulations governing the annual Barnegat Bay Classic power boat race. The location of the regulated area and effective period of the regulations are being changed along with correction of the event name. This regulation is needed to provide for the safety of participants and spectators on navigable waters during the event

**DATE:** Comments must be received on or before May 4, 1987.

**ADDRESSES:** Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004–5098. The comments and any other materials referenced in this notice will be available for inspection and copying at the Boating

Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:**
Mr. Lucas A. Dlhopolsky, (212) 668–7974.

**SUPPLEMENTARY INFORMATION:**
Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 87–09) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable.

**Drafting Information**

The drafters of this notice are Mr. Lucas A. Dlhopolsky, project officer, Boating Safety Division, and Ms. MaryAnn Arisman, project attorney, Third, Coast Guard District Legal Office.

**Discussion of Proposed Regulations**

The annual Barnegat Bay Classic power boat race is sponsored by the Barnegat Bay Power Boat Racing Association. Since this event is traditionally held each year on the Fourth Saturday in August the Coast Guard promulgated a permanent, amendment to Part 100 of Title 33, Code of Regulations, § 100.302. This year the event will take place on August 22, 1987 (rain date August 23rd). However, there are a few changes form past years' events. The sponsor now refers to the name of the event simply as the Barnegat Bay Classic, dropping "Air Brook" from the title.

The course on which the high speed power boats will race has been changed in shape and location. Instead of a simple oval shape, the sponsor has designed some navigational aspects into the course by requiring turns at several predetermined locations. While the course is still generally oval in shape it is wider at the southern end. The course relocation and reconfiguration moves the racing activity south of the previously established regulated area by about 0.5 nautical miles on the southern end. At the same time the northern end of the race course is shifted south by about 1.5 nautical miles. In order to have the race course and regulated area coincide, the regulated area is being shifted one nautical mile to the south as redefined by this amendment. The effective period for the regulation is also changing, from the existing 10:00 a.m.–3:00 p.m. to 10:30 a.m.–4:00 p.m. This should allow for set up time and for racers to complete the new course which is expected to cause the participating power boats to operate at more moderate speeds. Despite these changes there is still little or no interference expected with vessel traffic on the Intracoastal Waterway (I.C.W.). Access to or from any section of Toms River or other coastal rivers or creeks and Barnegat Bay will not be restricted. The sponsor is providing approximately 40 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for what is expected to be a large spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectators, and should adhere closely to the charted I.C.W.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Paragraphs (a) and (b) of § 100.302 are revised to read as follows:

**§ 100.302 Barnegat Bay Classic, Toms River, NJ.**

(a) *Regulated Area.* Barnegat Bay, New Jersey in the areas bounded by 39 degrees 54 minutes north latitude on the north, 39 degrees 49 minutes north latitude on the south, the Intracoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* These regulations will be effective from 10:30 a.m. to 4:00 p.m. on August 22, 1987, and thereafter annually on the fourth Saturday in August unless otherwise specified in the Coast Guard Local Notice to Mariners covering the involved region and in a **Federal Register** notice. In the case of postponement due to weather, the approved rain date is the following day and this regulation is effective for the same time period.

* * * * *

Dated: March 25, 1987.

**G.D. Passmore,**

*Rear Admiral (Lower Half) U.S. Coast Guard Commander, Third Coast Guard District.*

[FR Doc. 87–7298 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–14–M

---

**33 CFR Part 100**

**[CCGD3 87–08]**

**Regatta; Children's Liver Foundation Trophy Race, Barnegat Bay, Near Toms River, NJ**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal to establish Special Local Regulations for the Children's Liver Foundation Trophy Race. This event sponsored by the Barnegat Bay Power Boat Racing Association, involves competition between high speed power boats on Barnegat Bay adjacent to the Intracoastal Waterway. The purpose of

this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

**DATE:** Comments must be recived on or before May 4, 1987.

**ADDRESSES:** Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004–5098. The comments and any other materials referenced in this notice will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal officer hours are between 8:00 a.m. and 4:30 p.m., Monday through Firday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lucas A. Dlhopolsky, (202) 668–7974.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 87–08) and the specific section of the proposal to which comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable.

**Drafting Information**

The drafters of this notice are Mr. Lucas A. Dlhopolsky, project officer, Boating Safety Officer, and Ms. MaryAnn Arisman, project attorney, Third, Coast Guard District Legal Officer.

**Discussion of Proposed Regulations**

The Children's Liver Foundation Trophy Race will be held for the first time on Barnegat Bay just south of Toms River, New Jersey from about Cedar Creek south to the vicinity of Forked River. This benefit event is being sponsored by the Barnegat Bay Power Boat Racing Association which plans to hold the races on Saturday, June 6, 1987 with the following day as a rain date. While this is the first time for this event it will be closely patterned after the Barnegat Bay Classic which has been conducted by the same sponsor each August in the same location for the past several years. Between 40 and 60 power boats ranging from 20 to 36 feet in length are expected to race in various class heats. The race course is roughly oval in shape with the southern end about three times as wide as the northern end. The course has been laid out so that there should be little or no interference with vessel traffic in the Intracoastal Waterway (I.C.W.). Access to and from any section of Toms River or other coastal rivers and Barnegat Bay will not be restricted. The sponsor is providing at least 40 vessels in conjunction with the Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for what is expected to be a large spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectators, and should adhere closely to the charted I.C.W.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significnt economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Temporary § 100.35–333 is added to read as follows:

**§ 100.35–333 Children's Liver Foundation Trophy Race, Toms River, NJ.**

(a) *Regulated Area.* Barnegat Bay, New Jersey in the areas bounded by 39 degrees 54 minutes north latitude on the north, 39 degrees 49 minutes north latitude on the south, the Intracoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* These regulations will be effective from 10:30 a.m. to 4:00 p.m. on June 6, 1987. In case of postponement due to weather, these regulations will be in effect on June 7, 1987 during the same time period.

(c) *Special Local Regulations* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard Escort.

(3) The sponsor shall anchor race committee boats on each turn. Checkpoints shall be positioned so that race participants will pass no closer than 200 feet from the I.C.W. A line of committee boats shall be positioned to separate the race course from the I.C.W.

(4) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with mariners transiting the I.C.W. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Between the race course and the I.C.W. in the area to the west of the race course.

(ii) Between the race course and Island Beach State Park in the area around Trices Shoal.

(iii) In other locations as directed by the Coast Guard Patrol Commander and the sponsor.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform

vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: March 24, 1987.

G.D. Passmore,

*Rear Admiral (Lower Half), U.S. Coast Guard, Commander, Third Coast Guard District.*

[FR Doc. 87-7299 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-14-M

---

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-5-FRL-3179-4]

### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** USEPA is proposing to incorporate revised Indiana Rule 325 IAC 6-5, entitled Fugitive Particulate Matter Emission Limitations, into the Indiana State Implementation Plan (SIP), as it pertains to total suspended particulate (TSP). However, this regulation is not being proposed for approval for the purposes of fulfilling the requirements under Part D of the Clean Air Act (Act). Therefore, USEPA is proposing to disapprove the Part D plan for the areas where this regulation applies. In addition, USEPA is proposing to disapprove the TSP SIP for the nonattainment areas within Dearborn and Marion Counties where the rule does not apply, because the State has failed to submit adequate TSP plans for the nonattainment areas within these counties.

**DATE:** Comments on this revision and on the proposed USEPA action must be received by May 4, 1987.

**ADDRESSES:** Copies of the revision request, the technical support document and other materials relating to this rulemaking are available at the following addresses for review: (It is recommended that you telephone Steven D. Griffin, at (312) 353-3849, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Management Division, Department of Environmental Management, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Griffin, (312) 353-3849.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to the requirements of Part D of the Act, Indiana submitted a plan for statewide TSP nonattainment areas which was conditionally approved by USEPA on July 16, 1982 (47 FR 30972). Affected areas include portions of Clark, Dearborn, Dubois, Howard, Marion, St. Joseph, Vanderburgh, Vigo and Wayne Counties.[1] USEPA's approval was conditioned on Indiana's submittal in 1982 of an approvable industrial fugitive particulate regulation and on the understanding that nontraditional sources of fugitive particulate (e.g., unpaved roads) would be studied for controls necessary to assure attainment of the National Ambient Air Quality Standards (NAAQS) for TSP. As a partial fulfillment of these requirements, on November 29, 1982, and December 9, 1982, Indiana submitted, as a SIP revision, State Rule 325 IAC 6-5, Fugitive Particulate Matter Emission Limitations. This regulation required fugitive emission controls for existing sources that had the potential to emit 100 tons per year or more of fugitive particulate matter in nonattainment areas (excluding Lake County). Additionally, all new sources throughout Indiana which would require operating permits under State Rule 325 IAC Article 2 (i.e., those sources emitting 25 tons per year or more of at least one pollutant) would require similar controls. This rule was proposed for disapproval by USEPA, as published on October 11, 1984 (49 FR 39869). Proposed disapproval was based on the State's failure to require controls consistent with Reasonably Available Control Technology (RACT), as stipulated in section 172(b) of the Act. Indiana proposed to require RACT only for sources in excess of 100 tons per year of fugitive emission, whereas the Act calls for RACT for all existing sources in nonattainment areas.

In addition, the State regulation: (1) Failed to include sufficient provisions for receipt and adoption of individual source control plans; (2) provided conflicting factors for fugitive emissions determinations; and (3) lacked sufficient detail in stipulated control methods to be considered RACT (e.g., "flushing" to control emissions from paved roads and parking lots).

### II. Subsequent Revisions to State Rule 325 IAC 6-5

On November 21, 1984, Indiana submitted a tentative schedule for revising 325 IAC 6-5 and requested no action be taken on USEPA's proposal to disapprove the regulation. Indiana submitted the revision to Rule 325 IAC 6-5 on March 20, 1985. On April 19, 1985, USEPA responded to this revision, stating that the regulation could be incorporated into the SIP, because most enforceability issues were resolved and the regulation did not weaken any current regulations. However, the rule continued to allow broad discretion in State review of individual source control plans, and, thus, it did not ensure the application of RACT level controls; thereby failing to satisfy the RACT requirements of Part D of the Act. USEPA further stated that the existing construction bans would continue to be imposed for all primary TSP nonattainment areas, pursuant to section 110(a)(2)(I) of the Act, until which time USEPA reviewed and approved all site specific source control plans for RACT in that nonattainment area.

On August 6, 1985, USEPA further commented that revised 325 IAC 6-5 excluded portions of two counties which were undergoing separate rulemaking actions on TSP redesignation. At that time, certain Townships within Marion County were being considered for redesignation from primary nonattainment to attainment (see 49 FR 35964, September 13, 1984). Lawrenceburg Township in Dearborn County was also being considered for redesignation from primary nonattainment to attainment (see 50 FR 12044, March 27, 1985). Because the Administrator had not reached a final decision on either of these actions, USEPA stated that 325 IAC 6-5 should apply to all current TSP nonattainment areas (excluding Lake County).

On August 7, 1985, revised State Rule 325 IAC 6-5 was adopted by the State Air Pollution Control Board (Board). On August 15, 1985, Indiana submitted the regulation as adopted by the Board.

---

[1] Rulemaking on the remaining TSP nonattainment area in Lake County has been in separate actions (see 50 FR 4537, 51 FR 2492).

Enforceability deficiencies of the original regulation were corrected, including:

(1) Replacement of 100 ton per year source applicability with 25 ton per year cutoff;

(2) Required source submittal of either a control plan or a request for exemption to the Board within six (6) months of the regulation promulgation date; and

(3) Incorporation of control practices or measures, used to determine rule applicability or exemption, into source operating permits.

However, certain enforceability deficiencies remained. In a letter of December 6, 1985, the State responded to USEPA's letter of November 20, 1985, which noted deficiencies in State Rule 325 IAC 6–5 as approved by the Board. The State's responses and USEPA's comments and responses may be summarized as follows:

*USEPA's comment:* The regulation should require the Board to prepare and adopt a control plan which meets the regulatory requirements for any source that fails to submit such a plan. Also, the regulation should require sources to notify the Board or the Indian Air Pollution Control Division of changes that increase potential emissions over the 25 ton per year cutoff.

*State's comment:* Concerning the first point, the regulation was amended so that applicable sources will contact the Board and control plans will be included in each source's operating permit. The control plans will then be submitted to USEPA for approval. Regarding emissions increases over the 25 ton per year cutoff, the State claimed that section 1(b) of 325 IAC 6–5–1, which is the source applicability section, fulfilled this requirement by including any new fugitive particulate sources in the State which require operating permits under 325 IAC Article 2; i.e., those sources with potential particulate emissions of 25 tons per year or more.

*USEPA's Analysis:* USEPA believes that section 3 of 325 IAC 6–5–3 sufficiently provides for the submittal of source control plans for applicable existing and new sources through the enforcement of the State's operating permit requirements. USEPA notes that the Part D TSP plan for an area cannot be approved until the State submits and USEPA approves RACT level fugitive dust control requirements for all sources in a given nonattainment area.

*USEPA's comment:* The regulation must apply to all currently designated primary and secondary TSP nonattainment areas (excluding Lake County).

*State's comment:* The State felt that the designations in the source applicability section accurately reflected those counties, and portions thereof, which constituted primary and secondary nonattainment areas. More specifically, the State had submitted redesignation requests for Dearborn and Marion Counties, proceeded as if these requests would be approved by USEPA as submitted, and incorporated these new designations into the regulation's applicability section.

*USEPA's analysis:* The State's response does not adequately address this deficiency, because it does not recognize the need to submit enforceable RACT level particulate controls for applicable sources in all TSP nonatttainment areas, as required under Part D. Nevertheless, USEPA is proposing to incorporate the regulation into the SIP and approve the regulation for those nonattainment areas where it is applicable under the source applicability section.

On January 7, 1986, Indiana resubmitted revised State Rule 325 IAC 6–5, which by then had been promulgated by the State on November 13, 1985, and was now State enforceable. The regulation did not change from the August 15, 1985, submittal. It still allows broad discretion of the Board in determining approvability of source control plans and does not in and of itself ensure RACT level controls for all sources. In addition, the regulation does not apply to all areas currently designated by USEPA as nonattainment (excluding Lake County).

### III. Proposed Actions on Indiana's Part D TSP Plan

USEPA proposes to incorporate State Rule 325 IAC 6–5 into Indiana's SIP, because it provides the framework for an ultimately approvable industrial fugitive particulate RACT plan. However, this proposed approval would not constitute approval of Indiana's TSP SIP under Part D of the Act, because this regulation in and of itself does not meet the RACT requirements; it only provides a framework for applying such requirements. Therefore, USEPA proposes to withdraw its July 16, 1982, conditional approval and disapprove the Part D TSP plan for the areas where this rule applies. In order to ultimately meet Part D requirements, all fugitive particulate sources subject to the Act's RACT requirements in the State's TSP nonattainment areas must have enforceable RACT level particulate controls in effect. The State may satisfy Part D requiremnts through the current version of 325 IAC 6–5 or through a revised rule with RACT level control requirements. If the current version of 325 IAC 6–5 is pursued, then all individual control plans, requests for exmeptions, and requests for alternate emission factors for all applicable sources in areas currently designated as nonattainment by USEPA (excluding Lake County) must be submitted to USEPA for final approval and will be processed as site-specific revisions to the Indiana SIP. Furthermore, in the event that Indiana pursues the current version, only after all source control plans, exemptions, and alternate emission factors are approved can USEPA approve Indiana's TSP SIP under Part D of the Act.

Further, as stated above, USEPA proposes to approve 325 IAC 6–5 as it pertains to those portions of counties which are contained in the applicability section (section 1(a)) of the regulation. Those portions include secondary nonattainment areas within Clark, Dubois, St. Joseph, Vanderburgh and Vigo Counties and a portion of the primary nonattainment area in Marion County. The applicability section of the regulation does not match the proper TSP attainment status of Marion County, as defined at 40 CFR 81.315.[2] In addition, section 1(a) of the regulation excludes Lawrenceburg Township, a secondary nonattainment area in Dearborn County.[3]

Because the State regulation does not include all of the primary nonattainment area in Marion County and excludes the secondary nonattainment area within Dearborn County, USEPA finds that these two areas as well do not have acceptable TSP plans as required under Part D of the Act. Therefore, USEPA proposes to disapprove the TSP SIP for Dearborn County and the remaining area in Marion County. Pursuant to section 110(a)(2)(I) of the Act, the prohibition on the construction or modification of major stationary sources for all of the primary nonattainment area within Marion County will remain in effect; for the nonattainment area where the rule is applicable, because the rule in and of itself is not adequate, and for the nonattainment area where the rule is not applicable, because the State has not submitted an adequate plan.

---

[2] USEPA has designated the area of Washington Township east of Fall Creek and the area of Franklin Township south of Thompson Road and east of Five Points Road as attainment. The remainder of Marion County is designated primary nonattainment.

[3] On December 27, 1985 (50 FR 52922), USEPA approved the redesignation of Lawrenceburg Township from primary nonattainment to secondary nonattainment for TSP.

As stated above, USEPA is proposing to withdraw its conditional approval of Indiana's 1979 TSP SIP (see 47 FR 20972), due to the State's failure to submit an adequate TSP SIP for all nonattainment areas (excluding Lake County), as required under Part D of the Act.[4] In order to avoid the final disapproval of Indiana's Part D TSP SIP, the State must submit complete industrial fugitive particulate plans for all nonattainment areas in the State. Further, USEPA recommends that the State extend the applicability of 325 IAC 6–5 to include all current federally designated nonattainment areas in the State (excluding Lake County) within the comment period associated with this rulemaking notice.

Revised State Rule 325 IAC 6–5, supersedes Indiana's former rule 325 IAC 6–5, on which USEPA proposed rulemaking action on October 11, 1984 (49 FR 39869). Because the previous version of 325 IAC 6–5 no longer has any effect in State law, USEPA is discontinuing rulemaking on this version in favor of today's proposed rulemaking on revised 325 IAC 6–5.

Any interested persons are invited to submit written comments on the proposed SIP revision. Written comments received by the date specified above will be considered. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the revision.

Under 5 U.S.C. 605(b), the Agency must assess the impact of proposed or final rules on small entities. If USEPA takes final action to disapprove the TSP SIP for Indiana, a moratorium on the construction and modification of major stationary sources of TSP will remain in effect in the designated primary nonattainment portions of the area. USEPA does not have sufficient information to determine the impact a moratorium may have on small entities because it is difficult to obtain reliable information of future plans for business growth. However, because USEPA cannot be certain of the potential impact on small entities, the Agency invites comments on this issue. Even if this action, when promulgated, were to have a significant impact on a substantial number of small entities, the Agency could not modify the action. Under the Clean Air Act, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that a plan for a nonattainment area fails to meet the requirements of Part D of the Act.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon Monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7642.

Dated: June 13, 1986.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 87–7264 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–M

[4] USEPA is not proposing to withdraw its approval of the emission limits and other requirements in the July 16, 1982, plan, because they contribute towards the ultimate attainment of the NAAQS in these areas.

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Part 154

[CGD 77–069]

### Safety Standards for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability of the FONSI.

**SUMMARY:** In the **Federal Register** (50 FR 10264) issue of March 14, 1985, the Coast Guard published proposed safety standards for existing self-propelled vessels carrying bulk liquefied gases in U.S. waters. A Draft Economic Evaluation was placed in the rulemaking docket and made available for public comment during the 90 day comment period provided for the NPRM, but a specific statement giving public notice of the availability of the finding of no significant impact (FONSI) was not included in the preamble to the proposal. To ensure full public participation with respect to the environmental considerations involved in this rulemaking, the Coast Guard is giving specific notice of the FONSI's availability for public comment for an additional 30 day comment period.

**DATE:** Comments must be received on or before May 4, 1987.

**ADDRESSES:** Comments should be submitted to the Commandant (G–CMC) (CGD 77–069), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G–CMC), Room 2110, U.S. Coast Guard, 2100 Second Street SW., Washington, DC between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Barylski, Office of Marine Safety, Security, and Environmental Protection, (202) 267–1217, normal working hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The Draft Environmental Assessment and FONSI may be inspected and copied at the Marine Safety Council (G–CMC) at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Interested persons are invited to comment on the FONSI and Draft Environmental Assessment by submitting written views, data, or arguments. Comments should include the names and addresses of persons making them, identify the NPRM (CGD 77–069) and this notice, and give reasons for each comment.

The FONSI and Draft Environmental Assessment will be further evaluated in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal and the evaluations.

**J.W. Kime,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

March 23, 1987.

[FR Doc. 87–7300 Filed 4–1–87; 8:45 am]

BILLING CODE 4910–14–M

# Notices

Federal Register
Vol. 52, No. 63
Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-053]

### Birch 3-Ply Doorskins From Japan; Preliminary Results of Antidumping Duty Administrative Review

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**SUMMARY:** In response to a request by one exporter, the Department of Commerce has conducted an administrative review of the antidumping finding on birch 3-ply doorskins from Japan. The review covers one manufacturer and one exporter of this merchandise and the period February 1, 1982 through January 31, 1986. The review indicates no margins during the period

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 20, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 33026) the final results of its last administrative review of the antidumping finding on birch 3-ply doorskins from Japan (41 FR 7389, February 18, 1976). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, one exporter requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on March 14, 1986 (59 FR 8862). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

#### Scope of the Review

Imports covered by the review are shipments of birch 3-ply doorskins, manufactured in a variety of glue types, sizes, and colors. Birch 3-ply doorskins are currently classifiable under items 240.1420, 240.1440, and 240.1460 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer and one exporter of Japanese birch 3-ply doorskins and the period February 1, 1982 through January 31, 1986.

#### United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. price to an unrelated Japanese firm for export to the United States. Where applicable, we made deductions for Japanese inland freight, loading charges, and inspection fees. No other adjustments were claimed or allowed.

#### Foreign Market Value

In calculating foreign market value the Department used constructed value as defined in section 773 of the Tariff Act, since there were no sales of such or similar merchandise in the home market or to third countries.

Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and U.S. packing. Since we had insufficient information on general expenses and profit, as best information available the Department added the statutory minimum of 10 percent of the sum of materials and fabrication costs for general expenses, and 8 percent of the sum of materials, fabrication costs, and general expenses for profit.

#### Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that zero margins exist for Sanmoku Lumber/C. Itoh for the period December 1, 1982 through January 31, 1986.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made not later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after January 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. For any shipments from the remaining known manufacturers and/or exporters not covered by this review the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (48 FR 33026, July 20, 1983).

These deposit requirements are effective for all shipments of Japanese birch 3-ply doorskins entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: March 26, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-7310 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-001]

## Sorbitol From France; Preliminary Results of Antidumping Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a request by Roquette Freres, the Department of Commerce has conducted an administrative review of the antidumping duty order on sorbitol from France. The review covers the one known manufacturer/exporter of this merchandise to the United States and the period April 1, 1985 through March 31, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences betweeen United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Maureen Rosch or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/2923.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 26, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 42873) the final results of its last administrative review of the antidumping duty order on sorbitol from France (47 FR 15391, April 9, 1982). The respondent, Roquette Freres, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on May 20, 1986 (51 FR 18475).

### Scope of the Review

Imports covered by the review are shipments of crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries and pharmaceuticals. Such merchandise is currently classifiable under item 493.6820 of the *Tariff Schedules of the United States Annotated*. The review covers that one known French exporter of crystalline sorbitol to the United States, Roquette Freres, and the period April 1, 1985 through March 31, 1986.

### United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the packed duty-paid delivered price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign inland freight, ocean freight, marine insurance, freight forwarding, rebates, U.S. Customs duties and brokerage fees. No other adjustments were claimed or allowed.

### Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, quantity rebates, differences in credit costs, commissions, and packing. We disallowed a claimed adjustment for certain home market indirect selling expenses. No other adjustments were claimed or allowed.

### Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a margin of 12.07 percent exists for the period April 1, 1985 through March 31, 1986.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of that administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 12.07 percent shall be required.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 12.07 percent shall be required. This deposit requirement is effective for all shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-7311 Filed 4-11-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-588-041]

## Synthetic Methionine Form Japan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On November 17, 1986, the Department of Commerce published preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan. The review covers one manufacturer and one exporter of this merchandise and the period July 1, 1982 through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in our preliminary results of review.

**EFFECTIVE DATE:** April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 17, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 41515) the preliminary results of its administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18392, July 10, 1973).

The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of synthetic methionine other than synthetic L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and L methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under item 425.0430 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer and one exporter of Japanese synthetic methionine and the period July 1, 1983 through June 30, 1983.

**Analysis of Comments Received**

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, Monsanto, and the respondent, Mitsui.

*Comment 1:* The manufacturer, Nippon Soda, sold to its related customer, Mitsui (Japan) who, in turn, "sold" to Fuji Chemical for export to the United States. Fuji Chemical, who is unrelated to Mitsui (Japan), then "sold" to Mitsui (U.S.A.), a wholly-owned subsidiary of Mitsui (Japan), who subsequently sold to unrelated U.S. customers. Monsanto argues that we should use the price between Nippon Soda and Mitsui (Japan) as purchase price, despite the relationship of the two firms. Alternatively, Monsanto argues that we should use the price between Fuji Chemical and Mitsui (U.S.A.) as pruchase price. Mitsui agrees with the Department's using the price of Mitsui (U.S.A) to its unrelated U.S. customers as exporter's sales price ("ESP").

*Department's Position:* In accordance with our standard policy and practice we did not use the price between Nippon Soda and Mitsui (Japan) because they are related parties. We consider Fuji Chemical's function in this chain of transactions to be effectively that of an agent, rather than that of an outright buyer and seller. As in previous reviews in this case, we consider the sales by Mitsui (U.S.A.) to be the first sales to the United States to unrelated purchasers by or for the account of the exporter. As a result, we considered these to be ESP sales.

*Comment 2:* If the Department persists in using ESP, Monsanto argues that we must make further deductions to account for all U.S. selling expenses of Mitsui (Japan), Fuji Chemical, and Mitsui (U.S.A.). Mitsui maintains the only appropriate further adjustment is for Fuji Chemical's "commission" for handling these transactions.

*Department's Position:* We agree with Monsanto. Since Mitsui (Japan) did not identify what portion, if any, of its price to Fuji Chemical was attributable to its profit, we treated the entire difference between its acquisition cost from Nippon Soda and its "price" to Fuji Chemical, less inland freight, as indirectly-related U.S. selling expenses. Equally, since we have no evidence about what portion, if any, of Fuji Chemical's markup was attributable to its profit, we treated the entire difference between its acquisition cost from Mitsui (Japan) and its "price" to Mitsui (U.S.A.), less ocean freight, marine insurance, and FOB charges, as indirectly-related U.S. selling expenses. As for Mitsui (U.S.A.), in addition to movement expenses such as ocean freight, marine insurance, U.S. inland freight, duty, and FOB charges, we deducted credit expenses (the expenses incurred between the U.S shipment dates and the payment dates), early payment discounts, commissions to unrelated parties, warehouse expenses, and Mitsui (U.S.A.)'s other indirect selling expenses.

*Comment 3:* Monsanto asserts that in its foreign market value ("FMV") calculations, the Department erred in deducting a related-party commission, the cost of freight from Nippon Soda to Mitsui (Japan)'s warehouse, certain discounts as quantity discounts, and certain claimed credit expenses. In addition to these adjustments, Mitsui claims a deduction for Nippon Soda's SG&A or, alternatively, for Mitsui (Japan)'s SG&A, as part of the ESP offset.

*Department's Position:* We are satisfied that no "middleman dumping" occurred here. Fugi Chemical's initially-claimed acquisition cost reflected a typographical error; all other evidence indicates Fugi Chemical's "resale price" to Mitsui (U.S.A.) was more than its acquisition cost from Mitsui (Japan). For our treatment of the difference between the two "prices," *see* our position on Comment 2.

*Comment 5:* Mitsui argues that the Department erred in applying section 615 of the Trade and Tariff Act of 1984 ("the 1984 Act"), which defines the data for calculating FMV as the U.S. date of sale to an unrelated customer, to shipments in 1982. Instead, the Department should calculate FMV as of the date of export, in accordance with the Trade Agreements Act of 1979 ("the 1979 Act"), specifically section 773(a)(1) of the Tariff Act. Monsanto agrees that the FMV portion of the 1984 Act applies only to entries made after the effective date of the 1984 Act (October 30, 1984), but argues additionally that, since the 1979 Act required the Department to verify all information relied upon, and since the Department did not verify any of the home market sales data, the Department must use the best information otherwise available.

*Department's Position:* We disagree. Sections 615 and 618 of the 1984 Act, the FMV and verification provisions, apply to all investigations and section 751 administrative reviews initiated after October 30, 1984. Thus, since this review was initiated on January 21, 1986, we applied those provisions of the 1984 Act.

*Comment 6:* Mitsui argues that the Department erred in not deducting from FMV a home market discount given in November 1982.

*Department's Position:* We agree and have corrected our calculations accordingly.

*Comment 7:* Mitsui alleges the Department erred in deducting from USP certain early payment discounts that were not actually paid.

*Department's Position:* Mitsui submitted no evidence to support this claim; therefore, we disallowed it.

**Final Results of the Review**

Based on our analysis of the comments received, we determine that the following weighted-average margin exists for the period July 1, 1982 through June 30, 1983:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Nippon Soda/Mitsui | 3.35 |

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for

Nippon Soda/Mitsui. For any shipments from the remaining 29 known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (48 FR 55153, December 9, 1983). For any shipments from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1983 and who is unrelated to either reviewed firm or any previously reviewed firm, a cash deposit of 3.35 percent shall be required. These deposit requirements are effective for all shipments of Japanese synthetic methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: March 26, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87-7312 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DS-M

## Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Publication of Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese.

**SUMMARY:** The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:** Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our January 1, 1987 annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: March 26, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

| Country | Program(s) | Gross [1] subsidy | Net [2] subsidy |
|---|---|---|---|
| Belgium | European Community (EC) Restitution Payments. | 9.4¢/lb | 9.4¢/lb. |
| Canada | Export Assistance on Certain Types of Cheese. | 25.3¢/lb | 25.3¢/lb. |
| Denmark | EC Restitution Payments | 10.3¢/lb | 10.3¢/lb. |
| Finland | Export Subsidy | 69.7¢/lb | 69.7¢/lb. |
| | Indirect Subsidies | 18.2¢/lb | 18.2¢/lb. |
| | | 87 9¢/lb | 87.9¢/lb. |
| France | EC Restitution Payments | 10.0¢/lb | 10.0¢/lb. |
| Geece | EC Restitution Payments | 6.8¢/lb | 6.8¢/lb. |
| Ireland | EC Restitution Payments | 9.6¢/lb | 9.6¢/lb. |
| Italy | EC Restitution Payments | 41.7¢/lb | 41.7¢/lb. |
| Luxembourg | EC Restitution Payments | 9.4¢/lb | 9.4¢/lb. |
| Netherlands | EC Restitution Payments | 7.2¢/lb | 7.2¢/lb. |
| Norway | Indirect (Milk) Subsidy | 16.6¢/lb | 16.6¢/lb |
| | Consumer Subsidy | 36.8¢/lb | 36.8¢/lb. |
| | | 53.4¢/lb | 53.4¢/lb. |
| Switzerland | Deficiency Payments | 90.7¢/lb | 90.7¢/lb |
| U.K. | EC Restitution Payments | 7.7¢/lb | 7.7¢/lb. |
| W Germany | EC Restitution Payments | 12.9¢/lb | 12.9¢/lb. |

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 87-7313 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DS-M

**[Docket Nos. 6680-1, 6680-02, and 6680-03]**

## Mildren E. McKee and Mach II Electronics; Decision and Order

In the matter of: Mildred E. KcKee, individually and doing business as M/M Associates and Mach II Electronics, 17 Riviera Circle, Redwood City, California 94065, Respondents.

On September 15, 1986, the Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), initiated an administrative proceeding against Mildred E. McKee, individually and doing business as M/M Associates and Mach II Electronics (hereinafter referred to collectively as McKee), pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985)) (the Act), and Part 388 of

the Export Administrative Regulations (currently modified at 15 CFR Parts 368–399 (1986)) (the Regulations), alleging that between September 16, 1982 and November 18, 1982, McKee violated §§ 387.5 and 387.6 of the Regulations by exporting five shipments of U.S.-origin computer equipment from the United States to Switzerland and the Federal Republic of Germany without applying for and obtaining from the Department the validated export licenses required by § 372.1(b) of the Regulations and by making false statements on the Shipper's Export Declaration accompanying each shipment.

McKee answered the charging letter on October 20, 1986, admitting the allegations as true and waiving her right to a hearing. The Department and McKee then discussed settlement and eventually entered into a Consent Agreement whereby the parties agreed to resolve this matter by denying McKee all United States export privileges for a period of 20 years.

Pursuant to Section 388.17 of the Regulations, the parties submitted to the administrative law judge a consent proposal, which he approved on February 24, 1987.

Based on the foregoing, I find that McKee, individually and doing business as M/M Associates and Mach II Electronics, violated the Regulations as alleged in the charging letter. Moreover, the administrative law judge has recommended approval of the Consent Agreement and I, too, approve the terms of the Consent agreement.

Therefore, pursuant to § 388.23 of the Regulations, it is hereby ordered:

I. All outstanding validated export licenses in which Mildred E. McKee, individually and doing business as M/M Associates and Mach II Electronics, or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation.

II. For a period of 20 years from the date of this Order, Mildred E. McKee, individually and doing business as M/M Associates and Mach II Electronics, her successors or assignees, officers, partners, representatives, agents, and employees are hereby denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(a) As a party or as a representative of a party to a validated export license application,

(b) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith,

(c) In obtaining or using any validated or general export license of other export control document,

(d) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and

(e) In financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (1985), and the Regulations.

III. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which the respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondents or any related party, or whereby the respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the respondents or any related party denied export privileges; or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This Decision and Order shall be served upon respondents and published in the **Federal Register.**

Dated: March 26, 1987.

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

[FR Doc. 87–7314 Filed 4–1–87; 8:45 am]

BILLING CODE 3510–DS–M

## Short-Supply Review on Certain Steel Products; Request for Comments

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its reveiw of a request for short supply under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain shapes under three inches in cross-sectional dimension.

**DATE:** Comments must be submitted on or before April 13, 1987.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Deaprtment of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a request for short supply for certain rolled shapes, under three inches in cross-sectional dimension, for use in manufacturing cable lashing clamps and span clamps.

Any party interested in commenting on this request should send written coments as soon as possible, and no

later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also privide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Record Unit, Room B–099, Import Administration, U.S. Deaprtment of Commerce at the above address.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

March 30, 1987.

[FR Doc. 87–7315 Filed 4–1–87; 8:45 am]

BILLING CODE 3510–DS–M

---

## National Oceanic and Atmospheric Administration

[P392]

### Marine Mammals; Application for Permit; The Cousteau Society

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C 1361 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: The Cousteau Society.
   b. Address: 8440 Santa Monica Boulevard, Los Angeles, California 90069.
2. Type of Permit: Public Display.
3. Name and Number of Marine Mammals:

Killer whale (Orcinus Orca), 20
Beluga whale (Delphinapterus leucas), 50
Northern fur seal (Callorhinus ursinus), 50
Northern sea lion (Eumetopias jubatus), 50
Harbor seal (Phoca vitulina), 24

4. Type of Take: Harassment while filming for commercial documentary.
5. Location of Activity: Aleutian Islands, Southeastern Bering Sea, Prince William Sound, and Bristol Bay areas.
6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries,

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW. Room 805, Washington, DC. 20235;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington, 98115; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: March 26, 1987.

**Richard B. Roe,**

*Director, Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–7305 Filed 4–1–87; 8:45 am]

BILLING CODE 3510–22–M

---

[P261B]

### Marine Mammals; Application for Permit; National Aquarium of Baltimore

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. National Aquarium of Baltimore
   b. 501 E Pratt Street, Pier 3, Baltimore, Maryland 21202
2. Type of Permit: Public Display
3. Name and Number of Marine Mammals: Belukha whales (*Delphinapterus leucas*) 2
4. Type of Take: Live import.
5. Location of Activity: In and around the Churchill River and Churchill Manitoba, Canada.
6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3799.

Dated: March 25, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–7207 Filed 4–1–87; 8:45 am]

BILLING CODE 3510–22–M

---

[P391]

### Marine Mammals; Application for Permit; Jolly Roger Amusement Park

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Jolly Roger Amusement Park
   b. P.O. Box 572, Ocean City, Maryland 21842
2. Type of Permit: Public Display.
3. Name and Number of Marine Mammals:
   Bottlenose dolphins (*Tursiops truncatus*), 2
   California sea lion (*Zalophus californianus*), 1
4. Type of Take: Live import for temporary maintenance.
5. Location of Activity: Mexico: Animals are already in captivity.
6. Period of Activity: 1 year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily refect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3799, and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd. St. Petersburg, Florida 33072.

Dated: March 25, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–7208 Filed 4–1–87; 8:45 am]

BILLING CODE 3510–22–M

## National Technical Information Service

### Intent To Grant Exclusive Patent License; Diversified Textile Machinery Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Diversified Textile Machinery Corp., having a place of business in Gastonia, North Carolina, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Apparatus to Extract Fine Trash and Dust During High-Velocity Discharging of Cotton From Opener Cleaner," U.S. Patent 4,479,286. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.*

[FR Doc. 87–7239 Filed 4–1–87; 8:45 am]

BILLING CODE 3510–04–M

### Intent To Grant Exclusive Patent License; Xoma Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Xoma Corporation having a place of business in Berkeley, CA 94710, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin With Low Side Effects" U.S. Patent Application S.N. 6–911,227. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.*

[FR Doc. 87–7240 Filed 4–1–87; 8:45 am]

BILLING CODE 3510–04–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Export Visa and Exempt Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore; Correction

In the third column on page 43454, in the letter to the Commissioner of Customs (51 FR 43454) published on December 2, 1986, make the following corrections with regard to the part category designation used in Category 659:

659–I insert TSUSA number 384.9357
659–V delete TSUSA number 384.2113

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–7308 Filed 4–1–87; 8:45 am]

BILLING CODE 3510–DR–M

### Reminder of Requirement To Indicate Correct Tariff Classification for Yarn Dyed Shirts and Blouses

March 30, 1987.

The Committee for the Implementation of Textile Agreements (CITA) reminds the importing public that entry documents must cite the correct tariff classification for shirts and blouses made of fabrics in which there are yarns of two or more colors in the warp and/or the filling, in categories 340, 640, 341 and 641.

A number of bilateral textile agreement restraint levels are implemented on a basis which distinguishes between shirts and blouses made of these fabrics (referred to in these agreements as "yarn dyed" fabrics) and those which are not made of these fabrics.

Accordingly, the public is on notice that the correct Tariff Schedules of the United States Annotated (T.S.U.S.A.) classification for shirts and blouses made of "yarn dyed" and "non-yarn dyed" fabrics must be stated on the entry document included in the entry package presented to the U.S. Customs Service. Yarn dyed shirts and blouses are defined by the T.S.U.S.A. as those in which there are "two or more colors in the warp and/or the filling" of the fabric. For the purposes of this definition, white shall be considered a color.

Entry documents containing incorrect T.S.U.S.A. classifications may be rejected by Customs and Customs may detain such merchandise when presented for entry for consumption, or withdrawal from warehouse for consumption in the United States.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7309 Filed 4-1-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board; Meeting

March 21, 1987.

The meeting of the USAF Scientific Advisory Board Armament Division Advisory Group, announced in 52 FR 7649 (March 12, 1987), has been postponed. The Advisory Group will meet at the Armament Division Headquarters (Building 1), Eglin AFB, Florida, on May 14 and May 15, 1987.

All other information contained in the previously published Meeting Notice remains unchanged.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-7241 Filed 4-1-87; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Meeting

March 27, 1987.

The USAF Scientific Advisory Board Committee on Software Expertise and Ada will meet at Carnegie-Mellon University, Pittsburgh, PA on April 27, 1987 from 1:00 p.m. to 5:00 p.m. and at the Software Engineering Institute, Pittsburgh, PA on April 28, 1987 from 8:00 a.m. to 5:00 p.m.

The meetings will be open to the public.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force and the success of implementing the Ada computer language.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

**Norita C. Koritko,**

*Alternate, Federal Register Liaison Officer.*

[FR Doc. 87-7193 Filed 4-1-87; 8:45 am]

BILLING CODE 3910-01-M

### Department of the Army

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 23-24 April 1987.

Time of Meeting: 0815-1600, 23 April 1987; 0815-1600, 24 April 1987.

Place: Pentagon, Washington, DC.

Agenda: A meeting will be held of the Army Science Board U.S. Army Research Institute for the Behavioral and Social Sciences Laboratory Effectiveness Review Panel. The panel will address several subjects to include the quality of staff, facility and technical programs; accomplishment of the institute's mission; the institute's work in relation to important Army problems; and improving assessment methodology and procedures. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for futher information at (202) 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-7226 Filed 4-1-87; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21 April 1987.

Time of Meeting: 0800-1100 hours, 21 April 1987.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for the Army Combat Models will meet to present and discuss the final report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-7227 Filed 4-1-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF ENERGY

### Office of Conservation and Renewable Energy

### Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

**AGENCY:** Office of Conservation and Renewable Energy, DOE.

**ACTION:** Notice.

**SUMMARY:** In this notice, the Department of Energy is forecasting the representative average unit costs of five residential energy sources for the year 1987. The five sources are electricity, natural gas, No. 2 heating oil, propane and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

**EFFECTIVE DATE:** The representative average unit costs of energy contained in this notice will become effective May 4, 1987 and will remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

**SUPPLEMENTARY INFORMATION:** Section 323 of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619), (Act)[1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer products specified in the Act. DOE has prescribed test procedures for the types of products listed in section 322(a)(1)–(13) of the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating cost of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

DOE last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products on February 20, 1986 (51 FR 6165). Effective May 4, 1987, the cost figures published on February 20, 1986, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 1987 representative average unit costs of electricity, natural gas and No. 2 heating oil found in this notice. These costs were taken from the October 1986 "EIA Short-Term Energy Outlook," DOE/EIA–0202 (86/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices and established trends in margins and operating expenses. The development of these costs is discussed in detail in the October 1986 issue of "EIA Short-Term Energy Outlook," which is EIA's quarterly publication of historical and forecasted energy consumption and prices. The costs appear in Table 5 of "EIA Short-Term Energy Outlook." Copies of this report are available at the National Energy Information Center, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

In the cases of kerosene and propane, the 1987 representative average unit costs found in this notice were developed by other means since EIA's "Short-Term Energy Outlook" does not provide a forecast of the retail costs of these fuels. However, historical refiner and gas plant operator sales prices for kerosene and propane, and residential prices for No. 2 heating oil are available from another EIA publication, "Petroleum Marketing Monthly," DOE/EIA–0380. Referring to Table 10 of the September 1986 issue of "Petroleum Marketing Monthly," and Table 23 of the issues from February 1986 through September 1986, DOE obtained refiner and gas plant operator average sales prices to end users (excluding major refiners) for kerosene and No. 2 heating oil prices to residential consumers for each month of the period January 1986 to the most recent month for which data was available, September 1986. Based on these data, DOE computed the average monthly sales prices for each of these fuels. To forecast a 1987 representative average unit cost for kerosene, DOE made the assumption that the percentage change in 1987 from the January–September 1986 period for No. 2 heating oil prices to residential customers also would be applied to kerosene. Propane prices were assumed to change at the same rate as the residential price of natural gas. Residential natural gas prices from January 1986 through September 1986 appear in Table 4 of EIA's October 1986 issue of "Natural Gas Monthly," DOE/EIA–0130. The price change of propane to the residential customer reflects more closely the residential price change of natural gas rather than that of No. 2 heating oil.

The 1987 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(2) of the Act and will become effective May 4, 1987. They will remain in effect until further notice.

Issued in Washington, DC, March 19, 1987.

**Donna R. Fitzpatrick,**

*Assistant Secretary, Conservation and Renewable Energy.*

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[1987]

| Type of energy | In common terms | As required by test procedure | Dollars per million Btu[1] |
|---|---|---|---|
| Electricity | 7.94¢/kWh [2,3] | $0.0794/kWh | $23.27 |
| Natural Gas | 56¢/therm[4] or $5.80/MCF [5,6]. | 0.00000562/Btu | 5.62 |
| No. 2 Heating Oil | $0.80/gallon [7] | 0.00000576/Btu | 5.76 |
| Propane | 70¢/gallon [8] | 0.00000769/Btu | 7.69 |
| Kerosene | $0.77/gallon [9] | 0.00000570/Btu | 5.70 |

[1] Btu stands for British termal units
[2] kWh stands for kilowatt hour
[3] 1 kWh=3,412 Btu
[4] 1 therm=100,000 Btu
[5] MCF stands for 1,000 cubic feet
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,032 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu.
[8] For the purpose of this table, one gallon of liquid propane has an energy equivalance of 91,000 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalance of 135,000 Btu.

[FR Doc. 87–7188– Filed 4–1–87; 8:45 am]

BILLING CODE 6450–01–M

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

## Economic Regulatory Administration

[Docket No. ERA-C&E-87-33; OFP Case No. 61040-9203-03-12]

## Notice of Acceptance of Petition for Exemption and Availability of Certification by Champion International Corporation

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of Acceptance.

**SUMMARY:** On February 27, 1981, Champion International Corporation (Champion or petitioner), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption for the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a gas-fired boiler at Champion's facility located in Quinnesec, Michigan. Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new major fuel burning installation or powerplant, and prohibits the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found in 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

**DATES:** Written comments are due on or before May 18, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-33 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

**SUPPLEMENTARY INFORMATION:** The existing Champion Pulp Mill produces bleached hardwood market pulp. Current installed steam generation capacity is 867,000 lb/hr. The installation of a paper machine will require additional steam for the process and seasonal space heating. The petitioner proposes to meet this demand by installing a 300,000 lb/hr gas-fired boiler adjacent to the existing utility facility.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner, pursuant to 10 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adquate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations; and

(3) Use of mixtures is not feasible, as required under § 503.9 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above;

2. An enviromental impact analysis, as requried under 10 CFR 503.13; and,

3. All data requried by § 503.6 (cost calculation) necessary for computing the cost calculation formula.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 2694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on March 25, 1987

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-7223 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-14; OFP Case No. 62-23-9335-20,21-24]

## Order Granting Exemption; Ensearch Development Corp.

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Order granting exemption.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "Act"), to Ensearch Development Corporation (Ensearch). The permanent cogeneration exemption permits the use of natural gas as the primary energy source, for the proposed cogeneration facility to be operated by Encogen One Partners, Ltd., and located in Dallas, Texas. The final exemption order and detailed information are provided in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** The order shall take effect on June 1, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW, Room lE-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Russell, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585, Telephone (202)586-9624

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202)586-6749.

**SUPPLEMENTARY INFORMATION:** The facility for which Ensearch is requesting a permanent cogeneration exemption is a 207 MW combined cycle facility consisting of two gas turbines and two heat recovery steam generators. The facility, which will be owned and operated by Encogen One Partners, Ltd., will be located in Dallas, Texas. The facility will burn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

### Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on January 6, 1987, (52 FR 450), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on February 20, 1987; no comments were received and no hearing was requested.

### Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Ensearch has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Ensearch to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on March 17, 1987.

Robert L. Davies,

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-7189 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket Nos. ER87-307-000 et al.]

## Electric Rate and Corporate Regulation Filings; Florida Power Corp. et al.

March 27, 1987.

Take notice that the following filings have been made with the Commission:

### 1. Florida Power Co.

[Docket No. ER87-307-000]

Take notice that on March 16, 1987, Florida Power Corporation (Florida Power) tendered for filing a Contract for Interchange Service dated March 6, 1987 providing for interchange service between Florida Power and the City of Key West, Florida. Florida Power States that Florida Power and the City of Key West did not have a previous contract for interchange service.

Florida Power requests that the Contract for Interchange Service be permitted to become effective April 1, 1987 and therefore, requests waiver of the sixty day notice requirement. Copies of this filling have been served upon the City of Key West, Florida and the Florida Public Service Commission

*Comment data:* April 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 2. Northern States Power Co.

[Docket No. ER87-337-000]

Take notice that Northern States Power Company (Minnesota), on behalf of both Northern States Power Company (Minnesota) and Minnesota Power & Light Company on March 24, 1987, tendered for filing the Interconnection and Interchange Agreement Between Northern States Power Company and Minnesota Power & Light Company.

The Interconnection and Interchange Agreement provides for the sharing of existing electric transmission facilities for the purposes of receiving, delivering, and exchanging power and energy during routine and emergency operation, and for transmitting power and energy from their generating facilities to their respective systems.

The Interconnection and Interchange Agreement represents new arrangements agreed to by the parties, and therefore, replaces all existing agreements.

Northern States Power Company requests this Interconnection and Interchange Agreement become effective on October 9, 1986, and therefore, requests waiver of the Commission's notice requirements.

*Comment date:* April 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 3. Puget Sound Power and Light Co.

[Docket No. ER87-339-000]

Take notice that Puget Sound Power & Light Company (Puget) on March 23, 1987, tendered for filing proposed changes in its FPC Electric Tariff Original Volume No. 3 (Original Volume No. 3). The schedule provides that non-firm energy will be sold at such times and in such amounts as the Company in its sole discretion determines. The impact of the schedule change on transactions or revenues under Original Volume No. 3 cannot reasonably be estimated.

The rate schedule filing reflects additional Service Agreements under Original Volume No. 3 and changes to reflect current actual costs of the

Company's thermal generating resources, including the addition of Colstrip Unit #4.

Copies of the filing were served upon the utilities receiving service under Original Volume No. 3

*Comment date:* April 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Bangor Hydro-Electric Co., Bangor, ME**

[Docket No. ER87-335-000]

Take notice that the Bangor-Hydro Electric Company ("BHE") on March 20, 1987, tendered for filing as an initial rate schedule, a transmission contract ("Transmission Contract") dated as of August 19, 1985 between BHE and Boston Edison Company ("BECO") as amended by a Letter Agreement Amending Transmission Contract dated as of November 21, 1986, between the same parties (the "Amendment") (the Transmission Contract and the Amendment shall hereinafter be collectively referred to as the "Contract"). Assuming transmission of the full 22,800 kilowatts contracted for, BHE would receive approximately $124,716 for the inital twelve-month period of service under the Contract.

Under the Contract, beginning on or after the commencement date of operation of the generating facility of Down East Peat, L.P. ("DEP") located in Deblois, Maine, BHE will provide transmission service to BECO for a maximum of 22,800 kilowatts on the basis of a cost-of-service charge. Copies of the filing have served on BECO.

*Comment date:* April 10, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7277 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. GP87-32-000]

## Natural Gas Policy Act; Oklahoma Corporation Commission; Petition To Reopen Final Well Category Determination

March 27, 1987.

On February 17, 1987, the Oklahoma Corporation Commission (OCC) filed with the Commission, Section 102(C) NGPA Determination Fox No. 1 Well, FERC J.D. No. 8630785, pursuant to § 275.205 of the Commission's regulations[1], a petition to reopen and vacate a negative final well category determination for the Fox No. 1 well located in the NE quarter of Section 10, Township 18 North, Range 26 West, Ellis County, Oklahoma. The OCC requests the Commission to reopen the well category determination proceeding for the Fox No. 1 well, vacate its negative determination, and permit the OCC to reconsider the original application.

On August 11, 1981, John A. Taylor filed a well category determination application before the OCC seeking a determination that the Fox No. 1 well qualified as a new onshore reservoir well under section 102(c) of the Natural Gas Policy Act of 1978 (NGPA). According to the OCC, several requests for additional information were made to both the original applicant and the subsequent purchaser, PRI Producing Inc., but the information was never received. Subsequently on August 6, 1986, the OCC issued an order denying the Fox No. 1 well section 102(c) status. This order became final, pursuant to § 275.202 of the Commission's regulations,[2] forty-five days after the Commission received notice of the OCC's action.

According to the OCC, two working interest owners, Sylvia Golden Investments and Zelda Brown Investments, filed additional geological and engineering data that supports a section 102(c) determination. OCC states that the new data supports a grant of the original request. The OCC further submits that on January 22, 1987, ONA Western Inc., the purchaser of gas from the Fox No. 1 well, filed a protest as to the jurisdiction of the OCC. Therefore, the OCC requests the Commission to reopen the well category proceeding for the Fox No. 1 well, vacate its negative determination, and permit the OCC to reconsider the original application.

Any person desiring to be heard or to make any protest to the requested reopening should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed within 30 days from the issuance date of this Notice. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

**Lois D. Cashell**

*Acting Secretary.*

[FR Doc. 87-7286 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Project No. 9495-001]

## Surrender of Preliminary Permit; Buckley Associates

March 27, 1987.

Take notice that Buckley Associates, permittee for the proposed Prairie Creek Project, has requested that its preliminary permit be terminated. The permit was issued on February 28, 1986, and would have expired January 31, 1989. The project would have been located on the South Prairie Creek, a tributary to the Puyallup River, in Pierce County, Washington. The permittee cites that the proposed project is not feasible as the basis for the surrender request.

The permittee filed the request on March 11, 1987, and the preliminary permit for Project No. 9495 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Lois D. Cashell**

*Acting Secretary.*

[FR Doc. 87-7284 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

---

[1] 18 CFR 275.205 (1986).

[2] 18 CFR 275.202 (1986).

[Project No. 8471-001]

## Surrender of Preliminary Permit; New York State Energy Research and Development Authority

March 27, 1987.

Take notice the New York State Energy Research and Development Authority, permittee for the Erie Canal Locks E-10 and E-11 Project No. 8471, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8471 was issued on September 23, 1985, and would have expired on August 31, 1988. The project would have been located on the Erie Canal, in Montgomery County, New York.

The permittee filed the request on March 9, 1987, and the preliminary permit for Project No. 8471 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Lois D. Cashell**

*Acting Secretary.*

[FR Doc. 87-7285 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket Nos. QF85-11-003 et al.]

## Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; AES Shady Point, Inc., et al.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 27, 1987.

Take notice that the following filings have been made with the Commission.

**1. AES Shady Point, Inc.**

[Docket No. QF85-11-003]

On March 19, 1987, AES Shady Point, Inc. (Applicant), of 1925 North Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Recertification of the topping-cycle cogeneration facility is requested due to the increase in the net electric power production capacity from 300 megawatts to 322.34 megawatts, adjustments in the specifications for, and quantity of, process steam and the date of construction from January 1990 to July 1987. All other characteristics of the facility remain unchanged.

**2. McCallum Enterprises, Inc.**

[Docket No. QF87-296-000]

On March 2, 1987, McCallum Enterprises, Inc. (Applicant), of P.O. Box 1780, 805 Housatonic Avenue, Bridgeport, Connecticut 06601-1780 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 7.1 megawatt hydroelectric facility (FERC Project No. 6066) will be located in the towns of Derby and Shelton, counties of New Haven and Fairfield, Connecticut.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

*Signal Environmental Systems Inc.*

[Docket No. QF87-291-000]

On March 3, 1987, Signal Environmental Systems Inc. (Applicant), of 363 Exeter Road, Hampton, New Hampshire 03842 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of San Diego, California, adjacent to the Miramar Sanitary Landfill. The facility will consist of a steam turbine generator and three steam generators. The primary energy source will be biomass in the form of municipal solid waste. The net electric power production capacity of the facility will be 62 MW. Installation of the facility will begin approximately in May 1988.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plum,**

*Secretary.*

[FR Doc. 87-7276 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. RP86-30-001]

## Alabama-Tennessee Natural Gas Co.; Petition of Alabama-Tennessee Natural Gas Company for Authority To Terminate Direct Billing Mechanism

March 27, 1987.

Take notice that on March 24, 1987, Alabama-Tennessee Natural Gas Company (ATNG) filed a Petition For Authority To Terminate Direct Billing Mechanism. ATNG states that it seeks authorization to terminate the direct billing mechanism which was approved in Docket No. RP86-30-000. According to ATNG, that mechanism permitted it to pass through to its customers Order No. 94 costs that it was charged on a direct billing basis by Tennessee Gas Pipeline Company, its principal supplier. ATNG states that the market distorting effects which originally led to the approval of the direct mechanism are no longer extant on its system. ATNG therefore requests that it be permitted to treat the costs involved in accordance with its normal PGA methodology.

ATNG requests waiver of Commission regulations, rules and orders to the extent necessary to terminate the direct billing mechanism.

ATNG states that it has served a copy of the Petition on its customers, interested state commissions and others. ATNG also requests expeditious consideration of the Petition and a shortened period for the filing of interventions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214

BEST COPY AVAILABLE

and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before April 3, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7281 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP85-100-002 et al.]**

## Cimarron Transmission Co. et al.; Filing of Pipeline Refund Reports

March 27, 1987.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before April 13, 1987. Copies of the respective filings are on file with the Commission and available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

APPENDIX

| Filing date | Company | Docket No |
|---|---|---|
| 1-5-87 | Cimarron Transmission Co | RP85-100-002 |
| 1-5-87 | Colorado Interstate Gas Co | RP85-95-006 |
| 1-5-87 | El Paso Natural Gas Co | RP85-92-003 |
| 1-5-87 | Mountain Fuel Resources, Inc. | RP85-73-003 |
| 1-5-87 | Northwest Central Pipeline Corp | RP85-81-003 |
| 1-5-87 | Texas Gas Transmission Corp | RP85-84-004 |
| 1-9-87 | Midwestern Gas Transmission Co | RP71-16-015 |

APPENDIX—Continued

| Filing date | Company | Docket No |
|---|---|---|
| 2-10-87 | Algonquin Gas Transmission Co | RP72-110-043 |
| 2-19-87 | Sea Robin Pipeline Co | RP85-89-005 |
| 2-24-87 | Trunkline Gas Co | RP85-77-005 |

[FR Doc. 87-7279 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TC87-6-000]**

## Mississippi River Transmission Corp.; Proposed Tariff Change

March 27, 1987.

Take notice that on March 13, 1987, Mississippi River Transmission Corporation (Mississippi), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. TC87-6-000 the following revised tariff sheets in its FERC Gas Tariff, Second Revised Volume No. 1, to become effective April 15, 1987:

Eighth Revised Sheet No. 75
Seventh Revised Sheet No. 76
Eighth Revised Sheet No. 78
Seventh Revised Sheet No. 79

Mississippi states that this filing reflects changes in the Index of Protected Essential Agricultural Use (Step 10) Entitlements and in the Index of High Priority (Step 11) Entitlements. This proposed tariff sheets would be effective during the period, April 15, 1987, through October 31, 1987, pursuant to paragraph 8.2(a)(i) of Mississippi's curtailment plan, it is explained.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before April 10, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois, D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7280 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. ST85-1116-001 et al.]**

## Producer's Gas Co. et al.; Extension Reports

March 27, 1987.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and addresses of each company selling pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension reports should on or before April 13, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois, D. Cashell,**

*Acting Secretary.*

[1] Notice of these extension reports does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST

[February 1 through March 15, 1987]

| Docket No. | Transporter/seller | Recipient | Date filed | Part 284 subpart | Effective date | Expiration date [2] |
|---|---|---|---|---|---|---|
| ST85-1116-001 [1] | Producer's Gas Co., 6688 North Central Expressway, Suite 1600, Dallas, TX 75206. | Michigan Consolidated Gas Co. | 02-05-87 | D | 05-03-87 | 05-06-87 |
| ST85-1220-001 [1] | PGC Pipeline, Inc., 6688 North Central Expressway, Suite 1600, Dallas, TX 75206. | New Jersey Natural Gas Co. | 03-10-87 | D | 06-07-87 | 06-08-87 |

[1] This extension report was filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 87-7287 Filed 4-1-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-3-49-000]

## Williston Basin Interstate Pipeline Co.; Motion of Williston Basin Interstate Pipeline Company for Waiver of Requirements To Permit a One-Month Extension of Time To File Purchased Gas Adjustment

March 27, 1987.

Take notice that on March 24, 1987, Williston Basin Interstate Pipeline Company (Williston Basin) filed a Motion For Waiver Of Requirements To Permit A One-Month Extension Of Time To File Purchased Gas Adjustment pursuant to Rules 212 and 2008 of the Commission's rules of practice and procedure. Williston Basin requests the waiver to permit it to file its regular semi-annual purchased gas adjustment (PGA) on April 30, 1987, to be effective June 1, 1987.

Williston Basin states that it is currently involved in extensive restructuring/renegotiation of gas purchase contracts with its various suppliers. Therefore, sufficient information is not currently available to make the filing required under section 21.3.3.1 of First Revised Volume No. 1. Williston Basin believes that the additional thirty days provided by the requested extension of time will allow for the development of the information necessary to accurately reflect gas costs in the rates charged its customers. This will serve to mitigate future deferred account adjustments, thus promoting rate stability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before April 3, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7282 Filed 4-1-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. SA87-35-000]

## Zapata Exploration Co.; Petition for Adjustment

March 27, 1987.

On January 2, 1987, Zapata Exploration Company (Zapata) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Zapata seeks waiver concerning that portion of its Btu refund obligation attributable to certain royalties paid by it (or others on its behalf) to the Minerals Management Service of the U.S. Department of the Interior (MMS). The royalties relate to sales of gas of Zapata from High Island Block H-542, South Addition, Offshore Texas, by Sun Exploration and Production Company, as operator, to Trunkline Gas Company and sales from other producing properties of Zapata in the Federal Outer Continental Shelf.

[1] Refunds Resulting from Btu Measurement Adjustments, 49 FR 46,353 (Nov. 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR § 385.1101-.1117 (1986).

Under Order No. 399, these refunds were due by November 5, 1986,[4] but this deadline has been postponed.[5] Specifically, Zapata seeks deferral of any obligation it may have to make Btu refunds attributable to these royalty payments until 30 days after resolution of legal matters relating thereto pending in the Department of the Interior or until Zapata receives full payment of the royalties from MMS, whichever occurs first.

Zapata requests waiver on grounds that its operator, Sun, has informed Zapata that the overpaid royalties related to Btu refunds owed on Zapata's gas are uncollectible from MMS, but are subject to legal proceedings with MMS and elsewhere in the Department of the Interior.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days

[4] 49 FR 37735 at 37740 (September 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

[5] In Order No. 399-C, issued November 5, 1986, the Commission postponed the November 5, 1986 deadline for payment of Btu refunds attributable to royalty payments for any first seller that has a petition on file with the Commission seeking waiver of or postponement of the deadline to pay Btu refunds attributable to royalty payments.

after publication of this notice in the Federal Register.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7283 Filed 4-1-87; 8:45 am]

BILLING CODE 6717-01-M

## Office of Hearings and Appeals

## Issuance of Decisions and Orders; Week of January 12 Through January 16, 1987

During the week of January 12 through January 16, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Remedial Order

*Armada International Corp. and Texas Armada Refining Company, 1/12/87 KRO-0370*

The DOE issued a final Remedial Order to Armada International Corporation and Texas Armada Refining Company affirming a Proposed Remedial Order issued to them on September 26, 1986. Neither firm filed a Notice of Objection to the PRO. A Notice of Objection was filed by the State of California, but the state agreed to the dismissal of the Notice. The Remedial Order found that the firms were successors-in-interest to Texas Asphalt and Refining Company, Inc., which in the period March through May 1977 illegally received $1,155,457 in small refiner bias entitlements for crude oil that it did not own. The Remedial Order requires the firms to refund this amount plus interest. The overcharges and interest are to be deposited into a suitable DOE escrow account for ultimate disbursement pursuant to procedures set forth in 10 CFR Part 205, Subpart V.

### Requests for Exception

*Butler Bros. Oil Co., Inc., 1/12/87, KEE-0068*

Butler Bros. Oil Co., Inc filed an Application for Exception from the requirement to submit Form EIA-782B, entitled "Resellers'/Restailers' Monthly Petroleum Product Sales Report." In considering the applicant's request, the DOE found that the firm failed to demonstrate that it was affected in a particularly adverse manner by the filing requirement. Accordingly, the Application was denied.

*Sumter Petroleum Co., 1/16/87, KEE-0077*

Sumter Petroleum Co. filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not inordinately burdened by the filing requirement. Accordingly, exception relief was denied.

### Supplemental Order

*Warrior Asphalt Company of Alabama, Inc., Cities Service Company, 1/15/87, BYX-0197, HER-0052*

The DOE reviewed the level of exception relief that Warrior Asphalt Company of Alabama, Inc. received under the crude oil entitlements program, 10 CFR 211.67, for the firm's 1980 and 1981 fiscal years. The DOE affirmed its earlier determination that Warrior received excessive exception relief in the amount of $599,618 for those two fiscal years. The firm therefore was determined to have a final net entitlement dispense obligation for that amount. The DOE indicated that pursuant to its policy announcement of January 9, 1985, Warrior's dispense obligation would not be enforced.

### Refund Applications

*Gulf Oil Corporation/Frankenmuth Oil Company, Hill Oil Company, Inc., 1/16/87, RF40-3073, RF40-2753*

The DOE issued a Decision and Order concerning the Applications for Refund filed by Frankenmuth Oil Company and Hill Oil Company, Inc. Both firms were resellers of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated the volume of Gulf product it purchased, for which it will receive principal of $0.00122 per gallon (the Gulf volumetric refund amount), plus $0.00028 per gallon in accrued interest. The total amount of refunds approved in this Decision is $4,279 in principal and $983 in interest.

*Gulf Oil Corporation/Gallup-Silkworth Co. et al., 1/12/87, RF40-850 et al.*

The DOE issued a Decision and Order concerning the Applications for Refund filed by Gallup-Silkworth Co. and four other firms, each of which was both a purchaser and a consignee of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated the volume of motor gasoline and/or middle distillates purchased from Gulf, for which it will receive principal of $0.00122 per gallon (the Gulf volumetric refund amount), plus $0.00028 per gallon in accrued interest. Each applicant also demonstrated that it had lost potential sales and therefore had been injured in its role as a consignee of Gulf motor gasoline. The total amount of refunds approved in this Decision is $51,754 in principal and $11,877 in interest.

*Gulf Oil Corporation/Grogan Oil Co. Inc., 1/15/87, RF40-3622*

The DOE issued a Supplemental Order concerning a revised Application for Refund filed on behalf of Grogan Oil Co., Inc., a reseller of Gulf Oil Corporation petroleum products. Grogan was previously granted a refund in the Gulf Oil Corporation special refund proceeding. The DOE was informed by counsel for Grogan that the purchase volumes indicated in the firm's refund application had been overstated. The refund check that had been issued to Grogan was returned, and a revised claim based on 5,962,803 gallons was submitted. On the basis of these submissions and on the record, the DOE decided to rescind Grogan's initial refund and to grant the firm a new refund based upon the revised purchase volume figure. The total refund granted in this Decision was $8,944, representing $7,275 in principal and $1,669 in accrued interest.

*Gulf Oil Corporation/Page & Shamburger, Inc., Vickery Oil Company, 1/16/87, RF40-2786, RF40-2787*

The DOE issued a Decision and Order concerning the Applications for Refund filed by Page & Shamburger, Inc. and Vickery Oil Company, each of which was both a purchaser and a consignee of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated the volumes of product purchased from Gulf, for which it will receive principal of $0.00122 per gallon (the Gulf volumetric refund amount), plus $0.00028 per gallon in accrued interest. Each applicant also demonstrated that it had lost potential sales and therefore had been injured in its role as a consignee of motor gasoline. The total amount of refunds approved in this Decision is $4,357 in principal and $1,229 in interest.

*Gull Industries, Inc./R.B. Seiflein, et al., 1/12/87; RF260-1 et al.*

The DOE issued a Decision and Order concerning 10 Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). Each applicant was a reseller who was listed in the Appendix to that Decision as being eligible for a specified refund amount from the Gull consent order fund. Since each applicant's claim was for $5,000 or less, no further proof of injury was required. The refunds approved in the Decision totaled $48,170, including $32,086 in principal and $16,084 in interest.

*Gulf Oil Corporation/Reeves Oil Company, 1/16/87; RF40-2097*

The DOE issued a Decision and Order concerning the Application for Refund filed by Reeves Oil Company, in connection with the Gulf Oil Corporation refund proceeding. Reeves, a Gulf consignee, demonstrated that it had lost potential sales of motor gasoline and therefore had been injured as a result of Gulf's allegedly illegal pricing practices. Reeves did not demonstrate injury with illegal pricing practices. Reeves did not demonstrate injury with respect to consigned middle distillates. Accordingly, a refund of $1,284 in principal and $290 in interest was approved only for consigned motor gasoline.

*MAPCO, Inc./B & C LP Gas Company et al., 1/15/87; RF108-14 et al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by B & C LP Gas Company, Chumbley's L.P. Gas, Inc., and Moore LP Gas, Inc., requesting funds from the MAPCO, Inc. consent order fund. Since each claimant established that it purchased covered MAPCO product, and since no claim was more than the small claims threshold level of $5,000, no detailed showing of injury was required. The total refund amount granted in this Decision was

$17,517.01 including $11,625 in principal and $5,891.92 in interest.

*MAPCO, Inc./Rick's LP Gas, Inc., 1/13/87; RF108–24*

The DOE issued a Decision and Order concerning an Application for Refund filed by Rick's LP Gas, Inc., a retailer of MAPCO propane. Since the firm elected to limit its refund claim to the $5,000 small claims refund level, it was not required to submit proof that it was injured as a result of its MAPCO purchases. The DOE therefore concluded that Rick's should receive a refund of $5,000 in principal and $2,520.11 in accrued interest for a total refund of $7,520.11.

*Marathon Petroleum Company/American Sunroof Company et al., 1/15/87; RF250–2115 et al.*

The DOE issued a Decision and Order concerning 28 Applications for Refund filed by end-users of products covered by a consent order entered into with Marathon Petroleum Company. All the applicants demonstrated the volume of product purchased from Marathon and, since each was an end-user, none was required to submit proof of injury. Accordingly, the Applications were granted. The sum of the refunds approved was $28,321, representing $26,493 in principal and $1,828 in interest.

*Marathon Petroleum Company/Chronister Oil Co. et al., 1/14/87; RF250–1275 et al.*

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of products covered by a consent order entered into with Marathon Petrolum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. Accordingly, the Applications were granted. The sum of the refunds approved in this Decision is $9,167 in principal and $634 in interest.

*Marathon Petroleum Company/Dallas and Mavis Forwarding Co. Inc. et al., 1/12/87; RF250–2017 et al.*

The DOE issued a Decision and Order concerning 17 Applications for Refund filed by end-users of products covered by a consent order entered into with Marathon Petroleum Company. All the applicants demonstrated the volume of product purcahsed from Marathon and, since each was an end-user, none was required to submit proof of injury. Accordingly, the applications were granted. The sum of the refund approved in this Decision is $49,484 representing $46,390 in principal and $3,094 in interest.

*Marathon Petroleum Company/J.W. Kelley et al., 1/13/87; RF250–1475 et al.*

The DOE issued a Decision and Order concerning five Applications for Refund filed by four indirect purchasers of products covered by a consent order entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its purchases of product, and that the product had originated with Marathon. Since none of the applicants requested a refund greater than the $5,000 small claims refund amount, no injury demonstration was required. The sum of the refunds approved in this Decision is $2,919, representing $2,732 in principal and $187 in interest.

*Marathon Petroleum Company/Pride Petroleum Company, 1/14/87; RF250–1879, RF250–1880*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Pride Petroleum Company, Inc., a reseller of products covered by a consent order entered into with Marathon Petroleum Company. Pride elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Decision setting forth procedures for disbursing the Marathon consent order funds. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Pride should receive a refund of $7,036.61 in principal and $400.21 in acccrued interest, for a total refund of $7,436.82.

*Mobil Oil Corporation/Bothell Bros. et al., 1/12/87; RF225–7683 et al.*

The DOE granted 35 Applications for Refund from a fund obtained through a consent order entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $9,803, including $8,111 in principal plus $1,692 in interest.

*Mobil Oil Corp./Bridge Construction Corp. et al., 1/16/87; RF225–8032 et al.*

The DOE issued a Decision and Order granting 41 applications of end-users requesting refunds from the Mobil Oil Corporation consent order fund. Each applicant presented evidence that it purchased refined petroleum products directly from Mobil during the consent order period. According to the methodology set forth in *Mobile Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. The refunds approved in the Decision totaled $11,805, including $9,769 in principal and $2,036 in interest.

*Mobil Oil Corporation/Brown Plumbing Co. et al., 1/13/87; RF225–8099 et al.*

The DOE granted 38 Applications for Refund from a fund obtained through a consent order entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $1,630, including $1,353 in principal plus $277 in interest.

*National Helium RM3–45; Webster Oil Co./Missiouri, RM48–48; Vickers Energy Corp./Missouri, RM1–47; Standard Oil Co. (Indiana)/Missouri, RQ251–331; OKC Corp./Missouri, RQ13–332; Vickers Energy Corp./Missouri; 1/12/87; RQ1–349*

The State of Missouri filed proposed second-stage refund plans and motions for modification for previously approved second-stage refund monies with the Office of Hearings and Appeals, pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under consent orders with National Helium Corp., Webster Oil Co., Vickers Energy Corp., Standard Oil Co. (Indiana) and OKC Corp. Missouri proposed to use the refunds to replace 120 inoperable propane furnaces in low-income residences, implement a Residential Conservation Loan Program which will provide loan subsidies to middle-income, single-family residences and provide weatherization assistance to low-income homeowners. Missouri also proposed to implement an Energy Information Service to provide clients with a computer based energy audit that will enable them to determine cost effective, energy saving strategies to use in weatherizing their homes. The four programs were found to promote energy conservation and, accordingly, were approved.

## Dismissals

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| A.R. Fleming Printing Co. | RF225–8529 |
| Allen Basement Water-Proofing | RF225–7928 |
| Alway Central School | RF225–7681 |
| | RF225–7682 |
| Anderson, Greenwood & Co. | RF225–8704 |
| Anglo Fabrics Co., Inc. | RF225–7060 |
| | RF225–7061 |
| Beatrice Meats, Inc. | RF225–8465 |
| Boise Cascade Corp. | RF225–8737 |
| Bradford Auto Co. | RF225–9197 |
| Chicago Weaving Corp. | RF225–8539 |
| City of Syracuse | [illegible] |
| | RF225–8443 |
| | RF225–8444 |
| Connecticut Pencil Co. Inc. | [illegible] |
| Crescent Oil Co. | RF40–3134 |
| Dart Container Corp. | RF225–8505 |
| Deering Ice Cream Corp. | [illegible] |
| Douglas Furniture | RF225–7014 |
| | RF225–7015 |
| Earl Buche | RF225–8172 |
| Ferguson Bros. Construction Co. | RF191–9 |
| Gibson Thermogas | RF108–26 |
| Great Bend Industries | RF225–8755 |
| | [illegible] |
| | RF225–8757 |
| Herbert H. Lehman College | RF225–8129 |
| Hometown, Inc. | RF250–1261 |
| Hyatt-Sayler, Inc. | RF225–7098 |
| | RF225–7099 |
| Imperial Oil Co. | KEE–0087 |
| J.J. Ferguson Ready Mix-Hot Mix Company | RF191–8 |
| J.J. Ferguson Sand & Gravel Company | RF191–10 |
| J.P. Grimes, Inc. | RF225–7986 |
| | RF225–7987 |
| | RF225–7988 |
| Johnson Mobil | RF225–10329 |
| Joy Manufacturing Co. | RF225–8078 |
| Kane-Scott Corp. | RF225–8738 |
| Kasch Oil Co. | RF225–231 |
| | RF225–10164 |
| Leathers Oil Company | RF260–11 |
| Lock Haven Realty Co. | RF40–2745 |
| Lucas Machine Division | RF225–8158 |
| McCall Oil & Chemical Corp. | RF260–13 |
| Milwaukee Valve Co., Inc. | RF225–8574 |
| Missouri Terminal Oil Company, Inc. | RF40–904 |
| Mitchell Grinding Corp. of California | RF225–8876 |

| Name | Case No. |
|---|---|
| Montana-Dakota Utilities Co. | RF225-5005 |
| | RF225-5006 |
| Morton Machinery Co., Inc. | RF225-8589 |
| Morton Salt | RF225-8156 |
| New Harbor Fisherman's CO-OP | RF225-1785 |
| North Shore Masons Supply Corp. | RF225-7247 |
| | RF225-7248 |
| Norwest Publishing Co. | RF225-7556 |
| Ohlinger Industries, Inc. | RF225-7569 |
| Pacific Airmotive Corp. | RF225-8114 |
| Patterson Farms Inc. | RF225-8932 |
| Port Arthur Towing Co. | RF225-7992 |
| Poughkeepsie Journal | RF225-1799 |
| Propak-California Corp. | RF225-8732 |
| Public Works Dept. | RF225-8503 |
| | RF225-8504 |
| Quaker Oats Co. | RF225-6656 |
| Rendas Tool & Die, Inc. | RF225-7990 |
| Richard G. Shane | RF258-7 |
| Shebester, Inc. | RF225-7923 |
| Singer Company | RF225-7058 |
| | RF225-7059 |
| Stepan Company | RF225-7663 |
| The Bert-Co Enterprises, Inc. | RF225-7226 |
| | RF225-7227 |
| The Rams-Head Co. | RF225-8140 |
| Thomson Industries, Inc. | RF225-8548 |
| Trane Company | RF225-7051 |
| | RF225-7052 |
| Turbodyne Division | RF225-6877 |
| Unitek Corp. | RF225-8533 |
| | RF225-8534 |
| University of Washington | RF225-8573 |
| Village of Hastings-on-Hudson | RF225-7653 |
| Waukesha Bearing Corp. | RF225-8079 |
| Wells Public Utilities | RF225-7013 |
| Westinghouse Electric Corp. | RF225-5327 |
| Zapata Gulf Marine Corp. | RF225-8154 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

March 24, 1987.

**George P. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 87-7218 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of February 23 Through February 27, 1987

During the week of February 23 through February 27, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Appeal

*Louisiana Crude Oil and Gas Company, Inc., 2/26/87, HEA-0012*

The Louisiana Crude Oil and Gas Company, Inc. filed an Appeal with the Office of Hearings and Appeals of the Department of Energy (DOE) in which it challenged the Economic Regulatory Administration's (ERA) election of payment of overcharges to the DOE and proceedings under 10 CFR Part 205, Subpart V for payment of overcharges to unidentified victims in conjunction with the Remedial Order issued to the firm. 8 DOE ¶ 80,184 (1981). Louisiana Crude also challenged the pay-up order issued to the firm by the ERA. In considering the Appeal, the DOE found that the restitutionary and regulatory purposes of the petroleum price regulations justified the immediate payment of overcharges. The DOE also found that the ERA had properly chosen Subpart V proceedings to distribute the overcharges to the unidentified victims of the firm's illegal pricing activities. Finally, the DOE found that Louisiana Crude's remaining objections to immediate payment of the restitutionary amounts had been fully considered and decided in the firm's application for retroactive exception relief. 15 DOE ¶_____, Case No. DEE-2130 (February 20, 1987). Accordingly, Louisiana Crude's Appeal was denied.

### Petition for Special Redress

*South Dakota, 2/27/87, KEG-0004*

The DOE issued a Decision concerning a Petition for Special Redress submitted by the State of South Dakota. The State sought approval to use Stripper Well and Diamond Shamrock funds for two projects deemed by the DOE's Office of State and Local Assistance Planning to be inconsistent with the terms of the Stripper Well Settlement and the Diamond Shamrock Stipulation. After considering South Dakota's Petition, the DOE decided to approve the State's proposal to use $111,027 to replace and relocate the railroad trackage and turnouts at the Marion grain elevator train loading area. This program will help South Dakota farmers save 90,000 gallons of fuel annually by substituting trains for trucks in grain shipment. The DOE will not approve the proposed use of $325,500 for the expansion of the Minnehaha Community Water Corporation project. This program focuses more on health and environmental concerns than on reducing the energy costs incurred by injured consumers. Accordingly, South Dakota's Petition for Special Redress was partially approved.

### Requests for Exception

*Parish Oil Company, Inc., 2/24/87, KEE-0098*

Parish Oil Company, Inc. filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Parish requested relief because of computer problems that prevented it from retrieving the data needed to prepare Form EIA-782B. The Office of Hearings and Appeals (OHA) found that requiring Parish to prepare the Form without its computer would impose a substantial hardship on the firm. Therefore, the OHA granted Parish temporary exception relief to allow the firm time to resolve its computer difficulties.

*Zink Oil Company, 2/24/87, KEE-0090*

Zink Oil Company filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Zink argued that the monthly reporting requirement is costly because the firm must pay its accountant to prepare the Form. The Office of Hearings and Appeals (OHA) found, however, that the cost to Zink of filing the Form is no greater than the cost to other reporting firms, since every reporting firm must pay an employee to prepare the Form. Consequently, the OHA denied Zink's request for exception relief.

### Motion for Discovery

*Phoenix Petroleum Company, Steven B. Wyatt, 2/27/87, KRD-0190*

Phoenix Petroleum Company and Steven B. Wyatt filed a Motion for Discovery in connection with their Statement of Objections to a Proposed Remedial Order (PRO) issued to them by the ERA. The PRO alleged that they had violated the layering rule in their resales of crude oil. Alternatively, the ERA alleged that they had violated the general price rule by reselling crude oil at a markup which exceeded their permissible average markup. In their Motion, they sought discovery relating to (i) the ERA's legal contentions, (ii) the administrative records and the DOE's contemporaneous construction of the regulations at issue, and (iii) the Phoenix audit.

The DOE found that the discovery requested should be denied. In this regard, the DOE found that the ERA's legal contentions were clear and that discovery concerning them would not be appropriate. The DOE also found that the Petitioners had failed to show that the regulations at issue were sufficiently ambiguous to warrant contemporaneous construction discovery, or that discovery of materials in addition to the publicly available official administrative records of the rulemakings should be granted. Finally, the DOE found that while there is a dispute concerning whether the ERA correctly computed Phoenix's alleged overcharges, the presence of this dispute does not warrant discovery since the method used by the ERA was set out in workpapers that were provided the firm. Discovery of additional audit materials would impermissibly intrude on the decisionmaking process. Accordingly, the discovery motion was denied.

### Refund Applications

*Ferrell Companies Inc./ Vanguard Petroleum Corporation, 2/26/87, RF273-5*

The DOE issued a Decision and Order concerning an Application for Refund filed by a purchaser of Ferrell Companies, Inc. propane. The applicant filed for a refund based upon the small claims procedures outlined in *Ferrell Companies, Inc.*, 14 DOE ¶ 85,514 (1986). After examining the claim, the DOE concluded that the applicant should receive a refund based on the volumetric refund amount established in *Ferrell*. The total refund granted was $3,558.

*Gulf Oil Corporation/ Adkison's Gulf Service et al., 2/27/87, RF40-2315 et al.*

The DOE issued a Decision and Order concerning 14 Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corporation*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 Consent Order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by claimants, the DOE concluded that they should receive refunds totaling $54,321, representing $43,886 in principal and $10,435 in accrued interest.

*Gulf Oil Corporation/H&W Oil Company et al., 2/25/87, RF40–3628 et al.*

The DOE issued a Decision concerning four Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984) governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant has demonstrated that it would not have been required to pass through to customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that each applicant should receive a refund. The total amount of refunds approved in this Decision is $21,378, representing $17,398 in principal and $3,989 in interest.

*Gulf Oil Corporation/Newton's Westchester Gulf Inc. et al., 2/26/87, RF40–224 et al.*

The DOE issued a Decision granting 32 Applications for Refund from the Gulf Oil Corporation consent order fund filed by retailers and resellers of Gulf refined products. In considering the applications, the DOE found that each of the claimants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totalling $61,393 ($49,931 principal plus $11,462 interest).

The DOE also determined that no further claims should be accepted in the Gulf proceeding after March 1, 1987. Any unclaimed funds remaining in the Gulf escrow account after all pending claims are paid will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

*Marathon Petroleum Company/Abner Wolf, Inc. et al., 2/25/87, RF250–790 et al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applications were evaluated in accordance with the procedures set forth in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986). The sum of the refunds approved in this Decision is $11,901, representing $11,060 in principal and $841 in interest.

*Marathon Petroleum Company/Gastown, Inc. of Delaware, Consolidated Stations, Inc., Speedway Petroleum Corp., 2/27/87, RF250–2003 through RF250–2008*

The DOE issued a Decision and Order denying six Applications for Refund filed by three purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant requested a refund of $50,000 under the medium range presumption of injury. The applications were denied because all three of the applicants have been wholly owned subsidiaries of Marathon Petroleum Company since they began their purchases of covered product.

*Marathon Petroleum Company/Swifty Oil Company of Florida, Swifty Oil Company, 2/25/87, RF250–1652, RF250–1653, RF250–1654*

The DOE issued a Decision and Order concerning three Applications for Refund filed by Swifty Oil Company of Florida and Swifty Oil Company, purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The two firms are related by common ownership, and the DOE determined that they should be considered together for purposes of analysis. The applicants were granted a refund of $10,500, representing $9,735 in principal and $765 in interest, on the basis of 35 percent of their combined purchases of Marathon product, under the medium-range presumption of injury.

*Marathon Petroleum Company/Temko Oil Corporation, 2/24/87, RF250–1883, RF250–1884*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Temko Oil Corporation (Temko), a retailer of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Temko elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Temko should receive a refund of $7,288.27 in principal and $458.04 in accrued interest for a total refund of $7,746.31.

*Marathon Petroleum Company/Tom's Marathon, 2/24/87, RF250–1261*

The DOE issued a Decision and Order concerning the Application for Refund filed by Tom's Marathon in connection with the Marathon Petroleum Company refund proceeding. According to the procedures outlined in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), Tom's demonstrated that it indirectly purchased 958,960 gallons of covered Marathon motor gasoline from G & S Oil Company, Inc., a direct Marathon customer. Since the agency granted G & S a refund under the small claims presumption in *Marathon Petroleum Co./Arlie's Marathon Service*, 14 DOE ¶ 85,432 (1986), there was no conclusive finding that G & S absorbed all of the alleged overcharges. Therefore, Tom's is eligible to receive a small claims refund in this proceeding. Tom's will receive its full allocable share of $403 plus $32 in accrued interest.

*Mobil Oil Corporation/Alvarado Niles Service Station et al., 2/26/87, RF225–484 et al.*

The DOE issued a Decision and Order granting 52 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $25,357.

*Mobil Oil Corporation/ Cashman Seed and Fertilizer et al., 2/25/87, RF225–6856 et al.*

The DOE granted 26 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $5,273, representing $4,344 in principal plus $929 in interest.

*Owensboro Yellow Cab Co., Inc., 2/27/86, RF270–1167*

The Department of Energy (DOE) issued a Decision and Order approving a taxicab operator for a refund from the Surface Transporters Escrow. The company based its refund application on purchases of gasoline, lubricating oils, and liquified petroleum gas (propane). In evaluating the company's LP gas claim, the OHA ruled that a Surface Transporter may receive a refund based on LP gas purchases if it used the LP gas to operate its vehicles. Since Owensboro used propane as a fuel for its cabs, the DOE approved the company's volumes.

*Pioneer Corporation/ Vanguard Petroleum Corporation, 2/26/87, RF52–5*

The DOE issued a Decision and Order concerning the Application for Refund filed in the Pioneer Corporation Refund proceeding on behalf of Vanguard Petroleum Corporation, a reseller of Pioneer propane. Following the procedures set forth in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), Vanguard demonstrated that it purchased 1,656,128 gallons of propane from Pioneer during the Pioneer consent order period. Because Vanguard elected to limit its claim to the $5,000 threshold amount, however, the firm was not required to submit cost banks or to show that it did not pass through the alleged overcharges. Accordingly, the refund approved in this Decision is $5,000 in principal plus $3,053 in interest.

*Sid Richardson and Gasoline Company and Richardson Products Company/ Weick Bros. Oil Co., 2/26/87, RF26–43*

The DOE issued a Decision and Order approving an Application for Refund filed by

Weick Bros. Oil Co. (Weick Bros.), a reseller-retailer of Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Richardson) natural gas liquid products, that purchased the product directly from Richardson. In accordance with the procedures set forth in *Sid Richardson Carbon and Gasoline Company*, 10 DOE ¶ 85,056 (1983), Weick Bros. elected to limit its claim to the small claims threshold amount of 720,000 gallons of annual purchases. Therefore, Weick Bros. was eligible for a refund based on total purchases of 1,519,673 gallons. The total refund approved in the decision is $18,455 ($9,560 in principal plus $8,895 in interest).

*South Hampton Refining Company/ The Atchison Topeka and Santa Fe Railway Company, Tenneco Oil Company, City Public Service, 2/24/87, RF230–2, RF230–4, RF230–5*

The DOE issued a Decision and Order concerning three Applications for Refund filed by purchasers of covered products from South Hampton Refining Company (SHRC). Each firm applied for a refund based on the procedures outlined in *South Hampton Refining Company*, 13 DOE ¶ 85,328 (1985), governing the disbursement of settlement funds received from SHRC pursuant to a June 4, 1980 Consent Order. Since the Atchison, Topeka and Santa Fe Railway Company was an end user of SHRC products, it was found to have been injured by SHRC's alleged overcharges. Accordingly, the firm was granted its full volumetric share of the SHRC consent order amount. Although the other two applicants had been granted refunds in previous Decisions, *see South Hampton Refining Company/City Public Service*, 14 DOE ¶ 85,199 (1986); *South Hampton Refining Company/Tenneco Oil Company*, 14 DOE ¶ 85,360 (1986), we stated in those determinations that if SHRC made further payments to the DOE, the claimants would receive supplemental refunds. This Decision and Order provided for those additional disbursements. The total amount of refunds approved was $40,284, representing $29,028 in principal and $11,236 in accrued interest.

*Taranto Bus Corporation, 2/26/87, RF270–1104*

The Department of Energy (DOE) issued a Decision and Order approving a bus company for a refund from the Surface Transporters Escrow. However, the DOE found that the company overestimated its gasoline purchases. Since there was enough information in the record of the case for the DOE to arrive at a reasonably supported estimate, the DOE adjusted the company's volumes and approved it for a refund based on a smaller number of gallons.

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Benjamin A. Franklin | [illegible] |
| Christian Gas Co | RF272-3 |
| Clayton Automotive | RF225-6487 |
| Estate Mitchell A. Normand | [illegible] |
| Frederick Stullen Oil Co | [illegible] |
| Griffin Petroleum, Inc | [illegible] |
| Grimm's Fuel Co., Inc | [illegible] |
| Hometown Oil Co | KEE-0105 |
| Joe's Conoco | RF220-421 |
| Kelley Williamson Co | [illegible] |
| Mellon Enterprises, Inc | [illegible] |
| Murphy Oil Corp | [illegible] |
| Murphy Oil Corp | BRO-0984 |
| | [illegible] |
| Murphy Oil Corp | [illegible] |
| O.K. Oil Company | RF250-1040 |
| Pettyjohn Oil Co | RF225-10427 |
| | [illegible] |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 24, 1987.

[FR Doc. 87–7219 Filed 4–1–87; 8:45 am]

BILLING CODE [illegible]

## Case Filed; Week of February 20 Through February 27, 1987

During the Week of February 20 through February 27, 1987, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service or notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 24, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 20 through February 27, 1987]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 5/01/85 | Ball Marketing, Inc. Washington, DC | KRZ-0057 | Interlocutory. If granted: The Proposed Remedial Order issued to Ball Marketing, Inc. (Case No. HRO-0268) would be dismissed. |
| 2/24/87 | Anchor Gasoline Corporation Washington, DC | KRD-0330 & KRH-0330 | Motions for Discovery & Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Anchor Gasoline Corporation in response to the August 26, 1986 Proposed Remedial Order issued to Anchor Gasoline Corporation (Case No. KRO-0330) |
| 2/24/87 | Appel Oil Corporation Carmel, IN | KEE-0127 | Exception To The Reporting Requirements. If granted: Appel Oil Corporation would not be required to file Form EIA-782B, "Reseller/Retailer's Monthly Petroleum Products Sales Report." |
| 2/24/87 | Francis Ryan, Inc. Billings, NY | KEE-0128 | Exception To The Reporting Requirements. If granted: Francis Ryan, Inc. would not be required to file Form EIA-821 "Annual Fuel Oil & Kerosene Sales Report." |
| 2/25/87 | Texaco, Inc. & Stanford Harrell Washington, DC | [illegible] | Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the escrow fund transferred to the DOE by a November 26, 1986 Order issued by the US District Court for the Northern District of Texas. |

REFUND APPLICATIONS RECEIVED

[Week of February 20 through February 27, 1987]

| Date | Name | Case no |
|---|---|---|
| 5/01/86 | Farmers Union Central Exchange | RF225-10690 |
| 7/14/86 | Mdn Oil Company | RF225-10684 |
| 7/20/86 | Frank Cove, Jr. | RF225-10686 |
| 7/20/86 | Frank Cove, Jr. | RF225-10687 |
| 8/01/86 | Cochran Oil Company | RF225-10684 |
| 8/01/86 | Cochran Oil Company | RF225-10685 |
| 8/01/86 | Putman Oil Company | RF225-10688 |
| 8/01/86 | Putman Oil Company | RF225-10689 |
| 8/08/86 | National Helium/Wisconsin | RO-3-360 |
| 2/12/87 | City of Old Town | RF272-369 |
| 2/18/87 | Broy's Marathorn | RF250-2708 |
| 2/19/87 | Commonwealth Oil Refining Co | RF289-2 |
| 2/20/87 | Matter Incorporated | RF40-3669 |
| 2/20/87 | Bill's Queen Avenue Husky | RF161-102 |
| 2/20/87 | Flame Gas | RF225-10672 |
| 2/20/87 | Tires Plus Auto Service Ctr | RF225-10673 |
| 2/20/87 | Brucker's Mobil | RF225-10674 |
| 2/20/87 | Bottingr Fuel Corporation | RF285-16 |
| 2/20/87 | Blue Flame Gas Company, Inc. | RF40-3660 |
| 2/20/87 | Vallamont Gulf Service | RF40-3661 |
| 2/20/87 | Cashion Gulf Service | RF40-3662 |
| 2/20/87 | Bennett's Gulf | RF40-3663 |
| 2/20/87 | Archer Bros. Garage | RF40-3664 |
| 2/20/87 | Arnold Barfield Dist. Co., Inc. | RF40-3665 |
| 2/20/87 | Gulf Service Station | RF40-3666 |
| 2/20/87 | Bob Davis Gulf | RF40-3667 |
| 2/20/87 | Sellergren Propane | RF40-3668 |
| 2/20/87 | New Way Fuel | RF108-31 |
| 2/20/87 | Circle S. Dist. | RF259-28 |
| 2/20/87 | New Way Fuel | RF258-16 |
| 2/20/87 | Paramount Oil Company | RF259-29 |
| 2/20/87 | Paramount Oil Company | RF260-19 |
| 2/20/87 | New Way Fuel | RF260-20 |
| 2/20/87 thru 2/27/87 | Getty Oil Refund Applications Received. | RF265-498 |
| 2/24/87 | Bueres Mobil | RF225-10675 |
| 2/24/87 | Bueres Mobil | RF225-10676 |
| 2/24/87 | E.M. Ellinpson Oil Co. | RF40-3670 |
| 2/24/87 | A & H Flying Service | RF40-3671 |
| 2/24/87 | Pennant Aviation, Inc. | RF40-3672 |
| 2/24/87 | General Aviation, New Orle- | RF40-3673 |
| 2/24/87 | Arriba Super Service | RF161-103 |
| 2/24/87 | Bob & Tom's Conoco | RF220-485 |
| 2/24/87 | Consolidated Edison Co. | RF255-3 |
| 2/24/87 | Houston Coca-Cola Bottling | RF272-378 |
| 2/24/87 | A-One Oil Company | RF285-17 |
| 2/24/87 | C.F. Bean | RF225-10677 |
| 2/24/87 | Hodgson Mobil | RF225-10678 |
| 2/24/87 | Placito's Service Station | RF225-10679 |
| 2/24/87 | Steenwuk's Mobil | RF225-10680 |
| 2/24/87 | Mike's Mobil | RF225-10681 |
| 2/24/87 | Elmer's Mobil | RF225-10682 |
| 2/24/87 | Asadour Hagopian | RF225-10671 |
| 2/24/87 | Blu-Gas of S.C. Inc. | RF140-50 |
| 2/24/87 | Shulman Fuel Co. Inc. | [illegible] |
| 2/25/87 | Chene Marathon Service | RF250-2709 |
| 2/25/87 | Hansen Oil Co. | RF250-2710 |
| 2/25/87 | Hansen Oil Co | RF250-2711 |
| 2/25/87 | Mike's Service Center | RF40-3674 |
| 2/25/87 | Oblerlin Light & Water System. | RF40-3675 |
| 2/25/87 | Alamo Barge Lines, Inc. | RF40-3676 |
| 2/27/87 | Henderson Oil and Butane Co. | RF272-379 |
| 2/27/87 | Kent Oil & Trading | RF189-22 |
| 2/27/87 | Pollock LP Gas, Inc. | RF139-164 |

[FR Doc. 87-7220 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Proposed Decision and Order; Period of February 23 Through March 6, 1987

During the period of February 23 through March 6, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 24, 1987.

*Jasper Oil Company, Jasper, Texas; KEE-0066, Reporting Requirements*

Jasper Oil Company filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On March 2, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 87-7222 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

## Objection to Proposed Remedial Orders Filed; Week of March 2 Through March 6, 1987

During the week of March 2 through March 6, 1987, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

March 24, 1987.

*LaJet, Inc., Aurora, CO; Texas Napco, Inc., Abilene, TX; Lajet Petroleum Co., Abilene, TX; Kro-0470, Crude Oil*

On March 5, 1987, LaJet, Inc., 14190 E. Evans Avenue, Aurora, Colorado 80014, LaJet Petroleum Company, 3130 Antilley Road, Abilene, Texas 79606, and Texas Napco, Inc., located at the same Abilene address, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firms on January 22, 1987. On March 6, 1987, the Controller of the State of California also filed a Notice of Objection to the PRO.

In the PRO, the ERA found that during the period May 1977 through September 1977, LaJet, Inc. (LaJet) understated its crude oil receipts by erroneously reporting that certain crude oil was processed by LaJet for the account of another refiner. As a result, the PRO found that the firm violated the requirements of the Entitlements Program at 10 CFR 211.66(h) and 211.67 as well as 10 CFR 205.202. The PRO also found that LaJet Petroleum Company, succesor to the LaJet refining business, and Texas Napco, Inc., former parent of LaJet, are jointly and severally liable with LaJet for the violation.

According to the PRO, the violation resulted in $5,558,048 of overcharges.

*McAlister Enterprises, Inc., Kyle S. McAlister, Nw Braunfels, TX; Kro-0450, Crude Oil*

On March 6, 1987, McAlister Enterprises, Inc., formerly Questor Petroleum Corporation (Questor), and Kyle S. McAlister of 1150 Highway 46 South, New Braunfels, Texas, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to them on December 2, 1986. On March 6, 1987, the Controller of the State of California also filed a Notice of Objection to the PRO.

In the PRO, the ERA found that during the period July 1979 through November 1980, Questor violated the layering regulation at 10

CFR 212.186 and the provisions of 10 CFR 210.62(c) and 205.202 in its resales of crude oil. The PRO finds Kyle McAlister jointly liable for these violations as Questor's principal owner and the director of the firm's crude oil reselling actvities.

According to the PRO, the violation resulted in $42,539,059.30 of overcharges.

*Murphy Oil Corp., El Dorado, AR; Murphy Oil USA, Inc., El Dorado, AR; Ocean Drilling and Exploration Co., New Orleans, LA; CNG Producing, Co., New Orleans, LA; KRO–0460, Crude Oil*

On March 6, 1987, Murphy Oil Corp. and Murphy Oil, USA, Inc., both located at 200 Peach Street, El Dorado, Arkansas 71730, and Ocean Drillling and Exploration Co. and ODECO Oil and Gas Co., both at 1600 Canal Street, New Orleans, Louisiana 70112, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to them on December 15, 1986. On the same date, the Controller for the State of California also filed a Notice of Objection. Finally, on March 9, 1987, CNG Producing Co. and Roosevelt County, Montana, recipients of royalties from the properties in question, filed Notices of Objection. In the PRO, the Dallas District found that during the period September 1, 1973 through December 31, 1979 the respondents violated the provisions of 10 CFR 212.73 and 212.74 by charging prices in excess of their permissible ceiling prices for crude oil.

According to the PRO, the violation resulted in $13,366,664.60 of overcharges.

[FR Doc. 87–7221 Filed 4–1–87; 8:45 am]

BILLING CODE [illegible]

---

## Western Area Power Administration

## Final Post-1989 Allocation of Power; Salt Lake City Area Integrated Projects

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of final post-1989 power allocations; Salt Lake City area integrated projects.

**SUMMARY:** This notice contains the final post-1989 allocations of long-term firm energy and capacity from the Salt Lake City Area Integrated Projects (SLCA/IP) to eligible allottees in the Salt Lake City Area Northern and Southern Divisions by the Western Area Power Administration (Western). Also included in this notice is a discussion of the issues raised in public comments received subsequent to the publication of proposed allocations on September 11, 1986 (51 FR 32362), and a summary of the changes reflected in the final allocations.

It is important to note that the final allocations to Southern Division customers contained in this notice may be subject to adjustment upon completion of final allocations from the Parker-Davis Project (PDP). These adjustments may be necessary if the final post-1987 Parker-Davis Project allocations are different from the existing commitments used in formulating these final allocations. For this **Federal Register** notice, Western has used the existing Parker-Davis Project allocations as the basis for considering other Federal resources allocated to Salt Lake City Area Southern Division customers due to the Boulder City Area Office's probable extension of the existing Parker-Davis Project commitments for a period that will provide sufficient time to negotiate and sign new contracts. In all respects other than the adjustment referred to above, the Southern Division allocations set forth herein are final.

**DATES:** These allocations will become final on April 2, 1987, and become effective on May 4, 1987.

**ADDRESS:** For further information on these allocations contact: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, 438 East Second South, Salt Lake City, UT 84147, (801) 524–5493.

**SUPPLEMENTARY INFORMATION:** Contents of this section include:

I. Statutory Basis of the Allocations.
II. Background of the Allocation Procedures.
III. Southern Division Allocation Methodology.
IV. Summary of Comments on the Proposed Allocations.
1. Requests for Clarification.
a. Northern Division Reallocations.
b. Southern Division Reallocations.
c. Publication of Individual Allocations for Entities Receiving Allocations Through Single Purchasing Agent.
d. Allocation of Resource Pools 7 and 8 (Conservation and Renewable Energy Incentive).
e. Adjustments to Allocations to Collbran and Rio Grande Projects Customers.
2. Input Data Errors.
a. City of Holyoke, Colorado.
b. Municipal Subdistrict, Northern Colorado Water Conservancy District.
3. Allocation Methodology.
a. Issues Raised by Utah Power and Light Company.
b. Equity Issues.
c. Southern Division Energy Limitation.
4. Specific Allocation Issues.
a. U.S. Fish and Wildlife Service, Regions 2 and 6.
b. U.S. Army Yuma Proving Grounds.
c. U.S. General Services Administration.
5. Other Issues.
a. Wheeling Arrangements for the City of Truth or Consequences, New Mexico.
b. Administrative Procedures.
V. Summary of Revisions
1. Input Data.
a. City of Holyoke, Colorado.
b. Municipal Subdistrict, Northern Colorado Water Conservancy District.
2. Allocation Methodology.
a. Southern Division Energy Limitation.
b. Other Federal Resources.
3. Specific Allocations.
a. U.S. Fish and Wildlife Service, Region 2.
b. City of St. George, Utah.
c. Changes in Final Allocations Due to Limits on Total Federal Resources.
VI. Final Allocations
1. Southern Division.
2. Northern Division.

### I. Statutory Basis of the Allocations

The allocations published herein by Western's Salt Lake City Area Office (SLCAO) were determined from applications for power using the allocation criteria established by Western's final Post-1989 General Power Marketing and Allocation Criteria, published February 7, 1986, **Federal Register** at 51 FR 4844 (Criteria) with the minor modification outlined above. The allocations and Criteria were developed based on provisions of the Acts of Congress approved June 17, 1902 (ch. 1093, 32 Stat. 388), August 4, 1939 (43 U.S.C. 485h(c)), and August 4, 1977 (42 U.S.C. 7152, 7191), and, more specifically, on the Acts of Congress approved February 25, 1905 (33 Stat. 814), July 3, 1952 (66 Stat. 325), and April 11, 1956 (43 U.S.C. 620–620o), and acts amending or supplementing any of the foregoing legislation.

### II. Background of the Allocation Procedures

These final SLCA/IP allocations are issued pursuant to the provisions of Western's post-1989 Criteria. Contained in the Criteria was a call for entities eligible under the terms of the Criteria to submit applications for power. Among other things, the eligibility requirements of the Criteria included a requirement that entities must have submitted applicant profile data (APD) requested in Western's February 4, 1983, **Federal Register** notice (48 FR 5303). Also, as indicated in the February 7, 1986, Criteria, applications for allocations were to have been received by the SLCAO by the close of business on April 8, 1986.

Western published the "Proposed Post-1989 Power Allocations; Salt Lake City Area Integrated Projects (Proposed Allocations)" in the **Federal Register** on September 11, 1986 (51 FR 32362). The notice of Proposed Allocations included a discussion of the regulatory flexibility analysis, the notice of final environmental assessment and FONSI, and the determination under Executive Order 12291 applicable to these final post-1989 allocations. Included with this

publication was a notice that written comments on the Proposed Allocations would be received until November 10, 1986. In addition to accepting written comments, Western sponsored a public comment forum on the Proposed Allocations on October 8, 1986. Western published corrections to the Proposed Allocations in the October 29, 1986, **Federal Register** (51 FR 39574).

### III. Southern Division Allocation Methodology

In the Criteria, Western stated that it would take into account "other Federal resources," including Parker-Davis Project resources, in allocating power and limiting energy allocations in the post-1989 period. Western's Administrator reserved the right to deviate from the final post-1989 allocation criteria when warranted by special conditions. In the Proposed Allocations, Western explained that proposed allocations to Southern Division customers were based on the assumption that existing Parker-Davis Project nonwithdrawable commitments would continue in the post-1987 period. This assumption was necessary because the allocations of capacity and energy from the Parker-Davis Project had not been completed by the date of publication of the Proposed Allocations. The assumption was based on the fact that Western had stated in its December 28, 1984, "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects," that it would reserve allocations of Parker-Davis Project power for the post-1987 period in amounts equal to the current allocations for each Parker-Davis Project contractor (49 FR 50587).

Western now finds that it will be unable to complete the Parker-Davis Project allocation and contracting process by May 31, 1987, the termination date of the existing Parker-Davis Project contracts. Accordingly, Western's Boulder City Area Office will likely extend the existing Parker-Davis Project contracts for a time period that allows for the completion of the Parker-Davis Project allocation and contracting process. It would be inappropriate for Western to delay the publication of the SLCA/IP Final Allocations until completion of the Parker-Davis Project allocation process for several reasons:

1. Further delays would defer contract completion beyond the September 30, 1987, date contemplated in the Criteria and anticipated by Western and many customers;

2. By creating an air of uncertainty, further delay could harm the efforts of new customers to obtain utility responsibility or make arrangements with auxiliary suppliers for the post-1989 period; and

3. Failure to conclude the allocation process in a timely manner creates resource planning uncertainties for both new and existing customers.

Due to this special condition, Western will complete the Southern Division allocations based on the existing Parker-Davis Project commitments. However, the final allocations to Southern Division customers contained in this notice may be subject to some adjustment upon completion of the post-1987 final PDP allocations, if there are differences from existing commitments.

### IV. Summary of Comments on the Proposed Allocations

Subsequent to publication of the Proposed Allocations, Western received a number of comments from interested parties. These comments were presented orally at the public comment forum and in written form both during and subsequent to the public comment forum. Many of the comments were generally in support of the proposed allocations and indicated that Western had appropriately applied the allocation methodology contained in the Criteria. Other comments were more specific and require some discussion. Each of these are summarized and discussed below. Western's response to each comment is also summarized.

*1. Requests for Clarification*

a. Northern Division Reallocations

The Criteria provide that *any* "long-term firm energy with associated capacity made available for marketing because an allottee has failed to acquire a distribution system within the time period allowed, or because any allottee has failed to accept a contract within the time period allowed, or because a contract has been terminated, or because allocations have been reduced for noncompliance with contract provisions may be administratively reallocated without further public process." However, the Criteria are explicit in providing a first-right-of-refusal to the cities of Enterprise and Hurricane, Utah, for any energy and associated capacity to be reallocated. The amount of this first-right-of-refusal will not exceed 50 percent of the 1975–76 peakloads of these cities.

*(1) Comments:* Several Northern Division entities expressed an interest in any post-1989 resources available for reallocation.

*(2) Discussion:* The Criteria provide a first-right-of-refusal for reallocable Northern Division resources to the cities of Enterprise and Hurricane, Utah, up to the amount equal to 50 percent of their 1975–76 peak loads. However, any Northern Division resources remaining after these rights have been exercised will be available for reallocation to interested Northern Division post-1989 customers. Such reallocations will be effected administratively without further public process.

*(3) Summary and Conclusion:* Any reallocation of Northern Division resources will be in accordance with the Criteria, giving first right-of-refusal to the cities of Enterprise and Hurricane, Utah.

b. Southern Division Reallocations

The Criteria provide that Resource Pools 1 and 2 be allocated in the Southern Division.

*(1) Comment:* Several Southern Division entities requested clarification of the policy which would govern any reallocation of Southern Division resources. Specifically, they requested that Western clarify its intention to retain reallocable Southern Division resources within the Southern Division.

*(2) Discussion:* Although the issue of reallocations in the Southern Division is not addressed directly, the Criteria are explicit in stating that Resource Pools 1 and 2 be allocated in the Southern Division only. Western's intention is that any reallocation of Southern Division resources take place within the Southern Division.

*(3) Summary and Conclusions:* Any reallocation of Southern Division resources will be in accordance with the Criteria and are intended to be within the Southern Division.

c. Publication of Individual Allocations for Entities Receiving Allocations Through Single Purchasing Agent

The Criteria state that "Western may contract with single purchasing agents (SPA) for two or more allottees. . . ." Furthermore, in requesting applications for power, the Criteria call upon interested and qualified entities to specify the kilowatthours per kilowatt (kWh/kW) desired for each season.

*(1) Comment:* One entity applied both individually and later through an SPA. This entity has since requested that Western reconsider its initial application rather than the application made on its behalf by the SPA and grant it a separate allocation from the SPA.

*(2) Discussion:* In the Proposed Allocations, allocations to entities which are members of SPAs were shown as a single allocation to the SPA. Although the amounts requested by individual entities in kWh/kW form the

basis for the total SPA allocation, individual allocations to SPA members were not published. The City of St. George, Utah (St. George) requested an individual allocation with a kWh/kW equivalent to an approximate 35 percent load factor. Later, St. George requested that its allocation be made through the SPA known as Utah Associated Municipal Power System (UAMPS). Most recently, St. George has asked Western to reconsider its original application and grant a final allocation on the basis of the original application. St. George contends that this approach is necessary in order for St. George to have the means to confirm that the resources it actually receives through UAMPS are equal to those allocated from Western.

Western has concluded that it will grant St. George's request for an allocation in the amount specified in its original application. An amount equal to this allocation will then be deducted from the total allocation to UAMPS. Western considers this approach to be equitable because, based on the assumption that UAMPS' application on behalf of St. George accurately reflects the allocation St. George originally requested, neither party will suffer reductions in their net allocations.

*(3) Summary and Conclusion:* St. George will receive an individual allocation equal to the amount it would otherwise receive if the allocation were to remain associated with UAMPS. An amount equal to this allocation will be deducted from the total allocation to UAMPS.

d. Allocation of Resource Pools 7 and 8 (Conservation and Renewable Energy Incentive)

In the Criteria, Western notes the creation of special resource pools (7 and 8) to provide post-1989 contractors with additional incentive to develop outstanding conservation and renewable energy programs. The Criteria direct that these resources will be allocated through a future public process.

*(1) Comment:* Some commentors requested information about Western's plans for allocating the resources reserved for its Conservation and Renewable Energy Incentive Program (C&RE Incentive Program). Specifically, they asked about the timetable for such allocations.

*(2) Discussion:* In accordance with the Criteria, it is Western's intention to define procedures for the C&RE Incentive Program in a future public process. Although no definite schedule for this process has been established, Western expects it to begin sometime prior to the end of 1989. All post-1989 customers and interested parties will be informed about the timetable for this process as soon as it is established. In the interim, Western will market the resources reserved for the C&RE Incentive Program on a short-term basis.

*(3) Summary and Conclusion:* Western will establish procedures for the C&RE Incentive Program in a future public process. Customers will be notified of the timetable for this process once it has been established. Reserved resources will be marketed on a short-term basis in the interim.

e. Adjustments to Allocations to Collbran and Rio Grande Projects Customers

The Proposed Allocations reflect certain adjustments mandated by the Criteria to those existing customers of the Collbran and Rio Grande Projects in order to share the benefits from project integration and distribute them among all Northern Division customers. In addition, the Proposed Allocations state that allocations to the existing customers are contingent upon the continuation of the contracts now in effect for the sale of the Collbran and Rio Grande Projects' resources through September 1989. If power purchases from these projects are discontinued, or if Western is not assured that anticipated revenues will be received during this period, additional adjustments of the Collbran and Rio Grande Projects customers' post-1989 allocations may be necessary.

*(1) Comments:* One commentor requested clarification of the possible additional adjustments to small project customers' allocations contemplated in the Proposed Allocations. Another commentor expressed the opinion that the project integration related adjustments will have adverse impacts on its post-1989 allocation.

*(2) Discussion:* The purpose of the possible adjustments to Rio Grande and Collbran Projects customers indicated in the Proposed Allocations is to provide additional incentive to these customers to continue their purchases of the small project resources. These customers will benefit from the integration of the Rio Grande and Collbran Projects with the Colorado River Storage Project (CRSP). Part of this benefit is provided as an inducement to the small project customers to continue to purchase the relatively higher cost resources of the small projects until project integration is achieved. If the Rio Grande and Collbran Projects customers were to discontinue their purchases of these resources prior to project integration, Western could lose revenue and/or incur additional expenses which may jeopardize the timely repayment of these projects. Under such circumstances, Western would reduce the benefits to the small project customers in order to compensate for the difficulties that such circumstances would entail. Any adjustments would be in the form of reductions in the SLCA/IP allocations to the small project customers. In the unlikely event that such adjustments become necessary, it will be accomplished administratively, and the additional resources would be reallocated in the Northern Division in accordance with the Criteria.

With regard to the project integration related adjustments to the small project customers' allocations that have already occurred, all entities were given the opportunity to offer comments on the adjustments prior to publication of the Criteria. All comments were carefully analyzed and addressed in the final publication. Therefore, Western will not reiterate what has already been discussed, but refers commentors on this issue to the Criteria development process and specific **Federal Register** notices previously mentioned in the Background section.

*(3) Summary and Conclusion:* In the event that the customers of the Rio Grande and Collbran Projects are to discontinue existing contracts for these resources, Western will reserve the prerogative to make adjustments to their allocations of SLCA/IP resources. If such adjustments are necessary, the additional resources available will be reallocated administratively in accordance with the Criteria.

*2. Input Data Errors*

a. City of Holyoke, Colorado

As noted above, all entities initially wanting a post-1989 allocation were required to provide Western with APD by December 30, 1983. This APD was used in determining the eligibility of interested entities and forming the basis for Northern Division Participating Customers' allocations. In addition, the APD was used to determine 3-year average energy for the energy limitation applied to all customers.

*(1) Comment:* The City of Holyoke, Colorado (Holyoke), requested that corrections be made to erroneous energy data contained in its APD. It also requested that full consideration be given to the corrected energy and capacity figures for 1982.

*(2) Discussion:* Western performed an analysis to determine the likely affect that this correction would have on Holyoke's allocation and determined

that this change alone will have no impact on Holyoke or other Northern Division Existing Customers.

In the interest of maintaining correct APD, Western considered the requested changes in Holyoke's file to be appropriate. The new data were used to compute the Proposed Allocations, but did not have any impact on the outcome.

*(3) Summary and Conclusion:* Holyoke's APD has been changed to reflect accurate data for energy use in 1982. The new data were considered in determining Holyoke's final allocations, but did not have any impact on the outcome.

b. Municipal Subdistrict, Northern Colorado Water Conservancy District

*(1) Comment:* The Municipal Subdistrict, Northern Colorado Water Conservancy District (Municipal Subdistrict) requested that Western use its correct name in the final allocations.

*(2) Discussion:* The Municipal Subdistrict explained that it is a separate legal entity from the Northern Colorado Water Conservancy District, and that this correction should be reflected in all references to the Municipal Subdistrict in future publications by Western.

*(3) Summary and Conclusion:* Western will refer to the Municipal Subdistrict by its correct title in future publications and correspondence, including the final allocations.

*3. Allocation Methodology*

a. Issues Raised by Utah Power and Light Company

Throughout the formulation of the post-1989 Criteria, the Utah Power and Light Company (UP&L) has consistently opposed fundamental elements of Western's Criteria with particular objection to Western's interpretation of preference laws. Western has addressed each of UP&L's comments carefully throughout the public participation process.

A conditional application for post-1989 allocations to UP&L on its own behalf and on behalf of 143 cities, towns, and counties it serves in Utah and Wyoming was received by Western before the April 8 deadline. However, for reasons discussed in detail in the Criteria and the proposed allocations, UP&L and 141 of the 143 UP&L customer cities, towns, and counties did not receive an allocation. The two entities receiving an allocation are taking steps to attain utility responsibility in accordance with the Criteria, independent from the UP&L application.

On October 31, 1986, UP&L filed a Complaint for Declaratory, Injunctive, and Other Relief (Complaint) against Western and the Department of Energy in the United States District Court for the District of Utah in Salt Lake City seeking, among other things, to nullify the Criteria and Western's interpretation of preference laws.

*(1) Comment:* UP&L reiterates all comments made during the formulation of the Criteria and incorporates allegations made against Western in its Complaint into the public record.

*(2) Discussion:* As noted above, Western has carefully and thoroughly addressed all of UP&L's comments on the Criteria. Summaries of these comments and Western's detailed responses can be found in the discussion of comments published with the Criteria in the **Federal Register** on February 7, 1986, at 51 FR 4844 and Western's "Revised Proposed Post-1989 General Power Marketing and Allocation Criteria" published September 4, 1984, at 49 FR 34900. Western will not detail what has already been stated, but reiterates its positions.

As for the issues raised in UP&L's Complaint, Western will respond appropriately in the proper forum.

*(3) Summary and Conclusion:* Western reiterates its positions on the numerous comments made by UP&L on the Criteria. Western will respond to the issues raised by UP&L's Complaint in the appropriate manner.

b. Equity Issues

The allocation methodologies are described at length in the Criteria. The Proposed Allocations and final allocations were prepared pursuant to these methodologies. Essentially, allocations to existing customers were based on existing contract rates of delivery with Western, and allocations to participating customers are based upon historic load data presented in APD.

*(1) Comment:* Western's allocation methodology is unfair and fails to achieve its avowed goal of promoting widespread use of Federal resources. A more equitable allocation methodology would base allocations on the number of end users in each entity's jurisdiction.

*(2) Discussion:* A discussion of issues involving the allocation methodology appeared in the discussion of comments published with the Criteria in the **Federal Register** on February 7, 1986. This comment pertains to the final Criteria, and Western reincorporates by reference the justification for its positions in this notice.

*(3) Summary and Conclusion:* Western's position on the allocation method is clearly outlined in the Criteria and is reiterated by Western.

c. Southern Division Energy Limitation

The Criteria restrict energy allocations to Southern Division entities on the basis of their other Federal resource allocations, including allocations from the Boulder Canyon Project (BCP) and the Parker-Davis Project. However, the BCP and PDP allocations are based upon a 7-month summer season, whereas the SLCA/IP is allocated on the basis of a 6-month summer season. As a result, Western transferred one-seventh of all Southern Division entities' BCP and PDP summer allocations (March) to the SLCA/IP winter season in order to make an accurate comparison. Several entities were affected by the energy limitation.

*(1) Comment:* Western erred in its application of the energy limitation and Electrical District Number Seven (ED#7) should not have been subject to an energy limitation. Western's error was in assuming that the March allocations from the BCP and PDP were equal to one-seventh of the summer season when actual percentages varied. The actual allocation to ED#7 should be 3,669,953 kWh and 1,649 kW in the winter season and 10,619,670 kWh and 4,808 kW in the summer season. Other Southern Division entities were also impacted as a result of Western's assumptions.

*(2) Discussion:* Western reviewed the impacts of the approach used to determine the 6-month seasonal split of post-1987 BCP and existing PDP resources among existing CRSP Southern Division customers. Post-1987 BCP and existing PDP capacity and energy are marketed in a 7-month summer season and a 5-month winter season. Since the SLCA/IP resources will be marketed in two 6-month seasons, it was necessary to adjust Southern Division other Federal resource allocations, such as BCP and PDP, in order to apply the energy limitation test. Proposed allocations were adjusted for Southern Division customers by moving one-seventh (14.3 percent) of each customer's post-1987 summer BCP and existing summer PDP long-term energy commitment to the winter season. The adjusted seasonal total energy amounts were then used in applying the energy limitation test to SLCA/IP energy allocations for each Southern Division customer.

Upon further review of the relationship of the historic deliveries of BCP and PDP energy, particularly in the month of March, as compared to the total 7-month summer season, Western discovered that the existing Southern

Division customers received a range of 5.2 to 16.7 percent of total summer season BCP energy in March. A similar range was discovered for PDP customers. It was, therefore, concluded that application of the one-seventh adjustment had adversely affected a majority of Southern Division customers. The data used to arrive at this determination included 1985–86 actual deliveries of BCP and PDP resources to Southern Division customers with the exception of Arizona Power Authority (APA) members. Data used to determine the distribution of APA's BCP resources were based on projected post-1987 deliveries.

*(3) Summary and Conclusion:* Western's simplified adjustment of the Southern Division seasonal energy entitlements to resources from the BCP and PDP in the proposed allocations did not result in a reasonable determination of 6-month summer and winter distribution of BCP and PDP energy. Western has therefore prepared a revised estimate of the 6-month seasonal distribution of post-1987 BCP and existing PDP energy based upon recent historical distributions and has used these individualized distributions of seasonal resources in the energy limitation test for each Southern Division customer.

*4. Specific Allocation Issues*

a. U.S. Fish and Wildlife Service, Regions 2 and 6

The U.S. Fish and Wildlife Service Region 2 (F&WS Region 2) received a proposed post-1989 allocation from Resource Pools 5 and 6 for Dexter National Fish Hatchery (Dexter NFH) in southwestern New Mexico of 32,329 kWh of energy and 14 kW of capacity in the winter season and 19,532 kWh of energy and 6 kW of capacity in the summer season.

*(1) Comments:* Due to the inability to make feasible wheeling arrangements for Dexter NFH, F&WS Region 2 notified Western of its intent to withdraw from the post-1989 allocation process. U.S. Fish and Wildlife Service Region 6 (F&WS Region 6) later requested that F&WS Region 2's allocation for Dexter NFH be transferred to the Jackson National Fish Hatchery (Jackson NFH) in northwestern Wyoming.

*(2) Discussion:* F&WS Region 2's withdrawal from the allocation process is undisputed. However, Western cannot allocate the Dexter NFH allocation to F&WS Region 6. Although F&WS Region 6 submitted APD for Jackson NFH, it was found to be ineligible for an allocation based upon the size of its 1980–82 loads.

*(3) Summary and Conclusion:* Western will withdraw F&WS Region 2's application for an allocation to the Dexter NFH. F&WS Region 6 is not eligible to receive F&WS Region 2's refused allocation. F&WS Region 2's refused allocation was redistributed to all remaining Resource Pools 5 and 6 allottees in the final allocations.

b. U.S. Army Yuma Proving Grounds

U.S. Army Yuma Proving Grounds (YPG) is a Southern Division existing customer. The Proposed Allocations to YPG from Resource Pools 1 and 2 were 1,041,337 kWh of energy and 415 kW of capacity in the winter season and 732,781 kWh of energy and 347 kW of capacity in the summer season. In addition, YPG was given the first-right-of-refusal for unallocated winter season capacity remaining in the Southern Division.

*(1) Comment:* Western's proposed allocation to YPG is adverse to YPG's interest and deviates from the historic load and CRSP allocation to YPG. The allocation methodology used to determine these allocations is unfair. YPG should be given a first-right-of-refusal for any reallocable Southern Division resources.

*(2) Discussion:* YPG was subject to the same allocation methodology as all other Southern Division allottees. YPG's allocation is a direct result of its application and the nature of the seasonal division of resources available to the Southern Division. However, because YPG's application requested an allocation at a seasonal energy factor (SEF) higher than the pool SEF, Western offered YPG a first-right-of-refusal for unallocated winter seasonal capacity. YPG refused this offer.

Instead, YPG has requested that it be given a first-right-of-refusal for any reallocable summer season resources. A number of other Southern Division entities have also expressed a desire for equitable treatment in any reallocation procedure. In light of this interest and because YPG has been equitably treated in the allocation process, Western does not consider YPG to be eligible for first-right-of-refusal for reallocable resources and will not commit a special priority for future reallocable resources to YPG.

*(3) Summary and Conclusion:* Western has no basis for altering YPG's allocation, nor will it commit a special priority to YPG for reallocable resources. YPG will be eligible for a reallocation of resources on the same basis as other Southern Division allottees.

c. U.S. General Services Administration

The U.S. General Services Administration (GSA) submitted all requested APD prior to the deadline and was expected to submit an application for a post-1989 allocation. However, GSA did not submit an application for power and was dropped from the list of eligible entities.

*(1) Comment:* GSA's failure to submit an application was due to a misunderstanding of the process. Western should still grant GSA an allocation.

*(2) Discussion:* While Western considers GSA's situation unfortunate, the Criteria are explicit about the consequences of failure to follow the application procedure. One of the essential elements of that procedure was the April 8, 1986, deadline. GSA clearly did not meet this deadline and bears sole responsibility for its failure. In fact, GSA did not submit an application despite being contacted by Western and reminded of the deadline by telephone.

It would not be equitable for Western to grant an exception in this case and not in others.

*(3) Summary and Conclusion:* Western will not reconsider GSA's eligibility for a final allocation.

*5. Other Issues*

a. Wheeling Arrangements for the City of Truth or Consequences, New Mexico

Presently, Western pays the wheeling costs associated with transmitting CRSP and Rio Grande Project firm power purchased by the City of Truth or Consequences, New Mexico (TorC), from the West Mesa or Elephant Butte Equivalent Federal points of delivery (EFPOD) to TorC's Hot Springs Substation. This arrangement was made to replace service formerly available over Federal transmission facilities which were sold prior to the expiration of existing commitments to TorC. The arrangement covers only firm purchases and will terminate at the end of the current contract period. TorC is responsible for the wheeling costs associated with CRSP peaking power since its contract for peaking power was executed after the sale of the Federal transmission facilities. The Criteria require that, beginning with the post-1989 contract period, TorC will assume responsibility for all wheeling costs beyond its assigned EFPOD.

*(1) Comment:* One commentor expressed concern about the impact of Western's decision to terminate its wheeling arrangement with TorC

beginning with the post-1989 contract period.

*(2) Discussion:* It has always been the intention of the United States to discontinue its special arrangement with TorC to pay wheeling costs beyond the EFPODs. This is illustrated by the fact that it refused to extend the arrangement to cover CRSP peaking power costs. Most recently, Western included a provision in the Criteria which made explicit its intention not to pay the wheeling costs associated with delivery of power beyond its EFPODs, except on a passthrough cost basis.

*(3) Summary and Conclusion:* Western will abide by the terms of the Criteria which require the contractors to pay for wheeling services beyond the EFPODs.

b. Administrative Procedures

Throughout the process of formulating the post-1989 Criteria and Proposed Allocations, Western has afforded potential applicants and interested parties with numerous opportunities for public participation. Among these opportunities have been four public information forums, two formal public comment forums, and two opportunities for written comments.

*(1) Comment:* Western did not afford an opportunity for on-the-record public comment on the final Criteria.

*(2) Discussion:* The final Criteria were the result of an extensive administrative undertaking that included full accommodation of the public participation process. Interested parties were given numerous occasions to participate in the development of the Criteria and such participation was welcomed. Many individuals and entities did participate. In some cases, Western saw merit in the comments it received, and such input was reflected in the final Criteria. In other cases, although they were undoubtedly thoughtful, Western did not consider some suggestions appropriate and those were not incorporated. In every instance, careful analysis of public comments was initiated and reported in the **Federal Register** notice published February 7, 1986. However, Western was not obligated to provide a formal comment period on the final Criteria.

*(3) Summary and Conclusion:* Western is mindful of public comments and concerns about its marketing activities. With regard to the Criteria, Western afforded potential applicants and interested parties with numerous formal and informal opportunities for public participation.

**V. Summary of Revisions**

*1. Input Data*

The following changes to input data were effected:

a. City of Holyoke, Colorado

The APD submitted by Holyoke was subjected to minor modifications to correct erroneous data. These corrections pertained to Holyoke's historic energy and load data. These corrections alone had no impact on Holyoke's final allocation.

b. Municipal Subdistrict, Northern Colorado Water Conservancy District

The title of the Municipal Subdistrict was changed to reflect the words "Municipal Subdistrict."

*2. Allocation Methodology*

The following changes in allocation methodology were effected:

a. Southern Division Energy Limitation

Western has prepared a revised estimate of the 6-month seasonal distribution of post-1987 BCP and existing PDP energy based on actual 1985–86 deliveries and, in the case of APA members, on projected post-1987 distributions. These individualized distributions of seasonal resources provided the basis for calculating the energy limitation test for each Southern Division Customer.

b. Other Federal Resources

As discussed in Section III., "Southern Division Allocation Methodology," existing rather than post-1987 allocations from the PDP were used in determining the energy limitation for total Federal resources.

*3. Specific Allocations*

The following changes in allocations were effected:

a. U.S. Fish and Wildlife Service, Region 2

The F&WS Region 2 allocation for Dexter NFH was deleted, and the resources have been redistributed among other Resource Pools 5 and 6 allottees in these final allocations.

b. City of St. George, Utah

Allocations to St. George are separate from the allocation to UAMPS. The allocation to UAMPS is reduced by the amount of St. George's individual allocation.

c. Changes in Final Allocations Due to Limits on Total Federal Resources

In accordance with the requirements of the Criteria, final allocations to Northern Division Existing CRSP Customers in the Loveland Area and Southern Division CRSP Customers reflect adjustments for receipt of other Federal resources from the Loveland Area Integrated Projects (LA/IP) and the BCP and PDP, respectively. Some of these adjustments were not reflected in the Proposed Allocations, as the final allocations from the LA/IP were not completed at the time the proposed allocations were published. Final allocations from the Boulder Canyon Project were unchanged from those assumed in the Proposed Allocations. As noted earlier, PDP existing commitments were used in place of post-1989 commitments. A more complete discussion of this limitation is contained above and in the Criteria and the Proposed Allocations.

**VI. Final Allocations**

*1. Southern Division*

Table 1: Final SLCA/IP Post-89 Allocations to Southern Division Existing Customers.

*2. Northern Division*

Table 2: Final SLCA/IP Post-1989 Allocations to Northern Division Existing Customers.

Table 3: Final SLCA/IP Post-1989 Allocations to Northern Division Participating Customers and Special Allocations.

Issued at Golden, Colorado, March 13, 1987.

**William H. Clagett,**

*Administrator.*

TABLE 1.—POST-1989 SLCA/IP ALLOCATIONS SOUTHERN DIVISION EXISTING CUSTOMERS

| Customer group | Customer | Resource pool 1—winter season | | Resource pool 2—summer season | |
|---|---|---|---|---|---|
| | | Capacity (MW) | Energy (MWH) | Capacity (MW) | Energy (MWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Southern Division Existing Customers | Ak-Chin Indian Community | 1.920 | 4,273.433 | 4.244 | 9,373.563 |
| | APPA | 13.568 | 30,197.295 | 27.275 | 60,248.025 |
| | Chandler Heights Citrus I.D.D. | 0.302 | 671.748 | 0.400 | 881.769 |
| | Colorado River Commission | 29.477 | 65,603.370 | 22.420 | 49,521.181 |
| | Colorado River Irr./Power | 0.881 | 1,933.823 | 0.442 | 1,011.397 |
| | Electrical District #3 | 2.880 | 6,409.748 | 8.631 | 19,063.962 |
| | Electrical District #4 | 3.680 | 8,189.262 | 4.897 | 10,815.570 |
| | Electrical District #5–M | 0.233 | 518.682 | 1.274 | 2,813.842 |
| | Electrical District #5–P | 2.633 | 5,859.936 | 2.948 | 6,510.552 |
| | Electrical District #6 | 0.000 | 0.000 | 5.245 | 13,794.786 |
| | Electrical District #7 | 0.729 | 1,623.416 | 4.807 | 10,618.756 |
| | Maricopa County MWCD No. 1 | 2.373 | 5,280.927 | 5.748 | 12,697.156 |
| | Ocotillo WCD | 0.272 | 606.459 | 1.162 | 2,565.706 |
| | Queen Creek Irr. Dist | 0.000 | 0.000 | 1.887 | 4,167.452 |
| | Roosevelt Irr. Dist. | 1.761 | 3,918.404 | 5.243 | 11,581.167 |
| | Roosevelt Water Cons. Dist. | 1.616 | 3,596.519 | 2.364 | 5,221.513 |
| | Safford, AZ | 0.560 | 1,246.991 | 1.227 | 2,710.445 |
| | Salt River Project | 52.113 | 115,980.178 | 103.224 | 228,005.552 |
| | San Carlos Irr. Project | 1.840 | 4,094.242 | 1.366 | 3,018.303 |
| | San Tan Irr. District | 0.00 | 0.000 | 0.882 | 1,948.991 |
| | Thatcher, AZ | 0.363 | 806.785 | 0.556 | 1,228.656 |
| | Wellton-Mohawk Irr. Dist. | 0.448 | 996.974 | 0.146 | 320.783 |
| | Williams AFB | 0.912 | 1,993.462 | 2.265 | 5,002.065 |
| | Yuma Proving Grounds | 0.415 | 1,040.333 | 0.347 | 732.808 |
| Total, Southern Division Existing | | 118.976 [1] | 264,842.000 | 210.000 | 463,854.000 |

[1] 24–KW unallocated.

TABLE 2.—POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION EXISTING CUSTOMERS LOVELAND AREA

| Customer group | Customer | Resource pool 3—winter season | | Resource pool 4—summer season | |
|---|---|---|---|---|---|
| | | Capacity (MW) | Energy (MWH) | Capacity (MW) | Energy (MWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Northern Division Existing Customers Loveland Area | Center, CO | 1.801 | 3,945.115 | 1.082 | 2,330.498 |
| | Colorado Springs, CO | 64.864 | 141,272.844 | 16.269 | 35,559.318 |
| | Fleming, CO | 0.068 | 141.403 | 0.087 | 188.137 |
| | Fort Morgan, CO | 9.081 | 19,015.973 | 8.564 | 18,495.260 |
| | Frederick, CO | 0.045 | 115.384 | 0.038 | 95.511 |
| | Haxtun, CO | 0.546 | 1,103.302 | 0.575 | 1,217.513 |
| | Holyoke, CO | 2.023 | 4,214.092 | 1.598 | 3,441.244 |
| | Lamar, CO | 2.663 | 5,555.122 | 2.192 | 4,715.263 |
| | Platte River | 145.955 | 382,403.019 | 113.902 | 273,363.902 |
| | Pueblo Army Depot | 2.656 | 6,253.067 | 2.641 | 5,820.433 |
| | Torrington, WY | 1.302 | 2,673.435 | 1.922 | 4,127.592 |
| | Tri-State (CO–WY) | 226.027 | 472,836.547 | 272.938 | 587,818.883 |
| | Willwood LT & PWR | 0.039 | 85.267 | 0.050 | 108.933 |
| | WMPA | 6.731 | 14,727.997 | 5.036 | 10,775.528 |
| | Wray, CO | 1.059 | 2,318.709 | 0.051 | 1,104.557 |
| | Yuma, CO | 1.411 | 2,950.599 | 1.223 | 2,634.474 |
| Subtotal, Loveland Area | | 446.471 | 1,059,621.875 | 428.658 | 951,797.046 |
| Northern Division Existing Customers Salt Lake City Area | Aztec, NM | 2.778 | 6,082.158 | 2.039 | 4,494.653 |
| | Brigham City, UT | 12.594 | 27,577.769 | 8.932 | 19,650.298 |
| | Defense Depot Ogden, UT | 3.532 | 7,734.000 | 3.169 | 6,984.667 |
| | Delta, CO | 1.211 | 2,650.876 | 1.061 | 2,337.584 |
| | Delta-Montrose E.A. | 0.916 | 2,005.620 | 1.269 | 2,796.194 |
| | Deseret G&T | 110.346 | 230,865.569 | 101.616 | 218,834.447 |
| | Dixie-Escalante E.A. | 24.085 | 50,110.977 | 19.072 | 40,956.172 |
| | Doe-Albuq. Oper. Off. | 21.127 | 46,260.616 | 16.328 | 35,985.282 |
| | Empire Electric E.A. | 0.420 | 919.907 | 0.578 | 1,272.793 |
| | Farmington, NM | 17.577 | 42,676.272 | 15.968 | 35,191.494 |
| | Grand Valley Rural Power | 0.285 | 623.970 | 0.393 | 867.077 |

TABLE 2.—POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION EXISTING CUSTOMERS LOVELAND AREA—Continued

| Customer group | Customer | Resource pool 3—winter [redacted] | | Resource pool 4—summer [redacted] | |
|---|---|---|---|---|---|
| | | Capacity (MW) | Energy (MWH) | Capacity (MW) | Energy (MWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| | Gunnison, CO | 7.225 | 15,821.430 | 4.812 | 10,605.277 |
| | Gunnison County E.A. | 0.339 | 742.232 | 0.391 | 861.058 |
| | Holy Cross E.A. | 1.661 | 3,635.980 | 1.931 | 4,255.434 |
| | Irea | 27.172 | 59,496.928 | 20.650 | 45,509.434 |
| | La Plata E.A. | [redacted] | 1,765.250 | 0.990 | 2,181.036 |
| | Navajo Tribal UT. Ath | 20.817 | 54,457.724 | 18.589 | 48,629.623 |
| | Oak Creek, CO | 0.485 | 1,014.500 | 0.320 | 702.204 |
| | Page, AZ | 8.040 | 17,604.906 | 6.687 | 14,737.305 |
| | Plains G&T | 177.722 | 372,222.505 | 142.303 | 312,070.292 |
| | S. De Cristo E.A. | 0.177 | 387.030 | 0.240 | 527.561 |
| | San Isabel E.A. | 0.409 | 896.622 | 0.538 | 1,185.391 |
| | San Luis Vly Rea | 0.253 | 554.212 | 1.798 | 3,963.504 |
| | San Miguel E.A. | 0.436 | 954.693 | 0.604 | 1,330.410 |
| | Southeast Co Pwr Ath | 0.346 | 756.793 | 0.938 | 2,066.360 |
| | St. George, UT | 35.495 | 66,005.078 | 21.882 | 42,118.273 |
| | Truth or Consequences, NM | [redacted] | 14,234.333 | 6.025 | 13,285.367 |
| | UAMPS | 156.134 | 332,700.063 | 101.509 | 222,853.999 |
| | UMPA | [redacted] | 204,880.060 | 79.126 | 174,385.170 |
| | Weber Basin Cons. Dist. | 0.000 | 0.000 | 0.415 | 915.704 |
| | White River E.A. | 0.232 | 508.747 | 0.338 | 744.654 |
| | Yampa VLY E.A. | 1.341 | 2,936.304 | 1.644 | 3,624.237 |
| Subtotal, Salt Lake City Area | | 734.033 | 1.569,083.125 | 582,155 | 1.275,922.954 |
| Total, Northern Division Existing | | 1,200.504 | 2,628,705.000 | 1,010.813 | 2,227,720.000 |

TABLE 3.—POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION PARTICIPATING CUSTOMERS SPECIAL ALLOCATIONS

| | Winter | Summer | Resource pool No. 5 (Winter) | Resource pool No. 6 (Summer) |
|---|---|---|---|---|
| Energy | | | | |
| Marketable Firm Energy for Participating Customers | | | [1] 218,967,000 | [1] 220,389,000 |
| Special Allocations: | | | | |
| DOE/Los Alamos | [1] 0 | [1] 0 | | |
| Enterprise | 1,472,945 | 1,132,616 | | |
| Hurricane | +4,425,674 | +1,959,243 | | |
| Total | [1] 5,898,619 | [1] 3,091,859 | −5,898,619 | −3,091,859 |
| Resultant Resource Amounts For Distribution by Formula | | | [1] 213,068,381 | [1]217,297,141 |
| Capacity | | | | |
| Marketable Firm Power for Participating Customers | | | [2] 100,000 | [2] 100,000 |
| Special Allocations: | | | | |
| DOE/Los Alamos | [2] 15,000 | [2] 15,000 | | |
| Enterprise | [redacted] | 496 | | |
| Hurricane | +1,941 | +858 | | |
| Total | [2] 17,587 | [2] 16,354 | −17,587 | −16,354 |
| Resultant Resource Amounts For Distribution by Formula | | | [2] 82,413 | [2] 83,646 |
| Seasonal Energy Factor | | | | |
| Winter: 213,068,381 / 82,413=2585.373 kWh/kW | | | | |
| Summer: 217,297,141 / 83,646 = 2597.818 kWh/kW | | | | |
| Load Factor | | | | |
| Winter: 2585.373 / 4368=59.19% | | | | |
| Summer: 2597.181 / 4392=59.15% | | | | |

[1] kWh.
[2] kW.

TABLE 3.—NORTHERN DIVISION PARTICIPATING CUSTOMERS PROSPECTIVE CUSTOMERS—CONTINUED

| Customer Group | Customer | Resource pool 5—winter season | | Resource pool 6—summer season | |
|---|---|---|---|---|---|
| | | Capacity (MW) | Energy (NWH) | Capacity (MW) | Energy (NWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Prospective customers | Aspend, CO | 1.677 | 4,234.809 | 1.062 | 2,714.455 |
| | Blanding, UT | 0.765 | 1,926.300 | 0.500 | 1,278.588 |
| | Cannon AFB | 1.419 | 3,573.678 | 1.387 | 3,545.692 |
| | Cedar City, UT | 3.475 | 8,655.275 | 2.750 | 6,987.911 |
| | Central Vly Elec Co-op | 3.592 | 9,048.805 | 3.555 | 9,092.366 |
| | County of Los Alamos, NM | 1.569 | 3,951.530 | 1.056 | 2,701.693 |
| | Central Utah WCD | 0.095 | 285.651 | 0.237 | 607.009 |
| | Farmers Elec Co-op | 1.602 | 6,887.176 | 1.857 | 7,983.671 |
| | Gallup, NM | 3.592 | 9,048.805 | 3.439 | 8,795.248 |
| | Glenwood Springs, CO | 1.689 | 4,243.525 | 1.246 | 3,182.500 |
| | Helper, UT | 0.472 | 1,181.057 | 0.304 | 773.637 |
| | Hill, AFB | 3.592 | 9,048.805 | 3.555 | 9,092.366 |
| | Holloman AFB | 2.065 | 5,396.666 | 1.925 | 4,933.272 |
| | Ivins, UT | 0.131 | 328.168 | 0.118 | 300.073 |
| | Kanab, UT | 0.611 | 1,539.732 | 0.476 | 1,216.504 |
| | La Verkin, UT | 0.246 | 617.549 | 0.211 | 538.062 |
| | Lea County Elec Co-op | 3.592 | 9,048.805 | 3.555 | 9,092,366 |
| | Mun. Subdist, No. Col. WCD | 0.000 | 0.000 | 3.573 | 9,078.000 |
| | Panguitch, UT | 0.686 | 1,722.833 | 0.642 | 1,638.083 |
| | Price, UT | 1.702 | 4,287.107 | 1.119 | 2,861.732 |
| | Raton, NM | 1.637 | 4,077.916 | 1.078 | 2,737.564 |
| | Roosevelt Co Elec Co-op | 3.084 | 7,769.264 | 3.436 | 8,788.350 |
| | Sandia/Kirtland AFB | 3.592 | 9,048.805 | 3.555 | 9,092.366 |
| | Santa Clara, UT | 0.331 | 828.047 | 0.300 | 764.669 |
| | Springdale, UT | 0.029 | 72.781 | 0.024 | 61.049 |
| | Tooele Army Depot | 1.307 | 3,291.706 | 0.920 | 2,352.298 |
| | University of Utah | 3.461 | 8,944.220 | 3.104 | 8,021.611 |
| | Utah St. University | 1.152 | 3,017.143 | 1.124 | 2,881.047 |
| | Washington, UT | 0.691 | 1,728.876 | 0.556 | 1,417.587 |
| | West Bountiful, UT | 0.469 | 1,167.983 | 0.444 | 1,126,827 |
| Subtotal, prospective customers | | 48.325 | 124,963.017 | 47.107 | 123,656.596 |

TABLE 3.—NORTHERN DIVISION PARTICIPATING CUSTOMERS EXISTING CUSTOMERS AND SPECIAL ALLOCATIONS—CONTINUED

| Customer Group | Customer | Resource pool 5—winter season | | Resource pool 6—summer season | |
|---|---|---|---|---|---|
| | | Adjusted capacity (MW) | Adjusted energy (NWH) | Adjusted capacity (MW) | Adjusted energy (NWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Participating customers—Existing. | Delta, CO | 0.510 | 1,284.641 | 0.449 | 1,149.166 |
| | Delta-Montrose E.A. | 3.500 | 9,048.805 | 3.555 | 9,092.366 |
| | DOE-Albuq. oper. off. | 0.000 | 0.000 | 3.655 | 9,092.366 |
| | Empire E.A | 3.500 | 9,048.805 | 2.697 | 6,898.234 |
| | Farmington, NM | 1.289 | 3,254.728 | 3.555 | 9,092.366 |

TABLE 3.—NORTHERN DIVISION PARTICIPATING CUSTOMERS EXISTING CUSTOMERS AND SPECIAL ALLOCATIONS—CONTINUED—Continued

| Customer Group | Customer | Resource pool 5—winter [illegible] | | Resource pool 6—summer [illegible] | |
|---|---|---|---|---|---|
| | | Adjusted capacity (MW) | Adjusted energy (NWH) | Adjusted capacity (MW) | Adjusted energy (NWH) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| | Grand Valley Rural Power. | 2.810 | 7,263.719 | 1.843 | 4,713.908 |
| | Gunnison County E.A. | 3.371 | 8,716.289 | 1.843 | 4,713.908 |
| | Holy Cross E.A | 3.500 | 9,048.805 | 3.555 | 9,092.366 |
| | La Plata E.A | 3.500 | 9,048.805 | 3.555 | 9,092.366 |
| | Navajo Tribal Ut. Ath. | 2.860 | 7,482.443 | 3.213 | 8,404.460 |
| | San Miguel Pwr Assn. | 3.500 | 9,048.805 | 2.832 | 7,243.146 |
| | Weber Basin WCD. | 0.000 | 0.000 | 0.758 | 1,939.439 |
| | White River E.A | 2.248 | 5,810.714 | 1.573 | 4,024.085 |
| | Yampa Valley E.A. | 3.500 | 9,048.805 | 3.555 | 9,092.366 |
| Subtotal, existing custom- [illegible] | | 34.088 | 88,105.364 | 36.539 | 93,640.542 |
| Subtotal, exist. + prosp. (Excl. spec. alloc). | | 82.413 | 213,068.381 | 83.646 | 217,297.138 |
| Participating customers—Special allocations. | DOE-Albuq. oper. off. | 15.000 | 0.000 | 15.000 | 0.000 |
| | Enterprise | 0.646 | 1,472.945 | 0.496 | 1,132.616 |
| | Hurricane | 1.941 | 4,425.674 | 0.858 | 1,959.243 |
| Subtotal, special allocations. | | 17.587 | 5,898.619 | 16.354 | 3,091.859 |
| Total, participating custom- [illegible] | | 100.000 | 218,967.000 | 100.000 | 220,389.000 |

[FR Doc. 87-7187 Filed 4-1-87; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[A-6-FRL-3179-7]

### Approvals of PSD Permits

Notice is hereby given that Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. *PSD-TX-642M-2—Amoco Chemcials Corporation:* Chocolate Bayou petro-chemical and polymer manufacturing facility located on FM Road 2004, approximately 15 miles south of Alvin, Brazoria County, Texas. PSD-TX-642M-2 modifies PSD-TX-642M-1 to authorize the increase of the allowable carbon monoxide esmission rate from the heat recovery steam generator. This modified permit was issued on October 3, 1986.

2. *PSD-TX-634M-2—Koch Refining Company:* Petroleum refinery located on the Viola Turning Basin in Corpus Christi, Nueces County, Texas. PSD-TX-634M-2 modifies PSD-TX-634M-1 to authorize the use of a continous nitrogen oxide (NO) emissions monitor instead of the continous nitrogen oxides ($NO_x$) emission monitor orignially required by the PSD permit. This modified permit was issued on October 3, 1986.

3. *PSD-TX-652—American Ref-Fuel Company of Texas:* This permit, issued on October 7, 1986, authorizes the construction of a waste-to-energy facility to be located northwest of the intersection of Highway 225 and Beltline 8 in Pasadena, Harris County, Texas.

4. *PSD-TX-720—Power Resources, Incorporated:* This permit, issued on October 14, 1986, authorizes the construction of a gas turbine congeneration unit at the existing Fina Oil and Chemical Company refinery located on Interstate 20, approximately one mile east of Big Spring, Howard County, Texas.

5. *PSD-TX-482M-2—Liquid Energy Corporation:* Natural gas processing plant located approximately 5.5 miles southwest of Stinnett, Hutchinson County, Texas. PSD-TX-482M-2 modifies PSD-TX-482M-1 to downsize the sulfur recovery unit so that it will be able to operate efficiently at the low sulfur feed rates historically processed at the Canadian River Plant. This modified permit was issued on October 17, 1986.

6. *PSD-TX-673M-1—Farmland Industries, Incorporated:* Natural gas processing plant located approximately seven miles southwest of Mertzon, Irion County, Texas. PSD-TX-673M-1 modifies PSD-TX-673 to authorize the installation of two horsepower Caterpillar 3516 TA compressor engines instead of the two horsepower Ingersoll-Rand engines originally permitted. This modified permit was issued on October 21, 1986.

7. *PSD-TX-665M-1—Mid Plains Pipeline Company, Incorporated:* Natural gas processing plant located on FM Road 669, approximately 2.5 miles south of Post, Garza County, Texas. PSD-TX-665M-1 modifies PSD-TX-665 to authorize the addition of two compressors (360 and 150 bp) at the existing gas plant. This modified permit was issued on October 21, 1986.

8. *PSD-TX-Mobil Producing Texas and New Mexico, Incorporated:* This permit, issued on October 31, 1986, authorizes the installation of additional compressor engines at the existing gas plant located approximately six miles southeast of Coyanosa, Pecos County, Texas.

9. *PSD-TX-687—Sun Exploration and Production Company:* This permit,

issued on November 10, 1986, authorizes the modification of the Jameson Gas Processing Plant located approximately one mile south of Silver, Coke County, Texas.

10. *PSD–TX–731—Exxon Company, U.S.A.:* This permit, issued on November 10, 1986, authorizes the construction of a cogeneration facility at the existing refinery located at 2800 Decker Drive, Baytown, Harris County, Texas.

11. *PSD–TX–76M–4—Standard Oil Chemical Company:* Green Lake Chemical Complex located on FM Road 404, approximately 14 miles southwest of Port Lavaca, Calhoun County, Texas. PSD–TX–76M–4 modifies PSD–TX–76M–3 to authorize the installation of a distillation column in the acrylonitrile manufacturing facility to improve the recovery yields of acrylonitrile and hydrogen cyanide. This modified permit was issued on November 19, 1986.

12. *PSD–TX–708—Structural Metals, Incorporated:* This permit, issued on November 25, 1986, authorizes the modification of the electric arc furnace "C" at the existing steel mill located near the intersection of FM Road 1620 and FM Road 464, approximately 2.5 mile west of Sequin, Guadalupe County, Texas.

13. *PSD–TX–410M–2—Airco Carbon, Division of the BOC Group, Incorporated:* Green Lake graphite electrode manufacturing facility located at the intersection of FM Road 185 and FM Road 35, approximately eight miles northwest of Seadrift, Calhoun-County. PSD–TX–410M–2 modifies PSD–TX–410M–1 to authorize the increase of the maximum allowable emission rates for sulfur dioxide from 60.1 to 194.5 pounds per hour and particulate from 10 to 25 pounds per hour for the coke calciner. This modified permit was issued on December 1, 1986.

14. *PSD–TX–324M–2—Valero Refining Company:* Petroleum refinery located at 6560 Up River Road in Corpus Christi, Nueces County, Texas. PSD–TX–324–M–2 modifies PSD–TX–324M–1 to (1) reflect the "as built" capacity, (2) delete the continous monitoring requirement from the citrate scrubber stack, and (3) incorporate a "sulften unit" as sulfur recovery unit tail gas control. This modified permit was issued on December 8, 1986.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 77202–2722.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals within 60 days of April 2, 1987. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Dated: March 9, 1987.

**Frances E. Phillips,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 87–7265 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–M

---

[FRL–3179–6]

## Title III Emergency Planning and Community Right-to-Know Act of 1986; Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** The EPA has scheduled a public meeting to discuss the section 305 emergency systems review of Title III of the Superfund Amendments and Reauthorization Act of 1986.

**DATE:** The meeting will be held on Tuesday, April 14, 1987, from 9:00 a.m. to 12:00 noon.

**ADDRESS:** The meeting will be held in the EPA Auditorium 401 M Street SW. Washington, DC 20460.

**FOR FURTHER INFORMATION:** Contact the Chemical Emergency Preparedness Program Hotline, Environmental Protection Agency, (WH–562A), 401 M Street SW., Washington, DC 20460; Telephone (800) 535–0202 and in Washington, DC or Alaska, dial 202–479–2449.

**SUPPLEMENTARY INFORMATION:** EPA has scheduled a public meeting to provide background information on the section 305 emergency systems review study of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and to elicit public input on the scope and approach of the study.

As part of SARA, section 305(b) of Title III requires EPA to review emergency systems designed to monitor, detect and prevent accidental chemical releases, and to review public alert systems.

An interim report to Congress is due on May 17, 1987 and the final report, April 17, 1988. The final report must include the current technological capabilities to:

—Monitor, detect and prevent releases;
—Determine the magnitude and direction of the hazard posed by a release; and
—Provide data on specific chemical composition of releases and relative concentrations of the constituent chemicals.

The report must also include the status of public alert devices and systems as well as the technical and economic feasibility of perimeter alert systems which detect releases to the air, surface water, or ground water. It must also make recommendations for initiatives to support the development of new or improved technologies or systems to monitor, detect, and prevent releases as well as to improve devices for effectively alerting the public.

EPA has formed an agency-wide technical working group, which also includes representatives from FEMA, that has developed an approach to this systems review. On April 14, 1987, EPA would be interested in hearing your comments and suggestions on the scope and approach for this study, as well as specific areas of knowledge which should be enhanced by this review.

If you are planning to participate in this meeting, please contact the Chemical Emergency Preparedness Program Hotline at the telephone number listed under **"FOR FURTHER INFORMATION"**, in order to receive supplementary information.

Dated: March 25, 1987.

**Elaine Davies,**

*Chief, Chemical Accident Prevention Team.*

[FR Doc. 87–7267 Filed 4–1–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–066.
Title: American West African Freight Conference.
Parties:
American-Africa-Europe Line GMBH
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Iviorienne De Transport Maritime, Sitram
Torm West Africa Line
Westwing Africa Line

Synopsis: The proposed amendment would reduce the agreement membership fee from $50,000 to $15,000 and would define a "non-vested" member.

Agreement No.: 204–010064–012.
Title: U.S. Gulf/Colombia Equal Access Agreement.
Parties:
Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
Crowley Caribbean Transport, Inc.
CTMT, Inc.
New York Navigation Company, Inc.
O S & L of Louisiana

Synopsis: The proposed amendment would correct previous typographical errors and would add a provision emphasizing that the agreement shall be implemented in accordance with applicable governmental regulations. The parties have requested a shortened review period.

Agreement No.: 202–010689–021.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Lines, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would clarify the agreement's authority to implement neutral container rules should the agreement decide to do so.

Agreement No.: 202–010689–022.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would clarify voting procedures regarding rate initiative matters.

Agreement No.: 202–010689–023.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Lines, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would clarify Senior Executive and electronic voting procedures.

Agreement No.: 202–010689–024.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would prohibit a member from establishing a time/volume rate on a commodity excepted from the Commission's tariff filing requirements by means of independent action.

Agreement No.: 202–011084.
Title: India-Pakistan-Sri Lanka-Bangladesh/North America Stabilization Agreement.
Parties:
American President Lines, A.P. Moller-Maersk Line Sea-Land Service, Inc.

Synopsis: The proposed agreement would permit the parties, among other things, to agree upon rates, conditions of service and related matters in the trade from India, Pakistan, Sri Lanka and Bangladesh to North American ports and points.

Agreement No.: 224–011085.
Title: Kodiak Terminal Agreement.
Parties:
City of Kodiak (City)
Harbor Enterprises, Inc.

Synopsis: The proposed agreement would permit the City to lease a portion of its Pier I and grant an easement to Harbor Enterprise, Inc., d/b/a Petro Marine Services for the location and maintenance of a pipeline and petroleum products delivery system. The agreement would have a term of five years.

Agreement No.: 224–011086.
Title: Baltimore Terminal Agreement.
Parties:
Maryland Port Administration (Port)
Pre Delivery Service Corporation (PDS)

Synopsis: The proposed agreement would permit PDS to lease parcels of land totaling 21.98 acres at the Port's Dundalk Marine Terminal for a period of three years.

Dated: March 30, 1987.

By order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–7272 Filed 4–1–87; 8:45 am]

BILLING CODE 6730–01–M

BEST COPY AVAILABLE

## FEDERAL RESERVE SYSTEM

### 1st American Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 22, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *1st American Bancorp, Inc.*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of 1st American Bank for Savings, Boston, Massachusetts, and 9.8 percent of the voting shares of Plymouth Five Cents Savings Bank, Plymouth, Massachusetts. 1st American Bank for Savings currently engages directly in Massachusetts Savings Bank Life Insurance activities.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Liberty Bancshares, Inc.*, Ada, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Liberty National Bank of Ada, Ada, Ohio

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Northside Bancshares, Inc.*, Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Northside Bank & Trust Company, Roswell, Georgia, a *de novo* bank. Comments on this application must be received by April 21, 1987.

Board of Governors of the Federal Reserve System, March 27, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7215 Filed 4-1-87; 8:45 am]

BILLING CODE 6210-01-M

### Hardwick Holding Company et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Hardwick Holding Company*, Dalton, Georgia; to engage *de novo* through its subsidiary, Hardwick Services Corporation, Dalton, Georgia, in data processing and transmission services to depository institutions for processing and transmission of financial, banking and economic data, pursuant to § 225.25(b)(7) of the Board's Regulation Y; and management consulting to depository institutions, pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted throughout the State of Georgia.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Learner Financial Corporation*, Orinda, California; to engage *de novo* through its subsidiary, Learner Financial Corporation Information Systems Division, Walnut Creek, California, in providing data processing services to Northwest Creditors Service, Inc., Sacramento, California, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7217 Filed 4-1-87; 8:45 am]

BILLING CODE 6210-01-M

### Westdeutsche Landesbank Girozentrale et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 22, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Westdeutsche Landesbank Girozentrale*, Dusseldorf, Federal Republic of Germany; to acquire Vertex Business Systems, Inc., New York, New York, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire, either directly or through its subsidiary, Security Pacific Business Credit, Inc., all of the assets of Wells Fargo Business Credit, Dallas, Texas, and thereby engage in providing asset-based credit facilities to commercial borrowers, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7216 Filed 4-1-87; 8:45 am]

BILLING CODE 6210-01-M

## R.W. Wilkerson et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 16, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *R.W. Wilkinson*, Bluefield, West Virginia; to acquire 2.5 percent of the voting shares of Pocahontas Bankshares Corporation, Bluefield, West Virginia, and thereby indirectly acquire The First National Bank of Bluefield, Bluefield, West Virginia.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Daniel K. Conners*, Bloomington, Minnesota; to acquire 100 percent of the voting shares of Otisco Bancshares, Inc., Otisco, Minnesota, and thereby indirectly acquire Otisco State Bank, Otisco, Minnesota.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Gwendolyn M. Tubach*, El Toro, California; to acquire 42.22 percent of the voting shares of Pacific Regency Bancorp, El Toro, California, and thereby indirectly acquire Pacific Regency Bank, El Toro, California.

2. *Larry D. Williams*, Boise, Idaho; to acquire 14.46 percent of the voting shares of American Bank Corporation, Boise, Idaho, and thereby indirectly acquire Ameican Bank of Commerce, Boise, Idaho.

Board of Governors of the Federal Reserve System, March 27, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7214 Filed 4-1-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87N-0034]

## Drug Export Amendments Act of 1986; Export Applications

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing information on where to submit applications to export unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs. Under the recently enacted Drug Export Amendments Act of 1986, FDA may approve the export of such products without their prior approval for marketing in the United States.

**ADDRESSES:** Send applications (two copies) for export of unapproved new human drugs or unlicensed human biologicals to: Division of Drug Labeling Compliance (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send applications (two copies) for export of unapproved new animal drugs to: Office of New Animal Drug Evaluation (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** For questions about the contents of an export application for a human drug or a human biological: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

For questions about the contents of an export application for an animal drug: Frank Pugliese, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

For questions about this notice: Howard P. Muller, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

**SUPPLEMENTARY INFORMATION:** On November 14, 1986, President Reagan signed into law the Drug Export Amendments Act of 1986 (Pub. L. 99-660). The new law amends both the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act to authorize the export from the United States to other countries for commercial marketing of unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs. Under previous law, the export of

such products for marketing was confined to those that were approved or licensed by FDA for domestic use.

The Drug Export Amendments Act of 1986 establishes three separate tracks for the export of products. Under each track, an application is required to be submitted to FDA and FDA approval is to be obtained before export is permitted. The tracks vary considerably in terms of drug eligibility criteria, application requirements, and procedures for review and approval of export applications. The first track applies to applications to export unapproved new human drugs, unlicensed human biologicals, and unapproved new animal drugs to any of 21 countries listed in the act. (See sec. 802(b) through (e) of the act (21 U.S.C. 382(b) through (e).) The second track applies to applications to export such unapproved and unlicensed products for use in the prevention or treatment of tropical diseases. (See sec. 802(f) of the act (21 U.S.C. 382(f)).) The third track applies to applications to export partially processed biological products for human use. (See sec. 351(h)(1)(A) of the Public Health Service Act (42 U.S.C. 262(h)(1)(A)).)

Applications to export unapproved new human drugs and unlicensed human biologicals (including partially processed biological products) should be mailed to the Division of Drug Labeling Compliance (HFN–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. If such an application is delivered in person, it should be delivered during normal working hours to the Drug Listing Branch, Center for Drugs and Biologics, Rm. 167, 7520 Standish Pl., Rockville, MD 20855. All applications to export unapproved new animal drugs should be sent to the Office of New Animal Drug Evaluation (HFV–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Applicants should identify under which of the three tracks an application is being made. Two copies of an application should be submitted.

FDA is in the process of developing written guidance on the procedures to be followed in submitting export applications. Pending issuance of this guidance, questions about the content and format of export applications should be directed to the individuals identified above under **"FOR FURTHER INFORMATION CONTACT."**

Dated: March 26, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–7199 Filed 4–1–87; 8:45 am]

BILLING CODE 4160–01–M

**[Docket No. 87E–0063]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; Choletec

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Choletec and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Choletec (mebrofenin), which is indicated as a hepatobiliary imaging agent. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Choletec from E.R. Squibb & Sons, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 6, 1987, FDA advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, mebrofenin, represented the first permitted commercial marketing or use of that active ingredient. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Choletec is 2,100 days. Of this time, 680 days occurred during the testing phase of the regulatory review period, while 1,420 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* April 24, 1981. The applicant claims that the notice of claimed investigational exemption (IND) for the drug became effective on April 18, 1981. However, FDA did not receive the IND until March 25, 1981, and pursuant to FDA regulations, the IND became effective 30 days after its submission thereby making April 24, 1981, the effective date.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 4, 1983. FDA has verified the applicant's claim that the new drug application for Choletec (NDA 18–963) was initially submitted on March 4, 1983.

3. *The date the application was approved:* January 21, 1987. FDA has verified the applicant's claim that NDA 18–963 was approved on January 21, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and

Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 53 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 1, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 29, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 25,1987.

**Allen B. Duncan,**

*Deputy Associate Commissioner for Health Affairs.*

[FR Doc. 87–7200 Filed 4–2–87; 8:45 am]

BILLING CODE 4160–01–M

## National Institutes of Health

### Consensus Development Conference on Newborn Screening for Sickle Cell Disease and Other Hemoglobinopathies; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Newborn Screening for Sickle Cell Disease and Other Hemoglobinopathies," sponsored by the National Heart, Lung, and Blood Institute, the National Institute of Child Health and Human Development, the Genetic Diseases Branch of the Health Resources and Services Administration, and the NIH Office of Medical Applications of Research. The conference will be held April 6–8, 1987, in the Masur Auditorium of the Warren G. Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The technology to make a diagnosis of sickle cell disease in the newborn period has been available for the past 10 years. However, institution of neonatal screening has not received widespread acceptance because of doubts that early diagnosis could decrease the morbidity and mortality associated with the disease.

Infants with sickle cell disease are at risk of major infection with *Strepococcus pneumoniae* in the first three years of life. The annual incidence of septicemia is approximately ten percent and the mortality can be as high as 20–30 percent from fulminant infection. Data are now available to show that penicillin prophylaxis and early entry into programs of comprehensive care can reduce morbidity and mortality from infection.

The purpose of the conference is to discuss the need for widespread screening of newborns for sickle cell disease, to facilitate entry into comprehensive care programs and to initiate penicillin prophylaxis to reduce morbidity and mortality from infection.

The key questions to be addressed at the conference include: Are programs for screening the newborn for sickle cell disease effective in decreasing morbidity/mortality? What are the techniques of screening and what is their efficacy? What are the major factors to be considered including benefits and risks in conducting newborn screening programs? What is the optimal followup and management of infants identified with hemoglobinopathies (disease and carriers)? What future research directions are indicated?

This consensus conference will bring together biomedical investigators, clinicians, other health professionals, and representatives of the public. Following two days of presentations by medical experts and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement responding to the key conference questions. On the morning of the third day, Consensus Panel Chairman Doris Wethers, M.D., Associate Professor of Clinical Pediatrics, Columbia University of Physicians and Surgeons, New York, will read the preliminary Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Nancy Cowan, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–6555.

Dated: March 31, 1987.

**James B. Wyngaarden,**

*Director, NIH.*

[FR Doc. 87–7422 Filed 4–1–87; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N–87–1689]

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John F. Morrall, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

**Notice of Submission of Proposed Information Collection to OMB**

Proposal: Fair Housing Assistance Program: Type I and Type II Applications Kits.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: The applications are necessary to secure the requested information from the State and local government agencies involved regarding their eligibility and needs for funds so that appropriate Cooperative Agreements can be executed.

Form Number: None
Respondents: State or Local Governments
Frequency of Response: Annually
Estimated Burden Hours: 425
Status: Extension
Contact: Maxine B. Cunningham, HUD, (202) 755–0455, John F. Morrall, OMB, (202) 395–6880

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

**Notice of Submission of Proposed Information Collection to OMB**

Proposal: Community Development Block Grant (CDBG) Entitlement Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The need for the submission requested from entitlement grantees is based on statutory requirements. The law specifically requires the submission of the final statement, housing assistance plan, and annual report. The records are necessary for the Secretary of HUD to make his annual statutory review of performance and compliance.

Form Number: SF–424 and Narrative, HUD–4949.1 thru 4949.7, 7091.1, and 7091.2
Respondents: State or Local Governments
Frequency of Response: Annually
Estimated Burden Hours: 334,125
Status: Reinstatement
Contact: James R. Broughman, HUD, (202) 755–5977, John F. Morrall, OMB, (202) 395–6880

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 24, 1987.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

[FR Doc. 87–7225 Filed 4–1–87; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48263–AF has been received covering the following lands:

**Seward Meridian, Alaska**

T. 32 N., R. 9 E.,
Sec. 17 NW¼SW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from February 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48263–AF as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective February 1, 1986, subject to the terms and conditions cited above.

Dated: March 23, 1987.

**Sue A. Faught,**

*Acting Chief, Branch of Mineral Adjudication.*

[FR Doc. 87–7232 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–JA–M

### Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48615–DW has been received covering the following lands:

**Copper River Meridian, Alaska**

T. 13 N., R. 4 W.,
Sec. 20, NE¼SE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48615–DW as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1986, subject to the terms and conditions cited above.

Dated: March 25, 1987.

**Sue A. Faught,**

*Acting Chief, Branch of Mineral Adjudication.*

[FR Doc. 87–7234 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–JA–M

[MT–070–07–4212–12]

### Realty Action: Exchange; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Designation of public lands in Beaverhead and Madison Counties, Montana, for transfer out of federal ownership in exchange for lands owned by the State of Montana.

**SUMMARY:** BLM proposes to exchange public land with the State of Montana in order to achieve more efficient management of the public land through consolidation of ownership. The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management act of October 21, 1976, 43 U.S.C. 1716

Principal Meridian Montana

| | | |
|---|---|---|
| T. 1 S., R. 3 W., | Section 28, NE¼ SW¼ | 40.00 |
| T. 11 S., R. 10 W., | Section 35, SE¼ SW¼, SW¼ SE¼ | 80.00 |
| T. 12 S., R. 6 W., | Section 10, NE¼ NW¼ | 40.00 |
| | Section 24, NE¼ NE¼ | 40.00 |
| T. 12 S., R. 10 W., | Section 2, Lots 2, 3, SE¼ NW¼ | 121.74 |
| | Section 26, SW¼ | 160.00 |
| T. 13 S., R. 1 W., | Section 1, Lots 1, 2, 3, 4, S½ N½, SE¼ | 483.56 |
| | Section 2, Lots 1, 2, 3, 4, S½ N½ | 322.28 |
| | Section 3, Lots 1, 2, 3, 4, S½ N½ | 322.56 |
| | Section 4, Lots 1, 2, 3, S½ NE¼, SE¼ NW¼ | 241.55 |
| | Section 7, Lots 1, 2, 7, 8, 9, 10, 11, E½ SW¼ | 351.94 |
| | Section 18, All | 627.64 |
| | Section 19, E½ | 320.00 |
| T. 13 S., R. 2 W., | Section 12, Lot 9, SE¼ ¼ | 199.75 |
| | Section 13, Lots 1, 2, 3, 4, 5, 6, NE¼, E½ NW¼ | 493.08 |
| T. 13 S., R. 5 W., | Section 1, Lots 6, 7, W½ SE¼ ¼ | 165.27 |
| | Section 5, SE¼ SE¼ | 40.00 |
| | Section 8, E½ NE¼, SE¼ | 240.00 |
| | Section 10, SW¼ SW¼, E½ SW¼, SE¼ | 280.00 |
| | Section 11, S½ | 320.00 |
| | Section 12, All | 649.04 |
| | Section 13, N½ | 320.00 |
| | Section 14, All | 640.00 |
| | Section 15, All | 637.60 |
| | Section 21, N½ NE¼ | 80.00 |

The lands described above comprise 7216.01 acres, more or less, in Beaverhead and Madison counties. These lands will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the State of Montana, upon publication in the **Federal Register** of termination of the segregation, or two years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental analysis.

**DATE:** For a period of 45 days from date of publication in the **Federal Register** interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, Montana 59702, or to the Dillon Area Manager, P.O. Box 1048, Dillon, Montana 59725.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the exchange is available at the Butte District Office and at the Dillon Resource Area Office, Ibey Building, N. Dillon, Dillon, Montana 59725

**James A. Moorhouse,**

*District Manager.*

March 24, 1987.

[FR Doc. 87-7228 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-DN-M

---

[UT-060-07-4121-16; SL-066490]

## Availability of a Draft Environmental Impact Statement; Coal Lease Readjustments in Wilderness Study Areas, UT

March 25, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of draft environmental Assessment.

**SUMMARY:** The Bureau of Land Management, Moab District is proposing to adjust coal lease SL-066490. This lease has been evaluated and additional stipulations are proposed for the lease to increase the level of environmental protection and other considerations.

The Wilderness Study Area involved is Turtle Canyon (UT-060-067).

The Draft Environmental Assessment has been prepared for this proposal and is now available for public review and comment. Comments should be submitted by May 9, 1987.

**ADDRESS:** To obtain a copy of this document or to obtain additional information on the proposal, contact James Dryden, Supervisory Geologist at the Bureau of Land Management, Moab District, Price River Resource Area, P.O. Drawer AB, Price, Utah 84501 or telephone at 801-637-4584.

**Gene Nodine,**

*District Manager.*

[FR Doc. 87-7290 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-DQ-M

---

[OR-050-4322-01:GP7-150]

## Oregon; Prineville District Grazing Advisory Board Meeting

March 30, 1987.

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Grazing Advisory Board to be held May 11, 1987.

The meeting will begin at 10:00 AM in the conference room of the Bureau of Land Management Office located at 185 East 4th Street, Prineville, Oregon 97754.

The agenda will include the folloiwng items:

1. Status of Oregon/Washington BLM Organization Study.
2. Summary of the District Rangeland Monitoring Program.
3. "Oregon Watershed Improvement Coalition" activities.
4. District land exchange strategy.
5. Explenditures of Range Betterment Funds.
6. Brothers/LaPine Resource Management Plan Grazing Issues update.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address prior to May 5.

Summary minutes of the meeting will be available for review and

reproduction within 30 days following the meeting.

Dated: March 30, 1987.

**Donald L. Smith,**

*Acting District Manager.*

[FR Doc. 87-7291 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-23-M

---

[CA-060-07-4333-08]

## Motor Vehicles; California Desert District off-Road Vehicle Route Designation Amendments

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Decisions to open, close, or limit use of off-road vehicle routes of travel in the California Desert District.

**SUMMARY:** Notice is hereby given that final decisions have been reached in the first annual California Desert District off-road vehicle route designation amendment process. These decisions have been made in accordance with the authority and requirements of Executive Orders 11644 and 11989 and 43 CFR 8340. The affected routes are all within the El Centro Resource Area in the McCain Valley, Imperial Valley South, and Midway Well Desert Access Guide areas. Maps showing the open, closed, and limited routes are available from the BLM sources listed at the end of this notice.

Pulbic comments were solicited and evaluated in reaching these decisions. The draft decisions were made available on August 21, 1986 for a 45-day public comment period which ended October 10, 1986. Preliminary final decisions were issued on December 2, 1986 with an additional public comment period extending until January 9, 1987. The preliminary final decisions are now being implemented without further revision.

**DATE:** These designation amendments are effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these decisions will be implemented as routes are signed or as maps are printed and made available to the public.

**FOR FURTHER INFORMATION CONTACT:**

Steve Nelson, Outdoor Recreation Planner, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243, (619) 352-5842, Hours: 7:45 a.m. to 4:30 p.m., Monday thru Friday.

Dave Mensing, District Outdoor Recreation Planner, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 351-6402, Hours: 7:45 a.m. to 4:30 p.m., Monday thru Friday.

**SUPPLEMENTARY INFORMATION:** These vehicles route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), EO 11644 (Use of Off-Road Vehicles on the Public Lands), and 3 CFR 74.332 as amended by EO 11989, 42 FR 26959 (May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR Part 8341 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Dated: March 23, 1987.

**H. W. Riecken,**

*Acting District Manager.*

[FR Doc. 87-7292 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-10-M

---

## Alaska; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48601-U has been received covering the following lands:

**Copper River Meridian, AK**

T. 5 S., R. 1 E.,
Sec. 3, SW¼NW¼.
(40 acres)

The proposed reinstatement of the least would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48601-U as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1986, subject to the terms and conditions cited above.

Dated: March 27, 1987.

**Sue A. Faught,**

*Acting Chief, Branch of Mineral Adjudication.*

[FR Doc. 87-7293 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-DN-M

---

[(MT-930-07-4220-10; M 32820)]

## Opening Order of Public Lands, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This document is notice that the segregation created by the Bureau of Reclamation withdrawal application dated November 6, 1975, is terminated in part and open to operation of the public land laws, including the mining laws, but not from leasing under the mineral leasing laws.

**DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** James Binando, Chief, Branch of Land Resources, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6090.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the segregation created by the Notice of Proposed Withdrawal published January 5, 1976, FR Volume 41, Page 784, Document No. 76-15 is hereby terminated as to the following described lands and opened to operation of the public land and mining laws.

**Prnicipal Meridian, Montana**

T. 7 N., R. 1 E.,
Sec. 26, S½N½SW¼NE¼, S½SW¼NE¼, SE¼NE¼ and S½S½NW¼.

The area described contains 110.00 acres in Broadwater County.

**Ray Brubaker,**

*Acting State Director.*

March 26, 1987.

[FR Doc. 87-7294 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-DN-M

---

[AZ-020-07-4212-13; A-22439]

## Realty Action, Public Land Exchange; Mohave County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, exchange, public land, Mohave County, Arizona.

**SUMMARY:** The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

**Gila and Salt River Meridian**

T. 21 N., R. 21 W.,
Sec. 16, all.
Containing 640 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Roy and Scott Dunton, aka Dunton and Dunton, of Kingman, Arizona:

**Gila and Salt River Meridian**

T. 15 N., R. 12 W.,
Sec. 13, all;
Sec. 15, all.
T. 14 N., R. 13 W.,
Sec. 5, lots 1–4, S½N½, N½SW¼, SW¼SW¼, E½SE¼SW¼, SE¼.
T. 15 N., R. 13 W.,
Sec. 11, W½, W½SE¼;
Sec. 19, lots 1 and 2, NE¼, E½NW¼;
Sec. 31, lots 1–4, E½, E½W½.
T. 15 N., R. 14 W.,
Sec. 13, W½NE¼, E½W½, SE¼.
Containing 3,614.72 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals pursuant to the Act of August 30, 1890; (b) all the oil and gas and with it the right to prospect for, mine and remove same.

2. Subject to: (a) Restrictions that may be imposed by Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84–10 adopted on December 3, 1984.

Private lands to be acquired by the United States will be subject to the following reservations:

1. The rights or claims of title by the State of Arizona to any portion of the property being located in the bed of any river or dry wash.

2. All minerals to the Santa Fe Pacific Railroad Company.

3. The right of the Santa Fe Pacific Railroad Company to appropriate rights-of-way incident to the operation of railroads.

4. An easement to the Mohave Electric Cooperative, Inc., for electric transmission line purposes.

5. An easement to the Cyprus Mines Corporation for water pipeline purposes.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become final determination of the Department of the Interior.

Dated: March 26, 1987.

**Henri R. Bisson,**

*Acting District Monager.*

[FR Doc. 87–7295 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–32–M

---

**[NM 940–07–4520–12–0807]**

## Filing of Plat of Survey; New Mexico

March 17, 1987.

The supplemental plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on March 17, 1987.

The supplemental plat showing Lot 23 in its designated location in section 11, Township 14 North, Range 3 West, of the New Mexico Principal Meridian, New Mexico, was approved March 10, 1987, under Group 807.

The survey was requested by the Area Director, Bureau of Indian Affairs, Albuquerque Area Office, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

**Kelley R. Williamson, Jr.,**

*Acting Chief, Branch of Cadastral Survey.*

[FR Doc. 87–7296 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–FB–M

---

## Minerals Management Service

## Development Operations Coordination Document; Hall-Houston Oil Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6804, Block 89, Main Pass Area, offshore Losisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Hopedale, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elwood Park Boulevard, Room, 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and prooedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 24, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-7194 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Hughes-Denny Offshore Exploration, Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Hughes-Denny Offshore Exploration, Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5054 and 5055, Blocks 253 and 254, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 24, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-7195 Filed 4-1-87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than April 10, 1987. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, IRM/PE, Room 1109, SA-14, Washington, DC 20523.

Date Submitted: March 27, 1986
Submitting Agency: Agency for International Development
OMB Number: 0412-0004
Form Number: AID 11
Type of Submission: Renewal
Title: Application for Approval of Commodity Eligibility
Purpose: A.I.D. provides loans and grants to many developing countries in the form of commodity Import Programs (CIPs). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S. or in some cases, form other developing countries. In accordance with section 604(f) of the Foreign Assistance Act of 1961, as amended, A.I.D. can finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and agency policies. Using the Application for Approval of Commodity Eligibility (Form AID-11), the supplier certifies to A.I.D. information about the commodities being supplied, as required in section 604(f), so that A.I.D. may determine eligibility. The annual reporting burden is twice per respondent and each response requires approximately fifteen minutes.
Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: March 25, 1987.

**Fred D. Allen,**

*Planning and Evaluation Division.*

[FR Doc. 87-7288 Filed 4-1-87; 8:45 am]

BILLING CODE 8116-01-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-175 (Final—Court Remand)]**

### Cold-Rolled Carbon Steel Plates and Sheets From Argentina

### Determination

In response to a remand order of the U.S. Court of International Trade in the case of *USX Corp.* v. *United States* (Court No. 85-03-00325, Slip Op 87-14, CIT February 9, 1987), and on the basis of the record [1] developed in investigation No. 731-TA-175 (Final), the Commission determines [2] that as of the date of the Commission's determination in investigation No. 731-TA-175 (Final), an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of imports from Argentina of cold-rolled carbon steel plates and sheets, provided for in item 607.83 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes dissenting.

in the United States at less than fair value (LTFV).

**Background**

On January 28, 1985, the Commission notified the Secretary of Commerce of its determination that, based on the record developed during the course of investigation No. 731–TA–175 (Final), an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of imports from Argentina of cold-rolled carbon steel plates and sheets, provided for in item 607.83 of the Tariff Schedules of the United States, that had been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission's determination was subsequently challenged in the U.S. Court of International Trade by USX Corp., formerly known as United States Steel Corp. On February 9, 1987, the Court remanded the case to the Commission for further consideration consistent with the Court's opinion. The Court ordered the Commission to file its determination on remand with the Court within 45 days of the order, i.e., by March 26, 1987.

The Commission transmitted its determination in this investigation to the U.S. Court of International Trade on March 26, 1987. The views of the Commission are contained in USITC Publication 1967 (March 1987), entitled "Cold-Rolled Carbon Steel Plates and Sheets from Argentina: Determination of the Commission in Investigation No. 731–TA–175 (Final) (Remand) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: March 27, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–7181 Filed 4–1–87; 8:45 am]

BILLING CODE 7020–02–M

---

**[Investigation No. 731–TA–373 (Preliminary)]**

## Certain Copier Toner From Japan

**Determination**

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of electrically resistive monocomponent toner and "black powder" preparations therefor of a kind used in electrostatic copying machines, provided for in item 408.44 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

**Background**

On February 3, 1987, a petition was filed with the Commission and the Department of Commerce by Aunyx Corp., Hingham, MA, alleging that the establishment of an industry in the United States is materially retarded and that an industry is threatened with material injury by reason of LTFV imports from Japan of electrically resistive monocomponent toner and "black powder" preparations therefor of a kind used in electrostatic copying machines. Accordingly, effective February 3, 1987, the Commission instituted preliminary antidumping investigation No. 731–TA–373 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 13, 1987 (52 FR 4666). The conference was held in Washington, DC, on February 25, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 20, 1987. The views of the Commission are contained in USITC publication 1960 (March 1987), entitled "Certain Copier Toner from Japan: Determination of the Commission in Investigation No. 731–TA–373 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: March 23, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–7183 Filed 4–1–87; 8:45 am]

BILLING CODE 7020–02–M

---

**[Investigation No. 731–TA–374 (Preliminary)]**

## Potassium Chloride From Canada

**Determination**

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of potassium chloride, provided for in item 480.50 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

**Background**

On February 10, 1987, a petition was filed with the Commission and the Department of Commerce by Lundberg Industries, Ltd., of Dallas, TX, and New Mexico Potash Corp., of Memphis, TN, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of potassium chloride from Canada. Accordingly, effective February 11, 1987, the Commission instituted preliminary antidumping investigation No. 731–TA–374 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 19, 1987 (52 FR 5202). The conference was held in Washington, DC, on March 3, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 27, 1987. The views of the Commission are contained in USITC Publication 1963 (March 1987), entitled "Potassium Chloride from Canada: Determination of the Commission in Investigation No. 731–TA–374 (Preliminary) Under the

---

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i))

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: March 27, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-7182 Filed 4-1-87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. 337-TA-247]

## Certain Sickle Guards Intended for Use in Mowing Machines; Commission Decision

**AGENCY:** International Trade Commission.

**ACTION:** (1) Decision not to review the initial determination (ID) of the presiding administrative law judge (ALJ) finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation; and (2) termination of the investigation.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Galbreath, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0143.

**SUPPLEMENTARY INFORMATION:** The authority for the Commission's action is contained in 19 U.S.C. 1337 and 19 CFR 210.53-56.

On February 2, 1987 the presiding ALJ issued an ID that there is no violation of section 337 in the above-referenced investigation. On February 24, 1987, a petition for review was filed by complainant National-Standard Co. On March 3, 1987, the respondents and the Commission investigative attorney filed oppositions to the petition for review. No Government agency comments have been received.

On March 26, 1987, the Commission determined not to review the ID. By virtue of the Commission's decision not to review the ID, the ID became the final Commission determination in this section 337 investigation (19 CFR 210.53(h)).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-724-0002.

Issued: March 27, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-7185 Filed 4-1-87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. 731-TA-349 (Final)]

## Certain Welded Carbon Steel Pipes and Tubes From Taiwan

**AGENCY:** International Trade Commission.

**ACTION:** Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-349 (final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of light-walled rectangular pipes and tubes,[1] provided for in item 610.4928 of the Tariff Schedules of the United States Annotated, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 25, 1987, and the Commission will make its final injury determination by July 14, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** March 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washigton, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

**SUPPLEMENTARY INFORMATION:**

### Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of light-walled rectangular pipes and tubes from Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on October 2, 1986, by counsel for the Committee on Pipe and Tube Imports. In reponse to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (51 FR 42945, November 26, 1986).

### Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later then twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

### Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

### Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on May 26,

[1] For purposes of this investigation, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch.

1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing**

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 10, 1987, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 22, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 29, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 5, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 206.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

**Written submissions**

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 17, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 17, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment in desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: March 27, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87-7184 Filed 4-1-87; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31021]**

### The Great Walton Rail Co.—Acquisition and Operation Exemption; Georgia Eastern Railroad Co.

The Great Walton Rail Company has filed a notice of exemption to acquire and operate the Georgia and Eastern Railroad Company 10.01-mile line between Social Circle, GA (milepost 0.16) and Monroe, GA (milepost 10.17).[1] Any comments must be filed with the Commission and served on: John R. Molm, 1400 Candler Building, 127 Peachtree Street NE., Atlanta, GA 30043.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 26, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-7212 Filed 4-1-87; 8:45 am]

BILLING CODE 7035-01-M

**[Finance Docket No. 30942]**

### Southern Railway Co.; Acquisition and Operation Exemption; CSX Transportation, Inc.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts the Southern Railway Company from the requirements of 49 U.S.C. 11343 for the acquisition and operation of CSX Transportation, Inc.'s Jellico Branch line between Lot, KY, and Jellico, TN, a distance of 2.37 miles, and related joint yard facilities, subject to employee protective conditions.

**DATES:** This exemption will be effective on May 4, 1987. Petitions to stay must be filed by April 13, 1987, and petitions for reconsideration must be filed by April 22, 1987.

**ADDRESSES:** Send petitions referring to Finance Docket No. 30942 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Nancy S. Fleischman, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 25, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-7213 Filed 4-1-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree; Iowa Asbestos Co., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 4, 1987, a proposed partial consent decree in *United States v. Iowa Asbestos Co. et al.*, Civil Action No. 86-038B, was lodged with the United States District Court for the Southern District of Iowa. The complaint filed by the United States alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. Specifically, the complaint alleged that the defendants failed to comply with the asbestos NESHAP during the removal of asbestos from two Ankeny Community School District-owned buildings in

[1] By decision served April 2, 1987, the effective date of the exemption was set at March 26, 1987.

Ankeny, Iowa. The complaint sought injunctive relief to require the defendants to comply with the Clean Air Act and the NESHAP for asbestos and civil penalties for past violations. The decree requires defendant Ankeny Community School District to comply with the Clean Air Act and the NESHAP for asbestos in the future and requires the school district to pay a $2,000 settlement sum.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Iowa Asbestos Co. et al.*, Department of Justice Reference #90–5–2–1–901.

Copies of the proposed consent decree may be examined at the following locations: Office of the United States Attorney, 115 United States Courthouse, E. 1st and Walnut Streets, Des Moines, Iowa 50309; the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania, NW., Washington, DC 20530; and, the Region VII Office of the United States Environmental Protection agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. When requesting a copy, please refer to *United States v. Iowa Asbestos Co. et al.*, Department of Justice Reference #90–5–2–1–901.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–7233 Filed 4–1–87; 8:45 am]

BILLING CODE 4410–01–M

---

### Lodging of Consent Decree Kleer Kast, Inc. and PMC, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Kleer Kast, Inc. and PMC, Inc.*, Civil Action No. 85–4718(AJL) was lodged in the United States District Court for the District of New Jersey on March 10, 1987.

The proposed consent decree concerns alleged violations of the Clean Water Act 33 U.S.C. 1251, *et seq.*, and Kleer Kast Inc.'s National Pollutant Discharge Elimination System and New Jersey Discharge Elimination System permits. The alleged violations have occurred in connection with the operation of a cellulose acetate sheeting manufacturing facility in Kearny, New Jersey. The proposed decree requires Kleer Kast to comply with its applicable permit and pretreatment regulations. The proposed decree also requires defendants to pay a $100,000 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Kleer Kast, Inc. and PMC, Inc.*, D.O.J. Ref. No. 90–5–1–1–2452.

The proposed consent decree may be examined at the Office of the United States Attorney, 970 Broad Street, Room 502, Newark, New Jersey 07102 and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or, by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.50 (10 cent per page reporduction cost) made payable to the Treasurer of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530.*

[FR Doc. 87–7229 Filed 4–1–87; 8:45 am]

BILLING CODE 4410–01–M

---

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Sensory Physiology and Perception; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology and Perception Program.

Date and Time: April 15, 16, and 17, 1987: 9:00 a.m. to 5:00 pm each day.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC. Meeting is to be held in the conference Room 523.

Type of Meeting: Part Open—Open 4/16—1:00 p.m. to 3:00 p.m.; Closed 4/15 9:00 a.m. to 5:00 p.m.; Closed 4/19 9:00 a.m. to 5:00 p.m.

Contact Person: Dr. Steven Price, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7428.

Sumary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in the Sensory Physiology and Perception Program.

Agenda: Open—Discuss future trends in program area. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87–7301 Filed 4–1–87; 8:45 am]

BILLING CODE 7555–01–M

---

### Advisory Panel for Social and Developmental Psychology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Social and Developmental Psychology.

Date and Time: April 15–17, 1987: 9:00 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 1243, Washington, DC 20550.

Type of Meeting: Part Open—Closed 4/15—9:00 a.m. to 5:00—p.m.; Closed 4/16—9:00 a.m. to 5:00 p.m.; Closed 4/17—11:00 a.m. to 5:00 p.m.; Open 4/17—9:00 a.m. to 11:00 a.m.

Contact Person: Dr. Jean B. Intermaggio, Program Director, Room 320, National Science Foundation, Washington, DC 20550 (202–357–9485).

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in social and developmental psychology.

Agenda:

Open—General discussion of the research trends in social and developmental psychology.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 87-7302 Filed 4-1-87; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Systematic Biology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and Time: April 20 and 21, 1987—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. James E. Rodman, Acting Program Director, Systematic Biology, (202) 357-9588, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

March 30, 1987.

[FR Doc. 87-7303 Filed 4-1-87; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Use of Isotopes; Renewal

The Nuclear Regulatory Commission announces the renewal of the Advisory Committee on the Medical Uses of Isotopes. It has been determined that this advisory committee is in the public interest in connection with the performance of duties imposed upon the Commission by law. This committee provides advice and consultation both on the development of standards and criteria for regulating and licensing the uses of radionuclides on human patients and on individual license applications relating to user qualifications and proposed use of radiation sources.

The charter for the Advisory Committee on the Medical Uses of Isotopes is being extended for the two year period beginning April 4, 1987.

Additional details regarding the duties and functions of the Committee and its members can be obtained by telephoning Patricia C. Vacca, Office of Nuclear Materials Safety and Safeguards, at (301) 427-4112.

Dated: March 30, 1987.

John C. Hoyle,

*Advisory, Committee Management Officer.*

[FR Doc. 87-7275 Filed 4-1-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-135; License No. SNM-145]

## Babcock & Wilcox; Receipt of Petitions

Notice is hereby given that by Petition dated February 24, 1987, the Kiski Valley Coalition To Save Our Children requested that the Director, Office of Nuclear Material Safety and Safeguards, the Director, Nuclear Reactor Regulation, and the Director, Office of Inspection and Enforcement, take immediate action with regard to the Babcock and Wilcox (B&W) Apollo facility. The Petitions request that the license for the facility be suspended unitl corrective actions have been taken, after which the license be terminated and revoked and the facilities and grounds be released for unrestricted use. The Petitions assert as grounds for this request that (1) the licensee has not fulfilled License Condition 37, which provides that at the end of plant life, the licensee shall decontaminate the facility and grounds so that they can be released for unrestricted use; (2) the facility has had a significant adverse effect upon Apollo and the surrounding environment; and (3) there is licensed material that is missing and unaccounted for. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

Copies of the Petitions are available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and the Local Public Document Room of the Apollo Memorial Library, Apollo, Pennsylvania.

Dated at Silver Spring, Maryland, this 25th day of March, 1987.

For The Nuclear Regulatory Commission

Hugh L. Thompson, Jr.,

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 87-7274 Filed 4-1-87; 8:45 am]

BILLING CODE 7590-01-M

## Southern California Edison Co. and San Diego Gas and Electric Co.; Denial of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the licensees for an amendment to Provisional Operating License No. DPR-13, issued to the Southern California Edison Company, et al. (the licensees), for operation of the San Onofre Nuclear Generating Station, Unit 1 (the facility), located in San Diego County, California.

The amendment, as proposed by the licensees, would modify the facility Technical Specifications (TS) for the safety injection system hydraulic valves to establish a long-term surveillance program for these valves which would supplant an interim testing program effective during Fuel Cycle XIII. The licensees' application for amendment was dated November 21, 1985, as supplemented on June 25, 1986. Notice of consideration of issuance of the amendment was published in the Federal Register on February 12, 1986 (51 FR 5277). The staff determined that the proposed long-term program was inadequate to verify the operability of these valves. The licensee was notified of the Commission's denial of this request by letter dated March 30, 1987.

The licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene. Such requests for hearing and leave to intervene must be received by May 4, 1987.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 21, 1985 as supplemented on June 25, 1986, and (2) the Commission's letter to the licensees dated March 30, 1987, which are

available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Main Library, University of California, P.O. Box 19559, Irvine, California 92713. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC., 20555, Attention: Director, Divison of PWR Licensing–A.

Dated at Bethesda, Maryland, this 30th day of March, 1987.

For the Nuclear Regulatory Commission.

George E. Lear,

*Director, PWR Project Directorate #1, Division of PWR Licensing–A.*

[FR Doc. 87–7273 Filed 4–1–87; 8:45 am]

BILLING CODE 7590–01–M

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standards Amendments; Public Comment Period

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of proposed amendments and opportunity to comment regarding model conservation standards for new and existing structures, utility, customer, and governmental conservation programs, and other consumer actions for achieving conservation except areas for which model conservation standards already exist.

**SUMMARY:** On April 23, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted, pursuant to the Pacific Northwest Electric Power and Conservation Act, Pub. L. 96–501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), a Northwest Conservation and Electric Power Plan (Power Plan), including model conservation standards (MCS) for new residential and commercial structures, and for buildings converting to electric space conditioning (48 FR 24493, June 1, 1983). The most recent amendments of the MCS were adopted by the Council at its January 14, 1987, meeting. At its March 11, 1987, meeting, the Council voted to enter rulemaking to add to the existing MCS model standards for all sectors and end-uses of electricity not already covered.

**SUPPLEMENTARY INFORMATION:** The Act states that "Model conservation standards to be included in the [Council's] plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation." Section 4(f)(1). Upon consideration of a petition requesting that the Council adopt model standards for the particular conservation activities related to residential weatherization in the region, the Council now proposes to amend the Power Plan by adopting model standards applicable to all areas not covered by the existing MCS, including residential weatherization.

This notice describes the proposed amendments and explains how to participate in the amendment process. In order to allow the Bonneville Power Administration time to complete its hearings on its residential weatherization program, the Council will wait for two months from the publication of this notice to begin hearings on this proposed rule. The Council anticipates that its hearings will be conducted during late May and June and that it will be able to adopt these amendments by mid-October. The schedule of hearings and guidelines for presenting oral comment will be published several weeks before the hearings are to begin.

**Guidelines for Submitting Written Comments**

1. All written comments must be sent to the Council's central office, Attn: Dulcy Mahar, Director of Public Information and Involvement, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205.

2. Comments should be clearly marked "Comments on Proposed Model Conservation Standards Amendment."

3. Written comments should be specific and concise and refer to sections or page numbers in the proposed MCS amendments.

4. If appropriate, submit a "marked up" copy of the proposed MCS (or appropriate sections) indicating suggestions and/or revisions. Suggested deletions should be lined out and placed in parentheses. Suggested new language should be underlined.

5. Please type (double-spaced) comments, if possible. Use only one side of the paper.

6. Provide ten (10) copies of all comments and supporting materials if at all possible.

**Proposed Amendments**

If adopted by the Council, the proposed amendments would add to Volume I, Chapter 9, p. 9–4 at bottom of second column.

**Proposed Model Conservation Standards for New and Existing Structures, Utility, Customer, and Governmental Conservation Programs, and Other Consumer Actions for Achieving Conservation Except Areas for Which Model Conservation Standards Already Exist**

During this period of electricity surplus, prior to the time when the region needs to acquire new resources to meet increased electricity demand, conservation activities that can be deferred without detrimental consequences should be. However, decisions regarding whether to operate a program may turn on factors other than the need for electricity. If a utility or governmental organization elects to implement a conservation program during the surplus, the program should be operated in a manner that is consistent with the long-term goals of the region's electrical power system.

The proposed model conservation standards (MCS) set forth in this document establish the objectives that should be incorporated into programs for new and existing structures, utility, customer and governmental conservation programs, and other consumer actions for achieving conservation, except for areas already covered by existing model conservation standards. New residential and commercial buildings, and buildings converting to electric space conditioning are already covered by specific model conservation standards. The proposed standards are designed to help move the region toward a least-cost electrical energy future.

As the various conservation resources in the sectors covered by this MCS are needed to meet regional load growth, the Council may revisit these standards to make them more specific for some sectors or end-uses, and to consider recommending that failure to achieve equivalent savings from them be subject to a surcharge.

*Proposed MCS Objectives*

1. Utility, customer, and governmental conservation programs, and other consumer actions for achieving conservation should not create lost opportunities. A lost opportunity is a conservation measure or program which, because of physical or institutional characteristics, may lose its cost-effectiveness unless actions are taken to develop it or hold it for future use.

2. Conservation programs should require the installation of all measures that are cost-effective to the region in the long-run, and if not done would be

lost to the region. If physical barriers prevent the installation of all cost-effective measures, all measures up to this physical limitaton should be installed. Cost-effective levels are defined in the Northwest Power Plan.

3. The benefits of the conservation program should be equitably distributed throughout the sector or subsector within which the program is operating. If the program is operated on a regional level, its benefits should be equitably distributed throughout the region.

4. Environmental quality should be given strong consideration in program design. Programs should be designed to maintain or improve current levels of environmental quality. Environmental degradation should be avoided.

5. Utility, customer, and governmental conservation programs operated during the current period of surplus should contribute to the region's capability to implement those conservation programs aggressively when the region begins to need new resources. Consequently, such programs should include data gathering and evaluation components structured to gain statistically reliable information the region can use to fashion an aggressive and effective conservation acquisition program when additional power is needed. In addition, such programs should develop the capability to secure conservation in sectors or subsectors that are not generally reached by typical programs, for example, low-income households and renters in the residential weatherization program.

6. Programs should be designed to avoid significant alteration of a consumer's choice of fuel since significant fuel switching will negate the conservation savings and require the development of additional high cost resources.

*Surcharge Recommendation*

The Council is not recommending at this time that the standard in this rule be subject to a surcharge. The Council already has standards for new residential and new commercial building that are subject to the surcharge and standards for buildings converting to electric space conditioning that are not subject to the surcharge. Specific standards were set for new residential and commercial buildings since they represent lost opportunity resources and they are areas where significant activity is expected to occur, even during the electricity surplus.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 87-7191 Filed 4-1-87; 8:45 am]

BILLING CODE [illegible]

## PHYSICIAN PAYMENT REVIEW COMMISSION

### Commission Meeting

**AGENCY:** Physician Payment Review Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold a public meeting on April 9–10, 1987, in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC. The April 9th meeting will begin at 9:00 A.M. and the April 10th meeting will be at 8:30 A.M. The Commission was established by section 9305 of Pub. L. 99–272.

**ADDRESSES:** The Commission's office is located in the Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20201 in Suite 7033. Its telephone number is 202/472–1364.

**SUPPLEMENTAL INFORMATION:** The following is the meeting agenda:

*Thursday, April 9, 1987*

9:00 AM–9:30 AM—Executive Director's Report
9:30 AM–10:45 AM—Prompt Payment by Carriers
Marilyn Field, Ph.D., Associate Director, Physician Payment Review Commission
11:00 AM–1:00 PM—Recess for Meeting with Secretary Bowen and LUNCH (Executive Session)
1:00 PM–5:30 PM—Development of Relative Value Schedules
Peter Fraser, Executive Director, Ontario Medical Association
Howard Zander, M.D., President, American Society of Anesthesiologists
William Hsiao, Ph.D., Professor, Harvard School of Public Health

*Friday, April 10, 1987*

8:30 AM–10:30 AM—Proposals for Payment of Radiologists, Anesthesiologists, and Pathologists (RAPs) on a Per Admission (DRG) Basis
James Reuter, Ph.D., Specialist in Social Legislation, Congressional Research Service
Ross Anthony, Ph.D., Associate Administrator for Program Development, Health Care Financing Administration
10:30 AM–11:30 AM—Patterns of Relative Values in Fee Schedules Based on Factors Other than Charges
Terry Hammons, M.D., Deputy Director, Physician Payment Review Commission
11:30 AM–12:00 Noon—Public Comment
12:00 Noon–1:00 PM—LUNCH (Executive Session)
1:00 PM–1:30 PM—Report of Coding Subcommittee
*Members:* Oliver H. Beahrs, M.D., Chairman, Walter McNerney, Richard W. Wright
1:30 PM–2:30 PM—Initial Plans for Consensus Panels
Lauren LeRoy, Ph.D., Deputy Director, Physician Payment Review Commission
2:30 PM–3:00 PM—Next Steps

**Paul B. Ginsburg,**

*Executive Director.*

[FR Doc. 87-7192 Filed 4-1-87; 8:45 am]

BILLING CODE 6820-SE-M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

### Summary of Proposal(s)

(1) Collection title: Supplemental Doctor's Statement.

(2) Form(s) submitted: SI–7, ID–7h.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 50,050.

(7) Annual reporting hours: 4,171.

(8) Collection description: The RUIA provides for the payment of sickness benefits to qualified railroad employees. The physician's statement will be used for determining whether the applicant meets the requirements for sickness benefits.

### Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy Egan (202–395–6880), Office of Management

and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Pauline Lohens,**

*Director of Information and Data Management.*

[FR Doc. 87-7196 Filed 4-1-87; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash; (202) 272-2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20559

Extension

Rule 7d-1(b)(8)(i), (iii), and (viii)

File No. 270-176

Rule 31a-1

File No. 270-173

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rules 7d-1(b)(8) (i), (iii), and (viii) and 31a-1 under the Investment Company Act of 1940.

Rule 7d-1(b)(8) (i), (iii), and (viii) concerns the conditions and arrangements pursuant to which Canadian management investment companies may register under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*). The rule currently affects 2 recordkeepers, who expend a total of 50 burden hours, annually, to comply.

Rule 31a-1 requires investment company registrants to keep certain books and records which are the basis for their financial statements and a record of their operational activities so that these activities can be examined by Commission personnel for compliance with the law. The rule affects all of the 2960 active registered investment companies. These companies spend about 4,161,760 burden hours to comply with the rule.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

March 26, 1987.

[FR Doc. 87-7246 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24272; File No. SR-NASD-87-5]

### Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Filing of Direct Participation Program Advertising and Sales Literature

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on March 10, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds a new paragraph (c)(3) to Article III, section 35 of the NASD Rules of Fair Practice that requires advertising and sales literature for publicly offered direct participation programs to be filed with the NASD.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed amendment would require members to file advertising and sales literature concerning publicly offered direct participation programs with the NASD's Advertising Department within 10 days of its first use or publication. If the literature has been filed with the NASD by the program's sponsor, general partner, underwriter or another member, a second filing would not be required.

Article III, section 35 of the NASD Rules of Fair Practice regulates members' communications with the public. It requires that all such communications be based on principles of fair dealing and good faith and that the communications provide a sound basis for evaluating the facts regarding the securities offered by members.

The NASD has become aware that certain advertising and sales literature used in connection with public direct participation programs has involved misleading illustrations of past performance, the inclusion of information on projected performance, and the unbalanced presentation of programs by not including a statement of significant risks.

This situation was considered by the NASD Direct Participation Programs/Real Estate Committee which recommended to the NASD Board of Governors that the filing requirement be adopted.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade among members, and in general to protect investors and the public interest. The proposed rule change is designed to facilitate the NASD's ability to ensure that advertising and sales literature is based upon principles of fair dealing and is consistent with the NASD guidelines. In this matter the rule change will serve to protect the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The NASD solicited comments from members regarding the proposed rule change in Notice to Members 85-69. A total of 48 responses were received. Copies of the Notice to Members and comment letters have been submitted to the Commission as Exhibit 2 to this filing. A majority of the commentators supported adoption of the rule. The most frequent areas of negative comments related to the need to impose a filing requirement in addition to the NASD's

ongoing review of member advertising. The NASD Board of Governors considered all of the comments and modified the proposal based upon such review. The NASD responded to these and other comments in the filing with the Commission.

*III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 26, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7244 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24260; File No. SR–NASD–87–1]

**Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. to Provide a Broadcast Ticker of Last Sale Reports in NASDAQ/NMS Securities.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Propsoed Rule Change**

The following is the full text of a rule change being proposed by the National Association of Securities Dealers, Inc. ("NASD") and its subsidiary, NASD Market Service, Inc. ("MSI"). This propsal embodies the NASD's decision to offer a new service consisting of a low speed ticker signal (hereinafter referred to as the "NASDAQ/NMS Ticker" or "Ticker") by which subscribers can obtain a moving display of last sale reports for all NASDAQ/NMS securities from any of a number of vendors.[1] The low speed ticker signal will not be provided to the display devices that are owned by the NASD or its subsidiaries (*i.e.*, Level 2/3 terminals.) The proposal includes the following fee schedule applicable to any subcriber of this service: $50 per wall display unit per month and $5 per interrogation device per month.[2] These fees shall also apply to subscribers of any comparable service that might be developed by vendors from the NASD's NMTS high-speed line.[3] Subsequent to approval by the Securities and Exchange Commission pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (the "ACT"), MSI will incorporate this fee schedule into a standardized contract for the NASDO/NMS Ticker.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is twofold: to establish technical specifications for and a description of a low speed ticker broadcast of last sale reports in NASDAQ/NMS securities and a fee schedule application to subscribers receiving such information. The NASDAQ/NMS Ticker will be a low-speed information broadcast directly to independently owned interrogation devices or wall display units suitable for the display of ticker information. This arrangement paralles that provided for listed securities by the New York and American Stock Exchanges ("NYSE" and "AMEX," respectively), *i.e.*, Networks A and B of the Consolidated Tape.

The data source for the NASDAQ/NMS Ticker is the MNTS high-speed line that operates at 4,800 BPS. Vendors currently access this line to provide subscribers with last sale informtion on NASDAQ/NMS securities. Generally, subscribers access such information by entering selective queries through desk-top terminals. In contrast, the proposed Ticker will be a broadcast stream of last sale data at 134.5 BPS (or 1,000 characters per minute) for all NASDAQ/NMS securities. The slower pace of this transmission will enable the continuous display of last sale reports in visually readable form. As a broadcast function, the NASDAQ/NMS Ticker requires the use of specialized wall display units, interrogation or display devices that are available from vendors. The functional description filed with the Commission outlines the equipment interfaces needed to receive the Ticker feeds, as well as the requirements applicable to any authorized ticker display of NASDAQ/NMS last sale reports. This

[1] A functional description of the NASDAQ/NMS Ticker has been filed with the Commission.

[2] These fees are exclusive of any separate communications carrier fees that may be incurred to receive the low speed signal.

[3] The process by which a vendor takes a high-speed feed (from the NMTS high-speed line) of last sale data and converts it for display in a moving ticker is commonly referred to as "retransmission." *See* Securities Exchange Act Rule 11As3–1(d) [17 CFR 240.11Aa3–1(d)].

informtion will be made available to any firm authorized to act as a vendor for the NASDAQ/NMS Ticker.

Establishment of the NASDAQ/NMS Ticker is consistent with Section 11A(a)(1) of the Act in which the Congress articulated various premises and goals respecting a national market system for securities. In particular, the NASD cites the following subparagraphs as statutory bases for the proposed Ticker:

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) Economically efficient execution of securities transactions;

(ii) Fair competition . . . between exchange markets and markets other than exchange markets; [and]

(iii) The availability to brokers, dealers, and investors of information with respect to . . . transactions in securities. . . .

Moreover, the proposed rule change is fully consistent with section 15A(b)(5) of the Act, which specifies the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that the NASD operates or controls. In setting the proposed fees for the NASDAQ/NMS Ticker, consideration was given to the existing rate applicable to display of last sale information on interrogation devices ($7.50/terminal/month for NASDAQ/NMS securities) as well as the prevailing charges assessed by the AMEX and the NYSE for ticker services.[4]

The NASD has proposed a fee differential between wall units and terminals displaying the NASDAQ/NMS Ticker. In establishing this differential, the NASD seeks to satisfy the "equitable allocation" requirements specified in section 15A(b)(5) of the Act. A higher fee is appropriate for a wall unit because of its greater potential for contemporaneous use by many people. Having a wall display obviates the need for multiple terminals to achieve a similar level of contemporaneous use of the ticker display. Thus, the higher fee for a wall unit reflects its greater capacity for contemporaneous usage of ticker data and a partial offset for terminal fees lost because of that feature. The NASD believes that the fee differential between wall units and terminal displays strikes an equitable balance in recapturing the overall costs of making the information available through the NASDAQ/NMS Ticker. The Association will continue to monitor the revenues produced by this and other services in order to effect fee reductions where appropriate.

In sum, the NASD believes that the proposed fee schedule for the NASDAQ/NMS Ticker establishes an appropriate and justified discount from the present charge for last sale information which recognizes the more limited nature of the information conveyed through a low speed ticker display. The proposed fees are believed to be reasonable in light of the scope of the information provided and the corresponding charges imposed by the AMEX and the NYSE. Further, these fees are structured to achieve an equitable allocation of costs among subscribers of varying sizes. Accordingly, the NASD believes that the proposed fees are fully consistent with section 15A(b)(5) of the Act.

The NASD notes that prompt Commission approval of this rule change will expedite marketing of the NASDAQ/NMS Ticker by vendors and its availability to end users. This result is consistent with section 15A(b)(6) of the Act which requirs, *inter alia*, that the NASD's rules be designed for foster cooperation and coordination with persons engaged in processing information with respect, to and facilitating transactions in securities.

*B. Self-Regulatory Organization's Statement on Burden Competition*

The NASD believes that the establishment of the NASDAQ/NMS Ticker and related fees will impose no burden on competition. The proposed fees are comparable to, and in some instances lower than, fees assessed by the AMEX and NYSE for moving ticker displays of equities transactions. Consequently, the NASD anticipates that several vendors will be interested in marketing this service in a variety of end users. Because the NASDAQ/NMS Ticker will not be available on display devices that are owned by the NASD, the Association will not be in direct competition with vendors in offering this service to subscribers. In effect, the NASD will be expressly limiting its functions to that of a "wholesale" distributor of the NASDAQ/NMS Ticker service.

It should be noted that the proposal permits vendors to develop a comparable ticker service from the NMTS high-speed line (*i.e.*, retransmission) without payment of a surcharge to the NASD for the opportunity to do so. Nonetheless, subscribers to a vendor-developed ticker will still be obliged to pay the NASD the $5/$50 fees based upon the type and number of devices carrying the ticker display.

Vendor retransmission of transaction reports (or last sale data) and related subscriber fees were addressed by the Commission in 1980 when it amended Rule 17a–15 and redesignated it as Rule 11Aa3–1 [17 CFR 240.11Aa3–1] under the Act.[5] In that proceeding the Commission found that it was inappropriate to maintain a prohibition of retransmission in any effective transaction reporting plan. However, the Commission concluded that an exchange or an association may condition retransmission upon undertakings to ensure that the applicable subscriber charges are collected. Such charges should be reasonable and uniform irrespective of geographic location. These findings are embodied in subsections (d) and (e) of Rule 11Aa3–1 under the Act. The NASD cites these provisions and the underlying policy considerations [6] as bases for the imposition of reasonable, uniform subscriber fees in the context of retransmission of NASDAQ/NMS last sale data to moving ticker displays. Commission approval of this aspect of the NASD'S proposal will conform with the treatment of subscribers receiving ticker displays of exchange transactions via vendor retransmission.

Accordingly, the NASD reiterates that no competitive burden will be created by the Commission's approval of this proposal.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received respecting the proposed specifications and fee schedule.

---

[4] For example, recent amendments to the CTA and CQ plans to authorize the NYSE to charge professional subscribers a unified monthly rate for Network A last sale, ticker, and quotation information based on the total number of display devices which a professional subscriber has. *E.g.*, one display unit would cost $120, while three would cost $165 (or $55 ea.) and five would cost $225 (or $45 ea.) per month. Where the NYSE provides ticker service directly to a non-professional subscriber, the monthly charge is $30 per unit. *See* Securities Exchange Act Release No. 24130 (February 20, 1987).

[5] *See* Securities Exchange Act Release No. 16569 (February 19, 1980); 45 FR 12377 (February 26, 1980).

[6] *Id.*, at 12382–83.

### III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or,

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and be submitted by April 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 25, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 7247 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24259; File No. SR-ODD-87-1]**

## Self Regulatory Organization; Options Clearing Corporation; Order Granting Approval to Proposed Supplement to Options Disclosure Document

On March 17, 1987, the Options Clearing Corporation ("OCC") submitted to the Commission copies of a supplment to the Options Disclosure Document ("ODD") pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act"). The Supplement explains that, pursuant to a recent OCC rule change, an options market may provide by rule how the settlement value of an option on an index of securities will be determined, and that such settlement values may be determined by reference to the prices of the constituent stocks of the index at times other than the close of trading. Such rules, which would supercede any contrary provisions in the rules of the OCC, might apply generally, or only on particular days, such a the last business day before expiration.

The Supplement also notes that certain options markets have adopted or are considering rules that would calculate the settlement value of expiring index options on the last business day before expiration based on the opening prices of the constituent stocks on that day. Consequently, options to which such rules apply may not be traded, or may be traded only to a limited extend, on the last business day before expiration. Rules changing the method for determining index option settlement values may be adopted by some options markets, but not others, and an individual options market may adopt such rules with respect to some but not all of the index options traded in that market. A market that adopts such rules subsequently may repeal them.

Further, the Supplement to the ODD emphasizes that rules changing the method the determining index option settlement values may be made applicable to options outstanding at the time when the rules becomes effective, provided that such options are of a series opended for trading after the date of this Supplment. Such rules would not apply to any series of options outstanding on the date of this Supplement. After adopting such rules, however, an options market might open new series of options which are identical to series outstanding on the date of this Supplement in all respects other than settlement procedrues.

Finally, the Supplement reminds investors that the settlement value for options on a particular index will not necessarily be calculated in the same manner as the settlement values for futures or commodity options that may be traded on that index.

Paragraph (2)(1) of Rule 9b-1 provides that an options market must file five copies of an amendment to the options disclosure document with the Commission at leat 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors. This provisions is intended to permit the Commission either to accelerate or extend the time period before definitive copies of a disclosure document may be distributed to the public. The OCC has requested a waiver of the 30 day requirement so that the document can be distributed to the public as promptly as possible in light of a proposed rule change by the New York Stock Exchange ("NYSE") to permit the NYSE to settle its options on the NYSE Composite Index and the Beta Index on the basis of the opening prices of the constituent stocks on Expiration Friday.[1] As filed, the proposed rule change only would apply to the June contracts. These contracts will be listed for trading after the March expiration. In view of NYSE's proposal, the Commission has determined that it is in the public interest to waive the 30 day requirement and, thus, to allow the Supplement to be furnished to investors.

The Commission has reviewed the Supplement to the ODD and finds that it is consistent with the protection of investors and it the public interest to allow the distribution of the Supplement to the disclosure document as of the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 25, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7243 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24271; File No. SR-OCCC-87-02]**

## Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the"Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on February 27, 1987 the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The Commission is publishing notice to solicit comment on the rule change.

The proposal revises OCC's fee schedule concerning settlements of exercises and assignments of options on foreign currencies. The proposal establishes the following fees with

[1] File No. SR-NYSE-87-06.

BEST COPY AVAILABLE

respect to settlements of exercises and assignments of options on foreign currencies:

Regular Way Deliveries: $130/settlement

Delivery vs. Payment Deliveries: $90/settlement

When OCC commenced clearing and settling foreign currency options in 1982, it utilized only one bank and established a pass-through fee structure. OCC now has expanded the number of settlement banks and those banks have disparate price structures for the services they provide. Because of disparate pricing structures among the settlement banks, continuation of the direct pass-through system would result in different prices for each currency transaction. The proposed fees standardize delivery cost regardless of the currency delivered.

OCC believes the proposed rule change is consistent with Section 17A of the Act in that it provides for the equitable allocation of fees among OCC's foreign currency clearing members. OCC also believes that standardized pricing regardless of the currency delivered is preferable to a cumbersome pass-through fee structure with differing prices for each currency.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commision may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the **Federal Register**. Please file six copies of your comment with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, will be available at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–87–02 and should be submitted by April 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 26, 1987.

**Jonathan G. Katz**

*Secretary.*

[FR Doc. 87–1242 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–15643; 812–6574]**

## Application for Exemption Under the Investment Company Act of 1940

March 26, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

---

*Applicants:* Aetna Life Insurance and Annuity Company ("Aetna") and Variable Annuity Account C of Aetna Life Insurance and Annuity Company ("Account C").

*Relevant 1940 Act Sections:* Exemption requested pursuant to section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the Act.

*Summary of Application:* Applicants seek an order to permit payment to Aetna from the assets of Account C of the mortality and expense risk charges and an asset-based sales charge under certain variable annuity contracts (the "Contracts"). A notice was previously published on March 10, 1987 (Rel. No. IC–15593) (the "Previous Notice") concerning the order sought with respect to the mortality and expense risk charges under the Contracts. Thereafter, Applicants filed an amendment to the Application concerning the asset-based sales charge, which amendment is summarized herein (the "Amendment"). Interested persons are referred to the Previous Notice for additional information regarding the application.

*Filing Date:* The application was filed on December 23, 1986 and amendments thereto on March 10, 1987 and March 20, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Aetna and Account C, 151 Farmington Avenue, Hartford, Connecticut 06156.

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Fleming, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel (202) 272–2061 (Office of Insurance products and Legal Compliance).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the Amendment; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

### Applicants' Representations

1. A contract may provide for the deduction from Contract value of an amount equal to a maximum of 0.50% of Contract values as a sales charge ("Asset Based Sales Charge"). In no event will the sum of any Asset Based Sales Charge and any other sales charge assessed under a Contract exceed 9% of the total purchase payments (without taking into account the time value of money). In a post-effective amendment to the registration statement on Form N–4 filed in connection with these Contracts (File No. 2–52449) incorporated by reference into this application, Aetna has stated that it will monitor these deductions to ensure compliance with the 9% limitation for each individual or plan account under the Contracts.

2. Applicants submit that imposition of a sales charge in the form of an asset based charge is more favorable to a Contract Holder than the deduction of this charge from premiums paid—the conventional way of imposing such charges. The amount of the Contract Holder's investment in Account C is not reduced as it would be if these charges were taken in full from premiums paid. Second, the total amount charged to any Contract Holder is no greater than it would be if these charges were taken from premiums paid. Finally, the fact that the entire amount of the charge has not been deducted will favorably affect the amount of the death benefit until the 9% limitation is reached since Contract values will be greater. The death benefit under the Contract during the accumulation period is generaliy equal to the Contract value attributable to the individual account or the appropriate portion of the value of the plan account. As a result, Applicants submit that Contract Holders will obtain the

advantages described above, which arise from the deferred nature of the charge, without incurring any additional cost.

**Applicants' Conditions**

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7248 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Rel. No. IC-15640; 812-6601]**

## E.F. Hutton Mortgage Capital Inc. et al.; Notice of Application.

March 25, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* E.F. Hutton Mortgage Capital Inc. ("Depositor") and certain trusts ("Trusts") created by the Depositor (collectively as "Applicant").

*Relevant 1940 Act Sections:* Exemption requested under Section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order conditionally exempting the Depositor and certain Trusts that it may form from time to time from all provisions of the 1940 Act, for the limited purposes of both the Depositor and the Trusts issuing collateralized mortgage obligations, investing in certain mortgage certificates and selling beneficial interests in such Trusts and the Depositor.

*Filing Date:* The Application was filed on January 16, 1987 and amended on March 11, and March 20, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 17, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESS:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 6230 Texas Commerce Tower, Houston, Texas 77002.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Richard Pfordte at (202) 272-2811 or Special Counsel Karen L. Skidmore at (202) 272-2323, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations:**

1. The Depositor is a direct, wholly-owned limited purpose financing subsidiary of The E.F. Hutton Group Inc., and was organized to issue one or more series of collateralized mortgage or mortgage pass-through obligations ("Bonds"), serve as the depositor of one or more Trusts, and to sell the beneficial interests in the Depositor and such Trusts. Notwithstanding the sale of its residual interests, all of the stock in the Depositor will continue to be owned by the E.F. Hutton Group Inc.

2. The Depositor may issue one or more series ("Series") of Bonds directly or may form one or more Trusts to issue one or more Series of Bonds. The Applicant will invest in certain Mortgage Certificates [1] which will be used to collateralize the Bonds.

3. Trusts will be established under separate deposit trust agreements ("Deposit Trust Agreement") between the Depositor, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee").

4. Applicant will issue one or more Series of Bonds under the terms of a trust indenture ("Indenture") between the Applicant, or the Owner Trustee in the case of a Trust, and an independent trustee ("Trustee"), as supplemented by one or more Series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

5. In the case of each Series of Bonds: (a) The Applicant will hold no substantial assets other than the Mortgage Certificates; (b) the Bonds will be secured by Mortgage Certificates having a collateral value determined under the Indenture at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds and any Applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned to the Trustee and will be subject to the lien of the related Indenture.

6. In addition to the issue and sale of the Bonds, Applicant intends to sell the residual interests representing excess cash flows to a limited number, in no event more than 100, of sophisticated institutional investors in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies and pension plans or other investors that would have prior experience in making investments in mortgage-related securities or real estate ("Eligible Institutions"). Each Eligible Institution will be required to represent that it is purchasing such residual interests for investment purposes. In addition, the Deposit Trust Agreement relating to any Trust, and the Indenture with respect to the Depositor, will further prohibit the transfer of any certificates for such residual interests if there would be more than 100 owners of such certificates at any time.

7. Neither the holders of the residual interests of the Applicant (including any Trusts), the Owner Trustee, if any, nor the Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the holders of the residual interests in the Applicant, the Owner Trustee, if any, nor the Trustee will be able to: (1) Change the stated maturity on any

[1] By definition, the "Mortgage Certificates" collateralizing the Bonds will consist of (1) "fully-modified" pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). All or a portion of the Mortgage Certificates securing a Series of Bonds may be "partial pool" Mortgage Certificates. Some of the GNMA Certificates securing a Series of Bonds may be backed by mortgage loans that provide for payments during the initial portion of their term that are less than the actual amount of principal and interest payable thereon on a level debt service basis ("GPM GNMA Certificates"). In addition to the Mortgage Certrificates directly securing the Bonds, a Series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture.

Bonds; (2) reduce the principal amount or the rate of interest on any Bonds; (3) change the priority of payment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

8. The sale of the residual interests will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture, to support payments of principal and interest on the Bonds.

9. No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either the custodian or the statistical rating agency rating the Bonds. None of the owners of the residual interests will be affiliated with the Trustee.

10. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell residual interests and there will not be a conflict of interest between the Bondholders and the holders of the residual interests for several reasons: (a) The collateral which initially will be pledged to secure the Bonds issued by the Applicant will not be speculative in nature because it will consist solely of GNMA Certificates, FNMA Certificates or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories, which by definition means that the capacity of the issuing Applicant to repay principal and interest on the Bonds is extremely strong; (c) the Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders;[2] and (d) the owners of the residual interests will be entitled to receive current distributions representing the residual payments on the collateral in accordance with the terms of sale of such interests (with respect to a Trust, the applicable Deposit Trust Agreement) which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, unless a Trust elects to be treated as a "real estate mortgage investment conduit" ("REMIC") under the Internal Revenue Code of 1986, the residual interest owners will be liable for the expenses, taxes and other liabilities of the Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The choice of the form of issuer for the Bonds and the identity of the owners of the residual interests in such issuer, however, will not alter in any way the payments made to the holders of the Bonds, which are payments governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

11. The aggregate interests of the owners of the residual interests in the collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. Applicant does not intend to pledge as security for any Series, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds.

12. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the owners of the beneficial interests to alter the collateral initially pledged to secure a Series, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any collateral substituted for collateral initially pledged to secure a Series may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the residual interests, which market conditions are likely to affect all Mortgage Certificates of similar payment terms and maturities in a similar fashion; (b) the interests of the holders of the residual interests are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience; and (c) to the extent that it may be possible for the owners of the residual interests in a Trust to cause the substitution of collateral which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary. Further, due to the fact that there usually will be more than one owner of a Trust, it appears less likely that the owners will be able to agree on any desired substitution of collateral than if there were a single owner who could unilaterally decide on the timing and execution of the substitution.

13. For additional representations and conditions concerning classes of Bonds, certain optional and mandatory redemption features and the application of "excess cash flow," see the application.

14. The requested order is necessary and appropriate in the public interest because: (a) The Applicant should not be deemed to be an entity to which the provisions of the 1940 Act were intended to be applied; (b) the Applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Applicant's activities are intended to serve a recognized and critical public need; (d) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Trustee representing their interests under the Indenture; and (e) the residual interests in the Applicant will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

15. Each Class of variable rate Bonds will have a set maximum interest rate (an interest rate cap).

16. At the time of the deposit of the Collateral with the Trustee, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Certificates pledged to

[2] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the issuing Applicant (and any owner of the residual interests thereof) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds. With respect to any Trust, once amounts have been released from the lien of the Indenture, the Trust Agreement for the Trust will provide that the Owner Trustee under the Deposit Trust Agreement will have a lien superior to that of the owners of the beneficial interests of the Trust to the remaining cash flow.

secure the Bonds, absent a default, plus reinvestment income thereon, and funds if any, pledged to secure the Bonds (as described in the application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Class of variable rate Bonds. Such collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

17. The election by the Applicant to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by the Applicant. Any Applicant that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Applicant will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. If the Applicant elects to be treated as a REMIC, it will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Applicant by one of the following methods or a combination of one or more of such methods: (a) A third party, whose credit is acceptable to the agency or agencies rating the Bonds, the Trustee and the Owner Trustee, will guaranty the payment of such fees and expenses; (b) one or more reserve funds will be established to provide for the payment of such fees and expenses, which maximum fees typically shall be projected, assuming current inflation factor scenarios required by the independent agency or agencies rating the Bonds, at the time of the issuance of the Bonds and the establishing of such reserve funds. Thereafter, the Trustee will look solely to such reserve funds for the payment of certain fees and expenses. The procedure used to calculate the anticipated level of fees and expenses is reasonable and has been used successfully in the past, in that it has provided available funds sufficient to pay such fees and expenses and to insure that funds will be sufficient to cover future fees and expenses of the Trustee; (c) the Bonds will be secured by collateral the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein, and (d) the owners of the residual interests in any Trust will be personally liable, pursuant to the Deposit Trust Agreement, for the fees and expenses of the Trust not otherwise payable from one of the sources described above. Applicant will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods above (which methods may be used in combination) are selected by the Applicant to provide for the payment of such fees and expenses.

**Applicant's Conditions**

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

*A. Conditions relating to the Bond Collateral*

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. However, the collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates, or FHLMC Certificates.

3. If new mortgage collateral is substituted, the substitute mortgage collateral will: (i) Be of equal or better quality than the mortgage collateral replaced; (ii) have similar payment terms and cash flow as the mortgage collateral replaced; (iii) be insured or guaranteed to the same extent as the mortgage collateral replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

4. All Mortgage Certificates, funds accounts or other collateral securing a Series of Bonds ("Collateral") will be held by a Trustee, or on behalf of a Trustee by an independent custodian. Neither the Trustee nor the custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annualy, an independent public accountant will audit the books and records of the Applicant and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

*B. Conditions relating to variable rate Bonds*

7. Each Class of various rate Bonds will have a set maximum interest rate (an interest rate cap).

8. At the time of the deposit of the collateral with the Trustee, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Certificates pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the application for the Order) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Class of variable rate Bonds. Such collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

*C. Condition relating to REMIC election*

9. The election by the Applicant to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by an Applicant. Any Applicant that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Applicant will be paid or provided for in a manner satisfactory to the agencyor agencies rating the Bonds. If the Applicant elects to be treated as a REMIC it will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Applicant by one of the following methods or a combination of one or more of such methods: (a) A third party, whose credit is acceptable to the agency or agencies rating the Bonds, the Trustee and the Owner Trustee, will guaranty the payment of such fees and expenses; (b) one or more reserve funds will be

established to provide for the payment of such fees and expenses, which maximum fees typically shall be projected, assuming current inflation factor scenarios required by the independent agency or agencies rating the Bonds, at the time of the issuance of the Bonds and the establishing of such reserve funds. Thereafter, the Trustee will look solely to such reserve funds for the payment of certain fees and expenses. The procedure used to calculate the anticipated level of fees and expenses is reasonable and has been used successfully in the past, in that it has provided available funds sufficient to pay such fees and expenses and to insure that funds will be sufficient to cover future fees and expenses of the Trustee; (c) the Bonds will be secured by collateral the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein, and (d) the owners of the residual interests in any Trust will be personally liable, pursuant to the Deposit Trust Agreement, for the fees and expenses of the Trust not otherwise payable from one of the sources described above. Applicant will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods above (which methods may be used in combination) are selected by the Applicant to provide for the payment of such fees and expenses.

*D. Conditions relating to the sale of residual interests*

10. Notwithstanding the sale of residual interests, all of the outstanding stock of the Depositor will continue to be owned by the E. F. Hutton Group Inc.

11. In addition, Applicant agrees that the above representations regarding the residual interests (and more fully described in the application) will be express conditions to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-7249 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15644; 812-6606]

**First Variable Life Insurance Co., et al.; Application**

March 26, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* First Variable Life Insurance Company and First Variable Annuity Fund E.

*Relevant 1940 Act Sections:* Exemption requested *under* section 6(c) *from* sections 26(a)(2) and 27(c)(2).

*Summary of Application:* Applicants seek an order to permit them to issue variable annuity contracts that provide for the deduction of mortality and expense risk charges from net asset value.

*Filing Date:* The application was filed on January 27, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC. 20549. First Variable Life Insurance Company and First Variable Annuity Fund E, Plaza West Building, Little Rock, Arkansas, 782205.

**FOR FURTHER INFORMATION CONTACT:** Clifford E. Kirsch, Staff Attorney at (202) 272-3032 or Lewis B. Reich, Special Counsel at (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

**Applicant's Representations:**

1. First Variable Life Insurance Company ("First Variable") is a stock life insurance company organized under the laws of the State of Arkansas and is a wholly-owned subsidiary of Monarch Life Insurance Company which is a wholly-owned subsidiary of Monarch Capital Corporation. On August 20, 1984, First Variable Annuity Fund E ("Separate Account") registered as a unit investment trust under the Act. The Separate Account was established by First Variable to fund two types of contracts: (1) Flexible purchase payment deferred annuity contracts and (2) single purchase payment immediate annuity contracts. (Both types of contracts are hereinafter referred to collectively as "Contracts").

2. It is intended that the underlying investment medium for the Contracts will be the Variable Investors Series Trust (the "Trust"). The Trust is an open-end, diversified, series management investment company currently seeking registration under the Act. Monarch Investment Management Corporation, a wholly-owned subsidiary of Monarch Financial Services Corporation, a wholly-owned subsidiary of Monarch Capital Corporation, is the investment adviser for the Trust.

3. On August 20, 1984, the Separate Account and First Variable filed an application for an order pursuant to section 6(c) of the Act for exemption from sections 26(a) and 27(c)(2) of the Act. The purpose of the application was to: (i) Permit daily deductions by First Variable of a percentage charge for its assumption of mortality risks, expense risks, and distribution risks from the Separate Account at a rate of 1.15% annually; and (ii) to permit the deduction by First Variable of a Contract issuance fee from the initial purchase payment. By Order dated December 3, 1984, the SEC granted the exemptive relief requested by the Applicants.

4. The purpose of this Application is to request an order of the SEC to provide an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a daily mortality and administrative expenses risk charge ("Risk Charge") equivalent to an annual rate of 1.25% of the average daily net asset value of the Separate Account attributable to the Contracts.

5. The Risk Charge is assessed daily against the Separate Account at an annualized rate of 1.25% (approximately 0.75% for mortality expense risks and approximately 0.50% for administrative expense risks). The Risk Charge is guaranteed and may not be increased by First Variable.

6. Applicants state that the mortality component (approximately 0.75%) of the Risk Charge is intended to compensate

First Variable for assuming the risk that its actuarial estimate of mortality rates may prove erroneous (i.e., the risk that a participant may receive annuity benefits for a period longer than those reflected in the Contract's annuity rates or may die at a time when the death benefit guaranteed by the Contract is higher than the accumulation value of the participant's Contract); and that the expense component (approximately 0.50%) of the Risk Charge is intended to compensate First Variable for assuming the risk that administrative charges, which are guaranteed not to increase, may prove insufficient to cover expenses actually incurred.

7. No deduction for distribution or sales expense will be imposed upon purchase payments when received by First Variable. Rather, First Variable seeks to recoup some or all of such distribution expenses from a withdrawal charge ("Withdrawal Charge"). The Contracts allow each owner to withdraw his or her interest in a Contract in whole or in part prior to the date annuity payments commence. The withdrawal value will be determined on the basis of the accumulation unit values as of the valuation date coincident with or next following the date that the signed written request to surrender is received by First Variable. However, should a withdrawal exceed 10% of all Contract purchase payments made prior to a withdrawal, a Withdrawal Charge will be impose in accordance with the following schedule:

| Policy anniversary since purchase payments made | Applicable withdrawal charge percentage |
|---|---|
| 0 | 5 |
| 1 | 4 |
| 2 | 3 |
| 3 | 2 |
| 4 | 1 |
| 5+ | 0 |

8. The cumulative total of all Withdrawal Charges is quaranteed never to exceed five percent of the owner's aggregate purchase payments.

9. Applicants represent that the level of Risk Charge is reasonable in relation to the risks assumed by the Applicants under the Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon First Variable's analysis of publicly available information about such Contracts, taking into consideration the particular annuity features of comparable Contracts, including such factors as current charge levels, charge level guarantees or annuity rate guarantees, the manner in which the charges are impose and the markets in which the Contracts are offered. Applicants state that First Variable has incorporated the identity of the products analyzed and its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request.

10. Applicants represent that the Withdrawal Charge assessed in connection with certain partial or total withdrawals or at annuitization may be insufficient to cover all costs of distributing the Contracts. Applicants state that if the actual amounts derived from the Withdrawal Charge proves insufficient to cover actual expenses, the deficiency wil be met from First Variable's general corporate funds, which could include amounts derived from the Risk Charge that exceed the expenses the Risk Charge was designed to cover. Applicants represent that First Variable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the owners of the Contracts. Applicants further state that the basis for this conclusion has been incorporated in a memorandum which First Variable will maintain and make available to the Commission or its staff upon request.

11. Applicants represent that the assets of the Separate Account will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 promulgated by the Commission under the Act, to have such plan formulated and approved by the board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7250 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No. 35–24354]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 26, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 20, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amendedc, may be granted and/or permitted to become effective.

**The Columbia Gas System, Inc. (70–7199)**

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed a post-effective amendment to its declaration pursuant to section 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By order dated August 13, 1986 (HCAR No. 24167), Columbia was authorized to issue up to $450 million principal amount of debentures ("Debentures") and 3 million shares of its common stock ("Common Stock"), or some combination thereof aggregating no more than $450 million in gross offering proceeds. Columbia now seeks to increase the gross offering proceeds to allow the issuance of the Debentures and the 3 million shares of Common Stock over the two-year period ending December 31, 1987, for a gross offering proceeds of approximately $600 million.

During 1986, Columbia issued $250 million aggregate principal amount of debentures and 1.250 million shares of common stock at a price to the public of $41.375. Long-term financing requirements for 1987 are currently projected to be approximately $250 million, of which approximately $105 million is designated for the retirement of previously issued debentures.

**National Fuel Gas Company (70–7367)**

National Fuel Gas Company ("National Fuel"), 30 Rockefeller Plaza,

New York, New York 10012, a registered holding company, has filed an application-declaration pursuant to sections 9, 10 and 12(b) of the Act and Rule 45 promulgated thereunder.

National Fuel proposes to enter into agreements whereby it will acquire all of the issued and outstanding capital stock and other assets of Utility Constructors, Inc. ("New UCI"), a Pennslyvania corporation with chief executive offices in Linesville, Pennsylvania, and will obtain noncompetition and management agreements from certain principals of the corporation. New UCI has obtained assets necessary to carry on business as a construction company at part of a corporate reorganization and spinoff from its predecessor corporation, Utility Constructors, Inc., now know as Summers Enterprise, Inc. It is intended that New UCI will provide construction and replacement, and drilling and well maintenance services and related and auxiliary services to other subsidiary companies of National Fuel and to nonassociate companies. The total cash consideration in connection with these transactions will be approximately $5.5 million. National Fuel also proposes to contribute $.5 million to New UCI for working capital.

**National Fuel Gas Company (70–7369)**

National Fuel Gas Company ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a dclaration pursuant to sections 6(a) and 7 of the Act and Rules 50(a)(5) promulgated thereunder.

National is authorized to issue 100 million shares of common stock, no par values, ("Common Stock"), of which 11,928,871 shares are currently outstanding. On March 9, 1987, National's Board of Directors declared a two-for-one split of National's Common Stock for the purpose of reducing the price of the Common Stock from the recent high $30 to low $40 per share range to the $18 to $25 range. The record date for the stock split and the date of mailing of certificates of additional Common Stock to be issued as a result of the stock split have been established as May 29, 1987 and June 19, 1987, respectively.

Upon consummation of the stock split, National also proposes to double the aggregate number of shares of Common Stock Plan to 1.1 million shares. The individual limits with respect to both plans will be doubled to 110,000 shares. Consequently, National further proposes to double the number of such shares subject to outstanding options, stock appreciation rights and restricted stock granted pursuant to such plans, to halve the exercise price of outstanding options and stock appreciation base prices, and to halve the price for purposes of calculating the value of stock appreciation rights. Finally, National seeks an exception from the competitive bidding requirements of Rule 50, under subsection (a)(5) thereunder for the issuance of the Common Stock pursuant to the stock split.

**Eastern Utilities Associates (70–7370)**

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed an application-declaration pursuant to sections 6(a) 7, 9(a) and 10 of the Act and Rule 50(a) (5) promulgated thereunder.

EUA has previously requested authority to submit to its shareholders for their approval at the April 21, 1987 annual meeting a proposal to increase the number of outstanding shares of authorized common stock from 16,000,000 to 36,000,000, and to establish the authority of the trustees in EUA's declaration of trust to issue common shares for the purpose of carrying out stock splits and similar transactions without further authorization by the shareholders. A declaration with respect to this proposal and certain other matters to be acted on at the annual meeting was filed with the Commission on February 13, 1987, (File No. 70–7364) and notice of its filing is contained in HCAR No. 24325 (February 26, 1987), which also authorized the related solicitation of proxies.

EUA presently proposes, pending stockholder approval of the declaration of trust amendments, to issue up to 15,000,000 of additional common shares, par value $5.00, as a special dividend for the purpose of effecting a stock split. The ratio of the stock split, though not determined, will not be more than one share for each share held. In the event that a stock split would result in fractional shares, EUA may repurchase such fractional shares from its shareholdes or on the open market for cash.

**Monongahela Power Company (70–7377)**

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, an electric utility subsidiary of Allegheny Power System, Inc., a registerd holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), and 10 of the Act and Rule 50(a) (5) thereunder.

By orders dated November 26, 1975 and December 17, 1975 (HCAR Nos. 19268 and 19304), Monongahela was authorized to enter into purchase agreements to finance the installation of pollution control equipment and facilities ("Facilities") at Monongahela's Rivesville, Albright and Willow Island Generating Stations in West Virginia. These Facilities are now complete. That initial phase involved the respective issuance of $3,355,000, $6,500,000 and $11,145,000 principal amounts of pollution control revenue bonds ("Series A Bonds") by the Marion, Preston and Pleasant Counties, West Virginia ("Counties"). The Series A Bonds bear interest at the rate of 8–½% per annum, mature of December 1, 1995, and are now subject to optional redemption at 102–½% of the principal amount thereof plus accured interest to the redemption date.

Monongahela now seeks authority to amend its purchase agreements and arrange for the issuance and sale of a new series of bonds in the same principal amounts, prior to the maturity of the Series A Bonds for the purpose of redeeming the Series A Bonds.

**Connecticut Yankee Atomic Power Company (70–7378)**

Connecticut Yankee Atomic Power Company ("Company"), Selden Street, Berlin, Connecticut 06037, a subsidiary of Northeast Utilities and of New England Electric System, both registered holding companies, has filed a declaration pursuant to sections 6(a), 7 and 12(c) of the Act and Rules 42 and 50(a) (5) thereunder.

The Company proposes to issue and sell up to $100 million of long-term debt securities ("Securities") in one or more series, (i) in order to repay short-term borrowings or to decrease the need for future short-term borrowings, (ii) to fund the Company's accrual of spent fuel liabilities, and (iii) to finance the repurchase of, or the exchange for, all or part of the Company's outstanding 17% Sinking Fund Debentures, due 1996, Series A and B. The Company may amend the declaration to provide for a parental guarantee of the Securities.

The Company has requested an exception from the competitive bidding requirements of Rule 50 so that it can negotiate the terms and conditions of the Securities, and arrange for their sale. The request is granted.

**Ohio Power Company (70–7379)**

Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton Ohio 44702, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(c) of the Act and Rule 42 thereunder.

OPCo proposes to redeem three series of its cumulative preferred stock outstanding in amounts of 90,040 (14% Cumulative Preferred Stock), 177,760 (14% Cumulative Preferred Stock, Series A), and 1,200,000 ($3.75 Cumulative Preferred Stock) shares as of December 31, 1986 (HCAR Nos. 18693, December 6, 1974; 19000, May 22, 1975; 22406, March 1, 1982). The dividend rate for each is 14%, 14% and 15%. Each series is redeemable at prices of $107, $107, and $27.81 per share, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Janathan G. Katz,

*Secretary.*

[FR Doc. 87-7251 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

---

[Rel. No. IC-15639; 812-6434]

## Residential Resources, Inc.; Application for Exemption

March 25, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

---

*Applicants:* Residential Resources, Inc. ("Residential"), and James C. Marshall on behalf of certain Affiliates (as hereinafter defined).

*Relevant 1940 Act Section:* Order requested under section 6(c).

*Summary of Application:* Applicants seek a conditional order of exemption from all provisions of the 1940 Act in connection with the issuance and sale of mortgage-backed securities and Equity Interests (as hereinafter defined).

*Filing Date:* The application was filed on July 15, 1986, and amended on December 8, 1986, February 2, 1987, and March 20, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on April 17, 1987. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues contested. Serve Applicants with the request, either personally, or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

**ADDRESS:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, One East Camelback Road, Suite 700A, Phoenix, AZ 85012.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Meryl Dewey (202) 272-3038 or Special Counsel H.R. Hallock, Jr. (202) 272-3030 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3202 (in Maryland (301) 258-4300).

### Applicants' Statements and Representations

1. Residential, an Arizona corporation formed in 1986, is a limited purpose finance corporation organized to facilitate the financing of residential mortgages through the issuance of bonds collateralized by mortgage-backed securities or funding agreements secured by mortgage-backed securities. Residential is wholly-owned by James C. Marshall, Steven B. Chotin and James M. Corrigan. Mr. Marshall is an Arizona resident and managing partner of a public accounting firm. Mr. Chotin is a Colorado resident and president of a business and financial consulting firm. Mr. Corrigan is an Arizona resident and president of a financial consulting firm. Each is also a director and officer of Residential.

2. Applicants seek relief on behalf of Residential and any future affiliates ("Affiliates") originally sponsored and wholly-owned by one or more of the above-named individuals. All Affiliates will engage in activities substantially similar to those engaged in by Residential.

3. Residential and the Affiliates (together, "Issuers") will issue and sell bonds ("Bonds") in series ("Series") secured primarily by Mortgage Certificates.[1] Each Series of Bonds will be issued pursuant to an indenture ("Indenture") between an Issuer and an independent trustee ("Bond Trustee"), as supplemented by one or more supplemental indentures. Each Series of Bonds will be sold to institutional or retail investors through one or more investment banking firms. Indentures for public offerings will be qualified under the provisions of the Trust Indenture Act of 1939. Each Series will consist of one or more classes ("Classes") which will have fixed (established at the time of issuance) or variable (adjusted periodically according to a fixed index set forth in the Indenture) interest rates.

4. The Mortgage Certificates securing each Series of Bonds will be owned either (i) by an Issuer or (ii) by limited purpose financing entities affiliated with homebuilders, thrifts, commercial banks, mortgage bankers and other entities engaged in mortgage finance and pledged to secure such Series of Bonds pursuant to funding agreements ("Funding Agreements").[2] Each Series of Bonds may also be secured by certain funds and accounts including proceeds accounts, debt service funds, reserve funds, servicing agreements and insurance policies and by other credit enhancement devices described in the Prospectus Supplement for such Series (any or all of the foregoing together with Mortgage Certificates, "Bond Collateral"). Each Issuer will assign to the Bond Trustee as security for the relevant Series of Bonds its entire right, title and interest in the Bond Collateral.

5. The Mortgage Certificates securing each Series of Bonds, together with cash available to be withdrawn from any debt service funds, reserve funds, or other funds, will have scheduled cash flow sufficient, when taken together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds, to make timely payments of principal of and interest on the Bonds in accordance with their terms. The outstanding bond value of the Bond Collateral securing a Series will be at least equal to the initial principal amount of such Series on the issue date.

6. An Issuer may sell some or all of its equity interest ("Equity Interest") to one or more banks, savings and loan associations, pension funds, insurance companies or other investors which customarily engage in the purchase of mortgages or mortgage collateral ("Owners") in transactions not constituting a public offering under section 4(2) of the Securities Act of 1933 ("1933 Act").

7. There will not be a conflict of interest between the holders of the Bonds ("Bondholders") and Owners as: (a) The Bond Collateral will not be speculative in nature; (b) the Bonds will be issued only if an independent

---

[1] The "Mortgage Certificates" collateralizing the Bonds will be limited to fully-modified pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"), and mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates").

[2] Mortgage Certificates pledged pursuant to Funding Agreements will also be limited to GNMA, FNMA and FHLMC Certificates.

nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the relevant Indenture subjects the Bond Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders. Further, neither the Owners nor the Bond Trustee will be able to impair the security afforded by the Mortgage Certificates because, without the consent of each affected Bondholder, neither the Owners nor the Bond Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal or rate of interest on any Bond; (c) change the priority of repayment on any Class of any Series; (d) impair or adversely affect the Mortgage Certificates; or (e) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Certificates or otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

8. The sale of Equity Interests will not alter the payment of cash flow under any Indenture, including the amounts to be deposited in the collection account or any reserve fund. Pricing efficiencies mandate that the Bond Collateral does not substantially exceed the amount of collateral required to be pledged in order to satisfy the standards of the rating agency. Thus, the excess cash flow from the Bond Collateral which is available to Owners always will be far less than the cash flow from the Bond Collateral that is used to make principal and interest payments to Bondholders. Further, except for the limited right to substitute Mortgage Certificates, it will not be possible for Owners to alter the Bond Collateral, and, in no event will such right of substitution result in a diminution in the value or quality of the Bond Collateral. Although substitution may result in a different prepayment experience, the Bondholders' interests will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the Owners' control which market conditions are likely to affect similar mortgage certificates in similar fashion; (b) the Owners' interests are likely to be different from those of Bondholders with respect to prepayment experience; and (c) to the extent that the Owners may cause substitution which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary.

9. An election by an Issuer to be treated as a real estate mortgage investment conduit ("REMIC") will have no effect on the level of expenses that would be incurred by such Issuer. Administrative fees and expenses will be paid or provided for in a manner satisfactory to the agency rating the Series and subject to Condition D below.

10. The proceeds from the sale of the Bonds will be used to facilitate the long-term financing of residential mortgage loans through the reinvestment of the proceeds in housing or housing-related assets. The relief requested is necessary and appropriate in the public interest because neither Residential nor any Affiliate is the type of entity to which the provisions of the 1940 Act were intended to be applied, the safeguards afforded to Bondholders fully protect investors, prospective purchasers of Equity Interests will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number, and the proposed activities will promote the public interest by facilitating the financing of housing by supplying capital for reinvestment in the real estate and mortgage markets.

**Conditions To Order**

Applicants agree that the requested order may be expressly conditioned upon the following:

*A. Conditions Relating to the Bond Collateral*

(1) Each Series will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. The Mortgage Certificates will be limited to GNMA, FNMA, and FHLMC Certificates.

(3) If new Mortgage Certificates are substituted as security for a Series, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed at least to the same extent as the Mortgage Certificates replaced; and (iv) meet the criteria set forth in Conditions A (2) and (4). New Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates. New Funding Agreements may be substituted for the initial Funding Agreements only if the substitution of the Mortgage Certificates securing such Funding Agreements would be permitted under this Condition.

(4) All Bond Collateral will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. Neither the Bond Trustee nor custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405 ("Rule 405")) of any Issuer. The Bond Trustee for each Series will be granted a first priority perfected security or lien interest in and to all Bond Collateral securing such Series.

(5) Each Series will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with any Issuer. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) At least annually, an independent public accountant will audit the books and records of the Issuer and will report on whether the anticipated payments of principal and interest on the Bond Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

*B. Conditions Relating to Variable-rate Bonds*

(1) Each Series of adjustable or floating interest rate Bonds will have a set maximum interest rate.

(2) At the time of deposit of the Bond Collateral and during the life of the Bonds, the scheduled payments of principal and interest to be received by the Bond Trustee on all Mortgage Certificates plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the Application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Series of adjustable or floating interest rate Bonds. Such Bond Collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

*C. Conditions Relating to the Sale of Equity Interests*

(1) Any Equity Interest in an Issuer will be offered and sold only to (i) institutions or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Equity Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, will purchase at least $200,000 of such Equity Interest and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing an Equity Interest in such Issuer and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Owners will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities.

(2) Each sale of an Equity Interest will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(3) Each sale of an Equity Interest will prohibit the transfer of such Equity Interest if there would be more than 100 beneficial Owners of Equity Interests in an Issuer at any time.

(4) Each sale of an Equity Interest will require each purchaser thereof to represent that it is purchasing for investment and not for distribution and that it will hold such Equity Interest in its own name and not as nominee for undisclosed investors.

(5) Each sale of an Equity Interest will provide that (i) no Owner of such Equity Interest may be affiliated with the Bond Trustee for the relevant Issuer and (ii) no holders of a controlling (as that term is defined in Rule 405) Equity Interest in any Issuer may be affiliated with either the custodian of the Bond Collateral or the agency rating the Bonds of the relevant Series.

(6) If the sale of the Equity Interests results in the transfer of control (as the term "control" is defined in Rule 405) of any Issuer from the original owners of Residential or any Affiliate, the relief afforded by any Commission order granted on the application would not apply to subsequent Bond offerings by that Issuer.

*D. Condition Relating to REMICs*

The election by an Issuer to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Issuer. Any Issuer which elects to be treated as a REMIC will provide for the payments of administrative fees and expenses as set forth in the application. Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

*E. Special Condition*

Residential undertakes to secure each Affiliate's consent to comply with all of the applicable representations and conditions set forth above and more specifically described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7252 Filed 4-1-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Rel. No. IC-15642; File No. 812-6618]**

## RXR U.S. Government Fund, Inc.; Application for Exemption

Date: March 26, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

---

*Applicant:* RXR U.S. Government Fund, Inc.

*Relevant Sections of Act:* Exemption requested, pursuant to section 6(c) of the Act, from the provisions of section 19(b) of the Act and Rule 19b-1 thereunder.

*Summary of Application:* Applicant seeks an order to permit it to make monthly distributions of long-term capital gains realized on certain options transactions.

*Filing Date:* February 6, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, an order disposing of the application will be issued. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on April 20, 1987. Requests must be in writing, setting forth the nature of your interest, the reasons for the request, and the issues contested. Applicant should be served with a copy of the request, either personally or by mail, and the request should also be sent to the Secretary of the SEC, along with proof of service (by affidavit or, the case of an attorney-at-law, by certificate). Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. James R. McCannon, RXR U.S. Government Fund, Inc., 30 Buxton Farm Road, Stamford, Connecticut 06905; Perez C. Ehrich, Townley & Updike, 405 Lexington Avenue, New York, New York 10174.

**FOR FURTHER INFORMATION CONTACT:** George Martinez, Staff Attorney, (202) 272-3024, or H. R. Hallock, Jr., Special Counsel, (202) 272-3030, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. Applicant is an open-end, diversified, management investment company which is advised by RXR Capital Management. The primary investment objective of Applicant is to seek the highest level of current income that is consistent with the safety of principal. To achieve its investment objective, Applicant will be investing in debt obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities. In addition, Applicant plans to use options and futures to enhance return and protect principal. Applicant may also engage in the purchase and writing of put and call options on debt securities, and the purchase and sale of interest rate futures contracts and options on such futures contracts.

2. The Tax Reform Act of 1984 ("1984 Amendments") significantly altered the

tax treatment of capital gains from listed options on U.S. Government securities, all of which have become section 1256 contracts under the Internal Revenue Code. Prior to the 1984 Amendments, gain or loss recognized with respect to options on U.S. Government securities was treated as short-term capital gain or loss. As a result of the 1984 Amendments, 60% of the gain or loss recognized with respect to listed options is now treated as long-term capital gain or loss and 40% is treated as short-term capital gain or loss. The characterization of 60% of the gain from certain options transactions as long-term capital gain would cause the restrictions contained in section 19(b) of the Act and Rule 19b–1 thereunder to apply to such transactions.

3. The purposes of section 19(b) and Rule 19b–1 thereunder would not be served by the strict application of these provisions to 60% of the capital gains generated by certain options transactions. The characterization of the gains as long-term capital gains will not cause shareholders to confuse such gains with dividends out of net interest income, since Applicant declares dividends of substantially all of its interest income, after expenses, on each day the New York Stock Exchange is open for business, and distributions of long-term capital gains on options transactions would be made monthly, along with distributions of short-term capital gains. Applicant will distinguish distributions of capital gains from distributions of net interest income in an accompanying notice as required by section 19(a) of the Act and Rule 19a–1 thereunder. In addition, neither the investment decisions nor distribution practices of Applicant will be affected thereby. Finally, the monthly distribution of the long-term capital gains will not materially increase adminstrative expenses.

4. For the reasons stated, an order granting an exemption from section 19(b) of the Act and Rule 19b–1 thereunder would be appropriate as in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7253 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–7986]

## Issuer Delisting; Application to Withdraw From Listing and Registration; Texas American Energy Corp. (Common Stock, $0.10 Par Value Per Share, and $2.575 Cumulative Convertible Exchangeable Preferred Stock, No Par Value Per Share, $20.00 Liquidating Value)

March 27, 1987.

Texas America Energy Corporation of America ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company has approved a distribution to its common stockholders of nontransferable rights ("Rights") to purchase 8% Convertible Senior Subordinated Debentures ("Debentures") of Company. The Debentures, Rights and shares of common stock issuable upon conversion of the Debentures are the subject of a Registration Statement on Form S–1 of the Company which has not yet been declared effective by the Securities and Exchange Commission. The Company was advised by the Amex that the issuance of nontransferable rights was in violation of Company's listing agreement with the Amex. The Company was also advised by counsel that the risk of adverse tax consequences is increased if the Rights are transferable, and therefore the Company determined that the listing and registration of Company's Common Stock and Preferred Stock with the Amex be withdrawn. Trading in the Company's common stock and preferred stock on the Amex was suspended March 20, 1987.

The Company's common stock and preferred stock have been accepted for inclusion in the National Association of Securities Dealers Automated Quotation System (NASDAQ).

Any interested person may, on or before April 17, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7254 Filed 4–1–87; 8:45 am]

BILLING CODE 8010–01–M

## SELECTIVE SERVICE SYSTEM

### Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

**SSS–1**

Title: The Selective Service System Registration Form.

Need and/or use: Is used to establish a data base for use in supplying manpower to the military services during a military emergency.

Respondents: All 18 years old males who are United States citizens and those male aliens residing in the United States at the time of their 18th birthday are required to register with the Selective Service System.

Frequency: Registration with the Selective Service System is a one-time occurrence.

Burden: A burden of 2 minutes or less on the individual respondent.

**SSS–2, 3B, 3V, 3C**

Title: The Selective Service System Change of Information Correction/Change, Registration Status Forms and Vertification Letters.

Purpose: To insure the accuracy and completeness of the Selective Service System registration data.

Respondents: Registrants are required to report changes or corrections in dates submitted on SSS Form 1.

Frequency: When changes in a registrant's name or address occur.

Burden: The reporting burden is 2 minutes or less per report.

Copies of the above identified forms can be obtained upon written request to: Selective Service System, Reports Clearance Offices, Washington, DC 20435.

Written comments and recommendations for the proposed extension of clearance of the forms should be sent within 30 days of publication of this notice, to: Selective Service System, Reports Clearance Officer, Washington, DC 20435.

A copy of the comments should be sent to: Office of Information and Regulatory Affairs Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: March 30, 1987.

**Wilfred L. Ebel,**

*Acting Director.*

[FR Doc. 87-7297 Filed 4-1-87; 8:45 am]

BILLING CODE 8015-01-M

## SMALL BUSINESS ADMINISTRATION

### Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Indianapolis Indiana, will hold a public meeting at 9:30 a.m. EST, Thursday, April 23, 1987, in the School of Business, Room 4095 at Indiana, University-Purdue University at Indianapolis, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1584—(317) 269-7275.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

March 27, 1987.

[FR Doc. 87-7269 Filed 4-1-87; 8:45 am]

BILLING CODE 8025-01-M

### Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Columbus, Ohio, will hold a public meeting at 9:30 a.m., on Wednesday, April 22, 1987, at the Envoy Inn, 35 West Spring Street, Columbus, Ohio 43215, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Frank D. Ray, District Director, U.S. Small Business Administration, 85 Marconi Boulevard, Fifth Floor, Columbus, Ohio 43215, (614) 469-7310.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

March 27, 1987.

[FR Doc. 87-7270 Filed 4-1-87; 8:45 am]

BILLING CODE 8025-01-M

### Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Columbia, South Carolina, will hold a public meeting at 10:00 a.m., on Tuesday, May 5, 1987, at The Town House, 1615 Gervais St., Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John C. Patrick Jr., District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina—(803) 765-5339.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

March 27, 1987.

[FR Doc. 87-7271 Filed 4-1-87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

[Public Notice CM-8/1062]

### Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on April 22, 1987 in Conference Room 1K-221, Bell Communications Research, 435 South Street, Morristown, New Jersey. The meeting will begin at 9:30 a.m.

Study Group CMTT deals with the specifications to be satisfied by telecommunication systems for transmission of radio and television programs over long distances. The purpose of the meeting is to discuss preparations for the Interim Meeting of international Study Group CMTT in the Fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Dated: March 19, 1987.

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 87-7230 Filed 4-1-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1061]

### Study Group B of the U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 21, 1987 at 10:00 a.m. in Room 856 (Commission Meeting Room) of the Federal Communications Commission, 1919 M Street NW., Washington, DC.

The purpose of the meeting is to review and/or approve the work of the Study Group B Drafting Group of the proposed revisions to the International Telecommunication Regulations; to discuss contributions submitted to Study Group B since the last meeting; to discuss and develop positions on other nations' contributions and to prepare and finalize United States contributions for the Preparatory Committee of the World Administrative Telegraph and Telephone Conference (PC/WATTC) to be held in Geneva from 27 April through 1 May 1987.

Members of the general public may attend the meeting and join in the discussion, subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plane to attend should so advise the office of Mr. Glenn E. deChabert, International Conference Staff, F.C.C., (202) 632-3214.

Dated: March 18, 1987.

**Earl S. Barbely,**

*Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.*

[FR Doc. 87-7231 Filed 4-1-87; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[OMCS Notice No. 87-03]

### Driver's Record of Duty Status

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**AGENCY:** Notice of request for exemption.

**SUMMARY:** In accordance with section 206(f) of the Motor Carrier Safety Act of 1984, 49 U.S.C. App. 2505(f), the FHWA hereby provides notice that it has received several requests for an exemption from the requirements of 49 CFR 395.8 that drivers of commercial motor vehicles in interstate or foreign commerce record their hours of service in their own handwriting on a "record of duty status." In each case the motor carrier has requested that it be permitted to use an onboard computer which, among other things, will automatically record the driver's duty status.

These requests were made by ABT, INC., Maxwell, California; ANCHOR MOTOR FREIGHT, INC., and LEASEWAY MOTOR CAR TRANSPORT CO., Birmingham, Michigan; GOLDEN STATE FOODS CORPORATION, Greensboro, North Carolina; MARTIN-BROWER COMPANY, Des Plaines, Illinois; MARATHON PETROLEUM COMPANY, Robinson, Illinois; and GULF PRODUCTS DIVISION, BP OIL, INC., Jacksonville, Florida.

Copies of the petitions for exemption have been placed in the notice number file identified above. Interested parties may comment on these requests.

**DATE:** Comments must be received on or before April 17, 1987.

**ADDRESS:** All comments should refer to the notice number at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Office of Motor Carrier Standards, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2999, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1355, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(49 U.S.C. App. 2505 and 3102; 49 CFR 1.48)

Issued on: March 27, 1987.

**Robert E. Farris,**

*Deputy Administrator.*

[FR Doc. 87-7209 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-22-M

## Maritime Administration

[Docket No. S-802]

### United States Lines, Inc.; Application for Permission To Operate in the Domestic Trade

Notice is hereby given that United States Lines, Inc. by application dated March 25, 1987, has applied for written permission under sections 805(a) and 506 of the Merchant Marine Act, 1936, as amended (Act), for the temporary transfer of four of the six vessels which USL currently deploys in its West Coast-Hawaii-Guam-Far East service to a purely domestic West Coast-Hawaii-Guam service under authority of section 506 of the Act. The two vessels not transferred would be removed entirely from the service. Section 506 permits the temporary transfer for up to six months of construction-differential subsidy (CDS) built vessels "whenever the Secretary determines that such transfer is necessary or appropriate to carry out the purposes of the Act." Consent by MARAD is to be conditioned upon payment to MARAD, upon such terms as MARAD may prescribe, of "an amount which bears the same proportion to the CDS paid by the Secretary as such temporary period bears to the entire economic life of the vessel."

USL believes that the facts surrounding this request clearly demonstrate that the temporary transfer of four vessels to domestic service is necessary and appropriate to carry out the purposes of the Act. Most importantly, USL believes that the transfer would help to preserve those vessels as an active element of the U.S.-flag merchant marine. USL is currently operating under Chapter 11 of the U.S. bankruptcy laws. USL has very recently entered into a letter of intent to transfer the six vessels currently deployed in its Far East Trans-Pacific service, plus three Lancer class vessels, to Sea-Land Service, Inc. In addition, USL has also entered into an agreement to transfer four vessels deployed in its South American Service to American Transport Lines, a subsidiary of Crowley Maritime . USL is working with these two operators to complete these transactions as soon as possible and obtain required approvals.

USL states that this request should not be viewed as anything other than very short-term. USL believes that it would operate these vessels domestically for between six and eight weeks, until the sale to Sea-Land can be completed. Due to the uncertainties inherent, however, USL requests authority for the full six months. USL claims that it would not be carrying any more cargo under this proposal than it already does.

The vessels were built with construction-differential subsidy and are operating under a long-term operating-differential subsidy contract. Written permission pursuant to section 805(a) of the Act is required. Payback of construction-differential subsidy will be required pursuant to section 506 of the Act.

It will also be necessary to extend the section 805(a) written permission granted to USL to its related company, United States Lines (S.A.) Inc., which is a holder of long-term operating-differential subsidy contracts.

Although publication of a Notice with respect to USL's request for permission under section 506 is not required, the Maritime Administration believes that it is appropriate to provide an opportunity for interested parties to comment on USL's application.

Any person, firm, or corporation having any interest in the application for sections 805(a) and 506 permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business on Friday, April 3, 1987. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of

the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS) and 20.800 Construction-Differential Subsidies (CDS))

By Order of the Maritime Administrator.

Dated: March 27, 1987.

James E. Saari,

*Secretary.*

[FR Doc. 87-7238 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-81-M

## Maritime Administration; Meeting

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The Maritime Administration (MARAD) is issuing this notice to announce that the seminar on the "Potential for General Cargo in Offshore Barges and River/Ocean Vessels" will be held in Washington, DC in May 1987. The seminar will focus on potential for movements of general cargo by offshore barges and river/ocean vessels.

**DATE:** The seminar will be May 6–8, 1987 at the Capitol Holiday Inn, 550 C Street, Southwest, in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Bristor, Project Manager, U.S. Department of Transportation, Maritime Administration, Office of Port and Intermodal Development, MAR–830, Room 7201, Washington, DC 20590, Tel. (202) 366–5468.

**SUPPLEMENTARY INFORMATION:** The Maritime Administration, the National Waterways Conference, Inc., and the Louisiana State University Ports and Waterways Institute are jointly sponsoring the seminar on the "Potential for General Cargo in Offshore Barges and River/Ocean Vessels."

The seminar is being held to address two water transportation concepts to achieve better port/fleet utilization and market expansion for general cargo. The movement of cargo by ocean going barges will be assessed to evaluate the potential for expansion, limitations and possible areas of application. Use of "river/ocean" vessels will also be evaluated. Use of this type of vessel, while successful in many areas of the world, is not common in the United States. The seminar will consist of a plenary session and two concurrent workshops with participants attending the alternate workshop on the second day. The discussions will be led by professionals who have first hand experience in either ocean barge and river/ocean vessel operations. The seminar is formulated to encourage audience participation and open communications. Seminar results will be incorporated into a study report to be prepared by the Louisiana State University Ports and Waterways Institute. Attendees will receive both the seminar proceedings and the study report from Louisiana State University.

Advanced registration for the seminar is required. The fee for the seminar is $215 for registration by April 24, 1987 and $150 after the date. A block of hotel rooms has been set aside until April 10, 1987 at a special seminar rate.

Dated: March 30, 1987.

By Order of the Maritime Administrator.

James E. Saari,

*Secretary.*

[FR Doc. 87-7237 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-81-M

[Docket No. S-803]

## Margate Shipping Co. and Chestnut Shipping Co; Application for Review and Readjustment

On February 4, 1987, Margate Shipping Company and Chestnut Shipping Company filed an application with the Maritime Subsidy Board for review and readjustment of the amounts of future payments of operating-differential subsidy ("ODS") under their ODS contracts by establishing, for each applicant for each year since the commencement of subsidized operation of its subsidized vessels, a fuel subsidy rate reflecting the difference between the costs incurred for fuel by applicants' vessels and the costs incurred for fuel by similar vessels operating under the registry of a foreign country.

The applicants state that they are at a competitive disadvantage with foreign flag vessels whose main engines are slow-speed diesel engines due to their vessels consuming more fuel than does the engines of their foreign flag competitors. They further state that their operating costs have greatly exceeded the operating costs of their foreign flag competitors and that they are at a competitive disadvantage without a fuel subsidy.

On February 5, 1987, the applicants petitioned the Maritime Subsidy Board to consolidate their application with similar applications by Aeron Marine Shipping Company, *et al.*, which were referred for hearing and docketed as S–797. On March 27, 1987, the Maritime Subsidy Board granted the applications.

In light of the fact that a fuel subsidy is of general interest to the industry, all interested parties wishing to comment in favor or against such applications or take other appropriate action with regard to such applications.

Any person wishing to comment on pending applications or to petition for other relief in Docket S–797, as it was consolidated, should do so by 5:00 p.m. on April 30, 1987. Any petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

Any comments or petitions should be filed with Administrative Law Judge John M. Vittone, Room 9400–A, 400 Seventh Street, SW., Washington, DC 20590.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating Differential Subsidies))

By order of the Maritime Subsidy Board.

Dated: March 30, 1987.

James A. Saari,

*Secretary.*

[FR Doc. 87-7236 Filed 4-1-87; 8:45 am]

BILLING CODE 4910-81-M

## VETERANS ADMINISTRATION

## Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 27, 1987.

By direction of the Administrator.

**David A. Cox,**

*Associate Deputy Administrator for Management.*

**Extension**

1. Department of Medicine and Surgery.
2. Application for Voluntary Service.
3. VA Form 10–7055.
4. This information is used in the selection, screening and placement of volunteers in the nationwide VA voluntary service program.
5. One time.
6. Individuals or households.
7. 36,000 responses.
8. 9,000 hours.
9. Not applicable.

**Extension**

1. Department of Veterans Benefits.
2. Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter.
3. VA Form 26–8736a.
4. Nonsupervised lender's nomination of credit underwriter to evaluate loans proposed for guaranteed financing and used to determine the underwriter's qualifications.
5. On occasion.
6. Businesses or other for-profit; Small businesses or organizations.
7. 100 responses.
8. 33 hours.
9. Not applicable.

[FR Doc. 87–7190 Filed 4–1–87; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 63
Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:00 a.m., April 15, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Proposed rule amendments submitted by the Chicago Board of Trade authorizing an evening trading session.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*

[FR Doc. 87–7345 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:30 a.m., April 15, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*

[FR Doc. 87–7346 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:00 a.m., April 22, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

Application of the Philadelphia Board of Trade for designation as a contract market in Australian Dollar Futures

Application of the New York Cotton Exchange for designation as a contract market in the Five-Year U.S. Treasury Index

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*

[FR Doc. 87–7347 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., April 22, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*

[FR Doc. 87–7348 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:30 a.m., April 24, 1987.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Sales Practice Reviews.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*

[FR Doc. 87–7349 Filed 3–31–87; 11:20 am]

BILLING CODE 6351–01–M

---

**FEDERAL ELECTION COMMISSION**

**"FEDERAL REGISTER" NO.:** 87–6701.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, April 2, 1987, 10:00 a.m.

The following item has been withdrawn from the Agenda: Proposed Financial Control and Compliance Manual for Presidential primary canidates receiving public financing.

* * * * *

**DATE AND TIME:** Tuesday, April 7, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**DATES AND TIME:** Thursday, April 9, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC. (Ninth Floor).

**STATUES:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED**

Setting of Dates for Future Meetings.

Correction and Approval of Minutes.

Public Financing of Presidential Candidates—Revised draft of Proposed Rules.

Routine Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
*Secretary of the Commission.*

[FR Doc. 87–7396 Filed 3–31–87; 2:24 pm]

BILLING CODE 6715–01–M

# Corrections

Federal Register
Vol. 52, No. 63
Thursday, April 2, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510, 520, 522, 524, and 525

### Animal Drugs, Feeds, and Related Products; Change of Sponsor; Labeler Code Correction

*Correction*

In rule document 87-5378 beginning on page 7831 in the issue of Friday, March 13, 1987, make the following correction:

On page 7831, in the table, in the second column, in the tenth entry, "(intment" should read "Ointment".

BILLING CODE 1505-01-D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

### 24 CFR Parts 905 and 968

[Docket No. R-87-1308; FR-2262]

### Indian Housing Program and Comprehensive Improvement Assistance Program--Cost Containment

*Correction*

In proposed rule document 87-2854 beginning on page 4349 in the issue of Wednesday, February 11, 1987, make the following correction:

On page 4349, in the third column, in **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the last line, the FR citation should read "51 FR 33898)".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-940-07-4212-12; A-20347-B]

### Exchange of Public and State Lands in Arizona

*Correction*

In notice document 87-3427 beginning on page 5193 in the issue of Thursday, February 19, 1987, make the following corrections:

1. On page 5193, in the second column, in the 26th line from the bottom of the page, "SW½" should read "SW¼".

2. On the same page, in the third column, in the 28th line, the first "SE¼" should read "SW¼".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 133

[T.D. 87-40]

### Customs Regulations Amendments Relating to Copyrights

*Correction*

In rule document 87-6486 beginning on page 9471 in the issue of Wednesday, March 25, 1987, make the following correction:

§ 133.42 [Corrected]

On page 9475, in the third column, in § 133.42(c), in the 10th line, "§ 133.42(a)" should read "§ 133.43(a)".

BILLING CODE 1505-01-D

Federal Register

Thursday
April 2, 1987

Part II

# Department of the Interior

National Park Service

36 CFR Parts 1, 2, 4, 7, and 34
Vehicles and Traffic Safety; Final Rule

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Parts 1, 2, 4, 7, and 34**

**Vehicles and Traffic Safety**

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking revises the National Park Service's (NPS) regulations pertaining to vehicles and traffic safety. The existing regulations have not been revised significantly since 1966 and are outdated in many respects. The final rule reflects the fact that the NPS generally considers the respective States to be the appropriate authorities to regulate traffic, and relies heavily on the adoption of State vehicle codes. The other objectives of this rulemaking are: (1) To delete unnecessary general and special regulations; (2) to eliminate the remaining references to the management categories formerly used to classify park areas; and (3), to make use of and expand the discretionary authority provided park superintendents in other NPS general regulations to protect resources and provide for public safety. These revised traffic regulations are limited to those that address problems or situations that are not addressed by individual State vehicle codes in a manner consistent with NPS agency missions and program objectives and to those that reflect a need to apply a consistent Servicewide regulatory approach. The results of this revision will provide a consistent, yet flexible approach to the management of traffic in park areas in the interests of public safety and the protection of park resources and public and private property.

**EFFECTIVE DATE:** June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, DC 20013–7127, Telephone: 202–343–1360.

**SUPPLEMENTARY INFORMATION:**

## Background

The NPS administers 337 park areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Facilities developed by the NPS in park areas, including roads, are limited to those necessary to carry out these legislative mandates and to support the purposes of the individual park areas as defined by Congress.

Although visitors to the National Park System use a variety of access methods, the vast majority continue to rely on motor vehicles and roadways to reach park areas and to circulate within them. Consequently, the NPS has major program responsibilities in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

The NPS currently administers almost 8,000 miles of roads within the National Park System that are open to the public. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several states, to parkways used primarily as commuter routes in the Washington, DC area. Although the types of roadways vary, their designs are generally consistent with the policy of providing the public safe, but low profile, low impact and low speed road access that blends into its natural surroundings. NPS roads are intended to facilitate and enhance a visitor's leisurely enjoyment of a park area, not to detract from it. As a result, park roads generally relate simply and harmoniously with the topography and environment and are often more narrow and winding than roads outside parks that are designed to facilitate the movement of vehicles in the most direct and expeditious manner.

NPS general regulations pertaining to vehicles and traffic safety are codified in Title 36 of the Code of Federal Regulations (36 CFR) Part 4. These regulations apply to all units of the National Park System. Special regulations pertaining to traffic that apply only to individual park areas are codified in 36 CFR Part 7 and supplement provisions of the general regulations. The general regulations in Part 4 were last revised significantly in 1966. The evolution of the National Park System, new statutory authorities and directions, changes in vehicle technology and designs, modifications in recreation and visitation patterns and the general strengthening of State vehicle codes since then have all contributed to rendering many of the existing NPS regulations unnecessary, ineffective and/or otherwise outdated. This rulemaking represents an effort on the part of the NPS to strengthen its overall traffic safety program and, in the process, to update and clarify certain of its traffic regulations and delete others that are unnecessary.

Unnecessary regulations are those whose provisions are duplicated by the respective State vehicle codes or those that contain provisions that can be imposed by park superintendents without a rulemaking, using discretionary authority provided by general regulations promulgated in 1984 and codified elsewhere in 36 CFR. The existing regulations in Part 4 that are being deleted or restructured as part of this rulemaking are listed in the Organizational Summary found later in this document. The NPS is also deleting from Part 7 a number of special regulations that have been rendered unnecessary by other provisions of this rulemaking and is making minor revisions to provisions in Part 34 that cross-reference regulations in Part 4. Further discussion on these matters is found in the Section-by-Section Analysis portion of this document.

The NPS intends that the foundation of its vehicle and traffic safety regulations be the nonconflicting provisions of the respective State vehicle codes, which are adopted in § 4.2. NPS regulations supplementing those codes are limited to ones that are necessary to resolve visitor safety and/or resource protection concerns that cannot be satisfied on a Servicewide basis by applying and enforcing State vehicle code provisions.

## Summary of Public Comments

The NPS published a proposed rule in the Federal Register on June 16, 1986 (51 FR 21840), with a sixty-day period provided for public review and comment. That rulemaking was based largely on suggestions submitted by NPS field managers and their staffs and their suggested changes to a draft of the rule that was circulated for Servicewide internal review in the fall of 1985. This final rule reflects further refinements and changes made as a result of public and internal NPS comments received during the comment period.

The NPS received a total of 148 timely written comments in response to publication of the proposed rule. Comments were received from 11 individuals, 7 organizations, 14 representatives of the legal/judicial communities and 116 offices or individuals within the NPS. No comments were received from State agencies.

## Analysis of Comments

The following section of this rulemaking contains details of the comments received, the NPS response to the issues raised by commenters and general descriptions of any revisions

made to the regulatory text as a result. A detailed discussion of the text and the regulatory intent of the final regulations, including revisions made to the proposed rule, appears in the Section-by-Section Analysis of this rulemaking. Unless otherwise noted, section numbers used in these discussions refer to the section numbers used in the final rule.

*Miscellaneous/General Comments*

The NPS received a number of comments of an editorial nature, most of which were adopted. One comment was received objecting in general to the deletion of references to administrative categories from NPS regulations because of the commenter's feeling that such action has resulted in a more restrictive approach to the management of recreation areas. The last remaining references to the categories of natural, historical and recreation areas, formerly used to classify park areas for purposes of guiding management, protection and visitor use activities, were found in the former NPS regulation pertaining to bicycles (36 CFR 4.3). As explained in the proposed rule, the NPS ceased using these categories in 1978 and subsequently removed all references to them from its Management Policies (1978) and general regulations (1983–84). The question whether or not to reinstitute the use of these administrative categories for purposes of managing park areas is an issue outside the scope of this rulemaking. The references to these categories have been deleted from the bicycle regulation in the final rule (§ 4.30).

Several comments were received that pertained to regulations in 36 CFR Parts 2, 3 and 5 that were not reviewed as part of the proposed rule. The NPS did not consider these comments since they addressed issues that were clearly outside the scope of this rulemaking. Another comment suggested that the NPS seek legislation to revise the penalty provisions that apply to NPS regulations. The NPS has attempted to do so on several occasions, without success.

A comment that suggested developing a regulation pertaining to mopeds was also not adopted. At this time there is no demonstrated need for a general regulation addressing the use of such vehicles. Superintendents who are faced with problems involving these vehicles may apply State law and/or establish conditions for their use under the authority of 36 CFR 1.5.

Finally, one commenter pointed out that the proposed rule did not include a consideration of whether the regulations in Part 4 would apply on non-federal lands within park areas. The commenter suggested that, in order to provide necessary public safety services on non-federal roads where the NPS is the only reasonable source available for such services, all of the regulations in Part 4 should be made applicable to such lands. The NPS gave this suggestion serious consideration and has adopted it in the final rule as section 4.1. The regulations in Part 4 have been made applicable on all roadways and parking areas within park areas that are under the legislative jurisdiction of the United States and that are open to public traffic, i.e. those that are located on lands within a park area that are not owned or administered by the NPS but over which the State has ceded to the NPS either concurrent or exclusive jurisdiction. However, the NPS intends that the enforcement of these regulations on nonfederal lands be limited to actions necessary to provide essential public safety services to the public and the landowner. The inclusion of this new section has resulted in the renumbering of §§ 4.1, 4.2 and 4.3 of the proposed rule to 4.2, 4.3 and 4.4, respectively, in the final rule.

*Part 1—General Provisions*

*Section 1.2(e) Applicability and scope.*

This paragraph was proposed as § 1.2(f), but a rulemaking that has been completed in the interim has removed another paragraph in this section and resulted in a redesignation of this paragraph. The NPS received numerous comments pertaining to this paragraph, all of which supported the proposal, but many of which urged that the terms "standard non-motorized or motorized wheelchair" be defined. Another person suggested that the term "physically handicapped" was too broad when applied to persons that require a wheelchair for locomotion and that the term "mobility-impaired" was more appropriate. The NPS has adopted these suggestions in the final rule, using the terms "mobility-impaired", "manual wheelchair" and "motorized wheelchair" in this paragraph and defining the last two terms in § 1.4.

*Section 1.4 Definitions.*

Two comments were received addressing definitions other than wheelchairs. One commenter suggested defining the term "alcoholic beverage", another the term "motor vehicle accident". The NPS considers these common terms easily and consistently understood and, as used in the final rule, not necessary to define.

*Section 1.8 Information collection.*

One commenter indicated that § 4.4 had been omitted from the list of information collection references in this section. It has been included in the final rule.

*Part 2—Resource Protection, Public Use and Recreation*

*Section 2.18 Snowmobiles.*

Only one comment was received pertaining to this section, a suggestion that § 4.21 be included in the list of regulations in Part 4 that apply to the operation of a snowmobile. The NPS agrees with this suggestion as a means of improving public safety programs in winter recreation areas and has revised this section accordingly.

*Section 2.33 Report of injury or damage.*

The comments that pertained to this section addressed two issues: that the relationship between this section, § 3.4, and § 4.4 was confusing and that the $100 damage threshold for reporting an incident was too low. In the final rule the NPS has attempted to clarify the fact that § 2.33 applies to the reporting of incidents other than motor vehicle accidents and boating accidents by revising the text of § 2.33 and revising the heading of § 4.4. The threshold for reporting incidents resulting in property damage was raised to $300 to encourage the reporting of significant incidents but to alleviate the existing burden on park visitors to report minor ones.

*Section 2.35 Alcoholic beverages and controlled substances.*

One commenter suggested that the NPS take steps to phase out the sale of alcoholic beverages in all park areas. Such action was viewed as being much more restrictive than necessary in order for the NPS to manage public safety problems that occur as a result of alcohol consumption in park areas.

Several comments were received suggesting additions to the list of specific public use areas within a park area that can be closed by the superintendent to the consumption of alcoholic beverages. After reviewing the existing list and the suggested additions, the NPS has reworded this section using the phrase "all or a portion of a public use area or public facility" to replace the detailed listing of specific locations and types of public use sites within a park area that can be closed by a superintendent after meeting the prerequisite conditions of this regulation. However, the scope of this

BEST COPY AVAILABLE

particular closure authority remains less than parkwide.

Another commenter pointed out the difficulty of enforcing a closure pertaining solely to the *consumption* of alcoholic beverages and described the fine line that can be drawn between a person actually consuming an alcoholic beverage and one merely carrying an open container of an alcoholic beverage but not observed in the act of drinking. This commenter suggested that, if incidents of aberrant behavior related to alcohol consumption in an area have reached the proportions required to justify a closure under this section, the superintendent should also have the discretion to prohibit carrying an open container of an alcoholic beverage as well. The NPS agrees with this suggestion in that there would be no additional burden imposed on the public if, in an area already closed to the consumption of alcoholic beverages because of incidents related to alcohol abuse, the area is also closed to the possession of an open container of an alcholic beverage. Such additional closure authority would benefit public safety programs, contribute to greater enjoyment of park facilities by visitors and facilitate NPS enforcement efforts. This section has been revised to add this closure authority and to cross-reference the conditions in section 4.14 under which an open container may legally be stored in a motor vehicle in an area closed to the possession of an open container pursuant to this section.

*Part 4—Vehicles and Traffic Safety*

*Section 4.2 State law applicable.*

One commenter expressed concern that the regulations, with their heavy reliance on adopting State law, would increase the workload of attorneys prosecuting cases in Federal court because of their general unfamiliarity with State law. Since both the existing regulations and this revision contain provisions adopting State law, the NPS does not anticipate a significant increase in attorney workload. The number and the relative complexity of existing NPS regulations in Part 4 that are being deleted in this rulemaking in favor of adopting corresponding sections of State law are not significant.

Another commenter suggested that adopting State law alone did not provide regulations that were broad enough in scope, but that local laws should be adopted as well. The term "State law" as defined in § 1.4 includes regulations of State political subdivisions.

One commenter suggested that the NPS adopt applicable tribal law within park areas that are located within the exterior boundaries of Indian reservations. The NPS considers State law and NPS regulations adequate to govern traffic safety programs in those areas and intends that they apply to all persons and vehicles within those parks.

Several commenters requested clarification of the NPS authority used to adopt State law and questioned applying NPS penalty provisions to violations of State laws that might have different penalty provisions attached. Discussions of these issues are found in the Section-by-Section Analysis of this rulemaking.

*Section 4.3 Authorized emergency vehicles.*

Several comments were received that suggested requiring that authorized emergency vehicles be operated and equipped in compliance with NPS policies and standards. This section was developed to establish basic requirements for the operation of authorized emergency vehicles (as defined in section 1.4) and to provide their operators a limited number of qualified exemptions from traffic regulations that are considered essential in order for them to carry out their public safety responsibilities. Beyond these provisions, the operators of NPS emergency vehicles must comply with NPS policy, the operators of emergency vehicles owned by other Federal agencies must comply with their respective agency policies and the operators of emergency vehicles owned by State agencies and private organizations must comply with State law and their respective agency/organization policies. Vehicles must also be equipped in accordance with respective agency policies and for non-federal vehicles, in accordance with State law. A requirement that all operators and vehicles be bound by NPS policies was considered unnecessary and inappropriate.

Several other commenters expressed concern that this section did not adequately stress the operator's responsibility to consider individual and public safety. The NPS feels that the provision requiring the operator to give due regard for the safety of persons and property is a reasonable condition to impose on operators of emergency vehicles and provides appropriate levels of protection for the public, the operator and property. This section is published unchanged.

*Section 4.4 Report of motor vehicle accident.*

The heading of this section was revised in response to requests to clarify the difference between the accident reporting requirements of this section and those of § 2.33. Several commenters suggested revising the text of this section to focus on the moving of a vehicle involved in an accident, not just its towing, and to clarify reporting responsibilities in cases when the operator is incapacitated. Other commenters pointed out that there are certain conditions under which it is appropriate and/or necessary for an operator to move a vehicle that has been involved in an accident and that the regulation did not provide such flexibility. The NPS has adopted these suggestions and has revised this section to reflect these concerns.

Three comments were received suggesting that various damage threshholds be established for the reporting of motor vehicle accidents. The NPS agrees that a requirement to report all motor vehicle accidents regardless of the amount of property damage involved may sometimes cause inconvenience for vehicle operators involved in minor accidents. However, this inconvenience is outweighed by the benefits to the operators involved of assuring that appropriate identification and insurance information is exchanged and to park visitors in general that all information that could be useful in identifying and correcting traffic engineering and safety problems in a park area is made available to the superintendent. Requiring an operator to report a minor vehicle accident does not carry a corresponding requirement that a detailed accident investigation be conducted by NPS personnel; basic information pertaining to such accidents can be recorded very easily. The final rule was not revised in this respect.

A suggestion that this section be revised to address operators' leaving the scene of an accident and operator responsibilities following a collision with an unoccupied vehicle was not adopted because such provisions are addressed by State law.

*Section 4.10 Travel on park roads and designated routes.*

Two commenters opposed the provision in this section that restricts the designation of routes for off-road vehicle (ORV) use to national recreation areas, national seashores, national lakeshores and national preserves, stating that this provision unreasonably restricts opportunities for visitors to enjoy some park areas and is inconsistent with the earlier NPS decision to eliminate the use of administrative categories to manage park areas. The references to these

types of park areas are found in the former regulation pertaining to ORV use (§ 4.19) and were originally included in a 1974 rulemaking when the NPS revised its regulations to comply with the provisions of Executive Order 11644, which still governs ORV use on public lands. At that time the NPS used the administrative categories of park areas (natural, historical and recreational) to guide the management of park areas. The NPS determined that in order to comply with the provision of the Executive Order limiting the designation of ORV routes in units of the National Park System to areas where such use would not adversely affect their natural, aesthetic or scenic values, the designation of ORV routes could take place only in recreation areas. When the NPS decided no longer to use the administrative categories as management tools, this had no effect on the original determination made concerning the areas where ORV use could take place without adversely affecting park values. ORV use is an appropriate use of park areas that were established to provide recreational opportunities for the public, when that recreational activity is managed to provide for the protection of park resources and visitors. National recreation areas, seashores, lakeshores and preserves are park areas that have been established by Congress not only to conserve their natural, historic and scenic values, but also to provide outdoor recreational opportunities for visitors. ORV use may be appropriate in those areas, but not in park areas whose primary purposes, as established by Congress, do not include outdoor recreation. This provision remains in the final rule but results in no greater restriction on ORV use than has existed since 1974.

A suggestion was received to address vehicles that are parked outside of designated areas. This proposal was not adopted since a vehicle first must be operated outside of a designated area in order to be parked there.

One commenter objected to the word "unreasonable" as used in paragraph 4.10(c)(2) as being vague. The NPS intends this term, when used to describe damage to a park road or route, to mean damage to a degree beyond that which would ordinarily be expected under conditions existing at the time.

Concerns were also expressed that this regulation does not address licensing or registration requirements for off-road vehicles and their operators nor the operation on park roads of vehicles that are not street-legal. The NPS intends that such issues be resolved by applying State law or, if State law does not adequately address the local situations faced by individual park managers, that the discretionary authority provided superintendents in 36 CFR 1.5 to impose closures, conditions or restrictions on a use or activity be used to manage these activities.

Finally, one commenter pointed out that Executive Order 11644 authorizes the designation of areas for ORV use, not just routes. The NPS agrees and has added this term to the text of the final rule to assist individual park managers in describing in special regulations specific locations that are open to ORV use but that do not lend themselves to designation in terms of well-defined routes. However, this change is a clarification of terms only and does not reflect a relaxation of NPS policies pertaining to the management of ORV use.

*Section 4.11 Load, weight and size limits.*

No comments were received concerning this section; its text is published unchanged.

*Section 4.12 Traffic control devices.*

No comments were received concerning this section; its text is published unchanged.

*Section 4.13 Obstructing traffic.*

Two comments were received from persons who felt that the proposed rule was more restrictive than the existing regulation in that it prohibits stopping a vehicle on a park road except where authorized rather than allowing stopping except where prohibited. However, that is not the case. Both versions are similar, but the proposed rule provides greater discretion to superintendents (as defined in § 1.4) to allow a vehicle to stop on a park road. The superintendent's authorization need not take the form of a sign; a ranger's decision to allow a vehicle operator to stop on a park road to take a photograph also constitutes authorization by the superintendent. But if the same action by the operator creates a hazard or interferes with traffic flow, the ranger may use this section as the basis for action to resolve the situation.

Another commenter felt that the phrase "interfere with the normal flow of traffic" was too general and should include a qualifying provision addressing a specific number of vehicles being backed up or delayed. The NPS feels that such a provision would be too rigid, would not allow for the variety of types of roads and road conditions found within the National Park System and would conflict unnecessarily with provisions of State vehicle codes. The regulation as written provides an appropriate degree of flexibility that is necessary to manage traffic effectively within park areas. This section is published unchanged.

*Section 4.14 Open container of alcoholic beverage.*

This section has been changed in response to suggested improvements submitted by several persons. The first suggestion implemented was to address the carrying or storing of an open container within a motor vehicle anywhere in a park area rather than limit the scope of this section to a vehicle upon a park road, parking area or designated off-road vehicle route. Another revision clarifies the fact that the NPS intends the prohibitions of this section to apply to an open container carried in the living quarters of a motor home or camper but not to an open container that is stored in such areas.

A new paragraph was also added stressing that although each occupant of a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container, the motor vehicle operator is the person responsible for complying with the open container storage provisions of this section. This provision was added to assign responsibility for an unlawful open container in a motor vehicle that is not being carried by any of the vehicle occupants.

An exemption was discussed in the preamble of the proposed rule but was not included in the original regulatory text of this section, authorizing a person to carry an open container in a motor vehicle when the vehicle is parked at a campsite. This provision has been clarified and also included as a new paragraph in the final rule as a result of a comment submitted.

Finally, the phrase "readily accessible to" was added in response to a suggestion to describe more clearly the areas within a motor vehicle that are near the vehicle's occupants and that are considered unsuitable for storage of an open container.

One commenter pointed out that prohibiting the carrying of an open container but not an empty container of an alcoholic beverage might encourage a person to consume the entire contents of a container to avoid the possibility of violating this section. Although this situation might occur occasionally, the NPS does not feel that a detailed NPS regulation describing the conditions under which empty containers may be carried or stored in a motor vehicle is necessary or appropriate. The NPS

intends to leave the issue of carrying and storing empty containers of alcoholic beverages to be addressed by State law.

The final version of this section has been reorganized significantly to accommodate the revised text.

*Section 4.15 of the proposed rule: Safety belts.*

The NPS received numerous comments pertaining to this section, the vast majority of which opposed promulgation of this regulation. Reasons given for opposition included individual philosophical grounds, inappropriate federal role, conflicts created with State law, the absence of a demonstrated NPS need, and deviation from the basic NPS objective as stated in the proposed rule to use State law as the basis for NPS traffic regulations.

Since publication of the proposed rule a number of additional states have enacted mandatory safety belt legislation; over half of the states have now enacted legislation that is either in effect or that will go in effect in 1987. All states have mandatory child restraint laws in effect. These provisions of State law apply within park areas located in those states and can be adopted by the NPS under § 4.2. As additional states enact safety belt laws, they too can be adopted by the NPS.

The NPS has reevaluated this section of the proposed rule, concentrating particularly on the need for it, the creation of conflicts with State law and the effects of those conflicts on visitors and NPS enforcement staffs. The NPS supports the use of appropriate restraint systems by vehicle occupants but agrees that there is no greater need for the use of restraints within park areas than exists outside parks. As proposed, the NPS regulation would have superceded State law pertaining to safety belts in park areas located within states with mandatory safety belt legislation in effect and also would have applied in park areas located within states without safety belt legislation. Significant conflicts would have been created in both types of situations. On one hand, park visitors would have been faced with a federal regulation that differed from the State law in effect outside the park, with no apparent need for the discrepancy. NPS staffs would have been faced with the task of informing park visitors of the existence of the different federal regulation and with enforcing its provisions. On the other hand, park visitors would have been subject to a unique federal regulation, with no similar requirement in effect outside the park, and with no apparent need for its existence. Serious conflicts and management problems would result in both types of situations, with many NPS staffs faced with the tasks of providing notice to visitors and enforcing the NPS regulation in park areas with multiple access roads or on access roads that wind in and out of park areas.

Given the stated NPS position that the respective states are generally the appropriate authorities to regulate traffic, the absence of a need for a restraint requirement that is specific to occupants of vehicles within park areas and the conflicts and confusion for both visitors and NPS staffs that a NPS safety belt regulation would create, the NPS has omitted this regulation from the final rule and will rely on the individual states to determine whether mandatory safety belt legislation is needed and appropriate. Where such legislation is enacted, the NPS will enforce its provisions in park areas under 36 CFR 4.2.

*Section 4.20 Right of way.*

Three comments were received pertaining to this section. The NPS has adopted a suggestion to include dog sleds as a vehicle to which a motor vehicle operator must yield the right of way by including the phrase "vehicles drawn by animals". The NPS did not adopt a suggestion to include authorized emergency vehicles since that issue is adequately addressed by State law.

One commenter pointed out hazards associated with mixing motor vehicle traffic with other traffic and suggested that encouraging such use by providing the right of way to non-motor vehicle traffic was inadvisable. This section does not provide blanket authorization for pedestrian traffic, stock, or vehicles drawn by animals to mix indiscriminately with motor vehicle traffic. The superintendent retains both the authority and the responsibility to regulate these activities in the interest of public safety; however, where they are authorized in the same location, this section establishes who must yield the right of way.

*Section 4.21 Speed limits.*

Very few comments were received concerning this section. One person suggested including park tour roads in the category of park roads having a 25 mph speed limit. This is not necessary since the superintendent has the authority to establish speed limits other than those specified in paragraphs (a)(1) through (3). Another person suggested prohibiting the use of radar detectors. The NPS has decided that this is an issue that should be addressed by State law.

A commenter also suggested that the basic speed limits described in paragraphs (a) (1) through (3) are policies provided for the guidance of superintendents that should not be codified in the CFR. Although these limits do serve as basic policy, they also provide a Servicewide standard for speed limits on similar types of park roads. The NPS feels that having these standards codified in regulations helps achieve consistency in establishing speed limits throughout the National Park System and provides appropriate notice to vehicle operators and other interested persons concerning basic speed limits in park areas. The text of this section remains unchanged.

*Section 4.22 Unsafe operation.*

Three comments addressed this section. One opposed the provision allowing persons to ride on the floor of a truck bed equipped with sides as being an unsafe activity that conflicted in principle with the concern for safety reflected in the provision that required all occupants of a motor vehicle to wear a safety belt. Although the NPS recognizes that persons seated in such a manner may be at risk in case of collision, this method of riding in a truck is very common and accepted in many areas of the country. The NPS has retained this provision in the final rule, but conditioned it so as not to conflict with State law.

Another commenter pointed out that there are some conveyances such as trams and other specialized trailers that are designed specifically for carrying passengers while being towed and suggested that the prohibition in paragraph (b)(4)(i) be modified to provide for such vehicles. The NPS agrees and has revised this paragraph accordingly.

*Section 4.23 Operating under the influence of alcohol or drugs.*

All comments submitted pertaining to this section supported the regulation but many suggested improvements or requested clarifications of certain provisions. Also in response to a comment, the NPS has made minor editorial changes in several paragraphs to eliminate text that provided instructions to the judiciary. That text is appropriate in provisions passed by a legislative body but not in a regulation promulgated by an executive agency. Those provisions now are worded to reflect the NPS regulatory intent instead.

The NPS has slightly revised the definition of the term "operator" in § 1.4 of the final rule in response to suggestions submitted to include

consideration of the person who is in actual physical control of a motor vehicle. Rather than insert this phrase in several paragraphs in § 4.23, the NPS has revised the term "operator" to include the person who is in actual physical control of a motor vehicle. The term "operator" is now applicable whether the vehicle is in motion or not.

One commenter stated that the NPS was imposing an unnecessary burden of proof by requiring in paragraph (a)(1) a showing that the operator is incapable of *safe* operation. The NPS feels that this term is an important element of this paragraph and should be the focus of investigative and prosecution efforts to prove that a motor vehicle operator is operating under the influence. This element can be shown through descriptions of personal and witness observations, physical evidence and the results of field tests and quantitative tests.

A number of commenters expressed concern about potential confusion and administrative complications arising in situations where State law establishes more restrictive alcohol concentration levels than those established in the proposed NPS regulation. In order to prevent such situations from arising, the NPS has revised paragraph (a)(2) of the final rule to adopt alcohol concentrations established by State law *but only if they are more restrictive than the NPS levels established in that paragraph.*

Several commenters also requested clarification of the alcohol concentration levels specified in paragraph (a)(2), suggesting the inclusion of equivalent measures. The NPS recognizes that some State laws establish levels using other measures. However, the NPS has used both the standard concentrations and standard units of measure contained in the Uniform Vehicle Code. Conversion tables are readily available for the use of enforcement personnel, attorneys and U.S. Magistrates who are more familiar with other systems of measure. The applicability of equivalent measures is understood and need not be specified in the regulation

Several commenters addressed paragraph (c) which pertains to testing, questioning whether the NPS intended the provision that prohibits refusing to submit to a test to constitute a separate violation. Others suggested that this provision be expanded to include refusal to submit to field sobriety tests as well. Another commenter suggested that the term "refusal" be replaced with the word "failure". The NPS does intend this provision to describe a prohibited action, violation of which constitutes a criminal violation that is separate from, and in addition to, the prohibitions contained in paragraph (a). In order to clarify and emphasize this fact, the prohibitory clause has been broken out as a separate paragraph in the final rule. However, the NPS did not adopt the suggestions to expand this provision to include refusal to submit to field sobriety tests or to revise the principal element from refusal to submit to a test to failure to submit to a test. The NPS feels that it would not be appropriate or legally supportable to require a motor vehicle operator to submit to field sobriety tests. Such physical agility tests are often conducted prior to the existence of probable cause to arrest an operator for operating under the influence and contribute to establishing that probable cause. Likewise, broadening the prohibition to cover failure to submit to a test would encompass many passive situations where the operator might be unable to submit to a test for reasons beyond his or her control. The NPS intends this provision to encompass only situations where there is an active refusal by the operator to submit to a test.

Several comments concerned quantitative tests, the type of equipment used and the qualifications of the persons administering the tests. The NPS has not adopted any of the suggestions submitted that would serve to lower the standard set in the proposed rule for reliability of testing equipment and certification of equipment operators. Nor has the NPS adopted suggestions to specify exactly who may administer tests that involve drawing blood and relieving those persons of liability in connection with those activities. Those issues are addressed by State law. Liability is determined on the basis of State and Federal statutory law and is not an appropriate subject for these regulations.

Finally, several commenters questioned the usefulness of the presumptions found in paragraph (d). The NPS intends this paragraph to serve as notice to all parties concerned (vehicle operators, enforcement personnel, attorneys, judicial officials) that, although the results of quantitative tests may indicate that the alcohol concentration in the blood or breath of a motor vehicle operator is less than the limits established in paragraph (a)(2), the operator may still be convicted of violating paragraph (a)(1) based on other evidence.

*Section 4.30 Bicycles.*

Several persons submitted comments indicating that various issues involving the use of bicycles such as speeding, reckless operation, conflicts with pedestrian use, operation against traffic, etc., were not specifically addressed by this section. The NPS intends such problems to be resolved by applying State law or paragraph (c) of this section which makes a bicycle operator subject to most of the other traffic regulations in Part 4.

Other persons suggested that the superintendent, in order to be able to respond to local problems and situations, should be provided the authority to establish special conditions or restrictions governing bicycle use. That authority is already available to the superintendent under 36 CFR 1.5.

Several commenters pointed out that there were other sections in Part 4 other than § 4.10 that did not apply to the operation of a bicycle and that should be added to paragraph (c). In response, the NPS has added several sections to this paragraph in the final rule. Section 4.14 was added to the list of regulations that do not apply to bicycle operation since the methods available for storing an open container of an alcoholic beverage on a bicycle are limited and all constitute carrying an open container. However, paragraph (d)(4) has been added to this section to replace the open container provision, prohibiting the operation of a bicycle while consuming an alcoholic beverage or while carrying in hand an open container of an alcoholic beverage.

Other comments addressed both sides of the issue regarding the provision that prohibits possession of a bicycle in a designated wilderness area. The NPS position remains as discussed in the proposed rule. Bicycles are considered a mechanical form of transport that, in addition to the use of motor vehicles and motorized equipment, is specifically prohibited in designated wilderness areas by the Wilderness Act [16 U.S.C. 1133(C)]. Paragraph (d)(1) was included in this section to reflect that prohibition and to attach a penalty to violations of this statutory provision.

Several persons questioned the need for the rulemaking requirement in paragraph (b) in order for the superintendent to designate a route for bicycle use outside of developed areas and special use zones. Although the NPS recognizes that the rulemaking process is more cumbersome and time-consuming than the local designation process favored by some persons, the NPS continues to support the rulemaking process as the decisionmaking method that provides the greatest opportunity for public review of a proposal. Since a proposal to designate a bicycle route outside of developed areas has the

potential to generate significant public interest, controversy and questions related to visitor use conflicts and environmental impacts, the NPS feels that the public involvement associated with the rulemaking process would be of great benefit to the superintendent in arriving at a decision. A decision made by local designation would not provide the superintendent the same degree of public involvement. This provision remains unchanged in the final rule.

*Section 4.31 Hitchhiking.*

The comments received in response to this section were mixed. Some persons supported a total prohibition of hitchhiking; others preferred a regulation that allowed hitchhiking except where prohibited. The primary concern of the NPS in developing this regulation is public safety. Hitchhiking can be a very hazardous activity, exposing the hitchhiker to dangers from motor vehicles and motor vehicle occupants and exposing motor vehicle occupants to dangers from other motor vehicles and from hitchhikers. However, a strict prohibition of hitchhiking would not alter the fact that, in many park areas, a certain number of visitors depend on hitchhiking as a means of traveling to, from and within the park and would continue to engage in the activity regardless of the prohibition. Recognizing this fact, the NPS supports a regulation that generally prohibits hitchhiking but that provides the superintendent the discretion to designate areas where and establish conditions under which hitchhiking may take place and be managed to reduce the levels of hazards involved.

This section is published unchanged.

**Organizational Summary**

The NPS has prepared the following organizational summary to assist in the review and analysis of the revisions to 36 CFR Part 4 that are reflected in this rulemaking.

| Old section | New section |
|---|---|
| 4.1 State law applicable | 4.2. |
| 4.3 Bicycles | 4.30. |
| 4.4 Commercial towing service | 4.4. |
| 4.5 Driver's license | Deleted in favor of State law. |
| 4.6 Driving under the influence | 4.23. |
| 4.7 Entrances and exits | [illegible] |
| 4.8 Excessive acceleration | 4.22. |
| 4.9 False report | Deleted in favor of 36 CFR 2.32 |
| 4.10 Following vehicles | Deleted in favor of State law. |
| 4.11 Load, weight, length and [illegible] | 4.11. |
| 4.12 Mufflers | Deleted in favor of State law. |
| 4.13 Obstructing traffic | 4.13. |
| 4.14 Reckless or careless driving. | 4.22 and State law. |
| 4.15 Report of motor vehicle accident. | 4.4. |
| 4.16 Right-of-way | 4.20. |
| 4.17 Speed limits | 4.21. |
| 4.18 Traffic control and signs | 4.12. |
| 4.19 Travel on roads and designated routes. | 4.10. |
| 4.20 Vehicle registration | Deleted in favor of State law. |
| 4.21 Brakes | Deleted in favor of State law. |
| 4.22 Hitchhiking | 4.31. |
| NEW REGULATIONS | |
| 4.1 Applicability and scope. | |
| 4.3 Authorized emergency vehicles. | |
| 4.14 Open container of alcoholic beverage. | (Deleted from 36 CFR 2.35 and revised). |

**Section-by-Section Analysis**

The following terms used in the regulatory text of this rulemaking are defined in 36 CFR 1.4 and have specific meanings: authorized person, bicycle, carry, developed area, legislative jurisdiction, motor vehicle, operator, pack animal, park area, park road, permit, person, possession, State, superintendent, traffic, vehicle, and wildlife.

These terms are used throughout the NPS regulations codified in 36 CFR Parts 1, 2, 3, 4, 7, and 13 in order to facilitate consistent interpretation, understanding and enforcement. The definitions of the terms "authorized person", "operator" and "superintendent" are particularly important to a reader's clear understanding of the provisions of this rulemaking. "Authorized person" means "an employee or agent of the National Park Service with delegated authority to enforce the provisions of this chapter", i.e. a NPS law enforcement officer. "Operator", as revised in this rulemaking, means "a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment". "Superintendent" means "the official in charge of a park area or an authorized representative thereof".

This rulemaking also incorporates the use of discretionary authority provided park superintendents in 36 CFR 1.5. That section authorizes a superintendent, after having met certain decision criteria, to establish public use limits, impose closures, designate areas for a specific use or activity or impose conditions or restrictions on a use or activity. These management tools provide the flexibility necessary for a superintendent to react to changing situations in the field without having to resort to a lengthy rulemaking process each time closures or restrictions are imposed, changed or relaxed. Whenever the text of a section of this rulemaking contains the terms "designate" or "designated", or authorizes the superintendent to "establish conditions or restrictions", the NPS intends that language to constitute authorization for a superintendent to exercise the discretionary authority provided in § 1.5. When exercising the authority of § 1.5, a superintendent is required to comply with public notice procedures specified in 36 CFR 1.7. The use of this discretionary authority is discussed further under the headings of the individual sections in Part 4 in which it is included.

Although the primary focus of this rulemaking is Part 4, other Parts of 36 CFR are affected as well. The following outlines the purpose and intent of each section of this rulemaking and provides applicable background information.

*Part 1*

Section 1.2(e) Applicability and scope.

A paragraph has been added to this section, which pertains to the general applicability and scope of all the regulations codified in 36 CFR, clarifying the fact that NPS regulations are not intended to restrict the activities of a mobility-impaired person using a manual or motorized wheelchair, beyond the degree that the activities of pedestrians are restricted by the same regulations. The purposes of this provision are to eliminate potential confusion and to emphasize the NPS intent that a manual wheelchair or motorized wheelchair, as defined in 36 CFR 1.4, not be considered a bicycle or motor vehicle within the context of NPS regulations.

Section 1.4 Definitions.

The list of definitions in section § 1.4 is amended as follows. The definition of "authorized emergency vehicle" is revised to restrict the types of vehicles that qualify for this designation to a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by applicable State law. The NPS considers the former definition too broad and not clearly delineating the few types of vehicles that are appropriately classified as emergency vehicles. This defined term is subsequently used in § 4.3 of this rulemaking.

The definitions of "bicycle" and "motor vehicle" have been revised to specifically exclude a manual or motorized wheelchair.

The definition of "operator" has been revised to clarify the NPS intent that this term also include the person in actual physical control of a mechanical mode of

transportation or any other mechanical equipment.

Definitions of the terms "manual wheelchair" and "motorized wheelchair" have been developed to clarify which types of devices used by a mobility-impaired person qualify for exemption from restrictions that otherwise apply to bicycles and motor vehicles. The term "motorized wheelchair" encompasses only devices that are designed solely for and used by a mobility-impaired person for locomotion and that are capable of and suitable for use in indoor pedestrian areas. Accordingly, a small, motorized, three or four-wheel vehicle designed for outdoor recreational purposes would not qualify as a motorized wheelchair, even if used by a mobility-impaired person.

A comprehensive definition of "State law" has been added to clarify the many references made to this term in Part 4 as well as in other parts of 36 CFR. As it applies to the regulations in Part 4, the definition is intended to encompass the full spectrum of State and local provisions that apply to traffic, including provisions of State vehicle codes that have been decriminalized by the respective States. However, in the case of a park area located within the exterior boundaries of an Indian Reservation, this definition does not include Tribal Law.

A definition of "traffic control device" has also been added to this section. This definition is intended to cover the various types and purposes of signs and other markings used for the purpose of regulating traffic. By policy, NPS traffic control devices generally must comply with the Manual on Uniform Traffic Control Devices, the document that establishes national standards for traffic signs and markings, as supplemented by the NPS Sign Manual. The term is used in §§ 4.3, 4.12 and 4.21 of this rulemaking.

Section 1.8 Information collection.

This section has been revised to list the permit requirements contained in § 4.11, but otherwise remains unchanged.

*Part 2*

Section 2.18 Snowmobiles.

The NPS addresses the use of snowmobiles separately from traffic regulations. However, the close connection between snowmobile activities and certain aspects of traffic control are reflected in the fact that this section lists eight regulations in Part 4 that are made applicable to snowmobile operations. These references have been revised to reflect the deletions and renumbering of the sections in Part 4 resulting from this rulemaking. In addition, in response to requests from affected field area staffs, the NPS has added §§ 4.14 (Open Container) and 4.21 (Speed Limits) to the list of sections that apply to snowmobile operations in order to address public safety problems related to excessive speed and the consumption of alcoholic beverages by individuals while operating oversnow machines.

Section 2.33 Report of injury or damage.

This section has been revised to clarify the relationship of the reporting requirements imposed by this section to those imposed by §§ 3.4 and 4.4 and to raise the threshold for reporting incidents involving property damage unrelated to boating or motor vehicle accidents from $100 to $300. The NPS intends that incidents such as confrontations with wildlife, tree failures, vandalism, etc., resulting in personal injury or significant property damage be reported so that the NPS can provide assistance to visitors and to provide documentation necessary to improve park safety programs. However, the superintendent retains the discretion to investigate and document incidents of lesser severity if requested by visitors or if otherwise determined to be in the interest of public safety.

Section 2.35 Alcoholic beverages and controlled substances.

This general regulation pertains to the use of alcoholic beverages and controlled substances in park areas. However, paragraphs (a)(2) (iii) and (iv) of this section addressed carrying or storing an opened container of an alcoholic beverage within a motor vehicle on a park road or parking area, provisions that are more appropriately codified in Part 4. Section 2.35 has been revised to delete those two paragraphs. Additional discussion is found under the listing for § 4.14.

This rulemaking also revises paragraph (a)(3) of § 2.35, substituting the general terms "public use area or public facility" for the extensive list of specific types of sites within a park area that a park superintendent may close to the consumption of alcoholic beverages. This rulemaking also authorizes the superintendent to close the same types of areas to the possession of an open container of an alcoholic beverage as well, since in an area closed to the consumption of alcoholic beverages there is no legitimate reason to possess an open container. An exception is included that allows for the storage of an open container in a motor vehicle in accordance with the provisions of § 4.14.

However, both of these closure authorities are subject to the prerequisite conditions specified in § 2.35. A closure may only be imposed if based upon one of two determinations: (1) that the consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or (2) incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authority to establish public use limits and the enforcement of disorderly conduct regulations over a reasonable period of time have failed to alleviate the problem.

These limited closure authorities are site-specific and less than parkwide in scope. Parkwide closures to the consumption of alcoholic beverages or the possession of an open container *may not* be implemented locally under the authority of §§ 2.35 or 1.5. The NPS has determined that such expanded closures require a separate rulemaking to ensure the opportunity for full public notice and comment as required by 36 CFR 1.5(b) and the Administrative Procedures Act.

*Part 4*

The regulations in 36 CFR Part 4 are codified by general category in order to provide a logical system of organization and to facilitate their use and understanding by NPS employees and interested members of the public. These categories are: administrative provisions (§§ 4.1 through 4.4), general traffic provisions (§§ 4.10 through 4.14), moving violations (§§ 4.20 through 4.23) and non-motor vehicle provisions (§§ 4.30 and 4.31). Numerical gaps exist to allow for future changes and additions to each category.

Section 4.1 Applicability and scope.

This section was added as a result of a comment received in response to the proposed rule; its text differs from that of similar provisions in 36 CFR Parts 1 and 2 to provide a clearer indication of NPS intent. It provides that the regulations in Part 4 apply as specified in 36 CFR 1.2 and also apply on all roadways and parking areas within a park area that are open to the public and that are under the legislative jurisdiction of the United States, regardless of ownership. The NPS has added this provision in the interest of protecting the property rights of private, commercial and State landowners

within park areas and to assure that essential public safety services are available in those areas. However, these regulations do not apply on all non-federal lands, but apply *only* on roadways and parking areas, *only* on those over which the State has ceded either exclusive or concurrent legislative jurisdiction to the NPS and *only* on those that are open to the public.

This section has been added in an effort to provide services to non-federal landowners within park areas and to State agencies having responsibility for public safety on State highways located within park areas. A number of park areas contain private roads over which the State has no jurisdiction and/or State roads that are isolated from the closest State agency representatives responsible for providing law enforcement coverage. However, the NPS emphasizes that responsibility for public safety on State highways remains with the respective State agencies. The NPS intends that the enforcement of these regulations on non-NPS roadways take place only in emergency situations or in cases when State and local authorities are unable to provide the necessary enforcement action or response.

Section 4.2 State law applicable.

This section, which applies regardless of the type of jurisdiction exercised by the NPS, adopts State vehicle codes as the basis for the regulation and control of traffic in park areas. The NPS is adopting, as if they were a part of the regulations in Part 4, all the applicable and nonconflicting vehicle and traffic laws of the State and local political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located. The NPS regulations in Part 4 supercede any State vehicle code provisions that might conflict with or duplicate these sections and must be applied by NPS law enforcement personnel in lieu of State law.

The Secretary of the Interior's primary authority for promulgating regulations that pertain to the National Park System is 16 U.S.C. 3. Section 4.2 and all other regulations in Part 4 are considered necessary for the use and management of park areas and are promulgated under this authority. The same statute also establishes the penalty for violating a regulation promulgated under that authority. Under section 4.2, applicable and nonconflicting elements of State law are adopted and applied to units of the National Park System as if they were regulations promulgated by the Secretary of the Interior, therefore making violations subject to the penalty provision of 16 U.S.C. 3.

The NPS wishes to emphasize the fact that, although substantive provisions of State law are adopted, administrative or penalty provisions of State law are not. A person convicted in Federal court of a violation of State law under § 4.2 would be subject only to the penalty provisions in 36 CFR 1.3, regardless of whether State law provides for a greater or less severe penalty, a mandatory penalty or only a minor administrative penalty such as remedial training. However, imposition of specific penalties remains a matter of judicial discretion.

Furthermore, since drivers license suspensions and revocations are administrative procedures exercised by State agencies, the NPS has no authority or mechanism to apply such procedures to a conviction of a violation of State law under § 4.2 or a violation of any other section of Part 4 except through the cooperation of the appropriate State agency. The penalty provisions codified in 36 CFR 1.3 are established by statute and can be revised only through legislation.

*Section 4.3 Authorized emergency vehicles.*

This section allows operators of Federal, State, local or private emergency vehicles qualified exemptions from compliance with certain traffic regulations under certain emergency circumstances. These provisions apply only to an operator of a vehicle that meets the definition of "authorized emergency vehicle" as defined in § 1.4. Although this section is intended to facilitate prompt response in emergency situations and to provide operators a certain degree of protection from liability under those circumstances, it does not relieve them from the duty to drive safely. More specific guidance on the operation and equipping of emergency vehicles is found in agency guidelines and State law.

*Section 4.4 Report of motor vehicle accident.*

This section includes only those motor vehicle accident reporting requirements that pertain directly to the NPS and that are necessary for park area staffs to carry out their public safety responsibilities. These requirements are the only ones retained from the former §§ 4.15 and 4.4.

Paragraph (a) requires the operator of a vehicle that has been involved in an accident resulting in property damage, personal injury or death to report the accident to the superintendent as soon as practicable, but no later than 24 hours after the accident. A new provision has been added to this section that makes a vehicle occupant responsible for reporting an accident if the operator is physically incapable of doing so. Paragraph (b) prohibits moving a vehicle involved in an accident without first notifying the superintendent, unless the vehicle constitutes a hazard or prior notification is not practicable.

The requirements for notification of the superintendent are imposed so that park staffs can provide emergency assistance promptly and initiate and complete accident investigations in a timely manner. However, the requirement to report a minor motor vehicle accident to the superintendent does not automatically translate into the need for a detailed investigation and report of that accident. The requirement to report all motor vehicle accidents, regardless of severity, is made in the interest of identifying and correcting traffic safety hazards and engineering problems and to assure that appropriate information is exchanged between the operators involved.

The reporting requirements that States impose to assure protection of the public interest and State agency notification are reflected in State law and are not affected by this section. A motor vehicle operator and occupants remain responsible for satisfying applicable State reporting requirements; these can also be enforced in park areas under 36 CFR 4.2.

*Section 4.10 Travel on park roads and designated routes.*

This section retains most of the basic provisions codified in the former § 4.19, edited for clarity. Its purpose is to establish broad and consistent Servicewide standards for the operation of motor vehicles in the interest of protecting park resources and facilities. These particular limitations are not typically found in State vehicle codes. This section prohibits the operation of motor vehicles in park areas except on park roads, in parking areas and on routes and areas designated for off-road vehicle (ORV) use.

Paragraph (c) of this section addresses three issues related to the impacts of motor vehicle use on park visitors, resources and facilities. The first prohibits operation of a motor vehicle not equipped with pneumatic tires, except for limited authorized use of track-laying vehicles. The second prohibits causing unreasonable damage to the surface of roads or routes. The NPS intends the term unreasonable damage to mean damage to a degree beyond that which would ordinarily be expected under conditions existing at the time. The third provision of this paragraph imposes minimum visibility

requirements for motor vehicles used on ORV routes at night.

This rulemaking does not revise the existing conditions under which off-road motor vehicle activities may be conducted in park areas. These activities are governed by Federal statutory law and the provisions of Executive Orders 11644 and 11989 which apply to all Federal agencies. These Executive Orders require that ORV activities on public lands be limited to designated routes or areas and that these designations be based on the protection of resources, the promotion of visitor safety and the minimization of user conflicts. Furthermore, routes and areas may be designated in units of the National Park System only if the agency head determines that ORV use in such locations will not adversely affect their natural, aesthetic or scenic values. This section requires that ORV routes and areas in park areas be designated by special regulation and limits these designations to national recreation areas, national seashores, national lakeshores and national preserves.

The operation of a motor vehicle on park roads is governed by the regulations in 36 CFR Part 4 and by State law. Any vehicle that may be operated legally on a State highway may be operated legally on a park road unless otherwise restricted by the superintendent. The operation of a motor vehicle on a designated ORV route or area is governed by the provisions of this section, special regulations developed by individual superintendents in 36 CFR Part 7, and conditions and restrictions established by superintendents pursuant to 36 CFR 1.5. ORV use in park areas in Alaska is also governed by regulations codified in 36 CFR Part 13.

*Section 4.11 Load, weight and size limits.*

This section is a revision and clarification of the former section with the same number. Paragraph (a) provides that limits established by State law are used as the standard in each park area, but authorizes the superintendent to designate more restrictive limits and require a permit for a motor vehicle that exceeds an established limit. This discretionary authority is essential in order for a superintendent to impose restrictions, based on local conditions, for public safety purposes or for the protection of park resources or the road surface itself. Paragraph (b) contains the specific prohibitions of this section and paragraph (c) authorizes the superintendent to suspend or revoke the permit of a person who has violated one of its terms or conditions.

This rulemaking also provides for increasing to 10 inches the size of auxiliary side mirrors that are allowed under certain conditions and deletes the provision of the former section that pertained to transportation of explosives.

*Section 4.12 Traffic control devices.*

This section is a revision of the former section 4.18. The superintendent's authorities to erect signs and control public use are outlined in 36 CFR 1.5 and 1.7. This section serves as a basic requirement for a motor vehicle operator to comply with a traffic control device (as defined in § 1.4), a requirement that is essential to assuring the safety of park visitors and the protection of resources.

*Section 4.13 Obstructing traffic.*

This section is a revision of the former section of the same number, the text having been clarified and simplified. This section is intended to address the typical situations found in park areas where vehicle operators are often faced with narrow roads, steep grades, slow moving traffic and distractions caused by wildlife, points of interest or scenic vistas. State vehicle codes do not address these situations in a consistent manner.

Paragraph (a) prohibits stopping or parking a vehicle upon a park road (as defined in § 1.4) except as authorized by the superintendent or as a result of a condition beyond the control of the operator. The primary purpose of this provision is to provide for public safety by preventing obstructions and traffic congestion on the main-traveled surface of roadways. The exception provided allows the superintendent the discretion and flexibility, without the need for posting signs, to allow parking or stopping that, under conditions that exist at the time, does not pose a hazard to other traffic.

Paragraph (b) is intended to prevent hazards, mechanical problems, overheating and unsafe actions by vehicle operators that often occur as a result of situations when vehicle operators proceed at a speed well below the posted limit and that which is safe and, in doing so, impede the progress of operators of vehicles to the rear.

*Section 4.14 Open container of alcoholic beverage.*

This section addresses the carrying and storing of an open container containing an alcoholic beverage within a motor vehicle. These provisions were formerly codified in 36 CFR 2.35 but, since they pertain directly to motor vehicles and traffic safety, have been moved to Part 4. This section prohibits the carrying or storing of an open container of an alcoholic beverage in a motor vehicle within a park area except for specified areas within a motor vehicle that are not immediately accessible to the vehicle's operator or occupants. The NPS intends these provisions to apply to both moving and parked motor vehicles, except as specified in paragraph (c). The primary purpose of this section is to prevent public safety hazards created by individuals drinking and driving by physically separating vehicle operators and occupants from alcoholic beverages located in the vehicle.

Paragraph (a) specifies that each vehicle occupant is responsible for complying with the provisions of this section that pertain to the carrying of an open container and specifically makes the vehicle operator responsible for complying with the open container storage provisions. Paragraph (b) contains a detailed description of what constitutes an open container of an alcoholic beverage and contains the basic prohibitory elements of the regulation.

Paragraph (c) contains three exceptions to the prohibitions listed in paragraph (b). The first allows the *storage* of an open container in the trunk of a motor vehicle or, *if the motor vehicle is not equipped with a trunk*, in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers. The unoccupied bed of a pickup truck or hatchback area of an automobile are examples of areas that fall under this exception. The second exception applies to an open container *stored* in the living quarters of a motor home or camper. The final exception allows the carrying or storing of an open container in a motor vehicle parked at an authorized campsite *where the motor vehicle's occupants are camped* unless such action is otherwise prohibited (as would be the case in an area closed to the consumption of alcoholic beverages or the possession of an open container under 36 CFR 2.35 or in the case of a minor in possession of alcohol). This provision describes the only situation when carrying an open container within a motor vehicle is considered by the NPS to be appropriate, i.e. when that vehicle is parked at a campsite and being used more as an extension of the campsite than as a means of transportation.

Paragraph (d) clarifies the text used in paragraph (c), emphasizing that a utility or glove compartment is considered an area readily accessible to the operator and passengers of a motor vehicle and therefore not suitable for storage of an open container. The extended cab of a pickup truck is also in that category.

*Section 4.20 Right-of-way.*

This revision retains the basic provisions of the former § 4.16 that address the protection of pedestrians, saddle and pack animals and vehicles drawn by animals. These elements, which are typical traffic safety concerns in park areas, are not addressed consistently by State law. This section does not limit the superintendent's authority to establish restrictions and closures that serve to limit the use of park roads by pedestrians, stock or vehicles drawn by animals. However, in locations where their use of park roads is allowed in conjunction with motor vehicle traffic, this section specifies that a motor vehicle operator must yield the right of way. The issue of yielding right of way to emergency vehicles is addressed by State law.

*Section 4.21 Speed Limits.*

This section contains the basic provisions of the former § 4.17. Paragraph (a) lists the basic speed limits that are established for park areas in order to encourage Servicewide consistency and limit confusion on the part of park visitors. Paragraph (b) provides the superintendent discretionary authority to alter those limits in the interest of public safety and requires speed limits to be posted by using standard traffic control devices. Paragraph (c) contains the prohibitory text.

Paragraph (d) contains authorization for the use of radar and specifies that applicable signing is not required. These provisions are included to resolve questions and potential conflicts in some park areas arising from provisions of State law. However, the NPS intends that NPS law enforcement personnel who operate radar as part of traffic safety programs be certified according to applicable Federal, State or industry standards.

*Section 4.22 Unsafe Operation.*

This section is a significant revision of the former § 4.14 which combined elements related to reckless driving and careless driving. Paragraph (a) emphasizes that reckless driving is not addressed by this regulation; reckless driving is defined by State law and will be enforced by adopting applicable State law under 36 CFR 4.2.

Paragraph (b) prohibits a number of careless driving actions, less severe than reckless driving, that are not addressed consistently by State law but that occur frequently in park areas and are public safety concerns. The first prohibits operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering existing conditions. A motor vehicle operator is responsible for considering all of the listed factors when making decisions related to vehicle operation. The second prohibits the unnecessary squealing or skidding of tires. The third prohibits failure to maintain control of a motor vehicle to the extent necessary to avoid danger to persons, property or wildlife.

The final prohibited actions focus on the vehicle operator but are intended to enhance passenger safety. The first prohibits operating a motor vehicle while allowing a person to ride on or within any vehicle or trailer or other mode of conveyance while being towed, unless the towed vehicle is specifically designed for carrying passengers while being towed. A tram is an example of the type of vehicle that qualifies as an exception. The second provision prohibits allowing a passenger to ride on an exterior portion of a motor vehicle that is not designed or intended for the use of a passenger. The latter restriction does not apply to a person seated on the floor of a truck bed equipped with sides unless that also is prohibited by State law.

*Section 4.23 Operating under the influence of alcohol or drugs.*

This section represents a major revision of the former § 4.6 and is based on a model regulation developed by the Department of Transportation, tailored to fit NPS needs. This section prohibits operating a motor vehicle while under the influence of alcohol or drugs or a combination of both, includes a specific blood alcohol concentration limit, allows a great deal of flexibility in the use of state or federal training and equipment standards, includes a provision requiring an alleged violator to submit to quantitative blood-alcohol tests and leaves the choice of tests to the officer or ranger rather than the alleged violator. Key terms used in this section that are defined in section 1.4 include "authorized person" and "operator".

Paragraph (a) of this regulation addresses two individual offenses. The first is a standard prohibition against operating or being in actual physical control of a motor vehicle while under the influence of alcohol or drugs to a degree that renders the operator incapable of safe operation. The elements necessary to prove a violation of this provision can be demonstrated through descriptions of observations made by the arresting officer and witnesses, physical evidence and the results of field tests conducted by the officer at the scene. The results of chemical or other quantitative tests conducted may be used to supplement the other items of evidence. The second offense involves operating a vehicle while the alcohol concentration in the operator's blood is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. These specific concentrations and units of measure are taken from the Uniform Vehicle Code. Equivalent units of measure are by definition equal and may obviously be substituted. However, in order to eliminate unnecessary conflicts with State law in cases where State law provides for more restrictive alcohol concentrations than the Uniform Vehicle Code, the NPS has included a provision in this paragraph adopting the more restrictive State levels. Therefore, if State law establishes an alcohol concentration of 0.08 grams or more of alcohol per 100 milliliters of blood as the threshold for a determination of operating under the influence, that level applies within park areas located in that State rather than the 0.10 limit specified in this paragraph. But if State law establishes a less restrictive alcohol concentration such as 0.12 grams or more of alcohol per 100 milliliters of blood, then the 0.10 limit specified in this paragraph applies within park areas located in that State.

The elements necessary to prove a violation of paragraph (a)(2) can be shown only through the results of chemical or other quantitative tests; the officer's probable cause for believing that the person is operating a motor vehicle while under the influence must be comprised of other factors. In cases where the specified alcohol concentrations cannot be shown, an operator can only be charged with a violation of paragraph (a)(1).

Paragraph (b) provides that the prohibitions in paragraph (a) also apply to an operator who is legally entitled to use alcohol or another drug. Therefore, the fact that a person charged with a violation of paragraph (a) is legally entitled to use alcohol or another drug for medical reasons does not constitute authorization to operate a motor vehicle while under the influence of those substances.

Paragraph (c) pertains to quantitative testing for the purpose of determining an

operator's blood alcohol or drug content. Regardless of the medium being tested, the results of quantitative tests measure the concentration of the drug in the operator's blood. Paragraph (c)(1) requires an operator, when requested by an authorized person who has probable cause to believe that the operator has violated a provision of paragraph (a), to submit to one or more tests of body fluids or breath to determine blood alcohol or drug content. Paragraph (c)(2) provides that refusal by an operator to submit to a test under the conditions specified in paragraph (c)(1) is prohibited and constitutes a separate violation, subjecting the operator to the penalty provisions of 36 CFR 1.3. Proof of a violation of paragraph (c)(2) is not dependent upon a prior finding of the operator's guilt on a charge of violating a provision of paragraph (a).

Paragraphs (c)(1) and (2) are essential to the success of NPS public safety and alcohol enforcement programs because of the inability of the NPS to adopt State implied consent statutes which provide for the administrative revocation of the operator's drivers license when he or she refuses to take a quantitative test. The NPS wishes to emphasize, however, that a vehicle operator is not required to submit to a qualitative test (field sobriety test) and that there is no penalty attached to a refusal to take such a test.

Paragraph (c)(3) establishes that the choice of quantitative tests to be taken by an operator rests with the authorized person, not with the operator. This provision is necessary because park staffs are often limited in the types of testing equipment and facilities and the number of certified testers available. The isolation of many park areas and the distance to alternative testing equipment or facilities preclude giving the choice of tests to the operator. This provision also favors the operator, the person who benefits most from a situation that provides for prompt access to testing equipment and facilities.

Paragraph (c)(4) limits the conducting of quantitative tests to accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use. The NPS intent is to assure that equipment and methods used for such tests are of a type or nature commonly used by Federal, State and local law enforcement agencies and accepted as reliable for such purposes by Federal, State or local courts. The NPS also intends that tests be conducted by personnel who have been certified in the use of that equipment by the manufacturer or by an appropriate Federal, State or local official or agency.

Paragraph (d) addresses the issue of presumptions. If the results of quantitative tests indicate that the alcohol concentration in the operator's blood is less than the alcohol concentrations specified in paragraph (a)(2), there can be no presumption drawn concerning whether or not the operator is under the influence. However, this absence of presumption is not intended to preclude the introduction of other evidence, such as the elements comprising the officer's probable cause to arrest the operator, that addresses the question of whether the operator was, at the time of the alleged violation, under the influence of alcohol or drugs.

*Section 4.30 Bicycles.*

This section is a revision of the former section 4.3 and provides that the use of bicycles is allowed in park areas under the same basic conditions as are motor vehicles, i.e. on park roads, in parking areas and on routes designated for their use. These provisions reflect the facts that the NPS generally considers bicycle use a very appropriate, low impact method for visitors to enjoy park areas, but that certain limitations on their use are necessary and appropriate in the interest of public safety, resource protection and the avoidance of visitor conflicts.

Paragraph (a) authorizes the use of bicycles within park areas on roads, in parking areas and on routes designated by the superintendent for bicycle use but reinforces the fact that the superintendent may impose closures pursuant to 36 CFR 1.5. The superintendent may also establish conditions and restrictions on bicycle use under the same authority. The NPS intends that the discretionary authority provided superintendents to designate bicycle routes without a formal rulemaking be a flexible tool used to accommodate the needs of bicyclists for reasonable access to areas away from park roads. This process provides the opportunity for a superintendent, after making the required written determination that such use is consistent with the protection of park values and purposes and safety considerations, to designate routes (trails) for bicycle use only and/or for the common use of bicyclists and other visitors as appropriate, given local conditions. However, this discretionary authority to designate bicycle routes without a formal rulemaking may be exercised only for routes located in developed areas or special use zones of park areas, which are land management and use categories established pursuant to a park area's Statement for Management and General Management Plan.

Developed areas include lands within development and historic zones; these areas are generally impacted to a certain degree by structures, facilities or other improvements which reflect the fact that the primary purpose or management objective for the use of these lands is other than the preservation of their natural resources. Special use zones include non-federal lands within the exterior boundaries of a park area that are used for non-park purposes but over which the NPS exerts some degree of administrative control. Ranch, forest, industrial, or agricultural lands and transportation or utility corridors are all examples of land uses that could occur within special use zones and where recreational activities such as bicycling could be compatible.

Paragraph (b) requires a formal rulemaking in order for a bicycle route to be designated outside of a developed area or special use zone. The NPS has determined that the designation of a bicycle route outside of such developed areas, in areas whose primary purpose and land uses are related more to the preservation of natural resources and values, would have a much greater potential to result in adverse resource impacts or visitor use conflicts. This paragraph therefore provides for a much more stringent decisionmaking process for such a proposal by requiring a formal rulemaking. Such a process will provide for a thorough review of all environmental and visitor use considerations and assure the superintendent of having had the benefit of public review and comment before making a decision on any proposed designation.

Paragraph (c) establishes operator responsibilities by making applicable to a bicycle operator all the provisions of Part 4 that apply to a motor vehicle operator except §§ 4.4, 4.10, 4.11 and 4.14. Bicycle accidents are reported pursuant to the provisions of 36 CFR 2.33; §§ 4.10 and 4.11 do not apply to bicycle use; § 4.14 has very little applicability beyond the primary area of concern addressed in paragraph (d)(4) of this section and discussed below.

Most activities involving the operation of a bicycle are regulated under paragraph (c) by applying other sections of Part 4. However, paragraph (d) addresses four additional areas involving bicycle use. The first prohibits the possession of a bicycle in a designated wilderness area. This provision reflects a statutory prohibition

on forms of mechanical transport in wilderness areas that is contained in the Wilderness Act of 1964 [16 U.S.C. 1133(c)] and that has been in effect since that law was passed. This rulemaking establishes a regulatory provision (and an accompanying penalty) that is consistent with regulations promulgated by the United States Forest Service and the Bureau of Land Management, Federal land management agencies which administer extensive areas of public lands designated as wilderness.

The second provision of paragraph (d) imposes certain minimum visibility requirements on bicycle operators in the interest of their own safety. The third prohibits bicycle operators from riding abreast of one another except where authorized by the superintendent. This provision is also intended to enhance the safety of bicycle operators and to prevent obstruction of traffic.

The last provision of this paragraph prohibits consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage while operating a bicycle. The NPS has determined that, because of the limited storage options available to a bicycle operator, it is unreasonable to expect a bicycle operator to comply with the requirements for carrying and storing an open container of an alcoholic beverage specified in § 4.14. This paragraph allows an operator to carry or store, for later consumption, an open container of an alcoholic beverage in a backpack or in a cooler or storage bag attached to the bicycle, but prohibits the unsafe practice of consuming an alcoholic beverage while operating the bicycle.

*Section 4.31 Hitchhiking.*

This section is a revision of the former § 4.22 which prohibits hitchhiking altogether. This regulation reflects the NPS concern over the public safety issues involved with hitchhiking but also recognizes that, under certain circumstances and in certain locations, hitchhiking is the only practical method for some pedestrians to circulate within park areas. This section prohibits hitchhiking but provides the superintendent the discretion to allow hitchhiking through designations and under conditions established in the interest of public safety pursuant to the authority of § 1.5. This position recognizes the dangers inherent in hitchhiking and establishes a Servicewide standard that discourages the activity. But it also allows hitchhiking to take place on a limited basis under conditions that can reduce somewhat the types and levels of hazards to which participants are exposed. Based on local circumstances, a superintendent can allow hitchhiking in designated locations and under specific conditions that would reduce the public safety hazards involved in this activity.

*Part 7*

As a result of the revisions to 36 CFR Parts 1, 2 and 4 contained in this rulemaking, the NPS is deleting 22 regulations (park-specific) in 36 CFR Part 7 that pertain to motor vehicles and traffic safety. These regulations have been rendered unnecessary by the terms of this rulemaking either through duplication or by the fact that the restrictions can be imposed through use of the superintendent's discretionary authority. The subjects addressed by the regulations being deleted include load, weight and size limitations, limitations on vehicle types, speed limits and hitchhiking. A number of special regulations have also been revised to change or delete cross-references to regulations in Part 4.

*Part 34*

Minor revisions to the regulations in this Part were required to change cross-references to regulations in Parts 1 and 4.

**Drafting Information**

The workgroup that developed this rulemaking is composed of Paul Anderson (Delaware Water Gap National Recreation Area—Yosemite National Park), Pat Buccello (Sequoia National Park), Jim Fox (Blue Ridge Parkway), Bob Mihan (Yellowstone National Park), Pete Nigh (Grand Canyon National Park), Bob Reid, (U.S. Park Police), Andy Ringgold (Branch of Ranger Activities), Steve Shackelton (Hawaii Volcanoes National Park) and John Sharp (Office of the Solicitor). Numerous other NPS employees also contributed to its development and review.

**Paperwork Reduction Act**

The information collection requirements contained in § 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026.

**Compliance with Other Laws**

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on the fact that the overall economic effects of this rulemaking are negligible; they impose no additional costs on any group or class of individuals.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

**List of Subjects**

*36 CFR Part 1*

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

*36 CFR Part 2*

Environmental protection, National parks, Reporting and recordkeeping requirements.

*36 CFR Part 4*

National parks, Traffic regulations.

*36 CFR Part 7*

National parks, Reporting and recordkeeping requirements.

*36 CFR Part 34*

National parks, Administrative site, Penalties, Traffic regulations.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

## PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460*l*–6a(e), 462(k); D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By adding a new paragraph (e) to § 1.2 to read as follows:

**§ 1.2 Applicability and scope.**

* * * * *

(e) The regulations in this chapter are intended to treat a mobility-impaired person using a manual or motorized wheelchair as a pedestrian, and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations.

**§ 1.4 [Amended]**

3. By amending the list of definitions in § 1.4 as follows:

a. By revising the definition of "Authorized emergency vehicle" to read as follows:

"Authorized emergency vehicle" means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by State law.

b. By revising the definition of "Bicycle" to read as follows:

"Bicycle" means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels, except a manual wheelchair.

c. By revising the definition of "Motor vehicle" to read as follows:

"Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a snowmobile and a motorized wheelchair.

d. By revising the definition of "Operator" to read as follows:

"Operator" means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

e. By adding the following definitions and inserting them in alphabetical order:

"Manual wheelchair" means a device that is propelled by human power, designed for and used by a mobility-impaired person.

"Motorized wheelchair" means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion, that is both capable of and suitable for use in indoor pedestrian areas.

"State law" means the applicable and nonconflicting laws, statutes, regulations, ordinances, infractions and codes of the State(s) and political subdivision(s) within whose exterior boundaries a park area or a portion thereof is located.

"Traffic control device" means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Superintendent for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

4. By revising § 1.8 to read as follows:

**§ 1.8 Information collection.**

The information collection requirements contained in §§ 1.5, 2.4, 2.5, 2.10 2.12, 2.17, 2.33, 2.38, 2.50, 2.51, 2.52, 2.60, 2.61, 2.62, 3.3, 3.4, 4.4 and 4.11 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to provide superintendents data necessary to issue permits for special uses of park areas and to obtain notification of accidents that occur within park areas. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In §§ 2.33, 3.4 and 4.4, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

## PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

5. The authority citation for Part 2 is revised to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k).

6. By revising paragraphs (a) and (d)(4) of § 2.18 to read as follows. The introductory text of paragraph (d) is republished.

**§ 2.18 Snowmobiles.**

(a) Notwithstanding the definition of vehicle set forth in § 1.4 of this chapter, the provisions of §§ 4.4, 4.12, 4.13, 4.14, 4.20, 4.21, 4.22 and 4.23 of this chapter apply to the operation of a snowmobile.

* * * * *

(d) The following are prohibited: * * *

(4) Racing, or operating a snowmobile in excess of 45 mph, unless restricted in accordance with § 4.22 of this chapter or otherwise designated.

* * * * *

7. By revising paragraph (a) of § 2.33 to read as follows:

**§ 2.33 Report of injury or damage.**

(a) A person involved in an incident resulting in personal injury or property damage exceeding $300, other than an accident reportable under §§ 3.4 or 4.4 of this chapter, shall report the incident to the superintendent as soon as possible. This notification does not satisfy reporting requirements imposed by applicable State law.

* * * * *

8. By amending § 2.35 as follows:

a. By removing paragraphs (a)(2) (iii) and (iv).

b. By revising paragraph (a)(3) to read as follows:

**§ 2.35 Alcoholic beverages and controlled substances.**

(a) * * *

(3)(i) The superintendent may close all or a portion of a public use area or public facility within a park area to the consumption of alcoholic beverages and/or to the possession of a bottle, can or other receptacle containing an alcoholic beverage that is open, or that has been opened, or whose seal is broken or the contents of which have been partially removed. *Provided however,* that such a closure may only be implemented following a determination made by the superintendent that:

(A) The consumption of an alcoholic beverage or the possession of an open container of an alcoholic beverage would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(B) Incidents of aberrant behavior related to the consumption of alcoholic beverages are of such magnitude that the diligent application of the authorities in this section and §§ 1.5 and 2.34 of this chapter, over a reasonable time period, does not alleviate the problem.

(ii) A closure imposed by the superintendent does not apply to an open container of an alcoholic beverage that is stored in compliance with the provisions of § 4.14 of this chapter.

(iii) Violating a closure imposed pursuant to this section is prohibited.

* * * * *

9. By revising Part 4 to read as follows:

## PART 4—VEHICLES AND TRAFFIC SAFETY

Sec.

4.1 Applicability and scope.
4.2 State law applicable.
4.3 Authorized emergency vehicles.
4.4 Report of motor vehicle accident.
4.10 Travel on park roads and designated routes.
4.11 Load, weight and size limits.
4.12 Traffic control devices.
4.13 Obstructing traffic.
4.14 Open container of alcoholic beverage.
4.20 Right of way.
4.21 Speed limits.
4.22 Unsafe operation.
4.23 Operating under the influence of alcohol or drugs.
4.30 Bicycles.
4.31 Hitchhiking.

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k).

**§ 4.1 Applicability and scope.**

The applicability of the regulations in this part is described in § 1.2 of this chapter. The regulations in this part also apply, regardless of land ownership, on

all roadways and parking areas within a park area that are open to public traffic and that are under the legislative jurisdiction of the United States.

**§ 4.2 State law applicable.**

(a) Unless specifically addressed by regulations in this chapter, traffic and the use of vehicles within a park area are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

**§ 4.3 Authorized emergency vehicles.**

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

(1) Disregard traffic control devices;

(2) Exceed the speed limit; and

(3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

**§ 4.4 Report of motor vehicle accident.**

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the superintendent as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the superintendent.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the superintendent unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the park area.

(c) Failure to comply with a reporting requirement specified in paragraph (a) or (b) of this section is prohibited.

(d) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

**§ 4.10 Travel on park roads and designated routes.**

(a) Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road motor vehicle use.

(b) Routes and areas designated for off-road motor vehicle use shall be promulgated as special regulations. The designation of routes and areas shall comply with § 1.5 of this chapter and E.O. 11644 (37 FR 2887). Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.

(c) The following are prohibited:

(1) Operating a motor vehicle not equipped with pneumatic tires, except that a track-laying motor vehicle or a motor vehicle equipped with a similar traction device may be operated on a route designated for these vehicles by the superintendent.

(2) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a park road or route.

(3) Operating a motor vehicle on a route or area designated for off-road motor vehicle use, from ½ hour after sunset to ½ hour before sunrise, without activated headlights and taillights that meet the requirements of State law for operation on a State highway.

**§ 4.11 Load, weight and size limits.**

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a park road. However, the superintendent may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The superintendent may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

(1) Operating a vehicle that exceeds a load, weight or size limit designated by the superintendent.

(2) Failing to obtain a permit when required.

(3) Violating a term or condition of a permit.

(4) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

(c) Violating a term or condition of a permit may also result in the suspension or revocation of the permit by the superintendent.

**§ 4.12 Traffic control devices.**

Failure to comply with the directions of a traffic control device is prohibited unless otherwise directed by the superintendent.

**§ 4.13 Obstructing traffic.**

The following are prohibited:

(a) Stopping or parking a vehicle upon a park road, except as authorized by the superintendent, or in the event of an accident or other condition beyond the control of the operator.

(b) Operating a vehicle so slowly as to interfere with the normal flow of traffic.

**§ 4.14 Open container of alcoholic beverage.**

(a) Each person within a motor vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(b) Carrying or storing a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle in a park area is prohibited.

(c) This section does not apply to:

(1) An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(2) An open container stored in the living quarters of a motor home or camper; or

(3) Unless otherwise prohibited, an open container carried or stored in a motor vehicle parked at an authorized campsite where the motor vehicle's occupant(s) are camping.

(d) For the purpose of paragraph (c)(1) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

**§ 4.20 Right of way.**

An operator of a motor vehicle shall yield the right of way to pedestrians, saddle and pack animals and vehicles drawn by animals. Failure to yield the right of way is prohibited.

**§ 4.21 Speed limits.**

(a) Park area speed limits are as follows:

(1) 15 miles per hour: within all school zones, campgrounds, picnic areas, parking areas, utility areas, business or residential areas, other places of public assemblage and at emergency scenes.

(2) 25 miles per hour: upon sections of park road under repair or construction.

(3) 45 miles per hour: upon all other park roads.

(b) The superintendent may designate a different speed limit upon any park road when a speed limit set forth in

paragraph (a) of this section is determined to be unreasonable, unsafe or inconsistent with the purposes for which the park area was established. Speed limits shall be posted by using standard traffic control devices.

(c) Operating a vehicle at a speed in excess of the speed limit is prohibited.

(d) An authorized person may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a park road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

**§ 4.22 Unsafe operation.**

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of section 4.2 of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

**§ 4.23 Operating under the influence of alcohol or drugs.**

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath. *Provided however,* that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(c) *Tests.* (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissable in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) *Presumptive levels.* (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

**§ 4.30 Bicycles.**

(a) The use of a bicycle is prohibited except on park roads, in parking areas and on routes designated for bicycle use; *provided, however,* the superintendent may close any park road or parking area to bicycle use pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

(b) Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 4.4, 4.10, 4.11 and 4.14.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

**§ 4.31 Hitchhiking.**

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the superintendent.

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

10. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

11. The authority citations following all the sections in Part 7 are removed.

**§ 7.3 [Amended]**

12. In § 7.3, Glacier National Park, by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

**§ 7.4 [Amended]**

13. In § 7.4, Grand Canyon National Park, by removing paragraphs (a), (b), (c), (d), (e), and (f) and redesignating paragraph (g) as (a), paragraph (h) as (b) and paragraph (i) as paragraph (c).

**§ 7.7 [Amended]**

14. In § 7.7, Rocky Mountain National Park, paragraph (h)(3) is amended by revising the cross-reference to "§ 4.14" to read "§ 4.22".

**§ 7.12 [Amended]**

15. In § 7.12, Gulf Islands National Seashore, paragraph (b)(1)(i) is amended by revising the cross-reference to "§ 4.19(b)" to read "§ 4.10(b)" and paragraph (b)(2)(v)(B) is amended by removing the cross-references to "§§ 4.12, 4.19(e), 4.20 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10(c)(3)".

**§ 7.13 [Amended]**

16. In § 7.13, Yellowstone National Park, by removing paragraph (a), redesignating paragraph (b)(2) as paragraph (a), removing paragraph (b)(1), and redesignating the introductory text of paragraph (b)(3) and paragraphs (b)(3)(i) and (b)(3)(ii) as the introductory text of paragraph (b) and paragraphs (b)(1) and (b)(2).

**§ 7.15 [Amended]**

17. In § 7.15, Shenandoah National Park, by removing paragraphs (e) and (f).

**§ 7.16 [Amended]**

18. In § 7.16, Yosemite National Park, by removing and reserving paragraphs (d), (f) and (g).

**§ 7.20 [Amended]**

19. In § 7.20, Fire Island National Seashore, by amending paragraph (a)(7)(iv) by removing the cross-references to "§§ 4.12, 4.19(e), 4.20 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10(c)(3)".

**§ 7.29 [Amended]**

20. In § 7.29, Gateway National Recreation Area, by amending paragraph (a) by revising the cross-reference to "§ 4.19(b)" to read "§ 4.10(b)".

**§ 7.34 [Amended]**

21. In § 7.34, Blue Ridge Parkway, by removing paragraph (k) and redesignating paragraph (l) as (k).

**§ 7.41 [Amended]**

22. In § 7.41, Big Bend National Park, by removing paragraph (d).

**§ 7.43 [Amended]**

23. In § 7.43, Natchez Trace Parkway, by removing paragraphs (c)(5) (iii) and (iv) and redesignating paragraph (c)(5)(v) as paragraph (c)(5)(iii).

**§ 7.57 [Amended]**

24. In § 7.57, Lake Meredith Recreation Area, by removing paragraph (a)(2), by removing only the paragraph designation (1), not the text, of paragraph (a)(1) and revising paragraph (b) to read as follows:

* * * * * *

(b) *Safety Helmets.* The operator and each passenger of a motorcycle shall wear a safety helmet while riding on a motorcycle in an off-road area designated in paragraph (a) of this section.

* * * * *

**§ 7.58 [Amended]**

25. In § 7.58, Cape Hatteras National Seashore, by removing paragraph (b) and redesignating paragraph (c) as (b).

**§ 7.65 [Amended]**

26. In § 7.65, Assateague Island National Seashore, by amending paragraph (b)(2)(ii)(C) by removing the cross-references to "§§ 4.12, 4.19 and 4.21" and adding in place thereof a cross-reference to read "§ 4.10".

**§ 7.75 [Amended]**

27. In § 7.75, Padre Island National Seashore, by removing paragraphs (a)(1)(iii) and (a)(2)(v), by redesignating paragraphs (a)(1) (iv), (v) and (vi) as paragraphs (a)(1) (iii), (iv) and (v), and by amending paragraph (a)(1)(ii) by removing the cross-references to "§§ 4.12, 4.19, and 4.21" and adding in place thereof a cross-reference to § 4.10.

## PART 34—EL PORTAL ADMINISTRATIVE SITE REGULATIONS

28. The authority citation for Part 34 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 47–1, 460*l*–6a(e).

29. By revising paragraphs (a)(1) and (d) of § 34.5 to read as follows:

**§ 34.5 Applicable regulations.**

* * * * * *

(a) *General provisions.* (1) 1.2(d) Applicability and scope; exception for administrative activities.

* * * * * *

(d) *Vehicles and traffic safety.* (1) 4.2 State law applicable.

(2) 4.4 Report of motor vehicle accident.

(3) 4.10(a), (c)(1) and (c)(2) Travel on park roads and designated routes.

(4) 4.11 Load, weight and size limits.

(5) 4.12 Traffic control devices.

(6) 4.14 Open container of alcoholic beverage.

(7) 4.21 Speed limits.

(8) 4.22 Unsafe operation.

(9) 4.23 Operating under the influence of alcohol or drugs.

* * * * * *

Dated: March 5, 1987.

**P. Daniel Smith,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–6391 Filed 4–1–87; 8:45 am]

BILLING CODE 4310–70–M

Federal Register

Thursday
April 2, 1987

Part III

# Environmental Protection Agency

40 CFR Part 761

**Polychlorinated Biphenyls Spill Cleanup Policy; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 761**

**[OPTS 62051; FRL 3179–1]**

## Polychlorinated Biphenyls Spill Cleanup Policy

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** TSCA PCB spill cleanup policy rule.

**SUMMARY:** This rule presents the Toxic Substances Control Act (TSCA) policy for the cleanup of spilled polychlorinated biphenyls (PCBs). The TSCA policy establishes the measures which EPA considers to be adequate cleanup for the majority of situations where PCB contamination occurs during activities regulated under TSCA. While cleanup in accordance with this policy constitutes adequate cleanup of spills within the scope of this policy and creates a presumption against enforcement for penalties or further cleanup, EPA will not exercise enforcement abeyance for a disposal violation if the spill was the result of gross negligence or knowing violation.

Since this rule is a policy statement, it does not require notice and comment under the provisions of the Administrative Procedures Act. However, the Agency welcomes comment on and additional relevant information about the TSCA policy.

**DATE:** The TSCA policy shall be effective on May 4, 1987.

**ADDRESSES:** Information or comments for consideration by the Agency should be submitted in triplicate to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. G004 NE Mall, 401 M St., SW., Washington, DC 20460.

Information and comments should include the docket number OPTS–62051. Information and comments received in connection with this document will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. G004 NE Mall, Environmental Protection Agency, 401 M St., SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

**SUPPLEMENTARY INFORMATION:**

**Contents of Preamble**

I. Background
II. Scope of the Policy
  A. Excluded Spills
  B. Spill Situations Within the Scope of the Policy That May Warrant more Stringent Cleanup Levels
  C. EPA Flexibility to Allow Less Stringent or Alternative Requirements
  D. The Relationship of This Policy of Other Statutes
III. Definitions
IV. Requirements for PCB Spill Cleanup
  A. General Requirements
  B. Requirements for Cleanup of Low-concentration Spills Which Involve Less Than 1 1b PCBs by Weight (Less Than 270 Gallons of Untested Mineral Oil)
  C. Requirements for Cleanup of High-concentration Spills and Low-concentration Spills Involving 1 1b or more PCBs by Weight (270 or More Gallons of Untested Mineral Oil)
V. Sampling Requirements
VI. EPA Enforcement and the Effect of Compliance with this Policy
VII. Development of the TSCA PCB Spill Cleanup Policy
  A. Risks Posed by Leaks and Spills of PCBs
  B. Costs of Cleanup
  C. Risk/Benefit Discussion of Cleanup Requirements
  D. Scope of the Policy
  E. Issues

### I. Background

EPA regulations controlling the disposal of PCBs, promulgated in the **Federal Register** of February 17, 1978 (43 FR 7150) and May 31, 1979 (44 FR 31514), broadly define the term "disposal" to encompass accidental as well as intentional releases of PCBs to the environment. Under these regulations, EPA considers intentional, as well as unintentional, spills, leaks and other uncontrolled discharges of PCBs at concentrations of 50 parts per million (ppm) or greater (defined by the concentration of PCBs in the material which spills) to be improper disposal of PCBs. For purposes of this discussion, and as defined in this policy under Unit III, the term "Spill" means spills, leaks, or other uncontrolled discharges of PCBs where the release results in any quantity of PCBs running off or about to run off the surface of the equipment or other PCB source, as well as the contamination resulting from those releases. When PCBs are improperly disposed of as a result of a spill of material containing 50 ppm or greater PCBs, EPA has the authority under section 17 of TSCA to compel persons to take actions to rectify damage or clean up contamination resulting from the spill.

Policies for the cleanup of PCB spills are currently established separately by each EPA regional office, and owners of spilled PCBs are required to meet these standards or face potential penalties under TSCA section 16 for improper disposal of PCBs. Once cleanup occurs to the standard set by the EPA regional offices, the material which has been cleaned, e.g., soil, metal, or equipment, may be processed, distributed in commerce and used (unless the regional office has placed restrictions on these other activities).

EPA standards for the cleanup of spilled PCBs have been established at the EPA regional office level since 1978. Each region sets PCB cleanup standards in the form of general guidelines and then applies the general guidelines on a case-by-case basis for specific spill situations. The general guidelines and their application to spills have differed among regions. For certain spill situations, regions have required cleanup to 50 ppm PCBs. In other spill situations, regions have required cleanup to preexisting background levels or the limit of detection of PCBs.

For PCB spill cleanup, EPA has already in place certain requirements for timely cleanup. In the final PCB Electrical Equipment Rule, published in the **Federal Register** of August 25, 1982 (47 FR 37342), EPA requires the initiation of PCB Transformer spill cleanup within 48 hours of spill discovery and defines disposal specifically to include leaks, spills, and other unintentional discharges of PCBs. However, the PCB Electrical Equipment Rule did not establish numerical criteria for PCB spill cleanup.

Most recently, the regions have applied the "lowest practicable level" guideline set up in the January 27, 1984, Administrative Law Judge decision on *General Electric* v. *U.S.E.P.A.* The Agency has, however, experienced several areas of difficulty in applying the "lowest practicable level" approach. First, the guideline is subject to, and has resulted in, disparate interpretations. Second, the term "lowest practicable level" cannot be easily applied by the regulated community without guidance from EPA. This can delay cleanup, and delays in cleanup can result in prolonged exposures to humans and more widespread environmental contamination. Finally, the owner of the PCBs may disagree with the EPA regional office's interpretation of the "lowest practicable level" standard. This may occur when the EPA regional office interpretation would require more stringent and costly measures than the owner believes are warranted. This too can delay complete cleanup, as the application of this guideline has, in fact, led to protracted Agency actions in some cases.

Although EPA did not finalize the proposed PCB spill cleanup policy in 1982, EPA has continued to evaluate available information on the risks posed by spilled PCBs and the costs associated with cleanup to various levels. EPA recognized that setting a nationwide TSCA PCB cleanup policy was a desirable goal and in the winter of 1984 EPA produced a draft TSCA Compliance Monitoring Program Policy covering PCB spill cleanup. Although the 1984 draft policy was never officially released, the members of the press and the public acquired and reviewed the draft policy. The Environmental Defense Fund (EDF), Natural Resources Defense Council (NRDC), Edison Electric Institute (EEI), Chemical Manufacturers Association (CMA), and National Electrical Manufacturers Association (NEMA), among others, were principal reviewers of the 1984 draft policy.

On May 17, 1985 EDF, NRDC, EEI, CMA, and NEMA submitted to EPA an alternative PCB spill cleanup policy for consideration by the Agency. EPA viewed the Consensus Agreement as a framework for completing its nationwide TSCA policy and evaluated the Consensus Agreement as a source of information in developing the Agency's own policy. The Agency and the Consensus Group shared two general principles about the appropriate framework for a nationwide PCB spills cleanup policy: That the policy should establish requirements designed to be effective in the large majority of spill situations; and that the risks posed by residual contamination (PCBs remaining after cleanup) vary depending upon the location of the spill and the potential for human exposures.

The requirements and standards in this policy are based upon the Agency's evaluation of the potential routes of exposure and potential risks associated with the more common types of PCB spills, as well as the costs associated with cleanup following these more common types of spills. Typical PCB spills involve the limited release of PCBs during the course of EPA-authorized activities such as: The use of electrical equipment (e.g., transformers and capacitors), the servicing of electrical equipment, and the storage for disposal of PCBs.

In establishing this cleanup policy for typical PCB spills, EPA recognizes that the risks posed by spills of PCBs vary, depending upon spill location and the amount of PCBs spilled. EPA recognized this earlier, in both the August 25, 1982 PCB Electrical Equipment Rule and the July 17, 1985 PCB Transformer Fires Rule. In these rules, EPA placed more stringent requirements on higher concentration PCBs located in areas where their release would pose greatest potential for significant human exposure.

This TSCA policy requires cleanup of PCBs to different levels depending upon spill location, the potential for exposure to residual PCBs remaining after cleanup, the concentration of the PCBs initially spilled (i.e., PCBs spilled from PCB-contaminated equipment versus PCBs spilled from PCB equipment), and the nature and size of the population potentially at risk of exposure. Thus, this policy applies the most stringent requirements for PCB spill cleanup to areas where there is the greater potential for human exposures to spilled PCBs. The policy applies less stringent requirements for cleanup to PCB spills in areas where the type and degree of contact present lower potential exposures. Finally, even less stringent requirements apply to areas where there is little potential for any direct human exposures.

EPA firmly believes that by providing uniform, predictable requirements across the regions for the majority of spill situations, the nationwide policy will reduce the risks posed by spills of PCBs by encouraging rapid and effective cleanup and restoration of the site.

Unit VII of this document discusses available information and the rationale for the policy based upon that information. The policy reflects the Agency's best judgment in light of available information. However, the Agency welcomes comment on, and additional relevant information about, the TSCA policy as the Agency intends to continue to consider comments and evaluate information on the issue of PCB spills cleanup. Should the Agency's evaluation show that new information, or practical considerations associated with the implementation of the policy, warrant changes in, or modifications to, the policy, the policy will be revised accordingly by EPA headquarters. Thus, a public docket has been established to collect comments and information. The Agency believes that much of the data currently lacking can be developed only over a period of time and experience in implementing the policy. Therefore, EPA has not placed a time limit on the submission of comments.

Finally, the Agency intends to re-examine in 12 to 18 months the need to promulgate regulations requiring cleanup in accordance with Agency standards. The Agency's decision on the need to promulgate regulations will be based on two primary considerations. First, EPA will consider whether the issuance of the policy has in fact resulted in the application of consistent nationwide standards to PCB spill cleanup. Second, EPA will consider its experience in enforcing provisions of this policy with particular emphasis on the results of any litigation brought by the Agency for improper PCB disposal from leaks or spills.

## II. Scope of the Policy

This policy establishes requirements for the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. The policy applies to spills which occur after the effective date of this policy.

Existing spills (spills which occurred prior to the effective date of this policy) are excluded from the scope of this policy for two reasons: (1) For old spills which have already been discovered, this policy is not intended to require additional cleanup where a party has already cleaned a spill in accordance with requirements imposed by EPA through its regional offices, nor is this policy intended to interfere with ongoing litigation of enforcement actions which bring into issue PCB spills cleanup; and (2) EPA recognizes that old spills which are discovered after the effective date of this policy will require site-by-site evaluation because of the likelihood that the site involves more pervasive PCB contamination than fresh spills and because old spills are generally more difficult to clean up than fresh spills (particularly on porous surfaces such as concrete). Therefore, spills which occurred before the effective date of this policy are to be decontaminated to requirements established at the discretion of EPA, usually through its regional offices.

EPA expects the large majority of PCB spills subject to the TSCA PCB regulations to conform to the typical spill situations considered in developing this policy. However, this policy does exclude from application of the final numerical cleanup standards certain spill situations: Spills directly into surface water, drinking water, sewers, grazing lands, and vegetable gardens. While these spills are subject to the notification requirements and to measures designed to minimize further environmental contamination (see Unit IV.A.), final cleanup standards for these types of spills are to be established at the discretion of the EPA regional offices.

For all other spills, EPA generally expects the final decontamination standards of this policy to apply. Occasionally, some small percentage of spills covered by this policy may

warrant different or more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those assumed in developing the final cleanup standards of this policy.

There may also be exceptional spill situations that require less stringent cleanup, or a different approach to cleanup, due to factors associated with the particular spill. These factors may mitigate expected exposures and risks or make cleanup to these requirements impracticable.

*A. Excluded Spills*

Although the following six spill situations are excluded from the automatic application of final numerical decontamination standards of Units IV.B and C, the general requirements under Unit IV.A do apply to these spills. In addition, all of these excluded situations require practicable, immediate actions to contain the area of contamination. While these situations may not always require more stringent cleanup measures, the Agency is excluding these situations because they will always involve significant factors that may not be adequately addressed by cleanup standards based upon typical spill characteristics.

For the following six spill situations, the responsible party shall decontaminate the spill in accordance with site-specific requirements established by the EPA regional offices:

1. Spills that result in the direct contamination of surface waters (surface waters include, but are not limited to, "waters of the United States" as defined in 40 CFR Part 122, ponds, lagoons, wetlands, and storage reservoirs).
2. Spills that result in the direct contamination of sewers or sewage treatment systems.
3. Spills that result in the direct contamination of any private or public drinking water sources or distribution systems.
4. Spills which migrate to and contaminate surface waters, sewers, or drinking water supplies before cleanup has been completed in accordance with this policy.
5. Spills that contaminate animal grazing lands.
6. Spills that contaminate vegetable gardens.

*B. Spill Situations Within the Scope of the Policy That May Warrant More Stringent Cleanup Levels*

For spills within the scope of this policy, EPA generally retains the authority to require additional cleanup upon finding that, despite good faith efforts by the responsible party, the numerical decontamination levels in the policy have not been met (see discussion in Unit VI). In addition, EPA foresees the possibility of exceptional spill situations in which site-specific risk factors may warrant additional cleanup to more stringent numerical decontamination levels than are required by the policy. In these situations, the Regional Administrator has the authority to require additional cleanup upon finding, based upon the specific facts of the spill, that further cleanup must occur to prevent unreasonable risk. Before making a final decision on additional cleanup, the Regional Administrator will notify the Director of the Office of Toxic Substances of his finding and the basis for the finding.

For example, site-specific characteristics such as short depth to ground water, type of soil, or the presence of a shallow well may pose exceptionally high potential for ground water contamination by PCBs remaining after cleanup to the standards specified in this policy. Spills that pose such a high degree of potential for ground water contamination have not been excluded from the policy under Unit II.A.1 because the presence of such potential may not be readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is in fact a significant concern.

*C. EPA Flexibility To Allow Less Stringent or Alternative Requirements*

EPA retains the flexibility to allow less stringent or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site, or that site-specific characteristics make the costs of cleanup prohibitive.

The Regional Administrator will notify the Director of OTS of any decision (and the basis for that decision) to all less stringent cleanup. The purpose of this notification is to enable the Director of OTS to ensure consistency in standards for spill cleanup under special circumstances across the regions.

*D. The Relationship of This Policy to Other Statutes*

This policy does not affect cleanup standards or requirements for the reporting of spills imposed, or to be imposed, under other Federal Statutory authorities, including but not limited to, the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA). Where more than one requirement applies, the stricter standard must be met.

The Agency recognizes that the existence of this policy will inevitably result in attempts to apply the standards to situations within the scope of other statutory authorities. However, other statutes require the Agency to consider different or alternative factors in determining appropriate corrective actions. In addition, the types and magnitudes or exposures associated with sites requiring corrective action under other statutes often involve important differences from those expected of the typical, electrical equipment-type spills considered in developing this policy. Thus, cleanups under other statutes, such as RCRA corrective actions or remedial and emergency response actions under SARA, may result in different outcomes.

## III. Definitions

For purposes of this policy, certain words and phrases are used to denote specific materials, procedures, or circumstances. The following definitions are provided for purposes of clarity and are not to be taken as exhaustive lists of situations and materials covered by the policy.

1. *PCBs.* The term means polychlorinated biphenyls as defined in 40 CFR 761.3. As specified in 40 CFR 761.1(b), no requirements may be avoided through dilution of the PCB concentration.

2. *Low-concentration PCBs.* The term means PCBs that are tested and found to contain less than 500 ppm PCBs, or those PCB-containing materials which EPA requires to be assumed to be at concentrations below 500 ppm (i.e., untested mineral oil dielectric fluid).

3. *High-concentration PCBs.* The term means PCBs that contain 500 ppm or greater PCBs, or those materials which EPA requires to be assumed to contain 500 ppm or greater PCBs in the absence of testing.

4. *Spill.* The term as used in this policy means both intentional and

unintentional spills, leaks, and other uncontrolled discharges where the release results in any quantity of PCBs running off or about to run off the external surface of the equipment or other PCB source, as well as the contamination resulting from those releases. This policy applies to spills of 50 ppm or greater PCBs. The concentration of PCBs spilled is determined by the PCB concentration in the material spilled as opposed to the concentration of PCBs in the material onto which the PCBs were spilled. Where a spill of untested mineral oil occurs, the oil is presumed to contain greater than 50 ppm, but less than 500 ppm PCBs, and is subject to the relevant requirements of this policy.

5. *Residential/commercial areas.* Residential/commercial areas are those areas where people live or reside, or where people work in other than manufacturing or farming industries. Residential areas include housing and the property on which housing is located, as well as playgrounds, roadways, sidewalks, parks and other similar areas within a residential community. Commercial areas are typically accessible to both members of the general public and employees and include public assembly properties, institutional properties, stores, office buildings, and transportation centers.

6. *Outdoor electrical substations.* Outdoor electrical substations are outdoor, fenced-off, and restricted access areas used in the transmission and/or distribution of electrical power. Outdoor electrical substations restrict public access by being fenced or walled off as defined at 40 CFR 761.30(1)(1)(ii). For purposes of this TSCA Policy, outdoor electrical substations are defined as being located at least 0.1 kilometer (km) from a residential/commercial area. Outdoor fenced-off and restricted access areas used in the transmission and/or distribution of electrical power which are located less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.

7. *Other restricted access (nonsubstation) locations.* Other restricted access (nonsubstation) locations are areas other than electrical substations that are at least 0.1 km from a residential/commercial area and limited by man-made barriers (e.g., fences and walls) or substantially limited by naturally occurring barriers such as mountains, cliffs, or rough terrain. These areas generally include industrial facilities and extremely remote rural locations. (Areas where access is restricted but are less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.)

8. *Nonrestricted access areas.* A nonrestricted access area is any area other than restricted access, outdoor electrical substations, and other restricted access locations, as defined in paragraphs 5 and 6 of this unit. In addition to residential/commercial areas, these areas include unrestricted access rural areas (areas of low-density development and population where access is uncontrolled by either man-made barriers or naturally occurring barriers, such as rough terrain, mountains, or cliffs).

9. *High-contact residential/commercial surface.* A high-contact residential/commercial surface is a surface in a residential/commercial area which is repeatedly touched, often for relatively long periods of time. Doors, wall areas below 6 feet in height, uncovered flooring, windowsills, fencing, banisters, stairs, automobiles, and children's play areas, such as outdoor patios and sidewalks, are examples of high-contact residential/commercial surfaces. Examples of low-contact residential/commercial surfaces include interior ceilings, interior wall areas above 6 feet in height, roofs, asphalt roadways, concrete roadways, wooden utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components (e.g., aluminum/vinyl siding, cinder block, asphalt tiles), and pipes.

10. *High-contact industrial surface.* A high-contact industrial surface is a surface in an industrial setting which is repeatedly touched, often for relatively long periods of time. Manned machinery and control panels are examples of high-contact industrial surfaces. High-contact industrial surfaces are generally of impervious solid material. Examples of low-contact industrial surfaces include ceilings, walls, floors, roofs, roadways and sidewalks in the industrial area, utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components, indoor vaults, and pipes.

11. *Soil.* The term means all vegetation, soils and other ground media, including but not limited to sand, grass, gravel, and oyster shells. It does not include concrete and asphalt.

12. *Impervious solid surfaces.* The term means solid surfaces which are nonporous and thus unlikely to absorb spilled PCBs within the short period of time required for cleanup of spills under this policy. Impervious solid surfaces include, but are not limited to, metals, glass, aluminum siding, and enameled or laminated surfaces.

13. *Nonimpervious solid surfaces.* The term means solid surfaces which are porous and are more likely to absorb spilled PCBs prior to completion of the cleanup requirements prescribed in this policy. Nonimpervious solid surfaces include, but are not limited to, wood, concrete, asphalt, and plasterboard.

14. *Double wash/rinse.* The double wash/rinse procedural performance standard applied in this policy means a minimum requirement to cleanse solid surfaces (both impervious and non-impervious) two times with an appropriate solvent or other material in which PCBs are at least 5 percent soluble (by weight). A volume of PCB-free fluid sufficient to cover the contaminated surface completely must be used in each wash/rinse. The wash/rinse requirement does not mean the mere spreading of solvent or other fluid over the surface, nor does the requirement mean a once-over wipe with a soaked cloth. Precautions must be taken to contain any runoff resulting from the cleansing and to dispose properly of wastes generated during the cleansing.

15. *Standard wipe test.* For spills of high concentration PCBs on solid surfaces, this policy requires cleanup to numerical surface standards and sampling by a standard wipe test to verify that the numerical standards have been met. This definition constitutes the minimum requirements for an appropriate wipe testing protocol. A standard-size template (10 centimeters (cm) X 10 cm) will be used to delineate the area of cleanup; the wiping medium will be a gauze pad or glass wool of known size which has been saturated with hexane. It is important that the wipe be performed very quickly after the hexane is exposed to air. EPA strongly recommends that the gauze (or glass wool) be prepared with hexane in the laboratory and that the wiping medium be stored in sealed glass vials until it is used for the wipe test. Further, EPA requires the collection and testing of field blanks and replicates.

16. *Requirements and standards.* The term "requirements," as used in this policy means both the procedural responses and numerical decontamination levels set forth in this policy as constituting adequate cleanup of PCBs. The term "standards" means the numerical decontamination levels set forth in this policy.

17. *Spill area.* The term means the area of soil on which visible traces of the spill can be observed plus a buffer

BEST COPY AVAILABLE

zone of 1 foot beyond the visible traces. Any surface or object (e.g., concrete sidewalk or automobile) within the visible traces area, or on which visible traces of the spilled material are observed, is included in the spill area. This area represents the minimum area assumed to be contaminated by PCBs in the absence of precleanup sampling data and is thus the minimum area which must be cleaned.

18. *Spill boundaries.* The term means the actual area of contamination as determined by postcleanup verification sampling, or by precleanup sampling to determine actual spill boundaries. EPA can require additional cleanup when necessary to decontaminate all areas within the spill boundaries to the levels required in this policy (e.g., additional cleanup will be required if postcleanup sampling indicates that the area decontaminated by the responsible party, such as the spill area as defined in paragraph 13 of this unit, did not encompass the actual boundaries of PCB contamination).

## IV Requirements for PCB Spill Cleanup

### *A. General Requirements*

Unless expressly limited, the reporting, disposal, and precleanup sampling requirements in this unit apply to all spills of PCBs at concentrations of 50 ppm or greater which are subject to decontamination requirements under TSCA, including those spills listed in Unit II.A.1 through 6 which are excluded from the final cleanup standards in Units IV. B and C.

1. *Reporting requirements.* The following reporting is required in addition to applicable reporting requirements under the CWA or CERCLA. For example, under the National Contingency Plan all spills involving 10 lbs or more of PCB material must currently be reported to the National Response Center (1–800–424–8802). The requirements below are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on the governments as well as the regulated community.

a. Where a spill directly contaminates surface water, sewers, or drinking water supplies (see discussion under Unit II.A), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and obtain guidance for appropriate cleanup measures in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

b. Where a spill directly contaminates grazing lands or vegetable gardens (see discussion under Unit II.A), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and proceed with the immediate requirements specified in Unit IV.B or C, depending of the source of the spill, in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

c. Where a spill exceeds 10 pounds of PCB material (generally 1 gallon of PCB dielectric fluid) and is not addressed in paragraph 1.a. or b. of this unit, the responsible party will notify the appropriate EPA regional office and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after discovery, but in no case later than 24 hours after discovery. For purposes of the notification requirement, the 10 pounds are measured by the weight of the PCB-containing material spilled rather than by the weight of only the PCBs spilled.

d. Spills of 10 pounds of less which are not addressed in paragraphs 1. a. or b. of this unit must cleaned up in accordance with this policy (in order to avoid EPA enforcement liability), but notification of EPA is not required.

2. *Disposal of cleanup debris and materials.* All contaminated soils, solvents, rags, and other materials resulting from the cleanup of PCBs under this policy shall be properly stored, labeled, and disposed of in accordance with the provisions of 40 CFR 761.60.

3. *Determination of spill boundaries in the absence of visible traces.* For spills where there are insufficient visible traces yet there is evidence of a leak or spill, the boundaries of the spill are to be determined by using a statistically based sampling scheme.

### *B. Requirements for Cleanup of Low-Concentration Spills Which Involve Less Than 1 LB PCBs By Weight (Less Than 270 Gallons of Untested Mineral Oil)*

1. *Decontamination requirements.* Spills of low-concentrations PCBs (as defined in Unit III) which involve less than 1 pound of PCBs by weight (i.e., less than 270 gallons of untested mineral oil containing less than 500 ppm PCBs) shall be cleaned in the following manner:

a. Solid surfaces must be double washed/rinsed (as defined in Unit III) except that all indoor, residential surfaces other than vault areas must be cleaned to 10 micrograms per 100 square centimeters (100 $\mu g/cm^2$) by standard commercial wipe tests.

b. All soil within the spill area (i.e., visible traces of soil and a buffer of 1 lateral foot around the visible traces) must be excavated and the ground be restored to its original configuration by back-filling with clean soil (i.e., containing less than 1 ppm PCBs).

c. Requirements in paragraphs 1. a. and b. of this unit must be completed within 48 hours after the owner of the equipment, facility, or other source of PCBs (the responsible party) was notified or became aware of the spill.

2. *Effect of emergency or adverse weather.* Completion of cleanup may be delayed beyond 48 hours in case of circumstances including but not limited to, civil emergency, adverse weather conditions, lack of access to the site, and emergency operating conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Completion of cleanup may be delayed only for the duration of the adverse conditions. If the adverse weather conditions, or time lapse due to other emergency, have left insufficient visible traces, the responsible party must use a statistically based sampling scheme to determine the spill boundaries as required in Unit IV.A.3.

3. *Records and certification.* At the completion of cleanup, the responsible party or appropriate agent shall document the cleanup with records and certification of decontamination. The records and certification must be maintained for a period of 5 years. The records and certifiction shall consist of the following:

a. Indentification of the source of the spill, e.g., type of equipment.

b. Estimated or actual date and time of the spill occurrence.

c. The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

d. A brief description of the spill location.

e. Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of the sampling methodology used to establish the spill boundaries.

f. A brief description of the solid surfaces cleaned and of the double wash/rinse method used.

g. Approximate depth of soil excavation and the amount of soil removed.

h. A certification statement signed by the responsible party or his/her designated agent (e.g., a facility manager or foreman) stating that the cleanup

requirements have been met and that the information contained in the record is true to the best of his/her knowledge.

While not required for compliance with this policy, the following information would be useful if maintained in the records: (1) Additional pre- or postcleanup sampling: and (2) the estimated cost of the cleanup by man-hours, dollars, or both.

*C. Requirements for Cleanup of High-Concentration Spills and Low-Concentration Spills Involving 1 LB or More PCBs By Weight (270 Gallons or More of Untested Mineral Oil)*

Cleanup of low-concentration spills involving 1 lb or more PCBs by weight, and of all other spills of regulated materials shall be considered complete if all of the immediate requirements, cleanup standards, sampling, and recordkeeping requirements below are met.

1. *Immediate requirements.* The following four actions must be taken as quickly as possible and within no more than 24 hours (or within 48 hours for PCB Transformers) after the owner of the equipment or container from which the spill occurred, or other responsible representative of the owner such as a facility manager, was notified or became aware of the spill, except that actions described in paragraphs 1. b., c., and d. of this unit may be delayed beyond 24 hours if circumstances (e.g., civil emergency, hurricane, tornado, or other similar adverse weather conditions, lack of access due to physical impossibility, or emergency operating conditions) so require for the duration of the adverse conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Owners of spilled PCBs who have delayed cleanup because of these types of circumstances must keep records documenting the fact that circumstances precluded rapid response. The responsible party shall:

a. Notify the EPA regional office and the NRC as required by Unit IV.A.1 or by other applicable statutes.

b. Effectively cordon off or otherwise delineate and restrict an area encompassing any visible traces plus a 3-foot buffer, and place clearly visible signs advising persons to avoid the area, to minimize the spread of contamination as well as the potential for human exposure.

c. Record and document the area of visible contamination, noting the extent of the visible trace areas and the center of the visible trace area. If there are no visible traces, the responsible party shall record this fact and contact the regional office of the EPA for guidance in completing statistical sampling of the spill area to establish spill boundaries.

d. Initiate cleanup of all visible traces of the fluid on hard surfaces and initiate removal of all visible traces of the spill on soil and other media, such as gravel, sand, oyster shells, etc.

If there has been a delay in reaching the site and there are insufficient visible traces of PCBs remaining at the spill site, the owner of the PCBs must estimate (based on the amount of material missing from the equipment or container) the area of the spill and immediately cordon off the area of suspect contamination. The owner must then utilize a statistically based sampling scheme to identify the boundaries of spill area as soon as practicable.

Although this policy requires certain immediate actions, as described above, EPA is not placing a time limit on completion of the cleanup effort since the time required for completion will vary from case to case. However, the Agency expects that decontamination will be achieved promptly in all cases and will consider the promptness of completion in determining whether a responsible party made good faith efforts to clean up in accordance with this policy.

2. *Requirements for decontaminating spills in outdoor electrical substations.* Spills which occur in outdoor electrical substations (as defined in Unit III) shall be decontaminated in accordance with paragraphs a. and b. of this unit. Conformance to the cleanup standards in paragraphs a. and b. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the non-restricted access requirements in Unit IV.C.4.

a. Contaminated solid surfaces (both impervious and non-impervious) shall be cleaned to a PCB concentration of 100 $\mu g/100\ cm^2$ (as measured by standard wipe tests).

b. At the option of the responsible party, soil contaminated by the spill will be cleaned: (1) To 25 ppm PCBs by weight, or (2) to 50 ppm PCBs by weight provided that a label or notice is visibly placed in the area. Upon demonstration by the responsible party that cleanup to 25 ppm or 50 ppm will jeopardize the integrity of the electrical equipment at the substation, the EPA regional office may establish an alternative cleanup method or level and place the responsible party on a reasonably timely schedule for completion of cleanup.

3. *Requirements for decontaminating spills in other restricted access areas.* Spills which occur in restricted access locations other than outdoor electrical substations (as defined in Unit III) shall be decontaminated in accordance with paragraphs 3.a through e. of this unit. Conformance to the cleanup standards in paragraphs a. through e. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as restricted access areas other than outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access area requirements under Unit IV.C.4.

a. High-contact solid surfaces (see definition of high-contact industrial surfaces in Unit III) shall be cleaned to 10 $\mu g/100\ cm^2$ (as measured by standard wipe tests).

b. Low-contact, indoor, impervious solid surfaces will be decontaminated to 10 $\mu g/100\ cm^2$.

c. At the option of the responsible party, low-contact, indoor, nonimpervious surfaces will be cleaned either: (1) To 10 $\mu g/100\ cm^2$; or (2) to 100 $\mu g/100\ cm^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if encapsulation failed at a particular site this failure would create an imminent hazard.

d. Low-contact, outdoor surfaces (both impervious and non-impervious) shall be cleaned to 100 $\mu g/100\ cm^2$.

e. Soil contaminated by the spill will be cleaned to 25 ppm PCBs by weight.

4. *Requirements for decontaminating spills in non-restricted access areas.* Spills which occur in nonrestricted access locations (as defined in Unit III) shall be decontaminated in accordance with paragraphs 4.a. through e. of this unit. Conformance to the cleanup standards in paragraphs 4.a. through e. of this unit shall be verified by postcleanup sampling as specified in Unit V. At such times as outdoor electrical substations and other restricted access areas are converted to another use, the spill site shall be cleaned up to the non-restricted access area requirements.

a. Furnishings, toys, and other easily replaceable household items shall be disposed of in accordance with the provisions of 40 CFR 761.60 and replaced by the responsible party.

b. Indoor solid surfaces and high-contact outdoor solid surfaces (see definition of high contact residential/

commercial surfaces in Unit III) shall be cleaned to 10 $\mu g/100\ cm^2$ (as measured by standard wipe tests).

c. Indoor vault areas, and low-contact, outdoor, impervious solid surfaces shall be decontaminated to 10 $\mu g/100\ cm^2$.

d. At the option of the responsible party, low-contact, outdoor, nonimpervious solid surfaces shall be either: (1) cleaned to 10 $\mu g/100\ cm^2$; or (2) cleaned to 100 $\mu g/100\ cm^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

e. Soil contaminated by the spill will be decontaminated to 10 ppm PCBs by weight, provided that soil is excavated to a minimum depth of 10 inches. The excavated soil will be replaced with clean soil (i.e., containing less than 1 ppm PCBs), and the spill site will be restored (e.g., replacement of turf).

5. *Records.* The responsible party or appropriate agent shall document the cleanup with records of decontamination. The records must be maintained for a period of 5 years. The records and certification shall consist of the following:

a. Identification of the source of the spill (e.g., type of equipment.)

b. Estimated or actual date and time of the spill occurrence.

c. The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

d. A brief description of the spill location and the nature of the materials contaminated (this information should include whether the spill occurred in an outdoor electrical substation, other restricted access location, or in a nonrestricted access area).

e. Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of sampling methodology used to establish the spill boundaries.

f. A brief description of the solid surfaces cleaned.

g. Approximate depth of soil excavation and the amount of soil removed.

h. Postcleanup verification sampling data and, if not otherwise apparent from the documentation, a brief description of the sampling methodology and analytical technique used.

While not required for compliance with this policy, information on the estimated cost of cleanup (by man-hours, dollars, or both) would be useful if maintained in the records.

EPA will soon issue for publication in the **Federal Register** a proposed rule to require these recordkeeping measures to facilitate EPA's monitoring of PCB spill cleanups.

## V. Sampling Requirements

Postcleanup sampling is required to verify the level of cleanup under Unit IV.C. 2 through 4. The responsible party, or designated agent, may use any statistically valid, reproducible, sampling scheme (either random samples or grid samples), provided that the requirements of paragraphs 1. and 2. of this unit are satisfied.

1. The sampling area is the greater of (1) an area equal to the area cleaned plus an additional 1-foot boundary, or (2) an area 20 percent larger than the original area of contamination.

2. The sampling scheme must ensure 95 percent confidence against false positives.

3. The number of samples must be sufficient to ensure that areas of contamination of a radius of 2 feet or more within the sampling area will be detected, except that the minimum number of samples is 3 and the maximum number of samples is 40.

4. The sampling scheme must include calculation for expected variability due to analytical error.

EPA recommends the use of the sampling scheme developed by the Midwest Research Institute (MRI) for use in EPA enforcement inspections: "Verification of PCB Spill Cleanup by Sampling and Analysis." Guidance for the use of this sampling scheme is available in the MRI report "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup." Both the MRI sampling scheme and the guidance document are available from the TSCA Assistance Office at the address and telephone number given under "FOR FURTHER INFORMATION CONTACT." The major advantage of this sampling scheme is that it is designed to characterize the degree of contamination within the entire sampling area with a high degree of confidence while using fewer samples than any other grid or random sampling scheme. This sampling scheme also allows some sites to be characterized on the basis of composite samples.

At its discretion, EPA may take samples from any spill site. If EPA's sampling indicates that the remaining concentration level exceeds the required level, EPA will require further cleanup. For this purpose, the numerical level of cleanup required for spills cleaned in accordance with Unit IV.B are deemed to be the equivalent of numerical cleanup requirements required for cleanups under Unit IV.C. 2 through 4. EPA may sample using its best engineering judgment, a statistically valid random or grid sampling technique, or both. When using engineering judgment or random "grab" samples, EPA will take into account that there are limits on the power of a grab sample to dispute statistically based sampling of the type required of the responsible party. EPA headquarters will provide guidance to the EPA regions on the degree of certainty associated with various grab sample results.

## VI. EPA Enforcement and the Effect of Compliance With This Policy

Although a spill of material containing 50 ppm or greater PCBs is considered improper PCB disposal, this policy establishes requirements that EPA considers to be adequate cleanup of the spilled PCBs. Cleanup in accordance with this policy means compliance with the procedural as well as the numerical requirements of this policy. Compliance with this policy creates a presumption against both enforcement action for penalties and the need for further cleanup under TSCA. The Agency reserves the right, however, to initiate appropriate action to compel cleanup where, upon review of the records of cleanup, EPA finds that the decontamination levels in the policy have not been achieved. The Agency also reserves the right to seek penalties where the Agency believes that the responsible party has not made a good faith effort to comply with all provisions of this policy, such as prompt notification of EPA of a spill, recordkeeping, etc.

EPA's exercise of enforcement discretion does not preclude enforcement action under other provisions of TSCA or any other Federal statute. This includes, even in cases where the numerical decontamination levels set forth in this policy have been met, civil or criminal action for penalties where EPA believes the spill to have been the result of gross negligence or knowing violation.

The TSCA policy has been reviewed by the Office of Management and Budget.

This concludes EPA's TSCA policy. Unit VII, which follows, contains the rationale for the policy, the data on which the policy was based, and the

areas in which EPA lacks data. EPA solicits information to fill those gaps.

## VII. Development of the TSCA Spill Cleanup Policy

As will become apparent in the discussion below, there are gaps in the information which was available to the Agency in developing the TSCA policy. The EPA designed the TSCA policy to enable the Agency and the regulated industry to gather data for filling the gaps. In all cases, through the cleanup levels established in the TSCA policy and by retaining authority to require additional cleanup where warranted, EPA has placed sufficient controls on the party responsible for cleanup to ensure that future PCB spills will be cleaned to levels that do not pose an unreasonable risk of injury to human health or the environment. The TSCA policy reflects the Agency's best judgment in light of available information. However, the Agency welcomes comment on, and additional relevant information about, the TSCA policy.

### A. Risks Posed by Leaks and Spills of PCBs

1. *Frequency, amount, and nature of leaks and spills.* The TSCA policy establishes the measures which EPA considers to constitute adequate cleanup of PCB contamination resulting from activities regulated under TSCA. EPA expects that the TSCA policy will be most frequently applied to leaks and spills of PCBs which occur during the use of authorized equipment such as electrical transformers and capacitors. Thus, EPA's evaluation of the risks posed by spills of PCBs and the costs associated with cleanup following these spills focuses primarily on leaks and spills of PCBs from electrical transformers and capacitors.

EPA estimates that there are 121,000 (askarel) PCB Transformers currently in use, over 20 million mineral oil transformers contaminated with PCBs currently in use, and over 2.8 million large PCB Capacitors currently in use. Available data indicate that on an annual basis, about 3.3 percent of (askarel) PCB Transformers in use will leak or spill PCBs. The average PCB leak or spill from a PCB Transformer is 5.3 gallons, or about 66 pounds of PCBs. On an annual basis, EPA expects that about 264,000 pounds of PCBs are leaked or spilled into the environment from PCB Transformers.

EPA expects that about 17,000 of these PCB Transformers are located in electrical substations, where 37,000 pounds of spilled PCBs would be expected to be released each year. EPA expects that about 27,000 PCB Transformers are located in industrial facilities, where an estimated 59,000 pounds of PCBs are spilled each year. Finally, 77,000 PCB Transformers are located in other areas (most likely, in or near commercial buildings), where an estimated 168,000 pounds of PCBs are released each year.

EPA expects that of the over 20 million PCB-containing mineral oil transformers in use, 76 percent are located in residential neighborhoods and public areas (i.e., schools, shopping centers, etc.). The majority of these transformers contain less than 500 parts per million PCBs. Available data indicate that the average leak or spill of PCBs from mineral oil transformers contains less than one-tenth of a tablespoon of PCBs, or 0.08 ounce of PCBs. On an annual basis, EPA expects that 627 pounds of PCBs are spilled from mineral oil transformers in residential and public areas. The remaining mineral oil transformers are located in outdoor electrical substations, industrial facilities, and rural areas. EPA estimates that less than 200 pounds of PCBs are leaked from these transformers each year.

Based on available data, EPA estimates that there are over 2.8 million PCB Capacitors in use. Of these 2.8 million capacitors, EPA estimates that 1.6 million are in use in substations or generating facilities and 1.2 million are inside buildings and on utility poles throughout the distribution system. Of the 1.6 million PCB Capacitors in use in electrical substations, EPA expects that over 12,000 leak each year, releasing about 200,000 pounds of PCBs. Of the 1.2 million PCB Capacitors in use inside buildings and on utility poles, EPA expects that over 9,000 leak each year, releasing about 154,000 pounds of PCBs.

Electrical transformers generally contain 100 times the amount of PCBs contained within PCB Capacitors. PCB Transformers typically contain between 300 and 500 gallons of PCB dielectric fluid, while PCB Capacitors generally contain about 3 gallons of PCB dielectric fluid. Unlike PCB Transformer spills, the majority of PCB Capacitor spills involve the violent rupture of the capacitor and the spraying of PCBs. Thus, PCBs spilled from energized capacitors are generally more widely distributed in the spill area than PCBs spilled from transformers. Available data indicate that for over 80 percent of capacitor spills, PCBs are distributed as far as 11 feet from the center of the spill.

PCBs spilled from transformers are more likely to leak from gaskets and valves, and the area contaminated from these types of spills is more directly related to the amount of spilled material than is the case for explosive ruptures, such as occur from energized capacitors. EPA conducted a crude experiment in order to predict the maximum lateral spread of PCBs from other than explosive ruptures of electrical transformers; the maximum spread of water on low-porosity surfaces was tested and assumed to be equivalent to the maximum lateral spread of PCBs and PCB-contaminated oils on soil. EPA found that for every gallon of material spilled, one could expect a maximum area of contamination of about 3 square meters ($m^2$). Although with time one would see a slight increase in lateral spread (assuming no runoff), for the most part, a 1 gallon spill of PCB material from a transformer cleaned up within 2 weeks of the spill would not be expected to contaminate greater than a $3m^2$ area. This assumes of course that the material has not been tracked into other areas in the interim and that weather conditions have not caused further lateral spread. Spills of PCBs from deenergized capacitors, other authorized equipment, and containers of PCBs would be expected to behave in a similar manner to leaks and spills of PCBs from non-explosive transformer spills.

To summarize, the total amount of PCBs released from electrical transformers and capacitors each year from leaks and spills of PCBs is estimated at about 620,000 pounds (out of an estimated 163 million pounds of PCBs in use in this equipment). Of these PCBs, 38 percent are spilled in electrical substations and 62 percent of these PCBs are spilled in residential/commercial areas, rural areas, and industrial facilities. The majority of spilled PCBs are spilled from capacitors, and capacitor spills typically result from violent ruptures and lead to the distribution of PCBs at distances as far away as 11 feet from the center of the spill (total average spill area is about 380 square feet).

PCBs spilled from deenergized capacitors, transformers (excluding transformers involved in fires), other authorized equipment, and PCB Containers generally involve nonviolent ruptures and the maximum spread of the spilled material can be estimated by assuming $3m^2$ of contamination per gallon of spilled material.

2. *Toxicity and environmental persistence.* EPA has concluded that PCBs are both toxic and persistent. In earlier rulemakings and Agency PCB health effects review documents, EPA has determined that persons exposed to PCBs can develop chloracne (a

disfiguring skin illness), and that based on laboratory animal data, there is a potential for reproductive effects and developmental toxicity as well as oncogenicity in humans exposed to PCBs. EPA has also concluded that PCBs are resistant to degradation and that they bioaccumulate and bioconcentrate in the fatty tissue of organisms. PCBs are very stable compounds which can persist for years when released into the environment. A more detailed discussion of EPA's findings on the health effects of PCBs can be found in the July 10, 1986 **Federal Register** (51 FR 28172).

Recently, the Office of Health and Environmental Assessment (OHEA) at EPA developed draft health advisories for PCBs in soil for use by EPA's Office of Emergency and Remedial Response (OERR). These health advisory levels are to be used as guidelines for initiating removal action for sites contaminated with PCBs. The draft health advisories developed by OHEA address both the oncogenic risks and other than oncogenic risks posed to humans by exposures to PCBs in soils at various levels.

The cancer potency slope factor for PCBs has been estimated by EPA's Cancer Assessment Group (CAG) and the Office of Toxic Substances (OTS) to be 4.34 $(mg/kg/day)^{-1}$ and 3.57 $(mg/kg/day)^{-1}$, respectively. An average of these values (4.0 $(mg/kg/day)^{-1}$) was used in the OHEA draft health advisories as the PCB cancer potency factor. The OHEA calculation of the human dose associated with a $1\times10^{-6}$ level of oncogenic risk is 0.0175 microgram/day. The Agency's assessment of risks associated with dermal and inhalation exposure to PCBs on solid surfaces was also based upon a cancer potency slope factor of 4.0 $(mg/kg/day)^{-1}$ for PCBs.

3. *Potential for exposure to spilled PCBs.* In evaluating potential routes of exposure to PCBs which are leaked and spilled, EPA looked at the potentional for exposure in nonrestricted access areas, restricted access areas, and restricted access, outdoor electrical substations. Further, since the TSCA policy is designed to apply to the large majority of spill situations, EPA focused on the routes of potential exposure associated with typical spill situations. Unique spill scenarios which present greater potential exposures or additional routes of exposure are excluded from application of the cleanup levels in the TSCA policy.

In developing the cleanup standards for PCB spills into soil and other ground media, EPA relied primarily on the exposure and risk analysis in the OHEA health advisories for PCBs in soil. Exposure estimates used to evaluate the risk associated with various cleanup standards for solid surfaces such as metals, wood, asphalt, and concrete were developed by the EPA's Office of Toxic Substances. Neither the OHEA assessment for PCBs in soil nor the OTS estimates of exposure to PCBs in soil assume PCB contamination of other potential exposure pathways such as surface water, drinking water supplies, sewer systems, vegetable gardens, or grazing lands.

EPA believes that the large majority of spills which occur after the effective date of the TSCA policy will not involve these additional routes of exposure. Those exceptional spill situations which would result in these additional routes of exposure are excluded from the TSCA policy and must be cleaned up to levels determined by the appropriate EPA regional office. EPA excluded these spill situations from the scope of the policy because such spills may have to be cleaned up to lower levels in recognition of the potential for additional human exposures. Whether or not more stringent cleanup standards are necessary for these exceptional spill situations, the additional routes of potential exposure require some degree of evaluation on a case-by-case basis before making a final decision on appropriate cleanup levels in such circumstances.

Further, spills of PCBs into sand, soil, gravel, and other similar materials in special areas within the residential/commercial setting (i.e., areas where people may come into repeated daily contact, such as children's sandboxes, spills which pose particular concerns about future ground water contamination, spills which involve the combustion of PCBs (and the possible formation of toxic combustion byproducts such as polychlorinated dibenzofurans (PCDFs) and polychlorinated dibenzodioxins (PCDDs)), and spills onto farmland may be required to be cleaned up to lower levels, in recognition of the increased potential for exposure. The EPA regional offices should be contacted for guidance on appropriate cleanup for these types of spills.

The OTS dermal exposure assessments for PCBs on solid surfaces such as metal, concrete, and asphalt assume that PCBs are transferred to the skin at a relatively high rate (50 percent or more). This assumption is based on the results of an EPA-sponsored study on the transfer of PCBs from glass and unpainted metal to skin (human skin and pig skin) upon contact. EPA currently lacks data on the rate of transfer of PCBs from rougher, porous surfaces such as concrete, asphalt or wood to human skin. Although EPA expects that the transfer rate may be significantly lower for rough, porous surfaces, in the absence of more extensive data, EPA has assumed that the transfer rate would be the same as for glass and unpainted steel.

a. *Exposures in nonrestricted access areas.* Areas which do not limit public access by man-made or naturally occurring barriers (i.e., residential, commercial, and unrestricted access rural areas) generally present the greatest potential for a high degree of human exposure to spilled PCBs. Spills of PCBs in residential/commercial areas may involve: (1) The contamination of soil, grass, sand, gravel, and other ground materials; (2) the contamination of outdoor solid surfaces such as metal, concrete, asphalt, and wood; (3) the contamination of indoor solid surfaces such as ceilings, walls, and floors; (4) the contamination of indoor vault areas; and (5) the contamination of household items such as clothing, toys, and patio furniture.

Spills of PCBs in unrestricted access rural areas may involve the contamination of materials like those listed under paragraphs (1) and (2) of this unit. Since human exposures to PCBs spilled in unrestricted access rural areas may at times approach levels of exposure in residential/commercial areas, EPA has included unrestricted access rural areas under the standards for residential/commercial spills. Typical exposures would, however, be expected to be lower in rural areas compared to typical exposures in the residential/commercial setting.

i. *Exposures from outdoor spills into soil, sand, gravel, and other similar materials.* The principal routes of exposure to PCBs spilled into soil in residential areas would be through inhalation and ingestion. Dermal exposures may also occur, although EPA expects that the PCBs will adsorb to the soil particles, reducing the rate of dermal absorption. OHEA has calculated the expected levels of human exposure to PCBs through inhalation and ingestion when PCBs are present at different levels in soil.

The OHEA assessment concludes that a PCB level of 1 to 6 ppm PCBs in soil in a residential/commercial area would be associated with a $1\times10^{-5}$ level of oncogenic risk. OHEA assumed that the contaminated area is 0.5 acre (18,225 square feet), that 0.6 gram of soil is ingested per day at ages 0 to 6, and that the population is exposed for 50 percent of their lifetime. The placement of a 10-

inch cap of clean soil on top of soil containing 1 to 6 ppm PCBs reduces the expected level of oncogenic risk by an order of magnitude (to $1\times10^{-6}$).

ii. *Exposures to spills onto solid surfaces*—a. *Outdoor surfaces.* PCBs spilled onto outdoor solid surfaces such as metal, concrete, asphalt, or utility poles in residential areas would result in some inhalation exposures and infrequent dermal exposure. For solid surfaces to which people would be expected to have frequent contact, higher levels of dermal exposure would be expected.

Examples of low-contact outdoor solid surfaces include asphalt and concrete roadways, roof areas, unmanned machinery, concrete pads beneath electrical equipment, curbing, and external structural building components. The estimated level of oncogenic risk associated with exposures to low-contact outdoor surfaces in residential/commercial settings (using reasonable worst-case assumptions about exposures to surface levels of 10 $\mu$g/100 cm$^2$) is between $1\times10^{-5}$ and $1\times10^{-6}$.

Sidewalks and patios where children play, fences, and automobiles are examples of residential/commercial surfaces to which people may come into frequent daily contact. The estimated level of oncogenic risk associated with exposures to such higher contact outdoor surfaces in residential/commercial settings (using reasonable worst-case assumptions about exposures to surfaces levels of 0.5 to 1.0 $\mu$g/100 cm$^2$) is between $1\times10^{-5}$ and $1\times10^{-6}$.

b. *Indoor surfaces.* Spill onto indoor hard surfaces may occur when outdoor electrical equipment ruptures catastrophically and sprays PCBs into a room through an open window or door. Spills onto indoor hard surfaces may also occur when electrical equipment inside a building leaks or spills PCBs and the leaked or spilled PCBs are distributed outside the electrical equipment room into other areas of the building through ventilation equipment and ductwork or by tracking. Inhalation exposures and dermal exposures would be expected following a spill of PCBs onto an indoor hard surface. Based on EPA's assessment of the risks posed by spills of PCBs onto indoor hard surfaces, dermal exposures would be expected to be the exposure route of highest concern (inhalation exposures to residual indoor PCB levels of 10 $\mu$g/100 cm$^2$ are associated with a $1\times10^{-6}$ level of oncogenic risk, while dermal exposures to this same level of PCBs on a low-contact indoor surface are associated with a $1\times10^{-5}$ level of oncogenic risk).

From a perspective of dermal exposure, there are two types of potentially contaminated surfaces: low-contact surfaces and high-contact surfaces. Low-contact surfaces are those which are infrequently touched. In a residential/commercial setting, ceilings and wall areas above 6 feet in height would be considered low-contact surfaces. High-contact surfaces are those which are repeatedly contacted, often for relatively long periods of time. High-contact surfaces in a residential/commercial area include uncovered flooring, wall areas below 6 feet in height, stairways, bannisters, and railings. The estimated level of oncogenic risk associated with dermal exposures to 1 $\mu$g/100 cm$^2$ of PCBs on low-contact indoor hard surfaces is between $1\times10^{-5}$ and $1\times10^{-6}$. The National Institute of Occupational Safety and Health (NIOSH) has reported that 0.5 $\mu$g/100 cm$^2$ is background level of PCBs on indoor hard surfaces, and this level of residual contamination on a high-contact indoor hard surface would be associated with a level of oncogenic risk between $1\times10^{-5}$ and $1\times10^{-6}$.

c. *Easily replaceable/high-contact items.* PCBs released from electrical transformers or capacitors in indoor residential/commercial areas may result in the contamination of nonstructural, easily replaceable materials to which people have repeated daily contact (i.e., clothing, household furnishings, paper, notepads, office supplies, patio furniture, toys, swingsets, etc.). Since PCBs are expected to be readily absorbed through the skin, dermal contact with PCBs spilled onto these types of high-contact materials could result in significant exposures. Materials such as paper, clothing, and toys would themselves absorb the PCBs and be difficult, if not impossible, to clean completely. These materials would, however, be expected to release the PCBs slowly, resulting in continued dermal exposures to low levels of PCBs over a prolonged period of time. Depending upon the extent of contamination, inhalation exposures from these types of contaminated high-contact materials could also be significant.

iii. *Spills in indoor vault areas*—a. *Transformer vault areas and electrical equipment rooms.* One of the more common areas of PCB contamination from leaks and spills of PCBs from inuse electrical equipment are indoor transformer vault areas and electrical equipment rooms. Exposures to PCBs may occur through both inhalation and dermal routes, although since many transformer vaults and electrical equipment rooms are well ventilated (reducing airborne PCB concentrations in the vaults), the route of exposure of highest concern in an electrical equipment room would be the dermal route. From the perspective of inhalation exposures alone, residual PCB levels of 10 $\mu$g/100 cm$^2$ would be associated with oncogenic risks below $1\times10^{-6}$. Dermal exposures to PCBs on floors, ceilings, and walls in vault areas would be expected to be less than dermal exposures to PCBs on low-contact surfaces in residential/commercial areas because of less frequent contact with the contaminated surfaces. Residual PCB levels (on ceilings, floors, and walls) of 10 $\mu$g/100 cm$^2$ in vault areas would be associated with a $1\times10^{-5}$ to $1\times10^{-6}$ level of oncogenic risk.

b. *Exposures in industrial and other restricted access (nonsubstation) locations.* PCB spills in the industrial setting may result in: (1) Outdoor contamination of soil, sand, gravel, and other similar materials; (2) contamination of both indoor and outdoor hard surfaces; and (3) indoor contamination of vault areas and electrical equipment rooms.

i. *Outdoor contamination of soil, sand, etc.* The principal route of human exposure to PCBs from a spill in soil is through the inhalation route. Soil ingestion and dermal contact with soil would not be expected to be significant routes of exposure at a restricted access site. PCB levels in soil of 25 ppm would present less than a $1\times10^{-7}$ level of oncogenic risk to people on-site who work more than 0.1 km from the actual spill area (assuming that the spill area is less than 0.5 acre).

ii. *Contamination of hard surfaces.* Hard surfaces which may become contaminated in an industrial area include items such as lathes and other types of industrial equipment and machinery, in addition to surfaces such as asphalt, concrete, and wood. In industrial areas, outdoor hard surfaces such as concrete, asphalt, and structural building components would not be expected to result in as frequent exposures as may occur for these surfaces in a residential/commercial area. Thus, residual PCB levels on these outdoor industrial surfaces of 100 $\mu$g/100 cm$^2$ (following cleanup of an "askarel" spill) would not be expected to result in significant exposures.

Indoor contamination of structural building components in industrial areas (e.g., ceilings, walls, and floors) and contamination of vaults or electrical equipment rooms would result in some inhalation exposures, but the principal route of exposure would be expected to be through dermal contact. Residual

PCB levels of 10 μg/100 cm² on indoor low-contact surfaces in industrial areas would not be expected to result in significant exposures.

The highest exposure to surface contamination in an industrial setting would be to industrial workers using machinery contaminated with PCBs. Such workers may experience repeated dermal exposures to PCBs, and others may also experience such exposures if this equipment is sold, transported and/or reused. Dermal contact with PCBs may also lead to oral exposures during meals and while smoking. Depending upon the level of contamination, inhalation may also be significant, since workers using machinery are expected to be in close proximity to the equipment during its use. Higher levels of inhalation exposure can be anticipated if the contaminated equipment is operated under conditions of elevated temperature, since this would increase the volatility of any PCBs present on the equipment. Residual PCB levels of 0.5 μg/100 cm² (reported by NIOSH as the background level for PCBs) on these types of high-contact surfaces would not result in significant exposures.

c. *Exposures in outdoor electrical substations.* PCBs released from transformers or capacitors in fenced-off electrical substations pose little risk of directly exposing members of the general population to PCBs. Electrical substations are typically located at distances greater than 0.1 kilometer from population areas and are generally fenced off to restrict access to authorized maintanance personnel only. Dermal and inhalation exposures by maintenance workers would, however, occur during servicing activities, an oral exposures may result from the transfer of PCBs from the hands to the mouth during meals or while smoking. Populations located at distances of greater than 0.1 kilometer from the site of the spill may incur inhalation exposures. However, the OHEA assessment document indicates that PCB levels in soil between 220 and 1,300 ppm present a $1 \times 10^{-7}$ level of oncogenic risk to populations located at distances of 1 km or more from spill areas. Thus, PCB levels of 50 ppm in soil in an outdoor electrical substation would not be expected to result in significant exposures to the general population.

PCB spills onto hard surfaces in outdoor electrical substations may result in inhalation exposures and dermal exposures primarily to maintenance workers. The general population would not be expected to incur significant inhalation exposures, and dermal contact would be unlikely given the fact that these areas are fenced off and have restricted access. Residual PCB levels of 100 μg/100 cm² would not be expected to result in significant exposures to either the occasional maintenance worker or the general population.

4. *Conclusions about PCB leaks and spills.* Leaks and spills of PCBs from PCB Equipment in residential/commercial areas present the greatest potential for human exposure, when compared to other types and locations of PCB spills. The potential for exposure is high. Oral, dermal, and inhalation exposures to PCBs from spills in residential areas are likely, expecially among children. Human exposures to PCBs spilled in unrestricted access rural areas also may at times be comparable to exposures in the residential setting. Availab[illegible]s data on leaks and spills of PCBs indicate that the majority of PCBs spilled from PCB Equipment are spilled from PCB Capacitors and that there are many of these capacitors in use in residential areas.

Potential exposure to spilled PCBs or residual PCBs after cleanup of a spill in a restricted-access area is generally limited to industrial workers. Some types of contamination in restricted-access industrial facilities pose worker exposures as great as residential/commercial exposures. For example, contamination of control panels or manually operated machinery can result in frequent, if not continuous, dermal exposure to industrial workers. Other than any high-contact, manned equipment which may be located outdoors, spills outdoors in an industrial setting will result in a lesser degree of inhalation exposure to workers and the general population than similar spills in residential/commercial settings.

Spills in outdoor electrical substations pose the lowest potential exposures. Outdoor electrical substation are generally fenced off to restrict access to authorized personnel only. There is some possibility of dermal and inhalation exposures to maintenance workers. However, exposure to maintenance workers is less likely to be of a continuous or frequent nature than exposures to industrial workers.

*B. Costs of Cleanup*

1. *Factors influencing the cost of cleanup.* The cleanup of spilled PCBs from transformers and capacitors typically consists of a number of different measures: (1) Securing the spill site, (2) formulating a spill cleanup plan based on the nature of the spill, (3) removing or repairing the leaking equipment, (4) removing contaminated material (e.g., soil), (5) cleaning contaminated surfaces and decontaminating or removing equipment contaminated during cleanup, (6) properly disposing of contaminated materials, (7) ensuring proper cleanup by sampling and chemical analysis, and (8) restoring the site.

The costs associated with phases (1), (2), (3), and (8) above are fairly fixed and will not vary significantly with more, less stringent cleanup requirements. The costs associated with cleanup phases (4), (5), (6), and (7) above are the more variable elements influencing the total cost of cleanup and are affected by several factors, including the concentration of PCBs spilled, the amount of PCB material spilled, the size or boundary of the spill area (often influenced by the time lapse between spill occurrence and cleanup), and the nature and stringency of cleanup requirements.

According to information gathered by OTS staff in telephone surveys and, in a few cases, written comments, the two most significant cost factors associated with various target cleanup levels are: (1) The number of times cleanup crews have to be sent to the site; and (2) whether or not postcleanup sampling is required. The imposition of sampling costs automatically has the effect of requiring that cleanup crews have to make at least two trips to the site (at least once to clean and at least once to restore the site after the sampling results have verified cleanup). The more stringent cleanup requirements are, the more likely that more than one attempt at cleanup will have to be made and that more than one set of samples will have to be taken.

Thus, the effect of stringent cleanup requirements coupled with requirements for postcleanup verification by sampling is to (1) mitigate exposures by ensuring a greater degree of cleanup; (2) exacerbate exposures by leaving the site open for a longer period of time; and (3) increase the costs of complying with the policy. EPA weighed these countervailing considerations in establishing the various cleanup requirements in the TSCA policy. The balance between the benefits associated with potential risk reductions on the one hand, and potential additional risks and costs imposed by more stringent requirements on the other, weigh out differently depending on the potential for exposure and the degree of certainty that less stringent requirements will result in adequate cleanup.

As is discussed below, EPA has limited data on the cost of cleanup, particularly in the area of cleaning solid

surfaces such as metal or concrete to various levels. Further, the data that are available cannot readily be analyzed to determine the impact of variables other than the degree of cleanup and the extent of sampling performed at the site (e.g., amount spilled, types of ground materials or surfaces contaminated, and time lapse between spill occurrence and cleanup). EPA has evaluated available data and estimated the ranges of incremental costs associated with cleanup to various levels.

a. *Cleanup of spills in soil, sand, gravel, etc.* Available information suggests that the cost of cleanup of soil to "background" levels of PCBs can be 3 to 15 times greater than the cost of cleanup to 50 ppm. Further, since PCBs are ubiquitous in the enviroment and are found at low concentrations throughout the world (in areas where PCBs have never been used), target levels for PCBs spill cleanup which are lower than background levels in certain areas can result in very high cleanup costs. Large volumes of soil may have to be excavated for the removal of what may ultimately be only 1 to 2 pounds of PCBs. For example, there are about 2 pounds of PCBs present in four truckloads of soil containing 25 ppm PCBs. After excavation, these 2 pounds of PCBs may, under the PCB disposal regulations, be transferred to a PCB landfill for disposal.

EPA estimated the costs associated with the cleanup of a PCB spill in soil using two sets of available data on the costs of cleanup. One set of data on the costs associated with the cleanup of a 0.5 acre site contaminated with PCBs and PCB Equipment suggests that cleanup to 50 ppm would cost on the order of $105,000; cleanup to 25 ppm would cost on the order of $214,000; and cleanup to "background" levels of PCBs would cost on the order of $279,000. Using these data to estimate cleanup costs for different target levels of soil cleanup for typical PCB Capacitor spills, EPA estimates that the cleanup of a typical PCB Capacitor spill to 50 ppm would cost on the order of $2,100; cleanup to 25 ppm PCBs would cost on the order of $4,280; and cleanup to "background" levels of PCBs would cost on the order of $5,580.

EPA also estimated the costs of cleanup to various target levels using data on the cost of cleanup in actual capacitor spill situations. These data indicate that while the costs of cleanup to level between 50 and 25 ppm do not vary significantly, cleanup to levels lower than 25 and 20 ppm result in dramatically higher costs of cleanup. Based on these actual capacitor spill cleanup data, the cleanup of a typical PCB Capacitor spill to 50 or 25 ppm would cost on the order of $4,000; cleanup to 10 ppm PCBs would cost on the order of $10,000; and cleanup to background levels could cost on the order of $60,000 to $140,000.

EPA estimates that the actual incremental costs of cleaning typical capacitor spills to various levels would fall in the range between the two sets of estimates. Assuming that there are about 20,000 PCB Capacitor spills each year, EPA's estimates of the total annual cost of cleanup of PCB Capacitor spills to 50 ppm, 25 ppm, and "background" levels is $42–80 million, $80–86 million, and $112 million to over $2 billion, respectively.

Alternatively, information indicates that for lower concentration spills (i.e., spills of material containing less than 500 ppm PCBs—generally from oil-filled electrical equipment), cleanup of visible traces plus a 1 foot boundary of spills onto soil and other ground media within a few days of the spills will sufficiently ensure that PCB concentrations in the soil will be cleaned to a few parts per million. Therefore, the additional costs associated with sampling may not be justified by any incremental risk reduction where the spill is of low-concentration spills.

b. *Cleanup of PCBs spilled on surfaces.* EPA lacks data on the practicality, feasibility, and incremental costs associated with the cleanup of PCBs on hard surfaces. Comments from utility representatives as well as EPA regional office personnel suggest that costs of cleaning solid surfaces are significantly influenced by the nature of the contaminated surface (i.e., whether it is a porous surface such as concrete or an inpervious surface such as metal). Thus, cleaning porous, hard surfaces to 1 $\mu g/10cm^2$ may be very difficult, if not impossible, to achieve through generally accepted methods of cleanup (i.e., scrubbing and cleansing of surfaces) because of the penetration of PCBs below the surface.

EPA has evaluated some data on the costs of cleaning PCB-contaminated surfaces to various levels. However, all of the available data are from historical PCB spill sites which are typically more difficult to clean than fresh spills. Further, EPA's experience suggests that the relative difficulty of cleaning porous surfaces versus impervious surfaces increases as the amount of time between spill occurrence and cleanup increases.

Surface cleanup standards which are not achievable would in effect require the breakup and removal of materials such as concrete. Data on the breakup, removal, and replacement of concrete materials at historical spill sites indicate that the costs of such remedial action may range from one to several million dollars. While historical sites generally involve more extensive areas of cleanup, both in terms of PCBs absorbed into the materials and the area of contamination, these data do suggest that there are significant costs associated with a removal requirement for solid surfaces. EPA, however, has no comparative cost data on the differences in cost between cleaning solid surfaces by conventional methods versus removing solid surfaces.

An EPA-sponsored Midwest Research Institute study of the removal of PCBs from surfaces such as painted and unpainted steel, asphalt, concrete block, wood, and poured concrete demonstrates fairly clearly that a time lapse of several days before initiation of cleanup can significantly impede the efficacy of surface cleanup methods. That study also suggests that the washing of rough, porous hard surfaces with solvent is not very effective in removing the spilled askarel PCBs. Cleanup by washing/wiping within a few days following low concentration spills, however, is expected to be effective in reducing surface concentrations of PCBs to levels which will not pose unreasonable risks. This is primarily because of the small amount of PCBs actually present in most mineral oil spills.

In lieu of potentially impracticable surface cleanup standards, or removal standards, EPA also considered the option of requiring cleanup to an achievable surface cleanup standard and encapsulation with an appropriate epoxy resin or other sealant. Anecdotal information suggests that encapsulation is likely to be less costly than removal of solid surfaces by 1 to 3 orders of magnitude. While EPA believes that encapsulation can significantly reduce both dermal and inhalation exposure to residual PCB concentrations on solid surfaces, the Agency is aware of no empirical data which verify the effectiveness of encapsulants in reducing exposures. Ancedotal information provided by EPA regions and members of the regulated community raises doubts as to the long-term effectiveness of encapsulation because of the tendency of many sealants to peel or chip off over time.

In the absence of adequate data on the costs of cleaning fresh PCB spills on solid surfaces, the standards which appear in the TSCA policy for the cleanup of hard surfaces primarily reflect concerns about the potential for

exposure to these levels of residual PCBs which remain after cleanup. The TSCA policy does allow for less stringent cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous surfaces outdoors (or on low-contact surfaces indoors in restricted-access facilities) because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for certain low-contact solid surfaces in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

2. *Conclusions about costs of cleanup.* The costs associated with the cleanup of spills of PCBs into soils and other similar materials are principally influenced by the area of contamination and the target levels set for cleanup. The lower the target level, the more testing, excavation, and removal, and the higher the cost. The cleanup of spilled PCBs in soil from PCB Transformers and Capacitors to "background" levels of PCBs costs three times as much to an order of magnitude more than cleanup to 50 ppm, and several times as much as cleanup to 25 ppm. On an annual basis, hundreds of millions of dollars are being spent for the cleanup of PCBs from transformer and capacitor spills.

EPA expects that the costs associated with the cleanup of contaminated surfaces will increase as cleanup levels or standards decrease and that at some point, excavation and removal may be the only choice to reduce PCB levels further. Data on the practicality, feasibility, and cost of cleanup to the levels discussed in this TSCA policy and data on the effectiveness and cost of encapsulation are necessary so that EPA can more accurately weigh the cost effectiveness of various surface cleanup requirements.

EPA is seeking data on the incremental costs associated with the cleanup of different types of surfaces to the levels discussed in this TSCA policy. In the absence of data to support a determination that these levels are not practically achievable at a reasonable cost (or data that support a determination that exposures will be significantly lower than those assumed by current Agency assessments), the policy includes the surface cleanup standards discussed in Unit IV.

EPA is also seeking data on the effectiveness (in terms of risk reduction), cost, and long-term durability of the use of sealants and encapsulating materials. If encapsulating materials and sealants can be demonstrated to be more cost effective than removal, EPA will retain the provisions allowing, for low-contact, porous surfaces, the use of such sealants in lieu of cleanup to more stringent standards.

*C. Risk/Benefit Discussion of Cleanup Requirements*

1. *Scope and general requirements of the policy.* The TSCA policy applies to spills which EPA can require to be cleaned under TSCA enforcement authority (spills of 50 ppm or greater PCBs which generally occur during EPA-regulated use, processing, distribution in commerce, or storage of PCBs) and which occur after the effective date of the policy. The policy is prospective because historical spills tend to involve more extensive areas of contamination and because many of the requirements of the policy are based on the assumption that the spill area will be cleaned or contained within 1 or 2 days of spill occurrence.

PCB is an oily material which leaves stains on soil and surfaces. While EPA recognizes that the visibility of PCBs on soils and surfaces is inversely related to the amount of time elapsed from release to discovery and that weather conditions may also influence spill visibility, EPA expects that for the majority of PCB spills, visible traces of PCBs will remain at the time of spill discovery. The exception to this rule is for spills which are undiscovered for an extended period of time and spills which are followed by adverse/severe weather conditions. In these cases, the TSCA policy requires the use of an appropriate statistical sampling scheme to define the boundaries of the spill area.

EPA believes that one of the principal ways of minimizing human and environmental exposures to spilled PCBs is to prevent the spread of spilled PCBs (e.g., by cordoning off the area) and to initiate cleanup actions as soon as practically possible. This minimizes the likelihood that materials will be spread beyond the spill area through tracking and runoff and reduces the probability of surface water and drinking water contamination. EPA believes that response time in initiating remedial action may be one of the most significant factors influencing the magnitude of risks following PCB spills, especially in residential areas.

2. *Spills of low concentrations PCBs involving less than one lb of PCBs.* Where the spilled material is relatively low in PCB concentration (i.e., containing 50 ppm or greater, but less than 500 ppm PCBs), the TSCA policy allows cleanup in accordance with procedural performance requirements (i.e., double wash/rinse for solid surfaces and removal of visible traces plus a 1-foot lateral boundary for soil and other ground media provided that the minimum depth of excavation is 10 inches) rather than requiring sampling to verify that numerical cleanup standards have been met.

The procedural requirements are based upon data indicating that for low-concentration spills, double washing/rinsing of surfaces and removal of visible traces plus a buffer on soil will successfully reduce the PCB concentration in the spill area to the numerical standards specified for the higher concentration spills. The essential difference is that for spills of low-concentration PCBs, sampling is not required to verify that numerical standards are achieved, provided that the responsible party or designated agent certifies that the cleanup has been performed in accordance with all of the requirements of the policy. The enforcement provisions of the policy specify that should the sampling data indicate that the numerical standards have not been met, or that the area cleaned does not encompass all areas of actual contamination (as determined by sampling or indicated by remaining visible traces), the regional office will require additional cleanup.

3. *Spills of 500 ppm or greater PCBs and spills of low-concentration PCBs of more than 1 lb PCBs by weight*—a. *Spills in nonrestricted access areas.* The most stringent requirements for the cleanup of spilled PCBs apply to PCB spills in residential/commercial/unrestricted access rural areas. The TSCA policy requires that materials such as household furnishings, toys, and swingsets be disposed of rather than decontaminated. Generally, these types of materials pose a high potential for exposure and are very difficult to clean. Indeed, the costs of cleanup of these types of materials to the limit of detection of PCBs (which would be required given the high potential for repeated daily exposures) would in many cases exceed replacement costs.

Soil and other similar materials in residential/commercial areas must be cleaned up to 10 ppm PCBs, and a cap of clean materials containing less than 1 ppm PCBs (the average background level for PCBs in soil) equal to a minimum of 10 inches must be placed on top of the excavated area. The OHEA risk assessment for PCBs in soil indicates that 1 to 6 ppm PCBs in 0.5 acre of residential soil is associated with a $1 \times 10^{-5}$ level of oncogenic risk and that placing a 10-inch cap of clean soil reduces this level of oncogenic risk by an order of magnitude. PCB Capacitor

spills typically result in the contamination of significantly less than 0.5 acre.

For an average PCB Capacitor spill, the difference in costs associated with cleaning up PCBs to 10 ppm versus to below 1 ppm ("background" levels) in a residential area is estimated to be about $500. Assuming 9,000 PCB Capacitor spills each year in residential areas, the estimated incremental costs associated with cleanup of these spills to less than 1 ppm versus cleanup to 10 ppm is $4.5 million.

Thus, EPA believes that soil containing 10 ppm PCBs (covered by a cap containing PCBs below the practical limits of quantitation) in a residential/commercial area would not present unreasonable risks to public health or the environment.

The surface standards presented in the TSCA policy are based primarily on the potential for exposure to PCBs remaining on surfaces in residential/commercial areas and the estimated level of risk posed by these residual PCBs. EPA lacks data on the incremental costs associated with cleanup to different surface standards and is soliciting these data.

The TSCA policy does allow for less stringent surface cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous, low-contact surfaces outdoors because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for low-contact solid surfaces outdoors in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

b. *Industrial and other restricted access spills.* Spills of PCBs in industrial areas and other restricted access locations would present lower risks than spills in residential/commercial areas because access to these areas is controlled. Inhalation exposure is considered to be the principal route of exposure to PCBs in soil, sand, or gravel in an industrial area. Dermal exposures would, however, be likely when PCBs are spilled on manned machinery and equipment. EPA believes that the level of risk posed by 25 ppm PCB in soil at a restricted access facility would not present significant risks either to the typical worker or to the general public. EPA also believes that the surface standards of 100 $\mu g/100\ cm^2$ for low-contact outdoor surfaces and 10 $\mu g/100\ cm^2$ for indoor low-contact surfaces (and vaults) and high-contact surfaces in a restricted access industrial facility would not present significant risks to workers or to the general population.

Further, there are significant costs associated with the cleanup of soil, sand, gravel, and other similar materials in an industrial facility to background levels compared to cleanup to 25 ppm PCBs. Thus, EPA believes that cleanup of soil, sand, gravel, and other similar materials in an industrial facility to 25 ppm would not present unreasonable risks to public health or the environment.

The surface standards for industrial facilities and other restricted access locations which are presented in the TSCA policy are based on the expected level of exposure to residual PCBs left on industrial surfaces after cleanup. EPA lacks data on the incremental costs associated with cleanup to different standards and is soliciting these data. The TSCA policy does allow for less stringent cleanup options coupled with EPA-approved encapsulation measures where the spill occurs on porous, low-contact surfaces because of concerns about the achievability of more stringent cleanup levels on porous surfaces. The encapsulation option is allowed for certain low-contact solid surfaces in order to allow the development of data on the efficacy of encapsulation in mitigating exposures to residual PCBs on solid surfaces.

c. *Outdoor electrical substation spills.* The least stringent requirements for the cleanup of spilled PCBs apply to spills in outdoor electrical substations. This reflects the lower potential for exposures and fewer people potentially at risk of exposures to PCBs spilled in these areas. Spills of PCBs from PCB Equipment into solid materials such as soils in electrical substations must be cleaned up to 25 ppm PCBs or to 50 ppm PCBs, provided that a label is placed in the spill area indicating that a PCB spill has occurred. The OHEA risk assessment for PCBs in soil indicates that a PCB level of 50 ppm PCBs in soil located more than 1 kilometer from a population would present less than a $1 \times 10^{-7}$ level of oncogenic risk. This risk assessment assumes only inhalation exposures at distances of 1.0 kilometer (or approximately 1,093 yards) from the spill site.

The surface standards which appear in the TSCA policy are primarily based on the expected exposures and risks posed by contact with the residual PCBs. EPA lacks data on the incremental costs associated with cleanup to higher or lower levels.

*D. Scope of the Policy*

EPA expects the large majority of PCB spills subject to decontamination under TSCA to conform to the typical spill scenarios considered in developing the TSCA policy. However, some small percentage of spills will warrant more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those associated with typical PCB spills. Further, there may be exceptional spill situations which require less stringent cleanup or a different approach to cleanup because of factors associated with the particular spill which mitigate expected exposures and risks or which make cleanup to these requirements impracticable. Therefore, the policy (1) excludes certain situations from the scope of this policy; (2) discusses other spill situations which may warrant the use of EPA authority to require more stringent requirements and (3) retains EPA flexibility to allow alternative or less stringent decontamination measures when the responsible party demonstrates the presence of risk-mitigating factors or demonstrates the impracticability of applying this policy to a particular spill situation. For those exceptional spill situations which are excluded from the policy or in which EPA may exercise flexibility based on site-specific considerations, the EPA regions have the authority to determine cleanup requirements.

The TSCA policy excludes certain spill situations from the automatic applications of the numerical cleanup requirements in the policy (i.e. spills directly into water, sewers, vegetable gardens, and grazing areas, and spills which directly contaminate surface waters prior to cleanup) because those situations will always present routes of exposure to PCBs which are not associated with the typical spills considered in developing the TSCA policy. These exceptional spill situations may not always require more extensive cleanup. However, they will always require some level of site-specific analysis to determine appropriate cleanup measures.

Although EPA expects the majority of remaining spills to be subject to this policy, occasionally the site-specific characteristics (e.g., depth to ground water, type of soil, and the presence of a shallow well) may pose exceptionally high potential for ground water contamination by residual PCBs (i.e., those PCBs remaining after cleanup to the standards specified in this policy). Spills which pose a high degree of potential for ground water contamination are not automatically excluded from the policy as are spills into surface waters because the presence of such potential may not be

readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is a significant concern. The Agency will, however, require cleanup to more stringent decontamination standards upon making a determination that such additional cleanup is necessary because of ground water concerns associated with residual contamination based upon comparison of the site characteristics to ground water modeling and exposure assessments which have been developed by EPA in support of this policy.

Additionally, spill situations involving significantly larger areas of contamination than those assumed in developing this policy (e.g., <0.5 acre in soil and 550 $ft^2$ on indoor surfaces), spills in areas involving repeated daily contact such that the potential for dermal contact may be significantly higher than assumed in developing this policy (e.g., spills resulting from violent equipment rupture during which PCDFs and/or PCDDs were formed, and spills onto farmland on which root crops are grown) may require more stringent levels of cleanup. In such situations, the Regional Administrator may require cleanup in addition to that required by the policy. In those circumstances, the Regional Administrator must notify the Director, Office of Toxic Substances, of his finding and the basis for the finding.

The TSCA policy also retains EPA's flexibility to allow less stringent, or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, or that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site. For example, the responsible party may show that a dirt road need not be decontaminated to the levels in this policy because exposure to residual PCB concentrations on a dirt road will be significantly mitigated when the road is paved with concrete or asphalt in the immediate future. Alternatively, the responsible party may demonstrate that cleanup to the numerical standards in the policy may threaten the structural integrity of major equipment installations or buildings.

For purposes of delineating the scope of the TSCA policy, as well as to provide EPA regional offices and the regulated community with guidance on whether a particular spill may require more stringent standards for cleanup, EPA has performed some preliminary analyses of these potentially higher-risk spill situations. EPA evaluated the exposures and risks associated with these potential higher-risk situations using reasonable worst-case assumptions to identify cases where strict application of the standards in this policy may be inappropriate. In addition, EPA believes that some spill situations may require special action (e.g., additional immediate actions to prevent contamination of sewers where there is a real potential for such contamination).

1. *Spills into sewers.* EPA has not assessed the exposures associated with the release of PCBs into sewers because of the lack of information about the behavior of spilled PCBs in a system of sewer pipes. Being denser than water, PCBs may collect in depressions and irregularities in the sewer pipes, providing a long-term source of release of PCBs into the environment. On the other hand, the PCBs may be carried from place to place in the sewer system. Thus, there is no method for estimating which segments of the system are contaminated, what the concentration of PCBs is, or how long the PCBs will remain in the system. Because of the difficulty of evaluting the behavior of PCBs in sewer systems and because of the practical problems of decontaminating a sewer system, PCB spills into sewage are not covered by this policy. Each regional office will determine the requirements for adequate cleanup of sewer systems, treatment works, and sewage contaminated with PCBs on a case-by-case basis.

2. *Spills which may result in ingestion exposure through drinking water and fish.* To evaluate the potential for exposures through the ingestion of drinking water and/or fish contaminated with PCBs, EPA looked at four spill situations using reasonable worst-case assumptions: (1) PCBs are spilled into a pond and the sediment is cleaned to 10 ppm; (2) PCBs are spilled into a river and the sediment is cleaned to 10 ppm; (3) PCBs are spilled on the bank of a stream and the soil is cleaned to 25 ppm; and (4) PCBs are spilled on soil and cleaned to 25 ppm, assuming that the PCBs will enter ground water.

Preliminary results indicate that where PCBs enter surface water in a pond, the ingestion of fish and/or drinking water from the pond after the sediment has been cleaned to 10 ppm in accordance with the policy may result in significant human exposures. While rivers have higher flow rates than ponds, so that cleanup of river sediment to 10 ppm PCBs may not pose significant human exposures, PCB contamination in surface water poses important considerations in addition to the risks associated with residual PCB concentrations in sediment, in much the same way as sewer contamination. Thus, all spills directly into waterways and spills which contaminate waterways before cleanup are excluded from the TSCA policy.

Where PCBs are spilled near a waterway and the soil is cleaned to 25 ppm PCBs, PCBs can enter surface water through runoff from the contaminated bank. (EPA assumed that runoff into the stream occurs only after the spill area has been cleaned to 25 ppm.) Based on reasonable worst-case assumptions, the consumption of drinking water and/or fish from the stream for 70 years will not pose risks of concern and are therefore included in the scope of the policy. However, should the spill contaminate surface water cleanup, the spill must be cleaned to site-specific requirements. Therefore, the responsible party should take special measures to contain the spill area and prevent the spread of PCBs into the waterway.

In looking at the possible exposures associated with soil cleaned to 25 ppm through the ingestion of drinking water from contaminated ground water, the climate, soil and ground water configuration were assumed to be such as to maximize PCB concentrations in ground water. Significant risks may be posed by the ingestion of drinking water from very shallow wells (i.e., dug wells taking in water at the source of loading) in areas where soil characteristics and depth to aquifer maximize the potential for leaching into ground water. However, the ingestion of drinking water from a well located a horizontal distance of 50 meters from the spill site in these areas does not appear to pose significant risks. Thus, while the majority of spills will not result in unreasonable risks of human exposure due to ground water contamination, some unique spill scenarios will pose potential ingestion exposure through ground water contamination.

The TSCA policy specifically reserves EPA's authority to impose more stringent cleanup requirements in cases where site characteristics present special risks of ingestion of PCBs through ground water contamination. These spills are not automatically excluded from application of the policy because the potential for ground water contamination may not be readily apparent.

3. *Ingestion of milk from dairy cattle grazing on land contaminated with PCBs.* Using reasonable worst-case estimates, the Agency evaluated the potential risks to humans drinking milk from cattle which grazed on farmland where a PCB spill has been cleaned to 25 ppm. In the event of a spill on farmland, grazing dairy cattle can ingest the PCB-contaminated soil by consuming soil while grazing and from eating plants and roots from a PCB-contaminated site. The cattle can then accumulate unmetabolized residues of the PCBs in milk fat and excrete them through milk. Assuming that the contaminated milk is consumed by the farm residents, worst-case risk estimates indicate that reducing the PCB concentration in the soil to 10 or 25 ppm PCBs may not be adequate to prevent aganist unreasonable risks to human health.

4. *Ingestion of vegetables grown on contaminated home gardens and farmland.* EPA performed some preliminary analyses of the risks posed by the consumption of vegetables grown on a spill area cleaned to 25 ppm PCBs in the case of farmland and 10 ppm in the case of residential gardens. Assuming that vegetables grown on that garden or farm are used to provide the entire vegetable component of the diet of the site residents, cleaning soil to the levels in the policy may not be adequate. Vegetables are more likely to become contaminated through contact with contaminated dirt rather than through plant uptake. Thus, EPA believes that the potential for exposure to spilled PCBs through ingestion of crops grown on-site is greatest where the vegetables are root crop (e.g., carrots and potatoes).

5. *Exposure from larger spills.* In the above situations, the Agency focused on routes or ingestion exposure. The Agency has also evaluated situations which may significantly increase dermal or inhalation exposures. A principal factor in determining the magnitude of inhalation exposure is the size of the spill area. In estimating the risks associated with the cleanup levels in the policy for typical spills from electrical equipment, EPA relies on a risk assessment which assumes a contaminated area of 0.5 acre (see discussion in Unit VII.A.3.). Since the area of the typical spill addressed by this policy is expected to be $\frac{1}{20}$ of the size assumed in the risk assessment, EPA believes that the cleanup standards in this policy sufficiently protect against unreasonable risks from inhalation exposure to PCBs remaining after the cleanup of a spill from electrical equipment. Cleanup standards for larger spills, that is, greater than 0.5 acre, would be established by the EPA regional office after a consideration of both the level of risk posed by cleanup to different levels and the incremental costs associated with such cleanup.

*E. Issues*

As is apparent in the discussion under Unit VII.A, there are gaps in the information which was available to the Agency in developing the TSCA policy, particularly in the area of cleanup costs. Given the limited data available to the Agency in developing a PCB Spills Cleanup Policy under the TSCA unreasonable risk standard, EPA has generally taken an environmentally conservative approach by establishing cleanup requirements based on risk and exposure considerations, and by excluding certain potentially higher-risk spill scenarios from the scope of the policy.

In a few areas where available data support the conclusion that less restrictive requirements will not compromise the protection of human health or the environment, the Agency has allowed less restrictive cleanup options (i.e., the exclusion of low-concentration spills from sampling requirements and the encapsulation option for spills on low-contact, porous surfaces). One purpose of allowing such options is to provide an opportunity for the development of additional information on the relative efficacy and costs of such options. EPA expects that the regulated industry will make good faith efforts to submit additional data gathered under the TSCA policy.

1. *Decontamination of surface.* The TSCA policy includes surface standards (in micrograms ($\mu g$) per 100 square centimeters (100 $cm^2$)) for cleanup of PCB spills on hard surfaces such as wood, concrete and asphalt, and impervious surfaces such as metal or glass. For spills of PCBs at concentrations of 50 ppm or greater but less than 500 ppm onto hard or impervious surfaces in other than residential/commercial areas, this policy allows cleanup by double rinsing with an appropriate solvent.

The consensus proposal submitted by EDF, NRDC, EEI, NEMA, and CMA in May 1985 proposed that surfaces in residential areas be cleaned to 100 $\mu g$/100 $cm^2$. The consensus further proposed that surfaces in all other areas be cleaned either to 100 $\mu g$/100 $cm^2$ or triple rinsed at the discretion of the responsible party. A revised consensus proposal submitted in October 1986 modified the proposed surface standards to 10 $\mu g$/100 $cm^2$ for impervious surfaces in areas other than outdoor electrical substations. The revised proposal maintained the 100 $\mu g$/100 $cm^2$ level for all porous surfaces, arguing the infeasibility of cleaning to lower levels on porous surfaces.

After reviewing the consensus proposal, the Agency contemplated requiring that potential high-contact surfaces be cleaned to 10 $\mu g$/100 $cm^2$ and that spills of 500 ppm or greater on low-contact surfaces be cleaned to 100 $\mu g$/100 $cm^2$. The Agency further contemplated allowing the triple-rinse option for spills of 500 ppm or greater in reduced access areas and for all spills onto surfaces in outdoor electrical substations.

Lacking adequate information with which to assess potential exposures to surfaces cleaned to those levels, the Agency initiated some studies to (1) evaluate the risks posed by the 10 $\mu g$/100 $cm^2$ and 100 $\mu g$/100 $cm^2$ and (2) test the efficacy of rinsing/washing as a cleanup measure. The results of these studies indicate (a) that high contact surfaces such as those in residential play areas or manually operated machinery may require surface standards more stringent than the 10 $\mu g$ to 100 $\mu g$/100 $cm^2$ standards and (b) that while even one wash or rinse of a solid surface would be adequate for mineral oil spills (50 to 499 ppm PCBs), the wash/rinse procedural performance standard is relatively ineffective in removing higher concentration PCBs from porous surfaces such as concrete block, wood, and asphalt. Presented below is additional detail on these preliminary studies and requests for data and information pertaining to the cleanup of surfaces.

2. *Surface wiping as a cleanup method.* EPA began the study with the goal of evaluating the effectiveness of a triple-rinse performance standard for decontamination of various types of surfaces where spills of askarel or mineral oil contaminated with PCBs have occurred. The cleaning agents tested were a water-based industrial cleaner (Penetone Power Cleaner 155) and kerosene, which are both widely used. A set of six rinses were performed on steel, wood, concrete, and asphalt 1 day after spilling a known amount of PCBs on the surfaces. Another set of six rinses was performed on each surface 8 days after spilling a known amount of PCBs on the surface.

The rinses were relatively effective in cleaning askarel spills on steel and in cleaning mineral oil from all surfaces (because of the low initial concentration of PCBs in mineral oil). However, six rinses with the industrial cleaner did not

successfully remove askarel fluid from asphalt, wood, or concrete. Further, the PCBs and the solvent washed through the wood, concrete, and asphalt, and distributed the PCBs into the material. This has caused EPA to question the advisability of setting a surface concentration for nonimpervious materials. Absent information on whether or not the PCBs absorbed into the material later come back to the surface and become available for exposure, EPA must assume that the absorbed PCBs provide a continuing source of exposure until the total amount of PCBs in the material is depleted.

EPA also found that the Penetone Power Cleaner was significantly less effective than the organic solvent in reducing the concentration of PCBs. Anecdotal information, however, suggests that the detergent cleaner may be more effective on soiled surfaces because of the tendency of PCBs to bind to dirt.

These observations have led to some determinations and raised several issues. Any comments or data in these areas are welcome.

a. EPA has determined that a procedural performance specifying one to three washes/rinses on solid surfaces within a few days after the spill occurs will result in adequate decontamination of mineral oil (50 to 499 ppm PCBs) spills on hard surfaces (including wood, asphalt, and concrete).

b. EPA has determined that water-based solvents may not be effective in removing PCBs from hard surfaces. Seven days after the occurrence of a spill, the efficacy of water-based rinses appeared to decrease markedly even on steel (some of the reduced effectiveness of the water-based solvent after 7 days may be due to the loss of PCBs from the surface through volatilization). EPA is currently performing a second phase of the solvent-rinse study with an organic solvent used widely in industry.

c. EPA has determined that when a spill of PCBs occurs on nonimpervious hard surfaces, the PCBs are absorbed into the material and may later become available for exposure. In the absence of adequate information, the Agency must presume that these PCBs do provide a source of exposure. The Agency solicits any available data in this area.

d. Therefore, for PCB spills on nonimpervious surfaces, the Agency considered (1) requiring removal and decontamination to a ppm standard, or (2) some combination of a wipe standard and encapsulation. EPA solicits available information on the costs of removing hard sufaces and the efficacy of encapsulation in preventing future exposures to PCBs which have been absorbed into materials such as concrete, wood, or asphalt. In its spills cleanup policy the Agency has allowed an encapsulation option on low contact surfaces for iterative purposes. EPA may not retain such an option if no information on the relative cost, effectiveness, and durability of encapsulation becomes available.

3. *Cost of cleanup.* The cost estimates for decontamination of soil and other solid materials to various levels (as discussed under Unit VII.B) were derived from limited available information. While the Agency has received information on the costs of actual cleanups, it is difficult to extrapolate information from these data because very little is known about the cleanup methods used, the time lapse between the spill and the cleanup effort, the amount spilled, and the size of the spill area.

In order to develop a more sound data base for comparing the costs of cleanup to various levels in soil, the Agency modeled the vertical and lateral spread of spilled PCBs in soil over time, using assumptions which maximize the spread of PCBs. These data on the distribution of PCB concentrations in the soil are being used to solicit information from cleanup firms on the incremental cost of cleanup to various levels.

Any available data on the incremental costs of decontamination to various levels are welcome. Such data will be most helpful if accompanied by the following information: (1) The amount and concentration of PCBs spilled, (2) the area and depth of the original contamination and the area cleaned, (3) the amount of soil or other material removed or the type of cleanup performed on hard surfaces, (4) postcleanup sampling data, (5) the amount of time between spill occurrence and initiation of cleanup, and (6) some description of the cleanup procedures (e.g., initial efforts to contain the spill or methods used to prevent the spreading of contamination during cleanup efforts). EPA especially needs data on the costs associated with cleanup of hard surfaces (see discussion in previous unit).

4. *Cleanup standards for higher-risk situations.* The discussion under Unit VII.D details the Agency's rationale for limitations on the scope of the policy. The Agency believes that some small percentage of spills will warrant more stringent cleanup requirements than specified in the TSCA policy because of additional routes of exposure or significantly greater exposures than those associated with typical PCB spills.

Therefore, certain spill situations are excluded from the scope of this policy. The spill situations which the TSCA policy excludes from automatic application of the numerical cleanup requirements in the policy (i.e., spills directly into water, sewers, vegetable gardens, and grazing areas and spills which contaminate surface waters prior to cleanup) are those which will always present routes of exposure to PCBs which are not associated with the typical spills considered in developing the TSCA policy. The TSCA policy indicates exceptional spill situations may not always require more extensive cleanup. However, they will always require some level of site-specific analysis to determine appropriate cleanup measures.

In addition, the TSCA policy discusses other spill situations which may warrant the use of EPA authority to require more stringent requirements (e.g., where depth to ground water, type of soil, and the presence of a shallow well may pose exceptionally high potential for ground water contamination by residual PCBs; spill situations involving significantly larger areas of contamination than those assumed in developing this policy; spills resulting from violent equipment rupture during which PCDFs and/or PCDDs were formed; and spills onto farmland on which root crops are grown). The TSCA policy provides that in such situations the Regional Administrator may require cleanup in addition to that required by the TSCA policy.

EPA does not currently have sufficient information on the factors which must be considered in determining the type and degree of cleanup in such situations. Therefore, while EPA headquarters will provide guidance to the EPA regional offices to the extent possible on a case-by-case basis, the TSCA policy does not specify cleanup measures for these spill scenarios. EPA solicits available data on such spill situations in order to provide better guidance to the regions and to develop uniform guidance for such situations where appropriate.

This document was submitted for review to the Office of Management and Budget (OMB).

**Other Statutory Requirements**

*Regulatory Flexibility Act*

The TSCA policy will have an insignificant impact on small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

*Paperwork Reduction Act*

The TSCA policy reiterates certain recordkeeping requirements for the disposal of PCBs which were approved under OMB control number 2070–0008. Some additional recordkeeping and reporting will be added through the rulemaking process; these requirements will be submitted to OMB for clearance.

**List of Subjects in 40 CFR Part 761**

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: March 20, 1987.

**Lee M. Thomas,**

*Administrator.*

**PART 761—[AMENDED]**

Therefore, 40 CFR Chapter I Part 761 is amended as follows:

1. The authority citation for Part 761 is revised to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, and 2611; Subpart G is also issued under 15 U.S.C. 2614 and 2616.

2. Subpart G, consisting at this time of §§ 761.120, 761.123, 761.125, 761.130, and 761.135, is added to read as follows:

**Subpart G—PCB Spill Cleanup Policy**

Sec.

761.120 Scope.
761.123 Definitions.
761.125 Requirements for PCB spill cleanup.
761.130 Sampling requirements.
761.135 Effect of compliance with this policy and enforcement.

## Subpart G—PCB Spill Cleanup Policy

### § 761.120 Scope.

(a) *General.* This policy establishes criteria EPA will use to determine the adequacy of the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. The policy applies to spills which occur after May 4, 1987.

(1) Existing spills (spills which occurred prior to May 4, 1987, are excluded from the scope of this policy for two reasons:

(i) For old spills which have already been discovered, this policy is not intended to require additional cleanup where a party has already cleaned a spill in accordance with requirements imposed by EPA through its regional offices, nor is this policy intended to interfere with ongoing litigation of enforcement actions which bring into issue PCB spills cleanup.

(ii) EPA recognizes that old spills which are discovered after the effective date of this policy will require site-by-site evaluation because of the likelihood that the site involves more pervasive PCB contamination than fresh spills and because old spills are generally more difficult to clean up than fresh spills (particularly on porous surfaces such as concrete). Therefore, spills which occurred before the effective date of this policy are to be decontaminated to requirements established at the discretion of EPA, usually through its regional offices.

(2) EPA expects most PCB spills subject to the TSCA PCB regulations to conform to the typical spill situations considered in developing this policy. This policy does, however, exclude from application of the final numerical cleanup standards certain spill situations from its scope: Spills directly into surface waters, drinking water, sewers, grazing lands, and vegetable gardens. These types of spills are subject to final cleanup standards to be established at the discretion of the regional office. These spills are, however, subject to the immediate notification requirements and measures to minimize further environmental contamination.

(3) For all other spills, EPA generally expects the decontamination standards of this policy to apply. Occasionally, some small percentage of spills covered by this policy may warrant more stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those assumed in developing the final cleanup standards of this policy. While the EPA regional offices have the authority to require additional cleanup in these circumstances, the Regional Administrator must first make a finding based on the specific facts of a spill that additional cleanup must occur to prevent unreasonable risk. In addition, before a final decision is made to require additional cleanup, the Regional Administrator must notify the Director, Office of Toxic Substances at Headquarters of his/her finding and the basis for the finding.

(4) There may also be exceptional spill situations that requires less stringent cleanup or a different approach to cleanup because of factors associated with the particular spill. These factors may mitigate expected exposures and risks or make cleanup to these requirements impracticable.

(b) *Spills that may require more stringent cleanup levels.* For spills within the scope of this policy, EPA generally retains, under § 761.135, the authority to require additional cleanup upon finding that, despite good faith efforts by the responsible party, the numerical decontamination levels in the policy have not been met. In addition, EPA foresees the possibility of exceptional spill situations in which site-specific risk factors may warrant additional cleanup to more stringent numerical decontamination levels than are required by the policy. In these situations, the Regional Administrator has the authority to require cleanup to levels lower than those included in this policy upon finding that further cleanup must occur to prevent unreasonable risk. The Regional Administrator will consult with the Director, Office of Toxic Substances, prior to making such a finding.

(1) For example, site-specific characteristics, such as short depth to ground water, type of soil, or the presence of a shallow well, may pose exceptionally high potential for ground water contamination by PCBs remaining after cleanup to the standards specified in this policy. Spills that pose such a high degree of potential for ground water contamination have not been excluded from the policy under paragraph (d) of this section because the presence of such potential may not be readily apparent. EPA feels that automatically excluding such spills from the scope of the policy could result in the delay of cleanup—a particularly undesirable outcome if potential ground water contamination is, in fact, a significant concern.

(2) In those situations, the Regional Administrator may require cleanup in addition to that required under § 761.125 (b) and (c). However, the Regional Administrator must first make a finding, based on the specific facts of a spill, that additional cleanup is necessary to prevent unreasonable risk. In addition, before making a final decision on additional cleanup, the Regional Administrator must notify the Director of the Office of Toxic Substances of his finding and the basis for the finding.

(c) *Flexibility to allow less stringent or alternative requirements.* EPA retains the flexibility to allow less stringent or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating factors, that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site, or that site-specific characteristics make the costs of cleanup prohibitive. The Regional Administrator will notify the Director of OTS of any decision and the basis for the decision to allow less stringent cleanup. The purpose of this notification

is to enable the Director of OTS to ensure consistency of spill cleanup standards under special circumstances across the regions.

(d) *Excluded spills.* (1) Although the spill situations in paragraphs (d)(2) (i) through (vi) of this section are excluded from the automatic application of final decontamination standards under § 761.125 (b) and (c), the general requirements under § 761.125(a) do apply to these spills. In addition, all of these excluded situations require practicable, immediate actions to contain the area of contamination. While these situations may not always require more stringent cleanup measures, the Agency is excluding these scenarios because they will always involve significant factors that may not be adequately addressed by cleanup standards based upon typical spill characteristics.

(2) For the spill situations in paragraphs (d)(2)(i) through (vi) of this section, the responsible party shall decontaminate the spill in accordance with site-specific requirements established by the EPA regional offices.

(i) Spills that result in the direct contamination of surface waters (surface waters include, but are not limited to, "waters of the United States" as defined in Part 122 of this chapter, ponds, lagoons, wetlands, and storage reservoirs).

(ii) Spills that result in the direct contamination of sewers or sewage treatment systems.

(iii) Spills that result in the direct contamination of any private or public drinking water sources or distribution systems.

(iv) Spills which migrate to and contaminate surface waters, sewers, or drinking water supplies before cleanup has been completed in accordance with this policy.

(v) Spills that contaminate animal grazing lands.

(vi) Spills that contaminate vegetable gradens.

(e) *Relationship of policy to other statutes.* (1) This policy does not affect cleanup standards or requirements for the reporting of spills imposed, or to be imposed, under other Federal statutory authorities, including but not limited to, the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA). Where more than one requirement applies, the stricter standard must be met.

(2) The Agency recognizes that the existence of this policy will inevitably result in attempts to apply the standards to situations within the scope of other statutory authorities. However, other statutes require the Agency to consider different or alternative factors in determining appropriate corrective actions. In addition, the types and magnitudes of exposures associated with sites requiring corrective action under other statutes often involve important differences from those expected of the typical, electrical equipment-type spills considered in developing this policy. Thus, cleanups under other statutes, such as RCRA corrective actions or remedial and response actions under SARA may result in different outcomes.

### § 761.123 Definitions.

For purposes of this policy, certain words and phrases are used to denote specific materials, procedures, or circumstances. The following definitions are provided for purposes of clarity and are not to be taken as exhaustive lists of situations and materials covered by the policy.

"Double wash/rinse" means a minimum requirement to cleanse solid surfaces (both impervious and nonimpervious) two times with an appropriate solvent or other material in which PCBs are at least 5 percent soluble (by weight). A volume of PCB-free fluid sufficient to cover the contaminated surface completely must be used in each wash/rinse. The wash/rinse requirement does not mean the mere spreading of solvent or other fluid over the surface, nor does the requirement mean a once-over wipe with a soaked cloth. Precautions must be taken to contain any runoff resulting from the cleansing and to dispose properly of wastes generated during the cleansing.

"High-concentration PCBs" means PCBs that contain 500 ppm or greater PCBs, or those materials which EPA requires to be assumed to contain 500 ppm or greater PCBs in the absence of testing.

"High-contact industrial surface" means a surface in an industrial setting which is repeatedly touched, often for relatively long periods of time. Manned machinery and control panels are examples of high-contact industrial surfaces. High-contact industrial surfaces are generally of impervious solid material. Examples of low-contact industrial surfaces include ceilings, walls, floors, roofs, roadways and sidewalks in the industrial area, utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components, indoor vaults, and pipes.

"High-contact residential/commercial surface" means a surface in a residential/commercial area which is repeatedly touched, often for relatively long periods of time. Doors, wall areas below 6 feet in height, uncovered flooring, windowsills, fencing, bannisters, stairs, automobiles, and children's play areas such as outdoor patios and sidewalks are examples of high-contact residential/commercial surfaces. Examples of low-contact residential/commercial surfaces include interior ceilings, interior wall areas above 6 feet in height, roofs, asphalt roadways, concrete roadways, wooden utility poles, unmanned machinery, concrete pads beneath electrical equipment, curbing, exterior structural building components (e.g., aluminum/vinyl siding, cinder block, asphalt tiles), and pipes.

"Impervious solid surfaces" means solid surfaces which are nonporous and thus unlikely to absorb spilled PCBs within the short period of time required for cleanup of spills under this policy. Impervious solid surfaces include, but are not limited to, metals, glass, aluminum siding, and enameled or laminated surfaces.

"Low-concentration PCBs" means PCBs that are tested and found to contain less than 500 ppm PCBs, or those PCB-containing materials which EPA requires to be assumed to be at concentrations below 500 ppm (i.e., untested mineral oil dielectric fluid).

"Nonimpervious solid surfaces" means solid surfaces which are porous and are more likely to absorb spilled PCBs prior to completion of the cleanup requirements prescribed in this policy. Nonimpervious solid surfaces include, but are not limited to, wood, concrete, asphalt, and plasterboard.

"Nonrestricted access areas" means any area other than restricted access, outdoor electrical substations, and other restricted access locations, as defined in this section. In addition to residential/commercial areas, these areas include unrestricted access rural areas (areas of low density development and population where access is uncontrolled by either man-made barriers or naturally occurring barriers, such as rough terrain, mountains, or cliffs).

"Other restricted access (nonsubstation) locations" means areas other than electrical substations that are at least 0.1 kilometer (km) from a residential/commercial area and limited by man-made barriers (e.g., fences and walls) to substantially limited by naturally occurring barriers such as mountains, cliffs, or rough terrain. These areas generally include industrial

facilities and extremely remote rural locations. (Areas where access is restricted but are less than 0.1 km from a residential/commercial area are considered to be residential/commercial areas.)

"Outdoor electrical substations" means outdoor, fenced-off, and restricted access areas used in the transmission and/or distribution of electrical power Outdoor electrical substations restrict public access by being fenced or walled off as defined under § 761.30(1)(1)(ii). For purposes of this TSCA policy, outdoor electrical substations are defined as being located at least 0.1 km from a residential/commercial area. Outdoor fenced-off and restricted access areas used in the transmission and/or distribution of electrical power which are located less than 0.1. km from a residential/commercial area are considered to be residential/commercial areas.

"PCBs" means polychlorinated biphenyls as defined under § 761.3. As specified under § 761.1(b), no requirements may be avoided through dilution of the PCB concentration.

"Requirements and standards" means:

(1) "Requirements" as used in this policy refers to both the procedural responses and numerical decontamination levels set forth in this policy as constituting adequate cleanup of PCBs.

(2) "Standards" refers to the numerical decontamination levels set forth in this policy.

"Residential/commercial areas" means those areas where people live or reside, or where people work in other than manufacturing or farming industries. Residential areas include housing and the property on which housing is located, as well as playgrounds, roadways, sidewalks, parks, and other similar areas within a residential community. Commercial areas are typically accessible to both members of the general public and employees and include public assembly properties, institutional properties, stores, office buildings, and transportation centers.

"Responsible party means the owner of the PCB equipment, facility, or other source of PCBs or his/her designated agent (e.g., a facility manager or foreman).

"Soil" means all vegetation, soils and other ground media, including but not limited to, sand, grass , gravel, and oyster shells. It does not include concrete and asphalt.

"Spill" means both intentional and unintentional spills, leaks, and other uncontrolled discharges where the release results in any quantity of PCBs running off or about to run off the external surface of the equipment or other PCB source, as well as the contamination resulting from those releases. This policy applies to spills of 50 ppm or greater PCBs. The concentration of PCBs spilled is determined by the PCB concentration in the material spilled as opposed to the concentration of PCBs in the material onto which the PCBs were spilled. Where a spill of untested mineral oil occurs, the oil is presumed to contain greater than 50 ppm, but less than 500 ppm PCBs and is subject to the relevant requirements of this policy.

"Spill area" means the area of soil on which visible traces of the spill can be observed plus a buffer zone of 1 foot beyond the visible traces. Any surface or object (e.g., concrete sidewalk or automobile) within the visible traces area or on which visible traces of the spilled material are observed is included in the spill area. This area represents the minimum area assumed to be contaminated by PCBs in the absence of precleanup sampling data and is thus the minimum area which must be cleaned.

"Spill boundaries" means the actual area of contamination as determined by postcleanup verification sampling or by precleanup sampling to determine actual spill boundaries. EPA can require additional cleanup when necessary to decontaminate all areas within the spill boundaries to the levels required in this policy (e.g., additional cleanup will be required if postcleanup sampling indicates that the area decontaminated by the responsible party, such as the spill area as defined in this section, did not encompass the actual boundaries of PCB concentration).

"Standard wipe test" means, for spills of high-concentration PCBs on solid surfaces, a cleanup to numerical surface standards and sampling by a standard wipe test to verify that the numerical standards have been met. This definition constitutes the minimum requirements for an appropriate wipe testing protocol. A standard-size template (10 centimeters (cm) x 10 cm) will be used to delineate the area of cleanup; the wiping medium will be a gauze pad or glass wool of known size which has been saturated with hexane. It is important that the wipe be performed very quickly after the hexane is exposed to air. EPA strongly recommends that the gauze (or glass wool) be prepared with hexane in the laboratory and that the wiping medium be stored in sealed glass vials until it is used for the wipe test. Further, EPA requires the collection and testing of field blanks and replicates.

**§ 761.125 Requirements for PCB spill cleanup.**

(a) *General.* Unless expressly limited, the reporting, disposal, and precleanup sampling requirements in paragraphs (a)(1) through (3) of this section apply to all spills of PCBs at concentrations of 50 ppm or greater which are subject to decontamination requirements under TSCA, including those spills listed under § 761.120(b) which are excluded from the cleanup standards at paragraphs (b) and (c) of this section.

(1) *Reporting requirements.* The reporting in paragraph (a)(1) (i) through (iv) of this section is required in addition to applicable reporting requirements under the Clean Water Act (CWA) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). For example, under the National Contingency Plan all spills involving 10 pounds or more of PCB material must currently be reported to the National Response Center (1–800–424–8802). The requirements in paragraphs (a)(1) (i) through (iv) of this section are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on governments as well as the regulated community.

(i) Where a spill directly contaminates surface water, sewers, or drinking water supplies, as discussed under § 761.120(d), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and obtain guidance for appropriate cleanup measures in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(ii) Where a spill directly contaminates grazing lands or vegetable gardens, as discussed under § 761.120(d), the responsible party shall notify the appropriate EPA regional office (the Office of Pesticides and Toxic Substances Branch) and proceed with the immediate requirements specified under paragraph (b) or (c) of this section, depending on the source of the spill, in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

(iii) Where a spill exceeds 10 pounds of PCB material (generally 1 gallon of PCB dielectric fluid) and is not addressed in paragraph (a)(1) (i) or (ii) of this section, the responsible party will notify the appropriate EPA regional office and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after

discovery, but in no case later than 24 hours after discovery. For purposes of the notification requirement, the 10 pounds are measured by the weight of the PCB-containing material spilled rather than by the weight of only the PCBs spilled.

(iv) Spills of 10 pounds or less, which are not addressed in paragraph (a)(1) (i) or (ii) of this section, must be cleaned up in accordance with this policy (in order to avoid EPA enforcement liability), but notification of EPA is not required.

(2) *Disposal of cleanup debris and materials.* All concentrated soils, solvents, rags, and other materials resulting from the cleanup of PCBs under this policy shall be properly stored, labeled, and disposed of in accordance with the provisions of § 761.60.

(3) *Determination of spill boundaries in the absence of visible traces.* For spills where there are insufficient visible traces yet there is evidence of a leak or spill, the boundaries of the spill are to be determined by using a statistically based sampling scheme.

(b) *Requirements for cleanup of low-concentration spills which involve less than 1 pound of PCBs by weight (less than 270 gallons of untested mineral oil)*—(1) *Decontamination requirements.* Spills of less than 270 gallons of untested mineral oil, low-concentration PCBs, as defined under § 761.123, which involve less than 1 pound of PCBs by weight (e.g., less than 270 gallons of untested mineral oil containing less than 500 ppm PCBs) shall be cleaned in the following manner:

(i) Solid surfaces must be double washed/rinsed (as defined under § 761.123); except that all indoor, residential surfaces other than vault areas must be cleaned to 10 micrograms per 100 square centimeters (10 $\mu g/100\ cm^2$) by standard commercial wipe tests.

(ii) All soil within the spill area (i.e., visible traces of soil and a buffer of 1 lateral foot around the visible traces) must be excavated, and the ground be restored to its original configuration by back-filling with clean soil (i.e., containing less than 1 ppm PCBs).

(iii) Requirements of paragraph (b)(1) (i) and (ii) of this section must be completed within 48 hours after the responsible party was notified or became aware of the spill.

(2) *Effect of emergency or adverse weather.* Completion of cleanup may be delayed beyond 48 hours in case of circumstances including but not limited to, civil emergency, adverse weather conditions, lack of access to the site, and emergency operating conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Completion of cleanup may be delayed only for the duration of the adverse conditions. If the adverse weather conditions, or time lapse due to other emergency, has left insufficient visible traces, the responsible party must use a statistically based sampling scheme to determine the spill boundaries as required under paragraph (a)(3) of this section.

(3) *Records and certification.* At the completion of cleanup, the responsible party shall document the cleanup with records and certification of decontamination. The records and certification must be maintained for a period of 5 years. The records and certification shall consist of the following:

(i) Identification of the source of the spill (e.g., type of equipment).

(ii) Estimated or actual date and time of the spill occurrence.

(iii) The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather the nature and duration of the delay).

(iv) A brief description of the spill location.

(v) Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces, and a brief description of the sampling methodology used to establish the spill boundaries.

(vi) A brief description of the solid surfaces cleaned and of the double wash/rinse method used.

(vii) Approximate depth of soil excavation and the amount of soil removed.

(viii) A certification statement signed by the responsible party stating that the cleanup requirements have been met and that the information contained in the record is true to the best of his/her knowledge.

(ix) While not required for compliance with this policy, the following information would be useful if maintained in the records:

(A) Additional pre- or post-cleanup sampling.

(B) The estimated cost of the cleanup by man-hours, dollars, or both.

(C) *Requirements for cleanup of high-concentration spills and low-concentration spills involving 1 pound or more PCBs by weight (270 gallons or more of untested mineral oil).* Cleanup of low-concentration spills involving 1 lb or more PCBs by weight and of all spills of materials other than low-concentration materials shall be considered complete if all of the immediate requirements, cleanup standards, sampling, and recordkeeping requirements of paragraphs (c) (1) through (5) of this section are met.

(1) *Immediate requirements.* The four actions in paragraphs (c)(1) (i) through (iv) of this section must be taken as quickly as possible and within no more than 24 hours (or within 48 hours for PCB Transformers) after the responsible party was notified or became aware of the spill, except that actions described in paragraphs (c)(1) (ii) through (iv) of this section can be delayed beyond 24 hours if circumstances (e.g., civil emergency, hurricane, tornado, or other similar adverse weather conditions, lack of access due to physical impossibility, or emergency operating conditions) so require for the duration of the adverse conditions. The occurrence of a spill on a weekend or overtime costs are not acceptable reasons to delay response. Owners of spilled PCBs who have delayed cleanup because of these types of circumstances must keep records documenting the fact that circumstances precluded rapid response.

(i) The responsible party shall notify the EPA regional office and the NRC as required by § 761.125(a)(1) or by other applicable statutes.

(ii) The responsible party shall effectively cordon off or otherwise delineate and restrict an area encompassing any visible traces plus a 3-foot buffer and place clearly visible signs advising persons to avoid the area to minimize the spread of contamination as well as the potential for human exposure.

(iii) The responsible party shall record and document the area of visible contamination, noting the extent of the visible trace areas and the center of the visible trace area. If there are no visible traces, the responsible party shall record this fact and contact the regional office of the EPA for guidance in completing statistical sampling of the spill area to establish spill boundaries.

(iv) The responsible party shall initiate cleanup of all visible traces of the fluid on hard surfaces and initiate removal of all visible traces of the spill on soil and other media, such as gravel, sand, oyster shells, etc.

(v) If there has been a delay in reaching the site and there are insufficient visible traces of PCBs remaining at the spill site, the responsible party must estimate (based on the amount of material missing from the equipment or container) the area of the spill and immediately cordon off the area of suspect contaimination. The responsible party must then utilize a statistically based sampling scheme to identify the boundaries of the spill area as soon as practicable.

(vi) Although this policy requires certain immediate actions, as described in paragraphs (c)(1)(i) through (iv) of this section, EPA is not placing a time limit on completion of the cleanup effort since the time required for completion will vary from case to case. However, EPA expects that decontamination will be achieved promptly in all cases and will consider promptness of completion in determining whether the responsible party made good faith efforts to clean up in accordance with this policy.

(2) *Requirements for decontaminating spills in outdoor electrical substations.* Spills which occur in outdoor electrical substations, as defined under § 761.123, shall be decontaminated in accordance with paragraphs (c)(2)(i) and (ii) of this section. Conformance to the cleanup standards under paragraphs (c)(2)(i) and (ii) of this section shall be verified by post-cleanup sampling as specified under § 761.130. At such times as outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access requirements under paragraph (c)(4) of this section.

(i) Contaminated solid surfaces (both impervious and non-impervious) shall be cleaned to a PCB concentration of 100 micrograms ($\mu$g)/100 square centimeters ($cm^2$) (as measured by standard wipe tests).

(ii) At the option of the responsible party, soil contaminated by the spill will be cleaned either to 25 ppm PCBs by weight, or to 50 ppm PCBs by weight provided that a label or notice is visibly placed in the area. Upon demonstration by the responsible party that cleanup to 25 ppm or 50 ppm will jeopardize the integrity of the electrical equipment at the substation, the EPA regional office may establish an alternative cleanup method or level and place the responsible party on a reasonably timely schedule for completion of cleanup.

(3) *Requirements for decontaminating spills in other restricted access areas.* Spills which occur in restricted access locations other than outdoor electrical substations, as defined under § 761.123, shall be decontaminated in accordance with paragraph (c)(3)(i) through (v) of this section. Conformance to the cleanup standards in paragraph (c)(3)(i) through (v) of this section shall be verified by postcleanup sampling as specified under § 761.130. At such times as restricted access areas other than outdoor electrical substations are converted to another use, the spill site shall be cleaned up to the nonrestricted access area requirements of paragraph (c)(4) of this section.

(i) High-contact solid surfaces, as defined under § 761.163 shall be cleaned to 10 $\mu$g/100 $cm^2$ (as measured by standard wipe tests).

(ii) Low-contact, indoor, impervious solid surfaces will be decontaminated to 10 $\mu$g/100 $cm^2$.

(iii) At the option of the responsible party, low-contact, indoor, nonimpervious surfaces will be cleaned either to 10 $\mu$g/100 $cm^2$ or to 100 $\mu$g/100 $cm^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

(iv) Low-contact, outdoor surfaces (both impervious and nonimpervious) shall be cleaned to 100 $\mu$g/100 $cm^2$.

(v) Soil contaminated by the spill will be cleaned to 25 ppm PCBs by weight.

(4) *Requirements for decontaminating spills in nonrestricted access areas.* Spills which occur in nonrestricted access locations, as defined under § 761.123, shall be decontaminated in accordance with paragraphs (c)(4)(i) through (v) of this section. Conformance to the cleanup standards at paragraphs (c)(4)(i) through (v) of this section shall be verified by postcleanup sampling as specified under § 761.130.

(i) Furnishings, toys, and other easily replaceable household items shall be disposed of in accordance with the provisions of § 761.60 and replaced by the responsible party.

(ii) Indoor solid surfaces and high-contact outdoor solid surfaces, defined as high contact residential/commercial surfaces under § 761.123, shall be cleaned to 10 $\mu$g/100 $cm^2$ (as measured by standard wipe tests).

(iii) Indoor vault areas and low-contact, outdoor, impervious solid surfaces shall be decontaminated to 10 $\mu$g/100 $cm^2$.

(iv) At the option of the responsible party, low-contact, outdoor, nonimpervious solid surfaces shall be either cleaned to 10 $\mu$g/100 $cm^2$ or cleaned to 100 $\mu$g/100 $cm^2$ and encapsulated. The Regional Administrator, however, retains the authority to disallow the encapsulation option for a particular spill situation upon finding that the uncertainties associated with that option pose special concerns at that site. That is, the Regional Administrator would not permit encapsulation if he/she determined that if the encapsulation failed the failure would create an imminent hazard at the site.

(v) Soil contaminated by the spill will be decontaminated to 10 ppm PCBs by weight provided that soil is excavated to a minimum depth of 10 inches. The excavated soil will be replaced with clean soil, i.e., containing less than 1 ppm PCBs, and the spill site will be restored (e.g., replacement of turf).

(5) *Records.* The responsible party shall document the cleanup with records of decontamination. The records must be maintained for a period of 5 years. The records and certification shall consist of the following:

(i) Identification of the source of the spill, e.g., type of equipment.

(ii) Estimated or actual date and time of the spill occurrence.

(iii) The date and time cleanup was completed or terminated (if cleanup was delayed by emergency or adverse weather: the nature and duration of the delay).

(iv) A brief description of the spill location and the nature of the materials contaminated. This information should include whether the spill occurred in an outdoor electrical substation, other restricted access location, or in a nonrestricted access area.

(v) Precleanup sampling data used to establish the spill boundaries if required because of insufficient visible traces and a brief description of the sampling methodology used to establish the spill boundaries.

(vi) A brief description of the solid surfaces cleaned.

(vii) Approximate depth of soil excavation and the amount of soil removed.

(viii) Postcleanup verification sampling data and, if not otherwise apparent from the documentation, a brief description of the sampling methodology and analytical technique used.

(ix) While not required for compliance with this policy, information on the estimated cost of cleanup (by man-hours, dollars, or both) would be useful if maintained in the records.

**§ 761.130 Sampling requirements.**

Postcleanup sampling is required to verify the level of cleanup under § 761.125(c) (2) through (4). The responsible party may use any statistically valid, reproducible, sampling scheme (either random samples or grid samples) provided that the requirements of paragraphs (a) and (b) of this section are satisfied.

(a) The sampling area is the greater of (1) an area equal to the area cleaned

plus an additional 1-foot boundary, or (2) an area 20 percent larger than the original area of contamination.

(b) The sampling scheme must ensure 95 percent confidence against false positives.

(c) The number of samples must be sufficient to ensure that areas of contamination of a radius of 2 feet or more within the sampling area will be detected, except that the minimum number of samples is 3 and the maximum number of samples is 40.

(d) The sampling scheme must include calculation for expected variability due to analytical error.

(e) EPA recommends the use of a sampling scheme developed by the Midwest Research Institute (MRI) for use in EPA enforcement inspections: "Verification of PCB Spill Cleanup by Sampling and Analysis." Guidance for the use of this sampling scheme is available in the MRI report "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup." Both the MRI sampling scheme and the guidance document are available from the TSCA Assistance Office, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460 (202-554-1404). The major advantage of this sampling scheme is that it is designed to characterize the degree of contamination within the entire sampling area with a high degree of confidence while using fewer samples than any other grid or random sampling scheme. This sampling scheme also allows some sites to be characterized on the basis of composite samples.

(f) EPA may, at its discretion, take samples from any spill site. If EPA's sampling indicates that the remaining concentration level exceeds the required level, EPA will require further cleanup. For this purpose, the numerical level of cleanup required for spills cleaned in accordance with § 761.125(b) is deemed to be the equivalent of numerical cleanup requirements required for cleanups under § 761.125(c)(2) through (4). Using its best engineering judgment, EPA may sample a statistically valid random or grid sampling technique, or both. When using engineering judgment or random "grab" samples, EPA will take into account that there are limits on the power of a grab sample to dispute statistically based sampling of the type required of the responsible party. EPA headquarters will provide guidance to the EPA regions on the degree of certainty associated with various grab sample results.

**§ 761.135 Effect of compliance with this policy and enforcement.**

(a) Although a spill of material containing 50 ppm or greater PCBs is considered improper PCB disposal, this policy establishes requirements that EPA considers to be adequate cleanup of the spilled PCBs. Cleanup in accordance with this policy means compliance with the procedural as well as the numerical requirements of this policy. Compliance with this policy creates a presumption against both enforcement action for penalties and the need for further cleanup under TSCA. The Agency reserves the right, however, to initiate appropriate action to compel cleanup where, upon review of the records of cleanup or EPA sampling following cleanup, EPA finds that the decontamination levels in the policy have not been achieved. The Agency also reserves the right to seek penalties where the Agency believes that the responsible party has not made a good faith effort to comply with all provisions of this policy, such as prompt notification of EPA of a spill, recordkeeping, etc.

(b) EPA's exercise of enforcement discretion does not preclude enforcement action under other provisions of TSCA or any other Federal statute. This includes, even in cases where the numerical decontamination levels set forth in this policy have been met, civil or criminal action for penalties where EPA believes the spill to have been the result of gross negligence or knowing violation.

[FR Doc. 87-7262 Filed 4-1-87; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Thursday
April 2, 1987

Part IV

# Environmental Protection Agency

40 CFR Part 110

Water Programs; Discharge of Oil; Final Rule

BEST COPY AVAILABLE

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 110**

**[FRL 3119-6]**

## Water Programs; Discharge of Oil

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is amending the discharge of oil regulation (40 CFR Part 110), which implements section 311 of the Clean Water Act (CWA). The original regulation established a trigger for notifying the federal government of oil discharges that are harmful to public health or welfare. The regulation defined a harmful quantity as the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. It has come to be known as the "sheen regulation."

Today's regulation incorporates the 1977, 1978, and 1980 amendments to section 311 of the CWA and implements section 18(m)(3) of the Deepwater Port Act (DWPA) of 1974 by designating a harmful quantity for DWPA purposes. In addition, the Agency is responding to two suggestions by industry for modifications to the requirements of 40 CFR Part 110. The intended effect is to upgrade the oil spill notification requirements.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Hubert Watters, Response Standards and Criteria Branch, Emergency Response Division (WH-548/B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2463, or the RCRA/Superfund Hotline, (800) 424-9346 (in Washington, DC, 382-3000).

**SUPPLEMENTARY INFORMATION:** The proposed rulemaking was published on pages 9776-9783 of the **Federal Register** of March 11, 1985, and invited comments for 60 days ending May 10, 1985. The comment period was subsequently extended to July 1, 1985. Comments were received from over 50 sources, and today's preamble summarizes the comments, suggestions, and actions taken.

The contents of the preamble are listed in the following outline:

I. Introduction
II Changes from Proposed to Final Rule
III. Statutory Provisions Affecting the Oil Discharge Regulation
A. 1977, 1978, and 1980 Statutory Amendments
1. Extension of Geographical Scope
2. Modification of Harmful Quantity
3. Exemption of Discharges Subject to Section 402 of the CWA
4. Exemption of Discharges Permitted Under MARPOL 73/78
B. Deepwater Port Act of 1974
IV. Other Sections of the Oil Discharge Regulation
V. Requests for Changes in the Oil Discharge Regulation
A. Volumetric Alternatives to Sheen Test
B. Special Use Applications of Oil
VI. Summary of Supporting Analyses
A. Classification and Regulatory Impact Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
VII. List of Subjects in 40 CFR Part 110

### I. Introduction

On March 11, 1985, the Environmental Protection Agency (EPA) proposed amendments to the discharge of oil regulation (40 CFR Part 110). The March 11, 1985 preamble discussed in detail the nature and purpose of the proposed amendments.

Today, EPA is promulgating final amendments to the regulation. In preparing the amendments to the regulation, EPA has carefully considered all of the public comments submitted on the proposed amendments and is making some modifications in response to those comments. Major issues raised by commenters are addressed in this preamble. A summary of all comments and EPA's response to each is included in the Responses to Comments Documents, which may be found in the public docket for this rulemaking.

Section II of this preamble summarizes those changes made to the March 11, 1985, proposed rule. Statutory provisions, addressed in Section III of this preamble, include the following:

1. Extension of geographical scope of section 311 of the Clean Water Act (CWA) from the contiguous zone seaward to approximately 200 miles.

2. Modification of the harmful quantity definition from discharges of such quantities of oil that "will be harmful" to the public health or welfare of the United States to such quantities that "may be harmful" to the public health or welfare of the United States.

3. Exemption of oil discharges subject to CWA section 402 National Pollutant Discharge Elimination System (NPDES) from coverage under section 311 provisions.

4. Incorporation of the provisions under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), Annex I.

5. Definition of harmful quantities of oil for purposes of section 18(m)(3) of the Deepwater Port Act of 1974 (DWPA).

Section IV discusses other sections of 40 CFR Part 110, and Section V addresses two suggested changes requested by the regulated community for which comments were solicited in the preamble to the proposed rule. They are:

1. A request by Chevron to consider a volumetric amount of oil discharge as a trigger for notification to replace the sheen test.

2. A request by Esgard that EPA exempt its vegetable oil product, a corrosion inhibitor in ballast tanks, from the oil discharge notification requirements.

Section VI presents a summary of supporting analyses, and Section VII provides a list of subjects addressed by this rulemaking.

### II. Changes From Proposed To Final Rule

This section summarizes the substantive changes that have been made to the proposed rule. Four definitions have been modified slightly and one has been deleted. Modifications have also been made to the sections of the rule concerning applicability, prohibited discharges, demonstration projects, notice, and DWPA discharges. A copy of the final rule indicating all changes from the proposed rule has been placed in the docket for this rulemaking and is available for public inspection. The following summary is organized in the same order as the discharge of oil regulation (40 CFR Part 110) itself.

*Section 110.1.* The definition of "applicable water quality standards" has been amended to be consistent with the EPA water quality regulation, 40 CFR Part 131. The proposed definition in § 110.1 stated that applicable water quality standards were State standards "adopted by the State and approved by EPA . . . or promulgated by EPA . . ." In contrast, 40 CFR 131.21(c) states that:

> A State water quality standard remains in effect, even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standard.

Accordingly, the words "and approved by EPA" have been deleted from the definition of applicable water quality standards in § 110.1 of the final rule.

A reference to section 311 of the CWA has been added to the definition of "discharge" to clarify that a different definition, as provided in § 110.11, applies to the DWPA.

The regulatory explanation of the 1977 amendment language which extended the scope of section 311's coverage beyond 12 miles has been deleted from

40 CFR Part 110 because a number of comments indicated confusion regarding the scope of the specific statutory language and the applicability of discharge reporting requirements within the area covered by the language. Under the pre-1977 statutory language of sections 311 (b)(3) and (b)(5), all prohibited discharges of oil in the territorial seas and contiguous zones must be reported. With the enactment of the 1977 CWA amendments, however, Congress inserted additional language in section 311(b)(3) which provided that prohibited discharges "in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)" must be reported. Since the jurisdiction of the three statutes referenced in the 1977 amendments extends *within* as well as beyond the contiguous zone,[1] there was some question as to whether discharges within the zone now need only be reported if they are actually "in connection with" one of the three additional statutes. EPA believes that the correct interpretation of section 311(b)(3) is that *all* discharges of oil in the territorial seas and contiguous zone that create a sheen must continue to be reported. Discharges of oil beyond the contiguous zone, however, that create a sheen need only be reported if they are "in connection with activities" under the Outer Continental Shelf Lands Act, the Deepwater Port Act, or may affect natural resources subject to U.S. management authority under the Magnuson Fishery Conservation and Management Act. Today's rulemaking clarifies this issue by simply specifying appropriate reporting requirements in terms of whether the discharge and resulting sheen occurred in the territorial sea, the contiguous zone, or beyond 12 miles.

The definition of "oil" has been expanded to include references to both the CWA and the DWPA definitions of oil. Because oil is defined differently in the DWPA than in the CWA and is used in both contexts in the rule, the Agency believes it is desirable to provide references to both of these definitions of oil in § 110.1.

The reference to the Canal Zone has been deleted from the definition of "United States." The CWA no longer applies to the Canal Zone as a result of the Panama Canal Treaty of 1977 and the Panama Canal Act of 1979 (22 U.S.C. 3601 et seq.).

*Section 110.2.* A sentence has been added to the end of this section on applicability to indicate that the regulations also define the term "discharge" for purposes of section 18(m)(3) of the DWPA.

*Section 110.6* (formerly § 110.7). This section sets forth the provisions of CWA section 311(b)(3), which generally prohibits oil discharges in quantities as may be harmful, except for discharges permitted under MARPOL 73/78. The Agency believes that the MARPOL exemption extends to discharges under the DWPA as well. Section 19(a)(1) of the DWPA provides, in relevant part, that ". . . the treaties of the United States shall apply to a deepwater port . . . and to activities connected, associated, or potentially interfering with the use or operation of any such port . . .". Because MARPOL 73/78 is a "treaty of the United States," EPA interprets section 19(a)(1) as authorizing the application of MARPOL 73/78 provisions to discharges under the DWPA and, therefore, has also provided for an exemption of MARPOL 73/78 permitted discharges from DWPA requirements. This point has been clarified in the final rule, and the section on discharges defined for purposes of the DWPA (§ 110.11 in the final rule) has been modified to except discharges permitted under MARPOL 73/78.

*Section 110.9* (formerly § 110.10). In response to a commenter's recommendation to delete the geographic scope language from proposed § 110.10, the language has been replaced with the phrase "under section 311 of the Act." The Agency concurs with commenter's statement that the purpose of § 110.9 is to provide waiver authority to the Administrator, and therefore it is unnecessary to reprint the geographic scope in § 110.9.

*Section 110.10* (formerly § 110.11). The Agency has amended § 110.10 to make it consistent with Coast Guard discharge reporting regulations by incorporating the language in 33 CFR 153.203, as amended on May 16, 1986 (51 FR 17962).

*Section 110.11* (formerly § 110.6). In the final rule, the section concerning discharges defined for purposes of the DWPA has been moved to the end of the regulation. This section has been modified to except discharges from properly functioning vessel engines (which are not deemed to be harmful for CWA purposes) and discharges permitted by MARPOL 73/78. The proposed rule contained an exception for DWPA discharges subject to section 402 of the CWA, but this exception has been deleted. There is nothing in the language or legislative history of the DWPA to suggest that Congress contemplated such an exception.

## III. Statutory Provisions Affecting the Oil Discharge Regulation

This section of the preamble describes the five amendments to the sheen rule that were required by changes to the CWA and by the DWPA. Commenters generally expressed support for these regulatory changes. Major issues raised by commenters concerning each of the changes are discussed below.

### *A. 1977, 1978, and 1980 Statutory Amendments*

#### 1. *Extension of Geographical Scope*

In the 1977 amendments to the CWA (Pub.L. 95–217), Congress expanded the geographical scope of section 311 beyond the contiguous zone, which extends seaward to 12 miles, to include oil discharges in connection with a variety of activities out to approximately 200 miles. Specifically, sections 311 (b) and (c) of the Act were amended to apply not only to discharges of oil into navigable waters and the contiguous zone, but also to such discharges—

> in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)" (33 U.S.C. 1321(b) and (c)).

The Agency has amended the jurisdictional provisions of 40 CFR Part 110 to reflect the expanded scope of section 311 in § 110.5.

One commenter acknowledged that the proposed extension of geographical scope is consistent with the CWA amendments, but had reservations about the extension because of "the sheer size of the area to be included." The commenter asserted that the extension "will exacerbate the U.S. Coast Guard's inability to investigate spills." EPA notes that the major purpose of these amendments to the oil discharge rule is to implement statutorily mandated changes. The ability of the Coast Guard to investigate spills in the extended area

[1] Specifically, the Deepwater Port Act of 1974 regulates ports beyond "the territorial limits of the United States," including associated components and equipment, such as pipelines, located seaward of the high water mark. The Outer Continental Shelf Lands Act governs the Outer Continental Shelf, which lies beyond "navigable waters," and the Magnuson Fishery Conservation and Management Act establishes a fishery conservation zone, which lies beyond "the territorial sea of the United States."

depends, of course, on the number of spills in the area at any one time, enforcement discretion, the existence of competing demands for Coast Guard action at any particular time, and the availability of resources. In their comments submitted on this rule, the Coast Guard has not indicated any concern about their ability to carry out necessary investigations.

2. *Modification of Harmful Quantity*

In 1978, Congress modified the harmful quantity criteria of section 311 from discharge of oil that "will be harmful" to discharges that "may be harmful." More specifically, Congress modified the scope of prohibited discharges under section 311(b)(4) from quantities the "discharge of which, at such time, locations, circumstances, and conditions, will be harmful" to such quantities the "discharge of which may be harmful" (Pub. L. 95–576). Section 311(b)(3) was also amended to reflect this change.

The original oil sheen test was promulgated pursuant to the pre-1978 standard of "will be harmful." The Agency views the revised statutory standard "may be harmful" as being, at a minimum, at least as environmentally stringent and protective as the prior "will be harmful" standard, as discussed in more detail below, EPA has reviewed scientific research on the environmental effect of oil spills. It has assessed State and Federal experience in implementing the present "oil sheen" test, and it has carefully considered the alternatives suggested by commenters. On the basis of this review, the Agency has determined that the "oil sheen" is an appropriate, effective, and practical test for harmful quantities of oil under section 311(b)(4) of the CWA. As discussed later in this preamble, the Agency has made the same determination for discharges under section 18(m)(3) of the DWPA.

A number of commenters recognized that the replacement of "determined to be harmful" for "as may be harmful" in the regulations at 40 CFR Part 110 would be consistent with the CWA amendments. Some of these commenters advocated, however, adoption of a quantitative definition of harmful quantity of oil discharge using a volumetric trigger as an alternative to the sheen test. The scientific support for the oil sheen test together with the merits of adopting a volumetric trigger are addressed in detail in the discussion in Section V.A. concerning Chevron's proposal for a volumetric substitute to the sheen test.

3. *Exemption of Discharges Subject to Section 402 of the CWA*

In the 1978 amendments to the CWA, Congress also modified the definition of "discharge" in section 311(a)(2) to exclude from section 311 coverage three types of discharges that are subject to the National Pollutant Discharge Elimination System (NPDES) regulations under section 402 and the enforcement provisions of section 309. Specifically, Congress provided that the following discharges be excluded from section 311 coverage:

> . . . (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant opportunity or treatment systems.

Congress intended this amendment to clarify which section of the CWA governs discharges of oil and hazardous substances from point sources holding NPDES permits. Foreseeable or chronic point source discharges that are permitted under section 402, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the operation of the treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. "Classic spill" situations are subject to the requirements of section 311. Such spills are governed by section 311 even where the discharger holds a valid and effective NPDES permit under section 402.

Several commenters suggested a need for EPA to clarify the three categories of excluded discharges. EPA provided an extensive explanation of these exclusions in the March 11, 1985, preamble to the proposed rule, and the Agency intends at the pesent time to continue this interpretation of the CWA provisions, which was based on the language in 40 CFR 117.12 promulgated in 1979 for reportable quantities of CWA hazardous substances. This interpretation, however, is currently being reevaluated by the Agency in the context of the present NPDES program and the interpretation of "federally permitted releases" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The Agency intends to address this issue more fully in a forthcoming rulemaking on CERCLA federally permitted releases.

4. *Exemption of Discharges Permitted Under MARPOL 73/78*

Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), entered into force on October 2, 1983 (see 48 FR 45704–45727, October 6, 1983). The purpose of MARPOL 73/78, which supersedes the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, is to eliminate marine pollution from ships. In 1980, the Act to Prevent Pollution from Ships implemented portions of MARPOL, 73/78. Specifically, section 13(b) of Pub. L 96–478 amended section 311(b)(3)(A) of the CWA to exempt certain discharges into waters seaward of the territorial sea permitted under MARPOL 73/78. Such discharges include the operational discharge of limited quantities of oil-water mixtures from ships. Thus, discharges into those waters from ships made in compliance with the requirements of Regulation 9 of MARPOL 73/78, Annex I (as implemented through 33 CFR Parts 151 and 157), are not subject to notification and liability provisions under the CWA even if they would otherwise be of "a quantity that may be harmful" under the CWA. The MARPOL exemption does not apply, however, to discharges into the internal waters and the territorial seas of the United States. Such discharges must satisfy the CWA harmful quantity discharge standard even if the MARPOL 73/78 discharge standards are met. Section 110.6 of the sheen rule now includes this exemption.

One commenter pointed out that a far greater amount of the oil discharged into the world's oceans comes from tankers rather than from U.S. Outer Continental Shelf production operations and therefore recommended that if an exemption is granted to ships covered under MARPOL 73/78, a volumetric trigger should be set for offshore platforms that operate in the same waters and discharge less oil. In response to this comment, the Agency points out that the principal purpose of this regulatory revision is to incorporate Congress' specific exemption for MARPOL permitted releases. The Agency also notes, however, that the standard under MARPOL is concentration-based rather than volumetric and that Regulation 9 of MARPOL 73/78 applies to all "ships" operating in the marine environment. Such "ships" include all vessels and both fixed and floating platforms. Thus,

the MARPOL 73/78 exemption includes certain operational discharges from offshore platforms as well as from vessels (see Regulation 21 of MARPOL 73/78). Furthermore, some offshore platforms operate under NPDES permits with oil discharge limits, and discharges in compliance with such permits are also excluded from discharge of oil regulation coverage. The Agency has decided to retain the existing reporting trigger for discharges from offshore platforms at this time.

*B. Deepwater Port Act of 1974*

The Deepwater Port Act (DWPA) of 1974 (33 U.S.C. 150–1524) applies to the construction and operation of deepwater ports in waters beyond the territorial limits of the United States, including associated components and equipment, such as pipelines, located seaward of the high water mark. It contains provisions that prohibit the discharge of oil into the marine environment from a deepwater port, from a vessel that has received oil from another vessel at such a port, and from vessels within a port's safety zone. The DWPA also establishes deepwater port licensee and vessel owner or operator liability for cleanup costs and damages that result from a discharge of oil. Other features of the DWPA include discharge notification requirements, penalty provisions, and the establishment of the Deepwater Port Liability Fund. The fund is liable, without regard to fault, for all cleanup costs and damages in excess of those actually compensated by a liable deepwater port licensee or vessel owner or operator.

Action under each of the key pollution provisions of the DWPA is triggered by a discharge of oil in harmful quantities. Section 18(m)(3) of the DWPA defines "discharge" in terms of those "quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency" (33 U.S.C. 1517(m)(3)). In the proposed rule, EPA used the sheen test to complete the definition.

Several commenters favored, in one form or another, a volumetric trigger for discharges under the DWPA. After carefully reviewing the comments submitted and considering them in light of the statutory language of section 18(m)(3) of the DWPA and its supporting legislative history, EPA has decided to use the sheen test in the final rule to define "harmful quantities" for purposes of the DWPA. The Coast Guard, which has the responsibility for implementing the requirements of the DWPA, agrees with this position. Both EPA and the Coast Guard believe that Congress intended that the DWPA definition of harmful quantity be the same as the CWA definition in the oil discharge rule. According to the legislative history of the DWPA, Congress expected the Administrator". . . to define harmful quantities of oil as defined in regulations issued under section 311 of the Federal Water Pollution Control Act" (Sen. Rep. No. 93–1217, 93rd Cong. 2nd Sess. (1974)). As noted by commenters, the section 311 CWA harmful quantity determination was promulgated by the Department of the Interior in 1970 and adopted by EPA in 1971. When Congress enacted the DWPA in 1974 it specifically chose in section 18(m)(3) to define the word "discharge" in terms of "regulations issued by the Administrator of the Environmental Protection Agency". As the legislative history noted above makes explicitly clear, the regulations Congress was referring to were those issued under section 311 of the CWA. Those regulations defined harmful quantities in 1974 in precisely the same terms as today's rulemaking. Therefore, EPA and the Coast Guard believe the rule adopted today at 40 CFR 110.11 fulfills Congressional direction in this regard. Moreover, as discussed below, the Agency believes that the sheen test is an appropriate definition of harmful quantities for purposes of the DWPA.

One commenter submitted data from the Louisiana Offshore Oil Port (LOOP) monitoring program to show that there were no measurable short-term or long-term harmful effects that could be attributed to oil spills from the LOOP.[2] A review of the data submitted, however, suggests that the monitoring program was not specifically designed to assess the impacts of spills that have actually occurred at the LOOP. Moreover, the inconclusive indications that these data provide are more than offset in EPA's view by other scientific studies and research in the record that clearly demonstrate a connection between oil spills and adverse environmental effects, both at offshore oil platforms and other open ocean areas, as well as in controlled laboratory conditions. For this reason also, EPA believes that the determination in today's rulemaking that the oil sheen is an appropriate harmful quantity standard is reasonable and fully supportable.

Another commenter argued that the sheen test does not correspond with either actual or potential harm from deepwater port-related releases, which by definition, occur outside territorial waters. According to the commenter, the regulations assume that the same quantity of oil which presents a potential threat to the public health or welfare of the United States when spilled in navigable waters or in the contiguous zone creates a comparable potential for harm when discharged at a remote offshore location. The commenter challenges this assumption, citing a 1974 study by the U.S. Army Corps of Engineers on different areas of marine environmental sensitivity. It should be noted that this study does not state that there is no harm from oil spills offshore, but rather, that there is likely to be less harm from oil spills offshore than from those inshore. Other researchers have related the potential for harm from an oil spill to distance from shore, by noting that the potential for harm increases as water depths decrease from thousands to hundreds of feet. EPA believes that such a potential for harm exists at the LOOP because contrary to the commenter's suggestion that the LOOP represents a "remote offshore location," the depth of the water surrounding the LOOP platform is in fact on the order of one hundred feet. Furthermore, as mentioned previously, the DWPA definition of deepwater port includes pipelines and other components and equipment located seaward of the high water mark. Thus, LOOP discharges may occur within as well as beyond territorial waters.

Another commenter has indicated concern that unlike section 311 of the CWA, the provisions of the DWPA, specifically 33 U.S.C. 1517(c)(1), statutorily mandate a response action in every instance of a reported discharge, regardless of extreme weather conditions and resulting safety hazards that cleanup actions may entail. The Coast Guard, however, declines to adopt this interpretation of the DWPA. As explained in their comment letter of may 9, 1985 (OS–9–43 in the public docket), the Coast Guard interprets the provisions of the DWPA to give the Coast Guard discretionary authority to determine whether or not a response is necessary when a discharge occurs.

**IV. Other Sections of the Oil Discharge Regulation**

A few commenters recommended changes to other sections of the oil discharge regulation, particularly to §§ 110.1 and 110.8 of the proposed rule. For reasons discussed in the Responses to Comments documents, the Agency has decided not to incorporate these changes into the final rule.

[2] The LOOP is the only operating deepwater port in the United States. It is located approximately 18 miles off the coast of Louisiana in the Gulf of Mexico.

**V. Requests For Changes in the Oil Discharge Regulation**

*A. Volumetric Alternatives to Sheen Test*

Chevron U.S.A., Inc., of San Francisco, California, has commented to EPA that the sheen test under section 311 of the CWA is too stringent and that alternative, volumetric limits would provide sufficient water quality protection at a lesser cost to the company. Chevron has suggested that the reportable quantity threshold be changed to 1 barrel (42 gallons), except where water quality standards are more stringent. The company maintains that spills of less than 1 barrel "rarely, if ever, cause environmental damage." Chevron claims, in material submitted to EPA, that approximately 75 percent of the spills it reports are of under 1 barrel and estimates that the cost to the company is $500 to $6,000 per spill report. Some commenters have urged that a volumetric test be adopted for harmful quantity determinations under the DWPA, as well.

A large number of commenters expressed support for the sheen test rather than a volumetric test. Several commenters cited the greater enforceability, administrative ease, and higher level of environmental protection afforded by the sheen test. A few commenters pointed to the success of the sheen test in promoting prompt reporting and preventing larger spills, as well as in encouraging spill prevention and cleanup by industry. The commenters also noted the problems inherent in a volumetric reporting trigger, including the potential for environmental harm from small quantities of oil in the aquatic environment; these commenters asserted that a volumetric trigger would fail to account for differing susceptibility of water to damage from oil. They noted that the receiving waters and type of oil spilled affect the environmental impact more than the quantity of oil spilled.

Commenters opposed to the sheen test raised questions about environmental harm and concerns about the stringency of the requirement. Several commenters favoring a volumetric alternative to the sheen test also addressed administrative and policy issues as outlined below and detailed in the Responses to Comments documents.

1. Environmental Harm Issues

The majority of commenters opposing the sheen test expressed the belief that small oil spills do not have a significant impact on marine ecosystems. A few of the commenters referred to the fact that many scientific studies have been conducted since the Department of the Interior's 1970 determination that a sheen represents a "harmful quantity" of oil. For example, one suggested that many scientific studies have proven small quantities of oil to be harmless, and another asserted that EPA has failed to consider new data in its decision to retain the sheen test. Of all the commenters who expressed these opinions, only three submitted extensive documentation of scientific studies and literature reviews, which they felt illustrated the substantial amount of recent research that could support a volumetric reporting trigger. One of the commenters also recommended that EPA review the 1985 National Academy of Sciences study on the subject of oil pollution.

EPA has carefully reviewed the recent scientific literature on environmental effects of oil pollution, including documents submitted by commenters and other documents referenced in comment letters or compiled in the public docket during the comment period. EPA believes that the literature clearly demonstrates that discharges of small quantities of oil cause environmental harm. A discussion paper outlining the Agency's position and citing specific documents in support of that position has been placed in the public docket.

Many types of adverse effects from oil have been extensively documented, proving harmful effects from oil spills and chronic pollution in inland waters, in coastal environments, and in waters beyond 12 miles from shore. Evidence from reviews of laboratory studies further demonstrates that very small amounts of oil, e.g., less than 1 mg/L (1 ppm), can have lethal and sublethal effects on a wide variety of organisms. The National Academy of Sciences (NAS), in its 1985 comprehensive review, noted that "low concentrations (less than 1 mg/L) of petroleum hydrocarbons can apparently interfere with the normal behavior of marine organisms, especially the more fragile components such as the larval and juvenile forms of the marine food chain." The review articles and reports prepared by industry representatives that argue strongly for the commenters' position are either limited in their citation of scientific literature or highly selective in the conclusions drawn. The limited evidence cited by commenters to show little or no harm from oil discharges generally applies only to certain areas of chronic pollution (e.g., Milford Haven, United Kingdom), certain types of harm (e.g., permanent harm on a broad scale), or certain organisms. As discussed in the NAS report and in EPA's discussion paper, the studies of chronically polluted areas in the Gulf of Mexico that were cited by commenters are controversial and have been criticized by some scientists for their methodology and conclusions. Commenters provided no evidence disputing the widely recognized types of physical harm that may result from floating sheens of oil such as asphyxiation of fish and benthic fauna due to coating by oil, harm to waterfowl because of loss of buoyancy or loss of insulating capacity of feathers, and adverse aesthetic effects of fouled shorelines and beaches.

Moreover, some commenters appear to have defined potential harm as permanent biological harm on a broad scale. There simply is no persuasive indication in the statute that Congress intended this narrow interpretation of the harmful quantity standard. In fact, the Congressional policy expressed in CWA section 311(b)(1) "that there should be *no* discharges of oil" (emphasis added) suggests just the opposite.

Equally important, nothing in the legislative history of the CWA or in judicial interpretations of the Act suggests that a demonstration of permanent harm on a broad scale is required. Congress stated in the 1978 CWA Amendments that a prohibited discharge need only be a quantity that *may* be harmful. In cases such as *U.S.* v. *Atlantic Richfield Company*, 429 F.Supp. 830, 837 (E.D. Pa., 1977), the courts have suggested that Congress believed that even transitory pollution of waters was deleterious to the environment.

Many of the studies submitted by commenters support the fact that small oil spills do cause harm in certain waters (e.g., spawning grounds, estuaries). Many opponents of the sheen test concede that coastal and inland areas and sensitive habitats may be vulnerable to damage from low levels of oil pollution, and many admit that there may be at least temporary harm. Documents compiled in the public docket clearly show that small amounts of oil are harmful in a variety of locations and circumstances, including spawning grounds and sensitive habitats beyond 12 miles from shore. EPA has therefore chosen to retain the sheen test as an environmentally protective reporting trigger for purposes of both the CWA and the DWPA.

Several commenters favored the establishment of different oil discharge reporting triggers for different waters to ensure that the more stringent sheen test would be used for environmentally sensitive areas, while a less stringent

volumetric test would be applied to less environmentally sensitive waters. To the extent that they favor retaining the sheen test for certain waters, EPA agrees with these commenters. EPA further believes that the sheen test must be applied to all waters to ensure certain, consistent and effective implementation of the harmful quantity standard. A single reporting trigger is entirely consistent with Congressional intent as reflected in the 1978 CWA amendments, which eliminated the requirement that a determination of harm must consider the specific "times, locations, circumstances, and conditions" of a given spill. Senator Muskie, in the debates on these amendments, stated that the determinations of harmful quantities under CWA section 311 "are nationally applicable, before-the-fact decisions and are not expected to reflect the myriad of actual circumstances that may occur" (*Congressional Record* at 519653, December 15, 1977). In the case of hazardous substances, which, like oil, are covered by CWA section 311, EPA has previously expressed the view that Congress intended a single reportable quantity to apply to all waters. As stated in the 1978 preamble to regulations establishing reportable quantities for hazardous substances, "Congress was aware that requiring tailoring of such determinations to water body type and other circumstances is administratively unwise and could prevent achievement of the goals of the [Clean Water] Act" (43 FR 10491, March 13, 1978). EPA believes that this same principle should apply to discharges of oil. EPA continues to believe that a single reporting trigger is a practical and environmentally sound requirement. It is true that discharges of the same amount of oil into different bodies of water may result in different degrees of harm. The boundaries and differentiation of various ecologically significant waters, however, are not clearly defined nor readily discernible. Waters seaward of the territorial seas or the contiguous zone, which may contain neustonic communities or productive fisheries, can be sensitive to small spills. As sensitivity of individual aquatic environments to oil is dependent on much more than just distance from shore, EPA believes that it would be impractical to establish varying oil discharge reporting requirements for different waters. The sheen test, identifying a single threshold for all waters, provides a clear and definitive trigger for the reporting requirements of 40 CFR Part 110. A single reporting trigger for all waters is thus practical, effective, and fully reflective of Congressional intent underlying both section 311 of the CWA and section 18(m)(3) of the DWPA.

Several commenters argued that the sheen test will result in over reporting of discharges that may not be harmful. This argument, however, is true of any reporting trigger including the volumetric test. Moreover, any reporting trigger may in addition to requiring the reporting of some discharges that are not harmful, also allow some harmful discharges to go unreported. In comparison to the sheen test, for example, the volumetric triggers advocated by some commenters would allow nonreporting of a large number of spills that may be harmful both on an individual and cumulative basis. EPA believes that a sheen is an appropriate indicator of a discharge of harmful quantities of oil. A sheen is typically associated with discharges containing concentrations of oil in the 10 to 20 ppm range. In this regard, it is worth noting that Regulation 1(16) of MARPOL 73/78 defines clean ballast as either ballast that does not exceed 15 ppm, or ballast that, if discharged into clean, calm water on a clear day, would not produce a visible sheen. Thus, for purposes of this definition, a discharge causing a sheen may be roughly equated to a discharge with a concentration of 15 ppm. As detailed in the Agency's discussion paper in the public docket, adverse biological effects from oil occur at concentrations many times lower than 10–20 ppm. Furthermore, as noted above, the physical properties of floating sheens themselves may cause harm, such as coating birds' feathers and fouling beaches.

2. Administrative and Policy Issues

Some commenters suggested that a volumetric trigger would reduce the number of spill reports. With a reduction in reports, commenters asserted that there will be less of a paperwork burden on both industry and the implementing agencies and less need for administrative follow-up procedures such as inspections. EPA recognizes that in some cases reporting is already required under separate regulatory systems created under the Outer Continental Shelf Lands Act (OCSLA), under MARPOL 73/78, and under section 402 of the CWA. For facilities regulated under the OCSLU, *all* spills or leakage of oil or waste materials must be reported to the Director of the Minerals Management Service under 30 CFR 250.43 and OCS Order Number 7. The additional cost of complying with the reporting requirements under section 311 of the CWA would be minimal for these facilities.

In light of comments from implementing agencies, EPA believes that the cost of reporting under 40 CFR Part 110 are not excessive. For example, a State agency (Ohio EPA) estimated that the actual reporting phone call to the National Response Center's toll-free number normally takes less than 15 minutes. Furthermore, Ohio EPA has found that its data storage and administrative costs have generally been less than $20 per reported spill. The Coast Guard pointed out that the costs of reporting small spills are very small in comparison to spill prevention and corrective action expenditures. In response to EPA's request for information on administrative costs of responding to small spills, the Coast Guard suggested that spill response costs vary with the level of response required. The cost per assessment will not be reduced, according to the Coast Guard, by a change to a volumetric standard because each report would still need to be assessed to determine the actual amount discharged. Furthermore, the volumetric test may not reduce the overall costs of the regulation nor simplify its administration because there are additional implementation considerations associated with a volumetric test that are not associated with current notification requirements. The costs of installing, maintaining, and repairing any required oil monitoring devices could be substantial. Field verification costs of the releaser as well as the State, Coast Guard, or EPA would likely increase for a given spill, if observers were required to determine the quantity spilled rather than simply the existence of a sheen.

Several commenters expressed the belief that the adoption of a volumetric standard would not entail a reduction in their cleanup operations. The commenters asserted that their commitment to cleanup of all spills should continue under the volumetric standard. EPA commends the commenters' desire for the continued cleanup of all spills. EPA believes, however, that the Coast Guard's efforts to ensure cleanup will suffer in cases of spills that do not meet the volumetric threshold and are therefore unreported. Moreover, if, as commenters assert, voluntary cleanup of all spills will take place, EPA does not believe that the requirement of toll-free telephone reporting places an undue additional burden on vessels and facilities handling oil.

A few other commenters expressed the opinion that a volumetric reporting

trigger would be superior to the sheen test because the appearance of a sheen often depends on weather conditions and water turbulence. However, as discussed below, accurate volumetric determinations also can be dependent on weather and water conditions. The Agency believes that any potential shortcoming of the sheen test in particular circumstances are far outweighed by its overall usefulness, simplicity, and enforceability. A sheen provides a clear indication of a reportable discharge, enabling a responsible party to identify easily which discharges must be reported and facilitating third party (e.g., citizen) complaints or reports.

EPA also believes that the difficulty involved in determining the quantity of oil discharged, as evidenced in data from regulatory agencies, is one factor that makes a volumetric reporting trigger less effective than the sheen test. In many cases, the reports of oil spills are extremely inaccurate. In addition, a volumetric trigger may provide an incentive for underestimating the quantity discharged. In cases when an estimate of slick area and thickness must be made, an observer may require special training. Even under optimal viewing conditions, with a reference scale available for comparing dimensions, only rough estimates of volume may be possible. Moreover, in less than optimal viewing conditions (e.g., poor weather, turbulance, darkness), it is not clear that even rough estimates would be possible. Finally, any time-consuming determination of the amount spilled would be contrary to the spill reporting program goal of immediate notification and quick response to possible environmental threats.

Many commenters suggested that a volumetric reporting trigger would be consistent with the present reportable quantity (RQ) criteria for hazardous substances. EPA notes that an important purpose of the RQ program is to provide a readily implementable and easy to understand reporting trigger for a diverse set of hazardous substances. EPA believes that the sheen test satisfies this same regulatory objective for oil. The sheen test has been shown to be a successful notification trigger for oil under a variety of circumstances. The sheen test takes advantage of the physical properties of oil, which cause a film, sheen, or discoloration upon the surface of the water. Because oil generally floats, the sheen test may be used to provide a more simple, easily enforced, and reliable alternative to a volumetric trigger.

*B. Special Use Applications of Oil*

EPA has authority under the CWA, section 311(b)(3)(B), and Executive Order 11735 (38 FR 21243) to permit the discharge of oil "in quantities and at times and locations or under such circumstances or conditions" as the Agency determines not to be harmful. Thus, EPA may grant exemptions to section 311(b) and the sheen regulation under appropriate circumstances. The Agency has received a request for an exemption for vegetable oil products used to prevent salt water corrosion in the ballast tanks and void spaces of ships and semisubmersible oil rigs. Several comments were received on this issue. There was disagreement among the commenters as to whether vegetable oil products cause harm.

EPA has decided not to exempt the reporting of vegetable oil product discharges under the oil discharge rule. The Agency has reviewed the materials cited by commenters on the impacts of vegetable oils and believes that these materials do not support the conclusion that these oils do not cause environmental harm. Some harmful environmental effects of vegetable oils are similar to those of petroleum oils and include drowning of waterfowl, fishkills due to increased biological oxygen demand, asphyxiation of benthic life, and adverse aesthetic effects. Finally, the Agency believes that the reporting requirement does not pose such a burden that it would deter the application of a useful vegetable oil product.

## VI. Summary of Supporting Analyses

*A. Classification and Regulatory Impact Analysis*

Regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order 12291. E.O. 22291 established the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amended regulation is a nonmajor rule because the Agency has concluded that it meets none of the above criteria. An analysis has estimated that the upper bound total of annual economic costs from notification requirements, spill investigations, and increased cleanup liability is $3.8 million, well below the $100 million standard for a major rule classification. Data supporting this conclusion are in the rulemaking docket.

This regulation was submitted to OMB for review under Executive Order 12291.

*B. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act of 1980, Agencies must evaluate the effects of a regulation on "small entities." That Act recognizes three types of such entities:

1. Small businesses (specified by Small Business Administration regulations);
2. Small organizations (independently owned, nondominant in their field, nonprofit); and
3. Small governmental jurisdictions (serving communities with fewer than 5,000 people).

If the rule is likely to have a "significant impact on a substantial number of small entities," the Act requires that a Regulatory Flexibility Analysis be performed. EPA certifies that the amended regulation will not have a significant impact on a substantial number of small entities. There may be some incremental costs of compliance owing the extension of jurisdiction beyond the contiguous zone to approximately 200 miles. These costs will, however, be borne by companies larger than those defined as small entities.

The regulated industry is dominated by a few dozen major corporations. Because regulatory costs will ultimately be borne by these major corporations, the expected compliance costs will not affect any identifiable group of small entities and thus a Regulatory Flexibility Analysis is not required.

*C. Paperwork Reduction Act*

Information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0046.

**List of Subjects in 40 CFR Part 110**

Administrative practice and procedure, Coastal zone, Continental shelf, Environmental protection, Fisheries, Hazardous substances, Intergovernmental relations, Liabilities, Marine resouces, Natural resources, Oil pollution, Penalties, Petroleum, Public health, Reporting and recordkeeping requirements, Rivers, Treaties, Vessels,

Water pollution control, Water resources, Waterways.

Dated: March 24, 1987.

Lee M. Thomas,

*Administrator.*

For reasons set out in the preamble, 40 CFR Part 110 is revised to read as follows:

## PART 110—DISCHARGE OF OIL

Sec.

110.1 Definitions.
110.2 Applicability.
110.3 Discharge into navigable waters of such quantities as may be harmful.
110.4 Discharge into contiguous zone of such quantities as may be harmful.
110.5 Discharge beyond contiguous zone of such quantities as may be harmful.
110.6 Discharge prohibited.
110.7 Exception for vessel engines.
110.8 Dispersants.
110.9 Demonstration projects.
110.10 Notice.
110.11 Discharge at Deepwater Ports.

**Authority:** Secs. 311 (b)(3) and (b)(4) and 501(a), Federal Water Pollution Control Act, as amended (33 U.S.C. 1321 (b)(3) and (b)(4) and 1361(a)); sec. 18(m)(3) of the Deepwater Port Act of 1974 (33 U.S.C. 1517(m)(3)); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

### § 110.1 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

"Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., also known as the Clean Water Act;

"Administrator" means the Administrator of the Environmental Protection Agency (EPA);

"Applicable water quality standards" means State water quality standards adopted by the State pursuant to section 303 of the Act or promulgated by EPA pursuant to that section;

"Contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

"Deepwater port" means an offshore facility as defined in section (3)(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10));

"Discharge," when used in relation to section 311 of the Act, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act, that are caused by events occurring within the scope of relevant operating or treatment systems;

"MARPOL 73/78" means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, Annex I, which regulates pollution from oil and which entered into force on October 2, 1983;

"Navigable waters" means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section: Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

"NPDES" means National Pollutant Discharge Elimination System;

"Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

"Oil", when used in relation to section 311 of the Act, means oil of any kind or in any form, including, but not limted to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. "Oil," when used in relation to section 18(m)(3) of the Deepwater Port Act of 1974, has the meaning provided in section 3(14) of the Deepwater Port Act of 1974;

"Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States, other than submerged land;

"Person" includes an individual, firm, corporation, association, and a partnership;

"Public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

"Sheen" means an iridescent appearance on the surface of water;

"Sludge" means an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water;

"United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel; and

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

### § 110.2 Applicability

The regulations of this part apply to the discharge of oil prohibited by section 311(b)(3) of the Act. This includes certain discharges into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources

under the Magnuson Fishery Conservation and Management Act). The regulations of this part also define the term "discharge" for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, as provided under § 110.11 of this part.

**§ 110.3 Discharge into navigable waters of such quantities as may be harmful.**

For purposes of section 311(b) of the Act, discharges of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7 of this part, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

**§ 110.4 Discharge into contiguous zone of such quantities as may be harmful.**

For purposes of section 311(b) of the Act, discharges of oil into or upon the waters of the contiguous zone in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

**§ 110.5 Discharge beyond contiguous zone of such quantities as may be harmful.**

For purposes of section 311(b) of the Act, discharges of oil into or upon waters seaward of the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

**§ 110.6 Discharge prohibited.**

As provided in section 311(b)(3) of the Act, no person shall discharge or cause or permit to be discharged into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or into or upon waters seaward of the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) any oil in such quantities as may be harmful as determined in §§ 110.3, 110.4, and 110.5, except as the same may be permitted in the contiguous zone and seaward under MARPOL 73/78, Annex I, as provided in 33 CFR 151.09.

**§ 110.7 Exception for vessel engines.**

For purposes of section 311(b) of the Act, discharges of oil from a properly functioning vessel engine are not deemed to be harmful, but discharges of such oil accumulated in a vessel's bilges shall not be so exempt.

**§ 110.8 Dispersants.**

Addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of this part is prohibited.

**§ 110.9 Demonstration projects.**

Notwithstanding any other provisions of this part, the Administrator may permit the discharge of oil, under section 311 of the Act, in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

**§ 110.10 Notice.**

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as he or she has knowledge of any discharge of oil from such vessel or facility in violation of § 110.6, immediately notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area, 426–2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated On-Scene Coordinator (OSC) for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OCS immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible. The reports shall be made in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR Part 153, Subpart B and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, Subpart E. [Approved by the Office of Management and Budget under the control number 2050–0046]

**§ 110.11 Discharge at deepwater ports.**

(a) Except as provided in paragraph (b) below, for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" shall include but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil that:

(1) Violate applicable water quality standards, or

(2) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(b) For purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" excludes:

(1) Discharges of oil from a properly functioning vessel engine, (including an engine on a public vessel), but not discharges of such oil accumulated in a vessel's bilges (unless in compliance with MARPOL 73/78, Annex I); and

(2) Discharges of oil permitted under MARPOL 73/78, Annex I.

[FR Doc. 87-7263 Filed 4-1-87; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Thursday
April 2, 1987

Part V

# Commission on Education of the Deaf

## Educational Programs for the Deaf; Notice of Inquiry

## COMMISSION ON EDUCATION OF THE DEAF

### Educational Programs; Inquiry

**AGENCY:** Commission on Education of the Deaf.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Commission on Education of the Deaf solicits written responses and recommendations to questions about educational programs for persons who are deaf.

**DATE:** To be taken for consideration, written response, should be received on or before June 12, 1987.

**ADDRESS:** Responses should be sent to the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, DC 20407.

**FOR FURTHER INFORMATION CONTACT:** Pat Johanson, Staff Director or Robert J. Mather, Staff Counsel, (202) 453–4353 (TDD) or (202) 453–4684 (Voice). These are not toll free numbers.

**SUPPLEMENTARY INFORMATION:** The Commission on Education of the Deaf was established under section 301 of the Education of the Deaf Act of 1986, Pub. L. 99–371, 100 Stat. 781, 786–789 (20 U.S.C. 4341–4344). The Commission is mandated to make a study of the quality of educational programs serving individuals who are deaf. Specifically, the Commission is required to make a study of the quality of infant, early childhood, elementary, secondary, postsecondary, adult, and continuing education programs furnished to individuals who are deaf. This scope of education includes Gallaudet University, the National Technical Institute for the Deaf, the Model Secondary School for the Deaf, and the Kendall Demonstration Elementary School, and the four federally supported regional postsecondary education programs at the California State University at Northridge, Seattle Central Community College, St. Paul Technical Vocational Institute, and the University of Tennessee. The Commission is also to study federally assisted instructional media services and illiteracy among persons who are deaf. The Commission is to submit to Congress and to the President, not later than February 4, 1988, a final report of its study together with recommendations, including specific proposals for legislation, as the Commission deems advisable.

The Commission requests all interested persons and organizations to submit written responses and recommendations related to the questions listed below. If you use information or data from outside sources, please cite them, and, if possible, provide a copy of the material.

The questions are meant to be exhaustive, but simply indicate areas of Commissions concern. The Commission also welcomes any other questions and recommendations it should consider. Your response should clearly state which question(s) you are addressing.

**Topic #1: Availability and Appropriateness of Postsecondary, Adult, and Continuing Educational Opportunities for Persons Who are Deaf**

(a) Are appropriate postsecondary, adult, and continuing educational opportunities available to persons who are deaf? If not, what are the shortcomings?

(b) Are quality support services (*e.g.*, interpreting, notetaking, tutoring) being provided in response to section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794)?

(c) Are current transition programs sufficient to meet the needs of students when they graduate from high school?

(d) Are current vocational education programs readily accessible to students who are deaf?

(e) What are the current and future needs of vocational rehabilitation services to persons who are deaf?

(f) What can be done to promote and/or increase the participation of adults who are deaf in adult and continuing education at the community level?

(g) To what extent are out of state tuition and expenses discouraging or hindering student from attending postsecondary schools located outside of their home state?

(h) Since state rehabilitation funds follow students to whichever school they attend, are vocational rehabilitation counselors discouraging students from attending postsecondary schools outside of their home state?

**Topic #2: The Advisability of Expanding the Number of Federally Supported Postsecondary Regional Programs**

*Background*

The Regional Postsecondary Education Program for the Deaf (RPEPD) is limited to four schools. Currently, they are California State University at Northridge, Seattle Central Community College, St. Paul Technical Vocational Institute, and the University of Tennessee. Federal funding for these programs come in three year grants, with the amount of funding fluctuating from year-to-year, and from grant-to-grant.

(a) Should the number of schools participating in the RPEPD be expanded or not? Why?

(b) If additional regional programs should be created, what criteria should be used to select or design them?

(c) What are current and future needs of the regional programs?

(d) What are the effects of three year grants as opposed to continued funding upon these programs?

(e) What impact has section 504 had on the need for the RPEPD?

(f) What are, if any, the constraints on students' choice of which federally supported program (Gallaudet University (GU), the National Technical Institute for the Deaf (NTID), and the four regional programs to attend?

(g) Should each of the four regional programs offer a similar range of degrees and programs so that students do not have to go to out-of-region programs?

(h) What are shortcomings in the four regional programs, GU and NTID?

(i) Is it desirable to have a consortium of the four regional programs, GU and NTID? If necessary, how should a consortium be established? What would be the advantages and disadvantages of a consortium?

(j) Are the regional programs readily accessible to members of minority groups?

**Topic #3: Training and Technical Assistance Needs at All Levels of Educational Programs**

(a) What qualifications do teachers have to meet in order to become certified to teach students who are deaf? Are there appropriate training programs (general, special, or deafness-specific) where teachers can obtain these qualifications?

(b) Are evaluation and certification procedures for professionals (*e.g.*, speech therapists, language instructors, and audiologists), teachers, and interpreters sufficient to ensure quality services?

(c) Are current educational administration programs (general, special, deafness-specific) adequately preparing their students to administer educational programs for persons who are deaf?

(d) Are current interpreter training programs adequate to meet the need for educational interpreter services?

(e) What are the minimum guidelines or criteria to ensure the quality of interpreter training programs?

(f) What standards should interpreters meet in order to interpret in educational settings?

(g) Are sufficient professional development opportunities being offered to administrators, teachers, interpreters and professionals?

(h) What is the potential for using existing educational programs for the deaf (*e.g.*, day/residential schools) as resource centers in providing assistance to regular schools with students who are deaf?

(i) Are sufficient speech, language, and audiological services available to serve students who are deaf?

(j) Are speech therapists, language instructors, and audiologists adequately prepared to work with students who are deaf?

(k) What are the training and technical assistance needs for regular teachers who have students who are deaf in their classrooms?

(l) What are the training and technical assistance needs for infant and early childhood education programs?

(m) What are the training and technical assistance needs for professionals and staff working in dormitory programs?

(n) To what extent are all levels of education and government agencies coordinating their training and technical assistance activities for the deaf population?

(o) What are deaf education programs doing to ensure that the training and technical assistance needs of persons who are deaf are being met?

**Topic #4a: Availability and Appropriateness of Elementary/ Secondary Educational Opportunities and Effects of Part B Of the Education of the Handicapped Act on Infant, Early Childhood, Elementary and Secondary Educational Programs For the Deaf**

*Background*

Part B of the Education of the Handicapped Act (EHA) requires (1) that persons with disabilities, regardless of the nature or severity of their disability, be provided a free appropriate public education, (2) that students with disabilities be educated with nondisabled students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved children with disabilities, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children.

(a) Are current elementary/secondary education programs available and appropriate? If not, what are the shortcomings the Commission should consider?

(b) What is the quality of infant and early childhood education programs?

(c) How should the concept of "appropriate education" under part B of the EHA apply to students who are deaf? The concept of "least restrictive environment"?

(d) For purposes of policy interpretations, should there be a generic approach to all disabilities or a specific approach to deafness?

(e) What should be the selection criteria for determining appropriate placements (self-contained classes in regular schools, day/residential progams, or mainstreaming programs) for individuals who are deaf? Is there a need for federal guidelines for the selection criteria?

(f) What are the minimum standards to ensure quality support services (*e.g.*, interpreting, notetaking, and tutoring)?

(g) What should be the role of day/ residential schools under part B of the EHA? Is the desired role different from the current role?

(h) To what extent should local educational agencies give priority to parental preference for educational placement of children?

(i) To what extent does parental preference for communication method (*e.g.*, oral, cued speech, or total communication) play in determining how and where children who are deaf are educated?

(j) Who should decide what communication method(s) should be taught in local education program?

**Topic #4b: Appropriateness of Roles Played By the Model Secondary School for the Deaf (MSSD) and the Kendall Demonstration Elementary School (KDES)**

(a) What should be the "model" roles of MSSD/KDES? Are the desired roles different from the current roles?

(b) How should the principles of part B of the EHA apply to MSSD/KDES?

(C) What are the priority needs on which MSSD/KDES should focus in the development of curricula, instructional techniques, materials and programs to assist educational institutions to provide quality programs for students who are deaf?

(d) To what extent have KDES and MSSD used public and residential schools to test and evaluate their curricula, instructional techniques, and/ or materials?

(e) How frequently do KDES and MSSD assess the need for other deaf programs?

(f) Are KDES and MSSD coordinating their research activities with other groups who are also conducting research on the pre-college deaf population?

(g) What technical assistance and outreach activities should KDES develop to promote quality elementary programs, and train parents of infants and children in specialized learning skills?

(h) What technical assistance and outreach activities should MSSD develop to promote quality secondary programs?

(i) Are MSSD/KDES in support of or in competition with other educational programs serving students who are deaf?

(j) What should be the admission policies of MSSD regarding academic achievement levels?

(k) Is there a need for model programs to meet the needs of students who are low-functioning or who have additional disabilities?

(l) What should be the roles of MSSD/ KDES' national advisory groups, Gallaudet University's Board of Trustees, and the U.S. Department of Education's liaison official in overseeing MSSD/KDES? Are the desired roles different from the current roles?

(m) Should MSSD be relocated from the main campus of Gallaudet University?

**Topic #5: Role and Impact of Research, Development, Dissemination, and Outreach Activities at Gallaudet University (GU) and the National Technical Institute for the Deaf (NTID)**

(a) What is the current role and impact of research, development, dissemination and outreach activities at GU/NTID? Should any of these activities be continued, strengthened, or terminated?

(b) What are educational needs (for all age levels) that GU/NTID are addressing or should address in their outreach activities?

(c) How should research and development priorities be determined?

(d) What priority needs should GU/ NTID consider in their research and development activities?

(e) Is there adequate outside oversight of these activities? Between GU and NTID? How should these activities be monitored to ensure cost-effectiveness and quality?

(f) Should research and development projects at GU/NTID be funded from Congressional appropriations, competitive grants, or both?

**Topic #6: Instructional Media Services and Captioned Films Programs**

(a) What is the status, production, and distribution of federally funded educational captioned films?

(b) What are the current and potential uses of captioning in education (*e.g.*, vocational education, educational films, drama, job training) of students who are deaf?

(c) To what extent should the federal government support closed captioning of television programs?

(d) What are the advantages and disadvantages of open-captioning as opposed to closed-captioning? Under what circumstances is open-captioning preferable to closed-captioning?

(e) In light of the increasing number of vendors offering captioning services, what role should the federal government play in subsidizing any or all of them?

(f) Should the federal government provide or continue to provide funds for programming, decoder subsidies, decoder development, and public awareness?

(g) What has been the effect of the availability of captioning on the educational ability of persons who are deaf?

(h) Since some states (*i.e.*, California and Michigan) provide telecommunication devices for deaf persons or TDDs at "no cost", should decoders for closed captioned television programs also be provided at "no cost"?

(i) What is the effect of captioning upon children with reading difficulties and children for whom English is a second language?

**Topic #7: Illiteracy Among Deaf Persons**

(a) What is the impact of closed captioned programs on the reading skills of persons who are deaf?

(b) What is the possibility for the use of captioning by literacy programs?

(c) What is the definition of illiteracy when applied to persons who are deaf?

(d) What are appropriate language development strategies and programs for teaching children who are deaf?

(e) To what extent do illiteracy eradication efforts assist persons who are deaf?

(f) What is the ratio of illiteracy by age group among persons who are deaf as compared to the hearing population and persons with English as a second language?

(g) What effect does illiteracy have on job opportunities and advancement for persons who are deaf?

(h) If speech recognition by computers reaches its potential, what impact could this have on deaf persons who cannot read the print output?

**Topic #8: Any Other Recommendations To Improve the Quality of Education of the Deaf at all Educational Levels**

(a) Is there a need for a clearinghouse for the deaf? What are alternative and cost-effective means for sharing of information for and between parents, educators, professionals, students, and consumers?

(b) What are appropriate procedures and the availability of detection services for identification of hearing loss in infants and young children?

(c) What are effective intervention strategies for infants and children who are deaf?

(d) How do preschool programs/elementary schools coordinate with the medical community in early identification of children with hearing impairments?

(e) To what extent do elementary schools and/or social and education agencies encourage parents of children who are deaf to improve their communication and educational involvement with their children?

(f) What is the impact of Supplemental Security Income (SSI) benefits on education? To what extent should schools encourage students to apply for SSI? Should model guidelines be provided?

(g) What emphasis should deaf culture be given in educational programs for students who are deaf? How can it be effectively offered?

(h) What is the status and quality of education at all levels for members of minority groups?

(i) In what ways can or should adults who are deaf be used as role models for students who are deaf?

(j) What are employment opportunities in regular school systems for teachers who are deaf?

(k) Should the U.S. Department of Education's oversight responsibility over GU, NTID, and federally funded regional programs be increased or decreased?

(l) To what degree should the U.S. Department of Education be involved with major policy making at GU/NTID and the four federally supported regional programs?

(m) Are technological advances being realized in education of persons who are deaf? If not, what can be done to promote the use of technology?

**Topic #9: Cost Effectiveness of Providing the Education of the Deaf**

(a) What is the cost-effectiveness of federal support for educational programs serving persons who are deaf?

(b) How much emphasis should be given to the concept of "critical mass" (the number of students sufficient to ensure quality education programs/support services) at all educational levels?

(c) Are deaf programs in consolidated school districts more cost effective than individual school programs for persons who are deaf?

(d) What are the cost implications of admitting hearing and foreign students to GU and foreign students to NTID?

(e) Since 70 percent of students who are deaf are educated in public schools and the trend shows that more students are moving from state residential schools;

—To what extent has this trend affected the cost per student for educating students at residential schools?

—Is there a certain number of students needed to be enrolled in residential schools in order to justify their operation?

—Are residential schools cost effective?

Records will be kept of the responses and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, DC.

**Pat Johanson,**

*Staff Director, Commission on Education of the Deaf.*

March 27, 1987.

[FR Doc. 87-7255 Filed 4-1-87; 8:45 am]

BILLING CODE 6820-SD-M

# Reader Aids

Federal Register

Vol. 52, No. 63

Thursday, April 2, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2

## CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**7 CFR**

301.....10357
354.....10364
**Proposed Rules:**
1955.....10577
1965.....10577

**9 CFR**

78.....10554

**12 CFR**

203.....10365
500.....10557
564.....10557

**14 CFR**

39.....10558
71.....10559
73.....10559, 10560
**Proposed Rules:**
39.....10581
71.....10582

**18 CFR**

381.....10366

**19 CFR**

24.....10561
133.....10668

**20 CFR**

10.....10486
**Proposed Rules:**
200.....10384

**21 CFR**

193.....10561, 10562
510.....10668
520.....10668
522.....10668
524.....10668
529.....10668
561.....10562

**24 CFR**

**Proposed Rules:**
905.....10668
968.....10668

**26 CFR**

1.....10368
5f.....10368
54.....10563
602.....10368, 10563
**Proposed Rules:**
54.....10583
602.....10583

**28 CFR**

545.....10528

**Proposed Rules:**
549.....10531

**29 CFR**

2644.....10368
**Proposed Rules:**
1625.....10584
1910.....10586

**30 CFR**

914.....10369, 10373

**32 CFR**

706.....10374

**33 CFR**

**Proposed Rules:**
100.....10593, 10594

**36 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**39 CFR**

10.....10375

**40 CFR**

110.....10712
180.....10375, 10376, 10565, 10567
271.....10568
761.....10688
799.....10377

**Proposed Rules:**

52.....10596

**41 CFR**

201-32.....10379

**44 CFR**

**Proposed Rules:**
5.....10385
6.....10385

**46 CFR**

**Proposed Rules:**
154.....10598

**47 CFR**

2.....10568
22.....10571
73.....10381, 10382, 10568
74.....10568
78.....10568

**Proposed Rules:**
90.....10389

**49 CFR**

1207.....10382
219.....10575
1249.....10382

## List of Public Laws

**Last List April 1, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 63/Pub. L. 100-16**

To designate March 21, 1987, as Afghanistan Day. (Mar. 27, 1987; 101 Stat. 130; 2 pages) Price: $1.00

4-3-87
Vol. 52 No. 64

# Federal Register

Friday
April 3, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S Government Printing Office
(ISSN 0097-6326)

OL
2

SS
4

P
8

87

MI

4-3-87
Vol. 52 No. 64
Pages 10725-10874

# Federal Register

Friday
April 3, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 64

Friday, April 3, 1987

**Administrative Conference of the United States**
NOTICES
Meetings:
Adjudication Committee and Governmental Processes Committee, 10782

**Agricultural Marketing Service**
RULES
Lemons grown in California and Arizona, 10729
Milk marketing orders:
Eastern Colorado, 10730
Memphis, TN, 10729
Oranges (navel) grown in Arizona and California, 10728
NOTICES
Beef promotion and research; certification stamp use approval, 10782

**Agricultural Stabilization and Conservation Service**
RULES
Marketing quotas and acreage allotments and special programs:
Referenda challenges or disputes, tobacco, and commodity certificates, in kind payments, and other forms of payment, etc., 10725

**Agriculture Department**
*See also* Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Food Safety and Inspection Service
NOTICES
Import quotas and fees:
Meat import limitations; quarterly estimates, 10782

**Animal and Plant Health Inspection Service**
PROPOSED RULES
Exportation and importation of animals and animal products:
Llamas and alpacas from Chile—
Health certification requirements, etc., 10765
Lottery, 10765

**Army Department**
NOTICES
Environmental statements; availability, etc.:
Light helicopter family (LHX), 10791

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Christopher Columbus Quincentenary Jubilee Commission**
RULES
Organization, recognition and support of quincentenary projects, and use of logo, 10870

**Commerce Department**
*See* International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
China, 10790
Textile and apparel categories:
Correlation with U.S. Tariff Schedules; correction, 10791

**Commodity Credit Corporation**
RULES
Loan and purchase programs:
Emergency feed program, 10725
Mohair and shorn wool and unshorn lambs (pulled wool), 10732

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 10849

**Customs Service**
PROPOSED RULES
Customs brokers:
Licensing examinations; withdrawn, 10774

**Defense Department**
*See* Army Department; Navy Department

**Drug Enforcement Administration**
NOTICES
*Applications, hearings, determinations, etc.:*
First State Chemical Co. Inc., 10825
(2 documents)
Mallinckrodt, Inc., 10824
Penick Corp., 10825, 10826
(2 documents)
Stepan Chemical Co., 10826
Upjohn Co., 10826

**Economic Regulatory Administration**
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
San Joaquin Cogen, Inc., 10794

**Education Department**
NOTICES
Meetings:
Education Intergovernmental Advisory Council, 10791

**Employment and Training Administration**
PROPOSED RULES
Unemployment compensation program:
Extended benefit program, 10774
NOTICES
Adjustment assistance:
Aluminum Co. of Amer. et al., 10829
Dana Corp. et al., 10826
Emerald Mines Corp. et al., 10827
Geissler Knitting Mills, Inc., 10827
Tenneco Oil Co., 10827
Unemployment compensation program; extended benefit periods:
Idaho, 10827

Louisiana, 10828
Wyoming, 10828

**Employment Standards Administration**
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 10830

**Energy Department**
*See also* Economic Regulatory Administration; Energy Information Administration; Energy Research Office; Federal Energy Regulatory Commission; Western Area Power Administration
NOTICES
Nuclear waste management:
Spent nuclear fuel storage and disposal; nonnuclear weapon states; technical assistance; update, 10792

**Energy Information Administration**
NOTICES
Agency information collection activities under OMB review, 10795

**Energy Research Office**
NOTICES
Meetings:
Basic Energy Sciences Advisory Committee; correction, 10852

**Environmental Protection Agency**
RULES
Air pollution; standards of performance for new stationary sources:
Concentration calculation equations; revisions and additions and method 18 clarifications
Correction, 10852
Air quality implementation plans; approval and promulgation; various States:
North Carolina, 10751
Toxic substances:
Testing requirements—
Mesityl oxide, 10752
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Model UNOR-6N NDIR Analyzer, 10800
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 10799
Weekly receipts, 10799
Toxic and hazardous substances control:
Premanufacture notices receipts, 10799

**Equal Employment Opportunity Commission**
NOTICES
Meetings; Sunshine Act, 10849

**Federal Aviation Administration**
RULES
Airworthiness directives:
Fairchild, 10735
Lockheed, 10736
IFR altitudes, 10737

**Federal Communications Commission**
RULES
Radio broadcasting:
Antenna height above average terrain determination, etc.; reclassification of FM facilities, 10757

**Federal Crop Insurance Corporation**
PROPOSED RULES
Administrative regulations:
Late planting agreement option, 10764

**Federal Deposit Insurance Corporation**
NOTICES
Meetings; Sunshine Act, 10849

**Federal Emergency Management Agency**
RULES
Flood insurance; communities eligible for sale:
Kansas et al., 10753
NOTICES
Agency information collection activities under OMB review, 10800
(2 documents)

**Federal Energy Regulatory Commission**
RULES
Natural Gas Policy Act:
Ceiling prices for high cost natural gas produced from tight formations-
Texas, 10741
NOTICES
Natural gas certificate filings:
Texas Eastern Transmission Corp. et al., 10796

**Federal Home Loan Bank Board**
NOTICES
Committees; establishment, renewals, terminations, etc.:
Federal Savings & Loan Advisory Council, 10801
Receiver appointments:
South Florida Savings Bank, 10802
(2 documents)
*Applications, hearings, determinations, etc.:*
Prospect Park Savings & Loan Association, 10801

**Federal Maritime Commission**
NOTICES
Meetings; Sunshine Act, 10849
Privacy Act; systems of records, 10802, 10811
(2 documents)

**Federal Mine Safety and Health Review Commission**
NOTICES
Meetings; Sunshine Act, 10849, 10850
(2 documents)

**Federal Register Office**
NOTICES
Editorial note: For list of libraries that have announced availability of **Federal Register** and Code of Federal Regulations, see Reader Aids carried in Part II of this issue, 10854

**Federal Register, Administrative Committee**
*See* Federal Register Office

**Federal Reserve System**
RULES
Electronic fund transfers (Regulation E):
Official staff commentary update, 10732

Equal credit opportunity (Regulation B):
Official staff commentary update, 10734
NOTICES
Federal Reserve Bank services; fee schedules and pricing principles:
Check collection services, 10812
Meetings; Sunshine Act, 10850
*Applications, hearings, determinations, etc.:*
Austin County Bankshares, Inc., 10813
Norwood Associates II et al., 10813

**Fish and Wildlife Service**
NOTICES
Atlantic Striped Bass Conservation Act:
Determinations, etc.—
District of Columbia, 10783
New Jersey, 10784

**Food and Drug Administration**
NOTICES
Food additive petitons:
Ajay Chemicals, Inc., 10820
Human drugs:
New drugs and antibiotic drugs; marketing applications approval; supplementary guidelines; availability, 10819

**Food Safety and Inspection Service**
PROPOSED RULES
Meat and poultry inspection:
Mechanically separated (species); labeling, 10766

**Health and Human Services Department**
*See also* Food and Drug Administration; Health Resources and Services Administration
NOTICES
Agency information collection activities under OMB review, 10814
Organization, functions, and authority delegations:
Public Health Service, 10815
Social Security Administration, 10815

**Health Resources and Services Administration**
NOTICES
Grants and cooperative agreements:
Community and migrant health centers, 10821

**Interior Department**
*See* Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service

**Internal Revenue Service**
RULES
Income taxes:
Foreign sales corporations; foreign management and economic processes requirements, 10741
Real estate transactions; information reporting, 10742
PROPOSED RULES
Income taxes:
Real estate transactions; information reporting; cross reference, 10774

**International Trade Administration**
RULES
Export licensing:
General licenses for exports to cooperating governments and certified end-users (gold card)
Correction, 10741
PROPOSED RULES
Export licensing:
International import certificates; removal of district office authority to process, 10771
NOTICES
Antidumping:
Portland cement, other than white, nonstaining Portland cement, from Dominican Republic, 10786
Precipitated barium carbonate from West Germany, 10787
Countervailing duties:
Acetylsalicylic acid (aspirin) from Turkey, 10788
Export trade certificates of review, 10785
Meetings:
Semiconductor Technical Advisory Committee, 10786

**Interstate Commerce Commission**
NOTICES
Railroad operation, acquisition, construction, etc.:
Southern Railway Co. et al., 10823
Stone Container Corp., 10824

**Justice Department**
*See also* Drug Enforcement Administration
NOTICES
Voting Rights Act certifications:
Victoria County, TX, 10824

**Labor Department**
*See* Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration

**Land Management Bureau**
NOTICES
Environmental statements; availability, etc.:
Clark County wilderness study areas, NV, 10823
Withdrawal and reservation of lands:
New Mexico; correction, 10852

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
Mid-Continent Resources, Inc., 10831
Minton Hickory Coal Co., 10831

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**Minerals Management Service**
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 10823

**National Archives and Records Administration**
*See* Federal Register Office

**National Credit Union Administration**
NOTICES
Meetings; Sunshine Act, 10850
(2 documents)

**National Foundation on the Arts and the Humanities**
NOTICES
Agency information collection activities under OMB review, 10832
Meetings:
Expansion Arts Advisory Panel, 10832
Music Advisory Panel, 10832, 10833
(3 documents)

**National Highway Traffic Safety Administration**
PROPOSED RULES
Motor vehicle safety standards:
Brake fluids, 10775
NOTICES
Fuel economy program, automotive; annual report to Congress, 10841

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Atlantic surf clam and ocean quahog, 10763
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 10761
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 10762
Pacific Halibut Commission, International:
Pacific halibut fisheries; U.S. treaty Indian tribes, 10759
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic spiny lobster, 10780
Northeast multispecies, 10781
NOTICES
Atlantic Striped Bass Conservation Act:
Determinations, etc.—
District of Columbia, 10783
New Jersey, 10784

**National Park Service**
PROPOSED RULES
Minerals management:
Mining and mining claims, 10866
NOTICES
Meetings:
Appalachian National Scenic Trail Advisory Council, 10823

**National Technical Information Service**
NOTICES
Inventions, Government-owned; availability for licensing, 10789

**Navy Department**
RULES
Navigation, COLREGS compliance exemptions:
Large Harbor Tug YTB-769, 10748
Large Harbor Tug YTB-789, 10749

**Nuclear Regulatory Commission**
PROPOSED RULES
Rulemaking petitions:
Quality Technology Co., 10771
NOTICES
Environmental statements; availability, etc.:
Iowa Electric Light & Power Co. et al., 10833
University of New Mexico, 10834
Washington Public Power Supply System, 10834
Meetings:
Reactor Safeguards Advisory Committee, 10835, 10836 (3 documents)
Nuclear Waste Policy Act:
Spent nuclear fuel storage and disposal; nonnuclear weapon states; technical assistance; update, 10792

**Postal Service**
RULES
Domestic Mail Mannual:
Miscellaneous amendments, 10749

**Public Health Service**
*See* Food and Drug Administration; Health Resources and Services Administration

**Securities and Exchange Commission**
NOTICES
Agency information collection activities under OMB review, 10836, 10841 (2 documents)
Meetings; Sunshine Act, 10850
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 10836
Options Clearing Corp., 10838
*Applications, hearings, determinations, etc.:*
Flag Investors Corporate Cash Trust, 10840
Portland General Electric Co., 10839

**Tennessee Valley Authority**
PROPOSED RULES
Freedom of Information Reform Act; implementation, 10772

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Federal Aviation Administration; National Highway Traffic Safety Administration; Urban Mass Transportation Administration

**Treasury Department**
*See also* Customs Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 10848
Tax treaties, income; various countries:
West Germany, 10848

**Urban Mass Transportation Administration**
NOTICES
Financial capacity (grant program circular); availability, etc., 10847

**Western Area Power Administration**
NOTICES
Power marketing plans, etc.:
Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas Project; correction, 10798

**Separate Parts In This Issue**

**Part II**
Office of the Federal Register, 10854

**Part III**
Department of the Interior, National Park Service, 10866

**Part IV**
Christopher Columbus Quincentenary Jubilee Commission, 10870

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728
910.....10729
1097.....10729
1137.....10730
1468.....10731
1472.....10731
1475.....10725
**Proposed Rules:**
400.....10764

**9 CFR**
**Proposed Rules:**
92 (2 documents).....10765
317.....10766
319.....10766

**10 CFR**
**Proposed Rules:**
50.....10771

**12 CFR**
202.....10732
205.....10734

**14 CFR**
39 (2 documents).....10735, 10736
95.....10737

**15 CFR**
371.....10741
**Proposed Rules:**
368.....10771

**18 CFR**
271.....10741
**Proposed Rules:**
1301.....10772

**19 CFR**
**Proposed Rules:**
111.....10774

**20 CFR**
**Proposed Rules:**
615.....10774

**26 CFR**
1 (2 documents).....10741, 10742
602.....10742
**Proposed Rules:**
1.....10774
602.....10774

**32 CFR**
706 (2 documents).....10748, 10749

**36 CFR**
**Proposed Rules:**
9.....10866

**39 CFR**
111.....10749

**40 CFR**
52.....10751
60.....10852
799.....10752

**44 CFR**
64.....10753

**45 CFR**
2201.....10870

**47 CFR**
73.....10757

**49 CFR**
**Proposed Rules:**
571.....10775

**50 CFR**
301.....10759
611.....10761
642.....10762
652.....10763
672.....10761
675.....10761
**Proposed Rules:**
640.....10780
651.....10781

# Rules and Regulations

Federal Register
Vol. 52, No. 64
Friday, April 3, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### Commodity Credit Corporation

### 7 CFR Parts 713, 717, 724, 725, 726, 770 and 1475

### Marketing Quotas and Acreage Allotments and Special Programs; Referenda Challenges or Disputes, Tobacco, and Commodity Certificates, in Kind Payments and Other Forms of Payment

**AGENCY:** Commodity Credit Corporation ("CCC"), and Agricultural Stabilization and Conservation Service ("ASCS"), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts as final, with minor changes, five interim rules which were published in the Federal Register on March 28, 1986 (51 FR 10609); June 19, 1986 (51 FR 22268); August 12, 1986 (51 FR 28803); October 28, 1986 (51 FR 39479); and December 3, 1986 (51 FR 43579). These interim rules are applicable to: Price support and production adjustment programs for the 1987 and subsequent crops of feed grains, rice, cotton and wheat; the holding of referenda; acreage allotments and marketing quotas for flue-cured, burley and minor kinds of tobacco; the transferability of commodity certificates; and implementation of the emergency feed program.

**EFFECTIVE DATE:** April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** With respect to: the March 28, 1986 and June 19, 1986 interim rules: Donald M. Blythe, Agricultural Program Specialist, Tobacco and Peanuts Division, (202) 382–0200; the August 12, 1986 interim rule: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, (202) 447–5621; the October 28, 1986 interim rule: Raymond K. Aldrich, Agricultural Program Specialist, Cotton, Grain, and Rice Price Support Division, (202) 447–6688; the December 3, 1986 interim rule: Jackie Stonfer, Agricultural Program Specialist, Cotton, Grain, and Rice Price Support Division, (202) 447–8481. The mailing address of the above individuals is USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Impact Analyses prepared for the 1986 crops of wheat, feed grains, cotton and rice and the Regulatory Impact Analyses which is being prepared in connection with the determinations for the 1987 crops of such commodities adequately addresses the issues raised by this final rule. Copies of the analyses will be available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Commodity Loan and Purchases—10.051; Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065; Emergency Feed Program—10.066; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule

A draft environmental impact statement pertaining to agricultural acreage adjustment programs has been prepared. Further information is available from Phillip Yasnowsky, Program Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; (202) 447–7887. It has been determined by an environmental evaluation that other program actions contained herein will have no significant effect on the quality of the environment; therefore, neither an environmental assessment nor an Environmental Impact Statement are needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0030, 0560–0071, 0560–0091, and 0560–0650 have been assigned.

### Summary of Comments and Changes in the Interim Rules

*7 CFR Parts 713, 717, 724, 725, 726, and 770*

No comments were received with respect to the regulations in these Parts.

*7 CFR Part 1475*

One comment was received with respect to this interim rule. As discussed below, the comment expressed concern about the definition of eligible livestock with respect to the kinds of horses which qualify the owner thereof to obtain assistance under the program. This comment is on file and available for public inspection in Room 4905-South Building, 14th and Independence Avenue, SW., Washington, DC 20013.

1. March 28, 1986 Interim Rule

This interim rule provided that, with respect to certain commodities, eligible producers may vote in a referendum to determine whether marketing quotas will be in effect for those commodities. If more than the statutorily specified number of producers voting in a referendum conducted for a commodity

disapprove marketing quotas, marketing quotas will not be in effect. The Agricultural Act of 1949, as amended (the "1949 Act"), provides that, with respect to certain commodities, price support will not be available for such commodities if marketing quotas have been disapproved. Previously, the regulations found at 7 CFR 717.16 provided for a 3 day period during which any challenge or dispute with respect to the correctness of the summary of a marketing quota referendum conducted at polling places must be brought to the attention of the county committee. The interim rule amended 7 CFR 717.16 to provide a similar period for notifying the county committee of any challenge or dispute with respect to the canvassing of ballots or tabulating referendum results when a marketing quota referendum is conducted by mail.

Since eligible burley tobacco producers were to vote in a marketing quota referendum to be conducted by mail ballot between March 24, 1986 and March 27, 1986, it was determined that the interim rule would become effective March 28, 1986. The public was given 30 days to submit written comments.

2. June 19, 1986 Interim Rule

The Food Security Act of 1985 (the "1985 Act") provides that the Secretary of Agriculture shall implement a Conservation Reserve Program for the 1986 through 1990 crop years, with the Secretary entering into contracts of not less than 10 or more than 15 years to assist owners and operators of highly erodible cropland in conserving and improving the soil and water resources of their farms. Section 1236 of the 1985 Act requires a reduction in the aggregate of the crop acreage bases, quotas, and allotments with respect to farms participating in the Conservation Reserve Program. The interim rule amended the regulations at 7 CFR Parts 724, 725, and 726 to provide that acreage converted from the production of tobacco due to the participation of the owner or operator of a farm in the Conservation Reserve Program shall be considered planted to tobacco for purposes of preserving acreage allotment and marketing quota history for use in determining future acreage allotments and marketing quotas.

The Consolidated Omnibus Budget Reconciliation Act of 1985 ("the Reconciliation Act") amended section 319(g) of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"), to authorize the approval of certain burley tobacco lease and transfer agreements that are filed after July 1 of a crop year and also amended sections 317(g) and 319(i) of the 1938 Act to reduce from 110 percent to 103 percent of the effective farm marketing quota, the quantity of burley and flue-cured tobacco, respectively, that may be marketed without incurring a marketing quota penalty. The interim rule amended the regulations at 7 CFR Parts 725 and 726 to incorporate these changes. Prior to their amendment by the interim rule, the regulations at 7 CFR 725.72(e)(4) generally provided that an agreement to lease and transfer a flue-cured tobacco acreage allotment and marketing quota must be filed by April 15 in order to be approved by the county ASC committee. The Reconciliation Act, approved April 7, 1986, changed the method of determining the national acreage allotment and marketing quota for flue-cured tobacco. Accordingly, this change delayed the establishment of farm acreage allotments and marketing quotas. Therefore, flue-cured tobacco farmers did not receive notices of their acreage allotments and marketing quotas in time to file their lease and transfer agreements by April 15. In order to alleviate this problem, this interim rule extended from April 15 to May 30 the final date for filing an agreement to lease and transfer flue-cured tobacco acreage allotments and marketing quotas.

3. August 12, 1986 Interim Rule

This interim rule amended CCC's program for emergency feed with respect to: (1) Accepting applications for assistance; (2) increases in the maximum cost share amount of assistance; (3) making poultry eligible for assistance; (4) eligibility requirements for a producer to obtain assistance; (5) making payments in the form of commodity certificates; and (6) other changes of an administrative nature.

The Department received one comment regarding the definition of livestock with respect to the kinds of horses which qualify the owner thereof to obtain assistance under the program. The comment expressed concern that horse breeders, by virtue of the interim rule, are denied the same current and future assistance their counterparts in cattle, sheep, goats, swine, and poultry operations receive. Under the Emergency Feed Program, CCC will share with owners of eligible livestock producers the cost of purchasing feed, including hay, for their livestock, including horses and mules. To be considered eligible livestock under the provisions of the interim rule, horses and mules were limited to those used in the production of food and fiber and those kept for breeding of animals to be used in the production of food and fiber. This determination was made on the basis that the Emergency Feed Program, like other agricultural programs, is related to the production of food and fiber. Therefore, this provision of the interim rule has not been changed.

As stated in the interim rule, the information collection requirements of this Part 7 CFR Part 1475 were submitted to the Office of Management and Budget (OMB) for the purposes of the Paperwork Reduction Act and it was anticipated that an OMB Number would be assigned. This final rule will add a new § 1475.69 to include the OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

4. October 28, 1986 Interim Rule

This interim rule amended 7 CFR Part 713 to implement certain provisions of the 1987 production adjustment and price support programs that would be in effect for the 1987 crops of wheat, feed grains, cotton and rice. The major provisions of this interim rule were as follows:

(a) Section 505 of the 1949 Act requires the establishment of farm acreage bases and provides the Secretary with discretionary authority to adjust such bases for the 1987 and subsequent crop years. Accordingly, § 713.11(a) was amended to provide that adjustments will be permitted only as determined and announced by the Secretary.

(b) Sections 101A, 103A, 105C, and 107D of the 1949 Act provides discretionary authority for the Secretary to implement a "limited cross compliance" requirement as a condition of eligibility for loans, purchases, or payments. To provide greater flexibility in alleviating of shortages which may occur with respect to a particular program crop when limited cross compliance is effect, § 713.100(a) is amended to allow the Secretary to exclude specified commodities from this requirement. Therefore, this change allows the Secretary to implement a "limited cross compliance" requirement with respect to program crops as may be deemed necessary. On February 27, 1987 the Secretary announced the removal of oats from the cross compliance requirement. Accordingly, § 713.100(a) is amended to set forth the terms of the "limited cross compliance" requirement.

(c) The Food Security Act of 1985 (the 1985 Act) amended section 335 of the Consolidated Farm and Rural Development Act with respect to farmland owned by the Farmers Home Administration (FmHA). Compliance by the Secretary with the provisions of

section 335(e) shall not cause any acreage allotment, marketing quota, or acreage base assigned to such property to lapse, terminate, be reduced or otherwise be adversely affected. Accordingly, § 713.3(e) was amended to provide that considered planted credit be provided on farms owned by FmHA, as necessary, to protect the crop acreage bases on such farms.

(d) To alleviate inequities regarding considered planted credit for acreages of conserving uses designated for a crop, § 713.3(e)(2)(vii) was amended to provide that considered planted credit may be approved only if producers on the farm have not violated any cross compliance requirements in effect for the crop year and have not planted an acreage of any program crop in excess of the crop acreage base for such program crop. This section was inadvertently amended to provide that considered planted credit may be approved regardless of whether or not any acreage of the crop is planted. Accordingly, this section is amended to provide such credit only if no acreage of the crop is planted.

(e) The 1985 Act provided no authority to change or adjust yields established for the 1985 or previous crop years. However, determination of farm program payment yields established after December 23, 1985 may be appealed in accordance with 7 CFR Part 780. Accordingly, § 713.155 was amended to clarify that farm program payment yields established before enactment of the 1985 Act are not appealable.

(f) The Extra Long Staple Cotton Act of 1983 authorized a special reserve for adjusting acreage bases established for extra long staple cotton through the 1986 crop year. Accordingly, § 713.11(d) which provided for such reserve was deleted.

(g) The 1985 Act provides discretionary authority for the implementation of certain cost reduction options. Although the Secretary announced on June 30, 1986 that such options would not be exercised at that time, authority is provided to implement the bid diversion program option at any time prior to harvest. Accordingly, § 713.58 was added to provide for the implementation of a bid diversion program should it be determined necessary.

(h) Section 713.2 was amended to clarify that contracts to participate in the wheat, feed grains, cotton and rice programs may be executed by representatives of CCC only in accordance with the terms and conditions determined and announced by the Executive Vice President, CCC.

(i) Section 713.3(d) was amended to provide that State committees may authorize haying of conserving use acreage only after consulting with interested parties. If haying is not authorized, acreages which are hayed shall be considered to be nonprogram crop acreages. This was intended to apply only to conserving use acreage designated to a program crop for payment purposes under § 713.108 (b)(2). Accordingly, this section is amended to clarify the original intent.

(j) Section 713.63(a) was amended to provide that State committees may authorize grazing of ACR acreage only after consulting with interested parties and, if authorized, to establish a 5 month nongrazing period applicable to such acreage.

(k) Section 713.63(c)(2) was amended to provide that participating producers may charge fees for hunting and fishing on ACR acreage.

5. December 3, 1986 Interim Rule

This interim rule amended the regulations at 7 CFR Part 770 to provide the following: (1) producers who have commodity certificates issued prior to November 17, 1986, may transfer such certificates through the expiration date shown thereon; and (2) producers who have commodity certificates, issued on or after November 17, 1986, may transfer the commodity certificates through the expiration date thereon and may, during the period starting the first day of the sixth month after the month in which the certificate was issued through the expiration date, submit the certificate to CCC for payment by check.

On October 24, 1986, the Secretary of Agriculture announced that a portion of the advance deficiency payments made with respect to the 1987 wheat, feed grain, upland cotton and rice programs would be made in the form of commodity certificates. In order to provide uniform treatment of all producers who will receive such certificates, it was determined that this interim rule should become effective on the date of filing with the Office of Federal Register.

**List of Subjects**

*7 CFR Part 713*

Wheat, Feed grains, Cotton, Rice and related programs.

*7 CFR Part 717*

Marketing quotas, Holding of referenda.

*7 CFR Parts 724, 725, and 726*

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

*7 CFR Part 770*

Wheat, Feed grains, Cotton, Rice and related programs.

*7 CFR Part 1475*

Animal feed, Disaster assistance, Grant programs—Agriculture, Livestock.

**Final Rule**

Accordingly the regulations found at parts 713, 717, 724, 725, 726, 770 and 1475 of Chapters VII and XIV of Title 7 of the Code of Federal Regulations are amended as follows:

1. The interim rule published at 51 FR 10609, March 28, 1986, amending Part 717, is hereby adopted as a final rule without change.

2. The interim rule published at 51 FR 22268, June 19, 1986, amending Parts 724, 725 and 726, is hereby adopted as a final rule without change.

3. The interim rule published at 51 FR 43579, December 3, 1986, amending Part 770, is hereby adopted as a final rule without change.

4. The interim rule published at 51 FR 39479, October 28, 1986, amending Part 713, is hereby adopted as a final rule with the following changes:

**PART 713—[AMENDED]**

2. Section 713.3 is amended by revising (d)(1)(v) and (e)(2)(vii) to read as follows:

**§ 713.3 Definitions.**

* * * * *

(d) * * *

(1) * * *

(v) In a State where the State committee, after consulting with interested parties, has determined that haying of conserving use acreage designated to a program crop for payment purposes under § 713.108(b)(2) shall not be permitted, any acreage which is harvested for green chop, hay, silage, or haylage.

* * * * *

(e) * * *

(2) * * *

(vii) For farms which for which the acreage report filed in accordance with Part 718 of this chapter reflects zero acreage of the crop and which are not participating in a set-aside, acreage

reduction, or diversion program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102, provided that, in accordance with instructions issued by the Deputy Administrator, producers on the farm are not in violation of any cross compliance requirement in effect in accordance with § 1713.100 and such producers have not planted an acreage of a program crop in excess of the acreage base established for such program crop for the farm.

3. Section 713.100 is amended by revising (a) to read as follows:

**§ 713.100 Cross compliance on the farm.**

* * * * *

(a) Whenever an acreage reduction program is announced by the Secretary and the Secretary also announces that a limited cross compliance requirement will be in effect, as a condition of eligibility for loans, purchases and payments with respect to any crop of a commodity enrolled in the acreage reduction program, producers on a farm shall not plant an acreage of another commodity in excess of the crop acreage base established for that commodity for the farm, except as otherwise announced by the Secretary.

5. The interim rule published at 51 FR 28803, August 12, 1986, amending Part 1475, is hereby adopted as a final rule with the following change:

## PART 1475—[AMENDED]

1. The authority citation for 7 CFR Part 1475—Emergency Feed Program continues to read as follows:

**Authority:** Section 1105 of the Food and Agriculture Act of 1977, 91 Stat. 955, as amended (7 U.S.C. 2267).

2. A new § 1475.69 is added to read as follows:

**§ 1475.69 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in these regulations (7 CFR Part 1475) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and OMB number 0560–0029 has been assigned.

Signed at Washington, DC on March 30, 1987.

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 87–7235 Filed 4–2–87; 8:45 am]

BILLING CODE 3410–05–M

**Agricultural Marketing Service**

**7 CFR Part 907**

**[Navel Orange Reg. 654]**

## Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 654 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period April 3, 1987, through April 9, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

**DATE:** Regulation 654 (§ 907.954) is effective for the period April 3, 1987, through April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee met publicly on March 31, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 2 vote a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

**List of Subjects in 7 CFR Part 907**

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

## PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.954 Navel Orange Regulation 654 is added to read as follows:

**§ 907.954 Navel Orange Regulation 654.**

The quantities of navel oranges grown in California and Arizona which may be handled during the period April 3, 1987, through April 9, 1987, are established as follows:

(a) *District 1:* 1,709,234 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

Dated: April 1, 1987.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87-7559 Filed 4-2-87; 8:45 am]

BILLING CODE 3410-02-M

---

**7 CFR Part 910**

**[Lemon Reg. 555]**

## Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 555 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period April 5–11, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 555 (§ 910.855) is effective for the period April 5–11, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on March 31, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 3 vote a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of this Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of Subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, and Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.855 is added to read as follows:

**§ 910.855 Lemon Regulation 555.**

The quantity of lemons grown in California and Arizona which may be handled during the period April 5 through April 11, 1987, is established at 340,000 cartons.

Dated: April 1, 1987.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87-7558 Filed 4-2-87; 8:45 am]

BILLING CODE 3410-02-M

---

**7 CFR Part 1097**

## Milk in the Memphis, TN, Marketing Area; Order Suspending a Certain Provision

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of a rule.

**SUMMARY:** This action suspends the pool supply plant provision of the Memphis, Tennessee milk order for the months of March through December 1987. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is making supplemental shipments of milk to meet increased fluid milk needs of bottling plants that are regulated under the Memphis order. The milk supply that Mid-Am has available to meet such increasing need for milk in fluid uses at Memphis is milk received at supply balancing plants which handle reserve milk supplies associated with distributing plants that are regulated under other Federal order. The greater shipments needed at Memphis in the next few months would result in the reserve plants and milk supplies associated with such plants becoming regulated under the individual-handler pool Memphis order. This would result in a reduction of returns to Mid-Am's producers and disrupt the normal association of such dairy farmers' milk with other Federal orders. The suspension will permit the reserve milk supplies and supplemental shipments for fluid milk needs to continue to be regulated under the orders with which the milk is currently associated and also facilities making supplemental supplies of milk available to Memphis distributing plants for fluid use.

**EFFECTIVE DATE:** April 3, 1987, for the month of March-December 1987.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

*Notice of Proposed Suspension:* Issued March 11, 1987; published March 16, 1987 (52 FR 8075).

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

Such action tends to ensure that dairy farmers will continue to have their milk regulated and priced under the order for the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and of the order regulating the handling of milk in the Memphis, Tennessee marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on March 16, 1987 (52 FR 8075) concerning a proposed suspension of a certain provision of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No views opposing this action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of March through December 1987 the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1097.7, paragraph (b) in its entirety.

**Statement of Consideration**

This action makes inoperative, for the months of March-December 1987, that portion of the fluid milk plant definition that pertains to a supply plant. The order currently regulates a plant that ships more than 70,000 pounds of milk to pool distributing plants during the month.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is making supplemental shipments of milk to meet the increasing fluid milk needs of bottling plants regulated under the Memphis order. The shipments are necessary because of an increase in fluid milk sales by Memphis plants and a decrease in production in those areas that normally supply the Memphis market.

The most feasible milk supply that Mid-Am has available to meet the greater fluid milk needs of Memphis handlers is located in the heavy southwest Missouri production area. However, milk produced in that area is associated with supply plants and reserve processing plants that are regulated under the Southern Illinois, Southwest Plains and Texas Federal orders. These plants are qualified for pool status under the respective orders either on the basis of shipments from such plants to distributing plants and/or by Mid-Am's marketwide performance in supplying direct-shipped milk from farms to distributing plants. Greater shipments from such plants would result in the regulation of one or more of the cooperative's plants under the Memphis order.

Since the Memphis order provides for individual-handler pooling, regulation of Mid-Am's reserve plants under that order would result in a reduction of returns to the cooperative's producers since the reserve milk supplies for other Federal order markets would also be regulated under the Memphis order. The suspension action will permit the reserve milk supplies and the supplemental shipments for fluid purposes to continue to be regulated under the respective orders with which the milk is currently associated and also facilitate making supplemental supplies of milk available to Memphis handlers for fluid use.

Mid-Am has been relying on the southwest Missouri production areas to supply Memphis handlers at least since September 1986. Since that time, a shift in the regulation of the cooperative's plants has been avoided by a suspension of the Memphis supply plant provision during October-December 1986 and by alternating the plants from which milk is shipped to Memphis distributing plants since the suspension expired. A greater and continuing reliance on such supplemental shipments will be necessary during March-December 1987. Thus, this action suspends the provision for the remainder of 1987.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecesary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing in that it will ensure that dairy farmers will continue to have their milk regulated and priced under the order covering the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pooling and pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this proposal to suspend. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

**List of Subjects in 7 CFR Part 1097**

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provision of § 1097.7 of the Memphis, Tennessee order is hereby suspended for the months of March–December 1987 as follows:

## PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. The authority citation for 7 CFR Part 1097 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1097.7 [Suspended in part]**

2. Paragraph (b) of § 1097.7 is suspended in its entirety.

*Effective date:* Upon publication in the **Federal Register** for the months of March–December 1987.

Signed at Washington, DC, on March 30, 1987.

Kenneth A. Gilles,

*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 87–7358 Filed 4–2–87; 8:45 am]

BILLING CODE [illegible]

---

**7 CFR Part 1137**

## Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action continues to suspend through September 1987 portions of the Eastern Colorado Federal milk order that relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continued suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

**EFFECTIVE DATE:** April 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

*Notice of Proposed Suspension:* Issued February 26, 1987; published March 4, 1987 (52 FR 6579).

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking wa published in the **Federal Register** on March 4, 1987 (52 FR 6579) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of March through September 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

**Statement of Consideration**

This action continues for the months of March through September 1987 suspension of the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. Earlier actions suspended these provisions for the months of September 1985 through February 1987.

The order provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distributing plants in the months of March, April, May, June, July and December, and 20 percent in other months. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The continued suspension was requested by Mid-America Dairymen, Inc., (Mid-Am) a cooperative association of producers supplying the market. Mid-Am also requested the earlier suspensions. The cooperative association stated that the volume of producer milk pooled on the Eastern Colorado order began to increase following the conclusion of the Milk Diversion Program in 1985, and continued to increase during 1986. According to the cooperative, Eastern Colorado producer milk increased 12.7 percent over the previous year during 1985, and 5.8 percent from 1985 to 1986. Producer milk used in Class I increased only 1.8 percent from 1984 to 1985, and did not change from 1985 levels in 1986. Mid-Am stated that milk production continues to be above 1985 levels in the Eastern Colorado milkshed due to a mild winter in that area, and is expected to continue to remain above those levels through the spring and summer months. Mid-Am stated that as a result of continued high levels of milk production, there are ample supplies of local milk available to meet the fluid requirements of Denver-area distributing plants. The cooperative estimated that approximately 15 loads of producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers for continued pool status. The cooperative stated that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

No comments in opposition to the proposed action were received. Comments supporting the proposed action were filed by Mountain Empire Dairymen's Association (MEDA), a cooperative association representing most of the producers pooled under the order. Mid-Am also filed comments that supported the suspension.

Milk production is slightly above year-earlier levels, when suspension of the same provisions was also necessary. Consequently, a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses than would be allowable under the order's diversion limits. Favorable weather conditions and ample feed supplies provide strong indications that the current production trends will continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the suspension of the diversion limits and "touch-base" requirements of the Eastern Colorado milk order should be continued for the months of March through September 1987 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1137**

Milk marketing orders, Milk, Dairy products.

*It is therefore ordered,* That the following provisions of § 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of March through September 1987:

## PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.12 [Amended]

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant" are suspended.

3. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of " and "distributing" are suspended.

Signed at Washington, DC, on March 30, 1987.

**Kenneth A. Gilles,**

*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 87–7357 Filed 4–2–87; 8:45 am]

BILLING CODE 3410-02-M

---

## Commodity Credit Corporation

### 7 CFR Parts 1468 and 1472

### Mohair and Shorn Wool and Unshorn Lamb (Pulled Wool); Loans and Payment Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule; extension of comment period and correction.

**SUMMARY:** The comment period on the Interim Rule relating to the price support programs for mohair and wool published on February 11, 1987 (52 FR 4275) which expires on April 13, 1987 is extended an additional 30 days to allow time for comments to be received.

In addition to extending the comment period, a correction is being made to correct an error in one of the amendments to Part 1472.

**DATES:** Comments on the interim rule are being extended from April 13, 1987 to May 13, 1987. Comments must be received on or before May 13, 1987, in order to be assured of consideration.

**ADDRESS:** Send comments on the interim rule to: Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the rule will be made available for further inspection in Room 4095 South Building, USDA, between the hours 8:15 a.m. and 4:45 p.m., Monday thru Friday.

**FOR FURTHER INFORMATION CONTACT:** Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

**SUPPLEMENTARY INFORMATION:**

**Extension of Deadline for Comments**

The current 60 day comment period on the Interim Rule that was published in the **Federal Register** at 52 FR 4275 on Wednesday, February 11, 1987 (FR Doc. 87–2708) expires on April 13, 1987. The Interim Rule amended the regulations at 7 CFR Parts 1468 and 1472 with respect to a producer's eligibility for price support payments for mohair and wool, respectively, and made certain minor changes. This document extends the comment period for that interim rule for an additional 30 days to allow citizens as well as Federal, State and local officials ample time to comment on the interim rule.

*Correction*

FR Doc. 87–2708, published at 52 FR 4275, is corrected as follows:

On page 4277, middle column, amendatory language item 7, is corrected to read:

"7. Section 1472. 1507(c) is amended by removing paragraph (c) (3) and (4), and by revising paragraph (c) (1) and (2) to read as follows:".

Issued at Washington, DC, on March 31, 1987.

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–7278 Filed 4–2–87; 8:45 am]

BILLING CODE 3410-05-M

---

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

[Reg. B; EC–1]

### Equal Credit Opportunity; Official Staff Commentary Update

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final official staff interpretation.

**SUMMARY:** The Board is publishing in final form revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The revisions address questions that have arisen about the regulation, and include new material and changes in existing material

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Hurt or Leonard Chanin, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3867 or 452–3667; for the hearing impaired *only*, Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** (1) *General.* The Equal Credit Opportunity Act (15 U.S.C 1691 *et seq.*) makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR Part 202).

On November 20, 1985, an official staff commentary interpreting the regulation was published along with the final rule revising Regulation B (50 FR 48018). The commentary is designed to provide general guidance to creditors in applying the regulation to specific transactions.

Periodic updates provide the vehicle for additional staff interpretations that may be necessary as new questions arise (although each unique situation cannot be individually addressed in the commentary). This notice contains the first update, which was proposed for comment on December 2, 1986 (51 FR 43371). The revisions are effective on April 1, 1987.

(2) *Explanation of revisions.* Following is a brief description of the revisions to the commentary:

*Section 202.2—Definitions.*

2(f) Application

A cross reference to comment 9(a)(1)–(3) has been added to comment 2(f)–5. Comment 2(f)–5 is a general statement of a creditor's duty to exercise reasonable diligence in obtaining information from applicants or third parties in connection with an application for credit. Because a creditor may deny an application on the basis of incompleteness, the new cross reference helps clarify the relationship between this comment and the treatment of incomplete applications.

2(z) Prohibited Basis

Editorial changes have been made to the first and second sentences of

comment 2(z)–1 for clarity. No substantive change is intended.

*Section 202.3—Limited Exceptions for Certain Classes of Transactions.*

3(a) Public-Utilities Credit

New comment 3(a)–3 has been added to explain that only telephone companies that are regulated by or that file certain information with a government unit qualify for the public utilities exceptions available under § 202.3(a)(2). The words "required to" were deleted in the final comment to conform to the regulation.

*Section 202.9—Notifications.*

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

*Paragraph 9(a)(1)*

New comment 9(a)(1)–3 has been added to explain that a creditor may deny an application missing information from the applicant on the basis of incompleteness. Existing comments 9(a)(1)–3 through 9(a)(1)–6 are redesignated as comments 9(a)(1)–4 through 9(a)(1)–7, respectively.

*Section 202.13—Information For Monitoring Purposes.*

13(a) Information to Be Requested

New comment 13(a)–5 has been added to address transactions not covered by the data collection requirements of § 202.13(a). Based on suggestions made by commenters, the final comment clarifies that the test for determining whether an application is covered by § 202.13(a) focuses on the purpose of the transaction. For example, second mortgages and open-end home equity lines obtained primarily for a purpose other than the purchase or refinancing of an applicant's principal residence are not covered by § 202.13(a). Existing comment 13(a)–5 is redesignated as comment 13(a)–6.

Appendix B—Model Application Forms

Comments 1 and 2 to Appendix B have been revised to address the proper use of two mortgage application forms issued in October 1986 by the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA). The two forms—FHLMC 65/FNMA 1003 and FHLMC 703/FNMA 1012—contain a section for collecting the monitoring information required by section 202.13. The forms do not, however, differentiate between transactions that are covered by § 202.13(a), which limits data collection to applications for credit primarily for the purchase or refinancing of an applicant's principal residence, and other transactions in which collection is required for certain creditors by an enforcement agency under the substitute monitoring provisions of § 202.13(d). The residential loan application is typically used for second mortgages as well as the more limited class of mortgage loans covered by § 202.13(a) of the regulation, for example.

Revised comments 1 and 2 provide that creditors which are governed solely by § 202.13(a) should delete, strike, or modify the "Information for Government Monitoring Purposes" section when using the FHLMC/FNMA forms in transactions in which they are not permitted to collect the information. Other creditors may use the forms as issued in compliance with their enforcement agency's substitute monitoring program.

List of Subjects in 12 CFR Part 202

Banks; Banking; Civil rights; Consumer protection; Credit; Federal Reserve System; Marital status discrimination; Minority groups; Penalties; Religious discrimination; Sex discrimination; Women.

(3) *Text of revisions.* The revisions to the commentary (12 CFR Part 202, Supp. I) read as follows:

**PART 202—[AMENDED]**

**Supplement I—Official Staff Commentary**

* * * * *

*Section 202.2—Definitions.*

* * * * *

*2(f) Application.*

* * * * *

5. *Completed Application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditors's option to deny an application on the basis of incompleteness.)

* * * * *

*2(z) Prohibited basis.*

1. *Persons associated with applicant.* "Prohibited basis" as used in this regulation refers not only to certain characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 202.4, a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

* * * * *

*Section 202.3—Limited Exceptions for Certain Classes of Transactions.*

* * * * *

*3(a) Public utilities credit.*

* * * * *

3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in § 202.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

* * * * *

*Section 202.9—Notifications*

* * * * *

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons.

Current comments 9(a)(1)–3 through 9(a)(1)–6 are redesignated comments 9(a)(1)–4 through 9(a)(1)–7, respectively.

* * * * *

*Paragraph 9(a)(1)*

* * * * *

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding matters that the applicant can complete and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under § 202.9(c).

*Section 202.13—Information For Monitoring Purposes*

Current comment 13(a)–5 is redesignated 13(a)–6.

13(a) Information to Be Requested

* * * * *

5. *Transactions not covered.* The information collection requirements of § 202.13(a) apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for home equity lines and other applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not

subject to the information collection requirements of § 202.13(a).

**Appendix B—Model Application Forms**

1 *FHLMC/FNMA form—residential loan application.* The residential loan application form (FHLMC 65/FNMA 1003), including supplemental form (FHLMC 65A/FNMA 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of this regulation in some transactions but not others because of the form's section on "Information for Government Monitoring Purposes." Creditors that are governed by § 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data collection section on the form when using it for transactions not covered by § 202.13(a) to assure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) may use the form as issued, in compliance with the substitute program.

2. *FHLMC/FNMA form—home-improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section on "Information for Government Monitoring Purposes." Creditors that are governed by § 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data collection section on the form when using it for transactions not covered by § 202.13(a) to assure that they do not collect the information. Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) may use the form as issued, in compliance with that substitute program.

Board of Governors of the Federal Reserve System, March 31, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-7409 Filed 4-2-87; 8:45 am]

BILLING CODE 6210-01-M

---

**12 CFR Part 205**

**[Reg. E; EFT-2]**

## Electronic Fund Transfers; Official Staff Commentary Update

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final official staff interpretation.

**SUMMARY:** The Board is publishing revisions to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The revisions represent final action on proposed changes published for comment in December 1986.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION:** Contact Sharon Bowman or Heather Hansche, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-2412. For the hearing-impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202) 452-3544.

**SUPPLEMENTARY INFORMATION:** (1) *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). Effective September 24, 1981, an official staff commentary (EFT-2, Supp. II to 12 CFR Part 205) was published to interpret the regulation. The commentary is designed to provide guidance to financial institutions in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. There have been four updates so far. The proposed version of this fifth update was published for comment on December 3, 1986 (51 FR 43615); this notice contains the final version.

(2) *Revisions to Commentary.* Four of the questions included in this document—questions 2-12.6, 3-3.6, 7-11.5, and 9-3.5—are new. Question 2-12.6 addresses systems for paying government benefits, such as public assistance, by means of electronic terminals; it clarifies that since the benefits are not disbursed from an account established by or in the control of the recipient, Regulation E does not apply. Question 3-3.6 concerns the regulation's coverage of dividend or interest payments on securities; it has been modified from the proposed version to avoid indicating that such payments are necessarily "preauthorized" transfers.

Question 7-11.5 deals with the Regulation D restrictions on payments to third parties from money market deposit accounts; it describes the circumstances under which the institution would be required by Regulation E to disclose those restrictions. Question 9-3.5 addresses the practice of including promotional material on ATM or POS receipts, and is adopted without change from the proposed version.

The remaining two questions—questions 9-36 and 11-11.5—are revisions of existing commentary provisions; the new material deals with the treatment of cash-back and cash-only transactions at merchant point-of-sale terminals. These have been adopted without change from the proposed versions.

**List of Subjects in 12 CFR Part 205**

Banks, banking; Consumer protection; Electronic fund transfers; Federal Reserve System; Penalties.

**Text of Revisions**

The revisions to the Official Staff Commentary on Regulation E (EFT-2, Supp. II to 12 CFR Part 205) read as follows:

**§ 205.2 Definitions and rules of construction.**

* * * * *

Q 2-12.6: *Fund transfer—electronic payment of government benefits.* A recipient of government benefits, such as public assistance or food stamps, receives the benefits from an automated teller machine or a staffed electronic terminal. For example, the recipient presents an identification card to a clerk, the card is run through an electronic terminal, the recipient's identity is verified by some means (such as a photograph, personal identification number, or signature), and the benefits are given in the form of cash, food stamps, or food items. The benefits are disbursed from an account of the governmental entity paying the benefits, not an account established by or in the control of the consumer. Are these transactions subject to Regulation E?

A: No, since there is no debit or credit to a consumer asset account. (See questions 2-4 and 2-12.) (Section 205.2(b) and (g))

* * * * *

**§ 205.3 Exemptions.**

* * * * *

Q 3-3.6: *Payment of dividends or interest on securities.* A payment of interest or dividends on securities is made by electronic fund transfer into a consumer's account. The payment may be made, for example, by a discount brokerage firm into an account at an affiliated depository institution or, for government securities, by a Federal Reserve Bank into the consumer's account at a depository institution. Is the transfer covered by Regulation E?

A: Yes. The securities exemption does not apply since there is no purchase or sale of securities. (Section 205.3(c))

* * * * *

**§ 205.7 Initial Disclosure of Terms and Conditions.**

* * * * *

Q 7-11.5: *Restrictions on certain deposit accounts.* Regulation D imposes restrictions

on the number of payments to third parties that may be made from a money market deposit account (whether made by electronic or nonelectronic means). If an institution chooses to implement the restrictions by refusing to execute transfers that would exceed the limit, must it disclose the restrictions under Regulation E as limitations on the frequency of electronic fund transfers?

A: Yes, limitations on account activity that restrict the consumer's ability to make electronic fund transfers must be disclosed to the consumer as part of the Regulation E disclosures. (Section 205.7(a)(4))

* * * * *

**§ 205.9 Documentation of transfers.**

* * * * *

Q 9–3.5: *Receipts—inclusion of promotional material.* A financial institution uses receipts on which there is promotional material (such as discount coupons for food items at restaurants). Is the printing of such promotional material on receipts prohibited by the regulation?

A: No. The regulation does, however, mandate that the required receipt information be set forth clearly; this may be achieved, for example, by separating it from the promotional material. In addition, a consumer must not be required to surrender the receipt (or that portion containing the required disclosures) in order to take advantage of a promotion. (Section 205.9(a))

* * * * *

Q 9–36: *Receipts/periodic statements—type of transfer.* What degree of specificity is required on terminal receipts and periodic statements for the type of transfer?

A: Common descriptions are sufficient. There is no prescribed terminology, although some examples are contained in the regulation. On periodic statements, it is enough simply to show the amount of the transfer in the debit or the credit column if other information on the statement (such as a terminal location or third-party name) enables the consumer to identify the type of transfer. When a consumer obtains cash from a merchant at a POS terminal in addition to purchasing goods, or obtains cash only, it is not necessary to differentiate the transaction from one involving only the purchase of goods. (See question 9–27.) (Section 205.9(a)(3) and (b)(1)(iii))

* * * * *

**§ 205.11 Procedures for resolving errors.**

* * * * *

Q 11–11.5: *POS debit-card transactions.* The deadlines for investigating errors are extended for all transfers resulting from POS debit-card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit-card transactions?

A: POS debit-card transactions include all debit card transactions at merchants' point-of-sale terminals, including those for cash only. (Transactions at ATMs, however, are not POS transactions even though the ATM may be in a merchant location.) POS debit-card transactions generally take place at merchant locations but also include mail and telephone orders of goods or services involving a debit card. (Section 205.11(c)(4))

* * * * *

Board of Governors of the Federal Reserve System, March 30, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87–7408 Filed 4–2–87; 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 86–NM–194–AD; Amdt. 39–5596]**

## Airworthiness Directives; Fairchild Model F–27 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action supersedes an existing airworthiness directive (AD), applicable to Fairchild Model F–27 series airplanes, which currently requires a daily inspection of the wing-to-fuselage fairing, both left and right, for evidence of cracks or looseness around screws and grommets. This action provides for a modification, which, if incorporated, constitutes terminating action for the daily inspection requirements. This action also limits the applicability of the existing AD to those airplanes which have not had the modification incorporated in production.

**EFFECTIVE DATE:** April 20, 1987.

**ADDRESSES:** The applicable service information may be obtained from Fairchild Republic Company, Showalter Road, Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin, Room 202, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald E. Gonder, Technical and Administrative Support Staff (ANM–103), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, telephone (206) 431–2128; or Charles Birkenholz, Airframe Branch (ANE–172), FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791–6220.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 58–25–03, applicable to Fairchild Model F–27 series airplanes, to reduce the number of airplanes affected by the requirements of the existing AD and to add an optional modification which would constitute terminating actions for the daily inspection requirement, was published in the **Federal Register** on October 9, 1986 (51 FR 36230).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Since this amendment relieves a restriction by providing operators with an optional terminating action and reducing the number of airplanes affected by the requirements of the AD, it imposes no additional economic burden on any operator. Accordingly, the amendment may be made effective in less than 30 days.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few of these airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding Airworthiness Directive (AD) 58–25–03 with the following new airworthiness directive:

**Fairchild Republic Company:** Applies to Model F-27 series airplanes, Manufacturer's Serial Numbers 1 through 39, and 41 through 48; equipped with wing-to-fuselage fairings, Part Numbers (P/N) 27-100102-1 or -2, and 27-100103-1, -2, -31, or -32; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the inflight loss of the wing-to-fuselage fairing, accomplish the following:

A. Conduct a daily visual inspection of wing-to-fuselage fairing, both right and left, for cracks or looseness around screws and grommets. If cracks or looseness is found, before further flight install washer P/N AN970-3, and use washer head screw P/N AN525-10R9 in place of P/N AN509-10R9. Daily inspections are to continue until the modification of the fairings, described in paragraph B., below, is accomplished.

Note.—Caution should be used not to overtighten screws, as cracks may develop.

B. Modification of the wing-to-fuselage fairings in accordance with Fairchild Service Bulletin F27-53-9, Revision 1, dated May 13, 1959, or later FAA-approved revisions, constitutes terminating action for the daily inspection requirement of paragraph A., above.

C. Alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fairchild Republic Company, Showalter Road, Hagerstown, Maryland 21740. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment supersedes AD 58-25-03.

This amendment becomes effective April 20, 1987.

Issued in Seattle, Washington, on March 25, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-7317 Filed 4-2-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 86-NM-140-AD; Amdt. 39-5597]**

## Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes Equipped with Rolls Royce RB211-22B Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to Lockheed Model L-1011 series airplanes equipped with Rolls Royce RB211-22B engines, that requires modification and corrective actions to prevent the potential fire hazard caused by heat damage to the flex fuel feed line from an undetected gearbox fire. This AD is prompted by nine reports of gearbox fires caused by failed bearings. This amendment provides modifications and corrective actions that constitute terminating action for AD 85-09-03.

**EFFECTIVE:** May 8, 1987.

**ADDRESSES:** The applicable service information may be obtained upon request from the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1; and the Rolls-Royce PLC, P.O. Box 31, Derby DE 2 8BJ, England, Attention: Technical Publications Department. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD), applicable to Lockheed Model L-1011 series airplanes equipped with Rolls Royce RB 211-22B engines, to require modifications and corrective action to prevent the potential fire hazard caused by heat damage to the flex fuel feed line from an undetected gearbox fire, was published in the **Federal Register** on July 17, 1986 (51 FR 25896). The comment period for the proposal closed September 8, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

Three commenters objected to the proposed requirement of paragraph B. to install a heat shield; the commenter stated that installation of the heat shield is not effective since it is not directly associated with the cause of gearbox fires. The FAA notes that, while a heat shield may not be the cause of fires, it can prevent their spread. However, the FAA has reconsidered the proposed requirement for the installation of the heat shield and has revised paragraph B. of the final rule to delete the requirement to accomplish the modifications described in Rolls Royce Service Bulletins (S/B) RB.211-73-8105 and RB.211-72-8106. The FAA has determined that the remaining modifications required by paragraph A. and B. of the final rule adequately eliminate the unsafe condition addressed by the AD.

One commenter stated that accomplishment of the aircraft wiring change described in Lockheed Service Bulletin 093-28-074, as proposed in paragraph A., would cause the primary fuel shutoff valve for engine No. 2 to close each time the engine was shut down. The commenter stated that this procedure would result in decreased reliability of the valve actuator and might result in the valve being inoperative at a critical time. After further consideration of this information, the FAA concurs that this particular change in wiring is unnecessary. Accordingly, paragraph A. of the final rule has been revised to delete the requirement for the wiring change described in Lockheed Service Bulletin 093-28-074.

Several commenters stated that the compliance time was too short. One operator specifically requested that the compliance time be increased to 10,000 flight hours or 40 months, in order to compensate for material lead times, which are as high as 40 weeks. The FAA has verified with the manufacturer that the delivery time for the wiring change kit, described in Lockheed S/B 093-28-074, is indeed 40 weeks; however, since the requirement for installation of this kit has been deleted from the final rule (as explained above), the FAA does not concur with extending the compliance time based on that kit's availability. The FAA has determined that 8,000 flight hours or 30 months after the effective date of the AD, as proposed, is appropriate and will cause no unreasonable problems of timely compliance, since it provides adequate time to schedule installation of the

required modifications at an operator's regular "C" check.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted.

It is estimated that 149 airplanes of U.S. registry will be effected by this AD, that it will take approximately 24 manhours per airplane and 7 manhours per engine to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts is $5,600 per airplane and $600 per engine. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,370,800.

For reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few if any Model L-1011 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive (AD):

**Lockheed-California Company:** Applies to Lockheed Model L-1011 series airplanes equipped with Rolls-Royce RB211-22B engines, certificated in any category. Compliance as indicated, unless previously accomplished.

To prevent gearbox fires, accomplish the following:

A. Within 8,000 flight hours or 30 months after the effective date of this AD, whichever occurs sooner, comply with the accomplishment instructions listed in the following Lockheed Service Bulletins, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region:

1. 093-26-036, Installation of Fire Detector Segment, dated April 1, 1986;

2. 093-71-067, Gearbox Breather Duct Modification, Revision 1, dated April 1, 1986;

B. Within 8,000 flight hours, or 30 months after the effective date of this AD, whichever occurs sooner, comply with the accomplishment instructions listed in the following Rolls Royce Service Bulletins, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region:

1. RB.211-72-4666, Introduction of Vent Air Tube in Gear Compartment, Revision 3, dated October 14, 1977;

2. RB.211-72-8138, Installation of Additional No. 7 Fire Sensor, dated March 21, 1986.

C. Compliance with Rolls Royce Service Bulletins RB.211-72-4666, Introduction of Vent Air Tube in Gear Compartment, Revision 3, dated October 14, 1977, and RB.211-72-3878, Introduction of Thickened Gearbox Front and Rear Housings, Revision 3, dated June 25, 1976, constitutes an acceptable alternate means of compliance to paragraph A. and B., above.

D. Compliance with either paragraphs A. and B., or paragraph C., above, constitutes terminating action for the requirements of AD 85-09-03, Amendment 39-5056.

E. If an operator has complied with paragraphs A. and B., or paragraph C., above, on an airplane, and subsequently installs an engine on that airplane which does not comply with either paragraphs A. and B., or paragraph C., that airplane will be subject to the requirements of AD 85-09-03.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents may obtain copies of Lockheed service bulletins upon request from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. Copies of Rolls Royce Service Bulletins may be obtained upon request to Rolls-Royce PLC, P.O. Box 31, Derby DE 2 8BJ, England, Attention: Technical Publications Department. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective May 8, 1987.

Issued in Seattle, Washington, on March 25, 1987.

**Frederick M. Isaac,**

*Acting Director Northwest Mountain Region.*

[FR Doc. 87-7318 Filed 4-2-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 95**

**[Docket No. 25216; Amdt. No. 336]**

## IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8277.

**SUPPLEMENTARY INFORMATION:**

This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National

BEST COPY AVAILABLE

Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 95**

Aircraft, Airspace.

Issued in Washington, DC, on March 18, 1987.

**John S. Kern,**

*Director of Flight Standards.*

**Adoption of the Amendment**

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t.:

**PART 95—[AMENDED]**

1. The authority citation for Part 95 continues to read as follows:

**Authority:** 49 U.S.C. §§ 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910–13–M

# REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

## AMENDMENT 336 EFFECTIVE DATE, APRIL 9, 1987

| FROM | TO | MEA |
|---|---|---|
| **§95.6004 VOR FEDERAL AIRWAY 4 IS AMENDED TO READ IN PART** | | |
| HILL CITY, KS VORTAC<br>*4000 - MOCA | WESAL, KS FIX | *5500 |
| **§95.6007 VOR FEDERAL AIRWAY 7 IS AMENDED TO READ IN PART** | | |
| CHICAGO HEIGHTS, IL VORTAC<br>*3100 - MCA NILES FIX, N BND | *NILES, IL FIX | 2100 |
| **§95.6035 VOR FEDERAL AIRWAY 35 IS AMENDED TO READ IN PART** | | |
| SUGARLOAF MOUNTAIN, NC VORTAC<br>*9000 - MCA BUSIC FIX, N BND | *BUSIC, NC FIX | [illegible]000 |
| BUSIC, NC FIX<br>*9000 - MCA ROANS FIX, S BND | *ROANS, TN FIX | 9000 |
| **§95.6053 VOR FEDERAL AIRWAY 53 IS AMENDED TO READ IN PART** | | |
| SUGARLOAF MOUNTAIN, NC VORTAC<br>*9000 - MCA BUSIC FIX, N BND | *BUSIC, NC FIX | [illegible]000 |
| BUSIC, NC FIX<br>*9000 - MCA ROANS FIX, S BND | *ROANS, TN FIX | 9000 |
| **§95.6092 VOR FEDERAL AIRWAY 92 IS AMENDED TO READ IN PART** | | |
| NILES, IL FIX | CHICAGO HEIGHTS, IL VORTAC | 2100 |
| **§95.6097 VOR FEDERAL AIRWAY 97 IS AMENDED TO READ IN PART** | | |
| CHICAGO HEIGHTS, IL VORTAC<br>*3100 - MCA NILES FIX, N BND | *NILES, IL FIX | 2100 |
| **§95.6123 VOR FEDERAL AIRWAY 123 IS AMENDED TO READ IN PART** | | |
| ROBBINSVILLE, NJ VORTAC | LA GUARDIA, NY VOR/DME | 2700 |
| **§95.6219 VOR FEDERAL AIRWAY 219 IS AMENDED TO DELETE** | | |
| MANKATO, MN VOR/DME<br>*2400 - MOCA | FARMINGTON, MN VORTAC | *2900 |
| **§95.6220 VOR FEDERAL AIRWAY 220 IS AMENDED TO READ IN PART** | | |
| FARGO, ND VORTAC | GRAND FORKS, ND VOR/DME | 2700 |
| **§95.6232 VOR FEDERAL AIRWAY 232 IS AMENDED TO READ IN PART** | | |
| BROADWAY, NJ VOR/DME | LA GUARDIA, NY VOR/DME | 2700 |
| **§95.6272 VOR FEDERAL AIRWAY 272 IS AMENDED TO READ IN PART** | | |
| HOLLE, OK FIX<br>*2400 - MOCA | MC ALESTER, OK VORTAC | *3000 |
| **§95.6422 VOR FEDERAL AIRWAY 422 IS AMENDED TO READ IN PART** | | |
| NILES, IL FIX | CHICAGO HEIGHTS, IL VORTAC | 2100 |
| **§95.6456 VOR FEDERAL AIRWAY 456 IS AMENDED TO READ IN PART** | | |
| MANKATO, MN VOR/DME | FLYING CLOUD, MN VOR/DME | 2900 |

| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7029 JET ROUTE NO. 29** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| U.S. MEXICAN BORDER | CORPUS CHRISTI, TX VORTAC | 24000 | 45000 |
| **§95.7228 JET ROUTE NO. 228** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| BECKLEY, WV VORTAC | DRAPE, VA FIX | 18000 | 45000 |
| DRAPE, VA FIX | LINDEN, VA VORTAC | 18000 | 30000 |
| LINDEN, VA VORTAC | LANCASTER, PA VORTAC | 18000 | 38000 |

[FR Doc. 87-7319 Filed 4-2-87; 8:45 am]
BILING CODE 4910-13-C

## DEPARTMENT OF COMMERCE

### International Trade Administration

15 CFR Part 371

[Docket No. 70223-7023]

### General Licenses for Exports to Cooperating Governments and Certified End-Users; Correction

**AGENCY:** Export Administration, International Trade Administration, Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** A final rule establishing General Licenses GCG and G-CEU was published at 52 FR 5274, February 20, 1987. In § 371.14(c) an incorrect reference was made to § 371.13. This document is being issued to change that reference to § 371.14.

**FOR FURTHER INFORMATION CONTACT:** John Black, Regulations Branch, Export Administration, Telephone: (202) 377-2440.

### PART 371—[AMENDED]

Accordingly, the following correction is made to "General Licenses for Exports to Cooperating Governments and Certified End-Users," published in the **Federal Register** on February 20, 1987 (FR Doc. 87-3656):

**§ 371.14 [Corrected]**

1. On page 5275, in the second column, §371.14(c), line 5, change "§371.13" to "§ 371.14".

Dated: March 26, 1987.

**Dan Hoydysh,**

*Acting Deputy Assistant Secretary for Export Administration.*

[FR Doc. 87-7391 Filed 4-2-87; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-251; Texas 16—Addition II); Order No. 468]

### High-Cost Gas Produced From Tight Formations

Issued: March 30, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1985)). This rule established procedures for jurisdictional agencies to submit recommendations of areas for designation as tight formations. This order adopts the recommendation of the Railroad Commission of the State of Texas that an additional area of the Olmos Formation located in McMullen County, Texas, be designated as a tight formation under § 271.703(d) of the Commission's Regulations.

**EFFECTIVE DATE:** This rule is effective April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward G. Gingold, (202) 357-9114 or Walter W. Lawson (202) 357-8556.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Based on a recommendation made by the Railroad Commission of the State of Texas (Texas), the Commission amends § 271.703(d) of its regulations[1] to include an additional area of the Olmos Formation located in McMullen County, Texas, as a designated tight formation eligible for incentive pricing under § 271.703. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on November 13, 1986.[2]

Evidence submitted by Texas supports the assertion that the additional area of the Olmos Formation meets the guidelines contained in § 271.703(c)(2). The Commission therefore adopts Texas' recommendation.

The amendment shall become effective April 29, 1987.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

[1] 18 CFR 271.703(d) (1985).

[2] 51 FR 41806 (November 18, 1986). Comments on the proposed rule were invited and none was received. No party requested a public hearing and no hearing was held.

By the Commission

**Kenneth F. Plumb,**

*Secretary*

### PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 continues to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7171 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(111)(iii) to read as follows:

**§ 271.703 Tight formations.**

* * * * *

(d) *Designated tight formations.*

* * * * *

(111) *The Olmos Formation in Texas.* RM79-76 (Texas—16).

* * * * *

(iii) *A.W.P. (Olmos) Field, McMullen County.*

(A) *Delineation of formation.* The designated portion of the Olmos Formation located to the east and southeast of Tilden, in McMullen County, Texas, and consists of approximately 7,506 acres containing four leases; the 3,480.6 acre Bracken Ranch lease, the 320 acre Dan Foster lease, the 2,431.46 acre R.P. Horton lease and the 1,274 acre R.P. Horton "C" lease.

(B) *Depth.* The top of the Olmos Formation occurs at depths of from 9,100 feet to 9,600 feet below mean sea level.

* * * * *

[FR Doc. 87-7402 Filed 4-2-87; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[T.D. 8134]

26 CFR Part 1

### Foreign Sales Corporation; Foreign Management and Foreign Economic Processes

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Removal of temporary regulations.

**SUMMARY:** This document removes temporary Income Tax Regulations Relating to Foreign Sales Corporations (FSCs) published in the **Federal Register** on December 12, 1984 (49 FR 48321) concerning the foreign management and

foreign economic processess requirements.

**DATES:** The removal of the temporary regulations at sections 1.924(c)–1T, 1.924(d)–1T, and 1.924(e)–1T is effective generally for taxable years beginning after December 31, 1984.

**FOR FURTHER INFORMATION CONTACT:** Carol P. Tello of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:INTL:6) (202–566–3226, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document removes temporary Income Tax Regulations Relating to Foreign Sales Corporations (26 CFR Part 1) at sections 1.924(c)–1T, 1.924(d)–1T, and 1.924(e)–1T (T.D. 7994) published in the **Federal Register** on December 12, 1984 (49 FR 48321).

### Nonapplicability of Executive Order 12291

The Treasury Department has determined that removal of these temporary regulations is not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

### Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for removal of temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply and no Regulatory Flexibility Analysis is required.

### Drafting Information

The principal author of this removal of temporary Income Tax Regulations is Carol P. Tello of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this removal of temporary Income Tax Regulations.

### List of Subjects in 26 CFR Parts 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit FSC, Sources of income, United State investment abroad.

### Adoption of Amendments to the Regulations

The Income Tax Regulations (26 CFR Part 1) are amended as follows:

## PART 1—[AMENDED]

**Paragraph 1.** The authority citation for Part 1 continues to read in part:

**Authority:** 26 U.S.C. 7805.

### Income Tax Regulations

**§§ 1.924(c)–1T, 1.924(d)–1T, and 1.924(e)–1T [Removed].**

**Par. 2.** §§ 1.924(c)–1T, 1.924(d)–1T, and 1.924(e)–1T are removed.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: March 27, 1987.

**J. Roger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87–7389 Filed 4–2–87; 9:28 am]

BILLING CODE 4830–01–M

---

## 26 CFR Parts 1 and 602

**[T.D. 8135]**

## Income Taxes; Information Reporting on Real Estate Transactions

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the information reporting requirements for real estate transactions. Changes to the applicable law were made by the Tax Reform Act of 1986. The regulations affect certain persons who participate in real estate transactions and provide them with the guidance needed to comply with the law. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.**

**EFFECTIVE DATE:** The regulations apply to real estate transactions closing after December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Davis III of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566–3461 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide temporary rules relating to the information reporting requirements for real estate transactions under section 6045(e) of the Internal Revenue Code of 1986. The temporary regulations reflect the addition of section 6045(e) to the Code by section 1521 of the Tax Reform Act of 1986 (100 Stat. 2746).

Section 6045(e) requires the person who is the real estate broker with respect to a real estate transaction closing after December 31, 1986, to file an information return and provide a statement to the transferor with respect to the transaction. These temporary regulations provide rules and definitions with respect to those requirements.

### Scope of Provisions

The term "real estate transaction" is not defined by statute, but is intended to encompass a wide range of transactions that could have tax consequences. Given the breadth of coverage of section 6045(e), reporting could be required with respect to any transfer of an interest in real estate to the extent that the information provided would be useful in the administration of the tax laws. Under these temporary regulations, however, the types of transactions for which an information return will be required under section 6045(e) are limited initially to those types of transactions that will provide the most useful information to the Service.

The temporary regulations provide that a transaction will be treated as a real estate transaction (and therefore reportable) only if it consists of a sale or exchange of certain residential real estate. Reports with respect to these transactions will provide the Service with new and useful information and at the same time enable the Service to continue working with industry groups to devise comprehensive rules meeting both industry concerns and Service compliance goals. The Service anticipates that additional temporary or proposed regulations will be published applying the information reporting requirements to other transactions. Those additional temporary or proposed regulations will apply on a prospective basis only and will not apply to any transaction closing on or before December 31, 1987.

The Service is studying various types of transactions to determine whether they should be exempted from the final information reporting requirements. Among the categories under consideration are: (1) Transactions that consist solely of a transfer of a security interest in real estate in connection with a financing or refinancing that is not related to the acquisition of the real estate, (2) transactions certified by the transferor to be subject to a provision of the Internal Revenue Code (other than section 1031, 1034, or 453) or the associated Federal income tax regulations under which all gain or loss

is excluded from income or is not currently realized or recognized, (3) certain transactions creating a leasehold interest or involving a lease assignment or sublease, (4) option transactions, (5) transactions reportable under other provisions, such as section 6050N (relating to royalties), and (6) transactions in which the transferor is a publicly-traded corporation or a tax-exempt entity. Taxpayers are urged to comment on these or any other categories of transactions for which an exemption might be appropriate.

The Internal Revenue Service also is studying the relationship between section 6045(e) and the provisions of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) to determine the extent to which the reporting requirements of section 6045(e) should apply to transactions governed by FIRPTA. Taxpayers are urged to comment on the interaction between these provisions.

Finally, the Internal Revenue Service is studying the extent, if any, to which the provisions of section 3406 (relating to backup withholding) should apply to real estate brokers. Taxpayers are asked also to comment on this issue.

**Explanation of Provisions**

Under the temporary regulations, the term "real estate transaction" includes only a sale or exchange of one-to-four-family real estate. The temporary regulations define the term "one-to-four-family real estate" to include: (1) Any structure designed principally for the occupancy of from one to four families and any appurtenant fixtures, land, and associated structures transferred with such structure, (2) certain condominium units and appurtenant common elements, and (3) stock in a cooperative housing corporation (as defined in section 216).

The temporary regulations exempt from the reporting requirements transactions that are reportable under section 6050J (relating to foreclosures and abandonments of security). The temporary regulations also provide that the reporting requirements do not apply with respect to corporate transferors and transferors that are governmental units.

The temporary regulations provide rules for determining the person (referred to in section 6045(e) and these regulations as the "real estate broker") who is required to report with respect to a real estate transaction. Unless a person is identified as the real estate broker in a designation agreement that meets the requirements of the regulations, the real estate broker with respect to a transaction is generally the person responsible for closing the transaction.

If a Uniform Settlement Statement, prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601, *et seq.*, as amended, and the regulations thereunder, is used with respect to a real estate transaction, the person listed as the settlement agent on that statement is considered the person responsible for closing the transaction. If a Uniform Settlement Statement is not used (or if no person is listed as settlement agent on the Uniform Settlement Statement), the person responsible for closing the transaction is the person who prepares the closing statement or other written description of the disposition of the gross proceeds used at, or in connection with, the closing. If no closing statement or other written description of the disposition of the gross proceeds is used, the person responsible for closing the transaction is a transferee's or transferor's attorney who participates in the transaction in the manner specified in the regulations or, if there is no such attorney, the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed. If the transferee's attorney and the transferor's attorney both participate in the transaction in the manner specified, the person responsible for closing the transaction is the transferee's attorney.

If no person is responsible for closing the transaction (and there is no designation agreement that meets the requirements of the regulations), the real estate broker with respect to the transaction is the first-listed of the persons that participate in the transaction as: (1) The mortgage lender, (2) the transferor's broker, (3) the transferee's broker, or (4) the transferee.

The temporary regulations provide that the participants in a real estate transaction may, by agreement, designate a person as the real estate broker with respect to the transaction. Only the person responsible for closing the transaction, an attorney for the transferee or transferor, a title or escrow company, or a mortgage lender may be designated under such an agreement, and both the designated person and the person who would otherwise be the real estate broker with respect to the transaction must be parties to the agreement. If these conditions are met and the agreement otherwise satisfies the requirements of the temporary regulations, the designated person (and not the person who would otherwise be the real estate broker) is the real estate broker with respect to the transaction.

The temporary regulations prescribe the information required to be shown on the return and on the statement furnished to the transferor, the manner in which the return must be filed with the Service and the statement must be furnished to the transferor, and the time for filing such returns and furnishing such statements.

The temporary regulations provide special rules for transactions involving multiple transferors. The temporary regulations generally require a real estate broker to make a separate information return with respect to each transferor and to request an allocation of the gross proceeds from the transferors. Transferors who are husband and wife and who hold the real estate at the time of closing as tenants in common, joint tenants, tenants by the entirety, or community property are not considered multiple transferors for purposes of these rules.

The temporary regulations require magnetic-media reporting for real estate transactions, but provide an exception for persons who reasonably expect to report fewer than 250 transactions for a calendar year or who reported fewer than 250 transactions for the preceding calendar year. In addition, the Commissioner may authorize reporting on the prescribed paper Form 1099 if undue hardship is shown. For transactions closing in calendar year 1987, the Commissioner will authorize filing on the prescribed paper Form 1099 if the application for waiver indicates that the real estate broker reasonably expects to be required to file fewer than 500 returns for the year.

The regulations also provide rules for the solicitation of taxpayer identification numbers (TINs) from transferors, but do not require backup withholding with respect to real estate transactions reportable under section 6045(e). The solicitation must be made by providing a written statement containing certain information to the transferor. This statement may be provided to the transferor in person or in a mailing that includes other items.

The temporary regulations apply to real estate transactions closing after December 31, 1986. However, no penalty will be imposed with respect to transactions with dates of closing before May 4, 1987.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary

regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0715.

**Drafting Information**

The principal author of these regulations is Arthur E. Davis III of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

**List of Subjects**

*26 CFR 1.6001–1—1.6109–2*

Income taxes, Administration and procedure, Filing requirements.

*26 CFR Part 602*

OMB control numbers under the Paperwork Reduction Act.

*Adoption of Amendments to the Regulations*

For the reasons set out in the preamble, Subchapter A, Part 1, and Subchapter H, Part 602, of Title 26, Chapter 1 of the Code of Federal Regulations are amended as set forth below:

## PART 1—INCOME TAX REGULATIONS

**Paragraph 1.** The authority for Part 1 is amended by adding the following authority citation:

**Authority:** 26 U.S.C. 7805. * * * Section 1.6045–3T also issued under 26 U.S.C. 6045.

**Par. 2.** The following new § 1.6045–3T shall be added in the appropriate place.

**§ 1.6045–3T Information reporting on real estate transactions (Temporary).**

(a) *Requirement of reporting.* Except as otherwise provided in paragraphs (c) and (d) of this section, a real estate broker must make an information return with respect to a real estate transaction and, under paragraph (m) of this section, must furnish a statement to the transferor. For the definition of a real estate transaction for purposes of these reporting requirements, see paragraph (b) of this section. For rules for determining the real estate broker with respect to a real estate transaction, see paragraph (e) of this section.

(b) *Definition of real estate transaction*—(1) *In general.* (i) Until otherwise provided in regulations under section 6045(e), a transaction will be treated as a "real estate transaction" under this section only if the transaction consists in whole or in part of the sale or exchange of one-to-four-family real estate (as defined in paragraph (b)(2) of this section) for money, indebtedness, property other than money, or services.

(ii) A transaction that is not a sale or exchange (such as a gift or a financing or refinancing that is not related to the acquisition of real estate) is not a real estate transaction under this section, even if the transaction involves one-to-four-family real estate.

(iii) For purposes of this section, the term "sale or exchange" shall not include an involuntary conversion of real estate (within the meaning of section 1033 and the regulations thereunder). The term "sale or exchange" shall include any other transaction properly treated as a sale or exchange for Federal income tax purposes, whether or not the transaction is currently taxable. Thus, for example, a sale or exchange of one-to-four-family real estate is a real estate transaction under this section even though the transferor is entitled to defer gain recognition under section 1034 (relating to rollover of gain on sale of principal residence), or the transferor is entitled to the special one-time exclusion of gain from sale of a principal residence provided by section 121 to certain persons who have attained age 55.

(2) *Definition of one-to-four-family real estate.* For purposes of this section, the term "one-to-four-family real estate" means—

(i) Any structure designed principally for the occupancy of from one to four families (such as a house, townhouse, duplex, or four-unit apartment building) and any appurtenant fixtures, land, and associated structures (such as a detached garage) transferred with such structure;

(ii) Any condominium unit designed principally for the occupancy of from one to four families and any appurtenant fixtures and common elements (including land); and

(iii) Stock in a cooperative housing corporation (as defined in section 216).

The term "one-to-four-family real estate" shall not include a mobile home that includes wheels and axles.

(c) *Exception for certain exempt transactions*—(1) *Transactions reportable under section 6050J.* No return of information is required with respect to a real estate transaction that is required to be reported under section 6050J (relating to foreclosures and abandonments of security).

(2) *Certain transactions governed by FIRPTA.* [Reserved.]

(d) *Exception for certain exempt transferors*—(1) *Corporations.* No return of information is required with respect to a transferor that is a corporation, as defined in section 7701(a)(3). Absent actual knowledge to the contrary, a real estate broker may treat a transferor as a corporation if—

(i) The name of the transferor contains an unambiguous expression of corporate status, such as Incorporated, Inc., Corporation, Corp., or P.C. (but not Company or Co.);

(ii) The name of the transferor contains the term "insurance company," "indemnity company," "reinsurance company," or "assurance company"; or

(iii) The transfer or loan documents clearly indicate corporate status of the transferor.

(2) *Governmental units.* No return of information is required with respect to a transferor that is—

(i) The United States or a State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; or

(ii) A foreign government, a political subdivision thereof, an international organization, or any wholly-owned agency or instrumentality of the foregoing.

(e) *Person required to report*—(1) *In general.* Except as provided in a designation agreement under paragraph (e)(5) of this section, the real estate broker with respect to a real estate transaction is—

(i) The person responsible for closing the transaction, as defined in paragraph (e)(3) of this section; or

(ii) If there is no person responsible for closing the transaction, the person determined to be the real estate broker under paragraph (e)(4) of this section.

A person may be the real estate broker with respect to a transaction whether or not such person performs or is licensed to perform real estate brokerage services for a commission or fee.

(2) *Employees, agents, and partners.* If an employee, agent, or partner (other than an employee, agent, or partner of the transferor or the transferee) acting within the scope of such person's employment, agency, or partnership participates in a real estate transaction—

(i) Such participation shall be attributed to such person's employer, principal, or partnership; and

(ii) Only the employer, principal, or partnership (and not such person) may be the real estate broker with respect to such transaction as a result of such participation.

(3) *Person responsible for closing the transaction*—(i) *Uniform Settlement Statement used.* If a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601 *et seq.* (a "Uniform Settlement Statement"), is used with respect to the real estate transaction and a person is listed as settlement agent on the statement, such person is the person responsible for closing the transaction. For purposes of this section, a Uniform Settlement Statement shall include any amendments or variations thereto, or substitutions therefor that may hereafter be prescribed under RESPA, provided that any such amended, varied, or substituted form requires disclosure of the parties to the transaction, the application of the proceeds of the transaction, and the identity of the settlement agent or other person responsible for preparing the form.

(ii) *Other closing statement used.* If a Uniform Settlement Statement is not used, or if a Uniform Settlement Statement is used, but no person is listed as settlement agent, the person responsible for closing the transaction is the person who prepares a closing statement presented to the transferor and transferee at, or in connection with, the closing of the real estate transaction. For purposes of this section, a closing statement is any closing statement, settlement statement (including a Uniform Settlement Statement), or other written memorandum that identifies the transferor and transferee, reasonably identifies the transferred real estate, and describes the manner in which the proceeds payable to the transferor are to be (or were) disbursed at, or in connection with, the closing.

(iii) *No closing statement used or multiple closing statements used.* If no closing statement is used or multiple closing statements are used, the person responsible for closing the transaction is the first-listed of the persons that participate in the transaction as—

(A) The attorney for the transferee who is present at the occasion of the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or directs the preparation of the document(s) transferring legal or equitable ownership of the real estate;

(B) The attorney for the transferor who is present at the occasion of the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or directs the preparation of the document(s) transferring legal or equitable ownership of the real estate; or

(C) The disbursing title or escrow company that is most significant in terms of gross proceeds disbursed.

If more than one attorney would be the person responsible for closing the transaction under the preceding sentence, the person among such attorneys who is responsible for closing the transaction is the person whose involvement in the transaction is most significant.

(4) *Determination of the real estate broker in the absence of a person responsible for closing the transaction.* If no person is responsible for closing the transaction (within the meaning of paragraph (e)(3) of this section), the real estate broker with respect to the real estate transaction is the first-listed of the persons that participate in the transaction as—

(i) The mortgage lender (as defined in paragraph (e)(6)(i) of this section),

(ii) The transferor's broker (as defined in paragraph (e)(6)(ii) of this section),

(iii) The transferee's broker (as defined in paragraph (e)(6)(iii) of this section), or

(iv) The transferee (as defined in paragraph (e)(6)(iv) of this section).

(5) *Designation agreement*—(i) *In general.* If a written designation agreement executed at or prior to the time of closing designates one of the persons described in paragraph (e)(5)(ii) of this section as the real estate broker with respect to the transaction and the designated person and the person who otherwise would be treated as the real estate broker are each parties to the agreement, the designated person is the real estate broker with respect to the transaction. Other persons may become parties to the agreement, but are not required to do so.

(ii) *Persons eligible.* A person may be designated as the real estate broker under this paragraph (e)(5) only if the person is—

(A) The person responsible for closing the transaction (as defined in paragraph (e)(3) of this section);

(B) A person described in paragraph (e)(3)(iii) (A), (B) or (C) of this section (whether or not such person is responsible for closing the transaction); or

(C) The mortgage lender (as defined in paragraph (e)(6)(i) of this section).

(iii) *Form of designation agreement.* A designation agreement may be in any form that is consistent with the requirements of this paragraph (e)(5), and may be included on a closing statement with respect to the transaction. The designation agreement must, however, include the name and address of the transferor and transferee and the address and any additional information necessary to identify the real estate transferred. The agreement must identify, by name and address, the person designated as the real estate broker with respect to the transaction, and all other parties to the agreement. All parties to the agreement must date and sign the agreement and must retain the agreement for four years following the close of the calendar year in which the date of closing (as determined under paragraph (h)(2)(ii) of this section) occurs. Upon request by the Internal Revenue Service, the agreement must be made available for inspection.

(6) *Meaning of terms*—(i) *Mortgage lender.* For purposes of this paragraph (e), the term "mortgage lender" means the person who lends new funds in connection with the transaction, but only if the repayment of such funds is secured in whole or in part by the real estate transferred. If new funds are advanced by more than one person, the mortgage lender is the person who advances the largest amount of new funds. If two or more persons advance equal amounts of new funds and no other person advances a greater amount of new funds, the mortgage lender among the persons advancing such equal amounts is the person with the security interest that is most senior in terms of priority. For purposes of this paragraph (e)(6)(i), any amounts advanced by the transferor are not treated as new funds.

(ii) *Transferor's broker.* For purposes of this paragraph (e), the term "transferor's broker" means only the broker that contracts with the transferor and is compensated in connection with the transaction.

(iii) *Transferee's broker.* For purposes of this paragraph (e), the term "transferee's broker" means only the broker that participates to a significant extent in the preparation of the transferee's offer to acquire the real estate or that presents such offer to the transferor. If more than one person is so described, the transferee's broker is the person whose participation in the preparation of the transferee's offer to acquire the real estate is most significant or, in the event there is no such person, the person whose

participation in the presentation of the offer is most significant.

(iv) *Transferee.* For purposes of this paragraph (e), the term "transferee" means the person who acquires the greatest interest in the real estate. If there is no such person, the transferee is the person listed first on the document(s) transferring legal or equitable ownership of the real estate.

(f) *Multiple transferors.* In the case of multiple transferors each of which transfers an interest in the same one-to-four-family real estate, the real estate broker shall make a separate information return with respect to each transferor. For this purpose and for purposes of paragraph (i)(5) of this section, transferors who are husband and wife at the time of closing and hold the real estate as tenants in common, joint tenants, tenants by the entirety, or community property are treated as a single transferor. See paragraph (i)(5) of this section concerning the determination of gross proceeds to be reported in the case of multiple transferors.

(g) *Prescribed form.* Except as otherwise provided in paragraph (k) of this section, the information return required by paragraph (a) of this section shall be made on Form 1099.

(h) *Information required*—(1) *In general.* The following information must be set forth on Form 1099 required by this section:

(i) The name, address, and taxpayer identification number (TIN) of the transferor;

(ii) A general description of the real estate transferred (in accordance with paragraph (h)(2)(i) of this section);

(iii) The date of closing (as defined in paragraph (h)(2)(ii) of this section);

(iv) The gross proceeds with respect to the transaction (as determined under paragraph (i) of this section);

(v) If the transferor received (or will receive) property (other than cash and consideration treated as cash in computing gross proceeds) or services as part of the consideration for the transaction, an indication that such property or services were (or will be) so received;

(vi) The real estate broker's name, address, and TIN; and

(vii) Any other information required by the Form 1099 or its instructions.

(2) *Meaning of terms*—(i) *General description of the real estate transferred.* A general description of the real estate transferred includes the complete address of the property. If the address would not sufficiently identify the property, a general description of the real estate also includes a legal description (*e.g.*, section, lot, and block) of the property.

(ii) *Date of closing.* In the case of a real estate transaction with respect to which a Uniform Settlement Statement is used, the date of closing shall be the date (if any) properly described as the "Settlement Date" on such statement. In all other cases, the date of closing shall be the earlier of the date on which title is transferred or the date on which the economic burdens and benefits of ownership of the real estate shift from the transferor to the transferee.

(i) *Gross proceeds*—(1) *In general.* Except as otherwise provided in this paragraph (i), the term "gross proceeds" means the total cash received or to be received by or on behalf of the transferor in connection with the real estate transaction, taking into account the stated principal amount of any obligation to pay cash to or for the benefit of the transferor in the future. Thus, gross proceeds does not include the value of any property other than cash transferred in connection with the real estate transaction. If, as part of the consideration for the transfer, the transferee either assumes a liability of the transferor or acquires the real estate subject to a liability (whether or not the transferor is personally liable on the debt), the amount of the liability shall be treated as cash received by the transferor in computing gross proceeds. See paragraph (h)(1)(v) of this section for the information that must be included on the Form 1099 required by this section in cases in which the transferor receives services or property other than cash as part of the consideration for the transfer.

(2) *Treatment of sales commissions and similar expenses.* In computing gross proceeds, the total cash received or to be received by or on behalf of the transferor shall not be reduced by expenses borne by the transferor (such as sales commissions, expenses of advertising the real estate, expenses of preparing the deed, and the cost of legal services in connection with the transfer).

(3) *Special rule for contingent payments.* Gross proceeds shall not include contingent payments, determined by disregarding remote and incidental contingencies and contingencies relating to insolvency or default.

(4) *Uniform Settlement Statement used.* If a Uniform Settlement Statement is used with respect to a real estate transaction involving a transfer of one-to-four-family real estate solely for cash and consideration treated as cash in computing gross proceeds, the gross proceeds generally will be the same amount as the contract sales price properly shown on that statement.

(5) *Special rules for multiple transferors.* In the case of multiple transferors (within the meaning of paragraph (f) of this section) each of which transfers an interest in the same one-to-four-family real estate, the real estate broker must request the transferors to provide an allocation of the gross proceeds among the transferors. The request must be made at or before the time of closing. Neither the request nor the response is required to be in writing. The real estate broker must make a reasonable effort to contact all transferors of whom the real estate broker has actual knowledge. The real estate broker may, however, rely on the unchallenged response of any transferor and need not make additional efforts to contact other transferors after at least one complete allocation (whether or not contained in a single response) is received. Except as otherwise provided in this paragraph (i)(5), the real estate broker shall report the gross proceeds in accordance with the allocation received. If no gross proceeds are allocated to a transferor either because no allocation is received by the real estate broker or because the allocation received is incomplete, the real estate broker shall report the entire unallocated gross proceeds on the return of information made with respect to such transferor. In addition, if the real estate broker receives conflicting allocations from the transferors, the real estate broker shall report the entire gross proceeds on each return of information made with respect to the transaction.

(6) *Multiple asset transactions.* In the case of a real estate transaction reportable under this section that involves the transfer of one-to-four-family real estate and other assets, the real estate broker shall, except as provided in paragraph (i)(5) of this section, report the entire gross proceeds on each return of information made with respect to that transaction.

(j) *Time and place for filing.* A real estate broker shall file the information returns required by this section with respect to a real estate transaction after December 31 of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section) and on or before February 28 of the following calendar year. The returns shall be filed with the appropriate Internal Revenue Service Center at the address listed in the Instructions to Form 1099.

(k) *Use of magnetic media and substitute forms*—(1) *Magnetic media*—

(i) *General rule.* A real estate broker that is required to make a return of information under this section shall, except as otherwise provided in paragraph (k)(1) (ii) or (iii) of this section, submit the information required by this section on magnetic media (within the meaning of 26 CFR 301.6011–2). Returns on magnetic media shall be made in accordance with 26 CFR 301.6011–2 and applicable revenue procedures.

(ii) *Exception for low-volume filers.* A real estate broker may make the information returns required by this section on the prescribed paper Form 1099 for a calendar year if on the first day of that calendar year the real estate broker reasonably expects to file fewer than 250 returns under this section for that calendar year. In addition, a real estate broker may make such returns on the prescribed paper Form 1099 for a calendar year beginning after 1987 if the real estate broker was required to file fewer than 250 returns under this section for the prior calendar year.

(iii) *Undue hardship*—(A) *General rule.* The Commissioner may authorize a real estate broker to file information returns on the prescribed paper Form 1099 instead of on magnetic media if undue hardship is shown either on Form 8508, Request for Waiver From Filing Information Returns on Magnetic Media, or on a written statement requesting a waiver for undue hardship filed with the National Computer Center, Martinsburg, West Virginia in accordance with applicable revenue procedures.

(B) *Transition rule.* For calendar year 1987, the Commissioner will authorize filing on the prescribed paper Form 1099 if a Form 8508 or written application for waiver in good faith indicates that the real estate broker reasonably expects to be required to file fewer than 500 returns under this section for the year.

(2) *Substitute forms.* A real estate broker that is described in paragraph (k)(1)(ii) of this section or that receives permission to file returns on the prescribed paper Form 1099 under paragraph (k)(1)(iii) of this section may prepare and use a form that contains provisions identical with those of Form 1099 if the real estate broker complies with all applicable revenue procedures relating to substitute Form 1099, including any requirement relating to the use of machine-readable paper forms.

(l) *Requesting taxpayer identification numbers (TINS)*—(1) *Solicitation*—(i) *General requirements.* A real estate broker who is required to make an information return with respect to a real estate transaction under this section must solicit a TIN from the transferor at or before the time of closing. The solicitation may be made in person or in a mailing that includes other items. Any person whose TIN is solicited under this paragraph (l) must furnish such TIN to the real estate broker and certify that the TIN is correct.

(ii) *Content of solicitation.* The solicitation shall be made by providing to the person from whom the TIN is solicited a written statement that the person is required by law to furnish a correct TIN to the real estate broker, and that the person may be subject to civil or criminal penalties for failing to furnish a correct TIN. For example, the solicitation may be worded as follows:

> You are required by law to provide [insert name of real estate broker] with your correct taxpayer identification number. If you do not provide [insert name of real estate broker] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

The solicitation shall contain space for the name, address, and TIN of the person from whom the TIN is solicited and for the person to certify under penalties of perjury that the TIN furnished is that person's correct TIN. The wording of the certification must be substantially similar to the following: "Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number." The requirements of this paragraph (l)(1)(ii) may be met by providing to the transferor a copy of Form W–9 on which the following statement is substituted for the text of item (2) in the certification portion of the form: "I am providing my taxpayer identification number in connection with a real estate transaction." In the case of a real estate transaction for which a Uniform Settlement Statement is used, the requirements of this paragraph (l)(1)(ii) may be met by providing to the transferor a copy of such statement that is appropriately modified.

(iii) *Retention requirement.* The solicitation shall be retained by the real estate broker for four years following the close of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section). Such solicitation must be made available for inspection upon request by the Internal Revenue Service.

(2) *No TIN provided.* A real estate broker that does not receive the transferor's TIN will not be subject to any penalty cross-referenced in paragraph (n) of this section by reason of failure to report such TIN if the real estate broker—

(i) Has complied with the requirements of paragraph (l)(1) of this section in good faith (determined with proper regard for a course of conduct and the overall results achieved for the year); and

(ii) Certifies on the Form 1096 forwarding the information return required by this section with respect to such transferor that the solicitation requirements of this section have been met with respect to the returns so forwarded.

(m) *Furnishing statements to transferors*—(1) *Requirement of furnishing statements.* A real estate broker who is required to make a return of information under paragraph (a) of this section shall furnish to the transferor whose TIN is required to be shown on the return a written statement of the information required to be shown on such return. The written statement must bear either the legend shown on the recipient copy of Form 1099 or the following:

> This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

This requirement may be satisfied by furnishing to the transferor a recipient copy of a completed Form 1099 (or substitute Form 1099 that complies with current revenue procedures). In the case of a real estate transaction for which a Uniform Settlement Statement is used, this requirement also may be satisfied by furnishing to the transferor a copy of a completed statement that is conformed to comply with the requirements of this paragraph (m), and by designating on the Uniform Settlement Statement the items of information (such as gross proceeds or allocated gross proceeds) required to be set forth on the Form 1099. For purposes of this paragraph (m), a statement shall be considered furnished to a transferor if it is given to the transferor in person, either at the closing or thereafter, or is mailed to the transferor at the transferor's last known address.

(2) *Time for furnishing statement.* The statement required under this paragraph (m) shall be furnished to the transferor on or after the date of closing and before February 1 of the following calendar year.

(n) *Cross-reference to penalties.* See the following sections regarding penalties for failure to comply with the requirements of section 6045(e) and this section:

(1) Section 6721 for failure to file an information return;

(2) Section 6722 for failure to furnish a statement to the transferor;

(3) Section 6723 for failure to include correct information;

(4) Section 6676 for failure to supply identifying numbers; and

(5) Section 7203 for willful failure to supply information (including a taxpayer identification number).

(o) *Backup withholding requirements.* [Reserved.]

(p) *Effective date.* This section shall be effective for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur after December 31, 1986. No penalty will be imposed with respect to a transaction with a date of closing that occurs before May 4, 1987.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 3.** The authority for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 4.** Section 602.101(c) is amended by inserting in the appropriate place in the table

"§ 1.6045–3T ..... 1545–0715".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: March 26, 1987.

**J. Roger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87–7387 Filed 4–1–87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Large Harbor Tug YTB–769

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that Large Harbor Tug YTB–769 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** March 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (202) 325–9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that Large Harbor Tug YTB–769 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(b), pertaining to the placement of the sidelights; Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; and Annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light, without interfering with its special functions as a naval vessel. YTB–769 is a tug of special construction and functions. It performs towing services for naval vessels. The mast of this tug is hinged and is lowered when towing alongside or pushing ships having radically flared bows or sponsoned sides and sterns. When the mast is in the lowered position, the masthead lights, and task light mounted on this mast, cannot be displayed. During such operation, only the pilot house top-mounted auxiliary masthead light, sidelights, and sternlight will be exhibited. The Secretary of the Navy has further certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), Vessels.

**PART 706—[AMENDED]**

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

**§ 706.2 [Amended]**

2. Table 3 of § 706.2 is amended by adding the following vessel:

| Vessel | Number | [illegible] lights, arc of visibility; Rule 21(a) | Side lights, arc of visibility; Rule 21(b) | Stern light, arc of visibility; Rule 21(c) | Side lights, distance inboard of ship's sides in meters, Sec. 3(b), Annex I | Stern light [illegible] forward of [illegible] in meters; Rule 21(c) | Forward anchor light, height above hull in meters; § 2(k), Annex I | Anchor lights, relationship of aft light to forward light in meters, Sec. 2(k), Annex I |
|---|---|---|---|---|---|---|---|---|
| | YTB–769 | ..... | ..... | ..... | 2.77 | 14.02 | ..... | ..... |

3. Note 23, Table Four of § 706.2 is amended by adding the following vessel:

| Vessel [illegible] | Distance in meters of aux. masthead light below minimum required height, Annex I, Sec. 2(a)(i) |
|---|---|
| YTB–769 ..... | 3.86. |

Dated: March 24, 1987.

Approved.

**James F. Goodrich,**

*Acting Secretary of the Navy.*

[FR Doc. 87–7393 Filed 4–2–87; 8:45 am]

BILLING CODE 3810–AE–M

32 CFR Part 706

## Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Large Harbor Tug YTB–789

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that Large Harbor Tug YTB–789 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** March 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that Large Harbor Tug YTB–789 is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(b), pertaining to the placement of the sidelights; Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; and Annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light, without interfering with its special functions as a naval vessel. YTB–789 is a tug of special construction and functions. It performs towing services for naval vessels. The mast of this tug is hinged and is lowered when towing alongside or pushing ships having radically flared bows or sponsoned sides and sterns. When the mast is in the lowered position, the masthead lights, and task lights mounted on this mast, cannot be displayed. During such operation, only the pilot house top-mounted auxiliary masthead light, sidelights, and sternlight will be exhibited. The Secretary of the Navy has further certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comments prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (Water), and Vessels.

**PART 706—[AMENDED]**

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

**§ 706.2 [Amended]**

2. Table Three of § 706.2 is amended by adding the following vessel:

| Vessel | Number | [illegible] lights, arc of visibility, rule 21(a) | Side lights, arc of visibility, rule 21(b) | Stern light, arc of visibility, rule 21(c) | Side lights, distance inboard of ship's sides in meters, sec. 3(b), Annex I | Stern light [illegible] forward of stern in meters, rule 21(c) | [illegible] anchor light, height [illegible] in meters, sec. 2(k), Annex I | Anchor lights, relationship of aft light to forward light in meters sec 2(k), Annex I |
|---|---|---|---|---|---|---|---|---|
| | YTB-789 | | | | 2.50 | 14.99 | | |

3. Note 23, Table Four of § 706.2 is amended by adding the following vessel:

| Vessel No | Distance in meters of aux. [illegible] light below minimum required height Annex I, sec. 2(a)(i) |
|---|---|
| YTB-789 | 3.66 |

Dated: March 24, 1987.

Approved.

**James F. Goodrich,**

*Acting Secretary of the Navy.*

[FR Doc. 87–7394 Filed 4–1–87; 8:45 am]

BILLING CODE 3810–AE–M

## POSTAL SERVICE

39 CFR 111

## Domestic Mail Manual; Miscellaneous Amendments

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 22 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations on post office closing procedures, the return of books and sound recordings found loose in the mail, and so-called Plus publications, have previously been published in the **Federal Register.**

**EFFECTIVE DATE:** January 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Kemp, (202) 268–2960.

**SUPPLEMENTARY INFORMATION:** The Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 30 CFR 111.1) has been amended by the publication of a transmittal letter for issue 22, dated January 22, 1987. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 22 covers the

minor changes not previously described in interim or final rules published in the **Federal Register.**

Note.—This issue is a complete revision of the DMM, containing changes published in the Postal Bulletin between September 4, 1986, and January 22, 1987 (Postal Bulletins 21582 through 21603), and updates reflecting changes in management structure that may not have been cited in Postal Bulletin articles.

**Summary of Changes**

1. * * *

2. Exhibit 122.63a is revised to show updated label instructions for multi-ZIP Coded post offices (PB 21598, 12–18–86; PB 21603, 1–22–87). Exhibits 122.63d(p. 1), 122.63e(p. 2), 122.63 f(p.1), 122.63g(p. 1), and 122.63j (p.1) are updated (PB 21598, 12–18–86). Exhibit 122.63h, Exhibit 122.63k(p. 1), and Exhibit 122.631 are revised to reflect labeling changes for third- and fourth-class irregular parcels and machinable parcels destined for BMC Washington, DC (PB 21598, 12–18–86). Exhibits 122.63p; through 122.63r are added to provide originating mixed states labeling lists for mailer prepared second-class publications (PB 21591, 10–30–86).

3. Exhibit 125.2 is revised to reflect changes in the restrictions applied to mail addressed to military post offices (PB 21583, 9–11–86; PB 21586, 9–25–86; PB 21591, 10–30–86; PB 21595, 11–27–86).

4. Sections 137.153 and 137.154 are revised to change the forwarding procedures for PS Form 103, *Originating Franked Mail* (PB 21589, 10–16–86).

5. Section 137.252, *Agency Authorization Codes,* is revised and updated to clarify the requirements for standard penalty indicia mail and permit imprint numbers (PB 21597, 12–11–86).

6. Section 141.27, *nonstandard Printing,* is revised to permit the use of different typefaces and/or inks on printed stamped envelopes (those with printed return address information) for orders of one million or more (PB 21586, 9–25–86).

7. Sections 143.331(3), 143.333, 145.41, and 145.5a through 145.5d are revised. Section 143.331(4) is added to allow mailers the option of printing the endorsement, *Mailed from ZIP Code,* followed by the 5-digit ZIP Code in lieu of printing the name of the city and state of mailing in the mailer's precanceled postmark and the permit imprint (PB 21587, 10–2–86).

8. Part 144 is revised to (a) prohibit the date of mailing for metered reply mail in the metered reply mail section (144.112e); (b) specifically state that post offices will retain for return to the manufacturer lost, stolen, or unlicensed meters that are presented for examination or setting (144.313); (c) add bulk mail acceptance units (BMAUs) to the list of units required to perform a quarterly verification of metered mail (144.61b); and (d) correct a reference (144.342i) (PB 21587, 10–2–86).

9. Sections 144.112 and 281 are revised to allow mailers to use premetered reply envelopes for Express Mail Service (PB 21587, 10–2–86).

10. Section 144.64 is revised to update post offices' reporting instructions to reflect current data processing requirements (PB 21583, 9–11–86).

11. Section 145.44 is revised to permit the required return address of a mailing piece bearing a company imprint to be printed below the imprint on unendorsed pieces that are mailed at the bulk third-class rate of postage (PB 21598, 12–18–86).

12. Sections 149.251d and 149.252l are revised to allow payments for insured crickets (PB 21594, 11–13–86).

13. Section 149.441b(5) is revised to make the processing time for Form *585, Registered Mail Application for Indemnity,* compatible with the processing time for Form 3812, *Request for Payment of Domestic Postal Insurance,* which is used for both insured and COD claims (DMM 149.343)(PB 21598, 12–4–86).

14. Section 154.53 is added to provide that makeup requirements for plant loaded vehicles are determined according to the destination of the mailing. DMM 154.54 is added to require that if a plant load mailing does not meet the preparation requirements, the mailer must either (a) rework the mailing to meet the requirements or (b) transport the mailing at the mailer's expense to another postal facility designated by the origin postmaster where the mailing will be accepted and verified. Section 154.9 is revised to clarify what the Postal Service and mailers must do to comply with new plant load requirements (PB 21591, 10–30–86).

15. Sections 159.213, 291.1, 391.1, and 391.2 are revised to clarify that the forwarding period for First-Class and Express Mail is 12 months (PB 21590, 10–23–86).

16. * * *

17. Section 165.2 is revised to reflect establishment of the Philatelic Affairs Department and to add authorization for the Manager, Stamp Information Branch, to approve the use of U.S. postage stamps and stationery and other philatelic products for information and official postal business purposes and as official presentations for the Postal Service.

18. Section 292.1 is revised to reflect forwarding requirements for Express Mail (PB 21598, 12–18–86).

19. Sections 381.1 and 781 are revised to clarify that the single-piece postage rate for nonidentical weight pieces may be paid by permit imprint only under the provisions of DMM 145.8, *Optional Acceptance Procedure;* DMM 145.9, *Alternate Methods of Paying Postage;* or DMM 137.274c(2) *Exception for GPO Contractor Mailings* (PB 21597, 12–11–86).

20. Sections 412.1c, 441.112, 442.11, and 442.12 are revised and a new section 442.4 is added to clarify requirements for establishing and using additional entry post offices for second-class publications, including the submission of Form 3510, *Application for Additional Entry, Reentry, or Special Rate Request for Second-Class Publication,* payment of appropriate fees and procedures for application, modification, and cancellation of such entries (PB 21600, 1–1–87).

21. * * *

22. * * *

23. Sections 464, 667, 767, and Exhibit 122.63 are revised to incorporate new mixed states labeling requirements for mailer prepared sacks of second- and third-class mail prepared at the basic rate and fourth-class mail prepared as bound printed matter (PB 21591, 10–30–86).

24. Sections 622.1 and 667.3 are revised to allow mailers to prepare 3-digit carrier routes sacks containing fewer than 125 pieces or 15 pounds of qualifying carrier route presorted mail and to qualify this mail at the carrier route presort level rate (PB 21586, 9–25–86). The last two sentences of 691.5 are deleted (PB 21598, 12–18–86).

25. Section 642.13 is revised to permit mailers already authorized to use the special bulk third-class rates to mail at an additional office as long as the organization remains eligible for and retains its original authorization (PB 21601, 1–8–87).

26. Section 914.11 is revised to make it clear that return receipt and restricted delivery services are also available for collect-on-delivery (COD) mail (PB 21590, 10–23–86).

27. Section 932.43 is added to clarify that the Postal Service will provide mailers Form 3811–A, *Request for Return Receipt (After Mailing),* free if the mailer fails to receive the return receipt service for which the fee had been paid (PB 21590, 10–23–86).

28. Minor editorial and typographical changes have been made to 111.51, 128.43b, 135.1b, 144.342i, 154.521c(2), 441.113, 411.342, 724.24b, 951.122, 951.29, and 952.125.

**List of Subjects in 39 CFR Part 111**

Postal Service.

## PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

**§ 111.3 Amendments to the Domestic Mail Manual.**

* * * * *

| Transmittal letter for issue | Dated | Federal Register publication |
|---|---|---|
| 22 | January 22, 1987 | 52 FR [insert page number] |

**Fred Eggleston,**

*Assistant General Counsel Legislative Division.*

[FR Doc. 87–7340 Filed 4–2–87; 8:45 am]

BILLING CODE 7710–12–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[A-4-FRL-3179-3; NC-031]**

## Approval and Promulgation of Implementation Plans; North Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA, is today approving revisions to Regulation 15 NCAC 2D.0501, which were submitted as State Implementation Plan (SIP) revisions by the State of North Carolina. These revisions will update part of the State's stack testing procedures used for calculating emission rates of pollutants in pounds of pollutant per million BTU of heat input.

**DATES:** This action will be effective on June 2, 1987. Unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Written comments should be addressed to Stuart Perry of EPA Region IV (address below). Copies of the material submitted by North Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

**FOR FURTHER INFORMATION CONTACT:** Stuart D. Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347-2864 or FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** On October 14, 1986, the North Carolina Department of Natural Resources and Community Development submitted to EPA for approval revisions to the North Carolina State Implementation Plan (SIP), and EPA is today approving the revisions. This submittal contained certification that the revisions were preceded by adequate notice and a public hearing. A discussion of these revisions now follows: .

Regulation 15 NCAC 2D.0501 (Compliance with Emission Standards) was amended to update part of the stack testing procedures. In subparagraph (c)(14), the method required by North Carolina for determining emission rates for wood or fuel burning sources, which are expressed in units of pounds per million BTU, has been amended to require methodology based upon the "Oxygen-Based F Factor Procedure" as described in 40 CFR Part 60, Appendix A, Method 19, section 5. Previously, the State required a procedure which involved more steps and measurements than the "Oxygen-Based F Factor Procedure."

The "Oxygen-Based F Factor Procedure" requires the tester to obtain a measurement from the flue gas of the pollutant concentration (in pounds of pollutant per standard cubic foot of flue gas) and the percent of oxygen in the flue gas, (each can be measured by a continuous emission monitor) and use these values in a simple equation which will determine the emission rate in pounds per million BTU of heat input. For example, if calculated on a dry basis, the emission rate "E" in pounds per million BTU is equal to

$$E = C_d F_d \left( \frac{20.9}{20.9 - \%\ O_2 d} \right)$$

where:

$C_d$ = pollutant concentration (pounds per dry standard cubic foot).

$F_d$ = oxygen-based F factor dry basis (dry standard cubic foot per million BTU).

$\%O_2 d$ = percent oxygen in flue gas on dry basis.

F factors are given in Table 19-1 and are available for standard fuels such as coal, oil, gas, wood, and wood bark.

In paragraph (g), the effective date for the version of the methods referenced in paragraph (c) of this regulation 15 NCAC 2D.0501 has been amended to reflect that which appeared in the Code of Federal Regulations as of May 1, 1986.

### Final Action

EPA has reviewed this change in the regulatory part of the North Carolina SIP and is approving the revision as submitted. This action is taken without prior proposal because the change is noncontroversial and EPA anticipates no comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate Circuit by June 2, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the North Carolina State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

### List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Dated: March 24, 1987.

**Lee M. Thomas,**

*Administrator.*

## PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7642.

### Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(53) to read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) * * *

(53) Revisions to 15 NCAC, regulation 2D.0501 were submitted to EPA on October 14, 1986.

(i) Incorporation by reference.

(A) Letter of October 14, 1986, from the North Carolina Department of Natural Resources and Community Development, and revisions to 15 NCAC, regulation 2D.0501 which were adopted by the Environmental Management Commission on September 11, 1986.

(ii) Additional material—none.

[FR Doc. 87-7256 Filed 4-2-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42030E; FPL-3180-8]

## Mesityl Oxide; Clarification of Final Test Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule; Notice of clarification of final test rule.

**SUMMARY:** In the **Federal Register** of December 20, 1985, EPA issued a final Phase I test rule establishing testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of mesityl oxide (MO; CAS No. 141–79–7). At that time, EPA specified that those who manufacture or process mesityl oxide are subject to the rule. The Agency did not choose to exclude those who manufacture MO as a byproduct from the rule. Since that time, the Agency has been informed that those who use or process acetone under acidic conditions may manufacture MO as a byproduct. This document clarifies the rule by restating that those who manufacture MO as a byproduct are subject to this rule and must either submit a notice of intent to test or an exemption application in accordance with the requirements of 40 CFR 790.45.

**EFFECTIVE DATE:** The effective date of this rule was February 3, 1986.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

**SUPPLEMENTARY INFORMATION:** This notice clarifies who is subject to the test rule for MO.

### I. Background

The Phase I final test rule for MO specifies that all persons who manufacture or process or intend to manufacture or process MO from the effective date of the rule (February 3, 1986) to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, study plans, and/or shall conduct tests and submit data (see 40 CFR 799.2500(b)(1), published in the **Federal Register** of December 20, 1985 (50 FR 51857, 51867)).

The Phase I test rule exempts persons who manufacture or process MO only as an impurity from the testing and reimbursement requirements. EPA stated in the preamble to the rule that persons who manufacture or process MO as a byproduct are subject to the rule (50 FR 51863). The definitions for byproduct and impurity are provided in the data reimbursement rule (40 CFR 791.3). In part, the Agency chose to require testing by those who manufacture and process MO as a byproduct while exemption those doing so solely as an impurity because it considered the former activities to constitute intentional manufacture and processing while it believed that persons engaged in the latter activities often would be unaware that another substance contained MO as an impurity. At that time, EPA had not identified any persons who manufactured or processed MO as a byproduct.

On October 29, 1986, Hoffman LaRoche, Inc., notified EPA that it produces over 12,000 pounds of MO daily during the manufacture of Vitamin C. The MO is manufactured when acetone (the carrier solvent used in the synthesis of Vitamin C) enters an acidic environment and some is converted into MO. Hoffman LaRoche also processes this MO for reuse by converting it back into acetone. A small volume of the MO, which is found as a component of its reactor vessel residue, is disposed of as a hazardous waste (Ref. 1 below).

A wide variety of chemical processes utilize acetone either as a carrier or process solvent or as an intermediate (Table 1 below). These processes may result in the generation of MO as a byproduct.

The Agency has identified several implementation problems associated with making those who manufacture a chemical solely as a byproduct of the processing or use of another substance and those who intentionally manufacture a chemical equally subject to all provisions of a section 4 test rule. The Agency has been evaluating ways to rectify these problems. One possible solution would be to modify 40 CFR Parts 790 and 791 so that those who manufacture a chemical solely as a byproduct of the processing or use of another substance would be subject to only those provisions that processors of the test rule chemical must now comply with. However, such modifications to final rules must first be proposed and opened to public comment before they can be issued as final rules. In the interim, persons situated like Hoffman LaPoche, producing MO as a byproduct in the above or other types of processes, are considered to be manufacturers of Mo and are subject to the requirements of the MO test rule that apply to manufacturers. They have an obligation to submit a notice of intent to test or to apply for an exemption from testing.

**Table 1.—Uses of Acetone**

*Chemical intermediate uses in the production of:*

Methacrylates
Methyl isobutyl ketone
Methyl isobutyl carbinol
Mesityl oxide
Bisphenol A
Hexylene glycol
Isophorone
Ketene
Isopropylamines
Diacetone alcohol
Methyl isoamyl ketones
Pentoxone
Pharmaceuticals

*Solvent uses in:*

Paints, paint strippers, varnishes, and lacquers.

Other resin solutions—adhesives, thinners, nitrocellulose cement and heatseal coatings, vinyl-type grease resistant coatings.

Manufacture of acetate fibers.

Specification testing of vulcanized rubber products.

### II. Final Phase I Test Rule

*A. Exemption Procedures*

The Agency specified that within 30 days after the effective date of the final Phase I rule, each MO manufacturer must either (1) notify EPA that it intends to conduct or sponsor testing and submit study plans for the required tests, or (2) apply for an exemption on a belief that testing will be performed by others.

*B. Conditional Exemptions*

The final rule for test rule development and exemption procedures in 40 CFR Part 790 indicates that, when certain conditions are met, exemption applications will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if any test sponsor has not complied with the test rule.

Sponsors have indicated to EPA by letter of intent (Ref. 2 below) their agreement to sponsor all of the tests required for MO in the final Phase I test rule for this substance (50 FR 51857; December 20, 1985). The Agency plans

to grant conditional exemptions to all exemption applicants for all of the testing required for MO in 40 CFR 799.2500 when it promulgates the final Phase II test rule for MO.

*C. Manufacturers Must Submit Letters of Intent of Exemption Applications*

The promulgation date for the MO Phase I final rule was established as 1 p.m. eastern standard time on January 6, 1986. The effective date of this rule was February 3, 1986. Manufacturers had until March 5, 1986, to submit either a letter of intent to conduct the required tests or an application for exemption according to the procedures specified in 40 CFR 790.45. Throughout the rulemaking proceedings for MO, the Agency was unaware that a wide diversity of manufacturing processes may generate MO as a byproduct. Furthermore, this matter was not brought to the Agency's attention during the public meetings held on the proposed test rule. Because EPA clearly stated in the preamble to the rule that persons who manufacture or process MO as a byproduct are subject to the rule (50 FR 51863), EPA believes that persons producing MO as a result of processing or using acetone in an acidic environment should have been aware that they were subject to the rule. Nevertheless, EPA is now amplifying the guidance given in the preamble to the final test rule to make this explicit. The rule also specified that processors of MO who are not also manufacturers of MO are not required to submit letters of intent to test or exemption applications unless manufacturers fail to sponsor the required tests (50 FR 51864). Although several manufacturers have notified EPA of their intent to conduct the required testing (Ref. 2), those who manufacture MO as a byproduct are still required to submit either a notice of intent to test or an application for exemption.

Persons who manufacture MO and have not submitted a notice of intent to test or an application for exemption from testing are encouraged to do so. EPA will take into consideration voluntary disclosure of noncompliance with this requirement when determining the appropriate enforcement response for this violation of a TSCA section 4 test rule. The Agency gives additional consideration for disclosure within 30 days of knowledge of the violation. Unlike noncompliance that is voluntarily disclosed, violations detected by the Agency are subject to the full penalties provided in the Agency's TSCA section 4 Enforcement Response Policy.

**III. References**

(1) Hoffman LaRoche, Inc., Nutley, NJ 07110. Letter from Mark Lewis to Charles Elkins, Director, Office of Toxic Substances, Environmental Protection Agency, Washington, DC 20460. (October 29, 1986).

(2) CMA. Chemical Manufacturers Association. Letter from Geraldine Cox, Chemical Manufacturers Association, 2501 M St., NW., Washington, DC 20037 to TSCA Public Information Office, U.S. Environmental Protection Agency, Washington, DC 20460. (March 3, 1986).

Dated: March 26, 1987.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 87-7384 Filed 4-2-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 64**

**[Docket No. FEMA 6748]**

## List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the fourth column of the table.

**ADDRESS:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone (800) 638-7418.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Central Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of the these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 64**

Flood insurance—floodplains.

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127).

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

**§ 64.6 List of eligible communities.**

| State and county | Location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas [illegible] |
|---|---|---|---|---|
| Kansas: Wilson [1] | Unincorporated areas | 200617 | Jan. 2, 1987, Emerg | June 7, 1977. |
| Michigan: Charlevoix | Charlevoix, township of | 260790—New | Jan. 9, 1987, Emerg | |
| Texas: Fort Bend | Richmond, city of | 480231A | Mar. 31, 1975, Emerg.; Sept. 11, 1981, Withdrawn; Jan. 9, 1987, Rein.; Jan. 9, 1987, Reg | June 28, 1974 and Mar. 1, 1982 |
| Georgia: Haralson | Unincorporated areas | 130495—New | Jan. 16, 1987, Emerg | |
| Oklahoma: | | | | |
| Cherokee [1] | do | [illegible] | Jan. 9, 1987, Emerg | Jan 10, 1978 |
| Caddo [1] | Hydro, town of | 400024A | do | July 26, 1974 |
| Kingfisher [1] | Unincorporated areas | 400471 | do | |
| Pennsylvania: | | | | |
| Armstrong | Hovey, township of | 42229A | Apr. 7, 1976, Emerg.; Nov. 1, 1986, Reg.; Dec. 18, 1986, Susp.; Jan. 15, 1987, Rein. | Jan. 24, 1975 and Nov. 1, 1986 |
| Venango | Cherrytree, township of [2] | 422530A | Mar. 8, 1977, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp.; Jan. 15, 1987, Rein. | Jan. 10, 1975 and Jan. 1, 1987 |
| Fayette | Henry Clay, township of [2] | 421628B | Sept. 21, 1976, Emerg.; Jan. 1, 1987, Reg.; Jan. 1, 1987, Susp.; Jan. 16, 1987, Rein. | Dec. 6, 1974, Feb. 1, 1980 and Jan. 1, 1987. |
| Michigan: | | | | |
| Sanilac | Sanilac, township of | 260791—New | Jan. 20, 1987, Emerg | |
| Colorado: | | | | |
| Pitkin | Snowmass Village, town of | 080312—New | Jan. 29, 1987 Emerg | |
| Michigan: | | | | |
| Huron | Hume, township of | 260792—New | Jan. 29, 1987, Emerg | |
| Allegan | Martin, village of | 260793—New | do | |
| Grand Traverse | Whitewater, township of | 260794—New | do | |
| Wisconsin: Lafayette | South Wayne, village of | 550231A | Jan. 29, 1987, Emerg.; Jan. 29, 1987, Reg | May 28, 1976 and Dec. 7, 1973 |
| New Hampshire: Cheshire | Westmoreland, town of | 330238A | Oct. 12, 1976, Emerg.; Apr. 2, 1986, Reg.; Apr 2, 1986, Susp.; Jan. 22, 1987, Rein. | Jan. 17, 1975 and Apr. 2, 1986 |
| Ohio: Hamilton | Reading, city of | 390207B | Aug. 27, 1975, Emerg.; Dec. 18, 1986, Reg., Dec. 18, 1986, Susp.; Jan. 23, 1987, Rein | Feb. 6, 1974, Apr. 16, 1976, May 18, 1979 and Dec. 18, 1986 |
| Virginia: Mathews | Unincorporated areas | 510096B | Feb. 4, 1987, Susp | Nov. 8, 1974, Sept. 17, 1976 and Feb. 4, 1987 |
| Pennsylvania: | | | | |
| Westmoreland | Mt. Pleasant, borough of [2] | 422181B | Feb. 1, 1987, Susp | |
| Venango | Oakland, township of [2] | 422111B | do | |
| Maryland: St. Mary's | Unincorporated areas | [illegible] | Feb. 19, 1987 Susp | |
| Ohio: Hamilton | Reading, city of | 390207B | Aug. 27, 1975, Emerg.; Dec. 18, 1986, Reg., Dec. 18, 1986, Susp.; Feb. 19, 1987, Rein. | |
| Pennsylvania: | | | | |
| Westmoreland | Southwest Greensburg, borough of | 420901C | June 30, 1976, Emerg.; Nov. 19, 1986, Reg; Jan. 2, 1987, Susp.; Feb. 27, 1987, Rein | Feb. 1, 1974, Sept. 26, 1975, June 30, 1976 and Nov 19, 1986. |
| Forest | Tionesta, borough of | 421648A | May 12, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov 5, 1986, Susp., Mar. 2, 1987, Rein. | Mar. 29, 1974, May 11 1976 and Nov. 5, 1986 |
| Michigan: Mackinac | Bois Blanc, township of | 260795—New | Feb. 27, 1987, Emerg | |
| Kentucky | | | | |
| Garrad | Unincorporated areas | 210361—New | do | |
| Taylor | Buffalo Gap, town of | 481138 | do | Nov. 19, 1976. |
| Hardin | Kountze, city of | 480845 | do | June 25, 1976. |
| Madison | Unincorporated areas | 481180 | do | |
| Texas | | | | |
| Montgomery | Splendora, city of | 480488B | Feb. 27, 1987, Emerg.; Feb. 27, 1987, Reg | Aug. 30, 1974, Mar 5, 1976 and Aug. 1, 1984 |
| Aransas | Fulton, town of [3] | 480012 | Feb. 27, 1987, Emerg.; Feb. 27, 1987, Reg | |
| Wharton | Unincorporated areas | 480652C | Feb. 27, 1987, Emerg.; Feb. 27, 1987, Reg | Apr. 18, 1983, June 12, 1979, June 20, 1978 and Aug. 2, 1974. |

[1] Declared disaster areas.
[2] Minimal conversions
[3] The Town of Fulton has adopted as part of its ordinance Aransas County's effective FIRM dated 3-4-86 for flood insurance and floodplain management purposes.

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified |
|---|---|---|---|
| **Region I** | | | |
| Maine: Belgrade, town of, Kennebec County | 230232B | Jan. 16, 1987, suspension withdrawn | Jan. 31, 1975, May 14, 1976, and Jan. 16, 1987. |
| Vermont: Burlington, city of, Chittenden County | 500032C | do | July 19, 1984, Nov. 15, 1978, and Jan. 16, 1987. |
| **Region II** | | | |
| New York: Delaware, town of, Sullivan County | 360818E | do | June 28, 1974, Jan. 3, 1975, June 25, 1976, Jan. 21, 1977, Nov. 18, 1983, and Jan. 16, 1987 |
| **Region III** | | | |
| Virginia: Iron Gate, town of, Alleghany County | 510220 | do | Aug. 30, 1974, Mar. 19, 1976, and Jan. 16, 1987. |
| **Region IV** | | | |
| Florida | | | |
| Lafayette County, unincorporated areas | 120131B | do | May 27, 1977, and Jan. 16, 1987 |
| Branford, town of, Suwannee County | 120301B | do | Jan. 9, 1974, Nov. 7, 1975, and Jan. 16, 1987 |
| Kentucky: Stanton, city of, Powell County | 210196B | do | May 24, 1974, Mar. 5, 1976, and Jan. 16, 1987 |
| Tennessee: Pulaski, city of, Giles County | 470067C | do | May 24, 1974, Jan. 30, 1976, Aug. 29, 1980, and Jan. 16, 1987. |
| **Region V** | | | |
| Minnesota: Winona County, unincorporated areas | 270525C | do | Oct. 26, 1979, Apr. 21, 1978, Oct. 18, 1974, and Jan. 16, 1984. |
| **Region VI** | | | |
| Arkansas: Clinton, city of, Van Buren County | 050211C | do | June 21, 1974, June 4, 1976, July 17, 1979, Jan. 16, 1987, and Nov. 1, 1986 |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified |
|---|---|---|---|
| **Region VIII** | | | |
| Utah: Junction, town of, Piute County | 490096B | do. | Aug. 8, 1975 and Jan. 16, 1987 |
| **Region I** | | | |
| Vermont: Windoski, city of, Chittenden County | 500044C | Feb. 4, 1987, suspension withdrawn | Feb. 1, 1974, Aug. 1, 1978, and Feb. 4, 1987 |
| **Region II** | | | |
| New Jersey: Dover, town of, Morris County | 340340C | do. | Mar. 16, 1973, July 9, 1976, Sept. 5, 1979, and Feb. 4, 1987 |
| New York | | | |
| Colchester, town of, Delaware County | 360191C | do. | June 28, 1974, Nov. 14, 1975, Jan. 3, 1986, and Feb. 4, 1987 |
| Otego, town of, Otego County | 361284B | do. | Oct. 29, 1976 and Feb. 4, 1987 |
| **Region IV** | | | |
| Georgia | | | |
| Hinesville, city of, Liberty County | 130125C | do. | Feb. 25, 1977, Sept. 16, 1982, and Feb. 4, 1987 |
| Richmond Country, unincorporated areas | 130158b | do. | Oct. 24, 1975, Mar. 4, 1980, and Feb. 4, 1987 |
| North Carolina | | | |
| Beaufort County, unincorporated areas | 370013B | do. | July 22, 1977 and Feb. 4, 1987 |
| Creswell, town of Washington County | 370443A | do. | Feb. 4, 1987. |
| Hyde County, unincorporated areas | 370133B | do. | Dec. 27, 1974, June 16, 1978, and Feb. 4, 1987 |
| Burnettown, town of, Aiken County | 450004A | do. | Oct. 25, 1974 and Feb. 4, 1987 |
| South Carolina: Greenwood, city of, Greenwood County | 450093C | do. | June 21, 1974, Sept. 3, 1976, June 27, 1980, and Feb. 4, 1987 |
| **Region V** | | | |
| Indiana | | | |
| Kosciusko County, unincorporated areas | 180121C | do. | Dec. 27, 1974, Sept. 9, 1977, and Feb. 4, 1987 |
| Syracuse, town of, Kosciusko County | 180122C | do. | Aug. 9, 1974, June 11, 1976, and Feb. 4, 1987 |
| Winona Lake, town of, Kosciusko County | 180124C | do. | May 3, 1974, Apr. 30, 1976, Sept. 4, 1985, and Feb. 4, 1987 |
| Warsaw, city of, Kosciusko County | 180123C | do. | May 10, 1974, May 28, 1976, and Feb. 4, 1987 |
| Michigan: Litchfield, city of, Hillsdale County | 260409C | do. | July 11, 1975, Oct. 10, 1975, May 4, 1979, and Feb. 4, 1987 |
| Ohio: | | | |
| Marion County, unincorporated area | 390774C | do. | Jan. 6, 1978, Nov. 10, 1978, and Feb. 4, 1987 |
| Coshocton County, unincorporated area | 390765 | do. | Jan. 20, 1978 and Feb. 4, 1987. |
| Green Camp, village of, Marion County | 390374C | do. | Nov. 16, 1973, May 21, 1976, Dec. 14, 1979, and Feb. 4, 1987. |
| Prospect, village of, Marion County | 390377C | do. | Nov. 23, 1973, May 28, 1976, and Feb. 4, 1987 |
| La Rue, village of, Marion County | 390375C | do. | Nov. 23, 1973, May 28, 1976, Aug. 5, 1977, and Feb. 4, 1987. |
| **Region VI** | | | |
| Texas: Fort Bend County Municipal Utility District No. 25, Fort Bend County | 481570B | do. | July 19, 1976, Dec. 20, 1977, and Feb. 4, 1987 |
| **Region VII** | | | |
| Kansas: Florence, city of, Marion County | 200494B | do. | Aug. 6, 1976, Oct. 17, 1978, and Feb. 4, 1987 |
| **Region IX** | | | |
| Arizona: Oro Valley, town of, Pima County | 040109D | do. | Apr. 11, 1975, July 16, 1976, Dec. 4, 1979, Feb. 1, 1983, and Feb. 4, 1987 |
| Nevada: Lyon County, unincorporated areas | 320029C | do. | Jan. 31, 1978, Sept. 30, 1982, and Feb. 4, 1987 |
| **Region II** | | | |
| New Jersey: Wharton, borough of, Morris County | 340364B | Feb. 19, 1987, suspension withdrawn | Mar. 3, 1974, Apr. 16, 1976, and Feb. 19, 1987 |
| New York | | | |
| Tusten, town of, Sullivan County | 360831C | do. | Aug. 9, 1974, Sept. 17, 1976, Aug. 27, 1982, and Feb. 19, 1987 |
| Ulysses, town of, Tompkins County | 360854B | do. | June 14, 1974, Aug. 13, 1976, and Feb. 19, 1987 |
| **Region IV** | | | |
| Georgia: Rincon, city of, Effingham County | 130426A | do. | Apr. 11, 1975 and Feb. 19, 1984. |
| Kentucky: | | | |
| Lewis County, unincorporated areas | 210141B | do. | Dec. 20, 1974, June 17, 1977, and Feb. 19, 1987 |
| Vanceburg, city of, Lewis County | 210142B | do. | Feb. 1, 1974, Mar. 5, 1976, and Feb. 19, 1987 |
| North Carolina: Mount Airy, town of, Surry County | 370226C | do. | June 28, 1974, May 14, 1976, Feb. 1, 1981, and Feb. 19, 1987. |
| **Region V** | | | |
| Michigan: | | | |
| Alabaster, township of, Iosco County | 260249A | do. | Jan. 3, 1975 and Feb. 19, 1987 |
| Dexter, township of, Washtenaw County | 260536B | do. | July 18, 1975, Oct. 1, 1976 and Feb. 19, 1987 |
| Fowlerville, village of, Livingston County | 260439C | do. | Sept. 26, 1975 and Feb. 19, 1987. |
| Minnesota: Scott County, Unincorporated Areas | 270426C | do. | Oct. 20, 1974 and Feb. 19, 1987. |
| **Region VII** | | | |
| Colorado: Holyoke, town of, Philips County | 080141B | do. | June 28, 1974, Jan. 9, 1976 and Feb. 19, 1987 |
| North Dakota: Fargo, city of, Cass County | 38536D | do. | Apr. 10, 1970, May 1, 1971, July 1, 1974, Apr. 23, 1978, Dec. 1, 1978, Jan. 19, 1982 and Feb. 19, 1987 |
| Colorado: Poncha Springs, town of, Chaffee County | 080220A | do. | Aug. 29, 1975 and Feb. 19, 1987. |
| **Region IX** | | | |
| California: Pacifica, city of, San Mateo County | 060323D | do. | Jan. 28, 1974, Dec. 5, 1975, Sept. 26, 1978 Feb. 4, 1981 and Feb. 19, 1987. |
| **Region X** | | | |
| Idaho | | | |
| Cambridge, city of, Washington County | 160199A | do. | Aug. 8, 1975 and Feb. 19, 1987 |
| Midvale, city of, Washington County | 160123B | do. | Sept. 13, 1974, Sept. 19, 1975 and Feb. 19, 1987 |
| Washington County, Unincorporated Areas | 160221B | do. | Dec. 26, 1979 and Feb. 19, 1987 |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified |
|---|---|---|---|
| Weiser, city of, Washington County | 160124B | do | June 21, 1974, Dec. 12, 1975 and Feb. 19, 1987. |
| Oregon | | | |
| Pendleton, city of, Umatilla County | 410211E | do | May 4, 1973, Sept. 26, 1975, July 13, 1976, Nov. 3, 1978, Sept. 1, 1981 and Feb. 9, 1987. |
| Wilsonville, city of, Clackamas County | 410025C | do | Mar. 29, 1974, Aug. 6, 1976, Jan. 6, 1982 and Feb. 19, 1987. |
| **Region I** | | | |
| Maine | | | |
| Greenville, township of, Piscataquis County | 230409C | March 4, 1987, suspension withdrawn | Feb. 14, 1975, Feb. 4, 1977, Jan. 18, 1984 and Mar. 4, 1987. |
| **Region V** | | | |
| Ohio | | | |
| Scio, village of, Harrison County | 390261C | do | May 3, 1974, July 30, 1976, Mar. 6, 1982 and Mar. 4, 1987. |
| Bowerston, village of, Harrison County | 390257B | do | Aug. 9, 1974, May 28, 1976 and Mar. 4, 1987 |
| **Region VI** | | | |
| Texas: Double Oak, town of, Denton County | 481516C | do | June 19, 1978, June 22, 1982 and Mar. 4, 1987. |
| **Region VIII** | | | |
| Colorado | | | |
| Chaffee County, Unincorporated Areas | [illegible] | do | June 3, 1977 and Mar. 4, 1987. |
| Lanmer, County, Unincorporated Areas | 080101C | do | Dec. 27, 1974, Apr. 2, 1979, Mar. 18, 1986 and Mar. 4, 1987. |
| North Dakota: Center, city of, Oliver County | 380078B | do | Apr. 12, 1974, Dec. 19, 1975 and Mar. 4, 1987. |
| **Region IX** | | | |
| Hawaii, Kauai County, Unincorporated Areas | 150002C | do | Dec. 20, 1974, Dec. 20, 1977, Nov. 4, 1981 and Mar. 4, 1987. |
| **Region X** | | | |
| Oregon: Umatilla County Unincorporated Areas | 410204B | do | June 15, 1978 and Mar. 4, 1984 |
| **Region V** | | | |
| Minnesota: North Redwood city of, Redwood County | 270392B | do | Aug. 30, 1974, June 11, 1976 and Jan. 2, 1987. |
| Ohio: Ulrichsville, city of, Tuscarawas County | 390547 | do | Nov. 9, 1978, July 9, 1973, June 1, 1979 and Jan. 2, 1987. |
| New Philadelphia, city of Tuscarawas County | [illegible] | do | May 21, 1976, April 23, 1982 and Jan. 2, 1987. |
| New Comerstown, village of Tuscarawas County | 390544C | do | May 17, 1974, May 21, 1976, Oct. 27, 1978 and Jan. 2, 1987. |
| Sharonville, city of Hamilton County | 390236C | do | Apr. 12, 1974, May 28, 1976, July 27, 1979 and Jan. 2, 1987. |
| Wisconsin | | | |
| Crandon, city of Forest County | 550143B | do | June 7, 1974, Oct. 17, 1975, and Jan. 2, 1987. |
| Hixton, village of Jackson County | 550187B | do | May 17, 1974, Mar. 19, 1976 and Jan. 2, 1987. |
| **Region II** | | | |
| New York | | | |
| Dear Park, town of Orange County | 360612C | Mar. 18, 1987, Suspension Withdrawn | May 17, 1974, May 28, 1976, Feb. 4, 1977, and Mar. 18, 1987 |
| Hounsfield, town of Jefferson County | 360340B | do | Jan. 30, 1976 and Mar. 18, 1987 |
| Willsboro, town of Essex County | 360267B | do | Nov. 8, 1974, Jun. 25, 1976, and Mar. 18, 1987. |
| Woodbury, town of Orange County | 360640B | do | May 31, 1974, Jan. 2, 1976, and Mar 18, 1987 |
| **Region IV** | | | |
| Georgia | | | |
| Alma, city of Bacon County | 130202B | do | Jan. 28, 1974, Feb. 27, 1976, and Mar. 18, 1987. |
| Cordele, city of Crisp County | 130214A | do | Sept. 24, 1976 and Mar. 18, 1987 |
| Effingham County Unincorporated Areas | 130076B | do | Jun. 2, 1978 and Mar. 18, 1987. |
| **Region V** | | | |
| Michigan: Manistee, city of Manistee County | 260131B | do | May 24, 1976, Jun. 4, 1976, and Mar. 18, 1987. |
| **Region VI** | | | |
| Oklahoma: Cache, town of Comanche County | 400048B | do | May 17, 1974, Jul. 30, 1976, and Mar. 18, 1987. |
| Texas | | | |
| Bedford, city of Tarrant County | 480585C | do | Dec. 28, 1973, Jul. 18, 1977, Apr. 17, 1984, and Mar 18, 1987. |
| South Houston, city of Harris County | 480311B | do | June. 28, 1974, Oct. 17, 1975, and Mar. 18, 1987 |
| Willow Park, city of Parker County | 481164A | do | Nov. 12, 1976 and Mar. 18, 1987 |
| **Region VII** | | | |
| Kansas | | | |
| Bel Aire, city of Sedgwick County | 200964B | do | Mar. 18, 1985 and Mar. 18, 1987 |
| Junction City, city of Geary County | 200112C | do | Feb. 1, 1974, Sept. 29, 1978, and Mar. 18, 1987. |
| Mississippi | | | |
| Biloxi, city of Harrison County | 285252D | do | Jun. 27, 1970, Sept. 11, 1970, Jul. 1, 1974, Apr. 16, 1976, Aug. 18, 1980, Mar. 15, 1984, and Mar. 18, 1987. |
| Ocean Springs, city of Jackson County | 285259D | do | Sept. 9, 1970, Jul. 1, 1974, May 14, 1976, Mar. 1, 1984, and Mar. 18, 1987. |
| South Carolina: Greenwood County Unincorporated Areas | [illegible] | do | Jan. 20, 1978 and Mar. 18, 1987. |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified |
|---|---|---|---|
| **Region IX** | | | |
| California: Hanford, City of, Kings County | [redacted] | do | Jun. 7, 1974, July 11, 1975, and Mar. 18, 1987 |
| **Region X** | | | |
| Oregon: Curry County, Unincorporated Areas | 410052C | do | Sept. 13, 1974 and Apr. 3, 1978. |
| **Region II** | | | |
| Puerto Rico: Commonwealth of Puerto Rico | 720000 | April 3, 1987, Suspension Withdrawn | Aug. 1, 1978, Aug. 15, 1980, July 2, 1981, July 19, 1982, Sept. 16, 1982, Apr. 3, 1984, and Aug. 5, 1986 |
| **Region III—Minimal Conversions:** | | | |
| Pennsylvania. | | | |
| Bell, Township of Westmoreland County | 422185C | January 1, 1987, Suspension Withdrawn | Sept. 13, 1974, Sept. 24, 1974, Feb. 13, 1981, and Jan. 1, 1987 |
| Fairview, Township of Mercer County | 421865A | do | Nov. 29, 1974 and Jan. 1, 1987 |
| Vanderbilt, Borough of Fayette County | 421620A | do | Jan. 31, 1975 and Jan. 1, 1987 |
| Wharton, Township of Fayette County | 421640B | do | Jan. 24, 1975, May 2, 1980, and Jan. 1, 1987 |
| Mineral, Township of Venango County | 422536B | do | Jan. 31, 1975, May 25, 1979, and Jan. 1, 1987 |
| Cross Creek, Township of Washington County | 422145B | February 1, 1987, Suspension Withdrawn | Sept. 13, 1974, Nov. 12, 1976, and Feb. 1, 1987. |
| Independence, Township of Washington County | 421202B | do | Sept. 6, 1974, July 23, 1976, and Feb. 1, 1987 |
| New Beaver, Borough of Lawrence County | 422465B | do | Jan. 31, 1975, Aug. 29, 1980, and Feb. 1, 1987 |
| **Region I—Minimal Conversions:** | | | |
| Maine | | | |
| Bremen, Town of Lincoln County | 230214B | February 4, 1987, Suspension Withdrawn | Jan. 31, 1975, Oct. 8, 1976, and Feb. 4, 1987. |
| Dixmont, Town of Penobscot County | 230381A | do | Feb. 21, 1975 and Feb. 4, 1987 |
| East Millinocket, Town of Penobscot County | 230163B | do | Aug. 23, 1974, July 9, 1976, and Feb. 4, 1987 |
| Orland, Town of Hancock County | 230288A | do | Jan. 17, 1975 and Feb. 4, 1987 |
| Sedgwick, Town of Hancock County | 230291B | do | Jan. 24, 1975, Oct. 25, 1977, and Feb. 4, 1987 |
| Stockton Springs, Town of Waldo County | 230226A | do | Feb. 7, 1975 and Feb. 4, 1987 |
| Swanville, Town of Waldo County | 230267A | do | Feb. 7, 1975 and Feb. 4, 1987 |
| Windsor, Town of Kennebec County | 230251B | do | Jan. 17, 1975, Sept. 17, 1976, and Feb. 4 1987 |
| Palermo, Town of Waldo County | 230263B | March 1, 1987, Suspension Withdrawn | Apr. 1,1977 and Mar. 1, 1987 |
| Swans Island, Town of Hancock County | 230297 | do | Feb. 14, 1975 and Mar. 1, 1987 |
| Vinalhaven, Town of Knox County | 230230A | do | Apr. 18, 1975 and Mar. 1, 1987 |
| Eastbrook, Town of Hancock County | 230281A | do | Apr. 18, 1975 and Mar. 1, 1987 |
| Brooklin, Town of Hancock County | 230275B | do | Dec. 24, 1976 and Mar. 1, 1987 |
| **Region II** | | | |
| New York: Tupper Lake, Village of Franklin County | 360274B | do | May 31, 1974, June 25, 1976, and Mar. 1, 1987 |
| **Region III** | | | |
| Pennsylvania. | | | |
| Liberty, Borough of Tioga County | 420822B | do | Sept. 13, 1974, June 11, 1976, and Mar. 1, 1987 |
| Nicholson, Borough of Wyoming County | 420915B | do | Jan. 17, 1975, June 4, 1976, and Mar. 1, 1987 |
| Westfield, Borough of Tioga County | 422093B | do | Sept. 20, 1974, May 28, 1976, and Mar. 1, 1987 |
| **Region VIII** | | | |
| South Dakota: Philip, City of Haakon County | 460033B | do | June 7, 1974, Jan. 16, 1976, and Mar. 1, 1987 |
| **Region I—Minimal Conversions** | | | |
| Maine | | | |
| Sidney, Town of Kennebec County | 230274B | March 18, 1987, Suspension Withdrawn | Feb. 21, 1975, Dec. 3, 1976, and Mar. 18, 1987 |
| Starks, Town of Somerset County | 230372A | do | Apr. 18, 1975, Mar. 18, 1987 |
| Union, Town of Knox County | [redacted] | do | Sept. 20, 1974, Sept. 10, 1976, and Mar. 18, 1987 |
| **Region X** | | | |
| Idaho: Homedale, City of Owyhee County | 160107B | [redacted] | Feb. 1, 1974, Dec. 19, 1975, Mar. 18, 1987 |

Code for reading fourth column: Emerg.—Emergency. Reg.—Regular. Susp.—Suspension. Rein.—Reinstatement.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 87-7339 Filed 4-2-87; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[FCC 87-93]**

## Reclassification of Class B and C FM Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Clarification of Final Rules in BC Docket 80-90.

**SUMMARY:** This Public Notice explains how the Commission is implementing the reclassification of class B and C FM stations required in BC Docket 80-90 (see 48 FR 29486; June 27, 1983). In that Docket, existing class B and C FM stations were given until March 1, 1987 to modify their facilities to meet the minimum facilities required for such

BEST COPY AVAILABLE

stations or else be reclassified. This Notice has been prepared to advise the public as to how the various aspects of the reclassification are being administered.

**FOR FURTHER INFORMATION CONTACT:** Gary Kalagian, (202) 632–2049 or John Boursy, (202) 634–6315.

**William J. Tricarico,**

*Secretary.*

**Reclassification of FM Facilities Pursuant to BC Docket 80–90**

In the Report and Order in BC Docket 80–90, 94 FCC 2d 152 (1983), the Commission specified a minimum transmitting antenna height above average terrain (HAAT) of 300 meters and a minimum effective radiated power (ERP) of 100 kW for class 'C' facilities. The Report and Order also specified that class 'B' facilities have an ERP which exceeds 25 kW. In order to provide existing stations an opportunity to meet these minimums, the Commission indicated that existing stations would have three years from the effective date of the Report and Order (i.e. March 1, 1984) to submit an application for appropriate minimum facilities or be reclassified. Thus, to avoid reclassification, an application proposing minimum class 'B' or 'C' facilities must have been received by March 1, 1987. Since, however, March 1, 1987, fell on a Sunday, the Commission has accepted applications to meet the class 'B' and 'C' minimums filed by the close of business on March 2, 1987, pursuant to 47 CFR 1.4(i).

This Public Notice explains how various aspects of the reclassification are being administered. The following example covers most situations which arose during the reclassification process.

Consider the case of a class 'C' channel currently allotted to a city. The city and channel are listed in the Table of Allotments. A licensed station operates on this channel with facilities of 20 kilowatts and 100 meters. This station also has a construction permit to modify its facilities to increase power to 100 kilowatts but remain at 100 meters. An application was filed, by the close of business on March 2, 1987, to modify the construction permit to operate with facilities of 100 kilowatts and 400 meters.

The reclassification procedure affects this station and allotment in the following way.

(1) The license is reclassified to 'C2'.

(2) The construction permit is reclassified to 'C1'.

(3) The application remains classified as 'C'.

(4) The class of this channel in the Table of Allotments is *not* reclassified because the application requesting full class 'C' facilities was on file by the close of business on March 2, 1987.

Any other applicant will have to protect this station's licensed site as a 'C2', the site of its construction permit as a 'C1', and the proposed site in its application as a 'C'. The eventual grant of a license to this station for the facilities proposed in the application will retain the class 'C' channel in the Table of Allotments and the station will continue to operate as a full class 'C' facility. However, if the application is later returned or dismissed, the class of this channel in the Table of Allotments will be reclassified to 'C1' to reflect the class of the construction permit. Other applicants will then only have to protect this station's licensed site as a 'C2' and the site of its construction permit as a 'C1'. Subsequently, if the construction permit expires, the class of the channel in the Table of Allotments will be reclassified to 'C2' to reflect the class of the existing license. Other applicants will then only have to protect this station's licensed site as a 'C2'.

**Special Cases**

Applicants who applied before March 1, 1984, and were in hearing as of the close of business on March 2, 1987, and who were prevented from amending their applications to upgrade their facilities because of their status in hearing, will have 90 days after the decision in that proceeding becomes final to amend or be reclassified.

A class 'C1' station can have maximum facilities of 100 kilowatts (ERP) and 299 meters (HAAT). This ERP–HAAT combination produces a 1 mV/m contour at a distance of 72 kilometers. There are many existing class 'C' stations that operate with an ERP less than 100 kilowatts and a HAAT greater than 300 meters and whose 1 mV/m contour is at a distance greater than 72 kilometers. These stations exceed the equivalent class 'C1' maximum but they do not meet the Docket 80–90 requirement of 100 kilowatts ERP for class 'C'. These stations will remain classified as 'C' pending further rulemaking in MM Docket 86–144, which proposes an index method of classification.

Class 'B' stations with their transmitters located in Zone 2 are reclassified to 'C', 'C1', or 'C2', as appropriate. Similarly, Class 'C' stations with their transmitters located in Zone 1 or 1A are reclassified to 'B' or 'B1', as appropriate. The allotment will carry the classification of the station's license regardless of the zoning of the city of license.

We recognize that many applications filed by existing stations before the March 2, 1987 deadline to specify minimum class B or C facilities were not reached for processing by the March 2, 1987 filing deadline. Should such applications be found deficient after this deadline, we believe the public interest is best served by providing these licensees one opportunity to correct all deficiencies in their applications before the application is returned. Accordingly, upon finding a defect in a timely filed application seeking to meet the Class B or C minimums, the staff on its own motion may waive the "hard-look" FM processing rules established pursuant to the Report and Order in Docket 84–750, 50 FR 19936 (1985), and notify the applicant of the defect. The applicant will then be provided 30 days to correct the noted deficiency and any other deficiences which may exist in the application. If after this 30 day period the application still contains deficiencies, the application will be returned and the allotment reclassified. Thereafter, it will be necessary to submit a Petition for Rulemaking in order to return the channel to its prior classification.

**Other Matters**

Reclassified facilities will not be issued a new authorization solely because of reclassification. The Commission will issue a Public Notice as soon as possible after March 2, 1987, listing those facilities reclassified. When a new authorization is issued for any reason, the new class will appear.

The reclassification of the FM Tables of Allotments (Sections 73.202 and 73.504) was effective as of the close of business on March 2, 1987. The Tables are presently being modified as necessary to indicate the highest class of the authorized or proposed facilities for a station as of the close of business March 2, 1987 and shall be published as soon as possible. Subsequent deletion or dismissal of these authorized or proposed facilities will also be reflected by modifications of the Tables.

The FM Table of Allotments will also be amended to reflect the use of channels by those stations licensed to a community within 15 miles of the allotment (for class B/C) or 10 miles of the allotment (for class A) under the repealed portion of § 73.203 of the Rules. The allotment will therefore coincide with the city of license. In addition, all channels will henceforth contain a class of channel next to the numerical designation.

The reclassified allotments and assignments in the Canadian border area will be notified to Canada as soon as possible after March 2, 1987, with class 'C2' stations considered as class 'B' stations under the U.S.-Canada FM Agreement. Since the U.S.-Mexico FM Agreement does not recognize classes 'C1', 'C2', and 'B1', no notifications to Mexico of reclassified facilities in the Mexican border area are required.

Class 'C' licensees with a buffer zone are reminded that their additional spacing protection of 16 km expired as of the close of business on March 2, 1987, except for those in hearing as discussed in "Special Cases" above. Also, any pending applications on file as of March 2, 1987, which specify a transmitter site within the 16 km buffer zone will continue to be protected against proposals in rulemaking for changes to the FM Table of Allotments.

Questions regarding this notice should be directed to Gary Kalagian (202) 632–2049 or John Boursy (202) 634–6315.

Action by the Commission March 18, 1987. Commissioners Fowler (Chairman), Quello, Dawson, Patrick and Dennis.

[FR Doc. 87–7146 Filed 4–2–87; 8:45 am]
BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 301

[Docket No. 70357–7057]

### Pacific Halibut Fisheries—United States Treaty Indian Tribes

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule and request for comment.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA, issues an emergency interim rule to implement measures recommended by the International Pacific Halibut Commission (Commission) and approved by the Secretary of Commerce (Secretary) to govern fishing by certain U.S. treaty Indian tribes in the Pacific halibut fishery. These regulations establish a special quota and commercial fishing season for halibut in the Strait of Juan de Fuca and Puget Sound and in waters off the State of Washington for members of eleven U.S. treaty Indian tribes.

**DATES:** This rule is effective April 1, 1987, until modified, superseded or rescinded; announcement will be made in the **Federal Register**. Comments are due by May 1, 1987.

**ADDRESS:** Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten at 206–526–6150.

**SUPPLEMENTARY INFORMATION:** The Commission, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea [signed at Ottawa, Ontario, on March 2, 1953], as amended by a Protocol Amending the Convention [signed at Washington, DC, on March 29, 1979], recommended at its annual meeting on January 26–29, 1987, that the government of the United States take regulatory action, under its domestic law and separate from the Commission's action, to provide for the United States special obligation to eleven Indian tribes with historical treaties with the United States containing fishing provisions.

Those recommendations, which have been approved by the Secretary, include expanding Subarea 2A–1 within the Commission's Regulatory Area 2A, the special U.S. treaty Indian fishing area established under § 301.19 (51 FR 16471, May 2, 1986) in 1986 off the Washington Coast, to include waters of the Strait of Juan de Fuca and Puget Sound; providing a suballocation of the Area 2A quota of 100,000 pounds of halibut to the eleven treaty Indian tribes regardless of where it is caught in Regulatory Area 2A; providing an additional amount of halibut, not to exceed 50,000 pounds, which may be made available to the treaty Indian tribes, if necessary, to allow them to continue fishing until October 31, 1987, if the tribal suballocation of 100,000 pounds is projected to be taken prior to then; and setting an open season in Subarea 2A–1 commercial halibut fishing by the tribes beginning April 1, and closing on October 31, or when the additional 50,000 pounds is projected to be taken, whichever occurs first.

Consultation was had with the Coast Guard at a meeting of the Pacific Fishery Management Council on March 11–13, 1987, in Portland, Oregon. The Secretary has authority to promulgate regulations which are in addition to those of the Commission under the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773c.

The regulations establish Subarea 2A–1 under § 301.19 which includes the off-reservation halibut fishing areas of four treaty Indian tribes in the ocean off the coast of Washington and in the Strait of Juan de Fuca, and of seven treaty Indian tribes in the Strait of Juan de Fuca and Puget Sound. Subarea 2A–1 is not intended to describe precisely the historic off-reservation halibut fishing places of all treaty Indian tribes, as the location of those places has not been fully determined. The regulations also provide a tribal suballocation of 100,000 pounds of the total Area 2A quota. If it is projected that the tribal suballocation of 100,000 pounds will be taken prior to October 31, then an additional amount of halibut will be made available to the tribes sufficient for them to continue fishing until the October 31 closing date, but in no event will this additional amount exceed 50,000 pounds. If the tribal suballocation of 100,000 pounds and/or the additional poundage made available for the tribes is not taken by the tribal fishery, then it will be allowed to remain unharvested to benefit the resources and will not be made available to other users.

These regulations supersede the 1986 treaty Indian halibut regulations which were published at 51 FR 16471, May 2, 1986, and codified as 50 CFR 301.19.

This is the second year for which a special allocation of halibut has been established for harvest by U.S. treaty Indians. The 1987 suballocation is not intended to equal half of the exploitable biomass of halibut within Subarea 2A–1, nor does the 1987 suballocation represent any party's view of the eleven treaty Indian tribes' treaty entitlement to share in the Area 2A halibut fishery.

The regulations establish a special commercial season in Subarea 2A–1 beginning April 1 and ending October 31, or when a tribal harvest of 100,000 pounds of halibut is reached, whichever occurs first. Additional poundage, not to exceed 50,000 pounds, may be made available to allow fishing to continue until October 31. This season is designed to maximize the tribes' opportunity to harvest their 1987 allocation. The regulations also establish a special U.S. treaty Indian tribal subsistence and ceremonial season in Subarea 2A–1 which begins on April 1 and ends on December 31, 1987. After the tribal allocation is taken or after October 31, 1987, whichever occurs first, this subsistence and ceremonial fishery allows tribal members to take and retain up to two halibut per day caught on hook-and-line gear, but not sell the fish caught. Treaty Indians of the eleven tribes will fish under their respective tribe's licensing and identification requirements and will display on readily observable boat plaques and carry on the individual

persons of each treaty Indian fisher the standard treaty vessel and treaty Indian identification.

The regulations are time critical and require implementation without prior public comment and without delaying their effectiveness although public comment has been invited for 30 days after their effective date. They are the result of intricate negotiations following a lawsuit filed by the Makah Tribe in 1985 to force the federal government to protect their asserted treaty-protected halibut fishing rights, and threats of similar litigation by other of the eleven tribes. Given the protracted and bitter litigation over treaty Indian salmon fishing rights, now in its nineteenth year, the Commission determined that it was in the best interests of the United States and the halibut fishery to cooperatively establish a special season and suballocation for treaty Indian tribes, beginning in 1986. The Commission's recommendations in 1987 were based on the outcome of a series of meetings with all affected parties, including the tribes, the State of Washington, and segments of the non-Indian halibut fishing community.

For several reasons, the Commission's recommendations do not include an industry recommendation that any unused portion of the treaty Indian suballocation be made available to the non-Indian commercial and recreational halibut fisheries in Area 2A. First, the Commission and the United States could not determine a practical means of implementing this proposal during the 1987 season. This is due to the difficulty in determining the timing, location, and magnitude of the treaty Indian fishery, making it difficult to determine during the time non-Indian fisheries are ongoing what, if any, portion of the suballocation will remain unused at the end of the treaty Indian season. Second, a means for providing a fair and enforceable division between the commercial and recreational segments of the industry of any unused treaty harvest could not be determined in advance. Third, regulatory agencies are unable to specifically project and limit the harvest of recreational fisheries in Area 2A.

The Commission's recommendations and these implementing regulations are the popularly preferred alternative to continued litigation for this season. It was the Commission's recommendation and the common understanding of the affected parties that regulations would be promulgated in time to provide for a treaty Indian commercial halibut fishing season beginning on April 1, 1987. Without emergency implementation of the regulations, treaty Indian halibut fishing will be prevented until April 30, 1987, for the four coastal tribes and until July 10, 1987, for the Puget Sound Tribes. April 30 was the opening date for the commercial season for the four coastal tribes under the 1986 treaty Indian regulations, and July 10 is the beginning of the regularly scheduled commercial season for all citizens in Regulatory Area 2A in 1987. Failure to promulgate the regulations effective immediately would negate the Commission's action, breach the agreement reached among the affected parties, undermine the Federal government's credibility, and force the matter to the attention of the courts.

**Classification**

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Northern Pacific Halibut Act and other applicable law, including the U.S. obligations to Canada and to U.S. treaty Indians.

Absent emergency issuance of this rule, tribal commercial fishing would be prevented until April 30, 1987 for the four coastal tribes and until July 10, 1987 for the Puget Sound tribes. Given the time constraints, treaty obligations and international obligations under the Protocol, the Assistant Administrator finds there is good cause to promulgate these regulations on an emergency basis and that it is impracticable and contrary to the public interest in resolving litigation issues to require notice and public comment or to delay the effective date of the regulations under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The policy of NOAA is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this rule to the Regional Director at the address above. Comments must be received by the date specified above. Submitted comments will be considered by the Secretary in the formulation of future regulations.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order. In addition, NMFS has determined that this rule is not a major rule within the terms of E.O. 12291 because it will not have a major effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comments.

The implementation of a treaty Indian fishery by these regulations is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act.

This rule does not contain any collection of information requirement for purposes of the Paperwork Reduction Act.

**List of Subjects in 50 CFR Part 301**

Fisheries, Fishing, Treaties, Reporting and recordkeeping requirements.

Dated: March 31, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 301 is amended as follows:

**PART 301—[AMENDED]**

1. The authority citation for Part 301 continues to read as follows:

**Authority:** 5 U.S.C. 5; TIAS 2900; 16 U.S.C. 773–773k.

2. Section 301.19 is revised to read as follows:

**§ 301.19 United States treaty Indian tribes.**

(a) *Purpose.* The purpose of this section is to implement the recommendations of the International Pacific Halibut Commission (IPHC) to govern fishing for halibut by eleven United States treaty Indian tribes in certain marine fishing areas off the coast of Washington, in the Strait of Juan de Fuca, and in Puget Sound.

(b) *Relation to other laws.* Except as provided in this section, all regulations of the IPHC in this part apply to halibut fishing by members of United States treaty Indian tribes.

(c) *Definitions.* For purposes of this Part 301, United States treaty Indian tribes means the Makah, Quileute, Hoh, and Quinault tribes located along the north Washington coast, the Lower Elwha Klallam, Jamestown Klallam, and Port Gamble Klallam located along the Strait of Juan de Fuca, and the Lummi,

Swinomish, Tulalip, and Skokomish Tribes located along Puget Sound in the State of Washington.

(d) *Area.* Within IPHC Regulatory Area 2A, Subarea 2A–1 includes waters under United States jurisdiction off the coast of Washington from the U.S.-Canada border south of 46°53'18" N. latitude [Point Chehalis] along the Pacific coast and east through the Strait of Juan de Fuca to include the waters of Puget Sound. Within Subarea 2A–1, boundaries of a tribe's fishery may be revised as ordered by a Federal court.

| Tribe | Boundaries |
|---|---|
| Makah | North of 48°02'15" N. latitude (Norwegan Memorial), west of longitude 123°42'30" W. and east of 125°44'00" W. longitude |
| Quileute | Between 48°07'30" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River), and east of 125°44'00" W. longitude |
| Hoh | Between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River), and east of 125°44'00" W. longitude |
| Quinault | Between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis), and east of 125°44'00" W longitude |
| L. Elwha | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Tribe may take fish under rights secured by treaties with the United States |
| Jamestown | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particular at 626 F. Supp. 1486, and to be places at which the Jamestown Tribe may take fish under rights secured by treaties with the United States |
| Port Gamble | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Tribe may take fish under rights secured by treaties with the United States |
| Lummi | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, to be places at which the Lummi Tribe may take fish under rights secured by treaties with the United States |
| Swinomish | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may take fish under rights secured by treaties with the United States |
| Tulalip | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may take fish under rights secured by treaties with the United States |
| Skokomish | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 348 F. Supp. 377, to be places at which the Skokomish Tribe may take fish under rights secured by treaties with the United States |

(e) *Quota.* Of the total allowable catch in IPHC Regulatory Area 2A, 100,000 pounds (46 metric tons) is suballocated to the U.S. treaty Indian tribes regardless of where the fish are taken by those tribes in Regulatory Area 2A. If it is projected that the treaty tribal suballocation of 100,000 pounds will be taken prior to October 31, then an additional amounts of fish is available to the tribes sufficent for them to reach the October 31, 1987, closing date, but in no event will this additional amount exceed the 50,000 pounds (23 metric tons) made available for this purpose by the IPHC. All fish taken by members of U.S. treaty Indian tribes in Subarea 2A during the season described in paragraph f(1) of this section will count toward this quota whether or not the fish are sold.

(f) *Seasons.* (1) For members of U.S. treaty Indian tribes, the commercial fishing season in Subarea 2A–1 will commence on April 1 and terminate on October 31 or when a total tribal harvest of 100,000 pounds is reached as specified in paragraph (e) of this section, whichever occurs first. The IPHC will monitor catch and effort data in the treaty Indian fishery during the season. If at any time during the season it is projected that the treaty Indian harvest will reach 100,000 pounds prior to October 31, then an additional amount of halibut will be made available to the tribes sufficient to allow them to continue fishing until October 31, but in no event will this additional amount exceed 50,000 pounds. If the additional 50,000 pounds is projected to be taken, the Secretary will, by publishing a notice in the **Federal Register**, close the treaty Indian halibut fishery as of the date 50,000 pounds is projected to be taken. Following closure of the treaty Indian commercial halibut fishing season, no person authorized to fish for halibut by a United States treaty Indian tribe may fish for halibut except as authorized by paragraph (b)(2) of this section.

(2) For members of the U.S. treaty Indian tribes, a subsistence and ceremonial fishing season in Subarea 2A–1 will commence on April 1, and terminate on December 31. After the treaty Indian halibut quota is taken or after October 31, 1987, whichever occurs first, treaty Indians may take and retain, but not sell, up to two halibut per day caught on hook and line gear.

(g) *Size limit.* All halibut taken and retained by treaty Indians during the commercial fishing season specified in paragraph (f)(1) of this section must, with the head on, be a minimum of 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, or, with the head removed, be a minimum of 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the schedule.

(h) *Identification of U.S. treaty Indian.* Any member of a U.S. treaty Indian tribe as defined in paragraph (c) of this section who is fishing under this part must have in his or her possession a valid treaty Indian identification card issued under 25 CFR Part 249, Subpart A and must not fish except from a vessel properly identified and marked with the treaty Indian vessel identification required under 25 CFR Part 249, Subpart A.

[FR Doc. 87–7336 Filed 3–31–87; 11:22 am]
BILLING CODE 3510–22–M

## 50 CFR Parts 611, 672, and 675

[Docket No. 61238–6238]

## Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; extension of effective date.

**SUMMARY:** An emergency rule amending regulations implementing the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and the Groundfish Fishery in the Bering Sea and Aleutian Islands Areas is in effect through March 31, 1987. The Secretary of Commerce (Secretary) extends this rule for 50 CFR Part 672 through April 7, 1987 and for 50 CFR Parts 611 and 675 through April 15, 1987. This extension is necessary under the Gulf of Alaska FMP to continue the harvest limits, the procedure for setting prohibited species catch (PSC) limits, and the closure of specified areas around Kodiak Island to non-pelagic trawling. This extension is also necessary under the Gulf of Alaska and Bering Sea FMPs to continue the requirement for weekly catch reports from all U.S. catcher/processor and

mothership vessels. These actions are intended as conservation measures that respond to the best available biological and socioeconomic information on the status of the groundfish fisheries and are intended to provide for full development and utilization of the existing groundfish resources while protecting fishery resources important to other fishermen.

**EFFECTIVE DATES:** The effective date for the rule published on January 6, 1987, is extended from April 1, 1987, through April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

**SUPPLEMENTARY INFORMATION:** Under section 305(e) of the Magnuson Fishery Conservation and Management Act, the Secretary issued an emergency rule effective on January 1, 1987 (52 FR 422, January 6, 1987) to allow actions as summarized above. The Secretary, in agreement with the North Pacific Fishery Management Council at its March 1987 meeting, extends this emergency rule under Magnuson Act section 305(e)(3)(B). The reasons for these actions, which are discussed in the preamble to the emergency rule, still continue.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Office of Management and Budget, with an explanation of why following the procedures of that Order is not possible.

(16 U.S.C. 1801 *et seq.*)

**List of Subjects in 50 CFR Parts 611, 672, and 675**

Fisheries, Reporting and recordkeeping requirements.

Dated: March 31, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 87–7425 Filed 3–31–87; 5:10 pm]

BILLING CODE 3510–22–M

---

**50 CFR Part 642**

**[Docket No. 61233–6233]**

## Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule; extension of effective date.

**SUMMARY:** An emergency interim rule amending the regulations for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) is in effect through March 31, 1987. The Secretary of Commerce (Secretary) extends this rule for an additional 90 days (through June 29, 1987) and modifies the rule to discontinue commercial quotas in the exclusive economic zone (EEZ). The intended effect of extending and modifying the rule is to prohibit overfishing the Spanish mackerel resource while it is concentrated off the Florida coast.

**EFFECTIVE DATES:** April 1, 1987, through June 29, 1987.

**ADDRESS:** Copies of documents supporting this action may be obtained from and comments on this rule may be sent to W. Perry Allen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** William N. Lindall, 813–893–3722.

**SUPPLEMENTARY INFORMATION:** Under section 305(e)(2)(B) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) the Secretary promulgated an emergency rule (52 FR 288, January 5, 1987) for 90 days, through March 31, 1987) to address an emergency in the Spanish mackerel fishery. The Secretary extends this emergency rule for an additional 90 days under section 305(e)(3)(B) of the Magnuson Act because the conditions justifying the emergency action continue.

The initial emergency rule established (1) commercial quotas for the Gulf of Mexico and the South Atlantic and (2) bag limits for recreational fishermen. The commercial quota for the Atlantic area was projected to be reached, and the fishery was closed, on January 14, 1987 (52 FR 2113, January 20, 1987). The commercial quota in the eastern zone of the Gulf of Mexico is projected to be reached soon.

At meetings of the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) during January and March 1987, the Council concluded that an emergency continues to exist with regard to the Spanish mackerel fishery. The Councils therefore recommended extending the emergency rule for an additional 90 days and recommended that the rule be modified to discontinue the commercial quotas for Spanish mackerel in the Gulf of Mexico EEZ. The Councils reasoned that the small remaining commercial quota for the Gulf of Mexico could be taken within the nine nautical miles of water under Florida's jurisdiction where the majority of the commercial catch normally occurs. The Councils also recommended that during the extension of the emergency rule the sale of Spanish mackerel caught in the EEZ under the bag limit should be allowed only in accordance with the laws and regulations of the State where landed. The Secretary reviewed these recommendations and concluded that such action would be consistent with the provisions of the Magnuson Act and other applicable Federal law. This action will assure protection of the Spanish mackerel resource in the EEZ.

A detailed discussion of the background, issues, regulations, and classification of the rulemaking is set forth in the initial emergency interim rule and is not repeated here.

Except as modified below, all provisions of the emergency rule remain effective through June 29, 1987.

This extension of an emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

**List of Subjects in 50 CFR Part 642**

Fisheries, Fishing.

Dated: March 31, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

## PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 642.7, paragraphs (a) (31) and (32) are removed and new paragraphs (a) (31), (32), and (33) are added, to be effective from April 1, 1987, through June 29, 1987, to read as follows:

**§ 642.7 Prohibitions.**

(a) * * *

(31) Have in possesion Spanish mackerel in or from the EEZ in excess of the bag limit specified in § 642.28(g);

(32) Purchase, sell, barter, trade, or accept in trade Spanish mackerel harvested in the EEZ except as provided in § 642.28(h);

(33) Operate a vessel that fishes for Spanish mackerel in the EEZ with Spanish mackerel aboard in excess of the cumulative bag limit, based on the

number of persons aboard, applicable to the vessel.

**§ 642.21 [Amended]**

3. In § 642.21, paragraphs (g) and (h) are removed.

4. In § 642.28, paragraphs (g) and (h) are revised, to be effective from April 1, 1987, through June 29, 1987, to read as follows:

**§ 642.28 Bag and possession limits.**

* * * * *

(g) *Spanish mackerel bag limit.* All persons who fish for Spanish mackerel in the EEZ are limited to possessing four Spanish mackerel per person per trip except as provided under § 642.24(b).

(h) *Sale of catch.* Spanish mackerel taken in the EEZ under the bag limit in paragraph (g) may be sold upon landing only in those States where State laws and regulations authorize the sale of Spanish mackerel harvested from State waters.

* * * * *

[FR Doc. 87-7426 Filed 3-31-87; 4:57 pm]
BILLING CODE 3510-22-M

---

**50 CFR Part 652**

**[Docket No. 61109-7026]**

## Atlantic Surf Clam and Ocean Quahog Fisheries; Adjustment of Fishing Time

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of adjustment of surf clam fishery time.

**SUMMARY:** NOAA issues this notice to specify allowable fishing time for surf clams at 24 hours for the second quarter of 1987 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility to operators in the use of fishing time during this period. The intended effect is to match fishing effort to the available quota for the area.

**DATES:** This notice is effective April 5 through July 2, 1987.

**ADDRESS:** Select fishing periods by writing to Surf Clam Plan Coordinator, National Marine Fisheries Service, Management Division, 2 State Fish Pier, Gloucester, Massachusetts 01930.

**FOR FURTHER INFORMATION CONTACT:** Bruce Nicholls, 617-281-3600 ext. 263.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. Because of the limited amount of fishing time possible, considering the quota and fleet capacity, the Regional Director during the first quarter of 1987 decided, with the unanimous support of the Council, to allocate fishing time by quarter and allow each operator flexibility to schedule that time to best advantage. This program is being continued in the second quarter with some modifications required to promote enforcement.

Each operator is allotted 24 hours of fishing time for the second quarter. That time must be scheduled in four six-hour periods, which may be taken on any four separate days during the normal daily and weekly surf clam fishing times established in § 652.22(a) (1), (2), and (3). Letters of authorization required under § 652.22(a)(2) have been provided to vessel owners to carry out this effort management program. Each operator must select each fishing period at least fifteen days in advance of the intended date of operation in writing (see ADDRESS). Immediately after the period has been scheduled, the operator must write the date of the period in indelible ink on the letter of authorization. No change in period is allowed once scheduled, except that the make-up provisions at § 652.22(a)(4) will apply during the season and under the conditions specified in that paragraph of the regulations. The letter of authorization must be retained on board the vessel for inspection through July 2, 1987.

If fishing experience indicates that the quota for the second quarter will not be harvested, additional fishing time will be allotted later in the quarter.

### Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

### List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: March 31, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 87-7335 Filed 4-2-87; 8:45 am]
BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 64
Friday, April 3, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 400

[Amdt. No. 1; Doc. No. 4040S]

### General Administrative Regulations; Late Planting Agreement Option Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend the Late Planting Agreement Option (7 CFR Part 400, Subpart A), effective with the 1987 and succeeding crop years. The intended effect of this rule is to (1) add Safflowers to those crops eligible for the Late Planting Agreement Option; and (2) amend the Collection of Information and Data (Privacy Act) statement. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than May 4, 1987, to be sure of consideration.

**ADDRESS:** Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, June 4, 1986, FCIC published a Final Rule in the **Federal Register** at 51 FR 20245, which revised and reissued the Late Planting Agreement Option to : (1) Delete the adverse weather condition requirement; (2) publish a corrected list of crop insurance regulations to which the Late Planting Option applies; and (3) provide availability of the Late Planting Option beginning with 1987 crop year fall-planted crops.

FCIC is presently in the process of issuing a new Part 452 in 7 CFR to insure safflowers and has determined that this crop will be eligible for the Late Planting Agreement Option effective for the 1987 and succeeding crop years. FCIC herein proposed to amend 7 CFR Part 400, Subpart A for this purpose.

In addition, FCIC has amended the published statement relative to collection of information and data for the purposes of the Privacy Act of 1974 and includes this amended statement herein.

The principal, proposed changes in the Late Planting Option Regulations are:

1. Section 400.4—Add Safflower Crop Insurance Regulations (7 CFR Part 452) as a crop eligible for coverage under the provisions of the Late Planting Agreement Option.

2. Amend the Collection of Information and Data (Privacy Act) statement at the end of 7 CFR Part 400, Subpart A.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regulator business hours, Monday through Friday.

### List of Subjects in 7 CFR Part 400

Crop insurance, late planting agreement option.

### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Late Planting Agreement Option Regulations (7 CFR Part 400, Subpart A), effective for the 1987 and succeeding crop years, in the following instances:

### PART 400—[AMENDED]

1. The authority citation for 7 CFR Part 400 Subpart A continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. In 7 CFR Part 400, Subpart A, § 400.4 is amended to add "7 CFR Part 452, Safflowers," at the end thereof. As amended, § 400.4 reads in its entirety as follows:

**§ 400.4 Applicability to crops insured.**

The provisions of this subpart shall be applicable to the provisions of FCIC

policies issued under the following regulations for insuring crops:

7 CFR Part 416 Pea
7 CFR Part 418 Wheat
7 CFR Part 419 Barley
7 CFR Part 420 Grain Sorghum
7 CFR Part 421 Cotton
7 CFR Part 422 Potatoes
7 CFR Part 423 Flax
7 CFR Part 424 Rice
7 CFR Part 425 Peanuts
7 CFR Part 427 Oats
7 CFR Part 428 Sunflowers
7 CFR Part 429 Rye
7 CFR Part 430 Sugar Beets
7 CFR Part 431 Soybeans
7 CFR Part 432 Corn
7 CFR Part 433 Dry Beans
7 CFR Part 435 Tobacco (Quota Plan)
7 CFR Part 436 Tobacco (Guaranteed Production Plan)
7 CFR Part 437 Sweet Corn (Canning and Freezing)
7 CFR Part 438 Tomatoes (Canning and Processing)
7 CFR Part 443 Hybrid Seed
7 CFR Part 447 Popcorn
7 CFR Part 452 Safflowers

The Late Planting Option shall be available in all counties in which the Corporation offers insurance on these crops.

**§ 400.5 [Amended]**

3. In 7 CFR Part 400, Subpart A, in § 400.5, "the Collection of Information and Data (Privacy Act)" statement is revised in its entirety to read as follows:

* * * * *

**Collection of Information and Data (Privacy Act)**

To the extent that the information requested herein relates to the information supplier's individual capacity as opposed to the supplier's entrepreneurial (business) capacity, the following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)). The authority for requesting information to be furnished on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and the Federal Crop Insurance Corporation Regulations contained in 7 CFR Chapter IV.

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determined eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Furnishing the Tax Identification Number (Social Security Number) is voluntary and no adverse action will result from the failure to furnish that number. Furnishing the information required by this form, other than the Tax identification (Social Security) Number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of or substantial reduction in any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due. (See the face of this form for information on the consequences of furnishing false or incomplete information).

The information furnished on this form will be used by federal agencies, FCIC employees, and contractors who require such information in the performance of their duties. The information may be furnished to: FCIC contract agencies, employees and loss adjusters; reinsured companies; other agencies within the United States Department of Agriculture; the Internal Revenue Service; the Department of Justice, or other Federal or State law enforcement agencies; credit reporting agencies and collection agencies; and in response to judicial orders in the course of litigation.

Done in Washington, DC, on February 26, 1987.

**E. Ray Fosse,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 87-7368 Filed 4-2-87; 8:45 am]

BILLING CODE 3410-08-M

---

## Animal and Plant Health Inspection Service

### 9 CFR Part 92

**[Docket No. 87-044]**

## Llamas and Alpacas Imported From Chile; Withdrawal of Proposed Rule

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** On January 23, 1987, we published in the Federal Register (52 FR 2654–2658) a proposal to remove the prohibition of the importation of llamas and alpacas from Chile, except through the Harry S Truman Animal Import Center (HSTAIC), and to establish requirements for health certification and quarantine upon arrival in the United States for llamas and alpacas from Chile. In this document, we are withdrawing the proposal. This action is necessary because foot-and-mouth disease was confirmed in Chile and we have removed Chile from the list of countries free of rinderpest and foot-and-mouth disease; one of the effects of removing Chile is to prohibit the importation from Chile of live cattle, sheep, or other ruminants, including llamas and alpacas, except through HSTAIC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey Kryder, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8695.

**SUPPLEMENTARY INFORMATION:** On January 23, 1987, we proposed in the Federal Register (52 FR 2654–2658) to remove the prohibition against the importation of llamas and alpacas from Chile, except through HSTAIC, and to allow those animals to be imported provided certain criteria concerning health certification and quarantine upon arrival were met. We are now withdrawing that proposal.

On March 12, 1987, the Government of Chile informed us that an outbreak of foot-and-mouth disease has been confirmed in that country. Therefore, on March 13, 1987, we removed Chile from the list of countries declared free of rinderpest and foot-and-mouth disease. One of the effects of that action is to prohibit the importation into the United States from Chile of cattle, sheep, and other ruminants, including llamas and alpacas, except through HSTAIC. For this reason, our proposal to provide special criteria for the importation of llamas and alpacs from Chile is no longer warranted.

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 31st day of March, 1987.

**J.K. Atwell,**

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87-7433 Filed 4-2-87; 8:45 am]

BILLING CODE 3410-34-M

---

### 9 CFR Part 92

**[Docket No. 87-045]**

## Lottery for Importation of Llamas and Alpacas From Chile; Withdrawal of Proposed Rule

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** On January 23, 1987, we published in the Federal Register (52 FR 2658–2662) a proposal to establish a lottery by which applicants would receive authorization to import llamas and alpacas from Chile into quarantine facilities that we maintain. In this document, we are withdrawing the proposal. This action is necessary because foot-and-mouth disease has been confirmed in Chile and we have removed Chile from the list of countries free of rinderpest and foot-and-mouth disease; one of the effects of removing Chile is to prohibit the importation from Chile of live cattle, sheep, or other ruminants, including llamas and alpacas, except through the Harry S Truman Animal Import Center (HSTAIC).

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey Kryder, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8695.

**SUPPLEMENTARY INFORMATION:** On January 23, 1987, we proposed in the **Federal Register** (52 FR 2658–2662) to establish a lottery by which applicants would receive authorization to import llamas and alpacas from Chile into quarantine facilities that we maintain.

On March 12, 1987, the Government of Chile informed us that an outbreak of foot-and-mouth disease had been confirmed in that country. Therefore, on March 13, 1987, we removed Chile from the list of countries declared free of rinderpest and foot-and-mouth disease. One of the effects of that action is to prohibit the importation into the United States from Chile of cattle, sheep, and other ruminants, including llamas and alpacas, except through HSTAIC. There are currently provisions in the regulation with repect to lotteries and other requirements concerning the importation of animals through HSTAIC. For that reason, our proposal to establish a lottery for quarantine facilities space for the importation of llamas and alpacas from Chile is no longer warranted.

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 31st day of March, 1987.

**J.K Atwell,**

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87–7434 Filed 4–2–87; 8:45 am]

BILLING CODE 3410–34–M

---

## Food Safety and Inspection Service

## 9 CFR Parts 317 and 319

**[Docket No. 86–049N]**

## Filing of Mechanically Separated (Species) Petition

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Petition for rulemaking.

**SUMMARY:** The Food Safety and Inspection Service is announcing that the law office of Glassie, Pewett, Dudley, Beebe, and Shanks of Washington, DC, on behalf of their clients, Bob Evans Farms, Inc., Odom Sausage Company, Sara Lee Corporation, and Owens Country Sausage, Inc. (hereafter referred to as the "Petitioners"), has filed a petition requesting the Federal meat inspection regulations be amended, under certain circumstances, in regard to the labeling of mechanically separated (species) when it is used as an ingredient in meat food products. The Petitioners' requested amendment would allow "mechanically separated (species)" to be listed in the ingredients statement on the label of a meat food product as the species from which it was derived (e.g., beef), in lieu of listing it as "mechanically separated (species)" in the ingredients statement as now required, (a) if the calcium content of the meat food product, irrespective of amount, is stated on the label as part of any nutrition information on the label or in immediate conjunction with the list of ingredients or otherwise conspicuously on the label; and (b) if the mechanically separated (species) constitutes no more than 10 percent of the livestock and poultry portion of any meat food product.

**DATE:** Comments concerning this docket must be received on or before June 2, 1987.

**ADDRESS:** Written information or comments may be mailed to the U.S. Department of Agriculture, Food Safety and Inspection Service, ATTN: FSIS Docket Clerk, Room 3168–S, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Ashland Clemons, Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 447–6042. Supplementary Information:

### Comments

Interested persons are invited to submit information or comments concerning this docket. Written comments must be sent in duplicate to the FSIS Docket Clerk and must bear reference to the docket number located in the heading of this document. All comments submitted pursuant to this notice will be made available for public inspection in the office of the FSIS Docket Clerk between 9:00 a.m. and 4:00 p.m., Monday through Friday.

### Background

Documents referenced in this notice are available for public inspection in the office of the FSIS Docket Clerk.

On April 27, 1976, a notice of proposed rulemaking was published that included, among other things, a proposal for defining and permitting the manufacture of three types of product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle (41 FR 17560). There were more than 1,100 public comments on this proposal, a number of which raised various health and safety questions. Also on April 27, 1976, an interim regulation that included standards for the use of "Mechanically Deboned Meat" (MDM) was published (41 FR 17535). This interim regulation was challenged by a coalition of various consumer-oriented public interest groups, State officials, and a member of Congress in *Community Nutrition Institute, et al.* v. *Butz (CNI* v. *Butz),* 420 F. Supp. 751 (D.D.C. 1976).

The court in *CNI* v. *Butz* held that the promulgation of the interim regulation was in violation of the Administrative Procedure Act and that the Secretary could not permit the manufacture of MDM until certain health and safety questions were resolved. The Court issued an injunction enjoining the Secretary from giving further effect to the interim regulation with respect to MDM. In the Court's opinion, MDM was not "meat" as traditionally defined because of its bone particle content. The Court concluded that these bone particles must be regarded as a substance added during mechanical processing, and that the Secretary had not adequately considered the health effects of MDM. Also, it appeared to the Court that the interim regulation, which did not require MDM to be declared on the label, permitted misbranding because a product that contained MDM would have a higher calcium content than a comparable product prepared without MDM. The Court stated that since the public expects the "usual product," it would be misled by the labeling permitted by the regulation. The Court indicated that this could prove especially harmful to persons or calcium-restricted diets, who would be misled into thinking that the product contained no more than the usual amount of calcium.

In order to respond to the health and safety questions raised by the Court, the Department initiated an analytical program to develop data on the amounts of nutrients and substances of concern which might be present in MDM. The Panel assigned to undertake this evaluation concluded, among other things, that a slight nutritional benefit is to be expected for most people from the calcium in MDM, especially for persons whose customary intake of calcium falls below the Recommended Dietary Allowance. It was also concluded that the amount of calcium, which would be added to the diet by MDM, would not be so great in amount as to pose a hazard to the health of most people except for

those persons who were hyperabsorbers of calcium and who were likely already to be under medical supervision to limit their calcium intakes. It was suggested by the Panel that there be appropriate labeling to indicate that meat food products contain calcium so that the small percentage of the population which might require a low calcium intake for medical reasons would have the choice to avoid purchasing such products. The Panel agreed that MDM contained in food products should be so labeled in the ingredients statement so that persons who must stringently restrict calcium intake could avoid these products. (See Panel Report: Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume I and II.)

As a result of the Panel's conclusions and recommendations, *CNI* v. *Butz*, and the widespread public interest in and concern about the product, a revised proposal was published on October 6, 1977. The proposal provided, among other things, that the product be named "Tissue from Ground Bone" (TFGB); that the product be labeled "Tissue from Ground (Species) Bone," in the ingredients statement of a meat food product in which it is used; that the name of the meat food product in which it is used be qualified by the term "Tissue from Ground Bone Added," and that the product be classified as a meat food product rather than as a class of meat (42 FR 54437). As a result of the rulemaking proceeding, the Administrator concluded, among other things, that the product should be named "Mechanically Processed (Species) Product" or MP(S)P. The Administrator agreed with public comments that the proposed name "Tissue from Ground Bone" (TFGB) could be misleading as the product contained meat, bone, and bone marrow, and "TFGB" would incorrectly indicate it is made wholly from parts of bone. The Administrator determined not to adopt the name "Mechanically Deboned Meat" for the product because "deboned" would incorrectly represent that the product did not contain bone or bone marrow and "meat" would incorrectly represent that the product consisted solely of "meat." The Administrator also concluded that a qualifying statement should be added to finished product names to indicate the presence of MP(S)P, since MP(S)P is unique and would not be an expected ingredient; that finished product names should bear the additional qualifying statement, "Contains Up To ——% Powdered Bone" because the need of some individuals to limit their intake of calcium is an important consideration; and that MP(S)P should be listed separately from "meat" in its order of predominance by weight in the ingredients statement of finished products because MP(S)P is not meat and it would be a standardized product following publication of the rule.

On June 20, 1978, regulations were published concerning the production, use, and labeling of MP(S)P and products in which MP(S)P may be used (43 FR 26416). However, very little of this product was produced after these regulations became effective. The red meat industry contended that its failure to market products containing MP(S)P was due to regulatory requirements which they believed went beyond what was necessary to protect the public, and they asked the Department to reconsider these requirements. In particular, in April 1979, the Pacific Coast Meat Association (PCMA) petitioned the Department to amend various labeling and compositional requirements of the MP(S)P regulations. The Department denied this petition in May 1979, but indicated it was open to resubmission of PCMA's arguments if additional information in various areas was presented. In June 1979, PCMA resubmitted its request along with a further explanation of its position. The resubmitted petition was denied in September 1979. Thereafter, in February 1981, the PCMA and the American Meat Institute (AMI) submitted a petition on behalf of their members. The petition stated that their members "are effectively precluded from producing or marketing mechanically deboned beef, pork or veal or lamb by the misleading labeling and the unreasonable compositional standards imposed by" the regulations. A consumer focus group (Market Research Services) report concerning consumer attitudes towards various types of meat food product labeling and an analysis of the economic impacts of the 1978 regulations were submitted in support of their claim.

Following additional reviews and analyses, the Department issued a proposed rule on July 31, 1981 (46 FR 39274). Based on comments received and further evaluation of relevant information, in 1982 the Department promulgated a final rule which amended the Federal meat inspection regulations by, among other things, modifying the definition and standard and the labeling requirements for such product and meat food products in which it may be used (47 FR 28214). The name of the product was changed from "Mechanically Processed (Species) Product" to "Mechanically Separated (Species)" (MS(S)) in order to provide a more meaningful and concise description of its characteristics. A labeling requirement for the product was established in order to ensure that the product was used in accordance with regulatory requirements. The requirement that the names of meat food products be qualified to indicate the presence of this product as an ingredient was deleted as unnecessary. Further, the requirement that the names of meat food products be further qualified to indicate the percentage of powdered bone they contained was replaced by a requirement that their labels declare, in certain circumstances, calcium content either as part of nutrition labeling information or if the meat food product does not bear nutrition labeling information in a prominent statement in immediate conjunction with the ingredients list. This declaration must be stated on the label of a meat food product containing MS(S) whenever MS(S) contributes 20 mg or more of calcium to a serving of such meat food product, unless the amount that would be declared would not differ from the amount that would be declared if the meat food product contained only hand deboned ingredients or unless the calcium content of a serving of the meat food product would be 20 percent of the U.S. RDA or more if the meat product contained only hand deboned ingredients. The Department concluded that the calcium content approach was preferable because it would respond to the needs of calcium-sensitive individuals without having unwarranted, negative effects on the general population's evaluation of meat food products containing MS(S).

A definition and standard of identity for this product was retained, since as the Department noted in its proposal, the consistency of this product and its content of bone, bone marrow, and certain minerals as well as muscle tissue are materially different from those of meat. The requirement that the name of the product be listed in its proper order of predominance in the ingredients statement on the label of a meat food product in which it is used, consistent with the general requirements for declaring ingredients in meat food products, was also retained. The product's distinctive character and separate regulatory standard were the basis for the ingredient declaration requirement, and not the product's wholesomeness or fitness for consumption or the level or particular meat food product in which it would be included as an ingredient.

The final 1982 regulations were challenged in *Community Nutrition*

*Institute, et al.* v. *Block, et al.* Civil Action No. 82–2009 (D.D.C. decided December 1, 1982). The plaintiffs, among other things, challenged the amended regulations contending that they permitted the sale of misbranded meat food products because of the product name change to MS(S) and the elimination from the labeling of meat food products, in which MS(S) may be used, of the statements that qualified the name of the meat food product by indicating the presence of MS(S) and the percentage of powdered bone. The plaintiffs contended that the labeling required by the amended regulations, i.e., listing of MS(S) in the ingredients statement and the calcium declaration under certain circumstances, was insufficient under the Federal Meat Inspection Act. The United States District Court upheld the regulations, and the plaintiffs appealed. The United States Court of Appeals for the District of Columbia upheld the regulations in *Community Nutrition Institute, et al.* v. *Block, et al.*, 749 F.2d 50 (D. C. Cir. 1984).

**Petition Received**

On November 10, 1986, the Department received the following petition asking the Department to consider some changes in its current regulatory policy. The petition in its entirety, as received by the Department, is hereby published in order that the Department may obtain public comment on this requested regulatory change:

**Public Petition for Rulemaking to Amend a Regulation of the Food Safety and Inspection Service Pertaining to the Labeling of Products Containing Mechanically Separated Meat**

This Public Petition is filed on behalf of Bob Evans Farms, Inc., Columbus, Ohio, Odom Sausage Company, Madison, Tennessee, Sara Lee Corporation, Memphis, Tennessee, Owens County Sausage, Inc., Richardson, Texas (hereinafter sometimes referred to as "the Petitioners").

Each of the Petitioners operates a hog slaughter and sausage production facility. Specifically, they produce whole hog sausage by the so-called "hot process" method—that is, a process whereby sausage is formulated within a comparatively short period of time without a substantial reduction in the temperature of the meat between the time of slaughter and formulation.

Petitioners have the equipment and expertise to produce mechanically separated pork for use in their sausage products but have not done so since 1976. Furthermore, Petitioners are not aware of any meat processing concern which at present is commercially producing mechanically separated meat. This type of meat is not being produced (and therefore is being wasted) despite the fact that it is safe and wholesome, that the industry has invested substantial sums in deboning equipment, and that numerous economic benefits would result from its use (47 FR 28253).

Petitioners believe that the unwarranted negative connotations of the term "mechanically separated pork" (or beef, as the case may be), which term is required on the labels of finished products containing this type of meat, would cause consumers to refrain from purchasing such products. In contrast, so-called "chicken franks" apparently have gained consumer acceptance even though the poultry portion of such products consists entirely of mechanically separated chicken. However, FSIS regulations do not require use of the term "mechanically separated chicken"; rather the ingredient may be labeled "chicken" or "chicken meat". This terminology, Petitioners believe, eliminates the possible negative connotations of the term "mechanically separated". In short, it appears that the labeling requirements imposed on products containing mechanically separated meat, especially when compared to those imposed on products containing mechanically separated poultry, have effectively thwarted its use.

In these circumstances, Petitioners seek the promulgation of an amendment to the FSIS regulations on mechanically separated meat to provide for *optional* calcium content labeling of *all* finished products containing mechanically separated meat as an alternative to including in the ingredient statement the term "mechanically separated pork" (or beef). This optional labeling method could be used only when MS(S) constitutes no more than 10% (rather than 20% as now permitted) of the meat portion of the finished product. The justification for and the desirability of the proposed amendment to the regulations can be found in the record created in previous rulemaking proceedings on this subject.

**Evolution of the Present Regulations on MSM**

Traditional meat processing technology involves cutting meat off the carcass by hand before subjecting it to further processing, such as trimming, grinding or comminuting. Under the Department's regulations (9 CFR 301.2(tt) (1984)), the "meat" so derived consists of the part of the muscle of any cattle, sheep, swine or goats which is skeletal . . . [and accompanying tissue]." Hand odeboning wastes a significant amount of meat which cannot be economically removed from the bones. Mechanical deboning is a process whereby, after removal of meat by hand, certain bones with substantial meal remaining on them are mechanically crushed and forced through sieves which capture the crushed bone. The process produces comminuted meat consisting primarily of muscle tissue, with a small amount of calcium from bone.

In 1976, the Department published proposed regulations and an interim rule for mechanically deboned meat which revised the definition of "meat" to include mechanically deboned meat and permitted the use of mechanically deboned meat in processed meat food products without special labeling. The interim rule was similar to the rule in effect for mechanically deboned poultry and was to remain in effect pending completing of the rulemaking proceeding initiated by the publication of the proposed regulations. A federal court enjoined the implementation of the interim rule on the ground that it was a substantive rule and that the rulemaking requirements of the Administrative Procedure Act had not been followed in its promulgation. As a result of this decision (*Community Institute* (sic) V. *Butz*, 420 F. Supp. 751 (D.D.C. 1976)), the Secretary of Agriculture withdrew the interim rule. At the time, production of mechanically separated meat ceased.

As a result of this ruling, the Secretary of Agriculture appointed a Select Panel of scientists to study mechanically deboned meat. On the basis of the Select Panel's findings and consideration of comments made in a rulemaking proceeding, final rules on mechanically deboned meat were published in 1978 (43 FR 26416 (1978)). The 1978 regulations were amended in 1982 (47 FR 28214 (June 29, 1982)). The Community Nutrition Institute and other organizations filed suit in the United States District Court for the District of Columbia seeking to invalidate portions of the 1982 amendments. The District Court upheld those amendments (*Community Nutrition Institute* v. *Block*, Civil No. 2009, Slip Op. (D.D.C. December 1, 1982), finding the 1982 regulations reasonable in view of the administrative record. The Court of Appeals affirmed (749 F. 2d 50 (D.C. Cir. 1984)).

The present regulations:

(a) Provide a standard of identity and composition for mechanically deboned meat, calling it "Mechanically Separated (Species)", such as "Mechanically separated Pork" or "Mechanically Separated Beef".

(b) Require that "Mechanically Separated (Species)" (hereinafter sometimes "MS(S)") be listed in the ingredient statement of any finished meat food product containing it.

(c) Limit to 20 percent the amount of MS(S) in the meat (or livestock product) portion of a finished product.

(d) Require in certain circmstances that the labels of meat food products containing MS(S) state the calcium content per serving as part of nutrition labeling or in conjunction with the ingredient statement.

(e) Limit MS(S) to not more than ¾ of 1 percent (0.75%) calcium as a measure of bone content and restrict bond (sic) particles size.

(f) Require processors of MS(S) to have an approved quality control system for producing of MS(S).

(g) Prohibit the use of MS(S) In baby foods.

We believe that the best way to demonstrate the propriety of the amendment proposed by this Petition is to analyze the findings made by the Department in promulgating the 1982 amendments and on the Court decisions upholding term.

**Calcium Content Has Been the Focal Point of Ms(S) Regulations**

Although Petitioners vigorously disagree with the Department's position that MS(S) is not meat but rather is a distinct product, Petitioners are not at this time seeking a change in the definition of meat so as to include MS(S).[1] Nor are Petitioners requesting amendments to the regulations governing the definition or permitted uses of MS(S). Rather, Petitioners are requesting only a re-evaluation of the labeling requirements in the context of the concerns addressed by the Department in the 1982 rulemaking proceeding and by the courts in reviewing the 1982 amendments.

From the outset [2] and especially in the 1982 rulemaking, the focal point of the regulatory scheme for MS(S) was the increased amount of calcium in mechanically separated meat *vis-a-vis* hand-separated meat. The Select Panel found that a slight nutritional benefit was to be expected for most people from the calcium in MS(S), in particular for persons whose customary intake of calcium fell below the recommended dietary allowance. At the same time, the select Panel found that the amount of calcium which would be added to the diet by MS(S) would not be so great as to pose any hazard to the health of people except for that small number of people who were hyper-absorbers of calcium and who were already likely to be under medical supervision in order to limit their calcium intake.

The administrative record created in the 1982 rulemaking is replete with references to additional calcium in MS(S) as the primary area of concern: indeed, calcium presented the *sole* potential health hazard, although for only a very small group of people. Thus, as the basis for eliminating the requirement in the 1978 regulation that the label of products with MS(S) state "contains up to ____% powdered bone" the Department stated:

> * * *Unless supplementary labeling information is provided where there is a meaningful increase in the total calcium content of meat food content of meat food products that would otherwise be acceptable in the diets of persons on calcium-restricted diets, such persons could be misled. [47 FR at 28249].

The Department further noted that those persons were "likely to be under medical supervision that includes dietary management to restrict their consumption of calcium-containing foods and that the Department's "concern here is that such persons cold be misled if they are not informed about those increases in meat food products calcium content" [47 FR 28249].

In addition, the Department rejected a proposal that a calcium statement be placed on the labels of the *ingredient*, that is, on the MS(S) itself. Instead, the Department elected to use, where necessary, information on the labels of *finished product* which *"directly addresses the content question of concern to them"* (47 FR 28249; emphasis added).

Further, the Department reiterated:

> The focus of concern in this rulemaking is not the appropriate minimum amount that should be required before a food is promoted to the general population on the basis of its value as a nutrient source . . . Here, the concern is quite different: making sure that a population segment with particular health problems is not misled into thinking a food makes smaller calcium contribution than it actually does [47 FR 28250].

Thus, the thrust of the labeling requirements, as stated by the Department, was "to assure content information is not omitted when increases occur that should be taken into account in planning calcium-restricted diets" (47 FR. 28250). The Department again referred to the needs of the "special audience" for which this information was intended (47 FR 28250). And calcium content was the *sole area* of concern from a health standpoint, as found in *CNI* v. *Block* discussed hereinafter).

Under the current regulations, a calcium statement is required only when the finished product contributes more than 20 mg of calcium to a serving, unless the calcium content would be more than 20% U.S. RDA per serving if such product contained only hand-deboned meat. The Department emphasized that one of the main concerns was that the *amount* of calcium to be stated where necessary, not just that there was additional calcium. For this reason, the Department rejected a suggestion that a parenthetical declaration that MS(S) is a "calcium-containing" product be placed after the ingredient statement.

Moreover, the Court of appeals in *CNI* v. *Block* (749 F.2d at 55) noted that "since he [the Secretary] reasoned, the sole health risk associated with the use of MS(S) in accordance with the regulations is increased calcium levels, a calcium content statement would directly provide all needed health information without creating an unwarranted negative impression of the finished product" (citing 47 FR 28249–50; emphasis added). The Court of Appeals observed that "the Secretary fully considered each of the health risks alleged by appellants [cholesterol, lead and nucleic acids], finding none of them significant; and that there was substantial evidence to support his findings (749 F.2d at 55)(Sic) The Court also referred to the conclusion of the Select Panel that there were *no* health or safety reasons to require products with MS(S) to bear nutrition labeling and to the Select panel's recommendation that labels of products containing MS(S) note its presence "so that those who must stringently restrict calcium intake could avoid them" (749 F.2d at 52). The Court of Appeals observed that "the Secretary fully considered each of the health risks alleged by appellants [cholesterol, lead and nucleic acids], finding none of them significant; and that there was substantial evidence to support his findings" (749 F.2d at 55). In short, with regard to labeling, the calcium content of MS(S) was the primary, if not the sole, area of concern in the rulemaking proceeding and the judicial review thereof.

**Proposed Amendment**

The amendment which Petitioners are proposing is consistent with the basic concern about MS(S). The Select Panel studied all other potential health aspects of MS(S) and found *only* calcium to be of any concern with respect to labeling.[3]

---

[1] The Court of Appeals in *CNI* v. *Block* supported Petitioner's position on this point, finding that MS(S) is "overwhelmingly meat" (749 F.2d at 57). The Department itself recognizes that MS(S) "consists largely of muscle tissue" (47 Fed. Reg. 28228).

[2] The District court in *CNI* v. *Butz* noted specifically that the secretary had not adequately considered calcium implications in when promulgating the interim rule.

[3] We should emphasize here that in focusing on calcium as the key concern of the MS(S) regulations.

Continued

Nonetheless, under the current regulations, the labels of products containing MS(S) do not have to mention calcium *at all* unless the calcium content of finished product exceeds a certain amount. Thus, the Department has taken the position that the term "Mechanically Separated (Species)" will, by itself, inform consumers of increased calcium *up to* 20 mg per serving. Plainly, however, it would be even more informative to consumers on calcium-restricted diets to state on the labels of *all* products containing MS(S) the amount of calcium, even if it is less than 20 mg per serving. If that were done, there would be no reason to list MS(S) in the ingredient statement. In other words, rather than stating "mechanically separated pork", for example, and leaving the target group of consumers with the task of concluding the presence of added calcium up to 20 mg per serving, the ingredient statement could state "pork", and be followed by a statement of the *amount* of calcium, regardless of whether it is more or less than 20 mg per serving. In the final analysis, it simply makes good sense to tell more about a product itself than to describe the process used to produce a portion of it.[4] Petitioner's proposal would do precisely that.

Significantly, at the time the MS(S) regulation was last amended in 1982, concern centered on a small group of persons who might possibly ingest too much calcium. Now, there is a much greater concern about at least half of the population—women—not receiving adequate intakes of calcium. The Consensus Committee on Osteoporosis reported in 1984 that calcium intake for postmenopausal women should be doubled over the present 800 mg. RDA and substantially increased for premenopausal women as well. In short, stating the exact calcium content of a finished product, which is the core of Petitioners' proposal, would be beneficial to the much larger group seeking more calcium as well as to persons seeking to avoid it.

The only other conceivable area of concern with MS(S) is fat content, for MS(S) may have a higher fat content than some hand-deboned meat. However, this concern has been addressed by the fat limitations imposed on finished products, for example, the 50 percent fat limitation applicable to pork sausage and whole hog sausage. (See §§ 319.141 and 319.144.)

Finally, as to any other characteristic of MS(S) which is different from hand-deboned comminuted meat, *even though any such characteristic has no health implications*, petitioners propose that MS(S) constitute no more than 10% (rather than 20%) of the meat portion of a finished meat food product when the ingredient statement does not list MS(S). (See § 319.6(b) and (c).) This further limitation on the amount of MS(S) would not only reduce the amount of calcium (which would nevertheless be disclosed) but necessarily would reduce to negligible levels the overall amount of MS(S) in a finished product. At this level, there simply is no rational justification for separate identification of MS(S).[5] Of course, packers would have the option of using up to 20% MS(S) in the livestock and poultry portion of finished products if they elect to list MS(S) in the ingredient statement.)

The labeling changes which Petitioners propose are entirely consistent with the overall scheme of regulation of MS(S). The Secretary has determined that MS(S) is a distinct product with distinct characteristics. While not included within the technical definition of "meat" under the current regulations, MS(S) in fact, is, as expressly found by the Court of Appeals, "overwhelmingly" meat. Consistent with the Department's view that this product is unique, a special labeling requirement for it under § 317.2(c) would be appropriate, namely, that MS(S) need *not* be identified as such in the ingredient statement *if* the amount of calcium, the only property of MS(S) with any significance from a health standpoint, is specifically stated *and* MS(S) is limited to 10% of the meat portion of the finished product. Thus, the general requirement that MS(S) be listed as such in the ingredient statement, should give way to an optional method of describing a unique type of meat, which method unquestionably would be *more informative* about the only significant property of the meat (calcium). This would be especially appropriate since MS(S) is overwhelmingly meat in the first place and since it would account only for a very small proportion of the finished product by reason of its being limited to 10% of the meat portion of the product.[6]

## PART 317—[AMENDED]

According, Petitioners request that § 317.2(j)(13) be amended to read as follows (new language underscored):

**§ 317.2 [Amended]**

* * * * *

(j) * * *

(13)(i) On the label of any "Mechanically Separated (Species)" described in § 319.5(a) of this subchapter, the name of such product shall be followed immediately by the phrase "for processing" unless such product has a protein content of not less than 14 percent and a fat content of not more than 30 percent.

(ii) When any "Mechanically Separated (Species)" described in § 319.5 of this subchapter is used as an ingredient in the preparation of a meat food product and such "Mechanically Separated (Species)" contributes 20 mg or more of calcium to a serving of such meat food product, the label of such meat food product shall state the calcium content of such meat food product, determined and expressed as the percentage of the U.S. Recommended Daily Allowance (U.S. RDA) in a serving in accordance with 21 CFR 101.9(b)(1), (c)(7)(i) and (iv), and (e), as part of any nutrition information included on such label, or if such meat food product does not bear nutrition labeling information, as part of a prominent statement in immediate conjunction with the list of ingredients, as follows: "A _____ serving contains ____% of the U.S. RDA of calcium", with the blanks to be filled in, respectively, with the quantity of such product that constitutes a serving and the amount of calcium provided by such serving: Provided, That, calcium content need not be stated where (a) the percent of the U.S. RDA of calcium to be declared would not differ from the percent of the U.S. RDA that would be declared if the meat food product contained only hand deboned ingredients or (b) the calcium content of a serving of the meat food product would be 20 percent of the U.S. RDA or more if the meat food product

---

we are doing so from the standpoint of *labeling*. In the earlier rulemaking proceedings on this subject, other concerns were addressed in the regulations dealing with the *definition* and *uses* of MS(S) (*e.g.*, §§ 319.5 and 319.6). It is important that concerns addressed by these other regulations not be confused with the concern (calcium) addressed in the labeling regulation (§ 317.2(j)(13)). As stated at the outset, this petition seeks amendment only of the labeling regulation.

[4] Although the term "mechanically separated" is supposed to suggest the presence of bone tissue, the Market Research Services Survey, which was part of the administrative record, showed that many participants in focus group discussion did not, however, associate bone content with calcium content

[5] Indeed, there is no rational reason to require its separate identification even at the 20% level. As Judge Scalia stated in *CNI* v. *Block*: "*[W]hen used in the maximum proportions permitted by the regulations*, [MS(S)] was shown by scientific studies and taste tests to affect neither the nutritional nor the organoleptic characteristics of the product" (749 F.2d at 56).

[6] The Department, of course, has the legal authority to promulgate the proposed revision. *See* 21 U.S.C. 601(n)(7) and 9 CFR 317.2(c).

contained only hand deboned ingredients.

*Mechanically Separated (Species) may be designated in the list of ingredients as the species from which it was derived (a) if the calcium content of the meat food product, irrespective of amount, is stated on the label as part of any nutrition information on the label or in immediate conjuction with the list of ingredients or otherwise conspicuously on the label; and (b) if the mechanically separated species constitutes no more than 10 percent of the livestock and poultry portion of any meat food product.*

As stated in the 1982 rulemaking proceeding, this amendment would permit "the labeling requirements for meat food products in which [MS(S)] is used . . . to continue to provide adequate, nonmisleading information while reducing their burden and avoiding unwarranted and possibly derogatory implications (47 FR 28222). Indeed, Petitioners submit that the proposed amendment would accomplish those objectives more effectively.

Respectively submitted,

Glassie, Pewett, Dudley, Beebe, & Shanks, P.C.

By _____

James M. Kefauver

*1317 F Street, N.W., Washington, DC 20004. Telephone: 783–1414*

Counsel for Petitioners

Date: November 10, 1986: FSIS has commenced a review of the labeling provisions for mechanically separated (species), when it is used as an ingredient in meat food products, to determine if the petitioned action is warranted. To ensure that the review is comprehensive, FSIS is soliciting information and comments concerning the action requested. The Department will carefully consider comments and information on issues raised by the petition in deciding if further regulatory action should be proposed regarding labeling requirements for mechanically separated (species) when it is used as an ingredient in a meat food product. In particular, answers to the following questions would be most helpful:

1. Would the labeling of a meat food product containing "Mechanically Separated (Species)" be false or misleading if the ingredients statement on the labeling did not include "Mechanically Separated (Species)"?

2. Would an optional labeling statement, such as proposed in the petition, be a sufficient substitute for listing "Mechanically Separated (Species)" in the ingredients statement on the labeling of a meat food product in which it is used?

3. Is the 10 percent use limitation for Mechanically Separated (Species), proposed by the petition, a reasonable amount for triggering the optional calcium content labeling statement provided for by the petition?

4. Are there any other options, other than the one proposed in the petition, to accomplish the objective of the petitioners?

Done at Washington, DC, on: March 30, 1987.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 87–7355 Filed 4–2–87; 8:45 am]

BILLING CODE 3410–DM–M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[Docket No. PRM–50–47]**

### Quality Technology Company, Petition for Rulemaking; Extension of Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking: Extension of comment period.

**SUMMARY:** On January 12, 1987 (52 FR 1200), the NRC published a notice of receipt for a petition for rulemaking dated October 27, 1986, that was filed by Quality Technology Company. The petition was assigned Docket No. PRM–50–47 on November 14, 1986. The notice of receipt requested that the public submit comments by March 13, 1987. A request for an extension of the comment period indicates that the public needs additional time to coordinate views and prepare comments. The NRC agrees that it takes considerable time to coordinate views of several groups to be included in a single comment, and, further, values the contribution public comments lend to its assessment of a petition for rulemaking. Therefore, this notice extends for 60 days the original comment period for PRM–50–47 to May 13, 1987.

**DATE:** Submit comments by May 13, 1987, a 60-day extension of the original comment period. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received before this date.

**ADDRESSES:** Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Obtain a copy of the petition by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A copy of the petition and of comments on the petition are available for inspection or copying for a fee at the Public Document Room at 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Juanita F. Beeson, Acting Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–4268, or, Toll Free, 800–368–5642.

Dated at Washington, DC, this 30th day of March, 1987.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

[FR Doc. 87–7416 Filed 4–2–87; 8:45 am]

BILLING CODE 7590–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Part 368

**[Docket No. 70238–7038]**

### District Offices; Removal of Authority To Process International Import Certificates

**AGENCY:** Export Administration, International Trade Administration, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Commerce is issuing a proposed rule to remove the authority of Department of Commerce District Offices to process International Import Certificates. Once this proposed rule is adopted as final, a U.S. importer of commodities that require an International Import Certificate will have to submit each request for the certification, validation or amendment of the Certificate (Form ITA–645P/ATF–4522/DSP–53) to the Office of Export Licensing in Washington, D.C. This centralized processing is intended to result in more uniform processing of International Import Certificates.

**DATE:** Comments should be received by June 2, 1987.

**ADDRESS:** Written comments (six copies) should be sent to: Joan Maquire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

**FOR FURTHER INFORMATION CONTACT:** John Black or Patricia Muldonian, Regulations Branch, Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–2440).

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements and Invitation to Comment**

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of th United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C 553), or by any other law, under §§ 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The collection of this information has been approved by the Office of Management and Budget under control number 0625–0064.

The period for submission of comments will close June 2, 1987. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign govenrments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street, and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying or records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

**List of Subjects in 15 CFR Part 368**

Imports, Penalties, Reporting and recordkeeping requirements.

Accordingly, Part 368 of the Export Administration Regulations is proposed to be amended as follows:

**PART 368—[AMENDED]**

1. The authority citation for 15 CFR Part 368 continues to read as follows:

**Authority:** Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

**§ 368.2 [Amended]**

2. Section 368.2 is amended as follows:

A. The third sentence under paragraph (a)(1) is amended by removing the clause ", or the nearest District Office listed in § 368.2(a)(2),";

B. Paragraph (a)(2)(i) is amended by removing the paragraph designator and the word "or" appearing at the end of the text and by replacing the comma at the end of the amended text with a period;

C. Paragraph (a)(2)(ii) is removed; and

D. Paragraph (a)(12)(i) introductory text is amended by revising the words "any of the Offices listed in § 368.2(a)(2)" to read "the Office of Export Licensing".

Dated: March 31, 1987.

**Vincent F. DeCain,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 87–7442 Filed 4–2–87; 8:45 am]

BILLING CODE 3510–25–M

---

## TENNESSEE VALLEY AUTHORITY

**18 CFR Part 1301**

**Freedom of Information Act; Schedule of Fees**

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Proposed rule.

**SUMMARY:** TVA proposes to amend its schedule of fees for processing requests for records which are made available for public inspection. The Freedom of Information Reform Act of 1986 requires agencies to issue final regulations in conformance with the Office of Management and Budget (OMB) guidelines and schedule of fees.

**DATE:** Comments must be received by May 4, 1987.

**ADDRESS:** Comments should be sent to Craven Crowell, Director, Office of Information, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

**FOR FURTHER INFORMATION CONTACT:** Gilbert D. Francis, Jr., (615) 632–6000.

**SUPPLEMENTARY INFORMATION:** This proposed rule is not a major rule for the purpose of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant Impact on small business entities.

**List of Subjects in 18 CFR Part 1301**

Administrative practice and procedure, Freedom of Information, Privacy, Sunshine Acts.

For the reasons set forth in the preamble, TVA proposes to amend 18 CFR Part 1301 as follows:

**PART 1301—PROCEDURES**

1. The authority for Part 1301, Subpart A, is revised to read as follows:

**Authority:** 16 U.S.C. 831–831dd, 5 U.S.C. 552, 18 U.S.C. 208(b).

2. Section 1301.2 is revised to read as follows:

**§ 1301.2 Schedule of fees.**

(a) *Basis.* Except as otherwise provided in paragraph (d) of this section, TVA records which are available for public inspection under § 1301.1 are made available upon payment of uniform fees which will approximately cover the direct costs to TVA of searching for, duplicating, and in the case of commercial requesters, reviewing the records.

(b) *Definitions*—(1) *Search.* The term "search" includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents, and computer searches using existing programming.

(2) *Duplication.* The term "duplication" refers to the process of making a copy of a document necessary to respond to a request. Such copies can take the form of paper copy, microform, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review.* The term "review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(4) *Commercial use request.* The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or profit as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act. In determining the nature of a request, TVA will look to the use to which a requester will put the documents requested. Where a requester does not explain the use or where the explanation is insufficient, TVA may draw reasonable inferences from the requester's identity and charge fees accordingly.

(5) *Educational institution.* The term "educational institution" refers to an accredited institution of higher learning engaged in scholarly research.

(6) *Noncommercial scientific institution.* The term "noncommercial scientific institution" refers to an independent nonprofit institution whose purpose is to conduct scientific research.

(7) *Representative of the news media.* The term "representative of the news media" refers to any representative of established news media outlets, i.e., any organization such as a television or radio station, or a newspaper or magazine of general circulation, or a person working for an organization which regularly publishes information for dissemination to the general public whether electronically or in print. In the case of "free-lance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(c) *Fees.* The following fees are applicable:

(1) *Search time charges for other than computer searches.* For time spent by clerical employees in searching files the charge is $8.35 per hour. For time spent by supervisory and professional employees, the charge is $19.75 per hour.

(2) *Duplication charges.* For photostatic reproduction of requested material which consists of sheets no larger than 8½ by 14 inches, the charge is 10 cents per page. For reproduction of other materials, the charge is the direct cost of photostat or other means necessarily used for duplication.

(3) *Review charges.* For reviewing documents in response to a commercial use request, the time spent reviewing them to determine whether they are exempt from mandatory disclosure is charged at the same rates as search time.

(4) *Charges for computer searches.* For computer searches, the charge is the direct cost of providing the service, including computer search time, runs, and operator salary.

(5) *Other charges.* Where a response to a request requires services (including personnel) or materials other than the ones described in paragraphs (c) (1), (2), (3), and (4) of this section, the charge is the full cost of any such services and materials which TVA agrees to provide, but only if the requester has been notified of such cost before it is incurred, or if the request contains a statement accepting responsibility for the cost to be incurred. Such services or materials include:

(i) Certifying that records are true copies;

(ii) Packaging and mailing records rather than holding for pickup;

(iii) Sending records by special methods such as express mail, etc.

(d) *Waiver of fees and services provided without charge.* (1) TVA waives or reduces fees otherwise chargeable under this section if TVA determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(2) Except for documents provided in response to a commercial use request, the first 100 pages of duplication and the first 4 hours of search time will be provided without charge. Educational and noncommercial scientific institution requesters who seek records for scholarly or scientific research and representatives of the news media are not charged search time.

(3) No fee is charged to any requester if the cost of collecting the fee would be equal to or greater than the fee itself.

(e) *Assessment and collection of fees.* (1) Interest may be charged to those requesters who fail to pay fees charged. Interest may begin to be assessed on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) If TVA reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, TVA may aggregate any such requests and charge accordingly.

(3) If TVA determines that allowable charges a requester may be required to pay are likely to exceed $250, TVA may require a requester to make an advance payment of the entire fee before continuing to process the request. The administrative time limits prescribed in § 1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(4) Where a requester has previously failed to pay a fee charged in a timely manner (within 30 days of the date of billing), TVA may require the requester to pay the full amount owed plus any applicable interest as provided above and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. The administrative time limits prescribed in § 1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(5) TVA may assess charges for time spent searching, even if TVA fails to locate the records or if records located are determined to be exempt from disclosure.

**W.F. Willis,**

*General Manager.*

[FR Doc. 87-7367 Filed 4-2-87; 8:45 am]

BILLING CODE 8120-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 111

### Withdrawal of Proposed Customs Regulations Amendment Relating to Customs Broker Examinations

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This document withdraws the proposed amendment to the Customs Regulations which would have reduced the number of times per year the examination for those wishing to become licensed Customs brokers is given from twice to once per year. Upon further consideration, it has been determined advisable not to proceed with the proposal.

**DATE:** Withdrawal effective on April 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** William Wagner, Commercial Compliance Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–8121).

**SUPPLEMENTARY INFORMATION:**

#### Background

Part 111, Customs Regulations (19 CFR Part 111), sets forth the general provisions, as well as specific procedures, relating to Customs brokers, that is, individuals, partnerships, associations, or corporations licensed to transact Customs business on behalf of others. In particular, § 111.13, Customs Regulations, contains the procedural aspects of the examination of applicants for individual brokers licenses. By notice published in the **Federal Register** on April 25, 1986 (51 FR 15636), it was proposed to amend § 111.13(b), Customs Regulations, by reducing the number of annual examinations for those wishing to become licensed Customs brokers from twice to once per year.

Currently, Customs gives examinations in April and October. They are prepared and graded in Customs Headquarters and are designed to test an applicant's knowledge of customs and related laws, regulations, and procedures, and his or her fitness to render valuable service to importers and exporters. Due to increasing numbers of applicants and Customs limited resources with which to prepare, give, and grade the exam, Customs was concerned that the quality of the testing program might suffer. This could lead to the licensing of individuals who do not meet the standards maintained by previous examinations.

In response to our proposal, several commenters noted that once-a-year examination schedules would place a hardship on companies and individuals waiting to become licensed brokers. In response to that problem we have determined to continue to offer two examinations while maintaining their integrity by alternate staffing methods. We are therefore withdrawing the proposal to reduce the number of examinations.

#### Action—Withdrawal of Proposal

Based upon further consideration of the matter, Customs has determined that the proposed amendment should not be adopted. Accordingly, the notice published in the **Federal Register** on April 25, 1986 (51 FR 15636), is withdrawn.

#### Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Dated: March 30, 1987.

**John B. O'Loughlin,**

*Acting Assistant Commissioner, Commercial Operations.*

[FR Doc. 87–7351 Filed 4–2–87; 8:45 am]

BILLING CODE 4820–02–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### 20 CFR Part 615

### Closing Date for Comments on Notice of Proposed Rules for the Federal-State Unemployment Compensation Program; Extended Benefits; Extension of Comment Period

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of extension of closing date for comments.

**SUMMARY:** This notice extends the date of closing for comments on the Notice of Proposed Rulemaking published in the **Federal Register** on October 24, 1986 (51 FR 37746), concerning revision of the regulations for the Extended. Benefit Program. The former closing date for comments was November 24, 1986. The new closing date is April 20, 1987.

**DATE:** Written comments must be received by the close of business on April 20, 1987.

The address for comments is not changed.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Golding, Director, Unemployment Insurance Service (202) 376–6636.

Signed at Washington, DC on March 27 1987.

**Roberts T. Jones,**

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87–7404 Filed 4–2–87; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

[LR–95–86]

### Income Taxes; Information Reporting on Real Estate Transactions; Cross-Reference

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the information reporting requirements for real estate transactions. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by June 2, 1987. The amendments to the regulations are proposed to be effective for real estate transactions closing after December 31, 1986.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–95–86), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Davis III, of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566–3461 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) to provide rules relating to the information reporting requirements for real estate transactions under section 6045(e) of the Internal Revenue Code of 1986. The temporary regulations reflect

the addition of section 6045(e) to the Code by section 1521 of the Tax Reform Act of 1986 (100 Stat. 2746). This document proposes to adopt the temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations explains the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. (T.D. 8135) published in the Rules and Regulations portion of this issue of the **Federal Register.**

**Special Analyses**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

**Drafting Information**

The principal author of these proposed regulations is Arthur E. Davis III, of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

**List of Subjects**

*26 CFR 1.6001–1 through 1.6109–2*

Income taxes, Administration and procedure, Filing requirements.

*26 CFR Part 602*

OMB control numbers under the Paperwork Reduction Act.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 87–7388 Filed 4–1–87; 8:45 am]

BILLING CODE 4830–01–M

---

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 87–07; Notice 7]**

## Federal Motor Vehicle Safety Standards; Motor Vehicle Brake Fluids

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Grant of petition for rulemaking; notice of proposed rulemaking.

**SUMMARY:** This notice grants two related petitions for rulemaking submitted separately by the Chemical Specialties Manufacturers Association and the firm of Arent, Fox, Kintner, Plotkin & Kahn, on behalf of companies engaged in the manufacture and sale of motor vehicle brake fluid. The petitioners requested NHTSA to amend the brake fluid container labeling requirements of Federal Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids*, to provide for the use of permanently affixed labels (e.g., paper labels) on brake fluid containers. This notice proposes to revise the labeling requirements for both brake fluid containers and hydraulic system mineral oil containers, to permit container labeling by means other than by marking the required information directly on the container (i.e., permanently affixed labels). Procedures are proposed for testing the labeling of all such containers, including containers which are marked with information directly on the container, to ensure that the required information remains legible and present on the container after contact with the fluid.

**DATES:** Comments must be submitted not later than June 2, 1987. If adopted, this rule would be effective 180 days after publication of the final rule in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Mr. Vernon Bloom, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–5277.

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids*, specifies requirements for fluids used in hydraulic brake systems and for labeling the containers of these fluids. The purpose of the standard is "to reduce failures in the hydraulic braking systems of motor vehicles which may occur because of the manufacture or use of improper or contaminated fluid." (49 CFR 571.116.)

**Background**

Standard No. 116 has been in effect as a motor vehicle safety standard since passage of the National Traffic and Motor Vehicle Safety Act in 1966. In 1971, the standard was amended to establish requirements for the labeling of brake fluid containers. The rule required certain information to be clearly and indelibly marked on each brake fluid container.

*Requirements of Standard No. 116:* Paragraph S5.2.2 of the standard sets forth the certification, marking and labeling requirements of the standard. S5.2.2.1 applies to manufacturers of brake fluid. It requires them to furnish certain information to each packager, distributor, or dealer to whom the manufacturer delivers the fluid, including information identifying the production lot and date of manufacture of the brake fluid and the fluid's grade and minimum wet boiling point, and a certification that the brake fluid conforms to Standard No. 116.

S5.2.2.2 applies to packagers of brake fluid and specifies the information required to be on brake fluid containers. That paragraph requires packagers to furnish the required information "clearly and indelibly marked on each brake fluid container." The required information includes the certification that the fluid conforms to Standard No. 116, the name of the packager and name and mailing address of the distributor, information relating to identifying the packaged lot and date of packaging and the type of brake fluid contained in the

package, the minimum wet boiling point of the fluid, and a series of safety warnings. The safety warnings concern proper storage of the fluid and the safety consequences of using contaminated fluid. Comparable labeling requirements are set forth in S5.2.2.3 for packagers of hydraulic system mineral oil.

The safety warnings required of brake fluid and hydraulic system mineral oil containers serve as a safeguard against failures in hydraulic braking systems that might result from the use of improper or contaminated fluids. The warnings also help to prevent improper storage of the brake fluid which could contaminate the fluid or cause it to absorb moisture. Avoiding the absorption of moisture is extremely important since moisture in a brake system degrades braking performance and safety by lowering the brake fluid's boiling point, increasing the fluid's viscosity at low atmospheric temperatures and increasing the risk of brake system component corrosion. Lower boiling points increase the risk of brake system failure and increase the possibilities of vapor lock. The safety warnings also alert users of brake fluid containers with capacities less than five gallons that the containers should not be refilled.

*Interpretation of S5.2.2.2:* In an April 1984 letter to McGraw-Edison, the agency interpreted Standard No. 116 as prohibiting the use of labels, whether paper or of some other material, to meet the "marked on each . . . container" requirements of S5.2.2.2 of the standard. NHTSA stated that S5.2.2.2 required the relevant information to be marked directly on the brake fluid container and not simply on a label that is affixed to the container. This conclusion was based on a review of the plain language of S5.2.2.2 and the **Federal Register** notices proposing and adopting that language. Subsequent interpretations reiterated the agency's conclusion that paper labels were not sufficient to meet the "marked on each . . . container" requirements of the standard.

Members of the brake fluid marketing industry expressed concern about the effects of the agency's interpretations of S5.2.2.2. It became apparent that some brake fluid manufacturers and packagers had been using permanently affixed labels on their products, unaware that this practice did not meet the requirements of S5.2.2.2. The industry's concern culminated in the submission of two petitions for rulemaking to amend the labeling requirements of the standard.

**Petitions for Rulemaking**

The two petitions for rulemaking received by NHTSA request the agency to amend Standard No. 116 to provide for the use of permanently affixed labels to satisfy the marking requirements of S5.2.2.2. The Chemical Specialties Manufacturers Association (CSMA) and the law firm of Arent, Fox, Kintner, Plotkin & Kahn (Arent) petitioned the agency on behalf of companies engaged in the manufacture and sale of motor vehicle brake fluid. Because the two petitions share similar interests in the use of permanently affixed labels on brake fluid containers, NHTSA has decided to respond to both of their requests in this grant notice and NPRM.

*CSMA:* The CSMA is a voluntary trade association of over 400 companies engaged in the manufacture, distribution and marketing of chemical specialty products, and includes companies engaged in the manufacture and packaging of motor vehicle brake fluid. According to the CSMA, most brake fluid sold at retail is packaged under private brand names by independent packagers. An independent packager inventories large quantities of containers which are filled on an "as needed" basis as orders are placed by various brake fluid marketers distributing under their own brand names.

The CSMA believed that Standard No. 116 should permit brake fluid packagers the use of permanently affixed labels to affix required information on the containers because that would reduce costs with no negative effect on safety. According to the petitioner, the use of permanently affixed labels would permit a private brand name brake fluid packager to attach preprinted, low cost labels on readily available containers and avoid the expense of readjusting packaging lines each time a different brake fluid brand is packaged. The CSMA stated that it is economically unfeasible for independent packagers, typically small businesses, to directly mark the containers for each brand of brake fluid and store them in advance of packaging. It believed that the requirement for directly marking brake fluid containers entails the purchase of expensive machinery and increases other production costs, and "will serve only to eliminate from the marketplace those companies which contract-package brake fluid under private labels."

The CSMA argued that the standard's current labeling requirements, which specify that required information must be "indelibly marked" on brake fluid containers, are impracticable because "it is doubtful that any method of marking brake fluid containers could be considered indelible [since] any label, whether marked directly on the container or affixed thereto, can be removed." The petitioner believed that the labeling requirements should refer neither to an "indelibly marked" requirement nor focus on the method of application of the required labeling. The petitioner suggested instead that the requirements address the performance of the label, i.e., its ability to adhere to the container during the life of the product and convey the information of its markings. The CSMA stated that the state-of-the-art printing and labeling technologies are such that adhesive labels can be made not to smear, run or become unattached from the container when exposed to brake fluid. In support of its argument to permit permanently affixed labels, the CSMA suggested a test method for determining the durability and indelibility of labels on containers of brake fluid. That method includes procedures for immersing a container in brake fluid and determining whether an affixed label is capable of being destroyed or defaced when the attempt is made to remove it.

*Arent:* Arent petitioned the agency on behalf of client companies engaged in the marketing of brake fluid products. The petitioner's request to amend Standard No. 116 to permit permanently affixed labels on brake fluid containers was based on arguments that such an amendment would be "pro-competitive, pro-consumer and achieve the intended purpose (label permanency) of NHTSA," without an adverse effect on safety. The arguments made by Arent were virtually identical to those of the CSMA.

Arent believed, as did the CSMA, that small businesses and consumers would benefit from use of permanently affixed labels. Arent cited the extensive use of private label marketers in the brake fluid industry and stated that the use of permanent paper labels is critical to marketing strategy. According to Arent, an amendment to Standard No. 116 would result in cost benefits for the consumer by avoiding the costs associated with directly marking brake fluid containers. Arent also explained that current labeling requirements make it costly to label eight ounce plastic bottles and if the requirements are not changed, packagers using plastic bottles might discontinue use of the eight ounce size. Arent believed this is undesirable because plastic bottles are less expensive than metal cans, and because the eight ounce size, while very popular, is unavailable in metal cans.

Similar to the CSMA, Arent believed that the "indelibly marked" requirement of Standard No. 116 cannot be attained. Arent stated that a "rule of reason" is necessary which would "[seek] to confirm that under normal applications and usage, the package label will remain on the container, just as a vehicle's certification label remains on the vehicle." The petitioner suggested that Standard No. 116's labeling requirements be amended to permit use of "permanently affixed" paper labels; i.e. labels affixed in such a manner that they cannot he removed without detroying or defacing them. Unlike the CSMA, Arent included no performance criteria for determining the durability and indelibility of the labels.

**Discussion**

The agency has determined that petitioners' arguments warrant further consideration and has therefore granted their petitions. NHTSA believes that the safety warnings and other information required of brake fluid containers are important and necessary safeguards against failures in hydraulic braking systems. The agency has tentatively concluded that petitioners' request to provide for the use of permanently affixed labels meeting label retention performance requirements enhances manufacturer flexibility in the packaging of brake fluid while ensuring that safety needs are met.

While petitioners requested changes only to Standard No. 116's labeling requirements for brake fluid containers, this notice proposes to revise the labeling requirements for both brake fluid containers and hydraulic system mineral oil containers. NHTSA believes that the same considerations for permitting permanently affixed labels on brake fluid containers apply to the labeling of hydraulic system mineral oil containers, and knows of no reason not to allow packagers of hydraulic system mineral oil the same flexibility in packaging their product. Thus, this notice proposes to amend S5.2.2.2 and S5.2.2.3 of Standard No. 116 to permit container labeling by means other than by marking the required information directly on the container (i.e., the use of permanently affixed labels and to add a new paragraph S6.14 describing procedures for testing all labeling of containers, whether marked directly on the container or on an affixed label, to ensure that the required information remains legible and present on the container after contact with fluid.

**NHTSA's Authority To Set Labeling Requirements**

In support of their requests for use of permanently affixed labels on brake fluid containers, both Arent and the CSMA argued that section 114 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1403) precluded the agency from requiring that the certification of compliance be directly marked on the container. Section 114 of the Act pertains to manufacturer and distributor certification responsibilities, and states: ". . . [Certification of an item of motor vehicle equipment] may be in the form of a label or tag on such item or on the outside of a container in which such item is delivered. . . ." The CSMA argued that, because the Act provides for certification of motor vehicle equipment by means of attaching a label or tag to the item of equipment, NHTSA's requirement for marking a certification directly on brake fluid containers "contravenes the clear language of Section 1403" and is thus invalid under the holding of *Rex Chainbelt, Inc.* v. *Volpe*, 486 F.2d 757 (7th Cir., 1973. Arent also argued implicitly that NHTSA is precluded from setting a permanency requirement for the labels attached to brake fluid containers since none is required by section 114 (15 U.S.C. 1403).

Contrary to the suggestions of the petitioners, the Act does not compel adoption of an amendment permitting compliance with the standard's labeling requirements by means of a permanently affixed label. Even if petitioners were correct in their legal arguments regarding the use of permanently affixed labels for certification purposes, those arguments would be inapposite for the remainder of the standard's labeling requirements which are not related to certification. Apart from the certification requirement, the labeling requirements all concern safety warnings and are issued under the authority of sections other than § 114. Thus, the petitioners' legal arguments would dictate at most that the agency cease to require that the certification statement be included in the label bearing the safety warnings and other safety information and instead permit brake fluid manufacturers to use two different labels: A tag or affixed label to provide certification, in addition to a direct marking on the container to provide the safety warnings and other safety information.

The petitioners' arguments focus on the certification labeling requirement of Standard No. 116 to the exclusion of the numerous safety warning labeling requirements of that standard. The information required by the standard and objected to by the petitioners consists primarily of safety warnings and other safety-related statements directed towards preventing failures in hydraulic brake systems that might result from the use of improper or contaminated fluids. Thus, contrary to the approach taken by the petitioners, the information required by S5.2.2.2 for brake fluid containers is not intended to constitute only a declaration of certification. As explained above, brake fluid contaminated by moisture can degrade the performance and safety of hydraulic braking systems because of the lower boiling point and increased viscosity at low temperatures and the increased risk of brake system component corrosion. Because of these hazards, brake fluid container labels are required to provide warnings to users of the fluid and information identifying the packager, distributor and packaged lot of noncomplying fluid to facilitate agency enforcement efforts. While the certification labeling requirement is subject to any limitation established by § 114, the safety warning labeling requirements are not. The agency's determination of the manner of providing the warning labeling is based on the broad authority of sections 103, 112 and 119 of the Act.

The agency notes that brake fluid packagers would still be obligated under current requirements of the standard to directly mark the safety warnings on containers of brake fluid regardless of whether the certification were also required to be so marked. Since the warning labeling requirements are distinct from certification labeling requirements, the use of permanently attached labels would not become a permissible means of compliance with all Standard No. 116 labeling requirements simply as a result of changing the certification labeling requirements of the standard, as petitioners seem to believe. Moreover, NHTSA finds no merit in the argument that section 114 of the Safety Act prohibits the agency from requiring the certification to be directly marked on brake fluid containers. Section 114 concerns the responsibility of motor vehicle and motor vehicle equipment manufacturers to certify their products and to provide the certification to their distributors and dealers. It states, in pertinent part:

> Every manufacturer or distributor of . . . motor vehicle equipment shall furnish [the certification] to the distributor or dealer at the time of delivery of such . . . equipment by such manufacturer

BEST COPY AVAILABLE

or distributor. . . . In the case of an item of motor vehicle equipment such certification may be in the form of a label or tag on such item or on the outside of a container in which such item is delivered. . . .

The certificate required by section 114 is required of all manufacturers of motor vehicles or items of motor vehicle equipment to which a safety standard applies. The legislative history of section 114 indicates that Congress intended that section to direct itself primarily to the identity of the persons responsible for certifying compliance with the Federal standards. According to the House Committee report, "The committee believes that the manufacturer or distributor responsible for conforming to the Federal safety standards should have an affirmative duty to certify that such conformity has been achieved." H. REP. NO. 1776, 89th Cong., 2d Sess. 28 (1966).

The certificate required by section 114 functions to protect distributors and dealers from liability under the Safety Act for selling nonconforming vehicles and items of equipment. Exemptions from the prohibitions of the Act against the manufacture, sale or importation of noncomplying vehicles or equipment are provided in section 108(b)(2). That section protects from potential civil penalties persons who have a certificate from the manufacturer that the vehicle or equipment conforms to all applicable Federal standards (provided, of course, that the person did not know or have reason to know of the noncompliance). Section 108(a)(1)(C) prohibits the failure to issue the certificate required by section 114. In sum, the above sections of the Act avoid the imposition of absolute liability for violations of the Act in accordance with Congress' intent (see H. REP. NO. 1776, *id* at 23), and provide assurances that the dealer will be protected in cases of products whose nonconformity with the standards is not known to the dealer.

NHTSA does not believe that section 114 delimits the manner of certification for motor vehicle equipment manufacturers. On the contrary, the Safety Act implicitly authorizes the agency to issue further certification requirements for items of motor vehicle equipment. This is evident from the Senate Committee Report which states that the certification of motor vehicle equipment "may also take some other form in appropriate cases . . . [and] could be provided . . . in such other form as [NHTSA] might by regulation authorize". . . . S. REP. NO. 1301, 89th Cong., 2d Sess. 8 (1966). Such authorization is further evidenced by the language of section 108(a)(2)(E) which requires compliance with "any rule, regulation, or order issued under 114."

In addition to section 14, NHTSA has broad rulemaking authority under §§ 103 and 119 of the Safety Act. Section 119 authorizes the agency to issue rules and regulations deemed necessary to carry out the purposes of the Act. Pursuant to sections 114 and 119, NHTSA issued certification requirements for items of motor vehicle equipment in various equipment standards in addition to Standard No. 116, such as Standard No. 106, *Brake Hoses*, and Standard No. 109, *New Pneumatic Tires—Passenger Cars*. Many of NHTSA's certification requirements for items of motor vehicle equipment require the certification to be placed directly on the equipment. The agency believes that directly marking items of motor vehicle equipment with the certification of conformance as well as information relevant to safety performance facilities enforcement efforts, provides notice of the performance capabilities of the equipment, helps to ensure that only complying equipment is sold and minimizes the cost of compliance. Because the certification requirements accord with the purposes and policies of the Safety Act, NHTSA rejects the petitioners' arguments that Standard No. 116's certification requirement contravenes the language of section 114.

The agency also does not agree with petitioners that the requirement that brake fluid containers be directly marked or permanently labeled is invalid under the holding of *Rex Chainbelt, id.* In *Rex Chainbelt*, the Seventh Circuit held that regulations promulgated by NHTSA under section 1407 of the Safety Act are to be upheld if they conform to the purposes and policies of the Act and if they do not contravene any of its terms. 486 F.2d at 761. The court concluded that the regulations at issue in that case, relieving incomplete vehicle manufacturers of the duty to certify their vehicles and to assume any legal liabilities that may be imposed because of the certification, contravened the language of the Act requiring incomplete vehicle manufacturers to certify the compliance of their vehicles.

As discussed above, section 114 the Safety Act imposes no requirement that certification of equipment be only in the form of an affixed label or tag. Further, the court in *Rex Chainbelt* specifically stated, "§ 1403 [section 114] does not prohibit the imposition of further certification requirements by regulations of the Secretary but merely specifies who *must* certify their vehicles." The agency therefore finds no contradiction between the terms of the Act and its requirements under Standard No. 116 for brake fluid container labeling.

**Test procedures**

The major difference between the petitions from Arent and the CSMA is that the CSMA included suggestions for testing the durability and indelibility of labeling on brake flud containers, whereas Arent suggested S5.2.2.2 specify only that the labels "be affixed in such a manner that it cannot be removed without destroying or defacing it." While making this suggestion, Arent also implicitly argued that NHTSA was precluded from setting a permanency requirement insofar as it applied to manufacturer certification of the brake fluid, because section 114 of the Safety Act makes no reference to permanency. The petitioner stated that its approach "actually exceeds the certification requirements contained in the governing statute (no reference to permanency)." NHTSA rejects this argument for the same reasons the agency rejected the assertion that a "directly marked" requirement is precluded under section 114.

Arent believed also that a "destroyed or defaced" requirement is appropriate for permanently attached labels because it is identical to the labeling requirement referenced in NHTSA's regulations for vehicle certification (49 CFR Part 567) and theft prevention (49 CFR Part 541). NHTSA agrees and has decided to include such a requirement in this proposal for brake fluid container labeling. However, the agency believes that additional test requirements are needed to ensure that important safety information on the label is provided to brake fluid users. The agency has tentatively concluded that test procedures for label indelibility and durability, such as those suggested by the CSMA, are needed to make labeling requirements more objective and to meet the need for motor vehicle safety. NHTSA is therefore proposing that labels meet the "destroyed or defaced" requirement after having been exposed to the test conditions of S6.14.

Arent suggested that it would be appropriate to use only the "destroyed or defaced" requirement for brake fluid container labeling because that is the sole criterion used for permanency in NHTSA's certification regulations (49 CFR Part 567). Part 567 requires that a certification label "be permanently affixed in such a manner that it cannot be removed without destroying or defacing it." It does not contain any other requirements and does not specify any conditions under which the "destroy

or defaced" requirement must be satisfied.

NHTSA disagrees with the petitioner. While both Part 567 and Standard No. 116 are intended to ensure that the required labeling remains in place and legible, there are several specific, identifiable problems, like brake fluid spills, against which the brake fluid labels should be protected. Thus, the agency believes that the general "destroyed or defaced" criterion in Part 567 is not sufficient for ensuring that the brake fluid label will be permanent. To ensure the permanency of brake fluid container labeling, additional criteria are appropriate in Standard No. 116 to address the specific hazards likely to interfere with the permanency of the labeling. The requirements must be directed at ensuring that the required labeling remains permanent notwithstanding contact with the elements and conditions of a garage-type environment. NHTSA believes it is appropriate to pattern test conditions for the labeling after real-world conditions likely to affect the adhesiveness and legibility of the labeling and set performance requirements ensuring that the information is present throughout the time the fluid will be used.

NHTSA believes that this proposal, recognizing the effect of environmental factors on labeling information, is consistent with regulations issued previously by the agency. NHTSA's theft prevention standard issued under Part 541 requires "permanently affixed" labels which remain in place and are legible for the life of the vehicle. The Part 541 permanency requirement is adopted from Part 567 and specifies that removal of the label must cause the label to self-destruct. (49 CFR 541.5(d)(ii)(v)(A).) Yet, the permanency requirement includes also provisions ensuring that the required labeling is protected from the effects of repair and maintenance operations, including rustproofing, painting and undercoating—i.e., damage resulting from foreseeable contact with substances and operations in the environment. (49 CFR 541.5(d)(1)(ii) (A) and (C).)

NHTSA stated in the preamble to the theft prevention standard: "It is imperative that the [labels] not be destroyed or rendered illegible during repair and maintenance operations, to the greatest extent practicable, since destroyed or illegible labels will serve the interests of no one. . . ." 50 FR 43166, 43171; October 24, 1985. We believe that the important safety warnings required by Standard No. 116 also call for a permanency and legibility requirement which takes into account the environmental operations conditions (e.g., fluid exposure and wiping) to which the labeling will be exposed.

The procedures described in this proposal for the durability and indelibility of labeling on brake fluid and hydraulic system mineral oil containers apply to markings directly on containers and markings attached to containers by use of labels. NHTSA believes there is a safety need to ensure that all containers are properly marked, regardless of whether the markings are on the container itself or on an affixed label.

NHTSA recognizes that its current requirements do not contain procedures of this kind for markings that are made directly on containers of brake fluid and hydraulic system mineral oil. The agency believes the proposed procedures for the durability and indelibility of markings would be appropriate for those markings but invites comment on this issue.

The first step in the proposed procedures applies to affixed labels, and would require that the label be cut vertically from top to bottom. This step was proposed by the CSMA and NHTSA has tentatively decided to adopt it in the initial stage of the procedure.

Cutting the label is intended to address the use of various "slip-on" labels, which typically consist of a sleeve of paper or plastic which wraps around the container without the use of any type of adhesive material. NHTSA has tentatively concluded that this type of labeling should be prohibited due to the ease in which it can be removed from the container and the likelihood that containers will become completely unmarked before their fluid is used. Since no adhesive is used with these labels, the cutting of the label is likely to cause it to simply slip off the container without any further action by the person conducting the compliance test. Because the slip-on label is thus capable of being removed without destroying or defacing it after the initial step in the test conditions has been conducted, it would constitute a compliance failure.

During the next stage of testing, the container (i.e., test specimen) is soaked for 15 minutes at room temperature in the type of fluid found in the container. This aspect of the performance test was suggested by the CSMA and NHTSA tentatively agrees that the 15 minute period is adequate to determine the effect of the fluid on the container markings. The CSMA suggested also that affixed labels be wiped for determining whether they adhere properly to the container. NHTSA has tentatively concluded that this suggestion is appropriate because it is foreseeable that fluid labels moistened by excess fluid dripping down the container will be wiped. This notice therefore proposes that after the period of exposure to the fluid, the markings required by S5.2.2.2 or S5.2.2.3 should be wiped by hand with a clean dry cloth. Compliance would be achieved if the required markings are legible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of one foot, and if an affixed label, should one be provided, cannot be removed without destroying or defacing it.

NHTSA considered whether to specify letter font and color contrast of the labeling, but has determined that those requirements are unnecessary at this time. Should legibility problems develop due to the color of the labeling or use of inadequate letter fonts, the agency will initiate appropriate action to remedy the matter.

**Impacts**

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. Some saving might result from adoption of this proposal since petitioners estimate that the use of permanently affixed labels on brake fluid containers would result in savings for packagers and consumers. However, the agency does not believe that use of permanently affixed labels and adoption of compliance tests for container labeling will significantly affect the costs of brake fluid or hydraulic system mineral oil, or the cost of packaging these products.

NHTSA believes that the adoption of this rule would not increase the burdens for any party. On the contrary, the use of permanently affixed labels in packaging brake fluid and hydraulic system mineral oil would allow greater flexibility in product packaging. The agency believes that the compliance test suggested by one of the petitioners and proposed by this notice is not burdensome and that compliance would not be a problem for most manufacturers. However, comments are requested estimating the costs and other burdens which may affect some parties. Because NHTSA believes the impacts of this rule would be minimal, a full regulatory evaluation has not been prepared.

NHTSA has also considered the impacts of this rule on small entities, as required by the Regulatory Flexibility

Act. Based on this consideration, I hereby certify that this rule would not have a significant economic impact on a substantial number of small entities. Any fluid manufacturer or packager qualifying as a small business under the Regulatory Flexibility Act might benefit to a small extent by the changes proposed by this rule, since more flexibility is afforded to packagers in labeling their fluid containers and there might be a reduction in the costs associated with current packaging requirements. However, NHTSA believes that the revisions proposed by this notice should not result in significant cost impacts for any party.

Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new motor vehicles and motor vehicle equipment. The agency believes these entities would not be significantly affected by the revisions proposed in this notice since the change would not significantly affect the price of motor vehicle brake fluids.

Finally, NHTSA has considered the envirnmental implications of this rule in accordance with the National Environental Policy Act and determined that this rule will not significantly affect the human environment.

**Comments**

Interested persons are invited to submit comments on the proposals It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section . A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR 571.116, *Motor Vehicle Brake Fluids*, be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.116 [Amended]**

2. S5.2.2.2 of § 571.116 would be revised to read as follows:

S5.2.2.2 Each packager of brake fluid shall furnish the information specified in paragraphs (a) through (g) of this section by clearly and indelibly marking it on each brake fluid container or on a label (labels) permanently affixed to the container, in any location except a removable part such as a lid. After being subjected to the operations and conditions specified in S6.14, the information required by this section shall be legible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of one foot, and a label (labels) affixed to the container in compliance with this section shall not be removable without destroying or defacing it.

* * * * *

3. S5.2.2.3 would be revised to read as follows:

S5.2.2.3 Each packager of hydraulic system mineral oil shall furnish the information specified in paragraphs (a) through (e) of this section by clearly and indelibly marking it on each brake fluid container or on a label (labels) permanently affixed to the container, in any location except a removable part such as a lid. After being subjected to the operation and conditions specified in S6.14, the information required by this section shall be legible to an observer having a corrected visual acuity of 20/40 (Snellen ratio) at a distance of one foot, and a label (labels) affixed to the container in compliance with this section shall not be removable without destroying or defacing it.

* * * * *

4. A new S6.14 would be added after the formula set forth in S6.13.6(d) and before S7, *Auxiliary test methods and reagent standards*, to read as follows:

S6.14 *Container labeling.* Each container with information required by S5.2.2.2 or S5.2.2.3 marked directly on the container surface or on a label (labels) affixed to the container is subjected to the following procedure:

(a) If the container has a label affixed to it, make a single vertical cut all the way through the label with the container in the vertical position.

(b) Immerse the container in the same brake fluid or hydraulic system mineral oil contained therein for 15 minutes at room temperature (23 ± 5°C; 73.4 ± 9°F).

(c) Within 5 minutes after removing the container, remove excess fluid from the surface of the container marked with the information required by S5.2.2.2 or S5.2.2.3, by wiping with a clean dry cloth.

Issued on March 30, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87-7316 Filed 4-2-87; 8:45 am]

BILLING CODE 4910-59-M

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 640

### Spiny Lobster Fishery in the Gulf of Mexico and South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of minority report.

**SUMMARY:** NOAA issued a proposed rule (52 FR 8485, March 18, 1987) which would implement Amendment 1 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic. A minority report on this

Amendment, prepared by five members of the Gulf of Mexico Fishery Management Council, is available to the public. These members disagree with the Councils' recommendation to allow the possession and transport of immature, undersize lobsters on board fishing vessels for use as live attractants in traps.

**ADDRESS:** Copies of the minority report and other documentation pertaining to the proposed rule may be requested from Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813–893–3722.

(16 U.S.C. 1801 *et seq.*)

Dated: March 30, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–7334 Filed 4–2–87; 8:45 am]

BILLING CODE 3510–22–M

---

**50 CFR Part 651**

## Northeast Multispecies Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of public hearings and request for comments.

**SUMMARY:** The New England Fishery Management Council will hold a series of public hearings and provide a comment period to solicit public input into the development of an amendment to the Northeast Multispecies Fishery Management Plan. Individuals and organizations may comment in writing to the Council if they are unable to attend the hearings.

**DATE:** The public comment period will close April 24, 1987. See **"SUPPLEMENTARY INFORMATION"** for dates, and locations of the hearings. All hearings will begin at 7:00 p.m.

**ADDRESS:** Written comments should be addressed to Chairman, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422.

**SUPPLEMENTARY INFORMATION:** The New England Fishery Management Council proposes to amend the Northeast Multispecies Fishery Management Plan to include the following measures: (a) An expansion in the lower boundary of the George Bank regulated mesh area; (b) a requirement that no mesh smaller than that specified for the cod end be used in the rest of the net; (c) limits on the Exempted Fisheries Program to minimize the bycatch of regulated species; (d) a provision excluding scallop dredge vessels from the Southern New England closed area 1; (e) a change in the position of haddock spawning closed area; and (f) an exemption for hook-and-line fishing for shawks during the Southern New England area closure.

The dates and locations of the public hearings are scheduled as follows:

April 13, 1987—Holiday Inn, High Street, Ellsworth, ME

April 14, 1987—Holiday Inn, 88 Spring Street, Portland, ME

April 14, 1987—Holiday Inn, Route 25, Exit 72, Riverhead, LI, NY

April 14, 1987—Dutch Inn, Great Island Road, Galilee, RI

April 15, 1987—Skipper's Inn, 110 Middle Street, Fairhaven, MA

April 15, 1987—Holiday Inn, One Newbury Street, Peabody, MA

April 16, 1987—Sheraton, Route 132 and Bearse Way, Hyannis, MA

April 16, 1987—Howard Johnson's, Interstate Circle, Portsmounth, NH

Dated: March 31, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–7392 Filed 4–2–87; 8:45 am]

BILLING CODE 3510–22–M

# Notices

Federal Register
Vol. 52, No. 64
Friday, April 3, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Governmental Processes and Committee on Adjudication; Public Meetings

**Committee on Governmental Processes**

Date: Friday, April 10, 1987.
Time: 9:30 a.m.
Location: Covington and Burling, 1201 Pennsylvania Avenue NW., 11th floor, Washington, D.C.

Agenda: The Committee will meet for further consideration of possible recommendations on federal agency use of private attorneys. This subject is currently under study for the Administrative Conference by Professor Ronald Rotunda of the University of Illinois College of Law and by Professor William V. Luneburg of the University of Pittsburgh School of Law.

Contact: David M. Pritzker 202–254–7065.

**Committee on Adjudication**

Date: Thursday, April 23, 1987.
Time: 9:30 a.m.
Location: Administrative Conference of the United States Library, 2120 L Street, N.W., Suite 500, Washington, D.C.

Agenda: The Committee will meet to discuss draft recommendations concerning federal statutory protection for private sector whistleblowers and public comments received on the draft recommendations. The draft recommendations are based on a report by ACUS consultant Eugene R. Fidell.

Contact: Deborah Ross 202–254–7065.

**Public Participation**

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

**Jeffrey S. Lubbers,**
*Research Director.*
April 1, 1987.
[FR Doc. 87–7573 Filed 4–2–87; 8:45 am]
BILLING CODE 6110–01–M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Meat Import Limitations; Second Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lambs, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62) which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1987 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on January 5, 1987 (52 FR 311), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act, for calendar year 1987 is 1,309 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate for 1987 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1987 is 1,405 million pounds.

Done at Washington, DC, this 31st of March, 1987.
**Richard E. Lyng,**
*Secretary.*
[FR Doc. 87–7350 Filed 4–2–87; 8:45 am]
BILLING CODE 3410–10–M

## Agricultural Marketing Service

### Beef Promotion and Research

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Cattlemen's Beef Promotion and Research Board has approved the use of a certification stamp as an alternative method for a seller of cattle to certify to a buyer that the cattle being sold are not subject to the $1-per-head assessment pursuant to the Beef Promotion and Research Act. The Board will make approved stamps available to eligible marketing persons upon request.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to the Beef Promotion and Research Act (7 U.S.C. 2901 *et seq.*), a Beef Promotion and Research Order (order) was published in the July 18, 1986, **Federal Register** (51 FR 26132). Regulations implementing the order were published in the October 1, 1986, issue of the **Federal Register** (51 FR 35194).

The order and the regulations provide that, beginning October 1, 1986, cattle sold in the United States are subject to an assessment of $1 per head. The Act and the order provide for an exemption from the $1-per-head assessment when a person certifies that their only share of the proceeds from a sale of cattle is a sales commission, handling fee, or other service fee. An exemption is also permitted if a person (1) certifies that they acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party; (2) establishes such cattle were resold not later than 10 days on which the person acquired ownership; and (3) certifies that the assessment levied upon the person from whom they purchased

the cattle, if an assessment was due, has been collected and remitted, or will be remitted in a timely fashion. An official form "Statement of Certification of Non-Producer Status" completed by the seller is used to document the required certification for each applicable transaction.

This notice is being published to inform the beef industry that the Cattlemen's Beef Promotion and Research Board has approved a certification stamp and authorized its use as an alternative means of certifying non-producer status for a particular transaction. This alternative method for certification has been developed in response to requests from numerous marketing persons who must complete a substantial number of Non-Producer Status forms each day in the regular conduct of their business. The new rubber certification stamp should reduce the paperwork burden to the industry by significantly reducing the number of Non-Producer Status forms which must be completed and by minimizing the time required for office personnel to log and file such forms.

Persons who use the stamp will only need to insert the number of cattle for which an exemption is being claimed, their signature, and the date. The stamp may be used only on a document, such as a seller's invoice or a bill of sale, containing the seller's name, the buyer's name, the number of cattle sold, and the date of sale. Also, each stamp may be used only by the person to whom it is issued. When used as directed, the stamp will provide essentially the same information as the current "Statement of Certification of Non-Producer Status" form. The penalty for making a false statement with the stamp will be the same as for making a false statement on the form.

Because of the costs of distributing the stamps and monitoring their use, they will be issued only to marketing persons who can certify that, during any 1 month of the 12-month period preceding the month in which the request for the stamp is submitted, they have resold cattle in at least 20 separate transactions in which the use of the "Certification of Non-Producer Status" form would have been authorized if the Beef Promotion and Research Order and rules and regulations had been in effect during that 12-month period. The stamp will be issued upon written request and without charge to all marketing persons who meet this criterion and who agree to the prescribed conditions necessary for appropriate control of the stamp's use.

Interested persons may request an application form from the Qualified State Beef Council in the State where they reside; or if there is no Qualified State Beef Council in that State, from the Cattlemen's Beef Promotion and Research Board, P.O. Box 81117, Chicago, Illinois 60681–0117. Addresses for the Qualified State Beef Councils were published in the October 16, 1986, **Federal Register** (51 FR 36832).

Done at Washington, DC, on March 27, 1987.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 87–7432 Filed 4–2–87; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Adminstration

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Compliance by the District of Columbia With the Interstate Fisheries Management Plan for the Striped Bass

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce and U.S. Fish and Wildlife Service (FWS), Interior.

**ACTION:** Notice of determination that the District of Columbia is in compliance with the Interstate Fisheries Management Plan for the Striped Bass.

**SUMMARY:** the Department of Commerce and the Interior announced on February 6, 1987, that they had reached a joint determinaton in response to the notification by the Atlantic States Marine Fisheries Commission of its determination that the District of Columbia had not adopted and was not enforcing all regulatory measures necessary to fully implement the Commission's Interstate Fisheries Management Plan for the Striped Bass. In accordance with the Atlantic Striped Bass Conservation Act, the Departments determined that the District of Columbia was not in compliance with the Plan. The District was given until April 1, 1987, to promulgate the regulations enclosed in its January 23, 1987, letter to the Departments of the Interior and Commerce. If at that time the regulations were not in place and being enforced, a moratorium would have been jointly imposed by the Departments on fishing for striped bass within District waters, effective April 1, 1987. The regulations became effective on March 27, 1987, and enforcement is being provided through the Metropolitan Police Department of the District of Columbia. The District is now in full compliance with the Plan and a moratorium will not be imposed.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Roe, (202) 673–5263 or Gary Edwards, (202) 343–6394.

**ADDRESSES:** Richard B. Roe, NOAA/NMFS, 1825 Connecticut Avenue, NW., Washington, DC. 20235 or Gary Edwards, FWS, 18th and E Streets, NW., Washington DC 20240.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Atlantic Striped Bass Conservation Act (the Act) (16 U.S.C. 1851 Note), as amended by Pub. L. No. 99–423 specifies that after notification by the Atlantic States Marine Fisheries Commission (the Commission) that a coastal state has not adopted and/or is not enforcing regulatory measures to fully implement its Interstate Fisheries Management Plan for the Striped Bass (the Plan), the Secretaries of the Departments of Commerce and the Interior shall determine jointly, within 30 days, whether that coastal state is in compliance. (For purposes of the Act, the District is defined as a coastal state.) If the state is found not to be in compliance, the Secretaries shall declare jointly, i.e., impose, jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal state.

On January 7, 1987, the Secretaries received a letter from the Commission dated December 31, 1986, reporting that the District had not adopted fishery regulations for striped bass to implement Objective 1 of Amendment 3 to the Plan. While commercial fishing is prohibited in the District, there were no regulations on recreational fishing. In addition, the District lacked adequate enforcement capability. Notice of receipt of this notification from the Commission was published in the **Federal Register** at 52 FR 1518, January 14, 1987.

The Secretaries jointly determined on February 6, 1987, that the District of Columbia was not in compliance with the Plan. Notice of this determination was published in the **Federal Register** at 52 FR 4515, February 12, 1987. Although it was determined that the District was not in compliance with the Plan, it was recognized that the efforts were being made to implement regulations and obtain enforcement capability through the District's Metropolitan Police Department's Harbor Branch. In recognition of these efforts, the Departments of Commerce and the Interior delayed the imposition of a moratorium until April 1, 1987.

### Actions by the District of Columbia

The District has, effective March 27, 1987, regulations on recreational fishing. The District striped bass regulations are as follows: a 24 inch total length minimum size limit, a two fish daily bag limit, a closed season from December 1 to May 31, and only recreational fishing is permitted. These regulations are similar to those for the Potomac River Fisheries Commission, which were accepted by the Commission as being in compliance with the Plan. However, as commercial fishing is allowed by the Potomac River Fisheries Commission but is prohibited in the District, the District's regulations are more restrictive.

The District's Department of Consumer and Regulatory Affairs has entered into an agreement with the Metropolitan Police Department to provide for enforcement of fishery management regulations in District waters. This will include providing special enforcement emphasizing striped bass regulations and providing coordination with and reports to the Commission's Law Enforcement Committee.

### Secretarial Determination of Compliance

The Secretaries have jointly determined that the regulations in place in the District of Columbia meet the provisions of the Plan and that enforcement capability meets the requirements of the Act for satisfactory enforcement of the provisions of the Plan. This determination has been made after receiving notification from the Commission in a letter dated March 26, 1987, that the regulations meet the provisions of the Plan and that enforcement capability was satisfactory. Thus, a moratorium will not be imposed on striped bass fishing in the District.

Dated: March 31, 1987.

**William E. Evans,**

*Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.*

**Frank Dunkle,**

*Director, Fish and Wildlife Service.*

[FR Doc. 87-7435 Filed 4-2-87; 8:45 am]

BILLING CODE 3510-22-M

---

## Compliance by the State of New Jersey With the Interstate Fisheries Management Plan for the Striped Bass

**AGENCIES:** National Marine Fisheries Service (NMFS), NOAA, Commerce and U.S. Fish and Wildlife Service (FWS), Interior.

**ACTION:** Notice of determination that the State of New Jersey is in compliance with the Interstate Fisheries Management Plan for the Striped Bass.

**SUMMARY:** The Departments of Commerce and the Interior announced on February 6, 1987, that they had reached a joint determination in response to the notification by the Atlantic States Marine Fisheries Commission of its determination that the State of New Jersey had not adopted all regulatory measures necessary to fully implement the Commission's Interstate Fisheries Management Plan for the Striped Bass. In accordance with the Atlantic Striped Bass Conservation Act, the Departments determined that New Jersey was not in compliance with the Plan. New Jersey was given until April 1, 1987, to enact legislation that is determined to be in compliance with the Plan. If at that time, legislation had not been enacted, a moratorium would be jointly imposed by the Departments on fishing for striped bass in New Jersey waters, effective April 1, 1987. Effective March 24, 1987, New Jersey amended their striped bass legislation. The amended legislation has been determined to be in compliance with the Plan and a moratorium will not be imposed.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Roe, (202) 673-5263 or Gary Edwards, (202) 343-6394.

**ADDRESS:** Richard B. Roe, NOAA/NMFS, 1825 Connecticut Avenue, NW., Washington, DC 20235 or Gary Edwards, FWS, 18th and E Streets, NW., Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:**

### Background

The Atlantic Striped Bass Conservation Act (the Act) (16 U.S.C. 1851 Note), as amended by Pub. L. No. 99-432 specifies that after notification by the Atlantic States Marine Fisheries Commission (the Commission) that a coastal state has not adopted or is not enforcing regulatory measures to fully implement its Interstate Fisheries Management Plan for the Striped Bass (the Plan), the Secretaries of the Department of Commerce and the Interior shall determine jointly, within 30 days, whether that coastal state is in compliance. If the state is found not to be in compliance, the Secretaries shall jointly declare, i.e., impose, a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal state.

On January 7, 1987, the Secretaries received a letter from the Commission dated December 31, 1986, reporting that New Jersey had not adopted fishery regulations for striped bass to implement Objective 1 of Amendment 3 to the Plan. Notice of receipt of this notification from the Commission was published in the **Federal Register** at 52 FR 1518, January 14, 1987.

The Secretaries jointly determined on February 6, 1987, that the State of New Jersey was not in compliance with the Plan. Notice of this determination was published in the **Federal Register** at 52 FR 4516 February 12, 1987. The determination was made based on New Jersey's 24-inch minimum size restriction for striped bass (other than inland, for which there is a 33-inch restriction), while Amendment #3 requires a 31-inch restriction on February 1, 1987, and a 33-inch restriction on August 1, 1987, and because New Jersey had no other management measures to compensate for this difference and no data to demonstrate that a 24-inch restriction will meet the objective of Amendment #3.

Although it was determined that the State of New Jersey was not in compliance with the Plan, it was recognized that efforts were being made to amend State statutes regulating striped bass fishing. In recognition of these efforts, the Departments of the Interior and Commerce delayed the imposition of a moratorium until April 1, 1987.

### Action by the State of New Jersey

New Jersey has, effective March 24, 1987, amended legislation on striped bass fishing. The new restrictions are as follows: a 31-inch total length minimum size limit until July 31, 1987; a 33-inch minimum size limit from August 1, 1987, to September 30, 1988, a five fish possession limit, no closed season and only recreational fishing is permitted.

### Secretarial Determination of Compliance

The Secretaries have jointly determined that the legislation in place in New Jersey meet the provisions of the Plan. This determination has been made after receiving notification from the Commission in a letter dated March 26, 1987, that the legislation meets the provisions of the Plan. Thus, a moratorium will not be imposed on striped bass fishing in New Jersey.

Dated: March 31, 1987.

**William E. Evans,**

*Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.*

**Frank Dunkle,**

*Director, Fish and Wildlife Service.*

[FR Doc. 87-7436 Filed 4-2-87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 86-000-10]

## Export Trade Certificate of Review

**ACTION:** Notice of issuance of an export trade certificate of review.

**SUMMARY:** The Department of Commerce has issued an export trade certificate of review to Safety Equipment Export Trading Company. This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct:

**Export Trade**

*Products*

Clean room apparel, emergency eyewash and shower equipment, eye and face protection, fall protection, head protection, hearing protection, first aid equipment, machinery guards, respiratory protection, safety and health instruments, safety wearing apparel, safety cans, and warning devices.

*Export Trade Facilitation Services (as They Relate to the Export of Products)*

Consulting, international market research, advertising, marketing, sales of goods and services, insurance, product research and design, legal assistance, transportation, trade documentation and freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange, financing, and taking title to goods.

**Export Markets**

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and Canada.

**Members (in Addition to Applicant)**

American Allsafe Company; H.L. Bouton Company; Durafab Disposables, Inc.; HSC Corporation; and Tasco Corporation.

**Export Trade Activities and Methods of Operation**

SEETC may:

1. Enter into agreements with its Member suppliers to act as an Export Intermediary. All Products purchased by SEETC from its Member and non-Member suppliers will be for resale by SEETC in the Export Markets. These agreements may include any of the following provisions:

a. Each Member independently will provide SEETC with an estimate of what quantities of Products it will make available for export through SEETC.

b. SEETC will agree to purchase Products from its Member suppliers, and, when necessary to complete product line requests, from non-Member suppliers.

c. SEETC will market and sell the Products, either directly or through Export Intermediaries other than SEETC, to such purchasers, at such prices, and on such terms as SEETC shall determine.

2. Determine the price of Products which SEETC will pay to Member suppliers.

3. Enter into exclusive or nonexclusive agreements with other Export Intermediaries for the sale of Products in the Export Markets.

4. Participate in meetings with one or more Member suppliers to deliver and discuss, or otherwise exchange, information with Member suppliers regarding:

a. The prices that SEETC has charged or will charge in the Export Markets for each Member supplier's Products;

b. The quality and quantity of Products available from Member suppliers for export;

c. Deliver dates, terms of sale, and other information necessary to arrange and complete export sales of the Products;

d. General economic or business conditions in the Export Markets, including supply and demand conditions, prices and terms of sale in the Export Markets, and transportation and other costs incurred in exporting to the Export Markets;

e. SEETC's sales results in the Export Markets, including orders shipped, costs of doing business, and other information relating to SEETC's business in the Export Markets;

f. Quantities and prices of Products purchased from each Member supplier for export, and the terms and conditions under which such purchases were made;

g. Matters concerning SEETC's organization, governance, financial condition, and membership;

h. Market strategies for the Export Markets, and other issues relating to sales and Export Trade Facilitation Services in the Export Markets and SEETC's export business; and

i. Information about U.S. and foreign legislation and regulations, including Federal programs affecting sales and Export Markets.

5. Enter into agreements with customers wherein SEETC may agree in each case to sell Products in the Export Markets only to such customers, and/or such customers may agree not to purchase the Products from any competitor of SEETC.

6. Prescribe the following conditions of membership to and termination from SEETC:

a. SEETC shall have the right to admit additional manufacturers of safety equipment from time to time who:

(1) Receive a majority vote of SEETC's Board of Directors;

(2) Make such capital contribution in the purchase of common shares of stock as is determined in good faith by SEETC's Board of Directors. A fee shall be charged to cover initial start-up costs, including attorneys' fees incurred by SEETC's Members; and

(3) Agree not to compete with SEETC during the period of membership in SEETC and for two years thereafter, in the export of Products to particular Export Markets, except as shall be specifically agreed upon in writing between the new Member and SEETC.

b. Each Member shall have the right to withdraw its membership from SEETC by giving 180 days' prior written notice to the remaining Members. The remaining Members shall then have the option to terminate SEETC or pay the withdrawing Member the value of its stock, as adjusted, on the date of its withdrawal.

c. The withdrawing or removed Member shall remain responsible for commitments made by such Member and by SEETC on behalf of such Member prior to the effective date of

such Member's withdrawal. The withdrawing or removed Member shall reimburse SEETC for all costs, including attorneys' fees, incurred as a result of withdrawal or removal.

d. Any Member of SEETC may be removed by a majority vote of the Board of Directors with prior notice of the vote given to the Member. Removal shall be for due cause, including, but not limited to, violation of SEETC's Bylaws or agreements entered into by and between Members, and loss of credit-worthiness.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: March 27, 1987.

**David Barton,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-7413 Filed 4-2-87; 8:45 am]

BILLING CODE 3510-DR-M

---

## Semiconductor Technical Advisory Committee; Closed Meeting

**SUMMARY:** The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

**TIME AND PLACE:** April 22, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Ave., NW., Washington, DC.

**AGENDA:** The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

**SUPPLEMENTARY INFORMATION:** A notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information call Ruth D. Fitts at 202-377-2583.

Dated: March 31, 1987.

**Margaret a. Cornejo,**

*Director, Technical Support Staff Office of Technology and Policy Analysis.*

## Semiconductor Technical Advisory Committee; Closed Meeting—Agenda

April 22, 1987.

Room 6802.

1. Align/Expose Equipment
2. ATE
3. Linear Microcircuits
4. Discrete Devices

[FR Doc. 87-7415 Filed 4-2-87; 8:45 am]

BILLING CODE 3510-DT-M

---

[A-247-003]

## Portland Cement, Other Than White, Nonstaining Portland Cement, From the Dominican Republic; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to requests by four importers, the Department of Commerce has conducted an administrative review of the antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic. The review covers three manufacturers and/or exporters of this merchandise to the United States and the period June 1, 1983 through April 30, 1985. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 29, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 22367) the final results of its last administrative review of the antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic (28 FR 4507, May 4, 1963). We began this review of the finding under our old regulations. On September 20, 1985 and October 11, 1985, after the promulgation of our new regulations, four importers requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation on July 9, 1986 (51 FR 24884). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

### Scope of the Review

Imports covered by the review are shipments of Portland cement, other than white, nonstaining Portland cement, currently classifiable under items 511.1420 and 511.1440 of the Tariff Schedules of the United States Annotated.

The review covers three exporters of Dominican Republic Portland cement, other than white, nonstaining Portland cement, to the United States and the period June 1, 1983 through April 30, 1985. All three firms failed to submit an adequate response to our antidumping questionnaire. For these firms we used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is the previous rate for exports from those firms.

### Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 10.33 percent exists for the following firms during the period June 1, 1983 through April 30, 1985:

| Manufacturer/Exporter |
|---|
| Cementos Nacionales, S.A., Commercialization del Caribe, S.A., Fabrica Dominicana de Cemento, C. por A. |

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751 (a)(1) of the Tariff Act, a cash deposit of estimated dumping duties based on the above margin shall be required for these firms. For any future entries of this merchandise from a new exporter, whose first shipments occurred after April 30, 1985 and who is unrelated to any reviewed firm, the Department shall require a cash deposit of 10.33 percent. These deposit requirements are effective for all shipments of Dominican Republic Portland cement, other than white, nonstaining Portland cement, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-7411 Filed 4-2-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-428-061]

## Precipitated Barium Carbonate From the Federal Republic of Germany, Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke in Part

**AGENCY:** International Trade Administrative, Import Administration, Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administration Review and Tentative Determination to Revoke in Part.

**SUMMARY:** In response to a request by Kali-Chemie AG, the Department of Commerce has conducted an administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period July 1, 1983 through June 30, 1985. The review indicates the existence of no dumping margins for the firm during the period.

As a result of the review, the Department has preliminarily determined to revoke the finding with respect to Kali-Chemic AG.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

**EFFECTIVE DATE:** April 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Bruno or Robert J. Marenick, Office and Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 25, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 16330) the final results of its last administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32884 June 25, 1981). We began the current review of the order under our old regulations. After the promulgation of our new regulations, Kali-Chemie AG requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published notices of initiation of the antidumping duty administrative review on February 12, 1986 (51 FR 5219) and October 3, 1986 (51 FR 35384). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of the Review

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCO_3$), currently classifiable under item 472.0600 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of West German precipitated barium carbonate to the United States, Kali-Chemie AG, and the period from July 1, 1983 through June 30, 1985.

### United States Price

In calculating United States price, the Department used purchase price or exporter's sales price, as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the delivered, packed price to unrelated purchasers in the United States. Where applicable, we made deductions for foreign inland freight, marine insurance, U.S. duty, forwarding fees, U.S. clearance and brokerage charges, bulk loading, and the U.S. subsidiary's selling and warehousing expenses. No other adjustments were claimed or allowed.

### Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on either the delivered or ex-factory, packed price with adjustments, where applicable, for inland freight, cash discounts, and differences in packing costs. We denied claimed adjustments for rebates, credit expenses, technical assistance, and certain "other charges" because they were not properly quantified. No other adjustments were claimed or allowed.

### Preliminary Results of the Review and Tentative Determination to Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margins exist for Kali-Chemie AG for the period July 1, 1983 through June 30, 1985.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Kali-Chemie AG requested partial revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement in the order under circumstances specified in the written agreement. Kali-Chemie AG has had no margins for four years.

Therefore, we tentatively determine to revoke the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany with respect to Kali-Chemie AG. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Kali-Chemie AG, and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Further, as provided for by section 751(a)(1) of the Commerce Regulations,

since there was no margin, the Department shall not require a cash deposit of estimated antidumping duties for Kali-Chemie AG. For any shipments from the one remaining known manufacturer/exporter not covered by this review, the cash deposit will continue to be the rate published in the final results of the last administrative review for that firm (50 FR 16330, April 25, 1985). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1985 and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Dated: March 30, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-7412 Filed 4-2-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[C-489-603]

## Extension of the Deadline Date for the Final Countervailing Duty Determination and Rescheduling of the Public Hearing; Acetylsalicylic Acid (Aspirin) From Turkey

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** Based upon the request of petitioner, the Monsanto Company, we are extending the deadline date for the final determination in the countervailing duty investigation of acetylsalicylic acid from Turkey to correspond to the date of the final determination in the antidumping investigation of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). In accordance with Article 5¶3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), the Department will terminate the suspension of liquidation in the countervailing duty investigation 120 days after the date of publication of the preliminary determination in this case. In addition, we are rescheduling the public hearing.

**EFFECTIVE DATE:** April 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Roy Malmrose or Thomas Bombelles, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-2815 (Malmrose) or 202/377-3174 (Bombelles).

**SUPPLEMENTARY INFORMATION:** On October 31, 1986, we received antidumping and countervailing duty petitions filed by the Monsanto Company against acetylsalicylic acid from Turkey.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of acetylsalicylic acid from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds on which to initiate an antidumping duty investigation, and on November 20, 1986, we initiated such an investigation (51 FR 43062, November 28, 1986). The preliminary determination in this antidumping investigation will be made on or before April 9, 1987.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Turkey of acetylsalicylic acid directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds on which to initiate a countervailing duty investigation, and on November 20, 1986, we initiated such an investigation (51 FR 43062, November 28, 1986). On February 24, 1987, we issued a preliminary affirmative determination in the countervailing duty investigation (52 FR 6367, March 3, 1987).

On March 10, 1987, petitioner filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping duty investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we are granting an extension of the deadline date for the final determination in the countervailing duty investigation of acetylsalicylic acid from Turkey to June 23, 1987, the current deadline for the final determination in the antidumping investigation.

Article 5¶3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) provides that provisional measures (*i.e.*, suspension of liquidation) may not be imposed on another signatory to the Subsidies Code for a period longer than four months. To comply with the requirement of Article 5¶3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on July 1, 1987, which is 120 days from the date of publication of the countervailing duty preliminary determination. No cash deposits or bonds for potential countervailing duties will be required for any such merchandise entered, or withdrawn from warehouse, for consumption, after July 1, 1987. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order in this case. The Department will also direct the U.S. Customs Service to hold any entries suspended prior to July 1, 1987, until the conclusion of this investigation.

In addition, due to the extension of the final determination in the countervailing duty investigation, we are rescheduling the date of the public hearing, originally set for April 13, 1987. The hearing will now be held at 1:30 p.m. on May 15, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who have requested to participate in the

hearing must submit at least ten copies of the prehearing briefs to the Deputy Assistant Secretary by May 8, 1987.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within 10 days after the hearing transcripts are available.

This notice is published pursuant to section 705(d) of the Act.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

March 27, 1987.

[FR Doc. 87-7414 Filed 4-2-87; 8:45 am]

BILLING CODE 3510-DS-M

---

## National Technical Information Service

### Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

**Douglas J. Campion,**

*Patent Licensing Specialist, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

**Department of Agriculture**

SN 6-734,527 (4,630,658)
Counter Rotating Double Disc Chunker

SN 6-764,040 (4,630,481)
Method and Instrument to Estimate the Weights of Green Trees and Logs

SN 6-785,639 (4,632,829)
Sex Pheromone Composition for Southwestern Corn Borer

SN 6-794,028 (4,637,643)
Auto Release Logging Choker

SN 6-922,616
Yeast Strains Genetically Engineered to Produce Wheat Gluten Proteins

**Department of Commerce**

SN 6-801,972 (4,638,257)
Amplification by a Phase Locked Array of Josephson Junctions

SN 6-897,227
Polymer-Reactive Photosensitive Authracenes

SN 6-936,305
Purification of Fish Oils

**Department of Health and Human Services**

SN 6-547,235 (4,632,909)
Monoclonal Antibodies Which Block Infectivity of Malarial Parasites to Mosquitoes

SN 6-791,120 (4,632,922)
Oxomorpholinyl Dimer and Rescue of Anthracycline and Mitomycin C Damage

SN 6-796,782
Method for Obtaining a Ratio Measurement for Correcting Common Path Variation in Intensity in Fiber Optic Sensors

SN 6-896,262
New Chemotherapeutic Mustard Analogs

SN 6-911,227
Recombinant Pseudomonas Exotoxin: Construction of an Active Immunotoxin With Low Side Effects

SN 6-932,084
Method for Detecting Antibodies Against Neuropeptides and Drugs in Human Body Fluid

SN 6-938,716
Monoclonal Antibody Against Human Pneumocystis Carinii

SN 6-940,273
Biological Activity of Pyrimidin -2-Ones

SN 7-000,229
Adenosine Receptor Prodrugs

**Department of Interior**

SN 6-855,276
Production of Titanium Nitride, Carbide and Carbonitride Powders

**Department of the Air Force**

SN 6-582,496 (4,618,231)
Accommodative Amplitude and Speed Measuring Instrument

SN 6-591,715 (4,618,931)
Gas Generator Fuel Flow Throttle Control System

SN 6-614,904 (4,617,633)
Direct Lift Command Blending

SN 6-622,613 (4,616,565)
Modular Detonator Device

SN 6-623,667 (4,623,258)
Method for Measuring Haze in Transparencies

SN 6-624,846 (4,625,209)
Clutter Generator For Use in Radar Evaluation

SN 6-636,454 (4,619,199)
Safing and Arming Mechanism

SN 6-645,390 (4,619,506)
Random Pattern Tracking Acceleration Tolerance Tester

SN 6-649,565 (4,615,272)
Bomb and Bomb Liner

SN 6-657,099 (4,622,556)
Technique for Rapid Determination of Probability of Detection In Pulse Doppler Radars

SN 6-661,549 (4,625,316)
High Efficiency Electron Beam Gun Foil Support

SN 6-666,784 (4,622,557)
Transdigitizer for Relaying Signals From Global Positioning System (GPS) Satellites

SN 6-671,393 (4,616,230)
Conformal Phased Array Antenna Pattern Corrector

SN 6-679,327 (4,625,293)
Parallel Programmable Charge Domain Device

SN 6-679,332 (4,616,334)
Pipelined Programmable Charge Domain Device

SN 6-689,681 (4,618,217)
Electron-Bombarded Silicon Spatial Light Modulator

SN 6-689,699 (4,619,501)
Charge Isolation In A Spatial Light Modulator

SN 6-693,399 (4,615,811)
Vacuum Pump Oil Recovery Process

SN 6-693,926 (4,622,548)
Solid State Electronic G-Force Indicator

SN 6-693,927 (4,615,594)
Vision Test Chart and Method Using Gaussians

SN 6-698,728 (4,617,817)
Optimizing Hot Workability and Controlling Microstructures in Difficult to Process High Strength and High Temperature Materials

SN 6-700,368 (4,624,388)
Liquid Tank Weld Cavitation Protection

SN 6-704,109 (4,623,245)
System of White-Light Density Pseudocolor Encoding With Three Primary Colors

SN 6-713,666 (4,620,538)
Light-Weight Oxygen Delivery Hood Assembly For Hyperbaric Chamber

SN 6-751,400 (4,623,295)
One-Step Loading Adapter

SN 6-768,657 (4,623,600)
Low Shear Nickel Electrode

SN 6-798,042 (4 620,732)
Bolt Frame Construction

**Department of the Army**

SN 6-289,013 (4,632,830)
Oral Vaccine for Immunization Against Enteric Disease

SN 6-561,774 (4,621,646)
Blood Flow Measuring Method

SN 6-780,751 (4,623,936)

Error Processing Technique for Modified Read Code
SN 6–865,709
Oral Vaccine For Immunization Against Enteric Disease
SN 6–875,048
Monoclonal Antibodies to Cholesterol and Methods
SN 6–877,077
A Nucleic Acid Probe and Method for the Rapid Detection of Typhoid Fever Bacteria
SN 6–882,562
Pharmacological Active Amine-Carboxyboranes
SN 6–888,194
A Nucleic Acid Probe and Method for the Detection of *Shigella* and Enteroinvasive *E. Coli* Bacteria
SN 6–920,626
Method of Chemically Polishing Fused Quartz
SN 6–928,492
Modified Liquid Crystal Television as a Spatial Light Modulator
SN 6–932,860
Phase Scan Antenna Array
SN 6–933,430
Latch Connector
SN 6–934,273
Electromagnetic Railgun with a Non-Explosive Magnetic Flux Compression Generator
SN 6–937,804
Method of Making a Rotating Disk Electrode
SN 6–943,095
Broadband High Frequency Sky–Wave Antenna
SN 6–943,229
Dielectric Omni-Directional Antennas

**Tennessee Valley Authority**

SN 6–326,981 (4,571,435)
Preparation of Nitrogen Fertilizers from Oxalate Esters Prepared by the Oxidative Carbonylation of Alcohols Over Noble Metal Catalysts Utilizing Regenerable 2,5-Cyclohexadiene-1,4-Dione Oxidants.

[FR Doc. 87–7372 Filed 4–2–87; 8:45 am]
BILLING CODE 3510–04–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

March 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 31, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

On December 30, 1985 a notice was published in the **Federal Register** (50 FR 53182) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Category 648, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

In addition, on December 30, 1986 a notice was published in the **Federal Register** (51 FR 47041) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 359–V and 648, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, CITA is adjusting both limits for Category 648 for swing. The limit for Category 359–V is being reduced to 1,188,330 pounds to account for the swing in 1987.

Charges amounting to 54,357 dozen for merchandise in Category 648 exported in 1986 and charged to the current restraint limit will be deducted.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established restraints for Categories 359–V and 648 and to deduct charges as designated.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

March 30, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 24, 1985 and December 23, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month periods which began, in the case of Category 648, on January 1, 1986 and January 1, 1987, and, in the case of Category 359–V, on January 1, 1987.

Effective on March 31, 1987, the directives of December 24, 1985 and December 23, 1986 are further amended to include adjustments to the previously established restraint limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended:[1]

| Category | Adjusted 12-month restraint limit [1] (Jan. 1, 1986–Dec. 31, 1986) |
|---|---|
| 648 | 1,141,502 dozen. |

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limit in that agreement year; (2) the specific limits for certain categories may be increased for carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

| Category | Adjusted 12-month restraint limit [2] (Jan. 1, 1987–Dec. 31, 1987) |
|---|---|
| 359–V [3] | 1,188,330 pounds. |
| 648 | 1,187,163 dozen. |

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

[2] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[3] In Category 359, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

Also effective on March 31, 1987, you are directed to deduct charges for goods exported in 1986, amounting to 54,357 dozen, from the import restraint limit established for Category 648 for the period which began on January 1, 1987 and extends through December 31, 1987. This same amount is to be charged to the import restraint limit established for Category 648 for 1986.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–7353 Filed 4–2–87; 8:45 am]

BILLING CODE 3510–DR–M

## Correlation: Textile and Apparel Categories With the Tariff Schedules of the United States Annotated; Correction

March 30, 1987.

On February 26, 1987 a notice was published in the **Federal Register** (52 FR 5812) announcing the availability of the 1987 edition of the *Correlation.* This notice is to advise the public that TSUSA number 384.4608 in Category 341 was inadvertently omitted from the 1987 edition of the *Correlation.*

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–7352 Filed 4–2–87; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Finding of No Significant Impact Light Helicopter Family (LHX)

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Commander, U.S. Army Aviation Research and Development Command, ATTN: SAVAI–G (Mr. Larry Wright), 4300 Goodfellow Boulevard, St. Louis, MO 63120–1798, Telephone (314) 263–2114.

**SUMMARY:** The LHX rotorcraft will replace the Army's current fleet of light helicopters (UH–1, AH–1, OH–58, OH–6) which are rapidly becoming obsolete, difficult to support, non-survivable on the future battlefield, and not capable of conducting the Army's Air-Land Battle doctrine.

The design, testing, production, and fielding of a fleet of LHX rotorcraft will take place over the next two and a half decades. Detailed design of the LHX will begin in 1988. Component testing has already been initiated with test of a complete air vehicle to begin in approximately 1991. Fleet production is planned to begin in 1993 with fielding worldwide completed by 2013.

The anticipated environmental quality impacts of the proposed action are primarily on air quality and noise. The proposed action is not expected to impact water resources, land resources, flora, or fauna. It has been determined that the proposed action will not cause significant adverse impacts on the air quality or cause adverse noise levels. All anticipated environmental quality impacts of the proposed action are discussed in detail in the Environmental Assessment prepared for the Light Helicopter Family.

The Environmental Assessment indicates that this is a major Army action which will not cause significant adverse impact. Preparation of an Environmental Impact Statement is not required.

The Department of the Army will receive comments on this action for a thirty day period from the date this notice appears in the **Federal Register**. Comments should be directed to Mr. Larry Wright at the address shown above.

**Lewis D. Walker,**

*Deputy Assistant Secretary Of The Army For Environment, Safety And Occupational Health.*

[FR Doc. 87–7371 Filed 4–2–87; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Intergovernmental Advisory Council on Education; Meeting

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATE:** April 21, 1987.

**ADDRESS:** U.S. Department of Education, Room 3000, 400 Maryland Avenue, SW., Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jacqueline McGregor, Executive Director, Intergovernmental Advisory Council on Education, 413 Reporter's Building, 300 7th Street, SW., Washington, DC 20202.

**SUPPLEMENTARY INFORMATION:** The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and President concerning intergovernmental policies and relations pertaining to education.

On Tuesday, April 21, 1987 the Executive Committee of the Council will meet in open session, from 1:00 p.m. to 4:30 p.m.

The proposed agenda includes:

—Printing and dissemination of Council report on Job Training and Retraining
—Approval of the Parenting subcommittee proposal for a two-day conference
—Council staffing to complete agenda.

Records are kept of all Council proceedings, and are available for public inspection at the Intergovernmental Advisory Council on

Education, 413 Reporter's Building, 300 7th Street, SW., Washington, DC, from 9:00 a.m. to 5:00 p.m.

Dated: March 31, 1987.

Peter R. Greer,

*Deputy Under Secretary for Intergovernmental and Interagency Affairs.*

[FR Doc. 87-7437 Filed 4-2-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

## NUCLEAR REGULATORY COMMISSION

### Nuclear Waste Policy Act of 1982: Spent Fuel Storage and Disposal; Compliance With Section 223

**AGENCIES:** Department of Energy and Nuclear Regulatory Commission.

**ACTION:** Update of the previously published notice of offer to cooperate with and provide technical assistance to nonnuclear weapon states in the field of spent nuclear fuel storage and disposal.

**SUMMARY:** The Department of Energy and the Nuclear Regulatory Commission, in accordance with section 223 of the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425), January 7, 1983 (the Act), published in the **Federal Register** on March 30, 1983 (48 FR 13253, corrected on April 20, 1983 by notice 48 FR 16960) and updated and reissued in the **Federal Register** on April 6, 1984 (49 FR 13858), April 5, 1985 (50 FR 13738), and April 3, 1986 (51 FR 11463) an offer to cooperate with and provide technical assistance to nonnuclear weapon states in the field of spent nuclear fuel storage and disposal. This notice is the fourth update and again tenders this offer as provided by the Act. Available resources, scope, criteria, and modes of cooperation are described in this offer, which will be further updated and reissued next year.

**Background**

Section 223 of the Act provides that "it shall be the policy of the United States to cooperate with and provide technical assistance to nonnuclear weapon states in the field of spent fuel storage and disposal."

Section 223(b)(1) of the Act required that within 90 days of enactment of the Act the Department of Energy and the Nuclear Regulatory Commission would:

—Publish a joint notice in the **Federal Register** stating that the United States is prepared to cooperate with and provide technical assistance to nonnuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission including the availability of: (i) Data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.—

It is the intention of the Department of Energy and the Nuclear Regulatory Commission to offer to provide cooperation and technical assistance to other nations to improve spent fuel storage conditions as deemed necessary. It is not the intention of this offer to include transfer to the United States of spent fuel from foreign nuclear power reactors.

Section 223(c) of the Act specifies:

—Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of nonnuclear weapon states and, as feasible, the organizations operating nuclear power plants in such states that the United States is prepared to cooperate with and provide technical assistance to nonnuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from nonnuclear weapon states governments and nonnuclear weapon states nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.—

**Response to the Offers**

This notice was first published in the **Federal Register** on March 30, 1983 and was updated and reissued in the **Federal Register** on April 6, 1984, April 5, 1985, and April 3, 1986. (To date, eleven countries have responded to this offer.)

**Discussion and Description of Proposed Cooperative Activities and Programs**

For several years the United States has been cooperating with other nations as well as international organizations in areas related to spent fuel handling, storage, and geologic disposal. The Department of Energy and the Nuclear Regulatory Commission have adhered to policies of sharing the results of their studies and programs in these areas with other nations and they have sought to establish a framework to permit U.S. private organizations working in these fields to cooperate with their counterparts in the other nations. To the extent feasible, it is the intention of the Department of Energy and the Nuclear Regulatory Commission to augment their international cooperative ties in these areas. Any arrangements relative to funding of joint research and development projects will be developed on a case by case basis subject to program demands and the authorization and appropriation of funds by Congress.

In the course of developing the proposed new arrangements with other governments of foreign institutions, both the Department of Energy and the Nuclear Regulatory Commission will be guided by a number of factors and criteria, including the following:

—Whether the proposed program of cooperation will be useful in assisting a nonnuclear weapon state in overcoming significant and timely spent fuel storage or handling problems;
—Whether the arrangements will serve to advance knowledge in the field;
—Whether the arrangements will help solve common spent fuel handling problems; and
—Whether the arrangements will contribute to more predictability in fuel cycle operations.

While it is anticipated that in the near future most nations will be able to solve their spent fuel storage problems on a national basis, this is an area that could benefit from enhanced international cooperation. As noted by the Final Report of the International Atomic Energy Agency's Expert Group on International Spent Fuel Management (IAEA-ISFM/EG/26, Rev. 1, page 4, July 1982), prior to 1990 there is reasonably good assurance that adequate provision for dealing with spent fuel will exist. During the 1990's, however, the Report states that greater reliance must be placed on spent fuel management options which are now mainly in the planning stage, and further states that "By the year 2000 additional capacity remains to be identified and eventually provided. As greater reliance is placed upon planned facilities, some international cooperation could provide greater assurances that adequate means to deal with the spent fuel arising would be provided."

Some new storage technologies now under development hold promise for

achieving further economies in storage arrangements. Also, there are incentives for developing common standards and guidelines between nations relating to the conditions for shipping spent fuel. Nations can benefit from comparing information on the applicable regulatory practices and, in some cases, it may be productive for nations sharing common spent fuel storage problems to explore new institutional mechanisms designed to facilitate joint action.

The following paragraphs in this notice briefly summarize the nature of the activities of the Department of Energy and the Nuclear Regulatory Commission in these areas as well as the cooperative activities that these agencies wold propose to explore or engage in, as circumstances warrant.

**The U.S. Department of Energy**

The Department of Energy is now working with U.S. industry and utilities to assure that sufficient spent fuel storage capacity will be available for meeting U.S. domestic needs. U.S. utilities operating power reactors are presently storing spent fuel in water-filled pools at their reactor sites. In the next few years, additional capacity will be needed at some sites and the gravity of this problem could increase rapidly unless additional storage capacities are made available on a timely basis. Accordingly, the Department of Energy, industry, and utilities are now actively developing alternative methods for consolidating, transporting, and storing spent light water reactor fuel in order to increase at-reactor storage capacity.

The emphasis of this domestic program is to work jointly with industry for developing and licensing alternative storage technologies. Within this context, the Department of Energy is now in the process of working with industry and utilities in developing and demonstrating spent fuel rod consolidation and dry storage equipment and technology in support of utility license applications and is participating in efforts to assure the licensability of the entire system for handling, packaging, transportation, and storage. In addition, monitored retrievable storage facilities are being evaluated as integral components of the nuclear waste management system.

With these considerations in mind and considering the criteria cited above, the Department of Energy is prepared to engage in the following kinds of cooperative activities with nonnuclear weapon states and international organizations:

—To provide information, in the form of exchanges of documents and reports, on Department of Energy funded research and development projects in the specific areas of spent fuel handling and storage; pool storage; spent fuel packaging for storage or disposal; dry storage in metal casks, drywells, vaults and concrete silos; and on the technology of away-from-reactor and monitored retrievable storage;

—To arrange, on an appropriate basis, visits and briefings between foreign representatives and Department of Energy and Contractor personnel in those areas and to facilitate, within the terms of applicable U.S. laws, regulations and policies, contacts with private U.S. business entities and organizations with specialized capabilities in these fields;

—To arrange consultations between foreign representatives and expert Department of Energy and contractor personnel to review and comment on, as appropriate, other nations' proposed development program plans and facility designs;

—To furnish, under mutually agreed terms, information on certain U.S. standards and verified computer codes that may be used for equipment, component and facility design; and

—To cooperate, as appropriate, with international organizations to disseminate information to nonnuclear weapon states.

As U.S. program demands and the authorization and appropriation of funds by Congress permit, the Department of Energy also is prepared to participate in jointly funded development and demonstration activities such as:

—The demonstration of concepts for disassembling spent fuel assemblies and for consolidating fuel rods in operating reactor pools;

—The development and demonstration of technology for packaging spent fuel for storage and disposal;

—Activities related to assessing the feasibility of away-from-reactor storage, including foreign participation in, or observation of, U.S. tests and demonstrations of equipment and technology for dry storage of spent fuels; and

—The conduct of joint studies to evaluate monitored retrievable spent fuel storage.

In addition to the management of spent fuel in retrievable modes, the Department of Energy also is conducting extensive research and development on the geologic disposal of nuclear waste, including the spent fuel option. Where there is mutual interest, information in these areas can be exchanged through:

—The transmittal of published information;

—Arrangement of visits and consultations with the Department of Energy and contractor experts on spent fuel disposal methodology;

—Program planning; and

—Systems analyses.

The research and development activities conducted under the Department of Energy geologic disposal program include:

—The detailed characterization of spent fuel as required for disposal;

—Research and systems studies on spent fuel disposal packages and containers, and their materials;

—Safety analyses; and

—Disposal repository designs, including their performance evaluations in various host rock media.

Under the cooperative activities that have been described above, the information to be provided could possibly include exchanges of documents and reports, visits between specialists, short- or long-term assignments, and the undertaking of joint seminars and meetings.

**The Nuclear Regulatory Commission**

In regard to the issue at hand, the Nuclear Regulatory Commission is responsible for safety and environmental reviews, licensing, inspection and enforcement, and the conduct of research on the safety and environmental reviews, licensing, inspection and enforcement, and the conduct of research on the safety and environmental regulation of reactor waste in the United States, including the handling, storage, treatment, and disposal of spent reactor fuel. These responsibilities include licensing dry and wet at-reactor and away-from-reactor storage, monitored retrievable storage, and spent fuel and waste disposal (including geological disposal) at permanent repositories.

The Nuclear Regulatory Commission is prepared to cooperate with, and provide technical assistance to, nonnuclear weapon states in the areas of the health, safety, and environmental regulation of spent fuel management and disposal activities. Cooperation could include the following:

—Making available data from past and ongoing research and regulatory efforts: These data consist of evaluated and documented experimental results, validated and fully documented computer codes, and research results for which documentation and evaluation are complete. These data are primarily

documented as written reports, which the Nuclear Regulatory Commission can provide in specific technical subject areas, as agreed. State-of-the-art information on ongoing safety research programs can be acquired through attendance by representatives from participating countries at the annual Water Reactor Safety Research Information Meeting and other occasional topical meetings. Additional data more directly related to regulatory activities, such as regulations, standards, and guides, can also be provided as appropriate in specific subject areas as requested;

—Consulting with expert Nuclear Regulatory Commission contractor staff. As arranged by specific agreement with the Nuclear Regulatory Commission, expert technical consultation can be provided by Nuclear Regulatory Commission personnel and, as needed, by contractor employees in the regulatory areas within the Commission's purview;

—Helping (to the extent permitted by U.S. laws, regulations, and policies) foreign governments to establish initial contacts with private U.S. entities that conduct business in the applicable waste management activities;

—Cooperating, as appropriate, with international organizations to disseminate information to nonnuclear weapon states; and

—Participating in joint research programs. The Nuclear Regulatory Commission is ready to negotiate and engage in jointly funded research programs, consistent with the Agency's mission, with appropriate foreign entities, subject to the authorization and appropriation of funds by the Congress.

**Relationships With Multinational Organizations and International Scientific Bodies**

In addition to the foregoing activities, and within the framework of such foreign policy guidance as may be provided by the U.S. Department of State, it is expected that the Nuclear Regulatory Commission and Department of Energy will continue to participate in activities related to spent fuel handling and disposal that are undertaken by international organizations, if appropriate. These organizations have sponsored a range of activities relevant to this subject, and it is recognized that some nonnuclear weapon states may wish to avail themselves of the services of these bodies as well as the cooperative programs that are available bilaterally. The Nuclear Energy Agency of the Organization for Economic Cooperation and Development, for example, has been actively involved in studies related to the disposal of nuclear wastes. Also, as mentioned above, through the efforts of an Expert Group on International Spent Fuel Management, the International Atomic Energy Agency in 1982 completed a study on the potential for international cooperation in the management of spent fuel, giving emphasis to technical, economic, institutional, and legal considerations. Several of the recommendations of the International Atomic Energy Agency Expert Group could serve as a stimulus for further cooperative initiatives. Areas that may merit further study include the establishment of nuclear safety standards recommended by the International Atomic Energy Agency for spent fuel storage and transport, and possible further studies, as the interest of the international community dictate, such as multinational or regional approaches to spent fuel management and disposal.

**Storage and Disposition of Research Reactor Spent Fules**

The cooperative programs described in this announcement are addressed to the problems associated with the storage and handling of power reactor spent fuel that originates primarily in light water reactors. As such, they do not address any issues associated with the accumulation of foreign research reactor fuels.

**Solicitation of Expressions of Interest From Nonnuclear Weapon States**

As the next step in developing this offer of cooperation and technical assistance, nonnuclear weapon states will again be contacted through diplomatic channels to acquaint them with this proposal and to solicit expressions of interest to the Department of Energy and the Nuclear Regulatory Commission.

**Requests for Information**

Inquiries about this notice may be sent to the following:

Ben C. Rusche, Director, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, Washington, DC 20585 (Tel. No. 202/586-6850)

James R. Shea, Director, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (Tel. No. 301/492-7886)

Approval: March 27, 1987.

**Ben C. Rusche,**

*Director, Office of Civilian Radioactive Waste Management, Department of Energy.*

Dated: March 17, 1987.

**Victor Stello, Jr.,**

*Executive Director for Operations, Nuclear Regulatory Commission.*

[FR Doc. 87-7525 Filed 4-2-87; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[Docket No. ERA C&E-87-21; OFP Case No. 67058-9354-20-24]**

### Acceptance of Petition for Exemption and Availability of Certification by San Joaquin Cogen, Inc.

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of acceptance.

**SUMMARY:** On February 17, 1987, San Joaquin Cogen, Inc. (San Joaquin or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a facility to be located near Lathrop, California from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.27.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as

other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

**DATES:** Written comments are due on or before May 18, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA C&E–87–21 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

John Boyd, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947

**SUPPLEMENTARY INFORMATION:** The proposed cogeneration facility will utilize one nominal 48 MW combustion natural gas fired turbine generator (GTG), and one unfired heat recovery boiler, and the necessary foundations, structures, auxiliary equipment, piping system, electrical system an control system for a complete stand alone steam and powerplant. The gross power output of the facility at design conditions will be 48.7 MW. Auxiliary required power will be 1.3 MW, with a net power output of 47.4 MW, which will be sold to the Pacific Gas and Electric Company (PG&E). Steam produced in the plant will be used for environmental purposes and in the glass making operations of the Libby Owens Ford Company (LOF). Construction is expected to commence in June 1987 and be completed in April 1988.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion). This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioner has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will reveiw the completed environmental checklist submitted by the petitioner pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on March 27, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–7439 Filed 4–2–87; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

### Agency Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Notice of requests submitted for clearance to the Office of Management and Budget.

**SUMMARY:** The Department of Energy (DOE) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information: (1) the sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed within 30 days of publication of this notice. Last notice published Thursday, February 26, 1987 (52 FR 5818).

**ADDRESSES:** Copies of the materials submitted to OMB may be obtained from Mr. Gross at the address below. Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503.

(Copies of your comments also should be addressed to Mr. Gross.)

**FOR FURTHER INFORMATION CONTACT:** John Gross, Director, Data Collection Service Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586–2308.

**SUPPLEMENTARY INFORMATION:** If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB DOE desk officer of your intent as early as possible.

The energy information collections submitted to OMB for review were:

1. Energy Information Administration/ Office of Energy Markets and End Use
2. EIA–457A–H
3. 1905–0092
4. Residential Energy Consumption Survey
5. Revision
6. Triennially
7. Mandatory
8. Individuals or households, State or local governments, Business or other for profit, Federal agencies or employees, and Small businesses or organizations
9. 3,060 respondents
10. 5,787 responses
11. 6,212 hours
12. EIA–467A–H collect comprehensive, national and regional data on the consumption of energy in the residential sector. Data are used for analysis and forecasting. Housing and demographic characteristics data are collected via personal interviews, consumption and expenditure billing data are collected from the energy suppliers. Rental agents are contacted by telephone to check on fuels used in rented apartments.

**Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, March 30, 1987.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 87–7440 Filed 4–2–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. CP87–252–000 et al.]**

## Natural Gas Certificate Filings; Texas Eastern Transmission Corp. et al.

Take notice that the following filings have been made with the Commission:

### 1. Texas Eastern Transmission Corporation

March 6, 1987.

[Docket No. CP87–252–000]

Take notice that on March 13, 1987, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87–252–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and operation by Applicant of compression facilities necessary for the continued delivery of natural gas by Applicant to Consolidated Gas Transmission Corporation (Consolidated), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to install and operate a skid-mounted turbine compressor of up to 4,000 HP and associated valving, instruments, and piping on its Line No. 1 at Milepost 967.61 in Monroe County, Ohio, at an estimated cost of $4,105,000. Applicant states that the proposed compression facilities (known as the Switzerland Compressor Station) are required to provide for the delivery of natural gas by Applicant to Consolidated at a pressure of 750 psig.

Applicant states that it would initially finance the proposed facilities for funds on hand and permanent financing would be undertaken as part of Applicant's overall long-term financing program at a later date.

It is indicated that Applicant is authorized to deliver on a firm basis up to a total of 861,615 dt equivalent of natural gas per day to Consolidated pursuant to service agreements under Rate Schedules DCQ and ACQ dated December 22, 1975. It is further indicated that the principal point of delivery to Consolidated would be Applicant's M & R Station 004 in Monroe County, Ohio. Applicant states that its maximum daily delivery obligation at this point equals 40 percent of its total daily delivery obligation to Consolidated under Rate Schedule DCQ and 88 percent of its total daily delivery obligation to Consolidated under Rate Schedule ACQ. Applicant further states that the maximum daily delivery obligation at M & R Station 004 would be 259,523 dt equivalent of natural gas under Rate Schedule DCQ and 181,666 dt under Rate Schedule ACQ. It is indicated that the aggregate maximum daily delivery under all rate schedules for this station would be 259,523 dt equivalent of natural gas.

Applicant states that it has reduced its operating pressure on its Line No. 1 and Line No. 2 due to safety considerations. Applicant further states that the operating pressure of Applicant's system at M & R Station 004 is currently 596 psig. As a consequence, Applicant indicates that it would be unable to make contract deliveries of natural gas to Consolidated at M & R Station 004 under the present pressure conditions. Applicant explains that Consolidated has advised Applicant that natural gas delivered to Consolidated at M & R Station 004 would be required to fill Consolidated's storage fields during the spring and summer as well as for winter usage.

Comment date: April 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 2. Blue Dolphin Pipe Line Company

March 27, 1987.

[Docket No. CP87–254–000]

Take notice that on March 16, 1987, Blue Dolphin Pipe Line Company (Blue Dolphin), 2900 Citicorp Center, Houston, Texas 77002, filed in Docket No. CP87–254–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations. Blue Dolphin seeks authorization to transport natural gas on behalf of Polo Energy Corporation (Polo) under Blue Dolphin's blanket transportation certificate issued in Docket No. CP87–31–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Blue Dolphin states that, pursuant to a transportation agreement dated January 5, 1987, Blue Dolphin proposes to transport natural gas on behalf of Polo on Blue Dolphin's system in offshore Texas in the Gulf of Mexico. Blue Dolphin states that peak day volumes under this agreement would not exceed 25,000 Mcf, annual volumes would not exceed 7,300,000 Mcf and the average daily volume would be 20,000 Mcf.

Blue Dolphin states that it is not aware of any relationship under which a local distribution company or affiliate of Polo would receive natural gas on behalf of Polo. Blue Dolphin also indicates that no facilities are required to be constructed to provide the proposed service for Polo. It is stated that service commenced January 15, 1987, pursuant to the automatic 120 day authorization permitted by § 284.223 of the Commission's Regulations.

Comment date: May 11, 1987, in accordance with Standard Paragraph G at the end of this notice.

**3. Mississippi River Transmission Corporation**

March 27, 1987.

[Docket No. CP87-240-000]

Take notice that on March 10, 1987, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP87-240-000 a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a delivery point under the authorization issued in Docket No. CP82-489-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request filed with the Commission and open to public inspection.

MRT proposes to add a delivery point to Illinois Power Company (IPC) at Carlyle, Illinois. It is said that under the certificate authority issued at Docket No. CP70-158, MRT is authorized to provide IPC up to 100,000 Mcf per day under its CD-1 Rate Schedule. MRT states that although up to 35,000 MCF per day could be delivered at the new delivery point, it would not increase the mzximum daily volumes MRT is authroized to provide IPC pursuant to the current service agreement and the current certificate authority. MRT also states thar the cost of the facilities to be installed are estimated at $214,000.

MRT states that its FERC Gas Tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers. MRT states further that because MRT would serve IPC at the proposed delivery point without an increase in the maximum daily volumes it currently delivers under its contract with IPC, there would be no impact on peak day deliveries but MRT would have the potential to increase annual deliveries depending upon IPC's ability to inject gas into its storage fields.

Comment date: May 11, 1987, in accordance with Standard Paragraph G at the end of this notice.

**4. Northern Natural Gas Company Division of Enron Corporation**

[Docket No. CP87-250-000]

March 27, 1987.

Take notice that on March 12, 1987, Northern Natural Gas Company Division of Enron Corporation. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-250-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for permission and approval to abandon and remove seven small volume measuring stations under the blanket authorization issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern requests authority to abandon the following measuring stations:

| Customer | County and State |
|---|---|
| Arms, J.P. | Hansford Co., Texas |
| Cities Service | Pawnee Co., Kansas |
| Durkee, D.T. | Kiowa Co., Kansas |
| LaMaster, Orla R. | Audubon Co., Iowa |
| Logsdon, Bill | Hansford Co., Texas. |
| Mertland, Delbert | Rice Co Minnesota |
| Sampson, Carroll | Harden Co., Iowa |

Northern states that it has been advised by Peoples Natural Gas Company and West Texas Gas, Inc., that the seven small volume measuring station customers listed above no longer desire natural gas service and wish to have their meters removed. Consequently, Northern is requesting permission and approval to abandon these measuring stations. Northern further states that there would be no termination of service as a result of the abandonments and that the estimated cost of removal of such facilities is $2,100.

Comment date: May 11, 1987, in accordance wtih Standard Paragraph G at the end of this notice.

**5. South Georgia Natural Gas Company**

[Docket No. CP87-228-000]

March 27, 1987.

Take notice that on March 3, 1987, South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792-1279, filed in Docket No. CP87-228-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to construct and operate facilities in connection with the addition of a new delivery point under the certificate issued in Docket No. CP82-584-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

South Georgia states that the City of Tifton, Georgia (City), provides natural gas service to an area in and around the city by purchases it makes from South Georgia at an existing point of delivery in Tift County, Georgia. The application indicates that City has advised South Georgia that the addition of a new delivery point would improve City's ability to provide reliable service to its existing customers. Further, a second delivery point, according to South Georgia, would better serve additional growth of high priority and industrial loads that may occur in the area of the new delivery point.

South Georgia, as a consequence, proposes to construct and operate approximately 600 feet of 4-inch pipeline, a new combined meter and regulator station and appurtenant facilities in Tift County, Georgia, at an estimated cost of $75,000. South Georgia indicates that City has agreed to reimburse South Georgia for the actual cost of constructing and installing the proposed pipeline and measurement facilities.

South Georgia states that the present maximum daily obligation (MDO) to City at the existing delivery point is 2,626 Mcf. Pursuant to City's request, South Georgia proposes to assign 1,300 Mcf to the proposed delivery point and 1,326 Mcf to the existing delivery point; thus, the MDO would remain unchanged.

South Georgia states that it has sufficient capacity to accomplish the deliveries proposed by the installation without detriment or disadvantage to South Georgia's other customers.

Comment date: May 11, 1987, in accordance wtih Standard Paragraph G at the end of this notice.

**6. Tennesee Gas Pipeline Company a Division of Tenneco Inc.**

[Docket No. CP87-237-000]

March 27, 1987.

Take notice that on March 9, 1987, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed a request pursuant to to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to establish a new delivery point to New York State Electric & Gas Corporation (NYSEG), an existing firm sales customer, under Tennessee's blanket certificate issued in Docket No. CP82-413-000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to establish a new delivery point near Wallace, Steuben County, New York. Tennessee states that the proposed delivery point is necessary to enable NYSEG to render service to a anew natural gas franchise areas recently acquired by NYSEG. It is stated that NYSEG would reimburse Tennessee for the estimated $80,000 construction cost of the proposed delivery point.

Tennessee does not propose to increase or decrease the total daily and/or annual quantities it is authorized to

BEST COPY AVAILABLE

deliver to NYSEG. Tennessee states that it would deliver no more than 1,000 dt equivalent of natural gas per day and no more than 365,000 dt equivalent of natural gas per annum at the proposed Wallace delivery point. Tennessee asserts that the establishment of the proposed new delivery point is not prohibited by its currently effective tariff and that it would have sufficient capacity to accomplish the deliveries at the proposed delivery point without detriment or disadvantage to any of its customers.

Comment date: May 11, 1987, in accordance wtih Standard Paragraph G at the end of this notice.

**7. Williams Natural Gas Company**

[Docket No. CP87–255–000]

March 27, 1987.

Take notice that on March 17, 1987, William Natural Gas Company (Applicant), formerly Northwest Central Pipeline Corporation, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87–255–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorizations to abandon by reclaim measuring and appurtenant facilities and to abandon in place approximately 2,700 feet of 3-inch pipeline serving the Hiebert Oil company (Hiebert) lease operation in Rice County, Kansas, and the transportation of gas through said facilities, under the blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that Hiebert has request that the facilities be reclaimed and that no other customers would be affected by abandoning the 3-inch pipeline. Applicant explains that the total cost of the abandonment would be $450 with an estimated salvage value of $510.

Comment date: May 11, 1987, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Fedeal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to interven or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or the participate as a party in any hearing therein must file a motion to intervene in accodrance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unncessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–7403 Filed 4–2–87; 8:45 am]

BILLING CODE 6717–01–M

## Western Area Power Administration

### Final Post-1989 Allocation of Power; Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas Project; Corrections

**AGENCY:** Western Area Power Administration, Department of Energy.

**ACTION:** Corrections to the Final Post-1989 Allocation of Power from the Pick-Sloan Missouri Basin Program-Western Division and the Fryingpan-Arkansas Project.

In the **Federal Register**, Volume 52, No. 15, January 23, 1987, make the following corrections:

On page 2597, center column, under **SUPPLEMENTARY INFORMATION,** Section III.C.: change "Entitlement" to "Entitlements"; Section IV.B.: change "Entitlement" to "Entitlements".

On page 2598, first column, under Section 1. Comment, second sentence: change "The power Western will be supplying under the Criteria is not needed and will be supplying under the Criteria is not needed and will transfer the savings realized by those preference entities receiving an allocation to the remaining nonpreference entities in Kansas as an added expense." to "The power Western will be supplying under the Criteria is not needed and will transfer the savings realized by those preference entities receiving an allocation to the remaining nonpreference entities in Kansas as an added expense.".

On page 2598, third column, under Section 2. Discussion, first sentence: change "24.755 percent" to "24.775 percent."

On page 2599, first column, second line: change "schdeuled" to "scheduled".

On page 2599, third column, under Section V.B., third sentence: change "LOA" to "LAO".

On page 2600, third column, under "New Allottees", Summer Energy column, line 36, (Wyoming: Powell): change "1,953" to "1,953".

Issued at Golden, Colorado, March 23, 1987.

**William H. Clagett,**

*Administrator.*

[FR Doc. 87–7441 Filed 4–2–87; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59810; FRL-3178-4]

### Certain Chemical Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) 40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such polymer exemption submissions and provides a summary of each.

**DATES:** Close of Review Period:

Y 87–125, April 5, 1987
Y 87–126, April 6, 1987
Y 87–127, April 8, 1987

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 87–125**

*Manufacturer.* Confidential.

*Chemical.* (G) Copolymer of acrylic and methacrylic esters.

*Use/Production.* (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesive. Prod. range: Confidential.

**Y 87–126**

*Manufacturer.* Confidential.

*Chemical.* (G) Acrylic modified alkyd resin.

*Use/Production.* (S) Industrial component for industrial paint primer. Prod. range: 2,500 to 5,100 kg/yr.

**Y 87–127**

*Manufacturer.* Esterlite.

*Chemical.* (G) Unsaturated polyester resin.

*Use/Production.* (G) Electrical resin. Prod. range: Confidential.

Dated: March 24, 1987.

**Denise Devoe,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87–6991 Filed 4–2–87; 8:45 am]

BILLING CODE 6560–50–M

---

[ER–FRL–3180–5]

### Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements Filed March 23, 1987 through March 27, 1987, Pursuant to 40 CFR 1506.9

EIS No. 870104, Draft, FHW, KY, US 127 Improvements, Anderson County Line to I–64, Franklin County, Due: May 20, 1987, Contact: Robert Johnson (502) 227–7321.

EIS No. 870105, Draft, FHW, VA, VA–28/Sully Road Improvements, I–66, Centerville to VA–7, Leesburg Pike, Fairfax and Loudoun Counties, Due: May 18, 1987, Contact: James Tumlin (804) 771–2371.

EIS No. 870106, Draft, COE, CA, Shorelands Commercial and Industrial Park Development, 10/404 Permit, Alameda County, Due: May 18, 1987, Contact: Scott Miner (415) 974–0446.

EIS No. 870107, Final, NPS, NY, PA, Upper Delaware Scenic and Recreational River Management Plan, Due: May 4, 1987, Contact: Mike Gordon (215) 597–9195.

EIS No. 870108, Final, BLM, NV, Clark County Wilderness Study Areas Recommendations, Designation, Las Vegas District, Due: May 4, 1987, Contact: Stephen A. Mellington (702) 388–6403.

EIS No. 870109, Report, MD, VA, Baltimore Harbor and Channels 50 Foot Deepening Project, Rappahannock Shoal and York Spit Channels Dredging and Dredged Material Placement Modifications, Contact: Richard Makinen (202) 272–0166.

EIS No. 870110, Draft, OSM, TN, North Chickamauga Creek Watershed, Designation of Land Unsuitable for Surface Coal Mining Operations, Hamilton County, Due: June 1, 1987, Contact: Willis Gainer (615) 673–4348.

Amended Notice

EIS No. 870085, Draft, BLM/AFS, MT, ID, Centennial Mountains Wilderness Study Areas Recommendations, Designation, Targhee and Beaverhead National Forests, Due: June 19, 1987, Published FR March 13, 1987—Review period extended.

Dated: March 31, 1987.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 87–7448 Filed 4–2–87; 8:45 am]

BILLING CODE 6560–50–M

---

[ER–FRL–3180–6]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 16, 1987 through March 20, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

**Draft EISs**

ERP No. D–COE–L39045–AK, Rating EC2, Chignik Small Boat Harbor Facility Development, AK. SUMMARY: EPA recognizes the need for a safe harbor in the project area. EPA requested additional information about the extent of the wetlands adjacent to the site, alternative layout designs for the staging area for the preferred alternative, and operation and maintenance costs associated with the preferred alternative.

ERP No. D–FHW–F40288–MN, Rating E02, TH–77/I–494 Improvements, TH–77/Cedar Ave. From 70th St. to 86th St. and I–494 From W. 12th Ave. to E. 34th Ave., MN. SUMMARY: EPA concluded that noise impacts and impacts to carbon monoxide concentrations were adequately addressed. EPA requested more information regarding emissions of nitrogen oxides and volatile organic compounds.

ERP No. D–UMC–E11019–NC, Rating LO, Cherry 1 Military Operating Area (MOA) and Core MOA, Establishment, NC. SUMMARY: EPA has reviewed the draft EIS for the mandated program interests and does not anticipate any significant adverse environmental consequences.

Final EISs

ERP No. F–BLM–L40151–ID, Egin–Hamer Road Construction, Right-of-Way Application, Medicine Lodge Resource Area, ID. SUMMARY: EPA considers the final EIS to be unresponsive to EPA's comments on the draft EIS. The major concern at the draft EIS stage is the significance of potential impacts on elk and endangered species. Monitoring of these species must be included in any road building alternative. EPA recommends that the monitoring program be developed with input from the Fish and Wildlife Service and the Idaho Department of Fish and Game.

ERP No. F–COE–F07018–OH, Wm. Zimmer Conversion Project, Nuclear Power Plant into Coal Fired Electrical Generating Plant, Issuance of Permit, Sect. 10 and 404 Permits, OH. SUMMARY: EPA determined that more information should have been provided regarding alternatives that could reduce impacts to prime mussel habitat in the Ohio River adjacent to Zimmer. Further, the EIS should have evaluated alternatives to environmentally damaging dredging activities proposed solely to obtain fill material. A supplemental EIS is requested.

ERP No. F–MMS–A02116–00, Mid 1987–Mid 1992 OCS Oil and Gas Lease Sales, 5-Year Program, Offshore the Atlantic, Pacific, Gulf of Mexico and Alaska Regions, US. SUMMARY: EPA noted that many of its comments on the draft EIS had been addressed in the final EIS. EPA suggested that Alternative VI (proposed New Schedule eliminating some sales) coupled with the subarea deferrals of Alternative II, the proposals for Bering Sea Sales contained in Alternative X, and certain deferrals from Alternative V represented the environmentally preferable alternative.

ERP No. F–SCS–H36096–00, Upper Locust Creek Watershed, Protection and Flood Prevention, MO and IA. SUMMARY: EPA has no objection to the project as proposed.

Regulation

ERP No. R–FHA–A99176–00, 7 CFR Parts 1809 et al., General Revision of Farmer Program Regulations (52 FR 1706). SUMMARY: EPA supports the establishment of conservation easements under § 1951.42 of the proposed rule in the repayment of FmFA loans.

Dated: March 31, 1987.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 87–7447 Filed 4–2–87; 8:45 am]

BILLING CODE 6560–50–M

---

[ORD–FRL–3180–4]

## Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on March 4, 1987, the Environmental Protection Agency received an application from Westinghouse Electric Corporation, Combustion Control Division, 1201 Main Street, P.O. Box 901, Orrville, Ohio 44667, to determine if its Model UNOR–6N NDIR Analyzer for Ambient Measurement of Carbon Monoxide should be designated by the Administrator of the EPA as a reference method under 40 CFR Part 53 (40 FR 7049, 41 FR 11255). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**. For further information please contact Mr. C. Frederick Smith at (919) 541–4599.

**Vaun A. Newill,**

*Assistant Administrator for Research and Development.*

[FR Doc. 87–7385 Filed 4–2–87; 8:45 am]

BILLING CODE 6560–50–M

---

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0033

Title: Notice of Interest in Applying for Federal Disaster Assistance

Abstract: Form used by local government applicants to list the types of damages to property and facilities in order to determine kinds of damage and location by political entities

Type of Respondents: State or local governments, Non-profit institutions

Number of Respondents: 2,500

Burden Hours: 1,250

Frequency of Recordkeeping or Reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 87–7337 Filed 4–2–87; 8:45 am]

BILLING CODE 6718–02–M

---

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0043

Title: Project Application for Federal Assistance

Abstract: Standard OMB Form 424 (modified) used to apply for grants

Type of Respondents: State or local governments, non-profit institutions

Number of Respondents: 2,500

Burden Hours: 625

Frequency of Recordkeeping or Reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 87–7338 Filed 4–2–87; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL HOME LOAN BANK BOARD

[No. AC-585]

### Prospect Park Savings & Loan Association, West Paterson, NJ; Final Action; Approval of Conversion Application

Dated: March 26, 1987

Notice is hereby given that on March 16, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Prospect Park Savings and Loan Association, West Paterson, New Jersey for permission to convert to the stock form of organization.

Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home, Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-7343 Filed 4-2-87; 8:45 am]

BILLING CODE 6720-01-M

---

[No. 87-351]

### Federal Savings and Loan Advisory Council; Renewal of Charter

Dated: March 25, 1987.

Pursuant to the provisions of Section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a), the following notice has been adopted by the Federal Home Loan Bank Board for publication in the **Federal Register.**

Pursuant to the Provisions of Section 9 of the Federal Advisory Committee Act (5 U.S.C. App. I), and the implementing regulations issued by the Office of Management and Budget, the Federal Home Loan Bank Board, having determined, that the continuation of the Federal Savings and Loan Advisory Council is in the public interest in connection with the performance of the duties imposed on it by law, hereby renews the existence of the Federal Savings and Loan Advisory Council for two years to January 31, 1989, and in connection therewith reissues the following charter (which appears as Section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a)) to the said Council:

**Federal Savings and Loan Advisory Council Charter**

There is hereby created a Federal Savings and Loan Advisory Council, which shall continue to exist as long as the Bank Board bi-annually determines, as a matter of formal record, with timely notice in the **Federal Register**, to be in the public interest in connection with the performance of duties imposed on the Council by law. The Council shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act. The Council shall consist of one member for each Federal Home Loan Bank district to be elected annually by the Board of directors of the Federal Home Loan Bank in such district and twelve members to be appointed annually by the Bank Board to represent the public interest. Each such elected member shall be a resident of the district for which he is elected. All members of the Council shall serve without compensation, but shall be entitled to reimbursement from the Bank Board for subsistence, and transportation and other incidental travel expenses in accordance with the Federal Travel Regulation, as amended. The Council shall meet in Washington, District of Columbia, at least twice a year and more often if requested by the Bank Board. The Council may select its chairman, vice chairman, and agenda committee chairman, and adopt methods of procedure, and shall have power—

(1) To confer with the Bank Board on general business conditions, and on conditions affecting the Federal Home Loan Banks and their members and the Federal Savings and Loan Insurance Corporation.

(2) To request information, and to make recommendations, with respect to matters within the jurisdiction of the Bank Board and the Federal Savings and Loan Insurance Corporation.

**Federal Home Loan Bank Board**

The Federal Home Loan Bank Board also has directed, in connection with the foregoing, that—

1. The Federal Savings and Loan Advisory Council's estimated budget of $50,000 shall be paid for by the self-supporting Federal Home Loan Bank System, and none of its annual operating costs shall be charged to or paid by the United States;

2. The said Charter of the Federal Advisory Council shall not be amended, altered, or repealed except by Congress or by the Federal Home Loan Bank Board, unless reissued prior to that date by the Federal Home Loan Bank Board.

The Savings and Loan Advisory Council.

**John M. Bucklev, Jr.,**

*Executive Secretary*

The Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

**Charter**

*Pursuant to* the provisions of section 9 of the Federal Advisory Committee Act, and the implementing regulations issued by the Office of General Services Administration, the following charter, which was statutorily created by Congress as section 8a of the Federal Home Loan Bank Act, as amended, is hereby reissued.

There is hereby created a Federal Savings and Loan Advisory Council, which shall continue to exist as long as the Bank Board bi-annually determines, as a matter of formal record with timely notice in connection with the performance of duties imposed on the Council by law. The Council shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act. The Council shall consist of one member of each Federal Home Loan Bank district to be elected annually by the Board of directors of the Federal Home Loan Bank in such district and twelve members to be appointed annually by the Bank Board to represent the public interest. Each such elected member shall be a resident of the district for which he is elected. All members and alternates of the Council may be compensated as provided for in section 354 of the Garn-St Germain Depository Institutions Act of 1982 amending section 8a of the Federal Home Loan Bank Act, and shall be entitled to reimbursement from the Bank Board for traveling expenses incurred in attendance of meetings of such Council, and subsistence expenses, in accordance with the Federal Travel Regulations, as amended. The Council shall meet at least twice a year and more often if requested by the Bank Board. The Council may select its chairman, vice chairman, and agenda committee chairman, and adopt methods of procedure, and shall have power—

(1) To confer with the Bank Board on general business conditions, and on special conditions affecting the Federal Home Loan Banks and their members and the Federal Savings and Loan Insurance Corporation.

(2) To request information, and to make recommendations, with respect to matters within the jurisdiction of the Bank Board and the Federal Savings and Loan Insurance Corporation.

The Federal Savings and Loan Advisory Council's expenses shall be paid for by the self-supporting Federal Home Loan Bank System and none of its annual operating costs shall be charged to or paid by the United States

Federal Savings and Loan Advisory Council.
John M. Buckley, Jr.,
*Executive Secretary.*
[FR Doc. 87-7344 Filed 4-2-87; 8:45 am]
BILLING CODE 6720-01-M

## South Florida Savings Bank; Miami, FL; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for South Florida Savings Bank, Miami, Florida, on March 25, 1987.

Dated: March 30, 1987.
**Jeff Sconyers,**
*Secretary.*
[FR Doc. 87-7342 Filed 4-2-87; 8:45 am]
BILLING CODE 6720-01-M

## South Florida Savings Bank; Miami, FL; Appointment of Receiver

Notice is hereby given that the Circuit Court of the State of Florida for the County of Dade has confirmed the appointment by the Comptroller of the State of Florida ("Florida") of a receiver for South Florida Savings Bank, Miami, Florida ("South Florida"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Comptroller of the appointment as receiver for South Florida, for the purpose of liquidation, effective March 25, 1987.

Dated: March 30, 1987.
By the Federal Home Loan Bank Board.
**Jeff Sconyers,**
*Secretary.*
[FR Doc. 87-7341 Filed 4-2-87; 8:45 am]
BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

## Privacy Act of 1974; Publication of Notice of Systems of Records

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of Systems of Records.

**SUMMARY:** This notice meets the requirement of the Privacy Act of 1974, regarding the publication of an agency's notice of systems of records.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** This notice describes the character and gives notice of the systems of records maintained by the Federal Maritime Commission. This agency previously noticed its systems of records by publication in the **Federal Register** at 42 FR 48131, September 22, 1977, as amended by additional systems of records at 44 FR 5941, January 30, 1977, 44 FR 10629, February 22, 1979, and 47 FR 13214, March 29, 1982.

Previously noticed system FMC-6 has been deleted from this publication because the system is no longer maintained and all records formerly included in the system have been destroyed. Previously noticed system FMC-20 has been deleted because it has been determined that it is not a system of records as defined by law, in that information therein is not retrievable by the name of an individual or other identifying number, symbol or particular. To eliminate duplication, a number of other systems are also being deleted because they are included under the government-wide system of records notice published by the Office of Personnel Management: These systems are FMC-8, FMC-9, FMC-14, FMC-16 and FMC-19. Other non-substantive changes in the notices have been made which are of an editorial nature or which reflect changes due to agency reorganization or statutory authority resulting from passage of the Shipping Act of 1984.

Finally, two new systems, FMC-26 and FMC-27 are included in this document. These systems are concurrently being noticed as proposed systems to be effective in 60 days unless an announcement to the contrary is published by this agency. A new systems report for these two systems was filed on March 31, 1987.

By the Commission.
**C. Polking,**
*Secretary.*

FMC-1 Personnel Security File
FMC-2 Non-Attorney Practitioner File
FMC-7 Licensed Ocean Freight Forwarders File
FMC-10 Desk Audit File
FMC-15 Service Control File
FMC-18 Travel Orders/Vouchers File
FMC-21 Payroll Records
FMC-22 Investigatory Files
FMC-23 Parking Applications
FMC-24 Consumer Complaint File
FMC-25 Inspector General File
FMC-26 Administrative Grievance File
FMC-27 Staffing Plan

**FMC-1**

**SYSTEM NAME:**

Personnel Security File-FMC.

**SYSTEM LOCATION:**

Bureau of Investigations, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

1. Employees of the Federal Maritime Commission. 2. Applicants for employment with the Federal Maritime Commission.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Results of name checks, inquiries, and investigations to determine suitability for employment with the U.S. Government, and to determine whether employment or continued employment of an individual can reasonably be expected to be clearly consistent with national security interests.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Order 10450.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The records in this system of records are used or may be used: 1. By Commission officials to make a determination that the employment of an applicant or retention of employment of a current employee within the Commission is clearly consistent with the interests of national security. 2. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. 3. To request from a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee or the issuance of a security clearance. 4. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a

contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter. 5. By a court of law or appropriate administrative board or hearing having review or oversight authority.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders.

**RETRIEVABILITY:**

Records are indexed alphabetically by name.

**SAFEGUARDS:**

Records are maintained in a combination safe in the custody of the personnel security officer and access is limited to the personnel security officer and his duly authorized representatives.

**RETENTION AND DISPOSAL:**

Case transmittal records are maintained at the Federal Maritime Commission for at least two years from the date of final decision in the case as the agency record of adjudication action. All records are destroyed within a time period not to exceed five years after an employee leaves the agency.

**SYSTEM MANAGER(S) AND ADDRESS:**

Security Officer, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**NOTIFICATION PROCEDURE:**

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of title 46 of the Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Office of Personnel Management report, and reports from other federal agencies.

**FMC–2**

**SYSTEM NAME:**

Non-Attorney Practitioner File-FMC.

**SYSTEM LOCATION:**

Office of Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons, not attorneys, who apply for and/or are granted permission to practice before the Commission.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Application forms and letters of reference in relation to non-attorney practitioners.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

46 CFR 502.27.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The records in this system of records are used or may be used: 1. By personnel of the Secretary's Office to determine whether a non-attorney should be admitted to practice before the Commission. 2. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. 3. To request from a federal, state or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. 4. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders.

**RETRIEVABILITY:**

Records are indexed alphabetically by name.

**SAFEGUARDS:**

Records are maintained in file cabinets under the control of personnel in the Secretary's Office.

**RETENTION AND DISPOSAL:**

Records are maintained in the Office of the Secretary for 10 years after applicant ceases to practice and then are transferred to the Federal Records Center. Records are destroyed 20 years thereafter.

**SYSTEM MANAGER(S) AND ADDRESS:**

Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**NOTIFICATION PROCEDURE:**

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Applicants.

**FMC 7**

**SYSTEM NAME:**

Licensed Ocean Freight Forwarders File-FMC.

**SYSTEM LOCATION:**

Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM**

Records are maintained on sole proprietorships, partnerships and corporate licensees, exlicensees, and applicants for licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains the names and addresses, as well as the names and addresses of the stockholders, officers, directors, of individual freight forwarders; descriptions of the relationships the freight forwarder may have with other business entities; credit references; a record of the forwarder's past experience in forwarding; and any financial information and/or criminal convictions pertinent to the licensing of the forwarder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 553; secs. 3, 8, 10, 11, 13, 15, 17 and 19, Shipping Act of 1984 (46 U.S.C. App. 1702, 1707, 1709, 1710, 1712, 1714, 1716 and 1718).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system of records are used or may be used: 1. By Commission staff for evaluation of applications for licensing. 2. By Commission staff for monitoring the activities of licensees to ensure they are in compliance with Commission regulations. 3. To refer, where there is an indication of a violation or potential violation of law whether civil or criminal or regulatory in nature, information to the appropriate agency, whether federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rules, regulations, or orders issued pursuant thereto. 4. To request from a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. 5. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name and license or application number.

SAFEGUARDS:

Records are maintained in an area of restricted accessibility.

RETENTION AND DISPOSAL:

Applicant and licensee files are kept as long as the application and/or license is active. Files for withdrawn and denied applicants, and revoked licenses remain in the Record Location Center for two years after final action and are then transferred to the Federal Records Center. Then, after ten years the files are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Domestic Regulation Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Request may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

1. Information submitted by applicants and licensees. 2. Commission District Offices. 3. General Public (example complaints). 4. Surety companies.

FMC–10

SYSTEM NAME:

Desk Audit File-FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each record consists of the position classification, specialist's notes of conversations, evaluation reports, background papers, and/or research material used to support the audit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 et seq., 5 U.S.C. 1302 and the regulations issued pursuant thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in this system of records is used or may be used: 1. By Commission officials to support decisions on the proper classification of a position. 2. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, information to the appropriate agency, whether federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. 3. To request from a federal, state or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. 4. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter. 5. By the Office of Personnel Management in the course of an investigation, or evaluating for statistical or management analysis purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Records Management Policy and Practice.

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained as long as the position audited remains essential, current, and accurate, after which they are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Personnel specialists of the Commission.

FMC–15

SYSTEM NAME:

Service Control File-FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record consists of a Service Record Card (Standard Form 7) and a Position Identification Strip (Standard Form 7D). This file provides summary information of organizational structure, budgeted positions, and historical and current status data on employees only for the time they have been with the Commission. The service record of each employee who leaves the agency is filed separately and retained for historical reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 et seq., 5 U.S.C. 1302 and the regulations issued pursuant thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The records in this system of records are used or may be used: 1. By appropriate Commission officials for personnel actions such as within grade increases, conversions to career tenure, probationary ratings, terminations of limited assignments, and expiration of authorized absences. 2. By the Office of Personnel Management in the course of an investigation of a particular employee of the Commission, or for management analysis and statistical purposes. 3. To request from a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit. 4. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on index cards.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained while the individual is employed by the Commission and for thirty years afterwards, after which they are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Personnel specialists of the Federal Maritime Commission.

FMC 18

SYSTEM NAME:

Travel Orders/Vouchers File-FMC.

SYSTEM LOCATION:

Office of Budget and Financial Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record consists of the initial travel order for the individual and the subsequent travel voucher prepared from information supplied by the individual which includes hotel bills, subsistence breakdown, cab fares and air fares.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Travel Regulations FPMR 101–7 and Travel Expense Amendments Act of 1975 (5 U.S.C. 5701–5709). 44 U.S.C. 3101. 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records in this system of records are used or may be used: 1. By the Commission for the authorization of travel performed by personnel of the Commission. 2. By the Commission to prepare travel vouchers for submission

to the Federal Home Loan Bank Board and to maintain internal control of travel expenses within the agency. 3. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal in nature, information to the appropriate agency, whether federal, state or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto. 4. By the Commission to request from a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit. 5. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders.

**RETRIEVABILITY:**

Records are indexed by name or bureau.

**SAFEGUARDS:**

Records are maintained in locked file cabinets and monitored by the Director of the Office of Budget and Financial Management.

**RETENTION AND DISPOSAL:**

The records are maintained for four years and are then destroyed by shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Budget and Financial Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**NOTIFICATION PROCEDURE:**

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Individual to whom the record pertains, hotel bills, individual's subsistence record, and Travel Requests (Airline or train).

**FMC–21**

**SYSTEM NAME:**

Payroll Records-Federal Maritime Commission.

**SYSTEM LOCATION:**

Federal Home Loan Bank Board (FHLBB), Region 3 Office; copies held by the FMC. (FHLBB holds records for the Federal Maritime Commission under contract.)

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Varied payroll records, including, among other documents; time and attendance cards, payment vouchers, comprehensive listing of employees, health benefits records, requests for deduction, tax forms, W–2 forms, overtime requests, leave data, retirement records. Records are used by FMC and FHLBB employees to maintain adequate payroll information for FMC employees, and otherwise by the FMC and FHLBB employees who have a need for the record in the performance of their duties.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

31 U.S.C. generally.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the state, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Secretary at the above address.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with section 7 of the Privacy Act, Pub. L. 93–579.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper and microfilm.

**RETRIEVABILITY:**

Social Security Number.

**SAFEGUARDS:**

Stored in guarded building; released only to authorized personnel.

**RETENTION AND DISPOSAL:**

Disposition of records shall be in accordance with the FHLBB Records Maintenance and Disposition System.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Budget and Financial Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**NOTIFICATION PROCEDURE:**

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the

requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

Appendix—Federal Maritime Commission

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a "routine use," to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

A record from this system of records may be disclosed to officers and employees of a Federal agency for purposes of audit.

A record from this system of records may be disclosed as a "routine use" to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record from the system of records may be disclosed to officers and employees of the Federal Home Loan Bank Board in connection with administrative services provided to this agency under agreement with FHLBB.

FMC-22

SYSTEM NAME:

Investigatory Files-FMC.

SYSTEM LOCATION:

Bureau of Investigations, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records may be maintained on individuals involved in investigations and enforcement actions instituted by the Federal Maritime Commission. These individuals could include employees, owners, officers and directors of steamship companies, ocean freight forwarders, shippers, consignees, brokers and other entities associated with ocean transportation. Included would be individuals alleged to have violated the Shipping Act of 1984; the Intercoastal Shipping Act, 1933; the Shipping Act, 1916; and Public Law 89–777. Also included would be individual applicants routinely investigated in connection with licenses and certificates issued by the FMC pursuant to its statutory authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative and intelligence data; documented violations; warning letters and information regarding applications for certification and licensing, if appropriate; and, reports from investigative/law enforcement agencies.

Includes any information on alleged or proven violations of the statutes or parts thereof over which the FMC has jurisdiction.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Shipping Act of 1984, Intercoastal Shipping Act, 1933 (46 U.S.C. 801 and 843), and Shipping Act, 1916.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. In the event that a system of records maintained by the FMC to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an FMC decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system or records may be disclosed as a routine use to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of such joint committee.

6. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

7. A record in this system may be transferred, as a routine use, to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in paper form in filing cabinets and in a Lektriever, Series 80. Statistical data taken from record forms are maintained in a personal computer.

**RETRIEVABILITY:**

Information filed by case of subject file. Records pertaining to individuals are accessed by reference to the Bureau of Investigation's name-relationship index system.

**SAFEGUARDS:**

Records are located in locked metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. The Lektriever files are locked with a key and the key is secured in a locked file cabinet. Computer information is safeguarded with an access code. Files are maintained in buildings that have 24 hour security guards.

**RETENTION AND DISPOSAL:**

(a) Bureau of Investigations-Records are retained for 7 years after case is closed then transferred to the Federal Records Center. Records are destroyed 14 years after case is closed. (b) Field Offices-Records are destroyed 7 years after case is closed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Bureau of Investigations, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**NOTIFICATION PROCEDURE:**

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Individual shippers, carriers, freight forwarders, those authorized by the individual to furnish information, trade sources, investigative agencies, investigative personnel of the Bureau of Investigations and other sources of information.

## Appendix

Los Angeles District, U.S. Customs House Building, 300 S. Ferry Street, Room 2040A, P.O. Box 3184, Terminal Island Station, San Pedro, CA 90731
Miami District, 1001 North America Way, Room 115, Miami, FL 33132
New Orleans District, 600 South Maestri Place, Room 1035, P.O. Box 30550 New Orleans, LA 70190–0550
New York District, 6 World Trade Center, Suite 614, New York, NY 10048–0949
Puerto Rico District, U.S. District Courthouse, Federal Office Building, Room 762 Carlos Chardon Street, Hato Rey, PR 00918–2254
San Francisco District, 525 Market Street, 35th Floor, Suite 3510, San Francisco, CA 94105

**FMC–23**

**SYSTEM NAME:**

Parking Application-FMC.

**SYSTEM LOCATION:**

Office of Administrative Services, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and their carpool members desiring agency controlled parking.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Names; office locations and telephone numbers; home addresses; make, year, model, and license number of vehicles; carpool usage; handicap and special designations, signatures.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Federal Property Management Regulations § 101–20.111 and § 101–20.117.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Used by Agency employees responsible for allocation and control of parking spaces, and to assist in creating carpools.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders.

**RETRIEVABILITY:**

By applicant name or space assignment.

**SAFEGUARDS:**

Records are maintained in a file cabinet in a locked room, with 24 hour building security guards.

**RETENTION AND DISPOSAL:**

Records voided upon update or parking permit cancellation. Files destroyed after second overall reallocation of permits.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Administrative Services, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

**NOTIFICATION PROCEDURE:**

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Individuals to whom the records pertain.

FMC-24

SYSTEM NAME:

Informal Inquiries and Complaint File.

SYSTEM LOCATION:

Office of Informal Inquiries and Complaints, Federal Maritime Commission 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers complaining against business entities regulated by the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of complaints and correspondence developed in their resolution, complaint tracking logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12160, September 26, 1979.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in this system of records is used or may be used: 1. To determine whether a complaint can be resolved by staff in various bureaus and offices. 2. To determine whether a complaint can be resolved by a business entity regulated by the Commission. 3. To determine whether the complaint can be resolved by reference to another agency at the federal, state or local level. 4. To provide information to the Commission on developments or trends in the character of complaints which might suggest policy directions, proposed rules or programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are serially numbered and indexed by complainant and defendant.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained by the Federal Maritime Commission for one year, then transferred to the National Records Center. They are destroyed when four years old.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Informal Inquiries and Complaints, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Consumers who have filed complaints.

FMC-25

SYSTEM NAME:

Inspector General File.

SYSTEM LOCATION:

Office of the Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains final Inspector General reports along with supporting documentation, including working papers and follow-up communications and data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

44 U.S.C. 3101 et seq. and the regulations issued pursuant thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. By the Inspector General and authorized officials in conducting audits and investigations to identify and prevent waste, fraud and abuse in agency programs, management and operations, and to take appropriate actions. 2. To refer, where there is an indication of a violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether federal, state, or local, charged with enforcing or implementing the statute, rule regulation, or order issued pursuant thereto. 3. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or issuance of a license, grant, or other benefit, by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by investigation subject/title.

SAFEGUARDS:

Records are maintained in a locked safe.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of the Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Agency employees, reports and contracts from other agencies, and internal and external documents.

FMC-26

SYSTEM NAME:

Administrative Grievance File—FMC.

**SYSTEM LOCATION:**

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any employee of the Federal Maritime Commission including any former employee for whom a remedy can be provided (subject to the exclusions in 5 CFR 771.206(b)) who has filed a grievance with the agency (alleging that coercion, reprisal, or retaliation has been practiced against him or her).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Administrative Grievance Files contain all documents related to a particular grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 1302, 3301, 3302, 7301, E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 2964–2969 Comp., p. 306., 5 CFR 293.202.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Information in this system of records is used or may be used: 1. By Commission officials designated as grievance examiners for the purpose of adjudication, by the Director of EEO in the event of an investigation when the EEO complaint relates to the grievance, or for information concerning the outcome of the grievance. 2. By the Office of Personnel Management in the course of an investigation of a particular employee of the Commission, for statistical analysis purposes, or for program compliance checks. 3. By the Merit Systems Protection Board if necessitated by an appeal. 4. By the appropriate District Court of the United States to render a decision when the Commission has refused to release a current or former employee's record under the Freedom of Information Act. 5. To refer, where there is an indication, of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rules, regulation or order issued pursuant thereto. 6. To request from a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee. 7. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter. 8. By the employee or his/her designated representative in order to gather or provide information necessary to process the grievance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders.

**RETRIEVABILITY:**

Records are indexed alphabetically by name.

**SAFEGUARDS:**

Records are stored in locked file cabinets.

**RETENTION AND DISPOSAL:**

The Administrative Grievance File is maintained for three years after the decision is issued and is then shredded.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**NOTIFICATION PROCEDURE:**

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary, listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Information is supplied by the individual to whom the record pertains and/or by his or her representative, personnel specialists, grievance examiners, and any parties providing information bearing directly on the grievance.

**FMC–27**

**SYSTEM NAME:**

Staffing Plan—FMC.

**SYSTEM LOCATION:**

Office of the Managing Director, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All employees of the Commission.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The Staffing Plan file contains current and projected data regarding grade, step and potential promotions of employees of the Commission.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Information in this system of records is used, or may be used, by Commission management in the planning for the most efficient and most effective utilization of Commission human resources.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in computer memory and in hard copy.

**RETRIEVABILITY:**

Records are indexed by Commission unit, and by Month and Year and can also be retrieved by name of individual.

**SAFEGUARDS:**

Records are stored in lockable computers in locked offices.

**RETENTION AND DISPOSAL:**

The computer memory is revised monthly, thus erasing obsolete data. Revisions in hard copies are retained until revised, then shredded.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of the Managing Director, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary, listed at the above address. Requests may be in person or by mail, and shall meet the requirements set out in § 503.65 of Title 46, Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. The request shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46, Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Information is supplied by Commission Offices and Bureaus.

[FR Doc. 87-7420 Filed 4-2-87; 8:45 am]

BILLING CODE 6730-01-M

## Privacy Act of 1974; Proposed New Systems of Records

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed new systems of records.

**SUMMARY:** This notice proposes the establishment of two new systems of records relating to agency administrative grievance processing and staffing of Commission bureaus and offices. These systems contain information necessary for the Commission to process grievances filed by current and former employees and to better manage its human resources.

**DATES:** Comments must be submitted on or before May 4, 1987. If no comments are received the proposed systems will become effective on June 2, 1987.

**ADDRESSES:** Comments may be mailed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Polking, Secretary, (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** Notice is given that, pursuant to 5 U.S.C. 552 of the Privacy Act of 1974, the Commission proposes to adopt the following additional systems of records. Interested parties may participate by filing with the Secretary, Federal Maritime Commission, an original and 15 copies of their views and comments pertaining to the notice. All suggestions for changes in the text should be accompanied by drafts of the language thought necessary to accomplish the desired changes and should be accompanied by supportive statements and arguments. If no comments are received within the prescribed time the proposed system will become effective within 60 days of publication of this notice, unless an announcement to the contrary is published by the Commission. A new system report for these two proposed systems was filed on March 31, 1987.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

### FMC-26

**SYSTEM NAME:**

Administrative Grievance File—FMC.

**SYSTEM LOCATION:**

Office of Personnel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573-001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any employee of the Federal Maritime Commission including any former employee for whom a remedy can be provided (subject to the exclusions in 5 CFR 771.206(b)) who has filed a grievance with the agency (alleging that coercion, reprisal, or retaliation has been practiced against him or her).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Administrative Grievance Files contain all documents related to a particular grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 1302, 3301, 3302, 7301, E.O. 9830, 3 CFR 1943-1948 Comp., pp. 606-624; E.O. 11222, 3 CFR 2964-2969 Comp, p. 306., 5 CFR 293.202.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information in this system of records is used or may be used: 1. By Commission officials designated as grievance examiners for the purpose of adjudication, by the Director of EEO in the event of an investigation when the EEO complaint relates to the grievance, or for information concerning the outcome of the grievance, or for information concerning the outcome of the grievance. 2. By the Office of Personnel Management in the course of an investigation of a particular employee of the Commission, for statistical analysis purposes, or for program compliance checks. 3. By the Merit Systems Protection Board if necessitated by an appeal. 4. By the appropriate District Court of the United States to render a decision when the Commission has refused to release a current or former employee's record under the Freedom of Information Act. 5. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rules, regulation or order issued pursuant thereto. 6. To request from a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee. 7. To provide or disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter. 8. By the employee or his/her designated representative in order to gather or provide information necessary to process the grievance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders.

**RETRIEVABILITY:**

Records are indexed alphabetically by name.

**SAFEGUARDS:**

Records are stored in locked file cabinets.

**RETENTION AND DISPOSAL:**

The Administrative Grievance File is maintained for three years after the decision is issued and is then shredded.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Personnel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573-0001.

**NOTIFICATION PROCEDURE:**

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573-0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary, listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Information is supplied by the individual to whom the record pertains and/or by his or her representative, personnel specialists, grievance examiners, and any parties providing information bearing directly on the grievance.

**FMC-27**

**SYSTEM NAME:**

Staffing Plan—FMC.

**SYSTEM LOCATION:**

Office of the Managing Director, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All employees of the Commission.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The Staffing Plan file contains current and projected data regarding grade, step and potential promotions of employees of the Commission.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Information in this system of records is used, or may be used, by Commission management in the planning for the most efficient and most effective utilization of Commission human resources.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in computer memory and in hard copy.

**RETRIEVABILITY:**

Records are indexed by Commission unit, and by Month and Year and can also be retrieved by name of individual.

**SAFEGUARDS:**

Records are stored in lockable computers in locked offices.

**RETENTION AND DISPOSAL:**

The computer memory is revised monthly, thus erasing obsolete data. Revisions in hard copies are retained until revised, then shredded.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of the Managing Director, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

**RECORD ACCESS PROCEDURES:**

Requests for access to a record should be directed to the Secretary, listed at the above address. Requests may be in person or by mail, and shall meet the requirements set out in § 503.65 of Title 46, Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:**

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. The request shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46, Code of Federal Regulations.

**RECORD SOURCE CATEGORIES:**

Information is supplied by Commission Offices and Bureaus.

[FR Doc. 87–7421 Filed 4–2–87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

[Docket No. R–0582]

### Fees for Federal Reserve Bank; Check Collection Services

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board has approved a Federal Reserve Bank redeposit service for low-dollar cash items that are returned unpaid. Reserve Banks offering the service will, if their senders so instruct, intercept low-dollar cash items being returned for insufficient or uncollected funds, and redeposit the items for collection.

**EFFECTIVE DATE:** March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Anne M. DeBeer, Assistant Director (202/452–3879), or Gayle Thompson, Senior Analyst (202452–2934), Division of Federal Reserve Bank Operations; or, for the hearing impaired *only:* Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 4, 1986, the Board issued for public comment a proposal to allow Federal Reserve Banks to offer a redeposit service for low-dollar cash items that are being returned unpaid.[1] This proposal was initiated as a result of requests form the banking industry. Many collecting institutions routinely redeposit for collection low-dollar cash items returned to them for insufficient funds, because a large proportion of these items are paid on their second presentment. The collecting institutions find this practice to be simpler and less expensive than returning the items to their depositing customers.

In order to test the feasibility of accelerating the reclearing of certain low-dollar return items, the Federal Reserve Bank of St. Louis was authorized to conduct a pilot, which commenced in July, 1984, which was designed to determine what benefits could be provided to collecting institutions and the payments mechanism if Reserve Banks were to intercept and redeposit low-dollar return items on behalf of their senders.[2] In May, 1985, based on encouraging results from the St. Louis program, the Atlanta and Cleveland Reserve Banks were authorized to provide a similar service so that comparative data on the benefits of the return item reclearing service could be obtained.[3]

Results of the pilot program indicated that the reclearing service can benefit collecting institutions by reducing the costs associated with low-dollar return items and by accelerating collection times. Depositors of all sizes indicated cost savings due to the pilot, and large depositors in the St. Louis District were found to experience monthly savings of as much as $1,000. The pilot found that between 57 and 64 per cent of the redeposited checks were collected on the second presentment.

### Comments

A total of 225 public comments[4] were received on the Board's proposal to offer

[1] 51 FR 40516 (Nov. 7, 1986).

[2] A "sender" is an entity that sends items to a Federal Reserve Bank. A sender may be a depository institution, an international organization, a foreign correspondent, a branch or agency of a foreign bank, or another Reserve Bank. 12 CFR 210.2(k). As Reserve Banks will not be reclearing items for other Reserve Banks, they will be excluded from the meaning of the term "sender" when it is used in this notice.

[3] The dollar cutoff for the reclearing service is $100 in St. Louis; items for amounts over $100 are not eligible for the reclearing service. Atlanta and Cleveland allow the sender to choose its own dollar cutoff. Experience in Cleveland indicates that $100 is favored by the majority of senders. In Atlanta, however, one sender elected to use a dollar cutoff of $900.

[4] Comments were also received from nine Federal Reserve Banks. The Reserve Banks' comments are not included in the totals discussed in this notice.

a redeposit service. Of these, 176 commenters, or 78 per cent, were in favor of the proposal; 25 commenters, or 11 per cent, were opposed; and 24 (11 per cent) did not indicate whether they were for or against the proposal.

The commenters that favored the proposal indicated that the potential for reduced in-house costs and the potential for faster payment of the redeposited items were the primary factors in their decision to support the proposal. In addition, several commenters reported that it is their current practice to redeposit low-dollar items. The experience reported by six of these commenters comports with the pilot results which show that a large percentage of unpaid items are paid on the second presentment.

Those opposing the proposal did so primarily out of a concern that a sender could incur liability if it redeposits an item without providing prompt notice of the redeposit to its depositor. The Board notes, however, that senders need not incur such liability. The redeposit service will be an option offered by Reserve Banks; any sender concerned that potential liability may outweigh the benefits of using the service need not participate.

Several commenters suggested enhancements to the service as proposed by the Board. These enhancements include allowing the sender to select its own dollar cutoff for eligible returns; allowing the sender to specify eligible returns by account number rather than requiring a blanket redeposit policy; and allowing the sender to select the redeposit service only for items payable within the local area, but not for non-local items.

**Board Action**

In its policy statement, "The Federal Reserve in the Payment System," 70 Fed. Res. Bull. 707 (1984), the Board established a policy that before the Federal Reserve introduces a new service or a major service enhancement, all of the following criteria must be met:

(1) The Federal Reserve must expect to achieve full recovery of costs over the long run.

(2) The Federal Reserve must expect its provision of the service to yield a clear public benefit, including, for example . . . improving the efficiency of the payment mechanism or reducing the use of real resources. . . .

(3) The service should be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.

70 Fed. Res. Bull. at 710.

Based on the comments and the continuing evidence from the pilot programs, the Board believes that the proposed low-dollar reclearing service meets all of these criteria: (1) Reserve Banks will recover all costs associated with the service. (2) The service will yield clear public benefits by improving the efficiency of the return item process and reducing the amount of real resources expended by collecting institutions in the return item process. (3) For cash items that are collected through the Federal Reserve, Reserve Banks alone can provide the service to their senders. Thus, while other collecting institutions can and do provide reclearing services for institutions that send items to them for collection, the Federal Reserve must provide this service for it to be available to institutions that choose to collect some or all of their cash items through a Reserve Bank.

Accordingly, the Board has approved the proposal to allow all Federal Reserve Banks to offer as an option to their senders a basic redeposit service for low-dollar cash items being returned unpaid for insufficient or uncollected funds. Reserve Banks offering the service will use a two-part fee structure consisting of a fixed daily fee for reclearing items up to a number of items specified by the Reserve Bank and a per item fee for any additional volume.

The Board has also approved enhancements to the basic service, including permitting the sender to choose the dollar cut-off for return items to be redeposited, allowing the sender to specify eligible return items by account number rather than requiring a blanket redeposit policy, and permitting the sender to select the redeposit service only for items payable within the local area. Reserve Bank proposals to offer these and other service enhancements will be approved by the Director of the Division of Federal Reserve Bank Operations under delegated authority from the Board.

Board of Governors of the Federal Reserve System, March 30, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-7380 Filed 4-2-87; 8:45 am]

BILLING CODE 6210-01-M

---

## Austin County Bankshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 1987.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Austin County Bankshares, Inc.*, Bellville, Texas; to engage de novo in the activity of making, acquiring and/or servicing loans for itself or for others of the type made by a mortgage or consumer finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, March 30, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7381 Filed 4-2-87; 8:45 am]

BILLING CODE 6210-01-M

---

## Norwood Associates II et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval

under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 23, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norwood Associates II,* Hackensack, New Jersey; to become a bank holding company by acquiring 30.3 percent of the voting shares of Midland Bancorporation, Paramus, New Jersey, and thereby indirectly acquire Midland Bank & Trust Company, Paramus, New Jersey.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *American Bancorporation,* Wheeling, West Virginia; to acquire 100 percent of the voting shares of Citizens National Bank Flushing-St. Clairsville, St. Clairsville, Ohio.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SouthTrust Corporation,* Birmingham, Alabama; to acquire 80 percent of the voting shares of Bank of Pensacola, Pensacola, Florida.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Americorp,* Ventura, California; to become a bank holding company by acquiring 100 percent of the voting shares of American Commercial Bank, Ventura, California.

Board of Governors of the Federal Reserve System, March 30, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7382 Filed 4-2-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 20, 1987.

**Public Health Service (PHS)**

(Call Reports Clearance Officer on 202-245-2100 for copies of Package)

*Food and Drug Administration*

Subject: Advisory Opinions—21 CFR 10.85 Extension—(0910-0193)
Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Subject: New Animal Drug Requirements for Medicated Free-Choice Feeds 21-CFR-519.455—Revision—(0910-0205)
Respondents: Businesses or other for-profit; Small businesses or organizations

Subject: (Petition for) Administrative Stay of Action—Revision—(0910-0194)
Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

Subject: Notice of Participation—Revision—(0910-0191)

*Health Resources Services Administration*

Subject: Federal Set-Aside Program of the Maternal and Child Health Services Block Grant Program—Reinstatement—(0915-0050)
Respondents: State or local governments; Non-profit institutions
OMB Desk Officer: Shannah Koss

**Family Support Administration (FSA)**

(Call Reports Clearance Officer on 202-245-0652 for copies of package)
Subject: Model State Plan for the Low Income Energy Assistance Program—Reinstatement—(0970-0022)
Respondents: State or local governments
OMB Desk Officer: Judy Egan

**Social Security Administration**

(Call Reports Clearance Officer on 301-594-5706 for copies of package)
Subject: Supplemental Security Income—Quality Review Case Analysis—Revision—(0960-0135)
Respondents: Individuals or households

Subject: Report of Student Beneficiary at End of School Year—End of School Report of Student Beneficiary Outside the United States—Extension—(0960-0089)
Respondents: Individuals or households

Subject: Record of SSI Inquiry—Extension—(0960-0140)
Respondents: Individuals or households

Subject: Annual Earnings Test Direct-Mail Follow-up Program Notices—Revision—(0960-0369)
Respondents: Individuals or households

**Health Care Financing Administration**

(Call Reports Clearance Officer on 301-594-8650 for copies of package)
Subject: Questions to Determine Who Paid for Supplier Services Furnished to Hosptial Inpatients (Intermediary Section 3672.31 Carrier Manual Section 4168)—NEW—HCFA-R-98
Respondents: Businesses or other for-profit

Subject: Medicaid Eligibility Quality Control Information Collection Requirements in 42 CFR 431.804(d)(3) and (4)—Revision—(0938-0344)-HCFA-R-37
Respondents: State or local governments
OMB Desk Officer: Allison Herron

**Office of The Secretary**

(Call Reports Clearance Officer on 202-245-0509 for copies of package)
Subject: Self-evaluation and Recordkeeping required by the Regulation Implementing Section 504 of the Rehabilitation Act of 1973 (45 CFR 84.6 (c)—Extension—(0990-0124)
Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Judy Egan

**Office of Human Development Services**

(Call Reports Clearance Officer on 202-472-4415 for copies of package)
Subject: Head Start Program Information—Revision—(0980-0017)

Respondents: Head Start Grantees
OMB Desk Officer: Judy Egan

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS/FDA: 202–245–2100
FSA: 202–245–0652
HCFA: 301–594–8650
OS: 202–245–0509
OHDS: 202–472–4415
SSA: 301–594–5706

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC. 20503

Attn: (name of OMB Desk Officer)

Dated: March 30, 1987.

**James F. Trickett,**

*Director, Office of Administrative and Management Services.*

[FR Doc. 87–7397 Filed 4–2–87; 8:45 am]

BILLING CODE 4150–04–M

---

## Public Health Service; Protection and Advocacy for Mentally Ill Individuals; Delegation of Authority

I hereby delegate to the Assistant Secretary for Health all authorities vested in me under Title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, as amended, with the exception of the authorities to issue regulations and submit reports to Congress. The authorities delegated herein may be redelegated.

This delegation is effective upon date of signature.

Dated: March 19, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87–7398 Filed 4–2–87; 8:45 am]

BILLING CODE 4160–20–M

---

## Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Notice is given that Part S being revised. Specifically Chapter S (as last amended at 49 FR 4989 of February 9, 1984) and Chapter SA (as last amended at 50 FR 35608 of September 3, 1985) are amended and Chapters S1, S2, S3, S4, and S5 are issued to reflect the designation of the Deputy Commissioners for Programs, Operations, Systems, Policy and External Affairs, and Management and Assessment as line officials responsible for directing major organizational components. Notice is also given that the Office of Strategic Planning is being established. Other function transfers are reflected. The following Chapters replace Part S in its entirety.

### Chapter S—Social Security Administration

S.00 Mission
S.10 Organization
S.20 Functions
S.30 Order of Succession

*Section S.00 The Social Security Administration—(Mission)*

The Social Security Administration in the Nation's primary income security Agency. It administers the Federal retirement, survivors and disability insurance programs, as well as the program of supplemental security income (SSI) for the aged, blind and disabled, and performs certain functions with respect to the black lung benefits program. SSA also directs the aid to the aged, blind and disabled in Guam, Puerto Rico and the Virgin Islands.

*Section S.10 The Social Security Administration—(Organization)*

The Social Security Administration, under the supervision and direction of the Commissioner of Social Security (the Commissioner), includes:

A. The Office of the Commissioner (SA).

B. The Office of the Deputy Commissioner, Management and Assessment (S1).

C. The Office of the Deputy Commissioner, Operations (S2).

D. The Office of the Deputy Commissioner, Programs (S3).

E. The Office of the Deputy Commissioner, Systems (S4).

F. The Office of the Deputy Commissioner, Policy and External Affairs (S5).

*Section S.20 The Social Security Administration—(Functions)*

The Social Security Administration performs all functions necessary to accomplish the Agency's mission. These are specified in more detail in the sections which follow Section S.30.

*Section S.30 The Social Security Administration—(Order of Succession)*

A. 1. In the event of the absence of the Commissioner, one of the Deputy Commissioners shall be designated by the Commissioner to serve as Acting Commissioner.

2. In the event of the disability of the Commissioner or a vacancy in the position, the Secretary of Health and Human Services (the Secretary) shall designate one of the Deputy Commissioners to serve as Acting Commissioner.

3. In the event of the absence of the Commissioner and the Deputy Commissioners, an SSA official designated by the Commissioner shall serve as Acting Commissioner.

4. Should the position of the Commissioner and the Deputy Commissioner positions become vacant, or these officials become disabled, an official designated by the Secretary shall serve as Acting Commissioner.

B. 1. Where an Associate Commissioner has two Deputies, one of the Deputies shall be designated by the Associate Commissioner to serve as Acting Associate Commissioner during his/her absence. In the event of a disability of the Associate Commissioner, the Commissioner shall designate one of the Deputy Associate Commissioners to serve as Acting Associate Commissioner.

2. In the event of the absence of both an Associate Commissioner and his/her Deputy or Deputies, an executive designated by the Associate Commissioner shall serve as Acting Associate Commissioner.

3. Should an Associate Commissioner or his/her Deputy Associate Commissioner become disabled, an SSA official designated by the Commissioner shall serve as Acting Associate Commissioner.

C. 1. During the absence or disability of a Regional Commissioner, the Deputy Regional Commissioner shall serve as Acting Regional Commissioner.

2. In the event of the absence of both a Regional Commissioner and his/her Deputy, an SSA regional office official designated by the particular Regional Commissioner shall serve as Acting Regional Commissioner.

3. Should both the Regional Commissioner and Deputy Regional Commissioner become disabled, an SSA official designated by the Commissioner shall serve as Acting Regional Commissioner.

### Chapter SA—Office of the Commissioner

SA.00 Mission
SA.10 Organization
SA.20 Functions

*Section SA.00 The Office of the Commissioner—(Mission)*

The Office of the Commissioner (OC) is directly responsible to the Secretary for all programs administered by SSA; for State-administerd programs directed by SSA; and for certain functions with respect to the black lung benefits program. It provides executive leadership to SAA. The Office is responsible for development of policy; administrative and program direction; program interpretation and evaluation; research oriented to the study of the problems of economic insecurity in American society; and development of recommendations on methods of advancing social and economic security through social insurance and related programs.

*Section SA.10 The Office of the Commissioner—(Organization)*

The Office of the Commissioner, under the leadership of the Commissioner of Social Security, includes:

A. The Commissioner of Social Security (SA).

B. The Immediate Office of the Commissioner (SA), which includes:

1. The Executive Secretariat (SAX).

2. The Office of Strategic Planning (SAJ).

*Section SA.20 The Office of the Commissioner—(Functions)*

A. The Commissioner of Social Security (SA) provides executive leadership to SSA and exercises general supervision over its major components.

B. The Immediate Office of the Commissioner (SA) provides the Commissioner with staff assistance on the full range of his/her responsibilities.

1. The Executive Secretariat (SAX).

a. Coordinates and provides liaison for internal communication and correspondence control for OC.

b. Monitors administrative and program policy development and policy implementation activities, and prepares periodic status reports.

c. Ensures that issues requiring the Commissioner's attention are developed timely and coordinated with SSA and HHS components having an interest in the matter; designs and implements procedures for proper coordination and followthrough on specific issues.

d. Communicates the objectives, priorities and standards of OC to individuals involved in the preparation of correspondence and memoranda, and ensures that communications signed or approved by OC are consistent with these standards and objectives.

e. Reviews and analyzes memoranda and other communications directed to OC for adequacy of coordination and clearances, clearness and conciseness of presentation, timeliness, necessary followthrough and other elements of completed staff work.

f. Works with operating components and staff offices to improve the quality of decision papers and correspondence directed to the Office of the Secretary.

2. The Office of Strategic Planning (SAJ).

a. Establishes and implements a framework for the effective planning, evaluation and management of all of SSA's resources, projects and activities in accordance with applicable law and regulation.

b. Develops and promulgates planning and evaluation policies, procedures and methodologies for the Agency.

c. Develops the Agency's operational, tactical and strategic planning documents; monitors implementation of approved plans, and conducts or directs special cross-cutting projects.

**Chapter S1—Office of the Deputy Commissioner, Management and Assessment**

S1.00 Mission
S1.10 Organization
S1.20 Functions

*Section S1.00 The Office of the Deputy Commissioner, Management and Assessment—(Mission)*

The Office of the Deputy Commissioner, Management and Assessment (ODCMA) directs the administration of the Agency management programs including: budget and financial management, human resources, civil rights (CR) and equal opportunity (EO), training, grants and contracts, management analysis and materiel resources. It directs the evaluation of program operations quality and the management of Agency quality assurance and security programs.

*Section S1.10 The Office of the Deputy Commissioner, Management and Assessment—(Organization)*

The Office of the Deputy Commissioner, Management and Assessment, under the leadership of the Deputy Commissioner, Management and Assessment, includes:

A. The Deputy Commissioner, Management and Assessment (S1).

B. The Immediate Office of the Deputy Commissioner, Management and Assessment (SIA).

C. The Office of Management, Budget and Personnel (S1M).

D. The Office of Assessment (S1L).

*Section S1.20 The Office of the Deputy Commissioner, Management and Assessment—(Functions)*

A. The Deputy Commissioner, Management and Assessment (S1) is directly responsible to the Commissioner for carrying out the ODCMA mission and providing general supervision to the major components of ODCMA.

B. The Immediate Office of the Deputy Commissioner, Management and Assessment (S1A) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

C. The Office of Management, Budget and Personnel (S1M) provides overall management of SSA resources. The Office develops policy and guidelines for the exercise of SSA-wide management responsibilities, and evaluates and appraises the manner in which those responsibilities are carried out. It administers the following SSA-wide management programs:

1. Budget and financial management.

2. The full range of human resources programs.

3. Training and employee development.

4. Management analysis and workforce planning.

5. Civil rights and equal opportunity.

6. Materiel and general management support services.

7. Contracts and grants.

D. The Office of Assessment (S1L) reviews, evaluates and assesses the integrity and quality of the administration of Social Security programs and makes recommendations for corrective actions. It evaluates the quality of SSS operations and manages SSA's quality assurance programs, and SSA's audit and security programs. It also monitors and assesses SSA's compliance with statutes governing access to information and confidentiality of records, and represents SSA with external auditors.

**Chapter S2—Office of the Deputy Commissioner, Operations**

S2.00 Mission
S2.10 Organization
S2.20 Functions

*Section S2.00 The Office of the Deputy Commissioner, Operations*—(Mission).

The Office of the Deputy Commissioner, Operations (ODCO) directs and manages central office and geographically dispersed operations installations. It oversees regional operating program, technical assessment and program management activities. It directs studies and actions to improve

the operational effectiveness and efficiency of its components.

*Section S2.10 The Office of the Deputy Commissioner, Operations*—(Organization).

The Office of the Deputy Commissioner, Operations, under the leadership of the Deputy Commissioner, Operations, includes:

A. The Deputy Commissioner, Operations (S2).

B. The Immediate Office of the Deputy Commissioner, Operations (S2A).

C. The Field Liaison and Support Staff (S2C).

D. The Office of Central Operations (S2P).

E. The Office of the Regional Commissioner (S2D1–S2DX).

*Section S2.20 The Office of the Deputy Commissioner, Operations*—(Functions)

A. The Deputy Commissioner, Operations (S2) is directly responsible to the Commissioner for carrying out the ODCO mission and providing general supervision to the major components of ODCO.

B. The Immediate Office of the Deputy Commissioner, Operations (S2A) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

C. The Field Liaison and Support Staff (S2C).

1. Advises the Deputy Commissioner on the full range of issues pertaining to headquarters' support to the SSA field organization.

2. Ensures effective ongoing liaison between SSA headquarters and the SSA field organization.

3. Ensures that the concerns of, and issues raised by, the field organization on proposed legislation, operations, policy, procedures and systems matters are addressed by the appropriate headquarters' components.

4. Coordinates with field management in the identification of field components' systems needs, and in the installation and evaluation of systems applications in all SSA programs which affect field office operating procedures and practices.

5. Plans and coordinates a continuing program of operational analysis throughout field operations and the design and implementation of studies to measure the overall effectiveness and efficiency of field operations processes and identification and resolution of operating problems and issues.

D. The Office of Central Operations (S2P) coordinates SSA's central office operating components and geographically dispersed operations installations not under the line authority of the Regional Commissioners. The Office directs headquarters' components responsible for central records operations; the seven SSA program service centers; three data operations centers; and central disability operations. It plans and carries out comprehensive analyses and studies, and directs the implementation of actions to improve operational effectiveness and efficiency.

E. The Office of the Regional Commissioner (S2D1–S2DX) serves as the principal SSA component at the regional level and assures effective SSA interaction with HHS regional offices; other Federal agencies in the regions; State Welfare Agencies; State Disability Determination Services; and other regional and local organizations. The Office provides regional program leadership and technical direction for the retirement, survivors and disability insurance programs; the black lung benefits program; the SSI program and the field assessment program. It issues regional operating policy and procedures for these programs. It directs a regionwide network of district offices, branch offices and teleservice centers.

**Chapter S3—Office of the Deputy Commissioner, Programs**

S3.00 Mission
S3.10 Organization
S3.20 Functions

*Section S3.00 The Office of the Deputy Commissioner, Programs—(Mission)*

The Office of the Deputy Commissioner, Programs (ODCP) directs and manages the planning, development, issuance and evaluation of the program and operational policies, standards and instructions for the retirement and survivors insurance, disability and SSI programs. Directs the development and conduct of legislative planning for the Agency, and the formulation and issuance of program objectives and policies across program lines. Oversees Agency hearings and appeals activities. Directs the development of actuarial estimates and analyses pertaining to SSA-administered programs and projected changes in those programs.

*Section S3.10 The Office of the Deputy Commissioner, Programs—(Organization)*

The Office of the Deputy Commissioner, Programs, under the leadership of the Deputy Commissioner, Programs, includes:

A. The Deputy Commissioner, Programs (S3).

B. The Immediate Office of the Deputy Commissioner, Programs (S3A).

C. The Office of Legislative and Regulatory Policy (S3H).

D. The Office of Retirement and Survivors Insurance (S3B).

E. The Office of Disability (S3C).

F. The Office of Supplemental Security Income (S3E).

G. The Office of Actuary (S3N).

H. The Office of Hearings and Appeals (S3G).

*Section S3.20 The Office of the Deputy Commissioner, Programs—(Functions)*

A. The Deputy Commissioner, Programs (S3) is directly responsible to the Commissioner for carrying out the ODCP mission and providing general supervision to the major components of ODCP.

B. The Immediate Office of the Deputy Commissioner, Programs (S3A) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

C. The Office of Legislative and Regulatory Policy (S3H) develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in SSA. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs, and analyzes and develops recommendations on related proposals. It provides advisory service to SSA and HHS officials on legislation of interest to SSA pending in Congress. It also provides legislative specification drafting service.

D. The Office of Retirement and Survivors Insurance (S3B) develops, corrdinates, evaluates the program and issues Retirement and Survivors Insurance (RSI) operational policy and procedures. It conducts studies of the current impact and future needs of the RSI program. It ensures that interrelated policy areas are coordinated. The Office develops and issues program regulations and participates in legislative planning by identifying legislature needs and developing legislative proposals.

E. The Office of Disability (S3C) develops, coordinates, evaluates the program and issues the operational policies, standards and instructions for the SSA-administered disablity programs. Develops and issues policies and guidelines for use by State, Federal or private contractor providers which implement the disablity provisions of the Social Security Act as amended. The Office plans and directs a continuing program performance evaluation, and an economic and social survey program to evaluate the current impact and future needs of the disability programs. It ensures that interrelated policy areas are coordinated.

BEST COPY AVAILABLE

F. The Office of Supplemental Security Income (S3E) develops, coordinates, evaluates the program and issues the operational policies, standards and instructions for the SSI program. Develops actuarial and cost estimates for SSI. Develops and issues policies and guidelines for use by State and Federal organizations which implement the SSI provisions of the Social Security Act as amended. Develops agreements with the States that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps, energy assistance and fiscal reporting processes. The Office plans and directs a continuing performance evaluation, and an economic and social survey program to evaluate the current impact and future needs of the SSI program.

G. The Office of the Actuary (S3N) develops actuarial estimates and analyses pertaining to SSA-administered retirement, survivors and disability programs and to projected changes in those programs. It conducts studies of program financing, performs actuarial and demographic research on social insurance and related program issues, and projects future workloads.

H. The Office of Hearings and Appeals (S3G) holds hearings and issues decisions as part of the SSA appeals process. It directs a nationwide field organization which conducts impartial hearings and makes decisions on appealed determinations involving retirement, survivors, disability, health insurance, black lung and SSI benefits. The Office also performs central office reviews of decisions.

**Chapter S4—Office of the Deputy Commissioner, Systems**

S4.00 Mission
S4.10 Organization
S4.20 Functions

*Section S4.00 The Office of the Deputy Commissioner, Systems—(Mission).*

The Office of the Deputy Commissioner, Systems (ODCS) directs the SSA administrative, management and statistical systems development and operation. Oversees the planning, operation and maintenance of SSA computer and telecommunications systems. Directs the conduct of comprehensive integration and strategic planning processes, and the coordination of a comprehensive systems configuration management program and data base management program. Oversees software and hardware acquisition procedures, policies and activities. Directs the development of organizational information requirements and functional specifications for new and modified systems, and oversees development, validation and implementation phases.

*Section S4.10 The Office of the Deputy Commissioner, Systems—(Organization).*

The Office of the Deputy Commissioner, Systems, under the leadership of the Deputy Commissioner, Systems, includes:

A. The Deputy Commissioner, Systems (S4).

B. The Immediate Office of the Deputy Commissioner, Systems (S4A).

C. The Office of Information Systems (S4Y).

D. The Office of Strategic Planning and Integration (S4Q).

E. The Office of System Integration (S4U).

F. The Office of System Operations (S4B).

1. The Office of Computer Processing Operations (S4BP).

2. The Office of System Support and Planning (S4BL).

G. The Office of System Requirements (S4T).

*Section S4.20 The Office of the Deputy Commissioner, Systems—(Functions).*

A. The Deputy Commissioner, Systems (S4) is directly responsible to the Commissioner for carrying out the ODCS mission and providing general supervision to the major components of ODCS.

B. The Immediate Office of the Deputy Commissioner, Systems (S4A) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

C. The Office of Information Systems (S4Y) directs, develops and coordinates SSA-wide administrative, management and statistical information systems throughout the systems life cycle. This includes the development and coordination of information requirements, systems specifications, software development and implementation of new systems and modifications to existing systems, and the development of procedures and instructions to support user needs.

D. The Office of Strategic Planning and Integration (S4Q) directs and conducts SSA's comprehensive integration and strategic planning processes. It provides management leadership and direction to SSA systems activities in the areas of software engineering technology and systems engineering management. The Office develops SSA's Information Technology Systems budget, prepares the SSA systems detailed budget submission, and develops and maintains systems-wide procurement, contract and resource monitoring and tracking systems. It also develops and monitors systems security policy for the SSA systems organization.

E. The Office of System Integration (S4U) directs and coordinates a comprehensive SSA systems configuration management program. The Office directs the design and development of software improvement projects. It directs SSA's data base administration/management program. It is responsible for a comprehensive software engineering program, and develops and oversees the implementation of related standards, methods and procedures. The Office directs and coordinates the development of Automatic Data Processing (ADP) systems in support of SSA's social insurance and income maintenance programs.

F. The Office of System Operations (S4B) directs, manages and coordinates the planning, acquisition, implementation, operation and maintenance of SSA's computer and telecommunications systems operations. It directs and coordinates the transition, implementation and operation of current/ongoing operating systems software and other operating systems support software. It manages several computer and telecommunications operations complexes, which process SSA's programmatic support, administrative, management information and statistical application systems. It directs and coordinates the activities associated with the planning, management, acquisition, procurement and renewal of ADP equipment, software and technical services to maintain operational systems and to support systems improvement and modernization activities.

1. The Office of Computer Processing Operations (S4BP).

a. Plans and directs data processing operations in support of social insurance and income maintenance programs, as well as statistical and administrative information systems.

b. Operates SSA's nationwide data communications systems.

c. Manages a complex data processing facility of computers and related equipment which process programmatic and management information data.

d. Designs, develops, implements and

provides operating control systems software and operational standards for SSA's programmatic and management information ADP equipment.

e. Plans, directs and controls the integration, testing and, in conjunction with the Office of System Integration, the Office of System Requirements and the Office of Information Systems, the production release of revised hardware and systems software.

2. The Office of System Support and Planning (S4BL).

a. Plans, directs and provides a variety of ancillary support services related to SSA's data processing facility.

b. Evaluates and monitors computer performance and resource utilization and acts as the Office of System Operations (OSO) focal point for capacity issues.

c. Establishes systems and physical security standards.

d. Coordinates and directs the development of technical workpower, equipment and other costs for the SSA budget process.

e. Develops an ADP Capacity Plan to perform capacity allocation, monitors its usage and determines future requirements.

f. Participates in the development of policies and procedures for the acquisition of ADP computer and telecommunications equipment, software and services.

G. The Office of System Requirements (S4T) directs, develops and coordinates organizational information requirements and functional specifications for new systems and modifications to existing systems in direct support of SSA programs. The Office directs validation of systems operations against user-defined requirements and performance criteria, and approves the resulting system for operational acceptance. It directs the development of procedures and instructions to support user needs in effective implementation of all systems. It develops security standards and ensures implementation of the standards.

**Chapter S5—Office of the Deputy Commissioner, Policy and External Affairs**

S5.00 Mission
S5.10 Organization
S5.20 Functions

*Section S5.00 The Office of the Deputy Commissioner, Policy and External Affairs—(Mission):* The Office of the Deputy Commissioner, Policy and External Affairs (ODCPEA) directs and manages an external affairs program that effectively promotes and furthers the initiatives of SSA and public understanding of the Social Security programs. Through the Press Office, directs all SSA press activities, and initiates and maintains contacts with members of the working press. Directs the development of information in response to requests from newspapers, radio and television news departments, news and general magazines and the specialized press. Directs the formulation of overall basic policy for SSA.

*Section S5.10 The Office of the Deputy Commissioner, Policy and External Affairs—(Organization):* The Office of the Deputy Commissioner, Policy and External Affairs, under the leadership of the Deputy Commissioner, includes:

A. The Deputy Commissioner, Policy and External Affairs (S5).

B. The Immediate Officeof the Deputy Commissioner, Policy and External Affairs (S5A).

C. The Office of Governmental Affairs (S5E).

D. The Office of Policy (S5R).

*Section S5.20 The Office of the Deputy Commissioner, Policy and External Affairs—(Functions).*

A. The Deputy Commissioner, Policy and External Affairs (S5) is directly responsible to the Commissioner for carrying out the ODCPEA mission and providing general supervision to the Offices of Governmental Affairs and Policy.

B. The Immediate Office of the Deputy Commissioner, Policy and External Affairs (S5A) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

C. The Office of Governmental Affairs (5SE) plans, directs and implements a program designed to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the news media, the Congress, other Federal agencies and State and local governments to secure understanding, cooperation and acceptance of SSA programs and to provide avenues of public participation in the decisionmaking processes of SSA. The Office plans, coordinates, implements and evaluates SSA's nationwide public affairs program. The Office develops programs and materials to assure public knowledge and understanding of protections, rights and responsibilities under programs administered by SSA. It provides technical direction to SSA field offices in the management of their public affairs activities. It publishes a variety of informational material to promote effective information exchange with SSA employees.

D. The Office of Policy (S5R) plans and analyzes programs directly administered by the Agency. It coordinates the development of policies across program lines to ensure consistency in implementation. The Office broadly formulates, issues and interprets programs objectives and policy. It conducts the broad research and statistical program of the Agency. The Office develops, issues and reviews all program regulations for consistency. It also serves as the focal point for international policy matters.

Dated: March 26, 1987.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

[FR Doc. 87-7399 Filed 4-2-87; 8:45 am]

BILLING CODE 4190-11-M

## Food and Drug Administration

**[Docket No. 85D-0242 et al.]**

## Regulations Governing the Review and Approval of New Drug and Antibiotic Applications; Availability of Supplementary Guidelines

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of 12 guidelines to supplement the regulations that govern the review and approval of new drug and antibiotic marketing applications. The guidelines are intended to assist applicants in complying with the requirements of the regulations. The guidelines were prepared by FDA's Center for Drugs and Biologics.

**DATE:** These guidelines go into effect April 3, 1987.

**ADDRESSES:** Until July 2, 1987, requests for copies of the guidelines should be made in writing to the Division of Administrative Management (HFN-60), Center for Drugs and Biologics, Food and Drug Administration, Rm. 13B-21, 5600 Fishers Lane, Rockville, MD 20857. After July 2, 1987, requests should be made in writing to the Legislative, Consumer, and Professional Relations Branch (HFN-365), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Requests should identify the desired guidelines by their names and docket numbers.

Written comments regarding the guidelines may be submitted to the

Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Comments should identify the guidelines by their title and docket number.

**FOR FURTHER INFORMATION CONTACT:** Steven H. Unger, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 22, 1985 (50 FR 7452), FDA revised the regulations governing the approval for marketing of new drugs and antibiotic drugs for human use. This rule, also known as the NDA Rewrite, was intended to: (1) Assist drug manufacturers in preparing and submitting higher quality applications and (2) enable FDA to review applications more efficiently while, at the same time, preserving the high level of public health protection.

In the NDA rewrite regulations, FDA stated its intent to supplement the regulations with detailed guidelines to provide applicants with information on application format and other provisions of the regulations. In this notice, FDA is announcing the availability of 12 of these guidelines.

All of the guidelines that are being made available were previously issued in draft form. Comments received on the drafts were carefully reviewed and considered in the development of the final guidelines. The comments and the guidelines are available for review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, under the docket numbers listed below for each guideline.

The following 12 guidelines are now being made available:

1. "Guideline for the Format and Content of the Summary for New Drug and Antibiotic Applications" (Docket No. 85D–0247);
2. "Guideline for the Format and Content of the Chemistry, Manufacturing, and Controls Section of an Application" (Docket No. 85D–0243);
3. "Guideline for the Format and Content of the Nonclinical/Pharmacology/Toxicology Section of an Application" (Docket No. 85D–0244);
4. "Guideline for the Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application" (Docket No. 85D–0275);
5. "Guideline for the Format and Content of the Microbiology Section of an Application" (Docket No.. 85D–0245);
6. "Submission in Microfiche of the Archival Copy of an Application" (Docket No. 85D–0250);
7. "Guideline on Formatting, Assembling, and Submitting New Drug and Antibiotic Applications" (Docket No. 85D–0248);
8. "Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics" (Docket No. 84D–0015);
9. "Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics" (Docket No. 84D–0115);
10. "Guideline for Submitting Samples and Analytic Data for Methods Validation" (Docket No. 84D–0134);
11. "Guideline for Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Substances" (Docket No. 85D–0108);
12. "Guideline for Submitting Documentation for the Manufacture of and Controls for Drug Products" (Docket No. 85D–0078).

The guidelines on the presentation and format of the application, the first five guidelines listed, suggest appropriate ways to organize and present the required data and information in the application summary and in the technical sections of the application. Soon, FDA will make a guideline available suggesting ways to present information in the clinical and statistical sections of a marketing application. The availability of this guideline will also be announced in a notice to be published in the **Federal Register**.

The guideline on "Submission in Microfiche of the Archival Copy of an Application" recommends procedures and specifications to be followed when an applicant chooses to submit the archival copy of the marketing application in microfiche.

The "Guideline on Formatting, Assembling, and Submitting New Drug and Antibiotic Applications" provides general information on (1) assembling the archival and review copies of an application, (2) organizing multivolume submissions, and (3) submitting applications and correspondence to appropriate agency offices.

The last five guidelines listed provide detailed recommendations on how to meet the documentation requirements for the chemistry and technical section of an application. These guidelines also address documentation requirements for investigational new drug applications (IND's).

Section 10.90(b) provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline can be assured that his or her conduct will be acceptable to the agency. A person may choose to use alternative procedures even though they are not provided for in the guideline. A person who chooses to use an alternate procedure is encouraged to discuss the matter with the agency in order to prevent an expenditure of money and effort to generate an application that the agency may later determine to be unacceptable.

These guidelines become effective April 3, 1987. Interested persons may submit written comments on the guidelines to the Dockets Management Branch (address above). Comments will be considered in determining whether any future revisions to the guidelines are warranted. Comments should be in two copies except that individuals may submit single copies. All comments should be identified with the title of the guideline and the guideline's docket number. The guidelines and all comments received on them may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 20, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87–7069 Filed 4–2–87; 8:45 am]

BILLING CODE 4160–01–M

---

**[Docket No. 87F–0081]**

## Ajay Chemicals, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Ajay Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of calcium selenite in addition to sodium selenite and sodium selenate as a source of nutritional selenium in animal feeds.

**FOR FURTHER INFORMATION CONTACT:** Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2205) has been filed by Ajay Chemicals, Inc., 1400 Industry Rd. P.O. Box 127, Powder Springs, GA 30073–0127. The petition Proposes that § 573.920 *Selenium* (21 CFR 573.920) be amended to include the use of calcium selenite in addition to sodium selenite and sodium selenate as a source of nutritional selenium in animal feeds.

The potential environmental impact of this action is being reviewed. If the

agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 30, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-7324 Filed 4-2-87; 8:45 am]

BILLING CODE 4160-01-M

---

## Health Resources and Services Administration

### Public Health Service; Availability of Funds for Community and Migrant Health Activities

**AGENCY:** Health Resources and Services Administration.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is announcing, for Fiscal Year (FY) 1987: (1) The availability of approximately $400 million for community health (CH) activities and approximately $45.4 million for migrant health (MH) activities funded under sections 330 and 329 of the Public Health Service Act (42 U.S.C. 254c and 254b) respectively; (2) within the aforementioned section 330 funding, the availability of: (a) Up to $15 million, targeted to high need areas, for new starts and new expansion activities; (b) up to $3 million for grants to provide technical and other non-financial assistance under section 330(f)(1) of the Act, and (c) $2 million for the development of substance abuse activities and linkages for the provision of substance abuse prevention, treatment, referral and/or followup; (3) in addition to the aforementioned funding, approximately $17 million in National Health Service Corps (NHSC) funds will be available to support the costs associated with NHSC assignees whose service have been approved as expansions to community and migrant health center staffing (i.e., other than replacements); and (4) the criteria that will be used in evaluating applications in FY 1987.

**DATE:** With the exception of 330(f)(1) applications, continuation funding applications are due 120 days prior to the expiration of the current grant award; applications for new starts, expansions, substance abuse activities, and new and continuation 330(f)(1) awards must be received by June 1, 1987

**FOR FURTHER INFORMATION CONTACT:** Application kits and additional information may be obtained from, and completed applications should be sent to, the appropriate Regional Health Administrator (see Appendix). For general information about the availability of funds, contact Richard C. Bohrer (telephone: (301) 443-2260).

**SUPPLEMENTARY INFORMATION:**

### Criteria for Evaluating competing and Non-competing CH/MH Continuation Applications

As is the practice every year, compliance with standard criteria stipulated in the regulations (42 CFR Part 51c for CH and Part 56 for MH activities) and the performance of grant recipients in using previously awarded Section 330 and 329 funds will be carefully reviewed in determining whether continued Federal support will be made available. This year's reviews of Community and Migrant Health Centers (CHC/MHC) will emphasize clinical, governance and financial/administrative expectations as set out below:

(a) Clinical (42 CFR 51c.102(c)(1)(i), 51c.303 (a) and (p), 56.303 (a) and (p), 56.603 (a) and (n), and 56.102(g)(1)(i)).—CHCs and MH centers and programs must provide health services so that appropriate services are available and accessible promptly and in a manner which will assure continuity of service to the residents of the center's catchment area. Primary health services must be provided for residents of the catchment area; such services include, but are not limited to, the diagnostic, treatment, and other services rendered by physicians and physician's extenders, perinatal services, and other preventive health services. Centers with systems of managed care (i.e., those which assure: (1) Access to primary, secondary, and tertiary care; (2) coordination and management of each patient's care by a specific provider; and, (3) non-duplicative, cost-effective efforts by all levels of care) will be priorities for funding. In addition, a center must provide appropriate staff, qualified by training and experience, to carry out the activities of the center. In considering which projects to fund, the Secretary will consider whether a center has: (1) A suitable number of full-time providers on staff who provide after hours coverage, have hospital admitting privileges and hospitalize their patients, (2) a clinical or medical director with the authority and responsibility to lead a clinical team that includes appropriate health professionals, and (3) a recruitment and retention strategy.

(b) Governance (42 CFR 51c.304 and 56.304)—Each governing board must represent the population of the catchment area, with center users comprising a majority of membership of the board. Governing boards are expected to be responsive to the communities that they serve, fulfilling all of the functions and responsibilities specified in the legislation and implementing regulations.

(c) Financial/Administrative (42 CFR 51c.303(g), 56.303(r) and (s), and 56.305(a)(3))—CHCs and MH centers and programs must seek to develop and utilize to the greatest extent possible other Federal, State and local, and private resources, and must seek to maximize non-grant revenues. In considering which projects to fund, the Secretary will consider applicants' plans to secure maximum self sufficiency and minimize dependence upon and need for subsequent CHC and MCH grants. Priority will be given to centers that demonstrate use of combined resources in coordinated health care service delivery.

In order to be funded, grantees will be expected to demonstrate: (1) The need and demand for services to be funded with special attention given to the low birth weight and infant mortality rates in the catchment area; (2) a clinical system consistent with the priorities mentioned above; and, (3) financial and administrative efficiency in the provision of services. In order to be funded eligible grantees (e.g., those with functional quality assurance, financial and administrative systems) will be expected to show that they have the ability and commitment to increase the number of users from their catchment areas.

To determine the level of funding to be awarded, each grantee's entire section 330 and/or 329 financed program will be thoroughly reviewed using a zero-based assessment process. These assessments will be used to ascertain the need for the services and to assure that costs of providing the services and the revenues generated are acceptable. The reviews will incorporate all of the considerations listed in 42 CFR 51c.305 for CH grantees and 42 CFR 56.305 or 56.604, as appropriate, for MH grantees, analyzing: (1) The population to be served; (2) the services to be provided; and 3) the first and third party revenues which can be expected to be generated in that community and State for the services provided.

**Criteria for Evaluating New and Expansion CH/MH Applications**

Applications for funding of "new starts" for CHCs and MH centers and programs will be evaluated in accordance with the criteria set forth in 42 CFR 51c.305 for CH and §§ 56.305 and 56.604 for MH activities. Emphasis during grant evaluation will be placed on the extent to which the need for health services will be addressed, particularly for areas in need of improved perinatal systems. It should be noted that migrant health "centers and "programs" have different requirements under the authorizing legislation and the regulations: Migrant health centers must offer a full range of specified primary and supplemental services and serve a high impact area (section 329)d)(1)(A) of the PHS Act and 42 CFR Part 56, Subpart (C); migrant health "programs" may be funded in areas where there is no migrant health center and in which not more than 4,000 migratory agricultural workers and their families reside for more than two months, with a more limited range of services required than offered by migrant health centers (section 329)(1)(B) of the PHS Act and 42 CFR Part 56, Subpart F).

Proposals for the expansion of activities of existing grantees may include, but are not limited to, the establisment of satellite clinics, the expansion of service capacity, and related activities directed toward the expansion and the improvement of the delivery of services, such as improved financial management, planning, marketing, outreach activities, and perinatal systems. Expansion dollars will fund specific investments in capital, prepaid or other activities that are both significant components of strategic plans and mutual Bureau of Health Care Delivery and Assistance, State, local and/or grantee priorities. The extent to which applicants for expansion funds have or plan to develop cooperative linkages and arrangements with other health care organizations, such as through rural consortia and urban networks, will be considered as applications are reviewed. See 42 CFR 51c.305(i) and (j), 56.305(a)(6) and (7) and 56.604(a)(2)(iii) and (iv).

**Criteria for Evaluating Applications to Provide Technical and Other Non-financial Assistance under Section 330(f)(1)**

A full explanation of the basis of which applications will be reviewed is included in the **Federal Register** Notice, Volume 50, Number 130, Monday, July 8, 1985, page 27851. In addition, the performance of grant recipients in using previously awarded section 330(f)(1) funds will be considered in determining whether Federal support will be made available to continuation applicants.

**Criteria for Evaluating Requests for Funding of Substance Abuse Activities**

Substance abuse funding is to be awarded to CHC/MHC grantees to develop activities and linkages with the State alcohol and drug agency and local substance abuse programs for the provision of services to high risk CHC/MHC patients. Awards are expected to range from $25,000 to $50,000. The funds are not to be used to supplant existing substance abuse resources but should be used to develop new or expanded services.

**Eligibility for these funds requires meeting one of the following criteria**

(1) CHCs/MHCs located in high need areas which are not currently providing adequate substance abuse services either directly or through linkages with local substance abuse programs. These centers must have well established primary care systems and be in compliance with administrative, governance and clinical requirements.

(2) State or Regional primary care associations which demonstrate their ability to plan, develop, and implement a substance abuse program in a high need area(s) in collaboration with local CHCs/MHCs and other public and private substance abuse programs.

Eligibility for entities to receive funds under this category is based on the provisions of section 330(f)(1) of the PHS Act, authorizing awards to entities which will provide a broad range of technical assistance to CHCs/MHCs. A full explanation of the basis on which applications will be reviewed is included in the **Federal Register** Notice, Volume 50, July 8, 1985, page 27851.

The substance abuse funds will be used to support programs that provide the following types of services: patient and community education; in-service staff training; early detection of high risk clients; and, referral and followup to treatment. (Due to funding limitations, most treatment services will be provided by referral instead of direct support under this initiative.) Critical elements of the activities are: (1) Linkage(s) with State alcohol and drug agency and local substance abuse resources; (2) how the program services are to be organized and administered by an appropriately trained professional whose primary time is dedicated to the effort; and, (3) the specific services that will be provided. Also, applicants must include letter(s) of commitment from all proposed parties.

Applicants are urged to consult with their regional program consultant and State alcohol and drug agency in developing their applications.

*Executive Order 12372*

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by DHHS (standard DHHS Form No. 424) will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for that review. Applicants are to contact their State single point of contact and follow their instructions for the review of applications.

In the OMB *Catalog of Federal Domestic Assistance*, the Community Health Center program is listed as Number 13.224; the Migrant Health Center program is Number 13.246; and the Technical and Other Non-financial Assistance to Community Health Centers is Number 13.129.

Dated: March 30, 1987.

**David N. Sundwall, M.D.,**

*Administrator.*

**Appendix: (RHA's)**

*Regional Health Administrators*

Edward J. Montminy, Regional Health Administrator, DHHS-Region I., John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 565–1426

Vivian Chang, M.D., Regional Health Administrator, DHHS Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–2560

William Lassek, M.D., Regional Heath Administrator, DHHS Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637

John Whitney, Acting Regional Health Administrator, DHHS Region IV, 101 Marietta Tower, Suite, 1202, Atlanta, Georgia 30323, (404) 221–2316

E. Frank Ellis, M.D. Regional Health Administrator, DHHS Region V, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353–1385

John M. Dyer, M.D., Regional Health Administrator, DHHS Region VI, 1200 Main Tower Building, Dallas, Texas 75202, (214) 767–3879

Mr. Youn Bock Rhee, Regional Health Administrator, DHHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291

Audrey H. Nora, M.D., Regional Health Administrator, DHHS Region VIII, 1961 Stout Street, Denver, Colorado 30294, (303) 833–6163

Sheridan L. Wemstein, M.D., Regional Health Administrator, DHHS Region IX, 50 United Nations Plaza, San Francisco, California 34102, (415) 556–5810
Ms Dorothy H. Mann, Regional Health Administrator, DHHS Region X 2901 Third Avenue, Mail Stop 405, Seattle, Washington 98121, (206) 442–0430

[FR Doc. 87–7395 Filed 4–2–87; 8:45 am]
BILLING CODE 4160–15–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV–930–07–4332–09; FES 87–14]

### Availability of Final Environmental Impact Statement; Clark County Wilderness, Las Vegas District, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of final environmental impact statement (EIS) on the wilderness recommendations for Clark County, Las Vegas District, Nevada.

**SUMMARY:** This EIS assesses the environmental consequences of managing seven Wilderness Study Areas (WSAs) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) a Partial Wilderness alternative for each WSA.

The names of the WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

| WSA | Acres suitable | Acres nonsuitable |
|---|---|---|
| Arrow Canyon Range WSA | 0 | 32,853 |
| Muddy Mountains WSA | 36,850 | 59,320 |
| Mt. Sterling WSA | 40,275 | 29,375 |
| LaMadre Mountains WSA | [1] 34,010 | 22,957 |
| Pine Creek WSA | [2] 22,652 | 1,966 |
| North McCullough Mtns WSA | 0 | 47,166 |
| South McCullough Mtns WSA | 19,558 | 37,065 |
| Total | 153,345 | 230,702 |

[1] Includes 285 acres of U.S. Forest Service lands added to the original WSA for wilderness study.
[2] Includes 618 acres of BLM lands outside the original WSA boundary.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

**SUPPLEMENTARY INFORMATION:** A limited number of individual copies of the EIS may be obtained from the Area Manager, State Line Resource Area, P.O. Box 26569, Las Vegas, NV 89126, or call (702) 388–6627. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th & C Street NW., Washington, DC 20240
Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520
Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, NV 89129.

**FOR FURTHER INFORMATION CONTACT:** Stephen A. Mellington, EIS Team Leader, at 4765 W. Vegas Drive or Las Vegas District, P.O. Box 26569, Las Vegas, NV 89126.

Dated: March 26, 1987.

**Bruce Blanchard,**
*Director, Office of Environmental Project Review.*

[FR Doc. 87–7158 Filed 4–2–87; 8:45 am]
BILLING CODE 4310–HC–M

## Minerals Management Service

### Outer Continental Shelf Advisory Board—Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. App. 1, and the Office of Management and Budget's Circular No. A–63, Revised. The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet during the period 8 a.m. to 5:15 p.m., May 6, 1987, and 8 a.m. to 5 p.m., May 7, 1987, at the Sheraton Palace Hotel in San Francisco, California (415–392–8600).

The meeting will cover the following principal subjects;

May 6

- National Energy Policy
- Averting Future Energy Crises
- Restrictions on Export of Alaskan Crude
- Leasing in the Arctic National Wildlife Refuge
- 5-Year OCS Oil and Gas Leasing Program

May 7

- Marine Mining: Status Report
- Regulatory and Industry Efforts to Control Waste Disposal From Platforms Into the Ocean
- Update on California OCS Activities

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Committee. Such request should be made no later than April 15, 1987, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 18th & C Streets, NW., Room 4230, Washington, DC 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact the Executive Secretary, John B. Rigg, at 202–343–3530.

Minutes of the meeting will be available for public inspection and copying at the Minerals Management Service, Department of the Interior, 18th & C Streets, NW., Room 4230, Washington, DC 20240

Dated: March 31, 1987.

**Carolita Kallaur,**
*Deputy Associate Director for Offshore Minerals Management.*

[FR Doc. 87–7438 filed 4–2–87; 8:45 am]
BILLING CODE 4310–MR–M

## National Park Service

### Appalachian National Scenic Trail Advisory Council; Cancellation of Meeting

The meeting of the Appalachian National Scenic Trail Advisory Council planned for April 10 (52 FR 9550, March 25, 1987) in Harpers Ferry, West Virginia, has been cancelled. A new meeting date will be announced at least 15 days in advance of the meeting.

Dated: March 27, 1987.

**David A. Richie,**
*Project Manager.*

[FR Doc. 87–7321 Filed 4–2–87; 8:45 am]
BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30142 (Sub-No. 3)]

### Southern Railway Company and Virginia and Southwestern Railway Co. Exemption; Extension of Lease

Southern Railway Company (SRC) has leased and operated the properties of its wholly owned subsidiary, Virginia and

Southwestern Railway Company (VSW), consisting of approximately 100 miles of railroad line in Tennessee and Virginia, by virtue of a 1958 lease, two 1-year extensions previously granted by the Commission, and one 2-year extension previously granted by the Commission. The last extension expired by its terms on March 14, 1987.[1] The two railroads are continuing to consider a merger, and have agreed to a 2-year extension of the lease (until March 14, 1989). SRC and VSW filed, on March 6, 1987, a notice of exemption, under 49 CFR 1180.2(d)(3) and (4), for the 2-year extension.[2]

This transaction falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3), which exempts transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. *See also* 49 CFR 1180.2(d)(4), which exempts renewal of leases and any other matters where the Commission has previously authorized the transaction and only an extension in time is involved.

As a condition to the use of this exemption, any rail employees affected by this transaction shall continue to be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Decided: March 27, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7423 Filed 4–2–87; 8:45 am]

BILLING CODE 7035–01–M

[1] See Finance Docket No. 30142 (Sub-No. 2), *Southern Railway Company and Virginia and Southwestern Railway Company—Exemption—Extension of Lease* (not printed), served March 19, 1985.

[2] At the time of the issuance of the notice of exemption in Finance Docket No. 30142 (Sub-No. 2), *supra*, served March 19, 1985, and for about 18 months thereafter, all of VSW's properties were operated by SRC. However, pursuant to a notice of exemption served September 5, 1986, a portion of VSW's properties are now operated by a third affiliated railroad, Norfolk and Western Railway Company (NW). NW, like SRC, is controlled by Norfolk Southern Corporation, a holding company. The VSW properties now operated by NW are VSW's St. Charles Branch between Appalachia (MP O.OT, MP 1.7T) and St. Charles (MP 23.OTB), including all related branches, and that portion of VSW's Appalachia-Big Stone Gap line between MP O.OT and MP 3.36T necessary for NW to serve the St. Charles Branch and the coal transloader at Appalachia, VA. *See* Finance Docket No. 30874, *Norfolk and Western Railway Company—Operation Exemption—Interstate Railroad Company and Virginia and Southwestern Railway Company (not printed), served September 5, 1986.*

[Finance Docket No. 30998]

## Stone Container Corp.; Control Exemption

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts Stone Container Corporation (Stone) from the requirements of 49 U.S.C. 11343 for the acquisition by Stone of control of Southwest Forest Industries, Inc. (Southwest), a corporate entity holding motor carrier authority, and in turn of Atlanta & St. Andrews Bay Railway Company and the Apache Railway Company, both subsidiaries of Southwest, subject to employee protective conditions.

**DATES:** This exemption will be effective on April 13, 1987. Petitions to reopen must be filed by April 23, 1987.

**ADDRESSES:** Send petitions referring to Finance Docket No. 30998 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Ronald S. Flagg, 1722 Eye Street, NW., Washington, DC 20006

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–72445.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–17424 Filed 4–2–87; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Attorney General

### Certification of the Attorney General, Victoria County, TX

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Victoria County, Texas. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975, under Section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on September 23, 1975 (40 FR 43746).

**Edwin Meese III,**

*Attorney General of the United States.*

March 31, 1987.

[FR Doc. 87–7519 Filed 4–2–87; 8:45 am]

BILLING CODE 4410–01–M

### Drug Enforcement Administration

### Importation of Controlled Substances; Application; Mallinckrodt, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 14, 1987, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Raw opium (9600) | II |
| Opium plant form (9650) | II |
| Concentrate of poppy straw (9670) | II |

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register

Representative (Room 1112), and must be filed no later than May 4, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(i), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: March 26, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–7373 Filed 4–2–87; 8:45 am]

BILLING CODE 4410–09–M

## Importation of Controlled Substances; Application; McNeilab, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 21, 1987, McNeilab, Inc., DBA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Raw opium (9600) | II |
| Concentrate of poppy straw (9670) | II |

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 4, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: March 26, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–7374 Filed 4–2–87; 8:45 am]

BILLING CODE 4410–09–M

## Importation of Controlled Substances; Application; Penick Corp.

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 15, 1987, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Raw opium (9600) | II |
| Opium plant form (9650) | II |
| Concentrate of poppy straw (9670) | II |

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 4, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: March 26, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–7375 Filed 4–2–87; 8:45 am]

BILLING CODE 4410–09–M

## Manufacturer of Controlled Substances; Application; McNeilab, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 21, 1987, McNeilab, Inc., DBA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 4, 1987.

Dated: March 26, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-7376 Filed 4-2-87; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Application; Penick Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 12, 1987, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Pholcodine (9314) | I |
| Alphacetylmethadol (9603) | I |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Diphenoxylate (9170) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Pethidine (mependine) (9230) | II |
| Methadone (9250) | II |
| Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254). | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Opium extracts (9610) | II |
| Opium fluid (9620) | II |
| Tincture of opium (9630) | II |
| Powdered opium (9639) | II |
| Granulated opium (9640) | II |
| Mixed alkaloids of opium (9648) | II |
| Concentrate of poppy straw (9670) | II |
| Phenazocine (9715) | II |
| Fentanyl (9801) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 4, 1987.

Dated: March 26, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-7377 Filed 4-2-87; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Application; Stepan Chemical Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 12, 1987, Stepan Chemical Company, Natural Products, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cocaine (9041) | II |
| Ecgonine (9180) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 4, 1987.

Dated: March 26, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion, Drug Enforcement Administration.*

[FR Doc. 87-7378 Filed 4-2-87; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Registration; Upjohn Co.

By Notice dated January 28, 1987, and published in the **Federal Register** on February 5, 1987; (52 FR 3719), Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| 2,5-dimethoxyamphetamine (7396) | I |
| Methamphetamine, its salts, isomers and salts of its isomers (1105). | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 26, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-7379 Filed 4-2-87; 8:45 am]

BILLING CODE 4410-09-M

# DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA-W-18,448, et al.]**

## Dana Corp., Spicer Axle Division, New Castle, IN; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Dana Corporation, Spicer Axle Division, New Castle, Indiana; I.R.I. International, Pampa, Texas; Essex Shoe Trimming Company, Haverhill, Massachusetts indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-18,448; Dana Corporation, Spicer Axle Division, New Castle, Indiana (March 24, 1987)

TA-W-18,815; I.R.I. International, Pampa, Texas (March 20, 1987)

TA-W-18,538: Essex Shoe Trimming Company, Haverhill, Massachusetts (March 20, 1987).

Signed at Washington, DC this 26th day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-7327 Filed 4-2-87; 8:45 am]

BILLING CODE 4510-30-M

---

**[TA-W-18,197 et al.]**

## Emerald Mines Corp.; Waynesburg, PA; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance for workers at the Emerald Mines Corporation, Waynesburg, Pennsylvania; Emerald Services, Incorporated, Titusville, Pennsylvania; Charles E. Mayfield Company, Princeton, Louisiana indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-18,197; Emerald Mines Corporation, Waynesburg, Pennsylvania (March 24, 1987)
TA-W-18,962; Emerald Services, Incorporated, Titusville, Pennsylvania (March 24, 1987)
TA-W-18,821; Charles E. Mayfield Company, Princeton, Louisiana (March 24, 1987).

Signed at Washington, DC this 26th day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-7330 Filed 4-2-87; 8:45 am]

BILLING CODE 4510-30-M

---

**[TA-18,503]**

## Tenneco Oil Co.; Exploration and Production Division, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

| | |
|---|---|
| TA-W-18,503A | San Antonio, Texas |
| TA-W-18,503B | Bakersfield, California |
| TA-W-18,503C | Englewood, Colorado |
| TA-W-18,503D | Oklahoma City, Oklahoma |
| TA-W-18,503E | Lafayette, Louisiana |

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 23, 1986 applicable to all workers of Tenneco Oil Company, Exploration and Production Division, Headquartered in Houston, Texas. The certification notice was published in the **Federal Register** on January 21, 1987 (52 FR 2306).

Based on new information furnished to the Department, the certification notice is amended to properly reflect the correct worker group. All workers at Tenneco Oil Company's Exploration and Production Division man and operate properties in ten to fifteen states but report to Tenneco Oil Company's offices in the above mentioned five states.

The intent of the certification is to cover all workers of the Exploration and Production Division of the Tenneco Oil Company. The amended notice applicable to TA-W-18,503 is hereby issued as follows:

"All workers of Tenneco Oil Company, Exploration and Production Division, Houston, Texas; San Antonio, Texas; Bakersfield, California; Englewood, Colorado; Oklahoma City, Oklahoma and Lafayette, Louisiana who became totally or partially separated from employment on or after October 13, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 23rd day of March 1987.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-7329 Filed 4-2-87; 8:45 am]

BILLING CODE 4510-30-M

---

**[TA-W-19,222]**

## Geissler Knitting Mills, Inc.; Hazleton, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 3, 1987 in response to a worker petition received on March 2, 1987 which was filed on behalf of workers at Geissler Knitting Mills, Incorporated, Hazleton, Pennsylvania. The workers produce sweatshirts, sweatpants, t-shirts and tanktops.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-7328 Filed 4-2-87; 8:45 am]

BILLING CODE 4510-30-M

## Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Idaho

This notice announces the beginning of a new Extended Benefit Period in Idaho, effective on March 15, 1987, and remaining in effect for at least 13 weeks after that date.

### Background

The Federal-State extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head if the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

### Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on February 28, 1987, equals or exceeds 6 percent, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on March 15, 1987. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

**Information for Claimants**

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on March 27, 1987.

**Roberts T. Jones,**

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87-7405 Filed 4-2-87; 8:45 am]

BILLING CODE 4510-30-M

---

## Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Louisiana

This notice announces the ending of the Extended Benefit Period in the State of Louisiana, effective on March 14, 1987.

**Background**

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Louisiana on May 18, 1986, and has now triggered off.

**Determination of an "off" Indicator**

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on February 21, 1987, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending March 14, 1987.

**Information for Claimants**

The State employment security agency will finish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits, 20 CFR 615.13(d)(3)

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on March 27, 1987.

**Roberts T. Jones,**

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87-7404 Filed 4-2-87; 8:45 am]

BILLING CODE 4510-30-M

## Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Wyoming

This notice announces the beginning of a new Extended Benefit Period in Wyoming, effective on March 15, 1987, and remaining in effect for at least 13 weeks after that date.

**Background**

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equal or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

**Determination of an "on" Indicator**

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on February 28, 1987, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on March 15, 1987. This period will continue for no less than 13 weeks, and until three weeks after a

week in which there is an "off" indicator in the State.

**Information for Claimants**

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on March 27, 1987.

**Roberts T. Jones,**

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87-7407 Filed 4-2-87; 8:45 am]

BILLING CODE 4510-30-M

## Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Aluminum Co. of Amer. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 13, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 13, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC, 20313.

Signed at Washington, DC this 23rd day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No | Articles produced |
|---|---|---|---|---|---|
| Aluminum Co of Amer. (USWA) | Alcoa, TN | 3/23/87 | 3/16/87 | 19,362 | Alum. ingots flat |
| Amer. Steel Foundries (USWA) | Alliance, OH | 3/23/87 | 3/10/87 | 19,363 | Railroad car components |
| BWAB Inc (Workers) | Denver, CO | 3/23/87 | 3/13/87 | 19,364 | Oil services |
| Becton, Dickerson, P/R (Workers) | Juncos, PR | 3/23/87 | 3/10/87 | 19,365 | Clinical thermometers |
| C &K Coal Co. (Workers) | Clanon, PA | 3/23/87 | 3/13/87 | 19,366 | Bituminous coal |
| Cabot Oil & Gas Corp. (Workers) | Charleston, WV | 3/23/87 | 3/11/87 | 19,367 | Oil and gas |
| Calvert Mfg. Co. (UGW) | Seattle, WA | 3/23/87 | 3/4/87 | 19,368 | Outerwear, sluwear |
| Champlin Petroleum (CO) | Denver, CO | 3/23/87 | 3/2/87 | 19,369 | Crude oil |
| Colonial Mfg. Co (Workers) | Roseland, NJ | 3/23/87 | 3/9/87 | 19,370 | Security screens |
| Consolid. Alum Corp. (ABGWIU) | Waverly, TN | 3/23/87 | 3/9/87 | 19,371 | Aluminum products |
| Continental Can Co (Workers) | Weslaco, TX | 3/23/87 | 3/5/87 | 19,372 | Metal cans. |
| Endicott Johnson (Workers) | Tunkhannock, PA | 3/23/87 | 3/11/87 | 19,373 | Athletic shoes |
| G R. Mfg (UAW) | Grand Rapids, MI | 3/23/87 | 3/17/87 | 19,374 | Electric ranges |
| Gearhart Indust Inc (Workers) | Midland, TX | 3/23/87 | 3/10/87 | 19,375 | Oil services |
| Gilbert Develop. Corp. (Workers) | Cedar Cy, UT | 3/23/87 | 3/3/87 | 19,376 | Iron oil |
| Hercules O/S Drill (Workers) | Houston, TX | 3/23/87 | 2/10/87 | 19,377 | Oil drilling |
| Honeywell, Incorp. (IUE) | Fort Wash., PA | 3/23/87 | 3/9/87 | 19,378 | Micro processors. |
| Hyatt Clark, Indust (UAW) | Clark, NJ | 3/23/87 | 3/11/87 | 19,379 | Tapered roller. |
| Ingersoll-Rand, Co (CO) | Phillipsburg, NJ | 3/23/87 | 3/11/87 | 19,380 | Turbine compressors. |
| J.D Cain Co (Workers) | Denver, CO | 3/23/87 | 3/12/87 | 19,381 | Oil services |
| J.Q. Russell Elec Inc (Workers) | Skellytown, TX | 3/23/87 | 3/14/87 | 19,382 | Service operation. |
| Johnson Iron (CO) | Charlotte, MI | 3/23/87 | 2/28/87 | 19,383 | Counter-wght for L/Tks |
| KWB Oil Property Mgt (CO) | Tulsa, OK | 3/23/87 | 3/16/87 | 19,384 | Headquarter |
| KWB Oil Property Mgt (CO) | Denver, CO | 3/23/87 | 3/16/87 | 19,385 | Office |
| KWB Oil Property Mgt (CO) | Seminole, OK | 3/23/87 | 3/16/87 | 19,386 | Office |
| KWB Oil Property Mgt (CO) | Park Centralia, IL | 3/23/87 | 3/16/87 | 19,387 | Office |
| Kitt Energy Corp (Workers) | Meadow Lands, PA | 3/23/87 | 3/4/87 | 19,388 | Coal |
| Kitt Energy Corp (Workers) | Frederick, PA | 3/23/87 | 3/4/87 | 19,389 | Coal |
| Kitt Energy Corp (Workers) | Verona, PA | 3/23/87 | 3/4/87 | 19,390 | Coal |
| Kitt Energy Corp (Workers) | Russellton, PA | 3/23/87 | 3/4/87 | 19,391 | Coal |
| Leesburgs Mfg Co (ACTWU) | Leesburg, FL | 3/23/87 | 3/10/87 | 19,392 | Ladies sportswear |
| Liquid Energy Corp. Mitchell Energy CO 2 Plant (CO) | Bridgeport, TX | 3/23/87 | 3/13/87 | 19,393 | CO 2 plant |
| Liquid Energy Corp. Refinery (CO) | Bridgeport, TX | 3/23/87 | 3/13/87 | 19,394 | Refinery |
| Lochel Explor Inc (Workers) | Denver, CO | 3/23/87 | 3/6/87 | 19,395 | Oil and gas |
| Midcon Central Exp (Workers) | Denver, CO | 3/23/87 | 2/27/87 | 19,396 | Oil and gas |
| Moxness Products, Inc (IAMAW) | Racine, WI | 3/23/87 | 3/10/87 | 19,397 | Silicon rubber prod |
| NATCO, Inc (IAM) | Richmond, IN | 3/23/87 | 3/4/87 | 19,398 | Machine tools |
| Navister, Int'l. (Workers) | Indianapolis, IN | 3/23/87 | 2/24/87 | 19,399 | Cashing diesel engines |
| Pioneer Hi-Bred, Int (Workers) | Tipton, IN | 3/23/87 | 3/12/87 | 19,400 | Parent seed corn |
| Portage Casting & Mold (IAM) | E/Longmeadow, MA | 3/23/87 | 3/12/87 | 19,401 | Alum cast mold |
| RCA/Anola (Workers) | Indianapolis, IN | 3/23/87 | 3/11/87 | 19,402 | Black vinyl records |
| RCA Consumer Elect (IBEW) | Bloomington, IN | 3/23/87 | 3/13/87 | 19,403 | Color TV's |
| Remington Arms Co. (Workers) | Lonoke, AR | 3/23/87 | 3/12/87 | 19,404 | Sporting ammunition |
| Resistoflex (U.T W A.) | Roseland, NJ | 3/23/87 | 3/11/87 | 19,405 | Thermoplastic pipes |
| Ross Garment (ILGWU) | Hagerstown, MD | 3/23/87 | 2/11/87 | 19,406 | Dresses |

APPENDIX—Continued

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No | Articles produced |
|---|---|---|---|---|---|
| Schaper Mfg. Cedar (U.A.W.) | Lakeville, MN | 3/23/87 | 3/10/87 | 19,407 | Toys and games. |
| Schaper Mfg. Grenada (U.A.W.) | Lakeville, MN | 3/23/87 | 3/10/87 | 19,408 | Toys and games. |
| Schaper Mfg. (U.A.W.) | Plymouth, MN | 3/23/87 | 3/10/87 | 19,409 | Toys and games. |
| Silversprings S/Wear (ACTWU) | Ocala, FL | 3/23/87 | 3/10/87 | 19,410 | Ladies' sportswear |
| Smith Valve Corp. (Workers) | Westboro, MA | 3/23/87 | 2/26/87 | 19,411 | Valves |
| TRW-CARR Knoxville (O.C.A.W.) | Knoxville, TN | 3/23/87 | 2/18/87 | 19,412 | Elect mech. relays. |
| Updike Brothers, Incorp. (Workers) | Sidney, MT | 3/23/87 | 3/13/87 | 19,413 | Oil services |
| Vikron, Incorp. (Workers) | St. Croix Falls, WI | 3/23/87 | 3/14/87 | 19,414 | Tape recorder heads |
| W/V Glass Specialty Co. (Workers) | Weston, WV | 3/23/87 | 3/10/87 | 19,415 | Glassware, gift and tablewear. |
| W/V Plastics, Inc. (USWA) | Grafton, WV | 3/23/87 | 3/4/87 | 19,416 | Infant items. |
| Walthall Consult., Corp. (Workers) | Midland, TX | 3/23/87 | 3/13/87 | 19,417 | Well Site serv. co. |
| Wyman-Gordon Co. (CO) | Danville, IL | 3/23/87 | 3/11/87 | 19,418 | Forge parts for diesel E/C. |

[FR Doc. 87-7326 Filed 4-1-87; 8:45 am]
BILLING CODE 4510-BO-M

## Employment Standards Administration, Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

*Volume I:*

Massachusetts:
MA87-1 (Jan. 2, 1987) ..... p.373.
MA87-2 (Jan. 2, 1987) ..... p.388.
MA87-3 (Jan. 2, 1987) ..... pp.402,406.
New York:
NY87-2 (Jan. 2, 1987) ..... pp.686-687, pp.689-702.
NY87-3 (Jan. 2, 1987) ..... pp.704-706.
NY87-4 (Jan. 2, 1987) ..... pp.716-717.
NY87-5 (Jan. 2, 1987) ..... p.720.
NY87-6 (Jan. 2, 1987) ..... p.728.
NY87-7 (Jan. 2, 1987) ..... pp.738-754.
NY87-8 (Jan. 2, 1987) ..... pp.756-760.
NY87-9 (Jan. 2, 1987) ..... p.768.
NY87-10 (Jan. 2, 1987) ..... pp.770,772.
NY87-11 (Jan. 2, 1987) ..... p.784.
NY87-12 (Jan. 2, 1987) ..... pp.790-797.
NY87-13 (Jan. 2, 1987) ..... pp.800-801, p.803.
NY87-14 (Jan. 2, 1987) ..... pp.808-809.
NY87-15 (Jan. 2, 1987) ..... pp.812,814.
NY87-16 (Jan. 2, 1987) ..... p.818.
NY87-18 (Jan. 2, 1987) ..... pp.834-836.

*Volume II:*

Iowa: IA87-5 (Jan. 2, 1987) ..... p.42.
Illinois:
IL87-2 (Jan. 2, 1987) ..... p.100.
IL87-9 (Jan. 2, 1987) ..... p.148.
IL87-11 (Jan. 2, 1987) ..... pp.158-159.
IL87-13 (Jan. 2, 1987) ..... p.175.
IL87-16 (Jan. 2, 1987) ..... p.206.
Indiana: IN87-6 (Jan. 2, 1987) .. p.306, pp.317-318.
Texas:
TX87-10 (Jan. 2, 1987) ..... pp.946-947.
TX87-15 (Jan. 2, 1987) ..... pp.958-959.
Wisconsin: WI87-8 (Jan. 2, 1987). p.1105.

*Volume III:*

California:
CA87–1 (Jan. 2, 1987)..... pp.36–39.
CA87–4 (Jan. 2, 1987)..... pp.68–100b.
Washington: WA87–1 (Jan. 2, 1987). p.333.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office. Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of March 1987

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 87–7211 Filed 4–2–87; 8:45 am]

BILLING CODE 4510–27–M

## Mine Safety and Health Administration

**[Docket No. M–87–40–C]**

### Petition for Modification of Application of Mandatory Safety Standard; Mid-Continent Resources, Inc.

Mid-Continent Resources, Inc., 1058 Road 100, P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1100–2(b) (quantity and location of firefighting equipment) to its Dutch Creek No. 1 Mine, and its Rock Tunnels Project (I.D. No. 05–00301) located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that in all coal mines, waterlines shall be installed parallel to the entire length of belt conveyors and shall be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of firehose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry.

2. As an alternate method, petitioner requests a modification of the standard to permit the spacing of RTP firehose outlets with valves to correspond to actual, as-built crosscut spacing, both greater than and less than 300-foot intervals, and not by a fixed footage interval. To permit the adjustment of stored firehose footages at designated locations to a quantity at each such location sufficient to reach one-half the distance to the next adjacent (both inby and outby) hose storage location.

3. In further support of this request, petitioner states that:

(a) The RTP is developed through shale and sandstone formations underlying the coal formations in Coal Basin. Other than the locations of coal seam interception, the roof, ribs and floor of the RTP are either the natural shale or sandstone formations. The raw coal which will be hauled on the RTP northadit beltline is less susceptible to spontaneous combustion than more typical bituminous coal;

(b) A sign will be posted at the location of each firehose storage location; and

(c) All persons performing examinations, service or repair work in the RTP will be specifically instructed as to the location and identification of all RTP firehose outlets and the locations and available footage of firehoses.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 4, 1987. Copies of the petition are available for inspection at that address.

Dated: March 24, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–7331 Filed 4–2–87; 8:45 am]

BILLING CODE 4510–43–M

**[Docket No. M–87–51–C]**

### Petition for Modification of Application of Mandatory Safety Standard; Minton Hickory Coal Co.

Minton Hickory Coal Company, P.O. Box 922, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15–15550) and its Mine No. 2 (I.D. No. 15–15789) both located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and

will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 4, 1987. Copies of the petition are available for inspection at that address.

Dated: March 24, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7332 Filed 4-2-87; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted on or before May 4, 1987.

**ADDRESSES:** Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 and Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202) 395-7316.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Service Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

**Category Extension**

Title: Guidelines and Application Instructions, Younger Scholars
Form Number: 3136-0090
Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.
Respondents: High school and college students
Use: Application, evaluation, and award process for participants in the Younger Scholars program.
Estimated Number of Respondents: 658
Estimated Hours for Respondents to Provide Information: 3,026

**Susan Metts,**

*Assistant Chairman for Administration.*

[FR Doc. 87-7325 Filed 4-2-87; 8:45 am]

BILLING CODE 7536-01-M

### Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Dance/Music/Combination Section) to the National Council on the Arts will be held on April 22-24, 1987, from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 22, 1987, from 9:15 a.m.-10:30 a.m. and on April 24, 1987 from 2:00 p.m.-5:30 p.m. on a space available basis for a discussion of general program overview and policy issues.

The remaining sessions of this meeting on April 22, 1987, from 10:30 a.m.-5:30 p.m., on April 23, 1987, from 9:00 a.m.-5:30 p.m. and on April 24, 1987 from 9:00 a.m.-1:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contract the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

March 27, 1987.

[FR Doc. 87-7370 Filed 4-2-87; 8:45 am]

BILLING CODE 7537-01-M

### Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on April 25-26, 1987, from 9:00 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed ot the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

March 27, 1987.

[FR Doc. 87–7369 Filed 4–2–87; 8:45 am]

BILLING CODE 7537–01–M

---

**Music Advisory Panel; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge Section) to the National Council on the Arts will be held on April 22–23, 1987, from 9:00 a.m.–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

March 27, 1987.

[FR Doc. 87–7445 Filed 4–2–87; 8:45 am]

BILLING CODE 7537–01–M

---

**Music Advisory Panel; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on April 13–14, 1987, from 9:00 a.m.—5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

March 27, 1987.

[FR Doc. 87–7444 Filed 4–2–87; 8:45 am]

BILLING CODE 7537–01–M

---

## NUCLEAR REGULATORY COMMISSION

**Iowa Electric Light and Power Co.; Central Iowa Power Cooperative, Corn Belt Power Cooperative; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain testing requirements of Appendix J to 10 CFR Part 50 to the Iowa Electric Light and Power Company (IELP/the licensee) for the Duane Arnold Energy Center located at the licensee's site in Linn County, Iowa.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant an exemption from Appendix J, Type C, testing requirements for containment spray isolation valves.

*The Need for the Proposed Action*

The licensee has stated that the Type C testing requirement for the containment spray isolation valves is not practicable with the existing Duane Arnold Energy Center piping arrangement and proposes an alternate testing method which will also accurately determine the leakage rates for the valves.

*Environmental Impact of the Proposed Action*

The proposed exemption only effects components which are within the site boundaries and actually within reactor secondary containment. There is no anticipated decrease in the reliability of these components to operate as designed in the event of an accident. Post-accident radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the test procedures for Type C components required in Appendix J. Such action would not enhance the protection of the environment.

*Alternative Use of Resources*

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Duane Arnold Energy Center, dated March 1973.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finging of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated October 29, 1984, December 7, 1984, April 22, 1985 and July 12, 1985. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Dated at Bethesda, Maryland, this 31st day of March 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

*Director, BWR Project Directorate #2, Division of BWR Licensing.*

[FR Doc. 87-7427 Filed 4-2-87; 8:45 am]

BILLING CODE 7590-01-M

---

[Docket No. 50-252]

**Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-102; the University of New Mexico**

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-102 for the University of New Mexico AGN-201M research reactor located on the campus in Albuquerque, New Mexico.

The amendment will renew the Operating License for twenty years from its date of issuance, in accordance with the licensee's application dated June 2, 1986, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the **Federal Register** on August 22, 1986, at 51 FR 20145. No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

*Finding of No Significant Impact*

The Commission has prepared an Environmental Assessment of this action, dated March 24, 1987, and has concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

*Summary of Environmental Impacts As Described in the Environment Assessmental*

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1986. The environmental impacts associated with the continued operation of the AGN-201M reactor facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of the AGN-201M reactor for an additional 20 years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the Technical Specifications is insufficient to support a reactor transient generating enough energy to cause melting of the polyethylene fuel material.

(b) At a thermal power level of 5 watts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage, and

(c) The maximum hypothetical accident considered in the staff's satety Evaluation Report would not lead to radiation exposures in the unrestricted environment that exceed guideline values of 10 CFR Part 20.

For further details with respect to this proposed action, see: (1) The application for license renewal dated June 2, 1986, as supplemented; (2) Amendment No. 3 to Facility Operating License R-102; (3) the Environmental Assessment, dated March 24, 1987; and (4) the Safety Evaluation Report prepared by the staff (NUREG-1224).

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555. Copies may be obtained upon request addessed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Copies of NUREG-1224 may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982.

Dated at Bethesda, Maryland, this 24th day of March, 1987.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

*Director, Standardization & Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Regulation.*

[FR Doc. 87-7428 Filed 4-2-87; 8:45 am]

BILLING CODE 7590-01-M

---

[Docket No. 50-397]

**Washington Public Power Supply System; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix J, Section III.D.3 to the Washington Public Power Supply System (WPPSS of the licensee), holder of Facility Operating License No. NPF-21 which authorizes operation of the WPPSS Nuclear Project No. (WNP-2 of the facility). The facility is a boiling water reactor and is located in Benton County, Washington.

**Environmental Assessment**

*Identification of Proposed Action*

The exemption from 10 CFR Part 50, Appendix J, Section III.D.3, would allow the licensee to perform Type C testing of containment isolation valves at refueling outages or other convenient intervals but in no case at intervals greater than 27 months. Currently the regulations require the Type C tests to be performed during each reactor shutdown for refueling, provided the intervals are not greater than two years.

On April 24, 1986, an Environmental Assessment Notice similar to this one was published in the **Federal Register** (51 FR 15560). That exemption would have required Type C testing at intervals no greater than two years but without the requirement for testing during each refueling outage. The exemption was not granted at that time pending resolution of other unrelated details of the testing program. Those details are now resolved and the original request of January 31, 1986 is now contemplated.

*The Need for the Proposed Action*

The exemption is needed to avoid the requirement for testing each Type C containment isolation valve during each refueling outage. The Supply System is constrained by weather conditions and the abundance of hydroelectric power during the spring thaw in the Pacific Northwest to refuel on an annual basis each spring. Thus, Section III.D.3 of 10 CFR Part 50, Appendix J would require Type C testing on an annual basis. The exemption would permit affected valves to be tested at intervals other than each refueling provided that the testing intervals not exceed 27 months rather than two years or 24 months. The additional three months is needed to allow for vagaries of weather that could require an early outage at the beginning

of one testing cycle and a late outage at the beginning of the next.

*Environmental Impacts of the Proposed Action*

There are no environmental impacts of the proposed action. The proposed exemption involves a change in the installation or use of the facility's components located within the restricted areas as defined in 10 CFR Part 20. The NRC staff has determined that the proposed exemption involves no significant increase in the amounts, and so significant change in the types, of any effluents that may be released offsite and that there is no significant increase in individual or cumulative occupational radiation exposure. It is expected that granting the exemption will result in a reduction in cumulative occupational exposure.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and, by allowing better management of hydroelectric resources, may have a positive environmental impact. Therefore, the Commission concludes there are no significant adverse non-radiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

We have concluded that is no measureable adverse environmental impact associated with the proposed exemption. The principal alternative would be to deny the requested exemption. This alternative would not reduce the environmental impact of plant operation.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2" dated December 1981.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated January 31, 1986, and supplementary information dated April 11, July 22, 1986, January 9, and February 11, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland Public Library, Swift and Northgate, Richland, Washington 99352.

Dated at Bethesda, Maryland, this 30th day of March 1987.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director, BWR Project Directorate No. 3, Division of BWR Licensing.*

[FR Doc. 87-7429 Filed 4-2-87; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards, Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on April 23, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Thursday, April 23, 1987—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will continue the review of the proposed generic letter for Individual Plant Examinations (IPEs) as part of the NRC Implementation Plan for the Severe Accident Policy Statement.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, IDCOR representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated March 31, 1987.

**Morton W. Libarkin,**

*Assistant, Executive Director for Project Review.*

[FR Doc. 87-7417 Filed 4-2-87; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards, Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on April 22, 1987, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Wednesday, April 22, 1987—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will discuss the research plan intended to resolve the source term uncertainty areas and review the Expert Panels Assessment of these programs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions

with representatives of the NRC Staff, its consultants, IDCOR representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 31, 1987.

Morton W. Libarkin,

*Assistant, Executive Director for Project Review.*

[FR Doc. 87–7418 Filed 4–2–87; 8:45 am]

BILLING CODE 7590–01–M

---

### Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on April 28 and 29, 1987, at the Westbank Quality Inn, 475 River Parkway, Idaho Falls, ID.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Tuesday, April 28, 1987—8:30 A.M. until the conclusion of business**

**Wednesday, April 29, 1987—8:30 A.M. until the conclusion of business**

The Subcommittee will review: (1) Status of the NRC RES thermal hydraulic research program, (2) TIC activities at INEL, (3) Research Compendium supporting revision of the ECCS Rule, (4) the results of the OECD LOFT program, (5) plans to construct a new integral test facility; and (6) the status of the RES Experts' Group on Code Uncertainty.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any change in schedule, etc., which may have occurred.

Dated: March 31, 1987.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 87–7419 Filed 4–2–87; 8:45 am]

BILLING CODE 7590–01–M

---

## SECURITIES AND EXCHANGE COMMISSION

### Agency Information Collection Activities Under OMB

Agency Clearance Officer—Kenneth Fogash, (202) 272–2142

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

**Revision**

*Regulation S–X*

[SEC File No. 270–3]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for approval a proposed amendment regarding mandatory peer reviews for auditors of Commission registrants.

Information collected and records prepared pursuant to the proposed rules would focus on documenting the performance of the peer review and the findings of those conducting the peer review. This information will be used by the public, private peer review organizations and/or the Commission to monitor compliance with the peer review requirements.

Peer reviews, under the proposed rules, are to be conducted at least once every three years; therefore, there will generally be a triennial response to the information and record collection request.

The potential respondents include all entities that file registration statements or reports (and auditors of financial statements in such registration statements and reports) pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the Investment Advisers Act of 1940.

Many auditors of Commission registrants presently participate in voluntary peer review organizations. It is estimated that the increase in compliance burden resulting from the proposed rules would be approximately 69 hours for each triennial peer review of an auditor of a public company (or 23 hours per year on an annualized basis) and 16 hours for each triennial peer review of an auditor of an investment adviser (or 5.33 hours per year on an annualized basis).

Submit comments to OMB Desk Officer: Robert Neal (202) 395–7430, Office of Information and Regulatory Affairs, Room 3235, NEOB, Washington, DC 20503.

Jonathan G. Katz,

*Secretary.*

March 26, 1987.

[FR Doc. 87–7365 Filed 4–2–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No. 34–24276; File No. SR–NYSE–87–06]**

### Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Opening Price Settlement of Expiring NYSE Composite and Beta Index Options

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared

by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change modifies the definition of the term "Current Index Group Value" [Rule 700(b)(17)] to permit the Exchange to specify that the value upon exercise of options on the NYSE Composite Index and High Beta Index[1] on expiration Friday is calculated from the opening prices of the constituent stocks on that day. The proposed rule change also makes the specification required by the change to Rule 700(b)(17), and makes clear that trading in these two options ceases on the Thursday before expiration. The proposed change is applicable only to the June series of these two contracts. The Exchange intends to file subsequently for permanent approval of the revised procedures for index expirations.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) *Purpose.* The purpose of the proposed rule change is to ameliorate the impact of the concurrent expiration of index options and futures on the markets for individual stocks and on the stock market as a whole. The Exchange believes that settling index futures and options based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's opening procedures in handling the accompanying stock volume, is the best strategy for addressing widely held concerns about the actual and potential impact of the derivative products on the pricing mechanism and integrity of the stock market.

(b) *Statutory Basis.* The basis under the Act for the proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act so that it can open June contracts for trading as soon as possible after the March expiration. Normally, the June series in the two index options would open the Monday following the March expiration. The proposed rule change must be effective before the June series opens if the contracts are to commence trading subject to expiration valuation based upon the opening prices of the underlying stocks for the June expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The proposed rule change will enable the Exchange to implement procedures to base settlement of index futures and options on opening stock prices for the June 19, 1987, Expiration Friday. The Exchange believes that index settlement based on the opening prices of constituent stocks, utilizing the Exchange's opening procedures, may best address the actual and potential impact of index expirations.

On certain occasions during the past two years, the concurrent expiration of index futures and options has been accompanied by significant price volatility. This volatility appears to have resulted in part from the liquidation of securities held as part of index arbitrages. Many market professionals have chosen to liquidate these positions at the close of trading in order to receive an execution price that will be consistent with the closing value of the index used in the cash settlement of index futures and options positions.[2]

The Commission believes that the NYSE's proposal, incorporating the use of quote indications (*e.g.*, opening procedures) to attract order flow to offset stock order imbalances related to index expirations, may help to ameliorate the price effects of index expirations. Moreover, the ability to disseminate a second quote indication where an influx of orders has substantially shifted any existing order imbalance increases the accuracy and usefulness of the information. Therefore, the dissemination of price information in the component stocks of indexes at the opening, along with notice of order imbalances, should provide investors with a more accurate picture of the market in the effected stocks.

The Commission believes that adequate steps are being taken to inform investors of the pending change. The Options Clearing Corporation ("OCC") recently has filed with the Commission a supplement to the Options Disclosure Document that would amend its disclosure of settlement procedures for index products, thereby notifying investors of the change in procedures. In addition, OCC has filed a rule change to its By-Laws to permit options exchanges to provide by rule that the settlement value of any index on which options are traded on a particular exchange will be determined by reference to the prices of the constituent stocks at times other than the close of trading. Moreover, the Commission expects that the NYSE and broker-dealers will take steps to fully inform investors of these changes.

It should be noted, however, that not all index products will settle based on

[1] The NYSE incorporated the Beta index into the filing by a letter from Daniel P. Odell, Assistant Secretary, NYSE, to Sharon Lawson, Branch Chief, Division of Market Regulation, dated March 16, 1987.

[2] The liquidation of index arbitrage positions has resulted in increased volatility at expirations (*See* H. Stoll & R. Whaley, *Expiration Day Effects of Index Options and Futures* (March 15, 1986)). Consequently, the Commission, in conjunction with the NYSE, has implemented early order-entry and exposure experiments on the last three expirations (September and December 1986, and March 1987). Reduced volatility at these recent expirations may partially be attributed to these procedures.

BEST COPY AVAILABLE

opening prices at the June expiration. Currently no other options exchange has changed an index option contract to an opening price settlement. In contrast, the Commodity Futures Trading Commission ("CFTC") recently approved a proposal by the Chicago Mercantile Exchange to switch its Standard and Poors 500 Index future contract to an opening price settlement in June.[3]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because of the need to approve the change in settlement procedures prior to the introduction of the next monthly expiration cycle after the March expiration. Moreover, the Commission believes that acceleration is appropriate because of the absence of an impact on NYSE index options which are now outstanding. As mentioned previously, the NYSE plans to submit shortly a companion filing to make permanent the change in expiration settlement procedures for certain stock indexes. This filing for permanent approval will be subject to a full comment period.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by April 24, 1987.

### V. Conclusion

For the reasons discussed above, the Commission finds the proposed rule change is consistent with the Act, and in particular Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 27, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7362 Filed 4-2-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Rel. No. 34-24277; File No. SR-OCC-87-07]**

## Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change

On March 18, 1987, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to enable an options exchange to provide by rule that the settlement value of an index option may be determined by the reported index level at a time or times other than the close of trading. The Commission is publishing this Order to solicit comment on the proposed rule change. In its filing, OCC requested approval of the proposal on or before March 27, 1987, in order to permit exchanges to file rule changes concerning index options contracts that will expire in June, which the exchanges may wish to open for trading on March 30, 1987. This Order approves the proposal on that basis.

### I. Description

The proposal would amend OCC's By-Laws to authorize an exchange on which index options are traded to supercede OCC's By-Laws concerning index options valuation and specify, by rule, when to value those index options for exercise settlement purposes. The proposal would enable an exchange to set "current index values" [1] at a time other than the close of trading for the underlying securities, *e.g.*, the opening of trading. The proposal also would enable an exchange to set current index values generally or on particular trading days, such as the business day before expiration of the index option. Absent such exchange rules, however, the value of an index option would be determined by reference to OCC's By-Laws, which provide for valuation of the index at the close of trading.

The proposal provides that if an exchange rule sets a current index value for an index option at a time other than close of trading for underlying securities, that index option shall be deemed a different "series of options" from otherwise identical options to which the exchange rule does not apply. Thus, a series of options subject to an exchange rule would be traded, exercised, and settled separately from similar options that are not subject to the exchange rule. The proposal would apply only to options series opened for trading after March 27, 1987.

### II. OCC's Rational

OCC states in its filing that the purpose of the proposal is to enable exchanges to synchronize the valuation of expiring stock index options with the valuation of commodity products (i.e., stock index futures and options on stock index futures) based on the same indices. Although valuation of commodity index products traditionally has been based on closing prices of underlying stocks, at least one commodities exchange has announced its intention to value expiring stock index futures and futures options based on opening prices [2] of the constituent stocks on what was formerly the last day of trading.[3] OCC believes that the proposal should enable exchanges to provide effective index option hedging vehicles by establishing index options with settlement valuations that correspond to settlement valuations of commodity products on the same indices.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments,

---

[3] See letter from Jean A. Webb, Secretary, CFTC to Dr. Thomas F. Killcollin, Senior Vice President and Chief Economist, Chicago Mercantile Exchange, dated February 25, 1987.

[1] OCC By-Law Article XVII provides that the "current index value" for an index option means the level of the index at the close of trading on any trading day. The level of the index is derived from the current market prices of the securities underlying the index. Settlement of exercised index options is based on the difference between the current index value and the exercise price of the index option.

[2] The Commission understands that the Chicago Mercantile Exchange announced its intention to base the settlement value of its Standard & Poors 500 Futures contract on opening prices beginning with the June 19, 1987 expiration.

[3] The Commission understands that because settlement values would be fixed at the opening on that day, trading in the affected futures would terminate on the preceding day.

all written statements with respect to the proposed rule change that are filed with the Commission, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by April 24, 1987.

**IV. Discussion**

The Commission believes that the proposal is consistent with the Act and, in particular, the requirement that OCC's rules generally protect investors and the public interest. The Commission believes OCC's proposal strikes an appropriate balance between the desire to maintain index options as a hedging vehicle for related commodities products and the risk of increased investor confusion. Although the proposal would authorize exchanges to establish different bases for determining exercise settlement values of index options, the Commission believes OCC has taken appropriate measures to limit potential investor confusion.

OCC's current By-Laws reflect the traditional industry practice of basing the settlement value of exercised index options on the market prices of stocks underlying the index as of close of trading for those stocks. Under that practice, the settlement value for a stock index option exercised before or on expiration date is based on the closing prices of underlying securities on the date of exercise. Because commodity stock index products also used the closing market prices of stocks underlying the index to determine settlement obligations, index options and commodity products on the same indices have been used, among other things, as alternative vehicles to hedge market risks.

The Commission believes the proposal will allow exchanges, in appropriate circumstances, to maintain the traditional relationship between options and commodity products involving the same stock indices. As noted above, certain commodity exchanges have proposed to value commodity index products based on the opening prices of the constituent stocks. Absent changes in OCC's By-Laws that enable parallel changes to index options valuation procedures, investor ability to use commodity index products and stock index options as alternative vehicles to hedge market risks might be reduced significantly.[4]

The Commission believes that OCC's proposal is designed to provide orderly transition to index options valuation based on opening prices of underlying stocks. OCC has adopted a supplement to its Options Disclosure Document ("Supplement") to give its members and their customers notice and information about the exchange authority to designate new series of index options with different bases for settlement valuation.[5] The Supplement clarifies that changes to index option settlement values would apply only to series of options opened for trading after the date of the Supplement and that otherwise identical index options traded on an exchange could differ as to settlement valuation. The Supplement also notes that index options settlement values may be calculated differently from settlement values for commodity products based on the same index.

Finally, the Commission believes it is appropriate to approve OCC's proposal on an accelerated basis. The proposal merely enables exchange rulemaking to establish index options valuations at times different from those specified in OCC's By-Laws. Thus, the Commission will be able to review specific exchange proposals on a case-by-case basis.

**V. Conclusion**

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

The Commission finds good cause for approving the proposed rule change on an accelerated basis, before the thirtieth day after notice of the proposed rule change appeared in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–87–07) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[4] The Commission is approving today, on an accelerated basis, a New York Stock Exchange proposal that effects this change for its Composite Index Option and High-Beta Index Option. The Commission understands that other options exchanges favor such a change and expects similar rule filings may be filed.

[5] The Commission approved that supplement on an accelerated basis under Rule 9b–1 of the Act.

Dated: March 27, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7363 Filed 4–2–87; 8:45 am]

BILLING CODE 8010–01–M

---

[File No. 22–16604]

## Application and Opportunity for Hearing; Portland General Electric Co.

March 27, 1987.

Notice is hereby given that Portland General Electric Company, an Oregon corporation (the "Applicant"), has filed an application under Clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Chemical Bank, a New York corporation ("Chemical Bank") under an indenture dated as of October 1, 1986 (the "Qualified Indenture") with respect to the Applicant's 8% Debentures Due 1991 and other unsecured debentures, notes or other evidences of indebtedness in one or more series (together the "Securities"), and an indenture dated as of December 1, 1986 (the "December Indenture") relating to the issuance of certain Bonds of the City of Forsyth, Montana which are to be paid from loan payments made by Applicant to Chemical Bank as Trustee under the December Indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as Trustee under the Qualified Indenture with respect to the Securities.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material

conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that: (1) In October, 1986, the Applicant entered into the Qualified Indenture, with Chemical Bank as Trustee, providing for the issuance, from time to time, of the Securities. The Qualified Indenture was filed as Exhibit 4 to a registration statement on Form S–3 (File No. 33–6984) (the "Registration Statement"), which registration statement together with a Statement of Eligibility and Qualification of the Trustee on Form T–1 (File No. 22–15612) was filed with the Securities and Exchange Commission on July 3, 1986. On July 17, 1986, the Commission declared the Registration Statement effective and the Indenture was qualified. On October 8, 1986, the Applicant issued $100,000,000 aggregate principal amount of 8% Debentures Due 1991 under the Qualified Indenture. The 8% Debentures were offered by a prospectus dated July 17, 1986, as supplemented by a prospectus supplement dated September 29, 1986.

(2) The Applicant is not in default in any respect under the Qualified Indenture or under any other existing indenture.

(3) On December 17, 1986 the City of Forsyth, Montana (the "Issuer") and Applicant entered into a Loan Agreement, (the "Loan Agreement") dated as of December 1, 1986, whereby the Issuer agreed to issue, under an indenture (the "Bond Indenture"), dated as of December 1, 1986, between the Issuer and Chemical Bank, as Trustee, $21,000,000 aggregate principal amount of Variable Rate Demand Pollution Control Revenue Bonds, Series 1986 (Portland General Electric Company Colstrip Project) (the "Bonds"), and to lend the proceeds from the issuance of such Bonds to the Applicant. Pursuant to the Loan Agreement, the Applicant has agreed to make payments ("Loan Payments") sufficient to pay when due (whether at stated maturity, by acceleration or otherwise) the principal of, premium, if any, and interest on, the Bonds. The Bonds were not required to be, and were not, registered under the Securities Act of 1933 and the Bond Indenture was not qualified under the Trust Indenture Act of 1939.

(4) Trusteeship under the Qualified Indenture with respect to the Securities and under the Bond Indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as Trustee under the Qualified Indenture with respect to the Securities.

The Securities and the Loan Payments are both wholly unsecured and rank *pari passu*.

(5) Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and laws asserted, all persons are referred to said application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than April 15, 1987, request in writing that a hearing be held on such matter, stating the nature of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7364 Filed 4–2–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–15650; 812–6632]**

## Flag Investors Corporate Cash Trust; Application

March 27, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

*Applicant:* Flag Investors Corporate Cash Trust (the "Fund").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from section 19(b) and Rule 19b–1.

*Summary of Application:* Applicant seeks an order that would permit it to distribute more frequently than annually, and as often as monthly, all capital gains realized by it from certain options transactions.

*Filing Date:* The application was filed on February 17, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 20, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, Washington, DC 20549. The Fund, 135 East Baltimore Street, Baltimore, MD 21202.

**FOR FURTHER INFORMATION CONTACT:** Denis R. Molleur, Staff Attorney (202) 272–2363 or H.R. Hallock, Jr., Special Counsel (202) 272–3030 (Division of Investment Management).

*Applicant's Representations*

1. The Fund is a diversified open-end management investment company registered under the 1940 Act. The Fund's primary investment objective is high current return, which it seeks to achieve by investing primarily in dividend paying common stocks that it holds only long enough to receive the dividend next payable and to qualify such dividend for the 80 percent corporate dividends received deduction under the Internal Revenue Code of 1986 ("Code").

2. The Fund's secondary investment objective is to minimize fluctuations of principal. As a means of generating increased income and as a device to hedge the Fund's portfolio against fluctuations in principal value, the Fund writes covered call options on its portfolio stocks. As an additional hedge, the Fund purchases put options on broad-based stock indexes traded on national securities exchanges to the fullest extent possible under the Code and other applicable legal limitations.

3. The Fund pays dividends from net investment income monthly. Net investment income includes dividends received from portfolio stocks and short-term capital gains and all other income not characterized as long-term capital gains. Distributions of any net long-term capital gains are currently distributed annually.

4. Under section 1256 of the Code, gains or losses with respect to the Fund's option transactions are deemed to be 60% long-term capital gain or long-term capital loss regardless of how long the position is actually held. Section 1256, as amended, was intended to eliminate certain tax abuses relating to the realization of short-term capital losses from options transactions and there is no evidence that Congress intended to limit the frequency with which registered investment companies may distribute capital gains from options transactions.

5. Under the Code, long-term capital gains and short-term capital gains will eventually be taxed at the same rates. To the extent that the Code continues to distinguish between long-term and short-term capital gains, and that distinction governs the Fund's distributions, the Fund wishes to distribute section 1256 deemed long-term gains monthly as it believes that its shareholders wish more frequent distributions of such gains.

6. None of the purposes of section 19(b) and Rule 19b–1 which, with certain exceptions, prohibit distributions of long-term capital gains more than once every twelve months, will be served by a strict application of these provisions to 60% of the capital gains generated by certain options transactions because: (1) Characterizations of these gains as long term capital gains would not make investors likely to confuse them with dividends out of net dividend income since the principal shareholders are corporations that have invested with an interest in this particular type of investment vehicle that is designed to provide monthly income distributions and (2) distributions of capital gains will be clearly distinguished from other components of distributions, such as income that qualifies for the dividends received deduction.

7. Section 19(b) and Rule 19b–1 were also intended to prevent churning of portfolios in contravention of a stated goal of long-term capital appreciation. The investment strategy of the Fund requires a high portfolio turnover, which is disclosed in the Fund's prospectus, and its investment objective is high current income, not long-term capital appreciation. Any deemed long-term gain from index option transactions would be an incident of policies designed to minimize fluctuations of principal.

8. Monthly distribution of long-term capital gains from options transactions will not increase administrative expenses because the Fund already makes monthly distributions out of net investment income and the components of that net investment income, such as the percentage thereof that is eligible for the 80% dividends received deduction, must be communicated to shareholders.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7366 Filed 4–2–87; 8:45 am]

BILLING CODE 8010–01–M

## Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available Form: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549

Extension
Attorney Supplement to SF 171
File No. 270–277

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the Commission's Attorney Supplement to Standard Form 171.

Approximately 400 applicants submit an attorney supplement, which is estimated to require one hour of preparation.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7430. Office of Information and Regulatory Affairs, Room 3228 NEOB, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

March 31, 1987.

[FR Doc. 87–7430 Filed 4–2–87; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Automotive Fuel Economy Program; Report to Congress

The attached document, *Automotive Fuel Economy Program, Eleventh Annual Report to the Congress*, has been prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163) which requires in pertinent part that "each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

March 30, 1987.

## AUTOMOTIVE FUEL ECONOMY PROGRAM

### Eleventh Annual Report to the Congress—January 1987

**Table of Contents**

Section I: Introduction
Section II: Fuel Economy Improvement by Manufacturers
Section III: 1985 Rulemaking Activities
Section IV: Impact of Domestic Content Amendment
Section V: Use of Advanced Technology

### Section I: Introduction

This Eleventh Annual Report to the Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1986 regarding implementation of applicable Sections of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report by January 15th of each year. Included in this report are sections summarizing rulemaking activities during 1986 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III of the Department of Energy Act of 1978 (Pub. L. 95–238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States (U.S.) market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include: (1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks as

necessary; (2) promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards; (3) considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them; (4) preparing reports to Congress annually on the progress of the fuel economy program; (5) enforcing fuel economy standards and regulations; and (6) responding to petitions concerning domestic production by foreign manufacturers and other matters.

To date, passenger car fuel economy standards have been established by the Congress for Model Years (MY's) 1978 through 1980 and for 1985 and thereafter, and by NHTSA for MY's 1981 through 1984. In addition, during 1985 and 1986 NHTSA amended passenger car standards for MY's 1986 through 1988. Standards for light trucks have been established by NHTSA for MY's 1979 through 1988. All current standards are listed in Table I–1.

In her budget statement of January 5, 1987, the Secretary of Transportation recommended to the President that the Administration should seek repeal of the fuel economy standards provisions of Title V of the Motor Vehicle Information and Cost Savings Act. The fuel economy standards required by this law have now put U.S. manufacturers at a competitive disadvantage with foreign importers and threaten thousands of American jobs. This is due largely to the domestic content requirement of the CAFE statute. Continuing the CAFE requirements may encourage U.S. manufacturers to build large cars overseas to comply with the fuel economy standards for their domestic fleet, give foreign importers a growing competitive advantage in the large car segment of the market, and reduce the range of American-built cars available to consumers.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS FOR THE 1978 THROUGH 1988 MODEL YEARS (IN MPG)

| Model Year | Passenger Cars | Light Trucks [1] | | |
|---|---|---|---|---|
| | | Two-wheel drive | Four-wheel drive | Composite [2 3] |
| 1978 | [4] 18.0 | | | |
| 1979 | [4] 19.0 | 17.2 | 15.8 | 17.2 |
| 1980 | [4] 20.0 | 16.0 | 14.0 | ([5]) |
| 1981 | 22.0 | [6] 16.7 | 15.0 | ([5]) |
| 1982 | 24.0 | 18.0 | 16.0 | 17.5 |
| 1983 | 26.0 | 19.5 | 17.5 | 19.0 |
| 1984 | 27.0 | 20.3 | 18.5 | 20.0 |
| 1985 | [4] 27.5 | [7] 19.7 | [7] 18.9 | [7] 19.5 |
| 1986 | [8] 26.0 | 20.5 | 19.5 | 20.0 |
| 1987 | [8] 26.0 | 21.0 | 19.5 | 20.5 |
| 1988 | [8] 26.0 | 21.0 | 19.5 | 20.5 |

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY's 1980–1988 are for light trucks with a GVWR of up to and including 8,500 lbs.

[2] For MY 1979, light truck manufacturers may comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For MY 1982–1988, manufacturers may comply with the two-wheel and four-wheel drive standards or may combine their two-wheel and four-wheel drive light trucks and comply with the composite standard.

[4] Standards were established by Congress in Title V of the Motor Vehicle Information and Cost Savings Act.

[5] Manufacturers whose light truck fleet is powered exclusively by basic engines which are not also used in passenger automobiles, must meet standards of 14 mpg and 14.5 mpg in MY 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.

[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for composite.

[8] Title V established a standard of 27.5 mpg for 1985 and subsequent model years, but provided the Department of Transportation with the authority to amend the standard. NHTSA lowered the standard to 26.0 for MY 1986 in October 1985 and to 26.0 mpg for MY's 1987 and 1988 in October 1986.

**Section II: Fuel Economy Improvement by Manufacturers**

The fuel economy achievements for domestic and foreign manufacturers in MY 1985 have been updated since their publication in the *Tenth Annual Report to the Congress* and, together with current data for MY 1986, are listed in Tables II–1 and II–2.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER AND MODEL YEAR [1]

| Manufacturer | Model year—CAFE (MPG) | |
|---|---|---|
| | 1985 | 1986 |
| Domestic: | | |
| AM | 33.5 | 33.7 |
| Chrysler | 27.8 | 27.9 |
| Ford | 26.6 | 26.8 |
| GM | 25.5 | 26.2 |
| Sales weighted average | 26.2 | 26.6 |
| Imported: | | |
| Alfa Romeo | 27.1 | 27.6 |
| Bertone | 29.8 | 29.2 |
| BMW | 25.8 | 25.7 |
| Chrysler Imports | 36.2 | 36.4 |
| Ford Imports | 25.2 | 24.0 |
| GM Imports | 47.7 | 47.3 |
| Honda | 33.9 | 33.7 |
| Hyundai | | 35.0 |
| Isuzu | 27.7 | 30.7 |
| Jaguar | 19.3 | 18.9 |
| Mazda | 30.3 | 29.7 |
| Mercedes-Benz | 23.0 | 21.3 |
| Mitsubishi | 31.9 | 30.7 |
| Nissan | 29.4 | 30.2 |
| NUMMI (GM-Toyota) | 35.7 | 36.4 |
| Peugeot | 24.7 | 24.8 |
| Pininfarina | 28.0 | |
| Porsche | 26.3 | 25.5 |
| Renault | 28.6 | 26.3 |
| Saab | 25.8 | 26.4 |
| Subaru | 33.0 | 31.5 |
| Suzuki | 58.7 | 52.5 |
| Toyota | 32.9 | 32.5 |
| Volvo | 26.5 | 26.5 |
| VW [2] | 30.2 | 29.2 |
| Yugo | | 31.3 |
| Sales weighted average | 30.9 | 31.5 |
| Total fleet average | 27.3 | 27.9 |
| Fuel economy standards | 27.5 | 26.0 |

[1] Manufacturers of fewer than 10,000 passenger cars annually that have requested alternative fuel economy standards are not listed.

[2] Includes VW domestic production as well as VW and Audi imports.

Note—Some MY 1985 CAFE values differ from those used in the Tenth Annual Report to the Congress due to the inclusion of later data.

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER AND MODEL YEAR

| Manufacturer | Model year CAFE (mpg) | | | | | |
|---|---|---|---|---|---|---|
| | Two-wheel drive | | Four-wheel drive | | Composite [1] | |
| | 1985 | 1986 | 1985 | 1986 | 1985 | 1986 |
| Domestic: | | | | | | |
| AM | 23.5 | 23.7 | 20.3 | 20.7 | | |
| Chrysler | | | | | 19.1 | 19.7 |
| Ford | 19.5 | | 18.8 | | | 20.2 |
| GM | 20.1 | 20.0 | 20.1 | 18.7 | | |
| Sales weighted average | 19.9 | 20.1 | 19.7 | 19.4 | 19.1 | 20.1 |
| Imported: | | | | | | |
| Chrysler imports | 28.0 | | 24.6 | | | 23.0 |
| Ford imports | 26.0 | 27.9 | | | | |
| Isuzu | 33.5 | 32.3 | 24.9 | 25.4 | | |
| Mazda | (2) | 27.7 | | | | |
| Mitsubishi | 28.6 | 28.4 | 23.2 | 23.0 | | |
| Nissan | 26.7 | 25.8 | 22.9 | 22.4 | | |
| Subaru | | | 28.1 | 28.3 | | |
| Suzuki | | | 28.8 | 33.1 | | |
| Toyota | 27.8 | 27.8 | 23.9 | 24.5 | | |
| VW | 21.3 | | | | | 19.0 |
| Sales weighted average | 28.3 | 27.3 | 24.7 | 25.2 | | 22.9 |
| Total fleet average | 21.2 | 22.8 | 20.5 | 21.5 | 19.1 | 20.2 |
| Fuel economy standard | 19.7 | 20.5 | 18.9 | 19.5 | 19.5 | 20.0 |

[1] In MY's 1985 and 1986, manufacturers could comply with the two-wheel and four-wheel dirve standards or could combine their two-wheel and four-wheel drive trucks and comply with the composite standards.
[2] Early introduction of 1986 models, no 1985 models produced.
Note.—Some MY 1985 CAFE values differ from those used in the Tenth Annual Report to Congress due to the use of later data.

Despite lower fuel prices, overall fleet fuel economy improved for passenger cars from 27.3 mpg in MY 1985 to 27.9 mpg in MY 1986. Lower fuel prices also contributed to a continuing reduction in the demand for diesel engines (from 0.9 percent of the MY 1985 fleet to 0.3 percent of the MY 1986 fleet). For MY 1986, Corporate Average Fuel Economy (CAFE) values increased over MY 1985 levels for only 11 of the 27 passenger car manufacturers which produced cars in both MY's 1985 and 1986. (See Table II–1.) However, these 11 companies accounted for about 77 percent of the total MY 1986 production. Manufacturers did continue to introduce new technologies and more fuel-efficient models. On balance both domestic and import manufacturers improved their passenger car CAFE levels. For MY 1986, all four domestic manufacturers raised their CAFE from their MY 1985 levels and the average CAFE for imported cars recovered to the MY 1984 value after a decline in MY 1985.

For light trucks, fleet average MY 1986 CAFE increased from MY 1985 levels by 1.6 mpg for manufacturers using the two-wheel-drive standard, by 1.0 mpg for manufacturers using the four-wheel-drive standard, and by 1.1 mpg for manufacturers using the composite standard. CAFE levels for imported light truck manufacturers decreased by 1.0 mpg for two-wheel drive trucks and increased by 0.5 mpg for four-wheel drive trucks. Three of the four domestic manufacturers increased their light truck CAFE.

Two domestic and one imported light truck manufacturers are not projected to achieve the MY 1986 CAFE standards. Also, a number of European manufacturers with limited model offerings failed to meet the level of the MY 1986 passenger car CAFE standard. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1986 CAFE projections may change when final MY 1986 CAFE figures are provided to NHTSA by EPA, in mid-1987. In addition, many manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to eliminate current deficits.

Fleet average fuel economy for all MY 1986 passenger cars exceeded both the MY 1986 standard and, for the first time, the higher 27.5 mpg standard originally set by the Congress for MY's 1985 and beyond. Thus, even though NHTSA lowered, according to statutory criteria, the original MY 1986 standard, overall CAFE continued to rise.

Fleet average fuel economy for MY 1986 light trucks also exceeded the MY 1986 standards for either the separate two- and four-wheel drive fleets or on the composite basis. NHTSA estimates that by 1995 the projected cumulative passenger car and light truck fuel savings due to manufacturers'

achievements through 1986 would amount to approximately 410 billion gallons when compared to the consumption projected at MY 1976 new vehicle fuel economy levels. This calculation assumes that manufacturers will continue to achieve the fuel economy levels of existing standards for the post-1988 period and that on-road fuel economy averages 15 percent below EPA ratings, which is consistent with current EPA labeling requirements.

The characteristics of the MY 1986 passenger car fleet reflect a continuing trend toward heavier imported cars and higher performance domestic cars. (See Table II–3.) Since MY 1985, the average curb weight decreased 50 pounds for the domestic fleet but increased 25 pounds for the import fleet. From MY 1985 to MY 1986, horsepower per 100 pounds increased from 3.77 to 3.90 for domestic cars and declined from 4.01 to 3.85 hp for imported cars. Average engine size is smaller for both domestic and imported cars. The size class breakdown shows a slight trend away from full- and mid-size cars to compacts and subcompacts for the overall fleet. The import share of the passenger car market increased by about 3 percentage points in MY 1986 as it also did in MY 1985.

The 0.4–0.6 mpg passenger car fuel economy improvements for the MY 1986 domestic and import fleets were achieved primarily in four areas: increased use of front-wheel drive (to reduce driveline losses), increased use of torque converter clutches and split torque features on automatic transmissions (also to reduce driveline losses), increased use of fuel injection on domestic cars (to increase the engine efficiency), and reduced weight on domestic cars.

The characteristics of the MY 1986 light truck fleet (see Table II–4) show an average weight reduction of 47 pounds, smaller engine size, and higher performance as reflected by the increase in the average horsepower to weight ratio. Increased popularity of small pickups and compact vans contributed to improved CAFE levels. The 0.7 mpg fleet fuel economy improvement for MY 1986 light trucks was achieved primarily by a 28 percentage point increase in the use of fuel injection and increased use of lock-up torque converter clutches on automatic transmissions. As with passenger cars, diesel usage decline in light trucks.

The import share of the MY 1986 light truck fleet rose to the highest level since MY 1980. This is somewhat distorted, however, because of the extended model year in 1986 for two Japanese manufacturers.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS

| Model year | Total fleet | | Domestic fleet | | Import fleet | |
|---|---|---|---|---|---|---|
| | 1985 | 1986 | 1985 | 1986 | 1985 | 1986 |
| Fleet average fuel economy, mpg | 27.3 | 27.9 | 26.2 | 26.6 | 30.9 | 31.5 |
| Fleet average curb weight, lb | 2,866 | 2,821 | 3,018 | 2,968 | 2,457 | 2,482 |
| Fleet average engine displacement, in.[3] | 177 | 169 | 199 | 191 | 119 | 117 |
| Fleet average horsepower/weight ratio, hp/100 lb | 3.84 | 3.89 | 3.77 | 3.90 | 4.01 | 3.85 |
| Percent of fleet | 100 | 100 | 72.8 | 69.7 | 27.2 | 30.3 |
| Segmentation by EPA size class, percent: | | | | | | |
| Two-seater | 3.3 | 3.3 | 1.7 | 1.9 | 7.6 | 6.4 |
| Minicompact | 0.6 | 0.5 | 0.0 | 0.0 | 2.3 | 1.8 |
| Subcompact [1] | 21.1 | 23.8 | 9.8 | 10.3 | 51.3 | 54.7 |
| Compact [1] | 31.0 | 31.6 | 29.6 | 31.2 | 34.9 | 32.6 |
| Mid-size [1] | 28.6 | 27.8 | 37.7 | 38.1 | 3.8 | 4.2 |
| Full size [1] | 15.4 | 13.0 | 21.2 | 18.6 | 0.0 | 0.3 |
| Percent diesel engines | 0.9 | 0.3 | 0.2 | 0.1 | 2.7 | 0.7 |
| Percent turbocharged engines | 3.7 | 3.6 | 3.0 | 3.1 | 5.6 | 4.7 |
| Percent injection | 56.4 | 65.6 | 57.5 | 67.3 | 53.3 | 48.9 |
| Percent front-wheel drive | 63.3 | 71.1 | 60.0 | 68.2 | 72.3 | 77.8 |
| Percent automatic transmissions | 76.9 | 75.6 | 88.6 | 87.5 | 45.4 | 48.0 |
| Percent of automatic transmissions with lock-up clutches or split torque Features | 82.3 | 84.4 | 86.1 | 88.5 | 62.5 | 67.1 |

[1] Includes associated station wagons.

TABLE II–4.—LIGHT TRUCK FLEET CHARACTERISTICS

| Model year | Total fleet | | 2WD fleet | | 4WD fleet | |
|---|---|---|---|---|---|---|
| | 1985 | 1986 | 1985 | 1986 | 1985 | 1986 |
| Fleet Average Fuel Economy, mpg | 20.7 | 21.4 | 20.9 | 21.8 | 20.2 | 20.6 |
| Fleet Average Equivalent Test Weight, lb | 3,860 | 3,813 | 3,807 | 3,760 | 3,964 | 3,929 |
| Fleet Average Engine Displacement, in.[3] | 225 | 213 | 229 | 215 | 217 | 207 |
| Fleet Average Horsepower/Equivalent Test Weight ratio, HP/100 lb | 3.20 | 3.27 | 3.28 | 3.30 | 3.05 | 3.21 |
| Percent of Fleet | 100 | 100 | 66.5 | 68.7 | 33.5 | 31.3 |
| Import Share, percent | 17.8 | 29.2 | 16.9 | 27.8 | 19.7 | 32.2 |
| Segmentation by Type, percent: | | | | | | |
| Passenger Van: | | | | | | |
| Compact | 8.3 | 11.1 | 12.5 | 15.6 | ..... | 1.0 |
| Large | 2.4 | 1.2 | 3.6 | 1.8 | ..... | ..... |
| Cargo Van: | | | | | | |
| Compact | 3.6 | 3.3 | 5.4 | 4.8 | ..... | ..... |
| Large | 8.8 | 7.9 | 13.2 | 11.5 | ..... | ..... |
| Small Pickup | 23.2 | 28.5 | 29.9 | 36.9 | 10.5 | 10.2 |
| Large Pickup | 30.1 | 28.8 | 29.4 | 25.2 | 31.3 | 36.6 |
| Special Purpose | 23.2 | 18.7 | 5.5 | 3.5 | 58.2 | 52.1 |
| Cab Chassis | 0.3 | 0.5 | 0.5 | 0.7 | ..... | ..... |
| Percent Diesel Engines | 1.5 | 1.1 | 1.4 | 0.9 | 1.6 | 1.4 |
| Percent Fuel Injection | 14.0 | 41.9 | 15.5 | 38.1 | 11.0 | 50.2 |
| Percent Automatic Transmissions | 63.8 | 58.2 | 69.3 | 62.7 | 52.8 | 48.3 |
| Percent Automatic Transmissions with Lock-up Clutches | 70.1 | 72.4 | 68.6 | 69.4 | 74.6 | 81.0 |

**Section III: 1986 Activities**

*A. MY 1987–88 Passenger Car Fuel Economy Standards*

On March 1, 1985, General Motors Corporation (GM) and Ford Motor Company (Ford) petitioned the agency to reduce passenger car fuel economy standards from 27.5 mpg to 26.0 mpg for 1986 and subsequent model years. In general, both companies argued that changes in the passenger car market beyond their control, such as declining fuel prices and increased import competition, had reduced their fuel economy capability.

On March 28, 1985, NHTSA published a notice in the **Federal Register** (50 FR 12344) granting the GM and Ford petitions and requesting public comment. In that notice, NHTSA also combined rulemaking on these petitions with that of a petition submitted on July 26, 1984, by the Center for Auto Safety (CFAS) and the Environmental Policy Institute (EPI). The CFAS/EPI petition requested that the agency raise the existing passenger car fuel economy

standards from 27.5 mpg for MY 1987–90 to 31.5, 34.5, 37.5, and 40.5 mpg for MY 1987–90, respectively. The CFAS/EPI petition was granted by NHTSA in a **Federal Register** notice on November 28, 1984 (49 FR 46770). In both **Federal Register** notices, the agency noted that granting a petition does not mean that a rule will necessarily be issued. The determination to issue a rule is made in the course of rulemaking in accordance with statutory criteria.

On September 30, 1985, NHTSA issued a final rule amending the MY 1986 standard to 26.0 mpg (50 FR 40528, October 4, 1985).

On January 22, 1986, NHTSA published in the **Federal Register** (51 FR 2912) a notice of a public meeting to be held on February 19, 1986, and a notice of proposed rulemaking (NPRM) to amend the existing MY 1987–88 standard of 27.5 mpg to new values within the range of 26.0 mpg to 27.5 mpg. In the NPRM, the agency requested information and comments to assist it in its analysis of manufacturers' fuel economy capabilities for MY's 1987–88. NHTSA noted that manufacturers are faced with significant uncertainties that could have substantial adverse impact on their CAFE projections. Respondents were asked to comment on these uncertainties—specifically, future gasoline prices, competition from abroad, and consumer demand.

On July 30, 1986, NHTSA published in the **Federal Register** (51 FR 27224) a supplemental NPRM (SNPRM) concerning an argument put forth by GM that the agency may (or indeed, must) consider a company's need for carryback credits in determining the maximum feasible average fuel economy level. The notice requested comment on a tentative conclusion by the agency that the argument should be rejected.

On October 1, 1986, after receiving extensive comments on its proposal and holding a public meeting, NHTSA issued a final rule amending the MY 1987–1988 standards to 26.0 mpg (51 FR 35594, October 6, 1986). NHTSA concluded that the only actions available to GM and Ford to significantly raise their MY 1987–88 fuel economy levels would involve product restrictions resulting in adverse economic impacts, including sales losses well into the hundreds of thousands, job losses into the tens of thousands, and unreasonable restrictions on consumer choice. In its analysis, the agency noted that both GM and Ford CAFE estimates for MY 1987–1988 are subject to a number of risks. One risk is the possibility of greater than expected competition from foreign manufacturers of small cars, which compete directly with and thus could reduce sales of the domestic manufacturers' more fuel efficient cars. Another risk is that fuel prices may decline further, reducing demand beyond that anticipated by the manufacturers for smaller cars and engines, with concomitant increases in consumer demand for larger cars and engines. Based on its analysis, NHTSA concluded that the maximum feasible standard for MY 1987–88 is 26.0 mpg.

NHTSA based its decision to establish MY 1987–88 standards at 26.0 mpg on grounds unrelated to the argument set forth by GM that the agency must consider a company's need for carryback credits when determining the maximum average fuel economy level. The agency noted that if it did include GM's desire to earn carryback credits to offset its MY 1985 shortfall as part of the calculation of the MY 1987–88 standards, the record would dictate standards below 26.0 mpg for both model years.

*B. Light Truck Standards*

Proposed standards for MY 1988 and 1989 light trucks were published on January 24, 1986 (51 FR 3221). That rule proposed that final composite standards be set within a range of 20.5 mpg to 22.0 mpg for MY 1988 and 20.5 mpg to 22.5 mpg for MY 1989.

NHTSA published a final rule establishing MY 1988 light truck fuel economy standards on April 23, 1986 (51 FR 15335). The agency set a composite standard of 20.5 mpg, with optional standards of 21.0 mpg for two-wheel drive trucks and 19.5 mpg for four-wheel drive trucks.

In the final rule for MY 1988 trucks, the agency again determined that Ford was the "least capable" manufacturer with regard to the level of the average fuel efficiency of its light trucks. The agency concluded, upon balancing the relevant statutory factors that the relatively small and uncertain energy savings that would be associated with setting a standard above Ford's capability would not justify the economic harm to that company and the economy as a whole. The agency projected that Ford could achieve an average MY 1988 fuel economy level no higher than 20.8 mpg. In contrast, NHTSA concluded that GM could achieve between 20.8–21.1 mpg and Chrysler could achieve 21.5–23.3 mpg. The 20.8 mpg figure for Ford was subject to a potential loss of 0.3 to 0.5 mpg due to sales shifts towards larger engines and vehicles (primarily due to possible declines in fuel prices and consequent increased consumer demand for larger trucks and engines), as well as a potential loss of 0.3 mpg due to technological risks. The agency believed that it was likely that some but not all of these risks would occur, and that Ford's MY 1988 capability did not exceed 20.5 mpg. It selected 20.5 mpg as the final composite standard to balance the potentially serious adverse economic consequences associated with the realization of the above market and technological risks against Ford's opportunities as the "least capable" manufacturer with a substantial share of sales. (Since Ford produces more than 25 percent of all light trucks subject to fuel economy standards, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of the standards.)

The agency is currently in the process of analyzing data for MY 1989 light truck average fuel economy standards. A final rule is expected to be issued by the end of February 1987.

NHTSA has begun the process of establishing light truck standards for the post-1989 period. NHTSA issued a notice requesting data on manufacturers' MY 1990–91 light truck fuel economy capabilities on September 16, 1986 (51 FR 32802). The agency plans to issue a proposed rule on MY 1990–91 light truck fuel economy standards in the spring of 1987.

*C. Low Volume Petitions*

Section 502(c) of the Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one which manufactured fewer than 10,000 passenger automobiles, worldwide, in the model year for which the exemption is sought (the affected model year) and which manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year.

On April 16, 1986, NHTSA published a final rule in the **Federal Register** (51 FR 12855) setting alternative fuel economy standards for Rolls Royce of 11.2 mpg for MY 1987–89.

The agency has pending petitions for alternative standards from Lamborghini, Lotus, Maserati, LondonCoach, Ferrari, Bitter, and Dutcher Motors. Action on these petitions will be completed in 1987.

**Section IV: Impact of Domestic Content Amendment**

The Automobile Fuel Efficiency Act of 1980 (Act of 1980) modified several

provisions of the Motor Vehicle Information and Cost Savings Act. One modification concerned the domestic content provision in section 503 of Title V. Section 503 specifies that passenger cars having less than 75 percent of the cost to the manufacturer attributable to the value added in the United States or Canada are considered to be foreign manufactured. Conversely, vehicles with at least 75 percent value added in the U.S. or Canada are considered to be domestically manufactured for the purposes of complying with fuel economy regulations. Since section 503 also requires that domestically and foreign produced passenger automobiles not be grouped together for the purpose of complying with fuel economy standards, highly fuel-efficient vehicles with less than 75 percent value added in the United States or Canada may not be used by a manufacturer to offset the lower fuel economy of its domestically produced cars.

The domestic content provision was included in Title V to promote employment in the U.S. automobile industry by encouraging manufacturers to produce high fuel economy vehicles in this country, instead of relying on the importation of such cars which they produced or purchased abroad. However, foreign manufacturers choosing to build their most fuel-efficient vehicles in the U.S. or Canada, with at least 75 percent domestic content, would not, under the original domestic provision, be permitted to average such cars with their less fuel-efficient foreign-produced models. Thus, there existed a disincentive for foreign manufacturers to initiate U.S. production and to achieve high levels of domestic content. The Act of 1980 permits manufacturers completing their first year of production in the period 1975–85 to petition NHTSA for exemption from the separate compliance provisions of section 503 of Title V. Such a petition must be granted unless the agency finds that doing so would result in reduced employment in the U.S. automobile industry.

Volkswagen of America, Inc. (VWoA) was the only manufacturer to petition NHTSA for an exemption from the separate compliance provision. The agency granted the petition for relief on October 23, 1981. The agency concluded that granting the petition would not result in adverse effects on employment in the U.S. automobile industry.

During 1986, as required by the Act of 1980 (section 512(c)(1) of Title V), the Secretaries of Transportation and Labor made their fifth annual examination of the impact of the domestic content amendment to Title V. During 1986, employment in the domestic auto industry shrank as production declined. Through October 1986 (the latest figures available when this report was prepared), domestic passenger car production declined 4.8 percent compared to the same period in 1985. VWoA car production declined 11.8 percent; however, VWoA accounts for only 1.1 percent of total domestic car production. According to the U.S. Department of Labor, total employment in SIC (Standard Industrial Classification) 371 (Motor Vehicles and Equipment) declined from an average of 876,000 for January through October 1985 to 846,000 for the same period in 1986.

Although declines in vehicle production experienced by VWoA and other domestic manufacturers in 1986 have prevented growth in U.S. automobile industry employment, VWoA expects that its MY 1987 U.S. produced Golf, its only model assembled in the U.S. during MY 1986, will continue to contain over 75 percent domestic content. Also, VWoA is initiating U.S. assembly of its Jetta model which has previously only been imported from Europe. The domestic content of the MY 1987 Jetta is below 75 percent, but that percentage is expected to increase in the future. There is no reason, at present, to change the 1981 findings of NHTSA that granting VWoA's petition will promote employment in the U.S. automobile industry without causing undue harm to domestic manufacturers. Also, no evidence has been found that the domestic content provision has permitted a manufacturer of domestically produced cars to attain the 75 percent level, and then subsequently to fall below the 75 percent requirement for the same model type.

**Section V: Use of Advanced Technology**

This section fulfills the statutory requirement of section 305 of Title III of the Department of Energy Act of 1978 (Pub. L.95–238) which directs the Secretary of Transportation to submit an annual report to the Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronics and engine technology which improved fuel economy in MY 1986.

*New Models*

In 1986, manufacturers introduced several new, lighter weight, front-wheel drive passenger cars and some new, lighter weight truck models.

General Motors replaced the K-body Cadillac Seville and the E-body Cadillac Eldorado, Buick Riviera, and Oldsmobile Toronado with lighter transverse-engine, front-wheel drive models with more sophisticated computer control of engine functions. These new models are over 400 pounds lighter than their predecessors, have lower aerodynamic drag, and are manufactured in GM's new, highly-automated Hamtramck, Michigan, assembly plant. GM also introduced new, front-wheel drive H-body sedans (the Oldsmobile Delta 88 and the Buick LeSabre) which replaced the B-body rear-wheel drive sedans of the same model names. The new H-body sedans are about 600 pounds lighter than their predecessors.

Ford introduced new front-wheel drive mid-size cars (the Ford Taurus and Mercury Sable) which replaced the rear-wheel drive Ford LTD and Mercury Marquis. The Taurus and Sable incorporate new 4- and 6-cylinder engines, a new 4-speed automatic transmission and low aerodynamic drag for improved fuel economy.

For MY 1986, the number of imported passenger car makes increased with the introduction of Yugo, Hyundai, and Acura lines. The Yugo and Hyundai cars are marketed as low-cost entry-level vehicles and are manufactured in Yugoslavia and South Korea, respectively. This is the first time cars from either of these countries have been offered in the U.S. market. The Acura is a new Honda line offering larger and more luxuriously trimmed models. Other new imports include the front-wheel drive Toyota Celica replacing the rear-wheel drive model, the compact Mazda 323 replacing the subcompact Mazda GLC, and the Saab 9000, which is the first imported sedan to be classified as "large" by the EPA interior volume index measurements.

In the domestic light truck area, American Motors and Chrysler each introduced new pickup trucks in a new mid-size class that falls between compact and full-size models in weight, but has cargo box dimensions similar to full-size pickups. The American Motors Jeep Comanche pickup was an early introduction 1986 model while Chrysler's Dodge Dakota is an early introduction 1987 model. In the import truck category, Mazda and Nissan introduced new compact pickups this year, with part of the Nissan production assembled in the U.S. The number of small vans and van-like station wagons with four-wheel drive increased in MY 1986, with the introduction of the Nissan 4WD Stanza Wagon and four-wheel drive versions of the Plymouth/Dodge imported Colt Vista wagon and the Volkswagen Vanagon Syncro.

*Materials*

Auto makers continued to make progress in materials application aimed

at weight reduction, corrosion prevention, and general quality improvement. This report will focus on the weight reduction and improved efficiency aspects.

The use of aluminum is increasing as is the application of certain plastics and composite materials. The tubular aluminum driveshaft introduced on the Ford Aerostar van has entered high volume production. Weight has been reduced from 19 lbs to 11 lbs. The Aerostar also employs aluminum wheels made by a novel impact extrusion process. Weight savings on rotating components like wheels and driveshafts represent a greater energy savings than on static components because the rotational energy must be increased as well as the forward motion each time the vehicle accelerates.

Ford also has introduced an aluminum case for its four-speed automatic transmissions on the Taurus/Sable cars. The new Chevrolet Corvette uses aluminum cylinder heads on its V–8 engine. Although this application is not novel, these lighter weight heads are usually employed on smaller engines. Other new applications of aluminum include cast hinges on the AMC Jeep Cherokee and Wagoneer, balance shaft housings on Chrysler's new 2.5 liter engines, water pumps on Ford's new V–6 engines for the Taurus and Sable, new cast wheels on a number of cars, and expanded use of aluminum radiators. Another lightweight metal, nagnesium alloy, has been introduced in clutch housings and clutch/brake pedal support brackets.

As the lighter metals, plastics, and composite materials replace conventional steel, some of the remaining conventional steel is being replaced by high-strength steels. Examples of high-strength steel introduction include the Ford Aerostar van hood, liftgate and driveshaft; bumper components on the Taurus, Sable, and Aerostar; and leaf springs on various GM models. Smaller, more powerful engines will also rely heavily on high strength steel for component applications. Engine components affected on 1986 models include balance shafts and interconnecting helical gears in Chrysler's new 2.5 liter engines. Also steel camshafts are replacing cast iron camshafts in Ford's 5.0 liter V–8.

Body and chassis applications of high-strength steel include frame crossmembers, front bumper support bars, rear wheel wells and control arms on the Ford Aerostar van; certain underbody components of GM E/K-body cars; and wheels for the Buick LeSabre and Oldsmobile Delta 88.

A new application of a composite piston is being introduced in GM's 2.5 liter four cylinder "Iron Duke" engine. This consists of silicon impregnated aluminum cast into a piston to produce a light-weight low friction material.

The Ford Aerostar van uses various plastic components including polycarbonate polyester alloy bumper parts, polyethylene fuel tanks, nylon air cleaners and polycarbonate headlamp covers. Other new applications of plastics include polycarbonate bumpers on the Ford Taurus and Mercury Sable, fiberglass reinforced epoxy resins in rear leaf springs on various GM cars, and plastic rear load floor/seatback assemblies in the Taurus/Sable station wagons. The Pontiac Fiero continued to use the first thermoplastic rear quarter panels in the U.S. The Jeep Comanche pickup truck uses a plastic front end panel. These new introductions of plastics are expected not only to save weight, but to increase vehicle life, performance, and appearance.

In addition to the preceding applications, various research and development milestones were reached in 1986. For example a joint development project between the Aluminum Company of America and Audi AG is producing an all aluminum body which weighs 46.8 percent less than an identical body made of steel. Also, resilient foams are being developed for light weight bumper cores to produce superior impact absorption at reduced weight.

*Electronics*

The application of electronics in vehicles in ways that enhance fuel economy continues to grow. More cars have electronic controlled fuel injection and antiknock systems for MY 1986. Increasingly, fuel injection is multi-point which introduces the fuel at the intake port of each cylinder rather than single-point, which introduces fuel at a central position in the manifold. Shift indicator lights were used on about half of the manual transmission cars to indicate optimum shift points to achieve improved fuel economy. Many of these engine electronics functions are managed by computers, which control a multitude of other vehicle features such as comfort, convenience, diagnostic, antilock brakes, four-wheel drive, and suspension stiffness or leveling. Another electronic development beginning to be used in MY 1986 cars is multiplexing, which reduces the amount of wiring required by using internal switching to route several signals over the same wire.

*Summary*

Although the present stable supply and declining prices of fuel have somewhat limited manufacturers' technological efforts to achieve additional improvements in fuel economy, auto manufacturers are still making progress. Several new models of passenger cars and light trucks were introduced in MY 1986 with better fuel economy than their predecessors due to lighter weight, improved aerodynamics, and/or new engines and transmissions. Applications of alternative materials for lighter weight continued to increase as did electronic engine controls. Overall, the fuel economy of every sector of passenger cars (imported and domestic) and light trucks (two-wheel drive and four-wheel drive) improved in MY 1986.

[FR Doc. 87–7323 Filed 4–2–87; 8:45 am]
BILLING CODE 4910–59–M

---

## Urban Mass Transportation Administration

### Availability of UMTA Circular C 7008.1; Financial Capacity and Request for Comments

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Notice of the availability of UMTA Circular C 7008.1: Financial Capacity; and request for comments.

**SUMMARY:** By this Notice, the Urban Mass Transportation Administration (UMTA) announces that UMTA Circular C 7008.1, "Financial Capacity," is available to the public. This Circular provides guidance on the criteria UMTA uses to make a determination of each grantee's financial capacity as required by section 3 and the certification requirements of section 9 of the UMT Act. The Circular imposes no new requirements, nor does it require any additional documentation of grantees.

**DATE:** The Circular is effective March 30, 1987. Comments should be received by May 30, 1987.

**ADDRESS:** Comments on the Circular should be submitted to UMTA Docket Number 87–A, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street SW., Washington, DC 20590. Comments may be inspected by the public at this address, Monday through Friday between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Kenneth W. Butler, Associate Administrator for Budget and Policy, Room 9310, (202) 366–4050

Mr. Brian J. Cudahy, Director of Capital and Formula Assistance, Room 9311, (202) 366–1662

**SUPPLEMENTARY INFORMATION:** UMTA Circular C 7008.1 applies to grant funds made available under the UMT Act and concerns the statutory requirements for financial capacity required of UMTA grant recipients.

These requirements are found specifically in two provisions in the UMT Act, section 3(a)(2)(A)(i) and section 9(e)(3)(A), which require that the applicant has "the legal, financial and technical capacity to carry out the proposed project." The purpose of this Circular is to provide guidance to grantees on the factors UMTA considers when it makes an assessment of the financial capacity of applicants before it makes a grant.

Generally, financial capacity consist of two aspects: Overall current financial condition and future financial capability of the agency which includes the sufficiency of its funding sources to meet future operating deficits and capital costs.

The former is usually documented in audits and financial reports. It is reflected in working capital levels, current assets versus current liabilities, capital accounts, debt levels and trends in transit costs and relevant economic indicators.

Financial capability, on the other hand, refers to the stability and reliability of revenue sources to meet future annual capital and operating costs. Funds pledged to support operating deficits and capital programs, as well as replacement and rehabilitation costs and new investments are evaluated for their sufficiency and reliability.

Reviews conducted by the General Accounting Office (GAO) and others often have revealed inadequate financial planning on the part of transit agencies which can result in, among other things, excess fleet size, reduction of overall service in order to initiate service on new facilities and inadequate maintenance. Therefore, UMTA is issuing this Circular describing all stages of UMTA's assessment of financial capacity leading to its funding decisions.

This Circular imposes no new requirements, nor does it require grantees to submit any additional documentation than they are already required to submit. It is effective immediately, in order to permit grantees the earliest opportunity to reevaluate the steps they are taking to ensure compliance with the requirement for financial capacity. Comments will be accepted for 60 days from the effective date of this Notice, May 30, 1987. Following the end of the comment period, UMTA will review the comments and publish another Notice in the **Federal Register.** That Notice will respond to the comments and, if appropriate, make changes to the Circular.

UMTA plans to send a copy of the Circular to all its grantees. Any interested members of the public can obtain a copy by contacting: UMTA Office of Management Planning, Administrative Services Division, UAD–12, Room 7427, 400 7th Street SW., Washington, DC 20590, telephone 366–4865.

Issued on: March 30, 1987.

**Ralph L. Stanley,**

*Administrator.*

[FR Doc. 87–7354 Filed 3–31–87; 11:54 am]

BILLING CODE 4910–57–M

## DEPARTMENT OF THE TREASURY

### Income Tax Treaty Discussions With the Federal Republic of Germany

The Treasury Department announced that representatives of the United States and the Federal Republic of Germany will resume discussions in early April 1987 on possible revisions of the existing income tax treaty between the two countries. The present treaty was signed in 1954 and last revised in 1965.

The discussions will consider revisions in the tax laws of the two countries since the treaty was last revised in 1965. These revisions include the U.S. Tax Reform Act of 1986 and the German tax reform of 1977. To the extent possible, the discussions also will consider the German tax reform anticipated later this year.

Persons wishing to offer comments or suggestions relating to the forthcoming discussions are invited to submit such comments or suggestions in writing to Stephen E. Shay, International Tax Counsel, Room 3064 Main Treasury, Washington, DC 20220.

**J. Roger Mentz,**

*Assistant Secretary (Tax Policy).*

[FR Doc. 87–7356 Filed 4–2–87; 8:45 am]

BILLING CODE 4810–25–M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: March 27, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0026
*Form Number:* 926
*Type of Review:* Extension
*Title:* Return by a Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership
*Description:* Internal Revenue Code section 1491 imposes an excise tax on the transfer of property to a foreign entity. On the date of the transfer, Form 926 and any tax due is required to be filed and paid. In addition, Form 926 is used as a vehicle for taxpayers to report information under section 6038B.
*Respondents:* Individuals, Businesses
*Estimated Burden:* 10,315 hours
Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Financial Management Service**

*OMB Number:* 1510–0045
*Form Number:* TFS–150
*Type of Review:* Reinstatement
*Title:* Trace Request for EFT Payment
*Description:* Purpose is to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The form is designed to help the financial organization locate any problem and to keep the customer (beneficiary) informed of any action taken
*Respondents:* Businesses
*Estimated Burden:* 5,628 hours
Clearance Officer: Douglas C. Lewis (202) 436–5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 87–7333 Filed 4–2–87; 8:45 am]

BILLING CODE 4810–25–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 64
Friday, April 3, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, April 9, 1987.

**LOCATION:** Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*Indoor Air Quality Status*

The staff will brief the Commission on the status of the Indoor Air Quality project.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

**Sheldon D. Butts,**
*Deputy Secretary.*
April 1, 1987.

[FR Doc. 87–7526 Filed 4–1–87; 1:19 pm]
BILLING CODE 6355–01–M

---

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DATE AND TIME:** 2:00 p.m. (eastern time) Monday, April 13, 1987.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

**STATUS:** Closed to the public.

**MATTERS TO BE CONSIDERED:**

*Closed*

1. Litigation Authorization; General Counsel Recommendations

**Note.**—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.)

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer at (202) 634–6748.

This Notice Issued April 1, 1987.
Dated: April 1, 1987.
**Cynthia C. Matthews,**
*Executive Officer, Executive Secretariat.*
[FR Doc. 87–7542 Filed 4–1–87; 3:25 pm]
BILLING CODE 6750–06–M

---

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:05 p.m. on Tuesday, March 24, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) The First State Bank in Billings, Billings, Oklahoma, which was expected to be closed by the Acting Bank Commissioner for the State of Oklahoma on Thursday, March 26, 1987; and (b) Tallulah State Bank & Trust Company, Tallulah, Louisiana, which was expected to be closed by the Commissioner of Financial Institutions for the State of Louisiana on Friday, March 27, 1987.

At that same meeting, the Board also considered a memorandum relating to the initiation of a pilot program which would involve the use of public accountng firms to supplement the Corporation's present examination force.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurrred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 30, 1987.
Federal Deposit Insurance Corporation
**Hoyle L. Robinson,**
*Executive Secretary.*
[FR Doc. 87–7515 Filed 4–1–87; 12:28 pm]
BILLING CODE 6714–01–M

---

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10:00 a.m., April 8, 1987.

**PLACE:** Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Malpractices in the Trans-Atlantic Trade.
2. Proposed section 15 Orders—Far East Trades.
3. Petition and Amendment to Petition of O.N.E. Shipping, Ltd., for section 19 Relief (Colombia).
4. Docket No. 84–31—Arctic Gulf Marine, Inc., Peninsula Shippers Association, Inc., Southbound Shippers, Inc.—Consideration of the Record.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary (202) 523–5725.

**Joseph C. Polking,**
*Secretary.*
[FR Doc. 87–7516 Filed 4–1–87; 12:43 pm]
BILLING CODE 6730–01–M

---

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

March 31, 1987.

**TIME AND DATE:** 10:00 a.m., Thursday, April 9, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. *Jim Walter Resources, Inc.*, Docket Nos. SE 85–36–R, SE 85–62, etc., SE 86–83. (Issues include whether Jim Walter Resources, Inc. complied with its approved ventilation plan and 30 CFR 75.316).

. . . . .

**TIME AND DATE:** Following oral argument in the above case.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the above cases.

It was determined by a unanimous vote of Commissioners that this portion of the agenda be closed.

Any person who intends to attend the oral argument portion of this meeting who requires special accessibility features, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653–5629.

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 87–7462 Filed 4–1–87; 10:23 am]

BILLING CODE 6735–01–M

---

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

March 31, 1987.

**TIME AND DATE:** 9:30 a.m., Thursday, April 30, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. *John A. Gilbert v. Sandy Fork Mining Co., Inc.*, Docket No. KENT 86–49–D and KENT 86–76–D. (Issues include whether the judge erred in dismissing John A. Gilbert's complaint of discrimination.)

* * * * *

**TIME AND DATE:** Following oral argument in the above case.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The Commission will consider and act on the above case.

It was determined by a unanimous vote of Commissioners that this portion of the agenda be closed.

Any person who intends to attend the oral argument portion of this meeting who requires special accessibility features, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653–5629.

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 87–7462 Filed 4–1–87; 10:23 am]

BILLING CODE 6735–01–M

---

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 3:00 p.m., Friday, April 3, 1987. The business of the Committee requires that this meeting of the Committee on Employee Benefits be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific item is: Proposed early retirement program for employees of a Federal Reserve Bank.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 31, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87–7451 Filed 4–1–87; 10:22 am]

BILLING CODE 6210–01–M

---

**NATIONAL CREDIT UNION ADMINISTRATION**

**TIME AND DATE:** 2:00 p.m., Thursday, April 9, 1987.

**PLACE:** Biloxi Hilton, 3580 West Beach Boulevard, Biloxi, MS, 601–388–7000.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of Mintues of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Central Liquidity Facility Investment Policies.
5. Insurance Fund Report.
6. Memorandum of Understanding Between National Association State Credit Union Supervisors (NASCUS) and National Credit Union Administration (NCUA).
7. Proposed Rule: Part 705, NCUA Rules and Regulations, Community Development Credit Union Program.
8. Final Rule: Amendments to Part 708, NCUA Rules and Regulations, involving mergers of federally-insured credit unions and voluntary termination of conversion of Federal share insurance.
9. Final Rule: Amendments to §§ 701.21 and 741, NCUA Rules and Regulations, Member Business Loans by Federally-Insured Credit Unions.

**FOR MORE INFORMATION CONTACT:** Becky Baker, Acting Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

*Acting Secretary of the Board.*

[FR Doc. 87–7528 Filed 4–1–87; 2:07 pm]

BILLING CODE 7535–01–M

---

**NATIONAL CREDIT UNION ADMINISTRATION**

**TIME AND DATE:** 1:00 p.m., Wednesday, April 15, 1987.

**PLACE:** 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Act under section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Board Briefings. Closed Pursuant to exemptions (2), (8), (9)(A)(ii), and (9)(B).
4. Organizational Structure. Closed pursuant to exemptions (2) and (9)(B).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

**FOR MORE INFORMATION CONTACT:** Becky Baker, Acting Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

*Acting Secretary of the Board.*

[FR Doc. 87–7529 Filed 4–1–87; 2:07 pm]

BILLING CODE 7535–01–M

---

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [52 FR 10289 March 31, 1987].

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC

**DATE PREVIOUSLY ANNOUNCED:** Friday, March 27, 1987.

**CHANGE IN THE MEETING:** Cancellation.

The following open meeting scheduled for Thursday, April 9, 1987, at 10:00 a.m. has been cancelled.

Consideration of whether to issue a release proposing an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate as an exempted security, solely for purposes of futures trading thereon, foreign government debt (a) issued by any country the sovereign debt of which is

rated in one of the two highest rating categories of two nationally recognized rating agencies or (b) issued by the governments of Australia, France and New Zealand. For further information, please contact David L. Underhill at (202) 272–2375.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272–2091.

**Jonathan G. Katz,**

*Secretary.*

March 31, 1987.

[FR Doc. 87–7553 Filed 4–1–87; 3:53 pm]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 52, No. 64
Friday, April 3, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF ENERGY

### Office of Energy Research

### Basic Energy Sciences Advisory Committee; Open Meeting

*Correction*

In notice document 87-6321 appearing on page 9330, in the issue of Tuesday, March 24, 1987, make the following correction:

In the second column, in the ninth line from the bottom, "April 3, 1987" should read "April 23, 1987".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[AD-FRL-3141-4]

### Standards of Performance for New Stationary Sources; Appendix A, Reference Methods; Miscellaneous Clarifications and Addition of Concentration Calculation Equations to Method 18

*Correction*

In rule document 87-3316 beginning on page 5105 in the issue of Thursday February 19, 1987, make the following corrections:

1. On page 5108, in the first column, after the formula, in the second line, "$\mu$1" should read "$\mu$l"; in the third line, the character just before the equal sign should read "$\mu$l", and in the eighth line, "$10_6$" should read "$10^6$".

2. On the same page, in the second column, in section 7.1.1, in the first line, "Sampling" was misspelled.

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-940-07-4220-11; NM NM 10948]

### New Mexico; Proposed Continuation of Withdrawal

*Correction*

In notice document 87-6040 beginning on page 8983 in the issue of Friday, March 20, 1987, make the following correction:

On page 8983, in the third column, the 27th line should read: "N½SW¼SE¼, SE¼SW¼SE¼,".

BILLING CODE 1505-01-D

Federal Register

Friday
April 3, 1987

Part II

# Reader Aids

List of Libraries That Have Announced Availability of Federal Register and Code of Federal Regulations

## LIST OF LIBRARIES THAT HAVE ANNOUNCED AVAILABILITY OF FEDERAL REGISTER AND CODE OF FEDERAL REGULATIONS

In order to better serve the public the Office of the Federal Register is publishing a list of libraries where the *Federal Register* and *Code of Federal Regulations* are available for examination free of charge. This list contains only those Government depository libraries and other libraries that specifically have chosen to be included. A complete listing of *Government Depository Libraries* is available without charge from The Library, U.S. Government Printing Office, 5236 Eisenhower Avenue, Alexandria, VA 22304.

The Office of the Federal Register's list will be updated annually unless public interest requires more frequent publication. Any library that maintains these publications, makes them available to the public, and wishes to be included on future lists should write to the Director of the Federal Register, National Archives and Records Administration, Washington, DC 20408, or phone (202) 523–5227 giving the name and address of the library. (*FR only. †CFR only.)

ALABAMA

Birmingham:
Government Documents Department
Birmingham Public Library
2020 Park Place
Birmingham, AL 35203
(205) 254–2551

Gadsden:
Gadsden Public Library
254 College Street
Gadsden, AL 35901
(205) 547–1611

Mobile:
Governmental Information Division
Mobile Public Library
564 Davis Avenue
Mobile, AL 36603
(205) 438–7092

Government Documents Department
University of South Alabama Library
Mobile, AL 36688
(205) 460–7024

Montgomery:
Alabama Public Library Service
6030 Monticello Drive
Montgomery, AL 36130
(205) 277–7330

Tuscaloosa:
University of Alabama Library
Reference Department
Box S
University, AL 35486
(205) 348–6046

ALASKA

Anchorage:
Alaska Resources Library
U.S. Department of the Interior
701 C Street, Box 36
Anchorage, AK 85513

Office of the Solicitor, Law Library
U.S. Department of the Interior
510 L Street, Suite 408
Anchorage, AK 99501

Fairbanks:
Bureau of Land Management
Library
Fairbanks District Office
P.O. Box 1150
North Post of Ft. Waynewright
Fairbanks, AK 99707

Rasmuson Library
Government Documents Section
University of Alaska
Fairbanks, AK 99701

Juneau:
Alaska State Library
8th Floor, New State Office Bldg.
Pouch G
Juneau, AK 99811
(907) 465–2920

ARIZONA

Flagstaff:
Government Documents Department
Northern Arizona University Library
Flagstaff, AZ 86011
(602) 523–2171

Glendale:
Velma Teague Library
7010 N. 58th Avenue
Glendale, AZ 85301
(602) 931–5576

Phoenix:
Phoenix Public Library
Business, Science & Technology—
Documents
12 E. McDowell Road
Phoenix, AZ 85004
(602) 262–6451

Tempe:
Arizona State University
College of Law Library
Government Documents
Tempe, AZ 85281

Government Documents Department
Arizona State University Library
Tempe, AZ 85281

ARKANSAS

Little Rock
Government Documents Department
UALR Library
University of Arkansas at Little Rock
33rd and University Avenue
Little Rock, AR 72204
(501) 569–3120

Searcy:
Beaumont Memorial Library
Harding University
P.O. Box 928
Searcy, AR 72143
(501) 268–6161

CALIFORNIA

Anaheim:
Anaheim Public Library
500 W. Broadway Avenue
Anaheim, CA 92805
(714) 999–1880

Arcata:
Documents Department
The Library
Humboldt State University
Arcata, CA 95521

Burlingame:
The San Mateo Foundation*
1204 Burlingame Avenue
P.O. Box 627
Burlingame, CA 94010
(415) 342–2477

Glendale:
City of Glendale
Glendale Public Library
222 East Harvard Street
Glendale, CA 91205

Inglewood:
Inglewood Public Library
101 West Manchester Blvd.
Inglewood, CA 90301
(213) 649–7397

La Jolla:
Government Documents, Maps,
Microforms Department
Central University Library C–075–P
University of California, San Diego
La Jolla, CA 92093
(714) 452–3338

Lakewood:
Angelo M. Iacoboni Library
5020 Clark Avenue
Lakewood, CA 90712
(213) 866–1777

Long Beach:
Government Publications
Long Beach Public Library and
Information Center
101 Pacific Avenue
Long Beach, CA 90802
(213) 437–2949, ext. 40

Long Beach Safety Council Library
121 Linden Avenue
Long Beach, CA 90802

Menlo Park:
U.S. Geological Survey Library
345 Middlefield Road
Menlo Park, CA 94025

Oakland:
Holy Names College Library
3500 Mountain Blvd.
Oakland, CA 94619

CALIFORNIA—Continued
Orange:
Thurmond Clarke Memorial Library
Chapman College
333 North Glassell Street
Orange, CA 92666
Pasadena:
City of Pasadena
Pasadena Public Library
285 E. Walnut Street
Pasadena, CA 91101
(213) 577–4054
Pleasant Hill:
Contra Costa County Library
Documents Section
1750 Oak Park Boulevard
Pleasant Hill, CA 94523
(415) 944–3423
Redwood City:
Redwood City Public Library
881 Jefferson Avenue
Redwood City, CA 94063
(415) 369–6251, ext. 288

San Mateo County Superintendent of Schools Office
Educational Resources Center
333 Main Street
Redwood City, CA 94063
(415) 364–5600
Richmond:
Richmond Public Library
Civic Center Plaza
Richmond, CA 94804
Riverside:

Riverside City and County Public Library
(Current CFR only)
3581 Seventh Street
P.O. Box 468
Riverside, CA 92502
(714) 787–7203
Sacramento:
Law Library
California State Library
P.O. Box 2037
Sacramento, CA 95809
(916) 445–8833
San Bernardino:
San Bernardino County Library
104 West Fourth Street
San Bernardino, CA 92415
San Diego:
Western State University
College of Law
1333 Front Street
San Diego, CA 92101
(714) 231–0300
San Francisco:
University of California
Hastings College of the Law
Library
198 McAllister Street
San Francisco, CA 94102
San Rafael:
Marin County Free Library
Civic Center Administration Building
San Rafael, CA 94903
(415) 499–6051
Vallejo:
California Maritime Academy*
P.O. Box 1392
Vallejo, CA 94590
(707) 644–5601

COLORADO

Denver:
Bureau of Land Management
Denver Service Center Library
Building 50
Denver Federal Center
Denver, CO 80225

Bureau of Reclamation Library
Engineering and Research Center
P.O. Box 25007, Denver Federal Center
Denver, CO 80225

Colorado State Library
1362 Lincoln Street
Denver, CO 80203

Regional Solicitor, Law Library
U.S. Department of the Interior
Room 1400, Bldg. 67, Denver Federal Center
P.O. Box 25007
Denver, CO 80225

Rocky Mountain Regional Office Library
National Park Service
655 Parfect Street
P.O. Box 25287
Denver, CO 80225
Fort Collins:
Documents Department
The Libraries
Colorado State University
Fort Collins, CO 80523
Greeley:
James A. Michener Library
Government Publications Service
University of Northern Colorado
Greeley, CO 80639
Lakewood:
Villa Library*
455 South Pierce Street
Lakewood, CO 80226
(303) 936–7407
Pueblo:
Pueblo Regional Planning Commission Library*
No. 1 City Hall Place
Pueblo, CO 81003
(303) 543–6006

CONNECTICUT

Bloomfield:
Prosser Public Library
1 Tunxis Avenue
Bloomfield, CT 06002
Danielson:
Quinebaug Valley Community College
P.O. Box 59
Danielson, CT 06239
774–1130
East Haven:
Hagaman Memorial Library*
227 Main Street
East Haven, CT 06512
(203) 468–3223
Fairfield:
Nyselius Library
Fairfield University
North Benson Road
Fairfield, CT 06430
(203) 255–5411, Ext. 2451
Hartford:
The Stanley Osborne Library*
Third Floor
The Connecticut State Department of Health Services
79 Elm Street
Hartford, CT 06115
(203) 566–2198
Middletown:
Olin Library
Wesleyan University
Middletown, CT 06457
Stamford:
Ferguson Library
96 Broad Street
Stamford, CT 06901
Storrs:
Government Publications Department
University of Connecticut Library
University of Connecticut
Storrs, CT 06268
Waterbury:
Silas Bronson Public Library
Business, Industry & Technology Department
267 Grand Street
Waterbury, CT 06702
Wethersfield:
Wethersfield Public Library
515 Silas Deane Highway
Wethersfield, CT 06109

DELAWARE

Wilmington:
The Delaware Law School Library
Widener University
P.O. Box 7475 Concord Pike
Wilmington, DE 19803
(302) 478–5280
Ext. 247

DISTRICT OF COLUMBIA

Natural Resources Library
U.S. Department of the Interior
Washington, DC 20240

Office of the Federal Register
1100 L Street, N.W.
Room 8301
Washington, DC 20408
(202) 523–4986

FLORIDA

Clearwater:
Clearwater Public Library
100 North Osceola Avenue
Clearwater, FL 33515

FLORIDA—Continued
Daytona Beach:
Volusia County Library Center
City Island
Daytona Beach, FL 32014
(904) 255–3765
Fort Lauderdale:
Broward County Main Library
100 S. Andrews Avenue
Fort Lauderdale, FL 33301
(305) 357–7444
Melbourne:
Government Documents Department
Florida Institute of Technology Library
University Blvd.
Melbourne, FL 32901
(305) 723–3701
Miami:
Social Science Department
Miami Dade Public Library
101 West Flagler Street
Miami, FL 33130
(305) 375–2665
North Miami Beach:
North Miami Beach Library
1601 N.E. 164 Street
North Miami Beach, FL 33162
(305) 948–2970
Orlando:
Orange County Library System
General Information Department
10 N. Rosalind Avenue
Orlando, FL 32801
(305) 425–4694
Sarasota:
The University of Sarasota
2080 Ringling Blvd.
Sarasota, FL 33577
(813) 955–4228
Tallahassee:
Documents Section
State Library of Florida
R. A. Gray Building
Tallahassee, FL 32301
(904) 487–2651
Tampa:
Tampa–Hillsborough County Public Library
900 North Ashley Street
Tampa, FL 33602
(813) 223–8969

GEORGIA
Athens:
University of Georgia Libraries
Government Reference Department
Athens, GA 30602
Atlanta:
Documents Center
Robert W. Woodruff Library
Emory University
Atlanta, GA 30322
(404) 727–6880
Office of the Regional Solicitor, Law Library
U.S. Department of the Interior
148 Cain Street, N.E., Suite 405
Atlanta, GA 30303
Dublin:
Laurens County Library
801 Bellevue Ave.
Dublin, GA 31021
Elberton:
Southeastern Power Administration
Law Library
U.S. Department of Energy
Samuel Elbert Building
Elberton, GA 30635
Savannah:
Chatham–Effingham–Liberty Regional Library
2002 Bull Street
Savannah, GA 31499
(912) 234–5127

IDAHO
Boise:
Field Solicitor, Law Library
U.S. Department of the Interior
Federal Building, U.S. Courthouse
Box 20
Boise, ID 83724
Pocatello:
The Library
Idaho State University
Pocatello, ID 83209

ILLINOIS
Bloomington:
Illinois Wesleyan University Library
Bloomington, IL 61701
Chicago:
Government Publications Department
Chicago Public Library
425 N. Michigan Avenue
Chicago, IL 60611
(312) 269–3002

University of Chicago Law Library
1121 East 60th Street
Chicago, IL 60637

Documents Department
University of Illinois at Chicago Circle
The Library, P.O. Box 8198
Chicago, IL 60680
(312) 996–2716/996–2738
Dekalb:
Government Publications Department
Northern Illinois University
Founders Library
Dekalb, IL 60115
(815) 753–1932
Evanston:
Northwestern University Library
Government Publications Department
Evanston, IL 60201
(312) 491–3130
Lake Forest:
Lake Forest College Library
Lake Forest, IL 60045
(312) 234–3100, ext. 410
Lockport:
Lewis University
Route 53
Lockport, IL 60441
(815) 838–0500
Macomb:
Government Publications and Legal Reference Library
Western Illinois University
Macomb, IL 61455
(309) 298–2411
Niles:
Niles Public Library District
6960 Oakton Street
Niles, IL 60648
(312) 967–8554
Normal:
Milner Library
Illinois State University
Normal, IL 61761
Oak Park:
Oak Park Public Library
834 Lake Street
Oak Park, IL 60301
(312) 383–8200
Rockford:
Rockford Public Library
215 North Wyman Street
Rockford, IL 61101
(815) 965–6731
Springfield:
Energy Information Library*
Illinois Institute of Natural Resources, Room 300
325 W. Adams Street
Springfield, IL 62706
Streamwood:
Government Documents Department
Poplar Creek Public Library
1405 S. Park Blvd.
Streamwood, IL 60103
(312) 837–6800
Waukegan:
County of Lake
Law Library
18 North County Street
Waukegan, IL 60085
(312) 689–6654

INDIANA
Fort Wayne:
The Public Library of Fort Wayne and Ailen County
900 Webster Street
Fort Wayne, IN 46802
(219) 424–7241

INDIANA—Continued
Indianapolis:
Reference and Loan Division
Indiana State Library
140 N. Senate Ave.
Indianapolis, IN 46204
(317) 232–3675
Muncie:
Ball State University Library
Government Publications Service
Muncie, IN 47305
(317) 285–6195
South Bend:
Indiana University at South Bend
1700 Mishawaka Avenue
South Bend, IN 46615
(219) 237–4440

IOWA

Ames:
Library—Government Publications Department
Iowa State University
Ames, IA 50010
(515) 294–2834
Des Moines:
State Library Commission of Iowa
Law Library
Capitol Building
Des Moines, IA 50319
(515) 281–5125

State Library Commission of Iowa
Historical Building
East 12th & Grand
Des Moines, IA 50319
Dubuque:
Carnegie–Stout Public Library
Eleventh and Bluff Streets
Dubuque, IA 52001
(319) 583–9197

Wahlert Memorial Library
Loras College
1450 Alta Vista
Dubuque, IA 52001

KANSAS

Colby:
H. F. Davis Memorial Library
Colby Community College
1255 South Range
Colby, KS 67701
(913) 462–3984
Lawrence:
University of Kansas Law Library
Green Hall
Lawrence, KS 66045
(913) 864–3025
Pittsburg:
Leonard H. Axe Library
Pittsburg State University
Pittsburg, KS 66762
(316) 231–7000, ext. 4889
Salina:
Memorial Library
Kansas Wesleyan
100 East Claflin
Salina, KS 67401–6196
(913) 827–5541, ext. 298
Topeka:
Washburn University of Topeka
School of Law Library
Topeka, KS 66621
(913) 295–6660

KENTUCKY

Bowling Green:
Western Kentucky University
Helm–Cravens Library
Bowling Green, KY 42101
Frankfort:
Government Document Section
State Library Division
Kentucky Department of Library & Archives
Berry Hill
Frankfort, KY 40602
(502) 564–2480
Highland Heights
Northern Kentucky University
Library
Government Documents Department
Highland Heights, KY 41076
Lexington:
University of Kentucky Libraries
Government Publications Department
Lexington, KY 40506

Law Library
University of Kentucky
Lexington, KY 40506
Louisville:
University of Louisville
The Library
Louisville, KY 40208
Pikeville:
CITAC Library
Pikeville College
Armington Science Center
Pikeville, KY 41501
(606) 432–9396

LOUISIANA

Baton Rouge:
Library, Department of Urban & Community Affairs
5790 Florida Boulevard
Baton Rouge, LA 70806

Louisiana State Library
P.O. Box 131
760 N. Riverside Mall
Baton Rouge, LA 70821
(504) 389–6651
Lafayette:
University of Southwestern Louisiana
University Libraries
Lafayette, LA 70501
New Orleans:
U.S. Court of Appeals Library
5th Circuit
600 Camp Street
Room 106
New Orleans, LA 70130
(504) 589–6510

MAINE

Lewiston:
George and Helen Ladd Library
Bates College
Lewiston, ME 04240
Portland:
Donald L. Garbrecht Law Library
246 Deering Avenue
Portland, ME 04102
(207) 780–4350

MARYLAND

Aberdeen:
Department of the Army
U.S. Army Environmental Hygiene Agency
ATTN: Librarian, Bldg. E–2100
Aberdeen Proving Ground, MD 21010
Annapolis:
Maryland State Law Library
Courts of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401
Baltimore:
Enoch Pratt Free Library
400 Cathedral Street
Baltimore, MD 21201
Cumberland:
Allegany Community College Library
Willow Brook Road
P.O. Box 1695
Cumberland, MD 21502
(301) 724–7700, ext. 36
Oakland:
Garrett County Planning Office*
323 East Oak Street
Oakland, MD 21550
(301) 334–4200
Rockville:
Medical Library
Food & Drug Administration
5600 Fishers Lane
Room 11B40
Rockville, MD 20857

Department of Public Libraries
Montgomery County
99 Maryland Avenue
Rockville, MD 20850
(301) 279–1966

MASSACHUSETTS

Boston:
Government Documents Department
Boston Public Library
Copley Square
Boston, MA 02117
Gloucester:
Gloucester Lyceum and Sawyer Free Library*
General Reference Section
2 Dale Avenue
Gloucester, MA 01930
(617) 283–0376
Newton Corner:
Office of the Regional Solicitor, Law Library
Suite 612
1 Gateway Center
Newton Corner, MA 02158
(617) 965–5100, ext. 258

BEST COPY AVAILABLE

MASSACHUSETTS—Continued
Springfield:
The City Library
Central Library
220 State Street
Springfield, MA 01103
Woburn:
Commonwealth of Massachusetts
Trial Court of the Commonwealth
District Court Department
Fourth Eastern Middlesex Division
Woburn, MA 01801
(617) 935–4000

MICHIGAN

Ann Arbor:
Washtenaw Community College
4800 East Huron River Drive
Ann Arbor, MI 48106
(313) 973–3300
Detroit:
Downtown Library*
Detroit Public Library
121 Gratiot
Detroit, MI 48226

Detroit Public Library
5201 Woodward Avenue
Detroit, MI 48202

Municipal Reference Library
Detroit Public Library
1004 City–County Building
Detroit, MI 48226

Arthur Neef Law Library
Wayne State University
468 W. Ferry Mall
Detroit, MI 48202
(313) 577–3925
East Lansing:
Documents Department
Michigan State University Library
East Lansing, MI 48824
Flint:
Flint Public Library
General Reference Department
1026 E. Kearsley Street
Flint, MI 48502
(313) 232–7111
Lansing:
Thomas M. Cooley Law School
Library
U.S. Documents Collection
217 South Capitol Avenue
Lansing, MI 48901
(517) 371–5140
Marquette:
Government Documents Department
Olson Library
Northern Michigan University
Marquette, MI 49855
(906) 227–2112
Mount Clemens:
Macomb County Library
16480 Hall Road
Mount Clemens, MI 48044
469–5300
Mt. Pleasant:
Library – Documents Department
Central Michigan University
Mt. Pleasant, MI 48859
(517) 774–3414
Pontiac:
Adams–Pratt Oakland County Law
Library
1200 N. Telegraph Road
Pontiac, MI 48053

Oakland Schools Library*
2100 Pontiac Lake Road
Pontiac, MI 48054
Rochester:
Kresge Library
Documents Department
Oakland University
Squirrel/Walton
Rochester, MI 48063
(313) 377–2476
Saginaw:
Public Libraries of Saginaw
505 Janes
Saginaw, MI 48605
(517) 755–0904
Traverse City:
Mark Osterlin Library
Documents Department
Northwestern Michigan College
1701 East Front Street
Traverse City, MI 49684
(616) 946–5650, ext. 540
University Center:
Learning Resources Center
Delta College
University Center, MI 48710

MINNESOTA

Bemidji:
Documents Section
A. C. Clark Library
Bemidji State University
Bemidji, MN 56601
(218) 755–2958
Blaine:
Anoka County Library
707 Highway 10
Blaine, MN 55434
Cambridge:
East Central Regional Library*
Cambridge, MN 55008
Duluth:
Duluth Public Library
520 W. Superior Street
Duluth, MN 55802
(218) 723–3804
Edina:
Southdale–Hennepin Area Library
7001 York Avenue South
Edina, MN 55435
(612) 830–4900
Mankato:
Memorial Library
Mankato State University
Box 19
Mankato, MN 56001
(507) 389–6201
Minneapolis:
Minnesota Hospital Association
Library
2333 University Ave. S.E.
Minneapolis, MN 55414
(612) 331–5571

Government Publications Division
409 Wilson Library
University of Minnesota
Minneapolis, MN 55455
(612) 373–7813
St. Paul:
Minnesota State Law Library
117 University Avenue
St. Paul, MN 55155
(612) 296–2775

Government Publications Office
St. Paul Public Library
90 West Fourth Street
St. Paul, MN 55102
292–6178
Stillwater:
Stillwater Public Library
223 North Fourth Street
Stillwater, MN 55082
439–1675
Twin Cities:
Field Solicitor, Law Library
U.S. Department of the Interior
686 Federal Building, Fort Snelling
Twin Cities, MN 55111
Winona:
Maxwell Library
Government Documents
Winona State University
Winona, MN 55987
(507) 457–5148

MISSISSIPPI

Gulfport:
Harrison County Law Library
1st Judicial Courthouse
1801 23rd Avenue
Gulfport, MS 39501
(601) 864–5161 ext. 336
Jackson:
H. T. Sampson Library
Jackson State University
Jackson, MS 39217

MISSOURI

Cape Girardeau:
Kent Library
Southeast Missouri State University
Cape Girardeau, MO 63701
(314) 651–2000
Columbia:
Ellis Library
University of Missouri–Columbia
Columbia, MO 65201
(314) 882–6733
University of Missouri–Columbia
Law Library
Tate Hall
Columbia, MO 65211
(314) 882–4597

MISSOURI—Continued

Fulton:
Reeves Library
Westminster College
Fulton, MO 65251
(314) 642–3361

Jefferson City:
Missouri State Library
308 E. High Street
P.O. Box 387
Jefferson City, MO 65102
(314) 751–4552

Joplin:
Spiva Library
Missouri Southern State College
Newman & Duquesne Roads
Joplin, MO 64801
(417) 625–9386

Kansas City:
Kansas City Public Library
311 East 12th Street
Kansas City, MO 64106
(816) 221–2685

Government Documents Department
General Library
University of Missouri–Kansas City
5100 Rockhill Road
Kansas City, MO 64110
(816) 276–1536

Kirksville:
Pickler Memorial Library
Northeast Missouri State University
Kirksville, MO 63501
(816) 785–4534

Liberty:
Charles F. Curry Library
Government Documents
William Jewell College
Liberty, MO 64068
(816) 781–3806, ext. 293

Maryville:
B. D. Owens Library
Northwest Missouri State University
Maryville, MO 64468

Rolla:
Curtis Laws Wilson Library
University of Missouri–Rolla
Rolla, MO 65401
(314) 341–4227

St. Charles:
Butler Library
Lindenwood College
St. Charles, MO 63301
(314) 946–6912, ext. 329

St. Joseph:
St. Joseph Public Library
Tenth and Felix Streets
St. Joseph, MO 64501
(816) 232–7729

St. Louis:
Maryville College Library
Government Documents
13550 Conway Rd.
St. Louis, MO 63141
(314) 576–9300

Missouri Botanical Garden*
(back issues held 1 year)
2345 Tower Grove Avenue
St. Louis, MO 63110
(314) 772–7600

St. Louis County Library
1640 S. Lindbergh Blvd.
St. Louis, MO 63131
(314) 994–3300

Documents Department
St. Louis Public Library
1301 Olive Street
St. Louis, MO 63103
(314) 241–2288, ext. 375

Documents Department
Pius XII Memorial Library
St. Louis University
3655 West Pine Boulevard
St. Louis, MO 63108
(314) 658–3105

Thomas Jefferson Library
University of Missouri–St. Louis
8001 Natural Bridge Road
St. Louis, MO 63144
(314) 453–5954

Washington University Law Library
Documents Department
Campus Box 1120
St. Louis, MO 63130
(314) 889–6484

Sedalia:
State Fair Community College Library
1900 Clarendon Road
Sedalia, MO 65301

Springfield:
Walker Library
Drury College
Springfield, MO 65802

Southwest Missouri State University
The Library
Springfield, MO 65802
(417) 831–1561

Warrensburg:
Ward Edwards Library
Central Missouri State University
Warrensburg, MO 64093
(816) 429–4149

MONTANA

Billings:
Bureau of Land Management
Library
P.O. Box 30157
Billings, MT 59107

Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 1538
Billings, MT 59103

NEBRASKA

Kearney:
Calvin T. Ryan Library
Kearney State College
Kearney, NE 68847

Lincoln:
Nebraska Library Commission
1420 P Street
Lincoln, NE 68508
(402) 471–2045

University of Nebraska–Lincoln
Libraries
Lincoln, NE 68588

Norfolk:
Northeast Technical Community
College
801 E. Benjamin Avenue
Norfolk, NE 68701
(402) 371–2020

Wayne
U. S. Conn Library
Wayne State College
Wayne, NE 68787
(402) 375–2200, ext. 213

NEVADA

Carson City:
Nevada State Library
Capitol Complex
Carson City, NV 89710
(702) 885–5160

Reno:
Government Publications Department
University of Nevada Library
Reno, NV 89557
(702) 784–6579

NEW HAMPSHIRE

Concord:
Law Division, State Library
Supreme Court Building
Loudon Road
Concord, NH 03301
(603) 271–3777

New London:
Fernald Library
Colby–Sawyer College
New London, NH 03257

NEW JERSEY

Bloomfield:
Bloomfield Public Library
90 Broad Street
Bloomfield, NJ 07003
(201) 429–9292

Bridgeton:
Cumberland County Library
800 East Commerce Street
Bridgeton, NJ 08302

East Orange:
East Orange Public Library
21 South Arlington Avenue
East Orange, NJ 07018

Elmer:
Arthur P. Schalick High School
Elmer–Centerton Road
R.D. 1
Elmer, NJ 08318

NEW JERSEY—Continued

Hackensack:
Johnson Free Public Library
Hackensack Area Reference Library
275 Moore Street
Hackensack, NJ 07601

Jersey City:
Hudson Health Systems Agency Library
871 Berger Avenue
Jersey City, NJ 07306

Lawrenceville:
Franklin F. Moore Library
Rider College
Lawrenceville, NJ 08648
(609) 896–5115

Mahwah:
Ramapo College Library
505 Ramapo Valley Road
Mahwah, NJ 07430

Montclair:
Montclair Public Library
50 S. Fullerton Avenue
Montclair, NJ 07042
(201) 744–0500

Newark:
Newark Public Library
5 Washington Street
P.O. Box 630
Newark, NJ 07101
(201) 733–7782

Paterson:
Paterson Free Public Library
250 Broadway
Paterson, NJ 07501
(201) 881–3750

Pomona:
Stockton State College
Pomona, NJ 08240
(609) 652–1776, ext. 266

Toms River:
Ocean County College
Learning Resources Center
College Drive
Toms River, NJ 08753
(201) 255–4000 ext. 385

Trenton:
New Jersey State Law Library
185 West State Street
P.O. Box 1898
Trenton, NJ 08625
(609) 292–6230

Voorhees:
Camden County Library
Echelon Urban Center
Laurel Road
Voorhees, NJ 08043
(609) 772–1636

Wayne:
Wayne Public Library
475 Valley Road
Wayne, NJ 07470
(201) 694–4272

NEW MEXICO

Albuquerque:
The University of New Mexico
General Library
Albuquerque, NM 87131
(505) 277–4241 and 277–5441

The University of New Mexico
School of Law Library
1117 Stanford NE
Albuquerque, NM 87131
(505) 277–6236

Las Vegas:
New Mexico Highlands University
Donnelly Library
Las Vegas, NM 87701

Portales:
Golden Library
Documents Department
Eastern New Mexico University
Portales, NM 88130

Santa Fe:
New Mexico State Library
300 Don Gaspar
Santa Fe, NM 87503
(505) 827–2033

Office of the Solicitor, Law Library
U.S. Department of the Interior
U.S. Courthouse, Room 224
P.O. Box 1042
Santa Fe, NM 87501

Silver City:
Miller Library
Western New Mexico University
Silver City, NM 88061

NEW YORK

Albany:
The New York State Library
The State Education Department
Cultural Education Center
Empire State Plaza
Albany, NY 12230
(518) 474–5943

Brooklyn:
Brooklyn Public Library
Business Library
280 Cadman Plaza West
Brooklyn, NY 11201
(212) 780–7800

Corning:
The Arthur A. Houghton, Jr. Library
Corning Community College
Corning, NY 14830
(607) 962–9251

Garden City:
Adelphi University
Swirbul Library
South Avenue
Garden City, NY 11530
(516) 294–8700 ext. 7345

Geneseo:
State University of New York at Geneseo
Milne Library
Government Documents
Geneseo, NY 14454

Greenvale:
C. W. Post Center—Long Island University
B. Davis Schwartz Memorial Library
Greenvale, NY 11548

New Paltz:
Government Documents Department
Sojourner Truth Library
State University College
New Paltz, NY 12561
(914) 257–2252

Niagara Falls:
Niagara Falls Public Library
1425 Main Street
Niagara Falls, NY 14305
(716) 278–8113

Oswego:
State University of New York at Oswego
Oswego, NY 13126
(315) 341–4267

Rochester:
Rochester Public Library
Business and Social Science Division
115 South Avenue
Rochester, NY 14604
(716) 428–7342

Schenectady:
Schenectady County Public Library
Liberty and Clinton Streets
Schenectady, NY 12305

Syracuse:
Reference Department
Onondaga County Public Library
335 Montgomery Street
Syracuse, NY 13202
475–8458

Uniondale:
Nassau Library System
900 Jerusalem Avenue
Uniondale, NY 11553
(516) 292–8920

NORTH CAROLINA

Asheboro:
Asheboro Public Library
201 Worth Street
Asheboro, NC 27203
(919) 629–3329

Boone:
Regional Information Center
Region D Council of Governments
P.O. Box 1820
Boone, NC 28607

Charlotte:
Public Librarty of Charlotte and Mecklenburg County
310 N. Tryon Street
Charlotte, NC 28202
(704) 374–2540

Durham:
William Perkins Library
Public Documents Department
Duke University
Durham, NC 27706
(919) 684–2380

NORTH CAROLINA—Continued
Gastonia:
Gaston County Public Library*
Headquarters: Gaston–Lincoln Regional Library
1555 East Garrison Boulevard
Gastonia, NC 28052
(704) 865–3418

Greenville:
J. Y. Joyner Library
East Carolina University
Greenville, NC 27834

Raleigh:
Documents Department
The D. H. Hill Library
North Carolina State University
Box 5007
Raleigh, NC 27650

North Carolina Supreme Court Library
2 East Morgan Street
P.O. Box 28006
Raleigh, NC 27611
(919) 733–3425

Winston–Salem:
Forsyth County Public Library
660 West Fifth Street
Winston–Salem, NC 27101
(919) 727–2220

NORTH DAKOTA

Bismarck:
Bismarck Junior College*
Schafer Heights
Bismarck, ND 58501

North Dakota State Library
Highway 83 North
Bismarck, ND 58505
224–2490

Office of Program Planning*
All Nations Circle – Bldg. 35
United Tribes Educational Technical Center
3315 South Airport Road
Bismarck, ND 58501

OHIO

Athens:
Government Documents Department
Ohio University Library
Athens, OH 45701
(614) 594–5604

Cincinnati:
Municipal Reference Library
224 City Hall
Cincinnati, OH 45202

National Institute for Occupational Safety and Health
Division of Technical Services
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226

Cleveland:
Cleveland Public Library
325 Superior Avenue
Cleveland, OH 44114

Cleveland Regional Sewer District*
Library
Administrative Offices
801 Rockwell Avenue
Cleveland, OH 44114
(216) 781–6600 ext. 219

Cleveland Heights:
Cleveland Heights—University Heights Public Library
2345 Lee Road
Cleveland Heights, OH 44118
(216) 932–3600

Columbus
The State Library of Ohio
65 South Front Street
Columbus, OH 43215
(614) 466–2694

Dayton:
University Library
Wright State University
Dayton, OH 45435

Findlay:
Marathon Oil Company
Law Library, Room 854–M
539 South Main Street
Findlay, OH 45840
(419) 422–2121 ext. 3376

Shafer Library
Findlay College
1000 N. Main Street
Findlay, OH 45840
(419) 422–8313

Marion:
Marion Public Library*
445 E. Church Street
Marion, OH 43302
(614) 387–0992

Toledo:
Toledo–Lucas County Public Library
Social Science Department
325 Michigan Street
Toledo, OH 43624
(419) 255–7055 ext. 221

Wooster:
Andrews Library
The College of Wooster
Wooster, OH 44691

OKLAHOMA

Aradarko:
Field Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 397
Aradarko, OK 73005

Norman:
Law Library
University of Oklahoma
300 Timberdell
Norman, OK 73019

Oklahoma City:
Metropolitan Library System
Main Library
131 Dean A. McGee Avenue
Oklahoma City, OK 73102
(405) 631–1149

Oklahoma Department of Libraries
U.S. Documents Regional Depository
200 N.E. 18th Street
Oklahoma City, OK 73105
(405) 521–2502

Pawhuska:
Field Solicitor, Law Library
U.S. Department of the Interior
c/o Osage Agency
Pawhuska, OK 74056

Stillwater:
Documents Department
Edmon Low Library
Oklahoma State University
Stillwater, OK 74074
(405) 624–6546

Tulsa:
Office of the Regional Solicitor, Law Library
U.S. Department of the Interior
P.O. Box 3156
Tulsa, OK 74101

OREGON

Eugene:
University of Oregon Library
Government Documents Section
Eugene, OR 97403
(503) 686–3070

Portland:
Library Association of Portland
(Multnomah County Library)
801 S.W. 10th Avenue
Portland, OR 97205
223–7201

Salem:
Oregon State Library
State Library Building
Salem, OR 97310
(503) 378–4276

PENNSYLVANIA

Aliquippa:
B.F. Jones Memorial Library*
Aliquippa District Center
663 Franklin Avenue
Aliquippa, PA 15001
(412) 375–7174

Allentown:
The John A. W. Haas Library
Muhlenberg College
Allentown, PA 18104

Dallas:
Library
College Misericordia
Dallas, PA 18612

Harmony:
Library
Seneca Valley Senior High School*
Southwest Butler County School District
R.D. 2
Harmony, PA 16037

Harrisburg:
State Library of Pennsylvania
Box 1601
Harrisburg, PA 17126
(717) 787–7343

PENNSYLVANIA—Continued
Hazleton:
Hazleton Area Public Library
Church and Maple Streets
Hazleton, PA 18201
454–2961/454–0244
Johnstown:
Cambria County Library System
248 Main Street
Johnstown, PA 15901
(814) 536–5131
Lancaster:
Fackenthal Library
Franklin and Marshall College
P.O. Box 3003
Lancaster, PA 17604
(717) 291–4210
Loretto:
Pius XII Memorial Library
Saint Francis College
Loretto, PA 15940
Millersville:
Millersville State College
Millersville, PA 17551

Vein
Stayer R & L Center
Millersville State College
Millersville, PA 17551
(717) 872–5411 ext. 552, 542
Newtown:
The Library
Bucks County Community College
Newtown, PA 18940
Philadelphia:
Government Publications Department
Free Library of Philadelphia
Logan Square
Philadelphia, PA 19103
Pittsburgh:
Baldwin Borough Public Library
3344 Churchview Avenue
Pittsburgh, PA 15227

U.S. Bureau of Mines
Library
4800 Forbes Avenue
Pittsburgh, PA 15213
Shippensburg:
Ezra Lehman Memorial Library
Shippensburg State College
Shippensburg, PA 17257
Somerset:
Somerset State Hospital Library
Box 631
Somerset, PA 15501
(814) 445–6501, ext. 216
Swarthmore:
The Swarthmore College Library
The McCabe Library
Swarthmore, PA 19081
(215) KI 4–7900
Warren:
Warren Library Association
205 Market Street
Warren, PA 16365
Washington:
Washington County Law Library
Courthouse
Washington, PA 15301
(412) 228–6747
West Chester:
Francis Harvey Green Library*
West Chester State College
West Chester, PA 19380
(215) 436–2869
Wilkes-Barre:
Institute of Regional Affairs*
Wilkes College
Wilkes-Barre, PA 18703

RHODE ISLAND

Kingston:
Government Publications Office
University of Rhode Island
Library
Kingston, RI 02881
(401) 792–2602
Providence:
Brown University Library
Documents Department
Providence, RI 02912
(401) 863–2522

Providence Public Library
150 Empire Street
Providence, RI 02903
(401) 521–7722

Rhode Island College
James P. Adams Library
Documents Department
600 Mt. Pleasant Avenue
Providence, RI 02908
(401) 274–4900 ext. 331
Warwick:
Warwick Public Library
600 Sandy Lane
Warwick, RI 02886
(401) 739–5440

SOUTH CAROLINA

Charleston:
Baptist College of Charleston
P. O. Box 10087
Charleston, SC 29411

Charleston County Library
404 King Street
Charleston, SC 29403

Citadel
Charleston, SC 29409

College of Charleston
66 George Street
Charleston, SC 29401
Clemson:
Clemson University
Clemson, SC 29631
Columbia:
Benedict College
Blanding & Harden Streets
Columbia, SC 29204

Richland County Public Library
1400 Sumter Street
Columbia, SC 29201

South Carolina State Library
1500 Senate Street
Columbia, SC 29201

University of South Carolina
Columbia, SC 29208
Conway:
Coastal Carolina (of University of SC)
Route 6
Conway, SC 29526
Due West:
Erskine College*
Due West, SC 29639
Florence:
Florence County Library
319 S. Irby Street
Florence, SC 29501

Francis Marion College
Florence, SC 29501
Greenville:
Furman University
Greenville, SC 29613

Greenville County Library
300 College Street
Greenville, SC 29601
Greenwood:
Larry A. Jackson Library
Lander College
Greenwood, SC 29646
Orangeburg:
South Carolina State College
College Avenue
Orangeburg, SC 29117
Rock Hill:
Winthrop College
Rock Hill, SC 29733
Spartanburg:
Spartanburg County Library
P. O. Box 2409
333 S. Pine Street
Spartanburg, SC 29304
Sumter:
Sumter County Library
111 North Harvin Street
Sumter, SC 29150
773–7273

SOUTH DAKOTA

Brookings:
H. M. Briggs Library
South Dakota State University
Brookings, SD 57007
(605) 688–5106
Rapid City:
Devereaux Library
South Dakota School of Mines &
Technology
Rapid City, SD 57701
(605) 394–2418

Sioux Falls:
Sioux Falls Public Library
201 N. Main Avenue
Sioux Falls, SD 57101

TENNESSEE

Chattanooga:
Hamilton County Bicentennial Library
Business, Science and Technology Department
1001 Broad Street
Chattanooga, TN 37402
(615) 757–5312

Clarksville:
Woodward Library
Austin Peay State University
Clarksville, TN 37040
(615) 648–7346

Martin:
Paul Meek Library
University of Tennessee at Martin
Martin, TN 38238
(901) 587–7065

Nashville:
Documents Unit
Joint University Libraries
Nashville, TN 37203

Tennessee State Library
Tennessee State Library and Archives
403 Seventh Avenue North
Nashville, TN 37219
(615) 741–2451

TEXAS

Amarillo:
Amarillo Public Library*
City of Amarillo
P.O. Box 2171
413 E. 4th
Amarillo, TX 79189

Field Solicitor
U.S. Department of the Interior
P.O. Box H–4393, Herring Plaza
Amarillo, TX 79101

Austin:
The State Law Library
Supreme Court Building
P.O. Box 12367, Capitol Station
Austin, TX 78711
(512) 475–3807

College Station:
Documents Division
University Libraries
Texas A & M University
College Station, TX 77843

Dallas:
Dallas County Law Library
Government Center
Dallas, TX 75202
749–8481

U.S. Environmental Protection Agency
Region VI
1201 Elm Street
Dallas, TX 75270

Denton:
Texas Woman's University Library
Box 23715, TWU Station
Denton, TX 76204
(817) 566–6415

El Paso:
El Paso Public Library
Documents Section
501 North Oregon Street
El Paso, TX 79901
(915) 543–3808

Hurst:
Hurst Public Library
901 Precinct Line Road
Hurst, TX 76053
(817) 485–5320

Killeen:
Oveta Culp Hobby Library
American Educational Complex
U.S. Hwy 190 W.
Killeen, TX 76541
(817) 526–1237

Lubbock:
School of Law Library
Texas Tech University
Lubbock, TX 79409

Victoria:
Documents Department
VC/UHVC Library
2602 N. Ben Jordan
Victoria, TX 77901
(512) 576–3151, ext. 201
(512) 573–3291

UTAH

Cedar City:
Southern Utah State College Library
Cedar City, UT 84720

Ephraim:
Lucy A. Phillips Library
Snow College
Ephraim, UT 84627

Logan:
Documents Department
Merrill Library, UMC 30
Utah State University
Logan, UT 84322

Ogden:
Weber State College Library
Ogden, UT 84403

Provo:
Harold B. Lee Library
Documents and Maps Section
Brigham Young University
Provo, UT 84602

Law Library
Brigham Young University
Provo, UT 84602

Salt Lake City:
Regional Solicitor
U.S. Department of the Interior
Suite 6201, Federal Building
125 South State Street
Salt Lake City, UT 84138

Supreme Court Library
State Capitol
Salt Lake City, UT 84114

College of Law Library
University of Utah
Salt Lake City, UT 84112

Government Documents
Eccles Health Sciences Library
University of Utah, Bldg. 89
Salt Lake City, UT 84112

Government Documents Division
Marriott Library
University of Utah
Salt Lake City, UT 84112

Utah State Library Commission
2150 South 300 West, Suite 16
Salt Lake City, UT 84115

VERMONT

Burlington:
Bailey/Howe Library
Documents Department
University of Vermont
Burlington, VT 05405

Middlebury:
Egbert Starr Library
Government Documents Department
Middlebury College
Middlebury, VT 05753

South Royalton:
Law Library
Vermont Law School
South Royalton, VT 05068
(802) 763–8303

VIRGINIA

Alexandria:
Alexandria Library*
717 Queen Street
Alexandria, Va. 22314
(703) 838–4555

Arlington:
Office of Hearings and Appeals Library
U.S. Department of the Interior
4015 Wilson Boulevard
Arlington, VA 22203

Chesapeake:
Chesapeake Public Library
300 Cedar Road
Chesapeake, VA 23320
(804) 547–6591

Danville:
Danville Community College Library
1009 Bonner Avenue
Danville, VA 24541
(804) 797–3553

Fairfax:
Fairfax City Central Library
3915 Chain Bridge Road
Fairfax, VA 22030
(703) 691–2741

Fenwick Library
George Mason University
4400 University Drive
Fairfax, VA 22030

Lynchburg
The Library
Lynchburg College
Lynchburg, VA 24501

Norfolk:
Norfolk Public Library System
301 East City Hall Avenue
Norfolk, VA 23510

VIRGINIA—Continued

Reston:
U.S. Geological Survey
Library
National Center, Mail Stop 950
Reston, VA 22092

Richmond:
Learning Resources Center
Parham Road Campus
J. Sargeant Reynolds Community College
P.O. Box 12084
Richmond, VA 23241
(804) 264–3220

Municipal Library
County of Henrico
Hungary Springs & Parham Roads
Richmond, VA 23228

Virginia State Library
11th & Capitol Streets
Richmond, VA 23219

Roanoke:
Roanoke Law Library
210 Campbell Avenue, SW
Roanoke, VA 24011

Virginia Beach:
Public Law Library
Municipal Center
City of Virginia Beach
Virginia Beach, VA 23456

Williamsburg:
Documents Department
Earl Gregg Swem Library
College of William and Mary
Williamsburg, VA 23185

WASHINGTON

Bellingham:
Documents Division, Wilson Library
Western Washington University
516 High Street
Bellingham, WA 98225
(206) 676–3075

Cheney:
Eastern Washington University
The Library
Cheney, WA 99004
(509) 359–2475

Everett:
Everett Public Library
2702 Hoyt Avenue
Everett, WA 98201
(206) 259–8857

Snohomish County Law Library
County Courthouse
Everett, WA 98201
(206) 259–5326

Midway:
Highline Community College
Library 25–2
Midway, WA 98032
(206) 878–3710, ext. 232

Olympia:
Washington State Law Library
Temple of Justice
Olympia, WA 98504

Washington State Library
Document Section
Olympia, WA 98504
(206) 753–4027

Port Angeles:
North Olympic Library System
207 So. Lincoln
Port Angeles, WA 98362

Spokane:
Gonzaga University Law Library
E. 600 Sharp Avenue
P.O. Box 3528
Spokane, WA 99220

Spokane Public Library
West 906 Main Avenue
Spokane, WA 99201
(509) 838–3361

WEST VIRGINIA

Beckley:
National Mine Health and Safety Academy
Learning Resources Center
P.O. Box 1166
Beckley, WV 25801

Charleston:
Kanawha County Public Library
123 Capitol Street
Charleston, WV 25301
(304) 343–4646

Montgomery:
Vining Library
West Virginia Institute of Technology
Montgomery, WV 25136

Weirton:
Mary H. Weir Public Library
3442 Main Street
Weirton, WV 26062
(304) 748–7070

WISCONSIN

Appleton:
Appleton Public Library
121 South Oneida Street
Appleton, WI 54911
734–7171

Green Bay:
University of Wisconsin—Green Bay
Library Learning Center
Government Publications
Green Bay, WI 54302

Kenosha:
Library/Learning Center
University of Wisconsin–Parkside
Wood Road
Kenosha, WI 53141

Ladysmith:
Mount Senario College Library
Ladysmith, WI 54848

Madison:
Madison Public Library
201 W. Mifflin Street
Madison, WI 53703
(608) 266–6363

Milwaukee:
Milwaukee County
Law Library
Courthouse, Room 307
901 North 9th Street
Milwaukee, WI 53233
278–4322

WYOMING

Gillette:
George Amos Memorial Library
412 S. Gillette Avenue
Gillette, WY 82716
(307) 682–3223

Laramie:
Coe Library—Documents Division
University of Wyoming
Box 3334, University Station
Laramie, WY 82071
(307) 766–2174

Federal Register

Friday
April 3, 1987

Part III

# Department of the Interior

National Park Service

36 CFR Part 9
Mining and Mining Claims; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

## Mining and Mining Claims

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is publishing for public review and comment revisions to existing NPS regulations at 36 CFR Part 9, Subpart A. These regulations govern the exercise of mineral rights within National Park System units in connection with patented and valid unpatented mining claims held under the Mining Law of 1872. The existing regulations were promulgated in 1977. This revision is intended to clarify the scope of the regulations and the relationship of these regulations to those governing access in Alaska at 43 CFR Part 36.

**DATE:** Comments must be received on or before May 18, 1987.

**ADDRESS:** Please submit written comments to the Land Resources Division (660), National Park Service, P.O. Box 37127, Washington, DC 20013–3127.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol McCoy (Room 3223), Land Resources Division (660), National Park Service, P.O. Box 37127, Washington, DC 20013–3127, (202) 343–4630.

**SUPPLEMENTARY INFORMATION:**

### Background

The Mining Law of 1872 (30 U.S.C. 21 *et seq.*) opened all public lands, except those specifically exempted, to prospecting by individuals and companies for valuable deposits of minerals. Those who properly locate valuable mineral deposits and properly record their claims with the appropriate governmental offices gain the right to extract minerals and use the land within the boundaries of their claims for mineral development. These rights are maintained as long as the claimant fulfills the requirements for retaining the claims. In addition, a valid mineral discovery affords the claimant the option to take the claim to patent, whereby the claimant acquires title to the property within the boundary of the claim.

When units of the National Park System were established after the enactment of the 1872 Mining Law, the units were statutorily closed to the operation of the mining laws with the exception of the following six units: Death Valley National Monument, Crater Lake National Park, Mt. McKinley National Park (now part of Denali National Park and Preserve), Glacier Bay National Monument (now part of Glacier Bay National Park and Preserve), Coronado National Memorial, and Organ Pipe Cactus National Monument. Although all NPS units have now been closed to the location of new mining claims, twenty-seven National Park System units have mining claims within their boundaries. These claims were either located during the period when the units enumerated above were open to the location of mining claims, or on public lands that were later incorporated into a new or expanded unit of the National Park System. Where these claims have not been extinguished by Federal acquisition, through successful challenge to their validity, or through the failure of claimants to comply with procedural requirements, the claimants continue to have a legal right to develop minerals.

In 1976 Congress passed the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*, hereinafter referred to as "the Act"). Among other things, the Act directed the Secretary of Interior to promulgate regulations to control "all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within any area of the National Park System . . ." (16 U.S.C. 1902).

The National Park Service promulgated its existing mining regulations, contained in 36 CFR Part 9, Subpart A, on January 26, 1977, pursuant to the Mining in the Parks Act. The regulations govern all mineral activities within all units of the National Park System in connection with both patented and valid unpatented claims located under the 1872 Mining Law, no matter when the claim was located or patented.

Since the existing NPS mining regulations were promulgated, the acreage of the National Park System has more than doubled due to the addition of vast areas in Alaska. Though now closed to mineral entry, many of the new or expanded units in Alaska contain mining claims located prior to the withdrawal of the land. Mining activities associated with these claims are subject to the requirements of 36 CFR Part 9, Subpart A.

To avoid confusion and to facilitate review, an analysis of the proposed revisions is presented below.

*Existing § 9.1 Purpose and scope.*

The revision to the existing regulations at § 9.1 proposed by the NPS is intended to clarify that the regulations at 36 CFR Part 9, Subpart A control all activities within NPS units resulting from the exercise of valid mineral rights to patented and unpatented mining claims without regard to how access is gained to a claim or whether a claim was located before or after the incorporation of lands into the National Park System. There has been some confusion concerning whether the regulations apply if an operator gains access to a claim without crossing federally-owned or controlled lands or waters. Thus, the proposed language clarifies that the regulations are applicable to all claims, not only those claims where access is on, through or across federally-owned or controlled lands or waters.

In addition, the proposed additional language is intended to address any confusion that may have resulted from the September 4, 1986 (51 FR 31619) rulemaking at 43 CFR Part 36, governing transportation and utility systems and access in Alaska pursuant to the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101). ANILCA guarantees, subject to reasonable regulations, adequate and feasible access to inholdings, including valid mining claims, within or effectively surrounded by NPS units and other conservation system units in Alaska. As a result of this statute, the National Park Service first promulgated regulations at 36 CFR 13.10–15 on June 17, 1981, governing access within and across NPS units in Alaska.

The regulations at 36 CFR 13.15(d)(1) stated that ". . . no plan of operations is required for patented claims where access is not across federally-owned parklands." The Departmental rulemaking of September 4, 1986 at 43 CFR Part 36 repealed 36 CFR 13.15(d) without explaining why. This proposed regulation clarifies that the provisions of § 13.15(d)(1) will no longer apply. Since the Mining in the Parks Act authorizes the Secretary to regulate all activities in NPS units resulting from the exercise of valid existing mineral rights on patented and unpatented claims without regard to how access is gained, and since ANILCA does not amend the Mining in the Parks Act, there is no reason for the exception in Alaska.

While ANILCA guarantees inholders, including holders of valid mining claims, adequate and feasible access subject to reasonable regulations, ANILCA does not exempt operators on claims within NPS units, where access is not across federally-owned parklands, from the 36 CFR Part 9, Subpart A regulations. Thus, the Department, upon reevaluation of this issue, finds no basis for a rule that exempts operators from the plan of operations requirements because they

conduct operations on patented claims where access is not across federally-owned parklands.

*Existing § 9.3 Access permits.*

The provisions of 36 CFR 9.3 set forth the requirements for access to mining claims within NPS units and to mining claims located outside NPS units where access is sought across an NPS unit. However, access to valid mining claims in Alaska is governed by the provisions of ANILCA, as implemented by the September 4, 1986 rulemaking. As a result, 36 CFR 9.3 is amended to state that the provisions of § 9.3 (a), (b), and (c) are inapplicable in Alaska. Please note that while operators in Alaska may gain access to their valid mining claims within NPS units under the regulations at 43 CFR Part 36 without first possessing an NPS approved plan of operations, they may not conduct any other activity that constitutes "operations" as defined in § 9.2(h) without NPS approved plans of operations. All operators who propose to conduct operations on any valid mining claim within the exterior boundaries of any NPS unit in Alaska must possess an approved plan of operations.

**Public Participation**

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. Because communications can be difficult in Alaska where a number of parties concerned with these proposed regulations live, the NPS is providing a 45 day public comment period rather than the customary 30 days.

**Drafting Information**

The primary authors of this rulemaking are Frank Buono and Carol McCoy (Washington Office, NPS), Floyd Sharrock (Alaska Regional Office, NPS) and Brian Koula (Office of the Solicitor).

**Federal Paperwork Reduction Act**

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**Compliance With Other Laws**

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331, *et seq.*), the NPS has prepared an environmental assessment of these proposed regulations. This assessment examines whether implementation of the proposed regulations will be a major Federal action that would have a significant effect on the quality of the human environment, requiring the preparation of an environmental impact statement. The assessment is on file in the Land Resources Division of the National Park Service: Room 3223, Main Interior Building, 18th and C Streets NW., Washington, DC (P.O. Box 37127, WASO 660, Washington, DC 20013–7127); and 11011 W. 6th Avenue, Denver, Colorado (P.O. Box 25287, Denver, Colorado 80225); and at the National Park Service Alaska Regional Office, 2525 Gambell Street, Room 206, Anchorage, Alaska 99503. The environmental assessment will be available for public inspection and comment for a period beginning April 3, 1987 and running concurrently thereafter with the comment period for these proposed regulations.

**List of Subjects in 36 CFR Part 9**

Environmental protection, Mines, National Parks, Oil and gas exploration, Public Lands—Minerals resources, Public lands—Rights-of-way.

**PART 9—[AMENDED]**

For reasons set out in the preamble, it is proposed to amend Title 36, Chapter I, Part 9, Subpart A of the Code of Federal Regulations as follows:

1. The authority citation for Part 9 continues to read as follows:

**Authority:** Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 et seq.); Act of August 25, 1916 (39 Stat. 535, as amended (16 U.S.C. 1 et seq.); Act of September 28, 1976; 90 Stat. 1342 (16 U.S.C. 1901 et seq.).

2. Section 9.1 is revised to read as follows:

**§ 9.1 Purpose and scope.**

These regulations control all activities within units of the National Park System resulting from the exercise of valid existing mineral rights on claims without regard to the means or route by which the operator gains access to the claim. The purpose of these regulations is to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof was created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units is preserved for the benefit of present and future generations. These regulations apply to all operations, as defined herein, conducted within the boundaries of any unit of the National Park System.

3. Section 9.3 is amended by adding a new paragraph (d) to read as follows:

**§ 9.3 Access permits.**

* * * * *

(d) In units of the National Park System in Alaska, regulations at 43 CFR Part 36 govern access to claims, and the provisions of § 9.3 (a), (b), and (c) are inapplicable.

Dated: March 11, 1987.

**William P. Horn,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–7320 Filed 4–2–87; 8:45 am]

BILLING CODE 4310–70–M

OL
2

S S
4

P
3

87

M I

Federal Register

Friday
April 3, 1987

Part IV

# Christopher Columbus Quincentenary Jubilee Commission

45 CFR Part 2201

**Organization, Recognition and Support of Quincentenary Projects and Use of Logo; Interim Rule With Request for Comments**

## CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

### 45 CFR Part 2201

### Organization, Recognition and Support of Quincentenary Projects and Use of Logo

**AGENCY:** Christopher Columbus Quincentenary Jubilee Commission.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** These regulations are for the purpose of informing the public as to the organization of the Christopher Columbus Quincentenary Jubilee Commission, its purposes, to plan, encourage, coordinate and conduct the commemoration of the voyages of discovery of Christopher Columbus and to set forth general provisions and policies governing the process of recognition and support of Quincentenary projects as well as for the use of the Commission's logo.

These regulations are necessary so that the mandates of the Congress in Pub. L. 98–375 to plan, encourage coordinate and conduct the commemoration of the voyages of Christopher Columbus may be carried out by the Commission.

The intended effect of these regulations is to provide basic information on the authority and structure of the Commission and to inform individuals, private and public organizations, including governmental agencies and states on the procedure to obtain official recognition of the Commission for proposed projects and on the use of the Commission's logo. The regulations will also make clear the criteria for Commission involvement with projects and the limitations on such involvement.

**DATES:** Interim rule effective April 3, 1987, except for § 2201.52. Section 2201.52 will become effective after the information collection requirements contained in that section have been submitted by the Commission and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Comments must be submitted on or before June 2, 1987.

**ADDRESS:** Comments should be mailed or delivered to the Christopher Columbus Quincentenary Jubilee Commission at 1801 F Street, NW., Third Flood, Washington, DC 20006. Comments received may also be inspected at this address between 9:00 a.m. to 5:00 p.m. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Martinez-Alvarez, Assistant to the Chairman. Tel. (202) 632–1992.

**SUPPLEMENTARY INFORMATION:**

#### Background

These regulations are issued to inform the public as to the authority, organization, purposes and functions of the Commission and to inform the public on the policies that govern the recognition and support of projects as well as for the use of the logo as approved and certified by the Commission on December 4, 1986. The Commission will review all comments received. If changes to the rules are indicated by the comments received, these changes will be published in the **Federal Register.**

#### Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

#### Classification

The Chairman of the Commission certifies that these regulations will not have a significant economic impact on a substantial number of small entities because they would impose minimal burden on proponents of projects. The regulations do not constitute a major Federal action significantly affecting the quality of the environment and, therefore, an environmental impact statement is not required.

#### Statutory Authority

This regulation is authorized under Pub. L. 98–375, 98 Stat. 1257. No previous regulation on these subject matters has been issued.

#### Request for Comments

A 60 day public comment period ending June 2, 1987 has been provided for the purpose of receiving comments and recommendations for improvement of the regulation prior to publication of a final rule. Comments should be mailed or delivered to the Commission at 1801 F Street, NW., Third Floor, Washington, DC 20006.

#### Basis for Interim Rule

The Commission approved these regulations as an interim rule as a prompt response to the many inquiries concerning the criteria for Commission involvement in Quincentenary projects.

#### Paperwork Reduction Act of 1980

Section 2201.52 contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Christopher Columbus Quincentenary Jubilee Commission will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Joseph F. Lackey, Jr.

All other comments regarding these proposed regulations should be sent to the Commission's office.

#### List of Subjects in 45 CFR Part 2201

Organization and function (government agencies), Seals and insignia.

Issued in Washington, DC on April 3, 1987.

**John Alexander Williams,**

*Director.*

For the reasons set out in the preamble and under the authority of Pub. L. 98–375, 98 Stat. 1257, a new Chapter XXII is established and a new Part 2201 is added to Title 45, Code of Federal Regulations, to read as follows:

## CHAPTER XXII—CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

## PART 2201—RECOGNITION AND SUPPORT OF QUINCENTENARY PROJECTS

### Subpart A—Commission Organization

Sec.
2201.1 Authorization.
2201.2 The Commission.
2201.3 Report to the Congress.

### Subpart B—General Provisions

2201.11 Statement of policy.

### Subpart C—Types of Quincentenary Involvement

2201.21 Types of projects.
2201.22 Registered projects.
2201.23 Official Quincentenary Projects.

### Subpart D—Limitations

2201.31 Withdrawal of involvement.
2201.32 Publicity.
2201.33 Nonexclusive involvement.

### Subpart E—Official Quincentenary Logo

2201.41 Design and notification of certification.
2201.42 Authorized use of logo.
2201.43 No commercial use permitted.
2201.44 Penalties for unauthorized use.

**Subpart F—Procedure for Designation of Official Quincentenary Projects**

2201.51 Submission of proposals.
2201.52 Requirements.
2201.53 Review.
2201.54 Confidentiality.
2201.55 Notification.

Appendix A to Part 2201—Official Quincentenary Logo.

**Authority:** Pub. L. 98–375, 98 Stat. 1257.

## Subpart A—Commission Organization

### § 2201.1 Authorization.

The Christopher Columbus Quincentenary Jubilee Commission was established by Pub. L. 98–375, 98 Stat. 1257. The members of the Commission were sworn into office on September 12, 1985 and the first meeting of the Commission was held on September 12, 1985.

### § 2201.2 The Commission.

(a) *Composition.* The Commission is composed of thirty members as follows:

(1) Seven members appointed by the President upon the recommendation of the majority leader of the Senate in consultation with the minority leader of the Senate;

(2) Seven members appointed by the President upon the recommendation of the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives;

(3) Ten members appointed by the President, which members shall be broadly representative of the people of the United States, and not otherwise officers or employees of the United States;

(4) The Secretary of State;

(5) The Archivist of the United States;

(6) The Librarian of Congress;

(7) The Chairman of the National Endowment for the Arts;

(8) The Chairman of the National Endowment for the Humanities;

(9) The Secretary of Commerce.

(b) *Service without compensation.* Members of the Commission serve without compensation as a member of the Commission except that members may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(c) *Vacancies.* A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

### § 2201.3 Report to the Congress.

Within two years after the first date of the first meeting of the Commission, the Commission shall submit to Congress a comprehensive report incorporating its recommendations for the commemoration of the quincentennial of the voyages of discovery of Christopher Columbus.

## Subpart B—General Provisions

### § 2201.11 Statement of policy.

(a) The Christopher Columbus Quincentenary Jubilee Commission was established by Pub. L. 98–375 to commemorate the 500th anniversary of the voyages of Christopher Columbus. The Commission will plan, encourage, coordinate and conduct activities commemorating the historic events associated with those voyages. Private and public organizations, as well as state and local governments, are encouraged to conduct activities to commemorate the Quincentenary.

(b) The Commission, recognizing its duty under the law to conduct and coordinate for an array of projects, sets forth these regulations for the registration, endorsement and support of projects. These regulations may be changed or amended by the Commission at any time and any such change or amendment will be published in the Federal Register.

## Subpart C—Types of Quincentenary Involvement

### § 2201.21 Types of projects.

Subject to the limitations set forth in this and other sections of these guidelines, there shall be two forms of Commission involvement with projects: Registered Projects and Official Quincentenary Projects.

### § 2201.22 Registered projects.

(a) The Commission, at its discretion, may include a project in a Register of Quincentenary Projects and Events.

(b) Registered projects are defined as those which

(1) Will increase public awareness of the Quincentenary; and,

(2) Meet such other criteria as may be established by the Commission or the agencies or organizations defined in paragraph (c) of this section.

(c) Any project which is adequate for inclusion in the Register of Quincentenary Projects and Events, may be proposed for registration as a registered project by one of the following:

(1) Any state quincentenary commission or comparable authority established under the laws of a state, territory or the District of Columbia;

(2) The officially constituted quincentenary commissions of Italy, Spain or other countries or governments recognized by the United States.

(d) The Commission reserves the right to decline to include a project in the Register of Quincentenary Projects and Events.

(e) The Commission reserves the right to participate in the development and implementation of registered projects, although primary responsibility for the project will rest with the project's sponsor or sponsors.

(f) Registered projects shall receive a Certificate of Registration from the Commission and a letter of agreement detailing the extent of Commission participation in the project.

(g) Registered projects are expressly enjoined from identifying themselves with the Commission unless expressly authorized to do so in writing by the Commission. Registration with the Commission does not authorize the use of the Official Quincentenary Logo for any purpose by the project or any of its sponsors.

### §2201.23 Official Quincentenary Projects.

(a) A project which is presented to the Commission or originated by the Commission, its members or staff, and which the Commission, after careful review and consultation with appropriate entities, determines that such project furthers the mandate of the law in accordance with Section 4(b), and the criteria set forth in this section, shall be designated as an "Official Quincentenary Project."

(b) Official Quincentenary Projects shall be those which, upon the determination of the Commission,

(1) Will make an exceptional contribution to the commemoration of the voyages of Columbus,

(2) Will have substantial educational, historical and cultural value in relation to the Quincentenary,

(3) Will substantially increase public awareness of the Quincentenary,

(4) Will be adequately financed and directed, and

(5) Will be accomplished without unreasonable cost to the Commission.

(c) The Commission reserves the right to participate in the development and implementation of Official Quincentenary Projects although primary responsibility for the project shall rest with the project's sponsor or sponsors.

(d) Official Quincentenary Projects shall receive a Certificate stating that the project has been designated as such and a letter of agreement stating the extent of Commission participation in the project.

## Subpart D—Limitations

### § 2201.31 Withdrawal of involvement.

The Commission reserves the right at all times, upon timely and appropriate notice, and with respect to any project to withdraw its involvement, including authorization for the use of the logo.

### § 2201.32 Publicity.

The Commission shall determine the manner in which the Commission's involvement in a project shall be made public.

### § 2201.33 Nonexclusive involvement.

Unless otherwise indicated by the Commission in advance and in writing, Commission involvement with a project will not in any way limit the Commission from involving itself in other projects of the same or similar nature.

## Subpart E—Official Quincentenary Logo

### § 2201.41 Design and notification of certification.

Under the authority granted by Pub. L. 98–375, Sec. 10a, the Commission has designed and adopted a logo as the official symbol of the Quincentenary. This design is depicted and described in Appendix A to this Part of the Commission's regulations. The logo is hereby designated by the Commission as the Official Quincentenary Logo and this designation includes any likeness of the logo which, in whole or in part, is used in such manner as to suggest the Official Quincentenary Logo.

### § 2201.42 Authorized use of logo.

The Commission reserves full authority over its logo and permission to use the logo shall be granted only by written authorization by the Commission.

### § 2201.43 No commercial use permitted.

Registered Projects or Official Quincentenary Projects shall not carry the logo, symbol or mark of the Commission in connection with the production or manufacture of any commercial goods, as part of an advertisement promoting commercial goods or services, or as part of an endorsement of such goods and services.

### § 2201.44 Penalties for unauthorized use.

The use of such logo, symbol or mark, unless otherwise authorized by the Commission, constitute a violation punishable under Pub. L. 98–375, section 10(b).

## Subpart F—Procedure for Designation of Official Quincentenary Projects

### § 2201.51 Submission of proposals.

Proposals for projects to be designated as Official Quincentenary Projects may be submitted to the Commission from corporations, organizations, foundations, government agencies, and individuals.

### § 2201.52 Requirements.

(a) Each proposal submitted to the Commission shall include:

(1) A brief, typewritten summary of the proposal in English, which shall include a narrative statement indicating how the project meets the criteria established by the Commission;

(2) The name, address, and telephone number of the project director, the date of the application, the name and address of the person or persons responsible for the operation and implementation of the project, and the type of endorsement sought from the Commission;

(3) A comprehensive description of the project;

(4) The names and addresses of all persons or organizations proposing, sponsoring and funding the project;

(5) The total actual and estimated cost of the project, the total amount of funds available (excluding funds committed but not yet received), the names of government agencies and programs from which funds have been received, the source for funds not yet received and a short description of the financial accounting employed for the project;

(6) A statement to the effect that the proponent agrees to be bound by all policies, requirements, regulations and other decisions that have been made or will be made by the Commission affecting the project and those responsible for it; and,

(7) The signature of the person or persons responsible for the project and the project director.

(b) All materials submitted to the Commission shall become the property of the Commission.

(c) All materials shall be delivered personally or by mail, return receipt requested, to the office of the Commission at 1801 F Street, NW., Third Floor, Washington, DC 20006 or to its designated address.

(d) Although not required, it will be helpful to the Commission to receive one (1) original and two (2) copies of all materials included in a proposal submitted to the Commission.

### § 2201.53 Review.

(a) The Commission staff will perform an initial, procedural review of all proposals submitted to the Commission.

(b) After the initial procedural review by the staff, the staff shall refer the proposed project to the appropriate committees of the Commission which shall submit their recommendations to the Commission for final action. The Commission shall determine the manner in which proposals shall be reviewed.

(c) Unless delegated by vote of the Commission to the Director of the Commission, final authority to decide Commission involvement with the projects remains with the full Commission.

(d) All communication to and from the Commission regarding a project shall be made through the project director designated in the proposal.

### § 2201.54 Confidentiality.

Although the Commission cannot guarantee confidentiality in its review of proposals, the Commission will make every possible effort to maintain the confidentiality of those proposals for projects which, in their summary, request confidentiality.

### § 2201.55 Notification.

The Commission will notify the project director, in writing, the determination concerning an award for endorsement. The Commission may issue a letter of encouragement when a project demonstrates merit but has not obtained Commission approval as an Official Quincentenary Project. The Commission shall also issue a brief letter of explanation when a project is denied endorsement.

## Appendix A to Part 2201—Official Quincentenary Logo

This Appendix is intended to improve the quality of Part 2201 by setting forth a description and depiction of the Official Quincentenary Logo by the Christopher Columbus Quincentenary Jubilee Commission. The Logo is the subject of Subpart E, §§ 2201.41 through 2201.44, and it is referred to repeatedly thereafter. This Appendix contains no requirements or restrictions which are not already in the regulations.

Description: The Logo consists of the number "500" in outline form, as represented in the illustration below accompanied by the legend "Christopher Columbus Quincentenary Jubilee." In color, the Logo is intended to appear on a white field. The number "five" is in red, the first zero and center cross design are in green, the second

zero and center star design are in blue. The words "Christopher Columbus" appear above the numbers in gray and the words "Quincentenary Jubilee" appear under the numbers in gray. When printed in color, the following PMS color designations must be used: Red PMS 485; Green PMS 355; Blue PMS 285 and Gray PMS 424. The Logo may also be duplicated wholly in black on a white or light-colored field or in white on a black field.

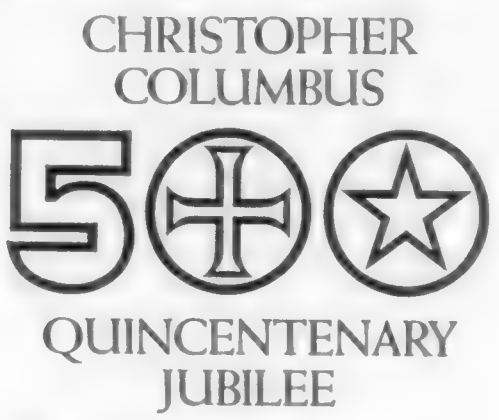


[FR Doc. 87-7390 Filed 4-2-87; 8:45 am]
BILLING CODE 6820-RB-M

# Reader Aids

Federal Register

Vol. 52, No. 64

Friday, April 3, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**7 CFR**

301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728
910.....10729
1097.....10729
1137.....10730
1468.....10731
1472.....10731
1475.....10725

**Proposed Rules:**

400.....10764
1955.....10577
1965.....10577

**9 CFR**

78.....10554

**Proposed Rules:**

92.....10765
317.....10766
319.....10766

**10 CFR**

**Proposed Rules:**

50.....10771

**12 CFR**

202.....10732
203.....10365
205.....10734
500.....10557
564.....10557

**14 CFR**

39.....10558, 10735, 10736
71.....10559
73.....10559, 10560
95.....10737

**Proposed Rules:**

39.....10581
71.....10582

**15 CFR**

371.....10741

**Proposed Rules:**

368.....10771

**18 CFR**

271.....10741
381.....10366

**Proposed Rules:**

1301.....10772

**19 CFR**

24.....10561
133.....10668

**Proposed Rules:**

111.....10774

**20 CFR**

10.....10486

**Proposed Rules:**

200.....10384
615.....10774

**21 CFR**

193.....10561, 10562
510.....10668
520.....10668
522.....10668
524.....10668
529.....10668
561.....10562

**24 CFR**

**Proposed Rules:**

905.....10668
968.....10668

**26 CFR**

1.....10368, 10741, 10742
5f.....10368
54.....10563
602.....10368, 10563, 10742

**Proposed Rules:**

1.....10774
54.....10583
602.....10583, 10774

**28 CFR**

545.....10528

**Proposed Rules:**

549.....10531

**29 CFR**

2644.....10368

**Proposed Rules:**

1625.....10584
1910.....10586

**30 CFR**

914.....10369, 10373

**32 CFR**

706.....10374, 10748, 10749

**33 CFR**

**Proposed Rules:**

100.....10593, 10594

**36 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670

228..... 10564
**Proposed Rules:**
9..... 10866

**39 CFR**

10..... 10375
111..... 10749

**40 CFR**

52..... 10751
60..... 10852
110..... 10712
180..... 10375, 10376, 10565, 10567
271..... 10568
761..... 10688
799..... 10377, 10752

**Proposed Rules:**
52..... 10596

**41 CFR**

201-32..... 10379

**44 CFR**

64..... 10753
**Proposed Rules:**
5..... 10385
6..... 10385

**45 CFR**

2201..... 10870

**46 CFR**

**Proposed Rules:**
154..... 10598

**47 CFR**

2..... 10568
22..... 10571
73..... 10381, 10382, 10568, 10757
74..... 10568
78..... 10568
**Proposed Rules:**
90..... 10389

**49 CFR**

219..... 10575
1207..... 10382
1249..... 10382
**Proposed Rules:**
571..... 10775

**50 CFR**

301..... 10759
611..... 10761
642..... 10762
652..... 10763
672..... 10761
675..... 10761
**Proposed Rules:**
640..... 10780
651..... 10781

## List of Public Laws

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 1, 1987

4-6-87
Vol. 52 No. 65

# Federal Register

Monday
April 6, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

LASS NEWSPAPER
tage and Fees Paid
vernment Printing Office
SSN 0097-6326)

O L
2
S S
5
P
6
87
M I

4-6-87
Vol. 52 No. 65
Pages 10875-11018

# Federal Register

Monday
April 6, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 65

Monday, April 6, 1987

**Agency for International Development**
NOTICES
Meetings:
Research Advisory Committee, 10915

**Agricultural Marketing Service**
PROPOSED RULES
Egg marketing order, 10984
Potatoes (Irish) grown in Idaho and Oregon, 10893

**Agriculture Department**
*See also* Agricultural Marketing Service; Commodity Credit Corporation; Foreign Agricultural Service
NOTICES
Committees; establishment, renewals, terminations, etc.:
Agribusiness Promotion Council; reestablishment, 10915

**Alcohol, Drug Abuse, and Mental Health Administration**
NOTICES
Committees; establishment, renewals, terminations, etc.:
Small Business Research Review Committee, 10932

**Army Department**
*See also* Engineers Corps
NOTICES
Meetings:
Science Board, 10919

**Coast Guard**
PROPOSED RULES
Regattas and marine parades:
Budweiser Trophy Race, 10905
1987 Put in Bay Air Show, 10906
NOTICES
Navigational rules:
Alternative compliance certificates, 10963, 10964
(2 documents)

**Commerce Department**
*See* International Trade Administration; National Oceanic and Atmospheric Administration

**Commodity Credit Corporation**
NOTICES
Targeted export assistance program, 10915

**Customs Service**
RULES
Financial and accounting procedure:
Harbor maintenance fee
Correction, 10970

**Defense Department**
*See* Army Department; Engineers Corps

**Drug Enforcement Administration**
NOTICES
Registration applications, etc.:
Sloan, Fredric J., M.D., 10957
*Applications, hearings, determinations, etc.:*
Stepan Chemical Co., 10957

**Economic Regulatory Administration**
NOTICES
Natural gas exportation and importation:
Bonus Energy, Inc., 10921

**Education Department**
NOTICES
Grants; availability, etc.:
American Indian vocational rehabilitation service projects program, 10919
Meetings:
Robert C. Byrd Honors Scholarship Program, 10920

**Employment and Training Administration**
NOTICES
Labor surplus area classifications:
Annual list
Correction, 10970

**Energy Department**
*See also* Economic Regulatory Administration; Federal Energy Regulatory Commission
NOTICES
Grant awards:
University of Alabama, 10920
Patent licenses, exclusive:
Fermethanol, Inc., 10921

**Engineers Corps**
NOTICES
Environmental statements; availability, etc.:
Sea Bright to Ocean Township Reach, Monmouth County, NJ, 10919

**Environmental Protection Agency**
PROPOSED RULES
Water pollution control:
National primary and secondary drinking water regulations—
Public notification, lead notification, fluoride notice, 10972
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region IX, 10928
(2 documents)
Superfund program:
Toxic chemicals list petitions; policy statement, etc.; technical amendments; correction, 10970
Toxic and hazardous substances control:
Dermal bioassay workshop, 10928

**Equal Employment Opportunity Commission**
NOTICES
Meetings; Sunshine Act, 10969

**Executive Office of the President**
*See* Trade Representative, Office of United States

**Federal Energy Regulatory Commission**
PROPOSED RULES
Electric utilities (Federal Power Act):
Hydroelectric projects; fees to reimburse fish and wildlife agencies
Correction, 10898
NOTICES
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 10924
Small producer certificates, applications, 10927
Natural Gas Policy Act:
OCS leases; blanket determinations, 10927
*Applications, hearings, determinations, etc.:*
Arkansas Electric Cooperative Corp. et al., 10921
Colorado Interstate Gas Co., 10926
K N Energy, Inc., 10922
Kentucky West Virginia Gas Co., 10926
Louisiana-Nevada Transit Co., 10926
Marathon Oil Co., 10922
Natural Gas Pipeline Co. of America, 10922
Washington Water Power Co., 10923
Williams Natural Gas Co., 10923, 10924 (2 documents)

**Federal Home Loan Bank Board**
NOTICES
Meetings:
Federal Savings and Loan Advisory Council, 10929
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 10929
*Applications, hearings, determinations, etc.:*
Cartaret Savings Bank, F.A., 10929

**Federal Maritime Commission**
PROPOSED RULES
Practice and procedure:
Automobile measurement rule; environmental assessment, 10912
NOTICES
Freight forwarder licenses:
Farrell Transportation Corp. et al., 10930
First International Transportation, Inc., et al., 10930

**Federal Reserve System**
RULES
Truth in lending (Regulation Z):
Official staff commentary update, 10875
NOTICES
Federal Reserve Bank services; fee schedules and pricing principles:
Book-entry securities services, 10930
*Applications, hearings, determinations, etc.:*
Atico Financial Corp., 10931
Continental Illinois Corp. et al., 10931
Gulf & Southern Financial Corp. et al., 10932
Nicholson, Roy O., 10932

**Fish and Wildlife Service**
RULES
Endangered and threatened species:
Tinian monarch, 10890
NOTICES
Endangered Species Convention; foreign law notifications:
Argentina, 10955
Peru, 10955

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Levamisole, 10886
Selenium, 10887
Color additives:
FD&C Yellow No. 6, and D&C Red Nos. 8 and 9; provisional listing, 10882
Food additives:
Adhesive coatings and components—
Poly(ethyloxazoline), 10883
Sucrose fatty acid esters, 10882
GRAS or prior-sanctioned ingredients:
Potassium and sodium lactate, 10884
Organization and authority delegations:
Center for Drugs and Biologics, Director and Deputy Director, et al.; abbreviated new drug applications, 10881
NOTICES
Medical devices; premarket approval:
Biophysic Picolas Nd:YAG Opthalmic Laser, 10933
Laserprobe-PLR Flex and Laserprobe-PLR Plus Catheters and Optilase Model 900 Contact Laser System, 10933

**Foreign Agricultural Service**
NOTICES
Targeted export assistance program, 10915

**General Services Administration**
PROPOSED RULES
Acquisition regulations:
Contractors; suspension and debarment, 10913
NOTICES
Agency information collection activities under OMB review, 10932

**Health and Human Services Department**
*See* Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Care Financing Administration; Human Development Services Office

**Health Care Financing Administration**
NOTICES
Medicare:
Heart transplants; coverage criteria, 10935
Meetings:
Technology-Dependent Children Task Force, 10934

**Housing and Urban Development Department**
NOTICES
Agency information collection activities under OMB review, 10953
Grants; availability, etc.:
Transitional housing demonstration program; proposed guidelines; correction [**Editorial Note:** This document, appearing on page 10440 of the **Federal Register** of April 1, 1987, was incorrectly identified in the Table of Contents for that issue]
Organization, functions, and authority delegations:
Assistant Secretary for Community Planning and Development, 10952
Director, Rehabilitation Loans and Homesteading Division, et al., 10952

**Human Development Services Office**
NOTICES
Head Start name and logo; trademark registration, 10951

**Interior Department**
*See* Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
NOTICES
Art Advisory Panel; report availability, 10965

**International Development Cooperation Agency**
*See* Agency for International Development

**International Trade Administration**
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 10917
Export privileges, actions affecting:
Valley Machine Tool et al., 10916
Export trade certificates of review, 10917

**Interstate Commerce Commission**
PROPOSED RULES
Tariffs and schedules:
Computer determination of mileages, 10913
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Corp., 10955
Railroad services abandonment:
Missouri Pacific Railroad Co., 10956

**Justice Department**
*See also* Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Millipore Corp., 10956

**Labor Department**
*See* Employment and Training Administration

**Land Management Bureau**
NOTICES
Meetings:
Craig District Advisory Council, 10954
Prineville District Advisory Council, 10954
Withdrawal and reservation of lands:
Wyoming, 10954
(2 documents)

**Merit Systems Protection Board**
RULES
Practice and procedure:
Regional office realignment, 10875

**Mississippi River Commission**
NOTICES
Meetings; Sunshine Act, 10969
(4 documents)

**National Aeronautics and Space Administration**
RULES
Tracking and data relay satellite system; use and reimbursement policy; service rates, 10880
NOTICES
Meetings:
Aeronautics Advisory Committee, 10958

**National Oceanic and Atmospheric Administration**
NOTICES
Permits:
Experimental fishing, 10918
(2 documents)

**Nuclear Regulatory Commission**
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 10958

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Personnel Management Office**
NOTICES
Agency information collection activities under OMB review, 10960
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 10958

**Postal Rate Commission**
NOTICES
Domestic mail classification and rate schedules:
Collect on delivery service (COD); service change, 10962

**Public Health Service**
*See* Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration

**Railroad Retirement Board**
RULES
Organization, reporting forms, etc., 11010

**State Department**
NOTICES
Fishermen's Protective Act procedures; Fishermen's Guaranty Fund; fee, 10962

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Initial and permanent regulatory program:
Federal oversight, evaluation, enforcement, and withdrawing approval of State programs, 10898

**Trade Representative, Office of United States**
NOTICES
Generalized System of Preferences:
Articles eligible for duty-free treatment, etc., 10960
Japan; semiconductor arrangement; possible U.S. actions; hearing
Correction, 10961

**Transportation Department**
*See also* Coast Guard
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 10963

**Treasury Department**
*See also* Customs Service; Internal Revenue Service
NOTICES
Meetings:
Debt Management Advisory Committee, 10964
Notes, Treasury:
E-1994 series, 10964
M-1991 series, 10964
W-1989 series, 10964

**Veterans Administration**
RULES
Missing children, official use of mail in location and recovery, 10888
PROPOSED RULES
Medical benefits:
State home facilities, 10907
NOTICES
Agency information collection activities under OMB review, 10968
Privacy Act:
Computer matching program, 10965
Systems of records, 10966

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 10972

**Part III**
Department of Agriculture, Agricultural Marketing Service, 10984

**Part IV**
Railroad Retirement Board, 11010

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**5 CFR**
1201 ..... 10875

**7 CFR**
**Proposed Rules:**
945 ..... 10893
994 ..... 10984

**12 CFR**
226 ..... 10875

**14 CFR**
1215 ..... 10880

**18 CFR**
**Proposed Rules:**
4 ..... 10898
11 ..... 10898
375 ..... 10898

**19 CFR**
24 ..... 10970
146 ..... 10970

**20 CFR**
200 ..... 11010
209 ..... 11010
210 ..... 11010
216 ..... 11010
217 ..... 11010
230 ..... 11010
234 ..... 11010
260 ..... 11010
266 ..... 11010
320 ..... 11010
322 ..... 11010
325 ..... 11010
330 ..... 11010
335 ..... 11010
341 ..... 11010
345 ..... 11010

**21 CFR**
5 ..... 10881
81 ..... 10882
172 ..... 10882
175 ..... 10883
184 ..... 10884
524 ..... 10886
573 ..... 10887

**30 CFR**
**Proposed Rules:**
733 ..... 10898

**33 CFR**
**Proposed Rules:**
100 (2 documents) ..... 10905, 10906

**38 CFR**
1 ..... 10888
**Proposed Rules:**
17 ..... 10907

**40 CFR**
**Proposed Rules:**
141 ..... 10972
142 ..... 10972
143 ..... 10972

**46 CFR**
**Proposed Rules:**
502 ..... 10912

**48 CFR**
**Proposed Rules:**
509 ..... 10913

**49 CFR**
**Proposed Rules:**
1312 ..... 10913

**50 CFR**
17 ..... 10890

# Rules and Regulations

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

### Practice and Procedure; Realignment of Regional Offices

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (the Board) announces a realignment of the geographical jurisdiction of its regional offices. The realignment affects the New York, Philadelphia, and Washington, DC Regional Offices.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Doheny, (202) 653–7980.

**SUPPLEMENTARY INFORMATION:** The Board announces the realignment of the geographical jurisdiction of its New York, Philadelphia, and Washington, DC regional offices. As a result of the jurisdictional changes, the Board will be more responsive to the needs of appellant and agency clients.

When agencies effect actions that are appealable to the Board, they must inform the affected employees of their appeal rights, and of the correct MSPB regional office address to which their appeals should be sent. Accordingly, agencies and other interested parties should carefully review the regional offices jurisdictional boundary changes in Appendix II.

### Regulatory Flexibiliy Act

The Clerk, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this rule pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of the determination that this rule would not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

### List of Subjects in 5 CFR Part 1201

Government employees, Administrative practice and procedures, Civil rights.

### PART 1201—[AMENDED]

Accordingly, Appendix II to 5 CFR Part 1201 is revised to read as follows:

**Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals**

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the below listed addresses, according to the geographic region of the employing agency or as required by 5 CFR 1201.4(e).

Address of Appropriate Regional Office and Area Served:

1. Atlanta Regional Office, Suite 500, 1365 Peachtree Street, NE., Atlanta, Georgia 30309–3199 (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina).
2. Boston Regional Office, 10 Causeway Street, Suite 1078, Boston, Massachusetts 02222–1042 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669 (Illinios, Indiana, Michigan, Minnesota, Ohio, Wisconsin).
4. Dallas Regional Office, 1100 Commerce Street, Suite 6F20, Dallas, Texas 75242–9979 (Arkansas, Louisiana, Oklahoma, Texas, Swan Island).
5. Denver Regional Office, 730 Simms Street, Suite 301, Golden, Colorado 80401–4720 (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming).
6. New York Regional Office, 26 Federal Plaza, Suite 2339, New York, New York 10278–0022 (New Jersey [Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union and Warren Counties], New York, Puerto Rico, Virgin Islands).
7. Philadelphia Regional Office, U.S. Customhouse, Suite 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904 (Delaware, New Jersey [Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Ocean and Salem Counties], Pennsylvania, Virginia [except Alexandria and Falls Church City and Arlington, Fairfax, Loudoun and Prince William Counties], West Virginia).
8. St. Louis Regional Office, 911 Washington Avenue, Suite 615, St. Louis, Missouri 63101–1203 (Iowa, Kentucky, Missouri, Tennessee).
9. San Francisco Regional Office, 525 Market Street, Suite 2800, San Francisco, California 94105–2789 (California).
10. Seattle Regional Office, 915 Second Avenue, Suite 1840, Seattle Regional Office 98174–1001 (Alaska, Hawaii, Idaho, Oregon, Washington, Pacific overseas).
11. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3473 (Maryland, Washington, DC, Virginia [Alexandria, Falls Church City, and Arlington, Fairfax, Loudoun and Prince William Counties], all overseas areas not otherwise covered).

Dated: April 1, 1987.

Robert E. Taylor,
*Clerk of the Board.*

[FR Doc. 87–7534 Filed 4–3–87; 8:45 am]
BILLING CODE 7400–01–M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

**[Reg. Z; TIL–1]**

### Truth in Lending; Official Staff Commentary Update

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final official staff interpretation.

**SUMMARY:** The Board is publishing in final form changes to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material.

As a result of the increased use of home-equity lines of credit and second mortgage loans, partly due to the new limitations on the deductibility of non-business interest expenses under the revised federal tax laws, the Board has received a number of inquiries concerning real estate-secured extensions of credit. These questions are addressed by several revisions, one of which clarifies the rules that apply when a creditor adds a security interest in the consumer's principal dwelling to a transaction that was previously exempt from the regulation.

The update includes a variety of other revisions including clarification of the

exception from the finance charge for participation or membership fees under § 226.4(c)(4), and clarification of the prohibition against offsetting a consumer's credit card indebtedness with funds from a deposit account held with a credit card issuer under § 226.12(d).

**DATES:** Effective April 1, 1987, but compliance optional until October 1, 1987.

**FOR FURTHER INFORMATION:** Contact the following attorneys in the Division of Consumer and Community Affairs at (202) 452–3667 or (202) 452–3867:

Open-end—Kathleen Brueger, Heather Hansche, Susan Kraeger

Closed-end—Sharon Bowman, Leonard Chanin, Adrienne Hurt, Thomas Noto

For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**(1) General**

The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR Part 226). Effective October 13, 1981, an official staff commentary (TIL–1, Supp. I to 12 CFR Part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise. There have been five general updates so far. This notice contains the sixth general update, which was proposed for comment on December 2, 1986 (51 FR 43372). The changes are effective on April 1, 1987. Although creditors are free to rely on the provisions as of that date and are protected if they do so, they need not follow the revisions until October 1, 1987.

**(2) Revisions**

The following is a brief description of the revisions to the commentary:

*Subpart A—General*

*Section 226.2—Definitions and Rules of Construction— 2(a) Definitions—2(a)(20) "Open-End Credit".* Comment 2(a)(20)–4 is amended to further clarify that an open-end credit plan may exist even though the creditor does not normally impose a finance charge, provided the creditor has the right to impose a finance charge from time to time on the outstanding balance.

*Section 226.3—Exempt Transactions*— 3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling—Comment 3(b)–2 is amended to clarify that an open-end credit plan which was exempt from the regulation's coverage under § 226.3(b) becomes subject to the regulation when a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. As a result, creditors must give the consumer an initial disclosure statement reflecting the current account terms at the time such security interest is taken, and comply with the other provisions of the regulation applicable to open-end credit. If the security interest that is taken is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest.

Comment 3(b)–3 is amended to correct the reference to the $25,000 limitation and to add a reference to the consumer's principal dwelling in the first sentence. In addition, the caption "Refinanced obligations" has been changed to "Closed-end credit—subsequent changes" to more closely parallel the language used in the caption for the preceding comment on open-end credit. The revisions clarify the rule that disclosures for previously exempt closed-end credit transactions are required only when the existing obligation is satisfied and replaced by a new obligation. A cross reference to the commentary to § 226.23(a)(1), which discusses the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction, has also been added to the comment.

*Section 226.4—Finance Charge*—4(c) Charges Excluded from the Finance Charge—*Paragraph 4(c)(4).* Comment 4(c)(4)–1 is amended and a new comment 4(c)(4)–2 is added to clarify the types of charges that may be treated as participation or membership fees, and thus excluded from the finance charge. Specifically, comment 4(c)(4)–1 is amended to make clear that a one-time charge imposed when an account is opened, such as a loan origination fee, may not be treated as a participation fee. Comment 4(c)(4)–2 is added to make clear that fees based on either the degree of account activity or on the amount of credit available under the plan (such as a fee based on a percentage of the credit limit) are not participation fees and, if imposed, must be treated as finance charges.

*Subpart B—Open-End Credit*

*Section 226.5—General Disclosure Requirements*—5(b) Time of Disclosures—*5(b)(1) Initial disclosures.* Comment 5(b)(1)–1 is revised to make clear that, in general, the initial disclosure statement must be provided to the consumer before the consumer pays any fees or charges under the plan, including real estate charges of the type excluded from the finance charge in § 226.4(c)(7). However, the comment would continue to allow imposition of an application fee (§ 226.4(c)(1)) or membership fee (§ 226.4(c)(4)) prior to giving the initial disclosure statement; any membership fee imposed before the initial disclosures are given must be refunded if the consumer rejects the plan.

*Section 226.6—Initial Disclosure Statement*—6(b) *Other Charges*— Comment 6(b)–1 is amended by adding examples of the types of real estate charges included in § 226.4(c)(7). In addition, taxes and filing or notary fees excluded from the finance charge under § 226.4(e) are deleted as examples of an "other charge" in comment 6(b)–1, and comment 6(b)–2 is amended to include them as examples of what is not an "other charge." Since taxes and filing or notary fees excluded from the finance charge under § 226.4(e) must be itemized and disclosed, it is unnecessary to specifically require them to be treated as "other charges" in order to ensure that they are disclosed to the consumer. The creditor has the option of either itemizing and disclosing these fees separately under § 226.4(e), or including the fees as part of the initial disclosure statement as an "other charge" under § 226.6(b). Under either option, the creditor may disclose the amount of the fees or, alternatively, an explanation of how the amount will be determined.

6(c) *Security Interests.* Comments 6(c)–2 and 6(c)–4 are revised to take into account the Board's Credit Practices Rule, Subpart B of Regulation AA, 12 CFR Part 227, and the credit practices rules of the Federal Trade Commission and the Federal Home Loan Bank Board, 16 CFR Part 444 and 12 CFR Part 535, respectively. These rules declare it an unfair or deceptive act or practice for creditors to take or enforce a nonpurchase money, nonpossessory security interest in "household goods," as that term is defined by the rules. Some state laws also limit the availability of security interests in household goods. Comments 6(c)–2 and 6(c)–4 have been supplemented with parenthetical statements designed to alert creditors to the existence of these restrictions, rather than deleting the references to "household appliances" and "household goods" altogether, as was originally proposed.

*Section 226.7—Periodic Statement—7(f) Amount of Finance Charge.* A new comment 7(f)–8 is added to clarify that finance charges assessed at the time an account is opened must be disclosed on the periodic statement if they are financed under the plan.

7(h) *Other Charges.* Comment 7(h)–1 is amended to make clear that creditors may disclose real estate-related charges excluded from the finance charge under § 226.4(c)(7) as a single amount with a term such as "closing costs" on the periodic statement, if the charges were itemized and described by the same term on the initial disclosure. Creditors may continue, however, to disclose these charges on the initial disclosure statement by explaining how the charge will be determined (see § 226.6(b)).

*Section 226.12—Special Credit Card Provisions—12(d) Offsets by Card Issuer Prohibited—Paragraph 12(d)(2).* Comment 12(d)(2)–1 is revised to clarify that the security interest exception to the prohibition on offsetting a cardholder's indebtedness against funds on deposit with the card issuer does not include a security interest that is the functional equivalent of the right of offset. Therefore, security interests granted by language routinely included in credit card agreements are not within the exception. For the exception to apply, there must be some affirmative indication that the consumer is aware that a security interest is a condition for an account (or for more favorable terms on an account) and specifically intends to grant the security interest. In addition, to qualify for the exception, a security interest in the consumer's deposit account must be obtainable and enforceable by creditors generally. The revised comment eliminates the examples at the end of the previous comment since they are now incorporated in the requirements discussion.

*Section 226.15—Right of Rescission—15(c) Delay of Creditor's Performance.* Comment 15(c)–1 is amended to clarify that a creditor is not prohibited from disbursing funds during the rescission period when property subject to the right to rescind is added as security under an existing open-end credit plan.

Comment 15(c)–3 is revised to clarify that the examples of actions a creditor may take during the rescission period are permissible actions provided they are not prohibited by state law or other requirements. In addition, the caption "Permissible actions" has been changed to "Actions during the delay period." These revisions were prompted by the fact that some creditors mistakenly believed that the regulation authorized the accrual of finance charges during the rescission period, even when state law does not permit the practice. The revisions make it clear that the regulation neither authorizes nor prohibits the listed actions.

*Subpart C—Closed-End Credit*

*Section 226.18—Content of Disclosures—18(g) Payment Schedule—Paragraph 18(g)(2).* Comment 18(g)(2)–1 is reVised to incorporate a discussion of transactions in which interest and principal payments occur at different intervals. The revision clarifies that a creditor may disclose the two series of payments separately and use an abbreviated payment schedule for the interest payments. The revision also makes clear that this option is available for transactions in which interest and principal payments are scheduled on the same, as well as on different, dates of the month.

18(m) *Security Interest*—Comment 18(m)–2, addressing disclosure of nonpurchase money security interests, is revised to reflect the existence of the Board's Credit Practices Rule, Subpart B of Regulation AA, 12 CFR Part 227, and the credit practices rules of the Federal Trade Commission, 16 CFR Part 444, and the Federal Home Loan Bank Board, 12 CFR Part 535. These rules declare it an unfair or deceptive act or practice for creditors to take or enforce a nonpossessory, nonpurchase money security interest in "household goods," as that term is defined by the rules. Some state laws also limit the availability of security interests in household goods. Comment 18(m)–2 has therefore been supplemented with a parenthetical statement designed to alert creditors to the existence of these restrictions.

Rather than deleting the reference to "household goods" altogether, as was originally proposed, an additional example has been provided: "certain household items." Some creditors have expressed reluctance, in light of the credit practices rules, to use the term "household goods." Accordingly, the additional term has been provided in comment 18(m)–2 as an alternative means of describing this type of property.

*Section 226.20—Subsequent Disclosure Requirements*—20(a) *Refinancing—Paragraph 20(a)(2).* The discussion in comment 20(a)(2)–1 on what qualifies as a corresponding change in the payment schedule is deleted as a result of the addition of comment 20(a)(2)–2.

Comment 20(a)(2)–2 is added to clarify what is a corresponding change in the payment schedule that would not require new disclosures. The addition also makes clear that a reduction in the annual percentage rate accompanied by an increase in the term of the original obligation is an event requiring new disclosures.

*Section 226.23—Right of Rescission—*23(a) *Consumer's Right to Rescind—Paragraph 23(a)(1).* Comment 23(a)(1)–5 is modified to clarify the circumstances in which the addition of a security interest to an existing obligation is rescindable. The revised comment makes clear that if a security interest in the consumer's principal dwelling is added to a transaction that was previously exempt from the regulation (because it was credit over $25,000 not secured by real property or a principal dwelling), the consumer has the right to rescind the addition of that security interest even if the existing obligation is not satisfied and replaced by a new obligation. Finally, the term "preexisting" has been replaced by "existing" for consistency of terminology.

23(c) *Delay of Creditor's Performance*—Comment 23(c)–3 is revised to clarify that the examples of actions a creditor may take during the rescission period are permissible actions provided they are not prohibited by state law or other requirements. In addition, the caption "Permissible actions" has been changed to "Actions during the delay period" to reflect a more neutral statement of the subject of the comment. These revisions were prompted by the fact that some creditors mistakenly believed that the regulation authorized the accrual of finance charges during the rescission period, even if state law prohibited such a practice. The revisions make it clear that the regulation neither authorizes nor prohibits the listed actions.

23(f) *Exempt Transactions*—In December, the Board adopted an amendment to Regulation Z to redefine what constitutes a new advance of money to a consumer for purposes of the rescission exemption for refinancings with the original creditor. Under the amendment, a new advance of money to a consumer would no longer include amounts attributed solely to the costs of the refinancing. Comment 23(f)–4 has been changed to incorporate the revised definition of a new advance of money in a refinancing with the original creditor and to further explain what amounts are included and excluded when determining what constitutes a new advance. In a refinancing, if the new "amount financed" exceeds the unpaid principal balance, any earned unpaid finance charges on the existing debt, and the amounts attributable solely to

the costs of the refinancing, the consumer has the right of rescission as to the difference. Final comment 23(f)–4 differs from the proposal in that it explains that in determining whether there is a new advance in a refinancing, creditors may rely on the information stated in the latest Truth in Lending disclosure given to the consumer. Thus, for example, if the actual dollar amount of refinancing costs determined at the time a loan closes differs from that reflected in the latest Truth in Lending disclosure, the creditor may rely on the amounts contained in the disclosure in determining whether there is a new advance in the refinancing. A minor editorial change has also been made in the first sentence of this comment to clarify that a consolidation is a type of refinancing: no substantive change is intended.

*Appendix D—Multiple-Advance Construction Loans*

Comment Appendix D–5 is added to explain the way in which "interest reserves" for multiple-advance construction loans should be treated when a creditor uses appendix D to calculate the annual percentage rate and disclosures. The final comment provides that regardless of the amount of the interest reserve, it is not treated as a prepaid finance charge. The comment explains that if the consumer is permitted to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under appendix D. The comment also provides, however, that if a creditor automatically deducts the interest payments from the interest reserve rather than allow the consumer to make the interest payments as they become due, the estimated interest must reflect the fact that interest will accrue on the interest payments as well as the other loan proceeds. The comment explains how to account for that accrual.

**List of Subjects in 12 CFR Part 226**

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board amends the official staff commentary to Regulation Z (12 CFR Part 226 Supp. I) as follows:

**1. Authority Citation**

The authority citation for Part 226 continues to read:

**Authority:** Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*).

**PART 226—[AMENDED]**

**2. Text of Revisions**

The commentary (TIL–1, Supplement I to 12 CFR Part 226) is amended by revising comments 2(a)(20)–4, 3(b)–2, 3(b)–3, and 4(c)(4)–1; by adding comment 4(c)(4)–2; by revising the first sentence of comment 5(b)(1)–1; by revising the third bulleted paragraph and removing the fourth bulleted paragraph of comment 6(b)–1; by adding a new bulleted paragraph at the end of comment 6(b)–2; by revising comment 6(c)–2; by adding parenthetical material at the end of comment 6(c)–4; by adding new comment 7(f)–8; by adding a new second sentence to comment 7(h)–1; by revising comment 12(d)(2)–1; by adding two new sentences at the end of comment 15(c)–1; by revising the heading and second sentence of comment 15(c)–3; by revising comments 18(g)(2)–1, 18(m)–2, 20(a)(2)–1; by adding comment 20(a)(2)–2; by revising comments 23(a)(1)–5, 23(c)–3, and 23(f)–4; and by adding comment app. D–5, to read as follows:

**Supplement I—Official Staff Interpretations**

* * * * *

**Subpart A—General**

* * * * *

*Section 226.2—Definitions and Rules of Construction*

2(a) Definitions

* * * * *

*2(a)(20) "Open-End Credit"*

* * * * *

4. *Finance charge on an outstanding balance.* The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, such as certain "china club" plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

* * * * *

*Section 226.3—Exempt Transactions*

* * * * *

*3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling.*

* * * * *

2. *Open-end credit.* An open-end credit plan is exempt under § 226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met

- The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances.
- The initial extension of credit on the line exceeds $25,000.

If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (See the commentary to § 226.15 concerning the right of rescission.)

3. *Closed-end credit—subsequent changes.* A closed-end loan for over $25,000 may later be rewritten for $25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (See the commentary to § 226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)

* * * * *

*Section 226.4—Finance Charge*

* * * * *

*4(c) Charges Excluded from the Finance Charge*

* * * * *

*Paragraph 4(c)(4)*

1. *Participation fees—periodic basis.* The participation fees mentioned in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a

periodic basis, and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by § 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to § 226.4(b)(2).)

* * * * *

**Subpart B—Open-End Credit**

*Section 226.5—General Disclosure Requirements*

* * * * *

*5(b) Time of Disclosures—5(b)(1) Initial Disclosures*

1. *Disclosure before the first transaction.* The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan. For example, the initial disclosures must be given before the consumer makes the first purchase, receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee (see below). * * *

* * * * *

*Section 226.6—Initial Disclosure Statement*

* * * * *

*6(b) Other Charges*

1. *General; examples of other charges.* Under § 226.6(b), significant charges related to the plan (that are not finance charges) must also be disclosed. For example: * * *

• Charges imposed in connection with real estate transactions such as title, appraisal, and credit report fees (See § 226.4(c)(7)) * * *

2. *Exclusions.* The following are examples of charges that are not "other charges": * * *

• Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

*6(c) Security Interests*

* * * * *

2. *Identification of property.* Identification of the collateral by type is satisfied by stating, for example, "motor vehicle" or "household appliances." (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number).

* * * * *

4. *Additional collateral.* * * * (See comment 6(c)–2.)

* * * * *

*Section 226.7—Periodic Statement*

* * * * *

*7(f) Amount of Finance Charge*

* * * * *

8. *Start-up fees.* Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (See footnote 33 in the regulation.)

* * * * *

*7(h) Other Charges*

1. *Identification.* In identifying any "other charges" actually imposed during the billing cycle, the type is adequately described as "late charge" or "membership fee," for example. Similarly, "closing costs" or "settlement costs," for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under § 226.4(c)(7), if the same term (such as "closing costs") was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. (See comment 6(b)–1 for examples of "other charges.")

* * * * *

*Section 226.12—Special Credit Card Provisions*

* * * * *

*12(d) Offsets by Card Issuer Prohibited*

* * * * *

*Paragraph 12(d)(2)*

1. *Security interest—limitations.* In order to qualify for the exception stated in § 226.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's initial disclosures under § 226.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 226.12(d)(2). For a security interest to qualify for the exception under § 226.12(d)(2) the following conditions must be met:

• The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. Indicia of the consumer's awareness and intent could include, for example:

—Separate signature or initials on the agreement indicating that a security interest is being given

—Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions

—Reference to a specific amount of deposited funds or to a specific deposit account number

• The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).

* * * * *

*Section 226.15—Right of Rescission*

* * * * *

*15(c) Delay of Creditor's Performance*

1. *General rule.* Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

• Disburse advances to the consumer

• Begin performing services for the consumer.

• Deliver materials to the consumer.

A creditor may, however, continue to allow transactions under an existing open-end credit plan during a rescission period that results solely from the addition of a security interest in the consumer's principal dwelling. (See comment 15(c)–3 for other actions that may be taken during the delay period.)

* * * * *

3. *Actions during the delay period.* Section 226.15(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:

• Prepare the cash advance check.

• Perfect the security interest.

• Accrue finance charges during the delay period.

* * * * *

**Subpart C—Closed-End Credit**

* * * * *

*Section 226.18—Content of Disclosures*

* * * * *

*18(g) Payment Schedule*

* * * * *

*Paragraph 18(g)(2)*

1. *Abbreviated disclosure.* The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. This option is also available when mortgage-guarantee insurance premiums, paid either monthly or annually, cause variations in the amount of the scheduled payments, reflecting the continual decrease or increase in the premium due. In addition, in transactions where payments vary because interest and principal are paid at different intervals, the two series of payments may be disclosed separately and the abbreviated payment schedule may be used for the interest payments. For example, in transactions with fixed quarterly principal payments and monthly interest payments based on the outstanding principal balance, the amount of

the interest payments will change quarterly as principal declines. In such cases the creditor may treat the interest and principal payments as two separate series of payments, separately disclosing the number, amount, and due dates of principal payments, and, using the abbreviated payment schedule, the number, amount, and due dates of interest payments. This option may be used when interest and principal are scheduled to be paid on the same date of the month as well as on different dates of the month. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments.

* * * * *

*18(m) Security Interest*

* * * * *

2. *Nonpurchase money transactions.* In nonpurchase money transactions, the property subject to the security interest must be identified by item or type. This disclosure is satisfied by a general disclosure of the category of property subject to the security interest, such as "motor vehicles," "securities," "certain household items," or "household goods." (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) At the creditor's option, however, a more precise identification of the property or goods may be provided.

* * * * *

*Section 226.20—Subsequent Disclosure Requirements 20(a) Refinancings*

* * * * *

*Paragraph 20(a)(2)*

1. *Annual percentage rate reduction.* A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change.* A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception in § 226.20(a)(2) does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

* * * * *

*Section 226.23—Right of Rescission*

* * * * *

*23(a) Consumer's Right to Rescind*

*Paragraph 23(a)(1)*

* * * * *

5. *Addition of a security interest.* Under footnote 47, the addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt (because it was credit over $25,000 not secured by real property or a consumer's principal dwelling). The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

* * * * *

*23(c) Delay of Creditor's Performance*

* * * * *

3. *Actions during the delay period.* Section 226.23(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:

- Prepare the loan check.
- Perfect the security interest.
- Prepare to discount or assign the contract to a third party.
- Accrue finance charges during the delay period.

* * * * *

*23(f) Exempt Transactions*

* * * * *

4. *New advances.* The exemption in § 226.23(f)(2) applies only to refinancings (including consolidations) by the original creditor. If the refinancing involves a new advance of money, the amount of the new advance is rescindable. In determining whether there is a new advance, a creditor may rely on the amount financed, refinancing costs, and other figures stated in the latest Truth in Lending disclosures provided to the consumer and is not required to use, for example, more precise information that may only become available when the loan is closed. For purposes of the right of rescission, a new advance does not include amounts attributed solely to the costs of the refinancing. These amounts would include § 226.4(c)(7) charges (such as attorneys fees and title examination and insurance fees, if bona fide and reasonable in amount), as well as insurance premiums and other charges that are not finance charges. (Finance charges on the new transaction—points, for example—would not be considered in determining whether there is a new advance of money in a refinancing since finance charges are not part of the amount financed.) To illustrate, if the sum of the outstanding principal balance plus the earned unpaid finance charge is $50,000 and the new amount financed is $51,000, then the refinancing would be exempt if the extra $1,000 is attributed solely to costs financed in connection with the refinancing that are not finance charges. Of course, if new advances of money are made (for example, to pay for home improvements) and the consumer exercises the right of rescission, the consumer must be placed in the same position as he or she was in prior to entering into the new credit transaction. Thus, all amounts of money (which would include all the costs of the refinancing) already paid by the consumer to the creditor or to a third party as part of the refinancing would have to be refunded to the consumer. (See the commentary to § 226.23(d)(2) for a discussion of refunds to consumers.) A model rescission notice applicable to transactions involving new advances appears in Appendix H.

* * * * *

**Appendix D—Multiple-Advance Construction Loans**

* * * * *

5. *Interest reserves.* In a multiple-advance construction loan, a creditor may establish an "interest reserve" to ensure that interest is paid as it accrues by designating a portion of the loan to be used for paying the interest that accrues on the loan. An interest reserve is not treated as a prepaid finance charge, whether the interest reserve is the same as or different from the estimated interest figure calculated under Appendix D.

- If a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under Appendix D.
- If a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allow the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures. To reflect the effects of such compounding, a creditor should first calculate interest on the commitment amount (exclusive of the interest reserve) and then add the figure obtained by assuming that one-half of that interest is outstanding at the contract interest rate for the entire construction period. For example, using the example shown under paragraph A, part I of Appendix D, the estimated interest would be $1,117.68 ($1093.75 plus an additional $23.93 calculated by assuming half of $1093.75 is outstanding at the contract interest rate for the entire construction period), and the estimated annual percentage rate would be 21.18%.

* * * * *

Board of Governors of the Federal Reserve System, March 31, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-7410 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1215

### Tracking and Data Relay Satellite System (TDRSS)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is amending 14 CFR Part 1215, "Tracking and Data Relay Satellite System (TDRSS)," by revising

Appendix A to reflect the estimated service rates in 1988 dollars for TDRSS standard services, based on NASA escalation estimates. 14 CFR Part 1215 sets forth the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users.

**EFFECTIVE DATE:** April 6, 1987.

**ADDRESS:** Office of Space Operations, Code T, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Eugene Ferrick, 202–453–2030.

**SUPPLEMENTARY INFORMATION:** The existing regulation was published in the **Federal Register** on March 9, 1983 (48 FR 9845). Each year since that time, 14 CFR Part 1215 has been amended by revising Appendix A to reflect the rate changes for the appropriate calendar years (CY). Since this revision of Appendix A to 14 CFR Part 1215 reflects the rate changes for CY 1988 and involves NASA management procedures and decisions, no public comment is required.

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, since it will not exert a significant economic impact on a substantial number of small entities, and it is not a major rule as defined in Executive Order 12291.

**List of Subjects in 14 CFR Part 1215**

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

## PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

For reasons set out in the Preamble, 14 CFR Part 1215 is amended to read as follows:

1. The authority citation for Part 1215 continues to read as follows:

**Authority:** Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Appendix A is revised to read as follows:

**Appendix A—Estimated Service Rates in 1988 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)**

TDRSS user service rates for services rendered in CY–88 based on current projections in 1988 dollars are as follows:

*Single Access Service*

Forward command, return telemetry, or tracking, or any combination of these, the base rate is $128.00 per minute for non-U.S. Government users.

*Multiple Access Forward Service*

Base rate is $:8.00 per minute for non-U.S. Government users.

*Multiple Access Return Service*

Base rate is $9.00 per minute for non-U.S. Government users.

**Charles T. Force,**

*Deputy Associate Administrator for Space Operations.*

[FR Doc. 87–7449 Filed 4–3–87; 8:45 am]

BILLING CODE 7510–01–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 5

### Delegations of Authority and Organization; Center for Drugs and Biologics

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new delegation to officials in the Center for Drugs and Biologics from the Commissioner of Food and Drugs. The authority relates to the submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Marjorie J. Shandruk, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

**SUPPLEMENTARY INFORMATION:** FDA is amending the regulations in 21 CFR Part 5 by adding § 5.93 to clarify that the Director and Deputy Director, Center for Drugs and Biologics (CDB), and the Director and Deputy Director, Office of Drug Standards, CDB, are delegated the authority to perform all of the functions of the Commissioner of Food and Drugs with regard to the submission of and effective approval dates for abbreviated new drug applications and certain new drug applications under section 505 (c) and (j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (c) and (j)).

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

**List of Subjects in 21 CFR Part 5**

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. Subpart B is amended by adding § 5.93 to read as follows:

**§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.**

The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs with regard to decisions made under section 505(c)(3)(D) and (j)(4)(D) of the Federal Food, Drug, and Cosmetic Act (the act) concerning the date of submission or the date of effective approval of abbreviated new drug applications including supplements thereto submitted under section 505(j) of the act and of new drug applications including supplements thereto submitted under 505(b)(1) of the act and described under section 505(b)(2) of the act:

(a) The Director and Deputy Director, Center for Drugs and Biologics (CDB).

(b) The Director and Deputy Director, Office of Drug Standards, CDB.

Dated: March 27, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–7508 Filed 4–3–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 81

[Docket No. 76N-0366]

## Provisional Listing of FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9; Postponement of Closing Date

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 8 and D&C Red No. 9 for use as color additives in drugs and cosmetics, and for the provisional listing of FD&C Yellow No. 6 for use as a color additive in food, drugs, and cosmetics. The new closing date will be June 5, 1987. FDA has decided that this postponement is necessary to provide time for evaluation of objections submitted in response to the final rule, published in the **Federal Register** of December 5, 1986 (51 FR 43877), permanently listing the drug and cosmetic uses of D&C Red. No. 8 and D&C Red. No. 9, and the final rule published in the **Federal Register** of November 19, 1986 (51 FR 41765), permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6.

**EFFECTIVE DATE:** April 6, 1987, the new closing date for FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9 will be June 5, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gerald L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

**SUPPLEMENTARY INFORMATION:** FDA established the current closing date of April 6, 1987, for the provisional listing of FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9 by regulation published in the **Federal Register** of February 3, 1987 (52 FR 3224). In the **Federal Register** of December 5, 1986 (51 FR 43877), FDA permanently listed the drug and cosmetic uses of D&C Red No. 8 and D&C Red No. 9. A final rule permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6 was published in the **Federal Register** of November 19, 1986 (51 FR 41765). FDA has received numerous comments objecting to the permanent listing of D&C Red No. 8, D&C Red No. 9, and FD&C Yellow No. 6.

FDA believes that it is reasonable to postpone the closing date for these color additives until June 5, 1987, to provide time for evaluation of these comments. FDA concludes that this extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

Because of the shortness of time until the April 6, 1987, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of April 6, 1987. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on April 6, 1987.

### List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

## PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

**Authority:** Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

### § 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "FD&C Yellow No. 6" in paragraph (a) and for "D&C Red No. 8" and "D&C Red No. 9" in paragraph (b) to read "June 5, 1987."

### § 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "FD&C Yellow No. 6," "D&C Red No. 8," and "D&C Red No. 9" in paragraph (d) to read "June 5, 1987."

Dated: March 20, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-7504 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 172

[Docket No. 86F-0221]

## Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucrose Fatty Acid Esters

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulation for sucrose fatty acid esters to provide for the safe use of vegetable oils in their manufacture. This action responds to a petition filed by the Nebraska Department of Economic Development.

**DATES:** Effective April 6, 1987; objections by May 6, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-426-5487.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of July 22, 1986 (51 FR 26308), FDA announced that a petition (FAP 5A3859) had been filed by the Nebraska Department of Economic Development, c/o Commonwealth Bldg., 1625 K Street NW., Washington, DC 20006, proposing that 21 CFR 172.859(a) be amended to provide for the safe use of vegetable oils in the manufacture of sucrose fatty acid esters.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulation should be amended as set forth below.

In the **Federal Register** of November 5, 1986 (51 FR 40160), FDA published an amendment of § 172.859 that would permit the use of additional solvents in the manufacture of sucrose fatty acid esters. The agency received an objection to this amendment and is currently evaluating this objection. However, the current action to expand the source of fatty acids that may be used in the manufacture of sucrose fatty esters is not related to the prior amendment or to the objection to that amendment. Therefore, the agency is proceeding with the current amendment to this regulation. The agency notes that this action has no bearing on its evaluation

of the objection to the November 5, 1986, amendment.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required

Any person who will be adversely affected by this regulation may at any time on or before May 6, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 172**

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

## PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 172.859 by revising the first sentence in paragraph (a) to read as follows:

**§ 172.859 Sucrose fatty acid esters.**

* * * * *

(a) Sucrose fatty acid esters are the mono-, di-, and tri-esters of sucrose with fatty acids and are derived from sucrose and edible tallow or hydrogenated edible tallow or edible vegetable oils.

* * *

Dated: March 24, 1987.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–7506 Filed 4–3–87; 8:45 am]

BILLING CODE 4160–01–M

---

**21 CFR Part 175**

[Docket No. 85F–0302]

## Indirect Food Additives; Adhesives and Components of Coatings

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(ethyloxazoline) as a component of adhesives. This action responds to a food additive petition filed by The Dow Chemical Co.

**DATES:** Effective April 6, 1987; objections by May 6, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of July 11, 1985 (50 FR 28264), FDA announced that a food additive petition (FAP 5B3869) had been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of polyethyloxazoline as a component of adhesives.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive as a component of adhesives is safe, and that the regulations should be amended as set forth below. The agency also concludes that the additive is more accurately identified as "poly(ethyloxazoline)." The agency is therefore adopting this modified nomenclature in this final rule.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before May 6, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such

a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 175**

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.105(c)(5) is amended by alphabetically inserting a new item in the list of substances to read as follows:

**§ 175.105 Adhesives.**

* * * * *

(c) * * *

(5) * * *

| Substances | Limita- |
|---|---|
| * * * * * | |
| Poly(ethyloxazoline) (CAS Reg. No. 25805-17-8)... | ... |
| * * * * * | |

Dated: March 6, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-7509 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 184

**[Docket No. 79N-0371/CP]**

## Potassium and Sodium Lactate; Affirmation of GRAS Status

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is affirming that potassium lactate and sodium lactate are generally recognized as safe (GRAS) for use as direct human food ingredients. This action responds to a petition filed by Purac, Inc.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Under the procedures described in 21 CFR 170.35, Purac, Inc., Arlington Heights, IL 60004, submitted a petition (GRASP 4G0292) requesting that 21 CFR Part 184 be amended to provide for the safe use of sodium lactate and potassium lactate as flavor enhancers, flavoring agents or adjuvants, humectants, and pH control agents in foods.

FDA published a notice of filing of this petition in the **Federal Register** of February 14, 1985 (50 FR 6252), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. No comments were received in response to the agency's notice of filing.

The petition contained data and information on food-grade specifications for sodium lactate and potassium lactate and information on the current and expected uses of these ingredients in a number of food categories. The petition also referenced published articles on animal feeding studies conducted with sodium lactate. The petition, however, did not contain safety studies on the food use of potassium lactate. Nonetheless, the agency found that it could adequately evaluate the safety of the food uses of these ingredients using data already available in its files.

The data on which FDA based its evaluation of the safety of the use of both potassium lactate and sodium lactate consisted of information compiled during the comprehensive safety review of the use of lactic acid and certain lactates as direct human food ingredients. The agency referenced these data in a proposed rule in the **Federal Register** of February 25, 1983 (48 FR 8086), and subsequently affirmed the GRAS status of calcium lactate and lactic acid in a final rule published in the **Federal Register** of September 7, 1984 (49 FR 35366).

### II. Background

The agency completed its comprehensive safety review of the GRAS status of lactic acid and calcium lactate in 1984. During the comment period on the agency's proposal to affirm the use of lactic acid and calcium lactate as GRAS, FDA received a petition that requested that the agency also affirm the use of sodium lactate and potassium lactate as GRAS. The agency notified the petitioner by letter on July 24, 1984, that it would not address the petitioned uses of sodium lactate and potassium lactate in the final rule on lactic acid and calcium lactate because the agency needed more time to evaluate the requested uses of sodium lactate and potassium lactate. The agency also requested clarification of some data presented in the petition on the identity, specifications, safety, and methods of detection of sodium lactate and potassium lactate. The agency informed the petitioner that the data requested were essential to assess the safety of the use of these substances. FDA advised the petitioner that the agency would consider whether the requested uses of these lactates were GRAS when it was presented with the data necessary to make such an assessment.

Consequently, the petitioner submitted an amendment responding to FDA's concerns about the petition. This amendment contained the supplemental data and information requested by the agency.

### III. Sodium Lactate and Potassium Lactate

Sodium lactate and potassium lactate are the sodium and potassium salts of lactic acid. They are prepared by neutralization of lactic acid with sodium and potassium bases. The bases used for the commercial preparation of these substances are food-grade sodium hydroxide and potassium hydroxide. Sodium and potassium lactate also occur naturally in the metabolic functions of mammalian species.

### IV. Use and Exposure Estimates

In 1970, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which various food ingredients, including sodium lactate and potassium lactate, were used and the levels of use. The survey revealed that sodium lactate has had only limited use as a food ingredient. No information was received from the survey on food uses of potassium lactate.

In 1982, NAS/NRC conducted a poundage update survey that found that 13 pounds of sodium lactate were used in food in 1981, and that the principal food use of this ingredient was as a

flavoring agent. No data on potassium lactate were received in the NAS/NRC 1982 poundage update.

Sodium lactate is listed in 9 CFR 318.7(c)(4) and 9 CFR 319.700 for use in margarine or oleomargarine as an acidulant. Additionally, it is listed as an optional ingredient in the preparation of mono- and diglycerides for use as emulsifiers in margarine under 21 CFR 166.110(b)(4). Sodium lactate is used in medicine as an electrolyte in injection solutions used for fluid or electrolyte replenishment and as an alkalizer for treating acidosis.

Published scientific literature included in the petition reported use of sodium lactate in other countries as a humectant to lower water activity in meat products; as a curing agent in hams: as a pH control agent in sauces, pickles, and dressings; and as a flavoring agent in imitation meat flavors (used in soups, gravies, and sauces). The Food and Agricultural Organization (FAO) Food and Nutrition Paper No. 30, which was published in 1984, listed sodium lactate as a bodying agent and antioxidant synergist for use in jams, jellies, and citrus marmalades; in edible ices and ice mixes; and in edible caseinates.

Potassium lactate is listed in 9 CFR 318.7(c)(4) and 9 CFR 319.700 for use in margarine and oleomargarine as an acidulant. The petitioned uses of potassium lactate are as a flavoring agent or adjuvant, humectant, and a pH control agent. The petitioner indicated that an anticipated major use of potassium lactate would be as a salt (sodium chloride) substitute.

The agency evaluated the safety of these ingredients at levels of use anticipated for the intended technical effects. FDA determined the estimated daily intake of sodium lactate using 1983 food consumption survey data. It calculated that the 90th percentile (data obtained from MRCA Market Census VI, 1977 and USDA 1977–1978) estimated daily intake of sodium lactate would be 1.84 grams per day.

FDA also determined the estimated daily intake of potassium lactate. The agency's first estimate was based on the assumption that potassium lactate would totally replace sodium chloride. This consumption estimate was 10 to 24 grams per day for potassium lactate. The agency recognized, however, that this number is unrealistically high because, in many instances, it is not practical to substitute potassium lactate for sodium chloride. FDA determined that a more realistic estimate for potassium lactate consumption is about 7.5 percent of the total sodium chloride consumption of 12 grams per day. On this basis, the agency calculated an estimated daily intake for potassium lactate of 0.9 gram per day. Thus, the agency considers the 0.9 gram per day estimated daily consumption to be an accurate estimate upon which to base its safety evaluation. The agency believes that the other uses of potassium lactate are small compared to its use as a salt substitute.

The agency is confident that the estimated daily intakes that it has calculated do not understate potential exposure to sodium lactate and potassium lactate.

## V. Safety and Technical Effects

As general evidence of safety for potassium lactate and sodium lactate, the petitioner presented copies of the report of the Select Committee on GRAS Substances on lactic acid and calcium lactate. This report contained safety data on sodium lactate. The agency evaluated the data in the report in assessing the safety of the requested uses of sodium lactate. The petitioner also submitted copies of the Select Committee reports on sodium hydroxide and potassium hydroxide. In addition, the petitioner and FDA both conducted scientific literature searches on potassium lactate and sodium lactate.

FDA has evaluated all the available information on potassium lactate and sodium lactate. Based on its review of this information (References 1 through 3), FDA finds that it can affirm that the use of these ingredients is GRAS for the following reasons:

1. There is no evidence to demonstrate that potassium lactate or sodium lactate represents a hazard to individuals when used in food in accordance with current good manufacturing practice for the purposes stated in this final rule.

2. Potassium lactate and sodium lactate are products of mammalian metabolic functions.

3. The chemistry involved in the preparation of these products is well understood. The reaction of lactic acid with sodium hydroxide or potassium hydroxide yields sodium lactate or potassium lactate plus water. No harmful products have been shown to result from this neutralized reaction.

4. Potassium lactate and sodium lactate are approved in this country for use in margarine or oleomargarine as acidulants.

When a petition is submitted seeking affirmation of GRAS status based upon scientific procedures, published studies are usually required (21 CFR 170.30(b)). The agency recognizes that, in this matter, no published studies on potassium lactate were submitted. However, FDA finds that the factors listed above, together with the other information available on sodium lactate and on potassium lactate, as well as data available on the similar compounds lactic acid and calcium lactate, provide an appropriate basis on which to affirm the use of sodium lactate and potassium lactate as GRAS.

Additionally, the agency concludes from its assessment of data in the petition and the Select Committee's reports on lactic acid and lactates that the potassium and sodium salts of lactic acid will perform the technical effects of flavor enhancer, flavoring agent or adjuvant, humectant, and pH control agent as intended.

## VI. Conclusion

Therefore, FDA is affirming the GRAS status of potassium lactate and sodium lactate when they are used in accordance with current good manufacturing practice under § 184.1(b)(1). To make clear, however, that the affirmation of the GRAS status of these ingredients is based on the evaluation of limited uses, the regulations set forth the technical effects of these ingredients that FDA evaluated. The use of potassium lactate and sodium lactate as an acidulant in margarine and oleomargarine is covered under the listing of pH control agent.

The agency concludes, further, that an appropriate basis on which to affirm as GRAS the general use of sodium lactate and potassium lactate in infant formula and infant foods does not exist. Although the petitioner did not request use of these lactates in infant formulas and infant foods, such use had to be considered when total dietary substitution is possible. Neither the petition nor the Select Committee's report on the comprehensive safety review of lactic acid and lactates contained information or safety data on the general use of lactates in infant formulas and foods. The agency thus concludes that exclusion for use of these ingredients in infant formulas is justified based on the absence of safety data to support such use.

Because no food-grade specifications have been accepted by FDA for potassium lactate or sodium lactate at the present time, the agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for these ingredients. If acceptable specifications are developed, the agency will incorporate them into these regulations at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if these ingredients comply with the description in the

regulations and are of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, the agency considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.

In accordance with Executive Order 12291, FDA has examined the economic effects of this final rule and has determined that the rule is not a major rule as defined by that Order.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which is on file with the Dockets Management Branch (address above).

References

The following references have been placed on display in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated February 14, 1985, from John E. Vanderveen, Director, Division of Nutrition, to Robert L. Martin, Division of Food and Color Additives.

2. Memorandum dated February 27, 1985, from Carl B. Johnson, Division of Toxicology, to Robert L. Martin, Division of Food and Color Additives.

3. Memorandum dated December 24, 1986, from Carl B. Johnson, Division of Toxicology, to Robert L. Martin, Division of Food and Color Additives.

List of Subjects in 21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 184 is amended as follows:

## PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

2. By adding new § 184.1639 to read as follows:

**§ 184.1639 Potassium lactate.**

(a) Potassium lactate ($C_3H_5O_3K$, CAS Reg. No. 996–31–6) is the potassium salt of lactic acid. It is a hydroscopic, white, odorless solid and is prepared commercially by the neutralization of lactic acid with potassium hydroxide.

(b) FDA is developing food-grade specifications for potassium lactate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. This regulation does not authorize its use in infant foods and infant formulas. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a flavoring agent or adjuvant as defined in § 170.3(o)(12) of this chapter; a humectant as defined in § 170.3(o)(16) of this chapter; and a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

3. By adding new § 184.1768 to read as follows:

**§ 184.1768 Sodium lactate.**

(a) Sodium lactate ($C_3H_5O_3N_a$, CAS Reg. No. 72–17–3) is the sodium salt of lactic acid. It is prepared commercially by the neutralization of lactic acid with sodium hydroxide.

(b) FDA is developing food-grade specifications for sodium lactate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. This regulation does not authorize its use in infant foods and infant formulas. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an emulsifier as defined in § 170.3(o)(8) of this chapter; a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a flavoring agent or adjuvant as defined in § 170.3(o)(12) of this chapter; a humectant as defined in § 170.3(o)(16) of this chapter; and a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: March 24, 1987.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–7507 Filed 4–3–87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 524

## Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Levamisole

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pitman-Moore, Inc., providing for use of levamisole as a pour-on liquid for treating cattle for stomach, intestinal, and lung worm infections.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

**SUPPLEMENTARY INFORMATION:** Pitman-Moore, Inc., Washington Crossing, NJ 08560, filed NADA 139–877 which provides for safe and effective use of a 200-milligram-per-milliliter levamisole pour-on liquid (TOTALON™) for treatment of cattle for stomach worm, intestinal worm, and lung worm infections. Levamisole is currently approved as a bolus, drench, gel, and injectable to treat cattle for stomach worm, intestinal worm, and lung worm infections. Based on the data in the NADA and additional information, the

NADA is approved and new 21 CFR 524.1240 is added to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

**List of Subjects in 21 CFR Part 524**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 524 is amended by adding new § 524.1240 to read as follows:

**§ 524.1240 Levamisole.**

(a) *Specifications.* The drug contains 200 milligrams of levamisole per milliliter of diethylene glycol monobutyl ether (DGME) solution.

(b) *Sponsor.* See 011716 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.350 of this chapter.

(d) *Conditions of use. Cattle*—(1) *Amount.* 2.5 milliliters per 110 pounds (10 milligrams of levamisole per kilogram) of body weight as a single dose topically to the back of the animal.

(2) *Indications for use.* Anthelmintic effective against stomach worms (*Haemonchus, Trichostrongylus, Ostertagia*), intestinal worms (*Trichostrongylus, Cooperia, Nematodirus, Bunostomum, Oesophagostomum, Chabertia*), and lungworms (*Dictyocaulus*).

(3) *Limitations.* Conditions of constant helminth exposure may require retreatment within 2 to 4 weeks after the first treatment. Cattle must not be slaughtered within 9 days following last treatment. Do not administer to dairy animals of breeding age. Do not treat animals before dipping or prior to exposure to heavy rain. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism, and before using in severely debilitated animals.

Dated: March 17, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–7510 Filed 4–3–87; 8:45 am]

BILLING CODE 4160–01–M

---

**21 CFR Part 573**

**[Docket No. 86F–0060]**

## Food Additives Permitted in Feed and Drinking Water of Animals; Selenium

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for (1) an increase in the maximum supplementation level of selenium in complete feed for the major food-producing animals from 0.1 to 0.3 part per million; (2) a proportional increase in the limit feeding (feed supplements and salt-mineral mixtures) consumption rates for sheep and beef cattle to 0.7 milligram and 3 milligrams per head per day, respectively; (3) a proportional increase in the selenium fortification levels for salt-mineral mixtures for sheep and cattle to 90 and 120 parts per million, respectively; and (4) more flexibility in certain manufacturing controls. This action responds to a petition filed by the American Feed Industry Association, Inc.

**DATES:** Effective April 6, 1987; objections by May 6, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William D. Price, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4438.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** on February 21, 1986 (51 FR 6321), FDA announced that FAP 2201 had been filed by the American Feed Industry Association, Inc., 1701 North Fort Myer Dr., Arlington, VA 22209. The petition proposes that 21 CFR 573.920 be amended (1) to increase the maximum use level of selenium in complete feed for chickens, swine, turkeys, sheep, cattle, and ducks to a level not to exceed 0.3 part per million; (2) to increase the animal unit consumption rate of feed supplements to a level not to exceed 0.7 milligram per head per day for sheep and not to exceed 3 milligrams per head per day for beef cattle; (3) to increase the selenium fortification levels and consumption rates for salt-mineral mixtures for beef cattle up to 120 parts per million in the mixture for feeding at a rate not to exceed 3 milligrams per head per day, and sheep up to 90 parts per million in the mixture for feeding at a rate not to exceed 0.7 milligram per head per day; (4) to make 1 pound the minimum amount of selenium premix (concentration of 90.8 milligrams of selenium per pound) that may be incorporated into each ton of complete feed or salt-mineral mixture for all approved animal species; and (5) to eliminate the requirement for premix manufacturers to analyze each production batch.

FDA has evaluated data and information submitted in the petition and other relevant material. The agency has concluded that Part 573 should be amended to provide for safe use of selenium as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine (address above) by appointment with the information contact person listed above. As provided in 21 CFR 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not a have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch

BEST COPY AVAILABLE

(address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before May 6, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9. a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 573**

Animal Feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 573 is amended as follows:

## PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR Part 573 is revised to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. By revising § 573.920 to read as follows:

**§ 573.920 Selenium.**

The food additive selenium may be safely used in accordance with the following prescribed conditions:

(a) The additive is used in animal feed as a nutrient in the form of sodium selenite or sodium selenate.

(b) It is added to feed as follows:

(1) In complete feed for chickens, swine, turkeys, sheep, cattle, and ducks at a level not to exceed 0.3 part per million.

(2) In feed supplements for limit feeding as follows:

(i) *Sheep:* At a level not to exceed an intake of 0.7 milligram per head per day.

(ii) *Beef cattle:* At a level not to exceed an intake of 3 milligrams per head per day.

(3) In salt-mineral mixtures for free-choice feeding as follows:

(i) *Sheep:* Up to 90 parts per million in a mixture for free-choice feeding at a rate not to exceed an intake of 0.7 milligram per head per day.

(ii) *Beef cattle:* Up to 120 parts per million in a mixture for free-choice feeding at a rate not to exceed an intake of 3 milligrams per head per day.

(c) The additive shall be incorporated into feed as follows:

(1) It shall be incorporated into each ton of complete feed by adding no less than 1 pound of a premix containing no more than 90.8 milligrams of added selenium per pound.

(2) It shall be incorporated into each ton of salt-mineral mixture for sheep or beef cattle from a premix containing no more than 4.5 grams of added selenium per pound.

(d) The premix manufacturer shall follow good manufacturing practices in the production of selenium premixes. Inventory, production, and distribution records must provide a complete and accurate history of product production. Production controls must assure products to be what they are purported and labeled. Production controls shall include analysis sufficient to adequately monitor quality.

(e) The label or labeling of any selenium premix shall bear adequate directions and cautions for use including this statement: "Caution: Follow label directions. The addition to feed of higher levels of this premix containing selenium is not permitted."

Dated: March 11, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–7505 Filed 4–3–87; 8:45 am]

BILLING CODE 4160–01–M

**VETERANS ADMINISTRATION**

**38 CFR Part 1**

## Use of Offical Mail in the Location and Recovery of Missing Children

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** These new regulations authorize the Veterans Administration (VA) to use official mail to aid in the location and recovery of missing children and provide procedures under which VA official mail may be used to assist in the location and recovery of missing children.

**EFFECTIVE DATE:** These regulations are effective April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gordon Boone, Mail and Travel Policy Division (734), Office of Information Management and Statistics, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2454/5436.

**SUPPLEMENTARY INFORMATION:** These regulations are issued in accordance with 39 U.S.C. 3220(a)(2) which requires Federal agencies to prescribe regulations under which official mail may be used to assist in the location and recovery of missing children. These regulations are published in conformance with the Office of Juvenile Justice and Delinquency Prevention (OJJDP) guidelines published in the November 8, 1985, **Federal Register** (50 FR 46622) and pursuant to Pub. L. 99–87, 99 Stat. 290, August 9, 1985.

Enactment of Pub. L. 99–87 reflects an increasing public concern with the problem of missing and exploited children. These regulations are intended to comply with the regulation requirement set forth in section 1(a) of Pub. L. 99–87, which adds a new Section 3220 to Title 39, United States Code. These regulations implement the OJJDP guidelines promulgated under authority of 39 U.S.C. 3220(a)(1), and are intended to assist in the location and recovery of missing children through the use of official mail.

The VA has determined that compliance with 5 U.S.C. 553(b) as to prior publication for notice and public comment is, pursuant to 5 U.S.C. 553(b)(B), impracticable and contrary to the public interest. There exists good cause for making these regulations effective without further delay. Any postponement in the implementation of the procedures described in these regulations would be contrary to the public's interest in the location and recovery of missing children.

**Executive Order 12291**

These regulations do not constitute a major rule as that term is defined in Executive Order 12291 because they will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in any costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Act**

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, because it only concerns agency procedures for dissemination of information pertaining to missing children which is obtained solely from the National Center for Missing and Exploited Children.

**Paperwork Reduction Act**

There are no collection of information requirements contained in these regulations. Therefore, approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520, is not required.

**List of Subjects in 38 CFR Part 1**

Administrative practice and procedure, Child welfare, Missing and exploited children, Official mail.

Approved: February 3, 1987.

**Thomas K. Turnage,**

*Administrator.*

## PART 1—[AMENDED]

38 CFR Part 1, General Provisions, is amended by adding a new center heading and §§ 1.700 through 1.705 to read as follows:

**Use of Official Mail in the Location and Recovery of Missing Children**

Sec.

1.700 Purpose.
1.701 Contact person for missing children official mail program.
1.702 Policy.
1.703 Cost and percentage estimates.
1.704 Report to the Office of Juvenile Justice and Delinquency Prevention (OJJDP).
1.705 Restrictions on use of missing children information.

**Authority:** 39 U.S.C. 3220(a)(2), 5 U.S.C. 301.

**§ 1.700 Purpose.**

Sections 1.700 through 1.705 of this title, providing for a Missing Children Official Mail Program in the Veterans Administration, are intended to comply with the regulation requirement set forth in section 1(a) of Pub. L. 99–87, which adds a new section 3220 to Title 39, United States Code.

**§ 1.701 Contact person for missing children official mail program.**

The Veterans Administration contact person for the missing children official mail program is: Gordon Boone, Mail and Travel Policy Division (734), Office of Information Management and Statistics, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 Telephone number: (202) 233–2454/5436.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

**§ 1.702 Policy.**

(a) The Veterans Administration will supplement and expand the national effort to assist in the location and recovery of missing children by maximizing the economical use of missing children information in domestic official mail and publications directed to members of the public and Veterans Administration employees.

(b) If doing so would be cost effective, the Veterans Administration shall insert via automated insertion equipment pictures and biographical information related to missing children in a variety of types of official mail originating at the Veterans Administration data processing centers. In addition, pictures and biographical information may be printed in self-mailers and other Veterans Administration publications (newsletters, bulletins, etc.).

(c) The National Center for Missing and Exploited Children (National Center) will be the sole source from which the Veterans Administration will acquire the camera-ready and other photographic and biographical materials to be disseminated for use by Veterans Administration organizational units. The information will be ordered and disseminated by the Mail and Travel Policy Division.

(d) The Veterans Administration will remove all printed inserts and other materials from circulation or other use (i.e. use or destroy) within a three-month period from the date the National Center notifies the Veterans Administration that a child whose picture and biographical information have been made available to the Veterans Administration has been recovered or that permission of the parent(s) or guardian to use the child's photograph and biographical information has been withdrawn. The National Center will be responsible for immediately notifying the Veterans Administration contract person, in writing, of the need to withdraw from circulation official mail envelopes and other materials related to a particular child. Photographs which were reasonably current as to the time of the child's disappearence shall be the only acceptable form of visual medium or pictorial likeness used in official mail.

(e) The Veterans Administration will give priority to official mail that is addressed to:

(1) Members of the public that will be received in the United States, its territories and possessions; and

(2) Inter- and intra-agency publications and other media that will also be widely disseminated to Veterans Administration employees.

(f) The Veterans Administration will avoid repetitive mailings of material to the same individuals.

(g) All Veterans Administration employee suggestions and/or recommendations for additional cost-effective opportunities to use photographs and biographical data on missing children will be provided to the Veterans Administration contact person.

(h) These shall be the sole reguations for the Veterans Administration and its component organizational units.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301).

**§ 1.703 Cost and percentage estimates.**

It is estimated that this program will cost the Veterans Administration $40,000 per year at full implementation. This figure is based on projections of printing, inserting, and administrative costs. It is the Veterans Administration's objective that 20 percent of its first class official mail addressed to the public contain missing children photographs and information by the end of the first full year of the program.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

**§ 1.704 Report to the Office of Juvenile Justice and Delinquency Prevention (OJJDP).**

The Veterans Administration will compile and submit to the Office of

Juvenile Justice and Delinquency Prevention (OJJDP) by June 30, 1987, a consolidated report on its experience in implementation of 39 U.S.C. 3220(a)(2), the OJJDP guidelines, and the Veterans Administration regulation. The report will consolidate information gathered from individual Veterans Administration organizational units, cover the period through March 31, 1987, and provide detail on:

(a) Veterans Administration experience in implementation, including problems encountered, successful and/or innovative methods, adopted to use missing children photographs and information on or in official mail, the estimated number of pieces of official mail containing such information, and estimates of the percentage of total agency official mail, domestic mail, and domestic official mail directed to members of the public which this number represents.

(b) The estimated total cost to implement the program, with supporting detail.

(c) Recommendations for changes in the program which would make it more effective.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

**§ 1.705 Restrictions on use of missing children information.**

Missing children pictures and biographical data shall not be:

(a) Printed on official envelopes and other materials which are ordered and/or stocked in quantities which represent more than a 90-day supply.

(b) Printed on blank pages or covers of publications that may be included in the Superintendent of Documents Sales Program or be distributed to depository libraries.

(c) Inserted in any envelope and/or publication the contents of which may be construed to be inappropriate for association with the missing children program.

(d) Inserted in any envelope where the insertion would increase the postage cost for the item being mailed.

(e) Placed on letter-size envelopes on the official indicia, the area designated for optical character readers (OCRs), bar code read area, and return, address areas in accordance with the OJJDP guidelines and U.S. Postal Service standards.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

[FR Doc. 87-7458 Filed 4-3-87; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Reclassification of the Tinian Monarch From Endangered to Threatened Status

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Tinian monarch (*Monarcha takatsukasae*) is a small bird endemic to the island of Tinian in the Mariana Archipelago. Because its numbers in 1945 were thought to be critically low due to the removal of native forests for sugarcane production and to the destruction of forest by the activities of World War II, the monarch was listed as endangered in 1970, though there had been no surveys of the bird's status in the preceding two decades. The Service proposed that this small bird be removed from the protection of the Endangered Species Act (Act) on November 1, 1985, on the basis of recovery of the species. Based on comments received the Service is now reclassifying the Tinian monarch to threatened status and continues the protection of this species under the Act.

**DATE:** The effective date of this rule is May 6, 1987.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE., Multnomah Street, Suite 1692, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

**SUPPLEMENTARY INFORMATION:**

### Background

The Tinian monarch was first recognized as a species in 1931, when it was described by Y. Yamashina (Takatsukasa and Yamashina 1931). It is a small (15 centimeters; 6 inches) songbird with light rufous underparts, olive-brown upperparts, dark brown wings and tail, and white rump and undertail coverts (Baker 1951). The monarch is endemic to the island of Tinian, where it inhabits a variety of forest types from introduced second growth to well-developed native forests. Its numbers had apparently been reduced by 1945 due to the clearing of forests by the Japanese for sugarcane production and the destruction of remaining forest by military action during World War II (Coultas 1931, Owen 1974).

Since 1945, most of Tinian has been revegetated by a shrubby legume (*Leucaena leucocephala*). The monarch has adapted well to this introduced, woody shrub, and is now found abundantly throughout Tinian. Biologists who have visited Tinian over the last 10 years have commented on the general abundance of the monarch (Owen 1974, Pratt *et al.* 1979), and forest bird surveys conducted by the Service in 1982 found the monarch to be the second most abundant bird on the island with a population estimate of 40,000 (Engbring *et al.* 1986). The correct number is 40,000 not 10,000 as misstated in the proposal. It is likely that the species had recovered to near itrs pre-disturbance levels by the time the Service listed it in 1970. The listing was based upon the report of Gleize (1945).

The Tinian monarch was classified as endangered June 2, 1970 (35 FR 8495). No critical habitat has been designated. Because the population of the Tinian monarch appeared health, showed no signs of reproductive irregularities or stress, and was widely distributed over Tinian Island; the Service proposed to delist species on November 1, 1985 (50 FR 45632). However, recent changes in the factors affecting the species have caused the Service to reevaluate the proposed rule. The Service now believes that removal of the Tinian monarch from the List of Engangered and Threatened Wildlife would not be prudent at this time. The reasons for this decision are discussed in the "Summary of Comments and Recommendations" and the "Summary of Factors Affecting the Species" section that follows.

The Service determines that the Tinian monarch is a threatened species and remains protected under the provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*) until the new threats to its continued existence can be more thoroughly evaluated and ameliorated. This change in status acknowledges the increase in suitable habitat for the bird and its increase in population size since the close of the Second World War, but also recognizes the new threat of *Leucaena* defoliation by an introduced insect and the possibility of introduction of the predatory brown tree snake (*Boiga irregularis*).

### Summary of Comments and Recommendations

In the November 1, 1985, proposed rule and associated notifications, all interested parties were requested to

submit factual reports or information that might contribute to the development of a final rule. Appropriate Commonwealth agencies, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Pacific Daily News* on November 23, 1985, which invited general public comment. Four letters of comment were received, including those from the Chief, Division of Fish and Wildlife, Commonwealth of the Northern Mariana Islands; Director, Guam Department of Agriculture; one Federal agency; and one individual. All comments received have been considered in formulating this final rule.

All letters of comment received recommended that the Tinian monarch not be removed from the List of Endangered and Threatened Wildlife, but instead be reclassified to threatened status. The reasons for this recommendation were as follows:

(1) The recent, accidental introduction of a psyllid insect that is causing the defoliation of the *Leucaena* shrub on the island. This shrub, which covers more than 70% of the land area of Tinian, is the only habitat for the monarch. The long term effect of the insect is presently unknown.

(2) The monarch is found only on Tinian, an island of about 39 square miles in area. There are no other natural or captive populations that could act as a reserve should there be a rapid and sustained decline in the population on this small island.

(3) As boat and plane traffic between Tinian and Guam increases (as a result of increased military and civilian development), the accidental, passive introduction of the brown tree snake from Guam becomes a greater threat. This snake appears to have caused the extirpation or near eradication of many native birds on Guam.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service agrees with the recommendations of the commentors and has determined that the Tinian monarch should be reclassified as a threatened species, rather than delisted as originally proposed. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement those provisions were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Tinian monarch (*Monarcha takatsukasae*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Since the publication of the proposed rule, and exotic psyllid insect (*Heteropsylla* sp.) has reached several of the Mariana Islands, including Tinian. Essentially all of the *Leucaena* scrub habitat on Tinian is infested with the insect, which is causing the near-total defoliation of the plant. This habitat makes up more than 70% of the land area of Tinian and is the only habitat for the monarch. The long term effect of the insect at present is unknown. Should the *Leucaena* not recover, then aggressive weeds, such as *Chromolaena odorata* and *Operculina ventricosa*, will move into the area, precluding regeneration of the *Leucaena* or native forest. The monarch is a forest dweller, and, if the *Leucaena* is replaced by vegetation such as these weeds, its population may be greatly reduced.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The Monarch is a small song bird and is not threatened by or sought for commercial, recreational, scientific, or educational purposes.

*C. Disease or Predation*

There are no known disease or predation problems on Tinian. There is concern, as there is for all islands in Micronesia, that disease or predators might someday be introduced and pose a threat. On Guam in the southern Mariana Islands, all native forest birds have been disappearing over the last 20 years. This decline appears to be due to an introduced predator, the brown tree snake, or other factors that are now being investigated. With the military becoming more active in training exercises on Tinian, the chance of an accidental introduction from Guam to Tinian of this secretive, nocturnal snake has increased. The principal potential source for introducing the snake on Tinian is the U.S. military. The Department of Defense is working with the Service towards the control of the snakes of Guam, particularly around transport centers (docks and airfields). The Service is actively investigating methods of controlling the snakes on Guam, in part, to reduce the threat of introduction to the other islands in this area of the Pacific. At present, however, nearly all bird species on Tinian appear to have healthy populations and are not known to be affected by serious disease or predation problems, although the potential threat remains.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The monarch is presently protected by the Commonwealth of the Northern Marianas Fish and Game Law, as well as the U.S. Endangered Species Act. There are few, if any, enforcement problems, since the monarch is not harvested for commercial, recreational, or other purposes. Perhaps more important than regulations specifically protecting the monarch are laws that protect the overall integrity of the island ecosystem, such as quarantine laws. Quarantine regulations have been promulgated and are enforced by the Commonwealth government at airports and ports of entry. The U.S. military is self-regulatory, and enforces its own quarantine regulations.

*E. Other Natural or Manmade Factors Affecting its Continued Existence*

The small size of the island (39 square miles) and the limited distribution of the bird are potential threats to its continued existence. The monarch is endemic to the island of Tinian and, therefore, natural populations are found nowhere else on earth. Currently there are no captive or transplanted populations of the species nor are there any plans to establish any. In the event of a rapid and sustained decline of the Tinian population, there is no gene pool reserve.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to reclassify the Tinian monarch as a threatened species. This new classification reflects the recovery of the monarch from its formerly depleted numbers following World War II, and, at the same time, acknowledges the potential imminent threat posed by the psyllid insect and the brown tree snake. See the following "Critical Habitat" section for a discussion of why critical habitat is not being designated at this time.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Such a determination would result in no

known benefit to the species. About two-thirds of the island has been leased to the Navy, including the majority of the habitat occupied by the bird. The Navy has conducted its own survey of the natural resources on the land under its management and is aware of the presence and distribution of the monarch and of its responsibilities to listed species under the Act. Should any other potential adverse threat develop, the involved agencies could be informed by means other than a critical habitat determination.

**Available Conservation Measures**

The Tinian monarch is already under the protection of the Act as an endangered species. Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. These activities will continue with this species being reclassified to threatened. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see 51 FR 19926; June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. As the Tinian monarch is presently listed as endangered, reclassification to threatened status would result in no modifications or changes of on-going or future management plans or actions by any Federal agency.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to posses, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing such permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities, and for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since the species is already protected by the Act and Commonwealth law, no take for commercial purposes has been allowed, and none would be expected for such a small bird. Therefore, no hardship permits can be issued.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

Baker, R.H. 1951. The avifauna of Micronesia, its origin, evolution, and distribution. University of Kansas Publications, Museum of Natural History 3:1–359.

Coultas, W.F. 1931. Whitney South Sea Expedition journals. Unpublished field notes. American Museum of Natural History. Vol. W (journal and letters):132–137 and 256–260.

Engbring, J., F. Ramsey, and V. Wildman. 1986. Micronesian forest bird survey, 1982: Saipan, Tinian, Agiguan, and Rota. U.S. Fish and Wildlife Service report. 143 pp.

Gleize, D.A. 1945. Birds of Tinian. Bull. Massachusetts Audubon Soc. 29:200.

Owen, R.P. 1974. Environmental impact study on the terrestrial fauna and flora of Tinian with respect to the proposed establishment of a U.S. military base on that island. Unpublished report, Trust Territory Conservation Office, Koror, Palau. 22 pp.

Pratt, H.D., P.L. Bruner, and D.G. Berrett. 1979. America's unknown avifauna: the birds of the Mariana Islands. American Birds 33(3):227–235.

Takatsukasa, S., and Y. Yamashina. 1931. Some new birds from the Palau and Mariana Islands. Dobutsu. Zasshi 43:484–487.

**Author**

The primary author of this final rule is Denal R. Herbst, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

**§ 17.11 [Amended]**

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, under BIRDS, as follows: in the "Status" column for the entry "Monarch Tinian . . ." change to read "T" instead of "E" and add the number "261" under the "When listed" column for the same species' entry.

Dated: March 24, 1987.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–7527 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–55–M

# Proposed Rules

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. AO-156-A5]

## Idaho-Eastern Oregon Potato Marketing Order; Recommended Decision and Opportunity To File Written Exceptions To Proposed Further Amendment of Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for potatoes grown in certain counties in Idaho and Malheur County, Oregon. The proposed amendments would authorize the appointment by the committee of public advisors, change the term of office for committee members to two years, and limit committee tenure to three consecutive terms. In addition, the proposed amendments would change nomination procedures for nominating committee members to permit nominations by mail and allow use of dates, other than those specified, for performing the procedures in the nomination process. Changes are also proposed that would revise the written acceptance procedures required of persons appointed as committee members; that would remove the limit on compensation to committee members; that would remove the limit on handler assessments by permitting assessments to be charged on a per unit basis; and that would provide for a larger operating reserve for excess funds. Provision would also be made for periodic continuance referenda. All of these proposed changes would improve the committee's operations and procedures.

**DATE:** Written exceptions must be filed by May 6, 1987.

**ADDRESS:** Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1077–S, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, phone (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding—Notice of Hearing issued November 8, 1985, and published in the November 15, 1985, issue of the Federal Register (50 FR 47226). This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of the Marketing Agreement and Marketing Order No. 945, regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon, and of the opportunity to file written exceptions thereto. In addition to James M. Scanlon whose address is listed above, copies of this decision also may be obtained from Joseph C. Perrin, USDA, AMS, Green/Wyatt Federal Building, 1220 S.W. Third Avenue, Room 369, Portland, Oregon 97204. Mr. Perrin's telephone number is (503) 221–2724.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed further amendment of the Marketing Agreement and Order No. 945 is based on the record of a public hearing held in Pocatello, Idaho, pursuant to the provisions of the Act and the applicable rules of practice and procedure on December 10, 1985. Notice of this hearing was published in the Federal Register on November 15, 1985 (50 FR 47226). The notice of hearing contained eight proposals submitted by the Idaho-Eastern Oregon Potato Committee, which operates under the order. The proposals pertained to adding a public advisor to the committee, limiting the tenure of committee members, changing the term of office, changing nomination procedures, making changes in fiscal operations, and requiring periodic referenda. The notice also included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, USDA, authorizing it to make any necessary conforming changes.

The Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). As stated in the notice of hearing, interested persons were invited to present evidence at a hearing on the probable regulatory and informational impact of the proposed rule on small businesses for the purpose of the RFA.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 through 674) requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 945 are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. During the 1985–1986 crop year, 106 handlers were regulated under M.O. 945 and handled potatoes for fresh market with an estimated crop value of $34.2 million. Given the applicable definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of potatoes would fall within that definition. In addition, there are about 2,150 producers of potatoes in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross annual revenues for the last three years of less than $100,000. The majority of handlers and producers may be classified as small entities.

The proposed amendments to the agreement and order include provisions pertaining to operations of the committee (tenure and periodic

referenda) which will provide more frequent opportunity for producer votes and opportunity for a broader based representation on the committee. The addition of a public advisor would formalize the current practice of providing consumer input to committee deliberations. This would provide the committee with information on consumer or non-industry related concerns with respect to the operation of the order. The change in the term of office from one to two years would provide continuity for committee operations, since only half of the members would be selected in a given year. The change proposing that committee nominations could be held by mail would have a positive impact on small businesses. Production area growers and handlers, could avoid spending up to a day in travel and attending nomination meetings, allowing them to spend the time and resources saved at their farms or businesses. These changes are designed to enhance the administration and functioning of the marketing agreement and order and would have negligible, if any, economic impact on small businesses.

The proposed change that would allow the committee to recommend increased reimbursement to members attending meetings would impact on growers and handlers in a positive way. Increased reimbursement to members would be defrayed through assessments on all handlers. However, program operations benefit all handlers and growers and it is appropriate to provide a minimum level of compensation to members who serve in the industry's general interest.

The proposed change to allow the rate of assessment to be based on other than a fixed amount per carlot and to allow a reserve of approximately one year's budgeted expenses would improve the financial operations of the agreement and order and not adversely impact on small business. These changes would provide for more efficient funding of order operations and activities. Fresh potato shipments have stabilized in recent years and the current maximum rate specified will not be sufficient to properly fund committee operating costs in future years. Moreover, the current reserve limitation has required the committee to refund small amounts of money to handlers at comparatively high cost. Authorization of a larger reserve should eliminate these expenses.

Finally, the proposed amendments to the order would have no significant impact on small businesses' recordkeeping and reporting requirements.

**Material Issues**

The material issues of record addressed in this decision are: (1) Whether specific authority should be provided for the appointment of a public advisor or advisors to the committee; (2) whether the term of office for committee members and alternates should be changed to two years, whether the terms should be staggered, and whether tenure on the committee should be limited to three consecutive terms; (3) whether the procedure for nominating members and alternates to the committee should be changed to allow nominations by mail, and to allow flexibility in the date nominations are made; (4) whether the required written acceptance by persons appointed as committee members or alternates should be replaced by a written statement of willingness to serve by nominees; (5) whether increased payments for expenses and compensation of committee members and alternates should be allowed; (6) whether the $1.00 per carload maximum rate for handler assessments should be removed and assessments be permitted on a per unit basis; (7) whether the provision for a reserve fund should be changed to allow a larger operating reserve; (8) whether periodic continuance referenda should be held on the order; and (9) whether any minor administrative and conforming changes should be made to the order if any of these proposals were to become effective.

**Findings and Conclusions**

The findings and conclusions on the material issues, all of which are based on evidence adduced at the hearing and the record thereof, are as follows:

(1) The Idaho-Malheur County, Oregon potato marketing agreement and order (hereinafter collectively referred to as the "order") should be amended to authorize one or more public advisors appointed by the committee. Since 1980, the committee has appointed a public advisor under its general duties authorizing it to appoint such employees, agents, and representatives as it deems necessary. This proposal would formalize under the marketing order procedures for appointing such persons.

To effectuate such a change, § 945.20 "Establishment and membership" of the current order should be revised to authorize, upon recommendation of the committee, one or more nonvoting public advisors. Because the public interest is to be observed in actions taken under marketing orders, the interests of all groups including growers, handlers, and consumers should be considered. While all committee meetings are open to the public, until the appointment of the public advisor there was little direct participation by consumers. Record evidence indicates the public advisor could continue to improve the exchange of information and viewpoints between industry members and the public. A proponent witness indicated that the industry likely would continue to benefit from the judgment and knowledge that a public advisor could contribute to industry decisions.

To implement the appointment of the public advisor, § 945.20 should be amended by adding authority for the appointment of a public advisor. Record evidence indicates that the public advisor(s) should not be engaged in the commercial production of any agricultural product nor in the commercial buying, grading, or processing of such products, except as a consumer. The public advisors(s) also should not be officers, directors, or employees of any firm engaged in such activities. Also, the public advisors' position should be able to devote sufficient time and express a willingness to attend committee functions and to familiarize themselves with the practices and economics of the potato industry. They should be residents of the production area so participation would be more convenient and travel costs could be held to a minimum. The public advisor(s) should be appointed by the committee in accordance with administrative rules which should indicate the qualification requirements and the procedure by which the committee will receive names of candidates.

Record evidence shows that the public advisor's expenses and compensation would be determined by the committee and set forth in the committee by-laws. Expenses and compensation could be set at the same or different levels than for the committee members. Such expenses and compensation should be reasonable. The record shows that the expenses and compensation of public advisors should be paid from committee funds, while such advisors are carrying out duties requested by the committee. Such duties could include serving on subcommittees and special projects helping to establish meaningful dialogue between the industry and consumers.

(2) Section 945.21 "Term of office" should be amended to authorize a two-year term rather than the present one-year term, to stagger the terms of office so that approximately one-half of the

members are selected each year, and to limit the tenure of the committee members and alternates to three consecutive terms. The record indicates two-year staggered terms would be more efficient and provide better continuity. A two-year term would enable a member to become more familiar with his/her duties and to more effectively participate in committee activities. Staggered terms would be provided to ensure that at least half of the members would be experienced in committee operations, thus avoiding the possibility of a committee consisting entirely of inexperienced new members.

The notice of hearing provided that the new procedures would be instituted in 1986. This provision has been revised in the proposal since that date has passed. One method of initially accomplishing this staggering of terms would be to consecutively number the committee positions starting with producer members for Districts 1, 2, and 3, followed by handler members in similar order. Members in even-numbered positions would serve a term ending in even-numbered years, and members in odd-numbered positions would serve a term ending in odd-numbered years. The initial terms may have to be adjusted so that staggering of terms may be accomplished. Thereafter, all members and alternates would serve full two-year terms.

The term of office currently begins on June 1, but the record indicates that the committee should have the authority to recommend and the Secretary to approve a different beginning and ending date. This would provide flexibility to align committee terms with future changes which might occur in the marketing of production area potatoes or in committee operations.

It is the Department's view that a limit on tenure improves representation on marketing order committees by allowing for different and more contemporary ideas, and will be beneficial to the committee's operation. The Department's goal is to encourage and foster to the maximum extent possible broad based participation by all members of the regulated community in the administration of the marketing order. This objective is best met by such a limitation. The proponents testified that a tenure limitation would improve representation and would be beneficial to the operation of the committee.

This change is consistent with the Secretary's 1982 "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" which provide for limiting committee tenure of members and alternates. The Department's policy pursuant to the guidelines is that a committee member's consecutive service be limited to a total of six years.

Therefore, it is proposed the order should be amended to limit tenure of members and alternates to three full consecutive terms. Any member or alternate member becomes ineligible to serve on the committee after having served three full consecutive terms. Any member or alternate member could again become eligible to serve on the committee by not serving on the committee for one full term as either a member or alternate member.

The hearing record also indicates that the Secretary should retain the authority to exempt an individual from the tenure limitation if the position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve. Nevertheless, it would seem clear that such an exception would be made only in special and unusual circumstances and should not be expected as a matter of course.

(3) Section 945.25 "Nominations" should be amended to provide for the use of mail balloting as an alternative method of conducting nominations. Record evidence supports the need for this alternative. In some portions of the production area the producers and handlers are widely scattered and comparatively few in number. For example, District No. 3 covers such a large area that many growers or handlers have to travel several hundred miles to attend nomination meetings, and it has been difficult to obtain adequate industry participation. Under such circumstances a mail-ballot nominating procedure would broaden the opportunity for industry members to be involved in the selection of their representatives. The evidence further indicates that the committee should recommend, and the Secretary establish, rules for the conduct of such nominations. One possible nomination procedure, suggested at the hearing, would be for the committee to obtain producer nominee names from growers' organizations or individual growers. A ballot containing such nominees, plus space for a write-in vote, could be mailed to all known producers in that district. A confidential ballot procedure should be followed with the vote count verified by an impartial person such as a county agent or a field representative of the U.S. Department of Agriculture. The name of the person receiving the highest number of votes for each position would be submitted to the Secretary for selection.

The order should also be amended to authorize the Secretary to change the dates by which nomination meetings must be held and a nomination report be received. The evidence shows that in the event that a mail ballot procedure is recommended by the committee and approved by the Secretary, it may be necessary to adjust the dates for nomination meetings and the receipt of nomination reports.

(4) Section 945.27 "Acceptance" should be amended to allow nominees to substitute a document signifying their willingness to serve on the committee for an acceptance letter filed after appointment. Each nominee currently completes a background information form prior to selection and signs a letter of acceptance within 10 days of selection by the Secretary. Record evidence indicates the proposed change would permit one document to serve both purposes, thus eliminating an unnecessary paperwork burden. Although a written acceptance or willingness to serve would still be required, it could be completed at an earlier time when nominee background information is given to the Secretary. The proposed change could thus improve and streamline current nomination procedures.

(5) Section 945.31 "Expenses and compensation" should be amended to delete the $10 per day limit on compensation to members and alternates while performing committee duties. Compensation is intended to at least partially offset costs such as those incurred by members in having someone take their places at their farms or businesses while they are away on committee business. The limit, which was set 25 years ago, is no longer realistic. The cost of paying someone sufficiently skilled to assume the management functions of the member during his/her absence is many times the current limit of $10 per day. Record evidence shows the committee should be authorized to recommend and the Secretary approve a rate of compensation better suited to current circumstances.

(6) Section 945.42 "Assessments" should be amended to remove the current $1 per carload limit on assessments. Since railcar capacities have increased significantly since this limit was set—more than a quarter of a century ago—and the load per car may vary greatly, it has become impractical to base the assessment on a fixed rate per carload. Committee operating costs have continued to rise over the years along with the cost of living and presumably will continue to do so. However, total fresh shipments have tended to stabilize during the past six years at an annual average of slightly more than 20 million hundredweight.

Thus, assessment income under the present authority is declining. Record evidence indicates that the current maximum assessment rate of $1 per carload will not be sufficient to properly fund committee expenses for future administration of the order. Therefore, the evidence supports providing authority to establish an assessment on a unit basis as recommended by the committee and approved by the Secretary.

(7) Section 945.44 "Excess funds" should be amended to authorize funds in excess of expenses to be placed in an operating reserve not to exceed approximately one fiscal period's budgeted expenses. The order authorizes the committee to set aside excess funds in a reserve to be used for specific purposes. Such funds may be used to allow the committee to function at the beginning of a season prior to the time assessment income is available or to cover any deficits during a fiscal period in which assessment income is not sufficient to cover expenses. In order that reserve funds not be accumulated beyond a reasonable amount, however, the reserve is limited to a half-year's expenses. Record evidence indicates the current authority to have a reserve no larger than half a year's expenses has caused several problems. The committee in past seasons has had to make comparatively insignificant refunds to handlers, at a comparatively high administrative cost, when the end of season reserve exceeded the authorized limit. Record evidence indicates it is not the intent of the committee to maintain the operating reserve at the maximum level authorized by the proposal. It is deemed more desirable to set a goal of approximately three-fourths of one-year's operating expenses with the flexibility to move above or below this level as the volume of shipments varies. Record evidence shows that when the one-half year limit was put into effect significant quantities of potatoes were shipped during the summer and early fall months. This is no longer true. Most shipments now are from late fall through spring. As a result, assessment income during the summer and early fall months is quite low; and during this period committee expenses usually exceed assessment income. Record evidence indicates that increasing the allowable level for the operating reserve could alleviate these problems by use of reserve funds to offset expenses until assessment income is adequate.

(8) The order should be amended, as hereinafter set forth, to require referenda to be held relative to the continuance of the order every six years.

The Secretary of Agriculture has determined that continuation referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. Currently the order and the Act provide that the Secretary shall terminate the program if a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market. Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support for termination of an order. Thus, in order to provide a basis for determining whether producers favor continuance of the order, a new paragraph (d) should be added to § 945.83 to authorize continuance referenda. Current paragraph (d) should be redesignated as paragraph (e). The results of such referenda should be based upon the same percentage of support required in section 8c(8) of the Act with respect to producer approval of the issuance of a marketing order. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of potatoes represented in the referedum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the continuance referendum but also should consider sll other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order should be announced on or before the last day of the then current fiscal period. This date precedes the beginning of the committee's operation for a new fiscal period and is considered to be an appropriate time to wind down the operations of the order.

In addition, the Secretary's 1982 "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity periodically to indicate their support for or rejection of the order. It is the position of the Department that periodic referenda ensure that the program continues to be accountable to the producers, obligate producers to evaluate their program periodically, and involve them more closely in its operations. The record evidence supports these goals.

The committee's proposal provided that the committee should recommend to the Secretary within every 10-year period that a referendum be conducted. It is the Department's view that ten years between referenda is too long a period to insure that the referenda will reflect producer support or opposition to the order in the face of rapidly changing market conditions; and voting twice during this period, or each five years, would be costly and administratively burdensome to both the committee and the Department. A referendum every six years would allow producers the opportunity to vote for or against the continuance of the order as changes occur in the industry yet would not be wasteful of Department or committee resources. For that reason, it is proposed that the order be amended to provide for periodic continuance referenda to be held within each six year period.

(9) In the November 15, 1985, Notice of Hearing the Department of Agriculture made a proposal to authorize it to make such other changes as may be necessary to make the entire order conform with any amendments that may have resulted from the hearing. None were necessary.

**Rulings on Briefs of Interested Persons**

At the conclusion of the hearing the Administrative Law Judge fixed January 21, 1986, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. None were filed.

**General Findings**

Upon the basis of the record it is found that:

(1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein all of the said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will

tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of potatoes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisons of the production area would not effectively carry out the declared policy of the Act;

(5) The marketing agreement and order as amended, and as hereby proposed to be further amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of potatoes grown in the production area; and

(6) All handling of potatoes grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

**List of Subjects in 7 CFR Part 945**

Marketing agreements and orders, Potatoes, Idaho, Oregon.

**Recommended Further Amendment of the Marketing Agreement and Order**

The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The authority citation for 7 CFR Part 945 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

## PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

**Proposal No. 1**

Add a new § 945.20(d) as follows:

**§ 945.20 Establishment and membership.**

* * * * *

(d) The committee may appoint such public advisors as it deems appropriate and determine the expenses, compensation, and define the duties of such advisors. Each person appointed as a public advisor shall be a resident of the production area. Also, each shall at the time of appointment and during the term of office not be engaged in the commercial production, buying, grading, or processing of any agricultural commodity, except as a consumer, nor shall such person be a director, officer, or employee of any firm so engaged.

**Proposal No. 2**

Revise § 945.21 to read as follows:

**§ 945.21 Term of office.**

(a) Except as otherwise provided in this section, the term of office of committee members and alternates shall be for two years beginning June 1 or such other date as recommended by the committee and approved by the Secretary. The term of office of members and alternates shall be so determined that approximately one-half of the total producer and handler committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified and continue until their successors are selected and have qualified: Except that beginning with the 1987 term of office, no member or alternate shall serve more than three full consecutive terms without approval of the Secretary.

**Proposal No. 3**

Amend § 945.25 as follows:

(1) Revise paragraphs (a) and (c).

(2) Redesignate paragraph (f) as paragraph (e).

(3) Redesignate paragraph (g) as paragraph (f).

(4) Revise paragraph (e) and redesignate it as paragraph (g).

**§ 945.25 Nominations.**

* * * * *

(a) In order to provide nominations for producer and handler committee members and alternates, the committee shall hold, or cause to be held, prior to April 1 of each year, or such other date as the Secretary may designate, one or more meetings of producers and of handlers in each district to nominate such members and alternates; or the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

* * * * *

(c) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

* * * * *

(g) Nominations shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than May 1 of each year, or such other date as the Secretary may specify.

**Proposal No. 4**

Revise § 945.27 as follows:

**§ 945.27 Acceptance.**

Any person nominated to serve on the committee as a member or as an alternate shall qualify by filing a statement of willingness to serve with the Secretary.

**Proposal No. 5**

Revise § 945.31 to read as follows:

**§ 945.31 Expenses.**

Committee members and alternates shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart, and may receive compensation at a rate determined by the committee, and approved by the Secretary, for each day or portion thereof, spent in conducting committee business.

**Proposal No. 6**

Revise paragraph (b) of § 945.42 to read as follows:

**§ 945.42 Assessments.**

* * * * *

(b) Assessments shall be levied upon handlers at a rate per unit established by the Secretary. Such a rate may be established by the Secretary upon the basis of the committee's recommendation or other available information.

* * * * *

**Proposal No. 7**

In § 945.44 revise the heading; delete the introductory paragraph; revise paragraph (a) and paragraph (b) to read as follows:

**§ 945.44 Excess funds.**

(a) The funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve. Such reserve shall be established at an amount not to exceed

approximately one fiscal period's budgeted expenses. Funds in such reserve shall be available for use by the committee for expenses authorized under § 945.40.

(b) Funds in excess of those placed in the operating reserve shall be credited proportionately against a handler's operations of the following fiscal period, except that if the handler demands payment, such proportionate refund shall be paid to such handler.

* * * * *

**Proposal No. 8**

Section 945.83 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

**§ 945.83 Termination.**

* * * * *

(d) The Secretary shall conduct a referendum as soon as practicable after July 31, 1992, and at such time every sixth year thereafter, to ascertain whether continuance of this order is favored by potato producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Termination of the order shall be effective only if announced on or before July 1 of the then current fiscal period.

* * * * *

Signed at Washington, DC, on March 27, 1987.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 87-7431 Filed 4-3-87; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 4, 11, and 375

**[Docket No. RM87-6-000]**

### Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies

March 30, 1987.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On March 11, 1987, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking in Docket No. RM87-6-000. This notice add an item omitted from that notice of proposed rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Fallon, Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8540.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission issued a notice of proposed rulemaking in Docket No. RM87-6-000 on March 11, 1987, 52 FR 8463 (March 18, 1987). The notice of proposed rulemaking established fees to be paid by an applicant for a hydroelectric project that is required to meet terms and conditions set by the Fish and Wildlife Service, the National Marine Fisheries Service and state fish and wildlife agencies. That notice inadvertantly omitted a person to contact concerning this rulemaking. Therefore, the following information is added in FR Doc. 87-5682 appearing on page 8463 in the issue of March 18, 1987:

On page 8463 column three, after the address to send filings concerning this docket and before the introduction to the notice of proposed rulemaking insert the following:

**FOR FURTHER INFORMATION CONTACT:** Grace Kim, Hydroelectric Licensing, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-5768.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7476 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 733

### Petition to Initiate Rulemaking on Surface Coal Mining and Reclamation Operations—Permanent Regulatory Program; Procedures for Evaluating State Programs, Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Notice of decision on petition for rulemaking.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available to the public its final decision on a petition for rulemaking from ten citizens' organizations. The petitioners requested that OSMRE amend existing regulations concerning procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs. On April 1, 1987, the Director made a decision to deny the petition.

**ADDRESS:** Copies of the petition, and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSMRE, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-5351.

**SUPPLEMENTARY INFORMATION:**

**I. Petition for Rulemaking Process**

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act, any person may petition the Director of OSMRE for a change in OSMRE's regulations. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, if the Director determines the petition has a reasonable basis, he shall publish notice in the **Federal Register** seeking comments on the petition and the Director may hold a public hearing, conduct and investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under § 700.12(d), the Director's decision constitutes the final decision of the Department of the Interior.

**II. Petition Submitted by Ten Citizens' Organizations on November 13, 1985**

On November 13, 1985, OSMRE received a petition submitted by ten citizen's organizations to amend OSMRE's existing regulations under 30 CFR Part 733 concerning procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs.

The petitioners are: The Dakota Resource Council, Environmental Policy Institute, Illinois South Project, Legal Environmental Assistance Foundation, Northern Plains Resource Council, Powder River Basin Resource Council,

Public Lands Institute, Save Our Cumberland Mountains, Western Colorado Congress, and Western, Organization of Resource Councils.

On January 3, 1986, OSMRE published on notice in the **Federal Register** (51 FR 272) requesting comments on the petition. The comment period closed on February 3, 1986. A number of interested parties requested that additional time be provided to submit comments. Therefore, on February 4, 1986, OSMRE published a second notice extending the comment period until March 5, 1986 (51 FR 4390).

Subsequently, as part of its ongoing efforts to implement the Phase II actions recommended in the 1985 management report of the House Committee on Interior and Insular Affairs, OSMRE held a conference in Washington, DC on August 13 and 14, 1986. The purpose of the conference was to have an exchange of views on two topics: (1) OSMRE's use of ten-day notices and Federal notices of violation, and (2) criteria and procedures for substituting Federal enforcement and withdrawing approval of a State regulatory program under SMCRA. OSMRE published a notice in the **Federal Register** on July 29, 1986 (51 FR 27059), to announce its intent to sponsor the conference and to announce that comments from the conference would be considered in OSMRE's review of the petition for rulemaking.

Following the conference, OSMRE on September 2, 1986, extended the public comment period until September 29, 1986, on the conference topics and on the portion of the petition related to substitution of Federal enforcement and withdrawal of approval of State programs (51 FR 31140). OSMRE received 39 comments during the comment periods.

For the reasons discussed in the appendix to this notice, the Director is denying the petition to initiate rulemaking. Therefore, no further rulemaking action will occur.

The Director's letter to the petitioners on this rulemaking petition appears as a appendix to this notice. This letter reports the Director's decision to the petitioners. It also contains a summary description of the issues raised by the petitioners, a discussion of the applicable statutory provisions, OSMRE's current regulatory program, an analysis of the petitioners' proposed regulatory changes, an analysis of the petitioners' reasons why the petition should be granted and a discussion of comments on the petition.

**Arthur W. Abbs,**

*Acting Assistant Director, Program Policy Office of Surface Mining Reclamation and Enforcement.*

## Appendix

The Director's letter dated April 1, 1987, to the petitioners on the rulemaking petition is as follows:

April 1, 1987.

Ms. Rose Sickler,
*Dakota Resource Council, 29 Seventh Avenue, West, Dickenson, North Dakota 58901.*

Dear Ms. Sickler: This letter is in response to the September 3, 1985 petition for rulemaking submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) by the Dakota Resource Council, Environmental Policy Institute, Illinois South Project, Legal Environmental Assistance Foundation, Northern Plains Resource Council, Powder River Basin Resource Council, Public Lands Institute, Save Our Cumberland Mountains, Western Colorado Congress, and Western Organization of Resource Councils (petitioners) requesting amendments to the Federal regulations concerning oversight of State regulatory programs.

On January 3, 1986, OSMRE published a notice in the **Federal Register** (51 FR 272) requesting public comments on the petition. A number of interested parties requested that additional time be provided to submit comments. Therefore, on February 4, 1986, OSMRE published a second notice extending the comment period until March 5, 1986 (51 FR 4390).

Subsequently, as part of its ongoing efforts to implement the Phase II actions recommended in the 1985 management report of the House Committee on Interior and Insular Affairs, OSMRE held a conference in Washington, DC, on August 13 and 14, 1986. The purpose of the conference was to have an exchange of views on two topics: 1) OSMRE's use of ten-day notices and Federal notices of violation, and 2) criteria and procedures for substituting Federal enforcement and withdrawing approval of a State regulatory program under SMCRA. OSMRE published a notice in the **Federal Register** on July 29, 1986 (51 FR 27059), to announce its intent to sponsor the conference and to announce that comments from the conference would be considered in OSMRE's review of the petition for rulemaking.

Following the conference, OSMRE on September 2, 1986, extended the public comment period until September 29, 1986, on the conference topics and on the portion of the petition related to substitution of Federal enforcement and withdrawal of approval of State programs (51 FR 31140). OSMRE received 39 comments during the comment periods.

For the reasons discussed in the enclosed analysis, I am denying the petition to initiate rulemaking. OSMRE already has regulations in place which sufficiently detail the criteria and procedures for evaluating State regulatory programs. The petitioners have not persuaded me that the issues that concern them, previously considered in two rulemakings on the same subject, warrant revision of the regulations. Therefore, no further rulemaking action will occur. As provided in 30 CFR 700.12(d), my decision constitutes the final decision of the Department of the Interior.

I appreciate your interest in the surface coal mining and reclamation program.

Sincerely,

Jed. D. Christensen,

*Director.*

Enclosure: (identical letter provided to 9 other addressees).

Identical letter provided to the below listing:

Ms. Suellen Keiner, Environmental Policy Institute, 218 D. Street, SE., Washington, DC 20003

Ms. Melanie Baise, Illinois South Project, 116-½ West Cherry, Herrin, Illinois 62948

Ms. Carol Nickle, Legal Environmental Assistance Foundation, 530 South Gay Street, #204, Knoxville, Tennessee 37902

Mr. Keith Powell, Northern Plains Resource Council, 419 Stapleton, Billings, Montana 59101

Mr. Dan Flaherty, Powder River Basin Resource Council, 48 North Main, Sheridan, Wyoming 82801

Ms. Carolyn R. Johnson, Public Lands Institute, 286 South Gilpin Street, Denver, Colorado 80209

Ms. Susan Williams, Save Our Cumberland Mountains, Box 457, Jacksboro, Tennessee 37757

Ms. Teresa Ericson, Western Colorado Congress, P.O. Box 472, Montrose, Colorado 81402

Mr. Pat Sweeney, Western Organization of Resource Councils, 412 Stapleton Building, Billings, Montana 59101

## Decision on Petition to Initiate Rulemaking on Procedures for Evaluating State Programs, Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs

### *Background on Petition*

On November 13, 1985, the Office of Surface Mining Reclamation and Enforcement (OSMRE) received a petition to initiate rulemaking submitted by ten citizens organizations. The petitioners proposed that OSMRE amend its regulations under 30 CFR Part 733 concerning procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs. The petition was published in the **Federal Register** on January 3, 1986 (51 FR 272), and public comment sought for 30 days. On February 4, 1986, the comment period was extended for an additional 30 days (51 FR 4390) until March 5, 1986.

Subsequently, as part of its ongoing efforts to implement the Phase II actions recommended in the July 1985 report prepared by the staff of the Committee on Interior and Insular Affairs entitled "Management Review of the Office of Surface Mining", OSMRE held a conference in Washington, DC, on August 13 and 14, 1986. The purpose of the conference was to have an exchange of views on two topics: (1) OSMRE's use of ten-day notices and Federal notices of violation, and (2) criteria and procedures for substituting Federal enforcement and withdrawing approval of a State regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published a notice in the **Federal Register** on July 29, 1986 (51 FR 27059), to announce its intent to sponsor the conference and to announce that comments from the conference would be considered in OSMRE's review of the petition for rulemaking.

Following the conference, OSMRE on September 2, 1986, extended the public comment period until September 29, 1986, on the conference topics and on the portion of the petition related to substitution of Federal enforcement and withdrawal of approval of State programs (51 FR 31140). OSMRE received 39 comments during the comment periods.

*Substance of Petition*

The petitioners's proposals can be categorized as follows. First, they proposed that OSMRE amend its regulations under 30 CFR Part 733 to provide detailed procedures for OSMRE's annual evaluation of State programs under SMCRA. Secondly, they proposed that OSMRE modify the existing procedures under 30 CFR Part 733 regarding the withdrawal of approval of State programs.

With regard to the annual evaluation of State programs, the petitioners proposed that the Director develop uniform procedures for conducting the annual evaluations. Under the petitioners' proposal, each annual evaluation of a State program would contain statistical information and analysis of major categories and subcategories. The procedures developed by the Director would ensure a comprehensive evaluation of State programs and provide for the evaluation of all major categories and subcategories. The petitioners' proposal also called for the establishment of acceptable performance levels for each program subcategory evaluated. In addition, the petitioners proposed that the Director provide a hearing opportunity and a 45-day comment period on draft evaluation reports. In preparing the annual reports the Director would be required to consider all relevant information, including public comment, issue written findings on all parts of the State program, respond to all public comments in the final report, publish notice of availability of the final report in the **Federal Register** and send the final report to all persons who commented.

With respect to OSMRE's procedures regarding the withdrawal of approval of State programs, the petitioners proposed that OSMRE modify its rules to require that whenever OSMRE or any interested person identifies any failure of the State to achieve a performance level in administering any part of its program, the Director would notify the State in writing and establish a period of time for correcting deficiencies not to exceed 90 days. They also proposed adoption of a requirement that pending completion of any changes in a State program required by the Director, the State would act in accordance with the required changes. The petitioners' proposed rules further provided that within 30 days after the period set for remedial action, the Director would publish written findings in the **Federal Register** and if the findings showed the State had failed to implement its program, the Director would hold a hearing within 30 days. In the event of negative findings, the Director would revoke the Secretary's approval of the State program. The petitioners also requested modification of OSMRE's rules to allow the decision to issue a State program evaluation or revoke a State program to be appealed by any person to the Interior Board of Land Appeals. Finally, the petitioners proposed adoption of a regulatory requirement which provides that the Director hold a hearing 30 days prior to revoking or returning a program.

*Applicable Statutory Provisions*

OSMRE's statutory obligations with respect to the evaluation of approved State regulatory programs under SMCRA are set forth under a number of sections of the Act. The key provisions are contained in sections 201, 504, 517 and 521. Section 201(c) authorizes the Secretary to make those investigations and inspections necessary to ensure compliance with the Act. Section 517(a) of SMCRA specifies that the Secretary shall make such inspections of any surface coal mining and reclamation operations as may be necessary to evaluate the administration of the approved State programs. Section 521(a) establishes the Secretary's authority to enforce the Act if the State fails to do so. Section 521(a)(1) states that if the Secretary has reason to believe that any person is in violation of any requirement of SMCRA or any permit required by SMCRA he shall notify the State regulatory authority. It further provides that the Secretary or his authorized representative shall order a Federal inspection of a mine if the State regulatory authority fails within ten days after notification by OSMRE to take appropriate action to cause violations to be corrected or show good cause for its failure to do so. Section 521(a)(2) provides that the Secretary or his authorized representative shall issue a cessation order for any violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources. Sections 504(b) and 521(b) require the Secretary to enforce any part of a State program not being enforced by the State and section 504(a)(3) provides authority for the Secretary to prepare and promulgate a Federal program if a State fails to implement, enforce, or maintain its approved State program. OSMRE's statutory responsibility to report on its "oversight" activities is set forth in section 706 of SMCRA, which provides that the Secretary shall submit annually to the President and Congress a report concerning the activities conducted by the Federal government and the States pursuant to the Act.

*Current OSMRE Regulatory Program*

OSMRE's State program evaluation policies and procedures are set forth in regulations, directives, and policy and guidance documents.

The regulations governing the evaluation of State programs, the substitution of Federal enforcement of State programs and the withdrawal of approval of State programs are contained in 30 CFR Part 733 of OSMRE's regulations. The regulations were adopted on March 13, 1979 (44 FR 15328) and revised on June 17, 1982 (47 FR 26366). These regulations provide that OSMRE shall evaluate the administration of each State program at least annually. They further provide that upon the request of any interested person, OSMRE will conduct an evaluation of a State program after verifying the fact presented by the person establishing the need for the evaluation. Also contained in this section of OSMRE's rules are the requirements and procedures pertaining to Federal enforcement of any part of a State program not being enforced by the

State and to withdrawal of approval of a State program if a State fails to administer or enforce its program.

The requirements pertaining to Federal inspection and enforcement activities in States with approved regulatory programs are contained in 30 CFR Parts 842 and 843. The regulations were adopted on March 13, 1979 (44 FR 15456) and revised on August 16, 1982 (47 FR 35635). Under 30 CFR 842.11(a)(1) authority is provided for OSMRE to conduct inspections of surface coal mining and reclamation operations as necessary to monitor and evaluate the administration of approved State programs. Under 30 CFR 842.11(b) OSMRE is required to conduct a Federal inspection upon the request of a person who has presented information to OSMRE about a possible violation or imminent danger or harm, and under 30 CFR 843.11 and 843.12 to enforce requirements of SMCRA, 30 CFR Chapter VII, the State program and permit conditions under a State program not being enforced by a State.

Detailed procedures for conducting Federal inspections and other evaluation activities and for preparing the annual reports to Congress presenting OSMRE's evaluation findings for each State with an approved regulatory program are contained in directives and policy and guidance documents. These documents are discussed below under "Analysis of Petitioners' Proposals."

*Analysis of Petitioners' Proposals*

1. Proposed 733.12(a)

(a) *Proposal*: The petitioners proposed that OSMRE promulgate specific uniform procedures to evaluate State regulatory programs on an annual basis.

*Response:* OSMRE has already promulgated regulations to implement its oversight responsibilities after providing opportunity for public comment. The regulations at 30 CFR Parts 733, 842 and 843, among others, implement the oversight requirements of the Act. Detailed procedures for evaluating State programs have been established through directives and other policy and guidance documents. OSMRE has developed the following documents in an effort to ensure consistent and comprehesive evaluations of State programs: "Plans and Procedures for the Evaluation of the States' Permanent Programs" (March 5, 1982); "Sampling Method for Conducting Federal Inspections in States with Approved Surface Mining Regulatory Programs" (March 13, 1981); "Format and Outline for the Annual Evaluation Reports" (July 30, 1986); "Procedures for the Evaluation of State Permitting Operations" (July 30, 1986). Two of these are directives and two are policy and guidance documents. The "Format and Outline for Annual Evaluation Reports" is revised annually on the basis of comments received from OSMRE staff, States and the public concerning problems or concerns in implementing the prior year's guidance and to alter the focus or emphasis of OSMRE's review of certain program areas as circumstances point to the need for such change. Thus, the petitioners' concern has already been met in that OSMRE has established detailed procedures for evaluating State programs.

Detailed procedures have been established through directives and other policy and guidance documents rather than rules for two reasons. First, the use of guidance documents allows OSMRE the necessary flexibility to revise its procedures to respond to changing needs and concerns relating to the States' implementation of their programs and to devise and incorporate evaluation techniques which recognize the variability of surface coal mining operations in States with approved regulatory programs. Each year, efforts are made to draw on the experience of OSMRE staff and the knowledge and expertise of groups and individuals outside the agency to improve the quality of OSMRE's evaluation methods and reporting techniques. Second, it allows OSMRE's Field Office Directors discretion in applying the established policies and procedures. Such discretion is necessary as each State program includes provisions which reflect unique environmental conditions or other State-specific factors which must be taken into consideration.

In summary, it is OSMRE's position that the evaluation of State regulatory programs should be conducted in accordance with standard procedures to ensure fair, comprehensive and consistent evaluations. OSMRE has developed policy and guidance documents which are intended to accomplish this while allowing for the variability in State programs. OSMRE does not support the adoption of additional detailed oversight procedures as rules as this would restrict the Director's discretion to modify its evaluation procedures to respond to changing circumstances or needs, and the Field Office Directors' discretion to adjust procedures to reflect State-specific factors.

(b) *Proposal:* The petitioners recommended that each annual evaluation of a State regulatory program contain statistical information and analysis of all major program categories and subcategories.

*Response:* No need exists to accept petitioners' recommendation. OSMRE's existing procedures provide for the collection and analysis of statistical information for many, although not all, program categories evaluated. OSMRE has prepared and distributed to its field offices two documents which provide guidance on statistical sampling techniques relevant to the evaluation of State programs. These documents are entitled "General Guidance Memorandum on Statistical Sampling" (February 4, 1985) and "Specific Guidance Memorandum on Statistical Sampling" (February 26, 1985).

In addition, as mentioned under (1) above, OSMRE has prepared a document entitled "Sampling Method for Conducting Federal Inspections in States with Approved Surface Mining Regulatory Programs."

OSMRE's oversight procedures do not provide for the collection of statistical information for all categories of State programs evaluated. For example, analyses of a State's processes for permitting or for designating lands unsuitable for surface coal mining do not lend themselves to statistical analysis. OSMRE favors data collection and analysis when these are suitable evaluation techniques. The outline for OSMRE's annual evaluation reports on State programs provides for the inclusion of statistical information in numerous tables throughout the reports and OSMRE's analysis of this statistical information provides, to a large extent, the basis for OSMRE's conclusions about the State's performance for any given evaluation period. OSMRE staff will continue to seek improvement of its data analyses techniques to ensure that conclusions drawn from the data collected and analyzed by OSMRE accurately reflect the States' performance.

(c) *Proposal:* The petitioners advocated that the Director develop evaluation procedures which ensure a comprehensive evaluation of State programs, provide for the evaluation of major categories and subcategories, and define acceptable performance levels for each subcategory.

*Response:* As discussed under (a) above, OSMRE has developed policy and guidance documents which establish the procedures to be utilized by OSMRE in evaluating State regulatory programs on an annual basis. In particular, the "Format and Outline for Annual Evaluation Reports" provides for the review and evaluation of all major categories and

subcategories of State regulatory and AML programs and ensures that OSMRE's evaluations of State programs are comprehensive. Thus, the existing procedures accomplish two of the petitioners' objectives. OSMRE relies on the provisions of each approved State program as the criteria for evaluating the State's administration of its program. OSMRE has not established performance levels for each major category and subcategory of State programs evaluated. OSMRE reviews the State's performance in each area, identifies deficiencies and works with the State to develop action plans and timetables for resolution of all identified problems. The underlying assumption of OSMRE's evaluation strategy is that States shall fully comply with all approved program provisions.

Whenever OSMRE has facts indicating that a State is not in full compliance, OSMRE seeks to bring the State into conformance. OSMRE cannot find any support in SMCRA for establishing performance levels other than the standards established by the approved program provisions. The Act and OSMRE's regulations do provide a certain degree of flexibility with respect to the nature of the approved program provisions. Under the standards for approval of State program provisions at 30 CFR 732.15, OSMRE may approve alternatives to the Federal regulations provided these are consistent with SMCRA and no less effective than the Federal regulations. States may amend their programs at any time provided these standards are met. Each State program incorporates provisions which reflect the environmental conditions unique to the State or other factors such as preexisting State legislation which has a bearing on the State's surface mining program. Because the criteria for evaluating States' performance are the approved program provisions, the mechanism for overseeing implementation of the program already exists.

2. *Proposed 733.12(c)–(e):* The petitioners proposed that the Director provide a hearing opportunity and a 45-day comment period on draft State program evaluation reports. They also recommended that in preparing the annual evaluation reports, OSMRE consider all relevant information, including public comment, and respond to all public comments in the final reports.

*Response:* Under the existing procedures OSMRE seeks public input at the beginning of the evaluation period in developing the State-specific oversight strategy for the upcoming year. Upon completion of the report, OSMRE publishes notice in the **Federal Register** that the report is available to any interested person upon request. OSMRE is concerned that publication of draft reports with request for comments would unduly delay and complicate the evaluation process. Each year, the evaluation process involves 24 States with approved regulatory programs. If a public comment period were provided, the States would seek further time to respond. These steps, together with OSMRE's need to review additional material provided using available resources would unduly impede the timely issuance of the final reports. So long as the final annual evaluation is made publicly available, the public has an opportunity to participate. If any person is dissatisfied with the result of an annual evaluation, he has the right under 30 CFR 733.12(a) to request further review and analysis based upon any available information.

3. *Proposed 733.12(f):* The petitioners proposed regulatory language which provides that whenever OSMRE or any interested person identifies any failure of the State to achieve a performance level in administering any part of its program the Director shall notify the State in writing and establish a period of time for correcting deficiencies not to exceed 90 days.

*Response:* Under the petitioners' proposal, the Director would be required to notify States upon any person's allegation of a State failure to meet a performance level. A similar proposal was previously considered by OSMRE (44 FR 14967, March 13, 1979). OSMRE's regulation at 30 CFR 733.12(a)(2) as originally proposed provided that a request by any person could trigger an evaluation. Commenters criticized the proposed evaluation provisions as being cumbersome and obstructive. After consideration of these comments OSMRE determined that verification is necessary to avoid the initiation of proceedings for unsubstantiated complaints. Thus, the present regulations require the Director to verify the allegations prior to performing an evaluation.

OSMRE believes the present regulations at 30 CFR 733.12(b) contain a reasonable threshold for initiating the process under 30 CFR Part 733. Under current rules, the Director is required to notify a State in writing when he has reason to believe that a State is not effectively administering, maintaining, or enforcing any part of its approved State program. Any attempt to further define the circumstances under which the Director must notify the State in writing of program deficiencies (through the use of performance levels) would essentially lock OSMRE into a non-discretionary oversight role. Under the petitioners' proposal, even trivial matters could become the subject of "733" notices.

Section 102(g) of the Act makes it clear that Congress intended for OSMRE to assist the States in developing and implementing State programs. OSMRE must carefully weigh all circumstances prior to initiating the process to withdraw approval of a State's program. OSMRE believes that the Director must have discretion to decide what course of action is appropriate in each unique situation and to consider the State's capability and intent to enforce its program when initiating the process under 30 CFR Part 733. OSMRE has developed a range of options to deal with deficiencies in a State's administration of its program. OSMRE considers the petitioners' proposal to be an unworkable and ineffective approach.

With respect to the petitioners' proposal that States be limited to 90 days to correct deficiencies, OSMRE cannot find any basis for adopting this proposal. The present regulations allow the Director discretion to establish a timetable for remedial actions appropriate to the deficiencies. The proposed 90-day limit for correcting deficiencies would be unworkable in certain cases. For instance, any problems requiring regulatory or statutory changes would almost certainly not be resolved in 90 days. The Director must retain the necessary flexibility to establish a reasonable time period which reflects the nature and extent of the identified deficiencies.

4. *Proposed 733.12(b)(3):* The proposed regulation provides that pending completion of any changes in a State program required by the Director, the States shall act in accordance with the required changes.

*Response:* OSMRE finds that the petitioners' proposal conflicts with the process established for the review and approval of State program amendments set forth under § 732.17 of OSMRE's regulations. The Federal rules explicitly prohibits a State from implementing any changes until approved as program amendments. Such program amendments cannot be approved until there has been an opportunity for public participation. In essence, petitioners are advocating State implementation of program changes before operators and other members of the public are able to comment on such changes. Furthermore, the petitioners' proposal would almost

certainly be illegal under State law in many, if not all, States. For these reasons, OSMRE does not support adoption of the proposal.

5. *Proposed 733.12(g):* The petitioners advocate that OSMRE publish written notice in the **Federal Register** of informal conferences held by OSMRE upon request of the State following the Director's written notice to the State pursuant to 30 CFR 733.12(b) of OSMRE's regulations.

*Response:* The preamble to the 1978 proposed rule stated that informal conference between OSMRE and the State would be open to the public. 43 FR 41678 (September 18, 1978). As a matter of policy, OSMRE has implemented that commitment and publishes notice in the **Federal Register** of all informal conferences to be held in connection with proceeding initiated under 30 CFR Part 733 and invites the public to attend. Therefore, OSMRE believes there is insufficient reason to conduct a rulemaking on the proposal as the public interest is adequately protected by OSMRE's practice under the current regulation.

6. *Proposed 733.12(d):* The proposed regulation stipulates that within 30 days after the period set for remedial action, the Director shall publish written findings in the **Federal Register.** If the findings show the State has failed to implement its program, the Director shall hold a hearing within 30 days.

*Response:* The existing regulation at 30 CFR 733.12(d) provides that if following any informal conference, the Director still has reason to believe the State is failing to implement its program adequately, OSMRE shall notify the State and the public specifying the basis for that belief and hold a public hearing within 30 days of the period set for remedial action. Under the petitioners' proposal the hearing would not be held until 60 days following the period set for remedial action, whereas under the current Federal rule the hearing would be held within 30 days following the remedial action period. Under the current rules, notice of the hearing would be published in the **Federal Register** together with an explanation of the reasons why OSMRE has determined a hearing is necessary. OSMRE believes the current rules provide for a more expeditious process than that proposed by the petitioners while providing for adequate public participation. The petitioners have not demonstrated problems with the current process or explained why their suggested process would be better.

7. *Proposed 733.12(i):* The petitioners proposed that upon completion of the hearing, the Director shall issue findings and in the event of negative findings, the Director shall revoke the Secretary's approval of the State program.

*Response:* The agency already has regulations at 30 CFR 733.12(e) which prescribe the agency's alternatives following the hearing held under 30 CFR 733.12(d). These procedures have worked in the past and have resulted in direct Federal enforcement of portions of two State programs (Tennessee and Oklahoma) and promulgation of a Federal program for Tennessee. Petitioners have not demonstrated why the current procedures are inadequate or that their suggested alternative is better.

In addition, the proposal would eliminate OSMRE's option under existing 30 CFR 733.12(e)(1) of substituting Federal enforcement of all or part of the State program and would permit only the complete withdrawal of program approval. OSMRE previously considered and rejected adding language to § 733.12 allowing immediate withdrawal of a State program when failure in administration results in a serious threat to the environment or public (44 FR 14969, March 13, 1979). OSMRE determined that such a proposal is outside the authority of the Act. Sections 504(b) and 521(b) of the Act specifically authorize direct Federal enforcement and require certain procedural steps to be taken before the Secretary may withdraw approval of a State program. Eliminating the Federal enforcement option removes a valuable tool that allows for alleviation of serious problems in a State, while permitting a State to retain certain functions. Moreover, elimination of direct Federal enforcement leaves the agency without any transitional enforcement authority between the time OSMRE withdraws program approval and implements a Federal program should the Secretary decide that complete or partial withdrawal of program approval is necessary.

The proposal also eliminates the option of partial withdrawal of a State program. OSMRE has previously considered and rejected the suggestion to delete this alternative (44 FR 14969, March 13, 1979). The provision allowing partial withdrawal is considered a necessary response for more serious breakdowns in administration where only a certain part of the program is affected. Authority for this requirement is contained in sections 201(c), 503, 504 and 521 of the Act. In addition, the proposal would be contrary to Section 521(b) of the Act which requires a finding that not only has the State failed to effectively administer and enforce its program, but that it has also failed to demonstrate its capability and intent to do so.

8. *Proposed 733.12(i)(3):* The proposed regulation provides that the decision to issue a State program evaluation or revoke a State program may be appealed by any person to the Interior Board of Land Appeals.

*Response:* Under section 526(a) of SMCRA, the Secretary's decision to withdraw program approval is reviewable by the Federal district courts. The jurisdiction of the Interior Board of Land Appeals as set forth under 43 CFR 4.1101 has not been expanded to include the authority to exercise final decisionmaking power of the Secretary with regard to decisions on State programs. Petitioners have not demonstrated why the current process is inadequate or that their suggested alternative would be better. With respect to evaluation findings, if any person is dissatisfied with the result of an annual evaluation, he has the right under 30 CFR 733.12(a) to request further review and analysis based upon any available information.

9. *Proposed 733.12(i) (4) and (5):* The proposed provisions specify that the Director will hold a hearing 30 days prior to revoking or returning a program.

*Response:* The current rules already provide that a hearing shall be held prior to approving or revoking a State's program. OSMRE's regulation at 30 CFR 733.12(d) provides that the Director shall hold a public hearing prior to making any determination that Federal enforcement of the State's program or withdrawal of approval of the State program, in whole or in part, is necessary. In the event a State program is revoked, the State would be required to submit a new program for the Secretary's approval under 30 CFR Part 732 in order to regain primary authority for regulating surface mining activities in the State. Under 30 CFR 732.11(b), the Director is required to conduct a hearing on a State program submission prior to the Secretary's decision to approve or disapprove it.

*Analysis of Petitioners' Reasons Why Petition Should Be Granted*

In addition to the section by section analysis of the petition set forth in the preceding portion of this decision document, this portion addresses the general concerns of the petitioners. As will be seen, some of OSMRE's general responses have already been recited in the analyses of specific suggested amendments.

1. *Reason:* The petitioners asserted that the petition should be granted because OSMRE regulations are

required by law. They further contended that OSMRE has promulgated two documents which fall within the Administrative Procedure Act (APA) definition of a "rule" but which have not been promulgated as rules in accordance with the APA.

*Response:* OSMRE has already promulgated regulations, as required by the APA and the Act, to implement its oversight responsibilities under the Surface Mining Act. The regulations at 30 CFR Parts 733, 842 and 843, among others, implement the oversights requirements of the Act. As to the petitioners' second contention, the two documents the petitioners refer to are not rules subject to the notice and comment requirements of section 553 of the APA. The two documents, "Plans and Procedures for the Evaluation of the States' Permanent Programs" (March 5, 1982) and "Sampling Method for Conducting Federal Inspections in States with Approved Surface Mining Regulatory Programs" (March 13, 1981), are non-binding, internal agency guidelines and procedures that are consistent with and implement the existing regulations. Neither document binds OSMRE or the States. Both documents call for the exercise of discretion and judgment in their application and the resulting analysis is itself subject to further review by agency management.

In any event, the issue of whether the two documents are rules subject to 5 U.S.C. Section 553 of the APA is not relevant to whether the amendments suggested in the petition should be granted or denied. The petition seeks amendments to OSMRE's existing regulations which should be analyzed on their own merit, independent of procedural consideration regarding two separate documents.

2. *Reason:* The petitioners contended the OSMRE has a statutory, non-discretionary duty to oversee State regulatory programs.

*Response:* OSMRE agrees that it has a statutory duty to oversee State regulatory programs and believes that it is currently fulfilling this obligation. OSMRE has promulgated rules, established systems and procedures and developed policy and guidance documents to carry out its statutory mandate to oversee State regulatory programs. Each of these has been discussed previously in this document. OSMRE does not agree, however, that successful performance of the Secretary's duties can occur without the judicious exercise of Federal authority. For example, section 521(b) clearly provides the Secretary with discretion to determine whether, on the basis of information available to him, there is adequate reason to believe that the State is failing to enforce its program. Exercise of such authority without the careful weighing of all relevant considerations and options available could constitute a failure to satisfy statutory authority.

The Surface Mining Act provides broad discretion to the Secretary to carry out his oversight responsibilities. The manner in which he has been implementing such responsibilities is consistent with judicially enunciated principles.[1]

3. *Reason:* The petitioners advocated that OSMRE establish a systematic method to measure and evaluate the effectiveness of State programs. They contended that OSMRE's current oversight documents fail to address many aspects of State regulatory programs.

*Response:* The specific standards which OSMRE utilizes for State program evaluations are the approved provisions of each State program. Procedures for evaluating the States' administration of their programs are set forth in OSMRE's rules and in policy and guidance documents which have been previously referenced. OSMRE policy and procedural documents provide for a comprehensive evaluation of State programs and cover the methods to be used for data collection and analysis including sampling methodologies. OSMRE's regulations at 30 CFR Part 733 set forth the criteria and procedures for instituting Federal enforcement of a State program or withdrawing approval of a State program. Thus, a systematic process for measuring and evaluating the administration of State programs is already in place.

4. *Reason:* It is the petitioners' belief that OSMRE has substituted improper procedures when it has identified failures of a State to enforce all or part of its program. They asserted that OSMRE has failed to notify States in accordance with 30 CFR Part 733 when States have failed to implement, administer, maintain or enforce their programs. They indicated that the amendments which they have proposed are intended to address the problem of OSMRE substituting other actions for formal "733" letters.

*Response:* Recognizing the need to ensure that States remedy problems identified by OSMRE during the evaluation process, OSMRE has developed a range of actions to compel State compliance. For instance, OSMRE procedures now require that OSMRE Field Office Directors work with the States to develop action plans and timetables for resolution of all identified problems. OSMRE has also developed other mechanisms to address a State's failure to implement its program in full compliance with the approved provisions. The process under Part 733 of OSMRE's regulations for instituting Federal enforcement of a State program or withdrawing approval of a State program has been utilized in situations in which OSMRE's other attempts to bring a State program into conformance have failed. Any transfer of authority involves a severe strain on the resources and personnel of both the Federal government and the State. Revocation of a State's program is a serious action which OSMRE believes should be taken when the Secretary has determined that the State has failed both to effectively implement its program and to demonstrate the capability and intent to enforce its program. Clearly, OSMRE must monitor the enforcement of State programs but the Secretary must retain discretion with respect to initiating the revocation process.

5. *Reason:* The petitioners pointed out that SMCRA requires public participation in enforcement of State programs. They contended that under OSMRE's current regulations, the public has no procedure for participating in OSMRE's evaluations of State programs.

*Response:* OSMRE's existing regulations provide numerous opportunities for public input into the regulatory process. In fact, OSMRE's regulations are replete with opportunities for the public to review and comment on State actions. For instance, under 30 CFR 842.12, any person may request a Federal inspection, and under 30 CFR 733.12(a), any person may request the Director to evaluate a State program. Thus, if a citizen has information that contradicts evaluation findings contained in

---

[1] In *City of Seabrook v. Costle*, 659 F. 2d 1371, 1374 (5th Cir. 1981), the court held that where enforcement actions are concerned, administrative agencies should be afforded broad discretion both in initiating such actions and in taking "the preliminary investigatory steps that would provide the basis for enforcement action." The court was interpreting section 113 of the Clean Air Act, 42 U.S.C. 7413, which contains a provision very similar to section 521(b) of the Act. Section 113 provides:

> Whenever on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding.

The plaintiffs argued that the Administrator had a nondiscretionary duty to make such findings on the basis of information available to him. The court disagreed, based upon the tradition of broad prosecutorial discretion described above.

OSMRE's annual reports on State programs, the citizen may provide that information to OSMRE and request that an evaluation be conducted. Also, as a matter of policy, OSMRE seeks public input at the beginning of each evaluation period prior to formulating its oversight strategy for the upcoming year. Upon completing the annual evaluation report for a State, OSMRE publishes notice in the **Federal Register** announcing the availability of the report. Thus, initiation of a rulemaking action on the proposal is not necessary or justified at this time.

**Public Comment**

OSMRE received 39 comments on this petition for rulemaking. Of those, 18 were comments received from State regulatory authorities and 16 from coal companies and industry groups. The remaining five comments were received from a U.S. Congressman, a State official, an environmental group, an interested person and the petitioners. Thirty-two of the commenters supported rejection of the petition, four supported acceptance of the petition and three of the commenters did not specify a position.

The petitioners themselves were one of the four commenters supporting acceptance of the petition. The reasons they offered in their letter were essentially the same as those provided in the petition. They commented that the present oversight program has resulted in inadequate and inconsistent evaluations, has excluded the public from participation in matters that affect its interests and has violated the agency's legal mandates. For the reasons discussed above OSMRE believes that its current oversight program complies with OSMRE's statutory obligations relative to the evaluation of State programs. OSMRE's regulations, together with its oversight policy and guidance documents, provide for the evaluation of all components of State programs in accordance with uniform procedures. OSMRE continues to seek improvement of its data collection and evaluation techniques to ensure the accuracy of its findings and conclusions about the States' administration of their programs.

On an annual basis, OSMRE seeks input on its oversight procedures from the States and other interested persons, and modifications are made to policy and guidance documents to incorporate improved strategies for evaluating State performance. OSMRE believes the existing regulations and procedures provide numerous opportunities for public participation in OSMRE's evaluation process.

The West Virginia Highlands Conservancy commented that it supports the petition but did not offer any specific rationale as to why OSMRE should accept it.

The Pennsylvania Department of Environmental Resources (DER) indicated that it supports the efforts of the petitioners to set up a formalized process for OSMRE to review and evaluate State mining programs. The State commented that it believed there is a need to establish program measures to determine the adequacy of States' performance. DER encouraged OSMRE to develop a guidance document that specifies the procedures for evaluating State programs which includes the statistical approach to be utilized and the justification as to the validity of the statistical analyses.

As previously discussed, OSMRE utilizes the approved provisions of each State program as the criteria for evaluating State performance. OSMRE's "Format and Outline for State Program Evaluations" and other oversight guidance documents establish uniform procedures for the evaluation of State programs including OSMRE's statistical sampling methodologies. Efforts are being made to improve OSMRE's data collecton and analysis techniques within the agency.

Maryann Lunderman, Attorney, also submitted certain comments supporting the petitioners' proposals. She supports the development of State evaluation procedures that are uniform and in accordance with the standard in SMCRA and urged OSMRE to publish proposed procedures in the **Federal Register** and provide the public an opportunity to review and comment on them. She further commented that the public should have the opportunity to review and comment on the annual evaluations without delaying the evaluation process.

As previously discussed OSMRE has developed and is presently using uniform procedures for evaluating the States's administraton of approved programs under SMCRA. OSMRE will continue to examine mechanisms to broaden public participation in the evaluation process without sacrificing the timeliness of the evaluation reports.

**Final Decision**

Based upon the foregoing analysis and comments, I am denying the petition to initiate rulemaking. OSMRE already has regulations in place which sufficiently detail the criteria and procedures for evaluating State regulatory programs. The petitioners have not persuaded me that the issues that concern them, previously considered in two rulemakings on the same subject, warrant revision of the regulations. OSMRE will continue its efforts to improve the quality and reliability of its evaluation methodologies. A discussion of these efforts is included in the above analysis of the petitioners' proposals. OSMRE is committed to making whatever modifications are necessary to its existing policies and procedures to ensure fair, consistent and comprehensive evaluations.

[FR Doc. 87-7540 Filed 4-3-87; 8:45 am]
BILLING CODE 4310-05-M

---

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 09-87-02]**

## Special Local Regulations; Budweiser Trophy Race—Detroit River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The Coast Guard is considering a proposal to establish Special Local Regulations for the Budweiser Gold Cup (formerly Stroh Thunderfest) to be held on the Detroit River. This event will be held on 9, 10, 11, and 12, July 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

**DATE:** Comments must be received on or before May 4, 1987.

**ADDRESSES:** Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

**FOR FURTHER INFORMATION CONTACT:** CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09-87-02) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be

acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this regulation are CWO GERALD M. TRACKIM, project officer, Office of Search and Rescue and LCDR C.V. MOSEBACH, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The Budweiser Trophy Race will be conducted on the Detroit River on the 9, 10, 11 and 12 July 1987. This event will have an estimated 25 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

**Economic Assessment and Certification**

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignficant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economical impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a larger number of spectation craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35–0902 to read as follows:

**§ 100.35–0902 Budweiser Trophy Race—Detroit River.**

(a) *Regulatory Area.* That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bound on the west by the Belle Isle Bridge and on the east a north-south line drawn through the Waterworks Intake Crib Light [LL 1022].

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorge from 7:30 A.M. (local time) until 7:00 P.M. on 9, 10, 11, and 12 July 1987.

(2) An escape zone for recreational craft will also be establishment from the Rooster Tail Marina out to Lake St. Clair.

(3) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. Those rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistel or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) *Effective Dates.* These regulations will become effective on 9 July 1987 and terminate on 13 July.

Dated: March 25, 1987.

**L.W. Garrett,**

*Chief of Staff, Ninth Coast Guard District, Captain, U.S. Coast Guard.*

[FR Doc. 87–7580 Filed 4–3–87; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 100**

**[CGD 09–87–01]**

## Special Local Regulations; 1987 Put In Bay Air Show, South Bass Island, OH; Lake Erie

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal to establish Special Local Regulations for the Annual Put In Bay Air Show which is to be conducted adjacent to Put In Bay Airport, South Bass Island on the 14th of June, 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** Comments must be received on or before April 24, 1987.

**ADDRESSES:** Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007D, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

**FOR FURTHER INFORMATION CONTACT:** CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD 09–87–01] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and

LT R.A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The 1987 Put In Bay Air Show will be conducted adjacent to Put In Bay Airport, South Bass Island on the 14th of June, 1987. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event within this section of Put In Bay. A Coast Guard patrol vessel will be located at strategic locations along the regulated area to stop vessel traffic.

**Economic Assessment and Certification**

This proposed regulation is considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 AND 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0914 to read as follows:

**§ 100.35—0901 Put In Bay Air Show, South Bass Island—Lake Erie.**

The following area will be closed to vessel navigation or anchorage from 12:00 P.M. (local time) until 4:00 P.M. on 14 June, 1987.

(a) *Restricted Area.* That portion of Lake Erie enclosed by a line running from a point at 41 degrees 34 minutes 28 seconds North, 82 degrees 52 minutes West to a point at 41 degrees 34 minutes 28 seconds North, 82 degrees 51 minutes 33 seconds West (Moore Point) to a point at 41 degrees 33 minutes 50 seconds North, 82 degrees 52 minutes West to a point at 41 degrees 33 minutes 50 seconds North, 82 degrees 51 minutes 43 seconds West (Sugar Rock) thence a point at 41 degrees 34 minutes 28 seconds North, 82 degrees 52 minutes West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer, vessels will be operated at a no make speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn form vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(c) *Effective Dates.* These regulations will become effective on 14 June 1987 and terminate on 15 June 1987.

Dated: March 16, 1987.

**A.M. Danielsen,**

*Radm, U.S. Coast Guard Commander, Ninth Coast Guard District.*

[FR Doc. 87–7561 Filed 4–3–87; 8:45 am]

BILLING CODE 4910–14–M

---

**VETERANS ADMINISTRATION**

**38 CFR Part 17**

**State Home Facilities**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendments.

**SUMMARY:** The Veterans Administration (VA) is amending its medical care regulations (38 CFR Part 17) to implement a number of statutory changes. Specifically, these regulations will implement section 105 of the Veterans' Health Care Act of 1984 (Pub. L. 98–528) which enables the VA to participate in up to 65 percent of the cost of acquisition of an existing facility or facilities by a State for use as a State home. The cost of acquisition plus renovation cannot exceed the estimated cost of an equivalent new State home facility. Purchase of land is excluded. This new authority enables the use of existing facilities and avoids the cost and time associated with new construction.

The amendments will also establish regulations for deferring approval of applications if a State does not have adequate financial support by July 1 of the fiscal year in which the VA notifies the State of the availability of Federal funds. This change implements provisions of the Veterans' Administration Health Care Amendments of 1985 (Pub. L. 99–166) and the Veterans' Benefits Improvements and Health Care Authorization Act of 1986 (Pub. L. 99–576). These Acts require the VA to defer applications for which Federal funds are available and which will meet all other requirements for a grant if by July 1 of the Federal Fiscal Year in which VA notifies the State of available funds, the State has not provided adequate financial support. The funds resulting from deferred projects may be applied to eligible nursing home and domiciliary projects which would not have been funded during the fiscal year but for the deferral and which will meet all grant requirements by the end of this fiscal year, and to which the Administrator has accorded the highest priority.

The amendment will also promulgate the regulations needed to accord priority to State home construction and acquisition grant projects as required by section 224 of the Veterans' Benefits Improvements and Health Care Authorization Act of 1986. Section 224 of the Act requires the VA to accord priority to applications for State veterans home grants and requires VA to establish a priority list by July 1 of each calendar year for State home projects for which applications have been submitted to VA. Grants will be awarded from the list during the next Federal Fiscal Year beginning October 1 of the calendar year in which the priority list was made, subject to the availability of Federal funds. The proposed amendment would implement

BEST COPY AVAILABLE

the requirements in the law that the VA accord priority to projects described in applications for Federal assistance for State veterans nursing home and domiciliary projects in the following order:

(1) Projects for which States have made available adequate State financial support (matching funds) so that the projects can proceed upon approval of the grant without the need for further State action to make funds available;

(2) Projects from States which have not received VA grant assistance for the construction or acquisition of State veterans home facilities;

(3) Projects from States which the Administrator determines to have a greater need for State veterans nursing home or domiciliary beds than other States; and

(4) Projects meeting other criteria the Administrator determines appropriate.

In developing the regulations to implement this priority framework, it was necessary to anticipate the likelihood that several applications might be accorded the same priority within a priority group. To assure a predictable, equitable mechanism for resolving questions of relative ranking among projects, the proposed regulatory amendemnt establishes a framework for determining such ranking. For example, to the extent that several projects are placed in "Priority Group 1" based on having made sufficient State funds available, these projects would be ranked by applying the criteria applicable to the next lower priority group (i.e. priority group 2). Highest priority among them would be given to projects from a State or States which had not previously received a grant for construction or acquisition under the program. If it becomes necessary to invoke a second tie-breaker among these projects in Priority Group 1, the proposed regulatory amendment calls for the VA to apply the criteria of the next lower priority group, i.e., Priority Group 3, so that priority would be given to projects from States determined to have a greater need for State veterans nursing home or domiciliary beds than other States.

At the same time, the VA is proposing a regulation to comply with the Single Audit Act of 1984 (Pub. L. 98–502). This Act, implemented in 38 CFR Part 41, establishes the uniform audit requirements and policy for State governments that receive Federal assistance from the VA. The proposed regulation which directs the State to follow these requirements and policy should reduce the number of Federal audits of State governments. Finally, certain requirements are being deleted because they are outdated and others are being updated and clarified.

**DATES:** Comments must be received before May 6, 1987.

**ADDRESS:** Interested persons are invited to submit written comments, suggestions, or objections to: Administrator of Veterans Affairs (217A), Veterans Administration, 810 Vermont Avenue, NW., Washington DC 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office, Veterans Services Unit, Room 132, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until April 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** F. Brent Baker (202) 233–3854.

**SUPPLEMENTARY INFORMATION:** Provisions of 38 CFR Part 17 regarding the VA's State Home Program need updating and revising to implement pertinent sections of the following Public Laws: Pub. L. 98–502 (Single Audit Act of 1984); Pub. L. 98–528 (Veterans' Health Care Act of 1984), which provides for the Federal Acquisition of State Home facilities as long as the total cot of acquisition of the facility including any expansion, remodeling, and/or alterations will not be greater than the estimated cost of construction of an equivalent new facility; Pub. L. 99–166 (Veterans' Health Care Amendments of 1985) which provides regulatory authoirty to defer approval of an application for a State home construction or acquisition grant if the State does not have adequate State financial support by July 1 following receipt of a VA notice of availability of funds; and Pub. L. 99–576 (Veterans' Benefits Improvements and Health Care Authorization Act of 1986), which provides regulatory authority to accord priority to request for Federal assistance for the construction or acquisition of a State veterans nursing home or domiciliary. The VA proposes to make these amendments and at the same time delete outdated construction standards and clarify and update some of the technical details of the construction standards currently found in 38 CFR 17.170 through 17.177.

These proposed regulatory amendments to VA regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation, on the basis that they will not have an annual effect on the economy of $100 million or more, they will not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, regions, nor will they have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that these proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 through 604. The reason for this certification is that these proposed regulatory amendments will affect only construction or acquisition grants for State Veterans Homes. They will, therefore, have no significant impacts on small entities (i.e. small business, small private and nonprofit organizations, and small governmental jurisdictions).

The catalog of Federal Domestic Assistance program numbers are 64.014, 64.015, and 64.016 and 64.005.

**List of Subjects in 38 CFR Part 17**

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: March 16, 1987.

**Thomas K. Turnage,**
*Administrator.*

## PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is proposed to be amended as follows:

1. Section 17.168 is added to read as follows:

**§ 17.168 Audit of State homes.**

The State must comply with the Single Audit Act of 1984 (Part 41 of this title.) (31 U.S.C. 7501–7507)

2. The centerheading and note which precede § 17.170 are revised to read as follows:

**Grants to States for Construction or Acquisition of State Home Facilities**

**Note:** The purpose of the regulations concerning grants to States for construction or acquisition of State home facilities is to effectuate the provisions of 38 U.S.C. 5031 through 5037 and to assist the several States

to construct or acquire State home facilities for furnishing domiciliary or nursing home care to veterans, and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home or hospital care to veterans in State homes.

3. In § 17.170 the introductory text, paragraphs (d) and (e) are revised and paragraphs (f), (g), (h), (i),and (j) are added to read as follows:

**§ 17.170 Definitions.**

For the purpose of the regulations concerning grants to States for construction or acquisition of State home facilities:

* * * * *

(d) The term "cost of construction" means the amount which the Administrator determines to be necessary for a State Home construction project, including architect fees, supervision and site inspection services, printing and advertising costs, but excluding land acquisition costs. (38 U.S.C. 5031(d))

(e) The term "State agency" means that State agency or instrumentality of a State designated by a State as authorized to apply for assistance to construct or acquire State home facilities for veterans and thereafter administer those facilities.

(f) The term "acquisition" means the purchase of a facility for use as a State veterans home for the provision of domiciliary and/or nursing home care to veterans. An acquisition includes any remodeling or alteration needed to meet existing standards.

(g) The term "cost of acquisition" means the amount which the Administrator determines to be necessary to acquire and renovate a facility for the provision of domiciliary or nursing home care as a State home.

(h) As used in connection with a request from a State for a grant to assist in the construction or acquisition of a State veterans home:

(1) The term "preapplication" means the State's submission to the Administrator of a preapplication for Federal Assistance on Standard Form 424 with an accompanying space program and schematics for the project; and

(2) The term "application" means the submission to the Administrator of an application for Federal Assistance for a project on Standard Form 424 after the Veterans Administration has reviewed the State's preapplication for the project and informed the State that it is a feasible project for Federal participation.

(i) The term "life safety project" means a State veterans nursing home or domiciliary project which would remedy an existing condition which has been cited by the Veterans Administration, a State or local agency (including a Fire Marshal), or the Joint Commission on Accreditation of Hospitals, as threatening to the lives or safety of patients within the facility.

(j) The term "renovation project" means a project to expand, remodel or alter a State veterans nursing home or domiciliary which is not a life safety project and does not result in the addition of domiciliary or nursing home beds.

4. In § 17.171, paragraph (a) is revised to read as follows:

**§ 17.171 Maximum number of nursing home beds required for veterans by State.**

(a) For purposes of these regulations, Appendix A prescribes the maximum number of beds which may be necessary to provide adequate nursing home care and domiciliary care to veterans residing in each State. When the nursing home beds to be constructed or acquired in a State will result in more than 2½ beds per 1,000 veterans, the State shall provide sufficient justification for the Administrator to determine that the additional beds are required in that State. In making this determination, the Administrator shall consider the following factors:

* * * * *

5. Section 17.172 is revised to read as follows:

**§ 17.172 Scope of grants program.**

Subject to the availability of an appropriation, a grant may be made to a State which has submitted an application for assistance to construct (or to acquire) State home facilities (if the application has been approved by the Administrator) as prescribed in §§ 17.170 through 17.177.

6. In § 17.173, paragraph (e) is redesignated as paragraph (h); the introductory text of paragraph (a), paragraphs (a)(1), (a)(4), (b)(5), (b)(8), (c) and (d) are revised, new paragraphs (a)(5), (b)(9), (b)(10), (e), (f), and (g) are added to read as follows:

**§ 17.173 Applications with respect to projects.**

(a) A State desiring to receive Federal assistance for construction or acquisition of a State home facility shall submit to the Administrator a preapplication (if the need for Federal funding exceeds $100,000) and an application for such assistance in compliance with the uniform requirements for grant-in-aid to State and local governments prescribed in the Office of Management and Budget Circular No. A–102, Revised. The applicant will submit as part of the application or as an attachment thereto:

(1) The amount of the grant requested with respect to such project which may not exceed 65 percent of the estimated cost of construction or acquisition and construction of such project.

* * * * * *

(4) Any comments or recommendations made by appropriate State (and areawide) clearinghouses pursuant to policies outlined in Executive Order 12372, Intergovernmental Review of Federal Programs (Part 40 of this title).

(5) If construction outside the walls of an existing structure will involve more than 75,000 net square feet (NSF), the application shall include an environmental assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act of 1969. The Environmental Assessment shall briefly describe the possible beneficial and/or harmful effects which the project may have on the following impact categories: (i) Transportation, (ii) air quality, (iii) noise, (iv) solid waste, (v) utilities, (vi) geology, (soils/hydrology/flood plains), (vii) water quality, (viii) land use, (ix) vegetation, wildlife, aquatic, ecology/wetlands, (x) economic activities, (xi) cultural resources, (xii) aesthetics, (xiii) residential population, (xiv) community services and facilities, (xv) community plans and projects, and (xvi) other. If an adverse environmental impact is anticipated, then the action taken to minimize the impact should be explained in the environmental assessment.

(b) * * *

(5) The rates of pay for laborers and mechanics engaged in construction of the project will not be less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1931 (40 U.S.C. 276a through 276a–5) known as the Davis-Bacon Act. (38 U.S.C. 5035(a)(8))

* * * * *

(8) The structures constructed will be of fire, earthquake, and other natural disaster resistant construction. (38 U.S.C. 5005)

(9) In the case of a project for acquisition of a facility, the State agency must provide reasonable assurance that the total cost of acquisition of the facility, including any expansion, remodeling and alteration to meet all building requirements and codes, and for all other purposes, shall not be greater than the estimated cost of

construction of an equivalent new State home facility. (38 U.S.C. 5035(a)(9))

(10) An audit will be performed in compliance with the Single Audit Act of 1984 (See Part 41 of this title). (31 U.S.C. 7501–7507)

(c) Upon receipt of an application for a grant for a project for construction or acquisition of a State veterans home, the Administrator or designee shall:

(1) Determine whether the application meets the requirements of 38 U.S.C. 5035 and §§ 17.170 through 17.177 and Appendix A to § 17.171 of this title and whether the application contains sufficient information for the Administrator to establish its priority. The administrator shall:

(i) Consider the following factors when making a determination for purposes of this section that a project is primarily a State veterans nursing home, domiciliary or hospital project:

(A) The number of State veterans nursing home, domiciliary, and/or hospital beds that would be constructed or acquired by the project;

(B) The amount of nursing home, domiciliary, or hospital project space that will result from the construction or acquisition project;

(C) The estimated number of veteran patients who would benefit from the construction or acquisition project. (38 U.S.C. 5035(b))

(2) Notify the State submitting the application whether the application conforms which such requirements, and, if it does not, notify the State

(i) Of the actions necessary to bring the application into conformance with those requirements; and

(ii) If the application provides insufficient information for the Administrator to establish its priority under paragraph (c)(1) of this section and

(iii) (If such application provides sufficient information for the Administrator to establish its priority) determine the priority of the project described in the application in relation to all other projects in accordance with the criteria set forth in this paragraph. The priority of any project is subject to change upon receipt of information concerning that or any other project. In establishing a project's priority, the Administrator shall rank projects from the highest to lower priority in the order of priority groups set forth in this paragraph, giving the projects in Group 1 the highest priority and the projects in Group 6 the lowest. Except as otherwise provided, where more than one project is ranked in a single priority group, the Administrator shall rank those projects by applying the criteria applicable to the next lower priority group. Where such ranking results in more than one project being given the same priority, the Administrator shall rank those projects, except as otherwise provided, in accordance with the criteria applicable to the next lower priority group until all projects are ranked with a different priority.

The priority groups are:

(A) *Priority Group 1:* A State veterans nursing home or domiciliary project for which a State, in the judgment of the Administrator, has made sufficient funds available for construction and/or acquisition so that the project may proceed upon approval of the grant which the State has requested without further action required by the State to make such funds available for that purpose, shall be accorded first priority. A State's enactment into law of a bill appropriating the State's (matching) funds for the project will be accepted by the Administrator as demonstrating that the State has made sufficient funds available for construction and/or acquisition of the project.

(B) *Priority Group 2:* A State veterans nursing home or domiciliary project from a State which has not received a construction or acquisition grant from the Administrator under 38 U.S.C. 5035 shall be accorded second priority.

(C) *Priority Group 3:* A State veterans nursing home or domiciliary bed producing or non-bed producing project from a State, which the Administrator determines, pursuant to this paragraph, to have a greater need for State veterans nursing home or domiciliary beds than other States which have submitted applications, shall be accorded third priority. The Administrator shall base such determinations on the Administrator's calculation, pursuant to this paragraph, of the State's unmet need for such beds. A State which has submitted an application for a project which the Administrator determines to be primarily a nursing home project will be deemed to have a greater need for State veterans nursing home beds than other States if the Administrator determines that the State has an unmet need for such beds of between 91 percent and 100 percent. The Administrator shall determine a State's unmet need for State veterans nursing home beds by dividing the number of that State's nursing home beds authorized by the Veterans Administration in State Veterans Homes as of June 15 of the current year by the number of beds needed to provide adequate nursing home care to veterans residing in that State as prescribed by the Administrator in Appendix A. The quotient, expressed as a percentage, will be subtracted from 100 percent. The difference constitutes the State's unmet need for State veterans nursing home beds for purposes of this section. The Administrator shall determine a State's unmet need for domiciliary beds by dividing the number of that State's domiciliary beds authorized by the Veterans Administration as of June 15 of the currrent year by the number of beds needed to provide adequate domiciliary care to veterans residing in that State prescribed by the Administrator in Appendix A. The quotient, expressed as a percentage will be subtracted from 100 percent. The difference constitutes the State's unmet need for State veterans domiciliary beds for purposes of this section.

(D) *Priority Group 4:* A State veterans nursing home or domiciliary project, which is not assigned a higher priority under this section, shall be accorded fourth priority. If there is more than one project in this priority group, the Administrator shall assign each project a value as set forth in the following table in accordance with the Administrator's determination of the type of project:

| Type of project | Value |
|---|---|
| Life-Safety Project for Nursing Home Facility | 10 |
| Project Resulting in the Construction or Acquisition of Nursing Home Beds | 10 |
| Life-Safety Project for Domiciliary Facility | 9 |
| Project Resulting in the Construction or Acquisition of Domiciliary Beds | 8 |
| Nursing Home Renovation Project | 6 |
| Domiciliary Renovation Project | 4 |

If the Administrator determines that a project could be included in two or more of the above-listed types so that the project, in the judgment of the Administrator, cannot be accurately characterized as to type by reference to any single type listed above, the Administrator shall determine the numerical value to be assigned a project by calculating the average of all the numerical values associated with all types of projects in which the project could be included. The Administrator shall rank projects in accordance with the numerical values assigned, with the highest priority being assigned to the project with the highest numerical valuation. Where this results in two or more projects with the same priority, these projects shall be ranked in the order in which the Administrator received the State's preapplication for that project giving highest priority to the project for which a preapplication was received first. If a preapplication was not received by the Administrator for a project, the project shall be ranked with other projects using the date on which

the Administrator received the application for the projects.

(E) *Priority Group 5:* A project which is primarily designed to renovate a State veterans hospital facility but which would not expand a State's capacity to furnish hospital care in a State veterans home shall be accorded fifty priority. Where more than one project is ranked in this priority group, the Administrator shall rank them in the order in which the Administrator received the State's preapplication for the project and shall give highest priority to the project for which a preapplication was received first. If a preapplication was not received by the Administrator for a project, the project shall be ranked with other projects using the date on which the Administrator received the application for the project.

(F) *Priority Group 6:* A hospital project which would expand a State's capacity to furnish hospital care in a State veterans home shall be accorded no priority. Where more than one such project has been submitted, the Administrator shall rank them in the order in which the Administrator received the State's preapplication for the projects and shall assign the lowest ranking to the project for which a preapplication was received last. If a preapplication was not received by the Administrator for a project, the project shall be ranked with other projects using the date on which the Administrator received the application for the project. (38 U.S.C. 5035(b))

(d) The Administrator shall establish as of July 1 of each year a list of projects in the order of their priority on June 15 of that year as determined pursuant to paragraph (c) of this section. To the extent that Federal funds are available, the Administrator shall award grants in the order of their priority on this list during the fiscal year beginning on October 1 of the calendar year in which the list is made. Once the list is established for the purpose of awarding construction grants, the Administrator shall not add projects or change the list in any way except to delete a project at the request of the State which has applied for grant assistance for that project or upon the award by the Administrator of a grant for a project on the list. (38 U.S.C. 5035(b)(4))

(e)(1) The Administrator shall defer approval of an application that otherwise meets the requirements of 38 U.S.C. 5035, if the State which submitted the application does not, by July 1 of the Federal fiscal year in which the State is notified by the Assistant Chief Medical Director for Geriatrics and Extended Care of the availability of Federal funding for a grant for the project described in the application, demonstrate that the State has provided adequate financial support (matching funds) for such project. A State's enactment into law of a bill appropriating the State's share of funding for the project is acceptable to demonstrate that the State has provided adequate financial support (matching funds) for the project. The Veterans Administration will evaluate other types of assurances on a case by case basis.

(2) The Administrator will apply Federal funds, which had been intended for an application which has been deferred pursuant to paragraph (e)(1) of this section to applications for State veterans nursing home or domiciliary projects that:

(i) Would not have been funded during the fiscal year but for the deferral,

(ii) Will meet the requirements of these regulations by the end of the Federal fiscal year, and

(iii) The Administrator has accorded the highest priority under paragraph (c) of this section.

(3) An application deferred in accordance with paragraph (e)(1) of this section shall be accorded priority in any subsequent Federal fiscal year ahead of applications that had not been approved before the first day of the Federal fiscal year in which the deferred application was first approved. (38 U.S.C. 5035(b)(5))

(f) The amount of a grant under these regulations shall be paid to the applicant or, if designated by the applicant, the State home for which such project is being developed or any other agency or instrumentality of the applicant. Funds paid for an approved project will be used solely for carrying out such project as so approved. (38 U.S.C. 5035(d)(1))

(g) Any amendment of any application whether or not approved under paragraph (d) of this section will be subject to review and approval pursuant to the regulations concerning grants to States for construction of State home facilities in the same manner as an original application. (38 U.S.C. 5035(e))

* * * * *

7. Section 17.174 is revised to read as follows:

**§17.174 Disallowance of a grant application and notice of a right to hearing.**

(a) Before disapproving an application submitted under § 17.173, the Administrator shall notify the applicant of the opportunity for a hearing. The notice shall state:

(1) That the application's disapproval has been proposed;

(2) The basis for the proposed disapproval;

(3) That a request for a hearing should be received in writing by the Administrator within 40 days from the date of this notice;

(4) That failure of an applicant to request a hearing as provided for by this section or to appear at a hearing for which a date has been set shall be deemed a waiver of the opportunity for a hearing.

(b) If an applicant requests a hearing after the expiration of the 40-day period, the Administrator may accept the request.

(c) An applicant who requests a hearing under the procedures specified by this section shall be notified of the time and place for the hearing. If the time or place set is inconvenient for the applicant, the Administrator may change the time or place for the hearing.

(d) The Administrator shall conduct the hearing. The hearing will be informal. The rules of evidence will not be followed. Witnesses shall testify under oath or affirmation. A record or transcript of the hearing shall be made. The Administrator who conducts the hearing may exclude from consideration irrelevant, immaterial, or unduly repetitious evidence or testimony. (38 U.S.C. 5035(c))

8. Section 17.175 is revised to read as follows:

**§ 17.175 Recapture provisions.**

(a) Except as provided in paragraph (b) of this section, if within 20 years after completion of any project with respect to which a grant has been made under the regulations concerning grants to States for construction or acquisition of State home facilities, a facility constructed or acquired as part of such project ceases to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home or hospital care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant or from the then owner of such construction 65 percent of the current value of such facility (but in no event and amount greater than the amount of assistance provide for such under these regulations), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated. (38 U.S.C. 5036)

(b) In the case of a grant where the Veterans Administration would provide between 50 and 65 percent of the estimated cost of expansion, remodeling, or alteration of an existing State Home facility recognized by the Veterans Administration in accordance with

§ 17.165, the Administrator may at the time of the grant provide for the following recovery periods associated with the following grant amounts.

| Grant Amount (dollars in thousands) | Recovery period (in years) |
|---|---|
| 0-250 | 7 |
| 251-500 | 8 |
| 501-750 | 9 |
| 751-1,000 | 10 |
| 1,001-1,250 | 11 |
| 1,251-1,500 | 12 |
| 1,501-1,750 | 13 |
| 1,751-2,000 | 14 |
| 2,001-2,250 | 15 |
| 2,251-2,500 | 16 |
| 2,501-2,750 | 17 |
| 2,751-3,000 | 18 |
| Over 3,000 | 20 |

(38 U.S.C. 5036)

If the magnitude of the Veterans Administration's contribution is below 50 percent of the estimated cost of the expansion, remodeling, or alteration of an existing State home facility recognized by the Veterans Administration in accordance with § 17.165, the Administrator may authorize a recovery period between 7 and 20 years depending on the grant amount involved and the magnitude of the project.

9. Section 17.176 is revised to read as follows:

**§ 17.176 State to retain control of operations.**

Neither the Administrator of Veterans Affairs nor any employee of the Veterans Administration shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State home constructed or acquired with assistance received under the regulations concerning grants to States for construction and acquisition of State home facilities except as prescribed in these regulations and § 17.167. (38 U.S.C. 5037)

**§ 17.177 [Amended]**

10. In § 17.177, paragraph (a)(4)(iii) is removed.

11. Appendix A is revised to read as follows:

**Appendix A (See § 17.171)—State Home Facilities for Furnishing Nursing Home Care**

The maximum number of beds to provide adequate nursing home care and domiciliary care to veterans residing in each State not to exceed four beds per 1,000 veteran population for nursing home care and two beds per 1,000 veteran population for domiciliary care is established as follows:

| State | Veteran population[1] | No. of beds: NHC | No. of beds: Dom |
|---|---|---|---|
| Alabama | 436,000 | 1,744 | 872 |
| Alaska | 50,000 | 200 | 100 |
| Arizona | 383,000 | 1,532 | 766 |
| Arkansas | 270,000 | 1,080 | 540 |
| California | 3,003,000 | 12,012 | 6,006 |
| Colorado | 401,000 | 1,604 | 802 |
| Connecticut | 413,000 | 1,652 | 826 |
| Delaware | 77,000 | 308 | 154 |
| District of Columbia | 65,000 | [illegible] | 130 |
| Florida | 1,392,000 | 5,568 | 2,784 |
| Georgia | 632,00 | 2,528 | 1,264 |
| Hawaii | 99,000 | 396 | 198 |
| Idaho | 121,00 | 484 | 242 |
| Illinois | 1,348,000 | 5,392 | 2,696 |
| Indiana | 680,000 | 2,720 | 1,360 |
| Iowa | 354,000 | 1,416 | 708 |
| Kansas | 300,000 | 1,200 | 600 |
| Kentucky | 405,000 | 1,620 | 810 |
| Louisiana | 453,000 | 1,812 | 906 |
| Maine | 154,000 | 616 | 308 |
| Maryland | 544,000 | 2,176 | 1,088 |
| Massachusetts | 720,000 | 2,880 | 1,440 |
| Michigan | 1,117,000 | 4,468 | 2,234 |
| Minnesota | 525,000 | 2,100 | 1,050 |
| Mississippi | 245,000 | 980 | 490 |
| Missouri | 647,000 | 2,588 | 1,294 |
| Montana | 108,000 | 432 | 216 |
| Nebraska | 191,000 | 764 | 382 |
| Nevada | 137,000 | 548 | 274 |
| New Hampshire | 138,000 | 552 | 276 |
| New Jersey | 925,000 | 3,700 | 1,850 |
| New Mexico | 162,000 | 648 | 324 |
| New York | 1,951,000 | 7,804 | 3,902 |
| North Carolina | 660,000 | 2,640 | 1,320 |
| North Dakota | 69,000 | 276 | 138 |
| Ohio | 1,385,000 | 5,540 | 2,770 |
| Oklahoma | 397,000 | 1,588 | 794 |
| Oregon | 400,000 | 1,600 | [illegible] |
| Pennsylvania | 1,593,000 | 6,372 | 3,186 |
| Rhode Island | 126,000 | 504 | 252 |
| South Carolina | 351,000 | 1,404 | 702 |
| South Dakota | 80,000 | 320 | 160 |
| Tennessee | 543,000 | 2,172 | 1,086 |
| Texas | 1,732,000 | 6,928 | 3,464 |
| Utah | 155,000 | 620 | 310 |
| Vermont | 64,000 | 256 | 128 |
| Virginia | 664,000 | 2,656 | 1,328 |
| Washington | 628,000 | 2,512 | 1,256 |
| West Virginia | 243,000 | 972 | 486 |
| Wisconsin | 574,000 | 2,296 | 1,148 |
| Wyoming | 67,000 | [illegible] | 134 |

[1] Estimate as of March 31, 1983.

*Source:* Office of Reports and Statistics, VA. (Based on last available Bureau of the Census data.) (January 1984)

[FR Doc. 87-7556 Filed 4-3-87; 8:45 am]

BILLING CODE 8320-01-M

## FEDERAL MARITIME COMMISSION

**46 CFR Part 502**

**[Docket No. 87-1]**

**Automobile Measurement Rule; Finding of No Significant Impact**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Availability of finding of no significant impact.

**SUMMARY:** The Commission has completed an environmental assessment of a proposed rule in Docket No. 87-1 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

**DATES:** Petitions for review are due on or before April 16, 1987.

**ADDRESS:** Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Meyer, Office of Special Studies, 1100 L Street NW., Washington, DC 20573.

**SUPPLEMENTARY INFORMATION:** Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that the Commission's proposed rule in Docket No. 87-1 (52 FR 4040, February 9, 1987) will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 87-1 the Commission proposes to amend its rules pertaining to the publishing, filing and posting of tariffs in domestic offshore commerce to permit the rating of automobiles on other than a weight or cube measure basis.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523-5725.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87-7552 Filed 4-3-87; 8:45 am]

BILLING CODE 6730-01-M

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Part 509

[GSAR Notice No. 5-169]

### General Services Administration Acquisition Regulation; Suspension and Debarment

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), which would revise § 509.403 to change titles to conform to current organizational titles, revise § 509.404 to delete the reference to the Automated Consolidated List and revise § 509.405 to add text to provide guidance concerning treatment to be accorded solicitation requests by suspended or debarred contractors and bids and proposals received from such contractors. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

**DATE:** Requests for a copy of the proposal and comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW. Room 4026, Washington, DC 20405 (202) 523-3822.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW., Room 4024, Washington, DC 20405 (202) 535-7791.

**SUPPLEMENTARY INFORMATION:** The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule will provide guidance to GSA contracting activities on treatment to be accorded solicitation requests by suspended or debarred contractors and bids and proposals received from such contractors. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 48 CFR Part 509**

Government procurement.

Dated: March 27, 1987.

Ida M. Ustad,

*Director, Office of GSA Acquisition, Policy and Regulations.*

[FR Doc. 87-7465 Filed 4-3-87; 8:45 am]

BILLING CODE 6820-61-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1312

[No. 37321 (Sub-No. 1)]

### Revision of Tariff Regulations; Computer Determination of Mileages

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to amend 49 CFR Part 1312 to allow all motor common carriers to file electronic distance determination systems in lieu of printed distance guides. Our present rule requires that distance guides must contain maps and/or comprehensive tables of distances between points. The proposed rule revision would allow for the filing of guides which refer tariff users to computer programs that provide exact distances to be used in connection with carriers' tariffs of mileage rates. The proposed revision should insure that all tariff users will have the right to access or retrieve information as filed, thus satisfying the requirements of 49 U.S.C. 10761 and 10762. We invite comments of interested parties on our proposal. We also invite parties to furnish us with additional proposals for "other than paper" filing of required tariff matter. These proposals will be considered in this or further rulemaking proceedings.

**DATE:** Comments are due May 8, 1987.

**ADDRESS:** The original and, if possible, 15 copies of comments referring to Docket No. 37321 (Sub-No. 1), should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Herzig, (202) 257-6887.

**SUPPLEMENTARY INFORMATION:** The commission's decision contains additional information. To obtain a copy, contact Office of the Secretary, Room 2215, Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, DC 20423, or call (202) 275-7428.

**Environmental and Energy Considerations**

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Initial Regulatory Flexibility Analysis**

We preliminarily conclude that the proposed rule revision will not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed action is permissive in nature and, thus, will affect only those entities which choose to utilize or develop automated distance determination systems. Voluntary filings under the proposed rule would not entail imposed additional record keeping or other administrative burdens.

**List of Subjects in 49 CFR Part 1312**

Motor carriers.

Decided: March 27, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1312 is revised to read as follows:

**Authority:** 49 U.S.C. 10321 and 10762, 5 U.S.C. 553.

2. Section 1312.30 is amended by revising paragraph (c)(5) to read as follows:

**§ 1312.30 Distance rates.**

* * * * *

(c) * * *

(5) Distance guides shall provide distance tables or combinations of tables and maps. Tables shall provide specific distances between a substantial number of the points and be shown as having precedence over the distances determined by the use of maps. Each guide, shall provide rules stating its application. The rules shall include a means for determining distances between all locations within the territorial coverage of the guide,

regardless of whether all the locations are shown in the guide or whether distances are shown between all locations. If distances between certain points or areas are to be determined only through a certain gateway or interchange point, those points or areas and the gateway or interchange point shall be identified. Distance guides may exceed the maximum size limitations imposed by § 1312.3 but may not exceed 14½ by 17½ inches in size. Motor common carriers may file automated distance determination systems which are linked by reference in abbreviated distance guides to computer stored information provided the following conditions are met:

(i) Carriers or their tariff publishing agents shall make arrangements with the Commission for the receipt, storage and use of the systems through existing Commission technology and facilities.

(ii) In the event that a system is not compatible with Commission technology, the necessary implementing equipment and programs shall be placed on file with the Commission for use by Commission personnel and the public at no cost.

(iii) Changes in the systems shall be given notice, as required by 49 U.S.C. 10762(c)(1) and § 1312.4(e), through printed tariff amendments to the distance guides. The amendments shall show the currently effective provisions and how the provisions will be changed or amended.

(iv) The distance guides shall provide all the information necessary to access and utilize the systems.

* * * * *

[FR Doc. 87-7498 Filed 4-3-87; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Meeting; Research Advisory Committee

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on May 7 and 8, 1986 at the Pan American Health Organization Building, 525 23rd Street, NW., Washington, DC, Conference Room 'C'. The Committee will discuss agriculture research policies in the Science and Technology Bureau on May 7, and health research policies on May 8.

The meeting will begin each day at 9:00 a.m. and will adjourn at 5:30 p.m. on May 7 and 12:00 p.m. on May 8. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Curtis Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Jackson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235–8929.

Dated: March 27, 1987.

**Curtis Jackson,**

*A.I.D. Representative, Research Advisory Committee.*

[FR Doc. 87–7467 Filed 4–3–87; 8:45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Reestablishment of the Agribusiness Promotion Council

Notice is hereby given that the Agribusiness Promotion Council will be reestablished for a two-year term.

The purpose of the Council is to assist the Department of Agriculture (USDA) in carrying out the agricultural development aspects of the Caribbean Basin Economic Recovery Act. The objective of the Council is to increase the level of new U.S. agro-industrial investment in the countries of the Caribbean Basin. This Council will serve an essential function.

Reestablishment of this Council is in the public interest in connection with the performance of the duties and responsibilities of USDA.

Written statements may be submitted to Joan S. Wallace, Administrator, USDA/OICD, Washington, DC 20250–4300, until April 21, 1987. Additional information may be obtained by contacting Joan S. Wallace, Administrator, USDA/OICD, Washington, DC 20250–4300, telephone (202) 653–9309.

March 30, 1987.

**John J. Franke, Jr.,**

*Assistant Secretary for Administration.*

[FR Doc. 87–7557 Filed 4–3–87; 8:45 am]

BILLING CODE 3410–43–M

## Commodity Credit Corporation

## Foreign Agricultural Service

### Targeted Export Assistance Program, Fiscal Year 1987

**AGENCY:** Commodity Credit Corporation and Foreign Agricultural Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the conduct of the Targeted Export Assistance Program for fiscal year 1987.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth H. Callanan, Chief Marketing Programs Staff, Commodity and Marketing Programs, Foreign Agriculture Service, U.S. Department of Agriculture, Washington, DC 20250–1000, Telephone: (202) 447–5521.

**Targeted Export Assistance Program**

Section 1124 of the Food Security Act of 1985, as amended, 7 U.S.C. 1736s, (the Act) provides that, for fiscal years 1986 through 1990, the Secretary of Agriculture shall use a specified amount of funds of, or commodities owned by, the Commodity Credit Corporation (CCC) to counter or offset the adverse effect on the export of a United States agricultural commodity, or the product thereof, of a subsidy, import quotas, or other unfair trade practices of a foreign country. Such funds or commodities must be used for export activities authorized to be carried out by the Secretary of Agriculture or CCC.

For each of the fiscal years 1986 through 1988 the minimum amount of funds or value of commodities required to be used is not less than $110,000,000 and for each of the fiscal years 1989 and 1990 the minimum increases to $325,000,000.

Section 1124 of the Act requires the Secretary to provide export assistance on a priority basis in the case of agricultural commodities and products thereof with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974, or for which exports have been adversely affected, as defined by the Secretary, by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974.

For fiscal year 1987, the Board of Directors, CCC, and the Secretary of Agriculture approved the use of commodities owned by CCC valued at $110,000,000 to support foreign market development projects to counter or offset the adverse effect of a subsidy, import quotas, or other unfair trade practices of a foreign country on the export of United States agricultural commodities, or products thereof.

The Targeted Export Assistance Program (Program) will be conducted through project agreements entered into by CCC with trade associations, regional state sponsored organizations or individual firms in the United States. These projects agreements will provide for the support of promotional activities for specific agricultural commodities and products thereof through the issuance by CCC of commodity

certificates to reimburse participants for activities authorized by the specified project agreement. Agreements are signed and administered by the Administrator, Foreign Agricultural Service (FAS), who is Vice President, CCC.

It has been determined that, for fiscal year 1987, the commodities which meet the conditions of priority assistance referred to in section 1124 of the Act are: Pasta, poultry, wheat flour, walnuts, raisins, citrus, and canned fruit. CCC will enter into agreements to provide export assistance for other commodities or products thereof only after it is determined that adequate assistance will be available to promote the export of commodities which meet the conditions for priority assistance. All commodities for which targeted export assistance is provided must be in adequate supply to meet anticipated domestic need, and preference will be given to products wholly of U.S. origin. Only products composed of more than 50 percent U.S. commodities, computed on either a value or volume basis, will be eligible. Assistance will only be provided to industries that are able to provide an adequate stable supply of the particular commodity to targeted countries.

Promotional activities will be undertaken only in those countries which (1) maintain trade practices which unfairly discriminate against U.S. agricultural commodities, (2) represents markets in which the export of U.S. agricultural commodities are adversely affected by subsidies or other unfair trade practices of other exporting countries, or (3) offer a reasonable possibility for increased exports to counter or offset such practices.

Persons desiring to participate in the program must be able to provide substantial cost sharing for export promotions activities, adequate administrative support and commitment to promotional activities. Project agreements will provide for adequate controls and review, similar to those of present FAS market development programs, including the approval of an annual marketing plan, review of progress, and conduct of compliance audits.

**Thomas O. Kay,**

*Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.*

[FR Doc. 87-7500 Filed 4-3-87; 8:45 am]

BILLING CODE 3410-10-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Docket No. OEE-1-87.01 II; OEE-1-87.02 II]**

### Actions Affecting Export Privileges

#### Summary

In the matter of: Valley Machine Tool and Anthony Speno; Respondents.

The renewal of the Temporary Denial Order against the Appellants Valley Machine Tool, with an address at 858 Civic Center Drive, Santa Clara, California 95050 and Anthony Speno, 650 Spring Street, Santa Cruz, California 95060, imposed on March 6, 1987 is vacated.

#### Facts

This is an appeal from the renewal of a temporary denial order imposed on Appellants Valley Machine Tool and Anthony Speno (hereinafter collectively referred to as Appellants) dated March 6, 1987 (52 FR 7636, March 12, 1987). The original *ex parte* denial order was issued on January 5, 1987. A Petition to Vacate that order was filed on behalf of Appellants on February 20, 1987. The petition was dismissed on March 9, 1987, because the order appealed from had expired while the appeal was pending. The submissions made in the initial appeal were considered by the Administrative Law Judge (ALJ) along with other filings made in the second petition to vacate. In his Recommended Decision, dated March 23, 1987, the ALJ concluded that Department counsel had failed to show that an imminent violation of the Export Administration Act was likely in that the evidence of record did not support the conclusion that the Aye-Zed Model 1100 Surface Enhancement Machines constituted controlled U.S.-origin disc manufacturing equipment. Accordingly, he recommends that the Temporary Denial Order be vacated.

#### Issue

Whether the record contains an adequate basis to sustain the extraordinary temporary denial order.

#### Discussion and Findings

The Appellants contend that the principal piece of machinery involved, the used and refurbished Aye-Zed Model 1100 Surface Enhancer, is not a controlled commodity and that it, as well as the technical information respecting it, fit within commodity classification number (CCN) 6099G. Appellants base this on, *inter alia*, a commodity classification determination made by the Department on February 10, 1987. While conceding the original classification, Agency counsel contends that the subject machine was properly reclassified under CCN 1358A on March 2, 1987 and that it, and the technical data respecting its use, are subject to controls which require a validated export license before shipment to Bulgaria. For the purposes of TDO proceedings, governed as they are by short, mandatory time limits for decisions, it must be assumed that the commodity, is controlled.

This fact alone, however, does not constitute a sufficient basis for sustaining the TDO. Recognizing this, the Department further alleges that the fact that Appellants have entered into two contracts for the future export to Bulgaria, of the same machines and technical data which have previously been shipped to the same proscribed destination and about which the CCN controversy exists. However, the mere existence of a contract is not enough to show threat of imminent violation, especially when past shipments may have been made under a justifiable assumption that the product did not require a license for shipment. Indeed, the manner in which the control system is administered almost assures that contracts will predate license applications. To deny an exporter all export privileges, even temporarily, in such a case is unreasonable. However, Appellants are on notice that the Department considers the Aye-Zed Model 1100 Surface Enhancer and supporting technical data properly classified under ECCN 1358A. Should Appellants export the commodities at issue here without either first obtaining a validated export license or appealing the commodity classification, they would do so at their own peril.

In his submission of March 27, 1987, the appellants' counsel contends that the ALJ has authority to review commodity classifications. This is true only in part and does not apply to the TDO process. In the normal course, the Regulations, section 389, provide that appeals of commodity classifications are made directly to the Assistant Secretary. This is not to say, however, that the ALJ is never involved in commodity classification issues since, clearly, one issue to be addressed in any compliance action is whether the violation claimed has occurred with respect to a controlled commodity. The issue of whether the commodity is controlled is addressed as part of the Department's case. However, the TDO appeal process, with its limited time frames for submissions, hearings, and decisions, is neither an adequate nor the proper

forum in which a commodity classification contest should be decided. The reasonable course available to the Appellants at present is to appeal directly to the Assistant Secretary the reclassification notice of March 2, 1987.

*Therefore, it is ordered, That the Temporary Denial Order issued against Valley Machine Tool and Anthony Speno on March 6, 1987 is hereby vacated.*

Dated: March 30, 1987.

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

[FR Doc. 87-7493 Filed 4-3-87; 8:45 am]

BILLING CODE 3510-DT-M

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finidng, or suspended investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an adminstrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity To Request a Review

Not later than April 30, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April, for the following periods:

| | Period |
|---|---|
| Antidumping duty proceeding | |
| Diamond Tips from the United Kingdom | 04/01/86-03/31/87 |
| Spun Acrylic Yarn from Italy | 04/01/86-03/31/87 |
| Spun Acrylic Yarn from Japan | 04/01/86-03/31/87 |
| Sugar and Syrups from Canada | 04/01/86-03/31/87 |
| Sorbitol from France | 04/01/86-03/31/87 |
| Roller Chain (other than bicycle) from Japan | 04/01/86-03/31/87 |
| Bicycle Tires and Tubes from South Korea | 04/01/86-03/31/87 |
| Calcium Hypochlorite from Japan | 04/01/86-03/31/87 |
| Steeling Reinforcing Bars from Canada | 04/01/86-03/31/87 |
| Cyanuric Acid from Japan | 04/01/86-03/31/87 |
| Dichloroisocyanurates from Japan | 04/01/86-03/31/87 |
| Trichloroisocyanuric Acid from Japan | 04/01/86-03/31/87 |
| Color Television Receivers from South Korea | 04/01/86-03/31/87 |
| Color Television Receivers from Taiwan | 04/01/86-03/31/87 |
| Countervailing duty proceeding | |
| Pig Iron from Brazil | 01/01/86-12/31/86 |
| Wool from Argentina | 01/01/86-12/31/86 |
| Carbon Steel Wire Rod from New Zealand | 12/23/85-12/31/86 |
| Leather Wearing Apparel from Mexico | 01/01/86-12/31/86 |
| Rice from Thailand | 01/17/86-12/31/86 |
| Cold Rolled Steel Sheet from Argentina | 01/01/86-12/31/86 |
| Leather Wearing Apparel from Colombia | 01/01/86-12/31/86 |

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985.

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by April 30, 1987.

If the Department does not recieve by April 30, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 26, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-7544 Filed 4-3-87; 8:45 am]

BILLING CODE 3510-DS-M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-00006." A summary of the application follows.

Applicant: Ira M. Ratner d/b/a United States Business & Industry Development Service (USBIDS), P.O. Box 141, Easton, Connecticut 06612, Telephone: (203) 371-8777

Application #: 87-00006

Date Deemed Submitted: March 23, 1987

Members (in addition to applicant):

None

*Summary of the Application:*

*Export Trade:*

*Products.* All products.

*Export Trade Facilitation Services (as they relate to the export of products).* Consulting.

**Export Markets**

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

**Export Trade Activities and Methods of Operation**

Ira M. Ratner d/b/a USBIDS is a sole proprietorship that seeks to facilitate U.S. exports. USBIDS intends to provide its clients with product-specific trade leads obtained through the Trade Opportunities Program of the U.S. Department of Commerce.

Dated: April 1, 1987.

**David M. Barton,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-7539 Filed 4-3-87; 8:45 am]

BILLING CODE 3510-DR-O

## National Oceanic and Atmospheric Administration

### Pelagic Fisheries of the Western Pacific Region; Receipt of Experimental Fishing Permit Application

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of receipt of an experimental fishing permit application and request for comments.

**SUMMARY:** This notice acknowledges receipt of an application for a permit to harvest marlin, swordfish and sharks with a drift gill net in the exclusive economic zone off Hawaii. If granted, an experimental fishing permit would allow fishing that otherwise would be prohibited by Federal regulations implementing the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP).

**DATE:** Comments on this application must be received by May 6, 1987.

**ADDRESS:** Send comments to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

**FOR FURTHER INFORMATION CONTACT:** Doyle E. Gates, Administrator, Western Pacific Program Office; 808-955-8831.

**SUPPLEMENTARY INFORMATION:** Final regulations implementing the FMP were published in the **Federal Register** on February 27, 1987 (52 FR 5983) and were effective on March 23, 1987. The regulations at 50 CFR Part 685 specify that experimental fishing permits may be issued to authorize fishing that otherwise would be prohibited. The procedures for issuing permits are contained in the regulations at § 685.8. An application for a permit was received on March 5, 1987. The application has been accepted for review and copies have been forwarded to the Western Pacific Regional Fishery Management Council (Council), the U.S. Coast Guard, and the State of Hawaii's Department of Aquatic Resources for comment. The application will be discussed at the next Council meeting to be announced at a later date. The applicant has proposed that he be allowed to fish 100 to 400 miles east and south of Hawaii using approximately 1000 fathoms of 24 inch mesh net, 120 meshes deep. Fishing would occur for about 10 months. Advice on whether to approve or deny the application, and advice on what conditions should be imposed if the permit is granted, is being sought from the Council, its advisors, State and Federal agencies and the general public.

There has been virtually no history on the use of drift gill nets by domestic fishermen in Hawaii to catch pelagic species. A permit system to control the use of gill nets was included in the FMP by the Council to determine the fishing method's potential effects on navigation due to discarded gear, possible hazards to sea turtles and marine mammals due to the nonselective nature of the gear, and the effects on existing fisheries resulting from the possibility of introducing lower quality fish to local markets.

(16 U.S.C. 1801 *et seq.*)

Dated: April 1, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-7545 Filed 4-3-87; 8:45 am]

BILLING CODE 3510-22-M

### Permits; Pacific Coast Groundfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of receipt of an experimental fishing permit application and request for comments.

**SUMMARY:** This notice acknowledges receipt of an application for an experimental fishing permit (EFP) to harvest sablefish and other groundfish with set nets in the exclusive economic zone (EEZ) north of 38° N. latitude. If granted, this permit would allow fishing which otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

**DATE:** Comments on this application must be received by April 10, 1987.

**ADDRESS:** Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten, 206-526-6150.

**SUPPLEMENTARY INFORMATION:** The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application to harvest groundfish using set nets in the EEZ off the coast of Washington and Oregon was received on March 20, 1987. Current groundfish regulations at 50 CFR 663.26(c) prohibit fishing for groundfish using set nets in the EEZ north of 38° N. latitude. The application was submitted by two U.S. fishermen who propose to conduct the experimental fishery with the fishing vessel ST. ANN.

The applicants propose an experimental fishery using set nets that will target on sablefish, *Anoplopoma fimbria*, with an incidental catch of lingcod and rockfish species. The proposed fishery is divided into two areas: 1) south of 47°30' N. latitude from June 1 through December 31, 1987, and 2) north of 47°30' N. latitude from May 15 through December 31, 1987, not to exceed thirty percent of available fishing time. The purpose of the experimental fishery south of 47°30' N. latitude is to obtain information on the effectiveness of the gear, incidental catch of salmon and other non-target species, and gear conflicts. In the northern area where past experimental set net fisheries have occurred, the applicants' purpose is to evaluate the nature of the sablefish stock in the Nitinat Canyon area, whether local or migratory, and whether overfishing might have occurred. The applicants propose using a maximum of 1600 fathoms of net with five and one-half inch stretched mesh size or greater.

NMFS has issued EFPs for this purpose each year since implementation of the FMP in 1982 through 1985 in order to obtain data on set nets and their use in harvesting sablefish and other

incidentally-taken groundfish species, and determine whether such fishing gear can be authorized under the FMP without undue negative impact on the resource or on other fishermen. A total of twenty-four EFPs were issued; one EFP in 1982, three in 1983 and 1984, and seventeen in 1985. NMFS observers accompanied the EFP vessels on over thirty percent of their trips to monitor the experiment and collect information. Most of this experimental fishing with set nets occurred in a small area in the deeper waters off the coast of northern Washington (north of 47°30' N. latitude). Sablefish was the target species although quantities of lingcod and rockfish were also landed. Totals of approximately 361, 572 and 704 metric tons of sablefish, lingcod, and rockfish were landed by EFP vessels in 1983, 1984, and 1985 respectively. The sablefish catch was 49 percent, 66 percent and 40 percent respectively of the landed catch in the three years. The incidental catch of salmon was negligible, as only five salmon were taken in over 500 of the sets observed in the three years. Further information on the past experimental set net fishery is included in annual reports on the fishery which are available from NMFS at the above **Address**.

In 1986, nine applications for EFPs to fish for groundfish with set nets in the area north of 47°30' N. latitude were received. As a result of consultations with the directors of the State fishery management agencies and the Pacific Fishery Management Council (Council) and a thorough review of the observer data obtained from three years' experiments with set nets, NMFS decided to issue no EFPs to fish for groundfish with set nets in 1986. This decision was consistent with the recommendation of the Council and with the Council's reaffirmation of the provisions of the FMP and implementing regulations prohibiting use of set nets for groundfish north of 38° N. latitude.

The application will be discussed at the April 7–9, 1987, public meeting of the Pacific Fishery Management Council in Seattle, Washington. The decision to approve or deny issuance of an EFP will be based on a number of considerations including recommendations made by the Council and comments received from the public. A copy of the application is available for review at the NMFS, Northwest Regional Office, address above.

(16 U.S.C. 1801 *et seq.*)

Dated: April 1, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–7546 Filed 4–3–87; 8:45 am]

BILLING CODE 3510–22–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 21–22 April 1987.

Times of meeting: 1200–1600, 21 April 1987; 0800–1600, 22 April 1987.

Place: Crystal City, Arlington, VA.

Agenda: The Technology Subgroup of the Army Science Board 1987 Summer Study Panel on Lightening the Force will conduct its first meeting to accomplish the following: subgroup formation and task definition, discussion of industry and government issues on independent research and development, continuation of briefings by DARPA, and lessons learned from other Army programs such as M1 tank. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87–7637 Filed 4–3–87; 8:45 am]

BILLING CODE 3710–08–M

### Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement for a Proposed Beach Erosion Control Project, Sea Bright to Ocean Township Reach, Monmouth County, NJ

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a draft environmental impact statement.

**SUMMARY:** 1. *Description of Proposed Action.* The proposed action provides for a beach berm, approximately 50 feet wide at 10 feet above mean low water for a 12-mile length of coast extending from Sea Bright southward to Ocean Township, New Jersey. Construction of 23 groins and extension of 14 existing groins in the project area are also authorized, as is maintenance of the project elements.

2. *Reasonable Alternatives.* In addition to the no action alternative, reasonable alternatives include: sand berm widths between 30 and 100 feet; alternative numbers of new and extended groins, up to 59 new groins and 65 extended groins; and combinations of the various project element alternatives.

3. *Scoping Process*—a. *Public Involvement.* Preliminary coordination has been conducted with Federal and State interests, and items of significant environmental concern have been identified. Additional views from public agencies and individuals will be solicited by means of public notice presenting a description of the proposed plan of improvement, and announcing the availability of a Draft Environmental Impact Statement.

b. *Significant Issues Requiring In-depth Analysis.* Water quality impacts, archaeological and cultural resources impacts, aquatic resource impacts, recreation impacts, and impacts on longshore sand transport.

c. *Assignments.* None anticipated.

d. *Environmental review and consultation.* Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–1508) and Corps regulations ER 200–2–2 dated August 25, 1980 (revised March 2, 1981).

4. Scoping Meeting will not be held.

5. Estimated date of statement availability—January 1988.

Address:

Project Manager, Joseph Vietri, ATTN: NANPL–FN, Tel. No. 212–264–9077

EIS Coordinator, Robert Dieterich, ATTN: NANPL–E, Tel. No. 212–264–4662

US Army Engineer District, New York, 26 Federal Plaza, New York, NY 10278–0090.

**Samuel P. Tosi, P.E.,**

*Chief, Planning Division.*

[FR Doc. 87–7464 Filed 4–3–87; 8:45 am]

BILLING CODE 3710–06–M

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.128H]**

### Invitation; Applications for New Awards Under the American Indian Vocational Rehabilitation Service Projects Program for Fiscal Year 1987

*Purpose:* This program supports projects which provide vocational

rehabilitation services to American Indians with handicaps who reside on Federal and State reservations. Governing bodies of Indian tribes and consortia of such bodies located on Federal and State reservations may apply for these grants.

*Deadline for Transmittal of Applications:* May 22, 1987.

*Applications Available:* April 10, 1987.

*Available Funds:* $1,941,000.

*Estimated Range of Awards:* $200,000 to $240,000.

*Estimated Size of Awards:* $220,000.

*Estimated Number of Awards:* 9.

*Project Period:* 36 months.

*Applicable Regulations:* Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped American Indian Vocational Rehabilitation Service Projects Program (34 CFR Parts 369 and 371); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

*For Applications or Information Contact:* Frank S. Caracciolo, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3320 Switzer Building, MS 2312, Washington, DC 20202. Telephone: (202) 732–1340.

*Program Authority:* 29 U.S.C. 750.

Dated: April 1, 1987.

**Madeleine Will,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 87–7564 Filed 4–3–87; 8:45 am]

BILLING CODE 4000-01-M

## Robert C. Byrd Honors Scholarship Program

**AGENCY:** Department of Education.

**ACTION:** Notice of final procedures for implementing the Robert C. Byrd Honors Scholarship Program in fiscal year 1987.

**SUMMARY:** The Secretary establishes procedures to implement the Robert C. Byrd Honors Scholarship Program (the Byrd Scholarship Program) in fiscal year 1987 in accordance with the provisions of the program statute (Title IV, Part A, Subpart 6 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070d–31 *et seq.*), with certain exceptions. The exceptions are necessary in order to implement applicable statutory provisions enacted, by incorporation by reference in Pub. L. 99–591, titled "Making continuing appropriations for the fiscal year 1987, and for other purposes", at 100 Stat. 3341–287. Because the Department has not issued specific regulations for this program, grant awards to the States for fiscal year 1987 will be governed by the General Education Provisions Act, the Education Department General Administrative Regulations, applicable provisions of the program statute, and the procedures in this notice.

**EFFECTIVE DATE:** This notice takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Neil C. Nelson, Chief, State Student Incentive Grant Program (Room 4018, RO3#3), Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 Telephone (202) 245–9720.

**SUPPLEMENTARY INFORMATION:** Under the Byrd Scholarship Program, the Secretary makes available, through grants to the States, scholarships to outstanding high school graduates for the first year of study at institutions of higher education. In the Fiscal Year 1987 Continuing Appropriations Act, Congress appropriated $8 million for the Byrd Scholarship Program. Pursuant to the Continuing Appropriations Act, certain provisions of the program statute will not apply to the administration of the program in fiscal year 1987.

On February 23, 1987, the Secretary published in the **Federal Register** a Notice of Proposed Procedures for Implementing the Robert C. Byrd Honors Scholarship Program in Fiscal Year 1987 (52 FR 5488). No comments were received during the comment period announced in the notice. Therefore, the Secretary adopts the following procedures for fiscal year 1987 in order to implement, to the extent possible, the congressional intent conveyed in the Conference Committee Report on H.R. 5233, the Appropriations Act as reported out of conference (H.R. Rep. No. 960, 99th Cong., 2d Sess. (1986)). These procedures are necessary for the administration of those aspects of the program which, due to superseding statutory provisions in the Continuing Appropriations Act, are not governed by provisions of the program statute for fiscal year 1987.

1. The Secretary will allot to the States the funds appropriated for the Byrd Scholarship Program in fiscal year 1987 in accordance with the provisions of section 419D of the program statute, except that the amount allotted for scholarship payments to each State will be $1,500 multiplied by the number of scholarships the Secretary has assigned to the State. The Secretary will assign to each State participating in the program the number of Byrd Scholarships which bears the same ratio to the total number of scholarships made available to all States as the State's school-aged population (ages five through seventeen) bears to the total school-aged population in all participating States, except that no State shall receive fewer than 10 scholarships. The population figures used to calculate the allotment of funds will be determined by the most recently available data from the United States Census Bureau.

2. States shall administer their fiscal year 1987 allotments under the Byrd Scholarships Program, for scholarships for academic year 1987–88, in accordance with the provisions of the program statute. However, due to the continuing appropriations act (Pub. L. 99–591), sections 419G(b) and 4919(a) of the program statute will not apply to the fiscal year 1987 appropriation. Thus, States shall also administer their fiscal year 1987 allotments in accordance with the following procedures—

(a) Byrd Scholars shall be selected solely on the basis of demonstrated outstanding academic achievement, promise of continued academic achievement, and the geographic consideration described in item 2(b) below.

(b) Byrd Scholars shall be selected in such a way that all parts of a State are fairly represented, and no part of a State has a disproportionate share of awards.

(Catalog of Federal Domestic Assistance No. 84.185, Robert C. Byrd Honors Scholarship Program)

**Authority:** 20 U.S.C. 1070d–31 *et seq.*

Dated: April 2, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–7633 Filed 4–3–87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

## University of Alabama Grant Award

**AGENCY:** Department of Energy, Nevada Operations Office.

**ACTION:** Notice of restriction of eligibility for grant award.

**SUMMARY:** The Department of Energy, Nevada Operations Office, announces that it intends to award a grant to the University of Alabama in the amount of $150,000 for a three-year project period. Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), DOE Nevada has determined that eligibility

for this grant award shall be limited to the University of Alabama.

Grant Number: DE–FG08–87NV10672

**Scope of Project**

The principal purpose is to assist the University of Alabama at Huntsville to conduct fundamental analyses by experimental test of developing alkaline battery technology. The physical and chemical phenomena and mechanisms discovered will guide continuing research into this family of battery types. The value to the Department of Energy and other federal agencies, and the scientific and technology communities is derived through the technology base of alkaline battery couples. Of further importance is that supporting this activity will help maintain a supply of trained scientists that will be required to meet the nation's future needs in energy conservation research and electrochemical energy storage.

**FOR FURTHER INFORMATION CONTACT:** Brad Bourn, U.S. Department of Energy, Nevada Operations Office, P.O. Box 14100, Las Vegas, NV 89114–4100, Telephone: (702) 295–1038.

Issued in Las Vegas, Nevada, March 23, 1987.

**Thomas R. Clark,**

*Manager.*

[FR Doc. 87–7570 Filed 4–3–87; 8:45 am]

BILLING CODE 6450–01–M

## Office of General Counsel Intent To Grant Exclusive Patent License; Fermethanol, Inc.

Notice is hereby given of an intent to grant to Fermethanol, Inc. of Tulsa, Oklahoma, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,359,533, entitled "Fermentation Alcohol Production." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed exclusive license will be subjecct to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty provision. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on March 30, 1987.

**J. Michael Farrell,**

*General Counsel.*

[FR Doc. 87–7571 Filed 4–3–87; 8:45 am]

BILLING CODE 6450–07–M

## Economic Regulatory Administration

**[ERA Docket No. 86–52–NG]**

## Bonus Energy, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of order granting blanket authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Bonus Energy, Inc. (Bonus), blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 86–52–NG authorizes Bonus to import up to 50 Bcf per year over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 24, 1987.

**Barton R. House,**

*Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–7489 Filed 4–3–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project No. 3033–004]**

## Arkansas Electric Cooperative Corp., Riceland Electric Cooperative, Inc., and C&L Electric Cooperative Corp.; Application for Transfer of License (Major)

March 31, 1987.

Take notice that Arkansas Electric Cooperative Corporation (AECC), Riceland Electric Cooperative, Inc., and C&L Electric Cooperative Corporation, licensee for Lock and Dam No. 2 Project, have requested that AECC be made the sole licensee for Project No. 3033. The license was issued on August 10, 1983, and would expire on August 1, 2033. The project is located on the Arkansas River in Desha and Arkansas Counties, Arkansas, and is currently under construction.

Correspondence with the applicants should be directed to: Robert M. Lyford, Staff Attorney, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219, Fred Carlisle, Manager, Riceland Electric Cooperative, Inc., P.O. Box 906, Stuttgart, Arkansas 72160, and W. H. Frizzell, Manager, C&L Electric Cooperative Corporation, P.O. Drawer 9, Star City, Arkansas 71667.

**Comments, Protests, or Motions to Intervene**

Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rule 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–19026 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 8, 1987.

**Filing and Service of responsive Documents**

Any filings must bear in all capital letters the title "Comments", "Protest, or Motion to Intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project

Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the second paragraph of this notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7483 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RP87-49-000]**

## K N Energy, Inc., Petition for Declaratory Order

March 31, 1987.

Take notice that on March 18, 1987, K N Energy, Inc. (K N) petitioned the Federal Energy Regulatory Commission (Commission) for the issuance of a declaratory order giving K N the authority to include in its jurisdictional cost of service the amounts which the Commission authorizes Plains Petroleum Company and Plains Petroleum Operating Company (Plains) to charge K N in Docket No. RI87-2-000; and in addition, that K N may include such costs in its Account No. 191 and pass them on to its customers in its future PGA filings.

As background, K N states that Plains has a pending petition before the Commission for recovery of excess royalty payments and for a declaratory order in Docket No. RI87-2-000. In its petition, Plains seeks Commission authorization to increase rates charged for natural gas produced and sold by Plains to K N to the extent necessary to make Plains whole for certain royalty payments to owners of land from which Plains produces such gas. Plains bases its claim to recover royalty payments on a December 29, 1986 settlement agreement approved by the District Court of Kearny County, Kansas. Plains bases its right to recover these costs from K N on the terms of a Gas Purchase Contract between Plains Production Company and K N.

K N asserts that Plains has only a contingent right to charge K N the excess royalty costs. Plains can charge K N such higher costs only if and when K N is authorized to include those costs in its jurisdictional cost of service. K N further states that Plains has not sought a Commission order authorizing K N to include in its jurisdictional cost of service the amounts for which Plains seeks authority to charge K N. Therefore, K N notes, the Commission cannot grant Plains' petition unless and until it has granted K N the authorization needed to include such costs in its jurisdictional cost of service. K N states that it has no rate proceeding before the Commission which provides an appropriate vehicle by which the Commission may authorize K N to include in its jurisdictional cost of service the costs which Plains seeks authority to charge.

K N has served a copy of this petition upon counsel for Plains Petroleum Company.

Any person desiring to be heard or to protest said petition should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 4/21/87. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7480 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket Nos. CI87-391-000 and CI87-392-000]**

## Marathon Oil Co.; Application

March 31, 1987.

Take notice that on March 24, 1987, Marathon Oil Company ("Marathon") filed in this proceeding an application pursuant to sections 4 and 7 of the Natural Gas Act ("NGA") and § 2.77, Parts 154 and 157 of the Commission's regulations. The application requests an order (1) authorizing blanket permanent abandonment of the sale for resale of natural gas in interstate commerce to ARKLA INC. ("Arkla") from Eugene Island Area, Blocks 37, 38, 57 and 58, (2) issuing a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale of such natural gas in interstate commerce for three years, and (3) authorizing blanket pre-granted abandonment of any sales for resale of natural gas made under the requested certificate. Marathon also requests waiver of certain Commission regulations including those in Parts 154 and 271 of the Commission's regulations and requests that the authorizations sought in this proceeding be considered on an expedited basis.

This application involves the abandonment of approximately 35,000 Mcf/day of natural gas qualifying under NGPA Sections 102 and 104. This gas is presently dedicated to Arkla by Marathon under a contract dated September 12, 1977 and on file with the Commission as Marathon's Rate Schedule 149. Arkla has agreed to permanently release all the gas under this contract. Arkla is currently purchasing approximately 10 percent of the deliverability under this contract and Arkla is not making take-or-pay payments on this gas. Marathon states that approval of this Application will relieve Arkla of take-or-pay obligations and permit Marathon to sell this gas to others at market-clearing levels.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7488 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CP87-206-000]**

## Natural Gas Pipeline Company of America; Application

March 31, 1987.

Take notice that on February 17, 1987, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-206-000 an application pursuant to section 7(b) of the Natural

Gas Act for authorization to abandon a portion of Applicant's sales service to two customers, Iowa Electric Light and Power Company (Iowa Electric) and Iowa Southern Utilities Company (Iowa Southern) effective March 18, 1987, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant indicates that Iowa Electric and Iowa Southern gave notice on September 4, 1986, and September 15, 1986, respectively, of their intent to exercise their option to reduce by fifteen percent the level of their existing firm sales contract quantity in existence on September 4, 1986, the date Applicant first became subject to § 284.10 of the Commission's Regulations. Applicant indicates that Electric's firm sales contract quantity of 48.541 billion Btu equivalent of gas per day would be reduced by fifteen percent, or 7.281 billion equivalent Btu per day, to 41.260 billion Btu equivalent per day. It is also indicated that Iowa Southern's firm sales contract quantity of 10.497 billion Btu equivalent per day would be reduced by fifteen percent, or 1.575 billion equivalent per day, to 8.922 billion Btu equivalent per day. Applicant states that these reductions would be effective on March 18, 1987, according to § 284.10(c)(2)(B) of the Commission's Regulations.

Applicant notes that because § 284.10 of the Commission's Regulations is currently on appeal to the DC Circuit Court of Appeals in *Associated Gas Distributors, et al., v. FERC, No. 85-1811*, it proposes that any abandonment should be made contingent on that appeal.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 14, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-7475 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. ER87-185-001]

## The Washington Water Power Co.; Amended Filing

March 26, 1987.

Take notice that on March 20, 1987, The Washington Water Power Company (Washington) tendered for filing copies of an Amended Filing for the filing which was tendered December 22, 1986 (Docket No. ER87-185-000) regarding Washington's FERC Electric Tariff Original Volume No. 3 (Tariff 3). The Amended Filing clarifies deficiencies to that filing relating to the revised tariff rate for nonfirm energy from noncontrollable hydroelectric resources and a revised index of purchasers.

By this Amended Filing, Washington has filed the 19 Service Agreements to complete the Tariff 3 Index of Purchasers as submitted December 22, 1986, and has requested a waiver of the 60-day filing requirements stating that there will be no effect upon purchasers under other rate schedules. No new facilities were installed to meet the requirements of these Agreements.

Washington restates its request of December 22, 1986, that Tariff 3 supersede Washington's Rate Schedule FPC. No. 88. Washington also requests that the applicable Tariff 3 Service Agreements supersede the following Washington FPC/FERC Rate Schedules: No. 133 (City of Anaheim); No. 134 (City of Burbank); No. 135 (City of Glendale); No. 139 (City of Los Angeles); No. 144 (Northern California Power Agency); Nos. 88.1, 120, and 122 (Pacific Gas and Electric Company); Nos. 86 and 136 (City of Pasadena); No. 112 (Portland General Electric Company); Nos. 111 and 115 (San Diego Gas & Electric Company); No. 114 (Southern California); and No. 87.1 (Service Agreement W-1 under the Intercompany Pool Agreement.)

Copies of the Amended Filing have been sent to affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 9, 1987.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-7485 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. RP87-33-003]

## Williams Natural Gas Co.; Filing of Revised Tariff Sheets

March 31, 1987.

Take notice that Williams Natural Gas Company (WNG) on March 23, 1987, tendered for filing to become a part of its FERC Gas Tariff:

First Revised Volume No. 1

Revised Original Sheet Nos. 6 and 7
Revised Original Sheet Nos. 41 through 53

Original Volume No. 2

Revised Third Revised Sheet No. 219

These pages are filed in accordance with Ordering Paragraphs (B), (C), (D), (E), (G), (H), (I) and (K) of the Commission's Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Establishing Hearing and Granting Intervention issued February 20, 1987 in this proceeding. The revised tariff sheets are proposed to be effective after suspension on July 23, 1987.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 8, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7486 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. TA87-3-43-000 and 001]**

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 31, 1987.

Take notice that Williams Natural Gas Company (WNG) on March 23, 1987, tendered for filing First Revised Sheets Nos. 6, 7 and 8 to its FERC Gas Tariff, Original Volume No. 1. WNG states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing of Provisions in Article 24 of its FERC Gas Tariff, it proposes to increase its rates effective April 23, 1987, to reflect:

(1) A 36.79¢ per Mcf increase in the Cumulative Adjustment as measured against WNG's last regular PGA filing in Docket No. TA87-1-43-000 which became effective October 23, 1986 and 40.99¢ per Mcf increase as measured against WNG's "flex PGA" filing in Docket No. TF87-1-43-000 which became effective on December 23, 1986, due to an increase in WNG's projected gas purchase costs.

(2) A 5.22¢ per Mcf increase in the Surcharge Adjustment (to a positive 2.14¢ per Mcf from a negative 3.08¢ per Mcf) to amortize the Deferred Purchased Gas Cost Subaccount Balance.

WNG states that copies of its filing were served on all jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7487 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CI87-364-000 et al.]**

## Northwest Exploration Co. et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

March 31, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 15, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-364-000 (CI78-1236), B, Mar. 11, 1987. | Northwest Exploration Company, P.O. Box 1526, Salt Lake City, Utah 84110-1526. | Northwest Pipeline Corporation, Rio Blanco County, Colorado. | (1) | |
| CI87-365-000 (CI78-1235), B, Mar. 11, 1987. | do | do | (2) | |
| CI87-369-000 (CI78-50), B, Mar. 11, 1987. | do | do | (3) | |
| CI87-370-000 (CI78-49), B, Mar. 11, 1987. | do | do | (4) | |
| CI87-372-000 (CI76-361), B, Mar. 11, 1987. | do | do | (5) | |
| CI87-363-000 (CI79-206), B, Mar. 11, 1987. | do | Northwest Pipeline Corporation, San Juan County, New Mexico. | (6) | |
| CI87-366-000 (CI78-887) B, Mar. 11, 1987. | do | do | (7) | |

| Docket No. and date | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-367-000 (CI78-330), B, Mar. 11, 1987 | ....do | Northwest Pipeline Corporation, Moffat County, Colorado. | (8) | |
| CI87-368-000 (CI78-62), B, Mar. 11, 1987. | ....do | Northwest Pipeline Corporation, Sweetwater County, Wyoming. | (9) | |
| CI87-371-000 (CI76-282), B, Mar. 11, 1987. | ....do | Northwest Pipeline Corporation, Lincoln County, Wyoming. | (10) | |
| CI87-377-000 F, Mar. 16, 1987. | Amoco Production Company, P.O. Box 3092, Houston, Texas 77253. | Natural Gas Pipeline Company of America, Lowe Deep Field, Duval County, Texas. | (11) | |
| CI87-378-000, A, Mar. 16, 1987. | ....do | Transwestern Pipeline Company, Kermit Field, Winkler County, Texas. | (12) | |
| CI87-379-000 (G-11231), B, Mar. 17, 1987. | ....do | Natural Gas Pipeline Company of America, East Maxine Field, Live Oak County, Texas. | (13) | |
| G-11083-002, D, Mar. 13, 1987. | Conoco Inc., P.O. Box 2197, Houston, Texas 77252. | Texas Eastern Transmission Corporation, Cabeza Creek Field, Goliad County, Texas. | 14 | |
| CI64-1298-000, D, Mar. 20, 1987. | ....do | El Paso Natural Gas Company, Jalmat-Langlie-Mattix Field, Lea County, New Mexico. | (15) | |
| CI87-376-000 (G-8608), B, Mar. 13, 1987. | ....do | Tennessee Gas Pipeline Company, a Division of Tenneco Inc., South Crowley Field, Acadia Parish, Louisiana. | (16) | |
| CI87-383-000, B, Mar. 18, 1987. | ....do | Phillips Petroleum Company, South Powder River Basin, Poison Draw Field, Converse County, Wyoming. | (17) | |
| CI83-168-005, D, Mar. 23, 1987. | Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, Okla. 74102. | Tennessee Gas Pipeline Company, a division of Tenneco, Inc., SW/4 West Delta Block 52, State Lease 977, Offshore Louisiana. | (18) | |
| CI87-323-000, B, Feb. 19, 1987. | Stephen Johnson d/b/a AGCO Petroleum Company, 1300 Main—Suite 1435, Houston, Texas 77002. | Tennessee Gas Pipeline Company, a division of Tenneco, Inc., Hidalgo County, Texas. | (19) | |
| CI87-389-000 (CI63-708), B, Mar. 23, 1987. | Verdad Oil & Gas Corporation, P.O. Box 266, Sulphur Springs, Texas 75482. | Farmland Industries, Inc., Schleicher County, Texas. | (21) | |
| CI80-245-002, D, Feb. 5, 1987. | Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210. | Panhandle Eastern Pipe Line Company, Box Elder Field, Adams County, Colorado. | (22) | |
| CI64-1302-000, D, Mar. 19, 1987. | Conoco Inc | El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico. | (23) | |
| CI87-362-000, B, Mar. 11, 1987. | Northwest Exploration Company | Northwest Pipeline Corporation, Daggett County, Utah. | (24) | |

[1] Only two wells were drilled on acreage covered by the 8-8-78, Gas Purchase Contract. Both wells were plugged and abandoned without production. The remaining acreage has not been developed.

[2] The acreage covered by the 7-29-78, Gas Purchase Contract has been sold to Fina Oil and Chemical Company and American Cometra Inc. effective 12-29-86.

[3] Only two wells were drilled on acreage covered by the 9-15-77, Gas Purchase Contract. Both wells were plugged and abandoned without production. The remaining acreage has not been developed.

[4] The acreage covered by the 8-31-77, Gas Purchase Contract has been sold to Fina Oil and Chemical Company and American Cometra Inc. effective 12-29-86.

[5] The acreage covered by the 1-7-76, Gas Purchase Contract has been sold to Fina Oil and Chemical Company and American Cometra Inc. effective 12-29-86.

[6] The acreage covered by the 12-4-79, Gas Purchase Contract has been sold to Fina Oil and Chemical Company and American Cometra Inc. effective 12-29-86.

[7] A portion of the acreage covered by the 5-26-78, Gas Purchase Contract has been sold to Ultramar Oil and Gas Limited and GeoVest Energy, Inc., effective 4-1-84. The interest in the remaining acreage was transferred to Lawrence O. Van Ryan effective 4-1-84.

[8] The acreage covered by the 12-5-77, Gas Purchase Contract was sold to JN Oil and Gas effective 6-1-84. Six wells were completed on the acreage and two of the wells have been plugged and abandoned.

[9] The acreage covered by the 10-4-77, Gas Purchase Contract has not been developed.

[10] A portion of the acreage covered by the 10-24-75, Gas Purchase Contract has been sold to Lawrence O. Van Ryan and Dolores E. Van Ryan effective 9-1-84. A portion of the acreage covered by the Gas Purchase Contract was sold to John J. Christmann effective 6-13-79 and Christmann subsequently sold it to La Barge Minerals Inc. The remaining acreage under the 10-24-75, Gas Purchase Contract has not been developed.

[11] Hanson Minerals Company assigned certain interests to Applicant effective 11-1-84.

[12] Applicant is filing under a Gas Purchase Agreement dated 3-8-84.

[13] Duty Gas Unit Well No. 1 was plugged and abandoned 4-26-85.

[14] Effective 11-1-86, Conoco assigned its interst in certain depths underlying the J.E. Pettus Lease (Conoco Land Lease No. 205963) to Ken Perkins Oil and Gas, Inc. The Yegua Formation was included in the assigned depths.

[15] By Assignment dated 2-21-86, effective 12-1-85, Conoco Inc. conveyed to D.P. Properties, Inc., all of its rights down the base of the San Andres Formation underlying the NW/4 SW/4 Section 1, S/2 NW/4 and SW/4 NE/4 Section 12-25S-36E, Lea County, New Mexico.

[16] Gas Contract passed its term and no gas is sold by Conoco from the acreage subject to FERC Gas Rate Schedule No. 128.
[17] Lease expiration.
[18] Cities Service released its operating rights upon demand by the State of Louisiana, effective 8-1-86, in the SW/4 of West Delta Block 52, State Lease 977, Offshore Louisiana, consisting of 749.99 acres.
[19] Gas purchaser has terminated gas contract effective 1-1-87. Without an active gas contract, AGCO is subject to arbitrary pricing and takes, as set by the gas purchaser.
[20] Not used.
[21] Uneconomical to produce.
[22] The Jeff Drohan #2-16 well located in Section 16-T3S-R65W, Adams County, Colorado qualifies as a casinghead gas well; and in accordance with Article III of the 1971 contract, Panhandle Eastern has elected not to take any such casinghead gas. As a potential purchase, Koch Hydrocarbon Inc. had offered to purchase 100% of the casinghead gas and Sohio will pursue this alternate market.
[23] By assignment dated 2-21-86, retroactively effective 12-1-85, Conoco conveyed to D.P. Properties, Inc. all rights down to the base of the San Andres Formation underlying S/2 NW/4 & SW/4 NE/4 Section 12-25S-36E, Lea County, New Mexico.
[24] A portion of the acreage covered by the 4-10-75 Gas Purchase Contract has been sold to Lawrence O. Van Ryan and Dolores E. Van Ryan effective 4-1-84. The property assigned to Van Ryan included the Betty Bee #1 Well, the only completed, producing well on the acreage covered by Gas Purchase Contract. The remaining acreage under the Gas Purchase Contract has not been developed.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-4781 Filed 4-3-87; 8:45 am]
BILLING CODE 6717-01-M

---

[Docket No. TA87-3-46-000, 001]

## Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

March 31, 1987.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 27, 1987, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Twenty-Second Revised Sheet No. 27A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective April 1, 1987.

The proposed tariff sheet amends the PGA filing made by Kentucky West herein on September 26, 1986, so as to reflect an Interim Purchase Gas Cost Rate Adjustment, in order to reflect a reduction in current purchase gas costs due to Kentucky West's exercise of market-out provisions in its various gas purchase contracts with independent producers and purchases of natural gas from affiliated companies, effective April 1, 1987.

The current purchase gas adjustment is a reduction of 21.55c per dekatherm (dth). This reduction results in a total net jurisdictional Purchase Gas Cost Charge of 157.96c per dth, to become effective April 1, 1987.

Apart from reflecting the decrease in purchase gas costs resulting from Kentucky West's exercise of market-out provisions effective April 1, 1987, no other amendment is proposed by Kentucky West to its PGA filing herein of September 26, 1986.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-7482 Filed 4-3-87; 8:45 am]
BILLING CODE 6717-0-M

---

[Docket No. RP87-30-004]

## Colorado Interstate Gas Co.; Compliance Filing

March 31, 1987.

Take notice that on March 26, 1987, Colorado Interstate Gas Company (CIG) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2, and First Revised Volume No. 1-A.

CIG states that the purpose of this filing is to comply with the directive stated in Ordering Paragraph (B) of the Commission's order of February 13, 1987 (Order) requiring CIG to eliminate the Capacity Commitment Standby Charge and the Payment of Gas Oversupply Costs tariff language. In addition, CIG recomputed its jurisdictional rates utilizing the 34 percent Federal income tax rate. The filing states that CIG inadvertently failed to eliminate the above-mentioned tariff provision within the 15-day period established in the Order and respectfully requested a waiver of that provision.

CIG has served copies of this filing upon its jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-7477 Filed 4-3-87; 8:45 am]
BILLING CODE 6717-01-M

---

[Docket No. RP87-38-002]

## Louisiana-Nevada Transit Co., Compliance Filing

March 31, 1987.

Take notice that on March 20, 1987, Louisiana-Nevada Transit Company (LNT) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, in compliance with Ordering Paragraph (B) of the Commission's order of March 5, 1987, and the notice of extension of time of March 10, 1987 in the above-referenced docket. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.1039b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 24, 1987. The effective date for the sheets is March 5, 1987.

LNT states that it has served a copy of this filing on Arkansas Louisiana Gas Company and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7478 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. GP87-40-000 MMS Docket G4-4428]**

## Minerals Management Service, Louisiana; Section 102(d) NGPA Determination; Conoco, Inc.; No. E-10 Well, Sidetrack No. 1; Preliminary Finding

March 27, 1987.

On February 12, 1987, the Minerals Management Service, Department of Interior (MMS) at New Orleans, Louisiana, submitted to the Commission a notice of determination. The notice stated that gas produced from the No. E-10, Sidetrack No. 1 well (the subject well) located on the Outer Continental Shelf (OCS), offshore Louisiana, (Grand Isle 41) owned by Conoco, Inc. (Conoco) meets all the requirements of section 102(d) of the Natural Gas Policy Act of 1978 (NGPA).[1]

Under section 103(d)(1) of the NGPA, natural gas produced from an old lease on the OCS qualifies for the new natural gas ceiling price if the natural gas is produced from a reservoir which was not discovered before July 27, 1976. Section 102(d)(2) states that a reservoir that was penetrated by a well before July 27, 1976, will be considered to have been discovered before July 27, 1976, if any of the criteria in subsection 103(d)(2)(B), concerning production tests and evidence regarding production capability, are satisfied. The section 102(d) criteria specifically refer to the requirements of OCS Order No. 4.[2]

On July 16, 1984, Conoco filed an application with MMS for a determination under NGPA 102(d) with respect to the subject well. The record shows that prior to July 27, 1976, other wells had penetrated the subject reservoir (EA sand) and that one well (the Grand Isle 41 No. E-11 well) had discovered the reservoir prior to July 21, 1976, within the meaning of section 102(d)(2)(B)(iii) of the NGPA.[3] Accordingly, MMS issued a preliminary negative determination on November 20, 1984, and issued a final negative determination on December 24, 1984. MMS forwarded the final negative determination to the Commission on January 16, 1985. Conoco filed with the Commission a protest to that determination, but the Commission took no action on the protest, and MMS' determination became final.[4]

On December 17, 1986, Conoco requested MMS to reopen the record, and permit it to file additional material facts which were omitted in its original filing. The additional evidence consisted of an economic evaluation of the commercial producibility of the discovery well (Grand Isle 41 No. E-11 well) at the time of the initial penetration. On February 9, 1987, MMS issued an Amended Notice of Final Determination, approving the application. The notice stated that the additional evidence, consisting of a detailed economic analysis, indicated that the "well was not commercially producible as defined by § 271.204 . . ." and that the well "does qualify for a positive section 102(d) determination."

In this case there was evidence which appeared to satisfy the production capability test, within the meaning of NGPA section 102(d)(2)(B)(iii), since the induction-electric log test showed that the reservoir contained a zone of producible sand when the reservoir was penetrated prior to July 27, 1976. Under section 102(d)(4)(B), where evidence regarding production capability exists, the producer has the burden of showing the evidence does not provide the applicable indication specified in NGPA section 102(d)(2) that the reservoir was commercially producible. Here, Conoco has failed to do so.

Accordingly, the Commission hereby makes a preliminary finding under 18 CFR 275.202(a)(1)(i) (1986), that the determination submitted by the MMS is not supported by substantial evidence in the record on which the determination was made, and issues this notice under 18 CFR 275.202(a)(2) (1986).

By direction of the Commission.

Commissioner Stalon dissented with a separate statement to be issued later.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7479 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

---

[1] 15 U.S.C. 3312(d) (1982).

[2] NGPA section 102(d)(5) defines OCS Order No. 4 as "the order numbered 4 of the Conservation Division, Geological Survey, Department of the Interior, as approved by the Chief of the Conservation division on August 28, 1969." Order No. 4 sets forth certain tests, which if satisfied, permit an extension of an OCS lease beyond its primary term in the absence of actual production.

[3] Induction logs for that well indicated that the EA sand in that well showed in excess of 15 feet of producible sand.

[4] Docket No. GP86-15-000.

---

**[Docket No. CS87-52-000 et al.]**

## Resource Technology Corp. et al.; Applications for Small Producer Certificates [1]

March 31, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to said applications should on or before April 15, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

| Docket No | Date filed | Applicant |
|---|---|---|
| CS87-52-000 | 3-19-87 | Resource Technology Corp., 410 17th Street, Suite 1375, Denver, CO 80202 |
| CS87-53-000 | 3-2-87 | Tyrex Oil Company, P.O Box 2459, Casper, WY 82602 |

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

BEST COPY AVAILABLE

| Docket No. | Date filed | Applicant |
|---|---|---|
| CS87-54-000 | 3-2-87 | Pape's Oilfield Service, P.O Box 66, Bennett, CO 80102 |
| CS87-55-000 | 3-9-87 | Arlington Exploration Company, 137 Newbury Street, Boston, MA. 02116 |
| CS87-56-000 | 3-10-87 | DP Properties, Inc., Box 1319, Sweetwater, TX 79556. |
| CS87-57-000 | 3-12-87 | Broussard Number One, Broussard Number One, Inc., Florida Petroleum Properties, Inc., Virginia W. Kennard and Compton K Kennard, P.O. Box 6242, Fort Myers, FL 33911. |
| CS87-58-000 | 3-13-87 | J.M. Stewart, 9201 Wilshire Blvd., Surte 201, Beverly Hills, CA 90210 |
| CS87-59-000 | 3-13-87 | Alliance Operating Corporation, 4739 Utica Street, Surte 205, Metairie, LA 70006 |
| CS87-60-000 | 3-17-87 | JMC Exploration, Inc., 5000 Rogers Avenue, Surte 810, Fort Smith, AR 72903. |
| CS87-61-000 | 3-23-87 | John William Bowers, 9010 Woodbluff Court, 9010 Woodbluff Court, Dallas, TX 75243 |

[FR Doc. 87-7484 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3181-2; EPA Project Number SJ-86-09]**

### Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Mount Poso Cogeneration Company

**AGENCY:** Environmental Protection Agency (EPA), Region 9.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on January 7, 1987 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 50 MW (nominal) coal-fired fluid bed powerplant to be located in the Mount Poso oil field. The permit is subject to certain conditions, including an allowable emission rate (2-hr average) as follows:

| Pollutant | Mass emission limit | Concentration emission limit |
|---|---|---|
| $NO_x$ (as $NO_2$). | 58.6 lbs/hr | 0.10 lb/$10^6$ BTU [1] (equivalent to 65 ppmdv at 3% $O_2$). |
| $SO_2$ | 25.0 lbs/hr | 0.04 lb/$10^6$ BTU [1]. |
| CO | 50.3 lbs/hr | |
| TSP | | 0.01 gr/dscf (at 12% $CO_2$). |

[1] The $NO_x$ and $SO_2$ concentration limits apply at full load only.

**FOR FURTHER INFORMATION CONTACT:** Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

**SUPPLEMENTARY INFORMATION:** Best Available Control Technology (BACT) requirements include the use of a limestone injection system for the control of $SO_2$, a Thermal De-Nox system (or equivalent) for the control of $NO_x$, and a baghouse to control TSP, $SO_2$, and radionuclide emissions.

**DATE:** The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 5, 1987.

Dated: February 23, 1987.

**Carl C. Kohnert,**

*Acting Director, Air Management Divisions, Region 9.*

[FR Doc. 87-7522 Filed 4-3-87; 8:45 am]

BILLING CODE [illegible]

**[FRL-3181-1; EPA Project Number SE 86-02]**

### Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to AFG Industries, Incorporated

**AGENCY:** Environmental Protection Agency (EPA), Region 9.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on December 8, 1986 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 500 ton per day flat glass manufacturing facility to be located in Victorville, California. The permit is subject to certain conditions, including an allowable emission rate (3-hr average) as follows: for $SO_2$—10.5 lbs/hr, and for $NO_x$ (as $NO_2$)—150 lbs/hr. A new higher $NO_x$ emission limit may not be set without adequate justification from AFG Industries, and may not exceed 200 lbs/hr (3-hr average) from the glass melting furnace.

**FOR FURTHER INFORMATION CONTACT:** Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

**SUPPLEMENTARY INFORMATION:** Best Available Control Technology (BACT) requirements include the use of a lime or soda ash dry scrubber for the control of $SO_2$ emissions, and an ammonia injection system for the control of $NO_x$ emissions.

**DATE:** The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 5, 1987.

Dated: Februray 23, 1987.

**Carl C. Kohnert,**

*Acting Director, Air Management Division, Region 9.*

[FR Doc. 87-7523 Filed 4-3-87; 8:45 am]

BILLING CODE [illegible]

**[OPTS-00079; FRL-3181-3]**

### Dermal Bioassay Workshop

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a 2-day workshop sponsored by the Health and Environmental Review Division of the Office of Toxic Substances to: (a) Identify and address key issues involved in the design of a 2-year dermal bioassay protocol, and (b) to explore the possibilities for developing a "limited" dermal protocol for the screening of acrylates/methacrylates for carcinogenic potential. The workshops will be closed to the public.

**DATES:** The workshops will be held on Tuesday and Wednesday, April 28 and 29, 1987, starting at 9 a.m. both days and ending at approximately 5 p.m. on April 29.

**ADDRESSS:** The meeting will be held at: Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, DC 20460, (202) 554-1404.

**SUPPLEMENTARY INFORMATION:** These closed workshops are being held to discuss carcinogenesis testing by the dermal route. Attendance will be limited to invited participants and observers. A summary of the meeting will be available by request from the above office at a later date.

Dated: March 27, 1987.

**Victor J. Kimm,**

*Assistant Administrator, for Pesticides and Toxic Substances.*

[FR Doc. 87-7524 Filed 4-3-87; 8:45 am]

BILLING CODE [illegible]

## FEDERAL HOME LOAN BANK BOARD

[No. 87-378]

### Approval of Application for Unlisted Trading Privileges; Midwest Stock Exchange

Dated: March 31, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** On December 3, 1986, The Midwest Stock Exchange, Inc. filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange:

Carteret Savings Bank, F.A. Morristown, New Jersey (FHLBB No. 4702)

Common Stock, $0.01 Par Value

Notice of the Application and opportunity for hearing was published in the **Federal Register** on January 23, 1987, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 87-73 dated January 16, 1987. (52 FR 2605, January 23, 1987). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in these securities on March 17, 1987.

**SUPPLEMENTARY INFORMATION:** The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on March 17, 1987.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-7568 Filed 4-3-87; 8:45 am]

BILLING CODE 6720-01-M

### Federal Savings and Loan Advisory Council Meeting

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the proposed agenda of a forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

**DATE(S):** April 22, 1987, 9:00 a.m.-4:00 p.m.; April 23, 1987, 9:00 a.m.-11:30 a.m.

**ADDRESS:** Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G. Street NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:**

John M. Buckley, Jr. (202/377-6577).
Debra J. Ahearn (202/377-6924).

**SUPPLEMENTARY INFORMATION:** Proposed agenda topics:

1. Regulatory Policy re: expanded use of tangible Net Worth.
2. Forbearance Policy.

No. 2, April 1, 1987.

**Jeff Sconyers,**

*Secretary to the Federal Home Loan Bank Board.*

[FR Doc. 87-7567 Filed 4-3-87; 8:45 am]

BILLING CODE 6720-01-M

[No. 87-379]

### Approval of Application To Withdraw Securities From Listing and Registration on the National Association of Security Dealers Automatic Quotation System

March 31, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** On October 27, 1986, Cartaret Savings Bank, F.A. Morristown, New Jersey (the "Association") (FHLBB No. 4702) filed with the Federal Home Loan Bank Board ("Board") an application, ("Application"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) thereunder, for the withdrawal from listing and registration on the National Association of Securities Dealers Automatic Quotation System ("NASDAQ" or "Exchange"), of the Association's Common Stock, $0.01 Par Value, (the "Stock"). The Association's Stock was approved for listing and registration on the New York Stock Exchange, to begin trading after November 1, 1986, and concurrently therewith such stock was suspended from trading on the Exchange.

Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for withdrawal from listing and registration on the Exchange, effective as of the opening of business on March 17, 1987.

**SUPPLEMENTARY INFORMATION:** The reasons stated in the Association's application for withdrawing the securities from the listing and registration on the Exchange include the following:

1. The Association has complied with the required procedure of the Exchange by filing with the Exchange a certified copy of preambles and resolutions adopted by the Association's Board of Directors authorizing the withdrawal of the Stock from listing on the Exchange.

2. The direct and indirect costs and expenses attendant on maintaining the dual listing of the stock on the New York Stock Exchange and the Exchange are not justified.

3. The belief that dual listing would fragment the market for the Stock without offsetting benefits.

4. The Exchange has no objection to the withdrawal of the Association's Stock from listing on the Exchange.

5. The withdrawal from listing of the Association's Stock from the Exchange

shall have no effect upon the continued listing of the Stock on the New York Stock Exchange.

6. By reason of section 12(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Association shall continue to be obligated to file reports under section 13 of the Act with the Federal Home Loan Bank Board and the New York Stock Exchange.

Notice of the application for withdrawal from listing and an opportunity for hearing were published in the **Federal Register** on January 23, 1987 and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 87–72 dated January 16, 1987 (52 FR 2605, January 23, 1987). The Board received no comments on the application.

Accordingly, pursuant to section 12(d) of the Act and Rule 12d2–2(d) thereunder, the Office of the General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, having considered the facts stated in the Application and having due regard for the public interest and protection of investors, approved the Application for withdrawal from listing and registration on the Exchange effective as of the opening of business on March 17, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87–7569 Filed 4–3–87; 8:45 am]

BILLING CODE 6720–01–M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License Applicants; First International Transportation, Inc., et al.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

First International Transportation, Inc., 1388–2 Stone Hollow Drive, Kingwood, TX 77339. Officers: H. Porter Taylor, President, Sandra G. Taylor, Vice President, Donna K. Ilardi, Secretary

Central Bay Warehouse Co., Inc., 1954 Williams Street, San Leandro, CA 94577. Officers: John F. Alonso, Sr., President, John F. Alonso, Jr., Vice President Carol Anne Alonso, Secretary/Treasurer

Schley International, Inc., 2509 Sutter Parkway, Dublin, OH 43017. Officers: James P. Schley, President/Treasurer, Susan U. Schley, Vice President/Secretary

Kyung H. Oh (Harry) dba Inter-Trans Line, 447 S. Berendo Street, #105, Los Angeles, CA 90020.

Dated: March 31, 1987.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87–7446 Filed 4–3–87; 8:45 am]

BILLING CODE 6730–01–M

### Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License: Number: 1149
Name: Farrell Transportation Corporation
Address: P.O. Box 4, Upper Darby, PA 19802
Date Revoked: March 3, 1987
Reason: Surrendered license voluntarily

License Number: 2608
Name: CIC International Fowarding, Inc.
Address: 7234 NW. 34th Street, Miami, FL 33122
Date Revoked: March 8, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2168
Name: International Movements, Inc.
Address: 4965 Mountain Road, Pasadena, MD 21122
Date Revoked: March 13, 1987
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

*Director, Bureau of Domestic Regulation.*

[FR Doc. 87–7518 Filed 4–3–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

**[Docket No. R–0599]**

### Fee Schedules for Federal Reserve Bank Services

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board has approved a fee schedule for book-entry securities services.

**EFFECTIVE DATE:** May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Bennett, Assistant Director (202–452–3442), Gerald D. Manypenny, Manager (202–452–3954), or Donna DeCorleto, Senior Analyst (202–452–3954) Division of Federal Reserve Bank Operations; Joseph R. Alexander, Senior Attorney (202–452–2489), Legal Division; or, for the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202–452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** On November 5, 1986, the Board approved the 1987 fee schedules for priced services of the Federal Reserve Banks. 51 F.R. 42630 (November 25, 1986). At that time, the Board postponed any changes to the book-entry fee schedule until the second quarter of 1987 "because recent operational changes, such as the mid-1986 expansion of book-entry mortgage-backed securities to all Reserve Banks, have increased the cost of the book-entry service," and the Board did not believe that the data available in November, 1986, were adequate for making pricing decisions for all of 1987.

Although there is still some uncertainty about costs and volumes, the Board believes that it is appropriate to act on proposed changes to the book-entry service at this time. Without repricing, Reserve Banks would recover 122 per cent of the costs (including a private sector adjustment factor) of providing the book-entry service.

Based on the information currently at hand, the Board has approved reductions in four components of the fee structure for the federal agency book-entry securities service. The Board expects that the new fee schedule will result in an annualized recovery rate of 105 per cent (110 per cent for all of 1987). This schedule reduces the fee charged for originating an on-line securities transfer from $3.00 to $2.25 and reduces the fee charged for originating or receiving an off-line securities transfer from $10.00 to $7.00. These fees are identical to those charged by the Treasury Department for transfers of Treasury book-entry securities.

The Board has also approved replacing the $1.00 to $5.00 graduated on-line origination fee, which has been in effect only at the Federal Reserve Bank of New York, with the $2.25 fee. This graduated fee never achieved its

intended goal of encouraging service users to send securities transfers during non-peak volume periods.

The schedule also reduces one of the two maintenance fees, the per-issue-per-account fee, $.50 per-issue to $.45. The other maintenance fee, the $15.00 account maintenance fee, would remain unchanged. The Treasury Department does not charge issue or account maintenance fees.

The fees approved by the Board are set out in the attachment.

By order of the Board of Governors of the Federal Reserve System, March 31, 1987.

James McAfee

*Associate Secretary of the Board.*

FEDERAL AGENCY BOOK-ENTRY SECURITIES FEE SCHEDULE, EFFECTIVE MAY 1, 1987

| Component | Transaction | Fee |
|---|---|---|
| On-Line Transfers Originated | Per Transfer | $2.25 |
| Off-Line Transfers: | | |
| Originated | Per Transfer | 7.00 |
| Received | Per Transfer | 7.00 |
| Account Maintenance | Per Account | 15.00 |
| Issues in Accounts | Per Issue | .45 |

[FR Doc. 87-7452 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

## Atico Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1987.

A. **Federal Reserve Bank of Atlanta** (Roberta E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Atico Financial Corporation*, Miami, Florida; to become a bank holding company by acquiring 99.2 percent of the voting shares of Atico Savings Bank, Miami, Florida (formerly Peninsula Federal Savings and Loan Association), and 93.5 percent of the voting shares of Intercontinental Bank, Miami, Florida.

In connection with this application, Applicant also proposes to acquire Pan American Mortgage Corp., Miami, Florida, and thereby engage in making and servicing commercial and residential loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, March 31, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-7453 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

## Continental Illinois Corp. et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Continental Illinois Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Continental Capital Management Corporation, Chicago, Illinois, in acting as an investment or financial advisor to the institutional market including corporate, foundation, government agency and union retirement plans pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. *Illinois Regional Bancorp, Inc.*, Elmhurst, Illinois, to engage de novo through its subsidiary, Illinois Regional Mortgage Corporation, Elmhurst, Illinois, in mortgage banking activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted in the states of Illinois, Indiana and Wisconsin.

Board of Governors of the Federal Reserve System, March 31, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7454 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

### Gulf and Southern Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 24, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Gulf & Southern Financial Corporation*, Fort Myers, Florida; to acquire 100 percent of the voting shares of Community National Bank of Sarasota County, Venice, Florida, a *de novo* bank.

B. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Mark Twain Bancshares, Inc.*, St. Louis, Missouri; to acquire at least 87 percent of the voting shares of Edwardsville National Bank and Trust Company, Edwardsville, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Baron II Bancshares, Inc.*, White Bear Lake, Minnesota; to become a bank holding company by acquiring 95.5 percent of the voting shares of Security State Bank of Deer Creek, Deer Creek, Minnesota.

2. *Market Bancorporation, Inc.*, New Market, Minnesota; to become a bank holding company by acquiring 83 percent of the voting shares of First State Bank of New Market, New Market, Minnesota. Comments on this application must be received by April 27, 1987.

Board of Governors of the Federal Reserve System, March 31, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7455 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Roy O. Nicholson*, Elberfield, Indiana; to acquire 4 percent of the voting shares of The Elberfield State Bank, Elberfield, Indiana.

Board of Governors of the Federal Reserve System, March 31, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7456 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### Review of Expiring Information Collection (3090-0066)

**DEPARTMENT:** Teleprocessing Services Branch (KECT).

**ACTION:** Notice of request to the Office of Management and Budget to extend an expiring information collection.

**SUMMARY:** Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), GSA seeks public comment on its proposal to extend the collection entitled "Contractor's Report of Services Ordered/Delivered."

**ADDRESSES:** Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

**FOR FURTHER INFORMATION TELEPHONE:** Maxine Andewelt, 566-1275.

Purpose: GSA collects the information to establish volume discounts, to make sure that services delivered match invoices, to confirm payment, and to project usage for budget hearings.

Annual Reporting Burden: Respondents, 45; Responses, 180; burden hours, 720.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566-0668.

Dated: March 26, 1987.

**Rodney P. Lantier,**

*Acting Director, Information Management Division.*

[FR Doc. 87-7466 Filed 4-3-87; 8:45 am]

BILLING CODE 6820-25-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Establishment of the Small Business Research Review Committee, NIMH

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the establishment, effective April 24, 1987 of the following committee:

Small Business Research Review Committee, NIMH.

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: March 31, 1987.

**Donald Ian Macdonald, M.D.,**

*Administrator, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 87-7491 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-20-M

## Food and Drug Administration

**[Docket No. 87M-0077]**

### Biophysic Medical, Inc.; Premarket Approval of Biophysic Picolas® ND:YAG Ophthalmic Laser

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Biophysic Medical, Inc., Pleasant Hill, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Biophysic Picolas® Nd:YAG Ophthalmic Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 6, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

**SUPPLEMENTARY INFORMATION:** On August 11, 1986, Biophysic Medical, Inc., Pleasant Hill, CA 92708, submitted to CDRH an application for premarket approval of the Biophysic Picolas® Nd:YAG Ophthalmic Laser. The Biophysic Picolas® Nd:YAG Ophthalmic Laser is a neodymium:yttrium-aluminum-garnet (Nd:YAG ophthalmic laser that is indicated for discission of the posterior capsule of the eye (posterior capsulotomy) and discission of pupillary membranes (pupillary membranectomy) in aphakic and pseudophakic eyes.

On October 20, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 17, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ-460), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 6, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 25, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health*

[FR Doc. 87-7512 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 87M-0076]**

### Trimedyne, Inc.; Premarket Approval of the Laserprobe-PLR™ Flex and Laserprobe-PLR™ Plus Catheters and Optilase™ Model 900 Contact Laser Model

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Trimedyne, Inc., Santa Ana, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Laserprobe-PLR™ Flex and Laserprobe-PLR™ Plus Catheters and Optilase™ Model 900 Contact Laser System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 6, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Lynne A. Reamer, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

**SUPPLEMENTARY INFORMATION:** On September 2, 1986, Trimedyne, Inc., Santa Ana, CA 92705, submitted to CDRH an application for premarket approval of the Laserprobe-PLR™ Flex and Laserprobe-PLR™ Plus Catheters and Optilase™ Model 900 Contact Laser System. The catheter and laser are indicated via percutaneous use or surgical cutdown under fluorscopic guidance as an adjunct to routine peripheral balloon dilatation techniques for the treatment of occlusive peripheral artery disease in male and female adult patients. Specifically, use of this device is recommended principally for, but is

not limited to, cases difficult or impossible to treat with balloon angioplasty. The device is not indicated for use in cases where success of reestablishment of flow could reasonably be expected with the use of routine angioplasty techniques.

On January 16, 1987, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 27, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch ( address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Lynne A. Reamer (HFZ-450), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall indentify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 6, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 25, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87-7511 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-01-M

## Health Care Financing Administration

[IOA-008-N]

## Task Force on Technology-Dependent Children; Meeting

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces a meeting of the Task Force on Technology-Dependent Children.

**DATE:** The meeting will be held on May 6, 1987 from 8:30 a.m. to 5:00 p.m., and on May 7, 1987 from 8:30 a.m. to 2:30 p.m., e.s.t. The meeting will be open to the public.

**ADDRESS:** The meeting will be held in the Quality Inn, Pentagon City, 300 Army-Navy Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Bill Pickens, Executive Director, Department of Health and Human Services, Room 4414 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 245-0070.

**SUPPLEMENTARY INFORMATION:**

### Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), will investigate alternatives to institutional care for technology-dependent children. Technology-dependent children are those with chronic conditions requiring continuing use of medical technology.

The Task Force must report to the Secretary of Health and Human Services, the Administrator of the Health Care Financing Administration (HCFA), and to the Congress concerning alternatives to institutional care for technology-dependent children. The Task Force must develop recommendations designed to:

(1) Identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology dependent children; and

(2) Recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

The Task Force will address fully the two specified goals before it addresses any other questions. To the extent that time and resources permit, the Task Force may develop recommendations that would address additional concerns regarding technology-dependent children. The Task Force recommendations are intended to be used only at the option of the Department of Health and Human Services and the Congress.

### Agenda

Agenda items for the meeting will include presentations from invited experts of professional organizations that impact on technology-dependent children. The Task Force is seeking to identify barriers, concerns and recommendations. Also, a Task Force business meeting will be conducted.

The public is invited to present testimony to the Task Force. We request those wishing to testify to contact the Task Force by April 17, 1987.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92-463, as amended (5 U.S.C. App. I, sec. 1-15) and sec. 9520 of Pub. L. 99-272 (42 U.S.C. 1396a note); 45 CFR Part 11)

Dated: March 18, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 87-7494 Filed 4-3-87; 8:45 am]

BILLING CODE 4120-01-M

[BERC-362-NR]

## Medicare Program; Criteria for Medicare Coverage of Heart Transplants

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of HCFA ruling.

**SUMMARY:** This notice extends Medicare coverage to heart transplantations when furnished by participating facilities that meet specific criteria, including patient selection criteria. We are extending coverage to heart transplants based on the results of the National Heart Transplant Study and our subsequent determination that heart transplants are a medically reasonable and necessary service when specific criteria are met. Because the HCFA Ruling HCFAR 80–1 excluded heart transplants from coverage under that Medicare program, we are issuing this notice as a new HCFA ruling. It will rescind HCFAR 80–1 and set forth the new coverage policy for heart transplants.

**EFFECTIVE DATE:** This notice is effective on April 6, 1987, and permits, under certain circumstances, coverage of heart transplants retroactive to October 17, 1986, which was the date of publication of the proposed notice. That notice set forth, for public comment, proposed criteria for coverage of heart transplants. Section VII of this notice contains a discussion of the effective dates in detail.

**FOR FURTHER INFORMATION, CONTACT:** Barton McCann, M.D., (301) 594–9370.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In November 1979, Medicare began paying for heart transplantation procedures performed for Medicare beneficiaries at Stanford University Medical Center. This was an interim decision, based on preliminary findings by the Public Health Service (PHS) regarding the safety and efficacy of heart transplants performed at that center.

Upon review of Medicare coverage of heart transplants, we determined that the issues were much more complex than originally thought and that adequate data did not exist to resolve many of them. Consequently, the Secretary of HHS announced a decision to exclude heart transplants from Medicare coverage, with the exception of a very few patients previously selected for and awaiting transplantations. That decision was announced June 12, 1980 by the Secretary and published as a notice of HCFA Ruling (HCFAR 80–1) in the **Federal Register** on August 6, 1980 (45 FR 52296).

Accompanying the decision to exclude heart transplants from Medicare coverage was an announcement that HCFA, in close cooperation with the PHS, would conduct a broad study of heart transplants. On January 22, 1981, we published a notice in the **Federal Register** (46 FR 7072) that described the study in detail and solicited applications from hospitals and medical centers wishing to participate. We awarded the contract for the National Heart Transplant Study to the Battelle Human Affairs Research Centers of Seattle, Washington.

As part of the January 1981 notice, we stated that when the results of the study were analyzed, we would publish a proposed decision regarding Medicare coverage and would give the public an opportunity to comment on our proposal before developing a final policy. Subsequently, on October 17, 1986, we published a notice in the **Federal Register** (51 FR 37164) that proposed Medicare coverage of heart transplants when furnished by participating facilities that meet special criteria. The notice also provided a 30-day public comment period.

### II. Provisions of the Proposed Notice

In the proposed notice, we stated that after analyzing the findings of the Battelle study and consulting with PHS, we had determined that, for Medicare coverage purposes, heart transplants are medically reasonable and necessary when performed in facilities that meet certain criteria. In accordance with the proposal, facilities that wish to obtain this coverage for their Medicare patients would be required to submit an application and supply documentation showing their initial and ongoing compliance with each of the criteria. For each facility for which an application is approved, we would cover under Medicare Part A (Hospital Insurance) and Part B (Supplementary Medical Insurance) medically reasonable and necessary services associated with the actual transplantation and surgery (including organ acquisition), and any covered services needed as followup care. We noted that post-transplant care would not include outpatient, self-administrable immunosuppressive drugs, such as cyclosporine, since Medicare coverage of self-administered drugs is excluded under section 1861(s)(2) of the Social Security Act (the Act).

#### *A. Criteria for Facilities*

We stated that we would require facilities to meet criteria relating to the following areas:

- Patient selection.
- Patient management.
- Commitment.
- Facility plans.
- Experience and survival rates.
- Maintenance of data.
- Organ procurement.
- Laboratory services.

We noted that the criteria we proposed may need to be updated periodically to recognize further developments in the technology and procedures for heart transplantations. We stated that after three years of experience with the use of the criteria, we would examine the appropriateness of continuing to use any criteria.

#### *B. Process for Review and Approval of Facilities*

Under the proposal, the approval of facilities would be based on a careful review of the materials submitted regarding their experience, survival rates and expertise, as well as their commitment to the heart transplant program. We proposed to conduct the review with the aid and advice of a panel of non-Federal experts in such relevant fields as cardiology, cardiovascular surgery, organ transplantation, immunosuppression and health care resource utilization. The experts would report to us on their findings with respect to individual applications and would provide the basis for decisions as to the approval or disapproval of such applications.

In approving facilities, we would compare the facility's submission against the criteria specified in this notice. The approval granted would be for a three year period. Extensions of approval would require submission of a continuation application and would not be automatic.

Finally, we noted that, in certain limited cases, exceptions to the strict criteria proposed might be warranted. We invited comments on the need for an exceptions policy and the structure this policy might take.

#### *C. Application Procedure*

In the proposed notice, we stated that we would accept and begin to review applications from facilities that believe they are qualified based on the proposed criteria. However, we specified that the applications would be approved only on the basis of the criteria to be published in our final notice. We stated that to the extent that the proposed criteria are modified as a

result of public comment, we would give facilities that submitted applications prior to the date of the final notice the opportunity to submit any necessary revisions and additions to their applications.

## III. Discussion of Comments

We received 158 timely items of correspondence in response to the proposed notice. Of these, 55 were from transplant centers, 13 were from professional associations, one was from a State governor, seven were from members of Congress, three were from State and local government agencies, 15 were from individual health professionals, 31 were from transplant patients, one was from a Medicare Part A intermediary, three were from heart transplant consortia, one was from an organ procurement agency, and 30 were from private citizens. The comments ranged from general support or opposition to the proposed coverage of heart transplants to very specific questions or comments regarding the proposed criteria. With the exception of comments relating to the impact analysis, a summary of the comments, and our responses to them, follow. The comments relating to the impact are addressed in the Impact Analysis in section VI of this notice.

### *A. Extension of Comment Period*

*Comment:* Several commenters recommended extending the 30-day comment period to allow more extensive public debate of the complex issues involved in designating approved facilities for Medicare coverage purposes.

*Response:* We have not accepted this comment because we believe that our need to publish a final notice and institute coverage outweighs the benefits that would be obtained by a longer comment period. Also, our criteria will be under continual review and we will make any changes that become necessary as a result of new information and continued progress in the field of cardiac transplantation.

### *B. Notional Heart Transplant Study*

*Comment:* One commenter suggested that basing the guidelines for designation of transplant centers on information derived from the 1984 National Heart Transplant Study is not prudent, since the data are significantly outdated.

*Response:* When we formulated the criteria, we used the best information available, including information more recent than that presented in the National Heart Transplant Study. The proposed criteria take into consideration advances in the cardiac transplantation field and reflect discussions with experts in cardiology, cardiovascular surgery, cardiac transplantation, biostatistics and experts familiar with the data bank of the International Society for Heart Transplantation. We realize that the indicators to measure the safety and efficacy of heart transplantation will continue to evolve, and we are prepared to update our criteria as further developments in heart transplantation technology occur.

*Comment:* One commenter was concerned that the six transplant facilities that previously participated in government-sponsored heart transplant studies would receive favored status.

*Response:* All facilities must meet these final published criteria. No facilities have been pre-selected. We will not know which facilities will qualify until after their applications have been received and reviewed.

### *C. Opposition to Coverage of Heart Transplants*

*Comment:* Several commenters were opposed to the coverage of heart transplants under Medicare. The reasons for opposition ranged from concerns over the cost of the procedure to a concern that the coverage of heart transplants discriminates against other therapies such as whole body health improvement programs.

*Response:* We do not find the commenters' arguments against coverage persuasive. Under Medicare, payment must be made for services that are reasonable and necessary and otherwise covered under the program. We have determined that when heart transplants are performed by facilities that meet the criteria we specify, such services are medically reasonable and necessary. The discussion of Medicare coverage of other forms of therapy is beyond the scope of this notice.

### *D. Other Coverage Issues*

*Comment:* Several commenters requested that the notice be amended to allow coverage of all types of transplants.

*Response:* We wish to assure these commenters that we are not ignoring the issue of coverage of other types of transplants under Medicare, even though they were not the subject of this notice. As part of our continuing review of Medicare coverage, we are reviewing the medical literature and research available on several other types of transplants. If and when such transplants appear to be at a point where coverage under Medicare would be feasible, we will consider covering them as well. In response to a question on Medicare coverage of combined heart-lung transplants, we note that this procedure is considered experimental and therefore is not covered by Medicare.

*Comment:* Several commenters asked that special rules be established or that mention be made of the differences between adult and pediatric heart transplants, expressing the concern that adoption of the provisions of the notice by other third parties could adversely affect pediatric heart transplant programs.

*Response:* We believe that the commenters have raised a valid concern regarding the possible adverse effects of inappropriate adoption of our provisions by other third parties. However, we believe that making such distinctions in this notice is not appropriate. We expect that facilities performing pediatric heart transplants may well have selection criteria that differ from those used for their adult transplant patients. There is nothing in this notice to prevent this, nor will such differentiation between different types of patients adversely affect such a facility's approval to be a heart transplant center.

Very few, if any, pediatric patients are likely to qualify for coverage of a heart transplant under Medicare. However, we add our admonition to that of these commenters that other third parties who may choose to adopt requirements similar to those of this notice for their own programs recognize that it applies primarily to adults, and should be modified or otherwise adapted for programs that may involve children.

*Comment:* Several commenters asked that artificial hearts be covered when used as a "bridge" for a person awaiting a donor heart.

*Response:* We have not accepted this suggestion. Several months ago we published an instruction indicating that artificial hearts and ventricular assist devices were not covered under Medicare, either when used as a replacement for the individual's natural heart, or when used as a "bridge to transplant." We have not seen anything since that time that would convince us to change that policy. These devices continue to be considered investigational by the Food and Drug Administration. We will, of course, continue to monitor the research in this area with a view toward determining whether that policy should be amended.

### *E. Immunosuppressive Drugs*

*Comment:* Numerous commenters objected to the lack of coverage of immunosuppressive drugs, despite the explanation in the proposed notice that

the Medicare statute did not permit coverage of outpatient prescription drugs that can be self-administered. One commenter, aware of the recent legislation described below, asked that such coverage be extended to permanently cover such drugs.

*Response:* On October 21, 1986, four days after the date of publication of the proposed notice, legislation was enacted to provide for the coverage of immunosuppressive drugs under Medicare, beginning January 1, 1987, for up to one year following the date of a covered Medicare transplant. Coverage for immunosuppressive drugs was contained in section 9335(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), and amended section 1861(s)(2) of the Act.

We have implemented these new coverage provisions through the issuance of instructions to hospitals, carriers, and fiscal intermediaries. We also are preparing a Notice of Proposed Rulemaking to address specifically the coverage of immunosuppressive drugs for all Medicare covered transplants. We note that we cannot change the statutory provision to provide coverage of immunosuppressive drugs for more than a year. That would require a further amendment to the law, and would have to be made by Congress.

*F. Eligibility*

*Comment:* Several commenters objected to the waiting period of 29 months between the onset of a disability and the beginning of Medicare coverage for a disabled individual as being too long.

*Response:* This requirement is based on sections 223(c)(2) and 226(b)(2)(A) of the Act, and is not a requirement adopted specifically for heart transplant recipients. Under section 226(b)(2)(A) of the Act, a Social Security disability beneficiary must receive disability insurance benefits under Social Security for 24 months before becoming entitled to Medicare benefits. In addition, section 223(c)(2) of the Act provides that the beneficiary must serve a five-month waiting period from the date of onset of the disability before cash benefits begin. While it is true that this statutory waiting period for Medicare coverage of the disabled represents a disadvantage to an individual who requires a transplant before completion of the waiting period, we would remind commenters that the coverage of heart transplants is an administrative decision, and no statutory provisions regarding either coverage or eligibility have changed.

*Comment:* One commenter suggested that successfully transplanted recipients who return to work should continue to receive transplant related services under Medicare.

*Response:* Under provisions of the Social Security Act, a beneficiary who is no longer disabled and therefore no longer receiving disability benefits is no longer entitled to receive benefits under Medicare. Any changes in these provisions would have to be legislated by Congress, and are outside the scope of our authority.

*G. Facility Criteria*

*Comment:* Several commenters objected to the use of any facility criteria, claiming that limiting coverage only to selected centers was anti-competitive and would restrain the development of such centers, to the detriment of those who require heart transplants.

*Response:* In the case of heart transplants, we have determined that in carefully selected patients, managed according to specific protocols by experienced medical teams at institutions with a substantial dedication to and experience with the procedure, cardiac transplantation has resulted in major increments in life expectancy and in improvements in the quality of life. We recognize that the proposed criteria for experience, survival rates, and facility commitment are somewhat restrictive. However, our goal in requiring facilities to meet certain criteria is not to restrict competition but to maintain the quality of services required by this complex procedure, provide coverage of the benefit at facilities and under conditions that have been shown to be safe and effective, and allow entry of new, qualified providers. We believe this approach is justified, particularly in view of the typical relationship between experience and quality of services. Facilities will continue to be approved as they come to meet the facility criteria. There will be neither a cut off date for receipt of applications nor a limit on the number of approved facilities, and hospitals that may be considering initiating a heart transplant program may do so with the clear understanding of what criteria they will have to meet.

*Comment:* Several commenters were opposed to any facility criteria, arguing that all hospitals that choose to do heart transplants should be allowed to do so and be paid by Medicare.

*Response:* We have not accepted this approach. As has been mentioned above, there are good reasons for the use of specialized criteria to select facilities in which heart transplants may be performed safely and efficaciously. Again, the approval process will remain open, and many Medicare-approved hospitals that do not now meet the criteria may someday do so. Also, we are committed to conducting a full scale reevaluation of the need for any criteria after a three-year period.

*Comment:* Several commenters stated that the proposed notice established a regrettable precedent in identifying only certain institutions as being eligible for reimbursement for specific procedures. A concern was expressed that the rationale would be applied inappropriately to other services such as cataract surgery, major joint replacements or routine open heart surgery.

*Response:* We do not have any plans at present to apply criteria as outlined for heart transplants to other types of surgery. If such plans were put into effect, we would do so for reasons of assuring quality of care and only after we provided the public with an opportunity to comment.

*Comment:* One commenter, opposed to limiting coverage of heart transplants to facilities that meet certain criteria, suggested that it would be appropriate for us to develop guidelines for fiscal intermediaries, carriers, and Peer Review Organizations to utilize in their individual coverage determinations.

*Response:* We have not accepted this suggestion. We believe that the most appropriate means of assuring that Medicare beneficiaries receive heart transplants under conditions that are safe and effective is to provide for coverage only at those facilities with demonstrated experience and success.

*Comment:* Several commenters objected to the use of any criteria and expressed the opinion that the limitations contained in the proposed notice go well beyond our authority under the Social Security Act.

*Response:* We disagree. Under section 1862(a)(1) of the Act, payment may not be made under the Medicare program for services that are "not reasonable and necessary for the diagnosis or treatment of illness or injury." This provision prohibits payment for services that are not recognized as effective and proven treatment for a given medical condition and that are experimental or investigational in nature. In the case of heart transplants, we have determined that in carefully selected patients, managed according to specific protocols by experienced medical teams at institutions with a substantial dedication to and experience with the procedure, cardiac transplantation has resulted in major increments in life expectancy and in improvements in the quality of life. Such practice has become

widely accepted by the medical profession. Thus, cardiac transplantation under such circumstances, and only under such circumstances, is safe, effective and widely accepted; that is, reasonable and necessary.

*Comment:* One commenter recommended that we make the principles of the proposed notice a part of the hospital conditions of participation rather than a coverage notice so that our staff and the expert panel would not be bogged down in a burdensome review process.

*Response:* We have not accepted this recommendation because to do so would be inconsistent with our determination that heart transplants can be considered reasonable and necessary only when performed in qualified facilities that meet certain criteria. Further, we believe that the conditions of participation procedures are too cumbersome for such a narrow purpose coverage decision.

*Comment:* Several commenters suggested that we expand our facility guidelines to include additional criteria. For example, it was recommended that we require the availability of a neurologist for establishing criteria for brain death and that the facility be a full service tertiary care center.

*Response:* We do not agree with these suggestions. We believe our guidelines are sufficient to initiate the heart transplant program. Any revisions that may be necessary in the future will be made at that time.

*Comment:* One commenter stated that, with the exception of experience and survival rates, the criteria are unduly broad and general, and lack objectivity. A concern was expressed that this lack of specificity and objectivity would result in an unjustified denial of approval.

*Response:* We disagree that our lack of specificity will result in unjustified denials. We expect applicant facilities to submit all relevant information about their program that they believe demonstrates their capabilities to provide safe and effective heart transplants. Details of criteria, such as patient protocols, are not provided because we recognize that there are acceptable variations in practice in different regions of the country.

*Comment:* One commenter suggested that the criteria for transplant facilities be reviewed annually and asked if there were any "hidden" criteria that already exist or that will be designated later.

*Response:* We will review continually the transplant facility criteria and publish any revisions or changes that we find necessary. There are no "hidden" criteria. At this time we cannot predict what changes may be made in the criteria, but the public should understand that whenever necessary changes are identified, they will be published in the **Federal Register** and an opportunity will be given for public comment.

*Comment:* One commenter suggested that a graduate medical education (GME) program be in place or that a university affiliation be maintained before a facility could become an approved transplant center.

*Response:* We disagree with this suggestion. Although most centers that qualify probably will have a GME program, we do not believe it is essential to a center that meets all the facility criteria. Further, we do not wish to restrict the technology of heart transplantation to academic institutions.

*H. Exceptions to Facility Criteria*

*Comment:* In the proposed notice, we indicated that in certain limited cases, exceptions to the strict criteria might be warranted. We invited comments on the need for an exceptions policy and the structure such a policy might take. The majority of the comments recommended exceptions for centers which did not meet the experience criteria but which were geographically distant from other centers, were members of a consortium, had significant experience in other organ transplants, or had higher survival rates over a period of time less than two years. Many of the commenters recommended provisional approval with close monitoring of those centers that lacked the required experience but met the other criteria. Several commenters recommended incorporating greater flexibility into the criteria, thereby removing the need for an exceptions process. One commenter expressed opposition to the incorporation of formal comprehensive guidelines into an exceptions process and recommended the granting of exceptions based on merit. Several others recommended that the exceptions process rely on critical assessments by the expert review panel to identify institutions that can demonstrate their ability to provide satisfactory care to heart transplant patients. It was pointed out that it would be difficult to anticipate or articulate in the final notice all of the alternatives that might provide reasonable assurance that a facility may offer safe and effective heart transplants. It was proposed that we rely on the panel of experts to recommend exceptions to the specific criteria rather than attempt to describe all of the acceptable variations. One commenter recommended that no exceptions should be made until the criteria had been in place for 18 months. Finally, one commenter recommended that exceptions be granted for patients in life or death situations who are transplanted in non-approved facilities.

*Response:* On the basis of the comments received, we believe that there will be a need to make some limited exceptions to the facility criteria if there is justification. Further, we believe that, in each case in which an exception to one or more criteria is justified, we must ensure that our objectives of ensuring safety and efficacy are met. We agree with the commenters who recommended that we rely on the professional expertise and judgment of the expert panel in determining whether heart transplants may be performed safely and effectively in a given facility. However, as we have explained in response to the comments regarding the functions of the panel (see section III.U. of this notice), we intend to solicit individual expert consultants. Since we have decided to use the advice of consultants in making exceptions, we have not developed specific alternative criteria for facilities that do not meet all the criteria. The exceptions will be limited to specific cases which, taking into consideration the consultants' professional judgments, would not compromise the use of facility criteria as a measure of the facility's commitment and quality of care. All decisions regarding approval or disapproval will be made by the Administrator of HCFA after considering the findings and recommendations of the consultants.

Further, we have identified those circumstances for which exceptions may not be made. Specifically, facilities whose transplant programs have been in existence for less than two years will not be approved. Geographic considerations will not be taken into account. Applications from consortia will not be approved. The basis of our decision to restrict exceptions for these three circumstances is described in our analysis of the comments we received on each of those subjects.

We have rejected the recommendations we received to grant conditional approvals to facilities that do not meet the required experience criteria. Such approvals are not consistent with the intent of the criteria, which is to ensure that Medicare beneficiaries in need of heart transplants receive them only in facilities with substantial dedication to and experience with the procedure. While we agree that significant experience in other organ transplants is of value and should be taken into account in the review of a facility's

application, we do not believe that other organ transplants are sufficiently analogous to heart transplants to permit an exception to the criteria based on the substitution of that experience for the required experience in heart tranplants. Finally, no exceptions will be granted for patients in "life or death" situations who are transplanted in non-approved centers. In view of the fact that any patient in need of a heart transplant could be considered to be in a "life or death" situation, the granting of exceptions on this basis would undermine our determination that heart transplants can be considered reasonable and necessary only when provided in certain qualified facilities. Our determination took into account the fact that, in spite of the very poor prognosis and often grave clinical condition of potential heart transplant recipients, the onset and progression of the underlying heart disease is rarely, if ever, so rapid that there is insufficient time for a referral to and, if needed, a transplant by an approved facility with extensive experience and demonstrated successful outcomes.

*Comment:* Two commenters suggested that Medicare risk contractors be excepted from a requirement that the heart transplants provided for their enrollees be performed in Medicare approved transplant facilities.

*Response:* Under the provisions of section 1876 of the Act, an organization with a risk contract (for example, a health maintenance organization or competitive medical plan) must provide all covered Medicare services to its enrollees. This will include a heart transplant for any enrollee in need of this complex procedure. Although there is no general prohibition against risk organizations providing noncovered services to Medicare beneficiaries, we believe that the circumstances present here would ordinarily preclude a risk organization from furnishing a heart transplant to an enrollee in other than a Medicare approved facility. Section 1876(i)(6) of the Act provides that any risk organization that fails substantially to provide medically necessary services covered by Medicare is subject to a civil money penalty if that failure has adversely affected or has a substantial likelihood of adversely affecting the beneficiary. In our view, a risk organization that substituted a noncovered heart transplant for a heart transplant in a Medicare approved facility could be found to violate this provision in light of the greater assurance of favorable outcome available in the Medicare approved facility. This conclusion is not necessarily affected by the patient's consent to the substitution of noncovered services, since it is unlikely that the beneficiary would fully understand the implications of the substitution. When the risk organization uses a facility approved by Medicare, it may agree with the facility as to the amount of the charges, or it may ask Medicare to pay the facility the DRG payment plus pass throughs under section 1876(g)(4) of the Act, for which the organization would then be liable to Medicare.

*Comment:* One commenter, while agreeing with the proposed experience and survival rates outlined in the proposed notice, raised the issue of whether some different rates should be applied to facilities engaged in clinical research on patients who fall outside the patient selection guidelines (for example, those over age 60). The commenter pointed out that such research is necessary to extend the coverage of heart transplants to those who are not currently acceptable candidates for such surgery. One commenter recommended that facilities be allowed some limited flexibility in applying their patient selection criteria. One other commenter questioned whether the patient selection criteria applied to all patients and pointed out that this issue has significant implications for the ability of transplant centers to engage in innovation and experimentation.

*Response:* These comments raise an important issue that requires some elaboration and explanation. It is not our intent to limit the ability of transplant facilities to engage in innovation and experimentation. All patients undergoing heart transplantation at the facility must enter into the statistics reported, but if the applicant facility judges that research has adversely affected the survival experience, it should so explain in sufficient detail that the expert consultants can take it into account. We recognize that some transplant facilities are actively engaged in clinical research; for example, the evaluation of the transplantation of lungs in combination with the transplantation of a heart. This procedure is considered investigational and is not covered by Medicare. The clinical indications for this procedure should be governed by the facility's research protocol and are likely to differ from the facility's heart transplant patient selection criteria. Under these circumstances, the patient selection criteria called for by our notice would not apply to all patients of the facility and should not be viewed as a restriction on a facility's ability to engage in clinical research. However, for circumstances other than clinical research we expect that the patient selection criteria will be applied uniformly across all Medicare and non-Medicare patients.

The suggestion to allow facilities some flexibility in the application of their own patient selection criteria relates to the proposed facility criterion at II.A.3(c)(8)(B), which states that the facility is responsible for the ethical and medical considerations involved in the patient selection process and the application of patient selection criteria. We believe that it would be inappropriate to transplant any patient who does not meet the facility's selection criteria without review by the facility's institutional review board or a comparable body responsible for considering in a comprehensive, deliberate, and documented manner the unique circumstances of a given case. With the approval, of such a body, minor departures from the established criteria might be allowed. In the absence of this approval, failure to adhere to the facility's patient selection criteria will result in the transplant not being covered.

This notice delineates those conditions under which heart transplants may be covered by the Medicare program. Generally, heart transplants that are performed in settings or under circumstances not in conformance with standard Medicare rules of coverage and payment or with the provisions of this notice will not be covered. This would include not only heart transplants performed in facilities that were not approved as Medicare heart transplant centers, but also might include heart transplants performed on patients who did not meet an approved facility's patient selection criteria or who were transplanted under a research protocol.

*I. Patient Selection Criteria*

*Comment:* We received numerous comments on the proposed guidelines for patient selection criteria. Two commenters felt that the guidelines were unnecessary. One recommended that we include a positive definition of those patients for whom heart transplants are indicated so that unnecessary transplants at an early stage of disease would be avoided. One commenter stated that the criteria were slanted so that only extremely low risk patients would qualify. Several commenters felt that some of the listed adverse factors were not in keeping with current standards. For example, many felt that

the age guideline was restrictive and should be raised. One commenter recommended that we clarify our policy to indicate that an individual may be a candidate for a heart transplant even though he or she fails to meet all of the elements in the patient selection criteria.

*Response:* We have not amended this section, since these are only guidelines for facilities to indicate the type of factors or areas we would like to see addressed in their patient selection criteria. As we stated in the proposal, the patient selection criteria are the responsibility of the heart transplant facility. We expect that different facilities will have differing patient selection criteria. We will be relying on the expert consultants to identify, during the review of a given facility, any criteria that, in their judgments, are not consistent with current medical practice.

Because it is not our intent to dictate the practice of medicine, we purposely avoided a list of absolute indications and contraindications for heart transplantation. However, we believe that the guidelines are reasonable and expect to disapprove any facility whose patient selection criteria depart so significantly from the guidelines that the performance of heart transplants in accordance with those criteria could not be considered medically reasonable and necessary on the basis of currently available knowledge. For example, we believe that an individual who fails to meet all the criteria would not be a suitable transplant candidate. Our rationale for rejecting a facility that proposes to accept patients who are far outside our guidelines is twofold. First, the use of significantly less restrictive criteria could place Medicare beneficiaries unnecessarily at risk. Second, the use of criteria that would permit the transplantation of patients with only a small likelihood of survival could lead to circumstances in which a scarce resource would be wasted. While we have not identified the specific indications for a transplant, we believe that unnecessary transplants will be avoided since our guidelines indicate that patients must have a very poor prognosis and all other therapies must have been tried or considered.

*Comment:* One commenter suggested that we develop a standardized, quantifiable method for determining physiologic age.

*Response:* We do not intend to develop any methods for determining physiologic age. The patient's physician is responsible for making this determination and for determining whether the patient is a candidate for transplantation based on a particular facility's patient selection criteria, which will follow the guidelines outlined in section V, of this notice.

*Comment:* One commenter proposed that obtaining a transplant patient's informed consent be added as one of the patient selection criteria.

*Response:* We believe that this would be unnecessary. Obtaining a patient's informed consent is an accepted standard of practice before performing any type of surgery. We expect this to be a standard procedure at any approved facility.

*J. Patient Management*

*Comment:* One commenter recommended that the first three months of postoperative care should be provided only in a designated center.

*Response:* We do not agree with this suggestion. We are not placing a specific time limit on how long a transplant recipient must remain in the designated facility. Under the final facility criteria (at V.A.2.c.), we require that the transplant facility maintain liaison with the patient's attending physician when the patient returns home or is transferred to another facility after discharge from the designated transplant facility.

*K. Transplant Team Expertise*

*Comment:* Several commenters suggested that the experience of the transplant team, rather than the experience of the facility, be used to determine a hospital's fitness as a heart transplant center.

*Response:* While we understand and appreciate the concern that is evidenced by these questions and comments, we have not been persuaded to change our position that the facility, not the team, is the proper repository for experience and survival rates. The suggestion to base experience on the team rather than the facility also relates to the issue of approval of the type of consortium that is designed to share a single transplant team that rotates among the member hospitals.

Our position is based upon several considerations. First, we believe we must deal with hospitals individually, and that it is inappropriate to apply the experience of one hospital's team to another hospital that lacks experience but acquires the services of that team. Neither can we average or group the experience of several hospitals when reviewing their applications. Second, while important, more than just a successful heart transplant team seems to contribute to the development of good experience and survival rates. The facility criteria measure a number of factors beyond the qualifications of the transplant team in determining the overall commitment of the facility to a successful transplant program. Finally, the use of criteria, including the relatively long-term survival rate, are predicated on the need to measure a facility's long range commitment to a heart transplant program. To allow the experience of an individual or group of individuals to substitute for that institutional commitment would call into question the entire rationale for the facility criteria we have proposed. Although the loss of key members of the transplant team will require a review by HCFA to assure that the facility continues to meet the criteria, their acquisition by another facility should not, in our view, entitle that other facility to obtain the first facility's hard-won experience and success.

*Comment:* One commenter claimed that our proposed facility criteria failed to recognize the role of the organized medical staff.

*Response:* We disagree with this comment. The term facility includes the medical staff. In addition to the responsibilities of the medical staff outlined in the proposed notice at II.A.3.b., we fully expect the medical staff to be primarily responsible for the development of the patient selection criteria and the patient management protocols and to be intimately involved in all other aspects of the heart transplant program.

*Comment:* One commenter stated there are no specific criteria that the transplant surgeon must meet. Another recommended that experienced personnel whose transplantation competence is well established should be considered qualified.

*Response:* The proposed criteria at II.A.3.b., concerning a facility's commitment of resources and planning, requires board certification or eligibility in the physician s respective medical or surgical field. We have, however, modified the criteria to allow the substitution of relevant experience for board certification or eligibility.

*L. Expertise and Commitment to Cardiovascular Medical and Surgical Program*

*Comment:* Several commenters suggested changing the number of cardiac catheterizations and coronary arteriograms (500) or the number of open heart surgical procedures (250) performed annually, which were included in the proposal under criteria II.A.3.b.(2), which addresses the facility's expertise and commitment to an active cardiovascular medical and surgical program.

*Response:* We believe this criterion is important, but the number of procedures are only general indicators of experience, not absolute standards that must be met for Medicare approval. The expert consultants will carefully weigh all factors and apply reasonable standards when reviewing a facility's application. Therefore, we have made no change to the criteria.

*M. Experience*

*Comment:* The greatest number of comments received dealt with the criterion requiring a facility to have had more than two years experience performing heart transplants. Specifically, these commenters requested either the elimination of the requirement that facilities had performed at least 12 transplants in the period preceding the last two years or the adoption of transitional provisions for facilities with two years or less experience, which would rely more upon survival rates than numbers of transplants performed.

*Response:* While we have not fully accepted these comments, we believe that it is important to explain the basis for this requirement and why we have chosen to retain it. Among the criteria for approval, we give considerable weight to the criteria related to survival rates. We are convinced that full one-year and full two-year survival statistics are necessary to provide an adequately reliable measure of the success of an applicant facility. We sustain the judgement that there must be at least 24 patients with whom one full-year of survival experience has taken place and at least 12 patients with whom two full-years of survival experience have taken place. It is for these reasons that the proposed experience levels remain unchanged. We note that in order to meet the experience criteria, a facility must have performed at least 36 transplants; that is, twelve or more patients in each of the two preceeding 12 month periods and twelve patients prior to that. However, it is not required that the facility have at least 36 months of experience since beyond the second 12 months period, a facility could perform the required twelve transplants over a period of less than 12 months. Conversely, these 12 transplants could have been performed over a period of more than 12 months, but no earlier than January 1, 1982.

We are clarifying that experience and survival rates must be presented on all patients receiving cardiac transplants since January 1, 1982, and that it is on this basis that experience and survival are assessed. The applicant facilities will be required to report experience and survial rates as of a given point in time. That point in time must be within 90 days of the date we receive the application and will be referred to as the fiducial date. The fiducial date for experience and survival results must be the same and it must be stated.

It is emphasized that the ruling does not specify the date by which this experience must be achieved. Some facilities that do not currently meet the requirements of experience will undoubtedly meet them in the future, and can apply at that time.

Consistent with the previous notice, a facility that applies within 90 days of this notice and is accepted may receive retroactive approval to as early as October 17, 1986, or the date upon which it first met the criteria, whichever occurred later. A facility that seeks retroactive approval must show that it met the experience and survival criteria on the date to which it seeks retroactive approval, as well as show its experience and survival to the stated fiducial date.

*Comment:* A commenter noted that the criteria only recognize a facility's current ability to provide heart transplants and ignore future capabilities to provide this service.

*Response:* This observation is correct. The criteria used to select a transplant facility are based on demonstrated experience and success and do not take into account future capabilities.

*Comment:* One commenter suggested allowing hospitals with a minimum of two years' experience with over 250 open heart surgical procedures per year to submit experience data for those procedures in lieu of heart transplant data.

*Response:* We have rejected this comment. Open heart surgical procedures are not directly analogous to heart transplant procedures, and open heart procedures do not demonstrate experience and success with a clinical organ transplantation program involving immunosuppressive techniques.

*N. Survival Rates*

*Comment:* Numerous comments were received regarding our proposed criteria of one- and two-year actuarial survival rates of 73 and 65 percent respectively. Many of the commenters recommended increasing the standards in view of better results obtained at certain transplant centers. Many others expressed concern that the proposed standards do not provide allowances for facilities that are: (1) Involved in clinical research; (2) treating high risk patients; or (3) utilizing artificial hearts or ventricular assist devices as bridges to transplants. They contended that adherence to the criteria would inhibit clinical progress and could make it more difficult for a high risk patient to receive a needed transplant. One commenter suggested the use of actual rather than actuarial survival rates since actuarial rates may be based upon a number of assumptions or statistical analysis methods that differ among the reporting facilities. To reflect accurately the true survival rates associated with the procedure it was suggested that we specify that determination of survival rates begin with the date of the transplant.

*Response:* Our standards of 73 percent one-year and 65 percent two-year actuarial survival rates are based upon an analysis of available survival data and judgments about what can reasonably be expected. We recognize that several facilities have reported considerably higher survival rates recently, but it is premature to fix such higher rates as standards until it is clear that such rates can be reasonably widely expected. Others argue that the proposed survival rates are too high if high risk patients are to be treated. It is our judgment that patients meeting the criteria in section V.D. should have at least the specified survival rates. Thus, we note both proponents of higher and lower survival standards, and at this time, we reiterate the proposed standards. If further experience suggests that these survival rate standards need to be changed, particularly moved to higher levels, the standards will be changed accordingly. We will depend heavily upon the advice of the expert consultants.

The expert consultants may also take into account, to the extent they deem necessary, the consequences of clinical research upon the survival data. The utilization of artificial hearts or ventricular assist devices as bridges-to-transplant certainly fits the category of clinical research, and its potential impact upon survival would be handled in this manner.

The comment that actual rather than actuarial survival rates be specified has not been accepted because the actual survival rate for a period takes into account only those who were operated upon before that period. Thus, the experience with more recent patients, whether it is good or bad, does not enter into that calculation. We regard the survival rate criteria as important. Because of this, we also believe that it is important that there be uniformity in the method used by hospitals to support their survival rates. Therefore, in addition to requiring that all facilities provide actual data on survival, we also are requiring that they perform actuarial

statistical analyses using the Kaplan-Meier technique, and we have established uniform definitions that are necessary for comparability of statistical analyses of survival. In deciding upon what approach should be followed, we were guided by accepted statistical conventions. The Kaplan-Meier actuarial procedure is a well established and sound procedure for reporting medical phenomena.

In using the Kaplan-Meier technique, facilities will be required to provide survival analyses on all patients transplanted since January 1, 1982. The following definitions and rules must be used:

(a) The date of transplantation must be the starting date for calculation of the survival rate.

(b) For those dead, the date of death is used if known. If the date of death is unknown, it must be assumed as one day after the date of the last ascertained survival.

(c) For those who have been ascertained as surviving within 60 days before the fiducial date, survival is considered to be the date of last ascertained survival, except for patients described in paragraph (e) below.

(d) Any patient who is not known to be dead but whose survival cannot be ascertained to a date that is within 60 days of the fiducial date, must be considered as "lost to followup" for the purposes of this analysis.

(e) Any patient transplanted between 61 and 120 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained for at least 60 days before the fiducial date. Any patient transplanted within 60 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained on the fiducial date.

(f) A facility must submit its survival analyses using the assumption that each patient in the "lost to followup" category specified in paragraphs (d) and (e) died one day after the last date of ascertained survival. However, a facility may submit an additional analyses that reflects each patient in the "lost to followup" category as alive at the date of the last ascertained survival.

Because of the importance of survival data and to provide maximum information to the reviewers, a limited amount of actual information on every heart transplant performed at the facility since January 1, 1982, is required. No patient may be omitted, but any unique circumstances that the facility believes should be considered may be described. Unique patient identifiers are not needed. The minimum data are:

1. Transplant number
2. Age
3. Sex
4. Date of transplant
5. Date of most recent ascertained survival
6. Date of death
7. Category of each patient (that is: living, dead, or "lost to followup" according to criteria (d) or (e) above).

Although we are not requiring that these data be submitted in a particular format, our review will be facilitated if the data are submitted as follows:

- Data are tabulated in seven columns, with data for each patient appearing as one line and listed in the sequence of date of transplant.
- The fiducial date should appear on each page.
- The transplant numbers listed may be existing heart transplant numbers used by the applicant facility. If so, the basis for any missing numbers should be explained.
- The tabulation should include no more that these required data. If more data are provided, they should be through additional tables or supplemental explanation.

*O. Data Maintenance*

*Comment:* We received several comments on the proposed criteria that facilities must agree to maintain and, when requested. Periodically submit to HCFA summary data, in standard format. All of the commenters supported routine collection and analysis of data. Two recommended that the data be made available to the public. One commenter recommended against the release of any data in raw form and one other offered assistance in the acquisition, analysis and presentation of data.

*Response:* We agree with the recommendation to require the routine submission of data by facilities. We will require facilities to maintain summary data in standard format and to submit that data on an ongoing basis. Facilities not approved for Medicare covered heart transplants are not required to maintain summary data in standard format. However, these facilities should be aware that, if and when they apply for Medicare approval, they will be required to submit such data for all patients receiving a heart transplant beginning 30 days after being notified of our data requirements. We plan to provide such notification to all hospitals regarding the data requirements in the near future.

We have not yet finalized the standard format to be used by the facilities. In view of our need to publish a final notice so that the approval of qualified centers may begin, we have decided against delaying this notice while the standard format is finalized. We appreciate the concerns of the commenters on the release of raw data, and we will provide the affected institutions the opportunity for review and comment on the data prior to its release. We note that the raw data would not include patient specific information.

*P. Organ Procurement Agency*

*Comment:* One commenter believed our definition of an organ procurement agency (OPA) in the proposed criteria at II.A.7.b. was misleading in that it did not recognize that some facilities harvest and preserve donor hearts without the use of an OPA.

*Response:* We recognize that some transplant facilities rely on organ procurement agencies only for locating donors and coordinating activities and assume responsibility for harvesting and preserving donor hearts. Such facilities may continue to harvest and preserve organs, although we expect that more will elect to affiliate with an organ procurement agency. We define an organ procurement agency in the final criteria (V.A.7.b.) as an organization that meets the criteria of section 371(b) of the Public Health Service Act.

*Q. Oral Applications*

*Comment:* One commenter suggested that facilities be given the opportunity to present oral, as well as written, applications to HCFA.

*Response:* We have not accepted this recommendation because we believe this procedure would be very time-consuming and costly. Written applications should provide sufficient information for a determination to be made. All applicants will be asked to furnish the name and telephone number of a contact person so that additional information, if any is required, may be obtained quickly.

*R. Review by Other Agencies or Networks*

*Comment:* One commenter recommended that we require facilities to submit a copy of their applications to the appropriate state health planning agency and that we provide these agencies with the opportunity to review and comment on the applications.

*Response:* We have not accepted this recommendation. Facilities will be reviewed and approved or disapproved based on whether or not they meet the required criteria. While we appreciate

the interest of health planners in our process. We do not believe that their participation is neessary in assuring that Medicare beneficiaries receive heart transplants only at qualified facilities

*Comment:* One commenter recommended that we delegate the responsibility for the approval of heart transplant centers to an organization such as the National Organ Procurement and Transplant Network.

*Response:* We have not accepted this recommendation because decisions as to whether a facility meets HCFA's criteria or standards must be made by HCFA or its fiscal agents.

*S. Geographic Access*

*Comment:* Numerous commenters requested that some type of regional access or allocation be allowed in order to assure that there would be approved heart transplant centers in all regions of the country and that certain populations would not be denied access. Some commenters recommended waiving or easing the facility criteria to assure that such areas and populations would have approved centers as soon as possible. Many of these commenters pointed out that, in various areas of the country, travel distances present problems of time and expense, not only for the patient and family members, but for the organs being transplanted.

*Response:* We have not accepted these comments because we do not believe that geographical distribution can be equitably determined within the framework of an ongoing approval process. We recognize the hardship that this may place on some transplant recipients and their families, but we do not believe it adversely affects the clinical outcomes of the procedures. We also note that the issue of geographic access will diminish over time as more centers gain the necessary experience to meet the criteria. We do not propose to assure an even geographic distribution, nor do we propose to limit the number of facilities that may qualify in a given area. The determinant of whether a facility will be approved will depend overwhelmingly upon whether the facility meets the coverage criteria set forth in this notice

*Comment:* One commenter stated that proximity to other approved heart transplant centers should not be a consideration of approval

*Response:* We agree with this comment. In the proposed notice, we did not include proximity to other centers as a criterion for approval, nor will we include it in this final notice. If more than one facility in a given area meet the criteria, then all that qualify will be approved.

*T. Consortia*

*Comment:* Several commenters requested that various types of "consortia" be approved as heart transplant centers. In arguing for the approval of consortia by the Medicare program, some commenters cited State or local government requirements that hospitals join consortia in order to be licensed to perform heart transplants. However, there was no consensus on what the term "consortia" should mean in this context. The term consortia as used by the various commenters described a variety of distinctly different programs including cooperative arrangements:

Among hospitals in a given city, state, or region; between university and Veterans Administration hospitals; and between adult and pediatric hospitals of a university system. Additionally, one commenter opposed the approval of consortia and expressed concern that facilities might apply as a consortium in order to bolster, numerically, their experience and results as a group. It was pointed out that, in actuality, the procedures would be done individually at various institutions making up the consortium and thus, could have highly variable experiences. A fear was expressed that small programs without true commitment and dedication to cardiac transplantation might band together causing, ultimately, a significant decrement in survival rates.

*Response:* At this time, we have not accepted the comment to grant approval to consortia as Medicare heart transplant centers in spite of the problems that some hospitals face. These criteria are based on analyses of patient outcomes for transplants provided in single-facility, single staff programs. We have no experience with other institutional arrangements (such as consortia) and are uncertain what criteria to apply to these alternative institutional arrangements to be assured of their qualifications and accountability to provide medically reasonable and necessary heart transplants to Medicare beneficiaries. Substantial analytical work would be needed to develop appropriate criteria that would take account of the many arrangements that currently exist. Of greater concern, however, is the fact that the criteria for facility approval are based on the performance of individual heart transplant facilities. They are designed to assure that Medicare beneficiaries receive only reasonable and necessary heart transplants that we believe can be provided only at facilities with substantial dedication to and experience with the procedure. Failure to apply these criteria to all the individual members of a consortia could result in the loss of that assurance.

Although we will not approve consortia as heart transplant centers, we note that individual members of a consortium may submit individual applications at any time and, if they meet the criteria, they will be approved. As stated elsewhere, these criteria will be reviewed after three years. We will continue to examine possible modifications to the criteria and their potential application to alternative institutional arrangements.

*U. Expert Consultants*

*Comment:* Several commenters requested clarification of the bylaws of the panel and recommended that its role and latitude be defined. One commenter stated that the panel should have the authority to approve, disapprove or rescind approvals. One commenter requested access to the deliberations of the panel. One commenter recommended that we utilize the expert panel in the identification of the appropriate data to be maintained by the facilities.

*Response:* In considering the role of the panel, we realized that we do not expect that there will be a need for the consultants to meet as a group on a routine basis to discuss matters relating specifically to all facility applications. Thus, it is inappropriate to refer to the consultants as a panel and we have changed the criteria to refer to them as "expert consultants". The consultants will have the responsibility of reviewing applications at the request of HCFA, making recommendations to HCFA on a timely basis concerning qualified facilities, and supporting each recommendation with written documentation. Consensus of the consultants is not required. In this fashion, we expect to maximize the benefit to be gained by employing such diverse and well-qualified consultants. The consultants will serve in purely advisory roles. All decisions regarding approval, disapproval or withdrawal of approval will be made by the Administrator of HCFA after considering the findings and recommendations of the consultants. Each individual consultant will review every application, except those from heart transplant programs that have been in existence less than two years and from consortia, and will identify its strengths or weaknesses. A short summary of the findings and a recommendation regarding approval or disapproval will be forwarded to the Administrator. The findings of the

consultants will be considered pre-decisional and not subject to public disclosure. However, every facility will be notified of its approval or disapproval and the basis for that decision. In addition to reviewing applications, the consultants may propose specific changes to the coverage criteria or offer advice and suggestions regarding the process of review, approval, and monitoring of cardiac transplant facilities.

*Comment:* We received several comments regarding the composition of the panel. Most commenters recommended including individuals with expertise in hospital administration. We received recommendations to include experts in health planning, ethics and law and to consider demographic representation as well. We also were advised to include representatives of private community hospitals in addition to academic teaching centers. One commenter recommended that we solicit nominations from the industry while two others submitted nominations as part of their comments.

*Response:* After the publication of the proposed notice, we solicited nominations from various professional organizations and consumer representative groups. In response to our request, we received the names of over 50 individuals to serve as consultants to us in reviewing applications from hospitals wishing to be approved heart transplant centers for Medicare coverage purposes.

After consideration of these nominations as well as the nominations and comments received from the proposed notice, we selected nine individual consultants. Our selection was based on three primary considerations: Professional qualifications related particularly to heart transplantation; the need for a balance among the related specialties as well as perspectives towards heart transplantations; and interest and availability of the individuals to participate in this activity. We agreed with the recommendation to include among those experts individuals with expertise in hospital administration and solicited nominations from this field as well as from the fields of cardiology, cardiovascular surgery, organ transplantation, immunosuppression and health care resource utilization. We did not believe that it was appropriate to consider experts in health planning, ethics or law, although the individuals we selected have some familiarity with these areas. Although the principal basis for selecting the individuals was clinical or administrative expertise, we considered, to the extent possible, demography and representation of community hospitals in making our selections. All of the consultants chosen are eminent and widely recognized experts and practitioners in their fields. We believe we achieved the desired balance among the specialties by our selection of representatives from the major relevant disciplines.

*Comment:* One commenter stated that the criteria are flawed because the experts in the field of cardiac transplantation who assisted in the development of the criteria may have a conflict of interest in the approval of facilities.

*Response:* We disagree with this statement. We believe that the criteria represent a general consensus of the experts in the field of heart transplantation who provided their technical expertise and advice without consideration for personal or institutional gain.

*Comment:* One commenter suggested that they expect the panel to be limited to 90 days in which to make a decision on an application.

*Response:* We do not feel a specific time limit should be placed on reviewing an application to become a transplant facility. We would expect that these decisions would be made timely and generally within 90 days.

*Comment:* One commenter suggested that the language in the proposed criterion II.B. be modified to add the word "predominantly" in the second sentence before the word "non-Federal."

*Response:* We disagree with this modification. The individual consultants will be non-Federal people.

*Comment:* One commenter suggested that the review process for applications be two-fold: Those meeting the numerical standards need only a staff review; while those not meeting the numerical standards be reviewed by the panel.

*Response:* We disagree with this suggestion. For purposes of fairness and consistency, applications will be reviewed by the expert consultants. However, we have identified two situations in which applications will not be reviewed by the expert consultants. These are cases in which disapprovals will be made by HCFA based on the fact that (1) A facility's heart transplant program has not been in existence for at least two years; or (2) a consortium has submitted an application.

*V. w. Appeals*

*Comment:* Two commenters objected that there was no provision allowing a hospital to appeal HCFA's decision to disapprove their application to become a heart transplant facility under Medicare.

*Response:* Although the proposed notice did not contain a provision allowing a facility to appeal a disapproval of its application, we wish to make it clear that we are prepared to reconsider any application if requested to do so. The basis of any decision to disapprove a facility will be made known to that facility, and if the facility believes that we have made some factual error, then it will be given the opportunity to rebut our findings and submit additional or corrected information regarding its application for approval to provide Medicare covered heart transplants. We do not believe that the appeal provisions in 42 CFR Part 405, Subpart O are appropriate for heart transplant facility appeals since the decision involves the coverage of the underlying procedure itself. By contrast, in the instances specified in Subpart O, basic coverage of services is not in question, only whether it was performed by entities or facilities meeting specific requirements. In the case of heart transplants, however, the procedure remains generally experimental and not covered, except when done in approved facilities. In addition, it requires a high degree of specialized expertise to judge whether a heart transplant facility meets the criteria, and it would be inappropriate to have an administrative law judge make this decision in the context of an administrative hearing.

*W. x. Payment*

*Comment:* One commenter asked that flexibility be built into the payment level within DRG 103.

*Response:* There is no need to incorporate any flexibility into DRG 103. As with all other DRG cases for hospitals under the prospective payment system, additional payments are available for cost and day outliers. Further, this DRG, as is the case with all others, will be recalibrated annually.

*Comment:* One commenter suggested that we take a conservative approach to adjusting the DRG weight and recommended that we not recalibrate the DRG weight until the second or third year. By doing this, the commenter suggested that we would have a better statistical sample of Medicare transplants on which to base the recalibration.

*Response:* Section 9302 of OBRA requires the Secretary to adjust DRG classifications and weighting factors for FY 1988 and at least annually thereafter. At the time of the first review under this provision, we will examine the issue of whether to use only Medicare data in

setting the weight of heart transplants. In the interim, we will use the weight of 14.9944 for heart transplant payment.

*Comment:* One commenter questioned whether DRG 103, "Heart Transplants," encompasses the preoperative evaluation necessary to determine whether the patient is an appropriate candidate for heart transplantation.

*Response:* DRG 103 provides payment for all services furnished during the hospitalization in which the transplant is performed. Payment for preoperative evaluation to determine if the patient is an appropriate candidate is included in DRG 103 if it was performed during the same admission as the transplant. Payment for medically necessary inpatient preoperative evaluations prior to the hospital stay during which the transplant is performed also will be made under the prospective payment system. The amount of payment will vary depending on the DRG to which the patient is assigned.

*Comment:* One commenter suggested that the acquisition cost of hearts be included in the DRG 103 payment, rather than paid as a cost pass-through.

*Response:* We have not accepted this comment at this time. For the future, we are considering paying for heart acquisitions on a prospective basis, possibly including them in the DRG payment. However, it is necessary to pay for heart acquisitions in FY 1987 on a cost basis since the DRG weight for heart transplants does not include the costs associated with heart acquisitions. Revising the DRG weight for heart transplants to include acquisition costs is not possible at this time since accurate data on heart acquisition costs are not readily available.

*Comment:* One commenter suggested that no reimbursement limit be placed on teaching hospitals since heart transplants are on the cutting edge of medical technology.

*Response:* We have not accepted this suggestion. As with all other Medicare admissions under the prospective payment system, payments for heart transplantation will be limited by the DRG weight and any day or cost outlier payments. We note that teaching hospitals receive direct and indirect medical education payments in addition to DRG and outlier payments.

*Comment:* One commenter thought that some consideration should be given to increasing payment for services furnished by anesthesiologists during heart transplantation operations.

*Response:* We do not believe that this issue is germane. Payments to anesthesiologists will not change as a result of this notice.

*Comment:* One commenter wanted to know if the military insurance program, CHAMPUS, would expand their coverage to include heart transplantation.

*Response:* On December 11, 1986, the Department of Defense announced in the **Federal Register** (51 FR 44601) that the CHAMPUS program will provide coverage of heart transplants under certain conditions.

*Comment:* One commenter stated that Part A intermediaries will be required to establish a cardiac acquisition payment rate for all independent organ procurement agencies that procure hearts.

*Response:* Due to the anticipated difference in the Medicare utilization between kidney procurement and heart procurement, we do not anticipate a cost reimbursement system for heart acquisition identical to that used for kidneys. Instructions will be issued in the near future dealing with the payment of heart acquisition costs.

*Comment:* One commenter submitted the results of an analysis of operating cost information related to heart transplants and recommended that it be used to establish a more appropriate weight for DRG 103. The results were based on data gathered from eleven transplant facilities between January, 1985 and June, 1986, and included 36 Medicare-eligible patients and 202 non-Medicare-eligible patients. When Medicare-eligible and non-Medicare eligible patients were separated, the average cost per case was $85,412 and $59,279, respectively. It was concluded that if the weight for DRG 103 remained at 14.9944 as proposed, then hospitals that provided heart transplants to Medicare beneficiaries would be reimbursed for 77 percent of their operating costs. Several other commenters expressed concern that the proposed weight was too low, and one commenter recommended that we analyze more current cost and charge data.

*Response:* In studying the appropriateness of the proposed relative weight, we reviewed the best data available to us at the time which included Medicare and non-Medicare charge data accumulated under the National Heart Transplant Study (NHTS). Because the six hospitals included the NHTS met comparable standards of experience, expertise, resources, and commitment to their transplant programs, the NHTS provided the most reliable and comprehensive compilation of cost data.

The relative weight for DRG 103 will be recalculated when the classifications and weighting factors for all 473 DRGs are recalibrated for FY 1988. In the interim, we will use the relative weight of 14.9944 that was proposed in the October 17, 1986 notice.

*Comment:* One commenter stated it is unclear whether follow-up care is available under Part A.

*Response:* Follow-up care is available under Part A for any medically necessary admission.

*X. Effective date*

*Comment:* One commenter pointed out that the proposed effective date (October 17, 1986) for Medicare coverage of heart transplants does not give State Medicaid programs time to comply with the requirements and time frames of the Administrative Procedures Act, to which they are bound.

*Response:* State Medicaid programs are not bound by Medicare's effective date of coverage and may choose any effective date they wish.

*Y. Specific Testimonials*

*Comment:* About one-fourth of the comments were testimonials in favor of a transplant facility with which the commenter was familiar.

*Response:* While we appreciate the interest which prompted such comments, testimonials, by themselves, are not considered when reviewing applications of facilities that wish to become heart transplant centers under Medicare.

## IV. Summary of Changes

On the basis of comments received, as well as certain provisions of the Omnibus Budget Reconciliation Act of 1986 (OBRA), which was signed by the President four days after the publication of the proposed notice, we have made several changes to our proposed policies. These changes are summarized below:

*A. Coverage of Immunosuppressive Drugs*

Section 9335(c) of OBRA modified section 1861(s)(2) of the Act to provide coverage of immunosuppressive drugs furnished, to an individual who receives an organ transplant for which payment is made, within one year after the date of the transplant procedure. This coverage applies to immunosuppressive drugs furnished on or after January 1, 1987. We have issued instructions to participating hospitals and Medicare contractors to implement this new provision. Medicare beneficiaries who receive heart transplants at non-approved facilities will not be eligible for coverage of their immunosuppressive

drugs since no payment will have been made for the transplant at the facility.

*B. Qualifications of Transplant Team*

We have modified our requirement that responsible medical/surgical members of the transplant team must be board certified or eligible in their respective disciplines to allow the substitution of relevant experience.

*C. Experience and Survival Criteria*

We are requiring that all facilities report their actuarial statistical analyses using the Kaplan-Meier technique, and we have established uniform definitions that are necessary for comparability of statistical analyses of survival. We have added a requirement that facilities must submit a minimal amount of data on every patient transplanted at the facility between January 1982 and the date of the application. Facilities may submit additional patient information that they believe should be taken into account during our review of their applications.

*D. Maintenance and Submission of Data*

We have modified our requirements that the facility must agree to maintain and, when requested, periodically submit summary data to indicate that the facility must maintain and routinely submit the data on an ongoing basis. Facilities not approved for Medicare covered heart transplants are not required to maintain summary data in standard format. However, these facilities should be aware that, if and when they apply for Medicare approval, they will be required to submit such data for all patients receiving a heart transplant beginning 30 days after being notified of our data requirements. We plan to issue instructions to all hospitals regarding the required summary data in the near future.

*E. Organ Procurement*

We have clarified the language concerning the organ procurement program recognize that some facilities may operate their own programs. Thus, the proposed language stating that a facility must "participate" in an organ procurement program has been changed to state that a facility must "operate or participate" in an organ procurement program.

Additionally, we have revised the definition of an organ procurement agency to reflect that it must meet the criteria of section 371(b) of the Public Health Service Act.

*F. Expert Consultants*

We have changed the references to the "panel of experts" to indicate that we will be relying on the advice of "individual expert consultants". In considering the role of the panel, we realized that we do not expect that there will be a need for the consultants to meet as a group on a routine basis to discuss all of the facility applications. A consensus of the consultants is not required. We also have specified that the consultants will review applications at the request of HCFA, make recommendations to HCFA on a timely basis, and support each recommendation with written documentation.

*G. Exceptions*

We have privided for some limited exceptions to the facility criteria if there is justification. We intend to rely on the professional expertise and judgment of expert consultants in determining whether heart transplants may be performed safely and effectively in a given facility. Consequently, we have not developed specific alternative criteria for facilities that do not meet all the criteria. However, we have identified three circumstances for which exceptions may not be made. First, facilities whose transplant programs have been in existence less than two years will not be approved. Second, applications from consortia will not be approved. Third, geographic considerations will not be taken into account. Disapprovals of facilities whose transplant programs have been in existence less than two years and of consortia will be made by HCFA and will not require prior reviews by the individual expert consultants.

*H. Forthcoming Changes*

Section 9318 of OBRA 1986 included other provisions related to organ transplantation and procurement that are summarized here for informational purposes:

- To participate in Medicare and Medicaid, all hospitals will be required to establish protocols to encourage organ and tissue donation.
- Any hospital performing transplants will be required to be a member of and abide by the rules of the Organ Procurement and Transplantation Network.
- To receive payment under title XVIII or XIX for the cost of organ procurements, organ procurement agencies (OPAs) will be required to be a qualified OPA operating under a grant under section 371(a) of the Public Health Service Act, or have been certified or recertified by the Secretary within the previous two years as meeting the standards to be a qualified OPA as described by section 371(b) of the PHS Act.
- OPAs will be required to meet performance-related standards to be designated as an OPA so that payments may be treated as organ procurement costs for the purposes of reimbursement. The Secretary may designate only one OPA per service area.

The instructions and any necessary regulations to implement these provisions will be published in the future. The statute provided an effective date of October 1, 1987 for these provisions.

**V. Provisions of this Notice and Ruling**

We have determined that, for Medicare coverage purposes, heart transplants are medically reasonable and necessary when performed in facilities that meet certain criteria. Because the HCFA Ruling HCFAR 80–1 excluded heart transplants from coverage under the Medicare program, we are issuing this notice as a new HCFA ruling. It will rescind HCFAR 80–1 and set forth the new coverage policy for heart transplants. We plan to compile and publish all HCFA Rulings in the "Health Care Financing Administration Rulings" booklet which will be indexed for citation purposes. When this Ruling is republished in the booklet, it will be known as HCFAR 87–1. The text of the HCFA ruling is as follows:

**Criteria for Medicare Coverage of Heart Transplants—HCFAR 87–1**

*Purposes*

This Ruling rescinds the HCFA ruling, HCFAR 80–1 that excludes coverage of heart transplants under the Medicare program. It also provides public notice of HCFA's new coverage policy for heart transplants.

*Citiations*

Sections 1102, 1862(a)(1) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y(a)(1) and 1395hh).

*Ruling*

HCFAR 80–1 that excludes heart transplants from coverage under the Medicare program is rescinded. Facilities that wish to obtain coverage of heart transplants for their Medicare patients must submit an application and supply documentation showing their initial and ongoing compliance with each of the criteria. For facilities which are approved, Medicare will cover under Part A (Hospital Insurance) all medically reasonable and necessary inpatient services. Payment for these services generally will be made under the Diagnosis Related Group (DRG) classification code #103, "Heart transplants". Organ acquisition costs will be paid separately on a cost-reimbursement basis. Physician services, related to the transplant, as well as non-hospital services related to pre- and post-transplant care, will be covered under Part B (Supplementary

Medical Insurance) and reimbursed on the basis of reasonable charges. In accordance with the provisions of section 9335(c) of OBRA, post-transplant care for covered transplants includes outpatient, self-administrable immunosuppressant drugs, such as cyclosporine, for a period of up to one year beginning with the date of discharge from the inpatient hospital stay during which the transplant was performed. If a Medicare beneficiary receives a covered heart transplant from an approved facility, reasonable and necessary services for followup care and for complications are covered, even if such services are furnished by a hospital that is eligible for Medicare reimbursement but is not specifically approved by Medicare for heart transplantation.

Medicare will not cover transplants or re-transplants in facilities which have not been approved as Medicare transplant facilities. If a Medicare beneficiary receives a heart transplant from a facility that is not approved by Medicare for heart transplantation, we will not cover any inpatient services associated with the transplantation procedure. Neither will we cover physician services associated with the transplantation procedure. Thus, payment will not be made for the performance of the transplant or for any other services which are incorporated into a global fee.

However, after a beneficiary has been discharged from a hospital (which has not been approved by Medicare as a heart transplant center) in which he or she receives the heart transplant, medical and hospital services required as a result of the prior non-covered transplant may be covered in a facility otherwise eligible for Medicare reimbursement when they are reasonable and necessary in all other respects. Thus, coverage will be provided for subsequent inpatient stays or outpatient treatment (exclusive of self-administrable immunosuppressive drugs) ordinarily covered by Medicare even if the need for treatment arose because of a previous non-covered heart transplant procedure. These services also will be covered for Medicare beneficiaries who were not beneficiaries at the time they received a heart transplant regardless of whether or not the transplant was performed at an approved facility.

Once a facility applies for approval and is approved as a heart transplant facility for Medicare purposes, it is obliged to report immediately to HCFA any events or changes which would affect its approved status. Specifically, a facility must report any significant decrease in its experience level or survival rates, the transplantation of patients who do not meet its patient selection criteria, the loss of key members of the transplant team, or any other major changes that could affect the performance of heart transplants at the facility. Changes from the terms of approval may lead to withdrawal of approval for Medicare coverage of heart transplants performed at the facility.

A facility that we approve as meeting the criteria set forth in this notice may seek Medicare payment from its Medicare intermediary for heart transplants performed on Medicare patients. For facilities receiving Medicare payment under the Medicare prospective payment system, we will use the DRG classification #103, "Heart transplants". We have established a relative weight of 14.9944 for DRG 103 and a 51 day outlier threshold.

Heart acquisition costs will be reimbursed as a cost pass through.

The criteria that we will require facilities to meet in order to receive Medicare payment for heart transplantations follow.

A. Criteria for Facilities

1. *Patient selection.* A facility must have adequate written patient selection criteria and an implementation plan for their application. (Guidelines for patient selection criteria appear in section V. D. of this ruling.)

2. *Patient management.* A facility must have adequate patient management plans and protocols that include the following:

a. Detailed plans for therapeutic and evaluative procedures for the acute and long-term management of a patient, including commonly encountered complications. The basis for confidence in these plans must be stated.

b. The logistics of the plans for patient management and evaluation during the waiting and immediate post-discharge, as well as in-hospital, phases of the program.

c. The logistics of the plans for long-term management and evaluation, including education of the patient, liaison with the patient's attending physician, and the maintenance of active patient records for five years.

3. *Commitment.* A facility must make a sufficient commitment of resources and planning to the heart transplant program to carry through its application. Indications of this commitment could include the following:

a. Commitment of the facility to the heart transplant program is at all levels and broadly evident throughout the facility. (A cardiac transplantation program requires a major commitment of resources. These may intermittently include many other departments as well as the principal sponsoring departments.)

b. The facility has both the expertise and the commitment for participation in medical, surgical, and other relevant areas, particularly cardiology, cardiovascular surgery, anesthesiology, immunology, infectious diseases, pulmonary diseases, pathology, radiology, nursing, and social services. The facility must identify individuals in these areas in order to achieve an identifiable and stable transplant team. Responsible medical/surgical members of the team must be board certified or eligible in their respective disciplines or have demonstrated transplantation competence irrespective of board status.

(1) The component teams must be integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(2) The facility must have an active cardiovascular medical and surgical program. (General indicators of this type of program would be a minimum of 500 cardiac catheterizations and coronary arteriograms annually, with the ability and willingness to do these procedures on an emergency basis, and a surgical group that has demonstrated low mortality rates in an active open heart surgical program involving at least 250 procedures a year.) The surgical team responsible for transplantation must be an identified, stable group.

(3) The anesthesia service must identify a team for transplantation that must also be available at all times.

(4) The infectious diseases service must have both the profesional skills and laboratory resources needed to discover, identify, and manage the complications from a whole range or organisms, many of which are uncommonly encountered in the usual infectious diseases laboratory.

(5) The nursing service must identify a team or teams trained not only in hemodynamic support of the patient, but also in the special problems of managing immunosuppressed patients.

(6) Pathology resources must be available for studying and reporting promptly the pathological responses to transplantation.

(7) Adequate social service resources must be available.

(8) Mechanisms must be in place for managing the heart transplant program which assure that—

(A) Patient selection criteria are consistent with those set forth in the facility's written patient selection criteria;

(B) The facility is responsible for the ethical, and medical considerations involved in the patient selection process and application of patient selection criteria.

(9) Adequate plans exist for organ procurement meeting legal and ethical criteria, as well as yielding viable transplantable organs in reasonable numbers.

4. *Facility plans.* The facility must have overall facility plans, commitments, and resources for a program that will assure a reasonable concentration of experience; specifically, 12 or more cardiac transplantation cases per year. This level of activity must be shown feasible and likely on the basis of plans, commitments, and resources.

5. *Experience and survival rates.* The facility must demonstrate experience and success with a clinical organ transplantation program involving immunosuppressive technique. The evaluation of a facility's experience and survival rates will be made on patients transplanted since January 1, 1982.

The facility must have an established cardiac transplantation program with documented evidence of 12 or more patients in each of the two preceding 12-month periods and twelve patients prior to that but since January 1, 1982. Such programs are deemed to have the potential for acceptable data bases for estimating survival.

The applicant facilities will be required to report experience and survival rates as of a given point in time. That point in time must be within 90 days of the date we receive the application and will be referred to as the fiducial date. The fiducial date for experience and survival results must be the same and it must be stated.

Survival rates may be influenced by many factors, including random chance and patient selection. However, most authorities agree

BEST COPY AVAILABLE

that a patient who is not free of adverse prognostic factors warrants cardiac transplantation only if he or she has a reasonable prognosis and the donor heart cannot be used in a patient who is a good candidate with at least a moderately urgent need and who is in reasonable geographic proximity. Initially, the facility must demonstrate actuarial survival rates of 73 percent for one year and 65 percent for two years for patients who have had heart transplants since January 1, 1982 at that facility. In reporting their actuarial survival rates, facilities must use the Kaplan-Meier technique. The following definitions and rules also must be used:

a. The date of transplantation must be the starting date for calculation of the survival rate.

b. For those dead, the date of death is used if known. If the date of death is unknown, it must be assumed as one day after the date of the last ascertained survival.

c. For those who have been ascertained as surviving within 60 days before the fiducial date, survival is considered to be the date of last ascertained survival, except for patients described in paragraph (e) below.

d. Any patient who is not known to be dead by whose survival cannot be ascertained to a date that is within 60 days before the fiducial date, must be considered as "lost to followup" for the purposes of this analysis.

e. Any patient transplanted between 61 and 120 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained for at least 60 days before the fiducial date. Any patient transplanted within 60 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained *on* the fiducial date.

f. A facility must submit its survival analyses using the assumption that each patient in the "lost to followup" category (according to the criteria A.5.d. or e. above), died one day after the last date of ascertained survival. However, a facility may submit an additional analyses that reflects each patient in the "lost to followup" category as alive at the of the last ascertained survival.

In addition to reporting actuarial survival rates, the facility must submit the following actual information on every Medicare and non-Medicare patient who received a heart transplant between January 1, 1982 and the date of the application:

- Transplant number.
- Age.
- Sex.
- Date of transplant.
- Date of most recent ascertained survival.
- Date of death.
- The category of each patient (that is: Living, dead, or "lost to followup" according to the criteria A.5.d. or e. above).

Unique patient identifiers are not needed. The facility may submit additional information on any of the cases that it would like the expert consultants to consider in their reviews.

Although we are not requiring that these data be submitted in a particular format, our review will be facilitated if the data are submitted as follows:

- Data are tabulated in seven columns, with data for each patient appearing as one line and listed in the sequence of date of transplant.
- The fiducial date should appear on each page.
- The transplant numbers listed may be existing heart transplant numbers used by the applicant facility. If so, the basis for any missing numbers should be explained.
- The tabulation should include no more than these required data. If more data are provided, they should be through additional tables or supplemental explanation.

6. *Maintenance and submission of data.* The facility must agree to maintain and routinely submit to HCFA in a standard format prescribed by HCFA, summary data about patients selected, protocols used and short- and long-term outcome on all patients undergoing cardiac transplantation, not only those for whom payment under Medicare is sought. (Such data are necessary to provide a data base for an ongoing assessment of cardiac transplantation and to assure that approved facilities maintain appropriate patient selection criteria, adequate experience levels and satisfactory patient outcomes.) In addition, facilities must agree to notify HCFA immediately of any change related to the facility's transplant program that could affect the health or safety of patients selected for covered Medicare heart transplants or which would otherwise alter specific elements in their application. For example, a facility must report any significant decrease in its experience level or survival rates, the loss of key members of the transplant team, or the transplantation of patients who do not meet the facility's patient selection criteria.

Facilities not approved for Medicare covered heart transplants are not required to maintain summary data in standard format. However, if and when these facilities apply for Medicare approval, they will be required to submit such data for all patients receiving a heart transplant beginning 30 days after being notified of our data requirements. We plan to issue instructions to all hospitals regarding the required summary data in the near future.

7. *Organ procurement.* The facility must operate or participate in an organ procurement program to obtain donor organs.

a. If a cardiac transplantation center utilizes the services of an outside organ procurement agency to obtain donor organs, it must have a written arrangement covering these services. The cardiac transplantation center must notify the Secretary in writing within 30 days of terminating such arrangements.

b "Organ procurement agency" is defined as an organization that meets the criteria of section 371(b) of the Public Health Service Act.

8. *Laboratory services.* The facility must make available, directly or under arrangements, laboratory services to meet the needs of patients. Laboratory services are performed in a laboratory facility approved for participation in the Medicare program.

B. Process for Review and Approval of Facilities

The approval of facilities will be based on a careful review of the materials submitted regarding their experience, survival rates, and expertise, as well as their commitment to the heart transplant program. We will conduct the review with the aid and advice of individual non-Federal, expert consultants in relevant fields. Generally, the consultants will have the responsibility of reviewing applications at the request of HCFA, making recommendations to HCFA on a timely basis concerning qualified facilities, and supporting each recommendation with written documentation. Consensus of the consultants is not required. The individual consultants will report to us on their findings with respect to individual applications and will provide the basis for decisions as to the approval or disapproval of such applications.

In approving facilities, we will compare the facility's submission against the criteria specified in this notice. The approval granted will be for a three year period and extensions of approval will require submission of a continuation application and will not be automatic.

In addition to reviewing applications, the individual expert consultants may propose specific changes to the coverage criteria. Finally, in certain limited cases, exceptions to the strict criteria proposed may be warranted if there is justification and if the facility ensures our objectives of safety and efficacy. Under no circumstances will exceptions be made for facilities whose transplant programs have been in existence for less than two years, and applications from consortia will not be approved. In these two cases, disapprovals will be made by HCFA and will not require prior reviews by the expert consultants. Additionally, exceptions on the basis of geographic considerations will no' be granted.

C. Application Procedure

In order to facilitate the approval of qualified facilities, we announced in the proposed notice that we would begin accepting and reviewing applications from facilities that believed they were qualified based on the proposed criteria. Because the applications will be approved only on the basis of the criteria published in this final notice, facilities which have submitted applications prior to the publication date of this final ruling April 6, 1987, have the opportunity to submit any necessary revision and additions to their applications.

A facility that seeks retroactive approval must show that it met the experience and survival criteria on the date to which it seeks retroactive approval, as well as show its experience and survival to the stated fiducial date.

The applications procedure is as follows: 1. An original and two copies of the application must be submitted on 8½ by 11 inch paper, signed by a person authorized to do so. The facility must be a participating hospital under Medicare and must specify its provider number, and the name and telephone number of an individual we could contact should we have questions regarding the application.

2. Information and data must be clearly stated, well organized and appropriately indexed to aid in its review against the criteria specified in this notice. Each page must be numbered.

3. To the extent possible, the application should be organized into eight sections corresponding to each of the eight major criteria and addressing, in order, each of the sub-criteria identified.

4. The application should be mailed to the address below in a manner which provides the facility with documentation that it was received by us.

Administrator, Health Care Financing Administration, c/o Office of Executive Operations, Room 777 East High Rise, 6325 Security Blvd., Baltimore, Maryland 21207.

D. Guidelines for Patient Selection Criteria

Included in section V.A., Criteria for Facilities, is the requirement that a facility must have adequate written patient selection criteria and an implementation plan for their application. Such criteria should include or be comparable to, but need not be limited to, the guidelines below that indicate the type of factors or areas we would like to see addressed. We expect to disapprove any facility that departs so significantly from the guidelines that Medicare beneficiaries would be placed at risk.

1. Patient selection criteria must be based upon both a critical medical need for transplantation and a maximum likelihood of successful clinical outcome.

2. The patient must have a very poor prognosis (for example, less than a 25 percent likelihood of survival for six months) as a result of poor cardiac status, but must otherwise have a good prognosis.

3. All other medical and surgical therapies that might be expected to yield both short- and long-term survival (for example, 3 or 5 years), comparable to that of cardiac transplantation, must have been tried or considered.

4. Many factors must be recognized at the present time to exert an adverse influence on the outcome after cardiac transplantation. The manner and extent to which adverse risk is translated into contraindication varies. A patient who meets patient selection criteria under section D. 2., 3., and 5., and is free of the adverse factors under this section 4a. and b., is considered a good candidate for cardiac transplantation. Some experts would not require freedom from all adverse factors under this section 4b. We recognize that some who may not be considered "good candidates" may also benefit, but the likelihood or extent of benefit is significantly less.

a. Strongly adverse factors include: (1) Advancing age; for example, a patient beyond 53 to 57 years of age (the mid 50's). Until not long ago, limited experience with patients over age 50 showed that these patients had both impaired capacity to withstand post-operative and immunosuppressive complications and lessened survival. More recently, carefully selected patients through age 55 have had good survival experience; but experience with patients beyond age 55 is limited. The selection of any patient for transplantation beyond age 50 must be done with particular care to ensure an adequately young "physiologic" age and the absence or insignificance of coexisting disease.

(2) Severe pulmonary hypertension (because of the limited work capacity of the typical donor right ventricle which is an important consideration in orthotopic cardiac transplantation). Generally, pulmonary vascular resistance above 5 Wood units or pulmonary artery systolic pressure over 65 mm Hg is a serious adverse factor. However, these patients may be acceptable if a pulmonary vasodilator drug reduces both pulmonary vascular resistance below 3 Wood units and pulmonary artery systolic pressure below 50 mm Hg.

(3) Renal or hepatic dysfunction not explained by the underlying heart failure and not deemed reversible (because of the nephrotoxicity and hepatotoxicity of cyclosporine). For patients who are to receive azathioprine and high-dose corticosteroid rather than cyclosporine, a slightly higher level of hepatic or renal dysfunction is acceptable, but substantial dysfunction is still a contraindication (because of the likelihood of early exacerbation postoperatively and because of interference with immunosuppressive regimens).

(4) Acute severe hemodynamic compromise at the time of transplantation if accompanied by compromise or failure of one or more vital end-organs (because of a substantially less favorable prognosis for survival than for the average transplant recipient).

(5) Symptomatic peripheral or cerebrovascular disease (because of accelerated progression in some patients after cardiac transplantation and on chronic corticosteroid treatment).

(6) Chronic obstructive pulmonary disease or chronic bronchitis (because of poor postoperative course and likelihood of exacerbation of infection with immunosuppression).

(7) Active systemic infection (because of the likelihood of exacerbation with initiation of immunosuppression).

(8) Recent and unresolved pulmonary infarction, pulmonary roentgenographic evidence of infection, or of abnormalities of unclear etiology (because of the likelihood that this represents pulmonary infection).

(9) Systemic hypertension, either at transplantation or prior to development of end-stage heart disease, that required multi-drug therapy for even moderate control (for example, multidrugs to bring diastolic pressure below 105 mm Hg) for patients who would be on cyclosporine protocols (because of the substantial exacerbation of hypertension with cyclosporine and the difficulty of its management).

(10) Any other systemic disease considered likely to limit or preclude survival and rehabilitation after transplantation.

(11) Cachexia, even in the absence of major end organ failure (because of the significantly less favorable survival of these patients).

(12) The need for or prior transplantation of a second organ such as lung, liver, kidney, or marrow (because this represents the coexistence of significant disease, and because multi-organ transplantation must still be considered experimental).

(13) A history of a behavior pattern or psychiatric illness considered likely to interfere significantly with compliance with a disciplined medical regimen (because a lifelong medical regimen is necessary, requiring multiple drugs several times a day, with serious consequences in the event of their interruption or excessive consumption).

(14) The use of a donor heart, that may have had its effectiveness compromised by such factors as the use of substantial vasopressors prior to its removal from the donor, its prolonged or compromised maintenance between the time of its removal from the donor and its implantation into the patient, or pre-existing disease.

b. Other factors given less adverse weight by some experts but considered importantly adverse by others include:

(1) Insulin-requiring diabetes mellitus, in the judgment of most experts (because the diabetes is often accompanied by occult vascular disease and because the diabetes and its complications are exacerbated by chronic corticosteroid therapy; even current cyclosporine immunosuppression regimens require chronic long-term corticosteroid, though at a lower dose, and high dose corticosteroid is used in the treatment of acute rejection).

(2) Asymptomatic severe peripheral or cerebrovascular disease (because of accelerated progression in some patients after cardiac transplantation and on chronic corticosteroid treatment).

(3) Documented peptic ulcer disease (because of the likelihood of early postoperative exacerbation).

(4) Current or recent history of diverticulitis (which must be considered a source of active infection that may be exacerbated with the initiation of immunosuppressant).

5. Plans for long-term adherence to a disciplined medical regimen must be feasible and realistic for the individual patient.

## VI. Regulatory Impact Analysis

### *A. Introduction*

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any document such as this that meets one of the executive order criteria of a "major rule"; that is, it is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a final regulatory flexibility analysis, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through, 612), for documents such as this, unless the Secretary certifies that implementation will not have a

significant economic impact on a substantial number of small entities.

Implementation of this proposal is not likely to have an annual economic effect exceeding $100 million, or result in a major increase in costs or prices. However, it will affect all facilities that consider themselves capable of performing heart transplants. These facilities are considered small entities under the Regulatory Flexibility Act.

*B. Affected Entities*

In the initial impact analysis, we stated that in calendar year 1985 there were 72 facilities that characterized themselves as heart transplant facilities and that had performed at least one heart transplant. As a result of applying our selection criteria, we expected that approximately ten facilities would initially be approved for Medicare coverage with a total of about 20 facilities receiving Medicare approvals a year later.

*Comment:* One commenter asked whether our estimate of ten hospitals receiving immediate approval reflected our judgement on the number of facilities meeting the selection criteria or if this reflected the minimum number of facilities we believe were required in order to meet the demand for Medicare heart transplants.

*Response:* The estimate of ten hospitals receiving initial approval for Medicare heart transplant coverage was our best guess of the number of hospitals that will immediately meet the determination criteria. It should be noted, however, that this estimate was developed primarily for the purpose of estimating the costs of covering heart transplants and was not intended to be a judgement on the number of hospitals capable of meeting the coverage criteria. That is, we do not have any advance information on which facilities will apply or meet the criteria.

*Comment:* A number of commenters expressed concern that as a result of establishing qualifying criteria for selecting heart transplant centers, we will be giving the facilities that qualify a significant advantage. Qualifying facilities, the commenters point out, will gain significant amounts of Medicare revenues at the expense of non-qualifying facilities. Also, one commenter argued that the prestige of being selected as a Medicare heart transplant center will help those hospitals to increase their share of related cardiovascular markets. Moreover, commenters were concerned that other third party payers may adopt Medicare's selection criteria, thus virtually shutting those facilities that do not meet the Medicare criteria out of the heart transplant market.

*Response:* These commenters have a legitimate concern, but we do not believe the effects of these criteria will be as drastic as they suggest. As we stated in the initial impact analysis, hospitals meeting the selection criteria for Medicare coverage of heart transplant may well increase their share of the transplant market and the added prestige of being an approved Medicare heart transplant center also could result in other benefits accruing to those facilities. We stated that noncertified facilities would view our coverage policy as having a potentially negative effect on them.

We do not, however, agree that the economic consequences for failing to be approved for Medicare are as serious as the commenters believe. We are not convinced that other third party payers will automatically fall into line with our coverage criteria. While some State Medicaid programs that either already cover or will cover heart transplants may adopt our coverage standards, they are not required to do so. The Blue Cross Association is an example of one major third party payer that has adopted hospital selection criteria for its member plans that are somewhat less restrictive than ours. Consequently, their policy may permit a number of hospitals that fail to meet our standards to be covered by Blue Cross payment plans.

In view of the small number of Medicare patients we anticipate will receive heart transplants, compared to the number of non-Medicare heart transplant cases, hospitals failing to meet the Medicare coverage requirements but which are able to meet standards established by other payers may not experience any adverse impact. To illustrate the relative sizes of the Medicare and non-Medicare markets, we estimate, that there will be, at most, 98 Medicare heart transplant cases for FY 1988, the first full year of coverage. By contrast, the number of non-Medicare cases for the same period is expected to be about 1900 cases. Thus, Medicare's share of the total heart transplant market is expected to be only about five percent. Clearly, hospitals that fail to meet the Medicare coverage criteria but meet the criteria of other insurers may enjoy significant benefits and may not be affected at all by failure to meet our criteria, depending on the distribution of Medicare and non-Medicare cases.

Nevertheless, should most or all third party payers eventually adopt our policy, it may, indeed, adversely affect those facilities that fail to meet the criteria. Yet, we must point out that we have no authority to regulate private insurers, nor to limit any decision they may make to adopt policies similar to our own. If such conformance were to occur, we believe it would merely reflect a general medical consensus that might have formed even if we had not addressed the issue.

*C. Impact on Beneficiaries*

In the initial impact analysis, we pointed out that because of Medicare eligibility requirements we did not expect that many Medicare beneficiaries to become suitable candidates for heart transplants. Either the age requirements or the long waiting period for persons with disabilities would tend to reduce the number of potential heart transplant recipients eligible for Medicare

*Comment:* Several commenters expressed concern that the restrictive nature of our facility selection criteria will result in beneficiaries having to travel long distances from their homes and having, as a result, to incur higher travel and accommodation expenses in order to receive a heart transplant. These commenters argue that if our criteria were more lenient, more hospitals in more areas of the country could be certified to perform heart transplants. Beneficiaries would then not have to travel as far to receive service and would not, therefore, have to incur the higher personal expenses.

*Response:* We acknowledged in our initial impact analysis that our policy was fairly restrictive. We believe, however, that our approach is justified on the basis of our concern for patient safety and the success rates currently achievable with this type of procedure. Furthermore, we believe the benefit of affording beneficiaries the opportunity of undergoing this type of procedure with a very reasonable assurance of a successful outcome must be weighed against the possibility of somewhat higher personal expenses.

*D. Alternatives Considered*

In the initial analysis, we considered the alternatives of either:

- Continuing not to cover heart transplants; or
- Allowing all Medicare participating hospitals to establish transplant programs without additional facility criteria, although requiring the use of patient selection criteria.

We continue to reject the first alternative because we have now determined that heart transplants, when performed in accordance with the proposed criteria, are medically

reasonable and necessary and meet the requirements for Medicare coverage.

Our major reason for continuing to reject the second alternative is that it would permit uncontrolled proliferation of transplant facilities, thus raising all the concomitant questions about quality of services, given the limited availability of donor organs and experienced transplant teams. Although adoption of this policy alternative would help in the faster proliferation of this treatment modality among the approximately 200 hospitals that could be interested in qualifying over the next five years, the diffusion of this procedure over such a broad base is likely to lower the experience level and would probably lead to lower success and survival rates among Medicare heart transplant patients. Our responsibilities for the well-being of Medicare beneficiaries and for the prudent expenditure of Medicare trust funds dictate that we pursue a cautious policy with respect to a procedure as complex as heart transplantation.

*E. Summary and Final Expenditure Estimate*

In the initial impact analysis, we discussed in some detail the difficulties of estimating the costs of covering heart transplants. The major problem was in accurately estimating the number of suitable Medicare eligible candidates for the procedure. As a result of this uncertainty in our projections, we presented a high and a low cost estimate for each of the five successive fiscal years. The differences between the two projections reflected different assumptions about the growth rate of Medicare heart transplant candidates. We also assumed that once Medicare began covering heart transplants, all State Medicaid programs that currently do not cover this procedure would do so within the next five years.

We did not receive any comments on our cost estimates. Thus, the only change we are making in our final cost projections is to reflect the enactment of section 9335(c) of Pub. L. 99–509 that amended section 1861(s)(2) of the Act. This provision allows for the payment for immunosuppressive drugs that are required in connection with a covered organ transplant for a one year period following the transplantation. In the initial cost estimates, we assumed the cost of immunosuppressive drugs would be covered over the life of the patient. As a result of the enactment of Pub. L. 99–509, we are lowering the high cost estimate for FY 1991 from $25 million to $20 million. The following table presents our minimum and maximum estimates in the growth of Medicare expenditures and the Federal share of Medicaid expenditures for the coverage of heart transplants through FY 1991.

PROJECTED INCREASES IN HEART TRANSPLANT EXPENDITURES

| | Fiscal year | | | | |
|---|---|---|---|---|---|
| | 1987 | 1988 | 1989 | 1990 | 1991 |
| Federal Expenditures (rounded to nearest $5 million) | | | | | |
| Medicare Low | (1) | (1) | (1) | (1) | (1) |
| Medicare High | 5 | 10 | 15 | 20 | 20 |
| Medicaid | (1) | (1) | 5 | 5 | 5 |

[1] Less than $2.5 million.

In conclusion, we have examined two alternative approaches to the coverage of heart transplants and the concerns raised by commenters. We acknowledged in our responses to comments that non-qualifying hospitals might be disadvantaged financially as a result of hospital selection criteria. However, we pointed out that patient safety and the need for the judicious expending of Medicare trust funds dictates the careful selection of facilities. Thus, we are maintaining the policy we proposed in our October 17 notice. Nevertheless, as we state elsewhere in this notice, the expert consultants may, under certain circumstances, recommend exceptions to the criteria. Also, we will be reviewing the selection criteria over the next three years and revising them based on new data and changes in the technology and methods of performing this procedure.

**VII. Waiver of 30-Day Delay in Effective Date**

In the Notice of Proposed Rulemaking published on October 17, 1986, we proposed to make the effective date of coverage of heart transplants the date of publication of the proposed notice (that is, October 17, 1986). Coverage as of October 17, 1986 would be effective only for those facilities which would have qualified as heart transplant facilities when the transplant was performed and whose applications are received by HCFA within 90 days of the **Federal Register** publication of this final notice announcing our policy (that is, July 6, 1987). The effective date of coverage for heart transplants performed at facilities applying after July 6, 1987, will be the date the facility receives approval from HCFA as a heart transplant facility.

**VIII. Paperwork Burden**

This final notice contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. Specifically, facilities that wish to obtain approval for Medicare coverage of heart transplantation services must submit an application and documentation pertinent to the transplantation services We submitted a copy of this proposed notice to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements. EOMB has approved the information collection requirements contained in this proposed notice under OMB Control No. 0938–0490.

(Secs. 1102, 1862(a)(1) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y(a)(1) and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program)

Dated: March 20, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: March 30, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87–7490 Filed 4–3–87; 8:45 am]

BILLING CODE 4120–01–M

## Office of Human Development Services

### Administration for Children, Youth, and Families; Head Start Name and Logo Trademark Registration

**AGENCY:** Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

**ACTION:** Notice of Trademark Registration for Head Start Name and Logo.

**SUMMARY:** This Administration for Children, Youth and Families' Notice provides information and instructions to all Head Start grantees and delegate agencies and the general public on the use of the Head Start name and logo.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Foster, Director, Program Operations Division, ACYF/Head Start Bureau, P.O. Box 1182, Administration for Children, Youth and Families, Washington, DC 20013, (202) 755–8208.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The name "Head Start" was officially registered by the United States Commission of Patents and Trademarks on February 25, 1986, and was provided U.S. Trademark Registration Certificate No. 1,384,264. On March 11, 1986, the Head Start logo was registered officially and provided U.S. Trademark Certificate Registration No. 1, 385,972.

The terms of the registrations are for twenty (20) years from those dates and can be renewed for subsequent 20-year terms at the appropriate time.

The registered trademark symbol, [R], must appear by the name and logo at all times. It is not necessary for grantees and delegate agencies to discard their current inventory of material. However, grantees must add the trademark symbol when materials are reprinted.

**B. Authorized Users**

The Head Start Bureau authorizes local Head Start grantees and delegate agencies to use the name and logo without further approval on stationery, posters, recruitment literature, newsletters and other promotional items designed to inform the local community of Head Start activities.

**C. Use of Head Start Name or Logo on Items for Manufacture, Sale or Distribution**

Only Head Start grantees, delegate agencies, and organizations that receive Head Start contracts, as well as non-profit organizations which represent Head Start programs, such as State or National Head Start Associations, may use the Head Start name and logo on items they sell or distribute. However, these organizations must obtain prior approval for the use of the Head Start name or logo from the Head Start Bureau. Grantees must treat profits from such sales as program income and report the proceeds on the SF–269. Grantees requesting approval to manufacture, sell or distribute items bearing the Head Start name or logo must identify at least one of the three additional cost alternatives to be used as stipulated in 45 CFR 74.42.

**D. Approval**

Requests to manufacture, sell or distribute items bearing the Head Start name or logo must be submitted at least sixty (60) days prior to the anticipated date of sale or distribution. Approved requests will be effective for a period not to exceed three years and only for those items for which such written approval was granted. Requests for approval should be sent to: Mr. William McCarron, Chief, Discretionary Grants Management Branch, Office of Human Development Services, 200 Independence Avenue SW., Room 345–F, Washington, DC 20201.

**E. Restrictions**

Unless otherwise approved, all unauthorized individuals, organizations and commercial firms must discontinue manufacturing, selling or distributing materials bearing either the Head Start name or logo on the effective date of this notice.

Unauthorized use of the Head Start name or logo should be reported immediately so that appropriate legal action can be taken. Reports of unauthorized use should be sent to: Mr. Clennie H. Murphy, Jr., Acting Associate Commissioner, Administration for Children, Youth and Families, Head Start Bureau, P.O. Box 1182, Washington, DC 20013.

Dated: March 6, 1987.

**Dodie Livington,**

*Commissioner, Administration for Children, Youth and Families.*

Approved: March 31, 1987.

**Jean K. Elder, Ph.D.,**

*Assistant Secretary for Human Development Services-Designate.*

[FR Doc. 87–7496 Filed 4–3–87; 8:45 am]

BILLING CODE 4130-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. D–87–834; FR–2342]**

### Delegation of Authority With Respect to the Solar Energy and Energy Conservation Bank Act

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of delegation of authority.

**SUMMARY:** The Secretary is transferring authority with respect to the Solar Energy and Energy Conservation Bank (SEECB) to the Office of the Assistant Secretary for Community Planning and Development.

**EFFECTIVE DATE:** March 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Grant E. Mitchell, Assistant General Counsel for Fiscal Management and Energy Programs, Room 10248, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–6550. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Solar Energy and Energy Conservation Bank which was established by Part 1, Subtitle A, Title V of the Energy Security Act of 1980 (12 U.S.C. 3602 through 3620), terminates according to its terms on September 30, 1987. No appropriations have been made for the Bank since FY 1985 and none are anticipated. All funds of the Bank have been committed. The President of the Bank has resigned as of February 28, 1987. The Secretary therefore deems it appropriate to delegate all necessary executive and administrative functions to the Assistant Secretary for Community Planning and Development.

**Section A. Authority Delegated**

The Assistant Secretary for Community Planning and Development is authorized to exercise the power and authority of the Secretary of Housing and Urban Development regarding the Solar Energy and Energy Conservation Bank, so long as executive and administrative functions remain outstanding. In addition, pursuant to Solar Energy and Energy Conservation Bank Resolution No. 3 of July 22, 1980 creating the position of Manager of the Bank, the Assistant Secretary for Community Planning and Development is also appointed as Manager of the Bank, to serve in such position until the termination of the Bank on September 30, 1987.

**Section B. Authority to Redelegate**

The Assistant Secretary for Community Planning and Development is authorized to redelegate to employees under his jurisdiction any power and authority delegated under Section A of this delegation, including the ability to act as Manager of the Bank, except the power and authority to issue rules and regulations.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 1, 1987.

**Samuel R. Pierce, Jr.,**

*Secretary.*

[FR Doc. 87–7575 Filed 4–3–87; 8:45 am]

BILLING CODE 4210-32-M

**[Docket No. D–87–833; FR–2336]**

### Office of the Assistant Secretary for Community Planning and Development; Redelegation of Authority To Execute Legal Instruments in the Name of the Secretary

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Amendment of notice of redelegation of authority.

**SUMMARY:** The Assistant Secretary for Community Planning and Development, on July 26, 1982 redelegated authority to execute written instruments relating to section 312 Rehabilitation Loans to certain officials, 47 FR 33324, August 2, 1982. Subsequent redelegations added other officials, 50 FR 13667, April 5, 1985 and 51 FR 5412, February 13, 1986. This amendment adds to the officials with this authority the Director, Rehabilitation Loans and Homesteading Division, removes the reference to the Deputy Director of the Office of Urban Rehabilitation, and supersedes previous redelegations.

**FOR FURTHER INFORMATION CONTACT:** David Cohen, Director, Office of Urban Rehabilitation, Room 7170, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, [202] 755–5685 [this is not a toll-free number].

**SUPPLEMENTARY INFORMATION:** Under section 312 of the Housing Act of 1964, 42 U.S.C. 1452b, the authority to execute legal instruments under the section 312 Loan Program has been delegated to the Assistant Secretary for Community Planning and Development, except for those legal instruments which relate to the property management and disposition functions delegated to the Assistant Secretary for Housing, 48 FR 49384, October 25, 1983. In order to expedite property foreclosures and judgments against section 312 borrowers in default, the Assistant Secretary for Community Planning and Development has determined that his authority to execute legal instruments should be redelegated to the Office of Urban Rehabilitation.

Accordingly, the Assistant Secretary's redelegation of July 26, 1982, 47 FR 33324, as amended, is further amended as follows:

**A. Authority Redelegated**

The Deputy Assistant Secretary for Program Management, Office of Community Planning and Development; the Director of the Office of Urban Rehabilitation; the Director, Rehabilitation Loans and Homesteading Division; and the Rehabilitation Program Specialist appointed as Government Technical Representative to the section 312 Loan Servicing Contract, (all in the Office of Urban Rehabilitation) are hereby redelegated the authority to execute in the name of the Secretary written instruments relating to Section 312 Rehabilitation Loans, including deeds of release, substitutions of trustees, compromises, write-offs, assignments, and satisfactions of notes, mortgages, deeds of trust, and other security instruments. However, this redelegation does not cover the execution of written instruments that relate to certain section 312 loan-related property management and disposition functions that have been delegated to the Assistant Secretary for Housing (see 45 FR 54143, August 14, 1980).

**B. Redelegations Superseded**

This redelegation supersedes the redelegation of authority to execute legal instruments under the section 312 program published at 47 FR 33324, August 2, 1982; 50 FR 13667, April 5, 1985; and 51 FR 5412, February 13, 1986.

**Authority:** Sec. 312 of the Housing Act of 1964, 42 U.S.C. 1452b, and section C, Delegation of Authority, 48 FR 49384, October 25, 1983.

Dated: March 30, 1987.

**Jack R. Stokvis,**

*Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 87–7517 Filed 4–3–87; 8:45 am]

BILLING CODE 4210–29–M

---

**[Docket No. N–87–1690]**

## Office of Administration; Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John F. Morrall, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

**Notice of Submission of Proposed Information Collection to OMB**

Proposal: Outline Specifications, 24 CFR 841

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This form is prepared by architects employed by PHAs or by Turnkey Developers to establish quality and type of materials and equipment to be incorporated into housing developments. It is used by the PHA and HUD to determine that specified items comply with codes and HUD standards and are appropriated in the project.

Form number: HUD–5087.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 2,641.

Status: Extension.

Contact: William C. Thorson, HUD, (202) 755–6460; John F. Morrall, OMB, (202) 395–6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: March 31, 1987.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

**Submission of Proposed Information Collection to OMB**

Proposal: Housing Development Grant Application.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Cities, counties, general-purpose political subdivisions of a state, Indian tribes, and states applying on behalf of general local government may submit an application(s) under the Housing Development Grant Program. All applications are reviewed and competitively ranked by HUD for award of grant funds.
Form number: HUD–90031 and 90031A.
Respondents: State or Local Governments.
Frequency of Respondents: On Occasion and Other.
Estimated Burden Hours: 16,400.
Status: Reinstatment.
Contact: Jessica A. Franklin, HUD (202) 755–6142; John F. Morrall, OMB, (202) 395–6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: March 31, 1987.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

[FR Doc. 87–7574 Filed 4–3–87; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR–050–4322–02:GP7–152]

### Prineville District Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Prineville District Advisory Council will be held on May 14, 1987. The meeting agenda will cover the John Day River Management Plan, the Brothers/LaPine Resource Management Plan planning process, the BLM organization study for Oregon/Washington, the District land exchange status and an update on the Wilderness Study Program.

The public is welcome to attend. Persons wishing to testify before the Advisory Council should contact the District Manager at 185 East 4th Street, Prineville, OR 97754, phone (503) 447–4115 by May 11, 1987.

Dated: March 30, 1987.

**James L. Hancock,**

*District Manager.*

[FR Doc. 87–7503 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–33–M

[CO–010–07–4322–17]

### Craig, CO; Advisory Council Meeting

In accordance with Pub. L. 94–579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on May 20, 1987, at 10 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

Agenda items will include:

1. Elections of chairperson and vice-chairperson.
2. Noxious weed control.
3. Proposed Sand Wash races.
4. Little Snake Resource Management Plan protests.

The meeting will be open to the public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Dated: March 16, 1987.

**William J. Pulford,**

*District Manager.*

[FR Doc. 87–7468 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–JB–M

[WY–930–07–4220–10; W–101899]

### Proposed Withdrawal and Opportunity for Public Meeting Sweetwater County, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 357.34 acres of public land for protection of the Natural Corrals archaeological site near Superior, Wyoming. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

**DATE:** Comments and requests for a public meeting should be received by July 6, 1987.

**ADDRESS:** Comments and meeting requests should be sent to: Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

**FOR FURTHER INFORMATION CONTACT:** Tamara J. Gertsch, BLM Wyoming State Office, (307) 772–2072.

On March 26, 1987, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

**Sixth Principal Meridian**

T. 21 N., R. 101 W.,
Sec. 18; Lots 1–3, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

The area described contained 357.34 acres in Sweetwater County. The purpose of the proposed withdrawal is the protection of the archaeological, geological, and recreational values of the Natural Corrals site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are only those which are specifically allowed by the authorized officer of the Bureau of Land Management.

**F. William Eikenberry,**

*Associate State Director.*

[FR Doc. 87–7492 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–930–07–4220–11; W–79284, W–72985]

### Wyoming: Amended Notice of Proposed Withdrawal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following described lands which are withdrawn by the

Department of the Army are not proposed for continuation as was published in Federal Register Document 84–14807, Page 23123 which published on June 4, 1984.

Sixth Principal Meridian

T. 33 N., R. 99 W.,
Sec. 10, SW¼SW¼.

This action will reduce the acreage proposed for continuation to 1320 acres.

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Land Resources, Bureau of Land Management Wyoming State Office P.O. Box 1828, Cheyenne, WY 82003.

**Hillary A. Oden,**

*State Director.*

[FR Doc. 87–7501 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–22–M

## Fish and Wildlife Service

### Endangered Species Convention; Foreign Law Notification, Argentina

**AGENCY:** Fish and Wildlife Service; Interior.

**ACTION:** Notice of information No. 13.

Subject: Argentina—Ban on trade in some species.

This is a Schedule II Notice

*Source of Foreign Law Information*

On May 7, 1986, by Notification to the Parties No. 384, the Secretariat, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), advised all Cites Management Authorities, including that of the United States, of a communication received by the Secretariat from the Management Authority of Argentina. Copies of Resolution 24, effective February 23, 1986, and of Resolutions 62 and 63, effective March 14, 1986, of the government of Argentina accompanied the Notification from the Secretariat.

*Action by the Fish and Wildlife Service*

Argentina Resolution No. 63 prohibits from export from Argentina after March 14, 1986, all specimens, including live animals and parts and derivatives, of the following species: *Felis jacobita, Felis pardalis mitis, Felis tigrinus,* and *Felis wiedii,* all of which are listed as endangered under the U.S. Endangered Species Act, as well as *Felis colocolo, Felis concolor, Felis geoffroyi, Felis guigna, Felis yagouaroundi,* and *Panthera onca.* All imports into the United States of any of these species, or their parts or derivatives, which declare Argentina as country of origin and a date of export on or after March 14, 1986, are illegal.

Argentina Resolution No. 24 prohibits the export from Argentina of *Boa constrictor occidentalis, Eunectes notaeus* and *Rhea americana* on or after August 22, 1986. All imports into the United States of any of these species, or their parts or derivatives, which declare Argentina as country of origin and date of export on or after August 22, 1986, are illegal.

Argentina Resolution No. 62 provides that only mammals, birds and reptiles listed by Argentina in Chapter VII of Argentina Decreto No. 691 of March 21, 1981, or wildlife declared by Argentina as harmful, or bred in captivity in Argentina-registered establishments may be legally exported. All imports into the United States of any other live mammals, birds or reptiles native to Argentina is prohibited after September 5, 1986, without proof of legal export in compliance with Argentina Resolution No. 62.

Without proof of legal export from Argentina in accordance with Resolutions 24, 62, 63, import of wildlife into the United States may be illegal. Specimens, parts and products imported in violation of Argentina law will be refused clearance and/or seized and forfeited.

**EFFECTIVE DATE:** May 6, 1987.

**EXPIRATION DATE:** None until further notice.

**FOR FURTHER INFORMATION CONTACT:** Nancy Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, Telephone: 202/343–9242.

Dated: March 31, 1987.

**Frank Dunkle,**

*Director.*

[FR Doc. 87–7547 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–55–M

### Endangered Species Convention; Foreign Law Notification, Peru

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Information No. 14.

Subject: Peru—Export of Parrots.

**This is a Schedule II Notice'**

Wildlife subject to this notice is subject to detention, to refusal of clearance, or to seizure and forfeiture, if imported into the United States.

**Source of Foreign Law Information**

On May 7, 1986, by Notification to the Parties No. 389 the Secretariat, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) advised all Cites Management Authorities, including that of the United States, that Peru has amended its list of parrots which Peruvian law allows to be exported from the country. The cooperation of foreign governments has been requested by Peru in enforcing its ban on export of other than listed species and Cites Management Authorities have been requested to reject exports involving species of the order Psittaciformes other than those listed.

**Action by Fish and Wildlife Service**

As of April 21, 1986, only the species *Aratinga wagleri* (red-fronted conure), *Aratinga erythrogenys* (red-masked conure), *Forpus coelestis* (Pacific parrotlet), *Bolborhynchus aurifrons* (Mountain parakeet), *Bolborhynchus orbygnesius* (Andean parakeet), and *Brotogeris pyrrhopterus* (grey-cheeked parakeet) of the order Psittaciformes may be legally exported from Peru. Imports into the United States of any other psittacine species declaring Peru as country of origin and exported from Peru on or after April 21, 1986, will be prohibited

**EFFECTIVE DATE:** May 6, 1987.

**EXPIRATION DATE:** None until further notice.

**FOR FURTHER INFORMATION CONTACT:** Nancy Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, Telephone: 202/343–9242.

Dated: March 31, 1987.

**Frank Dunkle,**

*Director.*

[FR Doc. 87–7548 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–55–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 30300]**

### CSX Corporation; Control; American Commercial Lines, Inc.; (Oversight Proceeding)

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Annual oversight proceeding.

**SUMMARY:** In *CSX Corporation—Control—American Commercial Lines,* 2 I.C.C. 2d. 490, the Commission authorized the acquisition of control by several class I railroads, of American Commercial Lines (ACL) and its water carrier subsidiary, American Commercial Barge Lines Company (ACBL). The Commission also imposed reporting and oversight conditions upon

CSX and established a procedure for an oversight proceeding. These conditions are set forth in Appendix E to the consolidation decision. The reporting condition requires CSX to file financial and rate information annually for a total period of 5 years. By decision served February 28, 1986, published at 51 FR 7140 (February 28, 1986), the Commission instituted the first oversight proceeding. Public comments regarding any adverse or beneficial effects of the consolidation were sought. Also the proceeding was assigned to the Commission's Office of Hearings for a recommendation. In a decision served July 25, 1986, the presiding administrative law judge summarized the public comments and recommended that the proceeding not be reopened. It was concluded that competition in the ACBL market area is not diminished. However, as required by the decision of the Commission in 2 I.C.C. 2d 490, a second annual oversight proceeding must be instituted.

II

Any interested party may submit comments concerning the acquisition of ACBL by CSX relative to the statutory standards of 49 U.S.C. 11321. These comments are due on or before April 30, 1987. In this regard, parties seeking to reopen the proceeding based on allegations of noncompliance with statutory standards must provide evidence of specific problems flowing from the consolidation.

After receipt of public comments, the proceeding will be assigned to a presiding administrative law judge. Upon his own motion or upon request of the parties, the ALJ may order that oral hearings be held and may receive additional written and oral evidence and argument. Proceedings before the ALJ are to be completed by June 30, 1987. The ALJ then will prepare a report to the Commission which will be served on applicants and on commenting parties no later than July 31, 1987.

**DATED:** Comments are due on or before April 30, 1987.

**ADDRESSES:** Send comments referring to Finance Docket No. 30300 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) CSX's representative: G Paul Moates, 1722 Eye Street NW., Washington, DC 20006

**FOR FURTHER INFORMATION CONTACT:** Paul S. Cross, (202) 275–7474.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision in *CSX Corporation—Control—American Commercial Lines, Inc.*, 2 I.C.C. 2d 490.

Decided: March 16, 1987.

By the Commission, Paul S. Cross, Chief Administrative Law Judge.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7497 Filed 4–3–87; 8:45 am]

BILLING CODE 7035–01–M

---

**[Docket No. AB–3 (Sub-No. 60X)]**

## Missouri Pacific Railroad Company; Exemption; Abandonment in Shawnee and Osage Counties, KS

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Missouri Pacific Railroad Company (MP), of 22.92 miles of its Topeka Branch between milepost 381.80 near Overbrook and milepost 404.72 near Topeka, in Shawnee and Osage Counties, KS, subject to the condition that MP continue its tariff providing a truck substituted service allowance to Overbrook for fertilizer moving to the facility of Overbrook Farmers Union Cooperative Association so long as it provides service between Overbrook and Lomax, KS, the condition that the right-of-way underlying the track be kept intact for a 180-day period to enable negotiations for acquisition of the line for public use, and further subject to standard labor protection conditions.

**DATES:** This exemption will be effective on May 6, 1987. Petitions to stay must be filed by April 16, 1987, and petitions for reconsideration must be filed April 27, 1987.

**ADDRESSES:** Send pleadings referring to Docket No. AB–3 (Sub-No. 60X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Joseph D. Anthofer, Jeanna L. Regier, 1416 Dodge Street, Omaha, NE 68179

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 25, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result with a separate expression.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7499 Filed 4–3–87; 8:45 am]

BILLING CODE 7035–02–M

---

## DEPARTMENT OF JUSTICE

**[Civil Action No. 84–195–L]**

## Lodging of a Consent Decree Pursuant to the Clean Water Act; Millipore Corp.

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States, et al.* v. *Millipore Corporation*, Civil Action No. 84–195–L, has been lodged with the United States District Court for the District of New Hampshire, on March 26, 1987. The Consent Decree resolves an action brought by the United States under section 309 of the Clean Water Act, 33 U.S.C. 1319, against Millipore Corporation for discharging pollutants from its Jaffrey, New Hampshire plant into nearby navigable waters without a National Pollutant Discharge Elimination System ("NPDES") permit from 1972 to 1985. The State of New Hampshire had intervened as a plaintiff seeking enforcement of state law prohibiting discharges of pollutants to surface water without a state permit.

The Consent Decree requires Millipore's Jaffrey plant to comply with the requirements of its NPDES permit, State Discharge permit and Town of Jaffrey industrial user permit, all of which were issued after this lawsuit was filed. The Consent Decree establishes a sampling program to monitor compliance with these permits and establishes stipulated penalties for any violation of permit requirements. The Consent Decree prohibits Millipore from discharging pollutants from its Jaffrey plant into navigable waters except in accordance with these permits.

The Consent Decree also requires Millipore to pay civil penalties of $192,500 for its past violations. Of the total amount, Millipore shall pay $128,000 to the United States and $64,500 to the State of New Hampshire.

As part of the settlement between the State of New Hampshire and Millipore, Millipore is required to undertake a study of groundwater contamination in the vicinity of its Jaffrey plant.

For thirty (30) days from the date of publication of this notice, the

Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States, et al.* v. *Millipore Corporation*, D.J. Ref. No. 90–5–1–1–2106.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, Federal Building, 55 Pleasant Street, Concord, New Hampshire 03301; at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–7502 Filed 4–3–87; 8:45 am]

BILLING CODE 4410–01–M

---

## Drug Enforcement Administration

### Importation of Controlled Substances, Application; Stephan Chemical Co.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 12, 1987, Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representatives (Room 1112), and must be filed no later than May 6, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–43748 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 30, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–7530 Filed 4–3–87; 8:45 am]

BILLING CODE 4410–09–M

---

### Fredric J. Sloan, M.D., Revocation of Registration

On January 13, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Fredric J. Sloan, M.D., 1000 North Allen, Robinson, Illinois 62454. The Order to Show Cause sought to revoke his DEA Certificate of Registration AS2471249 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Sloan's controlled substance-related felony conviction.

The Order to Show Cause was sent to Dr. Sloan by registered mail and was returned to DEA unclaimed. A copy of the Order to Show Cause was also sent by registered mail to Dr. Sloan's residence in Heber Springs, Arkansas and was returned to DEA unclaimed. On February 18, 1987, an Arkansas State Police Diversion Investigation Unit investigator personally served Dr. Sloan's wife with a copy of the Order to Show Cause at their residence in Heber Springs, Arkansas. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Sloan is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between November 1982 and December 1984, Dr. Sloan issued a number of his patients prescriptions for controlled substances. Dr. Sloan would instruct his nurse or a relative of the patient to have the prescription filled and then return to his office with the controlled substance, where he would administer some of the drug to the patient and later inject himself with what remained of the substance.

Dr. Sloan was indicted in the United States District Court, Central District of Illinois, Danville Division, and charged with five counts of knowingly and intentionally acquiring and obtaining possession of a controlled substance in violation of 21 U.S.C. 843(a)(3) and five counts of knowingly and intentionally furnishing materially false and fraudulent information in a prescription form in violation of 21 U.S.C. 843(a)(4)(a). On September 10, 1986, Dr. Sloan pled guilty to one count of knowingly and intentionally furnishing materially false and fraudulent information in a prescription form, and was subsequently convicted of such offense. This is a felony offense relating to controlled substances. Therefore, lawful grounds exist to revoke Dr. Sloan's DEA Certificate of Registration. 21 U.S.C. 824(a)(2).

Since Dr. Sloan did not offer evidence of any mitigating circumstances, the Administrator has no choice but to revoke Dr. Sloan's DEA Certificate of Registration and to deny any pending applications for registration. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS2471249, previously issued to Fredric J. Sloan, M.D., be, and it hereby is revoked. The Administrator further orders that any pending applications of Dr. Sloan, for registration under the Controlled Substances Act, be, and they hereby are

denied. This order is effective [thirty days from date of publication in the Federal Register].

Dated: March 31, 1987.

John C. Lawn,

*Administrator.*

[FR Doc. 87-7531 Filed 4-3-87; 8:45 am]

BILLING CODE 4410-09-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-31)]

### NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

**DATE AND TIME:** April 28, 1987, 8 a.m. to 4:45 p.m.

**ADDRESS:** National Aeronautics and Space Administration, Federal Building 10B, Room 425, 600 Independence Avenue, SW., Washington, DC 20546.

**FURTHER INFORMATION CONTACT:** Ms. Joanne O. Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-1887.

**SUPPLEMENTARY INFORMATION:** The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology. The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the team members and other participants).

Type of Meeting: Open.

**Agenda**

April 28, 1987

8 a.m.—Opening Remarks.
8:45 a.m.—Briefing on Aeronautics Program Strategy, Plans, Issues.
11 a.m.—Discussion of Action Summary from AAC/Aerospace Research and Technology Subcommittee meeting.
11:30 a.m.—Report of Ad Hoc Teams.
1:30 p.m.—Discussion of New Study Topics.
2:45 p.m.—Briefing on High Speed Transportation Study.
3:45 p.m.—Summary Session.
4:45 p.m.—Adjourn.

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

March 30, 1987.

[FR Doc. 87-7450 Filed 4-3-87; 8:45 am]

BILLING CODE 7510-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on April 24, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Friday, April 24, 1987—8:30 a.m. until the conclusion of business**

The Subcommittee will review NUREG-1226, "Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants".

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. M. El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 1, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87-7549 Filed 4-3-87; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Cole, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on March 20, 1987 (52 FR 8994). Individual authorities established or revoked under Schedule A, B, or C between February 1, 1987, and February 28, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

**Schedule A**

The following exception is established:

*National Endowment for the Arts*

One Assistant Director for State Programs. Effective February 5, 1987.

**Schedule B**

No Schedule B exceptions were established or revoked during February.

**Schedule C**

*Department of Agriculture*

One Private Secretary to the Administrator, Federal Grain Inspection Service. Effective February 4, 1987.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective February 18, 1987.

*Department of Commerce*

One Special Assistant to the Assistant Secretary, National Oceanic and Atmospheric Administration. Effective February 5, 1987.

One Confidential Assistant to the Special Assistant to the Secretary. Effective February 18, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Development, International Trade Administration. Effective February 18, 1987.

*Department of Defense*

One Family Program Coordinator to the Deputy Assistant Secretary of Defense for Family Support, Education and Safety. Effective February 6, 1987.

One Special Assistant for Foreign Intelligence Programs to the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence). Effective February 11, 1987.

*Department of Education*

One Executive Director, Intergovernmental Advisory Council on Education, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective February 4, 1987.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective February 6, 1987.

One Confidential Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective February 9, 1987.

One Special Assistant to the Assistant Secretary for Civil Rights. Effective February 10, 1987.

One Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs, Office of Postsecondary Education. Effective February 10, 1987.

One Director, Postsecondary Relations Staff, to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education. Effective February 10, 1987.

One Staff Assistant to the Secretary's Regional Representative. Effective February 20, 1987.

One Special Assistant to the Director, Legislative Liaison Staff. Effective February 25, 1987.

One Confidential Assistant to the Commissioner, Rehabilitative Services Administration, Office of Special and Rehabilitative Services. Effective February 25, 1987.

*Department of Energy*

One Staff Assistant to the Director, Office of Communications. Effective February 3, 1987.

One Congressional Affairs Advisor to the Assistant Secretary for Defense Programs. Effective February 12, 1987.

One Staff Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective February 17, 1987.

*Department of Health and Human Services*

One Special Assistant to the Deputy Commissioner, Programs, Social Security Administration. Effective February 12, 1987.

*Department of Housing and Urban Development*

One Special Projects Coordinator to the Deputy Asssistant Secretary for Policy, Financial Management and Administration, Office of Housing. Effective February 5, 1987.

One Special Assistant to the Regional Administrator-Regional Housing Commissioner. Effective February 11, 1987.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective February 12, 1987.

One Special Advisor to the Deputy Assistant Secretary for Policy, Financial Management and Administration, Office of the Assistant Secretary for Housing—Federal Housing Commissioner. Effective February 12, 1987.

One Executive Assistant to the Assistant Secretary for Housing. Effective February 17, 1987.

*Department of the Interior*

One Confidential Assistant to the Director, U.S. Fish and Wildlife Service. Effective February 9, 1987.

One Special Assistant to the Assistant Secretary for Water and Science. Effective February 13, 1987.

One Special Assistant to the Commissioner of Reclamation. Effective February 20, 1987.

*Department of Justice*

One Congressional Liaison Specialist to the Director, Congressional and Public Affairs, Immigration and Naturalization Service. Effective February 10, 1987.

One Assistant Director to the Director, Office of Public Affairs. Effective February 13, 1987.

One Confidential Assistant to the Director, Congressional and Public Affairs, Immigration and Naturalization Service. Effective February 26, 2987.

*Department of Labor*

One Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective February 24, 1987.

One Assistant to the Secretary's Representative. Effective February 24, 1987.

*Department of State*

One Special Assistant to the Assistant Secretary for Inter-American Affairs. Effective February 17, 1987.

*Department of Transportation*

One Congressional Liaison Officer to the Director, Office of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective February 18, 1987.

One Intergovernmental Liaison Officer to the Director, Office of Intergovernmental & Consumer Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective February 18, 1987.

One Intergovernmental Laison Officer to the Director, Office of Intergovernmental and Consumer Affairs. Effective February 18, 1987.

*Department of the Treasury*

One Staff Assistant to the Commissioner of Customs. Effective February 12, 1987.

*Agency for International Development*

One Special Operations Assistant to the Assistant Administrator, Bureau of External Affairs. Effective February 6, 1987.

*Commission on Civil Rights*

One Special Assistant to the Commissioner. Effective February 4, 1987.

*Environmental Protection Agency*

One Staff Assistant to the Associate Administrator for Regional Operations. Effective February 3, 1987.

*Equal Employment Opportunity Commission*

One Director, Communications Staff, to the Director, Office of Communications and Legislative Affairs. Effective February 27, 1987.

*Federal Communications Commission*

One Chief, Press and News Media Division, to the Director, Office of Congressional and Public Affairs. Effective February 5, 1987.

*Federal Deposit Insurance Corporation*

One Director, Office of Legislative Affairs, to the Chairman of the Board. Effective February 9, 1987.

*Federal Emergency Management Agency*

One Director of Congressional Affairs to the Director of External Affairs. Effective February 27, 1987.

*Federal Home Loan Bank Board*

One Public Affairs Specialist to the Director of Communications. Effective February 20, 1987.

*General Services Administration*

One Confidential Assistant to the Regional Administrator. Effective February 10, 1987.

*Interstate Commerce Commission*

One Congressional Liaison Representative to the Director, Office of Legislative and Public Affairs. Effective February 20, 1987.

*National Endowment for the Arts*

One Congressional Liaison Officer to the Chairman. Effective February 6, 1987.

*National Endowment for the Humanities*

One Special Assistant to the Chairman. Effective February 6, 1987.

*National Labor Relations Board*

One Confidential Assistant to a Board Member. Effective February 3, 1987.

*Office of Personnel Management*

One Special Assistant to the Associate Director for Administration. Effective February 5, 1987.

One Special Assistant to the Director. Effective February 6, 1987.

*President's Commission on White House Fellowships*

One Confidential Assistant to the Director. Effective February 18, 1987.

*Small Business Administration*

One Special Assistant to the Regional Administrator. Effective February 9, 1987

One Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective February 18, 1987.

*United States Information Agency*

One Special Assistant to the Director, Voice of America. Effective February 17, 1987.

*U.S. Tax Court*

One Trial Clerk to a Judge. Effective February 20, 1987.

*Veterans Administration*

One Confidential Assistant to the Administrator. Effective February 3, 1987.

**Authority:** 5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., P. 218.

**James E. Colvard,**

*Deputy Director.*

[FR Doc. 87–7473 Filed 4–3–87; 8:45 am]

BILLING CODE 6325–01–M

## Proposed Reinstatement of OPM Form 1312

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request for clearance to resume collecting information for the Biennial Report of Federal Civilian Employment by Geographic Area. OPM Form 1312, Geographic Distribution of Federal Civilian Employment (or an alternative automated medium), had been used by agencies in even-numbered years until 1982 to report on Federal employees whose duty station data were not otherwise available to the Office of Personnel Management (OPM) for incorporation into the Report. Reinstatement, however, of OPM Form 1312 is being requested from OMB. OPM and executive branch agencies need the data from the Report to manage personnel programs and to evaluate personnel policy objectives. For copies of this clearance package, call William C. Duffy, Acting Agency Clearance Officer on (202) 632–7714.

**DATE:** Comments on this data collection should be received within 10 working days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

William C. Duffy, Acting Agency Clearance Officer, Office of Personnel Management 1900 E Street NW., Room 6410, Washington, DC 20415

and

Richard Eisenger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** Randall T. Matke, (202) 632–5022.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

[FR Doc. 87–7474 Filed 4–3–87; 8:45 am]

BILLING CODE 6325–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Generalized System of Preferences (GSP); Deadline for Acceptance of Petitions Requesting Modification of List of Articles Eligible for Duty-Free Treatment Under the GSP and Requests To Review the GSP Status of Beneficiary Developing Countries

Notice is hereby given that, in order to be considered in the 1987 GSP annual review, all petitions to modify the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP) and requests to review the GSP status of any beneficiary developing country must be received by the GSP Information Center no later than the close of business, Monday, June 1, 1987. The GSP provides for the duty-free importation of qualifying articles when imported from designated beneficiary developing countries. The GSP is authorized by Title V of the Trade Act of 1974, as amended, and has been implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations.

**1987 GSP Annual Review**

Interested parties or foreign governments may submit petitions (1) to designate additional articles as eligible for GSP; (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; and (3) to otherwise modify GSP coverage. Also, any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) of the Act (19 U.S. 2662 (b) and (c)).

**Identification of Product Requests With Respect to the Harmonized System Tariff Nomenclature**

The Harmonized System tariff nomenclature is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the

purpose of classifying goods in international trade. The Harmonized System is expected to be implemented by the United States and internationally on January 1, 1988, and will replace the current Tariff Schedules of the United States (TSUS) nomenclature. Product eligibility under the coverage of the GSP program is currently defined in terms of the five-digit TSUS classifications. However, upon implementation of the Harmonized System, the coverage of the GSP program will be defined in terms of the Harmonized System. Therefore, all product-related petitions must identify the product(s) of interest in terms of both the current TSUS nomenclature and the proposed Harmonized System tariff nomenclature. (See FR 44163 for information on the coversion of the GSP program to the Harmonized System Tariff Nomenclature.

**Submission of Petitions and Requests**

Petitions and requests to modify GSP treatment should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, Room 517, Washington, DC 20506. All such submissions must conform with regulations codified in 15 CFR, Chapter XX, especially Part 2007. Information submitted will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Petitions and requests must be submitted in twenty copies in English. If the petition or request contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "nonconfidential").

Prospective petitioners and requestors are strongly advised to review the GSP regulations published in the **Federal Register** on Tuesday, February 11, 1986 (51 FR 5035). Prospective petitioners and requestors are reminded that submissions that do not provide all information required by § 2007.1 will not be accepted for review except upon a showing in the submission that the petitioner or requestor made a good faith effort to obtain the information required. This requirement will be strictly enforced. Petitions with respect to competitive need waivers must meet the informational requirements for product addition requests in § 2007.1(c). A model petition format is available from the GSP Information Center and is included in the publication "A Guide to the U.S. Generalized System of Preferences." Prospective petitioners are encouraged to use this model petition format so as to ensure that all informational requirements are met. Questions about the preparation of petitions and requests should be directed to the staff of the GSP Information Center. The phone number of the center is (202) 395–6971.

Notice of petitions and requests accepted for review will be published in the **Federal Register** on or about Wednesday, July 15, 1987. The notice will also provide information concerning the opportunity for interested parties to comment on requests accepted for review through public hearings and written submissions. Any modifications to the GSP resulting from the 1987 GSP annual review will be announced on or about April 1, 1988 and will take effect on July 1, 1988.

**Donald M. Phillips,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 87–7536 Filed 4–3–87; 8:45 am]

BILLING CODE 3190–01–M

---

## U.S.-Japan Semiconductor Arrangement; Correction of Notice of Request for Public Comments and Notice of Change of Location for Hearing

**SUMMARY:** This notice corrects four errors in the list of products on which the Administration is considering imposing increased customs duties. This notice also announces a change in the location of the public hearing, which will be held on April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jim Gradoville, (202) 395–3475 (for technical and policy issues); Chris Parlin (202) 395–3432 (for legal issues).

**SUPPLEMENTARY INFORMATION:**

### 1. Correction to Product List

On March 31, 1987, we published in the **Federal Register** a notice of "U.S.-Japan Semiconductor Arrangement: Request for Public Comments on Possible U.S. Actions in Response to Acts by the Government of Japan Apparently Inconsistent with the Arrangement (52 FR 10275). The Annex to that notice listed the products on which the Administration was considering imposing increased customs duties, to a level of 100 percent *ad valorem*, in response to the apparent failure by the Government of Japan to fulfill its obligations under the U.S.-Japan Semiconductor Arrangement. We have discovered four errors in that Annex. They are corrected in the Annex to this notice. In all other respects the Annex to the March 31 notice remains unchanged.

### 2. Change in location of Public Hearing

The location of public hearing in the matter has been changed. It will be held in the Auditorium, U.S. Department of Commerce, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230. There are no other changes to the information in and the requirements set out in the March 31 **Federal Register** notice.

Dated: April 2, 1987.

**Alan F. Holmer,**

*General Counsel.*

**Annex**

The Annex to the March 31 **Federal Register** is modified as follows:

(1) Item 660.97 is modified by deleting the article description thereto "Other" and inserting in lieu thereof "Other (except motor-vehicle pumps)";

(2) The provisions for "Data-processing machines with display units" preceding item 676.3055 are modified to read as follows:

"Office machines not specially provided for: Data-processing machines:
Display units: [With color CRT]
676.3041 With monochrome CRT
676.3046 Other";

(3) The superior heading to item 678.5066 is modified by deleting "[Radio-phonograph-tape player combinations]" and inserting in lieu thereof at the same level of indentation "Radio-phonograph-tape player combinations:";

(4) The superior heading to 723.15 pt. is modified by deleting "Photographic film, sensitized by not exposed:" and inserting in lieu thereof "Photographic film, sensitized but not exposed:";

(5) The provisions for "magnetic recording media not having any material recorded thereon" following item 723.15 pt. are modified to read as follows:

Magnetic recording media not having any material recorded thereon: [For audio recording; for video or video and audio recording]
Other:
724.4565 Tape suitable for use with computers
724.4570 Other".

[FR Doc. 87–7693 Filed 4–3–87; 11:27 am]

BILLING CODE 3190–01–M

## POSTAL RATE COMMISSION

[Docket No. MC87-3; Order No. 751]

### Filing of Proposal To Extend Collect-On-Delivery Service To Express Mail and Order Designating Officer of the Commission and Fixing Procedural Dates

Issued April 1, 1987.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson; Extension of Collect on Delivery Services, 1987.

Notice is hereby given that on March 30, 1987, the United States Postal Service, pursuant to section 3623 of Title 39, United States Code, filed a request with the Postal Rate Commission for a Recommended Decision on proposed changes to the Domestic Mail Classification Schedule to extend collect-on-delivery service (COD) to Express Mail. §§ 500.090 and 6.020, 39 CFR 500.090 and 6.020, Appendix A.[1] This filing has been designated Docket No. MC87-3.

The proposal was accompanied by the filing of the Direct Testimony of Edmund J. Wronski in support of the proposal.

**Motion for waiver of Rules 64(b)(3), 6 (c) and 64(h)**

Simultaneously with the filing of the case, the Postal Service filed a Motion for Waiver of §§ 64(b)(3), 64(c) and 64(h) of the Commission's rules of practice. [39 CFR 3001.64(b)(3), (c) and (h)]. Section 64(b)(3) requires the Postal Service to file a statement "identifying the degree of substitutability between the various classes and subclasses" including a description of cross-elasticity of demand between various classes of mail. Section 64(c) requires the Postal Service to provide information concerning the characteristics of mailers and the items they mail by class and subclass. Section 64(h) provides that certain rate case requirements listed in section 54 also apply to classification cases that have rate, fee, or cost change implications.

The Postal Service says that it should be granted a waiver because the proposed changes will have an extremely limited impact on volumes and revenues for both COD service and Express Mail service. Because the proposed change would not change rates for any class or subclass of mail but merely extends COD service to Express Mail, the Service states that the economic substitutability of the different classes of mail is not relevant to the proposed change. Furthermore, according to the Service, waiver of rule 64(b)(3) (c) and (h) is justified because of the "extremely small impact on Express Mail and COD service" anticipated to result from this proposal.

Persons who wish to address the Postal Service's motion should file their answers on or before April 20, 1987.

The request of the Postal Service for a recommended decision on establishing changes to the Domestic Classification Schedule and the motion or waiver of certain filing provisions of the Commission's rules of practice and procedure are on file with the Commission and are available for public inspection during regular business hours.

**Intervention**

Any person desiring to be heard with reference to the proposal submitted by the Postal Service in Docket No. MC87-3 and to become a party to the proceeding, or to participate as a party in any hearing thereon, should file a notice of intervention. Notices of intervention must be filed with the Secretary, Postal Rate Commission, Washington, DC 20268-0001 on or before April 20, 1987, and must be in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). We direct specific attention to section 20(b) which provides that petitions for leave to intervene shall affirmatively state whether or not the petitioner requests a hearing, or, in lieu thereof, a conference; and further, whether or not the petitioner intends to participate actively in the hearing.[2] Alternatively, persons seeking limited participation, but who do not wish to become parties may, on or before April 20, 1987, file a written notice of limited participation, pursuant to § 3001.20a. In addition, persons wishing to express their views informally, and not desiring to become a party or limited participant, may file comments pursuant to section 20b of the Commission's rules, 39 CFR 3001.20b.

**Officer of the Commission**

The Officer of the Commission charged with representing the interests of the general public in this docket [39 U.S.C. 3624(a)] is Stephen A. Gold, Director, Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in nor advise as to any Commission decision (39 CFR 3001.8). The Officer of the Commission shall supply for the report, at the appropriate time, the name of all Commission personnel assigned to assist him in this case.

In this case the Officer of the Commission shall be separately served with three copies of all filings, in addition to and simultaneously with service on the Commission of the 25 copies required by § 10(c) of the rules of practice [39 CFR 3001.10(c)].

**The Commission orders**

(A) Notices of intervention as a full or limited participator in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street, NW, Suite 300, Washington, DC 20268-0001, on or before April 20, 1987.

(B) Responses to the Postal Service's motion for waiver of sections 64(b)(30), 64(c) and 64(h) of the rules of practice shall be due on or before April 20, 1987.

(C) Stephen A. Gold is designated Officer of the Commission to represent the interests of the general public in this proceeding. Service of documents on the Commission shall not constitute service on the Officer of the Commission, who shall separately be served three copies of all documents.

(D) The Secretary shall cause this Notice and Order to be published in the Federal Register.

By the Commission.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 87-7541 Filed 4-3-87; 8:45 am]

BILLING CODE 7715-01-M

[1] The specific changes to the Domestic Mail Classification Schedule are set out in legislative format in Attachment A of the Postal Service's Request.

[2] In this regard, parties who intend to participate actively in this proceeding are encouraged to inform the Postal Service informally and promptly of desired preliminary clarifications of the Postal Service's presentation wherever the participant believes such clarification will expedite this proceeding.

## DEPARTMENT OF STATE

[Public Notice 1009]

### Fishermen's Protective Act Procedures; Fee

**ACTION:** Notice of change of due date for second installment of fees for the agreement year from October 1, 1986, through September 30, 1987.

**SUMMARY:** Section 7 of the Fishermen's Protective Act of 1967, as amended, requires fees from participating vessel owners for deposit into the Fishermen's Guaranty Fund. These fees fund a program which compensates fishing vessel owners for certain losses they have incurred when vessels have been seized by foreign nations. 52 FR 2642

established the fee for the present agreement year (October 1, 1986, through September 30, 1987) at $22 per gross vessel ton, optionally payable in two equal installments, the first due no later than January 30, 1987, and the second due no later than March 15, 1987. This notice changes the date on which the second payment is due to May 1, 1987.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stetson Tinkham, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520, telephone number (202) 647–2009.

**SUPPLEMENTARY INFORMATION:** The Fishermen's Guaranty Fund, under section 7 of the Fishermen's Protective Act (22 U.S.C. 1971 through 1980), (the "Act"), compensates U.S. fishing vessel owners, who have entered into guaranty agreements, for certain losses caused by a foreign country's seizure or detention of a U.S. fishing vessel based on claims to jurisdiction not recognized by the United States or exercised in a manner inconsistent with international law as recognized by the United States. Pre-existing agreements are required. A fee of $22 per gross vessel ton was established for the present agreement year (October 1, 1986, through September 30, 1987) and appeared at 52 FR 2642. Moving the due date for the second installment of fee payments for the 1987 fiscal year from March 15 to May 1, 1987, will reduce financial burden on fishermen who also have substantial insurance premiums due on March 15. All affected individuals were notified by telephone of this change in due date prior to March 15.

### Classification

This action is taken under the authority of 22 U.S.C. 1977, complies with Executive Order 12291, and is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information requirement, as defined in the Paperwork Reduction Act.

As a "matter relating to Agency . . . contracts," this rule is exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedure Act. This means analysis under the Regulatory Flexibility Act if not required.

Dated: March 31, 1987.

For the Secretary of State.

**Richard J. Smith,**

*Acting Assistant Secretary for Oceans and International Environmental and Scientific Affairs.*

[FR Doc. 87–7550 Filed 4–3–87; 8:45 am]

BILLING CODE 4710–09–M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements filed During the Week Ending—March 27, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

**Docket No. 44750**

Parties: Members of International Air Transport Association
*Date Filed:* March 24, 1987
*Subject:* Canada-Tunisia GIT fares
*Proposed Effective Date:* May 15, 1987

**Docket No. 44751 R–1—R–3**

Parties: Members of International Air Transport Association
*Date Filed:* March 24, 1987
*Subject:* 015 Series Filing Procedures
*Proposed Effective Date:* April 1, 1987

**Docket No. 44754 R–1—R–17**

Parties: Members of International Air Transport Association
*Date Filed:* March 26, 1987
*Subject:* TC12 North Atlantic-Africa Resolutions
*Proposed Effective Date:* April 1, 1987

**Docket No. 44755 R–1—R–2**

Parties: Members of International Air Transport Association
*Date Filed:* March 26, 1987
*Subject:* Composite Baggage Resolutions 300 and 398
*Proposed Effective Date:* April 1, 1987

**Docket No. 44756 R–1—R–18**

Parties: Members of International Air Transport Association
*Date Filed:* March 26, 1987
*Subject:* TC12 South Atlantic-Europe Resolutions
*Proposed Effective Date:* April 1, 1987

**Docket No. 44757**

Parties: Members of International Air Transport Association
*Date Filed:* March 26, 1987
*Subject:* TC1 Computer Constructed Fares to/from USA
*Proposed Effective Date:* May 1, 1987

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87–7537 Filed 4–3–87; 8:45 am]

BILLING CODE 4910–62–M

## Coast Guard

**[CGD14–87–01]**

### Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Seas (72 COLREGS)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of granting of Certificates of Alternative Compliance to vessels.

**SUMMARY:** This notice lists commercial vessels granted Certificates of Alternative Compliance. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Regulations for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessels' special functions. The intent of this notice is to allow the mariner to be aware of the listing of these commercial vessels that have granted Certificates of Alternative Compliance.

**EFFECTIVE DATE:** February 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** CDR Gerald W. Abrams, Chief, Commercial Vessel Safety Branch, U.S. Coast Guard, Commander (mvs), Fourteenth Coast Guard District, PJKK Federal Bldg., 300 Ala Moana Blvd., Room 9141, Honolulu, Hawaii 96450. Telephone (808) 541–2114.

**SUPPLEMENTARY INFORMATION:** Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules of light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The listing consists of commercial vessels granted certificates after authority of issuance was transferred to the Chief of the Marine Safety Division of the Coast Guard Districts on April 1, 1982 (33 CFR Part 81). The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The following commercial vessels are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance.

**Vessel and Official Number**

The following vessels' after masthead lights separation from the forward masthead lights is less than one half the length of the vessels (Annex I (3)(a)). The length overall of the vessels is 122.37 meters and the horizontal separation between the lights is 43.20 meters.

Ocean Valiant.....Hyundai Hull No. 520
Ocean America.....Hyundai Hull No. 521

Dated: February 19, 1987.

**T. Wood,**

*Captain, U.S. Coast Guard, Chief, Marine Safety Division, Fourteenth Coast Guard District.*

[FR Doc. 87-7562 Filed 4-3-87; 8:45 am]

BILLING CODE 4910-14-M

---

[CGD14-87-02]

## Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Seas (72 COLREGS)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of granting of Certificates of Alternative Compliance to vessels.

**SUMMARY:** This notice lists commercial vessels granted Certificates of Alternative Compliance between August 11, 1986 and January 6, 1987. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Regulations for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessels' special functions. The intent of this notice is to allow the mariner to be aware of the listing of these commercial vessels that have granted Certificates of Alternative Compliance.

**EFFECTIVE DATE:** February 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** CDR Gerald W. Abrams, Chief, Commercial Vessel Safety Branch, U.S. Coast Guard, Commander (mvs), Fourteenth Coast Guard District, PJKK Federal Bldg., 300 Ala Moana Blvd., Room 9141, Honolulu, Hawaii, 96850. Telephone (808) 541-2114.

**SUPPLEMENTARY INFORMATION:** Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules of light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The listing consists of commercial vessels granted certificates after authority of issuance was transferred to the Chief of the Marine Safety Division of the Coast Guard Districts on April 1, 1982 (33 CFR Part 81). The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The following commercial vessels are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance. Vessel and Official Number

The following vessels' after masthead lights separation from the forward masthead lights is less than one half the length of the vessels (Annex I(3)(a)). The length overall of the vessels is 102 meters and the horizontal separation between the lights is 22 meters.

Sonat Pratt Rather.....Daewoo Hull No. 3010
Sonat George Richardson...Daewoo Hull No. 3011

The following vessel has been issued a Certificate of Alternative Compliance which allows for an exception to the following: Annex I(2)(a)(i) in that the forward masthead light is located 6 meters above the upper main deck; Annex I(2)(f)(1) in that the forward and after masthead lights are located 6 meters and 35 meters respectively above the upper main deck; Annex I(2)(g) in that the side lights are located 0.5 meters below the upper main deck; Annex I(3)(a) in that the horizontal distance between the forward and after masthead lights is 28.4 meters; and Annex I(9)(b) in that the all-round lights are obscured by a derrick within the after angular sector of 145 degrees, and a duplicate set of all-round lights, placed on the after side of derrick, are obscured by the derrick within the forward angular sector of 145 degrees.

Zane Barnes.....ON 906283

The following vessels' side lights are located in a horizontal plane 2.0 feet forward of the masthead lights (Annex I(3)(b)).

Bull Run.....ON 579741
Harpers Ferry.....ON 577652
Leesburg.....ON 588427

The following vessel side lights are located in a horizontal plane 0.25 feet forward of the masthead light (Annex I(3)(b)).

George Pickett.....ON 648155

Dated: February 5, 1987.

**T. Wood,**

*Captain, U.S. Coast Guard, Chief, Marine Safety Division, Fourteenth Coast Guard District.*

[FR Doc. 87-7563 Filed 4-3-87; 8:45 am]

BILLING CODE 4910-14-M

---

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 7-87]

### Treasury Notes, Series W-1989

Washington, March 25, 1987.

The Secretary announced on March 24, 1987, that the interest rate on the notes designated Series W-1989, described in Department Circular—Public Debt Series—No. 7-87 dated March 19, 1987, will be 6⅜ percent. Interest on the notes will be payable at the rate of 6⅜ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-7470 Filed 4-3-87; 8:45 am]

BILLING CODE 4810-40-M

---

[Supplement to Department Circular—Public Debt Series—No. 8-87]

### Treasury Notes, Series M-1991

Washington, March 26, 1987.

The Secretary announced on March 25, 1987, that the interest rate on the notes designated Series M-1991, described in Department Circular—Public Debt Series—No. 8-87 dated March 19, 1987, will be 6¾ percent. Interest on the notes will be payable at the rate of 6¾ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-7471 Filed 4-3-87; 8:45 am]

BILLING CODE 4810-40-M

---

[Supplement to Department Circular—Public Debt Series—No. 9-87]

### Treasury Notes, Series E-1994

Washington, March 27, 1987.

The Secretary announced on March 26, 1987, that the interest rate on the notes designated Series E-1994, described in Department Circular—Public Debt Series—No. 9-87 dated March 19, 1987, will be 7 percent. Interest on the notes will be payable at the rate of 7 percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-7472 Filed 4-3-87; 8:45 am]

BILLING CODE 4810-40-M

---

### Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a

meeting will be held at the U.S. Treasury Department in Washington, DC on April 28 and April 29, 1987 of the following debt management advisory committee:

Public Securities Association
U.S. Government and Federal Agencies, Securities Committee

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on April 28 and the preparation of a written report to the Secretary of the Treasury on April 29, 1987.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: March 31, 1987.

**Charles O. Sethness,**

*Assistant Secretary (Domestic Finance).*

[FR Doc. 87–7572 Filed 4–3–87; 8:45 am]

BILLING CODE 4810-25-M

---

## Internal Revenue Service

### Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of availability of report on closed meetings of the Art Advisory Penal.

**SUMMARY:** The Report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. 552b, the Government in the Sunshine Act; and Treasury Directive 10–06.E section 12b (9–2–77); A report summarizing the closed meeting activities of the Art Advisory Penal during 1986, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies, at $1.95 each, should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20044, Telephone (202) 566–3770, (Not a toll free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43 FR 52122).

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, CC:AP:V:4, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone (202) 566–9259 (Not a toll free telephone number).

**Lawrence B. Gibbs,**

*Commissioner.*

[FR Doc. 87–7532 Filed 4–3–87; 8:45 am]

BILLING CODE 4830–01–M

---

## VETERANS ADMINISTRATION

### Privacy Act of 1974; Report of New Matching Program

**AGENCY:** Veterans Administration.

**ACTION:** Notice of matching program—Veterans Administration accounts receivable records/State income records.

**SUMMARY:** The Veterans Administration is providing notice that the Office of Inspector General will match records of delinquent accounts of veterans and beneficiaries with the records of State agencies that contain income information. The goal of the matching program is to assess the ability of the veterans and beneficiaries to repay their indebtedness to the United States.

**DATE:** It is anticipated the matching will commence in approximately March 1987.

**ADDRESS:** Interested individuals may comment on the proposed matches by writing to the Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack H. Kroll, Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone number 202–233–5297.

**SUPPLEMENTARY INFORMATION:** Further information regarding the matching program is provided below. This information is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: March 18, 1987.

**Thomas K. Turnage,**

*Administrator.*

**Report of Matching Program: Veterans Administration Accounts Receivable Records/State Income Records**

a. *Authority:* (1) The Inspector General Act of 1978 (Pub. L. 95–452).

(2) Title 38, United States Code, Veterans Benefits.

(3) The Federal Claims Collection Act of 1966 (31 U.S.C. 3711), as amended by the Debt Collection Act of 1982 (Pub. L. 97–365).

b. *Program Description:* (1) *Purpose:* There are a sizeable number of veterans,

dependents and survivors of veterans who have incurred indebtedness to the Veterans Administration (VA) as a result of participation in various benefits programs. Under Titles 31 and 38, United States Code, the VA is required to attempt recovery of amounts owed the Government as a result of overpayments in programs such as compensation, pension, educational or housing loans, and in cases of court ordered restitution for benefits obtained by ineligible persons. In compliance with the Debt Collection Act, the VA has increased its efforts to recover money owed by veterans and beneficiaries. Initial collection attempts have already been made by notifying the individuals concerned of their indebtedness and establishing accounts receivable to document repayment.

(2) The Office of Inspector General (OIG) will assist in these efforts by initiating a program of matching lists of persons owing the VA with lists derived from State income records to determine the ability of these persons to repay or reduce their obligations to the Agency. The State records to be used in the match may consist of wage, tax, employment security, and benefit payment records, or other income-related files. The matches will be performed by the VA OIG whenever possible; however, in some instances State agencies may actually perform the match in order to comply with local laws or rules on the release of records.

In conducting the matches, the OIG will request that State agencies provide computerized excerpts of records containing names, identifying data, and summaries or descriptions of the records. When it is necessary that a State agency perform the match, the OIG will provide a computerized extract of VA records containing only the social security numbers of veterans and beneficiaries. When it is necessary to verify the identity of veterans or beneficiaries who may be listed in the files of State agencies, the OIG may furnish additional identifying data such as date of birth, place of birth, sex, etc. In accordance with Title 38 U.S.C. 3301, the names and addresses of veterans and beneficiaries will not be made available to State agencies in the course of, or as a result of this match, except in connection with a proceeding for the collection of a debt owed to the United States and resulting from the receipt of VA benefits.

It is planned that the first matches will be with records of the following State agencies:

Pennsylvania Office of Employment Security
Tennessee Department of Employment Security
Virginia Employment Commission

If these matches demonstrate the effectiveness of matching VA accounts receivable records with State income records, the Inspector General may direct that matches be made with the records of additional States. The schedule and order of subsequent matches will depend on current workload, available resources, and other factors and, therefore, cannot be projected. The matches may be repeated on a cyclical or intermittent basis.

In the event of a "hit", i.e., the determination through the matching program that a debtor appears in State files, the identity of the debtor will be verified by the OIG. If confirmed, any income or employment information concerning that person will be referred to the Department of Veterans Benefits for further review and followup action. Employers or other knowledgeable sources may be contacted in the verification process. The VA may take steps to collect on the indebtedness when the circumstances warrant and after there have been unsuccessful efforts to obtain repayment agreements with debtors. Civil action to recover on the indebtedness may also be undertaken. When there are reasonable grounds to believe there has been a violation of criminal law, the matter may be investigated and referred for prosecutive consideration.

c. *Records to be Matched:* Automated lists extracted from the following systems of records will be matched with State income records:

(1) Compensation, Pension, Education, and Rehabilitation Records-VA (58VA21/22/28) as set forth on page 789 of the **Federal Register** publication Privacy Act Issuances, 1985 Compilation, Vol. V and amended at 50 FR 26875 (June 28, 1985); 50 FR 31453 (August 2, 1985), 51 FR 24781 (July 8, 1986); 51 FR 25142 (July 10, 1986); and 51 FR 28289 (August 6, 1986).

(2) Loan Guaranty Home, Condominium, and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA (55VA26), as set forth in Privacy Act Issuances, 1985 compilation, Volume V, pages 785–787 and amended at 51 FR 24781 (July 8, 1986).

The disclosure of information from these systems of records, for the purpose of the matching program, is permitted by published routine uses.

d. *Period of Match:* Intermittently from approximately March 1987.

e. *Safeguards:* Records used in the matches and data generated, as a result, will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have need for the information in order to conduct the matches or followup actions. All of the material will be stored in locked containers when not in use. Prior to releasing any information from the VA systems of records to a State agency, the OIG will obtain a written agreement from the agency specifying that the matching file will remain the property of the VA and will be returned to the OIG or will be destroyed upon completion of the match, as appropriate; that it will be used and accessed only to match the files previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose; and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the VA OIG or by the Chief Benefits Director.

f. *Retention and Disposition:* Records not resulting in "hits" will be destroyed by burning, shredding, or electronic erasing within three months of the completion of the individual match. Records resulting in "hits" will be retained by either the OIG or the Department of Veterans Benefits until the completion of any necessary administrative or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 87–7460 Filed 4–3–87; 8:45 am]
BILLING CODE 8320-01-M

---

## Privacy Act of 1974; Amended System of Records

Notice is hereby given that the Veterans Administration is altering the system of records entitled "Management Personnel Inventory-VA" (18VA05) as set forth on page 759 of the Privacy Act Issuances, 1985 Compilation, Volume V.

This system is being upgraded in order to enhance the VA's ability to recruit and place employees in centralized managerial or executive positions. The purpose of amending this system of records is to serve VA management's need to locate and refer high quality candidates for centralized positions through job-related qualifications and evaluation criteria. The system will expedite the filling of centralized position vacancies which are considered key management positions to the Administrator, Department Heads, Associate Deputy Administrators, and

Staff Office Directors. The system will also: Inform possible candidates of vacancies available in centralized management; monitor the receipt and disposition of applications; facilitate response to inquiries concerning the filling of positions; provide statistical information on candidates, vacancies and positions filled; and provide immediate on-line access to centralized staffing records for authorized personnel.

The system will contain paper files and automated records on each candidate who makes application for the Centralized Staffing System (CSS). The CSS will contain data on employment history, skills, qualifications, education, training, awards, performance evaluations, and geographic mobility. So that the system of records notice accurately reflects the changes being made to the system, certain paragraphs of the notice are being revised. These revised paragraphs are: System Name, System Location, Categories of Records in the System, Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing Records in the System, Retention and Disposal, and System Manager and Address.

The Veterans Administration has determined that the routine uses of records contained in this system, the categories of users and the purposes of such uses remains unchanged.

A "Report of Intention to Publish a **Federal Register** Notice" and an advance copy of the system notice has been provided to the Speaker of the House, President of the Senate, and the Director, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 552a (e)(4) and (o) and the Privacy Act Guidelines issued by OMB on October 3, 1975 (40 FR 45877).

These changes are administrative in nature, therefore, no public comment is required.

Approved: March 17, 1987.

**Thomas K. Turnage,**

*Administrator.*

**Notice of Amendments to System of Records**

1. The system identified as "Management Personnel Inventory-VA" (18VA05), on page 789 of the Privacy Act Issuances, 1985 Compilation, Volume V, is being revised as follows:

**18VA05**

**SYSTEM NAME:**

Centralized Staffing System-VA.

**SYSTEM LOCATION:**

Active records are located at the Veterans Administration (VA) Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Inactive records will be stored at the same address. Information from these records is also maintained in automated files at the VA Central Office. Duplicate copies of certain manual and automated files are maintained only by the VA Central Office. No other VA facility has access to the Centralized Staffing System automated data.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All categories of records may include names of individuals, social security numbers, dates of birth, inquiries or correspondence sent to the VA by individuals, information pertinent to decisions or responses given by the Administrator, Department Heads, Associate Deputy Administrators, and Staff Office Directors, and copies of the decisions or responses of the Administrator, Department Heads, Associate Deputy Administrators, and Staff Office Directors. The records will also include:

(a) Records reflecting work experience, educational level, and specialized training obtained outside of the Federal service.

(b) Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about: Past and present positions held including grades, salaries, and duty station locations.

(c) Records pertaining to annual performance evaluation and supervisory assessment of performance in response to specific knowledge, skills, abilities and other characteristics.

(d) Records relating to incentive awards received while employed within or outside of the agency.

(e) Records reflecting ratings assigned by a promotion panel to individuals participating in the system.

(f) Records reflecting geographic mobility and mobility statements.

(g) Records reflecting qualification determinations made on individuals participating in the system.

* * * * *

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper documents, magnetic tape and disks.

* * * * *

**SAFEGUARDS:**

1. *Physical Security.* The VA Central Office is protected from outside access by the Federal Protective Service. All file areas are restricted to authorized personnel on a need-to-know basis. Hard copy records pertaining to employees, or other sensitive records are stored in locked cabinets. Access to the VA Central Office computer room is restricted to authorized operating personnel through electronic locking devices. All other persons gaining access to the computer room are escorted by an individual with authorized access.

2. *System Security:* Access to computer programs is controlled at three levels: Programming, auditing, and operations. The CSS provides automated recognition of authorized users and their respective access restrictions through passwords. Passwords are changed periodically and are restricted to authorized individuals on a need-to-know basis for system access or security purposes. In addition to passwords, there are other levels of security assigned to system personnel only.

These levels are strictly monitored by the Systems Manager. The VA Central Office Systems Security Officer is assigned responsibility for privacy-security measures, including review of violation logs and local control and distribution of passwords.

**RETENTION AND DISPOSAL:**

Folder files are destroyed immediately upon separation from VA. Folders are retained two years if employee withdraws from the system and subsequently destroyed. Automated records are stored on disks for a period of ten years. Automated records in excess of ten years are then stored on remote disks separate from active disks. Other records are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Personnel and Labor Relations, (054), VA Central Office, Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

Any individual who wishes to determine whether a record is being maintained in this system under his or her name, or who has a routine inquiry concerning the status of his or her application under this system may contact the Director, Recruitment and Placement Service, Office of Personnel and Labor Relations, VA Central Office,

BEST COPY AVAILABLE

Washington, DC 20420. Requests concerning the specific content of a record must be in writing or in person. Employee should provide full name, social security number, employing station and position title.

* * * * * *

[FR Doc. 87-7461 Filed 4-3-87; 8:45 am]

BILLING CODE 8320-01-M

## Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before June 5, 1987.

Dated: March 30, 1987.

By direction of the Administrator.

David A. Cox,

*Associate Deputy Administrator for Management.*

Extension

1. Department of Veterans Benefits.
2. Request to Lender for Status Loan Account—LCS.
3. VA Form 26-8778.
4. Status request to servicers of guaranteed or insured loans and vendee loans sold with VA repurchase agreement on loans previously reported in default. Data is essential to VA contracts with obligors.
5. On occasion.
6. Small businesses or organizations.
7. 175,000 responses.
8. 29,167 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan.
3. VA Form 26-1847.
4. Veteran's and lender's request for guaranty of home loan, for which offsite or exterior onsite improvements are incomplete, to permit guaranty of loan and veteran's occupancy of property. VA uses this information to determine proper disbursement of escrow funds or acceptance of other assurances.
5. On occasion.
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations.
7. 5,000 responses.
8. 2,500 hours.
9. Not applicable.

[FR Doc. 87-7459 Filed 4-3-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Volume 52, Friday, April 3, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Monday, April 13, 1987.

**CHANGE IN THE MEETING:**

Open

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Request for Commission Approval to Receive Proposals to Mail out and Process the 1987 Employer Information Report EEO–1 Survey

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

This Notice, Issued and Dated April 2, 1987.

**Cynthia C. Matthews,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 87–7654 Filed 4–2–87; 2:58 pm]

BILLING CODE 6750–06–M

---

**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 27, 1987.

**PLACE:** On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 87–7593 Filed 4–2–87; 10:32 am]

BILLING CODE 3710–GX–M

---

**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 28, 1987.

**PLACE:** On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 87–7594 Filed 4–2–87; 10:32 am]

BILLING CODE 3710–GX–M

---

**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 29, 1987.

**PLACE:** On board MV MISSISSIPPI at City Front, Greenville, MS.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 87–7595 Filed 4–2–87; 10:32 am]

BILLING CODE 3710–GX–M

---

**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., May 1, 1987.

**PLACE:** On board MV MISSISSIPPI at foot of Prytania Street, New Orleans, LA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 87–7596 Filed 4–2–87; 10:32 am]

BILLING CODE 3710–GX–M

# Corrections

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-400001A; FRL-3175-1]

### Statement of Policy and Guidance Regarding Petitions Under Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986; Technical Amendments

*Correction*

In notice document 87-6451 appearing on page 9538 in the issue of Wednesday, March 25, 1987, make the following correction:

In the second column of the page, in the list of chemicals, in the 11th entry,"compounds" should read "ethers".

BILLING CODE [illegible]

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List of Labor Surplus Areas

*Correction*

In notice document 87-6527 beginning on page 9727 in the issue of Thursday, March 26, 1987, make the following corrections to the table:

1. On page 9727, in the third column, in the first column of the table, "Mobile County" should read "Mobile City".

2. On the same page and column, in the second column of the table, in the entry beginning "Russell County Less Phenix City", delete "in Dallas County".

3. On page 9728, in the left table, in the second column of the table, the second entry was incomplete and should read "Fairbanks North Star Borough less Fairbanks City".

4. On the same page, in the right table, in the first column of the table, under Florida, "Hialeah County" should read "Hialeah City".

5. On page 9729, in the middle table, in the first column of the table, "Maywood Village County" should read "Maywood Village".

6. On the same page, in the right table, in the first column of the table, "Richmond County" should read "Richmond City".

7. On the same page, in the same table, under Iowa:

(a) In the first column of the table, "Burlington County" should read "Burlington City";

(b) In the first column of the table, "Clinton County" should read "Clinton City";

(c) In the first column of the table, "Davenport County" should read "Davenport City"; and

(d) In the second column of the table, in the entry "Wapello County Less Ottumwa City", "Wappello" was misspelled and delete the second "Less Ottumwa".

8. On the same page, also in the right table, in the first column of the table, under Kentucky, "Ashland County" should read "Ashland City".

9. On page 9730, in the right table, in the second column of the table, the entry opposite the first column entry "Lansing City" was incomplete and should read "Lansing City in Eaton County, Ingham County".

10. On page 9731, in the left table, in the first column of the table, under Mississippi, "Biloxi County" should read "Biloxi City".

11. On the same page, in the second column of the same table, the entry opposite the first column entry "Hattiesburg City" was incomplete and should read "Hattiesburg City in Forrest County, Lamar County".

BILLING CODE [illegible]

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 24 and 146

[T.D. 87-44]

### Harbor Maintenance Fee

*Correction*

In rule document 87-7006 beginning on page 10198 in the issue of Monday, March 30, 1987, make the following corrections:

**§ 24.24 [Corrected]**

1. On page 10201, in the second column, in § 24.24(b)(1), in the table, in the entry "2813--Alameda, CA", under the "Notations" heading, "Movement" should read "Movements".

2. On the same page, in the third column, in the table, under the "Notations" heading, in the sixth line, remove "Do".

3. On page 10202, in the third column, in § 24.24(c)(6)(i), in the fourth line, "or commercial" should read "on commercial".

4. On page 10207, in § 24.24(e)(3)(ii), in the second column, in the sixth line, the reference should read "paragraph (e)(3)(iii)".

**§ 146.22 [Corrected]**

5. On page 10211, in the third column, in § 146.22(e), in the sixth line, "subject" was misspelled.

BILLING CODE 1505-01-D

Federal Register

Monday
April 6, 1987

Part II

# Environmental Protection Agency

40 CFR Parts 141, 142 and 143

National Primary and Secondary Drinking Water Regulations; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141, 142 and 143**

**[WH-FRL-3130-2]**

## National Primary and Secondary Drinking Water Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revise the general public notification regulations found at 40 CFR 141.32 of the National Primary Drinking Water Regulations (NPDWR), and to amend the public notification requirements for fluoride found at 40 CFR 143.5 of the National Secondary Drinking Water Regulations to make them consistent with the new general requirements. These changes, which implement the public notification requirements of the June 19, 1986, amendments to the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f *et seq.*, apply to owners and operators of public water systems which fail to comply with certain requirements of the National Primary Drinking Water Regulations (NPDWR), and owners or operators of public water systems which have a variance or exemption. EPA is proposing requirements regarding the content, form, manner, and frequency of the public notice.

EPA is also proposing new public notification requirements regarding lead contamination of drinking water to implement the SDWA Amendments. These notification requirements would apply in addition to the general public notification requirements. This section requires that each community water system identify and provide notice to persons who may be affected by lead contamination in their drinking water where such contamination results from either the use of lead in the construction materials of the distribution system and/or corrosivity of the water supply sufficient to cause leaching of lead. EPA is proposing requirements regarding the content, form, manner, and frequency of this notice as well.

Finally, EPA is proposing to revise the State implementation regulations found in 40 CFR 142.16 to require the State to adopt at a minimum the new public notification requirements in § 141.32 in order to obtain and retain primary enforcement authority for public water systems ("primacy").

EPA is proposing that the general public notice requirements under 40 CFR 141.32 and the public notice requirements pertaining to lead under 40 CFR 141.34 become effective 30 days after promulgation.

**DATES:** Written comments should be submitted by June 5, 1987. A public hearing will be held in Washington, DC, on Friday, May 1 beginning at 9:00 a.m. in the Auditorium of the Education Center, EPA, 401 M Street SW., Washington, DC 20460.

**ADDRESSES:** Send written comments to Murlene Lash, Comment Clerk, State Programs Division, Office of Drinking Water (WH-550E), Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at the EPA, Room 1101 East Tower, 401 "M" Street, SW., Washington, DC 20460. It is requested that anyone planning to attend the public hearing (especially those who plan to make statements) register in advance by calling or writing Murlene Lash at (202) 382-5522, EPA, WH-550E, 401 "M" Street, SW., Washington, DC 20460. Persons planning to make statements at the hearing are encouraged to submit written copies of their remarks at the time of the hearing.

**FOR FURTHER INFORMATION CONTACT:** Ralph Langemeier, Chief, Drinking Water Branch, Water Management Division, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 236-2815; or, Carl Reeverts, Deputy Director, State Programs Division, Office of Drinking Water, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-5522.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Statutory Requirements
  A. General Public Notification Requirements
  B. Public Notification Requirements Pertaining to Lead
II. Discussion of Today's Proposed Rules
  A. General Public Notification Requirements
    1. Overview of Proposed Requirements
      a. Community Water Systems
      b. Noncommunity Water Systems
    2. Discussion of Specific Provisions
      a. Manner of Notice
      b. Frequency of Notice
      c. Form and Content of Public Notices
  B. Revised Public Notice Requirements for Fluoride
  C. Public Notice Requirements Pertaining to Lead
    1. Applicability of Notice Requirement
    2. Frequency of Notice
    3. Manner of Notice
    4. Form and Content of Notice
  D. Revised State Implementation Requirements
III. Request for Public Comment
IV. Compliance with Executive Order 12291
V. Paperwork Reduction Act
VI. Regulatory Flexibility Act
VII. List of Subjects

### I. Statutory Requirements

#### *A. General Public Notification Requirements*

On June 19, 1986, the Safe Drinking Water Act, 42 U.S.C. 300f, *et seq.*, ("SDWA" or "the Act") was amended. Section 1414(c), as amended, requires owners or operators of public drinking water systems to notify consumers when certain violations of the National Primary Drinking Water Regulations (NPDWR) occur, when variances or exemptions are in effect, and whenever the systems fail to comply with any schedule prescribed pursuant to a variance or exemption. The Amendments require that, by September 19, 1987, EPA amend the NPDWR "to provide for different types and frequencies of notice based on the differences between violations . . . tak[ing] into account the seriousness of any potential adverse health effects which may be involved." Under the Amendments, EPA must prescribe the form, manner, and frequency for giving notice under section 1414(c).

#### *B. Public Notification Requirements Pertaining to Lead*

The SDWA Amendments also added a new section 1417 prohibiting the use of certain lead pipe, solder, and flux in (1) the installation or repair of any public water system, or (2) any plumbing in a residential or nonresidential facility connected to a public water system and providing water for human consumption. Subsection 1417(a)(2) requires each public water system to identify and provide notice to persons who may be affected by lead contamination in their drinking water, when such contamination results from either the use of lead in the construction materials of the system and/or corrosivity of the water supply sufficient to cause leaching of lead from plumbing systems. Notification is required even if the system is in compliance with the maximum contaminant level for lead.

The Amendments specify that the manner and form of the notice is to be prescribed by the EPA Administrator. The notice must provide a clear and readily understandable explanation of (1) the potential sources of lead in the drinking water, (2) potential adverse health effects, (3) reasonably available methods of mitigating known or potential lead content in drinking water, (4) any steps the system is taking to mitigate lead content in drinking water,

and (5) the necessity for seeking alternative water supplies, if any.

Section 1417(b) provides that the public notification requirements in section 1417(a)(2) shall be enforced in all States as of June 19, 1988. EPA is authorized to withhold up to five percent of a State's section 1443(a) public water system supervision program grant if the Agency determines that the State is not enforcing the prohibition and public notice requirements for lead.

## II. Discussion of Today's Proposed Rules

### *A. General Public Notification Requirements*

The public notification requirements established by the SDWA Amendments of 1986 apply to owners and operators of public water systems which (1) fail to comply with an applicable maximum contaminant level (MCL), treatment technique requirement or testing procedure prescribed by a NPDWR, (2) fail to perform monitoring as required by section 1445(a) of the SDWA, (3) have variances or exemptions under sections 1415(a)(1)(A), 1415(a)(2), or 1416 of the Act, or (4) fail to comply with the requirement of any schedule prescribed pursuant to a variance or exemption. (NOTE: For the sake of simplicity, we refer to all four events as "violations" throughout this notice).

The SDWA Amendments require that EPA amend the public notification requirements of the NPDWR to provide for different types and frequencies of notice based on the differences between violations and the seriousness of any potential adverse health effects which may be involved. The current public notification rules in 40 CFR 141.32 are organized according to type of public water system. To better reflect the new requirements, EPA has organized the proposed rule by type of violation. Two groups, or tiers, of violations are proposed. Tier 1 violations require more stringent public notification; Tier 2 requires less less stringent notice requirements.

The proposed organizational scheme appears in Table 1. As illustrated in Table 1, the Tier 1 category includes failure to comply with either an MCL or treatment technique prescribed in the NPDWR. Tier 2 includes failure to comply with monitoring and testing procedures, operation under a variance and exemption, and failure to meet a variance or exemption compliance schedule. EPA is considering an option to classify certain monitoring and testing procedure violations as Tier 1 violations. For instance, it may be appropriate to include as Tier 1 violations those monitoring violations that continue over an extended period of time. Alternatively, this option may include monitoring and testing procedure violations of NPDWRs that pose an acute health risk (for example, biological contaminants and nitrates). EPA requests comment on the classification system in general and the option to classify certain monitoring and testing procedure violations as Tier 1.

TABLE 1.—PROPOSED CLASSIFICATION OF VIOLATIONS FOR PUBLIC NOTICE

| Violation type | SDWA reference |
|---|---|
| Tier 1: | |
| 1. Failure to comply with MCL. | Section 1414(c)(1)(A). |
| 2. Failure to comply with prescribed treatment technique. | |
| Tier 2 | |
| 1. Failure to comply with monitoring requirements. | Section 1414(c)(1)(B). |
| 2. Failure to comply with a testing procedure prescribed by a NPDWR. | Section 1414(c)(1)(A). |
| 3. Operating under a variance/exemption. | Section 1414(c)(2)(A). |
| 4. Failure to meet variance or exemption schedule. | Section 1414(c)(2)(B). |

#### 1. Overview of Proposed Requirements

The proposed public notification requirements would apply to both community and noncommunity water systems as defined by 40 CFR 141.2. A public water system is a system for the provision of piped water for human consumption, if such system has at least fifteen service connections, or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A community water system is a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. A noncommunity water system is a public water system that is not a community water system. A summary of the proposed public notification requirements for community and noncommunity water systems and a comparison of the major differences between the current and proposed rules appear in Table 2.

*a. Community water systems.* For community water systems, the current rules require notice by newspaper, mail delivery, and electronic media for Tier 1 violations. Notice by posting is required where no daily or weekly newspaper of general circulation exists. Waiver of newspaper and electronic media notice for a community water system is permitted where the primacy agent determines in writing that the violation has been "corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health."

The proposed rule would require notice by both newspaper and mail delivery for Tier 1 violations, with notice by posting required where no daily or weekly newspaper of general circulation exists. In addition, the proposed rule requires that the public notice be delivered to electronic media (i.e., the principal radio and television stations) serving the area served by the public water system when the violation poses an acute risk to human health. EPA is proposing to waive notice by mail delivery where the violation has been corrected within 30 days.

Time frames for notification have been revised to be consistent with the Amendments. EPA proposes that, for community water systems, newspaper notice for all Tier 1 violations take place within 14 days of the occurrence of the violation, that notice to electronic media take place within seven days for violations that pose acute risks, and that initial notice by mail be given within 30 days of the occurrence of the violation (unless it has been corrected). For Tier 2 violations, EPA is proposing initial notice within 3 months for notification by newspaper, or posting in the absence of a daily or weekly newspaper. The proposed rule would also require community water systems which continue to be in violation of any Tier 1 or Tier 2 violation to give quarterly repeat notice by mail for the duration of the violation (or variance or exemption) as required in the current rule. The proposed rule also allows notice by the primacy agent in lieu of the owner or operator. Note that, when the primacy agent gives notice under this provision, the public water system remains legally responsible for meeting the public notification regulation requirements.

EPA also proposes that community water systems include mandatory health effects information (specified in this rule) in their notices of (1) MCL violations, (2) issuance or continued existence of variances and exemptions, and (3) violations of variance and exemption schedules. In addition, EPA is proposing to require community water systems to inform new customers of any violation existing at the time service begins. Notice must take place prior to, or at the time, service begins. Further, in all instances where public notification is required, EPA is proposing that the notice include the telephone number of the community water system's owner and/or operator so that customers may obtain further information regarding information in the notice.

*b. Noncommunity water systems.* For noncommunity water systems, the public notification regulations currently

TABLE 2.—COMPARISON OF CURRENT VS. PROPOSED PUBLIC NOTIFICATION REQUIREMENTS

| | General notice | | | Posting | | Timing | | Special notice | Content | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Newspaper | Mail delivery | Electronic media | In lieu of gen. notice rquirmts | In absence of newspaper | Initial Notice within | Repeat notice | Notice to new billing units | Health effects info | Phone No. of supplier |
| Community PWS: | | | | | | | | | | |
| *Tier 1:* | | | | | | | | | | |
| Current rule | X[w] | X | X[w] | | X | Newsp=14 days. Mail=30 days. Elec=7 days... Post=Unspec | Newsp=none Mail=qtrly Elec=none Post-contin | | X | |
| Proposed rule | X | X[w] | X[e] | | X | Newsp=14 days. Mail=30 days. Elec=7 days... Post=14 days. | Newsp=none Mail=qtrly Elec=none Post=contin | X | X[c] | X |
| *Tier 2:* | | | | | | | | | | |
| Current rule | | X | | | X | Mail=3 months. Post=Unspec | Mail=qtrly Post=contin | | | |
| Proposed rule | X | | | | X | Mail=none Newsp=3 months. Post=3 months. | Mail=qtrly Newsp=none Post=contin | | [d] | X |
| Noncommunity PWS: | | | | | | | | | | |
| *Tier 1* | | | | | | | | | | |
| Current rule | | | | X | | Unspecified | Continuous | | X | |
| Proposed rule: | | | | | | | | | | |
| Option 1 | X | X[w] | X[e] | | X | Newsp=14 days. Mail=30 days. Elec=7 days... Post=14 days. | Newsp=none Mail=qtrly Elec=none Post=contin | | X[c] | X |
| Option 2 | | | | X | | 14 days | Continuous | | X[c] | X |
| *Tier 2:* | | | | | | | | | | |
| Current rule | | | | X | | Unspecified | Continuous | | X | |
| Proposed rule: | | | | | | | | | | |
| Option 1 | X | | | X | | 3 months | Quarterly | | X[d] | X |
| Option 2 | | | | X | | 3 months | Continuous | | X[d] | X |

Notes:
X=Required for all systems.
X[c]=Content is specified for all Tier 1 violations.
X[w]=Requirement may be waived.
X[d]=Content is specified for variance and exemptions only.
X[e]=Required when violation poses acute risk to human health.

in effect provide that "the supplier of water shall give notice by continuous posting of . . . (any violation listed in section 1414(c)) or granting of a variance or exemption to the persons served by the system as long as the failure or granting of a variance or exemption continues." The current rule also allows notice by the primacy agent in lieu of the owner or operator. The timing of the initial notice for noncommunity water systems is not addressed in the current rule, but EPA has generally considered it to be the same as for community water systems.

Today's proposal gives owners or operators of noncommunity water systems the option of notifying either (1) in the same manner as proposed for community water systems (i.e., a combination of newspaper notice, notice to electronic media for violations posing acute risks, and follow-up notice by mail), or (2) by continuous posting. The timing of these notices would be the same for noncommunity water systems as proposed for community water systems. For the second option described above, this means that notification by posting would begin within 14 days for Tier 1 violations. Likewise, the timing for Tier 2 violations would be three months. The requirements for mandatory health effects information, and inclusion of the telephone number of the supplier in the notice, would apply to noncommunity water systems as they would community water systems.

In the notice proposing NPDWRs for certain volatile organic chemicals (VOCs), EPA announced that it was considering amending the definition of "community water system" to include noncommunity water systems serving nontransient users (e.g., schools, factories, daycare centers), and proposed a revised definition for comment. (See 50 FR 46918, November 13, 1985). The amended definition would apply to NPDWRs for VOCs and all other future NPDWRs. In developing this public notification proposal, EPA considered whether nontransient noncommunity water systems that are subject to NPDWRs should comply with the public notification requirements for community water systems, or be allowed to comply with the notice requirements for noncommunity water

systems proposed in this rule. EPA is considering allowing the nontransient noncommunity water systems which are subject to future NPDWRs to comply with the public notification regulations proposed for noncommunity water systems because it believes the option of posting (in lieu of newspaper, electronic media, and mail notice) is effective and therefore appropriate for these systems. Further, the notice to new billing units required of community water systems does not make sense for nontransient noncommunity water systems. EPA invites comment on which public notification requirements should apply to nontransient noncommunity water systems subject to NPDWRs.

2. Discussion of Specific Provisions

*a. Manner of notice.* Section 1414(c) of the SDWA, as amended, provides that EPA "shall specify the types of notice to be used to provide information as promptly and effectively as possible taking into account both the seriousness of any potential adverse health effects and the likelihood of reaching all affected persons. Notification of violations shall include notice by general circulation newspaper serving the area and, whenever appropriate, shall also include a press release to electronic media and individual mailings." EPA is proposing that newspaper notice (or its equivalent, in lieu of newspaper notice, as discussed below) be required for all violations.

EPA is also proposing that owners and operators of community water systems notify each new billing unit of any existing violation of an existing maximum contaminant level or treatment technique at the time service begins. Notice must take place prior to, or at the time, service begins. The purpose of this requirement is to inform new customers of potential health hazards. In order to avoid the additional time and expense which would be involved in the preparation of a new notice each time service to a new customer begins, EPA is proposing that the public water supply provide a copy of the most recent public notice issued under proposed § 141.32(a), unless it has corrected the violation. Comments concerning this new requirement are requested.

*Mail delivery of notice of violation.* In addition to newspaper notice, today's proposal also would require mail notice within 30 days of a Tier 1 violation. This requirement can be met by including the notice with the water bill, if the water bill is sent within 30 days.

The SDWA Amendments also state that the EPA Administrator shall specify the types of notice to be used to provide information as promptly and effectively as possible, taking into account the seriousness of any potential health effects, and the likelihood of reaching all affected persons. The proposed rule reduces the duration of newspaper notice from three consecutive days to a one-time publication. While this reduces the cost of newspaper notice, the likelihood of the notice coming to the attention of the consumer decreases. Also, consumers may not purchase newspapers or read notices. Therefore, considering the seriousness of Tier 1 violations, the Agency does not believe notice by newspaper alone is sufficient for these violations. In developing the proposed rule, EPA considered two types of additional notices: (a) Individual mailed notice to billing units, and (b) individual notice by hand delivery to all known or identifiable affected consumers.

The current rule requires individual mailed notice: § 141.32(a) requires such delivery "by inclusion of a notice in the first set of water bills of the system issued after the failure or grant (of a variance or exemption)." EPA proposes to retain this requirement for Tier 1 violations. Notice could be mailed with the water bill or mailed separately. Proposed § 141.32(a)(1)(B) provides that mail delivery may be waived by the primacy agent in writing where the primacy agent determines that the violation has been corrected within 30 days.

EPA requests comment on a second type of additional notice, individual notice by hand delivery. EPA considered proposing that individual delivery by direct mail or mailed with the water bill be supplemented by hand delivery or posting at multiple family dwellings, apartment complexes and other locations where individual consumers may not receive a water bill. However, as hand delivery of public notice might be difficult and impractical to carry out as a routine matter, EPA has not proposed this requirement. Nevertheless, such a requirement would provide direct consumer information where, for example, the owner of the apartment building or apartment complex receives the water bill and does not reside at the location nor make the information available to the residents. Although EPA is not proposing this requirement, the Agency recommends and encourages its use in appropriate circumstances.

*Press release to electronic media.* The SDWA Amendments provide that notice "whenever appropriate, shall also include a press release to electronic media. . . ." The current public notification requirements provide that community water systems which fail to comply with an applicable maximum contaminant level shall, in addition to mail and newspaper notice, furnish "a copy of the notice to the radio and television stations serving the area served by the system" within 7 days. EPA is proposing to require that the public notice be sent to electronic media (i.e., the principal radio and television stations) serving the area served by the public water system for all Tier 1 violations that pose an acute risk to public health. The proposed rule requires this notice to be given as soon as possible but in no case later than seven days after the violation occurs. This is similar to the current rule, except that the proposed notice to electronic media would be required only for violations which pose an acute risk, rather than for all MCL violations. EPA believes acute health risks require immediate notice and special precautions (e.g., notices to boil water when high coliform levels exist or to avoid the use of high nitrate water for infants) to protect public health.

EPA views the proposed requirements as the minimum necessary and encourages owners and operators of public water systems to consider wider use of the electronic media where appropriate to notify consumers of conditions in the drinking water that may threaten their health and well being. The primacy agent of course has broad discretion to define acute risk or prescribe other criteria that may require use of electronic media.

*Notice in lieu of newspaper, electronic media, and mail notices.* As described earlier, EPA proposes to retain the posting requirement for public water systems in areas not served by a weekly or daily newspaper and to allow continuous posting in lieu of newspaper, electronic media, and mail notice by noncommunity public water systems.

EPA promulgated the current regulation allowing posting by noncommunity public water systems, found at 40 CFR 141.32(d), on August 27, 1980 (45 FR 57332) under statutory language similar to that in the 1986 Amendments. In its notice of proposed rulemaking of July 19, 1979 (44 FR 42246), the Agency justified this provision on the basis that the paramount concern of the transient users of a noncommunity public water system is the current quality of the drinking water; transients are generally less interested in the past problems of the noncommunity system, and they are generally less active in lobbying for correction of the system's problems. Further, transients may not have wide access to local media. Also, it

would be difficult to identify users and their addresses, making subsequent mail notice impractical as well. Posting was viewed as the most effective and efficient way to address the immediate concerns of the transient user.

EPA believes that Congress' intent in revising the public notice requirements was to avoid ineffective notices and strengthen the effectiveness of notices of more serious violations. The boundaries of noncommunity water systems such as campgrounds, service stations, and highway rest stops can easily be delineated; therefore, the ability to reach all affected parties, and avoid unnecessary notice to those persons not affected by the violation, is high. EPA also believes that a requirement for continuous posting in a conspicuous place, which provides notice on an ongoing basis, is more stringent than a combined one-time newspaper notice which the posting requirement would replace. Therefore, EPA today proposes to retain the posting requirement for community water systems in areas not served by a weekly or daily newspaper, and to allow continuous posting in lieu of newspaper, electronic media, and mail notice by noncommunity water systems.

*b. Frequency of notice.* The SDWA Amendments provide that "notice of any violation of a maximum contaminant level or any other violation designated by the Administrator as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than 14 days after the violation. Notice of a continuous violation other than a maximum contaminant level shall be given no less frequently than every three months. Notice of violations judged to be less serious shall be given no less frequently than annually."

In keeping with this provision, today's proposal would require initial public notice (i.e., newspaper notice or posting in lieu of newspaper notice) for MCL violations within 14 days. EPA is also proposing that the initial notice for failure to comply with the treatment technique requirements prescribed under the NPDWR must also occur within 14 days of the violation. In addition, notice to electronic media for MCL and treatment technique violations that pose an acute risk to human health are required as soon as possible but in no case later than seven days from the date of the violation.

Initial notice within three months for monitoring and testing procedure violations, variances, and exemptions (Tier 2 violations) is retained from the current regulation. The proposal would require notice to be repeated quarterly for any Tier 1 or Tier 2 violation continuing beyond this time period or for repeated violations of the same requirement, until the violation ends. Where posting is required in lieu of newspaper notice, initial notice must begin within the time frames described above, and be continuous thereafter for as long as the violation exists.

EPA also considered requiring owners and operators of public water systems to provide their customers with an annual summary of the overall compliance status of the system. In the past, EPA has received comments that, under the current rule, consumers often ignore or fail to realize the significance of public notices received sporadically with water bills. It was suggested that an annual summary would have significant impact on the consumer, particularly for those public water systems which repeatedly violate the requirements of the NPDWRs. The Agency is concerned, however, that this additional requirement could be administratively burdensome to small public water systems and redundant with the general notice requirements. EPA requests comments on whether an annual summary requirement is appropriate.

*c. Form and content of public notices*—

*General.* The SDWA Amendments specify that the public notice "shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the steps that the system is taking to correct such violation, and the necessity for seeking alternative water supplies, if any, until the violation is corrected." EPA is proposing to revise the current regulatory language concerning the form of the public notice in § 141.32(d) to meet the amended requirements of the Act.

Proposed § 141.32(d) also states that the notice shall be conspicuous and shall not contain highly technical language, unnecessarily small print, or similar problems that frustrate the purpose of the notice. The requirement for bilingual notice, where appropriate, is retained from the current rule. EPA plans to provide additional information concerning this provision, including sample notices, as guidance.

*Health effects information.* Section 141.32(e) of the proposed rule requires that specific language provided by EPA be included in public notices of failure to comply with specified maximum contaminant levels, treatment techniques, notices of variances and exemptions from the NPDWRs, and notices of failure to comply with variance and exemption schedules. The required language specifies, in non-technical terms, what adverse health effects may occur as a result of the violation.

The mandatory health effects information in § 141.32(e) as proposed covers the seven volatile organic chemicals for which EPA proposed MCLs in November, 1985, and fluoride, for which EPA promulgated a revised MCL in April, 1986. In addition, EPA is proposing mandatory health effects language for the paradichlorobenzene (p-DCB) MCL, which will be reproposed soon in a separate **Federal Register** notice. MCLs for the eight volatile organic chemicals (including p-DCB) will be promulgated in June, 1987. EPA is not, in this rulemaking, requesting public comment on the specifc MCLs proposed for p-DCB or the other seven VOCs. Comments on the proposed MCL for p-DCB, and whether it should be classified as a probable human carcinogen, may be submitted as specified in the separate **Federal Register** notice referenced in this paragraph.

EPA will include mandatory health effects language for public notices for other contaminants in all future NPDWR proposals and promulgate such language with the final NPDWRs. The Agency is not proposing mandatory health effects language for violations of the existing national interim primary drinking water regulations (NIPDWRs). EPA expects to revise all existing NIPDWRs within the next three years and promulgate them as new NPDWRs. Mandatory health effects language will be included in these new rules. In the absence of health effects language established by rule, the proposal would require public water systems to follow the general guidelines in § 141.32(d) in developing language to describe potential health effects.

Requiring systems to use specific health effects language is intended to ensure that each notice includes a consistent and accurate summary of the toxicological information pertaining to a specific contaminant. The Agency believes that this requirement will ensure more effective public notices. A 1981 survey, "Study of the Cost and Effectiveness of the Public Notification Requirements of the Safe Drinking Water Act of 1974," reported that, of the 82 systems responding to a question on effectiveness, 61 percent said their public notices were not effective, 23 percent said they were somewhat effective, and 16 percent said they were very effective. By requiring the use of specific language, EPA believes that it will be able to improve the quality and, in turn, the effectiveness of public notices.

The use of mandatory text will also aid in the enforcement of the public notification requirements. EPA regional offices and primacy agents will be able to readily determine if public notices have adequate health effects information by the presence or absence of the required language.

EPA believes that improvements in the number of systems complying with the public notification requirements and in the quality of the notices will have a significant impact on improving compliance with drinking water regulations. The public notices required by the SDWA are intended to be a mechanism for organizing both public pressure and support for bringing systems into compliance. In fact, the public notification requirements appear with the other SDWA enforcement provisions in Section 1414. Today's proposal would require that notices include specific language regarding health effects only; the public water system would have flexibility to determine the content of the remainder of the notice to reflect the particular circumstances of the violation. As required by section 1414(c)(2)(B), § 141.32(d)(1) would require public water systems to add additional text which discusses steps being taken to come into compliance, and the need (if any) for alternative supplies of water. Further, systems would have flexibility to add to the notice any additional information they believe to be necessary based on the circumstances of their specific violation.

In addition to mandatory health effects information, EPA is proposing that the text of the notice also contain the telephone number of the owner or operator of the public water system. This provision is intended to assist consumers who have questions in obtaining additional information. This provision is also intended to encourage greater consumer and operator involvement in the educational and informational aspects of public notification.

EPA solicits comments on this approach. Since comments pertaining to the health effects and the appropriateness of the MCL are addressed in the course of developing the MCLs, commenters are requested to confine their remarks on this notice to the adequacy of the proposed language for providing health effects information to the consumer.

*B. Revised Public Notice Requirements for Fluoride*

EPA is proposing in § 141.32(f) of the NPDWR to incorporate by reference the existing mandatory public notification language for fluoride contained in § 143.5(b) of the National Secondary Drinking Water Regulations. EPA promulgated both the maximum contaminant level (MCL) and secondary maximum contaminant level (SMCL) for fluoride on April 2, 1986 (50 FR 11396). Section 143.5(b) requires systems which exceed the SMCL to provide public notification to all consumers, using mandatory language contained in the rule. The language includes health effects information about both SMCL exceedances and MCL violations. Since systems which are in violation of the MCL (4.0 mg/l) necessarily exceed the SMCL (2.0 mg/l), the mandatory language in § 143.5(b) applies to MCL violations as well.

Several changes to the current fluoride SMCL notification rule (§ 143.5(b)) are necessary to reconcile its provisions with the public notification requirements in the SDWA Amendments, which were enacted after EPA promulgated the fluoride regulation. Public notices for violations of the fluoride MCL, like public notices for all other MCL violations, require information about the steps that the system is taking to achieve compliance. However, the prescribed fluoride notice in § 143.5(b) does not require such information. The SMCL rule also provides that no additional information may be added to the prescribed notice. In addition, the current SMCL notification provision has somewhat different distribution requirements from those proposed here for MCL violations.

To resolve these discrepancies, EPA is proposing to amend § 143.5(a) to limit its requirements (including the notice distribution requirements) to exceedances of the SMCL which are less than or equal to 4.0 mg/l. Systems which exceed 4.0 mg/l (the MCL for fluoride) would follow the public notification requirements prescribed in this proposal (§ 141.32) for all other MCL violations.

EPA believes that the identical mandatory language in § 143.5(b) will adequately inform individuals of the potential health effects of fluoride. Therefore, the proposed general public notification provisions would require notices of the fluoride MCL to use the same notice prescribed in § 143.5(b), i.e., the same notice required when the SMCL, but not the MCL, is exceeded. EPA is proposing to delete the current prohibition against including additional information in the prescribed notice, to allow systems to supplement their notice with information on what steps the system is taking to deal with the violation, as required by the Act.

It is important to note that EPA is proposing these changes to the fluoride provisions only to make them consistent with the SDWA Amendments. EPA is not reproposing or requesting comment on any other aspect of the fluoride regulations including (1) the appropriate MCL and SMCL for fluoride, (2) the discussion of health effects in the prescribed notice, or (3) the distribution requirements for notices of exceedances of the SMCL that are less than or equal to 4.0 mg/l in § 143.5(a).

*C. Public Notice Requirements Pertaining to Lead*

EPA proposes today to establish a new section in Subpart D, § 141.34, Public Notice Requirements Pertaining to Lead, in response to section 1417(a)(2) of the SDWA. Comments are solicited on the content, manner, frequency, and form of the notice being proposed today.

1. Applicability of Notice Requirement

Section 1417(a)(2) of the Act requires that all public water systems shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from (1) the lead content in the construction materials of the system, and/or (2) the corrosivity of the water supply sufficient to cause leaching of lead.

The proposed rule would require public notice for lead by community water systems only. EPA believes that requiring noncommunity water systems to provide notice for lead would pose numerous difficult problems. The existing maximum contaminant level (MCL) for lead and the requirements for special monitoring for corrosivity characteristics under § 141.42 do not apply to noncommunity water systems. Therefore, monitoring data for determining whether users may be affected by lead contamination in their drinking water are not available for these systems. Further, it is not known what health effects may result from incidental exposure to lead by the infrequent users of noncommunity water systems.

EPA did consider the option of requiring the lead notice from nontransient, noncommunity water systems (e.g., schools, factories, daycare centers). These systems serve the same users over long periods of time, so the chronic health risks to users would be similar to the risks to residential populations. Under this option, the lead public notice requirements proposed for community water systems would also be required of nontransient, noncommunity water systems, except that notice by posting (in lieu of newspaper and direct mail notice) would be required and the

notice to new billing units would not apply. EPA invites comment on the proposal to require the public notice for lead by community water systems only and the alternative option to extend the requirement to nontransient, noncommunity water systems.

Under this proposal, public notice for lead would not be required if a community water system demonstrates to the primacy agent that either the construction materials in the water system (defined to include the residential or nonresidential facilities connected to the water system) are lead free, or by taking water samples for lead, the water system has water that is noncorrosive to lead-containing materials in the water system and all construction materials containing lead in the water system are at least five years old. However, EPA believes that few community water systems would qualify for this exemption.

2. Frequency of Notice

Section 1417(b)(2) of the Act states that the public notice requirements for lead "shall apply in all states effective 24 months after the enactment of this section." Therefore, under this proposal, the owners or operators of community water systems would be required to issue the initial notice for lead no later than June 19, 1988. Subsequent notice would be given annually for five years from the initial notice or the effective date of the State's lead ban, whichever is later. (The lead ban is mandated by sections 1417 (a)(1) and (b)(1)). EPA is proposing a five-year span because experience indicates that lead levels are substantially decreased five years after the last use of new lead solder in water supply systems.

Section 1417 requires public notice for lead even if there is no violation of the drinking water standard (i.e., MCL) for lead. Separate notice of a violation of the maximum contaminant level of the existing NPDWR lead standard would also be required; the general public notification requirements found at 40 CFR 141.32 would apply to such a notice.

3. Manner of Notice

Under this proposal, all community water systems must provide notice to persons that may be affected by lead contamination of their drinking water. EPA proposes that notice to the consumer be given by: mail delivery (direct mail or with the individual water bills), supplemented by newspaper notice. EPA is proposing that newspaper notices supplement the mail delivery of the lead notice, since mail delivery may not go to all affected persons (e.g., apartment renters that do not get water bills).

As proposed, § 141.34(f) allows the State to issue the public notice for lead on behalf of an owner or operator of an individual community water system. The State must comply with all requirements of this section regarding the manner, form, content, and frequency of the notice. Such notice would reduce the administrative burden on small water systems, while fulfilling the purpose of this provision.

EPA considered proposing that mail delivery be supplemented by hand delivery to individual units or posting at multiple family dwellings, apartment complexes, and other locations where individual consumers may not receive a water bill. Hand delivery is an effective means of providing information directly to consumers when, for example, the owner of the apartment building or apartment complex receives the water bill and does not reside on-site nor make the information available to the residents. EPA recommends and encourages its use where practical. The Agency is concerned, however, that hand delivery or posting might be difficult and impractical to carry out as a routine requirement. Therefore, EPA has not proposed this requirement. Comments are requested on whether EPA should require the public water system to arrange for hand delivery of notices to consumers that do not routinely receive a water bill, or posting to inform consumers residing in multiple-unit dwellings.

4. Form and Content of Notice

The SDWA Amendments require that public notices for lead be written in a clear and readily understandable manner. These notices must provide a clear and readily understandable explanation of the potential sources of lead in the drinking water, potential adverse health effects, reasonably available methods of mitigating known or potential lead content in drinking water, any steps the system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any.

Section 141.34(c) of the proposed rule lists these general requirements for the content of lead public notices. In addition to the general requirements outlined above, the proposed rule would require community water systems to include specific advice in the notice on how to minimize exposure to water likely to contain higher levels of lead. Such advice could include:

—Checking to see if lead pipes, solder, or flux have been used in plumbing that provides tap water.

—Where high lead content in drinking water is suspected or confirmed, running the water from the water faucet long enough to flush water from the pipes in the house (usually several minutes after several hours of disuse or from 5 to 30 seconds after major water use, such as showering or laundry), before drawing water for drinking or cooking.

—Using only the cold water faucet for drinking, cooking with, or preparing baby formula.

—Ensuring that new plumbing and plumbing repairs use lead free materials.

Section 141.34(d) of the proposed rule sets out health effects language that would be mandatory for all lead notices. The Agency believes that requiring specific language will ensure accurate and consistent toxicological information in every public notice and simplify the preparation of the individual notices. The community water system would have flexibility to draft the remainder of the notice to meet the requirements in § 141.34(c) to best reflect the specific circumstances of the individual systems

*D. Revised State Implementation Requirements*

In response to the revised general public notification requirements, EPA is also proposing to revise 40 CFR Part 142, National Primary Drinking Water Regulations Implementation. This part contains regulations for implementation and enforcement of the public water supply programs by States. EPA is proposing to revise § 142.16 State Public Notification Requirements, to require States to adopt regulations at least as stringent as the general public notification regulations under 40 CFR 141.32 as a condition of new or continued primacy.

This provision would replace the current State public notice program requirements in § 142.16, which lists the minimum conditions for State assumption of primacy. The regulations currently in § 142.16 are not as stringent as the public notification regulations in § 141.32. EPA solicits comment on whether State public notification requirements less stringent than the requirements of the proposed § 141.32 would meet the statutory requirements for primacy under section 1413(a)(2) (i.e., "[a State must have] adequate procedures for the enforcement of State regulations") and, if so, what these primacy requirements should be, given

the new minimum public notification requirements of section 1414(c).

### III. Request for Public Comment

EPA requests public comments and information on all aspects of this proposal, including the specific issues identified in the preamble (except as noted in the discussion of the mandatory health effects language for the volatile organic chemicals in section II.A.2.c. above and the fluoride provisions in section II.B. above).

### IV. Compliance With Executive Order 12291

Executive Order 12291 requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that the Agency conduct a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, federal, state, and local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since the proposed rule does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any response to these comments will be available for viewing at EPA, Room 1101 East Tower, 401 M Street SW., Washington, DC 20460.

### V. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document ICR No. 0270 has been prepared by EPA and a copy may be obtained from: Eric Strassler, Information Policy Branch; EPA; 401 M Street SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2709. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW., Washington, DC 20503; Attention: Richard Otis. The final rule will respond to OMB and public comments on the information collection requirements.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that federal agencies prepare regulatory flexibility analyses assessing the impacts of proposed rules on entities such as small businesses, small organizations, and small governmental jurisdictions. Such analysis is not required, however, when the head of an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities.

EPA considers the information required by this rule to be the minimum necessary to effectively administer the public notification program. Since most of the requested information will be readily available, it is anticipated that little time will be needed to prepare the notification response. Any additional economic impact on the small public water systems resulting from implementation of the regulation is expected to be negligible. Accordingly, I certify that these proposed rules, if promulgated, would not have a significant impact on a substantial number of small entities. The Agency seeks comment and any additional information related to the potential impact of these proposed rules on small entities.

### List of Subjects

*40 CFR Part 141*

Chemicals, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

*40 CFR Part 142*

Administrative practice and procedure, Chemicals, Radiation protection, Reporting and recordkeeping requirements, Water supply.

*40 CFR Part 143*

Chemicals, Water supply.

Dated: March 28, 1987.

**Lee M. Thomas,**

*Administrator.*

For reasons set forth in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows.

## PART 141—[AMENDED]

1. The authority for Part 141 is revised to read as follows:

**Authority:** Secs. 1412, 1414, 1417, 1445, and 1450 of the Safe Drinking Water Act (42 U.S.C. 300g–1, 300g–3, 300g–6, 300j–4, and 300j–9).

2. Part 141 is amended by revising § 141.32 to read as follows:

### § 141.32 General public notification requirements.

(a) *Maximum contaminant level (MCL) and treatment technique violations.* The owner or operator of a public water system which fails to comply with an applicable MCL or treatment technique established by this part shall notify persons served by the system as follows:

(1) Except as provided in paragraph (a)(3) of this section, the owner or operator of a public water system must give notice:

(i) By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than 14 days after the violation. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and

(ii) By mail delivery of the notice of violation by direct mail or with the water bill not later than 30 days after the violation. The primacy agent may waive mail delivery if it determines that the owner or operator of the public water system in violation has corrected the violation within the 30-day period. The primacy agent must make the waiver in writing within the 30-day period; and

(iii) For any MCL or treatment technique violation that poses an acute risk to human health (e.g., high coliform, turbidity, or nitrate levels), by furnishing a copy of the notice to the principal radio and television stations serving the area served by the public water system as soon as possible but in no case later than seven days after the violation.

(2) Except as provided in paragraph (a)(3)(ii) of this section, following the initial notice given under paragraph (a)(1) of this section, the owner or operator of the public water system shall furnish notice at least once every three months by mail delivery (by direct mail or with the water bill) for as long as the violation exists.

(3)(i) In lieu of the requirements of paragraph (a)(1)(i) of this section, the owner or operator of a community water system in the area that is not served by a daily or weekly newspaper of general circulation must give notice within 14 days after the violation by continuous posting of notice of such violation, in conspicuous places within the area served by the system, for as long as the violation exists.

(ii) In lieu of the requirements of paragraphs (a)(1) and (2) of this section, the owner or operator of a noncommunity water system must give notice within 14 days after the violation by continuous posting of such violation, in conspicuous places within the area served by the system for as long as the violation exists.

(b) *Other violations, variances, exemptions.* The owner or operator of a public water system which fails to perform monitoring required by section 1445(a) of the Act, fails to comply with a testing procedure established by this part, is subject to a variance granted under section 1415(a)(1)(A) or 1415(a)(2) of the Act, is subject to an exemption under section 1416 of the Act, or fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, shall notify persons served by the system as follows:

(1) Except as provided in paragraph (b)(3) of this section, the owner or operator of a public water system must give notice within three months after the monitoring violation, testing procedure violation, granting of a variance or exemption, or violation of a variance or exception schedule, by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(2) Except as provided in paragraph (b)(3) of this section, when a violation of a monitoring requirement, testing procedure violation, or variance or exemption schedule is not corrected within the first three months following the date of violation, the owner or operator of the pubic water system shall furnish notice at least once every three months by mail delivery (by direct mail or with the water bill) for as long as the violation exists. Notice of the existence of a variance or exemption shall be given every three months from the date it is granted for as long as the variance or exemption remains in effect.

(3)(i) In lieu of the requirements of paragraphs (b) (1) and (2) of this section, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper must give notice by continuous posting of such violation, in conspicuous places within the area served by the system, beginning within three months and continuing for as long as the violation or failure exists, or the variance or exemption remains in effect.

(3)(ii) In lieu of the requirements of paragraphs (b) (1) and (2) of this section, the owner or operator of a noncommunity water system may give notice by continuous posting of such violation, in conspicuous places within the area served by the system, beginning within three months and continuing for as long as the violation or failure exists, or the variance or exemption remains in effect.

(c) *Notice to new billing units.* The owner of operator or a community water system shall give a copy of the most recent public notice for any existing violation of any maximum contaminant level or treatment technique requirement to all new billing units or hookups prior to or at the time service begins.

(d) *General content of public notice.* Each notice required by this section shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall include the telephone number of the owner or operator of the public water system as a source of additional information concerning the violation. Where appropriate, the notice shall be bilingual.

(e) *Mandatory health effects information.* When providing the information on potential adverse health effects required by paragraph (d) of this section in public notices of violations of maximum contaminant levels, violations of treatment techniques, notices of issuance and continued existence of exemptions and variances from maximum contaminant levels, and notices of violation of variance and exemption schedules, the owner or operator of a public water system shall include the language specified below for each contaminant. (If language for a particular contaminant is not specified below at the time notice is required, this paragraph does not apply.)

(1) *Trichloroethylene.* Trichloroethylene (TCE) in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to trichloroethylene results in an increased cancer risk in humans, TCE is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, EPA has set a drinking water standard for trichloroethylene at 5 parts per billion (ppb).

(2) *Carbon tetrachloride.* Carbon tetrachloride in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animal's lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to carbon tetrachloride results in an increased cancer risk in humans, carbon tetrachloride is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, EPA has set a drinking water standard for carbon tetrachloride at 5 parts per billion (ppb).

(3) *1, 2-Dichloroethane.* 1, 2-Dichloroethane in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to 1, 2-Dichloroethane results in an increased cancer risk in humans, it is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, EPA has set a drinking water standard for 1, 2-dichloroethane at 5 parts per billion (ppb).

(4) *Vinyl chloride.* Vinyl chloride in drinking water is a health concern because exposure has been shown to result in an increased cancer risk in humans who are exposed over long periods of time. To reduce the risk of cancer or any other adverse health

effects which may have been observed in laboratory animals at high doses over the animal's lifetime. EPA has set a drinking water standard for vinyl chloride at 1 part per billion (ppb).

(5) *Benzene.* Benzene in drinking water is a health concern because exposure has been shown to result in an increased cancer risk in humans who are exposed over long periods of time. To reduce the risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime, EPA has set a drinking water standard for benzene at 5 parts per billion (ppb).

(6) *1, 1-Dichloroethylene.* 1, 1-Dichloroethylene in drinking water is a health concern to humans who are exposed over long periods of time because there is some but not conclusive evidence that it may cause cancer in laboratory animals at high doses over the animals' lifetime. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime, EPA has set a drinking water standard for 1, 1-dichloroethylene at 7 parts per billion (ppb).

(7) *1, 1, 1-Trichloroethane.* 1, 1, 1-Trichloroethane in drinking water is a health concern because it has been shown to damage the liver, the nervous system, and the circulatory system of laboratory animals and humans at high doses. EPA has set a drinking water standard for 1, 1, 1-trichloroethane at 200 parts per billion (ppb) to protect against these effects with a margin of safety.

(8) *Para-dichlorobenzene.* Para-dichlorobenzene (p-DCB) in drinking water is a health concern because it has been shown to cause cancer in mice when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to para-dichlorobenzene results in an increased cancer risk in humans, p-DCB is considered to be probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime EPA has set a drinking water standard for para-dichlorobenzene at 5 parts per billion (ppb).

(9) *Fluoride.*

**Note.**—EPA is not specifying language that must be included in a public notice for a violation of the fluoride maximum contaminant level in this section because the provisions of paragraph (f) include the necessary information.

(f) *Public notices for fluoride.* Notice for violations of the maximum contaminant level for fluoride, notices of variances and exemptions from the maximum contaminant level for fluoride, and notices of violations of variance and exemption schedules for fluoride maximum contaminant levels shall consist of the public notice prescribed in § 143.5(b), plus a description of any steps which the system is taking to come into compliance.

(g) *Notices by primacy agent.* The primacy agent may give notice to the public required by this section on behalf of the owner or operator of the public water system.

3. Subpart D is amended by adding a new § 141.34 to read as follows:

**§ 141.34 Public notice requirements pertaining to lead.**

(a) *Applicability of public notice requirement.* (1) By June 19, 1988, the owner or operator of each community water system shall issue notice to consumers that may be affected by lead contamination of their drinking water where such contamination results from either the lead content in the construction materials of the public water distribution system, and/or corrosivity of the water supply sufficient to cause leaching of lead. The owner or operator shall issue subsequent notices annually for five years from the initial notice or the effective date of the State's lead ban, required by section 1417 of the Act, whichever is later. The owner or operator shall provide notice under this section even if there is no violation of the national primary drinking water regulation for lead.

(2) Notice does not have to be given under paragraph (a)(1) of this section if the system demonstrates to the State that the construction materials containing lead in the water system, including the residential or nonresidential facilities connected to the water system, are "lead free", or by taking water samples for lead, it has been determined that the water system has water that is non-corrosive to lead-containing materials and all the construction materials containing lead in the water system, including the residential or nonresidential facilities connected to the water system, are at least five years old. For the purpose of this paragraph, the term "lead free" when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

(b) *Manner of notice.* The owner or operator of a community water system shall give notice to consumers by mail delivery (direct mail or with the individual water bills), and by newspaper notice.

(c) *General content of notice.* (1) Notices issued under this section shall provide a clear and readily understandable explanation of the potential sources of lead in the drinking water, potential adverse health effects, reasonably available methods of mitigating known or potential lead content in drinking water, any steps the water system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any.

(2) Each notice shall also include specific advice on how to determine if materials containing lead have been used in the house or in the water distribution system and how to minimize exposure to water likely to contain higher levels of lead. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall contain the telephone number of the owner or operator of the community water system as a source of additional information regarding the notice. Where appropriate, the notice shall be bilingual.

**Note** to paragraph (c).—Each notice should advise consumers to use only the cold water faucet for drinking, cooking with, or preparing baby formula, and to run the water until it gets as cold as it is going to get before each use. If there has recently been major water use in the household, such as showering or bathing, flushing toilets, or doing laundry with cold water, this should take 5 to 30 seconds; if not, flushing could take as much as several minutes. Each notice should also advise consumers to check to see if lead pipes, solder, or flux have been used in plumbing that provides tap water and to ensure that new plumbing and plumbing repairs use lead free materials.

(d) *Mandatory health effects information.* When providing the information in public notices required under paragraph (c) on the potential adverse health effects of lead in the drinking water, the owner or operator of the community water system shall include in the notice the specific language which appears below:

Lead has no known useful function in the body. It is a well-known toxin, causing damage to the nervous system, the blood-forming processes, the gastrointestinal system, and the kidneys. Recent studies have

shown that lead can also cause cognitive damage (e.g., damage to perception, memory, and judgment), stunt children's growth, and raise blood pressure in adult males, even at low levels of exposure. These health effects can range from relatively subtle biochemical changes at low lead body burden levels to severe retardation at high levels or even death at higher levels. Young children and fetuses are most at risk of damage from exposure to lead.

(e) *Notice to new billing units.* The owner or operator of a community water system shall give all new billing units or hook-ups a copy of the notice described in this section prior to or at the time service begins.

(f) *Notice by State.* Notice to the public required by this section may be given by the State on behalf of the owner or operator of the community water system.

(g) *Enforcement by State.* All States shall enforce the requirements of this section by June 19, 1988, as required by section 1417(b)(2) of the Act. If the Administrator determines that a State is not enforcing these requirements, the Administrator may withhold up to five percent of the State program grant fund under section 1443(a) of the Act.

## PART 142—[AMENDED]

1. The authority citation for Part 142 is revised to read as follows:

**Authority:** Secs. 1413, 1414, 1415, 1416, 1417, 1445, and 1450 of the Safe Drinking Water Act (42 U.S.C. 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9).

2. Part 142 is amended by revising § 142.16 to read as follows:

**§ 142.16 State public notification requirements.**

Each state program qualifying for primary enforcement responsibility shall include, at a minimum, the requirements for public notification found in § 141.32 of this title.

## PART 143—[AMENDED]

1. The authority citation for Part 143 is revised to read as follows:

**Authority:** Secs. 1412(c), 1445, and 1450 of the Safe Drinking Water Act. 42 U.S.C. 300g–1(c), 300j–4 and 300j–9.

2. In § 143.5 paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

**§ 143.5 Compliance with secondary maximum contaminant level and public notification for fluoride.**

(a) Community water systems, as defined in 40 CFR 141.2(e)(i), that exceed the secondary maximum contaminant level for fluoride as determined by the last single sample taken in accordance with the requirements of § 141.23 or any equivalent State law, but do not exceed the maximum contaminant level for fluoride as specified by § 141.62 or any equivalent State law, shall send the notice prescribed in paragraph (b) of this section, to all billing units annually, all new billing units at the time service begins, and the State public health officer.

(b) The notice required by paragraph (a) of this section shall contain the following language, including the language necessary to replace the superscripts:

* * * * *

[FR Doc. 87–7386 Filed 4–3–87; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
April 6, 1987

Part III

# Department of Agriculture

**Agricultural Marketing Service**

**7 CFR Part 994**

**Egg Marketing Order; Establishment of Programs Relating to Research, Consumer Education, and Advertising; Proposed Rule and Referendum Order**

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 994

[Docket No. EMO-1]

## Egg Marketing Order; Establishment of Programs Relating to Research, Consumer Education, and Advertising

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes an egg marketing agreement and order which would authorize the establishment of programs and projects relating to research, consumer education, advertising, promotion, and product development for eggs, spent fowl, and products thereof. The order would provide for a 22-member national board consisting of producers and handlers and one public member to administer the order. Funds to administer the order would be obtained from mandatory non-refundable assessments levied on egg handlers. The first year assessment rate for the research and promotion programs would be set at one-half cent on each dozen eggs first handled. Subsequent maximum one-fourth cent increases up to a 1-cent maximum rate would be allowed following appropriate rulemaking procedures and approval of the Secretary.

**DATE:** The representative period for purposes of the referendum herein ordered is December 1, 1986, through February 28, 1987. The referendum shall be conducted between May 25 and June 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Janice L. Lockard, Poultry Division, AMS, USDA, Washington, DC 20250, Phone (202) 382-8132.

**SUPPLEMENTARY INFORMATION:**

Prior documents in this proceeding:

### Notice of Hearing

Issued December 10, 1985; published December 16, 1985 (50 FR 51344), as corrected December 23, 1985 (50 FR 52332).

Termination of Rulemaking Proceedings in Part: Issued October 20, 1986; published October 23, 1986 (51 FR 37578).

### Recommended Decision

Issued October 20, 1986; published October 24, 1986 (51 FR 37822).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

### Preliminary Statement

This decision is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing formulation of marketing agreements and marketing orders (7 CFR 900.1 through 900.18).

The proposed marketing agreement and order, hereinafter referred to collectively as the "order," were formulated on the record of a public hearing held in Atlanta, Georgia, January 8–10, 1986; Little Rock, Arkansas, January 15–16, 1986; San Francisco, California, January 29–30, 1986; Philadelphia, Pennsylvania, February 5–6, 1986; and Chicago, Illinois, February 27–March 1 and March 3, 1986. The Notice of Hearing, published on December 16, 1985, contained a proposal submitted by an industry task force, composed of producers, handlers, and processors. The proposal contained, in addition to the research and promotion program, provisions for the voluntary removal of laying hens by producers during periods of extreme egg surpluses. The Agricultural Marketing Service proposed certain modifications of the proposal which included provisions requiring a public member on the proposed Egg Marketing Board; providing for a periodic continuance referendum; and authorizing establishment of regulations to implement a surplus removal program.

With respect to the surplus removal provisions of the proposed order, the proceedings for these provisions were terminated effective October 23, 1986 (51 FR 37578).

It is anticipated that the Egg Research and Promotion Order (7 CFR 1250.301 through 1250.363) authorized by the Egg Research and Consumer Information Act (7 U.S.C. 2701 *et seq.*) would be terminated if the proposed order is adopted.

During the hearing on the proposal, a number of witnesses, including producers, handlers, and State and regional producer and promotional organizations, testified in favor of the research and promotion provisions of the order. In addition, an economist appearing on behalf of the proponents presented evidence relating to the potential effectiveness of a sustained advertising program. In general, proponents testified that current American Egg Board (AEB) research and promotion activities authorized by the Egg Research and Consumer Information Act were inadequately funded. Proponents believed that strong research programs were needed to develop alternative uses for their products and to address questions regarding the specific role of eggs in maintaining optimum health. In addition, proponents summarized the effectiveness of the AEB advertising and promotion program especially during the early years of the program when available funds were greatest and advertising costs lower, and indicated that additional funds could help achieve the objective to increase consumption and demand. They also testified that they believe that the refund provision in the existing order is not equitable because it allows some producers to benefit from the research and promotion programs without contributing their share of program costs.

Opposition to the research and promotion program came primarily from food manufacturers who argued that assessments would be passed on to them and ultimately to consumers without their receiving any of the benefits. Opponents, including some producers, also asserted that a national research and promotion marketing order program was unnecessary and voluntary company-sponsored research and promotion programs have been highly successful in certain segments of the poultry industry.

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities.

In the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the order on small businesses. Based on the record evidence, a sizeable majority of both egg handlers and egg producers could be considered small businesses for purposes of the RFA. In that regard, considerable testimony was presented concerning the various operations existing in the egg industry, such as production methods and marketing.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders and rules proposed thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA

and the Act are usually compatible with respect to small business entities. Since the handlers to be covered under this order are predominately small businesses, the order proposed in this proceeding would impose no disproportionate regulatory burdens on any groups of small entities within the industry.

The principal requirements of the order which would affect handlers are (1) a mandatory assessment to fund research and promotion programs and, (2) associated reporting and recordkeeping requirements. The order provides for an initial assessment of one-half cent per dozen eggs to be paid by the first handler of the eggs. The term "handle" includes processing, grading, or cartoning of eggs from a person's own production or from eggs purchased from another person. This term also includes placing eggs in the current of commerce, except as a common carrier of eggs owned by another person. "Handle" does not include washing and packing of nest run eggs or a producer's delivery of his/her own nest run eggs. Thus, firms performing these activities alone would not be subject to assessments. Producers would not have to pay the assessment unless they were also first handlers. Eggs produced by producers with fewer than 10,000 hens would not be subject to the assessments. The order also requires that every handler furnish to the Egg Marketing Board such information as will enable the Board to exercise its responsibilities and duties.

Record evidence indicates that under the current Egg Research and Promotion Order, as authorized by the Egg Research and Consumer Information Act, producers pay an assessment of 5 cents per 30-dozen case of eggs, which is approximately 0.17 cents per dozen. Under that order, assessments are collected and remitted by egg handlers to the AEB. The assessments provide funding for national research, promotion and advertising, and consumer education activities on eggs and spent fowl and products thereof. Producers may request refunds under that Act and, according to the latest available information, approximately 25 percent of the 2,199 producers participating in this program do so. Record evidence indicates that $7.6 million was collected under that order during 1985 and that refunds totaled $3.3 million. Under that order, both producers and handlers are subject to recordkeeping requirements and handlers are subject to reporting requirements.

Testimony and evidence of record suggest that the egg industry is now generally composed of four basic types of firms: (1) Handlers who market and/or process eggs, but who are not engaged in production; (2) independent producers who are engaged in egg production only and are not involved in the processing or marketing of eggs; (3) producers who produce eggs under contractual arrangements, but do not possess title to them; and (4) producer-handlers who are not only engaged in the production of eggs but also market and/or process eggs. Under the terms of the proposed order, firms that are involved in the handling of eggs whether as handlers or producer-handlers would be required to pay the assessments for those eggs for which firms were first handlers. Firms that are independent producers are not subject to assessments but many could nevertheless be affected indirectly by the operation of the order, if assessments are passed back to them from first handlers. Although there was testimony which recognized this possibility, the extent to which this pass back might occur was not clear. In addition, it was not clear whether contract producers would be affected if the producers with whom they have contractual arrangements chose to pass all or a portion of the assessment to them.

According to Statistical Reporting Service (SRS) figures, there were approximately 5,090.67 million dozen table eggs produced between December 1, 1984, and November 30, 1985. This figure includes production from flocks of 3,000 or more laying hens. The collection of the proposed initial assessment of one-half cent per dozen eggs produced from 10,000 or more laying hens would result in approximately $24 million available for funding the research, promotion, and consumer education programs.

According to AEB statistics for August 1986, there are 938 handlers remitting assessments under the Egg Research and Consumer Information Act. It is anticipated that all of these handlers under the current Egg Research and Promotion Order would be first handlers subject to the assessments under the proposed order. Of these handlers, approximately 80 percent may be classified as small entities. The proposed initial assessment of one-half cent per dozen eggs would be equivalent to approximately three-quarters of 1 percent of a handler's annual gross sales revenue from the sale of eggs. This is based on the Economic Research Service (ERS) average wholesale price of 66.4 cents per dozen. At the maximum rate of 1 cent provided in the proposed order, the assessment would be only 1½ percent of annual gross sales revenue. This assumes an average price to wholesalers of 66.4 cents per dozen, based on ERS' statistics. However, some handlers may be further processors and distributors of eggs and, therefore, could derive a significant proportion of their revenue from activities other than egg handling. This would result in lessening the impact of assessments on such firms. In addition, of the 938 handlers currently remitting assessments under the present Egg Research and Promotion Order, it is estimated that 741 of these handlers are also producers who are already subject to assessments under that order at the rate of 0.17 cents per dozen eggs marketed. This represents approximately one-fourth of 1 percent of a handler's annual gross sales revenue derived from the sale of eggs. Accordingly, for these handlers currently paying assessments, the impact of the initial assessment in the proposed order would be less, representing approximately one-half of 1 percent for the initial assessment and approximately 1 percent at the maximum 1-cent rate.

There was some testimony with regard to the possible increased costs of eggs purchased by food manufacturers because of the assessment. In such instances all or a portion of the assessments would be passed forward to processors from first handlers. However, the extent to which this might occur was not clear in the record; nor was it specified in testimony that if this did occur whether the cost to consumers of the food manufacturers' products would increase.

The reporting and recordkeeping requirements in the proposed order would not require any significant additional cost or effort for handlers. Presently, under the existing Egg Research and Promotion Order, handlers who remit assessments are required to submit reports showing the number of eggs marketed from their own production and/or from production of others. These requirements are comparable to the reporting requirements for handlers in the proposed order. The proposed 2-year record retention period is also the same as that required presently under the current order. In addition, ordinary business records maintained by handlers for other purposes would generally contain any other required information.

Accordingly, it is determined that the proposed provisions of the order would not have a significant impact on handlers.

There are no reporting or recordkeeping requirements in the proposed order for producers. These firms which are engaged only in the production of eggs, commonly referred to as independent producers, may nevertheless be affected by the proposed operations of the order. There was testimony at the hearing indicating that handlers could pass back to producers in the form of lower prices paid for eggs purchased all or a portion of the assessments paid by first handlers. However, the extent to which this might occur is not clear from the record evidence.

Testimony and record evidence indicate that the egg industry has undergone some dramatic changes in the last 20 to 30 years. There have been significant advances in productivity at the producer level, resulting in lower per unit average costs. Some producers have expanded their operations to take advantage of economics of size in egg production and marketing. In addition, many producers have vertically integrated their operation both forward and backward.

Today, the industry is characterized in general by fewer but larger producers, as well as a greater number of producers who perform functions other than egg production, such as grading, cartoning, and processing. The number of small- and medium-sized producers has declined along with their share of total output. The industry breakdown for producers as of August 1986 is as follows:

| No. of layers | No. of producers | Percent of total | Monthly production (thousand dozens) | Percent of total |
|---|---|---|---|---|
| 3,001-10,000 | 549 | 25.0 | 5,960.6 | 1.6 |
| 10,001-20,000 | 483 | 22.0 | 11,710.9 | 3.2 |
| 20,001-50,000 | 512 | 23.3 | 27,570.3 | 7.6 |
| 50,001-100,000 | 275 | 12.5 | 32,905.6 | 9.0 |
| 100,001-500,000 | 283 | 12.8 | 104,222.5 | 28.6 |
| 500,001-1,000,000 | 64 | 2.9 | 74,946.0 | 20.6 |
| More than 1,000,000 | 33 | 1.5 | 106,873.5 | 29.4 |
| Total | 2,199 | ..... | 364,189.4 | ..... |

Source: Unpublished AEB Count of Active Producers by Size, August 1986.

The trend toward larger but fewer firms is also illustrated in a recent report in a trade journal (*Poultry Tribune*, December 1985) which suggested that only 61 producers accounted for approximately 56 percent of total egg production.

Of the 2,199 producers reported by AEB who are engaged in egg production in the 48 contiguous States, it is estimated that approximately 1,690 would be considered small entities. This is based upon a production level of 100,000 layers using a figure of 247 eggs per year (U.S.D.A. SRS, *Layers and Egg Production 1985 Summary*). However, not all producers would in all instances be indirectly impacted by the proposed order because the order provides for a 10,000 layer exemption. Accordingly, firms producing eggs from less that 10,000 layers would not be considered producers for purposes of the order and handlers would not be subject to assessments in handling their eggs. This exemption could insulate at least 549 small producers owning laying hens in the 3,001 to 10,000 range from any potential impact of the order. Information regarding the exact number of producers owning less than 3,001 laying hens is not known.

It is unclear from the testimony and record evidence the extent of which handlers would pass back the impact of assessments upon independent producers. In this regard, much would depend on the bargaining power of the first handler relative to that of the producer or the next buyer in the marketing chain. Assuming, however, that assessments would be passed directly back to producers, their gross annual sales revenue would be reduced by not more than an estimated 1 percent. This is based on ERS' 1985 average price to producers of 50 cents per dozen. For those producers who are currently paying the AEB assessments of 0.17 cents per dozen eggs, the potential impact would be approximately 0.66 percent of sales revenues. In addition, for those producers who are diversified with other types of enterprises, the proportion of total revenues impacted by assessments would be less. Accordingly, it is determined that the order provisions would not have a significant impact on a substantial number of producers who might be impacted by the order provisions.

According to AEB statistics, it is estimated that there are 741 producers who are not only engaged in the production of eggs, but also market and/or process eggs. The impact or potential impact of the order provisions on these producer-handler firms would be as discussed above for producers and handlers. The impact of the order may vary depending upon the extent to which these firms are engaged in production, handling, or other activities. Nonetheless, based upon the foregoing, it is determined that whether viewed as handlers, producers, or both, the impact on these firms would not be substantial.

Record evidence shows that, in addition to the national research and promotion program, conducted by the AEB pursuant to the Egg Research and Promotion Order, there are approximately 36 State and 2 regional promotion organizations which conduct individual egg promotion activities. These programs are funded either by voluntary or mandatory assessments and most tend to be independent of one another and operate on a relatively small scale. However, these programs are eligible for and do receive funds currently from the AEB on a matching fund basis. As a result, their individual programs are enhanced and strengthened. The proposed order also provides for funding for State and regional organizations. A mandatory assessment program as envisioned by the order would ensure consistent and enlarged funding not only on a national basis, but at the State and regional levels as well, through an increased share by eligible States and regions in the total amount collected under the proposed mandatory national program. Promotion and research activities performed by other industries also would benefit from an increased national effort through a cooperative funding provision in the order.

In determining that the egg research, promotion, and consumer education programs under the proposed order will

not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions were carefully reviewed and every effort was made to minimize any unnecessary costs or requirements. Although the order would impose some additional costs and requirements on handlers, and possibly some producers, it is anticipated that the research and promotion programs under the proposed order would help to increase demand for eggs and spent fowl and products thereof. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) the reporting and recordkeeping provisions that are included in the proposed order will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective prior to OMB approval.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator Marketing Programs, on October 20, 1986, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. Exceptions were received from the proponents (industry task force), the Arkansas Poultry Federation; Kraft, Inc.; Cargill Incorporated; New England Brown Egg Council; Carlin W. Hooper; the Biscuit and Cracker Manufacturers' Association; and Super Valu Stores, Inc., and affiliates. A ruling on each exception is contained under the material issue to which the exception relates. The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and set forth in full herein subject to modifications as hereinafter set forth. This decision modifies conclusions in the following material issues:

*Material issue* (1) With respect to an analysis of interregional trade;

*Material issue* (2) With respect to an analysis of the order on social welfare as measured by deadweight loss, and additional points regarding the need for the order;

*Material issue* (3) With respect to—

(a) The definition of the terms "handle" and "eligible organization",

(b) Terms of Board officers,

(c) Funds allocated for research on health issues and new products, State and regional promotion programs, funding and operation of programs for brown eggs, the initial rate of assessment and provisions for one-fourth cent increases, and

(d) Continuance referenda requirements.

## Material Issues

The material issues presented on the record of the hearing are the following:

(1) Whether the marketing of eggs produced in the United States affects the current of interstate or foreign commerce;

(2) Whether a national program for funding research, promotion, and consumer education is needed by the egg industry and whether such program would tend to effectuate the declared policy of the Act;

(3) What the specific terms and provisions of the proposed order should be, including, but not limited to:

(a) The definition of terms used herein which are necessary and incidental to attain the declared policy and objectives of the Act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of the Egg Marketing Board which shall be the local administrative agency for assisting the Secretary in the administration of the order;

(c) The authority for establishing and financing the development and carrying out of programs and projects of advertising, research, consumer education, and promotion directed to improve, maintain, and develop domestic and foreign markets for eggs and spent fowl and their products;

(d) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(e) The establishment of requirements for reporting and recordkeeping; and

(f) Additional terms and conditions as set forth in the Notice of Hearing published in the December 16, 1985, **Federal Register** (50 FR 51344) which are common to all marketing agreements and marketing orders, and certain other terms as set forth in § 994.85 through § 994.87.

## Findings and Conclusions

### *(1) Commerce*

Record evidence indicates that egg production occurs in all States and that some regions are deficit-producing while others are surplus-producing. Evidence further shows that eggs move in significant quantities across States lines. Information entered in the record includes a USDA study (*The U.S. Poultry Industry: Changing Economics and Structure*, ERS, U.S.D.A., July, 1983, Floyd Lasley) which provides data regarding the existence of net movements of eggs out of the West North Central, South Atlantic, and Pacific States into the New England, Middle Atlantic, and Mountain States. The South Central and South Atlantic regions both changed from deficit- to surplus-producing regions in the early 1960's. Additional evidence of the changing composition of interregional egg movements is the fact that the West North Central regions's surplus declined by 37 percent between 1970 and 1980. During the same time period the Pacific region's surplus declined by 29 percent and the New England region's deficit declined by 81 percent.

In addition, production and prices in one State or region affect those in other States or regions. There were various publications entered on the record which contain egg price quotations or estimates of egg values, such as USDA's "Egg Market News Report" and "Agricultural Prices" which are widely used by the industry and which facilitate the dissemination of price information across the country. Testimony presented at the hearing indicates that there is a link between egg prices in diverse geographic locations. For example, there appears to be a high correlation among retail egg price fluctuations in the Los Angeles, New York, Atlanta, and Chicago markets.

Record evidence indicates that eggs are sufficiently alike in appearance and quality, so that it is possible for eggs from widely varying locations to compete in the same market. Several producers testified that they often ship eggs to regions other than their own. Record evidence also indicates that eggs are marketed in processed form as well as in the shell, which facilitates transportation between States and regions. Finally, evidence indicates that eggs move into foreign commerce from the United States and that such exported eggs constituted an average of 1.50 percent of total U.S. table egg production over the past 4 years.

Therefore, it is found that the marketing of eggs produced in the United States affects the current of interstate or foreign commerce. Hence, all commercial eggs produced in the United States as defined in this order should be subject to the provisions of this order. While the definition of "United States" in the Notice of Hearing included all 50 States, it has been determined that the proposed order should be applicable to the 48 contiguous States as explained in section (3).

BEST COPY AVAILABLE

The exception submitted by the Arkansas Poultry Federation (APF) acknowledges that interregional trade exists in the egg market, but contends that producers in different regions would benefit unequally from national advertising expenditures authorized by the Board. This is based on a theoretical economic analysis of interregional trade. The argument is that producers in a surplus-production region (Region A) would not benefit as much as would producers in a deficit-production region (Region B) from an egg promotion campaign initiated by the Board in Region B which resulted in an increase in demand for eggs in Region B. Since assessments would be paid by first handlers, this argument apparently assumes that all producers would also be first handlers and/or that all assessments would be passed directly back to producers.

It is alleged that when demand (and thus, the price of eggs) increases in Region B, Region A would respond with an increased flow of eggs to Region B. However, the per-unit costs of interregional marketing services would allegedly increase with the increased volume of eggs traded. Producers in Region A would therefore receive a smaller increment in price than producers in Region B (assuming that the price of eggs in Region A equals the price of eggs in Region B minus per-unit marketing costs). This would be true because the producers in Region B would not have to absorb an increase in their per-unit marketing costs, as would producers in Region A. That is, producers in Region A would sustain an increase in per-unit interregional marketing costs, along with the increased price, whereas producers in Region B would receive the increased price but not have to bear a cost increase. Therefore, it is alleged that producers in both regions would be paying the same per-dozen assessment for a regional promotion program which would yield greater per-unit increases in profit for producers in Region A than in Region B and that, for this reason the order would be inequitable.

While there was a consensus among all of the economists who testified at the hearing that the egg market is national in scope, that interrelated deficit- and surplus-production regions exist, and that prices in different regions are interdependent, no evidence was presented concerning the per-unit costs of interregional marketing services. The nature of these costs is central to the validity of the APF's argument, i.e., that the costs increase with the volume of eggs marketed. However, there is a lack of record evidence concerning the exact nature of these costs. Marketing operations may vary among firms and, therefore, it is likely that the per-unit costs of interregional marketing services may also vary. While APF assumed that these costs would increase, there could be a decline in such costs with an increasing volume of eggs traded (i.e., economies of scale in marketing), which would favor the producers in Region A relatively more than those in Region B given the example presented by the APF. In addition, as previously stated, it has been determined that the benefits of the proposed order to the egg industry as a whole would outweigh the potential costs. Therefore, APF's argument concerning these is not accepted.

*(2) Need for a Research and Promotion Program*

The egg industry has suffered from a declining demand for its product for more than 20 years despite the existence of voluntary or mandatory research and promotion programs at the national, State, regional, or private levels. These programs have not reversed the downward trend in the demand for eggs. For example, the record evidence shows that the number of eggs used per person decreased from 317 eggs in 1963 to 261 in 1984. In addition, while the nominal price of eggs has increased, the real price (corrected for inflation) has declined. Real prices, in terms of 1984 dollars, decreased from $1.44 per dozen in 1969 to $.81 in 1984 for cartoned eggs delivered to New York retailers.

The record suggests several factors contributing to the decline in demand. Testimony indicates that eggs are recognized as among the most economical, high protein foods available in the supermarkets today and are listed in the meat group of the four basic food groups needed for nutrition. However, the positive nutritional attributes of eggs have been overshadowed in recent years by negative publicity surrounding the relationship of cholesterol and heart disease. This unfavorable publicity is seen as contributing to a loss of confidence by consumers in the nutritional benefits of eggs and accounts, at least in part, for the decline in consumption. Another important factor cited in decreased demand is the egg industry's inability to meet the needs of the population with changing lifestyles by developing new, convenient, low-cost egg products.

The record shows that promotion and research activities can have a positive effect on the demand for eggs as demonstrated by AEB programs authorized by the Egg Research and Consumer Information Act. Promotional activities at the national level are carried out under this program through assessment levied on producers owning over 3,000 laying hens. The assessment rate, established by statute is 5 cents per 30 dozen case of eggs. Total collections for the years 1980–1985 have averaged $7.5 million per year.

Testimony indicated that there is a correlation between levels of expenditures for advertising and promotion and per capita consumption. Exhibits entered into the record indicate that in 1977 and 1978, AEB implemented an aggressive national campaign utilizing television, radio, and national magazine advertising. During this period, per capita consumption of eggs increased from 267 in 1977 to 272 in 1978 and again upward to 278 in 1979. Due in part to inflation and increased costs for media space, however, AEB was unable to maintain the same level of advertising. Testimony indicated that because of this, per capita consumption resumed a downward trend. In 1978, AEB expended approximately $5.5 million on programs of advertising, research, and consumer education. In 1985, not accounting for inflation, AEB expended only $3.7 million for similar programs.

According to evidence submitted at the hearing, AEB has funded nutrition research over the years in an effort to determine the role of eggs in human nutrition. For example, in 1980, grants totaling approximately one-half million dollars were awarded to 17 scientists for research into the relationship between heath and dietary cholesterol. Also in 1980, funds were available for distribution to eight researchers for research into product development, processing techniques and functional performance, institutional uses, and market test applications. In addition, fellowship grants were given to three university students to encourage research in the field of egg product and poultry science research.

By 1983, due to lower net income, AEB was able to fund only one nutrition research grant and three graduate fellowship grants. In 1984 and 1985, some monies were reallocated from the advertising budget in order to fund a cholesterol action program and an egg nutrition center.

Record evidence indicates that although expenditures for research must be considered as long term, such expenditures are needed to establish an adequate program of continuous research to ensure that consumers receive current information on the nutritional value of eggs.

Testimony at the hearing indicated that new product development is the most promising avenue for the egg industry; yet very few egg producers are able to support or engage in significant or successful research and development activities. Because of the public's ever-changing lifestyle geared toward easier-to-prepare food items, it becomes all the more important to respond to this marketing challenge. With the additional funds that may be allocated in this area by the proposed order, new product development has the potential for increasing sales for egg products both domestically and abroad.

The AEB has provided funding to States and regions on a cooperative basis since the program began. Evidence was introduced concerning State and regional egg promotion programs currently in existence and the positive effect of such programs under the present order because State funds are matched by AEB funds for specific projects. In addition, the national, regional, and State programs complement each other through the distribution given by States of materials developed by AEB. Several representatives of State and regional promotion organizations testified in support of the proposed national research and promotion program. Those representatives testified as to the need for effective State and regional programs which would support a national effort. They specifically supported the proposed order provision which would provide that 15 percent of monies collected, less administrative expenses, would be allocated back to State and regional programs on a proportionate basis.

Under the AEB program, producers are eligible to receive refunds. The percentage of monies collected which are refunded has increased in the past several years, up to 43 percent at the end of 1985. The record contains some discussion about the mandatory requirement for paying assessments under the order as compared with the voluntary AEB program. Several witnesses referred to the "free rider syndrome" in the AEB program; i.e., producers who request refunds are receiving the same benefits of advertising, research, and promotion programs as are the producers who do not refund, creating an inequity in cost/benefits. These witnesses who were primarily producers testified in support of the proposed order provisions in which no refunds of assessments would be authorized. Therefore, sufficient funding would be available for these programs.

Concerns of opponents to the research and promotion program came primarily from food manufacturers and other users of eggs in further processed products who voiced no objection to the egg industry promoting "table grade eggs," but argued that they are better equipped and more knowledgeable themselves in promoting egg products and developing products using eggs. They asserted that assessments would be passed on to processors and on to consumers in increased prices for their products. However, there was no evidence indicating the extent to which this pass forward might occur. Exceptions filed by seven representatives of Super Valu Stores, Inc., and their affiliates contend that the assessments on first egg handlers would increase the cost of eggs to retail customers. The Biscuit and Cracker Manufacturers' Association in their exception also contend that the costs of administering the proposed order's programs will be passed on to the consumer. As previously discussed, there was some testimony with regard to the possible increased costs of eggs purchased by food manufacturers because of the assessment, assuming that all or a portion of the assessments would be passed forward to processors from first handlers. However, the extent to which this might occur was not clear in the record, nor was it specified in testimony that if this did occur whether the cost to consumers of food manufacturers' products would increase. The exceptions filed regarding this issue also were not specific with respect to the extent costs to consumers would increase as a result of the proposed assessments on egg handlers. In any event, it has been determined that the potential benefits of the proposed order, including consumer education, nutritional information and new-product research and development, would outweigh any potential increased costs. Therefore, the exception is denied. Other opponents, including producers, pointed out that voluntary, individual brand promotions are most effective, citing as an example the success of the broiler industry in developing and promoting their products. However, the evidence did not indicate whether a majority of egg producers had the ability to engage in such individual promotion or new product programs at the individual firm level or that such efforts would have an impact on national consumption. Further, record evidence shows that generic promotion is designed to increase aggregate demand, so the entire industry would benefit and, in fact, some research shows that generic and brand promotions complement each other.

Evidence indicates that there is a great potential for increasing consumption for eggs, spent fowl, and products thereof through the proposed research and promotion program. Further, there was no indication in the testimony or briefs filed that the proposed program would be in conflict with the *Dietary Guidelines for Americans*, U.S. Department of Agriculture/U.S. Department of Health and Human Services, Home and Garden Bulletin No. 232, Second Edition, 1985. Research activities authorized under the order would provide consumers with up-to-date information regarding the nutritional attributes of eggs. In addition, expansion of markets and the development of new products would be beneficial to the future of the egg industry.

The Arkansas Poultry Federation presented as part of its exception to the egg marketing order an economic analysis of the effects of the order on social welfare as measured by deadweight loss. The analysis states that a deadweight loss is "roughly equal to the amount of the assessment times the quantity of eggs consumed prior to the implementation of the assessment." Underlying this statement are unsupported assumptions about the degree to which the demand curve will shift in response to the programs which would be implemented under the order provisions. In addition, the deadweight loss is represented as the entire amount collected in assessments. However, the deadweight loss is theoretically an efficiency loss which is caused by a short-run reduction in the volume of trade which occurs when, all other things equal, the resources which would have been spent on egg production and consumption are instead spent on the assessments and as a result, fewer eggs are traded. Thus, the amount of the deadweight loss depends on the initial amount of reduction in egg production resulting from the implementation of the assessment (which in effect moves the supply curve to the left), as well as on the slopes of the demand and supply curves. However, if a measurable deadweight loss does in fact occur, it is anticipated that the assessment called for by the order would not significantly reduce the quantity of eggs traded and that, therefore, the amount of the deadweight loss in dollar terms would be small. And, after the programs provided for in the order are implemented, it is anticipated that there will be a net increase in the quantity of

eggs traded and that any deadweight loss will be offset.

It has been determined that although the order would impose some additional costs and requirements on handlers, and possibly some producers, the research and promotion programs under the proposed order would help to increase demand for eggs and spent fowl and products thereof. Therefore, any additional costs (including any deadweight loss) should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

There was evidence that funds to finance advertising, research, consumer information, and promotion programs must be obtained by the egg industry through a structure such as contained in the proposed order to assure mandatory industry-wide participation and sufficient income on a regular basis to finance these programs.

The APF's exception includes the argument that the record failed to establish the need for the proposed order and that the proposal does not promote orderly marketing. The exception cites the demise of the British Egg Authority as an example of a promotion program that had not worked. APF also argued that private and regional promotions and product development efforts were more successful than any demonstrated national program, citing three examples.

The concerns raised in APF's exception regarding need for the program were fully considered in reaching a recommended decision. The record evidence did not indicate that a majority of egg producers had the ability to engage in individual promotion or new product programs at the individual firm level or that regional promotional efforts would be more successful than a national effort. A review of the evidence regarding the British Egg Authority program fails to illustrate whether any other factors contributed to the reported decline in per capita consumption of 23 eggs per person per year during its tenure, such as prices, production controls, and the state of the economy in general. The benefits of the proposed order would encompass nutrition research, consumer education and the research and development of new products, as well as advertising, which was the main focus of the British program. The proposed marketing agreement and order and all the terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act. APF's arguments are therefore denied.

Therefore, it is concluded that the record evidence supports the need for the research, promotion, and consumer education programs for eggs and spent fowl and products thereof and that the order would effectuate the declared policy of the Act.

*(3) Specific Terms and Provisions of the Order*

Certain terms are used frequently throughout the order. These terms are defined as follows to clearly delineate their meaning and to simplify the subsequent provisions in which they are used:

(a) "Secretary" should be defined to mean the Secretary of Agriculture of the United States or any other officer or employee of the United States Department of Agriculture who is authorized to act for the Secretary with respect to administration of this order. The definition has been modified from that contained in the Notice of Hearing. This change is nonsubstantive and is made to simplify the language of the definition.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program is to be operative and avoids the need for referring to the citation throughout the order.

The term "Egg Marketing Board" should be synonymous with "Board" and should be defined to identify the administrative agency established under the provisions of the order. The Board is authorized by the Act and the term "Board" is used throughout the order to avoid the necessity of repeating the Board's full name each time it is used. The reference to § 994.35 has been deleted from the proposed order in the Notice of Hearing to eliminate unnecessary cross referencing in the order language.

"Fiscal period" should be defined as the calendar year or other 12-month period that may be recommended by the Board and approved by the Secretary. This would provide sufficient flexibility to authorize the Board, with approval of the Secretary, to set the beginning of the fiscal period on the date most practicable and appropriate.

The definition of "person" should be defined in the order to mean any individual, partnership, corporation, association, or any other business unit. This definition conforms with the definition set forth in the Act.

"Producer" should be defined in the order to identify the person owning hens who is engaged in the production of commercial eggs from such hens. A person owning less than 10,000 laying hens would not be a producer under the order. In addition, producers are the persons, as defined in § 994.5, who will be eligible to vote in any referendum on the order and will be eligible to serve on the Board. The term also references the eggs which will be subject to assessment under § 994.61.

Testimony presented at the hearing raised concerns as to how the definition of producer would be applied to those persons who should properly be determined to be producers under the order. Because of the varied commercial relationships entered into by persons who are involved in the production of eggs, it was noted that there could be difficulties in identifying whether one or more persons would be a producer under the order.

The proposed definition of producer is any person who is engaged in the production of commercial eggs and owns 10,000 or more laying hens. Person would be defined as any individual, partnership, corporation, association, or any other business unit.

Determining who is a producer under the order is of importance not only for voting in referenda but also, under § 994.61 of the order, assessments are made on each dozen eggs handled which are produced by producers. In addition, there was testimony which suggested that contract producers should be included in the definition of producer and that all independent producers who own hens and have housing facilities should be excluded from the definition of producer in the order.

While commercial relationships in the egg production industry may be varied and examples of such relationships are numerous, the record evidence confirms that in any possible commercial relationship, the person involved in the production of eggs and who owns the laying hens, regardless of whether an individual, partnership, association, corporation, or other business unit should be defined in the order as a "person" and should be considered as one producer.

In some instances, owners of hens enter into agreements with persons who own facilities and who agree to house and feed the hens for a fixed fee and/or other arrangement. Those persons who own the facilities are known in the industry as contract producers. Record evidence indicates that the contract relationships between such persons are diverse. Testimony indicates that there is no verifiable data with regard to the number of contract producers or the percent of total production represented by contract production. Therefore, the definition of producer should be defined in such a manner as to clearly identify

who is a producer. It is clear from testimony that the intent of this definition is to include only those persons who own laying hens. As defined, a producer must own the hens in order to be engaged in the production of eggs. When applied to a contract producer relationship, the person owning the hens would be a producer and not the person who owns the facilities. Accordingly, the recommendation made at the hearing to include contract producers in the definition of producer does not have merit and, therefore, the definition of producer is not so changed.

Persons who are engaged in the production of commercial eggs and also own less than 10,000 laying hens would not be a "producer" under the order. The definition of producer should be defined so that these small producers would not be directly impacted by the proposed order and, accordingly, handlers would not be subject to assessment in handling these producers' eggs. This exemption could insulate approximately 549 small producers currently paying assessments to AEB and who own laying hens in the 3,001 to 10,000 range from any potential impact of the order. Evidence indicates that commercial egg production from producers with less than 10,000 hens represents a very small proportion of national production. Even if first handlers were subject to assessment for these producers' eggs, their assessments would not be a significant amount. However, the program costs and the paperwork involved in the collection of these assessments and verification from large numbers of individual transactions would not make the inclusion of these producers in the definition of producer cost effective. On the other hand, the recommendation to exclude all independent producers from the definition of producer would have the opposite impact in the order. Egg production by independent producers owning 10,000 or more laying hens represents such a significant amount of egg production that to exclude them from the definition of producer and not subject their production to assessments would deplete funds available for programs and projects to such an extent as to render the national research and promotion program ineffective. Accordingly, the recommendation made at the hearing to exclude all independent producers from the definition of producer does not have merit and the definition of producer is not modified to include such a change.

Mr. Carlin Hooper's exception was generally opposed to the proposed order, but was specific with respect to his contention that a producer covered by the order and thus eligible to vote in any referendum should be defined as "An egg farmer (producer) whose total gross income is more than 51–80 percent from self farm raised or grown, raw, ungraded, and unprocessed production." His exception acknowledges that no record evidence supported this view. Section 8(c)(8) of the Act requires that a referendum must be based on number of producers voting or volume of production represented in the voting. The data needed to verify the status of individual producers, as defined in the proposed order, is obtainable by USDA. Egg production statistics also are available for verification purposes. Other data on individual farm income necessary to determine the percentage of revenue derived from egg production is not readily available to USDA. Therefore, Mr. Hooper's recommendation would not be possible to adopt for purposes of a referendum or otherwise. Moreover, as stated earlier, record evidence supports the definition of a producer to mean "any person who is engaged in the production of commercial eggs and owns 10,000 or more laying hens." For the reasons stated above, the exception is denied.

The term "handle" should be defined to include the functions performed by the persons to be regulated under the order. These functions include processing, grading, cartoning, or purchasing eggs or placing eggs in the current of commerce except as a common carrier of eggs owned by another person. However, to differentiate between the functions of handling and producing, the definition excludes certain activities which are customarily producer functions, such as washing, packing of eggs, or a producer's delivery of his/her own nest run eggs.

In their exception, the proponents recommend changing the definition of "handling" in § 994.7 so that buyers and sellers of nest run eggs would not be required to pay assessments. Under the present definition of "handle", producers would not be required to pay assessments on the sale of their own nest run eggs. However, the first buyer of nest run eggs would be classified as a "handler" and would be required to pay the assessment. The intent of the present definition is to exclude from assessment those eggs which are produced and sold by producers on a nest-run basis. The person or firm performing the first processing or marketing function after the nest run stage would be responsible for paying the assessment.

This change in the definition of "handle" would mean that eggs would not be assessed as long as they were not processed beyond the nest run stage in any form, no matter how many times ownership of them changed. According to the proponents, it would be easier for a buyer of nest run eggs to determine whether or not they had already been assessed. The buyer would know that the assessment had not been paid if he/she purchased nest run eggs, and that if the nest run eggs are sold without further processing, then he/she would not be required to pay the assessment. The proponents contend that this would aid purchasers of nest run eggs in avoiding confusion concerning who should pay the assessment.

Under the American Egg Board's present system, if nest run eggs are sold by a producer, the assessment is paid by the purchaser of the eggs, regardless of the function performed by said purchaser. In this case, the act of the first purchase of nest run eggs determines who pays the assessment. According to the proponents' exception, a problem arises only when there is some question as to whether the assessment has been paid, or should be paid, by the first buyer of nest run eggs. However, although the exception was considered in the development of the final decision, testimony indicates that this is not a significant problem because the current AEB system is quite effective regarding the collection of assessments.

The proponents did not clearly show the need for the proposed change in the definition of handle. Therefore, the exception is denied and the definition of "handle" shall remain unchanged in the order.

"Handler" should be defined in the order to identify the persons who would be subject to certain recordkeeping requirements provided by the Board, and who would have the responsibility for paying the assessments as a first handler and who would be eligible to serve as a member or alternate on the Board. Those persons performing producer functions only would not be considered handlers under the order. However, in those cases where producers are also functioning as handlers, such persons would be handlers under the order to the extent that they were engaged in the handling of eggs. It is recognized that some large users of eggs in food products would be handlers under this definition. During the hearing, the question was raised as to whether processors and purchasers of graded eggs, such as bakers, mayonnaise manufacturers, and food service companies, would qualify as

handlers and thus be eligible to serve on the Board, even though they were not "first handlers" required to pay the assessment. The testimony was not conclusive with respect to this issue. Nor was the number or identity of persons who would not be regulated under the order as "first handlers" made clear. Nonetheless, the brief filed by the proponents after the hearing suggested that handlers other than first handlers could serve on the Board. The American Bakers Association opposed the order and, in their brief filed after the hearing recommended that if the order were approved, users of eggs should be eligible to serve on the Board regardless of whether they were "first handlers."

Handlers who are not "first handlers" subject to the assessment of the order may be represented on the Board provided they are nominated by a certified organization which has met the criteria required for certification in § 994.70 and, therefore, no change in the order language is necessary.

Testimony indicates that there should be a system to verify first handler status so that eggs would be assessed only once. It was pointed out that AEB presently has the ability to identify first handlers through a computerized collection system utilized for the present order. In addition, AEB presently has the ability to identify those producers owning 3,001–10,000 hens so that eggs produced from such producers would not be subject to assessment. Accordingly, it is determined that the Board would be capable of identifying first handlers.

The term "hatching eggs" or "eggs" should be defined as eggs intended for the use by egg hatcheries for the production of baby chicks. Hatching eggs would not be subject to assessments under the order. These eggs are not sold as commercial eggs for human consumption either in shell form or in further processed form. Only commercial eggs are subject to assessments. However, if hatching eggs are at any time sold as commercial eggs, as defined in § 994.11 they would be assessed as any other commercial eggs covered by the order.

The term "hen or laying hen" was defined in the Notice of Hearing to identify domesticated female chickens which are raised primarily for the production of commercial eggs. A discussion ensued during the hearing as to whether the definition should be tied to a specific age; i.e., 18 weeks as specified in the proposal. It was pointed out that 15 years ago the industry identified a laying hen as one at least 22 to 24 weeks old. Since that time, the trend has been toward younger laying hens. The definition, therefore, has been modified in § 994.10 to exclude any reference to age and refers instead to a sexually mature female domesticated chicken raised primarily for the production of commercial eggs.

The term "commercial eggs" or "eggs" should be synonymous and should be defined as eggs subject to assessment under § 994.61. It is clear from record evidence that the intent of the order is to assess only those eggs that are commercially produced from domesticated chickens in the United States and which are sold for human consumption either as eggs or further processed eggs into dried, frozen, or liquid eggs. Record evidence indicates, however, that there are certain eggs produced in the United States which are not intended for human consumption. These eggs were identified in testimony as eggs from primary broiler-breeder flocks or broiler-breeder flocks. Therefore, the definition should exclude these eggs from the term "commercial eggs."

The definition of "egg product" should be defined to mean any dried, frozen or liquid eggs, with or without added ingredients, excepting products which contain eggs only in relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry. The definition of "egg products" corresponds with the definition as it appears in the Egg Products Inspection Act (21 U.S.C. 1031 through 1056).

"Spent fowl" should be defined to mean those hens that have been in production of commercial eggs but which have been removed from production for slaughter.

"Products of spent fowl" should be defined to mean those commercial products which are produced from spent fowl.

The definition "United States" which was contained in the Notice of Hearing included all 50 States of the United States. The Hawaii Department of Agriculture expressed strong opposition to inclusion of that State in the proposed order. Also, it was noted that separate legislative authorities, such as the Egg Research and Consumer Information Act, do not include Alaska and Hawaii. Record evidence confirms that commercial egg production is a part of the economy of all 50 States. However, substantial evidence indicates that Alaska and Hawaii should not be included in the proposed order. According to Poultry Production and Value: 1985 Summary, USDA, SRS, April 1986, Hawaii's share of national egg production was only 0.32 percent of total egg production in the United States, while Alaska's share was only 0.02 percent. Record evidence shows that neither State ships eggs into interstate or foreign commerce, hence, eggs produced in each State are consumed entirely in each respective State. Although some eggs are shipped from the mainland, primarily from the western area, to Alaska and Hawaii, the amount is not considered significant. The exclusion of Hawaii and Alaska in the proposed order would not have a detrimental effect on the operation of the order. Therefore, it is found that the 48 contiguous States represent the smallest regional production area that is practicable and consistent with carrying out the declared policy of the Act and that the issuance of several orders would not effectively carry out the declared policy of the Act.

The term "marketing" should be defined as the sale or disposition of commercial eggs, spent fowl, or their products. For eggs, this term would include all of the activities that occur from the time they are produced until they or their products are sold to the ultimate consumer.

The term "promotion" should be defined as any action authorized by the Board to enhance the image, acceptability, or desirability of eggs or spent fowl or their products. Testimony noted that the term would include, among others, sales promotion, merchandising, publicity, consumer education, market research, or any other related activities. Although the term was defined in the Notice of Hearing to include paid advertising for eggs, egg products, spent fowl, and products of spent fowl, this definition is modified to limit paid advertising to eggs and egg products as authorized by the Act. Section 608c(6)(I) of the Act authorizes paid advertising for eggs and egg products and not spent fowl or products thereof. The record includes evidence that, with respect to paid advertising, funding should be permitted only for generic advertising except in cases of cooperative advertising whereby eggs or their products combine with a compatible generic or branded product to share the advertising message and cost. Sections 994.50(b) and 994.52(b)(3) provide for such generic advertising.

"Research" should be defined to include all types of research which would enhance the image, acceptability, or desirability of eggs or spent fowl or their products. Testimony indicated that an important component of this term is nutrition research; however, other types of research could include activities normally associated with promotional or marketing programs, product research,

marketing research, packaging research, and consumer opinion attitude research.

The definition of "consumer education" should be defined to mean any activity which would communicate information about eggs to consumers. Testimony indicated that such activities could include the development of recipe or nutrition information brochures which are important in the overall promotion of eggs to consumers.

"Eligible organization" should be defined to identify those organizations which would be eligible to nominate producers and handlers to the Board. The term includes any organization, association, or corporation which represents egg producers and/or handlers of any egg producing area of the United States and certified by the Secretary pursuant to § 994.70. In its exception, APF would narrow the definition of "eligible organization" so that the primary activity of such organization relates to eggs and not other agricultural activities. Section 994.70 of the proposed order gives the Secretary the authority to certify organizations and provides specific criteria which he/she must consider in this determination. If an organization meets this criteria and can show that its membership is composed of a substantial number of egg producers or handlers who produce and/or handle a substantial volume of commercial eggs in the applicable area, then such organization would be certified regardless of any other agricultural activity in which it may engage. The criteria set forth in the order establish a reasonable basis for the Secretary to determine equitable representation of the egg industry within each of the geographic areas. Similar criteria have proven to be effective in selecting members to the American Egg Board. Therefore, the exception is denied.

(b) Record evidence shows that an administrative agency, to be known as the Egg Marketing Board, should be established to administer the order. In the Notice of Hearing, § 994.35 through § 994.45 covered the establishment, maintenance, composition, procedures, powers, duties and operation of the Board. The need for these provisions is supported by record evidence. The Notice of Hearing provided that the Board would be composed of 21 producer and handler members and 21 alternates. Three of the 21 members were designated as at-large producer and handler members on the Board. The Agricultural Marketing Service proposed in the Notice of Hearing that one of the three at-large positions be designated for a public member to represent consumer interests. The addition of a public member was adopted by the proponents at the hearing. However, in order to retain the three at-large positions on the Board, the proponents proposed at the hearing that an increase be made in total Board membership to 22 members and 22 alternates. The Board's composition, therefore, would include 18 producer and handler members and 18 alternates who would be nominated by certified organizations and appointed by the Secretary in accordance with § 994.37. In addition, three at-large producer and handler members and their alternates would be appointed by the Secretary from nominations submitted by the Board, as prescribed in § 994.37(f) of the proposed order. A public member and alternate should be appointed by the Secretary from nominations submitted by the Board or at his discretion. The proponents also proposed at the hearing that the order be amended to provide that at-large members be nominated by the Board in such a manner as to consider any representation imbalances, particularly relating to size, that might occur. These modifications have merit. Accordingly, §§ 994.35 and 994.38 have been amended to include these modifications. Also, miscellaneous, non-substantive changes have been made to section 994.35 through 994.38 and sections 994.41 and 994.43 for consistency and simplicity of order language.

The terms of office for Board members and their alternates should be for terms of 3 years. A 3-year term would provide Board members sufficient time to develop their expertise and apply their talents to the maximum benefit of the Board. The initial terms for producer and handler members and their alternates, including at-large positions, should be staggered to avoid the Board members' terms expiring at the same time. To accomplish this, the initial appointments for the 21 producer and handler members and alternates should be for seven members to a 3-year term, seven members to a 2-year term, and seven members to a 1-year term. Testimony indicated that the public member's initial term should be 2 years and such provision has been added to § 994.36 of the order.

Nominations for the 18 producer and handler Board members representing each of the six geographic areas as specified in the order should be submitted to the Secretary by eligible organizations or, if the Secretary determines that a substantial number of producers or handlers are not members of an eligible organization or that their interests are not represented, then from nominations made by producers and handlers in the manner authorized by the Secretary.

Where there is more than one eligible organization, association, or cooperative within each geographic area, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary a nomination for each appointment to be made.

For the initial Board, nominations for the 18 producer and handler members should be submitted by eligible organizations to the Secretary within 60 days following approval of the order by referendum. Section 994.37 in the Notice of Hearing provided for a 30-day period of time for this process. However, it is determined that a 30-day period of time is not reasonable for the Department to review and approve requests for certification of organizations under § 994.70 and for the submission of nominations by these organizations as provided in § 994.37(a). Therefore, a time period of 60 days is included in § 994.37(a).

Upon appointment of the initial 18 Board members representing the six geographic areas these Board members should nominate and submit to the Secretary for approval the initial appointment of three additional producer and handler members of the Board representing at-large positions on the Board and their alternates for such positions. As discussed previously, in making nominations for these three at-large positions, the Board, to the extent practicable, should consider representative composition of the Board appointments already made, particularly the size of members already appointed. While no time period is specified in the order for these initial nominations for at-large positions, it is anticipated that the Board's nominations will be submitted to the Secretary as soon as practicable.

Following establishment of the initial Board, nominations for subsequent Board members and alternates, including the at-large positions, should be submitted to the Secretary not less than 60 days prior to the expiration of the term of members and alternates previously appointed to the Board.

Testimony indicated that the Board members and alternates should not serve more than two consecutive 3-year

terms. Renewal of a Board member's or alternate's term of office may be in the best interests of the industry in some situations; however, limiting members to not more than two consecutive 3-year terms would assure the industry of a broader mix of leadership and ideas. Nonetheless, it should be possible, after serving two consecutive 3-year terms, for Board members to serve as alternates or alternates to serve as members. Testimony at the hearing also indicated that members and alternates appointed for initial terms of less than 3 years would not be prohibited from serving two 3-year consecutive terms.

Representation on the Board for the 18 members who are not at large members or who do not represent the public should be on a geographic basis. Testimony indicated that the geographic areas should duplicate the current designation of areas and production percentages currently in effect for the AEB. The designated geographic areas, therefore, should provide approximate representation on the Board on the basis of proportion of eggs produced in those areas to the total U.S. egg production, excluding Alaska and Hawaii. This is reflected in the latest analysis conducted by the AEB and the Department in 1984.

Based on record evidence, the order should specify in § 994.37(d) six geographic areas composed of the various States as follows:

Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, and California.

The States of Alaska and Hawaii were included in geographic area 6 in the Notice of Hearing. However, these States are not included in the proposed order as stated earlier in this document. The exclusion of Alaska and Hawaii does not otherwise affect the geographic area determination or the number of members and alternates to be appointed in any of the six geographic areas.

The order should provide for the following number of members of the Board and an equal number of alternate members: North Atlantic-3, South Atlantic-3, East North Central-3, West North Central-2, South Central-3, and Western-4. This distribution is reflective of the following approximate percentages of total U.S. egg production in each area: North Atlantic-17 percent, South Atlantic-17 percent, East North Central-17 percent, West North Central-12 percent, South Central-18 percent, and Western-19 percent.

In view of past and potential future shifts of egg production from State to State and between areas, the order should provide for a mandatory review by the Board, at least 5 years, of egg production by geographic area to determine (1) whether the areas should be redefined, and (2) whether the number of Board members and their alternates needs changing so that representation is as balanced as is practicable. The number of members for each area should be determined by dividing the total volume of eggs produced in the United States for the calendar year previous to the date of review by 18, which provides a factor of volume of eggs per member and then dividing the total volume of eggs for each area by such factor. Any reapportionment of geographic areas or modification of membership resulting from such review should be submitted to the Secretary for approval.

Testimony indicated that persons selected by the Secretary as Board members and alternates should file a written acceptance promptly after being notified of their selection. Such acceptance should reflect an agreement to (1) participate actively on the Board, (2) disclose any position held in any organization that has a contractual relationship with the Board, and (3) withdraw from voting on matters before the Board where such membership as an officer or board member capacity is in any organization which proposes to contract with the Board. However, members who are not officers or board members of nonprofit industry organization should be permitted to vote. Testimony emphasized the importance of obtaining preliminary assurances from prospective candidates, through the nomination process, that they would be willing to accept the terms of the agreement to serve on the Board, which is reflected in § 994.38 regarding a nominee's agreement to serve on the Board.

The procedure for conducting meetings of the Board should conform with the by-laws to be adopted by the Board. However, such matters as the method of voting and quorum requirements should be set forth in the order.

The order should provide that any action taken by the Board require the concurrence of a majority of the votes cast. Fifteen members of the Board should constitute a quorum at any assembled meeting of the Board, and any action of the Board should require the concurring votes of at least eight members. The Notice of Hearing provided in § 994.39(a) that 11 members would be necessary for a quorum. Proponents proposed the change from 11 to 15 at the hearing in the interest of requiring a larger representation for Board meetings. This change has merit and is incorporated into the order.

At any assembled meeting, all votes should be cast in person. The Board should be authorized, however, to vote by telephone, telegraph, or other means of communication for expediency. Any vote cast by telephone should be confirmed promptly in writing to provide a written record of such votes.

In the event a vacancy occurs, due to death, removal, resignation, or disqualification of any producer or handler member or alternate member, a successor should be appointed from the most recent list of nominations from the geographic area concerned. If necessary, nominations could also be made in accordance with the procedures established in the order for original nominations. Section 994.40 is modified to clarify the nomination procedure when a vacancy occurs for members and alternates representing the six geographic areas, the at-large positions, and the public. A public member or alternate vacancy should be filled from nominations submitted by the Board or by the Secretary at his discretion. It should be unnecessary to fill any unexpired term for any member or alternate of 6 months or less.

The order should provide that an alternate member shall be selected for each member of the Board. Each alternate selected should have the same qualifications for membership as the member. There could be occasions when a Board member is unable to attend a meeting or meetings. Moreover, in the event of death, removal, resignation, or disqualification of a member, the alternate should act until a new member is nominated and selected by the Secretary.

The order should provide that no member of the Board, or any alternate, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other

acts, either of commission or omission, of such member or alternate in performance of his/her duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

The order should provide that Board members, and alternates when acting as members, shall be reimbursed for out-of-pocket expenses necessarily incurred in the performance of their duties. Record evidence supported a further provision for the establishment of compensation at a rate to be determined by the Board and approved by the Secretary. Testimony indicated that a specific rate should not be included in the order so that any changes in the rate could be made by the Board and approved by the Secretary without the need for a referendum. The order should also permit actual expenses and compensation where specifically authorized for alternates, notwithstanding that the Board members for whom they serve as alternates also attend meetings.

The Board should be given those specific powers which are set forth in section 608c(7)(C) of the Act. Such powers are necessary to enable an administrative agency of this character to function properly under the order. Thus, the Board is given the power to administer the order; to issue rules and regulations to effectuate the order; to investigate and report violations; and to recommend amendments to the order.

The Board's duties, as set forth in the order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this nature, the necessity of which is supported by record evidence. The Board should meet and organize and select from among its members a chairman and such officers as may be necessary. The recommended decision stated that testimony from proponents strongly recommended that terms of Board officers should not exceed 1 year and should be limited to two consecutive terms in the same office. A further statement was made that although the order language was not modified by proponents in this regard, such provision would be appropriate for inclusion in the by-laws of the Board. Proponents took exception to this statement citing that it presupposes the appropriateness of one-year terms and restrictions on consecutive terms of Board officers. The statement has its basis in testimony and was intended only as a point of consideration for the Board in developing procedures. Therefore, no modification is required.

The Board should adopt such rules and bylaws with the approval of the Secretary, for its conduct as it may deem advisable. The Board also should be authorized to appoint such committees and subcommittees from Board membership, as necessary, and appoint individual consultants or groups of knowledgeable persons who can provide special expertise to the Board in administering its programs.

The Board should serve as intermediary between any concerned parties and the Secretary, thus alleviating the necessity for involvement of the Secretary in issues more appropriately resolved at the Board level. However, any unresolved issues should be reported to the Secretary.

The Board should keep minutes, books, and records which will clearly reflect all of its acts and transactions. Upon request, the Board should provide information to the Secretary from such documents. In addition, the Board should give the same notice of meetings of the Board and committees to the Secretary as is given to members so that representatives of the Secretary may attend such meetings. These provisions are necessary so that the Secretary is able to perform oversight responsibilities.

Since day-to-day activities of the Board cannot be performed by Board members, another duty of the Board should be to employ such persons as the Board deems necessary and to determine the compensation and define the duties of each. The Board should also take steps to protect the handling of Board funds through fidelity bonds.

The Board must maintain records of its activities and disbursement of funds. Accordingly, it should maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board.

To enable the Board and all persons paying assessments to plan accordingly, the Board should prepare and submit to the Secretary for approval a budget on a fiscal year basis of its anticipated expenses in the administration of the order, including probable costs of all programs or projects. The Board must delay funding any project until adequate funds have been collected. However, the Board should begin as soon as practicable to develop programs and projects and enter into contracts or agreements with national, regional, or State egg organizations or other organizations or other entities, as appropriate. Such contracts or agreements would be subject to the approval of the Secretary, and would provide for the development and execution of programs or projects of research, product development, advertising, promotion, or education, and the payment of the cost thereof with funds collected pursuant to the order. The Board should further establish procedures under which such proposals may be submitted, including submission of projects together with budgets showing estimated costs, and the right of the Secretary or employees of the Board to audit the records of the contracting party. Notwithstanding the Board's authority to enter into contractual arrangements with other entities, the Board should be authorized to recommend to the Secretary plans and projects developed on its own initiative.

To provide an accounting of funds received and spent, the Board should cause its books to be audited by a certified public accountant at the end of each fiscal period and submit a copy of each audit to the Secretary. A copy should also be made available at the principal office of the Board for inspection by producers and/or handlers. However, it is determined that information of a confidential nature should be removed from the report, and § 994.45(h) of the order is changed accordingly.

With the approval of the Secretary, the Board should invest, pending disbursement pursuant to a plan or project, funds collected through assessments pursuant to §994.61 in obligations of the United States Government or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government; and should receive and evaluate, or, on its own initiative, develop and budget for plans or projects to promote the use and consumption of eggs, egg products, spent fowl, or products of spent fowl, as well as projects for egg research and consumer education and to make recommendations to the Secretary regarding such proposals. Section 994.45(k) has been modified to specify that late payment charges provided in § 994.64 may also be invested as well as assessments.

Testimony at the hearing indicated that as part of the communication program to keep egg producers, handlers, and the public properly advised, the Board should make at least an annual report available of the

activities carried out and provide an accounting of funds received and expended. This provision has merit and is consistent with provisions in other orders. Accordingly, a new paragraph (m) has been added to § 994.45.

(c) The Board should have the authority to determine the type of advertising, research, consumer education, and promotion activities to be undertaken and it should have the responsibility for initiating and recommending to the Secretary the establishment of any plans or projects authorized under the Act for eggs, egg products, spent fowl, or products thereof. These provisions appear in § 994.50 and are supported by record evidence. Such plans or projects could include, among others, developing existing and new markets and expanding markets outside the United States as well as developing new uses for eggs, spent fowl, and their products. Since it is not possible to anticipate all the promotion, research, and consumer information activities that may be needed, the authority should be broad and flexible to enable the Board to use the most efficient and effective methods of carrying out its objectives. The Board may develop programs and projects on its own initiative or contract with other organizations with approval of the Secretary.

No advertising or promotion program shall use false or unwarranted claims or use unfair or deceptive acts or practices regarding competing products. The record evidence is clear that only generic promotion and advertising will be permitted since this would be a national program of benefit to all producers and handlers. However, as stated previously, cooperative advertising could be permitted whereby eggs or egg products, combine with a compatible generic or brand product other than eggs or egg products to share the advertising message and cost.

Testimony at the hearing was that a provision should be included in the order for a periodic evaluation of the promotion programs implemented under the authority of the order. It was pointed out that such evaluation would benefit the Board and protect the interests of egg handlers and producers as well as the public. This recommendation has merit and, accordingly has been added as paragraph (c) to § 994.50 to provide that an evaluation shall be arranged and funded by the Board at least once every 3 years. Additionally, § 994.50 has been reformatted for consistency with other sections of the order.

The record evidence supports the need for funding for research projects involving diet and health issues and development of new products and new uses. To assure that funds would be available for these two programs, the order should set minimum percentages of 5 percent of assessments collected for each program, less projected expenses. Although there was some concern expressed at the hearing that the minimum percentages would be interpreted as maximums, the record indicates that there is strong support for funding at levels above 5 percent. Subject to approval of the Secretary, the Board should have the discretion to increase that amount.

In its exception, APF contends that the proponents wanted to obligate only 10 percent of assessments, less Board expenses, to health issues and new products. However, as stated above, there is considerable record evidence which demonstrates the need and support for funding these programs over and above the minimum percentages authorized by the order in § 994.51 (a) and (b). Therefore, this exception is without basis and is denied.

The record evidence includes considerable information about State and regional promotion programs which are funded at various rates either on a voluntary or mandatory basis. Testimony from several State and regional promotion organizations cited the compatibility of these programs and those of the AEB. Because of the effectiveness of the cooperative funding program, the number of State promotion organizations receiving cooperative funds from the AEB increased from 17 in 1976 to 39 five years later. To encourage States and regions to continue and enlarge upon their programs, the order should specify that 15 percent, less expenses, be allocated to qualfied State or regional egg promotion, research, or consumer education programs. This 15 percent allocation should be proportionate to the amount of assessments collected from the area in which the program operates.

As part of its overall exception, APF contends that the order will curtail existing State and regional programs without providing significant new funds for State and regional efforts. Record evidence does not support this argument. In fact, during the hearing, representatives of State and regional promotion organizations stated that the new program would enhance their individual programs. Additionally, nothing in § 994.51(c) would preclude the Board from providing funds over and above the 15 percent allocated. APF further contends that there are no accounting requirements in the order for the 15 percent of funds allocated to the State and regional organizations, nor any requirements for reporting these expenditures back to the Board or to the Secretary. The order provides in § 994.45 regarding the duties of the Board, that the Board may enter into contracts or agreements with State and regional organizations. That section also provides for review and approval by the Board and Secretary, accounting of funds, and reporting under any contractual arrangement. Therefore, this part of the exception is denied.

The record indicates that brown egg production represents a small segment of total national production. However, there is a high concentration of brown egg production in the New England States, and there is some brown egg production in other geographic areas. Testimony noted that brown eggs are distinguished from white eggs only by shell color. Testimony further pointed out that brown egg producers in the New England States currently fund, on a voluntary basis, a brown egg advertising program which has been effective in that area.

While there is no evidence in the record that would demonstrate the need for a separate marketing order for brown eggs, based upon testimony at the hearing, the order should provide that a procedure be developed to ensure that programs for brown eggs are included at a level equal to the funding attributable to brown egg assessments. The order should also provide that the Board may contract with brown egg organization(s) for the purpose of developing and conducting programs for brown eggs. In so doing, the organization would be required to meet the same contractual terms as specified in § 994.45(i) with respect to developing plans or projects with attendant budgets, maintaining records, and submitting reports. Section § 994.51(d) has been modified to clarify the language of the provision. The recommended decision provided that funding for any such brown egg organization should be based on the proportion of funds received from brown egg production less administrative expenses and less the 15 percent allocated to any State in the predominately brown egg area. Record evidence supports inclusion of this provision in § 994.51(d). Further clarification is warranted, as pointed out in the exception filed by the New England Brown Egg Council which states that a brown egg advertising program should be continued under the order "while also supporting national expenditures, as provided in the order, for research and information on diet and health issues, and research and

development of new egg products." This intent is further supported by testimony. Therefore, § 994.51(d) of the order has been modified to provide that funding for any brown egg organization should be based on the proportion of funds received from brown egg production less expenses and less funds designated for State and regional programs, research projects involving diet and health issues, and new product and new uses reasearch and development programs.

Although there was some concern expressed during the hearing about whether assessments from brown eggs could be accounted for separately, it was pointed out that a computerized system, such as that presently used by the AEB for tracking producers and production, could identify assessments attributable to brown eggs.

Exceptions filed by the proponents and the New England Brown Egg Council state (1) that the permissive language in § 994.51(d) regarding the Board's contract authority should be changed to provide that the Board "shall" instead of "may' contract with a brown egg organization, (2) that further clarification is needed in that section to establish that assessments would be derived from handlers in the predominately brown egg area, and (3) that the Board should have the flexibility to establish a committee of brown egg producers and handlers to develop programs for brown eggs in the absence of a bona fide brown egg organization.

With respect to point (1), it has been established that there was no demonstrated need for a separate marketing order for brown eggs but, because of the record evidence supporting the need for specialized advertising programs for brown eggs, it is reasonable that the Board should be required to contract with any existing organization which represents a vast majority of brown egg producers and has an ongoing advertising program for brown eggs. Therefore, this suggestion is accepted. The additional language recommended in point (2) is reasonable to further clarify that any promotion effort targeted for brown eggs would be conducted only in that area of the country where brown eggs are a major commodity in the market. With respect to point (3), the suggested language in § 994.51(d) presented by the New England Brown Egg Council is accepted with a minor modification to clarify that any committee appointed from Board membership would assist the Board in the development of programs especially for brown eggs. Section 995.51(d) is additionally modified as discussed under points (1) and (2) above.

In its exception, APF argued that § 994.51(d) would allow one segment of the industry, brown egg producers, to benefit not only from generic egg advertising paid for by all producers, but also to receive special benefits from funds directed specifically for brown egg promotion. APF contends that this would defeat the goal of equal treatment. However, as stated previously, record evidence supports the need for specialized advertising programs for brown eggs in the predominately brown egg areas. APF further contends that a matter of fairness and consistency, those who engage in brand name advertising of eggs and egg products should be allowed to receive funds to reimburse those promotion efforts. However, the proposed order authorizes generic advertising only, except when the Board or State or regional promotion organization engages in cooperative advertising with a brand or trade name organization promoting a product other than eggs, spent fowl, or their products. For the reasons stated above, APF's exception is denied.

As stated earlier, evidence indicates that there are many State and regional organizations which presently conduct egg promotion, research, or consumer education programs. To be eligible to receive funds under § 994.51(c) of the order, any such State or regional organization must apply for certification and must meet certain requirements as specified in the order. The Secretary then should determine eligibility under the order. There should be a provision included in the order that cooperative promotion and research activities may be conducted with other products even though such products may utilize a brand or trade name other than eggs, spent fowl, or their products. Such cooperative advertising could include bakers, other users of eggs, and a variety of products and companies. However, cooperative advertising would be restricted as explained earlier and as clarified in § 994.53.

(d) The Board should be authorized to incur such expenses for research, promotion, advertising and consumer education and such other expenses for the administration, maintenance, and functioning of the Board as are approved by the Secretary. After the first year of operation, the Board must limit its expenses to the amounts received from assessments or in the reserve as provided in § 994.62.

The funds to cover the expenses of the Board should be obtained through assessments collected from handlers first handling eggs under regulations issued by the Board and approved by the Secretary. As noted in the record and briefs, there was some concern that handlers would be required to pay the assessment rather than producers, as is the case with several research and promotion programs on other commodities authorized by separate legislation. The Act permits regulation of handlers only and prohibits regulation of producers. Therefore, handlers, as the regulated entities, would be required to pay the assessment.

The order should provide for an initial assessment rate of one-half cent per dozen eggs marketed. Record evidence indicates that a one-half cent assessment would generate approximately $24 million which would provide the industry with sufficient funds to initiate meaningful research and promotion programs beneficial to the egg industry and the public.

The APF's exception contends that the order states that the estimated $24 million which would be raised from the initial one-half cent per dozen assessment rate during the first year after the implementation of the order would provide sufficient funds for research and promotion programs. However, the $24 million figure is an approximation based on an estimate of annual egg production and an assessment rate of one-half cent per dozen. The intent of the order is not to establish a limit of $24 million per year as the amount of money which the board would be allowed to collect in assessments. Rather, the estimated $24 million would provide sufficient funding for the board to initiate meaningful and effective programs. However, the order authorizes increases in the assessment rate as set forth in § 994.61(b). After the first year, the Board would be allowed to increase the assessment rate by up to one-fourth cent per dozen eggs annually, but in no event to increase the assessment rate above a 1-cent maximum. Therefore, the initial assessment rate provides funding to initiate research and promotion and educational programs while the provision for increases in the assessment rate provides for additional funding for any new or existing programs. Since the intent of the order is not to limit the collection of assessments by the board to $24 million per year, the APF's exception in this regard is denied.

The restriction on the assessment rate as set forth in the proposed order is necessary so handlers would know the maximum assessment which can be

levied upon them. This restriction still should provide a sufficient level of assessments to finance national programs of research, promotion and consumer information. The Board should also have the flexibility to lower the rate at any time as well. Approval of the Secretary should be required for any increases or decreases in the assessment rate.

A written exception filed by Cargill, Inc. contends that the initial assessment rate of one-half cent per dozen called for by the order is too high. The exception also questions the efficacy of egg advertising in providing increased benefits to egg producers.

The record evidence shows that there is a need for the initial assessment rate of one-half cent per dozen eggs set forth in this decision. It has been determined that this rate would generate the funds necessary to initiate effective research and promotion programs beneficial to the egg industry and the public.

The exception contends that since the assessments provided for in the national beef and pork research and promotion programs (7 U.S.C. 2901 *et seq.;* and 7 U.S.C. 4801 *et seq.,* respectively) represent a smaller percentage of producer revenue in these sectors than does the assessment provided for in the proposed egg marketing order, the assessment on eggs is disproportionately large. However, the size of the industry is not the only factor which was considered in determining the amount of the assessment rate for eggs. The appropriateness of the assessment rate is based not only on the size of the egg industry, but also on its needs. There is no testimony or record evidence which addresses the needs of the pork and beef industries with respect to the appropriateness of their assessment rates. Therefore, it is not possible to compare them with the needs of the egg industry nor to evaluate the beef and pork assessment rates relative to the assessment rate on eggs. The proponents did establish for the record a need for assessments at the level specified in the order to conduct an adequate program for eggs.

Cargill also contends that the result of the proposed order would be an "advertising war" between eggs and other commodities. However, record evidence does not support this contention. Although national advertising is an integral part of the proposed order, expenditures for other authorized programs, including reasonable administrative expenses, would constitute approximately one-third or more of total assessments collected. For example, a minimum of five percent of total assessments would be allocated each to health and nutrition projects and to development of new products made with eggs and new uses for eggs. In addition, the order also authorizes the allocation of 15 percent of assessments collected to qualified State or regional egg promotion organizations. Unspecified amounts also would be allocated to other authorized programs under the order. Therefore, it is anticipated that a significant portion of the total monies collected in assessments would be used for program expenses other than national advertising. In view of the record evidence supporting the need for the assessment rate, the exception by Cargill, Inc., is denied.

It has been determined that the provision for possible one-fourth cent per dozen increases in the assessment rate should be authorized, but only if approved by the Secretary. This approval would be contingent upon results of appropriate rulemaking procedures. In addition, such factors as actual progress or lack thereof of the programs being funded, the demand for eggs, and any other areas resulting from the programs implemented by the Board may be taken into consideration by the Secretary during the approval process. In order to clarify this process, § 994.61 is amended by adding a comma at the end of a paragraph (b) followed by: "and Provided Further, That any increase or decrease in the assessment rate shall be accomplished by rulemaking procedure after appropriate analyses as directed by the Secretary.

The proponents excepted to the language in § 994.61(b) which provided in part, that ". . . the Board, with the approval of the Secretary, may increase or decrease the level of assessments collected. . . ." Proponents argue that this language could be interpreted as authorizing the Board, with the approval of the Secretary, to establish the level of total assessements collected instead of the assessment level on each dozen eggs marketed. They therefore propose that § 994.61(b) be modified by deleting the "s" from the word "assessments" where it appears and by deleting the word "collected." This exception has merit in that it clarifies the intent and is supported by the record. It is therefore granted. Section 994.61(b) is amended accordingly.

The order should prohibit the use of funds for political activity or for the purpose of influencing governmental policy or action. The only exception should be that funds collected under the order may be used in recommending amendments to such order.

The Board should be allowed to authorize other organizations or agencies to collect assessments on its behalf as approved by the Secretary.

The Board should have the authority to establish a special reserve at the end of a fiscal period, not to exceed the limit set by the Board and approved by the Secretary. Funds in the reserve may be used during subsequent fiscal periods. Further, the Board should have authority to suspend the collection of assessments when the reserve exceeds the established limit.

The order should provide that in the event of termination, any monies collected and not spent would be distributed as the Secretary directs, provided that to the extent practicable, such funds would be returned pro rata to the persons who contributed.

The order should provide that late payment charges should be imposed on handlers who fail to pay assessments due to the Board by the due date, to be established by the Board. In addition, any outstanding amounts due plus late payment charges not paid should be subject to an interest charge. Any late payment and interest charges should be prescribed by the Board and approved by the Secretary before they are put into effect.

Record evidence indicates that any organization representing producers and/or handlers may apply for certification by the Secretary to participate in nominating the 18 producer and handler members to the Board to represent the geographic area of the organization. To be eligible, such an organization should be required to submit a request for certification which includes the geographic territory covered by its active members; the nature and size of its active membership, proportion of members who are commercial egg producers and/or handlers, egg production by State of its members and volume produced and/or handled by its members in such State; the extent to which the membership is represented in setting policies; evidence of the organization's stability and permanency; sources of its operating funds; functions of the organization; and, a statement of the organization's ability and willingness to further the aims and objectives of the order. The principal consideration for eligibility should be whether any organization's members represent a substantial number of producers and/or handlers who produce and/or handle a substantial volume of the area's commercial eggs to reasonably warrant its participation in the nomination process. The Secretary's decision is final for certification of organizations.

(e) The Board should have authority, with the approval of the Secretary, to require that all handlers, including egg-type hatchery operators and started pullet dealers, submit to the Board such reports and information as it may need to perform its functions and fulfill its responsibilities under the order. The record evidence is that in the normal course of business, handlers have the necessary information in their possession and, based on the requirements of the existing order, the proposed order's requirement that they furnish such information to the Board in the form of reports should not constitute an undue burden.

In order for the Board to effectively investigate and verify compliance with the order, each handler should be required to maintain for each fiscal period complete records with respect to eggs handled and eggs disposed of as will substantiate any reports required. Such records should be retained for not less than 2 years after the end of the fiscal period in which the transaction occurred, so that, if needed in connection with enforcement, the requisite records will be available for that purpose. For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Board through their duly authorized agents and employees, should have access to and authority to examine such records. This section has been modified to reflect that the Secretary and the Board have access to records not only through their employees but also through their agents.

All reports and records submitted by handlers would be required to be kept confidential and the contents disclosed to no person other than employees of the Secretary and the Board. Only such information so furnished or acquired as the Secretary deems relevant should be disclosed by them, and then only in a suit or administrative hearing brought at the direction or upon the request of the Secretary. However, information may be compiled and released on a composite basis and such release of information should disclose neither the identity of the person furnishing the information nor such person's individual operations. This is necessary to prevent disclosure of information that may affect the trade or financial position of business operations of individual handlers.

(f) The provisions of § 994.76 through § 994.83 of the order are common to marketing agreements and orders now operating. The provision in § 994.84 regarding patents and copyrights is generally included in research and promotion program orders. All such provisions are incidental to and not inconsistent with the Act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading are as follows: § 994.76 Right of the Secretary; § 994.77 Duration of immunities; § 994.78 Derogation; § 994.79 Separability; § 994.80 Amendments; § 994.81 Termination or suspension; § 994.82 Proceedings after termination; and § 994.83 Effect of termination or amendment. Those provisions applicable to the marketing agreement only are: § 994.85 Counterparts; § 994.86 Additional parties; and § 994.87 order with marketing agreement.

The order should require periodic continuance referenda to reassess the level of producer support for the order. Such a provision was proposed by the Agricultural Marketing Service in the Notice of Hearing, which provided that the Board should recommend to the Secretary that a referendum be conducted within every 5-year period beginning on the effective date of the order. If, as a result of any referenda, the requisite number of producers did not favor continuation of the order, the Secretary would not be required to terminate the order. The referendum results would, however, provide the Secretary with a source of information, among others, to determine whether the order tends to effectuate the declared policy of the Act, as stated in § 994.81(a). Subsection (b)(1) of § 994.81 provides that the Secretary would terminate the order if a majority of all producers favored such termination provided that the majority had produced more than 50 percent of the total volume of such eggs for market. The criteria for termination is identical to that contained in the Act.

A question was raised during the hearing regarding the voting percentages to be used in the continuance referenda. Section 994.81(b)(2) does not specify the percentage necessary for a favorable vote by producers inasmuch as the action would not be the sole determinant of whether the order should be terminated. However, the results of such referenda should be based on a certain percentage of producers participating. Such requirements should be the same percentages set forth in section 8(c)(8) of the Act with respect to producer approval of the issuance of an order. Thus, the Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of production represented in the referendum favor continuance. This is an appropriate basis for ascertaining whether egg producers favor continuation of the program.

However, in evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market.

The exception filed by APF requests that the order be subjected to a review vote by those who pay for the program at least biannually (which it is assumed means every 2 years rather than twice yearly). The exception contends that 5 years is too long to wait for a review vote to determine whether continuance of the order is favored by producers. As a matter of clarification, those who pay for the program, or handlers, are not authorized by the Act to vote in any referendum unless they are also producers. With respect to the objection to the 5-year timeframe provided for in the order, it can be stated that a 2-year period would not allow sufficient time for evaluation of the research and promotion programs by producers to the extent warranted for an informed vote. In addition, the Secretary could constantly be engaged in conducting continuance referenda. This would be costly and unnecessary. Further, in the event there is a demonstrated reason, including a significant number of petitioners, the Secretary can hold a referendum at any time, as specified in the order. Therefore, the request for a change in the time period for continuance referenda is denied.

As referenced above, section 8(c)(8) of the Act sets forth the voting requirements necessary for issuance of an order wherein approval is determined by at least two-thirds of the producers voting in a referendum by number or volume. In its exception, APF contends that the order should not go into effect unless two-thirds of the producers voting in the referendum and two-thirds of the total volume of eggs produced favor the order. Since the voting requirements are statutory, the exception must be denied.

**Ruling on Briefs of Interested Parties**

At the conclusion of the hearing the Administrative Law Judge fixed June 9, 1986, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing.

Of the 20 briefs filed, 9 were in favor of the research and promotion provision of the proposed order and 11 were opposed. Those favoring the proposal including the proponents, individual producers and handlers, a State Department of Agriculture, the American Farm Bureau Federation, and a State Farm Bureau Federation, focused on the need for adequate funds for such a program to increase per capita use of eggs, citing that the egg industry could not compete for consumer dollars at the present time. Further, it was pointed out by a State Farm Bureau Federation and others that a well-funded generic advertising program had increased sales for some commodities and that it is likely that egg sales would increase under such a program. The brief filed by the proponents stated that approximately $24 million would be raised annually with a one-half cent assessment which would provide the egg industry an opportunity to fund not only promotion and advertising, but several other programs. In addition, funds would be available to respond to the growing need for expansion of new markets and development of new products using eggs, spent fowl and their products. Other points included the value of strengthening grass roots support through appropriate funding allowances for existing State and regional promotion programs.

Briefs filed in opposition included several food manufacturers, producer trade associations, a State Department of Agriculture, a public interest group, and food retailer/wholesaler associations. Several briefs opposed the proposal in general. Others focused on the proponents' failure to establish a need for such a program or to justify a nationwide program covering all types of eggs. It was further pointed out that there is evidence that voluntary, individual promotions are most effective and that regional promotion efforts have been successful. Specific points made by food manufacturing organizations, opined that the burden of the proposed assessment would fall disproportionately on buyers of breaker eggs and that manufacturers of egg products already bear the costs of developing and promoting their own products containing eggs.

In addition to briefs filed, comments from approximately 70 individuals, many of whom were producers and handlers, were received and considered. Most of the comments either supported or opposed the proposed order in general, without specifically referencing the research and promotion provision contained in the Notice of Hearing.

These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth herein. In addition to the issues already discussed, it was argued that the proposed marketing order would violate the Act in section 608c (1) and (10) and section 608c (6)(I) of the Act because there is no legal basis for a research and promotion program that is not related to a marketing order with regulatory features, such as grades, sizes, and quality. Therefore, it was asserted that research and promotion cannot stand alone. It was also asserted that Department policy prohibited inclusion of research and development projects and marketing promotion in marketing orders unless such orders also contained regulatory provisions.

With respect to these arguments, it should be noted that the language of section 8c(6) provides that orders shall contain *one* or more of the terms and conditions as enumerated in paragraphs (A) through (J). Paragraph (I) refers specifically to research and promotion, including paid advertising and, therefore, would be considered as one term standing alone. Further, there is no indication of congressional intent to prohibit orders dealing exclusively with research and promotion. In addition, the present policy of the Department does not preclude the establishment of orders dealing with research and promotion programs.

In its exception Kraft, Inc., reiterated and expanded upon its arguments with respect to the legality of adopting a marketing order which is devoted solely to research and promotion. For the reasons started above, the exception with respect to this issue is denied.

Several recommendations and suggestions made during the hearing were adopted and the provisions of the order have been revised from the proposed order which accompanied the Notice of Hearing. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions as set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously cited in this decision.

**Ruling on Exceptions**

In arriving at the findings and conclusions, and the regulatory provisions of this decision, the exceptions to the recommended decision were carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

**Marketing Agreement and Order**

Annexed hereto and made a part hereof are two documents entitled, respectively, Egg Marketing Agreement and Egg Marketing Order. These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the proposed order as hereby, annexed and published with this decision.

**Referendum Order**

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.700 *et seq.*), to determine whether the issuance of the annexed Egg the terms of the order, who, during the representative period were engaged in the production of commercial eggs and own 10,000 or more laying hens. The representative period for the conduct of such referendum is hereby determined to be December 1, 1986 through February 28, 1987.

The agents of the Secretary to conduct such referendum are hereby designated to be Janice L. Lockard, Michael Newborg, and John W. Brockhouse, Jr., Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250. The referendum

shall be conducted between May 25 and June 19, 1987.

**List of Subjects in 7 CFR Part 994**

Marketing agreement and order; Eggs.

Signed at Washington, DC, on April 1, 1987.

**Kenneth A. Gilles,**

*Assistant Secretary for Marketing and Inspection Services.*

**Egg Marketing Order** [1]

*Findings and Determinations Upon the Basis of the Hearing Record*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held January–March 1986 upon a proposed marketing agreement and order on eggs, egg products, spent fowl, and products of spent fowl.

Upon the basis of the record it is found that:

General Findings

Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The marketing of eggs and derivatives of egg production produced in the 48 contiguous United States is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(2) The proposed marketing agreement and order is limited in its application to the smallest regional production area which is practicable and consistent with carrying out the declared policy of the Act, and the issuance of several orders would not effectively carry out the declared policy of the Act;

(3) The proposed marketing agreement and order regulates handlers in the same manner as and is applicable only to persons in the respective classes of commercial activity specified in the proposed marketing agreement and order upon which a hearing has been held;

(4) There are no differences in the production and marketing of eggs and spent fowl in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) The proposed marketing agreement and order and all the terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

*Order Relative to Establishment of Research and Promotion Programs*

It is therefore ordered, That on and after the effective date hereof, the programs and projects authorized by the order shall be in conformity to and in compliance with the terms and conditions thereof, as follows:

Except for the previously noted modifications, the provisions of the proposed marketing agreement and order contained in the recommended decision issued by the Deputy Administrator on October 20, 1986, and published in the **Federal Register** on October 24, 1986 (51 FR 37822) shall be and are the terms and provisions of this order, and are set forth in full herein. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

## PART 994—EGGS

### Subpart—Egg Marketing Order

*Definitions*


Sec.
994.1 Secretary.
994.2 Act.
994.3 Egg Marketing Board.
994.4 Fiscal period.
994.5 Person.
994.6 Producer.
994.7 Handle.
994.8 Handler.
994.9 Hatching eggs.
994.10 Hen or laying hen.
994.11 Commercial eggs or eggs.
994.12 Egg product.
994.13 Spent fowl.
994.14 Products of spent fowl.
994.15 United States.
994.16 Marketing.
994.17 Promotion.
994.18 Research.
994.19 Consumer education.
994.20 Eligible organization.

*Egg Marketing Board*

994.35 Establishment and membership.
994.36 Term of office.
994.37 Nominations.
994.38 Nominee's agreement to serve.
994.39 Procedure.
994.40 Vacancies.
994.41 Alternate members.
994.42 Personal liability.
994.43 Expenses and compensation.
994.44 Powers.
994.45 Duties.

*Research and Promotion*

994.50 Advertising, research, consumer education, and promotion program.
994.51 Allocation of expenditures for research and promotion.
994.52 Qualified State or regional egg promotion, research, or consumer education programs.
994.53 Cooperative advertising, research, promotion, and consumer education.

*Expenses and Assessments*

994.60 Expenses.
994.61 Assessments.
994.62 Excess funds.
994.63 Accounting of funds upon termination of Order.
994.64 Late payment charges.

*Certification of Organizations*

994.70 Certification of organizations.

*Miscellaneous provisions*

994.75 Reports and records.
994.76 Right of the Secretary.
994.77 Duration of immunities.
994.78 Derogation.
994.79 Separability.
994.80 Amendments.
994.81 Termination or suspension.
994.82 Proceedings after termination.
994.83 Effect of termination or amendment.
994.84 Patents, copyrights, trademarks, inventions, and publications.
994.85 Counterparts.
994.86 Additional parties.
994.87 Order with marketing agreement.


**Authority:** Secs. 1-9, 48 Stat. 31, as amended (7 U.S.C. 601 *et seq.*)

### Subpart—Egg Marketing Order

*Definitions*

**§ 994.1 Secretary.**

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture who has been delegated or who may hereafter be delegated the authority to act for the Secretary.

**§ 994.2 Act.**

"Act" means Public Act No. 10, 73d Congress (May 11, 1933), as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-9, 48 Stat. 31, as amended, 7 U.S.C. 601 *et seq.*).

**§ 994.3 Egg Marketing Board.**

"Egg Marketing Board" or "Board" means the administrative body established pursuant to this subpart.

**§ 994.4 Fiscal period.**

"Fiscal period" means the calendar year or such other 12-month period that may be recommended by the Board and approved by the Secretary.

**§ 994.5 Person.**

"Person" means any individual, partnership, corporation, association, or any other business unit.

**§ 994.6 Producer.**

"Producer" means any person who is engaged in the production of commercial

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

eggs and owns 10,000 or more laying hens.

**§ 994.7 Handle.**

"Handle" means to grade, carton, process, purchase, or in any manner place eggs or cause eggs to be placed in the current of commerce (except as a common carrier of eggs owned by another). Such term shall not include the washing, packing of cases, or the delivery of a producer's own nest run eggs.

**§ 994.8 Handler.**

"Handler" means any person who handles eggs.

**§ 994.9 Hatching eggs.**

"Hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

**§ 994.10 Hen or laying hen.**

"Hen" or "laying hen" means a sexually mature domesticated female chicken raised primarily for the production of commercial eggs.

**§ 994.11 Commercial eggs or eggs.**

"Commercial eggs" or "eggs" means eggs from domesticated hens, including egg-type breeder hens, which are sold for human consumption either in shell egg form or for further processing into egg products. Eggs from primary broiler breeder hens and/or broiler breeder hens shall not be considered "commercial eggs" or "eggs" pursuant to this section.

**§ 994.12 Egg product.**

"Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry.

**§ 994.13 Spent fowl.**

"Spent fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

**§ 994.14 Products of spent fowl.**

"Products of spent fowl" means commercial products produced from spent fowl.

**§ 994.15 United States.**

"United States" means the 48 contiguous States of the United States and the District of Columbia.

**§ 994.16 Marketing.**

"Marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl in any channel of commerce.

**§ 994.17 Promotion.**

"Promotion" means any action authorized by the Board to increase consumption of eggs, egg products, spent fowl, or products of spent fowl. "Promotion" does not include paid advertising for spent fowl or products of spent fowl.

**§ 994.18 Research.**

"Research" means any type of research, including nutrition, to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl.

**§ 994.19 Consumer education.**

"Consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

**§ 994.20 Eligible organization.**

"Eligible organization" means any organization, association, or cooperative which represents egg products and/or handlers of any egg producing area of the United States certified by the Secretary pursuant to this subpart.

*Egg Marketing Board*

**§ 994.35 Establishment and membership.**

There is hereby established an Egg Marketing Board composed of 22 members, including producers and handlers and one public member, and 22 alternates who shall have the same qualifications as the member for whom they are the alternate. Such members and alternates shall be appointed by the Secretary from nominations pursuant to § 994.37

**§ 994.36 Term of office.**

The members of the Board, and their alternates, shall serve for terms of 3 years, except initial appointments for producer and handler members and their alternates including the three at-large positions shall be divided equally for terms of 1, 2, and 3 years. The public member's initial term shall be 2 years. Each member and alternate member shall continue to serve until his/her successor has been qualified for Board membership and is appointed by the Secretary. No member or alternate shall serve for more than two consecutive 3-year terms.

**§ 994.37 Nominations.**

All nominations authorized under § 994.35 shall be made in the following manner.

(a) Within 60 days of the approval of this Order by referendum, nominations for 18 producer and handler members and alternates shall be submitted to the Secretary for approval and appointment for each geographic area as specified in paragraph (d) of this section, by eligible organizations, associations, or cooperatives certified pursuant to § 994.70, or, if the Secretary determines that a substantial number of producers or handlers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such producers or handlers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board in accordance with paragraph (a) of this section;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary a nomination for each appointment to be made;

(d) For purposes of nominating the 18 producer and handler members and their alternates to the Board, the 48 States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, and California. The number of members of the initial Board, and their alternates, who shall be appointed from each area

are: Area 1–3; Area 2–3; Area 3–3; Area 4–2; Area 5–3; and Area 6–4;

(e) At least every 5 years, and not more often than every 3 years, the Board shall review the geographic distribution of egg production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of areas and/or a modification of the numbers of members from areas in order to best reflect the geographic distribution of egg production volume in the United States. The number of members for each area which shall serve on the Board shall be determined by dividing the total volume of eggs produced in the United States for the calendar year previous to the date of review by 18 which provides a factor of volume of eggs per member, and then dividing the total volume of eggs for each area by such factor. In determining the volume of eggs produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to § 994.75 and data published by the Department;

(f) Upon appointment of the initial 18 Board members representing areas described in paragraph (d) of this section, such Board members shall nominate, and submit to the Secretary for approval and appointment, 3 additional producer and handler members of the Board representing at-large positions on the Board and 3 alternates for such positions. In making nominations for the three at-large positions, the Board, to the extent practical, should consider the representative composition of the Board appointments made pursuant to paragraphs (a) to (d) of this section and should utilize such nominations to provide representation to producers owning various size laying hen flocks. An additional position shall be filled by a public member. The public member and alternate member shall be nominated by the Board or selected by the Secretary at his discretion.

(g) The terms of the members of the Board representing at-large positions and their alternates shall expire upon the date of expiration of terms of Board members representing regions described in paragraph (d) of this section. Following the appointment of the initial Board, nominations for at-large positions and alternates for such positions on the Board shall be submitted to the Secretary by the Board at least 60 days prior to the expiration of the term for the position for which it was submitted.

**§ 994.38 Nominee's agreement to serve.**

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Actively serve on the Board if appointed;

(b) Disclose any position held with or any ownership interest in any organization that has a contractual relationship with the Board; and

(c) Withdraw from voting on matters where a Board member, or an alternate acting on behalf of a Board member, is an officer or board member of, or holds an ownership interest in, any organization proposing to contract with the Board. Membership in a nonprofit industry organization shall not require abstention from voting under this section.

**§ 994.39 Procedure.**

(a) Fifteen members of the Board shall be necessary to constitute a quorum and a majority of those present and voting will be required to pass any motion or approve any Board action.

(b) The Board may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

**§ 994.40 Vacancies.**

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member, or an alternate member, of the Board, the Secretary shall appoint a successor from the most recent list of nominations from the geographic area concerned for the position or from nominations made by the Board for any at-large positions. A public member or alternate vacancy shall be filled from nominations submitted by the Board or by the Secretary at his discretion. Replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

**§ 994.41 Alternate members.**

An alternate member of the Board, during the absence of the member for whom he/she is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act for him/her until a successor for such member is appointed and qualified.

**§ 994.42 Personal liability.**

No member of the Board, or any alternate, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member or alternate in performance of his/her duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 994.43 Expenses and compensation.**

The members of the Board, and their respective alternates when acting as members, shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties under this subpart and shall receive compensation at a rate to be determined by the Board and approved by the Secretary. Whenever specifically authorized or approved by the Board, an alternate member shall be reimbursed for reasonable expenses necessarily incurred by him/her in attending Board meetings and shall receive compensation at the rate provided in this section, notwithstanding that the Board member for whom he/she serves as alternate also attends such meeting.

**§ 994.44 Powers.**

The Board shall have the following powers:

(a) To administer this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the secretary amendments to this subpart.

**§ 994.45 Duties.**

It shall be the duty of the Board:

(a) To meet and organize, to select a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board and such minutes, books, and records shall

be subject to examination at any time by the Secretary or any authorized agent or representative;

(f) To provide for the bonding of all persons handling Board funds in an amount and with surety thereon satisfactory to the Secretary;

(g) Prior to the beginning of each fiscal period, to submit to the Secretary a budget of projected income and expenses for such fiscal period, together with a report thereon;

(h) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart. A copy of each report shall be furnished to the Secretary. A copy of each such report also shall be made available at the principal office of the Board for inspection by producers and/or handlers; however, information of a confidential nature shall be removed from the report;

(i) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State egg organizations or other organizations or entities for the development and conduct of activities authorized pursuant to this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 994.61. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party.

(j) To disseminate information to producers and handlers or eligible organizations through programs or by direct contact utilizing the public postage system or other system(s);

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments pursuant to § 994.61 and any late payment charges pursuant to § 994.64 in obligations of the United States Government or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve system or in obligations fully guaranteed as to principal and interest by the United States Government; and

(l) To receive and evaluate, or, on its own initiative, develop and budget for plans or projects to promote the use and consumption of eggs, egg products, spent fowl, or products of spent fowl, as well as projects for egg research and consumer education and to make recommendations to the Secretary regarding such proposals.

(m) To prepare and make public, at least annually, a report of activities carried out and an accounting of funds received and expended.

*Research and Promotion*

**§ 994.50 Advertising, research, consumer education, and promotion programs.**

(a) The Board shall develop and submit to the Secretary for approval advertising, research, consumer education, and promotion programs or projects undertaken under the authority of this subpart. Such programs or projects may provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising of eggs and egg products; and sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided,* That any such program or project shall be directed toward increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(2) The establishment and carrying on of research projects and studies with respect to the nutritional attributes, sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated; and

(3) The development and expansion of markets outside the United States and additional uses for eggs, egg products, spent fowl, and products of spent fowl.

(b) No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

(c) At least once every 3 years the Board shall conduct studies subject to the approval of the Secretary, to determine the effectiveness of the activities authorized and conducted pursuant to this section.

**§ 994.51 Allocation of expenditures for research and promotion.**

(a) At least 5 percent of the assessments collected pursuant to § 994.61, less projected expenses of the Board, shall be allocated for research projects involving diet and health issues and/or the dissemination of information relating to diet and health issues.

(b) At least 5 percent of the assessments collected pursuant to § 994.61, less projected expenses of the Board, shall be allocated for projects involving new products and new uses research and development and/or marketing of new products.

(c) Fifteen (15) percent of the funds collected pursuant to § 994.61, less the projected expenses of the Board, shall be allocated to those State or regional egg promotion, research, or consumer education programs which are qualified pursuant to § 994.52. Funding to qualified promotion, research, or consumer education programs shall be made on a quarterly basis and shall be proportionate to the amount of assessments collected pursuant to § 994.61 from the area in which the qualified promotion, research, and/or consumer education program operates.

(d) The Board shall establish a procedure to ensure that brown eggs are included in programs for promotion, research, and consumer education at a level which is equal to the percentage for research and promotion funding which is attributable to brown egg handler assessments in the predominately brown egg area, less projected expenses and less the 15 percent of funds collected allocated to any State, as specified in paragraph (c) of this section, in the predominately brown egg area, and less funds for research projects involving diet and health issues and new products and new uses, as specified in paragraphs (a) and (b) of this section. In accordance with § 994.45(i), the Board shall contract with a brown egg producer and/or handler organization to develop and conduct programs for brown eggs. If no such representative organization exists, then the Board shall appoint a committee composed of brown egg producers and handlers to assist the Board in the development of programs specifically for brown eggs.

**§ 994.52 Qualified State or regional egg promotion, research, or consumer education programs.**

(a) Any organization which conducts a State or regional egg promotion research or consumer education program may apply to the Secretary for certification of qualification so that such program may be eligible to receive funding pursuant to § 994.51(c).

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Provide for the conduct of activities as defined in § 994.50 that are intended to increase consumption of eggs, egg products, spent fowl, and products of spent fowl generally;

(2) Be financed primarily by producers and/or handlers, either individually or through cooperative associations; and

(3) Not use false or unwarranted claims or make references to private brand or trade names in its advertising and promotion of eggs, egg products, spent fowl, and products of spent fowl; and no funds provided by the Board pursuant to § 994.51(c) shall be utilized to promote eggs by using references to State or regional production.

**§ 994.53 Cooperative advertising, research, promotion, and consumer education.**

Nothing in this subpart shall prohibit the Board or qualified State or regional egg promotion, research, or consumer education organizations from engaging in cooperative advertising for eggs and egg products or research, promotion, or consumer education activities for egg products, spent fowl and products of spent fowl, even though such programs may utilize a brand or trade name of a product other than eggs, egg products, spent fowl, or products of spent fowl.

*Expenses and Assessments*

**§ 994.60 Expenses.**

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its establishment, maintenance, and functioning and to enable the Board to exercise its powers and perform its duties. The funds to cover such expenses shall be paid from assessments, late payment charges, and any sums earned from investment of such funds, except that administrative funds for the initial year of operation may be obtained from other sources, with the approval of the Secretary. Following the initial year of operation, the Board is only authorized to incur expenses at a level at which it receives assessments to cover such expenses, with the exception of funds utilized from reserves pursuant to § 994.62.

**§ 994.61 Assessments.**

(a) Each handler first handling eggs pursuant to regulations issued by the Board and approved by the Secretary, shall pay an assessment to the Board on each dozen eggs handled which are produced by producers as defined in § 994.6 at such times and in such manner as prescribed by the Board.

(b) The first-year assessment rate shall be at the rate of ½ cent per dozen of eggs marketed. Following the initial year of operation, the Board, with the approval of the Secretary, may increase or decrease the level of assessment. *Provided,* That such assessment rate shall not increase at a rate greater than ¼ cent per year up to a maximum rate of 1 cent per dozen eggs marketed, and *Provided Further,* That any increase or decrease in the assessment rate shall be accomplished by rulemaking procedures after appropriate analyses as directed by the Secretary.

(c) The Board funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to this subpart.

(d) The Board with the approval of the Secretary may authorize other organizations or agencies to act as the Board's agents to collect assessments in its behalf pursuant to regulations established by the Board and approved by the Secretary.

**§ 994.62 Excess funds.**

At the end of a fiscal period, funds collected in excess of the year's expenses for research, promotion, and consumer education, shall be placed in a separate special reserve not to exceed limits as the Board, with the approval of the Secretary, shall establish. Funds in such reserve shall be available for use by the Board for research, promotion, and consumer education activities during subsequent fiscal periods. If the funds contained in the special reserve exceed the limit placed on the special reserve, the Board, with the approval of the Secretary, shall temporarily suspend collection until funds in the special reserve are equal to or below the established limit.

**§ 994.63 Accounting of funds upon termination of Order.**

Any money collected as assessments pursuant to this subpart and remaining unexpended after termination of this subpart shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

**§ 994.64 Late payment charges.**

There shall be a late payment charge imposed on any handler who fails to pay his/her assessment within the prescribed time. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, there shall be imposed an additional charge in the form of interest on the outstanding amount. The rate of such charges shall be prescribed by the Board with the approval of the Secretary.

*Certification of Organizations*

**§ 994.70 Certification of organizations.**

Any organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members to the Board to represent the geographic area in which the organization represents egg producers and/or handlers. Such eligibility shall be based, in addition to other available information, upon a certified report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers and/or handlers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced and/or handled by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producers and/or handler membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of this subpart.

The primary consideration in determining the eligibility of an organization shall be whether its membership consists of a substantial number of egg producers and/or handlers who produce and handle a substantial volume of the applicable geographic area's commercial eggs to reasonably warrant its participation in

the nomination of members for the Board. The Secretary shall certify any organization which the Secretary finds to be eligible under this section and such determination as to eligibility shall be final.

*Miscellaneous Provisions*

**§ 994.75 Reports and records**

(a) Upon the request of the Board, with the approval of the Secretary, every handler, including handlers who are also egg-type hatchery operators and/or started pullet dealers, shall furnish to the Board in such manner and at such time as may be prescribed, such information as will enable the Board to exercise its responsibilities and duties under this subpart.

(b) Each handler shall establish and maintain for at least 2 succeeding years such records and documents with respect to eggs handled and eggs disposed of by such handler as will substantiate the reports required by this subpart.

(c) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Board through their duly authorized employers and agents, shall have access to and the authority to examine such records.

(d) All information obtained from the reports, records, and documents required to be maintained under this subpart shall be kept confidential by all persons, including employees of the Secretary and the Board and all officers and employees of contracting parties, and shall not be available to Board members and alternates or any other handlers, producers, or other interested persons. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit that such data and information may be combined, and made availalble in the form of general reports in which the identities of the individual handlers are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this subpart and the regulations issued thereunder.

**§ 994.76 Right of the Secretary**

The members of the Board (including successors and alternates), and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval by the Secretary, the disapproved action of the said Board shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

**§ 994.77 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

**§ 994.78 Derogation**

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

**§ 994.79 Separability.**

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof, to any other person, circumstance, or thing, shall not be affected thereby.

**§ 994.80 Amendments.**

Amendments to this subpart may be proposed, from time to time, by the Board or by the Secretary.

**§ 994.81 Termination or suspension.**

(a) *Failure to effectuate policy of Act.* The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) *Producer referendum.* (1) The Secretary shall terminate in accordance with Section 8(c)(16)(B) of the Act, the provisions of this subpart at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of eggs: *Provided,* That such majority has during such period, produced for market more than 50 percent of the volume of such eggs for market.

(2) The Secretary shall conduct a referendum within every 5-year period beginning on the effective date hereof to ascertain whether continuance of this subpart is favored by the producers.

(c) *Termination of Act.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

**§ 994.82 Proceedings after termination.**

(a) Upon the termination of the provisions of this subpart, the then-functioning members of the Board shall continue as trustees for the purpose of liquidating the affairs of the Board, of all the funds and property then in the possession of or under control of the Board, including claims for any funds unpaid or property not delivered at the time of termination. Action by said trusteeship shall require the concurrence of a majority of said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all recipients and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the Board and upon the said trustees.

**§ 994.83 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or

(b) Release or extinguish any violation of this subpart or of any regulation issued under this subpart, or

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

**§ 994.84 Patents, copyrights, trademarks, inventions, and publications.**

(a) Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board.

(b) Funds generated by such patents, copyrights, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

(c) Upon termination of this subpart, the Board shall transfer custody of all patents, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided for in § 994.82 of this subpart.

**§ 994.85 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

**§ 994.86 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

**§ 994.87 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an Order providing for the establishment of programs and projects relating to research, consumer education, advertising, promotion, and product development for eggs, spend fowl, and products thereof, in the same manner as is provided for in the agreement.

**Note.**—Copies of this proposed rule may be obtained from: Janice L. Lockard, Poultry Division, AMS, USDA, Washington, DC 20250.

[FR Doc. 87-7566 Filed 4-2-87; 10:29 am]

BILLING CODE 3410-02-M

BEST COPY AVAILABLE

L
2
S
5
P
87
M I

Federal Register

Monday
April 6, 1987

Part IV

# Railroad Retirement Board

20 CFR Parts 200, 209, 210, 216, 217, 230, 234, 260, 266, 320, 322, 325, 330, 335, 341 and 345

Procedures and Forms; Final Rule

## RAILROAD RETIREMENT BOARD

**20 CFR Parts 200, 209, 210, 216, 217, 230, 234, 260, 266, 320, 322, 325, 330, 335, 341, 345**

**Procedures and Forms**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** This amendment has been developed to inform the public about the central and field organization of the Railroad Retirement Board (hereinafter referenced as the "Board"); to inform the public of the revisions in the list of applications and related public reporting forms designated for use in applying for benefits under the various social insurance programs administered by the Board; to inform the public of revisions in the list of public reporting forms used in the maintenance of earnings records; and, to inform the public of the control numbers assigned by the Office of Management and Budget (OMB) to the information collection requirements of the Board.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Pauline Lohens, Director, Information and Data Management, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611. Telephone: (312) 751–4692.

**SUPPLEMENTARY INFORMATION:** The affirmative responsibilities provisions of the Freedom of Information Act, as amended, 5 U.S.C. 552, require in relevant part that agencies publish in the **Federal Register** descriptions of their central and field organization and the reporting forms available to the public. These affirmative responsibilities provisions further require that agencies keep such descriptions reasonably current. In addition, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, requires in relevant part that Federal agencies minimize the paperwork burden they impose on the public. Finally, the Paperwork Reduction Act requires that such agencies obtain OMB approval of their public reporting, recordkeeping and other information collection requirements, and provide the public with notice of the clearance control numbers assigned by OMB.

To comply with the provisions of the above two Acts, this rule amends Chapter II of Title 20 of the Code of Federal Regulations: (1) To add a description of the Board's central and field organization, (2) to revise the descriptions of the Board's public reporting forms, (3) to add a subsection to display the control numbers assigned by OMB to the information collections which contain these forms, and (4) to insert such control numbers immediately following the appropriate substantive sections of the Board's regulations which identify or describe a particular information collection requirement. However, this rule does not establish any new information collection requirements nor does it describe any new information collection activities. Accordingly, we find that we are not required to obtain OMB re-approval for the currently approved information collection requirements technically contained herein.

Similarly, because this rule relates to agency organization and procedural matters, we find that it is not a "regulation or rule" within the meaning of Executive Order 12291 and is not subject to review by OMB or to any other provision of that Order. Further, we find that the provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 through 612, do not apply to this rule since the Board is not an "agency" within the meaning of 5 U.S.C. 551(1).

I. For the reasons set forth in the preamble, Subchapter A of Chapter II is amended as follows:

## CHAPTER II—[AMENDED]

1. The headings for Subchapter A and for Part 200 are revised to read as follows:

### SUBCHAPTER A—GENERAL ADMINISTRATION

### PART 200—GENERAL ADMINISTRATION

2. The authority citation for Part 200 is revised to read as follows:

**Authority:** 45 U.S.C. 231f, 362 and 797, unless otherwise noted.

**§§ 200.1 through 200.6 [Redesignated as §§ 200.2 through 200.7]**

3. Sections 200.1 through 200.6 are redesignated as §§ 200.2 through 200.7, respectively.

4. A new § 200.1 is added to read as follows:

**§ 200.1 Designation of central and field organization.**

(a) *Introduction.* (1) The Railroad Retirement Board (hereinafter referenced as the "Board") is an independent agency in the executive branch of the Federal Government and is administered by three members appointed by the President, with the advice and consent of the Senate. By law, one member is appointed upon recommendations made by railroad labor organizations, one upon recommendations of railroad employers, and the third member, the Chairman, is in effect independent of employees and employers and represents the public interest. The terms of office are five years and are arranged so as to expire in different calendar years.

(2) The primary function of the Board is the determination and payment of benefits under the retirement-survivor and unemployment-sickness programs. To this end, the Board must maintain lifetime earnings records for covered employees, a network of field offices to assist railroad personnel and their dependents in filing claims for benefits, and examiners to adjudicate the claims.

(3) The Board administers the Railroad Retirement Act and the Railroad Unemployment Insurance Act. The Railroad Retirement Tax Act, which imposes employment taxes to fund the railroad retirement system, is administered by the Internal Revenue Service of the U.S. Department of Treasury. The Board also participates in the administration of the Federal Medicare health insurance program.

(4) The headquarters of the Board is in Chicago, Illinois, at 844 Rush Street. The Board maintains numerous district offices across the country in localities easily accessible to large numbers of railroad workers, in addition to five regional offices located in Atlanta, Georgia; Hackensack, New Jersey; Cleveland, Ohio; Kansas City, Missouri; and, San Francisco, California.

(b) *Internal Organization.* (1) In addition to the three Board Members, there is an Executive Director who reports directly to the Board Members and who is responsible for the overall administrative direction and coordination of the work of the entire Board organization.

(2) Responsibility for Board operations is concentrated in seven Associate Executive Directors, who report directly to the Executive Director and who serve on an Executive Committee advising the Executive Director on matters of agency-wide impact. The Associate Executive Director for Legal and Administrative Services is responsible for legal, appeals, personnel, legislative, information management, and internal services. The Associate Executive Director for Program Analysis is responsible for research, actuarial, and compensation operations. The Associate Executive Director for Retirement Claims is responsible for all claims operations under the Railroad Retirement Act. The Associate Executive Director for Unemployment and Sickness Insurance is responsible for all claims operations under the Railroad Unemployment Insurance Act, as well as certain employee protection

laws, and the Associate Executive Director for Field Service is responsible for all district and regional office operations. There is also an Associate Executive Director for Fiscal Operations and an Associate Executive Director for Data Processing.

(3) Further, the following offices provide administrative and other services in support of Board Operations: Office of Equal Employment Opportunity, Washington Legislative/Liaison Office, Office of Planning, Office of Public Affairs and Bureau of Quality Assurance.

(c) *Office of Inspector General.* The Railroad Retirement Solvency Act of 1983 established the Office of Inspector General within the Board to be governed by the Inspector General Act of 1978. As structured, the Inspector General reports directly to the Chairman. The Office of Inspector General is responsible for policy direction and conduct of audit, inspection, and investigation activities relating to program and operations of the Board; and maintaining liaison with other law enforcement agencies, the Department of Justice, and United States Attorneys on all matters relating to the detection and prevention of fraud and abuse. The Inspector General reports semi-annually to the Congress through the Chairman concerning fraud, abuses, other serious problems, and deficiencies of agency programs and operations; recommends corrective action; and, reports on progress made in implementing these actions.

5. Newly redesignated § 200.3 is raised to read as follows:

**§ 200.3 Designation of forms and display of assigned OMB control numbers.**

(a) *Designation of forms and instructions.* (1) This paragraph lists the public reporting forms prescribed by the Railroad Retirement Board under the authority of the Railroad Retirement Act, the Railroad Unemployment Insurance Act and certain other Acts. The Board uses these reporting forms to obtain information from the public that it needs in administering these Acts. The public reporting forms have been organized into the following groups: applications for basic benefit programs and related forms; health insurance applications and related forms; forms for appeals, withdrawals, retention of benefits, substitution of payees and other actions subsequent to applying for a benefit; and, forms related to the crediting and maintenance of earnings records.

(2) *Applications for basic benefits and related forms.* The following forms are prescribed for use by railroad employees, members of their families and certain other individuals in applying for benefits under the Railroad Retirement Act and the Railroad Unemployment Insurance Act; these forms are also prescribed for use by certain third parties to provide information in support of an application for benefits.

(i) Application forms.

AA–1—*Application for Employee Annuity.* Used in applying for an employee annuity. Information collected includes: Applicant's personally identifying data, earnings, family history, work history, military service, railroad pensions, and benefits from other government agencies.

AA–1b—*Application for Recomputation of Employee Annuity Under the Railroad Retirement Act.* Used to obtain information from an employee who performed additional service in the railroad industry since his or her annuity began. The information will be used to recompute such annuity.

AA–1d—*Application for Determination of Employee Disability.* Used in applying for an employee disability annuity and in establishing a period of disability and early Medicare coverage. Information collected includes: Applicant's personally identifying data, medical condition, medical care, daily activities, education and training, work history, current earnings, and benefits from other government agencies.

AA–3—*Application for Spouse/Divorced Spouse Annuity.* Used in applying for a spouse's or divorced spouse's annuity. Information collected includes: Applicant's personally identifying data, earnings, family history, work history, and benefits from other government agencies.

AA–17—*Application for Widow(er)'s Annuity.* Used in applying for an insurance annuity and a lump-sum payment by the widow(er), remarried widow(er), or the surviving divorced spouse. Information collected includes: Applicant's personally identifying data, family history, employment information, benefits from other government agencies, and the work history and military service of the deceased spouse.

AA–17b—*Application for Determination of Widow(er) Disability.* Used in applying for a disability annuity and for early Medicare coverage by a disabled widow(er), a disabled widow(er) who has remarried, and a disabled divorced wife who has survived the employee. Infomation collected includes: The applicant's personally identifying data, medical condition, medical care, daily activities, education and training, work history, current earnings, and benefits from other government agencies.

AA–18—*Application for Mother's/Father's and Child's Annuity.* Used in applying for insurance annuity benefits by the following surivors—the mother or father, the remarried mother or father, or the surviving divorced spouse—on their own behalf and on behalf of the child of the deceased employee. Information collected includes: Applicant's personally identifying data, family history, work history, earnings, benefits from the other government agencies, and the deceased employee's work history and military service.

AA–19—*Application for Child's Annuity.* Used in applying, on behalf of a child of a deceased employee, for an insurance annuity and any insurance benefits payable under Title II of the Social Security Act. Information collected includes: Applicant's personally identifying data, family history, work history, earnings, benefits from other government agencies, and deceased employee's work history and military service.

AA–19a—*Application for Determination of Child Disability.* Used in applying for an annuity based upon the child's disability and for early Medicare coverage by a spouse or the disabled child himself or herself. Information collected includes: Applicant's personally identifying data, medical condition, medical care, daily activities, education and training, work history, earnings, and benefits from other government agencies.

AA–19s—*Application for Child's Annuity/Full-Time Student.* Used in applying for an insurance annuity by a student who is the child of a deceased employee. Information collected includes: Applicant's personally identifying data, family history, work history, earnings, school attendance, benefits from other government agencies, and deceased employee's work history and military service.

AA–20—*Application for Parent's Annuity.* Used by the parent of a deceased employee in applying for an insurance annuity and for health insurance benefits. Information collected includes: Applicant's personally identifying data, family history, work history, earnings, benefits from other government agencies, and deceased employee's work history and military service.

AA–21—*Application for Lump-Sum Death Payment and Annuities Unpaid at Death.* Used by a surviving relative, a designated beneficiary or a funeral director to apply for, as appropriate, a lump-sum benefit or annuities due but unpaid at the annuitant's death. Information collected includes: Applicant's personally identifying data, burial expense information, and the deceased employee's family history, work history and military service.

ES–1a—*Application for Employment Service.* Used by an unemployed railroad employee in applying for employment counseling, referral and placement assistance services under the Railroad Unemployment Insurance Act; also used to enroll the names of separated railroad employees on the central register.

SI–1a—*Application for Sickness Benefits.* Used by a railroad employee in applying for sickness benefits under the Railroad Unemployment Insurance Act. Information collected will determine eligibility for benefits and the signed form will operate as a waiver for release of medical information.

SI–2—*Application and Statement of Sickness/Pregnancy, Miscarriage or*

*Childbirth.* Used by a female railroad employee in applying under the Railroad Unemployment Insurance Act for sickness benefits based on pregnancy, miscarriage or childbirth.

UI–1 (ES–1)—*Application for Unemployment Benefits & Employment Service.* Used by an unemployed railroad employee in applying for unemployment insurance benefits and employment referral services under the Railroad Unemployment Insurance Act.

(ii) Related forms.

AA–2P(R)—*Record of Employee's Prior Service (Retirement).* Used by an employer to inform the Board of an employee's pre-1937 creditable service and compensation.

AA–2P(U)—*Record of Employee's Prior Service (Unemployment).* Used by an employer to inform the Board of an employee's pre-1937 creditable service and compensation for railroad unemployment insurance purposes.

AA–4—*Self-Employment Questionnaire.* Used by an employee or the employee's spouse who has applied for a retirement annuity in order to determine whether any self-employment is exempt from "last person service" employment restrictions.

AA–11a—*Designation or Change of Beneficiary for Residual Lump Sum.* Used by an employee to designate the beneficiary or beneficiaries who would receive the residual lump-sum.

AA–15—*Employee's Statement of Service Performed Before January 1, 1937, to Employers Under the Railroad Retirement Act.* Used by an employee claiming creditable service prior to January 1, 1973 to assist the employer in locating the employee's service and compensation record. (The Board's records do not reflect service prior to 1937.)

ES–2—*Supplemental Information for Central Register (Card).* Used to update the central register of separated railroad employees.

ES–20a—*Applicant's Referral Report.* Used to refer a railroad employee or a railroad unemployment benefit claimant to a prospective employer. If unemployed, the claimant is informed that failure without good cause to comply with instructions or to accept suitable work available will prevent payment of benefits for 30 days.

ES–20b—*Employment Referral Card.* Used by a prospective employer to verify that the referred railroad worker: (1) Appeared for the interview and (2) was considered for the position.

ES–20c—*Notice of Job Opening.* Used to advise unemployed railroad employees of job opportunities for which they may apply or decline to apply without being penalized by a 30 day disqualification.

ES–21—*Referral to State Employment Service.* Used to refer a railroad unemployment insurance claimant to the State Employment Service for possible job openings. The claimant is informed that failure without good cause to comply with instructions to accept suitable work will prevent payment of benefits for 30 days.

ES–21c—*Report on Placement or Refusal or Referral or Job Offer to Railroad Retirement Board.* Used by a State Employment Service to verify whether the referred claimant: (1) Did appear for an interview and (2) was considered for job openings.

ES–22—*Unemployment Claims Agent's Placement Report.* Used by a railroad unemployment claims agent to report results of efforts to place an unemployed railroad employee in another job.

G–3EMP—*Report of Medical Condition by Employer.* Used to request information from a railroad employer about a disability applicant's medical condition and disqualification for work.

G–45—*Supplement to Claim of Person Outside the United States.* Used to obtain supplemental information from a non-U.S. citizen annuity applicant whose annuity may be subject to the income tax withholding provisions of the U.S. Internal Revenue Code; used to obtain information from a beneficiary who has informed the Board or a change in country of residence which may subject him or her to such tax withholding provisions.

G–86—*Certification in Support of Employer Service for Which No Records Are Available.* Used by an employee to reconstruct pre-1937 creditable service and compensation when the employer's records are incomplete or unavailable.

G–88—*Certificate of Termination of Service and Relinquishment of Rights.* Used to obtain evidence that an applicant for a retirement annuity has relinquished all rights to return to employer service.

G–88p—*Employer's Supplemental Pension Report.* Used to obtain pension data from an employer to correct the supplemental annuity amount payable to an annuitant or annuity applicant.

G–88r—*Request for Information About Employer Pension Plans.* Used to obtain information from an employer about any private pension plans that it may have established.

G–118—*Statement Regarding Adoption.* Used by a surviving child through his or her representative, to provide information supporting an equitable adoption; used by an employee or a spouse trying to increase an annuity by claiming an equitably adopted child; and, used by a third party or an institution to provide evidence of an equitable adoption in support of the claim of a surviving child, employee or spouse.

G–124—*Statement of Marital Relationship.* Used by a spouse to provide information in support of a marital relationship not solemnized by a civil or religious ceremony.

G–124a—*Statement Regarding Marriage.* Used by an individual who has knowledge of a marital relationship not solemnized by a civil or religious ceremony to provide information in support of that relationship.

G–131—*Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment.* Used by a non-spouse survivor of a deceased employee to assign rights as a beneficiary to another beneficiary.

G–134—*Statement Regarding Contributions and Support.* Used by an applicant who, in order to qualify for benefits, must show receipt of one-half support from the employee at the time of the employee's retirement, period of disability onset or death. Among these applicants are: a parent of a deceased employee, a spouse and a widow(er).

G–204—*Verification of Worker's Compensation/Public Disability Benefit Information.* Used to obtain, from a public agency paying an applicant's worker's compensation or public disability benefits, verification of the information provided by an applicant.

G–208—*Public Service Pension Questionnaire.* Used to obtain information from a spouse or a survivor annuity applicant to determine if the annuity is or will be subject to a reduction for a public service pension.

G–209—*Employee Noncovered Service Questionnaire.* Used to obtain information from railroad employee annuitants or annuity applicants about benefits they either receive or expect to receive based on employment not covered under the Railroad Retirement Act or the Social Security Act.

G–214—*Worker's Compensation and Public Disability Benefit Questionnaire.* Used to obtain information from an annuity applicant as to whether he or she is receiving or will receive worker's compensation or public disability benefits. Such benefits may be offset against the annuity computation.

G–237—*Statement Regarding Marital Status.* Used by an applicant or an employee if still living to obtain information required in establishing the marital status of the employee, spouse or surviving spouse if the initial information about the dissolution of the marriage is inconclusive.

G–238—*Statement of Residence.* Used to obtain information to determine whether there should be a presumption in favor of the validity of the last of several conflicting marriages. This form is completed by an individual who was shown by Form G–237 as having some knowledge as to where the applicant or former spouse lived after the dissolution of the marraige.

G–238a—*Statement Regarding Divorce or Annulment.* Used to search official legal records for copies of divorce decrees or annulments.

G–250—*Report of Physical Examination.* Used by a disability applicant's personal physician to provide requested medical information.

G–251—*Vocational Report.* Used to obtain a work history and detailed job duties from employee and most surviving spouse disability applicants; used to establish the employee's regular occupation for purposes of an employee occupational disability determination.

G–256—*Application for Search of Census Records.* Used to obtain census records from Bureau of Census to provide evidence of age in support of an application for benefits if age is at issue and no better evidence of age is available.

G–273—*Statement of Death by Funeral Director.* Used by a funeral director for providing certification of death in lieu of a death certificate and for providing

information in support of a claim for death benefits.

G–273a—*Funeral Director's Statement of Burial Charges.* Used by a funeral director in connection with an application by a survivor (other than the surviving spouse who was living in the same household with the annuitant at the time of death) authorizing direct payment of the lump-sum death payment to the funeral director.

G–315—*Student Questionnaire.* Used in seasonal monitoring and to obtain information from a student to verify his or her status with respect to (1) Full time enrollment, (2) marriage, (3) age, (4) employment, (5) social security benefits, and (6) earned income.

G–315a—*Statement by School Official of Student's Full Time Attendance.* Used to obtain information from a school official to verify the full time attendance of a student beneficiary.

G–318—*Statement of Spouse of Employee Annuitant.* Used to obtain information from a railroad employee's spouse to determine whether such spouse is eligible for Railroad Retirement Act benefits under the overall minimum guaranty provision.

G–319—*Employee Annuitant's Statement Regarding Family and Earnings.* Used to obtain information from a railroad employee about child(ren), earnings, and receipt of social security benefits to determine whether any student-child(ren) are eligible for Railroad Retirement Act benefits under the overall minimum guaranty provision.

G–320—*Statement by Employee Annuitant Regarding Student Age 18–19.* Used to obtain information from a railroad employee about the employee's child(ren)'s school attendance, earnings, and social security benefits.

G–346—*Employee's Certification.* Used in determining whether there was a legal impediment to the marriage of the spouse or former spouse of a railroad employee.

G–423—*Financial Disclosure Statement.* Used to obtain financial information from an overpaid annuitant or claimant who is requesting that the Board waive its right to recover the overpayment.

G–476c—*Report of Former Spouse-Annuitant.* Used in determining the eligibility of a spouse annuitant or divorced spouse annuitant for an appropriate survivor annuity upon death of the employee. Information collected includes: Applicant's personally identifying information, recent work history, benefits from other government agencies, and identification of other family member(s) possibly eligible for survivor benefits.

ID–4k—*Notification to Employer That a Current or Former Employee Has Applied for Unemployment Benefits.* Used to notify a railroad employer that an employee has filed an unemployment compensation claim; used to grant such employer the opportunity to rebut the employee's statements as to current unemployment, reasons for current unemployment, date last worked, and/or nonpayment of vacation or other such pay.

ID–4L—*Notification to Employer That a Current or Former Employee Has Applied for Sickness Benefits.* Used to notify a railroad employer that an employee has filed a claim for sickness benefits; used to grant such employer the opportunity to rebut the employee's statements as to current sickness or injury, date last worked or returned to work, nonreceipt of a personal injury settlement or judgment for the infirmity which has precluded work, and/or non-receipt of wages or salary or benefits such as vacation or sick pay while not working.

ID–5i—*Letter to Non-Railroad Employers on Employment and Earnings of a Claimant.* Used to obtain information from a non-railroad employer about work performed during the period for which unemployment benefits were claimed.

ID–5r(SUP)—*Report of Employees Paid RUIA Benefits for Each Day in Month Reported as a Creditable Month of Service.* Used to obtain information from a railroad employee about compensation credited to an employee during the period for which either unemployment or sickness benefits were claimed.

ID–7h—*Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits.* Used to notify a claimant that if he or she is unable to work for a longer period of time, he or she needs to have a doctor furnish additional medical information.

ID–11a—*Notice of Late Filing for Sickness Benefits.* Used to obtain information from an employee filing late for sickness benefits to determine whether the circumstances justify payment of benefits.

ID–28a(1)—*Statement in Lieu of an Application for Sickness Benefits.* Used by a survivor applying for sickness benefits for which the employee might have been eligible but for which no application had been filed.

ID–30k(1)—*Supplemental Information on Injury or Illness.* Used as a follow-up in obtaining information about the status of any personal injury claim based on the injury for which sickness benefits were paid.

RB–5—*Your Duties As Representative Payee.* Used to inform a substituted or representative payee of his or her recordkeeping duties with respect to the benefit payments he or she is receiving on behalf of an incompetent or incapacitated annuitant.

RL–11b—*Request for Hospital Medical Records.* Used to obtain copies of medical records from a private hospital when a disability applicant indicates that he or she received care from that hospital; used to provide that hospital with the applicant's written consent to disclose such information.

RL–11d—*Request for State Agency's Medical Information.* Used to obtain copies of medical reports and other information from a state agency that paid worker's compensation or public disability benefits when a disability applicant indicates that he or she received such benefits; used to provide the agency with the applicant's written consent to disclose such information.

RL–12/ID–31a—*Contract for Professional Services.* Used to request specific medical services from a consulting physician; used to provide the physician with reporting and reimbursement instructions.

RL–94–F—*Survivor Questionnaire.* Used to obtain information about the survivors or the estate of a deceased railroad employee to determine whether and to whom survivor benefits are payable.

RL–231–F—*Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings.* Used to determine whether an annuitant has returned to work for "last person service" employer (i.e., the last employer before retirement of a railroad employee or spouse applicant).

RRB–1001—*Nonresident Questionnaire.* Used to obtain information from a non-resident annuitant about the status of his or her citizenship and legal residence for purposes of determining the amount of tax that must be withheld.

RRB–W4–P—*Withholding Certificate for Railroad Retirement Payments.* Used to obtain information from an annuitant about the amount to be withheld from any portion of his or her retirement benefits subject to federal income taxation.

SI–1b—*Statement of Sickness.* Completed by the railroad employee's physician to support the employee's claim of being unable to work because of illness or injury.

SI–1c—*Supplemental Information on Accident and Insurance.* Used to obtain further information from an employee about the identity of the person, company, and/or insurer who may be liable for damages to the employee and about the possibility of litigation and/or a settlement.

SI–3—*Claim for Sickness Benefits.* Used by an employer who has filed for sickness to provide information in support of a claim for benefits for a particular period, usually 14 days.

SI–5—*Report of Payments to Employee Claiming Sickness Benefits Under the Railroad Unemployment Insurance Act.* Used to obtain information from the allegedly liable party about the amount of damages received by a railroad employee from a personal injury settlement or lawsuit or about the amount of an award for a worker's compensation or an insurance claim. Form SI–5 is sent with Form ID–30b, which serves as a transmittal letter and explains the Board's right of reimbursement.

SI–7—*Supplemental Doctor's Statement.* Used to obtain medical evidence needed to supplement the medical information submitted on Form SI–1b, Statement of Sickness.

SI–10—*Statement of Authority to Act for Employee.* Used to determine who may act in a representative capacity for an employee when he or she has become incapable of signing documents and transacting business in connection with obtaining sickness benefits.

SI–82—*Claim for Sickness Benefits Due Employee But Not Paid at Death.* Used by a survivor to claim unpaid sickness benefits for which the deceased employee was ineligible.

UI–1e—*Pay Rate Report.* Used by a claimant for sickness or unemployment benefits to provide information on his or her last railroad employment and pay rate when such information is not otherwise available from the Board's records.

UI–1f—*Pay Rate Report.* Used by an employer to verify the rate of pay reported by an employee.

UI–1g—*Employee-Employer Statement of Pay Rate.* Used to obtain information from both the employee and the employer when the employee believes that his or her pay rate was not reported accurately by the employer.

UI–3—*Claim for Unemployment Benefits.* Used by a claimant for unemployment benefits to provide information in support of claimed days of unemployment during a 14-day registration period.

UI–9—*Applicant's Statement of Employment and Wages.* Used by a claimant for unemployment or sickness benefits if his or her current service and compensation either have not yet been reported or have been underreported to the Board.

UI–13—*Notice of Payment of Separation Allowance.* Used by an employer to provide information about a former employee's separation from service.

UI–23—*Claimant's Statement of Service for Railroad Unemployment Insurance Benefits.* Used by a claimant for unemployment or sickness benefits to establish whether he or she has sufficient service to qualify for extended or accelerated benefits.

UI–35—*Field Office Record of Claimant Interview.* Used to conduct a personal interview of a claimant for unemployment benefits at a field office or itinerant point.

UI–44—*Claim for Credit for Military Service (RUIA Act).* Used to obtain information from a claimant about military service because such service can be used under certain circumstances to extend employment or sickness benefits under the Railroad Unemployment Insurance Act.

UI–45—*Certification Regarding Rights to Unemployment Benefits.* Used by a claimant who has voluntarily left work to certify whether he or she has rights to benefits under any other unemployment insurance law.

UI–48—*Claimant's Statement Regarding Benefit Claims for Days on Which He Worked.* Used to obtain the claimant's explanation for claiming benefits for days on which he or she was apparently employed.

UI–54—*Unemployment Claims Agent's Statement Regarding Benefit Claims for Days on Which a Claimant Worked.* Used to obtain information from an unemployment claims agent concerning a claimant's alleged employment on days claimed as days of unemployment.

UI–62—*Canadian Unemployment and Sickness Benefit Information.* Used to obtain the Canadian social insurance number from a claimant for unemployment or sickness benefits when a claimant's address indicates Canadian residency.

UI–63—*Application for Accrued Benefits Due Under the Railroad Unemployment Insurance Act and Unpaid at Death.* Used by a survivor to apply for the accrued sickness or unemployment benefits unpaid at the death of the employee; also used to identify the proper payee.

(3) *Health insurance applications and related forms.* The following forms are prescribed for use by qualified railroad retirement beneficiaries to establish entitlement based on age or disability, and to enroll and collect benefits under the Social Security health insurance program administered by the Board.

(i) Application forms.

AA–6—*Employee Application for Medicare.* Used by an employee not entitled to monthly benefits to apply for hospital insurance and supplemental medical insurance.

AA–7—*Spouse/Divorced Spouse Application for Medicare.* Used by the spouse or divorced spouse, neither of whom would be otherwise entitled to benefits under the Railroad Retirement Act, to apply for hospital and supplemental medical insurance.

AA–8—*Widow/Widower Application for Medicare.* Used by a widow(er) who is not otherwise entitled to benefits under the Railroad Retirement Act to apply for hospital and supplemental medical insurance.

(ii) Related forms.

AA–104—*Application for Canadian Hospital Benefits Under Medicare—Part A.* Used by a qualified railroad retirement beneficiary to apply for hospital benefits under Part A of Medicare for services provided in Canada. The information provided is verified by the Board's Canadian contractor, currently Blue Cross of Ontario, before any benefits are paid.

G–740B—*Requests for Medicare Payment by Organizations Which Qualify to Receive Payment for Paid Bills.* Used by Railroad Hospital Associations and Group Prepayment Plans approved to receive reimbursement directly from the Medicare carrier for charges that the organization paid for services to its members.

G–740s—*Patient's Request for Medicare Payment.* Used by a qualified railroad retirement beneficiary to file a claim for Part B (supplemental medical) benefits directly with the Board's carrier.

HCFA–1500—*Common Health Insurance Claim Used by Physicians and Suppliers.* Used by a physician or other supplier of Part B (supplemental medical) services to claim payment.

(4) *Forms for post-application actions.* The following forms are prescribed for use by the public to retain benefits and to request an appeal from a denial of benefits, a withdrawal of an application, a substitution of a representative payee for an incompetent annuitant, and similar actions subsequent to applying for a benefit.

AA–5—*Application for Substitution of Payee for Employee, Spouse or Survivor Annuitant.* Used in applying for a substitute payee to receive benefits on behalf of an incompetent annuitant. Information collected includes that needed to select a representative or substitute payee who will serve in the best interest of the incompetent beneficiary.

G–19—*Annual Earnings Monitoring Questionnaire.* Used annually by an annuitant to report work and earnings since excess income may reduce the amount of an annuity and type of work performed may suggest recovery from disability.

G–99a—*Representative Payee Report.* Used in obtaining information from a substitute or representative payee to monitor the performance of his or her duties with respect to the annuitant.

G–99c—*Representative Payee Evaluation Report.* Used in obtaining more highly detailed information from a substitute or representative payee who has failed to respond to Form G–99A, above; also used to determine whether the current payee should continue in this capacity.

G–254—*Continuing Disability Report.* Used to obtain current information about a disability beneficiary's work activity and medical condition to determine continuing entitlement to disability benefits.

G–478—*Statement Regarding Patient's Capability to Manage Payments.* Used to obtain—from an annuitant's attending physician or from a medical officer attached to an institution—medical evidence of such annuitant's incapacity to manage his or her personal and financial affairs.

G–718—*Request for Termination of Supplementary Medical Insurance.* Used by a beneficiary to provide the information needed to terminate his or her supplemental medical insurance.

G–790—*Request for Review of Part B Medicare Claim.* Used by a beneficiary claiming Part B medical insurance benefits to request reconsideration of a benefit determination by the carrier.

G–791—*Request for Hearing—Part B Medicare Claim.* Used by a qualified railroad retirement beneficiary to request a hearing following review when an unfavorable redetermination decision has been made on a Part B Medicare claim.

HA–1—*Appeal Under the Railroad Retirement Act.* Used by an applicant or an annuitant to appeal to a referee from a denial of a claim for retirement or disability benefits, or to appeal from a referee's decision to sustain the original denial.

HA–4—*Appeal Under the Railroad Unemployment Insurance Act.* Used by a claimant to appeal both an initial determination, a redetermination and/or a referee's decision denying railroad unemployment or sickness insurance benefits.

(5) *Forms related to maintenance of earnings records.* The following forms are used by the Railroad Retirement Board, by railroad employers, and by other members of the public in connection with the crediting and

maintenance of earnings records of railroad wage earners.

AA-12—*Notice of Death and Statement of Compensation.* Used by an employer to notify the Board of the date of death of an employee and to report any service and compensation not yet reported to the Board; such "lag period" data is used to determine entitlement to, and amount of, the annuity payable to the survivors of the employee.

BA-3a—*Annual Report of Creditable Compensation.* Used by an employer to report service months and compensation for each railroad employee annually.

BA-4—*Report of Creditable Compensation Adjustments.* Used by an employer to correct service and compensation previously reported, or to report service and compensation that was omitted from a previous report.

BA-5—*Quarterly Summary Report of Employee Compensation Adjustments.* Used by an employer to summarize on a quarterly basis monthly adjustments to employee compensation.

DC-1—*Employer's Quarterly or Annual Report of Contributions Under the Railroad Unemployment Insurance Act.* Used by an employer to show and to certify periodic contributions to the Railroad Unemployment Insurance fund.

DC-2—*Employee Representative's Report of Compensation.* Used by an employee representative to update his or her creditable service and compensation record which is the basis for payment of benefits under the Railroad Retirement Act.

DC-2a—*Employee Representative's Status Report.* Used to determine whether an individual qualifies for employee representative status.

DC-3—*Claim for Abatement or Refund of Contributions, Interest, or Penalty.* Used by an employer to claim abatement of liability or to claim a refund of contributions to the railroad unemployment insurance account.

ERR-8—*Employment Relation Questionnaire.* Used by an employer to inform the Board when an employee was not in compensated service on August 29, 1945 and did not perform six months of service after August 29, 1935 and before January 1, 1946.

G-88a—*Employer's Supplemental Report of Service and Compensation.* Used to obtain a report of "lag service" and compensation from an employer to help determine entitlement to, and the amount of, an annuity.

GL-99—*Employee Deemed Service Month Questionnaire.* Used to obtain information from a railroad employer to determine (1) Whether a claimant had an employment relationship with a covered railroad employer or was an employee representative during a month worked, and (2) whether such claimant can be credited with a deemed month of service.

UI-41—*Supplemental Report of Service or Compensation.* Used to obtain a report of service months and compensation from an employer covering the period between the Board's last recorded annual entry and the date when the claim for unemployment benefits was filed (i.e., the "lag period").

UI-41A—*Supplemental Report of Compensation.* Used to obtain information from an employer about an employee's compensation, not exceeding $775 per month, to determine whether additional benefits may be paid.

(b) *OMB control numbers assigned under the Paperwork Reduction Act.* (1) This paragraph collects and displays the control numbers assigned to information collection requirements of the Railroad Retirement Board (the "Board") by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Further, such OMB control numbers have been appropriately dispersed throughout the Code of Federal Regulations, following the pertinent section prescribed by the Board. The Board intends that this chapter complies with section 7(b) of Chapter 35 of Title 44 of the United States Code, which requires in relevant part that Federal agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

(2) In addition to being dispersed throughout the substantive text of this chapter, the OMB control numbers have also been compiled into the following tables of information collection requirements which includes the public reporting forms listed in paragraph (a) of this section as well as certain other information collection activities. In these tables, the Board's public reporting forms are associated with the OMB control number assigned to the information collection containing each form. The public reporting forms are also associated, where applicable, with the section or paragraph of the Code of Federal Regulations (CFR) in which they are identified or described.

TABLE 1A.—RAILROAD RETIREMENT BOARD APPLICATION AND RELATED FORMS

| Railroad Retirement Board Form No | 20 CFR (unless otherwise noted) Part, Section or Subsection Where Form is Identified or Described | Current OMB Control No |
|---|---|---|
| AA-1 | 217.3; 217.5; 217.6; 218.7; 218.8. | 3220-0002 |
| AA-1d | | 3220-0002 |
| AA-2P(R) | 210.7 | 3220-0003 |
| AA-3 | 216.21; 217.3; 217.6, 218.7; 218.8; 219.33, 234.30. | 3220-0042 |
| AA-4 | | 3220-0138 |
| AA-5 | 266.12 | 3220-0052 |
| AA-6 | | 3220-0082 |
| AA-7 | | 3220-0082 |
| AA-8 | | 3220-0082 |
| AA-11a | 234.42 | 3220-0031 |
| AA-12 | 209.4, 209.5 | 3220-0005 |
| AA-15 | 210.7 | 3220-0003 |
| AA-17 | 216.31; 217.3; 217.6, 218.7; 218.8, 219.31. | 3220-0030 |
| AA-17b | 216.31; 218.7, 218.8 | 3220-0030 |

TABLE 1A.—RAILROAD RETIREMENT BOARD APPLICATION AND RELATED FORMS—Continued

| Railroad Retirement Board Form No | 20 CFR (unless otherwise noted) Part, Section or Subsection Where Form is Identified or Described | Current OMB Control No |
|---|---|---|
| AA-18 | 216.31, 216.46, 217.3, 217.6, 218.7, 218.8, 219.33. | 3220-0030 |
| AA-19 | 216.47, 217.3, 217.6, 218.7 218.8 | 3220-0030 |
| AA-19a | 216.47, 218.7, 218.8 | 3220-0030 |
| AA-19s | 218.7, 218.8, 219.27 | 3220-0030 |
| AA-20 | 216.71, 217.3, 217.6, 218.7, 218.8 | 3220-0030 |
| AA-21 | 217.10 219.34, 234.10, 234.30. | 3220-0031 |
| AA-104 | | 3220-0066 |
| BA-3a | 209.6, 345.4(a) | 3220-0008 |
| BA-4 | 209.7 209.9, 345.4(b) | 3220-0008 |
| BA-4 | 209.13 | 3220-0158 |
| BA-5 | 209.8 345.4(c) | 3220-0008 |
| DC-1 | 345.5, 345.7 | 3220-0012 |
| DC-2 | 209.10 | 3220-0014 |
| DC-2a | 209.10 | 3220-0014 |
| ES-1a | 325.13 | 3220-0057 |
| ES-2 | 325.13 | 3220-0057 |
| ES-20a | 325.13 | 3220-0057 |
| ES-20b | 325.13 | 3220-0057 |
| ES-20c | 325.13 | 3220-0057 |
| ES-21 | 325.13 | 3220-0057 |
| ES-21c | 325.13 | 3220-0057 |
| ES-22 | 325.13 | 3220-0057 |
| G-3EMP | | 3220-0038 |
| G-19 | | 3220-0073 |
| G-45 | | 3220-0155 |
| G-86 | 210.7(b) | 3220-0003 |
| G-88 | 216.9, 216.21 | 3220-0016 |
| G-88a | 209.5 | 3220-0005 |
| G-88p | 209.2 | 3220-0089 |
| G-99a | 266.12 | 3220-0151 |
| G-99c | 266.12 | 3220-0151 |
| G-118 | 219.24 | 3220-0040 |
| G-124 | 219.16 | 3220-0021 |
| G-124a | 219.16 | 3220-0021 |
| G-131 | 234.61 | 3220-0031 |
| G-134 | 219.26, 219.31 | 3220-0099 |
| G-204 | 219.64(c) | 3220-0002 |
| G-208 | | 3220-0136 |
| G-209 | | 3220-0154 |
| G-214 | | 3220-0002 |
| G-237 | 219.18 | 3220-0021 |
| G-238 | 219.18 | 3220-0021 |
| G-238a | 219.18 | 3220-0021 |
| G-250 | | 3220-0038 |
| G-251 | | 3220-0141 |
| G-254 | | 3220-0073 |
| G-256 | 219.11 | 3220-0106 |
| G-273 | 219.12 | 3220-0077 |
| G-273a | 219.34 234.13 | 3220-0031 |
| G-315 | 219.27 | 3220-0123 |
| G-315a | 219.27 | 3220-0123 |
| G-318 | | 3220-0083 |
| G-319 | | 3220-0083 |
| G-320 | 219.27 | 3220-0083 |
| G-346 | | 3220-0140 |
| G-423 | | 3220-0127 |
| G-476c | 216.31 | 3220-0030 |
| G-478 | 266.12 | 3220-0052 |
| G-718 | | 3220-0098 |
| G-740B | | 3220-0131 |
| G-740s | | 3220-0131 |
| G-790 | | 3220-0100 |
| G-791 | | 3220-0100 |
| GL-99 | | 3220-0156 |
| HA-1 | 260.5(b) 260.9(b) | 3220-0007 |
| HA-4 | 320.12, 320.39 | 3220-0020 |
| HCFA-1500 | | 3220-0131 |
| ID-4k | | 3220-0153 |
| ID-4L | | 3220-0153 |
| ID-5i | 322.4 | 3220-0049 |
| ID-5r(SUP) | 322.4 | 3220-0049 |
| ID-7h | 335.103 | 3220-0045 |
| ID-11a | 335.104(c) | 3220-0039 |
| ID-28a(1) | | 3220-0055 |
| ID-30k(1) | 341.4 | 3220-0036 |
| RB-5 | 266.12 | 3220-0052 |
| RL-11b | | 3220-0038 |
| RL-11d | | 3220-0038 |
| RL-12/ID-31a | 335.103 | 3220-0124 |
| RL-94-F | 217.10 | 3220-0032 |
| RRB-1001 | | 3220-0145 |
| RRB-W4-P | | 3220-0149 |
| SI-1a | 335.102 | 3220-0039 |
| SI-1b | 335.103 | 3220-0039 |

TABLE 1A.—RAILROAD RETIREMENT BOARD APPLICATION AND RELATED FORMS—Continued

| Retirement Board Form No | 20 CFR (unless otherwise noted) Part, Section or Subsection Where Form is Identified or Described | Current OMB Control No. |
|---|---|---|
| SI-1c | 341.4 | [illegible] |
| SI-2 | 335.202 | [illegible] |
| SI-3 | 335.104(b) | [illegible] |
| SI-5 | 341.4 | [illegible] |
| SI-7 | 335.103 | 3220-0045 |
| SI-10 | 335.102 | [illegible] |
| SI-62 | | [illegible] |
| UI-1(ES)-1 | 325.13 | [illegible] |
| UI-1e | 330.4 | 3220-0097 |
| UI-1f | 330.4 | [illegible] |
| UI-1g | 330.4 | 3220-0097 |
| UI-3 | 325.12(b) | 3220-0022 |
| UI-9 | 325.13; 335.102 | 3220-0025 |
| UI-13 | | [illegible] |
| UI-23 | 325.13; 335.102 | 3220-0025 |
| UI-35 | 325.13 | 3220-0057 |
| UI-41 | | 3220-0070 |
| UI-41A | | 3220-0070 |
| UI-44 | | 3220-0072 |
| UI-45 | | [illegible] |
| UI-48 | 322.4 | 3220-0049 |
| UI-54 | 322.4 | [illegible] |
| UI-62 | | 3220-0074 |
| UI-63 | | 3220-0056 |

TABLE 1B.—OTHER RAILROAD RETIREMENT BOARD INFORMATION COLLECTION ACTIVITIES REFERENCED BY PERTINENT CFR SECTION AND OMB CONTROL NUMBER

| [illegible] Information Collection | 20 CFR (unless otherwise noted) part, section or [illegible] form is identified or described | Current OMB Control No. |
|---|---|---|
| Disclosure of Business Information Under FOIA | 200.3 | 3220-0150 |
| Gross Earnings Report | 209.12 | 3220-0132 |
| Procurement Request | | 3220-0139 |
| Railroad Job Vacancies | | 3220-0122 |
| Railroad Employer 5 Year Recordkeeping Requirement. | | 3220-0008 |

(c) Public reporting forms submitted to fewer than ten individuals annually and, consequently, not required to display OMB control numbers.

(1) This paragraph collects and displays the public reporting forms of the Railroad Retirement Board which are exempt from displaying Office Management and Budget (OMB) control numbers under the Paperwork Reduction Act. The Board intends that this paragraph complies with the requirements of section 6(c) of Chapter 35 of Title 44 of the United States Code which provide that those information collection requests that:

(i) Require the public to respond under penalty of law or as a condition of obtaining a benefit and

(ii) Are submitted to fewer than ten persons annually must contain a statement informing the public that they are exempt from OMB review. As a result of being exempt from such review, these information collections are also exempt from having to display a control number. The Board further intends that this list be a supplement to, rather than a substitution for, the statement of exemption that appears on the form.

(2) Display.

**Table 2—Public Use Forms Exempt From Displaying OMB Control Numbers**

| | *20 CFR Part, section or subsection where form is identified or described* |
|---|---|
| Railroad [illegible] Retirement Board Form Number: | |
| AA-1b[illegible] | 217.5 |
| AA-2P[U] | 210.7 |
| DC-3[illegible] | 345.13 |
| ERR-8[illegible] | [illegible] |
| G-88r[illegible] | [illegible] |

## Subchapter B—[Amended]

II. Subchapter B of Chapter II is amended as follows:

a. The authority citation for Part 209 continues to read as follows:

**Authority:** Secs. 7(b) (5) and (6), Pub. L. 93-445, 88 Stat. 1339, 1340 (45 U.S.C. 231f(b) (5) and (6)); sec. 9, Pub. L. 93-445, 88 Stat. 1343 (45 U.S.C. 231(h); sec. 13(a), Pub. L. 93-445, 88 Stat. 1345 (45 U.S.C. 2311).

b. The authority citation for Part 210 continues to read as follows:

**Authority:** Sec. 1 (d), (e) and (f), Pub. L. 93-445, 88 Stat. 1307 and 1308 (45 U.S.C. 231 (d), (e) and (f)); sec. 3(i), Pub. L. 93-445, 88 Stat. 1325 and 1326 (45 U.S.C. 231(i)); sec. 7(b)(5), Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

c. The authority citation for Part 216 continues to read as follows:

**Authority:** Sec. 2, Pub. L. 93-445, 88 Stat. 1312-1319 (45 U.S.C. 231a), unless otherwise noted. Subpart J also issued under sec. 1, Pub. L. 93-445, 88 Stat. 1311 (45 U.S.C. 231). Sec. 7, Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f).

d. The authority citation for Part 217 continues to read as follows:

**Authority:** Sec. 5, Pub. L. 93-445, 88 Stat. 1332 (45 U.S.C. 231d), sec. 7, Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f).

e. The authority citation for Part 230 continues to read as follows:

**Authority:** Secs. 2, 10, 50 Stat. 309, as amended, 314, as amended; 45 U.S.C. 228b, 228j.

f. The authority citation for Part 234 continues to read as follows:

**Authority:** 45 U.S.C. 231f.

g. The authority citation for Part 260 continues to read as follows:

**Authority:** Sec. 7(b)(5), Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)); sec. 8, Pub. L. 93-445, 88 Stat. 1341 (45 U.S.C. 231g); sec. 5(f), Pub. L. 75-722, 52 Stat. 1100 (45 U.S.C. 355(f)).

h. The authority citation for Part 266 continues to read as follows:

**Authority:** Sec. 10, 50 Stat. 314, as amended, sec. 19, 56 Stat. 207; 45 U.S.C. 228j, 228s.

i. The authority citation for Part 320 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362, unless otherwise noted.

j. The authority citation for Part 322 continues to read as follows:

**Authority:** 45 U.S.C. 3621.

k. The authority citation for Part 325 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362.

l. The authority citation for Part 330 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362.

m. The authority citation for Part 335 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended, secs. 1, 2, 5, 52 Stat. 1094, 1096, 1099, as amended; 45 U.S.C. 362, 351, 352, 355.

n. The authority citation for Part 341 continues to read as follows:

**Authority:** Sec. 323, Pub. L. 79-572, 60 Stat. 740, 741; 45 U.S.C. 362(o).

o. The authority citation for Part 345 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362. Interpret or apply sec. 8, 52 Stat. 1102, as amended; 45 U.S.C. 358, unless otherwise noted.

## PART 209—[AMENDED]

1. Section 209.2 is amended by adding the following language after the last sentence in the section:

**§ 209.2 [Amended]**

* * * * * *

(Approved by the Office of Management and Budget under control number 3220-0089)

## PART 210—[AMENDED]

2. Section 210.7 is amended by adding the following language after the last sentence in the section:

**§ 210.7 [Amended]**

* * * * * *

(Approved by the Office of Management and Budget under control numbers 3220-0003 and 3220-0008)

## PART 216—[AMENDED]

3. Section 216.7 is amended by adding the following language after the last sentence in the section:

**§ 216.7 [Amended]**

* * * * * *

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 3220–0002.)

4. Section 216.9 is amended by adding the following language after the last sentence in the section:

**§ 216.9 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0016.)

5. Section 216.21 is amended by adding the following language after the last sentence in the section:

**§ 216.21 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0016 and 3220–0042)

6. Section 216.31 is amended by adding the following language after the last sentence in the section:

**§ 216.31 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0030)

7. Section 216.47 is amended by adding the following language after the last sentence in the section:

**§ 216.47 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0030)

8. Section 216.71 is amended by adding the following language after the last sentence in the section:

**§ 216.71 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0030)

## PART 217—[AMENDED]

9. Section 217.3 is amended by adding the following language after the last sentence in the section:

**§ 217.3 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0030, 3220–0031 and 3220–0042)

10. Section 217.5 is amended by adding the following language after the last sentence in the section:

**§ 217.5 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0002)

11. Section 217.10 is amended by adding the following language after the last sentence in the section:

**§ 217.10 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0031 and 3220–0032)

## PART 230—[AMENDED]

12. Section 230.3 is amended by adding the following language after the last sentence in the section:

**§ 230.3 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0073)

## PART 234—[AMENDED]

13. Section 234.10 is amended by adding the following language after the last sentence in the section:

**§ 234.10 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0031)

14. Section 234.30 is amended by revising the following language appearing after the last sentence in the section:

**§ 234.30 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0031 and 3220–0032 and 3220–0042)

## PART 260—[AMENDED]

15. Section 260.5 is amended by adding the following language after the last sentence in the section:

**§ 260.5 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0007.)

16. Section 260.9 is amended by adding the following language after the last sentence in the section:

**§ 260.9 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0007.)

## PART 266—[AMENDED]

17. Section 266.12 is amended by revising the OMB control number statement which appears at the conclusion of this section as follows:

**§ 266.12 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0052 and 3220–0151)

## PART 320—[AMENDED]

18. Section 320.39 is amended by adding the following language after the last sentence in the section:

**§ 320.39 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0020)

## PART 322—[AMENDED]

19. Section 322.4 is amended by adding the following language after the last sentence in the section:

**§ 322.4 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0049)

## PART 325—[AMENDED]

20. Section 325.12 is amended by adding the following language after the last sentence in the section:

**§ 325.12 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0022.)

21. Section 325.13 is amended by adding the following language after the last sentence in the section:

**§ 325.13 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0022, 3220–0025 and 3220–0057)

## PART 330—[AMENDED]

22. Section 330.4 is amended by adding the following language after the last sentence in the section:

**§ 330.4 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0097)

## PART 335—[AMENDED]

23. Section 335.102 is amended by adding the following language after the last sentence in the section:

**§ 335.102 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0025, 3220–0034 and 3220–0039)

24. Section 335.103 is amended by adding the following language after the last sentence in the section:

**§ 335.103 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0039, 3220–0045 and 3220–0124)

25. Section 335.104 is amended by adding the following language after the last sentence in the section:

**§ 335.104 [Amended]**

* * * * *

(The information collection requirements contained in paragraphs (b) and (c) were approved by the Office of Management and Budget under control number 3220–0039.)

26. Section 335.202 is amended by adding the following language after the last sentence in the section:

**§ 335.202 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0039)

## PART 341—[AMENDED]

27. Section 341.4 is amended by adding the following language after the last sentence in the section:

**§ 341.4 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0036)

## PART 345—[AMENDED]

28. Section 345.4 is amended by adding the following language after the last sentence in the section:

**§ 345.4 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0008)

29. Section 345.5 is amended by adding the following language after the last sentence in the section:

**§ 345.5 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0012)

30. Section 345.6 is amended by adding the following language after the last sentence in the section:

**§ 345.6 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0012)

31. Section 345.8 is amended by adding the following language after the last sentence in the section:

**§ 345.8 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0012)

Dated: March 27, 1987.

By Authority of the Board.

For the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 87–7359 Filed 4–3–87; 8:45 am]

BILLING CODE 7905–01–M

# Reader Aids

Federal Register

Vol. 52, No. 65

Monday, April 6, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**5 CFR**

1201.....10875

**7 CFR**

301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728
910.....10729
1097.....10729
1137.....10730
1468.....10731
1472.....10731
1475.....10725

**Proposed Rules:**

400.....10764
945.....10893
994.....10984
1955.....10577
1965.....10577

**8 CFR**

78.....10554

**Proposed Rules:**

92.....10765
317.....10766
319.....10766

**10 CFR**

**Proposed Rules:**

50.....10771

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557

**14 CFR**

39.....10558, 10735, 10736
71.....10559
73.....10559, 10560
95.....10737
1215.....10880

**Proposed Rules:**

39.....10581
71.....10582

**15 CFR**

371.....10741

**Proposed Rules:**

368.....10771

**18 CFR**

271.....10741
381.....10366

**Proposed Rules:**

4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970

**Proposed Rules:**

111.....10774

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010

**Proposed Rules:**

200.....10384
615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883
184.....10884
193.....10561, 10562
510.....10668
520.....10668
522.....10668
524.....10668, 10886
529.....10668
561.....10562
573.....10887

**24 CFR**

**Proposed Rules:**

905.....10668
968.....10668

**26 CFR**

1.....10368, 10741, 10742
51.....10368
54.....10563
602.....10368, 10563, 10742

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

| Title | Price | Revision Date |
|---|---|---|
| 1, 2 (2 Reserved) | $9.00 | Jan. 1, 1987 |
| 3 (1985 Compilation and Parts 100 and 101) | 14.00 | [1] Jan. 1, 1986 |
| 4 | 14.00 | Jan. 1, 1987 |
| **5 Parts:** | | |
| 1–1199 | 18.00 | Jan. 1, 1986 |
| 1200–End, 6 (6 Reserved) | 6.50 | Jan. 1, 1986 |
| **7 Parts:** | | |
| 0–45 | 24.00 | Jan. 1, 1986 |
| *46–51 | 16.00 | Jan. 1, 1987 |
| 52 | 18.00 | Jan. 1, 1986 |
| 53–209 | 18.00 | Jan. 1, 1987 |
| 210–299 | 21.00 | Jan. 1, 1986 |
| 300–399 | 10.00 | Jan. 1, 1987 |
| 400–699 | 19.00 | Jan. 1, 1986 |
| 700–899 | 17.00 | Jan. 1, 1986 |
| 900–999 | 20.00 | Jan. 1, 1986 |
| *1000–1059 | 15.00 | Jan. 1, 1987 |
| 1060–1119 | 13.00 | Jan. 1, 1987 |
| 1120–1199 | 8.50 | Jan. 1, 1986 |
| 1200–1499 | 13.00 | Jan. 1, 1987 |
| 1500–1899 | 9.50 | Jan. 1, 1987 |
| 1900–1944 | 23.00 | Jan. 1, 1986 |
| 1945–End | 23.00 | Jan. 1, 1986 |
| 8 | 9.50 | Jan. 1, 1987 |
| **9 Parts:** | | |
| 1–199 | 14.00 | Jan. 1, 1986 |
| 200–End | 14.00 | Jan. 1, 1986 |
| **10 Parts:** | | |
| 0–199 | 22.00 | Jan. 1, 1986 |
| 200–399 | 13.00 | Jan. 1, 1986 |
| 400–499 | 14.00 | Jan. 1, 1987 |
| 500–End | 23.00 | Jan. 1, 1986 |
| 11 | 7.00 | Jan. 1, 1986 |
| **12 Parts:** | | |
| 1–199 | 11.00 | Jan. 1, 1987 |
| 200–299 | 22.00 | Jan. 1, 1986 |
| 300–499 | 13.00 | Jan. 1, 1987 |
| 500–End | 26.00 | Jan. 1, 1986 |
| *13 | 19.00 | Jan. 1, 1987 |
| **14 Parts:** | | |
| 1–59 | 20.00 | Jan. 1, 1986 |
| 60–139 | 19.00 | Jan. 1, 1986 |
| 140–199 | 7.50 | Jan. 1, 1986 |
| 200–1199 | 14.00 | Jan. 1, 1986 |
| *1200–End | 11.00 | Jan. 1, 1987 |
| **15 Parts:** | | |
| 0–299 | 10.00 | Jan. 1, 1987 |
| 300–399 | 20.00 | Jan. 1, 1986 |
| 400–End | 14.00 | Jan. 1, 1987 |

| Title | Price | Revision Date |
|---|---|---|
| **16 Parts:** | | |
| *0–149 | 12.00 | Jan. 1, 1987 |
| 150–999 | 10.00 | Jan. 1, 1986 |
| 1000–End | 19.00 | Jan. 1, 1987 |
| **17 Parts:** | | |
| 1–239 | 26.00 | Apr. 1, 1986 |
| 240–End | 19.00 | Apr. 1, 1986 |
| **18 Parts:** | | |
| 1–149 | 15.00 | Apr. 1, 1986 |
| 150–399 | 25.00 | Apr. 1, 1986 |
| 400–End | 6.50 | Apr. 1, 1986 |
| 19 | 29.00 | Apr. 1, 1986 |
| **20 Parts:** | | |
| 1–399 | 10.00 | Apr. 1, 1986 |
| 400–499 | 22.00 | Apr. 1, 1986 |
| 500–End | 23.00 | Apr. 1, 1986 |
| **21 Parts:** | | |
| 1–99 | 12.00 | Apr. 1, 1986 |
| 100–169 | 14.00 | Apr. 1, 1986 |
| 170–199 | 16.00 | Apr. 1, 1986 |
| 200–299 | 6.00 | Apr. 1, 1986 |
| 300–499 | 25.00 | Apr. 1, 1986 |
| 500–599 | 21.00 | Apr. 1, 1986 |
| 600–799 | 7.50 | Apr. 1, 1986 |
| 800–1299 | 13.00 | Apr. 1, 1986 |
| 1300–End | 6.50 | Apr. 1, 1986 |
| 22 | 28.00 | Apr. 1, 1986 |
| 23 | 17.00 | Apr. 1, 1986 |
| **24 Parts:** | | |
| 0–199 | 15.00 | Apr. 1, 1986 |
| 200–499 | 24.00 | Apr. 1, 1986 |
| 500–699 | 8.50 | Apr. 1, 1986 |
| 700–1699 | 17.00 | Apr. 1, 1986 |
| 1700–End | 12.00 | Apr. 1, 1986 |
| 25 | 24.00 | Apr. 1, 1986 |
| **26 Parts:** | | |
| §§ 1.0–1.169 | 29.00 | Apr. 1, 1986 |
| §§ 1.170–1.300 | 16.00 | Apr. 1, 1986 |
| §§ 1.301–1.400 | 13.00 | Apr. 1, 1986 |
| §§ 1.401–1.500 | 20.00 | Apr. 1, 1986 |
| §§ 1.501–1.640 | 15.00 | Apr. 1, 1986 |
| §§ 1.641–1.850 | 16.00 | Apr. 1, 1986 |
| §§ 1.851–1.1200 | 29.00 | Apr. 1, 1986 |
| §§ 1.1201–End | 29.00 | Apr. 1, 1986 |
| 2–29 | 19.00 | Apr. 1, 1986 |
| 30–39 | 13.00 | Apr. 1, 1986 |
| 40–299 | 25.00 | Apr. 1, 1986 |
| 300–499 | 14.00 | Apr. 1, 1986 |
| 500–599 | 8.00 | [2] Apr. 1, 1980 |
| 600–End | 4.75 | Apr. 1, 1986 |
| **27 Parts:** | | |
| 1–199 | 20.00 | Apr. 1, 1986 |
| 200–End | 14.00 | Apr. 1, 1986 |
| 28 | 21.00 | July 1, 1986 |
| **29 Parts:** | | |
| 0–99 | 16.00 | July 1, 1986 |
| 100–499 | 7.00 | July 1, 1986 |
| 500–899 | 24.00 | July 1, 1986 |
| 900–1899 | 9.00 | July 1, 1986 |
| 1900–1910 | 27.00 | July 1, 1986 |
| 1911–1919 | 5.50 | [3] July 1, 1984 |
| 1920–End | 29.00 | July 1, 1986 |
| **30 Parts:** | | |
| 0–199 | 16.00 | [4] July 1, 1985 |
| 200–699 | 8.50 | July 1, 1986 |
| 700–End | 17.00 | July 1, 1986 |
| **31 Parts:** | | |
| 0–199 | 11.00 | July 1, 1986 |
| 200–End | 16.00 | July 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| **32 Parts:** | | |
| 1–39, Vol. I | 15.00 | [5] July 1, 1984 |
| 1–39, Vol. II | 19.00 | [5] July 1, 1984 |
| 1–39, Vol. III | 18.00 | [5] July 1, 1984 |
| 1–189 | 17.00 | July 1, 1986 |
| 190–399 | 23.00 | July 1, 1986 |
| 400–629 | 21.00 | July 1, 1986 |
| 630–699 | 13.00 | July 1, 1986 |
| 700–799 | 15.00 | July 1, 1986 |
| 800–End | 16.00 | July 1, 1986 |
| **33 Parts:** | | |
| 1–199 | 27.00 | July 1, 1986 |
| 200–End | 18.00 | July 1, 1986 |
| **34 Parts:** | | |
| 1–299 | 20.00 | July 1, 1986 |
| 300–399 | 11.00 | July 1, 1986 |
| 400–End | 25.00 | July 1, 1986 |
| 35 | 9.50 | July 1, 1986 |
| **36 Parts:** | | |
| 1–199 | 12.00 | July 1, 1986 |
| 200–End | 19.00 | July 1, 1986 |
| 37 | 12.00 | July 1, 1986 |
| **38 Parts:** | | |
| 0–17 | 21.00 | July 1, 1986 |
| 18–End | 15.00 | July 1, 1986 |
| 39 | 12.00 | July 1, 1986 |
| **40 Parts:** | | |
| 1–51 | 21.00 | July 1, 1986 |
| 52 | 27.00 | July 1, 1986 |
| 53–60 | 23.00 | July 1, 1986 |
| 61–80 | 10.00 | July 1, 1986 |
| 81–99 | 25.00 | July 1, 1986 |
| 100–149 | 23.00 | July 1, 1986 |
| 150–189 | 21.00 | July 1, 1986 |
| 190–399 | 27.00 | July 1, 1986 |
| 400–424 | 22.00 | July 1, 1986 |
| 425–699 | 24.00 | July 1, 1986 |
| 700–End | 24.00 | July 1, 1986 |
| **41 Chapters:** | | |
| 1, 1–1 to 1–10 | 13.00 | [6] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | 13.00 | [6] July 1, 1984 |
| 3–6 | 14.00 | [6] July 1, 1984 |
| 7 | 6.00 | [6] July 1, 1984 |
| 8 | 4.50 | [6] July 1, 1984 |
| 9 | 13.00 | [6] July 1, 1984 |
| 10–17 | 9.50 | [6] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | 13.00 | [6] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | 13.00 | [6] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | 13.00 | [6] July 1, 1984 |
| 19–100 | 13.00 | [6] July 1, 1984 |
| 1–100 | 9.50 | July 1, 1986 |
| 101 | 23.00 | July 1, 1986 |
| 102–200 | 12.00 | July 1, 1986 |
| 201–End | 7.50 | July 1, 1986 |
| **42 Parts:** | | |
| 1–60 | 15.00 | Oct. 1, 1986 |
| 61–399 | 10.00 | Oct. 1, 1986 |
| 400–429 | 20.00 | Oct. 1, 1986 |
| 430–End | 15.00 | Oct. 1, 1986 |
| **43 Parts:** | | |
| 1–999 | 14.00 | Oct. 1, 1986 |
| 1000–3999 | 24.00 | Oct. 1, 1986 |
| 4000–End | 11.00 | Oct. 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| 44 | 17.00 | Oct. 1, 1986 |
| **45 Parts:** | | |
| 1–199 | 13.00 | Oct. 1, 1986 |
| 200–499 | 9.00 | Oct. 1, 1986 |
| 500–1199 | 19.00 | Oct. 1, 1986 |
| 1200–End | 13.00 | Oct. 1, 1986 |
| **46 Parts:** | | |
| 1–40 | 13.00 | Oct. 1, 1986 |
| 41–69 | 13.00 | Oct. 1, 1986 |
| 70–89 | 7.00 | Oct. 1, 1986 |
| 90–139 | 11.00 | Oct. 1, 1986 |
| 140–155 | 8.50 | [7] Oct. 1, 1985 |
| 156–165 | 14.00 | Oct. 1, 1986 |
| 166–199 | 13.00 | Oct. 1, 1986 |
| 200–499 | 19.00 | Oct. 1, 1986 |
| 500–End | 9.50 | Oct. 1, 1986 |
| **47 Parts:** | | |
| 0–19 | 17.00 | Oct. 1, 1986 |
| 20–39 | 18.00 | Oct. 1, 1986 |
| 40–69 | 11.00 | Oct. 1, 1986 |
| 70–79 | 17.00 | Oct. 1, 1986 |
| 80–End | 20.00 | Oct. 1, 1986 |
| **48 Chapters:** | | |
| 1 (Parts 1–51) | 21.00 | Oct. 1, 1986 |
| 1 (Parts 52–99) | 16.00 | Oct. 1, 1986 |
| 2 | 15.00 | Oct. 1, 1985 |
| 3–6 | 17.00 | Oct. 1, 1986 |
| 7–14 | 23.00 | Oct. 1, 1986 |
| 15–End | 22.00 | Oct. 1, 1986 |
| **49 Parts:** | | |
| 1–99 | 10.00 | Oct. 1, 1986 |
| 100–177 | 24.00 | Oct. 1, 1986 |
| 178–199 | 19.00 | Oct. 1, 1986 |
| 200–399 | 17.00 | Oct. 1, 1986 |
| 400–999 | 21.00 | Oct. 1, 1986 |
| 1000–1199 | 17.00 | Oct. 1, 1986 |
| 1200–End | 17.00 | Oct. 1, 1986 |
| **50 Parts:** | | |
| 1–199 | 15.00 | Oct. 1, 1986 |
| 200–End | 25.00 | Oct. 1, 1986 |
| CFR Index and Findings Aids | 27.00 | Jan. 1, 1987 |
| Complete 1987 CFR set | 595.00 | 1987 |
| Microfiche CFR Edition: | | |
| Complete set (one-time mailing) | 155.00 | 1983 |
| Complete set (one-time mailing) | 125.00 | 1984 |
| Complete set (one-time mailing) | 115.00 | 1985 |
| Subscription (mailed as issued) | 185.00 | 1986 |
| Subscription (mailed as issued) | 185.00 | 1987 |
| Individual copies | 3.75 | 1987 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

**Proposed Rules:**
1 ..... 10774
54 ..... 10583
602 ..... 10583, 10774

**28 CFR**
545 ..... 10528
**Proposed Rules:**
549 ..... 10531

**29 CFR**
2644 ..... 10368
**Proposed Rules:**
1625 ..... 10584
1910 ..... 10586

**30 CFR**
914 ..... 10369, 10373
**Proposed Rules:**
733 ..... 10898

**32 CFR**
706 ..... 10374, 10748, 10749

**33 CFR**
**Proposed Rules:**
100 ..... 10593, 10594, 10905, 10906

**36 CFR**
1 ..... 10670
2 ..... 10670
4 ..... 10670
7 ..... 10670
34 ..... 10670
228 ..... 10564
**Proposed Rules:**
9 ..... 10866

**38 CFR**
1 ..... 10888
**Proposed Rules:**
17 ..... 10907

**39 CFR**
10 ..... 10375
111 ..... 10749

**40 CFR**
52 ..... 10751
60 ..... 10852
110 ..... 10712
180 ..... 10375, 10376, 10565, 10567
271 ..... 10568
761 ..... 10688
799 ..... 10377, 10752
**Proposed Rules:**
52 ..... 10596
141 ..... 10972
142 ..... 10972
143 ..... 10972

**41 CFR**
201-32 ..... 10379

**44 CFR**
64 ..... 10753
**Proposed Rules:**
5 ..... 10385
6 ..... 10385

**45 CFR**
2201 ..... 10870

**46 CFR**
**Proposed Rules:**
154 ..... 10598
502 ..... 10912

**47 CFR**
2 ..... 10568
22 ..... 10571
73 ..... 10381, 10382, 10568, 10757
74 ..... 10568
78 ..... 10568
**Proposed Rules:**
90 ..... 10389

**48 CFR**
**Proposed Rules:**
509 ..... 10913

**49 CFR**
219 ..... 10575
1207 ..... 10382
1249 ..... 10382
**Proposed Rules:**
571 ..... 10775
1312 ..... 10913

**50 CFR**
17 ..... 10890
301 ..... 10759
611 ..... 10761
642 ..... 10762
652 ..... 10763
672 ..... 10761
675 ..... 10761
**Proposed Rules:**
640 ..... 10780
651 ..... 10781

## List of Public Laws

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 2, 1987

L
2
S S
5
P
87
M I

# New edition now available....

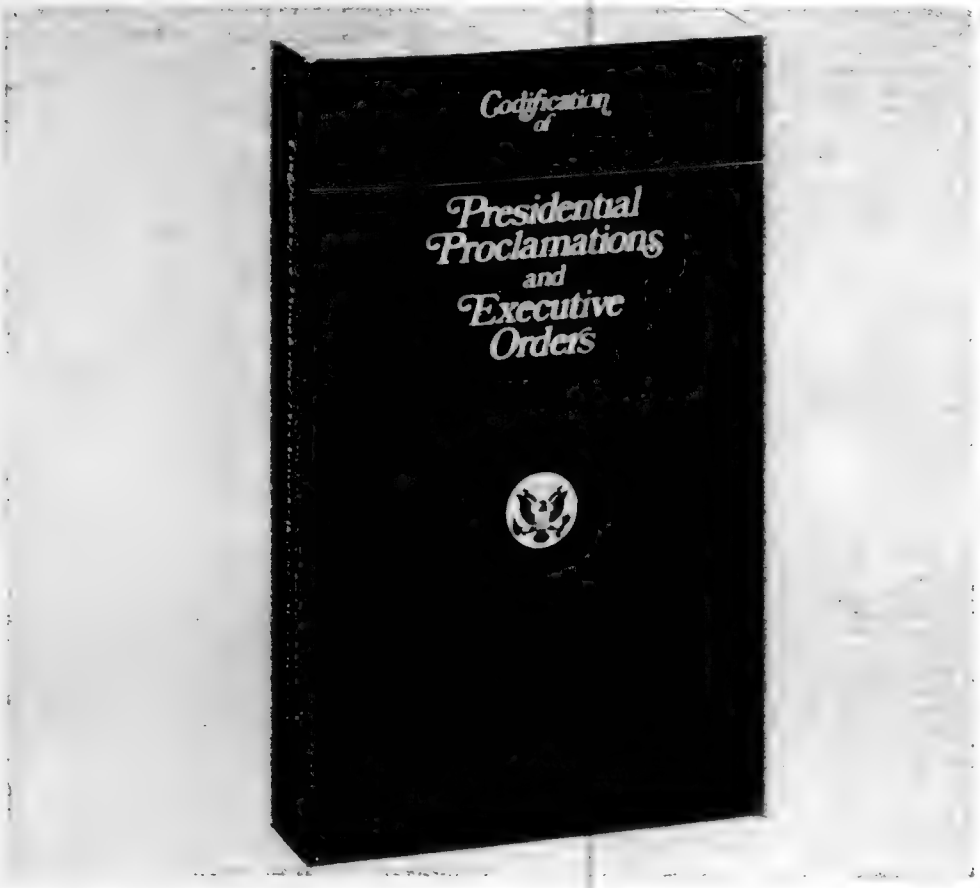


For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20,1985, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961-1985 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

MAIL ORDER FORM To:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

*Enclosed is $* _____ ☐ *check,* ☐ *money order, or charge to my*

*Deposit Account No.* ☐☐☐☐☐☐☐–☐ *Order No.* _____

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00a.m. to 4:00p.m. eastern time, Monday-Friday (except holidays).

master charge | VISA

Credit Card Orders Only

Total charges $ _____. Fill in the boxes below:

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

★6105

Expiration Date Month/Year ☐☐☐☐

Master Charge Interbank No. ☐☐☐☐

*Please send me* _____ *copies of the* ***Codification of Presidential Proclamations and Executive Orders*** *at $20.00 per copy. Stock No. 022-022-00110-0*

NAME—FIRST, LAST

COMPANY NAME OR ADDITIONAL ADDRESS LINE

STREET ADDRESS

CITY | STATE | ZIP CODE

(or) COUNTRY

**PLEASE PRINT OR TYPE**

(Revised 10-15-85)

4-7-87
Vol. 52 No. 66

# federal register

Tuesday
April 7, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

ɔND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
2
SS
6
P
87
MI

4-7-87
Vol. 52 No. 66
Pages 11019-11184

# Federal Register

Tuesday
April 7, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 66

Tuesday, April 7, 1987

**Agency for International Development**
RULES
Acquisition regulations, 11074

**Agriculture Department**
*See* Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food and Nutrition Service; Forest Service; Soil Conservation Service

**Alcohol, Tobacco and Firearms Bureau**
NOTICES
Organization, functions, and authority delegations:
Associate Director (Compliance Operations), 11153

**Animal and Plant Health Inspection Service**
RULES
Exportation and importation of animals and animal products:
Cattle from Canada—
Tuberculosis test requirements, 11022
Viruses, serums, toxins, etc.:
Virus Serum-Toxin Act; licenses and production requirements for biological products, 11024

**Army Department**
*See also* Engineers Corps
NOTICES
Meetings:
Science Board, 11102, 11103
(4 documents)

**Child Support Enforcement Office**
RULES
Chapter heading revision (**Editorial Note:** For a document on this subject, see entry under Family Support Administration)

**Commerce Department**
*See* National Oceanic and Atmospheric Administration

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Turkey, 11100
Export visa requirements; certification, etc.:
Hong Kong, 11099

**Community Services Office**
RULES
Chapter heading revision (**Editorial Note:** For a document on this subject, see entry under Family Support Administration)

**Copyright Royalty Tribunal**
PROPOSED RULES
Phonorecords; mechanical royalty adjustment proceeding, etc., 11096

**Defense Department**
*See also* Army Department; Engineers Corps; Navy Department; Uniformed Services University of the Health Sciences
RULES
Acquisition regulations:
Identification of sources of supply, 11076
NOTICES
Meetings:
Defense Acquisition Regulatory Council, 11101
Science Board task forces, 11102
(2 documents)
Women in Services Advisory Committee, 11101

**Drug Enforcement Administration**
RULES
Schedules of controlled substances:
Nabilone, 11042
PROPOSED RULES
Manufacturers, distributors, and dispensers of controlled substances, registration requirements, etc.:
Time period for registration, 11091
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
1987 aggregate, 11137

**Education Department**
NOTICES
Grants; availability, etc.:
Educational media research, production, distribution, and training and technology, educational media, and material
Funding priorities, 11104
Educational media research, production, distribution, and training program, 11158
Technology, educational media, and materials program, 11104

**Employment and Training Administration**
NOTICES
Adjustment assistance:
Chevron, U.S.A., Inc., 11139
Cooper Industries, 11140
Standard Oil Production Co., 11140
USS Corp., 11141

**Energy Department**
*See* Federal Energy Regulatory Commission

**Engineers Corps**
NOTICES
Environmental statements; availability, etc.:
Cattaraugus Creek, NY, 11103

**Environmental Protection Agency**
NOTICES
Grants; debarments, suspensions, and voluntary exclusions under EPA assistance programs, 11116
Grants; State and local assistance:
Hazardous waste treatment in situ, 11119
Tropospheric trace species; sources, sinks and chemistry (global climate factors), 11119
Pesticide programs:
Dinoseb; final suspension order; applications hearing denied, 11119

Radioactive and hazardous waste, commercial mixed low-level; guidance on definition and identification; jointly developed document with Nuclear Regulatory Commission, 11147

**Executive Office of the President**
*See* Presidential Documents

**Family Assistance Office**
RULES
Chapter heading revision (**Editorial Note:** For a document on this subject, see entry under Family Support Administration)

**Family Support Administration**
RULES
Chapter heading revisions, 11073

**Farm Credit Administration**
PROPOSED RULES
Farm credit system:
Conflict of interests, 11080

**Federal Aviation Administration**
RULES
Airport radar service areas, 11178
Restricted areas, 11033, 11034
(2 documents)
Terminal control areas, 11028
VOR Federal airways, 11032, 11033
(2 documents)
PROPOSED RULES
Airworthiness directives:
Pilatus Britten-Norman, Ltd., 11081
VOR Federal airways, 11082
NOTICES
Airport noise compatibility program:
San Jose International Airport, CA, 11152

**Federal Crop Insurance Corporation**
PROPOSED RULES
Crop insurance regulations:
Prevented planting endorsement (barley, corn, cotton, etc.), 11078

**Federal Deposit Insurance Corporation**
NOTICES
Meetings; Sunshine Act, 11155

**Federal Energy Regulatory Commission**
RULES
Electric utilities (Federal Power Act):
Hydroelectric licenses; information availability to public, etc., 11035
NOTICES
Hydroelectric applications, 11105
Natural gas certificate filings:
Southern Natural Gas Co. et al., 11109
Small power production and cogeneration facilities; qualifying status:
Ketchikan Pulp Co., 11114
Red Lion Corp., 11114
*Applications, hearings, determinations, etc.:*
Florida Gas Transmission Co., 11115
National Cooperative Refinery Association, 11115

**Federal Highway Administration**
PROPOSED RULES
Engineering and traffic operations:
National bridge inspection standards; frequency of inspection and inventory, 11092

**Federal Mine Safety and Health Review Commission**
NOTICES
Meetings; Sunshine Act, 11155

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
Commonwealth Bancshares Corp. et al., 11121
Omnibancorp, 11122

**Fish and Wildlife Service**
RULES
Endangered and threatened species:
Cave crayfish, 11170
Marshall's mussel, etc., 11162
Scrub lupine, 11172

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Ivermectin tablets, 11041
Tylosin, 11040, 11041
(2 documents)
NOTICES
Animal drugs, feeds, and related products:
Dr. MacDonald's Vitamized Feed Co., Inc.; approval withdrawn, 11122
Farm Bureau Services, Inc.; approval withdrawn, 11123
Biological products:
Category IIIB bacterial vaccines and toxoids; hearing, 11123
Medical devices; premarket approval:
BIOCURVE SOFT (methafilcon A) Hydrophilic Contact Lens, etc., 11124

**Food and Nutrition Service**
RULES
Food stamp program:
Employment and training requirements, 11021

**Forest Service**
NOTICES
Land and resource management planning schedules, 11129

**Health and Human Services Department**
*See* Child Support Enforcement Office; Community Services Office; Family Assistance Office; Family Support Administration; Food and Drug Administration; Health Resources and Services Administration; Office of Refugee Resettlement; Public Health Service

**Health Resources and Services Administration**
*See also* Public Health Service
NOTICES
Advisory committees, annual reports; availability, 11125
Meetings; advisory committees:
May, 11125

**Interior Department**
*See* Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

**International Development Cooperation Agency**
*See* Agency for International Development

**Justice Department**
*See also* Drug Enforcement Administration
RULES
Organization, functions, and authority delegations:
Asylum Policy and Review Unit, 11043

**Labor Department**
*See also* Employment and Training Administration; Mine Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 11138

**Land Management Bureau**
NOTICES
Land and resource management planning schedules, 11129
Realty actions; sales, leases, etc.:
Arizona, 11128
Minnesota, 11128
Survey plat filings:
California, 11129
(2 documents)

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
H L & W Coal Co., 11141
Mine Hill Coal Co., 11141
Mt. Vernon Coal Co., 11142
Terco, Inc., 11142
Three X Coal Co., 11143
U.S. Steel Mining Co., Inc., 11143
W & D Coal Co., Inc., 11143
Westmoreland Coal Co., 11144

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
Corpus Christi Oil & Gas Co., 11129

**National Labor Relations Board**
NOTICES
Meetings; Sunshine Act, 11155

**National Oceanic and Atmospheric Administration**
NOTICES
Meetings:
Caribbean Fishery Management Council, 11099

**National Park Service**
NOTICES
National Register of Historic Places:
Pending nominations—
Alaska et al., 11136

**Navy Department**
RULES
Privacy Act; implementation, 11051
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 11104

**Nuclear Regulatory Commission**
RULES
Conflict of interests; security interests ownership and vested pension interests, 11026
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 11147
Meetings; Sunshine Act, 11155
Radioactive and hazardous waste, commercial mixed low-level; guidance on definition and identification; jointly developed document with Environmental Protection Agency, 11147
*Applications, hearings, determinations, etc.:*
Philadelphia Electric Co., 11144

**Office of Refugee Resettlement**
RULES
Chapter heading revision (**Editorial Note:** For a document on this subject, see entry under Family Support Administration)

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
Interstate Commerce Commission Day (Proc. 5624), 11019

**Public Health Service**
*See also* Food and Drug Administration; Health Resources and Services Administration
RULES
Reference biological standards and biological preparations, distribution; user charge, 11072
NOTICES
Grants; availability, etc.:
Minority community health coalition demonstration projects, 11126
Organization, functions, and authority delegations:
Director, Office of Management, 11128
Health Resources and Services Administration, 11128

**Securities and Exchange Commission**
PROPOSED RULES
Securities:
Shareholder communications, facilitation, 11083, 11089
(2 documents)
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 11148
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 11148
Midwest Stock Exchange, Inc., 11148
Philadelphia Stock Exchange, Inc., 11149
*Applications, hearings, determinations, etc.:*
Citicorp, 11148, 11150
(2 documents)

**Soil Conservation Service**
NOTICES
Environmental statements; availability, etc.:
North Fork Edisto River Watershed, SC, 11099

**State Department**
NOTICES
Foreign assistance determinations:
Haiti, 11150
Meetings:
International Radio Consultative Committee, 11151

**Surface Mining Reclamation and Enforcement Office**
RULES
Federal/State cooperative agreements:
Virginia, 11044

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See also* Federal Aviation Administration
NOTICES
Aviation proceedings:
International cargo flexibility level adjustment, 11151
Standard foreign fare level—
Index adjustment factors, 11152
Meetings:
Electronic Tariff Filing System Advisory Committee, 11151

**Treasury Department**
*See* Alcohol, Tobacco and Firearms Bureau

**Uniformed Services University of the Health Sciences**
NOTICES
Meetings; Sunshine Act, 11156

---

**Separate Parts In This Issue**

**Part II**
Department of Education, 11158

**Part III**
Department of the Interior, Fish and Wildlife Service, 11162

**Part IV**
Department of Transportation, Federal Aviation Administration, 11178

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**
**Proclamations:**
5624 ..... 11019

**7 CFR**
272 ..... 11021
273 ..... 11021
**Proposed Rules:**
418 ..... 11078
419 ..... 11078
420 ..... 11078
421 ..... 11078
424 ..... 11078
427 ..... 11078
432 ..... 11078
448 ..... 11078

**9 CFR**
92 ..... 11022
102 ..... 11024
114 ..... 11024

**10 CFR**
0 ..... 11026

**12 CFR**
**Proposed Rules:**
612 ..... 11080

**14 CFR**
71 (5 documents) ..... 11028, 11032–11034
73 (2 documents) ..... 11033, 11034
**Proposed Rules:**
39 ..... 11081
71 ..... 11082

**17 CFR**
**Proposed Rules:**
240 (2 documents) ..... 11083, 11089

**18 CFR**
16 ..... 11035

**21 CFR**
510 (2 documents) ..... 11040, 11041
520 ..... 11041
558 (2 documents) ..... 11040, 11041
1308 ..... 11042
**Proposed Rules:**
1301 ..... 11091

**23 CFR**
**Proposed Rules:**
650 ..... 11092

**28 CFR**
0 ..... 11043

**30 CFR**
946 ..... 11044

**32 CFR**
701 ..... 11051

**37 CFR**
**Proposed Rules:**
307 ..... 11096

**42 CFR**
7 ..... 11072

**45 CFR**
Ch. II ..... 11073
Ch. III ..... 11073
Ch. IV ..... 11073
Ch. X ..... 11073

**48 CFR**
7 ..... 11074
217 ..... 11076
252 ..... 11076

**50 CFR**
17 (3 documents) ..... 11162

Federal Register
Vol. 52, No. 66
Tuesday, April 7, 1987

# Presidential Documents

Title 3—

## The President

Proclamation 5624 of April 3, 1987

## Interstate Commerce Commission Day, 1987

By the President of the United States of America

A Proclamation

As Americans, we can be proud of our unsurpassed surface transportation system and of the free enterprise that made private sector development of that system possible.

For the past 100 years, the Interstate Commerce Commission, the first independent administrative agency, has been responsible for regulatory oversight of our surface transportation system. For a century, the Commission has carried out its missions with dedication and with commitment to a national surface transportation system second to none. The Commission's role in regulating transportation has changed constantly and is changing even now; regulation by government is giving way to regulation by market competition, and both the transportation industry and the consumer are better off as a result.

The Congress, by Senate Joint Resolution 96, has designated April 3, 1987, as "Interstate Commerce Commission Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 3, 1987, as Interstate Commerce Commission Day. I invite the people of the United States to observe that day with appropriate ceremonies and activities to recognize the 100th anniversary of the establishment of the Interstate Commerce Commission.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-7819
Filed 4-6-87; 10:14 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 52, No. 66
Tuesday, April 7, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 272 and 273**

**[Amdt. No. 287]**

## Food Stamp Program; Cure Provision for Employment and Training Requirements and Technical Corrections

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking implements an amendment to the Food Stamp Act of 1977 made by the Food Security Act of 1985, Pub. L. 99–198, Title XV, 99 Stat. 1566, December 23, 1985 which enables an individual or household to reestablish food stamp eligibility if the household member who failed to comply with a work requirement under § 273.7 complies with the requirement that has been violated.

Several minor technical corrections to § 273.7 are also included in this rulemaking.

**DATE:** The provisions of this rulemaking are effective April 7, 1987. An employment and training program shall be implemented in each State, pending FNS approval, by April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Warner, Food and Nutrition Service, Chief, Administration and Design Branch, Family Nutrition Programs, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3383.

**SUPPLEMENTARY INFORMATION:**

### Classification

*Executive Order 12291*

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major.

The effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of the United States-based enterprises with foreign-based enterprises.

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this final action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. Potential and current participants will be affected because they will have to fulfill the work requirements established by State agencies under the guidance set forth in this rulemaking.

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in § 273.7 of this regulation have been approved by the Office of Management and Budget (OMB) under that Act. The OMB approval number for these requirements is 0584–0339.

*Public Comment/Effective Date*

As noted, the provision of this rulemaking related to reestablishment of eligibility was described in the preamble of the October 1, 1986, proposed rulemaking. No comments were received on the subject. Moreover, the provision is required under the amended section 6(d)(1) of the Food Stamp Act and thus is an interpretive rule for which publication for prior public comments is not required under 5 U.S.C. 553. The remaining provisions of this rule are technical corrections having no substantive impact. For these reasons good cause is found under 5 U.S.C. 553 for the publication of this rule without prior public comment and for publication less than 30 days prior to the effective date.

### Background

The Food Security Act of 1985 amended the Food Stamp Act of 1977 to require that no later than April 1, 1987, every State agency shall implement an employment and training program designed by the State agency and approved by the Secretary of Agriculture. Included in the Act is the provision that any period of ineligibility under section 6(d) shall end when the household member who committed the violation complies with the requirement that has been violated.

### Reestablishing Eligibility

On October 1, 1986 the Department published a proposed rulemaking implementing the work related amendments made to the Food Stamp Act of 1977 by the Food Security Act of 1985. In the preamble, 51 FR 35155, the Department stated that as in current regulations, "eligibility may be reestablished if the household member who committed the violation complies with the requirement that has been violated." The preamble of the December 31, 1986 rulemaking 51 FR 47386, which finalized the October 1, 1986 proposal also stated the Department's intent to permit eligibility to be reestablished if the household member who committed the violation complies with the requirement that has been violated. The provision, however, was inadvertently omitted from the regulatory language of that final rule. This rulemaking adds such language to the code of federal regulations.

### Technical Corrections

Section 273.7(b)(2)(i) addresses the procedure to be followed for a person losing work registration exemption status. The last sentence of the paragraph refers to returning a work registration form to the State agency. It

states that if the household fails to return the form the State agency shall issue a notice of adverse action stating that the household is being terminated and why and that the household can aviod termination by returning the form. Because work violations now apply to individuals rather than the entire household, except in cases where the violator is the head of household, the language of this sentence is being changed so that it may apply to either an individual or a household.

Participants who are subject to and complying with work requirements under title IV of the Social Security Act or registered for work as part of the unemployment compensation process are exempt from Food Stamp Program work registration.

Section 273.7(g)(2) of the food stamp regulations addresses the failure of food stamp recipients to comply with comparable WIN or unemployment compensation work requirements. Throughout paragraph (g)(2) there are references to food stamp job search requirements. Since the December 31, 1986 final rulemaking replaced a nationwide job search requirement with employment and training programs, the references to job search are obsolete. Those references are changed in this rulemaking to conform to the new work provisons.

Also in paragraph (g)(2) are references to the entire household being disqualified for noncompliance with a comparable WIN or unemployment compensation work program. The language is herewith changed to conform to the new Congressionally mandated sanctions which apply to the violating individual only, unless that individual is the head of household.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 273*

Administrative practice and procedure, Aliens, Claims, Food Stamp, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2029.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 a new paragraph (g)(86) is added to read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(g) *Implementation.* * * *

(86) *Amendment No. 287.* The provisions of this amendment are effective April 7, 1987.

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.7 the last sentence of paragraph (b)(2)(i) is revised;

**§ 273.7 Work requirements.**

* * * * *

(b) *Exemptions from work registration.* * * *

(2)(i) * * * If the participant fails to return the form, the State agency shall issue a notice of adverse action stating that the participant or, if the individual is the head of household, the household is being terminated and why, but that the termination can be avoided by returning the form.

* * * * *

4. In § 273.7 the words "job search" are removed from introductory paragraph (g)(2) and paragraph (g)(2)(i) and the words "employment and training program" are added in their place; in paragraph (g)(2)(i) the words "or FNS approved employment and training program" are added in the last sentence between the words "registration" and "requirements"; paragraph (g)(2)(ii) is revised; in paragraph (g)(2)(iii) the words "individuals or" are added before the word "households" and the words "individual or" are added before the word "household"; in paragraph (g)(2)(iv) the words "individual or" are added before the word "household".

* * * * *

(g) *Failure to comply* * * *

(2) *Failure to comply with a comparable WIN or unemployment compensation work requirement.* * * *

(ii) If the State determines that the WIN or unemployment compensation requirement is comparable, the individual or household (if the individual who committed the violation is the head of household) shall be disqualified in accordance with the following provisions. The State agency shall provide a notice of adverse action as specified in § 273.13 within 10 days after learning of the household member's noncompliance with the unemployment compensation or WIN requirement. The notice shall comply with the requirements of § 273.7(g)(1). An individual or household shall not be disqualified from participation if the noncomplying member meets one of the work registration exemptions provided in § 273.7(b) other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of that section. Household members who fail to comply with a noncomparable WIN or unemployment compensation requirement shall lose their exemption under § 273.7(b)(1) (iii) and (v), and must register for work if required to do so in § 273.7(a).

* * * * *

5. In § 273.7, a new paragraph (h)(5) is added to read as follows:

* * * * *

(h) *Ending disqualification.* * * *

(5) Refusal to comply with a State agency (or its designee) assignment as part of an FNS approved employment and training program—compliance with the assignment or an alternative assignment by the State agency.

* * * * *

6. In § 273.7, the title of paragraph (o)(6) is amended by removing the word "date" and adding in its place the word "data."

**§ 273.10 [Amended]**

7. In § 273.10, paragraphs (e)(2)(iii)(B)(*8*) and (*9*) are removed.

Dated: April 1, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-7535 Filed 4-6-87; 8:45 am]

BILLING CODE 3410-30-M

---

**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 86-120]**

## Tuberculosis Test Requirements for Cattle From Canada

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning tuberculosis test requirements for importing cattle from Canada (1) by requiring certain cattle to be tested for tuberculosis within 60 days preceding arrival at a port of entry instead of the previous requirement that such cattle be tested within 30 days preceding offer for entry and (2) by removing restrictions imposed upon the importation of certain cattle from "restricted areas" of Canada. This action relieves restrictions without

increasing the risk of the spread of tuberculosis from Canada into the United States. We are further amending the regulations by prohibiting the importation of cattle from a herd in which a tuberculosis reactor has been found. This action is necessary to prevent the introduction of tuberculosis from Canada into the United States. Finally, we are deleting the provisions regarding "range cattle". This is necessary because the above-mentioned amendments result in the deletion of all distinctions between the tuberculosis provisions regarding "range cattle" from Canada and all other types of cattle from Canada.

**EFFECTIVE DATE:** May 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey A. Kryder, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases. Section 92.20 of the regulations contains specific provisions concerning the importation into the United States of cattle from Canada.

A proposed rule was published in the **Federal Register** on October 3, 1986 (51 FR 35368–35370). Our proposal invited the submission of written comments on or before December 2, 1986. No comments were received. Based on the rationale set forth in the proposal, the proposed rule is adopted as a final rule.

### Miscellaneous

Two minor nonsubstantive changes have been made for the purpose of clarity.

### Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United-States based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Extending the tuberculin testing period from 30 to 60 days prior to importation will relieve existing restrictions that make compliance with the regulations easier for persons moving cattle from herds in Canada into the United States. Removal of the provisions for cattle from "restricted areas" will have no impact on the importation of cattle into the United States from Canada since there are no longer any "restricted areas" in Canada. Removal of the provisions for the importation of range cattle from reactor herds will have no impact on the importation of cattle from Canada into the United States, since Canadian regulations prohibit the exportation of such cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

### List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

### § 92.1 [Amended]

2. Paragraphs (k) and (l) of § 92.1 are removed.

3. The remaining definitions in § 92.1 are placed in alphabetical order and the paragraph designations are removed.

4. Section 92.1 is amended by adding, in alphabetical order, the following:

*Tuberculosis-free herd.* A herd which is not known to be infected with bovine tuberculosis (*M. bovis*) and which is certified by the Canadian Government as a tuberculosis-free herd.

*United States.* All of the States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

5. Section 92.20(b) is revised to read as follows:

### § 92.20 Cattle from Canada.

* * * * *

(b) *Tuberculin-test certificates.* (1) Cattle from Canada from a herd in which any cattle have been determined to have tuberculosis shall not be imported into the United States.

(2) Except for cattle prohibited from importation under paragraph (b)(1) of this section, cattle from Canada may be imported into the United States if:

(i) The cattle are imported for slaughter in accordance with § 92.23 of this part; or

(ii) The cattle are accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian Government showing:

(A) That the cattle are from a tuberculosis-free herd; or

(B) The date and place the cattle were last tested for tuberculosis; that the cattle were found negative for tuberculosis on such test; and that such test was performed within 60 days preceding the arrival of the cattle at the port of entry.

* * * * *

6. In § 92.20, paragraph (b), footnote number 10 is removed.

7. In Part 92, footnotes 11, 12, 13, and 13a and the references thereto are redesignated 10, 11, 12, and 13 respectively.

Done in Washington, DC, this 2nd of April 1987.

**J.K. Atwell,**

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87–7676 Filed 4–6–87; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Parts 102 and 114

[Docket No. 86-117]

## Viruses, Serums, Toxins, and Analogous Products; Revision of the Virus-Serum-Toxin Act

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to revise the regulations governing licenses and production requirements for biological products to conform with the recent amendment of the Virus-Serum-Toxin Act. Additionally, this rule reduces restrictions on producers of autogenous biologics, and makes other conforming changes.

Current regulations limit licensure for the purpose of producing autogenous biologics to manufacturers licensed to prepare at least one nonautogenous product. This revision of the regulations provides for licensure to produce autogenous biologics without the necessity of also obtaining a license for a nonautogenous product. Such licensure will be subject to conditions which assure acceptable product control.

Due to a recent change in the regulations, more than one establishment can be involved in the production of a biologic. This amendment provides that only the license number of the establishment which releases the product to market need appear on the product license.

The amendment to the Virus-Serum-Toxin Act provides for the issuance of special or conditional licenses under expedited procedures for products needed to meet emergency conditions, limited market or local situations, or other special circumtances, including production solely for intrastate use under a State-operated program. This revision of the regulations implements this amendment by shortening and simplifying the procedures for licensure.

**EFFECTIVE DATE:** May 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

**SUPPLEMENTARY INFORMATION:** .

### Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subjet to the Paperwork Reduction Act of 1980.

### Executive Order 12291

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

This action will not have a significant effect on the economy and will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will also not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic markets.

### Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. The regulatory amendments will reduce restrictions, remove obsolete language, and make changes to conform to the recent amendment to the Act.

### Background

The Virus-Serum-Toxin Act was amended on December 23, 1985. The amendment requires that, with certain exceptions to be provided by regulation, all manufacturers of veterinary biological products for shipment in or from the United States must be licensed by the Department of Agriculture.

Biologics establishments preparing biological products solely for intrastate shipment or for export are now required by the amendment to be in compliance with the Act and the regulations. However, such establishments often prepare only autogenous biologics. Currently, the regulations in 9 CFR 102.2 provide that establishments preparing autogenous biologics desiring to be licensed under the Act must also be licensed to produce a nonautogenous biological product. One reason for this provision was to assure that licensees preparing autogenous biologics which are not evaluated for potency or efficacy had sufficient expertise to prepare potent, effective products. In amending the Act, the confrees expressed the intent that firms be licensed to produce autogenous biologics without being required to first obtain a license for a nonautogenous product. Since, adequate assurance of expertise may be demonstrated by an establishment through the current system of review of Outlines of Production, frequent inspection of facilities, personnel, and records, and review of reports of production and testing, 9 CFR 102.2 and 102.4(f) are revised to delete the licensing restrictions concerning establishments which produce autogenous biologics. This will have the effect of permitting establishments that produce only autogenous biologics to become licensed.

The current regulations in 9 CFR 102.5(b) provide that the U.S. veterinary biologics establishment number of the establishment in which the product is packaged and labeled and from which the product is released for marketing shall appear on the U.S. veterinary biological product license. A recent revision of 9 CFR 114.3 allowing split manufacture provides for products to be moved to another establishment for further manufacture before being released to market. When more than one establishment is involved in the production of a biological product, no practical purpose is served by requiring the product license to bear the establishment license numbers of all the establishments involved. Therefore, 9 CFR 102.5(b) is amended to require that only the license number of the establishment releasing the product to market needs to appear on the product license.

The Act, as amended, provides that the Secretary may issue special licenses under expedited procedures to ensure availability of biological products to meet emergency conditions, limited market or local situations, or other special circumstances. This revision of the regulations includes provisions for special product licenses to conform to the amendment. Such special licenses shall be referred to as "conditional" licenses.

The regulations in 9 CFR 102.5(e) provide for restrictions to be placed on U.S. veterinary biological product licenses. These restrictions essentially fall into two categories. The first category provides for restriction of the product based on its properties and use. The second category provides for termination of the license at a predetermined time and conditions for reissuance. This revision separates these two categories, placing provisions for licenses with termination dates in a new 9 CFR 102.6. The provisions for issuance of licenses with termination dates provide for conditional licenses issued under shortened procedures to ensure the availability of products needed to meet emergency conditions, limited market or local situations, or other special circumstances.

The shortened procedure may include acceptance of serological response, lowered numbers of host species test animals, or other means of establishing purity and safety, and a reasonable expectation of efficacy without requiring a complete efficacy study and potency test correlated with host animal efficacy. The references in 9 CFR 102.5(b) are revised to reflect the changes in 9 CFR 102.5(e) and the addition of 9 CFR 102.6.

The regulations in 9 CFR 114.1 limit the applicability of Part 114 to products prepared or delivered for shipment interstate. The amendment of the Virus-Serum-Toxin Act removed interstate limitations. Therefore, a conforming change has been made to delete the reference to shipment interstate from 9 CFR 114.1.

**Comments Received**

On Tuesday, July 29, 1986, a notice of proposed rulemaking was published in the **Federal Register** at 51 FR 27048, discussing these revisions and soliciting comments.

Comments were received from two unlicensed manufacturers, three licensed manufacturers, one consultant to biologics manufacturers, and a national trade association which includes among its members the major manufacturers of veterinary biological products.

Three of the commenters agreed with the rule changes as proposed. Other commenters agreed in part, with specific reservations. Two commenters objected to the changes to § 102.2 which would allow for an establishment license to be issued to establishments producing only autogenous products. There were also objections to the proposed amendments of § 102.5 with respect to the establishment license number which must appear on a product license. Concern was also expressed that §§ 102.2 and 114.1, as proposed, do not accurately reflect the requirements of the Act with regard to which products are subject to its provisions and which establishments are required to be licensed.

Those concerned with granting a license to prepare only autogenous products commented about the Agency's ability to exercise sufficient supervision of "autogenous only" licensees, and indicated that the regulations for the production of autogenous products were not restrictive enough (9 CFR 113.98).

In the joint explanatory statement of the conference committee regarding the amendment to the Virus-Serum-Toxin Act, it is stated that "the Conferees expect the Department of Agriculture to establish a program under which companies can be licensed as an establishment and to produce autogenous bacterins without the necessity of previously obtaining a license for some other product." Congress intended that the Department assist intrastate producers in making the transition to Federal licensing and to offer new firms ready opportunities for such licensing. In the absence of this amendment to the regulations, many existing intrastate producers of autogenous products could be forced out of business unless they become licensed to produce nonautogenous products. Further, it is the Agency's view that existing regulations for autogenous biologics, which have been used extensively, have provided adequate regulatory control over these products.

One comment suggested limiting the use of autogenous products in herds or flocks from which the isolates were drawn. The current standards do not automatically allow a product to be used in adjacent herds. Permission for such use must first be obtained from the Deputy Administrator. If it is found that additional restrictions are needed in this area, they will be imposed.

There was some confusion concerning the intent of the proposed amendment of § 102.5 regarding the establishment license number that is required to appear on the final product license. It was proposed that the regulations be amended by changing the requirement that the license number of the establishment at which the product is packaged and labeled and the establishment from which the product is released for marketing appear on the product license. Under this amendment to the regulations only the license number of the establishment from which the final product is released for marketing is required to appear on the product license. Prior to amending § 114.3 in 1984 (49 FR 45846), an establishment releasing a product for marketing was required to perform all the steps in the manufacture of the product, including packaging and labeling. Currently, more than one manufacturer can participate in the production of a biological product. A final product license is issued to the establishment releasing the product to market. The Department considers that it is adequate to require only the establishment number of the establishment releasing the product to market on a product license for a product being released for final use.

The two final comments concerned §§ 102.2 and 114.1, and how these sections reflect the scope of coverage under the amended Act. Amendments to § 102.2 were proposed to permit the issuance of establishment licenses to firms producing only autogenous biologics. The proviso regarding autogenous biologics in § 102.5 was deleted in the proposal. Commenters stated that § 114.1 should be reworded to reflect that all biologics are now subject to the Act, whether moved interstate, intrastate, or exported. However, § 114.1 requires that, with certain exceptions, all biological products falling within the jurisdiction of the Department under the Act, must be prepared in accordance with the regulations in Part 114. The Secretary of Agriculture is authorized to make and promulgate regulations "to carry out the Virus-Serum-Toxin Act" (21 U.S.C. 154). The Department has published additional proposed rulemakings to implement the requirements of the Act. The Agency believes this section as proposed is completely adequate. Accordingly, the opening sentence of § 114.1 shall remain as proposed.

One comment questioned whether the granting of conditional licenses would be to licensed establishments only, and whether conditional licenses would be subject to the criteria in § 102.5. Licenses are issued in accordance with § 102.2 which requires each establishment producing veterinary biological products to hold an unexpired, unsuspended, and unrevoked U.S. veterinary biological establishment license and product license. In the case of a first application for a product license, the licensee must also apply for and meet all the requirements for an establishment license. Upon satisfactory completion of all requirements, an establishment license and product license are issued simultaneously. The product license may be a regular product license, a conditional product license, or a license for an autogenous product, and as the commenter suggested, licensing and production of biologics under a conditional license is subject to all applicable regulations and standards including § 102.5. Therefore, proposed § 102.6 is modified to reflect this more clearly.

After consideration of all relevant matters, including the comments on the proposed rulemaking, and under the authority of the Virus-Serum-Toxin Act of March 4, 1913, as amended by the Food Security Act of 1985 (21 U.S.C. 151–159), the amendment of Parts 102 and 114, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as modified from the above notice, is adopted as follows:

**List of Subjects in 9 CFR Parts 102 and 114**

Animal biologics.

## PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

Accordingly, 9 CFR Part 102 is amended as follows:

1. The authority citation for Part 102 continues to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 102.2 is revised to read:

**§ 102.2 Licenses required.**

Every person who prepares biological products subject to the Virus-Serum-Toxin Act shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biologics Establishment License and at least one unexpired, unsuspended, and unrevoked U.S. Veterinary Biologial Product License issued by the Deputy Administrator to prepare a biological product.

3. Section 102.4(f) is revised to read:

**§ 102.4 U.S. Veterinary Biologics Establishment License.**

* * * * *

(f) When a licensee no longer holds an unexpired, unsuspended, or unrevoked product license authorizing the preparation of a biological product, the establishment license shall be submitted to the Deputy Administrator for termination.

* * * * *

4. Section 102.5 (b) and (e) are revised as follows:

**§ 102.5 U.S. Veterinary Biological Product License.**

* * * * *

(b) The following shall appear on the U.S. Veterinary Biological Product License:

(1) The U.S. Veterinary Biologics Establishment License Number for the establishment from which the product is released for marketing.

(2) The true name of the product.

(3) The product code number for the product.

(4) The date of issuance.

(5) Any restrictions designated by the Deputy Administrator under paragraph (e) of this section.

(6) When necessary to comply with § 102.6 of this part, a termination date and a brief description of requirements to be met for reissuance.

* * * * *

(e) Where the Deputy Administrator determines that the protection of domestic animals or the public health, interest, or safety, or both, necessitates restrictions on the use of a product, the product shall be subject to such additional restrictions as are prescribed on the license. Such restrictions may include, but are not limited to, limits on distribution of the product or provisions that the biological product is restricted to use by veterinarians, or under the supervision of veterinarians, or both.

5. Section 102.6 is added as follows:

**§ 102.6 Conditional licenses.**

In order to meet an emergency condition, limited market, local situation, or other special circumstance, including production solely for intrastate use under a State-operated program, the Deputy Administrator may, in response to an application submitted as specified in § 102.3(b) of this part, issue a conditional U.S. Veterinary Biological Product License to an establishment under an expedited procedure which assures purity and safety, and a reasonable expectation of efficacy. Preparation of products under a conditional license shall be in compliance with all applicable regulations and standards and may be restricted as follows:

(a) The preparation may be limited to a predetermined time period which shall be established at the time of issuance and specified on the license. Prior to termination of the license, the licensee may request reissuance. Such requests shall be substantiated with data and information obtained since the license was issued. After considering all data and information available, the Deputy Administrator shall either reissue the U.S. Veterinary Biological Product License or allow it to terminate.

(b) Distribution may be limited to the extent necessary to assure that the product will meet the basic criteria for issuance of the conditional license.

(c) Labeling for the product may be required to contain information on the conditional status of the license.

## PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

Accordingly, 9 CFR Part 114 is amended as follows:

1. The authority citation for Part 114 continues to read as follows:

**Authority:** 21 U.S.C. 151–158; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 114.1 is revised to read:

**§ 114.1 Applicability.**

Unless exempted by regulation or otherwise authorized by the Deputy Administrator, all biological products prepared, sold, bartered or exchanged, shipped or delivered for shipment in or from the United States, the District of Columbia, any Territory of the United States, or any place under the jurisdiction of the United States shall be prepared in accordance with the regulations in this part. The licensee or permittee shall adopt and enforce all necessary measures and shall comply with all directions the Deputy Administrator prescribes for carrying out such regulations.

Done in Washington, DC, this 2nd day of April, 1987.

**J. K. Atwell,**

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87-7677 Filed 4-6-87; 8:45 am]

BILLING CODE 3410-34-M

## NUCLEAR REGULATORY COMMISSION

**10 CFR Part 0**

**Restriction Against Ownership of Certain Security Interests by Commissioners, Certain Staff Members, and Other Related Personnel; Vested Pension Interests**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations governing the ownership by NRC employees of stocks, bonds, and other security interests in companies engaged in activities relating to the nuclear fuel cycle so that only the major companies engaged in nuclear fuel cycle activities would be placed on the agency's prohibited stock list. The Commission also is amending its regulations to address the treatment of vested pension interests held by NRC employees.

**EFFECTIVE DATE:** April 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Paul Bollwerk, Senior Attorney, Office of the General Counsel, U.S Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–3224.

**SUPPLEMENTARY INFORMATION:** In July 1979 (44 FR 41422), the NRC promulgated regulations that barred most NRC employees from owning stocks, bonds, or other security interests in "companies licensed by the Commission to mill, convert, enrich, fabricate, store, or dispose of source of special nuclear material, or applicants for such licenses." 10 CFR 0.735–29(b)(1)(v). Subsequently, as a result of corporate mergers, several large corporations with minimal financial interests in the commercial nuclear industry fell within the purview of the regulation. Some

agency employees were required to divest themselves of these securities because the existing regulations required designation of the companies without regard to whether the corporation derived significant gross revenues or a significant percentage of its revenues from these fuel cycle activities.

Based upon its experience with the regulation, the Commission has determined that the scope of the regulation is too broad and that it should be narrowed so that only the major companies engaged in nuclear fuel cycle activities should be placed on the agency's prohibited stock list. Accordingly, the Commission is revising its regulations to narrow the scope of the fuel cycle security prohibition.

Under the revised regulation, the Commission's Executive Director for Operations (EDO), after consultation with the Office of the General Counsel, will designate the major fuel cycle applicants and licensees whose security interests are subject to the agency's stock ownership restrictions and thus may not be owned by NRC employees. Because there is a dearth of publicly available information regarding how much income a given company derives from NRC-licensed fuel cycle activities and what percentage of the company's total income fuel cycle activities account for, the EDO's determination regarding what companies are to be included within the stock ownership prohibition necessarily must be subjective. However, the Commission expects that those companies with large income from fuel cycle activities or those companies whose fuel cycle activities constitute a significant portion of corporate business will be included within the proscription by the EDO.

The Commission is also amending its regulations to provide explicitly that no employee is to provide advice to the NRC on matters affecting a company in which he or she has a vested pension interest from prior employment, unless an exemption has been granted permitting the employee to work on such matters. Exemptions are granted by the employee's office director only after a determination has been made by the Office of General Counsel, after a review of the pension plan, that as an NRC employee the individual cannot influence, in any fashion, the amount received from the pension. This rule codifies existing agency practice.

Because these are amendments dealing with agency organization, practice, and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a matter of agency, conduct, employee ownership of certain security interests.

**Environmental Impact: Categorical Exclusion**

The action required under this final rule is administrative and would not impact the environment. The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

**Regulatory Analysis**

Under existing Commission regulations, certain specified NRC employees are prohibited from owning security interests in firms having substantial interests in the commercial nuclear field, including the owner/operators of nuclear fuel cycle facilities. The present regulation includes all fuel cycle facility owner/operators without regard to whether the facility provides substantial gross revenues to the company or a substantial percentage of the company's gross revenues. The all-inclusive nature of this regulation has caused substantial hardship to some NRC employees. The increased number of corporate mergers has resulted in, and may continue to result in, large conglomerates acquiring companies that own and operate fuel cycle facilities. This, in turn, has required that NRC employees divest themselves of the parent conglomerate's securities. The alternative adopted in this rule, which will require designation only for companies that derive substantial gross revenues from fuel cycle activities or a substantial percentage of gross revenues from such activities, will minimize the likelihood of further forced divestitures caused by mergers while at the same time preserving the regulatory policy underlying the prohibited securities restriction. It thus is the preferred alternative and the cost entailed in its promulgation and application is necessary and appropriate.

As to that portion of the final rule relating to vested pension interests, this change is designed to codify existing agency practice in relation to its consideration of such interests. Although such codification is not legally required, in this instance the Commission believes it is the preferred alternative.

**Backfit Analysis**

This final rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this final rule.

**List of Subjects in 10 CFR Part 0**

Conflict of interest, Penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, E.O. 11222 of May 8, 1965, 5 CFR 735.104, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 0.

**Part 0—Conduct of Employees**

1. The authority citation for Part 0 is revised to read as follows:

**Authority:** Secs. 25, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2035, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 11222, 30 FR 6469, 3 CFR 1964–1965 COMP., p. 306; 5 CFR 735.104.

Sections 0.735–21 and 0.735–29 also issued under 5 U.S.C. 552, 553. Section 0.735–26 also issued under secs. 501, 502, Pub. L. 95–521, 92 Stat. 1864, 1867, as amended by secs. 1, 2, Pub. L. 96–28, 93 Stat. 76, 77 (18 U.S.C. 207).

2. In § 0.735–21, paragraph (b)(1) is revised and new paragraph (e) is added to read as follows:

**§ 0.735–21 Acts affecting a personal financial interest (based on 18 U.S.C. 208)**

* * * * *

(b) *Granting of ad hoc exemptions.* (1) If an employee desires to request an exemption from the prohibitions of paragraphs (a) and (e) of this section, he shall fully inform the head of his division or office, as appropriate, in writing of the nature and circumstances of the particular matter and of the financial interests involved and shall request a written determination in advance as to the propriety of his participation in such matter.

* * * * *

(e) *Vested pension interests.* Except as permitted by paragraph (b) of this section, no employee shall participate

personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter affecting the financial interest of a company in which the employee holds a vested pension interest. The head of the employee's division or office is not to grant an exemption pursuant to paragraph (b) unless the Office of the General Counsel has reviewed the pension plan and made a determination that the pension interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the government, in that as an NRC employee the individual cannot in any fashion influence the amount of the pension.

3. In §0.735–29, paragraph (b)(1)(v) is revised to read as follows:

**§ 0.735–29 Restriction against ownership of certain security interests by Commissioners, certain staff members and other related personnel.**

* * * * *

(b) * * *

(1) * * *

(v) Companies licensed by the Commission to mill, convert, enrich, fabricate, store, or dispose of source or special nuclear material, or applicants for such licenses, that are designated by the Executive Director for Operations, after consultation with the Office of the General Counsel, because they are or will be substantially engaged in such nuclear fuel cycle or disposal activities.

* * * * *

Dated at Washington, DC, this 2d day of April, 1987.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

[FR Doc. 87–7687 Filed 4–6–87; 8:45 am]

BILLING CODE 7590–01–M

---

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 85–AWP–9]**

## Alteration of the Honolulu, HI, Terminal Control Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Honolulu, HI, Terminal Control Area (TCA) to eliminate portions of the existing TCA where it has been determined that traffic conditions have become less complex; and to expand areas of the existing TCA where the potential for midair collision has increased. This action will result in a more efficient use of airspace in the vicinity of the Honolulu, HI, International Airport.

**EFFECTIVE DATE:** 0901 U.T.C., June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bob Laser, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

**SUPPLEMENTARY INFORMATION:**

### History

On December 9, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Honolulu TCA (50 FR 50174). A new very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) has been installed on the Honolulu, HI, Airport approximately 5 miles east of the previous VORTAC's location. In anticipation of the commissioning of the new VORTAC, a review of the Honolulu TCA was conducted to determine whether its volume of airspace could be reduced in size, whether its description and chart depiction could be made less complex, and whether air traffic conditions in the airspace of the TCA continued to be complex. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Additionally, an informal airspace meeting was held on January 22, 1986, in Honolulu, HI, at which participants were invited to express their views and make comments. The following is the FAA's analysis of the substantive comments received:

### Discussion of Comments

Several commenters expressed general support for the proposed reduced lateral limits and the proposed lowered ceiling of the TCA. However, an aviation organization representative, while concurring in general with the proposal, objected to the aspect of the proposal which would lower the TCA ceiling from 9,000 feet MSL to 7,000 feet MSL. The commenter stated that such an action would degrade air safety by increasing the collision potential due to a perceived resulting increase in the mix of uncontrolled visual flight rules (VFR) operations and controlled instrument flight rules (IFR) operations. An airline representative also expressed similar concerns.

Actual observations of the traffic within 40 miles of the Honolulu Airport revealed that the majority of operations at and above 7,000 feet MSL are conducted under IFR. However, the FAA has determined that the "mix" of uncontrolled and controlled traffic could increase relative to the present nonexistant "mix". Further, the increase could be significant if the presently controlled VFR flights that operate between 7,000 and 9,000 feet (in the present TCA), were to choose to operate as uncontrolled flights in that same airspace (with the TCA ceiling lowered to 7,000 feet MSL). Accordingly, the FAA is not adopting the lowered TCA ceiling proposed in the notice.

One commenter objected to the proposed northward expansion of Area H. This expansion, the commenter said, would affect the airspace over the Kahe Power Plant where pilots practice stalls and other maneuvers. The commenter stated further that these pilots would prefer that the northern TCA boundary, west of Honolulu Airport, be aligned with the northern boundary of present Area H. Such a configuration, the commenter said, would make more airspace available for practice operations. Other commenters expressed the opinion that the proposed expansions of Areas H, I, and J would eliminate much of the VFR "east-west route system" used by aircraft avoiding the present TCA and force aircraft into turbulence which exists at altitudes beneath the proposed lowered floor. These commenters also stated that the proposed Area H would take away much of the offshore airspace in the vicinity of the Kahe Power Plant which is used as a flight manuever practice area.

One commenter expressed an opinion that the surface area underlying the proposed expansion of Area H is too densely populated and residences would be impacted by a lowered TCA floor (3,000 to 2,000 feet MSL). This commenter, as well as others, stated that the proposed northern expansions of Areas H, I, and J were only necessary because ATC was not controlling traffic on approach to Runways 8L and 8R with sufficient precision to confine that traffic in existing TCA airspace.

The density of a populated area has no bearing on the establishment of a TCA floor because the rules pertaining

to flight over congested areas prevail irrespective of any TCA floor. The lowered floor of a portion of Area G that would result from the proposed northward expansion of Area H was an attempt to reflect the existing flight paths of large turbine-powered aircraft. Further, all of the airspace encompassed by the proposed expansion of Areas I and J, and approximately one-half of the airspace encompassed by the proposed expansion of Area H is within the NAS Barbers Point (NAX) airport traffic area (ATA). Therefore, regardless of the existence of the TCA, aircraft conducting operations within that airspace would be required to comply with the communications and ATC authorization requirements of § 91.85 and § 91.87. For example, east-west traffic operating below 3,000 feet AGL, operations conducted immediately adjacent to present Areas H, I, or J, as well as any practice operations conducted directly over Kahe Power Plant would have had to been authorized by ATC—the control tower at NAS Barbers Point or Honolulu Airport.

However, in regard to the airspace north of the Runway 8 final approach course which would have been encompassed by the proposed expansion to Areas H, I, and J, the FAA has reviewed the germane flight profiles in consideration of the comments received. The FAA has determined that the northern boundary of Area H can be established along the 269° magnetic radial making it significantly south of the proposed, as well as existing boundary. Also, the northern boundaries of Areas I and J can remain as they presently are and still provide sufficient airspace to contain departing and arriving large turbine-powered aircraft. Accordingly, much of the new impact that would have been created by the proposed expansion of these areas would be eliminated. The final rule contained herein reflects these boundary adjustments.

Two commenters stated that the proposed lowered floors along the proposed northern TCA boundary east of the airport (represented by the proposed northern boundaries of Areas B and C) would cause aircraft operating under VFR to be forced to fly in areas of higher terrain or at lower altitudes and generate noise problems. Another commenter expressed concerns that climbing eastbound aircraft exiting the TCA between 1,500 and 4,000 feet MSL would conflict with westbound traffic operating beneath the TCA, under proposed Area C, and in the same altitude range. This commenter recommended the FAA allay these concerns by effectively adopting the existing boundary along Highway H–1 to Koko Head thence via the Koko Head 093° magnetic radial to the proposed 20-mile outer perimeter. Also, the commenter would have the FAA establish the floor of Area C at the same altitude as Area B (1,500 feet MSL) and, if necessary install necessary ground radio facilities in the Koko Head area to facilitate better radio coverage and air traffic control (ATC) services to aircraft operating under VFR.

In regard to the airspace comprising proposed Area B, the FAA has reviewed the proposal in conjunction with large turbine-powered operations and the pertinent comments received. It has been determined that the alignment of the present TCA along Highway H–1 east of the airport creates a situation whereby uncontrolled aircraft use Highway H–1 for navigation guidance to remain outside of the TCA. In many instances, such navigation has resulted in unauthorized TCA entries. Under the ANPRM, the FAA sought to include Highway H–1 within the TCA thereby eliminating it as a potential cause for navigational error. After further consideration, the FAA believes that potential navigational errors can also be reconciled by establishing the TCA lateral boundary south of Highway H–1. Accordingly, the northern boundary of the TCA east of the airport between the 4- and 12-nautical-mile arcs is herein established along the 095° magnetic radial. This action effectively nonadopts Area B as proposed in the notice.

In regard to the suggestion that Area C be lowered to encompass aircraft operations that are normally conducted under VFR, the FAA believes that such an action would not be in keeping with the purposes of a TCA—containment of large turbine-powered aircraft operations. Further, traffic advisory service is available, on a workload and radio/radar coverage permitting basis in the airspace beneath the proposed Area C. Currently, there are no plans to provide additional radio/radar coverage in the airspace below the proposed Area C as air traffic conditions there do not justify the expenditure of resources to acquire such coverage.

While the floor of Area C, as proposed in the notice, would effectively be established 1,000 feet lower than the existing floor (5,000 to 4,000 feet), other portions of proposed Area C would be raised by as much as 3,000 feet (1,000 to 4,000 feet and 2,000 to 4,000 feet). Additionally, the local air traffic facility management has determined that VFR operations, in the vicinity of the airspace encompassed by proposed Area C, are normally conducted at altitudes below the proposed Area C floor (1,500 to 3,500 feet MSL). The FAA, after consideration of the comments, remains convinced that the floor of Area C be established at 4,000 feet MSL. However, Area C as proposed in the notice can be reduced in size by establishing its western boundary at the 12- rather than 10-nautical-mile arc.

Two commenters stated that the proposed Areas A and K were not needed, especially since, in their opinion, aircraft were being controlled satisfactorily in the exiting airspace of the TCA. Another commenter stated that aircraft on approach to Runways 26R, 22L, and 22R should be instructed to tighten turns so as to remain within the airspace of the existing TCA and, therefore, that any expansion of the TCA surface area beyond Highway H–1 would be unnecessary.

A commenter stated that Area K is unnecessary as it would prevent aircraft that have experienced radio failure from getting close enough to the airport to be seen and receive light gun signals from the tower. This commenter also expressed concern for the impact that the proposed Area K would have on the airport at Ford Island. Stating that the range of altitudes (surface to 7,000 feet MSL) for the proposed northeastwardly expansion of Area A is unnecessary, this commenter suggested instead that the altitude range be established as the surface to 2,500 feet MSL.

While aircraft may be satisfactorily controlled by ATC in the Honolulu area, the fact remains that large turbine-powered tactical aircraft routinely require ATC authorization to deviate from the regulatory requirement to operate at or above the floor of a TCA, when conducting certain tactical approaches to the Honolulu Airport. Such routine occurrences are inconsistent with the FAA's responsibility to provide sufficient TCA airspace to accommodate a pilot's responsibility to comply with the regulations. Additionally, there is an increased midair collision potential between large turbine-powered tactical aircraft exiting the present TCA at relatively low altitudes, and uncontrolled aircraft operating under VFR along the existing northern perimeter of the TCA.

The recommended traffic pattern altitude at Ford Island Airport, as published in the Pacific Chart Supplement, is 600 feet mean sea level (MSL). This altitude is 900 feet below the proposed floor of Area K and the FAA considers this as sufficient

airspace to facilitate aircraft entering and exiting the Ford traffic pattern. The existence or absence of Area K would make no difference for IFR aircraft that are destined to Honolulu Airport which have experienced two-way radio failure. These aircraft would still be required to comply with § 91.127 just as they are required to do so under the present TCA configuration. The proposed establishment of Area K with a 1,500-foot floor should only minimally affect VFR aircraft in similar situations. This is because VFR aircraft could still approach the boundary of Area A just as they are able to do under the existing TCA configuration except that such an approach would have to be conducted in the airspace below Area K; i.e., below 1,500 feet MSL. Regardless, the FAA believes that a VFR aircraft that has experienced two-way radio communications failure would be more visible to the tower controller at altitudes at or near the traffic pattern altitude. Accordingly, Area K, as proposed in the notice, is adopted except that it is entitled Area B in this final rule.

Some commenters objected to the loss of certain existing TCA boundaries that coincide with visual ground references.

The FAA strives to the maximum extent possible to align TCA boundaries with easily identifiable ground landmarks. However, the purpose of a TCA, and thus its boundary, is to effectively contain large turbine-powered aircraft operations approaching and departing the primary airport within the TCA. It was for this reason that the FAA proposed to modify segments of the TCA's northern boundary. Furthermore, alignment of the TCA along Highway H–1, a boundary line within the Honolulu ATA, tends to induce an impression that flight along that boundary and through the ATA can be made without obtaining authorization from ATC. Additionally, the FAA believes that if a pilot prefers to use visual references instead of the VORTAC radials which have been adopted to define some of the TCA boundaries, then there are sufficient ground references in proximity to the northern boundary of the TCA to exercise that preference.

One commenter stated that the establishment of the floor of Area D at 1,000 feet MSL was unnecessary. This commenter was of the opinion that the occasional exiting and reentering of the TCA by heavy aircraft would be corrected by the adoption of proposed 5- and 10-nautical-mile arcs as southern boundaries of Areas A and D.

The FAA has reviewed the proposal in regard to the need to establish the floor of the TCA south and east of the airport at 1,000 feet MSL and has determined that changes can be made to reduce the impact of the revised Honolulu TCA. By redefining Area D as that airspace between the 5- and 15-nautical mile arcs between the 095° and the 135° radials, any new impact is effectively eliminated. Likewise, Area E is redefined as the airspace between the 5- and 15-nautical-mile arcs from the 135° radial eastward to the 228° radial, with a floor of 1,500 feet MSL. This action also effectively eliminates any impact that would have resulted by adopting Area E as proposed in the notice. Section 71.401(b) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

**Regulatory Evaluation Summary**

The full regulatory evaluation has been placed in the docket and it contains more detailed information related to the costs and benefits that are expected to accrue from the implementation of this rule.

*Benefit-Cost Analysis*

The regulatory evaluation prepared for this final rule examines the benefit and cost aspects to amend Part 71 (Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points) of the Federal Aviation Regulations. The objective of this rule is to modify the Honolulu, HI, TCA by taking the following actions:

(1) Describing the TCA based on the relocated Honolulu, HI, VORTAC;

(2) Decreasing the lateral limits of the Honolulu TCA southern, southeastern, and southwestern perimeters by approximately 12 miles;

(3) Adjusting the northern lateral limit of the TCA slightly northward in the area west of the airport, and slightly southward in portions of the TCA east of the airport;

(4) Adjusting the floors of certain TCA segments upward and others downward to reflect the current traffic flows.

This final rule was prompted by information discovered in a review of the existing TCA configuration. The review revealed a lessening in complexity of air traffic conditions in certain areas and an increasing midair collision potential in other areas. The adoption of this final rule will result in a more efficient use of airspace in the vicinity of the Honolulu, HI, International Airport.

*Benefits*

This final rule is expected to generate benefits in the form of enhanced safety. Such safety, for instance, will take the form of lowered midair collision potential.

Since those minor description changes in Areas D, E, F, G, I, and J, are not expected to impose additional cost on general aviation (GA) aircraft operators, only those areas for expansion will be discussed in the evaluation. Expansion of the floors and ceilings in the Honolulu, HI, TCA will restrict the airspace to controlled operations in Areas A, B, C, and H and result in a lowered likelihood for fatalities and property damage (namely, aircraft). Due primarily to the proactive nature of this final rule, these safety benefits are extremely difficult, if not impossible, to quantify in monetary terms. The proactive nature of this rule concerns itself with averting a safety problem by taking corrective action towards its symptom. In this case, for example, the symptom is increased complexity primarily near the floors of Areas B, C, and H. In Areas A and B, however, there is also increased complexity near the ceilings. As the result of this increased complexity, the TCA airspace floors will be reduced and the ceilings increased in the aforementioned areas. This action will reduce the likelihood for midair collisions by expanding the TCA airspace. Previous actions such as these have been successful in lowering the likelihood of midair collisions by correcting safety problem symptoms. Thus, such proactive efforts have not afforded sufficient opportunity to quantify potential benefits. Without documented evidence of midair collisions in Hawaii, the probability of their occurrence cannot be determined with a very high degree of certainty. Despite this situation the FAA has managed to derive "best guess" estimates of potential benefits based on potential midair collision data. As a result of such data, the FAA estimates that over the next 10 years there will be an increasing probability of a midair collision taking place near the existing Honolulu TCA, which could result in either a serious injury or fatality. Thus, in monetary terms, this equates to a potential range of benefits between $8,400 and $162,000 (1985 dollars) annually.

*Costs*

FAA estimates that the total cost of compliance associated with implementation of this final rule will range between $0 and $3,700 (1985 dollars) annually. This assessment is based in part on information received from personnel at FAA's Air Traffic Control Tower in Honolulu, HI, coupled with the analyst's best judgment.

According to ATC facility personnel contacted, the description changes in Areas A, B, C, and H of this final rule is expected to not have much cost impact, if any, on VFR operators and no cost impact on IFR operators because virtually all of GA aircraft in Hawaii sooner or later enter the Honolulu TCA. (This TCA represents the hub of air traffic activity in Hawaii, especially for GA aircraft.) As a result of this situation, it is plausible to assume that such GA aircraft already have the required avionics for operation in the TCA. This point is reinforced in a report published by the FAA entitled, "General Aviation Activity and Avionics Survey (1985)." This report reveals that approximately 81 percent of GA aircraft in Hawaii have transponders (4096 code) and about 96 percent of such aircraft have either 360-channel or 720-channel very high frequency (VHF) two-way communications equipment. In addition, about 84 percent of these aircraft have VOR equipment. (All of this equipment meet the requirements for entrance into the Honolulu TCA.)

The estimated 93 active single-engine (piston) GA aircraft (1–3 seats), without transponders, engaged in VFR activity in Hawaii are expected to either enter, fly under, or circumnavigate Areas A, B, C, and H of the TCA. In instances where there will be no entrance into the TCA, some of these aircraft operators will incur small increases in operation costs per round trip. These cost increases will be small because VFR aircraft operators will not be required to deviate significantly from their current flying practices. If GA aircraft operators without transponders enter the TCA, under an ATC exception (which assumes they will have adequate two-way VHF communications and VOR equipment), no additional costs will be incurred. The extent to which, and the number of, aircraft operators who will elect to exercise this exception is unknown. Therefore, a cost range is employed in the evaluation. On balance, the FAA estimates that this final rule will be cost beneficial.

*Regulatory Flexibility Determination*

The FAA has determined that under the criteria of the Regulatory Flexibility Act of 1980, the final rule to modify the Honolulu, HI, TCA, evaluated in this report, will not have a significant economic impact on a substantial number of small entities. Practically all of the entities potentially impacted by the final rule will represent operators of unscheduled aircraft for hire, which consist mostly of air taxi operators, who do not have the required avionics. This assessment is based on an FAA report of GA avionics equipment, which reveals that about 98 percent of all air taxis use either 360-channel or 720-channel VHF two-way communications equipment, about 93 percent use VOR equipment, and approximately 89 percent of such unscheduled operators for hire use transponders (4096 code). Given the relatively isolated area of Hawaii, FAA assumes that unscheduled aircraft operators in this state are more likely to have the required avionics than those operators on the mainland. In order for a small entity to incur significant economic impact from this final rule it will have to by-pass Areas A and B of the TCA while in the process of making more than 50 round trips per year. These numbers of trips are considered to be unrealistic and not expected to materialize. Besides, no more than 11 percent of the air taxis in Hawaii are without transponders; therefore, the substantial number criterion for small entities could never be achieved. That is, the number of small entities that will incur significant economic cost will never exceed one-third of the small entities subject to the final rule. In any event, those small entities without transponders could always request an ATC exception to enter the TCA. It is for these reasons that this final rule is not expected to have a significant economic impact on a substantial number of small entities.

*Trade Impact Statement*

This final rule is expected to have no impact on the trade opportunities for the United States firms doing business overseas or for foreign firms doing business in the United States. The rule will only affect those aircraft that enter the Honolulu TCA without the required avionics. All foreign aircraft that enter the United States airspace in Hawaii are assumed to have all of the required avionics because of the great distance traveled over the ocean.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations: (1) Describes the Honolulu, HI, TCA using the relocated Honolulu, HI, VORTAC; (2) decreases the lateral limits of the Honolulu TCA southern, southeastern, and southwestern perimeters by approximately 12 miles; (3) adjusts the northern lateral limit of the TCA slightly northward in the area west of the airport, and slightly southward in portions of the TCA east of the airport; and (4) adjusts the floors of certain TCA segments upward and others downward to reflect the current traffic flows. These actions are being taken: to eliminate portions of the existing TCA where an evaluation revealed a lessening in complexity of air traffic conditions; and to expand areas of the existing TCA where the evaluation revealed an increasing midair collision potential. The overall result of this action is a reduction in the amount of TCA airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

**List of Subjects in 14 CFR Part 71**

Aviation safety, Terminal control areas.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority.** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.401 [Amended]**

2. Section 71.401(b) is amended as follows:

**Honolulu, HI [Revised]**

Area A. That airspace extending upward from the surface to and including 9,000 feet MSL within an area bounded by a line beginning at a point 4 miles north of the Honolulu VORTAC (lat. 21°18'41" N., long. 157°55'59" W.) on the Honolulu VORTAC 001° radial, then clockwise along a 4-mile radius arc of the Honolulu VORTAC to the Honolulu VORTAC 106° radial, then east on the Honolulu VORTAC 106° radial to 5 miles, then clockwise along a 5-mile radius arc of the Honolulu VORTAC to the Honolulu VORTAC 270° radial, then west on the Honolulu VORTAC 270° radial to 5.6 miles, then clockwise along a 5.6-mile radius arc of the Honolulu VORTAC to a point 0.5 miles north of the ILS Runway 8L localizer course, then east along a line 0.5 miles north of and parallel to the ILS Runway 8L localizer course to the Honolulu VORTAC 001° radial, then north on the Honolulu VORTAC 001° radial to the point of beginning.

*Area B.* That airspace extending upward from 1,500 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 4 miles north of the Honolulu VORTAC on the Honolulu VORTAC 001° radial, then counterclockwise along a 4-mile radius arc of the Honolulu VORTAC to a point 0.5 miles north of the ILS Runway 8L localizer course, then east along a

BEST COPY AVAILABLE

line 0.5 miles north of and parallel to the ILS Runway 8L localizer course to the Honolulu VORTAC 001° radial, then north on the Honolulu VORTAC 001° radial, to the point of beginning.

*Area C.* That airspace extending upward from 4,000 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 12 miles east of the Honolulu VORTAC on the Honolulu VORTAC 091° radial, then east on the Honolulu VORTAC 091° radial to 20 miles, then clockwise along a 20-mile radius arc of the Honolulu VORTAC to the Honolulu VORTAC 106° radial, then west on the Honolulu VORTAC 106° radial to 12 miles, then counterclockwise along a 12-mile radius arc of the Honolulu VORTAC to the point of beginning.

*Area D.* That airspace extending upward from 1,000 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 5 miles east southeast of the Honolulu VORTAC on the Honolulu VORTAC 106° radial, then east southeast on the Honolulu VORTAC 106° radial to 15 miles, then clockwise along a 15-mile radius arc of the Honolulu VORTAC to the Honolulu VORTAC 146° radial, then northeast on the Honolulu VORTAC 146° radial to 5 miles, then counterclockwise along a 5-mile radius arc of the Honolulu VORTAC to the point of beginning.

*Area E.* That airspace extending upward from 1,500 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 5 miles east southeast of the Honolulu VORTAC on the Honolulu VORTAC 146° radial, then southeast on the Honolulu VORTAC 146° radial to 15 miles, then clockwise along a 15-mile radius arc of the Honolulu VORTAC to the Honolulu VORTAC 239° radial, then northeast on the Honolulu VORTAC 239° radial to 5 miles, then counterclockwise along a 5-mile radius arc of the Honolulu VORTAC to the point of beginning.

*Area F.* That airspace extending upward from 2,000 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 15 miles east southeast of the Honolulu VORTAC on the Honolulu VORTAC 106° radial, then east southeast on the Honolulu VORTAC 106° radial to 20 miles, then clockwise along a 20-mile radius arc of the Honolulu VORTAC to the Honolulu VORTAC 239° radial, then northeast on the Honolulu VORTAC 239° radial to 15 miles, then counterclockwise along a 15-mile radius arc of the Honolulu VORTAC to the point of beginning.

*Area G.* That airspace extending upward from 3,000 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 5 miles southwest of the Honolulu VORTAC on the Honolulu VORTAC 239° radial, then southwest on the Honolulu VORTAC 239° radial to 20 miles, then clockwise along a 20-mile radius arc of the Honolulu VORTAC to the Honolulu VORTAC 280° radial, then east southeast on the Honolulu VORTAC 280° radial to 15 miles, then counterclockwise along a 15-mile radius arc of the Honolulu VORTAC to the Honolulu VORTAC 270° radial, then east on the Honolulu VORTAC 270° radial to 5 miles, then counterclockwise along a 5-mile radius arc of the Honolulu VORTAC to the point of beginning.

*Area H.* That airspace extending upward from 2,200 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 7.7 miles west of the Honolulu VORTAC on the Honolulu VORTAC 270° radial, then west on the Honolulu VORTAC 270° radial to 15 miles, then clockwise along a 15-mile arc to the Honolulu VORTAC 280° radial, then east southeast on the Honolulu VORTAC 280° radial to 7.7 miles, then counterclockwise along a 7.7-mile radius arc of the Honolulu VORTAC to the point of beginning.

*Area I.* That airspace extending upward from 1,900 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 6.7 miles west of the Honolulu VORTAC on the Honolulu VORTAC 270° radial, then west on the Honolulu VORTAC 270° radial to 7.7 miles, then clockwise along a 7.7-mile radius arc of the Honolulu VORTAC to a point 0.5 miles north of the ILS Runway 8L localizer course, then east along a line 0.5 miles north of and parallel to the ILS Runway 8L localizer course to 6.7 miles, then counterclockwise along a 6.7-mile radius arc of the Honolulu VORTAC to the point of beginning.

*Area J.* That airspace extending upward from 1,600 feet MSL to and including 9,000 feet MSL within an area bounded by a line beginning at a point 5.6 miles west of the Honolulu VORTAC on the Honolulu VORTAC 270° radial, then west on the Honolulu VORTAC 270° radial to 6.7 miles, then clockwise along a 6.7-mile radius arc of the Honolulu VORTAC to a point 0.5 miles north of the ILS Runway 8L localizer course, then east along a line 0.5 miles north of and parallel to the ILS Runway 8L localizer course to 5.6 miles, then counterclockwise along a 5.6-mile arc of the Honolulu VORTAC to the point of beginning.

Issued in Washington, DC, on March 31, 1987.

**Harold H. Downey,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 87-7603 Filed 4-6-87; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Part 71

**[Airspace Docket No. 86-ACE-2]**

## Establishment of VOR Federal Airways V-580 and V-582; Missouri

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes new Federal Airways V-580 between St. Louis, MO, and Burlington, IA, and V-582 between St. Louis and Quincy, IL. These new airways are designed to enhance and improve traffic flow in the St. Louis terminal area. This action reduces delays and controller workload.

**EFFECTIVE DATE:** 0901 U.T.C., June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9231.

**SUPPLEMENTARY INFORMATION:**

### History

On September 24, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish new VOR Federal Airways V-580 and V-582 located in the St. Louis, MO, area (51 FR 33903). The Kansas City Air Route Traffic Control Center has designed a plan to realign the traffic flow north of St. Louis to enhance and improve traffic flow in that area. Currently, extensive use of radar control is used to maneuver traffic, and these new airways provide designated airways along these radar tracks. This reduces controller workload and enhances traffic flow in the St. Louis terminal area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes new VOR Federal Airways V-580 between St. Louis, MO, and Burlington, IA, and V-582 between St. Louis and Quincy, IL. These new airways are designed to enhance and improve traffic flow in the St. Louis terminal area. This action reduces delays and controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR Federal Airways.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V-580 [New]**

From St. Louis, MO, via INT St. Louis 353° and Burlington, IA, 166° radials; to Burlington.

**V-582 [New]**

From St. Louis, MO, via INT St. Louis 353° and Quincy, IL, 127° radials; to Quincy.

Issued in Washington, DC, on March 31, 1987.

**Harold H. Downey,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 87-7605 Filed 4-6-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 71**

**[Airspace Docket No. 86-ASO-25]**

## Alteration of VOR Federal Airways; Georgia and Alabama

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the descriptions of two Federal Airways in the states of Georgia and Alabama to correct a potentially confusing situation that exists with two unrelated segments.

**EFFECTIVE DATE:** 0901 U.T.C., June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** William Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9249.

**SUPPLEMENTARY INFORMATION:**

**History**

On December 23, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the segment of V-311 that lies between La Grange, GA, and Wiregrass, AL, and extend V-168 from La Grange to Wiregrass along that segment of V-311 (51 FR 45911). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations eliminates a segment of VOR Federal Airway V-311 which lies between La Grange, GA, and Wiregrass, AL, and which is logically unrelated to other segments of that same airway. Low altitude navigation between these two points will now be accomplished via V-168 which is being extended from La Grange to Wiregrass.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR Federal Airways.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V-311 [Amended]**

By removing the words "From Wiregrass, AL, via INT Wiregrass 002° and La Grange, GA, 191° radials; to La Grange."

**V-168 [Revised]**

From Vulcan, AL; La Grange, GA; INT La Grange 191° and Wiregrass, AL, 002° radials; to Wiregrass.

Issued in Washington, DC, on March 31, 1987.

**Harold H. Downey,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 87-7604 Filed 4-6-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Parts 71 and 73**

**[Airspace Docket No. 86-AWP-12]**

## Establishment of Restricted Area R-2312 Fort Huachuca, AZ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** These actions establish restricted airspace near Fort Huachuca, AZ, for the purpose of providing the U.S. Customs Service the ability to deploy a tethered aerostat borne radar system in the area. These actions provide the U.S. Customs Service with the capability to provide surveillance of a volume of airspace from ground level to an altitude of approximately 15,000 feet mean sea level (MSL) and detect low altitude suspect aircraft attempting to penetrate the airspace.

**EFFECTIVE DATE:** 0901 U.T.C., June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

**SUPPLEMENTARY INFORMATION:**

**History**

On January 23, 1987, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish a new Restricted Area R-2312 near Fort

Huachuca, AZ (52 FR 2545). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.51 and 73.23 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

### The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations will establish a new Restricted Area R–2312 located near Fort Huachuca, AZ. These actions establish the necessary restricted airspace required by the U.S. Customs Service to deploy a tethered aerostat borne radar system with the capability to detect low altitude suspect aircraft attempting to penetrate the airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and restricted areas.

### Adoption of the Amendments

### PARTS 71 AND 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.151 [Amended]**

2. Section 71.151 is amended as follows:

**R–2312 Fort Huachuca, AZ [New]**

3. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 73.23 is amended as follows:

**§ 73.23 [Amended]**

**R–2312 Fort Huachuca, AZ [New]**

Boundaries. A 2-mile radius circle centered at lat. 31°29'07" N., long. 110°17'45" W.

Designated altitudes. Surface to but not including 15,000 feet MSL.

Times of designation. Continuous.

Using agency. Department of Treasury, Washington, DC.

Issued in Washington, DC, on March 31, 1987.

**Harold H. Downey,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 87–7602 Filed 4–6–87; 8:45 am]

BILLING CODE 4910–13–M

---

## 14 CFR Part 73

**[Airspace Docket No. 87–AGL–4]**

## Change Time of Designation for Restricted Areas R–3401A and R–3401B, Atterbury Reserve Forces Training Area, IN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action reduces the time of designation for Restricted Areas R–3401A and R–3401B, Atterbury Reserve Forces Training Area, IN, to more accurately reflect actual use and to return unused airspace for public access. An FAA review of the utilization reports for R–3401A and R–3401B indicated that the usage of the areas did not warrant retention of a "continuous" time of designation on a year-round basis. Consequently, the using agency has submitted revised times of designation based on current requirements for the airspace.

**EFFECTIVE DATE:** 0901 U.T.C., June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

### The Rule

This amendment to Part 73 of the Federal Aviation Regulations reduces the time of designation for Restricted Areas R–3401A and R–3401B, Atterbury Reserve Forces Training Area, IN, to more accurately reflect actual utilization. Because this action reduces the time of use and returns unused airspace for public access, I find that this is a minor technical amendment on which the public would not have a particular interest in commenting, and that notice and public procedure under 5 U.S.C. 553(b) are, therefore, unnecessary. Section 73.34 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

### Adoption of the Amendment

### PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1: The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 73.34 [Amended]**

2. Section 73.34 is amended as follows:

**R–3401A Atterbury Reserve Forces Training Area, IN [Amended]**

By removing the present time of designation and substituting the following:

Time of designation. May 1 through September 30—Continuous; October 1 through April 30—0800–2300 local time, Tuesday through Saturday; other times by NOTAM.

**R–3401B Atterbury Reserve Forces Training Area, IN [Amended]**

By removing the present time of designation and substituting the following:

Time of designation. May 1 through September 30—Continuous; October 1 through April 30—0800–2300 local time, Tuesday through Saturday; other times by NOTAM.

Issued in Washington, DC, on March 31, 1987.

Harold H. Downey,

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 87–7601 Filed 4–6–87; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 16

[Docket No. RM87–7–000; Order No. 467]

## Information to be Made Available by Hydroelectric Licensees Under Section 4(a) of the Electric Consumers Protection Act of 1986

Issued: March 30, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Interim rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing an interim rule to prescribe the information that an existing hydroelectric licensee must make available to the public upon notifying the Commission of the intention to file for a new license. The Commission is issuing this rule to implement section 4(a) of the Electric Consumers Protection Act of 1986.

**DATES:** This interim rule will become effective May 7, 1987. Comments must be in writing and received by the Secretary of the Commission prior to 4:30 p.m. E.D.T. on May 22, 1987. An original and fourteen copies should be filed.

**ADDRESS:** All filings should refer to Docket No. RM87–7–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Grace Kim, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–5768.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Martha O. Hesse, Chairman; Authony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to implement section 4(a) of the Electric Consumers Protection Act of 1986 (ECPA),[1] which amended section 15 of the Federal Power Act (FPA).[2] These regulations require an existing licensee to make certain information regarding its licensed project reasonably available to the public for inspection and reproduction at reasonable cost. These regulations also prescribe the time by which an existing licensee must notify the Commission whether or not it intends to file an application for a new license, and the time by which an existing licensee or a competitor must file an application for a new license.

Congress required the Commission to issue a rule by April 14, 1987, regarding the information that an existing licensee must make reasonably available to the public for inspection and reproduction. Accordingly, the Commission is issuing this rule as an interim rule which will be effective 30 days after publication in the Federal Register.[3]

### II. Background

On October 16, 1986, Congress enacted ECPA. To promote competition in the relicensing process, Congress amended section 15 of the FPA to establish new procedures, timetables, and standards for relicensing proceedings.

Section 4(a) of ECPA adds a new subsection (b) to section 15 of the FPA. Section 15(b)(1) of the FPA[4] requires an existing licensee to notify the Commission at least 5 years before the expiration of its license whether or not it intends to file an application for a new license.[5] Section 15(b)(3) of the FPA requires the Commission to provide public notice and notify fish and wildlife agencies of an existing licensee's intention to file or not to file an application for a new license[6]

Section 15(b)(2) of the FPA provides that, at the time an existing licensee notifies the Commission under section 15(b)(1) of the FPA, it must make reasonably available to the public for inspection at its offices current maps, drawings, data, and such other information as the Commission shall, by rule implemented within 180 days of ECPA's enactment, require regarding the construction and operation of the licensed project. That section provides that such information shall include, to the greatest extent practicable, pertinent energy conservation, recreation, fish and wildlife, and other environmental information. That section further provides that copies of the required information shall be made available by the existing license at reasonable reproduction costs.[7]

The provisions of section 15(b)(2) of the FPA were introduced in the House version of the bill.[8] There was no comparable Senate version. The House Committee Report incorporating these provisions[9] stated that the requirement for reimbursement of reproduction costs was not intended to apply to fish and wildlife agencies, and that the Commission must arrange for such agencies to promptly receive all necessary and pertinent information on a current and timely basis.

Section 4(a) of ECPA also adds a new subsection (c) to section 15 of the FPA. Section 15(c)(1) of the FPA requires an existing licensee or a competitor to file

---

[1] Pub. L. No. 99–495.

[2] 16 U.S.C. 808.

[3] This interim rule implements only a portion of new relicensing requirements established under section 4(a) of ECPA. The Commission will address other provisions of section 4(a) of ECPA in a future rulemaking

[4] Section 15(b)(1) of the FPA states: [e]ach existing licensee shall notify the Commission whether the licensee intends to file an application for a new license or not. Such notice shall be submitted at least 5 years before the expiration of the existing license.

[5] Prior to its amendment by ECPA, section 15 of the FPA did not specify any time period within which an existing licensee had to notify the Commission whether or not it intended to file an application for a new license. However, section 14(b) of the FPA provided that the Commission could entertain applications for a new license no earlier than 5 years before the expiration of the existing license. The Commission's current regulations require an existing licensee either to file an application for a new license or to file a statement of intention not to file an application for a new license no earlier than 5 years and no later than 3 years prior to the expiration of the existing license. *See* 18 CFR 16.3 (1986).

[6] Section 15(b)(3) of the FPA states: [p]romptly following receipt of notice under paragraph (1), the Commission shall provide public notice of whether an existing licensee intends to file or not to file an application for a new license. The Commission shall also promptly notify the National Marine Fisheries Service and the United States Fish and Wildlife Service, and the appropriate state fish and wildlife agencies.

[7] Section 15(b)(2) of the FPA states: [a]t the time notice is provided under paragraph (1), the existing licensee shall make each of the following reasonably available to the public for inspection at the offices of such licensee: current maps, drawings, data and other information as the Commission shall, by rule, require regarding the construction and operation of the licensed project. Such information shall include, to the greatest extent practicable pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Copies of the information shall be made available at reasonable costs of reproduction. Within 180 days after the enactment of the Electric Consumers Protection Act of 1986, the Commission shall promulgate regulations regarding the information to be provided under this paragraph

[8] H.R. 44, 99th Cong., 2nd Sess. (1986).

[9] H.R. Rep. No. 507, 99th Cong., 2nd Sess. at 35 (March 25, 1986).

an application for a new license with the Commission at least 24 months before the expiration of the existing license.[10] Section 15(c)(2) of the FPA [11] authorizes the Commission to adjust, by rule or order, the time periods specified in subsections (b) and (c) where existing licensees are unable to comply with a specified time period because of the expiration date of their licenses.[12]

## III. Discussion

### *A. Notification of Intention to File an Application for a New License and Filing of an Application for a New License*

The Commission's current regulations require an existing licensee to file an application for a new license or a statement of intention not to file an application for a new license no earlier than 5 years and no later than 3 years before the expiration of its license.[13] The Commission's current regulations allow a competitor to file an application for a new license within 5 years of expiration of the existing license; these regulations specify that the competitor may not file an application later than 6 months after the issuance of the public notice of the filing of an application or a statement by the existing licensee, or 2½ years before the expiration of the existing license, whichever is earlier.[14]

ECPA established new notification and filing requirements for relicensing. This interim rule amends the Commission's regulations to implement these new requirements.

The regulations implementing the new requirements track the terms of new sections 15(b)(1), 15(b)(3), and 15(c)(1) of the FPA. The Commission is requiring an existing licensee or a competitor to file an application for a new license no later than 2 years before the expiration of the existing license. The Commission is also requiring an existing licensee to notify the Commission whether it intends to file an application for a new license at least 5 years before the expiration of the existing license.[15] The existing licensee must provide such notification in a letter containing an unequivocal statement of the existing licensee's intention to file or not to file an application for a new license. After the Commission receives an existing licensee's notification letter, it will promptly provide public notice and notify the fish and wildlife agencies of the existing licensee's intention.

### *B. Information Requirements for Existing Licensees*

Section 15(b)(2) of the FPA requires an existing licensee to make certain information regarding its licensed project reasonably available to the public for inspection and reproduction. The Commission believes that the requirements of section 15(b)(2) of the FPA are intended to facilitate public access to information relating to the current and past operation and construction of the existing licensee's project. The Commission does not believe that information on a licensee's future plans should be disclosed to the public before an application for a new license is filed. Disclosure of this proprietary information may unfairly disadvantage the existing licensee. Under this rule, therefore, an existing licensee must only make available to the public information pertaining to the existing project as licensed. The information made available by the existing licensee must reflect any license amendments that the Commission has issued for the project as well as any annual licenses issued for the project.

#### 1. Information to be Made Available

The Commission believes that, with respect to project generation, operation and maintenance problems, and operation and maintenance costs, the public will only be interested in current data. To avoid placing any unnecessary burden upon existing licensees, the Commission is requiring the information for these items to cover only the last 5 years preceding the time that the information is required to be made available. For these items, therefore, an existing licensee is not required to make information from prior periods available to the public. However, the Commission encourages existing licensees to make information from prior periods reasonably available to those members of the public requesting such information. Moreover, in prescribing the information a licensee is required to make publicly available pursuant to section 4(a) of ECPA, the Commission is in no way rendering any judgment regarding the availability to the public of any other information regarding the licensed project or project licensee pursuant to a general information or discovery request.

Consistent with section 15(b)(2) of the FPA, the Commission considered both developmental and non-developmental criteria in determining which information an existing licensee must make available to the public. Developmental criteria are those relating to the construction and operation of the existing project, while non-developmental criteria are those relating to the existing project's impact on the environment. The Commission is therefore requiring existing licensees to make available to the public information regarding construction and operation, safety and structural adequacy, fish and wildlife resources, energy conservation, recreation and land use resources, and cultural resources.

The construction and operation category includes the following items:

(1) The original license application and the order issuing license for the existing project, including approved and as built Exhibit drawings, all orders issuing amendments to the license for the existing project, and all orders issuing annual licenses for the existing project;

(2) All data necessary to enable the public to verify that the project has been and is being operated in accordance with the requirements of each license article, including minimum flow requirements, maximum ramping rates, reservoir elevation limitations, and environmental monitoring;

(3) A compilation of project generation and respective outflow data

---

[10] Section 15(c)(1) of the FPA states, in relevant part, that: [e]ach application for a new license pursuant to this section shall be filed with the Commission at least 24 months before the expiration of the term of the existing license.

[11] Section 15(c)(2) of the FPA states: [t]he time periods specified in this subsection and in subsection (b) shall be adjusted, in a manner that achieves the objectives of this section, by the Commission by rule or order with respect to existing licensees who, by reason of the expiration dates of their licenses, are unable to comply with a specified time period.

[12] Section 10 of ECPA identifies nine projects for which special procedures will apply during relicensing. Under this section, an existing licensee may, within 90 days after the enactment of ECPA, elect to negotiate with the competing applicant. If an existing licensee fails to make such an election within 90 days after ECPA's enactment, most of the amendments made by ECPA, including those amendments made by section 4 of ECPA, will not apply to the relicensing proceeding. Section 10(d) of ECPA provides that, if an existing licensee elects to negotiate within 90 days after ECPA's enactment, the competitor has 45 days after notice from the Commission of the existing licensee's election to negotiate to accept or refuse the election. If the competitor refuses the existing licensee's election to negotiate, all of the amendments made by ECPA to the FPA will apply to the relicensing proceeding. Thus, an existing licensee for a project identified in section 10 of ECPA will come under the provisions of sections 15 (b) and (c) of the FPA only if: (1) The existing licensee elects to negotiate within 90 days after the date of ECPA's enactment and; (2) the competitor, within 45 days of notice from the Commission of an existing licensee's election to negotiate, refuses such an election to negotiate.

[13] 18 CFR 16.3 (1986).

[14] *Id.*

[15] Pursuant to section 15(c)(2) of the FPA, the Commission is establishing special timetables for those existing licensees that may be unable to comply with this 5-year time period. *See* Part III.B.4., *infra*.

with time increments not to exceed one hour for the previous 5 years;

(4) All public correspondence relating to the existing project;

(5) All existing reports showing the total actual annual generation and annual operation and maintenance costs for the previous 5 years, original project costs, and current net investment;

(6) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system; and

(7) All bills issued to the existing licensee by the Commission for annual charges under section 10(e) of the FPA.

The safety and structural adequacy category includes the following items:

(1) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(2) All independent consultant's reports, if required by Part 12 of the Commission's regulations, filed subsequent to January of 1981;

(3) All existing reports on any operation or maintenance problems, other than routine maintenance, occurring within the last 5 years, and associated costs of such problems under the Commission's Uniform System of Accounts;

(4) The final construction report (or reports if construction occurred in more than one phase) for the existing project; and

(5) All public correspondence relating to the safety and structural adequacy of the existing project.

The fish and wildlife resources category includes the following items:

(1) All existing reports documenting impacts of the project's construction and operation on fish and wildlife resources;

(2) All existing reports documenting the presence or absence of any threatened or endangered species and critical habitat located in the project area, or impacted by the existing project;

(3) All fish and wildlife management plans prepared by the existing licensee or resource agency related to the project area; and

(4) All public correspondence relating to fish and wildlife resources within the project area.

The energy conservation category includes the following items:

(1) If the existing licensee is an electric utility, or a state or municipality that uses any of the power generated by the existing project itself, its plan to conserve electricity or encourage conservation by its customers; and

(2) All public correspondence concerning energy conservation measures related to the existing project.

The recreation and land use resources category includes the following items:

(1) All existing reports on past and current recreational uses of the project area;

(2) All existing maps which show recreational facilities and areas reserved for future development in the project area, designated or proposed wilderness areas in the project area, Land and Water Conservation Fund lands in the project area, and designated or proposed wild and scenic river corridors (state and federal) in the project area;

(3) Documentation showing the entity or entities responsible for operating and maintaining any existing recreational facilities in the project area; and

(4) All public correspondence relating to recreation and land use resources within the project area.

The cultural resources category includes the following items:

(1) All existing reports concerning documented archeological resources identified in the project area;

(2) All existing reports documenting historical and present utilization of the project area and surrounding areas by Native Americans; and

(3) All public correspondence relating to cultural resources within the project area.

2. Form and Availability of Required Information

Section 15(b)(2) of the EPA requires an existing licensee to make the required information reasonably available. The Commission is therefore requiring an existing licensee to make the required information available in a form that is readily accessible, reviewable, and reproducible. The Commission wishes to clarify, however, that an existing licensee is not required to conduct studies or otherwise produce new documents or data in compiling the required information.

The Commission recognizes that an existing licensee may not be able to make some of the required information available for reasons beyond its control. If an existing licensee cannot make certain required information available, it must file a statement of unavailability with the Commission explaining which items cannot be made available. Any member of the public that believes an existing licensee is not making required information reasonably available for public inspection or reproduction may file a petition with the Commission. The petition must set forth in detail the basis for the petitioner's belief that the existing licensee is not making required information reasonably available. The Commission will take appropriate action on the basis of the facts set forth in the petition, the existing licensee's statement of unavailability, and any response filed by the licensee to the petition.

3. Place of Availability, Hours of Availability, and Cost of Reproduction

Section 15(b)(2) of the FPA requires an existing licensee to make the required information available at its offices. Accordingly, the Commission is requiring an existing licensee to make the required information available to the public for inspection and reproduction at the licensee's principal place of business during regular business hours.

Section 15(b)(2) of the FPA requires an existing licensee to make the required information available at reasonable reproduction costs. The Commission recognizes that the term "reasonable" is a relative one and could be interpreted to mean different amounts. The Commission believes that a reasonable amount is no more than 10 cents per page. Therefore, the Commission is requiring an existing licensee to make available, upon request, a copy or copies of the required information at costs of reproduction not to exceed 10 cents per page. If a member of the public wishes to obtain a copy of the required information but is unable to travel to the existing licensee's principal place of business to obtain the requested copy, the existing licensee must mail the requested copy to that entity after obtaining, in advance, reimbursement for postage fees and reasonable costs of reproduction.

The House Committee Report states that "[t]he requirement for reimbursement of reproduction costs is not intended to apply to the fish and wildlife agencies because of their important statutory role under the Fish and Wildlife Coordination Act and the procedural requirements of this legislation." [16] Accordingly, the Commission is exempting the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources from the requirement of reimbursing the existing licensee for the costs of reproducing the required information. The existing licensee must promptly make requested copies available to those agencies without charge. The Commission is also exempting the United States Fish

[16] H.R. Rep. No. 99-507 99th Cong., 2nd Sess., at 35 (March 25, 1986).

Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources from the payment of postage costs. The Commission believes that since Congress exempted these agencies from the payment of reproduction costs, these agencies should also be exempt from postage costs for items requested by mail.

4. Time of Availability

Section 15(b)(2) of the FPA requires an existing licensee to make the required information available to the public at the same time that it notifies the Commission as required under section 15(b)(1) of the FPA. Section 15(b)(1) of the FPA requires an existing licensee to notify the Commission at least 5 years before the expiration of its license whether or not it intends to file an application for a new license. ECPA therefore establishes a minimum 5-year time period prior to the expiration of a license in which an existing licensee must notify the Commission of its intention to file an application for a new license and make information regarding its project available to the public for inspection and reproduction. The Commission recognizes that it will be difficult or impossible for existing licensees that have relied on the Commission's current notice and filing procedures [17] to comply with this 5-year time period. Section 15(c)(2) of the FPA authorizes the Commission to adjust the time periods specified in subsection (b) with respect to existing licensees that are unable to comply with a specified time period because of the expiration date of their licenses.

The Commission is therefore establishing the following timetables to accommodate those existing licensees with license expiration dates that make it difficult or impossible for them to comply with the 5-year time period established by section 4(a) of ECPA:

(1) an existing licensee of a project that is or will be involved in a relicensing proceeding, with a license that expires on or before October 15, 1991, must make the required information available no later than 60 days after the effective date of this rule, if the licensee filed an application or a statement under the Commission's current regulations [18] before October 16, 1986, or must notify the Commission and make the required information available no later than 90 days after the effective date of this rule, if the licensee did not file an application or a statement under the Commission's current regulations before October 16, 1986 [19];

(2) An existing licensee with a license that expires on or after October 16, 1991, but before October 17, 1992, must notify the Commission and make the required information available on or before October 16, 1987; and

(3) An existing licensee with a license that expires on or after October 17, 1992 must notify the Commission and make the required information available at least 5 years before the expiration of the existing license.

## IV. Notice and Comment

This interim rule will become effective without prior notice and comment. Notice and comment procedures are not required under the Administrative Procedure Act when the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest.[20] The legislative history of the Administrative Procedure Act defines the term "impracticable" as a situation in which the due and required execution of the agency function would be unavoidably prevented by its undertaking public rulemaking proceedings.[21]

The Commission finds that the public notice and comment before the issuance of this interim rule would have been impractible. Congress required the Commission to issue this rule within 180 days following the enactment of ECPA. ECPA became law on October 16, 1986. Immediately thereafter the Commission began the process of drafting this rule. This required the Commission to determine the types of information to be made available by existing licensees and the manner in which this information must be made available. Determination of these matters and preparation of the interim rule, within the 180 day period, did not provide sufficient time for comments to be submitted and incorporated into this rule.

The Commission invites all interested persons to submit written data, views, or other information on the matters in this interim rule. The Commission will consider these comments before issuing final regulations. An original and fourteen copies should be submitted within May 22, 1987 to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments submitted should refer to Docket No. RM87–7–000. All written submissions will be placed in the Commission's public file and will be available for public inspection through the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regualar business hours.

## V. Applicability of Regulatory Flexibility Act

The Regulatory Flexibility Act requires that final rules issued by regulatory agencies contain an analysis of the impact of the rulemaking on small entities.[22] A regulatory analyais is prepared when an agency issues a final rule following a period of notice and comment.[23] This interim rule is being issued without notice and comment. Therefore, the Commission believes that the provisions of the Regulatory Flexibility Act are not applicable to this rulemaking.

In preparing this interim rule, however, the Commission has considered the impact on small entities. Two provisions were included to lessen the impact on small hydroelectric licensees. First, certain information is required to be available for only the previous five years. Second, the rule provides that licensees:

(1) Can inform the Commission if some of the required information is unavailable; and

(2) Are not required to conduct studies or otherwise produce new documents or data in compiling the required information.

## VI. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [24] and the Office of Management and Budget's (OMB) regulations [25] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this interim rule have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (attention: Ellen Brown (202) 357–8272). Comments on the provisions of this interim rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (attention: Desk Officer for the Federal Regulatory Commission). If OMB has not approved this interim rule by the

[17] *See* § 16.3 and n. 3, *supra*
[18] *See* § 16.3
[19] *Id.*
[20] 5 U.S.C. 533(b)(B) (1982).
[21] S. Rep. No. 752, 79th Cong., 1st Sess. at 16 (1945).
[22] 5 U.S.C. 604 (1982).
[23] *Id.*
[24] 44 U.S.C. 3501–3520 (1982).
[25] 5 CFR 1320.13 (1986).

effective date on this rule, the effective date of the rule will be suspended.

**EFFECTIVE DATE:** This interim rule will become effective May 7, 1987.

**List of Subjects in 18 CFR Part 16**

Electric power.

In consideration of the foregoing, the Commission amends Part 16, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

## PART 16—[AMENDED]

1. The authority citation for Part 16 is revised to read as follows:

**Authority:** Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR Part 142 (1978).

2. The table of contents for Part 16 is amended by adding the following entries to read as follows:

* * * * *

16.14 Filing of an application for a new license under ECPA.
16.15 Notification procedures under ECPA.
16.16 Information to be made available to the public under ECPA.

3. Part 16 is amended by revising § 16.1 to read as follows:

**§ 16.1 Applicability, purpose, and definitions.**

(a) The provisions of this Part apply to projects subject to sections 14 and 15 of the Federal Power Act, as amended.

(b) The provisions of §§ 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9, 16.10, 16.11, 16.12, and 16.13 of this Part implement the amendments of sections 7(c), 14, and 15 of the Federal Power Act enacted by Pub. L. No. 90–451, approved August 3, 1968.

(c) The provisions of §§ 16.14, 16.15, and 16.16 of this Part implement the amendments of section 15 of the Federal Power Act enacted by section 4(a) of the Electric Consumer Protection Act of 1986 ("ECPA"), Pub. L. No. 99–495, approved October 16, 1986.

(d) To the extent that the provisions of §§ 16.14, 16.15, and 16.16 of this Part are inconsistent with the other provisions of this Part, the provisions of §§ 16.14, 16.15, and 16.16 are controlling.

(e) *Definitions.* (1) "New license" means a license for a power project issued to the existing licensee or a new licensee upon the expiration of the existing license.

(2) "Non-power license" means a license for a nonpower project.

4. Sections 16.14, 16.15 and 16.16 are added to Part 16 'o read as follows:

**§ 16.14 Filing of an application for a new license under ECPA.**

An existing licensee or any other person or municipality must file an application for a new license at least 24 months before the expiration of the existing license.

**§ 16.15 Notification procedures under ECPA.**

(a) *Requirement to notify.* An existing licensee must notify the Commission by letter whether or not it intends to file an application for a new license. The notification letter must contain an unequivocal statement of the existing licensee's intention to file or not to file an application for a new license and must clearly show:

(1) The license expiration date;

(2) The licensee's name;

(3) The project number;

(4) The type of principal project works licensed, *e.g.*, dam and reservoir, powerhouse, transmission lines;

(5) The location of the project by state, county, and stream, and, when appropriate, city or nearby city; and

(6) The plant installed capacity.

(b) *When to notify.* (1) An existing licensee with a license that expires on or after October 17, 1992, must notify the Commission as required under paragraph (a) of this section at least five years before the expiration of the existing license.

(2) An existing licensee with a license that expires on or after October 16, 1991, but before October 17, 1992, must notify the Commission as required under paragraph (a) of this section by October 16, 1987.

(3) An existing licensee of a project that is or will be involved in a relicensing proceeding, with a license that expires on or before October 15, 1991, must notify the Commission as required under paragraph (a) of this section by August 5, 1987, if the licensee did not file an application or a statement under § 16.3 of this Part before October 16, 1986.

(c) *Commission notice.* Promptly following receipt of the notification required under paragraph (a) of this section, the Commission will provide public notice and notify the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources of the existing licensee's intention to file or not to file an application for a new license.

**§ 16.16 Information to be made available to the public under ECPA.**

(a) *Requirement to make information available.* An existing licensee must make information regarding its existing project reasonably available to the public for inspection and reproduction.

(b) *Information to be made available.* An existing licensee must make the following information regarding its existing project reasonably available to the public for inspection and reproduction.

(1) *Construction and operation.* (i) The original license application and the order issuing license for the existing project, including approved and as built Exhibit drawings, all orders issuing amendments to the license for the existing project, and all orders issuing annual licenses for the existing project;

(ii) All data necessary to enable the public to verify that the project has been and is being operated in accordance with the requirements of each license article, including minimum flow requirements, maximum ramping rates, reservoir elevation limitations, and environmental monitoring;

(iii) A compilation of project generation and respective outflow with time increments not to exceed one hour for the previous 5 years;

(iv) All public correspondence relating to the existing project;

(v) All existing reports showing the total actual annual generation and annual operation and maintenance costs for the previous 5 years, original project costs, and current net investment; and

(vi) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system; and

(vii) All bills issued to the existing licensee for annual charges under section 10(e) of the Federal Power Act, as amended.

(2) *Safety and structural adequacy.* (i) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(ii) All independent consultant's reports, if required by Part 12 of the Commission's regulations, filed subsequent to January of 1981;

(iii) All existing reports on any operation or maintenance problems, other than routine maintenance, occurring within the last five years, and associated costs of such problems under the Commission's Uniform System of Accounts;

(iv) The final construction report (or reports if construction occurred in more than one phase) for the existing project; and

(v) All public correspondence relating to the safety and structural adequacy of the existing project.

(3) *Fish and Wildlife resources.* (i) All existing reports documenting impacts of the project's construction and operation on fish and wildlife resources;

(ii) All existing reports documenting the presence or absence of any threatened or endangered species and critical habitat located in the project area, or impacted by the existing project;

(iii) All fish and wildlife management plans prepared by the existing licensee or resource agency related to the project area; and

(iv) All public correspondence relating to the fish and wildlife resources within the project area.

(4) *Energy conservation.* (i) If the existing licensee is an electric utility, or a state or municipality that uses any of the power generated by the existing project itself, its plan to conserve electricity or encourage conservation by its customers; and

(ii) All public correspondence concerning energy conservation measures related to the existing project.

(5) *Recreation and land use resources.*—(i) All existing reports on past and current recreational uses of the project area;

(ii) All existing maps which show recreational facilities and areas reserved for future development in the project area, designated or proposed wilderness areas in the project area, Land and Conservation Fund lands in the project area, and designated or proposed wild and scenic river corridors (state and federal) in the project area;

(iii) Documentation showing the entity or entities responsible for operating and maintaining any existing recreational facilities in the project area; and

(iv) All public correspondence relating to recreation and land use resources within the project area.

(6) *Cultural resources.* (i) All existing reports concerning documented archeological resources identified in the project area;

(ii) All existing reports documenting historical and present utilization of the project area and surrounding areas by Native Americans; and

(iii) All public correspondence relating to cultural resources within the project area.

(c) *Form, place of availability, hours of availability, and cost of reproduction.* (1) An existing licensee must compile the information specified in paragraph (b) of this section in a form that is readily accessible, reviewable, and reproducible.

(2) An existing licensee must make the information specified in paragraph (b) of this section available to the public for inspection at its principal place of business during regular business hours.

(3) Except as provided in paragraph (c)(4) of this section, an existing licensee must make requested copies of the information specified in paragraph (b) of this section available at reasonable costs of reproduction, not to exceed 10 cents per page of photocopy, per page on microform, or per page of computer printout. An existing licensee must make such requested copies available either:

(i) At its principal place of business, after obtaining reimbursement for reasonable costs of reproduction, or

(ii) Through the mail, after obtaining reimbursement for postage fees and reasonable costs of reproduction.

(4) *Exception.* An existing licensee must make requested copies of the information specified in paragraph (b) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources without charge for costs of reproduction or postage fees.

(d) *Unavailability of required information.* (1) An existing licensee must file a statement of unavailability with the Commission regarding the information specified in paragraph (b) of this section that it cannot, for reasons beyond its control, make available to the public for inspection and reproduction. Such statement of unavailability must describe those items that the existing licensee cannot make available and, to the extent known, why those items are not available.

(2) A member of the public that believes an existing licensee is not making the information specified in paragraph (b) of this section reasonably available for public inspection or reproduction may file a petition with the Commission. The petition must describe in detail the basis for the petitioner's belief that the existing licensee is not making required information reasonably available.

(e) *When to make information available.* (1) An existing licensee with a license that expires on or after October 17, 1992, must make the information specified in paragraph (b) of this section available to the public for inspection and reproduction at the same time that it notifies the Commission under § 16.15(b)(1) of this Part.

(2) An existing licensee with a license that expires on or after October 16, 1991, but before October 17, 1992, must make the information specified in paragraph (b) of this section available to the public for inspection and reproduction by October 16, 1987.

(3) An existing licensee of a project that is or will be involved in a relicensing proceeding, with a license that expires on or before October 15, 1991, must make the information specified in paragraph (b) of this section available to the public for inspection and reproduction by:

(i) August 5, 1987, if the licensee did not file an application or a statement under § 16.3 of this Part before October 16, 1986; or

(ii) July 6, 1987, if the licensee filed an application or a statement under § 16.3 of this Part before October 16, 1986.

[FR Doc. 87-7401 Filed 4-6-87; 8:45 am]
BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510 and 558

### Animal Drugs, Feeds, and Related Products; Tylosin

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Dr. MacDonald's Vitamized Feed Co., Inc. The NADA provides for use of a Type A article containing 0.5 gram of tylosin per pound for making Type C swine feed. FDA is also amending the regulations to remove the firm from the list of sponsors of approved NADA's. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

**EFFECTIVE DATE:** April 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Dr. MacDonald's Vitamized Feed Co., Inc.'s, NADA 96-782. The NADA provides for use of a 0.5-gram-per-pound tylosin (as tylosin phosphate) Type A article for making Type C swine feed. This document removes and reserves 21 CFR 558.625(b)(37) which reflected approval of the NADA. In addition, because the firm is no longer sponsor of any approved NADA's, the regulation in 21 CFR 510.600(c)(1) and (2) is amended to

remove the firm from the list of sponsors of approved NADA's.

List of Subjects

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

**Authority:** Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Dr. MacDonald's Vitamized Feed Co., Inc.," and in paragraph (c)(2) by removing the entry for "044142."

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.625 [Amended]**

4. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(37).

Dated: March 20, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–7647 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–01–M

---

**21 CFR Parts 510 and 558**

### Animal Drugs, Feeds, and Related Products; Tylosin

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Farm Bureau Services, Inc./Agra Land, Inc. The NADA provides for use of a Type A article containing 4 or 10 grams of tylosin per pound for making Type C swine feeds. FDA is also amending the regulations to remove Farm Bureau Services, Inc., from the list of sponsors of approved NADA's. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

**EFFECTIVE DATE:** April 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3184.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 118–780 which provides for use of a 4- or 10-gram-per-pound tylosin (as tylosin phosphate) Type A article for making a Type C swine feed. This document removes 21 CFR 558.625(b)(64) that reflects approval of the NADA. Additionally, since the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600(c) (1) and (2) are amended to remove the firm from the list of sponsors of approved NADA's.

List of Subjects

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

**Authority:** Sec. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Farm Bureau Services, Inc.," and in paragraph (c)(2) by removing the entry for "020584."

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.625 [Amended]**

4. Section 558.625 *Tylosin* is amended by removing paragraph (b)(64) and reserving it for future use.

Dated: March 20, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–7648 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–01–M

---

**21 CFR Part 520**

### Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Tablets

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories, providing for use of Heartgard 30™ (ivermectin) Tablets for dogs to prevent canine heartworm disease.

**EFFECTIVE DATE:** April 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

**SUPPLEMENTARY INFORMATION:** Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, filed NADA 138–412 providing for oral use of Heartgard 30™ (ivermectin) Tablets for dogs to prevent canine heartworm disease. Ivermectin eliminates the tissue stage of heartworm larvae (*Dirofilaria immitis*). The NADA is approved, and the animal drug regulations are amended to reflect this approval by adding § 520.1193 *Ivermectin Tablets* (21 CFR 520.1193). The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

**List of Subjects in 21 CFR Part 520**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

**PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION**

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding new § 520.1193 *Ivermectin Tablets* to read as follows:

**§ 520.1193 Ivermectin Tablets.**

(a) *Specifications.* Each tablet contains 68, 136, or 272 micrograms of ivermectin.

(b) *Sponsor.* See 000006 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 6.0 micrograms per kilogram body weight (2.72 micrograms per pound), minimum. For dogs up to 25 pounds, 68 micrograms; dogs 26 to 50 pounds, 136 micrograms; dogs 51 to 100 pounds, 272 micrograms; dogs over 100 pounds, a combination of the appropriate tablets. The drug is administered at monthly dosing intervals.

(2) *Indications for use.* To prevent canine heartworm disease (*Dirofilaria immitis* infection) by eliminating the tissue stage of larvae.

(3) *Limitations.* Use once-a-month. Not for use in dogs under 6 weeks old. Initial use within a month after first exposure to mosquitoes. Final use within a month after last exposure to mosquitoes. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: March 30, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–7576 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–01–M

---

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

**Schedules of Controlled Substances; Placement of Nabilone Into Schedule II**

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place nabilone into Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). Nabilone is a synthetic substance which is chemically and pharmacologically similar to the tetrahydrocannabinols. This action is based on a finding that nabilone fits the statutory criteria for inclusion in Schedule II of the CSA. As a result of this rule, the regulatory controls and criminal sanctions of Schedule II of the CSA will be applicable to the manufacture, distribution, importation and exportation of nabilone.

**EFFECTIVE DATE:** April 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

**SUPPLEMENTARY INFORMATION:** A proposed rule was published in the **Federal Register** on June 18, 1986 (51 FR 22085–22086), proposing that nabilone be placed into Schedule II of the Controlled Substances Act (21 U.S.C. 801 *et seq.*). All persons were given until July 18, 1986 to submit any comments or objections in writing regarding the proposal.

Two comments, objections or requests for an administrative hearing were filed. Eli Lilly and Company, the manufacturer and developer of the drug supported the action. The other, Unimed, Inc., requested a hearing. Unimed, Inc. stated that it desired a hearing on its contention that a cautionary Statement Policy in DEA's final order controlling Unimed's product Marinol ought, likewise, to apply to nabilone.

DEA's Statement of Policy in the Marinol (dronabinol) order was included to satisfy United States obligations regarding the Schedule I classification of the substance under the Convention on Psychotropic Substances, 1971. Eli Lilly and Company, the manufacturer of nabilone, has advised DEA that it has no objection to the inclusion of a similar statement with respect to its product. However, since nabilone is not controlled under any of the international treaties to which the United States is a party, DEA does not believe that a similar Statement of Policy is required with respect to nabilone. To attach the Statement to substances not controlled under the Psychotropic Convention is not justified in this case. Additionally, DEA has no statutory obligation under the CSA to publish such a Statement regarding initial control measures; nor does the Statement of Policy have any relation to the issue at hand, that is, the listing of nabilone in Schedule II of the CSA

As with any Schedule II drug, the manufacture, distribution and dispensing of nabilone will be closely monitored by DEA. Scheduling II drugs are often subject to diversion into the illicit market, in many cases by DEA registrants. DEA will take action to revoke the registration of any registrant whose diversion of this, or any controlled substance, constitutes a threat to the public health and safety, and in addition will pursue any criminal sanctions which may be warranted under 21 U.S.C. 841(a)(1). See *United States* v. *Moore*, 423 U.S. 122 (1975).

The Unimed, Inc. request for a hearing for the singular purpose of seeking a cautionary Statement of Policy with respect to nabilone is denied. The Administrator finds that the scheduling of nabilone may continue without the need for a time-consuming hearing.

Having considered the comments and objections presented by the above listed parties, the requirements of the CSA, the Food and Drug Administration's conclusion that nabilone is a safe and effective drug under the provisions of the Federal Food, Drug and Cosmetic Act, the scientific and medical evaluation and the recommendation of the Acting Assistant Secretary for Health, acting on behalf of the Secretary of the Department of Health and Human Services, in accordance with 21 U.S.C. 811(b), the Administrator of the Drug Enforcement Administration, pursuant to the provisions of 21 U.S.C. 811(a) and 811(b), finds that:

(1) Based on available information, nabilone has a high potential for abuse

(2) Nabilone, with final approval of a new drug application by the Food and Drug Administration, has a currently accepted medical use in treatment in the United States.

(3) Abuse of nabilone may lead to severe psychological or physical dependence.

The above findings are consistent with the placement of nabilone into Schedule II of the CSA. In order to avoid further delays in the initial marketing of nabilone, the control of nabilone in Schedule II will be effective on April 7, 1987. In the event that the regulations impose special hardships on any registrant, the Drug Enforcement Administration will entertain any justified request for an extension of time to comply with the Schedule II regulations. The applicable regulations are as follows:

1. Registration. Any person who manufactures, distributes, delivers, imports or exports nabilone, or who engages in research or conducts instructional activities with the substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. Security. Nabilone must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), (c) and (d), 1301.73, 1301.74, 1301.75 (b) and (c) and § 1301.76 of Title 21 of the Code of Federal Regulations.

3. Labeling and Packaging. All labels and labeling for commercial containers of nabilone must comply with the requirements of §§ 1302.03 through 1302.05 and 1302.07–1302.08 of Title 21 of the Code of Federal Regulations.

4. Quotas. All persons required to obtain quotas for nabilone shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. Inventory. Every registrant required to keep records and who possesses any quantity of nabilone shall take an inventory, pursuant to §§ 1304.04 and 1304.11 through 1304.19 of Title 21 of the Code of Federal Regulations, of all stocks on hand.

6. Records. All registrants required to keep records pursuant to §§ 1304.21 through 1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding nabilone.

7. Reports. All registrants required to submit reports pursuant to §§ 1304.34 through 1304.37 of Title 21 of the Code of Federal Regulations shall do so regarding nabilone.

8. Order Forms. All registrants involved in the distribution of nabilone shall comply with the order form requirements of Part 1305 of Title 21 of the Code of Federal Regulations.

9. Prescriptions. FDA approved nabilone drug products may be used in medical treatment and may be dispensed by prescription. All prescriptions for FDA approved nabilone drug products shall comply with §§ 1306.11 through 1306.15 of Title 21 of the Code of Federal Regulations.

10. Importation and Exportation. All importation and exportation of nabilone shall be in compliance with Parts 1311 and 1312 of Title 21 of the Code of Federal Regulations.

11. Criminal Liability. Any activity with respect to nabilone not authorized by or in violation of the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful. The applicable penalties after April 7, 1987 shall be those of a Schedule II substance.

12. Other. In all other respects, this orders is effective on April 7, 1987.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the control of nabilone, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980). This action will allow the initial marketing of a drug product which has been approved by the FDA.

In accordance with the provisions of 21 U.S.C. 811(a) (section 201(a) of the CSA), this order to place nabilone into Schedule II is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291.

### List of Subjects in 21 CFR Part 1308

Narcotics, Prescription drugs, Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 811(a) (section 201(a) of the CSA) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR 0.100), the Administrator hereby orders that 21 CFR 1308.12(f) be amended as follows by the addition of nabilone:

### PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. 21 CFR 1308.12(f) is amended by the addition of a new paragraph (f)(2) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(f) * * *

(2) Nabilone.....7379

[Another name for nabilone: (+)-*trans*-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].

Dated: March 31, 1987.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87–7533 Filed 4–6–87; 8:45 am]

BILLING CODE 4410–09–M

---

## Office of the Attorney General

## 28 CFR Part 0

[Order No. 1176–87]

## Asylum Policy and Review

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This order reflects the creation of the Asylum Policy and Review Unit within the Office of Legal Policy. This change to the Department's regulations is being made in order to reflect accurately the agency's internal management structure.

**EFFECTIVE DATE:** March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ralph Thomas, Deputy Assistant Commissioner for Refugee, Asylum and Parole, Immigration and Naturalization Service, 425 Eye Street NW., Washington, DC 20536 Telephone (202) 633–5463.

**SUPPLEMENTARY INFORMATION:** The Asylum Policy and Review Unit, located within the Office of Legal Policy, advises the Attorney General and the Deputy Attorney General on matters related to asylum policy. It will compile information relevant to asylum decisions and assist the Attorney General, the Deputy Attorney General, and the Immigration and Naturalization Service in coordinating related matters.

This order has been issued to increase efficiency within the Department and is a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of Executive Order No. 12291.

**List of Subjects in 28 CFR Part 0**

Administrative practice and procedure; Immigration; Organization and functions (Government agencies).

**PART 0—[AMENDED]**

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 0 of Title 28 of the Code of Federal Regulations is amended as follows.

1. The authority citation for Part 0 continues to read as follows:

**Authority.** 5 U.S.C. 301, 2303, 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300

**§ 0.15 [Amended]**

2. Section 0.15 is amended by adding new paragraph (f) to read as follows:

* * * * *

(f) The Deputy Attorney General is authorized, and may delegate authority to the Director of the Asylum Policy and Review Unit within the Office of Legal Policy, to:

(1) Compile and disseminate to Immigration and Naturalization Service (INS) officers information concerning the persecution of persons in countries on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) Review cases decided by the Board of Immigration Appeals pursuant to 8 CFR 3.1(h)(1)(i);

(3) Review INS asylum decisions in cases which the Deputy Attorney General directs INS to refer to him.

(4) Assist INS in conducting training concerning asylum and assist in resolving questions of policy that may arise.

**§ 0.105 [Amended]**

3. Section 0.105 is amended by adding a new paragraph (k) to read as follows:

* * * * *

(k) Insure that a copy of any asylum application filed with INS shall be sent simultaneously to the Asylum Policy and Review Unit and to the Bureau of Human Rights and Humanitarian Affairs at the Department of State.

4. Subpart D–2—Office of Legal Policy is amended by adding, following § 0.23a, a new section as follows:

**§ 0.23b Office of Asylum Policy and Review.**

There is established, in the Office of Legal Policy, the Asylum Policy and Review Unit, headed by a Director, under the general supervision and direction of the Assistant Attorney General, Office of Legal Policy, and exercising such duties as the Deputy Attorney General delegates pursuant to 28 CFR 0.15(f) or otherwise assigns to it.

**Edwin Meese, III**

*Attorney General.*

[FR Doc. 87–7675 Filed 4–6–87; 8:45 am]

BILLING CODE 4410–01–M

---

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 946**

**Surface Coal Mining and Reclamation Operations on Federal Lands Under the Permanent Program; State-Federal Cooperative Agreements; Virginia**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of the Interior is adopting a cooperative agreement between the Department of the Interior and the Commonwealth of Virginia for the regulation of surface coal mining and reclamation operations on Federal lands in Virginia under the permanent regulatory program. Such a cooperative agreement is provided for in Section 523 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

**EFFECTIVE DATE:** May 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary Josie Smith, Chief, Branch of Federal Regulatory Activities, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240, telephone: (202) 343–1475.

**SUPPLEMENTARY INFORMATION:** This preamble is divided into three parts as follows:

I. Background.
II. Summary of the Terms of the Cooperative Agreement.
III. Procedural Matters.

## I. Background

Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR Part 740 and 745 allow a State and the Secretary of the Interior (Secretary) to enter into a permanent program cooperative agreement if the State has an approved State program. Permanent program cooperative agreements are authorized by section 523(c) of SMCRA, which provides that "(a)ny State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act." (30 U.S.C. 1273(c)). OSMRE's rules setting forth the requirements for the development, approval, and administration of cooperative agreements under this section of SMCRA are found at 30 CFR Part 745.

Under these Federal lands rules, the Governor of any State may request that the Secretary enter into a cooperative agreement with the State, provided the State has an approved State regulatory program, or has submitted a regulatory program for approval. The request must be in writing, and must include certain required information on budget, equipment, personnel, organization, inspection and enforcement, etc., as well as a certification that the State has the legal authority to administer the agreement. These conditions have been met in the case of this agreement.

The nature and extent of the Secretary's ability to delegate authority for the regulation of surface coal mining operations of Federal lands to States through cooperative agreements was a subject of a Federal District Court opinion in *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144 (D.D.C.; July 6, 1984). The Virginia Cooperative Agreement (Agreement) is consistent with that opinion.

The Agreement provides for Secretarial delegation of authorities under the Federal lands program of SMCRA while retaining the Secretary's non-delegable responsibilities under the Mineral Leasing Act. Additionally, certain responsibilities under SMCRA that are reserved to the Secretary are not delegated by this agreement, such as determinations of compatibility for forest lands, unsuitability of Federal lands for mining, and valid existing rights. Requests for determinations of valid existing rights will be processed in accordance with the District Court opinion in *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144 (D.D.C.; March 22, 1985).

Although OSMRE has not yet amended the scope of the Federal lands program, 30 CFR Chapter VII Subchapter D, to be consistent with the District Court decision, this agreement encompasses the salient features of that decision. If changes to the Federal lands program are adopted which are not covered by this Agreement, OSMRE and the Secretary will promptly initiate the

steps necessary to conform the Agreement.

The cooperative agreement was published as a proposed rule in 48 FR 29545, June 27, 1983. A notice of the proposed rule and a summary of the terms were also published June 28, 1983, in the "Bristol Herald Courier," a Virginia newspaper of general circulation.

The results of the public notices and consultations are as follows:

- OSMRE received no comments or requests for public hearings from members of the public, and no public meetings or hearings were held.
- OSMRE received comments from, and consulted with, the U.S. Fish and Wildlife Service (FWS) and the U.S. Forest Service (FS).
- FWS agreed that the cooperative agreement was acceptable. However, FWS did express concern over two acre mine sites. OSMRE delayed finalizing the cooperative agreement until these issues were resolved. Virginia had calculated the affected area which qualifies for the 2-acre exemption in a manner less effective than the standards prescribed by 30 CFR 700.11 and 30 CFR 701.5. Pursuant to the litigation of *The Commonwealth of Virginia vs. Clark* (Civil No. 83–0332–B, U.S. District Court for the Western District of Virginia, January 9, 1985), the Secretary and Virginia entered into a consent order requiring retroactive application of the Federal two-acre criteria to all sites. The application of Federal standards alleviated FWS concerns.
- The FS supported the proposed cooperative agreement as it was written.

## II. Summary of the Terms of the Cooperative Agreement

Each article of the cooperative agreement is summarized below, and any changes from the proposed rule are discussed. Some minor changes have been made for clarity, brevity, and consistency. Some references to specific OSMRE rules have been changed to reflect renumbering resulting from OSMRE's regulatory reforms. Throughout the document the acronym "OSM" for the Office of Surface Mining Reclamation and Enforcement has been changed to "OSMRE".

*Article I: Introduction, Purpose, and Responsible Administrative Agency*

This Article sets forth the legal authority for the cooperative agreement, which is provided in section 523(c) of SMCRA. The Article also lists the purposes of the cooperative agreement, the lands affected, and the name of the responsible administrative agency within the Commonwealth of Virginia. It clarifies the role of the Forest Service, which administers most of the lands covered by this agreement, and specifies that this role would apply to any other Federal land management agency which might be affected by the agreement.

The name of the responsible administrative agency within the Commonwealth of Virginia has been changed from the Division of Mined Land Reclamation of the Department of Conservation and Economic Development to The Division of Mined Land Reclamation of the Department of Mines, Minerals and Energy, to be consistent with organizational changes made by the State.

*Article II: Effective Date*

This Article provides the effective date of the agreement, and specifies that it remains in effect until terminated, as provided in Article XI. The agreement will become effective 30 days after publication in the **Federal Register**. In the proposed cooperative agreement, the provisions for terminating the agreement were in Article X. In the final rule, they are in Article XI.

*Article III: Definitions*

This Article provides that terms used in this Agreement shall be given the meanings specified in SMCRA, 30 CFR Parts 700, 701, and 740, the State Program, the State Act, and in rules promulgated pursuant to those Acts.

Proposed Article III provided that any terms and phrases used in the Agreement would have the same meanings as in 30 CFR Parts 700, 701, and 740. In the final rule, this Article has been expanded to provide that terms and phrases used in the Agreement will have the same meanings set forth not only in those regulations, but also the meanings given in the approved State Program. Defining terms and phrases in this manner ensures consistency among all applicable authorities and the Agreement. The final Article further adds a provision that where there is a conflict among the referenced State and Federal definitions, State Program definitions will apply unless prohibited by Federal statute. A definition of the specific Federal lands subject to the agreement has been added for clarity.

*Article IV: Applicability*

This Article specifies the lands covered by the terms of the Agreement.

Article IV makes the laws, rules, terms and conditions of the State Program applicable to all non-Indian Federal lands within Virginia. The Agreement applies to all Federal land except lands containing leased Federal coal or Federal surface over unleased Federal coal. In the proposed Agreement Paragraph B provided that appeals of decisions issued by DMLR in accordance with the State Program would be appealed to the State; appealable decisions issued by the Department would be appealed to the Department's Office of Hearings and Appeals.

In the final rule, the reference to the conditional approval of the Virginia Program has been removed, because there are no longer any conditions attached to OSMRE's approval of that Program. The discussion of the land covered by the Agreement has been changed at the request of the State to specify that the Agreement covers those Federal lands in the State except where there is leased Federal coal or Federal surface over unleased Federal coal. The proposed rule stated only that non-Indian Federal lands except those containing leased Federal coal were covered by the Agreement. The State will regulate operations on lands on which the only interest is Federal surface or those with private surface and Federal coal that is not leased. Because the State does not wish to assume responsibility for regulating surface coal mining and reclamation operations on Federal lands containing leased Federal coal, or those with Federal surface over unleased Federal coal, OSMRE will continue to regulate surface coal mining operation's on such lands. In the final rule, the provisions formerly in Paragraph B concerning appeals have been moved to a new Article, X. This necessitated renumbering subsequent Articles.

*Article V: Requirements for Cooperative Agreements*

This Article discusses basic requirements for cooperative agreements, including an affirmation by the Governor and the Secretary to meet the requirements of this Agreement, funding of the State's implementation of the Agreement, records and reports which the State is required to make, personnel and equipment which the State must have, and fees charged by the State for processing permit applications.

As proposed, this Article contained an affirmation by the Governor and the Secretary that they would comply with the Agreement. Paragraph A provided that DMLR would continue to have authority to carry out the Agreement. These provisions are unchanged in the final rule.

Proposed Paragraph B provided that the State be given funds by OSMRE to defray the costs associated with

carrying out responsibilities under this Agreement pursuant to SMCRA upon application by DMLR, if funds were available to OSMRE. It also specified the procedures to be followed if insufficient funds were available. It further specified that funds provided to the State were to be adjusted according to Budget Circular A–102 of the Office of Management and Budget. In the final rule, the reference to provisions for terminating the Agreement, found in Article X of the proposed rule, has been changed to Article XI, consistent with renumbering changes in the final rule.

Proposed Program C contained requirements whereby DMLR would submit an annual report to OSMRE concerning implementation of the Agreement, and DMLR and OSMRE would exchange information developed under the Agreement, unless prohibited by Federal law. Additionally, the paragraph specified that OSMRE would provide DMLR a copy of any final evaluation report concerning the State's implementation of the Agreement. In the final rule, Paragraph C has been reworded for clarity.

Proposed Paragraph D required the State to maintain the necessary personnel to fully implement this Agreement. No change has been made in this provision in the final rule.

Proposed Paragraph E required the State to ensure itself of access to equipment, laboratories, and other facilities to perform inspections and analyses necessary to carry out the requirements of the Agreement. In the final rule, this paragraph has been rewritten for clarity.

Proposed Paragraph F established that the amount of the fee accompanying an application for a permit was to be determined in accordance with State regulation V771.25; that fees collected from operations on Federal lands covered by the Agreement were to be retained by the State; that the State's annual financial status report submitted to OSMRE was to include a report on fees collected attributable to Federal lands; and that this amount was to be disposed of according to OMB Circular A–102.

In the final rule, Paragraph F has been changed to specify that application fees are to be determined in accordance with the State mining act, and the list of fees covered by this provision has been expanded to include application fees for permit revisions, renewals, transfers, and sales or assignments. No other provisions of the paragraph have been changed.

*Article VI: Review of Permit Application Package(s)*

This Article discusses the requirements for permit application packages and how those packages will be reviewed. Such packages must be in the form required by DMLR, and must include any information required by the Federal land management agency. It must also include information needed to make a determination of compliance with the State program and with any special requirements of the Federal land management agency. Review procedures include provisions on consultation requirements with other responsible agencies; technical assistance provided by OSMRE to DMLR; OSMRE responsibility for determinations of compatibility of mining with Forest Service land uses and for determinations of valid existing rights under Section 522 of SMORA; exchange of information between OSMRE and DMLR; DMLR analysis of permit application packages; and a requirement that DMLR include in any permit any conditions imposed by OSMRE or a Federal land management agency.

Proposed Paragraph A of this Article discussed the required contents and form of "Permit Application Packages" (PAP's), which must be submitted by operators proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement.

The paragraph specified that PAPs had to contain information needed for DMLR to make a determination of compliance with any special conditions imposed by the Federal land manager and with the State program.

In the final rule, a reference to the Secretary requiring an operator to submit a PAP has been deleted, since the Secretary would not be directly involved in this process once this agreement has been finalized. The paragraph provides that the permit application package must be in the form required by DMLR, and include any supplemental information required by the Federal land management agency. It also specifies that the PAP must include information required for DMLR to make a determination of compliance with the State program and with any conditions imposed by the Federal land management agency. Additionally, a new provision has been added, specifying that OSMRE will assist DMLR in identifying Federal agencies which may be affected by a proposed mining operation.

The term "permit application package" (PAP) was adopted by OSMRE in the Federal lands program rules promulgated February 16, 1983 (48 FR 6912). The term includes requirements for mining on Federal lands in addition to those required for permit applications under the approved State program. For example, operations on Federal lands may be subject to requirements of the Federal land management agency under Federal laws other than SMCRA. The package concept allows for any additional information to be submitted along with the application required by the State program.

Proposed Paragraph B was subdivided into five sections. The first stated that DMLR would assume primary responsibility for the analysis, review, and approval or disapproval of the PAPs for Federal lands subject to this agreement, and that DMLR would be the primary point of contact for operators concerning the PAP. In the final rule, this section has been rewritten for clarity. Additionally, provision has been made for DMLR to review permit revisions and renewals, and applications for the transfer, assignment or sale of permit rights, as well as for permit applications. This last provision was added to clarify that an application for a transfer, assignment or sale of permit rights in not a PAP.

The proposed version of the second section of Paragraph B specified that DMLR provide copies of PAPs to the Federal land management agency for review. It also specified that DMLR provide OSMRE with sufficient information to determine whether a proposed operation is prohibited by section 522(e) of SMCRA. Finally, it provided that DMLR was responsible for obtaining the views of any other Federal agencies with responsibility over Federal lands affected by the Agreement.

Language has been added providing that DMLR will provide OSMRE with information to allow OSMRE to determine whether a proposed surface coal mining operation is prohibited or limited by section 522(e) of SMCRA. This will generally involve either a "valid existing rights" or "compatibility" determination. Additionally, a provision has been added requiring DMLR to determine whether leased Federal coal or Federal surface over unleased Federal coal is involved, and to inform OSMRE of these situations.

In the proposed rule, the third section of Article VI B. specified that OSMRE would provide technical assistance when requested by DMLR, if available resource allow. It also provided that OSMRE would process requests for determination of compatibility and valid

existing rights; would promptly provide information from applicants to DMLR; and would provide DMLR a copy of all correspondence with the applicant that had a bearing on permit decisions. This section also provided that OSMRE would have access to DMLR's files. Finally, it reserved the right of the Secretary to act independently of DMLR to carry out the requirements of laws other than SMCRA. The final version of this section has been edited for clarity; no other charges have been made.

The fourth section of Article VI B. specifies that DMLR prepare the required technical analyses and written findings on the permit application packages. Copies of these documents were to be provided upon request to the Federal land management agency for review. No changes have been made in this section in the final rule.

In the proposed rule, the fifth and final section of Article VI B. specified that any permit issued by DMLR would include any terms imposed by the Federal land management agency, including those relating to post mining land use, and those necessary to ensure that the initiation of mining was in compliance with that agency's requirements. The section also provided that notices of permit decisions would go to the applicant, the Federal land management agency, and OSMRE, along with a statement of findings.

In the final rule, the language specifying that DMLR would condition the initiation of mining on compliance with the requirements of the Federal land management agency has been deleted. This language is unnecessary since permits issued by DMLR must incorporate any terms or conditions imposed by OSMRE or the Federal land managing agency.

*Article VII: Inspections*

This Article provides procedures for inspections, and for exchange of information on inspections between DMLR and OSMRE. It provides that DMLR is the primary inspection authority, and encourages joint inspections by DMLR and OSMRE. However, it also reserves to OSMRE the right to conduct inspections, with or without prior notice to DMLR.

The proposed article on inspections was divided into an introductory statement and four paragraphs, A through D. The introduction specified that DMLR would conduct inspections on Federal lands covered by the Agreement, and would prepare and file reports in accordance with the State program. Paragraph A discussed inspection reports; established 15 days as the time period within which DMLR had to file inspection reports with OSMRE; and specified three items to be included in such reports: (1) General conditions of the lands affected; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) how operations are being conducted.

Proposed Paragraph B discussed DMLR's authority, and specified that DMLR was the primary inspection authority and point of contact for the operator on compliance with the Agreement. It reserved to authorized Federal or State agencies the right to conduct inspections for purposes other than those covered by the Agreement.

Proposed Paragraph C discussed OSMRE's authority, by and specified that OSMRE could conduct inspections on Federal lands. OSMRE was normally to give DMLR advance notice of such inspections, but this advance notice was not mandatory, especially when OSMRE was conducting an inspection in response to a citizen's complaint of an imminent danger to the health or safety of the public or of a significant imminent environmental harm pursuant to 30 CFR Part 842. Whenever OSMRE conducted an inspection without DMLR, OSMRE was to provide DMLR with a copy of the report within 15 days.

Proposed Paragraph D stated that personnel of the State and the Department were to be mutually available to serve as witnesses in enforcement actions.

In the final rule, this Article has been rewritten and reorganized extensively for clarity and brevity. The introductory statement has been deleted. Paragraphs A and B have been combined and shortened into a new Paragraph A, which covers both DMLR's authority as the primary inspection authority as well as the schedule for filing reports on inspections. The time allowed for the State to file reports has been extended to 30 days, which more realistically reflects the time needed to prepare such reports than did the 15 days allowed in the proposed rule. The final rule no longer specifies the contents of inspection reports. OSMRE believes that omitting a discussion of the specific contents of these reports provides the State with more flexibility to deal with specific structures.

In the final rule, Paragraph B (Paragraph C in the proposed rule) on the Department's authority has been rewritten. The provision reserving to the Secretary the right to conduct inspections without prior notice to DMLR has been placed first, for emphasis. 30 CFR Part 877 has been added as an authority under which OSMRE may conduct inspections in response to information about dangerous conditions. In the final rule, the provision on mutual witness availability for enforcement actions has been moved to Article VIII, which deals specifically with enforcement issues.

*Article VIII: Enforcement*

This Article provides that DMLR has primary enforcement authority on Federal lands covered by the Agreement, but that the Secretary's authority to enforce other laws is not affected by the Agreement. It also specifies that where OSMRE and DMLR fail to agree on enforcement actions, OSMRE can take any actions necessary to comply with 30 CFR Parts 843 and 845; and that witnesses from DMLR and the Department will be mutually available for enforcement actions.

Proposed Article VIII was divided into three paragraphs. Paragraph A specified that DMLR had primary enforcement authority for lands covered by the Agreement, and that DMLR was to take appropriate enforcement actions during any joint inspections by DMLR and OSMRE.

Proposed Paragraph B specified that DMLR was to notify the Federal land management agencies of all violations subject to the Agreement, and of actions taken by DMLR in response to violations.

Proposed Paragraph C provided that the Secretary's authority to enforce other laws was not limited by the Agreement. It also specified that OSMRE could take any enforcement actions necessary to enforce 30 CFR Parts 843 and 845 during any joint inspection when OSMRE and DMLR could not agree on appropriate enforcement actions. Such actions by OSMRE were to be based on standards in the State Program, and according to the procedures and penalty system in 30 CFR Parts 843 and 845.

In the final rule, proposed paragraphs A and B have been combined into a new Paragraph A. Proposed Paragraph C became final Paragraph B, with one addition to the proposal. A statement has been added to recognize that notwithstanding this cooperative agreement, the Secretary has certain responsibilities to enforce the two-acre exemption set forth in section 528(2) of the Act. The statement makes clear that the cooperative agreement will not preclude the Secretary from fulfilling his obligations under the June 7, 1985, court-approved settlement agreement in *Save Our Cumberland Mountains v. Hodel*, No. 81–2238 (D.D.C.).

A new Paragraph C has been added. This paragraph includes the provision

for mutually available witnesses that was in the proposed version of Article VII.

*Article IX: Bonds*

This Article discusses performance bonds, which are to be required by DMLR of all operators on lands covered by the Agreement. It covers bond amounts, payees of bonds, procedures to be followed to deal with bonds if the Agreement is terminated, and bond release and forfeiture. In the proposed rule, this Article was divided into two paragraphs. Paragraph A specified that performance bonds were to be required by DMLR to cover operators' responsibilities under SMORA and the State Program, and that such bonds were to be payable both to the United States and to the State. The bond was to be in such amount as would comply with the requirements of both Federal and State laws; and its release was to be conditioned upon compliance with all applicable requirements. DMLR could release an operator from any obligation under a bond with the concurrence of the Federal land manager. The paragraph further specified that if the Agreement were to be terminated, the bond would revert to being payable only to the United States to the extent that Federal lands were involved, and would be delivered by DMLR to OSMRE if only Federal lands were involved.

Paragraph B stated that bonds to be subject to forfeiture under procedures in the State Program.

In the final rule, Article IX has been rewritten and reorganized for clarity and brevity. Proposed Paragraph A has been divided into final Paragraphs A and B. Final Paragraph A includes the provisions on the basic bonding requirement, bond amounts, and procedures in the event the Agreement is terminated. A new provision specifies that DMLR will inform OSMRE of adjustments to the performance bond.

Final Paragraph B includes the provisions from proposed Paragraph A specifying that release of bonds shall be conditioned on compliance with all applicable requirements. The language on bond release has been rewritten to clarify that concurrence of the Federal land manager *must* be obtained prior to releasing an operator from any obligation under a bond.

Forfeiture provisions from proposed Paragraph B have also been included in final Paragraph B. A provision has been added specifying that OSMRE must concur in any bond forfeiture.

*Article X: Filing of Appeals*

This Article did not appear as a separate provisions in the proposed rule; however, the material contained therein is not new. It specifies that appealable orders issued by DMLR shall be appealed to the State. Appealable orders issued by the Department shall be appealed to the Department's Office of Hearings and Appeals. This section was proposed as Paragraph B of Article IV; in the final rule it has been put in a separate section for organizational purposes and rewritten for clarity and brevity.

*Article XI: Termination of Cooperative Agreement*

This Article specifies that the Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15. There are no changes from the proposed rule, except that the number of the Article has been changed from X to XI because of the addition of new Article X above.

*Article XII: Reinstatement of Cooperative Agreement*

This Article provides that if this Agreement is terminated it can be reinstated under the provisions of 30 CFR Part 745. This was proposed as Article XI, but has been renumbered because of the addition of new Article X above.

*Article XIII: Amendment of Cooperative Agreement*

This Article provides that the Agreement may be amended by mutual consent of the Governor and Secretary in accordance with 30 CFR 745.14. This was proposed as Article XII, but has been renumbered because of the addition of new Article X above.

*Article XIV: Changes in State or Federal Standards*

Paragraph A of this Article provides for notification of OSMRE and DMLR when one or the other party promulgates any changes in its regulations or laws, and that the party notified shall make any necessary changes in its own laws or regulations to ensure consistency. Paragraph B specifies that both parties shall provide the other with copies of any such changes. The title of Paragraph A has been changed from "Time for Changes" in the proposed rule to "Notification of Changes" in the final rule. This new title more accurately reflects the content of this paragraph. This Article was proposed as Article XIII, but has been renumbered because of the addition of new Article X above. No other changes have been made in the final rule.

*Article XV: Changes in Personnel and Organization*

This Article specifies that DMLR and the Secretary shall each notify the other of changes in the organization, structure, functions, duties and funds of their respective organizations. Notification of changes of key personnel are to be in writing, as are notifications of changes of mine inspectors and the areas within the State for which such inspectors are responsible. This Article was proposed as Article XIV, but has been renumbered because of the addition of new Article X above. No other changes have been made in the final rule.

*Article XVI: Reservation of Rights*

This Article specifies that rights that the State or the Secretary may have under other laws or regulations and that are not specifically addressed in the Agreement are not waived. This Article was proposed as Article XV, but has been renumbered because of the addition of new Article X above. The only other change in the final rule is a clarification that the Article does not apply to DOI personnel performing under the *Save Our Cumberland Mountains v. Hodel* two-acre settlement agreement.

## IV. Procedural Matters

*1. E.O. 12291 and Regulatory Flexibility Act*

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget an exemption for Federal/State cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department certifies that this cooperative agreement will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C 605(b). This certification is made based on an assessment of the probable impact of the cooperative agreement on small entities within the State. It is concluded that the effect of the cooperative agreement would be to reduce the cost burden of complying with the Federal lands program found in 30 CFR Chapter VII, Subchapter D. The above findings were made by the Director, OSMRE and approved by the Assistant Secretary for Energy and Minerals. A copy is on file in the OSMRE Administrative Record Room, 5315–A, 1100 L Street NW., Washington, DC 20005.

*2. Paperwork Reduction Act of 1980*

There are recordkeeping and reporting requirements in this cooperative agreement which are the same as, and required by the permanent program regulations. Those regulations required clearance from the Office of Management and Budget under 44 U.S.C. 3507 and were assigned the following clearance numbers:

**Location of Requirement OMB Clearance Number**

Article IV.F (Required by 30 CFR Part 735) 1029–0013

Article V. (Required by 30 CFR Part 740) 1029–0026

Article VIA (Required by 30 CFR Part 840) 1029–0051

Article IX.A (Required by 30 CFR Part 740) 1029–0026

*3. National Environmental Policy Act of 1970*

Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

*4. Author*

The author of this regulation is Mr. Dyrel Delany, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; telephone: (202) 343–1476.

**List of Subjects in 30 CFR Part 946**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

For the reasons set forth herein, 30 CFR Part 946 is amended as follows.

Dated: March 23, 1987.

**Steven Griles,**

*Assistant Secretary for Land and Minerals Management.*

## PART 946—[AMENDED]

1. The authority citation for 30 CFR Part 946 is revised to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.* Pub. L. 95–87.

2. Section 946.30 is added to read as follows:

**§ 946.30 State-Federal Cooperative Agreement.**

This is a Cooperative Agreement (Agreement) between the Commonwealth of Virginia (State) acting by and through the Governor, and the United States Department of the Interior (Department), acting by and through the Secretary of the Interior (Secretary).

**Article I: Introduction, Purpose, and Responsible Administrative Agency**

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA or the Act), 30 U.S.C. 1273(c), which provides that any State with a permanent regulatory program approved under 30 U.S.C. 1253 may enter into an agreement with the Secretary to assume the responsibilities of regulating surface coal mining and reclamation operations on Federal lands within that State. This Agreement provides for such regulation within the Commonwealth of Virginia (State) consistent with SMCRA, the Virginia State Program, and the Federal Lands Program (30 CFR Chapter VII, Subchapter D).

B. *Purpose:* The purpose of this Agreement is to (1) foster State-Federal cooperation in the regulation of coal mining including coal exploration on Federal lands containing non-Federal coal; (2) minimize intergovernmental overlap and duplication; and (3) provide uniform and effective application of the Virginia State Program (State Program) on all Federal lands except those containing leased Federal coal. This agreement does not apply on Indian lands.

C. *Responsible Administrative Agencies:* The Division of Mined Land Reclamation (DMLR) of the Department of Mines, Minerals and Energy is responsible for administering the Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is responsible for administering this Agreement on behalf of the Secretary. The Federal lands in Virginia covered by this Agreement are predominantly administered by the U.S. Department of Agriculture, Forest Service, and include in part the Jefferson National Forest and the George Washington National Forest. It is understood by all parties that the Forest Service or the applicable Federal agency will continue to regulate mining operations on lands under its jurisdiction pursuant to the laws, regulations, agreements, and restrictions governing those lands. These requirements are in addition to the requirements discussed in this Agreement.

**Article II: Effective Date**

The Agreement shall take effect May 7, 1987. This Agreement shall remain in effect until terminated as provided in Article XI.

**Article III: Definitions**

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR Chapter VII, and the approved State Program shall be given the meanings set forth in said definitions. Where there is a conflict among the above referenced State and Federal definitions, the definitions used in the approved State Program will apply unless prohibited by Federal law.

The term "Federal lands covered by the agreement" means all Federal lands in Virginia except those lands containing leased Federal coal or those consisting of Federal surface over unleased Federal coal.

**Article IV: Applicability**

The laws, rules, terms, and conditions of the State Program are applicable to all Federal lands in Virginia. The State is authorized to conduct regulatory activities on all Federal lands with cooperative agreement.

**Article V: Requirements for Cooperative Agreement**

The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in the Agreement.

A. *Authority of State Agency:* DMLR has and shall continue to have authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the DMLR and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided by section 705(c) of the SMORA and 30 CFR Part 735. If sufficient funds have not been appropriated to OSMRE, OSMRE and DMLR shall meet promptly to decide on measures that will insure that mining operations are regulated in accordance with the State Program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with Article XI.

Funds provided to the State shall be adjusted in accordance with the Office of Management and Budget Circular A–102, Attachment E.

C. *Reports and Records:* DMLR shall make annual reports to OSMRE pursuant to 30 CFR 745.12(d) on the results of the State's implementation and administration of this cooperative agreement. DMLR and OSMRE shall exchange, upon request, information developed under this Agreement except where prohibited by Federal law. OSMRE shall provide DMLR with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

D. *Personnel:* DMLR shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State Program.

E. *Equipment and Laboratories:* DMLR shall have access to equipment, laboratories, and facilities necessary to carry out inspections, investigations, studies, tests, and analyses necessary to implement this Agreement.

F. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance with the Virginia Coal Surface Mining Control and Reclamation Act of 1979 and 19 CV 45.1–235.(E). All permit fees, including fees for permits, permit revisions, renewals, transfers, sales or assignments, application fees, and civil penalties collected from

operations on Federal lands covered by this agreement shall be retained by the State and deposited with the State Treasurer. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of the permit application and other fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations and OMB Circular No. A–102 Attachment E.

**Article VI: Review of Permit Application Package(s)**

A. *Permit Application Package:* DMLR shall require an operator proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit the appropriate permit application package (PAP) for a permit, permit revision, or permit renewal in an appropriate number of copies to DMLR. DMLR will furnish OSMRE a copy if OSMRE so requests. The permit application package shall be in the form required by DMLR and include any supplemental information required by the Federal land management agency. The PAP shall include the information required by, or necessary for, DMLR to make a determination of compliance with the State program and, under 30 CFR 740.4(c)(2), with any conditions or special requirements imposed by the Federal land management agency.

As requested, OSMRE will assist DMLR in identifying Federal agencies which may be affected by the proposed mining operation.

B. *Review Procedures:* 1. DMLR shall assume primary responsibility for the analysis, review, and approval or disapproval of PAPs for a permit, permit revision, or permit renewal for operations on Federal lands covered by this agreement. DMLR shall also assume primary responsibility for the review and analysis of applications for transfer, assignment or sale of permit rights required by 30 CFR 740.13 for surface coal mining operations on Federal lands covered by this agreement. DMLR shall be the primary point of contact for operators regarding PAPs and applications for the transfer, sale, or assignment of permit rights and will be responsibile for informing the applicant of all joint State-Federal or Federal determinations.

2. Upon receipt of PAP that involves surface coal mining and reclamation operations on lands covered by this Agreement, DMLR shall (a) transmit a copy of the complete PAP to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(c)(4); (b) provide OSMRE with information necessary to allow OSMRE to determine whether or not a proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of Section 522(e) of SMORA (30 U.S.C. 1272(e)) and 30 CFR Part 761 and Part 762; (c) determine whether leased Federal coal or Federal surface over unleased Federal coal is involved and immediately inform OSMRE in these situations; and (d) obtain, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a PAP in Virginia. These consultation comments shall be forwarded to OSMRE to be considered in any compatibility or valid existing rights determination;

3. OSMRE will provide technical assistance when requested, if available resources allow, and will process requests for determinations of compatibility and valid existing rights under 30 CFR Part 761 and Part 762. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DMLR. OSMRE shall have access to DMLR files concerning mines on Federal lands. The Secretary reserves the right to act independently of DMLR to carry out his responsibilities under laws other than SMORA. A copy of all correspondence with the applicant that may have a bearing on decisions regarding the PAP shall be sent to the State.

4. DMLR shall prepare the required technical analysis and written findings on the PAP. If requested by the Federal land management agency, a draft of these documents shall be sent to it for review and comment.

5. Any permit including permit revisions, renewals, transfers, sales, or assignments approved or issued by DMLR shall incorporate any terms or conditions imposed by OSMRE or the Federal land management agency, including conditions relating to post mining land use. After DMLR reaches a decision on a PAP, it shall send a notice to the applicant, the Federal land management agency, and OSMRE with a statement of all findings and conclusions on which the decision is based.

**Article VII: Inspections**

A. *DMLR Authority*: DMLR shall be the point of contact and primary inspection authority in dealing with the operator concerning operations on lands covered by this Agreement, except as described in this Agreement and the Secretary's regulations. DMLR must conduct inspections on Federal lands covered by this agreement and shall, within 30 days of conducting an inspection on Federal lands, prepare and file with OSMRE a legible copy of the State's completed inspection report. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies.

B. *DOI Authority:* The Secretary reserves the right to conduct inspections without prior notice of DMLR to carry out his responsibilities under SMORA. For the purposes of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSMRE may periodically conduct inspections of surface coal mining and reclamation operations on Federal lands. OSMRE will attempt to give DMLR notice of its intent to conduct inspections and encourage joint inspections. However, pursuant to 30 CFR Part 842 or 30 CFR Part 877, OSMRE may conduct an inspection without the State when responding to information that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources. If an inspection is make without DMLR inspectors, OSMRE shall provide DMLR with a copy of the inspection report within 15 days after inspection.

**Article VIII: Enforcement**

A. *DMLR Enforcement:* DMLR shall have primary enforcement authority on Federal lands covered by this Agreement in accordance with the State Program and this Agreement, and DMLR shall take appropriate enforcement action whenever necessary, including issuance of orders of cessation and notices of violation.

DMLR shall promptly notify the Federal land management agency of all violations of applicable laws, regulations, orders, and approved permits subject to this Agreement and of all actions taken with respect to such violations.

B. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce provisions of laws other than the SMORA. (2) During an inspection made solely by OSMRE or any joint inspection where DMLR and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845 or with SMORA. Such enforcement action shall be based on the substantive standards included in the approved State Program and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845. (3) Nothing in this agreement shall preclude the Secretary from performing his responsibilities in *Save Our Cumberland Mountains* v. *Hodel*, No. 81–2238 (D.D.C.).

C. *Witness Availability:* Personnel of the State and Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

**Article IX: Bonds**

A. DMLR shall require all operators on Federal lands covered by this Agreement to submit a performance bond, payable to both the United States and Virginia. The performance bond shall be of sufficient amount to comply with the bonding requirements of both SMORA and the State Program. Such bond shall provide that if this Cooperative Agreement is terminated, (1) the bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by DMLR to OSMRE if only Federal lands are covered by the bond. The DMLR shall also advise OSMRE of adjustment to the performance bond, pursuant to the Program.

B. Release of the performance bond shall be conditioned upon compliance with all applicable requirements. Prior to releasing the operator from any obligation under such bond, the DMLR shall obtain the concurrence of the Federal land management agency. Such bond shall be subject to forfeiture, with the concurrence of OSMRE, in accordance with the procedures and requirements of the State Program.

**Article X: Filing of Appeals**

Orders and decisions issued by DMLR in accordance with the State Program that are appealable shall be appealed to the

Commonwealth of Virginia in accordance with the State Program. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

**Article XI: Termination of Cooperative Agreement**

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

**Article XII: Reinstatement of Cooperative Agreement**

If this Agreement has been terminated in whole or part, it may be reinstated under the provisions of 30 CFR 745.16.

**Article XIII: Amendment of Cooperative Agreement**

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

**Article XIV: Changes in State or Federal Standards**

A. *Notification of Changes:* The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised permitting or performance standards, or administrative and enforcement procedures. OSMRE and DMLR shall immediately inform each other of any final changes in their respective laws or regulations as provided in 30 CFR Part 732. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the State Program and section 501 of the SMORA for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSMRE shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the administration and enforcement of this Agreement.

**Article XV: Changes in Personnel and Organization**

DMLR and the Secretary shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. DMLR and OSMRE shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location, and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible. This provision does not apply to Department of the Interior personnel performing activities under *Save Our Cumberland Mountains* v. *Hodel* referenced in Article VIII of this Agreement.

**Article XVI: Reservation of Rights**

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Approved:

Dated: March 16, 1987.

Signed:

Jerold L. Baliles,

*Governor of Virginia.*

Dated: January 29, 1987.

Signed:

Donald Paul Hodel,

*Secretary of the Interior.*

(Reporting and recordkeeping requirements approved by the Office of Management and Budget under Control Numbers 1029–0013, 1029–0026, and 1029–0051)

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 43 CFR Parts 3480–3487.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR Part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.

6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 1593 (May 13, 1971), Cultural Resources Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.

12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

13. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*

14. The Constitution of the United States.

15. The Constitution of the State and State Law.

[FR Doc. 87–7612 Filed 4–6–87; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 701

### Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public; Amendment

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth an amended regulation pertaining to the Department of the Navy Privacy Act Program. The rule reflects changes in the Secretary of the Navy Instruction 5211.5 series from which it is derived.

**EFFECTIVE DATE:** April 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Gwendolyn R. Aitken (OP–09B30), Office of the Chief of Naval Operations, Washington, DC 20350–2000. Telephone: (202) 694–2004.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority cited below the Department of the Navy amends 32 CFR Part 701, Subparts F and G, derived from the Secretary of the Navy Instruction 5211.5 series, which implements within the Department of the Navy the provisions of Department of Defense Directive 5400.11, Department of Defense Privacy Program (32 CFR Part 286a) pertaining to action on requests for release of personal information contained in systems of records under the Privacy Act (5 U.S.C. 552a). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR Parts 296 and 701, Subpart E. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR Part 701, Subparts F and G, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Gwendolyn R. Aitken (OP–09B30), Office of the Chief of Naval Operations, Washington, DC 20350–2000. It has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public.

BEST COPY AVAILABLE

List of Subjects in 32 CFR Part 701

Administrative practice and procedure; Freedom of Information; Navy Department; Privacy.

Accordingly, 32 CFR Part 701, Subparts F and G are revised. Subparts A, B, C, D, and E remain unaffected by this amendment. Subparts F and G are revised to read as follows:

## PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

* * * * *

### Subpart F—Personal Privacy and Rights of Individuals Regarding Their Personal Records

Sec.
701.100 Purpose.
701.101 Scope and effect.
701.102 Policy, responsibilities, and authority.
701.103 Definitions.
701.104 Notification, access, and amendment procedures.
701.105 Disclosure to others and disclosure accounting.
701.106 Collection of personal information from individuals.
701.107 Safeguarding personal information.
701.108 Exemptions.
701.109 Contractors.
701.110 Judicial sanctions.
701.111 Government contractors.
701.112 Matching program procedures.
701.113 Rules of access to agency records.
701.114 Rules for amendment requests.
701.115 Rules of conduct under the Privacy Act.
701.116 Blanket routine uses.

### Subpart G—Privacy Act Exemptions

701.117 Purpose.
701.118 Exemption for classified records.
701.119 Exemptions for specific Navy records systems.
701.120 Exemptions for specific Marine Corps records systems.

### Subpart F—Personal Privacy and Rights of Individuals Regarding Their Personal Records

Authority: 5 U.S.C 552a, 32 CFR Part 286a.

#### § 701.100 Purpose.

32 CFR Part 701, Subparts F and G delineate revised policies, conditions, and procedures that govern collecting personal information, and safeguarding, maintaining, using, accessing, amending, and disseminating personal information kept by the Department of the Navy in systems of records. They implement 5 U.S.C. 552a (the Privacy Act of 1974), and the Department of Defense Directive 5400.11 series, Personal Privacy and Rights of Individuals Regarding Their Personal Records (DOD Dir. 5400.11) (32 CFR Part 286a), and prescribe:

(a) Procedures whereby individuals can be notified if any system of records contain a record pertaining to them.

(b) Requirements for verifying the identity of individuals who request their records before the records are made available to them.

(c) Procedures for granting access to individuals upon request for their records.

(d) Procedures for reviewing a request from individuals to amend their records, for making determinations on requests, and for appealing adverse determinations.

(e) Procedures for notifying the public of the existence and character of each system of records.

(f) Procedures for disclosing personal information to third parties.

(g) Procedures for exempting systems of records from certain requirements of 5 U.S.C. 552a.

(h) Procedures for safeguarding personal information.

(i) Rules of conduct for the Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a. *See* § 701.115.

#### § 701.101 Scope and effect.

(a) *Applicability.* 32 CFR Part 701, Subparts F and G apply throughout the Department of the Navy, and to any contractor maintaining a system of records to accomplish a Department of the Navy mission. For the purposes of any criminal liabilities adjudged, any contractor and any employee of such contractor shall be considered to be an employee of the Navy Department. Additionally, all requests by individuals for records (located in a system of records) pertaining to themselves which specify either the Freedom of Information Act or the Privacy Act (but not both) shall be treated under the procedures established under the Act specified in the request. When the request specifies, that it be processed under both the Freedom of Information Act and the Privacy Act, Privacy Act procedures should be employed. The individual should be advised that, while the Department of the Navy has elected to process his/her request in accordance with Privacy Act procedures, he/she can be assured that he/she will be provided with all the information that can be released under either the Privacy Act or the Freedom of Information Act. Requests may fall, however, within the scope of other applicable directives as follows:

(1) Requests from an individual about another individual are governed by the provisions of 5 U.S.C. 552 (Freedom of Information Act) and the SECNAVINST 5720.42 series (32 CFR Part 701, Subparts A through D).

(2) Requests by the General Accounting Office for information or records pertaining to individuals, except with respect to the requirements for disclosure accountings as provided in § 701.107(d) are governed by the SECNAVINST 5740.26 series, Relations with the General Accounting Office.

(3) Official and third party requests for information from systems of records controlled by the Office of Personnel Management shall be governed by 5 CFR Part 297 and the Federal Personnel Manual.

(b) *Other directives.* In case of a conflict, 32 CFR Part 701, Subparts F and G, take precedence over any existing Navy directive that deals with the personal privacy and rights of individuals regarding their personals records, except for disclosure of personal information required by 5 U.S.C. 552 (Freedom of Information Act) and implemented by the SECNAVINST 5720.42 series (32 CFR Part 701, Subparts A through D).

#### § 701.102 Policy, responsibilities and authority.

(a) *Policy.* Subject to the provisions of 32 CFR Part 701, Subparts F and G, it is the policy of the Department of the Navy to:

(1) Ensure that all its personnel at all echelons of command or authority comply fully with 5 U.S.C. 552a to protect the privacy of individuals from unwarranted invasions. Individuals covered by this protection are living citizens of the United States or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor has the same rights as the individual or minor and may act on the individual's or minor's behalf. (A member of the Armed Forces is not a minor for the purposes of 32 CFR Part 701, Subparts F and G).

(2) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law or Executive order, and disclose this information only as authorized by 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifiable or use of sampling of certain data for certain individuals, only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse

consequences of not maintaining the information.

(3) Keep only that personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(4) Let individuals have access to, and obtain copies of, all or any portions of their records, subject to exemption procedures authorized by law and 32 CFR Part 701, Subparts F and G.

(5) Let individuals request amendment of their records when discrepancies proven to be erroneous, or untimely, incomplete, or irrelevant, are noted.

(6) Let individuals request an administrative review of decisions that deny them access to, or refuse to amend their records.

(7) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(8) Maintain no records describing how an individual exercises his/her rights guaranteed by the First Amendment (freedom of religion, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(i) Expressly authorized by statute;

(ii) Authorized by the individual about whom the records is maintained;

(iii) Within the scope of an authorized law enforcement activity; or

(iv) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his/her record concerning religious preference, particularly that required in emergency situations.

(9) Maintain only systems of records which have been published in the **Federal Register.**

(b) *Responsibilities.* (1) The Chief of Naval Operations (OP–09B) is responsible for administering and supervising the execution of 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G within the Department of the Navy. Additionally, the Chief of Naval Operations (OP–09B) is designated as the principal Privacy Act coordinator for the Department of the Navy.

(2) The Commandant of the Marine Corps is responsible for administering and supervising the execution of 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G within the Marine Corps.

(3) Each addressee is responsible for the execution of the requirements of 5 U.S.C. 552a within his/her organization and for implementing and administering a Privacy Act program in accordance with the provisions of 32 CFR Part 701, Subparts F and G. Each addressee shall designate an official to be Privacy Act coordinator to:

(i) Serve as the principal point of contact on all Privacy Act matters.

(ii) Provide training for activity/command personnel in the provisions of 5 U.S.C. 552a.

(iii) Issue implementing instruction.

(iv) Review internal directives, practices, and procedures, including those for forms and records, for comformity with 32 CFR Part 701, Subparts F and G, when applicable.

(v) Compile and submit input for the annual report and record systems notices.

(vi) Maintain liaison with records management officials as appropriate (e.g., maintenance and disposal procedures and standards, forms, and reports).

(4) The systems managers are responsible for (with regard to systems of records under their cognizance):

(i) Ensuring that all personnel who in any way have access to the system or who are engaged in the development of procedures or handling records be informed of the requirements of 5 U.S.C. 552a and any unique safeguarding or maintenance procedures peculiar to that system.

(ii) Determining the content of and setting rules for operating the system.

(iii) Ensuring that the system has been published in the **Federal Register** and that any additions or significant changes are prepublished in the **Federal Register.**

(iv) Answering requests for information from individuals.

(v) Keeping accountability records of disclosures.

(vi) Evaluating information proposed for each system for relevance and necessity during the developmental phase of a new system or when an amendment to an existing system is proposed; in addition, annually comparing the system with the records system notice published in the **Federal Register** and considering:

(A) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(B) Specific adverse consequences of not collecting each category of information.

(C) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(D) Length of time the information is needed.

(E) Cost of maintaining the data compared to the risk or adverse consequences of not maintaining it.

(F) Necessity and relevance of the information to the mission of the command.

(vii) Keeping the Privacy Act coordinator informed of non-routine Privacy Act requests.

(5) Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. Employees shall:

(i) Not disclose any information contained in a system of records by any means of communication to any person, or agency, except as authorized in 32 CFR Part 701, Subparts F and G.

(ii) Not maintain unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(iii) Safeguard the privacy of individuals and the confidentiality of personal information contained in a system of records.

(iv) Familiarize themselves with the Rules of Conduct. *See* § 701.115.

(c) *Denial authority.* Only the following chief officials, their respective vice commanders, deputies, and those principal assistants specifically designated by the chief official are authorized to deny requests for notification, access, and amendment made under 32 CFR Part 701, Subparts F and G, when the records relate to matters within their respective areas of command, technical, or administrative responsibility, as appropriate.

(1) *For the Navy Department.* The Civilian Executive Assistants; the Chief of Naval Operations; the Commandant of the Marine Corps; the Chief of Naval Personnel; the Commanders of Naval Systems Commands; the Commanders of the Naval Intelligence Command, Naval Security Group Command, and Naval Telecommunications Command; the Commander, Naval Medical Command; the Auditor General of the Navy; the Naval Inspector General; the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity); the Chief of Naval Education and Training; the Chief of Naval Reserve; the Chief of Naval Research; the Commander, Naval Oceanography Command; the Director, Naval Civilian Personnel Command; the heads of Department of the Navy Staff Offices, Boards, and Councils; the Assistant Judge Advocate General (Civil Law); and the Assistant Judge Advocate General (Military Law).

(2) *For the Shore Establishment.* (i) All officers authorized pursuant to 10 U.S.C. 822, or designated as empowered in Section 0103d, JAGINST 5800.7 series.

*Manual of the Judge Advocate General,* to convene general courts martial.

(ii) The Director, Naval Security and Investigative Command and the Assistant Commander (Management and Operations), Naval Legal Service Command.

(3) *In the Operating Forces.* (i) All officers authorized pursuant to 10 U.S.C. 822, or designated as empowered in Section 0103d, JAGINST 5800.7 series, *Manual of the Judge Advocate General,* to convene general courts martial.

(d) Review authority. (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), as the Secretary's designee, shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel.

(2) The Judge Advocate General and the General Counsel, as the Secretary's designees, shall act upon requests for notification, access, or amendment of records, as set forth in § 701.104 (b), (c), and (d), other than as indicated in paragraph (d)(1) of this section, and other than initial denials of requests for notification, access, or amendment of records from civilian Official Personnel Folders or records contained on any other Office of Personnel Management (OPM) forms, which will be reviewed by OPM.

(e) The authority of the Secretary of the Navy, as the head of an agency, to request records subject to the 5 U.S.C. 552a from an agency external to the Department of Defense for civil or criminal law enforcement purposes, pursuant to subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

**§ 701.103 Definitions.**

For the purposes of 32 CFR Part 701, Subparts F and G, the following meanings apply:

(a) *Access.* Reviewing or obtaining copies by individuals of records that pertain to themselves, or by agents designated by the individuals, or by individual's legal guardians, that are a part of a system of records.

(b) *Agency.* For purposes of disclosing records, the Department of Defense is an "agency". For all other purposes, to include applications for access and amendment, denial of access and amendment, appeals from denials, and recordkeeping about release to non-DOD agencies, each DOD component is considered a separate "agency".

(c) *Confidential source.* Any individual or organization that has given information to the Federal government under: (1) An express promise that the identity of the source would be withheld, or (2) an implied promise to withhold the identity of the source made before September 27, 1975.

(d) *Disclosure.* The conveyance of information about an individual, by any means of communication, to an organization or to an individual who is not the subject of the record. In the context of the 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G, this term only applies to personal information that is part of a system of records.

(e) *Individual.* A living citizen of the United States, or an alien lawfully admitted for permanent residence; or a member of the United States naval service, including a minor. Additionally, the legal guardian of an individual or a parent of a minor has the same rights as the individual, and may act on behalf of the individual concerned under 32 CFR Part 701, Subparts F and G. Members of the naval service, once properly accepted, are not minors for purposes of 32 CFR Part 701, Subparts F and G. The use of the term "individual" does not, however, vest rights in the representatives of decedents to act on behalf of the decedent under 32 CFR Part 701, Subparts F and G (except as specified in § 701.105(b), nor does the term embrace individuals acting in an entrepreneurial capacity (e.g., sole proprietorships and partnerships).

(f) *Maintain.* When used in the context of records on individuals, includes collect, file or store, preserve, retrieve, update or change, use, or disseminate.

(g) *Official use.* Within the context of 32 CFR Part 701, Subparts F and G, this term encompasses those instances in which officials and employees of the Department of the Navy have a demonstrated need for use of any record to complete a mission or function of the Department, or which is prescribed or authorized by a directive.

(h) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official function or public life.

(i) *Privacy Act request.* A request from an individual for information about himself/herself concerning the existence of, access to, or amendment of records that are located in a system of records. (The request must cite or reasonably imply that it is pursuant to 5 U.S.C. 552a).

(j) *Record.* Any item, collection, or grouping of information about an individual that is maintained by or for the Department of the Navy or by an element of the Navy Department, operating forces, or shore establishment, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains his/her name, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(k) *Risk assessment.* An analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility or center.

(l) *Routine use.* The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the records were collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

(m) *Statistical record.* A record maintained for statistical research or reporting purposes only, which may not be used in whole or in part in making any determination about an identifiable individual.

(n) *System of records.* A group of records from which information "is", as opposed to "can be", retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The capability to retrieve information by personal identifiers alone does not subject a system of records to 5 U.S.C. 552a and 32 CFR Part 701, Subparts F and G.

(o) *System manager.* That official who has overall responsibility for records within a particular system. He/she may serve at any level in the Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (e.g., for local records, at the local activity).

(p) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

**§ 701.104 Notification, access, and amendment procedures.**

(a) *General*—(1) *Summary of requirements.* (i) Notification procedures are provided under subsection (e)(4) of 5 U.S.C. 552a to enable an individual to ascertain from the appropriate system manager whether or not a particular system of records contains information pertaining to him/her. If the system does

contain such a record, the individual may request access to the record, pursuant to subsection (d)(1) of 5 U.S.C. 552a, to ascertain the contents. Amendment procedures are provided under subsections (d) (2) and (3) of 5 U.S.C. 552a, to enable the individual to seek correction or deletion of information about himself/herself in the record which he/she considers to be erroneous. If a request for amendment is denied after a final determination, the individual may file a "statement of dispute," to be noted in the pertinent records and to be shown in connection with disclosures of such records. Individuals have a statutory right to obtain administrative review of denials of requests for amendment, and by 32 CFR Part 701, Subparts F and G, are accorded the right to obtain similar review of denials of requests for notification and access.

(ii) The provisions of this section apply to requests by individuals, or their authorized representatives, for records pertaining to themselves that are contained in systems of records. 32 CFR Part 701, Subparts F and G does not, however, require that an individual be given notification or access to a record that is not retrieved by name or other individual identifier. Requests for amendment of records contained in a system of records will normally be processed in accordance with 32 CFR Part 701, Subparts F and G, unless: (A) they are routine requests for administrative corrections not specifying that they are made under 32 CFR Part 701, Subparts F and G or 5 U.S.C. 552a, or (B) they are requests addressed to the Board for Correction of Naval Records, which is governed by other authority.

(2) *System rules.* Systems managers are responsible for ensuring that, for each system of records maintained, a records system notice is published in the **Federal Register**, stating the procedures by which an individual may be notified whether the system contains records pertaining to him/her. Additionally, systems managers are responsible for establishing, and making available to individuals upon request, rules applicable to requests for access or amendment of records within each system. Such rules must conform to the requirements of 32 CFR Part 701, Subparts F and G, and to matters indicated in §§ 701.113 and 701.114. In addition, they should contain the following:

(i) A statement of custodial officials other than the system manager, if any, authorized to grant requests for notification or access;

(ii) The minimum formal requirements for requests, including applicable requirements for requests to be reduced to writing; and, in the case of a request to provide the requester's records directly to an authorized representative who is other than the parent of a minor, or other legal guardian—an authorization signed within the past 45 days specifying the records to be released and the recipient of the records (notarized authorizations may be required if the sensitivity of the information in the records warrants);

(iii) The information which should be provided by the individual to assist in identifying relevant systems of records and the individual identifiers (e.g., full name, social security number, etc.) needed to locate records in the particular system; and,

(iv) The requirements for verifying the requester's identity, to which the following policies apply:

(A) Prior to being given notification or access to personal information, an individual is required to provide reasonable verification of his/her identity. No verification of identity, however, shall be required of an individual seeking notification or access to records which are otherwise available to any member of the public under 32 CFR Part 701, Subparts A through D.

(B) In the case of an individual who seeks notification, access, or amendment in person, verification of identity will normally be made from those documents that an individual is likely to have readily available, such as an employee or military identification card, driver's license, or medical card.

(C) When notification, access, or amendment is requested by mail, verification of identity may be obtained by requiring the individual to provide certain minimum identifying data, such as date of birth and some item of information in the record that only the concerned individual would likely know. If the sensitivity of the information in the record warrants, a signed and notarized statement of identity may be required.

(D) When a record has already been identified, an individual shall not be denied notification or access solely for refusing to disclose his/her social security number.

(3) *Responsibilities for action on initial requests.* (i) Subject to the provisions of this section and the applicable system manager's rules, requests for notification and access may be granted by officials having custody of the records, even if they are not systems managers or denial authorities. Requests for amendment may be granted by the cognizant system manager. Denials of initial requests for notification, access, or amendment of records under 32 CFR Part 701, Subparts F and G, however, may be made only by those officials designated as denial authorities under § 701.102(c).

(ii) *Investigative/non-investigative records.* (A) Copies of investigative records that are compiled by an investigative organization, but are in the temporary custody of another organization, which is holding the record for disciplinary, administrative, judicial, investigative, or other purposes, are the records of the originating investigative organization. Upon completion of the official action, the investigative reports are required to be destroyed or returned, in accordance with the instructions of the originating investigative activity. Individuals seeking notification or access, or making other requests under 32 CFR Part 701, Subparts F and G, concerning such records, shall be directed to the originating investigative organization. For example, a request for notification or access to a Naval Investigative Service report in the temporary custody of another activity should be forwarded directly to the Commander, Naval Security and Investigative Command.

(B) Copies of non-investigative records (including medical and/or personnel) located in the files of another agency must be referred for release determination. The originating agency may either authorize the records' release by the agency that located them or request that they be referred for processing. The individual requesting his/her records will be notified of records referred for processing.

(4) *Blanket requests not honored.* Requests seeking notification and/or access concerning all systems of records within the Department of the Navy, or a component thereof, shall not be honored. Individuals making such requests shall be notified that: (i) Requests for notification and/or access must be directed to the appropriate system manager for the particular record system, as indicated in the current **Federal Register** systems notices (a citation should be provided), and (ii) requests must either designate the particular system of records to be searched, or provide sufficient information for the system manager to ascertain the appropriate system. Individuals should also be provided with any other information needed for obtaining consideration of their requests.

(5) *Criteria for determinations.* (i) As further explained in Sec. 701.108, portions of designated records systems (indicated in subpart G of this part) are exempt, in certain circumstances, from the requirement to provide notification, access, and/or amendment. Only denial authorities (and the designated review authority) may exercise an exemption and deny a request, and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose served by denying the request. A request for notification may be denied only when an applicable exemption has been exercised by a denial or review authority. A request for access may be denied by a denial or review authority, in whole or part, on the basis of the exercise of an applicable exemption or for the reasons set forth in paragraph (a)(5) (ii) or (iii) of this section.

(ii) Where a record has been compiled in reasonable anticipation of a civil action or proceeding, a denial authority (or the designated review authority) may deny an individual's request for access to that record pursuant to subsection (d)(5) of 5 U.S.C. 552a, provided that there is specifically determined to be a significant and legitimate governmental purpose to be served by denying the request. Consultation with the Office of the Judge Advocate General, Office of General Counsel, or other originator, as appropriate, is required prior to granting or denying access to attorney-advice material. This includes, but is not limited to, legal opinions.

(iii) As indicated in § 701.103(e), where a record pertains to an individual who is a minor, the minor's parent or legal guardian is normally entitled to obtain notification concerning, and access to, the minor's record, pursuant to the provisions of this section. When, however, an applicable law or regulation prohibits notification to, or access by, a parent or legal guardian with respect to a particular record, or portions of a record, pertaining to a minor, the provisions of the governing law or regulation and § 701.105, shall govern disclosures of the existence or contents of such records to the minor's parent or legal guardian. (Members of the naval service, once properly accepted, are not minors for the purposes of 32 CFR Part 701, Subparts F and G.)

(iv) Subject to the provisions of this section, a medical record shall be made available to the individual to whom it pertains unless, in the judgment of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that granting access to medical information could have an adverse effect upon the individual to whom it pertains, the individual may be asked to name a physician to whom the information shall then be transmitted. This shall not be deemed a denial of a request for access.

(6) *Time requirements for making acknowledgements and determinations.* (i) A request for notification, access, or amendment of a record shall be acknowledged in writing within 10 working days (Saturdays, Sundays, and legal holidays excluded) of receipt by the proper office. The acknowledgement shall clearly identify the request and advise the individual when he/she may expect to be advised of action taken on the request. No separate acknowledgement of receipt is necessary if a request for notification or access can be acted upon, and the individual advised of such action, within the 10 working day period. If a request for amendment is presented in person, written acknowledgement may be provided at the time the request is presented.

(ii) Determinations and required action on initial requests for notification, access or amendment of records shall be completed, if reasonably possible, within 30 working days of receipt by the cognizant office.

(b) *Notification procedures* (1) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request for notification, the system manager or the other appropriate custodial official shall acknowledge the request as required by paragraph (a)(6)(i) of this section, and take one of the following actions:

(i) If consideration cannot be given to the request, because—

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified, or the individual has not furnished the information needed to locate a record within the system; or

(C) The request is erroneously addressed to an official having no responsibility for the record or system of records in question;

inform the individual of the correct means, or additional information needed, for obtaining consideration of his/her request for notification.

(ii) Notify the individual, in writing, whether the system of records contains a record pertaining to him/her (a notification that a system of records contains no records pertaining to the individual shall not be deemed a denial);

(iii) If it is determined that notification should be denied under an available exemption and the official is not a denial authority, forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(iv) If the official is a denial authority, take the appropriate action prescribed in paragraph (b)(2) of this section.

(2) *Action by denial authority.* (i) If the denial authority determines that no exemption is available or that an available exemption should not be exercised, he/she shall provide the requested notification, or direct the system manager or appropriate custodial official to do so.

(ii) If the denial authority determines that an exemption is applicable and that denial of the notification would serve a significant and legitimate governmental purpose (e.g., avoid interfering with an on-going law enforcement investigation), he/she shall promptly send the requesting individual an original and one copy of a letter stating that no records from the systems of records specified in the request are available to the individual under 5 U.S.C. 552a. The letter shall also inform the individual that he/she may request further administrative review of the matter within 60 calendar days from the date of the denial letter, by letter to the:

Judge Advocate General (Code 14),
Department of the Navy, 200 Stoval Street,
Alexandria, VA 22332

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for requesting the review.

(iii) A copy of the letter denying notification shall be forwarded directly to the Chief of Naval Operations (OP–09B30) or the Commandant of the Marine Corps (Code M), as appropriate. These officials shall maintain copies of all denial letters in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(3) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for notification, the Judge Advocate General shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. That official is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination. Within 30

working days of receipt of the request for review, whenever practicable, the Judge Advocate General shall inform the requesting individual, in writing, of the final determination and the action thereon. If the final determination is to grant notification, the Judge Advocate General may either provide the notification or direct the system manager to do so. If the final determination is to deny notification, the individual shall be informed that it has been determined upon review that there are no records in the specified systems of records that are available to him/her under 5 U.S.C. 552a.

(c) *Access procedures*—(1) *Fees.* When a copy of a record is furnished to an individual in response to a request for access, he/she will normally be charged duplication fees only. When duplication costs for a Privacy Act request total less than $30, fees may be waived automatically. Normally, only one copy of any record or document will be provided.

(i) Use the following fee schedule:

| | |
|---|---|
| Office copy (per page) | $.10 |
| Microfiche (per fiche) | .25 |

(ii) Checks or money orders to defray fees/charges should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the Treasury account maintained at the finance office servicing the activity.

(iii) Do not charge fees for:

(A) Performing record searches.

(B) Reproducing a document for the convenience of the Navy.

(C) Reproducing a record in order to let a requester review it if it is the only means by which the record can be shown to him/her (e.g., when a copy must be made in order to delete information).

(D) Copying a record when it is the only means available for review.

(2) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request for access, the system manager or other appropriate custodial official shall acknowledge the request as required by paragraph (a)(6)(i) of this section, and take one of the following actions:

(i) If consideration cannot be given to the request because—

(A) The individual's identity is not satisfactorily verified;

(B) The record system is not adequately identified or the individual has not furnished the information needed to locate a record within a system; or

(C) The request is erroneously addressed to an official not having responsibility for granting access to the record or system of record in question;

inform the individual of the correct means, or additional information needed, for obtaining consideration of his/her request for access.

(ii) If it is determined that the individual should be granted access to the entire record requested, the official shall inform the individual, in writing, that access is granted, and shall either:

(A) Inform the individual that he/she may review the record at a specified place and at specified times, that he/she may be accompanied by a person of his/her own choosing to review the record (in which event he/she may be asked to furnish written authorization for the record to be discussed in the accompanying person's presence), and that he/she may further obtain a copy of the record upon agreement to pay a duplication fee; or

(B) Furnish a copy of the record, if the individual requested that a copy be sent and agreed in advance to pay duplication fees unless such fees are waived.

(iii) If it is necessary to deny the individual access to all or part of the requested record, and,

(A) The official is not a denial authority—forward the request to the cognizant denial authority, with a copy of the requested record, and comments and recommendations concerning disposition; or

(B) The official is a denial authority—take the action prescribed in paragraph (c)(3) (ii) or (iii) of this section.

(3) *Action by denial authority.* (i) If the denial authority determines that access should be granted to the entire record, he/she shall promptly make it available to the requesting individual in the manner prescribed in paragraph (c)(2)(ii) of this section, or direct the system manager to do so.

(ii) If the denial authority determines that access to the entire record should be denied under the criteria specified in paragraph (a)(5) (i), (ii), or (iii) of this section, he/she shall promptly send the requesting individual an original and one copy of a letter informing the individual of the denial of access and the reasons therefor, including citation of any applicable exemptions and a brief discussion of the significant and legitimate governmental purpose(s) served by the denial of access. The denial letter shall also inform the individual that he/she may request further administrative review of the matter within 60 calendar days from the date of the denial letter, by letter:

(A) if the record is from a civilian Official Personnel Folder or is contained on any other OPM form, to—

Director, Bureau of Manpower Information Systems, Office of Personnel Management, 1900 E. Street, NW, Washington, DC 20415; or

(B) If the record pertains to the employment of a present or former Navy civilian employee, such as, Navy civilian personnel records or an employee's grievance or appeal file, to—

General Counsel, Department of the Navy, Washington, DC 20360; or

(C) If for any other record, to—

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the individual's reasons for seeking review of the initial determination.

(iii) A copy of the denial letter shall be forwarded directly to the Chief of Naval Operations (OP–09B30) or the Commandant of the Marine Corps (Code M), as provided in paragraph (b)(2)(iii) of this section.

(iv) If the denial authority determines that access to portions of the record should be denied under the criteria specified in paragraph (a)(5) (i), (ii), (iii) of this section, he/she shall promptly make an expurgated copy of the record available to the requesting individual and issue a denial letter as to the portions of the record that are required to be deleted.

(4) *Action by reviewing authority.* Upon receipt of a request for review of a determination denying an individual's initial request for access, the Judge Advocate General or the General Counsel shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination. He/she is designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and to effectuate the determination.

(i) Within 30 working days of receipt of the request for review, if practicable, the Judge Advocate General or the General Counsel shall inform the requesting individual, in writing, of the final determination and the action thereon.

(ii) If such a determination has the effect of granting a request for access, in whole or in part, the Judge Advocate General or the General Counsel may either provide access in accordance with paragraphs (c)(2)(ii) (A) or (B) of

this section, or direct the system manager to do so.

(iii) If the final determination has the effect of denying a request for access, in whole or part, the individual shall be informed of the reason(s) and statutory basis for the denial—including regulatory citations for any exemption exercised and an explanation of the significant and legitimate governmental purpose served by exercising the exemption—and his/her rights to seek judicial review.

(iv) If the determination is based, in whole or part, on a security classification, the individual shall be apprised of the matters set forth in § 701.9(d)(4)(ii) of this part relating to declassification review and appeal.

(d) *Amendment procedures*—(1) *Criteria for determinations on requests for amendment.* (i) As further explained in § 701.108, many of the systems of records listed in Subpart G of this part, are exempt, in part, from amendment requirements. Such exemptions, where applicable, may be exercised only by denial authorities (and by the designated review authorities upon requests for review of initial denials), and then only in cases where there is specifically determined to be a significant and legitimate governmental purpose to be served by exercising the exemption.

(ii) If an available exemption is not exercised, an individual's request for amendment of a record pertaining to himself/herself shall be granted if it is determined, on the basis of the information presented by the requester and all other reasonably available related records, that the requested amendment is warranted in order to make the record sufficiently accurate, relevant, timely, and complete as to ensure fairness in any determination which may be made about the individual on the basis of the record. If the requested amendment would involve the deletion of particular information from the record, the information shall be deleted unless it is determined that in addition to being accurate, relevant to the individual, timely, and complete—the information is relevant and necessary to accomplish a purpose or function required to be performed by the Department of the Navy pursuant to a statute or Executive order.

(iii) The foregoing is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any changes in such records should be made only through the procedures established for changing such records. These provisions are also not designed to permit collateral attack upon that which has already been the subject of a judicial or quasi-judicial action. For example, an individual would not be permitted to challenge a courts-martial conviction under 32 CFR Part 701, Subparts F and G, but the individual would be able to challenge the accuracy with which a conviction has been recorded in a record.

(iv) The procedures in paragraph (d) of this section may be applied to requests for amendment of records contained in a system of records, provided they can be identified and located.

(2) *Action upon receipt of request.* Subject to the provisions of this section, upon receipt of an individual's initial request to amend a record, the system manager (or official occupying a comparable position with respect to a record not contained in a system of records) shall acknowledge the request in the manner prescribed by paragraph (a)(6)(i) of this section, and, within 30 days, if reasonably possible, take one of the following actions:

(i) If consideration cannot be given to the request because—

(A) The individual's identity is not satisfactorily verified;

(B) The individual has not furnished the information needed to locate the record;

(C) The individual has not provided adequate information as to how or why the record should be amended; or

(D) The request is erroneously addressed to an official having no responsibility for the record or systems of records in question;

inform the individual of the correct means or additional information needed for obtaining consideration of his/her request for amendment (a request may not be rejected, nor may the individual be required to resubmit his/her request, unless this is essential for processing the request).

(ii) If the system manager determines that the individual's request to amend a record is warranted under the criteria in paragraph (d)(1) of this section, he/she shall promptly amend the record and advise the individual, in writing, of that action and its effect. (The system manager also should attempt to identify other records under his/her responsibility affected by the requested amendment, and should make other necessary amendments, accordingly.) Amendments to records should be made in accordance with existing directives and established procedures for changing records, if applicable and consistent with 32 CFR Part 701, Subpart F. The system manager shall advise previous recipients of the record from whom a disclosure accounting has been made that the record has been amended, and of the substance of the correction.

(iii) If the system manager is a denial authority, and denial of the request for amendment, in whole or part, is warranted, take the appropriate action prescribed in paragraph (d)(3) (ii) or (iii) of this section; or

(iv) If the system manager is not a denial authority, but denial of the request for amendment, in whole or part, appears to be warranted, forward the request to the cognizant denial authority with a copy of the disputed record, and comments and recommendations concerning disposition.

(3) *Action by denial authority.* (i) If the denial authority determines that amendment of the record is warranted under the criteria in paragraph (d)(1) of this section, he/she shall direct the system manager to take the action prescribed in paragraph (d)(2)(ii) of this section.

(ii) If the denial authority determines that amendment of the record is not warranted under the criteria in paragraph (d)(1) of this section, he/she shall promptly send the requesting individual an original and one copy of a letter informing him/her of the denial of the request and the reason(s) for the denial, including a citation of any exemption exercised and a brief discussion of the significant and legitimate governmental purpose(s) served by exercising the exemption. The denial letter shall inform the individual that he/she may request further administrative review of the matter, as follows:

(A) If the record is a fitness report or performance evaluation (including proficiency and conduct marks) from a military personnel file—by letter, within 60 calendar days from the date of the denial letter, to:

Assistant Secretary of the Navy (Manpower and Reserve Affairs), Department of the Navy, Washington, DC 20350; or

(B) If the record is from a civilian Official Personnel Folder or is contained in any other Office of Personnel Management form—by letter, within 60 calendar days from the date of the denial letter, to:

Director, Bureau of Manpower Information Systems, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or

(C) If the record pertains to the employment of a present or former Navy civilian employee, such as Navy civilian personnel records or an employee's grievance or appeal file—by letter,

within 60 calendar days from the date of the denial letter, to:

General Counsel, Department of the Navy, Washington, DC 20360

(D) For any other record—by letter, within 60 calendar days from the date of the denial letter, to:

Judge Advocate General (Code 14), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332

The individual shall be further informed that a letter requesting such review should contain the enclosed copy of the denial letter and a statement of the reasons for seeking review of the initial determination denying the request for amendment. A copy of the denial letter shall be forwarded to the Chief of Naval Operations or the Commandant of the Marine Corps, as provided in paragraph (b)(2)(ii) of this section.

(iii) If the denial authority determines that a request for amendment of a record should be granted in part and denied in part, he/she shall take the action prescribed in paragraph (d)(3)(ii) of this section with respect to the portion of the request which is denied.

(4) *Action by reviewing authority.* Upon receipt of a request for review for a determination denying an individual's initial request for amendment of a record, the Assistant Secretary of the Navy (Manpower and Reserve Affairs), the General Counsel, or the Judge Advocate General, as appropriate, shall obtain a copy of the case file from the denial authority, review the matter, and make a final administrative determination, either granting or denying amendment, in whole or in part. Those officials are designated to perform such acts as may be required by or on behalf of the Secretary of the Navy to accomplish a thorough review and effectuate the determination.

(i) Within 30 working days of receipt of the request for review, the designated reviewing official shall inform the requesting individual, in writing, of the final determination and the action thereon, except that the Assistant Secretary of the Navy (Manpower and Reserve Affairs) may authorize an extension of the time limit where warranted because a fair and equitable review cannot be completed within the prescribed period of time, or for other good cause. If an extension is granted, the requesting individual shall be informed, in writing, of the reason for the delay, and the approximate date on which the review will be completed and the final determination made.

(ii) If, upon completion of review, the reviewing official determines that denial of the request of amendment is warranted under the criteria in paragraph (d)(1) of this section, the individual shall be informed, in writing:

(A) Of the final denial of the request for amendment of the record, and the reason(s) therefor;

(B) Of the right to file with the appropriate system manager a concise statement of the individual's reason(s) for disagreeing with the decision of the agency, and that such statement of dispute must be received by the system manager within 60 calendar days following the date of the reviewing authority's final determination;

(C) Of other procedures for filing such statement of dispute, and that a properly filed statement of dispute will be made available to anyone to whom the record is subsequently disclosed, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record;

(D) That prior recipients of the disputed record, to the extent that they can be ascertained from required disclosure accountings, will be provided a copy of the statement of dispute and, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record; and

(E) Of his/her right to seek judicial review of the reviewing authority's refusal to amend a record.

(iii) If the reviewing official determines upon review that the request for amendment of the record should be granted, he/she shall inform the requesting individual of the determination, in writing, and he/she shall direct the system manager to amend the record accordingly, and to inform previous recipients of the record for whom disclosure accountings have been made that the record has been amended and the substance of the correction.

(5) *Statements of dispute.* When an individual properly files a statement of dispute under the provisions of paragraphs (d)(4)(ii) (B) and (C) of this section, the system manager shall clearly annotate the record so that the dispute is apparent to anyone who may subsequently access, use, or disclose it. The notation itself should be integral to the record. For automated systems of records, the notation may consist of a special indicator on the entire record or on the specific part of the record in dispute. The system manager shall advise previous recipients of the record for whom accounting disclosure has been made that the record has been disputed, if the statement of dispute is germane to the information disclosed, and shall provide a copy of the individual's statement, together with, if deemed appropriate, a brief statement summarizing the reason(s) why the Department of the Navy refused the request to amend the record.

(i) The individual's statement of dispute need not be filed as an integral part of the record to which it pertains provided the record is integrally annotated as required above. It shall, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the record is to be disclosed. When information which is the subject of a statement of dispute is subsequently disclosed, the system manager shall note that the information is disputed, and provide a copy of the individual's statement of dispute.

(ii) The system manager may include a brief summary of the reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. Although these summaries may be treated as part of the individual's record, they will not be subject to the amendment procedures of this section.

**§ 701.105 Disclosure to others and disclosure accounting.**

(a) *Summary of requirements.* Subsection (b) of 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except pursuant to the written request or consent of the individual to whom the record pertains, unless the disclosure is authorized under one or more of the 11 exceptions noted in paragraph (b) of this section. Subsection i(1) of 5 U.S.C. 552a outlines criminal penalties (as prescribed in 32 CFR 701.110) for personnel who knowingly and willfully make unauthorized disclosures of information about individuals from an agency's records. Subsection (c) of 5 U.S.C. 552a requires accurate accountings to be kept, as prescribed in paragraph (c) of this section, in connection with most disclosures of a record pertaining to an individual (including disclosures made pursuant to the individual's request or consent). This is to permit the individual to determine what agencies or persons have been provided information from the record, enable the agency to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trail for review of the agency's compliance with 5 U.S.C. 552a.

(b) *Conditions of disclosure.* No record contained in a system of records shall be disclosed, except pursuant to a written request by, or with the prior

written consent of, the individual to whom the record pertains, unless disclosure of the record falls within one of the exceptions. Where the record subject is mentally incompetent, insane, or deceased, no medical record shall be disclosed except pursuant to a written request by, or with the prior written request of, the record subject's next of kin or legal representative, unless disclosure of the record falls within one of the exceptions. Disclosure to third parties on the basis of the written consent or request of the individual is permitted, but not required, by 32 CFR Part 701, Subparts F and G.

(1) *Intra-agency.* Disclosure may be made to personnel of the Department of the Navy or other components of the Department of Defense (DOD) (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DOD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) This may include, for example, disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Navy who may be included are: Personnel of the Joint Chiefs of Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between Naval components and non-DOD agencies in connection with the Personnel Exchange Program (PEP) and interagency support agreements. Disclosure accountings are not required for intraagency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by paragraph (b) of this section might also meet the criteria for disclosure under other exceptions specified in paragraphs (b) (2) through (12) of this section, they should be treated under paragraph (b)(1) of this section for disclosure accounting purposes.

(2) *Freedom of Information Act.* Disclosure may be made of those records, or information obtained from records, required to be released under the provisions of 5 U.S.C. 552 and 32 CFR Subparts A through D. Disclosure accountings are not required when information is disclosed under the Freedom of Information Act. That act has the general effect of requiring the release of any record which does not fall within one of the nine exemptions specified in Subpart A, § 701.5(b)(4)(ii), including an exemption for records which, if disclosed, would result in a clearly unwarranted invasion of the personal privacy of an individual. The phrase "clearly unwarranted invasion of personal privacy" states a policy which balances the interest of individuals in protecting their personal affairs from public scrutiny against the interest of the public having available information relating to the affairs of government. The interests of the recipient or of society must be weighed against the degree of the invasion of privacy. Numerous factors must be considered such as: The nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (e.g., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage of time since the event which is the topic of the record (e.g., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester. Examples of information pertaining to civilian personnel, which are normally released without an unwarranted invasion of privacy are: name, present and past grades, present and past position titles, present and past salaries, present and past duty stations, and office or duty telephone numbers. Disclosure of other personal information pertaining to civilian employees shall be made in accordance with 5 CFR Part 297, and the Federal Personnel Manual. Determinations as to disclosure of personal information regarding military personnel shall be made using the same balancing test as explained above. The following are examples of information concerning military personnel, which can normally be released without the consent of the individual upon request, as they are a matter of public record: name, rank, date of rank, gross salary, present and past duty assignments, future assignments which are officially established, office or duty telephone numbers, source of commission, promotion sequence number, awards and decorations, attendance at professional military schools (major area of study, school, year of education, and degree), and duty status at any given time. When the information sought relates to a list of members who are attached to a unit located in foreign territory, routinely deployable, or engaged in sensitive operations, the policy set forth in paragraph (b)(2)(vi) of this section shall be applied. In instances where the duty address or phone number of a specifically named member who is attached to such a unit is sought, the concerns underlying the policy involved when releasing such information as to a list of members should be weighed along with the other considerations required in the case of all other members.

(i) Disclosure of home addresses and home telephone numbers without permission shall normally be considered a clearly unwarranted invasion of personal privacy. Accordingly, disclosure pursuant to 5 U.S.C. 552 is normally prohibited. Requests for home addresses (includes barracks and Government-provided quarters) may be referred to the last known address of the individual for reply at the person's discretion. In such cases, requesters will be notified accordingly.

(ii) Disclosure is permitted pursuant to the balancing test when circumstances of a case weigh in favor of disclosure. Disclosure of home address to individuals for the purpose of initiating court proceedings for the collection of alimony or child support, and to state and local tax authorities for the purpose of enforcing tax laws, are examples of circumstances where disclosure could be appropriate. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(iii) Lists or compilations of names and home addresses, or single home addresses will not be disclosed without the consent of the individual involved, to the public including, but not limited to, individual Members of Congress,

creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at the individual's discretion and the requester will be notified accordingly. This prohibition may be waived when circumstances of a case indicate compelling and overriding interests of the individual involved.

(iv) An individual shall be given the opportunity to elect not to have his/her home address and telephone number listed in a Navy activity telephone directory. The individual shall also be excused from paying additional costs that may be involved in maintaining an unlisted number for Government-owned telephone service if the individual complies with regulations providing for such unlisted numbers. However, the exclusion of a home address and telephone number from a Navy activity telephone directory does not apply to the mandatory listing of such information on a command's recall roster.

(v) Information regarding nonjudicial punishment normally will not be released in response to Freedom of Information Act requests. However, the usual balancing of interests must be done. It is possible that in a particular case, information regarding nonjudicial punishment should be disclosed pursuant to an FOIA request, i.e., the facts leading to a nonjudicial punishment are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement. (Note: Announcement of nonjudicial punishment dispositions under JAGMAN, subsection 0107, is a proper exercise of command authority and not a release of information under 32 CFR Part 701, Subparts A through D or 32 CFR Part 701, Subparts F and G.)

(vi) Unclassified information about service members may be withheld when disclosure "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552 (exemption (b)(6) applies). Disclosure of lists of names and duty addresses or duty telephone numbers of members assigned to units that are stationed in foreign territories, routinely deployable, or sensitive can constitute a clearly unwarranted invasion of personal privacy. Disclosure of such information poses a security threat to those service members because it reveals information about their degree of involvement in military actions in support of national policy, the type of naval unit to which they are attached, and their presence or absence from their households. Release of such information aids the targeting of service members and their families by terrorists or other persons opposed to implementation of national policy. Only an extraordinary public interest in disclosure of this information can outweigh the need and responsibility of the Navy to protect the tranquility and safety of service members and their families who repeatedly have been subjected to harassment, threats and physical injury. Units covered by this policy are:

(A) Those located outside the 50 states, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands and American Samoa.

(B) Routinely deployable units. Those units forming the core of the operating forces, i.e., organized, equipped and specifically tasked to participate directly in strategic or tactical operations. As such, they normally deploy from home port or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. For the Marine Corps, this includes all Fleet Marine Forces. For the Navy, this includes routinely deployable ships, aviation squadrons and operational staffs. It does not include ships undergoing yard work or whose primary mission is support or training, e.g., yard craft and auxiliary aircraft landing training ships.

(C) Units engaged in sensitive operations. Those primarily involved in the conduct of covert, clandestine or classified missions, including units primarily involved in collecting, handling, disposing or storing of classified information and materials. This also includes units engaged in training or advising foreign personnel. Examples of units covered by this exception are SEAL Teams, Security Group Commands, Weapons Stations, and Communication Stations. Exception to this policy must be coordinated with the Chief of Naval Operations (OP-09B30) or the Commandant of the Marine Corps (MPI-60) prior to responding to requesters, including all requests for this type of information from Members of Congress. See paragraph (b)(2) of this section regarding requests for duty telephone numbers or addresses of named service members with overseas, routinely deployable, or sensitive units.

(vii) Disclosure of addresses of Navy civilian employees is governed by Office of Personnel Management regulations.

(3) *Routine use.* Disclosure may be made for a "routine use" (as defined in § 701.103(k)) that is compatible with the purpose for which the record is collected and listed as a routine use in the applicable record system notice published in the **Federal Register.** Routine use encompases the specific ways or processes in which the information is used, including the persons or organizations to whom the record may be disclosed, even if such use occurs infrequently. In addition to the routine uses established by the Department of the Navy for each system of records, common blanket routine uses, applicable to all record systems maintained within the Department of the Navy, have been established. *See* § 701.116. In the interest of simplicity and economy, these blanket routine uses are published only once at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices rather than in each system notice. Disclosure accountings are required for all disclosures made pursuant to a routine use. Disclosures from a record maintained by the Navy to officers and employees of Department of Defense who have a need for information, and disclosure from such records made pursuant to a Freedom of Information Act request, are not "routine use" disclosures, and no disclosure accountings need be made for them.

(4) *Bureau of the Census.* Disclosure may be made to the Bureau of the Census for purpose of planning or carrying out a census of survey or related activity authorized by law. Disclosure accountings are required for disclosures made to the Bureau of the Census.

(5) *Statistical research or reporting.* Disclosure may be made to a recipient who has provided adequate written assurance that the record will be used solely as a statistical research or reporting record, provided the record is transferred in a form that is not individually identifiable (i.e., the identity of the individual cannot be deduced by tabulation or other methodology). The written request must state the purpose of the request, and will be made a part of the activity's accounting for the disclosure. When activities publish gross statistics concerning a population in a system of records (e.g., statistics on employer turnover rates, military reenlistment rates, and sick leave usage rates), these are not considered disclosures of records and accountings are not required.

(6) *National Archives.* Disclosure may be made to the National Archives when the record has sufficient historical or other value to warrant continued

preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his/her designee to determine whether the record has such value. (Records transferred to a federal records center for storage or safekeeping do not fall under this provision. Such transfers are not considered disclosures under this Act, since the records remain under the control of the transferring element. Therefore, disclosure accounting is not required for transfers of records to federal records centers.) Disclosure accountings are required for disclosures made to the National Archives.

(7) *Civil or criminal law enforcement activity.* Disclosure may be made to another agency or instrumentality of any government jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the activity which mantains the record, specifying the particular record desired and the law enforcement purpose for which the record is sought. The head of the agency or instrumentality may have delegated authority to request records to other officials. Requests by these designated officials shall be honored if they provide satisfactory evidence of their authorization to request records. Blanket requests for all records pertaining to an individual shall not be honored. A record may also be disclosed to a law enforcement activity, provided that such disclosure has been established as a "routine use" in the published record system notice. Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this section, but may be made only pursuant to established "blanket routine uses" contained in § 701.116, pursuant to an established "routine use" published in the individual record system notice, or pursuant to other governing authority. Disclosure accountings are required for disclosures to civil or criminal law enforcement agencies, and also for disclosures pursuant to a routine use, but need not be disclosed to the individual if the law enforcement agency has requested in writing that it not be.

(8) *Emergency conditions.* Disclosure may be made under emergency conditions involving compelling circumstances affecting the health and safety of a person, provided that notification of the disclosure is transmitted to the last known address of the individual to whom the record pertains. For example, an activity may disclose records when the time required to obtain the consent of the individual to whom the record pertains might result in a delay which could impair the health or safety of a person. The individual about whom the records are disclosed need not necessarily be the individual whose health or safety is in peril (e.g., release of dental charts on several individuals in order to identify a person injured in an accident). In instances where information under alleged emergency conditions is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call. Disclosure accountings are required for disclosures made under emergency conditions.

(9) *Congress and Members of Congress.* Disclosure may be made to either House of Congress, or, to the extent of matters within its jurisdiction, to any committee or subcommittee thereof, or to any joint committee of Congress or subcommittee thereof. Disclosure may not be made, however, to a Member of Congress requesting in his/her individual capacity or on behalf of a constituent, except in accordance with the following rules:

(i) Upon receipt of an oral or written request from a Member of Congress on his/her staff, inquiry should be made as to the identity of the originator of the request. If the request was prompted by a request for assistance by the individual to whom the record pertains, the requested information may be disclosed to the requesting Congressional office.

(ii) If the request was originated by a person other than the invididual to whom the record pertains, the Congressional office must be informed that the requested information cannot be disclosed without the written consent of the individual to whom the record pertains. If the Congressional office subsequently states that it has received a request for assistance from the individual or has obtained the individual's written consent for disclosure to that office, the requested information may be disclosed.

(iii) If the Congressional office requests the Department of the Navy to obtain the consent of the individual to whom the record pertains, that office should be informed that it is the policy of the Department not to interfere in the relationship of a Member of Congress and his/her constituent, and that the Department therefore does not contact an individual who is the subject of a congressional inquiry.

(iv) If the Congressional office insists on Department of the Navy cooperation, an effort should be made to contact, through his/her command, the individual to whom the records pertain and ascertain whether the individual consents to the disclosure. If neither the Congressional office nor the Department of the Navy obtains the individual's written consent, only information required to be released under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D should be disclosed. Disclosure accountings are required for disclosures made to Congress or Members of Congress, except nonconsensual disclosures pursuant to 5 U.S.C. 552 provided for in paragraph (b)(9)(iv) of this section.

(10) *Comptroller General.* Disclosure may be made to the Comptroller General of the United States, or to any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office. *See* § 701.101(a)(2) and the SECNAVINST 5740.26 series. Disclosure accountings are required for disclosures to the Comptroller General or General Accounting Office.

(11) *Court of competent jurisdiction.* Disclosure may be made in response to an order from a court of competent jurisdiction (signed by a state or Federal court judge), subject to the following provisions:

(i) When a record is disclosed under compulsory legal process, and the issuance of that order is made public by the court which issued it, activities shall make reasonable efforts to notify the individual to whom the record pertains of the disclosure and the nature of the information provided. This requirement may be satisfied by notifying the individual by mail at the last known address contained in the activity records. Disclosure accountings are required for disclosures made pursuant to court orders.

(ii) Upon being served with an order which is not a matter of public record, an activity shall seek to be advised as to when it will become public. An accounting for the disclosure shall be made at the time the activity complies with the order, but neither the identity of the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the concerned individual unless the court order has become a matter of public record.

(12) *Consumer reporting agencies.* Certain personal information may be disclosed to consumer reporting

agencies as defined by the Federal Claims Collection Act of 1966. Under the Federal Claims Collection Act of 1966, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual.

(ii) The amount, status and history of the claim.

(iii) The agency or program under which the claim arose.

The Federal Claims Collection Act of 1966 specifically requires that the system notice for the systems of records from which the information will be disclosed indicates that the information may be disclosed to a consumer reporting agency.

(c) *Disclosure accountings*—(1) *Responsibilities.* With respect to a disclosure of a record which it maintains in a system of records, each activity is responsible for keeping an accurate accounting of the date, nature, and purpose of the disclosure, and the name and address of the person or agency to whom the disclosure is made. When disclosure is made by an activity other than the activity that is responsible for maintaining the record, the activity making the disclosure is responsible for giving written notification of the above information to the activity responsible for maintaining the record, to enable the latter activity to keep the required disclosure accounting.

(2) *Disclosure for which accountings are required.* A disclosure accounting is required for all disclosures of records maintained in a system of records, except: Intra-agency disclosures pursuant to paragraph (b)(1) of this section; Freedom of Information Act disclosures pursuant to paragraph (b) (2) of this section or paragraph (b)(9)(iv) of this section; or disclosure pursuant to paragraph (b)(12) of this section; or disclosures for statistical research or reporting purposes pursuant to paragraph (b)(5) of this section. A disclosure accounting is required for a disclosure made to another person or agency pursuant to the request or consent of the individual to whom the record pertains. There is no requirement for keeping an accounting for disclosures of disclosure accountings.

(3) *Accounting method.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. For most paper records, it may be suitable to maintain the accounting on a record-by-record basis, physically affixed to the records. The primary criteria are that the selected method be one which will:

(i) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(ii) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(iii) Provide a means to prove, if necessary, that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart.

(4) *Retention of accounting record.* A disclosure accounting, if one is required, shall be maintained for the life of the record to which the disclosure pertains, or for at least five years after the date of the disclosure for which the accounting is made, whichever is longer. Nothing in 5 U.S.C. 552a or 32 CFR Part 701, Subparts F and G requires retaining the disclosed record itself longer than for the period of time provided for it in the SECNAVINST 5212.5 series, but the disclosure accounting must be retained for at least five years.

(5) *Accounting to the individual.* Unless an applicable exemption has been exercised, systems managers or other appropriate custodial officials shall provide all information in the disclosure accounting to an individual requesting such information concerning his/her records, except entries pertaining to disclosures made pursuant to paragraph (b)(11)(ii) of this section and disclosures made at the written request of the head of another agency or government instrumentality for law enforcement purposes under paragraph (b)(7) of this section. Activities should maintain the accounting of the latter two types of disclosures in such a manner that the notations are readily segregable, to preclude improper release to the individual. The process of making the accounting available may also require transformation of the data in order to make it comprehensible to the individual. Requests for disclosure accountings otherwise available to the individual may not be denied unless a denial authority for the designated review authority has exercised an applicable exemption and denied the request, and then only when it has been determined that denial of the request would serve a significant and legitimate Government purpose (e.g., avoid interfering with an ongoing law enforcement investigation). Appropriate procedures prescribed in § 701.104(b), for exercising an exemption, denying a request and reviewing a denial apply also to disclosure accounting to the individual.

(d) *Accuracy requirements.* Prior to disclosing any record about an individual to any person other than to personnel of the agency, with a need to know, and other than pursuant to 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D, reasonable efforts are required to ensure that such records are accurate, complete, timely and relevant for Department of the Navy purposes. It may be appropriate to advise the recipient that the information was accurate as of a specific date, or otherwise give guidance concerning its quality.

(e) *Mailing lists.* No activity nor any member or employee of the Department of the Navy shall sell or rent individuals' names and addresses unless such action is authorized by law. This provision should not be construed to require the withholding of names and addresses otherwise permitted to be made public.

**§ 701.106 Collection of personal information from individuals.**

(a) *Collection directly from the individual.* Personal information shall be collected, to the greatest extent practicable, directly from the individual when the information may adversely affect an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties shall be minimized. Exceptions to this policy may be made when warranted. The following are examples, not necessarily exhaustive, of situations which may warrant exceptions:

(1) There is need to ensure the accuracy of information supplied by an individual by verifying it through a third party, e.g., verifying information for a security clearance;

(2) The nature of the information is such that it can be obtained only from a third party, such as supervisor's assessment of an employee's performance in a previous job or assignment; or

(3) Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable cost.

(b) *Informing individuals from whom personal information is requested.* (1) Individuals who are asked to supply personal information about themselves for a system of records must be advised of:

(i) The authority (statute or Executive order) which authorizes the solicitation;

(ii) All major purposes for which the Department of the Navy uses the information (e.g., pay entitlement, retirement eligibility, or security clearance);

(ii) A brief summary of those routine uses to be made of the information as published in the **Federal Register** and distributed by current OPNAVNOTE 5211, and

(iv) Whether disclosure is mandatory or voluntary, and the possible consequences for failing to respond.

(2) This statement, which is referred to as a "Privacy Act statement," must be given regardless of the medium used in requesting the information, e.g., a blank sheet, preprinted form with a control number, format, questionnaire, survey sheet, or interview. It may be provided on the form used to collect the information, or on a separate form or sheet, a copy of which may be retained by the individual. There is no requirement that the individual sign the statement.

(3) When the Privacy Act statement is to be attached or provided with the form, the statement will be assigned the same identifying number as the form used in collecting the information, and the suffix, "Privacy Act Statement." For example, a DD Form 398 would be identified as "DD Form 398—Privacy Act Statement . . ." For unnumbered formats, such as questionnaires and survey report forms, the Privacy Act statement will bear the report control symbol, if one applies, or the OMB number, i.e., "OMB Approval No. 21–R0268, Privacy Act Statement." The statement will be positioned in such a manner that individuals from whom the information is being collected will be informed about the act before they begin to furnish any of the information requested.

(4) For the purpose of determining whether a Privacy Act statement is required, "personal information" should be considered to be information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions. *See* § 701.105(b)(2). It ordinarily does not include such information as the time, place, and manner of, or reasons or authority for, an individual's execution or omission of acts directly related to the duties of his/her Federal employment or military assignment.

(5) The head of the proponent activity (i.e., the initiating or sponsoring activity) is responsible for determining whether a Privacy Act statement is required, and for ensuring that it is prepared and available as an attachment or as a part of the form, etc.

(c) *Social Security Numbers*—(1) *Requesting an individual's social security number (SSN).* Department of the Navy activities may not deny an individual any right, benefit, or privilege provided by law because the individual refuses to disclose his/her SSN, unless such disclosure is required by Federal statute or, in the case of systems of records in existence and operating before January 1, 1975, where such disclosure was required under statute or regulation adopted prior to January 1, 1975 to verify the identity of an individual. E.O. 9397 authorizes this Department to use the SSN as a system of numerical identification of individuals.

(2) *Informing an individual when requesting his/her SSN.* When an individual is requested to disclose his/her social security number, he/she must be given a statement containing information required in paragraph (b) of this section.

(3) An activity may request an individuals's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act statement for the SSN, along, or a merged Privacy Act statement, covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his/her SSN, the activity must be prepared to identify the individual by alternate means.

(4) Once a military member or civilian employee of the Department of the Navy has disclosed his/her SSN for purposes of establishing personnel, financial, or medical records upon entry into naval service or employment, the SSN becomes his/her service or employment identification number. After an individual has provided his/her SSN for the purpose of establishing a record, the notification is not required if the individual is only requested to furnish or verify the SSN for identification purposes in connection with the normal use of his/her records. However, if the SSN is to be written down and retained for any purpose by the requesting official, the individual must be provided the notification required in paragraph (b)(1) of this section.

**§ 701.107 Safeguarding personal information.**

(a) *Legislative requirement.* The Privacy Act requires establishment of appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records, and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is required.

(b) *Responsibilities.* At each location, and for each system of records, an official shall be designated as having responsibility for safeguarding the information therein. Specific safeguards for individual systems must be tailored to the existing circumstances, with consideration given to sensitivity of the data, need for continuity of operations, need for accuracy and reliability in operations, general security of the area, cost of safeguards, etc.

(c) *Minimum safeguards.* Ordinarily, personal information should be afforded at least the protection required for information designated as "For Official Use Only". For privacy, the guideline is to provide reasonable safeguards to prevent inadvertent or unauthorized disclosures of record content, during processing, storage, transmission, and disposal.

(d) *Automatic data processing.* The Chief of Naval Operations (Code Op–945) is responsible for determining and formulating policies and procedures, as necessary, to ensure that ADP systems containing personal information contain adequate safeguards to protect personal privacy, and are in accordance with the OPNAVINST 5239.1 series.

(e) *Disposal*—(1) *General.* Reasonable care must be taken to ensure that personal information is not subject to unauthorized disclosure during records disposal. Records which contain personal information pertaining to individuals should be disposed of in such a manner as to preclude recognition or reconstruction of information contained therein, such as by pulping, tearing, shredding, macerating or burning. Records recorded on magnetic tapes or other magnetic media may be disposed of by degaussing or erasing. If contractors are hired to haul trash containing personal information, contract provisions as specified in § 701.109(a) should be incorporated into the contract. If paper trash containing personal information is sold for recycling, legal assistance should be obtained to insert in the sale contract clauses that will make the buyer a Government contractor subject to the provisions of 5 U.S.C. 552a.

(2) *Massive computer cards and printouts.* (i) The transfer of large quantities of computer cards and printouts in bulk to a disposal activity, such as the Defense Property Disposal Office, is not a release of personal information under 32 CFR Part 701, Subparts F and G. The volume of such data when turned over in bulk transfers make it difficult, if not impossible, to

identify a specific individual record. Therefore, there are no special procedures required when disposing of large numbers of punch cards, computer printouts or other large detailed listings and normal document disposal procedures may be followed.

(ii) If the systems manager believes that the data to be transferred in bulk for disposal is in a form where it is individually recognizable or is not of a sufficient quantity to preclude compromise, the records should be disposed of in accordance with this section.

**§ 701.108 Exemptions.**

(a) *Summary.* Subsections (j) and (k) of 5 U.S.C. 552a authorize the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements of 5 U.S.C. 552a. In accordance with 32 CFR Part 701, subpart E, publication of a general notice of a proposed rule concerning exemptions for systems of records is required to appear in the **Federal Register** at least 30 days prior to the effective date, in order to afford interested persons an opportunity to comment. 32 CFR Part 701, Subpart G indicates the systems designated as exempted, the type of exemption claimed, the authority and reasons for invoking the exemption, and the provisions of 5 U.S.C. 552a from which each system has been exempted. The two categories of exemptions are general and specific. No system of records, however, is automatically exempt from all provisions of 5 U.S.C. 552a.

(b) *General exemption.* To be eligible for a general exemption under the authority of subsection (j)(2), 5 U.S.C. 552a, the system of records must be maintained by an activity whose principal function involves the enforcement of criminal laws and must consist of:

(1) Data, compiled to identify individual criminals and alleged criminals which consists only of identifying data and arrest records and type and disposition of charges; sentencing, confinement, and release records; and parole and probation status;

(2) Data that supports criminal investigations (including efforts to prevent, reduce, or control crime) and reports of informants and investigators that identify an individual; or

(3) Reports on a person, compiled at any state of the process of law enforcement, from arrest or indictment through release from supervision.

(c) *Specific exemptions.* To be eligible for a specific exemption under the authority of subsection (k) of 5 U.S.C. 552a, the pertinent records within a designated system must contain one or more of the following:

(1) Information specifically authorized to be classified. Before denying a person access to classified information, the denial authority must make sure that it is properly classified under the criteria of E.O. 12356, and that it must remain so in the interest of national defense or foreign policy ((k)(1) exemption).

(2) Investigative records compiled for law enforcement purposes (other than that claimed under the general exemption). If this information has been used to deny someone a right, however, the Department of the Navy must release it unless doing so would reveal the identity of a confidential source ((k)(2) exemption).

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to 18 U.S.C. 3056 ((k)(3) exemption).

(4) Records used only for statistical, research, or other evaluation purposes, and which are not used to make decisions on the rights, benefits, or privileges of individuals, except as permitted by 13 U.S.C. 8 (Use of census data) ((k)(4) exemption).

(5) Data compiled to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only if disclosure would reveal the identity of a confidential source ((k)(5) exemption).

(6) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process ((k)(6) exemption).

(7) Information to determine promotion potential in the Armed Forces. This information may be withheld only to the extent that disclosure would reveal the identity of a confidential source ((k)(7) exemption).

(d) *Limitations on denying notification, access, and/or amendment on the basis of an exemption.*—(1) *Classified information.* Prior to denying a request for notification, access or amendment concerning a classified record on the basis of a subsection (k)(1) exemption, denial authorities having classification jurisdiction over the classified matters in the record shall review the record to determine if the classification is proper under the criteria of the OPNAVINST 5510.1 series. If the denial authority does not have classification jurisdiction, immediate coordination shall be effected with the official having classification jurisdiction, in order to obtain a review of the propriety of the classification. If it is determined upon review that the classification is proper, consideration shall also be given to the appropriateness of permitting the requester to view the record in classified form, provided that he/she has or can be given the requisite security clearance.

(2) *Law enforcement records.* Requests for notification or access shall not be denied on the basis of a subsection (k)(2) exemption if the requested record has been used as a basis for denying the individual a right, benefit, or privilege to which he/she would be entitled in the absence of the record, except that access may be limited to the extent necessary to protect the identity of a confidential source, as defined in paragraph (e) of this section. Additionally, neither a subsection (j)(2) nor a subsection (k)(2) exemption shall be the basis for a denial of a request for notification or access concerning a record, or a portion thereof, unless granting the request is in accordance with the exemptions specified in 5 U.S.C. 552a, and would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source or disclose confidential information furnished only by a confidential source in the course of a criminal investigation or in the course of a lawful national security intelligence investigation;

(v) Disclose investigative techniques and procedures not already in the public domain and requiring protection from public disclosure to ensure their effectiveness;

(vi) Endanger the life or physical safety of law enforcement personnel; or

(vii) Otherwise be deemed not releasable under 5 U.S.C. 552 and 32 CFR Part 701, Subparts A through D.

(e) *Confidential sources.* For the purposes of subsection (k) exemptions, a "confidential source" is a person who has furnished information to the Federal government under:

(1) An express promise that his/her identity would be held in confidence, or

(2) An implied promise made prior to September 27, 1975, that his/her identity would be held in confidence.

(f) *Promises of confidentiality.* Express promise of confidentiality shall be granted on a selective basis, and only when such promises are needed and are

in the interest of the service. Officials exercising denial authority shall establish appropriate procedures and standards governing the granting of confidentiality for records systems under their cognizance.

**§ 701.109 Contractors.**

(a) *Contracts to maintain records.* Any unit, activity, or official letting a contract that involves the maintenance of a system of records to accomplish a Department of the Navy purpose shall include in that contract such terms as are necessary to incorporate the relevant provisions of 5 U.S.C. 552a in accordance with the Federal Acquisition Regulation Part 24.1, "Protection of Individual Privacy," April 1, 1984.

(b) *Contracting officers.* Contracting officers shall review all requirements for service contracts to determine if the requirements may result in the design, development, or operation of a system of records on individuals. If it is determined that such is involved, the solicitation to meet the requirement shall contain notice similar to the following:

Warning

This procurement action requires the contractor to do one or more of the following: Operate, use or maintain a system of records on individuals to accomplish an agency function. The Privacy Act of 1974 (Pub. L. 93–597; 5 U.S.C. 552a) imposes requirements on how these records are collected, maintained, used, and disclosed. Violations of the Privacy Act may result in termination of any contract resulting from this solicitation as well as imposition of criminal or civil penalties.

**§ 701.110 Judicial sanctions.**

(a) Subsection (i)(1) of 5 U.S.C. 552a prescribes criminal penalties for violation of its provisions. Any member or employee of the Department of the Navy may be found guilty of a misdemeanor and fined not more than $5,000 for willfully:

(1) Maintaining a system of records without first meeting the public notice requirements.

(2) Disclosing information protected under the Privacy Act to any unauthorized person/agency.

(3) Obtaining or disclosing information about an individual under false pretenses.

**§ 701.111 Government contractors.**

(a) *Applicability to government contractors.* (1) When a naval activity contracts for the operation or maintenance of a system of records or a portion of a system of records by a contractor, the record system or the portion of the record system affected are considered to be maintained by the naval activity and are subject to 32 CFR Part 701, Subparts F and G. The naval activity is responsible for applying the requirements of 32 CFR Part 701, Subparts F and G to the contractor. The contractor and its employees are to be considered employees of the Navy for purposes of the sanction provisions of the Privacy Act during the performance of the contract. Consistent with the Federal Acquisition Regulation Part 24.1, Protection of Individual Privacy, contracts requiring the maintenance of a system of records or the portion of a system of records shall identify specifically the record system and the work to be performed and shall include in the solicitation and resulting contract such terms as are prescribed by the Federal Acquisistion Regulation Part 24.1.

(2) If the contractor must use or have access to individually identifiable information subject to 32 CFR Part 701, Subparts F and G to perform any part of a contract, and the information would have been collected and maintained by the Naval activity but for the award of the contract, these contractor activities are subject to 32 CFR Part 701, Subparts F and G.

(3) The restriction in § 701.111(a) (1) and (2) do not apply to records:

(i) Established and maintained to assist in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract.

(ii) Maintained as internal contractor employee records even when used in conjunction with providing goods and services to the Department of Defense; or

(iii) Maintained as training records by an educational organization contracted by the Department of the Navy to provide training when the records of the contract students are similar to and comingled with training records of other students (e.g., admissions forms, transcripts, academic counselling and similar records).

(iv) Maintained by a consumer reporting agency to which records have been disclosed under contract in accordance with the Federal Claims Collection Act of 1966.

(b) *Disclosure of records to contractors.* The disclosure of records required by the contractor for the operation, use or maintenance of a system of records in the performance of a government contract shall not require the consent of the individual to whom the record pertains or the maintenance of a disclosure accounting record since systems of records operated under contract to accomplish a Navy function, are, in effect, maintained by the Department of the Navy. Disclosure of personal information between the Department of the Navy and the contractor is considered to be the same as between those officers and employees of the Department of the Navy who have a need for the records in the performance of their duties.

**§ 701.112 Matching program procedures.**

The Office of Management and Budget (OMB) has issued special guidelines to be followed in programs that match the personal records in the computerized data bases of two or more federal agencies by computer. These guidelines are intended to strike a balance between the interest of the government in maintaining the integrity of federal programs and the need to protect individual privacy expectations. They do not authorize matching programs as such and each matching program must be justified individually in accordance with the OMB guidance.

**§ 701.113 Rules of access to agency records.**

5 U.S.C. 552a, as implemented in 32 CFR Part 701, Subparts F and G, provides for individuals to have access to agency records, pertaining to themselves, with certain limited exceptions. The following rules of access are in effect:

(a) Requests for access must be submitted in writing to *(name or organizational title of record custodian).*

(b) Individuals desiring to review records pertaining to themselves are urged to submit their requests by mail or in person 10 days before the desired review date. Every effort will be made to expedite access when necessary, but records ordinarily cannot be made available for review on the day of the request. In the case of a request to provide records directly to an authorized representative who is other than the parent of a minor or other legal guardian, an authorization signed within the preceding 45 days, by the individual to whom the records pertain, specifying the records to be released, will be required. Notarized authorizations may be required if the sensitivity of the information in the records warrants.

(c) Information should be provided by the individual to assist in identifying relevant systems of records and individual identifiers should also be furnished (e.g., full name, social security number, etc.) to locate records in the particular system.

(d) Review of the record may be accomplished between the hours of _____ and _____ in room _____ of building _____.

(e) When the individual reviews records in person, the custodian will require the presentation of identification before permitting access to the record. Acceptable forms of identification include military identification card, base or building pass, driver's license, or similar document. When the individual requests access to information by mail, verification of identity may be obtained by requiring him/her to provide certain minimum identifying data such as date of birth and any other item in the record that only the concerned individual would likely know.

(f) Individuals may be accompanied by a person of their own choosing when reviewing the record. The custodian will not, however, discuss the record in the presence of the third person without the written authorization of the individual to whom the record pertains.

(g) On request, copies of the record will be provided at a cost specified. Fees will not be assessed if the cost is less than $30.

(h) A medical record will not be released to the individual if, in the judgment of a physician, the information contained therein could have an adverse affect on the individual's physical or mental well-being. In such circumstances, the individual will be asked to provide to the record custodian the name of a personal physician along with written authorization for release of the record to that physician. The record will then be provided to the named physician.

(i) Questions concerning these Rules of Access, or, information contained in the record, should be addressed to *(title or official of organizational title)*, room _____, building _____, telephone number _____.

**§ 701.114 Rules for amendment requests.**

5 U.S.C. 552a, as implemented by 32 CFR Part 701, Subparts F and G, provides for individuals to request amendment of their personal records when the individuals believe the records are inaccurate, irrelevant, untimely, or incomplete. The following rules for amendment requests are in effect:

(a) Requests must be in writing and must indicate that they are being made under the Privacy Act (5 U.S.C. 552a), 32 CFR Part 701, Subparts F and G, or the SECNAVINST 5211.5 series. Requests should contain sufficient information to locate and identify the particular record which the requester is seeking to amend (e.g., full name, social security number, date of birth, etc.). A request should also contain a statement of the changes desired to be made to the record, the reasons for requesting amendment, and any available information the requester can provide in support of the request, including pertinent documents and related records.

(b) Requests for amendment must be submitted to the appropriate system manager designated in the published record system notice.

(c) A letter indicating receipt will be sent to the requester within 10 working days after the request has been received by the appropriate system manager. The letter will contain details as to when the requester may expect to be advised of action taken on the request. The requester may also be asked to provide additional verification of his/her identity. This is to protect the privacy of other individuals by ensuring that the requester is seeking to amend his/her own records and not, inadvertently or intentionally, the records of another individual.

(d) A letter indicating whether or not the request for amendment has been granted will be sent to the requester as soon as a decision has been reached by the appropriate authority. If it is determined that the requested amendment is warranted, the requester will be advised of the action taken and of the effect of that action. If it is determined that the requested amendment is not warranted, the requester will be advised of the reasons for the refusal and of the procedures and time limits within which the requester can seek further review of the refusal.

**§ 701.115 Rules of conduct under the Privacy Act.**

(a) *Maintaining personal records.* It is unlawful to maintain systems of records about individuals without prior announcement in the **Federal Register**. Anyone who does is subject to criminal penalties up to $5,000. Even with such notice, care shall be taken to keep only such personal information as is necessary to do what law and the President, by Executive order, require. The information is to be used only for the purposes described in the **Federal Register**.

(b) *Disclosure.* Information about an individual shall not be disclosed to any unauthorized individual. Anyone who makes an unauthorized disclosure on purpose may be fined up to $5,000. Every member or employee of the Department of the Navy who maintains records about individuals has an obligation to do his/her part in protecting personal information from unauthorized disclosure. 32 CFR Part 701, Subpart F and G describes when disclosures are authorized.

(c) *Individual access.* Every individual, with certain exceptions, has the right to look at any record the Department of the Navy keeps on him/her, to copy it, and to request to have it corrected if he/she considers it wrong. The individual attempting to exercise these right shall be given courteous and considerate assistance.

(d) *Ensuring accuracy.* The Department of the Navy has an obligation to use only accurate, timely, relevant, and complete information when making decisions about individuals. Every member, official, and employee involved in keeping records on individuals shall assist in the discharge of this obligation.

**§ 701.116 Blanket routine uses.**

(a) *Routine use—Law enforcement.* In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

(b) *Routine use—Disclosure when requesting information.* A record from a system of records maintained by this component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information, relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) *Routine use—Disclosure of requested information.* A record from a system of records maintained by this component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) *Routine use—Congressional inquiries.* Disclosure from a system of records maintained by this component

may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(e) *Routine use—Disclosure to the Department of Justice for litigation.* A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the DOD, or any officer, employee, or member of the Department in pending or potential litigation to which the record is pertinent.

(f) *Routine use—Private relief legislation.* Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(g) *Routine use—Disclosures required by international agreements.* A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

(h) *Routine use—Disclosure to state and local taxing authorities.* Any information normally contained in IRS Form W–2, which is maintained in a record from a system of records maintained by this Component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S.C., Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Nr. 76–07.

(i) *Routine use—Disclosure to the Office of Personnel Management (OPM).* A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the OPM concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for OPM to carry out its legally authorized Government-wide personnel management functions and studies.

## Subpart G—Privacy Act Exemptions

**Authority:** 5 U.S.C. 552a, 32 CFR Part 286a.

### § 701.117 Purpose.

32 CFR Part 701, Subparts F and G contains rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and Subpart F, § 701.108, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

### § 701.118 Exemption for classified records.

All systems of records maintained by the Department of the Navy and its components shall be exempted from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), to the extent that the system contains any information properly classified under E.O. 12356 and that is required by that Executive order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

### § 701.119 Exemptions for specific Navy record systems.

(a) *Office of the Assistant Deputy Chief of Naval Operations (Civilian Personnel/Equal Employment Opportunity).*

(1) *ID—N05527–5.*

*Sysname.* Navy Central Clearance Group (NCCG) Records.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) and (H), and (f).

*Authority.* 5 U.S.C. 552a(k) (1) and (5).

*Reasons.* Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, or access to classified information, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(2) *ID—N05520–3.*

*Sysname.* Civilian Personnel Security Files.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a (c)(3), (d), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1), (2), and (5).

*Reasons.* Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment or access to classified information, and that was obtained by providing express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Granting individuals access to certain information compiled for law enforcement purposes in this system of records could interfere with orderly investigations by disclosing the existence of investigations and investigative techniques, and result in the concealment, destruction, or fabrication of evidence.

(b) *Naval Military Personnel Command.*

(1) *ID—N05520–1.*

*Sysname.* Personnel Security Eligibility Information System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1), (2), (5) and (7).

*Reasons.* Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide information to the Government under an express or implied promise of confidentiality.

(2) *ID—N01610–1.*

*Sysname.* Navy Personnel Evaluation System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1), (2), (5), and (7).

*Reasons.* Granting individuals access to information collected and maintained in this system could result in disclosure of classified material, jeopardize the safety of informants and witnesses and their families, and result in the invasion of privacy of individuals only

incidentally related to an investigation. Material will be screened to permit access to unclassified material and to information that will not disclose the sources who provided the information under an express or implied promise of confidentiality.

(3) *ID—N05354–1.*

*Sysname.* Equal Opportunity Information and Support System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1), and (5).

*Reasons.* Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(4) *ID—N01420–1.*

*Sysname.* Officer Promotion System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1), (5), (6), and (7).

*Reasons.* Granting individuals access to this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(5) *ID—N01070–3.*

*Sysname.* Navy Personnel Records System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1) and (5).

*Reasons.* Granting individuals access to certain portions of the information collected and maintained in this system of records could result in the unauthorized disclosure of classified material. Material will be screened in order to provide access to unclassified information that does not disclose the identity of a source who provided information under an express or implied promise of confidentiality.

(6) *ID—N01640–1.*

*Sysname.* Individual Correctional Records.

*Exemption.* Portions of this system are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

*Authority.* 5 U.S.C. 552a(j)(2).

*Reasons.* Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(c) *Navy Recruiting Command.*

(1) *ID—N01131–1.*

*Sysname.* Officer Selection and Appointment System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a (k)(1), (5), (6), and (7).

*Reasons.* Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(2) *ID—N01133–2.*

*Sysname.* Recruiting Enlisted Selection System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1), (5), (6), and (7).

*Reasons.* Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(d) *Naval Security Group Command.*

(1) *ID—N05527–4.*

*Sysname.* Naval Security Group Personnel Security/Access Files.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1) through (5).

*Reasons.* Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(e) *Naval Investigative Service.*

(1) *ID—N05520–4.*

*Sysname.* NIS Investigative Files System.

*Exemption (1).* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e) (2), and (3), (e)(4) (G) through (I), (e)(5), (e)(8), (f) and (g).

*Authority (1).* 5 U.S.C. 552a(j)(2).

*Reasons (1).* Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this Component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his/her records, and the reasons therefore, necessitate the exemption of this system

of records from the requirements of the other cited provisions.

*Exemption (2).* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority (2).* 5 U.S.C. 552a (k)(1), (k)(3), (k)(4), (k)(5), and (k)(6).

*Reasons (2).* The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony.

Exempt portions of this system also contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his/her identity would not be revealed to the subject of the record. The notice for this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system of record is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system contain screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigative Service. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps, i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal Service.

(f) *Naval Intelligence Command.*

(1) *ID—N03834–1.*

*Sysname.* Special Intelligence Personnel Access File.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (1) and (5).

*Reasons.* Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his/her identity would not be revealed to the subject of the record.

(g) *Naval Inspector General.*

(1) *ID—N04385–1.*

*Sysname.* IG Investigatory System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

*Authority.* 5 U.S.C. 552a(j)(2).

*Reasons.* Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, the orderly administration of justice, and might enable suspects to avoid detection and apprehension. Disclosures of this information could result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well-being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could result in the invasion of the personal privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records, and the reasons therefore, necessitate the exemption of this system of records from the provisions of the other cited sections of 5 U.S.C. 552a.

(h) *Naval Resale System Office.*

(1) *ID—N12930–1.*

*Sysname.* Industrial Relations Personnel Records.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d), (e)(4) (G) and (H), and (f).

*Authority.* 5 U.S.C. 552a(k) (5) and (6).

*Reasons.* Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

(i) *Navy and Marine Corps Exchanges and Commissaries.*

(1) *ID—N04060–1.*

*Sysname.* Navy and Marine Corps Exchange and Commissary Security Files.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a (k)(2).

*Reasons.* Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication

of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(j) *Naval Clemency and Parole Board.*

(1) *ID—N05819–3.*

*Sysname.* Naval Clemency and Parole Board Files.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(4), (d), (e)(4)(G), and (f).

*Authority.* 5 U.S.C. 552a(j)(2).

*Reasons.* Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

The exemption of the individual's right of access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(k) *Office of the Secretary.*

(1) *ID—N01070–9.*

*Sysname.* White House Support Program.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k)(1), (2), (3), and (5).

*Reasons.* Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(l) *Security Operations Activities.*

(1) *ID—N05527–1.*

*Sysname.* Security Incident System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3) (e)(4) (G) through (I), (e)(5), (e)(8), (f) and (g).

*Authority.* 5 U.S.C. 552a(j)(2).

*Reasons.* Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcment personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

The exemption of the individual's right of access to his/her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(m) *Naval Medical Command.*

(1) *ID—N06320–2.*

*Sysname.* Family Advocacy Program System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3) and (d).

*Authority.* 5 U.S.C. 552a(k) (2) and (5).

*Reasons.* Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

(n) *Naval Postgraduate School.*

(1) *ID—N05300–3.*

*Sysname.* Faculty Professional Files.

*Exemption.* Portions of this system of records are exempt from the following portions of 5 U.S.C. 552a: (c)(3), (d), (e)(4) (G) and (H), and (f).

*Authority.* 5 U.S.C. 552a(k)(5).

*Reasons.* Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his/her identity would not be revealed to the subject of the record.

**§ 701.120 Exemptions for specific Marine Corps record systems.**

a. *ID—MMN00018.*

*Sysname.* Base Security Incident Reporting System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e) (2) and (3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

*Authority.* 5 U.S.C. 552a(j)(2).

*Reasons.* Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

BEST COPY AVAILABLE

The exemption of the individual's right of access to his/her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

b. *ID—MIN00001.*

*Sysname.* Personnel Security Eligibility and Access Information System.

*Exemption.* Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

*Authority.* 5 U.S.C. 552a(k) (2), (3), and (5) as applicable.

*Reasons.* Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his/her identity would not be revealed to the subject of the record.

Exempted portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

Dated: March 31, 1987.

**Harold L. Stoller,**

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87-7588 Filed 4-6-87; 8:45 am]

BILLING CODE 3810-01-M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### 42 CFR Part 7

## Distribution of Reference Biological Standards and Biological Preparations; User Charge

**AGENCY:** Centers for Disease Control, Public Health Service, HHS.

**ACTION:** Final rule.

**SUMMARY:** This regulation provides for the assessment of charges to private entities to cover the cost of producing and distributing reference biological standards and biological preparations by the Centers for Disease Control (CDC).

**EFFECTIVE DATE:** April 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** William K. Harrell, Ph.D., Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road NE., Atlanta, Georgia 30333, Telephone (404) 329-3352 or FTS 236-3352.

**SUPPLEMENTARY INFORMATION:** CDC has been delegated the authority under section 352 of the Public Health Service (PHS) Act (42 U.S.C. 263), as amended, to produce and distribute biological products in the conduct of its functional responsibilities. Under Title V of the Independent Offices Appropriation Act (IOAA) of 1952 (31 U.S.C. 9701), a federal agency may charge for the services it provides when such services confer a special benefit upon an identifiable recipient. On April 29, 1986, CDC published a notice of Proposed Rulemaking in the **Federal Register** (51 FR 15919) to establish a program whereby private organizations would be assessed a user fee to cover the cost to CDC of producing and distributing reference biological standards and biological preparations.

### User Charge

This final rule imposes a user charge for the distribution of biological products to private entities. Based on the same level of services as in the past, these user charges would be expected to generate about $95,000 annually toward the cost of producing and distributing reference biological standards and biological preparations. CDC has estimated that currently it will cost an average of $24 to produce, distribute, and recover the administrative costs for a unit of reagents to these organizations.

### Computation of User Charge

1. *Program cost.* The cost to CDC in Fiscal Year 1985 for producing and distributing reference biological standards and biological preparations to private entities is estimated to be $95,000. This cost includes both direct costs such as salaries and equipment, and indirect costs such as rent, telephone service, and a proportionate share of management and administrative costs.

2. *Computation of user charge.* In this program, CDC is attempting to generate, through a user charge, a sum equal to the $95,000 in program costs. CDC receives requests from private entities for approximately 4,000 units of reference biological standards and biological preparations each year. For purposes of this program, CDC will impose a user charge per unit distributed. The cost will vary, depending upon the type of preparation requested.

### Exemptions

CDC will not impose a user charge on State and local health departments, governmental institutions (e.g., State hospitals and universities), the World Health Organization, or ministries of health of foreign governments when these materials are provided to those agencies for public health reasons and not for the benefit of the requesters.

### Terms of Payment

CDC's initial procedure will require a purchase order at the time the request for the materials is received. The organization will be billed at the end of each month for materials distributed. Users may obtain information about ordering and payment procedures by writing CDC.

### Economic Impact

The Secretary has determined that this final rules does not significantly impact on a substantial number of small entities and therefore does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96-354.

The Secretary has also determined that this final rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Discussion of Comments

Comments were received from only two sources in response to the NPRM. One commenter, a commercial manufacturer of biological preparations, suggested that if there is to be a charge for biological standards and preparations, it should be applied uniformly to public and private organizations because the ultimate benefit is to the public at large. In response, this Department feels that commercial manufacturers of biological preparations are using CDC's standards to ensure that products they

manufacture meet or exceed the CDC standards thereby helping to ensure the reliability and, therefore, the profitability of these products. Thus, the manufacturer receives benefits above and beyond those accuring to the general public. Although CDC's production and distribution of reference biological standards and biological preparations also serve the public interest by providing the mechanism for ensuring reliable clinical diagnostic tests, the existence of a public benefit does not prohibit the imposition of a user charge, provided that the Government service bestows a distinct benefit upon identifiable beneficiaries.

The same commenter suggested that private producers of diagnostic products may decide to create their own standards or purchase standards, possibly of lower quality, from a private source. They further suggest that charging for these standards open the possibility for competitive private standards. In response, there is no legal requirement for the use of CDC standards and private entities may use any standard for comparative purposes. CDC believes that imposing a user fee for these standards would not necessarily create competitive private standards. The cost of the CDC standards are now comparable to those of the private sector.

This commenter also suggested that the legal justification for limiting the charge to private entities is inadequate. The commenter questioned the applicability of using section 311(b) of the Public Health Service Act (42 U.S.C. 243) as a precedent for only charging private entities. They argued that charging private entities for training for State and local health work is different from charging private entities for biological preparations used in the same manner by both the public and private sector. CDC maintains that the precedent is applicable. Personnel from private entities that receive training for State and local public health work acquire skills that enhance the marketability of the service provided by the private entity. Thus, the private entity receives benefits above and beyond those accruing to the general public.

The other commenter, a private medical association, supported the proposed rule in its entirety.

At its own initiative, the Department has expanded Section 7.4 to incorporate the criteria to be used in establishing the schedule of charges. These criteria were previously explained in the preamble to the NPRM.

**List of Subjects in 42 CFR Part 7**

Administrative practice and procedure, Biologics.

Accordingly, Title 42 of the Code of Federal Regulations is amended by adding a new Part 7 to Subchapter A as set forth below.

Dated: October 28, 1986.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: March 12, 1987.

**Don M. Newman,**

*Acting Secretary.*

## PART 7—DISTRIBUTION OF REFERENCE BIOLOGICAL STANDARDS AND BIOLOGICAL PREPARATIONS

Sec.

7.1 Applicability.
7.2 Establishment of a user charge.
7.3 Definitions.
7.4 Schedule of charges.
7.5 Payment procedures.
7.6 Exemptions.

**Authority:** Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216); Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701); and Sec. 352 of the Public Health Service Act, as amended (42 U.S.C. 263).

### § 7.1 Applicability.

The provisions of this Part are applicable to private entities requesting from the Centers for Disease Control (CDC) reference biological standards and biological preparations for use in their laboratories.

### § 7.2 Establishment of a user charge.

Except as otherwise provided in § 7.6, a user charge shall be imposed to cover the cost to CDC of producing and distributing reference biological standards and biological preparations.

### § 7.3 Definitions.

"Biological standards" means a uniform and stable reference biological substance which allows measurements of relative potency to be made and described in a common currency of international and national units of activity.

"Biological preparations" means a reference biological substance which may be used for a purpose similar to that of a standard, but which has been established without a full collaborative study, or where a collaborative study has shown that it is not appropriate to establish the preparation as an international standard.

### § 7.4 Schedule of charges.

The charges imposed in § 7.2 are based on the amount published in CDC's price list of available products. These charges will reflect direct costs (such as salaries and equipment), indirect costs (such as rent, telephone service, and a proportionate share of management and administrative costs), and the costs of particular ingredients. Charges may vary over time and between different biological standards or biological preparations, depending upon the cost of ingredients and the complexity of production. An up-to-date schedule of charges is available from the Biological Products Branch, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

### § 7.5 Payment procedures.

The requester may obtain information on terms of payment and a fee schedule by writing the "Centers for Disease Control," Financial Management Office, Buckhead Facility, Room 200, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

### § 7.6 Exemptions.

State and local health departments, governmental institutions (e.g., State hospitals and universities), the World Health Organization, and ministries of health of foreign governments may be exempted from paying user charges, when using biological standards or biological preparations for public health purposes.

[FR Doc. 87-7615 Filed 4-6-87; 8:45 am]
BILLING CODE 4160-18-M

---

**Family Support Administration**

**45 CFR Chs. II, III, IV, and X**

## Correction of Headings to Reflect Establishment of the Family Support Administration

**AGENCY:** Family Support Administration (FSA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the name of several chapter headings currently contained in 45 CFR Chapters II, III, IV, and X to reflect the placement of certain programs within the newly-established Family Support Administration.

**EFFECTIVE DATE:** This renaming of chapter headings is effective April 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Howard Rolston, (202) 245-0392.

**SUPPLEMENTARY INFORMATION:** On April 4, 1986, the Secretary announced in the **Federal Register** (51 FR 11641) the establishment of the Family Support

Administration consisting of the following HHS units:

1. The Office of Family Assistance, transferred from the Social Security Administration (SSA);

2. The Office of Refugee Resettlement, also transferred from SSA;

3. The Office of Child Support Enforcement, a separate unit within HHS;

4. The Office of Community Services, also a separate HHS unit; and

5. The Work Incentive Program, transferred from the Office of the Assistant Secretary for Human Development Services.

### Regulatory Provisions

These programs' regulations, rules, orders, statements of policy and interpretations remain in full force and effect. However, to correct reference to these programs in the Code of Federal Regulations and to enable interested individuals and organizations to locate pertinent regulations, this document corrects chapter headings in 45 CFR Chapters II, III, IV, and X to reference the Family Support Administration.

### Paperwork Reduction Act

This regulation contains no information collection requirements that are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

### Regulatory Flexibility Act

The Secretary certifies that this regulation will not result in a significant impact on a substantial number of small entities and therefore does not require preparation of a regulatory flexibility analysis as provided in Pub. L. 96–354 (5 U.S.C. 605(b)), the Regulatory Flexibility Act.

### Executive Order 12291

The Secretary has determined that this final rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

1. Have an annual effect on the economy of $100 million or more;

2. Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

3. Result in significant adverse effects on competition employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Waiver of Proposed Rule Making

We are publishing this regulation in final form, without notice of proposed rule making. Under 5 U.S.C. 553(b), notice of proposed rule making may be waived for rules of agency organization, procedure or practice, or when the agency for good cause finds that notice is impracticable, unnecessary, or contrary to the public interest. Since this regulation merely corrects regulatory chapter headings to refer to the Family Support Administration, the result of a departmental reorganization, and in no way revises regulatory substance, notice of proposed rule making is unnecessary, impracticable and contrary to the public interest.

### TITLES 45, CHAPTERS II, III, IV, AND X—[AMENDED]

1. 45 CFR Chapters II, III, IV, and X are amended by revising the Chapter titles to read as follows:

**CHAPTER II—OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), FAMILY SUPPORT ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**CHAPTER III—OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), FAMILY SUPPORT ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**CHAPTER IV—OFFICE OF REFUGEE RESETTLEMENT, FAMILY SUPPORT ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**CHAPTER X—OFFICE OF COMMUNITY SERVICES, FAMILY SUPPORT ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

(Catalog of Federal Domestic Assistance Programs, Program No. 13.808, Public Assistance—Maintenance Assistance; Program No. 13.679, Child Support Enforcement Program; Program No. 13.814, Refugee and Entrant Program; Program No. 13.665, Community Services Block Grant; Program No. 13.646, Work Incentive Program.)

Dated: February 5, 1987.

**Wayne A. Stanton,**

*Administration, Family Support Administration, and Director, Office of Child Support Enforcement.*

Approved: March 17, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87–7495 Filed 4–6–87; 8:45 am]

BILLING CODE 4910–11–M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### 48 CFR Part 7 and Appendices

[AIDAR Notice 87–7]

### Acquisition Regulation Concerning Contracts for Personal Services Abroad

**AGENCY:** Agency for International Development, (A.I.D.), IDCA.

**ACTION:** Final rule.

**SUMMARY:** The A.I.D. Acquisition Regulation (AIDAR) is being amended to add guidance concerning solicitation and negotiation of personal services contracts in paragraphs five and six of AIDAR Appendices D and J concerning A.I.D. contracts for personal services abroad.

**EFFECTIVE DATE:** April 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** M/SER/PPE, Mrs. Patricia L. Bullock, telephone (703) 875–1534.

**SUPPLEMENTARY INFORMATION:** Pursuant to 40 U.S.C. 474, section 706.302–70 of the AIDAR now provides an exception to other than full and open competition when foreign assistance objectives would be impaired. Contracts for personal services are specified in AIDAR 706.302–70(b) as cases in which the requirement for full and open competition would impair foreign aid programs.

FAR 6.303–1(c) permits justifications supporting less than full and open competition to be made on a class basis. Given the number of contract actions involved and the similarity of the circumstances existing to support such justifications, a class justification was approved by the A.I.D. Procurement Executive on January 20, 1987.

Guidance on soliciting and negotiating personal services contracts had been reserved pending development and approval of the class justification. The AIDAR is now being amended to incorporate such guidance.

This AIDAR Notice is not a major rule and is exempt from the requirements of Executive Order 12291 by OMB Bulletin 85–7. The changes are not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This Notice will not have an impact on a substantial number of small entities or require any information collection, as contemplated by the Regulatory Flexibility Act or the Paperwork Reduction Act respectively.

**List of Subjects in 48 CFR Ch. 7, Appendices**

Government procurement.

For the reasons set out in the preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citation for the Appendices to Chapter 7 is unchanged and continues to read as follows:

**Authority:** Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E. O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

**Appendices to Chapter 7**

2. Paragraphs 5, *Soliciting for Personal Services Contracts*, and 6, *Negotiating a Personal Services Contract*, which were previously [Reserved], are added to read as follows:

**Appendix D—Direct A.I.D. Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad**

* * * * *

*5. Soliciting for Personal Services Contracts*

(a) *Project Officer's responsibilities.* The Project Officer will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for. The statement shall be included in the procurement request (e.g., A.I.D. Form 1350–1, Project Implementation Order/Technical Services (PIO/T)); the request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) An estimate of what a comparable GS/FS position should cost, including basic salary, allowances, and differentials, if appropriate;

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing consulting services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's Responsibilities.*

(1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of SF 171s and 171As. (Upon receipt, one copy of each 171 and 171A shall be forwarded to the Project Officer.)

(ii) A detailed statement of duties or a completed position description for the position being recruited for.

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, General Provisions and Additional General Provisions, if applicable, as well as the FAR clauses to be incorporated by reference.

(iv) A copy of Attachment 2C to Chapter 2 of A.I.D. Handbook 24, entitled Employee Responsibilities and Conduct.

(2) The Contracting Officer shall comply with the requirements of AIDAR 706.302–70(c) as detailed in paragraph 5(c) below.

(c) *Competition.*

(1) Under AIDAR 706.302–70(b)(1), personal services contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers:

(i) Offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the A.I.D. Procurement Executive on January 20, 1987 which will satisfy the requirements of AIDAR 706.302–70(c)(2) for a justification in accordance with FAR 6.303 subject to the following conditions for use for personal services contracts with U.S. citizens or U.S. resident aliens:

(i) If recruited from the United States, the position was either publicized in a U.S. trade/professional/ technical publication, the Commerce Business Daily or a newspaper or similar publication, or the procedure in paragraph (iii) below was followed.

(ii) If recruited locally, the position was publicized in the same way that the Mission announces direct hire U.S. citizen positions, or the procedure in paragraph (iii) below was followed.

(iii) As an alternative to the procedures in paragraphs (i) and (ii) above, at least 3 individuals were considered by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation.

(iv) A copy of the class justification (which was distributed to all A.I.D. Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302–70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable.

(3) Since the award of a personal services contract is based on technical qualifications, not price, and since the SF 171, "Personal Qualifications Statement", and SF 171A, "Continuation Sheet for Standard Form 171", are used to solicit for such contracts, FAR Subparts 15.4 and 15.5 and FAR Parts 52 and 53 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this Appendix shall govern.

(4) If the appropriate competitive procedure in paragraph (2) above is not followed, the Contracting Officer must prepare a separate justification as required under AIDAR 706.302–70(c)(2).

*6. Negotiating a Personal Services Contract*

Negotiating a personal services contract is significantly different from negotiating a nonpersonal services contract because of the employer-employee relationship; therefore, the selection procedures are more akin to the personnel selection procedures.

(a) *Project Officer's responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications (i.e., SF 171s) received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's responsibilities.*

(1) The Contracting Officer shall forward a copy of each SF 171 received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. Normally, the Contracting Officer shall negotiate only the salary (see the salary setting coverage in paragraph 4(f) of this Appendix). The terms and conditions of the contract, including differentials and allowances, are not negotiable or waivable without a properly approved deviation (see AIDAR 701.470). If the Contracting Officer can negotiate a salary that is fair and reasonable, then the award shall be made.

(3) The Contracting Officer shall use the certified salary history on the SF 171 as the basis for salary negotiations, along with the Project Officer's cost estimate.

(4) The Contracting Officer will obtain two copies of IRS Form W–4, Employee's Withholding Allowance Certificate from the successful applicant. (Upon receipt, the Contracting Officer will forward one copy of the W–4 to the office of the Controller.)

(5) The Contracting Officer will obtain four sets of SF 86, Security Investiagtion Data for Sensitive Position from the successful applicant if a security clearance is required for the position.

* * * * *

2. Paragraphs 5, *Soliciting for Personal Services Contracts*, and 6, *Negotiating a Personal Services Contract*, which were previously [Reserved], are added as follows:

**Appendix J—Direct A.I.D. Contracts With Cooperating Country Nationals and With Third Country Nationals for Personal Services Abroad**

* * * * *

*5. Soliciting for Personal Services Contracts*

(a) *Project Officer's responsibilities.* The Project Officer (or the responsible requiring office), will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for. The statement shall be included in the procurement request; the procurement request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) An estimate of what a comparable GS/FS position should cost, including basic salary, allowances, and differentials, if appropriate;

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing consulting services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's responsibilities.*

(1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of certified biographical data and salary history. (Upon receipt, one copy of the above information shall be forwarded to the Project Officer.)

(ii) A detailed statement of duties or a completed position description for the position being recruited for.

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, General Provisions and Additional General Provisions, if applicable, as well as the FAR clauses to be incorporated by reference.

(iv) A copy of Attachment 2C to Chapter 2 of A.I.D. Handbook 24, entitled Employee Responsibilities and Conduct.

(2) The Contracting Officer shall comply with the requirements of AIDAR 706.302–70(c) as detailed in paragraph 5(c) below.

(c) *Competition.*

(1) Under AIDAR 706.302–70(b)(1), personal services contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers:

(i) offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) a justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the A.I.D. Procurement Executive on January 20, 1987 which will satisfy the requirements of AIDAR 706.302–70(c)(2) for a justification in accordance with FAR 6.303 subject to the following condition for use for personal services contracts with Cooperating Country Nationals and Third Country Nationals:

(i) New contracts are publicized consistent with Mission/Embassy practice on announcement of direct hire FSN positions. Renewals or extensions with the same individual for continuing service do not need to be publicized.

(ii) A copy of the class justification (which was distributed to all A.I.D. Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302–70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable.

(3) Since the award of a personal services contract is based on technical qualifications, not price, and since the biographical data and salary history, are used to solicit for such contracts, FAR Subparts 15.4 and 15.5 and FAR Parts 52 and 53 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this Appendix shall govern.

(4) If the appropriate competitive procedure in paragraph (2) above is not followed, the Contracting Officer must prepare a separate justification as required under AIDAR 706.302–70(c)(2).

6. *Negotiating a personal services contract.* Negotiating a personal services contract is significantly different from negotiating a nonpersonal services contract because of the employer-employee relationship; therefore, the selection procedures are more akin to the personnel selection procedures.

(a) *Project Officer's responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's responsibilities.*

(1) The Contracting Officer shall forward a copy of each statement of biographical data and salary history received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. The terms and conditions of the contract will normally be in accordance with the local compensation plan which forms the basis for all compensation payments paid to FSNs which includes CCNs and TCNs.

(3) The Contracting Officer shall use the certified salary history on the certified statement of biographical data and salary history as the basis for salary negotiations, along with the Project Officer's cost estimate.

(4) The Contracting Officer will obtain necessary data for a security and suitability clearance to the extent required by A.I.D. Handbook 6, Security.

* * * * *

Dated: March 27, 1987.

**John F. Owens,**

*Procurement Executive.*

[FR Doc. 87–7582 Filed 4–6–87; 8:45 am]

BILLING CODE 6116–01–M

---

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 217 and 252

## Department of Defense Federal Acquisition Regulation Supplement; Identification of Sources of Supply

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Defense Acquisition Regulatory Council has approved changes to the coverage in the DoD FAR Supplement regarding Identification of Sources of Supply. The purpose of these changes is to implement section 928 of Pub. L. 99–591.

**EFFECTIVE DATE:** April 15, 1987 (Effective on all contracts entered into on or after April 15, 1987).

**FOR FURTHER INFORMATION CONTACT:** Mr. Owen Green, Acting Executive Secretary, DAR Council, 202/697–7266.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 1231 of Pub. L. 98–525, as amended by section 928 of Pub. L. 99–591, requires delivery of source information under DoD supply contracts. This final rule modifies the existing rule by stipulating that the coverage applies to all contracts requiring delivery of supplies, other than commercial items sold in substantial quantities to the general public and priced at established catalog or market prices or awarded through full and open competition.

### B. Regulatory Flexibility Act Information

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule excludes commercial items sold in substantial quantities to the general public and priced at established catalog or market prices or awards made through full and open competition. Therefore contractors will not have to identify the actual manufacturer, the national stock number, or the source of technical data for such items. DoD estimates that the total impact of this reduced workload on all businesses is a reduction of 700,250 hours annually. In FY 1985, 59% of all contract actions were awarded to small businesses. DoD estimates that the reduced workload applicable to all small businesses is a reduction of approximately 413,148 hours annually ($-700{,}250 \times 59\%$). Since DoD conducts business with approximately 40,000 small businesses per year, this reduction is considered insignificant.

### C. Paperwork Reduction Act Information

The Department of Defense estimates that the implementation of this coverage will result in a paperwork burden reduction of 700,250 hours. OMB approved the burden estimate on 10 March 1987, clearance number 0704–0214.

**List of Subjects in 48 CFR Parts 217 and 252**

Government procurement.

**Owen L. Green, III,**

*Acting Executive Secretary, Defense Acquisition, Regulatory Council.*

Therefore, 48 CFR Parts 217 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 217 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 217—SPECIAL CONTRACTING METHODS

2. Section 217.7204 is amended by revising the first sentence of paragraph (a); by removing in paragraph (a)(1) between the words "or" and "all" the word "of"; by adding a new paragraph (b); by redesignating the existing paragraph (b) to paragraph (c); by removing at the end of paragraph (2) of the redesignated paragraph (c) the word "or"; by changing the period at the end of paragraph (3) of the redesignated paragraph (c) to a semicolon and adding the word "or"; by adding paragraph (4) to the redesignated paragraph (c); and by redesignating the existing paragraph (c) to paragraph (d); to read as follows:

**217.7204 Identification of sources of supply.**

(a) 10 U.S.C. 2384(a) requires that, whenever practicable, each contract requiring the delivery of supplies, other than commercial items sold in substantial quantities to the general public and priced at established catalog or market prices or awarded through full and open competition, shall require that the contractor identify:

* * * * *

(b) This section does not apply to a contract that requires delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

(1) Provides for the acquisition of such supplies at established catalog or market prices; or

(2) Is awarded through the use of full and open competition.

(c) * * *

(4) The contracting officer determines that paragraph (b) is applicable to all items under the contract.

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.217-7270 is amended by changing the reference in the introductory paragraph to read "217.7204(c)"; by changing the date of the clause to read "(FEB 87)"; by designating the existing paragraph of the clause as paragraph (a); and by adding paragraph (b) to the clause to read as follows:

**252.217-7270 Identification of sources of supply.**

* * * * *

(b) The requirements of paragraph (a) do not apply to any items that are commercial items sold in substantial quantities to the general public if—

(1) The items are priced using established catalog or market prices; or

(2) The items are acquired through the use of full and open competition.

(End of clause)

[FR Doc. 87-7611 Filed 4-6-87; 8:45 am]

BILLING CODE 3810-01-M

# Proposed Rules

Federal Register
Vol. 52, No. 66
Tuesday, April 7, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448

[Docket No. 3716S]

### Prevented Planting Endorsement to Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations (7 CFR Parts 419, 432, 421, 448, 420, 427, 424, and 418, respectively), effective for the 1988 crop year only. The intended effect of this rule is to: (1) Provide for use of the sales closing date of the qualifying crop insurance policy as a specific point of reference to determine the endorsement reporting date; (2) allow set off to pay premium; (3) require the insured to report total production from all units of the qualifying crop policy; (4) include the insured's share of the production guarantee in the determination of indemnity; (5) clarify that the endorsement is on an annual basis and define requirements to stay insured from year to year; (6) add definitions of "ASCS" and "Farm"; and (7) redefine "Prevented planting date", "Unit", and "Yield Guarantee". The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than May 7, 1987, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for the regulations affected by this action remain unchanged and are made part of each regulation affected by this rule.

E. Ray Fosse, Manager FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal proposed changes in the prevented planting endorsement are:

1. *Section 2.* Clarify that any acreage intended for planting must be insured under the qualifying crop insurance policy before insurance will attach under this endorsement. This change is made to prevent attachment of insurance under the endorsement to acreage which is otherwise uninsurable under the qualifying crop insurance policy.

2. *Section 3.* Add a provision requiring that at the time the insured must report the acreage under the prevented planting endorsement, it also must be reported by the intended type and practice. Since the indemnity under the endorsement is directly related to the guarantee for the qualifying crop and that guarantee is established by type and practice it is necessary to state the basis for determining the guarantee for the endorsement in a similar manner.

Change the date of reporting acreage from the reporting date established by the actuarial table to not later than the sales closing date for the applicable qualifying crop.

3. *Section 6.* Add a section specifically allowing set off for payment of premium. Although this is allowed under provisions of the qualifying crop policy, it is repeated in the endorsement to clarify the Corporation's intent in this regard.

4. *Section 9.* Eliminate the requirement for an insured to report to FCIC the total production from the units established under the provisions of the qualifying crop policy. Such information was previously required to calculate the amount of indemnity.

Remove the reference to acreage intended for planting from which a forage crop is harvested. The Corporation will no longer insure any acreage planted to a perennial crop. (See: Subsection 11.b.(1).)

5. *Section 10.* Revise the time, report, and notice provisions to more clearly explain what the insured must do to be eligible and to stay insured from year to year.

Remove the contract change date requirement as being duplicative of the qualifying crop policies.

6. *Section 11.* Add a definition for "ASCS".

Add a definition for "farm" as meaning the land which is designated by the Agricultural Stabilization and

Conservation Service (ASCS) under a single farm serial number to clarify that an applicant for the prevented planting endorsement must comply with ASCS qualifying programs.

Redefine:

"Prevented planting date" to establish when insurance will end for areas where there are no spring-planted crops;

"Unit" to remove the reference to reporting and correcting units; and

"Yield Guarantee" to clarify that the coverage level applicable under the qualifying crop contract is used to determine the liability for that crop under the Prevented Planting Endorsement.

FCIS is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448**

Crop Insurance; Wheat, Barley, Grain Sorghum, Cotton, Rice, Oat, Corn, ELS Cotton.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations (7 CFR Parts 418, 419, 432, 421, 448, 420, 427, 424, and 418, respectively), effective for the 1988 and succeeding crop years, in the following instances:

**PARTS 418, 419, 420, 421, 424, 427, 432, AND 448—[AMENDED]**

1. The Authority citation for 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448, continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448 are amended by revising §§ 418.8, 419.9, 420.8, 421.8, 424.8, 427.8, 432.8 and 448.8 in their entirety to read as follows:

**§ _____ Prevented planting endorsement.**

(a) A prevented planting crop insurance endorsement on the qualifying crop will be available to all insureds have a qualifying crop insurance contract under the provisions of this Part and who participate in the ASCS Acreage Reduction Program or Set-aside Program. This endorsement is not continuous. Application must be made annually for the prevented planting endorsement not later than the sales closing date established by the actuarial table for the applicable qualifying crop.

(b) The provisions of the Prevented Planting Crop Insurance Endorsement for the 1988 and succeeding crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

**Prevented Planting Crop Insurance Endorsement**

(This is an annual election to be made by the insured before the date specified in Section 10.)

AGREEMENT TO INSURE: We will provide the insurance described in this endorsement in return for the premium and your compliance with all applicable provisions.

*Prevented Planting*

1. Applicable Provisions. All provisions of the qualifying crop insurance contract and the prevented planting crop insurance application not in conflict with this endorsement are applicable.

2. Causes of Loss.

a. This insurance is against your being unavoidably prevented from planting insurable acreage to the qualifying crop or any other non-conserving crop during the insurance period. (You are required to plant to another non-conserving crop during the insurance period after you know or should have known that it is no longer feasible to plant the qualifying crop and you are not prevented from planting the other non-conserving crop by an insurable cause.) You must be prevented from planting by drought, flood, or other natural disaster which occurs within the insurance period. Limitations, exceptions, or exclusions on the causes insured against may be contained in the actuarial table.

b. We will not insure against any prevention of planting:

(1) If your failure to plant was due to a cause other than those listed in subsection 2.a.; or

(2) If most producers in the surrounding area in similar circumstances were able to plant the qualifying crop or any other non-conserving crop.

3. Acreage and Share Insured.

a. The acreage insured for each crop will be the cultivated acreage in the county intended to be planted for harvest to the qualifying crop, in which you have a share, as reported by you or as determined by us, whichever we elect, and for which a premium rate is provided by the actuarial table.

b. The insured share is your share as landlord, owner-operator, or tenant in the qualifying crop if the crop had been planted at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the prevented planting date.

c. Unless otherwise specified by the actuarial table, we will not insure any acreage unless you have a valid crop insurance contract for the current crop year on the qualifying crop and the acreage is insurable under that contract.

d. You must participate in the ASCS acreage reduction or set-aside program for the qualifying crop in the applicable crop year on at least one farm which is part of the insured unit under this endorsement.

4. Report of Acreage and Share.

You must report on our form:

a. All the cultivated acreage intended for planting to the qualifying crop in the county in which you have a share;

b. The intended type and practice; and

c. Your share at the time of reporting.

You must designate separately any cultivated acreage that is intended for planting to the qualifying crop that is not insurable. This report must be submitted not later than the sales closing date for the qualifying crop. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine the insured acreage and share or we may deny liability on the unit. Any report submitted by you may be revised only upon our approval.

5. Amounts of Insurance and Coverage Levels.

a. The amount of insurance per acre is computed by multiplying the qualifying crop yield guarantee times the price election selected for the qualifying crop, times .35.

b. The coverage level is the same as that selected under your crop insurance contract for the qualifying crop.

6. Annual Premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share.

b. Interest will accrue at the same rate and terms on any unpaid premium balance as on the qualifying crop insurance contract.

7. Deductions for Debt. Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agencies.

8. Insurance Period. Insurance attaches on the sales closing date of the qualifying crop insurance contract for the crop year and ends at the earlier of:

a. Planting of the insured acreage to the qualifying crop or any other non-conserving crop; or

b. The prevented planting date.

9. Notice of Damage or Loss and Claim For Indemnity.

a. If you fail to plant the insured acreage and expect to claim an indemnity on the unit, you must give us notice in writing not later than 5 days after the prevented planting date.

b. Any claim for indemnity must be submitted to us on our form prior to the time a claim is or should be filed for the qualifying crop.

c. We will not pay any indemnity unless you:

(1) Establish that any prevention of planting on insured acreage was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed; and

(2) Furnish all information we require concerning the loss.

d. The indemnity will be determined for the unit by:

(1) Multiplying the insured acreage times the amount of insurance as determined in Section 5 of this endorsement;

(2) Subtracting therefrom the amount obtained by multiplying the planted acreage, times the amount of insurance; and

(3) Mulitplying this result by your share.

e. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section.

10. Life of Contract: Cancellation and Termination.

a. This contract will be in effect only for the crop year specified on the application and may not be canceled by you for such crop year.

b. This contract may be renewed for each succeeding crop year if:

(1) You apply and report your intended acreage for planting not later than the sales closing date of the qualifying crop; and

(2) The qualifying crop insurance contract is not cancelled or terminated for the crop year.

11. Meaning of Terms.

For the purposes of prevented planting crop insurance:

a. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

b. "Cultivated acreage intended for planting" means land that was ready or, except for insured causes, could have been made ready for planting, but does not include land:

(1) On which a perennial forage crop is being grown or on which the qualifying crop or other not-conserving crop was planted prior to the prevented planting acreage reporting date; or

(2) Which was not or would not have been planted to comply with any other United States Department of Agriculture or State programs or for any other reason.

c. "Farm" means the land which is designated by ASCS under a single farm serial number.

d. "Insurable acreage" means the land classified as insurable by us for the qualifying crop and shown as such by the actuarial table.

e. "Non-conserving crop" means any crop planted for harvest as food, feed, or fiber.

f. "Planted acreage" means the insurable acreage:

(1) Planted to the qualifying crop or any non-conserving crop during the insurance period; or

(2) Which could have been planted to the qualifying crop or any non-conserving crop during the insurance period.

g. "Prevented planting date" means the latest final spring planting date established by the crop actuarial tables for any insurable crop in the country, except tobacco, plus any extended date or final planting date offered under any late planting agreement. (In areas where there are no spring planting dates, we will use the latest final planting fall planting date.)

h. "Qualifying crop" means the ASCS program crop (barley, corn, cotton, ELS Cotton, grain sorghum, oats, rice, or wheat) which is also insured.

i. "Unit" means all insurable acreage in the county which you intend for planting to the qualifying crop prior to the prevented planting date for the crop year at the time insurance first attaches under this policy for the crop year. The unit will be determined when the acreage is reported.

j. "Yield guarantee" means the result of multiplying your yield for the qualifying crop by your coverage level for that crop.

Done in Washington, DC, on February 25, 1987.

Edward Hews,

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 87-7649 Filed 4-6-87; 8:45 am]

BILLING CODE 3410-08-M

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 612

### Personnel Administration

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Farm Credit Administration (FCA) publishes for comment a proposed amendment to Subpart B of Part 612 that would prohibit an individual serving simultaneously as an employee of a Farm Credit System (System) bank and a System association it supervises. Subpart B presently prohibits employees of System institutions from serving as officers or directors of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institutions, with certain exceptions. The Farm Credit Administration Board (Board), is reconsidering the related conflict-of-interest issue, and invites comment on a proposed regulation that would prohibit an employee of a System bank from serving simultaneously as an employee of an association supervised by the bank.

**DATE:** Written comments must be received on or before June 5, 1987.

**ADDRESSES:** Submit any comments (in triplicate) in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:** Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020.

**SUPPLEMENTARY INFORMATION:** Subpart B of 12 CFR Part 612, Standards of Conduct for Directors, Officers and Employees, presently prohibits employees of System institutions from serving as officers or directors of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institutions, with certain exceptions. Among the exceptions is an entity in which the System institution has an ownership interest. This exception has permitted the same individual to serve as the chief executive officer (CEO) or other employee of both a district bank and a districtwide association. The FCA has not previously objected to these arrangements in approving mergers of like associations.

The Board, as organized under the 1985 Amendments, is reconsidering the related conflict-of-interest issue, and invites comment on a proposed regulation that would prohibit an employee of a System bank from serving simultaneously as an employee of an association supervised by the bank. The FCA's concerns are twofold. The supervisory responsibilities of the Federal intermediate credit bank (FICB) toward the production credit associations (PCAs) and the Federal land bank (FLB) toward the Federal land bank associations (FLBAs) under the Farm Credit Act of 1971, as amended, (Act) make the potential for conflicts of interest, as defined in FCA regulations, greater than those present with entities in which no such relationship exists. FCA regulations consider a conflict of interest to exist "when a person has an interest in a transaction, relationship or activity which: (1) Actually or potentially affects the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution or (2) Results in such person being unable to devote required time to official duties." 12 CFR 612.2150. The Board is concerned that an individual, as an employee of a bank, may find it difficult to be totally impartial in discharging its supervisory responsibilities toward and managing its financial relationship with an association of which he or she also serves as the CEO. Where there is more than one PCA in the district, an absence of objectivity in performing supervisory functions may operate to the detriment

of the other PCAs. Even where there is only one PCA, an absence of impartiality could disadvantage non-System institutions that discount with the FICB. At a minimum, the appearance of a conflict is inherent in such an arrangement. In addition, the Board is concerned that System borrowers may be deprived of the benefits of supervision of their associations by a separate System entity, which the Act clearly contemplates.

The FCA's concern is not confined to the position of the CEO. The same rationale could be applied to other joint employees when a supervisory relationship is involved. Consequently, the proposed prohibition in the regulation, if adopted, would extend to all employees.

It should be noted that the proposed regulation does not include a provision which would grandfather existing joint employee arrangements. Rather, the Board expects that, should be the regulation be adopted as proposed, existing arrangements in violation of the prohibition would be terminated as soon as reasonably possible. Compliance with the regulation as it may be finally adopted would be reviewed as a part of the examination process. Accordingly, System institutions should make appropriate contingency plans.

Pending final action by the Board on the proposed regulation, the proponents of any pending association merger transaction should carefully reconsider any terms of the proposal that would implement or authorize arrangements for common employees between the resulting association and its supervisory bank in view of the potential conflicts of interest involved. The FCA will focus on related concerns in deciding whether to approve those mergers.

**List of Subjects in 12 CFR Part 612**

Banks, Banking, Credit, Conduct standards, Ethical conduct.

As stated in the preamble, it is proposed that Part 612 of Chapter VI, Title 12, Code of Federal Regulations be amended to read as follows:

## PART 612—PERSONNEL ADMINISTRATION

1. The authority citation for Part 612 continues to read as follows:

**Authority:** 12 U.S.C. 2243 and 2252.

### Subpart B—Standards of Conduct for Directors, Officers and Employees

2. Section 612.2150 is amended by revising paragraph (b)(6) to read as follows:

**§ 612.2150 Employees—prohibited acts.**

* * * * *

(b) An employee of a System institution:

* * * * *

(6) Shall not serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution, except employee credit unions. For the purposes of this paragraph, "transacts business" does not include loans by a System institution to a family-owned entity and does not include nonprofit entities or entities in which the System institution has an ownership interest, except that no person shall serve simultaneously as an employee of a bank and an association it supervises. With the prior approval of the Board of the employing System institution, an employee of a Federal land bank, Federal intermediate credit bank, or association may serve as a director of a cooperative which borrows from a bank for cooperatives. Boards, prior to approving such employee requests, shall evaluate the potential of the employee's proposed directorship for violating any regulations contained in this subpart, with particular emphasis on the requirements of § 612.2190, Devotation of time to official duties.

* * * * *

William A. Sanders, Jr.,

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87-7634 Filed 4-6-87; 8:45 am]

BILLING CODE 6705-01-M

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 87-CE-10-AD]**

### Airworthiness Directives; Pilatus Britten-Norman, Ltd., Model BN-2A Mk III Trislander Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Pilatus Britten-Norman, Ltd., (PBN) Models BN-2A Mk III, BN-2A Mk III-1, BN-2A Mk III-2, and BN-2A Mk III-3 Series airplanes, which would correct the severe internal corrosion problem of the elevator trim tab operating rods. Several in-service reports have been received that rods, which are constructed from steel tubing, have been found with internal corrosion breaking through to the external surface, which could lead to failure of the rod and result in tab disconnect. The proposed AD would detect this internal corrosion and preclude the possible loss of aircraft control.

**DATES:** Comments must be received on or before May 28, 1987.

**ADDRESSES:** Pilatus Britten-Norman Mandatory Service Bulletin BN-2/SB.179, Issue 1, dated January 30, 1987, applicable to this AD may be obtained from Pilatus Britten-Norman, Ltd., Bembridge, Isle of Wight, England. This information may be examined in the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-10-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ted Ebina, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Harvey Chimerine, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87–CE–10–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

*Discussion:* Several in-service incidents have been reported that elevator trim tab operating rods, which are constructed from steel tubing, have been found with severe internal corrosion breaking out to the surface. The cause of the corrosion has been traced to an assembly procedure when a "LOCKTITE" sleeve was placed over a cleaned surface in the steel tab rod tube assembly and the surface was not reprotected. Consequently, internal rusting occurred. As a result, Pilatus Britten-Norman, Ltd., has issued Pilatus Britten-Norman Mandatory Service Bulletin (MSB) BN–2/SB.179, Issue 1, dated January 30, 1987, which requires removal of the two (2) elevator tab rod assemblies from the airplane, dismantling of the rods, inspection for any corrosion, replacement if necessary, cleaning, internal corrosion protection, and reinstallation. The Civil Airworthiness Authority-United Kingdom (CAA–UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Great Britain, has classified this Pilatus Britten-Norman MSB No. BN–2/SB.179, Issue 1, dated January 30, 1987, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under CAA–UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Pilatus Britten-Norman MSB No. BN–2/SB.179, Issue 1, dated January 30, 1987, and the mandatory classification of this service bulletin by the CAA–UK. Based on the foregoing, the FAA believes that the condition addressed by Pilatus Britten-Norman MSB No. BN–2/SB.179, Issue 1, dated January 30, 1987, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require removal of the two (2) elevator tab rod assemblies from the airplane, dismantling of the rods, inspection for any corrosion, replacement if necessary, cleaning, internal corrosion protection, and reinstallation.

The FAA has determined there are approximately 13 airplanes affected by the proposed AD. The cost of inspecting and modifying the proposed AD is estimated to be $160 per airplane. The total cost is estimated to be $2,080 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Pilatus Britten-Norman, Ltd.:** Applies to Models BN–2A Mk III, BN–2A Mk III–1, BN–2A Mk III–2, and BN–2A Mk III–3 (all serial numbers) airplanes certificated in any category.

*Compliance:* Required within 30 days after the effective date of this AD, unless already accomplished, and every 24 calendar months thereafter. To prevent structural failure of the elevator trim tab operating rods, accomplish the following:

(a) Remove the two (2) elevator trim tab operating rod assemblies in accordance with the instructions contained in the "INSPECTION" section of Pilatus Britten-Norman, Ltd., Mandatory Service Bulletin (MSB) No. BN–2/SB.179, Issue 1, dated January 30, 1987 (hereinafter referred to as MSB BN–2/SB.179).

(1) Disassemble one end of each control rod and visually examine the rod (tube) internally and externally for corrosion, rust, or cracks.

(i) If any corrosion, rust, or crack is found, before further flight, replace the control rod and accomplish paragraphs (a)(1) through (a)(3) of this AD on the replacement unit.

(ii) If no defect is found, clean and apply corrosion protection to the rod in accordance with the "RECTIFICATION" instructions of MSB BN–2/SB.179, and

(2) Visually inspect each ball end or fork fitting and sleeve (Part Number (P/N) NB–45–2627), after removing any surface rust, for pitting, discoloration, or cracks. If any evidence of corrosion, pitting, discoloration, or crack is found, before further flight:

(i) Replace the defective part with a serviceable unit.

(ii) Remove the fitting and sleeve from the other end of the associated control rod and repeat the inspection specified in paragraph (a)(2) of this AD.

(3) Reassemble the control rods in accordance with the "RECTIFICATION" instructions of MSB BN–2/SB.179.

(4) Reinstall the control rod in accordance with the "RETURNING THE AIRCRAFT TO SERVICE" instructions of MSB BN–2/SB.179.

(b) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain a copy of the document referred to herein upon request to Pilatus Britten-Norman, Ltd., Bembridge, Isle of Wight, England; or may examine the document referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 27, 1987.

**Jerold M. Chavkin,**

*Acting Director, Central Region.*

[FR Doc. 87–7606 Filed 4–6–87; 8:45 am]

BILLING CODE 4910–13–M

---

**14 CFR Part 71**

**[Airspace Docket No. 86–AGL–33]**

## Proposed Alteration of VOR Federal Airways, Wisconsin

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the descriptions of Federal Airways V–13, V–55, V–505 and the

Grantsburg Compulsory Reporting Point located in the vicinity of Grantsburg, WI. The FAA is proposing to decommission the Grantsburg very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) located approximately 13 miles east of Grantsburg. This action amends the descriptions of all airways affected by the commissioning of Siren, WI, VOR/DME and the decommissioning of the Grantsburg VOR/DME and changes the name of the Grantsburg Compulsory Reporting Point.

**DATES:** Comments must be received on or before May 21, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 86–AGL–33, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AGL–33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airways V–13, V–55 and V–505 located in the vicinity of Grantsburg, WI. The FAA is planning the decommissioning of the Grantsburg VOR/DME and the commissioning of the Siren VOR/DME, and this action would alter the descriptions of all airways affected and change the name of the Grantsburg Compulsory Reporting Point. Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR Federal airways.

**PART 71—[AMENDED]**

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V–13 [Amended]**

By removing the words "Grantsburg, WI;" and substituting the words "INT Farmington 017°T(011°M) and Siren, WI, 218°T(213°M) radials; Siren;"

**V–55 [Amended]**

By removing the words "Grantsburg, WI;" and substituting the words "Siren, WI;"

**V–505 [Amended]**

By removing the words "Grantsburg, WI;" and substituting the words "Siren, WI;"

**§ 71.203 [Amended]**

3. Section 71.203 is amended as follows:

**Grantsburg, WI [Removed]**

Siren, WI [New].

Issued in Washington, DC, on March 31, 1987.

**Harold H. Downey,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87–7607 Filed 4–6–87; 8:45 am]

BILLING CODE 4910–13–M

---

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 240**

**[Release No. 34–24274; IC–15645; File No. S7–11–87]**

**Facilitation of Shareholder Communications**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today is publishing for comment proposals specifying that, where an employee

benefit plan provides a means through which plan participants obtain in a timely manner proxy cards, proxy soliciting material and annual reports to security holders, a registrant would not be obligated under Rule 14a–13(a) to furnish such materials to record holders and respondent banks for distribution to participants in that plan. The proposed amendments also would provide that a registrant need not include employee benefit plan participants in its request for a list of beneficial owners under the direct communications system if it has access to the names and addresses of such beneficial owners through some other means.

**DATE:** Comments should be received on or before May 7, 1987.

**ADDRESS:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–11–87. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION, CONTACT:** Sarah A. Miller or Barbara J. Green (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities & Exchange Commission, 450 Fifth St., NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment proposed revisions to Rules 14a–1,[1] 14a–13,[2] 14b–1,[3] 14b–2,[4] 14c–1 [5] and 14c–7.[6]

## I. Executive Summary

On November 25, 1986, the Commission adopted new shareholder communications rules and related amendments [7] to effect the Shareholder Communications Act of 1985.[8] The new rules set forth the obligations of banks, associations and other entities that exercise fiduciary powers (hereinafter "banks") in connection with forwarding proxy materials to beneficial owners and registrants' communications with beneficial owners of securities registered in the banks' names.

At the time it adopted the new rules, the Commission indicated that it would consider application of the shareholder communications rules to employee benefit plans in a separate rulemaking proceeding. This release addresses that issue. The rule proposals are intended to avoid duplicative mailing of proxy materials to plan participants and to permit registrants to realize cost savings in connection with requests for beneficial owner lists.

Currently, the shareholder communications rules require proxy soliciting material to be forwarded to plan participants who are beneficial owners. Such plan participants, however, also may receive proxy soliciting materials pursuant to the terms of the plan itself. The proposals would permit proxy soliciting material to be disseminated in accordance with plan documents and not Commission shareholder communications rules.

The rule proposals specify conditions under which registrants would not be obligated under Rule 14a–13(a) [9] to furnish proxy cards, proxy soliciting material and annual reports to record holders and respondent banks for distribution to certain beneficial owners whose securities are held in nominee name pursuant to an employee benefit plan. Specifically, a registrant would not be required to forward such materials where the plan contains a mechanism under which the registrant-plan sponsor or other person designated in the plan [10] obtains and supplies proxy soliciting materials to such beneficial owners in a timely manner. A registrant would be required to notify the record holders and respondent banks that hold the registrant's securities on behalf of participants in the plan that it intended to use these alternative means to distribute proxy materials and annual reports.

The rule proposals also allow a registrant that has access to the names and addresses of employee benefit plan participants by some other means to exclude those plan participants from its request for a list of beneficial owners. Again, the registrant would be required to inform record holders and respondent banks of its intention not to include these plan participants in its request.

As proposed, the exclusions from the proxy processing and direct communications systems are optional on the part of the registrant. In addition, the exclusions operate independently; satisfaction of the requirements for excluding participants in an employee benefit plan from the operation of one system would not automatically warrant or require exclusion from the other system. The Commission is, however, particularly interested in receiving comment on whether the two exclusions should work in tandem, whether one prerequisite should permit a registrant to choose both exclusions and whether either or both exclusions should be mandatory.[11]

## II. Discussion

### *A. The Rule Proposals*

#### 1. Proxy Processing

Proposed paragraph (d)(1) of Rule 14a–13 relates to proxy processing procedures with respect to beneficial owners [12] who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to the plan.[13] Where the plan contains a mechanism for both obtaining proxy soliciting material from registrants and supplying plan participants with proxy soliciting materials in a timely manner and action is taken that is reasonably calculated to assure that plan participants receive such materials in accordance with that mechanism,[14] the registrant would not be required to perform its proxy processing obligations with respect to these plan participants. Specifically, the registrant would not be required to send a search card inquiry to record holders and respondent banks [15] and supply record holders and respondent banks with the requisite sets of proxy materials required for forwarding to such beneficial owners.[16] With respect

---

[1] 17 CFR 240.14a–1.

[2] 17 CFR 240.14a–13.

[3] 17 CFR 240.14b–1.

[4] 17 CFR 240.14b–2.

[5] 17 CFR 240.14c–1.

[6] 17 CFR 240.14c–7.

[7] Release No. 34–23847 (November 25, 1986) [51 FR 44267].

[8] Pub. L. 99–222, 99 Stat. 1737 (1985), amending 15 U.S.C. 78n(b) (1982).

[9] 17 CFR 240.14a–13(a).

[10] Plans contain a wide variety of proxy dissemination arrangements. Depending on the structure and particular facts and circumstances of each plan, proxy material may be distributed by the plan sponsor, the plan administrator or the trustee.

[11] See discussion *infra* § II.B.

[12] If voting authority rests with the plan trustee, the trustee is the beneficial owner for purposes of the shareholder communications rules and, accordingly, the proposals would not apply. *See* Rule 14b–2(i), 17 CFR 240.14b–2(i).

[13] The Commission is proposing to add a definition of "employee benefit plan" to Rules 14a–1 and 14c–1. This definition would be identical to the definition presently contained in 17 CFR 230.405. *See* proposed Rules 14a–1(b) and 14c–1(b).

[14] Many of these mechanisms are incorporated into the plan as a result of the undertaking required by Form S–8. 17 CFR 239.16b. Item 21 of Form S–8 requires the registrant, at the time of filing an S–8 registration statement, to furnish, among other things, the undertaking required by Item 512(f)(2) of Regulation S–K, 17 CFR 229.512(f)(2). That item requires the registrant "to transmit . . . to all employees participating in the plan who do not otherwise receive such material as stockholders of the registrant, . . . copies of all reports, proxy statements and other communications distributed to its stockholders generally."

[15] Rule 14a–13(a)(1), 17 CFR 240.14a–13(a)(1).

[16] Rule 14a–13(a)(3), 17 CFR 240.14a–13(a)(3). Effective July 1, 1987, current paragraph (a)(3) will be redesignated paragraph (a)(4).

to the requirement for a plan mechanism for obtaining and timely supplying proxy materials to beneficial owners, the Commission requests comment as to whether the rule should specify minimum requirements for the plan. For example, should the mechanism require that proxy soliciting materials be mailed to beneficial owners a specified period of time before an annual or special meeting?

Proposed paragraph (d)(1) also would require a registrant that determines to use the alternative proxy processing mechanism to notify the appropriate record holders and respondent banks that hold the registrant's securities on behalf of plan participants of its intention in this regard. As proposed, the notice would be effective 60 calendar days after receipt by the record holder or respondent bank or such shorter period as the record holder or respondent bank and the registrant mutually agree. This is intended to give a recordholder or respondent bank an opportunity to place plan participant information in a suspense file or remove it from its recordkeeping systems and to obtain reimbursement for actions taken under the shareholder communications rules until such notice is effective. The Commission requests commentators' views on whether, as currently proposed, the rules should specify any time period between receipt and effectiveness of the notice. In addition, comment is requested on whether the specified period should be shorter or longer, such as a 30 or 90 calendar day period.

Once the notice is received and effective, a record holder or respondent bank would not be required to respond [17] to the registrant's search card inquiry [18] with respect to those plan participants or forward proxy soliciting material to them.[19] Also, upon effectiveness of the notice, the registrant no longer would be responsible for reimbursement of proxy processing costs associated with these particular plan participants.

Banks would execute an omnibus proxy [20] in favor of respondent banks with respect to the number of securities held by these plan participants.[21] Alternatively, banks could comply with the terms of any Commission approved alternate procedure to the omnibus proxy.[22]

Failure to comply with the terms of the plan document would preclude reliance on the exclusion from the proxy processing rules and could lead to liability under those rules.[23] In addition, if the plan is subject to the Employee Retirement Income Security Act ("ERISA"),[24] liability for non-compliance with the plan document could be established under the general fiduciary responsibility provisions of ERISA.[25] In the case of a plan that is not subject to ERISA, liability also might result under state law for breach of fiduciary duties or contract. Moreover, plans registered on Form S–8 contain an undertaking requiring that registrants transmit to all employees participating in the plan copies of all communications distributed to shareholders generally.[26]

Absent a specified plan procedure that reasonably insures timely delivery of proxy materials to plan participants, plan participants would continue to receive proxy soliciting material in accordance with the procedures set forth in the shareholder communications rules.

2. Direct Communications

Proposed paragraph (d)(2) would provide that a registrant's request for a list of beneficial owners need not include employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to the plan, if the registrant has access, by some other means, to the names and addresses of such beneficial owners. For example, registrants could obtain such information by means of payroll deductions or a list of plan participants provided by the plan administrator. A registrant would be required to communicate its intention to exclude employee benefit plan participants from its requests for beneficial owner lists to record holders and respondent banks that hold the registrants' securities on behalf of plan participants.

Under the proposal, once a record holder or respondent bank is so informed, it would not be required to include employee benefit plan participants in its responses to that registrant's requests for lists of beneficial owners.[27] Again, the notice would become effective 60 calendar days after receipt by the record holder or respondent bank or such shorter period as the record holder or respondent bank and the registrant mutually agree. The Commission requests comment as to whether there should, in fact, be a time period between receipt and effectiveness and whether the time period should be shorter or longer, such as 30 or 90 calendar days. The notice period is intended to give a record holder or respondent bank an opportunity to place plan participant information in a suspense file or remove it from its recordkeeping systems and to obtain reimbursement for actions taken under the shareholder communications rules until such notice is effective. Finally, having provided the notice, the registrant would not be responsible, once the notice is effective, for reimbursing record holders and respondent banks for any subsequently

---

[17] *See* proposed Rules 14b–1(d)(1) and 14b–2(g)(1).

[18] *See* Rules 14b–1(a), 17 CFR 240.14b–1(a), and 14b–2(a), 17 CFR 240.14b–2(a).

[19] *See* Rules 14b–1(b), 17 CFR 240.14b–1(b), and 14b–2(c), 17 CFR 240.14b–2(c).

[20] *See* Rule 14b–2(b), 17 CFR 240.14b–2(b).

[21] Although proxy soliciting material would be disseminated to plan participants in accordance with the plan document and not the Commission's shareholder communications rules, the omnibus proxy procedure still would be required to ensure that legal voting authority reaches the specific respondent bank or trustee with which plan participants have deposited their securities.

[22] *See* Rule 14b–2(d), 17 CFR 240.14b–2(d).

[23] Where registrants do not themselves perform the functions of plan administrators, registrants should be aware that they may be liable for the acts and omissions of their plan administrators, which act as their agents, and should negotiate the terms of such agencies accordingly.

[24] 29 U.S.C. section 1001, *et seq.*

[25] Of course, it should be noted that compliance with the provisions of this regulation does not necessarily establish compliance with the fiduciary responsibility provisions of ERISA. Under section 404(a)(1)(D) of ERISA, 29 U.S.C. 1104(a)(1)(D), fiduciaries of employee benefit plans are generally obligated to discharge their duties in accordance with the documents and instruments governing the plan insofar as they are consistent with the requirements of ERISA. In this respect, under sections 403 and 404(a) of ERISA, 29 U.S.C. 1103 and 1104(a), every plan fiduciary also has an obligation to discharge his duties for the exclusive benefit, and solely in the interest, of plan participants and beneficiaries. A fiduciary would be required to adhere strictly to these standards in implementing any plan provisions relating to proxy materials. The Department of Labor has indicated that, in the case of a plan which permits participants to direct plan responses to tender offers, plan trustees would be relieved of liability for losses resulting from participant decisions only if, among other things, they assure that participants are provided information necessary to make independent decisions. *See* letter to John Welch dated April 30, 1984, reprinted in BNA Pens. Rptr., vol. 11, no. 19, at 633 (May 7, 1984). The Department of Labor has informed the staff of the Commission that, in its view, the duties of plan fiduciaries under ERISA with respect to pass through voting of securities are similar to the duties of plan fiduciaries with respect to pass through of tender offers as articulated in the Welch letter. Thus, in discharging their duties under ERISA, plan trustees may be obliged to take steps to disseminate materials to participants in addition to the materials required to be distributed under the plan.

[26] *See supra* note 14.

[27] See proposed Rules 14b–1(d)(2) and 14b–2(g)(2).

provided information regarding these beneficial owner plan participants.[28]

Record holders and respondent banks that do not perform participant recordkeeping duties may not have access to beneficial owner information regarding plan participants. Where there is no exclusion from the direct communications system, a bank or record holder, in order to satisfy the registrant's request for a list of beneficial owners, may have to request beneficial owner information regarding plan participants from the party performing the recordkeeping function (which may be the registrant itself). If the bank or record holder makes a good faith effort to obtain the information from the recordkeeper and is denied access to that information, in the Commission's view, it need not take further steps to satisfy its obligations.

The Commission recognizes that many plans may have provisions prohibiting disclosure of participants' securities positions to registrant/plan sponsors in certain circumstances.[29] The shareholder communications rules are not intended to override these provisions, but they may have that effect by permitting registrants to obtain access to such information under the direct communications system. The Commission seeks comment on whether registrants prohibited by the plan from obtaining access to participants' names, addresses and/or securities positions should be permitted to obtain that information under the direct communications system, and if not, how such access can be restricted. Data on the frequency and duration of these types of plan provisions also is requested.

3. Optional Nature of the Proposals

The proposals are optional in nature. A registrant would be free to include voting plan participants in the proxy processing or direct communications systems. Under the proposed rules, once a registrant no longer satisfies the prerequisites for excluding voting plan participants from either system or determines it wishes to utilize either system, the registrant must notify each record holder or respondent bank promptly. The record holder or respondent bank would be required to recommence compliance with respect to these voting plan participants in either the proxy processing or direct communications system or both within 60 calendar days of receiving such notice. Thus, once the 60 calendar day time period has lapsed, record holders and respondent banks will be required to perform their obligations under Rules 14b–1 and 14b–2.

This second 60 calendar day advance notice period is proposed to provide record holders and respondent banks with sufficient time in which to comply with the shareholder communication rules.[30] For example, a bank could choose to delete plan participant information from its beneficial owner records when a registrant notifies it that plan participants will be excluded from the operation of the rules.[31] If the registrant subsequently determines it must or will include plan participants, a bank will need time to resolicit those beneficial owners to determine if they acquiesce in disclosure of beneficial owner information.

*B. Alternative Proposals*

In addition to the rule proposals, comment is requested on other alternatives the Commission is considering and may adopt with respect to exclusion of employee benefit plan participants from the ambit of the shareholder communications rules. The Commission solicits commentators' specific views on the feasibility of each of these alternatives and any suggestions for revising these proposed alternatives.

One alternative would be to make one or both of the exclusions mandatory rather than optional. Under this approach, plan participants would be excluded if the stated prerequisite was satisfied. Thus, where proxy soliciting materials are disseminated in a timely manner to plan participants pursuant to a specified mechanism in the plan, plan participants automatically would be excluded from the proxy processing system. Similarly, where a registrant had access, by some other means, to the plan participants' names and addresses, those plan participants automatically would be excluded from the direct communications system. The exclusions would no longer be applicable once the plan no longer satisfied the stated prerequisites.

Comment is requested on whether the same type of notice requirements for inclusion in the shareholder communication rules under the optional system contained in the proposed rules should be incorporated into the mandatory approach, if adopted. Specifically, should registrants be required to give record holders and respondent banks 60 calendar days notice prior to including these plan participants within, or excluding them from, the coverage of the shareholder communications rules?

The Commission also is considering whether the two exclusions should work in tandem in an optional or mandatory context. Thus, satisfaction of all prerequisites would be required before any exclusion would apply. This approach could prevent a registrant from realizing certain cost savings. For example, even though a registrant may have access to plan participants' names and addresses, the registrant would not be permitted to request beneficial owner lists that exclude plan participants if the other prerequisite—a plan proxy dissemination mechanism—was not satisfied.

Another possible alternative that the Commission is considering would be to base automatic or optional total exclusion from the shareholder communication rules on satisfaction of only one prerequisite. Thus, for example, plan participants could be excluded automatically from both the proxy processing and direct communications systems if the registrant has access to plan participant names and addresses. This approach would, in certain instances, cause duplication in delivery of proxy materials.

Another alternative under consideration would be an across-the-board mandatory exclusion of employee benefit plan participants from all

---

[28] Reimbursements are calculated on a per name basis. *See, e.g.*, Release No. 34–22889 (February 11, 1986) [51 FR 5821] (File No. SR–NYSE–85–43).

Where a bank or broker has incurred expenses to solicit beneficial owners' acquiescence to disclosure, those costs, to the extent reasonable, are recoverable up to the date of effectiveness of the notice of the registrant's intention not to use the direct communications system. In addition, if a bank must resolicit beneficial owners' acquiescence in order to comply with a registrant's request to include plan participants in beneficial owner requests, those costs, to the extent reasonable, would be recoverable.

[29] For example, some plans provide that the plan sponsor will not have access to the securities positions of its employee beneficial owners during and subsequent to a tender offer. These provisions generally are enforced through ERISA's general fiduciary provisions, 29 U.S.C. 1104, and its prohibition against coercive interference with participants' exercise of their rights under the plan, 29 U.S.C. 1141.

[30] Unlike the Commission's May 1986 proposal, which would have allowed a registrant to exclude plan participants from an individual beneficial owner request, this proposal will not require continual monitoring by record holders and respondent banks. Once a registrant exercises its option to exclude employee benefit plan participants, record holders and respondent banks will be free to discard the information that would otherwise be required under the appropriate provisions of the shareholder communications rules. *But see infra* note 31.

[31] Brokers would not purge their records of beneficial owner information, because they are required to maintain this information under Rule 17a–3(a)(9) under the Securities Exchange Act, 17 CFR 240.17a–3(a)(9). Comment is solicited on the costs associated with continuing to request and retain this information.

aspects of the proxy processing system as well as the direct communications system.[32] Satisfaction of certain stated prerequisites would not be required. This approach would not present the notice issues posed by the other alternatives and rule proposals.

### III. Request for Comments

Any interested persons wishing to submit written comments on the proposed revisions to the shareholder communication rules and alternatives suggested herein, as well as on other matters that might have an impact on these proposals and alternatives, are requested to do so.

The Commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Exchange Act of 1934 ("Exchange Act"). Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.

### IV. Cost—Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendments to Rules 14a–1, 14a–13, 14b–1, 14b–2, 14c–1, and 14c–7, the Commission requests commentators to provide views and data as to the costs and benefits associated with the proposed amendments. In this regard, the Commission notes that the proposals will avoid duplicative mailing of proxy soliciting materials to beneficial owners whose securities are held in nominee name pursuant to an employee benefit plan if proxy materials are disseminated in a timely fashion to plan participants under a mechanism specified in the plan. By avoiding duplicative mailing of proxy soliciting materials to beneficial owners, registrants will be able to realize cost savings. In addition, these proposals will permit further cost savings to registrants in obtaining beneficial owner lists, the charges for which are calculated on a per name basis.

The costs associated with these proposals will occur only if registrants decide to perform a review of employee benefit plans to determine if the necessary prerequisites to the rule proposals have been satisfied. The proposals do not require any additional recordkeeping obligations for brokers and banks.

### V. Statutory Basis and Text of Proposed Amendments

These amendments are being proposed pursuant to sections 12, 14, 17 and 23(a) of the Exchange Act.[33]

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Banks, Associations.

### VI. Text of Proposals

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations: (Citations before * * * indicate general rulemaking authority).

**Authority:** Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * §§ 240.14a–1, 14a–13, 14b–1, 14b–2, 14c–1 and 14c–7 also issued under Sections 12, 15 U.S.C. 781, 14, Pub. L. 99–222, 99 Stat. 1737, 15 U.S.C. 78n, and 17, 15 U.S.C. 78q.

2. By redesignating current paragraphs (b) through (j) as paragraphs (c) through (k) and adding new paragraph (b) to § 240.14a–1 to read as follows:

**§ 240.14a–1 Definitions.**

* * * * *

(b) *Employee benefit plan.* For purposes of §§ 240.14a–13, 240.14b–1 and 240.14b–2, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers.

* * * * *

3. By revising Note 1 to paragraph (a) and adding new paragraph (d) to § 240.14a–13 to read as follows:

**Note.**—This version of Note 1 to paragraph (a) of § 240.14a–13 is effective _____ through June 30, 1987; new paragraph (d) is effective _____.

**§ 240.14a–13 Obligation of registrants in communicating with beneficial owners.**

(a) * * *

**Note 1.** If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (*e.g.*, "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner, and shall comply with the above paragraph with respect to any such participant (*see* § 240.14a–1(h)).

* * * * *

(d) A registrant need not comply with—

(1) Paragraph (a) of this section with respect to beneficial owners who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to an employee benefit plan as defined in § 240.14a–1(b) if—

(i) Such plan contains a mechanism pursuant to which a person designated in the plan document is required to obtain and supply plan participants with proxy cards, proxy soliciting material and annual reports to security holders in a timely manner;

(ii) Action is taken that is reasonably calculated to assure that plan participants receive such materials in accordance with the mechanism contained in the plan; and

(iii) The registrant has notified record holders and respondent banks that hold the registrants' securities on behalf of participants in the plan of its intention not to comply with paragraph (a) of this section; and/or

(2) Paragraphs (b) and (c) of this section with respect to beneficial owners who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to an employee benefit plan as defined in § 240.14a–1(b), if—

(i) The registrant has access to the names and addresses of such beneficial owners by some means other than pursuant to paragraph (b) of this section; and

(ii) The registrant has notified record holders and respondent banks that hold the registrant's securities on behalf of participants in the plan of its intention not to comply with paragraphs (b) and (c) of this section; *Provided, however,* that if the prerequisite(s) set forth in paragraphs (d)(1) (i) and (ii) and/or (d)(2)(i) of this section is no longer satisfied or the registrant determines to comply with the obligations of paragraphs (a) and/or (b) and (c) of this section, the registrant shall notify promptly record holders and respondent banks that hold the registrant's securities on behalf of participants in the plan.

**Note.**—This version of Note 1 to paragraph (a) of § 240.14a–13 is effective July 1, 1987.

**§ 240.14a–13 [Amended]**

(a) * * *

---

[32] This approach would not, however, exclude employee benefit plan participants from the definition of beneficial owner. *See* Rule 14b–2(i). Voting plan participants are beneficial owners and should be treated as such.

[33] 15 U.S.C. 781, 78n, 78q and 78w(a).

**Note 1.** If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (*e.g.*, "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* § 240.14a–1(h)).

* * * * *

4. By redesignating current paragraph (d) as (e) and adding new paragraph (d) to § 240.14b–1 to read as follows:

**§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.**

* * * * *

(d) Not comply with—

(1) paragraphs (a) and (b) of this section with respect to beneficial owners who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to an employee benefit plan as defined in § 240.14a–1(b), beginning 60 calendar days after it receives notice from the registrant pursuant to § 240.14a–13(d) that the registrant does not intend to comply with § 240.14a–13(a) or such shorter time period agreed to by the registrant and broker or dealer; and/or

(2) paragraph (c) of this section with respect to beneficial owners who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to an employee benefit plan as defined in § 240.14a–1(b), beginning 60 calendar days after it receives from the registrant notice that the registrant does not intend to comply with § 240.14a–13(b) and (c) or such shorter time period agreed to by the registrant and broker or dealer; *Provided, however,* that 60 calendar days after it receives notice from a registrant that the registrant intends to recommence compliance with § 240.14a–13(a) and/or 14a–13 (b) and (c), such broker or dealer shall comply with paragraphs (a) and/or (b) and (c) of this section, as applicable.

* * * * *

5. By redesignating current paragraphs (g) through (i) as (h) through (j), adding new paragraph (g) and revising paragraphs (e)(2)(i) and (f)(1) and redesignated paragraph (h) to § 240.14b–2, to read as follows:

**§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.**

* * * * *

(e) * * *

(2) * * *

(i) With respect to customer accounts opened on or before December 28, 1986, beneficial owners of the registrant's securities on whose behalf it holds securities who have consented affirmatively to disclosure of such information, subject to paragraph (i) of this section; and

* * * * *

(f) * * *

(1) Its obligations under paragraphs (b), (c), (e) and (i) of this section if a registrant does not provide assurance of reimbursement of its reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b), (c), (e) and (i) of this section; or

* * * * *

(g) Need not comply with—

(1) Paragraphs (a), (b), (c) and (d) of this section with respect to beneficial owners who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to an employee benefit plan as defined in § 240.14a–1(b), beginning 60 calendar days after it receives notice from the registrant that the registrant does not intend to comply with § 240.14a 13(a) or such shorter time period agreed to by the registrant and the record holder or respondent bank; and/or

(2) Paragraphs (e) and (i) of this section with respect to beneficial owners who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to an employee benefit plan as defined in § 240.14a–1(b), beginning 60 calendar days after it receives notice from the registrant that the registrant does not intend to comply with § 240.14a–13 (b) and (c) or such shorter time period agreed to by the registrant and the record holder or respondent bank; *Provided, however,* that 60 calendar days after it receives notice from a registrant that the registrant intends to recommence compliance with § 240.14a–13(a) and/or 14a–13 (b) and (c), it shall comply with paragraphs (a), (b), (c) and (d) and/or (e) and (i) of this section, as applicable.

(h) For purposes of determining the fees which may be charged to registrants pursuant to § 240.14a–13(b)(5) and paragraph (f)(1) of this section for performing obligations under paragraphs (b), (c), (e) and (i) of this section, an amount no greater than that permitted to be charged by brokers or dealers for reimbursement of their reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b) and (c) of § 240.14b–1 shall be deemed to be reasonable.

* * * * *

6. By redesignating current paragraphs (b) through (i) as paragraphs (c) through (j) and adding new paragraph (b) to § 240.14c–1 to read as follows:

**§ 240.14c–1 Definitions.**

* * * * *

(b) *Employee benefit plan.* For purposes of § 240.14c–7, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers.

* * * * *

7. By revising Note 1 to paragraph (a) and adding new paragraph (d) to § 240.14c–7 to read as follows:

**Note.**—This version of Note 1 to paragraph (a) of § 240.14c–7 is effective _____ through June 30, 1987; new paragraph (d) is effective _____.

**§ 240.14c–7 Providing copies of material for certain beneficial owners.**

(a) * * *

**Note.**—If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (*e.g.*, "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such a clearing agency who may hold on behalf of a beneficial owner, and shall comply with the above paragraph with respect to any such participant (*see* § 240.14c–1(h)).

* * * * *

(d) A registrant need not comply with—

(1) Paragraph (a) of this section with respect to beneficial owners who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to an employee benefit plan as defined in § 240.14c–1(b), if: (i) such plan contains a mechanism pursuant to which a person designated in the plan document is required to obtain and supply plan participants with proxy cards, proxy soliciting material and annual reports to security holders in a timely manner; and (ii) action is taken that is reasonably calculated to assure that plan participants receive such materials in accordance with the mechanism contained in the plan; and

(iii) the registrant has notified record holders and respondent banks that hold the registrant's securities on behalf of participants in the plan of its intention not to comply with paragraph (a) of this section; and/or

(2) Paragraphs (b) and (c) of this section with respect to beneficial owners who are employee benefit plan participants or beneficiaries with securities held in nominee name pursuant to an employee benefit plan as defined in § 240.14c–1(b), if:

(i) The registrant has access to the name and addresses of such beneficial owners by some means other than pursuant to paragraph (b) of this section and

(ii) The registrant has notified record holders and respondent banks that hold the registrant's securities on behalf of participants in the plan of its intention not to comply with paragraphs (b) and (c) of this section; *Provided, however,* that if the prerequisite(s) set forth in paragraphs (d)(1)(i) and (ii) and/or (d)(2)(i) of this section is no longer satisfied or the registrant determines to comply with the obligations of paragraphs (a) and/or (b) and (c) of this section, the registrant shall promptly notify record holders and respondent banks that hold the registrant's securities on behalf of participants in the plan.

**Note.**—This version of Note 1 to paragraph (a) of § 240.14c–7 is effective July 1, 1987.

**§ 240.14c–7 [Amended]**

(a) * * *

**Note 1.**—If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (*e.g.*, "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such a clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* § 240.14c–1(h)).

* * * * *

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

March 27, 1987.

**Securities and Exchange Commission Regulatory Flexibility Act Certification**

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed revisions to Rules 14a–1, 14a–13, 14b–1, 14b–2, 14c–1 and 14c–7, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows: The proposed amendments to Rules 14a–1, 14a–13, 14b–1, 14b–2, 14c–1 and 14c–7 would: (1) relieve a registrant of the obligation to furnish proxy cards, proxy soliciting material and annual reports to record holders and respondent banks for distribution to employee benefit plan participants with securities held in nominee name pursuant to the plan, where the plan contains a mechanism for both obtaining proxy soliciting materials from the registrant and supplying such materials to plan participants in a timely manner and action is taken that is reasonably calculated to assure that plan participants receive such materials and (2) allow a registrant that has access to the names and addresses of employee benefit plan participants by some other means to exclude these plan participants from its request for a list of beneficial owners.

These proposed exclusions of employee benefit plan participants from the proxy processing and direct communications systems would be optional on the part of the registrant. Accordingly, only those registrants, including small entity registrants, that elect to employ the exclusions would be affected. It is expected that large registrants with a large number of employees who participate in employee benefit plans will be more likely to employ the exclusions than small registrants that have a smaller number of employees.

The proposals are intended to allow registrants to avoid duplicative mailing of proxy materials to plan participants and to permit registrants to realize cost savings in connection with requests for beneficial ownership lists. Therefore, the proposals would not impose any additional costs on registrants, including small entity registrants. Rather, the proposals would result in a decrease of costs for those registrants that elect to utilize the proposed exclusions. The decrease in costs, however, is not expected to be significant for a substantial number of small entities.

Furthermore, banks or brokers, including small banks or brokers, that participate in the proxy processing and direct communication systems would incur little or no costs in complying with the Commission's shareholder communication rules. Banks and brokers are reimbursed for their reasonable costs incurred in connection with performing their obligations under these rules. As banks' or brokers' costs decrease when a registrant elects to employ an exclusion from either or both the proxy processing and direct communications rules, the costs that a registrant will be required to reimburse to banks or brokers will be lowered in a corresponding amount.

Dated: March 27, 1987.

John Shad,

*Chairman.*

[FR Doc. 87–7554 Filed 4–6–87; 8:45 am]

BILLING CODE 8010–01–M

**17 CFR Part 240**

**[Release No. 34–24275; IC–15646; File No. S7–12–87]**

## Facilitating Shareholder Communications

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today is publishing for comment a proposal that would change from 3 to 5 business days the time in which a bank, association or other entity exercising fiduciary powers (hereinafter "bank") is to execute an omnibus proxy and provide notice of that execution to respondent banks. In addition, the Commission is proposing certain clarifying and technical amendments to the shareholder communications rules.

**DATE:** Comments should be received on or before May 7, 1987.

**ADDRESS:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–12–87. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Miller or Barbara J. Green (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment proposed revisions to Rules 14a–13(a)(1),[1] 14a–13(b)(3),[2] 14b–2(a)(1),[3] 14b–2(b),[4] 14b–2(e)(1),[5] 14c–7(a)(1)[6] and 14c–7(b)(3).[7]

### I. Discussion

On November 25, 1986, the Commission adopted new shareholder communications rules and related amendments[8] to effect the Shareholder

[1] 17 CFR 240.14a–13(a)(1).
[2] 17 CFR 240.14a–13(b)(3).
[3] 17 CFR 240.14b–2(a)(1).
[4] 17 CFR 240.14b–2(b).
[5] 17 CFR 240.14b–2(e)(1).
[6] 17 CFR 240.14c–7(a)(1).
[7] 17 CFR 240.14c–7(b)(3).
[8] Release No. 34–23847 (November 25, 1986) [51 FR 44267]

Communications Act of 1985.[9] The new rules set forth the obligations of banks in connection with the forwarding of proxy materials to beneficial owners and registrants' communications with beneficial owners of securities registered in the banks' names.

The new rules governing the forwarding of proxy materials to beneficial owners incorporated an omnibus proxy approach. At the time it adopted the new rules, the Commission recognized the need for banks to have adequate time to implement the omnibus proxy system. Accordingly, the effectiveness of paragraphs (a) through (c) of Rule 14b–2 was deferred until July 1, 1987. The Commission also invited comment from persons having concern with the specific language of these new rules.

In response to this request, one commentator[10] recommended extending from 3 to 5 business days, the time provided in Rule 14b–2(b) in which a bank is required to: (1) execute an omnibus proxy in favor of its respondent banks and forward such proxy to the registrant; and (2) provide notice of that execution to its respondent banks.[11] This commentator has indicated that a 3 business day time period may not be practicable given the layers of banks involved in the proxy processing system. Therefore, the Commission is proposing to extend the time period provided in Rule 14b–2(b) from 3 to 5 business days. The Commission solicits public comment on, among other things, the need for such an extension as well as its practical effects.

In addition, the Commission is considering making certain other clarifying and technical changes to the shareholder communications rules. The proposed amendments would clarify that registrants' obligations in connection with respondent banks apply only to those respondent banks that hold the registrants' securities on behalf of beneficial owners and that the corresponding obligations of banks apply only to those banks that hold registrants' securities on behalf of beneficial owners. Additionally, it has been made explicit that registrants must inquire of each record holder whether it holds the registrant's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank.

[9] Pub. L. 99–222, 99 Stat. 1737 (1985), amending 15 U.S.C. 78n(b) (1982).

[10] The Independent Election Corporation of America.

[11] Nine other commentators submitted comment letters on various issues. These comment letters are available for public inspection and copying at the Commission's Public Reference Room (*See* File No. S7–12–86).

## II. Request for Comments

Any interested persons wishing to submit written comments on the proposed revisions to the shareholder communication rules are requested to do so. The Commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Exchange Act of 1934 ("Exchange Act"). Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.

## III. Cost—Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendment to Rule 14b–2, the Commission requests commentators to provide views and data as to the costs and benefits associated with the proposed amendment. In this regard, the Commission notes that, by lengthening the time for execution of omnibus proxies by two business days, it intends to help to ensure the effectiveness of the omnibus proxy approach. This approach is intended to provide a cost-effective and efficient means to ensure that proxies are executed by the appropriately authorized parties. The proposal does not require any additional recordkeeping obligations for brokers and banks.

## IV. Statutory Basis and Text of Proposed Amendments

These amendments are being proposed pursuant to sections 12, 14 and 23(a) of the Exchange Act.[12]

## List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Banks, Associations.

## V. Text of Proposals

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations: (Citations before * * * indicate general rulemaking authority).

[12] 15 U.S.C. 781, 78n and 78w(a).

**Authority:** Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * §§ 240.14a–13, 14b–2 and 14c–7 also issued under sections 12, 15 U.S.C. 781, and 14, Pub. L. 99–222, 99 Stat. 1737, 15 U.S.C. 78n.

2. Section 240.14a–13 is amended by revising paragraphs (a)(1)(i)(B) and (b)(3) and adding new paragraph (a)(1)(i)(D) to read as follows:

**Note.**—This version of paragraph (b)(3) of § 240.14a–13 is effective _____ through June 30, 1987.

**§ 240.14a–13 Obligation of registrants in communicating with beneficial owners.**

* * * * * *

(b) * * *

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: All brokers and dealers and/or all banks, associations and other entities that exercise fiduciary powers;

* * * * * *

**Note.**—This version of paragraphs (a)(1)(i)(B) and (D) and paragraph (b)(3) of § 240.14a–13 is effective July 1, 1987.

**§ 240.14a–13 [Amended]**

(a) * * *

(1) * * *

(i) * * *

(A) * * *

(B) in the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the registrant;

* * * * * *

(D) whether it holds the registrant's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and * * *

* * * * * *

(b) * * *

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers;

* * * * * *

3. Section 240.14b–2 is amended by revising paragraph (a)(1), the introductory text to paragraph (b) and paragraph (e)(1) to read as follows:

**Note.**—Revised paragraph (a)(1) and the revised introductory language to paragraph (b) are effective July 1, 1987; revised paragraph (e)(1) is effective _____.

**§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.**

A bank, association or other entity that exercises fiduciary powers:

(a)(1) Shall respond, by first class mail or other equally prompt means, directly to the registrant no later than one business day after the date it receives an inquiry made in accordance with § 240.14a–13(a) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any; and

* * * * *

(b) Within five business days after the record date shall:

* * * * *

(e) Shall: (1) respond, by first class mail or other equally prompt means, directly to the registrant no later than one business day after the date it receives an inquiry made in accordance with § 240.14a–13(b)(1) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any;

* * * * *

4. Section 240.14c–7 is amended by revising paragraphs (a)(1)(i)(A) and (b)(3) and adding new paragraph (a)(1)(i)(C) to read as follows:

**Note.—This version of paragraph (b)(3) of § 240.14c–7 is effective _____ through June 30, 1987.**

**§ 240.14c–7 Providing copies of material for certain beneficial owners.**

* * * * *

(b) * * *

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers and dealers and/or all banks, associations and other entities that exercise fiduciary powers;

* * * * *

**Note.—This version of paragraphs (a)(1)(i)(A) and (C) and paragraph (b)(3) of § 240.14c–7 is effective July 1, 1987.**

**§ 240.14c–7 [Amended]**

(a) * * *

(1) * * *

(i) * * *

(A) Whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to such beneficial owners;

* * * * *

(C) Whether it holds the registrant's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and (ii) * * *

* * * * *

(b) * * *

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers;

* * * * *

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

March 27, 1987.

**Securities and Exchange Commission Regulatory Flexibility Act Certification**

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed revision to Rule 14b–2(b) and the proposed amendments to Rules 14a–13(a)(1), 14a–13(b)(3), 14b–2(a)(1), 14b–2(e)(1), 14c–7(a)(1) and 14c–7(b)(3), if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows: The proposed revision of Rule 14b–2(b) would change from 3 to 5 business days the time in which a bank, association or other entity exercising fiduciary powers (hereinafter "bank") is (1) to execute an omnibus proxy in favor of respondent banks and forward such proxy to the registrant; and (2) to provide notice of that execution to its respondent banks. This change would give banks or their agents additional time in which to perform proxy processing activities; it would neither impose additional costs on small entities, nor would it significantly reduce such costs.

The other proposed amendments to Rules 14a–13(a)(1), 14a–13(b)(3), 14b–2(a)(1), 14b–2(e)(1), 14c–7(a)(1) and 14c–7(b)(3) would make clarifying and technical changes to the shareholder communications rules. The proposed amendments would make clear, *inter alia*, that the obligations of registrants in connection with respondent banks apply only to those respondent banks that hold the registrants' securities on behalf of beneficial owners. These amendments would not impose any additional costs on small entities, nor would they reduce such costs.

Dated: March 27, 1987.

John Shad,

*Chairman.*

[FR Doc. 87–7555 Filed 4–6–87; 8:45 am]

BILLING CODE 8019–01–M

---

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1301

### Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

**AGENCY:** Drug Enforcement Administration.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Section 510 of the Diversion Control Amendments, which was included in the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), effective October 12, 1984, amends the Controlled Substances Act at 21 U.S.C. 822(a). Section 822 details the time period persons are to register with the Drug Enforcememt Administration (DEA). The amendment allows the Attorney General to determine, by regulation, the time period for registration of dispensers of controlled substances. The parameters of the statute permit registration for not less than one year, not more than three years. The annual registration requirement for distributors and manufacturers remains unchanged. The purpose of the amendment is to reduce the administrative burden of annual registration on retail pharmacies, hospitals/clinics, practitioners and teaching institutions, which comprise over 98 percent of the DEA's active file of registrants.

**DATE:** Written comments and objections must be received on or before May 7, 1987.

**ADDRESS:** Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** James M. Sheahan, Deputy Chief, Regulatory Support Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1570.

**SUPPLEMENTARY INFORMATION:** The current regulation, found at 21 CFR 1301.31(a), describes a registration system for all DEA registrants which includes a one-year registration period. This amendment will reflect the congressional mandate of the Diversion Control Amendments, found in the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), to strengthen the authority of DEA to prevent diversion of controlled substances while reducing the administrative burden of annual registration for dispensers of controlled substance. Beginning in July 1987, the DEA proposes to institute the phase-in of a three-year registration cycle for retail pharmacies, hospitals/clinics, practitioners and teaching institutions, which comprise over 98 percent of the DEA's active file of registrants. All new applicants for registration in the above business activities will be registered initially for a three-year period and

BEST COPY AVAILABLE

renewed every three years thereafter. All other business activities, such as manufacturers, distributors, researchers, analytical labs, importers, exporters and narcotic treatment programs, will continue to be registered on an annual basis. One third of the DEA registrants due for renewal in July 1987 will be renewed for a three-year period and their new expiration date will be July 31, 1990. Another one-third of the DEA registrants due for renewal in July 1987 will be renewed for a two-year period and their new expiration dates will be July 31, 1989. The final one-third of the DEA registrants due for renewal in July 1987 will be renewed for a one-year period and their expiration date will be July 31, 1988. When this final group is renewed in July 1988 it will be for a three-year period. Those registrants due for renewal in July 1989 will be renewed for a three-year period. A similar phase-in will be used for each succeeding month and will be fully implemented by August 1990.

The selection process for determining which registrants will be renewed for a one-, two- or three-year period during the phase-in will be through random sorting to divide the DEA's active file of registrants into equal thirds. It will not be accomplished by zip code sorting or selection. The renewal applications are mailed to registrants approximately 45 to 60 days prior to the expiration date of the registration.

Therefore, the renewals with an expiration date of July 31, 1987, will be mailed to registrant's between June 1 and June 15, 1987. The fee remains at $20 per year. The fee for a one-year renewal is $20. The fee for a two-year renewal will be $40. The fee for a three-year renewal will be $60. The correct fee and renewal period for each registrant will be preprinted on the renewal application forms issued to the registrants due for renewal. Fees are not refundable.

The Deputy Assistant Administrator hereby certifies that this proposal will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This regulatory change will reduce the administrative burden to the majority of those individuals and businesses registered with DEA.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, this proposed rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) and delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby proposes that 21 CFR, Part 1301 be amended as follows:

**List of Subjects in 21 CFR Part 1301**

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures.

**PART 1301—[AMENDED]**

1. The authority citation for Part 1301 continues to read as follows:

**Authority:** 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.11 is amended by revising paragraph (c) to read as follows:

**§ 1301.11 Fee amounts.**

* * * * *

(c) For each registration or reregistration to dispense, or to conduct research or instructional activities with, controlled substances listed in Schedules II through V, the registrant shall pay a fee of $60 for a three-year registration.

* * * * *

3. Section 1301.12 is revised to read as follows:

**§ 1301.12 Time and method of payment; refund.**

Fees shall be paid at the time when the application for registration or reregistration is submitted for filing. Payments should be made in the form of a personal, certified, or cashier's check or money order made payable to "Drug Enforcement Administration." Payments made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. These fees are not refundable.

4. Section 1301.31 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 1301.31 Time for application for registration; expiration date.**

* * * * *

(c) At the time a manufacturer, distributor, researcher, analytical lab, importer, exporter or narcotic treatment program is first registered, that business activity shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last day of the month designated for that group. In assigning any of the above business activities to a group, the Administration may select a group the expiration date of which is less than one year from the date such business activity was registered. If the business activity is assigned to a group which has an expiration date less than three months from the date on which the business activity is registered, the registration shall not expire until one year from that expiration date; in all other cases, the registration shall expire on the expiration date first following the date on which the business activity is registered.

(d) At the time a retail pharmacy, hospital/clinic, practitioner or teaching institution is first registered, that business activity shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last day of the month designated for that group. In assigning any of the above business activities to a group, the Administration may select a group the expiration date of which is not less than 28 months nor more than 39 months from the date such business activity was registered. After the initial registration period, the registration shall expire 36 months from the initial expiration date.

Dated: March 13, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-7646 Filed 4-6-87; 8:45 am]

BILLING CODE 4410-09-M

---

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 650**

**[FHWA Docket No. 87-10]**

## National Bridge Inspection Standards; Frequency of Inspection and Inventory

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FHWA is requesting comments on proposed revisions to its National Bridge Inspection Standards (NBIS). The revised regulation would permit States to increase the maximum time interval between the inspections for certain types or groups of bridges, as opposed to retaining the mandatory 2-year interval as required under the regulations currently in effect. The

proposed revisions would also require that States identify those bridges having fracture critical members or bridges which warrant underwater inspection or other special inspection consideration. These bridges would then be earmarked and the inspection data and results of inspection of these bridges would be tracked to ensure that they are inspected and evaluated in such a manner as to minimize risk to the public. As an alternative to the existing regulation, the proposed revision would permit bridge inspection team leaders to be certified as competent if they have received Level III certification as bridge safety inspectors under the provisions of the National Institute for Certification in Engineering Technologies (NICET) operated under the aegis of the National Society for Professional Engineers. The proposed regulation would require that inventory data on newly load posted, as well as modified or newly completed bridges, be entered into a State's record within 90 days. The proposed revisions would provide State highway agencies greater flexibility with which to use available inspection resources in a cost-effective manner. It is intended that the proposed revision would encourage efficient use of resources while ensuring that the safety of the traveling public is protected.

**DATE:** Written comments must be received on or before June 8, 1987.

**ADDRESS:** Submit written comments preferably in triplicate, to FHWA Docket No. 87–10 Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Ahlskog, Chief, Bridge Management Branch, Bridge Division, Office of Engineering, 202/366–4617, or Mr. Michael J. Laska, Office of Chief Counsel, 202/366–1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The National Bridge Inspection Standards for bridges on all public roads are set forth in 23 CFR Part 650, Subpart C. Section 650.305 currently requires that the type and depth of inspections be determined by the individual in overall charge of the program and refers to the American Association of State Highway and Transportation Officials "Manual for Maintenance Inspection of Bridges," 1978, as a reference guide. Section 650.305 also currently requires each bridge to be inspected at regular intervals not to exceed 2 years. Section 650.307 specifies the current minimum requirements which shall be met by the inspection team leaders and the individual in overall charge of the State's bridge inspection program. Section 650.311 currently requires inventory data on newly completed or modified structures to be entered in the States' records within 90 days. These four provisions are addressed in this notice of proposed rulemaking.

## Background

Each State highway department is required to maintain a bridge inspection organization capable of performing inspections, preparing reports and determining ratings in accordance with the provisions of 23 CFR Part 650, Subpart C. Prior to the enactment of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599), the inspection standards only applied to bridges on the Federal-aid system. Section 124 of the Act required that all bridges located on public roads be inventoried and thus subject to the bridge inspection standards. By regulation published on May 1, 1979 (44 FR 25434), the National Bridge Inspection Standards were amended to reflect the legislative change. In effect the number of bridges that became subject to inspection standards increased by approximately 100 percent. Consequently, the scope and costs of the inspection program also increased. Available inspection resources, including equipment, manpower and funds, have been extended in order to meet the increased inspection work load. Since many States are using Highway Bridge Replacement and Rehabilitation Program (HBRRP) funds for inspection, this impact on resources results in possible diversion of funds and personnel from the primary objective of the HBRRP, which is to replace or rehabilitate bridges. The FHWA decided to review the 2-year inspection requirement in order to explore possible changes which would result in the maximum utilization of inspection resources without compromising the safety of the travelling public, which is the paramount concern.

In 1982, the FHWA reviewed data in the National Bridge Inventory (NBI) for the purpose of considering an increase in the inspection frequency interval for some categories of bridges provided that the State submit a detailed proposal and supply data to FHWA for approval prior to implementation of any interval changes. This should not affect, or if so only to a minimal or negligible degree, highway safety and should result in cost savings, which could then be applied more effectively toward the removal from service of deficient bridges and thus improve overall highway safety. Based on available bridge inventory and inspection data compiled since 1968, along with the experience gained, an NPRM was published in the **Federal Register** on January 20, 1983 (48 FR 2550). The NPRM proposed to permit variations in the mandatory 2-year interval between inspections under certain conditions. Two categories suggested for possible consideration were culverts and newly completed structures which had received an initial 2-year inspection without any indication of a change in the structure condition.

Sixty comments were received in response to the NPRM issued on January 20, 1983. Comments were submitted by representatives from the following interest groups: 49 government agencies (34 State, 5 city, 10 county), 2 State county organizations, 1 Federal agency, 4 professional organizations, 2 consultants and 2 safety organizations.

A majority of the commentors believed the inspection interval could be increased for certain bridges without additional risks to the public. However, some of these commentors had specific concerns with an increased inspection interval. There was also support for maintaining the 2-year interval.

The specific breakdown of suggestion criteria for determining the proper inspection interval varied considerably. There was also a wide range and diversification within the general criteria recommended. The same wide division existed for specific types of bridges recommended for greater than the 2-year inspection interval. There was a lack of a clear consensus at that time for which bridges the commentors believed could be inspected less frequently.

In light of the information available in the NBI and the wide division among the various entities as to which types or groups of bridges could be included in an increased inspection interval, the FHWA determined that the revisions as proposed at that time should be further reviewed and evaluated. Therefore, the NPRM published on January 20, 1983, was withdrawn on April 23, 1984 (49 FR 17039).

Upon further review and analysis since April of 1984, the FHWA has decided to issue a modified notice of proposed rulemaking. Using National Bridge Inventory data, which does not necessarily encompass all factors which

may be relevant to such determinations, the FHWA has made the tentative determination that the inspection interval can be increased for some categories of bridges with only a minimal or negligible increase in risk to the public. Any funds saved by this action could be applied cost-effectively toward the removal from service of additional deficient bridges.

Based on inventory data which has been compiled from inspections conducted on all Federal-aid bridges and the majority of off-system bridges, the FHWA proposes to permit variations in the mandatory 2-year interval between inspections under certain approved conditions. The physical data and experience derived from continuous inspections since 1968 have identified certain groups or categories of bridges where a longer inspection interval may be warranted. One category might include modern, recently completed structures for which the initial 2-year inspection indicated no design or construction flaws and no change from the condition of the bridge as constructed. Inspection experience and records of similar older bridges would be useful to States in making these determinations. Concrete culverts are another example of a bridge category where an increased interval of inspection might be warranted. It is believed that measures such as special designation for fracture critical details and bridges warranting underwater inspection at specified intervals, along with inspection manual addendums to the Bridge Inspector's Training Manual, may overcome the previous objections to changes in the 2-year maximum interval between bridge inspections.

Although a maximum time interval between inspections is not specified in this proposal, an FHWA review of National Bridge Inventory data and management review of the bridge program indicate that a 4-year maximum time interval (5-year for underwater inspection) may be appropriate. With the 2-year interval retention for some bridges, inspection of others at a multiple of the 2-year interval would seem appropriate for efficient use of resources and planning purposes.

If a State proposes to inspect a group or category of bridges at intervals of greater than 2 years, the proposed revision would require that State to submit for approval by the Federal Highway Administration a documented analysis with supporting data justifying the increased time interval. Relevant factors to be considered would include:

*1. Past Experience*

Records of past inspections for individual or groups of bridges would provide valuable documentation for establishing trends in deterioration of structures.

*2. Age*

Tables derived from National Bridge Inventory data show that general deterioration increases with age.

*3. Condition of Bridges*

The know condition, such as deteriorated structural members or members with reduced load capacities would be an important part of any decision to lengthen the time between inspections.

*4. Type and Frequency of Traffic Volume*

Bridges with a high total volume of traffic, or a high percentage of truck traffic, particularly when the truck weight approaches the bridge capacity, deserve special consideration in determining appropriate frequencies of inspection.

*5. Other Relevant Factors*

Factors unique to individual States or localities should be considered in evaluating individual proposals. The resulting study of relevant factors would need to demonstrate that safety would not be compromised.

The listed factors are not all inclusive. It is anticipated that individual States will, of necessity, modify and add to this list factors or items which are of special concern. In order to better identify additional national common categories and factors, comments are specifically requested concerning appropriate candidate bridge groups and factors which should be included in the evaluation of safe intervals between inspections. Concrete culverts and modern, recently completed structures noted earlier are two categories which might be considered for review and possible lengthening of the interval between inspections.

The proposed revision would provide State highway agencies greater flexibility with which to utilize available inspection resources in a cost-effective manner. It is intended that the proposed revision would encourage the efficient utilization of resources without compromising the safety of the travelling public.

In addition to the proposed revision to the mandatory 2-year interval between inspections, the FHWA is again proposing to make changes to § 650.311(b). The first sentence in this section requires the bridges that are subject to the standards be inventoried by December 31, 1980, as required by the Surface Transportation Act of 1978. This sentence would be deleted since the inventory is completed.

Since the issuance of the 1983 NPRM, several bridge failures have occurred. These recent failures focused attention of the program on the need for concentrated inspection of fracture critical details (e.g., those details on tension members whose failure would probably cause collapse of one or more spans of a bridge) and the need for evaluation of the underwater components of many bridges. Other features of certain bridges may also be exceptionally important to the safety of the structure. Because of the importance of these special features to the structural integrity and safety of a bridge, it is proposed that they should be pre-identified by the individual in overall charge of the State or local jurisdiction program and the results of each inspection along with the date of inspection noted on the inspection forms to the extent necessary for the individual in charge to monitor the condition of these significant details.

The current NBIS regulations specify minimum qualification requirements for both the individual in charge of the State's bridge inspection program and for inspection team leaders. Both must be registered professional engineers or qualified for registration, or have completed a comprehensive training program in bridge inspection and have bridge inspection experience of at least 10 years for the individual in charge of the program and 5 years for the team leader. In order to encourage additional competence in inspection and to provide a national forum for recognition of engineering technicians as competent in bridge inspection, the FHWA proposes to permit an alternate minimum qualification standard for bridge inspection leaders. The National Society of Professional Engineers has established under its National Institute for Certification of Engineering Technologies (NICET), a Bridge Safety Inspection Level I through Level IV. Engineering technicians are certified under this program based upon minimum specified experience levels and satisfactory completion of standardized written tests on the subject matter. The proposed revisions would allow technicians with NICET bridge safety inspection certification to be recognized throughout the country as having met minimum competency requirements. Bridge inspection team members would also, by virtue of the

NICET Level III team leader requirement, be encouraged to gain Level I and progressively, Level II certification as a prelude to becoming team leaders. The proposed revision would retain the existing minimum inspection team qualification standard as equally acceptable to NICET certification.

One area of concern pertaining to the existing minimum qualification standard is that of a "comprehensive training course in bridge inspection." The FHWA through the years has offered the opinion that at least three weeks of comprehensive classroom training is required for those technicians not familiar with bridge inspection. For an engineer or equivalent familiar with bridge inspection, a two week comprehensive course has been termed as adequate. Because bridge inspection team leaders, and sometimes team members, must make day-to-day decisions regarding the safety and integrity of bridge components and the resultant safety of the bridge, the three- and two-week-long comprehensive training course concept has been promoted by the FHWA. Comments are specifically requested concerning this matter.

Because the placement of load restriction signs on the approaches to a bridge must be done promptly whenever a bridge evaluation indicates that it cannot safely carry legal loads, reasonable care must be exercised to be sure that required signs are in place soon after the inspection and evaluation indicates that restrictions are needed. By the same token, efficient management of the network of bridges in any jurisdiction requires that changes in the status of individual bridges be promptly entered into the inventory. Data that are not current because of changes in the load capacity of bridges can bring about inefficiencies, unsafe practices, and in the extreme, catastrophic collapse of an understrength bridge which is not properly load restricted. As a result, it is vitally important that inventory data on newly constructed, modified or load restricted bridges be entered in a State's data file promptly after the change. Current regulations require this within 90 days for newly completed or newly modified bridges, but do not specifically extend the requirement to bridges newly load restricted. The proposed revisions would add the placement of load restriction signs as an action which requires prompt inventory update.

It is anticipated that the proposed revisions would have a positive economic impact on State highway agencies. If for example, 30 percent of the Nation's bridges could be inspected at a 4-year frequency rather than the 2-year frequency, it is estimated that $8.4 million of annual inspection costs could be saved.

However, additional inspection effort will be required in some States to identify and carry out the more intensified inspections proposed for fracture critical bridge members and underwater elements of bridges. Many States may balance any added costs required for the more intense inspection, evaluation and monitoring of bridges with critical elements against the savings gained by less frequent inspection of low risk bridges.

Due to the fact that States would be under no obligation to propose greater inspection time intervals, it is not anticipated that this proposal will have a significant economic effect.

Accordingly a full regulatory evaluation is not required at this time. For the foregoing reasons, it is certified that this proposal under the criteria of the Regulatory Flexibility Act, will not have a significant economic impact on a substantial number of small entities.

Comments are requested on the proposed revisions from all interested parties. The comments should specifically address the effects of the proposed revisions on the national bridge inspection program in the States and the requirement that States submit a detailed proposal and supporting data to justify a longer inspection time interval.

The FHWA has determined that this document contains neither a major proposal under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511) the reporting or recordkeeping provisions that are included in this proposal will be submitted to the Office of Management and Budget (OMB) for approval.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

In consideration of the foregoing, the FHWA hereby proposes to amend Part 650, Subpart C of Title 23, Code of Federal Regulations, as set forth below.

**List of Subjects in 23 CFR Part 650**

Bridges, Grant programs—transportation, Highways and roads.

Issued on: March 26, 1987.

R.D. Morgan,

*Executive Director.*

The FHWA proposes to amend 23 CFR Part 650, Subpart C as follows:

## PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. The authority citation for Part 650 is revised to read as follows and all other authority citations which appear throughout Part 650 are removed:

**Authority:** 23 U.S.C. 109(a) and (h), 116(d), 144, 315, and 319; 23 CFR 1.32; 49 CFR 1.48 (b); E.O. 11988—Floodplain Mangement, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); section 161 of Pub. L. 97–424, 96 Stat. 2097, 2135; and Pub. L. 97–134, 95 Stat. 1699.

### Subpart C—National Bridge Inspection Standards [Amended]

2. Footnote number one § 650.303(a) is amended by revising the first sentence to read as follows:

**§ 650.303 Inspection procedures.**

(a) * * *

The "AASHTO Manual" referred to in this part is the "Manual for Maintenance Inspection of Bridges 1983" together with subsequent interim changes or the most recent version of the AASHTO Manual published by the American Association of State Highway and Transportation Officials.

* * * * *

3. Section 650.303 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) The individual in charge of the organizational unit that has been delegated the responsibilities for bridge inspection, reporting and inventory shall determine and designate on the individual inspection and inventory records and maintain a master list of the following:

(1) Those bridges which contain fracture critical members, the location and description of such members on the bridge and the inspection frequency and procedures for inspection of such members. (Fracture critical members are tension members of a bridge whose failure will probably cause a portion of or the entire bridge to collapse.)

(2) Those bridges with underwater members which cannot be visually evaluated during periods of low flow or examined by feel for condition, integrity and safe load capacity due to excessive water depth or turbidity. These members shall be described, the inspection frequency stated, not to

exceed five years, and the inspection procedure specified.

(3) Those bridges which contain unique or special features requiring additional attention during inspection to ensure the safety of such bridges and the inspection frequency and procedure for inspection of as such features.

(4) The date of last inspection of the features designated in paragraphs (d)(1) through (d)(3) of this section and a description of the findings and follow-up actions, if necessary, resulting from the most recent inspection of fracture critical details, underwater members of special features of each so designated bridge.

4. Section 650.305 is amended by adding paragraph (c) to read as follows:

**§ 650.305 Frequency of inspections.**

* * * * *

(c) The maximum inspection interval may be increased for certain types or groups of bridges where past inspection reports and favorable experience and analysis justifies the increased interval of inspection. If a State proposes to inspect some bridges at greater than the specified 2-year interval, the State shall submit a detailed proposal and supporting data to the Federal Highway Administrator for approval.

5. Section 650.307 is amended by revising paragraph (a)(3), adding paragraph (b)(3), and adding footnote numbers three and four to read as follows:

**§ 650.307 Qualifications of personnel.**

(a) * * *

(3) Have a minimum of 10 years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the, "Bridge Inspector's Training Manual," [2] which has been developed by a joint Federal-State task force, and subsequent additions to the manual.[3]

(b) * * *

(3) Current certification as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET)[4] is an alternate acceptable means for establishing that a bridge inspection team leader is qualified.

6. Section 650.311 is amended by revising paragraph (b) to read as follows:

**§ 650.311 Inventory.**

* * * * * *

(b) Newly completed structures, modification of existing structures which would alter previously recorded data on the inventory forms or placement of load restriction signs on the approaches to or at the structure itself shall be entered in the State's inspection reports and the computer inventory file as promptly as practical, but no later than 90 days after the change in the status of the structure.

[FR Doc. 87-7469 Filed 4-6-87; 8:45 am]

BILLING CODE 4910-22-M

[2] The "Bridge Inspector's Training Manual" may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[3] The following publications are supplements to the "Bridge Inspector's Training Manual": "Bridge Inspector's Manual for Movable Bridges," 1977, GPO Stock No. 050-002-00103-5; "Culvert Inspector's Training Manual," July 1986, GPO Stock No. 050-001-00300-7; and "Inspection of Fracture Critical Bridge Members," 1986, GPO Stock No. 050-001-00302-3.

[4] For information on NICET program certification contact: National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, Virginia 22314, Attention: John D. Antrim, P.E., Phone (703) 684-2835.

## COPYRIGHT ROYALTY TRIBUNAL

**37 CFR Part 307**

**[Docket No. CRT 87-3-87MRA]**

## Notice Commencing 1987 Mechanical Royalty Adjustment Proceeding and Setting Procedural Dates

**AGENCY:** Copyright Royalty Tribunal.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Copyright Act of 1976 authorizes the Copyright Royalty Tribunal to adjust the mechanical license royalty rate in 1987. In response to a joint submission by parties with a significant interest in the rate, the Tribunal announces the commencement of the 1987 mechanical royalty adjustment proceeding through informal rulemaking. The Tribunal is proposing to adopt the adjustments agreed upon in the settlement agreement of the petitioners.

**DATES:** All interested parties shall notify the Tribunal of their intent to participate and shall file their comments on the proposed changes by June 5, 1987. If any opposing comments are filed, reply comments shall be filed by July 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert Cassler, General Counsel; Copyright Royalty Tribunal; 1111 20th Street, NW., Suite 450, Washington, DC 20036; (202) 653-5175.

**SUPPLEMENTARY INFORMATION:** Sections 801(b)(1) and 804 of the Copyright Act of 1976 (Act) authorize the Copyright Royalty Tribunal (Tribunal) to adjust the mechanical royalty rate set in section 115 of the Act. The first such adjustments were made by the Tribunal after a proceeding commenced in 1980.[1]

On March 18, the Tribunal received a joint petition concerning the 1987 mechanical royalty rate adjustment from the National Music Publishers' Association, Inc. and The Songwriters Guild of America (collectively, Copyright Owners) and the Recording Industry Association of America, Inc. (Copyright Users). These entities are described in the joint petition set forth below. The Copyright Owners and the Copyright Users were the prinicipal parties who participated in the Tribunal's 1980 mechanical royalty rate adjustment proceeding. They have a significant interest in the royalty rate subject to adjustment under section 801(b)(1) of the Act.

In their joint submission, the Copyright Owners and Copyright Users have petitioned the Tribunal to commence a 1987 mechanical royalty rate adjustment proceeding and to adjust the royalty rate in section 307 of the Tribunal's rules in accordance with proposed regulations set forth in their "Proposal Concerning 1987 Mechanical Royalty Rate Adjustment" (proposal).

The Tribunal is pleased that the principal parties who participated in the 1980 mechanical royalty rate adjustment proceeding have submitted this proposal. The Tribunal has long encouraged voluntary resolution of the issues confronting the parties as being consistent with the spirit and intent of the Copyright Act. The Tribunal has carefully reviewed the proposal. The Tribunal believes that the proposal represents a good faith effort by the parties to resolve the differences among them. Nevertheless, there may be entities which have not participated in the formulation of this proposal or the prior mechanical royalty rate adjustment proceeding who wish to express views regarding the rate adjustment.

Accordingly, in light of the above and pursuant to section 804 of the Act, the Tribunal hereby gives notice of commencement of the 1987 mechanical royalty rate adjustment proceeding. The Tribunal directs that all interested parties shall notify the Tribunal of their intent to participate in the proceeding

[1] 46 FR 891 (Jan. 5, 1981); 46 FR 10466 (Feb. 3, 1981); 46 FR 55276 (Nov. 9, 1981); and 46 FR 62287 (Dec. 23, 1981); *Recording Industry Association of America v. Copyright Royalty Tribunal*, 662 F. 2d 1 (D.C.Cir. 1981).

and shall file their comments on the proposed changes in the rates by June 5, 1987. Only persons providing such notification by this date will be allowed to participate in the 1987 mechanical royalty rate adjustment proceeding.

Any party filing opposing comments must (1) set forth the bases of its opposition; (2) set forth its position with respect to each of the provisions of the proposal and any other matters which it wishes the Tribunal to consider relevant to the mechanical royalty rate adjustments; (3) describe what, if any, further proceedings (including oral argument and evidentiary hearings) should be held before the Tribunal makes mechanical royalty rate adjustments under section 801(b)(1) of the Act; and (4) describe the nature and purpose of any evidence which it would introduce should the Tribunal hold evidentiary hearings. If one or more opposing comments are filed, reply comments must be filed by July 6, 1987.

For the convenience of interested parties, the full text of the joint petition as well as the proposal is set forth as part of this notice.

**List of Subjects in 37 CFR Part 307**

Copyright, Music, Recordings

**PART 307—[AMENDED]**

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 307 as follows:

1. The authority citation for Part 307 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 804.

**§ 307.3 [Amended]**

2. Section 307.3(a) is proposed to be amended by removing the words "paragraphs (b) and (c) of this section." from the end, and by adding in their place the words "paragraphs (b), (c), (d) and (e) of this section."

3. Section 307.3(b) is proposed to be amended by removing the words "paragraph (c) of this section." and adding in their place the words "paragraphs (c), (d) and (e) of this section."

4. Section 307.3(c) is proposed to be amended by adding the words ", subject to further adjustment pursuant to paragraphs (d) and (e) of this section." at the end.

5. A new § 307.3(d) is proposed to be added to read as follows:

**§ 307.3 [Amended]**

* * * * *

(d)(1) On November 1, 1987, the Copyright Royalty Tribunal (CRT) shall publish in the **Federal Register** a notice of the percent change in the Consumer Price Index (all urban consumers, all items) (CPI) from the Index published for December 1985 to the Index published for September, 1987, and the underlying calculations.

(2) On the same date as the notice is published pursuant to paragraph (d)(1) of this section, the CRT shall publish in the **Federal Register** revised compulsory license royalty rates which shall adjust the amounts set forth in § 307.3(c) in direct proportion to the percent change in the CPI determined as provided in paragraph (d)(1) of this section, rounded to the nearest ½oth of a cent; provided however, that:

(i) The adjusted rates shall be no greater than 25% more than the amounts set forth in § 307.3(c); and

(ii) The adjusted rates shall be no less than the amounts set forth in § 307.3(c).

(3) The revised royalty rates for the compulsory license adjusted pursuant to this paragraph (d) shall become effective for every phonorecord made and distributed on or after January 1, 1988, subject to further adjustment pursuant to paragraph (e) of this section.

6. A new § 307.3(e) is proposed to be added to read as follows:

**§ 307.3 [Amended]**

* * * * *

(e)(1) On November 1, 1989, and each November 1, biennially thereafter until November 1, 1995 (that is, November 1, 1991, 1993 and 1995), the CRT shall publish in the **Federal Register** a notice of the percent change in the CPI from the Index published for the September two years earlier to the Index published for the September of the year in which such notice is published, and the underlying calculations.

(2) On the same date as the notice is published pursuant to paragraph (e)(1) of this section, the CRT shall publish in the **Federal Register** revised compulsory license royalty rates which shall adjust the amounts then in effect pursuant to § 307.3(d) or this paragraph (e), as the case may be, in direct proportion to the percent change in the CPI determined as provided in paragraph (e)(1) of this section, rounded to the nearest ½oth of a cent; provided, however, that:

(i) The adjusted rates shall be no greater than 25% more than the rates then in effect; and

(ii) The adjusted rates shall be no less than the amounts set forth in § 307.3(c).

(3) The revised royalty rates for the compulsory license adjusted pursuant to this paragraph (e) shall become effective for every phonorecord made and distributed on or after the January 1 of the year following that in which such notice is published; that is, on January 1, 1990, 1992, 1994 and 1996, respectively.

**Joint Petition for Automatic Adjustments of Mechanical Royalty Rate; Submitted by National Music Publishers' Association, Inc., The Songwriters Guild of America and Recording Industry Association of America, Inc.**

This petition is submitted jointly, pursuant to section 804(a)(2)(B) of the Copyright Act of 1976 (the "Act"), 17 U.S.C. 804(a)(2)(B), and § 301.61(b)(2) of the Tribunal's rules, 37 CFR 301.61(b)(2), on behalf of the National Music Publishers' Association, Inc. and The Songwriters Guild of America (formerly American Guild of Authors and Composers) (hereinafter collectively referred to as the "Copyright Owners"); and the Recording Industry Association of America, Inc. (hereinafter referred to as the "Copyright Users").

National Music Publishers' Association, Inc. is a national association of over 300 commercially active American music publishers and represents the common interests of publishers of diverse types of music through a variety of legislative, legal, and public relations activities. The Songwriters Guild of America is a national association of approximately 4,000 songwriters. Its primary functions are to promote the interests of authors and composers in their dealings with those who market and use their creative works, and in legislative matters. Both of these organizations represent the interests of copyright royalty recipients. Recording Industry Association of America, Inc. is an association of approximately 43 recording companies. Its members are the principal manufacturers of the records, tapes and compact disks sold in the United States. The organization represents the interests of those who must pay royalties for use of copyrighted musical works in recordings.

The Copyright Owners and Copyright Users have held discussions for the purpose of arriving at a joint proposal respecting the 1987 mechanical royalty rate adjustment authorized under sections 801(b)(1) and 804 of the Act. As a result of these discussions, we are pleased jointly to submit the attached "Proposal Concerning 1987 Mechanical Royalty Rate Adjustment" ("Proposal"). We hereby petition the Tribunal to undertake a proceeding to promulgate regulations effecting an adjustment of the royalty rates provided in section 115 of the Copyright Act, as thereafter adjusted by the Tribunal, in the manner set forth in the Proposal.

In sum, the Proposal calls for the present mechanical royalty rates (5¢ per musical work, or .95¢ per minute of playing time or fraction thereof, whichever amount is larger) to be adjusted, in direct proportion to the percent change in the Consumer Price Index (all urban consumers, all items) (the "CPI"), on January 1 of 1988, 1990, 1992, 1994 and 1996; provided, however, that (a) the adjusted rates shall be no greater than 25% more than the rates in effect during the immediately preceding period, and (b) the adjusted rates shall be no lower than the 5¢/.95¢ rates presently in effect. Pursuant to section 804(a)(2)(B) of the Act, the Tribunal may be petitioned again in 1997 for adjustment of the royalty rates. The Proposal establishes the

mechanism for periodic rate adjustments until that time.

Under the Proposal, the first rate adjustment would become effective on January 1, 1988, based on changes in the CPI for December 1985 through the CPI for September 1987. Thereafter, rate adjustments would be based on changes in the CPI in two-year intervals measured from the September CPI through the September CPI two years later, with the adjusted rates becoming effective on the following January 1. Rates would be rounded to the nearest ½oth of a cent.

In formulating this joint proposal, the parties have been guided by the approach which the Tribunal (46 FR 891 (Jan. 5, 1981); 46 FR 10466 (Feb. 3, 1981); 46 FR 55276 (Nov. 9, 1981); 46 FR 62267 (Dec. 23, 1981)) and the Court of Appeals for the District of Columbia Circuit (662 F.2d 1 (D.C. Cir. 1981)) adopted in the 1980 mechanical royalty rate adjustment proceeding. We believe that the Proposal is within the authority of the Tribunal to enact, and is calculated to achieve the objectives of section 801(b)(1) (A)–(D) of the Act.

The Copyright Owners and Copyright Users were the principal parties who participated in the 1980 mechanical royalty rate adjustment proceeding; they adequately represent the owners and users of copyrighted works whose royalty rates were specified by § 115 of the Act, and thereafter adjusted by the Tribunal; they have a "significant interest" in the mechanical royalty rates to be adjusted within the meaning of section 804(a)(2)(B) of the Act. The Copyright Owners and Copyright Users are presently unaware of any person or entity which would oppose the Proposal.

We recommend that the Tribunal make the Proposal available for public comment before determining whether to adopt its terms in a final decision.

The Proposal is submitted on the understanding that its various provisions are not severable. The Proposal is without prejudice to any position, contention, or argument which the Copyright Owners or Copyright Users may take in any proceeding or litigation, and is not intended to be, and should not constitute, a precedent in any rate adjustment proceedings in 1997 or thereafter.

Respectfully submitted,

National Music Publishers' Association, Inc.

The Songwriters Guild of America, Inc.

Dated: April 1, 1987.

**Edward W. Ray,**

*Acting Chairman.*

[FR Doc. 87–7635 Filed 4–6–87; 8:45 am]

BILLING CODE 1410–09–M

# Notices

Federal Register
Vol. 52, No. 66
Tuesday, April 7, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

### North Fork Edisto River Watershed, SC; Environmental Impact Statement

**AGENCY:** Soil Conservation Service, U.S.D.A.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 65); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Fork Edisto River Watershed, Calhoun, Lexington, and Orangeburg Counties, South Carolina.

**FOR FURTHER INFORMATION CONTACT:** Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, Telephone (803) 765–5681.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement included accelerated technical and financial assistance to apply land treatment measures on 19,236 acres of cropland.

A copy of the Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: March 23, 1987.

**Billy Abercrombie,**

*State conservationist.*

[FR Doc. 87–7636 Filed 4–6–87; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Caribbean Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Subcommittee will convene a public meeting, April 14, 1987, from 9:30 a.m. to approximately 3 p.m., at Hotel Pierre, De Diego Avenue, Santurce, PR, to discuss issues related to the Subcommittee's participation in joint development of the Billfish Fishery Management Plan with four other Regional Fishery Management Councils on the Atlantic Coast and the Gulf of Mexico.

For further information contact the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, PR 00918; telephone: (809) 743–4926.

Dated: April 1, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–7681 Filed 4–6–87; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment to the Export Visa Requirement for Certain Cotton Textile Products Produced or Manufactured in Hong Kong

April 1, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1987. For further information contact Ann Fields, International Trade Specialist (202) 377–4212.

**Background**

A CITA directive was published in the **Federal Register** (48 FR 2400), on January 19, 1983, as amended, which established export visa requirements for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported to the United States.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Textile Agreement of June 22, 1982, as amended, the United States Government has agreed to amend the export visa arrangement with Hong Kong to include the part category designation 314/320–B for cotton broadcloth and poplin not elsewhere specified. Effective on April 1, 1987 shipments from Hong Kong of cotton broadcloth and poplin visaed as 314/320–B and exported on and after February 9, 1987 shall be permitted entry for consumption or withdrawal from warehouse for consumption in the United States. Shipments of cotton broadcloth and poplin visaed as Category 314/320–X, exported from Hong Kong between the period January 1, 1987 through February 8, 1987, shall not be denied entry.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the directive which established the export visa arrangement to implement this adminstrative arrangement under the terms of the bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 1, 1987.

*Commissioner of Customs,*
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended, by the Chairman of the Committee for the Implementation of Textile Agreements that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hong Kong which were not properly visaed.

Effective on April 1, 1987, the directive of January 14, 1983, as amended, is hereby further amended to include the part category designation 314/320–B [1], previously designated as 314/320 pt., for cotton broadcloth and poplin exported from Hong Kong. You are directed to permit entry for consumption or withdrawal from warehouse for consumption in the United States of cotton broadcloth and poplin in Category 314/320 from Hong Kong visaed as 314/320–B and exported on and after February 9, 1987. Shipments of cotton broadcloth and poplin in Category 314/320, visaed as 314/320–X, which were exported from Hong Kong during the period January 1 through February 8, 1987 are not to be denied entry.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7683 Filed 4-6-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 320, only TSUSA items 320.—, 321.—, 322.—, 326.—, 327.—, 328.—, with statistical suffixes 21, 22, 26, 72 and 76; TSUSA items 323.—, 324.—, 325.—, 329.—, 330.— and 331.—, with statistical suffixes 21, 22, 26, 72, 74 and 76.

## Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

April 2, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 8, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212.

For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information in embargoes and quota re-openings, please call (202) 377–3715.

### Background

On August 18, 1986 a notice was published in the **Federal Register** (51 FR 29513) which establishes import restraint limits for certain cotton and man-made fiber textile products, including Category 319, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987. On December 16, 1986 another notice was published in the **Federal Register** (51 FR 45031) which establishes import restraint limits for certain other cotton and man-made fiber textile products, including Category 313, produced or manufactured in Turkey and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987. Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, and at the request of the Government of Turkey, swing is being applied to the restraint limit previously established for cotton textile products in Category 313 for the period January 1, 1987 through December 31, 1987. The limit for Category 319, for the period July 1, 1986 through June 30, 1987, is being reduced to account for the amount of swing applied to Category 313.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 313 and 319.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 2, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on August 12, 1986 and December 10, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in Turkey and exported during the twelve-month periods which began, in the case of Category 313, on January 1, 1987 and extends through December 31, 1987; and in the case of Category 319, on July 1, 1986 and extends through June 30, 1987.

Effective on April 8, 1987, the directives of August 12, 1986 and December 10, 1986 are amened to include the following adjusted limits to the previously established restraint limits for cotton textile products in Categories 313 and 319, as provided under the terms of the bilateral agreement of October 18, 1985, as amended and extended: [1]

| Category | Adjusted 12-mo. limit [2] |
|---|---|
| 313 | 18,033,780 square yards. |
| 319 | 9,820,220 square yards. |

[2] The limits have not been adjusted to account to any imports exported after June 30, 1986 (Category 319) and December 31, 1986 (Category 313).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be increased by 7 percent swing during an agreement period and (2) specific limits may be increased by carryover and carryforward up to 11 percent of which carryforward shall not constitute more than 6 percent the applicable category limit.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7682 Filed 4-6-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulatory Council; Meeting

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of Meetings.

**SUMMARY:** The Defense Acquisition Regulatory Council will travel to Chicago, Illinois and San Antonio, Texas during the week of April 27, 1987. The Council will conduct joint Government/Industry meetings at both locations and will discuss acquisition topics of mutual interest. The Council will be available for questions on specific DAR cases and issues.

**DATES:** April 28, 1987 and April 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, 202/697-9125.

**SUPPLEMENTARY INFORMATION:** The Defense Contract Administration Services Region (DCASR) Chicago, Illinois 60666, will host the Council's meeting at the Woodfield Hilton and Towers on Tuesday, April 28, 1987, from 8 a.m. to 4:30 p.m. The point of contact for further information is Ms. Kathy Gricus, 312/694-6416.

The San Antonio Air Logistics Center will host the Council's meeting on Thursday, April 30, 1987, from 8 a.m. until 4:30 p.m., the Council will conduct a joint Government/Industry meeting at the La Mensione Del Norte, San Antonio, TX. The point of contact for further information is Mr. Nick Reynolds, 512/925-3091.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

[FR Doc. 87-7610 Filed 4-6-87; 8:45 am]

BILLING CODE 3810-01-M

## Office of the Secretary

### Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

**SUMMARY:** Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semi-annually.

**DATE:** May 3-7, 1987 (Detailed agenda follows).

**ADDRESS:** Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia, unless otherwise noted in detailed agenda.

Agenda: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

**Sunday May 3, 1987**

8:00 a.m.—1:00 p.m. Registration
9:00 a.m.—10:00 a.m. Executive Committee Meeting
10:00 a.m.—11:00 a.m. New Member Orientation
11:45 a.m.—12:45 a.m. Get Acquainted Luncheon (Current DACOWITS Members Only)
11:45 a.m.—12:45 p.m. MilRep and Liaison Officers Luncheon
12:50 p.m.—1:30 p.m. OSD Overview
1:45 p.m.—4:20 p.m. New Member Orientation
4:30 p.m.—5:15 p.m. Briefing: Manpower Resource Pool
5:25 p.m.—6:30 p.m. Subcommittee Sessions
Briefings: Army and Air Force Exchange Services (Subcommittee #3), Quality of Life (Subcommittee #3)
7:00 p.m.—9:00p.m. No-Host Social Buffet

**Monday, May 4, 1987**

10:00 a.m.—10:30 a.m. Official Opening—Pentagon Auditorium, Room 5A1070
Presiding: Dr. Jacquelyn Davis, DACOWITS Chairman
Welcome: Honorable Chapman B. Cox, Assistant Secretary of Defense (Force Management and Personnel)
Keynote Speaker: Honorable Caspar W. Weinberger, Secretary of Defense
10:40 a.m.—11:00 a.m. Official Coffee, Military Women's Corridor, Pentagon
12:00 noon—1:30 p.m. OSD Luncheon, (By Invitation Only)
Hosted By: Honorable Chapman B. Cox, Assistant Secretary of Defense for Force Management and Personnel
Guest Speaker: VADM Dudley L. Carlson, USN, Chief of Naval Personal, Deputy Chief of Naval Operations (Manpower, Personnel and Training)
1:15 p.m.—1:45 p.m. Briefing: Woman Marine Officer Review
1:45 p.m.—2:15 p.m. Briefing: Navy 600 Ship Manning
2:30 p.m.—3:15 p.m. Briefing: National Guard
3:30 p.m.—4:30 p.m. Briefing: Army Direct Combat, Probability Coding (DCPC)
4:30 p.m.—6:00 p.m. Subcommittee Sessions (Evaluation and Disposition of Service Responses)
7:00 p.m.—8:00 p.m. OSD Reception (*By Invitation Only*)
Hosted by: Honorable Caspar W. Weinberger
8:00 p.m.—10:30 p.m. OSD Dinner (*By Invitation Only*)
Hosted by: Dr. David J. Armor, Principal Deputy Assistant Secretary of Defense (Force Management and Personnel)
Guest Speaker: ADM Huntington Hardisty, USN, Vice Chief of Naval Operations

**Tuesday, May 5, 1987**

Field trip hosted by the U.S. Navy to United States Naval Academy (USNA), Annapolis, Maryland. (Limited to DACOWITS Members, Former Members, Official Military Representatives, DACOWITS Liaison Officers, and special guests.)

**Wednesday, May 6, 1987**

8:00 a.m.—8:30 a.m. Presentations by Members of the Public
8:30 a.m.—9:50 p.m.* Briefings; Service Sexual Harassment Prevention
10:00 a.m.—12:00 noon Subcommittee Sessions
12:00 noon—2:00 p.m. Installation Visit Luncheon
2:00 p.m.—5:00 p.m. Executive Committee Mark-up

**Thursday, May 7, 1987**

7:00 a.m.—8:00 a.m. Individual Review of Resolutions
8:00 a.m.—11:00 a.m. General Business Session

*Adjourn*

11:00 a.m.—12:00 noon Executive Committee Meeting

**FOR FURTHER INFORMATION CONTACT:** Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

**SUPPLEMENTARY INFORMATION:** The following rules and regulations will govern the participation by members of the public at the meeting:

(1) Members of the public will not be permitted to attend the official Department of Defense luncheon or dinner.

* If the there are no presentations by Members of the Public, briefings will begin at 8:00 a.m.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 17, 1987.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentations by members of the public will be permitted only from 8:00 a.m. to 8:30 a.m. on Wednesday, May 6, 1987, before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation or 60 copies of the statement by April 24, 1987.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chairman or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chairman and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee Meetings, or the Business Session on Thursday, May 7, 1987.

April 1, 1987.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87-7619 Filed 4-6-87; 8:45 am]

BILLING CODE 3810-01-M

## Defense Science Board Task Force on Image Recognition Systems; Change in Date and Location of Advisory Committee Meeting

**SUMMARY:** The meeting of the Defense Science Board Task Force on Image Recognition Systems scheduled for March 12, 1987 as published in the **Federal Register** (Vol. 52, No. 45, Page 7188, Monday, March 9, 1987, FR Doc. 87-4867) will be held on April 7-8, 1987 in the Pentagon, Arlington, Virginia. In all other respects the original notice remains unchanged.

April 1, 1987.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87-7618 Filed 4-6-87; 8:45 am]

BILLING CODE 3810-01-M

## Defense Science Board Task Force on Subgroup to the Strategic Air Defense; Change in Dates of Advisory Committee Meeting

**SUMMARY:** The meeting of the Defense Science Board Task Force on Subgroup to the Strategic Air Defense scheduled for April 2-3, and April 16-17 as published in the **Federal Register** (Vol. 52, No. 52, Page 8500, Wednesday, March 18, 1987, FR Doc. 87-5784) will be held on April 3-4, and April 17-18, 1987. In all other respects the original notice remains unchanged.

April 1, 1987.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87-7617 Filed 4-6-87; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

## Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

NAME OF THE COMMITTEE: Army Science Board (ASB)

DATES OF MEETING: 22-23 April and 30 April 1987

TIMES OF MEETING: 0900-1500 each day

PLACE: 22 April: Harry Diamond Lab (HDL), Adelphi, MD; 23 April: US Chemical Research Development Engineering Center (CRDEC), Aberdeen Proving Ground, MD; 30 April: Atmospheric Labs, White Sands, New Mexico

AGENDA: A subpanel of the Army Science Board Summer Study Panel for Army Force Cost Drivers will meet at three different locations to discuss a myriad of subjects to include Electro Magnetic Pulse (EMP), hardening countermeasures, nuclear/chemical protection and countermeasures, global data base on environmental conditions, and development of U.S. Army equipment. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-7638 Filed 4-6-87; 8:45 am]

BILLING CODE 3710-08-M

## Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

NAME OF COMMITTEE: Army Science Board (ASB)

DATES OF MEETING: 27-28 April 1987

TIMES OF MEETING: 1000-1500, 27 April 1987; 0900-1500, 28 April 1987

PLACE: 27 April 1987, Pentagon, Washington, DC.; 28 April 1987, LABCOM, Adelphi, MD

AGENDA: The Army Science Board Summer Study Panel for Army Force Cost Drivers will meet to discuss Army acquisition and analysis process and capabilities. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1 subsection 10(d). Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-7639 Filed 4-6-87; 8:45 am]

BILLING CODE 3710-08-M

## Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

NAME OF THE COMMITTEE: Army Science Board (ASB)

DATES OF MEETING: 28–29 April 1987

TIMES OF MEETING: 1200–1700, 28 April 1987; 0900–1500, 29 April 1987

PLACE: 28 April: Pentagon, Washington, DC; 29 April: Night Vision Electro-Optics (NVEO) Lab, Fort Belvoir, VA

AGENDA: A subpanel of the Army Science Board Summer Study Panel for Army Force Cost Drivers will meet to discuss various subjects to include the use of lasers, microwave and particle beam weapons/systems. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87–7640 Filed 4–6–87; 8:45 am]

BILLING CODE 3710–08–M

## Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

NAME OF THE COMMITTEE: Army Science Board (ASB)

DATES OF MEETING: 28 and 30 April 1987

TIMES OF MEETING: 0800–1500, 28 April 1987; 0800–1500, 30 April 1987

PLACE: Fort Ord, CA, 28 April 1987; Fort Carson, CO, 30 April 1987

AGENDA: The Army Science Board 1987 Summer Study on Lightening the Force will meet at Fort Ord, CA and Fort Carson, CO for discussions with the 7th Light Infantry Division and the 4th Mechanized Infantry Division, respectively. The meeting will be closed to the public in accordance with section 552(b) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87–7641 Filed 4–6–87; 8:45 am]

BILLING CODE 3710–08–M

## Corps of Engineers, Department of the Army

## Intent To Prepare Draft Environmental Impact Statement (DEIS); Flood Control Project, Cattaraugus Creek, NY

To prepare a Draft Environmental Impact Statement (DEIS) for a proposed flood control project on Cattaraugus Creek, in Cattaraugus and Erie Counties, New York. The study was authorized by two resolutions—one adopted 2 June 1956 by the Committee on Pubic Works of the U.S. Senate, and the other adopted 23 July 1956 by the Committee on Public Works of the U.S. House of Representatives. The DEIS will accompany the Draft Feasibility Report.

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

### Proposed Action

The proposed action would involve implementation of the following plan: Alternative 3B(2) consists of a 270-foot long ice retention structure and a 200-foot wide adjacent floodway for passage of flood flows just upstream of the town of Versailles. The ice retention structure would have three gated, low-flow openings incorporated into its design to permit passage of salmonids and other fish species when the ice retention structure is not in operation and to accommodate summertime flows. A debris boom would be installed upstream of the ice retention structure to trap debris before it becomes lodged against the structure. In addition, a fish ladder adjacent to the ice retention structure would be included to allow unhindered movement of salmonids and other fish species upstream and downstream via the fish ladder when the ice retention structure is in operation.

At least two structural and eight nonstructural plans, plus the No-Action alternative, were considered during the feasibility study. The No-Action alternative will be carried forth throughout the planning process together with the selected alternative.

### Public Involvement

A public meeting was held on 4 August 1986 at the Sunset Bay Fire Hall, Cattaraugus County, to review the results of the reconnaissance study and to discuss future study activities. Federal agencies providing input to date through the course of this flood control study include the U.S. Soil Conservation Service, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency. State and local agencies maintaining liaison with the Corps on this study include the New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation and Historic Prevention, elected officials of counties and towns throughout the basin, the Seneca Nation of Indians, and the Sunset Bay Association.

### Issues

Significant issues to be raised in the DEIS include determination of the extent of which the selected plan might positively or negatively impact upon the natural and human environment—to include, but not be limited to, such parameters as air quality, water quality, fish and wildlife, noise, aesthetics, community and regional growth and development, health and safety, and cultural resources.

### Review and Compliance

The study shall be conducted so as to comply with the various Federal and State environmental status and Executive Orders and associated review procedures.

### Scoping Meetings

Since Federal, State, and local interests have been involved during formulation of the proposed project and because a recent public meeting was held outlining the various proposed project alternatives, adequate coordination has already been conducted; therefore, no further scoping meetings are anticipated.

### Availability

The combined document consisting of the Draft Feasibility Report and Draft Environmental Impact Statement will be made available to the public on or about 31 July 1987.

**ADDRESS:** Questions concerning preparation of the Draft Environmental Impact Statement can be answered by Mr. Timothy Daly, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207, telephone (716) 876–5454 or FTS 473–2173.

Dated: March 30, 1987.

**Daniel R. Clark,**

*Colonel, Corps of Engineers District Commmander.*

[FR Doc. 87-7642 Filed 4-6-87; 8:45 am]

BILLING CODE 3710-GP-M

## Department of the Navy

### Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Training Task Force will meet April 28–29, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting will include an examination of Navy training to assess how best to organize and manage training to accommodate future requirements, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: April 1, 1987.

**Harold L. Stoller,**

*Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.*

[FR Doc. 87-7589 Filed 4-6-87; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

### Inviting Applications for New Awards Under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year 1987. (CFDA No. 84-026)

*Purpose:* To contribute to the general welfare of deaf persons by providing cultural and educational enrichment through the captioning of films and television.

*Proposed Priorities:* In a separate notice published in this issue of the **Federal Register**, the Secretary has proposed to establish the following priorities for fiscal year 1987. The Secretary intends to give an absolute preference to applications that meet any of these priorities.

| CFDA No | Priority | Closing date | Applications | Available funds | Intergovernmental review deadline |
|---|---|---|---|---|---|
| 84.026J | Closed-Captioned National Television Programming—1 Cooperative Agreement. | 5/26/87 | 4/10/87 | $950,000 | 7/27/87 |
| 84.026L | Closed-Captioned Local News Projects—3 Grants | 5/26/87 | 4/10/87 | $150,000 | 7/27/87 |
| 84.026N | Closed-Captioned Real-Time News—1 Cooperative Agreement | 5/26/87 | 4/10/87 | $2,000,000 | 8/27/87 |

*Applicable Regulations:* (a) The Educational Media Research, Production, Distribution, and Training Regulations, 34 CFR Part 332, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, and (c) when adopted in final form, the Annual Funding Priorities for this program. A notice of proposed annual funding priorities is published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed priorities. If there are any changes made when the final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

*For Applications or Information Contact:* Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, S.W. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

*Program Authority:* 20 U.S.C. 1451(a)(2), and 1452(b)(5).

Dated: April 2, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87-7628 Filed 4-6-87; 8:45 am]

BILLING CODE 4000-01-M

### Inviting Applications for New Awards Under the Technology, Educational Media, and Materials Program for Fiscal Year 1987 (CFDA No. 84.026)

*Purpose:* To promote the educational advancement of handicapped persons through the use of educational media, materials, and technology.

*Proposed Priorities:* In a separate notice published in this issue of the **Federal Register,** The Secretary has proposed to establish the following priorities for fiscal year 1987. The Secretary intends to give an absolute preference to applications that meet any of these priorities.

| CFDA # | Priority | Closing date | Applications available | Available funds | Intergovernmental review deadline |
|---|---|---|---|---|---|
| 84.026P | Compensatory Technology Applications—9 Grants. | 6/1/87 | 4/10/87 | $1,400,000 | 7/31/87 |
| 84.026S | Improving Technology Software—9 Grants | 6/1/87 | 4/10/87 | $1,600,000 | 7/31/87 |
| 84.026W | Instructional Technology Research—4 Grants | 5/26/87 | 4/10/87 | $400,000 | 7/27/87 |

*Applicable Requirements:* (a) Section 317 of the Education of the Handicapped Act Amendments of 1986 (Section 661, Part G of the Education of the Handicapped Act), (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, and (c) when adopted in final form, the Annual Funding Priorities and selection criteria that have been proposed for this program. A notice of proposed annual funding priorities and proposed use of the selection criteria at 34 CFR 332.32 to evaluate applications is published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed priorities and proposed use of the selection criteria set out at 34 CFR 332.32. If any changes are made to the funding priorities or the decision to use the selection criteria at 34 CFR 332.32, applicants will be given the opportunity to amend or resubmit their applications.

*For Applications or Information Contact:* Linda Glidewell, Division of

Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1099.

**Program Authority:** 20 U.S.C. 1481.

Dated: April 2, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–7629 Filed 4–6–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 7267–004 et al.]**

### Hydroelectric License Applications (Dale L. R. Lucas, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Minor License.

b. Project No: 7267–004.

c. Date Filed: September 30, 1986.

d. Applicant: Dale L. R. Lucas.

e. Name of Project: Tungstar Water Power Project.

f. Location: On Morgan Creek and Upper Pine Creek, within Inyo National Forest, in Inyo County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, CA 95667.

i. Comment Date: May 4, 1987.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 10-foot-long diversion dam at elevation 7,840 feet m.s.l.; (2) a 36-inch-diameter, 3,500-foot-long penstock; (3) a powerhouse containing one generating unit with an installed capacity of 990 kW operating under a head of 470 feet; and (4) a 55-kV, 350-foot-long transmission line inter-connecting with an existing transmission line owned and operated by Southern California Edison Company (SCE). The applicant estimates the average annual energy generation at 4.3 GWh to be sold to SCE. The project cost has been estimated to be $4.3 million. The Applicant proposes some recreational facilities as a part of the project.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

2 a. Type of Application: Major License.

b. Project No: 7664–002.

c. Date Filed: September 2, 1986.

d. Applicant: East Bench Irrigation District.

e. Name of Project: Clark Canyon Dam.

f. Location: Beaverhead River in Beaverhead County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. James A. Sewell, James A. Sewell & Associates, Consulting Engineers, Newport, WA 99156, (509) 447–3626.

i. Comment Date: May 7, 1987.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Clark Canyon Dam. The proposed project would consist of: (1) An 8.5-foot-diameter, 306-foot-long steel penstock constructed inside the existing low level outlet works tunnel to a bifurcation; (2) an 8.5-foot-diameter, 20-foot-long penstock extending to the outlet works stilling basin, and including two slide gates; (3) a 7.5-foot-diameter, 133-foot-long Penstock conveying water to the powerhouse; (4) a powerhouse containing a generating unit with a rated capacity of 4,395 kW; (5) the five sets of three-phase, 4.2-kV generator leads; (6) the three-phase, 4.2/24.4-kV, 5,000-kVA step-up transformer; and (7) the 0.1-mile long, 24.4-kV overhead transmission line connecting into the existing Vigilante Electric Cooperative System. The applicant estimates an 18.86 GWh average annual energy production.

k. Purpose of Project: Power would be sold to local utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

3 a. Type of Application: Minor License Under 5 MW.

b. Project No: P–8369–001.

c. Date Filed: November 13, 1986.

d. Applicant: Village of Saranac Lake.

e. Name of Project: Lake Flower Water Power.

f. Location: On the Saranac River in Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. David MacDowell, Village of Saranac Lake, Office of Community Development, 38 Main Street, Saranac Lake, NY 12983, (518) 891–0490.

i. Comment Date: May 4, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 24-foot-high, 97-foot-long concrete dam with a crest elevation of 1,533 feet MSL including a 49-foot-long spillway section with a crest elevation of 1,528 feet MSL; (2) an existing reservoir with a surface area of 1,360 acres and a gross storage capacity of 6,200 acre-feet at the spillway crest; (3) two existing powerhouses, one containing a 75-kW generating unit and the other a 165-kW generating unit for a total installed capacity of 240 kW; (4) a proposed less than 100-foot-long transmission line tying into the existing Niagara Mohawk Power System; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 892,000 kWh under a net hydraulic head of 13 feet. The dam is owned by the Village of Saranac. A prior preliminary permit was issued on June 18, 1984 for this project.

k. Purpose of Project: Project power would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

4a. Type of Application: Major License.

b. Project No.: 9401–000.

c. Date Filed: August 12, 1985, and revised August 29, 1986.

d. Applicant: Halecrest Company.

e. Name of Project: Mount Hope Pumped Storage Project.

f. Location: On Mount Hope Lake, near Town of Rockaway, in Morris County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Richard M. Hale, Halecrest Company, 321 Talmadge Road, Edison, NJ 08817, (201) 287–2272.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project will utilize the waters of the existing Mount Hope Lake as the upper reservoir, enlarged from its present size by the construction of a new dam. A new underground powerhouse will use the stored water of the upper reservoir to produce power during daily periods of peak demand.

The project would consist of: (1) A new 45-foot-high, 8,000-foot-long earth and rockfill dam with a 120-foot-wide ungated concrete spillway at crest elevation 833 feet; (2) the existing Mount Hope Lake as the upper reservoir, enlarged from its present size to have a storage capacity of 7,000 acre-feet at maximum operating surface elevation 825 feet; (3) two new concrete intake shafts each 2,400-foot-long and 20-foot-diameter bifurcating into four 10-foot-diameter penstocks; (4) a new 60-foot-wide, 400-foot-long, 120-foot-high underground powerhouse at elevation 2072 below m.s.l. containing 8 generating units with a total installed capacity of

2,000 MW at a head of 2,500 feet and producing total average annual energy of 10,000 MWh; (5) a new underground lower reservoir with a storage capacity of 4,800 acre-feet at maximum operating surface elevation 1628 below m.s.l.; (6) two parallel 500-kV, 5.5-mile-long transmission lines connecting to the regional grid at the future Jefferson substation and (7) other appurtenant facilities.

k. Purpose of Project: Power output would be sold to nearby utilities to meet the regional peak demand.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

5a. Type of Application: License (5 MW or Less).

b. Project No.: 9874–000.

c. Date Filed: December 16, 1985.

d. Applicant: Michiana Hydro Electric Power Corporation.

e. Name of Project: Mishawaka.

f. Location: On the St. Joseph River in St. Joseph County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Douglas Hunt, Michiana Hydro Electric Power Corporation, 1134 East Jefferson Boulevard, South Bend, IN 46617, Phone No.: 317–232–9433.

i. Comment Date: May 4, 1987.

j. Description of Project: The Applicant proposes to utilize an existing dam owned by the State of Indiana. The proposed project would consist of: (1) An existing concrete dam that is 10 feet high and 327 feet long; (2) a proposed 70-foot-wide by 150-foot-long headrace; (3) a proposed concrete and brick powerhouse containing one generating unit rated at 1,900 kW; (4) a proposed 70-foot-wide by 50-foot-long tailrace; (5) a proposed transmission system which includes 4.16-kV generator leads and 600 feet of 4.16-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy output is 12,500,000 kWh.

k. Purpose of Project: Power produced at the project would be sold to the Mishawaka Municipal Utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6a. Type of Application: Minor License.

b. Project No.: 9997–000.

c. Date Filed: May 22, 1986.

d. Applicant: Carol A. Sever.

e. Name of Project: Swengle.

f. Location: Penn's Creek, Union County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Ms. Carol A. Sever, 516 Sand Hill Road, Montoursville, PA 17754, (717) 368–8337.

i. Comment Date: May 4, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high earth dam; (2) a reconstructed 5-foot-high concrete and gabion spillway; (3) a reservoir with negligible storage; (4) a 200-foot-long, 15-foot-wide and 8-foot-deep power canal; (5) a powerhouse containing a single generating unit rated at 200 kW; (6) a 300-foot-long, 40-foot-wide and 20-foot-deep tailrace; (7) a transmission line 100 feet long connecting to a Pennsylvania Power and Light Company distribution line; and (8) appurtenant facilities. The estimated annual energy production is 1.2 GWh. The net hydraulic head is 12 feet. The existing facilities are owned by Mr. Curtis Hill, 6019 Oxford Street, West Philadelphia, PA 19151.

k. Purpose of Project: Project power would be sold to Pennsylvania Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

7a. Type of Application: Preliminary Permit.

b. Project No.: 10099–000.

c. Date Filed: September 26, 1986.

d. Applicant: Cascade River Hydro.

e. Name of Project: Straight Creek.

f. Location: On Straight Creek, tributary of the Suiattle River, within the Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington near the town of Darrington. T. 31 N., R. 11 E., sec. 4, NW¼; T. 32 N., R. 11 E., sec. 15, SW¼; sec. 21, E½ of the W½; W½ of the E½; sec. 28 and sec. 33.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, Cascade River Hydro, 12122—196th NE., Redmond, WA 98052, (206) 885–3986;

Mr. Philip M. Botch, 8730 Overlake Drive W., Bellevue, WA 98004, (206) 455–1035.

i. Comment Date: May 4, 1987.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 20-foot-long diversion dam at elevation 2,440 feet; (2) a 42-inch-diameter, 9,000-foot-long penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 4,640 kW, producing approximately 20.76 GWh of energy annually; (4) a tailrace; and (5) an 8-mile-long, 115-kV buried transmission line tying into an existing Puget Power and Light Company line. No new roads will be needed to carry out studies under the preliminary permit. The Applicant estimates that the cost of conducting studies under the preliminary permit would $40,000.

k. Purpose of Project: Project power would be sold to Puget Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10148–000.

c. Date Filed: October 30, 1986.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Bear Creek.

f. Location: On Bear Creek, tributary of the North Fork Skykomish River, within the Snoqualmie—Mt. Baker National Forest in Snohomish County, Washington near the town of Everett.

T. 28 N., R. 9 E.,
sec. 5, E¾
sec. 8, NE¾
sec. 9, NW¼, W½NE¼
T. 30 N., R. 9 E.,
sec. 20 E½SW¼
sec. 29, E½W½
sec. 32, E½W½

g. Filed pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, Skykomish River Hydro, 12122 196th NE., Redmond, WA. 98052, (206) 885–3986.

i. Comment Date: May 4, 1987.

j. Description of Project: The proposed project would consist of: (1) Two 3-foot-high, 20-foot-long diversion dams at elevation 2,600 feet; (2) pipeline; (3) a 36-inch-diameter, 8,000-foot-long penstock; (4) a powerhouse containing a single generating unit with an installed capacity of 2,700 kW, producing approximately 11.80 GWh of energy annually; (5) a tailrace; (6) a 12-mile-long, 115–kV transmission line tying into an existing Puget Power and Light Company line. No new access road will be needed to conduct studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $40,000.

k. Purpose of Project: Project power will be sold to Puget Power and Light Company.

l. This notice also consists of the following standard paragrapsh: A5, A7, A9, A10, B, C, D2.

9 a. Type of Application: Preliminary Permit.

b. Project No: 10177–000.

c. Date Filed: November 21, 1986.

d. Applicant: Town of West Stockbridge, MA.

e. Name of Project: Shaker Mill Dam Hydroelectric Project.

f. Location: On the Williams River in Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Clay Max Hall, Chairman, Board of Selectmen, Town of West Stockbridge, Town Hall, W. Stockbridge, MA 01262, (413) 232–7080.

i. Comment Date: May 1, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 10–foot-high, approximately 36-foot-long, dam; (2) an existing 32.6-acre reservoir which will be increased to a 33.6-acre reservoir by the proposed installation of 1-foot-high flashboards; (3) an existing powerhouse to contain a 30-kW generating unit; (4) a proposed 30-foot-long, 2.4-kV transmission line; and (5) appurtenant facilities. The applicant estimates the average annual energy generation to be 180 MWh. The dam is owned by the Town of West Stockbridge, Massachusetts.

k. Purpose of Project: The applicant intends to sell the power produced at the site to the Massachusetts Electric Company. Applicant estimates the cost of the studies under the permit would be $4,000.

l. This notice also consists of the following standard paragrapsh; A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10187–000.

c. Date Filed: November 24, 1986.

d. Applicant : Skykomish River Hydro.

e. Name of Project: Salmon Creek Project.

f. Location: In Snoqualmie—Mt. Baker National Forest, on Salmon Creek, Snohomish County, Washington. Township 29N and Range 10E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmon, WA 98052, (206) 885–3986.

i. Comment Date: May 1, 1987.

j. Description of Project: The proposed project would consist of: (1) Two diversion structures with inlet elevations of 2,000 feet msl; (2) a bifurcated penstock 15,000 feet long and 36 inches in diameter leading to; (3) a powerplant at elevation 1,200 feet msl containing a single turbine/genrator unit with a capacity of 2,880 kW operating at 800 feet of hydraulic head; and (4) a 4-mile-long, 115-kV transmission line. The applicant estimates that the average annual generation would be 12.6 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Conduit Exemption.

b. Project No.: 10263–000.

c. Date Filed: January 23, 1987.

d. Applicant: Three Valleys Municipal Water District.

e. Name of Project: Miramar Plant Station.

f. Location: At the Miramar Water Treatment Plant on Miramar and Padua Avenues, Claremont, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: James W. Hansen, General Manager, Three Valleys Municipal Water District, 174 West McKinley Avenue, Pomona, CA 91768, (714) 623–6681.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of a 520-kW turbine-generator unit in the existing pipes of the water treatment plant. Applicant estimates an average annual generation of 1,972,000 kWh. The power would be used to operate equipment at the water treatment plant and the surplus would be sold to the Southern California Edison Company through transmission facilities available at the site.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

12 a. Type of Application: Conduit Exemption.

b. Project No.: 10264–000.

c. Date Filed: January 23, 1987.

d. Applicant: Three Valleys Municipal Water District.

e. Name of Project: Fulton Road Station.

f. Location: At the Fulton Water Treatment Plant on Fulton Road and Sixth Street, Pomona, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Richard W. Hansen, General Manager, Three Valleys Municipal Water District, 174 West McKinley Avenue, Pomona, CA 91768, (714) 623–6681.

i. Comment Date: May 4, 1987.

j. Description of Project: The proposed project would consist of a 300-kW turbine-generator unit in the existing pipes of the water treatment plant. Applicant estimates an average annual generation of 976,000 kWh. The power would be sold to the Sourthern California Edison Company through transmission facilities available at the site.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

13 a. Type of Application: Conduit Exemption.

b. Project No.: 10265–000.

c. Date Filed: January 23, 1987.

d. Applicant: Three Valleys Municipal Water District.

e. Name of Project: Williams Avenue Station.

f. Location: At the Reservoir and Pumping Station of La Verne's Water Department on Williams Avenue and Amherst Street, La Verne, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: James W. Hansen, General Manager, Three Valleys Municipal Water District, 174 West McKinley Avenue, Pomona, CA 91768, (714) 623–6681.

i. Comment Date: May 4, 1987.

j. Description of Project: The proposed project would consist of a powerhouse with a 350-kW turbine generator unit utilizing the existing pipes of the treatment plant. Project energy would be sold to the Southern California Edison Company through facilities available at the site. Applicant estimates an average annual generation of 2,210,000 kWh.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

14 a. Type of Application: Conduit Exemption.

b. Project No.: 10324–000.

c. Date Filed: February 13, 1987.

d. Applicant: Mesa Consolidated Water District.

e. Name of Project: Santa Ana Pressure Reducing Station.

f. Location: Water transmission pipeline at Santa Ana Pressure Reducing Station in Orange County, near Costa Mesa, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. Karl Kemp, General Manager, Mesa Consolidated Water District, 1965 Placentia Avenue, Costa Mesa, CA 92626.

i. Comment Date: May 7, 1987.

j. Description of Project: The proposed project would be located on lands owned by the Applicant and would utilize the flows of an existing 42-inch transmission pipeline. The Project would consist of a powerhouse containing three turbine generating units with a total rated capacity of 432 kw. The applicant estimates that the average annual energy output would be 1,300,000 kWh.

k. Purpose of Project: Project power would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

**Standard Paragraphs**

*A3. Development Application*

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

*A4. Development Application*

Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

*A5. Preliminary Permit*

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

*A7. Preliminary Permit*

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

*A8. Preliminary Permit*

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

*A9. Notice of Intent*

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

*A10. Proposed Scope of Studies Under Permit*

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

*B. Comments, Protests, or Motions to Intervene*

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*C. Filing and Service of Responsive Documents*

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*D1. Agency Comments*

States, agencies established pursuant to Federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and State agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825/ (b), that Commission findings

as to facts must be supported by substantial evidence.

All other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

*D2. Agency Comments*

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

*D3a. Agency Comments*

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

*D3b. Agency Comments*

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, the agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 2, 1987.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7655 Filed 4-6-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket Nos. CP87-236-000 et al.]**

## Natural Gas Certificate Filings; Southern Natural Gas Co. et al.

Take notice that the followings filings have been made with the Commission:

### 1. Southern Natural Gas Company

[Docket No. CP87-236-000]

March 27, 1987.

Take notice that on March 9, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-236-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport natural gas on behalf of Blue Circle, Inc. (Blue Circle) and Atlanta Gas Light Company (Atlanta), acting as agent for Blue Circle, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 2.5 billion Btu equivalent of natural gas per day on an interruptible basis on behalf of Blue Circle, and up to 2.5 billion Btu equivalent of natural gas per day on an interruptible basis for Atlanta, acting as agent for Blue Circle. Southern states that Blue Circle would purchase gas from SNG Trading Inc., and that Blue Circle and Atlanta would cause this gas to be delivered to Southern for transportation at various existing points of interconnection on Southern's contiguous pipeline system. Southern would redeliver gas to Blue Circle at the Blue Circle Meter Station in Shelby County, Alabama, for ultimate delivery to Blue Circle's plant in Roberta, Alabama, and to Atlanta at the Atlanta area delivery point for ultimate delivery to Blue Circle's plant in Atlanta, Georgia.

Southern requests that it be issued certificates for the transportation proposed in its application for terms expiring October 31, 1988.

Southern states that in accordance with its agreement with Atlanta, Atlanta would pay Southern each month for performing the proposed transportation service the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate would be 48.2 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes would be 77.6 cents per million Btu.

Southern states that its agreement with Blue Circle provides that Blue Circle would pay Southern a transportation rate of 64.9 cents per million Btu of gas redelivered by Southern.

In addition Southern proposes to collect from Blue Circle and Atlanta the GRI surcharge of 1.52 cents per Mcf, or such other GRI funding unit or surcharge as the Commission or other governmental authority may from time to time by order of general or specific

applicability or otherwise prescribe or approve.

Southern indicates that the proposed services would be performed without detriment or disadvantage to Southern's obligation to its customers who are dependent on its general system supply.

Comment date: April 17, 1987, in accordance with Standard Paragraph F at the end of this notice.

**2. Algonquin Gas Transmission Company**

[Docket No. CP87–251–000]

March 31, 1987.

Take notice that on March 13, 1987, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP87–251–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to provide sales service to an existing customer, The Connecticut Light and Power Company (CL&P), at an existing meter and regulating station near Danbury, Connecticut, where Applicant currently delivers gas to CL&P for the account of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Applicant and Tennessee currently have in effect a gas service contract for the exchange of natural gas. Applicant states that the contract provides that Applicant deliver to CL&P, for the account of Tennessee, such daily quantities of natural gas required by CL&P, up to 510 MMBtu of natural gas per hour at CL&P's Danbury meter station, which is leased to Algonquin for operation and maintenance. Applicant states that CL&P is therefore a customer of Tennessee for the quantities of natural gas delivered at Danbury under the gas service contract. Applicant states that Tennessee is obligated to redeliver equivalent quantities of natural gas to Applicant at one or more of five specified redelivery points.

Applicant states that CL&P has requested Applicant to provide service to CL&P under Applicant's sales Rate Schedule F–1, F–2, F–3 and F–4 on a best-efforts basis at the Danbury gate station. Applicant states that no transfer of firm maximum daily quantity is requested and that the superseding service agreements between Applicant and CL&P would reflect a zero Btu delivery obligation at the Danbury gate station to reflect the interruptible nature of the service.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**3. Mountain Fuel Resources, Inc.**

[Docket No. CP87–243–000]

March 31, 1987.

Take notice that on March 11, 1987, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP87–243–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon two 4-inch meter runs located at its Clear Creek and Luckey Ditch meter stations in southwestern Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MFR states that the two meter runs were constructed to measure volumes of natural gas flowing from both the Clear Creek and Luckey Ditch producing areas in Uinta County, Wyoming, into MFR's Jurisdictional Laterals Nos. 54 and 69, respectively. MFR states, however, that neither of the 4-inch meter runs is capable of accurately measuring current and projected volumes of natural gas entering MFR's interstate transmission system and, therefore, the Clear Creek and Luckey Ditch meter runs require abandonment and replacement with larger 6-inch meter runs. MFR further states that it would construct and operate the replacement meter runs in accordance with its blanket authorization issued in Docket No. CP82–491–000.

Comment date: April 21, 1986, in accordance with Standard Paragraph F at the end of this notice.

**4. Northern Border Pipeline Company**

[Docket No. CP87–234–000]

March 31, 1987.

Take notice that on March 9, 1987, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–234–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to operate an existing side valve and to transport natural gas volumes in interstate commerce on behalf of Williston Basin Interstate Pipeline Company (Williston Basin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern Border proposes to operate an existing 16-inch side valve located near Glen Ullin, North Dakota, and to transport on an interruptible basis up to 48,000 Mcf of natural gas per day on behalf of Williston Basin from Buford, North Dakota, to Glen Ullin, North Dakota. If operating conditions allow, Northern Border intends to transport for Williston Basin volumes in excess of 48,000 Mcf of natural gas per day that Williston Basin makes available. In order to accomodate the receipt of gas at Glen Ullin, Williston Basin shall install the necessary interconnect and measurement facilities pursuant to its blanket certificate in Docket No. CP82–487–000, *et al.*

Williston Basin states that the proposed transportation by Northern Border will relieve a capacity problem on its system during periods of low system sales. The majority of gas produced in Williston Basin's supply area is gas associated with oil production. If no transportation is available for this gas, either oil production will have to be curtailed or the gas would have to be flared.

Northern Border proposes to assess Williston Basin a monthly charge designed to recover, on a unit basis, Northern Border's full cost-of-service.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**5. Phillips Gas Pipeline Company**

[Docket No. CP87–249–000]

March 31, 1987.

Take notice that on March 12, 1987, Phillips Gas Pipeline Company (Phillips Gas) 800–A Plaza Office Building, Bartlesville, Oklahoma 74004, filed in Docket No. CP87–249–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate certain replacement sections of its Southern Oklahoma Gathering System (SOGS) pipeline with thicker walled pipe that would permit the pipeline to be operated at a higher maximum allowable operating pressure (MAOP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Phillips Gas requests Commission authorization for the replacement of approximately 7,550 feet of its 30-inch SOGS pipeline in four seperate locations in Bryan, Johnston, Pontotoc and Seminole Counties, Oklahoma. It is stated that Phillips Gas SOGS pipeline is limited to a MAOP of 487 psig as prescribed by the Minimum Federal Safety Standards of the Department of Transportation (49 CFR Part 192) and by replacing certain segments of the pipeline located in Class 3 locations[1] in

[1] Class 3 location classis described as those areas subdivided for residential or commercial use with

Continued

these counties the overall pipeline could be operated at a MAOP of 584 psig thereby increasing the through put capacity of the pipeline by 24,000 Mcf of gas per day. Phillips Gas states that the additional capacity will be used for the firm and interruptible transportation of gas for other customers pursuant to Commission Order No. 436 and Part 284 of the Regulations. Phillips Gas indicates the proposed replacement program and upgrading of the four segments of the SOGS pipeline is estimated to cost $1,119,000.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**6. Southern Natural Gas Company, South Georgia Natural Gas Company**

[Docket No. CP86-401-003]

March 31, 1987.

Take notice that on March 12, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, collectively referred to as Applicants, filed in Docket No. CP86-401-003 a petition to amend the order issued June 13, 1986, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize Applicants to increase the daily transportation quantity for the end-user, Engelhard Corporation (Engelhard), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by the order issued June 13, 1986, as amended, the Commission authorized Southern to transport on an interruptible basis, for a term expiring June 13, 1987, up to 6 billion Btu equivalent of gas per day on behalf of South Georgia acting as agent for Engelhard under the terms and conditions set forth in a transportation agreement between Southern and South Georgia dated March 13, 1986 (Southern agreement). It is stated that pursuant to a transportation agreement between Engelhard and South Georgia dated March 11, 1986 (South Georgia agreement), South Georgia agreed to transport Engelhard's gas and to act as agent in arranging for the transportation of the gas through Southern's pipeline system. Applicants indicate that the orders authorize Southern to receive gas for transportation at the various existing points of delivery on Southern's contiguous pipeline system specified in Exhibit A to the Southern agreement and redeliver it to South Georgia at the interconnection of Applicant's facilities located in Lee County, Alabama. It is further indicated that the South Georgia agreement provides that South Georgia would redeliver the gas to Engelhard at the Engelhard Meter Station located at mile post 2.215 on South Georgia's Line No. 17 in Decatur County, Georgia.

It is stated that Engelhard has recently informed Applicants that its natural gas requirements at its plant in Attapulgus, Georgia, exceed the existing transportation quantity set forth in the Southern and South Georgia agreements and authorized by the Commission and that because of this increased need, Engelhard has arranged to obtain additional supplies of natural gas. Applicants state that in order to provide transportation of these additional sources of gas, Applicants have entered into an amendment to the Southern agreement dated December 2, 1986, and Engelhard and South Georgia have entered into an amendment to the South Georgia agreement dated December 2, 1986, whereunder, subject to the receipt of all necessary governmental authorizations, the transportation quantity of 6 billion Btu equivalent of gas per day would be increased to 10 billion Btu equivalent of natural gas per day. Applicants therefore request that the Commission amend the certificate authorization granted June 13, 1986, in Docket No. CP86-401-000, as amended, to authorize Applicants to transport up to 10 billion Btu equivalent per day in accordance with the terms and conditions of the Southern and South Georgia amendments. It is stated that all other aspects of the original authorized service would remain the same.

Comment date: April 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**7. United Gas Pipe Line Company**

[Docket No. CP87-244-000]

March 31, 1987.

Take notice that on March 11, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-244-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service and related facilities located in Wharton County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to abandon deliveries and 1.43 miles of 4-inch pipeline and appurtenant facilities which were originally installed to serve Bay Prairie Aggregate Corporation (Bay Prairie) in Wharton County, Texas. United states that Bay Prairie, after having become delinquent in its payments to United, went bankrupt and its plant was dismantled. United states, however, that its metering facilities remain in place, locked on location. United further states that deliveries of direct sale gas were last made by United to Bay Prairie on September 10, 1975.

United explains that on April 8, 1986, the current land owners of the property across which a portion of United's 4-inch pipeline had been laid, entered into a settlement at which time United agreed to abandon in place the portion of pipeline located on the landowners' properties which will be deemed sold, transferred and conveyed to the landowner who has agreed to accept all benefits and burdens attendant thereto. United states that it does, however, intend to salvage the metering facilities. United estimates the cost of removal of such facilities would be $4,690 with a salvage value of $1,400.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**8. Phillips Gas Pipeline Company**

[Docket No. CP87-248-000]

March 31, 1987.

Take notice that on March 12, 1987, Phillips Gas Pipeline Company (Phillips Gas) 800-A Plaza Office Building, Bartlesville, Oklahoma 74004, filed in Docket No. CP87-248-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing Phillips Gas to transport natural gas on behalf of others pursuant to Order No. 436, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Phillips Gas indicates that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Phillips Gas states that it accepts and would comply with the conditions in paragraph (c) of Section 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations. Phillips Gas states that it filed on March 2, 1987, in Docket No. RP87-47-000 its FERC Gas Tariff, Original Volume No. 1 which includes maximum and minimum rates for firm and interruptible service for purposes of section 311 of the Natural

---

the prevalent height of the buildings of three stories or less.

BEST COPY AVAILABLE

Gas Policy Act and Subpart B of Part 284 of the Commission's Regulations.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**9. Southern Natural Gas Company**

[Docket No. CP87-241-000]

March 31, 1987.

Take notice that on March 10, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-241-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment authorization, authorizing the transportation of natural gas on behalf of the City of Warner Robins, Georgia (Warner Robins), acting as agent for the transportation of natural supplies for Anchor Glass Container Corporation (Anchor Glass), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it has been advised that Anchor Glass has entered into gas sales contracts to purchase natural gas from Arco Oil and Gas Company, Amoco Production Company and SNG Trading Inc., (Sellers) in order to serve the natural gas requirements of its plant in Warner Robins, Georgia. In order to effectuate delivery of the gas purchased, Anchor Glass has entered into an agreement with Warner Robins, wherein Warner Robins has agreed to transport through its facilities the gas purchased by Anchor Glass to its plant, and in conjunction therewith, to obtain as agent for Anchor Glass the transportation of said gas through Southern's pipeline system, it is stated.

Southern proposes to transport on an interruptible basis up to 5 billion Btu equivalent of gas per day purchased by Anchor Glass. Southern states that the term of the proposed limited-term certificate would expire on October 31, 1988.

It is stated that Warner Robins would cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system as specified in Exhibit F to the Application. Southern would redeliver to Warner Robins in Twiggs County, Georgia, an equivalent quantity of gas less 3.25 percent of such amount which would be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Warner Robins' pro-rata share of any gas delivered for Warner Robins' account which would be lost or vented for any reason, it is stated.

Southern states that Warner Robins has agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Warner Robins under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Warner Robins do not exceed the daily contract demand, the transportation rate would be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Warner Robins under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Warner Robins exceed the daily contract demand of Warner Robins, the transportation rate for the excess volumes would be 77.6 cents per MMBtu.

Southern would collect from Warner Robins the GRI surcharge of 1.52 cents per Mcf, or such other GRI funding unit or surcharge as hereafter prescribed by the Commission or any other governmental authority, it is stated.

Southern states that the transportation arrangement would enable Anchor Glass to diversify its natural gas supply sources and to obtain gas at competitive prices. It is further stated that Southern would obtain take-or-pay relief gas that Anchor Glass may obtain from its suppliers.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**10. Southern Natural Gas Company**

[Docket No. CP87-242-000]

March 31, 1987.

Take notice that on March 10, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-242-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment authorization, authorizing it to transport gas on behalf of the Jasper Utilities Board (Jasper), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 5.5 billion Btu equivalent of gas per day purchased by Jasper from SNG Trading Inc., and Texican Natural Gas Company. Southern states that the term of the proposed limited-term certificate would expire on October 31, 1988.

It is stated that Jasper would cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system as specified in Exhibit A to the agreement between Jasper and Southern dated February 18, 1987. It is stated that Southern would redeliver to Jasper in Walker County, Alabama, an equivalent quantity of gas less 3.25 percent of such amount which would be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Jasper's pro-rata share of any gas delivered for Jasper's account which would be lost or vented for any reason.

Southern states that Jasper has agreed to pay Southern each month a transportation rate of 64.9 cents per MMBtu of gas redelivered by Southern. Southern would collect from Jasper the GRI surcharge of 1.52 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed by the Commission or any other governmental authority, it is stated.

Southern states that the transportation arrangement would enable Jasper to diversify its natural gas supply sources and to obtain gas at competitive prices. It is further stated that Southern would obtain take-or-pay relief gas that Jasper may obtain from its suppliers.

Comment date: April 21, 1986, in accordance with Standard Paragraph F at the end of this notice.

**11. Southern Natural Gas Company**

[Docket No. CP87-245-000]

March 31, 1987.

Take notice that on March 11, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-245-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment authorization, authorizing it to transport gas on behalf of the DeKalb-Cherokee Counties Natural Gas District (DeKalb-Cherokee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 5.6 billion Btu equivalent of gas per day purchased by

DeKalb-Cherokee from SNG Trading Inc. and Tucker Operating Company. Southern states that the term of the proposed limited-term certificate would expire on October 31, 1988.

It is stated that DeKalb-Cherokee would cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system as specified in Exhibit A to the Agreement. Southern would redeliver to DeKalb-Cherokee's meter station located in Etowah County, Alabama, an equivalent quantity of gas less 3.25 percent of such amount which would be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less DeKalb-Cherokee's pro-rata share of any gas delivered for DeKalb-Cherokee's account which would be lost or vented for any reason, it is stated.

Southern states that DeKalb-Cherokee has agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to DeKalb-Cherokee under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to DeKalb-Cherokee do not exceed the daily contract demand of DeKalb-Cherokee, the transportation rate would be 39.9 cents MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to DeKalb-Cherokee under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to DeKalb-Cherokee exceed the daily contract demand of DeKalb-Cherokee, the transportation rate for the excess volumes would be 64.9 cents per MMBtu.

Southern would collect from DeKalb-Cherokee the GRI surcharge of 1.52 cents per Mcf, or such other GRI funding unit or surcharge as hereafter prescribed by the Commission or any other governmental authority, it is stated.

Southern states that the transportation arrangement would enable DeKalb-Cherokee to diversify its natural gas supply sources and to obtain gas at competitive prices. It is further stated that Southern would obtain take-or-pay relief gas the DeKalb-Cherokee may obtain from its suppliers.

Comment date: April 21, 1986, in accordance with Standard Paragraph F at the end of this notice.

**12. Southern Natural Gas Company**

[Docket No. CP87-246-000]

March 31, 1987.

Take notice that on March 11, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-246-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment authorizing Southern to transport natural gas on behalf of Atlanta Gas Light Company (Atlanta), acting as agent in arranging for the transportation of natural gas supplies for The Briggs Plumbingware, Inc., a Division of J.P. Industries (Briggs), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it has been advised that Briggs has entered into a gas sales contract to purchase natural gas from Entrade Corporation (Entrade) in order to serve the natural gas requirements of its plant in Atlanta, Georgia. In order to effectuate delivery of the gas purchased, Briggs has entered into an agreement with Atlanta wherein Atlanta has agreed to transport through its facilities the gas purchased by Briggs to its plant, and in conjunction therewith, to obtain as agent for Briggs the transportation of said gas through Southern's pipeline system.

Southern proposes to transport on an interruptible basis up to .325 billion Btu equivalent of gas per day purchased by Briggs. Southern states that the term of the limited-term certificate would expire on October 31, 1988.

It is stated that Atlanta would cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system as specified in Exhibit F to the Application. Southern would redeliver to Atlanta at the Atlanta Area Delivery Point an equivalent quantity of gas less 3.25 percent of such amount which would be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Atlanta's pro-rata share of any gas delivered for Atlanta's account which would be lost or vented for any reason, it is stated.

Southern states that Atlanta has agreed to pay Southern each month the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate would be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes would be 77.6 cents per MMBtu.

Southern would collect from Atlanta the GRI surcharge of 1.52 cents per Mcf, or such other GRI funding unit or surcharge as hereafter prescribed by the Commission or any other governmental authority, it is stated.

Southern states that the transportation arrangement would enable Briggs to diversify its natural gas supply sources and to obtain gas at competitive prices. It is further stated that, Southern would obtain take-or-pay relief gas that Briggs may obtain from its suppliers.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**13. United Gas Pipe Line Company**

[Docket No. CP87-244-000]

March 31, 1987.

Take notice that on March 11, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-244-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service and related facilities located in Wharton County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to abandon deliveries and 1.43 miles of 4-inch pipeline and appurtenant facilities which were originally installed to serve Bay Prairie Aggregate Corporation (Bay Prairie) in Wharton County, Texas. United states that Bay Prairie, after having become delinquent in its payments to United, went bankrupt and its plant was dismantled. United states, however, that its metering facilities remain in place, locked on location. United further states that deliveries of

direct sale gas were last made by United to Bay Prairie on September 10, 1975.

United explains that on April 8, 1986, the current landowners of the property across which a portion of United's 4-inch pipeline had been laid, entered into a settlement at which time United agreed to abandon in place the portion of pipeline located on the landowners' properties which will be deemed sold, transferred and conveyed to the landowner who has agreed to accept all benefits and burdens attendant thereto. United states that it does, however, intend to salvage the metering facilities. United estimates the cost of removal of such facilities would be $4,690 with a salvage value of $1,400.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7590 Filed 4-6-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. QF87-329-000]**

## Ketchikan Pulp Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 1, 1987.

On March 18, 1987, Ketchikan Pulp Company, P.O. Box 6600, Ketchikan, Alaska 99901, submitted for filing with the Federal Energy Regulatory Commission an application for certification of a facility as a qualifying cogeneration facility pursuant to §292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located near Ketchikan, Alaska. The facility consists of two power boilers, four heat recovery boilers, one single extraction condensing turbine generator, one double extraction turbine generator, and one double auto-extraction condensing single flow exhaust-turbine generator. Thermal energy recovered from the facility in the form of steam will be used for pulp process temperature control, processing and drying pulp, and for other industrial process applications. The electric power production capacity of the facility will be approximately 38 MW. The primary energy source for the facility will be red liquor, hog fuel and No. 6 fuel oil. No. 6 fuel oil will be used as a supplemental fuel.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be serve on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7657 Filed 4-6-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. QF87-300-000]**

## Red Lion Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 1, 1987.

On March 20, 1987, Red Lion Corporation (Applicant), of 4001 Main St., Vancouver, Washington 98663, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the Red Lion Hotel at 3050 Bristol Street, Costa Mesa, California. The facility will consist of two internal combustion engine-generator units. The primary energy source for the facility will be natural gas. Thermal energy recovered from the jacket cooling water and exhaust will be used for space heating, pool heating, and domestic hot water. The electric power production capacity of the facility will be 460 kilowatts. Installation of the facility was expected to begin in February 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practices and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7658 Filed 4-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-381-000 et al.]

## National Cooperative Refinery Association; Applications for Abandonment With Limited-Term Pregranted Abandonment for Three Years for Sales Under Small Producer Certificate

March 31, 1987.

The Applicant listed herein has filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service. Applicant further requests limited-term pregranted abandonment for three years to make sales for resale in interstate commerce of the released gas under its small producer certificate. Details are shown in the applications and in the attached tabulation.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, persons desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

| Docket No. and date filed | Applicant | Purchaser and Location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-381-000, B, Mar. 17, 1987. | National Cooperative Refinery Association, 1775 Sherman Street, Suite 3000, Denver, Colorado 80203. | El Paso Natural Gas Company, Section 16-T33N-R9W Ignacio Blanco Field, La Plata County, Colorado. | ([1] [2]). | |
| CI87-382-000, B, Mar. 17, 1987. | .....do..... | .....do..... | ([1] [3]). | |

[1] Applicant, a small producer certificate holder in Docket No. CS69-32, is filing to abandon sales to El Paso. By letter agreement dated February 1, 1987, El Paso and Applicant have permanently released on another from further obligations under the contract.

In support of its application Applicant states that El Paso has reduced its takes of gas such that production from the wells has been shut-in since the first week in February 1987. The well produces NGPA section 104 gas. The last effective rate was $1.242 per MMBtu. Applicant proposes to offer this gas to alternate buyers in the spot market.

Applicant also requests pregranted abandonment for a period of three years for sales under its small producer certificate.

[2] Involves an October 28, 1955, contract which covers the sale of gas to El Paso from the So. Ute #2-16 Well in the SW/4 of Section 16. The production capability is 70 Mcf/d.

[3] Involves an January 18, 1956, contract which covers the sale of gas to El Paso from the So. Ute #3-16 Well in the SE/4 of Section 16 and the So. Ute #4-16 in the NW/4 of Section 16. The production capability is 450 Mcf/d.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 87-7656 Filed 4-6-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket Nos. G-9262-004, G-18615-000, CP64-249-000, CP65-284-000]

## Florida Gas Transmission Co.; Further Notice of Petition To Amend

April 1, 1987.

Take notice that on February 17, 1987, Florida Gas Transmission Company (Petitioner), P.O. Box 1188, Houston, Texas, 77251-1188 Filed in Docket Nos. G-9262-004, G-18615-000, CP64-249-000, CP65-284-000 a petition to amend the Commission's order issued in Docket Nos. G-9262, as amended, G-18615, CP64-294, and CP65-284 so as to authorize the delivery of all or part of the current daily demand for gas of certain direct sales customers that use the gas for the generation of electricity to the plants of other direct sales customers that use the gas for the generation of electricity, and to declare that certain aspects of the proposed transaction are not subject to the Commission's jurisdiction under the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commision and open to public inspection.

Petitioner explains that it is currently making direct sales of natural gas to Fort Pierce Utilities Authority, the City of Gainesville, the City of Homestead, Kissimmee Utility Authority, the City of Lakeland, Orlando Utilities Commission, Sebring Utilities Commission, the City of Starke, the City of Tallahassee and the City of Vero Beach (Gas Users) under the direct sales contracts all dated January 1, 1986. Petitioner states that the transportation service necessary to permit the direct sales to the Gas Users and to Florida Power Corporation was authorized in the captioned dockets. By this petition to amend, Petitioner requests authority to deliver gas for the account of any of the Gas Users, including Florida Power Corporation, to any of the alternative delivery points identified in Appendix A to this notice.

Petitioner states further that the Gas Users would retain title to all gas delivered for the account of the Gas Users and that all gas so delivery would be used to generate electricity for the Gas Users. Petitioner alleges that the proposed change in service would permit the Gas Users to use their natural gas in the generating equipment of other utilities to achieve more economic generation of electricity, more environmentally compartible generation of electricity and/or better conservation of energy than they would achieve by

using natural gas in their generating equipment.

Based upon representations by each of the Gas Users that the title to all gas delivered to the alternative delivery points would remain with those Gas Users and that all such gas so delivered would be used to generate electric power for the Gas User's customers, Petitioner further requests a declaration by the Commission that the deliveries for the account of the Gas Users for use in the facilities of another customer would not cause the sale by Petitioner to the Gas Users to be considered as a sale for resale under the Natural Gas Act and that Petitioner's sales rates to the direct sale customers would not be regulated by the Commission.

On March 6, 1987, Petitioner filed a statement identifying certain errors in the Notice of Petition to Amend issued on March 5, 1987, and the Petition to Amend filed on February 17, 1987. Petitioner explains that Exhibit Z–2 to the Petition to Amend and Exhibit A to the Notice of Petition to Amend, erroneously identified the Deerhaven Plant as a delivery point to the City of homestead and omitted the City of Homestead Municipal Power Plant. Petitioner states that the Deerhaven Plant is actually a second delivery point to the City of Gainesville and the delivery point for the City of Homestead is at their Municipal Power Plant. In addition, Petition has made certain grammatical changes to the footnote in Appendix A of the Notice of Petition to Amend.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 22, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426 a motion to interevene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to interevene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Acting Secretary.*

APPENDIX A—LIST OF ALTERNATIVE DELIVERY POINTS

| Customer | Alternate Delivery Points[1] |
|---|---|
| City of Gainesville | Kelly Plant, Deerhaven Plant. |
| City of Homestead | City of Homestead Municipal Power Plant. |
| City of Kissimmee | Kissimmee Municipal Generating Plant. |
| City of Lakeland | Larsen Plant, McIntosh Plant. |
| City of Starke | Starke Municipal Generating Plant. |
| City of Tallahassee | Tallahassee West Plant, St. Marks Plant. |
| City of Vero Beach | Vero Beach Municipal Power Plant. |
| Ft. Pierce Utilities Auth. | Ft. Pierce Power Plant. |
| Orlando Utilities Comm. | Highland Plant, Indian River Plant. |
| Sebring Utilities Comm. | Sebring Power Plant. |
| Florida Power Corporation. | Bartow, Turner, Avon Park, Higgins. |

[1] All of the delivery points listed are proposed to be added as delivery points for each customer listed.

[FR Doc. 87–17659 Filed 4–6–87; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[AAA–FRL–3181–7]

## EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

**AGENCY:** Environmental Protection Agency.

**ACTION:** EPA master list of debarred, suspended, or voluntarily excluded persons.

**SUMMARY:** 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recepients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

**DATE:** This short list is current as of March 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475–8025.

Dated: March 25, 1987.

**Harvey G. Pippen, Jr.,**

*Director, Grants Administration Division (PM–216).*

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

| Name and jurisdiction | File No. | Status [1] | From | To | Grounds |
|---|---|---|---|---|---|
| A.C. Lawrence Leather Company, Inc. (Danvers, MA) | 83–0007–00 | D | 04–12–84 | 04–11–87 | § 32.200(a)(c)(i). |
| A.F. Beil Electric Company, Inc. (Youngstown, OH) | 85–0014–00 | D | 06–27–85 | 06–26–88 | § 32.200(a). |
| Altman, Larry L. (Charleston, SC) | 85–0063–03 | S | 07–29–85 | OPEN | § 32.200(b). |
| American Recovery Co., Inc. (Glen Burnie, MD) | 86–0011–00 | D | 08–20–86 | 08–19–89 | § 32.200(f)(i). |
| Applied Science Distributors (Pensacola, FL) | 87–0013–00 | S | 02–05–87 | OPEN | § 32.200(a)(i). |
| Averill, Ernest Jr. (Fort Myers, FL) | 83–0066–06 | D | 12–02–83 | 10–29–88 | § 32.200(b). |
| Azzil Trucking Co., Inc. (Roslyn, NY) | 85–0008–02 | D | 09–11–86 | 09–10–89 | § 32.200(a)(b). |
| Barber, Lawrence (Hazelwood, NC) | 83–0007–05 | D | 04–12–84 | 04–11–87 | § 32.200(a)(c)(i). |
| Barnum, James Charles (Utica, MI) | 86–0010–01 | D | 12–10–85 | 12–09–88 | § 32.200(a). |
| Batzer Construction Co., Inc. (St. Cloud, MN) | 85–0052–00 | S | 03–07–86 | OPEN | § 32.300(b). |
| Batzer, Bruce (St. Cloud, MN) | 85–0052–01 | S | 03–07–86 | OPEN | § 32.300(b). |
| Batzer Robert (St. Cloud, MN) | 85–0052–02 | S | 03–07–86 | OPEN | § 32.300(b). |

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

| Name and jurisdiction | File No. | Status [1] | From | To | Grounds |
|---|---|---|---|---|---|
| Beckham, Charles (Detroit, MI) | 84-0030-02 | D | 02-24-86 | 07-30-89 | § 32.200(a)(b). |
| BECO, Inc. (HighPoint, NC) | 85-0017-01 | VE | 12-10-85 | 12-09-88 | § 32.200(a)(3). |
| Bell, Bobby (Sulphur, LA) | 85-0071-01 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b). |
| Bell, Edwin (Sulphur, LA) | 85-0071-02 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b). |
| Blackwelder, Ray Martin (Concord, NC) | 84-0011-01 | D | 06-27-85 | 06-26-88 | § 32.200(a). |
| Bowers, Darralyn (Detroit, MI) | 84-0030-01 | D | 02-24-86 | 05-11-89 | § 32.200(a)(b). |
| Boyette, Willie Eugene (Wilson, NC) | 83-0044-01 | D | 04-15-85 | 04-14-87 | § 32.200(a). |
| Bridges, William D., Jr., (Wilmington, NC) | 85-0069-01 | D | 04-09-86 | 04-08-89 | § 32.200(a). |
| Cannady, Nathaniel Ellis (Asheville, NC) | 86-0047-01 | D | 03-18-86 | 07-15-89 | § 32.200(a)(i). |
| Carson, Charles (Grosse Point Woods, MI) | 85-0066-00 | D | 03-18-86 | 04-25-89 | § 32.200(b). |
| Carson, E. Eugene Statesville, NC) | 85-0004-01 | D | 01-06-86 | 01-05-89 | § 32.200(a). |
| City Chemicals Company, Inc. (Orlando, FL) | 86-0038-02 | D | 10-02-86 | 11-23-89 | § 32.200(a)(1). |
| City Environmental Services, Inc. (Orlando, FL) | 86-0038-03 | D | 10-02-86 | 11-23-89 | § 32.200(a)(1). |
| City Fuel Oil Company (Orlando, FL) | 86-0038-05 | D | 10-02-86 | 11-23-89 | § 32.200(a)(1). |
| City Industries, Inc. (Orlando, FL) | 86-0038-01 | D | 10-02-86 | 11-23-89 | § 32.200(a)(1). |
| Commonwealth Companies Incorporated (Lincoln, NE) | 86-0100-01 | S | 11-12-86 | OPEN | § 32.200(a)(1). |
| Commonwealth Electric Company Inc. (Lincoln, NE) | 86-0100-00 | S | 09-09-86 | OPEN | § 32.300(b). |
| Crane Creek Asphalt, Inc. (Owatonna, MN) | 86-0024-00 | VE | 09-04-86 | 09-03-87 | § 32.200(i). |
| Croft, William A. (Madison, WI) | 83-0047-00 | D | 08-20-84 | 08-19-87 | § 32.200(a). |
| Crossgrove, Richard (Pensacola, FL) | 87-0013-01 | S | 02-05-87 | OPEN | § 32.200(a)(i). |
| Cryer, John P. (Baton Rouge, LA) | 85-0062-03 | S | 07-29-85 | OPEN | § 32.300(b). |
| Cummins Construction Company, Inc. (Enid, OK) | 86-0069-00 | S | 09-08-86 | OPEN | § 32.300(b) |
| Cusenza, Sam (Ypsilanti, MI) | 85-0024-02 | D | 02-24-86 | 04-02-89 | § 32.200(a)(b). |
| Cuti, Vincent J., Jr. (Huntington, NY) | 83-0040-03 | D | 04-30-85 | 04-29-88 | § 32.200(a). |
| Dellinger, Theodore C. (Monroe, NC) | 84-0012-01 | VE | 03-12-85 | 03-11-88 | § 32.200(a). |
| Denson, David A. (Wilmington, NC) | 86-0043-01 | D | 01-12-87 | 01-11-88 | § 32.200(a). |
| Dobson, Arthur A. (Lincoln, NE) | 83-0030-01 | D | 08-30-85 | 04-18-87 | § 32.200(i). |
| Domanski, Gary Henry (Utica, MI) | 86-0010-02 | D | 12-10-85 | 12-09-88 | § 32.200(a). |
| Driscoll, John William (Dundale, MD) | 86-0011-02 | D | 10-15-86 | 10-14-89 | § 32.200(f)(i). |
| Dykes, Lamar D. (Nederland, TX) | 85-0071-03 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b). |
| Enmanco (Utica, MI) | 86-0010-00 | D | 12-10-85 | 12-09-88 | § 32.200(a). |
| Environmental Management Corporation (Utica, MI) | 86-0010-00 | D | 12-10-85 | 12-09-88 | § 32.200(a). |
| Environmental Technology of America, Inc. (Wilbraham, MA) | 86-0071-00 | D | 02-05-87 | 02-04-90 | § 32.200(a). |
| Fields, Leroy (Pensacola, FL) | 87-0013-02 | S | 02-05-87 | OPEN | § 32.200(a). |
| Fischback & Moore, Inc. (Dallas, TX) | 84-0023-00 | D | 01-15-86 | 10-19-87 | § 32.200(a). |
| Floyd D. Stuckey & Associate (Winfield, KS) | 84-0028-00 | D | 08-26-85 | 08-25-88 | § 32.200(a). |
| Foley, Bancroft T. (Washington, DC) | 86-0004-03 | D | 03-07-86 | 03-06-89 | § 32.200(a). |
| Franklin Wiring Co. (Youngstown, OH) | 85-0044-00 | D | 09-04-85 | 09-03-88 | § 32.200(a)(3). |
| FSA Engineenng Consultants (Winfield, KS) | 84-0028-00 | D | 08-26-85 | 08-25-88 | § 32.200(a). |
| Geuther, Herbert G. (Philadelphia,PA) | 86-0004-04 | D | 03-07-86 | 03-06-89 | § 32.200(a). |
| Goodspeed, Robert (North Hampton, NH) | 83-0007-02 | D | 04-12-84 | 04-11-87 | § 32.200(c)(i). |
| Graves, George William (Wilmington, NC) | 85-0069-02 | D | 03-05-86 | 03-04-89 | § 32.200(a). |
| Greer, Arthur (Maitland, FL) | 86-0038-00 | D | 10-02-86 | 11-23-89 | § 32.200. |
| Gross, William R. (Big Springs, TX) | 86-0002-01 | D | 10-06-86 | 10-05-89 | § 32.200(a). |
| Hansen, Leonard A. (St. Peter, MN) | 85-0019-02 | D | 09-26-85 | 09-25-88 | § 32.200(a)(3). |
| Herring, Donald W. (Wilson, NC) | 83-0044-01 | D | 10-11-84 | 10-10-87 | § 32.200(a). |
| Hi-Way Surfacing, Inc. (Marshall, MN) | 85-0053-00 | D | 12-17-85 | 12-16-88 | § 32.200(a)(3). |
| Hochreiter, Herbert (Roslyn, NY) | 85-0008-01 | D | 09-11-86 | 09-10-89 | § 32.200(a)(b). |
| Hodges Electric Company (Wilmington, NC) | 85-0070-00 | D | 04-04-86 | 04-03-89 | § 32.200(a). |
| Hopper, Thomas G. (Bedford, MA) | 86-0095-03 | S | 06-24-86 | OPEN | § 32.300(b). |
| Howard P. Foley, Company (Washington, DC) | 86-0004-00 | D | 03-07-86 | 03-06-89 | § 32.200(a). |
| Hugo Schulz, Inc. (Lakefield, MN) | 85-0047-00 | D | 05-01-86 | 04-30-89 | § 32.200(a). |
| Insulation Speciality and Supply, Inc. (Cleveland, OH) | 84-0025-00 | D | 10-04-84 | 10-03-87 | § 32.200(c)(i). |
| J.A. LaPorte, Inc. (Arlington, VA) | 86-0037-00 | D | 08-29-86 | 08-28-89 | § 32.200(a)(3). |
| Jerlow, John A. (Lakefield, MN) | 85-0047-02 | D | 05-01-86 | 04-30-89 | § 32.200(a). |
| Jerpbak, Daniel R. (Owatonna, MN) | 86-0024-01 | D | 09-25-86 | 09-24-89 | § 32.200(i). |
| Johnson, C. Theodore (Indianapolis, IN) | 84-0023-04 | D | 03-04-86 | 03-03-89 | § 32.200(a)(f). |
| Johnson, Richard (Hinsdale, NH) | 83-0007-03 | D | 04-12-84 | 04-11-87 | § 32.200(c)(i). |
| Jopel Contracting & Trucking Corporation (Bronx, NY) | 85-0022-00 | S | 07-30-85 | OPEN | § 32.300(b). |
| Komatz Construction Co., Inc. (St. Peter, MN) | 85-0019-00 | D | 09-26-85 | 09-25-88 | § 32.200(a)(3). |
| Komatz, Thomas P. (St. Peter, MN) | 85-0019-01 | D | 09-26-85 | 09-25-88 | § 32.200(a)(3). |
| Krueger, Joseph (Cleveland, OH) | 84-0025-01 | D | 10-04-84 | 10-03-87 | § 32.200(c)(i). |
| Kruse, Lloyd C. (Lakefield, MN) | 85-0047-01 | D | 05-01-86 | 04-30-89 | § 32.200(a). |
| L&J Waste Service, Inc. (Hialeah, FL) | 85-0079-02 | D | 12-19-86 | 12-18-89 | § 32.200(a)(i). |
| Laney, Stuart D., Jr. (Wilmington, NC) | 87-0039-00 | D | 01-12-87 | 07-11-87 | § 32.200(a). |
| Law, David P. (Greenwell Springs, LA) | 85-0064-00 | S | 07-29-85 | OPEN | § 32.300(b). |
| Law, Theresa McBeth (Greenwell Springs, LA | 85-0064-01 | S | 07-29-85 | OPEN | § 32.300(b). |
| Lee, Herbert P., III. (Sumter, SC) | 84-0013-01 | VE | 02-14-85 | 12-31-87 | § 32.200(a). |
| Lench, Frank P. (Lafayette, CA) | 86-0004-01 | D | 03-07-86 | 03-06-89 | § 32.200(a). |
| Leyendecker Highway Contractors, Inc. (Laredo, TX) | 86-0014-00 | D | 07-17-86 | 03-25-88 | § 32.200(a). |

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

| Name and jurisdiction | File No. | Status [1] | From | To | Grounds |
|---|---|---|---|---|---|
| Lizza Industries, Inc. (Roslyn, NY) | 85-0008-00 | D | 09-11-86 | 09-10-89 | § 32.200(a)(b). |
| Lofgren, Sven (Lincoln, NE) | 87-0014-01 | S | 11-12-86 | OPEN | § 32.200(i). |
| Marshall, Weymouth (Gloucester, MA) | 83-0007-01 | D | 04-12-84 | 04-11-87 | § 32.200(c)(i). |
| Masselli, William P. (Bronx, NY) | 85-0022-02 | S | 07-30-85 | OPEN | § 32.300(b). |
| McDowell Contractors, Inc. (Nashville, TN) | 84-0014-00 | VE | 12-23-85 | 12-22-88 | § 32.200(a). |
| McGonagle, Joseph D. (Everett, MA) | 86-0041-01 | VE | 11-17-86 | 11-16-87 | § 32.200(a). |
| Midhampton Asphalt (Roslyn, NY) | 85-0008-03 | D | 09-11-86 | 09-10-89 | § 32.200(a)(b). |
| Modern Electric Co. (Statesville, NC) | 85-0004-00 | D | 01-06-86 | 01-05-89 | § 32.200(a). |
| Moore, Gray E. (Jr.) (Greenwood, SC) | 86-0108-00 | D | 08-19-86 | 08-18-89 | § 32.200. |
| Moorehead, Dennis, L. (Graniteville, SC) | 84-0006-01 | D | 01-11-85 | 01-10-88 | § 32.200(a). |
| Moorse, Lawrence (Marshall, MN) | 85-0053-01 | D | 12-17-85 | 12-16-88 | § 32.200(a)(3). |
| Mystic Bituminous Products Company, Inc. (Everett, MA) | 86-0041-00 | VE | 11-17-86 | 11-16-87 | § 32.200(a). |
| Neal, George D. (Hamden, CT) | 86-0040-01 | VE | 01-09-87 | 01-08-88 | § 32.200(a). |
| Newt Solomon, Inc. (Nashville, TN) | 85-0058-00 | D | 10-10-85 | 10-09-88 | § 32.200(e)(i). |
| Ownes, Jerry B. (Southfield, MI) | 85-0065-00 | D | 02-24-86 | 03-26-89 | § 32.200(b). |
| Pinney, J.A. Bruce (Bala Cynwyd, PA) | 84-0023-06 | D | 01-15-86 | 03-03-89 | § 32.200(a)(f). |
| Pipeline Renovation Service, Inc. (Tacoma, WA) | 86-0078-00 | D | 07-02-86 | 08-07-89 | § 32.200(c)(i). |
| Regenscheid, Charles E. (St. Peter, MN) | 85-0019-03 | VE | 12-19-85 | 12-18-87 | § 32.200(a)(3). |
| Resource Conservation & Recovery of America, Inc. (Orlando, FL). | 86-0038-04 | D | 10-02-86 | 11-23-89 | § 32.200(a)(i). |
| Rio Grande Construction Company (Bunkie, LA) | 85-0063-00 | S | 07-29-85 | OPEN | § 32.300(b). |
| Rogers, Joseph J. (Pittsburgh, PA) | 86-0004-02 | D | 03-07-86 | 03-06-89 | § 32.200(a). |
| Rol-Away Systems, Inc. (Hollywood, FL) | 85-0079-00 | D | 12-19-86 | 12-18-89 | § 32.200(a)(i). |
| Rothrock Construction, Inc. (Murrells Inlet, NC) | 83-0064-00 | D | 05-17-84 | 05-16-87 | § 32.200(a). |
| Rothrock, Steve D. (Murrells Inlet, NC) | 83-0064-01 | D | 05-18-84 | 05-17-87 | § 32.200(a). |
| Rupp Construction Company, Inc. (Slayton, MN) | 85-0048-00 | D | 07-17-86 | 07-16-89 | § 32.200(a). |
| Rupp, Douglas (Slayton, MN) | 85-0048-01 | D | 07-17-86 | 07-16-89 | § 32.200(a). |
| Sarandos, Constantino (Gus) (Tacoma, WA) | 86-0078-02 | D | 07-02-86 | 08-07-89 | § 32.200(c)(i). |
| Sarandos, Dolores K. (Tacoma, WA) | 86-0078-01 | D | 07-02-86 | 08-07-89 | § 32.200(c)(i). |
| Sarandos, George (Tacoma, WA) | 86-0078-03 | D | 07-02-86 | 08-07-89 | § 32.200(c)(i). |
| Saunders, George F. (High Point, NC) | 85-0017-02 | VE | 12-10-85 | 12-09-88 | § 32.200(a)(3). |
| Sauseda, Roy (Bunkie, LA) | 85-0063-02 | D | 07-29-85 | 10-13-89 | § 32.200(a)(i). |
| Schorr, Paul C. (III) (Lincoln, NE) | 87-0014-00 | S | 11-12-86 | OPEN | § 32.200(i). |
| Seale, Leonard M. (Bedford, MA) | 86-0095-02 | S | 06-24-86 | OPEN | § 32.300(b). |
| Seymour Sealing Service, Inc. (Hamden, CT) | 86-0040-00 | VE | 01-09-87 | 01-08-88 | § 32.200(a). |
| Smith, Norman F. (Wilbraham, FL) | 86-0071-01 | D | 02-05-87 | 02-04-90 | § 32.200(a). |
| Smith, Paul F. (Lakefield, MN) | 85-0047-03 | D | 05-01-86 | 04-30-89 | § 32.200(a). |
| Solomon, Newt (Nashville, TN) | 85-0058-01 | D | 10-07-85 | 10-06-88 | § 32.200(e)(i). |
| Stone, Francis, (Swanzey, HM) | 83-0007-04 | D | 04-12-84 | 04-11-87 | § 32.200(a)(c)(i). |
| Stuckey, Floyd D. (Winfield, KS) | 84-0028-01 | D | 08-26-85 | 08-26-88 | § 32.200(a). |
| Tallini, Robert (Atlanta, GA) | 86-0046-00 | D | 02-26-87 | 08-25-87 | § 32.200(i). |
| Tow Brothers Const., Company (Fairmont, MN) | 85-0054-00 | D | 01-22-86 | 01-21-89 | § 32.200(a). |
| Tow, James (Fairmont, MN) | 85-0054-01 | D | 01-22-86 | 01-21-89 | § 32.200(a). |
| Toy, Daniel Lee (Utica, MI) | 86-0010-03 | D | 12-10-85 | 12-09-88 | § 32.200(a). |
| Tubre Enterprises (Bunkie, LA) | 85-0062-01 | S | 07-29-85 | OPEN | § 32.300(b). |
| Turbe Enterprises, Inc. (Bunkie, LA) | 85-0062-00 | S | 07-29-85 | OPEN | § 32.300(b). |
| Tubre, Charles (Baton Rouge, LA) | 85-0062-02 | S | 07-29-85 | OPEN | § 32.300(b). |
| Tubre, Thomas, (Bunkie, LA) | 85-0063-01 | S | 07-29-85 | OPEN | § 33.200(a). |
| Tucker Brothers Contracting Co. (Pell City, AL) | 83-0061-00 | D | 11-26-84 | 11-25-87 | § 32.200(a). |
| Tucker, Harold Ray (Pell City, AL) | 83-0061-02 | D | 11-26-84 | 11-25-87 | § 32.200(a). |
| Tucker, Kenneth W. (Pell City, AL) | 83-0061-01 | D | 11-26-84 | 11-25-87 | § 32.200(a). |
| Twedell, David Bruce (Gainesville, FL) | 83-0020-01 | D | 08-30-85 | 08-29-87 | § 32.200(a). |
| Universal Engineering & Supply, Inc. (Sulphur, LA) | 85-0071-00 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b). |
| Universal Engineering (Sulphur, LA) | 85-0071-05 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b). |
| Universal Wheels, Inc. (Sulphur, LA) | 85-0071-06 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b). |
| Valentini, Joseph (Ypsilanti, MI) | 85-0024-01 | D | 02-24-86 | 04-02-89 | § 32.200(a)(b). |
| W.V. Pangborne & Co., Inc. (Bala Cynwyd, PA) | 84-0023-05 | D | 01-15-86 | 10-19-87 | § 32.200(a)(f). |
| Watson Electrical Construction Co. (Wilson, NC) | 86-0109-00 | D | 12-19-86 | 12-18-89 | § 32.200(i). |
| Watson-Flagg Electric, Co., Inc. (Indianapolis, IN) | 84-0023-03 | D | 04-28-86 | 10-19-87 | § 32.200(a). |
| Williams, G. Marvin (Asheville, NC) | 86-0047-02 | D | 03-18-86 | 07-15-89 | § 32.200(i). |
| Wolverine Disposal, Inc. (Ypsilanti, MI) | 85-0024-00 | D | 02-24-86 | 04-02-89 | § 32.200(a)(b). |
| Young, Frank Paul (Sr.) (Glen Burnie, MD) | 86-0011-01 | D | 08-20-86 | 08-19-89 | § 32.200(f)(i). |

[1] D = Debarred, S = Suspended; VE = Voluntarily Excluded.

[FR Doc. 87-7625 Filed 4-6-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3181-9]

## Grant Applications for Hazardous Waste Treatment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Availability.

**SUMMARY:** A Request for Applications (RFA), RFA #NPIR-001-87 is available. The purpose of the request is to solicit grant proposals which will result in the development of innovative, cost-effective methods for the treatment of hazardous wastes in situ. The Agency expects to fund 5 to 10 proposals for two years at a total cost of $1 million per year.

[Section 209, Superfund Amendments and Reauthorization Act 1986]

**DATES:** Applications must be received no later than June 1, 1987 to be considered for funding.

**ADDRESS:** Copies of the RFA may be obtained from: U.S. Environmental Protection Agency, ORD Publications, 26 West St. Clair Street, Cincinnati, Ohio 45268, (513) 569-7562.

**FOR FURTHER INFORMATION:** Questions relating to the RFA may be directed to Mr. Donald Carey at: U.S. Environmental Protection Agency, Research Grants Staff (RD-675), 401 M Street, Southwest, Washington, DC 20460, (202) 382-7445.

Dated: April 1, 1987.

**Donald F. Carey,**

*Science Review Administrator for Environmental Engineering.*

[FR Doc. 87-7623 Filed 4-6-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3181-8]

## Grant Applications for Tropospheric Trace Species

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Availability.

**SUMMARY:** A Request for Applications (RFA), RFA-PC-03-87 is available. The request is for grant applications to conduct research on the sources, sinks and chemistry of tropospheric trace species, with half-lives of days to months, which can directly or indirectly affect the global radiation balance which in turn effects global climate. The Agency expects to spend $800,000 per year for three years to support six to ten projects.

[Section 103 of the Clean Air Act as amended].

**DATES:** Applications must be received no later than June 25, 1987.

**ADDRESS:** Copies of the RFA may be obtained from: U.S. Environmental Protection Agency, ORD Publications, 26 West St. Clair Street, Cincinnati, Ohio 45268, (513) 513-7562.

**FOR FURTHER INFORMATION:** Questions relating to the RFA may be directed to Dr. Louis Swaby at: U.S. Environmental Protection Agency, Research Grants Staff (RD-675), 401 M Street, Southwest, Washington, DC 20460, (202) 382-7445.

Dated: April 1, 1987.

**Louis B. Swaby,**

*Science Review Administrator for Environmental Chemistry & Physics.*

[FR Doc. 87-7624 Filed 4-6-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-6801 3A; FRL-3182-5]

## Denial of Hearing Concerning Application To Modify the Final Suspension Order for Pesticide Products Containing Dinoseb

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of hearing under Subpart D of 40 CFR Part 164.

**SUMMARY:** On January 20 and January 29, 1987, the Agency received evidentiary submissions from the American Frozen Food Institute (AFFI) in support of its request that the final order suspending all use of pesticide products containing dinoseb be modified to permit use of dinoseb on green peas, snap beans, and lima beans. Similar petitions were subsequently received from the Northwest Food Processors Association (NWFPA), the Oregonians for Food and Shelter (OFS), and the National Food Processors Association (NFPA). These petitions together with supporting applications submitted by the states of Oregon, Washington and Idaho under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are being treated as petitions under Subpart D of 40 CFR Part 164 to reconsider the final suspension order concerning dinoseb products. This Notice announces that EPA has decided to deny the petitions and has declined to hold a hearing because the petitions did not meet the standard for triggering a proceeding under Subpart D of 40 CFR Part 164.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Michael McDavit, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1014A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) (557-1787).

**SUPPLEMENTARY INFORMATION:**

### I. Procedural History

On October 7, 1986, I issued a decision and emergency suspension order immediately prohibiting all further sale, distribution, and use of pesticide products containing dinoseb (2-sec-butyl-4,6-dinitrophenol) in the United States. (51 FR 36634; October 14, 1986). My decision to issue that order was based on my determination that applicators and other populations with substantial dinoseb exposure would otherwise be at significant risk for teratogenic and other adverse health effects. The information and analysis upon which that determination was based is set forth in detail in the text of my decision. As required by FIFRA section 6(c)(1), I issued on the same day a notice announcing the Agency's intent to cancel and deny all registrations for pesticide products containing dinoseb.

Four registrants subsequently submitted timely requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose on imminent hazard during the time required to conduct a cancellation hearing. These four registrants and two others also submitted timely requests for a cancellation hearing. All dinoseb products for which the registrants requested neither a suspension nor a cancellation hearing were subsequently cancelled by operation of law.

The expedited suspension hearing concerning dinoseb products commenced on October 20, 1986. On October 29, 1986, the FIFRA Science Advisory Panel met pursuant to FIFRA section 25(d) to consider the Agency's analysis of the impact of dinoseb use on health and the environment. On October 30, 1986, the four registrants who had requested an expedited hearing on the question of imminent hazard withdrew their hearing requests, resulting in the immediate entry pursuant to the terms of my October 7 decision of a final order suspending the regiatrations of their dinoseb products during the pendency of the cancellation hearing. On November 26, 1986, the Administrative Law Judge closed the docket in the expedited suspension hearing, thereby affirming that no valid requests for a hearing concerning the suspension of dinoseb products were still pending.

On January 20, 1987, the Agency received a petition from the AFFI requesting that the Agency rescind the suspension of dinoseb as applied to use on green peas, snap beans, and lima beans during the 1987 growing season. The AFFI petition covers the states of Washington, Oregon and New York and, by implication, other states as well. Additional material was received from AFFI on January 29. The NWFPA submitted a petition on February 11 to modify the suspension order with respect to, *inter alia*, green peas and snap beans grown in the states of Idaho, Oregon and Washington. On February 25, OFS petitioned EPA to modify the suspension order with respect to, *inter alia*, green peas and snap beans in Oregon and, by implication, other states in the Pacific Northwest. The NFPA submitted a petition on February 27 to modify the suspension order with respect to green peas, snap beans and lima beans in the states of Virginia, Maryland, Delaware, and New Jersey. On March 5 NFPA supplemented its petition to request use of dinoseb on green peas and snap beans in Pennsylvania. The states of Washington and Idaho submitted applications on February 5 and 6, respectively, for emergency exemptions under FIFRA section 18 to permit use of dinoseb products on peas. On February 13, 1987, the state of Oregon submitted an application for an emergency exemption to permit use of dinoseb products on snap beans and peas.

The AFFI, NWFPA, OFS and NFPA petitions and the supporting emergency exemption applications are being treated as petitions under Subpart D of 40 CFR Part 164. Because any direct communication with me concerning the registrability of dinoseb, except on the record of the pending cancellation hearing, would be an *ex parte* communication prohibited by 5 U.S.C. 557(D), all communications from the petitioners were directed to appropriate officials in the Office of Pesticides and Toxic Substances.

On January 20, 1987, the Agency also received evidentiary submissions from the American Dry Pea and Lentil Association requesting that the suspension order be lifted to permit use of dinoseb on dry peas, lentils, and chick peas in the states of Washington and Idaho. On February 18, 1987, EPA issued a Notice in the **Federal Register** (52 FR 4963) announcing its decision to hold a hearing concerning the application to modify the suspension order for dinoseb on products for use on dry peas, lentils and chick peas in Washington and Idaho. The Notice stated that, although the emergency exemption application submitted by the state of Washington also requested that dinoseb be approved for use on green peas as well as dry peas, the application did not include substantial new evidence concerning the green pea use beyond that available to the Agency at the time of the final suspension decision. (Note 1, 52 FR 4965).

Based on the information submitted by petitioners with respect to green peas, snap beans and lima beans, Dr. John A. Moore, EPA's Assistant Administrator for Pesticides and Toxic Substances, recommended that I deny these requests for a Subpart D proceeding. In order to comply with the separation of functions requirements set forth in 5 U.S.C. 554(d), his recommendation and the information and record underlying that recommendation were filed in the cancellation hearing record and served on each party to that proceeding at the same time they were transmitted to me for decision.

After considering the petitions and the Assistant Administrator's recommendation, I have decided to issue this notice denying the petitions to reconsider the final suspension of dinoseb as it applies to use on green peas, snap beans, and lima beans. The basis for my decision with respect to green peas and snap beans in the states of Idaho, Oregon and Washington is discussed in Part III of this notice. The petitions are being denied with respect to lima beans and for snap beans and green peas in states other than Idaho, Oregon and Washington because the Agency has not received supporting applications under section 18 of FIFRA. This denial is not meant to imply that, but for the lack of section 18 application, the subject petitions would necessarily have been granted. Other crops included in the petitions submitted to the Agency are still under review and are not covered by this notice.

## II. Subpart D Proceedings

When the Agency receives an application under section 3 or section 18 of FIFRA to permit use of pesticide in a manner inconsistent with a prior final suspension or cancellation decision, that application constitutes a petition to the Administrator to reconsider the final suspension or cancellation order. Because of the opportunity for notice and a formal adjudicatory hearing which preceeds entry of a final suspension or cancellation order concerning a pesticide product, EPA has determined that such an order should not be modified or rescinded without affording interested parties a similar notice and opportunity for hearing concerning such modification or rescission. The procedures governing all applications to modify or reverse a previous final suspension or cancellation order are set forth in Subpart D of 40 CFR Part 164, 40 CFR 164.130 through 164.133.

When all opportunities for hearing and review with respect to an Agency decision to suspend or cancel a pesticide product have either been exercised or waived, and a final suspension or cancellation order has been entered, the Agency is entitled to rely on the finality of the order and the validity of the evidentiary rationale supporting it. Applicants seeking reconsideration of a final order should not be afforded a new adjudicatory hearing concerning the same matters which were considered or could have been considered during a prior hearing. Thus, 40 CFR 164.131(a) provides that the Administrator will grant a hearing to reconsider a prior final suspension or cancellation order when he finds that:

(1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation of suspension determination, and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

In deciding whether to initiate a hearing, the Administrator does not need to determine that the evidence submitted by the petitioner would in fact justify modification of the prior order. Rather, a decision to initiate a hearing means only that the Administrator has determined that the evidence submitted, if substantiated on the record in the hearing, may "materially affect" the evidentiary rational upon which the prior order was based. On the other hand, if the evidence submitted, even if substantiated on the record, would be unlikely to provide a basis for modification of the prior order, then a hearing would serve no purpose. In that event, the Administrator issues a notice in the **Federal Register** briefly describing the basis for his determination to deny the application.

## III. Analysis of the Petitions

### *A. Risk Issues*

The petitioners have not submitted any new information that would affect the validity of the Agency's analysis of the toxicity of dinoseb or the methodology used by the Agency to

estimate exposure to dinoseb. The petitioners submitted information concerning additional use restrictions that their members would be willing to accept that in large measure are the same or similar to risk reduction measures considered by the Agency when it initiated the emergency suspension action.

Even if all of the use restrictions suggested by the petitioners were imposed, as well as some other possible use restrictions not suggested by petitioners (e.g., prohibition of aerial spraying), the risks to unborn children from dinoseb would still be of grave concern. Nor do the suggested use practices eliminate the possibility that pregnant females may be exposed to dinoseb as bystanders from spray drift or from residues on clothing or other items contaminated with dinoseb. Further, dinoseb use poses risks of male reproductive effects and acute toxicity. (51 FR 36634, 36659; October 14, 1986).

*B. Benefits Issues*

The petitions include information on the benefits of dinoseb use on green peas and snap beans. This information consists mainly of unverified, conclusory statements and testimonials. In addition, petitioners submitted some limited data developed by universities and other agricultural researchers in the states of Oregon, New York, Delaware, Maryland, New Jersey, Virginia and Pennsylvania.

The benefits claimed by petitioners are much greater than indicated by the information available to the Agency at the time of the emergency suspension action. However, the Agency's analysis of the information available at the time of suspension implied that there could initially be even greater economic impacts due to the unavailability of dinoseb for green peas, since available alternatives appeared to provide pool control of certain weeds. Further, while there was expected to be a minor impact due to the unavailability of dinoseb for snap beans, the Agency's recognition of uncertainty concerning the relative efficacy of alternatives carried with it the implication that the impacts could be more substantial. The Agency's assessment with respect to the uncertain efficacy of alternatives for the snap bean use appears to be corroborated by the AFFI submission, which shows a wide variation in the efficacy of alternatives.

For the reasons stated above, the difference in estimated benefits between the Agency's notice of October 14, 1986, and the petitioners' submissions on green peas and snap beans is not of sufficient magnitude or probative value as to amount to substantial new evidence which may materially affect the dinoseb suspension order. As noted earlier, no emergency exemptions were requested with respect to lima beans. The states requesting emergency exemptions for green peas and snap beans were in the Pacific Northwest. However, the only evidentiary data submitted for this region was a summary of row crop weed control strategies prepared by the Oregon State University Extension Service. While the Agency has reviewed the studies and data submitted with respect to the use of dinoseb in New York, Delaware, Maryland, New Jersey, Virginia and Pennsylvania, the Agency questions the relevance of these data to the use of dinoseb on green peas and snap beans in the Northwest based on anticipated differences in climatic conditions and soil types.

*C. Subpart D Determination*

Under 40 CFR 164.131(c) the Administrator is to provide a hearing to reconsider a final suspension decision only if he determines that an application under section 3 or section 18 of FIFRA "has presented substantial new evidence which may materially affect" the prior suspension order. I conclude that the AFFI, NWFPA, OFS and NFPA petitions and applications for emergency exemption presented by Washington, Idaho and Oregon on both risk and benefits issues do not constitute the presentation of "substantial new evidence" required under EPA regulations. Therefore, I have decided to deny the applications and not to hold a hearing under Subpart D to reconsider the final suspension order for pesticide products containing dinoseb as it applies to use on green peas, snap beans, and lima beans.

Dated: April 1, 1987.

**Lee M. Thomas,**

*Administrator.*

[FR Doc. 87-7735 Filed 4-6-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL RESERVE SYSTEM

### Commonwealth Bancshares Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 27, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Commonwealth Bancshares Corporation*, Williamsport, Pennsylvania; to merge with County Bancorp, Inc., Montrose, Pennsylvania, and thereby indirectly acquire County National Bank of Montrose, Montrose, Pennsylvania. Comments on this application must be received by April 22, 1987.

2. *Commonwealth Bancshares Corporation*, Willimsport, Pennsylvania; to acquire 100 percent of the voting shares of First Bank of Troy, Troy, Pennsylvania. Comments on this application must be received by April 22, 1987.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President 230 South LaSalle Street, Chicago, Illinois 60690:

1. *EMF Corporation*, Blue Grass, Iowa; to become a bank holding company by acquiring 51 percent of the voting shares of Blue Grass Savings Bank, Blue Grass, Iowa.

2. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire 100 percent of the voting shares of NBD Battle Creek National Association, Battle Creek, Michigan, a *de novo* bank.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Wyatt Bancshares, Inc.*, Calico Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Izard County, Calico Rock, Arkansas.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Cando Holding Company, Inc.*, Cando North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of The First Bank Cando, N.A., Cando, North Dakota.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *The First National Bankcshares, Inc.*, Tucumcari, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Santa Rosa, Santa Rosa, New Mexico, and The First National Bank in Tucumcari, Tucumcari, New Mexico.

Board of Governors of the Federal Reserve System, April 1, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7591 Filed 4-6-87; 8:45 am]

BILLING CODE 6210-01-M

---

### Omnibancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Omnibancorp*, Denver, Colorado; to acquire 35.4 percent of the voting shares of C.C.B., Inc., New Central Colorado Company, and Central Bancorporation, Inc., all in Denver, Colorado, and thereby indirectly acquire First National Bank in Aspen, Aspen, Colorado; Central Bank of East Aurora, N.A., Aurora, Colorado; Central Bank of Aurora, Aurora, Colorado; Central Bank of Broomfield, Broomfield, Colorado; Central Bank of Academy Boulevard, Colorado Springs, Colorado; Central Bank of Colorado Springs, Colorado Springs, Colorado; Central Bank of Garden of the Gods, N.A., Colorado Springs, Colorado, Central Bank of Chapel Hills, N.A., Colorado Springs, Colorado, First National Bank in Craig, Craig, Colorado; Central Bank of Denver, Denver, Colorado; Central Bank of North Denver, Denver, Colorado, Central Bank of Inverness, N.A., Englewood, Colorado; First National Bank of Glenwood Springs, Glenwood Springs, Colorado; First National Bank in Grand Junction; Grand Junction, Colorado; Central Bank of Greeley, West Greeley, Colorado; Central Bank of Chatfield, Littleton, Colorado; Central Bank of Centennial, N.A., Littleton, Colorado; Central Bank of Pueblo, N.A., Pueblo, Colorado; Rocky Ford National Bank, Rock Ford, Colorado; and Central Bank of Westminster, N.A., Westminster, Colorado.

In connection with this application, Applicant also proposes to acquire Central Bancorp Life Insurance Company, Denver, Colorado, and thereby engage in underwriting life, accident, and health insurance directly related to extensions of credit by the subsidiaries of C.C.B., Inc., pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Garfield, Jefferson, Mesa, Moffat, Otero, Pitken and Weld Counties in Colorado.

Board of Governors of the Federal Reserve System, April 1, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7592 Filed 4-6-87; 8:45 am]

BILLING CODE 6210-01-M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Dr. MacDonald's Vitamized Feed Co., Inc.; Withdrawal of Approval of NADA

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Dr. MacDonald's Vitamized Feed Co., Inc. The NADA provides for use of a Type A article containing 0.5 gram per pound tylosin for making Type C swine feeds. The firm requested the withdrawal of approval.

**EFFECTIVE DATE:** April 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

**SUPPLEMENTARY INFORMATION:** Dr. MacDonald's Vitamized Feed Co., Inc., Highway 20 West, Box 1077, Fort Dodge, IA 50501, is the sponsor of NADA 96-782. The NADA provides for use of a Type A article containing 0.5 gram per pound of tylosin (as tylosin phosphate) for making Type C swine feeds for use as in 21 CFR 558.625(f)(1)(vi)(*a*). The NADA was originally approved July 30, 1975 (40 FR 31934).

In a letter dated November 17, 1986, the sponsor requested the withdrawal of approval because the product was not being manufactured.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 96-782 and all

supplements thereto is hereby withdrawn, effective April 17, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the regulations that reflect this approval and is removing the firm from the list of sponsors of approved NADA's.

Dated: March 20, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-7513 Filed 4-6-87; 8:45 am]

BILLING CODE 4160-01-M

## Farm Bureau Services, Inc.; Withdrawal of Approval of NADA

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Farm Bureau Services, Inc./Agra Land, Inc. The NADA provides for use of a Type A article containing 4 or 10 gram per pound of typlosin for making Type C swine feeds. The firm requested the withdrawal of approval.

**EFFECTIVE DATE:** April 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

**SUPPLEMENTARY INFORMATION:** Farm Bureau Services, Inc., P.O. Box 30960, Lansing, MI 48909 (or its successor, Agra Land, Inc.), is the sponsor of NADA 118-780 which provides for use of a Type A article containing 4 or 10 gram per pound of tylosin (as tylosin phosphate) for making Type C swine Feeds for use as in 21 CFR 558.625(f)(1)(vi)(*a*). The NADA was originally approved on February 1, 1980 (45 FR 7249).

In a letter dated November 19, 1986, the custodian of Farm Bureau Services, Inc./Agra Land, Inc., has informed FDA that the firm has disposed of its assets and ceased doing business, and that all applications should be canceled.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 118-780 and all supplements thereto is hereby withdrawn, effective April 17, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the regulations that reflect this approval and is removing the firm from the list of sponsors of approved NADA's.

Dated: March 20, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-7514 Filed 4-6-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0208]

## Bacterial Vaccines and Toxoids; Opportunity for Hearing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the product licenses for the bacterial vaccines and toxoids classified in Category IIIB by FDA in response to the recommendations of the Panel on Review of Bacterial Vaccines and Toxoids. The bacterial vaccines and toxoids for which FDA is proposing product license revocation are not marketed currently in their licensed form.

**DATES:** The licensees may submit written requests for a hearing to the Dockets Management Branch by May 7, 1987, and any data justifying a hearing must be submitted by June 8, 1987. Other interested persons may submit comments on the proposed revocations by June 8, 1987.

**ADDRESS:** Written requests for hearing, data, and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Steven F. Falter, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 13, 1985 (50 FR 51002), FDA published the report of the Panel on Review of Bacterial Vaccines and Toxoids (the Panel) and FDA's proposed response to the Panel's recommendations. The Panel found that for 40 products the available evidence was inadequate to document the products' safety and effectiveness. In its response to the Panel's report, FDA proposed that 36 of the products be classified in Category IIIB. FDA also proposed that 4 of the products be reclassified as safe and effective because of additional evidence received after the Panel's review.

In its response to the Panel's report, FDA announced its intention to revoke the product licenses for the bacterial vaccines and toxoids classified in Category IIIB. Since the time of the Panel's review, FDA has revoked the licenses for 29 of the products at the request of the manufacturer and, therefore, further revocation procedures will be unnecessary for these 29 products. FDA's response to the Panel's report lists 24 of the products for which manufacturers requested revocation (50 FR 51106). After the publication of the Panel's report, FDA received a request from Merck Sharp & Dohme, Division of Merck & Co., Inc., for the revocation of the product licenses for Cholera Vaccine, Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed, Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use), Tetanus Toxoid, and Typhoid Vaccine, License, No. 2. On January 31, 1986, FDA revoked the product licenses for these five products. In its response to the Panel's report, FDA also proposed that the following products be classified in Category IIIB:

Diphtheria Toxoid, manufactured by Istituto Sieroterapico Vaccinogeno Toscano Sclavo, License No. 238;

Tetanus Toxoid, manufactured by Massachusetts Public Health Biologics Laboratories, License No. 64;

Diphtheria Antitoxin, and Diphtheria Toxoid Adsorbed, manufactured by Michigan Department of Public Health, License No. 99; and

Diphtheria Toxoid, Diphtheria Toxoid Adsorbed, and Pertussis Vaccine, manufactured by Wyeth Laboratories, Inc., License No. 3.

The Panel recommended that the product license be revoked for each of the products above. The Panel made clear that its recommendations for revocation of licenses were based on administrative and procedural problems and were not judgments derived from a scientific evaluation of the products. The products listed above either have never been marketed in their licensed form or they have not been marketed for many years. As a result, the manufacturers did not submit supportive information or submitted incomplete or outdated information for the Panel's review. Therefore, the Panel found that the data were insufficient to classify the products as safe and effective and to determine the potential benefits and risk of the products. As announced in the December 13, 1985, proposed rule, FDA agrees with the Panel's findings and recommendations concerning the

bacterial vaccines and toxoids listed above. FDA proposed to classify these products in Category IIIB and, in accordance with 21 CFR 601.5 and 12.21(b), FDA is offering an opportunity for hearing. A licensee may submit a written request for a hearing to the Dockets Management Branch by May 7, 1987 and any data justifying a hearing must be submitted by June 8, 1987. Other interested persons may submit comments on the proposed revocation to the Dockets Management Branch by June 8, 1987. The failure of a licensee to file timely written appearance and request for a hearing constitutes an election of the licensee not to avail itself of the opportunity of a hearing concerning the proposed license revocation.

FDA procedures and requirements governing a notice of opportunity for hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing are contained in 21 CFR Parts 12 and 601 and 21 CFR 314.200. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the revocation of the license, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the licensee requesting the hearing, making findings and conclusions that justify denying a hearing.

Two copies of any submissions are to be provided to FDA except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, and 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director and Deputy Director of the Center for Drugs and Biologics (21 CFR 5.67) (see the **Federal Register** of July 29, 1985; 50 FR 30696).

Dated: March 27, 1987.

**Gerald F. Meyer,**

*Acting Deputy Director, Center for Drugs and Biologics.*

[FR Doc. 87-7577 Filed 4-6-87; 8:45 am]

BILLING CODE 4160-01-M

---

[Docket No. 87M-0073]

## Cal Bionics, Inc.; Premarket Approval of BIOCURVE SOFT (Methafilcon A) Hydrophilic Contact Lens, BIOCURVE SOFT TORIC (Methafilcon A) Hydrophilic Contact Lens, and BIOCURVE SOFT EW (Methafilcon A) Hydrophilic Contact Lens

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Cal Bionics, Inc., Novato, CA, for premarket approval, under the Medical Device Amendments of 1976, of the BIOCURVE SOFT (methafilcon A) Hydrophilic Contact Lens, BIOCURVE SOFT TORIC (methafilcon A) Hydrophilic Contact Lens, and BIOCURVE SOFT EW (methafilcon A) Hydrophilic Contact Lens. The lenses are to be manufactured under an agreement with Kontur Kontact Lens Co., Inc., Richmond, CA, which has authorized Cal Bionics, Inc., to incorporate by reference information contained in its approved premarket approval applications for the Hydracon (methafilcon A) Contact Lens, Kontur Soft (methafilcon A) Hydrophilic Contact Lens, and Kontur Soft EW (methafilcon A) Hydrophilic Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 7, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On August 28, 1986, Cal Bionics, Inc., Novato, CA 94947, submitted to CDRH an application for premarket approval of the spherical BIOCURVE SOFT (methafilcon A) Hydrophilic Contact Lens, the BIOCURVE SOFT TORIC (methafilcon A) Hydrophilic Contact Lens, and the spherical BIOCURVE SOFT EW (methafilcon A) Hydrophilic Contact Lens. The spherical BIOCURVE SOFT (methafilcon A) Hydrophilic Contact Lens is indicated for daily wear for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who exhibit refractive astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. The lens ranges in spherical powers from −20.00 D to +20.00 D. The BIOCURVE SOFT TORIC (methafilcon A) Hydrophilic Contact Lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic, hyperopic, or have refractive astigmatism not exceeding 5.00 D that does not interfere with visual acuity. The lens ranges in powers from −20.00 D to +10.00 D. The BIOCURVE SOFT EW (methafilcon A) Hydrophilic Contact Lens is indicated for extended wear from 1 to 21 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who exhibit refractive astigmatism of 1.50 D or less that does not interfere with visual acuity. The lens ranges in powers from −10.00 D to +10.00 D. These lenses are to be disinfected using a chemical lens care system. The application includes authorization from Kontur Kontact Lens, Co., Inc., Richmond, CA, to incorporate by reference the information contained in its approved premarket approval applications for the Hydracon (methafilcon A) Contact Lens, Kontur Soft (methafilcon A) Hydrophilic Contact Lens, and Kontur Soft EW (methafilcon A) Hydrophilic Contact Lens (Docket Nos. 85M–0409, 86M–0109, and 86M–0304).

On July 30, 1982, January 24, 1986, and May 23, 1986, the Ophthalmic Devices Panel, an FDA advisory committee reviewed and recommended approval of the application. On February 19, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contract David M. Whipple (HFZ–460), address above.

The labeling of the contact lenses states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive lebeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by leter to the applicant.

### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 7, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs, (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 25, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–7578 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1987:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: May 4–5, 1987, 8:30 a.m.–5:00 p.m.

Place: Hyatt Regency Hotel, 623 Union Street, Nashville, Tennessee 37219.

Site visits will be made to a network of services for the homeless in the Nashville area on May 5, no transportation will be provided for visistors and observers.

The entire meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provisions of the legislation.

Agenda: The agenda will include a discussion of the homeless activities in Region IV, overall NHSC policies, and other topics at the pleasure of the Council.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mrs. Anna Mae Voigt, National Health Service Corps, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 6–40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301–443–4814.

Agenda items are subject to change as priorities dictate.

Dated: March 31, 1987.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 87–7579 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–15–M

## Annual Report of Federal Advisory Committee; Notice of Filing

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Nurse Training

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G–400, 330 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 245–6791. Copies may be obtained from Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–04, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Dated: March 2, 1987.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 87–7581 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–15–M

**Public Health Service**

**Availability of Grants for Minority Community Health Coalition Demonstration Projects**

**AGENCY:** Office of Minority Health/ Office of the Assistant Secretary for Health, HHS.

**ACTION:** Notice of availability of funds and request for applications under the Office of Minority Health's Program of Grants for Minority Community Health Coalition Demonstration Projects.

**SUMMARY:** The Office Of Minority Health announces the availability of grants to provide support for a period which will not exceed two years for project which demonstrate methods of developing community health coalitions which can effectively promote risk factor reduction within minority populations.

**Background**

The Report of the Secretary's Task Force on Black and Minority Health identified six health problems that account for 80 percent of the excess deaths among minorities. Excess deaths are the difference between actual minority deaths and the number of deaths which would have been expected if the minority population had the same age- and sex-specific death rates as the white population. Every minority group does not suffer from excess deaths in each category. However, the six health problems became prority issue areas for Task Force study. Listed in alphabetical order, they are:

- Cancer
- Cardiovascular disease and stroke
- Chemical dependency, measured by death due to Cirrhosis
- Diabetes
- Homicide, Suicide, and Accidents (unintentional injuries)
- Infant mortality.

The risk factors for these causes of death involve behavior or preventable conditions which are potentially modifiable but are in some cases resistant to change. In order to modify health behavior, impact must often be made on the individual which may be greater than that achieved by health information or media campaigns alone. In addition, conventional health promotion activities are frequently not effective in reaching minority populations. It appears that change can be achieved by community-based awareness, support, and exhortation, particularly if such a community health campaign is carried out using familiar, as well as influential institutions such as churches and schools, and organized by recognized community leaders.

Moreover, in many cases it may be insufficient to simply pressure individuals to change behavior without offering positive alternatives. For example, if teens are being encouraged to avoid drugs or to avoid pregnancy it may also be important to organize constructive alternatives such as career-oriented activities.

The following is a list of major risk factors for each cause of death, some of which are involved in several health problems:

*Cancer:* Tobacco, Diet, Alcohol, Environment.

*Cardiovascular Disease and Stroke:* Hypertension, Diet, Tobacco, Sedentary Life Style, Obesity.

*Chemical Dependency:* Direct Behavioral Outcome of Substance Abuse.

*Diabetes:* Obesity.

*Infant Mortality:* Smoking, Alcohol, Late or No Prenatal Care, Teen Pregnancy, Nutrition.

*Homicide:* Alcohol, Drugs, Poor Conflict Resolution Skills.

*Suicide:* Alcohol, Drugs, Depression.

*Unintentional Injuries:* Alcohol, Drugs, Environmental Hazards.

Many of the risk factors are normally the interest of a number of components of communities. In addition, a number of community organizations have different kinds of access to influence the behavior of an individual.

This announcement is the second annual notice for this grant program. In Fiscal Year 1986 the Office of Minority Health received over 160 applications of which 65 were approved and six (6) grants awarded for a total of $1.035 million. Many applications were disapproved because of a lack of documentation. Several applications may have been in the approval range with some technical assistance. Others would have required much more work before being submitted. Given the time and resources involved in developing and writing a proposal, potential applicants should give serious consideration as to whether they should apply at this time or wait until they develop a stronger expertise in developing and writing their proposals. Applicants wishing to improve their chances for approval should pay *particular attention to the instructions provided with the grant application* to ensure that their applications:

1. Provide evidence that a valid community-based coalition either exists or is in the process of being formed;
2. Describe in detail the roles of coalition members and other participants;
3. Clearly describe the goals and objectives of the proposed project;
4. Specify and document problem health areas and related risk factors in the target population;
5. Present implementation plans which describe precisely, step-by-step, what efforts are being taken and how the various efforts will lead to addressing the problems identified;
6. When describing evaluation plans, outline the relationship between what the applicant is planning to do and how it is going to be measured, including the results of the interventions;
7. Define the target populations and identify which interventions are working with which minority groups;
8. Ensure that intervention strategies describe a broad concept that goes beyond an analysis of medical records of minorities;
9. Ensure that there are realistic timetables for accomplishing the objectives;
10. Provide detailed management plans to assure that there is a clear delineation of responsibility and accountability of each coalition member;
11. Describe the duties and qualifications of staff and consultant positions to be filled after the grant award; and
12. Ensure that key staff have appropriate experience and qualifications, especially experience in working with community-based programs and/or health promotion programs, as well as having treatment and research experience.

**Authority:** This program is authorized under section 301 of the Public Health Service Act, as amended.

**Program Objectives**

The objectives of the program are to fund projects which: (1) Provide epidemiological evidence of the health problem(s) and risk factor(s) of the minority population(s) which are the targets of the applicant's proposal.

(2) Provide detailed and specific methods for risk factor reduction through the use of a community coalition targeted to a specific minority population and to identified risk factors.

(3) Demonstrate a sound organizational scheme for the coalition which assures adequate involvement and representation of both coalition members and community leaders.

(4) Evaluate the process of establishing and operating the coalition and how its activities will impact on the risk factors and health problem areas identified in the target population through the use of the community coalition.

(5) Demonstrate experience of the applicant and some coalition members with community-based projects, either focused on health or other community concerns.

**Definitions**

For the purpose of this grant program, the following definitions are provided:

(1) *Health Problem Areas*—One of the six priority issue areas identified in the Secretary's Task Force report. They are: (a) Cancer; (b) cardiovascular disease and stroke; (c) chemical dependency measured by death due to cirrhosis; (d) diabetes; (e) homicide, suicide and unintentional injuries; and (f) infant mortality.

(2) *Risk Factors*—The environmental and behavioral influences capable of causing ill health with or without previous predisposition. The term "risk factor" is also used to denote an aspect of personal lifestyles and behavior known, on the basis of epidemiological evidence, to be associated with one or more diseases or health conditions considered important to prevent. These include use of tobacco, poor dietary habits, obesity, severe emotional stress, depression, poor conflict resolution skills, abuse of alcohol and drugs, late or no prenatal care, teen pregnancy, environmental hazards, and others.

(3) *Community*—A defined geographical area in which persons live, work, and recreate and is characterized by: (1) Formal and informal communication channels; (2) formal and informal leadership structures for the purpose of maintaining order and improving their conditions; and (3) its capacity to serve as a focal point for addressing societal needs including health needs.

(4) *Community Coalition*—The coming together of individuals from and representatives of organizations and institutions in a community for the purpose of collaborating around specific community concerns, and seeking resolution of those concerns.

(5) *Minority Populations*—As defined by the Report of the Secretary's Task Force on Black and Minority Health, they include Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives (which include Native Hawaiians).

**Availability of Funds**

The Office of Minority Health intends to make available approximately $1.2 million to be expended by grantees over a 2-year project period. It is anticipated that individual grants of up to $200,000 (total costs including indirect costs) for the two-year project period will be awarded from these funds.

**Applicant Eligibility**

Eligible applicants are public and private nonprofit organizations and for-profit organizations except for all current grantees under this program, since these grantees are considered not eligible. The applicant is the lead agency for the coalition and is responsible for management of the Project and will serve as the fiscal agent for the Federal funds awarded.

Federal demonstration grant support is not expected to result in more than one award in any Standard Metropolitan Statistical Area (SMSA) unless an additional project in an SMSA were to be targeted to another of the 4 major minority groups—Hispanics, Native Americans/Alaska Natives, Asian/Pacific Islanders and Blacks. Efforts will be made to achieve geographic and ethnic distribution of awards as well as cover the various health problems identified above. There is no lower limit for the size of the population targeted by the applicant, but there must be a reasonable relationship between the level of effort involved in the coalition and the size of the target population and the health problem(s) to be addressed. Similarly, the geographic distribution of the target population must be such that effecting risk factor reduction is feasible.

The target risk factor(s) must be epidemiologically justified on the basis of health problem patterns in the population. It is suggested that the number of risk factors on which a coalition plans to focus be limited.

**Applications**

*1. Copies*

The forms used for applying for grants under this program are either Form PHS 5161–1 for State and local governments or Form PHS 398 for all others. Copies of the application kit may be obtained from the Grants Management Branch, Room 18A10, Parklawn Building, 5600 Fishers Lane, Rockville MD 20857.

*2. Deadlines*

Applications shall be considered meeting the deadline if they are received on or before 5:30 pm on June 17, 1987.

*3. Late Applications*

Applications which do not meet the criteria in paragraph 2 immediately above will be considered late applications and will be returned to the applicant.

*4. Reviews*

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. Applications for funding will be subject to State review but comments must be received by 60 days after the due date by the program grants management office. Applicants should contact State Single Points of Contact (SPOC) early in the application preparation process.

*5. Project Budget*

Funds may be used to cover the cost of personnel to coordinate the coalation's activities, for consultants, support services and materials. Funds may not be used for building construction costs or building alterations and renovations.

*6. Cost Participation*

It is expected that a portion of the program's costs will be borne by coalition members or by other non-federal sources such as business, labor, local government, or community funds. Cost participation for those grants awarded in FY 1986 ranged between $40,000 and $125,000 and was either in-kind or direct funds contributions.

*7. Review Criteria*

Applications will be reviewed and evaluated in terms of the evidence regarding the ability of the applicant to meet program objectives. Of specific importance will be:

(1) The justification for the choice of disease(s) and risk factor(s) to be targeted, and its (their) direct relationship to the epidemologic charcterization(s) of the target minority population(s).

(2) The degree to which the choice of coalition members is a logical choice based on target population, target risk factor(s) and intervention(s) to be demonstrated. The specificity of the methods to address the target risk factor(s) in the target population(s) will be given significant weight in the review process of the application.

(3) The commitment of each coalition member to the coalition and to the proposed implementation plan including the extent of support obtained from coalition members to cover a portion of project needs.

(4) Relevant experience and qualifications of the managers of the applicant organization to provide program and fiscal management of the grant.

(5) Qualifications and time allocation of proposed regular staff, both paid and voluntary, and a description of how the staff will manage the project.

(6) Adequacy of medical/scientific/public health technical expertise available to the coalition for its use.

(7) Likelihood that the project will demonstrate whether or not community health coalitions can effectively promote risk factor reduction among minority populatons.

(8) Coherence, feasibility and realistic approach of the intervention strategy and of the implementation methods described.

(9) Adequacy of the evaluation plan to measure the process of the development of the coalition as well as indicators and trends of outcome changes based on the goals and objectives of the application.

*8. Information and Technical Assistance Contacts*

Information on application procedures and copies of application forms may be obtained from Ralph Sloat, Grants Management Office, Room 18A10, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (phone (301) 443–4033).

Technical assistance on the programmatic content of the application may be obtained from J. Henry Montes, Room 118–F, HHH Bldg., Washington, DC 20201 (phone (202) 245–0020).

The Catalog of Federal Domestic Assistance Number for the program is 13.137.

Dated: April 2, 1987.

**Herbert W. Nickens,**

*Director, Office of Minority Health.*

[FR Doc. 87–7613 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–17–M

## Delegation of Authority; Director, Office of Management

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services to the Assistant Secretary for Health on March 2, 1987, the Assistant Secretary for Health has delegated to the Director, Office of Management, with authority to redelegate, all the authority delegated to the Assistant Secretary for Health under Title XXII of the Public Health Service Act (42 U.S.C. 300bb–1 *et seq.*), as amended, concerning State and local governmental group health plans providing continuation coverage to certain individuals.

The delegation to the Director, Office of Management, became effective on March 27, 1987.

Dated: March 27, 1987.

**Robert E. Windom, M.D.**

*Assistant Secretary for Health.*

[FR Doc. 87–7614 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–17–M

## Health Resources and Services Administration; Omnibus Budget Reconciliation Act of 1981; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of March 13, 1987, by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), the Administrator, HRSA, has delegated to the Director, Bureau of Health Care Delivery and Assistance, with authority to redelegate, the authorities under Title IX, Subtitle J of the "Omnibus Budget Reconciliation Act of 1981," Pub. L. 97–35, (42 U.S.C. 248b. note *eq seq.*) as amended, concerning orderly closure, transfer, and financial self-sufficiency of Public Health Service hospitals and clinics.

This delegation excludes the authority to (1) determine the feasibility of the proposals for transfer or achievement of financial self-sufficiency, and (2) execute and implement the transfer of HHS-owned real property and related personal property of the Public Health Service hospitals and clinics.

This delegation was effective on March 27, 1987.

Military Construction Authorization Act, 1982

**Delegation of Authority**

Notice is hereby given that in furtherance of the delegation of March 13, 1987, by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), the Administrator, HRSA, has delegated to the Director, Bureau of Health Care Delivery and Assistance, with authority to redelegate, the authorities under section 911 of Pub. L. 97–99, the "Military Construction Act, 1982, [42 U.S.C. 248c) as amended, concerning the continued use of certain former Public Health Service facilities.

This delegation was effective on March 27, 1987.

Dated: March 27, 1987.

**David N. Sundwall,**

*Administrator, Health Resources and Services Administration.*

[FR Doc. 87–7580 Filed 4–6–87; 8:45 am]

BILLING CODE 4160–15–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ–940–07–41212–24; A–21913]

## Realty Actions; Arizona

Dated: March 26, 1987.

**ACTION:** Notice of Donation of Private Lands in Mohave County, Arizona.

**SUMMARY:** On March 9, 1987, the United States accepted title to the following described land pursuant to section 205 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1715:

**Gila and Salt River Meridian, Arizona**

T. 25 N., R. 21 W.
Sec. 27, W½NW¼NW¼.
Comprising 20 acres in Mohave County.

**FOR FURTHER INFORMATION CONTACT:** Marsha Luke, Arizona State Office (602) 241–5534.

The surface of the land acquired by the Federal Government will be open to entry under the public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, at 9:30 A.M., thirty days from publication of this notice. The mineral estate is in private ownership and, therefore, will not be subject to entry under the United States mining or mineral leasing laws.

Inquires concerning the land should be addressed to the Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

**John T. Mezes,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87–7583 Filed 4–6–87 8:45 am]

BILLING CODE 4310–32–M

[ES–030–07–4212–11; ES–00157–006; ES–36452]

## Realty Action; Recreation and Public Purposes Classification—Land Classification for Recreation and Public Purposes, Grant County, MN

**SUMMARY:** The following described parcels have been classified as suitable for disposal to the State of Minnesota by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (43 U.S.C. 869):

**Fifth Principal Meridian, Minnesota**

1. ES–36452, Grant County: T. 127 N., R. 43 W., Sec. 20, Tract 37, total of .44 acres; and T. 128 N., R. 43 W., Sec. 27, Tract 37, total of 1.09 acres.

The purpose of the conveyance is the preservation of a Wildlife Management Area.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

Classification of this land will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this Notice, or upon publication of a notice of termination.

Comments: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

**FOR FURTHER INFORMATION:** Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53201, or by calling Larry Johnson at (414) 291–4413.

**Bert Rodgers,**

*District Manager.*

[FR Doc. 87–7584 Filed 4–6–87; 8:45 am]

BILLING CODE 4310–40–M

---

**[CA–940–07–4520–12; C–3–87]**

## Filing of Plat of Survey; California

March 26, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

**Mount Diablo Meridian, Shasta County**

T. 31 N., R. 5 W.

2. This supplemental plat of the East ½, Section 7, Township 31 North, Range 5 West, Mount Diablo Meridian, California, was accepted March 6, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

**Herman J. Lyttge,**

*Chief, Public Information Section.*

[FR Doc. 87–7585 Filed 4–6–87; 8:45 am]

BILLING CODE 4310–40–M

---

**[CA–940–07–4520–12; C–1–87]**

## Filing of Plat of Survey; California

March 26, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

**San Bernardino Meridian, San Diego County**

T. 13 S., R. 2 E.

2. This supplemental plat of the East ½, Section 8, Township 13 South, Range 2 East, San Bernardino Meridian, California, showing new lottings created by the segregation of M.S. 6230, is based upon the plat approved September 21, 1875, and the mineral survey record was accepted March 6, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat had been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

**Herman J. Lyttge,**

*Chief, Public Information Section.*

[FR Doc. 87–7586 Filed 4–6–87; 8:45 am]

BILLING CODE 4310–40–M

---

## Minerals Management Service

### Outer Continental Shelf Development Operations Coordination Document; Corpus Christi Oil & Gas Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8546, Block 566, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

**DATE:** The subject DOCD was deemed submitted on March 27, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executive of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 30, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–7587 Filed 4–6–87; 8:45 am]

BILLING CODE [illegible]

---

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AA760–07–4410–01–2410]**

## DEPARTMENT OF AGRICULTURE

## Forest Service

### Public Land and Resources; Planning, Programming, and Budgeting National Forest Land and Resource Management Planning

**AGENCIES:** Bureau of Land Management, USDI, and Forest Service, USDA.

**ACTION:** Joint notice of land and resource management planning schedules.

**SUMMARY:** Land and resource management plans of the Bureau of

Land Management and the Forest Service frequently cover adjourning areas which share common resource issues and management concerns requiring continuous and close interagency coordination. Therefore, the USDI Bureau of Land Management and the USDA Forest Service have again elected to jointly announce land management planning schedules for lands which each agency administers. The purpose of publishing joint planning schedules is to provide agencies and the public with the opportunity to study the relationships between the agencies' current and projected planing activities.

The Bureau of Land Management's and the Forest Service's planning systems are authorized and administered under different laws and regulations. Consequently, this notice is organized into two parts (Part A—Bureau of Land Management and Part B—Forest Service).

Comments on the schedules should be directed to the appropriate (see **ADDRESS**, Part A and Part B).

**Part A—Bureau of Land Management**

Resources management planning for the Bureau of Land Management adminstered lands is governed by regulations 43 CFR Parts 1601 and 1610. Those regulations (43 CFR 1610.2(b)) require that the Bureau publish a planning schedule advising the public of the status of plans in preparation and projected new starts for the three succeeding fiscal years and calling for public comment on the projected new starts. The schedule below fulfills that requirement.

The planning process begins with the publications of a Notice of Intent to initiate a plan. The projected planning starts are shown on the schedule through 1990. Public notice and opportunity for participation in each resource management plan (RMP) shall be provided as required by the regulations (43 CFR 1610.2(f)). Publication of the draft RMP and associated draft environmental impact statement as indicated on the schedule is a key opportunity for public comment.

A key to the abbreviations used is provided after the schedule.

**DATES:** Comments on the schedule will be accepted until May 7, 1987.

**ADDRESS:** Comments should be sent to Director (760), Bureau of Land Management, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Forest W. Littrell, (202) 653–8824.

**SUPPLEMENTARY INFORMATION:**

PART A.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE

| State District/ Resource Area | Plan Name (Major Resource Issues) | Fiscal year— | | | |
|---|---|---|---|---|---|
| | | 1987 | 1988 | 1989 | 1990 |
| Alaska: | | | | | |
| Anchorage | Southwest RMP (recreation, wildlife, minerals, fisheries, subsistence). | | | | Start |
| Artic | Corridor RMP (lands, oil & gas, recreation, wildlife, minerals, subsistence, wilderness). | DEIS | FEIS, PFEIS | | |
| Glenallen | South Central RMP (national defense, recreation, minerals, lands, wild & scenic rivers, forestry, cultural). | | Start | | DEIS, FEIS |
| Steese/White Mtn. | Ft. Greely RMP (national defense, wildlife, recreation, minerals). | Start | DEIS | FEIS | |
| | Ft. Wainwright RMP (national defense wildlife, recreation, minerals). | Start | DEIS | FEIS | |
| | Fortymile RMP (minerals) | | | | Start |
| Arizona: | | | | | |
| Arizona Strip: | | | | | |
| Districtwide | Arizona Strip RMP (minerals, recreation, range, wildlife). | Start | | DEIS | FEIS |
| Phoenix: | | | | | |
| Phoenix | Phoenix RMP (range, wildlife minerals, lands). | DEIS | FEIS | | |
| Lower Gila | Lower Gila South RMP–A (national defense) | Start | DEIS | FEIS | |
| Kingman | Kingman RMP (range, wildlife, minerals) | | | Start | DEIS |
| Safford: | | | | | |
| Districtwide | Safford RMP (range, minerals, lands) | Start | | DEIS | FEIS |
| Bakersfield: | | | | | |
| Bishop | Benton-Owens Valley/Bodie-Coleville MFP–A (wilderness). | PFEIS | | | |
| Caliente | S. Sierra Foothills MFP–A (wilderness) | PFEIS | | | |
| Folsom | Sierra MFP–A (wilderness) | PFEIS | | | |
| California Desert: | | | | | |
| El Centro | East San Diego MFP–A (wilderness) | PFEIS | | | |
| Indio | Escondido-Border MFP–A (wilderness) | PFEIS | | | |
| Susanville: | | | | | |
| Cedarville | Cowhead/Massacre MFP–A (wilderness) | PFEIS | | | |
| | Tuledad/Homecamp MFP–A (wilderness) | PFEIS | | | |
| Eagle Lake | Cal-Neva MFP–A (wilderness) | PFEIS | | | |
| | Willow-Creek MFP–A (wilderness) | PFEIS | | | |
| Ukiah: | | | | | |
| Arcata | Arcata RMP (lands, forestry, wildlife) | DEIS | FEIS | | |
| | East Mendocino MFP–A (wilderness) | PFEIS | | | |
| | King Range MFP–A (wilderness) | PFEIS | | | |
| | Red Mountain MFP–A (wilderness) | PFEIS | | | |

PART A.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

| State District/ Resource Area | Plan Name (Major Resource Issues) | Fiscal year— | | | |
|---|---|---|---|---|---|
| | | 1987 | 1988 | 1989 | 1990 |
| Colorado: | | | | | |
| Canon City: | | | | | |
| Royal Gorge. | Royal Gorge RMP (recreation, oil and gas, range, realty). | | | | Start |
| | Royal Gorge MFP-A (realty, Quail Mtn) | Start | DEIS | FEIS | |
| | Royal Gorge MFP-A (wilderness) | PFEIS | | | |
| San Luis | San Luis MFP-A (wilderness) | PFEIS | | | |
| | Saguache MFP-A (wilderness) | PFEIS | | | |
| | San Luis RMP (lands, minerals, range, wildlife, forestry). | | DEIS | FEIS | |
| Craig: | | | | | |
| Little Snake. | Little Snake RMP (livestock, oil and gas, wildlife, coal). | FEIS | | | |
| | Little Snake RMP (wilderness) | DEIS | | | |
| White River | White River MFP-A (wilderness) | DEIS | PFEIS | | |
| Kremmling | Kremmling RMP (wilderness) | DEIS | | | |
| Grand Junction: | | | | | |
| Glenwood Springs. | Glenwood Springs RMP (wilderness) | PFEIS | | | |
| Grand Junction. | Grand Junction RMP (wilderness) | PFEIS | | | |
| Montrose: | | | | | |
| Gunnison Basin. | Gunnison Basin RMP (riparian, range, land tenure adjustment). | | Start | DEIS | FEIS |
| | Gunnison Basin MFP-A (wilderness) | PFEIS | | | |
| Gunnison Basin/ San Juan. | American Flats/Silverton MFP-A (wilderness) | PFEIS | | | |
| San Juan/ San Miguel. | San Juan/San Miguel RMP (wilderness) | PFEIS | | | |
| Uncompahgre. | Uncompahgre RMP (coal, wilderness) | DEIS | FEIS, PFEIS | | |
| Idaho: | | | | | |
| Statewide | Plan Amendments (wilderness; areas less than 5000 acres). | DEIS | PFEIS | | |
| Idaho Falls: | | | | | |
| Pocatello | Pocatello RMP (lands, minerals, grazing, wildlife). | DEIS, FEIS | | | |
| Medicine Lodge. | Medicine Lodge RMP (wilderness) | PFEIS | | | |
| | Medicine Lodge RMP-A (Egin-Hammer ROW). | FEIS | | | |
| Boise. | | | | | |
| Cascade | Cascade RMP (rangeland management, lands). | FEIS | | | |
| Owyhee | Owyhee MFP-A (wilderness) | PFEIS | | | |
| | Owyhee RMP (grazing, wildlife, lands) | | | | Start |
| Bruneau | Bruneau MFP-A (wilderness) | PFEIS | | | |
| Jarbidge | Jarbidge RMP (wilderness) | PFEIS | | | |
| Salmon: | | | | | |
| Lemhi | Lemhi RMP (wilderness) | PFEIS | | | |
| Challis | Challis RMP (grazing, land tenure, forestry, recreation). | | | Start | DEIS |
| Shoshone: | | | | | |
| Monument | Monument RMP (wilderness) | PFEIS | | | |
| Montana: | | | | | |
| Butte: | | | | | |
| Dillon | Dillon MFP-A (wilderness) | PFEIS | | | |
| | Dillon MFP-A (Centennial wilderness; joint with USFS). | DEIS | PFEIS | | |
| Garnet | Garnet RMP (wilderness) | PFEIS | | | |
| Headwaters. | Headwaters RMP (wilderness) | PFEIS | | | |
| | Headwaters RMP-A (Sleeping Giant wilderness). | | PFEIS | | |
| Dickinson, (N.D.). | North Dakota RMP (coal, lands, oil and gas, ORV). | DEIS, FEIS | | | |

BEST COPY AVAILABLE

PART A.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

| State District/ Resource Area | Plan Name (Major Resource Issues) | Fiscal year— | | | |
|---|---|---|---|---|---|
| | | 1987 | 1988 | 1989 | 1990 |
| Lewistown: | | | | | |
| Great Falls/ Havre. | West HiLine RMP (lands, ORV, wild & scenic rivers). | DEIS | FEIS | | |
| Judith | Judith RMP (access, lands, ORV, recreation) | | Start | DEIS | FEIS |
| Phillips | Phillips RMP (grazing, wildlife) | | | Start | DEIS |
| Valley | Valley MFP-A (Bitter Creek wilderness) | PFEIS | | | |
| | Valley RMP (grazing, wildlife) | | | | Start |
| Lewistown/ Miles City: | | | | | |
| Various Resource Areas. | Plan Amendments (Missouri Breaks wilderness). | PFEIS | | | |
| Miles City: | | | | | |
| Big Dry | Jordan-N. Rosebud MFP-A (wilderness) | PFEIS | | | |
| | New Prairie MFP-A (wilderness) | PFEIS | | | |
| | Musselshell MFP-A (wilderness) | PFEIS | | | |
| Billings | Billings RMP (wilderness) | PFEIS | | | |
| Powder River. | Powder River RMP (wilderness) | PFEIS | | | |
| Nevada: Statewide. | Plan Amendments (wilderness; areas less than 5000 acres). | | PFEIS | | |
| Battle Mtn.: | | | | | |
| Shoshone-Eureka. | Shoshone-Eureka RMP-A (range, wildlife) | DEIS, FEIS | | | |
| | Shoshone-Eureka RMP (wilderness) | PFEIS | | | |
| Tonopah | Tonopah MFP-A (wilderness) | PFEIS | | | |
| Carson City: | | | | | |
| Lahontan | Lahontan RMP (wilderness) | PFEIS | | | |
| Walker | Walker RMP (wilderness) | | PFEIS | | |
| Elko: | | | | | |
| Elko | Elko RMP (wilderness) | PFEIS | | | |
| Wells | Wells RMP (wilderness) | PFEIS | | | |
| Ely: | | | | | |
| Egan | Egan RMP (wilderness) | PFEIS | | | |
| Schell | Schell MFP-A (wilderness) | PFEIS | | | |
| Las Vegas: | | | | | |
| Caliente | Nellis RMP (national defense, wild horses, access, minerals, wildlife). | Start | DEIS | FEIS | |
| | Caliente MFP-A (wilderness) | | PFEIS | | |
| Stateline-Esmeralda. | Clark County MFP-A (wilderness) | PFEIS | | | |
| | Esmeralda-So. Nye RMP (wilderness) | | PFEIS | | |
| Winnemucca: | | | | | |
| Paradise-Denio. | Paradise-Denio MFP-A (wilderness) | PFEIS | | | |
| Sonoma-Gerlach. | Sonoma-Gerlach MFP-A (wilderness) | PFEIS | | | |
| New Mexico: | | | | | |
| Statewide | New Mexico Statewide MFP-A (wilderness) | PFEIS | | | |
| Albuquerque: | | | | | |
| Farmington | Farmington RMP (grazing, lands, ORV, ROW). | DEIS, FEIS | | | |
| Taos | Taos RMP (grazing, lands, ORV, ROW) | DEIS, FEIS | | | |
| Las Cruces: | | | | | |
| All Resource Areas. | Plan Amendments (transmission line corridor) | DEIS, FEIS | | | |
| Las Cruces/ Lordsburg. | Las Cruces/Lordsburg RMP (lands, access, spc. mgt. areas, cultural). | | Start | | DEIS |
| | So. Rio Grande MFP-A (land tenure) | FEIS | | | |
| Socorro | Socorro RMP (grazing, lands, coal, wild horses). | | DEIS, FEIS | | |

PART A.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

| State District/ Resource Area | Plan Name (Major Resource Issues) | Fiscal year— | | | |
|---|---|---|---|---|---|
| | | 1987 | 1988 | 1989 | 1990 |
| White Sands. | White Sands RMP–A (national defense | Start | DEIS | FEIS | |
| Roswell: | | | | | |
| Roswell | Roswell RMP (minerals, access, lands, special management areas). | | | Start | |
| Oregon: | | | | | |
| Statewide | Oregon Statewide MFP–A (wilderness) | DEIS | PFEIS | | |
| Burns: | | | | | |
| Three Rivers. | Drewsey-Riley RMP (grazing, wildlife, watershed, lands). | Start | | DEIS, FEIS | |
| Coos Bay: | | | | | |
| Districtwide | Coos Bay RMP (timber, wildlife, watershed, lands. | | | | DEIS, FEIS |
| Eugene: | | | | | |
| Districtwide | Eugene RMP (timber, wildlife, watershed, lands). | | | | DEIS, FEIS |
| Medford: | | | | | |
| Districtwide | Medford RMP (timber, wildlife, watershed, lands). | | | | DEIS, FEIS |
| Prineville: | | | | | |
| Cental Oregon/ Deschutes. | Brothers-La Pine RMP (timber, lands, watershed, ORV). | DEIS | FEIS | | |
| Roseburg: | | | | | |
| Districtwide | Roseburg RMP (timber, wildlife, watershed, lands). | | | | DEIS, FEIS |
| Salem: | | | | | |
| Districtwide | Salem RMP (timber, wildlife, watershed, lands). | | | | DEIS, FEIS |
| Yamhill | Westside Salem MFP-A (water supply project). | DEIS | FEIS | | |
| Vale: | | | | | |
| Baker | Baker RMP (grazing, land tenure, timber, fisheries). | FEIS | | | |
| Utah: | | | | | |
| Statewide | Utah Statewide MFP-A (wilderness) | PFEIS | | | |
| Cedar City: | | | | | |
| Dixie | Dixie RMP (lands, recreation, wildlife, corridors, community expansion). | Start | DEIS, FEIS | | |
| Escalante | Escalante RMP (coal, recreation) | | Start | | |
| Kanab | Kanab RMP (recreation, watershed) | | | Start | |
| Moab: | | | | | |
| San Juan | San Juan RMP (livestock, oil & gas, recreation, lands). | FEIS | | | |
| San Rafael | San Rafael RMP (livestock, oil & gas, coal, recreation). | | DEIS, FEIS | | |
| Price River | Price River RMP (recreation, minerals, wildlife, watershed). | | | | Start |
| Salt Lake: | | | | | |
| Pony Express. | Pony Express RMP (range, lands, minerals) | Start | DEIS, FEIS | | |
| Vernal: | | | | | |
| Diamond Mtn. | Diamond Mtn. RMP (wildlife, oil and gas) | | Start | | |
| Wyoming: | | | | | |
| Rawlings: | | | | | |
| Lander | Lander RMP (wilderness) | PFEIS | | | |
| | Lander RMP (wilderness; areas less than 5000 acres). | | PFEIS | | |
| Medicine Bow/ Divide. | Medicine Bow/Divide RMP (range, wildlife, recreation, minerals). | DEIS, FEIS | | | |
| Rock Springs: | | | | | |
| Pinedale | Pinedale RMP (rangeland, oil and gas, lands, forestry recreation, wildlife, watershed). | DEIS, FEIS | | | |
| Worland: | | | | | |
| Cody | Cody RMP (oil & gas, range) | DEIS | FEIS | | |

PART A.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

| State District/ Resource Area | Plan Name (Major Resource Issues) | Fiscal year— | | | |
|---|---|---|---|---|---|
| | | 1987 | 1988 | 1989 | 1990 |
| Washakie..... | Washakie RMP (range, wilderness)..... | DEIS, FEIS..... | PFEIS..... | | |

[1] Projected planning starts for California will appear in the FY 88 planning schedule.

Key to Abbreviations:
DEIS—Draft environmental impact statement.
FEIS—Final environmental impact statement.
MFP-A—Management framework plan amendment.
ORV—Off road vehicle.
PFEIS—Preliminary final environmental impact statement (wilderness only).
RMP—Resource management plan.
ROW—Rights-of-way.

**Robert Burford,**
*Director.*

**Part B—Forest Service**

The National Forest Management Act of 1976 directed the Secretary of Agriculture to attempt to complete land and resource management plans for each "administrative unit" (e.g., National Forest) of the National Forest System by September 30, 1985. Regulations to guide this effort were initially developed in 1979, and revised in 1982 at the direction of the Presidential Task Force on Regulatory Relief (Vol. 47, N. 190 of the **Federal Register**, September 30, 1982). Additional revision to the rules was necessary to respond to a court decision that the 1979 Roadless Area Review and Evaluation (RARE II) environmental statement and associated procedures were inadequate under the National Environmental Policy Act (NEPA).

The NFMA regulations require integrated planning for all resources of the National Forest System—recreation, fish and wildlife, water, timber, range, and wilderness. The rules set forth a process for developing and revising the land and resource management plans as required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA). These rules require development of Regional Guides and Forest Plans. Each plan will include all management planning for resources and be supported by an environmental impact statement.

All drafts and final Regional Guides and Forest Plans and associated environmental impact statements have been or will be filed with the Environmental Protection Agency and made available to the public for comment.

A planning schedule is included below showing the fiscal year in which draft and final documents have been or will be filed. Also given are the addresses of the Forest Service's nine Regional Offices and National Forest headquarters in each Region for which plans are to be prepared.

Readers interested in the progress and status of a particular Regional Guide or Forest Plan should contact the appropriate Regional Forester or Forest Supervisor.

**DATES:** Comments on the schedule will be accepted until May 7, 1987.

**ADDRESS:** Comments should be sent to: Chief, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Joyce P. Parker, Land Management Planning, P.O. Box 2417, Washington, DC 20013, (202) 447-6697.

**J. Lamar Beasley,**
*Deputy Chief.*
March 23, 1987.

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY

| Headquarters location [1] | Fiscal year to be completed | |
|---|---|---|
| | DEIS | FEIS [3] |
| R-1, Northern Region, Federal Building, Missoula, Montana 59807 | | |
| Regional guide..... | 1981 | 1981 |
| IDAHO— | | |
| Clearwater, Orofino 83544..... | *1985 | 1987 |
| Idaho Panhandle National Forests,[2] Coeur d'Alene, Coeur d'Alene 83814..... | *1985 | 1987 |
| Kaniksu | | |
| St. Joe | | |
| Nezperce, Grangeville 83530..... | 1985 | 1987 |

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

| Headquarters location [1] | Fiscal year to be completed | |
|---|---|---|
| | DEIS | FEIS [3] |
| MONTANA— | | |
| Beaverhead, Dillon 59725..... | 1985 | 1986 |
| Bitterroot, Hamilton 59840..... | *1985 | 1987 |
| Custer, Billings 59103..... | 1985 | 1987 |
| Deerlodge, Butte 59701..... | 1985 | 1987 |
| Flathead, Kalispell 59901..... | *1984 | 1986 |
| Gallatin, Bozeman 59715..... | 1985 | 1987 |
| Helena, Helena 59601..... | *1985 | 1986 |
| Kootenai, Libby 59923..... | 1985 | 1987 |
| Lewis and Clark, Great Falls 59403..... | *1984 | 1986 |
| Lolo, Missoula 59801..... | *1985 | 1986 |
| R-2, Rocky Mountain Region, 11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225 | | |
| Regional Guide..... | 1981 | 1983 |
| COLORADO— | | |
| Arapaho-Roosevelt,[2] Ft. Collins 80521..... | 1982 | 1984 |
| Grand Mesa, Uncompahgre, and Gunnison,[2] Delta 81416..... | 1983 | 1983 |
| Pike and San Isabel,[2] Pueblo 81008..... | 1982 | 1985 |
| Rio Grande, Monte Vista 81144..... | 1983 | 1985 |
| Routt, Steamboat Springs 80477..... | 1983 | 1984 |

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

| Headquarters location [1] | Fiscal year to be completed | |
|---|---|---|
| | DEIS | FEIS [3] |
| San Juan, Durango 81301 | 1982 | 1983 |
| White River, Glenwood Springs 81601 | 1983 | 1984 |
| NEBRASKA— | | |
| Nebraska-Samuel R. McKelvie,[2] Chadron 69337 | 1982 | 1985 |
| SOUTH DAKOTA— | | |
| Black Hills, Custer 57730 | 1982 | 1983 |
| WYOMING— | | |
| Bighorn, Sheridan 82801 | 1984 | 1985 |
| Medicine Bow, Laramie 82070 | 1984 | 1986 |
| Shoshone, Cody 82414 | 1984 | 1986 |
| R-3, Southwestern Region, 517 Gold Ave., SW, Albuquerque, New Mexico 87102 | | |
| Regional guide | 1981 | 1983 |
| ARIZONA— | | |
| Apache-Sitgreaves,[2] Springerville 85938 | 1986 | 1987 |
| Coconino, Flagstaff 86001 | 1986 | 1987 |
| Coronado, Tuscon 85702 | 1985 | 1986 |
| Kaibab, Williams 86046 | 1986 | 1987 |
| Prescott, Prescott 86301 | 1985 | 1987 |
| Tonto, Phoenix 85034 | 1985 | 1986 |
| NEW MEXICO— | | |
| Carson, Taos 87571 | 1985 | [4] 1987 |
| Cibola, Albuquerque 87112 | 1984 | 1985 |
| Gila, Silver City 88061 | 1985 | [4] 1987 |
| Lincoln, Alamogordo 88310 | 1985 | [4] 1987 |
| Santa Fe, Santa Fe 87501 | *1986 | 1987 |
| R-4, Intermountain Region, 324 25th Street, Ogden, Utah 84401 | | |
| Regional guide | 1981 | 1984 |
| IDAHO— | | |
| Boise, Boise 83706 | 1987 | 1988 |
| Caribou, Pocatello 83201 | [4] 1985 | 1986 |
| Challis, Challis 83226 | 1985 | 1987 |
| Payette, McCall 83638 | 1985 | 1987 |
| Salmon, Salmon 83467 | 1985 | 1987 |
| Sawtooth, Twin Falls 83301 | 1985 | 1987 |
| Targhee, St. Anthony 83445 | *1985 | 1985 |
| NEVADA— | | |
| Humboldt, Elko 89801 | 1985 | 1986 |
| Toiyabe, Reno 89501 | 1985 | 1986 |
| UTAH— | | |
| Ashley, Vernal 84078 | 1985 | [4] 1987 |
| Dixie, Cedar City 84720 | 1985 | 1985 |
| Fishlake, Richfield 84701 | 1985 | 1986 |
| Manti-LaSal, Price 84501 | 1985 | [4] 1987 |
| Uinta, Provo 84601 | 1985 | 1985 |
| Wasatch-Cache,[2] Salt Lake City 84138 | 1985 | 1985 |
| WYOMING—Bridger-Teton,[2] Jackson 83001 | 1987 | 1987 |
| R-5, Pacific Southwest, 630 Sansome Street, San Francisco, California 94111 | | |
| Regional guide | 1981 | 1984 |
| CALIFORNIA— | | |
| Angeles, Pasadena 91101 | 1985 | 1987 |
| Cleveland, San Diego 92188 | 1985 | 1986 |
| Eldorado, Placerville 95667 | [4] 1987 | 1988 |
| Inyo, Bishop 93514 | [4] 1987 | 1988 |
| Klamath, Yreka 96097 | *1987 | 1989 |
| Lassen, Susanville 96130 | 1986 | 1988 |
| Los Padres, Goleta 93107 | 1986 | 1988 |
| Mendocino, Willows 95988 | [4] 1987 | 1988 |
| Modoc, Alturas 96101 | 1986 | 1989 |
| Plumas, Quincy 95971 | 1986 | 1987 |
| San Bernardino, San Bernardino 92408 | 1986 | 1988 |
| Sequoia, Porterville 93257 | 1986 | 1987 |
| Shasta-Trinity,[2] Redding 96001 | *[4] 1987 | 1989 |
| Sierra, Fresno 93721 | *1986 | 1988 |
| Six Rivers, Eureka 95501 | [4] 1987 | 1988 |
| Stanislaus-Calaveras, Big Tree,[2] Sonora 95370 | 1987 | 1988 |
| Tahoe, Nevada City 95959 | 1986 | 1988 |
| Lake Tahoe Basin Management Unit, So. Lake Tahoe | *1986 | 1988 |
| R-6, Pacific Northwest Region, 319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208 | | |
| Regional guide | 1982 | 1984 |
| Supplemental EIS | *1986 | *1987 |
| OREGON— | | |
| Deschutes, Bend 977701 | 1986 | 1988 |
| Fremont, Lakeview 97630 | 1987 | 1988 |
| Malheur, John Day 97845 | 1987 | 1988 |
| Mt. Hood, Portland 97233 | 1987 | 1988 |
| Ochoco, Prineville 97754 | [4] 1987 | 1988 |
| Rogue River, Medford 97501 | 1987 | 1988 |
| Siskiyou, Grants Pass 97526 | [4] 1987 | 1987 |
| Siuslaw, Corvallis 97330 | [4] 1987 | 1988 |
| Umatilla, Pendleton 97801 | 1987 | 1988 |
| Umpqua, Roseburg 97470 | 1987 | 1988 |
| Wallowa-Whitman,[2] Baker 97814 | 1986 | 1988 |
| Willamette, Eugene 97440 | 1987 | 1988 |
| Winema, Klamath Falls 97601 | 1987 | 1988 |
| WASHINGTON— | | |
| Colville, Colville 99114 | 1987 | 1988 |
| Gifford Pinchot, Vancouver 98660 | 1987 | 1988 |
| Mt. Baker-Snoqualmie,[2] Seattle 98101 | 1987 | 1988 |
| Okanogan, Okanogan 98840 | 1986 | 1988 |
| Olympic, Olympia 98501 | [4] 1987 | 1988 |
| Wenatchee, Wenatchee 98801 | [4] 1987 | 1988 |

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

| Headquarters location [1] | Fiscal year to be completed | |
|---|---|---|
| | DEIS | FEIS [3] |
| R-8, Southern Region, 1720 Peactree Road, NW, Atlanta, Georgia 30309 | | |
| Regional guide | 1982 | 1984 |
| ALABAMA— | | |
| National Forests in Alabama,[2] Montgomery 36101 | 1985 | 1986 |
| William B. Bankhead | | |
| Conecuh | | |
| Talladega | | |
| Tuskegee | | |
| ARKANSAS— | | |
| Ouachita, Hot Springs 79101 | 1985 | 1986 |
| Ozark-St. Francis,[2] Russellville 72801 | 1985 | 1986 |
| FLORIDA— | | |
| National Forests in Florida,[2] Tallahassee 32301 | 1985 | 1986 |
| Apalachicola | | |
| Ocala | | |
| Osceola | | |
| GEORGIA— | | |
| Chattahoochee-Oconee,[2] Gainesville 30501 | 1984 | 1985 |
| KENTUCKY—Daniel Boone, Winchester 40391 | 1985 | 1985 |
| LOUISIANA—Kisatchie, Pineville 71360 | 1984 | 1985 |
| MISSISSIPPI— | | |
| National Forests in Mississippi,[2] Jackson 39205 | 1985 | 1985 |
| Bienville | | |
| Delta | | |
| DeSoto | | |
| Holly Springs | | |
| Homochitto | | |
| Tombigbee | | |
| NORTH CAROLINA— | | |
| National Forests in North Carolina,[2] Asheville 28802 | | |
| Nantahala and Pisgah | 1985 | 1987 |
| Uwharrie and Croatan | 1985 | 1986 |
| PUERTO RICO— | | |
| Carribbean, Rio Piedras 00928 | 1985 | 1986 |
| SOUTH CAROLINA— | | |
| Francis-Marion | 1984 | 1985 |
| Sumter,[2] Columbia 29202 | 1985 | 1985 |

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

| Headquarters location [1] | Fiscal year to be completed | |
|---|---|---|
| | DEIS | FEIS [3] |
| TENNESSEE— | | |
| Cherokee, Cleveland 37311 | 1985 | 1986 |
| TEXAS— | | |
| National Forests in Texas,[2] Lufkin 75901 | 1985 | 1987 |
| Angelina | | |
| Davy Crockett | | |
| Sabine | | |
| Sam Houston | | |
| VIRGINIA— | | |
| George Washington, Harrisonburg 22801 | 1985 | 1986 |
| Jefferson, Roanoke 24011 | 1985 | 1986 |
| R-9, Eastern Region, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 | | |
| Regional Guide | 1982 | 1984 |
| ILLINOIS—Shawnee, Harrisburg 62946 | 1985 | [4] 1987 |
| INDIANA and OHIO— | | |
| Wayne-Hoosier,[2] Bedford, IN 47421 | | |
| Wayne | [4] 1987 | 1987 |
| Hoosier | 1984 | 1986 |
| MICHIGAN— | | |
| Hiawatha, Escanaba 49829 | 1985 | [4] 1987 |
| Huron-Manistee,[2] Cadillac 49601 | 1985 | 1986 |
| Ottawa, Ironwood 49938 | 1985 | [4] 1987 |
| MINNESOTA— | | |
| Chippewa, Cass Lake 56633 | 1985 | 1986 |
| Superior, Duluth 55801 | 1985 | 1986 |
| MISSOURI—Mark Twain, Rolla 65401 | 1985 | 1986 |
| NEW HAMPSHIRE and MAINE—White Mountain, Laconia, NH 03246 | 1985 | 1986 |
| PENNSYLVANIA— | | |
| Allegheny, Warren 16365 | 1985 | 1986 |
| VERMONT—Green Mountain, Rutland 05701 | 1985 | [4] 1987 |
| WEST VIRGINIA— | | |
| Monongahela, Elkins 26241 | 1985 | 1986 |
| WISCONSIN— | | |
| Chequamegon, Park Falls 54552 | 1985 | 1986 |
| Nicolet, Rhinelander 54501 | 1985 | 1986 |
| R-10, Alaska Region, Federal Office Building, P.O. Box 1628, Juneau, Alaska 99802 | | |
| Regional guide | 1981 | [4] 1984 |
| ALASKA— | | |
| Chugach, Anchorage 99502 | 1982 | 1984 |
| Tongass-Chatham, Sitka 99835 | [5] 1989 | [5] 1989 |
| Tongass-Ketchikan, Ketchikan 99901 | [5] 1989 | [5] 1989 |
| Tongass-Stikine, Petersburg 99833 | [5] 1989 | [5] 1989 |

[1] Mailing address for each National Forest.
[2] Two or more separately proclaimed National Forests.
[3] DEIS and FEIS mean Draft and Final Environmental Impact Statements.
[4] Filed with EPA in fiscal year 1987.
[5] One EIS will be filed for the Tongass National Forest.
*An earlier published Draft EIS will be supplemented or revised.

[FR Doc. 87-7457 Filed 4-6-87; 8:45 am]
BILLING CODE 4310-84-M

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 28, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 22, 1987.

Carol D. Shull,
*Chief of Registration, National Register.*

ALASKA

**Ketchikan Gateway Borough**

Ketchikan, *Ketchikan Ranger House*, 309 Gorge St.

CONNECTICUT

**New Haven County**

Branford, *Branford Center Historic District*, Roughly bounded by US 1, Branford River on the East and South, Monroe, and Kirkham Sts.

INDIANA

**Jackson County**

*Low Spur Archaeological Site (12 J 87)*

KENTUCKY

**Harrison County**

Cynthiana, *Spur Gasoline Station*, 201 E. Bridge St.

MARYLAND

**Wicomico County**

Hebron vicinity, *Western Fields*, Porter Mill Rd.

MISSOURI

**Pike County**

Louisiana, *Georgia Street Historic District*, Roughly Georgia St. between Main and Seventh Sts.

**St. Louis (Independent City)**

*Oakherst Place Concrete Block District*, Roughly bounded by Julian, Oakley, Plymouth, and Oakherst

NEW YORK

**Onondaga County**

Syracuse, *Syracuse Post Office and Courthouse*, 4 Clinton Square

**Westchester County**

Tarrytown, *Christ Episcopal Church*, Broadway and Elizabeth Sts.

NORTH CAROLINA

**Mecklenburg County**

Charlotte, *Myers Park Historic District*, Roughly bounded by N C 16, Queens Rd. East and West, and Lillington Ave.

OHIO

**Cuyahoga County**

Cleveland, *Colonial and Euclid Arcades*, 508 and 600 Euclid Ave.

**Erie County**

Sandusky, *Doerzbach, George J., House*, 1208–1210 Central Ave.

**Fairfield County**

Lancaster vicinity, *Artz, John, Farmhouse*, 5125 Duffy Rd.

**Fayette County**

Mt. Sterling vicinity, *McCafferty, William, Farmhouse*, 7099 O H 207 N E

Washington Court House, *Robinson-Pavey House*, 421 W. Court St.

**Franklin County**

Gahanna, *Old Peace Lutheran Church*, 78–82 N. High St.

**Fulton County**

Wausen, *Jones-Read-Touvelle House*, 435 E. Park St.

**Montgomery County**

Dettering, *Long-Mueller House*, 986 Laurelwood Rd.

**Pickaway County**

Orient vicinity, *Scioto Township District No. 2 Schoolhouse*, 8143 Snyder Rd.

SOUTH CAROLINA

**Charleston County**

Edisto Island vicinity, *Old House Plantation and Commissary (Boundary Increase) (Edisto Island M R A)*, .5 mi. E of S C 174 and Oak Island Rd. Jct., then right on dirt Rd.

**Oconee County**

Seneca, *Seneca Historic District (Boundary Increase)*, 300 S. Fairplay St.

[FR Doc. 87–7538 Filed 4–6–87; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Controlled Substances; Proposed Revised 1987 Aggregate Production Quotas

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of proposed revised 1987 aggregate production quotas.

**SUMMARY:** This notice proposes revised 1987 aggregate production quotas for controlled substances in Schedule II of the Controlled Substances Act. Since the establishment of the 1987 aggregate production quota on December 30, 1986 (51 FR 47071), DEA has reviewed data submitted by the registered manufacturers concerning 1986 dispositions and year-end inventories and has determined that revisions of some of the previously established quotas are necessary.

**DATE:** Comments or objections should be received on or before May 7, 1987.

**ADDRESS:** Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act (21 U.S.C 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Scheudules I and II each year.

This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On December 30, 1986, a notice of the 1987 aggregate production quotas was published in the **Federal Register** (51 FR 47071). Indicated in that notice was that, pursuant to Title 21 of the Code of Federal Regulations, § 1303.23(c), the Administrator of the Drug Enforcement Administration would adjust these quotas in early 1987. These aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1987 and does not include amounts which may be imported for use in industrial processes.

Based on a review of 1986 year-end inventories, 1986 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the Drug Enforcement Administration by the Food and Drug Administration and other information available to DEA, the Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the following changes in the 1987 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base:

| Schedule II | Previously established 1987 aggregate production quota | Proposed revised 1987 aggregate production quota |
|---|---|---|
| Alfentanil | 10,000 | 0 |
| Amobarbital | 887,000 | 0 |
| Amphetamine | 325,000 | 372,000 |
| Codeine (for sale) | 58,001,000 | 60,199,000 |
| Codeine (for conversion) | 4,064,000 | 3,814,000 |
| Desoxyephedrine | 1,360,000 | 1,314,000 |
| 1,300,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 14,000 grams for the production of methamphetamine | | |
| Dextropropoxyphene | 69,637,000 | 74,108,000 |
| Dihydrocodeine | 823,000 | 444,000 |
| Diphenoxylate | 584,000 | 971,000 |
| Hydrocodone | 1,859,000 | 2,431,000 |

| Schedule II | Previously published 1987 aggregate production | Proposed revised 1987 aggregate production |
|---|---|---|
| Hydromorphone | 196,000 | 206,000 |
| Levorphanol | 22,500 | 14,500 |
| Meperidine | 11,282,000 | 11,586,000 |
| Methadone | 1,510,000 | 1,231,000 |
| Methadone Intermediate (4-cyano-2-dimethylamino-4,4-diphenylbutane) | 1,886,000 | 1,539,000 |
| Mixed Alkaloids of Opium | 10,500 | 3,000 |
| Morphine (for sale) | 2,078,000 | 2,802,000 |
| Morphine (for conversion) | 62,557,000 | 64,466,000 |
| Opium (tinctures, extracts etc. expressed in terms of USP powdered opium) | 1,506,000 | 1,676,000 |
| Oxycodone (for sale) | 2,333,000 | 2,202,000 |
| Pentobarbital | 12,000,000 | 12,937,000 |
| Phenmetrazine | 100,000 | [illegible] |
| Secobarbital | 1,963,000 | [illegible] |
| Phenylacetone | 755,000 | 944,000 |

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the other. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to section 3(c)(3) and (3)(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominately upon major manufacturers of the affected controlled substances.

Dated: March 30, 1987.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87-7645 Filed 4-6-87; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

*Background:* The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

*List of recordkeeping/reporting requirements under review:* As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency indentification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small business or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the requests for approval, if applicable.

An abstract describing the need for and uses of the information collection.

*Comments and questions:* Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clerance Officer. Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, D.C. 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**New Collection**

*Bureau of Labor Statistics*

Survey of Employer Provided Child-Care Benefits
BLS 372
One-time survey
State or local government; Businesses or other for-profit,
Federal agencies or employees, Non-profit institutions;
Small businesses or organizations
10,000 responses; 1,333 hours; 1 form

The Survey of Employer Provided Child-Care Benefits will collect information on establishment practices of providing child-care and related benefits. The results will provide estimates of the incidence of these various benefits across broad industry groups nationwide.

*Employment or Training Administration*

Data Collection and Analyses of JTPA Evaluation Experiments
Other
Individuals or households
45,532 respondents; 15,402 hours; survey

JTPA mandates evaluation of the effectiveness of JTPA programs.

DUE to ambiguous results of prior evaluations, USDOL will carry out a classical field experiment in a sample of 20 locations to measure net impacts, and improve future quasiexperimental analyses.

Approval is sought for information collections to support this evaluation.

*Occupational Safety and Health Administration*

Cadmium
Other, nonrecurring
Businesses or other for-profit
205 response; 113 hours

The information for which this request has been submitted is required for the Regulatory Impact Analysis of a proposed Cadmium Standard. The information will be requested of businesses who manufacture cadmium-containing products or cadmium compounds.

Data on finances, employee exposures, processes, and exposure limiting practices will be sought.

**Revision**

*Bureau of Labor Statistics*

CPI Commodities and Services Data Collection Forms
1220–0039; BLS 3400, BLS 3400A, BLS 3400B, BLS 3400C, BLS 3401
Monthly or bimonthly
State or local governments; Businesses or other for-profit;
Non-profit institutions; Small businesses or organizations
275,204 responses; 87,683 hours; 5 forms

The Consumer Price Index (CPI) is the nation's leading measure of inflation at the retail level. It is widely used to measure the success of national economic policy and to escalate federal and private payments of many kinds. The Commodities and Services Survey provides the measure of price change for about 80 percent of the CPI. Effective March 31, 1987, responsibility for the collection of residential electricity prices will be transferred from the Department of Energy (DOE) to the Bureau of Labor Statistics (BLS). Although individual electricity prices are currently available from DOE, all electricity data collected by BLS will be subject to the usual BLS confidentiality restrictions. Thus, beginning in April 1987 only aggregate electricity data will be available to the public.

**Extension**

*Employment and Training Administration*

Forms for Interstate Clearance Program of Services to Migratory Workers and Employers
1205–0134; ETA 790, 795, 785, 785A
On occasion
State or local governments
52 respondents; 6,500 burden hours; 4 forms

State Employment Security Agencies use forms in servicing agricultural employers to insure their labor needs for domestic migratory agricultural workers are met; in servicing domestic agricultural workers to assist them in locating jobs expeditously and orderly; and to insure exposure of employment opportunities to domestic agricultural workers before certification for employment of foreign workers.

*Mine Safety and Health Administration*

Annual Status Report and Certification and Weekly Inspections of Refuse Piles and Impoundments
1219–0015
Annually; weekly
Businesses and other for profit; small businesses or organizations
675 respondents; 79,350 hours

Requires coal mine operators to submit to MSHA an annual status report and certification on refuse piles and impoundments; and to keep records of the results of weekly examinations and instrumentation monitorings of impoundments.

*Hazard Communication*

OSHA–245
Occupational Safety and Health Administration
Recordkeeping; On Occasion
Businesses or Other Profit, Small Businesses or Organizations
328,000 Responses; 806,640 Hours; 1 form

The Hazard Communication Standard requires chemical manufacturers and importers to generate hazard information about their products, and make it available to employers and employees covered by the rule. Respondents will be chemical manufacturers, importers, and distributors of chemicals. Transmittal of such information will increase protection to employees exposed to chemicals and decrease the incidence of chemical source illnesses and injuries.

*Departmental Management, Office of the Assistant Secretary for Administration and Management*

Qualifications Inquiry for Positions in the Local 12 Bargaining Unit–DL 1–1104
1225–0016; PERS–5
On occasion
Individuals or households
1,000 responses; 250 hours; one form

This form is required under the Department of Labor's negotiated Merit Staffing Plan for positions in the Local 12 barganining unit to collect information by the Personnel Office from the applicants supervisor. The information will be used by raters to evaluate outside applicants against the requirements of the vacancy to be filled.

**Reinstatement**

*Occupational Safety and Health Administration*

Quarterly Report of State Compliance and Standards Activities and Migrant Housing Inspections/Violations Report
1218–0004; OSHA 120, 120A, 124
Quarterly
State or local governments
3 responses; 360 hours

29 CFR 1902 requires each State having an approved plan to submit reports so that the Secretary may evaluate the manner in which each State is carrying out its responsibility under the plan.

*Occupational Safety and Health Administration*

Powered Platforms for Exterior Maintenance
1218–0121
On Occasion
Businesses or other for-profit
234,000 responses; 243,750 hours; 0 forms

OSHA is requiring this information to be collected by employers for determining the cumulative maintenance of a powered platform and for taking the necessary preventive action to assure employer safety.

*Occupational Safety and Health Administration*

Ionizing Radiation
OSHA–253
On occasion, annually
Businesses or Other For-Profit; Federal Agencies or Employees, Small Businesses or ogranizations
Number of responses vary; 44,660 Hours; 0 form This information is to be collected by employers to protect employees exposed to radiation in the workplace.

Signed at Washington, DC, this 2nd day of April, 1987.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 87–7660 Filed 4–6–87; 8:45 am]

BILLING CODE 4510–26–M

## Employment and Training Administration

[TA–W–18,227]

### Chevron, U.S.A., Inc., Cleves Refinery, Cleves, OH; Negative Determination Regarding Application for Reconsideration

By an application dated March 2, 1987, the Oil, Chemical and Atomic Workers International Union (OCAW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance filed on behalf of workers at Chevron, U.S.A., Incorporated, Cleves, Ohio. The denial notice was signed on February 2, 1987 and published in the **Federal Register** on February 19, 1987 (52 FR 5211).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the Chevron, U.S.A. refinery at Cleves could not remain competitive because it did not have the capability to refine low cost imported crudes.

In order for a worker group to become certified eligible to apply for adjustment assistance it must meet all three group eligibility criteria of the Group Eligibility Requirements of the Trade Act of 1974—significantly decreased employment; decreased sales or production and increased imports contributing importantly to worker separations. Investigative findings show that the decreased employment criterion was not met in 1985. The Cleves refinery closed in July, 1986.

The predominant portion of production at the Cleves refinery was gasoline and diesel fuel. U.S. imports of motor gasoline decreased absolutely and relative to domestic shipments in the first half of 1986 compared to the same period in 1985. The ratio of imports to domestic gasoline shipments was less than five percent in the first half of 1986. U.S. imports of distillate fuel oil, including diesel fuel, also declined absolutely and relative to domestic shipments over the same periods. The ratio of imports to domestic shipments was about six percent in the first half of 1986.

Concerning the claim that the Cleves refinery did not have the potential or capability to refine high sulfur imported crudes, this, in itself, would not form a basis for certification. Technological unemployment and potential imports together would not meet the increased import criterion of the Trade Act.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 31st day of March, 1987.

**Harold A. Bratt,**

*Deputy Director, Office of Program Management, UIS.*

[FR Doc. 87-7661 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-18,883]

### Cooper Industries, Arrow Hart Division, Danielson, CT; Affirmed Determination Regarding Application for Reconsideration

The International Brotherhood of Electrical Workers (IBEW) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of former workers at Cooper Industries, Arrow Hart Division, Danielson, Connecticut. The determination was published in the **Federal Register** on March 10, 1987 (52 FR 7330).

The union claims, among other things, that the Danielson plant was an integrated production facility with the Hartford plant of Cooper Industries whose workers are covered under a certification (TA-W-17,815).

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 31st day of March 1987.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-7662 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA-W-18,012 et al.]

### Standard Oil Production Co.; Negative Determination Regarding Application for Reconsideration

In the matter of TA-W-18,012 Anchorage, Alaska; TA-W-18,013 Executive Offices, Houston, Texas; TA-W-18,014 Gulf Coast Division, Houston, Texas; TA-W-18,015 Continental Division, Dallas, Texas; TA-W-18,016 Technology Center, Dallas, Texas; TA-W-18,017 Midland, Texas; TA-W-18,018 Oklahoma City, Oklahoma; TA-W-18,019 Headquarters, Cleveland, Ohio; TA-W-18,020 Warrensville Lab, Cleveland, Ohio; and TA-W-18,021 Casper, Wyoming.

By an application dated February 19, 1987, a company official requested administrative reconsideration of the Department's negative determinations on the subject petitions for trade adjustment assistance filed on behalf of workers at the above mentioned locations of the Standard Oil Production Company. The denial notice was signed on January 13, 1987 and published in the **Federal Register** on February 19, 1987 (52 FR 5210).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that the Standard Oil Production Company could not justify its exploration and production efforts because of global oil economics dictated by OPEC pricing and production.

In order for a worker group to become certified eligible to apply for adjustment assistance it must meet all three group eligibility criteria of the Group Eligibility Requirements of the Trade Act of 1974—decreased employment; decreased sales or production and increased imports contributing importantly to worker separations. Investigative findings show that the decreased sales or production criterion was not met in 1985. Sales and production at the Standard Oil Production Company increased, in quantity and in value, in 1985 compared to 1984 and, in quantity, in 1986 compared to 1985. Further, the average employment of production workers at the Standard Oil Production Company increased in 1985 compared to 1984.

The "contributed importantly" test of the increased import criterion was not met in the first half of 1986. The findings showed that nearly all of the Standard Oil's production is shipped to a wholly owned subsidiary which had decreased imports of crude oil in the first half of 1986 compared to the same period in 1985. This occurred while the Standard Oil increased its production and sales in the first half of 1986 compared to the same period in 1985.

Most of the crude oil is refined into gasoline and distillate fuel oil by Standard Oil's major customer. U.S. imports of gasoline declined absolutely and relative to domestic shipments in the first half of 1986 compared with the same period of 1985. The ratio of imports to domestic shipments was less than five percent in the first half of 1986. U.S. imports of distillate fuel oil declined absolutely and relative to domestic shipments in 1985 compared to 1984 and in the first six months of 1986 compared

to the same period in 1985. The ratio of imports to domestic shipments was about six percent in the first half of 1986.

Further, the fact that worker separations occurred among the salaried and non-production employees because of the drop in oil prices would not form a basis for certification.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's price decision. Accordingly the application is denied.

Signed at Washington, DC, this 30th day of March 1987.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services.*

[FR Doc. 87-7663 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA-17,927]

**USS Corp. (Formerly United States Steel Corp.), Lorain Works, Lorain, OH; Affirmed Determination Regarding Application for Reconsideration**

On December 29, 1986 the petitioners requested administrative reconsideration and were granted a filing extension to supplement their request for reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers at USS Corporation, Lorain Works, Lorain, Ohio. The determination was published in the **Federal Register** on December 2, 1986 (51 FR 43483).

The petitioners claim, among other things, that the Department in its initial investigation did not distinguish between carbon bar and alloy bar products produced at the Lorain Works. It is also claimed that import information on commodity classes (6068600, 613216, 6103945 and others) are at variance with the overall decrease in imports in each of the last two years and inconsistent with the Department's findings.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of March, 1987.

**Barbara Ann Farmer,**

*Acting Director, Office of Program Management, UIS.*

[FR Doc. 87-7664 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-30-M

---

**Mine Safety and Health Administration**

[Docket No. M-87-56-C]

**H L & W Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

H L & W Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its H L & W Slope (I.D. No. 36-07825) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis, history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cublic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1987. Copies of the petition are available for inspection at that address.

Dated: March 30, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7665 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-57-C]

**Mine Hill Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Mine Hill Coal Company, R.D. # 2, Box 2844, Pottsville, Pennsylvania 17901 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Buck Mountain Slope (I.D. No. 36-07032) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no

emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1987. Copies of the petition are available for inspection at that address.

Dated: May 25, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7666 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-65-C]**

## Mt. Vernon Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mt. Vernon Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Rend Lake Mine (I.D. No. 11-00601), located in Jefferson County, Illinois and its Wheeler Creek Mine (I.D. No. 11-02387), located in Hamilton County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the installation requirements of water sprinkler systems.

2. As an alternate method, petitioner proposes to use a single line of automatic sprinklers for fire protection systems at main and secondary belt conveyor drives. In support of this request, petitioner states that:

(a) Automatic sprinklers will be maintained at a distance of not more than 10 feet apart with actuation temperatures between 200 degrees F. and 230 degrees F.;

(b) Automatic sprinklers will be located so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit;

(c) During operation of the system, water pressure will not be less than 10 psi; and

(d) A test to insure proper operation will be conducted during the installation of each new system and during subsequent repair or replacement of any critical part thereof.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1987. Copies of the petition are available for inspection at that address.

Dated: March 25, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7667 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-47-C]**

## Terco, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Terco, Inc., HC 73, Box 1723, Bryants Store, Kentucky 40921 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-14730), and its Terco No. 3 Mine (I.D. No. 15-12478) both located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1987. Copies of the petition are available for inspection at that address.

Dated: March 30, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7668 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-49-C]

### Three X Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Three X Coal Company, P.O. Box 1149, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-15680) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapsed time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1987. Copies of the petition are available for inspection at that address.

Dated: March 30, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7669 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-64-C]

### U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Gary No. 50 Mine (I.D. No. 46-01816), and its Shawnee Mine (I.D. No. 46-05907), both located in Pineville County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that metallic frames, casings, and other enclosures of electric equipment that can become "alive" through failure of insulation or by contact with energized parts be grounded.

2. Petitioner uses a continuity ground monitoring system and states that an internal grounding conductor cannot be used.

3. As an alternate method, petitioner seeks a modification of the standard to allow the use of mechanical connection without the external grounding shunt. Petitioner believes that the mechanical connection between the plug and receptacle housings of the connector provides an effective electrical ground.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1987. Copies of the petition are available for inspection at that address.

Dated: March 25, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7670 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-69-C]

### W & D Coal Company, Inc., Petition for Modification of Application of Mandatory Safety Standard

W & D Coal Company, Inc., P.O. Box 92, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-13376) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of

continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous montoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous montoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery fractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be indspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 41015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 7, 1987. Copies of the petition are available for inspection at that address.

Dated: March 30, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary.*

[FR Doc. 87-7671 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-66-C]

**Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Holton Mine (I.D. No. 44-04197) located in Lee County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to the differing degrees of stability to which roof conditions deteriorate in the tailgate entry as the longwall face is mined, application of the standard will result in a diminution of safety.

3. As an alternate method, petitioner proposes to establish air monitoring checkpoints at specific locations. In further support of this request, petitioner states that:

(a) When an area of the tailgate entry cannot be safely traveled, the approach to that area will be dangered off and the quality and quantity of air returning from the longwall face will be evaluated for methane content and volume outby the dangered-off area (with access traveled from the mouth of the panel); and

(b) One-hour, self-contained self-rescuers will be maintained along the longwall face in sufficient numbers to provide easy and prompt access should an emergency arise. All persons who work in this area will be advised when portions of the tailgate entry are dangered off and will be reinstructed in emergency evacuation procedures.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comment. These comments must be filed with the Office of Standard, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that Office on or before May 7, 1987. Copies of the petition are available for inspection at that address.

Dated: March 25, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-7672 Filed 4-6-87; 8:45 am]

BILLING CODE 4510-13-M

---

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-352]

**Philadelphia Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-39 issued to Philadelphia Electric Company for operation of the Limerick Generating Station, Unit 1, located in Montgomery County, Pennsylvania.

The proposed amendment would change the Technical Specifications (TS) in accordance with the licensee's application for amendment dated January 30, 1987, and as supplemented on March 27, 1987, to permit an increase in the allowable control room air leakage rate. The change to the surveillance requirement in TS 4.7.2.e.3 would allow an increase from 525 cubic feet per minute (cfm) to 2100 cfm in the amount of outside air which must be taken in by the control room heating, ventilating and air conditioning (HVAC) systems in order to maintain a control room internal positivve pressure of at least one-eight inch water gauge during a radiation isolation pressure mode of operation of the control room habitability systems. The change is requested to permit the establishment of a larger opening into the common Unit 1 and 2 control room to facilitate cable pulling associated with the construction of Unit 2.

The control room HVAC systems operate in three modes of operation as follows: (1) The chlorine isolation mode in response to a chlorine accident (2) the other toxic chemical isolation mode in response to other toxic chemical accidents, and (3) the radiation isolation mode in response to a high radiation accident. The response to the other toxic chemical accidents, as required by the degree of severity of the event, is to manually isolate the control room, initiate the control room emergency fresh air supply system (CREFAS) to process the recirculated air through charcoal filters, and use by the operators of self contained breathing apparatus. The response for the chlorine accident is similar except that the isolation is automatic. The response to the radiation accident is to automatically isolate the control room except for a specified intake of outside air which is processed by the CREFAS

before being used to maintain the control room at a positive internal pressure.

The proposed change would result in no physical system design changes to the normal control room (CR) HVAC or CREFAS system. A CR admitting 2100 cfm, instead of 525 cfm, in the radiation isolation mode would require a corsponding increase in the flowrate processed by the CREFAS prior to supplying it to the CR. The value of 2100 cfm is within the 3000 cfm capability of the CREFAS as discussed in the FSAR. A control room, that is assumd to be consistent with a demonstrated 2100 cfm inleakage capability when unpressurized and isolated in the chlorine or other toxic chemical isolation mode would require the operators to rely on self contained breathing apparatus at an earlier time (2.1 minutes) than if the leadage were consistent with the lower value of 525 cfm (2.6 minutes).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided analyses of no significant hazards considerations in its request for the license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment satisfies the standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The NRC staff has made a preliminary review of the licensee's submittals. The staff's evaluation of the proposed changes is provided below.

**Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**

The control room HVAC systems, including the control room emergency fresh air system, operate in response to three accident scenarios which include a high radiation accident, a chlorine release accident and other toxic chemical release accident. There are no physical changes to the design of the CR HVAC or the CREFAS system. The system's controls will compensate for the increased opening area into the control room space by increasing the volume of outside air to the control room in order to keep the control room pressurized in response to the high radiation accident. The increase in the potential CR inleakage rate during its chlorine and other toxic chemical isolation response modes continues to provide more than two minutes for operators to put on self contained breathing apparatus. The increase in the allowable leakage rate and the associated increase in the HVAC flow rate is considered by the licensee to be independent of those events which would cause a high radiation or toxic chemical release accident; the probability of any accident previously evaluated is, therefore, not significantly increased. The licensee has evaluated the change in consequences resulting from the increased leakage and finds that the radiological doses to the operators, as shown in Table 1 of the amendment application and the supplemental letter dated March 27, 1987, would not be significantly increased. These calculated doses remain well within the dose guidelines of Section 6.4 of the Standard Review Plan (SRP). The licensee has evaluated the change in consequences from the chlorine and other toxic chemical release accidents and finds that there is no significant increase in consequences since the operators will continue to have more than the two minute minimum specified in SRP 6.4 in which to put on self contained breathing apparatus.

**Standard 2—Create the Possibility of a New or Different kind of Accident From An Accident Previously Evaluated**

The proposed changes do not physically alter the normal HVAC or CREFAS system design or operation nor does it affect the performance of any other system. The proposed change involves an increase in system flow rate which is within the design capability of the system to meet normal operational requirements and the high radiation accident. The proposed changes continue to allow the system to be isolated upon a chlorine or other toxic chemical accident in sufficient time to provide the operators with over two minutes to don self contained breathing apparatus. The licensee states that the analyses at the proposed increased air leakage rate are based on the existing design basis radiological accident described in FSAR Sections 15.6 and 15.10.2 and releases of toxic chemicals as described in FSAR Section 2.2.3 and that no new or different types of accidents are created by increasing the allowable leakage rate into the control room.

**Standard 3—Involve a Significant Reduction in a Margin of Safety**

The licensee states that while the CR dose following the postulated design basis accidents described in FSAR Sections 15. 6 and 15.10.2 is increased with the higher leakage rate, the reduction in the margin of safety is minimal as shown in Table 1 of the amendment application. Table 1 shows that although there will be an increase in the calculated dose as a result of a high radiation accident the increase is insignificant and the dose continues to be a small fraction of the limits established in General Design Criterion 19 and in the Standard Review Plan.

Since the allowable inleakage to the CR in a toxic chemical isolation mode would be increase by the proposed amendment the time available to the operators to don protective breathing apparatus before the concentration of chlorine or other toxic chemicals in the CR atmosphere becomes excessive is reduced. The licensee states that the effect of the proposed change is to reduce the time available for the operators to respond to the limiting chemical, ethylene oxide, from 2.6 minutes as stated in FSAR Table 2.2–6, to 2.1 minutes. The 2.1 minute period is still in excess of the protective action limit of two minutes or less as discussed in Section 6.4 of the Standard Review Plan. On this basis the licensee has concluded that the proposed change does not involve a significant reduction in a margin of safety.

The staff notes that the change from 2.6 minutes to 2.1 minutes in the available time for donning breathing apparatus is, as stated by the licensee, a decrease in the margin of safety. Although this change does result in a reduction in the margin associated with the time to implement protective measures prior to incapacitation, the staff is aware of the various conservatisms that are applied to the overall evaluation of the toxic gas risk. This includes conservatisms with respect to the likelihood and magnitude of a toxic gas release, as well as the degree of gas dispersion and infiltration into the control room. Hence, when considered in the context of the complete sequence of events associated with toxic gas hazards and accident analyses, the effect of the calculated decrease from 2.6 to 2.1 minutes on the overall toxic gas risk is small.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. Example vi relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system of component specified in the Standard Review Plan (SRP).

In this case the proposed change is similar to Example vi in that even though the margin between the calculated and the allowable control room doses due to a radiation accident and the margin between the previously available time and the minimum allowable time for the operators to put on self contained breathing apparatus in response to a toxic chemical accident is reduced, the change results in calculated doses and a response time which are within the acceptance criteria specified in the SRP.

As the changes requested by the licensee's January 30, 1987 submittal fit Example (vi) as well as satisfy the criteria of 10 CFR 50.92, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice with be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number this **Federal Register** notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington DC.

By May 7, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or by the Chairman of the Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first perhearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which may include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, BWR Project Directorate No. 4, Division of DWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 30, 1987, as supplemented by letter dated March 27, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, this 2nd day of April, 1987.

For the Nuclear Regulatory Commission.

**Walter R. Butler,**

*Director, BWR Project Directorate No. 4, Division of BWR Licensing.*

[FR Doc. 87–7684 Filed 4–6–87; 8:45 am]

BILLING CODE 7590–01–M

---

## Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 9–11, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. The agenda for this meeting was published in the **Federal Register** on March 26 1987, Vol. 52, No. 58, FR–9737.

**Friday, April 10, 1987**

*1:30 P.M.–4:00 P.M.*

*Operating Experience* (Open/Closed)—Briefing and discussion of recent incidents and events at nuclear facilities.

Portions of this session will be closed as required to duscuss Proprietary Information applicable to the matter being considered in accordance with 5 U.S.C. 552b(c)(4) and to discuss investigatory records complied for purposes of law enforcement or information which, if written, would be contained in such records to the extent that production of such records would interfere with enforcement proceedings per 5 U.S.C. 552b(c)(7)(A).

Procedures for the conduct of this meeting remain as previously noticed.

Dated: April 2, 1987.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 87–7686 Filed 4–6–87; 8:45 am]

BILLING CODE 8590–01–M

---

## NUCLEAR REGULATORY COMMISSION

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–3181–6]

## Commercial Mixed Low-Level Radioactive and Hazardous Waste

**AGENCY:** Nuclear Regulatory Commission/Environmental Protection Agency.

**ACTION:** Notice of availability of guidance document and request for comments.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) and the Environmental Proection Agency (EPA) are issuing a jointly developed document which provides guidance on the definition and identification of commercial mixed low-level radioactive and hazardous waste (Mixed LLW) and sets out answers to anticipated questions from potential generators of this waste. This document was developed to assist commercial low-level radioactive waste generators in assessing whether they are currently generating Mixed LLW.

**DATES:** NRC and EPA will accept comments on this guidance document until July 6, 1987.

**ADDRESSES:** Comments on the guidance document should be directed to both NRC and EPA. For NRC, the public must send an original and two copies of their comments to: Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For EPA, the public must send an original and two copies of their comments to: EPA RCRA Docket (S–212) (WH–562), Office of Solid Waste, 401 M Street SW., Washington, DC 20460. Communications should be identified by docket reference codes "F–87–LLWN–FFFFF".

Copies of this guidance document may be obtained free of charge from NRC upon written request to Linda Luther, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555, telephone (800) 368–5642, Ext. 74426. It may also be obtained free of charge from EPA by calling the RCRA Hotline telephone (800) 424–9346, or in Washington, DC by calling 382–3000, or by writing to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests should be identified as follows: OSWER Directive 9432.00–2. In addition, this document is available for viewing in the EPA RCRA Docket (Sub-basement), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sher Bahadur, Division of Waste Management, Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555; or Mr. Alan Corson, Characterization and Assessment Division, Environmental Protection Agency, Mail Code WH–562B, 401 M Street SW., Washington, DC 20460.

Copies of NUREGs referenced in this document may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection and copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

**SUPPLEMENTARY INFORMATION:** This announcement notices availability and solicits comments on the "Guidance on the Definition and Identification of Commercial Mixed Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions." This guidance was jointly developed by the NRC and EPA and was approved on January 8, 1987 with the purpose of assisting low-level radioactive waste generators in assessing whether they are currently generating Mixed LLW.

Both agencies strongly encourage interested organizations and individuals to comment on the guidance, and to suggest additional areas of inquiry if appropriate.

Dated at Washington, DC, this 1st day of April, 1987.

For the Nuclear Regulatory Commission.

**Hugh L. Thompson, Jr.,**

*Director, Office of Nuclear Materials Safety and Safeguards.*

For the Environmental Protection Agency.

**J. Winston Porter,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 87-7626 Filed 4-6-87; 8:45 am]

BILLING CODE 6560-50-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-24290; File No. SR-NASD-87-7]**

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on February 3, 1987, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend section 66(b) of the NASD's Uniform Practice Code to reduce the time period for settling syndicate accounts from 120 days to 90 days.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24110, February 18, 1987) and by publication in the **Federal Register** (52 FR 6090, February 27, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved. In accordance with the letter amendment filed by the NASD on March 20, 1987, the proposed rule change will become effective on May 1, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 1, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-7678 Filed 4-6-87; 8:45 am]

BILLING CODE 8010-01-M

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

April 1, 1987

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Consolidated Rail Corporation
Common Stock, $1.00 Par Value (File No. 7-9870)
Colonial Municipal Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-9871)
Petrolane Partners, L.P.
Depository Receipts, No Par Value (File No. 7-9872)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 22, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-7679 Filed 4-6-87; 8:45 am]

BILLING CODE 8010-01-M

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 31, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Consolidated Rail Corporation, Common Stock, $1.00 Par Value (File No. 7-9868)
Maritrans Partners L.P., Depository Receipts Representing Units of Limited Partnership Interest (File No. 7-9869)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated tranasction reporting system.

Interested persons are invited to submit on or before April 21, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7598 Filed 4-6-87; 8:45 am]

BILLING CODE 8010-01-M

**[File No. 22-16542]**

### Application and Opportunity for Hearing; Citicorp

April 1, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement, dated as of January 1, 1987 under which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under any of such indentures or the agreement.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to

have a conflicting interest if such trustee is trustee under another indenture under which any other securities of an obligor upon the indenture securities are outstanding.

The Applicant alleges that: (1) The Trust Company currently is acting as Trustee under four indentures under which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989; the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes; the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A; and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statement Nos. 2–42915, 2–58355, 2–59396 and 2–64862 under the Securities Act of 1933 (the "1933 Act"), and have been qualified under the Act. Said four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes."

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On January 15, 1987, the Trust Company entered into a Pooling and Servicing Agreement dated as of January 1, 1987 (the "1986–T Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on January 15, 1987 Mortgage Pass-Through Certificates, Series 1986–T 8.50% Pass-Through Rate (the "Series 1986–T Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986–T Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $97,389,210.99 at the close of business on January 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986–T Certificates. On January 15, 1987, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1986–T Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1986–T Certificates, to be liable for 7.0% of the initial aggregate principal balance of the 1986–T Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986–T Guaranty. The 1986–T Guaranty states the Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986–T Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986–T Certificates were registered under the 1933 Act (Registration Statement on Forms S–11 and S–3, File No. 33–6358) as part of a delayed or continous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the 1933 Act. The Series 1986–T Certificates were offered by a Prospectus Supplement Dated December 16, 1986, supplemental to a Prospectus dated November 7, 1986. The 1986–T Agreement has not been qualified under the Act.

(4) The obligations of Applicant under the Indentures and the 1986–T Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1986–T Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1986–T Agreement.

(5) The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules and Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–16542, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is Further Given that an interested person may, not later than April 20, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7680 Filed 4–6–87; 8:45 am]

BILLING CODE 8010–01–M

---

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 31, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Sun Chemical Corporation (New), Class A Common Stock, No Par Value (File No. 7–9866)

Sun Chemical Corporation (New), Class B Common Stock No Par Value (File No. 7–9867)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 21, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–7599 Filed 4–6–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22-16430]

**Application and Opportunity for Hearing; Citicorp**

April 1, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a pooling and Servicing Agreements dated December 1, 1986 under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under any of such indentures or the agreement. Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of

Section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under which securities of an obligor upon the indenture securities are outstanding.

The Applicant alleges that: (1) The Trust Company currently is acting as Trustee under four indentures under which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating rate notes due 1989; the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated notes; the indenture dated as of August 25, 1977 involved the issuance of rising-rate notes, Series A; and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated notes. These indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective registration statement nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933 (the "1933 Act"), and have been qualified under the Act. Said four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes".

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On December 22, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of December 22, 1986 (the "1986-S Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on December 22, 1986 Mortgage Pass-Through Certificates, Series 1986-S 9.00% Pass-Through Rate (the "Series 1986-S Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986-S Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $125,377,276.53 at the close of business on December 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986-S Certificates. On December 22, 1986, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1986-S Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1986-S Certificates, to be liable for 6.5% of the initial aggregate principal balance of the 1986-A Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986-S Guaranty. The 1986-S Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986-A Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986-S Certificates were registered under the Securities Act of 1933 (registration statement on Forms S-11 and S-3, File No. 33-6358) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the 1933 Act. The Series 1986-S Certificates were offered by a prospectus supplement dated December 3, 1986, supplemental to a Prospectus dated November 7, 1986. The 1986-S Agreement has not been qualified under the Act.

(4) The obligations of Applicant under the Indentures and the 1986 Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1986-S Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1986-S Agreements.

(5) Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-16430, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is further given that any interested person may, not later than April 21, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application that he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan Katz,**

*Secretary.*

[FR Doc. 87-7600 Filed 4-6-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

[Notice No. 1008]

**Certification To Authorize Continuation of Certain Assistance for Haiti**

Pursuant to the authority vested in me by Executive Order 12163, as amended, I hereby reconfirm the certification issued by the Acting Secretary on December 23, 1986, as it applies to the provision of assistance under chapter 5 of part II of the Foreign Assistance Act of 1961, as amended, and I hereby determine that the following conditions imposed by section 203 of the Special Foreign Assistance Act of 1986 (Pub. L. 99-529) with respect to the provisions of assistance under that chapter, as well as chapter 2 of Part II and the Arms Export Control Act, have been met.

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts:

a. To prevent the involvement of the Haitian Armed Forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

b. To ensure that freedom of speech and assembly are respected;

c. To conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

d. To provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with those rights; and

e. To take steps to implement the policy of the Government of Haiti requiring former members of the volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

This certification shall be reported to the Congress immediately and shall be published in the **Federal Register**.

Dated: March 23, 1987.

**George P. Shultz,**

*Secretary of State.*

[FR Doc. 87-7643 Filed 4-6-87; 8:45 am]

BILLING CODE 4710-29-M

---

[Public Notice CM-8/1063]

## Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on May 8, 1987, at the Springfield Hilton Hotel, 6550 Loisdale Road, Springfield, Virginia. The meeting will begin at 9:00 a.m. in Room 222.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting will be to continue the plan of work for the Study Group during the 1986–1990 period.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647–2592.

April 1, 1987.

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 87-7644 Filed 4-6-87; 8:45 am]

BILLING CODE 4710-07-M

---

## DEPARTMENT OF TRANSPORTATION

### Order Adjusting International Cargo Rate Flexibility Level

Policy statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility, within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The standard foreign rate level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 86-9-91, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting April 1, 1987, we have projected nonfuel costs based on the year ended September 30, 1986, data and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 87-4-2 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982, level:

| | |
|---|---|
| Atlantic | .9238 |
| Western Hemisphere | .8576 |
| Pacific | 1.1815 |

For Further Information Contact: Julien Schrenk, (202) 366-2441.

By the Department of Transportation.

**Vance Fort,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 87-7621 Filed 4-6-87; 8:45 am]

BILLING CODE 4910-62-M

---

## Office of the Secretary

[Docket No. 43343; Notice 87-8]

## Electronic Tariff Filing System; Meetings of Subcommittees of the Advisory Committee

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of Subcommittee Meetings.

**SUMMARY:** The Department announces the first meetings of the subcommittees on technical issues and posting requirements of the Electronic Tariff Filing System Advisory Committee.

**DATE:** The meeting of the Posting Requirements Subcommittee will commence on April 22, 1987, at 10:00 a.m. The Technical Issues (Database) Subcommittee will meet at 2:00 p.m. on April 22, 1987, and continue through April 23, 1987.

**ADDRESS:** Meetings of both subcommittees will be held in Room 6434 in the Department of Transportation headquarters building at 400 7th St., SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas Moore, Chief, Tariffs Division, Office of International Aviation, 400 7th St., SW., Washington, DC 20590, Telephone: (202) 366-2414.

The meeting will be open to public observation. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes for each individual. Public comments regarding subcommittee affairs may be submitted at any time before or after the meeting. Approximately 10 seats will be available for the public on a first-come, first-serve basis.

Copies of the minutes will be available at cost on request 30 days after the meeting.

Dated: April 1, 1987.

By:

**Matthew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 87-7620 Filed 4-6-87; 8:45 am]

BILLING CODE 4910-62-M

BEST COPY AVAILABLE

**Notice of Order Adjusting the Standard Foreign Fare Level Index**

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 87–2–3 set the currently effective two-month SFFL applicable through March 31, 1987.

In establishing the SFFL for the two-month period beginning April 1, 1987, we have projected nonfuel costs based on the year ended September 30, 1986 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 87–4–1 fares may be increased by the following adjustment factors over the October 1, 1979, level:

| | |
|---|---|
| Atlantic | 0.9617 |
| Latin America | 1.0412 |
| Pacific | 1.3693 |
| Canada | 1.1402 |

For further information contact: Julien R. Schrenk (202) 366–2441.

By the Department of Transportation.

Vance Fort,

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 87–7622 Filed 4–6–87; 8:45 am]

BILLING CODE 4910–62–M

**Federal Aviation Administration**

**San Jose International Airport, San Jose, CA; Noise Exposure Maps**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Revised Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the city of San Jose, California, for the San Jose International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is August 29, 1986. This provides an amended date which was previously reported as December 30, 1986, in the **Federal Register** Notice announcing receipt of the Noise Compatibility Program issued February 11, 1987, and published in the **Federal Register** on February 27, 1987 (52 FR 6091).

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Conley, Environmental Protection Specialist, AWP–611.3, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles California 90009, (213) 297–1621.

**SUPPLEMENTARY INFORMATION:** This notice annouces that the FAA finds that the Noise Exposure Maps submitted for the San Jose International Airport, San Jose, California, are in compliance with applicable requirements of the Federal Aviation Regulation (FAR) Part 150, effective August 29, 1986.

FAA notified the city of San Jose of its determination of the Noise Exposure Maps by letter dated August 29, 1985, in accordance with § 150.21(c) of FAR Part 150, but by oversight, did not publish notice of its determination in the **Federal Register** at that time. This constitutes FAA's **Federal Register** Notice in accordance with § 150.21(c).

Under section 103 of the Aviation Safety and Notice Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by the city of San Jose, on August 29, 1986. The specific maps under consideration are Exhibits V–1 and V–2 in the submission. FAA has determined that the Noise Exposure Maps for the San Jose International Airport are in compliance with applicable requirements. This determination is effective on August 29, 1986. FAA's determination on an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, nor is it a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of the FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the Noise Exposure Maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Western-Pacific Region, Airports Division, AWP–600, Federal Aviation Administration, 15000 S. Aviation Boulevard, Room 6E25, Hawthorne, California 90261

Mr. Raul L. Regalado, C.A.E., Director of Aviation, San Jose, International Airport, San Jose, California 95110–1285.

Questions may be directed to the individual named above under heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on March 23, 1987.

Herman C. Bliss,

*Manager, Airports Division, FAA, Western Pacific Region*

[FR Doc 87-7608 Filed 4-6-87; 8:45 am]

BILLING CODE 4910-13-M

## DEFPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

[Notice No. 626; Ref: ATF O 1100.113B]

## Delegation of Certain Authorities of the Director in 27 CFR Parts 47, 178, 179; Delegation Order

1. *Purpose.* This order delegates certain authorities now vested in the Director by regulations in 27 CFR Parts 47, 178 and 179 to the Associate Director (Compliance Operations). The order also permits the redelegation of certain authorities to lower organizational levels.

2. *Cancellation.* ATF O 1100.113A, Delegation Order—Delegation of Certain Authorities of the Director in 27 CFR Parts 47, 178, 179, dated 7/26/83, is canceled.

3. *Background.* a. Under current regulations, the Director has authority to take final action on certain matters relating to:

(1) Commerce in Firearms and Ammunition, 27 CFR Part 178.

(2) Machineguns, Destructive Devices, and Certain Other Firearms, 27 CFR Part 179.

(3) Importation of Arms, Ammunition, and Implements of War, 27 CFR Part 47.

b. Certain of these authorities were delegated by the Director to the Associate Director (Compliance Operations). Regulatory provisions promulgated under the amendments to the Federal firearms laws delegate additional authorities to the Director. These amendments necessitate that these authorities now be redelegated to the Associate Director (Compliance Operations).

c. In order to properly fulfill ATF responsibilities with respect to these delegated authorities, the Associate Director (Compliance Operations) will coordinate actions that may have an impact on law enforcement activities with the Associate Director (Law Enforcement). Authorities redelegated by the Associate Director (Compliance Operations) to lower organizational levels will be coordinated with the appropriate law enforcement office.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, the authority to take final action on the following matters relating to 27 CFR Parts 178, 179, and 47 is hereby delegated to the Associate Director (Compliance Operations).

a. *27 CFR Part 178:*

(1) To prescribe all forms required by 27 CFR Part 178, under 27 CFR 178.21.

(2) To approve written applications for alternate methods or procedures, under 27 CFR 178.22(a).

(3) To withdraw authority for any alternate method or procedure, under 27 CFR 178.22(a).

(4) To approve written applications for emergency variations, under 27 CFR 178.22(b).

(5) To withdraw authority for any emergency variations, under 27 CFR 178.22(b).

(6) To compile for publication in the **Federal Register**, annually revise, and furnish to Federal firearms licensees a list of state laws and published ordinances which are relevant to the enforcement of Part 178, under 27 CFR 178.24.

(7) To determine whether a particular firearm is a curio or relic, under 27 CFR 178.26.

(8) To determine whether a device is excluded from the definition of a destructive device, under 27 CFR 178.27.

(9) To approve the transportation in interstate or foreign commerce of any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, under 27 CFR 178.28.

(10) To authorize alternate means of identification of a firearm or a destructive device by a licensed importer or licensed manufacturer, under 27 CFR 178.92.

(11) To approve applications for sale or delivery of destructive device or weapon, under 27 CFR 178.98.

(12) To furnish each licensed dealer information defining which projectiles are considered armor piercing, under 27 CFR 178.99(e).

(13) To approve applications to import firearms, firearms barrels, and ammunition, under subpart G of 27 CFR Part 178, under 27 CFR 178.112, 178.113, 178.114, and 178.116.

(14) To designate research organizations exempt from the provisions of 178.98, with respect to the sale or delivery of destructive devices, machineguns, short-barreled shotguns, or short-barreled rifles to such research organizations, under 27 CFR 178.145.

(15) To exempt certain armor piercing ammunition from recordkeeping requirements of this part, and to require that a sample of the ammunition be submitted for examination and evaluation, under 27 CFR 178.148.

(16) To authorize manufacture, importation, sale, or delivery of armor piercing ammunition for the purpose of testing or experimentation, under 27 CFR 178.149.

b. *27 CFR Part 179:*

(1) To prescribe all forms required by 27 CFR Part 179, under 27 CFR 179.21.

(2) To determine whether a device is excluded from the definition of a destructive device, under 27 CFR 179.24.

(3) To determine whether a firearm or device, which although originally designed as a weapon, is by reason of the date of its manufacture, value, design, and other characteristics primarily a collector's item and is not likely to be used as a weapon, under 27 CFR 179.25.

(4) To approve alternate methods or procedures, under 27 CFR 179.26(a).

(5) To withdraw approval of alternate methods or procedures, under 27 CFR 179.26(a).

(6) To approve emergency variations, under 27 CFR 179.26(b).

(7) To withdraw approval of emergency variations, under 27 CFR 179.26(b).

(8) To relieve qualified persons of the requirement to pay special (occupational) tax, under 27 CFR 179.33(a).

(9) To relieve qualified manufacturers from compliance with any provision of 27 CFR Part 179, under 27 CFR 179.33(a).

(10) To maintain supply of stamps bearing the words "National Firearms Act," representing payment of tax on the making of a firearm, under 27 CFR 179.61.

(11) To affix National Firearms Act stamp to original application authorizing the making of a firearm, under 27 CFR 179.62.

(12) To approve applications to make a firearm, under 27 CFR 179.64.

(13) To approve applications to make a firearm for the United States, under 27 CFR 179.69.

(14) To approve applications to make a firearm by or on behalf of certain Government entities, under 27 CFR 179.70.

(15) To approve applications to transfer firearms and to affix NFA stamps, under 27 CFR 179.86.

(16) To approve applications to transfer firearms to special (occupational) taxpayers, under 27 CFR 179.88(b).

(17) To approve applications to transfer firearms to certain Government entities, under 27 CFR 179.90(b).

(18) To approve applications to transfer unserviceable firearms as a curio or ornament, under 27 CFR 179.91.

(19) To maintain a central registry (the National Firearms Registration and Transfer Record) of all firearms in the United States which are not in the possession or under the control of the United States, under 27 CFR 179.101.

(20) To authorize other means of identification of firearms and destructive devices, under 27 CFR 179.102.

(21) To receive notice and effectuate registration of firearms manufactured, under 27 CFR 179.103.

(22) To approve registration of firearms acquired by certain Government entities, under 27 CFR 179.104.

(23) To approve importations of firearms, under 27 CFR 179.111(a).

(24) To receive notice and effectuate registration of imported firearms, under 27 CFR 179.112(a).

(25) To approve importations of firearms by an importer or dealer qualified under 27 CFR Part 179, for use as a sample in connection with sales of such firearms to Federal, State, or local Government entities, under 27 CFR 179.112(d).

(26) To approve applications for the conditional importation of firearms and impose conditions upon such importation, under 27 CFR 179.113.

(27) To approve applications and execute permits for the exportation of firearms, under 27 CFR 179.115.

(28) To vary the requirements relating to permits and supporting documents for firearms exported to persons in the insular possessions of the United States, under 27 CFR 179.121.

(29) To issue duplicate documents evidencing possession of a firearm, under 27 CFR 179.142.

(30) To maintain supply of stamps bearing the words "National Firearms Act," representing payment of the transfer tax or tax on making a firearm, under 27 CFR 179.161.

(31) To affix the appropriate "National Firearms Act" stamp evidencing payment of the transfer tax or tax on making a firearm, under 27 CFR 179.161.

c. *27 CFR Part 47:*

(1) To approve applications for registration of persons to import articles enumerated on the U.S. Munitions Import List, under 27 CFR 47.32(a).

(2) To approve the refund of registration fee, under 27 CFR 47.32(c).

(3) To prescribe a longer or shorter period of records retention, under 27 CFR 47.34(b).

(4) To prescribe all forms required by 27 CFR Part 47, under 27 CFR 47.35(a).

(5) To approve permit applications to import firearms, ammunition, and implements of war, under 27 CFR 47.42.

(6) To amend, alter, or certify permits to import firearms, ammunition, and implements of war, under 27 CFR 47.43(c).

(7) To deny, revoke, suspend, or revise permits to import firearms, ammunition, and implements of war, under 27 CFR 47.44 (a) and (b).

(8) To certify to the legality of importation of articles on the U.S. Munitions Import List, under 27 CFR 47.51.

5. *Redelegation.* a. The authorities in paragraphs 4a(7), 4a(8), 4a(10), 4a(12), 4a(15), 4b(2), 4b(3), and 4b(20) may be redelegated to Compliance Operations personnel in Bureau Headquarters, but not lower than the position of division chief.

b. The authorities in paragraphs 4a(1), 4a(3), 4a(5), 4a(14), 4a(16), 4b(1),4b(5), 4b(7), 4b(8), 4b(9), 4b(10), 4b(19), 4b(30), 4c(3), 4c(4), and 4c(7) may be redelegated to Compliance Operations personnel in Bureau Headquarters, but not lower than the position of branch chief.

c. The authorities in paragraphs 4a(9), 4a(11), 4a(13), 4b(11), 4b(12), 4b(13), 4b(14), 4b(15), 4b(16), 4b(17), 4b(18), 4b(21), 4b(22), 4b(23), 4b(24), 4b(25), 4b(26), 4b(27), 4b(28), 4b(29), 4b(31), 4c(1), 4c(2), 4c(5), 4c(6), and 4c(8) may be redelegated to Compliance Operations personnel in Bureau Headquarters, but not lower than the position of application examiner.

d. The authorities in paragraphs 4a(2), 4a(4), 4a(6), 4b(4), and 4b(6), may beredelegated to Compliance Operations personnel in Bureau Headquarters, but not lower than the position of specialist.

e. The authorities in paragraphs 4a(2), 4a(4), 4b(4), and 4b(6) may be redelegated to the regional director (compliance) to approve, without submission to Bureau Headquarters, requests which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate these authorities to a position not lower than chief, technical services, or area supervisor. The authorities in paragraphs 4a(3),4a(5), 4b(5), and 4b(7) may be redelegated to the regional director (compliance) who may redelegate the authorities to a position not lower than chief, technical services, regarding alternate methods, procedures or emergency variations approved by regional offices only.

6. *For Information Contact.* Robert Trainor, Procedures Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20026 (202) 566–7602.

7. *Effective Date.* This delegation order becomes effective on April 7, 1987.

Approved: March 26, 1987.

**Stephen E. Higgins,**

*Director.*

[FR Doc. 87–7543 Filed 4–6–87; 8:45 am]

BILLING CODE 4810–13–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 66
Tuesday, April 7, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, March 31, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum re: Proposed Statement of Policy for Minimum Disclosure by Insured State Nonmember Banks which statement of policy would set forth the various types of information as insured state nonmember bank should make available to the public upon request.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of New WSB Savings Bank, New York City (Brooklyn), New York, a proposed stock savings bank in organization, for consent to merge, under its charter and with the title "The Williamsburgh Savings Bank," with The Williamsburgh Savings Bank, New York City (Brooklyn), New York, an insured mutual savings bank, and for consent to establish the main office and twelve existing branches of The Williamsburgh Savings Bank as the main office and branches of the resultant bank, and for consent to convert The Williamsburgh Savings Bank to a stock form of organization and to prepay its outstanding net worth certificates.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: April 2, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87-7719 Filed 4-3-87; 11:34 am]

BILLING CODE 6714-01-M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

April 1, 1987.

**TIME AND DATE:** Following the oral argument, April 9, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Secretary of Labor on behalf of Bobby G. Keene v. S & M Coal Company, Inc.*, Docket No. VA 86-34-D. (Issues include consideration of a petition for discretionary review).

3. *Harlan L. Thurman v. Queen Anne Coal Company*, Docket No. SE 86-121-D. (Issues include consideration of a petition for discretionary review).

It was determined by a unanimous vote of Commissioners that these items be considered in a closed meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653-5629.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 87-7696 Filed 4-3-87; 11:34 am]

BILLING CODE 6735-01-M

**NATIONAL LABOR RELATIONS BOARD**

**TIME AND DATE:** 2:00 p.m., Thursday, April 9, 1987.

**PLACE:** Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

**MATTERS TO BE CONSIDERED:** Selection of Regional Director for Region 22—Newark, New Jersey, Region 3, Buffalo, New York.

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, 1 April 1987.

By direction of the Board.

**John C. Truesdale,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 87-7768 Filed 4-3-87; 3:07 pm]

BILLING CODE 7545-01-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of April 6, 13, 20, and 27, 1987.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of April 6**

*Monday, April 6*

2:00 p.m.
Briefing on NRC Strategic Planning (Public Meeting)

*Wednesday, April 8*

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

*Thursday, April 9*

2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Review of ALAB-853, In the Matter of Public Service Company of New Hampshire

*Friday, April 10*

10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Clinton (Public Meeting)

3:30 p.m.
Briefing on Status of Peach Bottom (Closed—Ex. 5 & 7) (Tentative)

3:45 p.m.
Briefing on Status of Peach Bottom (Public Meeting) (Tentative)

**Week of April 13—Tentative**

*Wednesday, April 15*

10:00 a.m.
Briefing by Office of Special Projects (Public Meeting)

2:00 p.m.
Briefing by DOE on the TMI-2 Core Examination Program (Public Meeting)

*Thursday, April 16*

11:00 a.m.
Periodic Meeting with the Advisory Panel for the Decontamination of TMI-2 (Public Meeting)

2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2, 5, 6, & 7)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of April 20—Tentative**

*Thursday, April 23*

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of April 27—Tentative**

2:00 p.m.
Briefing on Advanced Boiling Water Reactor Review (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** Robert McOsker (202) 634–1410.

**Robert B. McOsker,**

*Office of the Secretary.*

April 2, 1987.

[FR Doc. 87–7781 Filed 4–3–87; 3:52 pm]

BILLING CODE 7590–01–M

---

**UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES**

**TIME AND DATE:** 8:00 a.m., April 13, 1987.

**PLACE:** Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**STATUS:** Open—under "Government in the Sunshine Act" [5 U.S.C. 552b(e)(3)].

**MATTERS TO BE CONSIDERED:**

8:00 Meeting—Board of Receipts

(1) Approval of Minutes—January 12, 1987; (2) Sunshine Act Report; (3) Faculty Matters: (a) Faculty Appointments, (b) Appointment of Chairperson, Department of Biochemistry, (c) Appointment of Acting Vice President, (d) Appointment of Advisor, Board of Regents; (4) Report—Admissions; (5) Report—Associate Dean for Operations; (6) Report—President, USUHS; (a) University Awards, (b) Certification of Medical Students, (c) Certification of Graduate Students, (d) Department of Defense/Veterans Administration Cooperative Medical Research Program, (e) Foreign Physicians Certification, (f) Militarily Unique Graduate Medical Education Curriculum, (g) Information Items; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents

New Business

**SCHEDULED MEETING:** July 20, 1987.

**CONTACT PERSON FOR MORE INFORMATION:** Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295–3028.

**Particia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 3, 1987.

[FR Doc. 87–7787 Filed 4–7–87; 4:01 pm]

BILLING CODE 3810–01–M

Federal Register

Tuesday
April 7, 1987

Part II

# Department of Education

**Educational Media Research, Production, Distribution, and Training and Technology, Educational Media, and Materials; Notice of Proposed Annual Funding Priorities**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Educational Media Research, Production, Distribution, and Traininig and Technology, Educational Media, and Materials; Proposed Annual Funding Priorities

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed annual funding priorities.

**SUMMARY:** The Secretary proposes to establish annual funding priorities for the Educational Media Research, Production, Distribution, and Traininig program and the Technology, Educational Media, and Materials program to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1987.

**DATE:** Comments must be received on or before May 7, 1987.

**ADDRESS:** Comments should be addressed to the contact person listed in each individual proposed priority.

**FOR FURTHER INFORMATION CONTACT:** The person listed in each individual proposed priority.

**SUPPLEMENTARY INFORMATION:** Awards under the Educational Media Research, Production, Distribution, and Training program are authorized under Part F of the Education of the Handicapped Act. The purpose of this program is to promote the educational advancement of handicapped persons by providing assistance for research on the use of educational media for handicapped persons; producing and distributing educational media for handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and training persons in the use of educational media for the instruction of handicapped persons. Awards under the Technology, Educational Media, and Materials program are authorized under Part G of the Education of the Handicapped Act which was established by section 317 of the Education of the Handicapped Act Amendments of 1986. The purpose of this program is to advance the use of new technology, media, and materials in the education of the handicapped.

#### Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under the Educational Media Research, Production, Distribution, and Training program in fiscal year 1987 to applications that respond to priorities 1, 2, and 3, described below. The Secretary also proposes to give an absoslute preference under the new Technology, Educational Media, and Materials program in fiscal year 1987 to applications that respond to priorities 4, 5, and 6 described below. An absolute preference is one under which the Secretary selects only those applications that meet the described priorities. In addition, for fiscal year 1987 the Secretary proposes to use the selection criteria for the Educational Media Research, Production, Distribution, and Training program at 34 CFR 332.32 to evaluate applications submitted under the Technology, Educational Media, and Materials program which will be funded under new Part G of the Act.

*Priority 1—Closed-Captioned Real-Time News*

This proposed priority would support one cooperative agreement for closed-captioned national real-time news and public information programming. This would provide hearing-impaired Americans with national up-to-date evening news, morning news, and weekend news as well as access to current events and other public information that affects the lives of all citizens. This priority is covered under section 651(a)(2) of the Act (Part F).

For Further Information Contact: Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

*Priority 2—Closed-Captioned National Television Programming*

This proposed priority would support a cooperative agreement to close-caption syndicated programs. Closed-captioning of syndicated programs increases access to programming available to the general population. This priority is covered under section 651(a)(2) of the Act (Part F).

For Further Information Contact: Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1177.

*Priority 3—Closed-Captioned Local News Projects*

This proposed priority would support new projects for the closed-captioning of local news programs. Projects would be incrementally funded over a 3-year period to encourage closed captioning of local news. At the end of the third year the applicants are expected to continue the project without additional Federal support. This priority is covered under section 651(a)(2) of the Act (Part F).

For Further Information Contact: Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington DC 20202. Telephone: (202) 732–1177.

*Priority 4—Compensatory Technology Applications*

This proposed priority would support innovative adaptations of hardware and software technology and the field-test evaluation of those innovative adaptations. The technology adaptations must compensate for physical, sensory, or cognitive learning impediments in order to: (a) Alleviate the need to modify instructional materials and/or (b) increase the overall accessability to educational opportunities for handicapped learners. These projects must capitalize on advances in such areas as peripherals, memory, display, networking, and reproduction. Projects must develop prototypes which serve as models of transfer applications of existing technology for use in the education of handicapped children. Following the development phase, appropriate evaluation and field-testing of the adapted technology device must occur. In addition, a plan for national marketing and distribution including a rationale supporting the modifications based on the field-test results must be submitted as a final report. This priority is covered under section 661 of the Act (Part G).

For Further Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1099.

*Priority 5—Improving Technolgoy Software*

This proposed priority would support the investigation, synthesis, and transfer of research information related to designing, creating, and field-testing an

advanced computer-assisted instruction (CAI) program that demonstrates superior computerization of teaching/learning processes. This may include the collection of data for use in the design and development phase.

The resulting product from each project must be a CAI personal computer program designed for use in the education of handicapped children. The CAI program must be on a specific topic in one of these basic subjects: language arts, mathematics, or science. The CAI program must involve the handicapped student in an interactive, individualized way by including instructional options such as: student control of the entry point in lessons; student reponse to questions asked; branching of instruction or direction based on performance analysis as presented on the computer screen; and/or student manipulation via response devices other than the keyboard (e.g., graphics entry pad, light pen, touch screen, mouse, voice, or other non-keyboard input devices). Computer simulations of science experiments, and situations involving math and language arts skills are encouraged. This advanced programming must result in state-of-the-art software and demonstrate the benefits of student involvement and student control in CAI. This priority is covered under section 661 of the Act (Part G).

For Further Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

*Priority 6—Instructional Technology Research*

This priority would support studies of the various secondary impacts of using technology in the education of handicapped children to enhance the effective use of technology in special education. For example, even with the growing number of microcomputers available in schools today this media technology is not being used to its fullest potential as an integral part of instruction. Research must be conducted on: (1) The effects of computer-developed versus noncomputer-developed individualized education programs (IEP's) on the administrators, teachers, and parents involved in developing and implementing IEP's; (2) the effects of cultural differences related to the use and outcomes of technology-based instruction; (3) the social impact on children from using technology as part of their instruction; (4) the organizational impact and change associated with the implementation of technology; or (5) the effects of computer-managed versus noncomputer-managed instruction. The results of this research are to be reported in a series of research monographs. This priority is covered under section 661 of the Act (Part G).

For Further Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

**Intergovernmental Review**

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's specific plans and actions for this program.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding the proposed priorities, and the proposed use of the current selection criteria at 34 CFR 332.32 to evaluate applications submitted under the new Technology, Educational Media, and Materials program. Written comments and recommendations may be sent to the address listed under each individual proposed priority. Written comments on the use of the selection criteria at 34 CFR 332.22 for applications under the Technology, Educational Media, and Materials program may be sent to Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Rooms 4092 (Priorities 1, 2, and 3) and 3522 (Priorities 4, 5, and 6); and the use of the selection criteria at 34 CFR 332.32), Switzer Building, 330 C Street, SW., Washington, DC 20202 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1451(a)(2), 1452(b)(5), and section 317 of the Education of the Handicapped Act Amendments of 1986 (Part G Section 661))

(Catalog of Federal Domestic Assistance No. 84.026; Educational Media Research, Production, Distribution, and Training)

Dated: February 19, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87-7627 Filed 4-6-87; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
April 7, 1987

Part III

# Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

## Endangered and Threatened Species; Cave Crayfish, Marshall's, Curtus', Judge Tait's, and the Penitent Mussels, and Scrub Lupine; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

# Endangered and Threatened Wildlife and Plants; Endangered Status for Marshall's Mussel (Pleurobema marshalli), Curtus' Mussel (Pleurobema curtum), Judge Tait's Mussel (Pleurobema taitianum), the Stirrup Shell (Quadrual stapes), and the Penitent Mussel (Epioblasma (=Dysnomia) penita)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service has determined Marshall's mussel (*Pleurobema marshalli* Frierson), Curtus' mussel (*Pleurobema curtum* (Lea)), Judge Tait's Mussel (*Pleurobema taitianum* (Lea)), the stirrup shell (*Quadrula stapes* (Lea)), and the penitent mussel (*Epioblasma* (=*Dysnomia*) *penita* (Conrad)) to be endangered species under the Endangered Species Act (Act) of 1973, as amended. These five freshwater clams are restricted to areas in the Tombigbee River system that represent remnants of their historic ranges. They have been found in moderate-to-large rivers with moderate-to-swift current. Their preferred habitats are riffle or shoal areas with stable substrates ranging from sandy gravel to gravel-cobble. Much of the historic habitat has been modified by reservoir and barge canal construction. The remaining populations are in a bendway or meander of the Tombigbee River that was bypassed by the Tennessee-Tombigbee Waterway (TTW) and in a few tributaries of the Tombigbee River. They are away from and not affected by present operation of the completed TTW. The remaining habitat is threatened by siltation from a variety of sources and by gravel dredging. The U.S. Army Corps of Engineers is currently undertaking conservation efforts for these species through reconstruction and management of gravel bar habitat as well as ecological studies. The construction of impoundments adversely impacted these five species by physical destruction during dredging, increasing siltation, reducing water flow, suffocating juveniles with sediment, and possibly disturbing host fish movements. This determination implements the protection of the Endangered Species Act of 1973, as amended, for these five freshwater clams.

**DATE:** The effective date of this rule is May 7, 1987.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis B. Jordan, Endangered Species Field Supervisor, at the above address (601/965–4900 or FTS 490/4900).

**SUPPLEMENTARY INFORMATION:**

## Background

Marshall's mussel was described as *Pleurobema marshalli* by Frierson in 1927 from specimens collected by A.A. Hinkley from the Tombigbee River in Greene County, Alabama (Stansbery 1983b). Marshall's mussel is a bivalve mollusk about 60 mm long, 50 mm high, and 30 mm wide. The shell has a shallow umbonal cavity, a rounded sub-ovate or obliquely elliptical outline, nearly terminal beaks, and very low pustules or welts on the postventral surface. This mussel was historically known from the main stem of the Tombigbee River from just above Tibbee Creek near Columbus, Mississippi, down to Epes, Alabama (Stansbery 1983b). Studies of clams of the Gulf Coast rivers from the Escambia River to the Suwannee River by Clench and Turner (1956) and of Mississippi streams by Grantham (1969), did not reveal Marshall's mussel in those areas. Extensive surveys of the Cahaba River by van der Schalie (1938) and Baldwin (1973) and of the Coosa River by Hurd (1974) did not find Marshall's mussel (Stansbery 1983b). This complete lack of specimens from anywhere except the Tombigbee River from Tibbee Creek to Epes, Alabama, suggests that the historical range of this species was restricted to this river reach. An extensive survey of the Tombigbee River in 1971–1976 by Williams (Stansbery 1983b) recorded Marshall's mussel in the lowermost half of the river from Tibbee Creek downstream to just above the mouth of the Noxubee River. Yokley (1978) did not find Marshall's mussel in his survey of the Buttahatchie River. The only remaining viable habitat for this species in the Tombigbee River is a gravel bar in a bendway in Sumter County, Alabama.

Curtus' mussel was originally described as *Unio curtus* by Lea in 1859. The Service recognizes the following name combinations (based on Stansbery 1983d) as equivalent to *Pleurobema curtum* (Lea, 1859):

*Unio curtus* Lea, 1859:113.
*Margaron* (*Unio*) *curtus* (Lea).—Lea 1870:40.
*Pleurobema curta* (Lea).—Simpson 1900:754.
*Pleurobema curtum* (Lea).—Simpson 1914:762.
*Obovaria* (*Pseudoon*) *curta* (Lea).—Frierson 1927:91.

Curtus' mussel is a bivalve mollusk 50 mm long, 35 mm high, and 30 mm wide. The shell varies from green in young shells to a dark greenish-brown in older shells. The shell is subtriangular, is inflated in front, and has a bluish-white, iridescent, thin nacre (Simpson 1914). Curtus' mussel was historically found in the main stem of the Tombigbee River. The Service considers the single record of this species from the Big Black River in Mississippi (Hinkley 1906:54) to be erroneous. The species has been collected from only five locations, and only two living specimens are known to have been collected. The single remaining viable habitat is in the East

Fork Tombigbee River, Mississippi. Grantham (1969) did not record Curtus' mussel from the Big Black River, nor have more recent surveys found it there (P. D. Hartfield, Mississippi Museum of Natural Science, pers. comm.).

Judge Tait's mussel was described as *Unio taitianus* by Lea in 1834, with the type locality identified as the Alabama River (Stansbery 1983a). The Service recognizes the following abbreviated synonymy (based on Stansbery 1983a) for *Pleurobema taitianum* (Lea, 1834):

*Unio taitianus* (Lea) 1834:39.
*Margarita taitianus* (Lea).—Lea 1838:21.
*Margaron taitianus* (Lea).—Lea 1852:25.
*Pleurobema taitiana* (Lea).—Simpson 1900:754.
*Pleurobema taitianum* (Lea).—Simpson 1914:764.
*Pleurobema tombigbeanum* Frierson 1908:27.

Judge Tait's mussel is a bivalve mollusk about 50 mm long, 45 mm high, and 30 mm wide. The shell is brown to brownish-black, obliquely triangular, and inflated, with narrowly pointed beaks directed forward, a very shallow but distinct furrow, pink-tinted nacre, and shallow beak cavities (Stansbery 1983a, Simpson 1914). Judge Tait's mussel was historically found in the Tombigbee River from the mouth of Tibbee Creek near Columbus, Mississippi, to Demopolis, Alabama; the Alabama River at Claiborne and Selma, Alabama; the lower Cahaba River, Alabama; and possibly the Coosa River, Alabama (Stansbery 1983a, Williams 1982). Several shells from recently dead specimens were found at one location on the Buttahatchie River, a tributary of the Tombigbee, in Mississippi (Schultz 1981). This species has also been reported from the East Fork Tombigbee River (Schultz 1981) and from the Sipsey River, Alabama. Only four sites with suitable habitat remain: these consist of localities in a bendway of the Tombigbee River, Sumter County, Alabama; the East Fork Tombigbee River, Mississippi; the Buttahatchie River, Mississippi; and the Sipsey River, Pickens and Greene Counties, Alabama.

The stirrup shell was originally described from the Alabama River as *Unio stapes* by Lea in 1831. The Service recognizes the following name combinations (based on Stansbery 1981) as equivalent to *Quadrula stapes* (Lea, 1831):

*Unio stapes* Lea, 1831:77.
*Margarita (Unio) stapes* (Lea).—Lea 1836:15.
*Margaron (Unio) stapes* (Lea).—Lea 1852b:22.
*Quadrula stapes* (Lea).—Simpson 1900:775.
*Orthonymus stapes* (Lea).—Haas 1969:310.

The stirrup shell is a bivalve mollusk about 55 mm long, 50 mm high, and 30 mm wide. The shell is yellowish-green, with the green, zigzag markings of young individuals becoming brown with age. It is irregularly quadrate, with a sharp posterior ridge, truncated posterior, tubercles, and a silvery white nacre that is thinner and iridescent behind (Simpson 1914). The stirrup shell was found historically in the Tombigbee River from the mouth of Tibbee Creek near Columbus, Mississippi, downstream to Epes, Alabama; The Black Warrior River in Alabama; and in the Alabama River (Stansbery 1981, Williams 1982). One specimen was found recently in the Sipsey River, Pickens and Greene Counties, Alabama, by Dr. Paul Yokley. Only two small areas of viable habitat remain: one in the Sipsey River and the other in a bendway of the Tombigbee River in Sumter County, Alabama.

The penitent mussel was described as *Unio penitus* by Conrad in 1834. The type locality is the Alabama River near Claiborne, Alabama (Stansbery 1983c). The Service recognizes the following name combinations (based on Stansbery 1983c) as equivalent to *Epioblasma penita* (Conrad, 1834):

*Unio penitus* Conrad, 1834:33.
*Margarita (Unio) penitus* (Conrad).—Lea 1838:19.
*Margaron (Unio) penitus* (Conrad).—Lea 1852a:24.
*Truncilla penita* (Conrad).—Simpson 1900.
*Dysnomia penita* (Conrad).—Frierson 1927:93.
*Epioblasma penita* (Conrad).—Stansbery 1976:48.
*Plagiola (Plagiola) penita* (Conrad) [in part].—Johnson 1978:254.

The penitent mussel is a bivalve mollusk about 55 mm long, 40 mm high, and 34 mm wide. The shell is yellowish, greenish-yellow, or tawny, sometimes with darker dots; is rhomboid with irregular growth lines and a radially sculptured posterior; and has white or straw-colored nacre (Simpson 1914). The females have a large radially-grooved swelling projecting behind the shell. This species was historically known from the Tombigbee River from Bull Mountain Creek above Amory, Mississippi, downstream to Epes, Alabama; the Alabama River at Claiborne and Selma; the Cahaba River below Centreville, Alabama; and the Coosa River in Alabama and Georgia (Stansbery 1983c, Williams 1982). Live specimens were found recently in the Buttahatchie River in Alabama (Yokley 1978, Schultz 1981). The only remaining viable habitats are in the Buttahatchie River, Alabama, the East Fork Tombigbee River, and a single locality in a bendway of the Tombigbee River, Sumter County, Alabama.

These five species have historically been found in moderate-to-large rivers with moderate-to-swift current. Their preferred habitats are riffle-run or shoal areas with stable substrates ranging from sandy gravel to gravel-cobble (Stansbery 1976, 1980, 1981, 1983a, 1983b, 1983c, 1983d). These clams have been taken in water up to 0.7 meters deep (Williams 1982).

Land ownership in the portions of the Tombigbee and Alabama River systems where these species have been collected includes Federal, State, corporate, and individual. Governmental regulation of alterations of these habitats is primarily the responsibility of the U.S. Army Corps of Engineers (COE).

The status of each of these clams has declined owing to habitat alteration. The modification of the free-flowing Tombigbee River into a series of impoundments to form a barge canal has adversely impacted these species through physical destruction during dredging, increased siltation, reduction of water flow, and possible disturbance of host fish movements. Remaining populations are in a bendway and tributaries that are outside of the navigation channel of the Tennessee-Tombigbee Waterway (TTW). The COE has authorized channelization and snagging projects in portions of the Buttahatchie, Sipsey, Tombigbee, East Fork, and Cahaba Rivers where these species have been found.

On April 11, 1980, the Service published a notice in the **Federal Register** (45 FR 24904), that a status review was being conducted for these five clam species. In comments received in response to that notice, former Congressman David Bowen of Mississippi opposed the notice and possible listing based on his concern that Service employees opposed the construction of the TTW. The Service responds that it has based the notice, proposed rule, and final rule to list these five clams solely on the most current biological data available, as required by the Endangered Species Act. Former Governors Fob James of Alabama and William F. Winter of Mississippi commented that the classification and life histories of these five species required clarification, and that the species were not threatened by the TTW. Both governors cited van der Schalie (1980) in support of their comments. The Service responds that it

has examined the reports by Drs. van der Schalie and Stansbery and all relevant scientific literature and museum collections and believes that the taxonomic characterizations presented in the previous paragraphs represent the soundest and most current interpretation of available data. The Service also notes that the TTW populations survive only at sites that are outside of the navigation channel, which is now completed, and conservation efforts for these species are likely to be expended on habitats that have not been altered by the waterway.

The COE submitted documents describing studies of these species and suggesting possible conservation and management procedures for remaining populations. The Service has incorporated the distributional data from these studies with data from other sources in the process of making final determinations of endangered status. As stated above, the Service has considered taxonomic questions raised in these and other studies and believes that the taxonomy employed here is most consistent with all available information.

Three conservation groups and two individuals, including a professional malacologist, presented or cited data in support of a proposal of protective status under the Endangered Species Act for these species. The proposed rule was published in the **Federal Register** (51 FR 11761) on April 7, 1986.

**Summary of Comments and Recommendations**

In the April 7, 1986, proposed rule (51 FR 11761) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Columbus Commercial Dispatch* on April 27, 1986, the *Jackson Clarion Ledger* on April 25, 1986, the *Jackson Daily News* on April 25, 1986, the *Tupelo Journal* on April 22, 1986, the *Birmingham News* on April 26, 1986, the *Birmingham Post Herald* on April 26, 1986, and the *Tuscaloosa News* on April 22, 1986. A public hearing was requested by the Tenn-Tom Waterway Authority. The hearing was held in Columbus, Mississippi, on July 10, 1986, and the comment period was reopened until July 20, 1986, to accommodate the public hearing. Comments, either written or presented orally at the public hearing, were received from eight parties.

Three parties supported the proposal; these included the Mississippi Department of Wildlife Conservation, the U.S. Army Corps of Engineers, and a professional malacologist. One individual expressed concern over the listing of a short river reach at Columbus as habitat for the mussels but did not otherwise comment on the listing. One professional malacologist expressed taxonomic concerns about Marshall's mussel. One agency requested the designation of critical habitat if these species were listed but did not express a position on the listing.

The two statements obtained at the public hearing were opposed to listing until further data were collected. All comments and statements of similar content are grouped in a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: The data do not support the continued existence of these species since none of them were collected alive during the status surveys in the 1970's upon which much of the proposed rule is based. The collections were made before the TTW construction extirpated the species. Response—The available data support the continued existence of all five species. Marshall's mussel was collected alive in 1972 in Sumter County, Alabama by Stansbery and in Pickens County, Alabama by Williams. The Sumter County gravel bar is still viable habitat in a bendway that is assured a continous water flow. The Pickens County collection site has heavy sedimentation and is not considered viable habitat. Curtus' mussel was collected alive in 1972 and 1974 by Williams in Pickens County, Alabama. Shells of recently dead (less than two years) individuals were collected by Williams from the East Fork in 1974. The Pickens County site has heavy sedimentation. The East Fork continues to provide excellent habitat for this species, and the Service finds no basis for doubting that it continues to exist there. The lack of live specimens is due to the scarcity of the species and the lack of collecting effort during the past decade. Judge Tait's mussel was collected alive by Stansbery in 1972 in Sumter County, Alabama. Shells of recently dead individuals were collected by Service biologists in 1984 from the Sipsey and Buttahatchie Rivers. The stirrupshell was collected alive in 1972 by Stansbery in Sumter County, Alabama, and by Williams in Pickens County, Alabama. Service biologists collected the shell of a recently dead individual in 1984 from the Sipsey River. The Sumter County and Sipsey River sites continue to provide viable habitat for this species. The penitent mussel was collected alive in 1972 by Stansbery in Sumter County, Alabama; in 1974 by Williams, and in 1977 by Yokley in the Buttahatchie River. In 1984, the shell of a recently dead individual was collected by Service biologists in the Buttahatchie River. The Sumter County and Buttahatchie River sites continue to provide viable habitat. The collection of shells of recently dead individuals in 1984 indicates that the TTW has not completely extirpated these species. The lack of records of live individuals since surveys of the 1970's is due to the difficulties in censusing low-density populations in rivers that represent the remaining habitat.

*Issue 2:* The taxonomy of *Pleurobema* is questionable and should be clarified before listing. Response—One commenter questioned the validity of Marshall's mussel based upon a review of the type specimen and one shell. The Service views this as an inadequate sample on which to base a taxonomic decision, and has based its recognition of the species' validity on the examination of more than 300 shells. The appropriate use of the specific epithet *taitianum* for Judge Tait's mussel was questioned by a commenter who suggested that an earlier name "may" exist. The commenter did not suggest what that earlier name might be. If an earlier, valid name for Judge Tait's mussel is discovered and generally accepted by the scientific community, the Service will recognize that name as applying to this species. The peril of the species remains, regardless of its formal scientific name. Curtus' mussel was not specifically addressed by any commenters. The species within the genus *Pleurobema* remain a subject of discussion by many malcologists. The current scientific literature supports the Service's position. Should future research, published in the scientific literature, support a generally accepted view that is significantly different, the Service will reassess the status of these species.

*Issue 3.* The COE and other agencies will be required to continuously monitor (look for mussels) their activities during the operation and maintenance of the TTW and associated channel and port facilities. Response—The service does not believe that any of these species currently exist in the TTW. The current operation and maintenance procedures of the TTW do not affect any of the five species. Unless the operation and maintenance of the TTW is significantly

changed, the COE will not be required to monitor these activities within the TTW. Any channel or port facilities proposed for construction outside the TTW may be required to conduct a biological assessment prior to construction. If none of the species are found in the project area or the area impacted by the project, the Service does not anticipate a need for continuously monitoring project activities. Should the activities change from those included in the biological assessment, a new assessment may be required.

*Issue 4:* Critical habitat should be designated so that areas outside of critical habitat would be free of the restrictions that listing may invoke. Response—The designation of critical habitat does not remove the mandates of the Endanger Species Act in areas where a listed species occurs outside of critical habitat. The Service's reasons for not designating critical habitat are presented in the Critical Habitat section of this rule.

*Issue 5:* The fish hosts of these clams should be identified. Response—The Service expects this to be accomplished as part of its effort to recover these species.

*Issue 6:* Surveys should be conducted to determine whether these species are common in other locations. Response—Surveys have been and are continuing to be conducted on other streams. Since impoundment of the Coosa River, none of these species have been found outside the Tombigbee River system. Should any of the five species be found in other systems, the Service will reassess the status of these species and take appropriate action. The Service sees little likelihood that these species exist elsewhere in numbers that would abrogate the need for protection under the Act.

*Issue 7:* Laws Bar in the Colombus bendway should not be included in the listing. Response—Specific areas of habitat are not designated except when critical habitat is determined. A survey of Laws Bar in 1985 found a thick layer of sediment and no mussels, which generally prefer sand and gravel substrates. The Service no longer considers Laws Bar to be viable habitat for any of the five species.

*Issue 8:* Mussels in bendways should be relocated to suitable habitat before the bendways receive enough sediment to kill the mussels. Response—The only remaining bendway where these species still are known to occur is in Sumter County, Alabama, and it appears to remain clear of sediment.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that these five species of mussels should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Marshall's mussel (*Pleurobema marshalli*), Curtus' mussel (*P. curtum*), Judge Tait's mussel (*P. taitianum*), the stirrup shell (*Quadrula stapes*), and the penitent mussel (*Epioblasma penita*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* All five of the subject species have greatly declined in range and/or numbers in the Tombigbee River owing to alteration of their habitat from a free-flowing riverine system to an impounded system by the construction of the Tennessee-Tombigbee Waterway (TTW). The modification of the free-flowing Tombigbee River into a series of impoundments adversely impacted these clams by physical destruction druing dredging, increasing siltation, reducing water flow, and suffocating juveniles with sediment (Stansbery 1980, 1983b; Stein 1971, Williams 1982) These species survive in the Tombigbee River proper only in meander or bendway that was bypassed by the TTW. The situation of this population away from the navigation channel allowed it to escape the full force of the threats that extirpated these species elsewhere in the Tombigbee River. Dredging and snagging for channel maintenance and flood control threaten populations in tributaries of the Tombigbee River.

Marshall's mussel has been collected from only the Tombigbee River in a reach from just above the confluence with Tibbee Creek downstream to Epes, Alabama. Construction of the TTW effectively eliminated, by impoundment, the historic habitat of Marshall's mussel except for gravel bars in one river bendway bypassed by the TTW. The gravel bars are receiving some sedimentation. In addition, the river flows are significantly reduced by backwater from impoundments. This flow reduction impacts clams by increasing siltation and changing the fishery habitat This latter impact may result in the loss of the fish host for glochidial development. Since Marshall's mussel has only been found in large river systems, the fish host may be a large-river species that has been adversely impacted by impoundments.

The known historic range of Curtus' mussel is the main stem Tombigbee River, but it is now limited to the East Fork. The East Fork is the principal extension of the Tombigbee River proper upstream from the confluence of the East Fork and Town Creek. The East Fork site remains similar to historic habitat but continues to face threats. The COE has approved a final supplement to the environmental impact statement to conduct dredging and snagging activities in a 53-mile reach of the East Fork in the area where the last known collection of a live Curtus' mussel was made. The East Fork water flows have been affected by construction of the TTW canal, which has diverted the flow of Bull Mountain Creek. Bull Mountain Creek provides nearly half the flow of the East Fork (U.S. Army Corps of Engineers 1984). Even with flow now restored to the East Fork, the water quality is undoubtedly altered. Bull Mountain Creek is a cool water stream that is likely warmed to some degree when it is routed through the TTW canal.

Judge Tait's mussel is known historically from the Tombigbee River in a reach from Bull Mountain Creek above Amory, Mississippi, downstream to Demopolis, Alabama; the Alabama River at Claiborne and Selma, Alabama; the lower Cahaba River, Alabama; and the Coosa River, Alabama (Stansbery 1983a, Williams 1982). Shells of recently dead Judge Tait's mussel were found recently on the Buttahatchie River (Schultz 1981) and the Sipsey River. Judge Tait's mussel has not been collected from the Alabama and Cahaba Rivers since the 1800's (Stansbery 1983a) or the Coosa River since 1974, which was prior to impoundment of its habitat there (Williams 1982). Judge Tait's mussel was last collected from the mainstem Tombigbee River in 1972 (Stansbery 1983a). Habitat remaining there is marginal and remaining clams must cope with the continuing impacts of siltation, reduced water flows, water quality degradation, and possible loss of their fish host. Judge Tait's mussel is surviving in the Buttahatchie River (Schultz 1981), East Fork Tombigbee River, and Sipsey River. The species is threatened in these three Tombigbee River tributaries by a 59-mile channel improvement project in the Buttahatchie, a 53-mile clearing and snagging project in the East Fork (U.S. Army Corps of Engineers 1983), and an 84.5-mile

channel improvement project in the Sipsey River (U.S. Army Corps of Engineers 1981). The COE has the authority to spend up to $100,000 per year per stream for the removal of snags, clearing, and straightening for flood control purposes. Such a project has been carried out on the East Fork upstream of Mill Creek (U.S. Army Corps of Engineers 1984). The East Fork population is also impacted by water diversion. Bull Mountain Creek is a cool water stream that contributes nearly half the flow of the East Fork. During construction of the canal, the entire blow of Bull Mountain Creek was diverted. The cool inflow from Bull Mountain Creek will undoubtedly be warmed as it mixes with the canal water, resulting in warming of the East Fork. Changes in water temperatures can be physiologically stressful to clams, alter their food supply, and impact their fish hosts.

The stirrup shell is known historically from the Alabama River and the Tombigbee River. Museum records indicate the stirrup shell was restricted historically to the lowermost part of the Alabama River (Stansbery 1981). The lack of fresh shells or living specimens from the Alabama River for several decades indicates the likely extirpation of the stirrup shell from this portion of the historic range. This species has been collected from a reach of the Tombigbee River from near Epes, Alabama, upstream to just above the confluence of Tibbee Creek. One specimen was recently collected by Yokley in the lower Sipsey River, and a recent survey by Fish and Wildlife Service biologists found a fresh stirrup shell at the same site. The present known distribution of this clam is limited to a single Tombigbee River bendway and the Sipsey River. This limited distribution continues to be threatened by habitat modification. Impoundment of the Tombigbee River has altered water flows and increased siltation on the gravel bars. This alteration suffocated mussels with silt and may have modified habitat so as to eliminate the fish host, if the host is a riverine species that is intolerant of impoundments. The COE has a channel improvement project for 84.5 miles of the Sipsey River that includes 32 miles of clearing and snagging (U.S. Army Corps of Engineers 1981). Channel modifications adversely impact clams by alteration of the substrate, increased siltations, altered water flows, and direct mortality of mussels from dredging and snagging activities.

The penitent mussel is known historically from the Tombigbee River from the confluence of the East Fork and Bull Mountain Creek above Amory, Mississippi, downstream to Epes, Alabama; the Alabama River at Claiborne and Selma; the Cahaba River below Centreville, Alabama; and the Coosa River in Alabama and Georgia (Stansbery 1983c, Willimas 1982). Live specimens were found recently on the Buttahatchie River (Yokley 1978, Schultz 1981). The penitent mussel has not been collected from the Alabama and Cahaba Rivers since the 1800's (Stansbery 1983c) or the Coosa River since 1974, prior to impoundment of its habitat there (Williams 1982). The penitent mussel was last collected from the mainsteam Tombigbee River in 1972 (Stansbery 1983c). Remaining habitat in the Tombigbee River is in the bendway in Sumter County, Alabama. This habitat is marginal and is subject to siltation, reduced water flows, water quality degradation, and possible loss of habitat of the fish host. The penitent mussel is surviving in the Buttahatchie River (Yokley 1978, Schultz 1981) and the East Fork Tombigbee River. The species is threatened in these two Tombigbee River tributaries by a 59-mile channel improvement project in the Buttahatchie (U.S. Army Corps of Engineers 1981) and a 53-mile clearing and snagging project in the East Fork (U.S. Army Corps of Engineers 1983). The COE has the authority to spend up to $100,000 per year per stream for the removal of snags, clearing, and channel straightening for flood control purposes. Such a project has been conducted on the East Fork upstream of Mill Creek (U.S. Army Corps of Engineers 1984). The East Fork population is also impacted by water diversion. Bull Mountain Creek is a cool water stream that contributes nearly half the flow of the East Fork. During construction of the canal, the entire flow of Bull Mountain Creek was diverted. The cool inflow from Bull Mountain Creek will be warmed as it mixes with the canal water, resulting in warmer water temperatures in the East Fork. Changes in water temperatures can physiologically stress clams, alter their food supply, and impact their fish hosts.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* These rare species occur in such low numbers that collection for private collections and scientific purposes poses an additional threat. Considering the historic rarity of these species and their loss of historic habitat by construction of the TTW, collection of live specimens could result in the loss of a significant proportion of surviving individuals.

C. *Disease or predation.* There is no evidence of threats from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* These species occur in Mississippi and Alabama. Both States have regulations that require a permit to take clams. Enforcement of this regulation is very difficult and limited. Limited enforcement results from several factors, including limited enforcement resources, enforcement priorities, and the difficulty of apprehending violators. In addition, these regulations do not affect habitat degradation, the major threat to these species.

E. *Other natural or manmade factors affecting their continued existence.* Marshall's mussel is restricted to the lower half of the Tombigbee River and is found in free-flowing riffle areas (Stansbery 1983b). Construction of the TTW effectively eliminated this entire reach of free-flowing river except for the site discussed earlier. The isolation of the remaining population, along with very low population size, increases vulnerability to any single adverse event. Reproduction becomes increasingly difficult at low population densities owing to the decreased concentration of gametes in the water column.

Curtus' mussel is also limited to the Tombigbee River system. The population in Pickens County, Alabama, has likely been extirpated by the TTW, which leaves the East Fork Tombigbee River as the only remaining occupied habitat. The historic low numbers and difficulties in successful reproduction for such a rare species increase the likelihood of a further decline.

Judge Tait's mussel is threatened by limited range and low numbers. The four remaining populations are isolated from each other by the TTW. This effectively isolates these small gene pools and leaves them susceptible to the loss of genetic variation, and thereby limits their adaptability to changing conditions. Isolation of populations and individuals also decreases the likelihood of successful reproduction because this species depends upon water currents to transport gametes from one individual to another.

The stirrup is restricted to the Sipsey River and one site in the Tombigbee River. The Sipsey River, Tombigbee River, and the bendway in Sumter County, Alabama, support the only viable populations, and these populations are threatened by low numbers and the associated difficulties of successful reproduction.

The penitent mussel is threatened by limited range and low numbers. The remaining populations are isolated from each other by the TTW. This effectively creates isolated gene pools of small size that are therefore subject to loss of genetic variability. Isolation of populations and low density of individuals also decreases the likelihood of successful reproduction, since this species also depends upon water currents to transport gametes from one individual to another

All five species are affected by runoff of fertilizers and pesticides. Runoff of fertilizers into small streams can exceed the assimilation ability of the stream and result in algal blooms and excesses of other aquatic vegetation. This condition can produce stream eutrophication and result in the death of the native fauna. Herbicides, insecticides, fungicides, and other pesticides are easily washed from fields into streams, along with silt particles to which these substances adhere. While being transported downstream, these particles may be ingested by filter feeders, which include these native clams. Pesticide laden silt particles eventually settle to and become a part of the substrate. This increases the concentrations of pesticides in the clams' habitat.

All five species may also be adversely affected by loss of their fish hosts. Although the host fish for these particular species have not been identified, the hosts of clams from riffle habitats tend to be riffle-dwelling species (Fuller 1974) and are likely to decline or become extirpated as this habitat is modified.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these five species of clams in determining to make this rule final. Based on this evaluation, the preferred action is to list Marshall's mussel, Curtus' mussel, Judge Tait's mussel, the stirrup shell, and the penitent mussel is endangered. Endangered status is appropriate because of the loss of historic habitat in the Tombigbee River by construction of the TTW and the reduction in quality of the remaining habitat owing to reduced water velocity and resulting sedimentation. Tributary populations also face threats. Threatened status would not be appropriate because these species are restricted to very limited areas, are reduced to low numbers, and remain vulnerable to a single catastrophic event. The Tombigbee River populations are close to extinction. Critical habitat is not proposed for these species for reasons given in the next section.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these five mussels at this time owing to lack of benefit from such designation. The COE is the Federal agency most involved and is already aware of the location of the remaining populations of these five species. The COE has conducted numerous studies of the Tombigbee River system fauna and is very knowledgeable of the fauna and of project impacts. No additional benefits would accrue from a critical habitat designation that do not already accrue from the listing. In addition, these species are so rare that taking for scientific purposes and private collections is a threat. The publication of critical habitat maps and other publicity accompanying critical habitat designation would increase that threat. The locations of populations of these species have consequently been described only in general terms in this rule. Precise locality data are available to appropriate Federal agencies through the Service office described in the **ADDRESSES** section.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include COE projects for flood control and navigation and Soil Conservation Service watershed projects on Tombigbee River tributary streams. The COE will conduct annual maintenance dredging for navigation on the TTW and will manage a number of the bendways for recreation and other beneficial values. This will require the maintenance of some river flow and of boat access from one or both ends of these bendways. Structural management will be required at 12 bendways. Structural management actions include blockage structures, using dredged material, at the upstream end of seven bendways to prevent sedimentation. The downstream ends of the bendways would remain open for access. The upstream ends of five bendways would be dredged initially and maintained to pre-TTW channel dimensions, plus sediment basins designed to contain the projected annual sediment deposition would be dredged and maintained (U.S. Army Corps of Engineers 1984). This management action would maintain water flows and boat access, but would require periodic dredging to remove sediment. The remaining 22 bendways will be monitored to determine the need for further structural management measures. Other COE projects that occur in rivers where these species have been found are: 84.5 miles of channel improvements and 32 miles of clearing and snagging in the Sipsey River (U.S. Army Corps of Engineers 1981); 53 miles of clearing and snagging in the East Fork (U.S. Army Corps of Engineers 1983); and 70 miles of clearing, snagging, enlargement, channels, and cutoffs in 18 streams for flood control on the Tombigbee River (U.S. Army Corps of Engineers 1983). The Soil Conservation Service has eight watersheds in operation, one in the planning stage, and one application for planning in the western tributaries of the Tombigbee River in Mississippi (U.S. Department of Agriculture 1983). Channelization activities associated with watershed projects could increase siltation and adversely affect potential habitat.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions

that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, delivery, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


Baldwin, C.S. 1973. Changes in the freshwater mussel fauna in the Cahaba River over the past forty years. Thesis, Tuskegee Institute. 45 pp.

Clench, W.J., and R.D. Turner. 1956. Freshwater mollusks of Alabama, Georgia, and Florida from the Escambia to the Suwannee River. Bulletin of the Florida State Museum (Biological Sciences) 1:97–239.

Conrad, T.A. 1834. New fresh water shells of the United States, with colored illustrations, and a monograph of the genus *Anculotus* Say: also a synopsis of American naiades. Philadelphia. 73 pp.

Frierson, L.S. 1908. Description of a new *Pleurobema*. Nautilus 22:27–28.

Frierson, L.S. 1927. A classified and annotated check list of the North American naiades. Baylor University Press, Waco, Texas. 111 pp.

Fuller, S.L.H. 1974. Clams and Mussels (Mollusca: Bivalvia). Pages 215–274 *in* C.W. Hart, Jr., and S.L.H. Fuller (eds.), Pollution Ecology of Freshwater Invertebrates. Academic Press, New York.

Grantham, B.J. 1969. The fresh-water pelecypod fauna of Mississippi. Ph.D. Dissertation, University of Southern Mississippi. 243 pp.

Haas, F. 1969. Superfamilia Unionaceae. Das Tierreich 88:i–x, 1–663.

Hinkley, A.A. 1906. Some shells from Mississippi and Alabama. Nautilus 20:34–36, 40–44, 52–55.

Hurd, J.C. 1974. Systematics and zoogeography of the unionacean mollusks of the Coosa River drainage of Alabama, Georgia, and Tennessee. University Microfilms, Ann Arbor, Michigan. 240 pp.

Johnson, R.I. 1978. Systematics and zoogeography of *Plagiola (=Dysnomia=Epioblasma)*, an almost extinct genus of freshwater mussels (Bivalvia: Unionidae) from middle North America. Bulletin of the Museum of Comparative Zoology 148:239–320.

Lea, I. 1831. Observations on the naiades; and descriptions of new species of that and other families. Transactions of the American Philosophical Society (N.S.) 4:63–121.

Lea, I. 1834. Observations on the naiades, and descriptions of new species of that and other families. Transactions of the American Philosophical Society (N.S.) 5:23–119.

Lea, I. 1836. A synopsis of the family of naiades. Carey, Lea and Blanchard, Philadelphia. 59 pp.

Lea, I. 1852a. A synopsis of the family of naiades, 3rd edition. Philadelphia, pp. 17–88.

Lea, I. 1852b. Descriptions of new species of the Family Unionidae. Transactions of the American Philosophical Society 10:253–294.

Lea, I. 1859. Description, of eight new species of Unionidae, from Georgia, Mississippi and Texas. Proceedings of the Academy of Natural Science of Philadelphia 11:112–113.

Lea, I. 1870. A synopsis of the family Unionidae. H.C. Lea, Philadelphia. 184 pp.

Schultz, C.A. 1981. North Mississippi Fisheries Investigation D–J Project F–47, Tombigbee basin preimpoundment studies. Freshwater Fisheries Report Number 18, Mississippi Department of Wildlife Conservation, Bureau of Fisheries and Wildlife. 86 pp.

Simpson, C.T. 1900. Synopsis of the naiades, or pearly freshwater mussels. Proceedings of the U.S. National Museum 22:501–1044.

Simpson, C.T. 1914. A descriptive catalogue of the naiades, or pearly freshwater mussels. Bryant Walker, Detroit, Michigan. 3 vol. 1540 pp.

Stansbery, D.H. 1976. Naiade mollusks. Pages 42–52 *in* H. Boschung (ed.), endangered and threatened plants and animals in Alabama. Bulletin of the Alabama Museum of Natural History, No. 2.

Stansbery, D.H. 1980. Comments on naiade mollusks being reviewed for possible addition to the Federal list of endangered and threatened wildlife and plants (unpublished report). 23 pp.

Stansbery, D.H. 1981. The status of *Quadrula stapes* (Lea, 1831) (Mollusca: Bivalvia: Unionoida) (unpublished report). 10 pp. + 4 pp. museum records.

Stansbery, D.H. 1983a. The status of *Pleurobema taitianum* (Lea, 1834) (Mollusca: Bivalvia: Unionoida) (unpublished report). 10 pp. + 5pp. museum records.

Stansbery, D.H. 1983b. The status of *Pleurobema marshalli* Frierson, 1927 (Mollusca: Bivalvia: Unionoida) (unpublished report). 10 pp.+6 pp. museum records.

Stansbery, D.H. 1983c. The status of *Epioblasma penita* (Conrad, 1834) (Mollusca: Bivalvia: Unionoida) (unpublished report). 15 pp. + 6 pp. museum records.

Stansbery, D.H. 1983d. The status of *Pleurobema curtum* (Lea, 1859) (Mollusca: Bivalvia: Unionoida) (unpublished report). 10 pp. + 6 pp. museum records.

Stein, C.B. 1971. Naiad life cycles: their significance in the conservation of the fauna. pp. 19–25 + Figures 1–15. *In* S.E. Jorgensen and R.W. Sharp (eds), Proceedings of a Symposium on Rare and Endangered Mollusks (Naiads) of the U.S. Department of the Interior, Fish and Wildlife Service. 79 pp.

U.S. Army Corps of Engineers. 1981. Water resources development in Alabama. 1981. 121 pp.

U.S. Army Corps of Engineers. 1983. Mobile District Corps of Engineers projects in Alabama.

U.S. Army Corps of Engineers. 1984. Supplement to the project design memorandum bendway management study Mobile District. 276 pp.

U.S. Department of Agriculture. 1983. Soil Conservation Service watershed progress report—Mississippi.

van der Schalie, H. 1938. The naiades (freshwater mussels) of the Cahaba River in northern Alabama. Occasional Papers of the Museum of Zoology, University of Michigan 392:1–29.

van der Schalie, H. 1980. Untitled and unpublished report on mussels in the Tombigbee River prepared for Tennessee-Tombigbee Waterway Development. 18 pp.

Williams, J.D. 1982. Distribution and habitat observations of selected Mobile basin unionid mollusks, pp. 61–85 + 11 fig. *In* A.C. Miller (ed.). Report of freshwater mollusks workshop, 19–20 May 1981. U.S. Army Engineer Waterways Experiment Station Environment Laboratory, Vicksburg, Mississippi. 184 pp.

Yokley, P., Jr. 1978. A survey of the bivalve mollusks of the Buttahatchie River, Alabama and Mississippi (unpublished report). 26 pp.


### Authors

The primary authors of this proposed rule are James H. Stewart and John J. Pulliam, III (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

## Regulations Promulgation

## PART 17—[AMENDED]

Accordingly, Part 17, Subcapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the list of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| CLAMS | | | | | | | |
| Mussel, Curtis' | *Pleurobema curtum* | U.S.A. (AL, MS) | NA | E | 262 | NA | NA |
| Mussel, Judge Tait's | *Pleurobema taitianum* | U.S.A. (AL, MS) | NA | E | 262 | NA | NA |
| Mussel, Marshall's | *Pleurobema marshalli* | U.S.A. (AL, MS) | NA | E | 262 | NA | NA |
| Mussel, pentent | *Epioblasma (= Dysomia) penta* | U.S.A. (AL, MS) | NA | E | 262 | NA | NA |
| Stirrup shell | *Quadrula stapes* | U.S.A. (AL, MS) | NA | E | 262 | NA | NA |

Dated: March 24, 1987.

**Susan Recce,**

*Acting Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–7650 Filed 4–6–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Cambarus Zophonastes

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines a cave crayfish, *Cambarus zophonastes*, to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. This obligate cave dweller has been found only in one cave in Stone County, Arkansas. The species does not have an accepted common name. Groundwater contamination, collecting, and low population levels represent major potential threats to *Cambarus zophonastes*. Groundwater contamination is especially important because most of the stream channels in the cave's recharge area are sinking streams, which can readily introduce pollutants or contaminants into the cave system. This determination implements the protection of the Endangered Species Act of 1973, as amended, for this cave crayfish.

**DATE:** The effective date of this rule is May 7, 1987.

**ADDRESS:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Dennis B. Jordan at the above address (601/965–4900 or FTS 490–4900).

**SUPPLEMENTARY INFORMATION:**

### Background

*Cambarus zophonastes* is an albinistic cave crayfish endemic to the White River Basin in north-central Arkansas (Smith 1984). This obligate cave crayfish was first collected in 1961 and described in 1964 from five specimens taken from the type locality (Hobbs and Bedinger 1964). *Cambarus zophonastes* lacks pigment in the body and eyes, which are reduced, and the overall body length reaches about 65 mm (2.5 inches). It can be distinguished from related species by the following features of its carapace: the rostrum has strongly convergent margins bearing spines, and the areola is more than 29 times longer than wide. The species is known from only the type locality, and only eight specimens are known to exist in zoological collections. A search of over 170 additional caves in north-central Arkansas failed to locate any additional populations of *Cambarus zophonastes*. A survey of 436 caves and ten springs in Missouri revealed two closely related species (*Cambarus hubrichti* and *Cambarus setosus*), but failed to reveal *Cambarus zophonastes* (Smith 1984).

The type locality is situated in the Ozark Mountains, where the cave is formed in the Plattin Limestone (Hobbs and Bedinger 1964). This cave is a solution channel, most of which is wet year-round. It contains much mud, and many of its passages are flooded during storms and wet seasons. About 150 feet (45 meters) inside the cave entrance is a pool that ranges from 1 to at least 20 feet (0.3–6 meters) in depth. A narrow, shallow stream from the cave's interior enters the pool. This stream flows through 1400 feet (425 meters) of cave passage (Smith 1984). Water exits the cave through three springs that emerge about 150 feet (45 meters) from the cave entrance. The crayfish has been found only in the cave pool. The Arkansas Natural Heritage Commission and the Nature Conservancy recently purchased a 160-acre (65-hectare) tract that includes the cave's entrance. The cave's primary recharge area covers 3.51 square miles (9 square kilometers) (Aley and Aley 1985) and is largely privately owned. Population trends for *Cambarus zophonastes* have not been documented. The largest number of individuals sighted during a single trip was 15 crayfish recorded by a scuba diver in 1983. The total population is estimated at fewer than 50 individuals (Smith 1984).

The Service published a proposed rule to list this species as endangered in the **Federal Register** (51 FR 16569) on May 5, 1986.

### Summary of Comments and Recommendations

In the May 5, 1986, proposed rule (51 FR 16569) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited public comment were published in the *Arkansas Gazette* on May 25, 1986, and the *Arkansas Democrat* on May 24, 1986. Comments were received from two State agencies, one conservation organization, and one individual. All four comments supported the proposed listing.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cambarus zophonastes* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cambarus zophonastes* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Groundwater contamination represents a major threat to *Cambarus zophonastes*. The only known population is in a geographic area characterized by sinking streams. A sinking stream is a surface watercourse that loses significant quantities of water into the subsurface in very localized areas. Sinking streams are of extreme importance in supplying water and nutrients to caves. This rapid flow of water into caves also allows the easy introduction of pollutants. A hydrological study of the area (Aley and Aley 1985) has identified several threats to the habitat of *Cambarus zophonastes*. An electrical transmission line crosses the recharge area for this cave. The use of herbicides to clear the right-of-way for this line could contaminate the cave.

A State highway borders the recharge area for the cave and is a potential source for accidental spills of materials hazardous to water quality. A 4,000 gallon (15,140 liter) spill of gasoline occurred in March 1985. There are three industrial operations within the cave recharge area that threaten the water quality. All three operations store petroleum products that could spill or leak into the cave. One of the operations, a concrete plant, contributes silt to the cave when its sediment ponds overflow (Aley and Aley 1985). The City of Mountain View has grown rapidly and will likely expand into the topographic basin, within which some subdivision roads have already been built. Continuing development presents a major threat to water quality in the cave from the use of septic tanks to dispose of wastewater.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Obligate cave species

characteristically live longer and have considerably lower reproductive abilities than their surface relatives. Cooper (1975), in his study of crayfish in Shelta Cave, Alabama, found that female *Orconectes australis* carried only 10 to 60 attached ova, while surface species of *Orconectes* carry up to 574 attached ova. *Cambarus zophonastes* probably also has low reproductive capabilities. The removal of adults from a limited population with a likely low reproductive potential would seriously endanger the existence of the population. With a maximum of 15 individuals of *Cambarus zophonastes* ever observed and with a total population estimate of 50 individuals, the removal of any reproducing females would dramatically impact and could eliminate a year's recruitment. The limited habitat and population size make the species vulnerable to vandalism and taking.

C. *Disease or predation.* Disease and predation have not been documented for this species.

D. *The inadequacy of existing regulatory mechanisms.* This species is not recognized or protected as a rare species by any existing Federal or State regulation. Arkansas requires a scientific collecting permit for collecting any species, except taking for fish bait under other State regulations. This affords very limited protection owing to the difficulty of apprehending violators and limited resources for law enforcement.

E. *Other natural or manmade factors affecting its continued existence.* Obligate cave species apparently have very low reproductive rates, as evidenced by the limited information available on other cave species (Poulson 1961). The low fecundity is partially due to the limited energy availability in caves. The cave occupied *Cambarus zophonastes* likely served as a maternity roost site for gray bats (*Myotis grisescens*), a species listed as endangered, at one time in the past (Harvey *et al.* 1981). The abandonment of this roost site represents a loss of energy input, in the form of guano, to the cave's aquatic community. This loss of energy reduces the available food supply and may have limited or reduced the population size of *Cambarus zophonastes*. Reproduction of *Cambarus zophonastes* is further impacted by low numbers of mature individuals, which reduces genetic diversity and the likelihood of successful mating encounters. Low reproductive capabilities and the small, single population naturally limit this species' ability to recover from any adversity.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cambarus zophonastes* as endangered. Endangered status was chosen because this species is known from only one cave system with an estimated population of 50 individuals. The species is especially vulnerable to water quality degradation at this site. It therefore requires the greatest possible protection available under the Act. The reason critical habitat is not being designated is discussed in the next section.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extend prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Cambarus zophonastes* is endangered by taking, an activity difficult to prevent. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and landowners will be notified of the location and importance or protecting the species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard (see below). Therefore, it would not be prudent to determine critical habitat for *Cambarus zophonastes* at this time.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal involvement with this species is expected to be minimal. The continuing development of this region could lead to sub-surface water degradation which may involve the Environmental Protection Agency or other agencies with jurisdiction over the groundwater. The Federal Housing Administration may be required to consult with the Service on Federal loans for housing development within the cave's recharge area.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National

BEST COPY AVAILABLE

Environmental Policy Act, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**


Aley, T., and C. Aley. 1985. Water Quality Protection Studies. Hell Creek Cave, Arkansas. A contract report for the Arkansas Natural Heritage Commission.

Cooper, J.E. 1975. Ecological and Behavioral Studies in Shelta Cave, Arkansas, with Emphasis on Decapod Crustaceans, Ph.D Dissertation, University of Kentucky.

Harvey, M.J., J.J. Cassidy, and G.G. O'Hagan. 1981. Endangered Bats of Arkansas: Distribution, Status, Ecology, and Management. A report to Arkansas Game and Fish Commission, Little Rock.

Hobbs, H.H., Jr., and M.S. Bedinger. 1984. A New Troglobitic Crayfish of the Genus *Cambarus* (Decapoda, Astacidae) from Arkansas with a Note on the Range of *Cambarus cryptodytes* Hobbs. Proceedings of the Biological Society of Washington, 77:9–15.

Poulson, T.L. 1961. Cave Adaptation in Amblyopsid Fishes. Ph.D Dissertation, University of Michigan.

Smith, K.L. 1984. The Status of *Cambarus zophonastes* Hobbs and Bedinger, An Endemic Cave Crayfish from Arkansas. A status survey report for the U.S. Fish and Wildlife Service.


**Author**

The primary author of this final rule is James Stewart (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under CRUSTACEANS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| CRUSTACEANS | | | | | | | |
| Crayfish (no common name) | Cambarus zophonastes | U.S.A. (AR) | NA | E | 263 | NA | NA |

Dated: March 24, 1987.

Susan Recce,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–7651 Filed 4–6–87; 8:45 am]

BILLING CODE 4310–55–M

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; Endangered Status for Lupinus Aridorum (Scrub Lupine)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.


**SUMMARY:** The Service determines a plant in the pea family, *Lupinus aridorum* (scrub lupine), to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. This plant has been found at only 16 sites in Orange and Polk Counties, Florida; fewer than 350 individual plants are known to exist. All sites are on privately owned property, and are highly desirable for residential and commercial development. Populations have already suffered losses from home building, road construction, off-road vehicle use, and/or land clearing for pastures and other purposes.

This rule will implement the Federal protection and recovery provisions afforded by the Act for *Lupinus aridorum.*


**DATES:** The effective date of this rule is May 7, 1987.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

**FOR FURTHER INFORMATION CONTACT:** Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address, or telephone 904/791–2580 or FTS/946–2580.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Lupinus aridorum*, a member of the pea family (Fabaceae), was first collected by Meislahn in 1900 in Orange County, Florida. It was not collected again until McFarlin found it in Polk County in 1928 and 1937. Renewed efforts by Beckner in the early 1970's, and again in the early 1980's by Beckner and Wunderlin, greatly expanded knowledge of the distribution of the species in both Orange and Polk Counties. Beckner recognized and named the species as distinct in 1982. Prior to that, the plants were variously misidentified by workers as *Lupinus diffusus* and *Lupinus westianus*. Since the plant was described as a full species by Beckner, there have been no alternative taxonomic treatments.

*Lupinus aridorum* is a biennial or short-lived perennial growing from a soft woody base; the stems are up to one meter (3 feet) tall. Its leaves are obovate-elliptic in shape, 4–7 centimeters (1.5–2.8 inches) long, and 2–4 centimeters (0.8–1.5 inches) wide. The ends of the leaves are rounded with sharp pointed tips and the bases are rounded; the upper and lower surfaces are covered with silvery hairs. The petioles are 2–4.5 centimeters (0.8–1.8 inches) long; the stipules are very small. The inflorescences are racemose with stalks 4–13 centimeters (1.5–5.2 inches) long, and the flowering portion 4–15 centimeters (1.5–5.8 inches) long. The petals are pale flesh-pink except for the standard, which has a black center surrounded by a maroon-red area. The standard is about 1.5 centimeters (0.5 inch) long, the wing petals about 1.4 centimeters (0.5 inch) long, and the keel petals slightly shorter. The fruit is 2–2.5 centimeters (0.8–1.0 inch) long, woody, and elliptic in shape, tapering to a sharp apex.

*Lupinus aridorum* is distinctive in the field, being the only upright pink-flowered lupine in Florida. It is further distinguished from the only other pink-flowered lupine, the prostrate *Lupinus villosus*, by the lack of long, shaggy hairs on stems and leaves, and vestigial

(rather than large and conspicuous) stipules. It is most closely related to *Lupinus westianus* of the Florida panhandle, but differs in flower color, *Lupinus westianus* having blue flowers.

*Lupinus aridorum* is endemic to central Florida. It is known from Orange County, between the city of Orlando and Walt Disney World, and from Polk County, between Winter Haven and Auburndale. Recently N.J. Bissett, a Winter Haven horticulturist, (pers. comm. 1986) reported that there is also a "fairly sparse population" visible from State road 64, west of the Avon Park Bombing Range in Polk County. The scrub lupine is a sand pine scrub species that grows primarily in well drained sandy soils of the Lakewood or St. Lucie series. The sands are white or occasionally yellow where the turkey oak woods have invaded the sand pine scrub. The tree layer may be a mixture of *Pinus clausa* (sand pine), *Pinus elliotii* (slash pine), and *Quercus laevis* (turkey oak) (Wunderlin 1982). The scrub layer is usually sparse which many be the result of disturbance at many of the sites where the lupine occurs. The most frequent shrubs include *Ceratiola ericoides* (rosemary), *Quercus geminata* (scrub live oak), *Lyonia ferruginea* (rusty lyonia), *Palafoxia feayi, Ximenia americana* (tallowwood), and scattered *Sabal palmetto* (cabbage palm). The herbaceous layer is dominated by *Aristida stricta* (wiregrass) intermixed with *Pityopsis graminifolia, Helianthemum nashii, Rhynchospora megalocarpa, Bonamia grandiflora, Polygonella myriophylla,* and *Opuntia humifusa* (prickly-pear cactus). In the open areas, *Selaginella arenicola* (sand spikemoss) is often common. All currently known populations of *Lupinus aridorum* are on privately owned land. They are in danger of extirpation because they occur in two of the most rapidly growing areas of Florida.

On December 15, 1980, the Service published in the Federal Register (45 FR 82480) its Review of Plant Taxa for Listing as Endangered or Threatened. On November 28, 1983 (48 FR 53640), the Service published a supplement to this review. *Lupinus aridorum,* which had not been named when the 1980 review was published, was listed in the 1983 supplement as a category 2 species (those candidate species for which the Service needs additional information before proceeding with a proposal). The 1985 updated version of the review (September 27, 1985; 50 FR 39526) included *Lupinus aridorum* as a category 1 species (those candidate species for which the Service possesses information indicating listing is appropriate).

All plant taxa included in the 1980 review, 1983 supplement, and 1985 review, are treated as being under petition. Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Service to make findings on pending petitions within 12 months of their receipt. On October 12, 1984, and again on October 11, 1985, the Service made its 12-month finding that listing of *Lupinus aridorum* was warranted, and that although proposal of other higher priority species had precluded its proposal, expeditious progress was being made to add other species to the list. Biological data, supplied by Wunderlin in 1984, fully supported a proposed rule listing *Lupinus aridorum* as endangered, and on April 24, 1986, the Service published the proposed rule which constituted the next 12-month finding for this species.

## Summary of Comments and Recommendations

In the April 24, 1986, proposed rule (51 FR 15514) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Orlando Sentinel* and the *Winter Haven News Chief.* The following six comments were received concerning the proposal.

The Florida Department of Agricultural and Consumer Services, and the Bok Tower Gardens, Lake Wales, Florida, fully supported the listing of *Lupinus aridorum* as endangered. The Florida Department of Environmental Regulation determined that the proposed listing was consistent with the Florida Coastal Management Program. The Florida State Clearing House, in compliance with Presidential Executive Order #12372 and the Governor's Executive Order 85–150, noted that the action was in accord with State plans, programs, procedures, and objectives. The International Union for Conservation of Nature and Natural Resources wrote that it had no additional data on the status of *Lupinus aridorum,* but appreciated receiving the detailed considerations published in the proposal. Nancy J. Bissett, a Winter Haven horticulturist, supported the listing, and reported a new site for the species on State road 64, west of the Avon Park Bombing Range in Polk County.

## Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Lupinus aridorum* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lupinus aridorum* McFarlin ex Beckner (scrub lupine) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Lupinus aridorum* is known from only 16 sites (Wunderlin 1984, Bissett 1986 pers. comm.). Ten of these are in Orange County between the city of Orlando and Walt Disney World. Orlando has been, and continues to be, one of the most rapidly growing cities in Florida. The sites on which scrub lupines are growing are prime property for development. Six sites for *Lupinus aridorum* are in Polk County, near the towns of Winter Haven, Auburndale, and Avon Park. These are also rapidly expanding communities whose growth threatens the continued existence of the species.

Altogether, fewer than 350 plants of *Lupinus aridorum* are thought to exist, most of which occur in habitats that have already been highly modified, or are threatened by housing developments, road construction and maintenance, conversion to pastureland, and pedestrian, horse, and off-road vehicular traffic. One site occurs on highway right-of-way lands; all other sites are privately owned and subject to development or modification by the landowners at any time.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the scrub lupine has not been in commercial trade, it is a large and attractive plant when in bloom and has the potential to be used as a decorative landscape addition. The attractive nature of the scub lupine, and its potential for landscaping use, is emphasized by the fact that at one site, where a single large plant, seven feet in diameter, was growing, the landowner actually divided a fence he was building in order to avoid destroying it (Wunderlin 1984). The scrub lupine is only sporadically collected for scientific purposes.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms. Lupinus aridorum* is listed as endangered under the Preservation of the Native Flora of Florida Law (Section 581.185 of the Florida Statutes). This Florida law regulates taking and the intrastate sale of plants, but it does not provide habitat protection.

E. *Other natural or manmade factors affecting its continued existence.* The scrub lupine is restricted in distribution and occurs in relatively small numbers (largest site has fewer than 100 plants). Such rarity increases the species' vulnerability to disturbance and natural disasters.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lupinus aridorum* as endangered. It occurs in three small disjunct population centers (Orlando area, Winter Haven area, and Avon Park area), and is known from only 16 sites. Human population pressures in all three areas are increasing annually. Currently, all 16 known populations are on private lands and their continued existence is not secure. Critical habitat is not determined for the scrub lupine for reasons discussed in the "Critical Habitat" section below.

## Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Lupinus aridorum* at this time. This species is a large plant which bears attractive pink flowers. There are indications that it might be a desirable species for landscaping purposes. In addition, it occurs very near areas of high human concentration where it could readily be located and vandalized. The identification of the precise sites where populations occur, through publication of critical habitat descriptions and maps in the **Federal Register**, might increase the threats to the species. It would be difficult to safeguard it from curiosity seekers or vandals. In addition, critical habitat benefits apply only when Federal activities and/or Federal lands are involved. The scrub lupine occurs only on privately owned lands where no Federal involvements are known at present. Therefore, there would be no benefits to this species by a designation of critical habitat. Because of these factors, the Service finds that a designation of critical habitat for *Lupinus aridorum* is not prudent.

## Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since all presently known sites for *Lupinus aridorum* are on privately owned land, there will be no effect from the above requirement unless a private activity requires some Federal action, such as funding or issuance of permits.

Section 9 of the Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export endangered plants, transport such in interstate or foreign commerce in the course of a commercial activity, sell or offer them for sale in interstate or foreign commerce, or remove them from areas under Federal jurisdiction and reduce them to possession. Certain exceptions can apply to agents or the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With respect to *Lupinus aridorum*, it is anticipated that few trade permits will ever be sought or issued since the species is not known to be in cultivation and is scarce in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

## National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited

Beckner, J. 1982. *Lupinus aridorum* J.B. McFarlin ex Beckner (Fabaceae), a new species from central Florida. Phytologia 50:209–211.

Wunderlin, R.P. 1982. Guide to the vascular plants of central Florida. University Presses of Florida, 472 pp.

Wunderlin, R.P. 1984. Endangered and threatened plant status survey, *Lupinus aridorum* McFarlin ex Beckner. Unpublished report prepared under contract with U.S. Fish and Wildlife Service.

## Author

The primary author of this final rule is John L. Paradiso, U.S. Fish and Wildlife Service, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

## List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

## Regulations Promulgation

## PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. Amend § 17.12(h) by adding the following, in alphabetical order under Fabaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | | | | | | |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | Historic range | Status | When listed | Critical habitat | Special rules |
| FABACEAE—PEA FAMILY | | | | | | |
| Lupinus andorum | Scrub lupine | U.S.A. (FL) | E | 264 | N/A | N/A |

Dated: March 24, 1987

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–7652 Filed 4–6–87; 8:45 am]

BILLING CODE 4310–55–M

Federal Register

Tuesday
April 7, 1987

Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 71**

**Establishment of Airport Radar Service Areas; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 86-AMA-40]**

## Establishment of Airport Radar Service Areas

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action designates Airport Radar Service Areas (ARSA) at Barksdale Air Force Base, LA; Boise Air Terminal, ID; Flint Bishop Airport, MI; Fort Wayne Municipal Airport, IN; Lansing Capital City Airport, MI; Madison Dane County Regional Airport-Truax Field, WI; and Shreveport Regional Airport, LA. The locations designated are public or military airports at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

**EFFECTIVE DATE:** 0901 UTC, May 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9245.

**SUPPLEMENTARY INFORMATION:**

### History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83–9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 75 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On October 1, 1986, the FAA proposed to designate ARSA's at Barksdale Air Force Base, LA; Boise Air Terminal, ID; Flint Bishop Airport, MI; Fort Wayne Municipal Airport, IN; Lansing Capital City Airport, MI; Madison Dane County Regional Airport-Truax Field, WI; and Shreveport Regional Airport, LA, (51 FR 35140). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports.

### Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designation. Additionally, several of the comments on individual designation are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposal at each of the specific airports.

*ARSA Program Comments*

Aircraft Owners and Pilots Association (AOPA) and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA, disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase for the present levels to 100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if TRSA was designated. The FAA recognizes that participation in the ARSA program is relatively low at some of the candidate locations. However, this is in large part due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

AOPA and others claim the FAA is changing the criteria that an operating control tower is the only requirement for an airport to be eligible for an ARSA. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating

control tower served by a Level III, IV, or V radar approach control facility.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in visual flight rule (VFR) conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considered emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designated locations.

Numerous commenters also objected to the proposals based upon their belief that the volume of air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than expected by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. Any delay that may result is expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the experience at those locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

Several comments claimed that some aircraft would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. The FAA does not agree. Each primary airport receiving ARSA designation has an airport traffic area requiring two-way radio communications at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore-Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach

control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

One commenter claimed that the grouping of ARSA's such as that adopted in the Sacramento Valley area would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR § 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR § 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, and others commented that several of the proposed ARSA's failed to meet the critria for designation. The criteria for this airport was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that

pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

Information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

SSA commented that the FAA should take into consideration the unique operating characteristics of gliders in defining the ARSA airspace at some locations. The FAA has modified the configurations of the ARSA at locations where glider operations would be adversely affected by a standard configuration.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

*Comments on Specific Locations*

Boise Air Terminal, ID

Several commenters claimed that the proposed ARSA would have an adverse effect on glider operations from Nampa Airport, particularly when towing east from Nampa due to the winds. The FAA believes that Nampa Airport, which is 11.8 nautical miles west of Boise Air Terminal, is a sufficient distance outside the ARSA that normal towing operations will not be restricted by the ARSA. The only requirement to operate in the ARSA is that the pilot of the tow plane establish two-way radio communications with the approach control facility prior to entering the ARSA. As stated below, local agreements between the aircraft operators and the FAA facility can also be developed to allow operations of this type.

Several commenters claimed that the ARSA would restrict soaring along the mountains north and northeast of Boise. The area over the mountains in the northeast quadrant, which appears to be the area referred to by the commenters, has been deleted from the ARSA due to the high terrain. This should allow gliders to operate in this area much as before.

SSA requested that the FAA continue to work with local and cross country glider operations to provide service through local agreements, if necessary.

The Idaho Department of Transportation and the ATA responded in support for the ARSA as proposed.

Flint Bishop Airport, MI

A commenter claimed that the floor of the 5- to 10-mile area is too low to allow flight above the antenna east of the airport in accordance with FAR § 91.79. The FAA believes that the floor of the ARSA is established in accordance with the rule. As stated above, the FAA continues to believe that sufficient alternatives remain which allow pilots to either participate in the ARSA or circumnavigate the antenna.

SSA commented that they are not aware of any glider operators in close proximity to the proposed ARSA. However, they request that the FAA continue to work closely with glider operators to ensure safety for all concerned.

ATA commented in full support of the ARSA at Flint, MI.

Fort Wayne Municipal Airport, IN

One commenter claimed that some airports were omitted from the graphic depicting the proposed ARSA. The airports which were inadvertently omitted are outside ARSA airspace and will not be affected by the ARSA.

One commenter requested a 3-mile cutout around Smith Field. The floor of the ARSA above that portion of Smith Field which is within 10 miles of Fort Wayne Airport is established at 2,000 feet MSL, which is approximately 1,200 feet above field elevation and 300 to 500 feet above the normal VFR traffic pattern. For these stated reasons, the FAA does not agree that a cutout for Smith Field is appropriate.

One commenter claimed that the ARSA will cause arrivals to Fort Wayne Airport to be lower than at present. The FAA does not agree. The ARSA airspace will not cause a change in normal arrival routes and altitudes.

SSA commented that they are not aware of any glider operators in close proximity to the proposed ARSA. However, they request that the FAA continue to work closely with glider operators to ensure safety for all concerned.

Lansing Capital City Airport, MI

One commenter claimed that the number of student pilot certificate applications is reported to have declined by about 50 percent in the past year and claimed that the ARSA and other airspace actions by the FAA have contributed to that decline. The FAA can find no evidence that relates the decline of student pilot applications to the ARSA or any other FAA airspace action or program.

Several commenters claimed that the proposed ARSA will have a detrimental effect on glider operations at Ionia Airport, which is 23 miles northwest of Lansing Capital City Airport. SSA claimed that they are aware of no glider operations in close proximity to the proposed Lansing ARSA but request that the FAA continue to cooperate with

the glider pilots to assure safety for all and allow cross country operations to continue to operate from Ionia Airport. The FAA has cooperated with glider operators on cross country flights and will continue to do so in the future with gliders from Ionia Airport.

Several commenters claimed that the ARSA will adversely affect operations to and from Davis Airport which is 4.3 miles east of Capital City Airport. The FAA agrees that aircraft should have access to this airport and have established a 2-mile wide corridor to this airport from the east.

Other commenters claimed that the ARSA will force a practice area to move from its present location 5 miles north of Capital City Airport. The FAA believes that, although some flight training activities may move, flight training can still be accomplished between 5 and 10 miles from the airport en route to the northern portion of the existing practice area, either by remaining below the ARSA floor, or by establishing radio communication with ATC within the ARSA. Furthermore, there are areas which may be used for practice and training which are outside the ARSA and are no further away from training bases than the current practice area. A greater measure of safety can be afforded to all aircraft in this area by either communicating with ATC in the ARSA, by segregating aircraft in this flight training area from other aircraft in the ARSA, or by arriving at a local agreement for use of this practice area.

ATA supported implementation of the ARSA as soon as possible.

Madison Dane County Regional Airport-Traux Field, WI

Several commenters claimed that the proposed ARSA would adversely affect east operations at Waunakee Airport which is 5.4 miles northwest of Madison. The FAA agrees and will exclude the airspace below 2,300 feet MSL within a 1-mile radius of the Waunakee Airport from the surface area of the ARSA. This should allow aircraft to remain clear of the ARSA and reach prescribed altitudes prior to turning north after an east departure from Waunakee Airport.

One commenter claimed that amphibious operations would be severely restricted or prohibited from a lake within 5 miles of Madison Dane County Airport. The FAA does not agree. The rules for operations at a satellite airport in an ARSA will apply in this case. The only requirement for this operation remains two-way radio communications or prior approval from the appropriate facility, if the aircraft is NORDO.

Several commenters claimed that glider operations in the vicinity of Morey Airport, which is 8.5 miles from Madison Dane County Airport, would be adversely affected by the ARSA. The FAA does not agree. The proximity of Morey Airport to the edge of ARSA airspace should not affect any towing or arrival operations. The base of the ARSA in this area is 2,300 feet MSL which is 1,400 feet above Morey Airport. Additionally, as stated above, local agreements can be made to allow glider operations to be conducted much as in the past.

ATA responded in support of the Madison, WI, ARSA.

Shreveport Regional Airport, LA, and Barksdale AFB, LA

Several commenters, including the Southwest Region Office of the Air Transport Association and the Shreveport Airport Authority, requested terminating the Barksdale AFB 5-mile inner core west of the Red River to allow a VFR access route below 1,600 feet MSL from the south to Shreveport Downtown Airport between the Shreveport and Barksdale ARSA's. Although this area would be eliminated from ARSA rules and no communication with the approach control facility would be required, the communication requirements of an airport traffic area (ATA) would remain in effect. The FAA does not agree that removing this area from the ARSA would accomplish the stated purpose. As stated in the enabling rule, the ARSA airspace takes precedence over the ATA but the use of this overlapping airspace can be agreed to among the facilities concerned. Additionally, the purpose of an ARSA is to provide a service to all participants rather than to provide an area for general nonparticipation. The FAA believes that a safer air traffic environment can be maintained by not allowing this modification.

Several commenters claimed that a cutout was needed around Shreveport Downtown Airport to allow easier access to this airport. The FAA agrees and is providing a cutout of one and one-half miles below 1,600 feet MSL. This will also allow access to Downtown Airport when the control tower is not operating, normally during periods of darkness.

Several commenters requested a cutout for glider operations and training activities for Strong Airport, which is 6.2 miles south of Shreveport Regional Airport. The FAA does not agree. This area is in close proximity to the base leg and final approach course for the primary runway at Shreveport Regional Airport. The FAA believes a safer environment for all concerned will be maintained by keeping the ARSA intact in this area. As stated, local agreements can be reached to provide for the glider and training acitivites which should alleviate any claimed adverse economic impacts.

The Louisiana Department of Transportation and Development and the United States Air Force responded in full support of the ARSA's at Shreveport Regional Airport and Barksdale Air Force Base.

**Other Comments**

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

**Regulatory Evaluation**

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate

that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA site established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of ths ARSA site will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

**Regulatory Flexibility Determination**

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within five miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the five-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similary, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

**The Rule**

This action designates Airport Radar Service Areas (ARSA) at Barksdale Air Force Base, LA; Boise Air Terminal, ID; Flint Bishop Airport, MI; Fort Wayne Municipal Airport, IN; Lansing Capital City Airport, MI; Madison Dane County Regional Airport-Traux Field, WI; and Shreveport Regional Airport, LA. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

**List of Subjects in 14 CFR Part 71**

Aviation safety, Airport radar service areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.501 [Amended]**

2. Section 71.501 is amended as follows:

**Barksdale AFB, LA [New]**

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of Barksdale AFB (lat. 32°30'06"N., long. 93°39'45"W.) excluding that airspace within a 1½-mile radius of the Shreveport Downtown Airport (lat. 32°32'33"N., long. 93°44'40"W.); and excluding that airspace within the 5-mile surface area of Shreveport Regional Airport, LA, Airport Radar Service Area; and that airspace extending upward from 1,600 feet MSL to and including 4,300 feet MSL within a 10-mile radius of Barksdale AFB excluding that airspace within the Shreveport Regional Airport ARSA west of the points where the 10-mile radius from Barksdale AFB intersects the 10-mile radius from Shreveport Regional Airport.

**Boise Air Terminal, ID [New]**

That airspace extending upward from the surface to an including 6,900 feet MSL within a 5-mile radius of the Boise Air Terminal (lat. 43°33'54"N., long. 116°13'27"W.); and that airspace within a 10-mile radius of the Boise Air Terminal extending upward from 4,600 feet MSL to and including 6,900 feet MSL from the 098° bearing from the airport clockwise to the 183° bearing from the airport and from 4,200 feet MSL to and including 6,900 feet MSL from the 183° bearing from the airport clockwise to the 348° bearing from the airport; and from 5,200 feet MSL to and including 6,900 feet MSL from the 348° bearing from the airport clockwise to the 008° bearing from the airport.

**Flint Bishop Airport, MI [New]**

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Bishop Airport (lat. 42°57'56"N., long. 83°44'37"W.); and that airspace extending upward from 2,100 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the Bishop Airport.

**Fort Wayne Municipal Airport, IN [New]**

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Fort Wayne Municipal Airport (lat. 40°58'42"N., long. 85°11'28"W.); and that airspace extending upward from 2,000 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the Fort Wayne Municipal Airport.

**Lansing Capital City Airport, MI [New]**

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Capital City Airport (lat. 42°46'43"N., long. 84°35'14"W.), excluding that airspace within a 1-mile radius of the Davis Airport (lat. 42°46'25"N., long. 84°29'20"W.) and excluding that airspace 1 mile either side of the 090° bearing from Davis Airport to the 5-mile radius from Capital City Airport; and that airspace extending upward from 2,100 feet MSL to and including 4,900 feet MSL within a 10-mile radius of the Capital City Airport.

**Madison Dane County Regional Airport-Truax Field, WI [New]**

That airspace extending upward from the surface to and including 4,900 feet MSL

within a 5-mile radius of the Dane County Regional Airport-Truax Field (lat. 43°08'22"N., long. 89°20'13"W.) excluding that airspace within a 1½-mile radius of the Waunakee Airport (lat. 43°11'00"N., long. 89°27'00"W.); and that airspace extending upward from 2,300 feet MSL to and including 4,900 feet MSL within a 10-mile radius of the airport.

**Shreveport Regional Airport, LA [New]**

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Shreveport Regional Airport (lat. 32°26'48"N., long. 93°49'30"W.), and that airspace extending upward from 1,800 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport, excluding that airspace designated as the Barksdale AFB, LA, Airport Radar Service Area east of the points where the 10-mile radius from Shreveport Regional Airport intersects the 10-mile radius from Barksdale AFB.

Issued in Washington, D.C., on April 2, 1987.

**Harold H. Downey,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87-7772 Filed 4-6-87; 8:45 am]

BILLING CODE 4910-13-M

# Reader Aids

Federal Register

Vol. 52, No. 66

Tuesday, April 7, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019

**5 CFR**

1201.....10875

**7 CFR**

272.....11021
273.....11021
301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728
910.....10729
1097.....10729
1137.....10730
1468.....10731
1472.....10731
1475.....10725
**Proposed Rules:**
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
945.....10893
994.....10984
1955.....10577
1965.....10577

**9 CFR**

78.....10554
92.....11022
102.....11024
114.....11024
**Proposed Rules:**
92.....10765
317.....10766
319.....10766

**10 CFR**

0.....11026
**Proposed Rules:**
50.....10771

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
**Proposed Rules:**
612.....11080

**14 CFR**

39.....10558, 10735, 10736
71.....10559, 11028, 11032-11034
73.....10559, 10560, 11033, 11034
95.....10737
1215.....10880
**Proposed Rules:**
39.....10581, 11081
71.....10582, 11082

**15 CFR**

371.....10741
**Proposed Rules:**
368.....10771

**17 CFR**

**Proposed Rules:**
240.....11083, 11089

**18 CFR**

16.....11035
271.....10741
381.....10366
**Proposed Rules:**
4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
**Proposed Rules:**
111.....10774

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
**Proposed Rules:**
200.....10384

615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883
184.....10884
193.....10561, 10562
510.....10668, 11040, 11041
520.....10668, 11041
522.....10668
524.....10668, 10886
529.....10668
558.....11040, 11041
561.....10562
573.....10887
1308.....11042

**Proposed Rules:**

1301.....11091

**23 CFR**

**Proposed Rules:**

650.....11092

**24 CFR**

**Proposed Rules:**

905.....10668
968.....10668

**26 CFR**

1.....10368, 10741, 10742
5f.....10368
54.....10563
602.....10368, 10563, 10742

**Proposed Rules:**

1.....10774
54.....10583
602.....10583, 10774

**28 CFR**

0.....11043
545.....10528

**Proposed Rules:**

549.....10531

**29 CFR**

2644.....10368

**Proposed Rules:**

1625.....10584
1910.....10586

**30 CFR**

914.....10369, 10373
946.....11044

**Proposed Rules:**

733.....10898

**32 CFR**

701.....11051
706.....10374, 10748, 10749

**33 CFR**

**Proposed Rules:**

100.....10593, 10594, 10905, 10906

**36 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**Proposed Rules:**

9.....10866

**37 CFR**

**Proposed Rules:**

307.....11096

**38 CFR**

1.....10888

**Proposed Rules:**

17.....10907

**39 CFR**

10.....10375
111.....10749

**40 CFR**

52.....10751
60.....10852
110.....10712
180.....10375, 10376, 10565, 10567
271.....10568
761.....10688
799.....10377, 10752

**Proposed Rules:**

52.....10596
141.....10972
142.....10972
143.....10972

**41 CFR**

201-32.....10379

**42 CFR**

7.....11072

**44 CFR**

64.....10753

**Proposed Rules:**

5.....10385
6.....10385

**45 CFR**

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870

**46 CFR**

**Proposed Rules:**

154.....10598
502.....10912

**47 CFR**

2.....10568
22.....10571
73.....10381, 10382, 10568, 10757
74.....10568
78.....10568

**Proposed Rules:**

90.....10389

**48 CFR**

7.....11074
217.....11076
252.....11076

**Proposed Rules:**

509.....10913

**49 CFR**

219.....10575
1207.....10382
1249.....10382

**Proposed Rules:**

571.....10775
1312.....10913

**50 CFR**

17.....10890, 11162
301.....10759
611.....10761
642.....10762
652.....10763
672.....10761
675.....10761

**Proposed Rules:**

640.....10780
651.....10781

## List of Public Laws

**Last List April 1, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet from (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**H.R. 2/Pub. L. 100-17**

Surface Transportation and Uniform Relocation Assistance Act of 1987. (Apr. 2, 1987; 101 Stat. 132; 130 pages) Price: $3.75

**S. 632/Pub. L. 100-18**

To amend the Legislative Branch Appropriations Act, 1979, as reenacted, to extend the duration of the Office of Classified National Security Information within the Office of the Secretary of the Senate, and for other purposes. (Apr. 3, 1987; 101 Stat. 262; 1 page) Price: $1.00

4-8-87
Vol. 52 No. 67

# Federal Register

Wednesday
April 8, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
2
SS
7
P
8
87
MI

4-8-87
Vol. 52 No. 67
Pages 11185-11452

# Federal Register

Wednesday
April 8, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 67

Wednesday, April 8, 1987

**Agriculture Department**
*See also* Food and Nutrition Service
NOTICES
Agency information collection activities under OMB review, 11297

**Air Force Department**
NOTICES
Procurement:
Contracts—
Conversion determinations, 11311

**Arms Control and Disarmament Agency**
NOTICES
Meetings:
General Advisory Committee, 11297

**Army Department**
NOTICES
Environmental statements; availability, etc.:
Biological defense research program, 11311

**Census Bureau**
NOTICES
Meetings:
American Indian and Alaska Native Populations for the 1990 Census Advisory Committee et al., 11298

**Centers for Disease Control**
NOTICES
Fatal accident circumstances and epidemiology, worker control and job stress; NIOSH meetings, 11342

**Commerce Department**
*See also* Census Bureau; International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 11297, 11298
(2 documents)

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Romania, 11305
Sri Lanka, 11306
Turkey, 11307
(2 documents)
Export visa requirements; certification, etc.:
Phillipines, 11308

**Customs Service**
RULES
Country of origin marking:
Threading of pipe fittings, 11216
NOTICES
Trade name recordation applications:
Aspen Laboratories, Inc., 11392
Jobst Institute, Inc., 11392
Medical Engineering Corp., 11392
Xomed, Inc., 11393

**Defense Department**
*See also* Air Force Department; Army Department
RULES
Acquisition regulations:
Contractor records; availability, 11276
Security:
Personnel security program, 11219
NOTICES
Meetings:
Science Board task forces, 11310
(4 documents)
Special Operations Policy Advisory Group, 11311

**Education Department**
RULES
Postsecondary education:
Endowment challenge grant program, 11256
PROPOSED RULES
Elementary and secondary education:
Students whose families are engaged in migrant and seasonal farmwork; high school equivalency program and college assistance migrant program, 11448
NOTICES
Agency information collection activities under OMB review, 11311
Civil Rights Office; public higher education desegregation plan implementation; availability, 11313
Meetings:
Women's Educational Programs National Advisory Council, 11313

**Employment and Training Administration**
RULES
Alien permanent employment labor certification process:
Board of Alien Labor Certification Appeals; establishment, 11217

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Air pollution; standards of performance for new stationary sources:
Volatile organic liquid storage vessels (including petroleum liquid storage vessels), 11420
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 11259
Hazardous waste program authorizations:
Rhode Island, 11263
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one, 11260
Ethalfluralin, 11261
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 11287
Ohio, 11288

Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Benomyl, 11293
Paraquat, 11292
NOTICES
Pesticide programs:
2,4,5-T and silvex pesticide products; claims submission procedures for indemnification and disposal requests, 11319
Pesticides; emergency exemption applications:
Dinoseb, 11333
Metalaxyl, etc., 11337
Toxic and hazardous substances control:
Premanufacture notices receipts, 11338 (2 documents)

**Executive Office of the President**
*See* Science and Technology Policy Office

**Federal Deposit Insurance Corporation**
NOTICES
Meetings; Sunshine Act, 11415

**Federal Election Commission**
RULES
Contribution and expenditure limitations and prohibitions:
Contribution by persons and multicandidate political committees, 11187

**Federal Energy Regulatory Commission**
NOTICES
Natural gas certificate filings:
Phillips Natural Gas Co. et al., 11314
*Applications, hearings, determinations, etc.:*
American Central Gas Pipeline Corp., 11316
ARCO Oil & Gas Co., 11317
Coastal Oil & Gas Corp., 11317
Kenrell Petroleum Resources, Inc., 11317
MDU Resources Group, Inc., 11318
South Jersey Gas Co. et al., 11318
Southwest Gas Corp., 11318
Transcontinental Gas Pipe Line Corp., 11319 (2 documents)

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 11340

**Federal Mine Safety and Health Review Commission**
NOTICES
Meetings; Sunshine Act, 11415

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 11415
*Applications, hearings, determinations, etc.:*
Merchants National Corp., 11340

**Fish and Wildlife Service**
RULES
Endangered and threatened species:
Waccamaw silverside, 11277

**Food and Nutrition Service**
RULES
Child nutrition programs:
National school lunch program—
Food service management companies; limitations, 11186

**General Accounting Office**
NOTICES
Government auditing standards, 11341 (2 documents)

**General Services Administration**
RULES
Property management:
Customer supply center program, 11275
Management of buildings and grounds, 11263

**Health and Human Services Department**
*See* Centers for Disease Control; Social Security Administration

**Interior Department**
*See* Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
NOTICES
Privacy Act; systems of records, 11393

**International Trade Administration**
NOTICES
Antidumping:
Brass sheet and strip from Italy, 11299
Drycleaning machinery from West Germany, 11299
Tapered roller bearings and parts thereof, finished or unfinished from—
Hungary, 11301
Italy, 11302
Romania, 11303
Countervailing duties:
Leather wearing apparel from Argentina, 11300
Short supply determinations:
Steel billets, 11304

**International Trade Commission**
NOTICES
Import investigations:
Ammonium paratungstate and tungstic acid from China: correction, 11346
Battery-powered smoke detectors, 11346
Indomethacin, 11346
Line pipes and tubes from Canada, 11349
Luggage products, 11347
Stainless steel pipes and tubes from Sweden, 11349
Tapered roller bearings and parts, and housings incorporating tapered rollers from—
Italy and Yugoslavia, 11348
Japan, 11347
Meetings; Sunshine Act, 11416

**Interstate Commerce Commission**
RULES
Motor carriers and freight forwarders:
Liability Risk Retention Act of 1986; implementation, 11277
PROPOSED RULES
Rail carriers:
Non-coal commodities; rate guidelines, 11295
Tariffs and schedules:
Credit; shippers, payment of rates and charges; penalty charges for nonpayment, 11295

**Justice Department**
NOTICES
Pollution control; consent judgments:
Art-Lloyd Metal Products Corp., 11350

**Labor Department**
*See* Employment and Training Administration; Labor Statistics Bureau

**Labor Statistics Bureau**
NOTICES
Meetings:
Business Research Advisory Council Board and Committees, 11350

**Land Management Bureau**
NOTICES
Opening of public lands:
California, 11343
Realty actions; sales, leases, etc.:
Arizona, 11343
Nevada, 11344
Survey plat filings:
Colorado, 11343
Withdrawal and reservation of lands:
Arizona, 11344
Oregon; correction, 11417
(2 documents)

**Maritime Administration**
NOTICES
Meetings:
Potential for general cargo in offshore barges and river/ocean vessels; seminar; correction, 11417
*Applications, hearings, determinations, etc.:*
American President Lines, Ltd., 11391

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
Hall-Houston Oil Co., 11345
Taylor Energy Co., 11345

**National Aeronautics and Space Administration**
NOTICES
Meetings:
Advisory Council, 11351
Space Applications Advisory Committee, 11351
Senior Executive Service:
Performance Review Board, 11351

**National Credit Union Administration**
NOTICES
Meetings; Sunshine Act, 11415

**National Highway Traffic Safety Administration**
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Uniroyal Goodrich Tire Co., 11391

**National Institute for Occupational Safety and Health**
*See* Centers for Disease Control

**National Oceanic and Atmospheric Administration**
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
California, 11304
Permits:
Marine mammals, 11304, 11305
(2 documents)

**National Transportation Safety Board**
NOTICES
Meetings: Sunshine Act, 11416

**Nuclear Regulatory Commission**
NOTICES
Operating licenses, amendments; no significant hazards considerations:
Bi-weekly notices, 11352
Petitions; Director's decisions:
Carolina Power & Light Co., 11386
Regulatory guides:
Issuance availability, and withdrawal, 11385
(2 documents)
*Applications, hearings, determinations, etc.:*
Philadelphia Electric Co., 11386
Public Service Co. of New Hampshire et al., 11388

**Peace Corps**
NOTICES
Agency information collection activities under OMB review, 11388

**Personnel Management Office**
RULES
Excepted service:
Schedule B appointing authority revision, 11185

**Prospective Payment Assessment Commission**
NOTICES
Meetings, 11388

**Public Health Service**
*See* Centers for Disease Control

**Science and Technology Policy Office**
NOTICES
Meetings:
Biotechnology Science Coordinating Committee, 11388

**Securities and Exchange Commission**
RULES
Investment companies:
Separate accounts funding flexible premium variable life insurance contracts, 11187
NOTICES
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, 11389
*Applications, hearings, determinations, etc.:*
Hartford Life Insurance Co. et al., 11390
Northwestern Mutual Life Insurance Co. et al., 11389

**Social Security Administration**
NOTICES
Organization, functions, and authority delegations, 11342

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Initial and permanent regulatory programs:
Individual civil penalties, 11287

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Maritime Administration; National Highway Traffic Safety Administration

**Treasury Department**
*See also* Customs Service; Internal Revenue Service
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements; Bank Secrecy Act; implementation, 11436

**United States Information Agency**
NOTICES
Cultural property; State Party request from El Salvador, 11413
Meetings:
Cultural Property Advisory Committee, 11413

**Veterans Administration**
RULES
Medical benefits:
Copayments for health care, 11259
NOTICES
Agency information collection activities under OMB review, 11414

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 11420

**Part III**
Department of the Treasury, 11436

**Part IV**
Department of Education, 11448

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**5 CFR**
213.....11185

**7 CFR**
210.....11186

**11 CFR**
100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**17 CFR**
270.....11187

**19 CFR**
177.....11216

**20 CFR**
656.....11217

**30 CFR**
**Proposed Rules:**
723.....11287
724.....11287
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
937.....11287
939.....11287
941.....11287
942.....11287
947.....11287

**31 CFR**
103.....11436

**32 CFR**
154.....11219

**34 CFR**
628.....11256
**Proposed Rules:**
206.....11448

**38 CFR**
17.....11259

**40 CFR**
52.....11259
60.....11420
180 (2 documents).....11260, 11261
271.....11263
**Proposed Rules:**
52 (2 documents).....11287, 11288
180 (2 documents).....11292, 11293

**41 CFR**
101-20.....11263
101-28.....11275

**48 CFR**
215.....11276
252.....11276

**49 CFR**
1003.....11277
1043.....11277
1084.....11277
**Proposed Rules:**
Ch. X.....11295
1320.....11295

**50 CFR**
17.....11277

# Rules and Regulations

Federal Register
Vol. 52, No. 67
Wednesday, April 8, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 213

### Excepted Service—High School Vocational Program

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is revising the Schedule B excepted service appointing authority used by agencies to hire high school vocational cooperative education program participants in skilled trades and crafts occupations. These regulations permit appointments under the authority to be made by any agency with prior OPM approval. The change reflects OPM's intent that the authority be available to any agency that wished to set up an appropriate high school vocational cooperative education program. Previously, the language of the authority referred only to positions in the Department of the Navy.

**EFFECTIVE DATE:** May 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Tracy E. Spencer, (202) 632–6817.

**SUPPLEMENTARY INFORMATION:** The Schedule B appointing authority was established as a supplementary recruiting source in the skilled trades and craft occupations for which other sources are not always adequate. Appointments are limited to positions in occupational series for which a directly related high school level vocational skills training program can be identified. Students who complete at least 1,040 hours of satisfactory career-related work experience prior to graduation may be noncompetitively converted to career-conditional appointments at grade levels up to and including WG–5 and equivalent under the provisions of Executive Order 12015. However, those conversions may not account for more than 25 percent of an installation's total annual hiring at the WG–5 level and below in the covered occupations.

When the Schedule B authority was established in 1978, only the Department of the Navy sought inclusion under it even though the intent was that any agency could request coverage. In 1981, at the request of the Department of the Air Force, coverage of the authority was expanded to include Air Force. Through oversight, however, that change was never published.

Proposed regulations correcting that omission and providing for use of the Schedule B appointing authority by any agency that has a qualifying program were published for comment on December 2, 1986 (51 FR 43359). No substantive comments were received, but one agency suggested an editorial change to clarify that the 25-percent limit applies to annual hiring not to an installation's total population in a particular occupation. That suggestion has been adopted. Aside from the editorial change, the proposed regulations have been adopted without change. The requirement that OPM approve an agency's use of the authority is retained to ensure that Schedule B appointments are limited to occupations in which structured vocational training programs exist and in which the quantity or quality of candidates available through other sources will not meet the agency's staffing needs. Once OPM approves use of the authority, however, the agency involved may approve programs at specific installations in accordance with criteria set out in the regulations.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it effects only the procedures used to appoint certain employees in Federal agencies.

### List of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.
**Constance Horner,**
*Director.*

Accordingly, OPM is amending 5 CFR Part 213 as follows:

## PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 is revised to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, and 8337(h).

2. In § 213.3202, paragraph (e) is revised to read as follows:

**§ 213.3202 Entire executive civil service.**

* * * * *

(e) Positions in shipyards, air rework facilities, and other major industrial activities that prepare students at the high school level (upon satisfactory completion of a cooperative education program of at least 1,040 hours) for employment in preapprentice positions or in helper positions at the WG–5 level or below. Agencies may make appointments under this authority only with prior approval of OPM and only under the following conditions:

(1) Employment is limited to skilled trades and crafts occupations having a journeyman level of WG–9 or above;

(2) Not more than 25 percent of appointments to positions in covered occupations will be made annually at any single installation through this conversion authority;

(3) The maximum time during which any student will be employed in the program is 18 months;

(4) Except for the conditions specified in this authority, students will be subject to instructions governing all other high school vocational education students in cooperative education programs; and

(5) Any student who completes a program without a diploma must have an authenticated certificate from the school indicating satisfactory completion of his/her personnel folder.

[FR Doc. 87–7706 Filed 4–7–87; 8:45 am]
BILLING CODE 6325–01–M

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 210**

## National School Lunch Program; Limitations on Food Service Management Companies

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a provision of the School Lunch and Child Nutrition Amendments of 1986 which prohibits a school or school food authority participating in the National School Lunch Program from contracting with a food service company to provide a la carte food service unless such company agrees to offer free, reduced price and full price reimbursable meals to all children. This rule prevents a food service company from entering into a contract with a school or school food authority to provide a la carte service without undertaking the responsibility of offering free, reduced price and full price reimbursable meals to all eligible children.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, Alexandria, Virginia 22302 or phone (703) 756–3620.

**SUPPLEMENTARY INFORMATION:**

### Classification

This final rule implements a nondiscretionary provision of Pub. L. 99–500 and 99–591. For this reason, the Administrator has determined pursuant to 5 U.S.C. 553 (b) and (d) that prior notice and public comment are unnecessary and contrary to the public interest and that good cause exists for making this rule effective on publication. In addition, since this rule merely implements cited statutory provisions, it constitutes an interpretative rule for which notice and comment rulemaking and a 30-day period before taking effect are not required by 5 U.S.C. 553.

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983).

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) are included in this final rule. The National School Lunch Program requirements have been approved by OMB for use through June 30, 1987 (OMB No. 0584–0006).

### Background

Congress recently enacted amendments to the National School Lunch and Child Nutrition Acts in Pub. L. 99–500 and 99–591. Included in those laws was an amendment which establishes restrictions concerning a la carte food sales in schools and school food authorities participating in the National School Lunch Program. That legislation is addressed later in the preamble. To fully understand the amendments, a brief discussion of the current operations of nonprofit school food services is necessary.

### Current Food Service Operations

School food authorities wishing to participate in the National School Lunch Program must agree to maintain a nonprofit school food service. Often, schools will operate an a la carte food service in addition to the service which delivers full course lunches designed to meet the requirements of the National School Lunch Program regulations. These a la carte services typically consist of sales of individual food items, like sandwiches and salads. Some schools or school food authorities have been contracting with food service companies to operate a la carte food services on school premises. These companies have no responsibility for provision of lunches for which cash subsidies are given under the National School Lunch Program.

### Congressional Action

Congress recently expressed concern regarding food services companies operating only the *profitable* a la carte meal service. Such practices can reduce participation of nonneedy students in the National School Lunch Program thereby diverting revenue from the nonprofit school food service. Such diversion of resources can have a deleterious effect on the fiscal well-being of the school meal programs.

Section 324 of Pub. L. 99–500 and 99–591 added a new paragraph (e) to section 9 of the National School Lunch Act (42 U.S.C. 1785) which establishes controls on a la carte sales, effective July 1, 1988. Specifically, paragraph (e) states: "A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price and full price reimbursable meals to all eligible children."

### Regulatory Change

In order to implement the amendment, this final rule amends § 210.16 to prohibit any school or school food authority from contracting with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and full price reimbursable meals to all children.

The provision applies to food service management companies as currently defined in 7 CFR 210.2: " . . . a commercial enterprise or nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service." Use of this definition clearly excludes food service companies which vend products to the school food authority.

In summary, this final rule states that no school or school food authority may contract with a food service management company to operate an a la carte food service unless the food service management company undertakes the responsibility of managing the National School Lunch Program.

### List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping

requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 210 is amended as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. In § 210.16, introductory paragraph (a) is revised to read as follows:

**§ 210.16 Food service management companies.**

(a) *General.* Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and full price reimbursable meals to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

* * * * *

Dated: April 1, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87–7805 Filed 4–7–87; 8:45 am]

BILLING CODE 3410–30–M

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100, 102, 103, 104 and 110

[Notice 1987–5]

### Contribution and Expenditure Limitations and Prohibitions: Contributions by Persons and Multicandidate Political Committees

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule: Announcement of effective date.

**SUMMARY:** On January 9, 1987, (52 FR 760), the Commission published the text of revised regulations governing contributions by persons and multicandidate committees. 11 CFR 110.1 and 110.2. These regulations implement the contribution limitations established by the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. 441a(a) (1) and (2). The Commission announces that these rules and the conforming amendments are effective as of April 8, 1987.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376–5690 or toll free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** 2 U.S.C. 438(d) requires that regulations prescribed by the Commission to implement Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The revisions to 11 CFR 110.1 and 110.2 and the conforming amendments to 11 CFR 100.7, 100.8, 102.9, 103.3 and 104.8 were transmitted to Congress on January 6, 1987. Thirty legislative days expired in the Senate on March 19, 1987 and in the House of Representatives on March 12, 1987.

Announcement of effective date: 11 CFR 100.7(c), 100.8(c), 102.9, 103.3, 104.8(d), 110.1 and 110.2, as published at 52 FR 760, are effective as of April 8, 1987.

Dated: April 3, 1987.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 87–7755 Filed 4–7–87; 8:45 am]

BILLING CODE 6715–01–M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 270

[Release No. IC–15651; File No. S7–35–84]

### Separate Accounts Funding Flexible Premium Variable Life Insurance Contracts

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Adoption of amendments to temporary rule; request for comments.

**SUMMARY:** The Commission is adopting amendments to temporary rule 6e–3(T) under the Investment Company Act of 1940. The amendments modify and clarify the conditions under which insurance company separate accounts are permitted to offer flexible premium variable life insurance contracts. The Commission concurrently requests public comment on these revisions, but is not, at this time, adopting a permanent rule. The release also addresses several related matters.

**EFFECTIVE DATE:** The rule amendments will become effective May 8, 1987. Registrants may, however, voluntarily rely on the revised temporary rule immediately April 8, 1987. Comments must be received on or before July 31, 1987.

**ADDRESSES:** All communications on this matter should be sent, in triplicate, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Such communications should refer to File No. S7–35–84 and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Lewis B. Reich, Special Counsel, (202) 272–2061, Joseph R. Fleming, Attorney, (202) 272–3017, Office of Insurance Products and Legal Compliance, or Karen L. Skidmore, Special Counsel, Office of Investment Company Regulation, (202) 272–3023, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission") today is adopting amendments to temporary rule 6e–3(T) [17 CFR 270.6e–3(T)] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] ("Act"). The rule provides extensive exemptive relief from various provisions of the Act and rules thereunder for insurance company separate accounts [1] offering flexible premium variable life insurance contracts ("flexible life insurance" or "flexible contracts").[2] It is a companion

[1] The term "separate account" is defined in section 2(a)(37) of the Act [15 U.S.C. 80a–2(a)(37)] as "an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, . . . under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company." A substantially identical definition of that term, as it is used in various rules under the Act, is contained in rule 0–1(e)(1) under the Act [17 CFR 270.0–1(e)(1)]. The term "insurance company" is defined inspection 2(a)(17) of the Act [15 U.S.C. 80a–2(a)(17)].

A separate account may be rgistered under the Act either as a unit investment trust ("trust account") or as an open-end management company ("management account"). Typically, a trust account will be funded by an underlying management investment company ("fund" or "underlying fund," referred to as a "two tier" structure) of a series type or by several funds.

[2] The definition of flexible life insurance is contained in paragraph (c)(1) of the rule.

The relief provided by rule 6e–3(T) is also available to the account's investment adviser, principal underwriter, and sponsor or depositor.

rule to rule 6e–2 under the Act [17 CFR 270.6e–2], relating to scheduled premium variable life insurance ("scheduled life insurance" or "scheduled contracts," collectively with flexible life insurance, "variable life insurance" or "variable contracts").

Rule 6e–3(T) was adopted by the Commission on a temporary basis, with a concurrent solicitation of comments, on November 14, 1984.[3] It was based in large part upon a suggested rule contained in a rulemaking petition (the "petition") submitted by the American Council of Life Insurance ("Petitioner" or "ACLI"), the life insurance industry's principal trade association.[4] The adopted rule, like the petition, followed the same regulatory approach for flexible life insurance as rule 6e–2 did for scheduled life insurance. Modifications were made only where necessary to accommodate flexible life insurance or to update certain provisions.[5] The Commission did not otherwise reconsider the policy determinations underlying specific provisions of rule 6e–2.

The original comment period for rule 6e–3(T) closed on January 31, 1985, but was subsequently extended to March 29, 1985.[6] The Commission received thirteen letters of comment.[7] The comments ranged from substantive to technical, with requests for clarification in some cases. In response, the Commission is adopting various amendments to the rule. Because the scope and nature of the relief provided by these amendments differ in certain respects from that originally provided by rule 6e–3(T), the Commission has decided to request public comment on the revisions before adopting a permanent rule. However, the fundamental policy decisions underlying rules 6e–2 and 6e–3(T) have not been revisited.

**Index to Release**


Title
Discussion
A. Paragraph (a)—The Separate Account
B. Paragraph (b)—The Exemptive Provisions
1. Paragraph (b)(1)—Sales Load Definition
2. Paragraph (b)(5)—Investment Policies
3. Paragraph (b)(9)—Custodianship of Assets
4. Paragraph (b)(10)—Voting Rights
5. Paragraph (b)(12)—Pricing and Processing
a. Subparagraph (b)(12)(i)—Cash Value
b. Subparagraph (b)(12)(ii)—Death Benefit
c. Subparagraph (b)(12)(iii)—Variations in Charges
6. Paragraph (b)(13)—Sales Load and Other Deductions
a. Subparagraph (b)(13)(i)—Sales Load Limitation
b. Subparagraph (b)(13)(ii)—"Stair Step" Relief
c. Subparagraph (b)(13)(iii)—Deductions of Fees and Charges and Custodianship of Assets
[1] Administrative Expenses
[2] Income Taxes
[3] Premium Taxes
[4] Mortality, Expense, and Guaranteed Death Benefit Risk Charges
d. Subparagraph (b)(13)(iv)—Redeemability and Contract Lapses
[1] Contract Lapses
[2] Contingent Deferred Administrative Expenses
[3] Fees on Partial Surrenders
e. Subparagraph (b)(13)(v)—Surrender and Refund of Excess Sales Load Rights and Conversion Rights
[1] Surrender and Refund Rights
[2] Conversion Rights
f. Subparagraph (b)(13)(viii)—"Free Look" Period
7. Paragraph (b)(15)—Trust Accounts
C. Paragraph (c)—The Definitions
1. Paragraph (c)(1)—Flexible Premium Variable Life Insurance
a. Single Premium Contracts
2. Paragraph (c)(2)—Incidental Insurance Benefits
3. Paragraph (c)(4)—Sales Load
a. Subparagraph (c)(4)(i)—Increase in Cash Value
b. Subparagraph (c)(4)(ii)—Use of the 1980 CSO Table
c. Subparagraph (c)(4)(vi)—Substandard Risk Charges
d. Subparagraph (c)(4)(viii)—Modal Payment Charge
e. Subparagraph (c)(4)(x)—Dividend Allowance
f. Additional Risk Charges
4. Paragraph (c)(8)—Guideline Annual Premium
5. Paragraph (c)(9)—Cash Value and Paragraph (c)(10)—Cash Surrender Value
6. Paragraph (c)(12)—Contract Processing Day
D. Paragraph (d)—The Computational Rules
1. Paragraph (d)(1)—Subsequent Sales Load
a. Subparagraph (d)(1)(i)—Limitations
b. Subparagraph (d)(1)(ii)—"Stair Step"
2. Paragraph (d)(2)—Sales Load on Changes in Contract Benefits
Transition Period and "Grandfathering"


**Index to Text of Rule—Rule 6e–3(T)**


Paragraph
(a) The Separate Account
(1) General Exemption
(2) Assets of the Separate Account
(3) Assets Not Used to Fund Variable Annuities, etc.
(4) Legally Segregated Assets
(5) Value of the Assets of the Separate Account
(6) Investment Adviser
(b) The Exemptive Provisions
(1) Sales Load Definition
(2) Transactions by Unregistered Separate Accounts
(3) Registration
(4) Eligibility Restrictions
(5) Investment Policies
(6) Initial Capital Requirements
(7) Selection of Investment Adviser
(8) Selection of Board of Directors
(9) Custodianship of Assets
(10) Voting Rights
(11) Dividends
(12) Pricing and Processing
(13) Sales Load and Other Deductions
(14) Selection of Independent Public Accountant
(15) Trust Accounts
(c) The Definitions
(1) Definition of Flexible Premium Variable Life Insurance
(2) Definition of Incidental Insurance Benefits
(3) Definition of Guaranteed Death Benefit
(4) Definition of Sales Load
(5) Definition of Contract Period
(6) Definition of Variable Death Benefit
(7) Definition of Payment
(8) Definition of Guideline Annual Premium
(9) Definition of Cash Value
(10) Definition of Cash Surrender Value
(11) Definition of Net Investment Earnings
(12) Definition of Contract Processing Day
(d) The Computational Rules
(1) Subsequent Sales Loads
(2) Sales Load on Changes in Contract Benefits


## Discussion

The rule is divided into four paragraphs. Paragraph (a) defines the type of separate account that may use the rule, and paragraph (b) provides relief from specific sections of the Act and rules thereunder. Terms used in the rule are defined in paragraph (c), while paragraph (d) sets forth certain computational methods to be used in applying the rule.

Each provision of the rule that either received significant comments or has been amended is discussed below. Important similarities and differences between the amended rule, the rule as originally adopted, and the petition are also noted.

---

[3] The reasons for adopting rule 6e–3(T) and the administrative history of the rule are set forth in Investment Company Act Release No. 14234 (Nov. 14, 1984) [48 FR 47208 (Dec. 3, 1984)] ("the adopting release"). Technical amendments to the rule were adopted in Investment Company Act Release No. 14625 (July 10, 1985) [50 FR 28930 (July 17, 1985)].

[4] Investment Company Act Release No. 13632 (Nov. 23, 1983) [48 FR 54043 (Nov. 30, 1983)].

[5] Similar updating and conforming amendments to rule 6e–2 were proposed in Investment Company Act Release No. 14421 (March 15, 1985) [50 FR 11709 (March 25, 1985)].

[6] *See* Investment Company Act Release No. 14328 (Jan. 17, 1985) [50 FR 3317 (Jan. 24, 1985)]. This extension of the comment period was made at the request of Petitioner, to allow more time for study and preparation of comments.

[7] The comment letters included two extensive comments, one from Petitioner ("ACLI letter"), and the other from a law firm on behalf of a large insurance company. In addition, four more comment letters were received from two original commenters after the comment period closed, each in response to comments made by the other.

*A. Paragraph (a)—The Separate Account*

Paragraph (a) sets forth the conditions a separate account and certain related persons must meet to avail themselves of the exemptions provided in paragraph (b). One of the conditions is that the assets of the separate account be derived solely from the sale of flexible contracts, scheduled contracts, related dividend accumulations, and advances by the insurance company sponsoring the separate account ("life insurer").[8]

The ACLI letter recommended that the paragraph also permit separate account assets to be derived from the sale of variable annuity contracts, subject to certain conditions.[9] This would, in effect, extend to management accounts the conditional exemptive relief for use of "mixed funding" (variable life insurance and variable annuities in the same funding media) currently available to trust accounts under paragraph (b)(15).[10]

The ACLI letter argued that the reasons mixed funding was not permitted for management accounts at the time rule 6e–3(T) was adopted are no longer relevant. It also argued that, by incorporating in paragraph (a) the same conditions found in paragraph (b)(15), management accounts would be adequately protected against any conflicts that might arise between the interests of variable annuity contractholders and those of flexible life insurance contractholders.

The Commission is not adopting this commenter's suggestion. The decision in rule 6e–3(T) to permit trust accounts with underlying funds to engage in mixed funding was based on a number of applications for exemptive relief under the Act.[11] In contrast, the Commission has not received any applications from management accounts desiring to use mixed funding. Thus, the Commission has not had the benefit of the exemptive process to consider the costs and benefits of mixed funding in the context of management accounts, or whether the conditions in paragraph (b)(15) would be appropriate in that context. Indeed, the ACLI letter acknowledges that permitting management accounts to use mixed funding might present some administrative problems and certain interpretive questions under the Act. Therefore, it would be premature to extend mixed funding relief to management accounts at this time. However, the Commission and its staff will consider applications for this type of exemptive relief, at which time the issues can be more fully explored.

*B. Paragraph (b)—The Exemptive Provisions*

Paragraph (b) exempts separate accounts that meet the requirements of paragraph (a) from certain specified provisions of the Act with respect to flexible contracts funded by the account.[12] Each subparagraph of paragraph (b) will be discussed in turn, highlighting changes made (or not made) and clarifications in response to comments.

1. Paragraph (b)(1)—Sales Load Definition

This paragraph exempts flexible life insurance separate accounts from the Act's definition of sales load so that the special definition of sales load in paragraph (c)(4) of the rule apply.[13] It also provides exemptions from the sales load definition and other sections of the Act, and rules thereunder, to enable subsequent as well as front-end sales loads to be deducted.

The comments suggested that it would be helpful to clarify whether certain types of subsequent sales loads are permissible. In the adopting release, the Commission stated that paragraph (b)(1) provides exemptive relief to permit a deferred sales load, a sales load deducted periodically from cash value, and any combination of a front-end, deferred, the periodic sales load. The commenters believed that the release was unclear about the permissibility of an asset-based sales load.[14] While an asset-based sales load is not the same as periodic deductions from cash value, both are permitted under the rule as long as the paragraph (b)(13) limitations on amount and sequence are observed. In the case of an asset-based sales load, the deductions from each individual contractholder's cash value must be monitored continuously to ensure compliance with the sales load limitations imposed by the Act and rule 6e–3(T), taking into account the individual's actual payments.[15] In short, any amount of sales load that may be deducted as a front-end load under the Act may also be "accrued" and deducted subsequently.

2. Paragraph (b)(5)—Investment Policies

Paragraph (b)(5) provides an exemption from section 13(a) of the Act [15 U.S.C. 80a–13(a)] to allow the life insurer, in limited circumstances, to disapprove changes in investment policies initiated by contractholders or the board of directors. It requires that the reasons for disapproval be disclosed in the proxy statement for the next meeting of contractholders. Since meetings are typically held annually, the next meeting would occur no more than twelve months from the date of the disapproval.

No comments were received on this provision of the rule. However, a modification has been made to accommodate the possibility that, for example, the underly fund in a two tier structure might not hold annual meetings.[16] In this case, the amended rule requires disclosure of any disapproval to be made in the next routine communication to contractholders, provided the communication occurs within twelve months of the disapproval. This

---

[8] Paragraph (a)(2).

[9] The term "variable annuity contract" is defined in rule 0–1(e)(1) under the Act to include any accumulation or annuity contract or participation therein participating in a separate account pursuant to which the value of the contract, either prior or subsequent to annuitization, or both, varies according to the income, gains or losses of the separate account.

[10] The ACLI letter also recommended a change in paragraph (a)(3) to line it up with the modifications the letter proposed for paragraph (a)(2). The Commission is not making this change because it decided not to revise paragraph (a)(2). It is, however, making other changes to paragraph (a)(3) to accommodate certain account liabilities not involving life contingencies, such as dividend accumulations.

[11] *See, e.g., Metropolitan Tower Life Insurance Company*, Investment Company Act Release Nos. 13519 (Sept. 21, 1983) [48 FR 44301 (Sept. 28, 1983)] and 13580 (Oct. 18, 1983); *MML Bay State Life Insurance Company* Investment Company Act Release Nos. 13418 (Aug. 2, 1983) [48 FR 36229 (Aug. 9, 1983)] and 13464 (Aug. 26, 1983).

[12] Rule 6e–3(T) provides a series of individual exemptions from the Act. A separate account relying on the rule need only comply with each exemptive provision to the extent that it needs the relief provided.

[13] Section 2(a)(35) of the Act [15 U.S.C. 80a–2(a)(35)] defines sales load as the difference between the price of a security and that part of the proceeds from its sale which is invested or held for investment, less certain listed items. Paragraph (c)(4) of rule 6e–3(T) is discussed in Section C.3., *infra*.

[14] An asset-based sales load is assessed as a specified percentage of total separate account assets allocable to a contractholder on the basis of his cash value, and is deducted on a daily basis with other asset-based charges. In contrast, periodic deductions from cash value for sales load are an administrative feature where the amount of load to be deducted has been fixed in relation to payments, but is simply deducted over time from the individual's cash value.

[15] *See* the discussion of subparagraph (b)(13)(i) in Section B.6.a., *infra*. In addition, the stair step rule would apply to an asset-based sale load. The percentage sales load deducted pursuant to this method may not exceed the sales load percentage previously deducted. *See* note 139 and accompanying text, *infra*.

[16] For example, where an investment company is organized as a Massachusetts business trust, and does not hold annual meetings, proxies are not annually solicited.

communication need not be a proxy solicitation, although if proxies are subsequently solicited, such disclosure may have to be made a second time, if material under the proxy rules.[17] The Commission believes this requirement ensures that contractholders will receive timely notice of any disapproval (within one year of the action), without unduly burdening the investment company, since the disclosure may be in a regular mailing as opposed to a formal proxy solicitation made for that purpose alone.

3. Paragraph (b)(9)—Custodianship of Assets

This paragraph provides an exemption from section 17(f) of the Act [15 U.S.C. 80a–17(f)] to allow securities and similar investments of a management account to be maintained in the custody of the life insurer or of an affiliated life insurer, provided certain conditions designed to ensure the safekeeping of such assets are satisfied. The petition suggested alternative relief from section 17(f) where a management account complied with rule 17f–2 [17 CFR 270.17f–2].[18] The Commission declined to include this alternative relief in rule 6e–3(T), stating that paragraph (b)(9) as written provided comparable and, in some cases, greater relief than that of rule 17f–2. However, the Commission specifically requested comment on whether an alternative test would be necessary.

Petitioner subsequently commented that, upon reconsideration, it was not renewing its prior request. Therefore, paragraph (b)(9) remains as proposed in rule 6e–3(T).

Paragraph (b)(9)(iv) of rule 6e–3(T) contains specific authorization for securities to be deposited in any manner permitted by any rule under section 17(f) of the Act.[19] At the time rule 6e–3(T) was adopted, rule 17f–4 [17 CFR 270.17f–4], dealing with custody of securities in securities depositories, was the most recent rule under section 17(f). The adopting release refers to rule 17f–4 as specifically encompassed by the language in paragraph (b)(9)(iv). Since then, rule 17f–5 [17 CFR 270.17f–5], regarding custody of management investment company assets outside the United States, has been adopted. This rule, like rule 17f–4, would be available to management accounts or underlying funds pursuant to paragraph (b)(9)(iv) of amended rule 6e–3(T). That is, subparagraph (b)(9)(iv) of rule 6e–3(T) is to be given the plain meaning of its words; any rules under section 17(f) that are enacted in the future may be relied upon by management accounts or underlying funds, subject to their meeting and rule's requirements.

4. Paragraph (b)(10—Voting Rights

This provision is substantively identical to rule 6e–2(b)(10). It provides an exemption from the voting requirements of section 18(i) of the Act [15 U.S.C. 80a–18(i)], provided contractholders receive one vote for each $100 of cash value.[20] No comments were received on this paragraph or on subparagraph (b)(15)(C)(iii), which generally extends certain voting related exemptions to underlying funds of trust accounts.[21] However, the Commission believes it would be useful to clarify here and in the rule itself, certain issues related to voting.

The stipulation in subparagraph (b)(10)(i)(A) of the rule, that contractholders have one vote for each $100 of cash value funded by the separate account, reflects a policy decision made in rule 6e–2 that management of the affairs of the separate account should be allocated on a basis that reflects a contractholder's economic interest in the separate account. The use of cash value in rule 6e–2 was dictated, in some measure, by the inability to use net asset value as a means to quantify the ownership interests on which voting rights might be based.[22] The Commission also determined that basing voting rights on cash value had an advantage over basing them on variable death benefit or one vote per contract, in that each contractholder's interest would be valued on the same day and each contractholder would receive a vote related to his investment in the separate account. This policy decision was carried over to flexible contracts without debate, as part of the philosophy of parallel regulation for variable life insurance, wherever feasible.

The concept of voting based on cash value is increasingly important because of the proliferation of series funds in the variable life insurance context. For example, if voting in a series fund comprised of typical money market and equity portfolios were based on an equal "per share" vote, where shares represent net asset values of $10 and $1, respectively, money market shareholders in "cross-series" voting matters would have a vote disproportionate to their economic interests. Voting on the basis of cash value removes this inequity.

Issues relating to cash value voting also arise in the context of two tier structures. In particular, these issues concern the need to maintain equivalent regulation of management accounts and trust accounts. In this connection, several modifications have been made in the language of paragraph (b)(15) of the rule to make it clearer that the policies underlying paragraph (b)(10) apply in the two tier structure as well.[23]

That the rule always contemplated the application of paragraph (b)(10) in the two tier format is demonstrated by the administrative history of paragraph (b)(15). Paragraph (b)(15) provides relief similar to that in rule 6e–2(b)(15). That paragraph was added to rule 6e–2 at the adoption stage, when it was suggested by the commenters that several potential sellers of scheduled contracts were considering organizing their separate accounts as trust accounts. These commenters on rule 6e–2 expressed the concern that rule 6e–2, essentially designed for management accounts, might not address certain problems that might be experienced

---

[17] A similar change was made with respect to the disclosure requirements in paragraph (b)(7)(ii) of the rule regarding an insurer's disapproval of the account's investment adviser or principal underwriter.

[18] Rule 17f–2 is a rule prescribing conditions for the custody of investments by registered management investment companies.

[19] Paragraph (b)(9)(iv) of the rule provides, "The requirement in paragraph (b)(9)(i) of this Rule that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company *shall not apply to securities* deposited with insurance regulatory authorities or *deposited in accordance with any rule under Section 17(f)* . . ." (emphasis added).

[20] Section 18(i) generally requires that every share of stock issued by a registered management investment company be voting stock and have equal voting rights with every other share of voting stock.

[21] *See* discussion in Section B.7., *infra*.

[22] The first issuer of a scheduled contract, Equitable Variable Life Insurance Company ("EVLICO"), argued successfully to the Commission in their application for exemptive relief that cash value would provide a fair basis for allocating voting rights. EVLICO pointed out that unlike a typical investment company where all investors purchase shares at net asset value (plus any sales load) and thus have proportionate interests in the fund, scheduled contracts are issued on the basis of insurance underwriting standards so that a dollar in premiums will purchase varying amounts of death benefit depending upon the age and underwriting class of the purchaser. The order of exemption granted to EVLICO was one of the influences on the final version of rule 6e–2. *See* Investment Company Act Release Nos. 8888 (Aug. 13, 1975) [40 FR 37116 (Aug. 25, 1975)] and 8992 (Oct. 16, 1975).

[23] Indeed, without the exemptions provided by subparagraph (b)(10)(ii), actions permitted by subparagraph (b)(15)(iii) (which conditionally permits disapproval by an insurance regulatory authority or the life insurer of certain proposals) might violate section 18(i). Subparagraph (b)(10)(ii) of the rule specifically states that the voting rights required by section 18(i) shall not be deemed to be violated by actions specifically permitted by it or other paragraphs of the rule. These other paragraphs include the limited exemptions from sections 13 and 15 given by paragraph (b)(15).

under the two tier format. In response, exemptions for underlying funds designed to parallel those provided elsewhere for management accounts were written into new paragraph (b)(15).[24] The Commission did not, however, write paragraph (b)(15) to negate the impact of any other paragraph of the rule; the paragraph assumes implementation of the paragraph (b)(10) voting rights.

Parallel treatment of voting rights for contractholders in management accounts and trust accounts is also consistent with the policies of the Act, as expressed in section 48 thereof [15 U.S.C. 80a–47]. The section states, in essence, that no person may do indirectly through another entity what it may not do directly.[25] Thus, it would seem contrary to the intent of the Act to deprive contractholders of the voting rights given by section 18(i) (as modified by paragraph (b)(10) of the rule) merely because an insurer interposes a trust account between them and the underlying fund.

Finally, in applying paragraph (b)(10) in the two tier context, life insurers should take special note of paragraph (b)(10)(i)(B) of the rule. This paragraph tracks a similar paragraph in rule 6e–2, which provides voting rights to life insurers in proportion to "assets of the separate account not otherwise attributable to contractholders."

Thus, the paragraph gives a life insurer voting rights with respect to, *e.g.*, any "seed" money (and accumulations thereon) allocated to the separate account.[26] These voting rights were given to the life insurer, however, with the express caveat that when contracts were sold to the public, the insurer would exercise these rights in proportion to the votes cast by contractholders (a process known as "proportionate voting"). Like the rest of paragraph (b)(10), this proviso applies in both the management account and the two tier structures.[27]

5. Paragraph (b)(12—Pricing and Processing

This paragraph provides relief from sections 22(c) [15 U.S.C. 80a–22(c)], 22(d) [15 U.S.C. 80a–22(d)], 22(e) [15 U.S.C. 80a–22(e)], and 27(c)(1) [15 U.S.C. 80a–27(c)(1)] of the Act, and rule 22c–1 thereunder [17 CFR 270.22c–1], in connection with certain pricing and processing provisions of flexible contracts. Subparagraph (i) of paragraph (b)(12) presently concerns the determination of cash value and death benefits under a flexible contract. Subparagraph (ii) provides an exemption to accommodate certain insurance company administrative procedures.[28] Comments were received on both subparagraphs, and are discussed below.

a. Subparagraph (b)(12)(i)—Cash Value

Subparagraph (b)(12)(i) requires cash value to be "determined" in accordance with rule 22c–1(b), the pricing rule for all investment companies.[29] The ACLI letter requested that the word "determined" in this paragraph be replaced by "determinable." The ACLI letter stated this would codify the industry's understanding that the life insurer need only have the *capability* of computing this value daily and that actual computations and print-outs would only need to be performed when necessary for the operation of the contract and the separate account (*e.g.*, on contract processing days).

Both to remove any ambiguity and to underscore that, absent an exemption, the same pricing standards apply to all investment companies (including separate accounts), the Commission has replaced the word "determined" in rule 6e–3(T) with "computed," as used in rule 22c–1(b) (and in proposed amendments to rule 6e–2).[30] Thus, the net asset value computation for management and trust accounts and underlying funds would have to be made and recorded on the same basis as for any other investment company. However, computation of the daily net asset value of a separate account does not always require computation of a cash value for every contractholder on a daily basis; cash value must only be capable of computation, unless actual computation is necessary for the operation of the contract. Accordingly, the rule has been amended to bring it in line with the industry's understanding in this area.

b. Subparagraph (b)(12)(ii)—Death Benefit

Subparagraph (b)(12)(i), renumbered in part as subparagraph (ii), has been amended to clarify the Commission's pricing policy as it pertains to death benefits. Paragraph (b)(12) was originally drafted to reflect the only two death benefit options known at that time: (1) "Option I," essentially a level death benefit option;[31] and (2) "Option II," under which the death benefit is equal to the face amount plus cash value, thus reflecting every change in cash value.[32] However, flexible life

---

[24] Historical evidence of the desire to achieve a regulatory parallel further exists in that a general "veto" right for trust accounts applicable to any underlying fund was requested by the commenters, but rejected by the Commission in favor of applying through paragraph (b)(15) the limited veto right provided management accounts in subparagraphs (b)(5)(ii) and (b)(7)(ii)(C).

[25] Section 48 makes it "unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under [the Act]."

[26] Paragraph (b)(10)(i)(B) reads in its entirety, "[t]he life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders under paragraph (b)(10)(i)(A) of this Rule, with fractional votes allocated for amounts less than $100. *Provided*, That after the commencement of sales of flexible contracts, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast be contractholders."

[27] Earlier this year, the staff of the Commission became aware of the fact that some companies organized as trust accounts, in apparent good faith, were voting on a discretionary basis: (1) fund shares held in the general or separate account representing "seed" money and (2) fund shares held in the separate account representing charges imposed by the company against the separate account. The staff sent out letters advising these companies of its position that both rule 6e–2 and rule 6e–3(T) require proportionate voting for all fund shares. All of those companies subsequently responded that they would comply.

[28] To facilitate understanding this paragraph of the rule, it has been divided into three subparagraphs. As amended, subparagraph (i) will contain the requirements for the determination of cash value, and subparagraph (ii) will contain the requirements for the determination of death benefits. Subparagraph (iii) will contain former subparagraph (ii).

[29] The Commission has refined this provision by dropping the text of the pricing rule stated therein and simply referencing rule 22c–1(b). Since the rationale with respect to the pricing of redeemable securities by investment companies is equally applicable to the computation of cash value of variable contracts, the Commission believes, as an administrative matter, it is more efficient to incorporate rule 22c–1 by reference into rule 6e–3(T).

[30] *See* note 5, *supra*.

[31] Subparagraph (b)(12(i)(B)(2) requires death benefit to be determined only on days when it could be affected by the investment experience of the separate account. In a typical Option I contract, the death benefit is equal to the face amount of the contract or, if greater, the cash value multiplied by the "applicable percentage," as set forth in Section 7702 of the Internal Revenue Code of 1986 [I.R.C. § 7702 (1986)] ("Code"). The "applicable percentage" is 250% of cash value for insureds aged 40 and under, decreasing in varying increments each year therafter until age 75, when it levels off at 105% for sixteen years and then grades down to 100% at age 95. Under this type of contract, investment experience (either positive or negative) would not affect the death benefit until the cash value times the "applicable percentage" exceeded the current face amount of death benefit under the contract. Although the "applicable percentage" formulation is required by the tax laws to assure the contract's status as insurance, these contracts nonetheless generally operate and are thought of as level death benefit contracts.

[32] In the case of an "Option II" contract, death benefit would be determined daily since cash value (which generally changes daily with investment performance) would be determined daily and death benefit is a function of cash value. Therefore, it was contemplated at the time rule 6e–3(T) was adopted that "Option II" contracts would meet the daily computation requirement of subparagraph (b)(12)(i)(A).

insurance has continually evolved since the first product designs were introduced. Recently, some contracts with death benefits that fall between straight "Option I" and "Option II" designs have been registered.[33] Therefore, the Commission has revised the language of the death benefit provisions to make it clear that contracts such as these are acceptable under the rule.

Under the revised paragraph, death benefits need only be computed on designated days where the investment experience would, under the terms of the contract, affect the death benefit. Thus, the ability to compute death benefits less frequently than daily is not limited to "Option I" contracts. Of course, the computation dates would have to be specified on an evenhanded basis.[34] In addition, full and prominent disclosure should be made in the prospectus of any death benefit option that was either not fixed or that did not vary daily with cash value to reflect fully the investment performance of the separate account. Full and fair disclosure of the death benefit pricing procedures under the contract would be particularly critical to explain the effect, if any, on death benefit of additional purchase payments made between death benefit valuation dates.

c. Subparagraph (b)(12)(iii)—Variations in Charges

Subparagraph (b)(12)(iii) (formerly, subparagraph (b)(12)(ii)), provides a limited pricing exemption, to the extent "(n)ecessary to comply with [rule 6e–(T)] or with insurance laws and regulations and established administrative procedures of the life insurer . . . ."

This exemption enables life insurers to process initial purchase payments (in connection with either the issuance of flexible contracts or increases in insurance benefits requiring evidence of insurability) in a manner consistent with life insurance industry practice.[35] Of course, subsequent payments must be priced in accordance with rule 22c–1.

The ACLI letter requested confirmation that subparagraph (b)(12)(iii) permits variations in sales loads and charges that meet the principles of rule 22d–2 [17 CFR 270.22d–2] (formerly rule 22d–3), an exemptive rule under section 22(d) for variable annuity contracts.[36] The Commission concurs in this interpretation. In addition, the Commission notes that recently amended rule 22d–1 [17 270.22d–1], which permits scheduled variations in sales loads, would also be available.[37]

6. *Paragraph (b)(12)—Sales Load and Other Deductions*

This paragraph provides exemptions from section 27 and related provisions in connection with the deduction of sales load and certain fees and charges from the assets of a flexible life insurance separate account. The paragraph is divided into nine sections, most of which are discussed below.

a. Subparagraph (b)(13)(i)—Sales Load Limitation

This subparagraph provides exemptions comparable to those provided by rule 6e–2(b)(13)(i), with some modifications to reflect the flexibility of payments and the ability to adjust insurance coverage under flexible life insurance. For each rule, paragraph (b)(13)(i) provides an exemption from the requirement of section 27 [15 U.S.C. 80a–27] that sales load deducted under any periodic payment plan certificate not exceed 9% of payments "to be made thereon."

With respect to scheduled life insurance, rule 6e–2 regulates sales load on the basis of "payments to be made" for a specified time period of the lesser of 20 years of the anticipated life expectancy of the insured.[38] The design of flexible life insurance, on the other hand, does not contemplate a fixed pattern of payments.[39] Therefore, an analogue to scheduled payments under rule 6e–2 is necessary to provide the base against which to measure compliance with the 9% limitation of section 27. Rule 6e–3(T) adopted the concept of the "guideline annual premium" (sometimes referred to as "GAP") as this anologue.[40]

A "guideline annual premium" is defined generally in the rule as the level annual payment necessary to provide the future benefits under the contract through maturity, based on certain assumptions.[41] These assumptions include the 1980 Commissioners Standard Ordinary Mortality Table ("1980 CSO Table"),[42] a 5% assumed interest rate, and the fees and charges specified in the contract.

Thus, subparagraph (b)(13)(i)(A) of the rule provides relief from the sales load limitations of sections 27(a)(1) [15 U.S.C. 80a–27(a)(1)], 27(h)(1) [15 U.S.C. 80a–27(h)(1)], and 27(h)(4) [15 U.S.C. 80a–27(h)(4)], provided that sales load does not exceed 9% of the sum of GAPs that would be paid during the relevant contract periods.[43] Under this test, a wide latitude in the design of sales load deduction schedules is given so long as the total amount deducted neither exceeds 9% of 20 GAPs (subject to the insured's life expectancy) nor violates the "stair step" provisions, discussed below. In addition, sales load may be deducted from actual payments made in

---

[33] For example, one contract provided for a death benefit which was affected by separate account investment performance only at the beginning of each contract quarter, *i.e.*, the death benefit was fixed or level for three months at a time. *See* Variable Account A of Monarch Life Insurance Company (File No. 33–457, May 1, 1986) and Variable Account B of Monarch Life Insurance Company (File No. 33–464, Aug. 15, 1986). Another product design that may evolve in the future is a contract providing for only a yearly adjustment to death benefit.

[34] Thus, the revised rule requires death benefits to be computed on a basis that is reasonable, fair, and nondiscriminatory. The adjustments to death benefits could not be set, for example, as daily adjustments in a falling market and annual adjustments in a rising market.

[35] The pricing exemption provided by subparagraph (b)(12)(iii) for flexible contracts is broader than that given by Rule 22c–1(c) for variable annuity contracts. This is because of the greater underwriting and other complexities that exist in the life insurance context.

[36] The exemption requires that the prospectus disclose certain information about the variations, that the variations reflect differences in costs or services, and that the variations do not unfairly discriminate against any person.

[37] *See* Investment Company Act Rel. No. 14390 (Feb. 22, 1985) [50 FR 7909 (Feb. 27, 1985)].

[38] Because variable contracts are of an indeterminable length, unlike traditional periodic payment plans, an artificial test is necessary to permit demonstration by the life insurer of prospective compliance with the 9% limitation.

[39] *See* the definition of a flexible premium variable life insurance contract, contained in paragraph (c)(1) of the rule.

[40] Paragraph (b)(13) of the the rule, in subparagraph (i)(B), also allows sales loads to be taken without the use of GAP. Under this provision, sales load may be taken in any manner permitted by the rule, but in an amount no greater than 9% of payments actually made.

[41] Paragraph (c)(8) of the rule. *See* discussion in Section C.4 *infra*.

[42] A mortality table is a statistical table from which an estimate of a person's life expectancy can be made. The 1958 CSO Mortality Table, developed jointly by The Society of Actuaries and the National Association of Insurance Commissioners ("NAIC"), prescribes the minimum basis upon which certain insurance related calculations must be made. The NAIC recently promulgated new mortality tables embodying updated and less conservative mortality assumptions—the 1980 CSO Table—which generally will be mandatory for all life insurance contracts by 1989. *See* discussion in Section C.4., *infra*.

[43] "Contract period" is defined generally in paragraph (c)(5) of the rule as the period from a contract issue or anniversary date to the earlier of the next following anniversary date or the contract's termination date. *See* discussion in Section C.4., *infra*. The relevant contract periods are equal to the lesser of 20 years or the anticipated life expectancy of the insured, based on the 1980 CSO Table.

excess of 20 GAPs, provided that the "stair step" provisions are observed.

The use of the guideline annual premium approach prompted a critical and lengthy comment letter from one commenter.[44] The commenter argued strenuously that use of guideline annual premiums produces too high an estimate of the actual premiums likely to be paid and that, therefore rule 6e–3(T) potentially permits overall sales loads far in excess of 9% of payments.[45] The commenter proposed instead that sales load be regulated on the basis of "target premiums," which would be established by life insurers for each contractholder. The commenter argued that because "target premiums" illustrate a payment schedule intended to provide the level of insurance benefits and investment performance selected by the particular contractholder, they provide a more reasonable "surrogate" for actual payments than guideline annual premiums. In addition, the commenter contended that with respect to subsequent sales loads, the rule departs even further from the concept that sales loads should be geared to actual payments. This, the commenter claimed, is because the rule allows continuing sales load deductions, even after the contractholder has ceased making the planned payments.[46]

To illustrate its point, the commenter cited as an example a contract with the following schedule of sales load, to be deducted from the assets in the separate account: 50% of the GAP at issue; 10% of the GAP at the beginning of year two, three, and four; and 6.5% of the GAP on each subsequent anniversary—a sales load schedule that is prospectively in compliance with rule 6e–3(T)(b)(13)(i)(A). The example further supposes that the contractholder (age 50) pays five annual GAPs, each in the amount of $2,000, and makes no other payments. Under the assumptions of an average 10% annual net investment return and cost of insurance deductions less than those permitted by the 1980 CSO Table, the commenter stated that the contract would remain in force for 15 years or more even if no further payments are made. The commenter concluded that the insurer would deduct $1000 in the first year (50% of GAP), $200 in years two through four (10% of GAP), and $130 in years 5 through 20 (6.5% of GAP), for a total of $3680 or 36.8% of the total payments made (5 GAPs or $10,000).

The example is a useful one because it illustrates a misunderstanding about the use of the GAP assumption. Under rule 6e–3(T), sales load may be deducted in any manner as long as it never exceeds what could have been deducted as a front-end load.[47] The assumption of 20 GAPs allows a life insurer to demonstrate prospectively that its sales load schedule will meet the 9% of total GAPs limitation. However, this is *not* the same as "pretending" that GAPs have been paid at the time sales load is deducted. In the above example, the life insurer's last deduction should have been 6.5% of the fifth GAP received; the life insurer was not entitled to continue taking 6.5% of an "imaginary" payment, *i.e.*, a payment not actually made in years 6 through 20.[48]

On a related point, the Commission wishes to emphasize that paragraph (b)(13) of rule 6e–3(T) adopts a "cumulative" or "aggregate" approach to sales loads, *i.e.*, it measures sales loads with reference to the amount of payments rather than the particular year in which they are received. Accordingly, in the example discussed above, if the fourth $2,000 GAP had been paid in three yearly installments, the insurer would have been entitled to deduct 10% of each installment until the full fourth GAP had been made (payments thereafter being subject to a 6.5% load). The insurer would not be limited to a 6.5% load on installments of the fourth GAP paid beyond the fourth year. It would not, however, have been entitled to take the full 10% of the fourth GAP, or $200, out of the first installment of the fourth GAP, *i.e.*, the first $667, to be paid.

These clarifications of the applicability of the guideline annual premium concept may ameliorate some of the concerns raised by the commenter. In addition, using guideline annual premiums, rather than "target premiums," provides the advantages of a single set of assumptions for all flexible contracts. Therefore, different contractholders and different issuers will be regulated on the same basis with respect to sales load.[49] It also permits a wider variety of sales load designs than would be possible using "target premiums."

b. Subparagraph (b)(13)(ii)—"Stair Step" Relief

This subparagraph grants exemptions from the requirements of sections 27(a)(3) [15 U.S.C. 80a–27(a)(3)] and 27(h)(3) [15 U.S.C. 80a–27(h)(3)], provided that the proportionate amount of any sales load deducted from any payment does not exceed the proportionate amount deducted from any prior payment—commonly known as "stair step" requirements.[50] However, this provision provides an exception to the stair step requirements similar to that in rule 6e–2 for, among other things increases caused by the grading of cash surrender values into reserves.

The adopting release, solicited comment about the appropriateness of this exception for flexible life insurance.[51] The ACLI letter commented

---

[44] This, in turn, provoked an exchange of letters. *See* note 7, *supra*.

[45] The commenter also noted that subparagraph (b)(13)(i) omitted a requirement contained in the petition that an insurer could not deduct 9% of 20 GAPs if in any year premiums were paid in the amount of the guideline single premium ("GSP"); in that case, the petition would have limited the sales load to 9% of the GSP. This comment will be addressed generally in connection with the discussion of single premium contracts. *See* discussion in Section C.1.a., *infra*, regarding the fixing of premium payments for the first two years.

[46] "Subsequent sales loads" refers to sales loads that are deducted other than from payments (which is referred to as a "front-end sales load"). Examples of this would be: (1) a deferred sales load upon full or partial redemption; (2) a periodic deduction directly from a contract's cash value; (3) an asset-based sales load; or (4) a combination of any of the above. *See* discussion in Section B.1., *supra*.

[47] Paragraph (d)(1) of the rule effectively permits subsequent sales loads "if during each contract period through [maturity], the amount of sales load deducted is not more than the amount of sales load that could be deducted under a flexible contract identical to the actual contract except that sales load is deducted only from payments . . . ."

[48] Of course, the insurer in the example could have taken sales load more rapidly; *e.g.*, 50% of payments up to each of the first three GAPs and 30% of payments up to the fourth GAP. Thus, if 4 GAPs of $2000 each were paid in year 1, the insurer could deduct $3600 as sales load ((50%×$6000)+(30%×$2000)). However, this would be subject to the refund and conversion rights of subparagraph (b)(13)(v), discussed *infra* in Section B.6.e., and to full disclosure of the load structure and its consequences. In addition, *see* the discussion in Section C.1.a., *infra*, regarding sales load where more than 4 GAPs are required in the first two years.

[49] Some commenters asserted that "target premiums" vary from contractholder to contractholder and thus would be an administratively difficult alternative.

[50] Paragraph (d)(1)(ii) provides comparable relief from the stair step requirements for other than front-end loads. *See* discussion in Section D.1.b., *infra*.

One example of a subtle stair step violation involves a combination front end and deferred sales load structure where no "front-end" deduction is made from the initial payment, but one is made from subsequent payments. This would violate stair step requirements because the amount of any front-end load actually taken on payments after the first would necessarily be proportionately greater than that (*i.e.*, none) on the initial payment.

[51] *See* the adopting release at note 46. Generally speaking, the "grading of cash surrender values into reserves" exception contained in Rule 6e–2 allows certain upward variations in sales load from one year to the next for scheduled contracts providing tabular cash values adjusted for investment earnings. For example, in the early years of a scheduled contract, state insurance law typically requires larger contract reserves than legal minimums for cash values. Some insurance companies, therefore, gradually increase cash

Continued

that by defining sales load in paragraph (c)(4) with respect to "cash value" rather than "cash surrender value," the possibility of producing increases in proportionate sales loads by the typical grading down of deferred sales loads to 0% over several years (which could be viewed as the grading of cash surrender values into reserves) has been eliminated and the exception may be properly deleted from this paragraph. The Commission agrees.

The ACLI letter also recommended that another exception to the "stair step" requirement be provided for reductions in proportionate sales loads deducted from amounts transferred from other insurance programs. The letter noted that insurers are permitted to reduce or eliminate front-end sales loads on initial "rollover" amounts transferred into the separate account from other programs, subject to the non-discrimination, fairness, and other standards prescribed by former subparagraph (b)(12)(ii) (now subparagraph (b)(12)(iii)). The letter then pointed out that although such reductions would benefit contract-owners, they could cause sales loads charged against subsequent payments under the regular load structure for the contract to violate the "stair step" requirements. The Commission believes that the requested exemption is justified, and paragraph (b)(13)(ii) has been amended accordingly.

c. Subparagraph (b)(13)(iii)—Deductions of Fees and Charges and Custodianship of Assets

(1) *Administrative expenses.* This subparagraph provides relief from sections 27(c)(2) [15 U.S.C. 80a–27(c)(2)], 26(a)(1) [15 U.S.C. 80a–26(a)(1)], and 26(a)(2) [15 U.S.C. 80a–26(a)(2)] to permit certain fees and charges to be deducted from separate account assets and to permit various custodianship activities regarding those assets. The ACLI letter recommended that the provision in subparagraph (b)(13)(iii)(A) for the payment of a fee to the life insurer for "administrative services," be modified to clarify that the exemption is not limited to account maintenance expenses. Another commenter supported this recommendation. Specifically, commenters sought clarification that deductions for administrative expenses incurred in connection with establishing separate account administrative systems and first-year contract issuance and underwriting are permissible.

The Commission concurs with the commenters that the exemption includes these types of expenses, and has modified the subparagraph accordingly. This amendment does not, however, reflect any change in policy with respect to variable life insurance administrative expenses; the fees allowed are those for the expenses normally associated with the traditional start-up (including setting up new computer systems) and underwriting processes. These would include, for example, the costs of processing applications, conducting medical examinations, determining insurability and the insured's risk class, and establishing records relating to the contract. The amended exemption is not a way to recover any distribution expenses or sales load. Moreover, the Commission continues to retain jurisdiction regarding the determination of "reasonable amounts" of fees for administrative services.[52]

(2) *Income taxes.* Subparagraph (iii)(E) of paragraph (b)(13) permits certain deductions from the assets of a separate account. The ACLI letter suggested that the scope of the subparagraph be expanded to include a deduction for any possible future income or other taxes incurred by the life insurer and properly chargeable against separate account assets. Presently, no such taxes are assessed.

The Commission has granted exemptive relief similar to that requested by the ACLI letter.[53] However, the relief involved only income taxes and was based on certain representations designed to eliminate any possibility of hidden benefits (such as hidden "float") for the life insurer.[54] Subject to these representations, the assessment of an amount for income taxes was found to be consistent with the purposes of sections 26(a)(2) and 27(c)(2) of the Act.

The Commission is adopting the language suggested in the ACLI letter. While the "or other taxes" language is more expensive than an exemption merely for income taxes, there is no sound policy basis to limit the types of taxes that may be deducted. The amount deducted should be no greater than the actual amount of the liability, and should not be deducted far in advance of the time such taxes are due. The life insurer may, however, take potential tax liability into account in determining lapse. That is, if flexible contract's cash surrender value, reduced (for purpose of this calculation only) by the contractholder's potential tax liability, is insufficient to support the contract charges, an additional payment may be required to avoid entering the grace period.

(3) *Premium taxes.* Subparagraph (iii)(E) of paragraph (b)(13) permits, among other charges, the deduction of premium taxes imposed by a governmental entity. The ACLI, in commenting on the proposed conforming amendments to rule 6e–2, [55] noted that in permitting the deduction of premium taxes, rule 6e–3(T)(b)(13)(iii)(E) refers to "the deduction of premium taxes." The parallel provision in rule 6e–2 refers to "the deduction of an amount approximately equal to premium taxes." The ACLI letter suggested that rule 6e–3(T), like rule 6e–2, specify that the permissible deduction need only approximate the average premium taxes the insurer must pay, a standard industry practice.

While agreeing that rule 6e–2 currently contemplates an averaging of premium taxes, the Commission would like to request comment on the necessity of, and justification for, continuing this practice. The effect of averaging on individual contractholders is not inconsequential when one considers that the range of actual tax liability is from 0% to 4% of payments, and that single premium variable life insurance has become increasingly popular. Single premium contracts are accompanied by a large single payment, typically $10,000 to $25,000. A 2½% premium tax assessment, chosen as an "average" state tax, on a $25,000 payment could

---

values above legal minimums until they equal reserves in the later years (a process referred to by the ACLI as "equalization"). Consequently, in the year *after* the equalization, the amount of the increase in a contract's cash value is proportionately less than the preceding year, resulting in an increase in sales load as determined under paragraph (c)(4) of Rule 6e–2 (assuming all other charges remain level or unchanged).

[52] Section 26(a)(2)(C) provides: "No principal underwriter for or depositor of a registered unit investment trust shall sell . . . any security of which such trust is the issuer . . . . unless the trust indenture . . . provides . . . that no payment . . . shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment . . . of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself. *See also* subsections (5) and (6) of section 27(a).

[53] *See, e.g., Nationwide Life Insurance Company,* Investment Company Act Rel. Nos. 15002 (March 19, 1986) [51 FR 10291 (March 25, 1986)] and 15057 (April 16, 1986).

[54] The representations were that (1) any income tax charge would not recover any more than the amount of tax liability actually incurred, with no interest element; (2) any such charge would comply with state insurance laws; (3) the charge would be fully disclosed in the prospectus; (4) it would only be deducted from the separate account as taxes became due; and (5) taxes would not be deducted and accumulated in the life insurer's general account prior to the time they were due.

[55] *See* note 5, *supra.*

result in a loss to a contractholder of $625 plus all earnings thereon for the life of the contract—even though his particular state did not impose such a tax.

Hidden "float" profits, may also become a concern in the premium tax area. This would arise where the tax is deducted from the contractholder's account on day one, but the life insurer continues to derive a benefit from the use of all contractholders' funds until remitted to the governmental entity—perhaps for a period as long as one year. However, the Commission acknowledges in this regard that, while it was never intended that "float" be used to benefit the life insurer, the exemption for deduction of premium taxes contains no prohibitions with respect to this possibility; nor does the adopting release speak to the issue. Therefore, comment is requested on how and when deductions for premium taxes are actually made. In addition, comment is requested on the costs and benefits to life insurers and contractholders of requiring life insurers to deduct for premium taxes on a basis more closely related to the contractholder's individual "liability" and their time of assessment by the governmental entity.[56]

(4) *Mortality, expense, and guaranteed death benefit risk charges.* Subparagraph (b)(13)(iii)(F) permits charges for mortality, expense, and guaranteed death benefit risks ("risk charges") to be deducted from account assets, provided that certain conditions are met.[57] These conditions are designed to address the Commission's concern that proceeds from risk charges may be used to finance distribution expenses or other expenses not related to insurance risks; at the time rule 6e–3(T) was adopted, the condtions were comparable to those proposed in rule 26a–3 [17 CFR 270.26a–3], a rule to permit variable annuity separate accounts to deduct risk charges.[58]

The Commission recently proposed amendments to subparagraph (b)(13)(iii)(F) of rule 6e–3(T) to conform the terms of exemptive relief found in this subparagraph to those of the exemptions in rule 26A–3, as reproposed.[59] The amendments to this subparagraph were proposed to ensure that consistent standards apply to substantially similar activities among different separate account registrants.[60]

d. Subparagraph (b)(13)(iv)—Redeemability and Contract Lapses

Subparagraph (b)(13)(iv) provides exemptive relief from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) of the Act, and Rule 22c–1 thereunder, to the extent that the insurance nature of flexible contracts prevents them from being redeemable for a pro rata share of the separate account's assets. Issues arising under this subparagraph concern both contract lapses and redemption generally. The commenters were particularly concerned with whether it would be permissible under the rule to deduct contingent deferred administrative charges and fees upon partial surrenders.

(1) *Contract lapses.* Unlike a scheduled contract, a flexible contract enters the grace period only when its cash surrender value is insufficient to pay charges due.[61] If this deficiency remains, the contract will lapse at the end of the grace period. In light of the small cash surrender value, the rule permits a life insurer to apply this amount to purchase a nonforfeiture option specified by the life insurer. The ability of the life insurer to do so, however, is subject to the condition that, among other things, any excess sales load paid must first be applied to keep the contract in force.

The ACLI letter requested confirmation in the release that the condition of the subparagraph applies only where sales load would be refundable had the contract instead been surrendered. Thus, the ACLI letter submitted that the condition would not apply where the contract (1) is excess loaded, but lapses after the first 24 months [62] or (2) lapses within this period, but no sales load need be refunded if surrendered instead (*i.e.*, there is no excess loading). The Commission concurs in this interpretation.[63]

The ACLI letter also requested an interpretation of whether the condition requires application of refundable sales load at the beginning of the grace period or only at the end of the period. The ACLI would prefer that the rule permit the application of sales load at the end of the grace period where that design is administratively preferable. The ACLI argued that because the contract provides full death benefits throughout the grace period, notwithstanding the deficiency in cash value, applying the excess sales load at the end protects the contractholder's interests, while avoiding unnecessary administrative processing by the life insurer.[64] This would also be consistent, the letter maintains, with the practice permitted by Rule 6e–2.[65]

The Commission is tentatively rejecting the ACLI's request because application of the excess load at the end of the period, rather than at the beginning, might lead to a smaller amount available for the purchase of a nonforfeiture option. This is because applying the excess load at the beginning would delay the point at which the remaining cash value is under by the insurer in the manner permitted by the rule. However, if the ACLI's administrative processing concern can be addressed without negative effect on contractowners,[66] their suggestion might be acceptable. Comment is requested on this matter.

The ACLI letter also suggested allowing the life insurer, at its discretion, to apply all refundable excess sales load to enhance the nonforfeiture benefits, rather than to perpetuate the contract. The reason given for the suggested change is that for some companies, the former will be "administratively less difficult." The letter offered no further analysis of the costs and benefits to contractholders of allowing the life insurer to make this

---

[56] Strictly speaking, it is usually the life insurer that incurs the liability.

[57] This provision, similar to rule 6e–2, also requires that the amount of the risk charge be disclosed in the prospectus and be at least one half of the maximum charge permitted under the contract. Comment was requested on this provision but none was received. Therefore, no changes to this requirement have been made.

[58] Investment Company Act Release No. 14190 (October 11, 1984) [49 FR 40879 (October 18, 1984)].

[59] Investment Company Act Release No. 15586 (February 26, 1987) [52 FR 7166 (March 9, 1987)].

[60] The comment letters on rule 26a–3 raised the same issues with respect to the deduction of risk charges and the conditions for relief as those raised by the commenters in the context of rule 6e–3(T)(b)(13)(iii)(F), the parallel provisions for flexible contracts.

[61] A scheduled contract enters its grace period when the contractholder fails to make a scheduled payment.

[62] Refund rights exist only for the first 24 months after issuance of a contract. *See* subparagraph (b)(13)(v)(A) discussed in Section B.6.e.(1), *infra*.

[63] This is not a change in position. The adopting release stated that it would be inequitable to permit the life insurer to keep any excess sales loading "which it otherwise would have been obligated to refund had the contractholder surrendered (rather than lapsed)." Adopting release at note 54.

[64] The ACLI letter offers the example of a payment made during the grace period to continue the contract; the life insurer would have the administrative burden of "recapturing" from premiums any previously credited excess sales load.

[65] Rule 6e–2(b)(13)(v)(A) permits cash value and excess sales loading (which would otherwise be refundable) to be applied to purchase a nonforfeiture benefit for a lapsing contractholder. These benefits are normally purchased at the end of the grace period.

[66] *See* note 64, *supra*.

choice; consequently, the information provided is insufficient to justify this change.

The final comment on subparagraph (b)(13)(iv)(B) made by the ACLI letter concerned its use of the term "cash surrender value." The letter contended that this use of the term erroneously implies that it is the amount contractually available to pay the contract charges. The letter noted that the term, in fact, may be construed to include amounts not so available, such as refundable excess sales load and amounts serving as security for an outstanding loan. Accordingly, the letter suggested that the term be replaced with the phrase "amounts available under the contract." The Commission agrees and has revised the rule to reflect this modified language.

(2) *Contingent deferred administrative expenses.* Subparagraph (b)(13)(iv)(C) grants exemptions from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) of the Act, and rule 22c-1 thereunder, to permit sales loads to be assessed upon redemption. The ACLI letter proposed that the exemptions be extended to certain deferred administrative charges. The letter pointed out, among other things, that these charges (like all administrative charges) would be subject to the cost-based standard of subparagraph (b)(13)(iii). Two other commenters supported this proposal, noting that it would eliminate the need for individual exemptive applications.

Typically, an administrative charge deducted upon redemption may be assessed as a flat amount (on a contract or payment basis) or as a specified amount per $1000 of face amount of death benefit. In either case, the charge is for the usual administrative expenses, discussed above (contract maintenance, underwriting, etc.).[67] In addition, this charge may be a "contingent deferred" administrative charge. In that case, it is deducted only upon surrender or lapse of the contract, within a prescribed period of time, and then on a decreasing basis.[68]

The Commission has granted a number of exemptive orders to permit an administrative charge to be deducted on a contingent deferred basis.[69] Applicants argued that assessing administrative charges in this manner, rather than as a deduction from premiums or cash value, provides advantages to contractholders. Examples of the advantages include increased earnings potential, resulting from a larger cash value, and lower cost of insurance charges, due to a lower net amount at risk.

Applicants also made certain representations designed to protect investors. Each one represented that the deferral administrative charge was cost-based, and no higher than it would have been if it were designated as a charge against purchase payments or as a periodic charge. In particular, applicants have represented that the charge was not increased to take into account the time value of money (the investment cost of the life insurer of deferring the charge) or the fact that not all contractholders would incur the charge. These representations were deemed important because they preserved the advantages to contractholders of deferring charges.[70]

The Commission is codifying the relief given in the applications by amending subparagraph (b)(13)(iv)(C) to include administrative charges. The representations discussed above would continue to govern, and this paragraph would remain "subject to other provisions of this rule," *e.g.*, the "at cost" standard of subparagraph (b)(13)(iii).

(3) *Fees on partial surrenders.* The ACLI letter suggested that a new paragraph be added to the rule, providing exemptive relief from section 10(d)(4) of the Act [15 U.S.C. 80a-10(d)(4)] to permit the deduction of fees on partial surrenders in excess of the "statutory 2 percent limit." [71] These fees would cover the costs of processing the surrender, and should be distinguished from the deferred administrative charges discussed above. The letter argued that the surrender fees, like other charges under flexible contracts, are independently limited to cost under rule 6e-3(T). In this connection, it argued that the actual cost of processing small redemptions will, in fact, exceed 2 percent of the amount requested. Further, the letter contended that under the present rule, insurance companies may be forced either to establish high minimum partial surrender amounts or to allow small requests and recover the excess costs from other sources.

The Commission has determined it would be inappropriate to add such a new paragraph. The issue is redeemability, not compliance with section 10(d). The Act's redemption requirements are designed to ensure that investors are able to receive, upon demand, the full approximate value of their underlying investments.[72] In addition, the redemption requirement of section 27(c)(1) was intended to eliminate "withdrawal fees" and other deductions which might be charged to recover additional sales expenses that would have been collected but for the fact that the contract was discontinued.[73] These provisions would

---

[67] *See* discussion of subparagraph (b)(13)(iii) in Section B.6.c., *supra*.

[68] For example, a contingent administrative charge might be $5.00 for each $1000 of face amount on surrenders or lapses on or before the contract's fifth anniversary, with charges of $4, $3, $2, and $1 per $1000 of face amount assessed in contract years 6, 7, 8, and 9, respectively.

[69] *See, e.g., Aetna Life Insurance and Annuity Company*, Investment Company Act Release Nos. 15113 (May 23, 1986) [51 FR 20565 (June 5, 1986)] and 15157 (June 19, 1986); *Commercial Life Insurance Company*, Investment Company Act Release Nos. 15111 (May 21, 1986) [51 FR 19435 (May 29, 1986)]—and 15150 (June 17, 1986).

[70] For example, if the time value of money or some other computation of the "economic value" of the deferred charge were factored into that charge, the benefit of increased earnings resulting from the larger cash value would be largely illusory. Similarly, the public is not served by a cash surrender value that reflects a deduction for administrative expenses made possible only by the shifting of those costs other contractholders.

[71] Section 10(d) permits registered investment companies, subject to certain conditions, to have a board of directors all the members of which, except one, are "interested persons" of the company within the meaning of section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)]. One of these conditions, subsection (d)(4), is that no premium over net asset value upon purchase or discount from such value upon redemption, in the aggregate, exceed two percent.

[72] The right of redemption was discussed in a memorandum that David Schenker, a Commission representative, introduced in the record during the legislative hearings on the Act. This memorandum stated, in part:

"Undoubtedly, the most important single attribute which induces purchases of the securities of open-end companies by the public is the so-called "redemption feature" of such securities—that is, the assurance that the shareholder may tender his shares to the company and receive at once, or in a very short time, the approximate cash asset value of such shares as of the time of tender."

*Hearings Before a Subcommittee of the Senate Committee on Banking and Currency*, 76th Cong., 3rd Sess. on S. 3580, p. 985 (1940).

The Commission would also note that it may well be materially misleading to market a product as "liquid" or "easy to redeem," if redemption is then "penalized" by high redemption charges.

[73] S.E.C. Investment Trusts and Investment Companies, Supplement on Companies Sponsoring Installment Investment Plans (1939), at p. 37. *See also, Pacific Scholarship Trust Sponsored by Pacific Scholarship Fund* (Investment Company Act Release No. 8065, October 31, 1973, at p. 5), in which the Commission stated:

[T]he redeemability requirement [of section 27(c)(1) of the Act] is stated clearly and unequivocally; its intent to prevent forfeitures is obvious. Moreover, the redeemability feature would appear to be the keystone of the Act's provisions regulating in detail the amount and timing of sales charges on periodic payment plans. (Footnote omitted.) The substantial protection investors enjoy from the detailed regulation of these charges would be easily outflanked if penalties could be imposed for the premature termination of periodic payment plans. . . ."

be undermined by granting the commenter's request.

This is not to say that no fees may ever be assessed to cover redemption costs. The staff has informally taken the position that a company may impose a redemption fee of up to of 2 percent (subject to the "at-cost" standard) without such a deduction raising redeemability issues.[74] The redemption fee contemplated would be imposed by the investment company to cover legitimate expenses that may be incurred to make the payment in cash to a redeeming shareholder, *i.e.*, brokerage costs and odd-lot premiums, transfer taxes, administration fees, custodian fees, and registrar or transfer-agent fees. While the 2 percent ceiling may not cover the cost of effecting redemptions where the amount redeemed is small, it strikes an appropriate balance between recouping legitimate investment-related expenses and addressing the redeemability concerns of the Act.

e. Subparagraph (b)(13)(v)—Surrender and Refund of Excess Sales Load Rights and Conversion Rights

This paragraph, like rule 6e–2(b)(13)(v), provides an exemption from the requirements of section 27(d) of the Act. The section requires that the holder of a periodic payment plan certificate must have the right to surrender the certificate within the first 18 months after issuance and receive the value of his account plus any amount paid for sales loading which exceeds 15% of payments made. The exemption permits a life insurer to keep a greater amount of sales load, subject to the contractholder being given the surrender and refund rights [(b)(13)(v)(A)] discussed below and the conversion rights [(b)(13)(v)(B)] discussed in the next section of the release.

(1) *Surrender and refund rights.* Paragraph (b)(13)(v)(A) of the rule currently provides that the contractholder must be given the right to surrender the contract within the first 24 months and receive its cash surrender value plus a refund of any "excess" paid for sales loading. This provision defines the "excess" as that amount of sales load which exceeds the sum of (1) the lesser of 30% of the guideline annual premium or 30% of actual payments made during the first contract period plus (2) the lesser of 10% of the guideline annual premium or 10% of actual payments made during the second contract period plus (3) 9% of payments made during either the first or the second contract period in excess of the guideline annual premium in each period.

The ACLI letter recommended that the "aggregate" approach to sales load (*i.e.*, regulating sales load with reference to the amount rather than the timing of payments) be incorporated with respect to the refund right.[75] Accordingly, the letter stated that the refund right should be structured in terms of the level of payments up to the first guideline annual premium, between the first and second guideline annual premiums, and in excess of two guidelines annual premiums during the first 24 months. This would be instead of having the refund right depend on the timing of payments between the first and second year.[76] Several other commenters supported this position.

The Commission agrees with the comment and has revised the rule. Timing will continue to be important, however, in defining the duration of the surrender, refund and conversion rights; the two-year period will continue to govern. Finally, prospectus disclosure should make this approach clear so that, for example, a contractholder who is considering paying an amount in excess of two guideline annual premiums within the first two years will understand how his refund rights will operate.

The Commission also received lengthy comments by several commenters, including the ACLI, on the amount of sales load subject to refund rights. Most commenters essentially reiterated the position taken in the original petition. The petition's formula would permit the life insurer to retain sales load at higher rates where the contractholder chose to pay less than the guideline annual premium during the first two contract years.[77]

One comment letter suggested a very different refund requirement: life insurers should be permitted to retain a 50% sales load on first year payments up to the first "target" premium,[78] and a 10% sales load on second through fourth year payments up to an additional three target premiums. There would also be a "true-up" requirement at the end of the fourth year that would require the life insurer to refund the excess of sales load actually charged over what the sales load would have been had actual payments been correctly estimated. After the "true-up", a level sales load would be required to reduce the overall sales load average to 9% of 20 target premiums. This "true-up" proposal was criticized by other commenters, however, as forcing life insurers either to schedule payments or to face a four year refund exposure risk. They also argued that it would expose the life insurer to manipulation by contractholders and would narrow possible sales load designs.

All of these commenters asserted that the level of refund relief was "critical" to the financial feasibility of flexible life insurance. In this regard, the commenters pointed to the need to subsidize out of surplus the high distribution expenses in the first two years. They argued that most companies will structure their sales load to avoid a refund requirement and that, therefore, the refund provisions will effectively limit first and second year sales loads.

In adopting and amending rule 6e–3(T), the Commission has stated repeatedly that it does not generally wish to reconsider the policy determinations underlying specific provisions of rule 6e–2. This is both because rule 6e–2 has provided workable standards and because that rule was the result of extensive and lengthy hearings,[79] public comment, and Commission deliberation.[80] The

[74] *See* John P. Reilly & Associates (pub. avail. July 12, 1979).

[75] *See* discussion in Sections B.6.a. and B.6.b., *supra*.

[76] To illustrate, suppose GAP under a contract is $1,000 and sales load is 50% of payments up to the first GAP, and 50% of payments up to the second GAP. Suppose further that a contractowner pays $500 in year 1 and $500 in year 2. Under the rule, as currently drafted, the insurer would have to refund $300; that is, $100 [(50%–30%) × $500] for year one, plus $200 [(50%–10%) × $500] for year two. Under the revised approach, it need only refund $200 [(50%–30%) × $1,000].

[77] The petition defined excess sales loading as the amount in excess of the lesser of 30% of the guideline annual premium or 50% of actual payments in the first year and amounts of 10% and 17%, respectively, in the second year. The ACLI letter accepted the temporary rule's 10% figure for the second year and only renewed its request for the higher figures found in the petition for the first year, *i.e.*, 30%/50%, versus the 30%/30% in the temporary rule.

[78] *See* discussion in Section B.6.a., *supra*.

[79] The public hearings on variable life insurance began on April 10, 1972, and concluded on June 7, 1972. During the hearings, more than 2300 pages of testimony (supplemented by hundreds of pages of exhibits and other data) were received. *See* Report of the SEC Division of Investment Management Regulation on Variable Life Insurance and the Petition for the Issuance and Amendment of Exemptive Rules, January 30, 1973, reprinted in Mutual Funds Guide (CCH) Special Report (Feb. 5, 1973).

[80] Notice of Intention to Propose a Rule, Investment Company Act Release No. 8691 (Feb. 27, 1975) [40 FR 27644 (July 1, 1975)]; EVLICO, *supra* at note 22; Notice of Proposal to Adopt Rule 6e–2, Investment Company Act Release No. 9104 (December 30, 1975) [41 FR 2256 (Jan. 15, 1976)]; and Adoption of Rule 6e–2, Investment Company Act Release No. 9482 (October 18, 1976) [41 FR 47023 (Oct. 27, 1976)].

BEST COPY AVAILABLE

Commission remains disinclined to duplicate the previous effort or to distrub the findings made.

The commenters' arguments with respect to the amount of sales load subject to refund rights differ little from those made in the prior proceedings. In reviewing the basis for the "compromise" position taken with respect to scheduled life insurance, it is clear that attention *was* focused on the high initial distribution expenses.[81] Also important, however, were the high early lapse rates. The release adopting rule 6e–2 stated:

> The Commission's original proposal represented an attempt to strike a delicate balance. The insurance industry has argued persuasively that the cost of selling and issuing variable life insurance contracts would be greater than initial selling costs incurred in connection with mutual funds *and* that those costs are incurred primarily in the first year of the contract. Thus, it seems appropriate to permit the insurance company to retain a large amount of sales load . . . . However, . . . experience . . . indicates that high numbers of purchasers will allow their contracts to lapse in the early years . . . . For this reason, the Commission balanced the increased amount of sales load which the life insurance company could retain . . . by extending the period for refund . . . .
>
> * * * * *
>
> The Commission determined not to adopt the other proposed modifications of the refund requirements of rule 6e–2 primarily because each of these would not only substantially reduce the amount of refund to be received by a contractholder but would also increase the amount of sales load allowed to be retained by the insurer . . . .[82]

Given the "delicate balance" that spawned the refund exemption and the apparent lack of changed circumstances regarding the flexible life insurance product, the Commission does not believe a full scale reexamination of this issue is warranted. Therefore, the Commission has determined not to make the changes suggested by the industry commenters.

The Commission, however, has modified this paragraph slightly in recognition of the way in which the refund provision currently operates when more than two guideline annual premium payments are made. As originally adopted, the literal wording of the rule might have permitted the insurer to determine refundable sales load on payments in excess of two guidelines without reference to each individual payment. An insurer could reduce the amount of sales load that would otherwise be refundable for the first two guideline payments whenever the load on payments in excess of the first two guidelines was less than 9%. For example, under a literal reading of the rule, an insurer could have escaped from the rule's refund requirements in an unforseen manner by structuring a contract's sales loading as follows: 35% of payments up to the first guideline, 11% of payments up to the second guideline, and 3% of payments thereafter. Thus, under this example, an insurer would be required to refund a portion of the sales load, but only if the contractowner restricted his payments during the first two contract years to an amount less than three guideline payments. This potential regulatory anomaly has been eliminated in order to produce a more equitable application of the refund requirements. Comment is requested on this change.

(2) *Conversion rights.* As a condition for exemption relief from section 27(d) of the Act, and as an alternative to the surrender and refund rights discussed above, rule 6e–3(T)(b)(13)(v)(B) requires that the contractholder be given the right to convert his contract into a fixed benefit life insurance policy during the first two contract periods, *i.e.*, the first 24 months. The rule requires that the new policy must provide for either the same death benefit or the same net amount at risk to the life insurer as the flexible contract at the time of conversion. It must also provide for premiums based on the same issue age and risk classification of the insured as the flexible contract, subject to an equitable adjustment.

The ACLI and two other commenters recommended that the rule be amended to require only that the fixed benefit contract received upon conversion provide the same net amount at risk as the flexible contract. They argued that allowing the contractholder to choose that option or the same death benefit, as the rule now, provides, gives rise to significant adverse selection problems that are unacceptable to the industry. The ACLI letter cites the example of a flexible contractholder with a death benefit "Option I" contract having a $100,000 death benefit and a $25,000 cash value. This contractholder may be able to convert to a fixed premium contract providing a $100,000 death benefit with only a $2,000 tabular cash value at the time of conversion. The additional $23,000 would therefore be unnecessary under the new contract and may be returned to the contractholder. The letter states that in this example the contractholder has obtained a significant increase in insurance protection—the net amount at risk has changed from $75,000 to $98,000—without evidence of insurability. Thus, the ACLI letter contended that the life insurer would be vulnerable to considerable "antiselection."

While this is an appealing argument, it appears to the Commission that, as a practical matter, the danger of "antiselection" risk is more theoretical that real. In the first place, the conversion right applies only where the contract is excess loaded and the contractholder chooses not to surrender. Further, for a material "antiselection" risk to occur, the contractholder must have made very large payments, and must have suddenly contracted a terminal illness, all within the first 24 months (otherwise, he would have no "motive" to "antiselect"). In addition, unless the contractowner dies soon after conversion, the life insurer will be compensated for the increased net amount at risk by increased cost of insurance charges. The "antiselection" risk seems still further minimized by the adjustment procedure, which ensures that the contractholder remains in the same underwriting class and, indeed, places him in the same position as if he had bought the fixed benefit contract on day one.

Balanced against this remote but possible risk to the life insurer, is concern for the contractholder. His decision to make the large initial payments would seem to entitle him to have the option of deciding, in effect, how to apply those funds upon conversion. Moreover, this approach is more consistent with the policies underlying rule 6e-2(b)(13)(v)(B) than is the ACLI's suggestion. Therefore, the Commission has determined to leave the rule as written.

The ACLI next recommended certain technical refinements related to the mechanics of conversion. They stated these refinements are necessary to implement the purposes of the rule.

The ACLI letter correctly noted that conversion may be made either to "traditional insurance policies" or to a universal life contract, provided the contractholder is given the right to convert to a fixed benefit contract without providing evidence of current insurability.[83] If the conversion is made

---

[81] The "compromise" was the extension of the refund period from 18 to 24 months, and the allowance for retention of 30% rather than 15% of the first year's payments.

[82] Investment Company Act Release No. 9482 (October 18, 1976) at 18–19, 23 [41 FR 47023, 47026 (Oct. 27, 1976)].

[83] One of the objectives of the conversion right, both in rule 6e-2 and in rule 6e-3(T), is to provide a means to prevent lapses by contractholders who become dissatisfied with a variable contract but who might prefer to continue coverage if it were fixed. Therefore, the new contract issued on conversion should offer essentially the same

Continued

to a universal life contract or other flexible premium programs, the ACLI letter recommended that the insurance charges (rather than the premiums) should be required to correspond to those of the exchanged flexible contract. The Commission agrees and has added language to clarify that the new contract must provide for "premiums (*or cost of insurance or other charges, if such plan of insurance provides for flexible premiums)* which are based on the same issue age and risk classification of the insured as the flexible contract. . . ." A conforming change related to the equitable adjustment has also been added to this subparagraph.

The ACLI requested confirmation of its view of the requirement described above that the conversion reflect "the same issue age . . . of the insured as the flexible contract." That is, if the conversion is made to a fixed premium contract, those premiums are computed as if payable from the insured's issue age under the flexible contract, subject to the equitable adjustment; if made instead to a flexible premium contract, the insurance charges (or other charges assessed on the basis of issue age and risk classification) are made on the same basis as if the new policy had been issued at the time the flexible contract was issued.[84] The Commission confirms this interpretation. It also notes that the method of computing the equitable adjustment must be filed as an exhibit to the registration statement.

One other matter regarding conversion rights warrants discussion. This concerns "combination" flexible contracts that allow contractholders at any time to shift all of their cash value from variable participation in the separate account to fixed participation in the general account.[85] This type of product design may meet the objectives of the conversion right and, therefore, may comply with paragraph (b)(13)(v)(B). For example, the Commission has received registration statements for contracts under which a contractholder, pursuant to his 24-month coversion right, is permitted to transfer all of his cash value to the general account, without charge or reference to any other limitations on transfers. The transfer also serves to change his allocation instructions for all future payments received. These contracts satisfy the rule's conversion rights.

f. Subparagraph (b)(13)(viii)—"Free Look" Period

Subparagraph (viii) provides an exemption section 27(f) [15 U.S.C. 80a-27(f)], and rule 27f-1 [17 CFR 270.27f-1] thereunder, provided that the contractholder is permitted to withdraw from the contract at any time up to the latest of (i) 45 days from the date of the application for insurance, (ii) 10 days from receipt of the contract by the insured, or (iii) 10 days from the mailing of the notice of the right to withdraw.[86] This is known as the "free look" right. The amount of the refund upon withdrawal is permitted to reflect investment performance (unless state law or the contract requires a refund of all payments made).[87] All contract fees or other changes, however, must be refunded to the contractholder.

The ACLI letter recommended that the 45 day period be eliminated as one of the alternative measuring periods for the free look right. The letter argued that this period unduly extends the time during which the life insurer must bear the insurance risk without compensation (in the event the free look right is exercised, the cost of insurance charges must be refunded to the contractholder). As Petitioner, the ACLI had made a similar request to delete the 45 day period.[88]

The Commission has reached the same conclusion as it did in response to the original petition. As stated in the adopting release, ". . . the 45 day provision . . . already represents a shortening of the 60 day withdrawal period provided by section 27(f), and the Commission is reluctant to shorten this period further. . . . [M]oreover, the fact that the flexible contractholder will bear the investment risk during the free look period further lessens any need to shorten the withdrawal period." Therefore, no change has been made in this provision.

The ACLI letter also requested a revision "to clarify" that asset charges reflected in net investment earnings need not be refunded upon exercise of the free look right. The letter argued that because investment risk is borne by the contractholder, there is an implication that the contractholder should also incur these charges. The Commission disagrees. The phrase denoting the refundable amount, "any contract fees and other charges imposed," refers not only to cash value charges, but also to charges assessed against separate account assets, such as investment advisory fees.[89]

7. Paragraph (b)(15)—Trust Accounts

This paragraph provides certain exemptions for underlying funds of separate accounts organized as unit investment trusts. The exemptions parallel those provided elsewhere in the rule for open-end management investment companies that are separate accounts.[90] The relief provided is subject to the condition that the underlying fund sell only to the separate accounts of the life insurer or of any affiliated life insurer. The comments on this paragraph focused on "shared funding" (described below), seed money, and "mixed funding."[91]

The ACLI letter requested that the rule permit separate accounts of unaffiliated insurance companies to use the same underlying fund ("shared funding"). It based its request on perceived economic advantages for the industry and the public. The economic advantages cited were the shared expertise of the investment manager and the cost efficiencies and investment

---

insurance protection, with the benefits being fixed instead of variable. While a flexible premium fixed benefit contract ("universal life") would be the most parallel contract to offer upon conversion, a guaranteed annual renewable term ("ART") contract that is renewable to the greatest extent permitted by state law would be permissible under rule 6e-3(T). Thus, an ART contract would be acceptable even though, typically, state regulatory requirements may limit coverage to age 60, 65, or 70 and/or limit the number of renewals.

[84] The ACLI letter cited two examples: (1) if the insured was age 35 when the flexible contract was issued, the insurance charges under the new contract will be those determined under the relevant mortality table for an issue age of 35 and (2) if the insured is age 37 at the time of conversion and the new contract (like the flexible contract) deducts cost of insurance based on the insured's attained age, the insurance charge for the year following conversion will be based on a 37-year old insured (not a 35-year old).

[85] Combination contracts are contracts that offer the options of both variable and fixed cash values.

[86] This provision also conditionally permits the life insurer to design the form of the notice required by Form N-27I-2 [17 CFR 274.303], and to mail or personally deliver it to the contractholder.

[87] The life insurer, consistent with bearing the investment risk (when payments are to be refunded), may require that contractholder's funds be paced in a particular account, (*e.g.*, the money market portfolio of the funding vehicle) for the free look period.

[88] The petition implied that the 45 day alternative to the section 27(f) 60 day period was based solely on the NAIC Variable Life Insurance Model Regulation in effect at the time rule 6e-2 was adopted (but which had been dropped by the time the suggested rule was drafted). However, in rule 6e-2, the section 27(f) 60 day refund period was already liberalized because the life insurer was required to refund all premium payments. The life insurer would thereby assume the investment risk, and the costs of insurance and administration for the duration of the free look period.

[89] As a practical matter, the advisory fee will probably be a fairly small amount even over the longest period, *e.g.*, 45 days. Other examples of refundable charges would be sales load and premium taxes.

[90] *See* discussion in Section B.4., *supra*, for additional background on paragraph (b)(15). This paragraph is based on rule 6e-2(b)(15).

[91] *See* Section A., *supra*, for a discussion of "mixed funding."

flexibility offered by a large pool of funds.

The Commission has granted several exemptive orders to allow applicants to participate in shared funding arrangements.[92] However, this is a very new and somewhat complicated area from a regulatory perspective. Too few applications have been received to have raised and explored all of the issues inherent in these arrangements.[93] For example, there are a number of issues concerning voting arrangements in this area. Therefore, the Commission has decided not to address shared funding arrangements in the rule at this time, but expects to deal with this by rule after more applications experience.

The ACLI letter suggested adding a clause to the paragraph which would permit an underlying fund to contain "seed money" as a direct contribution from a life insurer's general account.[94] The letter asserted that a direct contribution is administratively less complex than the method currently contemplated by the paragraph. The Commission has no objection to amending paragraph (b)(15) generally along the lines suggested. However, this amendment is technical in nature and limited in scope; it is not meant to be read as a substantive change or as affecting the substantive voting rights of contractholders under the Act.[95]

With respect to the conditional exemption to permit mixed funding (variable life insurance and variable annuities in the same funding media), the ACLI letter endorsed the omission in the rule of certain conditions contained in individual applications.[96] It also suggested a modification to the condition requiring that a majority of the underlying fund's board of directors not be "interested persons" under the Act.[97] The ACLI letter stated that section 10(a) of the Act [15 U.S.C. 80a–10a] does not require such board composition, and it asserted that there are no policy reasons for conditioning mixed funding relief in this manner. The ACLI argued that the purposes of the rule would be satisfied if either the board or a board committee, constituted in either case with a majority of disinterested directors, performed the monitoring function.

The Commission agrees that the position taken in this paragraph is more conservative than the requirements of section 10(a) of the Act. This is primarily a function of codifying exemptive relief granted on the basis of specific applications—the only administrative experience the Commission has with respect to mixed funding. However, the policy of requiring a disinterested majority on the board is appropriate in that the board is charged with monitoring for irreconcilable conflicts and promptly taking whatever corrective action may be necessary. These responsibilities require a cautious approach. This is not to say that there are no other, equally appropriate, safeguards to deal with potential conflicts of interests arising from mixed funding. It means simply that the Commission would prefer to see any evolvement in this area, along the lines suggesed by the ACLI or otherwise, take place in the context of the application process. In that process, alternative safeguards could be fully discussed and evaluated against the backdrop of specific factual situations.[98] Hopefully, subsequent administrative experience will provide a basis for dealing with this area by rule.

*C. Paragraph (c)—The Definitions*

Paragraph (c) of the rule defines various terms used in the rule.

1. Paragraph (c)(1)—Flexible Premium Variable Life Insurance

This paragraph defines a flexible contract for purposes of the rule as a contract of life insurance, subject to regulation under the insurance laws of every jurisdiction in which it is offered, which contains certain features. Those features include payments which are not fixed as to both timing and amount (with a limited exception for the first two contract periods), a death benefit the amount or duration of which may vary to reflect the separate account's investment experience, and a cash value that varies to reflect the separate account's investment experience.

Comment was requested on the Commission's decision to omit a proviso to the definition in paragraph (c)(1) suggested by the Petitioner, that a flexible contract shall not include that portion of a contract treated under state law as providing any annuity benefits other than as a settlement option. The ACLI letter stated that this proviso was modeled on the Code definition of those flexible contracts entitled to life insurance treatment for tax purposes, *i.e.*, only contracts treated as life insurance (rather than as annuities) under state law.

The Commission believes that the definition of a flexible contract, as currently stated, is sufficient. As written, it already provides that the contract be one of life insurance and be appropriately regulated by the states. Therefore, the suggested priviso has not been adopted.

The ACLI letter suggested other modifications, including that the definition expressly acknowledge "combination products." [99] On the other hand, the ACLI letter also stated their belief that rule 6e-3(T), "properly read," already applies to any such product to the extent it is funded by a separate account. The Commission agrees with the ACLI, as an interpretative matter; the rule does not require that the contract be funded exclusively by a separate account or provide for a cash value the exclusively varies to reflect the investment experience of a separate account. Therefore, the Commission believes the language of the definition should be given its plain meaning and

---

[92] *See, e.g., Equitable Life Insurance Company*, Investment Company Act Release Nos. 14860 (Dec. 18, 1985) [50 FR 53037 (Dec. 27, 1985)] and 14899 (Jan. 14, 1986); *Scudder Variable Life Investment Fund*, Investment Company Act Release Nos. 14729 (Sept. 18, 1985) [50 FR 38934 (Sept. 25, 1985)] and 14752 (Oct. 11, 1985); *Variable Insurance Products Fund*, Investment Company Act Release Nos. 14714 (Sept. 11, 1985) [50 FR 37933 (Sept. 18, 1985) and 14757 (Oct. 15, 1985); *Provident Mutual Variable Life Insurance Company*, Investment Company Act Release Nos. 14710 (Sept. 10, 1985) [50 FR 37747 (Sept. 17, 1985)] and 14744 (Oct. 3, 1985).

[93] Indeed, a hearing has been requested on one of these applications, a notice of the filing of that application appears in Investment Company Act Release No. 15233 (July 31, 1986) [51 FR 28470 (Aug. 7, 1986.)]

[94] Currently, the life insurer may "seed" the underlying fund only by purchasing an interest in the separate account. In 1983, the staff issued a no-action letter to permit the parent of a scheduled life insurance issuer to invest initial seed money directly in the shares of the underlying fund from its general account without having to go through the trust account (as contemplated by paragraph (b)(15) of rule 6e–2). No-action assurance was given on the basis of representations that investing via the trust account would result, in this particular case, in increased costs and materially complicated recordkeeping, without any concomitant benefits to contractholders. *See* Metropolitan Tower Life Insurance Company (pub. avail. June 13, 1983).

[95] The Commission has determined to make some modifications in subparagraph (b)(15)(iii) to clarify contractholders' voting rights in the unit investment trust context. These changes are discussed in the Section B.4., *supra*.

[96] In the adopting release, at note 63, the Commission specifically requested comment on whether those omissions were appropriate.

[97] Paragraph (b)(15) conditions the exemption on, among other things, the board of directors (comprised of a disinterested majority) monitoring the fund for the existence of an irreconcilable conflict of interest.

[98] This would be especially important in the area of shared and mixed funding (*see* note 92 and accompanying text, *supra*) where, *e.g.*, the issues of control by the sponsoring life insurer and irreconcilable conflicts have yet to be fully analyzed for all factual situations.

[99] *See* note 85 and accompanying text, *supra*.

has not made any revision in the text.[100]

The ACLI letter requested a revision of subparagraph (c)(1)(i) to extend the ability of the life insurer to fix the timing and minimum amount of payments during the first two contract periods following the initial issuance to the same period following an increase in the level of death benefits. Their rationale was that life insurers have the same sales load concerns on the sale of an increase in benefits as they do on the initial sale of the contract—designing a "refund-proof" sales load structure while at the same time, assuring themselves of sufficient early sales load to cover the high initial sales expenses.[101] The Commission agrees and has amended the rule in line with the letter's suggestion. However, subsequent payments, and sales loads thereon, will have to be allocated proportionately between the original contract and the increase or addition of insurance benefits (the "incremental contract").[102]

On a related point, subparagraph (c)(1)(i) further allows the life insurer to prescribe a "reasonable minimum amount" for any payment in addition to those in the first two contract periods following issuance. The Commission wishes to clarify that in its view, a guideline annual premium is the highest minimum payment, that qualifies as the "reasonable minimum amount" a life insurer may prescribe. This is consistent with permitting guideline annual premiums to be used as a basis for measuring sales load compliance.

The ACLI and another commenter urged the Commission to view the two-year fixed premium language as a "safe harbor," and not to exclude from the rule other contracts with different premium requirements.[103] The commenters suggested expanding the rule to cover contracts resembling flexible contracts only in that they provide for at least *some* payments which are not fixed by the life insurer as to both timing and amount. The Commission does not believe it prudent to expand the rule's definition of flexible contracts. We acknowledge that not every contract will clearly fall within rule 6e-2 or rule 6e-3(T). The insurance industry is extremely innovative; it would be difficult to draft rules that would take into account prospectively every conceivable variation of contract design. The industry's pattern of innovation and product differentiation has already established itself for the new flexible life insurance product. The Commission prefers to treat "hybrid" contracts on a case by case basis, placing them in the context of either rule 6e-2 or rule 6e-3(T), with appropriate exemptive relief and conditions tailored to the particular contract. This practice will continue until a pattern emerges and the Commission has had enough experience to amend the existing rules or draft a new, separate rule.

a. Single Premium Contracts

The hallmark of a flexible contract, according to the petition, is the ability of the contractholder to adapt payments and the death benefits levels to his individual insurance needs, as economic conditions and personal circumstances change.[104] Rule 6e-3(T) and the guideline annual premium approach to sales load regulation were designed specifically to accommodate this novel life insurance product. Thus, the rule's regulatory approach is not intended to include those contracts which provide only a very limited range of flexibility.[105]

Assessing whether there is sufficient flexibility to qualify a contract for rule 6e–3(T) is particularly difficult in the case of a single premium variable life insurance contract ("single payment" contract). These contracts typically require an initial payment that is large enough to provide the future benefits under the contract until the maturity date. In the context of rule 6e–3(T), this payment is usually set at an amount no greater than the guideline single premium limitation (sometimes referred to as "GSP") defined in the Code.[106]

Under the Code, a single payment contract that requires a payment equal to the guideline single premium (assuming the Code's 6% rate) could not permit any further payments. Therefore, it is functionally equivalent to a scheduled contract, and is appropriately regulated under rule 6e–2.[107] However, a more analytically difficult situation is that involving a "flexible" single payment contract that requires payment of some amount less than 100% of the guideline single premium and that permits subsequent payments to be dropped-in (subject to certain conditions).[108]

Rule 6e–3(T) should apply only to contracts for which there is a reasonable expectation that unscheduled payments will be made by contractholders.[109] For example, the rule would generally not encompass contracts that require more than 80% of the guideline single premium as the initial payment.[110] As the amount of the

---

[100] This conclusion does not constitute a judgment of the Commission on the question of whether interests in the general account should be registered as securities under the Securities Act of 1933 or the general account registered as an investment company under the Act.

[101] The ability to fix payments in the first two contract periods was meant to address these concerns.

[102] Allocation is discussed in greater detail in connection with paragraph (d)(2), the computational section for sales loads on changes in contract benefits. *See* discussion in Section D.2, *infra*.

[103] The example cited by the ACLI letter was of a contract that provided for a minimum death benefit guarantee conditioned on payment of specified minimum premiums. This type of contract attempts to encourage regular, specified payments by tying the meeting of a payment schedule to the additional benefit of a guaranteed minimum death benefit. However, the payments so "scheduled" are not mandatory; the schedule merely represents an additional option to the contractholder. Therefore, as an interpretative matter, this type of contract design may rely on the rule.

[104] *See* petition at 9–11.

[105] *See* the adopting release's discussion on the definition of flexible premium variable life insurance.

[106] The more widely used of the two tests in Section 7702 of the Code, either of which a contract must meet in order to be treated as life insurance for tax purposes, is the guideline premium/cash value corridor test. This test provides that two requirements be met at all times: (1) the sum of the premiums paid cannot exceed the guideline premium limitation; and (2) the death benefit cannot be less than the "applicable percentage" multiplied by the contract's cash value. *See* note 31, *supra*, for a discussion of the term "applicable percentage." Generally speaking, unless the contract has been in force for many years, the guideline premium limitation is the single premium at issue necessary to fund the future benefits provided under the contract, based on mortality and other charges fixed in the contract and based on interest at the greater of 6 percent or the minimum rate(s) guaranteed in the contract. *See Deficit Reduction Act of 1984* (Pub. L. No. 98–369, § 221, 98 Stat. 767), H.R. Report No. 432, 98th Cong., 2d Sess. 1442–1450 (1984).

[107] *See, e.g.*, registrations statements filed by IDS Life Insurance Company (File No. 2–97637, Aug. 11, 1986) and The Guardian Insurance and Annuity Company, Inc. (File No. 2–97765, May. 2, 1986).

[108] Two typical conditions are that the payment (1) not increase the death benefit, because the "drop-in" payments are accepted without new evidence of insurability, and (2) not cause the contract to fail to qualify as life insurance under the Code's definition.

[109] The text of paragraph (c)(1) has been amended to provide expressly for this standard, which was previously implicit in the rule but addressed directly only in the adopting release. Comment is requested, however, on this clarification.

[110] The Commission realizes, however, that nothing in the rule text, as originally adopted, or the adopting release, expressly prohibits these contracts. In this regard, some registration statements for similar contracts have been declared effective by the staff.

There may be other ways to satisfy the "reasonable expectation" standard. *See, e.g.*, the prospectus for the flexible contract offered by Charter National Life Insurance Company (File No. 33–3448, July 9, 1986). The contract provides for a large initial premium that is consistent with the GSP limitation under Section 7702 of the Code. It also permits an additional premium payment up to $5,000 in a contract year without evidence of insurability, even though the additional premium payment causes the death benefit to increase.

initial premium payment approaches the Code's guideline single premium limitation, a contractholder is restricted in the amount of additional premium that can be paid. In addition, a contractholder may be less inclined to make further payments since the initial payment would keep the contract in force for many years, assuming the cash value earns a moderate return.

This is not to say that contracts which permit (rather than require) a contractholder to pay 100% of the guideline single premium or which condition a desirable contract feature, such as simplified underwriting, on such a payment, would necessarily fail the "reasonable expectation of further payments" standard of the rule. In these cases, the making of a very large (or maximum) initial payment is a choice for the contractholder, not a requirement of the life insurer; the life insurer would have to be prepared to deal with the potential payments.

One difficult question in this area is to determine where a true choice exists. A true choice would not exist, for example, where a contractholder is offered the sole option of accepting or declining a contract based on simplified underwriting and payment of an amount equal to 100% of the guideline single premium. That would simply be a one-payment schedule. A more problematic scenario, for example, is where a choice is given to an employer to select for the benefit of the contractholder either an 80% GSP/full underwriting contract or a 100% GSP/modified and simplified underwriting contract.[111] Comment (particularly a cost/benefit analysis for the industry and contractholders) is requested on these interpretive matters and on single payment contracts offered in the group market, with respect to their status under rule 6e–3(T).

Finally, the Commission wishes to discuss a matter relating to the fixing of premium payments for the first two years, as permitted by paragraph (c)(1). This matter concerns both single payment contracts and other flexible contracts. The issue is the need for, and appropriateness of, the guideline annual premium approach (contrasted with the "payments" approach) to sales load regulation where large payments are required in the early years of the contract.[112]

The reason for allowing payments to be fixed by the life insurer in the first two years is to ensure that, by requiring two full annual guideline payments, the life insurer will have a reasonable base against which to assess a full sales load to help offset the high early distribution expenses of this product.[113] Requiring the equivalent of four guideline annual premiums in the first two year period provides the life insurer with the opportunity to assess the maximum total sales load permitted upon the sale of this product, *i.e.*, the full 180% of a guideline annual premium.[114] The more guideline annual premiums that are required to be paid, the larger the amount the insurer can count on receiving and against which it can assess a sales load.

Requiring more than four guideline annual premiums in the first two years should obviate the need (and, indeed, the rationale) for a sales load test based on guideline annual premiums. The Commission believes it would be an inappropriate departure from what was contemplated by section 27, to permit excess sales loads to be assessed against payments of such large amounts. The alternate sales load test under subparagraph (b)(13)(i)(B) for "payments" contracts, should, therefore, be used in these circumstances. The Commission has amended the rule to include this requirement.[115] However, it requests comments on this issue.

2. Paragraph (c)(2)—Incidental Insurance Benefits

This provision defines the term "incidental insurance benefits" as those insurance benefits under the contract which do not vary with the investment experience of the separate account.

The adopting release requested comment on the omission of the petition's suggestion that incidental insurance benefits under rule 6e-3(T) be limited only as to those insurance benefits which do not "have discrete cash values that may" vary with investment experience. The ACLI letter commented that there may be additional benefit riders to a contract that indirectly reflect the variable benefits of the contract, but that do not have independent variable cash values in the separate account. It asserted that these riders should legitimately be included within the paragraph (c)(2) definition. As an example, the ACLI letter cited the waiver of premium rider.[116] This type of rider provides that if the insured becomes disabled, the monthly deduction for all costs of insurance are waived for the period of the disability. The amount waived (the monthly deduction) varies depending upon the net amount at risk and cash value, which are related to, in turn, the investment experience of the separate account. However, this incidental insurance benefit does not have any "discrete cash value;" it is only indirectly related to fluctuations in the separate account. The cost to the contractholder of this benefit does not vary based on the amount waived and, the ACLI letter maintained, this rider is a form of traditional insurance benefit. In contrast, the ACLI letter stated that a rider for variable annuity benefits funded by its own variable cash value does have a "discrete cash value."

The Commission agrees that certain incidental insurance benefits that indirectly fluctuate with the investment performance of the separate account, but which do not have independent cash values, can be fairly treated as "fixed" benefits for purposes of the rule.[117] Therefore, the Commission has adopted the ACLI's suggested language in this provision.

3. Paragraph (c)(4)—Sales Load

This provision defines "sales load" as the difference between "payments" made and certain enumerated items deemed *not* to be sales load. Because sales load and other expenses may not necessarily be deducted from payments, this provision measures sales loads in terms of receipt of guideline annual premiums (*see* the discussion of this measurement under subparagraph (b)(13)(i), Section B.6.a., *supra*).

a. Subparagraph (c)(4)(i)—Increase in Cash Value

The first item deemed not to be sales load is "the amount of the increase in the cash value for the period that is attributable to payments made and not

---

[111] This question arises because of the traditional posture of federal securities regulation in this area that has always looked through, for example, a master contractholder or plan administrator to the individual contractholder. (*See, e.g.*, the latest amendment to rule 22c–1, Investment Company Act Rel. No. 14756 (October 15, 1985)) [50 FR 42680 (Oct. 22, 1985)].

[112] Subparagraphs (b)(13)(i) (A) and (B), respectively, of rule 6e–3(T).

[113] *See* discussion in Section B.6.a., *supra*.

[114] This is based on the permissible loads of 50% of the first, second, and third guideline annual premiums, and 30% of the fourth guideline annual premium. This excess sales load design would, of course, be subject to the surrender and refund rights under subparagraph (b)(13)(v).

[115] *See* revised paragraph (b)(13)(i).

[116] The staff subsequently granted a no-action letter request for this type of rider. *See* USAA Life Insurance Company (pub. avail. August 30, 1985).

[117] *See, e.g.*, the prospectus for Variable Appreciable Life Insurance Contracts, offered by Pruco Life Insurance Company (File No. 2–89558, May 1, 1986), which includes a description of a rider that provides monthly renewable term life insurance at increasing rates, designed to increase the amount payable upon the death of the insured.

to net investment earnings for the period." [118] The ACLI letter repeated a suggestion made in the petition that the definition of sales load look to the increase in the "cash surrender value" instead of the "cash value." It contended that the "cash surrender value" approach recognizes load at the time the payment is made, rather than upon actual surrender or withdrawal, and was intended as a way of equating the treatment of front-end and deferred loads with respect to the stair step requirement. However, the ACLI letter also stated that the "cash value" formulation is "workable" if their understanding of the application of stair step rule is correct. The letter contains certain examples designed to reflect this understanding. Since most of these examples seem correct, the "cash value" formulation has been retained.[119]

Two commenters suggested that the "attributable to payments made" modifier on increases in cash value in (c)(4)(i) could cause sales load to be understated and should be deleted. There was also concern that in a contract period where no payment is made, it would appear there is a large negative sales load where, in fact, subtraction of a negative "increase" in cash value (in connection with subsequent sales loads) from payments algebraically produces a positive effect in determining sales load. Finally, they both recommended that, similar to investment earnings, where dividends are directly credited to cash value they should also be disregarded in determining sales load. The Commission believes that the rule already allows for these effects but has modified the wording of the subparagraph (c)(4)(i) to make it clearer.

b. Subparagraph (c)(4)(ii)—Use of the 1980 CSO Table

Subparagraph (c)(4)(ii) specifies the 1980 CSO Table for purposes of the cost of insurance deduction. The ACLI letter repeated its suggestion made in the petition and urged that the 1958 CSO Table be specified instead. The discussion of those comments can be found under the discussion of paragraph (c)(8), the definition of "guideline annual premium." [120]

On a related point, the Commission has decided to permit the use of the 1958 CSO Table, for purposes of the cost of insurance deduction, in calculating sales load under paragraph (c)(4), provided that the flexible contract is subject to paragraph (b)(13)(i)(B).[121] The reason for this decision is that sales load on these contracts is based on payments actually made, rather than on guideline annual pemiums, and can at no time exceed 9 percent of payments made. The Commission has amended subparagraph (c)(4)(ii) to reflect this determination, subject, however, to an appropriate "sunset" provision.

c. Subparagraph (c)(4)(vi)—Substandard Risk Charges

Subparagraph (c)(4)(vi) excludes from sales load any additional charge made where the insured does not meet standard underwriting requirements. The ACLI letter proposed a modification to this subsection to clarify that this item includes additional insurance charges in guaranteed issue and simplified underwriting markets (*e.g.*, the pension market). The Commission agrees and has adopted the suggested language.

d. Subparagraph (c)(4)(viii)—Modal Payment Charge

Subparagraph (c)(4)(viii) excludes from sales load an additional "interest" charge when payments are made more frequently than annually, [122] but only in connection with required minimum payments during the first two contract periods. The ACLI letter stated that this item should be read to encompass interest charges reflected in the first modal payment payable on the normal due date because each such modal payment is typically priced to contain a level interest component. The letter also expressed concern that the example in footnote 67 of the adopting release could preclude the above interpretation. The Commission, as an interpretative matter, agrees with the ACLI's comment that to the extent each of several modal payments contains a level interest component, it would nonetheless be permitted under the rule.[123]

e. Subparagraph (c)(4)(x)—Dividend Allowance

Subparagraph (c)(4)(x) permits, for a participating flexible contract, the deduction of dividends assuming a gross annual investment return of 5% for the separate account which funds the contract. It also prescribes two methods of determining the deduction. The ACLI letter repeated the recommendation of the petition that the dividend allowance reflect a net rather than gross investment return. The adopting release stated that this suggestion seemed to permit a greater dividend deduction (and correspondingly a higher sales load) than rule 6e–2, was not discussed in the petition, and appeared unwarranted.

The ACLI letter represented that the change from a gross rate to a net rate does not permit a relatively higher sales load, mirrors the effect of rule 6e–2, and is necessary in light of changes in product design since rule 6e–2 was adopted. The ACLI letter stated that under scheduled contracts, where the assets of a single separate account were all invested in the same fund, there was for each company (and within the industry) an approximately uniform relationship between the 4% gross rate prescribed for the dividend deduction and the 3% to 3½% *net* rate used to compute the cost of insurance deduction. Today, the ACLI argued, with miltiple separate accounts or underlying funds and differing expense charges, the stipulation of a *gross* interest rate means that there is generally no standard *net* interest rate. The ACLI letter also offered that since the principal element of dividends is a return of mortality charges which are likely to incorporate a 5% net interest assumption (to match the basis for deducting such charges from payments pursuant to subparagraph (b)(13)(i) regarding sales load calculation), it is desirable to calculate dividends using the same interest rate, *e.g.*, to avoid stair step problems. Finally, the ACLI letter represented that if a life insurer used

---

[118] Subparagraph (c)(4)(i).

[119] The ACLI letter asked for the Commission's concurrence with examples 6, 7, 8, and 9, used in their comments on paragraph (d)(1)(ii), on pages 133–136 of the letter. The Commission concurs with examples 6–8, subject to the replacement of the "years" concept of measurement with receipt of guideline annual premiums in example 7 (*see* discussion in Section B.6.a., *supra*). The Commission does not, however, concur with example 9 on page 135 of the ACLI letter, to the extent that sales load is charged on the basis of payments not actually received. *See* discussion on the guideline annual premium in Section B.6.a., *supra*, and on the computational rule in Section C.4., *infra*.

[120] *See* discussion in Section C.4., *infra*.

[121] *See* note 40, *supra*. The Commission has granted several exemptive orders to permit the use of the 1958 CSO Table in flexible contract designs that compute their sales load on the basis of actual payments. *See, e.g., The Life Insurance Company of Virginia*, Investment Company Act Release Nos. 14428 (March 19, 1985) [50 FR 11967 (March 26, 1985)] and 14475 (April 17, 1985); *The Volunteer State Life Insurance Company*, Investment Company Act Release Nos. 14525 (May 17, 1985) [50 FR 21529 (May 24, 1985)] and 14653 (August 1, 1985).

[122] The various frequencies (*e.g.*, semiannually, quarterly, and monthly) are generally referred to as "modes" of premium payment.

[123] The referenced example in the adopting release was of a contract that required a $1000 payment in the second year, and a contractholder who made a $400 payment on January 1 (the normal due date) and a $750 payment on June 1, thus incurring an interest charge on the $600 ($1000–$400=$600) reflecting the time value of the money the life insurer had anticipated collecting on the normal due date. To the extent interest on the $600 was factored into all payments, on a level basis, it would be permitted under the rule.

calculation method B, the 5% net interest rate has only a small effect on the size of the deduction, and if calculation method A is chosen, it will actually reduce the size of the deduction. The Commission concurs in the ACLI's assessment of the effect, and utility, of changing the investment return reflected in the dividend allowance from a gross to a net amount and has amended subparagraph (c)(4)(x) accordingly.

f. Additional Risk Charges

The ACLI letter proposed a new subparagraph under (c)(4) to permit the exclusion from sales load of any additional charge assessed specifically for any mortality or expense risk or interest rate guarantees, to the extent that such charges are not reflected in net investment earnings. The ACLI cited as the basis for this suggestion the possibility that in the future some companies may impose risk charges as cash value charges rather than asset charges, and may develop contracts with guaranteed minimum rates of investment return for which a charge would be appropriate. The Commission believes such "possibilities" are too speculative to warrant attention in the rule at this time. Therefore, this provision has not been adopted.

4. Paragraph (c)(8)—Guidance Annual Premium

As discussed above,[124] rule 6e–3(T) adopted the concept of a "guideline annual premium" as an analogue to scheduled payments under rule 6e–2. "Guideline annual premium" is defined in subparagraph (c)(8)(i) generally as the level annual payment necessary to provide the future benefits under the contract through maturity. Subparagraph (c)(8)(i)(A) of the definition assumes annual payments fixed by the life insurer as to both timing and amount. Four additional assumptions are specified by subparagraph (c)(8)(i)(B): (1) the 1980 CSO Table; (2) net investment earnings at the greater of an annual effective rate of 5% or the rate guaranteed at issuance; (3) sales load under the contract; and (4) the fees and charges associated with the contract. Comment was received on two of these assumptions, the 1980 CSO Table (which was the primary focus of the commenters) and the 5% rate.

Several commenters recommended that the definition of "guideline annual premium" mirror the definition provided in the Code, particularly with reference to the 4% rate used in the Code. They argued that it would be administratively easier to use the same rate in the rule as is in the Code. They also argued that use of a 5% rate in the rule would produce an unacceptable risk since its use for flexible contracts (which do not guarantee any rate of return) would necessitate its use (instead of the usual 4%) in pricing fixed benefit policies (which do contain a guaranteed rate). These arguments, however, are not persuasive. The Commission carefully considered these same arguments earlier (in the context of comments on the petition) and the adopting release sufficiently discussed many of them.[125] The Commission concluded therein that similar definitions between the Code and the rule were not necessary. It also concluded that the 5% rate was a sufficiently conservative estimate of long term investment performance.

The ACLI stated that use of the 1980 CSO Table in the definition of sales load and elsewhere in rule 6e–3(T) is of critical concern to the industry. The ACLI argued that it is inappropriate for the Commission to specify insurance charges, even in the definition of sales load. It also disagreed with the statement in the adopting release that the 1980 CSO Table will "more closely reflect the actual mortality experience upon which flexible life will be priced."

Moreover, it stated that specification of the 1980 CSO Table effectively requires use of that table for insurance-related purposes, contrary to the Commission's intent. Finally, the ACLI maintained that rule 6e–3(T) should be conformed to the proposed amendment to rule 6e–2. This amendment would permit use of either the 1958 CSO Table or the 1980 CSO Table, whichever is guaranteed in the contract. Three other commenters made similar comments.[126]

Notwithstanding the above, the ACLI letter concluded that if the Commission chose to retain the assumption of the 1980 CSO Table, the adopting release should specifically reconfirm that it is for the sole purpose of providing an assumption for regulating sales load under the Act.

The Commission disagrees with the ACLI's assertion that it is inappropriate to specify the 1980 CSO Table as an assumption necessary to the definition of sales load. To permit sales load to be based upon the guideline annual premium, the assumptions used must be designed, to the maximum extent possible, to produce an amount that could reasonably be expected to be paid by a flexible life insurance contractholder. The 1980 CSO Table, combined with the 5% rate for net investment earnings and the other assumptions, produces such an amount.[127] However, the 1980 CSO Table is specified here for the sole purpose of regulating sales load under the Act. It does not require insurers to use that table for insurance-related purposes, such as calculating the cost of insurance or valuing reserves.[128]

The ACLI also had a clarifying comment with respect to the 1980 CSO Table. It noted the ambiguity created by the existence of several versions of the 1980 CSO Table (most of which were issued after the petition was filed),[129] and suggested two alternative resolutions. Specifically, the ACLI proposed that companies be permitted to use (1) a 1980 CSO male table for compliance demonstrations in all circumstances, or (2) any "non-biased" combination of tables. The ACLI stated that this latter suggestion could be accomplished by either a "universal" reference to the 1980 CSO Table in the rule or by a definition of the table parallel to that in the Code. Two other commentators recommended generally that smoker/non-smoker and sex distinctions, based on the relevant 1980 CSO Table (and factored into a particular flexible contract's mortality charges), be recognized in rule 6e–3(T).

The Commission has determined that any fair and "non-biased" combination

---

[124] *See* discussion of Subparagraph (b)(13)(i) in Section B.6.a., *supra*.

[125] Adopting release at Section II.C.B.

[126] In addition, one commenter proposed a very different definition of the "guideline annual premium." Its definition deleted reference to a maturity date and defined the "guideline annual premium" as equal to that for an Option I contract (even when the contract issued is an Option II contract). The suggestion was based on the commenter's earlier conclusion that the guideline annual premium would be substantially higher than most target premiums. *See* discussion of subparagraph (b)(13)(i) in Section B.6.a., *supra*.

[127] It is true that stipulation of the 1980 CSO Table may not permit certain life insurers to charge the maximum amount for cost of insurance and sales load, and still rely on the guideline annual premium contract to receive that sales load as early as possible. On the other hand, a life insurer would be able to deduct the maximum permissible cost of insurance charges (based on the 1958 CSO Table) and sales load under the 1940 Act, if it deducted the load on the basis of a level percentage of payments received.

[128] To meet the concern outlined in the ACLI letter that use of the 1980 CSO Table in the rule would dictate its use for all other insurance products offered by a company, one commenter suggested that companies consider guaranteeing charges based on the 1958 CSO Table, while actually charging on the basis of the 1980 CSO Table.

[129] The ACLI letter, at pages 101–104, mentioned a pair of 1980 CSO Tables for male and female lives, each with or without ten-year select factors; a 1980 CSO smoker and non-smoker mortality table each with a male and female table, with or without 10-year select mortality factors; and gender-blended mortality tables, with or without ten-year select mortality factors.

of tables is acceptable.[130] Therefore, the rule will continue to refer to the "1980 CSO Table" with this understanding.

Finally, the ACLI suggested that subparagraph (c)(8)(i)(B) of the guideline annual premium definition should refer specifically to subparagraph (c)(4)(x). Subparagraph (c)(4)(x) reflects the dividend allowance for "participating" contracts.[131] The Commission agrees and has amended the rule accordingly.

5. Paragraph (c)(9)—Cash Value and Paragraph (c)(10)—Cash Surrender Value

"Cash value" is defined generally as the amount available in cash upon a voluntary termination of a contract, without regard to any charges upon termination and any deduction of contract loans. "Cash surrender value" is defined as the cash value of a contract, less any sales load or other charges that may be deducted upon redemption. The ACLI suggested that, for clarification purposes, the definitions be revised to exclude specifically charges refunded upon exercise of the free look and refund rights. The ACLI stated that this would reflect the commonly understood meaning of these terms in the industry.

The definitions do not need to be amended; rather, certain interpretive matters raised by the ACLI's letter need to be clarified. When sales load is assessed as a front-end charge, it is deducted from payments and, therefore, never becomes part of the investment base that is put into the separate account. Thus, refundable excess sales load would not normally be thought of as part of the cash value. Conversely, amounts attributable to deferred or contingent deferred sales loads are placed in the separate account and made part of the investment base. Contractholders benefit from returns on these amounts and the life insurer assesses asset charges (*e.g.*, daily mortality and expense risk charges item.[132] Until deducted, these amounts are therefore treated as part of the cash value. This does not mean, however, that an insurer may not ultimately take the full sales load to which it is entitled; sales load that would be refunded upon exercise of the free look and refund rights does not become part of a contractholder's cash surrender value merely because of deferral. The only limitation is that no greater amount may be deducted as a deferred charge than could have been deducted as a front-end charge.

6. Paragraph (c)(12)—Contract Processing Day

The term "contract processing day" is used in subparagraph (b)(13)(iv) dealing with redeemability and contract lapses, and in subparagraph (b)(13)(vii) dealing with notification of the free look right. It is defined in paragraph (c)(13) (renumbered as (c)(12)) of rule 6e–3(T) as any day on which charges under th contract are deducted from the separate account. The ACLI requested confirmation of its view that the phrase "charges under the contract" does not refer to asset charges reflected in net investment earnings in the manner described in paragraph (c)(11). The Commission concurs in this view.

*D. Paragraph (d)—The Computational Rules*

Paragraph (d) sets forth several computational rules to be used in applying rule 6e–3(T).

1. Paragraph (d)(1)—Subsequent Sales Loads

a. Subparagraph (d)(1)(i)—Limitations

As discussed above, rule 6e–3(T) provides generally that sales load imposed on a flexible contract may not exceed 9% of the sum of twenty guideline annual premiums.[133] Paragraph (d)(1) permits sales load to be deducted other than from payments, *i.e.*, as a subsequent sales load.[134] The 9% limit on sales load shall be deemed satisfied with respect to any subsequent sales load if the amount of sales load deducted (together with any previously deducted front-end load) is not more than the amount that could have been deducted had the entire amount been taken as a front-end sales load.

The ACLI requested that the Commission reconsider the rejected "economic value" approach to sales load regulation.[135] It contended that the rule's failure to incorporate this approach would significantly limit the economic viability of flexible life insurance, particularly those contracts with contingent deferred sales load designs. In addition to the economic justifications referenced from the petition, the ACLI argued that this approach is consistent with the purposes of section 27(a)(1) and that the contractholder would often be in a better position, even if the dollar amount of sales load exceeded 9% of payments actually made. For similar reasons, four other commenters supported this approach.

The Commission continues to believe that, to the extent possible, permissible sales load should be limited to 9% of payments, as mandated by section 27 of the Act. In this regard, there is no persuasive reason for treating subsequent sales loads of flexible contract issuers differently from those of other issuers. Therefore, the Commission declines to reverse its findings on the "economic value" approach.[136]

The ACLI also offered certain other revisions of paragraph (d)(1). They stated that the paragraph, by its reference to sales load deducted "during each contract period" through the specified maturity date, can be read to suggest that the subsequent sales load in any year may not exceed the permissible front-end sales load deductible in that year only. The Commission agrees with the need for technical revision to clarify that the subsequent sales load is to be tested on a cumulative basis. This will be accomplished by replacing the timing notion of contract periods for purposes of sales load regulations with that of receipt of guideline annual premiums, i.e., "aggregate" approach to sales loads.[137]

In connection with this comment, the ACLI asserted that subsequent sales load "may be imposed in any contract period even if payments equal to the guideline amount have not been made." The Commission reiterates that the assumed payment of 20 guideline annual premiums to demonstrate, prospectively,

---

[130] For example, it would be appropriate to use a male table for male lives and a female table for female lives.

[131] A "participating" contract is an insurance contract under which contractholder dividends are payable—that is, a contract that entitles its owner to participate in allocations of surplus, as determined by the corporation's board of directors, if the experience of that class of contracts warrants a refund.

[132] These amounts are included when calculating the number of votes that a contractholder is eligible to cast.

[133] *See* Section B.6.a., *supra*.

[134] As discussed at note 46, *supra*, examples of subsequent sales load are: (1) a deferred sales load upon full or partial redemption; (2) a periodic deduction directly from a contract's cash value; (3) an asset-based sales load; or (4) a combination of any of the above. *See also* the discussion of sales load definition in Section B.1., *supra*.

[135] Under the "economic value approach," any subsequent sales load would be permitted so long as the contractholder would be in the same financial condition as would have resulted from a completely front-end sales loaded contract.

[136] The findings are discussed more fully in the adopting release in connection with paragraph (d)(1). The light of the rejection of the "economic value" approach, paragraph (d)(1)(i)(B)'s reference to "guideline single premium" and paragraph (d)(2)(ii)(B) have been deleted. In addition, the Commission has streamlined the text of paragraph (d)(1). The changes are strictly clarifying ones; they represent no change in substantive policy.

[137] *See* Section B.6.a. and b., *supra*. One commenter also suggested that subsequent sales loads be limited by reference to the permissible cumulative front-end load.

sales load compliance with the 9% of payments limitation, is not the same as "pretending" that guideline annual premiums have been paid at the time the sales load is deducted.[138] The policy that sales load cannot be taken unless a payment has actually been made is also consistent with the rule's provision that life insurers be able to fix payments for the first two years. This provision was designed to enable insurers to charge the maximum permissible sales loads they claimed were necessary.

b. Subparagraph (d)(1)(ii)—Stair Step

Subparagraph (d)(1)(ii) provides exemptive relief from the requirements of section 27(a)(3) for subsequent sales loads. It corresponds to the relief provided by subparagraph (b)(13)(ii) for front-end sales loads. The paragraph provides for a stair step requirement that the amount of any subsequent sales load deducted shall not exceed the proportionate amount of sales load previously deducted under the same methods.

The ACLI noted that the terms "proportionate amount" and sales load "method" are not defined in the rule. It requested confirmation of its understanding that "methods" appears to be distinguished on the basis of timing and the manner in which a charge is calculated, and that "proportionate amount" refers to sales load under each separate method in proportion to the base on which sales load is computed pursuant to the method. Another commenter suggested that it would be sufficient to limit sales load deducted from assets by reference to permissible cumulative front-end load. This commenter argued that it was not helpful to "strain" the stair step concept by applying it to subsequent sales loads.

In examining sales load structures for stair step violations, a method-by-method approach should be used, as noted in the release adopting Rule 6e–3(T). Under this approach, the stair step requirement is applied separately to the base test contract and the incremental test contract. Therefore, upon an increase in the contract's death benefit, a new, separate determination of whether the sales load structure complies with the stair step requirement should be made. *However*, such a determination is subject to the additional requirement that the maximum amount charged for sales load pursuant to each method under the incremental test contract cannot be greater than that charged pursuant to the corresponding method under the base test contract. For example, if the base test contract provided for a front-end load of 30% on the first guideline annual premium, the front end load on the first guideline annual premium under the incremental test contract could not exceed 30%.

The Commission believes that, consistent with section 27, the stair step concept should not be limited to front-end sales loads. The concept may, however, be difficult to apply to one particular method, *i.e., an* asset-based sales load structure. A literal application of the stair step requirement would, in effect, thwart the use of asset-based sales load designs. Thus, the language of the stair step requirement, as applied to asset-based sales loads, has been modified slightly to sharpen its focus. Solely with respect to this sales load method, the stair step provision is now directed at changes in the asset-based rate, rather than changes in the actual dollar amount deducted. The stair step requirement would preclude an asset-based sales load structure that allows the insurer to deduct a higher percentage of assets than was previously deducted under the same method. Thus, an insurer may not increase the percentage of assets taken as sales load above any of the percentages previously taken, without violating the stair step requirement.[139]

2. Paragraph (d)(2)—Sales Load on Changes in Contract Benefits

Paragraph (d)(2) sets forth the computational rules to be used in determining the permissible sales load on an increase in, or addition of, insurance benefits requested by a contractholder after issuance of the contract.[140] Subparagraph (d)(2)(i) affirmatively permits sales load in those cases. Sales load on each payment up through receipt of each guideline annual premium,[141] may not, however, exceed that which would be permissible under the "base test contract" [142] and the "incremental test contract," [143] *i.e.*, the total sales load may not exceed the sum of the corresponding loads under these tests.[144]

Paragraph (d)(2) goes on to provide that a flexible contract need not contain free look, refund or conversion rights with respect to an increase or addition if the incremental test contract deducts no more than fifty percent of the otherwise permissible maximum sales load.[145] Finally, subparagraph (d)(2)(iii)(D) does not permit additional sales loads on automatic benefit changes or on changes in death benefit options.

The ACLI and others suggested that the Commission clarify the application of the "50%" incremental test contract requirement.[146] The ACLI also commented on coversion rights following an increase in death benefits. Finally, the ACLI and another commenter inquired as to whether sales load could be deducted upon a decrease in face amount.

As a result of the comments received and the flexible contracts filed since rule 6e–3(T) was adopted, it is apparent that further clarification of the fifty percent sales load test is necessary.

The sales load limits for the base test contract dictate the maximum sales load for the incremental test contract.[147] If

---

[138] *See* Section B.6.a., *supra*. However, the ACLI letter is correct if it was referring to the situation where, for example, a fourth "guideline annual premium" of $2,000, subject to a 10% sales load, arrives in three installments; the life insurer may deduct 10% for each of the two installments that were received prior to a partial redemption without waiting until the full fourth guideline amount has been received. The assumption that 20 GAPs will be paid is necesary to demonstrate that, over the life of the contract, the sales load paid will average no more than 9%. In a scheduled premium product, one is permitted to assume that 20 annual premiums will be paid. The GAP concept is needed only to approximate an "annual premium." No other difference in sales load structure is needed or intended.

[139] *See* paragraph (d)(1)(ii)(B). The Commission recognizes that the dollar amount of sales load actually taken may increase or decrease daily as a percentage of payments. This does not contravene the policies underlying the stair step requirement, since the fluctuations would be due to factors beyond the insurer's control. The insurer nevertheless would be subject to the sales load limitations set out in subparagraphs (b)(13) (i), (v) and (viii) of the rule, and it may not deduct more sales load on a subsequent basis than that permitted to be deducted as a front-end charge.

[140] The text of the paragraph has been simplified.

[141] *See* Section B.6.a., *supra*, regarding the "aggregate" approach to sales load regulation.

[142] The base test contract is defined in paragraph (d)(2)(iii)(B) generally as the actual contract without the increase or change in insurance benefits.

[143] The incremental test contract is defined in paragraph (d)(2)(iii)(C) generally as a contract identical to the actual contract (defined in paragraph (d)(2)(iii)(A)), but providing only the incremental change in benefits.

[144] Paragraph (d)(2)(i) previously set forth these limitations as two separate tests (former paragraphs (d)(2)(i)(A) and (d)(2)(i)(B)). With the adoption of the aggregate approach, however, this is no longer necessary, and the paragraph has been revised accordingly.

[145] This limitation was formerly part of the definition of "incremental test contract." It is now set forth separately in paragraph (d)(2)(ii)(D) as one of the procedures for applying paragraph (d)(2).

[146] The ACLI stated that the "50%" test could be read as limiting average sales loads to 4½% rather than 9%. It should not, however, be read to limit sales load that does not otherwise trigger free look rights.

[147] The exemptive relief granted from the stair step provisions (discussed below) does not permit a larger percentage of sales load to be deducted for the incremental test contract than for the base test contract. In reality, there is only one "actual" contract.

the original (base test) contract provides for a sales load of 9% or less of each payment, then neither section 27 of the Act nor rule 6e–3(T)(b)(13) requires the contractholder to be given "free look," refund, or conversion rights. Therefore, an incremental test contract related to this base test contract would not be required to provide these rights either.

If, for example, an original contract provides for a sales load of 10–30% of payments up to the first guideline annual premium, section 27(f) of the Act and paragraph (b)(13)(viii) of the rule, would require that a free look right be given.[148] If the incremental test contract deducts the same sales load, this same right would have to be provided. However, if the incremental test contract takes only half of the sales load otherwise permissible under the actual contract,[149] *e.g.*, 50% of 30% of payments up to the first guideline annual premium (15% of such payments), then, under paragraph (d)(2)(ii)(D), no free look need be provided. The paragraph would effectively exempt the incremental test contract from the Act's requirement of a free look right at sales loads of 10% to 15%, as long as those amounts represent no more than half of the otherwise permissible sales load under the original contract.

If a contract initially deducts an excess sales load of 31% to 50% of payments up to the first guideline annual premium, paragraph (b)(13)(v) would require that a 24-month surrender and refund right, and a 24-month conversion right, be provided.[150] If the incremental test contract charged the same amounts, it would be subject to the same requirements. However, if the incremental test contract deducted only half of the otherwise permissible sales load, *e.g.*, 50% of 50% (25%) of payments up to the first guideline annual premium, none of these rights need be provided.[151] Sales load in excess of 25% of payments up to the first guideline annual premium for the incremental test contract would trigger the need to provide the rights contained in paragraph 6e–3(T)(b)(13)(v). Therefore, the conversion right would be immediately operable, but only sales load in excess of 30% of payments up to the first guideline annual premium would have to be refunded (sales load between 26% and 30% would be refund-proof).[152]

A related issue that has arisen in this area involves the need for guidance and uniformity on premium allocations between the original contract and the increase or addition of benefits.[153] A proportionate allocation is the fairest rule to apply across the board. This means that for all payments received after an increase of insurance benefits, there would be a proportionate allocation of payments between the base test contract and the incremental test contract, on the basis of their relative guideline annual premiums.[154] Thus, under proportionate allocation, a life insurer may not automatically deem the next payments received as being entirely "for" the increase in benefits. Were the insurer permitted to do so, it would likely subject those payments to a higher percentage of sales load because the base test contract would be in "trail load," while the incremental test contract would be subject to higher early sales load.[155]

Proportionate allocation also applies where no additional payments are required. Under the design of a flexible contract, charges may be assessed against cash value to continue the contract without the necessity of a payment being made. In addition, sales load may be taken as a charge against assets. Therefore, it would be possible, under the designs of some contracts, for an increase to be added and funded on the basis of the existing cash value rather than by requiring that a payment be made specifically for the increase. Under proportionate allocation, the existing cash value would be allocated proportionately between the base test and incremental test contracts on the basis of their respective guideline annual premiums. The cash value under the incremental test contract would be treated as a payment received in anticipation of the increase and could be subject to a sales load. The insurer may, however, require the contractholder to make a further payment if the cash value, as allocated, is insufficient to support the actual contract. The Commission has determined to amend paragraph (d)(2) of the rule to better reflect the above interpretations. Although these amendments represent no change in policy, comment is requested.

With reference to conversion rights upon an addition or increase in face amount, the ACLI suggested that these rights be afforded only if the contractholder could have purchased outright a fixed benefit contract providing the same type and amount of benefit as the increase. The ACLI also noted that when these rights are exercised, it is necessary to determine the contract values allocable to the increase. It recommended that these allocation procedures, like the conversion right at issue, be developed by the life insurer and filed as an exhibit to the registration statement for Commission review. However, the letter also requested that a standardized allocation procedure be incorporated into the rule as a "safe harbor."

As indicated above, the rules has been amended to require proportionate allocation. While conversion rights would not accompany certain types of additions,[156] simple increases in benefits should have these rights attached, as discussed above, with respect to allocation.

Finally, with respect to sales load upon decreases in face amount, rule 6e–3(T) permits the assessment of a sales load in any manner that is fair, non-discriminatory, and consistent with the rule. Once again, the operative principle is that no more sales load may be deducted on a subsequent basis than could have been deducted as a front-end charge; sales loads on decreases in face amount would be in the nature of deferred or contingent deferred sales loads.[157] For these purposes, a decrease in face amount would be analogous to a partial redemption.[158]

Several sales load designs relevant to decreases in face amount can be seen in public registration statements on file.[159]

---

[148] A free look right must be given with respect to any base test contract having a sales load of greater than 9% of payments.

[149] "Actual contract" is defined in subparagraph (d)(2)(iii) as the flexible contract issued to the contractholders, and adjusted for the increase in or addition of insurance benefits, as of the date of the increase or addition.

[150] A free look right would also have to be provided.

[151] A free look right would not have to be provided either in this instance.

[152] *See* section B.6.a., *supra*. The free look right would also be immediately operable.

[153] One commenter supported the idea of premium allocation.

[154] If the base test contract had a GAP of $1,000 and an increase with a GAP of $500 was added, the next $9,000 payment received would be allocated $6,000 to the base test contract and $3,000 to the incremental test contract.

[155] After one or more assessments of sales load in excess of 9%, the percentage must drop so that the total sales load for twenty guideline annual premiums does not exceed an average of 9% overall.

[156] The ACLI cited in its letter examples of benefits as to which conversion rights should not be required: waiver of premium riders and incidental benefits such as cost of living adjustments and guaranteed insurability options. This view is correct.

[157] This is, of course, different from increases in fact amount, which justify an additional sales load, whether front-end or subsequent.

[158] If sales load is taken as a percentage of payments up to one or more GAPs, the appropriate GAP limit to use after a decrease in face amount is, of course, the GAP for the revised contract.

[159] *See, e.g.*, MONY America Variable Account L (File No. 2–95990, Feb. 20, 1986) and Luthern

Continued

Nonetheless, this area has not developed sufficiently to permit discussion on all possible ways in which it may be permissible to deduct sales load on a decrease. However, where there is a decrease in face amount following an increase, the "fairness" standard requires that the determination of sales load assessments be on a basis consistent with cost of insurance deductions. For example, the method of "last in, first out" would mean that, for purposes of *both* the sales load and the cost of insurance deductions, the face amount would be reduced in the order of (a) the face amount provided by the most recent increase; (b) the next most recent increases successfully; and (c) the initial face amount. The rule already permits decreases in the face amount of insurance and a series of increases; therefore, no further amendments in this regard have been made.

**Transition Period and "Grandfathering"**

Registration statements for flexible contracts that are filed within 30 days of publication of this release in the Federal Register may use the provisions of rule 6e–3(T) as constituted prior to this modification or may use the rule as modified. Registration statements that are filed 31 days or more after the publication would have to rely on the modified temporary rule. All registrants, of course, may rely on the many clarifications and interpretations of both versions of the rule that are spelled out in this release. Registrants relying on the old version of the temporary rule do not have to modify their contract designs to conform with the new version of the temporary rule. However, at the time of final adoption of rule 6e–3, registrants using either version of the temporary rule would have one year to adjust to any changes required to conform their contract designs to the final rule. Contracts sold during that year and during times prior to that transition year would be "grandfathered" to prevent the need to modify executed contracts retroactively.

**Regulatory Flexibility Act Certification**

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission previously certified that rule 6e–3(T) will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification. The amendments do not alter the basis for this determination.

**Paperwork Reduction Act**

These amendments to Rule 6e–3(T) are not subject to the Act because they do not impose an information collection requirement.

**List of Subjects in 17 CFR Part 270**

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Revised Rule**

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 270 continues to read as follows:

**Authority:** Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89 * * * § 270.6e–3(T) also issued under sec. 6(e), 15 U.S.C. 80a–5(e).

2. By revising § 270.6e–3(T) to read as follows:

**§ 270.6e–3(T) Temporary exemptions for flexible premium variable life insurance separate accounts.**

(a) A separate account, and its investment adviser, principal underwriter and depositor, shall, except as provided in paragraph (b) of this Rule, comply with all provisions of the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] and the rules under it that apply to a registered investment company issuing periodic payment play certificates if:

(1) It is a separate account within the meaning of section 2(a)(37) of the Act [15 U.S.C. 80a–2(a)(37)] and is established and maintained by a life insurance company pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies with Rule 7d–1 [17 CFR 270.7d–1] under the Act (the "life insurer");

(2) The assets of the separate account are derived solely from (i) the sale of flexible premium variable life insurance contracts ("flexible contracts") as defined in paragraph (c)(1) of this Rule, (ii) the sale of scheduled premium variable life insurance contracts ("scheduled contracts") as defined in paragraph (c)(1) of Rule 6e–2 [17 CFR 270.6e–2] under the Act, (iii) funds corresponding to dividend accumulations with respect to such contracts, and (iv) advances made by the life insurer in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or other contract liabilities not involving life contingencies;

(4) The separate account is legally segregated, and that part of its assets with a value approximately equal to the reserves and other contract liabilities for such separate account are not chargeable with liabilities arising from any other business of the life insurer;

(5) The value of the assets of the separate account, each time adjustments in the reserves are made, is at least equal to the reserves and other contract liabilities of the separate account, and at all other times approximately equals or exceeds the reserves and liabilities; and

(6) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.].

(b) A separate account that meets the requirements of paragraph (a) of this Rule, and its investment adviser, principal underwriter and depositor shall be exempt with respect to flexible contracts funded by the separate account from the following provisions of the Act:

(1) Section 2(a)(35) [15 U.S.C. 80a–2(a)(35)], *Provided, however,* That the term "sales load," as used in the Act and rules under it, shall have the meaning set forth in paragraph (c)(4) of this Rule. *And provided further,* That in connection with any sales load deducted pursuant to paragraph (d)(1) of this Rule, the separate account and other persons shall be exempt from sections 2(a)(32) [15 U.S.C. 80a–2(a)(32)], 12(b) [15 U.S.C. 80a–12(b)], 22(c) [15 U.S.C. 80a–22(c)], 26(a) [15 U.S.C. 80a–26(a)], 27(c)(1) [15 U.S.C. 80a–27(c)(1)], 27(c)(2)[15 U.S.C. 80a–27(c)(2)], and 27(d) [15 U.S.C. 80a–27(d)], and Rules 12b–1 [17 CFR 270.12b–1] and 22c–1 [17 CFR 270.22c–1].

(2) Section 7 [15 U.S.C. 80a–7].

(3) Section 8 [15 U.S.C. 80a–8], to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account filed with the Commission a notification on Form N–6EI–1 [17 CFR 274.301] which identifies the separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission the form designated by the Commission within ninety days after filing the notification on Form N–6EI–1, *Provided, however,* That if the fiscal year of the separate account end within this ninety day period, the form may be filed within ninety days after the end of such fiscal year.

---

Brotherhood Variable Insurance Account (File No. 33–3243, Feb. 11, 1986). *See also* the exemptive order issued to the Pruco Life Insurance Company, *et al.*, Investment Company Act Release Nos. 14545 (May 29, 1985) [50 FR 23782 (June 5, 1985)] and 14605 (June 28, 1985).

(4) Section 9 [15 U.S.C. 80a–9], to the extent that:

(i) The eligibility restrictions of section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates and who do not participate directly in the management or administration of the separate account or in the sale of flexible contracts; and

(ii) A life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser, depositor of or principal underwriter for the separate account only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates directly in the management or administration of the separate account or in the sale of flexible contracts.

(5) Section 13(a) [15 U.S.C. 80a–13(a)], to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the sub-classification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by its contractholders or board of directors may be disapproved by the life insurer, if the disapproval is reasonable and is based on a good faith determination by the life insurer that:

(A) The change would violate state law; or

(B) The change would not be consistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques used by other separate accounts of the life insurer or of an affiliated life insurance company with similar investment objectives;

(iii) Any action described in paragraph (b)(5)(i) or (ii) of this Rule and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(6) Section 14(a) [15 U.S.C. 80a–14(a)], *Provided,* That until the separate account has total assets of at least $100,000, the life insurer shall have (i) a combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in the balance sheet of such life insurer contained in the registration statement for flexible contracts filed under the Securities Act of 1933 [15 U.S.C. 77a et seq.] (the "1933 Act").

(7)(i) Section 15(a) [15 U.S.C. 80a–15(a)], to the extent it requires that the initial written contract with the investment adviser shall have been approved by the vote of a majority of the outstanding voting securities of the registered investment company, *Provided,* That:

(A) The investment adviser is selected and a written contract is entered into before the effective date of the 1933 Act registration statement for flexible contracts, and that the terms of the contract are fully disclosed in the registration statement, and

(B) A written contract is submitted to a vote of contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement, unless the Commission upon written request and for good cause shown extends the time for the holding of such meeting;

(ii) Sections 15 (a), (b) and (c), to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided,* That such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided,* That such disapproval is reasonable and is based on a good faith determination by the life insurer that:

(*1*) The proposed investment advisory fee will exceed the maximum rate specified in any flexible contract that may be charged against the assets of the separate account for such services; or

(*2*) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques used by the current investment adviser to the separate account, or advise the purchase or sale of securities which would not be consistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts with similar investment objectives of the life insurer or an affiliated life insurance company;

(D) Any action described in paragraph (b)(7)(ii) (A), (B) or (C) of this Rule and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(8) Section 16(a) [15 U.S.C. 80a–16(a)], to the extent that:

(i) Directors of the separate account serving before the first meeting of the account's contractholders are exempt from the requirement of section 16(a) that they be elected by the holders of outstanding voting securities of the account at an annual or special meeting called for that purpose, *Provided,* That:

(A) Such persons were appointed directors of the account by the life insurer before the effective date of the 1933 Act registration statement for flexible contracts and are identified in the registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors), and

(B) An election of directors for the account is held at the first meeting of contractholders and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by the Commission upon written request and for good cause shown;

(ii) A member of the board of directors of the separate account may be disapproved or removed by an insurance regulatory authority if the person is not eligible to be a director of the separate account under the law of the life insurer's domicile.

(9) Section 17(f) [15 U.S.C. 80a–17(f)], to the extent that the securities and similar investments of a separate account organized as a management investment company may be maintained in the custody of the life insurer or of an affiliated life insurance company, *Provided,* That:

(i) The securities and similar investments allocated to the separate account are clearly identified as owned by the account, and the securities and similar investments are kept in the vault of an insurance company which meets the qualifications in paragraph (b)(9)(ii) of this Rule, and whose safekeeping function is supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a state or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance

Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of the Commission, representatives of insurance regulatory authorities, independent public accountants retained by the separate account (or on its behalf by the life insurer), accountants for the life insurer, and to no more than 20 persons authorized by a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated life insurance company in whose vault the investments are kept (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) of this Rule that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in accordance with any rule under section 17(f), or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated life insurance company, shall sign a notation showing (A) the date and time of the deposit, withdrawal or order, (B) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another person, the name of such person. The notation shall be sent promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who is not himself permitted to have access to the securities or investments under paragraph (b)(9)(iii) of this Rule. The notation shall be on serially numbered forms and shall be kept for at least one year;

(vi) The securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account (or on its behalf by the life insurer) at least three times each fiscal year, at least two of which shall be chosen by the accountant without prior notice to the separate account. A certificate of the accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be sent to the Commission by the accountant promptly after each examination;

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by federal or state authorities under any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of Section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(10) Section 18(i) [15 U.S.C. 80a–18(i)], to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Flexible contractholders shall have one vote for each $100 of cash value funded by the separate account, with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders under paragraph (b)(10)(i)(A) of this Rule, with fractional votes allocated for amounts less than $100, *Provided*, That after the commencement of sales of flexible contracts, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days before any meeting at which such vote is held, *Provided*, That if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date;

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust of the character described in section 16(c) [15 U.S.C. 80a–16(c)]) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provisions of this Rule.

(11) Section 19 [15 U.S.C. 80a–19], to the extent that the provisions of this section shall not apply to any dividend or similar distribution paid or payable under provisions of participating flexible contracts.

(12) Sections 22(c), 22(d) [15 U.S.C. 80a–22(d)], 22(e) [15 U.S.C. 80a–22(e)], and 27(c)(1) and Rule 22c–1 to the extent:

(i) The cash value of each flexible contract shall be computed in accordance with Rule 22c–1(b) under the Act; *Provided, however*, That where actual computation is not necessary for the operation of a particular contract, then the cash value of that contract must only be capable of computation; *And provided further*, That to the extent the calculation of the cash value reflects deductions for the cost of insurance and other insurance benefits or administrative expenses and fees or sales loads, such deductions need only be made at such times as specified in the contract or as necessary for compliance with insurance laws and regulations; and

(ii) The death benefit, unless required by insurance laws and regulations, shall be computed on any day that the

investment experience of the separate account would affect the death benefit under the terms of the contract provided that such terms are reasonable, fair, and nondiscriminatory;

(iii) Necessary to comply with this Rule or with insurance laws and regulations and established administrative procedures of the life insurer for issuance, increases in or additions of insurance benefits, transfer and redemption of flexible contracts, including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract, *Provided, however,* That any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholders and to all other holders of contracts of the same class or series funded by the separate account, *And provided further,* That any such action shall be disclosed in the form filed by the separate account with the Commission under paragraph (b)(3)(ii) of this Rule.

(13) Section 27 [15 U.S.C. 80a–27], to the following extent:

(i) Section 27(a)(1) [15 U.S.C. 80a–27(a)(1)], 27(h)(1) [15 U.S.C. 80a–27(h)(1)], and 27(h)(4) [15 U.S.C. 80a–27(h)(4)], to the extent that sales load, as defined in paragraph (c)(4) of this Rule, deducted does not exceed that permitted by either subparagraph (A) or (B) below:

(A) 9 per centum of the sum of the guideline annual premiums that would be paid during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract based on the 1980 Commissioners Standard Ordinary Mortality Table, *Provided,* That this subparagraph (b)(13)(i)(A) shall not prohibit deduction of sales load, in any manner permitted by this Rule, from payments made in excess of the sum of the guideline annual premiums that would be paid during the lesser of 20 years or the anticipated life expectancy of the insured based on the 1980 Commissioners Standard Ordinary Mortality Table; or

(B) 9 per centum of payments made thereon; *Provided,* That the separate account elects by written notice to the Commission to be governed (with respect to each class of flexible contract offered) by either subparagraph (b)(13)(i)(A) or (B); *Provided, however,* that for each class of flexible contract that requires more than four guideline annual premiums within the first two contract periods following issuance of the contract or of an increase in or addition of insurance benefits (within the meaning of paragraph (d)(2)), the separate account must elect to be governed by subparagraph (b)(13)(i)(B).

(ii) Sections 27(a)(3) [15 U.S.C. 80a–27(a)(3)] and 27(h)(3) [15 U.S.C. 80a–27(h)(3)], *Provided,* That the proportionate amount of sales load deducted from any payment shall not exceed the proportionate amount deducted from any prior payment unless an increase is caused by reductions in the annual cost of insurance, or a reduction in the sales load deducted from amounts transferred to a flexible contract from another plan of insurance;

(iii) Sections 27(c)(2), 26(a)(1) [15 U.S.C. 80a–26(a)(1)], and 26(a)(2) [15 U.S.C. 80a–26(a)(2)], to the extent necessary to permit the actions described in paragraphs (A) through (F) of this section, *Provided,* That the life insurer complies with all other applicable provisions of Section 26 as if it were a trustee, depositor or custodian for the separate account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operations.

(A) Payment of a fee to the life insurer, or to any affiliated person or agent of the insurer, for bookkeeping or other administrative services provided to the separate account, or for administrative services or expenses incurred in underwriting, issuing, and maintaining flexible contracts, *Provided,* That the fee is not greater than the expenses, without profit:

(*1*) Actually paid by the life insurer for the services provided; and

(*2*) Increased by the value of any services provided directly by the life insurer, as determined in accordance with generally accepted accounting principles consistently applied.

The standard set forth in this paragraph shall be applied as follows: if the separate account reserves the right to increase the fee, the fee shall not exceed the cost of the services to be provided for one year; or if the fee is guaranteed not to increase for a specified period of time, the fee shall not exceed the average expected cost of the services to be provided during the period of the guarantee;

(B) The holding of the assets of the separate account by the life insurer without a trust indenture or other such instrument;

(C) When the separate account is organized as a unit investment trust, the holding of the securities of any registered management investment company which offers its shares to the separate account in uncertificated form;

(D) When the separate account is organized as a management investment company, the holding of its assets in any manner permitted by paragraph (b)(9) of this Rule or by section 17(f) or the rules under it;

(E) The deduction of premium or other taxes imposed by any state or other governmental entity, the cost of insurance, charges assessed for incidental insurance benefits or if the insured does not meet standard underwriting requirements, and, if the separate account is organized as a management investment company, an investment advisory fee;

(F) The deduction of a charge for mortality, expense, and any guaranteed death benefit risks assumed by the life insurer under the flexible contracts (collectively, a "risk charge"), *Provided,* That the registration statement under the 1933 Act for flexible contracts includes:

(*1*) A representation that this paragraph is being relied upon;

(*2*) A representation that the level of the risk charge either is:

(*i*) Within the range of industry practice for comparable flexible or scheduled contracts, or

(*ii*) Reasonable in relation to the risks assumed by the life insurer under the contracts;

(*3*) A brief description of the methodology used to support the representation made in response to paragraph (b)(13)(iii)(F)(*2*) of this Rule and an undertaking to keep and make available to the Commission upon request the documents used to support that representation;

(*4*) A representation that either:

(*i*) The proceeds from explicit sales loads will be sufficient to cover the expected costs of distributing the flexible contracts; or

(*ii*)(*A*) The life insurer has concluded that there is a reasonable likelihood that the distribution financing arrangement of the separate account will benefit the separate account and contractholders and will keep and make available to the Commission on request a memorandum setting forth the basis for this representation; and

(*B*) If the separate account is organized as a management investment company, a representation that the account will have a board of directors, a majority of whom are not interested persons of the separate account, formulate and approve any plan under Rule 12b–1 to finance distribution expenses. If the separate account is organized as a unit investment trust, a representation that the account will invest only in management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notwithstanding the provisions of this paragraph (b)(13)(iii)(F), no risk charge may be deducted in reliance thereupon if the registration statement or amendment thereto which initially sets forth the deduction of such charge or its increase becomes effective by lapse of time pursuant to section 8(a) of the 1933 Act or Rule 486 [17 CFR 230.486] thereunder. Such charge shall be disclosed in the prospectus and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract. Any separate account organized under the Act as a management investment company and deducting a risk charge pursuant to this section shall be exempt from section 12(b) and Rule 12b–1 thereunder to the extent that monies derived from the risk charge may be used to finance distribution of the flexible contracts;

(iv) Sections 27(c)(1) and 27(d), and sections 2(a)(32) and 22(c) and Rule 22c–1 thereunder, to the extent that:

(A) Such sections require that the flexible contract be redeemable or provide for a refund in cash, *Provided,* That the contract provides for election by the contractholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered, *And provided further,* That unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, the contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge.

(B) Notwithstanding the provisions of paragraph (b)(13)(iv)(A) of this Rule, if the amounts available under the contract to pay the charges due under the contract on any contract processing day are less than such charges due, the contract may provide that the cash surrender value (and any excess paid for sales loading not used to keep the contract in force pursuant to paragraph (b)(13)(iv)(B)(*2*) of this Rule) shall be applied to purchase a non-forfeiture option specified by the life insurer in such contract, *Provided,* That the contract also provides that:

(*1*) Contract processing days occur not less frequently than monthly, and

(*2*) the amount of any excess paid for sales loading (as provided in paragraph (b)(13)(v)(A) of this Rule) shall first be applied to keep the contract in force, *Provided, however,* That if the contractholder subsequently makes a payment, the life insurer may recover such excess loading;

(C) Subject to other provisions of this Rule, sales loads and administrative expenses or fees may be deducted upon redemption.

(v) Section 27(d), *Provided,* That the flexible contract gives the holder thereof the right to:

(*A*) Surrender the contract at any time during the first 24 months after issuance and receive in cash an amount not less than the sum of the present value of his contract which is the cash surrender value next computed after receipt by the life insurer of the request for surrender in proper form, plus, an amount which is a refund of any excess paid for sales loading prior to or in connection with the surrender. The amount of sales loading to be refunded shall be equal to that part of the sales loading in excess of (1) the sum of 30 per centum of payments in aggregate amount less than or equal to one guideline annual premium, plus 10 per centum of payments in aggregate amount greater than one guideline annual premium but not more than two guideline annual premiums, and (2) 9 per centum of each payment made in excess of two guideline annual premiums;

(B) Convert the contract at any time during the first 24 months after issuance, so long as the contract is in force, to a life insurance policy on the life of the insured under a plan of insurance (other than a plan involving a flexible contract as defined in paragraph (c)(1) of this Rule or a scheduled contract as defined in paragraph (c)(1) of Rule 6e–2) specified in the contract, issued by the life insurer or by an affiliated life insurance company, which provides for (*1*) at the election of the contractholder, either the same death benefit or the same net amount at risk as the flexible contract at the time of conversion and (*2*) premiums (or cost of insurance or other charges, ("charges") if such plan of insurance provides for flexible premiums) which are based on the same issue age and risk classification of the insured as the flexible contract. The conversion shall be subject to an equitable adjustment in payments and cash values to reflect variances, if any, in the payments (or charges), dividends, and cash values under the flexible contract and the new policy. The method of computing such adjustment shall be filed with the Commission as an exhibit to the form required under paragraph (b)(3)(ii) of this Rule;

(vi) A depositor or principal underwriter for a flexible contract sold subject to section 27(d) or section 27(f), or both, shall be exempt from the requirements of Rule 27d–1 [17 CFR 270.27d–1] if an insurance company undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter under sections 27(d) and 27(f) to refund charges, and such insurance company, depositor and principal underwriter comply with all provisions of Rule 27d–2 [17 CFR 270.27d–2];

(vii) Section 27(e) [15 U.S.C. 80a–27(e)] and Rule 27e–1 [17 CFR 270.27e–1] thereunder, to the extent that the separate account and the depositor and principal underwriter therefor, when such persons are subject to paragraph (b)(13)(v)(A) of this Rule, are required to provide a notice of right of surrender and refund to holders of flexible contracts, if the life insurer or a duly authorized agent provides a notice of surrender and refund rights on a written document containing information comparable to that required by Form N–27I–1 [17 CFR 274.301] to the holder of any flexible contract under which a refund may be available, *Provided,* That such notice shall be sent by first class mail or personal delivery to the contractholder:

(A) Upon issuance of the flexible contract, which notice may be sent together with the issued contract and an illustration, in a form appropriate for inclusion in the prospectus for the flexible contract, of guideline annual premiums, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured; and

(B) On any contract processing day, prior to the expiration of the surrender and refund right provided in paragraph (b)(13)(v)(A) of this Rule, on which the amounts available under the contract on such day to pay the charges authorized by the contract are less than the amount necessary to keep the contract in force

until the next following contract processing day. This notice may be sent together with any notice required by applicable state authority to be sent in these circumstances; *Provided, however,* That the right of surrender and refund provided by paragraph (b)(13)(v)(A) of this Rule shall not expire until not less than 15 days after the mailing or receipt, if personally delivered, of the last notice referred to in this paragraph (b)(13)(vii)(B);

(viii) Section 27(f) and Rule 27f–1 thereunder [17 CFR 270.27f–1], *Provided,* That:

(A) The contractholder may elect to return the contract within 45 days of the date of the execution of the application for insurance, or within 10 days after receipt of the issued contract by the contractholder, or within 10 days after mailing or personal delivery of the notice of the right of withdrawal referred to in paragraph (b)(13)(viii)(C) of this Rule, whichever is later, and receive a refund equal to the sum of (*1*) the difference between the payments made, including any contract fees or other charges, and the amounts allocated to the separate account under the contract, (*2*) the value of the amounts allocated to the separate account under the contract on the date the returned contract is received by the insurer or its agent, and (*3*) any contract fees and other changes imposed on the amounts allocated to such separate account, *Provided, however,* That if state law or the contract so require, the redeeming contractholder shall receive a refund of all payments made for such contract;

(B) A refund in accordance with paragraph (b)(13)(viii)(A) of this Rule to redeeming contractholders will not in any way affect the interests in the separate account or the benefits of other flexible or scheduled contractholders;

(C) Notice of such withdrawal right and a statement of contract fees and other charges on a written document containing information comparable to that required by Form N–27I–2 [17 CFR 274.303] is sent by first class mail or personal delivery to the contractholder, which notice and statement may be accompanied by the flexible contract, and an illustration, in a form appropriate for inclusion in the prospectus for the flexible contract, of guideline annual premiums (or, if the contract is subject to paragraph (b)(13)(i)(B), payments), death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured;

(D) The contractholder, in conjunction with the notice of withdrawal right referred to in paragraph (b)(13)(viii)(C), is provided with a form of request for refund of the amount computed in accordance with paragraph (b)(13)(viii)(A), which form shall set forth:

(*1*) Instructions as to the manner in which a refund may be obtained, including the address to which the request form should be mailed; and

(*2*) Spaces necessary to indicate the date of such request, the contract number and the signature of the contractholder; and

(E) Within 7 days from the receipt of such duly executed timely request for refund, the life insurer will refund in cash to the contractholder the amount computed in accordance with paragraph (b)(13)(viii)(A) of this Rule; and

(ix) Solely for purposes of paragraphs (b)(13)(v) and (b)(13)(viii) of this Rule, the postmark date on the envelope containing the flexible contract shall determine whether such contract has been submitted for surrender, conversion, or withdrawal within the designated period.

(14) Section 32(a)(2) [15 U.S.C. 80a–31(a)(2)], *Provided,* That:

(i) The independent public accountant is selected before the effective date of the 1933 Act registration statement for flexible contracts, and the identity of the accountant is disclosed in the registration statement, and

(ii) The selection of the accountant is submitted for ratification or rejection to flexible contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by order of the Commission.

(15) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account; *Provided,* That: the board of directors of each investment company, constituted with a majority of disinterested directors, will monitor such company for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders and scheduled or flexible contractholders investing in such company; the life insurer agrees that it will be responsible for reporting any potential or existing conflicts to the directors; and if a conflict arises, the life insurer will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the scheduled or flexible contracts; Then:

(i) The eligibility restrictions of section 9(a) shall not apply to those persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described in this paragraph (b)(15);

(ii) The life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser of or principal underwriter for any registered management investment company described in this paragraph (b)(15) only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) For purposes of any section of the Act which provides for the vote of securityholders on matters relating to the separate account or the underlying registered investment company, the voting provisions of paragraph (b)(10)(i) and (ii) of this Rule apply, *Provided,* That:

(A) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(*1*) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of this Rule; or

(*2*) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of this Rule;

(B) Any action taken in accordance with paragraph (b)(15)(iii)(A) (*1*) or (*2*) of this Rule and the reasons therefor shall

be disclosed in the next report contractholders made under Section 30(d) [15 U.S.C. 80a–29(d)] and Rule 30d–2 [17 CFR 270.30d–2];

(iv) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from section 14(a), *Provided*, That until the company has total assets of at least $100,000, the life insurer shall have at least the minimum net worth prescribed in paragraph (b)(6) of this Rule; and

(v) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from sections 15(a), 16(a), and 32(a)(2), to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14) of this Rule, *Provided*, That the company complies with the conditions set forth in those paragraphs as if it were a separate account.

(C) When used in this Rule:

(1) "Flexible premium variable life insurance contract" means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract provides for:

(i) Payments which are not fixed by the life insurer as to both timing and amount: *Provided, however*, That the life insurer may fix the timing and minimum amount of payments for the first two contract periods following issuance of the contract or of an increase in or addition of insurance benefits (within the meaning of paragraph (d)(2)), and may prescribe a reasonable minimum amount for any additional payment;

(ii) A death benefit the amount or duration of which may vary to reflect the investment experience of the separate account;

(iii) A cash value which varies to reflect the investment experience of the separate account; and

(iv) There is a reasonable expectation that subsequent payments will be made.

(2) "Incidental insurance benefits" means insurance benefits provided pursuant to the flexible contract, other than any guaranteed and variable death benefit, which do not have discrete cash values that may vary in amount in accordance with the investment experience of the separate account, and include, but are not limited to, accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, and family income or fixed benefit term riders.

(3) "Guaranteed death benefit" is any amount guaranteed by the life insurer to be paid pursuant to a flexible contract in the event of the death of the insured without regard to the investment experience of the separate account, if there are no outstanding loans or partial surrenders, but does not include any incidental insurance benefits.

(4) "Sales load" charged during a contract period is the excess of any payments made during the period over the sum of the following:

(i) The amount of the change (whether it is an increase or decrease) in the cash value for the period that is not attributable to net investment earnings or to dividends for a participating flexible contract for the period;

(ii) The cost of insurance for the period based on:

(A) For a flexible contract subject to paragraph (b)(13)(i)(A), the 1980 Commissioners Standard Ordinary Mortality Table and net interest at the annual effective rate specified for purposes of paragraph (c)(8)(i)(B) of this Rule; or

(B) For a flexible contract subject to paragraph (b)(13)(i)(B), either the 1980 Commissioners Standard Ordinary Mortality Table or the 1958 Commissioners Ordinary Mortality Table (whichever relates to rates guaranteed by the contract) and the assumed investment rate specified in the contract, *Provided, however*, That the 1958 Commissioners Ordinary Mortality Table may only be used for those contracts issued before 1990, or such earlier mandatory date for implementation of the 1980 Commissioners Standard Ordinary Mortality Table under the applicable Standard Nonforfeiture Law for life insurance;

(iii) A reasonable charge necessary to cover the risk assumed by the life insurer that the variable death benefit will be less than any guaranteed death benefit;

(iv) Any administrative expenses or fees which are deducted pursuant to paragraph (b)(13)(iii)(A) of this Rule;

(v) A deduction for and approximately equal to state premium taxes;

(vi) Any additional charge assessed if the insured does not meet standard underwriting requirements, including, but not limited to, any additional cost of insurance charge for a contract purchased on a simplified underwriting or guaranteed issue basis;

(vii) Any additional charge assessed specifically for any incidental insurance benefits;

(viii) Any additional charge, the nature of an interest charge, assessed when payments are made more frequently than annually, but only to the extent that such payments are made to fulfill a minimum payment requirement imposed pursuant to paragraph (c)(1)(i) of this Rule;

(ix) Any amounts redeemed by the contractholder or paid out to the beneficiary upon the death of the insured which are not attributable to net investment earnings for the period; and

(x) For a participating flexible contract, a deduction for dividends to be paid or credited in accordance with the dividend scale in effect on the issue date of the contract assuming a net annual investment return for the separate account which funds the contract of 5 per centum. The deduction may be determined by either of the following methods, but the same method must be used for each contract period:

(A) The actuarial level annual equivalent of dividends to be paid or credited over the contract periods described in paragraph (b)(13)(i) of this Rule, based upon the mortality, interest and lapse assumptions used in computing the dividend scale for the contract (and, if the contract is subject to paragraph (b)(13)(i)(A), the assumption that the guideline annual premium will be paid in each contract period) multiplied by the fraction of the contract year represented by the contract period; or

(B) That portion of the dividend to be paid for the contract year which does not depend on the making of payments in addition to those made during the period.

(5) "Contract period" means the period from a contract issue or anniversary date to the earlier of the next following anniversary date (or, if later, the last day of any grace period commencing before such next following anniversary date) or the termination date of the contract.

(6) "Variable death benefit" is the amount of death benefit, other than incidental insurance benefits, payable under a flexible contract which varies to reflect the investment experience of the separate account and which would be payable in the absence of any guaranteed death benefit.

(7) "Payment," as used in paragraphs (b)(13)(i), (b)(13)(ii), and (b)(13)(v)(A) of this Rule and in sections 27(a)(2) and 27(h)(2) solely with respect to flexible contracts, means for a contract period the gross premiums paid less any portion of such gross premiums charged for the items specified in paragraphs (c)(4)(vi), (c)(4)(vii), and (c)(4)(viii) of this Rule. "Payment," as used in any other section of this Rule, means the gross premiums paid or payable for the flexible contract, *Except*, That "Payment" shall not include any amount deducted by the life insurer to recover

excess sales loading previously applied to keep the contract in force pursuant to paragraph (b)(13)(iv)(B)(*2*) of this Rule.

(8)(i) "Guideline annual premium" means the level annual amount that would be payable through the maturity date specified in paragraph (c)(8)(ii)(B) of this Rule for the future benefits under the contract if, subject to the provisions of paragraph (c)(8)(ii) of this Rule:

(A) The payments were fixed by the life insurer as to both timing and amount, and

(B) The payments were based on the 1980 Commissioners Standard Ordinary Mortality Table, net investment earnings at the greater of an annual effective rate of 5 per centum or rate or rates guaranteed at issuance of the flexible contract, the sales load under the contract, and the fees and charges associated with the contract specified in parapraphs (c)(4)(iii), (c)(4)(iv), (c)(4)(v), (c)(4)(vi), (c)(4)(vii), (c)(4)(viii) (for the first two contract periods as permitted by paragraph (c)(1)(i)), and (c)(4)(x) of this Rule.

(ii) In computing the future benefits under the flexible contract for determining the guideline annual premium:

(A) The excess of the amount payable by reason of the death of the insured (determined without regard to any incidental insurance benefits) over the cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(B) The maturity date shall be the latest maturity date permitted under the contract but not less than 20 years after the date of issue or (if earlier) age 95, and

(C) The amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any incidental insurance benefits) at any time under the contract.

(9) "Cash value" means the amount that would be available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, without regard to any charges that may be assessed upon such termination and before deduction of any outstanding contract loan.

(10) "Cash surrender value" means the amount available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, after any charges assessed in connection with the termination have been deducted and before deduction of any outstanding contract loan.

(11) "Net investment earnings" means investment earnings in the separate account after deduction of any asset charges, including but not limited to, such charges for income tax; brokerage and other investment expenses; mortality, expense, and guaranteed death benefit risks; and an investment advisory fee, but not including deductions for sales load. However, "net investment earnings" as used in paragraph (c)(4)(i) of this Rule shall not include any amount deducted pursuant to subparagraphs (ii) through (viii) of paragraph (c)(4).

(12) "Contract processing day" means any day on which charges under the contract are deducted from the separate account.

(d) The following computational rules shall be used in applying this Rule:

(1) Paragraphs (b)(13)(i) and (b)(13)(ii) of this Rule shall be deemed to be satisfied with respect to any flexible contract under which sales load is deducted other than from payments prior to the allocation of net payments to the separate account if:

(i) from issuance of the contract through each contract period, the aggregate amount of sales load deducted is not more than the aggregate amount of sales load that could be deducted under an otherwise identical flexible contract that deducted sales load only from payments prior to their allocation to the separate account; and

(ii)(A) the amount of sales load deducted pursuant to any method permitted under this paragraph (other than asset-based sales loads) does not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method, unless an increase in such proportionate amount is caused by reductions in the annual cost of insurance, or a reduction in the sales load deducted from amounts transferred to a flexible contract from another plan of insurance; or

(B) for asset-based sales load structures, the percentage of assets taken as sales load does not exceed any of the percentages previously taken pursuant to the same method, unless an increase in such percentage is caused by a reduction in the percentage taken on amounts transferred to a flexible contract from another plan of insurance.

(2)(i) Solely with respect to increases in or additions of insurance benefits requested by a contractholder after issuance of a flexible contract, the contract shall be deemed to satisfy paragraphs (b)(13)(i)(A), (b)(13)(ii), (b)(13)(v), (b)(13)(viii), and (d)(1)(ii) of this Rule, *Provided,* That from issuance of the contract through each contract period the aggregate amount of sales load imposed is not more than the aggregate amount of sales load that would be permissible under the base test contract, as defined in paragraph (d)(2)(iii)(B) of this Rule, and the incremental test contract, as defined in paragraph (d)(2)(iii)(C) of this Rule.

(ii) The following procedures shall be used in applying paragraph (d)(2)(i):

(A) Payments for the actual contract, as defined in paragraph (d)(2)(iii)(A) of this Rule, and the base and incremental test contracts shall, for purposes of demonstrating compliance with the sales load provisions of this Rule, be deemed paid in the following proportionate amounts: level annual payments for the base test contract equal to the guideline annual premium for the contract, commencing upon issuance; level annual payments for the incremental test contract equal to the difference between the guideline annual premium for the actual contract after the increase in or addition of insurance benefits and before such increase or addition, commencing upon such increase or addition; and level annual payments for the actual contract equal to the guideline annual premium for such contract, commencing upon issuance and adjusted for such increase or addition as of the date of such increase or addition, *Provided* that the guideline annual premium used is that defined in paragraph (c)(8);

(B) To the extent that the increases in, or additions of, insurance benefits are funded out of cash value, such cash value shall be proportionately allocated between the base test contract and incremental test contract according to the ratio of their respective guideline annual payments, as described in (d)(2)(ii)(A); and

(C) It is assumed that no redemptions are made under the actual and test contracts.

(D) An incremental test contract may deduct, in any manner permitted by this Rule, not more than 50 per centum of the sales load which would otherwise be permitted under the base test contract, and not be subject to the surrender, conversion, and withdrawal provisions set forth in paragraphs (b)(13)(v) (A) and (B) and (b)(13)(viii) of this Rule, *Provided, however,* That the increased or added benefit will be subject to the surrender, conversion, and withdrawal provisions referenced above if more than such 50 per centum of sales load is assessed. (iii) For purposes of this paragraph (d)(2):

(A) "Actual contract" shall mean the flexible contract issued to the contractholder, and adjusted for the increase in or addition of insurance

benefits, as of the date of the increase or addition;

(B) "Base test contract" shall mean the actual contract had the increase or addition not occurred;

(C) "Incremental test contract" shall mean a flexible contract that, (*1*) is issued on the date of the increase or addition, and (*2*) provides insurance benefits identical to the incremental change in insurance benefits under the actual contract upon such increase or addition; and

(D) Any change in insurance benefits which would occur automatically under a contract, with or without the opportunity for contractholder disapproval, or any change in death benefit operation shall not be considered an "increase in or addition of insurance benefits requested by a contractholder" for purposes of imposing additional sales load.

Dated: March 30, 1987.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-7597 Filed: 4-7-87; 8:45 am]

BILLING CODE 8010-01-M

---

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 177**

**[T.D. 87-46]**

## Change of Practice Regarding Country of Origin (Substantial Transformation) Determinations on Threading of Certain Pipe Fittings

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final interpretive rule.

**SUMMARY:** This document gives notice that Customs is changing its current practice of considering pipe fittings, produced in one country, to be substantially transformed by virtue of threading operations performed in a second country so as to be considered products of that second country. The current practice is based upon a published Customs ruling. After review of comments received in response to a notice proposing this change, and following further consideration of the matter, it has been decided that threading operations alone do not substantially transform pipe fittings so as to change their country of origin.

**EFFECTIVE DATE:** This change of practice will be effective as to merchandise entered for consumption or withdrawn from warehouse for consumption, on or after July 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** John L. Valentine, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8181).

**SUPPLEMENTARY INFORMATION:**

### Background

By notice published in the **Federal Register** on August 23, 1985 (50 FR 34165), it was announced that Customs was reviewing the practice of considering pipe fittings, produced in one country and threaded in a second country, to have been substantially transformed by the threading operation. The notice invited public comments with respect to the correctness of the contemplated change.

The current practice is based upon a published Customs Service ruling of November 9, 1978 (C.S.D. 79-437, 13 Cust. Bul. 1666 (1979)). Pursuant to § 177.10(b), Customs Regulations (19 CFR 177.10(b)), the publication of a ruling in the Customs Bulletin which affects a rate of duty or charge, will establish a uniform practice. Pursuant to section 315, Tariff Act of 1930, as amended (19 U.S.C. 1315), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)), before publication of a ruling which changes an established practice and results in an increase in duty, Customs is required to publish a notice that the practice is under review and to give interested parties an opportunity to comment on the contemplated change.

A review of the published decision was initiated in light of several judicial and Treasury decisions which concerned whether specific processing operations are sufficient to affect the country of origin of imported articles for Customs purposes. One example is the decision in the case of *Uniroyal, Inc.* v. *United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982), in which pre-shaped soles were attached to substantially complete shoes (shoe uppers) from Indonesia after the shoes had entered the U.S. The court found that the shoes were not substantially transformed as a result of the domestic application of soles, and thus remained products of Indonesia for country-of-origin marking purposes. In so holding, the court in *Uniroyal, supra.*, reaffirmed the validity of the long-standing criteria which, for substantial transformation determinations, examine whether the name, character, or use of an article has been changed by second-country processing. In *Uniroyal* the court held that the imported shoe uppers—which were the very essence of the completed shoes—were already substantially complete shoes, and that the attachment of the outsoles was a relatively minor operation which did not alter the identity of the uppers.

### Analysis of Comments

Seven comments were submitted in response to the notice published on August 23, 1985. One commenter did not take a position on the substantial transformation issue but requested that the final decision include a holding that the product coverage under the steel restraint arrangements is not affected by the decision. This question is not properly within the scope of this document. Any determinations regarding the operation of steel restraint arrangements are properly made by the International Trade Administration, Department of Commerce.

Two commenters opposed any change because an unthreaded coupling is a useless raw material that must be changed into a functional coupling, and threading, as a processing step, is complex and critical and requires great precision.

We concur with these commenters that the threading operation is required in order to produce a functional coupling. Although the threading, which can range from coarse threads to proprietary specialty threads, varies in its complexity and critical nature as demanded by the intended application, even the more complex and precise threading oprations are not substantial manufacturing operations and do not change the essential character of the article: it remains a fitting.

The remaining commenters supported a change because, as they reasoned, the fundamental character and use of a fitting is established when it is cast or formed. The threading operation is described as a finishing operation which, in relation to the cost of processing a fitting prior to threading, typically represents (together with the other finishing operations) less than one-third of that cost.

One commenter suggested that reliance on *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026 (1970), as controlling in C.S.D. 79-437 was misplaced because threading constituted only one of the various processing operations that were considered as a whole in *Midwood*. We agree that *Midwood* is distinguishable on this and other grounds. In addition, we conclude that, as the court noted concerning the shoe uppers in *Uniroyal, Inc. v. United States*, 3 C.I.T. 220 (1982), the essential character of the fitting is established in the first country, and that

the treading merely completes it for its intended use. The name, character, and use of the article have already been established. These facts are not affected by the threading operations.

Although the argument is raised that an unthreaded pipe fitting is still a producer's good, we find that, in addition to our conclusion that threading does not change the name, character, or use of a fitting, the nature of the threading operation is insubstantial in relation to the nature of the operations required to manufacture the fitting. Many unfinished steel articles (as well as other articles) are "producer's" goods rather than "consumer's" goods because they cannot be used in the unfinished condition. However, these finishing operations are not always substantial processing operations, and may not change the underlying nature of the article. The change from a producer's to consumer's good is not controlling on the issue of substantial transformation. *National Juice Products Association, et al. v. United States*, 11 CIT _____ (Slip op. 86–13, dated January 30, 1986). The established criteria of new name, character, or use, together with the nature of the processing, must be addressed.

In this case, even though the threading of a fitting does change it from a producers good to a consumers good, we find that the threading operation does not so transform the unthreaded fitting as to cause its identity to be lost in the finished product, nor is the value added by threading and related finishing operations, typically less than one-third, substantial.

### Change of Practice

After careful analysis of the comments and following further review of the matter, we find that the mere threading of pipe fittings does not result in a substantial transformation which would change the country of origin of the pipe fittings and that our previously published ruling to the contrary is clearly wrong. Therefore, the ruling of November 9, 1978 (file 055619), published as C.S.D. 79–437, 13 Cust. Bull. 1666 (1979), is revoked. Other ruling letters that are in conflict with the principles of this decision are modified accordingly.

### Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**William von Raab,**
*Commissioner of Customs.*

Approved: March 18, 1987.

**Francis A. Keating, II,**
*Assistant Secretary of the Treasury.*

[FR Doc. 87–7748 Filed 4–7–87; 8:45 am]
BILLING CODE 4820–02–M

---

## DEPARTMENT OF LABOR

## Employment and Training Administration

## 20 CFR Part 656

## Labor Certification Process for the Permanent Employment of Aliens in the United States; Establishment of Board of Alien Labor Certification Appeals

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Department of Labor is revising the procedures for review of denials of certifications for the permanent employment of immigrant aliens in the United States. This final rule establishes a Board of Alien Labor Certification Appeals in the Office of Administrative Law Judges to hear and decide such appeals.

**DATES:** Effective date, May 8, 1987. This final rule applies to requests for review filed (*i.e.*, mailed by certified mail to the Certifying Officer who denied the application) on or after May 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, United States Employment Service, Employment and Training Administration, United States Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0163.

**SUPPLEMENTARY INFORMATION:**

### Introduction

The Department of Labor (Department) is revising the procedures for review of denials of certifications for the permanent employment of immigrant aliens in the United States. The revised procedures establish a Board of Alien Labor Certification Appeals in the Office of Administrative Law Judges to hear and decide such appeals.

### Permanent Alien Labor Certification Process

Pursuant to section 212(a)(14) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(14)), certain immigrant aliens seeking to enter the United States for the purpose of permanent employment are excluded, unless the Secretary of Labor first certifies in each such case to the Attorney General that there are not sufficient United States workers who are able, willing, qualified, and available for the job opportunity at the time of the alien's application for a visa and admission into the United States and at the place where the alien is to perform the work; and that the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

Aliens required by 8 U.S.C. 1182(a)(14) to be beneficiaries of permanent alien labor certifications are aliens eligible for nonpreference status pursuant to 8 U.S.C. 1153(a)(7), and aliens who are eligible for third and sixth preference status under 8 U.S.C. 1153(a) (3) and (6).

The regulations in 20 CFR Part 656 set forth the Department's procedures under which such permanent alien labor certifications may be applied for, and given or denied. Decisions on permanent alien labor certification applications are made in *Final Determinations* by Certifying Officers in the Employment and Training Administration of the Department.

### Appeals Process

*1. Prior Procedure*

Under the regulations revised by this final rule, a *Final Determination* by a Certifying Officer denying an application of permanent alien labor certification was appealed by the employer-applicant (and the alien beneficiary, but only if the employer appeals) to the Office of Administrative Law Judges of the Department. See 20 CFR 656.26, 656.27, and 656.27a (1986). These requests for review were heard by individual Administrative Law Judges designated by the Chief Administrative Law Judge. 20 CFR 656.26(d) (1986). These Administrative Law Judges, while assigned to the Department, are, pursuant to the Administrative Procedure Act, independent of the Department, and, thus, individually heard and decided permanent alien labor certification appeals.

*2. Revised Procedure*

The Department is establishing a Board of Alien Labor Certification Appeals (Board) to hear and decide on requests for review from denials of applications for permanent alien labor certification. While the decisions of the

BEST COPY AVAILABLE

Administrative Law Judges, by and large, have been of high quality, the Board will enhance uniformity and consistency of decisions.

The Board, chaired by the Chief Administrative Law Judges of the Department, consists of Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 and assigned to the Department who are designated by the Chief Administrative Law Judge to sit on the Board. Requests for review may be considered by panels of the Board, or by individual Administrative Law Judges making recommendations to the Board or to such panels. The scope of review essentially remains unchanged from the prior regulations at 20 CFR 656.26 and 656.27 (1986). However, in the case of hearings, the procedures now are governed by the Department's "Rules of Practice and Procedure For Administrative Hearings Before the Office of Administrative Law Judges", set forth at 29 CFR Part 18.

**Regulatory Impact**

The rule promulgated in this document is one of internal agency administrative organization, practice, and procedure. As such, the Administrative Procedure Act does not require it to be first published for public notice and comment. 5 U.S.C. 553(b)(A). The appeal and other rights which may accrue to the public under the prior regulations remain unchanged. The only changes are to the organization of the body (Administrative Law Judges in the Department's Office of Administrative Law Judges) hearing appeals.

In addition, the process in the final rule would affect only those approximately 500–900 appeals from employers across the nation each year appealing from denials of applications for permanent alien labor certification.

The economic and other impact of this final rule is not so great as to make it a major rule requiring the development of a regulatory impact analysis. See E.O. 12291, 3 CFR, 1981 comp., p. 127 (February 17, 1981).

Since a general notice of proposed rulemaking has not been published for this final rule, it is not a "rule" as defined under the Regulatory Flexibility Act. 5 U.S.C. 601(2).

*Catalogue of Federal Domestic Assistance Number*

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.203, "Certification for Immigrant Workers".

**List of Subjects in 20 CFR Part 656**

Administrative practice and procedure, Aliens, Employment, Fraud, Labor, Unemployment, Wages.

**Final Rule**

Accordingly, Part 656 of Chapter V of Title 20, Code of Federal Regulations, is amended, as follows:

**Authority**

1. Revise the authority citation for Part 656 to read as follows, and remove all separate authority citations following the sections in Part 656:

**Authority:** 8 U.S.C. 1182(a)(14); 29, 49 *et seq.*

2. In 20 CFR 656.26(c), remove the words "Administrative Law Judge" and "Chief Administrative Law Judge" and add, in their place, the words "Board of Alien Labor Certification Appeals";

3. In 20 CFR 656.26, in addition to the amendments set forth in 2. above, remove paragraphs (d), (e), (f), (g), and (h); and revise the section heading and the introductory text to paragraph (a) to read as follows:

**§ 656.26 Board of Alien Labor Certification Appeals review of denials of labor certification.**

(a) If a labor certification is denied, a request for review of the denial made be made to the Board of Alien Labor Certification Appeals:

* * * * * *

3. Revise 20 CFR 656.27 to read as follows:

**§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.**

(a) *Designations.* In considering requests for review before it, the Board of Alien Labor Certification Appeals may sit in panels of three members. The Chief Administrative Law Judge may designate any Board of Alien Labor Certification Appeals member to submit proposed findings and recommendations to the Board of Alien Labor Certification Appeals or to any duly designated panel thereof to consider a particular case.

(b) *Briefs and Statements of Position.* In considering requests for review before it, the Board of Alien Labor Certification Appeals shall afford all parties 21 days to submit or decline to submit any appropriate Statement of Position or legal brief. The Department of Labor shall be represented solely by the Solicitor of Labor or the Solicitor's designated representative. In the cases involving college or university teachers and aliens represented to be of exceptional ability in the performing arts, if the employer has designated a person or organization to submit an *amicus curiae* brief, the Board of Alien Labor Certification Appeals shall afford *amicus curiae* 21 days to submit a brief. Briefs, statements, and *amicus curiae* briefs submitted pursuant to this paragraph (b) shall be deemed timely if either mailed or delivered to the Board of Alien Labor Certification Appeals on or before the end of the 21-day period set forth in this paragraph, and shall be consistent with the requirements of § 656.26(b)(4) of this Part.

(c) *Review on the record.* The Board of Alien Labor Certification Appeals shall review the denial of labor certification on the basis of the record upon which the denial of labor certification was made, the request for review, and any Statements of Position or legal briefs submitted and shall:

(1) Affirm the denial of the labor certification; or

(2) Direct the Certifying Officer to grant the certification; or

(3) Remand the matter to the Certifying Officer for further consideration or factfinding and determination; or

(4) Direct that a hearing on the case be held pursuant to paragraph (f) of this section.

(d) *Notifications of decisions.* The Board of Alien Labor Certification Appeals shall notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the decision pursuant to paragraph (c) of this section, and shall return the record to the Certifying Officer unless the case has been set for hearing pursuant to paragraph (f) of this section.

(e) *Remanded cases.* If the case is remanded, the Certifying Officer shall do the additional factfinding or consideration in accordance with §§ 656.24 and 656.25 of this Part, but such factfinding and consideration shall be limited to the issues for which the case has been remanded.

(f) *Hearings.* (1) *Notification of hearing.* If the case has been set for a hearing, the Board of Alien Labor Certification Appeals shall notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the date, time, and place of the hearing, and that the hearing may be rescheduled upon written request and for good cause shown.

(2) *Hearing procedure.* (i) The "Rules of Practice and Procedure For Administrative Hearings Before the Office of Administrative Law Judges", set forth at 29 CFR Part 18, shall apply to hearings pursuant to this paragraph (f).

(ii) For the purposes of this paragraph (f)(2), references in 29 CFR Part 18 to: "administrative law judge" shall mean

the Board of Alien Labor Certification Appeals member or the Board of Alien Labor Certification Appeals panel duly designated pursuant to § 656.27(a) of this Part; "Office of Administrative Law Judges" shall mean the Board of Alien Labor Certification Appeals; and "Chief Administrative Law Judge" shall mean the Chief Administrative Law Judge in that official's function of chairing the Board of Alien Labor Certification Appeals.

**§ 656.27a [Removed]**

4. Remove 20 CFR 656.27a.

5. In 20 CFR 656.50, between the definitions of the terms "Attorney General" and "Certifying Officer", add a new definition of the term "Board of Alien Labor Certification Appeals", to read as follows:

**§ 656.05 Definitions.**

* * * * *

"Board of Alien Labor Certification Appeals" means the permanent Board of Alien Labor Certification Appeals established by this Part, chaired by the Chief Administrative Law Judge, and consisting of Administrative Law Judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals. The Board of Alien Labor Certification Appeals is located in Washington, DC, and reviews and decides appeals in Washington, DC.

* * * * *

Signed at Wasington, DC, this 2nd day of April, 1987.

**William E. Brock,**

*Secretary of Labor.*

[FR Doc. 87-7703 Filed 4-7-87; 8:45 am]

BILLING CODE 4510-30-M

---

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 154

[DoD 5200.2-R]

### Personnel Security Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This part prescribes the policy and procedures for the Department of Defense governing access to classified information and employment in sensitive positions by DoD military, civilian and contractor personnel. It also specifies the nature and extent of the investigative scope required for a DoD security clearance and employment in a variety of sensitive positions; provides adjudicative policy and criteria against which investigative results are compared and evaluated in order to ensure that the access or employment is consistent with the interests of national security; prescribes due process/appeal procedures for DoD military and civilian employees who are being considered for denial or revocation of a security clearance or employment in a sensitive position.

**EFFECTIVE DATE:** January 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pete Nelson, Office of the Under Secretary of Defense (Policy), The Pentagon, Washington, DC 20301, telephone (202) 697-3969.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 154**

Security, Classified information.

Accordingly, Title 32 is amended to add Part 154 to read as follows:

## PART 154—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM REGULATION

**Subpart A—General Provisions**

Sec.
154.1 Purpose.
154.2 Applicability.
154.3 Definitions.

**Subpart B—Policies**

154.6 Standards for access to classified information or assignment to sensitive duties.
154.7 Criteria for application of security standards.
154.8 Types and scope of personnel security investigations.
154.9 Authorized personnel security investigative agencies.
154.10 Limitations and restrictions.

**Subpart C—Personnel Security Investigative Requirements**

154.13 Sensitive positions.
154.14 Civilian employment.
154.15 Military appointment, enlistment, and induction.
154.16 Security clearance.
154.17 Special access programs.
154.18 Certain positions not necessarily requiring access to classified information.
154.19 Reinvestigation.
154.20 Authority to waive investigative requirements.

**Subpart D—Reciprocal Acceptance of Prior Investigations and Personnel Security Determinations**

154.23 General.
154.24 Prior investigations conducted by DoD investigative organizations.
154.25 Prior personnel security determinations made by DoD authorities.
154.26 Investigations conducted and clearances granted by other agencies of the Federal government.

**Subpart E—Requesting Personnel Security Investigations**

Sec.
154.30 General.
154.31 Authorized requesters.
154.32 Criteria for requesting investigations.
154.33 Request procedures.
154.34 Priority requests.
154.35 Personal data provided by the subject of the investigation.

**Subpart F—Adjudication**

154.40 General.
154.41 Central adjudication.
154.42 Evaluation of personnel security information.
154.43 Adjudicative record.

**Subpart G—Issuing Clearance and Granting Access**

154.47 General.
154.48 Issuing clearance.
154.49 Granting access.
154.50 Administrative withdrawal.

**Subpart H—Unfavorable Administrative Actions**

154.55 Requirements.
154.56 Procedures.
154.57 Reinstatement of civilian employees.

**Subpart I—Continuing Security Responsibilities**

154.60 Evaluating continued security eligibility.
154.61 Security education.

**Subpart J—Safeguarding Personnel Security Investigative Records**

154.65 General
154.66 Responsibilities.
154.67 Access restrictions.
154.68 Safeguarding procedures.
154.69 Records disposition.
154.70 Foreign source information.

**Subpart K—Program Management**

154.75 General.
154.76 Responsibilities.
154.77 Reporting requirements.
154.78 Inspections.

**Appendix A—Investigative Scope**

**Appendix B—Request Procedures**

**Appendix C—Tables for Requesting Investigations**

**Appendix D—Reporting of Nonderogatory Cases**

**Appendix E—Personnel Security Determination Authorities**

**Appendix F—Guidelines for Conducting Prenomination Personal Interviews**

**Appendix G—List of Designated Countries**

**Appendix H—Adjudication Policy**

**Appendix I—Overseas Investigations**

**Appendix J—ADP Position Categories and Criteria for Designating Positions**

**Authority:** E.O. 10450; E.O. 12356; E.O. 10865; E.O. 12333.

## Subpart A—General Provisions

### § 154.1 Purpose.

(a) To establish policies and procedures to ensure that acceptance and retention of personnel in the Armed Forces, acceptance and retention of civilian employees in the Department of Defense (DoD), and granting members of the Armed Forces, DoD civilian employees, DoD contractors, and other affiliated persons access to classified information are clearly consistent with the interests of national security.

(b) This part: (1) Establishes DoD personnel security policies and procedures;

(2) Sets forth the standards, criteria and guidelines upon which personnel security determinations shall be based;

(3) Prescribes the kinds and scopes of personnel security investigations required;

(4) Details the evaluation and adverse action procedures by which personnel security determinations shall be made; and

(5) Assigns overall program management responsibilities.

### § 154.2 Applicability.

(a) This part implements the Department of Defense Personnel Security Program and takes precedence over all other departmental issuances affecting that program.

(b) All provisions of this part apply to DoD civilian personnel, members of the Armed Forces, excluding the Coast Guard in peacetime, contractor personnel and other personnel who are affiliated with the Department of Defense except that the unfavorable administrative action procedures pertaining to contractor personnel requiring access to classified information are contained in DoD 5220.22–R and in 32 CFR Part 155.

(c) The policies and procedures which govern the National Security Agency are prescribed by Public Laws 88–290 and 86–36, Executive Orders 10450 and 12333, DoD Directive 5210.45[1], Director of Central Intelligence Directive (DCID) 1/14[2] and regulations of the National Security Agency.

(d) Under combat conditions or other military exigencies, an authority in paragraph A, Appendix E, may waive such provisions of this part as the circumstances warrant.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Attn: Code 301, Philadelphia, PA 19120.

[2] Copies may be obtained, if needed from Central Intelligence Agency (CCISCMS/ICS), 1225 Ames Building, Washington, DC 20505.

### § 154.3 Definitions.

(a) *Access.* The ability and opportunity to obtain knowledge of classified information. An individual, in fact, may have access to classified information by being in a place where such information is kept, if the security measures that are in force do not prevent him from gaining knowledge of such information.

(b) *Adverse action.* A removal from employment, suspension from employment of more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less.

(c) *Background Investigation (BI).* A personnel security investigation consisting of both record reviews and interviews with sources of information as prescribed in paragraph 3, Appendix A, this part, covering the most recent 5 years of an individual's life or since the 18th birthday, whichever is shorter, provided that at least the last 2 years are covered and that no investigation will be conducted prior to an individual's 16th birthday.

(d) *Classified information.* Official information or material that requires protection in the interests of national security and that is classified for such purpose by appropriate classifying authority in accordance with the provisions of Executive Order 12356.

(e) *Defense Central Security Index (DCSI).* An automated sub-system of the Defense Central Index of Investigations (DCII) designed to record the issuance, denial or revocation of security clearances, access to classified information, or assignment to a sensitive position by all DoD Components for military, civilian, and contractor personnel. The DCSI will serve as the central DoD repository of security related actions in order to assist DoD security officials in making sound clearance and access determinations. The DCSI shall also serve to provide accurate and reliable statistical data for senior DoD officials, Congressional committees, the General Accounting Office and other authorized Federal requesters.

(f) *DoD component.* Includes the Office of the Secretary of Defense; the Military Departments; Organization of the Joint Chiefs of Staff; Directors of Defense Agencies and the Unified and Specified Commands.

(g) *Entrance National Agency Check (ENTNAC).* A personnel security investigation scoped and conducted in the same manner as a National Agency Check except that a technical fingerprint search of the files of the Federal Bureau of Investigation is not conducted.

(h) *Head of DoD component.* The Secretary of Defense; the Secretaries of the Military Departments; the Chairman, Joint Chiefs of Staff; and the Commanders of Unified and Specified Commands; and the Directors of Defense Agencies.

(i) *Immigrant alien.* Any alien lawfully admitted into the United States under an immigration visa for permanent residence.

(j) *Interim security clearance.* A security clearance based on the completion of minimum investigative requirements, which is granted on a temporary basis, pending the completion of the full investigative requirements.

(k) *Limited access authorization.* Authorization for access to Confidential or Secret information granted to non-United States citizens and immigrant aliens, which is limited to only that information necessary to the successful accomplishment of their assigned duties and based on a background investigation scoped for 10 years (paragraph 3, Appendix A).

(l) *Minor derogatory information.* Information that, by itself, is not of sufficient importance or magnitude to justify an unfavorable administrative action in a personnel security determination.

(m) *National Agency check (NAC).* A personnel security investigation consisting of a records review of certain national agencies as prescribed in paragraph 1, Appendix A, this part, including a technical fingerprint search of the files of the Federal Bureau of Investigation (FBI).

(n) *National Agency Check Plus Written Inquiries (NACI).* A personnel security investigation conducted by the Office of Personnel Management, combining a NAC and written inquiries to law enforcement agencies, former employers and supervisors, references and schools.

(o) *DoD National Agency Check Plus Written Inquiries (DNACI).* A personnel security investigation conducted by the Defense Investigative Service (DIS) for access to SECRET information consisting of a NAC, credit bureau check, and written inquiries to current and former employers (see paragraph 2, Appendix A), covering a 5-year scope.

(p) *National security.* National security means the national defense and foreign relations of the United States.

(q) *Need-to-know.* A determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, knowledge, or possession of the classified information in order to perform tasks or services essential to the fulfillment of an official United States Government program.

Knowledge, possession of, or access to, classified information shall not be afforded to any individual solely by virtue of the individual's office, position, or security clearance.

(r) *Periodic Reinvestigation (PR).* An investigation conducted every five years for the purpose of updating a previously completed background or special background investigation on persons occupying positions referred to in § 154.19 (a) through (k). The scope will consist of a personal interview, NAC, LACs, credit bureau checks, employment records, employment references and developed character references and will normally not exceed the most recent five year period.

(s) *Personnel Security Investigation (PSI).* Any investigation required for the purpose of determining the eligibility of DoD military and civilian personnel, contractor employees, consultants, and other persons affiliated with the Department of Defense, for access to classified information, acceptance or retention in the Armed Forces, assignment or retention in sensitive duties, or other designated duties requiring such investigation. PSIs include investigations of affiliations with subversive organizations, suitability information, or hostage situations (see § 154.9(d)) conducted for the purpose of making personnel security determinations. They also include investigations of allegations that arise subsequent to adjudicative action and require resolution to determine an individual's current eligibility for access to classified information or assignment or retention in a sensitive position.

(t) *Scope.* The time period to be covered and the sources of information to be contacted during the prescribed course of a PSI.

(u) *Security clearance.* A determination that a person is eligible under the standards of this part for access to classified information.

(v) *Senior Officer of the Intelligence Community (SOIC).* The DoD Senior Officers of the Intelligence Community include: the Director, National Security Agency/Central Security Service; Director, Defense Intelligence Agency; Assistant Chief of Staff for Intelligence, U.S. Army; Assistant Chief of Staff for Intelligence, U.S. Air Force; and the Director of Naval Intelligence, U.S. Navy.

(w) *Sensitive position.* Any position so designated within the Department of Defense, the occupant of which could bring about, by virtue of the nature of the position, a materially adverse effect on the national security. All civilian positions are either critical-sensitive, noncritical-sensitive, or nonsensitive as described in § 154.13(b).

(x) *Significant derogatory information.* Information that could, in itself, justify an unfavorable administrative action, or prompt an adjudicator to seek additional investigation or clarification.

(y) *Special access program.* Any program imposing "need-to-know" or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but not be limited to, special clearance, adjudication, investigative requirements, material dissemination restrictions, or special lists of persons determined to have a need-to-know.

(z) *Special Background Investigation (SBI).* A personnel security investigation consisting of all of the components of a BI plus certain additional investigative requirements as prescribed in paragraph 4, Appendix B, this part. The period of investigation for an SBI is the last 15 years or since the 18th birthday, whichever is shorter, provided that the last 2 full years are covered and that no investigation will be conducted prior to an individual's 16th birthday.

(aa) *Special Investigative Inquiry (SII).* A supplemental personnel security investigation of limited scope conducted to prove or disprove relevant allegations that have arisen concerning a person upon whom a personnel security determination has been previously made and who, at the time of the allegation, holds a security clearance or otherwise occupies a position that requires a personnel security determination under the provisions of this part.

(bb) *Service.* Honorable active duty (including attendance at the military academies), membership in ROTC Scholarship Program, Army and Air Force National Guard, Military Reserve Force (including active status and ready reserve), civilian employment in Government service, or civilian employment with a DoD contractor or as a consultant involving access under the DoD Industrial Security Program. Continuity of service is maintained with change from one status to another as long as there is no single break in service greater than 12 months.

(cc) *Unfavorable administrative action.* Adverse action taken as the result of personnel security determinations and unfavorable personnel security determinations as defined in this part.

(dd) *Unfavorable personnel security determination.* A denial or revocation of clearance for access to classified information; denial or revocation of access to classified information; denial or revocation of a Special Access authorization (including access to SCI); nonappointment to or nonselection for appointment to a sensitive position; nonappointment to or nonselection for any other position requiring a trustworthiness determination under this part; reassignment to a position of lesser sensitivity or to a nonsensitive position; and nonacceptance for or discharge from the Armed Forces when any of the foregoing actions are based on derogatory information of personnel security significance.

(ee) *United States Citizen (Native Born).* A person born in one of the 50 United States, Puerto Rico, Guam, American Samoa, Northern Mariana Islands, U.S. Virgin Islands; or Panama Canal Zone (if the father or mother (or both) was or is, a citizen of the United States).

## Subpart B—Policies

### § 154.6 Standards for access to classified information or assignment to sensitive duties.

(a) *General.* Only United States citizens shall be granted a personnel security clearance, assigned to sensitive duties, or granted access to classified information unless an authority designated in Appendix E has determined that, based on all available information, there are compelling reasons in furtherance of the Department of Defense mission, including, special expertise, to assign an individual who is not a citizen to sensitive duties or grant a Limited Access Authorization to classified information. Non-U.S. citizens may be employed in the competitive service in sensitive civilian positions only when specifically approved by the Office of Personnel Management, pursuant to E.O. 11935. Exceptions to these requirements shall be permitted only for compelling national security reasons.

(b) *Clearance and sensitive position standard.* The personnel security standard that must be applied to determine whether a person is eligible for access to classified information or assignment to sensitive duties is whether, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

(c) *Military service standard.* The personnel security standard that must be applied in determining whether a person is suitable under national

security criteria for appointment, enlistment, induction, or retention in the Armed Forces is that, based on all available information, there is no reasonable basis for doubting the person's loyalty to the Government of the United States.

**§ 154.7 Criteria for application of security standards.**

The ultimate decision in applying either of the security standards set forth in § 154.6 (b) and (c) must be an overall common sense determination based upon all available facts. The criteria for determining eligibility for a clearance under the security standard shall include, but not be limited to the following:

(a) Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act.

(b) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(c) Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(d) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or combination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the U.S. or of any State or which seeks to overthrow the Government of the U.S. or any State or subdivision thereof by unlawful means.

(e) Unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by Statute, Executive Order or Regulation.

(f) Performing or attempting to perform one's duties, acceptance and active maintenance of dual citizenship, or other acts conducted in a manner which serve or which could be expected to serve the interests of another government in preference to the interests of the U.S.

(g) Disregard of public law, Statutes, Executive Orders or Regulations including violation of security regulations or practices.

(h) Criminal or dishonest conduct.

(i) Acts of omission or commission that indicate poor judgment, unreliability or untrustworthiness.

(j) Any behavior or illness, including any mental condition, which, in the opinion of competent medical authority, may cause a defect in judgment or reliability with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(k) Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be (1) the presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the U.S., or (2) any other circumstances that could cause the applicant to be vulnerable.

(l) Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

(m) Habitual or episodic use of intoxicants to excess.

(n) Illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis or other dangerous drug.

(o) Any knowing and willful falsification, coverup, concealment, misrepresentation, or omission of a material fact from any written or oral statement, document, form or other representation or device used by the Department of Defense or any other Federal agency.

(p) Failing or refusing to answer or to authorize others to answer questions or provide information required by a congressional committee, court, or agency in the course of an official inquiry whenever such answers or information concern relevant and material matters pertinent to an evaluation of the individual's trustworthiness, reliability, and judgment.

(q) Acts of sexual misconduct or perversion indicative of moral turpitude, poor judgment, or lack of regard for the laws of society.

**§ 154.8 Types and scope of personnel security investigations.**

(a) *General.* The types of personnel security investigations authorized below vary in scope of investigative effort required to meet the purpose of the particular investigation. No other types are authorized. The scope of a PSI may be neither raised nor lowered without the approval of the Deputy Under Secretary of Defense for Policy.

(b) *National Agency Check.* Essentially, a NAC is a records check of designated agencies of the Federal Government that maintain record systems containing information relevant to making a personnel security determination. An ENTNAC is a NAC (scope as outlined in paragraph 1, Appendix A) conducted on inductees and first-term enlistees, but lacking a technical fingerprint search. A NAC is also an integral part of each BI, SBI, and Periodic Reinvestigation (PR). Subpart C prescribes when an NAC is required.

(c) *National Agency Check plus written inquiries.* The Office of Personnel Management (OPM) conducts a NAC plus Written Inquiries (NACIs) on civilian employees for all departments and agencies of the Federal Government, pursuant to E.O. 10450. NACIs are considered to meet the investigative requirements of this Regulation for a nonsensitive or noncritical sensitive position and/or up to a SECRET clearance and, in addition to the NAC, include coverage of law enforcement agencies, former employers and supervisors, references, and schools covering the last 5 years.

(d) *DoD National Agency check plus written inquiries.* DIS will conduct a DNACI, consisting of the scope contained in paragraph 2, Appendix A, for DoD military and contractor personnel for access to SECRET information. Subpart C prescribes when a DNACI is required.

(e) *Background investigation.* The BI is the principal type of investigation conducted when an individual requires TOP SECRET clearance or is to be assigned to a critical sensitive position. The BI normally covers a 5-year period and consists of a subject interview, NAC, LACs, credit checks, developed character references (3), employment records checks, employment references (3), and select scoping as required to resolve unfavorable or questionable information. (See paragraph 3, Appendix A). Subpart C prescribes when a BI is required.

(f) *Special background investigation.* (1) An SBI is essentially a BI providing additional coverage both in period of time as well as sources of information, scoped in accordance with the provisions of DCID 1/14 but without the personal interview. While the kind of coverage provided for by the SBI

determines eligibility for access to SCI. DoD has adopted this coverage for certain other Special Access programs. Subpart C prescribes when an SBI is required.

(2) The OPM, FBI, Central Intelligence Agency (CIA), Secret Service, and the Department of State conduct specially scoped BIs under the provisions of DCID 1/14. Any investigation conducted by one of the above-cited agencies under DCID 1/14 standards is considered to meet the SBI investigative requirements of this part.

(3) The detailed scope of an SBI is set forth in paragraph 4, Appendix A.

(g) *Special investigative inquiry.* (1) A Special Investigative Inquiry is a personnel security investigation conducted to prove or disprove allegations relating to the criteria outlined in § 154.7(a) of this part except current criminal activities (see § 154.9(c)(4)), that have arisen concerning an individual upon whom a personnel security determination has been previously made and who, at the time of the allegation, holds a security clearance or otherwise occupies a position that requires a trustworthiness determination.

(2) Special Investigative Inquiries are scoped as necessary to address the specific matters requiring resolution in the case concerned and generally consist of record checks and/or interviews with potentially knowledgeable persons. An SII may include an interview with the subject of the investigation when necessary to resolve conflicting information and/or to provide an opportunity to refute or mitigate adverse information.

(3) In those cases when there is a disagreement between Defense Investigative Service (DIS) and the requester as to the appropriate scope of the investigation, the matter may be referred to the Deputy Under Secretary of Defense for Policy for resolution.

(h) *Periodic reinvestigation.* As referred to in § 154.19(a) and other national directives, certain categories of duties, clearance, and access require the conduct of a PR every five years according to the scope outlined in paragraph 5, Appendix A. The PR scope applies to military, civilian, contractor, and foreign national personnel.

(i) *Personal interview.* Investigative experience over the years has demonstrated that, given normal circumstances, the subject of a personnel security investigation is the best source of accurate and relevant information concerning the matters under consideration. Further, restrictions imposed by the Privacy Act of 1974 dictate that Federal investigative agencies collect information to the greatest extent practicable directly from the subject when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. Accordingly, personal interviews are an integral part of the DoD personnel security program and shall be conducted in accordance with the requirements set forth in the following paragraphs of this section.

(1) *BI/PR.* A personal interview shall be conducted by a trained DIS agent as part of each BI and PR.

(2) *Resolving adverse information.* A personal interview of the subject shall be conducted by a DIS agent (or, when authorized, by investigative personnel of other DoD investigative organizations designated in this Regulation to conduct personnel security investigations), when necessary, as part of each Special Investigative Inquiry, as well as during the course of initial or expanded investigations, to resolve or clarify any information which may impugn the subject's moral character, threaten the subject's future federal employment, raise the question of subject's security clearability, or be otherwise stigmatizing.

(3) *Hostage situation.* A personal interview shall be conducted by a DIS agent (or, when authorized, by investigative personnel of other DoD investigative organizations designated in this Regulation to conduct personnel security investigations) in those instances in which an individual has immediate family members or other persons bound by ties of affection or obligation who reside in a nation whose interests are inimical to the interests of the United States. (See § 154.9(d).

(4) *Applicants/potential nominees for DoD military or civilian positions requiring access to SCI or other positions requiring an SBI.* A personal interview of the individual concerned shall be conducted, to the extent feasible, as part of the selection process for applicants/potential nominees for positions requiring access to SCI or completion of an SBI. The interview shall be conducted by a designee of the Component to which the applicant or potential nominee is assigned. Clerical personnel are not authorized to conduct these interviews. Such interviews shall be conducted utilizing resources in the order of priority indicated below:

(i) Existing personnel security screening systems (e.g., Air Force Assessment Screening Program, Naval Security Group Personnel Security Interview Program, U.S. Army Personnel Security Screening Program); or

(ii) Commander of the nominating organization or such official as he or she has designated in writing (e.g., Deputy Commander, Executive Officer, Security Officer, Security Manager, S–2, Counterintelligence Specialist, Personnel Security Specialist, or Personnel Officer); or

(iii) Agents of investigative agencies in direct support of the Component concerned.

(5) *Administrative procedures.* (i) The personal interview required by paragraph (i)(4) of this section shall be conducted in accordance with Appendix F.

(ii) For those investigations requested subsequent to the personal interview requirements of paragraph (i)(4) of this section the following procedures apply:

(A) The DD Form 1879 (Request for Personnel Security Investigation) shall be annotated under Item 20 (Remarks) with the statement "Personal Interview Conducted by (cite the duty assignment of the designated official (e.g., Commander, Security Officer, Personnel Security Specialist, etc.))" in all cases in which an SBI is subsequently requested.

(B) Unfavorable information developed through the personal interview required by paragraph (i)(4) of this section, will be detailed in a written report attached to the DD Form 1879 to include full identification of the interviewer. Failure to provide such information may result in conduct of an incomplete investigation by DIS.

(C) Whenever it is determined that it is not feasible to conduct the personal interview required by paragraph (i)(4) of this section prior to requesting the SBI, the DD Form 1879 shall be annotated under Item 20 citing the reason for not conducting the interview.

(j) *Expanded investigation.* If adverse or questionable information relevant to a security determination is developed during the conduct of a personnel security investigation, regardless of type, the investigation shall be expanded, consistent with the restrictions in § 154.10(e) to the extent necessary to substantiate or disprove the adverse or questionable information.

### § 154.9 Authorized personnel security investigative agencies.

(a) *General.* The DIS provides a single centrally directed personnel security investigative service to conduct personnel security investigations within the 50 states, District of Columbia, and Commonwealth of Puerto Rico for DoD Components, except as provided for in DoD Directive 5100.23.[1] DIS will request

[1] See footnote 1 to § 154.2(c).

the Military Departments or other appropriate Federal Agencies to accomplish DoD investigative requirements in other geographic areas beyond their jurisdiction. No other DoD Component shall conduct personnel security investigations unless specifically authorized by the Deputy Under Secretary of Defense for Policy. In certain instances provided for below, the DIS shall refer an investigation to other investigative agencies.

(b) *Subversive affiliations*—(1) *General.* In the context of DoD investigative policy, subversion refers only to such conduct as is forbidden by the laws of the United States. Specifically, this is limited to information concerning the activities of individuals or groups that involve or will involve the violation of Federal law, for the purpose of:

(i) Overthrowing the Government of the United States or the government of a state;

(ii) Substantially impairing for the purpose of influencing U.S. Government policies or decisions:

(A) The functions of the Government of the United States, or

(B) The functions of the government of a state;

(iii) Depriving persons of their civil rights under the Constitution or laws of the United States.

(2) *Military Department/FBI jurisdiction.* Allegations of activities covered by § 154.7 (a) through (f) are in the exclusive investigative domain of either the counterintelligence agencies of the Military Departments or the FBI, depending on the circumstances of the case and the provisions of the Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the FBI. Whenever allegations of this nature are developed, whether before or after a security clearance has been issued or during the course of a personnel security investigation conducted by DIS, they shall be referred immediately to either the FBI or to a military department counterintelligence agency, as appropriate.

(3) *DIS jurisdiction.* Allegations of activities limited to those set forth in § 154.7 (g) through (j) of this part shall be investigated by DIS.

(c) *Suitability information*—(1) *General.* Most derogatory information developed through personnel security investigations of DoD military or civilian personnel is so-called suitability information, that is, information pertaining to activities or situations covered by § 154.7 (g) through (q). Almost all unfavorable personnel security determinations made by DoD authorities are based on derogatory suitability information, although such information is often used as a basis for unfavorable administrative actions not of a security nature, such as action under the Uniform Code of Military Justice or removal from Federal employment under OPM regulations.

(2) *Pre-clearance investigation.* Derogatory suitability information, except that covered in paragraph (c)(4) of this section, developed during the course of a personnel security investigation, prior to the issuance of an individual's personnel security clearance, shall be investigated by DIS to the extent necessary to confirm or refute its applicability to § 154.7 (g) through (q).

(3) *Postadjudication investigation.* Derogatory suitability allegations, except those covered by paragraph (c)(4) of this section arising subsequent to clearance requiring investigation to resolve and to determine the individual's eligibility for continued access to classified information, reinstatement of clearance/access, or retention in a sensitive position shall be referred to DIS to conduct a Special Investigative Inquiry. Reinvestigation of individuals for adjudicative reconsideration due to the passage of time or evidence of favorable behavior shall also be referred to DIS for investigation. In such cases, completion of the appropriate statement of personal history by the individual constitutes consent to be investigated. Individual consent or completion of a statement of personal history is not required when § 154.19(b) applies. Postadjudication investigation of allegations of a suitability nature required to support other types of unfavorable personnel security determinations or disciplinary procedures independent of a personnel security determination shall be handled in accordance with applicable Component administrative regulations. These latter categories of allegations lie outside the DoD personnel security program and are not a proper investigative function for departmental counterintelligence organizations, Component personnel security authorities, or DIS.

(4) *Allegations of criminal activity.* Any allegations of conduct of a nature indicating possible criminal conduct, including any arising during the course of a personnel security investigation, shall be referred to the appropriate DoD, military department or civilian criminal investigative agency. Military department investigative agencies have primary investigative jurisdiction in cases where there is probable cause to believe that the alleged conduct will be the basis for prosecution under the Uniform Code of Military Justice.

(d) *Hostage situations*—(1) *General.* A hostage situation exists when a member of an individual's immediate family or such other person to whom the individual is bound by obligation or affection resides in a country whose interests are inimical to the interests of the United States. The rationale underlying this category of investigation is based on the possibility that an individual in such a situation might be coerced, influenced, or pressured to act contrary to the best interests of national security.

(2) *DIS jurisdiction.* In the absence of evidence of any coercion, influence or pressure, hostage investigations are exclusively a personnel security matter, rather than counterintelligence, and all such investigations shall be conducted by DIS.

(3) *Military Department and/or FBI jurisdiction.* Should indications be developed that hostile intelligence is taking any action specifically directed against the individual concerned—or should there exist any other evidence that the individual is actually being coerced, influenced, or pressured by an element inimical to the interests of national security—then the case becomes a counterintelligence matter (outside of investigative jurisdiction of DIS) to be referred to the appropriate military department or the FBI for investigation.

(e) *Overseas personnel security investigations.* Personnel security investigations requiring investigation overseas shall be conducted under the direction and control of DIS by the appropriate military department investigative organization. Only postadjudication investigations involving an overseas subject may be referred by the requester directly to the military department investigative organization having investigative responsibility in the overseas area concerned (see Appendix I) with a copy of the investigative request sent to DIS. In such cases, the military department investigative agency will complete the investigation, forward the completed report of investigation directly to DIS, with a copy to the requester.

### § 154.10 Limitations and restrictions.

(a) *Authorized requesters and personnel security determination authorities.* Personnel security investigations may be requested and personnel security clearances (including Special Access authorizations as indicated) granted only by those

authorities designated in § 154.31 and Appendix E.

(b) *Limit investigations and access.* The number of persons cleared for access to classified information shall be kept to a minimum, consistent with the requirements of operations. Special attention shall be given to eliminating unnecessary clearances and requests for personnel security investigations.

(c) *Collection of investigative data.* To the greatest extent practicable, personal information relevant to security determinations shall be obtained directly from the subject of a personnel security investigation. Such additional information required to make the necessary personnel security determination shall be obtained as appropriate from knowledgeable personal sources, particularly the subject's peers, and through checks of relevant records including school, employment, credit, medical, and law enforcement records.

(d) *Privacy Act notification.* Whenever personal information is solicited from an individual preparatory to the initiation of a personnel security investigation, the individual must be informed of—

(1) The authority (statute or Executive order that authorized solicitation);

(2) The principal purpose or purposes for which the information is to be used;

(3) The routine uses to be made of the information;

(4) Whether furnishing such information is mandatory or voluntary;

(5) The effect on the individual, if any, of not providing the information and

(6) That subsequent use of the data may be employed as part of an aperiodic, random process to screen and evaluate continued eligibility for access to classified information.

(e) *Restrictions on investigators.* Investigation shall be carried out insofar as possible to collect only as much information as is relevant and necessary for a proper personnel security determination. Questions concerning personal and domestic affairs, national origin, financial matters, and the status of physical health thus should be avoided unless the question is relevant to the criteria of § 154.7. Similarly, the probing of a person's thoughts or beliefs and questions about conduct that have no personnel security implications are unwarranted. When conducting investigations under the provisions of this part, investigators shall:

(1) Investigate only cases or persons assigned within their official duties.

(2) Interview sources only where the interview can take place in reasonably private surroundings.

(3) Always present credentials and inform sources of the reasons for the investigation. Inform sources of the subject's accessibility to the information to be provided and to the identity of the sources providing the information. Restrictions on investigators relating to Privacy Act advisements to subjects of personnel security investigations are outlined in § 154.10(d).

(4) Furnish only necessary identity data to a source, and refrain from asking questions in such a manner as to indicate that the investigator is in possession of derogatory information concerning the subject of the investigation.

(5) Refrain from using, under any circumstances, covert or surreptitious investigative methods, devices, or techniques including mail covers, physical or photographic surveillance, voice analyzers, inspection of trash, paid informants, wiretap, or eavesdropping devices.

(6) Refrain from accepting any case in which the investigator knows of circumstances that might adversely affect his fairness, impartiality, or objectivity.

(7) Refrain, under any circumstances, from conducting physical searches of the subject or his property.

(8) Refrain from attempting to evaluate material contained in medical files. Medical files shall be evaluated for personnel security program purposes only by such personnel as are designated by DoD medical authorities. However, review and collection of medical record information may be accomplished by authorized investigative personnel.

(f) *Polygraph restrictions.* The polygraph may be used as a personnel security screening measure only in those limited instances authorized by the Secretary of Defense in DoD Directive 5210.48.[1]

## Subpart C—Personnel Security Investigative Requirements

### § 154.13 Sensitive positions.

(a) *Designation of sensitive positions.* Certain civilian positions within the Department of Defense entail duties of such a sensitive nature, including access to classified information, that the misconduct, malfeasance, or nonfeasance of an incumbent in any such position could result in an unacceptably adverse impact upon the national security. These positions are referred to in this part as sensitive positions. It is vital to the national security that great care be exercised in the selection of individuals to fill such positions. Similarly, it is important that only positions which truly meet one or more of the criteria set forth in § 154.13(b) be designated as sensitive.

(b) *Criteria for security designation of positions.* Each civilian position within the Department of Defense shall be categorized, with respect to security sensitivity, as either nonsensitive, noncritical-sensitive, or critical-sensitive.

(1) The criteria to be applied in designating a position as sensitive are:

(i) Critical-sensitive.

(A) Access to Top Secret information.

(B) Development or approval of plans, policies, or programs that affect the overall operations of the Department of Defense or of a DoD Component.

(C) Development or approval of war plans, plans or particulars of future major or special operations of war, or critical and extremely important items of war.

(D) Investigative and certain investigative support duties, the issuance of personnel security clearances or access authorizations, or the making of personnel security determinations.

(E) Fiduciary, public contact, or other duties demanding the highest degree of public trust.

(F) Duties falling under Special Access programs.

(G) Category I automated data processing (ADP) positions.

(H) Any other position so designated by the head of the Component or designee.

(ii) Noncritical-sensitive.

(A) Access to Secret or Confidential information.

(B) Security police/provost marshal-type duties involving the enforcement of law and security duties involving the protection and safeguarding of DoD personnel and property.

(C) Category II automated data processing positions.

(D) Duties involving education and orientation of DoD personnel.

(E) Duties involving the design, operation, or maintenance of intrusion detection systems deployed to safeguard DoD personnel and property.

(F) Any other position so designated by the head of the Component or designee.

(2) All other positions shall be designated as nonsensitive.

(c) *Authority to designate sensitive positions.* The authority to designate sensitive positions is limited to those authorities designated in paragraph G, Appendix E. These authorities shall designate each position within their

[1] See footnote 1 to § 154.2(c).

jurisdiction as to its security sensitivity and maintain these designations current vis-a-vis the specific duties of each position.

(d) *Limitation of sensitive positions.* It is the responsibility of those authorities authorized to designate sensitive positions to insure that only those positions are designated as sensitive that meet the criteria of § 154.13 (b) and (c) that the designation of sensitive positions is held to a minimum consistent with mission requirements. Designating authorities shall maintain an accounting of the number of sensitive positions by category, i.e., critical or non-critical sensitive. Such information will be included in annual report required in Subpart K.

(e) *Billet control system for Top Secret.* (1) To standardize and control the issuance of Top Secret clearances within the Department of Defense, a specific designated billet must be established and maintained for all DoD military and civilian positions requiring access to Top Secret information. Only persons occupying these billet positions will be authorized a Top Secret clearance. If an individual departs from a Top Secret billet to a billet/position involving a lower level clearance, the Top Secret clearance will be administratively rescinded. This Top Secret billet requirement is in addition to the existing billet structure maintained for SCI access.

(2) Each request to DIS for a BI or SBI that involves access to Top Secret or SCI information will require inclusion of the appropriate billet reference, on the request for investigation. Each Component head should in corporate, to the extent feasible, the Top Secret billet structure into the component Manpower Unit Manning Document. Such a procedure should minimize the time and effort required to maintain such a billet structure.

(3) A report on the number of established Top Secret billets will be submitted each year to the DUSD(P) as part of the annual clearance report referred to in Subpart K.

### § 154.14 Civilian employment.

(a) *General.* The appointment of each civilian employee in any DoD Component is subject to investigation, except for reappointment when the break in employment is less than 12 months. The type of investigation required is set forth in this section according to position sensitivity.

(b) *Nonsensitive positions.* In accordance with the OPM Federal Personnel Manual, a NACI shall be requested not later than 3 working days after a person is appointed to a nonsensitive position. Although there is normally no investigation requirement for per diem, intermittent, temporary or seasonal employees in nonsensitive positions provided such employment does not exceed an aggregate of 120 days in either a single continuous or series of appointments, a NAC may be requested of DIS where deemed appropriate by the employing activity.

(c) *Noncritical-sensitive positions.* (1) An NACI shall be requested and the NAC portion favorably completed before a person is appointed to a noncritical-sensitive position (for exceptions see § 154.14(e) (1) and (2)). An ENTNAC, NAC or DNACI conducted during military or contractor employment may also be used for appointment provided a NACI has been requested from OPM and there is no more than 12 months break in service since completion of the investigation.

(2) Seasonal employees (including summer hires) normally do not require access to classified information. For those requiring access to classified information the appropriate investigation is required. The request for the NAC (or NACI) should be submitted to DIS by entering "SH" (summer hire) in red letters approximately one inch high on the DD Form 398–2, Personnel Security Questionnaire (National Agency Checklist). Additionally, to ensure expedited processing by DIS, summer hire requests should be assembled and forwarded to DIS in bundles, when appropriate.

(d) *Critical-sensitive positions.* A BI shall be favorably completed prior to appointment to critical-sensitive positions (for exceptions see § 154.14(e) (1) and (2). Certain critical-sensitive positions require a preappointment SBI in accordance with § 154.17. Preappointment BIs and SBIs will be conducted by DIS.

(e) *Exceptions*–(1) *Noncritical-sensitive.* In an emergency, a noncritical-sensitive position may be occupied pending the completion of the NACI if the head of the requesting organization finds that the delay in appointment would be harmful to the national security and such finding is reduced to writing and made part of the record. In such instances, the position may be filled only after the NACI has been requested.

(2) *Critical-sensitive.* In an emergency, a critical-sensitive position may be occupied pending completion of the BI (or SBI, as appropriate) if the head of the requesting organization finds that the delay in appointment would be harmful to the national security and such finding is reduced to writing and made a part of the record. In such instances, the position may be filled only when the NAC portion of the BI (or SBI) or a previous valid NACI, NAC or ENTNAC has been completed and favorably adjudicated.

(f) *Mobilization of DoD civilian retirees.* The requirements contained in paragraph (a) of this section, regarding the type of investigation required by position sensitivity for DoD civilian retirees temporary appointment when the break in employment is greater than 12 months, should either be expedited or waived for the purposes of mobilizing selected reemployed annuitants under the provisions of Title 5, United States Code, depending upon the degree of sensitivity of the position to which assigned. Particular priority should be afforded to newly assigned personnel assigned to the defense intelligence and security agencies with respect to granting security clearances in an expeditious manner under paragraph (a) of this section.

### § 154.15 Military appointment, enlistment, and induction.

(a) *General.* The appointment, enlistment, and induction of each member of the Armed Forces or their Reserve Components shall be subject to the favorable completion of a personnel security investigation. The types of investigation required are set forth in this section.

(b) *Entrance investigation.* (1) An ENTNAC shall be conducted on each enlisted member of the Armed Forces at the time of initial entry into the service. A DNACI shall be conducted on each commissioned officer, except as permitted by paragraph (d) of this section, warrant officer, cadet, midshipman, and Reserve Officers Training Candidate, at the time of appointment. A full NAC shall be conducted upon reentry of any of the above when there has been a break in service greater than 12 months.

(2) If an officer or warrant officer candidate has been the subject of a favorable NAC or ENTNAC and there has not been a break in service of more than 12 months, a new NAC is not authorized. This includes ROTC graduates who delay entry onto active duty pending completion of their studies.

(3) All derogatory information revealed during the enlistment or appointment process that results in a moral waiver will be fully explained on a written summary attached to the DD Form 398–2.

(c) *Reserve Components and National Guard.* Reserve Component and National Guard personnel not on active

duty are subject to the investigative requirements of this section.

(d) *Exceptions for certain commissioned officers of Reserve Components.* The requirements for entrance investigation shall be rigidly adhered to except as follows. Health professionals, chaplains, and attorneys may be commissioned in the Reserve Components prior to completion of a DNACI provided that:

(1) A DNACI is initiated at the time an application for a commission is received; and

(2) The applying health professional, chaplain, or attorney agrees in writing that, if the results of the investigation are unfavorable, he or she will be subject to discharge if found to be ineligible to hold a commission. Under this exception, commissions in Reserve Components other than the National Guard may be tendered to immigrant alien health professionals, chaplains, and attorneys.

(e) *Mobilization of military retirees.* The requirements contained in paragraph (c) of this section, regarding a full NAC upon reentry to active duty of any officer or enlisted regular/reserve military retiree or Individual Ready Reserve who has been separated from service for a period of greater than 12 months, should be waived for the purposes of partial or full mobilization under provisions of Title 10, (Title 14, pertaining to the US Coast Guard as an element of the Navy) United States Code, to include the period of prescribed service refresher training. Particular priority should be afforded to military retirees mobilized and assigned to the defense intelligence and security agencies communities.

**§ 154.16 Security clearance.**

(a) *General.* (1) The authorities designated in paragraph A, Appendix E are the only authorities authorized to grant, deny or revoke DoD personnel security clearances. The granting of such clearances shall be limited to only those persons who require access to classified information for mission accomplishment.

(2) Military, DoD civilian, and contractor personnel who are employed by or serving in a consultant capacity to the DoD, may be considered for access to classified information only when such access is required in connection with official duties. Such individuals may be granted either a final or interim personnel security clearance provided the investigative requirements set forth below are complied with, and provided further that all available information has been adjudicated and a finding made that such clearance would be clearly consistent with the interests of national security.

(b) *Investigative requirements for clearance*—(1) *Top Secret.* (i) Final Clearance:

(A) BI.

(B) Established billet per § 154.13(e) (1) through (3) (except contractors).

(ii) Interim Clearance:

(A) Favorable NAC, ENTNAC, DNACI, or NACI completed

(B) Favorable review of DD Form 398/SF–86/SF–171/DD Form 49

(C) BI or SBI has been initiated

(D) Favorable review of local personnel, base/military police, medical, and other security records as appropriate.

(E) Established billet per § 154.13(e) (1) through (3) (except contractors)

(F) Provisions of paragraph § 154.14(e) (1) and (2) have been met regarding civilian personnel.

(2) *Secret.* (i) Final Clearance:

(A) DNACI: Military (except first-term enlistees) and contractor employees

(B) NACI: Civilian employees

(C) ENTNAC: First-term enlistees

(ii) Interim Clearance:

(A) When a valid need to access Secret information is established, an interim Secret clearance may be issued in every case, provided that the steps outlined in paragraphs (b)(2)(ii) (B) through (E) of this section have been complied with.

(B) Favorable review of DD Form 398–2/SF–85/SF–171/DD Form 48.

(C) NACI, DNACI, or ENTNAC initiated.

(D) Favorable review of local personnel, base military police, medical, and security records as appropriate.

(E) Provisions of § 154.14(e) have been complied with regarding civilian personnel.

(3) *Confidential.* (i) Final Clearance:

(A) NAC or ENTNAC: Military and contractor employees (except for Philippine national members of the United States Navy on whom a BI shall be favorably completed.)

(B) NACI: Civilian employees (except for summer hires who may be granted a final clearance on the basis of a NAC).

(ii) Interim Clearance

(A) Favorable review of DD Form 398–2/SF 85/SF 171/ DD Form 48.

(B) NAC, ENTNAC or NACI initiated.

(C) Favorable review of local personnel, base military police, medical, and security records as appropriate.

(D) Provisions of § 154.14(e) (1) and (2) have been complied with regarding civilian personnel.

(4) *Validity of previously granted clearances.* Clearances granted under less stringent investigative requirements retain their validity; however, if a higher degree of clearance is required, investigative requirements of this directive will be followed.

(c) *Naturalized United States citizens.* (1) Naturalized U.S. citizens, whose country of origin has been determined to have interests adverse to the United States (Appendix G), or who have resided in such countries for a significant period of their life, shall be eligible for a security clearance, under the provisions of paragraph (b) of this section, only if they have:

(i) Been a U.S. citizen for five years or longer, or

(ii) If a citizen for less than five years, must have resided in the U.S. for the past 10 years. Exceptions to the above policy may be granted only by the DUSD(P).

(2) Each year of active service in the U.S. military shall be counted to satisfy the foregoing residency requirements.

(3) In the event a naturalized U.S. citizen from one of the countries listed in Appendix G does not meet either of the criteria in § 154.16(c)(1) (i) and (ii) and a compelling need exists, he or she may be considered for issuance of a limited access authorization (as an exception to policy) in accordance with the provisions of paragraph (d) of this section. The scope of the background investigation shall be confined to the period of residence in the U.S.

(4) Naturalized U.S. citizens from countries other than those contained in Appendix G may be considered for a security clearance in the same manner as native born citizens (§ 154.16(b)).

(d) *Access to classified information by non-United States citizens.* (1) Only U.S. citizens are eligible for a security clearance. Therefore, every effort shall be made to ensure that non-United States citizens are not employed in duties that may require access to classified information. However, when there are compelling reasons to grant access to classified information to an immigrant alien or a foreign national in furtherance of the mission of the Department of Defense, such individuals may be granted a "Limited Access Authorization" (LAA) under the following conditions:

(i) LAAs will be limited to Secret and Confidential level only; LAAs for Top Secret are prohibited.

(ii) Access to classified information is not inconsistent with that determined releasable by designated disclosure authorities, in accordance with DoD Directive 5230.11[1] to the country of which the individual is a citizen.

[1] See footnote 1 to § 154.2(c).

(iii) Access to classified information must be limited to information relating to a specific program or project.

(iv) Favorable completion of an BI (scoped for 10 years); where the full investigative coverage cannot be completed, a counterintelligence scope polygraph examination will be required in accordance with the provisions of DoD Directive 5210.48.

(v) Security clearances previously issued to immigrant aliens will be reissued as LAAs.

(vi) The Limited Access Authorization determination shall be made only by an authority designated in paragraph B, Appendix E.

(vii) LAAs issued by the Unified and Specified Commands shall be reported to the central adjudicative facility of the appropriate military department in accordance with the assigned responsibilities in DoD Directive 5100.3[1] for inclusion in the Defense Central Index of Investigation (DCII).

(2) In each case of granting a Limited Access Authorization, a record shall be maintained as to:

(i) The identity (including current citizenship) of the individual to whom the Limited Access Authorization is granted, to include name and date and place of birth;

(ii) Date and type of most recent investigation to include the identity of the investigating agency;

(iii) The nature of the specific program material(s) to which access is authorized (delineated as precisely as possible);

(iv) The classification level to which access is authorized; and

(v) The compelling reasons for granting access to the materials cited in (iii).

(vi) Status of the individual (i.e., immigrant alien or foreign national).

(3) Individuals granted LAAs under the foregoing provisions shall be the subject of a 5-year periodic reinvestigation as set forth in paragraph 5, Appendix A.

(4) Foreign nationals who are LAA candidates must agree to submit to a counterintelligence-scope polygraph examination prior to being granted access in accordance with DoD Directive 5210.48.

(5) If geographical and political situations prevent the full completion of the BI (and/or counterintelligence-scope polygraph) issuance of an LAA shall not be authorized; exceptions to the policy may only be authorized by the DUSD(P).

(6) A report on all LAAs in effect, including the data required in paragraphs (d)(2) (i) through (vi) of this section shall be furnished to the Deputy Under Secretary of Defense for Policy within 60 days after the end of each fiscal year. (See § 154.77).

(e) *Access by persons outside the Executive Branch.* (1) Access to classified information by persons outside the Executive Branch shall be accomplished in accordance with 32 CFR Part 159. The investigative requirement shall be the same as for the appropriate level of security clearance, except as indicated below.

(2) Members of the U.S. Senate and House of Representatives do not require personnel security clearances. They may be granted access to DoD classified information which relates to matters under the jurisdiction of the respective Committees to which they are assigned and is needed to perform their duties in connection with such assignments.

(3) Congressional staff members requiring access to DoD classified information shall be processed for a security clearance in accordance with 32 CFR Part 353 and the provisions of this part. The Director, Washington Headquarters Services (WHS) will initiate the required investigation (initial or reinvestigation) to DIS, adjudicate the results and grant, deny or revoke the security clearance, as appropriate. The Assistant Secretary of Defense (Legislative Affairs) will be notified by WHS of the completed clearance action.

(4) State governors do not require personnel security clearances. They may be granted access to specifically designated classified information, on a "need-to-know" basis, based upon affirmation by the Secretary of Defense or the head of a DoD Component or single designee, that access, under the circumstances, serves the national interest. Staff personnel of a governor's office requiring access to classified information shall be investigated and cleared in accordance with the prescribed procedures of this part when the head of a DoD Component, or single designee, affirms that such clearance serves the national interest. Access shall also be limited to specifically designated classified information on a "need-to-know" basis.

(5) Members of the U.S. Supreme Court, the Federal judiciary and the Supreme Courts of the individual states do not require personnel security clearances. They may be granted access to DoD classified information to the extent necessary to adjudicate cases being heard before these individual courts.

(6) Attorneys representing DoD military, civilian or contractor personnel, requiring access to DoD classified information to properly represent their clients, shall normally be investigated by DIS and cleared in accordance with the prescribed procedures in § 154.16(b). This shall be done upon certification of the General Counsel of the DoD Component involved in the litigation that access to specified classified information, on the part of the attorney concerned, is necessary to adequately represent his or her client. In exceptional instances, when the exigencies of a given situation do not permit timely compliance with the provisions of § 154.16(b), access may be granted with the written approval of an authority designated in Appendix E provided that as a minimum: a favorable name check of the FBI and the DCII has been completed, and a DoD Non-Disclosure Agreement has been executed. In post-indictment cases, after a judge has invoked the security procedures of the Classified Information Procedures Act (CIPA) the Department of Justice may elect to conduct the necessary background investigation and issue the required security clearance, in coordination with the affected DoD Component.

(f) *Restrictions on issuance of personnel security clearances.* Personnel security clearances must be kept to the absolute minimum necessary to meet mission requirements. Personnel security clearances shall *not* be issued:

(1) To persons in nonsensitive positions.

(2) To persons whose regular duties do not require authorized access to classified information.

(3) For ease of movement of persons within a restricted, controlled, or industrial area, whose duties do not require access to classified information.

(4) To persons who may only have inadvertent access to sensitive information or areas, such as guards, emergency service personnel, firemen, doctors, nurses, police, ambulance drivers, or similar personnel.

(5) To persons working in shipyards whose duties do not require access to classified information.

(6) To persons who can be prevented from accessing classified information by being escorted by cleared personnel.

(7) To food service personnel, vendors and similar commercial sales or service personnel whose duties do not require access to classified information.

(8) To maintenance or cleaning personnel who may only have inadvertent access to classified information unless such access cannot be reasonably prevented.

(9) To persons who perform maintenance on office equipment, computers, typewriters, and similar equipment who can be denied classified access by physical security measures.

(10) To perimeter security personnel who have no access to classified information.

(11) To drivers, chauffeurs and food service personnel.

(g) *Dual citizenship.* Persons claiming both U.S. and foreign citizenship shall be processed under § 154.16(b) and adjudicated in accordance with the "Foreign Preference" standard in Appendix I.

(h) *One-time access.* Circumstances may arise where an urgent operational or contractual exigency exists for cleared DoD personnel to have one-time or short duration access to classified information at a higher level than is authorized by the existing security clearance. In many instances, the processing time required to upgrade the clearance would preclude timely access to the information. In such situations, and only for compelling reasons in furtherance of the DoD mission, an authority referred to in paragraph (h)(1) of this section, may grant higher level access on a temporary basis subject to the terms and conditions prescribed below. This special authority may be revoked for abuse, inadequate record keeping, or inadequate security oversight. These procedures do not apply when circumstances exist which would permit the routine processing of an individual for the higher level clearance. Procedures and conditions for effecting emergency one-time access to the next higher classification level are as follows:

(1) Authorization for such one-time access shall be granted by a flag or general officer, a general court-martial convening authority or equivalent Senior Executive Service member, after coordination with appropriate security officials.

(2) The recipient of the one-time access authorization must be a U.S. citizen, possess a current DoD security clearance, and the access required shall be limited to classified information one level higher than the current clearance.

(3) Such access, once granted, shall be cancelled promptly when no longer required, at the conclusion of the authorized period of access, or upon notification from the granting authority.

(4) The employee to be afforded the higher level access shall have been continuously employed by a DoD Component or a cleared DoD contractor for the preceding 24-month period. Higher level access is not authorized for part-time employees.

(5) Pertinent local records concerning the employee concerned shall be reviewed with favorable results.

(6) Whenever possible, access shall be confined to a single instance or at most, a few occasions. The approval for access shall automatically expire 30 calendar days from date access commenced. If the need for access is expected to continue for a period in excess of 30 days, written approval of the granting authority is required. At such time as it is determined that the need for access is expected to extend beyond 90 days, the individual concerned shall be promptly processed for the level of clearance required. When extended access has been approved, such access shall be cancelled at or before 90 days from original date of access.

(7) Access at the higher level shall be limited to information under the control and custody of the authorizing official and shall be afforded under the general supervision of a properly cleared employee. The employee charged with providing such supervision shall be responsible for:

(i) Recording the higher-level information actually revealed,

(ii) The date(s) such access is afforded; and

(iii) The daily retrieval of the material accessed.

(8) Access at the next higher level shall not be authorized for COMSEC, SCI, NATO, or foreign government information.

(9) The exercise of this provision shall be used sparingly and repeat use within any 12 month period on behalf of the same individual is prohibited. The approving authority shall maintain a record containing the following data with respect to each such access approved:

(i) The name, and SSN of the employee afforded higher level access.

(ii) The level of access authorized.

(iii) Justification for the access, to include an explanation of the compelling reason to grant the higher level access and specifically how the DoD mission would be furthered.

(iv) An unclassified description of the specific information to which access was authorized and the duration of access along with the date(s) access was afforded.

(v) A listing of the local records reviewed and a statement that no significant adverse information concerning the employee is known to exist.

(vi) The approving authority's signature certifying (h)(9) (i) through (v) of this section.

(vii) Copies of any pertinent briefing/debriefings administered to the employee.

(i) *Access by retired flag/general officers.* (1) Upon determination by an active duty flag/general officer that there are compelling reasons, in furtherance of the Department of Defense mission, to grant a retired flag/general officer access to classified information in connection with a specific DoD program or mission, for a period not greater than 90 days, the investigative requirements of this part may be waived. The access shall be limited to classified information at a level commensurate with the security clearance held at the time of retirement—not including access to SCI.

(2) The flag/general officer approving issuance of the clearance shall, provide the appropriate DoD Component central clearance facility a written record to be incorporated into the DCII detailing:

(i) Full identifying data pertaining to the cleared subject;

(ii) The classification of the information to which access was authorized.

(3) Such access may be granted only after the compelling reason and the specific aspect of the DoD mission which is served by granting such access has been detailed and under the condition that the classified materials involved are not removed from the confines of a government installation or other area approved for storage of DoD classified information.

### § 154.17 Special access programs.

(a) *General.* It is the policy of the Department of Defense to establish, to the extent possible, uniform and consistent personnel security investigative requirements. Accordingly, investigations exceeding established requirements are authorized only when mandated by statute, national regulations, or international agreement. In this connection, there are certain Special Access programs originating at the national or international level that require personnel security investigations and procedures of a special nature. These programs and the special investigative requirements imposed by them are described in this section. A Special Access program is any program designed to control access, distribution and protection of particularly sensitive information established pursuant to section 4–2 of Executive Order 12356 and prior Orders. 32 CFR Part 159 governs the establishment of Departmental Special Access Programs.

(b) *Sensitive Compartmented Information (SCI).* (1) The investigative requirements for access to SCI is an SBI (See paragraph 4, Appendix A) including a NAC on the individual's spouse or cohabitant. When conditions indicate additional investigation shall be conducted on the spouse of the

individual and members of the immediate family (or other persons to whom the individual is bound by affection or obligation) to the extent necessary to permit a determination by the adjudication agency that the Personnel Security standards of DCID 1/14 are met.

(2) A previous investigation conducted within the past five years which substantially meets the investigative requirements prescribed by this section may serve as a basis for granting access approval provided that there has been no break in the individual's military service, DoD civilian employment, or access to classified information under the Industrial Security Program greater than 12 months. The individual shall submit one copy of an updated PSQ covering the period since the completion of the last SBI.

(c) *Single Integrated Operation Plan—Extremely Sensitive Information (SIOP–ESI).* The investigative requirement for access to SIOP–ESI is an SBI, including a NAC on the spouse and the individual's immediate family who are 18 years of age or over and who are United States citizens other than by birth or who are resident aliens.

(d) *Presidential support activities.* (1) DoD Directive 5210.55 [1] prescribes the policies and procedures for the nomination, screening, selection, and continued evaluation of DoD military and civilian personnel and contractor employees assigned to or utilized in Presidential Support activities. The type of investigation of individuals assigned to Presidential Support activities varies according to whether the person investigated qualifies for Category One or Category Two as indicated below:

(i) *Category one.* (A) Personnel assigned on a permanent or full-time basis to duties in direct support of the President (including the office staff of the Director, White House Military Office, and all individuals under his control):

*(1)* Presidential aircrew and associated maintenance and security personnel.

*(2)* Personnel assigned to the White House communications activities and the Presidential retreat.

*(3)* White House transportation personnel.

*(4)* Presidential mess attendants and medical personnel.

*(5)* Other individuals filling administrative positions at the White House.

(B) Personnel assigned on a temporary or part-time basis to duties supporting the President:

*(1)* Military Social Aides.

*(2)* Selected security, transportation, flight-line safety, and baggage personnel.

*(3)* Others with similar duties.

(C) Personnel assigned to the Office of the Military Aide to the Vice President.

(ii) *Category two.* (A) Personnel assigned to honor guards, ceremonial units, and military bands who perform at Presidential functions and facilities.

(B) Employees of contractors who provide services or contractors employees who require unescorted access to Presidential Support areas, activities, or equipment—including maintenance of the Presidential retreat, communications, and aircraft.

(C) Individuals in designated units requiring a lesser degree of access to the President or Presidential Support activities.

(2) Personnel nominated for Category One duties must have been the subject of an SBI, including a NAC on the spouse and all members of the individual's immediate family of 18 years of age or over who are United States citizens other than by birth or who are resident aliens. The SBI must have been completed within the 12 months preceding selection for Presidential Support duties. If such an individual marries subsequent to the completion of the SBI, the required spouse check shall be made at that time.

(3) Personnel nominated for Category Two duties must have been the subject of a BI, including a NAC on the spouse and all members of the individual's immediate family of 18 years of age or over who are United States citizens other than by birth or who are resident aliens. The BI must have been completed within the 12 months preceding selection for Presidential Support duties. It should be noted that duties (separate and distinct from their Presidential Support responsibilities) of some Category Two personnel may make it necessary for them to have special access clearances which require an SBI.

(4) The U.S. citizenship of foreign-born immediate family members of all Presidential Support nominees must be verified by investigation.

(5) A limited number of Category One personnel having especially sensitive duties have been designated by the Director, White House Military Office as "Category A." These personnel shall be investigated under special scoping in accordance with the requirements of the Memorandum of Understanding between the Director, White House Military Office and the Special Assistant to the Secretary and Deputy Secretary of Defense, July 30, 1980.

(e) *Nuclear Weapon Personnel Reliability Program (PRP).* (1) DoD Directive 5210.42 [1] sets forth the standards of individual reliability required for personnel performing duties associated with nuclear weapons and nuclear components. The investigative requirement for personnel performing such duties is:

(i) Critical Position: BI. In the event that it becomes necessary to consider an individual for a critical position and the required BI has not been completed, interim certification may be made under carefully controlled conditions as set forth below.

(A) The individual has had a favorable DNACI, NAC (or ENTNAC) within the past 5 years without a break in service or employment in excess of 1 year.

(B) The BI has been requested.

(C) All other requirements of the PRP screening process have been fulfilled.

(D) The individual is identified to supervisory personnel as being certified on an interim basis.

(E) The individual is not used in a two-man team with another such individual.

(F) Justification of the need for interim certification is documented by the certifying official.

(G) Should the BI not be completed within 150 days from the date of the request, the certifying official shall query the Component clearance authority, who shall ascertain from DIS the status of the investigation. On the basis of such information, the certifying official shall determine whether to continue or to withdraw the interim certification. .

(ii) Controlled Position: DNACI/NACI. (A) An ENTNAC completed for the purpose of first term enlistment or induction into the Armed Forces does not satisfy this requirement.

(B) Interim certification is authorized for an individual who has not had a DNACI/NACI completed within the past 5 years, subject to the following conditions:

*(1)* The individual has had a favorable ENTNAC/NAC, or higher investigation, that is more than 5 years old and has not had a break in service or employment in excess of 1 year.

*(2)* A DNACI/NACI has been requested at the time of interim certification.

*(3)* All other requirements of the PRP screening process have been fulfilled.

---

[1] See footnote 1 to § 154.2(c).

---

[1] See footnote 1 to § 154.2(c).

(4) Should the DNACI/NACI not be completed within 90 days from the date of the request, the procedures set forth in paragraph (e)(1)(i)(G) of this section for ascertaining the delay of the investigation in the case of a critical position shall apply.

(iii) Additional requirements apply. (A) The investigation upon which certification is based must have been completed within the last 5 years from the date of initial assignment to a PRP position and there must not have been a break in service or employment in excess of 1 year between completion of the investigation and initial assignment.

(B) In those cases in which the investigation was completed more than 5 years prior to initial assignment or in which there has been a break in service or employment in excess of 1 year subsequent to completion of the investigation, a reinvestigation is required.

(C) Subsequent to initial assignment to the PRP, reinvestigation is not required so long as the individual remains in the PRP.

(D) A medical evaluation of the individual as set forth in DoD Directive 5210.42.

(E) Review of the individual's personnel file and other official records and information locally available concerning behavior or conduct which is relevant to PRP standards.

(F) A personal interview with the individual for the purpose of informing him of the significance of the assignment, reliability standards, the need for reliable performance, and of ascertaining his attitude with respect to the PRP.

(G) Service in the Army, Navy and Air Force Reserve does not constitute active service for PRP purposes.

(f) *Access to North Atlantic Treaty Organization (NATO) classified information.* (1) Personnel assigned to a NATO staff position requiring access to NATO Cosmic (Top Secret), Secret, or Confidential information shall have been the subject of a favorably adjudicated BI (10 year scope), DNACI/NACI or NAC/ENTNAC, current within five years prior to the assignment, in accordance with USSAN Instruction 1–69 and § 154.19(f).

(2) Personnel *not* assigned to a NATO staff position, but requiring access to NATO Cosmic, Secret or Confidential information in the normal course of their duties, must possess the equivalent final U.S. security clearance based upon the appropriate personnel security investigation (Appendix A) required by §§ 154.16(b) and 154.19(j) of this part.

(g) *Other special access programs.* Special investigative requirements for Special Access programs not provided for in this paragraph may not be established without the written approval of the Deputy Under Secretary of Defense for Policy.

### § 154.18 Certain positions not necessarily requiring access to classified information.

(a) *General.* DoD Directive 5200.8 [1] outlines the authority of military commanders under the Internal Security Act of 1950 to issue orders and regulations for the protection of property or places under their command. Essential to carrying out this responsibility is a commander's need to protect the command against the action of untrustworthy persons. Normally, the investigative requirements prescribed in this part should suffice to enable a commander to determine the trustworthiness of individuals whose duties require access to classified information or appointment to positions that are sensitive and do not involve such access. However, there are certain categories of positions or duties which, although not requiring access to classified information, if performed by untrustworthy persons, could enable them to jeopardize the security of the command or otherwise endanger the national security. The investigative requirements for such positions or duties are detailed in this section.

(b) *Access to restricted areas, sensitive information or equipment not involving access to classified information.* (1) Access to restricted areas, sensitive information or equipment by DoD military, civilian or contractor personnel shall be limited to those individuals who have been determined trustworthy as a result of the favorable completion of a NAC (or ENTNAC) or who are under the escort of appropriately cleared personnel. Where escorting such persons is not feasible, a NAC shall be conducted and favorably reviewed by the appropriate component agency or activity prior to permitting such access. DoD Components shall not request, and shall not direct or permit their contractors to request, security clearances to permit access to areas when access to classified information is not required in the normal course of duties or which should be precluded by appropriate security measures. In determining trustworthiness under this paragraph, the provisions of § 154.7 and Appendix H will be utilized.

(2) In meeting the requirements of this paragraph, approval shall be obtained from one of the authorities designated in paragraph A, Appendix E of this part.

[1] See footnote 1 to § 154.2(c)

for authority to request NACs on DoD military, civilian or contractor employees. A justification shall accompany each request which shall detail the reasons why escorted access would not better serve the national security. Requests for investigative requirements beyond a NAC shall be forwarded to the Deputy Under Secretary of Defense for Policy for approval.

(3) NAC requests shall—

(i) Be forwarded to DIS in accordance with the provisions of paragraph B, Appendix C,

(ii) Contain a reference to this paragraph on the DD Form 398–2, and

(iii) List the authority in Appendix E who approved the request.

(4) Determinations to deny access under the provisions of this paragraph must not be exercised in an arbitrary, capricious, or discriminatory manner and shall be the responsibility of the military or installation commander as provided for in DoD Directive 5200.8.

(c) *Nonappropriated fund employees.* Each Nonappropriated Fund employee who is employed in a position of trust as designated by an official authorized in paragraph H, Appendix E, shall have been the subject of a NAC completed no longer than 12 months prior to employment or a prior personnel security investigation with no break in Federal service or employment greater than 12 months in accordance with DoD Manual 1401.1–M. An individual who does not meet established suitability requirements may not be employed without prior approval of the authorizing official. Issuance of a Confidential or Secret clearance will be based on a DNACI or NACI in accordance with § 154.16(b).

(d) *Customs inspectors.* DoD employees appointed as customs inspectors, under waivers approved in accordance with DoD 5030.49–R shall have undergone a favorably adjudicated NAC completed within the past 5 years unless there has been a break in DoD employment greater than 1 year in which case a current NAC is required.

(e) *Red Cross/United Service Organizations personnel.* A favorably adjudicated NAC shall be accomplished on Red Cross or United Service Organizations personnel as prerequisite for assignment with the Armed Forces overseas (32 CFR Part 253).

(f) *Officials authorized to issue security clearances.* Any person authorized to adjudicate personnel security clearances shall have been the subject of a favorably adjudicated BI.

(g) *Personnel security clearance adjudication officials.* Any person

selected to serve with a board, committee, or other group responsible for adjudicating personnel security cases shall have been the subject of a favorably adjudicated BI.

(h) *Persons requiring DoD building passes.* Pursuant to DoD Directive 5210.46[1] each person determined by the designated authorities of the Components concerned as having an official need for access to DoD buildings in the National Capital Region shall be the subject of a favorably, adjudicated NAC prior to issuance of a DoD building pass. Conduct of a BI for this purpose is prohibited unless approved in advance by ODUSD(P).

(i) *Foreign national employees overseas not requiring access to classified information.* Foreign nationals employed by DoD organizations overseas, whose duties do not require access to classified information, shall be the subject of the following record checks, initiated by the appropriate military department investigative organization consistent with § 154.9(e) prior to employment:

(1) Host government law enforcement and security agency checks at the city, state (province), and national level, whenever permissible by the laws of the host government; and

(2) DCII.

(3) FBI–HQ/ID. (Where information exists regarding residence by the foreign national in the United States for one year or more since age 18).

(j) *Special agents and investigative support personnel.* Special agents and those noninvestigative personnel assigned to investigative agencies whose official duties require continuous access to complete investigative files and material require an SBI.

(k) *Persons requiring access to chemical agents.* Personnel whose duties involve access to or security of chemical agents shall be screened initially for suitability and reliability and shall be evaluated on a continuing basis at the supervisory level to ensure that they continue to meet the high standards required. At a minimum, all such personnel shall have had a favorably adjudicated NAC completed within the last 5 years prior to assignment in accordance with the provisions of DoD Directive 5210.65.[1]

(l) *Education and orientation personnel.* Persons selected for duties in connection with programs involving the education and orientation of military personnel shall have been the subject of a favorably adjudicated NAC prior to such assignment. This does not include teachers/administrators associated with university extension courses conducted on military installations in the United States. Non-US citizens from a country listed in Appendix G shall be required to undergo a BI if they are employed in a position covered by this paragraph.

(m) *Contract guards.* Any person performing contract guard functions shall have been the subject of a favorably adjudicated NAC prior to such assignment.

(n) *Transportation of arms, ammunition and explosives (AA&E).* Any DoD military, civilian or contract employee (including commercial carrier) operating a vehicle or providing security to a vehicle transporting Category I, II or Confidential AA&E shall have been the subject of a favorably adjudicated NAC or ENTNAC.

(o) *Personnel occupying information systems positions designated ADP–I, ADP–II & ADP–III.* DoD military, civilian personnel, consultants, and contractor personnel performing on unclassified automated information systems may be assigned to one of three position sensitivity designations (in accordance with Appendix J) and investigated as follows:

ADP–I: BI
ADP–II: DNACI/NACI
ADP–III: NAC/ENTNAC

Those personnel falling in the above categories who require access to classified information will, of course, be subject to the appropriate investigative scope contained in § 154.16(b).

(p) *Others.* Requests for approval to conduct an investigation on other personnel, not provided for in § 154.18 (b) through (o) considered to fall within the general provisions of § 154.18(a) shall be submitted, detailing the justification therefor, for approval to the Deputy Under Secretary of Defense for Policy. Approval of such requests shall be contingent upon an assurance that appropriate review procedures exist and that adverse determinations will be made at no lower than major command level.

**§ 154.19 Reinvestigation.**

(a) *General.* DoD policy prohibits unauthorized and unnecessary investigations. There are, however, certain situations and requirements that necessitate reinvestigation of an individual who has already been investigated under the provisions of this part. It is the policy to limit reinvestigation of individuals to the scope contained in paragraph 5, Appendix A to meet overall security requirements. Reinvestigation, generally, is authorized only as follows:

(1) To prove or disprove an allegation relating to the criteria set forth in § 154.7 of this part with respect to an individual holding a security clearance or assigned to a position that requires a trustworthiness determination;

(2) To meet the periodic reinvestigation requirements of this part with respect to those security programs enumerated below; and

(3) Upon individual request, to assess the current eligibility of individuals who did not receive favorable adjudicative action after an initial investigation, if a potential clearance need exists and there are reasonable indications that the factors upon which the adverse determination was made no longer exists.

(b) *Allegations related to disqualification.* Whenever questionable behavior patterns develop, derogatory information is discovered, or inconsistencies arise related to the disqualification criteria outlined in § 154.7 that could have an adverse impact on an individual's security status, a Special Investigative Inquiry (SII), psychiatric, drug or alcohol evaluation, as appropriate, may be requested to resolve all relevant issues in doubt. If it is essential that additional relevant personal data is required from the investigative subject, and the subject fails to furnish the required data, the subject's existing security clearance or assignment to sensitive duties shall be terminated in accordance with § 154.56(b).

(c) *Access to Sensitive Compartmented Information (SCI).* Each individual having current access to SCI shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, Appendix A.

(d) *Critical-sensitive positions.* Each DoD civilian employee occupying a critical sensitive position shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, Appendix A.

(e) *Presidential support duties.* Each individual assigned Presidential Support duties shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, Appendix A.

(f) *NATO staff.* Each individual assigned to a NATO staff position requiring a COSMIC clearance shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, Appendix A. Those assigned to a NATO staff position requiring a NATO SECRET clearance shall be the subject of a new NAC conducted on a 5-year recurring basis.

(g) *Extraordinarily sensitive duties.* In extremely limited instances, extraordinary national security implications associated with certain SCI

duties may require very special compartmentation and other special security measures. In such instances, a Component SOIC may, with the approval of the Deputy Under Secretary of Defense for Policy, request PR's at intervals of less than 5 years as outlined in paragraph 5, Appendix A. Such requests shall include full justification and a recommendation as to the desired frequency. In reviewing such requests, the Deputy Under Secretary of Defense for Policy shall give due consideration to:

(1) The potential damage that might result from the individual's defection or abduction.

(2) The availability and probable effectiveness of means other than reinvestigation to evaluate factors concerning the individual's suitability for continued SCI access.

(h) *Foreign nationals employed by DoD organizations overseas.* Foreign nationals employed by DoD organizations overseas who have been granted a "Limited Access Authorization" pursuant to § 154.16(d) shall be the subject of a PR, as set forth in paragraph 5, Appendix A, conducted under the auspices of DIS by the appropriate military department or other U.S. Government investigative agency consistent with § 154.9(e) and Appendix I of this part.

(i) *Persons accessing very sensitive information classified Secret.* (1) Heads of DoD Components shall submit a request to the Deputy Under Secretary of Defense for Policy for approval to conduct periodic reinvestigations on persons holding Secret clearances who are exposed to very sensitive Secret information.

(2) Generally, the Deputy Under Secretary of Defense for Policy will only approve periodic reinvestigations of persons having access to Secret information if the unauthorized disclosure of the information in question could reasonably be expected to:

(i) Jeopardize human life or safety.

(ii) Result in the loss of unique or uniquely productive intelligence sources or methods vital to U.S. security.

(iii) Compromise technologies, plans, or procedures vital to the strategic advantage of the United States.

(3) Each individual accessing very sensitive Secret information who has been designated by an authority listed in paragraph A, Appendix E as requiring periodic reinvestigation, shall be the subject of a PR conducted on a 5-year recurring basis scoped as stated in paragraph 5, Appendix A.

(j) *Access to Top Secret information.* Each individual having current access to Top Secret information shall be the subject of a PR conducted on a 5-year recurring basis scoped as outlined in paragraph 5, Appendix A.

(k) *Personnel occupying computer positions designated ADP–1.* All DoD military, civilians, consultants, and contractor personnel occupying computer positions designated ADP–I, shall be the subject of a PR conducted on a 5-year recurring basis as set forth in paragraph 5, Appendix A.

### § 154.20 Authority to waive investigative requirements.

*Authorized officials.* Only an official designated in paragraph G, Appendix E, is empowered to waive the investigative requirements for appointment to a sensitive position, assignment to sensitive duties or access to classified information pending completion of the investigation required by this section. Such waiver shall be based upon certification in writing by the designated official that such action is necessary to the accomplishment of a DoD mission. A minor investigative element that has not been met should not preclude favorable.

## Subpart D—Reciprocal Acceptance of Prior Investigations and Personnel Security Determinations

### § 154.23 General.

Previously conducted investigations and previously rendered personnel security determinations shall be accepted within DoD in accordance with the policy set forth below.

### § 154.24 Prior investigations conducted by DoD investigative organizations.

As long as there is no break in military service/civilian employment greater than 12 months, any previous personnel security investigation conducted by DoD investigative organizations that essentially is equivalent in scope to an investigation required by this part will be accepted without requesting additional investigation. There is no time limitation as to the acceptability of such investigations, subject to the provisions of §§ 154.8(h) and 154.25(b) of this part.

### § 154.25 Prior personnel security determinations made by DoD authorities.

(a) Adjudicative determinations for appointment in sensitive positions, assignment to sensitive duties or access to classified information (including those pertaining to SCI) made by designated DoD authorities will be mutually and reciprocally accepted by all DoD Components without requiring additional investigation, unless there has been a break in the individual's military service/civilian employment of greater than 12 months or unless derogatory information that occurred subsequent to the last prior security determination becomes known. A check of the DCII should be conducted to accomplish this task.

(b) Whenever a valid DoD security clearance or Special Access authorization (including one pertaining to SCI) is on-record, Components shall not request DIS or other DoD investigative organizations to forward prior investigative files for review unless:

(1) Significant derogatory information or investigation completed subsequent to the date of last clearance or Special Access authorization, is known to the requester; or

(2) The individual concerned is being considered for a higher level clearance (e.g., Secret or Top Secret) or the individual does not have a Special Access authorization and is being considered for one; or

(3) There has been a break in the individual's military service/civilian employment of greater than 12 months subsequent to the issuance of a prior clearance.

(4) The most recent SCI access authorization of the individual concerned was based on a waiver.

(c) Requests for prior investigative files authorized by this part shall be made in writing, shall cite the specific justification for the request (i.e., upgrade of clearance, issue Special Access authorization, etc.), and shall include the date, level, and issuing organization of the individual's current or most recent security clearance or Special Access authorization.

(d) All requests for non-DoD investigative files, authorized under the criteria prescribed by paragraphs (a), (b)(1), (2), (3), and (4) and (c) of this section shall be:

(1) Submitted on DD Form 398–2 to DIS;

(2) Annotated as a "Single Agency Check" of whichever agency or agency developed the investigative file or to obtain the check of a single national agency.

(e) When further investigation is desired, in addition to an existing non-DoD investigative file, a DD Form 1879 will be submitted to DIS with the appropriate security forms attached. The submission of a Single Agency Check via DD Form 398–2 will be used to obtain an existing investigative file or check a single national agency.

(f) Whenever a civilian or military member transfers from one DoD activity to another, the losing organization's security office is responsible for advising the gaining organization of any

pending action to suspend, deny or revoke the individual's security clearance as well as any adverse information that may exist in security, personnel or other files. In such instances the clearance shall not be reissued until the questionable information has been adjudicated.

**§ 154.26 Investigations conducted and clearances granted by other agencies of the Federal government.**

(a) Whenever a prior investigation or personnel security determination (including clearance for access to information classified under Executive Order 12356 of another agency of the Federal Government meets the investigative scope and standards of this part, such investigation or clearance may be accepted for the investigative or clearance purposes of this part, provided that the employment with the Federal agency concerned has been continuous and there has been no break longer than 12 months since completion of the prior investigation, and further provided that inquiry with the agency discloses no reason why the clearance should not be accepted. If it is determined that the prior investigation does not meet the provisions of this paragraph, supplemental investigation shall be requested.

(b) A NACI conducted by OPM shall be accepted and considered equivalent to a DNACI for the purposes of this part.

(c) Department of Defense policy on reciprocal acceptance of clearances with the Nuclear Regulatory Commission and the Department of Energy is set forth in DoD Directive 5210.2.[1]

## Subpart E—Requesting Personnel Security Investigations

**§ 154.30 General.**

Requests for personnel security investigations shall be limited to those required to accomplish the Defense mission. Such requests shall be submitted only by the authorities designated in § 154.31. These authorities shall be held responsible for determining if persons under their jurisdiction require a personnel security investigation. Proper planning must be effected to ensure that investigative requests are submitted sufficiently in advance to allow completion of the investigation before the time it is needed to grant the required clearance or otherwise make the necessary personnel security determination.

[1] See footnote 1 to § 154.2(c).

**§ 154.31 Authorized requesters.**

Requests for personnel security investigation shall be accepted only from the requesters designated below:

(a) *Military Departments.* (1) Army.

(i) Central Clearance Facility.

(ii) All activity commanders.

(iii) Chiefs of recruiting stations.

(2) Navy (including Marine Corps).

(i) Central Adjudicative Facility.

(ii) Commanders and commanding officers of organizations listed on the Standard Navy Distribution List.

(iii) Chiefs of recruiting stations.

(3) Air Force.

(i) Air Force Security Clearance Office.

(ii) Assistant Chief of Staff for Intelligence.

(iii) All activity commanders.

(iv) Chiefs of recruiting stations.

(b) Defense Agencies—Directors of Security and activity commanders.

(c) Organization of the Joint Chiefs of Staff—Chief, Security Division.

(d) Office of the Secretary of Defense—Director for Personnel and Security, Washington Headquarters Services.

(e) Commanders of Unified and Specified Commands or their designees.

(f) Such other requesters approved by the Deputy Under Secretary of Defense for Policy.

**§ 154.32 Criteria for requesting investigations.**

Authorized requesters shall use the tables set forth in Appendix C to determine the type of investigation that shall be requested to meet the investigative requirement of the specific position or duty concerned.

**§ 154.33 Request procedures.**

To insure efficient and effective completion of required investigations, all requests for personnel security investigations shall be prepared and forwarded in accordance with Appendix B and the investigative jurisdictional policies set forth in § 154.9.

**§ 154.34 Priority requests.**

To insure that personnel security investigations are conducted in an orderly and efficient manner, requests for priority for individual investigations or categories of investigations shall be kept to a minimum. DIS shall not assign priority to any personnel security investigation or categories of investigations without written approval of the Deputy Under Secretary of Defense for Policy.

**§ 154.35 Personal data provided by the subject of the investigation.**

(a) To conduct the required investigation, it is necessary that the investigative agency be provided certain relevant data concerning the subject of the investigation. The Privacy Act of 1974 requires that, to the greatest extent practicable, personal information shall be obtained directly from the subject individual when the information may result in adverse determinations affecting an individual's rights, benefits, and privileges under Federal programs.

(b) Accordingly, it is incumbent upon the subject of each personnel security investigation to provide the personal information required by this part. At a minimum, the individual shall complete the appropriate investigative forms, provide fingerprints of a quality acceptable to the FBI, and execute a signed release, as necessary, authorizing custodians of police, credit, education, employment, and medical and similar records, to provide relevant record information to the investigative agency. When the FBI returns a fingerprint card indicating that the quality of the fingerprints is not acceptable, an additional set of fingerprints will be obtained from the subject. In the event the FBI indicates that the additional fingerprints are also unacceptable, no further attempt to obtain more fingerprints need be made; this aspect of the investigation will then be processed on the basis of the name check of the FBI files. As an exception, a minimum of three attempts will be made for all Presidential Support cases, for SCI access nominations if the requester so indicates, and in those cases in which more than minor derogatory information exists. Each subject of a personnel security investigation conducted under the provisions of this part shall be furnished a Privacy Act Statement advising of the authority for obtaining the personal data, the principal purpose(s) for obtaining it, the routine uses, whether disclosure is mandatory or voluntary, the effect on the individual if it is not provided, and that subsequent use of the data may be employed as part of an aperiodic review process to evaluate continued eligibility for access to classified information.

(c) Failure to respond within the time limit prescribed by the requesting organization with the required security forms or refusal to provide or permit access to the relevant information required by this part shall result in termination of the individual's security clearance or assignment to sensitive duties utilizing the procedures of

§ 154.59 or further administrative processing of the investigative request.

## Subpart F—Adjudication

### § 154.40 General.

(a) The standard which must be met for clearance or assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

(b) The principal objective of the DoD personnel security adjudicative function, consequently, is to assure selection of persons for sensitive positions who meet this standard. The adjudication process involves the effort to assess the probability of future behavior which could have an effect adverse to the national security. Since few, if any, situations allow for positive, conclusive evidence of certain future conduct, it is an attempt to judge whether the circumstances of a particular case, taking into consideration prior experience with similar cases, reasonably suggest a degree of probability of prejudicial behavior not consistent with the national security. It is invariably a subjective determination, considering the past but necessarily anticipating the future. Rarely is proof of trustworthiness and reliability or untrustworthiness and unreliability beyond all reasonable doubt.

(c) Establishing relevancy is one of the key objectives of the personnel security adjudicative process in evaluating investigative material. It involves neither the judgment of criminal guilt nor the determination of general suitability for a given position; rather, it is the assessment of a person's trustworthiness and fitness for a responsibility which could, if abused, have unacceptable consequences for the national security.

(d) While equity demands optimal uniformity in evaluating individual cases, assuring fair and consistent assessment of circumstances from one situation to the next, each case must be weighed on its own merits, taking into consideration all relevant facts, and prior experience in similar cases. All information of record, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, and overall significance. In all adjudications the protection of the national security shall be the paramount determinant.

### § 154.41 Central adjudication.

(a) To ensure uniform application of the requirement of this part and to ensure that DoD personnel security determinations are effected consistent with existing statutes and Executive orders, the head of each Military Department and Defense Agencies shall establish a single Central Adjudication Facility for his/her component. The function of such facility shall be limited to evaluating personnel security investigations and making personnel security determinations. The chief of each Central Adjudication Facility shall have the authority to act on behalf of the head of the Component concerned with respect to personnel security determinations. All information relevant to determining whether a person meets the appropriate personnel security standard prescribed by this part shall be reviewed and evaluated by personnel security specialists specifically designated by the head of the Component concerned, or designee.

(b) In view of the significance each adjudicative decision can have on a person's career and to ensure the maximum degree of fairness and equity in such actions, a minimum level of review shall be required for all clearance/access determinations related to the following categories of investigations:

(1) BI/SBI/PR/ENAC/SII:

(i) *Favorable:* Completely favorable investigations shall be reviewed and approved by an adjudicative official in the civilian grade of GS–7/9 or the military rank of O–3.

(ii) *Unfavorable:* Investigations that are not completely favorable shall undergo at least two levels of review by adjudicative officials, the second of which must be at the civilian grade of GS–11/12 or the military rank of O–4. When an unfavorable administrative action is contemplated under § 154.56(b), the letter of intent (LOI) to deny or revoke must be approved and signed by an adjudicative official at the civilian grade of GS–13/14 or the military rank of O–5. A final notification of unfavorable administrative action, subsequent to the issuance of the LOI, must be approved and signed at the civilian grade of GS–14/15 or the military rank of O–6.

(2) *NACI/DNACI/NAC/ENTNAC:*

(i) *Favorable:* A completely favorable investigation may be finally adjudicated after one level of review provided that the decisionmaking authority is at the civilian grade of GS–5/7 or the military rank of O–2.

(ii) *Unfavorable:* Investigations that are not completely favorable must be reviewed by an adjudicative official in the civilian grade of GS–7/9 or the military rank of O–3. When an unfavorable administrative action is contemplated under § 154.56(b), the letter of intent to deny/revoke must be signed by an adjudicative official at the civilian grade of GS–11/12 or the military rank of O–4. A final notification of unfavorable administrative action subsequent to the issuance of the LOI must be signed by an adjudicative official at the civilian grade of GS–13 or the military rank of O–5 or above.

(c) Exceptions to the above policy may only be granted by the Deputy Under Secretary of Defense for Policy.

### § 154.42 Evaluation of personnel security information.

(a) The criteria and adjudicative policy to be used in applying the principles at § 154.40 are set forth in § 154.7(a) and Appendix H of this part. The ultimate consideration in making a favorable personnel security determination is whether such determination is clearly consistent with the interests of national security and shall be an overall common sense evaluation based on all available information. Such a determination shall include consideration of the following factors:

(1) The nature and seriousness of the conduct;

(2) The circumstances surrounding the conduct;

(3) The frequency and recency of the conduct;

(4) The age of the individual;

(5) The voluntariness of participation; and

(6) The absence or presence of rehabilitation.

(b) Detailed adjudication policy guidance to assist adjudicators in determining whether a person is eligible for access to classified information or assignment to sensitive duties is contained in Appendix H. Adjudication policy for access to SCI is contained in DCID 1/14.

### § 154.43 Adjudicative record.

(a) Each clearance/access determination, whether favorable or unfavorable, shall be entered into the Defense Central Security Index (DCSI), a subelement of the Defense Central Index of Investigations (DCII). (Operational details regarding implementation of the DCSI shall be implemented in a forthcoming change to this part.)

(b) The rationale underlying each unfavorable administrative action shall be reduced to writing and is subject to

the provisions of 32 CFR Part 286 and 32 CFR Part 286a.

## Subpart G—Issuing Clearance and Granting Access

### § 154.47 General.

(a) The issuance of a personnel security clearance (as well as the function of determining that an individual is eligible for access to Special Access program information, or is suitable for assignment to sensitive duties or such other duties that require a trustworthiness determination) is a function distinct from that involving the granting of access to classified information. Clearance determinations are made on the merits of the individual case with respect to the subject's suitability for security clearance. Access determinations are made solely on the basis of the individual's need for access to classified information in order to perform official duties. Except for suspension of access pending final adjudication of a personnel security clearance, access may not be finally denied for cause without applying the provisions of § 154.56(b).

(b) Only the authorities designated in paragraph A, Appendix E are authorized to grant, deny or revoke personnel security clearances or Special Access authorizations (other than SCI). Any commander or head of an organization may suspend access for cause when there exists information raising a serious question as to the individual's ability or intent to protect classified information, provided that the procedures set forth in § 154.55(b) of this part are complied.

(c) All commanders and heads of DoD organizations have the responsibility for determining those position functions in their jurisdiction that require access to classified information and the authority to grant access to incumbents of such positions who have been cleared under the provisions of this part.

### § 154.48 Issuing clearance.

(a) Authorities designated in paragraph A, Appendix E shall record the issuance, denial or revocation of a personnel security clearance in the DSCI (see § 154.43). A record of the clearance issued shall also be recorded in an individual's personnel/security file or official personnel folder, as appropriate.

(b) A personnel security clearance remains valid until the individual is separated from the Armed Forces, separated from DoD civilian employment, has no further official relationship with DoD, official action has been taken to deny, revoke or suspend the clearance or access, or regular access to the level of classified information for which the individual holds a clearance is no longer necessary in the normal course of his or her duties. If an individual resumes his or her affiliation with DoD no single break in the individual's relationship with DoD exists greater than 12 months, the need for regular access to classified information at or below the previous level recurs, and no record of an unfavorable administrative action exists, the appropriate clearance shall be reissued without further investigation or adjudication provided there has been no additional investigation or development of derogatory information.

(c) Personnel security clearances of DoD military personnel shall be granted denied or revoked only by the designated authority of the parent Military Department. Issuance, reissuance, denial, or revocation of a personnel security clearance by any DoD Component concerning personnel who have been determined to be eligible for clearance by another component is expressly prohibited. Investigations conducted on Army, Navy, and Air Force personnel by DIS will be returned only to the parent service of the subject for adjudication regardless of the source of the original request. The adjudicative authority will be responsible for expeditiously transmitting the results of the clearance determination. As an exception, the employing DoD Component may issue an interim clearance to personnel under their administrative jurisdiction pending a final eligibility determination by the individual's parent Component. Whenever an employing DoD Component issues an interim clearance to an individual from another Component, written notice of the action shall be provided to the parent Component.

(d) When a Defense agency, to include OJCS, initiates an SBI (or PR) for access to SCI on a military member, DIS will return the completed investigation to the appropriate Military Department adjudicative authority in accordance with paragraph (c) of this section for issuance (or reissuance) of the Top Secret clearance. Following the issuance of the security clearance, the military adjudicative authority will forward the investigative file to the Defense agency identified in the "Return Results To" block of the DD Form 1879. The receiving agency will then forward the completed SBI on to DIA for the SCI adjudication in accordance with DCID 1/14.

(e) The interim clearance shall be recorded in the DCSI (§ 154.43) by the parent DoD Component in the same manner as a final clearance.

### § 154.49 Granting access.

(a) Access to classified information shall be granted to persons whose official duties require such access and who have the appropriate personnel security clearance. Access determinations (other than for Special Access programs) are not an adjudicative function relating to an individual's suitability for such access. Rather they are decisions made by the commander that access is officially required.

(b) In the absence of derogatory information on the individual concerned, DoD commanders and organizational managers shall accept a personnel security clearance determination, issued by any DoD authority authorized by this part to issue personnel security clearances, as the basis for granting access, when access is required, without requesting additional investigation or investigative files.

(c) The access level of cleared individuals will also be entered into the DCSI, along with clearance eligibility status, as systems are developed and adopted which make such actions feasible.

### § 154.50 Administrative withdrawal.

As set forth in § 154.48 the personnel security clearance and access eligibility must be withdrawn when the events described therein occur. When regular access to a prescribed level of classified information is no longer required in the normal course of an individual's duties, the previously authorized access eligibility level must be administratively downgraded or withdrawn, as appropriate.

## Subpart H—Unfavorable Administrative Actions

### § 154.55 Requirements.

(a) *General.* For purposes of this part, an unfavorable administrative action includes any adverse action which is taken as a result of a personnel security determination, as defined at § 154.3 and any unfavorable personnel security determination, as defined at § 154.3. This Subpart is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon, to create or enlarge the jurisdiction or review authority of any court or administrative tribunal, including the Merit Systems Protection Board.

(b) *Referral for action.* (1) Whenever derogatory information relating to the criteria and policy set forth in § 154.7(a) and Appendix H of this part is

developed or otherwise becomes available to any DoD element, it shall be referred by the most expeditious means to the commander or the security officer of the organization to which the individual is assigned for duty. The commander or security officer of the organization to which the subject of the information is assigned shall review the information in terms of its security significance and completeness. If further information is needed to confirm or disprove the allegations, additional investigation should be requested. The commander of the duty organization shall insure that the parent Component of the individual concerned is informed promptly concerning the derogatory information developed and any actions taken or anticipated with respect thereto. However, referral of derogatory information to the commander or security officer shall in no way affect or limit the responsibility of the central adjudication facility to continue to process the individual for denial or revocation of clearance or access to classified information, in accordance with § 154.56(b), if such action is warranted and supportable by the criteria and policy contained in § 154.7(a) and Appendix H. No unfavorable administrative action as defined in § 154.3 may be taken by the organization to which the individual is assigned for duty without affording the person the full range of protections contained in § 154.56(b) or, in the case of SCI, Annex B, DCID 1/14.

(2) The Director DIS shall establish appropriate alternative means whereby information with potentially serious security significance can be reported other than through DoD command or industrial organization channels. Such access shall include utilization of the DoD Inspector General "hotline" to receive such reports for appropriate follow-up by DIS. DoD Components and industry will assist DIS in publicizing the availability of appropriate reporting channels. Additionally, DoD Components will augment the system when and where necessary. Heads of DoD Components will be notified immediately to take action if appropriate.

(c) *Suspension.* The commander or head of the organization shall determine whether, on the basis of all the facts available upon receipt of the initial derogatory information, it is in the interests of national security to continue subject's security status unchanged or to take interim action to suspend subject's access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), if information exists which raises serious questions as to the individual's ability or intent to protect classified information, until a final determination is made by the appropriate authority designated in Appendix E. Every effort shall be made to resolve a suspension action as expeditiously as possible.

(d) *Final Unfavorable Administrative Actions.* The authority to make personnel security determinations that will result in an unfavorable administrative action is limited to those authorities designated in Appendix E, except that the authority to terminate the employment of a civilian employee of a military department or Defense agency is vested solely in the head of the DoD component concerned and in such other statutory official as may be designated. Action to terminate civilian employees of the Office of the Secretary of Defense and DoD Components, on the basis of criteria listed in § 154.7 (a) through (f), shall be coordinated with the Deputy Under Secretary of Defense for Policy prior to final action by the head of the DoD Component. DoD civilian employees or members of the Armed Forces shall not be removed from employment or separated from the Service under provisions of this part if removal or separation can be effected under OPM regulations or administrative (nonsecurity) regulations of the military departments. However, actions contemplated in this regard shall in no way affect or limit the responsibility of the central adjudication facility to continue for process the individual for denial or revocation of a security clearance, access to classified information on or assignment to a sensitive position if warranted and supportable by the criteria and standards contained in this part.

**§ 154.56 Procedures.**

(a) *General.* No final personnel security determination shall be made on a member of the Armed Forces, an employee of the Department of Defense, a consultant to the Department of Defense, or any other person affiliated with the Department of Defense without granting the individual concerned the procedural benefits set forth in § 154.56(b) when such determination results in an unfavorable administrative action (see § 154.55(a)). As an exception, Red Cross/United Service Organizations employees shall be afforded the procedures prescribed by 32 CFR Part 253.

(b) *Unfavorable administrative action procedures.* Except as provided for below, no unfavorable administrative action shall be taken under the authority of this part unless the person concerned has been given:

(1) A written statement of the reasons why the unfavorable administrative action is being taken. The statement shall be as comprehensive and detailed as the protection of sources afforded confidentiality under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) and national security permit. Prior to issuing a statement of reasons to a civilian employee for suspension or removal action, the issuing authority must comply with the provisions of Federal Personnel Manual, Chapter 732, Subchapter 1, paragraph 1–6b. The signature authority must be as provided for in § 154.41(b) (1)(ii) and (2)(ii).

(2) An opportunity to reply in writing to such authority as the head of the Component concerned may designate;

(3) A written response to any submission under subparagraph b. stating the final reasons therefor, which shall be as specific as privacy and national security considerations permit. The signature authority must be as provided for in § 154.41(b) (1)(ii) and (2)(ii). Such response shall be as prompt as individual circumstances permit, not to exceed 60 days from the date of receipt of the appeal submitted under paragraph (b)(2) of this section provided no additional investigative action is necessary. If a final response cannot be completed within the time frame allowed, the subject must be notified in writing of this fact, the reasons therefor, and the date a final response is expected, which shall not, in any case, exceed a total of 90 days from the date of receipt of the appeal under § 154.56(b).

(4) An opportunity to appeal to a higher level of authority designated by the Component concerned.

(c) *Exceptions to policy.* Notwithstanding § 154.56(b) or any other provision of this part, nothing in this part shall be deemed to limit or affect the responsibility and powers of the Secretary of Defense to find that a person is unsuitable for entrance or retention in the Armed Forces, or is ineligible for a security clearance or assignment to sensitive duties, if the national security so requires, pursuant to section 7532, Title 5, United States Code. Such authority may not be delegated and may be exercised only when it is determined that the procedures prescribed in § 154.56(b) are not appropriate. Such determination shall be conclusive.

BEST COPY AVAILABLE

**§ 154.57 Reinstatement of civilian employees.**

(a) *General.* Any person whose civilian employment in the Department of Defense is terminated under the provisions of this part shall not be reinstated or restored to duty or reemployed in the Department of Defense unless the Secretary of Defense, or the head of a DoD Component, finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of national security. Such a finding shall be made a part of the personnel security record.

(b) *Reinstatement benefits.* A DoD civilian employee whose employment has been suspended or terminated under the provisions of this part and who is reinstated or restored to duty under the provisions of section 3571 of Title 5, U.S. Code is entitled to benefits as provided for by section 3 of Pub. L. 89–380.

## Subpart I—Continuing Security Responsibilities

**§ 154.60 Evaluating continued security eligibility.**

(a) *General.* A personnel security determination is an effort to assess the future trustworthiness of an individual in terms of the likelihood of the individual preserving the national security. Obviously it is not possible at a given point to establish with certainty that any human being will remain trustworthy. Accordingly the issuance of a personnel security clearance or the determination that a person is suitable for assignment to sensitive duties cannot be considered as a final personnel security action. Rather, there is the clear need to assure that, after the personnel security determination is reached, the individual's trustworthiness is a matter of continuing assessment. The responsibility for such assessment must be shared by the organizational commander or manager, the individual's supervisor and, to a large degree, the individual himself. Therefore, the heads of DoD Components shall establish and maintain a program designed to evaluate on a continuing basis the status of personnel under their jurisdiction with respect to security eligibility. This program should insure close coordination between security authorities and personnel, medical, legal and supervisory personnel to assure that all pertinent information available within a command is considered in the personnel security process.

(b) *Management responsibility.* (1) Commanders and heads of organizations shall insure that personnel assigned to sensitive duties (or other duties requiring a trustworthiness determination under the provisions of this part) are initially indoctrinated and periodically instructed thereafter on the national security implication of their duties and on their individual responsibilities.

(2) The heads of all DoD components are encouraged to develop programs designed to counsel and assist employees in sensitive positions who are experiencing problems in their personal lives with respect to such areas as financial, medical or emotional difficulties. Such initiatives should be designed to identify potential problem areas at an early stage so that any assistance rendered by the employing activity will have a reasonable chance of precluding long term, job-related security problems.

(c) *Supervisory responsibility.* Security programs shall be established to insure that supervisory personnel are familiarized with their special responsibilities in matters pertaining to personnel security with respect to personnel under their supervision. Such programs shall provide practical guidance as to indicators that may signal matters of personnel security concern. Specific instructions should be disseminated concerning reporting procedures to enable the appropriate authority to take timely corrective action to protect the interests of national security as well as to provide any necessary help to the individual concerned to correct any personal problem which may have a bearing upon the individual's continued eligibility for access.

(1) In conjunction with the submission of PRs stated in § 154.19, and paragraph 5, Appendix A, supervisors will be required to review an individual's DD Form 398 to ensure that no significant adverse information of which they are aware and that may have a bearing on subject's continued eligibility for access to classified information is omitted.

(2) If the supervisor is not aware of any significant adverse information that may have a bearing on the subject's continued eligibility for access, then the following statement must be documented, signed and dated, and forwarded to DIS with the investigative package.

I am aware of no information of the type contained at Appendix D, 32 CFR Part 154, relating to subject's trustworthiness, reliability, or loyalty that may reflect adversely on his/her ability to safeguard classified information.

(3) If the supervisor is aware of such significant adverse information, the following statement shall be documented, signed and dated and forwarded to DIS with the investigative package, and a written summary of the derogatory information forwarded to DIS with the investigative package:

I am aware of information of the type contained in Appendix D, 32 CFR Part 154, relating to subject's trustworthiness, reliability, or loyalty that may reflect adversely on his/her ability to safeguard classified information and have reported all relevant details to the appropriate security official(s).

(4) In conjunction with regularly scheduled fitness and performance reports of military and civilian personnel whose duties entail access to classified information, supervisors will include a comment in accordance with § 154.60(c) (2) and (3) as well as a comment regarding an employee's discharge of security responsibilities, pursuant to their Component guidance.

(d) *Individual responsibility.* (1) Individuals must familiarize themselves with pertinent security regulations that pertain to their assigned duties. Further, individuals must be aware of the standards of conduct required of persons holding positions of trust. In this connection, individuals must recognize and avoid the kind of personal behavior that would result in rendering one ineligible for continued assignment in a position of trust. In the final analysis, the ultimate responsibility for maintaining continued eligibility for a position of trust rests with the individual.

(2) Moreover, individuals having access to classified information must report promptly to their security office:

(i) Any form of contact, intentional or otherwise, with a citizen of a designated country, (Appendix G) unless occurring as a function of one's official duties.

(ii) Attempts by representatives or citizens of designated countries to cultivate friendships or to place one under obligation.

(iii) Attempts by representatives or citizens of foreign countries to:

(A) Cultivate a friendship to the extent of placing one under obligation that they would not normally be able to reciprocate, or by offering money payments or bribery to obtain information of actual or potential intelligence value.

(B) Obtain information of actual or potential intelligence value through observation, collection of documents, or by personal contact.

(C) Coerce by blackmail, by threats against or promises of assistance to relatives living under foreign control, especially those living in a designated country.

(iv) All personal foreign travel in advance.

(v) Any information of the type referred to in § 154.7 or Appendix H.

(e) *Co-worker responsibility.* Co-workers have an equal obligation to advise their supervisor or appropriate security official when they become aware of information with potentially serious security significance regarding someone with access to classified information or employed in a sensitive position.

**§ 154.61 Security education.**

(a) *General.* The effectiveness of an individual in meeting security responsibilities is proportional to the degree to which the individual understands them. Thus, an integral part of the DoD security program is the indoctrination of individuals on their security responsibilities. Moreover, such indoctrination is essential to the efficient functioning of the DoD personnel security program. Accordingly, heads of DoD Components shall establish procedures in accordance with this chapter whereby persons requiring access to classified information, or being assigned to positions that require the occupants to be determined trustworthy are periodically briefed as to their security responsibilities.

(b) *Initial briefing.* (1) All persons cleared for access to classified information or assigned to duties requiring a trustworthiness determination under this part shall be given an initial security briefing. The briefing shall be in accordance with the requirements of 32 CFR Part 159 and consist of the following elements:

(i) The specific security requirements of their particular job.

(ii) The techniques employed by foreign intelligence activities in attempting to obtain classified information and their responsibility for reporting such attempts.

(iii) The prohibition against disclosing classified information, by any means, to unauthorized persons or discussing or handling classified information in a manner that would make it accessible to unauthorized persons.

(iv) The penalties that may be imposed for security violations.

(2) If an individual declines to execute Standard Form 189, "Classified Information Nondisclosure Agreement," the DoD Component shall initiate action to deny or revoke the security clearance of such person in accordance with § 154.56(b).

(c) *Refresher briefing.* Programs shall be established to provide, at a minimum, annual security training for personnel having continued access to classified information. The elements outlined in 32 CFR Part 159 shall be tailored to fit the needs of experienced personnel.

(d) *Foreign travel briefing.* (1) DoD Components will establish appropriate internal procedures requiring all personnel possessing a DoD security clearance to report to their security office all personal foreign travel in advance of the travel being performed. When travel patterns, or the failure to report such travel, indicate the need for investigation, the matter will be referred to the appropriate counterintelligence investigative agency.

(2) Personnel having access to classified information shall be given a Foreign Travel Briefing by a counterintelligence agent, security specialist, security manager, or other qualified individual, as a defensive measure prior to travel to a designated country (Appendix G) in order to alert them to their possible exploitation by hostile intelligence services. These personnel will also be debriefed upon their return. The briefings will be administered under the following conditions:

(i) Travel to or through a designated country for any purpose.

(ii) Attendance at international, scientific, technical, engineering, or other professional meetings in the United States or in any country outside the United States when it can be anticipated that representative(s) of designated countries will participate or be in attendance.

(3) Individuals who travel frequently, or attend or host meetings of foreign visitors as described in paragraph (d)(2)(ii) of this section need not be briefed for each occasion, but shall be provided a thorough briefing at least once every 6 months and a general reminder of security responsibilities before each such activity.

(4) Records on such employees will be maintained for 5 years.

(e) *Termination briefing.* (1) Upon termination of employment administrative withdrawal of security clearance, or contemplated absence from duty or employment for 60 days or more, DoD military personnel and civilian employees shall be given a termination briefing, return all classified material, and execute a Security Termination Statement. This statement shall include:

(i) An acknowledgment that the individual has read the appropriate provisions of the Espionage Act, other criminal statutes, DoD Regulations applicable to the safeguarding of classified information to which the individual has had access, and understands the implications thereof;

(ii) A declaration that the individual no longer has any documents or material containing classified information in his or her possession;

(iii) An acknowledgment that the individual will not communicate or transmit classified information to any unauthorized person or agency; and

(iv) An acknowledgment that the individual will report without delay to the FBI or the DoD Component concerned any attempt by any unauthorized person to solicit classified information.

(2) When an individual refuses to execute a Security Termination Statement, that fact shall be reported immediately to the security manager of the cognizant organization concerned. In any such case, the individual involved shall be debriefed orally. The fact of a refusal to sign a Security Termination Statement shall be reported to the Director, Defense Investigative Service who shall assure that it is recorded in the Defense Central Index of Investigations.

(3) The Security Termination Statement shall be retained by the DoD Component that authorized the individual access to classified information for the period specified in the Component's records retention schedules, but for a minimum of 2 years after the individual is given a termination briefing.

(4) In addition to the provisions of paragraphs (e)(1), (e)(2), and (e)(3) of this section, DoD Components shall establish a central authority to be responsible for ensuring that Security Termination Statements are executed by senior personnel (general officers, flag officers and GS–16s and above). Failure on the part of such personnel to execute a Security Termination Statement shall be reported immediately to the Deputy Under Secretary of Defense for Policy.

## Subpart J—Safeguarding Personnel Security Investigative Records

**§ 154.65 General.**

In recognition of the sensitivity of personnel security reports and records, particularly with regard to individual privacy, it is Department of Defense policy that such personal information shall be handled with the highest degree of discretion. Access to such information shall be afforded only for the purpose cited herein and to persons whose official duties require such information. Personnel security investigative reports may be used only for the purposes of determining

eligibility of DoD military and civilian personnel, contractor employees, and other persons affiliated with the Department of Defense, for access to classified information, assignment or retention in sensitive duties or other specifically designated duties requiring such investigation, or for law enforcement and counterintelligence investigations. Other uses are subject to the specific written authorization of the Deputy Under Secretary of Defense for Policy.

**§ 154.66 Responsibilities.**

DoD authorities responsible for administering the DoD personnel security program and all DoD personnel authorized access to personnel security reports and records shall ensure that the use of such information is limited to that authorized by this part and that such reports and records are safeguarded as prescribed herein. The heads of DoD Components and the Deputy Under Secretary of Defense for Policy for the Office of the Secretary of Defense shall establish internal controls to ensure adequate safeguarding and limit access to and use of personnel security reports and records as required by §§ 154.67 and 154.68.

**§ 154.67 Access restrictions.**

Access to personnel security investigative reports and personnel security clearance determination information shall be authorized only in accordance with 32 CFR Parts 286 and 286a and with the following:

(a) DoD personnel security investigative reports shall be released outside of the DoD only with the specific approval of the investigative agency having authority over the control and disposition of the reports.

(b) Within DoD, access to personnel security investigative reports shall be limited to those designated DoD officials who require access in connection with specifically assigned personnel security duties, or other activities specifically identified under the provisions of § 154.65.

(c) Access by subjects of personnel security investigative reports shall be afforded in accordance with 32 CFR Part 286a.

(d) Access to personnel security clearance determination information shall be made available, other than provided for in paragraph (c) of this section, through security channels, only to DoD or other officials of the Federal Government who have an official need for such information.

**§ 154.68 Safeguarding procedures.**

Personnel security investigative reports and personnel security determination information shall be safeguarded as follows:

(a) Authorized requesters shall control and maintain accountability of all reports of investigation received.

(b) Reproduction, in whole or in part, of personnel security investigative reports by requesters shall be restricted to the minimum number of copies required for the performance of assigned duties.

(c) Personnel security investigative reports shall be stored in a vault, safe, or steel file cabinet having at least a lockbar and an approved three-position dial-type combination padlock or in a similarly protected area/container.

(d) Reports of DoD personnel security investigations shall be sealed in double envelopes or covers when transmitted by mail or when carried by persons not authorized access to such information. The inner cover shall bear a notation substantially as follows:

TO BE OPENED ONLY BY OFFICIALS DESIGNATED TO RECEIVE REPORTS OF PERSONNEL SECURITY INVESTIGATION

(e) An individual's status with respect to a personnel security clearance or a Special Access authorization is to be protected as provided for in 32 CFR Part 286.

**§ 154.69 Records disposition.**

(a) Personnel security investigative reports, to include OPM NACIs may be retained by DoD recipient organizations, only for the period necessary to complete the purpose for which it was originally requested. Such reports are considered to be the property of the investigating organization and are on loan to the recipient organization. All copies of such reports shall be destroyed within 90 days after completion of the required personnel security determination. Destruction shall be accomplished in the same manner as for classified information in accordance with 32 CFR Part 159.

(b) DoD record repositories authorized to file personnel security investigative reports shall destroy PSI reports of a favorable or of a minor derogatory nature 15 years after the date of the last action. That is, after the completion date of the investigation or the date on which the record was last released to an authorized user—whichever is later. Personnel security investigative reports resulting in an unfavorable administrative personnel action or court-martial or other investigations of a significant nature due to information contained in the investigation shall be destroyed 25 years after the date of the last action. Files in this latter category that are determined to be of possible historical value and those of widespread public or congressional interest may be offered to the National Archives after 15 years.

(c) Personnel security investigative reports on persons who are considered for affiliation with DoD will be destroyed after 1 year if the affiliation is not completed.

**§ 154.70 Foreign source information.**

Information that is classified by a foreign government is exempt from public disclosure under the Freedom of Information and Privacy Acts. Further, information provided by foreign governments requesting an express promise of confidentiality shall be released only in a manner that will not identify or allow unauthorized persons to identify the foreign agency concerned.

## Subpart K—Program Management

**§ 154.75 General.**

To ensure uniform implementation of the DoD personnel security program throughout the Department, program responsibility shall be centralized at DoD Component level.

**§ 154.76 Responsibilities.**

(a) The Deputy Under Secretary of Defense for Policy shall have primary responsibility for providing guidance, oversight, development and approval for policy and procedures governing personnel security program matters within the Department:

(1) Provide program management through issuance of policy and operating guidance.

(2) Provide staff assistance to the DoD Components and defense agencies in resolving day-to-day security policy and operating problems.

(3) Conduct inspections of the DoD Components for implementation and compliance with DoD security policy and operating procedures.

(4) Provide policy, oversight, and guidance to the component adjudication functions.

(5) Approve, coordinate and oversee all DoD personnel security research initiatives and activities.

(b) The General Counsel shall ensure that the program is administered in a manner consistent with the laws; all proceedings are promptly initiated and expeditiously completed; and that the rights of individuals involved are protected, consistent with the interests of national security. The General Counsel shall also ensure that all relevant decisions of the courts and

legislative initiatives of the Congress are obtained on a continuing basis and that analysis of the foregoing is accomplished and disseminated to DoD personnel security program management authorities.

(c) The Heads of the Components shall ensure that:

(1) The DoD personnel security program is administered within their area of responsibility in a manner consistent with this part.

(2) A single authority within the office of the head of the DoD Component is assigned responsibility for administering the program within the Component.

(3) Information and recommendations are provided the Deputy Under Secretary of Defense for Policy and the General Counsel at their request concerning any aspect of the program.

**§ 154.77 Reporting requirements.**

Personnel security program management data will be developed and submitted by 1 December each year for the preceding fiscal year in a report to the Deputy Under Secretary of Defense for Policy. The information required below is essential for basic personnel security program management and in responding to requests from the Secretary of Defense and Congress. The report will cover the preceding fiscal year, broken out by clearance category, according to officer, enlisted, civilian or contractor status:

(a) Number of Top Secret, Secret and Confidential clearances issued;

(b) Number of Top Secret, Secret and Confidential clearances denied;

(c) Number of Top Secret, Secret and Confidential clearances revoked;

(d) Number of SCI access determinations issued;

(e) Number of SCI access determinations denied;

(f) Number of SCI access determinations revoked;

(g) Number of actions which resulted in nonappointment or non-selection to a sensitive position;

(h) Total number of personnel holding a clearance for Top Secret, Secret, Confidential and Sensitive Compartmented Information as of the end of the fiscal year.

(i) Number of Top Secret billets established § 154.13(e).

(j) Number of personnel adjudicating personnel security cases on a full or part time basis;

(k) Number of man years expended in adjudicating personnel security cases;

(l) Number of civilian positions designated sensitive, by designation criteria;

(m) The number of Limited Access Authorizations in effect (in accordance with § 154.16(d)).

This reporting requirement has been assigned Report Control Symbol DD-POL (A)1749.

**§ 154.78 Inspections.**

The heads of DoD Components shall assure that personnel security program matters are included in their administrative inspection programs.

**Appendix A—Investigative Scope**

This appendix prescribes the scope of the various types of personnel security investigations.

1. *National Agency Check (NAC).* Components of a NAC. At a minimum, the first three of the described agencies (DCII, FBI/HQ, and FBI/ID) below shall be included in each complete NAC; however, a NAC may also include a check of any or all of the other described agencies, if appropriate.

a. DCII records consist of an alphabetical index of personal names and impersonal titles that appear as subjects or incidentals in investigative documents held by the criminal, counterintelligence, fraud, and personnel security investigative activities of the three military departments, DIS, Defense Criminal Investigative Service (DCIS), and the National Security Agency. DCII records will be checked on all subjects of DoD investigations.

b. FBI/HQ has on file copies of investigations conducted by the FBI. The FBI/HQ check, included in every NAC, consists of a review of files for information of a security nature and that developed during applicant-type investigations.

c. An FBI/ID check, included in every NAC (but not ENTNAC), is based upon a technical fingerprint search that consists of a classification of the subject's fingerprints and comparison with fingerprint cards submitted by law enforcement activities. If the fingerprint card is not classifiable, a "name check only" of these files is automatically conducted.

d. OPM. The files of OPM contain the results of investigations conducted by OPM under Executive Orders 9835 and 10450, those requested by the Nuclear Regulatory Commission (NRC), the Department of Energy (DOE) and those requested since August 1952 to serve as a basis for "Q" clearances. Prior to that date, "Q" clearance investigations were conducted by the FBI. A "Q" clearance is granted to individuals who require access to DOE information. In order to receive a "Q" clearance, a full field background investigation must be completed on the individual requiring access in accordance with the Atomic Energy Act of 1954. Also on file are the results of investigations on the operation of the Merit System, violations of the Veterans Preference Act, appeals of various types, fraud and collusion in Civil Service examinations and related matters, data on all Federal employment, and an index of all BIs on civilian employees or applicants completed by agencies of the Executive Branch of the U.S. Government. The OPM files may also contain information relative to U.S. citizens who are, or who were, employed by a United Nations organization or other public international organization such as the Organization of American States. OPM records are checked on all persons who are, or who have been, civilian employees of the U.S. Government; or U.S. citizens who are, or who have been, employed by a United Nations organization or other public international organization; and on those who have been granted security clearances by the NRC or DOE.

e. Immigration and Naturalization Service (I&NS). The files of I&NS contain (or show where filed) naturalization certificates, certificates of derivative citizenship, all military certificates of naturalization, repatriation files, petitions for naturalization and declaration of intention, visitors' visas, and records of aliens (including government officials and representatives of international organizations) admitted temporarily into the U.S. I&NS records are checked when the subject is:

(1) An alien in the U.S., or

(2) A naturalized citizen whose naturalization has not been verified, or

(3) An immigrant alien, or

(4) A U.S. citizen who receives derivative citizenship through the naturalization of one or both parents, provided that such citizenship has not been verified in a prior investigation.

f. State Department. The State Department maintains the following records:

(1) Security Division (S/D) files contain information pertinent to matters of security, violations of security, personnel investigations pertinent to that agency, and correspondence files from 1950 to date. These files are checked on all former State Department employees.

(2) Passport Division (P/D) shall be checked if subject indicates U.S. citizenship due to birth in a foreign country of American parents. This is a check of State Department Embassy files to determine if subject's birth was registered at the U.S. Embassy in the country where he was born. Verification of this registration is verification of citizenship.

g. Central Intelligence Agency (CIA). The files of CIA contain information on present and former employees, including members of the Office of Strategic Services (OSS), applicants for employment, foreign nationals, including immigrant aliens in the U.S., and U.S. citizens traveling outside the U.S. after July 1, 1946. These files shall be checked under the following guidelines.

| Investigation | Criteria for CIA Checks |
|---|---|
| NAC, DNACI or ENTNAC | Residence anywhere outside of the U.S. for a year or more since age 18 except under the auspices of the U.S. Government, and, travel, education, residence, or employment since age 18 in any designated country (Appendix G) |
| BI | Same as NAC, DNACI, and ENTNAC requirements plus travel, residence, employment, and education outside the U.S. for more than a continuous 3-month period during the past 5 years, or since age 18, except when under the auspices of the Government |

| Investigation | Criteria for CIA Checks |
|---|---|
| SBI | Same as BI requirements except the period of the investigation will cover the past 15 years, or since age 18. Also when subject's employment, education or residence has occurred overseas for a period of more than one year under the auspices of the U.S. Government, such checks will be made |

These files shall also be checked if subject has been an employee of CIA or when other sources indicate that CIA may have pertinent information.

h. Military Personnel Record Center files are maintained by separate departments of the Armed Forces, General Services Administration and the Reserve Records Centers. They consist of the Master Personnel Records of retired, separated, reserve, and active duty members of the Armed Force. These records shall be checked when the requester provides required identifying data indicating service during the last 15 years.

i. Treasury Department. The files of Treasury Department agencies (Secret Service, Internal Revenue Service, and Bureau of Customs) will be checked only when available information indicates that an agency of the Treasury Department may be reasonably expected to have pertinent information.

j. The files of other agencies such as the National Guard Bureau, the Defense Industrial Security Clearance Office (DISCO), etc., will be checked when pertinent to the purpose for which the investigation is being conducted.

2. *DoD National Agency Check plus Written Inquires (DNACI):*

a. *Scope:* The time period covered by the DNACI is limited to the most recent five (5) years, or since the 18th birthday, whichever is shorter, provided that the investigation covers at least the last two (2) full years of the subject's life, although it may be extended to the period necessary to resolve any questionable or derogatory information. No investigation will be conducted prior to an individual's 16th birthday. All DNACI investigation information will be entered on the DD Form 398–2 and FD-Form 258 and forwarded to the Defense Investigative Service (paragraph D, Appendix B).

b. *Components of a DNACI:*

(1) *NAC.* This is the same as described in paragraph 1, above.

(2) *Credit.* (a) A credit bureau check will be conducted to cover the 50 states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands, at all locations where subject has resided (including duty stations and home ports), been employed, or attended school for 6 months (cumulative) during the past five (5) years.

(b) When information developed reflects unfavorably upon a person's current credit reputation or financial responsibility, the investigation will be expanded as necessary.

(3) *Employment.*—(a) *Non-Federal Employment. (1)* Verify, via written inquiry, all employment within the period of investigation with a duration of six (6) months or more. Current employment will be checked regardless of duration.

*(2)* If all previous employments have been less than 6 months long, the most recent employment, in addition to the current, will be checked in all cases.

*(3)* Seasonal holiday, part-time and temporary employment need not be checked unless subparagraph 2 above applies.

(b) *Federal employment.* All Federal employment (to include military assignments) within the period of investigation will be verified by the requester through locally available records, and a statement reflecting that such checks have been favorably accomplished will be contained in the investigative request. Those that cannot be verified in this fashion will be accomplished via written inquiry by DIS (within the 50 United States, Puerto Rico, Guam, and the Virgin Islands).

3. *Background Investigation (BI).* The period of investigation for the BI is 5 years and applies to military, civilian, and contractor personnel.

a. *NAC.* See paragraph 1, above.

b. *Local Agency Checks (LAC).* Same as paragraph 4j, below, except period of coverage is five years.

c. *Credit checks.* Same as paragraph 4i, below.

d. *SUBJECT Interview (SI).* This is the principal component of a BI. In some instances an issue will arise after the primary SI and a secondary interview will be conducted. Interviews in the latter category are normally "issue" interviews that will be reported in the standard BI narrative format.

e. *Employment records.* Employment records will be checked at all places where employment references are interviewed with the exception of current Federal employment when the requester indicates that such employment has been verified with favorable results.

f. *Employment reference coverage.* A minimum of *three references, either supervisors or co-workers,* who have knowledge of the SUBJECT's activities in the work environment will be interviewed. At least one employment reference at the current place of employment will always be interviewed with the exception of an individual attending military basic training, or other military training schools lasting less than 90 days. However, if the SUBJECT has only been at the current employment for less than 6 months, it will be necessary to go not only to his or her current employment (for example, for one employment reference) but also to the preceding employment of at least 6 months for additional employment references. If the SUBJECT has not had prior employment of at least 6 months, interview(s) will be conducted at the most recent short-term employment in addition to the current employment.

g. *Developed and Listed Character References.* A minimum of three developed character references (DCR) whose combined association with the SUBJECT covers the entire period of investigation will be interviewed. If coverage cannot be obtained through the DCRs, listed character reference (LCR) will be contacted to obtain coverage.

h. *Unfavorable information.* Unfavorable information developed in the field will be expanded.

4. *Special Background Investigation (SBI)*— a. *Components of an SBI.* The period of investigation for an SBI is the last 15 years or since the 18th birthday, whichever is the shorter period, provided that the investigation covers at least the last 2 full years of the subject's life. No investigation will be conducted for the period prior to an individual's 16th birthday. Emphasis shall be placed on peer coverage whenever interviews are held with personal sources in making education, employment, and reference (including developed) contact.

b. *NAC.* In addition to conducting a NAC on the subject of the investigation, the following additional requirements apply.

(1) A DCII, FBI/ID name check only and FBI/HQ check shall be conducted on subject's current spouse or cohabitant. In addition, such other national agency checks as deemed appropriate based on information on the subject's SPH or PSQ shall be conducted.

(2) A check of FBI/HQ files on members of subject's immediate family who are aliens in the U.S. or immigrant aliens who are 18 years of age or older shall be conducted. As used throughout the part, members of subject's immediate family include the following:

(a) Current spouse.

(b) Adult children, 18 years of age or older, by birth, adoption, or marriage.

(c) Natural, adopted, foster, or stepparents.

(d) Guardians.

(e) Brothers and sisters either by birth, adoption, or remarriage of either parent.

(3) The files of CIA shall be reviewed on alien members of subject's immediate family who are 18 years of age or older, regardless of whether or not these persons reside in the U.S.

(4) I&NS files on members of subject's immediate family 18 years of age or older shall be reviewed when they are:

(a) Aliens in the U.S., or

(b) Naturalized U.S. citizens whose naturalization has not been verified in a prior investigation, or

(c) Immigrant aliens, or

(d) U.S. citizens born in a foreign country of American parent(s) or U.S. citizens who received derivative citizenship through the naturalization of one or both parents, provided that such citizenship has not been verified in a prior investigation.

c. *Birth.* Verify subject's date and place of birth (DPOB) through education, employment and/or other records. Verify through Bureau of Vital Statistics (BVS) records if not otherwise verified under d., below, or if a variance is developed.

d. *Citizenship.* Subject's citizenship status must be verified in all cases. U.S. citizens who are subjects of investigation will be required to produce documentation that will confirm their citizenship. Normally such documentation should be presented to the DoD Component concerned prior to the initiation of the request for investigation. When such documentation is not readily available, investigative action may be initiated with the understanding that the designated authority in the DoD Component will be provided with the documentation prior to the issuance of a clearance. DIS will

not check the BVS for native-born U.S. citizens except as indicated in 4.c. above. In the case of foreign-born U.S. citizens, DIS will check I&NS records. The citizenship status of all foreign-born members of subject's immediate family shall be verified. Additionally, when the investigation indicates that a member of subject's immediate family has not obtained U.S. citizenship after having been eligible for a considerable period of time, an attempt should be made to determine the reason. The documents listed below are acceptable for proof of U.S. citizenship for personnel security determination purposes:

(1) A birth certificate must be presented if the individual was born in the United States. To be acceptable, the certificate must show that the birth record was filed shortly after birth and must be certified with the registrar's signature and the raised, impressed, or multicolored seal of his office except for states or jurisdictions which, as a matter of policy, do not issue certificates with a raised or impressed seal. Uncertified copies of birth certificates are not acceptable.

(a) A delayed birth certificate (a record filed more than one year after the date of birth) is acceptable provided that it shows that the report of birth was supported by acceptable secondary evidence of birth as described in subparagraph (b), below.

(b) If such primary evidence is not obtainable, a notice from the registrar stating that no birth record exists should be submitted. The notice shall be accompanied by the best combination of secondary evidence obtainable. Such evidence may include a baptismal certificate, a certificate of circumcision, a hospital birth record, affidavits of persons having personal knowledge of the facts of the birth, or other documentary evidence such as early census, school, or family bible records, newspaper files and insurance papers. Secondary evidence should have been created as close to the time of birth as possible.

(c) All documents submitted as evidence of birth in the United States shall be original or certified documents. Uncertified copies are not acceptable.

(2) A certificate of naturalization shall be submitted if the individual claims citizenship by naturalization.

(3) A certificate of citizenship issued by the I&NS shall be submitted if citizenship was acquired by birth abroad to a U.S. citizen parent or parents.

(4) A Report of Birth Abroad of A Citizen of The United States of America (Form FS–240), a Certification of Birth (Form FS–545 or DS–1350), or a Certificate of Citizenship is acceptable if citizenship was acquired by birth abroad to a U.S. citizen parent or parents.

(5) A passport or one in which the individual was included will be accepted as proof of citizenship.

e. *Education.* (1) Verify graduation or attendance at institutions of higher learning in the U.S. within the last 15 years, if such attendance was not verified during a prior investigation.

(2) Attempts will be made to review records at overseas educational institutions when the subject resided overseas in excess of one year.

(3) Verify attendance or graduation at the last secondary school attended within the past 10 years if there was no attendance at an institution of higher learning within the period of investigation.

(4) Verification of attendance at military academies is only required when the subject failed to graduate.

f. *Employment.* (1) Non-Federal employment. Verify all employment within the period of investigation to include seasonal, holiday, Christmas, part-time, and temporary employment. Interview one supervisor and one co-worker at subject's current place of employment as well as at each prior place of employment during the past 10 years of six months duration or longer. The interview requirement for supervisors and co-workers does not apply to seasonal, holiday, Christmas, part-time, and temporary employment (4 months or less) unless there are unfavorable issues to resolve or the letter of inquiry provides insufficient information.

(2) *Federal employment.* All Federal employment will be verified within the period of investigation to include Christmas, seasonal temporary, summer hire, part-time, and holiday employment. Do not verify Federal employment through review of records if already verified by the requester. If Federal employment has not been verified by the requester, then subject's personnel file at his/her current place of employment will be reviewed. All previous Federal employment will be verified during this review. In the case of former Federal employees, records shall be examined at the Federal Records Center in St. Louis, Missouri. Interview one supervisor and one co-worker at all places of employment during the past 10 years if so employed for 6 months or more.

(3) *Military employment.* Military service for the last 15 years shall be verified. The subject's duty station, for the purpose of interview coverage, is considered as a place of employment. One supervisor and one co-worker shall be interviewed at subject's current duty station if subject has been stationed there for 6 months or more; additionally, a supervisor and a co-worker at subject's prior duty stations where assigned for 6 months or more during the past 10 years shall be interviewed.

(4) *Unemployment.* Subject's activities during all periods of unemployment in excess of 30 consecutive days, within the period of investigation, that are not otherwise accounted for shall be verified.

(5) When an individual has resided outside the U.S. continuously for over one year, attempts will be made to confirm overseas employments as well as conduct required interviews of a supervisor and co-worker.

g. *References.* Three developed character references who have sufficient knowledge of subject to comment on his background, suitability, and loyalty shall be interviewed personally. Efforts shall be made to interview developed references whose combined association with subject covers the full period of the investigation with particular emphasis on the last 5 years. Employment, education, and neighborhood references, in addition to the required ones, may be used as developed references provided that they have personal knowledge concerning the individual's character, discretion, and loyalty. Listed character references will be interviewed only when developed references are not available or when it is necessary to identify and locate additional developed character references or when it is necessary to verify subject's activities (e.g., unemployment).

h. *Neighborhood investigation.* Conduct a neighborhood investigation to verify each of subject's residences in the U.S. of a period of 6 months or more on a cumulative basis, during the past 5 years or during the period of investigation, whichever is shorter. During each neighborhood investigation, interview two neighbors who can verify subject's period of residence in that area and who were sufficiently acquainted to comment on subject's suitability for a position of trust. Neighborhood investigations will be expanded beyond this 5-year period only when there is unfavorable information to resolve in the investigation.

i. *Credit.* Conduct credit bureau check in the 50 states, the District of Columbia, Puerto Rico and overseas (where APO/FPO addresses are provided) at all places where subject has resided (including duty stations and home ports), been employed, or attended school for 6 months or more, on a cumulative basis, during the last 7 years or during the period of the investigation, whichever is shorter. When coverage by a credit bureau is not available, credit references located in that area will be interviewed. Financial responsibility, including unexplained affluence, will be stressed in all reference interviews.

j. *Local Agency Checks (LAC's).* LACs, including state central criminal history record repositories, will be conducted on subject at all places of residence to include duty stations and/or home ports, in the 50 states, the District of Columbia, and Puerto Rico, where residence occurred during the past 15 years or during the period of investigation, whichever is shorter. If subject's place of employment and/or education is serviced by a different law enforcement agency than that servicing the area of residence, LACs shall be conducted also in these areas.

k. *Foreign travel.* If subject has been employed, educated, traveled or resided outside of the U.S. for more than 90 days during the period of investigation, except under the auspices of the U.S. Government, additional record checks during the NAC shall be made in accordance with paragraph 1.f. of this Appendix. In addition, the following requirements apply:

(1) Foreign travel not under the auspices of the U.S. Government. When employment, education, or residence has occurred overseas for more than 90 days during the past 15 years or since age 18, which was not under the auspices of the U.S. Government, a check of records will be made at the Passport Office of the Department of State, the CIA, and other appropriate agencies. Efforts shall be made to develop sources, generally in the U.S., who knew the individual overseas to cover significant employment, education, or residence and to determine whether any lasting foreign contacts or connections were

established during this period. If the individual has worked or lived outside of the U.S. continuously for over one year, the investigation will be expanded to cover fully this period through the use of such investigative assets and checks of record sources as may be available to the U.S. Government in the foreign country in which the individual resided.

(2) Foreign travel under the auspices of the U.S. Government. When employment, education, or residence has occurred overseas for a period of more than one year, under the auspices of the U.S. Government, a record check will be made at the Passport Office of the Department of State, the CIA and other appropriate agencies. Efforts shall be made to develop sources (generally in the U.S.) who knew the individual overseas to cover significant employment, education, or residence and to determine whether any lasting foreign contacts or connections were established during this period. Additionally, the investigation will be expanded to cover fully this period through the use of such investigative assets and checks of record sources as may be available to the U.S. Government in the foreign country in which the individual resided.

l. *Foreign connections.* All foreign connections (friends, relatives, and/or business connections) of subject and immediate family in the U.S. or abroad, except where such association was the direct result of subject's official duties with the U.S. Government, shall be ascertained. Investigation shall be directed toward determining the significance of foreign connections on the part of subject and the immediate family, particularly where the association is or has been with persons whose origin was within a country whose national interests are inimical to those of the U.S. When subject or his spouse has close relatives residing in a Communist-controlled country, or subject has resided, visited, or traveled in such a country, not under U.S. Government auspices, the provisions of § 154.8(i)(3) of this part apply.

m. *Organizations.* Efforts will be made during reference interviews and record reviews to determine if subject and/or the immediate family has, or formerly had, membership in, affiliation with, sympathetic association towards, or participated in any foreign or domestic organization, association, movement, group, or combination of persons of the type described in § 154.7(a) through (d) of this part.

n. *Divorce.* Divorces, annulments, and legal separations of subject shall be verified only when there is reason to believe that the grounds for the action could reflect on subject's suitability for a position of trust.

o. *Military service.* All military service and types of discharge during the last 15 years shall be verified.

p. *Medical records.* Medical records shall not be reviewed unless:

(1) The requester indicates that subject's medical records were unavailable for review prior to submitting the request for investigation, or

(2) The requester indicates that unfavorable information is contained in subject's medical records, or

(3) The subject lists one or more of the following on the SPH or PSQ:

(a) A history of mental or nervous disorders.

(b) That subject is now or has been addicted to the use of habit-forming drugs such as narcotics or barbiturates or is now or has been a chronic user to excess of alcoholic beverages.

q. *Updating a previous investigation to SBI standards.* If a previous investigation does not substantially meet the minimum standards of an SBI or if it is more than 5 years old, a current investigation is required but may be limited to that necessary to bring the individual's file up to date in accordance with the investigative requirements of an SBI. Should new information be developed during the current investigation that bears unfavorably upon the individual's activities covered by the previous investigation, the current inquiries shall be expanded as necessary to develop full details of this new information.

5. *Periodic Reinvestigation (PR).* a. Each DoD military, civilian, consultant, and contractor employee (to include foreign nationals holding a limited access authorization) occupying a critical sensitive position, possessing a Top Secret clearance, or occupying a special access program position shall be the subject of a PR initiated 5 years from the date of completion of the last investigation. The PR shall cover the period of the last 5 years.

b. *Minimum investigative requirements.* A PR shall include the following minimum scope.

(1) *NAC.* A valid NAC on the SUBJECT will be conducted in all cases. Additionally, for positions requiring SCI access, checks of DCII, FBI/HQ, FBI/ID name check only, and other agencies deemed appropriate, will be conducted on the SUBJECT's current spouse or cohabitant, if not previously conducted. Additionally, NACs will be conducted on immediate family members, 18 years of age or older, who are aliens and/or immigrant aliens, if not previously accomplished.

(2) *Credit.* Credit bureau checks covering all places where the SUBJECT resided for 6 months or more, on a cumulative basis, during the period of investigation, in the 50 states, District of Columbia, Puerto Rico and overseas (where APO/FPO addresses are provided), will be conducted.

(3) *Subject interview.* The interview should cover the entire period of time since the last investigation, not just the last 5-year period. Significant information disclosed during the interview, which has been satisfactorily covered during a previous investigation, need not be explored again unless additional relevant information warrants further coverage. An SI is not required if one of the following conditions exists:

(a) The SUBJECT is aboard a deployed ship or in some remote area that would cause the interview to be excessively delayed.

(b) The SUBJECT is in an overseas location serviced by the State Department or the FBI.

(4) *Employment.* Current employment will be verified. Military and federal service records will not routinely be checked, if previously checked by the requester when PR was originally submitted. Also, employment records will be checked wherever employment interviews are conducted. Records need be checked only when they are locally available, unless unfavorable information has been detected.

(5) *Employment references.* Two supervisors or co-workers at the most recent place of employment or duty station of 6 months; if the current employment is less than 6 months employment reference interviews will be conducted at the next prior place of employment, which was at least a 6-month duration.

(6) *Developed Character References (DCRs).* Two developed character references who are knowledgeable of the SUBJECT will be interviewed. Developed character references who were previously interviewed will only be reinterviewed when other developed references are not available.

(7) *Local Agency Checks (LACs).* DIS will conduct local agency checks on the SUBJECT at all places of residence, employment, and education during the period of investigation, regardless of duration, including overseas locations.

(8) *Select scoping.* When the facts of the case warrant, additional select scoping will be accomplished, as necessary, to fully develop or resolve an issue.

**Appendix B—Request Procedures**

A. *General.* To conserve investigative resources and to insure that personnel security investigations are limited to those essential to current operations and are clearly authorized by DoD policies, organizations requesting investigations must assure that continuing command attention is given to the investigative request process.

In this connection, it is particularly important that the provision of Executive Order 12356 requiring strict limitations on the dissemination of official information and material be closely adhered to and that investigations requested for issuing clearances are limited to those instances in which an individual has a clear need for access to classified information. Similarly, investigations required to determine eligibility for appointment or retention in DoD, in either a civilian or military capacity, must not be requested in frequency or scope exceeding that provided for in this part.

In view of the foregoing, the following guidelines have been developed to simplify and facilitate the investigative request process:

1. Limit requests for investigation to those that are essential to current operations and clearly authorized by DoD policies and attempt to utilize individuals who, under the provisions of this part, have already met the security standard;

2. Assure that military personnel on whom investigative requests are initiated will have sufficient time remaining in service after completion of the investigation to warrant conducting it;

3. Insure that request forms and prescribed documentation are properly executed in accordance with instructions;

4. Dispatch the request directly to the DIS Personnel Investigations Center;

5. Promptly notify the DIS Personnel Investigations Center if the investigation is no longer needed (notify OPM if a NACI is no longer needed); and

6. Limit access through strict need-to-know, thereby requiring fewer investigations.

In summary, close observance of the above-cited guidelines will allow the DIS to operate more efficiently and permit more effective, timely, and responsive service in accomplishing investigations.

B. *National Agency Check (NAC).* When a NAC is requested an original only of the DD Form 398–2 (National Agency Check Request) and a completed FD 258 (Applicant Fingerprint Card) are required. If the request is for an ENTNANC, an original only of the DD Form 398–2 and a completed DD Form 2280 (Armed Forces Fingerprint Card) are required. Those forms should be sent directly to: Personnel Investigation Center, Defense Investigative Service, P.O. Box 1083, Baltimore, Maryland 21203.

C. *National Agency Check plus written Inquiries (NACI).* When a NACI is requested, an original and one copy of the SF 85 (Data for Nonsensitive or Noncritical-sensitive Position), an SF 171 (Personal Qualifications Statement), and an SF 87 (U.S. Civil Service Commission Fingerprint Chart) shall be sent directly to: Office of Personnel Management, Bureau of Personnel Investigations, NACI Center, Boyers, Pennsylvania 16018.

The notation "ALL REFERENCES" shall be stamped immediately above the title at the top of the Standard Form 85.

D. *DoD National Agency Check with Inquiries (DNACI).* 1. When a DNACI is requested, one copy of DD Form 1879, an original and two copies of the DD Form 398–2 (National Agency Check Request), two copies of FD 258 (Fingerprint Card), and an original of DD Form 2221 (Authority for Release of Information and Records) shall be sent directly to: Personnel Investigations Center, Defense Investigative Service, P.O. Box 1083, Baltimore, Maryland 21203.

2. The DD Form 398–2 must be completed to cover the most recent five year period. All information, to include items relative to residences and employment, must be complete and accurate to avoid delays in processing.

E. *Special Background Investigation (SBI)/ Background Investigation (BI).* 1. When requesting a BI or SBI, one copy of DD Form 1879 (Request for Personnel Security Investigation), an original and four copies of DD Form 398 (Statement of Personnel History), two copies of FD 258, and an original of DD Form 2221 (Authority for Release of Information and Records) shall be sent directly to the: Personnel Investigations Center, Defense Investigative Service, P.O. Box 454, Baltimore, Maryland 21203.

2. For the BI and SBI, the DD Form 398 must be completed to cover the most recent five and 15 year period, respectively, or since the 18th birthday, whichever is shorter.

F. *Periodic Reinvestigation (PR).* 1. PRs shall be requested only in such cases as are authorized by § 154.19 (a) through (k) of this part.

a. For a PR requested in accordance with § 154.19 (a) and (k) and the DD Form 1879 must be accompanied by the following documents:

(1) Original and four copies of DD Form 398.

(2) Two copies of FD–258.

(3) Original copy of DD Form 2221.

b. In processing PRs, previous investigative reports will not be requested by the requesting organization, unless significant derogatory or adverse information, postdating the most recent favorable adjudication, is developed during the course of reviewing other locally available records. In the latter instance, requests for previous investigative reports may only be made if it is determined by the requesting organization that the derogatory information is so significant that a review of previous investigative reports is necessary for current adjudicative determinations.

2. No abbreviated version of DD Form 398 may be submitted in connection with a PR.

3. The PR request shall be sent to the address in paragraph E.1.

G. *Additional investigation to resolve derogatory or adverse informotion.* 1. Requests for additional investigation required to resolve derogatory or adverse information shall be submitted by DD Form 1879 (Request for Personnel Security Investigation) to the: Defense Investigative Service, P.O. Box 454, Baltimore, Maryland 21203.

Such requests shall set forth the basis for the additional investigation and describe the specific matter to be substantiated or disproved.

2. The request should be accompanied by an original and four copies of the DD Form 398, where appropriate, two copies of FD–258 and an original copy of DD Form 2221, unless such documentation was submitted within the last 12 months to DIS as part of a NAC or other personnel security investigation. If pertinent, the results of a recently completed NAC, NACI, or other related investigative reports available should also accompany the request.

H. *Obtaining results of prior investigations.* Requesters requiring verification of a specified type of personnel security investigation, and/or requiring copies of prior investigations conducted by the DIS shall submit requests by letter or message to: Defense Investigative Service Investigative Files Division, P.O. Box 1211, Baltimore, Maryland 21203, Message Address: DIS PIC BALTIMORE MD/ /D0640.

The request will include subject's name, grade, social security number, date and place of birth, and DIS case control number if known.

I. *Requesting postadjudication cases.* 1. Requests pertaining to issues arising after adjudication of an investigation (postadjudication cases) shall be addressed to DIS on a DD Form 1879 accompanied by a DD Form 398, where appropriate.

2. All requests for initial investigations will be submitted to PIC regardless of their urgency. If, however, there is an urgent need for a postadjudication investigation, or the mailing of a request to PIC for initiation of a postadjudication case would prejudice timely pursuit of investigative action, the DD Form 1879 may be directed for initiation, in CONUS, to the nearest DIS Field Office, and in overseas locations, to the military investigative service element supporting the requester (Appendix I). The field element (either DIS or the military investigative agency) will subsequently forward either the DD Form 1879 or completed investigation to PIC.

3. A fully executed DD Form 1879 and appropriate supporting documents may not be immediately available. Further, a case that is based on sensitive security issues may be compromised by a request that the subject submit a DD Form 398. A brief explanation should appear on DD Form 1879s which does not include complete supporting documentation.

J. *Requests involving contractor employees.* To preclude duplicative investigative requests and double handling of contractor employee cases involving access to classified information, all requests for investigation of contractor personnel must be submitted, using authorized industrial security clearance forms, for processing through the Defense Industrial Security Clearance Office, except for programs in which specific approval has been obtained from the Deputy Under Secretary of Defense for Policy to utilize other procedures.

K. *Responsibility for proper documentation of requests.* The official signing the request for investigation shall be responsible for insuring that all documentation is completed in accordance with these instructions.

## Appendix C—Tables for Requesting Investigations

GUIDE FOR REQUESTING BACKGROUND INVESTIGATIONS (BI) (TABLE 1)

| A<br>If the individual is a: | B<br>And duties require: | C<br>Then a BI is required before: |
|---|---|---|
| U.S. national military member, civilian, consultant, or contractor employee. | Top Secret clearance | Granting final clearance. |
| U.S. national civilian employee | Assignment to a "Critical" sensitive position | Assignment to the position. |
| U.S. national military member, DoD civilian or contractor employee. | Occupying a "critical" position in the Nuclear Weapon Personnel Reliability Program (PRP). | Occupying a "critical" position. |

GUIDE FOR REQUESTING BACKGROUND INVESTIGATIONS (BI) (TABLE 1)—Continued

| A<br>If the individual is a: | B<br>And duties require: | C<br>Then a BI is required before: |
|---|---|---|
| U.S. national military member or civilian employee | Granting, denying clearances | Performing clearance functions. |
| U.S. national military member or civilian employee | Membership on security screening, hearing, or review board. | Appointment to the board. |
| Immigrant alien | Limited access to Secret or Confidential information | Issuing limited access authorization (Note 1). |
| Non-U.S. national employee excluding immigrant alien | Limited access to Secret or Confidential information | Issuing limited access authorization. |
| Non-U.S. national nominee military education and orientation program (from a country listed at Appendix G). | Education and orientation for of military personnel | Before performing duties. |
| U.S. national military member DoD civilian or contractor employee. | Assignment to a category two Presidential Support position. | Assignment. |
| U.S. national military member, DoD civilian or contractor employee assigned to NATO. | Access to NATO COSMIC information | Access may be granted. |

Note 1.—BI will cover a 10 year scope.

GUIDE FOR REQUESTING SPECIAL BACKGROUND INVESTIGATIONS (SBI) (TABLE 2)

| A<br>If the individual is a: | B<br>And duties require: | C<br>Then a SBI is required before: |
|---|---|---|
| U.S. national military member, DoD civilian, consultant, or contractor employee. | Access to SCI | Granting Access. |
| | Assisgnment to a category one Presidential Support position. | Assignment. |
| | Access to SIOP-ESI | Granting access. |
| | Assignment to the National Security Agency | Assignment. |
| | Access to other Special Access programs approved under § 154.17(g). | Granting access. |
| | Assignment to personnel security, counterintelligence, or criminal investigative or direct investigative support duties. | Assignment. |

GUIDE FOR REQUESTING PERIODIC REINVESTIGATIONS (PR) (TABLE 3)

| A<br>If the individual is a: | B<br>And duties require: | C<br>Then a PR is required before: |
|---|---|---|
| U.S. national military member, DoD civilian, consultant, or contractor employee. | Access to SCI | 5 years from date of last SBI/BI or PR. |
| | Top Secret Clearance | 5 years from date of last SBI/BI or PR. |
| | Access to NATO COSMIC | 5 years from date of last SBI/BI or PR. |
| | Assignment to Presidential Support activities | 5 years from date of last SBI/BI or PR. |
| U.S. national civilian employee | Assignment to a "Critical" sensitive position | 5 years from last SBI/BI or PR. |
| Non-U.S. national employee | Current limited access authorization to Secret or Confidential information. | 5 years from last SBI/BI or PR. |

GUIDE FOR REQUESTING DOD NATIONAL AGENCY CHECK WITH INQUIRIES (DNACI) OR NACI (TABLE 4)

| A<br>If the individual is a: | B<br>And duties require: | C<br>Then DNACI/NACI is required |
|---|---|---|
| U.S. national military member or contractor | Secret clearance | Before granting clearance (note 1). |
| | Interim Secret Clearance | May be automatically issued (note 2). |
| U.S. national civilian employee or consultant | Secret clearance | Before granting clearance. |
| | Interim Secret Clearance | May be automatically issued (note 3). |
| U.S. national military member, DoD civilian or contractor employee. | Appointment to "Non Critical" sensitive position | Before appointment. |
| | Occupying a "controlled" position in the Nuclear Weapon PRR. | Before assignment. |
| Applicant for appointment as a commissioned officer | Commission in the Award Forces | Before appointment (after appointment for health professionals, chaplains, and attorneys, under conditions authorized by § 154.15(d) of this part). |
| Naval Academy Midshipman, Military Academy Cadet, or Air Force Academy Cadet. | Enrollment | To be initiated 90 days after entry. |
| Reserve Officer Training Corps Cadet of Midshipman | Entry to advanced course or College Scholarship Program. | Then a DNACI is required to be initiated 90 days after entry. |

Note 1.—First term enlistees shall require an ENTNAC.
Note 2.—Provided DD Form 398-2 is favorably reviewed, local records check favorably accomplished, and DNACI initiated
Note 3.—Provided an authority designated in Appendix E finds delay in such appointment would be harmful to national security, favorable review of DD Form 398-2; NACI initiated; favorable local records check accomplished. Table 5.

GUIDE FOR REQUESTING NATIONAL AGENCY CHECKS (NAC) (TABLE 5)

| A<br>If the individual is a: | B<br>And duties require: | C<br>Then a NAC is required: |
|---|---|---|
| A first-term enlistee | Retention in the Armed Forces (including National Guard and Reserve). | To be initiated NLT three work days after entry (note 1). |
| Prior service member reentering military service after break in Federal employment exceeding 1 year. | Retention in the Armed Forces (including National Guard and Reserve). | To be initiated NLT three work days after reentry. |
| Nominee for military education and orientation program. | Education and orientation of military personnel | Before performing duties (note 2). |
| U.S. national military, DoD civilian, or contractor employee. | Access to restricted areas, sensitive information, or equipment as defined in § 154.18(b). | Before authorizing entry. |
| Nonappropriated fund instrumentality (NAFI) civilian employee. | Appointment as NAFI custodian | Before appointment. |
| | Accountability for non appropriated funds | Before completion of probationary period. |
| | Fiscal responsibility as determined by NAFI custodian | Before completion of probationary period. |
| Persons requiring access to chemical agents | Other "positions of trust" | Before appointment. |
| | Access to or security of chemical agents | Before assignment. |
| U.S. national, civilian employee nominee for customs inspection duties. | Wavier under provisions of § 154.18(d) | Before appointment (note 3). |
| Red Cross/United States Organization personnel | Assignment with the Armed Forces overseas | Before assignment (See note 4 for foreign national personnel). |
| U.S. national | DoD building pass | Prior to issuance. |
| Foreign national employed overseas | No access to classified information | Prior to employment (note 4). |

Note 1.—Request ENTNAC only.
Note 2.—Except where personnel whose country of origin is a country listed at Appendix G, a BI will be required (See § 154.18(1))
Note 3.—A NAC not over 5 years old suffices unless there has been a break in employment over 12 months. Then a current NAC is required
Note 4.—In such cases, the NAC shall consist of: (a) Host government law enforcement and security agency record checks at the city, state (province), and national level, and (b) DCII.

**Appendix D—Reporting of Nonderogatory Cases**

Background Investigation (BI) and Special Background Investigation (SBI) shall be considered as devoid of significant adverse information unless they contain information listed below:

1. Incidents, infractions, offenses, charges, citations, arrests, suspicion or allegations of illegal use or abuse of drugs or alcohol, theft or dishonesty, unreliability, irresponsibility, immaturity, instability or recklessness, the use of force, violence or weapons or actions that indicate disregard for the law due to multiplicity of minor infractions.

2. All indications of moral turpitude, heterosexual promiscuity, aberrant, deviant, or bizarre sexual conduct or behavior, transvestitism, transsexualism, indecent exposure, rape, contributing to the delinquency of a minor, child molestation, wife-swapping, window-peeping, and similar situations from whatever source. Unlisted full-time employment or education; full-time education or employment that cannot be verified by any reference or record source or that contains indications of falsified

education or employment experience. Records or testimony of employment, education, or military service where the individual was involved in serious offenses or incidents that would reflect adversely on the honesty, reliability, trustworthiness, or stability of the individual.

3. Foreign travel, education, visits, correspondence, relatives, or contact with persons from or living in a designated country (Appendix G).

4. Mental, nervous, emotional, psychological, psychiatric, or character disorders/behavior or treatment reported or alleged from any source.

5. Excessive indebtedness, bad checks, financial difficulties or irresponsibility, unexplained affluence, bankruptcy, or evidence of living beyond the individual's means.

6. Any other significant information relating to the criteria included in paragraphs (a) through (q) of § 154.7 or Appendix H of this part.

**Appendix E—Personnel Security Determination Authorities**

A. *Officials authorized to grant, deny or revoke personnel security clearances (Top Secret, Secret, and Confidential):*

1. Secretary of Defense and/or designee
2. Secretary of the Army and/or designee
3. Secretary of the Navy and/or designee
4. Secretary of the Air Force and/or designee
5. Chairman, Joint Chiefs of Staff and/or designee
6. Directors of the Defense Agencies and/or designee
7. Commanders of the Unified and Specified Commands and/or designee

B. *Officials authorized to grant Limited Access Authorizations:*

1. Secretaries of the Military Departments and/or designee
2. Director, Washington Headquarters Service for OSD and/or designee
3. Chairman, JCS and/or designee
4. Directors of the Defense Agencies and/or designee
5. Commanders, Unified and Specified Commands and/or designee

C. *Officials authorized to grant access to SCI:*

Director, NSA—for NSA
Director, DIA—for OSD, OJCS, and Defense Agencies
Senior Officers of the Intelligence Community of the Army, Navy, and Air Force—for their respective Military Departments, or their single designee.

D. Officials authorized to certify personnel under their jurisdiction for access to Restricted Data (to include Critical Nuclear Weapon Design Information): see enclosure to DoD Directive 5210.2.

E. Officials authorized to approve personnel for assignment to Presidential Support activities: The Executive Secretary to the Secretary and Deputy Secretary of Defense or designee.

F. *Officials authorized to grant access to SIOP-ESI:*

1. Director of Strategic Target Planning
2. Director, Joint Staff, OJCS
3. Chief of Staff, U.S. Army
4. Chief of Naval Operations
5. Chief of Staff, U.S. Air Force
6. Commandant of the Marine Corps
7. Commanders of Unified and Specified Commands
8. The authority to grant access delegated above may be further delegated in writing by the above officials to the appropriate subordinates.

G. *Officials authorized to designate sensitive positions:*

1. Heads of DoD Components or their designees for critical-sensitive positions.

2. Organizational commanders for noncritical-sensitive positions.

H. *Nonappropriated Fund Positions of Trust:*

Officials authorized to designate nonappropriated fund positions of trust: Heads of DoD Components and/or their designees.

**Appendix F—Guidelines for Conducting Prenomination Personal Interviews**

A. *Purpose.* The purpose of the personal interview is to assist in determining the acceptability of an individual for nomination and further processing for a position requiring an SBI.

B. *Scope.* Questions asked during the course of a personal interview must have a relevance to a security determination. Care must be taken not to inject improper matters into the personal interview. For example, religious beliefs and affiliations, beliefs and opinions regarding racial matters, political beliefs and affiliations of a nonsubversive nature, opinions regarding the constitutionality of legislative policies, and affiliations with labor unions and fraternal organizations are not proper subjects for inquiry. Department of Defense representatives conducting personal interviews should always be prepared to explain the relevance of their inquiries. Adverse inferences shall not be drawn from the refusal of a person to answer questions the relevance of which has not been established.

C. *The interviewer.* Except as prescribed in paragraph B. above, persons conducting personal interviews normally will have broad latitude in performing this essential and important function and, therefore, a high premium must necessarily be placed upon the exercise of good judgment and common sense. To insure that personal interviews are conducted in a manner that does not violate lawful civil and private rights or discourage lawful political activity in any of its forms, or intimidate free expression, it is necessary that interviewers have a keen and well-developed awareness of and respect for the rights of interviewees. Interviewers shall never offer an opinion as to the relevance or significance of information provided by the interviewee to eligibility for access to SCI. If explanation in this regard is required, the interviewer will indicate that the sole function of the interview is to obtain information and that the determination of relevance or significance to the individual's eligibility will be made by other designated officials.

D. *Interview procedures.* 1. The Head of the DoD Component concerned shall establish uniform procedures for conducting the interview that are designed to elicit information relevant to making a determination of whether the interviewee, on the basis of the interview and other locally available information (DD 398, Personnel Security Investigation Questionnaire, personnel records, security file, etc.), is considered acceptable for nomination and further processing.

2. Such procedures shall be structured to insure the interviewee his full rights under the Constitution of the United States, the Privacy Act of 1974 and other applicable statutes and regulations.

E. *Protection of interview results.* All information developed during the course of the interview shall be maintained in personnel security channels and made available only to those authorities who have a need-to-know in connection with the processing of an individual's nomination for duties requiring access to SCI or those who need access to information either to conduct the required SBI or to adjudicate the matter of the interviewee's eligibility for access to SCI, or as otherwise authorized by Executive order or statute.

F. *Acceptability determination.* 1. The determination of the interviewee's acceptability for nomination for duties requiring access to sensitive information shall be made by the commander, or designee, of the DoD organization that is considering nominating the interviewee for such duties.

2. Criteria guidelines contained in DCID 1/14 upon which the acceptability for nomination determination is to be based shall be provided to commanders of DoD organizations who may nominate individuals for access to SCI and shall be consistent with those established by the Senior Officer of the Intelligence Community of the Component concerned with respect to acceptability for nomination to duties requiring access to SCI.

**Appendix G—List of Designated Countries[1]**

| Country or area | Approximate control date |
|---|---|
| Afghanistan | April 1978 |
| [illegible] | January 1946 |
| Angola | November 1975 |
| Berlin (Soviet Sector) | April 1946 |
| Bulgaria | October 1946 |
| Cambodia (Kampuchea) | April 1975 |
| Cuba | December 1960 |
| Czechoslovakia | February 1948 |
| Estonia | June 1940 |
| Ethiopia | September 1974 |
| German Democratic Republic (East Germany) | April 1946 |
| Hungarian People's Republic (Hungary) | June 1947 |
| Iran | February 1978 |
| Iraq | July 1958 |
| Democratic People's Republic of Korea (North Korea) | September 1945 |
| Laos | June 1977 |
| Latvia | June 1940 |
| Libyan Arab Republic | September 1969 |
| Mongolian People's Republic (Outer Mongolia) | |
| Nicaragua | July 1979 |
| Poland | February 1947 |
| Rumania | December 1947 |
| Southern Yemen | June 1969 |
| Syria | February 1958 |

[1] See Appendix G, DoD C-S102.21-M-1.

| Country or area | Approximate control date |
|---|---|
| Union of Soviet Socialist Republics | October 1922 |
| Democratic Republic of Vietnam (North Vietnam) | December 1946 |
| South Vietnam | April 1975 |
| Yugoslavia | November 1945 |
| Kurile Islands and South Sakhalin (Karafuto) | September 1945 |

## Appendix H—Adjudication Policy

*General.* The following adjudication policy has been developed to assist DoD adjudicators in making determinations with respect to an individual's eligibility for employment or retention in sensitive duties or eligibility for access to classified information. Adjudication policy relative to access to sensitive compartmented information is contained in DCID ⅓.

While reasonable consistency in reaching adjudicative determinations is desirable, the nature and complexities of human behavior preclude the development of a single set of guidelines or policies that is equally applicable in every personnel security case. Accordingly, the following adjudication policy is not intended to be interpreted as inflexible rules of procedure. The following policy requires dependence on the adjudicator's sound judgment, mature thinking, and careful analysis as each case must be weighed on its own merits, taking into consideration all relevant circumstances, and prior experience in similar cases as well as the guidelines contained in the adjudication policy, which have been compiled from common experience in personnel security determinations.

Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis being placed on the seriousness, recency, frequency and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future. The listed "Disqualifying Factors" and "Mitigating Factors" in this set of Adjudication Policies reflect the consideration of those factors of seriousness, recency, frequency, motivation, etc., to common situations and types of behavior encountered in personnel security adjudications, and should be followed whenever an individual case can be measured against this policy guidance. Common sense may occasionally necessitate deviations from this policy guidance, but such deviations should not be frequently made and must be carefully explained and documented.

The "Disqualifying Factors" provided herein establish some of the types of serious conduct under the criteria that can justify a determination to deny or revoke an individual's eligibility for access to classified information, or appointment to, or retention in sensitive duties. The "Mitigating Factors" establish some of the types of circumstances that may mitigate the conduct listed under the "Disqualifying Factors". Any determination must include a consideration of both the conduct listed under "Disqualifying Factors" and any circumstances listed under the appropriate or corresponding "Mitigating Factors".

The adjudication policy is subdivided into sections appropriate to each of the criteria provided in § 154.7 of this part, except § 154.7(i) for which conduct under any of the "Disqualifying Factors" of the adjudication policy or any other types of conduct may be appropriately included, if it meets the definition of § 154.7(i).

In all adjudications, the protection of the national security shall be the paramount determinant. In the last analysis, a final decision in each case must be arrived at by applying the standard that the issuance of the clearance or assignment to the sensitive position is "clearly consistent with the interests of national security."

*Loyalty*

(See § 154.7 (a) through (d)).

*Basis:* Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts threat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act. Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means. Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means. Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or combination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

*Disqualifying Factors* (behavior falls within one or more of the following categories):

1. Furnishing a representative of a foreign government information or data which could damage the national security of the United States.

2. Membership in an organization that has been characterized by the Department of Justice as one which meets the criteria in the above cited "Basis."

3. Knowing participation in acts that involve force or violence or threats of force or violence to prevent others from exercising their rights under the Constitution or to overthrow or alter the form of government of the United States or of any State.

4. Monetary contributions, service, or other support of the organization defined in "Basis", above, with the intent of furthering the unlawful objectives of the organization

5. Participation, support, aid, comfort or sympathetic association with persons, groups, organizations involved in terrorist activities, threats, or acts.

6. Evidence of continuing sympathy with the unlawful aims and objectives of such an organization, as defined in the "Basis" above.

7. Holding a position of major doctrinal or managerial influence in an organization as defined in the "Basis" above.

*Mitigating Factors* (circumstances which may mitigate disqualifying information):

1. Lack of knowledge or understanding of the unlawful aims of the organization.

2. Affiliation or activity occurred during adolescent/young adult years (17–25), more than 5 years has passed since affiliation was severed, and affiliation was due to immaturity.

3. Affiliation for less than a year out of curiosity or academic interest.

4. Sympathy or support limited to the lawful objectives of the organization.

*Foreign Preference*

(See § 154.7(f)).

*Basis:* Performing or attempting to one's perform duties, acceptance and active maintenance of dual citizenship, or other acts conducted in a manner which serve or which could be expected to serve the interests of another government in preference to the interests of the United States.

*Disqualifying Factors* (behavior falls within one or more of the following categories):

1. The active maintenance of dual citizenship, by one or more of the following:

a. Possession of a passport issued by a foreign nation and use of this passport to obtain legal entry into any sovereign state in preference to use of a U.S. passport.

b. Military service in the armed forces of a foreign nation or the willingness to comply with an obligation to so serve, or the willingness to bear arms at any time in the future on behalf of the foreign state.

c. Exercise or acceptance of rights, privileges or benefits offered by the foreign state to its citizens, (e.g., voting in a foreign election; receipt of honors or titles; financial compensation due to employment/retirement, educational or medical or other social welfare benefits), in preference to those of the United States.

d. Travel to or residence in the foreign state for the purpose of fulfilling citizenship requirements or obligations.

e. Maintenance of dual citizenship to protect financial interests, to include property ownership, or employment or inheritance rights in the foreign state.

f. Registration for military service or registration with a foreign office, embassy or consulate to obtain benefits.

2. Employment as an agent or other official representative of a foreign government, or seeking or holding political office in a foreign state.

3. Use of a U.S. Government position of trust or responsibility to influence decisions

in order to serve the interests of another government in preference to those of the United States.

*Mitigating Factors* (circumstances which may mitigate disqualifying information):

1. Claim of dual citizenship is with a foreign country whose interests are not inimical to those of the United States and is based solely on applicant's or applicant's parent(s)' birth, the applicant has not actively maintained citizenship in the last ten years and indicates he or she will not in the future act so as to pursue this claim.

2. Military service while a U.S. citizen was in the armed forces of a state whose interests are not inimical to those of the United States and such service was officially sanctioned by United States authorities.

3. Employment is as a consultant only and services provided is of the type sanctioned by the United States Government.

*Security Responsibility Safeguards*

(See § 154.7 (g) and (e)).

*Basis:* Disregard of public law, Statutes, Executive Orders or Regulations, including violation of security regulations or practices, or unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by Statute, Executive Order or Regulation.

*Disqualifying Factors:* (behavior falls within one or more of the following categories):

1. Deliberate or reckless disregard of security regulations, public law, statutes or Executive Orders which could have resulted in the loss or compromise of classified information.

2. Deliberate or reckless violations of security regulations, including, but not limited to, taking classified information home or carrying classified data while in a travel status without proper authorization, intentionally copying classified documents in order to obsure classification markings, disseminating classified information to cleared personnel who have no "need to know", or disclosing classified information, or other information, disclosure of which is prohibited by Statute, Executive Order or Regulation, to persons who are not cleared or authorized to receive it.

3. Pattern of negligent conduct in handling or storing classified documents.

*Mitigating Factors* (circumstances which may mitigate disqualifying information):

1. Violation of security procedures was directly caused or significantly contributed to by an improper or inadequate security briefing, provided the individual reasonably relied on such briefing in good faith.

2. Individual is personally responsible for a large volume of classified information and the violation was merely administrative in nature.

3. Security violation was merely an isolated incident not involving deliberate or reckless violation of security policies, practices or procedures.

*Criminal Conduct*

(See § 154.7(h)).

*Basis:* Criminal or dishonest conduct.

When it is determined that an applicant for a security clearance, or a person holding a clearance, has engaged in conduct which would constitute a felony under the laws of the United States, the clearance of such person shall be denied or revoked unless it is determined that there are compelling reasons to grant or continue such clearance. Compelling reasons can only be shown by clear and convincing evidence of the following:

(a) The felonious conduct (1) did not involve an exceptionally grave offense; (2) was an isolated episode; and (3) the individual has demonstrated trustworthiness and respect for the law over an extended period since the offense occurred; or

(b) The felonious conduct (1) did not involve an exceptionally grave offense; (2) was an isolated episode; (3) was due to the immaturity of the individual at the time it occurred; and (4) the individual has demonstrated maturity, trustworthiness, and respect for the law since that time; or

(c) In cases where the individual has committed felonious conduct but was not convicted of a felony, there are extenuating circumstances which mitigate the seriousness of the conduct such that it does not reflect a lack of trustworthiness or respect for the law.

The above criteria supersede all criteria previously used to adjudicate criminal conduct involving commission of felonies under the Laws of the United States. Involvement in criminal activities which does not constitute a felony under the laws of the United States shall be evaluated in accordance with the criteria set forth below. (For purposes of this paragraph, the term "felony" means any crime punishable by imprisonment for more than a year. The term "exceptionally grave offense" includes crimes against the Federal Government, its instrumentalities, officers, employees or agents; or involves dishonesty, fraud, bribery or false statement; or involves breach of trust or fiduciary duty; or involves serious threat to life or public safety.)

*Disqualifying Factors:* (behavior falls within one or more of the following categories):

1. Criminal conduct involving:
   a. Commission of a state felony.
   b. Force, coercion, or intimidation.
   c. Firearms, explosives, or other weapons.
   d. Dishonesty or false statements, e.g. fraud, theft, embezzlement, falsification of documents or statements.
   e. Obstruction or corruption of government functions.
   f. Deprivation of civil rights.
   g. Violence against persons.
2. Criminal conduct punishable by confinement for one year or more.
3. An established pattern of criminal conduct, whether the individual was convicted or not.
4. Failure to complete a rehabilitation program resulting from disposition of a criminal proceeding or violation of probation, even if the violation did not result in formal revocation of probation. Rehabilitation should not be considered a success or failure while the individual is still on parole/probation.
5. Criminal conduct that is so recent in time as to preclude a determination that recurrence is unlikely.
6. Close and continuing association with persons known to the individual to be involved in criminal activities.
7. Criminal conduct indicative of a serious mental aberration, lack of remorse, or insufficient probability of rehabilitative success, (e.g., spouse or child abuse).
8. Disposition:
   a. Conviction.
   b. Disposition on a legal issue not going to the merits of the crime.
   c. Arrest or indictment pending trial when there is evidence that the individual engaged in the criminal conduct for which arrested or indicted.
9. Arrest record. In evaluating an arrest record, information that indicates that the individual was acquitted, that the charges were dropped or the subject of a "stet" or "nolle prosequi", that the record was expunged, or that the cause was dismissed due to error not going to the merits, does not negate the security significance of the underlying conduct. Personnel security determinations are to be made on the basis of all available information concerning a person's conduct and actions rather than the legal outcome of a criminal proceeding.

*Mitigating Factors:* (circumstances which may mitigate disqualifying information):

1. Immaturity attributable to the age of the individual at the time of the offense.
2. Extenuating circumstances surrounding the offense.
3. Circumstances indicating that the actual offense was less serious than the offense charged.
4. Isolated nature of the conduct.
5. Conduct occurring only in the distant past (such as more than 5 years ago) in the absence of subsequent criminal conduct.
6. Transitory conditions directly or significantly contributing to the conduct (such as divorce action, death in family, severe provocation) in the absence of subsequent criminal conduct.

*Mental or Emotional Disorders*

(See § 154.7(j)).

*Basis:* Any behavior or illness, including any mental condition, which, in the opinion of competent medical authority, may cause a defect in judgment or reliability with due regard to the transient or continuing effect of the illness and the medical findings in such case.

*Disqualifying Factors:* (behavior or condition falls within one or more of the following categories):

1. Diagnosis by competent medical authority (board certified psychiatrist or clinical psychologist) that the individual has an illness or mental condition which may result in a significant defect in judgment or reliability.
2. Conduct or personality traits that are bizarre or reflect abnormal behavior or instability even though there has been no history of mental illness or treatment, but which nevertheless, in the opinion of competent medical authority, may cause a defect in judgment or reliability.
3. A diagnosis by competent medical authority that the individual suffers from mental or intellectual incompetence or

mental retardation to a degree significant enough to establish or suggest that the individual could not recognize, understand or comprehend the necessity of security regulations, or procedures, or that judgment or reliability are significantly impaired, or that the individual could be influenced or swayed to act contrary to the national security.

4. Diagnosis by competent medical authority that an illness or condition that had affected judgment or reliability may recur even though the individual currently manifests no symptoms, or symptoms currently are reduced or in remission.

5. Failure to take prescribed medication or participate in treatment (including follow-up treatment or aftercare), or otherwise failing to follow medical advice relating to treatment of the illness or mental condition.

*Mitigating Factors:* (circumstances which may mitigate disqualifying information):

1. Diagnosis by competent medical authority that an individual's previous mental or emotional illness or condition that did cause significant defect in judgment or reliability is cured and has no probability of recurrence, or such a minimal probability of recurrence as to reasonably estimate there will be none.

2. The contributing factors or circumstances which caused the bizarre conduct or traits, abnormal behavior, or defect in judgment and reliability have been eliminated or rectified, there is a corresponding alleviation of the individual's condition and the contributing factors or circumstances are not expected to recur.

3. Evidence of the individual's continued reliable use of prescribed medication for a period of at least two years, without recurrence and testimony by competent medical authority that continued maintenance of prescribed medication is medically practical and likely to preclude recurrence of the illness or condition affecting judgment or reliability.

4. There has been no evidence of a psychotic condition, a serious or disabling neurotic disorder, or a serious character or personality disorder for the past 10 years.

*Foreign Connections/Vulnerability To Blackmail or Coercion*

(See paragraph § 154.7(k)).

*Basis:* Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be (1) the presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the United States, or (2) any other circumstances that could cause the applicant to be vulnerable.

*Disqualifying Factors:* (behavior falls within one or more of the following categories):

1. Indications that the individual now is being blackmailed, pressured or coerced by any individual, group, association, organization or government.

2. Indications that a vulnerable individual actually has been targeted and/or approached for possible blackmail, coercion or pressure by any individual, group, association, organization or government.

3. Indications that the individual has acted to increase the vulnerability for future possible blackmail, coercion or pressure by any individual, group, association, organization or governments, especially by or in a country designated hostile to the United States (See Appendix G). Indicators include, but are not limited to the following:

a. Failure to report to security officials any evidence, indication or suspicion that mail to relatives has been opened, unusually delayed or tampered with in any way, or that telephone calls have been monitored.

b. An increase in curiosity or official or quasi-official inquiries about the individual to relatives in the country where they reside occasioned by the receipt of mail, packages, telephone calls or visits from the individual.

c. Contact with, or visits by officials to the individual while visiting relatives in another country, to learn more about the individual, or the individual's employment or residence, etc.

d. Unreported attempts to obtain classified or other sensitive information or data by representatives of a foreign country.

4. Conduct or actions by the individual while visiting in a country hostile to the United States that increase the individual's vulnerability to be targeted for possible blackmail, coercion or pressure. These include, but are not limited to the following:

a. Violation of any laws of the foreign country where relatives reside during visits or through mailing letters or packages, (e.g., smuggling, currency exchange violations, unauthorized mailings, violations of postal regulations of the country, or any criminal conduct, including traffic violations) which may call the attention of officials to the individual.

b. Frequent and regular visits, correspondence, or telephone contact with relatives in the country where they reside, increasing the likelihood of official notice.

c. Failure to report to security officials those inquiries by friends or relatives for more than a normal level of curiosity concerning the individual's employment, sensitive duties, military service or access to classified information.

d. Repeated telephone or written requests to the foreign government officials for official favors, permits, visas, travel permission, or similar requests which increase the likelihood of official notice.

e. Reckless conduct, open or public misbehavior or commission of acts contrary to local customs or laws, or which violate the mores of the foreign country and increase the likelihood of official notice.

f. Falsification of documents, lying to officials, harassing or taunting officials or otherwise acting to cause an increase in the likelihood of official notice or to increase the individual's vulnerability because personal freedom could be jeopardized.

g. Commission of any illicit sexual act, drug purchase or use, drunkenness or similar conduct which increases the likelihood of official notice, or which increases the individual's vulnerability because personal freedom could be jeopardized.

5. Conduct or actions by the individual that increase the individual's vulnerability to possible coercion, blackmail or pressure, regardless of the country in which it occurred, including, but not limited to the following:

a. Concealment or attempts to conceal from an employer prior unfavorable employment history, criminal conduct, mental or emotional disorders or treatment, drug or alcohol use, sexual preference, or sexual misconduct described under that section below, or fraudulent credentials or qualifications for employment.

b. Concealment or attempts to conceal from immediate family members, or close associates, supervisors or coworkers, criminal conduct, mental or emotional disorders or treatment, drug or alcohol abuse, sexual preference, or sexual misconduct described under that section below.

*Mitigating Factors* (circumstances which may mitigate disqualifying infomration):

1. The individual:

a. Receives no financial assistance from and provides no financial assistance to persons or organizations in the designated country.

b. Has been in the United States for at least 5 years since becoming a U.S. citizen without significant contact with persons or organizations from the designated country (each year of active service in the United States military may be counted).

c. Has close ties of affection to immediate family members in the United States.

d. Has adapted to the life-style in the United States, established substantive financial or other associations with U.S. enterprises or community activities.

e. Prefers the way of life and form of government in the U.S. over the other country.

f. Is willing to defend the U.S. against all threats including the designated country in question.

g. Has not divulged the degree of association with the U.S. government or access to classified information to individuals in the designated country in question.

h. Has not been contacted or approached by anyone or any organization from a designated country to provide information or favors, or to otherwise act for a person or organization in the designated country in question.

i. Has promptly reported to proper authorities all attempted contacts, requests or threats from persons or organizations from the designated country.

j. The individual is aware of the possible vulnerability to attempts of blackmail or coercion and has taken positive steps to reduce or eliminate such vulnerability.

*Financial Matters*

(See § 154.7(1)).

*Basis:* Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

*Disqualifying Factors:* (behavior falls within one or more of the following categories):

1. History of bad debts, garnishments, liens, repossessions, unfavorable judgments, delinquent or uncollectable accounts or debts

written off by creditors as uncollectable losses with little or no apparent or voluntary effort by the individual to pay amounts owed.

2. Bankruptcy:

a. Due to financial irresponsibility, or

b. With continuing financial irresponsibility thereafter.

3. Indebtedness aggravated or caused by gambling, alcohol, drug abuse, or other factors indicating poor judgement or financial irresponsibility.

4. A history or pattern of living beyond the person's financial means or ability to pay, a lifestyle reflecting irresponsible expenditures that exceed income or assets, or a history or pattern of writing checks not covered by sufficient funds or on closed accounts.

5. Indication of deceit or deception in obtaining credit or bank accounts, misappropriation of funds, income tax evasion, embezzlement, fraud, or attempts to evade lawful creditors.

6. Indifference to or disregard of financial obligations or indebtedness or intention not to meet or satisfy lawful financial obligations or when present expenses exceed net income.

7. Unexplained affluence or income derived from illegal gambling, drug trafficking or other criminal or nefarious means.

8. Significant unexplained increase in an individual's net worth.

*Mitigating Factors:* (circumstances which may mitigate disqualifying information):

1. Scheduled program or systematic efforts demonstrated over a period of time (generally one year) to satisfy creditors, to acknowledge debts and arrange for reduced payments, entry into debt-consolidation program or seeking the advice and assistance of financial counselors or court supervised payment program.

2. Change to a more responsible lifestyle, reduction of credit card accounts, and favorable change in financial habits over a period of time (generally one year).

3. Stable employment record and favorable financial references.

4. Unforeseen circumstances beyond the individual's control (e.g. a major or catastrophic illness or surgery, accidental loss of property or assets not covered by insurance, decrease or cutoff of income, indebtedness resulting from court judgments not due to the individual's financial mismanagement), provided the individual demonstrates efforts to respond to the indebtedness in a reasonable and responsible fashion.

5. Indebtedness due to failure of legitimate business efforts or business-related bankruptcy without evidence of fault or financial irresponsibility on the part of the individual, irresponsible mismanagement of an individual's funds by another who had fiduciary control or access to them without the individual's knowledge, or loss of assets as a victim of fraud or deceit, provided the individual demonstrates efforts to respond to the indebtedness in a reasonable and responsible fashion.

6. Any significant increase in net worth was due to legitimate business interests, inheritance or similar legal explanation.

*Alcohol Abuse*

(See paragraph § 154.7(m))

*Basis:* Habitual or episodic use of intoxicants to excess.

*Disqualifying Factors:* (behavior falls within one or more of the following categories):

1. Habitual or episodic consumption of alcohol to the point of impairment or intoxication.

2. Alcohol-related incidents such as traffic violations, fighting, child or spouse abuse, non-traffic violation or other criminal incidents related to alcohol use.

3. Deterioration of the individual's health or physical or mental condition due to alcohol use or abuse.

4. Drinking on the job, reporting for work in an intoxicated or "hungover" condition, tardiness or absences caused by or related to alcohol abuse, and impairment or intoxication occurring during, and immediately following, luncheon breaks.

5. Refusal or failure to accept counseling or professional help for alcohol abuse or alcoholism.

6. Refusal or failure to follow medical advice relating to alcohol abuse treatment or to abstain from alcohol use despite medical or professional advice.

7. Refusal or failure to significantly decrease consumption of alcohol or to change life-style and habits which contributed to past alcohol related difficulties.

8. Indications of financial or other irresponsibility or unreliability caused by alcohol abuse, or discussing sensitive or classified information while drinking.

9. Failure to cooperate in or successfully complete a prescribed regimen of an alcohol abuse rehabilitation program.

*Mitigating Factors* (circumstances which may mitigate disqualifying information):

1. Successfully completed an alcohol awareness program following two or less alcohol-related incidents and has significantly reduced alcohol consumption, and made positive changes in life-style and improvement in job reliability.

2. Successfully completed an alcohol rehabilitation program after three or more alcohol-related incidents, has significantly reduced or eliminated alcohol consumption in accordance with medical or professional advice, regularly attended Alcoholics Anonymous or similar support organization for approximately one year after rehabilitation, and abstained from the use of alcohol for that period of time.

3. Whenever one of the situations listed below occurs, the individual must have successfully completed an alcohol rehabilitation or detoxification program and totally abstained from alcohol for a period of approximately two years:

a. The individual has had one previously failed rehabilitation program and subsequent alcohol abuse or alcohol related incidents.

b. The individual has been diagnosed by competent medical or health authority as an alcoholic, alcoholic dependent or chronic abuser of alcohol.

4. Whenever the individual has had repeated unsuccessful rehabilitation efforts and has continued drinking or has been involved in additional alcohol related incidents then the individual must have successfully completed an alcohol rehabilitation or detoxification program, totally abstained from alcohol for a period of at least three years and maintained regular and frequent participation in meetings of Alcoholics Anonymous or similar organizations.

5. If an individual's alcohol abuse was surfaced solely as a result of self referral to an alcohol abuse program and there have been no precipitating factors such as alcohol related arrests or incidents action will not normally be taken to suspend or revoke security clearance solely on the self referral for treatment.

*Drug Abuse*

(See § 154.7(n)).

*Basis:* Illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis, or other dangerous drug.

*Disqualifying Factors* (behavior falls within one or more of the following categories):

1. Abuse of cannabis only, not in combination with any other substance.

a. Experimental abuse, defined as an average of once every two months or less, but no more than six times.

b. Occasional abuse, defined as an average of not more than once a month.

c. Frequent abuse, defined as an average of not more than once a week.

d. Regular abuse, defined as an average of more than once a week.

e. Compulsive use, habitual use, physical or psychological dependency, or use once a day or more on the average.

2. Abuse of any narcotic, psychoactive substance or dangerous drug (to include prescription drugs), either alone, or in combination with another or cannabis, as follows:

a. Experimental abuse, defined as an average of once every two months or less, but no more than six times.

b. Occasional abuse, defined as an average of not more than once a month.

c. Frequent abuse, defined as an average of not more than once a week.

d. Regular abuse, defined as an average of more than once a week.

e. Compulsive use, habitual use, physical or psychological dependency, or use on an average of once a day or more on the average.

3. Involvement to any degree in the unauthorized trafficking, cultivation, processing, manufacture, sale, or distribution of any narcotic, dangerous drug, or cannabis or assistance to those involved in such acts whether or not the individual was arrested for such activity.

4. Involvement with narcotics, dangerous drugs or cannabis under the following conditions whether or not the individual engages in personal use:

a. Possession.

b. Possession of a substantial amount, more than could reasonably be expected for personal use.

c. Possession of drug paraphernalia for cultivating, manufacturing or distributing (e.g., possession of gram scales, smoking devices, needles for injecting intravenously.

empty capsules or other drug production chemical paraphernalia.

d. Possession of personal drug paraphernalia such as needles for injecting, smoking devices and equipment, etc.

5. Information that the individual intends to continue to use (regardless of frequency) any narcotic, dangerous drug or cannabis. Note.—There is no corresponding Mitigating Factor for this Disqualifying Factor because it is DoD policy that, as a general rule, if any individual expresses or implies any intent to continue use of any narcotic, dangerous drug, or other controlled substance, including marijuana and hashish, without a prescription, in any amount and regardless of frequency, it is to be considered contrary to the national interest and the interests of national security to grant or allow retention of a security clearance for access to classified information for that individual.)

*Mitigating Factors* (circumstances which may mitigate disqualifying information):

1. Abuse of cannabis only, as follows: (Use this to assess Disqualifying Factor 1)

a. Experimental abuse, which occurred more than six months ago and the individual has demonstrated an intent not to use cannabis or any other narcotic, psychoactive substance or dangerous drug in the future.

b. Occasional abuse of cannabis, which occurred more than 12 months ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

c. Frequent abuse of cannabis occurred more than 18 months ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

d. Regular abuse of cannabis occurred more than two years ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

e. Compulsive, habitual use or physical or psychological dependency on cannabis occurred more than three years ago, the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future and has demonstrated a stable lifestyle, with no indication of physical or psychological dependence.

2. For abuse *other than* cannabis alone. Use is considered cumulative and each separate substance must not be considered separately. (Use this to assess Disqualifying Factor 2).

a. Experimental abuse occurred more than 12 months ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future and has successfully completed a drug rehabilitation program.

b. Occasional abuse occurred more than two years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle and satisfactory employment record and has successfully completed a drug rehabilitation program.

c. Frequent abuse occurred more than three years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug abuse, and has successfully completed a drug rehabilitation program.

d. Regular abuse occurred more than four years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug abuse, and has successfully completed a drug rehabilitation program.

e. Compulsive abuse occurred more than five years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug abuse, and has successfully completed a drug rehabilitation program.

3. Use this only to assess conduct under Disqualifying Factor 3.

a. Involvement in trafficking, cultivation, processing, manufacture, sale or distribution occurred more than five years ago, the individual has demonstrated an intent not to do so in the future, and has a stable lifestyle and satisfactory employment record and has not been involved in any other criminal activity.

b. Cultivation was for personnel use only, in a limited amount for a limited period and the individual has not been involved in similar activity or other criminal activity for more than three years and has demonstrated intent not to do so again in the future.

c. Illegal sale or distribution involved only the casual supply to friends of small amounts (not for profit or to finance a personal supply) and occurred on only a few occasions more than two years ago, and the individual has demonstrated an intent not to do so again in the future.

4. Use this only to assess conduct under Disqualifying Factor 4 in the corresponding subparagraphs.

a. No possession of drugs or other criminal activity in the last two years.

b. The individual has not possessed drugs in the last three years, has had no other criminal activity in the last three years and has demonstrated an intent not to be involved in such activity in the future.

c. The individual has not possessed drug paraphernalia used in processing, manufacture or distribution for the last five years, has had no other criminal activity in the last five years and has demonstrated an intent not to be involved in such activity in the future.

d. The individual has not possessed drug paraphernalia for personal use in the last year, has had no other criminal activity in the last two years and has demonstrated an intent not to be involved in such activity in the future.

1. *Narcotic.* Opium and opium derivatives or synethtic substitutes.

2. *Dangerous Drug.* Any of the nonnarcotic drugs which are habit forming or have a potential for abuse because of their stimulant, depressant or hallucinogenic effect.

3. *Cannabis.* The intoxicating products of the hemp plant, Cannabis Sativa, including but not limited to marijuana, hashish, and hashish oil.

*Falsification*

(See § 154.7(o)).

*Basis:* Any knowing and willful falsification, cover-up, concealment, misrepresentation, or omission of a material fact from any written or oral statement, document, form or other representation or device used by the Department of Defense or any other Federal agency.

*Disqualifying Factors* (behavior falls within one or more of the following categories):

1. Deliberate omission, concealment, falsification or misrepresentation of relevant and material facts including, but not limited to information concerning arrests, drug abuse or treatment, alcohol abuse or treatment, treatment for mental or emotional disorders, bankruptcy, military service information, organizational affiliations, financial problems, employment, foreign travel, or foreign connections from any Personnel Security Questionnaire, Personal History Statement or similar form used by any Federal agency to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance or access eligibility, or award fiduciary responsibilities.

2. Deliberately providing false or misleading information concerning any of the relevant and material matters listed above to an investigator, employer, supervisor, security official or other official representative in connection with application for security clearance or access to classified information or assignment to sensitive duties.

*Mitigating Factors* (circumstances which may mitigate disqualifying information):

1. The information was not relevant or material to reaching a security clearance or access determination.

2. The falsification was an isolated incident in the distant past (more than 5 years) and the individual subsequently had accurately provided correct information voluntarily during reapplication for clearance or access and there is no evidence of any other falsification misrepresentation or dishonest conduct by the individual.

3. The behavior was not willful.

4. The falsification was done unknowingly or without the individual's knowledge.

5. The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts of falsification.

6. Omission of material fact was caused by or significantly contributed to by improper or inadequate advice of authorized personnel, provided the individual reasonably relied on such improper or inadequate advice in good faith, and when the requirement subsequently was made known to the individual, the previously omitted information was promptly and fully provided.

*Refusal to Answer*

(See § 154.7(p)).

*Basis:* Failing or refusing to answer or to authorize others to answer questions or provide information required by a Congressional committee, court or agency in the course of an official inquiry whenever such answers or information concern relevant and material matters pertinent to an

evaluation of the individual's trustworthiness, reliability and judgment.

*Disqualifying Factors* (behavior falls within one or more of the following categories):

1. Failure or refusal to provide full, frank and truthful answers or to authorize others to do so, in connection with any application for security clearance or access, to include required non-disclosure and security termination agreements.

2. Failure or refusal to provide appropriate investigative forms, including release forms, for use by investigators in obtaining information from medical institutions, agencies or personal physicians, therapists, psychologists, psychiatrists, counselors, rehabilitation treatment, agencies or personnel; from police or criminal agencies, probation agencies or officers, financial institutions, employers, Federal or State agencies, professional associations or any other organizations as required as part of an investigation for security clearance, access, appointment or assignment to sensitive duties.

3. Failure or refusal to authorize others to provide relevant and material information necessary to reach a security clearance determination.

4. Failure or refusal to answer questions or provide information required by a Congressional committee, court or agency when such answers or information concern relevant and material matters pertinent to evaluating the individual's trustworthiness, reliability and judgment.

*Mitigating Factors* (circumstances which may mitigate disqualifying information):

1. The individual was unable to provide the information despite good faith and reasonable efforts to do so.

2. The individual was unaware of the necessity to provide the information requested or of the possible consequences of such refusal or failure to provide the information, and, upon being made aware of this requirement, fully frankly and truthfully provided the requested information.

3. The individual sought and relied in good faith on information and advice from legal counsel or other officials that the individual was not required to provide the information requested, and, upon being made aware of the requirement, fully, frankly and truthfully provided the requested information.

*Sexual Misconduct*

(See § 154.7(q)).

*Basis:* Acts of sexual misconduct or perversion indicative of moral turpitude, poor judgment, or lack of regard for the laws of society.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. The conduct involves:

a. Acts performed or committed in open or public places.

b. Acts performed with a minor, or with animals.

c. Acts involving inducement, coercion, force, violence or intimidation of another person.

d. Prostitution, pandering or the commission of sexual acts for money or other remuneration or reward.

e. Sexual harassment.

f. Self mutilation, self punishment or degradation.

g. Conduct that involves spouse swapping, or group sex orgies.

h. Adultery that is recent, frequent and likely to continue and has an adverse effect on good order or discipline within the workplace (e.g., officer/enlisted, supervisor/subordinate, instructor/student).

i. Conduct determined to be criminal in the locale in which it occurred.

j. Deviant or perverted sexual behavior which may indicate a mental or personality disorder (e.g., transexualism, transvestism, exhibitionism, incest, child molestation, voyeurism, bestiality, or sodomy.)

2. The conduct has been recent.

3. The conduct increases the individual's vulnerability to blackmail, coercion or pressure.

4. Evidence that the applicant has intention or is likely to repeat the conduct in question.

*Mitigating Factors* (circumstances which may mitigate qualifying information):

1. Sexual misconduct occurred on an isolated basis during or preceding adolescence with no evidence of subsequent conduct of a similar nature, and clear indication that the individual has no intention of participating in such conduct in the future.

2. Sexual misconduct was isolated, occurred more than 3 years ago, and there is clear indication that the individual has no intention of participating in such conduct in the future.

3. The individual was a minor or was the victim of force, or violence by another.

4. The individual has successfully completed professional therapy, has been rehabilitated and diagnosed by competent medical authority that misconduct is not likely to recur.

5. Demonstration that the individual's sexual misconduct can no longer form the basis for vulnerability to blackmail, coercion or pressure.

## Appendix I—Overseas Investigations

*1. Purpose*

The purpose of this appendix is to establish, within the framework of this part, 32 CFR Part 361 and Defense Investigative Service Manual 20–1, standardized procedures for the military investigative agencies to follow when they perform administrative and investigative functions on behalf of DIS at overseas locations.

*2. Type Investigation*

This part describes in detail Background Investigations (BI) which are conducted for Limited Access Authorizations and those Special Investigative Inquiries conducted for post-adjudicative purposes. Hereafter they are referred to as LAA and Post-adjudicative cases and are briefly described in paragraphs a and b below:

a. *Limited access authorization.* A level of access to classified defense information that may be granted to a non-U.S. citizen under certain conditions, one of which is that a BI must have been completed with satisfactory results. § 154.16(d) further describes LAA cases.

b. *Post-adjudication investigation.* A Personnel Security Investigation (PSI) predicated on new, adverse or questionable security, suitability or hostage information that arises and requires the application of investigation procedures subsequent to adjudicative action on a DoD-affiliated person's eligibility for continued access to classified information, assignment to or retention in sensitive duties or other designated duties requiring such investigation. While these cases are normally predicated on the surfacing of unfavorable information subsequent to favorable adjudication, they may also be opened when favorable information is offered to counter a previous unfavorable adjudication. § 154.9(c)(3) further describes these cases.

*3. General*

a. As a rule, investigative activity in most PSIs occurs in the U.S. even when the Subject is at an overseas location. Therefore, the submission of requests for investigation to the Personnel Investigation Center (PIC) at Baltimore is a required procedure as it ensures uniform application of DoD PSI policy and the efficient dispatch and coordination of leads.

b. When the purpose of the investigation is for an LAA or post-adjudication on a Subject overseas, much, if not all of the leads are at an overseas location. While these cases also may be submitted directly to PIC for action, there is an inherent delay in the mailing of the request, the exchange of leads and reports with PIC, and transmittal of the reports back to the requester. To avoid this delay, the military investigative agencies, when acting for DIS overseas in accordance with 32 CFR Part 361 may, with their Headquarters approval, accept these requests for investigations, initiate them and disseminate the results from the same level as they open, close, and disseminate their own cases. Usually this will greatly improve response time to the requester.

c. Under the procedures in paragraph b., above, DIS will not often be in a position to directly exercise its responsibility for control and direction until the case or lead is in progress or even completed; therefore, adherence to the policy stated in referenced documents, and as modified herein, is mandatory. When the policy of the military investigative agency is at variance with the above, the matter will be referred to the respective headquarters for resolution.

d. Since DIS is ultimately responsible for the personnel security product, it must be kept informed of all such matters referred to in this appendix. For instance, when the investigative agency overseas receives a DD Form 1879, Request for Personnel Security Investigation, which sets forth an issue outside DIS jurisdiction, it will reject the request, inform the requester of the reason and furnish an information copy of the DD Form 1879 and rejection letter to PIC. When the issue/jurisdiction is unclear to the investigative agency, the DD Form 1879 and the perceived jurisdictional question should be promptly forwarded to DIS for action and, if appropriate, to the component's headquarters for information. Questions on the interpretation of DIS or DoD policy and Directives pertaining to individual PSI cases

can usually be resolved through direct communications with PIC.

e. 32 CFR Part 361 establishes the supporting relationship of the military investigative agencies to DIS in overseas areas, and DIS provides these agencies with copies of relevant policy and interpretive guidance. For these reasons, the investigative agency vice the requester, is responsible for evaluating the request, processing it, collecting and evaluating the results within their jurisdiction for sufficiency, and forwarding the completed product to the appropriate activity.

f. The magnitude of operations at PIC requires that methods of handling LAA and post-adjudicative cases be consistent to the maximum extent possible. For this reason, the procedures for LAA cases are nearly identical to those for post-adjudicative cases. Briefly, the main exceptions are:

(1) The notification to PIC that a post-adjudication case has been opened will be by message, since an issue is present at the outset, whereas notification of an LAA case should normally be by mail.

(2) The scope of the LAA investigation is 10 years or since the person's 18th birthday, whichever is shortest, whereas the leads in a post-djudication case are limited to resolving the issue.

*4. Jurisdiction*

a. As set-forth in 32 CFR Part 361 DIS is responsible for conducting all DoD PSIs in the 50 states, District of Columbia, and Puerto Rico, and will request the military departments to accomplish investigative requirements elsewhere. The military investigative agencies in overseas locations routinely respond to personnel security investigative leads for DIS.

b. DIS jurisdiction also includes investigation of subversive affiliations, suitability information, and hostage situations when such inquiries are required for personnel security purposes; however, jurisdiction will rest with the military investigative agencies, FBI and/or civil authorities as appropriate when the alleged subversion or suitability issue represents a violation of law or, in the case of a hostage situation, there is an indication that the person concerned is actually being pressured, coerced, or influenced by interests inimical to the United States, or that hostile intelligence is taking action specifically directed against that person. Specific policy guidance on the applicability of these procedures and the jurisdictional considerations are stated in § 154.9.

*5. Case Opening*

a. A request for investigation must be submitted by using DD Form 1879 and accompanied by supporting documentation unless such documentation is not immediately available, or the obtaining of documentation would compromise a sensitive investigation. Upon receipt of the request, the military investigative component will identify the issue(s), scope the leads, and ensure that the proposed action is that which is authorized for DIS as delineated in this part, 32 CFR Part 361 and Defense Investigative Service Manual 201–1.

b. Upon such determination, the Component will prepare an Action Lead Sheet (ALS) which fully identifies the Subject and the scope of the case, and specifies precisely the leads which each investigative component (including DIS/PIC when appropriate) is to conduct.

c. Case opening procedures described above are identical for LAA and post-adjudication cases except with respect to notification of case opening to PIC:

(1) Post-adjudication Cases. These cases, because they involve an issue, are potentially sensitive and must be examined as early as possible by PIC for conformity to the latest DoD policy. Accordingly, the initial notification to PIC of case openings will always be by message. The message will contain at a minimum:

(a) Full identification of the subject;

(b) A narrative describing the allegation/facts in sufficient detail to support opening of the case; and

(c) A brief listing of the leads that are planned.

The DD Form 1879 and supporting documents, along with the agency's ALS, should be subsequently mailed to PIC.

(2) LAA Cases. The notification to PIC of case opening will normally be accomplished by mailing the DD Form 1879, DD Form 398 (Personal History Statement), a copy of the ALS, and any other supporting documents to PIC. Message notification to PIC in LAA cases will only be required if there is a security or suitability issue apparent in the DD Form 1879 or supporting documents.

(d) Beyond initial actions necessary to test allegation for investigative merit and jurisdiction, no further investigative action should commence until the notification of case opening to PIC has been dispatched.

(e) PIC will promptly respond to the notification of case opening by mail or message specifying any qualifying remarks along with a summary of previously existing data. PIC will also provide a DIS case control number (CCN). This number must be used by all components on all case related paperwork/reports.

(The investigating agency may assign its unique service CCN for interim internal control; however, the case will be processed, referenced, and entered into the DCII by the DIS case control number.) The first five digits of the DIS CCN will be the Julian date of the case opening when received at DIS.

*6. Case Processing*

a. The expected completion time for leads in LAA cases is 50 calendar days and for post-adjudication cases, 30 days, as computed from the date of receipt of the request. If conditions preclude completion in this time period, a pending report of the results to date, along with an estimated date of completion will be submitted to PIC.

b. Copies of all ALSs will be furnished to PIC. In addition, PIC will be promptly notified of any significant change in the scope of the case, or the development of an investigative issue.

c. The procedures for implementing the Privacy Act in PSI cases are set in DIS Manual 20–1–M 1. Any other restrictions on the release of information imposed by an overseas source or by regulations of the country where the inquiry takes place will be clearly stated in the report.

d. The report format for these cases will be that used by the military investigative agency.

e. Investigative action outside the jurisdictional area of an investigative component office may be directed elsewhere by ALS as needed in accordance with that agency's procedures and within the following geographical considerations:

(1) Leads will be sent to PIC if the investigative action is in the United States, District of Columbia, Puerto Rico, American Samoa, Bahama Islands, the U.S. Virgin Islands, and the following islands in the Pacific: Wake, Midway, Kwajalin, Johnston, Carolines, Marshalls, and Eniwetok.

(2) Leads to areas not listed above may be dispatched to other units of the investigative agency or even to another military agency's field units if there is an agreement or memorandum of understanding that provides for such action. For case accountability purposes, copies of such "lateral" leads must be sent to the PIC.

(3) Leads that cannot be dispatched as described in paragraph (2) above, and those that must be sent to a non-DoD investigative agency should be sent to PIC for disposition.

f. The Defense Investigative Manual calls for obtaining PIC approval before conducting a Subject interview on a post-adjudicative investigation. To avoid the delay that compliance with this procedure would create, a military investigative component may conduct the interview provided:

(1) All other investigative leads have been completed and reviewed.

(2) The CCN has been received, signifying DIS concurrence with the appropriateness of the investigation.

(3) Contrary instructions have not been received from the PIC.

(4) The interview is limited to the resolution of the relevant issues disclosed by the investigation.

g. Notwithstanding the provisions of paragraphs f.(1) through (4) of this Appendix, if time is of the essence due to imminent transfer of the subject, a subject interview may be conducted at the discretion of the investigative agency.

*7. Case Responsibility: LAA and PA*

Paragraph 3, above, describes the advantages of timely handling which accrue when the military investigative components act for DIS overseas. These actions for DIS may, however, be limited by the component's staffing and resource limitations, especially since some cases require more administration and management than others. Post-adjudication case leads, for instance, will normally be within the geographical jurisdiction of the component that accepted the request for investigation; therefore, relatively little case management is required. In contrast, LAA cases may require leads world-wide, and, therefore, create more complex case management and administration, especially in the tracking, monitoring and reviewing of leads outside the component's geographical area. Accordingly,

an investigative component will accept the case from the requester, but only assign itself the appropriate leads within its own geographical jurisdiction and send the balance to PIC for appropriate disposition in accordance with the following:

a. The investigative agency will accept the request for investigation (thereby saving time otherwise lost in mailing to PIC) but limit its involvement in case management by extracting only those leads it will conduct or manage locally.

b. The agency should then prepare an ALS that shows clearly what leads it will cover and send PIC a copy of this ALS, along with the request for investigation and any other appropriate documentation. It must be clear in the ALS that PIC is to act on all those leads that the unit has not assigned to itself.

c. PIC, as case manager, will assume responsibility for the complete investigative package and, upon receipt of the last lead, will send the results to the appropriate activity.

d. The agency that accepted the case and assigned itself leads may send a copy of its report to the activity in the "Results to" block at the same time it sends the originals to PIC. If so, the letter of transmittal must inform the recipient that these reports are only a portion of the investigation, and that the balance will be forthcoming from PIC. Similarly, PIC must be informed of which investigative reports were disseminated. (This is normally done by sending PIC a copy of the letter of transmittal.)

*8. Scope*

a. *LAA.* The scope of investigation is 10 years or from age 18, whichever is the shortest period.

b. Post-Adjudication Cases. There is no standard scope. The inquiries conducted will be limited to those necessary to resolve the issue(s).

*9. Case Closing: LAA and PA*

a. Whether the investigative component or PIC closes out an investigation, there are three key elements to consider:

(1) The investigative results must be reviewed for quality and conformance to policy.

(2) The results must be sent to the activity listed in the "Results to" block of the DD Form 1879.

(3) PIC must be informed whether or not any dissemination was made by the investigative agency and, if so, what reports were furnished.

b. Investigative results may also be sent to a requester or higher level activity that makes a statement of need for the results. In such instances, a copy of the letter requesting the results and the corresponding letter of transmittal must be sent to PIC for retention.

c. When an investigative agency disseminates reports for PIC, it may use the transmittal documents, letters, or cover sheets it customarily uses for its own cases.

d. The material that is to be provided to PIC will consist of: The originals of all reports, and all other case documentation such as original statements, confidential source sheets, interview logs, requests for investigation, letters of transmittal to adjudicaters/requesters, or communications with the requester, such as those that modify the scope of the investigation.

e. For DIS to fulfill its responsibilities under DoD 5220.22–R and the Privacy Act of 1974 all inquiries conducted in its behalf must be set forth in an ROI for the permanent file, whether the case is completed, terminated early, or referred to another agency.

*10. Referral*

A case may require premature closing at any time after receipt of the DD Form 1879 by the investigative component if the information accompanying the request, or that which is later developed, is outside DIS jurisdiction. For example, alleged violations of law, a counterintelligence matter, or actual coercion/influence in a hostage situation (see paragraph 4.b. of this Appendix ) must be referred to the appropriate agency, and DIS involvement terminated. The requester will be informed by letter or indorsement to the DD Form 1879 of the information developed that, due to jurisdictional consideration, the case was referred to (fill in appropriate address) and that the DIS case is closed. The agency to which referral was made and PIC will be furnished with the results of all investigations conducted under DIS auspices. DIS, however, has an interest in the referral agency's actions and no information should be solicited from that agency.

**Appendix J—ADP Position Categories and Criteria for Designating Positions**

OMB Circular A–71 (and Transmittal Memo #1), July 1978 OMB Circular A–130, December 12, 1985, and FPM Letter 732, November 14, 1978 contain the criteria for designating positions under the existing categories used in the personnel security program for Federal civilian employees as well as the criteria for designating ADP and ADP related positions. This policy is outlined below:

*ADP Position Categories*

*1. Critical-Sensitive Positions*

ADP–I positions. Those positions in which the incumbent is responsible for the planning, direction, and implementation of a computer security program; major responsibility for the direction, planning and design of a computer system, including the hardware and software; or, can access a system during the operation or maintenance in such a way, and with a relatively high risk for causing grave damage, or realize a significant personal gain.

*2. Noncritical-Sensitive Positions*

ADP–II positions. Those positions in which the incumbent is responsible for the direction, planning, design, operation, or maintenance of a computer system, and whose work is technically reviewed by a higher authority of the ADP–I category to insure the integrity of the system.

*3. Nonsensitive Positions*

ADP–III positions. All other positions involved in computer activities.

In establishing the categories of positions, other factors may enter into the determination, permitting placement in higher or lower categories based on the agency's judgement as to the unique characteristics of the system or the safeguards protecting the system.

*Criteria for Designating Positions*

Three categories have been established for designating computer and computer-related positions—ADP–I, ADP–II, and ADP–III. Specific criteria for assigning positions to one of these categories is as follows:

| Category | Criteria |
|---|---|
| ADP–I | Responsibility or the development and administration of agency computer security programs, and also including direction and control of risk analysis and/or threat assessment<br>Significant involvement in life-critical or mission-critical systems<br>Significant involvement in life-critical or mission-critical systems.<br>Responsibility for the preparation or approval of data for input into a system which does not necessarily involve personal access to the system, but with relatively high risk for effecting grave damage or realizing significant personal gain<br>Relatively high risk assignments associated with or directly involving the accounting, disbursement, or authorization for disbursement from systems of (1) dollar amounts of $10 million per year or greater, or (2) lesser amounts if the activities of the individual are not subject to technical review by higher authority in the ADP–I category to ensure the integrity of the system<br>Positions involving *major* responsibility for the direction planning, design, testing, maintenance, operation, monitoring, and/or management of systems hardware and software<br>Other positions as designated by the agency head that involve relatively high risk for effecting grave damage or realizing significant personal gain |
| ADP–II | Responsibility for systems design, operation, testing, maintenance, and/or monitoring that is carried out under technical review of higher authority in the ADP–I category, includes, but is not limited to<br>(1) access to and/or processing of proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts.<br>(2) accounting, disbursement, or authorization for disbursement from systems of dollar amounts less than $10 million per year<br>Other positions are designated by the agency head that involve a degree of access to a system that creates a significant potential for damage or personal gain less than that in ADP–I positions. |
| ADP–III | All other positions involved in Federal computer activities. |

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

April 1, 1987.

[FR Doc. 87–7616 Filed 4–7–87; 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF EDUCATION

## 34 CFR Part 628

## Endowment Challenge Grant Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary issues final regulations for the Endowment Challenge Grant Program, formerly called the Endowment Grant Program. The regulatory changes conform the regulations to the changes made to the statute governing the Endowment Challenge Grant Program, Parts C and D of Title III of the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1986, Pub. L. 99-498.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the U.S. Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Dr. Caroline Gillin, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, DC 20026. Telephone (202) 732-3308.

**SUPPLEMENTARY INFORMATION:**

## A. Background

The Endowment Challenge Grant Program is one of several programs authorized by Title III of the HEA and known collectively as the Institutional Aid Programs. Under the Endowment Challenge Grant Program, the Secretary awards grants to eligible institutions of higher education to enable them to establish or increase endowment funds. Grantees must match the Federal grant funds that they receive. The Federal grant and the institutional match are called the endowment fund corpus. Institutions must invest and may not spend the endowment fund corpus for a 20-year grant period. When the grant expires, the institution may use the endowment fund corpus for any educational purpose.

In general, a grantee may spend up to 50 percent of endowment fund income earned before the date of each proposed expenditure. Endowment fund income is an amount equal to the difference between the total value of the endowment fund and the endowment fund corpus. The total value of the endowment fund includes the endowment fund corpus plus appreciation (or minus depreciation, if applicable), cumulative interest and dividends. A grantee may use that 50 percent of endowment fund income to defray any expenses necessary to operate the institution. A grantee must invest the other 50 percent of endowment fund income for the entire grant period. When the grant expires, the grantee may use all the income for any educational purpose.

## B. Explanation of Changes

The Higher Education Amendments of 1986, Public Law 99-498, amended the authorizing statute governing the Endowment Challenge Grant Program, Parts C and D of Title III of the HEA, in several areas. The Secretary is amending the regulations to conform the regulations to the amended statute.

These changes include—

- Changing the name of the program to the Endowment Challenge Grant Program;
- Deleting the requirement that an applicant for an endowment challenge grant submit a long-range development plan;
- Adding a funding preference for recipients of Strengthening Historically Black Colleges and Universities Program grants;
- Reducing the maximum grant in fiscal year 1987 to $250,000;
- Adding a provision that allows the Secretary to award a grant that exceeds $1,000,000 if the appropriation for the program exceeds $10,000,000;
- Adding a provision that permits a grantee of a more than $1,000,000 grant to match that grant on a one-to-two basis, i.e., one dollar of non-grant funds for every two dollars of grant funds; and
- Removing appropriation set-asides for junior and community colleges and historically Black colleges and universities.

The Secretary is also correcting typographical and other technical errors.

## C. Missing Item—Eligibility

Readers should note that the Secretary has not addressed the subject of institutional eligibility in these regulations, although the Higher Education Amendments of 1986 have changed the eligibility requirements for the Endowment Challenge Grant Program. In general, an institution is eligible to receive a grant under the Endowment Challenge Grant Program if it is eligible to receive a grant under the Strengthening Institutions Program or under the Strengthening Historically Black Colleges and Universities Program. Accordingly, the Secretary will issue regulations relating to eligibility for the Endowment Challenge Grant Program when he publishes regulations for the other two programs. The Secretary anticipates that the regulations will be published in the near future.

## Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations only include technical corrections and provisions implementing mandatory statutory changes to the Endowment Challenge Grant Program required by the Higher Education Amendments of 1986, Pub. L. 99-498. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

## Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

## Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The changes made in these regulations will not create any additional burden on small institutions that will participate in the program.

## Paperwork Reduction Act of 1980

The regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

## Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

## List of Subjects in 34 CFR Part 628

Colleges and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031—Endowment Challenge Grant Program)

Dated: March 23, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary amends Part 628 of Title 34 of the Code of Federal Regulations as follows:

BEST COPY AVAILABLE

## PART 628—[AMENDED]

1. The authority citation for Part 628 is revised to read as follows:

Authority: 20 U.S.C. 1065a, unless otherwise noted.

2. In Part 628, all references to "Endowment Grant Program" are revised to read "Endowment Challenge Grant Program" and all references to "endowment grant" are revised to read "endowment challenge grant".

3. Section 628.1 is amended by revising the introductory text to read as follows:

### § 628.1 What are the purposes of the Endowment Challenge Grant Program?

The Endowment Challenge Grant Program provides endowment challenge grants, which must be matched, to eligible institutions of higher education to—

* * * * *

4. In § 628.5, paragraph (a)(1), the number "624.22", is removed.

5. In § 628.5, paragraph (b)(1)(i) is revised to read as follows:

### § 628.5 What regulations apply to the Endowment Challenge Grant Program?

* * * * *

(b)(1) * * *

(i) The regulations in 34 CFR 74.61(h) or 74.62, as applicable.

* * * * *

6. In § 628.5, paragraph (b)(1)(iii), the phrase "(d) and (e)" is added after the number "75.217".

### § 628.6 [Amended]

7. In § 628.6, the definition of "Endowment fund income" is amended by changing the word "market" to "total".

8. Section 628.10 is revised to read as follows:

### § 628.10 What are the characteristics of an endowment challenge grant?

(a) Each endowment challenge grant awarded by the Secretary under this part—

(1) Except as provided in paragraph (b) of this section—

(i) Ranges from $50,000 to $250,000 in fiscal year 1987 and from $50,000 to $500,000 in subsequent fiscal years; and

(ii) Must be matched on a dollar-for-dollar basis;

(2) Must be invested by the institution; and

(3) Covers a period of 20 years.

(b) When funds appropriated for a fiscal year for the Endowment Challenge Grant Program exceed $10,000,000, the Secretary may award an endowment challenge grant to an institution in excess of $1,000,000, which may be matched with one dollar of matching funds for every two dollars of grant funds, if the institution—

(1) Requests an endowment challenge grant in excess of $1,000,000; and

(2) Deposits, in its endowment fund established under this part, matching funds equal to one-half of the amount of the grant.

(Authority: 20 U.S.C. 1065a)

### § 628.20 [Amended]

9. In § 628.20, paragraph (b) is removed, the designation (a) is removed, and paragraphs (a) (1) and (2) are redesignated as paragraphs (a) and (b).

### § 628.30 [Amended]

10. In § 628.30, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b). In redesignated paragraph (b), the phrase "(d) and (e)" is added between "34 CFR 75.217" and "of".

11. In § 628.32, paragraph (a) is revised to read as follows:

### § 628.32 What funding priorities does the Secretary use in evaluating an application for an endowment challenge grant?

* * * * *

(a) *Recipient of Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Special Needs Program grant.* (Total: 20 points) The Secretary gives 20 points to each applicant that, on October 1 of the fiscal year in which the applicant is applying for an endowment challenge grant, is a recipient of a development or planning grant under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Special Needs Program.

* * * * *

12. In § 628.32, paragraph (b)(1) is amended by adding the word "to" between the word "up" and the phrase "20 total points".

### § 628.33 [Removed]

13. Section 628.33 is removed.

14. In § 628.40, paragraphs (a) and (b) are revised to read as follows:

### § 628.40 What are the restrictions on the amount of an endowment challenge grant?

(a) For endowment challenge grants of up to $500,000—

(1) An institution must raise at least $50,000 in matching funds and qualify for at least a $50,000 grant under paragraph (c) of this section; and

(2) If an institution obtains at least $50,000 in matching funds and raises all the nongovernmental funds it proposes to raise in its application, the institution may receive a grant equal to the amount of matching funds it raised up to a maximum of $250,000 in fiscal year 1987 and $500,000 in subsequent fiscal years.

(b) For endowment challenge grants in excess of $1,000,000—

(1) An institution must raise at least $500,001 in matching funds and qualify for at least a $1,000,001 grant under paragraph (c) of this section; and

(2) If an institution obtains at least $500,001 in matching funds and raises all the nongovernmental funds it proposes to raise in its application, the institution may receive a grant equal to double the amount of matching funds it raised.

* * * * *

15. In § 628.41, paragraph (b)(1) is revised to read as follows:

### § 628.41 What are the obligations of an institution that the Secretary selects to receive an endowment challenge grant?

* * * * *

(b) * * *

(1) Match, with cash or low-risk securities, the endowment challenge grant funds to be received under this part;

* * * * *

### § 628.45 [Amended]

16. In § 628.45, paragraph (c) is amended by changing the word "granting" to read "grant".

### § 628.46 [Amended]

17. In § 628.46, paragraph (a)(1) is amended by the changing the word "market" to read "total".

18. In § 628.47, paragraphs (d) and (e) are revised to read as follows:

### § 628.47 What shall a grantee record and report?

* * * * *

(d) Carry out the audit required in 34 CFR 74.61(h) or 74.62, as applicable;

(e) Provide to the Secretary a copy of the external or internal audit to be performed under 34 CFR 74.61(h) or 74.62, as applicable; and

* * * * *

### § 628.48 [Amended]

19. In § 628.48, paragraph (a)(1) is amended by adding the word "not" between the word "income" and the word "permitted".

[FR Doc 87-7779 Filed 4-7-87; 8:45 am]

BILLING CODE 4000-01-M

## VETERANS ADMINISTRATION

### 38 CFR Part 17

### Copayments for VA Health Care

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations .

**SUMMARY:** The VA (Veterans Administration) has amended its medical series regulations to conform with two technical changes to Title 38, United States Code, enacted with the passage of Title II of Pub. L. 99–576, the "Veterans' Benefits Improvement and Health-Care Authorization Act of 1986." Pub. L. 99–576 provides that all persons receiving disability compensation pursuant to 38 U.S.C. 351 are included in the highest VA health care eligibility category. The public law also limited the total copayments certain nonservice-connected veterans must agree to pay for VA health care equal to four times the inpatient Medicare deductible. Previous to this change it was possible that a veteran could pay an amount equal to five times the inpatient Medicare deductible due to a five-day billing cycle that remained after the initial four ninety-day billing cycles.

**EFFECTIVE DATE:** This regulation is effective April 7, 1986. This date is the effective date specified in the statute.

**FOR FURTHER INFORMATION CONTACT:** Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2143.

**SUPPLEMENTARY INFORMATION:** Pub. L. 99–272, enacted April 7, 1986, made major changes in VA health care eligibility. That law established three general categories of eligibility for care. Most persons in receipt of disability compensation pursuant to 38 U.S.C. 351 were inadvertently not included in the highest priority eligibility category. Pub. L. 99–576 changed the law to place those veterans in the highest eligibility category, retroactively to April 7, 1986. Additionally, prior to enactment of the new public law, nonservice-connected veterans with incomes in excess of certain threshold amounts had to agree to pay a copayment no greater than the Medicare deductible during each of four 90-day billing cycles (360 days) and for the 5-day billing cycle at the end of any 365-calendar-day period. The new law limits total payments to an amount equal to no greater than four times the amount of the inpatient Medicare deductible during any 365-day-calendar period thus eliminating the additional 5-day billing cycle. These regulation changes implement those two new provisions of law.

Pursuant to 38 CFR 1.12 the VA finds that prior publication of these changes for public notice and comment is not required and is unnecessary. The VA has no discretion in this matter. Effective April 7, 1986, the law placed those receiving compensation under 38 U.S.C. 351 in the highest priority category, and provided that a veteran may not be required to make copayments greater than four times the amount of the inpatient Medicare deductible for VA medical care or 365-calendar-day period. Consequently, a proposed notice will not be published. For this reason, these changes are also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, since they do not come within the term "rule" as defined in that Act.

*Executive Order 12291:* This amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 38 CFR Part 17**

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants program, Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Veterans.

(Catalog of Federal Domestic Assistance Numbers are 64.009, 61.011, and 64.013)

Approved: March 5, 1987.

**Thomas K. Turnage,**

*Administrator.*

### PART 17—[AMENDED]

38 CFR 17, Medical, is amended as follows:

1. In §17.47, paragraph (a)(3) is revised to read as follows:

**§ 17.47 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.**

* * * * *

(a)(3) A veteran who is in receipt of, or, but for a suspension pursuant to 38 U.S.C. 351 (or both such a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is provided for in the judgment or settlement described in such section, for any disability; (Pub. L. 99–576)

* * * * *

2. In § 17.48, paragraph (e)(1) introductory text is revised and new paragraph (e)(8) is added to read as follows:

**§ 17.48 Considerations applicable in determinig eligibility for hospital, nursing home or domiciliary care.**

* * * * *

(e)(1) A veteran who received hospital or nursing home care under 17.47(d) shall be liable to the U.S., for each 90 days of care in a 365-day period, for an amount equal to the lesser of:

* * * * *

(e)(8) A veteran who receives any combination of hospital, nursing home or outpatient care shall not be required to pay an amount greater than four times the amount of the inpatient Medicare deductible during any 365-day period. (Pub. L. 99–576, sec. 237)

* * * * *

[FR Doc. 87–7771 Filed 4–7–87; 8:45 am]

BILLING CODE 8320–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-3-FRL-3158-3]

### Approval and Promulgation of Implementation Plans; Approval of the Pennsylvania I/M Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This notice approves the Pennsylvania Motor Vehicle Inspection and Maintenance Program (I/M). The proposed rulemaking for this action appeared in the **Federal Register** on April 16, 1986 (51 FR 12882). The comment period ended on May 16, 1986, and no comments were received. The Pennsylvania I/M Program commenced June 1, 1984, in the Philadelphia, Pittsburgh and Allentown-Bethlehem-Easton areas. It meets all EPA criteria for such programs as outlined in the January 22, 1981 **Federal Register** (46 FR 7186).

**DATE:** The rule will become effective on May 8, 1987.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg.

Pennsylvania Department of Environmental Resources, P.O. Box 2063, Harrisburg, PA 17120, Attn: Gary Triplett, Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Eileen Glen (3AM11), PA/WV Section at the EPA, Region III address given above or telephone (215) 597–8379.

**SUPPLEMENTARY INFORMATION:** On April 16, 1986 (51 FR 12882) EPA proposed approval of the Pennsylvania I/M Program and established a 30-day comment period. No comments were received, so today EPA is approving the Pennsylvania I/M Program as a revision of the Pennsylvania State Implementation Plan. The Pennsylvania I/M Program commenced June 1, 1984, and is currently being implemented in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties and in portions of Beaver, Washington, Westmoreland, Allegheny, Lehigh and Northampton Counties. The portions of the Counties included in the program are identified by zip code. The zip code areas included in the program were published in the April 16, 1986 notice. In a letter of March 13, 1986, the Pennsylvania Department of Environmental Resources (DER) amended the list of zip code areas by adding the following zip codes: 15007, 15129, 15025, 15039, and 15200–15299. Except for this change the program remains as it was described in the April 16, 1986 notice. More detailed information on the Pennsylvania I/M Program can be found in that notice.

At the request of EPA, Region III, EPA's Office of Mobile Sources (OMS) calculated the air quality benefit of the Pennsylvania I/M Program using the MOBILE3 emission factor model. MOBILE3 runs determined that the Pennsylvania I/M Program will achieve a reduction of 36.1% in hydrocarbon (HC) emissions and 60.5% in emissions of carbon monoxide (CO). These reductions are much greater than the Reasonably Available Control Technology (RACT) requirement for an I/M Program (a reduction of 23.3% HC and 34.4% CO). A January 27, 1986 memo, from OMS to EPA, Region III, which is attached to this rulemaking, gives a more detailed explanation of the MOBILE3 calculations.

**Final Action**

EPA approves the Pennsylvania I/M Program as a revision of the Pennsylvania State Implementation Plan.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 1987. This action may not be challenged later in proceedings to enforce its requirements (See § 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Incorporation by reference, Air pollution control, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register of July 1, 1982.

Dated: February 11, 1987.

**Lee M. Thomas,**

*Administrator.*

**PART 52—[AMENDED]**

40 CFR Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2020 is amended by adding paragraph (c)(66) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * * *

(c) * * *

(66) A revision to the Pennsylvania State Implementation Plan adopting a Motor Vehicle Emissions Inspection and Maintenance Program submitted by the Secretary of the Pennsylvania Department of Environmental Resources on June 24, 1985 and an amendment submitted March 13, 1986 by the Chief, Division of Air Resource Management, Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources.

(i) Incorporation by Reference

(A) Title 75, sections 4703 (a) and (h) and 4706 of the Purdon's Pennsylvania Consolidated Statutes Annotated and Title 67, Pennsylvania Code §§ 175.41, 177.21, 177.31, 177.32, 177.35, 177.39 and 177.61.

(B) Bureau of Air Quality Control, Department of Environmental Resources, State Implementation Plan, Revision for Ozone for I/M, dated June 17, 1985 and the letter to EPA, dated March 13, 1986.

[FR Doc. 87–3832 Filed 4–7–87; 8:45 am]

BILLING CODE 6560–50–M

---

**40 CFR Part 180**

**[PP6F3405/R881; FRL–3181–4]**

## Pesticide Tolerance for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule increases the established tolerance for the residues of the herbicide 2-[1-(ethoxyimino)butyl]5-[2-(ethylthio)propyl)-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sugar beet tops from 0.2 part per million (ppm) to 3.0 ppm. The regulation was requested by BASF Corp. and establishes the maximum permissible level for residues of the herbicide in or on the raw agricultural commodity.

**EFFECTIVE DATE:** April 8, 1987.

**ADDRESS:** Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, Jefferson Davis Highway, Arlington, VA 22203, (703) 557–1800.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of March 18, 1987 (52 FR 8532), which announced that BASF Corp. had submitted pesticide petition 6F3405 to EPA proposing to amend 40 CFR 180.412 by increasing the established tolerance for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sugar beet tops for 0.2 ppm to 3.0 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include several acute studies, a 6-month feeding study with dogs fed dosages of 0, 2.0, 20.0, and 200 milligrams per kilogram of body weight per day (mg/kg/day) with a no-observed-effect level (NOEL) of 2.0 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT); a 2-generation reproduction study with rats fed 0, 2, 6, 18, and 54 mg/kg/day with no reproductive effects observed at 54 mg/kg/day (HDT) and a NOEL of 18 mg/kg/day; a teratology study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT) and a maternal NOEL of 40 mg/kg/day; a teratology study in rabbits fed dosages of 0, 40, 160 and 480 mg/kg/day with a teratogenic NOEL of 160 mg/kg/day; and mutagenic studies including recombinant assays and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (negative at concentrations of chemical to 100 percent) and host-mediated assay (mouse) with *S. typhimurium* (negative at concentrations of chemical to 100 percent) and a host-mediated assay (mouse) with *S. typhimurium* negative at 2.5 grams per kilogram of body weight per day (mg/kg/day) of chemical.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 2.0 mg/kg/day and using a hundred-fold safety factor is calculated to be 0.02 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.837 mg/day (1.5 kg). Published and pending tolerances utilize 69.75 percent of the ADI. The current action does not change the ADI or TMRC.

Data lacking are a repeat of a rate primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes of this tolerance. The nature of the residue is adequately understood for the purpose of establishing the tolerance. Adequate analytical methodology (gas chromatography using a sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are therefore set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 27, 1987.

**Susan H. Wayland,**

*Acting Director, Office of Pesticide Programs.*

Therefore Part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. In § 180.412, by revising the entry for sugar beet, tops, to read as follows:

**§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.**

. . . . . .

| Commodity | Parts per million |
|---|---|
| . . . . . | |
| Sugar beet tops | |

[FR Doc. 87-7521 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

**[PP 4F3094/R876; FRL-3183-1]**

## Pesticide Tolerance for Ethalfluralin

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the herbicide ethalfluralin in or on the raw agricultural commodities peanuts, peanut hulls, eggs, milk, meat, meat byproducts (mbyp), and fat of cattle, goats, hogs, horses, poultry, and sheep. This regulation to establish the maximum permissible level for residues of ethalfluralin in or on these commodities was requested by Elanco Products Co.

**EFFECTIVE DATE:** Effective on April 8, 1987.

**ADDRESS:** Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of July 18, 1984 (49 FR 29134), which announced that Elanco Products Co., a division of Eli Lilly Co., 740 South

Alabama St., Indianapolis, IN 46285, had submitted a pesticide petition (4F3094) to EPA proposing that 40 CFR 180.416 be amended by establishing tolerances for residues of the herbicide ethalfluralin [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine] in or on the agricultural commodities peanut hulls and nutmeat at 0.05 part per million (ppm).

EPA issued notices, published in the **Federal Register** of August 6, 1985 (50 FR 31773) and of March 26, 1986 (51 FR 10442), that Elanco Products Co. amended the petition by adding the agricultural commodities milk, meat, meat byproducts (including liver and kidney), and fat of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and subsequently by adding eggs, meat, meat byproducts and fat of poultry at 0.05 ppm.

There were no comments received in response to the notices of filing. Peanut nutmeat is being editorially changed to read peanuts.

The data submitted in the petition and other relevant material have been evaluated. The data considered include plant and animal metabolism studies; a 90-day rat-feeding study with a no-observed-effect level (NOEL) of 500 ppm (equivalent to 25 milligrams (mg)/kilogram (kg) of body weight (bwt)); a 90-day dog-feeding study with a NOEL of 27.5 mg/kg; a rabbit teratology study with a fetotoxic, maternal toxicity, and teratogenic NOEL of 75 mg/kg (the teratogenic effect level is 150 mg/kg with multiple anomalies observed in 2 fetuses out of 76 examined at this level (margin of safety (MOS) values are based on the NOEL of 75 mg/kg/day)); a rat teratology study with a developmental NOEL of 1,000 mg/kg/day (highest dose tested) and a maternal toxicity NOEL of 50 mg/kg/day; a 3-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg); a 1-year dog-feeding study with a NOEL of 4 mg/kg/day; a 2-year rat chronic feeding/oncogenicity study with a nonneoplastic NOEL of 750 ppm (37.5 mg/kg) and a significant increase in mammary gland fibroadenomas at 250 ppm (12.5 mg/kg) and 750 ppm (37.5 mg/kg) (this study is discussed further below); a 2-year mouse oncogenicity study with no observed oncogenic potential under the conditions of the study up to 1,500 ppm (225 mg/kg), the highest dose tested; a bacterial gene mutation (modified Ames test), positive; an Ames assay, positive; an *in vitro* unscheduled DNA synthesis (UDS) in rat hepatocytes, negative; an *in vitro* mouse lymphoma assay, negative; an *in vitro* study in Chinese Hamster Ovary (CHO) cells, positive.

The Agency has evaluated dietary exposure to ethalfluralin residues for the commodities proposed. Assuming 100 percent of the proposed crop is treated with ethalfluralin, that all livestock consume ethalfluralin from treated plant commodities, and with actual residue levels in the human diet of approximately 0.0008 ppm in eggs; and less than 0.004 ppm in peanuts, 0.003 ppm in milk and poultry; and 0.001 ppm in meat using the "one-hit" model, the upper limit on dietary oncogenic risk associated with those residue levels is calculated to be 4 incidences in a million ($4\times10^{-6}$). Based on estimates of market penetration over several years following initial registration, the upper limit on dietary risk would be 2 incidences in a million [$2\times10^{-6}$]. These are extremely conservative estimates; actual risk is likely to be several orders of magnitude lower. Previously established tolerances provide an upper limit on oncogenic risk associated with worst case dietary exposures of 1 incidence in 100,000 ($10^{-5}$). The exposure and risk assessment given above for peanuts is also worst case, since it assumes 100% crop treated and upper limits on meat and milk residues. The upper limit on total dietary oncogenic risk (from worst case exposure) is calculated to remain at 1 incidence in 100,000 ($10^{-5}$).

Based on a NOEL of 4 mg/kg/day in the 1-year dog study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.04 mg/kg/day with a maximum permissible intake (MPI) of 2.4 mg/day for a 60-kg person. The TMRC from existing tolerances for a 1.5 kg diet is calculated to be 0.0031 mg/day. The proposed tolerances will increase the TMRC by 0.0329 mg/day. The proposed and established tolerances utilize 1.5 percent of the ADI.

There are no regulatory actions pending against the registration of ethalfluralin. The metabolism of ethalfuralin in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, electron capture gas-liquid chromatography, is available in Pesticide Anlytical Manual, PAM Volume II, for enforcement purposes. The proposed tolerances are adquate to cover residues that would result in meat, milk, poultry, and eggs.

Based on the information cited above, the Agency has determined that establishing a tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator had determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(e))).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticide and pests.

Dated: March 31, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

## PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.416 is amended in the table by adding and alphabetically inserting the raw agricultural commodities peanuts, peanut hulls, eggs, milk, meat, meat byproducts (mbyp), and fat of cattle, goats, hogs, horses, poultry, and sheep to read as follows:

**§ 180.416 Ethalfluralin; tolerances for residues.**

. . . . . .

| Commodities | Parts per million |
|---|---|
| . . . . . | |
| Cattle, fat | 0.05 |
| Cattle, meat | 0.05 |
| Cattle, mbyp | 0.05 |
| . . . . . | |
| Eggs | 0.05 |
| Goats, fat | 0.05 |
| Goats, meat | 0.05 |

| Commodities | Parts per million |
|---|---|
| Goats, mbyp | 0.05 |
| Hogs, fat | 0.05 |
| Hogs, meat | 0.05 |
| Hogs, mbyp | 0.05 |
| Horses, fat | 0.05 |
| Horses, meat | 0.05 |
| Horses, mbyp | 0.05 |
| Milk | 0.05 |
| Peanuts | 0.05 |
| Peanuts hulls | 0.05 |
| * * * * * | |
| Poultry, fat | 0.05 |
| Poultry, meat | 0.05 |
| Poultry, mbyp | 0.05 |
| Sheep, fat | 0.05 |
| Sheep, meat | 0.05 |
| Sheep, mbyp | 0.05 |

* * * * *

[FR Doc. 87-7739 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 271

[SW-1-FRL-3182-4]

## Rhode Island; Schedule of Compliance for Modification of Rhode Island's Hazardous Waste Program

**AGENCY:** Environmental Protection Agency, Region I.

**ACTION:** Notice of Rhode Island's Compliance Schedule to adopt program modifications.

**SUMMARY:** On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Rhode Island to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

**FOR FURTHER INFORMATION CONTACT:** Frank Battaglia, U.S. EPA, JFK Federal Building, Room 1903, Boston, MA 02203, (617) 223-1961.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

### B. Rhode Island

Rhode Island received final authorization of its hazardous waste program on January 31, 1986. See 51 FR 3780, January 30, 1986. Today EPA is publishing a compliance schedule for Rhode Island to obtain program revisions for the following Federal program requirement:

(1) Redefinition of Solid Waste—50 FR 614, January 4, 1985.

The State has agreed to obtain the needed program revisions according to the following schedule:

(1) Draft Regulations and Checklist submitted to EPA for review...April 3, 1987
(2) Draft Regulations submitted to RI Task Force for approval..... July 3, 1987
(3) RI publishes Public Notice of Proposed Regulations.....July 17, 1987
(4) Public Hearing.....August 7, 1987
(5) Regulations signed (assumes no significant public comments)...August 14, 1987
(6) Regulations effective (assumes no significant public comments)...September 6, 1987

Rhode Island expects to submit an application to EPA for authorization of the above mentioned program revisions by October 2, 1987.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 26, 1987.

**Paul G. Keough,**

*Acting Regional Administrator.*

[FR Doc. 87-7738 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

## 41 CFR PART 101-20

[FPMR AMENDMENT D-84]

## Management of Buildings and Grounds

**AGENCY:** General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** This regulation is a revision of the part of FPMR Subchapter D that governs the operation of, and the activities in Federal buildings. This regulation was developed by a subcommittee of the Interagency Advisory Committee on Regulatory Review and is designed to clarify the content, eliminate duplication, and remove obstacles to effective building management.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** James Steele (202-566-1563).

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more: a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

### List of Subjects in 41 CFR Part 101-20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

1. Part 101-20 is revised to read as follows:

## PART 101-20—MANAGEMENT OF BUILDINGS AND GROUNDS

Sec.
101-20.000 Scope of part.
101-20.001 Authority.
101-20.002 Basic policy.
101-20.002-1 Government-owned buildings.
101-20.20.002-2 Leased buildings.
101-20.003 Definitions.

**Subpart 101-20.1-Building Operations, Maintenance, Protection, and Alternations**

101-20.101 Building systems.
101-20.102 Cleaning and maintenance.
101-20.103 Physical protection and building security.
101-20.103-1 Standard protection.
101-20.103-2 Special protection.
101-20.103—3 Responsibilities of occupant agencies.
101-20.103-4 Occupant Emergency Program.
101-20.103-5 Initiating action under Occupant Emergency Programs.
101-20.104 Parking facilities.
101-20.104-1 Allocation and assignment of parking for official needs.
101-20.104-2 Allocation and assignment of employee parking spaces.
101-20.104-3 Utilization of parking.
101-20.104-4 Guidelines for agency implementation.
101-20.105 Accident and fire prevention.
101-20.105-1 Responsibilities of occupant agencies.

101-20.105-2 Correction of hazardous conditions.
101-20.105-3 Smoking.
101-20.106 Reimbursable services.
101-20.106-1 Placing of orders for reimbursable alternations by occupant agencies.
101-20.106-2 Limitations on provision of reimbursable services by GSA.
101-20.107 Energy conservation.
101-20.108 Staggered hours of duty.
101-20.109 Concessions.

**Subpart 101-20.2—Vending Facility Program for Blind Persons**

101-20.200 Scope of subpart.
101-20.201 Policy.
101-20.202 Establishing vending facilities.
101-20.203 Application for permit.
101-20.204 Terms of permit.
101-20.205 Enforcement procedures.
101-20.206 Reports.

**Subpart 101-20.3—Conduct on Federal Property**

101-20.300 Applicability.
101-20.301 Inspection.
101-20.302 Admission to property.
101-20.303 Preservation of property.
101-20.304 Conformity with signs and directions.
101-20.305 Disturbances.
101-20.306 Gambling.
101-20.307 Alcoholic beverages and narcotics.
101-20.308 Soliciting, vending, and debt collection.
101-20.309 Posting and distributing materials.
101-20.310 Photographs for news, advertising, or commercial purposes.
101-20.311 Dogs and other animals.
101-20.312 Vehicular and pedestrian traffic.
101-20.313 Weapons and explosives.
101-20.314 Nondiscrimination.
101-20.315 Penalties and other laws.

**Subpart 101-20.4—Occasional use of Public Buildings**

101-20.400 Scope of subpart.
101-20.401 Applications for permits.
101-20.402 Permits.
101-20.403 Disapproval of applications or cancellation of permits.
101-20.404 Appeals.
101-20.405 Schedules of use.
101-20.406 Hours of use.
101-20.407 Services and costs.
101-20.408 Conduct.
101-20.409 Non-affiliation with the Government.

**Subpart 101-20.5—Sidewalk Installation, Repair, and Replacement**

101-20.500 Scope of subpart.
101-20.501 Responsibilities.
101-20.502 Standards.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

### § 101-20.000 Scope of part.

The regulations in this part prescribe policies and procedures for the management, operation, protection, and maintenance of Government-owned and -leased buildings and grounds under the assignment responsibility of GSA.

### § 101-20.001 Authority.

This Part 101-20 implements the Act of July 1, 1898 (40 U.S.C. 285); the Act of April 28, 1902 (40 U.S.C. 19); the Act of March 1, 1919 (40 U.S.C. 1); the Act of June 23, 1923 (40 U.S.C. 281); the Act of May 27, 1924 (D.C. Code, 1961 ed., 4-208); the Act of June 20, 1936 (20 U.S.C. 107 et seq.); the Act of December 10, 1941 (40 U.S.C. 291); the Act of May 14, 1948 (40 U.S.C. 130); the Act of June 1, 1948 (40 U.S.C. 318 et seq.); the Federal Property and Administrative Services Act of 1949 (63 Stat. 377 as amended); the Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note; 3 CFR); the Public Buildings Act of 1950 (73 Stat. 479) as amended; and the Public Buildings Amendments of 1972 (40 U.S.C. 602a).

### § 101-20.002 Basic policy.

It is the responsibility of GSA to provide or otherwise arrange for all services required to house occupant agencies. GSA shall provide fully service space equivalent to that furnished in commercial practice.

### § 101-20.002-1 Government-owned buildings.

(a) GSA will provide space alterations, repairs, and improvements sufficient to meet the mission requirements of occupant agencies, including mechanical and electrical systems which meet nationally recognized standards, within the limitations of available funding. When alterations are required, alterations which are essential for performance of agency missions or which improve the utilization rate shall be given priority over other alterations. Alterations solely for decorative or non-essential purposes shall be avoided.

(b) GSA will ensure that space assigned to agencies is safe and that employees and visitors are not exposed to unnecessary risks.

(c) Buildings will be cleaned and maintained at a service level equivalent to that normally furnished commercially in similar space.

(d) GSA will make every effort to provide or arrange for a reasonable amount of protective services to ensure the physical security of occupants and visitors, to safeguard the Government's property interests, and to maintain order.

(e) GSA shall ensure that physically handicapped persons will have ready access to space assigned to occupant agencies. GSA shall provide building standards and shall prescribe and enforce appropriate guidelines in accordance with applicable statutes, regulations and executive orders.

(f) GSA is responsible for ensuring the availability of parking spaces for officials needs. Parking priorities are as established in § 101-20.104.

(g) Services in addition to those normally provided in the commercial sector shall be arranged by GSA on a reimbursable basis, as provided in § 101-20.106.

(h) GSA may, by agreement with occupant agencies, delegate authority to perform specified functions with respect to the operation, maintenance or repair of GSA-assigned space.

(i) GSA will maintain a comprehensive energy management program to reduce energy consumption and costs in Federal buildings. GSA will apply energy-efficient and economical operating and maintenance procedures, will make cost-effective repairs and alterations, will incorporate design features which will minimize the life cycle cost of buildings, and will ensure continuity of services through contingency planning.

(j) Occupant agencies shall assist in the management of buildings by exercising economy in the use of utilities, by observing professional standards of neatness and cleanliness, and by taking all reasonable precautions to avoid the risk of accidents and fires. Occupant agencies shall also document and report to GSA any hazardous or unhealthy conditions in GSA-assigned space.

(k) Consultations with occupant agencies and their safety representatives will be held whenever substantial alterations or repairs are proposed to be undertaken, or when GSA proposes to make significant changes to the standard level of services. GSA will consider the comments of occupant agencies before final decisions are made. GSA will make every reasonable effort to involve representatives of occupant agencies in the planning for such proposed alterations, repairs, and changes in services.

(l) It is the general policy of GSA to provide space and systems which substantially conform to nationally recognized standards, when applicable. GSA may, however, adopt other standards for space and systems in Federally-controlled facilities in order to conform to diverse statutory requirements, to implement cost-reduction efforts, or to better effect overall Government objectives.

**§ 101-20.002-2 Leased buildings.**

(a) Standards for space and services in leased buildings will be equivalent to standards for Government-owned space. However, the scope of the functions performed by GSA will be modified to reflect the lessor's responsibilities for operations, maintenance and protection under the terms of the lease.

(b) Alterations, improvements and repairs in leased buildings shall be performed by GSA to the extent of the Government's responsibility under the lease. Such alterations shall not, however, exceed the limitations of the Economy Act (40 U.S.C. 278(a)) except as otherwise provided by law.

(c) Occupant agencies are not authorized to negotiate with lessors or to place orders for alterations or building services, except where such authority has been specifically delegated by GSA, and except as provided in § 101-20.106-2 regarding reimbursable services.

**§ 101-20.003 Definitions**

(a) "Alteration" means remodeling, improving, extending, or making other changes to a facility, exclusive of maintenance repairs which are preventive in nature. The term includes planning, engineering, architectural work, and other similar actions.

(b) "Blanket work authiorization" means an open-end agreement with an agency with an agreed upon maximum dollar ceiling where there is an on-going account for processing small requests for reimbursable services. The need for the service is clearly recognized, but exactly when the service must be rendered during the fiscal year is unclear.

(c) "Carpool" means a group of two or more people regularly using a motor vehicle for transportation to and from work on a continuing basis, regardless of their relationship to each other. The number of persons in a carpool will normally be the basis for priority of assignments.

(d) "Commercial activities," within the meaning of Subpart 101-20.4, are activities undertaken for the primary purpose of producing a profit for the benefit of an individual or organization organized for profit. (Activities where commercial aspects are incidental to the primary purpose of expression of ideas or advocacy of causes are not "commercial activities" for purposes of these regulations.)

(e) "Crime prevention assessments" are formal, on-site reviews which consist of a detailed survey, review, and analysis of an occupant agency's vulnerability to criminal activity. In addition to the normal process of a physical security survey, it involves an intensive review of an occupant's and/or building's operation and administrative procedures. It is designed to identify specific weaknesses and to recommend cost-effective, positive steps to Federal managers in dealing with criminal threats and occurrences.

(f) "Cultural activities" include, but are not limited to, films dramatics dances, and musical presentations, and fine art exhibits, whether or not these activities are intended to make a profit.

(g) The "Designated Official" is the highest ranking official of the primary occupant agency of a Federal facility; or, alternatively, a designee selected by mutual agreement of occupant agency officials.

(h) "Educational activities" mean activities such as (but not limited to) the operation of schools, libraries, day care centers, laboratories, and lecture or demonstration facilities.

(i) The term "emergency" includes bombings and bomb threats, civil disturbances, fires, explosions, electrical failures, loss of water pressure, chemical and gas leaks, medical emergencies, hurricanes, tornadoes, floods, and earthquakes. The term does not apply to civil defense matters such as potential or actual enemy attacks. Note: Civil defense emergencies are addressed by the Federal Emergency Management Agency.

(j) "Executive" means a Government employee with management responsibilities which, in the judgment of the employing agency head or his/her designee, require preferential assignment of parking privileges.

(k) "Flame-resistant" means meeting performance standards as described by the National Fire Protection Association (NFPA Standard No. 701). Fabrics labeled with the Underwriters Laboratories Inc. classification marking for flammability are deemed to be flame-resistant for purposes of this regulation.

(l) "Foot-candle" is the illumination on a surface one square foot in area on which there is a uniformly distributed flux of one lumen, or the illuminance produced on a surface all points of which are at a distance of one foot from a directionally uniform point source of one candela.

(m) "GSA Regional Officer," within the meaning of Subpart 101-20.4, means the regional director of the Buildings Management Division of GSA designated to supervise the implementation of the Public Buildings Cooperative Use Act's occasional use provisions.

(n) "Handicapped employee" means an employee who has a severe, permanent impairment which for all practical purposes precludes the use of public transportation, or an employee who is unable to operate a car as a result of permanent impairment who is driven to work by another. Priority may require certification by an agency medical unit, including the Veterans Administration or the Public Health Service.

(o) "Indefinite quantity contract" (commonly referred to as "term contract") provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class.

(p) "Life cycle cost" is the total cost of owning, operating, and maintaining a building over its useful life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems; except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

(q) "Limited combustible" means rigid materials or assemblies which have fire hazard ratings not exceeding 25 for flame spread and 150 for smoke development when tested in accordance with the American Society for Testing and Materials, Test E 84, Surface Burning Characteristics of Building Materials.

(r) "Maintenance" means preservation by inspection, adjustment, lubrication, cleaning, and the making of minor repairs. "Ordinary maintenance" means routine recurring work which is incidental to everyday operations; "preventive maintenance" means work programmed at scheduled intervals.

(s) The term "nationally recognized standards" encompasses any standard or modification thereof which:

(1) Has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby those interested and affected by it have reached substantial agreement on its adoption, or

(2) Was formulated through consultation by appropriate Federal agencies in a manner which afforded an opportunity for diverse views to be considered.

(t) "Normally furnished commercially" means in conformance with the level of services provided by a commercial building operator for space of comparable quality, housing tenants with comparable requirements. Service

levels are based on the effort required to service space for a five-day week, one eight-hour shift schedule.

(u) "Occupant agency" means an organization which is assigned space in a facility under GSA's custody and control through the formal procedures outlined in Part 101–17 of the Federal Property Management Regulations.

(v) "Occupancy Emergency Organization" means the emergency response organization comprised of employees of Federal agencies designated to perform the requirements established by the Occupant Emergency Plan.

(w) "Occupant Emergency Plan" means procedures developed to protect life and property in a specific Federally-occupied space under stipulated emergency conditions.

(x) "Occupant Emergency Program" means a short-term emergency response program. It establishes procedures for safeguarding lives and property during emergencies in particular facilities.

(y) "Postal vehicle" means a Government-owned vehicle used for the transportation of mail, or a privately owned vehicle used under contract for the transportation of mail.

(z) "Public area" means any area of a building under the control and custody of GSA which is ordinarily open to members of the public, including lobbies, courtyards, auditoriums, meeting rooms, and other such areas not assigned to a lessee or occupant agency.

(aa) "Recognized labor organization" means a labor organization recognized under Title VII of the Civil Service Reform Act of 1978 (Public Law 95–454) governing labor-management relations.

(bb) "Recreational activities" include, but are not limited to, the operations of gymnasiums and related facilities.

(cc) "Ridesharing" means the sharing of the commute to and from work by two or more people, on a continuing basis, regardless of their relationship to each other, in any mode of transportation including, but not limited to, carpools, vanpools, buspools and mass transit.

(dd) "Special space alterations" are those alterations required by occupant agencies that are beyond those standard alterations provided by GSA under the SLUC system and are reimbursable from the requesting agency.

(ee) "State" means the fifty States, political subdivisions thereof, the District of Columbia, the Commonwealths of Puerto Rico and Guam, and the territories and possessions of the United States.

(ff) "Unit price agreement" provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services at a specified price, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the lessor by activities designated either specifically or by class.

(gg) "Unusual hours" means work hours that are frequently required to be varied and do not coincide with any regular work schedule. This category includes individuals who regularly or frequently work significantly more than 8 hours per day. Unusual hours does not include shift workers, those on alternate work schedules, and those granted exceptions to the normal work schedule (e.g., flex-time).

(hh) "Vanpool" means a group of at least 8 persons using a passenger van or a commuter bus designed to carry 10 or more passengers. Such a vehicle must be used for transportation to and from work in a single daily round trip. The number of persons in a vanpool will normally be the basis for priority of assignments.

(ii) "Zonal allocations" means the allocation of parking spaces on the basis of zones established by GSA in conjunction with occupant agencies. In metropolitan areas where this method is used, all agencies located in a designated zone will compete for available parking in accordance with instructions issued by GSA. In establishing this procedure, GSA will consult with all affected agencies.

## Subpart 101–20.1—Building Operations, Maintenance, Protection, and Alterations

### § 101–20.101 Building systems.

(a) Structural features and mechanical and electrical systems in GSA-assigned space shall be adequate for the needs of occupant agencies. Such systems will comply with applicable GSA fire safety criteria and with standards prescribed under the Occupational Safety & Health Act (OSHA). GSA will take all measures necessary to comply with energy conservation objectives as promulgated by relevant statutes, regulations, and executive orders.

(b) No modification shall be made to buildings, or equipment which will exceed the building design loads or exceed the capacities of electrical, mechanical, and protection systems. No modifications which adversely alter the performance of building systems, or which create safety and health hazards, as determined by GSA safety and health representatives, shall be made.

(c) Occupant agencies shall obtain GSA approval for any modifications proposed to be made with their own forces. This approval requirement applies to the moving or installation of unusually heavy equipment, to electrical appliances such as heaters, refrigerators, and cooking equipment, and to employee-owned equipment.

(d) Occupant agencies shall conform to GSA accident and fire prevention policy, shall observe all OSHA requirements, and shall comply with applicable local safety regulations.

### § 101–20.102 Cleaning and maintenance.

GSA shall provide:

(a) Cleaning for all assigned space at a level equivalent to the cleaning furnished commercially for similar types of space.

(b) Maintenance of building systems for heating and cooling, and maintenance of plumbing, electrical, and elevator systems.

(c) Maintenance and repairs of exterior grounds, sidewalks, driveways, and parking areas.

(d) Maintenance of building equipment such as directory boards, clock systems, window shades, door locks, and door title cards.

(e) Cyclic paintings of agency occupied space once every five years, and paintings of public areas once every three years, if needed.

(f) Maintenance of all safety and fire protection devices, equipment, and systems in a state of readiness in conformance with applicable laws, regulations, and standards.

(g) Maintenance of all food service activities in accordance with applicable U.S. Public Health Service standards and local regulations.

(h) Arrangements for raising and lowering the United States flags at appropriate times.

### § 101–20.103 Physical protection and building security.

### § 101–20.103–1 Standard protection.

For properties under its custody and control, GSA will provide standard protection services by:

(a) Responding to criminal occurrences, incidents, and lifethreatening events through the use of Federal Protective Officers and local law enforcement officers where a response agreement is in effect.

(b) Installing and maintaining perimeter security devices and systems if they are monitored to provide timely response by authorized personnel;

(c) Implementing crime prevention activities, including tenant awareness programs;

(d) Investigating crimes and violations of Federal statutes, recording and evaluating reports of criminal incidents,

and referring findings and evidence to appropriate enforcement agencies;

(e) Entering into cooperative agreements with local law enforcement agencies;

(f) Performing physical security surveys and providing security advisory services; or

(g) Coordinating a comprehensive Occupant Emergency Program.

(h) Periodically evaluating the effectiveness of protection services by in-depth inspections of procedures and records.

**§ 101-20.103-2 Special protection.**

The degree of protection beyond standard levels required by the nature of an agency's activities or by unusual public reaction to an agency's programs will be determined jointly by GSA and the occupant agency. Special protection will be provided on a reimbursable basis. The level of special protection will be determined on a facility-by-facility basis, after the conducting of appropriate security surveys and crime prevention assessments. In such determinations, GSA and occupant agencies will consider:

(a) The characteristics of the facility, including size, configuration, exterior lighting, and presence of physical barriers;

(b) The location of the facility and the history of criminal or disruptive incidents in the surrounding neighborhoods; and

(c) The reimbursable funding and resources available to GSA for provision of protective service.

(d) Tenant agency's mission.

**§ 101-20.103-3 Responsibilities of occupant agencies.**

Occupants of facilities under the custody and control of GSA shall:

(a) Cooperate to the fullest extent with all pertinent facility procedures and regulations;

(b) Promptly report all crimes and suspicious circumstances occurring on GSA-controlled property to the regional Law Enforcement Branch and other designated law enforcement agencies and then through internal agency channels;

(c) Provide training to employees regarding protection and responses to emergency situations; and

(d) Make recommendations for improving the effectiveness of protection in Federal facilities.

**§ 101-20.103-4 Occupant Emergency Program.**

(a) The Designated Official (as defined in § 101-20.003-7) is responsible for developing, implementing, and maintaining an Occupant Emergency Plan (as defined in § 101-20.003-23). The Designated Official's responsibilities include establishing, staffing, and training an Occupant Emergency Organization with agency employees. GSA shall assist in the establishment and maintenance of such plans and organizations.

(b) All occupant agencies of a facility shall fully cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

(c) GSA shall provide emergency program policy guidance, shall review plans and organizations annually, shall assist in training of personnel, and shall otherwise ensure proper administration of Occupant Emergency Programs (as defined in § 101-20.003-24). In leased space, GSA will solicit the assistance of the lessor in the establishment and implementation of plans.

(d) In accordance with established criteria, GSA shall assist the Occupant Emergency Organization (as defined in § 101-20.003-22) by providing technical personnel qualified in the operation of utility systems and protective equipment.

**§ 101-20.103-5 Initiating action under Occupant Emergency Programs.**

(a) The decision to activate the Occupant Emergency Organization shall be made by the Designated Official, or by the designated alternate official. Decisions to activate shall be based upon the best available information, including an understanding of local tensions, the sensitivity of target agency(ies), and previous experience with similar situations. Advice shall be solicited, when possible, from the GSA buildings manager, from the appropriate Federal Protective Service official, and from Federal, State, and local law enforcement agencies.

(b) When there is immediate danger to persons or property, such as fire, explosion, or the discovery of an explosive device (not including a bomb threat), occupants shall be evacuated or relocated in accordance with the plan without consultation. This shall be accomplished by sounding the fire alarm system or by other appropriate means.

(c) When there is advance notice of an emergency, the Designated Official shall initiate appropriate action according to the plan.

(d) After normal duty hours, the senior Federal official present shall represent the Designated Official or his/her alternates and shall initiate action to cope with emergencies in accordance with the plans.

**§ 101-20.104 Parking facilities.**

(a) Parking facilities shall be compatible with the character of neighborhoods and consistent with local planning requirements. They shall not adversely affect the use or appearance of property, and shall not create traffic hazards.

(b) As necessary or upon agency request, GSA may provide for the regulation and policing of parking facilities. GSA will consult with primary occupant agencies prior to implementing procedural changes. Such regulation and policing may include:

(1) The issuance of traffic rules and regulations;

(2) The installation of signs and markings for traffic control. (Signs and markings shall be in conformance with the Manual on Uniform Traffic Control Devices published by the Department of Transportation);

(3) The issuance of citations for parking violations; and

(4) The immobilization or removal of illegally parked vehicles.

(c) When the use of parking space is controlled as in paragraph (b) of this section, all privately owned vehicles other than those authorized to use designated visitor or service areas must display a parking permit. This requirement may be waived in parking facilities where the number of available space regularly exceeds the demand for such spaces.

(d) GSA may delegate the responsibility for management, regulation, and policing of parking facilities by agreement with occupant agencies or by contractual arrangements with lessors or parking management contractors. Where possible, existing contracts shall be amended or modified before renewal to conform with the policies of this regulation.

(e) Privately owned vehicles converted for propane carburetion will not be permitted in underground parking facilities unless the owner provides to the occupant agency and the GSA buildings manager the installer's certification that the installation methods and equipment meet the standards in National Fire Protection Association (NFPA) Standard No. 58.

**§ 101-20.104-1 Allocation and assignment of parking for official needs.**

GSA is responsible for ensuring the availability of parking spaces for official needs. GSA may, by mutual agreement, delegate allocation and assignment responsibilities to occupant agencies or boards, commissions, and similar groups. GSA and other agencies with assignment responsibilities shall

determine the appropriate number of spaces at each facility for official purposes; such determinations will be based upon submissions of information from occupant agencies regarding their needs. Parking spaces in controlled facilities shall first be reserved for official needs, in the following order of priority:

(a) At buildings containing U.S. Postal Service mailing operations, official postal vehicles.

(b) Government-owned vehicles used for criminal apprehension, firefighting, and other emergency functions.

(c) Privately owned vehicles of Federal judges appointed under Article III of the Constitution and of Members of Congress. (This priority does not extend to members of their staffs.)

(d) Other Government-owned and leased vehicles, including motor pool vehicles and vehicles assigned for general use.

(e) Service vehicles and vehicles of patrons and visitors. (Accommodations for handicapped visitors shall be provided when necessitated by agency program requirements. Agencies are encouraged to provide accommodations for handicapped visitors.)

**§ 101-20.104-2 Allocations and assignment of employee parking spaces.**

(a) Parking spaces not required for official needs may be used for employee parking.

(b) GSA (or other agencies having assignment responsibilities) will determine the total number of spaces available for employee parking. Normally, a separate determination will be made for each parking facility. In major metropolitan areas, however, GSA and occupant agencies may ascertain that zonal allocations would achieve more efficient use of space or equality in the availability of parking.

(c) Space available for employee parking will be allocated for occupant agency use on a equitable basis. Allocations may be made in proportion to each agency's share of building space, office space, or total employee population, as appropriate. In certain cases, GSA may allow a third party, such as a board composed of representatives of agencies sharing space, to determine proper reallocations among the agencies.

(d) Agencies shall in turn assign spaces to their employees, using the following order of priority:

(1) Severely handicapped employees. Justifications based on medical opinion may be required.

(2) Executive personnel and persons who work unusual hours.

(3) Vanpool/carpool vehicles.

(4) Privately owned vehicles of occupant agency employees which are regularly used for Government business at least 12 days per month and which qualify for reimbursement of mileage and travel expenses under Government travel regulations.

(5) Other privately owned vehicles of employees, on a space-available basis. (In locations where parking allocations are made on a zonal basis, GSA and affected agencies may cooperate to issue additional rules, as appropriate.)

**§ 101-20.104-3 Utilization of parking.**

(a) Agencies shall develop, implement, and maintain ridesharing programs. (Guidelines for the administration of ridesharing programs are contained in FPMR Amendment A-36.)

(b) GSA will take all feasible measures to improve the utilization of parking facilities. Such measures may include the conducting of surveys and studies, the periodic review of parking space allocations, the dissemination of parking information to agencies, the implementation of parking incentives which promote ridesharing, the use of stack parking practices where appropriate, and the employment of parking management contractors and concessionaires.

**§ 101-20.104-4 Guidelines for agency implementation.**

(a) In most instances, the assignment of individual reserved spaces should be minimized; this allows the number of permits to be overallocated and results in increased efficiency.

(b) In order to promote fuel conservation, reduce traffic congestion, reduce the demand for parking spaces, and reduce air pollution, agencies are encouraged to make available as many parking spaces as possible for the use of vanpools/carpools.

(c) Agency procedures for the assignment of parking spaces should be maintained in writing. Provisions for reviewing assignments, enforcing compliance with regulations, and enforcing penalties for misrepresentation on applications are also recommended.

(d) Occupant agencies should make every effort to schedule arrival and departure times for employees to facilitate ridesharing.

(e) Subject to the availability of satisfactory and secure space and facilities, agencies should reserve areas for the parking of bicycles and other two-wheeled vehicles. Bicycles should not be transported on elevators or via stairways, nor should they be parked in offices.

(f) Implementation of the provisions of this regulation may require consultation, as appropriate, with recognized labor organizations.

**§ 101-20.105 Accident and fire prevention.**

Standards for GSA-assigned space will conform to those presented by the Occupational Safety and Health Act (OSHA) of 1970 (Public Law 91-596); Executive Order 12196; 29 CFR Part 1960, and applicable GSA fire and safety criteria. Occupants and visitors will not be exposed to unnecessary risks. Safeguards which minimize personal harm, property damage, and impairment of Governmental operations, and which allow emergency forces to accomplish their missions effectively, will be provided. To the maximum extent feasible, GSA will provide space which meets or exceeds these objectives.

**§ 101-20.105-1 Responsibilities of occupant agencies.**

(a) Each occupant agency shall maintain a neat and orderly facility to minimize the risk of accidental injuries and fires. All exits, accesses to exits, and accesses to emergency equipment shall be kept clear at all times.

(b) Hazardous explosive or combustible materials shall not be brought into buildings unless authorized by appropriate agency officials and by GSA and unless protective arrangements determined necessary by GSA have been provided. All draperies, curtains, or other hanging materials shall be of non-combustible or flame-resistant fabric. Freestanding partitions and space dividers shall be limited combustible, and fabric coverings shall also be flame resistant.

(c) Occupant agencies shall cooperate with GSA to develop and maintain fire prevention programs. Such programs shall ensure the maximum safety of the occupants by:

(1) Training employees to use protective equipment and educating employees to take appropriate fire safety precautions in their work, including participating in at least one fire drill each year, and

(2) Ensuring that facilities are kept in the safest condition practicable, and conducting periodic inspections in accordance with Executive Order 12196 and 29 CFR Part 1960.

(d) Accidents resulting from building system or maintenance deficiencies which involve personal injury or property damage in GSA-assigned space will be reported immediately to the GSA buildings manager.

(e) Each occupant agency shall appoint a safety, health and fire

protection liaison to represent the occupant agency with GSA.

**§ 101-20.105-2 Correction of hazardous conditions.**

(a) GSA is responsible for correcting hazards associated with the condition of the space it assigns, including hazards related to building features, fixtures, and systems. GSA is also responsible for correcting hazards in common, joint, and public use spaces. Occupant agencies are responsible for correcting hazards associated with their use of assigned space, including those related to the operation of their program equipment.

(b) Hazardous conditions within the occupant agency's responsibility to correct shall be corrected within 30 workdays when possible. Imminently dangerous conditions shall be corrected immediately upon their discovery. If more than 30 workdays are required for correction, an abatement plan shall be prepared in accordance with 29 CFR Part 1960. Corrective alteration measures may be undertaken in accordance with § 101-20.106, Reimbursable services.

(c) Conditions within GSA's responsibility to correct shall be identified, documented and presented to the GSA buildings manager. Imminently dangerous conditions shall be corrected immediately upon their discovery. When an imminently dangerous condition as defined by 29 CFR 1960.28 exists, this report shall be made by telephone. Upon receipt of a properly documented report of hazardous conditions, GSA will promptly investigate, determine a plan to resolve the problems, and inform the occupant agency. Such reports shall state the hazardous condition and cite references to specific OSHA standards violated. In cases involving health problems, agencies shall provide to GSA an industrial hygienist's report of an investigation of the alleged problem, which must include a description of the problem, results of testing, and recommendations for correction. When resolution will take more than 30 workdays, GSA shall prepare an abatement plan in accordance with 29 CFR Part 1960, shall furnish this plan to the occupant agency for review and subsequent follow-up, and shall give priority to prompt abatement of the conditions.

**§ 101-20.105-3 Smoking.**

(a) Regulations for controlling smoking in GSA-controlled buildings and facilities, including leased space and delegated facilities, are set forth below. Smoking is defined as a lighted cigar, cigarette, pipe, or any other lit tobacco product. These regulations reflect the following considerations:

(1) In recognition of the increased health hazards of passive smoke on the non-smoker, smoking is to be held to an absolute minimum in areas where there are non-smokers.

(2) In recognition of the needs of smokers, smoking areas should be designated in Federal buildings which are convenient, do not negatively impact worker productivity, and do not impinge on the health of those who do not smoke.

(3) Agency heads are to be given the responsibility to determine which areas are to be smoking areas and which areas are to be non-smoking areas. In exercising this responsibility, agency heads are to give appropriate consideration to the views of the employees affected and/or their representatives and are to take fully into consideration the health issues involved.

Note—Agencies are encouraged to develop additional guidelines for internal use for action when violations of these regulations occur. Nothing in these regulations precludes an agency from establishing more stringent guidelines. For purposes of these regulations, general office space is defined as space occupied by personnel performing their daily work functions; this includes, but is not limited to: ADP areas, mail rooms, file rooms, duplication areas, court and jury rooms, office space, etc.

(b) Smoking is prohibited in the following areas:

(1) General office space, except as permitted under paragraph (c)(2)(iii) of this section;

(2) Auditoriums, classrooms, and conference rooms;

(3) Elevators ("No Smoking" signs shall be posted in elevators and adequate receptacles shall be placed outside the entrances if designated as a smoking area);

(4) Corridors, lobbies, restrooms, and stairways, except as permitted under paragraph (c)(2)(iv) of this section;

(5) Medical care facilities such as medical clinics and units;

(6) Libraries; and

(7) Hazardous areas. Each agency shall post and enforce "No Smoking" rules in any location under its jurisdiction which involves flammable liquids, flammable gases, or flammable vapors, or in all other locations where there is a collection of readily ignitable, combustible materials.

(c) Designated smoking area shall be established as follows:

(1) Smoking areas in cafeterias.

(i) Each agency head shall establish "smoking areas" in cafeterias.

(ii) The areas designated shall be based upon an estimate of the number of smoking and non-smoking patrons served. This may be adjusted on the basis of local experience. The designated "smoking" areas shall be identified by appropriate signs.

(2) "Designated smoking areas" established by agency heads.

(i) Agency heads shall establish "designated smoking areas" except those areas set forth under paragraph (b) of this section. Agency heads will be responsible for monitoring and controlling these areas, and for ensuring that "designated smoking areas" are identified by proper signs. Suitable, uniform signs reading "Designated Smoking Area" shall be furnished and installed by the agency.

(ii) Agencies in multi-tenant buildings are encouraged to work together to identify "designated smoking areas".

(iii) Office space may be designated as a smoking area providing that the office space is configured so as to limit the involuntary exposure of non-smokers to secondhand smoke to a minimum; e.g., the office space involved must be large enough and sufficiently ventilated to provide separate smoking and non-smoking sections which protect the non-smokers against involuntary exposure to smoke.

(iv) An agency head may designate corridors, lobbies, or restrooms as smoking areas when it is not possible to designate a sufficient number of other smoking areas.

(d) Agencies are responsible for providing adequate ash-trays or receptacles in the designated smoking areas.

(e) Suitable, uniform signs reading "No Smoking Except in Designated Areas" shall be placed on or near entrance doors of buildings subject to these regulations. These signs shall be furnished and installed by the GSA Buildings Manager in buildings managed by GSA. It should not be necessary to display a sign in every room of each building.

(f) An agency is not required by this regulation to make any expenditures for structural or non-structural changes to accommodate the preferences of non-smoking employees.

(g) Prior to implementation of this regulation, where there is an exclusive representative for the employees, the agency shall meet its obligation under 5 U.S.C. Ch. 71. In all other cases, agencies should consult directly with employees.

(h) In accordance with the Federal Acquisition Regulation, Part 8, the mandatory source of supply for the purchase of the aforementioned signs is UNICOR, Federal Prison Industries, Inc. (FPI). Prior approval from FPI is required before using any other source of supply. Purchase Orders should be submitted to: UNICOR, Federal Prison Industries, Inc., 320 First Street, NW., Washington, DC 20534, (202) 724–8239.

**§ 101–20.106 Reimbursable services.**

Services in addition to those standard level services prescribed in §§ 101–20.101 through 20.105 may be provided or arranged for by GSA on a reimbursable basis. Such services include:

(a) Specialized security services beyond standard levels, such as guarding, ingress-egress control, inspection of packages, directed security patrols, and other similar activities;

(b) Design, installation, maintenance, and operation of electronic systems such as intrusion-detection devices, duress-holdup alarms, and remote monitoring systems;

(c) Utilities for specialized equipment, or for times when space conditioning beyond standard levels is required;

(d) Construction and/or alterations necessary for installation of agency program equipment;

(e) Space adjustments requested by an occupant agency for its convenience in moving activities within its already assigned space;

(f) Janitorial and other services over and above standard levels;

(g) Space alterations beyond the standard level provided by GSA;

(h) Construction, installation, operation, maintenance, and repair of agency program equipment, and space adjustments required as a result of such installations;

(i) Services of motion picture operators and other technicians required in the use of auditoriums, conference rooms, and special agency equipment; and

(j) Office design, space planning, and office automation installation support and services.

**§ 101–20.106–1 Placing of orders for reimbursable alterations by occupant agencies.**

(a) Where GSA has indefinite quantity contracts and/or unit price agreements available for accomplishment of space alterations in Government owned and leased buildings, agencies should order against these contracts and agreements, except when it is not in the Government's best interest. Agencies wishing to ure this authority shall submit names of their proposed ordering officials to the GSA buildings manager, who will submit them to the GSA contracting officer. The contracting officer shall designate in writing the ordering officials and will authorize the contractor to accept orders from the designated ordering officials. The GSA contracting officer shall advise the agencies' ordering officials in writing of their responsibilities, authorities, and limitations under these contracts and agreements.

(b) No individual order, or combination of orders for a single alteration project, shall exceed $25,000; and agencies shall not split orders so as to circumvent this limitation.

(c) For all orders placed against GSA contracts or agreements, agency ordering officials shall obtain prior written approval of the GSA buildings manager and provide a copy of the ordering document and final payment document to the GSA buildings manager. Agencies are responsible for inspecting and certifying satisfactory completion of the work, and for ensuring contractor compliance with contract provisions. The final payment document shall be supported by GSA Form 1142, Release of Claims; GSA Form 2419, Certification of Payments to Subcontractors and Suppliers; and certification that the work has been inspected and accepted.

(d) Agencies may not negotiate with contractors for items not specifically priced under indefinite quantity contracts and/or price agreements.

(e) Where no GSA contracts or agreements are in effect, an agency may contract directly for services up to maximum of $25,000 per project after obtaining written approval of the GSA buildings manager. Agencies contracting directly must provide the GSA buildings manager with complete documentation of the scope of work and contract specifications at the time of submission for approval. Each project shall include an initial, interim, and final review by the regional safety staff. If contracting for security systems, agencies must submit the design work to the regional Law Enforcement Branch for review and approval. Agencies shall be responsible for inspecting and certifying satisfactory completion of the ordered work. All work must conform to GSA fire and safety standards. As-built drawings must be submitted to the GSA buildings manager with 30 days of completion of the work.

**§ 101–20.106–2 Limitations on provision of reimbursable services by GSA.**

In order to reduce processing costs of documents and to improve efficiency of service delivery, requests for reimbursable work to be performed or arranged by GSA may be subject to the following requirements:

(a) Individual work authorizations (e.g., GSA Form 2957's) for which total expenses as estimated by GSA are less than $500 need not be processed by GSA, but may be returned to the requesting agency. Unless the work is related to security or required to correct an unhealthful or unsafe condition, occupant agencies may be required to hold all such requests until the reimbursable work in question can be aggregated into a single request for at least $500.

(b) The restrictions of paragraph (a) of this section are not mandatory, but may be applied by GSA when their application is in the best interests of the Government from the standpoint of cost effectiveness.

(c) The restrictions of paragraph (a) of this section do not apply to orders placed against existing blanket or open-end authorizations which exceed $500 and which show obligated and unused fund balances sufficient to perform the work.

(d) Agencies requesting reimbursable services are responsible for verifying and approving GSA estimates within 30 calendar days following submission of such estimates to the requester. Reimbursable work requests for which estimates have not been approved within 30 days will be canceled.

**§ 101–20.107 Energy management.**

Agencies shall comply with the energy conservation guidelines set forth in 10 CFR Part 436 (Federal Energy Management and Planning Programs) and shall observe the energy conservation policies cited herein.

(a) Agencies shall ensure that lights and equipment are turned off when not needed, that ventilation is not blocked or impeded, and that windows and other building accesses are closed during the heating and cooling seasons.

(b) Except where special circumstances exist, illumination levels shall be maintained as near as is practical to the following standards:

(1) 50 foot-candles at work station surfaces, measured at a height of 30 inches above floor level, during working hours (For visually difficult or critical tasks, additional lighting may be authorized by the GSA buildings manager or by agencies that have been given delegated authority to perform buildings management functions.);

(2) 30 foot-candles in work areas during working hours, measured at 30 inches above floor level;

(3) 10 foot-candles, but not less than 1 foot-candle nonwork areas, sufficient to ensure safety in non-work areas during working hours. (Normally this will require levels of 5 foot-candles at elevator boarding areas, minimum of 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, and 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, and 10 foot-candles in storage areas.); and

(4) Other lighting essential for safety and security purposes, including exit signs and exterior lights, shall be maintained.

(c) Within the limitations of the building systems, heating and cooling systems shall be operated in the most overall energy efficient and economical manner.

(1) Thermostats shall be set to maintain temperatures between 65 and 70 degrees Fahrenheit during the heating season and 76 and 80 degrees Fahrenheit during the cooling season. During non-working hours, heating temperatures shall be set no higher than 55 degrees Fahrenheit and air-conditioning will not be provided. Temperatures in warehouses, loading docks, inspection facilities, and other similar spaces subject to external traffic shall be adjusted lower than 65 degrees Fahrenheit depending upon the type of occupancy and activity.

(2) The locations used for measurement of temperatures to determine compliance will be representative of the spaces to be heated or cooled.

(3) Work stations which are the most adversely affected may be the basis for establishing the temperature levels throughout that portion of the building.

(4) Reheating, humidification, and simultaneous heating and cooling shall not be permitted.

(5) During extreme weather conditions, building systems shall be operated as necessary to protect the physical condition of the building.

(d) The operation of portable heaters, fans, and other such devices in Government-controlled space is prohibited unless authorized by the GSA buildings manager or by agencies that have been given delegated authority to perform buildings management functions.

(e) Within limitations of building systems, ventiliation will be provided in the most cost effective manner. During working hours, 5 cubic feet per minute, per persn, will be the minimum provided during periods of heating or cooling. Additional outside air above this minimum level can be provided to allow "free" cooling.

(f) Energy standards for existing buildings will be no less stringent than those prescribed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North American in ASHRAE/IES Standard 90A–1980 as amended by Department of Energy (DOE). These energy standards are applicable where they can be achieved through life cycle, cost effective actions.

(g) Exceptions to the foregoing policies may be necessary for specialized requirements of for agencies to accomplish their missions more effectively and efficently. Such exceptions may be granted by the GSA buildings manager or by agencies that have been given delegated authority to perform buildings management functions.

(h) Contracting officers shall ensure that all new lease contracts are in conformance with the policies prescribed in this § 101–20.116. Existing lease contracts shall be administered in accordance with these policies to the maximum extent feasible.

(i) Each agency shall report to the Department of Energy (DOE) the energy consumption in buildings, facilities, vehicles, and equipment under its control within 45 calendar days after the end of each quarter as specified in the DOE Federal Energy usage Report DOE F 6200.2 instructions. This report has been cleared in accordance with FPMR 101–11.11, Interagency Reports Management Program, and assigned interagency report control number 1492 DOE OU.

### § 101–20.108 Staggered hours of duty.

(a) The GSA Regional Administrator, National Capital Region, is responsible for putting into effect the policy of maintaining staggered duty hours in Metropolitan Washington, DC. For purposes of this regulation, "Metropolitan Washington" means the Washington Standard Metropolitan Statistical Area (SMSA) as defined by the Department of Commerce.

(b) Any agency planning a change in its schedule of duty hours which will affect 50 or more employees shall submit the changes to the GSA Regional Administrator, (WA) Washington, DC, 20407, for approval prior to implementation. The agency shall indicate the number of employees affected, the present and proposed hours of duty, and the reasons for the change in schedule. The agency shall also coordinate with the employees and their union(s) to determine the percentage of employees in favor of the proposed change.

(c) The GSA Regional Administrator, National Capital Region, shall coordinate the proposed change with appropriate authorities to ensure that the change will not create congestion or disruptions in traffic or transportation flow patterns.

(d) GSA and other Federal agencies may also consider the advisability of establishing staggered duty hours in areas outside Metropolitan Washington where major concentrations of Federal employees exist.

### § 101–20.109 Concessions.

(a) The provisions of this section do not apply to blind vending facilities operated under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.); regulations governing this program are continued in Subpart 101–20.2.

(b) GSA is responsible for the planning, provision, and administration of essential concessions in buildings under its control. GSA will enter into and award concessions contracts, provide suitable space and facilities, if required, and administer applicable inspection and oversight functions. Officials of occupant agencies shall convey concerns to GSA and shall not instruct concessionaires regarding their operations.

(c) Subject to the availability of space, prior to establishing concessions, GSA will ensure that:

(1) The proposed concession will offer only essential services which are needed by employees, and which cannot be conveniently obtained from existing facilities, (Consultation will be held with occupant agencies.);

(2) The proposed concession will be established and operated in conformance with applicable policies, safety, health, and sanitation codes, laws, regulations, etc., and will not contravene the terms of any lease or other contractual arrangement;

(3) Sufficient funds are legally available to cover all costs for which the Government may be responsible; and

(4) All contracts will be financially self-supporting and not compete with nearby commercial enterprise.

## Subpart 101–20.2—Vending Facility Program for Blind Persons

### § 101–20.200 Scope of subpart.

This subpart contains the policy and procedures for ensuring the priority of blind vendors in operating vending facilities on GSA-controlled property.

### § 101–20.201 Policy.

Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the

provisions of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) shall be given priority in the location and operating of vending facilities, including vending machines, on GSA-controlled property provided the location or operation of such facility would not adversely affect the interests of the United States. Blind vendors shall also be given priority on GSA-controlled property in the operation of cafeterias according to 34 CFR 395.33.

**§ 101-20.202 Establishing vending facilities.**

(a) GSA shall not acquire a building by ownership, rent, or lease, or occupy a building to be constructed, substantially altered, or renovated unless it is determined that such buildings contain or will contain a "satisfactory site" as defined in 34 CFR 395.1q, for the location and operating of a blind vending facility.

(b) In accordance with 34 CFR 395.31, GSA shall provide the appropriate State licensing agency with written notice of its intention to acquire or otherwise occupy such building. Providing notification shall be the responsibility of the Buildings Management Division, GSA.

**§ 101-20.203 Application for permit.**

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of GSA.

**§ 101-20.204 Terms of permit.**

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with Title VI of the Civil Rights Act of 1964 and GSA regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to GSA; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services as are determined by the State licensing agency, in consultation with GSA to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the Director, Buildings Management Division, GSA, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; that costs of relocations initiated by the Director, Buildings Management Division, shall be paid by GSA; and that all plumbing, electrical, and mechanical costs related to the renovation of existing facilities shall be paid by GSA.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit. The State licensing agency shall be expected to perform under the same contractual arrangement applicable to commercial cafeteria operators.

**§ 101-20.205 Enforcement procedures.**

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the buildings manager.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the GSA regional office in an attempt to resolve the issue.

**§ 101-20.206 Reports.**

At the end of each fiscal year, GSA shall report to the Secretary of Education the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected, and the amount of such vending machine income disbursed to the State licensing agency in each State.

## Subpart 101-20.3—Conduct on Federal Property

**§ 101-20.300 Applicability.**

These rules and regulations apply to all property under the charge and control of the General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations.

**§ 101-20.301 Inspection.**

Packages, briefcases, and other containers in the immediate possession of visitors, employees, or other persons arriving on, working at, visiting, or departing from Federal property, are subject to inspection. A full search of a person and any vehicle driven or occupied by the person may accompany an arrest.

**§ 101-20.302 Admission to property.**

Property shall be closed to the public during other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by Subpart 101-20.4. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency Program after consultation with the buildings manager and the ranking representative of the Law Enforcement Branch responsible for protection of the facility or the area. This requirement does not preempt the

authority of the Chief, Law Enforcement Branch, or any other authorized GSA official to effect a security alert of a facility in accordance with GSA Order, Physical Security of Buildings Alert Guidelines (PBS 5930.16), dated February 20, 1976. This action shall be coordinated with the designated official. The designated official is defined in § 101–20.003–7 as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or a portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested, display Government or other identifying credentials to the Federal Protective Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the above applicable provisions is a violation of these regulations.

**§ 101–20.303 Preservation of property.**

The improper disposal of rubbish on property; the willful destruction of or damage to property; the theft of property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from or at a building or the climbing upon statues, fountains, or any part of the building, is prohibited.

**§ 101–20.304 Conformity with signs and directions.**

Persons in and on property shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the lawful direction of Federal Protective Officers and other authorized individuals.

**§ 101–20.305 Disturbances.**

Any loitering, disorderly conduct, or other conduct on property which creates loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; or which prevents the general public from obtaining the administrative services provided on the property in a timely manner, is prohibited.

**§ 101–20.306 Gambling.**

Participating in games for money or other personal property or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, et seq.)

**§ 101–20.307 Alcholic beverages and narcotics.**

Operation of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine is prohibited. The prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occassions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the buildings manager who shall inform the Federal Protective Officer, or other authorized officials, responsible for the security of the property.

**§ 101–20.308 Soliciting, vending, and debt collection.**

Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on GSA-controlled property is prohibited. This rule does not apply to—

(a) National or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454); and

(d) Lessee, or it agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(16)).

Public areas of GSA-Controlled property may be used for other activities permitted in accordance with Subpart 101–20–4.

**§ 101–20.309 Posting and distributing materials.**

Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property is prohibited, except as authorized in § 101–20.308 or when these displays are conducted as part of authorized Government activities. Distribution of materials, such as pamphlets, handbills, or flyers, is prohibited, except in the public areas of the property as defined in § 101–20.003–26, unless conducted as part of authorized Government activities. Any person or organization proposing to distribute materials in a public area under this section shall first obtain a permit from the building manager under Subpart 101–20.4 and shall conduct distribution in accordance with the provisions of Subpart 101–20.4. Failure to comply with those provisions is a violation of these regulations.

**§ 101–20.310 Photographs for news, advertising, or commercial purposes.**

Photographs may be taken in space occupied by a tenant agency only with the consent of the occupying agency concerned. Except where security regulations apply or a Federal court order or rule prohibits it, photographs for news purposes may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings. Subject to the foregoing prohibitions, photographs for advertising and commercial purposes may be taken only with written permission of an authorized official of the agency occupying the space where the photographs are to be taken.

**§ 101–20.311 Dogs and other animals.**

Dogs and other animals, except seeing eye dogs, other guide dogs, and animals used to guide or assist handicapped persons, shall not be brought upon property for other than official purposes.

**§ 101–20.312 Vehicular and pedestrian traffic.**

(a) Drivers of all vehicles entering or while on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of Federal protective officers or other

authorized individuals and all posted traffic signs;

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on property is prohibited; and

(c) Except in emergencies, parking on property is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owners' risk and expense. This paragraph may be supplemented from time to time with the approval of the Regional Administrator by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part thereof. Proof that a motor vehicle was parked in violation of these regulations or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

**§ 101-20.313 Weapons and explosives.**

No person entering or while on property shall carry or possess firearms, other dangerous or deadly weapons, explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

**§ 101-20.314 Nondiscrimination.**

There shall be no discrimination by segregation or otherwise against any person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on the property.

**§ 101-20.315 Penalties and other laws.**

Whoever shall be found guilty of violating any rule or regulation in this Subpart 101-20.3 while on any property under the charge and control of GSA is subject to a fine of not more than $500 or imprisonment of not more than 6 months, or both. [See 18 U.S.C. (Ch.1) (Sec.1)]. Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated.

## Subpart 101-20.4—Occasional Use of Public Buildings

**§ 101-20.400 Scope of subpart.**

§§ 101-20.401 through 101-20.408 establish rules and regulations for the occasional use of public areas for cultural, educational and recreational activities as provided by the Public Buildings Cooperative Use Act of 1976 (Pub. L. 94-541).

**§ 101-20.401 Applications for permits.**

(a) Any person or organization desiring to use a public area shall file an application for permit with the GSA Buildings Manager. Such application shall be made on a form provided by GSA and shall be submitted in the manner specified by GSA.

(b) The following information is required:

(1) Full names, mailing addresses, and telephone numbers of the applicant, the organization sponoring the proposed activity, and the individual(s) responsible for supervising the activity;

(2) Documentation showing that the applicant has authority to represent the sponsoring organization;

(3) A description of the proposed activity, including the dates and times during which it is to be conducted and the number of persons to be involved.

(c) If the proposed activity constitutes a use of a public area for soliciting funds, the applicant shall also submit a signed statement that:

(1) The applicant is a representative of and will be soliciting funds for the sole benefit of, a religion or religious group; or

(2) The applicant's organization has received an official ruling of tax-exempt status from the Internal Revenue Service under 26 U.S.C. 501; or, alternatively, that an application for such a ruling is still in process.

**§ 101-20.402 Permits.**

(a) A permit shall be issued by GSA within 10 working days following its receipt of the completed applications. A permit shall not be issued for a period of time in excess of 30 calendar days, unless specifically approved by the regional officer. After the expiration of a permit, a new permit may be issued upon submission of a new application; in such a case, applicants may incorporate by reference all required information filed with the prior application.

(b) When more than one permit is requested for the same area and times, permits will be issued on a first-come, first-served basis.

(c) All permits involving demonstrations and activities which may lead to civil disturbances should be coordinated with the Chief, Law Enforcement Branch, before approval.

**§ 101-20.403 Disapproval of applications or cancellation of permits.**

(a) GSA shall disapprove any application or cancel an issued permit if:

(1) The applicant has failed to submit all information required under § 101-20.401, or has falsified such information;

(2) The proposed use is a commercial activity as defined in § 101-20.003-4;

(3) The proposed use interferes with access to the public area, disrupts official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property;

(4) The proposed use is intended to influence or impede any pending judicial proceeding;

(5) The proposed use is obscene within the meaning of obscenity as defined in 18 U.S.C. 1461-65; or

(6) The proposed use is violative of the prohibition against political solicitations in 18 U.S.C. 607.

(b) Upon disapproving an application or cancelling a permit, GSA shall promptly notify the applicant or permittee of the reasons for the action, and shall inform the applicant or permittee of his/her appeal rights under § 101-20.404.

**§ 101-20.404 Appeals.**

(a) A disapproval of application or cancellation of issued permits may be appealed to the GSA Regional Officer (as defined in § 101-20.003-13) within 5 calendar days of the notification of disapproval or cancellation. Notices of appeal must be made in writing.

(b) On appeal, the applicant or permittee and the GSA buildings manager shall have opportunity to orally state their positions on the issues. Written materials may also be submitted.

(c) The GSA Regional Officer shall affirm or reverse the GSA building manager's decision, based on the information submitted, within 10 calendar days of the date on which the Regional Officer received notification of the appeal. If the decision is not rendered within 10 days, the application will be considered to be approved or the permit validly issued. The Regional Officer will promptly notify the applicant or permittee and the buildings manager of the decision and the reasons therefor.

**§ 101-20.405 Schedules of use.**

Nothing in these regulations shall prevent GSA from reserving certain time periods for use of public areas for official Government business; from setting aside certain time periods for maintenance, repair, and construction; or from permitting a previously approved use for official Government business.

**§ 101-20.406 Hours of use.**

Public areas may be used during or after regular working hours of Federal agencies, provided that such uses will not interfere with Government business. When public areas are used by permittees after normal working hours, all adjacent areas not approved for such use shall be locked, barricaded, or identified by signs, as appropriate, to restrict permittees' activities to approved areas.

**§ 101-20.407 Services and costs.**

(a) *Costs.* The space to be provided under these regulations is furnished free of charge. Services normally provided at the building in question, such as security, cleaning, heating, ventilation, and air-conditioning, shall also be provided free of charge by GSA. The applicant shall be requested to reimburse GSA for services over and above those normally provided. If the applicant desires to provide services, such as security and cleaning, this request must be approved by the GSA Regional Officer. GSA may provide the services free of charge if the cost is insignificant and if it is in the public's interest.

(b) *Alterations.* Permittees shall make no alterations to public areas except with prior approval of GSA. Such approval shall not be given unless GSA determines that changes in a building should be made to encourage and aid in the proposed use. Permittees making alterations must make provisions to ensure the safety of users and the prevention of damage to property.

(c) Permittees are responsible for furnishing items such as tickets, audiovisual equipment, etc., which are necessary for the proposed use.

**§ 101-20.408 Conduct.**

(a) Permittees are subject to all rules and regulations governing conduct on Federal property as set forth in Subpart 101-20.3. In addition, a permittee shall:

(1) Not misrepresent his or her identity to the public;

(2) Not conduct any activities in a misleading or fraudulent manner;

(3) Not discriminate on the basis of race, creed, color, sex or national origin in conducting activities;

(4) Not distribute any item, nor post or otherwise affix any item, for which prior approval under § 101-20.401 has not been obtained;

(5) Not leave leaflets or other materials unattended on the property; and

(6) Not engage in activities which would interfere with the preferences afforded blind licenses under the Randolph-Sheppard Act (20 U.S.C. 107).

(b) Permittees engaging in the solicitation of funds as authorized by § 101-20.401 shall display identification badges while on Federal property. Each badge shall indicate the permittee's name, address, telephone number, and organization.

**§ 101-20.409 Non-affiliation with the Government.**

The General Services Administration reserves the right to advise the public through signs or announcements of the presence of any permittees and of their nonaffiliation with the Federal Government.

## Subpart 101-20.5—Sidewalk Installation, Repair, and Replacement

**§ 101-20.500 Scope of subpart.**

This subpart contains the regulations governing the installation, repair, and replacement of sidewalks around buildings, installations, properties, or grounds under the control of executive agencies and owned by the United States within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States, by reimbursement to a State or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, or the territory or possession of the United States. They are issued with the approval of the Director of the Office of Management and Budget.

**§ 101-20.501 Responsibilities.**

Upon prior consent of the property-holding agency, the State in which the property lies may perform or arrange for the installation, repair, and replacement of sidewalks, and obtain reimbursement therefor from the property-holding agency, or, if mutually agreed upon, the property-holding agency may contract or otherwise arrange for and pay directly for such installation, repair, and replacement.

**§ 101-20.502 Standards.**

Sidewalks shall be installed, repaired, or replaced with due consideration to the standards and specifications prescribed by the State or political subdivision thereof. However, where the property-holding agency determines that it is necessary, in order to achieve or retain architectural harmony with the surroundings, the property-holding agency may prescribe other standards and specifications.

Dated: October 23, 1986.

**T.C. Golden,**

*Administrator of General Services.*

[FR Doc. 87-7694 Filed 4-7-87; 8:45 am]

BILLING CODE 6820-23-M

---

**41 CFR Part 101-28**

**[FPMR Temp. Reg. E-86]**

## Customer Supply Center Program; Revision of Mission Statement

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** This regulation revises the mission statement of customer supply centers (CSCs) and provides certain restrictions on the use of CSCs. These changes are necessary to limit the frequency and quantity of orders that customer agencies may place with CSCs so that the orders will not exceed the volume that CSCs are intended to handle. The regulation will result in customer agencies obtaining items of supply from the sources that are most cost-effective.

**DATES:** Effective date: March 23, 1987.

Expiration date: January 31, 1988.

Comments due on or before: June 1, 1987.

**ADDRESS:** Comments should be addressed to: General Services Administration (FFY), Washington, DC 20406.

**FOR FURTHER INFORMATION CONTACT:** General questions: Mr. John Boughton, Regulations and Policy Division (703-557-7525).

Specific technical questions: Mr. Roman Marciniak, Distribution Management Division (703-557-0800).

**SUPPLEMENTARY INFORMATION:** GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Part 101–28**

Government property management, Warehouses.

**Authority:** Sec. 205(c) 63 Stat. 390; (40 U.S.C. 486(c)).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

**Federal Property Management Regulations, Temporary Regulation E–86**

March 16, 1987

To: Heads of Federal agencies.

Subject: Customer supply center program.

1. *Purpose.* This regulation provides a revised mission statement for customer supply centers (CSCs) and provides for improved cost-effective use of CSCs.

2. *Effective date.* This regulation is effective March 23, 1987

3. *Expiration date.* This regulation expires January 31, 1988, unless sooner superseded or incorporated into the permanent regulations of GSA.

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.* A number of customer agency ordering points have been submitting orders for items, on a daily basis, that exceed the maximum order quantities (MOQs) established for those items. This practice contradicts the intended mission of this program which is to satisfy only small quantity (retail) needs, is costly for the ordering agency, and lessens the efficiency and effectiveness of the CSC program.

6. *Explanation of changes.* Subpart 101–28.3 is amended as indicated below.

a. Section 101–28.302 is revised to read as follows:

**§ 101–28.302 Mission of customer supply centers.**

CSCs are retail supply distribution outlets established by GSA to provide fast, efficient, and economical support for satisfying small quantity repetitive requirements for common-use items. CSCs are intended to support end-user activities only. Warehouses, stores, and stockrooms that are used to redistribute supplies are generally not considered to be end-users. CSCs are not authorized to provide supply support to activities which redistribute supplies through the mail or resale activities such as Department of the Navy servmarts and Department of the Army self-service supply centers. CSCs are authorized to issue stock to storerooms which maintain cupboard levels of supplies for redistribution to activities in the immediate area if CSC requirements on order size and frequently are met.

b. Section 101–28.306–3 is amended by adding paragraph (c) as follows:

**§ 101–28.306–3 Limitations on use.**

. . . . .

(c) Customer ordering points shall consolidate orders for one or more items placed with the CSCs in frequencies not to exceed one order per day and in quantities not to exceed the MOQ established for each item as indicated in the Customer Supply Center Catalog. Customer ordering points shall review the frequency of CSC orders and, whenever possible, consolidate several small orders into one large order within the limitations of the MOQ for each item. This will reduce administrative costs for ordering agencies and GSA. When exceptional item requirements exist (emergencies, disaster, immediate unforecasted needs, etc.), the individual CSC management may elect to exercise system override capabilities permitting exceptions to this policy. When normal item requirements exceed the CSC MOQ, customer ordering points shall use FEDSTRIP to obtain depot items (wholesale GSA stock) and their own agency of GSA's procurement offices to obtain Federal Supply Schedule and open market items. Each GSA region has a staff of customer service officers (CSOs) available to assist customers and answer questions regarding proper use of GSA Federal Supply Service programs. The staff of the Federal Supply Service Bureau in each GSA region can also answer questions regarding use of GSA Federal Supply Service programs.

7. *Agency comments and assistance.* Comments or inquiries concerning the effect or impact of this regulation should be submitted to the General Services Administration (FFY), Washington, DC 20406, not later than June 1, 1987, for consideration and possible incorporation into a permanent regulation.

8. *Effect on other directives.* This regulation supersedes the provisions of FPMR 101–28.302 and supplements the provisions of FPMR 101–28.306–3.

T.C. Golden,

*Administrator of General Services.*

[FR Doc. 87–7708 Filed 4–7–87; 8:45 am]

BILLING CODE 6820–24–M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 215 and 252

### Department of Defense Federal Acquisition Regulation Supplement; Availability of Contractor Records

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** On 26 February 1987, the Defense Acquisition Regulatory Council issued a proposed rule (52 FR 5791) that proposes to add section 215.873, Availability of Contractor Records, and the related clause at 252.215–7001, Availability of Contractor Records, to the Department of Defense Federal Acquisition Regulation Supplement. However, section 943 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500) requires that these regulations be prescribed by 16 April 1987. This interim rule is issued in order to implement the requirements of section 943 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500) and is identical to the proposed rule of 26 February 1987. The expiration of the public comment period on 27 April 1987 for the proposed rule remains unchanged, and will also be used for the comment period of this interim rule. The comments received at the 27 April deadline will be used to amend this interim rule, if necessary.

**DATES:** Effective Date: Effective on all solicitations issued on or after 16 April 1987.

Comment Date: Comments must be received on or before 27 April 1987. Please cite DAR Case 85–219 in all correspondence on this subject.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7267.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule implements 10 U.S.C. 2406 as found in the FY 1987 DoD Authorization Act at section 943 and is the same as that issued in the **Federal Register** previously (52 FR 5791). This rule grants the Department access to records on certain contracts.

**B. Determination to Issue an Interim Regulation**

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary in order to implement Section 943 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500).

**C. Regulatory Flexibility Act**

This rule applies to the award of contracts requiring the submission of cost or pricing data, and most awards to small entities are made on a price competitive basis not requiring such data. It does not require contractors to collect or maintain additional data not already collected or maintained. The only potential additional administrative effort imposed is that contractors must retain any data collected or maintained until three years after final payment. This minimal burden does not appear to have a significant impact on a substantial number of small entities. Therefore, an initial regulatory

flexibility analysis has not been prepared. Comments from interested small businesses are invited.

**D. Paperwork Reduction Act**

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

**List of Subjects in 48 CFR Parts 215 and 252**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Parts 215 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 215 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.873 is added to read as follows:

**§ 215.873 Availability of contractor records.**

In accordance with 10 U.S.C. 2406, the contracting officer shall include the clause at 252.215–7001, "Availability of Contractor Records", in solicitations and contracts which—

(a) Require the submission and certification of cost or pricing data; and

(b) Are for the manufacture of end items for a major defense acquisition program, as defined in 10 U.S.C. 2432a.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215–7001 is added to read as follows:

**§ 252.215–7001 Availability of contractor records.**

As prescribed in 215.873, insert the following clause:

**Availability of Contractor Records (APR 87)**

(a) Upon request by the Contracting Officer, the Contractor shall make available, in a timely manner, to the Contracting Officer or to an authorized representative of the Contracting Officer (who is an employee of the United States or a member of the Armed Forces), records of the contract and of end items under the contract for:

(1) The proposed, negotiated and incurred costs and related profit or fee;

(2) Bills of materials; and

(3) Work measurement system data (and any revision to such data), including standard hours of work content. These work measurement system data are those generated from time standard setting, time monitoring and variance analysis, produced for such purposes as planning, cost estimating, and productivity improvement. This availability includes access to proposed and negotiated work measurement system data (and any revision to such data).

(b) Nothing in this clause shall require the Contractor to collect or maintain additional data not otherwise collected or maintained nor to maintain data in a form or manner different from that in which the Contractor maintains such data.

(c) Any data covered by this clause shall be available for review until three (3) years after final payment under this contract.

(End of clause)

[FR Doc. 87–7817 Filed 4–7–87; 8:45 am]
BILLING CODE 3810–01–M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Parts 1003, 1043, and 1084**

**[Ex Parte No. MC–178 (Sub–No. 4)]**

### Implementation of Liability Risk Retention Act of 1986

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Adoption of Policy Statement.

**SUMMARY:** The Commission adopts this Policy Statement and gives notice that Risk Retention Groups established under the Liability Risk Retention Act of 1986, and licensed as Liability Insurance Companies under the laws of a state, qualify as insurance or surety companies defined at 49 CFR 1043.8. Accordingly, the Commission will accept Risk Retention Groups' filings of evidence of insurance or surety bonds and notices of cancellation. Risk Retention Groups, as with other insurance and surety companies, must comply with and must certify coverage on the Commission's prescribed forms as specified in 49 CFR 1043.7 and Part 1003, and comply with all other applicable regulations published at 49 CFR Part 1043 and Part 1084.

The Commission has determined that its existing rules and regulations allow the acceptance of filings by Risk Rentention Groups; therefore, new or revised rules are unnecessary and no comments are required.

**DATE:** The Policy Statement is effective on April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:**
Alice K. Ramsay (202) 275–0854
Heber P. Hardy (202) 275–7148

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll-free (800) 424–5403.

**Energy and Environmental Consideration**

This action does not significantly affect either the quality of the human environment or conservation of energy resources.

**Regulatory Flexibility Analysis**

The Commission is issuing a Policy Statement to implement the provisions of the liability Risk Retention Act of 1986, rather than promulgate new or revised regulations in 49 CFR 1043 and 1084. This action is fully in accordance with the objectives of the Regulatory Flexibility Act.

A substantial number of small entities will be affected by this action. However, we expect the economic impact to be beneficial. Motor carriers, brokers, and freight forwarders will now be able to meet their financial responsibility obligations to the Commission by participating in Risk Retention Groups and by having these groups file evidence of security on their behalf. We believe that this alternative will ameliorate some of the problems small entities are presently encountering because of their inability to obtain available and affordable insurance coverage from insurance and surety companies.

This action is taken under the authority of 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

Decided: March 31, 1987

By the Commission, Chairman Gradison Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7725 Filed 4–7–87; 8:45 am]
BILLING CODE 7035–01–M

## DEPARTMENT OF THE INTERIOR

**Fish and Wildlife Service**

**50 CFR Part 17**

### Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat for the Waccamaw Silverside

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines the Waccamaw silverside (*Menidia*

BEST COPY AVAILABLE

*extensa*) to be a threatened species and designates its critical habitat under provisions of the Endangered Species Act of 1973, as amended. The species is known only from Lake Waccamaw and the upper Waccamaw River in Columbus County, North Carolina. Recently completed research indicates nutrient loading has increased in lake Waccamaw. If this trend continues, habitat changes in the lake could jeopardize the survival of this species. Due to the species' limited distribution, its survival could also be threatened by any other factors that degrade water or habitat quality.

**DATE**: The effective date of this rule is May 8, 1987.

**ADDRESSES**: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

**FOR FURTHER INFORMATION CONTACT**: Nora Murdock at the above address (704/259–0321 or FTS 8/672–0321).

**SUPPLEMENTARY INFORMATION**:

## Background

The Waccamaw silverside (*Menidia extensa*) is known only from Lake Waccamaw and the upper Waccamaw River in Columbus County, North Carolina. It was described by Hubbs and Raney (1946). This fish, also known as a "skipjack" or "glass minnow," inhabits open water throughout Lake Waccamaw, where schools are commonly found near the surface over shallow, dark-bottomed areas (Lee *et al.* 1980). The silverside has not been taken outside the lake, with the exception of the Waccamaw River immediately below the Lake Waccamaw dam during periods of very high water (Lindquist and Yarbrough 1982).

The Waccamaw silverside is a long (adults 2.5 inches) slender, almost transparent fish with a silvery stripe along each side. The eyes are large, and the jaw is sharply angled upward. Adults of the species feed on zooplankton. They are sexually mature at one year of age and spawn from April through June. Most silversides die shortly after spawning, but a few may survive a second winter. Since this fish is a short-lived species, it is subject to sudden extirpation should its habitat deteriorate to the point where reproduction fails. The silverside is an important prey species for large fishes in Lake Waccamaw (Lindquist and Yarbrough 1982).

Lake Waccamaw, the principal hibitat of the species, is considered unique. It is a registered North Carolina Natural Heritage Area and has been proposed as a National Natural Landmark. The lake and its drainage have a diverse fish fauna (56 species), including many popular game fish (Shute *et al.* 1981). Teulings and Cooper (1977) listed 17 species of plants and animals from in and around Lake Waccamaw, which were considered of special concern by biologists. Bailey (1977) commented that Lake Waccamaw ". . . apparently served as a minor center of evolutionary differentiation [for fish], and a rufuge for earlier forms." Fuller (1977) stated that "The Waccamaw basin in southeastern North Carolina and northeastern South Carolina supports more unique non-marine mollusks than any other locale in the state [North Carolina]."

Lake Waccamaw has a surface area of approximately 8,934 acres and has an average depth of only 7.5 feet (Shute *et al.* 1981). Although it is fed by acidic swamp streams, the lake has a virtually neutral pH (Davis and Louder 1969, Porter 1985). Dr. Charles Yarbrough (Wingate College, personal communication 1984) characterized Lake Waccamaw as "an island of neutrality in an acid sea." This neutral condition, unusual among North Carolina's coastal plain lakes, is believed to be caused by the buffering effect of the calcareous Waccamaw Limestone formation, which underlies the lake and is exposed on the north shore (Frey 1951).

Studies of Lake Waccamaw and its fish and mussel fauna, funded through the North Carolina Wildlife Resources Commission (NCWRC), were conducted from 1979 through 1981 (Linquist and Yarbrough 1982, Porter 1985). Those studies and other research (Linquist 1981, Casterlin *et al.* 1986) indicate the lake is experiencing increases in nutrient loading. If this trend continues, the overall water quality will deteriorate, and the lake's ecosystem will be adversely altered. These changes will threaten Lake Waccamaw's fauna, including the silverside. In the proceedings of the 1975 Symposium on Endangered and Threatened Biota of North Carolina (Cooper 1977), the silverside is categorized as "endangered."

The Waccamaw silverside was included in a March 18, 1975, Notice of Review published in the **Federal Register** (40 FR 12297). In the **Federal Register** of December 30, 1977 (42 FR 65209), the Service proposed endangered status and critical habitat for this species. On March 30, 1978, the time period for receiving comments on the proposal was extended 90 days. Considerable opposition was expressed with regard to the proposal.

The NCWRC and the Governor of the State recommended that the proposal be postponed pending further studies of the lake and its fauna. The 1978 amendments to the Endangered Species Act required that proposals for listing species be withdrawn if the listing was not made final within two years of the proposal; accordingly, the proposal to list this species was withdrawn on January 21, 1980 (45 FR 5782).

On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that this fish, along with 147 other fishes, was being considered for possible addition to the List of Endangered and Threatened Wildlife. On June 22, 1984, the Service announced that a status review was being conducted on this species, as well as a second species of fish, the Waccamaw killifish (*Fundulus waccamensis*), and a mussel, the Waccamaw spike (*Elliptio waccamawensis*). By letter and through personal contacts, the Service solicited data on the status and location of the species and their habitat, current and planned activities that might adversely affect the species or their habitat, and possible impacts to Federal activities if critical habitat were designated.

A total of 23 replies was received by the Service in response to the status review. Two respondents opposed the listing of the species and indicated that they did not think these species were endangered or threatened. Two other respondents, while not opposing the listing, pointed out potentials for conflict with planned or ongoing activities. These potential conflicts included highway construction in the vicinity of the lake and aquatic weed control programs administered by the U.S. Army Corps of Engineers (COE). Twelve respondents indicated that they had no problem with the listing of these species and their critical habitat. Seven respondents supported the listing. Among those supporting the listing were the North Carolina Department of Natural Resources and Community Development (NCDNRCD), Consevation Council of North Carolina, North American Native Fishes Association, Southeastern Natural Resources Center, and the National Wildlife Federation.

During the status review process, information was obtained on the Waccamac killifish and the Waccamaw spike, which must be further evaluated before a decision can be made on proposing these species for listing. Therefore, the Service, after receiving sufficient new information through the 1984 status review, only proposed the Waccamaw silverside for threatened species status.

On November 7, 1985, the Service published, in the **Federal Register** (50 FR 42320), a proposal to list the Waccamaw silverside as threatened and designate its critical habitat. That proposal provided information on the species' biology, status and threats, and the potential implications of the proposed designation of critical habitat. The proposal also solicited comments on the species and potential impacts of the proposed critical habitat designation.

**Summary of Comments and Recommendations**

In the November 7, 1985, proposed rule (50 FR 46320) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice summarizing the proposed rule was published in the *Whiteville News Reporter* and in the *Wilmington Star News* on November 28, 1985, which invited general public comment. A public hearing was requested on the proposed rule by Thomas Elliott, Mayor, Town of Lake Waccamaw. In the January 16, 1986, **Federal Register** (51 FR 2409), the Service announced that a public hearing would be held February 12, 1986, and that the public comment period would be extended until February 22, 1986. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other parties were again contacted and requested to comment. A newspaper notice of the public hearing and comment period extension was published in the *Whiteville News Reporter* on January 20, 1986, and in the *Wilmington Star News* on February 9, 1986. A total of 41 comments were received, in addition to 18 oral comments presented at the public hearing. Multiple comments from a single individual expressing the same opinion were counted as one response. The comments and public hearing are discussed below:

The Service received 21 comments supporting the proposal or expressing no problems. Three comments received expressed no position on the issue. Six letters supporting the listing were received from local landowners. One suggested that the critical habitat designation be extended to include the entire watershed for Lake Waccamaw. The Service does not believe the entire watershed is critical habitat for the Waccamaw silverside because it is not essential to the conservation of the silverside. The Service considered this suggestion; however, the Waccamaw silverside does not occur in Big Creek or any of the other tributaries which flow into Lake Waccamaw. As Lake Waccamaw is being designated critical habitat, it will be protected under section 7 of the Act from any Federal activities which occur in the watershed and result in "adverse modification" to the lake. Therefore, the Service believes that adequate protection will be provided to the species by designating the lake and the lowermost portion of Big Creek as critical habitat.

Eight Federal agencies, including the U.S. Forest Service, the Economic Development Administration, the Federal Energy Regulatory Commission, Geological Survey, Nuclear Regulatory Commission, and the Department of the Air Force, indicated that they had no proposed projects in the area that would affect or be affected by the proposed listing or designation of critical habitat.

Comments supporting the proposal were received from the NCDNRCD, Division of Parks and Recreation. Two other divisions of the NCDNRCD, the Division of Soil and Water Conservation, and the Division of Forest Resources, responded that they had no problems with the proposed listing. The NCWRC commented in support of the proposal. Comments in support of the listing were also received from the American Society of Ichthyologists and Herpetologists, the Southeastern Fishes Council, the North American Native Fishes Association, the National Wildlife Federation, and the Conservation Council of North Carolina.

The North Carolina Natural Heritage Advisory Committee, composed of representatives of State, conservation, and scientific organizations appointed by the Secretary of the NCDNRCD, at a March 4, 1986, meeting, unanimously endorsed a resolution in support of the Service's proposed listing of the Waccamaw silverside and designation of its critical habitat.

The Vice President of Federal Paper Board, Incorporated, which maintains a commercial timber operation in the Lake Waccamaw area, commented that he had no problem accepting the proposal, as long as it would not result in termination of plans to expand U.S. Highways 74 and 76 located north of the lake. The Service has been in contact with the North Carolina Department of Transportation (NCDOT) and the Federal Highway Administration (FHWA) with regard to this project and, as discussed in detail below, does not foresee any conflicts between protection of the silverside and completion of the highway project as presently planned.

Four other comments were received which did not state a position supporting or opposing the proposal. Two of these were from local landowners, one of whom noted that populations of fish other than the silverside had declined in the lake over the past decade. The other suggested that the Fish and Wildlife Service participate in the local land use planning process. A third response, from the Lieutenant Governor of North Carolina, recommended that the Service discuss in detail the significance of the designations with local officials in and around the Town of Lake Waccamaw, as well as answer the questions which have been raised regarding the adequacy of the water quality management plan developed by town and State officials and the potential impact on the lake from development activities. The fourth response, from the NCDOT, stated that it "does not object to the listing of this or any other species from the standpoint of species/habitat preservation." The NCDOT has plans for widening U.S. Highway 74 where it currently crosses Friar Swamp just north of Lake Waccamaw, as well as a bridge replacement project for the N.C. Highway 211 bridge over a canal south of Bolton. The NCDOT was concerned that the additional environmental requirements of the Endangered Species Act, if the species were listed and its critical habitat designated, would result in delays of project completion dates, and therefore increased project costs.

In response to these questions and comments, the Service would welcome any opportunity to assist a local community in developing land management plans which would preserve or enhance the habitat of an endangered or threatened species. Over the past two years Service personnel have made repeated trips to Lake Waccamaw for the express purpose of discussing this proposal with local officials, explaining the ramifications, and answering questions. Several informal meetings have been held with Town Council members, presentations were given to the Lake Waccamaw Water Quality Committee, and many discussions held with local residents and government officials. In addition, a public hearing was held in February 1986. The listing of the Waccamaw silverside as a threatened species and the designation of its critical habitat will impose the requirements of section 7 of the Endangered Species Act upon any federally funded project which may affect the species or its critical habitat,

such as the proposed widening and relocation of U.S. Highway 74. However, it is our understanding that the existing highway route across Friar Swamp will be used as a basis for construction of the additional two lanes. Since the lake's water quality and its endemic species, including the silverside, obviously survived the construction of the first highway across the swamp, there does not presently appear to be any reason why widening the existing highway would threaten the silverside. The working philosophy behind the section 7 consultation process involves examining the project and its potential impacts a very early stage in development, so that impacts can be minimized or eliminated without unduly delaying project completion. The proposed highway improvement project will cross Friar Swamp approximately 2.5 miles upstream from the lake. The Service believes that, with careful planning and construction, there is no presently known reason why this project cannot be completed as presently planned, with no serious impacts to the silverside.

The Service received 13 letters and a petition with 180 signatures opposing the proposed listing of the Waccamaw silverside and designation of its critical habitat. The majority of the letters of opposition simply stated the opinions that no Federal "intervention" was necessary or desirable in local affairs, or that Federal money would be better spent on other environmental problems such as cleaning up toxic waste dumps. Issues raised by those opposing the listing that have not been previously discussed are addressed below:

Two respondents recommended that action on the listing be postponed until more data on water quality had been collected. Another argued that there was no evidence that adverse changes in the lake's water quality would be detrimental to the silverside. The Service believes that the data on hand is sufficient evidence to conclude that the Waccamaw silverside qualifies for threatened status. Creager *et al.* (1984) identified an unnatural trend toward nutrient enrichment of Lake Waccamaw from non-point sources and recommended that action be taken immediately to halt or reverse the trend. The Lake Waccamaw Water Quality Committee, composed of local citizens and State, Federal, and local government representatives, concurred and added that the long residence time of water in the lake (about eight months) means that the system cannot readily flush itself of problems that do occur. Based upon three years of data taken from Lake Waccamaw, Casterlin *et al.* (1986) concluded that the lake is now incipiently eutrophic, and that continued high rates of phosphorus input would bring the lake to a hyper-eutrophic state by the end of the century, resulting in extinction of endemic fishes and mollusks. A similar large shallow lake north of Lake Waccamaw (Phelps Lake) has, in recent years, undergone massive algal blooms and associated fish kills as a result of excessive nutrient loading; a closely related species of silverside (*M. beryllina*) which was present prior to the onset of the algal blooms, has not vanished from the lake (P. Kornegay, NCWRC, personal communication 1986).

The Columbus County Commissioners passed a resolution opposing the listing of the fish and the designation of its critical habitat, stating that the county and the Town of Lake Waccamaw were capable of "preserving the quality of the lake without undue restrictions on the part of other levels of government." This resolution further stated that designation of Lake Waccamaw as a critical habitat would "unduly retard growth not only in the immediate area of the lake but also in the Big Creek watershed" and that "no effort has been initiated on the part of the Federal government to contact the Town of Lake Waccamaw and/or the County of Columbus to request land use planning or zoning as a method to address the issue of the lake's quality." The Service requested information on any economic impacts which might occur as a result of critical habitat designation, but no information on specific economic impacts was provided by anyone responding other than the NCDOT. Although the Commissioners' resolution stated that the nutrient loading problem could effectively be controlled at the local level, current data indicate that this has not occurred, since Casterlin *et al.* (1986) documented a substantial increase in orthophosphate concentrations and surface specific phosphorus loading rates as well as in the Palmer algal index for Lake Waccamaw since 1973. The Service has and will continue to work with the local governments.

The mayor of lake Waccamaw, representing the Town Council, commented in opposition to the listing. The Town Council also adopted a resolution opposing the proposed listing and designation of critical habitat. The mayor's response did not provide additional biological or economic data but challenged existing water quality data upon which the proposal to list the species was based. The Service concurs that extremely rapid increases in nutrient loading are not indicated by the available data; however, an unnatural trend toward eutrophication is documented in current data. While the town's commitment to prohibit intensive development within its zoning control is commendable, no authoritative statements can be made by local officials about the outlying areas of the Friar Swamp watershed, since they are not under the municipal control or ownerhsip of the town. The actions of the Lake Waccamaw Water Quality Committee are also commendable and their continuance should help protect good water quality in the lake although we remain concerned that these actions will not halt the trend toward increased nutrient loading in the lake, *infra*. The Committee report (NCDNRCD 1984) recognized that the Lake represents a unique and sensitive ecosystem where increases over current levels of nutrient loading would result in serious problems which would be difficult to reverse. This report further stated that such problems could be caused by extensive residential and state park development, large-scale timber harvest, and increased agricultural operations if such activities were conducted without regard for water quality.

Although the mayor maintains that more water quality data is needed than is currently available, and states that the Town of Lake Waccamaw samples and analyzes water from the lake one to three times per week year-round, the data from these analyses has never been presented to the Service. When Service personnel contacted the mayor to request the data from this ongoing water sampling, the mayor indicated that the data obtained from this effort were not substantial. The recent paper by Casterlin *et al.* (1986) indicates that, while the lake is not currently eutrophic, a clear danger of eutrophication exists, and all available evidence indicates that non-point sources of pollution are gradually contributing to increased nutrient loading in the lake.

A public hearing was held February 12, 1986, at 7:30 p.m. at the Lake Waccamaw Boys Home, Lake Waccamaw, North Carolina. Approximately 190 individuals attended the public hearing. Eighteen comments were received at the hearing and only those issues raised that were not addressed in the previous discussion of the written comments are summarized below.

Eleven other comments were received opposing the proposal. The majority of these did not present additional information, but expressed general opposition to increased Federal

involvement in the local area. Four comments were made in support of the proposal, and three comments were made which expressed concerns or questions but stated no position on the issue. Those who spoke in support of the proposal stated their belief that the listing would benefit the lake and surrounding community by helping to assure good water quality, high property values, and protection from future Federal projects having adverse environmental impacts. Several also pointed out evidence of declining water quality, and expressed concern for the future of the large number of rare species inhabiting the lake.

Several questions were asked that have not been previously addressed. These were: 1. Will the listing of the silverside and designation of its critical habitat provide funding for extensive water quality monitoring? 2. Will the listing require paper companies to use forestry "Best Management Practices" when they harvest timber in the lake's watershed or require a specific cutting rotation? 3. Will the designation of critical habitat provide incentives for education of foresters and farmers in the watershed, provide grants for expansion of municipal water sewer systems, and provide expertise and labor to clean up nearby weed-choked canals where water quality is poor? 4. Will the designation provide a plan for minimizing hazardous chemical spills on U.S. Highways 74–76?

In response to these questions, the Service believes that one of the primary objectives for this species, once it is listed, will be to initiate a consistent program of water quality monitoring for the lake, which will accurately reflect serious problems and hopefully allow time to take remedial action before the entire lake is adversely affected. Under section 7 of the Act, the FHWA will be required to ensure that the construction of additional lanes for U.S. Highway 74 across Friar Swamp will not adversely modify Lake Waccamaw, nor likely jeopardize the continued existence of the Waccamaw silverside. Measures for minimizing potentials for hazardous chemical spills on Highway 74 through Friar Swamp will be incorporated into planning for the project as part of the section 7 consultation process. Funding for water quality monitoring is not automatically assured as a result of this listing and designation of critical habitat; however, the Service intends to seek ways of providing such monitoring. With regard to forestry management practices used by the commercial timber companies who own parts of Friar Swamp, the requirements of section 7 of the Endangered Species Act do not extend to private operations, where no Federal involvement exists. However, the Service will work toward an education effort for voluntary conservation efforts by private interests in the area which may be affecting the lake's water quality. The listing of this fish and designation of its critical habitat will not automatically provide grants to the Town of Lake Waccamaw for the purpose of extending its water and sewer systems; however, Federal agencies which administer such grants, such as the Environmental Protection Agency (EPA) and the Economic Development Administration, are required, as are all Federal agencies, to untilize their authorities for the purposes of conserving endangered and threatened species. Areas with listed species present which could benefit from such grants may therefore be given higher priority for available monies than other areas where endangered species did not exist. As for cleaning up weed-choked canals, these areas do not provide habitat for the silverside; therefore, since no effect upon the species exists, the Endangered Species Act would not be involved.

One person commented that the Service should not designate critical habitat since data are lacking to determine it. Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. After review and consideration of all the available data, the Service believes that the critical habitat for the Waccamaw silverside is prudent and determinable based upon currently available data, and is therefore proceeding with designation.

One person questioned the relationship of section 7 to Federal activities such as FHA loans, and expressed concern that the additional cost of "an environmental impact statement" would be added to the costs of housing construction at Lake Waccamaw. FHA loans and other Federal activities in the area will only fall under the requirements of section 7(a)(2) of the Act if there is a potential for them to affect this species or its critical habitat. It is difficult for the Service to conceive of a single house construction project, if properly planned and connected to the sewer system, which would have significant impacts on the water quality of the lake. Also, an environmental impact statement (EIS) is not automatically required in any case under the provisions of section 7. EIS's are required for certain projects by the National Environmental Policy Act, which is separate legislation unrelated to the Endangered Species Act. Under section 7(c) of the Endangered Species Act, Federal agencies are required to prepare a biological assessment to assess anticipated impacts if their proposals involve "major construction activities" (see 51 FR 19958; June 3, 1986) and listed species or critical habitat may be present in the action area. The majority of section 7 consultations do not involve major projects or require biological assessments. In any case, the responsibility for assessing the impacts of a proposed action on the species or critical habitat belongs to the Federal agency involved. In summary, any proposed activities, including housing construction, highway construction, and industrial development, are affected by the requirements of section 7 of the Endangered Species Act only if they involve activities which are Federally funded, authorized or carried out. Furthermore, the Service has an excellent record of cooperating with other Federal agencies and private individuals and local governments in resolving potential conflicts under section 7 early in the project planning stages, so projects are completed in most cases with minimal or no delays.

The mayor of Lake Waccamaw criticized the water quality studies of the lake for the wide variability in results of phosphate tests (0 to 0.11 mg/l) and for the fact that the final 12 testing periods of the study were used to "negate opinions formed with all the previous testing." The Service concedes that the mayor's allegation of wide variability in test results is correct. However, in the final analysis of data presented in Casterlin *et al.* (1986), this variability was taken into account by the use of measures of central tendencies for comparison. These comparisons show that the orthophosphate concentrations in Lake Waccamaw quadrupled between 1973 and the 1979 to 1981 testing period. As for the mayor's contention that final results contradicted the results of preliminary reports in this study, the picture is clarified by the following quote from the 1980 preliminary report (Lindquist and Yarbrough 1982):

> We now can suggest that the general water quality appears to be good . . . however there are some changes in one or two water quality parameters that might pose a problem if they are trends. We believe that the third year of sampling will strongly suggest whether there is a general decline in the quality of these features or whether the

differences simply represent normal fluctuations.

The final year of sampling did indeed indicate that these were trends toward declining water quality as reported in Casterlin *et al.* (1986).

The mayor further criticized the existing data on water quality in Lake Waccamaw by stating that the algal index did not show any change from 1973, and that this was "reinforced by the Secchi Disk depth remaining the same. Given variability of individual nitrogen analysis values, the change reported from a 1973 mean of 0.12 mg/l is not a significant change." The Service does not accept the mayor's contention that the Palmer algal index did not show any change from 1973. Casterlin *et al.* (1986) cited Morris *et al.* (1977) as reporting the Palmer algal index for Lake Waccamaw in 1973 being no higher than 4. The latest calculations of this index (1979 to 1981) indicate that the Palmer algal index for the lake is now 19, indicating probable evidence of high levels of organic pollution (Casterlin *et al.* 1986). Index values of 20 or higher constitute strong evidence of high levels of organic pollution. The Secchi Disk depth reading is a measure of water transparency and is not related to the algal index. Although the change in *summer* concentrations of nitrates does not appear significant at first glance, the *overall* increase of nitrate concentrations and loading rates for Lake Waccamaw between 1973 and 1981 were significant. As reported in Casterlin *et al.* (1986), overall nitrate concentrations in the lake increased by almost 50 percent, and the nitrogen loading rate (milligrams per square meter per year) increased from 2,800 to 3,700 during the same period. Vollenweider (1968) stated that a body of water is "in danger with regard to its trophic level" when springtime concentrations of inorganic nitrogen compounds exceed 200 to 300 mg/m3. The mean springtime (February to April) nitrate concentrations in Lake Waccamaw during the 1979 to 1981 sampling period, was 324.7 mg/m3 (Casterlin *et al.* 1986), which clearly exceeds Vollenweider's maximum level. Vollenweider further suggested maximum permissible surface specific nitrogen loading rates for lakes up to 5 meters in depth of not more than 1,000 mg/m2 per year; values exceeding 2,000 mg/m2 represented "dangerous" loading for lakes of this depth. As stated in Casterlin *et al.* (1986), the nitrogen loading of Lake Waccamaw was within this "dangerous" range in 1973 as well as in 1981, which makes the subject of significant increases between these two periods irrelevant. Based on Vollenweider's standards, the lake was already in trouble in 1973, and the small additional increase in these values six to eight years later maintain the lake's status in this range.

The mayor further stated: "The only reasonable conclusion is that it will take more testing periods over a much longer time to determine a trend of change. The inescapable conclusion is: any predictions of imminent danger to the Waccamaw silverside by rapidly increasing nutrient loading and destruction of its habitat must be based on conjecture, philosophical views, or reasons other than the scientific data at hand." The Service does not agree that more testing periods over a much longer time are necessary now to determine a trend of change in Lake Waccamaw's water quality. The existing data, as interpreted by Casterlin *et al.* (1986), indicate that phosphate concentrations and loading rates in the lake more than tripled in the years between 1973 and 1981. They further state that "continued high rates of phosphorus input (organic pollution) will likely bring the lake to a hyper-eutrophic state. . . by the end of the century." This represents evidence of more than just a trend. It documents the classification of the lake at present as "incipiently eutrophic" as defined in standard technical terms. The Service is not predicting "imminent danger to the Waccamaw silverside by rapidly increasing nutrient loading and destruction of its habitat"; this is reflected in the designation of the species as threatened rather then endangered. The Service believes that if water quality in Lake Waccamaw remains at least as good as it was when the last water quality measurements were taken in 1981, the silverside's continued survival will be assured. However, if the tend shown by the data presented in Casterlin *et al.* (1986) continues at the same rate in succeeding years, there is a clear danger of eutrophication and a lessening of the silverside's chances for survival in the wild. Although the mayor challenged the validity of existing water quality data, no additional data or information was brought forth. Therefore, the Service believes that, based on a careful analysis of all the currently existing commercial and scientific evidence, that the Waccamaw silverside merits designation as a threatened species and that Lake Waccamaw should be designated as its critical habitat.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that the Waccamaw silverside should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.)* and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Waccamaw silverside (*Menidia extensa*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The water quality of Lake Waccamaw, the only known habitat of the Waccamaw silverside, is a major concern. Since the publication of the proposed rule, a paper containing the most recent update of water quality data collected from lake Waccamaw has been published (Casterlin *et al.* 1986). The conclusions of this study were that the Palmer index value (an assessment of the lake's trophic status based on presence of various pollution-tolerant genera of algae) for the lake in 1981 was indicative of high levels of organic pollution. This conclusion was further supported by three years of physicochemical measurements which documented excessive phosphorus loading. Furthermore, both orthophosphate concentrations and the surface specific phosphorus loading rates, in addition to the Palmer index, have increased substantially since 1973 when the lake was classified as "mesotrophic" by a national eutrophication survey (NTIS 1973). This trend, as well as the sensitive, unusual nature of this shallow lake, has led some researchers to state that ". . . a clear danger of eutrophication exists and any increase in nutrient loading could tip the uneasy balance" and threaten the existence of the silverside and other endemic species (Lindquist and Yarbrough 1982). Casterlin *et al.* (1986) state that Lake Waccamaw is now incipiently euthrophic, and continued high rates of phosphorus input "will likely bring the lake to a hyper-eutrophic state characterized by massive algal blooms" by the end of the century. The lake's environmental quality and its fauna could also be threatened by habitat alteration resulting from development and land use in Lake Waccamaw and its watershed (expecially Big Creek) if these activities are not planned and implemented with protection of Lake Waccamaw's ecosystem in mind. The short life cycle of the fish (one to two years) and its

dependence on the unique habitat conditions present in Lake Waccamaw make it extremely vulnerable to any significant change in its environment. The species is potentially threatened by a proposed highway project across the lake's watershed which involves expanding the existing two-lane U.S. Highway 74 to a four-lane facility. The Waccamaw silverside could be adversely affected if the project were completed without consideration of potential impacts on the water quality of Lake Waccamaw. The effect on the fish and its habitat would depend upon the nature of the construction and the resultant modifications to stream flows, silt loads, water temperatures, and pH.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence that overutilization is or will be a problem for this species. The silverside population numbers in the millions. In addition, the one- to two-year life cycle of the fish results in a virtually complete turnover of the population every year. Therefore, the taking of individuals for bait and for scientific purposes is not a threat to this species.

C. *Disease or predation.* Currently, there is no evidence of threats to this species from disease or predation. Although the silverside is one of the principal forage species for Lake Waccamaw's game fish, the high population levels of the silverside and the presence of other prey species in large numbers are sufficient to sustain this predation pressure without the species being threatened.

A recent application by the Waccamaw Siouan Development Association for a permit to propagate hybrid bass at several sites in the Lake Waccamaw watershed was initially denied by the NCWRC. Upon further review, the permit was granted on condition that extra measures were installed to prevent escape of fish from the rearing ponds. Escape of non-native predators from such a project into the system could upset the existing predator-prey relationships in the lake to the detriment of the Waccamaw silverside and other fishes now present in the Lake.

D. *The inadequacy of existing regulatory mechanisms.* Lake Waccamaw is the property of the State of North Carolina. The NCDNRCD's Division of Parks and Recreation administers the lake by authority given in North Carolina General Statute, Chapter 113, Section 35, and Subchapter 120 of the State Lakes Regulations. Through the above statute and implementing regulations, the North Carolina Parks Department reviews and issues special use permits for scientific research, educational, and noncommercial activities on the lake. By the same authority, the Parks Department regulates commercial activities, construction of piers, boat docks, drainage ditches, and similar activities on the lake. The NCWRC, by authority given in North Carolina General Statute, Chapter 113, regulates the taking of the Waccamaw silverside and issues collection licenses for the taking of nongame species as provided in sections 272.4 and 292. Although these statutes provide protection to individual fish, they do not afford protection for the habitat upon which the species depend. Scientific or commercial collecting do not pose threats to the species that would require Federal regulation (see "Special Rules" section of this rule). However, additional protection will be provided the species and its habitat by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species or its critical habitat.

E. *Other natural or manmade factors affecting the species' continued existence.* The Waccamaw silverside has a very short life cycle, usually dying shortly after spawning as a one-year-old. Therefore, if a year class of the silverside fails to reproduce in any one year, the species could be lost. The continued increase in nutrient loading could result in serious deterioration of water quality which, even on a short-term basis, could precipitate the extinction of this fish.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Waccamaw silverside as a threatened species with special rules to allow take in certain instances permitted under State law. There is only one known population of this species and at present its population level and environmental conditions in its habitat are adequate to justify threatened status. However, if, as expected, present nutrient loading continues to increase and the lake's habitat and water quality deteriorate, the species is likely to become endangered in the foreseeable future. It should be pointed out that actual loss of habitat and decline in the population is not required to list a species as threatened. Reasons for the critical habitat designation are discussed in the "Critical Habitat" section of this rule.

**Critical Habitat**

Critical habitat, as defined by section 3 of the Act, means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Waccamaw silverside to include Lake Waccamaw (8,934 acres), and Big Creek from its mouth at the head of Lake Waccamaw upstream approximately 0.4 mile to where the creek is crossed by County Road 1947 in Columbus County, North Carolina (see "Regulations Promulgation" section of this proposal for a precise description of critical habitat). The good water quality of Big Creek and Lake Waccamaw is one of the most important factors in the continued survival of this species. The clean sand bottom of the lake is used by the fish during spawning.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities that presently occur within the proposed critical habitat include, in part, fishing, swimming, water skiing, boating, scientific research, and nature study. These activities do not appear to be adversely impacting the area. Other activities that do or could occur in the watershed of Lake Waccamaw and could impact the critical habitat include, in part, indiscriminate logging, land use changes, stream alterations such as channelization or impoundment, bridge and road construction, improper pesticide/herbicide application, and point and nonpoint discharges.

There are also activities with Federal involvement that do or could occur and that may be affected by designating critical habitat. These activities include, in part, construction and/or upgrading of waste treatment systems, stream alterations, bridge and road construction

(including the proposed expansion/relocation of U.S. Highway 74 from west of Hallsboro to east of Bolton), filling of wetlands, discharges of municipal and industrial wastes, and State park acquisition and development. Some of these activities could degrade the water and substrate quality of Lake Waccamaw by increasing siltation and/or nutrient loading, or by altering water temperature and pH, if they are conducted without consideration for the protection of Lake Waccamaw's environmental quality.

Private activities with no Federal involvement will not be affected by this critical habitat designation. However, if a Federal agency is involved in activities that may affect the critical habitat, section 7(a)(2) of the Act, as amended, requires that agency to consult with the Service to ensure that actions it authorizes, funds, or carries out are not likely to destroy or adversely modify critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. To collect this information, the Service has solicited comments from Federal and State agencies, local governments, planning entities, businesses, the scientific community, and interested parties through written requests. Public notices and news releases have been published and interviews have been conducted with local news media. Telephone conversations and personal contacts have been made with local governmental officials, Federal and State agency personnel, and business leaders. The Service has held several informal meetings with local government officials, both prior to publication of the proposal and during the comment period, to which the public was invited. In addition, the Service has given presentations and participated in the meetings of the Lake Waccamaw Water Quality Committee. The material collected during this process was incorporated into an economic analysis of the impacts of designating critical habitat.

All Federal and State agencies responding, except the NCDOT, indicated that they anticipate no economic impacts to result from the designation of critical habitat. The NCDOT responded that the designation of critical habitat could impact on the proposed widening/relocation of U.S. Highway 74 from Hallsboro to Bolton. Several local businessmen and government officials indicated that failure to construct this highway project would have an impact on the local community in terms of jobs and business access, as well as public safety. The NCDOT currently has filed an application for a 404 permit from the COE, Wilmington District, to place fill in wetlands in association with the construction of the two additional lanes of U.S. Highway 74 across Friar Swamp. The NCDOT has indicated that any additional environmental review requirements and resultant delays would increase the cost of this project. However, they provided no specific information concerning economic or other impacts. Portions of the U.S. Highway 74 project which have already been constructed in adjacent areas across wetlands have demonstrated the ability of the NCDOT to effectively control siltation and other effects of the construction, and recent conversations with the personnel of that department have revealed that they do not foresee adverse impacts upon Lake Waccamaw from the completion of this project across Friar Swamp.

The EPA was contacted with regard to existing discharge permits or pending permit applications that would affect or be affected by this designation. In conversations with EPA and State personnel, it was revealed that there are two existing NPDES permits authorized for Columbus County. Both the industries having active NPDES permits in this area, Federal Paper Board Company and National Spinning Company, discharge into areas outside the Lake Waccamaw watershed. EPA and the State Division of Environmental Management (NCDNRCD) personnel stated that there were no pending or existing permits which would affect or be affected by the critical habitat designation.

The Soil Conservation Service and the Economic Development Administration were both contacted by letter and telephone, and both agencies indicated that they had no existing or proposed projects which would affect or be affected by the designation.

The Farmers Home Administration was contacted by letter and telephone. Personnel with the North Carolina office of that agency indicated during telephone conversations with the Service that they were not aware of any projects, existing or proposed, in the area which would affect or be affected by critical habitat designation. They stated, however, that if the municipal sewer system for the Town of Lake Waccamaw were ever upgraded, they might be involved in the funding for such a project. Upgrading of the municipal sewer system could preserve or improve the habitat of the Waccamaw silverside.

The COE, Wilmington District, was contacted by letter and by telephone. Personnel with that agency's Regulatory Functions Branch and Environmental Resources Branch indicated that they knew of no proposed or existing projects or existing permits or pending permit applications, other than that of the NCDOT for the construction of U.S. Highway 74, which would affect or be affected by critical habitat designation. The FHWA, as the lead agency in the construction of U.S. Highway 74, would be designated as responsible for fulfilling the section 7 consultation requirements of the Endangered Species Act for that project. COE personnel indicated that although they had been requested in the past to conduct weed control activities (primarily herbicide spraying) in areas adjacent to Lake Waccamaw, they had no plans for pursuing such projects in the foreseeable future.

Lake Waccamaw is the property of the State of North Carolina with the NCDNRCD (Division of State Parks and Recreation) administering the lake by authority of North Carolina General Statute. Lake Waccamaw State Park is a relatively undeveloped 273-acre tract. The NCDNRCD, Division of State Parks and Recreation, responded in support of the proposal to list the Waccamaw silverside as threatened and designate Lake Waccamaw as its critical habitat.

With the exception of the State park, the remainder of Lake Waccamaw's shoreline is in private ownership, with the principal form of development being for private residences. The 85-square-mile watershed draining into Lake Waccamaw is predominantly rural, dominated by small farms and large timber companies. There is no known Federal involvement (other than the proposed highway project) in the watershed which would affect or be affected by critical habitat designation.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed

species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agencies must enter into formal consultation with the Service. It has been the experience of the Service that nearly all section 7 consultations are resolved so that the species is protected and the project objectives are met. The Service is presently aware of only one proposed Federal project (the widening/relocation of U.S. Highway 74) that may affect the Waccamaw silverside and its critical habitat. The Service has been in contact with the FHWA in North Carolina and the NCDOT concerning the potential impacts of this project on the species and its habitat.

Section 9(a)(1) of the Act lists prohibited acts which apply to any fish or wildlife species listed as endangered. Section 4(d) of the Act provides that these same prohibitions may, by regulation, be applied to a threatened species. The Service does not believe that it is necessary and advisable to the conservation of the Waccamaw silverside to apply all of the prohibitions listed under section 9(a)(1).

The Waccamaw silverside is threatened by alteration and/or degradation of water and habitat quality, not by intentional, direct taking of the species or by commercialization. Individuals of the species are estimated to number more than a million, with virtually the entire population being replaced each year by a new generation. State regulations governing the take of this and other Lake Waccamaw species presently exist, and the Service has concluded that these regulations are sufficient to protect the Waccamaw silverside from any threat which may arise from excessive collecting. The Service believes that the imposition of additional prohibitions would result in needless conflict with ongoing activities in Lake Waccamaw (i.e., U.S. bait seining) and would not promote the conservation of the species.

Section 4(d) requires that the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. The Service believes that enforcement of State regulations governing take will be sufficient to protect this species. However, to support State regulations governing take and provide for the conservation of the species, the Service sets forth a special rule (see "Special Rule" section) that will provide the protection of the Endangered Species Act only when State laws governing the species were violated. The Service believes this special rule is consistent with the purposes of the Act and will facilitate the conservation of the Waccamaw silverside.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species is not a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Present and planned uses of the critical habitat area and the watershed above it are compatible with the critical habitat designation based on the information discussed in this rule concerning public projects within and private lands fronting the proposed critical habitat. It is not expected that significant economic impacts will result from the critical habitat designation. In addition, there is no known involvement of Federal funds or permits that would affect or be affected by the critical habitat designation for the private lands that front the critical habitat area. No direct costs, enforcement costs, information collection, or record keeping requirements are imposed on small entities by the critical habitat designation. Further, the rule contains no information collection or record keeping requirements as defined by the Paperwork Reduction Act of 1980. These determinations are based on a determination of effects that is available at the U.S. Fish and Wildlife Service, Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia.

### References Cited


Bailey, J.R. 1977. Watersheds and Critical Areas. Pages 268–277 *in* J.E. Cooper *et al.* (eds.). Endangered and Threatened Biota of North Carolina. North Carolina Museum of Natural History, Raleigh.

Casterlin, M.E., W.W. Reynolds, D.G. Lindquist, and C.C. Yarbrough. 1986. Algal and Physicochemical Indicators of Eutrophication in a Lake Harboring Endemic Species: Lake Waccamaw, North Carolina. Journal of the Elisha Mitchell Scientific Society, 100(3):83–103.

Cooper, J.E., ed. 1977. Endangered and Threatened Plants and Animals of North Carolina: Proceedings of the Symposium on Endangered and Threatened Biota of North Carolina. North Carolina Museum of Natural History, Raleigh, NC. 444 pp.

Creager, C.S., N.K. Browne, and R.E. Shaw. 1984. Modeling of phosphorus concentrations in Lake Waccamaw, North Carolina, with an analysis of economic alternatives and policy options to preserve water quality. 1984. Master's Project, Duke University, School of Forestry and Environmental Studies. 125 pp.

Davis, J.R., and D.E. Louder. 1969. Life History of *Menidia extensa*. Transactions of the American Fisheries Society 98(3): 466–472.

Frey, D.G. 1951. The Fishes of North Carolina's Bay Lakes and Their Intraspecific Variation. Journal of the Elisha Mitchell Scientific Society 67(1):1–44.

Fuller, S.L.H. 1977. Freshwater and Terrestrial Mollusks. Pages 143–153 *in* J.E. Cooper *et al.* (eds.). Endangered and Threatened Biota of North Carolina. North Carolina Museum of Natural History, Raleigh.

Hubbs, C.L., and E.C. Raney. 1946. Endemic Fish Fauna of Lake Waccamaw, North Carolina. Miscellaneous Publication University Michigan Museum Zoology 65:1–30.

Lee, D.S., C.R. Gilbert, C.H. Hocutts, R.E. Jenkins, E.E. MacAllister, and J.R. Staufer, Jr. 1980. Atlas of North American Freshwater Fishes. North Carolina State Museum of Natural History, Raleigh, NC. i-x plus 867 pp.

Lindquist, D.G. 1981. Endemic Fishes of Lake Waccamaw. Kin'Lin' 2(5):38–41.

Lindquist, D.G., and C.G. Yarbrough. 1982. Status of the Endemic Ichthyofauna of Lake Waccamaw, North Carolina. North Carolina Endangered Species Restoration Technical Report E–1–VI–1–61 (plus appendices 62–108).

National Technical Information Service. 1973. Compendium of National Eutrophication Survey Lakes in North Carolina—Lake Waccamaw. Working Paper No. 391.

N.T.I.S. Accession No. PB–252 047/AB. Springfield, VA.

North Carolina Department of Natural Resources and Community Development. November 26, 1984. Lake Waccamaw Water Quality Committee report. 16 pp.

Palmer, C.M. 1969. A composite rating of algae tolerating organic pollution. Journal Phycology 5:78–82.

Porter, H. 1985. Molluscan Census and Ecological Interrelationships; Rare and Endangered Fauna of Lake Waccamaw, North Carolina. Watershed System. North Carolina Endangered Species Restoration Technical Report E–1–VI–7. 372 pp.

Reynolds, W.W., and M.E. Casterlin. 1981. Thermal Preferenda and Diel Activity Patterns of Fishes from Lake Waccamaw. Brimleyana: 7:55–60.

Shute, J.R., P.W. Shute, and D.G. Lindquist. 1981. Fishes of the Waccamaw River Drainage. Brimileyana: 6:1–24.

Shute, P.W., D.G. Lindquist, and J.R. Shute. 1983. Breeding Behavior and Early Life History of the Waccamaw Killifish, *Fundulus waccamensis*. Environmental Biology Fishes 8 (20):293–300.

Shute, P.W., J.R., Shute, and D.G. Lindquist. 1979. Notes on the Spawning, Fecundity and Diet of the Waccamaw Killifish, *Fundulus waccamensis*. Association Southeastern Biologist Bulletin 26(2):49.

Teulings, R.P., and J.E. Cooper. 1977. Cluster Areas. Pages 409–433 *in* J.E. Cooper *et al.* (eds.) Endangered and Threatened Biota of North Carolina. North Carolina Museum of Natural History, Raleigh.

Vollenweider, R.A. 1968. Scientific fundamentals of the eutrophication of lakes and flowing waters, with particular reference to phosphorus and nitrogen as factors in eutrophication. OECD Tech. Rept. DAS/CSI/68.27 (revised 1971). 159 pp.

## Author

The primary author of this final rule is Nora Murdock, Endangered Species Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321).

## List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

## Regulations Promulgation

## PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159; 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife.

**§ 17.11 Endangered and threatened wildlife.**

. . . . . .

(h) * * *

| Species | | | | | | | |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
| FISHES | | | | | | | |
| Silverside, Waccamaw | *Menidia extensa* | U.S.A. (NC) | Entire | T | 265 | 17.95(e) | *ERR81*17.44(s) |

3. The following paragraphs (s) is added to § 17.44:

**§ 17.44: Special rules—fishes.**

* * * * *

(s) Waccamaw Silverside (*Menidia extensa*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (s) (1) through (3) of this section.

4. Amend § 17.95(e) for "FISHES," by adding critical habitat for the Waccamaw silverside as follows: [The position of this entry under section 17.95(e) follows the same sequence as the species occurs in § 17.11.]

**§ 17.95 Critical habitat—fish and wildlife.**

(e) *] * *

. . . . . .

**Waccamaw Silverside** (*Menidia extensa*)

*North Carolina, Columbus County.* Lake Waccamaw in its entirety to mean high water level, and Big Creek from its mouth at Lake Waccamaw upstream approximately 0.6 kilometer (0.4 mile) to where the creek is crossed by County Road 1947.

Constituent elements include high quality clear open water, with a neutral pH and clean sand substrate.

. . . . . .

Dated: March 24, 1987.

**Susan Recce,**

*Acting Assistant Secretary of Fish and Wildlife and Parks.*

[FR Doc. 87–7786 Filed 4–7–87; 8:45 am]

BILLING CODE 4310–55–M

# Proposed Rules

Federal Register
Vol. 52, No. 67
Wednesday, April 8, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Parts 723, 724, 845, 846, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947

### Surface Coal Mining and Reclamation Operations; Initial Regulatory Program; Permanent Regulatory Program; Federal Program for a State; Individual Civil Penalties; Reopening of Comment Period

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of reopening of public comment period.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) previously has published a proposed rule to amend its Initial Regulatory Program, Permanent Regulatory Program, and Federal Programs for States to provide procedures for the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Surface Mining Control and Reclamation Act of 1977. OSMRE is now reopening and extending the comment period for that proposed rule.

**DATES:** The comment period on the proposed rule is extended until May 8, 1987.

**ADDRESSES:** Written comments may be hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC; or mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5241 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:** On December 24, 1986 (51 FR 46838) OSMRE published a proposed rule to amend its Initial Regulatory Program, Permanent Regulatory Program, and Federal Programs for States to provide procedures for the assessment of individual civil penalties against officers, directors and agents of corporate permittees in accordance with section 518(f) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*

Under section 518(f) if a violation is committed by a corporate permittee or a failure or refusal to comply with certain specified orders occurs, then any director, officer or agent of the corporate permittee who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal is subject to the same civil penalties as may be imposed upon the corporate permittee under section 518(a) of the Act. In order to distinguish between a penalty assessed against a corporate permittee under section 518(a) and a penalty assessed against a corporate officer, director or agent under section 518(f), OSMRE refers to the former penalty as a "civil penalty," and the latter penalty as an "individual civil penalty."

The proposed rule published on December 24, 1986 would apply through cross-referencing in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington, where Federal regulatory programs are in effect. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively.

In the notice of proposed rulemaking OSMRE offered to hold public hearings in these States to receive comments on the substance of the proposed rule. No requests for any hearing was received. To insure that it is understood that the rule if adopted would apply through cross-referencing to States in which Federal regulatory programs are in effect, OSMRE is now reopening the comment period and specifically solicits comment as to whether unique conditions exist in any of the States where Federal regulatory programs are in effect which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

Dated: April 2, 1987.

**Jed D. Christensen,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–7722 Filed 4–7–87; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[A–8–FRL–3182–3]**

### Approval and Promulgation of State Implementation Plans; Revisions to Regulation No. 1 of the Colorado Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This notice proposes approval of a revision to the Colorado Air Quality Control Commission Regulation No. 1 (A Regulation to Control Smokes, Particulates and Sulfur Dioxide) which was submitted by the Governor on May 13, 1986. This revision requires that all major sources emitting 1,000 tons per year or more of carbon monoxide (CO) in nonattainment areas, or any source which can be expected to emit 1,000 tons or more of CO during any future 12-month period, use Reasonably Available Control Technology (RACT) to reduce emissions of CO to 0.050 or less percent of the volume of the gas by January 30, 1987. This measure is aimed at major sources in and around the Denver Metropolitan Area to ensure attainment of the required Ambient Air Quality Standard for CO by the deadline of December 31, 1987. EPA has required the use of RACT as a strategy in nonattainment areas for approval of the Colorado State Implementation Plan. The State has assured EPA that all the affected sources in the State are in compliance. The effect of this action is to ensure federal enforceability of the regulation.

**DATES:** Comments must be received on or before May 8, 1987.

**ADDRESSES:** Written comments should be addressed to: Mr. Marius Gedgaudas, Environmental Protection Agency, Region VIII, Air Programs Branch, One

Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

Copies of the documents relevant to this proposed action are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices: Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Frey, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293–1768.

**SUPPLEMENTARY INFORMATION:** A revision to Colorado Regulation No. 1 was submitted pursuant to section 172(b)(3) of the Clean Air Act, 42 U.S.C. 7502(b)(3), which requires that the State Implementation Plan (SIP) for a nonattainment area require such reduction in emissions from existing sources as may be obtained through the adoption of Reasonably Available Control Technology (RACT). EPA's policy implementing section 172 requires that, in nonattainment areas for carbon monoxide (CO), RACT be applied to all sources with the potential to emit more than 1,000 tons per year of CO. See 46 FR 7182, 7186 (Jan. 22, 1981).

The only sources of carbon monoxide greater than 1,000 tons per year in nonattainment areas in Colorado are fluidized-bed catalytic cracking units (FCC) at two petroleum refineries. Some are cabable of emitting as much as 100,000 ppm carbon monoxide when operating without pollution controls. Although they are required to reduce CO emissions to 0.05% or less of the volume of gas by January 30, 1987, the affected sources are currently in compliance with the proposed regulation. The effect of this action is to ensure federal enforcability of the regulation.

The revised Colorado regulation applies to any source which has emitted or "can reasonably be expected to emit" 1,000 or more tons of CO per year. EPA understands the latter phrase to refer to sources with "potential emissions" of 1,000 tons or more per year as the term is used in EPA's January 22, 1981, policy statement, i.e., sources that could emit 1,000 tons or more per year when operating at full capacity without emission control measures.

The regulation allows for a demonstration by the source of an appropriate method that will allow monitoring for compliance. This demonstration must follow New Source Performance Standards (NSPS) guidelines for fluidized-bed catalytic cracking units contained in 40 CFR Part 60, Appendix B, Performance Specification 4. This regulation requires a compliance test to determine whether or not continuous emission monitoring (CEM) is applicable. If the carbon monoxide emissions are 250 ppm or less, CEM will not be mandatory. Otherwise, the source will be required to install, calibrate, certify, and maintain a CEM system for CO.

**Proposed Action**

EPA is proposing to approve Colorado's Regulation No. 1 as amended in this revision.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401–7642.

Dated: October 9, 1986.

Alexandra B. Smith,

*Acting Regional Administrator.*

[FR Doc. 87–7740 Filed 4–7–87; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[A-5-FRL-3182-2]

## Approval and Promulgation of Implementation Plan; Ohio

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** USEPA is proposing to approve revisions to the Ohio State Implementation Plan (SIP) for ozone. The revisions incorporate into the zone SIP: (1) Specific statewide volatile organic compound (VOC) emission limits and requirements for petroleum dry cleaning facilities, polystyrene resin manufacturing, leaks from process units that produce ogranic chemicals, and air oxidation processes that produce organic chemicals, and (2) general requirements which apply to the specific VOC emission requirements. Ohio's statewide ozone SIP is based upon Rule 3745–21–01, Definitions; Rule 3745–21–04, Attainment Dates and Compliance Time Schedules; Rule 3745–21–09, Control of Emissions of Organic Compounds from Statutory Sources; and Rule 3745–21–10, Compliance Test Methods and Procedures of Chapter 21 of the Ohio Administrative Code.

The purpose of this notice is to discuss USEPA's evaluation of the revision and to solicit public comments on this rulemaking action.

**DATE:** Comments must be received by May 8, 1987.

**ADDRESSES:** Copies of the SIP revisions are available at the following addresses: (It is recommended that you telephone the contact person listed below before visiting the Region V office of USEPA.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Delores Sieja, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

**SUPPLEMENTARY INFORMATION:** Section 172 of the Clean Air Act allowed USEPA to grant attainment date extensions to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution control program. The revised programs had to include additional reasonably available control technology (RACT) emission limits for various types of volatile organic compound (VOC) sources located in the areas needing the extension. The extension if granted by USEPA, obligated the State to develop RACT regulations for those sources addressed by Group III Control Technique Guidelines (CTGs) (these Group III CTG sources are referred to as RACT III sources).

The USEPA published CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control technology techniques and provide recommendations on what the USEPA calls the "presumptive norm" for RACT. During the period 1982–1984, the USEPA released, among others, the following four Group III CTGs:

1. "Volatile Organic Emissions from Large Petroleum Dry Cleaners", October 6, 1982 (47 FR 44155).

This CTG covers large dry cleaning facilities that use petroleum solvent.

2. "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins", November 14, 1983 (48 FR 51848).

This CTG covers high-density polyethylene plants using a slurry process, polypropylene plants using a liquid phase process, and polystyrene plants using a continuous process.

3. "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment", April 10, 1984 (49 FR 14181).

This CTG covers equipment leaks from synthetic organic chemical and polymer manufacturing plants.

4. "Volatile Organic Compound Emissions from Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry", December 28, 1984 (49 FR 50442).

This CTG covers air oxidation processes.

There are three areas in Ohio where RACT III regulations are currently required: Cleveland, Cincinnati and Akron. The State of Ohio could not demonstrate attainment of the ozone National Ambient Air Quality Standard (NAAQS) in the Cities of Cleveland and Cincinnati by the required date of December 31, 1982, so the State requested, and received, an extension to December 31, 1987. The Akron area is a State Implementation Plan (SIP) call area. Because the State did not demonstrate attainment of the ozone standard by December 31, 1982, for the Akron area (Summit and Portage Counties), the USEPA on February 24, 1984, issued a notice of SIP inadequacy to the Governor of the State of Ohio. The notice of SIP inadequacy obligated the State to correct the inadequacies and demonstrate attainment of the ozone standard by December 31, 1987. Additionally, the State is required to implement RACT III regulations in the Akron area at this time.

On April 9, 1986, to meet the extension and SIP call area obligations for its RACT III VOC sources located in the Cleveland, Cincinnati, and Akron areas, and based largely upon the above four CTGs, the State of Ohio submitted revisions to USEPA for its statewide ozone SIP. Although RACT III regulations are only required in the Cleveland, Cincinnati and Akron areas, the State has chosen to make these regulations applicable statewide. USEPA notes that also within the April 9, 1986, submittal the State submitted further revisions to its overall ozone SIP and a site-specific revision for Huffy Corporation. These additional revisions are addressed in separate rulemaking actions.

Before USEPA begins its discussion of the RACT III amendments, it would first like to provide a general overview of the RACT regulations contained in Ohio's ozone SIP. Ohio's statewide ozone strategy is based upon Rule 3745–21–01, Definitions; Rule 3745–21–04, Attainment Dates and Compliance Time Schedules; Rule 3745–21–09, Control of Emissions of Organic Compounds from Stationary Sources; and Rule 3745–21–10, Compliance Test Methods and Procedures, of Chapter 21 of the Ohio Administrative Code (OAC). USEPA conditionally approved these regulations as part of Ohio's SIP for ozone in separate rulemaking actions on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097). On March 6, 1985 (50 FR 9052), USEPA proposed action on further revisions to these Chapter 21 regulations. All of these rulemaking actions pertain to RACT I and II categories. The further revisions to the ozone SIP that are mentioned above and were submitted on April 9, 1986, pertain to all RACT categories and will be addressed in a separate rulemaking action.

The RACT III regulations submitted on April 9, 1986, contain both specific and general requirements. The specific RACT III requirements, i.e., emission limitations, are contained in Rule 09. General applicability requirements, i.e., definitions, attainment dates and compliance time schedules, and compliance test methods and procedures, that pertain to the specific requirements are contained in Rules 01, 04, 09, and 10. USEPA's discussion of the RACT III regulations will be segmented into (1) specific emission limits and requirements within Rule 09, and (2) general requirements within Rules 01, 04, 09, and 10, that pertain to the specific RACT III limits and requirements.

## I. Specific Requirements Within Rule 09

### *A. Subparagraph (BB), Petroleum Dry Cleaning Facility*

1. This subparagraph

• Establishes RACT requirements for VOC emissions from petroleum dry cleaning facilities. The RACT requirements include the following: (1) Any dryer shall be either a solvent recovery dryer that is operated to achieve a final recovered solvent flow rate of 1.7 ounces per minute (50 milliliters per minute) or a dryer that emits less than 3.5 pounds of VOC per 100 pounds dry weight of articles cleaned; (2) any solvent filter shall be either a cartridge filter that is drained for at least eight hours in its sealed housing before removal or a filter that has a filtration waste which contains no more than 1.0 pound of VOC per 100 pounds dry weight of articles cleaned; (3) any bucket or barrel that contains petroleum solvent or petroleum solvent-laden waste shall be covered; and (4) any petroleum dry cleaning equipment shall be visually inspected weekly for leaks and if found leaking shall be repaired within 15 days.

• Specifies that any solvent recovery dryer shall be tested in order to establish a minimum recovery cycle time that meets the required final recovered solvent flow rate.

• Contains an exemption from the RACT requirements for dryers and solvent filters for those petroleum dry cleaning facilities in which either the total manufacturer's rated capacity of all petroleum solvent dryers is less than or equal to 83 pounds of articles, dry basis *or* total annual consumption of petroleum solvent is less than or equal to 4,700 gallons.

2. USEPA's Evaluation.

USEPA has determined that Ohio's Petroleum Dry Cleaning regulation is generally consistent with the model regulation found in the CTG and is proposing to approve it. Although USEPA is proposing to approve this regulation, it would like to discuss three areas where the regulations differ from the CTG.

a. The model regulation requires that petroleum solvent vapor and liquid leaks be repaired within 3 working days after identifying the sources of the leak. Ohio's regulations allows 15 days for the repair of leaks. The 15 day repair period is recommended in the New Source Performance Standards (NSPS) contained in Subpart JJJ, 40 CFR Part 60.620–60.625, and is, therefore, acceptable.

b. The exemption in Ohio's rule, based upon solvent use, is much more restrictive than that found in the model regulation. Ohio's rule exempts facilities with an annual consumption of less than or equal to 4,700 gallons (17,791 liters) while the CTG recommends a 123,000 liter/year exemption level.

c. Ohio's rule contains the requirement that any bucket or barrel that contains petroleum solvent or petroleum solvent-laden waste shall be covered. This is an additional requirement to that which is contained in the CTG and is, therefore, acceptable.

### *B. Subparagraph (CC), Polystyrene Resin Manufacturing*

1. This subparagraph

• Establishes a RACT requirement for VOC emissions from continuous, polystyrene resin manufacturing processes. The RACT requirement for the material recovery section of this process is an emission limitation of 0.12 pound of VOC per 1,000 pounds of polystyrene resin produced.

2. USEPA's Evaluation.

USEPA has determined that the Polystyrene Resin Manufacturing regulation is consistent with the CTG and is proposing to approve it. USEPA notes that the CTG also covers polyethylene and polypropylene processes but the State has no sources for these categories. Therefore, the State submitted a negative declaration, i.e., that it has no such sources, and USEPA's action on the negative declaration submitted by Ohio and four other States can be found in a separate rulemaking action. Approval of the "negative declaration" by USEPA would exempt the State from developing a control plan for VOC sources in that CTG category.

*C. Subparagraph (DD), Leaks from Process Units that Produce Organic Chemicals*

1. This subparagraph

• Establishes RACT requirements for VOC leaks from process units that produce as an intermediate or final product one or more of the 382 organic chemicals listed in Appendix A of this rule. Appendix A lists the 382 organic chemicals that are subject to the requirements in new subparagraphs (DD) and (EE). RACT includes: (1) A leak detection and repair program for specific pieces of equipment; (2) a "no detectable emissions" requirement for specific pieces of equipment; (3) various equipment requirements for compressors, sampling connection systems, and open-ended valves or lines; and (4) requirements for any control equipment to which an equipment leakage is vented.

• Requires the owner or operator of a process unit to meet specific recordkeeping requirements and reporting requirements. Also, the owner or operator may apply for an equivalent emission limitation as provided under this paragraph. An equivalent emission limitation may not be obtained for pressure relief devices, which are required to be operated with no detectable emissions (except during pressure releases).

• Exempts from the RACT requirements certain process units and equipment. The process units exempted are those having a design production capacity of less than 1,100 tons per year, those producing only heavy liquid chemicals from heavy liquid feed or raw materials, those producing beverage alcohol, those having no equipment in VOC service, and those at a petroleum refinery.

The equipment exempted are those not in VOC service, those not in vacuum service and those subject to an equivalent emission limitation.

2. USEPA's Evaluation.

USEPA has determined that Ohio's regulation that controls leaks from Process Units that Produce Organic Chemicals is virtually the same as under the NSPS contained in Subpart VV, 60.480–60.489, and is, therefore, approvable. However, any equivalent emission limitations established in accordance with (DD) (16) must be submitted to USEPA for approval as a SIP revision. By letter dated January 9, 1987, the State committed to submit these discretionary actions as a SIP revision.

*D. Subparagraph (EE), Air Oxidation Processes that Produce Organic Chemicals*

1. This subparagraph

• Establishes a RACT requirement for VOC emissions from processes that produce by air oxidation any organic chemicals listed in Appendix A. The RACT requirement is that each process vent stream is to be vented to a combustion device which has either a control efficiency of at least 98 percent or an exit VOC concentration less than 20 parts per million by volume. (If a combustion device is installed to meet the above RACT requirement for a process vent stream containing chlorinated VOC, a scrubber is also to be installed to remove the highly acidic hydrogen chloride formed by combustion.)

• Exempts any process vent stream or combination of process vent streams that has a total resource effectiveness value greater than 1.0 and any process vent stream equipped with a combustion device that was installed prior to the effective date of this subparagraph (i.e., May 9, 1986).

2. USEPA's Evaluation.

USEPA has determined that this regulation is consistent with the CTG and is proposing to approve it.

**II. General Applicability Requirements Within Rules 01, 04, 09 and 10 that Pertain to the Specific RACT III Requirements**

*A. Rule 3745–21–01, Definitions*

This regulation has been modified and new paragraphs added to define the terms employed in new paragraphs (BB), (CC), (DD), and (EE) of Rule 09 discussed above. USEPA is proposing to approve as SIP revisions, all the new terms and definitions because they are consistent with USEPA guidance. This guidance is primarily contained in the CTG document. The following portions of Rule 01 have been revised or added.

1. Paragraph (K)

This paragraph has been revised to indicate that the definitions within this paragraph are applicable to new paragraph (BB) of Rule 3745–21–09, which pertains to petroleum dry cleaning facilities. Also, definitions for the following six terms have been added because of new paragraph (BB) of Rule 09: (1) cartridge filter, (2) manufacturer's rated capacity, (3) petroleum dry cleaning facility, (4) petroleum solvent, (5) solvent filter, and (6) solvent recovery dryer. A definition has been added for "dryer" in order to clarify its usage in paragraphs (AA) and (BB) of Rule 09. Paragraph (AA), a RACT II rule, was previously approved on June 29, 1982.

2. *Paragraph (L)*

This paragraph has been added to define the terms employed in new paragraph (CC) of Rule 3745–21–09, which pertains to continuous, polystyrene resin manufacturing processes. Definitions have been included in this paragraph for the following four terms: (1) Continuous, polystyrene resin manufacturing process, (2) material recovery section, (3) styrene recovery distillation column, and (4) vacuum devolatizer.

3. *Paragraph (M)*

This paragraph has been added to define the terms employed in new paragraph (DD) of OAC Rule 3745–21–09, which pertain to leaks from process units that produce organic chemicals. Definitions have been included in this paragraph for the following 25 terms:

(1) BTU/scf
(2) closed vent system
(3) connector
(4) distance piece
(5) double block and bleed system
(6) equipment
(7) first attempt at repair
(8) heavy liquid
(9) in gas/vapor service
(10) in heavy liquid service
(11) in light liquid service
(12) in-site sampling system
(13) in vacuum service
(14) in VOC service
(15) liquids dripping
(16) open-ended valve or line
(17) ppmv
(18) pressure release
(19) pressure relief device
(20) pressure relief valve
(21) process unit

(22) process unit shutdown
(23) repaired
(24) rupture disk
(25) sensor

4. *Paragraph (N)*

This paragraph has been added to define the terms employed in new paragraph (EE) of Rule 3745–21–09, which pertains to air oxidation processes that produce organic chemicals. Definitions have been included in this paragraph for the following two terms: "air oxidation process" and "process vent stream".

*B. Rule 3745–21–04, Attainment Dates and Compliance Time Schedules*

This regulation has been modified and new paragraphs added to require the owners or operators of sources subject to new paragraphs (BB) through (EE) of Rule 3745–21–09, to comply with certain certification and permit application requirements and to establish general compliance schedules. USEPA is proposing to approve as SIP revisions, the certification and permit application requirements and general compliance schedules because they are consistent with USEPA guidance. This guidance is primarily contained in the CTG document. The following portions of Rule 04 have been revised or added.

1. *Paragraph (B)(1)*

This paragraph has been modified to require the owners or operators of sources subject to new paragraphs (BB) through (EE) of Rule 3745–21–09, to comply with the certification and permit application requirements specified within this paragraph by no later than June 1, 1986. By the June 1, 1986, deadline the owners or operators were to either demonstrate compliance with the new requirements in Rule 09 or provide an acceptable compliance schedule which will achieve compliance with those requirements as expeditiously as practicable, but in no event later than the compliance deadlines established in new paragraphs (C)(36) through (C)(39) of Rule 04. USEPA notes that, through mass mailings at the end of May, the State notified the applicable sources of the June 1, 1986, deadline to comply with the certification and permit application requirements. The sources are in the process of responding to the mailing, and any additional requirements will be absorbed in the sources' permit program.

2. *Paragraph (C)(36) through (C)(39)*

These paragraphs have been added to establish the general compliance schedules for sources subject to the requirements contained in new paragraphs (BB) through (EE) of Rule 3745–21–09. These sources are required to achieve compliance as expeditiously as practicable, but in no event later than the deadlines specified in paragraphs (C)(36) through (C)(39). The final compliance deadlines for these sources are listed below.

| Source category | Final compliance deadline |
|---|---|
| Petroleum dry cleaning facilities | December 31, 1987 |
| Continuous, polystyrene resin manufacturing processes | December 31, 1987 |
| Leaks from process units that produce organic chemicals | January 1, 1987 (for implementation of the leak detection and repair program)<br>February 1, 1987 (for submission of the 1st semiannual report on leak detection and repair)<br>July 1, 1987 (for compressors, pressure relief devices in gas/vapor service, sampling connection systems, and open-ended values or lines) |
| Air oxidation processes that produce organic chemicals | December 31, 1987 |

*C. Rule 3745–21–09, Control of Emissions of Volatile Organic Compounds From Stationary Sources*

This regulation has been revised and a new sentence added to specify that new paragraphs (BB) through (EE) apply to certain counties and facilities. USEPA is proposing to approve, as SIP revisions, these applicability requirements because they satisfy USEPA's requirements that RACT III regulations apply to all those counties where extensions were granted until 1987 or a SIP call was issued. The following portions of Rule 09 have been revised or added.

1. *Paragraph (A)(1)*

This paragraph has been revised to state that the new paragraphs (BB) through (EE) are applicable to sources which are located in the following 18 urban counties: Butler, Clermont, Cuyahoga, Franklin, Greene, Hamilton, Lake, Lorain, Lucas, Mahoning, Medina, Montgomery, Portage, Stark, Summit, Trumbull, Warren, and Wood.

2. *Paragraph (A)(2)*

This paragraph has been revised to state that for the remaining 70 counties in Ohio not mentioned in paragraph (A)(1), the new paragraphs (BB) through (EE) are applicable to sources which are located at facilities having the potential to emit a total of 100 tons or more of VOC per calendar year.

3. *Paragraph (A)(4)*

A sentence has been added to state the requirements of new paragraphs (BB) through (EE) are applicable to any sources constructed or modified on or after the current effective date of this rule.

*D. Rule 3745–21–10, Compliance Test Method and Procedures*

This regulation has been revised and new paragraphs added to establish test methods and procedures for the RACT III source categories discussed under Part I of today's notice. USEPA is proposing to approve, as SIP revisions, the test methods and procedures, because they are consistent with USEPA guidance. That guidance is primarily contained in the CTG document. The following portions of Rule 10 have been revised or added. (USEPA notes that paragraph (L), (M) and (N) apply to petroleum dry cleaning; paragraph (C) applies to polystyrene resin manufacturing; paragraphs (F), (C), (O), and (P) apply to leaks from process units that produce organic chemcials; and paragraphs (C) and (P) apply to air oxidation processes that produce organic chemicals.)

1. *Paragraph (C)*

This paragraph has been revised to include the use of USEPA Method 18 for the determination of VOC concentration of a gas stream.

2. *Paragraph (F)*

This paragraph has been revised to pertain to chemical manufacturing equipment subject to new paragraph (DD) of Rule 3745–21–09. The procedures for the detection of leaks have been deleted and replaced by USEPA Method 21 and standard requirements on calibration of the leak detection instrument.

3. *Paragraph (L)*

This paragraph has been added for testing the VOC emission rate from dryers at petroleum dry cleaning facilities. This test procedure pertains to documenting the compliance of those dryers which are not solvent recovery dryers.

4. *Paragraph (M)*

This paragraph has been added for determining the amount of VOC contained in waste from a solvent filter at a petroleum dry cleaning facility. The amount of VOC in the waste is expressed in pounds of VOC per 100 pounds dry weight of articles cleaned and is based on the weighted average of three tests.

5. *Paragraph (N)*

This paragraph has been added to establish the procedure for determining the length of time to operate the solvent recovery cycle of a solvent recovery dryer at a petroleum dry cleaning facility. The dryer would normally be tested by the owner or operator under normal operating conditions during a 2-week period to determine the appropriate solvent recovery times for

various types of loads. The termination of the solvent recovery cycle is bsed on a recovered solvent flow rate that is not greater than 50 milliliters per minute (1.7 ounces per minute).

6. *Paragraph (O)*

This paragraph has been added to determine if any piece of equipment at a petroleum refinery or in a process unit that produces organic chemicals is in VOC service or in light liquid service.

7. *Paragraph (P)*

This paragraph has been added to determine the net heating value of a gas, the actual exit velocity for a flare, and the maximum permitted velocity for an air-assisted flare. The net heating value of a gas is used for the following: (1) To determine the compliance of flares employed to meet paragraph (DD)(10)(d) of Rule 3745–21–09, and (2) to calculate the total resource effectiveness (TRE) value of a gas stream subject to paragraph (EE) of Rule 3745–21–09. The actual exit velocity for a flare and the maximum permitted velocity for an air-assisted flare are used to determine the compliance of flares subject to paragraph (DD)(10)(d) of Rule 3745–21–09.

Interested parties are invited to submit comments on this proposed approval. USEPA will consider all comments submitted within 30 days of publication of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to provisions of 5 U.S.C. 605(b), I certify that the attached rule will not have, if promulgated at the Federal level, a significant economic impact on a substantial number of small entities (See 46 FR 8709). At the time of USEPA's final rulemaking, the affected sources will be subject to the then applicable provisions of the Ohio VOC regulations as a matter of State law. Thus, no additional requirements will be imposed upon these sources, at that time, as a result of adding these requirements to the Federal SIP.

Authority: 42 U.S.C. 7401–7642.

Dated: December 29, 1986.

Valdas V. Adamkus,

*Regional Administrator.*

[FR Doc. 87–7741 Filed 4–7–87; 8:45 am]

BILLING CODE 6560–50–M

---

**40 CFR Part 180**

**[PP 6E3414/P412; FRL–3182–9]**

## Pesticide Tolerance for Paraquat

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes establishing a tolerance for residues of the desiccant, defoliant, and herbicide paraquat in or on the raw agricultural commodity tyfon. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on tyfon was requested by the Interregional Research Project No. 4 (IR–4).

**DATE:** Comments, identified by the document control number [PP 6E3414/P412], should be received on or before May 8, 1987.

**ADDRESS:** By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703–557–1806).

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3414 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of New Hampshire.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide paraquat (1,1′-dimethyl-4,4′-bipyridinium ion) derived from application of either the bis(methylsulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodity tyfon at 0.05 part per million (ppm). Tyfon is a cross between Chinese cabbage and turnips, and is grown for animal feeding purposes. The petitioner proposed that use on this commodity be limited to New Hampshire based on the geographical respresentation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. Several rat acute oral-feeding studies with median lethal dose (LD50) values of 30 to 150 milligrams (mg) paraquat cation/kilogram (kg) of body weight (bw).

2. A 90-day dog feeding study with a no-observed effect level (NOEL) of 20 ppm of paraquat cation (0.5 mg/kg bw).

3. A mouse oncogenicity study with a systemic NOEL for non-oncogenic effects greater than 100/125 ppm (15.0/18.75 mg paraquat cation/kg bw) (12.5, 37.5 and 100/125 ppm levels fed).

4. A one-generation rat reproduction study with a NOEL of 100 ppm paraquat cation (10 mg/kg bw, highest level tested).

5. Two teratology studies, rat and mouse, with maternal NOEL's at 1 mg/kg and fetotoxic NOEL's at 1 and 5 mg/kg, respectively.

6. A three-generation rat reproduction study with a reproductive NOEL of 150 ppm and a systemic NOEL of 25 ppm (core guideline).

7. A 1-year dog feeding study with a systemic NOEL of 15 ppm (0.45 mg of cation/kg bw) and a systemic lowest effect level (LEL) of 30 ppm.

Twenty-one mutagenicity studies were submitted for paraquat. Paraquat was negative in eight studies (mostly in gene mutation and chromosomal aberration assays); weakly positive in four studies (two gene mutations, one chromosomal aberration and one DNA

damage/repair assays); and positive in four studies (all DNA damage/repair assays). Five studies were not acceptable.

A rat chronic feeding/oncogenic study indicated a NOEL slightly below 25 ppm (1.25 mg paraquat cation/kg bw) and lung lesions which were difficult to differentiate between neoplastic and non-neoplastic pulmonary lesions as addressed in the Registration Standard for Paraquat dated March 31, 1986. The Agency subsequently considered the evidence for pulmonary adenomas and carcinomas as well as several other tumors in evaluating the rat feeding/oncogenicity study, and concluded that only squamous cell neoplasms of the skin and the subcutaneous areas of the head region of the high-dose (150 ppm) male rates were significantly increased over the concurrent control group. The Agency concluded that although the data available for paraquat places it in the "C Category" (limited evidence for oncogenicity in animals), it is not appropriate to develop a quantitative estimation of the oncogenic potential of paraquat.

The Agency has concluded that the amount of paraquat added to the diet from the proposed use will not significantly increase dietary exposure in humans. Thus the tolerance that will be established by this proposed rule is considered to pose a negligible increment in risk. Tolerances have previously been established for paraquat on a wide variety of food commodities, including meat, milk, grain, fruits, vegetables, and nuts at levels ranging from 0.01 to 5 ppm.

The acceptable daily intake (ADI), based on the 1-year dog feeding study (systemic NOEL of 0.45 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.0045 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.27 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.11130 mg/day; the current action will increase the TMRC by 0.0000225 (0.02 percent). Published tolerances will utilize 41.22 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method, spectrophotometry, is available in Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There are presently no actions pending against the continued registration of this chemical. EPA has reviewed paraquat as a candidate for rebuttable presumption against registration (RPAR) and concluded that available data did not support an RPAR (43 FR 30613 of October 1982).

Existing meat, milk, poultry or eggs tolerances are adequate to cover any secondary residues resulting from the proposed use on tyfon in the State of New Hampshire. Based on the information and data considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 6E3414/P412]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: March 22, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.205(b) is amended by adding and alphabetically inserting the raw agricultural commodity tyfon to read as follows:

**§ 180.205 Paraquat; tolerances for residues.**

. . . . .

(b) . . .

| Commodities | Parts per million |
|---|---|
| . . . . . | |
| Tyfon | 0.05 |

[FR Doc. 87-7742 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

**[PP 6E3325/P413; FRL-3180-7]**

## Pesticide Tolerance for Benomyl

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes a tolerance for the combined residues of the fungicide benomyl and its metabolites in or on the raw agricultural commodity watercress. The proposed regulation to establish a maximum permissible level for residues of benomyl in or on watercress was petitioned by the Interregional Research Project No. 4 (IR-4).

**DATE:** Comments, identified by the document control number [PP 6E3325/P413], should be received on or before May 8, 1987.

**ADDRESS:** By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703–557–1806).

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3325 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of Florida.

This petition requested that the Agency, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodity watercress at 10.0 parts per million (ppm). The petitioner proposed that this use of benomyl on watercress be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 miligrams (mg)/kilogram (kg) of body weight (bw)/day).

2. A 2-year rat feeding study with a NOEL of 2,500 ppm (125 mg/kg bw/day).

3. A three generation rate productive study with no effect on reproductive performance up to 1000 ppm (5.0 mg/kg bw/day).

4. A mouse teratology study (gavage dosing), negative for teratogenic effects at 50 mg/kg bw/day.

5. A rat teratology study with a teratogenic NOEL of 30 mg/kg/day.

6. An oncogenicity studies in mice discussed in more detail in the paragraph immediately following.

Subsequent to these findings, data have been made available indicating that benomyl is oncogenic in mice. A re-review of the presently registered and proposed uses of benomyl in light of the potential oncogenic and teratogenic adverse effects has been completed. Both benomyl and methyl 2-benzimidazole carbamate (MBC), the common metabolite of benomyl, have been shown to be hepatocarcinogens in tests with mice. The Agency concluded that the date available places benomyl and its major metabolite MBC in the "C Category"—limted evidence for oncogenicity in animals. The upper limit to the oncogenic lifetime risk to the general public via worst case dietary exposure to previously published tolerances is estimated to be $7.52 \times 10_5$. The incremental increase in risk from the proposed tolerance for watercress is a negligible increase in risk from $7.52 \times 10_5$ to $7.54 \vee 10_5$. Benomyl has the potential to cause teratogenic effects. The NOEL for these effects is set at 30 mg/kg/day based on results from a gavage study in rats. Margins of Safety (MOS) for teratogenicity from dietary exposure from current uses would amount to 761, the MOS for watercress is 2,308. The MOS for reproductive effects (damage to spermatogonia and seminal vesicles) resulting from existing tolerances (including this proposed tolerance) for benomyl is 1,712.

A comprehensive review of the data available for the chemical was conducted in connection with the rebuttable presumption against registration (RPAR) for benomyl which was published in the **Federal Register** of December 6, 1977 (42 FR 61788). This presumption was based on information indicating that benomyl posed the risks of mutagenicity (point mutation and non-disjunctions) spermatogenic depression and teratogenic effects, acute toxicity to aquatic organisms, and significant population reduction in nontarget organisms. In the **Federal Register** of August 30, 1979 (44 FR 51166), the Agency published a Preliminary Notice of Determination, which concluded that benomyl continued to pose the risks noted above with the exception of point mutations and significant population reductions in nontarget organisms. In the Notice and the accompanying Position Document 2/3, the Agency weighed the risk and benefits of use together, and determined that certain modifications to the terms and conditions of use were necessary to reduce the risk of use to applicators.

The Agency's position concerning the RPAR issues with benomyl was published in the **Federal Register** of October 20, 1982 (47 FR 46747). In the Notice of Determination Concluding the Rebuttable Presumption Against Registration (PD–4) for benomyl the Agency determined that the benefits of benomyl use exceed the risk of use if a dust mask is used when mixing and loading for aerial application. Registrants are required to amend their product labels to require use of a dust mask for persons who mix and load benomyl for aerial application.

The acceptable daily intake (ADI), based on the three-generation rat reproduction study (NOEL of 100 ppm, or 5.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from established tolerances (excluding current action) for a 1.5-kg daily diet is calculated to be 1.9735 mg/day. The current action will increase the TMRC by 0.0045 mg/day (0..22 percent). Published tolerances utilize 65.78 percent of the ADI; the current action will utilize an additional 0.15 percent.

The nature of the residues is adequately understood and an adequate analytical method, fluorometric spectrometry or liquid chromatography employing an ultra-violet detector, is available in Pesticide Analytical Manual, Volume II (PAM–II), for enforcement purposes. Secondary residues are not expected in meat or milk from the proposed use since watercress is not an animal feed item. There are presently no actions pending against the continued registration of this chemical.

Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal

be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3325/P413]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities; Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.294 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 180.294 Benomyl; tolerances for residues.**

. . . . .

(b) Tolerances with regional registration as defined in § 180.1(n), are established for residues of the fungicide benomyl (methyl 1-[butylcarbamoyl]2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities:

| Commodities | Parts per million |
|---|---|
| Watercress | 10.0 |

[FR Doc. 87–7383 Filed 4–7–87; 8:45 am]

BILLING CODE 6560–50–M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Ch. X**

**[Ex Parte No. 347 (Sub-No. 2)]**

### Rate Guidelines—Non-Coal Proceedings

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Request for additional comments to notice of proposed policy.

**SUMMARY:** In the notice served May 21, 1986 (51 FR 18811, May 22, 1986), in this proceeding, the Commission solicited comments on the feasibility of applying the principles of Constrained Market Pricing to captive non-coal and small coal shipments. We continue to believe that Constrained Market Pricing (CMP) is the most sophisticated and accurate method available for determining the reasonableness of captive rates. Much of the Commission's existing maximum reasonableness docket consists of cases involving high volume, unit train operations and, for these cases, CMP is the preferred methodology. Nothing presented in this proceeding suggests any valid reason to diminish reliance on it for such movements. However, many of parties commenting believe that CMP is not suitable for assessing the reasonableness of rates for other captive traffic. Because resolution of the initial cases under CMP has entailed considerable expense in the development and presentation of evidence, many parties believe that the cost of preparing and presenting a case is prohibitive where small amounts of traffic are involved. We agree that, where the cost of preparing and presenting CMP evidence is prohibitive, simplified alternative procedures are needed. Additional comments on specific proposals to create simplified procedures are solicited.

**DATE:** Comments are due by May 26, 1987.

**ADDRESS:** An orginal and 15 copies of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and served on all parties of record.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. A copy of the decision is available from the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, (202) 275–7428.

*Environment and energy.* This action will not significantly affect the quality of the human environment or energy conservation.

*Regulatory Flexibility Certification.* The Commission certified that the proposed rules will not, if promulgated, have a significant impact on a substantial number of small entities, because the proposal is limited to non competitive rail shipments. To the extent it does affect small entities, the proposed rules are intended to reduce their burden in rate reasonableness proceedings.

**List of Subjects**

Railroads.

This notice is used pursuant to 5 U.S.C. 553 and 49 U.S.C. 10101a(6) and 10701a(b)(1).

Decided: March 23, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Chairman Gradison commented with a separate expression. Vice Chairman Lamboley commented with a separate expression. Commissioner Simmons concurred in the issuance of the notice and decision, and commented with a separate expression.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7814 Filed 4–7–87; 8:45 am]

BILLING CODE 7035–01–M

**49 CFR Part 1320**

**[Ex Parte No. MC–1]**

### Regulations for Payment of Rates and Charges; Penalty Charges for Nonpayment

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to amend 49 CFR Part 1320 to revise its credit regulations.

The proposed rules would allow a carrier to impose conditions for extensions of credit to shippers in the form of collection expense charges. They would apply to situations when a carrier seeks to collect payment of overdue freight charges. There are no provisions in the current regulations authorizing carriers to impose tariff

penalties on shippers that do not timely pay their freight bills.

**DATES:** Comments are due on or before May 25, 1987.

**ADDRESS:** The original and, if possible, 10 copies of comments referring to Ex Parte No. MC–1 should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:**

Richard Johnson (202) 275–7939

or

Andrew Lyon (202) 275–7292

**SUPPLEMENTARY INFORMATION:** In recent months concerns have arisen over the absence of any provisions in our credit regulations authorizing carriers to impose tariff penalties on shippers that do not timely pay their freight bills. It appears to us that the regulations should be amended to permit such extra charges for delinquent accounts. Rules authorizing such charges could take several different forms. One alternative could involve a general rule, stating simply that a carrier may establish reasonable collection expense charges, but that those charges must be computable from the carrier's tariff. A second alternative could involve specific rules prescribing a particular approach that carriers must take to address delinquent accounts. One such particular approach, for example, could allow a carrier to require payment of the full nondiscounted rates instead of discounted rates, if the shipper has not paid legitimate, overdue freight charges.

In theory, the rules need not be tied to court actions or particular collection costs. For example, straight-forward liquidated damage provisions imposed by a carrier may be permissible under the Act. (We note that liquidated damages could be the sole permissible method of addressing delinquent accounts, or it could be included as an alternative for those carriers not wishing to use a more detailed process.) For purposes of this notice of proposed rulemaking we here included liquidated damages in the more specific alternative approach as a carrier option.

We seek comments on which approach is preferable. The appendix contains a possible rule of each type. Parties should also comment, if they prefer a more detailed rule, on the appropriate conditions that should be imposed on a carrier's collection procedure.

The rules would liberalize the credit regulations for carriers and would foster prompt payments of freight charges. They would also allow carriers to recover costs incurred in collecting payments of overdue freight charges. We invite comments of interested parties on these matters.

The Commission's decision contains additional information. To obtain a copy of the decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428.

**Environmental and Energy Considerations**

We preliminarily concluded that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Initial Regulatory Flexibility Analysis**

The Commission is proposing to exercise its discretion under 49 U.S.C. 10743(b)(1) and revise the credit regulations to allow carriers to make certain collection expense charges when they try to collect payments of overdue freight charges.

We preliminarily conclude that the proposed liberalization of the credit regulations for carriers will not have a significant, economic impact on a substantial number of small entities. The proposed rules will not require the filing of reports or recordkeeping by small entities. The proposed rules will not duplicate, overlap, or conflict with any existing Federal rules.

**List of Subjects for 49 CFR Part 1320**

Credit, Freight forwarders, Motor carriers, Maritime carriers, Railroads.

**Authority:** 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744, and 5 U.S.C. 553.

Decided: March 25, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result.

**Noreta R. McGee,**

*Secretary.*

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 1320—EXTENSIONS OF CREDIT TO SHIPPERS BY RAIL COMMON CARRIERS, MOTOR COMMON CARRIERS, WATER COMMON CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

1. The authority citation for 49 CFR Part 1320 continues to read as follows:

**Authority:** 5 U.S.C. 553 and 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744.

2. Section 1320.2 is proposed to be amended by redesignating paragraph (g) as paragraph (h), and by adding one of the new alternative paragraphs (g) to read as follows:

**§ 1320.2 Extension of credit to shippers.**

* * * * *

Alternative I:

(g) *Collection expense charges.* Carriers may, by tariff rule, impose conditions for extensions of credit to shippers in the form of collection expense charges for the nonpayment of overdue freight charges. Carriers may establish the collection expense charges in addition to the service charges allowed in paragraph (e) of this section. All such charges must be computable from the tariff, and otherwise be lawful.

* * * * *

Alternative II:

(g)(1) Collection expense charges. Carriers may, by tariff rule, assess charges for reasonable attorneys' fees, court costs, and administrative costs incurred in legitimate collection efforts. The amount of the charge must be specified in the tariff.

(2) These charges may be applied when the shipper does not make payment after the expiration of an authorized credit period, and does not timely notify the carrier that it disputes the amount charged for the shipment.

(3) A tariff rule may also require payment of the full, nondiscounted rates instead of discounted rates, as a reasonable collection expense, if the shipper has not paid legitimate, overdue freight charges.

(4) Alternatively, or in addition, tariffs may provide reasonable liquidated damage charges for bills unpaid after a certain period.

* * * * *

**§ 1320.3 [Amended]**

3. Section 1320.3(c) is proposed to be amended by inserting the term "collection expense charge" after the term "service charge" each time it appears.

[FR Doc. 87–7724 Filed 4–7–87; 8:45 am]

BILLING CODE 7035–01–M

# Notices

Federal Register

Vol. 52, No. 67

Wednesday, April 8, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

April 3, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Reinstatement**

• Food and Nutrition Service
Report of the Care Food Program
FNS–44
Monthly, Quarterly, Semi-annually
State of local governments; 1,584 responses; 4,752 hours; not applicable under 3504(h)
Alan Rich (703) 756–3100

**Revision**

Agricultural Market Service
Oranges, Grapefruit, Tangerines and Tangelos grown in Florida
Marketing Order 905
Weekly; Annually; Once every 6 years
Farms; Businesses or other for-profit; Small businesses or organizations; 1,418 responses; 406 hours; not applicable under 3504(h)
Gary D. Rasmussen (202) 475–3918

**Larry K. Roberson,**

*Acting Departmental Clearance Officer.*

[FR Doc. 87–7783 Filed 4–7–87; 8:45 am]

BILLING CODE 3410–01–M

## ARMS CONTROL AND DISARMAMENT AGENCY

### General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control Disarmament.

Date: April 23, 24, 1987.

Time: 9:15 A.M.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact Person: Barry Daniel, Executive Director, General Advisory Committee U.S. Arms Control and Disarmament Agency, Room 5927, Washington, DC 20451 (202) 647–5177.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

*April 23, 1987*

AM Receive briefing on and discuss NATO/WP forces

PM Receive briefing on and discuss Soviet INF forces and INF negotiations

*April 24, 1987*

AM Receive briefing on Verification Collection Capabilities
Executive Discussions.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated April 1, 1987, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.

**William J. Montgomery,**

*Committee Management Officer.*

[FR Doc. 87–7674 Filed 4–7–87; 8:45 am]

BILLING CODE 6820–32–M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Prelist Operation, 1990 Census
Form Number: Agency—D–101A, D–169, D–31; OMB—NA
Type of Request: New collection
Burden: 28,715,000 respondents; 717,875 reporting hours
Needs and Uses: This is an address list compilation and update operation to be used in the 1990 decennial census. This prelist operation will require respondents to provide information about their mailing address, the physical location of the housing unit and the name of the householder.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377—3271, Department of Commerce, Room

BEST COPY AVAILABLE

H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dates: March 16, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87-7701 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-07-M

## Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Auxiliary Establishment Report
Form Number: Agency—ES-9200; OMB—NA
Type of Request: New collection
Burden: 40,000 respondents; 20,000 reporting hours
Needs and Uses: This survey is part of the 1987 Economic Censuses. Form ES-9200 will be used to collect census data items on auxiliary units of multiestablishment enterprises within the scope of the economic censuses. These auxiliary establishments are primarily engaged in general business administration; management; research, development and testing; warehousing; and other supporting services.
Affected Public: Businesses or other for-profit institutions
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Agency: Bureau of the Census
Title: 1987/1988 Census of Horticultural Specialties Pretests
Form Number: Agency—BC86-A19.01, BC86-A19.02, BC86-A19.03; OMB—NA
Type of Request: New collection
Burden: 2,500 respondents; 1,250 reporting hours
Needs and Uses: These pretests will provide a means of measuring the effectiveness of the report form consent to obtain the requested information, and will allow for testing the various form designs of the report forms.
Affected Public: Farms
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: March 16, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87-7702 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-07-M

## Bureau of the Census

### Census Advisory Committee (CAC); Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on April 23 and 24, 1987, at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

Each of these committees is composed of 12 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communications between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The committees will draw on the knowledge and insight of their members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the April 23 combined meeting that will begin at 8:45 a.m. and end at 2:00 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) 1990 planning update; (3) 1990 census budget; (4) race and Hispanic items; and (5) publicity and outreach activities, including (a) language assistance, and (b) community action guide.

The agendas for the four committees in their separate and jointly held meetings that will begin at 2:00 p.m. and end at 5:15 p.m. on April 23 are:

*The CAC on the American Indian and Alaska Native Populations for the 1990 Census:* (1) Bureau of Indian Affairs identification of tribal lands, (2) Alaska enumeration plans, (3) language assistance, (4) community action guide, (5) publicity and outreach activities, and (6) consideration of Census Bureau responses to recommendations made at the last meeting.

*The CAC on the Asian and Pacific Islander Populations for the 1990 Census:* (1) publicity and outreach activities, (2) language assistance, (3) community action guide, and (4) consideration of Census Bureau responses to recommendations made at the last meeting.

*The CAC on the Black Population for the 1990 Census:* (1) Publicity and outreach activities, (2) language assistance, (3) community action guide, and (4) consideration of Census Bureau responses to recommendations made at the last meeting.

*The CAC on the Hispanic Population for the 1990 Census:* (1) Publicity and outreach activities, (2) language assistance, (3) community action guide, and (4) consideration of Census Bureau responses to recommendations made at the last meeting.

The agenda for the April 24 combined meeting that will begin at 8:45 a.m. and end at 10:15 a.m. will be 1990 census community awareness plans.

In their separate meetings that will begin at 10:30 a.m. and end at 12:00 noon the American Indian and Alaska Native Populations Committee for the 1990 census will discuss (1) 1990 census community awareness plans, and (2) the American Indian Office. The Asian and Pacific Islanders, Black, and Hispanic Committees will discuss 1990 Census community awareness plans. In separate meetings from 1:15 p.m. to 2:45 p.m. the four Committees will develop and discuss recommendations to the Census Bureau.

The agenda for the combined meeting that will begin at 3 p.m. and adjourn at 4 p.m. is: (1) comments by outside observers, (2) presentation of

recommendations, and (3) plans for the next meeting.

All meetings are open to the public, and a brief period is set aside on April 24 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact Mr. Russell L. Valentine, Assistant Chief for Outreach and Program Information, Decennial Planning Division, Bureau of the Census, Room 3779, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone (301) 763–5169.

Dated: April 2, 1987.

**John G. Keane,**

*Director, Bureau of the Census.*

[FR Doc. 87–17753 Filed 4–7–87; 8:45 am]

BILLING CODE 3510–07–M

## International Trade Administration

[A–475–601]

## Amendment to Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From Italy and Amendment to Antidumping Duty Order

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** As a result of correction of a clerical error, the Department of Commerce (the Department) is amending its final determination in this investigation and its antidumping duty order, and is directing the U.S. Customs Service to adjust the cash deposit as follows:

| Manufacturer/producer/exporter | From (percent) | To (percent) |
|---|---|---|
| La Metalli Industriale, SpA | 12.08 | 9.74 |
| All others | 12.08 | 9.74 |

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Wilson (202–377–5288), Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On January 9, 1987, we published a final determination of sales at less than fair value on brass sheet and strip from Italy (52 FR 816). On February 19, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the United States International Trade Commission (ITC) notified the Department that imports of this merchandise are materially injuring a United States industry. After being notified of these findings, the Department published an antidumping duty order on March 6, 1987 (52 FR 6997).

The detection of a clerical error by counsel for respondent has caused us to review our calculations in this investigation. We have discovered and have corrected the clerical error found in the calculations. Consequently, we are amending our final determination by changing the weighted-average margins.

We are also amending our antidumping duty order to reflect these weighted-average margins. This amendment is effective as of the date of publication of this notice. The new estimated weighted-average antidumping duty margins are as follows.

| Manufacturer/producer/exporter | Weighted-Average Margin (percent) |
|---|---|
| La Metalli Industriale, SpA | 9.74 |
| All others | 9.74 |

**Joseph A. Spetrini,**

*Acting Deputy Assistant Secretary for Import Administration.*

April 3, 1987.

[FR Doc. 87–7804 Filed 4–7–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–037]

## Drycleaning Machinery From West Germany; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On January 20, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from West Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period November 1, 1982 through October 31, 1984.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and correction of clerical errors, we have changed the margins from those presented in the preliminary results.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5289/5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 20, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 2124) the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from West Germany (37 FR 23715, November 2, 1972). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of the Review

Imports covered by the review are shipments of drycleaning machinery, currently classifiable under item 670.4100 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of this merchandise to the United States and the period November 1, 1982 through October 31, 1984.

### Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from Boewe Reinigungstechnik GmbH, the respondent.

*Comment 1:* Boewe contends that through apparent clerical error, the foreign market value of certain machines was calculated using list price rather than actual prices during the review period November 1, 1982 through October 31, 1983.

*Department's position:* We agree and have corrected the error.

*Comment 2:* Boewe contends that we improperly compared a U.S. sale of a certain model that had no filter to the foreign market value based on constructed value of the same model machine with a filter. In its comment Boewe provided constructed value figures for that model without a filter and argues that we should use those figures for comparison purposes.

*Department's position:* We agree and have changed our calculations accordingly.

*Comment 3:* Boewe contends that the Department improperly added, rather than subtracted, the packing adjustment in its calculation of foreign market value. Furthermore, the full amount of export packing should be substracted from the foreign market value because U.S. prices were reported without packing included in the price.

*Department's position:* We disagree. The cost of packing for export to the United States is included in both the U.S. price and the foreign market value when calculating dumping margins. Boewe's home market prices included home market packing. We, therefore, subtracted home market packing from the foreign market value and added U.S. export packing in accordance with section 773(a) of the Act.

The U.S. selling prices Boewe reported included export packing. In addition Permac reported additional packing performed in the United States. We further adjusted the foreign market value to reflect this additional packing.

*Comment 4:* Boewe contends that for one U.S. sale in the review period November 1, 1982 through October 31, 1983 we incorrectly calculated the foreign market value of a particular partially completed drycleaning machine. The machine in question was sold without a still or a condensor, in effect rendering it a half machine. Boewe requests that we make appropriate adjustments in calculating the foreign market value for this machine.

*Department's position:* We agree and have changed our calculations accordingly.

*Comment 5:* Boewe contends, as in previous reviews, that the Department should make adjustments to the foreign market value for differences in the levels of trade involved in comparisons of home market and U.S. sales. In its home market Boewe sold directly to end-users, whereas in the United States its subsidiary, Permac, sold through distributors.

*Department's position:* Our position remains unchanged from the previous reviews. In terms of function in the marketplace, Permac's distributor customers and Boewe's agents in their home market are at a comparable level of trade. The Department has compared Permac's sales to distributors with Boewe's sales in West Germany through independent agents to end-users, in accordance with section 353.19 of the Commerce Regulations. When there were no contemporaneous home market sales through agents, we compared sales to distributors in the United States with direct sales to end-users in the home market, with no adjustment for differences in level of trade because the differences were not adequately quantified.

*Comment 6:* Boewe continues to maintain that trade-in losses should be treated as discounts on its home market sales of new machinery or, in the alternative, that such losses be treated as direct selling expenses and allowed as an adjustment to foreign market value on that basis.

*Department's position:* Our position remains unchanged from the previous reviews. We do not consider profits and losses on the sales of any machines to be selling expenses, direct or indirect. Nor do we consider the amount deducted from the price of a new machine for a trade-in to be a discount. It is still our policy that the amount of that credit is a measure to Boewe of the value of the used machine. Therefore, we have not made any adjustment.

*Comment 7:* Boewe continues to maintain that warranty expenses incurred by Boewe, even if outside the narrow warranty period, are proper adjustments and requests that its claimed warranty expenses be allowed, in full, as direct selling expenses.

*Department's position:* The claimed warranty expenses were actually repair work performed on the machines after the guarantee periods had expired. As neither the customer nor Boewe anticipated or bargained for the work at the time of the sale, they are not true warranty expenses but rather goodwill. We do not allow such expenses as circumstance-of-sale adjustments.

*Comment 8:* Boewe continues to maintain that the amounts reported for general and administrative expenses, research and development, advertising and other items are properly included in the calculation of indirect selling expenses in the home market for use as offsets, where appropriate. Boewe also maintains that sales related general and administrative expenses, management expenses, and traffic department expenses are directly related selling expenses and should be treated as such.

*Department's position:* As in the last reviews we disallowed all of these claims as selling expenses because: (1) They were not properly allocated to home market sales; or (2) Boewe failed to specifically relate them to the sales function.

### Final Results of Review

As a result of the comments received, we have revised our preliminary results for Boewe and we determine that the following weighted-average margins exist for the period November 1, 1982 through October 31, 1984:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Boewe Reinigungstechnik GmbH | 11/1/82-10/31/83 | 5.55 |
| | 11/1/83-10/31/84 | 0.84 |

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

The above margins do not change the current rates for cash deposits of antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 1, 1987.

**Joseph A. Spetrini,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-7813 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[C-357-001]

## Leather Wearing Apparel From Argentina; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Argentina. The review covers the period July 1, 1983 through December 31, 1984 and three programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be zero for the period of review. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Chadwick or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 29, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 34479) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Argentina (48 FR 11480; March 18, 1983). On September 17, 1985, an interested party, the Amalgamated Clothing and Textile Workers Union, AFL/CIO, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on May 30, 1986 (51 FR 19580). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

Imports covered by the review are shipments of Argentine leather wearing apparel currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983 through December 31, 1984 and three programs: (1) The reembolso, a cash rebate of taxes; (2) pre-export financing; and (3) incentives for exports from southern ports.

**Analysis of Programs**

*(1) Reembolso*

The reembolso is a tax rebate paid upon export. It is calculated as a percentage of the f.o.b. invoice price. The Tariff Act and the Commerce Regulations allow the rebate of the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex I.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (*see* Annex I.2 of part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes, we consider the difference to be an overrebate of indirect taxes and, therefore, a bounty or grant.

Based on our analysis and verification of the questionnaire response submitted by the Government of Argentina, we find that indirect taxes on physically incorporated inputs and final stage indirect taxes on leather wearing apparel amount to 6.87 percent *ad valorem* for the period of July 1, 1983 through December 31, 1983 and 6.67 percent *ad valorem* for the period January 1, 1984 through December 31, 1984. Until October 1984, the reembolso rate for leather wearing apparel was 5.00 percent (Resolution ME 8; July 5, 1982). On October 29, 1984 the Argentine government reduced the rate to zero (Resolution ME 1090). We preliminarily find no overrebate of indirect taxes for the period of review.

*(2) Pre-export Financing*

The Central Bank makes pre-export financing available to exporters through Circular OPRAC 1–9, chapter 1, section 2.1. Communication C–504, dated November 23, 1983, excluded exports of leather wearing apparel to the United States from this program. We verified that the exporters did not use this program. Therefore, we preliminarily find no benefit from this program during the review period.

*(3) Incentives for Exports from Southern Ports*

Law 23.018, dated December 7, 1983, provides a payment to promote exports from southern ports of Argentina. We verified that no exporters of leather wearing apparel used this program. Therefore, we preliminarily find no benefit from this program during the review period.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the total bounty or grant to be zero for the period of review.

The Department intends to instruct the Customs Service to assess no countervailing duties on any shipments of this merchandise exported on or after July 1, 1983 and on or before December 31, 1984.

The Department intends to instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of leather wearing apparel from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: April 2, 1987.

**Joseph Spetrini,**

*Acting Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87–7809 Filed 4–7–87; 8:45 am]

BILLING CODE 3510–DS–M

---

[A–437–601]

## Antidumping Duty Investigation of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic; Preliminary Negative Determination of Critical Circumstances

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that "critical circumstances" do not exist with respect to imports of tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from the Hungarian People's Republic (Hungary). We have notified the U.S. International Trade Commission (ITC) of our determination

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkman (202–377–3965) or Mary Jenkins (202–377–1756), Office of Investigations, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230.

**Case History**

On February 6, 1987, we published a preliminary determination of sales at less than fair value with respect to the subject merchandise (52 FR 3836). On February 25, 1987, petitioner alleged that "critical circumstances" exist with respect to imports of tapered roller bearings from Hungary.

**Critical Circumstances**

In determining whether critical circumstances exist, section 733(e)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(e)) requires that we examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class of kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(A), we reviewed past antidumping findings of the Department of Treasury as well as past Department of Commerce antidumping orders to determine whether there is a history of dumping of tapered roller bearings from Hungary in the United States or elsewhere. There have been no past United States antidumping determinations on tapered roller bearings from Hungary. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no history of dumping of this product from Hungary. We then consider whether the persons by whom, or for whose account, this product was imported knew or should have known that it is was being sold at less than its fair value. We have no evidence that the importers had such knowledge. Nor is the weighted-average margin found in the preliminary determination (3.66 percent) sufficiently large in and of itself for us to assume that the importers should have known that the product was being sold at less than fair value. Accordingly, having failed the first prong of the test there is no need to consider whether the second prong, massive imports, under section 733(e)(1)(B) of the Act applies.

For the reasons described above, we have preliminarily determined that "critical circumstances" do not exist with respect to tapered roller bearings from Hungary.

### Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof (tapered roller bearings), currently classified in the *Tariff Schedules of the United States* (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classifed in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified in TSUS item 692.32 or elsewhere in the TUSU.

### ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

March 27, 1987.

[FR Doc. 87-7806 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-475-603]

## Antidumping Duty Investigation of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy; Preliminary Affirmative Determination of Critical Circumstances

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that "critical circumstances" exist with respect to imports of tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Italy. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend retroactively liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination of "critical circumstances" by June 22, 1987.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles Wilson (202-377-5288) or Karen S. DiBenedetto (202-377-1776), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

On February 6, 1987, we published a preliminary determination of sales at less than fair value with respect to the subject merchandise (52 FR 3835).

On February 26, 1987, petitioner alleged that "critical circumstances" exist with respect to tapered roller bearings from Italy.

### Critical Circumstances

In determining whether critical circumstances exist, section 733(e)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(e)) requires that we examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining whether the importers knew, or should have known, the exporter was selling the merchandise at less than fair value, we normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the preliminary margin in this case exceeds this level, we find that knowledge of sales at less than fair value can be imputed to the importers.

In determining whether imports have been massive over a relatively short period, we normally consider the following factors: (1) The volume and value of imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Import data on the subject merchandise falls within five different TSUS categories. Three of these TSUSA categories relate to pieces and two categories relate to pounds. Using volume figures, we found massive imports with respect to the TSUSA categories in which imports of the subject merchandise were measured in pounds. With respect to the remaining three TSUSA categories, the data was less conclusive, and merely showed fluctuations in the volume of imports. By combining the value of imports in all five categories, we find there have been significant increases in total imports of the subject merchandise after the filing of the petition. Thus, based on currently available information, we preliminarily determine that imports of tapered roller bearings have been massive. We will be requesting further, more specific information from the respondent regarding imports of the subject merchandise for the final determination on critical circumstances.

For the reasons described above, we have preliminarily determined that "critical circumstances" exist with respect to tapered roller bearings from Italy.

### Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof (tapered roller bearings), currently classified in the

*Tariff Schedules of the United States* (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS.

### Suspension of Liquidation

In accordance with section 733(e) of the Act, we have directed the U.S. Customs Service to suspend retroactively liquidation of all entries of tapered roller bearings, from Italy that are entered, or withdrawn from warehouse, for consumption, on or after November 7, 1986, the date which is 90 days before the date of which suspension of liquidation was first ordered, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 54.18 percent of the ex-factory value. The suspension of liquidation will remain in effect until further notice.

### ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Joseph A. Spetrini,**

*Acting Deputy Assistant Secretary for Import Administration.*

March 30, 1987.

[FR Doc. 87-7807 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-485-602]

## Antidumping Duty Investigation of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania; Preliminary Affirmative Determination of Critical Circumstances

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that "critical circumstances" exist with respect to imports of tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from the Socialist Republic of Romania (Romania). We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to retroactively suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION:** Contact John Brinkmann (202-377-3965) or Mary Jenkins (202-377-1756), Office of Investigation, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

### Case History

On February 6, 1987 we published a preliminary determination of sales at less than fair value with respect to the subject merchandise (52 FR 3838). The estimated dumping margin was 8.87 percent. On February 25, 1987, petitioner alleged that "critical circumstances" exist with respect to imports of tapered roller bearings from Romania.

### Critical Circumstances

In determining whether critical circumstances exist, section 733(e)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(e)) requires that we examine whether:

(a)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the ivnestigation over a relatively short period.

Pursuant to section 733(e)(1)(A), we reviewed past antidumping findings of the Department of Treasury as well as past Department of Commerce antidumping orders to determine whether there is a history of dumping of tapered roller bearings from Romania in the United States. There have been no past United States antidumping determinations on tapered roller bearings from Romania. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found that the Commission of European Communities (EC) made a preliminary determination of dumping and injury. Subsequently, on June 4, 1981, the EC and Romania entered an undertaking with respect to roller bearings. On April 15, 1986, this undertaking was terminated. (*Offical Journal of the European Communities*, No. L 102-31, April 18, 1986.) We have therefore preliminarily determined, based on this EC undertaking, that there is a history of dumping of the class of kind of merchandise which is the subject of this investigation. Accordingly, we do not have to consider whether the persons by whom, of for whose account, this product was imported knew or should have known that it was being sold at less than fair value under section 733(e)(A)(ii) of the Act.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place over a short period of time. (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of the domestic consumption accounted for by the imports. We found that imports have been massive since the filing of the petition, even though total volume and value have decreased since 1985. Import penetration was not available for the second half of 1986.

For the reasons described above, we have preliminarily determined that "critical circumstances" exist with respect to tapered roller bearings from Romania.

### Scope of Investigation

The products covered by this investigation are tapered roller bearings, currently classified in the *Tariff Schedules of the United States* (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS.

### Suspension of Liquidation

In accordance with section 733(e) of the Act, we have directed the U.S. Customs Service to retroactively suspend liquidation of all entries of tapered roller bearings from Romania that are entered, or withdrawn from warehouse, for consumption, on or after November 7, 1986, the date which is 90 days before the date on which suspension of liquidation was first ordered, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin amount by which the foreign market

value of the merchandise subject to this investigation exceeded the United States price, which was 8.87 percent of the ex-factory value. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

March 27, 1987.

[FR Doc. 87-7808 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

## Short Supply Review on Certain Steel Billets; Request for Comments

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products with respect to certain steel billets for use in the manufacture of wire rod.

**DATE:** Comments must be submitted no later than April 20, 1987.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099, (202) 377-0159.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a short supply request for low carbon steel billets (AISI Grade 1008 or 1010). The requested billets are of a square cross section, measuring 4¾ inches on each side, and in lengths ranging between 25 and 30 feet.

Any party interested commenting on this request should send written comments as soon as possible, and no later than April 20, 1987. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

**Joseph A. Spetrini,**

*Acting Deputy Assistant Secretary for Import Administration.*

April 2, 1987.

[FR Doc. 87-7810 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

[P27C]

## Marine Mammals; Application for Permit; Walt Disney Company

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: Walt Disney Company
   b. Address: P.O. Box 10,000, Lake Buena Vista, Florida, 32830-1000
2. Type of Permit: Public Display
3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*), 8
4. Type of Take: Capture and maintain
5. Location of Activity: West Coast of Florida
6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC 20235;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 1, 1987.

**Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87-7737 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-22-M

## Coastal Zone Management; Federal Consistency Appeal by Korea Drilling Company Ltd. From an Objection by the California Coastal Commission

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of public comment period.

On December 15, 1986, Korea Drilling Company Ltd. ("Appellant") filed an appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A). The appeal is taken from an objection by the California Coastal Commission to the activities described

in Appellant's application for a permit under section 402 of the Clean Water Act for the discharge of drilling muds and cuttings from its Outer Continential Shelf oil and gas drilling vessel, the DOO SUNG. The Commission objected to the EPA permit because of issues relating to foreign competition and drilling vessel safety.

Appellant requested and was granted a 60-day extension to file supporting information. This information has now been submitted and public comments are invited on the issues raised by the appeal, as set out in the regulations at 15 CFR 930.121.

Comments are due within 30 days of the publication of this notice. Comments should be sent to: Daniel W. McGovern, General Counsel, National Oceanic and Atmospheric Administration, Washington, DC 20235. Copies of the comments also should be sent to the parties: Shelby H. Moore, Jr., Esq., 908 Camino Dos Rios, Thousand Oaks, CA 91360 and Michael Wornum, California Coastal Commission, 631 Howard Street, Fourth Floor, San Francisco, CA 94105.

**FOR ADDITIONAL INFORMATION CONTACT:** S. Campbell, Office of General Counsel, National Oceanic and Atmospheric Administration, (202) 673–5200.

(Domestic Assistance Catalog No. 11.419 Coastal Zone Management Administration)

Dated: April 3, 1987.

**Daniel W. McGovern,**

*General Counsel.*

[FR Doc. 87–7767 Filed 4–7–87; 8:45 am]

BILLING CODE 3510–08–M

---

[P329]

## Marine Mammals; Modification No. 1 to Permit No. 455; Brighton Aquarium and Dolphinarium

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 455 issued to Brighton Aquarium and Dolphinarium, Marine Parade and Madeira Drive, Brighton BN2 1TE Sussex, United Kingdom, on March 16, 1984, (50 FR 32252), is modified as follows:

Section B.4 is replaced by:

4. This Permit is valid with respect to the taking authorized herein until December 31, 1987. The terms and conditions of this Permit (sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective April 8, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 1, 1987.

**Nancy M. Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87–7721 Filed 4–7–87; 8:45 am]

BILLING CODE 3510–22–M

---

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Romania

April 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 9, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

On December 31, 1986, a notice was published in the **Federal Register** (51 FR 47280), announcing import restraint limits for wool and man-made fiber textile products, produced or manufactured in Romania and exported to the United States during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania establishes a minimum consultation level for man-made fiber textile products in Category 641, produced or manufactured in Romania and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

The United States Government has decided to control imports of Category 641 at the agreed level. Accordingly, in the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry, or withdrawal from warehouse, for consumption in the United States of man-made fiber textile products in Category 641, in excess of designated level. Category 641 is currently controlled under Group III and shall remain part of the group.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This action and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provision.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 3, 1987.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption for certain wool and man-made fiber textile products, produced or manufactured in the Socialist Republic of Romania.

Effective on April 9, 1987, the directive of December 23, 1986 is hereby amended to include an individual restraint limit for man-made fiber textile products in Category 641, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987 at a level of 48,276

dozen.[1] Category 641 is currently controlled under Group III and shall remain part of the group.

In carrying out this directive, entries of textile products in Category 641, produced or manufactured in the Socialist Republic of Romania, which have been exported to the United States on and after January 1, 1986, shall, to the extent of any unfilled balances, be charged against the level of restraint established for that period. In the event the level of restraint established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(l).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7798 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DR-M

## New Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

April 2, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 8, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

During consultations held January 26-28, 1987, the Governments of the United States and Sri Lanka agreed to amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, to establish specific limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 333/633, 345/845, 350, 442, 636/836, 638/639/838 and 642/842.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry or withdrawal from warehouse for consumption, in the United States of textile products, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Categories 333/633, 345/845, 350 and 442, on June 1, 1986; in the case of Category 638/639/838, on December 1, 1986; and in the case of Categories 636/836 and 642/842 on January 1, 1987; and extend through May 31, 1987, in excess of the designated limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 2, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 8, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the designated periods, in excess of the following levels of restraint.[1]

| Category | Re-straint limit (doz.) | Restraint period |
|---|---|---|
| 333/633 | 29,000 | June 1, 1986-May 31, 1987. |
| 345/845 | 90,000 | June 1, 1986-May 31, 1987. |
| 350 | 45,000 | June 1, 1986-May 31, 1987. |
| 442 | 12,000 | June 1, 1986-May 31, 1987. |
| 636/836 | 90,000 | Jan. 1, 1987-May 31, 1987. |
| 638/639/838. | 400,000 | Dec. 1, 1986-May 31, 1987. |
| 642/842 | 75,000 | Jan. 1, 1987-May 31, 1987. |

Textile products in Categories 333/633, 345/845, 350 and 442, which have been exported to the United States prior to June 1, 1986; Category 638/639/838 prior to December 1, 1986; and Categories 636/836 and 642/842 prior to January 1, 1987 shall not be subject to this directive.

Textile products in Categories 33/633, 345/845, 350, 442, 636/836, 642/842 and 638/639/838 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, which provide, in part, that (1) any specific limit and sublimit may be exceeded by designated percentages of the square yards equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent decrease in one or more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any of the adjustments referred to above will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7799 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

[1] The limits have not been adjusted to account for imports exported after May 31, 1986 (Categories 333/633, 345/845, 350 and 442), November 30, 1986 (Category 638/639/838) and December 31, 1986 (Categories 636/836 and 642/842).

## Increasing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

April 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 9, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

### Background

A CITA directive published in the **Federal Register** on August 18, 1986 (51 FR 29513) established import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987.

During consultations held January 8–10, 1987, under Article 3 of the Arrangement Regarding International Trade in Textiles, the Governments of the United States and Turkey agreed to increase the designated consultation levels for Categories 300/301 and 604–O (all TSUSA numbers except 310.5049), produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 300/301 and 604–O during the designated period in excess of the new agreed limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreement.*

April 3, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on August 12, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987.

Effective on April 9, 1987, the directive of August 12, 1986 is hereby further amended to include new limits [1] for Categories 300/301 and 604–O.[2]

| Category | 12-mo restraint limit |
|---|---|
| 300/301 | 6,400,000 pounds |
| 604–O | 935,000 pounds |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–7800 Filed 4–7–87; 8:45 am]

BILLING CODE 3510–DR–M

## Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

April 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 9, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For informaiton on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

### Background

On October 6, 1986 a notice was published in the **Federal Register** (51 FR 40351) announcing that the Government of the United States had requested consultations with Turkey concerning exports to the United States of cotton dressing gowns and robes in Category 350 and man-made fiber handknitting yarn in Category 605–H (only TSUSA numbers 310.9310 and 310.9320).

During consultations held January 8–10, 1987, under Article 3 of the Arrangement Regarding International Trade in Textiles, the Governments of the United States and Trukey agreed to establish specific limits for cotton and man-made fiber textile products in Categoreis 350 and 605-H, produced or manufactured in Turkey and exported during the eight-month period which began on November 1, 1986 and extends through June 30, 1987.

The United States Government has decided to control imports in these categories at the agreed limits. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 350 and 605-H during the designated period in excess of the agreed limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the

[1] The limits have not been adjusted to account for any imports exported after June 30, 1985.

[2] In Category 604, all TSUSA numbers except 310.5049.

Tariff Schedules of the United States Annotated (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 3, 1987.

**Committee for the Implementation of Textile Agreements.**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textile done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 9, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categoris 350 and 605-H [1], produced or manufactured in Turkey and exported during the eight-month period which began on November 1, 1986 and extends through June 30, 1987, in excess of the following limits.

| Category | 8-mo. restraint limit[1] |
|---|---|
| 350 | 62,250 dozen |
| 605-H | 735,000 pounds |

[1] The limits have not been adjusted to account for any imports exported after October 31, 1986.

Textile products in Categories 350 and 605-H which have been exported to the United States prior to November 1, 1986 shall not be subject to this directive.

Textile products in Categories 350 and 605-H which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The following amounts should be charged to the restraint limits established for the period which began on November 1, 1986 and extends through June 30, 1987. These charges are for goods imported during the period November 1, 1986 through January 31, 1987.

| Category | Amount to be charged |
|---|---|
| 350 | 14,895 dozen |
| 605-H | 197,853 pounds |

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 16, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7801 Filed 4-7-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] Category 605, only TSUSA numbers 310.9310 and 310.9320

## Amending the Export Visa Arrangement and Exempt Certification for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Products Produced or Manufactured in the Republic of the Philippines

April 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 13, 1987. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

### Background

Under the terms of the Bilateral Agreement for Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Products of March 4, 1987, the Government of the United States and the Republic of the Philippines have exchanged letters amending the export visa arrangement and exempt certification system which was published in the Federal Register (44 FR 68005) on November 28, 1979.

Effective on April 13, 1987, commercial shipments of cotton, wool and man-made fiber textile and textile products and silk blend and other vegetable fiber apparel products in categories 300-369, 400-469, 600-670 and 831-859 exported on and after April 13, 1987 must be accompanied by a valid visa that includes the correct category and quantity or exempt certification as described in the enclosed letter to the Commissioner of Customs. Merchandise imported for the personal use of the importer and not for resale, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa or exempt certification for entry and shall not be charged to the restraint limits.

The visa and exempt certification stamps remain unchanged.

The Government of the Republic of the Philippines has authorized the following officials to issue visas and exempt certifications:

Ana Maria V. Coruna, Deputy Executive Director

Aida B. Cabardo, Consultant

Eden S. Malapad, Assistant Chief, Industry Development Specialist

Lorna A. Del Rosario, Assistant Chief, Industry Development Specialist

Interested persons are advised to take all necessary steps to ensure that cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel products, produced or manufactured in the Philippines and exported on and after April 13, 1987, which are to be entered or withdrawn from warehouse for consumption into the United States will meet the requirements set forth in this notice.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 3, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supercedes the directive of November 21, 1979 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for the consumption of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Philippines in designated categories for which the Government of the Republic of the Philippines had not issued an appropriate export visa or exempt certification.

Under the Arrangement Regarding International Trade in Textiles one at Geneva on December 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of March 4, 1987 between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on April 13, 1987

and until further notice, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel, in Categories 300–369, 400–469, 600–670, and 831–859, *except* Categories 355, 356, 655, 656, 455, 371 and 671, produced or manufactured in the Philippines and exported on and after April 13, 1987, which are not visaed or certified for exemption in accordance with the procedures outlined below.

The suffix designation of T and NT adjacent to the category number will no longer be required for certain categories exported from the Philippines. Cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel which have been exported before April 13, 1987 and visaed or certified in accordance with previously established requirements shall not be denied entry.

A valid visa or exempt certification shall be presented to the U.S. Customs Service before entry, or withdrawal from warehouse for consumption, into the Customs territory of the United States (the 50 States, the District of Columbia and Puerto Rico).

Customs shall not deny entry for shipments covering merchandise in Categories 800–810 and 863–899, which do not require a visa. However, should additional categories, merged categories or part categories be added to or changed in the Bilateral Agreement or become subject to import quotas the entire category or categories shall be automatically included in the coverage of the Visa Arrangement when the first action takes place. Merchandise exported on or after the date the category is added to or changed in the Agreement or becomes subject to import quotas shall require a visa subject to a grace period to establish the required administrative procedures. Notification will be provided when additions or changes are made.

Cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel exported from the Philippines on and after April 13, 1987 shall be visaed by the stamping of the original circular visa in blue ink on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number and date of issuance. The visa number shall be nine digits and letters, beginning with one numeric digit for the last digit of the year of export, the two character alpha country code specified by the International Organization for Standardization (ISO), and a six digit numeric serial number identifying the shipment; e.g., 7PH123456.

2. The signature of the issuing official.

3. The correct category(s), part category(s) or merged category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tarriff Schedules of the United States Annotated (TSUSA). (e.g., "Cat. 340–510 DZ."). Annex B lists all the part-category and merged category visa required for entry. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. Customs is directed to deny entry if a shipment arrives with a wrong category visa. (e.g., quota Category 333/334 may be visaed as "Cat. 333/334" or if shipment consists solely Cat. 333 merchandise, the shipment may be visaed as "Cat. 333" but *not* as "Cat. 33").

U.S. Customs shall not accept a visa and entry will not be permitted if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

If the visa is not acceptable to U.S. Customs, a new visa must be obtained from the Philippine Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Philippine Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service shall not return the original document after entry or attempted entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or visa waiver.

If import quotas are in force, U.S. Customs shall charge only the actual quantity in the shipment and the correct category will be charged to the restraint level. If a shipment from the Philippines has been allowed entryinto the commerce of the United States with either an incorrect visa or no visa redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Certain cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel will be exempt from levels of restraint and visa requirements if they are certified, prior to the shipment leaving the Philippines, by the placing of the original rectangular-shaped stamped marking in blue ink on the front or the original commercial invoice. The original copy of the invoice with the original exempt certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or exempt certification may not be used.

Exempt products include: (1) Handwoven and handloomed fabrics of the cottage industry; (2) Handmade articles and garments of handwoven and handloomed fabric: All items must be cut, sewn, or otherwise fabricated by hand in order to quality for this exemption. They may not include machine stitching. (3) Traditional folklore handicraft products: Only products which fall within the definition of "Philippine Items" in Annex A attached, qualify for this exemption provided they are cut, sewn, or otherwise fabricated by hand. They may not include machine stitching.

Each exempt certification stamp will include the following information: (1) Date of issuance, (2) signature or issuing official, and (3) the basis for the exemption shall be noted as, for example, handwoven fabric or handloomed fabric or handmade textile product or the name of the particular traditional folklore handicraft product (Philippine Items) as listed in Annex A attached to this directive.

Should a shipment be exported from the Philippines without an exempt certification being issued prior to the date of exportation, or the certification is incorrectly certified (i.e., the date of issuance, signature or basis for the exemption is missing, incorrect or illegible, or have been crossed out or altered in any way), then the exempt certification will not be accepted and entry shall not be permitted.

If the exempt certification is not acceptable then a visa or a visa waiver nust be obtained prior to release of any portion of the shipment by U.S. Customs Service. An exempt certification may not be issued after exportation of the shipment from the Philippines. If quotas are in force, the shipment will be charged to the appropriate quota level.

An invoice may cover visaed merchandise or exempt certification merhandise, but not both.

U.S. Customs shall not require a visa or exempt certification for entry and shall not charge to quota merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued $250 or less.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa or a valid exempt certification in accordance with the foregoing provisions, shall be denied entry by U.S. Customs Service unless the Government of the Philippines authorizes the entry and any charges to the Agreement levels through the visa waiver process.

Facsimiles of the visa and exempt certification stamps are enclosed, as are the names of the officials authorized by the Government of the Republic of the Philippines to issue visas and certifications.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27088) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of

cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

Enclosures: Annex A & B, Facsimiles of Visa an Certification Stamps,[1] List of Authorizing Officials.

**Annex A—Philippine Items**

*Philippine Traditional Folklore Handicraft Textile Products*

1. Philippine items are traditional Philippine products, cut, sewn or otherwise fabricated by hand in cottage units of the cottage industry. The following is the agreed upon list of such items:

A. Batik and hablon fabrics—handwoven fabrics of the cottage industry.

B. Banaue cloth—cotton handloom fabric in multi-colors.

C. Other handwoven and handloom fabrics of the cottage industry.

D. Articles and garments made by hand from handwoven and handloomed fabrics.

**Annex B—Merged Category Visas**

| | |
|---|---|
| 333/334 | 351/651 |
| 337/637 | 352/652 |
| 338/339 | 445/446 |
| 341/641 | 638/639 |
| 342/642 | 645/646 |
| 347/348 | 647/648 |

**Annex B—Part-Category Visas**

340–Y/640–Y [1]
340–O/640–O [2]
359–I [3] Visaed in Dozens
359–O [4]
369–S [5]
369–O [6]
659–I [7] Visaed in Dozens
659–H [8]
659–O [9]

[1] Not published in the **Federal Register**.

[2] In Category 340–Y/640–Y, made from fabrics with two or more colors in the warp and/or filling, in TSUSA numbers 381.0522, 381.5637, 381.5610, 381.5625, 381.5660, 381.5500, 381.3132, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550.

[3] In Category 340–O/640–O, all TSUSA numbers except those listed in footnote 1.

[4] In Category 359–I, infant sets, in TSUSA numbers 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172, 384.3451, 384.3452, 384.3453 and 384.3454.

[5] In Category 359–O, other, all TSUSA numbers except those listed in footnote 3.

[6] In Category 369–S, shop towels, only TSUSA number 366.2840.

[7] In Category 369–O, other, all TSUSA numbers except that list in footnote 5.

**Government of the Republic of the Philippines Officials Authorized to Issue Visas and Exempt Certifications**

Ana Maria V. Coruna, Deputy Executive Director
Aida B. Cabardo, Consultant
Eden S. Malapad, Assistant Chief, Industry Development Specialist
Lorna A. Del Rosario, Assistant Chief, Industry Development Specialist

[FR Doc. 87–7803 Filed 4–7–87; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Airborne Reconnaissance

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Airborne Reconnaissance will meet in closed session on May 1, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish airborne reconnaissance.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 2, 1987.

[FR Doc. 87–7726 Filed 4–7–87; 8:45 am]

BILLING CODE 3810–01–M

### Defense Science Board Task Force on Detection and Neutralization of Illegal Drugs and/or Terrorist Devices

**ACTION:** Change in Dates of Advisory Committee Meeting Notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on Detection and Neutralization of Illegal Drugs and/or Terrorist Devices scheduled for May 12–13, June 16–17, and July 14–15, 1987 as published in the **Federal Register** (Vol. 52, No. 28, Page 4376, Wednesday, February 11, 1987, FR Doc. 87–2825) will be held on May 20–21, June 17–18, and July 15–16, 1987. In all other respects the original notice remains unchanged.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 2, 1987.

[FR Doc. 87–7727 Filed 4–7–87; 8:45 am]

BILLING CODE 3810–01–M

### Defense Science Board Task Force on LHX Requirements

**ACTION:** Change in Date of Advisory Committee Meeting Notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on LHX Requirements scheduled for April 27, 1987 as published in the **Federal Register** (Vol. 52, No. 35, Page 5482, Monday, February 23, 1987, FR Doc. 87–3714) will be held on April 25, 1987. In all other respects the original notice remains unchanged.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 2, 1987.

[FR Doc. 87–7728 Filed 4–7–87; 8:45 am]

BILLING CODE 3810–01–M

### Defense Science Board Task Force Subgroup to the Strategic Air Defense

**ACTION:** Notice of Advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force Subgroup to the Strategic Air Defense will meet in closed session on June 1–2, and June 17–18, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate and make recommendations on the use of

[7] In Category 659–I, infant sets, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359 and 384.9365.

[8] In Category 659–H, headwear, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[9] In Category 659–O, all TSUSA numbers except those listed in footnotes 7 and 8.

technology for the extension of the Strategic Air Defense mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 2, 1987.

[FR Doc. 87–7729 Filed 4–7–87; 8:45 am]

BILLING CODE 3810-01-M

---

## Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 10 April 1987 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison, Department of Defense.*

April 3, 1987.

[FR Doc. 87–7730 Filed 4–3–87; 2:11 pm]

BILLING CODE 3810-01-M

---

## Department of the Air Force

### Air Force Activities for Conversion to Contract

**ACTION:** Notice.

The Air Force recently determined that the Janitorial Services function at Kelly AFB, TX will be examined for possible conversion to contract.

For further information contact Mrs. Karen Johnson, HQ ESC/XPMQX, Kelly AFB, TX 78243–5000, telephone (512) 925–2271.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–7697 Filed 4–7–87; 8:45 am]

BILLING CODE 3910-01-M

---

## Department of the Army

### Intent To Prepare Environmental Impact Statement on the Defense Department's Biological Defense Research Program

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement for the Biological Defense Research Program.

1. The Department of the Army intends to prepare an Environmental Impact Statement for certain activities performed as part of the Biological Denfense Research Program (BDRP).

The Department of the Army, as Executive Agent for the Department of Defense, is responsible for research, development, test, and evaluation of biological defense. The Biological Defense Research Program involves research and product development for equipment, devices, drugs, substances, and biologics that are used to: Detect biological substances; protect from the adverse effects of biological substances; treat exposed individuals; decontaminate exposed individuals, areas and equipment. It is anticipated that the Army will use the services of contractors, consultants, and advisors with demonstrated expertise and experience as well as scientists, engineers and other Government personnel to accumulate the necessary information to make the appropriate analysis.

2. The environmental impact analysis process will be in accord with the National Environmental Policy Act of 1969, Army Regulation 200–2, 32 CFR Part 651, and the regulations of the Council on Environmental Quality, 40 CFR Part 1500. The purpose of this analysis is to determine the extent of any significant impacts, and in the event significant impacts exist, to analyze those impacts under the National Environmental Policy Act of 1969.

3. The Army will conduct a scoping process to aid in determining the significant issues related to the proposed action. Public as well as Federal, State, and local agency participation and input are desired. To provide an opportunity for public input to the scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments for consideration by the Army and possible incorporation into the EIS. Particularly solicited is information that would assist the Army in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies, issues and alternatives which the EIS should consider, major impacts and recommended mitigating measures associated with the proposed action.

4. Individuals or agencies may offer information relevant to the environmental impacts or aspects of the environment that should be considered by writing to or participating in a public scoping meeting which will be held approximately June, 1987. Notice will also be mailed to groups and individuals, agencies, and anyone responding to this Notice of Intent desiring to be informed on the details of this upcoming public participation meeting. Questions and comments regarding the scope of the environmental analysis should be submitted to Commander, U.S. Army Medical Research and Development Command, ATTN: SGRD–PA, Fort Detrick, MD 21701–5012. Comments and suggestions should be received no later than 15 days following the public scoping meeting to be considered in the Draft EIS (DEIS).

5. The DEIS is expected to be available to the public in December, 1987. The completed DEIS will be available for review in order that interested persons may comment on the document. Comments received will be considered in preparation of a Final Environmental Impact Statement (FEIS) unless the Army concludes that a finding of no significant impact to the environment is appropriate. Persons desiring to be placed on a mailing list to receive additional information regarding the public scoping process and copies of the DEIS and FEIS may contact Mr. Charles Dasey at the address above.

**Lewis D. Walker,**

*Deputy for Environment, Safety and Occupational Health OASA(I&L).*

[FR Doc. 87–7756 Filed 4–7–87; 8:45 am]

BILLING CODE 3710-08-M

---

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before May 8, 1987.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulation Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 426–7304.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 3, 1987.

**Carlos U. Rice,**

*Director for Information Technology Services.*

**Office of Bilingual Education and Minority Affairs**

Type of Review: Reinstatement
Title: Application for Grants Under the Transition Program for Refugee Children
Agency Form Number : ED 443–2
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 54
Burden Hours: 156
Recordkeeping Burden:
Recordkeepers:
Burden Hours: 0.

Abstract: This application will be used by State educational agencies to apply for grants under the Transition Program for Refugee Children. The Department uses the data collected to determine the amount of the grant award based on the number of eligible refugee children enrolled in a State's public and private elementary and secondary schools.

**Office of Educational Research and Improvement**

Type of Review: Extension
Title: Application for Grants Under the Strengthening Research Library Resources Program
Agency Form Number : ED 592
Frequency :Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 100
Burden Hours: 1,600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

Abstract: This application will be used by institutions and non-profit organizations to apply for funds under the strengthening Research Library Resources Program. The Department evaluates the data submitted to determine the significance of the applicant's facility as a major research library and the quality of the proposed project. Grants are awarded on a competitive basis.
Type of Review: New
Title: Application for Training and Demonstration Grants to Institutions of Higher Education for the Drug Free Schools and Communities Program
Agency Form Number: G50–32P
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 600
Burden Hours: 11,400
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

Abstract: This application will be used by institutions of higher education to apply for Training and Demonstration grants under the Drug Free Schools and Communities Program. The Department will evaluate the data collected and award grants for personnel training and curriculum demonstrations in drug and alcohol abuse education and prevention.
Type of Review: New
Title: Application for Federal Activities Grants under the Drug Free Schools and Communities Program
Agency Form Number: G50–31P
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 600
Burden Hours: 11,400
Recordkeeping Burden:
Burden Hours: 0.

Abstract: This application will be used by State educational agencies, local education agencies, institutions of higher education, and other non-profit organizations, to apply for Federal Activities grants under the Drug Free Schools and Communities Program. The Department will evaluate the data collected and award grants for programs that support model development, dissemination, technical assistance, and curriculum development activities for drug and alcohol abuse education and prevention.
Type of Review: New
Title: Fast Response Survey—Survey of Arts and Humanities Education
Agency Form Number: E50–30P
Frequency: Non-recurring
Affected Public: Individuals or households
Reporting Burden:
Responses: 700; Burden Hours: 350
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0

Abstract: This survey will collect information from school district about the policies and practices of local school systems as they pertain to arts and humanities education. The Department will use this data for a Congressionally mandated report.

**Office of Management**

Type of Review: Reinstatement
Title: Request for Advance Reimbursement
Agency Form Number: ED PMS 270
Frequency: On occasion
Affected Public: State or local governments; businesses or other for profit; small businesses or organizations
Reporting Burden:
Responses: 66,000; Burden Hours: 1,150
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: O.

Abstract: This is a cash request form which is used by approximately 5500 recipients to obtain grant funds from the Department of Education. Recipients are required to schedule for one advance within the month to correspond to disbursement needs, also, the recipient is required to report actual cash on hand as of the request date.
Type of Review: Reinstatement
Title: Federal Cash Transactions Report
Agency Form Number: ED PMS 272
Frequency: On occasion

Affected Public: State or local governments; business or other for profit; non-profit institutions
Reporting Burden:
Responses: 30,000; Burden Hours: 90,000
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This report collects cash disbursement information from recipients of grant awards in order for the Department to monitor Federal cash advances to grantees.

**Office of Postsecondary Education**

Type of Review: Revised
Title: Application for Grants and Contracts Under the Veterans Education Outreach Program
Agency From Number: ED 269
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 800; Burden Hours: 800
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This application will be used by institutions of higher education to apply for grants under the Veterans Education Outreach Program. The Department uses the data collected to award grants to all eligible institutions that provide special educational services to veterans.

Type of Review: New
Title: Loan Application for the College Facilities Program
Agency Form Number: E40–14P
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 1000; Burden Hours: 8000
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This application will be used by institutions of higher education to apply for loan funds under the College Facilities Loan Program. Information submitted by the institutions will be evaluated by the Department and used as a basis for obligating program funds for the construction, reconstruction, and renovation of housing and other college facilities.

Type of Review: Reinstatement
Title: Application for New and Continuing Grants Under the Cooperative Education Program
Agency Form Number: ED 1193
Frequency: Annually
Affected Public: Non-profit
Reporting Burden:
Responses: 357; Burden Hours: 3376
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This application is used by institutions of higher education to apply for grants under the Cooperative Education Program. The Department uses the data collected to evaluate proposals for cooperative education programs and to obligate program funds.

**Office of Special Education and Rehabilitation Services**

Type of Review: New
Title: Study of Programs of Instruction for Handicapped Children and Youth in Day and Residential Facilities
Agency Form Number: B20–23P
Frequency: Once only
Affected Public: State or local governments; business or other for-profit; non-profit institutions; small business or organizations
Reporting Burden:
Responses: 540; Burden Hours: 1344
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This survey will collect information from principals and directors of day and residential schools for children with handicaps. The Department needs this information to evaluate program and population characteristics in this segment of educational services to handicapped persons.
Type of Review: New
Title: Application for Preschool Grants Program Under the Education of the Handicapped Act
Agency Form Number: E20–24P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57; Burden Hours: 342
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This application will be used by State educational agencies to apply for for grants under the Preschool Grant Program. The Department will use the data collected to determine a State's eligibility to receive grant awards for programs that serve handicapped children ages three through five.

Type of Review: New
Title: Report of the Estimated Total Number of Handicapped Children Ages 3–5 Expected to be Receiving Special Education and Related Services
Agency Form Number: E20–25P
Frequency: One time only
Affected Public: State or local governments
Reporting Burden:
Responses: 57; Burden Hours: 228
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0.
Abstract: This form will be used by State educational agencies to report the estimated number of children ages 3–5 years old, who will be receiving special education and related services under the Education of the Handicapped Act in the 1987–88 school year. The Department will use the data collected to award preschool grants for the 1987–88 school year based on the number of eligible children reported.

[FR Doc. 87–7777 Filed 4–7–87; 8:45 am]
BILLING CODE 4000–01–M

## Office for Civil Rights; Higher Education Desegregation Plan Implementation

**AGENCY:** Department of Education.
**ACTION:** Notice of Availability.

**SUMMARY:** Notice is hereby given that the Office for Civil Rights proposed factual reports on public higher education desegregation plan implementation by Arkansas, Delaware, Florida, Georgia, Missouri (3 institutions only), North Carolina (community college system only), Oklahoma, South Carolina, Virginia, and West Virginia (1 institution only) are available for inspection by the public from 9:00 a.m. to 4:00 p.m., Washington, DC time, Monday through Friday, excluding Federal holidays, at the following location: U.S. Department of Education, Switzer Building, 330 C Street, SW., Room 3129, Washington, DC 20202.
This action is taken to obtain public comments on the reports before final decisons are made on compliance with Title VI of the Civil Rights Act of 1984. These states' higher education desegregation plans expired in the 1985–86 academic year.

**DATES:** The reports will be available until June 8, 1987.

**FOR FURTHER INFORMATION:** Contact Gloria Wilkinson at 202–732–1213.

Dated: March 31, 1987.

Alicia Coro,

*Acting Assistant Secretary for Civil Rights.*

[FR Doc. 87–7780 Filed 4–7–87; 8:45 am]
BILLING CODE 4000–01–M

## National Advisory Council on Women's Educational Programs; Meeting

**AGENCY:** National Advisory Council on Women's Educational Programs, Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Federal Policies, Practices and Programs; WEEA Program and Civil Rights Committees. The agenda will

include orientation, legislation up-date, budget review, committee reports, distribution of annual report and Council calendar. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** April 22, 1987: 8:30 a.m. to close of business—Executive Committee Meeting.

April 22, 1987: 10:15 a.m. to 3:30 p.m.—orientation and related activities.

April 23, 1987: 9:00 a.m. to 10:00 a.m.—General session 10:00 a.m. to close of business—Committee meetings.

April 24, 1987: 9:00 a.m. to close of business—Full Council Meeting.

**ADDRESSES:** All meetings will be held at the Embassy Row Hotel, 2015 Massachusetts Ave., NW., Washington, DC 20036. The April 22, 1987 meeting will be held in the Board Room of the Embassy Row Hotel; the April 23, 1987 meetings will be held in the Wintergarden Atrium of the Embassy Row Hotel and the Full Council meeting of April 24, 1987 will be held in the Board Room of the Embassy Row Hotel.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Weber, Executive Director-Designate, National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036, (202) 634–6105.

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) make recommendations to the Secretary with respect to the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet on Wednesday, April 22, 1987 from 8:30 a.m. until close of business. The agenda will include discussion of the '86 annual report, budget review and Council calendar.

The meetings of the Federal Policies, Practices and Programs; Civil Rights; and WEEA Program Committees will take place on Thursday, April 23, 1987 from 10:00 a.m. until noon when they will recess for lunch. At 2:00 p.m. the committees will reconvene until close of business. The agenda will include general discussion and committee mission statement discussion.

The full Council will meet on Friday, April 24, 1987 from 9:00 a.m. until close of business. The agenda will include discussion of '86 and '87 annual reports; committee reports; Budget review; WEEA site visit budgeting and Council calendar.

The meeting of the Council is open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC, on March 31, 1987.

Patricia A. Weber,

*Executive Director—Designate.*

[FR Doc. 87–7699 Filed 4–7–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP87–247–000 et al.]**

### Natural Gas Certificate Filings; Phillips Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

**1. Phillips Natural Gas Company**

[Docket No. CP87–247–000]

March 31, 1987.

Take notice that on March 12, 1987, Phillips Natural Gas Company (Phillips Gas) 800–A Plaza Office Building, Bartlesville, Oklahoma 74004, filed in Docket No. CP87–247–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity that would authorize Phillips Gas to transport natural gas on behalf of others pursuant to Commission Order No. 436, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Phillips states that it is a "Hinshaw" pipeline company that is not subject to the jurisdiction of the Commission by reason of Section 1(c) of the NGA.

Phillips Gas proposes that capacity in excess of its affiliated end-use industrial transportation customers' needs will be used to serve firm or interruptible natural gas transportation for others by receiving gas into its Texas Border Gathering System (TBGS) pipeline near Denision, Texas, or other receipt points for redelivery, less fuel and unaccounted for losses, at any point between Phillips Gas and the Shipper(s).

Phillips Gas states that its transportation rates are regulated by the Texas Railroad Commission (TRC) and that it elects, pursuant to 284.123(b)(1)(ii) to use the rates contained in one of its effective intrastate transportation rate schedules on file with the TRC.

Comment date: April 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

**2. Mountain Fuel Resources, Inc.**

[Docket No. CP85–78–001]

April 1, 1987.

Take notice that on March 6, 1987, Mountain Fuel Resources, Inc. (MFR), Post Office Box 11368, Salt Lake City, Utah 84139, filed in Docket No. CP85–78–001, pursuant to section 7(c) of the Natural Gas Act an amendment to its application in Docket No. CP85–78–000, filed on October 31, 1984, all as more fully set forth in the amendment which is on filed with the Commission and open to public inspection.

MFR requests that the original application be amended to add an April 15, 1985, gas transportation agreement with Cordillera Corporation (Cordillera), so as to:

(1) Increase the maximum daily gas transportation and delivery limitation from 1,000 to 5,000 Mcf of natural gas per day on behalf of Cordillera;

2. Include a new receipt point for Cordillera at the interconnection of MFR's interstate transmission facilities and gathering facilities located in Section 19, Township 13 South, Range 7 East, Carbon County, Utah; and

(3) Incorporate the gas transportation agreement into its tariff as revised Rate Schedule X–34.

Comment date: April 22, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**3. Southern Natural Gas Company**

[Docket No. CP87–256–000]

April 1, 1987.

Take notice that on March 18, 1987, Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87–256–000 an application pursuant to

section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing until October 31, 1988, the transportation of natural gas for the City of LaGrange, Georgia (LaGrange), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of LaGrange in accordance with the terms and conditions of a transportation agreement between LaGrange and Southern dated February 20, 1987, (agreement).

It is stated that subject to the receipt of all necessary governmental authorizations, Southern has agreed to transport on an interruptible basis up to 4.6 billion Btu equivalent of gas per day purchased by LaGrange from SNG Trading Inc. (SNG). Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988.

The agreement, it is said, provides that LaGrange would cause gas to be delivered to Southern for transportation at various existing points of delivery on LaGrange's contiguous pipeline system as specified in Exhibit F to the Application. Southern states that it would redeliver to LaGrange at the City of LaGrange Meter Station No. 2 located in Troup County, Georgia, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less LaGrange's *pro rata* share of any gas delivered for LaGrange's account which is lost or vented for any reason.

Southern states that LaGrange has agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to LaGrange under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to LaGrange do not exceed the daily contract demand of LaGrange, the transportation rate would be 39.9 cents per million Btu equivalent; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to LaGrange under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to LaGrange exceed the daily contract demand of LaGrange, the transportation rate for the excess volumes would be 64.9 cents per million Btu equivalent.

Southern states that it also proposes to collect from LaGrange the GRI surcharge of 1.52 cents per Mcf or such other GRI surcharge funding which is applicable.

Southern states that the transportation arrangement would enable LaGrange to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, it is said that Southern would obtain take-or-pay relief on all volumes transported pursuant to the agreement.

Comment date: April 22, 1987, in accordance with Standard Paragraph F at the end of this notice.

**4. Southern Natural Gas Company**

[Docket No. CP87–258–000]

April 1, 1987.

Take notice that on March 19, 1987, Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87–258–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on behalf of Amax Nickel, Inc., (Amax) for use in its Braithwaite, Louisiana, plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Amax in accordance with the terms and conditions of a transportation agreement between Amax and Southern dated February 26, 1987. Southern states it has agreed to transport on an interruptible basis up to 3 billion Btu equivalent of natural gas per day purchased by Amax from SNG Trading Inc., and Seagull Marketing Services, Inc. Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988.

Southern states that the transportation agreement provides for Amax to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Breton Sound and Main Pass Areas, offshore Louisiana, and Plaquemines, St. Mary, and St. Martin Parishes, Louisiana. Southern states it would redeliver to Amax at the Amax Meter Station, Plaquemines Parish, Louisiana, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Amax's pro-rata share of any gas delivered for Amax's account which is lost or vented for any reason.

Southern states that Amax has agreed to pay Southern each month 34.8 cents per MMBtu of gas redelivered by Southern. Additionally, Southern states it would collect from Amax the GRI surcharge of 1.52 cents per Mcf of gas or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern states that the transportation arrangement would enable Amax to diversify its natural gas supply sources and to obtain gas at competitive prices. Southern additionally states it would obtain take-or-pay relief on all volumes Amax may obtain from its suppliers.

Comment date: April 22, 1987, in accordance with Standard Paragraph F at the end of this notice.

**5. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.**

[Docket No. CP86–647–001]

April 1, 1987.

Take notice that on March 11, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P. O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86–647–001 an amendment to its application filed in Docket No. CP86–647–000 pursuant to section 7(c) of the Natural Gas Act so as to reflect the deletion of two proposed points of receipt and the corresponding point of delivery, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP86–647–000, applicant requested authority to provide an interruptible transportation service for Mobil Oil Exploration & Producing Southeast, Inc.; Mobil Exporation and Producing North America, Inc.; and Mobil Producing Texas and New Mexico, Inc, (Mobil) of up to 162,000 dt of natural gas per day from various points of receipt located onshore and offshore Louisiana, offshore Texas, and Mississippi to various points of delivery to interstate pipelines with whom Applicant is interconnected. Applicant now states that alternative arrangements have been made for the transportation of Mobil's Mississippi reserves. Applicant proposes in Docket No. CP87–647–001 to amend its application to delete the proposed points of receipt from Mobil in the Bovina and Oakridge Fields, Warren

County, Mississippi, and to delete the corresponding point of delivery to United Gas Pipe Line Company at Bovina, and the transportation service proposed therein.

Comment date: April 22, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**6. Texas Gas Transmission Corporation**

[Docket No. CP87-7-001]

April 1, 1987.

Take notice that on March 9, 1987, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro Kentucky 42302, filed in Docket No. CP87-7-001, an amendment to its application for a certificate of public convenience and necessity filed in Docket No. CP87-7-000 pursuant to section 7 of the Natural Gas Act requesting that the contract demand of Louisville Gas and Electric Company (LG&E) be decreased to 215,000 MMBtu of natural gas per day from the original request of 231,753 MMBtu of natural gas per day, and as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

On October 3, 1986, Applicant filed an application in Docket No. CP87-7-000 requesting authority to increase the contract demand for twenty-one of its existing customers, for a total increase in contract demand of 17,495 MMBtu of natual gas per day. Applicant states that its requested authority to decrease the contract demand of one existing customer, LG&E, by 436 MMBtu of natural gas per day. Applicant states that although LG&E's original requested reduction was in excess of 436 MMBtu of natural gas per day, of the above-referenced requests for increases in contract demand, only 436 MMBtu of natural gas was available in the same sales zone and under the same sales rate schedule to offset the requested reduction, as required under Section 13.2 of the General Terms and Conditions of Applicant's tariff.

Applicant states that it proposes to amend its application in Docket No. 87-7-000 to request an increase in the original amount of contract demand reduction proposed for LG&E, bringing the total reduction to 16,753 MMBtu per day, for an effective contract demand of 215,000 MMBtu per day. Applicant requests the waiver of any and all applicable Commission regulations necessary to make the reduction in contract demand for LG&E effective on March 1, 1987.

Applicant states that the requested reduction and the effective date is the result of a mutual agreement between the parties and it is required by the public convience and necessity.

Comment date: April 22, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convience and necessity. If no motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provded for, unless otherwise advised, it will be unnecessary for the applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7695 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-386-000]

**American Central Gas Pipeline Corp.; Application**

April 3, 1987.

Take notice that on March 23, 1987, American Central Gas Pipeline Corporation (American Central), pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and Parts 154 and 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Parts 154 and 157, applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by American Central; (2) authorizing sales for resale of natural gas in interstate commerce by the certain producers from whom American Central purchases natural gas as described herein; (3) authorizing sales for resale of natural gas in interstate commerce by certain producers through American Central acting as their agent; and (4) authorizing pregranted abandonment of sales. American Central requests such authorizations for an unlimited duration.

American Central states that such authorities, if granted, will enable American Central to sell natural gas in the spot market which it purchases from certain producers, that have received prior abandonment approval and gas which has not previously been sold in interstate commerce but which if sold would require a certificate for sale, as described more fully in its application. Such authority will also enable American Central to act as agent for certain producers in the sale for resale of their gas in the spot market.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining with appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise adviser, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7758 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-394-000]

**ARCO Oil Gas Co., Division of Atlantic Richfield Co.; Application**

April 3, 1987.

Take notice that on March 25, 1987, ARCO Oil and Gas Company, a Division of Atlantic Richfield Company (ARCO) filed an application requesting the Federal Energy Regulatory Commission (Commission) to issue an Order Permitting and Approving a Blanket Limited-Term Certificate for Sales for Resale with Pregranted Abandonment upon the expiration of the term of such sales. The requested authorizations would enable ARCO to initiate sales of gas into interstate commerce from acreage subject to the jurisdiction of the Commission under the Natural Gas Act which is currently not dedicated by contract to a specific purchaser.

ARCO asked that the Commission also: (1) Grant the requested authority for a term of three years; (2) include the undedicated interests of coowners in the same wells under the requested authorizations; (3) waive requirements under section 154 and 271 of the Commission's Regulations concerning the establishment and maintenance of rate schedules and blanket affidavits; and (4) include categories of gas qualifying for a maximum lawful price prescribed by section 109 or 102(d) of the Natural Gas Policy Act of 1978 from wells drilled offshore on old OCS leases.

ARCO states that the requested authority will give ARCO maximum flexibility in moving new gas supplies from wellhead to burner tip at market responsive prices, and thus serve the public interest by promoting competition in the nationwide gas market.

Any person desiring to be head or to make any protests with reference to said application should on or before April 20, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20436, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7759 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-360-000]

**Coastal Oil & Gas Corp.; Application for Limited-Term Blanket Abandonment and Limited-Term Blanket Certificate With Pre-Granted Abandonment**

April 3, 1987.

Take notice that on March 11, 1987, Coastal Oil & Gas Corporation (Coastal) filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 and § 2.77 of the Regulations, requesting: (1) Limited-term blanket authorization to abandon sales by Coastal (or its co-owners in the same production) of certificated gas released by the original pipeline-purchaser; and (2) limited-term blanket certificate authorization with pre-granted abandonment for sales for resale in interstate commerce of gas released by the original pipeline-purchaser and covered by such blanket limited-term abandonment. The authorizations requested would be for a three-year term without supply or market restrictions and without limitation on vintage of gas, as more fully described in the Application which is on file with the Commission and open for public inspection.

Coastal states that the authorizations sought herein, if granted, will enable Coastal (and its co-owners) to sell on a short-term and spot basis natural gas that remains subject to the Commission's NGA jursidiction, but has been released by the original pipeline-purchasers. The authorizations requested in this proceeding, it is alleged, would enable Coastal to continue and to expand its ability to sell gas on an expeditious basis to meet market needs. Sales volumes, prices, purchasers and delivery points will vary from sale to sale.

Further, Coastal has requested a waiver of Commission rules and regulations to the extent necessary to implement the authorizations requested including, without limitation, filings required under §§ 154.94(h) and 154.94(k), and Part 271 of the regulations.

Coastal asserts that the authorizations requested herein are consistent with the Commission's recent orders in *NICOR Exploration Company*, Docket No. CI87-708-000 (issued December 22, 1986); *Sonat Exploration Company*, Docket No. CI86-403-000 (issued December 29, 1986); and *ANR Pipeline Company, et al.*, Docket Nos. CI86-637-000, *et al.* (issued January 21, 1987).

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 20, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7760 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-353-000]

**Kenrell Petroleum Resources, Inc.; Application**

April 3, 1987.

Take notice that on March 10, 1987, Kenrell Petroleum Resources, Inc. (Kenrell), of 4545 Post Oak Place, Suite 250, Houston, Texas 77027, filed an application pursuant to section 7 of the Natural Gas Act (NGA—15 U.S.C. 717f) and § 157.30 of the Commission's Regulations (18 CFR 157.30 (1986)), for a three-year limited-term blanket abandonment for initial sales and a three-year pregranted abandonment for subsequent sales, both to be made under its small producer certificate exemption (for which an application is currently pending in Docket No. CS87-48-000 as noticed March 3, 1987).

Any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

BEST COPY AVAILABLE

Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7761 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. ES87-19-000]**

## MDU Resources Group, Inc.; Application

March 31, 1987.

Take notice that on March 23, 1987, MDU Resources Group, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Order (a) exempting the Applicant from the competitive bidding requirements of the Act and (b) authorizing the issuance of up to 1,000,000 shares of Common Stock, par value $5, pursuant to Applicant's Automatic Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 22, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7762 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CP87-225-000]**

## South Jersey Gas Company, Complainant and SunOlin Chemical Company, Respondent; Complaint

April 3, 1987.

Take notice that on February 27, 1987, South Jersey Gas Company (Complainant), One South Jersey Plaza, Folsom, New Jersey 08037, filed in Docket No. CP87-225-000 a complaint, pursuant to § 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), against SunOlin Chemical Company (Respondent) for engaging in the construction or extension of facilities for the transportation of natural gas in interstate commerce without prior Federal Energy Regulatory Commission certification, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Complainant states that in late January 1987, Respondent initiated construction or extension of pipeline facilities in New Jersey necessary for the delivery of gas supplies from Claymont, Delaware to B F Goodrich Company's (Goodrich) plant in Pedricktown, New Jersey. Complainant further states that Respondent and Goodrich have entered into a contract under which, effective March 1, 1987, Respondent will sell and transport to Goodrich approximately 650 Mcf per day of gas supplies which are or may be "natural gas" within the meaning of section 2(5) of the Natural Gas Act. Complainant indicates that to its knowledge no application for a certificate authorizing such construction or transportation has been filed with the Commission.

Complainant requests that proceedings be instituted against Respondent requiring Respondent to show cause (1) why it is not in violation of section 7(c) of the Natural Gas Act by engaging in the construction of facilities for transportation of natural gas in interstate commerce without prior authorization, (2) why its proposed transportation of natural gas in interstate commerce without prior authorization would not violate section 7(c) of the Natural Gas Act, and (3) why Respondent should not be required to refrain from such acts unless and until an appropriate certificate is issued by the Commission. Complainant further requests that Respondent be ordered to cease and desist from the transportation and construction of facilities until those proceedings have been completed and that the sale pricing arrangements between Respondent and Goodrich be investigated to determine whether they violate the Natural Gas Policy Act of 1978.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Complainant states that a copy of the complaint has been served on Respondent. Respondent's answer to the complaint shall also be due on or before May 4, 1987.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7763 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RP87-54-000]**

## Southwest Gas Corp.; Request for Southwest Gas Corporation of Waiver

April 3, 1987.

Take notice that on March 24, 1987, Southwest Gas Corporation (Southwest) tendered for filing a request for waiver of footnote one of § 154.38(d)(4) of the Commission's regulations. Southwest anticipates purchasing gas from Canadian sources. Southwest states that the net effect will be to reduce the average cost of gas on Southwest's system. As Southwest understands the Commission's rules, system gas purchases from Canadian sources may not be flowed through the PGA unless authorization through a waiver of the limitation set forth in the footnote is obtained. As these will be purchased gas costs, Southwest is requesting this waiver to include the Canadian costs in its PGA adjustments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7764 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket Nos. TA85-1-29-011, TA85-3-29-027, TA86-1-29-009, TA86-5-29-010, TA87-1-29-004, TA87-4-29-002]

## Transcontinental Gas Pipe Line Corp.; Proposed Stipulation and Agreement

April 3, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 31, 1987, a Stipulation and Agreement in the above-referenced proceedings. Transco also filed, as an Appendix B to the Agreement, proposed tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 to implement the Agreement.

The major elements of the settlement proposal are as follows:

In regard to several of the earlier PGA dockets, issues should be resolved (or reserved for separate disposition in the case of the "Title I" issue) with respect to gas purchase practices and "as billed" treatment of Sulpetro import quantities essentially in the same fashion as provided in Transco's May 13, 1986 offer of settlement, subject also to separate resolution of the "transition costs" issues as provided under the Commission's severance orders.

Refunds shall be made (1) to all customers for Sulpetro demand charges collected during February, March and April, 1987 based upon relative firm sales entitlement levels, and (2) to those customers which, along with their state commissions and agencies, do not oppose the settlement; such refunds shall be in the specific amounts set forth on an attachment to the settlement.

Transco would reduce its PGA cost of gas to $2.1487/dt effective April 1, 1987, with provision for Transco to assume the risk of any undercollections of gas costs above 103% of that level as to all quantities purchased by those customers which purchase at least 20% of their firm sales entitlements during the period April-October 1987. Refunds of any actual costs below the level reflected in rates will be made to all customers, and surcharges due to any higher unit gas costs shall be billed and collected (subject to refund to the 103% level as a refund floor) from those customers which purchase at less than a 20% sales entitlement level for the period.

In accordance with Rule 602(f) of the Commission's Rules of Practice and Procedure, the Commission will grant a shortened comment period for parties wishing to comment on this settlement. Initial comments should be filed on or before April 13, 1987, and reply comments should be filed on or before April 20, 1987 with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7766 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. TA87-4-29-000, 001]

## Transcontinental Gas Pipe Line Corp., Proposed Changes in FERC Gas Tariff

April 3, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 31, 1987, the following proposed tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

Third Revised Forty-Fourth Revised Sheet No. 12
Third Revised Forty-Second Revised Sheet No. 15
Fourth Revised Sheet No. 15-A
First Revised Sheet No. 250-C

The proposed tariff sheets reflect an overall rate decrease of 85.1¢ per dt in the commodity charge under the CD, PS, ACQ and S-2 Rate Schedules, a decrease of 86.7¢ per dt in the commodity charge under the G, OG, and E Rate Schedules, a decrease of $0.50 per dt in the demand charge under the CD Rate Schedule, and a decrease of $0.04 per dt in the demand charge under the PS Rate Schedule.

Transco states that this PGA filing reflects a projected average cost of purchased gas of approximately $2.15 based on projected system gas purchases of 750 Mdt/day. In accordance with Ordering Paragraph (A) of the Commission's June 4, 1986 order in Docket No. TA86-5-29-003, Transco has excluded approximately $1.7 million from its Account No. 191 related to the "at risk" condition in effect for the period May, 1986 through October, 1986. Transco proposes a special transition gas cost surcharge to amortize $66.2 million of remaining "transition costs" over a 3-year period commencing May 1, 1987. Additionally, Transco proposes to directly refund approximately $1.4 million of overrecovered Sulpetro demand charges related to the month of February 1987.

Transco states that it has mailed copies of this filing to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7765 Filed 4-7-87; 8:45 am]

BILLING CODE 6717-01-M

---

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-150002; FRL-3182-6]

## Procedures for Submission of Claims for Indemnification and Disposal of 2,4,5-T and Silvex Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of procedures for requesting indemnification and disposal.

**SUMMARY:** This Notice announces that EPA is accepting claims for indemnification and requests for disposal for certain 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) and 2-(2,4,5-trichlorophenoxy) propionic acid (silvex) pesticides under sections 15 and 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136m and 136q. This Notice provides information to persons who may be entitled to indemnification for losses suffered as a result of regulatory actions taken by EPA with respect to these products and who may wish to request Federal disposal of eligible pesticide stocks. It states who may be entitled to indemnification and how claims for Federal disposal and indemnification should be prepared and submitted to the Agency.

**DATES:** All claims filed as a result of this Notice must be received by July 7, 1987, in order to be considered.

**ADDRESS:** Claims filed in response to this Notice must be mailed or delivered to, and claims forms may be obtained from: Mailing address; Stanley Cook, Special Review Branch (TS–767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1006, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–74000).

**FOR FURTHER INFORMATION CONTACT:** Stanley Cook (at the address above).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FIFRA section 6 authorizes the Administrator to take certain actions to prohibit production, sale, and use of pesticide products that cause danger to human health or the environment. The Administrator may cancel or suspend the registration of a pesticide, depending upon the degree of hazard posed by continued registration.

The Administrator may cancel a pesticide registration if he finds that its use generally causes unreasonable adverse on the environment. A Notice of Intent to Canel becomes effective 30 days after the date the registrant receives the notices or the date the notice is published, whichever is later, unless an affected person first requests a hearing. If action is necessary to prevent an imminent hazard to human health, the Administrator may suspend a pesticide registration, and at the same time issue a Notice of Intent to Cancel the registration. A suspension order immediately prohibits all sale or distribution of the pesticide in both intrastate and interstate commerce, and may also prohibit use of the pesticide.

Based on information concerning potential human health risks posed by certain uses of pesticide products containing 2,4,5-T or silvex, the Administrator issued an emergency suspension order on February 28, 1979, pursuant to FIFRA section 6(c)(3), for the forestry, rights-of-way, and pasture uses of 2,4,5-T products, published in the **Federal Register** of March 15, 1979 (44 FR 15874). The Administrator also ordered emergency suspensions of the forestry, rights-of-way, pasture, home and garden, commercial/ornamental turf and aquatic weed control/ditch bank uses of silvex (44 FR 15897). From that date forward, no person could lawfully sell, distribute or use 2,4,5-T or silvex product labeled for suspended uses.

At the same time, the Administrator issued Notices of Intent to Cancel the suspended uses (44 FR 15893 and 15917). In accordance with FIFRA section 6, each product labeled exclusively for suspended uses was canceled 30 days after publication of the notice, unless the registrant or other adversely affected person requested a hearing to contest the cancellation of that product. Although non-suspended uses were not subject to those cancellation notices, a product labeled for both suspended and non-suspended uses could not be legally sold or distributed unless the registrant submitted an application for amended registration to delete the suspended uses from the label.

Thereafter, 18 registrants of silvex pesticides labeled for home and garden use entered into agreements with EPA regarding suspension and cancellation of certain silvex pesticides. Each agreement provided that the silvex registrations which were the subject of the agreement were thereby canceled. The agreements established a procedure for the submission and processing of indemnification claims and for the disposal of the pesticides. Pesticides owned by, or purchased from, these registrants prior to the suspension order have been disposed of by the Agency in accordance with the agreements. The Agency has also processed indemnification claims in accordance with the agreements. However, as registrants were informed when they entered the agreements, the Agency lacked the funds with which to pay such claims. Some registrants have brought suits for indemnification in the U.S. Claims Court and have obtained judgments in their favor.

A number of registrants requested hearings on proposed cancellations of 2,4,5-T and/or silvex uses, and their registrations remained in effect pending the outcome of the administrative hearing. The cancellation proceedings resulting from the hearing requests were consolidated by an order of the Administrative Law Judge. Order of Consolidation, *In re The Dow Chemical Company et al.*, FIFRA Docket Nos. 415 et al. (April 24, 1979).

On December 9, 1979, the Administrator issued a Notice of Intent to Hold a Hearing under FIFRA section 6(b)(2) to determine whether products registered for the remaining non-suspended end-uses of 2,4,5-T and silvex should be canceled, published in the **Federal Register** of December 13, 1979 (44 FR 72316 and 72328). These proceedings were merged with the previously consolidated proceedings.

The Agency issued a notice announcing the denial of all applications for Federal registration of all intrastate pesticide products containing 2,4,5-T and silvex submitted to the Agency pursuant to 40 CFR 162.17, which was published in the **Federal Register** of January 15, 1980 (45 FR 2898). Three hearing requests challenging this action were also consolidated with the previously described hearing.

By notice dated October 14, 1983, Dow Chemical Company, a major participant in the 2,4,5-T/silvex hearing, withdrew its hearing requests and terminated its participation in the hearing. Thereafter, on October 28, 1983, under the authority of FIFRA section 6(b)(1), the Agency issued a Notice of Intent to Cancel the registrations of all products which contained 2,4,5-T or silvex and which were labeled for any manufacturing use or end use not already the subject of the March 15, 1979, Notice of Intent to Cancel. At the same time, the Agency revoked its earlier notice of intent to hold a hearing on these issues issued under FIFRA section 6(b)(2).

Several registrants of 2,4,5-T and silvex products and other parties requested hearings concerning the October 18, 1983, cancellation notice. An EPA motion to consolidate the resulting cancellation proceeding with the previously stayed 1979 cancellation proceeding was denied by the Chief Administrative Law Judge on May 3, 1984. A number of registrants subsequently withdrew from each proceeding, resulting in cancellation of affected products by operation of law. Because no remaining party was prepared to assume the burden of persuasion concerning the continued registrability of 2,4,5-T and silvex products, EPA submitted a motion in each proceeding seeking an order and accelerated decision which would terminate that proceeding. Pursuant to these motions, the respective Administrative Law Judge issued orders dismissing all remaining parties and terminating the proceedings. The order in the 1979 cancellation proceeding concerning products labeled for suspended uses became final and effective on January 30, 1985; the order in the 1983 cancellation proceeding concerning products labeled for non-suspended uses became final and effective on February 11, 1985. These two orders resulted in the final cancellation by operation of law of all remaining registrations of pesticide products containing 2,4,5-T or silvex.

The Agency has established procedures by which persons may claim indemnity for and/or request disposal of, 2,4,5-T and silvex products suspended and canceled under FIFRA section 6. FIFRA section 15 provides a right of indemnification under specified conditions. Section 19 provides for disposal of suspended and canceled

pesticides at Federal expense. Claimants who satisfy statutory eligibility standards may obtain indemnification and disposal, if their claims are not barred by the applicable Federal statute of limitations.

Title 28 U.S.C. 2401(a) provides generally that any action concerning a claim against the United States shall be barred unless filed within 6 years of the date when the claim arose. This provision would bar a claimant from instituting any action to enforce any claim arising out of suspension and cancellation of any 2,4,5-T or silvex product which was cancelled more than 6 years ago. The Agency will deny any indemnification claim submitted concerning such a product. The Agency has not determined whether or not it will provide disposal assistance to owners of such products. Persons holding stocks of 2,4,5-T and silvex products for which the statute of limitations has expired may submit disposal requests for consideration by the Agency. The 2,4,5-T and silvex products are listed under Unit IV of this notice. That list indicates whether the statute of limitations has expired for each of the 2,4,5-T and silvex products.

## II. Statutory Criteria

FIFRA section 15 requires EPA to indemnify any person who suffers economic loss by reason of suspension or cancellation of a pesticide registration and who satisfies other statutory requirements. The statute provides that indemnification is payable if (1) the Administrator suspended the registration to prev ent an imminent hazard; (2) the registration was cancelled; (3) the person owned some quantity of the pesticide immediately before the suspension (i.e., on February 28, 1979); and (4) the person suffered losses by reason of the suspension or cancellation. The right to indemnification extends to "any person" who meets these four requirements. Therefore, indemnity payments may be made not only to registrants, but also to sellers, distributers, or individual users who owned the products at the time of suspension. Under section 15(b), the amount of the indemnity payment is to be determined on the basis of the cost of the pesticide to the owner immediately before the suspension, but may not exceed the pesticide's fair market value at that time.

FIFRA section 19(a) requires the Administrator to accept at convenient locations for safe disposal, those pesticides the registrations of which have been suspended and canceled as specified in FIFRA section 6(c), if requested by the owner of the pesticide.

## III. Products That Are Eligible for Indemnification and Disposal

Whether a particular claimant satisfies the statutory requirements will depend on the regulatory action taken against the particular 2,4,5-T or silvex pesticide product the claimant owned. For purposes of this Notice, products have been classified into three categories: (1) 2,4,5-T and silvex products labeled only for uses that were suspended on February 28, 1979; (2) 2,4,5-T and silvex products that were labeled only for uses that were not suspended on February 28, 1979; and (3) 2,4,5-T and silvex products that were labeled for both suspended and non-spended uses. Each of these categories is discussed below. A list of the 2,4,5-T and silvex products in each of these categories is inlcuded at the end of this unit.

In addition to the federally registered 2,4,5-T and silvex products, certain products containing these pesticides were being marketed intrastate under State pesticides registrations at the time of the February 28, 1979, suspension orders, in accordance with EPA regulations, 40 CFR 162.17. By virtue of a recent U.S. Claims Court decision, *Gro-Green Products, Inc.* v. *United States*, 3 Cl. Ct. 639 (1983), owners of products with such State registrations are entitled to indemnification on the same basis as Federal registrants.

### *A. 2,4,5–T and Silvex Products Labeled Only for Uses That Were Suspended on February 28, 1979*

Owners of products labeled solely for suspended uses of 2,4,5–T or silvex may qualify for indemnification and disposal if other conditions have been met. All registrations of 2,4,5–T products in effect on February 28, 1979, and bearing labeling allowing use only on forest, right-of-way, or pasture sites have been suspended and cancelled. Similarly, all silvex pesticide registrations in effect on February 28, 1979, and bearing label directions allowing use only on forest, right-of-way, pasture, home and garden, commercial/ornamental turf, or aquatic weed control/ditch bank sites have been suspended and cancelled. Persons who owned 2,4,5–T or silvex products labeled solely for these uses on February 28, 1979, who suffered losses by reason of suspension or cancellation of such products, and whose claims are not barred by the statute of limitations will generally be eligible for indemnification and disposal.

### *B. 2,4,5–T and Silvex Pesticide Products Labeled for Uses That Were not Subject to the February 28, 1979 Suspension Orders*

The February 28, 1979, suspension orders affected only 2,4,5–T products registered for forestry, rights-of-way, and pasture uses, and silvex products registered for forestry, rights-of-way, pasture, home and garden, commercial/ornamental turf, or aquatic weed control/ditch bank uses. Owners of 2,4,5–T or silvex pesticide products that were registered solely for other uses as of that date are not eligible for indemnification or for disposal at Federal expense since FIFRA provides indemnification and disposal only for pesticide products that have been suspended.

### *C. 2,4,5–T and Silvex Products That Were Registered for Both Suspended and Non-Suspended Uses*

Owners of 2,4,5–T or silvex products which are labeled for both suspended and non-suspended uses and which are not subject to the statute of limitations will generally be eligible for Federal disposal. However, such persons will in many cases not qualify for Federal indemnification. After the 2,4,5–T and silvex suspension orders, the Agency permitted registrants to delete suspended uses from their product labels and to distribute and sell the products with amended labeling retaining the non-suspended uses. End-users who held 2,4,5–T or silvex products labeled for both suspended and non-suspended uses at the time of the suspension orders could subsequently use, and may continue to use, such products for any non-suspended use appearing on the label. Owners of products labeled for both suspended and non-suspended uses may file indemnification claims, but may be found ineligible to the extent that they failed to mitigate their losses, as discussed below. In some instances, a pesticide intended primarily for suspended uses included a minor non-suspended use on its label. In appropriate circumstances, the Agency will treat such products as if they were labled solely for suspended uses.

## IV. Registration Numbers and Eligibility Status for Silvex and 2,4,5–T Products

### *A. Silvex Products Labeled Only for Suspended Uses: Eligible for Indemnification and Disposal*

**Note.**—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

000004–00113 3 in 1 Weed Killer
000004–00121 New Bonide Chickweed Clover and Bent Grass Killer
000004–00141 Lawn Weed Killer
000004–00168 Bonide Foaming Jet Action Weed Killer
000004–00243 Lawn Weed Killer Granules.

Great Western Chemical Company:
000168–00314**** Morgro 2–in–1 Weed & Feed

Riverdale Chemical Company:
000228–00116 Riverdale Weedestroy Lawn Weed Killer

Chevron Chemical Company:
000239–00599**** Weed-B-Gon
000239–01393**** Ortho Chickweed and Clover Killer
000239–02227**** Ortho-gro Weed & Feed
000239–02296**** Ortho Chickweed, Spurge & Oxalis Killer
000239–02301**** Ortho Dandelion & Broadleaf Weed Killer
000239–02305**** Ortho-gro Bahia Weed & Feed
000239–02425**** Ortho Weed-B-Gon Lawn Weed Killer

Union Carbide Agricultural Products Company:
000264–00076 Weedone TP
000264–00083 Weedone Granular Lawn Weed Control
000264–00237 Amchem 3–D Weedone Turf Weed Control

Hysan Corporation:
000334–00249**** Hyweed Chickweed and Clover Killer

Imperial, Inc.:
000407–00299 Imperial Lawn Weed Killer Contains 2,4–D and Silvex

Farmland Industries, Inc.:
000449–00176

Dow Chemical U.S.A.:
000464–00382 Lawn Weed Killer

Gurney Seed and Nursery Company:
000468–00012**** Gurney's Lawn Weed Killer Contains Silvex (2,4,5–TP)

Chase Products Company:
000498–00090**** Spot Weed Killer

Growmark, Inc.:
000534–00082**** FS Farmtown Weed and Feed

O.M. Scott & Sons Company:
000538–00054**** O–X–D Weed Control

Sears Roebuck & Company:
000539–00197**** Sears Lawn Weed Killer Contains 2,4–D and Silvex
000539–00261**** Sears Superfine Weed & Feed with 2,4–D and Silvex 23–4–9

Rockland Chemical Co., Inc.:
000572–00159**** Rockland Weed & Feed
000572–00197**** Lawn-A-Magic Weed Away Prills Plus
000572–00202**** Lawn-A-Magic "Weed Away Plus" with Silvex
000572–00203**** Professional Lawn Weed Killer
000572–00267**** Rockland Professional Lawn Weed Killer with Silvex
000572–00270**** Rockland Professional Lawn Killer D
000572–00297**** Rockland Professional Lawn Killer 'B'
000572–00300**** Rockland Weed & Feed "B" 18–6–6

Purina Mills, Inc.:
000602–00180**** Purina Lawn Weed Killer

Safeway Stores, Inc.:
000793–00009**** Safeway Brand Lawn & Feed

Chas. H. Lilly Company:
000802–00402 Miller's Silvex Silvicide
000802–00463 Miller's Weed Bomb

Agrico Chemical Co., Div. of Continental:
000827–00203**** Agrico Country Club Fertilizer 10–6–4
000827–00216**** Agrico Dandelion & Broadleaf Weed Control

Farmers Union Central Exchange, Inc.:
000912–00041**** Greenhouse Lawn Weed and Feed

Lebanon Chemical Corporation:
000961–00209**** Lebanon Lawn Weed Killer
000961–00212**** Lebanon 10–6–4 with Silvex and 2,4-D
000961–00213**** Lebanon Turf Weed Killer Silvex and 2,4-D
000961–00219**** Lebanon Turf Organic with Weed Killer
000961–00231**** Glorion Lawn Weed and Crabgrass Killer
000961–00241**** Lebanon Weed Spray Contains 2,4-D and Silvex
000961–00249**** Greenskeeper 10–6–4 with Weed Killer
000961–00282**** Greenview Dandelion and Chickweed Killer
000961–00289**** Greenview Crabgrass & Dandelion Killer
000961–00295**** Greenview Expel Spot Weed Killer
000961–00299**** Greenview Two-Way Green Power
000961–00300**** Greenview Two-Way Winter Green
000961–00301**** Greenview Modern Two-Way Green Power
000961–00302**** Greenview Expel Granular Lawn Weed Killer
000961–00304**** Lebanon Weed Control with Grass Food
000961–00305**** Lebanon Country Club for Professional Use
000961–00306**** Lebanon Grass Food with Weed Control
000961–00308**** Agrico Country Club Fertilizer 16–8–8 with Herbicide
000961–00311**** Green Gold Law Weed Killer
000961–00315**** Lebanon Country Club Fertilizer 12–4–8 with Herbicide
000961–00324**** Lebanon Weed Control Plus Turf Food with Iron
000961–00327**** Lebanon Weed Control Plus Turf Food with Iron

Malter International Corporation:
001266–00151 Di-Phen Broadleaf Weed & Woody Brush Killer

Land O' Lakes:
001381–00080**** Splendor 18–9–4 Weed & Feed

Blue Spruce Company:
001439–00195**** Lawn-Aid Weed Killer with Silvex (2,4-D Plus 2,4,5-TP)

Elanco Products Company:
001471–00044**** Greenfield Dandelion & Broadleaf Weed Killer

Montgomery Ward:
001946–00036**** Wards Garden Mark Weed & Feed 20–10–5 with 2,4,-D & Silvex

Patterson Chemical Company, Inc.:
002169–00166 Patterson's Chickweed Killer with Silvex

PBI/Gordon Corporation:
002217–00305 Chickweed & Clover Killer
033955–00089 Acme Weed-No-More Lawn Weed Killer
033955–00436 Acme Chickweed Clover Killer

Terre Company of New Jersey, Inc.:
002290–00031 Terre Easy to Use Granular: A Selective Weed Killer for Lawns

Kerr-McGee Chemical Corporation:
002342–00826**** Nitroganic 5–4–0 with Weed Killer
002342–00873**** Granular Lawn Weed Killer with 2,4-D & Silvex
002342–00918**** 2'N 1 Weed and Feed

Koos, Inc.:
002491–00319**** Thrive with Weed Killers

USS Agri-chemicals Division, US Steel Corporation:
003442–00660**** USS Vertagreen Double Duty Fertilizer, Broadleaf Weed Killer
003442–00674**** USS Weed & Feed: Kills Weed—Feeds Turf
003442–00675**** USS Vertagreen Double Duty Fertilizer, Broadleaf Weed Killer

Economy Products:
003770–00048 Economy's Lawn Weed Killer/2,4-D Low Volatile Esters & Silvex

Smith-Douglass, Inc.:

004185–00354**** Ongaro's Weed & Feed 20–5–5
004185–00404**** Nutro Dandelion & Weed Killer
004185–00441**** Smith-Douglass Sevin 50% High Concentrate Dust

Agchem Division, Pennwalt Corporation:
004581-00183 Aquathol Plus
004581–00200 Aquathol Plus Granular
004581–00249 Aqua-vex Granular
004581–00251 Aqua-vex

Ringer Judd Corporation:
004825–00009 Pill Kill Weed Killer for Lawn Weeds

Seedkem, Inc. c/o:
004876–00045 Lawn Weed Killer

Federal Chemical Company:
005288–00055**** Nu Turf 20–10–5 Weed and Feed
005288–00083**** Texaco Nu-Turf 20–10–5 Feed & Weed

Old Fox Agric Sales, Inc.:
005293–00005**** Old Fox Weed Killer
005298–00006**** M. N. A. Weed Kleen

Patco Products, Inc.:
005348–00003**** Patco's Weedkill
005348–00004**** Patco Weed and Feed

Adikes, Inc. J & L:
005535–00018**** Gro-well Chickweed and Clover Killer
005535–00041**** Gro-well Weed-N-Chick
005535–00046**** Gro-well Feed-N-Weed
005535–00076**** Gro-well Lawn Weed Bomb

Farmingdale Garden Labs:
005605–00015**** Farmingdale 2,4,5 T. P. Silvex Chickweed & Clover Killer
005605–00088**** Farmingdale 2,4-D Plus 2,4,5-TP Lawn Weed & Dandelion Killer

Wegro, Inc.:
005815–00022**** Farmer Tom Lawn Fertilizer 10–6–4
005815–00023**** Mr. Gro Weed and Feed with Silvex and Iron-Triple Action H
005815–00027**** Forest City Weed & Feed Plus Iron 22–7–7 (contains Silvex)
005815–00031**** Stein Supreme Weed and Feed

Black Leaf Products Company:
005887–00020**** Blackheat Clover and Chickweed Killer
005887–00048**** Black Leaf Chickweed & Clover Killer
005887–00092**** Black Leaf Lawn Weed Killer
005887–00106**** Black Leaf Lawn Weed Killer Spray

Lott's Pedigreed Seed, Inc.:
006143–00017**** Loft's Weed & Feed
006143–00018**** Loft's Dandelion and Broadleaf Lawn Weed Killer

Voluntary Purchasing Group's, Inc.:
007401–00006**** Ferti-lome Weed & Feed Containing 2,4–D & 2,4,5–TP

Nulife Fertilizers Div. of Hygrade Food:
007404–00007**** Nulife Weed and Feed 10–2–3
007404–00008**** Turf King Weed & Feed 3-In-1

Liqui Lawn Corporation:
007764–00016**** Heritage House Systemic Weed & Feed Plus
007764–00018**** Heritage House Systemic Dandelion & Chickweed Killer
007764–00020**** Heritage House Systemic Lawn Weed Killer

Webfoot Fertilizer Co., Inc.:
007923–00001 Web Foot Weed & Feed 8–4–4

Kaiser Agricultural Chemicals:
007943–00011**** Lawn Life Weed Killer
007943–00012**** Lawn Master Lawn Weed Killer

Miller Frank & Sons, Inc.:
008123–00039**** Selective Lawn Weed Killer

Knox Fertilizer & Chemical Co., Inc.:
008378–00003**** Patio Lawn Weed Killer Contains 2,4–D and Silvex

The Andersons:
008419–00008**** Luster Green Turf Fertilizer 10–6–4 Plus Weed Control
008419–00009**** Aladdin Weed & Feed 10–6–4 Plus Silvex & 2,4–D
008419–00015**** The Andersons Broadleaf Weed Killer
008419–00016**** Th Andersons Weed and Feed

Agway, Inc.—Crop Services:
008590–00262**** Agway Improved Weed-N-Green Turfood and Weed Control
008590–00389**** Greenlawn Plus 12–5–7 Broadleaf Weed Killer

Sta-Green Plant Food Company:
008660–00002**** Sta-Green Logo Post-Emergence Crabgrass and Weed Killer

Kaiser Aluminum & Chemical Corporation:
009159–00141**** Federal New Improved Lawn Life Weed & Feed

The Anderson Lawn Feterilizer Division:
009198–00002**** Feast-N-Famine
009198–00012**** Garden Gate Turf Food Plus Weed Control
009198–00014**** Hawthorne House Lawn Food and Weed Killer
009198–00015**** Wickes Big Acre Weed and Feed 24–6–6 Plus 2
009198–00022**** Turf Care 30–5–3 W/ 2,4–D & Silvex
009198–00025**** Weed and Feed 18–5–9
009198–00027**** A. C. E. Weed & Feed 12–4–8
009198–00029**** Mr Wiggs 10–6–6 Weed Killer and Turf Feed
009198–00034**** Constantine's Weed Killer and Fertilizer
09198–00035**** Big City Weed and Feed 10–6–4
009198–00034**** Golf Green Weed and Feed 24–4–9

Fertile Acres Corp.:
010345–00002**** Old Gardener Weed 'N Feed

Jubliee Products, Inc.:
010645–00002**** Home Pride Weed & Feed

Occidental Chemical Company:
010659–00044**** Green Gro Lite Weight Weed-N-Feed with Silvex

Seaboard Seed Company:
011281–00002**** Seaboard Premium Weed & Feed

Ayr-Way Stores:
011506–00001**** Ayr-Way 10-6-4 Lawn Food with Weed Killers

Shalco Chemical Corporation:
011511–00018**** Shalco Selective Lawn Week Killer

Meijer, Inc.:
011700–00001**** Meijer Best Weed 'N Feed 22-6-6

Washington Distributors, Inc.:
011706–00001**** Rink's Green World Premium Weed and Feed

D.H. and R., Inc.:
028003–00002**** Green Up Weed & Feed Contains 2,4-D Silvex
028003–00006**** Easy Green Weed & Feed

Howard Johnson's Enterprises, Inc.:
032802–00002**** Howard Johnson's Weed & Feed 20-10-5

Weaver's Lawn and Garden Products, Inc.:
033108–00003**** Garden Gate Turf Food and Weed Control

Vertac Chemical Corporation:
039511–00046 Silvi-Rhap Low Volatile/ Granular TP Hebricide 2,4,5-TP

**B. Intrastate Silvex Products Labeled Only For Suspended Uses: Eligible For Indemnification and Disposal**

Note: If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Union Carbide Agricultural Products:
000264–08322**** Weedone 2,4,5-TP
000264–08323**** Weedone 2,4,5-TP
Amvac Chemical Corporation:
005481–03858**** Alco Squirt-N-Kill
Wegro, Inc.:
005815–09362**** Durig's Weed & Feed 22-5-5
005815–09363**** Lazurus 22-5-5 Weed & Feed
J.R. Simplot Co.:
007001–07704**** Aristocrat Blade Grass Weed & Feed 12-3-6
Nulife Fertilizers Div. of Hygrade Food:
007404–08328**** Vita-Rich Weed and Feed
007404–08329**** Nulife Deluxe Weed and Feed
007404–08330**** Deluxe Weed and Feed
007404–08331**** Lowell Deyoung Co., Inc. Deluxe Weed and Feed
007404–08332**** Furney's Deluxe Weed and Feed
007404–08333**** Harvey's Deluxe Weed and Feed
007404–08334**** Five Corner's Deluxe Weed and Feed
007404–08337**** Poole's Deluxe Weed and Feed
Nulife Fertilizers Div. of Hygrade Food (continued):
007404–08338**** P.F.C. Fertilizers Deluxe Weed and Feed
007404–08339**** Gateway Deluxe Weed and Feed
Cape Chemical Company:
010371–07436**** Chick Weed Killer
010371–07539**** 245 Brush Killer
Farm Bureau Services, Inc.:
020792–08853**** Weed-Go Lawn Weed Killer with 10-6-4 Fertilizer
Horn's Crop Service Center, Inc.:
033285–09369**** Weed and Feed
033285–09371**** Super Green Weed and Feed
033285–09374**** Green Lightning Weed and Feed
Chemicals-Pesticides Program, Department of En:
038655–07430**** NYS-Dewey-Silvex (% and form not specified)

**C. 2,4,5-T Products Labeled Only For Suspended Uses: Eligible For Indemnification and Disposal**

**Note:** If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Union Carbide Agricultural Products:
000264–00009 Weedone 2,4,5-T
000264–00121 Amchem Envert-DT
000264–00123 Amchem Envert-T
000264–00161 Amchem Emulsamine 2,4,5-T
000264–00163 Emulsamine BK Woody Plant Herbicide
000264–00208 Emulsavert 100
000264–00269 Emulsavert 248
000264–00284 Amchem 2,4,5,-T Wood Plant Herbicide
000264–00286 Weedone 2,4,5-T Woody Plant Herbicide Odor Inhibited
Rhone-Poulenc, Inc.:
000359–00653**** Visko-RHAP H Low Volatile 2 T
Dow Chemical U.S.A.:
000464–00364 Dow Tordon 155 Mixture Brush Killer
U.S. Eagle, Inc.:
001200–00026**** Eagle Brush Kill 2,4,5-T Solution
Reuel Little Tree Injection Company:
004917–00002**** Reuel Little Tree Injection Fluid Formula No. 2
Fertile Acres Corporation:
010345–00002**** Old Gardener Weed N Feed
K-AGRI, Inc.:
041653–00010**** Butyl Ester 22 Brush Killer

**D. Intrastate 2,4,5-T Products Labeled Only For Suspended Uses: Eligible For Indemnification and Disposal**

**Note:** If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Thompson-Hayward Chemical Company:
000148–10180**** DED-Weed LV-9
000148–10181**** DED-Weed LV-33
000148–10182**** DED-Weed LV-6
Union Carbide Agricultural Products Company:
000264–10178**** Envert DT
000264–10179**** Envert DT
Cape Chemical Company:
10371–07492**** 3-Way Weed Killer
Colorado Chemical & Fert., Co., Inc.:
037351–05523**** Colorado's Own Spot Grass Killer

**E. 2,4,5–T Products Registered Under Section 24(C) and Labeled Only For Suspended Uses: Eligible For Indemnification and Disposal**

**Note.**—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

OR–760031****
OR–770007****
OR–770008****
OR–770009****
OR–770010****
OR–770011****
WA–760018****
WA–770005****
WA–770006****
WA–770007****
WA–770008****
WA–790005
WA–790006
CA–780065****
CA–780066****

**F. Silvex Products Labeled For Both Suspended Non-Suspended Uses: Eligible For Disposal Possibly Eligible For Indemnification**

**Note.**—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Bonide Chemical Co., Inc.:
000004–00151 Bonide "Squeeze-Weeder"
000004–00163 Bonide Weed Killer Contains 2,4-D Plus Silvex
Thompson-Hayward Chemical Company:
000148–00361**** De-Pester DED-Weed for Lawn Contains 2,4-D 2,4,5-TP
000148–00479 Depester DED-Weed Silvex LV
Great Western Chemical Company:
000168–00317 Morgro Weedit Lawn Weed Spray
Tobacco States Chemical Company:
000226–00218 Tasco Brand Broadleafed Weed X
Riverdale Chemical Company:
000228–00088 Riverdale Silvex
000228–00100 Riverdale Brush Killer 2 Special
000228–00130 Riverdale Butoxy Ethanol Low Volatile Ester of Silvex
Union Carbide Agricultural Products Company:
000264–00061 Amchem Weedone 2,4,5–TP
000264–00289 Amchem 2,4,5–TP
Hysan Corporation:
000334–00308 GCC–425
000334–00253 GCC–429
Nott Manufacturing Company, Inc.:
000358–00147 Super Poison Ivy Killer
Rhone-Poulenc, Inc.:
000359–00366 Chipman Silvex 4 L
000359–00643 Visko-RHAP Low Volatile Ester 2 TP for Ground Application
000359–00644 Visko-RHAP Low Volatile Ester 2 TP for Air Application
Durhams Drug Products Company:
000430–00046 Durham's Weed-Killer for Lawns
Farmland Industries, Inc.:

000449–00478 Sure Death Brand Special Low Vol Wood-Kill 4 LB Concentrate

Dow Chemical U.S.A.:

000464–00162 Kuron a Brush Killer

Rockland Chemical Co., Inc.:

000572–00123 Rockland Lawn Weed Killer

000572–00269 Rockland Lawn Weed Killer

000572–00298 Rockland Lawn Weed Killer 'B'

Diamond Shamrock Agricultural Chemicals:

000677–00305 Silvex 4–TP

Chas H. Lilly Company:

000802–00087 Miller's Lawn Weed Killer

000802–00272 Miller's Silvex 4 Brush and Weed Killer

000802–00521 Miller's Silvex 4 BP

Southern Agricultural Insecticides, Inc.:

000829–00183 SA–50 Brand Silvex Herbicide

Velsicol Chemical Corporation:

000876–00227 Velsicol Vegatrol LV Herbicide

Miller Chemical & Fertilizer Corporation:

000904–00136 Pratt Industrial Weed Killer

Farmers Union Central Exchange, Inc.:

000912–00057 Greenhouse Lawn Weed Killer with Silvex and 2,4,D

Malter International Corporation:

001266–00106 DI-PHEN Broadleaf Weed and Woody Brush Killer

Universal Cooperatives, Inc.:

001386–00528 Unico LO-V Brush Killer II

001386–00529 Unico Silvex 2,4-D LO-V 1-2 Brush Killer

001386–00530 Unico Silvex 2,4-D LO-V 2-2 Brush Killer

001386–00583 Unico LO-V 2,4,5-TP Weed & Brush Killer

Blue Spruce Company:

001439–00174 Chemsect Brand Chem Vex

W.R. Grace & Company:

002124–00746 Naco Low Volatile 4 TP Herbicide

Patterson Chemical Company, Inc.:

002169–00241 Dandelion & Chickweed Killer

PBI/Gordon Corporation:

002217–00318 Silvex-T Brush Killer

002217–00351 Silvex Lawn Weed Killer

Oxford Chemicals:

003635–0039 Osford WK82 Low-Volatile Herbicide for Controlling Woody Pl

Colorado International Corporation:

004715–00235 Best 4 Servis Brand Lawn Killer Contains 2,4-D & Silvex

ABCO, Inc.:

004828–00063 ABCO WKS-65 Brush Killer

Good Life:

004931–00078 Good Life Chickweed Killer

Farmingdale Garden Labs:

006505–00142**** Farmingdale Lawn Weed and Dandelion Formula C Killer

Bes Tex Insecticides Co., Inc.:

006853–00016 BEX–TEX Lawn Weed Killer

Miller Frank & Sons, Inc.:

008123–00043 Brush Killer

Agway, Inc.—Crop Services:

008590–00299**** Agway 2,4-D and Silvex Lawn Weed Killer

Hanco Mfg. Company, Inc.:

009931–00006 Hanco WS–22 Brush Killer

Athea Laboratories, Inc.:

010088–00043 Selective Herbicide #4

Dymon, Inc.:

0116940–00041 SWK–99

Vertac Chemical Corporation:

039511–00047 Silvi-RHAP LV-4TP (Silvex) Herbicide 2,4,5-TP

039511–00048 Silvi-RHAP LV OXY 4-TP Herbicide

**G. Intrastate Silvex Products Labeled For Both Suspended and Non-Suspended Uses: Eligible For Disposal/Possibly Eligible For Indemnification**

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Esco Distributor, Inc.:

003286–08058**** Staffel's New Improved Lawn Weed Killer

Bel Chemical & Supply Company, Inc.:

004502–03318 Bel Silvex Weed and Brush Killer

004502–03319 Bel Weed and Brush Killer Silvex 4 TP

Gro Green Products, Inc.:

006665–09475 Weed & Feed 60

Bes Tex Insecticides Company, Inc.:

006853–07345**** BES-TEX Lawn Weed Killer Low Volatile

Chem-Pak Company:

007478–07987**** Sprink'l

007478–08001**** Florida Lawn Weed Killer

Rowco, Inc.:

011465–10170**** Rowchem LPL–21 Right-of-Way Brush Control Mixture

038655–10430****

**H. 2,4,5–T Products Labeled For Both Suspended and Non-Suspended Uses: Eligible For Disposal/Possibly Eligible For Indemnification**

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Brulin & Company, Inc.:

000106–00049 Liqweedate Concentrate

Thompson-Hayward Chemical Company:

000148–00211 DED-Weed LV-2D2T

000148–00212 DED-Weed LV-6 Brush Kill Low Volatile Ester

000148–00272 De-Pester DED-Weed Amine-T Amine Salt

000148–00431 DED-Weed LV-9 Brush Kil

000148–01193 DED-Weed Amint-T Amine Salt

000148–01204 DED-Weed OS-6 Brush Kil

000148–01206 DED-Weed LV 2-1 Brush Kil

Great Western Chemical Company:

000168–00227 Wasco 2,4,5,-T Low Volatile Ester 4LB E.C.

000168–00231 Wasco 2,4,5,-T Butyl Ester #4 E.C. (2,4,5,-T Emul. Conc.)

000168–00261 Wasco Brush Killer Low Volatile 2,4,-D 2,4,5-T Emul. C.

Bogle R.H. Company:

000179–00064 BO-RID K.O. Brush Killer BKE-4

000179–00065 BO-RID K.O. Brush Killer BKE-6

000179–00067 BO-RID K.O. Brush Killer BKE-2+2

Tabacco States Chemical Company:

000226–00124 Tobacco States Brand Ester Brush Killer 2-2

000226–00155 Tabacco States Brand Low-Vol Brush Killer 2-20

Riverdale Chemical Company:

000228–00015 Riverdale Brush Killer 1 Contains Low Volatile 2,4,5,-T+2,4

000228–00016 Riverdale Weedestroy 2,4,5,-T

000228–00027 2,4,5-T Low Volatile Ester

000228–00028 Riverdale Brush Killer 2 Ester

000228–00045 Riverdale Brush Killer 2 Low Volatile Ester

000228–00075 Riverdale Formula 4 Brush Killer

000228–00077 Riverdale 2,4,5-T Amine Brush Killer

000228–00078 Weedestroy 2,4,5,-T Ester 4

000228–00091 2,4,5-T LV6

000228–00119 Riverdale Butoxy 2,4,5-T Low Volatile Ester

000228–00120 Riverdale Butoxy Brush Killer 2 Low Volatile Ester

Chevron Chemical Company:
000239-01256 Ortho LV Brush Killer TD-2

Union Carbide Agricultural Products Company:
000264–00010 Weedone BK 32
000264–00019 Weedone BK 64 Woody Plant Herbicide
000264–00021 Weedone I.B.K.
000264–00053 Weedar Amine BK
000264–00062 Weedone 2,4,5-T
000264–00071 2,4,5-T Low Volatile Ester Brush Killer
000264–00073 2,4,-D2,4,5-T Low Volatile Ester Brush Killer
000264–00084 Amchem Trinoxol
000264–00089 Weedone 2,4,5-T Special Air Spray Formula
000264–00103 Dinoxol
000264–00128 Amchem Trinoxol Super-6
000264–00132 Dinoxol Super-6 Woody Plant Herbicide
000264–00200 Asplundh 1054-E Brush Killer
000264–00268 Weedone IBK Odor Inhibited Woody Plant Herbicide
000264–00282 Amchem BK Woody Plant Herbicide
000264–00283 Amchem BK Woody Plant Herbicide
000264–00288 Weedone 2,4,5-T Special Air Spray Formula

Hysan Corporation:
000334–00253 GCC-429
000334–00308 GCC-425

Rhone-Poulenc, Inc.:
000359–00178 Rhodia 2,4,5-T Low Volatile Ester 4 L
000359–00179 Rhodia Low Volatile Brush Killer No. 2
000359–00412 Rhodia Low Volatile Brush Killer No. 3
000359–00413 Rhodia 2,4,5-T, Low Volatile Ester 6 L
000359–00540 Utility Brush Killer No. 4
000359–00645 Visko-RHAP Low Volatile Ester 1D-1T for Air Application
000359–00646 Visko-RHAP Low Volatile Ester 1D-1T Herbicide for Ground Application
000359–00651 Visko-RHAP Low Volatile Ester 2T Ground Application

Imperial, Inc.:
000407–00345 Imperial LO-VOL Super Brush Killer
000407–00346 Imperial LO-Vol, 2,4,5-T
000407–00365 Imperial No. 4 Low Volatile 2,4,5-T Brush and Weed Killer
000407–00366 Imperial No. 2+2 Low Volatile Brush and Weed Killer

Bartels & Shores Chemical Company:
000413–00023 Pioneer Brand Brush Killer No. 23 Butyl Ester

Farmland Industries, Inc.:
000449–00014 Woodbury Woodkill Ester
000449–00028 Woodbury Woodkill 6 LB. Ester Concentrate

Farmland Industries, Inc. (continued)
000449–00065 Wood-Kill 4 LB Butyl Ester Concentrate
000449–00126
000449–00127 No. 4 Low Volatile 2,4,5-T
000449–00218 No. 6 Low Volatile 2,4,5-T
000449–00317 2,4,5-T 4LB Butyl Ester

Dow Chemical U.S.A.:
000464–00180 Reddon
000464–00199 Veon 245
000464–00204 Esteron Brush Killer
000464–00205 Esterton 245
000464–00272 Tippon T6 Brush and Weed Killer
000464–00273 Tippon 2-2 Brush and Weed Killer
000464–00289 Verton CE Weed and Brush Killer
000464–00308 Verton T Herbicide
000464–00351 Brush Killer 4T
000464–00352 Brush Killer 2-2
000464–00407 Tordon 225 Mixture Herbicide
000464–00422 Verton 2T
000464–00527 Dow Brush Killer X Herbicide
000464–00528 Dow Bursh Killer TX Herbicide

Stauffer Chemical Company:
000476–00600 2,4,5-T Triethylamine 4WS
000476–00623 2,4-D-2,4,5-T Amine 2-2 WS
000476–00901 2,4-D-2,4,5-T Isooctyl Ester 2-2E Low Volatile Brush Killer
00476–00906 2,4,5-T Isooctyl Ester 4-E Low Volatile Brush Killer
000476–00933 2,4,5-T Butyl Ester 4-E
000476–00938 2,4-D 2,4,5-T Butyl Ester 1.33-.66E
000476–00939 2,4-D 2,4,5-T Butyl Ester 2-2-E High Volatile Brush Killer

Monsanto Company:
000524–00075**** Monsanto 2,4,-D-2,4,5-T Butyl Ester Brush Killer
000524–00081**** 2,4,5-T Low Volatile Ester Brush Killer
000524–00097**** Monsanto 2,4,5-T Ester Brush Killer
000524–00099**** 2,4,-D,4,5-T Amine Brush Killer
000524–00100**** Monsanto 2,4,5-T Amine Brush Killer
000524–00110**** Brush-O-Cide Brush Killer
000524–00111**** Brush Blitz
000524–00254**** 2,4,-D/2,4,5-T Low Volatile Ester Brush Killer (CODE 34)

Baird & McGuire, Inc.:
000551–00111 4DT Amine Brush Killer
000551–00116 4T Amine Brush Killer
000551–00157 4T-Ester Brush Killer
000551–00158 4DT-Ester Brush Killer
000551–00183 Brush Killer (Low Volatile Emusifiable Concentrate) LV 3D/3
000551–00184 Brush Killer (Low Volatile Emusifiable Concentrate) LV-6T

AGSCO:
000554–00056 Agsco Brush Killer

Rockland Chemical Company, Inc.:
000572–00035 Rockland Brush Killer (Ester Form) Low Volatile

Mutual Dealer Wholesale, Inc.:
000632–00022 Worthmore L–V Brush Killer

Diamond Shamrock Agricultural Chemicals:
000667–00095 Line Rider 22 Brush Killer
000677–00097 Line Rider 4T Brush Killer
000667–00102 Line Rider LV 3D/3T Brush Killer
000677–00103 Brush Killer Dormant Cane LV 3D/3T–OS
000677–00104 Dormant Cane Concentrate LV–6T–OS
000677–00133 Line Rider Amine 4T Brush Killer
000677–00136 Fence Rider 6T Brush Killer
000677–00141 Line Rider LV–21 Brush Killer
000677–00172 Line Rider Invert T Concentrate
000677–00174 Line Rider Invert D/T Concentrate
000677–00195 Dacamine 4T Brush Killer
000677–00196 Dacamine 2D/2T
000677–00238 Diamond Shamrock Chemical Co., Trailway 2D/2T Weed & Brush Killer
000677–00273 Trailway 4T Contains 4.0 Pounds 2,4,5-T Acid Equivalent Per
000677–00301 LO–VOL 2D/2T
000677–00306 LO–VOL 4T
000677–00324 Diamond Shamrock BP LO–VOL 2D/25 Brush Killer
000677–00325 Diamond Shamrock Brush Killer BP LO–VOL 4T

MFA Oil Company:
000746–00050 M.F.A. LO–V 2,4,5-T
000746–00051 M.F.A. 2,4,5-T Butyl Ester
000746–00052 M.F.A. LO–V Super Brush Kill
000746–00053 M.F.A. Super Brush Kill (Butyl Ester)
000746–00108 M.F.A. Aerial Ester No. 42

Chas H. Lilly Company:
000802–00182 Miller's 2,4,5-T Amine 4
000802–00181 Miller's LV Brush Killer
000802–00184 Miller's LV 2,4,5-T Ester
000802–00229 Miller's Blackberry & Brush Killer
000802–00329 Miller's LV 2,4,5-T Ester 6E

000802–00520 Miller's LV Brush Killer D
000802–00523 Miller's LV 2,4,5-T Ester Four BP
000802–00529 Millers Brush Killer

Southern Agricultural Insecticides Inc.:
000892–00212 SA–50 Brand Brush Killer

Velsicol Chemical Corporation:
000876–00169 Banvel 510 Oil Soluble Industrial Herbicide
000876–00176 Banvel—710
000876–00179 Velsicol Banvel—320 Water Soluble Industrial Herbicide
000876–00180 Velsicol Banvel 310 Oil Soluble Industrial Herbicide
000876–00204 Brush Buster III Herbicide
000876–00214**** Velsicol Vegatrol A 2D–2T Herbicide for Brush Control
000876–00216**** Velsicol Vegatrol LV–2D–2T Herbicide for Brush Control
000876–00219**** Velsicol Vegatrol LV–2D–2T Herbicide for Brush Control
000876–00220**** Velsicol Vegatrol BE–4T Herbicide for Brush Control
000876–00226**** Velsicol Vegatrol 0–6T Herbicide for Brush Control
000876–00228**** Velsicol Vegatrol LV–4T Herbicide for Brush Control
000876–00229**** Velsicol Vegatrol LV–6T Herbicide for Brush Control
000876–00230**** Velsicol Vegatrol 0–4T Herbicide for Brush Control
000876–00231**** Velsicol Vegatrol A–4T Herbicide Brush Control

Farmers Union Central Exchange, Inc.:
000912–00049 Co-op A Brush Killer Concentrate
000912–00050 Co-op Brush Killer LV 2&2 Brush and Weed Killer

The Cropmate Company:
001145–00016 Amoco Brush Killer
001145–00029 Amoco 2,4,5-T LV Ester For Brush Control
001145–00079 Amoco 2,4,5-T Amine
001145–00126 Amoco Brush Killer-M
001145–00133 Amoco 2,4,5-T LV Ester-M

Midland Cooperatives, Inc.:
001180–00017 Midland 50–50 Low Volatile Brush Killer

Indiana Farm Bureau Coop. Assn., Inc.:
001222–00034 Coop Concentrate 2,4,5-T
001222–00044 Co-op Long Chain Low Volatile Four Pound Brush Killer

Dewitt Chemical Company:
001269–00033 De Witt S–77 Weed Killer
0001269–00104 Dewitt No. 170 Brush Killer

Zep Manufacturing Company:
001270–00055 Zep R–61 Weed Killer
001270–00125 Zep B–70 Brush Killer

Land O'Lakes:
001381–00020 Felco Super Brush Killer
001381–00065 Felco 2,4,5-T Brush Killer

Universal Cooperatives, Inc.:
001386–00057 Unico 2,4,5-T LO–V Ester Brush Killer
001386–000556 Unico LO V Brush Killer 1–2

The Detteback Chemical Corporation:
001421–00107 Brush Killer–EH–10 2,4,-D/2,4,5-T Low Volatile Emuls Conc

State Chemical MFG:
001685–00041 Formula 888 Brush-Kil Selective Weed and Brush Killer
001685–00048 Formula 220 Brush-Kil Selective Weed and Brush Killer
001685–00078 Formula 220–A Brush-Kil

NCH Corporation:
001769–00100 National Chemsearch Chemester 123

Holder Corporation:
001772–00072 Chemform Brand Butoxy Brush Killer

Navy Brand MFG Company:
001926–00010 WKB–15

Parsons Chemicals:
001969–00071 Poison Ivy & Brush Killer #2

Farmland Ind., Inc.:
001990–00100 Co-op Weed-Out (2,4,5-T Low Volatile Ester 4 Pounds)
001990–00101 Co-op Weed-Out Brush Killer Low Volatile
001990–00106 Weed-Out 2,4,5-T Butyl Ester
001990–00227 Co-op Weed-Out (Brush Killer Butyl Ester)

W.R. Grace & Company:
002124–00437 NACO Low Volatile 2D–2T
002124–00705 NACO 2,4,5-T Low Vola Brush Killer-4T Cont. 4 LBS 2,4,5-T Gal

I. Schneid, Inc.:
002155–00045 Formula 406 Brush Killer

Patterson Chemical Company, Inc.:
002169–00069 Patterson's Brush Killer No. 200

PBI/Gordon Corporation:
002217–00074 LV Brush Killer
002217–00094 Super Brush Killer No. 400 Butyl
002217–00100 Butyl Ester 400 2,4,5-T Brush Killer
002217–00554 2,4,5-T Amine

Hopkins Agricultural Chemicals:
002393–00309 Arcadian Low Volatile 2–2 Brush Killer

Pueblo Chemical & Supply Company:
002737–00012 Pueblo 4 LB Brush Killer
002737–00033 Pueblo Brush Killer Lovol 2D/2T

Oxford Chemicals:
003635–00039 Oxford WK–82 Low-Volatile Herbicide for Controlling Woody Pl

Economy Products:
003770–00013 No. 2 & 2 Brush Killer
003370–00098 Economy 2,4,5-T Butyl Ester 4E

DH Industrial Sup Company:
003797–00003 Right-A-Way Brush-Killer Semi-Concentrate

Smith-Douglass, Inc.:
004185–00124 Smith-Douglass Mangle Brush Killer
004185–00128 Smith-Douglass 2,4,5-T Low Volatile Ester Brush Killer

Colorado International Corporation:
004715–00173 Best 4 Servis Brand LO–VOL Brush Killer
004715–00174 Best 4 Servis Brand LO–VOL 2,4,5-T Brush Killer
004715–00182 Best 45 Servis Brand Butyl Ester 400 2,4,5-T Brush Killer
004715–00246 Butyl Brush Killer 3–3

ABCO, Inc.:
004828–00037 W.K.—DT 133
004828–00063 ABCO WKS–65 Brush Killer

Good Life:
004931–00086 Good-Life 2–2 Low Volatile Brush Killer
004931–00087 Good-Life 4 LB 2,4,5-T Low Volatile Brush Killer
004931–00089 Good-Life 4 LB 2,4,5-T Brush Killer Butyl

Helena Chemical Company:
005905–00074 Helena 2D–2T Brush Killer

Comet Manufacturing Company:
006294–00018**** Com-O-Brush LV 20–10 Low Volatile Isoctyl Ester of 2,4,5-T
006294–00019**** Com-O-Brush Isoctyl BRH KLR 5LV Low VOL ISOTL Ester 2,4,5-TE

Southern Mill Creek Products Company, Inc.:
006720–00033 Standard Amine T Brush Killer
006720–00112 SMCP Special Ester LV D & D

Stern Chemtech Corporation:
006762–00010 Weedex 130 Low Volatile Ester Weed Grass and Brush Killer
006762–00021 Weedex-65 Low Volatile Ester Weed Grass & Brush Killer
006762–00032 2,4,5-T Tree Killer
006900–00073 Dill 2,4,5-T Low Volatile Ester 4L Brush and Weed Killer

Chempar Chemical Company Inc.:
007173–00021 Chempar L.V. Brush Killer Z/Z
007173–00050 Chempar

Crown Chemical Industries:
007273–00062 Brush-Off 4-T Amine Brush Killer
007273–00066 Brush-Off D & T Brush Killer
007273–00077 Brush-Off 2–2–LV Brush Killer

007273–00083 Weed and Brush-Off Amine Formula 400
007273–00088 Brush-Off Low Volatile Brush & Weed Killer
007273–00091 Brush-Off 2–2 Amine Brush Killer

BASF Corporation:
007969–00016 U-46 DT–LV Brush Killer

Miller Frank & Sons, Inc.:
008123–00032 Brush & Weed Killer To Control Broadleaf Weed & Wood Plants

Habco, Inc.:
008823–00050 Habco LO–VOL 2D/2T
008823–00051 Habco LO–VOL 4T

Precision Laboratories, Inc.:
009349–00005 Liqui-Date Brush Killer (Ester Form) Range Eng Dev Corporation
009650–00001 Foamicide No. 100 Brush & Weed Killer

Riverside/Terr Corporation:
009779–00122 Riverside Herbicide Low Volatile 4T
009779–00123 Riverside Herbicide Low Volatile 2–D–2T
009779–00124 Riverside Herbicide A–4T 2,4,5-T

Athea Laboratories, Inc.:
010088–00008 LVBK Kills Broadleaf Weeds and Woody Plants Low Volatile Sel
010088–00009 Weed & Brush Killer No. 1
010088–00010 2,4,5-T Low Volatile Ester Brush and Weed Killer

Mantek:
010272–00006 Mantek Man Weed X–40

ABC Chemical Corporation:
011515–00056 Twin Esters Kills Woody Plants Low Volatility

Forage Unlimited:
033330–00001 Sifon Rangeland Brush Spray OLV 4D–2T
033330–00005 Forage Unlimited Industrial Brush Spray OLV 3D–3T

Environmental Process Research:
039128–00001 Best 4 Servis Brand Butyl Brush Killer 2–2
039128–00002 Best 4 Servis Brand Brush & Range Clear 3–3
039128–00003 Best 4 Servis Brand Brush & Range Clear 4–4

Vertac Chemical Corporation:
039511–00016 Brush–RHAP Amine A–2D–2T Herbicide
039511–00017 Brush–RHAP A–4T Herbicide 2,4,5-T Amine
039511–00018 Brush–RHAP O B–4T Herbicide 2,4,5-T
039511–00019 Brush–RHAP Butyl Ester B–4T Herbicide 2,4,5-T
039511–00021 Brush–RHAP Butyl–2D–2T Herbicide
039511–00022 Brush–RHAP LV–6T Herbicide 2,4,5-T
039511–00023 Brush–RHAP LV–5T Herbicide 2,4,5-T
039511–00024 Brush–RHAP LV–4T Herbicide
039511–00025 Brush–RHAP LV OXY–5T Herbicide
039511–00026 Brush–RHAP LV OXY–45 Herbicide
039511–00027 Brush–RHAP LV OXY–6T Herbicide
039511–00028 Brush–RHAP LV OXY 3D–3T Herbicide
039511–00029 Brush–RHAP LV OXY–2D–2T Herbicide
039511–00030 Brush–RHAP LV 3D–3T Herbicide
039511–00032 Brush–RHAP LV 2D–2T Herbicide
039511–00033 Brush–RHAP OLV 2D–2T Herbicide
039511–00034 Brush–RHAP OLV–4T Herbicide
039511–00035 Brush–RHAP OLV–6T Herbicide
039511–00036 Brush–RHAP OLV 3D–3T Herbicide
039511–00050 Amine OA–1.50–1.5T Herbicide
039511–00051 Transamine OA–3T Herbicide 2,4,5-T Oil Soluble Amine

K-Agri, Inc.:
041653–00003 LV Ester 22 Brush Killer
041653–00004 LV Ester T4 Brush Killer
041653–00011 Butyl Ester T4 Brush Killer

*I. Intrastate 2,4,5-T Products Labeled For Both Suspended and Non-Suspended Uses: Eligible For Disposal/Possibly Eligible For Indemnification*

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

Dow Chemical U.S.A.:
000464–08120**** Tordon Special LV 225 Herbicide

S&P Branded Fertilizer, Inc.:
000557–09483**** Swifts Gold Bear Brush Kill 55

Velsicol Chemical Corporation:
000876–07819 Banvel 2+2 Herbicide for Pasture, Rangeland Grasses and NONCR
000876–07934 Banvel 2+2 Herbicide
000876–07943 Banvel 2+2 Herbicide

Esco Distributer, Inc.:
003286–08060**** Staffel's 2,4,5-T
003286–10172**** Staffel's Brush Killer No. 32

Brewer Chemical Corporation:
003579–03279**** Ultramar LV-BK

Chemical Specialties, Inc.:
010827–03424**** IND-SOL 100

Rowco, Inc.:
011485–10171**** Rowchem Brush Control Mixture T

American National Chemical Company:
025203–10595**** Quick Kill 400 Weed Killer Liquid

Uni-Chem Corporation of Florida:
037347–03126**** Uni-Chem Brush and Weed Killer

*J. 2,4,5-T Products Registered Under Section 24(c) and Labeled For Both Suspended and Non-Suspended Uses: Eligible For Disposal/Possibly Eligible For Indemnification*

Note.—If the Registration Number is followed by asterisks (****) the product will be considered for disposal only, due to expiration of the statute of limitations.

TX–760003****
TX–770001****
TX–770016****
TX–780017
TX–780006****
TX–770003****
TX–770001****
TX–780001
TX–780008****

*K. Silvex Products Labeled Exclusively for Non-Suspended Uses: Ineligible for Indemnification or Disposal*

Miller Chemical and Fertilizer Corporation:
000072–00407 Miller's Nu-Set 2,4,5-Hormone Type Spray

Thompson-Hayward Chemical Company:
000148–00925 Isoocytle Ester of Silvex Technical

Riverdale Chemical Company:
000228–00134 Riverdale Silvex Butoxyl Ethanol Ester Tech
000228–00135 Riverdale Silvex Isoocytl Ester Tech

Union Carbide Agricultural Products Co.:
000264–00144 Fruitone-T Double Strength
000264–00150 Fruitone
000264–00272 Technical Silvex

FMC Corp.:
000279–01794 Niagara Stikcol
000279–01809 Niagara Stikcol-D
000279–02079 Stikcol 256

Rhone-Poulenc, Inc.:
000359–00598 Ag Mix 561
000359–00623 Rhodia 2,4-D & 2,4,5-TP Blend (Technical)
000359–00670 Rhodia 2,4,5-TP Acid

Farmland Industries, Inc.:
000449–00344 No. 4 Silvex Ester Emulsifiable
000449–00496 2,4,5-TP Technical Acid for Manufacturing Purposes Only

Dow Chemical U.S.A.:
000464–00436 Silvex, Isooctyl Esters for Manufacturing Use Only
000464–00455 Silvex, Acid for Manufacturing Use Only

000464–00461 Silvex, Butoxypropyl Esters for Manufacturing Uses
000464–00515 Dow Butoxy Propylester Mix No. 1
000464–00519 Dow IOE Mix No. 1

Diamond Shamrock Agricultural Chemicals:
000677–00287 Technical Isoocytle Esters of Silvex for Manufacturing Purposes Only

Chas. H. Lilly Co.:
000802–00400 Miller's Stick 'N Stay #243 (Tree Fruit Set)
000802–00518 Miller's 2,4-D Silvex 18-20 Granular
000802–00519 Miller's 2,4-D Silvex 30-10 Granular

PBI/Gordon Corporation:
002217–00598 Technical Herbicide Blend No. 820 Manufacturing Concentrate

Aceto Chemical Company:
0002749–00097 Silvex Technical

Wilbur Ellis Company:
002935–00338 Red Top Brand 2,4,5-TP 256
002935–00339 Red Top Brand 2,4,5-TP 400

Gallard-Schelsinger Chemicides, Inc.:
004221–00016 2,4,5-T.P. Acid

Vertac Chemicals Corporation:
039511–00045 Transvaal MCPA Low Volatile Oxy Ester
039511–00056 2,4,5-TP Acid
039511–00057 2,4,5-TP Volatile Silvex Ester

Falls Chemicals, Inc.:
040831–00071 Best 4 Servis Brand Lawn Weed Killer Cont. 2,4-D & Silvex

Morgro Chemical & Energy Corp.:
042057–0049 Morgro Weedit Lawn Weed Spray

*L. Intrastate Silvex Products Labeled Exclusively for Non-Suspended Uses: Ineligible for Indemnification or Disposal*

Dow Chemical U.S.A.:
000464–06847 Kuron

*M. 2,4,5-T Products Labeled Exclusively for Non-Suspended Uses: Ineligible for Indemnification or Disposal*

Bonide Chemical Co., Inc.
000004–00164 Bonide Kilbrush

Thompson-Hayward Chemical Company:
000148–000924 2,4,5-T Isooctyl Ester Technical
000148–001223 T-H 2,4,5-T Acid

Union Carbide Agricultural Products Company:
000264–00086 Amine 2,4,5-T for Rice
000264–00234 Technical 2,4,5-T Ester (for use in the Manufacture of Herbicide
000264–00255 Brominal Industrial Broadleaf Herbicide

Nott Manufacturing Company, Inc.:
000358–00094 Nott's Poison Ivy Killer

Rhone-Poulenc, Inc.:
000359–00574 Chipman Aerosol Special Mixture No. 1
000359–00578 Chipman 2,4,5-T Acid
000359–00580 Rhodia 2,4,5-T Isooctyl Ester (Technical)
000359–00582 Chipman 2,4-D and 2,4,5-T Ester Mix Technical
000359–00605 Chipman D and T Mix No. 8
000359–00612 T & C Lawn Weed Killer Concentrate
000359–00615 Swift Mix No. 1
000359–00616 Swift Mix No. 2
000359–00652 Visko-RHAP Low Volatile Ester 2T for Air Application

Dow Chemical U.S.A.:
000464–00491 2,4,5-T Butoxy Ethanol Esters
000464–00492 2,4,5-T Butoxy Proply Esters
000464–00493 2,4,5-T Acid
000464–00494 2,4,5-T Butyl Esters
000464–00495 2,4,5-T Isooctyl Esters

Monsanto Company:
000524–00047 2,4,5-T Isopropyl Ester Technical Grade
000524–00048 2,4,5-Trichlorophenoxyacetic Acid
000524–00067 Technical Grade 2,4,5-T Butyl Ester
000524–00095 D-61 Monsanto 2,4,5-T Isooctyl Ester
000524–000149 2,4,-D/2,4,5-T Mixed Esters N-Butyl and Isobutyl
000524–000150 2,4,-D/2,4,5-T Butyl Esters
000524–000258 2,4,5-T Isobutyl Ester Technical Grade

Prentiss Drug & Chemical Company, Inc.:
000655–000611 Parsons Poison Ivy and Brush Killer NO. 2

Diamond Shamrock Agricultural Chemicals:
000677–000247 Technical 2-Ethylhexyl-T (2,4,5-T)
000677–000248 Technical Isopropyl-T (2,4,5-T)
000677–000250 Technical Butyl-T (2,4,5-T)
000677–000253 Technical Isooctyl-T (2,4,5-T)
000677–000267 Diamond Chemical 2,4,5-T Acid Dustless for Manufacturing Purposes

Olin Corporation:
001258–01007 LV Ester 22 Brush Killer
001258–01008 LV Ester T4 Brush Killer
001258–01015 Butyl Ester T4 Brush Killer

Land O'Lakes:
001381–00086 Midland 50-50 Low Volatile Brush Killer

Universal Cooperatives, Inc.:
001386–00028 Unico Brush Killer
001386–00056 Unico LO-V Brush Killer

Farmland Industries, Inc.:
001990–00393 Woodbury Woodkill Ester
001990–00395 Woodbury WoodKill 6 LB Ester Concentrate
001990–00411 Low Vol 4 LB Woodkill
001990–00412 No. 4 Low Volatile 2,4,5-T
001990–00422 No. 6 Low Volatile 2,4,5-T
001990–00439 2,4,5-T 4 LB Butyl Ester

PBI/Gordon Corporation:
002217–00442 2,4,5-Trichlorophenoxyacetic Acid

Kerr-McGee Chemical Corporation:
002342–00838 Poison Ivy Killer

Corn Belt Chemical Company:
010107–00025 Wasco 2,4,5-T Low Volatile Ester 4 LB E.C.
010107–00026 Wasco 2,4,5-T Butyl Ester #4 E.C. (2,4,5-T Emul. Conc.)

EM Industries, Inc.—Plant Protection Div.:
021137–00013 2,4,5-T Technical

Inland Labs., Inc.:
023486–00004 No. 2 & 3 Brush Killer
023486–00018 Economy 2,4,5-T Butyl Ester 4E

Vertac Chemical Corporation:
039511–00052 2,4,5-T Acid
039511–00053 2,4,5-T Butyl Ester
039511–00054 2,4,5-T Low Voltile Ester
039511–00055 2,4,5-T Low Volatile Oxy-Ester
039511–00083 Helena 2D-2T Brush Killer

Falls Chemicals, Inc.:
040831–00009
040831–00048 Best 4 Servis Brand LO-VOL Brush Killer
040831–00049 Best 4 Servis Brand LO-VOL 2,4,5-T Brush Killer
040831–00053 Best 4 Servis Brand Butyl Ester 400 2,4,5-T Brush Killer
040831–00078 Butyl Brush Killer 3-3

Morgro Chemical & Energy Corporation:
042057–00032 Wasco Brush Killer Low Volatile 2,4-D 2,4,5-T Emul. C.

Gilmore, Inc.:
042545–00002 2,4,5-T 4LB Amine
042545–00003 2,4,5-T Technical Acid
042545–00005 Chipman 2,4,5-T Acid
042545–00006 Rhodia Low Volatile Brush Killer No. 2
042545–00021 Rhodia 2,4,5-T Low Volatile Ester 4L
042545–00022 Rhodia 2,4,5-T Low Volatile Ester 6L
042545–00023 Rhodia 2,4,5-T Isooctyl Ester (Technical)

Cameron M. Baird:

050415–00037 Brush Killer (Low Volatile Emulsifiable Concentrate) LV 3C/3

*N. Intrastate 2,4,5-T Products Labled Exclusively For Non-Suspended Uses: Ineligible For Indemnification or Disposal*

Dow Chemical U.S.A.:
000464–08119 Mesquite T Herbicide

S & P Branded Fertilizer, Inc.:
000557–09482 Swifts Gold Bear Brush Kill 22

*O. 2,4,5-T Products Registered Under Section 24(c) and Labeled Exclusively For Non-Suspended Uses: Ineligible For Indemnification or Disposal*

TX-780007

**V. What Is a Loss Caused by Suspension or Cancellation?**

*A. General Rule*

FIFRA section 15 provides that a pesticide owner who is otherwise eligible may be entitled to indemnification if the owner has suffered losses by reason of suspension or cancellation of a pesticide registration. The Agency interprets this provision to mean that a claimant is entitled to be indemnified for losses the claimant suffered when the claimant was prevented from using or selling a pesticide product by Agency action. The 2,4,5–T/silvex suspension orders generally prohibited both the sale and use of products registered for specified uses. Thus, registrants, sellers, and end-users may claim indemnification for losses resulting from compliance with the orders. However, to the extent that the Agency has permitted the sale or use of existing pesticide stocks, either as originally labeled or after relabeling, owners of such stocks may be ineligible for indemnification.

*B. Registrants Who Had Opportunity to Relabel Product*

It is the Agency's view that registrants who lawfully could have amended their pesticide registrations and relabeled their products for non-suspended uses are in most instances not eligible for indemnification. The Agency permitted registrants of products registered for both suspended and non-suspended uses to delete the suspended uses and to retain active registrations for the non-suspended uses. Registrants, distributors, and retailers of such pesticides may be ineligible for indemnification depending on the particular factual circumstances. Such persons may submit claims for consideration by the Agency.

*C. Sale and Distribution of Existing Stocks*

The Agency incorporated a provision concerning distribution and sale of existing stocks in the cancellation notice concerning the non-suspended uses of 2,4,5–T and silvex which was published in the **Federal Register** of October 18, 1983 (48 FR 48434). That notice stated that the Agency would permit continued distribution and sale of 2,4,5–T and silvex products labeled for non-suspended end-uses and canceled pursuant to the notice for no more than 1 year from the effective date of such cancellation. Although this 1983 existing stocks provision excluded all products labeled for any end-use subject to the 1979 suspension orders, that provision nevertheless is pertinent here. Products with labeling which originally included both suspended and non-suspended uses, and which were subsequently amended to delete suspended uses, could be distributed and sold pursuant to the 1983 existing stocks provision.

The owner of any quantity of a pesticide product that could have been lawfully distributed and sold pursuant to the existing stocks determination may not obtain indemnification for the cost of that quantity of that pesticide unless and until the owner demonstrates that the product could not reasonably have been distributed and sold for any nonsuspended use pursuant to that determination.

*D. Products Owned by End-Users*

Because no 2,4,5–T or silvex product may be legally used for any use subject to the 1979 emergency suspension orders, end-users who own stocks of 2,4,5–T or silvex products labeled for suspended uses may be eligible for indemnification. However, end-users who currently own 2,4,5–T or silvex products labeled for non-suspended uses may continue to use those products for such uses. Some end-users may have originally acquired a product for a non-suspended use or could otherwise reasonably use the product for such a use. Accordingly, end-users who own stocks of 2,4,5–T or silvex products labeled for both suspended and non-suspended uses may be ineligible for indemnification depending on the particular factual circumstances. Such persons may submit claims for consideration by the Agency.

*E. Prior Indemnity Payment*

Some registrants of silvex pesticides entered into settlement agreements with EPA which resulted in the cancellation of their pesticide registrations. These agreements established a procedure for the processing of indemnification claims and for the disposal of affected products. Most of the owners of pesticides covered by these Agreements have obtained indemnification payments as a result of litigation in the U.S. Claims Court, and have had their products disposed of by EPA. Such persons have no rights to further indemnification or disposal. In any event, any remaining claims by owners of pesticides covered by the Agreements who have not already instituted an appropriate action in the U.S. Claims Court are now barred by the statute of limitations.

**VI. Who May File a Claim for Indemnification**

A claim for indemnification may be filed by: (1) Any person who, on February 28, 1979, owned some quantity of a 2,4,5-T or silvex pesticide product the registration of which was suspended and cancelled; (2) the assignee of the claim of such a person; or (3) the authorized representative of such a person. Unit VII of this Notice tells how to file a claim for indemnification.

Some registrants and suppliers have recalled products from their customers who owned the product at the time of suspension. EPA is interested in consolidating as many claims as possible, and therefore, encourages submission of consolidated claims by such registrants or suppliers (see Unit VIII.C. of this Notice).

A person who is entitled to be indemnified may authorize another person to file a claim on his behalf, to receive payment on his behalf, or both. A power of attorney is a document which appoints someone (the registrant, for exmaple), as the agent of the person who is entitled to be indemnified, and authorizes the agent to submit an indemnification claim and receive payment on the owner's behalf.

A person entitled to claim indemnification may instead assign his/her claim to another person, and thereby transfer his right to indemnification to that other person. The person who assigns his/her claim thereafter has no legal interest in the claim. In either situation, the validity of the claim depends on whether the agent or assignee obtained the right to present it from a person eligible for indemnification under section 15. Although the Federal Anti-Assignment of Claims Act, 31 U.S.C. 3727, ordinarily would bar the assignment of claims against the Government, the Government has determined that it will waive the defense with regard to otherwise valid claims for

indemnification for 2,4,5-T and silvex products under section 15.

**VII. Who May Request Federal Disposal**

Any person who currently owns any quantity of a 2,4,5-T or silvex pesticide product which is eligible for disposal (see Unit III of this Notice), or any authorized representative of such a person, may request that EPA dispose of the pesticide, whether or not the person claims indemnification for that quantity of the product. Unit VIII of this Notice describes how to request disposal.

**VIII. How To File a Claim or Request Disposal**

*A. Form and Supporting Documentation*

EPA Form 8500–21, entitled "Silvex/2,4,5-T Products; Claim for Indemnification and Request for Federal Disposal," must be filled out and submitted to the address listed at the beginning of this Notice in order for any indemnification claim or disposal request to be considered. Copies of the form can be obtained at the same address.

The person submitting the form must submit the required documentation to support the claim or disposal request. The instructions accompanying the form state what kinds of supporting documentation will be accepted for each element of the claim or disposal request.

The person filing the form must find the product for which he/she is claiming indemnification or requesting disposal on the list in Unit III of this Notice, and indicate on the form the category to which the product belongs. If indemnification is being requested for a product registered for both suspended and non-suspended uses, registrants, distributors, or retailers must state why the product was not relabeled for only non-suspended uses and subsequently marketed, and end-users must state why the product was not used for non-suspended uses.

If the person submitting a claim for indemnity was not the owner of the pesticide product on February 28, 1979, the person submitting the claim must submit documentary evidence which establishes that he/she is authorized to file the claim. If the person submitting the claim seeks to have the Government pay him/her on behalf of the owner of the product, an appropriate power of attorney must be submitted. All assignments and power of attorney documents should be notarized.

The form provides a means to request disposal of pesticide stocks, whether or not indemnification is requested. All information requested on the form regarding quantity, unit number and size, and other facts pertinent to disposing of products must be submitted.

*B. Business Records Verification*

Manufacturers, registrants, distributors, and any other claimants that normally maintain business records may consolidate the information required to support a claim and to verify the contents of the claim by submitting an auditor's report, or a schedule supported by an independent certified accountant's statement verifying the validity of the schedule. Each element of the claim, such as cost per unit of product or quantity of product owned at the time of suspension, must be reviewed and verified by the independent auditor if verification for the complete contents of the claim is being provided through the report or statement. If the independent review is being conducted for only one element of the claim, such as a manufacturer's cost of production per unit of product, supporting documentation must be submitted for all other elements of the claim. EPA reserves the right to request submission of (or to otherwise inspect) the information that formed the basis for the audits or reports, in order to verify the validity of the information submitted.

*C. Composite Claim Lists*

Registrants or suppliers who have recalled a product from their customers and who are assignees or are acting as legal representatives may submit composite lists for separate elements of the claim form identifying the product, product owner, quantities and units of pesticides, and other pertinent information indicated on the claim form. Documentation of the assignment, power of attorney, or other legal authorization from each former owner of the product listed in such composite list must be submitted. The legal documentation should identify the parties and product involved.

*D. Confidential Business Information*

As a general matter, businesses may assert claims of business confidentiality covering part or all of the information submitted in or with the Claim Form, in the manner described at 40 CFR 2.203(b). Any such assertions of confidentiality of business information must be supported by documentation of the reasons why disclosure of the information is likely to cause substantial harm to the business' competitive position. The information covered by the assertion will be disclosed by EPA only to the extent, and in accordance with the procedures, set forth in 40 CFR Part 2. If no such assertion and supporting documentation accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the business. See 40 CFR 2.203(a)(2).

EPA has determined that it will not afford confidential treatment to certain information requested on the Claim Form, because it must be disclosed to potential contractors in order to arrange for disposal of the pesticides. Confidentiality claims should not be made for the following information: the type, composition, and quantity of each pesticide product for which disposal is requested, the unit size of containers, and the product's location. If the Agency receives any confidentiality claims for this information, the claim for indemnification and disposal will not be considered and will be returned to the claimant.

*E. Signing of Claim Required*

The claimant, or his/her authorized representative, must sign the claim form. Signature of the form constitutes agreement to the following:

(1) That all statements made and information provided in the claim are true and correct to the best of the claimant's knowledge, and that the amount of the claim is an accurate statement of the cost of the product;

(2) That the claimant had no knowledge of facts which, in themselves, showed that the pesticide did not meet Federal registration requirements;

(3) That acceptance of any payment from EPA constitutes full satisfaction and final settlement of the claim;

(4) That by submission of the claim, the claimant grants permission to authorized agents of the United States Government to enter premises where records or product are retained to conduct whatever inspections, audits, or examinations are necessary to verify the contents of the claim;

(5) That by submission of the claim, the claimant waives any claim for confidential treatment of the types of information specified in Unit VIII.D. of this notice.

(6) That claimant has received no other payment for the cost of the pesticides for which indemnification is claimed and that should claimant receive such other payment, claimant agrees to promptly reimburse the EPA in such amount up to and including the full amount of the indemnification payment made under this program;

(7) That ownership of and responsibility for pesticide products for which indemnification payments are

made under this program remains with the claimants and/or the holders of the material unless and until the EPA accepts the material for disposal under section 19 of FIFRA;

(8) That neither payment of indemnification under section 15 of FIFRA nor acceptance of pesticides for disposal under section 19 of FIFRA in any way constitutes a finding or warranty by the United States with respect to the proper or safe storage, packaging, handling, transport or disposal of such products by the owners or holders of the products or by agents, employees, or other persons acting in their behalf;

(9) If the claim is filed by an assignee, that the United States may assert against the assignee any defenses, or right of setoff or counterclaim, applicable against the person who assigned the claim.

*F. Compliance With RCRA Requirements*

Information submitted to the Office of Pesticide Programs in connection with an indemnification claim or disposal request may be provided to other Agency offices. Therefore, persons who intend to submit indemnification claims and/or disposal requests for 2,4,5-T or silvex products are advised that any products in their possession which are listed as acute hazardous waste in the regulation concerning dioxin-containing wastes promulgated by EPA under the Resource Conservation and Recovery Act (RCRA), 40 CFR 261.31 (Hazardous Waste F027), 50 FR 1978, January 14, 1985, must be managed in compliance with the management standards in that regulation.

Before materials can be hazardous wastes under RCRA, they must first be solid wastes. Remaining stocks of cancelled pesticide products containing 2,4,5-T or silvex are considered to be solid wastes subject to RCRA if they have been "discarded" or are intended for discard. In this context, "discarded" means either abandoned or used as a fuel or as a component of a fuel. See 40 CFR 261.2(a)(2)(i) and 261.33, 50 FR 637, January 4, 1985. Any 2,4,5-T or silvex product which the owner reasonably and legitimately intends to legally sell or use for a lawful pesticidal purpose is not yet a RCRA solid or hazardous waste. Except for sales to a foreign purchaser in conformity with FIFRA section 17(a), no canceled 2,4,5-T or silvex product may still be lawfully sold or distributed. However, 2,4,5-T and silvex products which are labeled for non-suspended uses and are currently held by the end user may still be used for such non-suspended uses.

Except for 2,4,5-T and silvex products which are "household wastes" as defined in 40 CFR 261.4(b)(1), all canceled 2,4,5-T and silvex products which have been discarded or are intended for discard are not only solid wastes but are also classified as "hazardous wastes" by the RCRA dioxin listing (Hazardous Waste F027). Among other things, the RCRA dioxin listing requires holders of the subject waste to notify EPA or an authorized State and establishes particular requirements concerning storage and disposal of such waste. Such waste must be stored in containers having secondary containment, containers must be kept in sound operating condition, and leaks and spills must be responded to (40 CFR Part 264, Subpart I). Tanks containing these wastes are subject to similar requirements (40 CFR Part 264, Subpart J). Storage of such waste by the generator for more than 90 days requires a permit (40 CFR 262.34). In general, such wastes may only be disposed of, or incinerated, at facilities having RCRA permits; thus, interim status disposal or incineration facilities may not ordinarily accept such waste.

In addition, persons holding any 2,4,5-T or silvex product which is or may become hazardous waste should be aware of additional constraints on land disposal of such wastes which will be effective on November 7, 1988 (RCRA section 3004(e), 51 FR 40572, November 7, 1986.) After that date, such wastes are prohibited from land disposal unless they meet the applicable treatment standards in 40 CFR 268.41, or are the subject of an approved petition under 40 CFR 268.6, an approved case-by-case extension under 40 CFR 268.5, or a variance from the treatment standard under 40 CFR 268.44. In addition, effective November 7, 1988, storage of such wastes for over 1-year must be for the purpose of accumulating sufficient waste as necessary to facilitate treatment, recovery, or disposal of the waste (40 CFR 268.50(c)).

Persons holding stocks of canceled 2,4,5-T or silvex products who desire further information concerning the applicability of RCRA requirements to their products should contact one of the employees listed below:

Gerry Levy, EPA—Region I, John F. Kennedy Federal Building, Boston, MA 02203, (617–223–4852).
Ernie Regna, EPA—Region II, Woodbridge Avenue, Edison, NJ 08837, (201–321–6765).
Larry Miller, Curtis Bldg., EPA—Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215–597–8598).
Kirk Lucius, EPA—Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404–347–3222 or 3621).
Phyllis Reed, EPA—Region V, Federal Office Building, 230 South Dearborn Street, Chicago, IL 60604, (312–353–2291).
Dr. Norman Dryer, EPA—Region VI, 1201 Elm Street, 1st International Bldg., Dallas, TX 75270, (214–767–5311).
Leo Alderman, EPA—Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913–236–2835).
Al Yorke, EPA—Region VIII, 999 18th St., Suite 1300, Denver, CO 80202, (303–293–1730).
Richard Vaille, EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, (415–974–8138).
Anita Frankel, EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, (206–442–1198).

## IX. Where and When Claim Must be Filed

All claims must be submitted to the address listed at the beginning of this Notice, and must be postmarked no later than July 7, 1987. All claims postmarked after that date will be denied.

EPA is imposing this time limitation on filing of claims because the information provided through the claims forms will enable the Agency to estimate the funds required for indemnification for and disposal of the products. Until the Agency is able to estimate with some certainty the total cost required for such activity, it will be unable to determine the adequacy of potential sources of funding, seek additional funds as required, and properly evaluate available options for disposal of eligible products.

If a claim is filed within the prescribed time period, but the Agency requests supporting documentation not included with the original claim, an appropriate period will be allowed for submission of the additional information required for consideration of the claim. If the requested information is not submitted within the grace period provided, and a response is not received stating why the information cannot be submitted within that time period, the claim will be denied.

A claim may be amended at any time before final action by EPA. All amendments must be submitted in writing and signed by the claimant or his/her authorized agent or legal representative.

## X. How Claims Will be Processed

Upon receipt of a claim, EPA will assign it a claim number and all correspondence regarding the claim will reference that number. All claimants will be notified of receipt of the claim and, if necessary, of any additional information or verification required for consideration of the claim. If a claimant is unable to provide the documentation required for consideration of his/her

claim within the prescribed time period, the claim will be disallowed and will be returned to him.

The Agency plans to conduct random investigations of claims submitted for the purpose of establishing their veracity. In verifying claims, the Agency may seek to enter premises to examine any 2,4,5-T or silvex pesticide products being stored pending disposal, to examine records relevant to the claim, or to conduct whatever other examinations are necessary to audit the claim. EPA may reject claims if investigators are not permitted to enter the claimant's premises or are otherwise impeded in conducting an audit.

EPA determinations regarding eligibility of claims and amount of indemnity payable shall constitute final administrative action.

**XI. EPA Disposal of Unused Pesticide Stocks**

When discarded, most 2,4,5-T and silvex products eligible for Federal disposal will be classified as hazardous wastes. Any disposal of such waste by EPA (or any other person) must be in conformity with the standards included in the RCRA hazardous waste management regulations for dioxin-containing wastes (40 CFR 261.31, 50 FR 1978, January 14, 1985). At present, there is no legal disposal capacity available for waste which is subject to the listing. Unless such waste is formally delisted through EPA's delisting procedures (see 40 CFR 260.20 and 260.22), it must properly be stored until legal disposal capacity becomes available.

Dated: March 31, 1987.

**Victor J. Kimm,**

*Acting Assistant Administrator, Office of Pesticide and Toxic Substances.*

[FR Doc. 87-7743 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

---

[OPP-62007; FRL-3183-6]

## Notice of Hearing Concerning Application To Modify the Final Suspension Order for Pesticide Products Containing Dinoseb

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Hearing Under Subpart D of 40 CFR Part 164.

---

**SUMMARY:** On February 13 and March 23, 1987, the Department of Agriculture of the State of Oregon submitted applications for emergency exemptions under section 18 of the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA) to permit use of pesticide products containing dinoseb on a number of crops including dry peas, lentils, and chickpeas. Under Subpart D of 40 CFR Part 164, these applications constitute a petition to reconsider the Agency's final suspension order of October 7, 1986, concerning dinoseb products. Such a petition may not be granted without a formal adjudicatory hearing. EPA has concluded that the applications from the State of Oregon raise issues that, if substantiated in a hearing, may provide a basis for modification of the Agency's final order suspending use of dinoseb products. This Notice announces that EPA has decided to hold an expedited hearing to reconsider that order as it applies to use of dinoseb on dry peas, lentils, and chickpeas in Oregon, specifies the issues of fact and law to be considered at that hearing, and establishes a schedule for the hearing.

**DATE:** Requests to participate in the hearing announced by this notice must be received by the Office of the Hearing Clerk at the address given below by April 13, 1987. A pre-hearing conference will be held on the first business day thereafter.

**ADDRESS:** Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Information supporting the Administrator's decision to hold a hearing will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Section, Management and Program Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: Michael McDavit, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1014A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1787).

**SUPPLEMENTARY INFORMATION:**

### I. Legal Authority

*A. Standards for Maintaining a Registration*

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Environmental Protection Agency. FIFRA sections 3(a) and 12(a)(1). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product may be registered or remain registered only if it performs its intended pesticidal function without causing "unreasonable adverse effects on the environment." FIFRA section 3(c)(5). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of [the] pesticide." FIFRA section 2(bb). The burden to demonstrate that a pesticide product satisfies the criteria for registration is on the proponents of initial or continued registration. *Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607, 653 n.61 (1980); *Environmental Defense Fund* v. *Environmental Protection Agency*, 510 F.2d 1292, 1297, 1302 (D.C. Cir. 1975).

Under FIFRA section 6, the Agency may issue a notice of intent to cancel the registration of a pesticide product whenever it determines that the product no longer satisfies the statutory criteria for registration. The Agency may specify particular modifications in the terms and conditions of registration, such as deletion of particular uses or revisions of labeling, as an alternative to cancellation. If a hearing is requested by an alternative to cancellation. If a hearing is requested by an adversely affected person, the final order concerning cancellation of the product is not issued until after a formal administrative hearing.

*B. Suspension of a Pesticide Product*

The suspension provisions in FIFRA section 6(c) give the Administrator authority to take interim action until completion of the time-consuming procedures which may be required to reach a final cancellation decision. Under this section, the Administrator may suspend the registration of a product and prohibit its distribution, sale, or use during cancellation proceedings upon a finding that the pesticide poses an "imminent hazard" to humans or the environment. "Imminent hazard" is defined by FIFRA section 2(*l*) as:

> A situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under Pub. L. 91-135.

As noted above, "unreasonable adverse effects on the environment" means that the risks associated with use of a pesticide outweigh the benefits of its use. Thus, in order to find an "imminent hazard," the Agency must determine that the risks associated with continued registration during the period likely to be necessary to complete a cancellation proceeding appear to outweigh the benefits. The Agency may not suspend the registration of a pesticide unless it has previously issued, or simultaneously issues, a notice of intent to cancel the registration or change the classification of that pesticide.

Suspension is an interim remedy which enables the Agency to abate potential risks in advance of the full analysis of risks and benefits in a cancellation hearing. The function of suspension "is to make a preliminary assessment of evidence, and probabilities, not an ultimate resolution of difficult issues." *Environmental Defense Fund* v. *Environmental Protection Agency*, 465 F.2d 528, 537 (D.C. Cir. 1972). The courts have emphasized that suspension does not require a "crisis." Rather, "it is enough if there is *substantial likelihood* that serious harm will be experienced during the year or two required in any realistic projection of the administrative [cancellation] process." *Environmental Defense Fund* v. *Environmental Protection Agency*, 510 F.2d 1292, 1297 (D.C. Cir. 1975), quoting *Environmental Defense Fund* v. *Environmental Protection Agency*, 465 F.2d 528, 540 (D.C. Cir. 1972).

A notice of intent to suspend (unlike an emergency suspension order) does not take effect immediately. Registrants are notified and afforded 5 days from the date of receipt of the notification to request an expedited hearing on the question of imminent hazard. If no hearing is requested for a product, or a hearing request is submitted but subsequently withdrawn, the suspension of that product becomes final and is not reviewable by any court. If a hearing is requested, the final order concerning suspension of the product is not issued until after the completion of an expedited hearing.

*C. Emergency Suspension*

If the Administrator determines that (1) a pesticide poses an imminent hazard, and (2) that "an emergency exists that does not permit him to hold a hearing before suspending," FIFRA section 6(c)(3) provides that he may issue an emergency order immediately suspending registration of the pesticide.

The term "emergency" is not defined by FIFRA. The Agency interprets FIFRA section 6(c)(3) to mean that, if the threat of harm to humans or the environment associated with continued sale, distribution, or use of a pesticide is sufficiently serious and immediate that the risks would be likely to outweigh the benefits during the time required for a suspension hearing, the registration of that pesticide may be suspended immediately. Thus, the determination whether an emergency exists is even more preliminary than the determination concerning the question of imminent hazard, and an emergency order is analogous to a temporary restraining order issued by a court while it is determining whether to issue a preliminary injunction. *Dow Chemical Company* v. *Blum*, 469 F.Supp. 892, 901 (E.D. Mich. 1979).

An emergency suspension order may be issued without prior notice to affected registrants and is effective immediately upon issuance. Registrants are notified that an emergency order has been issued and may request an expedited hearing by submitting a valid hearing request within five days from receipt of the notification. If a registrant does not request an expedited hearing concerning a particular product, but does request a hearing concerning cancellation of that product, the emergency order becomes a final suspension order with respect to that product and the suspension of the product remains in effect until the completion of the cancellation proceeding. If an expedited hearing is held concerning any product, the hearing is confined solely to the question of imminent hazard, and the emergency order remains in effect during the pendency of the expedited hearing. When an expedited hearing is held following issuance of an emergency order, only registrants and the Agency may actively participate. However, other adversely affected parties such as users may file briefs. Following the expedited hearing, the Administrator issues a final order which may either retain, modify, or rescind the suspension during subsequent cancellation hearings.

*D. Subpart D Proceedings*

When the Agency receives an application to permit use of a pesticide in a manner inconsistent with a prior final suspension or cancellation decision, that application constitutes a petition to the Administrator to reconsider the final suspension or cancellation order. Because of the opportunity for notice and a formal adjudicatory hearing which precedes entry of a final suspension or cancellation order concerning a pesticide product, EPA has determined that such an order should not be modified or rescinded without affording interested parties a similar notice and opportunity for hearing concerning such modification or rescission. The procedures governing all applications to modify or reverse a previous final suspension or cancellation order are set forth in Subpart D of 40 CFR Part 164, 40 CFR 164.130 through 164.133.

When all opportunities for hearing and review with respect to an Agency decision to suspend or cancel a pesticide product have either been exercised or waived, and a final suspension or cancellation order has been entered, the Agency is entitled to rely on the finality of the order and the validity of the evidentiary rationale supporting it. Applicants seeking reconsideration of a final order should not be afforded a new adjudicatory hearing concerning the same matters which were considered or could have been considered during a prior hearing. Thus, 40 CFR 164.131(a) provides that the Administrator will grant a hearing to reconsider a prior final suspension or cancellation order when he finds that:

(1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

In deciding whether to initiate a hearing, the Administrator does not need to determine that the evidence submitted by the petitioner would in fact justify modification of the prior order. Rather, a decision to initiate a hearing means only that the Administrator has determined that the evidence submitted, if substantiated on the record in the hearing, may "materially affect" the evidentiary rationale upon which the prior order was based. On the other hand, if the evidence submitted, even if substantiated on the record, would be unlikely to provide a basis for modification of the prior order, then a hearing would serve no purpose.

If the Administrator determines that a petitioner has met the criteria for a Subpart D hearing, he then publishes a notice in the **Federal Register** setting forth his determination, the rationale for that determination, a description of the issues of fact and law to be adjudicated in the hearing, and a schedule for the hearing. The purpose of the hearing is to

determine whether: (1) Substantial new evidence exists and (2) such substantial new evidence requires reversal or modification of the existing cancellation or suspension order. For purposes of any decision in the hearing, those portions of the substantive rationale for the existing order concerning which the petitioner did not submit substantial new evidence are assumed to be correct. Thus, the scope of any Subpart D hearing is intrinsically narrower than the proceeding which was held or could have been held concerning the order to be reconsidered.

In a Subpart D hearing, as in a suspension or cancellation hearing, the Administrative Law Judge transmits a recommended decision to the Administrator, who then issues a final decision retaining, modifying, or reversing the existing order.

## II. Procedural History

On October 7, 1986, I issued a decision and emergency suspension order immediately prohibiting all further sale, distribution, and use of pesticide products containing dinoseb (2-sec-butyl-4,6-dinitrophenol) in the United States. (51 FR 36634, October 14, 1986). My decision to issue that order was based on my determination that applicators and other populations with substantial dinoseb exposure would otherwise be at significant risk for teratogenic and other adverse health effects. The information and analysis upon which that determination was based is set forth in detail in the text of my decision. As required by FIFRA section 6(c)(1), I issued on the same day a notice announcing the Agency's intent to cancel and deny all registrations for pesticide products containing dinoseb.

Four registrants subsequently submitted timely requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazzard during the time required to conduct a cancellation hearing. These four registrants and two others also submitted timely requests for a cancellation hearing. All dinoseb products for which the registrants requested neither a suspension nor a cancellation hearing were subsequently cancelled by operation of law.

The expedited suspension hearing concerning dinoseb products commenced on October 20, 1986. On October 29, 1986, the FIFRA Science Advisory Panel met pursuant to FIFRA section 25(d) to consider the Agency's analysis of the impact of dinoseb use on health and the environment. On October 30, 1986, the four registrants who had requested an expedited hearing on the question of imminent hazard withdrew their hearing requests, resulting in the immediate entry pursuant to the terms of my October 7 decision of a final order suspending the registrations of their dinoseb products during the pendency of the cancellatiion hearing. On November 26, 1986, the Administrative Law Judge closed the docket in the expedited suspension hearing, thereby affirming that no valid requests for a hearing concerning the suspension of dinoseb products were still pending.

After the registrants withdrew their requests for a suspension hearing, the American Dry Pea and Lentil Association (ADPLA) wrote to the Agency seeking a decision which would permit continued use of dinoseb on dry peas, lentils, and chickpeas in the States of Washington and Idaho. On January 20 and January 29, 1987, the Agency received evidentiary submissions from the ADPLA in support of its request that the Agency reconsider the suspension of dinoseb as applied to use on dry peas, lentils, and chickpeas in the States of Washington and Idaho. On February 10, 1987, the Departments of Agriculture of the States of Washington and Idaho submitted applications for emergency exemptions under FIFRA section 18 to permit use of dinoseb products on peas, lentils, and chickpeas. Taken together, these submissions and applications constituted a petition under Subpart D to reconsider the final suspension of dinoseb as it applies to use on dry peas, lentils, and chickpeas in the States of Washington and Idaho.

Based on the information and applications submitted, Assistant Administrator for Pesticides and Toxic Substances John A. Moore recommended to me on February 11, 1987, that I initiate a Subpart D proceeding. After considering the Assistant Administrator's recommendation and the information supporting it, I decided to initiate a Subpart D hearing to reconsider the final suspension of dinoseb as it applies to use on dry peas, lentils, and chickpeas in Washington and Idaho. My decision was issued on February 11 and published in the **Federal Register** on February 18, 1987 (52 FR 4967). The Subpart D hearing commenced shortly thereafter (FIFRA Docket No. 612). On March 20, 1987, Administrative Law Judge J.F. Greene submitted a 44-page Recommended Decision to me, which included extensive findings of fact and conclusions of law. On March 25, two of the parties to the Subpart D hearing submitted objections to Judge Greene's Recommended Decision.

Based on the record before me, I decided to modify my October 7, 1986, Suspension Order to allow emergency exemptions to be granted under FIFRA Section 18 to the States of Idaho and Washington for use of dinoseb on dry peas, lentils, and chickpeas during 1987. (Decision and Final Order Modifying Final Suspension of Pesticide Products Which Contain Dinoseb, March 30, 1987.) Emergency exemptions were issued to the States of Idaho and Washington by the EPA's Office of Pesticide Programs on April 1, 1987.

By letter of February 13, 1987, the Department of Agriculture of the State of Oregon applied for an emergency exemption for statewide use of dinoseb on, *inter alia*, dry peas and chickpeas. Based upon Judge Greene's Recommended Decision of March 20, the State of Oregon submitted a new application on March 23 for emergency use of dinoseb on dry peas, chickpeas, and lentils in the Oregon counties of Morrow, Umatilla, and Union.

Because any direct communication with me concerning the registrability of dinoseb, except on the record of the pending cancellation hearing, would be an *ex parte* communication prohibited by 5 U.S.C. 557(d), all communications received by the Agency have been directed to appropriate officials in the Office of Pesticides and Toxic Substances. All petitioners and their representatives have been informed that any decision to permit the requested uses of dinoseb would be contrary to the final suspension decision concerning dinoseb products and would require the Agency to hold an adjudicatory hearing under Subpart D. In order to comply with the separation of functions requirements set forth in 5 U.S.C. 554(d), all recommendations from Assistant Administrator Moore and the information and record underlying those recommendations have been filed in the cancellation hearing record and served on each party to that proceeding at the same time they were transmitted to me for decision.

## III. Analysis of the Oregion Petition

The application submitted on February 13, 1987, by the Department of Agriculture of the State of Oregon under FIFRA Section 18, as modified by the application submitted by the State on March 23, 1987, constitutes a petition under Subpart D of 40 CFR Part 164 to reconsider the final suspension order concerning dinoseb products. The Oregon applications make specific reference to the earlier submissions made by the ADPLA, the applications submitted by the States of Idaho and Washington under FIFRA Section 18, and the Recommended Decision issued

by Judge Greene in FIFRA Docket No. 612 on March 20, 1987. It is on the basis of that Recommended Decision, and the Decision and Final Order which followed, that the State of Oregon requests virtually identical relief to that granted to the States of Idaho and Washington with respect to dry peas, lentils, and chickpeas.

Oregon has not submitted any new information which would affect the validity of the Agency's analysis of the toxicity of dinoseb or the methodology used by the Agency to estimate exposure to dinoseb. Oregon did submit information concerning use practices for dry peas, lentils, and chickpeas which is virtually identical to that previously submitted by ADPLA. As such, although such information on prior dinoseb use practices and the practicality of additional use restrictions was helpful in making my earlier decision to modify the suspension order and was considered at length in the ADPLA hearing, the information on risk issues submitted by Oregon does not itself constitute substantial new evidence of the sort required to initiate a Subpart D proceeding.

The Oregon submissions include information on the benefits of dinoseb use on dry peas, lentils, and chickpeas which was not available to or considered by the Agency prior to entry of a final suspension order. The benefits claimed by Orgeon for these uses are generally much greater than indicated by the information available to the Agency at that time. The State provides crop loss estimates from university researchers ranging from 25–30% in dry peas, 50% in chickpeas, and 35–40% in lentils. Based on 5-year average yields, the State provides dollar loss estimates for 1987 of $1.92 million for dry pea producers, $127,680 for chickpea producers, and $7,920 for lentil growers. While the total economic losses sustained by all dry pea, lentil, and chickpea growers as a result of the unavailability of dinoseb may not be as great as for some major crops, the impact on individual growers could be unusually severe, as noted in my decision to initiate a hearing in response to the ADPLA petition.

Oregon makes claims with respect to the unavailability of effective chemical or mechanical alternatives to the use of dinoseb which are virtually identical to those made by the ADPLA submission. A maximum of 12,000 acres of dry peas, 1500 acres of chickpeas, and 100 acres of lentils would be treated with dinoseb under the emergency exemption as proposed.

Although the State has not fully substantiated some of its key assertions, the information on the benefits of dinoseb use for dry pea, lentil, and chickpea growers in Oregon appears to be substantial new evidence not available to the Agency at the time of the final suspension decision. Due to the similarity of the ADPLA and Oregon petitions, the basis for my conclusion regarding the Oregon petition is more fully set forth in the **Federal Register** notice of February 18, 1987 (52 FR 4967), which is incorporated herein by reference.

*Subpart D—Determination*

Under 40 CFR 164.131(a), the Administrator is to provide a hearing to reconsider a prior final suspension decision only if he determines that certain criteria have been met. Having concluded that the State of Oregon has presented substantial new evidence concerning the use of dinoseb on dry peas, lentils, and chickpeas which was not available to the Agency when the final suspension order went into effect, I must now determine whether that evidence "may materially affect" that order. I have concluded that, if the evidentiary record in a hearing were to substantiate Oregon's assertions concerning the short-term benefits of dinoseb use on dry peas, lentils, and chickpeas and the practicality of additional use restrictions, I might consider modifying the suspension decision to permit use on these crops while the cancellation hearing is pending. Thus, the first criterion in 40 CFR 164.131(a) has been met.

On the face of Oregon's petition, it is questionable whether the second criterion in 40 CFR 164.131(a), that the parties in the suspension proceeding could not have discovered the new evidence "through the exercise of due diligence," has been met. Arguably, Oregon could have provided the evidence in question to the parties in the suspension hearing, or the parties could have otherwise discovered it, prior to the entry of the final suspension order. However, given the particular circumstances at hand, including the fact that the State of Oregon had no right to actively participate in the expedited suspension hearing and the short period of time in which the information in question could have been presented to the parties prior to the withdrawal of the registrants from the hearing, I have concluded that the "due diligence" requirement is not apposite to these circumstances.

Based on the above analysis, I have decided to hold a hearing under Subpart D to reconsider the final suspension order for pesticide products containing dinoseb as it applies to use on dry peas, lentils, and chickpeas in the State of Oregon.

## IV. Hearing Procedures

*A. Issues To Be Adjudicated*

Pursuant to 40 CFR 164.131(c), I am specifying those issues of fact and law to be adjudicated in the hearing convened pursuant to this Notice. Because the purpose of such a hearing is only to reconsider certain aspects of my prior suspension decision, because the Agency has just concluded a Subpart D hearing concerning the use of dinoseb on the same crops and in the same geographic region as presented by the Oregon petition, because no useful purpose would be served and considerable resources of all parties would be wasted by reexamining at this time the issues of fact and law which have already been adjudicated in the previous Subpart D hearing, and because a prompt conclusion to the hearing is a requisite of meaningful relief for the petitioner, the evidentiary presentation in the hearing shall be strictly confined to the issues of fact and law which I have determined are presented by the Oregon submission.

The issue of fact to be adjudicated in the extent to which the use of dinoseb on dry peas, lentils, and chickpeas in the Oregon counties of Morrow, Umatilla, and Union presents factors significantly at variance from those considered in FIFRA Docket No. 612.

The issue of law to be adjudicated is whether the factors found to be at variance from those considered in FIFRA Docket No. 612 justify any different result from that set forth in the Decision and Final Order issued by the Administrator on March 30, 1987, in FIFRA Docket No. 612.

The sole objective of this hearing is to determine whether or not the order suspending all sale, distribution, and use of pesticide products containing dinoseb should be modified to permit use, and sale and distribution for use, on dry peas, lentils, and chickpeas in the Oregon counties of Morrow, Umatilla, and Union, while the cancellation hearing is pending. The ultimate registrability of dinoseb products for these uses and in these locations will be determined exclusively in the cancellation hearing.

*B. Burden of Proof*

As provided by 40 CFR 164.132, the burden of proof in this proceeding shall be on the proponent(s) of modification of the final suspension order and the petitioner shall proceed first. As in all formal adjudications, all testimony must

be presented and documents sponsored by a witness competent to be cross-examined on the material. It is the petitioner rather than the Agency who must make an evidentiary record substantiating the assertions in the Oregon submission. Of course, Agency counsel may also present testimony concerning the issues of fact and law to be adjudicated.

*C. Hearing Requests*

The petitioner and the Agency shall automatically be parties in the hearing. Any other person or party who seeks to participate in the hearing must submit a written hearing request describing the interest of that person or party in the proceeding and the nature and purpose of the participation sought. All requests for a hearing must be received by the Office of the Hearing Clerk within 5 calendar days from the date of publication of this Notice in the **Federal Register**. Any request received after that time will be denied. Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

*D. Scheduling*

As required by 40 CFR 164.131(c), I am specifying a schedule for this hearing. Any relief which the Agency may determine that the petitioner should receive would only be meaningful if my final decision is entered so as to permit use during the 1987 spring planting season. In recognition of the need for a prompt decision and of the narrow scope of the proceeding, I am establishing the following expedited schedule.

The Chief Administrative Law Judge shall appoint an Administrative Law Judge to preside at this proceeding within 5 calendar days from the date of publication of this Notice in the **Federal Register**. The hearing shall commence on the first business day thereafter, at which time the presiding Administrative Law Judge shall determine whether the parties are prepared to stipulate to proposed findings of fact and conclusions of law. The presiding Administrative Law Judge shall transmit recommended findings of fact and conclusions of law and the hearing record to me within 10 calendar days from the date of publication of this Notice in the **Federal Register**. The parties shall submit any objections to the recommended findings of fact and conclusions of law to me within 3 calendar days after issuance, and I will enter a final order as soon thereafter as possible.

I recognize that the Subpart D hearing initiated pursuant to this Notice could result in delays in, or divert resources from, the pending dinoseb cancellation hearing, *In re: Cedar Chemical Company, et al.*, FIFRA Docket Nos. 590, *et al.* Accordingly, I hereby authorize the Administrative Law Judge in that proceeding, in the exercise of her discretion, to extend the deadline for transmission of a recommended decision to me by up to 30 days from that previously authorized (52 FR 4967).

*E. Separation of Functions*

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in this proceeding: the Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

Dated: April 3, 1987.

**Lee M. Thomas,**

*Administrator.*

[FR Doc. 87–7831 Filed 4–7–87; 8:45 am]

BILLING CODE 6560–50–M

---

**[OPP–180724; FRL–3179–9]**

## Emergency Exemptions; Control of Various Pests

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions for the control of various parts in the three States and one public health exemption to the Wyoming Department of Agriculture. Also listed are three crisis exemptions initiated by the Arizona Commission of Agriculture and Horticulture, California Department of Food and Agriculture, and the Florida Department of Agriculture and Consumer Services. The exemptions, issued during the month of January, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

**DATES:** See each specific, public health exemption, and crisis exemption for its effective dates.

**FOR FURTHER INFORMATION CONTACT:** See each specific exemption for the name of the contact person. The following information applies to all contact persons. By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

**SUPPLEMENTARY INFORMATION:** EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of metalaxyl on blackberries; boysenberries, evergreen thornless berries, and youngberries to control downy mildew; January 28, 1987 to April 30, 1987. (Jack F. Housenger)

2. Florida Department of Agriculture and Consumer Services for the use of benomyl on potatoes to control white mold; January 14, 1987 to April 30, 1987. (Jim Tompkins)

3. Michigan Department of Agriculture for the use of fluazifop-p-butyl on dry bulb onions to control grassy weeds; January 20, 1987 to September 15, 1987. (Libby Pemberton)

EPA has granted a public health exemption to the Wyoming Department of Agriculture for the use of strychnine in eggs to control rabid skunks throughout Wyoming; January 21, 1987 to January 21, 1988. A notice of receipt and solicitation of public comment was published in the **Federal Register** of December 5, 1986 (51 FR 43970); no comments were received.

The Agency, in its decision to grant the exemption, concluded that the incidence of rabies in various counties constituted an emergency to the public health and that the use of strychnine would reduce local populations of skunks. (Jack E. Housenger)

Crisis exemptions were initiated by the:

1. Arizona Commission of Agriculture and Horticulture on January 8, 1987, for the use of linuron on asparagus to control annual weeds. This program has ended. (Jack E. Housenger)

BEST COPY AVAILABLE

2. California Department of Food and Agriculture on September 19, 1986, for the use of malathion on persimmons to control oriental fruit fly. Since it was anticipated that this program would be needed for more than 15 days, California requested a quarantine exemption to continue it. The need for this program is expected to last until December 11, 1990. (Jim Tompkins)

3. Florida Department of Agriculture and Consumer Services on January 30, 1987, for the use of mancozeb on mangoes to control anthracnose. Since it was anticipated that this program would be needed for more than 15 days, Florida requested a specific exemption to continue it. The need for this program is expected to last until January 30, 1988. (Jim Tompkins)

**Authority:** 7 U.S.C. 136.

Dated: March 23, 1987.

**Edwin F. Tinsworth,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 87-7266 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

---

**[OPTS-59811, FRL-3182-8]**

## Certain Chemicals Premanufacture Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMN's and provides a summary of each.

**DATES:** Close of Review Period:

Y 87-128 and 87-129—April 9, 1987.

Y 87-130, 87-131 and 87-134—April 13, 1987.

Y 87-132 and 87-133—April 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 87-128**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane.

*Use/Production.* (G) This is a polyurethane to be used in the plastic industry. Prod. range, Confidential.

**Y 87-129**

*Manufacturer.* Polychrome Chemical Corporation.

*Chemical.* (S) Polymer of vegetable oil fatty acid 1, 2-benzenedicarboxylic acid, benzoic acid, 2,2-dimethyl-1, 3-propanediol and 2-ethyl-2-(hydroxymethyl)-1, 3-Propanediol.

*Use/Production.* (S) Industrial resin for high solid baking paint enamels. Prod. range, 110,000 to 220,000 kg/yr.

**Y 87-130**

*Manufacturer.* Confidential.

*Chemical.* (G) Acrylic copolymer.

*Use/Production.* (S) Industrial protective coating. Prod. range, 3,600 to 11,000 kg/yr.

**Y 87-131**

*Manufacturer.* Confidential.

*Chemical.* (G) Short oil alkyd.

*Use/Production.* (G) Resin for coatings. Prod. range, Confidential.

**Y 87-132**

*Manufacturer.* Confidential.

*Chemical.* (G) Saturated polyester resin.

*Use/Production.* (G) Manufacture of pigmented printing ink. Prod. range, Confidential.

**Y 87-133**

*Manufacturer.* Confidential.

*Chemical.* (G) Water reducible alkyd resin.

*Use/Production.* (S) Air-dry water reducible varnishes, stains and enamels. Prod. range, Confidential.

**Y 87-134**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyd resin.

*Use/Production.* (S) Industrial and commercial coatings. Prod. range, Confidential.

Dated: March 30, 1987.

**Linda K. Smith,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87-7744 Filed 4-7-87; 8:45 am]

BILLING CODE 6560-50-M

---

**[OPTS-51669; FRL-3182-7]**

## Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-eight such PMNs and provides a summary of each.

**DATES:** Close of Review Period:

P 87-846 and 87-847—June 17, 1987.

P 87-848, 87-849, 87-850, 87-851, 87-852, 87-853, 87-854, 87-855 and 87-856—June 20, 1987.

P 87-857, 87-858, 87-859, 87-860, 87-861, 87-862, 87-863, 87-864, 87-865, 87-866, 87-867, 87-868, 87-870, 87-876, 87-877, 87-878, 87-879, 87-880, 87-881, 87-882, 87-883, 87-884 and 87-885—June 21, 1987.

P 87-872 and 87-873—June 22, 1987.

P 87-874 and 87-875—June 23, 1987.

Written comments by:

P 87-846 and 87-847—May 18, 1987.

P 87-848, 87-849, 87-850, 87-851, 87-852, 87-853, 87-854, 87-855 and 87-856—May 21, 1987.

P 87-857, 87-858, 87-859, 87-860, 87-861, 87-862, 87-863, 87-864, 87-865, 87-866, 87-867, 87-868, 87-870, 87-876, 87-877, 87-878, 87-879, 87-880, 87-881, 87-882, 87-883, 87-884 and 87-885—May 22, 1987.

P 87-872 and 87-873, P 87-874 and 87-875—May 23, 1987.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51669]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**P 87–846**

*Manufacturer.* Arsynco, Incorporated.
*Chemical.* (G) Polyol polyacetate.
*Use/Production.* (G) Intermediate to produce polyols, destructive use. Prod. range: Confidential.

**P 87–847**

*Manufacturer.* Arsynco, Incorporated.
*Chemical.* (G) Polyol polyacetate.
*Use/Production.* (S) Chemical intermediate for manufacture of herbicides. Prod. range: Confidential.

**P 87–848**

*Manufacturer.* Confidential.
*Chemical.* (G) Substituted thioxotetrazole salt.
*Use/Production.* (G) Chemical. intermediate. Prod. range. 2,200 to 4,500 kg/yr.

**P 87–849**

*Manufacturer.* PMC Specialties Group.
*Chemical.* (G) Ultra-Cure ™ 200.
*Use/Production.* (S) Ultra-Violet curing of inks. Prod. range. Confidential.

**P 87–850**

*Manufacturer.* Mazer Chemicals, Incorpora
*Chemical.* (G) Substituted melamine resin.
*Use/Production.* (G) Chemical intermediate. Prod. range. Confidential.

**P 87–851**

*Manufacturer.* Mazer Chemicals, Incorporated.
*Chemical.* (G) Substituted Melamine resin.
*Use/Production.* (G) Blend component. Prod. range. Confidential.

**P 87–852**

*Manufacturer.* Maxer Chemicals, Incorporated.
*Chemical.* (G) Substituted Melamine resin.
*Use/Production.* (G) Blend component. Prod. range. Confidential.

**P 87–853**

*Manufacturer.* Confidential.
*Chemical.* (G) Condensation of formaldehyde with sulfonated alkylphenol salt and substituted aryl substituted phenol.
*Use/Production.* (G) Open, non-dispersive use. Prod. range. Confidential.

**P 87–854**

*Manufacturer.* Confidential.
*Chemical.* (G) Alkyl substitute 3,3-bis (phenyl) isobenzofuranone.
*Use/Production.* (G) Minor color-forming component in paper coatings. Prod. range. Confidential.

**P 87–855**

*Manufacturer.* Confidential.
*Chemical.* (G) Phenylmethyl substituted bis (phenyl isobenzofuranone.
*Use/Production.* (G) Minor color-forming component in paper coatings. Prod. range. Confidential.

**P 87–856**

*Manufacturer.* Rohm and Haas Company.
*Chemical.* (G) Modified polymethacrylate polymer.
*Use/Production.* (G) Polymeric dispersant. Prod. range. Confidential.

**P 87–857**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amide substitute imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range. Confidential.

**P 87–858**

*Manufacturer.* Westvaco Corporation.
*Chemical.* (G) Rosin polymer with substituted phenols, formaldehyde and pentaerythritol.
*Use/Production.* (S) Industrial and commercial resin for lithographic ink. Prod. range. Confidential.

**P 87–859**

*Importer.* Confidential.
*Chemical.* (G) Isoindoline derivative.
*Use/Import.* (G) Colorant. Import range. Confidential.

**P 87–860**

*Manufacturer.* Rohm and Haas Company.
*Chemical.* (G) Modified polyacrylate polymer.
*Use/Production.* (G) Polymeric dispersant. Prod. range. Confidential.

**P 87–861**

*Manufacturer.* Confidential.
*Chemical.* (G) Aliphatic polyester polyurethane.
*Use/Production.* (S) Industrial and commercial general purpose coating and modifier for coatings and inks. Prod. range. Confidential.

**P 87–862**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (S) 1,1-methylenebis (4-isocyanatobenzene) trimellitic anhydride, isophthalic acid.
*Use/Production.* (S) Industrial molding resin for electronic applications and film for electronic applications. Prod. range. Confidential.

**P 87–863**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine Substituted imidazolidines.
*Use/Production.* (G) Industrial intemediate for oil field chemicals. Prod. range. Confidential.

**P 87–864**

*Importer.* Confidential.
*Chemical.* (G) Fluorinated copolymer.
*Use/Import.* (G) Water and oil repellent. Import range. Confidential.
*Toxicity Data.* Acute oral. 5 ml/kg; Acute dermal, 0.5 ml/kg; Irritation. Skin-Non-irritant, Eye-Non-irritant.

**P 87–865**

*Manufacturer.* Confidential.
*Chemical.* (G) Polymeric sulfonate polymer.
*Use/Production.* (G) Oil well additive. Prod. range. Confidential.

**P 87–866**

*Manufacturer.* CIBA-CEIGY Corporation.
*Chemical.* (G) Tall oil fatty acid polyamide.
*Use/Production.* (S) Industrial hardener for high solids marine paints and industrial maintenance paints hardener for product finishing and civil engineering applications. Prod. range. Confidential.
*Toxicity Data.* Acute oral, 2,00 mg/kg; Acute dermal, 2,000 mg/kg; Irritation Skin-Slight.

**P 87–867**

*Importer.* Confidential.
*Chemical.* (G) Polyhydric phenol, polydiazo naphthoquinone sulfonate.
*Use/Import.* (G) Coating component. Import range. Confidential.

**P 87–868**

*Manufacturer.* Mazer Chemicals.
*Chemical.* (G) Alkyl silicone fluid.
*Use/Production.* (G) Surface treatment agent. Prod. range: Confidential.

**P 87–870**

*Manufacturer.* Confidential.
*Chemical.* (G) Alkyd resin.
*Use/Production.* (G) Resin is converted to paint. Prod. range: Confidential.

**P 87–872**

*Manufacturer.* Confidential.
*Chemical.* (G) Aliphatic alicyclic polyester.
*Use/Production.* (G) Industrial coating with a dispersive use. Prod. range: 9,000 to 45,000 kg/yr.

**P 87–873**

*Manufacturer.* Confidential.
*Chemical.* (G) Aromatic polyester polyurethane.
*Use/Production.* (S) Industrial, commerical and consumer laminating adhesive for vinyl films. Prod. range: Confidential.

**P 87–874**

*Manufacturer.* Confidential.
*Chemical.* (G) Substituted polyaminoamide.
*Use/Production.* (G) Additive in specialty formulation with open use. Prod. range: 500 to 2,000 kg/yr.

**P 87–875**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Resin for coatings and inks and a modifier for coatings. Prod. range: Confidential.

**P 87–876**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Industrial intermediate for oil field chemicals. Prod. range: Confidential.

**P 87–877**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Industrial intermediate for oil field chemicals. Prod. range: Confidential.

**P 87–878**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

**P 87–879**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

**P 87–880**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

**P 87–881**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

**P 87–882**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

**P 87–883**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

**P 87–884**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

**P 87–885**

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Amine substituted imidazolidines.
*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

Dated: March 30, 1987.

**Linda K. Smith,**

*Acting Division Director, Information Management Division.,*

[FR Doc. 87–7745 Filed 4–7–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–002491–004.
*Title:* Long Beach Terminal Agreement.
*Parties:*
City of Long Beach
International Transportation Service, Inc.

*Synopsis:* The proposed amendment would revise the description of the assigned premises by deleting an area previously contained within Parcel 2 and by adding a new Parcel 5 and by adjusting the agreed compensation accordingly.

*Agreement No.:* 224–003829–002.
*Title:* New Orleans Terminal Agreement.
*Parties:*
Boad of Commissioners of the Port of New Orleans
Baton Rouge Marine Contractors, Inc.

*Synopsis:* The proposed amendment would change the rental basis on which the parties have been functioning.

Dated: April 3, 1987.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–7757 Filed 4–7–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Merchants National Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company

Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 17, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to acquire 100 percent of a series of convertible nonvoting preferred shares of Indiana United Bancorp, Greensburg, Indiana, and thereby indirectly acquire Union Bank and Trust Co. of Greensburg, Greensburg, Indiana, and Peoples Bancshares Corp., Portland, Indiana, and thereby indirectly acquire Peoples Bank, Portland, Indiana.

Board of Governors of the Federal Reserve System, April 6, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7976 Filed 4-7-87; 10:31 am]

BILLING CODE 6210-01-M

## GENERAL ACCOUNTING OFFICE

### Proposed Revisions to Government Auditing Standards

**AGENCY:** General Accounting Office.

**ACTION:** Public hearings.

**SUMMARY:** The United States General Accounting Office (GAO) has scheduled public hearings to obtain information from interested individuals and organizations on the proposed revisions to the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* contained in the exposure draft which the GAO made available to the public for comment on March 16, 1987. The hearings will be conducted by GAO's Accounting and Financial Management Division and members of the Auditing Standards Advisory Council appointed by the Comptroller General of the United States. The GAO encourages the participation of interested parties at the following public hearings:

June 3, 1987
Sheraton Washington, Washington, D.C.
June 9, 1987
The Pointe at Squaw Peak, Phoenix, Arizona
June 23, 1987
Loews Anatole Hotel, Dallas, Texas
July 2, 1987
The Fairmont Hotel, New Orleans, Louisiana.

**Testimony Requirements**

Individuals or organizations that want to testify at the public hearings should notify the GAO in writing and provide a brief summary not to exceed five pages of the testimony to be given by the dates specified below:

| Hearing dates and locations | Due date for written notice of intent to testify | Due date for summary of testimony to be given |
|---|---|---|
| June 3, 1987, Washington, DC | Apr. 24, 1987 | May 19, 1987 |
| June 9, 1987, Phoenix, AZ | May 1, 1987 | May 25, 1987 |
| June 23, 1987, Dallas, TX | May 14, 1987 | June 8, 1987 |
| July 2, 1987, New Orleans, LA | May 22, 1987 | June 17, 1987 |

Parties testifying at the hearings should submit their written statement at the time of their testimony. Both oral and written statements will be included in the record of the GAO's deliberations.

GAO will notify each individual or organization of the scheduled time of their testimony. The time allotted each individual or organization will be limited to approximately 10 minutes to summarize or elaborate on their detailed written statement. Sufficient time will also be given to respond to questions from those conducting the hearing. The GAO will hold a second day of hearings if needed, and will schedule parties for that date to accommodate the number of people testifying. The hearings will be open to the public, and interested parties are welcome to attend.

**ADDRESS:** Interested parties should send their notification of intent to testify and summary of testimony to be given to: W.A. Broadus, Jr., Accounting and Financial Management Division, U.S. General Accounting Office, 441 G Street NW., Room 6106, Washington, DC 20548. Telephone inquiries: (202) 275-9425.

Dated: April 3, 1987.

**Charles A. Bowsher,**

*Comptroller General of the United States.*

[FR Doc. 87-7717 Filed 4-7-87; 8:45 am]

BILLING CODE 1610-01-M

### Proposed Revisions to Government Auditing Standards

**AGENCY:** General Accounting Office.

**ACTION:** Request for comments on proposed revised standards contained in exposure draft.

**SUMMARY:** The General Accounting Office (GAO) is soliciting comments on an exposure draft containing proposed revisions to the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, also known as the "yellow book" or "generally accepted government auditing standards." The proposed revised standards expand and clarify explanations of standards in response to questions and recommendations GAO has received from users of the standards, expand and clarify the responsibilities of the auditor relative to certain standards, and add requirements for quality control. The GAO developed the exposure draft as part of its continuing effort to obtain public input into the revised government auditing standards the Comptroller General of the United States should issue. By this notice, the GAO invites interested parties to participate in this process by commenting on the proposed revisions presented in the exposure draft.

**DATES:** Written comments must be received on or before June 30, 1987.

**ADDRESS:** Comments should be sent to: W.A. Broadus, Jr., Accounting and Financial Management Division, U.S. General Accounting Office, 441 G Street NW., Room 6106, Washington, DC 20548.

**To Receive the Exposure Draft and for Further Information Contact:** W.A. Broadus, Jr., Group Director, (202) 275-9425.

**Background Information:** In 1972 the GAO issued *Standards for Audit of Governmental Organizations, Programs, Activities & Functions*. The standards as issued in 1972 and subsequently revised in 1981 have proved to be sound and durable and have been generally accepted by all levels of government as well as by the accounting profession. The standards have also been adopted and/or modified for adoption by several nations.

The Inspector General Act requires that the federal inspectors general comply with audit standards established by the Comptroller General for audits of

federal establishments, organizations, programs, activities, and functions. The act further states that the inspectors general should take appropriate steps to ensure than any work relating to federal organizations, programs, activities, and functions performed by nonfederal auditors complies with these standards. The Office of Management and Budget (OMB) included these standards as basic audit criteria for federal executive departments and agencies in OMB Circular A–73.

Further, the Single Audit Act of 1984 requires that audits of state and local governments receiving federal financial assistance be conducted in accordance with the standards.

The audit standards are also recommended for other audits of state and local government organizations, programs, activities, and functions performed by state or local government auditors or by public accountants.

Auditors performing governmental audits under certain agreements or contracts also may be required to comply wit the audit standards under the terms of the agreement or contract.

As part of the GAO project to revise the standards, the Comptroller General appointed an Auditing Standards Advisory Council to provide advice on the drafting of the proposed revisions. The council members include representatives from all levels of government, public accounting, and academia.

The GAO prepared the exposure draft to solicit public comment on the proposed revisions to the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*. The exposure draft contains an introduction, and chapters on the scope of audit work standard, general standards, field work and reporting standards for financial audits, field work and reporting standards for performance audits. The major proposed revisions to the standards:

- Incorporate references to the Single Audit Act of 1984.
- Include guidance on the procurement of audit services.
- Clarify the types of assignments that a government audit organization might perform.
- Expand the requirements for continuing professional education and training.
- Include a requirement for an internal quality control system and the participation in an external quality control review program.
- Expand on audit risk and materiality in governmental auditing.
- Clarify the auditor's responsibility for followup on findings and recommendations.
- Clarify the auditor's responsibility for detecting and reporting on fraud, abuse and illegal acts.
- Clarify the auditor's responsibility on the study and evaluation of internal controls and reporting thereon.
- Clarify the auditor's responsibility when auditing computer-based systems and/or using computer-processed data in an audit.
- Include guidance for relying on the results of other's work.

The exposure draft is being mailed directly to audit officials at all levels of government, the public accounting profession, academia, professional organizations, and public interest groups. This notice invites other interested parties to request copies of the exposure draft and submit written comments on the exposure draft.

Dated: April 3, 1987.

**Charles A. Bowsher,**

*Comptroller General of the United States.*

[FR Doc. 87–7718 Filed 4–7–87; 8:45 am]

BILLING CODE 1610–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Fatal Accident Circumstances and Epidemiology (FACE) Worker Control and Job Stress; Open Meeting

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

**Fatal Accident Circumstances and Epidemiology (FACE)**

Date: April 29–30, 1987.

Time: 9 a.m. to 5 p.m., each day.

Place: Room 138, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: The purpose of this meeting is to discuss the research protocol for the Fatal Accident Circumstances and Epidemiology project.

Additional information may be obtained from: Peter M. Bochnak, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923–4010; Commercial: 304/291–4010.

**Worker Control and Job Stress (Analysis of Controllability in Job Stress)**

Date: May 18, 1987.

Time: 7:45 a.m.—4:30 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: The purpose of this meeting is to conduct a critical scientific appraisal of the role of job control in the mitigation of job stress and related occupational health problems.

Additional information may be obtained from: Steven L. Sauter, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8293; Commercial: 513/533–8293.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: April 2, 1987.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 87–7689 Filed 4–7–87; 8:45 am]

BILLING CODE 4160–19–M

## Social Security Administration

### Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Sections SP.00, SP.10 and SP.20 of the SSA statement, describe the mission, organization and functions of SSA's Office of Central Operations (OCO). Notice is given that Sections SP.10 and SP.20 are amended to reflect the deletion of the Office of SSA Program Service Centers (OPSC) (SPR) and the realignment of the Office of Operations Analysis and Support (OOAS) (SPN). This realignment consolidates the existing staff structure of OOAS and adds some functions previously performed within OPSC. The OCO material is amended as follows:

Section SP.10 *The Office of Central Operations—(Organization):*

D. The Office of Operations Analysis and Support (SPN). Delete:

1. The Financial Management Staff (SPN1).
2. The Management Analysis and Services Staff (SPN2).
3. The Operations Planning Staff (SPN3).
4. The Operations Analysis Staff (SPN4).

5. The Micrographics and Special Equipment Staff (SPN5).

F. The Office of Program Service Centers (SPR) in its entirety.

Add: F. The SSA International Program Service Center ( ) (located at SSA Headquarters).

G. The SSA Program Service Centers ( ) (located at six SSA field locations geographically dispersed throughout the United States.)

Subsection G. *The Office of Disability Operations* (SPT) should be relabeled as H.

Section SP.20 *The Office of Central Operations—(Functions):*

Delete: D. The Office of Operations Analysis and Support (SPN) in its entirety.

F. The Office of SSA Program Service Centers (SPR) in its entirety.

1. The Immediate Office of the Director (SPR) in its entirety.

Add: D. The Office of Operations Analysis and Support (SPN):

The Office of Operations Analysis and Support (OOAS) directs operational analysis and internal administrative activities in support of OCO. It designs and conducts studies to measure the effectiveness and efficiency of overall OCO processes and interactions. The Office directs and coordinates the implementation of process changes together with other OCO components and identifies and directs the timely resolution of major problems and issues. It establishes management objectives and monitors progress to assure their timely implementation. The office prepares responses to Congressional and sensitive correspondence requiring the Associate Commissioner's personal attention. The Office is assigned the following functions:

Directing the financial management activities of OCO, consistent with overall SSA and Office of Management and Budget policy, including budget development, analysis, planning, coordination and execution. Directing the analysis of OCO needs for management resources in such areas as manpower, training and office space.

Directing the development of long- and short-range objectives and goals.

Directing the analysis of the impact on OCO Of proposed policies and procedures and the analysis of ongoing operations throughout OCO.

Directing the analysis of systems development issues, office automation implementation and technology related issues throughout OCO.

Subsection F.2. *The SSA International Program Service Center* ( ) should be relabeled as F.

Subsection F.3. *SSA Program Service Centers* ( ) should be relabeled as G.

Subsection G. *The Office of Disability Operations* SPT) should be relabeled as H.

Dated: March 24, 1987.

**Nelson J. Sabatini,**

*Deputy Commissioner for Management and Assessment.*

[FR Doc. 87-7734 Filed 4-7-87; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-942-06-4520-12]

March 31, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., March 31, 1987.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 11 N., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 816, was accepted March 18, 1987.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South (south boundary, T. 5 S., R. 89 W.) and subdivisional lines, and the survey of the subdivision of section 2, T. 6 S., R. 90 W., Sixth Principal Meridian, Colorado, Group No. 752, was accepted March 10, 1987.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

**Jack A. Eaves,**

*Chief, Cadastral Surveyor for Colorado.*

[FR Doc. 87-4811 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-JB-M

[CA-940-07-4212-24; CA 10153; Cash Certificate No. 456]

### Order Providing for Opening of Toiyabe National Forest Lands; California

In a patent correction application processed under the provisions of section 316 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1746), the following described land was reconveyed to the United States:

Mount Diablo Meridian, California

T. 7 N., R. 25 E.,

Sec. 33, Lots 12 and 13.

The area described contains 160 acres in Mono County. (Lots 12 and 13 said Sec. 33 are now described as Lots 20 and 21 said Sec. 33.)

Upon acceptance of title to such lands, they became a part of the Toiyabe National Forest and are subject to all the laws, rules and regulations applicable thereto.

At 10 a.m. on May 11, 1987 the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431.

Dated: March 31, 1987.

**Sharon N. Janis,**

*Chief, Branch of Adjudication and Records.*

[FR Doc. 87-7711 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-40-M

[AZ-010-07-4212-12; 4310-32; A-20348a]

### Realty Action—Exchange of Federal Lands for State Lands in Mohave and Coconino Counties, Arizona

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice.

**SUMMARY:** The following described public land has been determined to be suitable for disposal by state exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

**Selected Public Lands**

Gila & Salt River Meridian, Mohave County, Arizona, 80.00 acres

T. 41 N., R. 12 W.,

Sec. 6, S½NE¼.

Gila & Salt River Meridian, Coconino County, Arizona, 1,260.83 acres

T. 41 N., R. 2 W.,

Sec. 9, S½NE¼, SE¼NW¼, E½SW¼, SE¼;

Sec. 21, Lots 1 & 3, NE¼, NE¼SE¼;

Sec. 27, All.

In exchange for the above described 1,340.83 acres of public land in Mohave and Coconino Counties, the Bureau of Land Management will receive an acreage of equal value from the Arizona State Land Department. These lands are located in Mohave County and listed below:

**Offered State Lands**

Gila & Salt River Meridian, Mohavo County, Arizona, 4,629.27 acres

T. 34 N., R. 7 W.,

Sec. 32, All.

T. 40 N., R. 15 W.,

Sec. 16, W½NE¼, W½SE¼NE¼, SE¼;

Sec. 32, All.
T. 40 N., R. 16 W.,
Sec. 16, N½;
Sec. 26, E½SE¼.
T. 41 N., R. 7 W.,
Sec. 13, NW¼, N½SW¼, SW¼SW¼.
T. 41 N., R. 13 W.,
Sec. 2, All.
T. 41 N., R. 15 W.,
Sec. 2, All;
Sec. 30, Lots 1, 2, 3 & 4, SW¼SW¼NE¼, W½E½NW¼, SE¼SE¼NW¼, E½SW¼, SW¼NE¼SE¼, W½NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼, W½SE¼SE¼.
T. 41 N., R. 16 W.,
Sec. 2, All.
T. 42 N., R. 16 W.,
Sec. 36, Lots 1, 2 & 3.

The Public land to be conveyed to the State of Arizona will be subject to the following reservations and exceptions:

*A. Excepting and Reserving to the United States*

. . . rights-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

*B. Subject to*

All valid existing rights of record.

This exchange will be on an equal value basis. A final appraisal will be completed to determine the value of the disposal and acquired lands. On the basis of the appraisal, all or a portion of the lands will be exchanged to provide an equal value exchange.

Publication of this Notice will segregate the subject lands from all appropriations under the public lands laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon issuance of a patent or two years from the date of publication of this Notice in the **Federal Register**, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Shivwits Resource Area Office, 225 North Bluff Street, St., George, UT 84770. Within forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, Arizona Strip District Office, 196 East Tabernacle, St. George, UT 84770. Any adverse comments will be evaluated by the Arizona State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

**G. William Lamb,**
*Arizona Strip District Manager.*
March 30, 1987.
[FR Doc. 87-7733 Filed 4-7-87; 8:45 am]
BILLING CODE 4310-32-M

---

**[NV-930-07-4212-11; N-45126; N-45126]**

## Realty Action; Lease/Purchase for Recreation and Public Purposes; Nye County, NV

The following described public land in Amargosa Valley Nye County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

**Mount Diablo Meridian, Nevada**

T. 16 S., R. 49 E.
Sec. 16, NW¼NE¼.

This parcel of land contains approximately 40 acres. The County intends to use the land for park purposes. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Nye County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action, including Cultural Resources Report No. 5-1587 is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: March 20, 1987.

**Ben F. Collins,**
*District Manager, Las Vegas, NV.*
[FR Doc. 87-7723 Filed 4-7-87; 8:45 am]
BILLING CODE 4310-HC-M

---

**[AZ-940-87-4220-10; A-22647]**

## Proposed Withdrawal; Opportunity for Public Meeting

March 31, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, has filed application for withdrawal of 40 acres of land from location and entry under the United States mining laws to allow the Smithsonian Institution to develop a multi-purpose facility. The area proposed for withdrawal is within the boundaries of the Coronado National Forest.

**DATE:** Comments and requests for a public meeting should be received by June 30, 1987.

**ADDRESS:** Comments should be sent to Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011.

**FOR FURTHER INFORMATION CONTACT:** Marsha Luke, Arizona State Office; (602) 241-5534.

**SUPPLEMENTARY INFORMATION:** On March 11, 1987, the Forest Service filed an application to withdraw the following land from location and entry under the mining laws only, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

Coronado National Forest

Gila and Salt River Meridian

T. 20 S., R. 14 E.
Sec. 19, S½N½NE¼SW¼, S½NE¼SW¼, N½N½SE¼SW¼.

The area described aggregates 40 acres in Santa Cruz County, Arizona.

The purpose of the withdrawal is for the use of the land by the Smithsonian Institute to build a base camp including a visitor center, administrative offices and a motor pool on the site. These facilities will serve as the base camp for the Fred Lawrence Whipple Observatory on Mt. Hopkins, as well as meet demands for information-education services and public recreation opportunities.

Effective on the date of publication, this land is segregated from operation of the United States mining laws. The land will remain open to mineral leasing and to Forest Service management.

For a period of 90 days, from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned office of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is offered in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned office within 90 days from the date of publication of this notice. Upon determination by the State Director, Bureau of Land Management, that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in Title 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the operation of the General Mining Laws unless the application is rejected prior to that date. Current administrative jurisdiction over the segregated land will not be affected by the temporary segregation.

**John T. Mezes,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-7710 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-32-M

## Minerals Management Service

### Development Operations Coordination Document; Hall-Houston Oil Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8140, Block A–101, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

**DATE:** The subject DOCD was deemed submitted on March 30, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 31, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-7712 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-MR-M

### Development Operations Coordination Document; Taylor Energy Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3087, Block 620, Matagorda Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

**DATE:** The subject DOCD was deemed submitted on March 30, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 31, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-7709 Filed 4-7-87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-406-11]

### Ammonium Paratungstate and Tungstic Acid From the People's Republic of China; Correction

Correction

In the Federal Register of Thursday, March 19, 1987, FR Doc. 87-5861, Summary, Line 10, "471.40" is changed to "417.40".

Issued: April 1, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-7792 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. 337-TA-259]

### Certain Battery-Powered Smoke Detectors; Decision To Review and Modify Initial Determination Granting a Motion To Amend Complaint To Join a Respondent

**AGENCY:** International Trade Commission.

**ACTION:** Review and modification of the ALJ's initial determination granting a motion to amend the complaint to add Mott, Inc. (Mott) as a respondent. On review the Commission determined to amend the notice of investigation as well as the complaint to add Mott as a respondent.

**SUMMARY:** Notice is hereby given that the Commission has determined to review and modify an initial determination (ID) (Order No. 16) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted the motion of complainants BRK/Colorado and Pittway Corp. to add Mott as a respondent and denied complainants' motion to add seven other firms as respondents. The Commission determined to modify the ID to include amending the notice of investigation as well as the complaint to add Mott as a respondent.

**FOR FURTHER INFORMATION CONTACT:** Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1693.

**SUPPLEMENTARY INFORMATION:** On November 13, 1986, the Commission instituted the above-captioned investigation. On January 30, 1987, complainants BRK/Colorado, Inc. and Pittway Corp. filed a Substitute Motion to Amend Complaint to Add Eight Respondents. The proposed respondents included Mott. The presiding ALJ issued an ID (Order No. 16) on February 26, 1987, granting the motion as to Mott, and denying the motion as to the other proposed respondents.

Mott filed a petition for review of the ID on the grounds that the ALJ had made an error of fact in finding that Mott was the successor to interest to Gateway Scientific, Inc., a respondent already named in the investigation, and an error of law in concluding that Mott would not be prejudiced by being named as a respondent at this stage of the litigation. Mott further argued that the ALJ's conduct constituted an abuse of discretion.

Responses to the petition for review were filed by the complainants and the Commission investigative attorney. No Government agency comments were received.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C 1337) and in §§ 210.53 through 210.56 of the Commission's rules (19 CFR 210.53 through 210.56).

Copies of the ID and all other nonconfidential documents on the record of the investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: March 30, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-7794 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. 337-TA-183]

### Certain Indomethacin; Commission Decision Not To Review Initial Determinations Terminating Seven Respondents for Non-Participation in Ancillary Proceeding

**AGENCY:** International Trade Commission.

**ACTION:** Nonreview of initial determinations terminating for non-participation respondents GYMA Laboratories of America (GYMA), Industrie Chimiche Farmaceutiche Italiana S.p.A. (ICFI), ACIC Ltd. (ACIC), Henley & Co. (Henley), B.T.B. Industrie Chimical S.p.A. (BTB), Pharma Development Corp. (Pharma), and European Manufacturers Associates, Ltd. (EMA).

**SUMMARY:** Notice is hereby given that the Commission has determined not to review the presiding adminstrative law judge's (ALJ) initial determinations (IDs) terminating respondents GYMA, ICFI, ACIC, Henley, BTB, Pharma, and EMA for non-participation in the above-captioned ancillary proceeding.

**FOR FURTHER INFORMATION CONTACT:** Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

**SUPPLEMENTARY INFORMATION:** On December 30, 1986, the Commission certified to the ALJ ten respondents' motions and the Commission investigative attorney's (IA) response alleging that complainant Merck & Co., Inc. (Merck) abused Commission process in Inv. No. 337-TA-183. *See* 52 FR 611 (January 7, 1987). On February 4, 1987, complainant Merck filed a "Motion for Limiting Participating Parties and Service List" (Motion No. 183-98). Two respondents, Agvar Chemicals (Agvar) and Ellis Pharmaceuticals, Inc. (Ellis), and the IA filed responses opposing Merck's motion in part.

On February 25, 1987, the ALJ issued an Id (Order No. 59) terminating and striking from the service list respondents GYMA, ICFI, ACIC, Henley, Pharma, and EMA for non-participation. On March 2, 1987, the ALJ issued an ID (Order No. 64) striking from the service list and terminating respondent BTB for non-participation. Three respondents, Lederle Laboratories, Ellis, and Agvar, and the IA are still participating in the proceeding.

No petitions for review were filed nor were any comments received from other government agencies.

Copies of the ALJ's IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: March 31, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-7793 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. 337-TA-243]

## Certain Luggage Products; Commission Decision To Affirm Administrative Law Judge's Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

**AGENCY:** International Trade Commission.

**ACTION:** Determination of no violation of section 337 of the Tariff Act of 1930.

**SUMMARY:** The Commission has determined to affirm the initial determination (ID) of the presiding administrative law judge (ALJ) that there is no violation of section 337 in the importation and sale of certain luggage products in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

**SUPPLEMENTARY INFORMATION:** On December 29, 1987, the presiding ALJ issued an initial determination (ID) finding that there is no violation of section 337 in the importation and domestic sale of certain luggage products which were alleged to infringe complainant's common law trademarks in the overall configuration of its luggage products. On February 13, 1987, the Commission determined to review the ALJ's ID on the issue of secondary meaning and on the issues of domestic industry and injury to the extent that such review was required by the Commission's review of the secondary meaning issue. The Commission received briefs on the issues under review and on the issues of remedy, the public interest, and bonding. Submissions were received from complainant Lenox, Inc., respondent Star Leather Products, Ltd., and the Commission investigative attorney. No submissions from the public or government agencies were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.54 through 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54 through 210.56).

Notice of this investigation was published in the **Federal Register** on March 27, 1986. (51 FR 10580).

Copies of the Commission opinion in support of its determination, the nonconfidential version of the ALJ's ID and all other nonconfidential document filed in connection with this investigation will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: March 27, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-7745 Filed 4-7-87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. 731-TA-343 (Final)]

## Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Japan

**AGENCY:** International Trade Commission.

**ACTION:** Institution of final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** The Commission hearby gives notice of the institution of final antidumping investigation No. 731-TA-343 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of tapered roller bearings and parts thereof provided for in Tariff Schedules of the United States (TSUS) items 680.30 and 680.39; flange, take-up, cartridge, and hanger units incorporating tapered roller bearings, provided for in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, provided for in item 692.32 or elsewhere in the TSUS, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before June 8, 1987, and the Commission will make its final injury determinations by July 22, 1987 (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207 (19 CFR Part 207), Subparts A and C, and Part 201 (19 CFR Part 201), Subparts A through C and Subpart E.

**EFFECTIVE DATE:** March 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Maria Papadakis (202-523-0439), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

**SUPPLEMENTARY INFORMATION:**

### Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). This investigation was requested in a petition filed on August 25, 1986, by the Timken Company, Canton, OH, in which Timken alleged that imports of tapered roller bearings and parts thereof, and certain housings containing tapered rollers from Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia were being sold in the United States at less than fair value.

In response to that petition, the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 36874). On February 11, 1987, the Commission instituted final antidumping investigations on imports of the subject merchandise from Hungary (Inv. No. 731-TA-341), Italy (Inv. No. 731-TA-342), the People's Republic of China (Inv. No. 731-TA-344), Romania (Inv. No.

731–TA–345), and Yugoslavia (Inv. No. 731–TA–346) (52 FR 5841, Feb. 26, 1987).[1]

**Participation in the investigations**

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b) of the Commission's rules (19 CFR 201.11(b)), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service list**

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Staff report**

A public version of the prehearing staff report in this investigation will be placed in the public record on April 28, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing**

The Commission will hold a hearing in connection with this investigation and investigations 731–TA–341, 342, 344, 345, and 346 (Final) beginning at 9:30 a.m. on May 12, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 16, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 21, 1987 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 8, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

**Written submissions**

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 19, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 19, 1987.

A period for submitting supplemental briefs will be provided for Parties in conjunction with investigation No. 731–TA–343; details concerning the date and nature of the filing of such supplemental briefs will be provided at the Commission's hearing on May 12, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: April 2, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–7790 Filed 4–7–87; 8:45 am]

BILLING CODE 7020–02–M

---

**[Investigations Nos. 731–TA–342 and 346 (Final)]**

## Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Italy and Yugoslavia

**AGENCY:** International Trade Commission.

**ACTION:** Revised schedule for the subject investigations.

**EFFECTIVE DATE:** March 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Maria Papadakis (202–523–0439), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

**SUPPLEMENTARY INFORMATION:** On Feb. 11, 1987, the Commission instituted the subject investigations and established a schedule for their conduct (52 FR 5841, Feb. 26, 1987). Subsequently, the Department of Commerce extended the date for its final determinations in these investigations from April 20, 1987, to June 22, 1987 (52 FR 6361, 6366). The Commission, therefore, is revising its schedule in these investigations to conform with Commerce's new schedule.

The date of the Commission's public hearing on these investigations remains unchanged as scheduled in its notice of institution (52 FR 5841, February 26, 1987). This schedule is as follows: requests to appear at the hearing are to be filed with the Secretary to the Commission not later than the close of business April 16, 1987; the prehearing conference will be held in room 117 of the U.S. International Trade

[1] The date of Commerce's preliminary determinations for all of the countries subject to investigation, except Japan, was February 6, 1987. However, the Department of Commerce determined that the investigation involving Japan was "extraordinarily complicated" and, accordingly, extended the date for its preliminary less-than-fair-value determination to March 23, 1987.

Commission Building on April 21, 1987, at 9:30 a.m.; the public version of the prehearing staff report will be placed on the public record on April 28, 1987; the deadline for filing prehearing briefs is May 8, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building on May 12, 1987, at 9:30 a.m.; and the deadline for filing posthearing briefs is the close of business on May 19, 1987.

A period for submitting additional briefs will be provided for parties in conjunction with investigations Nos. 731–TA–342 and 346; the deadline for filing supplemental briefs is July 29, 1987. Such supplemental briefs should be limited to information not available at the time the posthearing brief was submitted, and should be filed in accordance with the Commission's rules.

For further information concerning these investigations see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207 (19 CFR Part 207), Subparts A and C, and Part 201 (19 CFR Part 201), Subparts A through C and Subpart E.

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: April 2, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–7791 Filed 4–7–87; 8:45 am]

BILLING CODE 7020–02–M

---

**[Investigation No. 731–TA–375 (Preliminary)]**

## Certain Line Pipes and Tubes From Canada

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of line pipes and tubes [3] that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On February 11, 1987, a petition was filed with the Commission and the Department of Commerce by counsel for Tex-Tube Division of Cyclops Corp., Houston, TX, and Maverick Tube Corp., Chesterfield, MO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of line pipes and tubes from Canada. Accordingly, effective February 11, 1987, the Commission instituted preliminary antidumping investigation No. 731–TA–375 (Preliminary).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 30, 1987. The views of the Commission are contained in USITC Publication 1965 (March 1987), entitled "Certain Line Pipes and Tubes from Canada: Determination of the Commission in Investigation No. 375 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

March 30, 1987.

[FR Doc. 87–7789 Filed 4–7–87; 8:45 am]

BILLING CODE 7020–02–M

---

**[Investigation No. 701–TA–281 (Final)]**

## Stainless Steel Pipes and Tubes From Sweden

### Determinations

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is not material injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Sweden of seamless stainless steel pipes, tubes, hollow bars, and blanks therefor, all of the foregoing of circular cross section, provided for in items 610.51 and 610.52 of the Tariff Schedules of the United States (TSUS). The Commission further determines [2] that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Sweden of welded stainless steel pipes, tubes, and blanks therefor, all of the foregoing of circular cross section, provided for in TSUS items 610.37 and 610.52, that have been found by the Department of Commerce to be subsidized by the Government of Sweden.

### Background

The Commission instituted this investigation effective December 5, 1986, following a preliminary determination by the Department of Commerce that imports of certain stainless steel hollow products from Sweden were being subsidized within the meaning of section 701 of the Act (19 U.S.C. § 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 29, 1986 (51 FR 46946). The hearing was held in Washington, DC, on February 26, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on Appril 3, 1987. The views of the Commission are contained in USITC Publication 1966 (April 1987), entitled "Stainless Steel Pipes and Tubes from Sweden: Determination of the Commission in Investigation No. 701–TA–281 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: April 3, 1987.

By Order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–7788 Filed 4–7–87; 8:45 am]

BILLING CODE 7020–02–M

---

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes determines there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of line pipes and tubes from Canada that are allegedly sold in the United States at less than fair value.

[3] For purposes of this investigation, the term "line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to API specifications for line pipe, provided for in items 610.3208 and 610.3209 of the *Tariff Schedules of the United States Annotated* (1987) (*TSUSA*).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] Commissioners Eckes and Lodwick determine that an industry in the United States is materially injured by reason of imports from Sweden of welded stainless steel pipes and tubes that have been found by the Deparment of Commerce to be subsidized by the Government of Sweden.

## DEPARTMENT OF JUSTICE

### U.S. v. Art-Lloyd Metal Products Corp.; Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Judgment in *United States v. Art-Lloyd Metal Products Corporation*, Civil Action No. CV-84-4862 has been lodged in the United States District Court for the Eastern District of New York on March 17, 1987.

The proposed Judgment concerns alleged violations of the Clean Air Act ("Act"), 42 U.S.C. 741 *et seq.*, and provisions of the New State Implementation Plan ("SIP"), established pursuant to section 110 of the Act, 42 U.S.C. 7410. The alleged violations occurred during Art-Lloyd's manufacture of metal office furniture in Brooklyn, New York. During the manufacturing process, coatings containing volatile organic compounds ("VOC") were applied in excess of the amounts permitted by the New York SIP. Manufacturing operations at the Brooklyn facility have ceased. The proposed Judgment requires the company to comply with the New York SIP if manufacturing operations resume. Stipulated penalties for future violations are also provided. Finally, the proposed Judgment requires Art-Lloyd to pay a $26,500 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Art-Lloyd Metal Products Corporation*, D.J. Ref. No 90-5-2-1-749.

The proposed Judgment may be examined at the Office of the United States Attorney, 225 Cadman Plaza East, Brooklyn, New York 11201, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the proposed Judgment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Departmentof Justice.

**F. Henry Habicht II,**

*Assistant Attorney General Land and Natural Resources Division, Department of Justice, Washington, DC 20530.*

[FR Doc. 87-7700 Filed 4-7-87; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Business Research Advisory Board and Committees; Meetings and Agenda

The regular Spring meetings of the Board and Committees of the Business Research Advisory Council will be held on April 22 and 23, 1987. All of the meetings will be held in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

**Wednesday, April 22, 1987**

*10:00 a.m.—Committee on Price Indexes*

Room N3437 A & B

1. Status Reports:
   a. Consumer Price Index.
   b. Producer Price Index.
   c. Export and Import Price Indexes.
   d. Service Sector Initiative.
   e. Consumer Expenditures.
2. Other business.

*1:30 p.m.—Committee on Occupational Safety and Health Statistics*

Room S-4215 A & B

1. Recordkeeping.
2. National Academy of Sciences Panel.
3. Congressional hearings.
4. Annual survey—fatalities.
5. Supplemental data systems.
6. Work injury reports.
7. Health studies.
8. Other business.

*2:00 p.m.—Committee on Productivity/Foreign Labor*

Room N-3437 A & B

1. Developments in U.S. productivity.
2. New industry multi-factor productivity measures.
3. Cost-function models accounting for growth in U.S. manufacturing.
4. International Productivity Symposium 3—Status Report.
5. Other business.

**Thursday, April 23, 1987**

*10:00 a.m.—Committee on Employment and Unemployment Statistics*

Room S-4215 A, B & C

1. Status of dislocated workers statistics:
   a. Review of use of dislocated worker data in report of Secretary's Task Force on Economic Adjustment and Worker Dislocation.
   b. Plant closing and mass layoff data system: first annual report.
2. Issues in employer practices and workforce trends:
   a. Temporary help industry.
   b. Part-time employment.
   c. Hours and employment.
3. Discussion of BLS survey of child care in industry.
4. Discussion of cognitive aspects of survey design.
5. Review of BLS policy for release and dissemination of data to businesses.
6. Other business.

*2:00 p.m.—BRAC Board*

Room S-4215 A, B, & C

1. Chairperson's Opening Remarks.
2. Commissioner's Remarks—Janet L. Norwood.
3. Committee Reports:
   a. Price Indexes.
   b. Occupational Safety and Health Statistics.
   c. Productivity/Foreign Labor.
   d. Employment and Unemployment Statistics.
4. Other Business.
5. Chairperson's Closing Remarks.

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347.

Signed at Washington, DC this 2nd day of April 1987.

**Janet L. Norwood,**

*Commissioner of Labor Statistics.*

[FR Doc. 87-7705 Filed 4-7-87; 8:45 am]

BILLING CODE 4510-24-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-32)]

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

**DATE AND TIME:** May 4, 1987, 8:30 a.m. to 5 p.m., and May 5, 1987, 8:30 a.m. to 5 p.m.

**ADDRESS:** National Aeronautics and Space Administration, George C. Marshall Space Flight Center (MSFC), Building 4200, Room P–110, Marshall Space Flight Center, AL 35812.

**FOR FURTHER INFORMATION CONTACT:** Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8335.

**SUPPLEMENTARY INFORMATION:** The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 25 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

This meeting will be closed to the public from 8:30 a.m. to 9:30 a.m. on May 5 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 110 persons including Council members and other participants. Visitors will be requested to sign a visitors' register.

Type of meeting: Open—except for a closed session as noted in the agenda below.

**Agenda**

*May 4, 1987*

8:30 a.m.—Introductory Remarks
8:45 a.m.—Space Transportation System Recovery Status
10:15 a.m.—MSFC Future Technology Program
1 p.m.—Status Report on Recent Scientific Events
2 p.m.—Advanced X-Ray Astronomical Facility
3 p.m.—Microgravity Activities
4 p.m.—NAC Committee Reports
5 p.m.—Adjourn

*May 5, 1987*

8:30 a.m.—Closed Session, Council Membership
9:30 a.m.—NASA Organization
10:30 a.m.—Lyndon B. Johnson Space Center Future Technology Program
1 p.m.—Tours of MSFC Areas of Interest
5 p.m.—Adjourn

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

April 1, 1987.

[FR Doc. 87–7715 Filed 4–7–87; 8:45 am]

BILLING CODE 7510–01–M

[Notice (87-33)]

### NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee, Informal Advisory Subcommittee on Microgravity Science and Applications.

**DATE AND TIME:** April 22, 1987, 8:30 a.m.–5 p.m., April 23, 1987, 8:30 a.m.–5 p.m.

**ADDRESS:** NASA Headquarters, 226B, 600 Independence Avenue, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ray J. Arnold, Code EE, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1656).

**SUPPLEMENTARY INFORMATION:** The Informal Advisory Subcommittee on Microgravity Science and Applications will meet to continue its review of NASA's extramural microgravity research and to collect comments on the Interim Report on Extramural Centers. The Committee is chaired by Dr. Simon Ostrach and is composed of 9 members. The meeting will be closed April 22, 8:30 a.m. to 5 p.m. to allow for a discussion on performance evaluations of individuals associated with the extramural research centers. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 15 persons including committee members and other participants).

Meeting: Open—except for a closed session as noted in the agenda below.

*AGENDA:*

*April 22, 1987*

8:30 a.m. Discussion on performance evaluations (closed session)
5 p.m. Adjourn

*April 23, 1987*

8:30 a.m. Prioritize science questions.
10 a.m. Overlay matrix with center emphasis. Discussion to identify open areas.
2 p.m. Plan for Summer Study.
5 p.m. Adjourn.

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

April 1, 1987.

[FR Doc. 87–7716 Filed 4–7–87; 8:45 am]

BILLING CODE 7510–01–M

[Notice (87-34)]

### Performance Review Board; Senior Executive Service

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Membership of SES Performance Review Board.

**SUMMARY:** The Civil Service Reform Act of 1978, Pub. L. 95–454 (Section 405) requires that appointments of individual members to a Performance Review Board by published in the **Federal Register.**

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals are serving on the Committee and the Board:

**Senior Executive Committee**

Dale D. Myers, Chairperson
Willis H. Shapley (Acting member)
June Gibbs Brown

Thomas P. Murphy, Assistant Chief Administrative Officer, Prince George's County Government, Maryland

**Performance Review Board**

Willis H. Shapley, (Acting Chairperson)
Ann P. Bradley, Executive Secretary
Dale L. Compton (Term expires February 1988)
Louis B. DeAngelis (Term expires November 1988)
Edward A. Frankle (Indefinite Term)
Thomas E. Utsman (Term expires November 1989)
Paul F. Holloway (Term expires November 1989)
John J. Quann (Term expires November 1988)
Robert Rosen (Term expires November 1989)
Franklin D. Martin (Term expires November 1989)
Richard J. Wisniewski (Term expires February 1988)
Charles T. Force (Term expires November 1989)
Thomas N. Tate, Special Assistant to the Chairman, Committee on Science and Technology, House of Representatives (Indefinite Term)

**James C. Fletcher,**

*Administrator.*

March 30, 1987.

[FR Doc. 87-7714 Filed 4-7-87; 8:45 am]

BILLING CODE 7510-01-M

## NUCLEAR REGULATORY COMMISSION

### Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on March 25, 1987 (52 FR 9559) through March 30, 1987.

### NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 8, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

**Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of amendment request:* October 17, 1986.

*Description of amendment request:* The following proposed technical specification (TS) changes complete the response to the BG&E application dated October 17, 1986 as supplemented January 12, 1987. The proposed TS changes are: (1) Change the definition of the phrase "fuel reload cycle" from 18 months to 24 months for the surveillance interval of TS Surveillance Requirement 4.6.4.1.5 which requires that the containment purge isolation valve seals be replaced at a frequency such that no individual seal remains in service greater than two consecutive fuel reload cycles. (2) Modify TS Surveillance Requirements 4.6.3.1.b and d for verifying containment iodine filter train operability by changing the surveillance interval from at least once per 18 months to at least once per refueling interval where a refueling interval is defined as 24 months. (3) Change the surveillance interval from at least once per 18 months to at least once per refueling interval (24 months) for TS Surveillance Requirements 4.5.1.e and 4.5.2.e which demonstrate the operability of the reactor coolant system safety injection tanks and the operability of the independent emergency core cooling systems (ECCS), respectively.

*Basis for proposed no significant hazards consideration determination:* Change No. 1 proposes changing the definition of the phrase "fuel reload cycle" from 18 months to 24 months for TS surveillance requirement 4.6.4.1.5. This would permit an individual containment purge isolation valve seal to remain in service for up to 48 months rather than the 36-month service life that is currently permitted.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

This proposal only affects events requiring the establishment of containment isolation by extending the containment purge isolation valve seal replacement schedule from at least every 36 months to at least every 48 months.

The seal replacement program was established because the licensee was experiencing difficulty in performing containment purge isolation valve leakage tests while operating due to a thermal gradient existing across the test boundary. As a consequence, the licensee was permitted to leak test the containment purge isolation valves every 18 months rather than every 6 months in combination with a seal replacement program.

Since 1982, the licensee has replaced these seals on each unit at a frequency of approximately every 36 months. The seals that were replaced showed no signs of material degradation. The seal manufacturer recommends a 5-year service life.

Extension of the seal replacement schedule by 12 months to a total service life of 4 years would not significantly increase the probability of seal degradation. The service history demonstrates that the rate of material degradation with time apparently is small. Also, the proposed service life is only 80% of that expected for these seals by their manufacturer. As the probability of seal degradation is only minimally increased by this proposed extension, the probability or consequences of a loss of containment isolation due to purge isolation valve leakage therefore, would not be significantly increased.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change system design, operation or operability requirements other than extending the service life of the containment purge isolation valve seals from 3 years to 4 years. The containment isolation function would remain unchanged and the decrease in containment isolation reliability due to seal deterioration would be minimal. Consequently, this proposed extension in the surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety . . .

As the only consequence of the extension of the seal service life by 12 months is a minimal material degradation of the containment purge valve seals and, therefore, the concurrent minimal degradation in containment isolation reliability, the reduction in the margin to the 10 CFR Part 100 limits for site boundary dose rates, for any event requiring containment isolation, would not be significant.

Based upon the above, the NRC staff proposes to determine that the requested change in the phrase "fuel reload cycle" in TS 4.6.4.1.5 involves no significant hazards considerations.

Change No. 2 proposes to change the surveillance frequency of the Units 1 and 2 TS 4.6.3.1.b and d for demonstrating the operability of the containment iodine filter trains from at least once per 18 months to at least once per refueling interval. A refueling interval shall be defined as 24 months. The surveillance period of 18 months matches the current refueling cycle interval. The proposed extension to 24 months is requested to facilitate a 24-month operating cycle.

The parameters tested at the 18-month surveillance interval are as follows:

a. Halogenated hydrocarbon removal efficiency of charcoal absorbers

b. DOP removal efficiency of HEPA filter banks

c. Laboratory test analysis of removal efficiency of carbon samples

d. Filter train flow rate

e. Pressure drop across the HEPA filters and the charcoal absorber banks

f. Filter train actuation on a containment isolation test signal.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

This proposal only affects events that release iodine to the containment atmosphere while the reactor coolant system (RCS) temperature is above 200°F. The bounding event for iodine release would be the loss of coolant accident (LOCA). Each unit has three 50% capacity recirculation containment iodine filter trains. Each of these trains normally operates between 600 and 800 hours during an 18-month cycle.

A review of plant surveillance history as, provided below, indicates that the iodine filter trains' performance and materials do not significantly degrade with time and, therefore, an extension of the surveillance interval for these tests by six months to a total surveillance interval of 24 months would not significantly reduce the performance of iodine filter trains:

a. There are 60 charcoal filter elements in each of the three iodine filter trains. Since 1977, each filter element has been tested for its removal efficiency of halogenated hydrocarbons eight times (seven times) on Unit 1 (2). In this total of 2700 filter element tests, only one test yielded unsatisfactory results. This was due to a leak at the gasketed surface between the filter element and the housing. The combined filter element removal efficiency for each train has always been above 99%.

b. There are 20 HEPA filter elements in each of the three iodine filter trains. Since 1976, each filter element has been tested for DOP removal efficiency seven times (six times) on Unit 1 (2). Of this total of 780 HEPA filter element tests performed, only three tests have yielded unsatisfactory results. Two of these tests had gasket leaks and the third filter failure was due to a materially damaged HEPA filter element. The combined filter element removal efficiency for each train experiencing a failed HEPA filter element was always at least 95%. In all other tests the removal efficiency was at least 99%.

c. The 17 laboratory test analyses as performed on Unit 1 and 2 combined of the removal efficiency of the iodine filter train carbon samples have always yielded satisfactory results with demonstrated efficiencies of at least 98%. The minimum removal efficiency permitted is 95%. In addition, over the 10-year period of these tests, the charcoal was never changed out but remained the originally installed charcoal. This shows a degradation of less than 2% over a 10-year span.

d. The total of 39 surveillances on Units 1 and 2 combined over the past 10 years, to verify the proper filter train flow rate have always yielded satisfactory results with the exception of one Unit 2 test on June 1984 when the flow was too low due to inadequate lubrication of the fan motor bearings. Since this failure, maintenance is performed to lubricate the fan motor bearings for each filter train during each refueling outage.

e. The 39 surveillances conducted to determine the filter train differential pressure and the 45 surveillances performed to verify automatic filter train actuation on a test containment isolation signal have always yielded satisfactory results.

In addition, if the iodine filter train run time exceeds 720 hours, the laboratory test analysis of the carbon sample and the removal efficiency of the charcoal absorbers for halogenated hydrocarbons must be performed to permit continued operation above 200°F RCS temperature.

This plant surveillance history and the 720-hour run time surveillance provide mitigation for the proposed extension of the surveillance interval to 24 months and, as such, indicate that this 6-month surveillance interval extension would not cause any significant additional degradation of the containment iodine filter trains and, as such, the probability or consequences of an iodine release from a LOCA or any other accident previously evaluated would not be significantly increased.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change any system design, operation, or operability requirements other than extending the period between performances of iodine filter train operability determinations. The reliability of the iodine filter trains function would be only negligibly reduced as these trains apparently do not suffer much degredation with time and as only two of the three trains need to be operable to provide 100% recirculation capability. Consequently, this proposed extension in the surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety . . .

The only margin of safety which could he affected by this proposed change would be the increase in site boundary dose limits as prescribed by 10 CFR Part 100 due to an increased probability of failure or degraded reliability or capability of the iodine filter trains. As previously discussed, plant surveillance history indicates that the likelihood of iodine filter train degradation or failure does not significantly increase over time. Consequently, the margin of safety to the site boundary limits or to any other margin of safety would not be significantly reduced by this proposed 6-month extension in the surveillance interval.

Based upon the above, the NRC staff agrees. with the licensee's evaluation and proposes to determine that the proposed changes to TS 4.6.3.1. b and d involve no significant hazards considerations.

Change No. 3 proposes to modify the surveillance interval from 18 to 24 months for the Units 1 and 2 TS 4.5.1.e and 4.5.2.e which do the following:

a. Verify the opening of the safety injection tank (SIT) isolation valves

when RCS pressure exceeds 300 psia and upon receipt of a safety injection test signal

b. Verify automatic isolation and interlock action of the shutdown cooling system (SDCS) from the RCS when RCS pressure exceeds 300 psia

c. Visually inspect the containment sump for debris and degradation

d. Verify a minimum of 100 cubic feet of trisodium phosphate dodecahydrate (TSP) is maintained in the TSP storage baskets and that dissolution of a sample of TSP in borated water will raise the solution's pH, as appropriate.

The current surveillance period for these tests is 18 months which corresponds to the current refueling cycle. The extension in the surveillance interval to 24 months is requested to facilitate a 24-month operating cycle.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

The safety injection systems are designed to supply emergency core cooling in the event of a LOCA. The surveillance that verifies the opening of the SIT isolation valves when RCS pressure exceeds 300 psia or when a safety injection test signal is received is performed to ensure that in the event of a LOCA, the safety injection system will be capable of supplying emergency core cooling.

A review of plant history of these surveillances as performed since 1977, a total of 10 tests, indicates that the operability of these SIT isolation valves does not significantly degrade with time as no failures of the valves to open have been noted on either reaching 300 psia RCS pressure or upon the receipt of a test safety injection signal. No system response degradation was noted as resulting from the previous 6-month surveillance interval extension from 12 to 18 months.

The automatic isolation and interlock actions of the SDCS from the RCS when RCS pressure exceeds 300 psia is provided to prevent the SDCS from exceeding design temperatures and pressure thereby preventing a possible LOCA via the SDCS. In addition, this prevents the inadvertent operation of the SDCS while at normal operating temperatures and pressures which could result in a cooldown event.

A review of plant history of these surveillances as performed since 1977, a total of 13 tests, indicates that these automatic isolation and interlock actions do not significantly degrade over time as no failures were noted in the performance of these surveillances. No system response degradation was noted as a consequence of the previous 6-month surveillance interval extension from 12 to 18 months.

The containment sump is inspected for debris and corrosion to ensure that the recirculation mode of emergency cooling will function properly in continuing to provide cooling water to the core in the event of a LOCA. This surveillance has been performed on each unit a minimum of seven times. Only once, during the pre-operational examination of Unit 2 in 1986, was any debris noted in the sump. This debris was left in place by the construction staff. No debris has been noted since then. No sump degradation has been noted during any performance of this surveillance. Debris accumulation in the containment sump would generally be the result of refueling outage work. The probability of debris accumulating in the sump during the operating cycle is not significant. Sump degradation could occur at any time, but the previous surveillance results have shown that this degradation is not significantly time dependent as the degradation mechanisms would generally require much more time than 24 months. As such, the results of these surveillances are not expected to significantly degrade with an extension in their surveillance interval.

TSP is provided in the containment sump to prevent chloride stress corrosion cracking of certain metal components (generally post-LOCA support systems) located inside containment during operation of the emergency core cooling system. The boric acid solution injected has a pH of approximately 5. The TSP is provided to buffer this acid solution and to raise the pH to approximately 7 (neutral solution). This neutralization of the boric acid solution reduces the probability of chloride stress corrosion cracking.

TSP is a weakly basic, ionic, crystalline salt of phosphoric acid with high melting and boiling points and an extremely low vapor pressure. The TSP is very stable both chemically and physically, resulting in a shelf life that is estimated to be significantly longer than the operating life of the reactor plant. Due to the properties of the TSP, the environmental conditions inside containment during reactor operations should have only very negligible effects upon the quantity or quality of the TSP stored inside containment. Hence, an extension of this surveillance interval by 6 months would have only negligible effects upon the results of these surveillances.

The plant history for these surveillances and the properties of TSP indicate that this proposed extension of these surveillance intervals by 6 months to a total interval of 24 months would not cause any further significant degradation in system components or functions and as such, no significant increase in the probability or consequences of accidents previously analyzed would result.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change any system design, operation, or operability requirements other than extending the period between performances of the surveillances by 6 months to a total interval of 24 months. Consequently, this proposed extension in the surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

(iii) Involve a significant reduction in a margin of safety . . .

The only margins of safety which these proposals could reduce would be the availability of emergency core cooling after a LOCA and post-LOCA support system operability. As the satisfactory performance of these surveillances has been demonstrated to be relatively time independent by the plant history and as only minimal additional degradation in the results of these surveillances is expected to occur due to the extended surveillance interval, these margins of safety would not be significantly reduced by this proposal.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed changes to TS 4.5.1.e and 4.5.2.e involve no significant hazards considerations.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland.

*Attorney for licensee:* Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Ashok C. Thadani.

**Carolina Power & Light Company, Dockets Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendments:* March 2, 1987.

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TS) for

Brunswick Steam Electric Plant, Units 1 and 2 relative to the definition of OPERABLE in TS Sections 1.0, 3.0.3, 3.0.5 and 3.8.1.1.

The current definition of OPERABLE in the Brunswick TS states:

A system, subsystem, train component, or device shall be *Operable* or have *Operability* when it is capable of performing its specified function(s). Implicit in this definition shall be the assumption that all necessary attendant instrumentation, controls, normal and emergency electric power sources, cooling or seal water, lubrication or other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support function(s).

The proposed revision would replace the phrase "normal and emergency electrical power sources" in the above definition with the words "electrical power." Specific requirements for the type of electrical power sources would continue to be controlled by TS Section 3.8.1.1.

Specification 3.0.3 provides actions to be taken when a Limiting Condition for Operation and/or the associated action requirements cannot be satisfied. Currently, under these circumstances, the unit must be placed in *Hot Shutdown* within 6 hours and achieve *Cold Shutdown* within the following 30 hours unless corrective measures are completed. The proposed revision requires the unit to be placed in *Startup* within 6 hours, in *Hot Shutdown* within the following 6 hours, and in *Cold Shutdown* within the subsequent 24 hours. As in the current Specification 3.0.3, the provisions of the proposed specification require the unit to achieve *Cold Shutdown* within 36 hours. However, the revised specification provides an increase in operational safety by allowing an orderly progression from *Power Operation* to *Startup* to *Hot Shutdown* to *Cold Shutdown*, thereby possibly avoiding a manual reactor scram should any difficulties (such as a rod block) arise while shutting the unit down.

The final change addressed in this request involves the relocation of the requirements of Specification 3.0.5 into the action statements for Specification 3.8.1.1 (AC Sources). Specification 3.0.5 was incorporated into the Brunswick TS to preserve the single failure criterion for systems that are relied upon in the Safety Analysis Report. Two conditions are provided in Specification 3.0.5 which must be met in order to declare equipment operable should this equipment be inoperable solely due to a loss of its emergency or normal power source: (1) The corresponding normal or emergency power source must be operable, (2) all redundant systems, subsystems, trains, components, and devices must be operable. If these conditions are not met, the unit must be placed in *Hot Shutdown* within 6 hours and in *Cold Shutdown* within the following 30 hours. In order to provide better control of system operability when a power source is lost, Specification 3.0.5 has been rewritten in *Action* format and incorporated as *Actions* a.2 and b.2 of Specification 3.8.1.1. Merging the actions required in the event of an inoperable emergency power source into the *Action* statements dealing with this situation prevents the possible oversight of the Specification 3.0.5 requirements.

In addition, *Actions* a.2 and b.2 include: (1) An allowance of 2 hours for the operator to verify operability of the required systems, subsystems, trains, components, and devices which are powered from the remaining diesel generators, and (2) an extension of 6 hours to the shutdown schedule for achieving *Hot Shutdown*. *Cold Shutdown* will still be achieved within 36 hours as is required by the current Specification 3.0.5. These schedules allow sufficient time to verify that the required equipment is operable and provide for a more orderly shutdown should it be required. This shutdown schedule is consistent with that proposed for Specification 3.0.3.

The *Action* statements for Specification 3.8.1.1 have been reformatted to provide easier identification of required actions.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The license has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Deleting the reference to normal and emergency power from the definition of *Operable* has no affect on operation of the Brunswick Plant. Revised *Action* statements of specification 3.8.1.1 ensure that upon loss of a power source, the alternate power supply is operable and that the redundant equipment is operable. As such, this change does not affect the redundancy of required safety systems and, therefore, does not increase the probability or consequences of an accident previously evaluated.

The schedules for shutdown provided in the revised Specification 3.0.3 require the unit to achieve *Cold Shutdown* within 36 hours. This is consistent with the current requirements of Specification 3.0.3. However, operational safety is increased by allowing an orderly progression from *Power Operation* to *Startup* to *Hot Shutdown* to *Cold Shutdown*. This reduces the possibility of having to scram the reactor in order to achieve *Hot Shutdown* within the required time frame should some difficulty such as a rod block occur. This, in turn, reduces challenges to required safety systems and ultimately reduces the probability or consequences of an accident previously evaluated.

Incorporation of the requirements of Specification 3.0.5 into the *Action* statements for Specification 3.8.1.1 reduces the possibility that they will be overlooked should a diesel generator or an off-site power source become inoperable and, as such, reduces the possibility of operating outside the limits of the Technical Specifications. The revised schedule proposed in *Actions* a.2 and b.2 ensure redundant equipment is operable and provides for a more orderly shutdown should it be required. These factors increase operational flexibility and reduce the chances of operating the unit in a degraded condition, thereby reducing the probability and consequences of previously evaluated accidents.

Other changes made in this amendment are administrative in nature and, therefore, cannot result in an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the changes do not affect the method in which any equipment performs its intended safety function. The requirements of Specification 3.0.5 associated with inoperable normal or emergency power sources have been incorporated into Specification 3.8.1.1. Therefore, deleting the reference to normal and emergency power from the definition of *Operable* power does not affect the redundancy of required safety systems. Expanding the shutdown schedules in Specifications 3.0.3 and 3.8.1.1, *Actions* a.2 and b.2, provide increased operational safety by allowing a more controlled shutdown of the unit.

Other changes made in this amendment are administrative in nature and, therefore, cannot create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The revisions result in: (1) Increased operational safety and flexibility, (2) a reduction in the possibility of operating the plant in a degraded condition due to missed action requirements, and (3) a simplification of the specification through merging of action requirements and reformatting, thereby reducing the possibility of operator confusion. As such, this revision does not involve a significant reduction in a margin of safety.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

*Attorney for licensee:* Thomas A Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Daniel R. Muller.

**Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois**

*Date of amendment request:* March 6, 1987.

*Description of amendment Request:* The proposed amendments to Operating License No. NPF–11 and Operating License No. NPF–18 would revise the La Salle, Units 1 and 2 Technical Specifications to: (a) eliminate the ammonia detectors because of recent surveys conducted to supplement the past data; and (b) provide additional information needed to perform quantitative analyses of the station control room habitability and exposure risk due to accidental release of anhydrous ammonia. Regulatory Guide 1.78, "Assumptions for Evaluating the Habitability of a Nuclear Power Plant Control Room during a Postulated Hazardous Chemical Release," establishes criteria for assessing ammonia as a hazardous chemical and, when the chemical is deemed hazardous, requires a habitability analysis in case there is an accidental ammonia release from stationary or mobile sources near the plant. Position 1 of Regulatory Guide 1.78 states that ammonia stored or situated at distances greater than five miles from the control room would not need to be considered in evaluating the habitability of the control room. The recent surveys were used as the basis for a quantitative analysis of the La Salle County Station, Units 1 and 2, control room habitability and exposure risk due to accidental release of anhydrous ammonia. A probability analysis considered the statistical data required to cause the development of toxic concentrations in the control room. The licensee determined by these analyses that the toxic hazard created by the accidental release of ammonia in the vicinity of La Salle County Station is not a significant risk to the safe operation of the station. Spurious operation of the existing detection system has caused operation of safety systems, such as the filter system serving the control room. The licensee, therefore, expects a net improvement in safety with regards to these proposed changes to the La Salle, Units 1 and 2 design as a result of the reduction in challenges to the engineered safety features systems.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident from any accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff proposes to agree, that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the probability of ammonia gas reaching the control room ventilation intake is very low. The operators can place the control room ventilation system in the recirculation mode manually, if necessary. Also, the operators have an emergency breathing air supply readily available to them in the control room. The likelihood of an ammonia release causing an accident, as described in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR), is remote.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because ammonia gas does not contribute to, cause, or change any type of accident analysis in Chapter 15 of the UFSAR. Removal of the ammonia detectors will only affect the possibility of an ammonia release rendering the control room uninhabitable. The probability of this occurrence has been analyzed and determined to be sufficiently low.

(3) Involve a significant reduction in the margin of safety because the probability of an ammonia gas release reaching the control room ventilation system intake and incapacitating the operators is small.

Accordingly, the Commission proposes to determinte that the changes would create no significant hazards consideration.

*Local Public Document Room location:* Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

*Attorney for licensee:* Isham, Lincoln and Beale, 1120 Connecticut Avenue, NW., Suite 840, Washington, DC 20036.

*NRC Project Director:* Elinor G. Adensam.

**Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan**

*Date of amendment request:* February 25, 1987.

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TSs) to revise the Recirculation Actuation System (RAS) logic from a two-out-of-four logic to one-out-of-two taken twice. This change to the TS would reflect the actual RAS logic currently in place at the plant as a result of a design deficiency identified and corrected during the 1986–1987 maintenance outage. The change would provide clarifications to appropriate sections and impose operability requirements for the safety injection and refueling water (SIRW) tank low level switches consistent with the modified logic.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

BEST COPY AVAILABLE

margin of safety. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

As a result of a design deficiency identified during the 1986–1987 maintenance outage, the RAS actuation logic was changed from two-out-of-four to one-out-of-two taken twice, thereby removing the single failure potential in which a premature RAS could occur. The proposed change to the TS's is required to cause the modifications provided for the RAS logic to be reflected in the specifications and provide clarifications to appropriate sections. The proposed change also would impose operability requirements for the SIRW tank low level switches consistent with the modified logic. Specifically, with the new logic and a single channel in bypass, a time limit of 7 days is proposed to restrict the period in which the potential for a single failure to occur would prevent an automatic RAS actuation at the proper time. The failure to achieve an RAS is not considered to be as significant a malfunction as an early actuation, as it is believed that sufficient time and awareness is available for a failure to actuate to be recognized and any adverse consequences prevented via manual actions.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated as the changes result in a more restrictive specification in that the potential for a premature RAS actuation is eliminated and the allowable time in a degraded condition is restricted. Previously, the specifications allowed operation for an unlimited time period with two SIRW tank low level switches inoperable.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

While the proposed TS does introduce the potential for failure to achieve an RAS, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the resultant consequence, lack of safety injection (the same resultant consequence of a premature RAS), could be overcome as a result of the belief that sufficient time and awareness is available for a failure to actuate to be recognized and any adverse consequences prevented via manual actions. Therefore, the proposed changes reduce the potential for a failure as could occur with the current TS's.

(3) Involve a significant reduction in a margin of safety.

The proposed change adapts the specifications to reflect the modification of the RAS actuation logic. Appropriate restrictions are provided to reduce the chance of the failures previously found in the RAS logic. Therefore, the margin of safety is not being compromised or changed.

Based on the above analysis, the staff proposes to determine that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

*Attorney for licensee:* Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

*NRC Project Director:* Ashok C. Thadani.

**Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan**

*Date of application for amendment:* March 9, 1987 (VP–No.–87–0005).

*Brief description of amendment:* The proposed amendment, if approved, would revise the Fermi-2 Operating License No. NPF–43 Plant Technical Specifications as follows:

1. *Specification 3/4.2.2*—amend the APRM Setpoint action statement extending the action time limit for control rod withdrawal from two to six hours before setdown action is required to (1) establish target patterns, (2) achieve a reasonable power distribution at full power with equilibrium xenon, and (3) ensure that no combination of the Maximum Fraction of Limiting Power Density (MFLPD) and Fraction of Rated Thermal Power (FRTP) would result in a Linear Heat Generating Ratio (LHGR) transient peaking factor beyond the one percent plastic strain limit.

2. *Specification 3/4.3.6*—amend the control rod block instrumentation Table 3.3.6–2 to delete the asterisks in the "TRIP SETPOINT" and "ALLOWABLE VALUE" columns for Item 1.a to correct a typographical error (the asterisk does not apply to Item 1.a) and to add "APRM" to the same footnote.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:

1. The proposed change to Specification 3/4.2.2, "APRM SETPOINT":

(a) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change does not involve a physical modification to the plant, or a change in the limiting conditions for plant operation. The control rod target patterns are designed to achieve a reasonable power distribution at full power with equilibrium xenon. Because a skewed power distribution may occur due to non-equilibrium xenon, or from the fact that the control rods have not been pulled to their target positions, extension of the action time limit from two hours to six hours would allow the normal startup progression to continue withdrawing control rods until the target patterns are achieved; and this change would also allow sufficient time for additional xenon to build up. The proposed action time limit extension would further tend to flatten any core peaking and ensure bringing local power densities within allowable limits. In addition, because the causative factor of skewed power distribution is almost always xenon, utilizing control rod movements to reduce counter-productive core peaking factors, which would be attained by allowing the proposed change, would eliminate the possibility of optimizing the power shape at higher power levels due to preconditioning.

(b) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change will not eliminate the flow-biased rod block or flowbiased APRM scram setpoints, or the setdown adjustments. The trip setdown adjustments would continue to ensure that no combination of MFLPD and FRTP would result in a LHGR transient peaking factor beyond the one percent plastic strain limit. Operationally, the setdown adjustment enforces an optimal upper bound on the core total peaking factor, which in turn ensures conformance with LHGR limits at full power control rod patterns.

(c) Does not involve a significant reduction in a margin of safety because the maximum xenon depletion that would bound the transient event occurs during the first two hours after control

rod movement. Extending the action time limit from two to six hours allows more time for additional xenon buildup, minimizing its effect on a transient and effectively reducing the peaking factor concern as is stated in (1.a) above.

2. The change proposed to Specification 3/4.3.6, control rod block instrumentation:

(a) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change to Technical Specification Table 3.3.6–2 removes an asterisk in both the "TRIP SETPOINT" and "ALLOWABLE VALUE" columns for Item 1.a which does not apply to Item 1.a, and adds "APRM" to the single asterisk footnote unintentionally omitted. The change, which is administrative in nature and does not involve a physical change to the plant, or change a limiting condition of operation, or change any plant operating practice, is to correct a typographical error. Neither will the safety analysis or design basis for Fermi-2, as analyzed in the FSAR, be affected by the proposed administrative change.

(b) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because, as is stated in (2.a) above, the proposed change is administrative in nature and will not involve any physical or operational change to the plant.

(c) Does not involve a significant reduction in the margin of safety because, as is stated in (2.a) above, the proposed change is administrative in nature and will not affect plant operation.

The Commission agrees with the licensee's determination and proposes to determine that the changes requested to Technical Specification 3/4.2.2, and Technical Specification 3/4.3.6, as described above, do not involve a significant hazards consideration.

*Local Public Document Room location:* Monroe County Public Library System, 3700 South Custer Road, Monroe, Michigan 48161.

*Attorney for the licensee:* John Flynn, Esq., The Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

*NRC Project Director:* Elinor G. Adensam.

**Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan**

*Date of application for amendment:* March 9, 1987 (VP–No–87–0020).

*Brief description of amendment:* The proposed amendment, if approved, would revise Operating License No. NPF–43 Plant Technical Specifications to make editorial and typographical error corrections to Specification 3/4.8.4.3 (MOV Thermal Overload Protection), Specification 3/4.5.1 (ECCS-Operating) and Specification 3/4.6.1.2 (the Bases for Primary Containment Leakage).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the changes proposed to Technical Specifications 3/4.8.4.2, 3/4.5.1 and 3/4.6.1.2:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes proposed to these specifications do not involve a physical change to the plant, or change a limiting condition of operation, or change any operating practices. In addition, implementation of the editorial/typographical error corrections proposed does not change any safety analysis or design basis for Fermi-2. The specific nature of the proposed change to each of these specifications, upon which this determination has been made follows:

(a) *3/4.8.4.3*—the current MOV Thermal Overload Protection Table 3.8.4.3–1, Item 12, lists the Condensate Storage and Transfer System valve (PII–F616) for *Channel Calibration.* It was discovered during the required 18-month MOV thermal overload channel calibration that the valve in question was no longer applicable to the design as a result of a design change implemented prior to finalization of the Fermi-2 Plant Technical Specifications for plant licensing. At that time, all of the requisite documents and drawings were changed, and the FSAR updated to reflect the change. The Fermi-2 Plant Technical Specifications were being drafted at the time this design was being effected; but, because of an oversight, Table 3.8.4.3–1 did not reflect the change made in drawings or the FSAR.

(b) *3/4.5.1*—the current ECCS-Operating ACTIONS b.2 and b.3 under Section 3.5.1 have been found to be out of sequence. The proposed change to this Specification would resequence the action statements, by replacing *Action* b.2 with *Action* b.3 and by replacing *Action* b.3 with *Action* b.2.

(c) *BASES 3/4.6.1.2*—the current BASES statements relative to primary containment leakage reference American National Standard (ANS). document N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." The proposed change would correct this typographical error to read N45.5–1972, the correct standard.

(2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated, because as stated in (1) above, the changes are either editorial or typographical error corrections, administrative in nature, and are needed to achieve consistency throughout the Technical Specifications. Additionally, the proposed changes fall into the category of amendments that are considered unlikely to involve a significant hazards consideration as documented in 51 FR 7744.

(3) Do not involve a significant reduction in a margin of safety for the reason stated in (1) and (2) above. The editorial changes and typographical error corrections do not alter any safety analysis or design basis which would reduce any margin of safety under which the Fermi-2 plant was licensed to operate.

The Commission agrees with the licensee's determinations, and proposes to determine that the changes requested to Technical Specification 3/4.8.4.3, 3/4.5.1 and 3/4.6.1.2, as described above, do not involve a significant hazards consideration.

*Local Public Document Room location:* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

*Attorney for the licensee:* John Flynn, Esq., The Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

*NRC Project Director:* Elinor G. Adensam.

**Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* June 9, 1986, February 18, and March 23, 1987.

*Description of amendment request:* The proposed amendments would revise Technical Specification (TS) 3.4.6.2 to modify the actions taken in the event an unidentified leak, between one and three gallons per minute (gpm), occurs in the reactor coolant system (RCS) while it is hot and pressurized.

For unidentified leakage in excess of 1 gpm, action statements in the current TS allow the licensee 4 hours to reduce the leak rate to within limits. Otherwise, the plant is required to be in at least Hot Standby (Mode 3) within the next 6 hours and in Cold Shutdown (Mode 5) within the following 30 hours. The proposed amendments would not modify the 4 hours allowed to reduce the leak or the 6 hours to be in Mode 3, but would extend by 72 hours the 30 hours presently allowed to achieve Mode 5 conditions provided the unidentified leakage is not more than 3 gpm. This would result in 72 additional hours allowed in Mode 3 to provide the licensee sufficient time to identify the leak under elevated temperature and pressure conditions while the reactor is subcritical.

The licensee stated that the proposed change is needed because a small leak, (between 1 and 3 gpm when at Power Operation (Mode 1). or Startup (Mode 2)), becomes virtually undetectable at Cold Shutdown conditions (Mode 5). On several previous occasions, the licensee requested and was granted authorization by the NRC staff to extend the time before the Catawba Station would be required to achieve Mode 5 conditions when leaks in the 1–2 gpm range were present. From this experience, the licensee has determined that the average time needed to identify such a leak pathway was about 61 hours. For an unidentified leak greater than 3 gpm, requirements of the existing action statements would remain unchanged.

Also, the licensee requested the addition of an action statement to TS 3.4.6.2 regarding the standby makeup pump flow. This statement would require that the total of identified, unidentified, and RCS pump seal leaks must not be greater than 26 gpm or the pump is to be declared inoperable. This requirement is already included in the existing Catawba TS 3.7.13.

Furthermore, the licensee proposed deleting a footnote on page 3/4 4–20 because its applicability expired on October 23, 1985, and it is no longer needed.

TS Bases 3/4.4.6.2 "Operational Leakage" would be supplemented to explain the above changes.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The portion of the request regarding actions for unidentified leakage from 1 to 3 gpm and the standby makeup pump flow does not match any of those examples. However, the staff has reviewed the licensee's request and has determined that should this portion of the request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change related to the unidentified leakage would have no effect on the existing action statement until 10 hours into the event (i.e., until the transition to cold shutdown would otherwise begin); the only credible change in probability thereafter is that the opportunity for a loss of coolant accident (LOCA) occurring while the reactor is in hot standby is increased somewhat because of the additional 72 hours which would be allowed prior to starting cold shutdown. From prior analyses recognizing the fracture mechanics principles of pipe failure (i.e., "leak-before-break" studies), the licensee stated that the flaw size associated with a leak of 3 gpm (about 5 inches) is less than the critical flaw size (32.5 inches) necessary for crack propagation. For this reason, and because the period prior to cold shutdown would be increased by no more than 72 hours, no significant increase in probability of a LOCA would occur. The consequences of LOCAs have been analyzed in the FSAR, for a spectrum of pipe break sizes, including the double-ended rupture of the primary piping. The consequences of any leak affected by these changes would continue to be bounded by these analyses. Also, the addition of the action statement regarding the standby makeup pump flow would tend to decrease the probability or consequences of an accident previously analyzed because it would alert the operators to verify the pump flow.

Also, this portion of the licensee's proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no new or novel features would be added to plant design. As noted above, the only accident associated with the changes related to the unidentified leakage is a LOCA, and any LOCA would continue to be bounded by the FSAR analyses. The addition of the action for the standby makeup pump does not affect the design or operation of the plant because this action already exists in TS 3.7.13.

Finally, this portion of the licensee's proposed changes would not (3) involve a significant reduction in a margin of safety because, as noted above, a flaw associated with a 3 gpm unidentified leak would not propagate within the limited time period that would be allowed by the proposed changes; and the addition of the action for the standby makeup pump does not affect the design or operation of the plant.

One of the Commission's examples in 51 FR 7744 of actions likely to involve no significant hazards considerations is (i), "a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change to delete a footnote on page 3/4 4–20 because its applicability expired on October 23, 1985, and it is no longer needed represents a change that meets the guidance provided by this example.

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

*NRC Project Director:* B.J. Youngblood.

**Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* November 17, 1986.

*Description of amendment request:* The proposed amendments would revise Technical Specification (TS) Table 4.4–5 to show that Surveillance Capsule "Z" was pulled at the first refueling outage in lieu of surveillance capsule "U" which will be used as a standby. During Unit 1 refueling outage, an attempt was made to remove Capsule "U" in accordance with TS Table 4.4–5 but the tools available could not reach it. Based on discussion with Westinghouse, the licensee concluded that Capsule "Z" would produce similar results because it has an identical Lead Factor, identical composition and was exposed to a similar neutron flux profile. The licensee plans to modify the tools utilized to withdraw capsule "U" at a later refueling outage, if necessary.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that

should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the accident analyses will not be significantly affected by this change. Pulling capsule "Z" in lieu of Capsule "U" will not affect the normal operation of the station. Furthermore, Capsule "Z" will produce similar results as Capsule "U".

Also, the licensee's proposed revision would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the design and operation of the facility will not be significantly affected.

Finally, the proposed revisions would not (3) involve a significant reduction in a margin of safety because the characteristics of Capsule "Z" are identical to Capsule "U" and their neutron flux profiles are similar.

Accordingly, the Commission has determined that the above change involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

*NRC Project Director:* B.J. Youngblood.

**Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* June 9, 1986, February 18, and March 23, 1987.

*Description of amendment request:* The proposed amendments would revise Technical Specification (TS) 3.4.6.2 to modify the actions taken in the event an unidentified leak, between one and three gallons per minute (gpm), occurs in the reactor coolant system (RCS) while it is hot and pressurized.

For unidentified leakage in excess of 1 gpm, action statements in the current TS allow the licensee 4 hours to reduce the leak rate to within limits. Otherwise, the plant is required to be in at least Hot Standby (Mode 3) within the next 6 hours and in Cold Shutdown (Mode 5) within the following 30 hours. The proposed amendments would not modify the 4 hours allowed to reduce the leak or the 6 hours to be in Mode 3, but would extend by 72 hours the 30 hours presently allowed to achieve Mode 5 conditions provided the unidentified leakage is not more than 3 gpm. This would result in 72 additional hours allowed in Mode 3 to provide the licensee sufficient time to identify the leak under elevated temperature and pressure conditions while the reactor is subcritical.

The licensee stated that the proposed change is needed because a small leak, (between 1 and 3 gpm when at Power Operation (Mode 1) or Startup (Mode 2)) becomes virtually undetectable at Cold Shutdown conditions (Mode 5). On several previous occasions, the licensee requested and was granted authorization by the NRC staff to extend the time before a similar plant, the Catawba Station, would be required to achieve Mode 5 conditions when leaks in the 1–2 gpm range were present. From this experience, the licensee has determined that the average time needed to identify such a leak pathway was about 61 hours. For an unidentified leak greater than 3 gpm, requirements of the existing action statements would remain unchanged.

The licensee also requested the addition of an action statement regarding the standby makeup pump flow. This statement would require that the total of identified, unidentified, and RCS pump seal leaks must not be greater than 26 gpm or the pump is to be declared inoperable. This requirement is not included in existing McGuire TSs.

TS Bases 3/4.4.6.2 "Operational Leakage" would be supplemented to explain the above changes.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request regarding action for unidentified leakage from 1 to 3 gpm does not match any of those examples. However, the staff has reviewed the licensee's request and has determined that should this portion of the request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes would have no effect on the existing action statement until 10 hours into the event (i.e., until the transition to cold shutdown would otherwise begin); the only credible change in probability thereafter is that the opportunity for a loss of coolant accident occurring while the reactor is in hot standby is increased somewhat because of the additional 72 hours which would be allowed prior to starting cold shutdown. From prior analyses recognizing the fracture mechanics principles of pipe failure (i.e., "leak-before-break" studies), the licensee stated that the flaw size associated with a leak of 3 gpm (about 5 inches) is less than the critical flaw size (32.5 inches) necessary for crack propagation. For this reason, and because the period prior to cold shutdown would be increased by no more than 72 hours, no significant increase in probability of a LOCA would occur. The consequences of LOCAs have been analyzed in the FSAR, for a spectrum of pipe break sizes, including the double-ended rupture of the primary piping. The consequences of any leak affected by these changes would continue to be bounded by these analyses.

This portion of the licensee's proposed changes also, would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no new or novel features would be added to plant design. As noted above, the only accident associated with the change is a LOCA, and any LOCA would continue to be bounded by the FSAR analyses.

This portion of the licensee's proposed changes also, would not (3) involve a significant reduction in a margin of safety because as noted above, a flaw associated with a 3 gpm leak would not propagate within the limited time period that would be allowed by the proposed change.

One of the Commission's examples in 51 FR 7744 of actions likely to involve no significant hazards considerations is (ii), "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The proposed change to add an action statement so as to limit the total identified, unidentified and RCS pump seal leakage represents an additional limitation not in the existing TS, and therefore matches this example.

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

*NRC Project Director:* B.J. Youngblood.

**Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* February 17, 1987

*Description of amendment request:* The proposed change would add the

Noble Gas Monitor (EMF–39) to Technical Specification (TS) Tables 3.3–3 "Engineered Safety Features Actuation System Instrumentation" and 4.3–2 "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements." This addition would be new item 4) under table item 3c "Containment Purge and Exhaust Isolation."

The proposed change would also correct Surveillance Specification 4.11.2.4.2 which presently requires that the installed Gaseous Radwaste Treatment System be demonstrated operable by meeting Specifications 3.11.2.1 and 3.11.2.2 "or" 3.11.2.3. The error would be corrected by specifying 3.11.2.1 and 3.11.2.2 "and" 3.11.2.3.

Other proposed changes in the licensee's letter of February 17, 1987 will be handled separately.

*Basis for proposed no significant hazards consideration determination:* EMF–39 is used in trip logic which causes isolation of the containment purge system and termination of containment atmosphere release to the environment through the unit vent in the event of abnormal levels of gaseous activity inside containment. Therefore, TS 3.3.3.9 "Radioactive Gaseous Effluent Monitoring Instrumentation" and referenced Table 3.3–13 appropriately require that EMF–39 be operable at all times. For this same reason and for consistency, Tables 3.3–3 and 4.3–2 should also include EMF–39 as part of the engineered safety features instrumentation required for containment purge and exhaust isolation. The proposed change would correct this omission. Because EMF–39 is not presently included in Tables 3.3–3 and 4.3–2, the proposed change is also a more restrictive requirement.

TS 3.11.2.1 specifies limits for the allowable dose rate due to radioactive materials released in gaseous effluents from the site to areas at and beyond the site boundary. TS 3.11.2.2 specifies limits for the allowable air dose due to noble gases released in gaseous effluents to areas at and beyond the site boundary. TS 3.11.2.3 specifies limits for the allowable dose to a member of the public from Iodine-131 and -133, tritium, and all radioactive materials in particulate form with half-lives greater than 8 days in gaseous effluents released to areas at and beyond the site boundary. These limits are based upon the Commission's regulations. To be considered operable, the Gaseous Radwaste Treatment System must demonstrate each of the three limits, rather than two of the three or just one. The proposed change is, therefore, a more restrictive requirement and corrects the TS consistent with the Commission's regulations.

The Commission has provided guidance concerning the application of standards for no significant hazards consideration determinations by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a change that is administrative in nature, intended to achieve consistency or correct an error. Another example, (ii), is "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." As noted above, the proposed changes are both corrective and more restrictive; they, therefore, match those examples.

Accordingly, the Commission proposes to determine that the change does not involve significant hazards considerations.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC) Station, North Carolina 28223.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

*NRC Project Director:* B.J. Youngblood.

**Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of amendment request:* February 10, 1987.

*Description of amendment request:* The licensee has submitted an amendment request to revise five radiation monitoring instrumentation setpoints in Technical Specification Table 3.3–6. The amendment would also revise the meteorological monitoring instrumentation operability requirements in Table 3.3–8 to include both the primary and redundant instruments, and would revise Action Statements 27 and 29 in Technical Specification Table 3.3–13 to allow an alternative to grab sampling by providing for initiation of continuous monitoring by alternate monitoring equipment.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The changes to the radiation monitor alarm setpoints would be incorporated to provide consistency with the revised Emergency Action Levels (EAL) and thus, improve response actions. These instruments provide alarms only and do not perform control functions. The addition of the redundant meteorological monitoring instruments would provide an additional set of instruments to allow more flexibility when satisfying the minimum instrument operability requirements. The minimum number of instruments required to be operable would be increased to include the additional instruments and the surveillance requirements would remain unchanged. The revised Action Statements of Table 3.3–13 would incorporate an option to allow monitoring with comparable alternate monitoring instruments. Surveillance requirements that would have been applied to the primary Technical Specification channel would then be applied to the alternate monitoring instruments. This will thus ensure that operability of the alternate monitoring instruments is comparable to that required for the Technical Specification instruments. Therefore, there would be no reduction in the quality of the instruments monitoring these effluent pathways. These changes would not significantly increase the probability of occurrence or the consequences of an accident previously evaluated and would not affect the UFSAR accident analysis of Section 14.

The proposed revisions would not create the possibility of a new or different kind of accident from any accident previously evaluated because the instruments addressed by the proposed changes do not perform control functions. The alarm setpoint changes would provide consistency with the associated Emergency Action Levels to provide improved emergency response actions. The revised Action Statements would provide only an option to the use of grab samples when an effluent monitor is inoperable. These changes would not affect the UFSAR system descriptions of Section 11.

The proposed changes would not involve a significant reduction in the margin of safety since the applicable radiation and meteorological monitoring instruments will continue to perform the

intended functions, will be maintained in accordance with design requirements, and will not affect the Bases for any Technical Specification. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Lester S. Rubenstein.

**Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of amendment request:* February 11, 1987.

*Description of amendment request:* The amendment would revise the Technical Specification Reactor Coolant System (RCS) heatup and cooldown limit curves and the Bases for these limit curves.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c))1. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revisions to the Technical Specification and Bases entail incorporation of data taken from the summary report (WCAP 10867) on the second surveillance capsule evaluated in conjunction with the BVPS–1 Reactor Vessel Material Surveillance Program. All the reactor coolant system components are designed to withstand the effects of normal cycle loads due to temperature and pressure changes, as well as the loads associated with the postulated faulted conditions. The fracture mechanics analysis performed to verify the fracture toughness of the reactor vessel is amended to account for the irradiation effects determined by the analysis of the surveillance capsules, and the operating limits of the plant are adjusted accordingly to offset any observed changes in the material. Therefore, the probability of a previously analyzed accident occurring is not significantly increased by the incorporation of new heatup and cooldown limit curves.

In addition, the consequences of an accident previously evaluated in the FSAR will not be significantly increased since the integrity of the reactor vessel is ensured by accounting for the irradiation effect.

The amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical changes in the reactor coolant system will result from the proposed Technical Specification changes. Additionally, the revisions do not result in a significant reduction in a margin of safety since the incorporation of new limit curves ensures that the conditions under which the reactor vessel is operated are such that an adequate margin of safety is maintained.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

*Local Public Document Room location:* B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Lester S. Rubenstein.

**Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida**

*Date of amendment request:* March 17, 1987.

*Description of amendment request:* The licensee proposes to change the Reactor Coolant System Pressure/Temperature (P/T) limit figures. The removal of the St. Lucie Plant, Unit No. 1 thermal shield a few years ago resulted in a reduction in the period of applicability of the current P/T figures (curves) from 10 years of full power operation or 8 Effective Full Power Years (EFPY) to 7.4 EFPY. As a result, at 7.4 EFPY, the existing Low Temperature Overpressure Protection (LTOP) system, which is designed based upon current P/T limitations, will be inadequate for LTOP for the reactor coolant system. Thus, LTOP-related technical specifications are also proposed to be changed.

The licensee specifically proposes to delete existing P/T limit Figures 3.4–2a, 3.4–2b, and 3.4–2c as contained in TS 3/4.4.9.1—Pressure/Temperature Limits—Reactor Coolant System. These figures contain the P/T limit curves for up to 5 years of Full Power Operation (FPO), up to 10 years of FPO, and up to 40 years of FPO, respectively. Proposed Figure 3.4–2a will contain the heatup and core critical P/T curve for up to 10 EFPY, while proposed Figure 3.4–2b will contain the cooldown and inservice test P/T curve for up to 10 EFPY. The allowable heatup rates will be included in Figure 3.4–2a, but the allowable cooldown rates will not be included in Figure 3.4–2b. Thus, Figure 3.4–3 is proposed to be added to specify the allowable cooldown rates. The limits will now be a function of EFPY instead of calendar years of operation. Thirty-two EFPY equals 40 calendar years of operation.

The licensee also proposes to further change the RCS heatup and cooldown rates for certain conditions of operation. The modified rates are contained in proposed Figure 3.1–1b entitled "Maximum Allowable Heatup and Cooldown Rates, Single HPSI Pump in Operation." The conditions are when: (1) The flow path from the refueling water tank to the RCS via a single High Pressure Safety Injection (HPSI) pump is in effect, and (2) all charging pumps are disabled. This change is contained in proposed amended TS 3/4.1.2.1 (Boration System—Flow Paths—Shutdown) and TS 3/4.1.2.3 (Charging Pump—Shutdown).

Since the P/T curves are changing, there are a number of other Technical Specification changes necessary as follows. The power operated relief valves low temperature protection setpoints are proposed to be changed (TS 3/4.4.13—Power Operated Relief Valves). The licensee proposes a setpoint of less than or equal to 350 psia during: (a) Cooldown when the temperature of any RCS cold leg is less than or equal to 200 °F, and (b) heatup and isothermal conditions when the temperature of any cold leg is less than or equal to 180 °F. The licensee also proposes an elevated setpoint of less than or equal to 530 psia during (a) cooldown when the temperature of any RCS cold leg is greater than 200 °F and less than or equal to 334 °F, and (b) heatup and isothermal conditions when the temperature of any cold leg is greater than or equal to 180 °F and less than or equal to 334 °F.

The steam generator water temperature to reactor coolant system water temperature delta temperature is proposed to be changed (TS 3/4.4.14—Reactor Coolant Pump Start and 3/4.1.4.1—Reactor Coolant Pump Start). The licensee proposes a delta

temperature of 30 °F versus the current 45 °F.

The HPSI pump disable temperatures are proposed to be changed (TS 3/4.5.3—ECCS Subsystems, $T_{ave}$ less than 325 °F). A maximum of only one HPSI pump may be operable below a RCS temperature of 253 °F, versus the current 215 °F. All HPSI pumps must be disabled when the RCS temperature is below 220 °F, versus the current 165 °F.

Finally, bases statements associated with the above changes are proposed to be changed.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In addition, the licensee provided a safety evaluation to support the changes, and this included an in-depth analysis by the licensee's consultant, Combustion Engineering, Inc. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure/temperature (P/T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR 50 Appendix G as supplemented by the ASME Code Section III, Appendix G. The $RT_{NDT}$ values for the revised curves are based on Regulatory Guide 1.99, Revision 02 (Draft) shift correlations and Combustion Engineering's flux attenuation factors. The analysis of reactor vessel material irradiation surveillance specimens are used to verify the validity of the fluence predictions and the P/T limit curves. Use of the revised curves in conjunction with the surveillance specimen program ensures that the reactor coolant pressure boundary will behave in a non-brittle manner and that the possibility of rapidly propagating fracture is minimized.

In conjunction with revising the P/T limit curves, a low temperature overpressure protection analysis has been performed to establish the configuration and PORV setpoints of the St. Lucie Unit 1 low temperature overpressure protection system.

To ensure compliance with the P/T limit curves, overpressure protection is provided to keep the RCS pressure below the P/T limits for any given temperature after the initiation of assumed pressure transients (energy-addition and mass-addition transients) while operating below the temperature at which the pressurizer safety valves provide overpressure protection during heatup and cooldown.

The revised P/T curves and LTOP system do not represent a significant change in the configuration or operation of the plant. The results of the LTOP analysis show that the limiting pressures for a given temperature are not exceeded for the assumed transients and that reactor vessel integrity is maintained. Thus, the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

In connection with the second standard, the licensee states that:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The evaluation performed has resulted in revised P/T limits based on the fracture toughness requirements of 10 CFR Part 50 Appendix G, and in a revised low temperature overpressure protection system based on standard energy and mass addition transients. Since there is no significant change in the configuration or operation of the facility as a result of the proposed amendment, the use of revised P/T limits and/or PORV setpoints will not create the possibility of a new or different kind of accident from any accident previously evaluated.

In connection with the third standard, the licensee states:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed amendment will not involve a significant reduction in a margin of safety, because the fracture toughness requirements of 10 CFR Part 50 Appendix G are satisfied and conservative operating restrictions are applied for the purpose of low temperature overpressure protection.

The staff has reviewed the licensee's no significant hazards consideration determination analysis, as supported by the licensee's safety evaluation and consultant's report. Based on this review, it appears that the proposed amendment does not involve an increase in the probability or consequences of events previously evaluated and that the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated because the licensee did address the usual technical areas of concern in updating the P/T limit figures and changing the related specifications for low temperature overpressurization protection. Likewise, it does not appear that the margin of safety is reduced because the licensee used Appendix G in the formulation of the figure changes and it does appear that conservative operating restrictions were applied for the purpose of low temperature overpressure protection.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

*NRC Project Director:* Ashok C. Thadani.

**Indiana and Michigan Electric Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan**

*Date of amendment request:* February 20, 1987 as supplemented by letter dated March 13, 1987.

*Description of amendment request:* The proposed amendment would revise the Technical Specification to modify the heat flux hot channel factor and the axial power distribution to allow an increase in the peak pellet exposure for Advanced Nuclear Fuel Corp. (formally Exxon Nuclear Company) fuel from its present valve of 48.0 MwD/kg to 48.7 MwD/kg.

*Basis for proposed no significant hazards consideration determination:* The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Advanced Nuclear Fuel Corp. (ANF) fuel in Unit 1 constitutes one third of the core and is due to be discharged at the next refueling outage currently scheduled to begin after May 24, 1987. The unit has been operating at 90% power due to steam generator tube corrosion problems and this reduction in power has extended the fuel cycle and increased the peak pellet exposure of ANF fuel to near its approved limit. The proposed changes in the licensee's February 20, 1987 letter would allow the peak pellet exposure to be increased to

51.OMwD/kg and the unit to finish the fuel cycle with full utilization of the fuel before it is discharged. The supportable basis, however, is limited by mechanical consideration to 48.7 MwD/kg. The licensee's letter dated March 13, 1987 provides the revised Technical Specification for consideration.

The licensee has performed loss-of-coolant accident (LOCA) and fuel mechanical design analyses to demonstrate that the exposures will not violate any applicable safety limits or design criteria. The analyses were accomplished with methods previously used in the D.C. Cook fuel reloads and found acceptable. Acceptance criteria for the technical specifications are not significantly changed, therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Operation and use of the fuel will not change; only the residence time in the core. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated and with the small increase in the exposure level, the change does not involve a significant reduction in a margin of safety.

Based on the above consideration, the staff proposes to determine that the changes do not involve a significant hazards determination.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20036.

*NRC Project Director:* B.J. Youngblood.

**Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* December 18, 1986 which supersedes an April 5, 1985 request.

*Description of amendment request:* The proposed amendment would revise the Duane Arnold Energy Center(DAEC) Technical Specifications (TS) to assure periodic verification that the opening angle of the purge/vent valves is restricted to 30° which was found by the NRC staff to assure valve closure against a postulated design basis loss-of-coolant accident (LOCA) pressure in the containment. The licensee is modifying its Standby Gas Treatment System (SGTS) to provide overpressure protection. This modification will protect both trains of SGTS against the pressure pulse and moisture in the containment due to a postulated design basis accident, when purge/vent valves are open.

The licensee states that as a result of limiting valve opening angle and protecting SGTS trains against design basis LOCA, the current numerical restriction of 90 hours duration of annual purge/vent operation is no longer necessary. Accordingly, the licensee has proposed to delete the TS restriction limiting the valve operation to 90 hours per year. Instead the licensee has proposed to operate the purge/vent valves in such a way as not to create a flow path to the environment while primary containment is required, except for inerting, deinerting, testing, or pressure control.

In addition, subsection 3.7.D.2 of the TS is being revised to reflect more closely the wording of the Standard Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment as follows:

In accordance with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based upon the following information:

(1) Does the proposed license amendment involve a siqnificant increase in the probability or consequences of an accident previously evaluated?

Response:

a. Eliminating the requirement to limit purge time through containment vent/purge valves (CV–4302, CV–4303, CV–4300, CV–4301, CV–4307, CV–4309 and CV–4310) does not increase the probability or consequences of an accident. The requirement to limit purge time to 90 hours per year as currently described in Specification 3.7.A.9 was added to reduce the probability of a DBA/LOCA occurring while the vent/purge valves are open, which could have prevented the valves from closing and result in an uncontrolled release of containment atmosphere to the environs.

On October 1, 1984, the NRC issued a Safety Evaluation to the DAEC which demonstrated that the containment purge and vent valves, as modified, could close against the buildup of containment pressure in the event of a DBA/LOCA. The Safety Evaluation also closed out NUREG–0737 Action Item II.E.4.2.6 for the DAEC. Because the vent/purge valves, as modified, have been demonstrated to be able to close against DBA/LOCA pressures, the probability of occurrence of an accident has not been increased by deleting the 90 hour purge requirement from Specification 3.7.A.9.

Given the fact that the vent/purge valves are capable of closing against DBA/LOCA pressures, onlv. two factors related to this Technical Specification change affect the consequences of such an accident: The radiological release from the primary containment during the five-second closing time of the vent/purge valves and the potential destruction of both trains of the Standby Gas Treatment (SGTS) from overpressurization or moisture during the five-second closing of the valves.

The NRC issued a Safety Evaluation on December 29, 1983, in which the staff concluded that the radiological consequences of a hypothetical DBA/LOCA, while the containment is in the purge mode and the reactor is at full power operation, do not exceed the requirements of 10 CFR Part 100 and do not alter the NRC's previous conclusions reached in the original Safety Evaluation Report for the DAEC.

The DAEC has modified the SGTS to provide it with overpressure protection to prevent damage to either train of the SGTS from a hypothetical DBA/LOCA during purging.

The new wording of Specification 3.7.A.9 limits the operation of vent/purge valves to certain evolutions already allowed or required by the Technical Specifications and UFSAR.

Based on the discussion above, the rewording of Specification 3.7.A.9 will not increase the consequences of an accident or malfunction of equipment previously evaluated in the DAEC UFSAR.

b. Adding the requirement to limit the opening angle of the vent/purge valves to 30 degrees by mechanical means to the Technical Specifications provides additional assurance that this modification will remain functional. The DAEC has demonstrated to the NRC that these vent/purge valves are capable of closing against the buildup of containment pressure in the event of a DBA/LOCA if the valves are limited mechanically to a maximum opening angle of 30 degrees. Therefore, this Technical Specification change does not increase the probability of occurrence of an accident or the consequences of an accident.

c. The revision of subsection 3.7.D.2 does not change the requirement to isolate lines which contain inoperable valves. It provides specific guidance regarding acceptable methods for isolating affected lines or permits restoration of the inoperable valve to OPERABLE status within 4 hours. The deletion of the surveillance requirement (subsection 4.7.D.2) does not adversely affect the function of this specification, since isolation of affected lines will be controlled administratively. The provision allowing opening of isolation valves on an intermittent basis will allow for testing of other valves in

the line under administrative control while preventing the line from being isolated for an excessive period. These changes do not increase the probability of occurrence of an accident or the consequences of an accident.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

a. The rewording of Specification 3.7.A.9 merely allows the DAEC more flexibility to perform plant evolutions which are already allowed by Technical Specifications and the UFSAR. Therefore, the possibility for an accident different from any previously evaluated is not created.

b. Adding the 30 degree opening limit for vent/purge valves to the Technical Specifications provides additional assurance that these valves will perform as designed and, therefore, does not create the possibility for an accident different from those previously evaluated.

c. The revision of subsection 3.7.D.2 to clarify the acceptable methods of isolating affected lines and the deletion of subsection 4.7.D.2 do not change the functional requirements of the Technical Specifications for isolating lines which contain inoperable valves, and, therefore, do not create the possibility for an accident different from those previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

a. According to the discussion in (1)a. above, the DAEC vent/purge valves and SGTS will remain functional during and after a DBA/LOCA. Therefore, the rewording of Specification 3.7.A.9 does not prevent the containment isolation systems or SGTS from performing their intended function as designed. Therefore, the margin of safety is not reduced.

b. Adding the 30 degree opening limit for vent/purge valves to the Technical Specifications provides additional assurance that these valves will perform their function as designed. Therefore, the margin of safety is not reduced.

c. The clarification of the acceptable methods of isolating the lines with inoperable valves and the notation that the isolated valves may be opened intermittently under administrative control do not change the functional requirements of the Technical Specification to limit the time during which the plant is operated with a line containing an inoperable isolation valve unisolated. The deletion of the surveillance requirement for recording the position of the other valve in the line on a daily basis does not change the functional requirement of the Technical Specification because the isolation of the lines must still be controlled administratively. Therefore, the margin of safety is not reduced.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analyses. Therefore, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

*NRC Project Director:* Daniel R. Muller.

**Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* February 24, 1987.

*Description of amendment request:* The proposed changes to the Technical Specifications (TS) concern the Semiannual Radioactive Effluent Release Report (SRERR) and the Special Report (SR). The change to TS concerning SRERR would allow additional time for the filing of supplemental dose and meteorological summary reports. The proposed change to the TS concerning SRERR would ensure that the specification references are consistent with current TS.

The change to the TS concerning SRERR would provide the added time necessary for preparing the annual summaries of meteorological history, and estimated dose commitments resulting from plant operation. These reports would be required to be submitted within 90 days after January 1 of each year. This has been accomplished by dividing the TS concerning SRERR into two sections. Section one contains the requirements for the SRERR and Section two outlines the requirements for submitting annual reports of the Estimated Dose and Meteorological Summary. This change will not affect the submittal of plant radioactive effluent data required by 10 CFR 50.36a, paragraph (a)(2).

The proposed change to TS concerning SR would update the references for the Excessive Radioactive Release Report. Presently the TS concerning SR refers to an incorrect TS section. This TS change would correct that situation.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes to the Technical Specifications for the Cycle 10 operation of the Maine Yankee plant against the standards of 10 CFR 50.92 and has determined they do not involve a significant hazards consideration. The licensee's discussion is as follows.

These proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The division of the TS concerning SPERR into two sections and the request for additional time to prepare the supplemental dose and meteorological summary reports is strictly of an administrative nature and does not affect either the type of information submitted or the methods used to prepare it. The change to the TS concerning SR is also of an administrative nature as its purpose is to clarify which sections of TS 3.16 and 3.17 require special reports subject to the TS concerning SR. Thus, these changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Both of these changes are of an administrative nature and affect the requirements for reporting data. One of the changes to specifications concerns the timing of a report; the other will ensure that references within Technical Specifications are consistent. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

These changes are concerned with the timing of reports and references to reports in Technical Specifications. These changes do not affect the contents of the reports or the methods used to prepare them. Therefore, there is no reduction in a margin of safety.

Based on the above discussion, the staff agrees with the licensee's evaluation and proposes to determine that the proposed amendment would involve no significant hazards considerations.

*Local Public Document Room location:* Wiscasset Public Library, High Street, Wiscasset, Maine.

*Attorney for licensee:* J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

*NRC Project Director:* Ashok C. Thadani.

**Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York**

*Date of amendment request:* February 20, 1987.

*Description of amendment request:* The proposed amendment would modify Technical Specification (TS) Section 6.3.1 and Figure 6.2–2 to reflect the combined nuclear site organization for Nine Mile Point Unit 1 and Unit 2. The proposed change also represents a restructuring of the Chemistry and Radiation Management Organization.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). The licensee has presented its determination of no significant hazards consideration as follows:

The proposed amendment to Figure 6.2–2 of the Technical Specifications reflects the combined nuclear site organization for Nine Mile Point Unit 1 and Unit 2. The change also represents a restructuring of the Chemistry and Radiation Management Organization. The position of Supervisor Chemistry and Radiation Protection has been divided into two separate positions. The newly created positions are Supervisor Chemistry and Radiochemistry, and Radiation Protection Manager. This change was made to improve the efficiency and effectiveness of the Chemistry and Radiation Management Organization.

The proposed revision to Section 6.3.1 requires the Radiation Protection Manager to meet or exceed the qualifications of Regulatory Guide 1.8, September 1975. This change clarifies the qualifications for the Radiation Protection Manager and provides consistency between the Nine Mile Point Unit 1 and Unit 2 Technical Specifications.

*The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed amendment incorporates a management organizational change in the Chemistry and Radiation Management Organization to improve the overall performance of Nine Mile Point Unit 1. The other proposed changes are purely administrative in nature. Therefore, the proposed amendment will not increase the probability or consequences of an accident previously evaluated.

*The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.*

This amendment reflects a change in the site organization. The functions and responsibilities of the site organization will remain the same. Therefore, this change does not create any new or different kind of accident from any accident previously evaluated.

*The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.*

The proposed changes do not affect the limiting conditions for operations as defined in the Technical Specifications.

The margin of safety for Nine Mile Point Unit 1 will therefore be unaffected.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

*Local Public Document Room location:* State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

*Attorney for licensee:* Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, DC 20006.

*NRC Acting Project Director:* Marshall Grotenhuis.

**Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Scriba New York**

*Dates of amendment request:* March 11, 1987, as supplemented March 16, 1987.

*Description of amendment request:* The proposed amendment to the Operating License No. NPF–54 included a request to delete license condition 2.C.(14) concerning the main steam isolation valves (MSIVs). Additional changes requested in the referenced request will be addressed in a later notice. This change, to delete license condition 2.C.(14), would remove the requirements for the licensee to report on prototype testing of the MSIV ball valves and to perform extra leak testing of the MSIV ball valves as required by the license condition and has been requested to support the change from MSIV ball valves to MSIV wye-pattern globe valves.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change regarding deletion of license condition 2.C.(14) against these standards specified in 10 CFR 50.92(c) and determined that no significant hazards considerations exist for the reasons discussed below. The staff agrees with these reasons.

As discussed in Section 6.2.4 of Supplement 5 to the Safety Evaluation Report for NMP–2, the prototype test program and confirmatory leak testing were to provide confirmation of the adequacy of the MSIV ball valves to meet the design and operating requirements. License condition 2.C.(14) of OL NPF–54 required implementation of this program and reporting. The deletion of the requirements for additional testing of these valves and reporting in this license condition is administrative in nature and will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety because these valves will no longer be used.

Accordingly, the Commission proposes to determine that the proposed change to the License involves no significant hazards considerations.

*Local Public Document Room location:* Penfield Library, State University College, Oswego, New York 13126.

*Attorney for licensee:* Mr. Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Elinor G. Adensam.

**Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit I, Montgomery County, Pennsylvania**

*Date of amendment request:* January 13, 1987, as supplemented by letter dated March 25, 1987.

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TSs), in accordance with the licensee's application for amendment dated January 13, 1987, as supplemented by

letter dated March 25, 1987, to permit the licensee to complete the physical modifications, testing and other actions to facilitate connection of the standby gas treatment system (SGTS) to the refueling floor area. These changes to the TS would enable the licensee to establish the operability of the SGTS service to the refueling floor area in response to the requirements of License Condition No. 2.C(14).

The SGTS has been operable in support of the Unit 1 reactor enclosure secondary containment integrity since the issuance of the Unit 1 operating license. A secondary containment completely encloses the Unit 1 and the Unit 2 primary containments and is provided to contain any leakage from the primary containments for processing by filtration systems prior to release. The secondary containment is divided into three separate ventilation zones. Zones I and II consist of the reactor enclosures which surround the primary containments of Units 1 and 2, respectively, below the floor at elevation 352 feet. Zone III consists of the common refueling area above the floor at elevation 352 feet. A design basis of the secondary containment is that the conditions that could exist following a loss-of-coolant-accident (LOCA) or fuel handling accident require the control of any fission products that may leak into secondary containment. Accordingly, a standby gas treatment system is provided to collect and exhaust sufficient filtered air from the reactor enclosure or refueling area to maintain a negative pressure in the affected volumes during secondary containment isolation.

The NRC staff concurred in SER Supplement Nos. 2 and 3 with a request by the licensee for a scheduled delay in completion of the connection of the SGTS to the refueling floor area (Zone III). The staff concurred on the basis that Zone III is completely isolated from the Unit 1 reactor enclosure secondary containment zone, and that Zone III SGTS operation is relied upon during fuel handling and that there would be no irradiated fuel in the spent fuel pool until the first refueling outage. The staff also established License Condition No. 2.C(14) which prohibited any movement of irradiated fuel within the refueling floor volume prior to connection of the SGTS. License Condition No. 2.C(14) would be completely satisfied upon a demonstration of SGTS operability pursuant to the proposed Technical Specifications prior to the movement of any irradiated fuel and prior to removal of the reactor vessel head.

The proposed changes to the TS consist of the following:

(a) The Refueling Area Ventilation Exhaust Duct—Radiation High signal (R signal) and the Outside Atmosphere to Refueling Area Differential Pressure-Low signal (T signal) are presently included in both the primary and the secondary containment isolation actuation instrumentation sections of the TS Tables 3.3.2–1, 3.3.2–2 and 4.3.2.1–1. To eliminate the confusion which could arise among plant operators from having the P and T signals reflected in the primary and secondary containment isolation sections of these Tables, once the refueling floor area is served by the SGTS, the licensee proposes to delete the R and T signals from the primary containment isolation section of these Tables. The generation of the R and T signals would be indicative of conditions in the reactor enclosure or refueling floor area secondary containments requiring isolation. The licensee states that these signals have no relevance to primary containment isolation. Some of the primary containment isolation valves serve a dual role in that they assist in establishing the isolation boundary for the secondary containment as well as the isolation boundary for the primary containment. Therefore, to avoid the confusion which could arise in determining the instrumentation operability requirements for the primary containment isolation function based on operability concerns affecting only the secondary containment isolation function, the licensee proposes to delete operability requirements for R and T signals from the primary containment isolation function in these TS Tables. No change is made to the physical design or hardware of the primary containment isolation system and the R and T signals will actuate all isolation valves required for secondary containment isolation including those valves which serve a dual role as primary containment isolation valves. The specification for the R and T signals, the setpoints, the response times and the surveillance requirements will continue to be included in the secondary containment isolation section of TS Tables 3.3.2–1, 3.3.2–2, 3.3.2–3 and 4.3.3.1–1.

(b) With the proposed changes, the SGTS will be prepared to serve the Unit 1 and the Unit 2 Reactor Enclosure Secondary Containment (Zones I and II) and the Refueling Floor Area (Zone III). Accordingly, the single Manual Isolation Signal in TS Tables 3.3.2–1, 3.3.2–2, 3.3.2–3 and 4.3.2.1–1 is proposed to be divided into a Reactor Enclosure Manual Initiation and a Refueling Area Manual Initiation signal.

(c) Signals R and T are provided to actuate containment isolation valves for the drywell purge supply and exhaust lines and for the suppression pool purge supply and exhaust lines and several associated notes are updated in TS Table 3.6.3–1. These signals are provided to isolate these primary containment lines and thus permit alignment of the SGTS to the refueling area in the event of conditions in the refueling area which require the SGTS to process effluent from the refueling area. Four of these valves, as indicated by the addition of Note 33, also assist in establishing the refueling area secondary containment isolation boundary as well as assist in establishing the primary containment isolation boundary in response to other signals.

(d) Slide gate dampers are proposed to be added to Specification 3/4.6.5 to manually isolate any zone from the SGTS in the event that its secondary isolation system is not in service, thus preventing any valve failures from connecting the SGTS to an area which cannot be brought under SGTS pressure control.

(e) Signals R and T are provided to two of the drywell purge exhaust valves listed in both Table 3.6.5.2.1–1 and Table 3.6.5.2.2–1. The R and T signals are provided to these valves since they assist in establishing the secondary containment isolation boundary and enable the SGTS to be aligned to the appropriate secondary containment when required.

(f) Eight drywell and suppression pool inboard and outboard exhaust line isolation valves and their isolation signals are added to Table 3.6.5.2.2–1 to complete the establishment of the refueling area secondary containment boundary. Four of these valves are Unit 1 valves which serve a dual role in establishing the refueling area secondary containment isolation boundary as well as the primary containment isolation boundary as designated by Note 33 in Table 3.6.3–1. Four of these valves are Unit 2 valves in lines that are sealed off by blind flanges while Unit 2 construction is ongoing and therefore are not required to be active, operable valves until Unit 2 construction is completed.

(g) The surveillance requirements in TS 4.6.5.3 are revised to reflect the required SGTS flowrates, pressure drop, drawdown vacuum and drawdown time for SGTS serving the Unit 1 and 2 reactor enclosures (Zones I and II) and refueling area (Zone III). The

specification for the Unit 2 reactor enclosure will become effective upon completion of construction and licensing of Unit 2 as noted by a footnote at the bottom of page 3/4 6–53.

(h) The BASES to the TS are also modified to reflect the SGTS capability to serve Unit 1 and 2 reactor enclosure (Zones I and II) and the refueling area (Zone III).

The licensee added a vent in the SGTS ductwork to balance the SGTS airflow from the reactor enclosure and refueling area when both zones are connected to the common SGTS at the same time. The licensee states that this vent does not change any response modes or design bases of the SGTS. The licensee also relocated the HPCI Barometric Condenser Vacuum Pump Discharge from the SGTS duct to the reactor enclosure equipment compartment exhaust system. The licensee states that this relocation would not result in radiological consequences greater than previously evaluated.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff has made a preliminary review of the licensee's submittal. The staff's evaluation of the proposed changes is provided below.

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The accidents that are relevant to the proposed changes are the loss-of-coolant-accident (LOCA) and the fuel handling accident which were previously analyzed in FSAR sections 15.6 and 15.7, respectively. The proposed changes would result in completion of construction of the SGTS to Zone III by the installation of ductwork, dampers, controls, filters, instrumentation and reflection of the requirements for this equipment in the TS. The SGTS fans would also be increased in capacity to enable the SGTS to serve all zones simultaneously, if required.

The principal SGTS factors affecting the consequences of a LOCA are not changed significantly. The minimum flow rate analysis basis for each reactor enclosure secondary containment is maintained at 2800 cfm, the drawdown time proposed for the modified SGTS for Zones I and II is maintained at the 121 second value as in the previous safety analysis, the drawdown vacuum is unchanged and the SGTS filter efficiencies are maintained. Therefore, the results of the licensee's analysis of the LOCA consequences in the FSAR are unchanged. None of the proposed changes are proposed to affect the integrity or the operation of the reactor coolant pressure boundary. On these bases the staff concludes that the proposed changes do not increase the probability or consequences of a LOCA. The principal SGTS factors affecting the consequences of a fuel handling accident are also not changed significantly as sufficient SGTS flow rate is provided to drawdown the refueling floor area to the previously specified negative pressure and the SGTS filter efficiencies are maintained. The additional instrumentation and revised surveillance requirements serve to ensure that the containment isolation system and SGTS design basis specified in the FSAR to isolate affected areas and process any releases will be met. None of the proposed SGTS changes would significantly increase the probability of a fuel handling accident since the proposed changes do not impact the handling frequencies, the design of systems, procedures or other factors relevant to the handling of fuel.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated.

The loss-of-coolant-accident and the fuel handling accident for which the SGTS is designed to respond were previously analyzed in the FSAR. The proposed changes will extend the capability of the SGTS from the Unit 1 reactor enclosure secondary containment to the Unit 2 reactor enclosure secondary containment (when it is declared operable) and to the refueling area as analyzed in the FSAR and are also consistent with the design basis set forth in the FSAR. The response of the SGTS to the LOCA and the fuel handling accidents will not be significantly different from the response defined in the FSAR. The proposed TS changes reflect the upgraded SGTS fan capability, the instrumentation required for an operable SGTS refueling area capability and clarifications. No other changes to the plant design, operation or limiting conditions for operation are involved. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction In a Margin of Safety.

The principal factors affecting the margin of safety are not changed significantly from those described in the FSAR and the current TS. Proposed SGTS operation for the reactor enclosure secondary containments would involve the same fan flow rate basis, the same drawdown time, the same drawdown negative pressure, essentially equivalent filter efficiencies and equivalent containment isolation capabilities. Proposed SGTS operation for the refueling area involves sufficient fan flow rate to ensure the same drawdown negative pressure, essentially equivalent filter efficiencies and the addition of containment isolation signals to the appropriate valves to ensure meeting the FSAR isolation design basis. The licensee states that reviews have been performed which support its conclusions that there will be no effect on the post-LOCA doses previously evaluated in the FSAR and that the safety related mode of the SGTS following a LOCA or fuel handling accident will not be affected. Therefore, operation of the facility in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

On the bases discussed above the staff proposes to determine that the application for amendment involves no significant hazard consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Attorney for licensee:* Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Walter R. Butler.

**Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania**

*Date of amendment request:* February 11, 1987.

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TS) for the Limerick Generating Station, Unit 1 by revising the current requirement of TS 3.9.2 and Table 3.3.6–1 for a minimum Source Range Monitor (SRM) detector count rate when 16 or fewer fuel assemblies are in the reactors.

The licensee has scheduled the first refueling outage to begin on May 16.

1987. During the outage, a complete core offloading is planned in order to more efficiently complete and accommodate refueling outage work. The fuel assemblies adjacent to the Source Range Monitors (SRMs), being the last fuel assemblies to be removed, would cause the loss of SRM detector count rate contrary to the requirements of the current TS 3/4.9.2, which requires that a minimum SRM detector count rate be maintained at all times during core alterations. This application requests a revision to the requirement for a minimum SRM count rate when sixteen or fewer assemblies are in the core so as to permit complete core offloading. The proposed TS changes consist of a footnote to be added to the bottom of pages 3/4 3–59, 3/4 9–3 and 3/4 9–4. The footnote allows the SRM count rate to decrease below 3.0 cps (0.7 cps when the signal-to-noise ratio is greater than or equal to 2) wherever sixteen or fewer fuel assemblies are in the core adjacent to the SRMs. A change is also made to the TS BASES 3/4.9.2 which further describes how the fuel is to be offloaded and reloaded without the currently required minimum SRM count rate.

The licensee states that the SRM system provides neutron flux information during startup and low flux level operations, monitors neutron flux level during refueling operations, provides protection against high neutron flux during the approach to criticality and monitors neutron flux through the overlap into the Intermediate Range Monitoring System. The SRM functions addressed by the proposed amendment are related to its use in the refueling mode.

The licensee states that the necessity for maintaining a minimum count on the SRMs at all times is based on the most conservative evaluation which includes fresh fuel loaded in the initial fuel cycle. A multiplying medium with no neutrons present forms the basis for an accident scenario in which reactivity is gradually but inadvertently added until the medium is highly supercritical. No neutron flux would be evident since there are no neutrons present to be multiplied. The introduction of some neutrons at this point would cause the core to undergo a sudden power burst, rather than a gradual startup, with no warning from the nuclear instrumentation. The licensee states that this scenario is of great concern when loading fresh fuel, but is of much lesser concern when loading irradiated fuel. Irradiated fuel continuously produces neutrons by spontaneous fission of certain plutonium isotopes, photofission, and photo disintegration of deuterium naturally present in the moderator. The neutron production in irradiated fuel is normally great enough to meet the minimum count for a full core after a refueling outage with the neutron startup source removed.

The licensee states that the proposed amendment guarantees the indication of the presence of neutrons in the core because it requires the first assemblies, which will always be loaded next to the SRMs, to produce the minimum required count rate on that SRM. If the first four assemblies fail to produce the minimum required count rate on that SRM, the loading operation must be stopped in the quadrant.

During the refueling, the refueling operations system interlocks and the design of the control rod provide the primary assurance that inadvertent criticality does not occur. Inadvertent criticality was evaluated in Chapter 15 of the Final Safety Analysis Report which analyzed four reactivity anomalies as discussed below. The licensee further states that lack of the minimum required count rate on the Source Range Monitors, whenever sixteen or fewer fuel assemblies are in the core, does not decrease the margin of safety during core offloading/reloading because the control rod design rather than the SRMs precludes removal of a control rod prior to first removing the four adjacent fuel assemblies and because the refueling system interlocks, rather than the SRM, also preclude inadvertent criticality.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

(1) Core offloading, reloading and operation of the plant in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Inadvertent criticality concerns were evaluated in the Limerick Generating Station Final Safety Analysis Report (Chapter 15), including the following anomalies:

- A Control Rod Removal Error During Refueling
- A Second Control Rod Removal or Withdrawal
- A Fuel insertion with the Control Rod Withdrawn
- A Control Rod Removal Without the Fuel Removed

The design of the control rods, coupled with the existing refueling system interlocks, precludes inadvertent criticality in each of the above cases. The evaluation of each case did not take credit for the Source Range Monitors, nor does the control rod design or the refueling system interlocks depend on the Source Range Monitors for safe operation.

Therefore, amending the Technical Specifications to allow the SRM indication to drop below the minimum required count rate whenever there are sixteen or fewer fuel assemblies in the core does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Core offloading, reloading and operation of the plant in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SRMs assure that the neutron flux level information is always available during startup and when core alterations are being accomplished. By stipulating that fuel assemblies remain adjacent to each SRM until all other fuel assemblies have been removed from that quadrant, neutron flux information remains available until the lack of fuel eliminates the need for such information. During reloading, irradiated fuel assemblies are first placed adjacent to the SRMs so that flux information is available as fuel is loaded. Elimination of the requirement to maintain a source of information when the need for the information would no longer be required does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Core offloading, reloading and operation of the plant in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

After all fuel assemblies in a quadrant have been removed from the core (except for those adjacent to the SRMs), the SRMs would no longer be required in that quadrant. During reloading, two, three or four irradiated fuel assemblies are placed adjacent to each SRM until neutron flux indication is obtained.

Because of the physical configuration of the velocity limiter which was incorporated into the control rod design, removing the control rod prior to removing the adjacent fuel assemblies is not physically possible with the existing refueling equipment. Further, the refueling system interlocks prevent a second control rod withdrawal if one control rod is already withdrawn. Shutdown margin demonstrations at the beginning of fuel cycle conditions assures subcriticality with the most reactive control rod fully withdrawn. This reactivity characteristic has been a basic assumption in the analysis of plant

performance and was demonstrated at the time of initial fuel loading. (See Technical Specification Bases, page B 3/4 1–1.) All control rods must be fully inserted during reloading to preclude placing fuel in a cell which does not contain a control rod. Interlocks prevent fuel movement when a control rod is withdrawn and also blocks rod motion if the refueling platform is over the core.

Therefore, based on the discussions above, allowing the SRM count rate to drop below the minimum required count rate when there are sixteen or fewer fuel assemblies in the core, does not involve a significant reduction in a margin of safety because the control rod design and the refueling system interlocks, rather than the SRMs, preclude inadvertent criticality.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Attorney for licensee:* Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Walter R. Butler.

**Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania**

*Date of amendment request:* February 25, 1987.

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TS) for the Limerick Generating Station, Unit 1 by providing an extension of 30 days in the current 60 day requirement of TS 6.9.1.8 for filing the SemiAnnual Effluent Release Report. The Current Technical Specification 6.9.1.8 requires that the Semiannual Effluent Release Report covering the previous six months of operation shall be submitted within 60 days after January 1 and July 1 of each year. The licensee states that the extension is appropriate for the following reasons:

This schedule presents difficulties in that the data from which this report is developed is dependent on the analyses of certain isotopes which may take a significant period of time to complete. The length of time which it takes to deliver, analyze and receive the results of the analyses does not provide sufficient time for Licensee's proper preparation and final review of the report within the required 60 day period.

For example, a time period of approximately one week is required for the collection, packaging, and shipment of the sample to the vendor's laboratory located off-site. The time period from receipt of the effluent sample by the analytical laboratory to the issue of final data to Licensee is approximately 45 days. This turn-around time is typical of an analysis of this type because of the time required to perform certain portions of the analysis. Additionally, this analysis is performed during a time of heavier than normal workload for the laboratory due to receipt of similar samples from many other utilities requiring similar analysis to meet the same semiannual deadlines. Any unforeseen delay in the analyses would result in the necessity to submit an incomplete report in order to meet the 60 day reporting period. A follow-up report containing the delayed data can be provided but does impose an added dimension to docketing, filing and later recovery of all the data by interested parties.

For the reason discussed above Licensee requests that the time period in Technical Specification 6.9.1.8 on page 6–17 and on page 6–18 be changed from 60 days to 90 days. The additional 30 days to submit the Semiannual Effluent Release Report will ensure that an adequate period of time is available to analyze the samples, receive and review the data, prepare a report, and provide a reasonable amount of time for review by Licensee's management and technical staffs and to identify and correct errors. This additional time period will eliminate the need for follow-up reports and reduce errors and omissions caused by compressed review time.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

Operation of the Limerick Generating Station Unit 1 in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the collection and analysis of routine plant data, and the preparation time to transmit the information to the NRC is independent of plant design and operational characteristics that can impact potential accidents. Significant increases in radiological effluent releases that may be indicative of an inherent defect in plant design or operation, are reported promptly under the provisions of 10 CFR 50.72, 10 CFR 20.403 and 10 CFR 50.73 and are therefore not impacted by this amendment request;

2. Create the possibility of a new or different kind of accident from any previously analyzed because the routine collection and transmittal of data does not establish a potential new accident precursor;

3. Involve a significant reduction in a margin of safety because the transmittal of these routine plant data does not impact the health and safety of the public.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff, therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Attorney for licensee:* Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Walter R. Butler.

**Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado**

*Date of amendment request:* September 24, 1986.

*Description of amendment request:* This proposed change separates the "loss of off-site power" test described in Surveillance Requirement 5.6.1 into two portions. In one portion of the test, the automatic start feature of the diesel generator is tested. In the second portion, the load sequencers are tested. The purpose of this change is to improve plant reliability by not introducing transients into the electrical power system during plant operation.

*Basis for proposed no significant hazards consideration determination:* Neither the probability nor consequences of accidents previously evaluated have been affected by this proposed Technical Specification change. The frequency of performing the presently required surveillance is reduced from twice annually to once per refueling cycle. The emergency diesel generator surveillance verifying

automatic start and run features, but not requiring load shedding and subsequent reenergization of loads, is still proposed to be performed twice annually. Thus, emergency generator operability is affirmed semiannually by proper operation of the loss of power sensing circuits and auto-start capability.

The possibility of a new or different kind of accident from those previously evaluated has not been introduced. The proposed testing still verifies diesel generator operability using previously used and understood tests, but reduces the frequency of power disruptions to essential loads.

No margins of safety have been reduced as a result of the proposed surveillance changes. The proposed changes in surveillance testing involve testing already performed with well understood effects on the plant.

Based on the evaluation provided above, it is the staff's initial determination that operation of Fort St. Vrain in accordance with the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in any margin of safety. Therefore, the staff proposes to determine that this proposed change would involve no significant hazards consideration.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado.

*Attorney for licensee:* Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201–0840.

*NRC Project Director:* Herbert N. Berkow.

**Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendments request:* October 3, 1986.

*Description of amendments request:* Section 5.3.1 of the Technical Specifications identifies a maximum total fuel rod weight of 1766 grams of uranium. Recent improvements to the fuel design (including chamfered pellets with a reduced dish and a nominal density increase) have increased fuel rod weight slightly. The weight increases have caused the maximum fuel rod weight to exceed the specified maximum value of 1766 grams. This proposed change would delete the specified maximum weight limit to allow the current fuel to be in compliance with the Salem 1 and 2 Technical Specifications.

The proposed change would permit the use of assemblies with fuel rods over the weight limit and also reflects the relative insensitivities of this technical specification parameter in the safety analyses. It is judged that this weight difference does not have a significant impact on the safety analyses. Therefore, deletion of the Design Features fuel rod weight limit is not significant to the safe operation of the plant.

*Basis for proposed no significant hazards consideration determination:* Public Service Electric and Gas Company and Westinghouse Electric Corporation have performed analyses justifying the use of assemblies with fuel rods over the weight limit. These analyses were provided in our letter NLR–N86057, dated April 25, 1986.

In support of this proposed change to Technical Specification 5.3.1, Westinghouse has performed an additional evaluation, which finds that the weight limit is not significant to the safe operation of the plant.

Although a number of safety analyses are affected indirectly by fuel weight, the analyses are more sensitive to fuel configuration, length, enrichment and physical design, which are also specified in the plant Technical Specifications. The Technical Specifications limit power and power distribution, thus controlling the fission rate and the rate of decay heat production. Fuel rod weight does not have any direct bearing on the power limits, power operating level, or decay heat rate. The composition of the fuel is closely monitored to assure acceptable fuel performance. The fuel weight changes that could be made without Technical Specification limit are not of sufficient magnitude to cause a significant difference in fuel performance as analyzed by Westinghouse. There are no expected observable changes in normal operation due to the noted fuel rod weight changes, and the remaining fuel parameters listed in the Technical Specifications are considered in the Reload Safety Evaluation.

Therefore, the proposed change would not involve a significant hazards consideration because facility operation in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The deletion of the fuel rod uranium weight limit does not significantly increase the probability or consequences of previously evaluated accidents. The variation in fuel rod weight that can occur even without a Technical Specification limit is small based on other fuel design constraints, e.g., rod diameter, gap size, UO–2 density and active fuel length, all of which provide some limit on the variation in rod weight. The current safety analyses are not based directly on the fuel rod weight, but rather on design parameters such as power and fuel dimensions. These parameters are either not affected at all by fuel rod weight, or are only slightly affected. However, a review of design parameters which may be affected indicates that such an insignificant change in fuel weight does not cause other design parameters to exceed the values assumed in the various safety analyses, or cause acceptance criteria to be exceeded. The effects are not significant with respect to measured nuclear parameters (power, power distribution, nuclear coefficients), which remain within their Technical Specification limits. Thus, it is concluded that the Technical Specification modification does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The creation of a new, different kind of accident from any previously evaluated accident is not considered a possibility. All of the fuel contained in the fuel rod is similar to and designed to function similar to previous fuel.

3. Involve a reduction in a margin of safety. The margin of safety is maintained by adherence to other fuel-related Technical Specification limits and the FSAR design bases. The deletion of 5.3.1 does not directly affect any safety system or the safety limits, and thus does not affect the plant margin of safety.

Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

*Attorney for licensee:* Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Victor Nerses, Acting Director.

**Tennessee Valley Authority, Dockets Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment request:* February 11, 1987.

*Description of amendment request:* The proposed changes in the Technical Specifications (TS) would revise the limiting conditions for operations (LCO) to require that a later standard be used for iodine testing and analysis of charcoal filter samples. More specifically, the proposed TS change would reference test method ASTM D3803 instead of ANSI N510–1975 now currently specified in the Browns Ferry

TS for laboratory tests to demonstrate methyl iodide removal by carbon filter samples. The requested change is needed to reflect the proper test method since the current reference test procedure (ANSI N510–1975) is for new charcoal filters whereas the NRC Regulatory Guide 1.52 refers to ASTM D3803 for testing samples of both new and used charcoal filters and their iodine filtering capacity. This issue was raised by the NRC staff in Inspection and Enforcement Report 85–57. These tests are required by the TS for charcoal filters in the Standby Gas Treatment System, Control Room Emergency Ventilation, and Primary Containment Purge System in order to determine when charcoal filters need replacement.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards of determing whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

This proposed amendment does not affect the probability or possibility of any accident previously evaluated since it only deals with a test method for laboratory analysis of charcoal filter samples. No plant equipment or operational procedures will be modified as a result of this amendment. The proposed amendment will not involve a significant increase in the consequences of an accident since it will only result in more accurate surveillance testing of the iodide removal capabilities of the charcoal filters. The margin of safety will not be reduced since the Technical Specifications will only be changed to reference a proper testing method which provides more accurate and conservative results.

The NRC staff has reviewed the licensee's no significant hazards consideration and agrees with the licensee's analysis.

The staff, therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Athens Public Library, South and Forrest, Athens, Alabama 35611.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

*NRC TVA Projects Assistant Director:* John A. Zwolinski.

**Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of application for amendment:* August 26, 1986.

*Description of amendment request:* The proposed amendment would revise the Vermont Yankee Technical Specifications with respect to certain surveillance requirements and Limiting Conditions for Operation. These changes would:

1. Revise Emergency Core Cooling System actuation instrumentation requirements (Table 3.2.1 and 4.2.1) to provide actual instrument numbers rather than an undefined number, and make the trip setting the same for common instruments which provide inputs to different systems.

2. Revise calibration requirements for the Reactor Vessel Shroud instrumentation input to the Emergency Core Cooling Systems to reflect the replacement of level and pressure switches with analog loops.

3. Delete an inapplicable reference note from the Table of Test and Calibration Frequencies. (Table 4.2.1 through 4.2.6)

4. Revise the Limiting Condition for Operation and Bases for operation with one of the Pressure Suppression Chamber—Reactor Building Vacuum Breaker Systems out of service to better clarify the intent of the requirement.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed changes to . . . Tables 3.2.1 and 4.2.1 . . . provide instrument tag numbers which will improve the clarity of the Technical Specifications. The revisions to the trip level setpoints listed in Table 3.2.1 of the Technical Specifications also reflect the replacement of level and pressure switches with analog instruments. This change improves the consistency of the Technical Specifications for instruments common to more than one system. Replacement of switches with more reliable instrumentation improves plant reliability and does not change the design basis, protective function, redundancy, or logic of the original system. As such, this change does not impact the probability or consequences of any accident previously evaluated, nor does it create the possibility of a new or different kind of accident from any accident previously considered. Further, no change in any plant safety margin is required for the reasons stated above.

2. The proposed changes to [Reactor Vessel Shroud Instrumentation Input] revise the surveillance and calibration requirements in Table 4.2.1 to reflect the replacement of level and pressure switches with analog instrumentation. These modified requirements are consistent with those previously approved for similar analog instrumentation utilized at Vermont Yankee . . . The previous requirement of once every three months was appropriate for level and pressure switches. The revised requirement of once every operating cycle is appropriate for the new analog loops because of the reduced setpoint drift. As such, there is no impact in the probability or consequences of [any] accident previously evaluated by this change since it does not involve safety system or primary system boundaries. Similarly, no new kinds of accidents involving safety-related systems are created by this change, nor are any changes required in plant operating or design safety margins.

3. The proposed changes . . . delete a reference to Note 2 in Tables 4.2.1 through 4.2.6 in order to improve and simplify the Technical Specifications. Because the note only applies to those systems which have pilot valves, reference to it is being deleted from those systems for which it is not applicable. The deletion of an inapplicable reference to a table notation has no bearing on any accident previously evaluated, nor does it create the possibility of a new or different kind of accident. Similarly, no changes in any plant operating or design bases safety margins are required by the deletion.

4. The proposed changes . . . revise Section 3.7.A.5.b of the Technical Specifications to better reflect the intent of the requirements [with respect to] the Limiting Conditions for Operation (LCO) of the pressure suppression Chamber-Reactor Building vacuum breakers. The previous LCO required locking the vacuum breakers closed if it was inoperable. The revised LCO specifies that a valve in the failed line must be verified to be in the isolation condition allowing greater flexibility in meeting the intent of the Technical Specification requirements The new requirement meets the intent to isolate the failed vacuum breaker and also improves consistency between LCOs in the Technical Specifications. .

Because these changes provide greater flexibility in meeting an existing requirement and improve consistency with other containment isolation requirements in the Technical Specifications, the probability or consequences of any accident previously evaluated is not significantly increased. Additionally, the possibility of a new or different kind of accident from any accident previously evaluated is not created and no significant reduction [in a] margin of safety is involved.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

*Attorney for licensee:* John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

*NRC Project Director:* Daniel R. Muller.

**Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of application for amendment:* January 12, 1987.

*Description of amendment request:* The amendment would revise the Technical Specifications to reflect the addition of redundant post-accident instrumentation and associated limiting conditions for operation and surveillance requirements, a range change, and several minor corrective updates for currently installed instrumentation. More specifically these changes would include:

I. Tables 3.2.6 and 4.2.6 are revised as follows:

(A) The torus pressure parameter was upgraded to provide two (2) redundant, fully qualified instrument channels. The Table 3.2.6 drywell pressure parameter type of indication is accordingly revised to identify the two (2) 0–80 psia pressure indicators.

(B) Based on the torus pressure instrumentation upgrade, the calibration frequency listed in Table 4.2.6, was revised to read Once/Operating Cycle to reflect the installation of analog transmitters. This is consistent with the calibration frequency for other analog instrumentation in the plant.

(C) The torus air temperature instrument channel was upgraded to include a redundant fully qualified instrument channel. A temperature indicator, with a range of 50–300°F is accordingly added to Table 3.2.6.

(D) The reactor vessel water level instrumentation range was upgraded to provide an expanded range indication from (−150)–0–(±150) inches of water to (−200)–0–(±200) inches of water. Accordingly, the Table 3.2.6 reactor vessel water level parameter indication instrumentation range is being changed.

II. NUREG–0737, Supplement 1 required symptom-based Emergency Operating Procedures (EOPs). These EOPs require the ability to measure water level to at least 22.4 feet in the torus. Therefore, the torus water level instrumentation was changed to provide a range of 0–25 feet. Accordingly, revisions to Table 3.2.6 and to Section 3.2 Bases are proposed to reflect this indication change.

III. A corrective update to Table 3.2.6 is proposed for the drywell pressure indicators because containment pressure indication is provided by Meters PI–16–19–12A, B and not by Meters 16–19–29 A, B as presently indicated in Table 3.2.6. 16–19–29A, B are the identification numbers of the transmitters which supply the signal to the indicators. Additionally, the indication recorder number for the drywell atmospheric temperature parameter on Table 3.2.6 is revised to better specify the actual indication recorder number.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

Proposed Changes I(A), I(B), I(C), and I(D) involve the addition of redundant, environmentally, and seismically qualified instrumentation, an associated calibration frequency change and an expanded indicator range. These changes enhance the safety of the plant by assuring the upgraded/qualified instrumentation will operate properly following a Loss of Coolant Accident (LOCA) or High Energy Line Break (HELB). The calibration frequency change to Table 4.2.6 from every six months to once per operating cycle reflects the increased reliability and reduced setpoint drift of the upgraded instrumentation, and is consistent with the existing Technical Specification calibration frequency for other similar equipment in the plant. The equipment added and modified in these changes complies with NRC accepted design and installation standards. In addition it has been selected to enhance operator interface and support emergency operating procedures. As such, this change does not increase in the probability or consequences of accidents previously evaluated. Similarly, no new or different kinds of accidents involving safety-related systems are created by this change, nor are any changes required in plant operating or design safety margins.

Proposed Change II involves the modification of the torus water level instrumentation range to envelope, with margin, the Emergency Operating Procedure requirement to measure at least 22.4 feet in the torus. The torus water level instrumentation is redundant, environmentally, and seismically qualified analog instrumentation. The change assures that qualified instrumentation will operate properly following a LOCA or HELB and will support operator procedural steps. As such, this change does not impact the probability or consequences of accidents previously evaluated. Similarly, no new or different kinds of accidents are created by this change, nor is any plant safety margin impacted.

Proposed Change III involves corrective updates to Table 3.2.6. As such, there is no increase in the probability or consequences of accidents previously evaluated. Similarly, no new or different kinds of accidents are created by this change, nor is any margin of safety reduced.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

*Attorney for licensee:* John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

*NRC Project Director:* Daniel R. Muller.

**Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of application for amendment:* January 16, 1987.

*Description of amendment request:* The proposed amendment would change the Technical Specifications for the

Vermont Yankee Nuclear Power Station by (1) adding a reporting level to the RETS for Co–60 in sediment samples taken from the north storm drain outfall, and (2) requiring the inclusion of the revision number on each page of the Off–Site Dose Calculation Manual (ODCM) in place of an approval and date box on each page.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a request for amendment involves a significant hazards consideration (10 CFR 50.92). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria as follows:

The change proposed to Table 3.9.4 involves the addition of a sediment reporting level requirement which enhances the Vermont Yankee Radiological Environmental Monitoring Program. As described in the referenced amendment request [Reference (b)], enhancements to the Environmental Monitoring Program as described in NRC guidance and requested in this supplemental proposed change are not related to accident analyses or plant safety. As such, this change does not impact the probability or consequences of any accident previously evaluated, nor does it create the possibility of a new or different kind of accident previously considered. Since the change concerns only environmental monitoring reporting levels, no change in any plant safety margin is required.

The change proposed to Section 6.13.A.1.a involves a change to achieve consistency with Vermont Yankee's practices for updating controlled documents. As such, this change is purely administrative and thus creates no significant change in the probability or consequences of an accident previously evaluated, nor creates a new or different accident. No significant changes in any plant operating or design basis safety margins are required by this administrative change.

Based on an evaluation of the above licensee analysis, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

*Attorney for licensee:* John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

*NRC Project Director:* Daniel R. Muller.

**Virginia Electric and Power Company, et al., Docket No. 50–339, North Anna Power Station, Unit No. 2, Louisa County, Virginia**

*Date of application for amendment:* February 19, 1987.

*Brief description of amendment:* The proposed change would modify the NA–2 Facility Operating License Condition 2.C.(15)(c) which requires the inspection of the recirculation spray pumps inside containment at least once every five years. Specifically, the proposed change would permit the second inspection to be performed during the forthcoming NA–2 refueling outage which is scheduled to commence on July 31, 1987. The inspection is currently required to be performed on May 27, 1987, and would require a plant shutdown. Therefore, the proposed change would allow the second inspection to take place during the refueling outage after an additional 64 days had transpired from the presently specified date for the second inspection.

Supplement 10 to NUREG–0053, Final Safety Evaluation Report, NA–1&2, Section 6.3.3 concerns the testing performed on the Inside Recirculation Spray Pumps. Paragraph 3 of Section 6.3.3 states: "We also require that these pumps be removed and inspected at the first planned major outage. The pump bearings should be replaced if necessary." Paragraph 4 adds ". . . We require a similar inspection of the pumps at least once every five years. . . . [and] [t]he Technical Specifications (TS) will reflect these requirements." By stating that the TS will reflect these requirements, Supplement 10 to NUREG–0053 indicates that these inspections will be subject to the same requirements regarding time intervals and allowable extensions as specified in the NA–2 TS 4.0.2.

The NA–2 TS 4.0.2 specifies (in part) that "Each surveillance requirement shall be performed within the specified time interval with a maximum allowable extension in time not to exceed 25% of the surveillance interval." Twenty-five percent of the five year surveillance interval (1825 days) is 456 days and thus, the licensee's request to exceed the five year testing interval by an additional 64 days to the forthcoming refueling outage is well within the allowable extension in time specified in the NA–2 TS 4.0.2.

It is noted that during the first refueling outage for NA–2, the inside recirculation spray pumps were removed and inspected. The inspections revealed no significant degradation of the pump bearings.

Section 6.2.2.5.2 of the Updated Final Safety Analysis Report describes the instrumentation available in the control room to monitor system parameters during the operation of the recirculation spray pumps. This includes: pump discharge pressure; containment sump and recirculation pump discharge water temperature; vibration alarms; and indication of shaft rotation. Also, NA–2 TS 3.6.2.2 requires that "four separate and independent containment recirculation spray subsystems, each composed of a spray pump, associated heat exchanger and flow path" shall be *Operable* during *Modes* 1, 2, 3, and 4. In addition, station periodic test procedures require that the inside recirculation spray pump be run every 3 months to determine *Operability*. This is accomplished by verifying that the pump achieves a speed greater than 100 rpm as indicated by a rotation sensor. No problems related to the bearings have been identified as a result of these periodic tests.

Based upon the satisfactory results of the inspection of the bearings during the first refueling outage, the diverse instrumentation available in the control room to detect system degradation during emergency operation, the current NA–2 TS requirements for system operability, and the periodic testing of the pumps for *Operability* determination, there is adequate assurance that the inside recirculation spray pumps will remain operable during the requested extension of time to the surveillance interval.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety. The proposed change will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The

testing requirements will not change, only the required surveillance interval. The requested extension in the surveillance interval is in accordance with the surveillance requirements of the other NA–2 TS. Previous inspections have not shown any significant degradation of the pump bearings and periodic testing of the pumps for *Operability* have not indicated any problems. The NA–2 *Operability* requirement for the containment recirculation spray system has not been changed. Therefore, there is no significant increase in the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously identified. The testing requirements will not change, only the required surveillance interval; consequently, no new or different kind of accident is created.

(3) Involve a significant reduction in a margin of safety. The testing requirements will not change, only the required surveillance interval. The requested extension in the surveillance interval is in accordance with the surveillance requirements of the other TS. Previous inspections have not shown any significant degradation of the pump bearings. In addition, periodic testing of the pumps for *Operability* (every 3 months over the last 5 years) have not indicated any problems.

The TS *Operability* requirement for the containment recirculation spray system has not been changed. Therefore, there is no significant reduction in a margin of safety.

Therefore, the proposed change meets criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed change involves no significant hazards considerations, and that operation of the facility in accordance with the proposed change would not involve a significant hazards consideration.

*Local Public Document Room location:* Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

*NRC Project Director:* Lester S. Rubenstein.

**Virginia Electric and Power Company, Docket No. 50–338, North Anna Power Station, Unit No. 1, Louisa County, Virginia**

*Date of amendment request:* February 20, 1987.

*Description of amendment request:* The proposed change in the form of a license condition for North Anna, Unit 1 (NA–1) would permit the use of two (2) fuel assemblies containing advanced cladding materials. The licensee plans to insert two Westinghouse fuel assemblies containing fuel rods clad with advanced cladding material (zirconium base alloy) into the NA–1 Cycle 7 core which is scheduled for startup in the second quarter of 1987. The fuel assemblies will contain a number of fuel rods clad with a zirconium base alloy instead of the presently used Zircaloy-4 to obtain further confirmation of the alloy clad's improved corrosion performance at reactor conditions. The two fuel assemblies have removable top nozzles which allow access to all fuel rods for inspection. The fuel rods with the alloy cladding will contain nominally 95% dense $UO_2$ pellets and will have the same rod dimensions as other fuel rods presently in the core. The fuel rods will have Zircaloy-4 end plugs, and will be pressurized with helium.

The NA–1 Technical Specification 5.3.1 describes the reactor core as consisting of assemblies containing 264 fuel rods clad with Zircaloy–4. In order to allow for the insertion of fuel rods clad with a zirconium base alloy in the two fuel assemblies, a license condition would specify NRC approval for the use of the two fuel assemblies containing fuel rods clad with the advanced cladding material (zirconium base alloy).

Fuel rods clad with the zirconium base alloy clad have been irradiated in a foreign reactor at linear power levels up to 17 kilowatts per foot (kw/ft) and at burnups greater than those planned for the NA–1 fuel assemblies. Corrosion and hydriding data obtained on the alloy cladding were compared with reference Zircaloy-4 cladding of fuel rods irradiated as controls in the same test assemblies. Based on the irradiation results of the test assemblies in the foreign reactor, it is expected that the zirconium base alloy waterside corrosion and hydriding will be less than that expected for Zircaloy-4 clad fuel rods. Irradiation results also showed lower clad irradiation growth (delta L/L) and creepdown for the zirconium alloy compared to Zircaloy-4. These irradiation results were considered in the design of the fuel rods with zirconium alloy clad in order to assure that all the current fuel rod design bases are satisfied for the planned irradiation life of the NA–1 fuel assemblies.

The use of two assemblies with fuel rods clad with a zirconium base alloy will not result in any new accident since the two assemblies and their fuel rods will satisfy the same design bases used for other assemblies in the fuel region as specified in the NRC approved Westinghouse report, "Reference Core Design Report—17 x 17 Optimized Fuel Assembly," WCAP–9500–A, Volume 2, May 1982. For each reload core until discharge, the fuel assemblies will be specifically evaluated using NRC approved standard methods specified in the VEPCO report, "Reload Nuclear Design Methodology," VEP–FRD–42, Revision 1–A, September 1986, and the Westinghouse report, "Improved Analytical Models Used in Westinghouse Fuel Rod Design Computations," WCAP–8720, October 1976 and Addendum dated June 1982 and December 1983. The two fuel assemblies do not change the existing reload design and safety analysis limits and therefore, the current NA Updated Final Safety Analysis Report (UFSAR) remains bounding. Finally, the irradiation data and design analysis provide sufficient evidence to support the determination that fuel rods with zirconium base alloy cladding will perform, at the very least, as well as fuel rods with the present Zircaloy-4 cladding.

Although the new zirconium based alloy is very similar in composition to "Zircaloy", it is not clear that it falls within the scope of 10 CFR 50.46 which applies to "Zircaloy" clad fuel. Resolution of this question will involve substantial effort in checking into the rulemaking process on which 10 CFR 50.46 is based. Complete resolution of this issue however is not necessary at this time to assure that operation with 2 test assemblies will be adequately safe. For the use of this material in test assemblies, the composition of the zirconium based alloy is very similar to zircaloy in all significant respects; moreover, the test assemblies are not located in the portions of the core expected to experience highest burnup and highest power density. The performance of these assemblies in the event of a LOCA will be bounded by the performance previously calculated for the other zircaloy clad assemblies in the core which was based on accepted ECCCs evaluation models. In the absence of resolution of whether the zirconium based alloy material can be considered to be "Zircaloy" an

exemption from the provision of 50.46 limiting its application to "Zircaloy" is needed.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

Based on the above, the proposed change (license condition) does not:

(1) Involve a significant increase in the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the safety analyses. The fuel assemblies with zirconium base alloy clad fuel rods meet the same fuel assembly and rod design bases as other fuel assemblies in the fuel region, and the use of these fuel assemblies will not result in a change to existing reload design and safety analysis limits. Although the use of the zirconium based alloy may require an exemption as discussed above, for use in test assemblies the characteristics of this material are very similar to zircaloy in all significant respects. Consequently, the existing evaluations are fully applicable to the new material and the new material does not affect the probability or consequences of any previously evaluated accident or any malfunction of equipment.

(2) Create the possibility of a new or different type of accident than previously evaluated since the fuel assemblies satisfy the current design bases. In addition, use of the assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. The use of the new materials does not create the possibility of a new or different type of accident.

(3) Involve a significant reduction in the margin of safety. The fuel assemblies do not change the existing reload design and safety analysis limits. Therefore, the current UFSAR analyses remain bounding and there is no reduction in the margin of safety. The use of the new material does not involve a reduction in margins of safety.

Therefore, the proposed change (license condition) meets the criteria specified in 10 CFR 50.92(c) and, thus, the NRC staff proposes to determine that the proposed change involves no significant hazards considerations, and that operation of the facility in accordance with the proposed change would not involve a significant hazards consideration.

*Local Public Document Room locations:* Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

*NRC Project Director:* Lester S. Rubenstein.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington**

*Date of amendment request:* November 18, 1986.

*Description of amendment request:* This proposed amendment, if approved, will change the WNP–2 Technical Specifications by modifying Tables 3.3.7.5–1 and 4.3.7.5–1, Accident Monitoring Instrumentation, to reflect the environmentally qualified flux monitoring instrumentation required as a condition of the WNP–2 license.

License Condition 16, Attachment 2, Item 3b states: "The licensee shall implement (installation or upgrade) requirements of Regulatory Guide 1.97, Revision 2, for flux monitoring prior to startup following the second refueling outage." Accordingly, the licensee is procuring equipment to meet this schedule and satisfy the license condition.

The WNP–2 Technical Specifications (Tables 3.3.7.5–1 and 4.3.7.5–1) currently reflect three neutron monitoring instruments, APRM/IRM/SRM, to cover the entire neutron flux range of interest; but single wide range environmentally qualified monitors are being installed for this purpose. Consequently, it is appropriate to change the technical specifications to specify the environmentally qualified neutron instrumentation that will be added to the system.

Additionally, with the redundancy provided by the existing flux monitoring devices, which will remain in use, the action statement for wide range monitors should be changed from "80" to "81". Under action statement 81 the alternate method of monitoring, should the number of operable channels be less than the minimum, would be use of the existing APRM, IRM and SRM monitors. This action is similar to that required for other instruments listed in Table 3.3.7.5–1.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from an accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the equipment being installed will not provide input to any safety systems relied upon in the licensing bases accident analyses. The change in action statements does not significantly increase the probability or consequences of an accident previously evaluated because the redundant APRM, IRM and SRM monitors presently in use will be available should the wide range monitors be declared inoperable.

(2) Create the possibility of a new or different kind of accident than previously evaluated because the equipment provides monitoring only and merely provides another display that indicates neutron flux or power levels in addition to the existing devices currently relied upon. The change in action statements does not create the possibility of a new or different kind of accident because the equipment provides a monitoring function only and has adequate redundancy with the existing APRM, IRM and SRM monitors so that no new or different kind of accident is credible.

(3) Involve a significant reduction in a margin of safety because no safety margins are changed. This wide range monitoring equipment provides a passive monitoring function only and is not part of any plant safety related system, thus safety margins will not be affected. The change in action statements does not involve a significant reduction in a margin of

BEST COPY AVAILABLE

safety because the existing redundant monitors provide adequate backup given the remote possibility that both wide range monitors become inoperable.

Based on the above considerations, the Commission proposes to determine that the requested change to the WNP–2 Technical Specifications involves no significant hazards considerations.

*Local Public Document Room:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

*Attorney for the Licensee:* Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036.

*NRC Project Director:* Elinor G. Adensam.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington**

*Date of amendment request:* March 10, 1987.

*Description of amendment request:* This proposed amendment, if approved, would revise a license condition of the WNP–2 Operating License NPF–21. Attachment 2, paragraph 3.(b) of License Condition 2.C.(16) as amended, now requires that the licensee shall implement (install or upgrade) requirements of Regulatory Guide 1.97, Revision 2, for flux monitoring prior to startup following the second refueling outage. The licensee has requested that implementation of this requirement be delayed until the third refueling outage.

To date the Supply System has been unsuccessful in its attempt to qualify a neutron monitoring system as required by Revision 2 of Regulatory Guide 1.97. On three separate occasions during recent qualification testing, the test assembly experienced immediate failures. These failures are currently under investigation by the monitoring system vendor. It is now deemed unlikely that the difficulty can be found, corrected and the system subjected to a successful qualification test prior to restart following the second refueling outage. Thus the Supply System would be unable to meet the requirements of the existing License Condition.

Because the development of a flux monitoring system that meets the criteria of the Regulatory Guide remains an industry development item and because there are unrelated systems to monitor plant status (e.g., control rod position monitors) as well as the existing neutron monitoring system, the Supply System has concluded that the operators have sufficient data to assess reactor conditions following an accident event.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from an accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the existing instrumentation consists of four redundant safety related channels; additionally, there are unrelated systems in place to provide operators with sufficient data to assess reactor conditions in the unlikely event of an accident prior to replacement; or

(2) Create the possibility of a new or different kind of accident than previously evaluated because no function of the flux monitor system is being changed; therefore, no new or different kind of accident is conceivable; or

(3) Involve a significant reduction in a margin of safety because adequate instrumentation is provided to allow the operator to assess reactor conditions without this monitor in the unlikely event of an accident condition that could cause the monitor currently in place to fail prior to replacement.

Based on the above considerations, the Commission proposes to determine that the requested change to the WNP–2 license involves no significant hazards considerations.

*Local Public Document Room:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

*Attorney for the Licensee:* Nicholas Reynolds, Esquire; Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036.

*NRC Project Director:* Elinor G. Adensam.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (21) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

**Carolina Power & Light Company, Dockets Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendments:* June 28, 1985, as supplemented September 2 and 23, 1986 and February 27, 1987.

*Brief description of amendments:* The amendments change Section 3/4.8.1 of the Technical Specifications to reduce the number of cold fast starts, eliminate

excessive surveillance testing and extend the allowable outage time for the emergency diesel generators. We have determined that sufficient information was not provided to approve that portion of the June 28, 1985 application relating to extending the allowable outage time for offsite power sources. As requested by CP&L letter of February 27, 1987, we will consider the proposed change to the offsite power source outage time in a separate action after receipt of additional justification.

*Date of issuance:* March 27, 1987.

*Effective date:* March 27, 1987.

*Amendments Nos.:* 104 and 134.

*Facility Operating Licenses Nos. DPR–71 and DPR–62.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 14, 1985 (50 FR 3278.).

The September 2, 1986 submittal provided clarifying information and did not change the substance of the initial notice. The September 23, 1986 submittal provided a clarifying correction to a footnote.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

**Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois**

*Date of application for amendments:* November 26, 1985, supplemented June 16, 1986 and November 24, 1986.

*Brief description of amendments:* The amendment approves changes to the Technical Specification Section 3/4.5.2 to allow closure of either of the Residual Heat Removal Pump discharge to Reactor Coolant System (RCS) cold leg isolation valves, along with the Safety Injection Pump discharge to RCS cold leg valve, in order to perform certain check valve back leakage testing.

The licensee's submittal of November 24, 1986 was made as a result of NRC staff request to clarify the original submittal dated November 26, 1985, supplemented June 16, 1986.

*Date of issuance:* March 20, 1987.

*Effective date:* March 20, 1987.

*Amendment Nos.:* 6.

*Facility Operating License Nos. NPF–37 and NPF-66.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 30, 1986 (51 FR 27279).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

**Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois**

*Date of application for amendments:* December 5, 1986, supplemented February 26, 1987 and February 27, 1987.

*Brief description of amendments:* These amendments would extend the applicability of the heatup and cooldown curves to 14 effective full power years.

*Date of issuance:* March 13, 1987.

*Effective date:* March 13, 1987.

*Amendment Nos.:* 101 and 91.

*Facility Operating License Nos. DPR–39 and DPR–48.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 11, 1987 (52 FR 4404).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois**

*Date of application for amendments:* October 16, 1986.

*Brief description of amendments:* These amendments would allow disabling the rod control system at Zion Station during the time periods that a reactor is in Mode 3 with less than four reactor coolant pumps operating.

*Date of issuance:* March 19, 1987.

*Effective date:* March 19, 1987.

*Amendment Nos.:* 102 and 92.

*Facility Operating License Nos. DPR–39 and DPR–48.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 17, 1986 (51 FR 45197).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 19, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois**

*Date of application for amendments:* October 15, 1986.

*Brief description of amendments:* These amendments would modify the Zion Technical Specifications in accordance with the guidance contained in the referenced letter, Generic Letter 85–19. These changes will eliminate the requirement to shutdown if the coolant iodine exceeds one micro-curie per gram dose equivalent iodine 131 for 800 hours in a twelve month period.

In addition, the reporting requirements regarding iodine spiking and a number of other minor administrative changes are also included. These minor administrative changes include correction of position title, special reporting requirement changes, and the specific activity reporting requirements discussed above.

*Date of issuance:* March 26, 1987.

*Effective date:* March 26, 1987.

*Amendment Nos.:* 103 and 93.

*Facility Operating License Nos. DPR–39 and DPR–48.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 17, 1986 (51 FR 45196).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* October 15, 1985.

*Brief description of amendment:* This amendment allows delegation of the Plant Manager's procedure approval authority, by the Plant Manager, to appropriate members of the plant management. This amendment differs from the October 15, 1985 submittal in that the affected Technical Specifications within the Administrative Controls, Section 6.8.2 and 6.8.3c, have been revised in mutual agreement between the Consumers Power Company and the staff such that the intent of the specifications is clarified.

*Date of issuance:* March 23, 1987.

*Effective date:* March 23, 1987.

*Amendment No.* 103.

*Provisional Operating License No. DPR–20.* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 17, 1986 (51 FR 451191 at 45197).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 23, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

**Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* April 9, 1986, as supplemented February 13, 1987.

*Brief description of amendments:* The amendments modify Technical Specification 3/4.7.7 to change the allowed outage time of the auxiliary building filtered exhaust system to make it consistent with the Standard Technical Specification.

*Date of issuance:* March 24, 1987.

*Effective date:* March 24, 1987.

*Amendment Nos.:* 23 and 13.

*Facility Operating License Nos. NPF–35 and NPF–52.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 27, 1986 (51 FR 30565).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

**Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* August 7, 1985, as supplemented November 8, and December 4 and 20, 1985.

*Brief description of amendments:* The amendments change Technical Specifications Table 3.2–1 "DNB Parameters" for the Reactor Coolant System average temperature and pressurizer pressure so as to provide for direct comparison of measured values with parameter limits.

*Date of issuance:* March 27, 1987.

*Effective date:* March 27, 1987.

*Amendment Nos.:* 24 and 14.

*Facility Operating License Nos. NPF–35 and NPF–52.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 27, 1986 (51 FR 30564).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

**Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* October 13, 1986, and supplemented January 21, 1987.

*Brief description of amendments:* The amendments change the Technical Specifications to authorize a maximum fuel enrichment of 4.0 weight percent (w/o) uranium-235, rather than the present 3.5 w/o.

*Date of issuance:* March 24, 1987.

*Effective date:* March 24, 1987.

*Amendment Nos.:* 68 and 49.

*Facility Operating License Nos. NPF–9 and NPF–17.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 19, 1986 (51 FR 41853).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* February 17, 1986 and supplemented February 5 and March 16, 1987.

*Brief description of amendments:* The amendments change Technical Specification 3/4.9.12 regarding restrictions for fuel assemblies placed in region 2 of the spent fuel storage pool.

*Date of issuance:* March 24, 1987.

*Effective date:* March 24, 1987.

*Amendment Nos.:* 69 and 50.

*Facility Operating License Nos. NPF–9 and NPF–17.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 27, 1986 (51 FR 30571).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina**

*Date of application for amendments:* August 15, 1984.

*Brief description of amendments:* These amendments revise the Station's common Technical Specifications (TSs) to add limiting conditions for operation and surveillance requirements for the low temperature overpressure protection system.

*Date of issuance:* March 30, 1987.

*Effective date:* March 30, 1987.

*Amendments Nos.:* 156, 156 and 153.

*Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55.* Amendments revised the Facility Operating Licenses.

*Date of initial notice in* **Federal Register:** October 24, 1984 (49 FR 42817).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

**Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida**

*Date of application of amendment:* September 10, 1984, as supplemented November 3, 1986.

*Brief description of amendment:* The amendment added test flowrates to be used when the spray additive system is tested at least once every 5 years.

*Date of Issuance:* March 30, 1987.

*Effective Date:* March 30, 1987.

*Amendment No.:* 78.

*Facility Operating License No. DPR–67.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 21, 1984 (49 FR 45941 at 45948). The licensee's November 3, 1986 submittal provided additional analyses and had slightly revised the technical specification wording as compared to the original wording proposed in the September 10, 1984 application. The revised wording is acceptable and it does not alter the substance of the action noticed or our original proposal of a no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

**GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of application for amendment:* November 7, 1986 (TSCR 155).

*Brief description of amendment:* The amendment revises Sections 3.12 and 4.12, Fire Protection, of the Appendix A Technical Specifications (TS), regarding fire protection and the Alternate Shutdown Facility. Specifically, the changes to the TS are the following:

(1) Add Sections 3.12.I/4.12.I and Tables 3.12–6/4.12–1, the Limiting Conditions of Operation (LCO) and the Surveillance Requirements for the operability of the Alternate Shutdown Facility.

(2) Revise Table 3.12–1 "Fire Detection Instrumentation" to include new detectors which have been added, new fire area/zone designations, and new detection systems.

(3) Revise Table 3.12–2 "Spray/Sprinkler Systems" to include new fire suppression systems and new fire area/zone designations.

(4) Revise Table 3.12–3 "Hose Stations" and Table 3.12–5 "Hydrants and Hose Houses" to include new fire area/zone designations.

(5) Revise Table 3.12–4 "Halon Systems" to include changes in the 480 Volt Switchgear Room Halon System and new fire area/zone designations.

*Date of issuance:* March 20, 1987.

*Effective date:* March 20, 1987.

*Amendment No.:* 114.

*Provisional Operating License No. DPR–16.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 17, 1986 (51 FR 45201).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 20, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

**GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania**

*Date of applications for amendment:* July 16, 1986, and November 3, 1986.

*Brief description of amendment:* The amendment revised the TMI–1 Technical Specifications (TSs) to support the core reload for Cycle 6 operation.

Additionally, the amendment changed the order of preference of instrumentation used to monitor reactor power quadrant tilt.

*Date of issuance:* March 20, 1987.

*Effective date:* March 20, 1987.

*Amendment No.:* 126.

*Facility Operating License No. DPR–50.* Amendment revised the Technical Specifications.

*Date of initial notices in* **Federal Register:** October 8, 1986 (51 FR 36091) and December 30, 1986 (51 FR 47079)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Gulf States Utilities Company, Docket No. 50–458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of application for amendment:* August 29, 1986 as supplemented on February 19, 1987.

*Brief description of amendment:* Changes the Technical Specifications requirements to perform channel calibrations of the recirculation flow transmitters for two functions of the Average Power Range Monitor (APRM) and one function of the Reactor Coolant System Recirculation Flow from once per six months to once per 18 months.

*Date of issuance:* March 28, 1987.

*Effective date:* March 28, 1987.

*Amendment No.:* 3.

*Facility Operating License No. NPF–47.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 25, 1987 (52 FR 5732).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

**Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan**

*Date of application for amendments:* December 22, 1986.

*Brief description of amendments:* The amendments delete from the Design Features Section 5.3.1 of the Technical Specifications (TS) the maximum fuel rod weight limit 2236 grams uranium for Unit 1 and 1983 grams uranium for Unit 2. The amendments also correct several typographical errors.

*Date of issuance:* March 27, 1987.

*Effective date:* March 27, 1987.

*Amendment Nos.:* 102 and 88.

*Facility Operating License Nos. DPR–58 and DPR–74.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 14, 1987 (52 FR 1556).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of application for amendment:* August 29, 1986.

*Brief Description of amendment:* The amendment revises the current Technical Specifications (TS) to change the control rod (CR) scram time basis from a percentage insertion to a CR position basis. This will more accurately determine CR scram times based on directly obtainable plant data. Administrative changes are also being approved which will improve consistency in nomenclature throughout the TS.

*Date of issuance:* March 27, 1987.

*Effective date:* March 27, 1987.

*Amendment No.:* 141.

*Facility Operating License No. DPR–49.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 22, 1986 (51 FR 37513).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

**Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York**

*Date of amendment request:* October 30, 1986 as supplemented by letter dated January 15, 1987.

*Brief description of amendment:* The amendment modifies Figures 2.1.1 and 3.1.7aa of the Appendix A Technical Specifications regarding the limiting relationships between core power and core flow rate.

*Date of issuance:* March 24, 1987.

*Effective date:* March 24, 1987.

*Amendment No.:* 92.

*Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.*

*Date of initial notice in* **Federal Register:** January 28, 1987 (52 FR 2884). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

**Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of application for amendment:* November 5, 1986.

*Brief description of amendment:* The amendment changed the surveillance criteria for Sample Selection and Inspection Results regarding steam generator tube inspections from fixed numerical criteria to comparable percentages.

*Date of issuance:* March 26, 1987.

*Efffective date:* March 26, 1987.

*Amendment No.:* 104.

*Facility Operating License No. DPR–40.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 17, 1986 (51 FR 45191 at 45212).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

**Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of application for amendments:* October 17, 1986.

*Brief description of amendments:* These amendments revise Units 1 and 2 license conditions approving the proposed changes regarding the employee security clearances and the vital equipment identification.

*Date of issuance:* March 26, 1987.

*Effective date:* March 26, 1987.

*Amendment Nos.:* 62 and 33.

*Facility Operating License Nos. NPF–14 and NPF–22:* Amendment revises license condition 2.D.

*Date of initial notice in the* **Federal Register:** December 30, 1986 (51 FR 47084). The Commission's related evaluation of the amendment is contained in a safety Evaluation dated March 26, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

**Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon**

*Date of application for amendment:* October 31, 1986, as supplemented December 8, 1986.

*Brief description of amendment:* The amendment revises Technical Specifications Sections 3.1.3.4 and 3.1.3.5 regarding Shutdown Rod and Control Rod Insertion Limits, by changing the definition of "fully withdrawn rods" from 228 steps to greater than 225 steps.

*Date of issuance:* March 20, 1987.

*Effective date:* March 20, 1987.

*Amendment No.:* 125.

*Facilities Operating License No. NPF–1:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 11, 1987 (52 FR 4417). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

**Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* December 31, 1986.

*Brief description of amendment:* The amendment changes the Technical Specifications to support plant operation with the recently installed second-level undervoltage protection system.

*Date of issuance:* March 20, 1987.

*Effective date:* March 20, 1987.

*Amendment No.:* 106.

*Facility Operating License No. DPR–59.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 28, 1987 (52 FR 2889). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* December 4, 1986.

*Brief description of amendment:* The amendment changes the Technical Specifications pertaining to operability requirements for the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems.

*Date of issuance:* March 20, 1987.

*Effective date:* March 20, 1987.

*Amendment No.:* 107.

*Facility Operating License No. DPR–59.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 28, 1987 (52 FR 2886). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California**

*Dates of applications for amendments:* December 12, 1985 and February 7, 1986.

*Brief description of amendments:* The amendments revised Technical Specification 3/4.7.6, "Snubbers" to add additional requirements for the visual inspection acceptance criteria and transient event inspections.

*Date of issuance:* March 23, 1987.

*Effective date:* March 23, 1987, to be implemented within 30 days of issuance.

*Amendment Nos.:* 58 and 47.

*Facility Operating License Nos. NPF–10 and NPF–15:* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 21, 1986 (51 FR 18695). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* General Library, University of California at Irvine, Irvine, California 92713.

**Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* January 20, 1987.

*Brief description of amendments:* The amendments change the Technical Specifications to add a requirement for demonstrating the operability of the shunt trip attachment to the reactor trip breaker and to incorporate testing requirements in the surveillance requirements for the reactor trip bypass breakers.

*Date of issuance:* March 16, 1987.

*Effective date:* March 16, 1987.

*Amendment Nos.:* 54 and 46.

*Facility Operating License Nos. DPR–77 and DPR–79.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 11, 1987 (52 FR 4420). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of application for amendment:* August 5, 1986.

*Brief description of amendment:* This amendment corrected a clerical error in the Technical Specifications (TSs) by inserting the word "or" after the words "within 7 days" in Section 3.7.9.1.a. This correction makes the reporting requirements of Section 3.7.9.1.a consistent with the reporting requirements of fire protection TS Sections 3.3.3.8.b, 3.7.9.2.a and 3.7.10.a.

*Date of issuance:* March 16, 1987.

*Effective date:* March 16, 1987.

*Amendment No.* 101.

*Facility Operating License No. NPF–3.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 8, 1986 (51 FR 36105). The Commission's related evaluation of the amendment is contained in a letter to the Toledo Edison Company dated March 16, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

**Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of application for amendments:* September 12, 1986.

*Brief description of amendments:* The amendments revise the Technical Specifications in order to allow the tie-in, startup, and operation of a replacement spray system for the existing service water spray system and its related components.

*Date of issuance:* March 27, 1987.

*Effective date:* Within 60 days of the date of issuance.

*Amendment Nos.:* 91 and 76.

*Facility Operating License Nos. NPF–4 and NPF–7.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 8, 1986 (51 FR 36106). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room locations:* Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington**

*Date of amendment request:* March 14, 1986.

*Brief description of amendment:* This amendment revises WNP–2 Technical Specifications Table 4.3.7.5–1 to reflect the installation of new HydrogenOxygen Analyzers which eliminate the necessity of obtaining precise sample gas concentrations for calibration.

*Date of issurance:* March 27, 1987.

*Effective date:* March 27, 1987.

*Amendment No.:* 37.

*Facility Operating License No. NPF–21:* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 10, 1986 (51 FR 32280). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

**Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of application for amendments:* June 28, 1985.

*Brief description of amendments:* The amendments change the expiration date for the Point Beach Unit 1 Facility Operating License No. DPR–24 from July 19, 2007 to October 5, 2010 and change the expiration date for the Unit 2 Facility Operating License No. DPR–27 from July 25, 2008 to March 8, 2013.

*Date of issuance:* March 17, 1987.

*Effective date:* March 17, 1987.

*Amendment Nos.:* 107 and 110.

*Facility Operating License Nos. DPR–24 and DPR–27.* Amendments change the license expiration dates.

*Date of initial notice in* **Federal Register:** October 9, 1985 (50 FR 41241). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 17, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By May 8, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800)

325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

**Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina**

*Date of application for amendments:* December 12, 1986, as revised on January 29, 1987, and supplemented on February 11, 1987.

*Brief description of amendments:* These amendments revised the Station's common Technical Specifications (TSs) to support the operation of Oconee Unit 3 at full rated power during the upcoming Cycle 10. These amendments also revised the TSs on the Oconee Unit 1 operational power imbalance curve; quadrant power tilt and xenon reactivity. For Oconee Unit 3 only, these amendments raised the minimum boron concentration in the borated water storage tank from 1835 parts per million (ppm) to 2010 ppm to ensure that the core is at one percent delta k over k, 1% delta k/k or shutdown margin, at 70 °F without any control rods in the core. Other administrative type changes requested in the licensee's February 11, 1987 application are being handled separately.

*Date of issuance:* March 19, 1987.

*Effective date:* March 19, 1987.

*Amendments Nos.:* 155, 155, 152.

*Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55.* Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, published in the **Federal Register** on March 6, 1987 (52 FR 7050).

*Comments received:* No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 19, 1987.

*Attorney for licensee:* J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

*Local Public Document Room location:* Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Dated at Bethesda, Maryland this 2nd day of April, 1987.

For the Nuclear Regulatory Commission.

**Thomas M. Novak,**

*Acting Director, Division of PWR Licensing-A.*

[FR Doc. 87–7685 Filed 4–7–87; 8:45 am]

BILLING CODE 7590–01–M

## Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, RS 701–4 (which should be metioned in all correspondence concerning this draft guide), is entitled "Best-Estimate Calculations of Emergency Core Cooling System Performance" and is intended for Division 1, "Power Reactors." The guide is being developed to describe models, data, model evaluation procedures, and methods that are acceptable to the NRC staff for addressing proposed amendments to 10 CFR Part 50 (52 FR 6334). It provides guidance on realistic calculation of emergency core cooling system performance during a loss-of-coolant accident and on estimating the uncertainty in that calculation. The guide also requests comments from the public on the applicability of the models and guidance.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide (including the implementation schedule). Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by July 1, 1987.

Although a time limit is given for comments on the draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552)(a))

Dated at Rockville, Maryland, this 2nd day of April 1987.

For the Nuclear Regulatory Commission.

**Bill M. Morris,**

*Acting Director, Division of Reactor System Safety, Office of Nuclear Regulatory Research.*

[FR Doc. 87–7775 Filed 4–7–87; 8:45 am]

BILLING CODE 7590–01–M

## Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques

used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, CE 602–4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 3.1, "Use of Borosilicate-Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material." The guide is being revised to update procedures acceptable to the NRC staff for implementing the Commission's regulations concerning the prevention of criticality accidents in solutions of fissile material by the use of borosilicate-glass raschig rings as a neutron absorber. They guide is being revised to endorse ANSI/ANS–8.5–1986, "Use of Borosilicate-Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. The have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by June 5, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 2nd day of April 1987.

For the Nuclear Regulatory Commission.

**Guy A. Arlotto,**

*Director, Division of Engineering Safety, Office of Nuclear Regulatory Research.*

[FR Doc. 87–7776 Filed 4–7–87; 8:45 am]

BILLING CODE 7590–01–M

---

**[Docket No. 50–400]**

## Carolina Power and Light Co., (Shearon Harris Nuclear Power Plant); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a "Director's Decision Under 10 CFR 2.206" concerning a Petition dated October 17, 1986, submitted by Mr. Wells Eddleman and the Coalition for Alternatives to Shearon Harris (Petitioners). The Petition requested the agency to revoke, suspend or modify the construction permit for the Shearon Harris facility of the Carolina Power & Light Company (CP&L) and to delay or deny the issuance of an operating license for the facility. The basis for the requests were alleged deficiencies in CP&L's quality assurance program for electrical safety-related components, alleged lack of requisite character and technical capability to operate the Shearon Harris facility, and allegedly poor documentation and performance of certain construction procedures.

The Director, Office of Nuclear Reactor Regulation, has determined to deny Petitioner's request pursuant to 10 CFR 2.206. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206," DD–87–06 which is available for public inspection in the Commission Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room for the Shearon Harris facility at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 2nd day of April, 1987.

For the Nuclear Regulatory Commission.

**Harold R. Denton,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 87–7774 Filed 4–01–87; 8:45 am]

BILLING CODE 7590–01–M

---

**[Docket Nos. 50–277; 50–278, License Nos. DPR–44; DPR–56, EA 87–46]**

## Philadelphia Electric Co., Peach Bottom Atomic Power Station, Units 2 and 3; Order Suspending Power Operation and Order to Show Cause

I

Philadelphia Electric Company (Licensee) is the holder of Facility Operating License Nos. DPR–44 and DPR–56, authorizing the License to operate the Peach Bottom Atomic Power Station, Units 2 and 3 (facility), in Delta, Pennsylvania. The licenses were issued by the Nuclear Regulatory Commission (NRC or Commission) on October 25, 1973 and July 2, 1974, respectively.

II

On March 24, 1987, the NRC, Region I, received information that control room operators at Peach Bottom had been observed sleeping while on duty in the control room and were otherwise inattentive to their license obligations. The information also indicated that this conduct on the part of operators was pervasive and has been occurring for some time, and that shift supervision had knowledge of this situation. On March 24, 1987, in response to this information NRC initiated: (1) 24 hour inspection coverage of the Peach Bottom control room and (2) a special safety investigation of licensed activities. The NRC investigation, which is still ongoing, to date has established:

1. At times during various shifts, in particular the 11:00 p.m. to 7:00 a.m. shift, one or more of the Peach Bottom operations control room staff (including licensed operators, senior licensed operators and shift supervision) have for at least the past five months periodically slept or have been otherwise inattentive to licensed duties.

2. Management at the Shift Supervisor and Shift Superintendent level have either known and condoned the facts set forth in Paragraph one, or should have known of these facts.

3. Plant management above the shift superintendent position either knew or

should have known the facts set forth in Paragraph one and either took no action or inadequate action to correct this situation.

III

Prior NRC inspections have identified other instances of inattention to duty or failure to adhere to procedures on the part of licensed operators in the control room at Peach Bottom.

On June 10, 1985, during the 11:00 p.m. to 7:00 a.m. shift, an NRC inspector was present in the Unit 3 control room and observed an on-duty Unit 3 reactor operator sitting in a chair at the Unit 3 reactor control panel with his eyes closed and his head tilted back, aparently asleep or otherwise inattentive to his duties. In response to this charge the licensed operator denied being asleep and indicated he was enticing the NRC inspector to believe he was asleep, demonstrating poor judgment and a negative attitude toward safety. An enforcement conference was held with the licensee concerning this matter on June 21, 1985.

On June 6, 1986, the NRC issued its Systematic Assessment of Licensee Performance (SALP) report for the period April 1, 1985 through January 31, 1986. This report concluded that management involvement and effectiveness toward improving operating activities was not evident. Indications of the lack of adequate management involvement included: poor dissemination of management goals and policies; poor communications between different departments and divisions; and a focus on compliance rather than acknowledgement and correction of the root causes of problems. Further, the report concluded there was a complacent attitude toward procedural compliance in plant operations.

On June 9, 1986, the NRC issued a Notice of Violation and Proposed $200,000 Civil Penalty for several violations that resulted from numerous personnel errors by several licensed operators, including the Shift Supervisor and Shift Superintendent, both of whom are licensed senior reactor operators, and two licensed reactor operators. These personnel errors by four licensed individuals and associated violations indicated a pattern of inattention to detail, failure to adhere to procedural requirements, and a generally complacent attitude by the operations staff toward performance of their duties at Peach Bottom. This NRC assessment was emphasized to the licensee in a June 12, 1986, letter from Victor Stello, Jr., Executive Director for Operations, to J.C. Everett, III, PECo Chairman of the Board and Chief Executive Officer.

In addition, three previous civil penalties were issued for violations of technical specifications involving violations that resulted from personnel errors. March 29, 1983 (EA 83–7); June 13, 1983 (EA 83–46); June 18, 1984 (EA 84–39). In general, the enforcement history at Peach Bottom regarding adherence to procedures and attention to duty has been poor.

IV

The NRC expects licensees to maintain high standards of control room professionalism. NRC licensed operators in the control rooms at nuclear power plants are responsible for assuring that the facility is operated safely and within the requirements of the facility's license, technical specifications, regulations and orders of the NRC. To be able to carry out these highly important responsibilities, reactor operators must give their full attention to the condition of the plant at all times. Operators must be alert to ensure that the plant is operating safely and must be capable of taking timely action in response to plant conditions. All control room business must be conducted in such a way that neither control room operator attentiveness nor the professional atmosphere will be compromised. Sleeping while on duty in the control room demonstrates a total disregard for performing licensed duties and a lack of appreciation for what those duties entail.

10 CFR 50.54(k) and Peach Bottom Technical Specifications 6.2.2 prohibit sleeping or otherwise inattentive operators in the control room. Under 10 CFR Part 50, App. B, the licensee must have and implement procedures to ensure that activities affecting quality, including operations of the facility, are satisfactorily accomplished. The Peach Bottom quality assurance program has failed to identify this condition adverse to safety. These conditions constitute a hazard to the safe operation of the facility.

In light of the above, it is apparent that the licensee, through its enforcement history and from what has been developed by the ongoing investigation, knew or should have known of the unwillingness or inability of its operations staff to comply with Commission requirements, and has been unable to implement effective corrective action. Consequently, the NRC lacks reasonable assurance that the facility will be operated in a manner to assure that the health and safety of the public will be protected. Pending the development of other relevant information, I am unable to determine that there is reasonable assurance that the facility will be operated in a manner to assure that the health and safety of the public will be protected. Accordingly, I have determined that continued operations of the facility is an immediate threat to the public health and safety. Therefore, I have determined that the public health, safety and interest requires that the Licensee should proceed to place or maintain its units in a cold condition.

I have further determined for the reasons set forth above, that pursuant to 10 CFR 2.201(c), no prior notice is required and, pursuant to 10 CFR 2.202(f), the actions required by section V of this Order are immediately effective pending further Order.

V

Accordingly, pursuant to sections 103, 161 (i) and (o), 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Part 50, it is hereby ordered, effective immediately that:

A. The licensee shall within 36 hours from receipt of this Order, shutdown Unit 3 and place the unit in the cold condition (reactor coolant temperature equal to or less than 212°F) and maintain both units in the cold condition with the reactor mode switch in either the refueling or shutdown mode pending further Order.

B. The licensee shall provide to the Administrator of Region I within seven days of this Order a description of the actions the licensee plans to take to provide asurance that the facility will comply with all requirements including station procedures while in a cold condition.

C. Before the licensee proposes to operate either Unit 2 or Unit 3 above a cold condition the licensee shall provide to the Administrator of Region I, for his approval, a detailed and comprehensive plan and the schedule to accomplish the plan to assure that the facility will safely operate and comply with all requirements including station procedures;

D. Licensee may show cause, in the manner hereinafter provided, why this order should not have been issued; and

E. The Regional Administrator, Region I, may relax any of the above provisions, in writing, upon demonstration of good cause by the licensee.

VI

The licensee may show cause, within 20 days after issuance of this Order by filing a written answer under oath or affirmation setting forth the matters of fact and law on which the licensee relies. The licensee may answer as

provided in 10 CFR 2.202(d) by consenting to the entry of an Order in substantially the form proposed in this Order.

VII

The licensee or any other person adversely affected by this Order may request a hearing within 20 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this Order or a request for hearing shall not stay the immediate effectiveness of Section V of this Order.

If a hearing is requested by the licensee or other person adversely affected by this Order, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 31 day of March, 1987.

For the Nuclear Regulatory Commission.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

[FR Doc. 87-7784 Filed 4-7-87; 8:45 am]

BILLING CODE 7590-01-M

---

**[Docket Nos. 50-443-OL, 50-444-OL, (ASLBP No. 82-471-02-OL) (Offsite Emergency Planning)]**

### Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 and 2); Hearing

Before Administrative Judges: Helen F. Hoyt, Chairperson, Gustave A. Linenberger, Jr., Dr. Jerry Harbour.

April 2, 1987.

The following dates and location have been established for the first three weeks of hearings:

June 1–5, 1987 9:00 a.m.–6:00 p.m. EDT
June 22–26, 1987 9:00 a.m.–6:00 p.m. EDT
June 20–24, 1987 9:00 a.m.–6:00 p.m. EDT
U.S. District Court, 55 Pleasant Street, Concord, New Hampshire 03301–1498

For the Atomic Safety and Licensing Board.

**Helen F. Hoyt,**

*Chairperson, Administrative Judge.*

[FR Doc. 87-7785 Filed 4-7-87; 8:45 am]

BILLING CODE 7590-01-M

---

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Biotechnology Science Coordinating Committee; Open Meeting

*Agency:* Executive Office of the President, Office of Science and Technology Policy.

Notice is hereby given of the following open meeting of the Biotechnology Science Coordinating Committee.

*Date and time:* 28 April 1987 at 3:00 p.m.

*Place:* National Science Foundation, 1800 G Street, NW., Room 543, Washington, DC.

*Contact:* Mary Gant, Executive Secretary, BSCC, Office of Science and Technology Policy, Room 5026, New Executive Office Building, Washington, DC 20506, (202) 395–3952.

*Tentative agenda:* International cooperative activities, Status of USDA regulations, Subcommittee activities.

*Public participation:* The meeting is open to the public. Members of the public who wish to make oral presentations pertaining to agenda items should contact Mary Gant at the above address or telephone number. Requests to speak including topic must be received 2 days prior to the meeting; reasonable provisions will be made to include the presentation on the agenda as time permits although the time available for each presentation may need to be limited. The Chairman of the BSCC is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC, on 3 April 1987.

**Jonathan F. Thompson,**

*Executive Assistant to the Director, Office of Science and Technology Policy.*

[FR Doc. 87-7873 Filed 4-7-87; 8:45 am]

BILLING CODE 3170-01-M

---

## PEACE CORPS

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Peace Corps.

**ACTION:** Notice of submission of public use form review request to the Office of Management and Budget.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Returned Peace Corps Volunteer and Former Staff Data Base Card through March 1, 1990. The card is completed voluntarily by those former volunteers and staff interested in receiving information on current activities by the Agency. Respondents also indicate if they are willing to voluntarily share with the general public their experiences with the Peace Corps. This information is necessary for Peace Corps to cost effectively achieve the three goals stated in the Peace Corps Act, in particular, the third goal of promoting a better understanding of other people on behalf of the American people.

**Information About the Form**

*Agency Address:* Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526
*Title:* RPCV and Former Staff Data Base Card
*Request:* Approval of Use
*Frequency of Collection:* On occasion
*General Description of Respondent:* Individuals who served as Peace Corps volunteers or as Peace Corps staff.
*Estimated Number of Responses:* 5,000
*Estimated Hours for Respondents to Furnish Information:* .033 Hours each.
*Respondents Obligation to Reply:* Voluntary
*Comments:* Comments on this form request should be directed to Francine Picoult, Desk Officer, Office of Management and Budget, Washington, DC 20503.

A copy of this form may be obtained from Noel McCaman, Direct Response Advertising Unit, Office, of Recruitment, Peace Corps, 806 Connecticut Avenue, NW., Room M-1106, Washington, DC 20526. Mr. McCaman may be called at 202–254–6480.

This notice is issued in Washington, DC, on April 6, 1987.

**Linda Rae Gregory,**

*Associate Director for Management.*

[FR Doc. 87-7769 Filed 4-7-87; 8:45 am]

BILLING CODE 6051-01-M

---

## PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

### Meeting

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Wednesday May 13, 1987, at the Hyatt Regency Crystal City

at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meetings are to set the work agenda for the next year. The public is encouraged to communicate with PROPAC regarding issues for consideration. Suggestions may be addressed to Dr. Donald A. Young, Executive Director, Prospective Payment Assessment Commission, 300 7th Street, Southwest, Suite 301B, Washington, DC 20024.

The Subcommittee on Diagnostic and Therapeutic Practices will meet in the Regency A & B Rooms at 9 o'clock a.m. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene their meeting at 9 o'clock a.m. in Potomac I and II Rooms. The Full Commission will convene its meeting at 1:30 p.m. in the Virginia Room.

All meetings are open to the public.

**Donald A. Young,**

*Executive Director.*

[FR Doc. 87-7953 Filed 4-7-87; 9:00 am]

BILLING CODE 6820-BW-M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Certain Over-the-Counter Securities

March 30, 1987.

The Midwest Stock Exchange, Inc. ("MSE") on March 30, 1987, submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 in the following over-the-counter ("OTC") security, *i.e.*, not registered under section 12(b) of the Act:[1]

| Symbol | Issuer | File No |
|---|---|---|
| APCI | Apollo Computer, Inc | 7-9866 |

*Comments*

Interested persons are invited to submit, on or before April 23, 1987, written comments, data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Commentators are requested to address whether they believe the grant of UTP is consistent with section 12(f)(1)(C). Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for extension of UTP to OTC securities under section 12(f)(1)(C), the Commission is required to take account of, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant the application if any rule of the national securities exchange making the application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists. In this connection, commentators should note that the Commission previously has stated, as a general matter, that the grant to an exchange of UTP for up to 25 OTC stocks pursuant to section 12(f)(1)(C) would be appropriate, subject to the establishment of a facility for consolidating the OTC and exchange reports of quotations and transactions in such securities.[2] The NASD and MSE have submitted a plan intended to provide for such a reporting facility.[3] Accordingly, commentators may wish to address the specific question of UTP regarding this security in the context of the Commission's general policy statements in this area. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Shirley E. Hollis**

*Assistant Secretary.*

[FR Doc. 87-7732 Filed 4-7-87; 8:45 am]

BILLING CODE 8010-01-M

[1] On December 18, 1986, the MSE submitted an application for UTP on 25 OTC securities (*see* 52 FR 1687). One of the issuers, Tandem Computers, Inc. ("TNDM"), however, has since listed its securities on the New York Stock Exchange. Thus, the MSE submitted this application for UTP in Apollo Computer, Inc. and simultaneously withdrew its UTP application for Tandem Computers, Inc. (File No. 7-9495).

[2] *See* Securities Exchange Act Release No. 22412 (September 16, 1985) 50 FR 38640.

[3] *See* Securities Exchange Act Release No. 23698 (January 7, 1987).

[Rel. No. IC-15659; 812-6551]

### The Northwestern Mutual Life Insurance Co., et al.

April 2, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* The Northwestern Mutual Life Insurance Company ("Northwestern"); NML Equity Services, Inc. ("Equity"); NML Variable Annuity Account B ("Account B"); NML Variable Annuity Account 1 ("Account 1"); and NML Variable Annuity Account 2 ("Account 2").

*Relevant 1940 Act Sections:* Exemption requested *under* Section 17(b) from Section 17(a).

*Summary of Application:* Applicants seek an order of exemption to the extent necessary to effect the proposed combination of Accounts 1 and 2 into Account B.

*Filing Date:* The application was filed on December 4, 1986, and amended on March 27, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 27, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC, 20549. Applicants, 720 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202.

**FOR FURTHER INFORMATION CONTACT:** Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person of the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

*Applicants' Representations:* 1. Northwestern is a mutual life insurnace company. Equity is a wholly-owned,

second-tier broker-dealer subsidiary of Northwestern and acts as underwriter of Northwestern's variable annuity contracts. Accounts B, 1 and 2 are variable annuity separate accounts registered under the 1940 Act as unit investment trusts. Northwestern and Equity are co-depositors of the Accounts.

2. Assets of Account B are invested in shares of four underlying mutual funds ("Funds") used exclusively as funding vehicles for Northwestern's variable annuity contracts. The Account B variable annuities are tax-qualified and nontax-qualified contracts. Assets of Account 1 are invested in shares of one of the Funds, and assets of Account 2 are invested in shares of two of the Funds. The Account 1 and Account 2 variable annuities are nontax-qualified contracts.

3. The Applicants proposed to combine Accounts 1 and 2 into Account B by redeeming the shares of the Funds held in Accounts 1 and 2, reallocating the proceeds of the redemptions to Account B, and purchasing for Account B the same number of shares of each Fund to replace the assets previously held in Accounts 1 and 2. The combination will be accomplished by transactions as of a single point in time, based on the net asset values of the shares of each Fund.

4. The combination of the Accounts will make all four of the Funds available as investment funding vehicles for the Account 1 and Account 2 contracts and will permit savings of administrative costs. The present limitations of the funding vehicles for Accounts 1 and 2 reflect the former federal income tax treatment of long-term capital gains in the context of non-tax qualified variable annuities. These limitations are no longer appropriate in view of the changes in the tax laws enacted in 1984.

5. All provisions of the Account 1 and Account 2 contracts will continue in effect after the proposed combination and the contracts will continue to be administered in accordance with their terms.

6. All costs of the proposed combination of the Accounts will be borne by Northwestern. No taxes or other costs will be incurred by owners of the variable annuity contracts as a resuls of, or in connection with, the proposal transaction.

7. The terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned. The proposed transaction is consistent with the policy of each registered investment company concerned and is consistent with the general purposes of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-7731 Filed 4-7-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. IC-15608; File No 812-6590]**

## Hartford Life Insurance Co., et al.

April 3, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

---

*Applicants:* Hartford Life Insurance Company ("Hartford"), Hartford Life Insurance Company-Thomson McKinnon Separate Account ("Account"), and Hartford Equity Sales Company, Inc. ("Equity Sales").

*Relevant 1940 Act Sections:* Exemption requested *under* section 6(c) *from* sections 26(a)(2)(C) and 27(c)(2).

*Summary of Application:* Applicants request exemption to offer certain individual and group Flexible premium variable annuity contracts ("contracts") subject to a daily asset charge for mortality and expense guarantees at the annual rate of 1.25%, estimated at .90% and .35%, respectively.

*Filing Date:* The application was filed on January 7, 1987, and amended on March 5, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549 Applicants, Hartford Plaza, Hartford, Connecticut 06115.

**FOR FURTHER INFORMATION CONTACT:** Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

### Applicants' Representations

1. Hartford is a stock life insurance company organized under the laws of the state of Connecticut. The Account is registered under the 1940 Act as a unit investment trust. Equity Sales, a registered broker-dealer, is the principal underwriter for the contracts.

2. The contractowner has the right to allocate purchase payments to any one or more of five portfolios ("Funds") of Thomson McKinnon Investment Annuity Trust. A sales charge is not deducted at the time of purchase. Each premium payment, net of any applicable premium tax, is credited to the contract. A Contingent deferred sales charge may be assessed against contract values upon surrender. The time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge; and the charge equals 5% of the amount withdrawn for the first year, 4% for the second year, 3% for the third year, 2% for the fourth and fifth year, and 0% for the sixth year. A single partial surrender may be made each year after the first full contract year of up to 10% of the aggregate premium payments without the application of the contingent deferred sales charge.

3. An annual maintenance fee of $25 is deducted on each contract anniversary from contract values. A daily charge of .175% per annum is made against contract values for administration. The contracts issued with respect to the Account will provide for a 1.25% annual asset charge paid to the Hartford on a daily basis for providing mortality and expense guarantees.

4. The mortality undertaking provided by Hartford under the contracts, assuming the selection of one of the forms of life annuities, is to make monthly annuity payments (determined in accordance with the 1983(a) Individual Annuity Table with ages set back one year and other provisions in the contract) regardless of how long an annuitant may live, and regardless of how long all annuitants as a group may live. Hartford also assumes the liability for payment of a minimum death benefit. The expense undertaking is the risk assumed that the contingent deferred

sales charges, the annual maintenance fee, and the asset-based administration charge, may be insufficient to cover the actual costs.

5. Exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) is requested in order that the contracts may be subject to the mortality and expense risk charge. Hartford and the Account represent that:

(a) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. These contracts are similar in that current charge levels are approximately the same; all provide minimum death benefit guarantees the same as or lower than the Applicants' contract; all have guaranteed annuity purchase rates; all have the same special accounting system for separate account unit value administration; and all are offered in the same market. Hartford will undertake to maintain and make available to the Commission upon request a memorandum underlying this representation;

(b) There is likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the contracts. Hartford has concluded that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Account and contractowners, and that it will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation; and

(c) The Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

6. The exemption requested to permit the deduction for mortality and expense guarantees is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-7815 Filed 4-7-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket S-805]

### American President Lines, Ltd.; Application To Increase Sailings to Guam on its TR 29 (U.S. Pacific, Hawaii, Alaska/Far East Service)

Notice is hereby given that American President Lines, Ltd. (APL), by letter application dated March 30, 1987, has requested amendment of its Appendix A of Operating-Differential Subsidy Agreement, Contract MA/MSB-417, to increase from 26 to 52 the number of Line A sailings that APL may provide between California and Guam. For future flexibility, APL also requested an increase to 52 in the number of Line B sailings that may call at Guam, subject to an overall maximum of 52 annual sailings that may call at Guam in either or both Line A and Line B services. No increase was requested in the scope of APL's exsting authority to provide service between Guam and foreign ports on APL's authorized routes.

APL has recently reorganized its services to begin a second, weekly service on Line A, between California and the Far East. The reorganization is occasioned by the continuing growth in trade that has occurred on the routes serviced by APL, particularly eastbound. APL ships have been operating at full capacity eastbound for several years, and have been experiencing good utilization westbound as well. Without added service and added capacity APL believes it will lose cargo, and market share, to foreign lines, which themselves have been increasing service and adding capacity at a rapid rate.

The increase in Line A sailings, while providing increased coverage to major Far East ports served by APL and improved transit time between many of those ports and California ports, also provides APL the opportunity to call at Guam on a weekly basis, rather than on a fortnightly basis as it has in the past. APL feels that the availability of a weekly rather than a fortnightly service will be a significant benefit to Guam commercial interests, and remedies the disadvantage that APL has operated under since it reinstituted the Guam service in competing with the weekly service being provided by United States Lines, Inc.

Commerce between continental United States ports and Guam has been determined to be not "domestic intercoastal or coastwise service" within the meaning of section 805(a) of the Merchant Marine Act, 1936, as amended (Act). Also it is not foreign commerce, and therefore does not fall within the provisions of section 605(c) of the Act.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Such views should be directed to the issue as to whether the effect of the amendment sought by APL would be to give undue advantage or be unduly prejudicial as between APL and other operators serving Guam. Comments must be received no later than 5:00 p.m. on April 21, 1987. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: April 3, 1987.

By Order of the Maritime Subsidy Board.

**James E. Saari,**

*Secretary.*

[FR Doc. 87-7773 Filed 4-7-87; 8:45 am]

BILLING CODE 4910-81-M

---

### National Highway Traffic Safety Administration

[Docket No. IP-87-02; Notice 1]

### The Uniroyal Goodrich Tire Company; Receipt of Petition for Determination of Inconsequential Noncompliance

The Uniroyal Goodrich Tire Company of Akron, Ohio, has petition to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for apparent noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tire for Vehicles Other Than Passenger Cars*, on the basis that it is consequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other

exercise of judgment concerning the merits of the petition.

Paragraph S6.5(d) of Federal Motor Vehicle Safety Standard No. 119, *New Peneumatic Tires for Vehicles Other Than Passenger Cars*, requires that tires be marked on both sidewalls with the maximum load rating and corresponding inflation pressure of the time. Uniroyal Goodrich Tire Company manufactured and shipped 3,922 31X10.50R15 All-Terrain Radial tires that do not comply with Paragraph S6.5(d) of FMVSS No. 119. These tires have the incorrect load range stamped on the serial number side of the tire.

From August 31, 1986 to December 12, 1986, Uniroyal Goodrich stamped the following load range on their 31X10.50R15 All-Terrain Radial:

Load Range G—Max. Load 2,250 Lbs. at 50 PSI Cold.

The correct load range is: Loag Range C—Max. Load 2,250 Lbs. at 50 PSI Cold.

Uniroyal Goodrich believes this noncompliance is inconsequential to motor vehicle safety because all identification located above the bead on both sides of the tire correctly states the maximum load in terms of pounds and pressure and the highest load range available in the family of flotation tire sizes is load range "C". Also the correct load range identification appears on the opposite serial number sidewall and is imprinted on each paper label adhered to the tread of the tire.

Interested persons are invited to submit written data, views and arguments on the petition of The Uniroyal Goodrich Tire Company described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 8, 1987.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on April 3, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87–7754 Filed 4–7–87; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 87–48]

### Recordation of Trade Name; Aspen Laboratories, Inc.

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of recordation.

**SUMMARY:** On January 30, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ASPEN LABORATORIES, INC." was published in the **Federal Register** (52 FR 3075). The notice advised that before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 31, 1987. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "ASPEN LABORATORIES, INC." is recorded as the trade name used by the Aspen Laboratories, Inc., a corporation organized under the laws of the State of Colorado, located at 181 Inverness Drive West, Englewood, Colorado 80155. The trade name is used in connection with the following merchandise manufactured in the United States: the developing and marketing of products for medical electronic equipment, such as electrosurgical electrodes, electro power supply and adapter for power supply to supply electricity to electrosurgical electrodes.

**DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: April 2, 1987.

**Steven Pinter,**

*Chief, Entry, Licensing and Restricted Merchandise Branch.*

[FR Doc. 87–7749 Filed 4–7–87; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 87–50]

### Recordation of Trade Name: Jobst Institute, Inc.

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of recordation.

**SUMMARY:** On January 26, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "JOBST INSTITUTE, INC." was published in the **Federal Register** (52 FR 2787). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 27, 1987. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "JOBST INSTITUTE, INC." is recorded as the trade name used by the Jobst Institute, Inc., a corporation organized under the laws of the State of Ohio, located at 653 Miami Street, Toledo, Ohio 43694. The trade name is used in connection with the following merchandise manufactured in the United States: developing and marketing of medical soft goods for the treatment of vascular and lymphatic system disorders due to surgery, trauma or disease, such as support stockings and elastic pressure covers for the treatment of burns.

**DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: April 2, 1987.

**Steven Pinter,**

*Chief, Entry, Licensing and Restricted Merchandise Branch.*

[FR Doc. 87–7750 Filed 4–7–87; 8:45 am]

BILLING CODE 4820–02–M

[T.D. 87–49]

### Recordation of Trade Name; Medical Engineering Corporation

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of recordation.

**SUMMARY:** On January 30, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "MEDICAL ENGINEERING CORPORATION" was published in the Federal Register (52 FR 3075). The notice

advised that before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 31, 1987. No responses where received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "MEDICAL ENGINEERING CORPORATION," is recorded as the trade name used by the Medical Engineering Corporation, a corporation organized under the laws of the State of Delaware, located at 3037 Mount Pleasant, Racine, Wisconsin 53401. The trade name is used in connection with the following merchandise manufactured in the United States: medical prostheses, catheters, drains and tracheal tubes.

**DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: April 2, 1987.

**Steven Pinter,**

*Chief, Entry, Licensing and Restricted Merchandise Branch.*

[FR Doc. 87–7751 Filed 4–7–87; 8:45 am]

BILLING CODE 4820–02–M

---

[T.D. 87–47]

## Recordation of Trade Name; Xomed, Inc.

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of recordation.

**SUMMARY:** January 26, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "XOMED, INC." was published in the **Federal Register** (52 FR 2787). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than March 27, 1987. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "XOMED, INC." is recorded as the trade name used by the Xomed, Inc., a corporation organized under the laws of the State of Delaware, located at 6743 Southpoint Drive North, Jacksonville, Florida 32216. The trade name is used in connection with the following merchandise manufactured in the United States: medical prosthetic supplies and apparatus, such as, surgical instruments, x-ray machine drapes, ear drapes, various types of sheeting and gauze primarily for use in surgical procedures, otology implants, and stapedectomy prostheses.

**DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: April 2, 1987.

**Steven Pinter,**

*Chief, Entry, Licensing and Restricted Merchandise Branch.*

[FR Doc. 87–7752 Filed 4–7–87; 8:45 am]

BILLING CODE 4820–02–M

---

## Internal Revenue Service

## Privacy Act of 1974; Systems of Records

**AGENCY:** Internal Revenue Service, Department of the Treasury.

**ACTION:** Notification of revised notices of systems of records.

**SUMMARY:** The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to revise several notices of systems of records and Appendix A. Further identification of changes are printed below in their entirety.

**DATE:** These changes are effective April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Marcus Farbenblum, (202)566–3359, Chief, FOI/Privacy Section.

**SUPPLEMENTARY INFORMATION:** The Internal Revenue Service is revising several notices of systems of records and Appendix A. Some of the notices are being revised to add the phrase "in response to a subpoena" in the following routine use (wherever it appears): "to disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings." This phrase was inadvertently dropped when routine uses contained in the Department of the Treasury's Appendix AA were incorporated into appropriate systems.

With the elimination of Appendix AA's routine uses, the congressional inquiry routine use is included for several systems to enable us to respond to a congressional inquiry.

Several systems also contain tax return information; thus IRC 6103 is cited within the Routine Uses category of the notice. Additionally, 26 U.S.C. 7852(e) is included in the Contesting Records Category.

In numerous systems, the Notification Procedures and Record Access Procedures are being revised to contain instructions on how to seek access and/or notification.

In System 10.001, the Categories of Records in the System is being amended to include photographs. The Routine Uses category is being amended to include the statement that, "information contained in this system may be included in news releases issued to the media and the public".

In System 10.004, the Routine Uses category is being amended to include the following: "To the extent information contained in this system is used in response to inquiries from the media, routine disclosures may be made to the media and the public."

In System 22.034, the Categories of Records in the System is being amended to include withholding allowance certificates. The Storage category is being expanded to include magnetic media.

In System 24.030, the Retention and Disposal category is being amended to clarify that although the Potentially Dangerous Taxpayer System (PDT) contemplates reassessment after five years, it does not necessarily mean that PDT codes will be removed in five years.

The System Name of 24.046, "Returns and Information Processing—Treasury/IRS Business Master File (BMF)" should be "Business Master File (BMF): Returns and Information Processing, D:R:R—Treasury/IRS."

In Systems 26.001, 26.006, 26.008, 26.010, 26.011, 26.013, 26.016, 26.019, 26.020, 26.021 and 26.022 the Routine Uses category is being revised. Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

In Systems 26.011 and 26.016, the phrase, "disclosures may be made during judicial processes" is being deleted from the Categories of Records in the System, as not being applicable to this section of the notices.

In System 34.018, the Routine Uses category is being revised. The routine use set forth in the notice as published is an intra-agency use which need not be published.

In System 36.002, the method of storage of records is being expanded to include magnetic media.

In System 36.005, in the Routine Uses category, the "(3)" is being removed. The language which follows should be part of the second routine use enumerated therein.

In Systems 37.001, 37.002, 37.003, 37.004, 37.005, 37.006, 37.007, 37.008, 37.009, 37.010 and 37.011 the Routine Uses category is being revised to include disclosures to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

The System Name of 42.001, "Examination Administrative File" is being changed to, "Examination Administrative File (open and closed)" to clarify that both open and closed examination administrative files are included.

In Systems 42.001, 42.012, 42.013, 42.017, 42.027, 42.030, 49.001, 49.002, 49.003, 49.007 and 49.008 the System Location and System Manager(s) and Address categories are being revised to reflect the IRS reorganization which established the Office of the Assistant Commissioner (International).

The System Name of 42.016, "Classification and Examination Selection Files" is being changed to, "Classification/Centralized Files and Scheduling Files" and other changes in the System Location, Categories of Records in the System and Retention and Disposal categories are being made to reflect the systems change from manual to automated.

In System 48.001, the language in the Systems Exempted from Certain Provisions of the Act and Record Source categories is being revised. In accordance with 5 U.S.C. 552a(k)(2), the Commissioner has claimed the system exempt from various Privacy Act provisions, including access.

Pursuant to paragraph (g) of the Notice of Exempt Systems, 42 FR 49407 published on September 26, 1977, any information contained in an exempt IRS system which is also located in another nonexempt system retains its exempt status. Accordingly, the language in System 48.008, Systems Exempted from Certain Provisions of the Act category is being revised.

System 60.010 has not been exempted by the Commissioner. The first sentence in the Notification Procedure category is being deleted. It is a partial restriction which has no legal basis.

As a result of the reorganization of the Office of Chief Counsel (effective 10/27/85), the Corporation Tax Division and the Individual Tax Division were transferred to Chief Counsel. Therefore, the systems described in 80.001 and 80.002 are now under the jurisdiction of the Director, Appeals Division and are being renumbered as 44.004 and 44.005. The system described in 80.003 will remain under Associate Chief Counsel (Technical) but, as a result of the reorganization, is being renumbered as 90.017.

System 90.001 is being revised to add 5 U.S.C. 552(d)(5) in the Notification and Record Access Procedures category.

In Systems 90.003 and 90.013, the System Name category is being revised to include the Associate Chief Counsel (International).

The current language in the Retention and Disposal category of 90.006 and 90.010 is no longer correct and is therefore being revised.

Typographical errors are being corrected as follows: The Routine Uses category of 70.001, "27 U.S.C. 6103" should be "26 U.S.C. 6103"; the Categories of Records in the System headnote of 60.007 should be set apart and in bolder print, and in the Contesting Records category, "7851(e)" should be "7852(e)"; and the Routine Uses headnote of 80.003, now 90.017, should be set apart and in bolder print, as the other category headings are. In System 60.007, in the Categories of Individuals Covered by the System, the phrase, "persons whose actions or alleged actions indicate a threat to IRS employees, facilities, or the integrity of the tax system" is being corrected to change "indicate" to the past tense "indicated".

The following corrections are being made in Appendix A: Due to the IRS reorganization, Director, Disclosure and Security Division is being changed to Director, Office of Disclosure; Foreign Operations District is being changed to Assistant Commissioner (International) and District Counsel's Office, IRS, Foreign Operations is being deleted. The Chief Counsel and the Associate Chief Counsel (Technical) are being deleted from the listing of National Office Internal Revenue Service Systems Managers. The proper placement for the Director, Appeals Division, the Associate Chief Counsel (Technical) and the newly created Associate Chief Counsel (International) is under the listing of National Office Chief Counsel Systems Managers, and the abolished position of Associate Chief Counsel (General) is being deleted. Under Regional Office Internal Revenue Service, the Regional Inspector for each region is being deleted.

Dated: April 1, 1987.

**John F.W. Rogers,**

*Assistant Secretary of the Treasury (Management).*

Portions of the following systems of records are being changed for the reasons stated in the preamble. The date and volume/page of the previous **Federal Register** publication of each system notice is also provided.

Treasury/IRS 10.001 published on July 22, 1985 (50 FR 29817).

**SYSTEM NAME:**

Biographical Files, Public Affairs—Treasury/IRS.

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records are biographical data and photographs of key IRS employees.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used to disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Information contained in this system may be included in news releases issued to the media and the public.

* * * * *

Treasury/IRS 10.004 published on July 22, 1985 (50 FR 29817).

**SYSTEM NAME:**

Subject Files, Public Affairs—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To the extent information contained in this system is used in response to inquiries from the media, routine disclosures may be made to the media and the public.

* * * * *

Treasury/IRS 21.001 published on July 22, 1985 (50 FR 29818).

**SYSTEM NAME:**

Tax Administration Advisors Resources File, Tax Administration Advisory Services Division—Treasury/IRS.

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Applicant roster database, locator cards, and lists with names, addresses, telephone number, and organizational affiliations of officials engaged in tax

administration; work assignment or application folders of past and potential tax administration advisors, which contain employment history, information, medical abstracts, security clearances, and passport information, bio-data sketches on IRS employees and others engaged in tax administration and related fields.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Maintained for use by Division management officials as a reference in obtaining and presenting information related to tax administration, and for administrative selection and processing of overseas and domestic assignments. These records and information in these records may be used to disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes.

* * * * *

STORAGE:

Paper records and magnetic media.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to Director, TAAS Division, PM:HR:TAAS, 1111 Constitution Avenue, NW., Washington, DC 20224.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to Director, TAAS Division, PM:HR:TAAS, 1111 Constitution Avenue, NW., Washington, DC 20224.

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the Director, TAAS Division, PM:HR:TAAS, 1111 Constitution Avenue, NW., Washington, DC 20224.

* * * * *

Treasury/IRS 22.034 published on July 22, 1985 (50 FR 29821).

SYSTEM NAME:

Individual Returns Files, Adjustments and Miscellaneous Documents Files. D:R:R—Treasury/IRS.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

A variety of records reflecting tax matters which have served as input documents or supporting documentation for entries on the Individual Master File, or other tax accounting files, including tax return forms, declarations, applications, case records, processing documents, vouchers, computer notices, posting and correction forms, Interest Equalization Tax Forms, withholding allowance certificates, and similar records. Information will be maintained as to the name, SSN, address of individuals owing past due child and/or spousal support payments submitted by states under Pub. L. 97–35. Also maintained will be the name of the submission state, the amount owed, and the amount of any individual income tax overpayment retained and transferred to the state to apply against the amount owed.

* * * * *

STORAGE:

Paper document files or magnetic media.

* * * * *

Treasury/IRS 24.030 published on July 22, 1985 (50 FR 29826).

SYSTEM NAME:

Individual Master File (IMF): Returns and Information Processing, D:R:R—Treasury/IRS.

* * * * *

RETENTION AND DISPOSAL:

As specified in the Records Disposition Handbook published by the Service, IRM 1(15)59. The code identifying taxpayers who threatened or assaulted IRS employees may be removed five years after initial input.

* * * * *

Treasury/IRS 24.046 published on July 22, 1985 (50 FR 29826).

SYSTEM NAME:

Business Master File (BMF): Returns and Information Processing, D:R:R—Treasury/IRS.

* * * * *

Treasury/IRS 26.001 published on July 22, 1985 (50 FR 29827).

SYSTEM NAME:

Acquired Property Records, OP:C—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 26.006 published on July 22, 1985 (50 FR 29828).

SYSTEM NAME:

Form 2209, Courtesy Investigations, OP:C—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 26.008 published on July 22, 1985 (50 FR 29828).

SYSTEM NAME:

IRS and Treasury Employee Delinquency, OP:C—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 26.010 published on July 22, 1985 (50 FR 29829).

SYSTEM NAME:

Lists of Prospective Bidders at Internal Revenue Sales of Seized Property, OP:C—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used: (1) To disclose pertinent information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation. (2) To disclose information to a court, magistrate, or administrative tribunal in

the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 26.011 published on July 22, 1985 (50 FR 29830).

**SYSTEM NAME:**

Litigation Case Files, OP:C—Treasury/IRS.

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, and dollar amount. This file includes: Suit to Reduce Tax Claim to Judgement; Suit for Failure to Honor a Levy; Suit to Enforce Federal Tax Lien; Suit Against Transferee; Suit to Set Aside Fraudulent Transfer; Suit to Recover Erroneous Refund; other suits include those in which the United States may intervene to assert a Federal tax lien; a proceeding to require opening of a safe deposit box, etc. The following suits against the United States are also included in this file; Quiet Title Suit; Foreclosure of Mortgage or other Lien; Partition; Condemnation; Interpleader; Refund Suits Involving 100-Percent Penalty Assessments; Injunction Suits Under Freedom of Information Act. Also included in Litigation Files are: Individuals against whom bankruptcy proceedings are pending; decedent estates in probate with outstanding Federal tax liabilities; individuals executing Assignments for the Benefit of Creditors; individuals in Receivership Proceedings; individuals conducting a bulk sale; summons referrals; subpoena files, advisory opinions; collateral security agreements; revenue officer reports; and various other legal instruments and correspondence.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 26.012 published on July 22, 1985 (50 FR 29831).

**SYSTEM NAME:**

Offer in Compromise (OIC) File, OP:C—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103, and to the extent necessary to permit public inspection of any accepted offer-in-compromise as required by 26 U.S.C. 6103(K)(1).

* * * * *

Treasury/IRS 26.013 published on July 22, 1985 (50 FR 29832).

**SYSTEM NAME:**

One Hundred Percent Penalty Cases, OP:C—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 26.016 published on July 22, 1985 (50 FR 29833).

**SYSTEM NAME:**

Returns Compliance Programs (RCP), OP:C—Treasury/IRS.

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records consist of name, address, taxpayer identification number (if known) and information concerning the potential tax liability. Returns Compliance Programs involve any type of Federal tax administered by the Collection Division and are conducted in accordance with Section 7601 of the Internal Revenue Code. RCP programs can be initiated by the National Office, Regional Offices, or by individual districts.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 26.019 published on July 22, 1985 (50 FR 29833).

**SYSTEM NAME:**

TDA (Taxpayer Delinquent Accounts) including subsystems: (a) Adjustments and Payment Tracers Files, (b) Collateral Files, (c) Seized Property Records, (d) Tax Collection Waiver, Forms 900, Files, (e) Accounts on child support obligations, OP:C—Treasury/IRS.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

**STORAGE:**

Paper records and magnetic media.

* * * * *

Treasury/IRS 26.020 published on July 22, 1985 (50 FR 29834).

**SYSTEM NAME:**

TDI (Taxpayer Delinquency Investigation) Files, OP:C— Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 26.021 published on July 22, 1985 (50 FR 29835).

**SYSTEM NAME:**

Transferee Files, OP:C—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 26.022 published on July 22, 1985 (50 FR 29835).

**SYSTEM NAME:**

Delinquency Prevention Programs, OP:C—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 30.004 published on July 22, 1985 (50 FR 29837).

**SYSTEM NAME:**

Security Violations—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Routine disclosure of information contained in this system of records may

be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

* * * * *

Treasury/IRS 32.001 published on July 22, 1985 (50 FR 29837).

**SYSTEM NAME:**

Travel Expense Record—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. Routine disclosure of information may be made to furnish another Federal agency information to effect inter-agency salary offset; to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data available to private sector credit grantors.

* * * * *

Treasury/IRS 32.003 published on July 22, 1985 (50 FR 29838).

**SYSTEM NAME:**

Schedules of Collections and Schedules of Canceled Checks—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. Routine disclosure of information may be made to furnish another federal agency information to effect inter-agency salary offset, to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data available to private sector credit grantors.

* * * * *

Treasury/IRS 34.003 published on July 22, 1985 (50 FR 29838).

**SYSTEM NAME:**

Assignment and Accountability of Personal Property Files—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(2) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

**CONTESTING RECORD PROCEDURES:**

See Access above.

* * * * *

Treasury/IRS 34.005 published on July 22, 1985 (50 FR 29839).

**SYSTEM NAME:**

Parking Space Application and Assignment—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes.

* * * * *

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

**CONTESTING RECORD PROCEDURES:**

See Access above.

* * * * *

Treasury/IRS 34.007 published on July 22, 1985 (50 FR 29839).

**SYSTEM NAME:**

Record of Government Books of Transportation Requests—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. Routine disclosure of information may be made to furnish another federal agency information to effect inter-agency salary offset; to

BEST COPY AVAILABLE

furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data available to private sector credit grantors.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

* * * * *

Treasury/IRS 34.009 published on July 22, 1985 (50 FR 29840).

SYSTEM NAME:

Safety Program Files System—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(11) To the extent the records in this system contain returns and return information, disclosures thereof may be made only as provided by 26 U.S.C. 6103.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched. Name must be provided to ascertain whether or not the system has a record pertaining to the individual.

* * * * *

Treasury/IRS 34.012 published on July 22 1985 (50 FR 29841).

SYSTEM NAME:

Emergency Preparedness Cadre Assignments and Alerting Rosters Files Systems—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

* * * * *

Treasury/IRS 34.013 published on July 22, 1985 (50 FR 29841).

SYSTEM NAME:

Identification Media Files System for Employees and Others Issued IRS ID—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes.

* * * * *

Treasury/IRS 34.014 published on July 22, 1985 (50 FR 29841).

SYSTEM NAME:

Motor Vehicle Registration and Entry Pass Files System—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

CONTESTING RECORD PROCEDURES:

See Access above.

* * * * *

Treasury/IRS 34.016 published on July 22, 1985 (50 FR 29842).

SYSTEM NAME:

Security Clearance Files System—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal

advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. To provide information to agencies and individuals on a need-to-know basis to determine the current status of an individual's security clearance.

* * * * *

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

**CONTESTING RECORD PROCEDURES:**

See Access above.

* * * * *

Treasury/IRS 34.018 published on July 22, 1985 (50 FR 29842).

**SYSTEM NAME:**

Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS.

* * * * *

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Director of the Internal Revenue Service Center or District Office servicing the area in which the individual resides. (See IRS Appendix A.)

**CONTESTING RECORD PROCEDURES:**

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

* * * * *

Treasury/IRS 36.001 published on July 22, 1985 (50 FR 29843).

**SYSTEM NAME:**

Appeals, Grievances and Complaints Records—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(7) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(10) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(11) To the extent returns and return information is included, disclosure thereof may only be made pursuant to 26 U.S.C. 6103.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

(a) EEO Discrimination Complaint Records—Assistant Commissioner (EEO, National Office; (b) all other records—Director, Human Resources Division, or Chief Personnel Branch, appropriate office (See IRS Appendix A.)

* * * * *

Treasury/IRS 36.002 published on July 22, 1985 (50 FR 29844).

**SYSTEM NAME:**

Employee Activity Records—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(1) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

* * * * *

**STORAGE:**

Paper records and magnetic media.

* * * * *

Treasury/IRS 36.003 published on July 22, 1985 (50 FR 29844) and December 2, 1985 (50 FR 49493).

**SYSTEM NAME:**

General Personnel and Payroll Records—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(19) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Human Resources Division, and Chief, Personnel Branch, appropriate office (see IRS Appendix A); Executive Secretary, Executive Resources Board (for executive resource records).

* * * * *

Treasury/IRS 36.005 published on July 22, 1985 (50 FR 29846).

**SYSTEM NAME:**

Medical Records—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

* * * * *

(13) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Human Resources Division, or Chief, Personnel Branch, appropriate office; Director, Operations Division (Office of Chief Counsel), National and Regional Counsels. (See IRS Appendix A for Locations.)

* * * * *

Treasury/IRS 36.008 published on July 22, 1985 (50 FR 29847).

**SYSTEM NAME:**

Recruiting, Examining and Placement Records—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(10) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(13) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Human Resources Division, or Chief, Personnel Branch, appropriate office. (See IRS Appendix A.)

* * * * *

Treasury/IRS 36.009 published on July 22, 1985 (50 FR 29848).

**SYSTEM NAME:**

Retirement, Life Insurance and Health Benefits Records System—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(11) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(14) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Human Resources Division, and Chief, Personnel Branch, appropriate office. Director, Operations Division (Office of Chief Counsel), National and Regional Counsels. (See IRS Appendix A for Locations.)

**NOTIFICATION PROCEDURE:**

(1) Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to: District Director for each District whose records are to be searched; Service Center Director for each Service Center whose records are to be searched; Director, National Computer Center (for Computer Center employees only); Director, Data Center (for Data Center employees only); Regional Commissioner for each Regional Office whose records are to be searched; Director Human Resources Division, National Office; Assistant Commissioner (Human Resources), National Office; Regional Counsel for each region whose records are to be searched; Director, Disclosure Litigation Division for records in the National Office of Chief Counsel; or other appropriate official. (See IRS Appendix A for locations.) (2) If the individual is retired from Federal service he should direct inquiries to: Associate Director for Compensation, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. (3) If the individual is not retired, but has been separated from Federal service, he should direct inquiries to: National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118.

* * * * *

Treasury/IRS 37.001 published on July 22, 1985 (50 FR 29849).

**SYSTEM NAME:**

Abandoned Enrollment Applications—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

**CONTESTING RECORD PROCEDURES:**

See Access above.

* * * * *

Treasury/IRS 37.002 published on July 22, 1985 (50 FR 29850).

**SYSTEM NAME:**

Applicant Appeal Files—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.003 published on July 22, 1985 (50 FR 29851).

**SYSTEM NAME:**

Closed Files containing Derogatory Information about individual's practice before the Internal Revenue Service and files of attorneys and certified public accountants formerly enrolled to practice—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.004 published on July 22, 1985 (50 FR 29851).

**SYSTEM NAME:**

Derogatory Information (No Action)—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.005 published on July 22, 1985 (50 FR 29852).

**SYSTEM NAME:**

Present Suspensions and Disbarments Resulting From Administrative Proceeding—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(7) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(8) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.006 published on July 22, 1985 (50 FR 29853).

**SYSTEM NAME:**

General Correspondence File—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.007 published on July 22, 1985 (50 FR 29853).

**SYSTEM NAME:**

Inventory—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions

appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.008 published on July 22, 1985 (50 FR 29854).

**SYSTEM NAME:**

Register of Docketed Cases and Applicant Appeals—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.009 published on July 22, 1985 (50 FR 29854).

**SYSTEM NAME:**

Resigned Enrolled Agents (action pursuant to 31 CFR, Section 10.55(b))—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.010 published on July 22, 1985 (50 FR 29855).

**SYSTEM NAME:**

Roster of Former Enrollees—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 37.011 published on July 22, 1985 (50 FR 29856).

**SYSTEM NAME:**

Present Suspensions from Practice before the Internal Revenue Service—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(6) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

(7) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings.

* * * * *

**RECORD ACCESS PROCEDURES:**

See Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 38.001 published on July 22, 1985 (50 FR 29856).

**SYSTEM NAME:**

General Training Records—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Routine disclosure of information contained in this system may be made available to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure may be made during judicial processes. Information in these records

may be used to provide input data for the automated Training CPDF at the Office of Personnel Management.

* * * * *

Treasury/IRS 42.001 published on July 22, 1985 (50 FR 29857).

**SYSTEM NAME:**

Examination Administrative File (open and closed)—Treasury/IRS.

**SYSTEM LOCATION:**

Jurisdictional District Office where the individual resides, or Service Center where return was examined, or Assistant Commissioner (Examination) and Assistant Commissioner (International), National Office. (See IRS Appendix A.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any taxpayer who is being considered for examination or is being examined or has been examined for tax determination purposes, i.e., income, estate and gift, excise, or employment tax liability.

* * * * *

**RETRIEVABILITY:**

By taxpayer's name and social security number and employer identification number and document locator number.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International); Officials maintaining the system—Director of Jurisdictional District Office, or Service Center, or Assistant Commissioner (Examination) and Assistant Commissioner (International). (See IRS Appendix A.)

* * * * *

Treasury/IRS 42.012 published on July 22, 1985 (50 FR 29858).

**SYSTEM NAME:**

Combined Case Control Files—Treasury/IRS.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Director of Jurisdictional District. (See IRS Appendix A.)

* * * * *

Treasury/IRS 42.013 published on July 22, 1985 (50 FR 29859).

**SYSTEM NAME:**

Project Files for the Uniform Application of laws as a result of technical determinations and court decisions—Treasury/IRS.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Director of Jurisdictional District. (See IRS Appendix A.)

* * * * *

Treasury/IRS 42.016 published on July 22, 1985 (50 FR 29859).

**SYSTEM NAME:**

Classification/Centralized Files and Scheduling Files—Treasury/IRS.

**SYSTEM LOCATION:**

Jurisdictional service center or related district office where individual resides. (See IRS Appendix A.)

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individuals' tax returns/claims and other information considered in screening/classifying of an individual's return or claim for refund.

* * * * *

**RETENTION AND DISPOSAL:**

Returns/claims accepted as filed are returned to System of Records 22.034. Returns/claims selected for examination become part of System of Records 42.001. Other information is retained until associated with returns/claims or two years, whichever occurs first. Authority: Records Disposition Handbook IRM 1(15)59.

* * * * *

Treasury/IRS 42.017 published on July 22, 1985 (50 FR 29860).

**SYSTEM NAME:**

International Enforcement Program Files—Treasury/IRS.

**SYSTEM LOCATION:**

Jurisdictional District Office of district where individual resides; National Office: Examination and International, Washington, DC. (See IRS Appendix A.)

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Director of Jurisdictional District; Assistant Commissioner (Examination) and Assistant Commissioner (International). (See IRS Appendix A.)

* * * * *

Treasury/IRS 42.021 published on July 22, 1985 (50 FR 29860).

**SYSTEM NAME:**

Compliance Programs and Projects Files—Treasury/IRS.

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Taxpayers that may be involved in tax evasion schemes, including withholding noncompliance or other areas of noncompliance grouped by industry, occupation, or financial transactions, and other, e.g., return preparers, political contributions, corporate kickbacks, questionable Forms W–4.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records pertaining to individuals in projects and programs.

* * * * *

**RETRIEVABILITY:**

By taxpayers name and social security number or Document Locator Number.

* * * * *

**RETENTION AND DISPOSAL:**

* * * * *

W–4 paper case files and National Computer Center (NCC) magnetic tape records are destroyed two years after the cases have been inactive.

* * * * *

**RECORD SOURCE CATEGORIES:**

(1) Taxpayer's return, (2) taxpayer's books and records, (3) informants and third party information, (4) city, state government, (5) other federal agencies, (6) examinations of related taxpayers, and (7) taxpayer's employer.

* * * * *

Treasury/IRS 42.027 published on July 22, 1985 (50 FR 29861).

**SYSTEM NAME:**

Data on Foreign Corporations—Treasury/IRS.

**SYSTEM LOCATION:**

IRS Data Center, Detroit, Michigan; National Office, Examination and International, Washington, D.C.; District Offices; Regional Offices; Philadelphia Service Center. (See IRS Appendix A.)

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant

Commissioner (International), National Office. Officials maintaining the system—District Directors; Regional Commissioners; Assistant Commissioner (Examination) and Assistant Commissioner (International), National Office; Director, Data Center, Detroit, Michigan; Director, Returns Processing and Accounting Division, National Office. (See IRS Appendix A.)

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if the System of Records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the district director for each district whose records are to be searched, or to the directors, or Assistant Commissioner (International) in the case of records in the National Office. (See Appendix A for addresses.)

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in the System of Records may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the district director for each district whose records are to be accessed or contested, or to the directors, or Assistant Commissioner (International) in the case of records in the National Office. (See Appendix A for addresses.)

* * * * *

Treasury/IRS 42.029 published on July 22, 1985 (50 FR 29861).

**SYSTEM NAME:**

Audit Underreporter Case File. OP:EX—Treasury/IRS.

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Recipients of income who appear not to have declared on their income tax returns (Forms 1040, 1040A, and 1040EZ) all income paid to them in the tax year under study.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records maintained are taxpayer (i.e., payee) entity records containing payee name, address, taxpayer identification number, and other indicators relating to entity maintenance; and income records containing the types and amounts of income received/ reported, and information identifying the income payer.

* * * * *

**RECORD SOURCE CATEGORIES:**

Information returns filed by payers and Forms 1040, 1040A, and 1040EZ.

* * * * *

Treasury/IRS 42.030 published on July 22, 1985 (50 FR 29862).

**SYSTEM NAME:**

Discriminant Function File (DIF), OP:EX—Treasury/IRS.

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals whose Forms 1040 and 1040A have a DIF Score higher than a cutoff score determined by Examination and International, indicating high audit potential. The DIF Score is the computation of Audit potential, based on formulae prescribed by Examination.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Document Locator Number of the return, the Regional and District Offices of the taxpayer, the taxpayer's DIF Score and data from the individual's Income Tax Return needed to conduct an audit of his/her return.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Official prescribing policies and practices—Assistant Commissioner (Examination) and Assistant Commissioner (International). Officials maintaining the system—Directors, Internal Revenue Service Centers. (See IRS Appendix A.)

* * * * *

Treasury/IRS 44.003 published on July 22, 1985 (50 FR 29863).

**SYSTEM NAME:**

Appeals Case Data—Treasury/IRS.

* * * * *

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be searched.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in the system of records or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager for each office whose records are to be accessed.

* * * * *

Treasury/IRS 44.004 formerly 80.001 published on July 22, 1985 (50 FR 29880).

**SYSTEM NAME:**

Artist File—Treasury/IRS.

**SYSTEM LOCATION:**

Director, Appeals Division, National Office; Regional Director of Appeals. (See IRS Appendix A.)

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. These records and information in these records may be used: (1) To disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. (2) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation. (3) To disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit. (4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings. (5) To disclose information to foreign governments in accordance with formal or informal international agreements. (6) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. (7) To provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings. (8) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of

1978, 5 U.S.C. 7111 and 7114. (9) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Appeals Division, National Office; Regional Director of Appeals. (See IRS Appendix A.)

* * * * *

CONTESTING RECORD PROCEDURES:

Individuals seeking access to any record contained in the system of records to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. Address inquiries to the System Manager.

* * * * *

Treasury/IRS 44.005 formerly 80.002 published on July 22, 1985 (50 FR 29880).

SYSTEM NAME:

Expert Witness and Fee Appraiser Files—Treasury/IRS.

SYSTEM LOCATION:

Director, Appeals Division, National Office; Regional Director of Appeals. (See IRS Appendix A.)

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Appeals Division, National Office; Regional Director of Appeals. (See IRS Appendix A.)

* * * * *

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

* * * * *

Treasury/IRS 46.002 published on July 22, 1985 (50 FR 29863).

SYSTEM NAME:

Case Management and Time Reporting System, Criminal Investigation Division—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 46.003 published on July 22, 1985 (50 FR 29863).

SYSTEM NAME:

Confidential Informants, Criminal Investigation Division—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 46.016 published on July 22, 1985 (50 FR 29866).

SYSTEM NAME:

Secret Service Details, Criminal Investigation Division—Treasury/IRS.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

List of Criminal Investigation participants and correspondence between Criminal Investigation and Secret Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes.

* * * * *

Treasury/IRS 48.001 published on July 22, 1985 (50 FR 29867).

SYSTEM NAME:

Disclosure Records; Disclosure—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation, and in connection with requests for legal advice. Disclosure may be made during judicial processes, and as necessary to report apparent violations of law to appropriate law enforcement agencies. Disclosure of debtor information may be made to a Federal payor agency for purposes of salary and administrative offsets, to a consumer reporting agency to obtain commercial credit reports, and to a debt collection agency for debt collection services. Disclosure may be made to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains. Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Director, Office of Disclosure. Officials maintaining the system— Director, Office of Disclosure, National Office; Regional Commissioners, District Directors, Service Center Directors, or other official receiving or servicing requests for records. (See IRS Appendix A.)

* * * * *

RECORD SOURCE CATEGORIES:

Requests for disclosure, records being evaluated and processed for disclosure, and related information from other systems of records. This system may contain investigatory material compiled for law enforcement purposes whose sources need not be reported.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 48.008 published on July 22, 1985 (50 FR 29868).

SYSTEM NAME:

Defunct Special Service Staff File being retained because of Congressional directive, Disclosure—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This file is no longer being used by the Internal Revenue Service. The Special Service Staff was abolished August 13, 1973. Disclosure of information contained in this system of records may be made to the Department of Justice in connection with actual or potential litigation. Access to the system is

limited to Congressional Committees and individuals making Freedom of Information requests pertaining to themselves. Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Disclosure, National Office. (See IRS Appendix A.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may address inquiries to the Director, Office of Disclosure, National Office. (See IRS Appendix A for location.)

RECORD ACCESS PROCEDURES:

Individuals seeking access to any system of records may inquire in accordance with the instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Director, Office of Disclosure, National Office. (See IRS Appendix A for location.) In addition, this System may contain some records provided by other agencies which are exempt from the access and contest provisions of the Privacy Act as published in the Notices of Systems of Records for those agencies.

* * * * *

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Information from another agency's exempt system of records duplicated in this system of records retains the exempt status.

* * * * *

Treasury/IRS 49.001 published on July 22, 1985 (50 FR 29868).

SYSTEM NAME:

Collateral and Information Requests System—Treasury/IRS.

SYSTEM LOCATION:

The central files for this system are maintained at the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024. A corresponding system of records is separately maintained by the foreign posts located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Jidda, Saudi Arabia; (5) Johannesburg, Republic of South Africa; (6) Nassau, Bahamas; (7) London, England; (8) Manila, Philippines; (9) Mexico City, Mexico; (10) Ottawa, Canada; (11) Paris, France; (12) Rome, Italy; (13) Sao Paulo, Brazil; (14) Singapore; and (15) Tokyo, Japan. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

* * * * *

Treasury/IRS 49.002 published on July 22, 1985 (50 FR 29869).

SYSTEM NAME:

Competent Authority and Index Card—Microfilm Retrieval System—Treasury/IRS.

SYSTEM LOCATION:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

* * * * *

Treasury/IRS 49.003 published on July 22, 1985 (50 FR 29869).

SYSTEM NAME:

Financial Statements File—Treasury/IRS.

SYSTEM LOCATION:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

Individuals seekings to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries may be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Assistant Commissioner (International).

* * * * *

Treasury/IRS 49.007 published on July 22, 1985 (50 FR 29870).

SYSTEM NAME:

Overseas Compliance Projects System—Treasury/IRS.

SYSTEM LOCATION:

The central files for this system are maintained at the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024. A corresponding system of records is separately maintained by the foreign posts located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Jidda, Saudi Arabia; (5) Johannesburg, Republic of South Africa; (6) Nassau, Bahamas; (7) London, England; (8) Manila, Philippines; (9) Mexico City, Mexico; (10) Ottawa, Canada; (11) Paris, France; (12) Rome, Italy; (13) Sao Paulo, Brazil; (14) Singapore; and (15) Tokyo, Japan. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Office of the Assistant Commissioner (International).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant plaza SW., Fourth Floor, Washington, DC 20024.

* * * * *

Treasury/IRS 49.008 published on July 22, 1985 (50 FR 29870).

SYSTEM NAME:

Taxpayer Service Correspondence System—Treasury/IRS.

SYSTEM LOCATION:

This system is separately maintained by each one of the 15 overseas posts of the Office of the Assistant Commissioner (International) located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Jidda, Saudi Arabia; (5) Johannesburg, Republic of South Africa; (6) Kuala Nassau, Bahamas; (7) London, England; (8) Manila, Philippines; (9) Mexico City, Mexico; (10) Ottawa, Canada; (11) Paris, France; (12) Rome, Italy; (13) Sao Paulo, Brazil; (14) Singapore; and (15) Tokyo, Japan; as well as (16) Vancouver, Canada. Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence from taxpayers, foreign post personnel, and the Office of the Assistant Commissioner

(International) headquarters offices in Washington, DC.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Assistant Commissioner (International), 950 L'Enfant Plaza SW., Fourth Floor, Washington, DC 20024.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in the system of records may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Assistant Commissioner (International).

* * * * *

RECORD SOURCE CATEGORIES:

Taxpayers and the Office of the Assistant Commissioner (International) foreign posts and headquarter's offices.

* * * * *

Treasury/IRS 50.001 published on July 22, 1985 (50 FR 29871).

SYSTEM NAME:

Employee Plans/Exempt Organizations, Correspondence Control Record (Form 5961)—Treasury/IRS.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager.

* * * * *

Treasury/IRS 50.003 published on July 22, 1985 (50 FR 29871)

SYSTEM NAME:

Employee Plans/Exempt Organizations, Report of Significant Matters in Technical (M–5945)—Treasury/IRS.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the System Manager.

* * * * *

Treasury/IRS 60.001 published on July 22, 1985 (50 FR 29872).

SYSTEM NAME:

Assault and Threat Investigation Files, Inspection—Treasury/IRS.

* * * * *

SYSTEM LOCATION:

IRS National Office, Regional Inspectors' Offices, and the Federal Records Center, as well as offices of the District Directors.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

* * * * *

Treasury/IRS 60.002 published on July 22, 1985 (50 FR 29873).

SYSTEM NAME:

Bribery Investigation Files, Inspection—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

* * * * *

Treasury/IRS 60.003 published on July 22, 1985 (50 FR 29873)

SYSTEM NAME:

Conduct Investigation Files, Inspection—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

NOTIFICATION PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

* * * * *

Treasury/IRS 60.004 published on July 22, 1985 (50 FR 29874).

SYSTEM NAME:

Disclosure Investigation Files, Inspection—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

* * * * *

Treasury/IRS 60.005 published on July 22, 1985 (50 FR 29875).

SYSTEM NAME:

Enrollee Applicant Investigation Files, Inspection—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 60.006 published on July 22, 1985 (50 FR 29875).

SYSTEM NAME:

Enrollee Charge Investigation Files, Inspection—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

NOTIFICATION PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

* * * * *

Treasury/IRS 60.007 published on July 22, 1985 (50 FR 29876).

SYSTEM NAME:

Miscellaneous Information File, Inspection—Treasury/IRS.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the Internal Revenue Service; Tax Practitioners (Attorneys, Certified Public Accountants, Enrolled Persons, Return Preparers); alleged tax violators; persons whose actions or alleged actions indicated a threat to IRS employees, facilities, or the integrity of the tax system; confidential informants; and reputed numbers of the organized criminal element.

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

NOTIFICATION PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of notification and inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

* * * * *

Treasury/IRS 60.008 published on July 22, 1985 (50 FR 29877).

SYSTEM NAME:

Security, Background and Character Investigations Files, Inspection—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if the system contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to Assistant Commissioner (Inspection), National Office.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

* * * * *

Treasury/IRS 60.009 published on July 22, 1985 (50 FR 29878).

SYSTEM NAME:

Special Inquiry Investigation Files, Inspection—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

* * * * *

Treasury/IRS 60.010 published on July 22, 1985 (50 FR 29878).

SYSTEM NAME:

Tort Investigation Files, Inspection—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

NOTIFICATION PROCEDURES:

Individuals seeking to determine if their record is accessible may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the Assistant Commissioner (Inspection), National Office.

* * * * *

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

* * * * *

Treasury/IRS 70.001 published on July 22, 1985 (50 FR 29879).

SYSTEM NAME:

Individual Income Tax Returns, Statistics of Income—Treasury/IRS.

* * * * *

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 90.001 published on July 22, 1985 (50 FR 29882).

SYSTEM NAME:

Chief Counsel Criminal Tax Case Files. Each Regional Counsel Office, each District Counsel Office, and the National Office maintain one of these systems. The information in this notice applies to all 59 systems—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

NOTIFICATIONS PROCEDURES:

This systems of records may not be accessed for purposes of determining if the records pertain to a particular individual as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (j)(2).

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records as the records are exempt under 5 U.S.C. 552a(d)(5) and/or (j)(2).

* * * * *

Treasury/IRS 90.002 published on July 22, 1985 (50 FR 29883).

SYSTEM NAME:

Chief Counsel Disclosure Litigation Division Case Files—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.003 published on July 22, 1985 (50 FR 29883).

SYSTEM NAME:

Chief Counsel General Administrative Systems. Each of the 7 Regional Counsel Offices and 51 District Counsel Offices, each of the 9 Divisions in the National Office, the Office of the Chief Counsel, and the Office of the Deputy Chief Counsel, Associate Chief Counsels (Litigation, International and Technical) maintain a General Administrative System. This notice applies to all 72 of these systems—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(5) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.004 published on July 22, 1985 (50 FR 29884).

SYSTEM NAME:

Chief Counsel General Legal Services Case Files. Each of the seven Regional Counsel Offices and the National Office maintain a General Legal Services Case File System. The information in this notice applies to all eight systems—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(21) To provide information to the Office of Government Ethics in conflict of interest, conduct, financial statement reporting, and other ethical matters.

* * * * *

Treasury/IRS 90.005 published on July 22, 1985 (50 FR 29886).

SYSTEM NAME:

Chief Counsel General Litigation Case Files. Each Regional Counsel Office, each District Counsel Office, and the National Office maintain one of these systems. The information in this notice applies to all 59 systems—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(7) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.006 published on July 22, 1985 (50 FR 29887).

SYSTEM NAME:

Chief Counsel Interpretative Division Case Files—Treasury/IRS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

RETENTION AND DISPOSAL:

General Counsel Memorandums, Office Memorandums, and legal case and administrative files are retained

indefinitely in the National Office. Internal Control Records are generally disposed of when no longer useful.

* * * * *

Treasury/IRS 90.007 published on July 22, 1985 (50 FR 29888).

**SYSTEM NAME:**

Chief Counsel Legislation and Regulation Division Correspondence and Private Bill Files—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.009 published on July 22, 1985 (50 FR 29888).

**SYSTEM NAME:**

Chief Counsel Tax Litigation Case Files. Each Regional Counsel Office, each District Counsel Office, and the National Office maintain one of these systems. The information in this notice applies to all 59 systems—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.010 published on July 22, 1985 (50 FR 29889).

**SYSTEM NAME:**

Digest Room Files Containing Briefs, Legal Opinions, and Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(10) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

**RETENTION AND DISPOSAL:**

Briefs, legal opinions, and digests are retained indefinitely.

* * * * *

Treasury/IRS 90.011 published on July 22, 1985 (50 FR 29890).

**SYSTEM NAME:**

Employee Recruiting Files Maintained by the Operations Division—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.013 published on July 22, 1985 (50 FR 29891).

**SYSTEM NAME:**

Legal Case Files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Litigation), (International) and (Technical)—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.014 published on July 22, 1985 (50 FR 29891).

**SYSTEM NAME:**

Management Files Maintained by Operations Division and the Deputy Chief Counsel other than the Office of Personnel Management's Official Personnel Files—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.015 published on July 22, 1985 (50 FR 29892).

**SYSTEM NAME:**

Reference Records of the Library in the Office of Chief Counsel—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(3) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

(9) Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

* * * * *

Treasury/IRS 90.016 published on July 22, 1985 (50 FR 29893).

**SYSTEM NAME:**

Reports and Information Retrieval Activity Computer and Microfilm Records (Counsel/Appeals Tracking System)— Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of

civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS 90.017 formerly 80.003 published on July 22, 1985 (50 FR 29881).

**SYSTEM NAME:**

Correspondence Control and Records, Associate Chief Counsel (Technical)—Treasury/IRS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(4) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings.

* * * * *

Treasury/IRS—Appendix A published on July 22, 1985 (50 FR 29895–29897).

Inquiries under Treasury/IRS systems should be addressed to the office whose records are to be searched. The titles and addresses of the Systems Managers are as follows:

**National Office Internal Revenue Service**

Assistant to the Commissioner (Equal Opportunity)
Assistant to the Commissioner (Public Affairs)
Assistant Commissioner (Collection)
Assistant Commissioner (Computer Services)
Assistant Commissioner (Employee Plans and Exempt Organizations)
Assistant Commissioner (Inspection)
Assistant Commissioner (Planning, Finance and Research)
Assistant Commissioner (Human Resources)
Assistant Commissioner (Returns and Information Processing)
Assistant Commissioner (Criminal Investigation)
Assistant Commissioner (Examination)
Assistant Commissioner (International)
Director, Office of Disclosure

The address for all of the above Systems Managers with the exception of the Assistant Commissioner (International) noted below, is as follows: 1111 Constitution Avenue, NW., Washington, DC 20224, Assistant Commissioner (International), 950 L'Enfant Plaza, SW., Fourth Floor, Washington, DC 20024.

**Regional Offices Internal Revenue Service**

Central Region:
- Regional Commissioner, Internal Revenue Service, 550 Main Street, Cincinnati, Ohio 45202.
- District Director, Internal Revenue Service, 550 Main Street, Cincinnati, Ohio 45202.
- District Director, Internal Revenue Service, 1240 East 9th Street, Cleveland, Ohio 44199
- District Director, Internal Revenue Service, Rm. 2483, Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226.
- District Director, Internal Revenue Service, Federal Office Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204.
- District Director, Internal Revenue Service, U.S. Post Office Building, 601 West Broadway, Louisville, Kentucky 40202.
- District Director, Internal Revenue Service, 425 Juliana Street Parkersburg, West Virginia 26101.
- -Director, Internal Revenue Service Center, Central Region, 201 W. Second St., Covington, Kentucky 41019.

Mid-Atlantic Region:
- Regional Commissioner, Internal Revenue Service, 841 Chestnut Street, Philadelphia, Pennsylvania 19107.
- District Director, Internal Revenue Service, Federal Building, 31 Hopkins Plaza, Baltimore, Maryland 21201.
- District Director, Internal Revenue Service, 1501–970 Broad Street, Newark, New Jersey 07102.
- District Director, Internal Revenue Service, W.J. Green Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19106.
- District Director, Internal Revenue Service, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
- District Director, Internal Revenue Service, 400 North 8th Street, Richmond, Virginia 23240
- District Director, Internal Revenue Service, 844 King Street, Wilmington, Delaware 19801.
- Director, Internal Revenue Service Center, Mid-Atlantic Region, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19154.

Midwest Region:
- Regional Commissioner, Internal Revenue Service, One North Wacker Drive, Chicago, Illinois 60606.
- District Director, Internal Revenue Service, Federal Building, 115 Fourth Avenue SE., Aberdeen, South Dakota 57401.
- District Director, Internal Revenue Service, 230 South Dearborn Street, Chicago, Illinois 60604.
- District Director, Internal Revenue Service, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.
- District Director, Internal Revenue Service, Federal Building and Post Office, 653 Second Avenue, North, Fargo, North Dakota 58102.
- District Director, Internal Revenue Service, Federal Building, Second Floor, 301 South Park, Helena, Montana 59626–0016.
- District Director, Internal Revenue Service, Federal Building and Court House, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.
- District Director, Internal Revenue Service, Federal Office Building, 106 South 15th Street, Omaha, Nebraska 68102.
- District Director, Internal Revenue Service, U.S. Court and Custom House, 1114 Market Street, St. Louis, Missouri 63101.
- District Director, Internal Revenue Service, Federal Building and Court House, 316 North Robert Street, St. Paul, Minnesota 55101.
- District Director, Internal Revenue Service, Room 702, 320 West Washington St., Springfield, Illinois 62704.
- Director, Internal Revenue Service, Midwest Region, 2306 East Bannister Road, P.O. Box 24551, Kansas City, Missouri 64131.

North-Atlantic Region:
- Regional Commissioner, Internal Revenue Service, 90 Church Street, New York, New York 10007.
- District Director, Internal Revenue Service, 68 Sewall Street, Augusta, Maine 04330.
- District Director, Internal Revenue Service, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203.
- District Director, Internal Revenue Service, Leo W. O'Brien Federal Building, Clinton Avenue and North Pearl Street, Albany, New York 12207.
- District Director, Internal Revenue Service, 120 Church Street, New York, New York 10007.
- District Director, Internal Revenue Service, 35 Tillary Street, Brooklyn, New York 11201.
- District Director, Internal Revenue Service, 111 W. Huron Street, Buffalo, New York 14202.
- District Director, Internal Revenue Service, 11 Elmwood Avenue, Burlington, Vermont 05401.
- District Director, Internal Revenue Service, William R. Cotter Federal Building, (Stop 204), 135 High Street, Hartford, Connecticut 06103.
- District Director, Internal Revenue Service, Federal Building, 80 Daniel Street, Portsmouth, New Hampshire 03801.
- District Director, Internal Revenue Service, 380 Westminister Mall, Providence, Rhode Island 02903.
- Director, Internal Revenue Service Center, North-Atlantic Region, (Stop 100), 310 Lowell Street, Andover, Massachusetts 05501.
- Director, Internal Revenue Service Center, North-Atlantic Region, (Stop 100), 1040 Waverly Avenue, Holtsville, New York 11799.

Southeast Region:
- Regional Commissioner, Internal Revenue Service, P.O. Box 926, Room 600, Atlanta, Georgia 30370.
- District Director, Internal Revenue Service, 275 Peachtree Street NE., Atlanta, Georgia 30043.
- District Director, Internal Revenue Service, 500 22nd Street South, Birmingham, Alabama 35233.
- District Director, Internal Revenue Service, 1835 Assembly Street, Columbia, South Carolina 29201.
- District Director, Internal Revenue Service, 320 Federal Place, Greensboro, North Carolina 27401.
- District Director, Internal Revenue Service, Suite 504, 100 W. Capital Street, Jackson, Mississippi 39269.

District Director, Internal Revenue Service, Federal Office Building, 400 West Bay Street, Jacksonville, Florida 32202.
District Director, Internal Revenue Service, 801 Broadway, Nashville, Tennessee 37203.
District Director, Internal Revenue Service, 700 W. Capitol, Little Rock, Arkansas 72201.
District Director, Internal Revenue Service, (Stop 6), 500 Camp Street, New Orleans, Louisiana 70130.
District Director, Internal Revenue Service, One University Drive, Building B, Ft. Lauderdale, FL 33324.
Director, Internal Revenue Service Center, Southeast Region, 4800 Buford Highway, Chamblee, Georgia 30341.
Director, Internal Revenue Service Center, Southeast Region, 3131 Democrat Road, Memphis, Tennessee 38110.

Southwest Region:
Regional Commissioner, Internal Revenue Service, LB–70 Stop 1000 SWR, 7839 Churchill Way, Dallas, Texas 75251.
District Director, Internal Revenue Service, 517 Gold Avenue SW., Albuquerque, New Mexico 87101.
District Director, Internal Revenue Service, Stop 100D AUS, 300 E. 8th Street, Austin, Texas 78701.
District Director, Internal Revenue Service, 3223 Briarpark, Houston, Texas 77042.
District Director, Internal Revenue Service, 308 W. 21st Street, Cheyenne, Wyoming 82001.
District Director, Internal Revenue Service, Stop 1000 DAL, 1100 Commerce Street, Dallas, Texas 75242.
District Director, Internal Revenue Service, 1050 Seventeen Street, Denver, Colorado 80265.
District Director, Internal Revenue Service, 2120 N. Central Avenue, Phoenix, Arizona 85004.
District Director, Internal Revenue Service, 465 S. Fourth East Street, Salt Lake City, Utah 84111.
District Director, Internal Revenue Service, 200 N.W. Fourth Street, Oklahoma City, Oklahoma 73102.
District Director, Internal Revenue Service, 412 S. Main Street, Wichita, Kansas 67202.
Director, Internal Revenue Service Center, Southwest Region, 3651 S. Interregional Highway, Austin, Texas 73301.
Director, Internal Revenue Service Center, Western Region, 1160 W. 1200 South Street, Ogden, Utah 84201.

Western Region:
Regional Commissoner, Internal Revenue Service, 5th Floor, 1650 Mission Street, San Francisco, California 94103.
District Director, Internal Revenue Service, 949 East 36th Ave., Anchorage, Alaska 99508.
District Director, Internal Revenue Service, Box 041, 550 W. Fort Street, Boise, Idaho 83724.
District Director, Internal Revenue Service, PJKK Federal Bldg., 300 Ala Moana, Honolulu, Hawaii 96850.
District Director, Internal Revenue Service, 2400 Avila Road, Laguna Niguel, CA 92677.
District Director, Internal Revenue Service, 300 N. Los Angeles Street, Los Angeles, CA 90012.
District Director, Internal Revenue Service, 1220 S.W. Third Ave., Portland, Oregon 97204.
District Director, Internal Revenue Service, 300 Las Vegas Blvd., South, Las Vegas, Nevada 89101.
District Director, Internal Revenue Service, 2345 Fair Oaks Blvd., Sacramento, CA 95825.
District Director, Internal Revenue Service, Box 36020, 450 Golden Gate Avenue, San Francisco, CA 94102.
District Director, Internal Revenue Service, 55 S. Market Street, San Jose, CA 95113.
District Director, Internal Revenue Service, 915 Second Avenue, Seattle, Washington 98174.
Director, Internal Revenue Service Center, Western Region, 5045 E. Butler Avenue, Fresno, CA 93727.

**Addresses of Chief Counsel, Regional Counsel, District Counsel, and Regional Director of Appeals Offices**

National Office:
Appeals Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.
Operations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Criminal Tax Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Disclosure Litigation Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
General Legal Services Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
General Litigation Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Interpretative Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Tax Litigation Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Corporation Tax Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Individual Tax Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.
Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Litigation), (International), and (Technical), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Regional Counsel Offices
North-Atlantic Region:
Regional Counsel Office
Regional Counsel's Office, IRS, North-Atlantic Region, 26 Federal Plaza, 12th Floor, New York, New York 10278.
District Counsel Offices
District Counsel's Office, IRS, 26 Federal Plaza, 12th Floor, New York, New York 10278.
District Counsel's Office, IRS, Leo W. O'Brien Federal Building, Clinton Avenue and N. Pearl Street, Albany, New York 12207.
District Counsel's Office, IRS, 100 Summer Street, Room 1728, Boston, Massachusetts 02110.
District Counsel's Office, IRS, Brooklyn Office, 1000 Uniondale Avenue and Hempstead Turnpike, Uniondale, New York 11553.
District Counsel's Office, IRS, U.S. Court House, Room 304, 68 Court Street, Buffalo, New York 14202.
District Counsel's Office, IRS, 135 High Street, Room 259, Hartford, Connecticut 06103.
Regional Director of Appeals, 90 Church Street, New York, N.Y. 10007.

Mid-Atlantic Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Mid-Atlantic Region, 841 Chestnut Street, Room 360, Philadelphia, Pennsylvania 19107.
District Counsel Offices
District Counsel's Office, IRS, Room 10424, 600 Arch Street, Philadelphia, Pennsylvania 19106.
District Counsel's Office, IRS, Room 4100, 101 W. Lombard Street, Baltimore, Maryland 21201.
District Counsel's Office, IRS, Room 904, 970 Broad Street, Newark, New Jersey 07102.
District Counsel's Office, IRS, 726 Federal Building, Room 726, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
District Counsel's Office, IRS, Room 5215, 400 N. Eighth Street, Richmond, Virginia 23240.
District Counsel's Office, IRS, 422 Universal Building, North, 1875 Connecticut Avenue, NW., Washington, DC 20009.
Regional Director of Appeals, Room 360, 841 Chestnut St., Philadelphia, PA 19107.

Southeast Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Southeast Region, Room 830, 275 Peachtree Street, NE., Atlanta, Georgia 30043.
District Counsel Offices
District Counsel's Office, IRS, Room 850, 275 Peachtree Street, NE., Atlanta, Georgia 30043.
District Counsel's Office, IRS, Room 340, 500 22nd Street, South, Birmingham, Alabama 35233.

District Counsel's Office, IRS, Room 509, 320 Federal Place, Greensboro, North Carolina 27401.
District Counsel's Office, IRS, Box 35027, Federal Office Building, 400 West Bay Street, Room 564, Jacksonville, FL 32202.
District Counsel's Office, IRS, Room 1502, Federal Office Building, 51 SW First Avenue, Miami, Florida 33130.
District Counsel's Office, IRS, Room 703, 801 Broadway, Nashville, Tennessee 37203.
District Counsel's Office, IRS, Stop 18, Room 917, 500 Camp Street, New Orleans, Louisiana 70130.
Regional Director of Appeals, 625 Federal Office Building, 275 Peachtree Street, NE., Atlanta, GA 30043.

Central Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Room 7510, 550 Main Street, Cincinnati, Ohio 45202.
District Counsel Offices
District Counsel's Office, IRS, Room 7525, 550 Main Street, Cincinnati, Ohio 45202.
District Counsel's Office, IRS, Suite 810, One Cleveland Center, 1375 E. Ninth St., Cleveland, Ohio 44114.
District Counsel's Office, IRS, 1870 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226.
District Counsel's Office, IRS, 509 Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204.
District Counsel's Office, IRS, 579 Federal Office Building, 600 Federal Place, Louisville, Kentucky 40202.
Regional Director of Appeals, Room 7514, 550 Main Street, Cincinnati, Ohio 45202.

Midwest Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Kluczynski Federal Building, 230 South Dearborn Street, Room 3410, Chicago, Illinois 60604.
District Counsel Offices
District Counsel's Office, IRS, Room 1342, Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604.
District Counsel's Office, IRS, 439 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.
District Counsel's Office, IRS, Room 240, Federal Building, 301 S. Park Avenue, Helena, Montana 59626.
District Counsel's Office, IRS, 2700 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.
District Counsel's Office, IRS, 760 Henry Reuss Federal Plaza, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.
District Counsel's Office, IRS, 3101 Federal Building, 215 N. Fifteenth Street, Omaha, Nebraska 68102.
District Counsel's Office, IRS, Room 720, 320 W. Washington Street, Springfield, Illinois 62701.
District Counsel's Office, IRS (3rd Floor), Chouteau Center Building, 133 S. Eleventh Street, St. Louis, Missouri 63102.
District Counsel's Office, IRS, 572 Federal Building and U.S. Court House, 316 N. Robert Street, St. Paul, Minnesota 55101.
Regional Director of Appeals, 230 N. Dearborn, 29th Floor, Room 2972, Chicago, Illinois 60604.

Southwest Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Southwest Region, LB–81, Stop 2000 SWR, 7839 Churchill Way, Dallas, Texas 75251.
District Counsel Offices
District Counsel's Office, IRS, Room 12A24, Stop 2000 DAL, 1100 Commerce St., Dallas, TX 75242.
District Counsel's Office, IRS, 20th Floor, 1050 Seventeenth Street, Denver, Colorado 80265.
District Counsel's Office, IRS, Suite 350, 10850 Richmond Avenue, Houston, Texas 77042–4775.
District Counsel's Office, IRS, 200 NW. Fourth Street, Oklahoma City, Oklahoma 73102.
District Counsel's Office, IRS, Room 784, Stop 2000 AUS, 300 E. 8th Street, Austin, Texas 78701.
District Counsel's Office, Suite 1500, 3225 N. Central Avenue, Phoenix, Arizona 85012.
District Counsel, Room 1311, 125 S. State Street, Salt Lake City, Utah 84138.
Regional Director of Appeals, LB–70, Stop 8000 SWR, 7839 Churchill Way, Dallas, TX 75251.

Western Region:
Regional Counsel Office
Regional Counsel's Office, IRS, Western Region, 5th Floor, 1650 Mission Street, San Francisco, CA 94103.
District Counsel Offices
District Counsel's Office, IRS, 84 W. Santa Clara Street, Room 300, San Jose, CA 95113.
District Counsel's Office, IRS, 801 I Street, Room 204, Sacramento, CA 95814.
District Counsel's Office, IRS, Room 607, 949 E. 36th Avenue, Anchorage, Alaska 99508.
District Counsel's Office, IRS, Box 024, 550 W. Fort Street, Boise, Idaho 83724.
District Counsel's Office, P.O. Box C–15, Laguna Niguel, CA 92677.
District Counsel's Office, IRS, 3018 Federal Building, 300 N. Los Angeles Street, Los Angeles, CA 90012.
District Counsel's Office, IRS, 810 Crown Plaza, 1500 SW. First Avenue, Portland, Oregon 97201.
District Counsel's Office, IRS, 550 E. Charleston Boulevard, Reno, Nevada 89104.
District Counsel's Office, IRS, Room 2N16, U.S. Courthouse, 940 Front Street, San Diego, CA 92189.
District Counsel's Office, IRS, Room 504, 160 Spear Street, San Francisco, CA 94105.
District Counsel's Office, IRS, 2710 Federal Building, 915 Second Avenue, Seattle, Washington 98174.
District Counsel's Office, IRS, 7119 PJKK Federal Building, 300 Ala Moana, Honolulu, HI 96850.
Regional Director of Appeals, 5th Floor, 1650 Mission Street, San Francisco, CA 94103.

[FR Doc. 87–7673 Filed 4–7–87; 8:45 am]
BILLING CODE 4830–01–M

## UNITED STATES INFORMATION AGENCY

### Cultural Property Advisory Committee; Meeting

The Cutural Property Advisory Committee will conduct a meeting in Room 840, 301 4th Street SW., Washington, DC on April 21–22, 1987.

The meeting will be closed to the public in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. 552 App. 2), the Government in the Sunshine Act (U.S.D. 552b), and the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq.). The session will be closed because the discussion will involve investigation techniques and information the premature disclosure of which would be likely to frustrate significantly implementation of proposed actions and policies. Disclosure of information at this time identifying specific cultural property is likely to frustrate the imposition of import restrictions on such property. For this reason, the Government of El Salvador has requested that the information be held in confidence. Also, the Committee will discuss recommendations to the President as to appropriate U.S. action regarding a request from the Government of El Salvador for a U.S. cultural property agreement with El Salvador under the terms of the Cultural Property Implementation Act. (5 U.S.C. 552b(c)(1), 5 U.S.C. 552b(c)(2), 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605).

Dated: April 1, 1987.

**Marvin L. Stone,**

*Acting Director, United States Information Agency.*

[FR Doc. 87–7691 Filed 4–7–87; 8:45 am]
BILLING CODE 8230–01–M

### Federal Register Announcement of Receipt of Cultural Property Request From the Government of El Salvador

Pursuant to section 303(f)(1) of the Cultural Property Implementation Act (19 U.S.C. 2602(f)(1)), notice is hereby given that the United States Government is in receipt of a request under section 303(a)(3) from the Government of El Salvador, a State Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The request from El Salvador is for U.S. import restrictions on certain endangered archaeological material to

assist El Salvador in protecting its cultural patrimony.

Dated: April, 1987.

**Marvin L. Stone,**

*Acting Director, United States Information Agency.*

[FR Doc. 87-7692 Filed 4-7-87; 8:45 am]

BILLING CODE 8230-01-M

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration

**ACTION:** Notice

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503 (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 2, 1987.

By direction of the Administration.

**David A. Cox,**

*Associate Deputy Administrator for Management.*

**Reinstatement**

1. Department of Medicine and Surgery
2. Application for Medical Benefits for Dependents or Survivors—CHAMPVA
3. VA Form 10-10d
4. Legal eligibility to obtain medical care under CHAMPVA is determined by information provided by dependents and survivors of a veteran who has a total service-connected disability or who died as a result of that disability.
5. One time
6. Individuals or households
7. 9,600 responses
8. 787 hours
9. Not applicable

[FR Doc. 87-7770 Filed 4-7-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 67
Wednesday, April 8, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Change in Subject Matter of Agency Meeting

Pursaunt to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, March 31, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointix), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of a recommendation to: (1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of assets of and the assumption of the liability to pay deposits made in The First National Bank of Herington, Herington, Kansas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 2,1987, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type of transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 3, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87-7872 Filed 4-6-87; 12:09 pm]

BILLING CODE 6714-01-M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**TIME AND DATE:** 11:30 a.m., Friday, April 3, 1987.

**PLACE:** Room 600, 1730 K Street NW., Washington, DC.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *Texas Utilities Generating Company.* Docket No. CENT 86-119. (Issues include consideration of the Secretary's motion to stay the proceedings and the Secretary's petition for interlocutory review).

* * * * *

**TIME AND DATE:** 10:00 a.m., Monday, April 6, 1987.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will continue their consideration of:

1. *Texas Utilities Generating Company.* Docket No. CENT 86-119. (Issues considered are the same as above).

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible.

**CONTACT PERSON, FOR MORE INFORMATION:** Jean Ellen (202) 653-5629.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 87-7868 Filed 4-6-87; 12:01 pm]

BILLING CODE 6735-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, April 13, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.
2. Request by the General Accounting Office for Board comment on a draft report regarding supervision of country risk and international lending.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 6, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7825 Filed 4-6-87; 10:34 am]

BILLING CODE 6210-01-M

**NATIONAL CREDIT UNION ADMINISTRATION**

Notice of Change in Subject of Meeting

The following item has been deleted from a previously announced open meeting (52 FR 10850, Friday, April 3, 1987) of the National Credit Union Administration on April 9, 1987, and tentatively rescheduled for consideration at the Board's May 8, 1987, open meeting.

Central Liquidity Facility Investment Policies.

Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Memorandum of Understanding Between National Association State Credit Union Supervisors (NASCUS) and National Credit Union Administration (NCUA).
6. Proposed Rule: Part 705, NCUA Rules and Regulations, Community Development Credit Union Program.
7. Final Rule: Amendments to Part 708, NCUA Rules and Regulations, involving mergers of federally-insured credit unions and voluntary termination or conversion of Federal share insurance.
8. Final Rule: Amendments to Sections 701.21 and 741, NCUA Rules and Regulations, Member Business Loans by Federally-Insured Credit Unions.

The meeting is scheduled for 2:00 p.m., April 9, 1987, at the Biloxi Hilton, Biloxi, MS.

**FOR MORE INFORMATION CONTACT:** Becky Baker, Acting Secretary of the Board, Telephone (202) 357–1100.

**Becky Baker,**

*Acting Secretary of the Board.*

[FR Doc. 87–7926 Filed 4–6–87; 3:42 pm]

BILLING CODE 7535–01–M

---

**NATIONAL TRANSPORTATION SAFETY BOARD**

**TIME AND DATE:** 9:00 a.m., Tuesday, April 14, 1987.

**PLACE:** NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

**STATUS:** The first two items will be open to the public. The last three items will be closed under Exemption 10 of the Government in the Sunshine Act.

**MATTERS TO BE CONSIDERED:**

1. *Railroad Accident Report:* Rear-End Collision of Two Greater Cleveland Regional Transit Authority Red Line Rail Rapid Transit Authority Trains, Cleveland, Ohio, July 10, 1985.
2. *Highway Accident Report:* Schoolbus Loss of Control and Collision with Sign Pillar, U.S. Highway 70 near Lucas and Hunt Road, St. Louis County, Missouri, November 11, 1985.
3. *Opinion and Order:* Commandant V. Lyons, Docket ME–125; disposition of seaman's appeal.
4. *Opinion and Order:* Administrator V. Arroyo, Docket SE–7131, disposition of the respondent's appeal.
5. *Opinion and Order:* Administrator V. Ospina, Docket SE–6901; disposition of the appeals of each party.

**FOR MORE INFORMATION, CONTACT:** Ray Smith (202) 382–6525.

Dated: April 3, 1987.

**Ray Smith,**

*Federal Register Liaison Officer.*

[FR Doc. 87–7818 Filed 4–6–87; 9:17 am]

BILLING CODE 7533–01–M

---

**INTERNATIONAL TRADE COMMISSION**

**[USITC SE–87–14]**

**TIME AND DATE:** Monday, April 13, 1987 at 2:30 p.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731–TA–326 (Final) (Frozen Concentrated Orange Juice from Brazil)—briefing and vote.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 523–0161.

Dated: April 1, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–7796 Filed 4–3–87; 4:22 pm]

BILLING CODE 7020–02–M

# Corrections

Federal Register
Vol. 52, No. 67
Wednesday, April 8, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ORE-03587-F, ORE-012712, ORE-013107, ORE-017506; ORE-2945, ORE-5708, OR-7878; OR-943-07-4220-11: GP-07-118]**

### Oregon; Proposed Continuation of Withdrawals

*Correction*

In notice document 87-5767, beginning on page 8535, in the issue of Wednesday, March 18, 1987, make the following corrections:

1. On page 8536, in the first column, in item 7, in the sixth line, "northwest" should read "northeast".

2. On the same page, in the first column, in the fourth line from the bottom, after "determine" insert "whether".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ORE-03468, ORE-03588-A, ORE-011667-A) (ORE-015246, OR 1579) OR-943-07-4220-11: GP-07-121)]**

### Oregon; Proposed Continuation of Withdrawals

*Correction*

In notice document 87-5769, appearing on page 8537, in the issue of Wednesday, March 18, 1987, make the following correction:

In the third column, in the second complete paragraph, in the sixth line, after "present" insert "their".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Meeting

*Correction*

In notice document 87-7237 appearing on page 10665 in the issue of Thursday, April 2, 1987, make the following correction:

In the second column, in the first complete paragraph, in the third line, the fee for registration by April 24, 1987, should read "$125.00".

BILLING CODE 1505-01-D

BEST COPY AVAILABLE

L
2
S
7
P
87
M I

Federal Register

Wednesday
April 8, 1987

Part II

# Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3162-7]

## Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Standards of performance for volatile organic liquid (VOL) storage vessels (including petroleum liquid storage vessels) were proposed in the **Federal Register** on July 23, 1984 (49 FR 29698). That notice included revisions to the priority list to include VOL storage vessels; revisions to the standards of performance for petroleum liquid storage vessels constructed after June 11, 1973, and prior to May 19, 1978 (38 FR 15406); and revisions to the standards of performance for petroleum liquid storage vessels constructed after May 18, 1978 (45 FR 23374), and prior to July 23, 1984. This action promulgates those revisions and the standards of performance for VOL storage vessels (including petroleum liquid storage vessels). These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that synthetic organic chemical manufacturing industry and VOL storage vessels and handling equipment cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed VOL storage vessels to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

**DATE:** Effective April 8, 1987.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

### Incorporation by Reference

The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the **Federal Register** as of April 8, 1987.

**ADDRESSES:** *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels)—Background Information for Promulgated Standards" (EPA–450/3–81–003b). The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement that summarizes the impacts of the standards.

*Docket:* A docket, number A–80–51, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

**SUPPLEMENTARY INFORMATION:**

### I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> . . . application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to new, modified, or reconstructed storage vessels, regardless of location, with a capacity greater than or equal to 40 cubic meters ($m^3$) (≅10,000 gallons [gal]) and storing a VOL from which volatile organic compounds (VOC's) can be emitted to the atmosphere except for vessels specifically exempted from the standards in § 60.110b(d).

The standards requires that new, modified, or reconstructed storage vessels, regardless of location, with (1) a capacity greater than or equal to 151 $m^3$ (≅40,000 gal) and storing a VOL with a maximum true vapor pressure greater than or equal to 5.2 kPa (≅0.75 psia) but less than 76.6 kPa (≅11.1 psia) or (2) with a capacity greater than or equal to 75 $m^3$ (≅20,000 gal) but less than 151 $m^3$ (≅40,000 gal) and storing a VOL with a maximum true vapor pressure greater than or equal to 27.6 kPa (≅4.0 psia) but less than 76.6 kPa (≅11.1 psia) be equipped with:

1. A fixed roof in conjunction with an internal floating roof equipped with a liquid-mounted or mechanical shoe primary seal, either flexible fabric sleeve seals on pipe columns or gasketed sliding covers on built-up or pipe columns, slit fabric membranes or sample wells, and gasketed covers on roof fittings; or

2. An external floating roof equipped with a liquid-mounted or mechanical shoe primary seal and a continuous rim-mounted secondary seal, with both seals meeting certain minimum gap requirements, and gasketed covers on roof fittings; or

3. A closed vent system and a 95 percent effective control device. Alternative means of emission limitation may be approved by the Administrator after notice and an opportunity for a public hearing.

The standards require that each new, modified, or reconstructed storage vessel, regardless of location, with a capacity greater than or equal to 75 $m^3$ (≅20,000 gal) and storing a VOL with a maximum true vapor pressure greater than or equal to 76.6 kPa (≅11.1 psia) be equipped with a closed vent system and 95 percent effective control device.

To determine applicability, the standards require that the owner or operator of each new, modified, or reconstructed storage vessel with a capacity greater than or equal to 40 $m^3$ (≅10,000 gal) and storing a VOL maintain a record of the capacity of the storage vessel. The standards also require that the owner or operator of each new, modified, or reconstructed storage vessel with (1) a capacity greater than or equal to 75 $m^3$ (≅20,000 gal) but less than 151 $m^3$ (≅40,000 gal) and storing a VOL with a maximum true vapor pressure greater than or equal to 15.0 kPa (≅2.2 psia) but less than 27.6 kPa (≅4.0 psia) or with (2) a capacity greater than or equal to 151 $m^3$ (≅40,000 gal) and storing a VOL with a maximum true vapor pressure greater than or

equal to 3.5 kPa (≅0.51 psia) but less than 5.2 kPa (≅0.75 psia) maintain a record of maximum true vapor pressure of the VOL stored.

*Standards for Internal Floating Roof Vessels.* The standards for internal floating roof vessels (IFR's) have additional requirements that are not in the previous petroleum liquid storage vessel new source performance standards (NSPS); these include a liquid-mounted primary seal, gasketed fittings, and either flexible fabric sleeve seals on pipe columns or gasketed sliding covers on built-up or pipe columns. The new requirements do not apply retroactively to petroleum liquid storage vessels already covered by Subparts K or Ka; only vessels on which construction, modification, or reconstruction commences after July 23, 1984, are subject to the new requirements.

The owner or operator of each IFR subject to these standards is required to inspect the internal floating roof and seals to ensure that the equipment is maintained and operated properly. The owner or operator is required to inspect the floating roof and seals prior to filling the vessel with VOL to ensure that there are no holes in the internal floating roof and that there are no holes, tears, or other openings in the seals. Every 12 months thereafter, the owner or operator is required to inspect visually the internal floating roof and primary seal from the fixed roof. If there are holes in the internal floating roof or if VOL is accumulated on the roof, the owner or operator would have the option of repairing the control equipment within 45 days or emptying the storage vessel within 45 days. At least once every 10 years, the owner or operator is required to empty the storage vessel and to inspect the internal floating roof, the primary seal, and the secondary seal, if one exists. The owner or operator has the option of conducting an internal inspection of the internal floating roof at least once every 5 years in place of conducting an annual visual inspection if a double-seal (primary and secondary) system has been installed. In any case, the standards require that all defects in the control equipment be repaired before the vessel is refilled.

*Standards for External Floating Roof Vessels.* The requirements of the standards for external floating roof vessels (EFR's) are identical to the requirements in the previous petroleum liquid storage vessel standards except that the type of primary seal is restricted to liquid-mounted or mechanical shoe seals, that gasketed covers are required for roof fittings, and that a continuous rim-mounted secondary seal is required.

The owner or operator of each EFR subject to these standards is required to inspect the seals prior to filling the vessel with VOL to ensure that there are no holes, tears, or other openings in the seals. Measurements of gaps between the seal and the vessel wall for both primary and secondary seals are required for EFR's to ensure that the equipment is maintained and operated properly. The owner or operator is required to measure the gaps in both the primary and secondary seals within 60 days of introducing VOL into the vessel. Every 12 months thereafter, the owner or operator is required to perform secondary seal gap measurements. At least once every 5 years, the owner or operator must perform primary seal gap measurements. Measured gaps that exceed specified limitations must either be repaired within 45 days or the storage vessel must be emptied within that time.

The reporting and recordkeeping provisions of Subpart Ka are amended to be consistent with the provisions of Subpart Kb, which require that reports be made only when the measured gaps exceed the specified limitations. These reports shall be submitted to EPA within 30 days of the date of the report. Otherwise, records of gap measurements are kept by the owner or operator.

*Standards for Closed Vent Systems and Control Devices.* The owner or operator of each affected facility equipped with a closed vent system designed to duct all emissions to a 95 percent effective control device is required to submit to the Administrator the system design specifications and an operation and maintenance plan. The owner or operator is required to operate, maintain, and monitor the system in accordance with the plans submitted to the Administrator.

*Selection of Format for the Standards.* Section 111 of the Clean Air Act requires that an emission standard be developed whenever it is feasible. Section 111(h) states that "if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard or combination thereof . . . ." The term "not feasible" is applicable if the emissions cannot be captured and vented through a vent or stack designed for that purpose or if the application of a measurement methodology is not practicable because of technological or economic limitations.

Determining compliance with an emission standard for storage vessels would require the measurement of emissions from each storage vessel; therefore, the emissions would have to be vented in a manner that would allow the measurement of pollutant concentration and flow rates. Internal and external floating roof vessels typically do not have a conveyance designed to capture the emissions or a stack or vent through which the emissions pass to the atmosphere, nor is it practical to design such a capture system for these vessels. Therefore, the Administrator concluded that a performance standard is not feasible for either IFR's or EFR's.

A performance standard was also considered for closed vent systems and control devices. A standard based on a mass emission limitation was determined to be infeasible because a mass emission limitation value cannot be selected that would be achievable in the worst-case situation (i.e., large vessel capacity, high vapor pressure, and high utilization rate) and that, at the same time, would prevent the construction of closed vent systems and control devices that are less effective than BDT. A standard based on reduction efficiency was also determined to be infeasible. Emissions from storage vessels are variable and are often too low to measure. Total emissions from vessels have not been measured, and to do so would require that the operation of the vessel be strictly controlled during the testing period. Because of methodology problems, it may not be possible to measure simultaneously both the flow rate and the concentration. Thus, the accuracy of the measurements may be in doubt. For these reasons, it was concluded that it was impracticable to measure the emissions exiting the vessel or captured by the control system. Therefore, it was concluded that reduction efficiency standards are not feasible for closed vent systems and control devices.

A "design, equipment, work practice, or operational standard or combination thereof" was established. The equipment that comprises BDT for vessels storing affected liquids with vapor pressures less than 76.6 kPa (≅11.1 psia) consists of an internal floating roof with a liquid-mounted or mechanical shoe primary seal and controlled fittings or an external floating roof with a liquid-mounted or mechanical shoe primary seal, a continuous rim-mounted secondary seal, and gasketed fittings. Operational and work practice requirements, which

consist of inspection and repair requirements, are necessary to ensure the continued integrity of the control equipment. Therefore, the Administrator concluded that the format of the standards for these vessels should include a combination of a design, equipment, work practice, and operational standards.

A "design, equipment, work practice, or operational standard or combination thereof" was also established for storage vessels equipped with closed vent systems and control devices. A reduction efficiency design standard can account for the wide variation in emission and flow rates being vented from the vessel, and it would require the use of closed vent systems and 95 percent effective control devices on all vessels equipped with these controls. Operational requirements, which consist, among other things, of inspection, repair, and work practice requirements, are necessary to ensure the proper operation and integrity of control equipment meeting a reduction efficiency design standard. Therefore, the Administrator concluded that the format of the standards for storage vessels equipped with closed vent systems and control devices should include a combination of a design, equipment, work practice, and operational standards.

## II. Environmental Impacts

There has been no change in the environmental impacts since proposal. The promulgated standards would reduce the national VOC emissions from new, modified, and reconstructed storage vessels by about 31,100 megagrams (Mg) (34,300 tons) in 1988. The standards reduce the national VOC emissions from storage vessels with no adverse impacts on other aspects of the environment or on energy requirements.

## III. Energy Impacts

There has been no change in the energy impacts since proposal. The control technologies that are the bases for the regulatory alternatives do not increase the power or energy requirements of VOL storage vessels. Therefore, no energy impacts are attributed to the standards.

## IV. Cost Impacts

The total nationwide capital cost for affected facilities constructed through the fifth year of implementation to comply with the proposed standards has increased to $44.4 million from the nationwide capital cost of $15.6 million estimated at the time of proposal. The annualized cost for a typical plant controlled by the standards has increased from $2,350 to $3,200, and the initial capital cost has increased from $10,800 to $14,100. Since proposal, the cost of the liquid-mounted primary seal has been revised upward to $98.40/meter from $2.60/meter, and the expected life of the seals has been revised downward from 20 years to 10 years. The cost of installing fitting controls has also been revised. However, the standards still result in a net annualized credit in the fifth year (1988) due to the retention of liquids that would otherwise be lost.

## V. Economic Impact

As discussed above, the standards result in a net annualized credit in the fifth year. For this reason, no price increases or other adverse economic impacts attributable to implementation of the standards are expected.

In addition to economic impacts, the cost effectiveness of alternative standards also was evaluated in order to determine the least costly way to reduce emissions and to assure that the controls required by this rule are reasonable relative to other regulations. In this case, the promulgated standards would reduce the operating costs of VOL storage vessels and produce a net annualized credit in the fifth year. Additional details can be found in the BID.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the proposed standards ("VOC Emissions From Volatile Organic Liquid Storage Tanks—Background Information for Proposed Standards" [EPA–450/3–81–003a]).

## VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (45 FR 73133) (November 4, 1980) of a meeting of the National Air Pollution Control Techniques Advisory Committee to dicuss the standards for VOL storage vessels recommended for proposal. This meeting was held on December 2, 1980. The meeting was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal.

The proposed standards were published in the **Federal Register** on July 23, 1984 (49 FR 29698). The preamble to the proposed standards discussed the availability of the BID ("VOC Emissions From Volatile Organic Liquid Storage Tanks—Background Information for Proposed Standards" [EPA–450/3–81–003a]), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

The opportunity for interested persons to present data, views, or arguments concerning the proposed standards at a public hearing was provided. However, there were no requests to hold such a hearing, and, therefore, no hearing was held.

The public comment period was from July 23, 1984, to October 2, 1984. Twenty-three comment letters were received during the comment period concerning issues relative to the proposed standards of performance for VOL storage vessels. One late comment was also received. The comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

## VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, Federal and State agencies, and trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the promulgation BID serves as the basis for revisions that have been made to the standards between proposal and promulgation. In addition, several clarifications have been made to the standards. The changes involve clarification of procedural matters such as the length of time allowed to operators or owners of storage vessels to submit reports to the Agency regarding vessels in noncompliance, specific notification requirements when unplanned inspections occur, and the procedures followed by the Administrator in considering requests for permission to use alternate means of emission limitation.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Selection of Affected Facility; Emission Control Technology; and Reporting, Recordkeeping, and Inspection Requirements.

### *Selection of Affected Facility*

Commenters requested that the vapor pressure and tank size cutoffs be maintained so that consistency with the existing regulations and with State implementation plans (SIP's) is

maintained at the levels described in Subparts K and Ka (10.4 kPa [≅1.5 psia] and 151 $m^3$ [≅40,000 gal]).

Section 111 requires EPA to set NSPS that reflect BDT. The EPA has identified BDT for classes of tanks covered by this standard and is, therefore, promulgating this NSPS reflecting BDT. Consistency with some SIP's or the previous standards (K and Ka) is not germane.

Commenters stated that no data are presented that show a significant reduction in emissions from vessels storing liquids with true vapor pressures between 3.5 and 10.4 kPa (0.51 and 1.5 psia) or that show that emissions from these vessels contribute to ozone formation. One commenter maintained that control of vessels storing liquids having vapor pressures between 3.5 and 10.4 kPa (0.51 and 1.5 psia) would not contribute greatly to the reduction in emissions and that such vessels are less cost effective to control than vessels storing liquids with vapor pressures above 10.4 kPa. Another commenter said that the emission reduction attributed to vessels of this size class is overstated at "for-hire" terminals because of the low turnover rate (approximately 5 per year) on these vessels. This commenter suggested that IFR's average at least 10 annual turnovers and fixed roof vessels average at least 50 annual turnovers before becoming subject to the control requirement.

The Agency reevaluated the cost effectiveness of controlling emissions from vessels storing VOL's in this vapor pressure range. The Agency recognizes that there will be variations in cost-effectiveness values within a class. In particular, certain subclasses of vessels (for example, vessels storing low vapor pressure liquids) may have unreasonable cost-effectiveness values, particularly when combined with other storage parameters such as low annual turnovers. Therefore, the Agency has limited the scope of the standards to preclude some of those vessels storing low vapor pressure chemicals that may have unreasonable cost-effectiveness values. This has been done by changing the vapor pressure cutoff from 3.5 to 5.2 kPa (0.51 to 0.75 psia). While the exact number of vessels excluded by the revision of the vapor pressure cutoff is not known, the change in emission reduction is small.

It should be noted that cost effectiveness is not a measure of the economic impact of the standards to individual owners. Rather, it is a measure of the overall cost efficiency for various classes of sources subject to the standards. Because it is practical to do so without affecting the objectivity and enforceability of the standards, the Agency has limited the scope of the standards to preclude some of the vessels which have unreasonable cost-effectiveness values. Nevertheless, variation in cost-effectiveness values among individual facilities does remain. This is expected and is not unreasonable.

Furthermore, these cost-effectiveness estimates do not reflect the indirect environmental benefits of these standards. Emissions from storage of some potentially toxic chemicals will be controlled under these standards. It was not possible to quantify these benefits in this case; nonetheless, the existence of these benefits, in light of the difficulty of making additional distinctions among classes of tanks, was a factor in the Agency's determination that the cost effectiveness of the standards is reasonable.

The Agency also considered an exemption based on turnovers. The Agency evaluated the cost effectiveness of BDT controls for a typical chemical industry tank (a volume of 606 $m^3$ [160,000 gal], diameter and height of 9.2 m [30 ft], and a stored liquid vapor pressure of 6.9 kPa [1.0 psia]). Tanks with this volume associated with the chemical industry typically turn over 60 times per year. However, the analysis was conducted assuming 10 turnovers per year to evaluate the cost effectiveness of controls at a low turnover rate. The cost effectiveness of BDT is about $1,140/Mg for this case.

The Agency's analysis of tanks larger than 151 $m^3$ (40,000 gal) was based on an annual turnover rate of 50. Because the number of turnovers does play a role in the cost effectiveness of BDT controls for fixed roof tanks, the Agency examined the impact on the cost effectiveness of BDT controls of low turnover rates in this vapor pressure range (3.5 to 10.4 kPa). As the number of turnovers decreases, fixed roof tank emissions will decrease; the emission reduction obtained by BDT will decrease; and, therefore, BDT will become less cost effective.

The average volume of a tank at a "for-hire" terminal is about 3,300 $m^3$ (871,000 gal). The emission reductions obtained by constructing a BDT internal floating roof tank in place of a fixed roof tank are about 7.2 Mg/yr and 5.3 Mg/yr at 5 and 2.5 turnovers, respectively; and the associated cost-effectiveness values are $520/Mg rounded and $870/Mg rounded at 5 and 2.5 turnovers, respectively.

An exemption based on annual turnovers is not possible without affecting the objectivity and enforceability of the standards. The number of turnovers that any vessel storing VOC's undergoes is not constant from year to year and cannot be predicted with certainty at the time the vessel is built or reconstructed. As such, any standards designed to exempt individual vessels that may have low turnover rates would be impractical both from an enforcement perspective and from the owner's perspective.

The Agency has concluded that, even in cases of low turnover rates, the control of vessels storing liquids with vapor pressures between 5.2 and 10.4 kPa (0.75 and 1.5 psia) is reasonable. As discussed above, a cutoff based on turnovers is not practical even for those instances where cost-effectiveness values are high. Therefore, because the overall cost of the standards produces a net credit and because an exemption for the subclass of low turnover vessels is not practical, no changes based on turnovers were made to the proposed cutoffs in these final standards. However, the final standards will reflect the change in vapor pressure cutoff.

The emission reduction achieved between 3.5 and 10.4 kPa (0.75 and 1.5 psia) cannot be quantified. However, the cost effectiveness of typical tanks in this vapor pressure range is reasonable. Also, the overall emission reduction of the standards is 31,000 Mg (34,300 tons) and results in a net annual credit. Therefore, this cutoff is reasonable.

Commenters also requested that EPA reevaluate the inclusion of small volume (75– to 151-$m^3$ [20,000- to 40,000-gal]) vessels by using a range of annual turnovers because at low turnover rates (fewer than 10 per year) controls for these vessels are not cost effective. Another commenter said that the turnover rate for 75– 10 151-$m^3$ (20,000- to 40,000-gal) vessels in the for-hire terminal industry is as low as 2.5 to 5 times per year. This commenter said that EPA's selection of higher turnover rates results in overstated overall emission reduction and understated cost-effectiveness values.

The Agency examined the possibility of significant numbers of small volume (75- to 151-$m^3$ [20,000- to 40,000-gal]), low tunover vessels being located at terminals. While some petroleum products such as gasoline meet the small volume vapor pressure cutoff (27.6 kPa [4 psia]), these products are typically stored in much larger tanks. In the chemical industry, only 0.3 percent of total storage volume is shipped and, thereby, available for storage at for-hire terminals. Of this volume shipped, less than 13 percent consists of liquids in the higher vapor pressure range (27.6 to 76.6 kPa [4 to 11.1 psia]) that would be affected under the standards in this size

range. Therefore, the Agency considers it unlikely that a significant number of storage vessels in this size range would be affected by the standards. However, the Agency examined the cost effectiveness of BDT controls in a 113-$m^3$ (30,000-gal) tank for four specific liquids stores at terminals and at two turnover rates (5 and 10 per year). The cost effectiveness at 5 turnovers annually ranges from $920/Mg to $2,570/Mg and averaged $1,500/Mg. The cost effectiveness at 10 turnovers annually ranged from a savings of $160/Mg to a cost of $890/Mg and averaged $310/Mg. While BDT for these low turnover vessels results in higher cost-effectiveness values than those for vessels with higher turnovers, these costs are reasonable considering the difficulty of discriminating between tanks with different turnover rates. As noted previously, larger vessels, which are more typical in the for-hire terminal industry, are even more cost effective to control.

The actual cost effectiveness of BDT controls is dependent upon tank-specific parameters (diameter, height, and volume) and product-specific parameters (vapor pressure, molecular weight, and chemical formulation) that cannot be predicted and may be higher or lower than those presented. Because of these variable parameters, an objective exemption that would exempt only those vessels that always have low turnovers would be complex and impractical. Therefore, because the average cost effectiveness is reasonable even at lower turnovers, no changes in the volume cutoffs have been made in the final rule.

Commenters requested an exemption for storage vessels located at retail gasoline service stations on the basis that it would be an unnecessary recordkeeping burden for both the operators of smaller affected vessels not subject to the control requirements and the regulatory agencies that would have to keep the records. The commenters stated their belief that it was not EPA's intent to include underground storage vessels at gasoline service stations as affected facilities.

It is true that EPA did not intend to affect vessels at gasoline service stations with these standards. Consequently, no evaluation of the possible economic impact of these standards on retail gasoline marketers was performed. Emissions from retail gasoline marketers are part of the gasoline marketing source category (Petroleum Transportation and Marketing, 40 CFR 60.16, category No. 23) as well as part of the VOL storage category. The decision as to whether to regulate emissions from these vessels is being made in a regulatory decision package for that source category. Therefore, the Agency decided to exempt storage vessels at retail gasoline service stations specifically from the final standards.

One commenter requested that the impact of the standards on bulk gasoline plant owners or operators be evaluated. The commenter was concerned that these firms, which are typically small businesses, would be unable to raise the capital necessary to install the equipment to comply with BDT.

According to the Small Business Administration's criteria for small businesses, bulk plants may be classified as such because they typically have fewer than 500 employees. The economic impacts of the standards on model bulk plants were examined to see if adverse impacts (closure of the facility or inability to construct the new source) could be ruled out. While the capital costs of controls represent only 5 percent of total capital cost for a new model facility, the capital costs of control for replacing or adding an individual tank are significant and may be 50 percent of the total capital cost required to install a new individual tank. Also, the bulk plant industry is declining due to closure and consolidation of firms, and it is possible that the impact of further regulation would be to accelerate closures. Therefore, it was determined that a potential adverse economic impact exists.

Although an Agency study indicates that the cost effectiveness of controls is reasonable for typical facilities ($520/Mg), the economic impact may not be reasonable. The Agency was unable to quantify the profitability of bulk plant firms, and no data are available to prove that these firms have access to sufficient capital to install controls. Even firms that are part of integrated operations may not be able to divert capital from more profitable operations to bulk plant operations. Therefore, the Agency was unable to ascertain how many of the plants that would add or replace tanks would suffer an adverse economic impact due to the inability to finance the capital costs of controls. Furthermore, bulk plants are an identifiable class of vessels, and an exemption for this class would not affect the objectivity and enforceability of the standards. For these reasons, the Agency has decided to exempt bulk gasoline plants from the standards.

This change in the regulation from proposal only affects those plants in attainment areas. Plants located in nonattainment areas would have been exempted in any case because the control technology required by the SIP's in these areas (vapor balance systems) is incompatible with BDT. The bulk plant industry is also part of the gasoline marketing source category, and the decision as to whether to regulate emissions from these vessels at bulk plants is being made in a regulatory decision package for that category.

One commenter also requested that EPA grant an exemption from the standards for vessels used to store nonindustrial, distilled beverage alcohol. The commenter requested the exemption for the following reasons: (1) Producers of distilled spirits are insignificant sources of VOC emissions, (2) the suggested control technology would be either extremely damaging to the product as a food item or would be proscribed by existing Federal regulations, and (3) the costs and other problems that would result from implementation of the proposed standards would violate Executive Order 12291.

The Agency concurs with the commenter that the proposed control technologies required by these standards could contaminate beverage alcohol, resulting in a product with little or no market value. Also, because beverage alcohol was exempted from the priority list as part of the synthetic organic chemical manufacturing industry source category and because it is not a petroleum liquid, storage vessels containing beverage alcohol are exempt from the final standards. However, any storage vessels that are used to store nonbeverage, fermented products are subject to the standards if they are found to be affected facilities.

Some commenters requested that the provision of Subparts K and Ka that exempts underground vessels when the volume of liquid added to and taken from the tank in a year does not exceed twice the volume of the vessel be continued in Subpart Kb.

Based on the following reasons, the Administrator has decided not to continue the exemption. It is impracticable to control emissions from underground vessels with internal floating roofs. Emissions from these tanks can be controlled with vapor recovery or disposal systems designed and operated in compliance with these standards. While the cost effectiveness of vapor recovery or disposal systems in these isolated instances may be high, cost effectiveness is not a measure of economic impact. Rather, it is a measure of the cost efficiency of subclasses of vessels. The overall cost of the

standards to the industry is a net credit. Additionally, aboveground IFR's or EFR's equipped with the controls required by the standards could be constructed in lieu of underground storage vessels. Therefore, the Administration has decided not to include this exemption in the promulgated standards. It should be noted that the exemption does continue for vessels constructed after the date of proposal for Subpart K but prior to proposal for Subpart Kb.

One commenter contended that the BID does not support the inclusion of underground storage vessels, particularly those smaller than 100 $m^3$ (26,000 gal) in capacity. The commenter's primary concern was that some manufacturing plants may not have adequate space to install aboveground tanks in place of underground tanks. The commenter also noted that emissions from these vessels are excessively costly to control. According to the commenter, installations storing VOL for use in manufacturing operations may need one or two horizontal, underground tanks as large as 95 $m^3$ (25,000 gal) to store material received from railroad tank cars that have capacities up to 75 $m^3$ (20,000 gal). The commenter recommended that an exemption be included in the proposed standard for underground storage vessels with capacities less than 100 $m^3$ (26,000 gal).

Adequate spacing of tanks is necessary to reduce the possibility of the spread of fire from the tank initially involved to exposed structures or adjacent tanks. For example, a 75–$m^3$ (20,000-gal) tank would have to be placed at least 7.5 to 15 m (25 to 50 ft) away from buildings depending on the flammability of the liquid being stored. The minimum tank-to-tank spacing is one-half the diameter of the largest tank, which is 4.3 m (14 ft) in the case of adjacent 75-$m^3$ (20,000-gal) tanks. In contrast, underground tanks may be located as close as 1.5 m (5 ft) to building foundations and 0.6 m (2 ft) to other tanks and pipelines.

Aboveground tanks are a proven and safe method of storage, and there appear to be no technical reasons why aboveground tanks could not be installed in place of underground tanks when space permits. Furthermore, it is expected that space would not be a problem at new plants because they can be designed to allow sufficient space for aboveground tanks. However, EPA cannot predict which existing facilities may have spacing problems in installing new aboveground tanks. In cases where space is a problem, the owner or operator may install underground tanks equipped with the control devices allowed by § 60.112b(a)(3).

The cost effectiveness of controlling emissions from a 113-$m^3$ (30,000-gal) capacity underground tank is about $2,100/Mg. This amount assumes the tank undergoes 10 turnovers per year, which is typical for the commenter's industry. While $2,100/Mg is higher than the cost effectiveness of BDT control (i.e., floating roof) in comparable tanks ($310/Mg), the overall cost of the standards to the industry is a net credit. Therefore, the promulgated standards were not revised to include a blanket exemption for underground storage vessels because adequate means of complying with the standards (aboveground vessels or underground vessels equipped with add-on controls) exist.

One commenter noted that horizontal tanks are used widely in the synthetic organic chemical manufacturing industry (SOCMI). The commenter said that, because floating roofs cannot be used in these tanks, there is a problem in applying the proposed standards to them.

The standards provide three fundamentally different methods of compliance:

1. Tanks equipped with an external floating roof and with liquid-mounted or mechanical shoe primary seals and a rim-mounted secondary seal;

2. Tanks equipped with an internal floating roof and with liquid-mounted or mechanical shoe primary seals or vapor-mounted primary seals and secondary seals and gasketed fittings; or

3. A 95 percent effective vapor control system. Horizontal tanks are typically small (volumes rarely exceed 113 $m^3$ [30,000 gal]); and because EFR's are rarely smaller than 492 $m^3$ (130,000 gal), these horizontal tanks could not be constructed as new EFR's. However, the other options allowed by the standard are suitable for vesels in the size range of horizontal tanks. In subsequent discussion, the commenter agreed that vertical tanks equipped with internal floating roofs could be used in place of horizontal tanks although in some instances such as separation processes horizontal tanks were advantageous.

Additional information was obtained from the State of Texas on the issue. Texas requires equipment similar to BDT (internal floating roofs) for all new storage vessels with capacities of 95 $m^3$ (25,000 gal) or greater storing liquids with vapor pressures of 3.5 kPa (0.51 psia) or greater and, thus, currently requires controls on vessels of concern to the commenter. Texas Air Control Board (TACB) personnel have stated that, in their permitting experience, there are very few circumstances in which the tanks must be horizontal. If a horizontal tank is used, the TACB generally requires add-on control systems (carbon adsorption or thermal oxidation).

Previous studies of storage in the chemical industry indicate that add-on control systems are cost effective (less than $1,000/Mg) for tanks with volumes less than 151 $m^3$ (40,000 gal) storing liquids with high vapor pressures. For example, the average cost effectiveness of a 95 percent efficient condenser for chloroform storage at chloroform production facilities is $630/Mg. This issue was further analyzed by examining the cost effectiveness of controlling a 113 $m^3$ (30,000 gal) horizontal tank as a function of turnover rate and filling rate. While turnover rates of 170 times per year are typical for vessels in this size range in the chemical industry, cases were analyzed assuming 5 and 10 turnovers per year. Cost-effectiveness values were determine for 4 chemicals (n-pentane, cyclopentane, isoprene, ethyl ether) stored at 21° (70°F). The average cost effectiveness of these cases ranged from $650/Mg to $1,540/Mg. This range is judged to be reasonable. The standards are achievable and, in many cases, are cost effective even if atypical turnover rates are assumed and if add-on controls are adopted. Furthermore, only 0.22 percent of vessels in the 75- to 151-$m^3$ (20,000- to 40,000-gal) size range are used to store liquid with vapor pressures between 27.6 and 58.7 kPa (4 and 8.5 psia) in the chemical industry, and only 8 percent of total storage capacity is dedicated to storage of liquids with vapor pressures between 20.7 and 103.4 kPa (3 and 15 psia). Based on this information, it is reasonable to assume that only a very small proportion of potential new sources of small fixed roof tanks in the chemical industry would be affected by the standards. Therefore, no exemption for these vessels has been incorporated into the final rule.

Several commenters requested an exemption to the recordkeeping requirements for tanks used to store a mixture of different products ("slop oil") and for tanks used to retain wastewater after the organic liquids have been removed in an oil-water separator. The commenters said that the constantly changing nature of the products and the associated vapor pressure in the slop oil vessels would necessitate physical testing to determine vapor pressure as required in the proposed standards. The

wastewater vessels contain liquids with low vapor pressures such that operational monitoring is inappropriate.

The purpose of the vapor pressure determination is to distinguish between the three possible classes of VOL's that are of concern:

1. Those liquids with vapor pressures greater than or equal to a control cutoff (27.6 kPa [4 psia] for vessels with capacities of 75 $m^3$ [20,000 gal] or greater and 5.2 kPa [0.75 psia] for vessels with capacities of 151 $m^3$ [40,000 gal] or greater);

2. Those liquids that are exempt from all vapor pressure recordkeeping provisions of the standards (less than 15 kPa [2.2 psia] for vessels with capacities between 75 and 151 $m^3$ [20,000 and 40,000 gal] and less than 3.5 kPa [0.51 psia] for vessels with capacities of 151 $m^3$ [40,000 gal] or greater); and

3. Those liquids for which monitoring, but not emission control, is required (greater than or equal to 15 kPa [2.2 psia] and less than 27.6 kPa [4 psia] for vessels with capacities ranging from 75 to 151 $m^3$ [20,000 to 40,000 gal] and greater than or equal to 3.5 kPa [0.51 psia] and less than 5.2 kPa [0.75 psia] for vessels with capacities of 151 $m^3$ [40,000 gal] or greater).

For most chemical and petroleum products, the class to which a given liquid belongs will be obvious. For instance, the vapor pressure of No. 2 fuel oil will not exceed 5.2 kPa (0.75 psia) at normal storage temperatures, and, therefore, vessels storing this liquid would be exempt from all except the monitoring provisions of the standards.

Waste tanks with constantly changing mixtures pose a different issue. While a range of possible vapor pressures will be known, constant minor fluctuations in composition will prevent the determination of the actual vapor pressure without extensive (perhaps daily) testing. However, these fluctuations generally are not so large that under normal operating conditions large daily changes in vapor pressure would be expected. Extensive testing of these liquids would be unduly burdensome to industry without providing a corresponding benefit. Therefore, EPA sought an alternative that would preserve the intent of the requirement without being unreasonably burdensome.

Prior to construction of the vessel, the range of likely liquid compositions will be known, as will the maximum monthly average storage temperature. Given these, it is possible to estimate the vapor pressure of the mixture by Raoult's law:

$P_t = \Sigma P_n X_n$.

where

$P_t$ = the total vapor pressure.
$P_n$ = the vapor pressure component.
$X_n$ = the mole fraction of a component.

As with all other liquids, if the anticipated liquid composition with the highest vapor pressure is below the monitoring cutoffs, the vessel would be exempt from the vapor pressure monitoring requirements of the standards.

For these types of liquids, the provisions for monitoring have been changed from those proposed. If the anticipated liquid composition is above the cutoff for monitoring but below the cutoff for controls, the standards require a physical test of the vapor pressure initially and at least once every 6 months thereafter. This testing is not costly (less than $100) and would serve the intent of the proposed standards without being burdensome. Records of the results will be kept by the owner or operator, but reports will be required only in the event the vapor pressure of the stored liquid exceeds the threshold for controls.

*Emission Control Technology*

One commenter stated that industry experience with secondary seals on EFR's is limited and that there is uncertainty regarding the effective life of the seals. The commenter also requested that EPA acknowledge a potential safety hazard from the formation of a vapor space between the primary and secondary seal.

There may be some uncertainty about the lifetime of secondary seals; the actual lifetime may be longer or shorter than the 10 years estimated at proposal. Comments received on the draft Control of Volatile Organic Compound Emissions From Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks (CTG), August 1983, suggested that vapor-mounted primary seals on an internal floating roof would have a lifetime of 10 years or more in the more severe chemical services. Because the construction of the seal systems is similar to that of secondary seals used on EFR's, it is reasonable to assume a 10-year life on secondary seals for EFR's as an average.

The Agency has determined that adequate technology exists and is commonly employed to operate EFR's with double seals in a safe manner. Although specific data are not available for EFR's equipped with double-seal systems, the fire and explosion hazard is greatly reduced because the floating roof eliminates vapor space. The reduced hazard is substantiated by a study conducted by Factory Mutual Research of fire loss experience of storage vessels from 1962 to 1974. Fixed roof tanks were involved in 53 percent of all losses while floating roof tanks were involved in only 34 percent. Significantly, 47 percent of fixed roof tanks were totally destroyed compared to 12 percent of the floating roof tanks. Unlike fires in fixed roof tanks, most fires in floating roof tanks were extinguished by portable foam or water hose streams before serious damage occurred. Therefore, the Administrator has concluded that there are no safety hazards associated with floating roof tanks beyond those normally experienced by industry.

Some commenters noted that vented IFR's may not be the best choice of storage vessel in cases where the stored liquid must be protected from moisture or oxygen. They cited chemical products such as chlorinated solvents that may be contaminated by exposure to moist ambient air. One commenter noted that vented IFR's would greatly increase the cost of inert gas pads.

These comments are based on the premise that the IFR required in § 60.112(b)(a)(1) must be vented. The Agency agrees that ventilating tanks storing liquids that must be protected from contact with ambient air is not wise. Neither the proposed nor the promulgated standards require the IFR to be vented. The IFR may be ventilated or nonventilated, padded or unpadded, according to the preference of the owner or operator, without affecting the compliance status of the tank. Therefore, the requirement for an internal floating roof will impose no additional contamination problems, safety problems, or gas padding costs over normal industry practice. No changes to the standards were made as a result of these comments.

Some commenters stated that use of the floating roof itself is incompatible with storage of highly corrosive liquids. According to the commenters, to prevent corrosion damage, the vessel either may be lined with plastics, fluoropolymers, or synthetic materials, or it may be constructed with fiberglass reinforced plastic. These commenters state that such materials are unable to withstand the abrasion that is inherent in the operation of floating roofs.

Regarding the abrasion of the tank liner, internal floating roof seals are typically made of soft materials and are softer than common liners. The seals do not exert much compressive force against the tank sidewall. The anticipated point of wear would be the seal and not the tank liner. Internal floating roofs have been installed in lined tanks and have operated properly without excessive wear to the liner.

Therefore, no exemption for lined tanks has been incorporated into the final standards.

Fiberglass reinforced plastic (FRP) tanks are used by some tank operators to store corrosive liquids (chlorinated solvents, acids, and bases). These tanks generally are lined with a corrosion barrier composed of a thin layer of resin. Floating roof are not used in these tanks because a leak or structural damage could result if the roofs seals damage the resin layer. However, stainless steel tanks equipped with internal floating roofs may be substituted for FRP tanks, or emissions from FRP tanks may be controlled by use of a closed vent system and 95 percent effective control device. Therefore, because adequate control alternatives are available to owners or operators of FRP tanks, no revisions have been made to the standards as a result of this comment.

Other commenters questioned whether ventilation in IFR's is adequate to prevent an explosion hazard. They said that the proposed standards should recognize that the use of IFR's could promote the formation of explosive vapor mixtures above the floating roof. They also noted that, by design, the product stored in an IFR is isolated from any roof-mounted deluge system, thus reducing the probability of early control of any fire that occurs.

The Agency has determined that the final standards do not pose a safety hazard. A representative of the Texas Chemical Council stated that his company's safety personnel had reviewed the standards and did not believe that the required controls would pose a hazard. Data from vendors indicate that the lower explosive limit was never reached in tests on a noncontact internal floating roof in vented tanks storing a wide variety of products. It appears that there are no additional safety hazards associated with the IFR beyond those hazards normally accepted by the industry.

Regarding isolation from any roof-mounted deluge system, vendors of internal floating roofs as well as Factory Mutual Research Standards have stated that foam distribution systems have been used successfully against fires in IFR's. Foaming the deck closes off the oxygen supply; any vapor space under the deck will quickly be deficient in the oxygen necessary to support a fire.

Some commenters stated that the flare exit velocity limitations are unduly restrictive and suggested that they be reviewed in light of the latest information from the Chemical Manufacturers Association and EPA. They said that the velocity specifications are identical to those proposed in the SOCMI equipment leak NSPS and suggested that both the SOCMI and the proposed VOL standards be revised to encompass a consistent set of limitations based on a recently completed study showing 98 percent or better destruction efficiencies at velocities greater than the existing velocity limitation. One commenter suggested a public comment period on flare operation limitations.

The flare exit velocity limitations have been reviewed by EPA in the time since the standards were proposed. New data obtained by an EPA test program showed that VOC destruction efficiencies of 98 percent or better are achievable using higher exit velocities when the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf). Accordingly, an addition to the General Provisions (§ 60.18) was promulgated (51 FR 2699, January 21, 1986) to reflect this information, and the VOL standards were revised as well. The specifications limit flare exit velocity of steam-assisted and nonassisted flares to 18.3 m/s (60 ft/s) unless the net heating value of the gas being combused is greater than 37.3 MJ/scm (1,000 Btu/scf). In this latter case, exit velocities may be between 18.3 m/s and 122 m/s (60 ft/s and 400 ft/s). The specifications also permit the owners to operate the flare at a prorated maximum exit velocity (based on the net heating value of the gas being combusted) so long as it is less than 122 m/s (400 ft/s) but greater than 18.3 m/s (60 ft/s).

Some commenters found the required use of flexible fabric sleeve seals on column penetrations to be restrictive and recommended that EPA also allow the use of gasketed sliding covers. They noted that flexible fabric sleeve seals are a fitting design unique to a single manufacturer and are not generally available. They also noted an insignificant difference in overall emission reduction (0.1 to 0.2 percent) when flexible fabric sleeve seals are used in place of gasketed sliding covers. They stated that the use of "built-up" columns, which are currently in wide-spread use, is disallowed under the proposed standards because sleeve seals can only be used with pipe columns. One commenter discussed the potential for damage and maintenance repair problems with use of sleeve seals, which could result in lengthy downtime.

Flexible fabric sleeve seals are currently available only on contact decks. It is not the intent of the Agency to prohibit the use of noncontact decks with this fitting requirement. While the annualized cost of redesigning a noncontact deck to allow the adoption of flexible fabric sleeve seals is not known, the Agency has determined that it is highly unlikely that noncontact decks could be redesigned and flexible fabric sleeve seals installed cost effectively. Alternatively, gasketed sliding covers are widely available and may be employed on both contact and noncontact decks with a slight difference in overall emission reduction as noted by the commenter. Therefore, the Agency has decided to revise the proposed regulations to allow the use of either flexible fabric sleeve seals or gasketed sliding covers.

*Recordkeeping, Reporting, and Inspection requirements*

Commenters said that an annual visual inspection of IFR seals precludes the use of nonvented IFR's because of the excessive time, materials, and manpower required to inspect the vessels. They also said that the inspection could pose a safety hazard. One commenter suggested that IFR's with primary and secondary seals be inspected internally at 5-year intervals. If EPA were to approve a 5-year inspection interval, the commenter further proposed that it be considered equivalent to an annual inspection of a single-seal system. The commenter calculated that overall emission rates due to seal failure are equivalent under the two options. Other commenters suggested that VOC emissions be monitored annually from a small fitting on the roof. They said that if monitoring indicates a significant increase in emissions, an internal inspection would be warranted to find and correct the problem. It was suggested that this option either replace or be considered equivalent to the annual visual inspection.

After evaluating this issue, the Agency has determined that it may not be possible to inspect all IFR's without emptying and degassing the vessel. The Agency evaluated the commenters' proposed revisions and has decided to revise the standards. If the operator equips the vessel with a primary and a secondary seal and conducts an internal inspection every 5 years, the controls are considered equivalent to a single-seal system and annual visual inspection. Under the double-seal system option, the addition of a secondary seal will reduce emissions beyond the emission reduction achieved by a single-seal system, thus offsetting the risk of increased emission due to seal failure. In any case, seal failure rates are generally quite low, and a major failure (such as a deck sinking) would be evident to the operator even in

the absence of an annual inspection because of a loss of material.

A worse-case analysis of the possible impact this suggestion would have on emissions was performed. Even if 10 percent of the tanks equipped with primary and secondary seals experienced total failure of one seal, average emissions would be 4 percent lower than if all tanks had been equipped with a primary seal only.

The alternative of VOC monitoring suggested by the commenters has not been incorporated into the final standards. There are no data on which to base a selection of a hydrocarbon concentration that would indicate a problem with the control equipment. The hydrocarbon concentration measured at the roof fitting would be heavily dependent upon recent tank operations (e.g., filling, emptying, or static level) and liquid level. The Agency is not aware of any method by which an annual concentration measurement could be used to establish the condition of the control equipment.

Several commenters said that the 30-day allowance for repairing or emptying storage vessels found to be out of compliance is unreasonble. Commenters said that the provision would necessitate the installation of two small tanks rather than a single large tank to provide the flexibility to transfer material from a vessel in need of repair.

Another commenter noted that the provision would be a problem in the event a facility found that several vessels were simultaneously out of compliance. Commenters suggested that a 45-day to 120-day allowance would give the operator sufficient time to order, receive, and install new equipment without having to request an extension for repairing or emptying the vessel.

Discussion with storage vessel manufacturers indicated that a 30-day allowance for repairing or exempting storage vessels in conjunction with the option of requesting a 30-day extension is reasonable from the supplier's viewpoint. However, in the event that special materials not normally kept in stock (such as Teflon seals) were required, this time would probably be insufficient. The Agency has decided to revise the proposed standards to provide a 45-day allowance to accommodate delays in repairing or emptying the vessel. A 30-day extension may still be requested if repairs are likely to exceed the initial allowance.

### VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and affected industries to identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

The effective date of this regulation is April 8, 1987. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (July 23, 1984).

As prescribed by section 111, the promulgation of these standards is based on the Administrator's determination that SOCMI and VOL storage vessels and handling equipment contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart A and Subpart Kb) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0074.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The regulation results in a net annual credit to the industry, and no price increases are expected. The Agency has concluded, therefore, that this regulation is not a "major rule" under Executive Order 12291. The regulation was submitted to OMB for review as required by Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Volatile organic liquid storage vessels.

Dated: March 30, 1987.

**Lee M. Thomas,**

*Administrator.*

## PART 60—[AMENDED]

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows.

1. The authority citation for Part 60 continues to read as follows:

**Authority:** Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.16 of Subpart A is amended by revising the first entry in the list to read as follows:

**§ 60.16 Priority list.**

* * * * *

1. Synthetic Organic Chemical Manufacturing Industry (SOCMI) and

Volatile Organic Liquid Storage Vessels and Handling Equipment
(a) SOCMI unit processes
(b) Volatile organic liquid (VOL) storage vessels and handling equipment
(c) SOCMI fugitive sources
(d) SOCMI secondary sources

* * * * *

3. Section 60.17 of Subpart A is amended by revising paragraph (a)(13), paragraph (a)(37), paragraph (c) introductory text, and paragraph (c)(1) as follows:

**§ 60.17 Incorporation by reference.**

(a) * * *

(13) ASTM D323–82, Test Method for Vapor Pressure of Petroleum Products (Reid Method), IBR approved April 8, 1987 for §§ 60.111(1), 60.111a(g), 60.111b(g), and 60.116b(f)(2)(ii).

* * * * *

(37) ASTM D2879–83, Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved April 8, 1987 for §§ 60.485(e), 60.111b(f)(3), 60.116b(e)(3)(ii), and 60.116b(f)(2)(i).

* * * * *

(c) The following material is available for purchase from the American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

(1) API Publication 2517, Evaporation Loss from External Floating Roof Tanks, Second Edition, February 1980, IBR approved January 27, 1983, for §§ 60.111(i), 60.111a(f), 60.111a(f)(1) and 60.116b(e)(2)(i).

* * * * *

4. The heading for Subpart K is revised to read as follows:

**Subpart K—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978**

* * * * *

5. In § 60.111 of Subpart K, paragraph (l) is revised to read as follows:

**§ 60.111 Definitions.**

* * * * *

(l) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D323–82 (incorporated by reference—see § 60.17).

* * * * *

6. The heading for Subpart Ka is revised to read as follows:

**Subpart Ka—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984**

* * * * *

7. In § 60.111a of Subpart Ka, paragraph (g) is revised to read as follows:

**§ 60.111a Definitions.**

* * * * *

(g) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and nonviscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D323–82 (incorporated by reference—see § 60.17).

* * * * *

8. In § 60.113a of Subpart Ka, the introductory text of (a)(1)(i) is revised and (a)(1)(i) (D) and (E) are added to read as follows:

**§ 60.113a Testing and procedures.**

(a) * * *
(1) * * *
(i) Determine the gap areas and maximum gap widths between the primary seal and the tank wall and between the secondary seal and the tank wall according to the following frequency:

* * * * *

(D) Keep records of each gap measurement at the plant for a period of at least 2 years following the date of measurement. Each record shall identify the vessel on which the measurement was performed and shall contain the date of the seal gap measurement, the raw data obtained in the measurement process required by paragraph (a)(1)(ii) of this section and the calculation required by paragraph (a)(1)(iii) of this section.

(E) If either the seal gap calculated in accord with paragraph (a)(1)(iii) of this section or the measured maximum seal gap exceeds the limitations specified by § 60.112a of this subpart, a report shall be furnished to the Administrator within 60 days of the date of measurements. The report shall identify the vessel and list each reason why the vessel did not meet the specifications of § 60.112a. The report shall also describe the actions necessary to bring the storage vessel into compliance with the specifications of § 60.112a.

9. Subpart Ka § 60.114a is revised as follows:

**§ 60.114a Alternative means of emission limitation.**

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions at least equivalent to the reduction in emissions achieved by any requirement in § 60.112a, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(b) Any notice under paragraph (a) of this section will be published only after notice and an opportunity for a hearing.

(c) Any person seeking permission under this section shall submit to the Administrator a written application including:

(1) An actual emissions test that uses a full-sized or scale-model storage vessel that accurately collects and measures all VOC emissions from a given control device and that accurately simulates wind and accounts for other emission variables such as temperature and barometric pressure.

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(d) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same emissions reduction as specified in § 60.112a.

(e) The primary vapor-mounted seal in the "Volume-Maximizing Seal" manufactured by R.F.I. Services Corporation is approved as equivalent to the vapor-mounted seal required by § 60.112a(a)(1)(i) and must meet the gap criteria specified in § 60.112a(a)(1)(i)(B). There shall be no gaps between the tank wall and any secondary seal used in conjunction with the primary seal in the "Volume-Maximizing Seal".

10. Part 60 is amended by adding Subpart Kb, consisting of §§ 60.110b thru 60.117b, to read as follows:

**Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984**

Sec.

60.110b Applicability and designation of affected facility.
60.111b Definitions.
60.112b Standard for volatile organic compounds (VOC).
60.113b Testing and procedures.
60.114b Alternative means of emission limitation.
60.115b Recordkeeping and reporting requirements.
60.116b Monitoring of operations.
60.117b Delegation of authority.

## Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984

### § 60.110b Applicability and designation of affected facility.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, the affected facility to which this subpart applies is each storage vessel with a capacity greater than or equal to 40 cubic meters ($m^3$) that is used to store volatile organic liquids (VOL's) for which construction, reconstruction, or modification is commenced after July 23, 1984.

(b) Except as specified in paragraphs (a) and (b) of § 60.116b, storage vessels with design capacity less than 75 $m^3$ are exempt from the General Provisions (Part 60, Subpart A) and from the provisions of this subpart.

(c) Except as specified in paragraphs (b) and (c) of § 60.116b, vessels either with a capacity greater than or equal to 151 $m^3$ storing a liquid with a maximum true vapor pressure less than 3.5 kPa or with a capacity greater than or equal to 75 $m^3$ but less than 151 $m^3$ storing a liquid with a maximum true vapor pressure less than 15.0 kPa are exempt from the General Provisions (Part 60, Subpart A) and from the provisions of this subpart.

(d) This subpart does not apply to the following:

(1) Vessels at coke oven by-product plants.

(2) Pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere.

(3) Vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships.

(4) Vessels with a design capacity less than or equal to 1,589.874 $m^3$ used for petroleum or condensate stored, processed, or treated prior to custody transfer.

(5) Vessels located at bulk gasoline plants.

(6) Storage vessels located at gasoline service stations.

(7) Vessels used to store beverage alcohol.

### § 60.111b Definitions.

Terms used in this subpart are defined in the Act, in Subpart A of this part, or in this subpart as follows:

(a) "Bulk gasoline plant" means any gasoline distribution facility that has a gasoline throughput less than or equal to 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal requirement or Federal, State or local law, and discoverable by the Administrator and any other person.

(b) "Condensate" means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.

(c) "Custody transfer" means the transfer of produced petroleum and/or condensate, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation.

(d) "Fill" means the introduction of VOL into a storage vessel but not necessarily to complete capacity.

(e) "Gasoline service station" means any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(f) "Maximum true vapor pressure" means the equilibrium partial pressure exerted by the stored liquid at the temperature equal to the highest calendar-month average of the liquid storage temperature for liquids stored above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum institute Bulletin 2517, Evaporation Loss From External Floating Roof Tanks, (incorporated by reference—see § 60.17); or

(2) As obtained from standard reference texts; or

(3) As determined by ASTM Method D2879–83 (incorporated by reference—see § 60.17);

(4) Any other method approved by the Administrator.

(g) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquified petroleum gases, as determined by ASTM D323–82 (incorporated by reference—see § 60.17).

(h) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

(i) "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery.

(j) "Storage vessel" means each tank, reservoir, or container used for the storage of volatile organic liquids but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors; or

(2) Subsurface caverns or porous rock reservoirs.

(k) "Volatile organic liquid" (VOL) means any organic liquid which can emit volatile organic compounds into the atmosphere except those VOL's that emit only those compounds which the Administrator has determined do not contribute appreciably to the formation of ozone. These compounds are identified in EPA statements on ozone abatement policy for SIP revisions (42 FR 35314, 44 FR 32042, 45 FR 32424, and 45 FR 48941).

(l) "Waste" means any liquid resulting from industrial, commercial, mining or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded or recycled.

### § 60.112b Standard for volatile organic compounds (VOC).

(a) The owner or operator of each storage vessel either with a design capacity greater than or equal to 151 $m^3$ containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kPa but less than 76.6 kPa or with a design capacity greater than or equal to 75 $m^3$ but less than 151 $m^3$ containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa but less than 76.6 kPa, shall equip each storage vessel with one of the following:

(1) A fixed roof in combination with an internal floating roof meeting the following specifications:

(i) The internal floating roof shall rest or float on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a fixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

(ii) Each internal floating roof shall be equipped with one of the following closure devices between the wall of the storage vessel and the edge of the internal floating roof:

(A) A foam-or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal). A liquid-mounted

seal means a foam-or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.

(B) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.

(C) A mechanical shoe seal. A mechanical shoe seal is a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(iii) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(iv) Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains is to be equipped with a cover or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use.

(v) Automatic bleeder vents shall be equipped with a gasket and are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(vi) Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(vii) Each penetration of the internal floating roof for the purpose of sampling shall be a sample well. The sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(viii) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(ix) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(2) An external floating roof. An external floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a vessel with no fixed roof. Each external floating roof must meet the following specifications:

(i) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be either a mechanical shoe seal or a liquid-mounted seal. Except as provided in § 60.113b(b)(4), the seal shall completely cover the annular space between the edge of the floating roof and tank wall.

(B) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as allowed in § 60.113b(b)(4).

(ii) Except for automatic bleeder vents and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof legs supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(iii) The roof shall be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of filling, emptying, or refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(3) A closed vent system and control device meeting the following specifications:

(i) The closed vent system shall be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in Part 60, Subpart VV, § 60.485(b).

(ii) The control device shall be designed and operated to reduce inlet VOC emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements (§ 60.18) of the General Provisions.

(4) A system equivalent to those described in paragraphs (a)(1), (a)(2), or (a)(3) of this section as provided in § 60.114b of this subpart.

(b) The owner or operator of each storage vessel with a design capacity greater than or equal to 75 $m^3$ which contains a VOL that, as stored, has a maximum true vapor pressure greater than or equal to 76.6 kPa shall equip each storage vessel with one of the following:

(1) A closed vent system and control device as specified in § 60.112b(a)(3).

(2) A system equivalent to that described in paragraph (b)(1) as provided in § 60.114b of this subpart.

**§ 60.113b Testing and procedures.**

The owner or operator of each storage vessel as specified in § 60.112b(a) shall meet the requirements of paragraph (a), (b), or (c) of this section. The applicable paragraph for a particular storage vessel depends on the control equipment installed to meet the requirements of § 60.112b.

(a) After installing the control equipment required to meet § 60.112b(a)(1) (permanently affixed roof and internal floating roof), each owner or operator shall:

(1) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service), prior to filling the storage vessel with VOL. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric or defects in the internal floating roof, or both, the owner or operator shall repair the items before filling the storage vessel.

(2) For vessels equipped with a liquid mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least one every 12 months after initial fill. If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel

from service within 45 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Administrator in the inspection report required in § 60.115(a)(b)(3). Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(3) For vessels equipped with a double-seal system as specified in § 60.112b(a)(1)(ii)(B):

(i) Visually inspect the vessel as specified in paragraph (a)(4) of this section at least every 5 years; or

(ii) Visually inspect the vessel as specified in paragraph (a)(2) of this section.

(4) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes (if any), and sleeve seals (if any) each time the storage vessel is emptied and degassed. If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with VOL. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years in the case of vessels conducting the annual visual inspection as specified in paragraph (a)(2) of this section and at intervals no greater than 5 years in the case of vessels specified in paragraph (a)(3) of this section.

(5) Notify the Administrator in writing at least 30 days prior to the filling or refilling of each storage vessel for which an inspection is required by paragraphs (a)(1) and (a)(4) of this section to afford the Administrator the opportunity to have an observer present. If the inspection required by paragraph (a)(4) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance or refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to the refilling.

(b) After installing the control equipment required to meet § 60.112b(a)(2) (external floating roof), the owner or operator shall:

(1) Determine the gap areas and maximum gap widths, between the primary seal and the wall of the storage vessel and between the secondary seal and the wall of the storage vessel according to the following frequency.

(i) Measurements of gaps between the tank wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the vessel or within 60 days of the initial fill with VOL and at least once every 5 years thereafter.

(ii) Measurements of gaps between the tank wall and the secondary seal shall be performed within 60 days of the initial fill with VOL and at least once per year thereafter.

(iii) If any source ceases to store VOL for a period of 1 year or more, subsequent introduction of VOL into the vessel shall be considered an initial fill for the purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(2) Determine gap widths and areas in the primary and secondary seals individually by the following procedures:

(i) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.

(ii) Measure seal gaps around the entire circumference of the tank in each place where a 0.32-cm diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the storage vessel and measure the circumferential distance of each such location.

(iii) The total surface area of each gap described in paragraph (b)(2)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually and divide the sum for each seal by the nominal diameter of the tank and compare each ratio to the respective standards in paragraphs (b)(4) of this section.

(4) Make necessary repairs or empty the storage vessel within 45 days of identification in any inspection for seals not meeting the requirements listed in (b)(4)(i) and (ii) of this section:

(i) The accumulated area of gaps between the tank wall and the mechanical shoe or liquid-mounted primary seal shall not exceed 212 $Cm^2$ per meter of tank diameter, and the width of any portion of any gap shall not exceed 3.81 cm.

(A) One end of the mechanical shoe is to extend into the stored liquid, and the other end is to extend a minimum vertical distance of 61 cm above the stored liquid surface.

(B) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(ii) The secondary seal is to meet the following requirements:

(A) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in paragraph (b)(2)(iii) of this section.

(B) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 $cm^2$ per meter of tank diameter, and the width of any portion of any gap shall not exceed 1.27 cm.

(C) There are to be no holes, tears, or other openings in the seal or seal fabric.

(iii) If a failure that is detected during inspections required in paragraph (b)(1) of § 60.113b(b) cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Administrator in the inspection report required in § 60.115b(b)(4). Such extension request must include a demonstration of unavailability of alternate storage capacity and a specification of a schedule that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(5) Notify the Administrator 30 days in advance of any gap measurements required by paragraph (b)(1) of this section to afford the Administrator the opportunity to have an observer present.

(6) Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(i) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with VOL.

(ii) For all the inspections required by paragraph (b)(6) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to the filling or refilling of each storage vessel to afford the Administrator the opportunity to inspect the storage vessel prior to refilling. If the inspection required by paragraph (b)(6) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to the refilling.

(c) The owner or operator of each source that is equipped with a closed vent system and control device as required in § 60.112b (a)(3) or (b)(2) (other than a flare) is exempt from § 60.8 of the General Provisions and shall meet the following requirements.

(1) Submit for approval by the Administrator as an attachment to the notification required by § 60.7(a)(1) or, if the facility is exempt from § 60.7(a)(1), as an attachment to the notification required by § 60.7(a)(2), an operating plan containing the information listed below.

(i) Documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and VOC content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases, or liquids other than fuels from sources that are not designated sources under this subpart, the efficiency demonstration is to include consideration of all vapors, gases, and liquids received by the closed vent capture system and control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816 °C is used to meet the 95 percent requirement, documentation that those conditions will exist is sufficient to meet the requirements of this paragraph.

(ii) A description of the parameter or parameters to be monitored to ensure that the control device will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(2) Operate the closed vent system and control device and monitor the parameters of the closed vent system and control device in accordance with the operating plan submitted to the Administrator in accordance with paragraph (c)(1) of this section, unless the plan was modified by the Administrator during the review process. In this case, the modified plan applies.

(d) The owner or operator of each source that is equipped with a closed vent system and a flare to meet the requirements in § 60.112b (a)(3) or (b)(2) shall meet the requirements as specified in the general control device requirements, § 60.18 (e) and (f).

**§ 60.114b Alternative means of emission limitation.**

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions at least equivalent to the reduction in emissions achieved by any requirement in § 60.112b, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(b) Any notice under paragraph (a) of this section will be published only after notice and an opportunity for a hearing.

(c) Any person seeking permission under this section shall submit to the Administrator a written application including:

(1) An actual emissions test that uses a full-sized or scale-model storage vessel that accurately collects and measures all VOC emissions from a given control device and that accurately simulates wind and accounts for other emission variables such as temperature and barometric pressure.

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(d) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same emissions reduction as specified in § 60.112b.

**§ 60.115b Reporting and recordkeeping requirements.**

The owner or operator of each storage vessel as specified in § 60.112b(a) shall keep records and furnish reports as required by paragraphs (a), (b), or (c) of this section depending upon the control equipment installed to meet the requirements of § 60.112b. The owner or operator shall keep copies of all reports and records required by this section, except for the record required by (c)(1), for at least 2 years. The record required by (c)(1) will be kept for the life of the control equipment.

(a) After installing control equipment in accordance with § 60.112b(a)(1) (fixed roof and internal floating roof), the owner or operator shall meet the following requirements.

(1) Furnish the Administrator with a report that describes the control equipment and certifies that the control equipment meets the specifications of § 60.112b(a)(1) and § 60.113b(a)(1). This report shall be an attachment to the notification required by § 60.7(a)(3).

(2) Keep a record of each inspection performed as required by § 60.113b (a)(1), (a)(2), (a)(3), and (a)(4). Each record shall identify the storage vessel on which the inspection was performed and shall contain the date the vessel was inspected and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

(3) If any of the conditions described in § 60.113b(a)(2) are detected during the annual visual inspection required by § 60.113b(a)(2), a report shall be furnished to the Administrator within 30 days of the inspection. Each report shall identify the storage vessel, the nature of the defects, and the date the storage vessel was emptied or the nature of and date the repair was made.

(4) After each inspection required by § 60.113b(a)(3) that finds holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects listed in § 60.113b(a)(3)(ii), a report shall be furnished to the Administrator within 30 days of the inspection. The report shall identify the storage vessel and the reason it did not meet the specifications of § 61.112b(a)(1) or § 60.113b(a)(3) and list each repair made.

(b) After installing control equipment in accordance with § 61.112b(a)(2) (external floating roof), the owner or operator shall meet the following requirements.

(1) Furnish the Administrator with a report that describes the control equipment and certifies that the control equipment meets the specifications of § 60.112b(a)(2) and § 60.113b(b)(2), (b)(3), and (b)(4). This report shall be ar attachment to the notification required by § 60.7(a)(3).

(2) Within 60 days of performing the seal gap measurements required by § 60.113b(b)(1), furnish the

Administrator with a report that contains:

(i) The date of measurement.

(ii) The raw data obtained in the measurement.

(iii) The calculations described in § 60.113b (b)(2) and (b)(3).

(3) Keep a record of each gap measurement performed as required by § 60.113b(b). Each record shall identify the storage vessel in which the measurement was performed and shall contain:

(i) The date of measurement.

(ii) The raw data obtained in the measurement.

(iii) The calculations described in § 60.113b (b)(2) and (b)(3).

(4) After each seal gap measurement that detects gaps exceeding the limitations specified by § 60.113b(b)(4), submit a report to the Administrator within 30 days of the inspection. The report will identify the vessel and contain the information specified in paragraph (b)(2) of this section and the date the vessel was emptied or the repairs made and date of repair.

(c) After installing control equipment in accordance with § 60.112b (a)(3) or (b)(1) (closed vent system and control device other than a flare), the owner or operator shall keep the following records.

(1) A copy of the operating plan.

(2) A record of the measured values of the parameters monitored in accordance with § 60.113b(c)(2).

(d) After installing a closed vent system and flare to comply with § 60.112b, the owner or operator shall meet the following requirements.

(1) A report containing the measurements required by § 60.18(f) (1), (2), (3), (4), (5), and (6) shall be furnished to the Administrator as required by § 60.8 of the General Provisions. This report shall be submitted within 6 months of the initial start-up date.

(2) Records shall be kept of all periods of operation during which the flare pilot flame is absent.

(3) Semiannual reports of all periods recorded under § 60.115b(d)(2) in which the pilot flame was absent shall be furnished to the Administrator.

**§ 60.116b Monitoring of operations.**

(a) The owner or operator shall keep copies of all records required by this section, except for the record required by paragraph (b) of this section, for at least 2 years. The record required by paragraph (b) of this section will be kept for the life of the source.

(b) The owner or operator of each storage vessel as specified in § 60.110b(a) shall keep readily accessible records showing the dimension of the storage vessel and an analysis showing the capacity of the storage vessel. Each storage vessel with a design capacity less than 75 $m^3$ is subject to no provision of this subpart other than those required by this paragraph.

(c) Except as provided in paragraphs (f) and (g) of this section, the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 $m^3$ storing a liquid with a maximum true vapor pressure greater than or equal to 3.5 kPa or with a design capacity greater than or equal to 75 $m^3$ but less than 151 $m^3$ storing a liquid with a maximum true vapor pressure greater than or equal to 15.0 kPa shall maintain a record of the VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period.

(d) Except as provided in paragraph (g) of this section, the owner or operator of each storage vessel either with a design capacity greater than or equal to 151 $m^3$ storing a liquid with a maximum true vapor pressure that is normally less than 5.2 kPa or with a design capacity greater than or equal to 75 $m^3$ but less than 151 $m^3$ storing a liquid with a maximum true vapor pressure that is normally less than 27.6 kPa shall notify the Administrator within 30 days when the maximum true vapor pressure of the liquid exceeds the respective maximum true vapor vapor pressure values for each volume range.

(e) Available data on the storage temperature may be used to determine the maximum true vapor pressure as determined below.

(1) For vessels operated above or below ambient temperatures, the maximum true vapor pressure is calculated based upon the highest expected calendar-month average of the storage temperature. For vessels operated at ambient temperatures, the maximum true vapor pressure is calculated based upon the maximum local monthly average ambient temperature as reported by the National Weather Service.

(2) For crude oil or refined petroleum products the vapor pressure may be obtained by the following:

(i) Available data on the Reid vapor pressure and the maximum expected storage temperature based on the highest expected calendar-month average temperature of the stored product may be used to determine the maximum true vapor pressure from nomographs contained in API Bulletin 2517 (incorporated by reference—see § 60.17), unless the Administrator specifically requests that the liquid be sampled, the actual storage temperature determined, and the Reid vapor pressure determined from the sample(s).

(ii) The true vapor pressure of each type of crude oil with a Reid vapor pressure less than 13.8 kPa or with physical properties that preclude determination by the recommended method is to be determined from available data and recorded if the estimated maximum true vapor pressure is greater than 3.5 kPa.

(3) For other liquids, the vapor pressure:

(i) May be obtained from standard reference texts, or

(ii) Determined by ASTM Method D2879–83 (incorporated by reference—see § 60.17); or

(iii) Measured by an appropriate method approved by the Administrator; or

(iv) Calculated by an appropriate method approved by the Administrator.

(f) The owner or operator of each vessel storing a waste mixture of indeterminate or variable composition shall be subject to the following requirements.

(1) Prior to the initial filling of the vessel, the highest maximum true vapor pressure for the range of anticipated liquid compositions to be stored will be determined using the methods described in paragraph (e) of this section.

(2) For vessels in which the vapor pressure of the anticipated liquid composition is above the cutoff for monitoring but below the cutoff for controls as defined in §60.112b(a), an initial physical test of the vapor pressure is required; and a physical test at least once every 6 months thereafter is required as determined by the following methods:

(i) ASTM Method D2879–83 (incorporated by reference—see § 60.17); or

(ii) ASTM Method D323–82 (incorporated by reference—see §60.17); or

(iii) As measured by an appropriate method as approved by the Administrator.

(g) The owner or operator of each vessel equipped with a closed vent system and control device meeting the specifications of § 60.112b is exempt from the requirements of paragraphs (c) and (d) of this section.

**§ 60.117b Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under Section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: Sections 60.111b(f)(4), 60.113b(c)(1), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).

[FR Doc. 87–7520 Filed 4–7–87; 8:45 am]
BILLING CODE 6560–50–M

Federal Register

Wednesday
April 8, 1987

Part III

# Department of the Treasury

Office of the Secretary

31 CFR Part 103

Amendments to Implementing Regulations Under the Bank Secrecy Act; Final Rule

**DEPARTMENT OF THE TREASURY**

**Office of the Secretary**

**31 CFR Part 103**

## Amendments to Implementing Regulations Under the Bank Secrecy Act

**AGENCY:** Office of the Secretary, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Bank Secrecy Act, Public Law No. 91–508 (12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, 31 U.S.C. 5311 *et seq.*), empowers the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax and regulatory matters. On August 25, 1986, Treasury published in the **Federal Register** (51 FR 30233) a series of proposed changes to the Bank Secrecy Act regulations in 31 CFR Part 103 in order to ensure the collection of needed information, and to strengthen enforcement of the Act.

After review of the many comments received, Treasury is issuing a final rule encompassing all but three of the original proposals. One proposal, regarding exempt list customer certification statements, was enacted as part of the Anti-Drug Abuse Act of 1986 and was incorporated into Part 103 by final rule dated December 17, 1986 (51 FR 45108); two proposals, dealing with the purchase of more than $3,000 in monetary instruments, are still under consideration by Treasury and will be the subject of a separate notice to be issued within the next few months.

**EFFECTIVE DATE:** July 7, 1987 for those amendments to 31 CFR 103.11(e), 103.26(b)(2), 103.27, 103.33(b), 103.34(b)(13), and 103.37. All other changes to Part 103 made by this final rule are effective May 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Ave., NW., Washington, DC 20220, (202) 566–8022.

**SUPPLEMENTARY INFORMATION:**

### Discussion of Comments

Over 300 comments, many quite detailed, were received from individuals and financial institutions. Many general comments concerned the burden on financial institutions and the costs of compliance posed by the proposed amendments. The proposals to which commenters objected most frequently concerned the reporting of cash purchases of more than $3,000 in monetary instruments, and for new recordkeeping requirements placed on the purchase of monetary instruments. Because an initial review of the comments on these proposals indicates that further review of the issue is needed prior to promulgation of any final rule, the proposals relating to the cash purchase of more than $3,000 in monetary instruments, the certification requirement relating to those purchases, and the new recordkeeping requirements on the purchase of monetary instruments are being held in abeyance at this time and are not included in this final rule. Treasury anticipates issuing a notice on this issue in the near future.

Several commenters also asserted that the proposed rule, if adopted, would be considered a "major rule" within the meaning of Executive Order 12291. In their view, the proposed rule would create significantly increased operational costs, high implementation costs, and an ultimate cost burden that would be imposed on consumers. Many of the comments on this issue failed to present any substantial evidence to support the assertion, and apparently misunderstood the extent of the burdens the proposed rule would place upon financial institutions. The only new major substantive requirements that this final rule imposes pertain to records maintained by currency dealers and exchangers, and the majority of those records are ordinary business records. Moreover, a number of provisions in the proposed rule have been modified after review of the comments received, and other provisions (such as the monetary instruments purchase provisions) will be treated separately in a future regulatory proposal. Finally, Treasury emphasizes that no provision in this final rule will obligate financial institutions to purchase computer hardware or software to comply with the revised regulations. In view of these considerations, it is the Department's position that any cost created by this final rule will be far below the 100 million dollar threshold for a Regulatory Impact Analysis under Executive Order 12291.

A general discussion of the comments and Treasury decisions on the various proposals is presented below.

(1) *Expand the definition of "bank" to include Edge Act corporations:* An "Edge" or "Agreement" corporation, as defined by 12 U.S.C. 611 *et seq.*, is a corporation organized in the United States for the purpose of engaging in international or foreign banking, or other foreign financial operations; such institutions are supervised by the Board of Governors of the Federal Reserve System. This amendment would clarify that the regulations include these entities. (Amendment #2.)

As this is merely a clarification that comports with Treasury's interpretation of the present regulations, there was no substantial discussion of this issue by the commenters; it will stay as drafted.

(2) *Add a new definition of "common carrier":* This new definition would clarify the reporting responsibilities for currency and monetary instruments that are transported into or out of the United States. (Amendment #2.)

Many commenters desired further clarification and expressed a desire to have armored car services, such as Brinks, and private messenger services covered within the definition. Several also suggested that the term "undertaken to do so [supply services] indiscriminately for all persons" be deleted so that companies that supply services only to banks could be covered. The definition will be clarified to include institutions such as Brinks and businesses that limit their clientele to banks. Private messenger services are not covered by the definition of "common carrier."

(3) *Revise the definition of "financial institution" in light of recent case law, and to include certain selling agents of traveler's checks, money orders and similar instruments:* This revision would modify the definition to comport with recent case law defining financial institutions for Bank Secrecy Act purposes, and expand the definition to include selling agents of certain monetary instruments and all transmitters of funds. (Amendment #2.)

Five major issues were raised: (a) Many commenters felt that the proposed definition of "check casher" was so broad that it would cover any business which cashed a check, even if only an incidental part of its business, thus putting the concept of exempt lists in jeopardy; (b) some commenters wanted to know what a person "subject to State or Federal banking supervision" meant and whether it covered nonbanking subsidiaries of banking institutions; (c) some commenters wanted a clarification of the term "transmitter of funds;" (d) some commenters wanted to know what were "similar instruments" to money orders not already listed; and (e) some commenters wanted to know the significance of including "agents" in the definition. In response to these comments, Treasury notes that (a) the term "check casher" has been defined further as someone engaged in the business of cashing checks; (b) coverage

of those persons under "State or Federal banking supervision" was meant to cover all other banking institutions subject to examination by State or Federal banking supervisory authorities not already covered within the term "financial institution;" but the term does not include nonbanking subsidiaries, even if approval for the subsidiary initially must be given by the Federal or State banking authority; (c) "transmitter of funds, including telegraph companies" will be replaced by language that more closely tracks the relevant statute, 31 U.S.C. 5312; (d) the term "similar instruments" will be deleted; and (e) the term "agent" was added in order to make this definition consistent with the others in section 103.11.

(4) *Clarify and expand the definition of "monetary instruments" to include promissory notes, checks made out to fictitious payees, and certain other types of checks:* These substantive changes were proposed because enforcement experience indicated that certain cashier's checks and checks made out to fictitious payees were being used for money laundering, but arguably were not subject to current reporting requirements. Other amendments to the definition were intended to clarify the regulations. (Amendment #2.)

The major issues raised were (a) the use of the term "fictitious payee" and the near impossibility of a bank to determine when a check is made out to a "fictitious payee;" (b) the use of the term "promissory note" and concern as to its scope; (c) a request that the term "traveler's checks" be clarified to describe the different ways that a traveler's check could be considered to be in bearer form; and (d) clarification of the term "endorsed without restriction." Treasury has changed the definition in the final rule to clarify that the term "fictitious payee" is applicable only for the purposes of § 103.23. The issue would arise only in the rare case where a bank has to file a report under § 103.23, such as when the bank sends or receives funds from outside the United States by other than common carrier, and the bank knew at the time it filed the report that the payee was fictitious. The term "promissory note" refers to the UCC definition of that term. Treasury has not changed the definition of "traveler's check" because the definition of "monetary instrument" clearly states that the instrument in question, whether personal check, traveler's check, etc., must be in such a form that title would pass upon delivery; accordingly, that definition need not include separate descriptions of the circumstances in which these instruments could be considered to be in bearer form. The term "endorsed without restriction" is included as an example of how an instrument can be considered to be in bearer form; it does not need to be clarified further. The final rule also clarifies in the definition the difference between incomplete instruments and negotiable instruments, a distinction that previously was not as clear.

(5) *Add a new definition for "transition account" and insert it in place of the deleted term "demand deposit account" wherever it appears in the Part:* This new term would combine currently covered demand deposit accounts with recently developed money market and NOW accounts, which have many of the same characteristics as demand deposit accounts. (Amendments #2 & 3.)

There were few comments. One commenter requested clarification of the status of accounts that are not subject to withdrawal by check. As long as withdrawals are by some form of negotiable order, the accounts are covered under this definition. The proposal is adopted as drafted without change.

(6) *Add a new definition for "business day":* This amendment would provide that the term "business day" for banks means banking day. (Amendment #2.)

Many commenters wanted further clarification of the proposed definition, pointing out that the hours the bank is open to the public are not necessarily the same as the hours the bank might be open for other purposes. Several commenters suggested that the definition refer to the day that the transaction is posted to the customer's account. Treasury has adopted that suggestion, and has revised the definition of "business day" to mean that day, as normally communicated to depository customers (such as by teller window sign), on which the bank routinely posts a particular transaction to its customer's account.

(7) *Clarify that financial institutions must report multiple, same-day currency transactions of which they are aware that total more than $10,000:* This amendment would codify the CTR Form 4789 instruction that currently requires financial institutions to report multiple, same-day transactions of which they are aware that are by or on behalf of any person and total more than $10,000. As indicated above, this would not impose any new burden on financial institutions to adopt or purchase systems to reveal the existence of multiple, same-day transactions. (Amendment #4.)

A majority of the comments expressed concern about this proposal. These comments were devoted largely to two issues: the meaning of the term "aware" in discussing the scienter element in reporting transactions; and the extent to which banks would have to adopt or purchase new systems to capture currency transaction data if their present systems cannot do so. In order to clarify the requirement, Treasury has changed the term "is aware" to "has knowledge." This term means knowledge on the part of a partner, director, officer or employee of a financial institution, or on the part of any existing system at the institution that permits it to aggregate transactions.

"Knowledge," as used in the final rule, clearly includes the concept of "willful blindness" as well. *See United States* v. *Jewell*, 532 F. 2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976). This concept applies to a person who has deliberately avoided positive knowledge; that is, "if a person has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge." *Jewell* at 700. If a financial institution suspects someone may be structuring transactions in order to avoid the filling out of a record or report, but deliberately refuses to ask questions because it wishes to remain ignorant and therefore, "innocent," the financial institution will be deemed to have knowledge for purposes of assessing liability under the Bank Secrecy Act.

Treasury emphasizes that this regulation does not require institutions to adopt or purchase new systems; however if and when financial institutions are considering the purchase of new computer systems, software or recordkeeping methods, Treasury urges that they consider the systems' ability to aggregate. Therefore, if a bank's existing system provides its officers or employees with information on transactions that may require reporting as aggregated transactions, that bank must make use of that system to comply with the reporting requirements of the Bank Secrecy Act, but need not adopt or purchase enhancements to increase that system's capability to identify multiple related transactions.

The commenters also raised the question of deposits and withdrawals accomplished through the use of night depository slots or automatic teller machines (ATM's). Treasury realizes that there is not a teller physically present when these transactions take place; however, when these transactions are later processed by a teller, if the teller (or the system) has knowledge that

BEST COPY AVAILABLE

an aggregated deposit or withdrawal has taken place, then there is a duty to file a Form 4789 under this section. Commenters also wished to know whether the term "by or on behalf of any person" in the aggregation requirement required institutions to track multiple transactions to one specific account, even if made by more than one person, or to track transactions by one person making deposits/withdrawals in reportable amounts to or from several accounts. As long as "a transaction in currency of more than $10,000" has occurred, it does not matter if it was done by one person with one account, several persons with the same account, or one person with several accounts. Examples of reportable transactions would be two people depositing more than $10,000 in one account, though neither deposited a reportable amount, or one person making a deposit of more than $10,000, but depositing the money in more than one account. Obviously, the regulations cover more than activity tied to a particular account. Reportable transactions need not, and often do not, involve an account at all. Finally, Treasury also wishes to reiterate that "cash in or cash out totalling more than $10,000" means the total of all deposits *or* the total of all withdrawals. Deposits *and* withdrawals are not to be aggregated together for purposes of the Bank Secrecy Act. However, the total of all deposits or the total of all withdrawals during a particular business day should be aggregated in order to determine if a reportable deposit or withdrawal limit has been reached.

(3) *Require banks to obtain signed statements from their customers attesting to the basis for their exemption from the currency transaction reporting requirements:* (Amendment #4.)

Subtitle H of Title I of the Anti-Drug Abuse Act of 1986 (Pub. L. No. 99–570), the "Money Laundering Control Act of 1986," contained an amendment substantially similar to this proposal. By final rule dated December 17, 1986 (51 FR 45108), the Treasury Department issued a final rule incorporating this statutory requirement into Part 103 for all exemptions granted after October 27, 1986, the effective date of the legislation.

(9) *Permit banks to exempt from the currency transaction reporting requirement deposits by certain public utilities and commercial passenger carriers:* This proposed amendment to the exemption procedure would permit banks to exempt cash deposits by certain public utilities and commercial passenger carriers. (Amendment #4.)

Most commenters approved of the proposal, and requested that the restrictions be lifted which limited the public utilities to governmentally supervised utilities, and the passenger carriers to those whose stock is publicly traded. After consideration, Treasury is dropping the restrictions and expanding the exemption to include all passenger carriers and public utilities.

(10) *Clarify the prohibition on exempting automobile, boat and airplane dealerships:* This proposed amendment would clarify that no motor vehicle dealership (including, but not limited to, motorcycle, recreational vehicle, and farm equipment dealers), may be exempted from the currency reporting requirements. (Amendment #4.)

There was considerable confusion about use of the term "conveyance." After consideration of the comments, it is being dropped from the final rule, since it seemed to confuse the issue more than clarify it. Several comments were received concerning other exempt issues. Several commenters wanted the exemption privilege extended to other entities such as retail sellers of services or foreign businesses. Others wished the governmental entity exemption to be clarified, and some wished deletion of the requirement to report transactions with foreign correspondent banks. The question of expansion of the exemption privilege was not a matter at issue in this proposal. Also, Treasury feels that the governmental entity exemption is sufficiently clear as written. However, Treasury is clarifying the exemption privilege as it applies to check cashing services in order to resolve an internal inconsistency in § 103.22. Finally, some commenters raised operational difficulties with the requirement that a centralized exempt list be maintained. These commenters should be aware that the requirement to maintain a centralized list is not a new requirement, as it is presently required under 31 CFR 103.22(f).

(11) *Revise the procedures for filing all reports and for recording foreign financial accounts:* This amendment would update and clarify the procedures for filing all reports, and for keeping records of interests in foreign financial accounts. All reports previously subject to filing within 30 days would be filed within 15 days of the reportable event or the request for the report, whichever is applicable. (Amendments #5, 6 & 8.)

Many commenters wanted a universal 30 day filing date; a few commenters were under the mistaken impression that the CTR filing deadline was presently 30 days instead of 15. Many complained about the retention of original records, not copies, of the Form 4789. Some commenters also wanted the forms published for comments. The only changes proposed for 31 CFR 103.26 were to change the date for filing the Form 4790 (CMIR) to 15 days after receipt of the currency or monetary instruments, and to require that any exempt list information requested by Treasury under 31 CFR 103.22(g) be submitted within 15 days. After review of the comments, Treasury is retaining the proposal as originally drafted. As for publishing forms for public comment, information contained on the forms originally is specified in regulations which have been published for notice and comment. There is no need to publish proposed forms and request comments on an issue for which comment had already been solicited. Treasury, however, always is open to any written comments from institutions that may have difficulty dealing with a specific Treasury form.

A few questions were raised about the foreign financial report itself; one bank wanted an assurance that employees authorized to sign *ex officio* on accounts were not required to file the reports. Another commenter wanted to assure that its international interbank transfer accounts ("nostro accounts") also were not included. Employees authorized to sign on accounts are not required to file a report unless they have a personal financial interest in the account. Additionally, nostro accounts are not subject to the foreign financial account report, but are subject to the Forms 4789 and 4790 requirements.

(12) *Require that customer identification be verified by document examination:* This amendment would address a compliance problem Treasury identified with financial institutions that reported insufficient information on Forms 4789 to show proper identification of customers. This amendment would require financial institutions to exercise no less care in identifying the individuals conducting reportable transactions than they do when identifying nondepositors cashing checks. Signature cards alone would not satisfy the identification requirement. (Amendment #7.)

This was a major target for commenters, centering mainly on the proposal's impact on customer services and customer relations problems. Many banks said that they verify the identity of a customer when opening an account, and that they therefore should be permitted to rely on a signature card when filling out a Form 4789. Other commenters raised the issue of whether

they must refuse a transaction if the customer refuses to supply the identification, while others wanted to know to what extent the bank could rely on the identification actually produced. Finally, some commenters wanted clarification of when a report "may be required" for purposes of obtaining the required information. After review of the comments, Treasury has altered the original proposal to permit banks that have obtained sufficient identifying information from the customer when opening the account, and that have noted that specific informaton on the signature card, to refer to the customer's signature card in filling out the Form 4789. Only specific identifying information, *i.e.*, a driver's license or credit card number, may be used on the Form 4789; the notation "known customer" or "signature card on file" still is not permitted. A conforming amendment provides that the signature card need not be consulted prior to conducting the transaction. Other foreign identity requirements are being clarified by specifying a foreign driver's license with a listed residence as an example of an acceptable document proving identity. The term "may be required" has been deleted. While Treasury has not taken the position that a financial institution must refuse a transaction if a customer refuses to supply sufficient identifying information, it reminds financial institutions that § 103.26(a) of the regulations already obligates a financial institution to file complete and accurate Forms 4789 on all reportable transactions. Financial institutions should treat the identification of persons conducting reportable transactions, whether or not account holders, with as much care as they would treat the identification of nondepositors who cash checks.

(13) *Limit financial institution recordkeeping requirements to extensions of credit exceeding $10,000 instead of $5,000:* This amendment would eliminate this recordkeeping requirement since it is no longer justified by the usefulness of the information retained. (Amendment #9.)

There was no dissent on this point. The proposal will stay as originally drafted.

(14) *Expand financial institution recordkeeping requirements to include incoming as well as outgoing transactions with persons, accounts or places outside the United States:* This amendment was proposed to respond to increasingly sophisticated international financial schemes, and would require that recordkeeping cover incoming as well as outgoing transactions, including transactions that are later cancelled or not completed for any reason. (Amendment #9.)

There was major opposition on the requirement to retain records on transactions later cancelled, mostly focusing on the fact that few banks recorded nonevents, and that therefore their systems would not capture this information. The regulation will be clarified in order to require that only where a record ordinarily was made of an order later cancelled should that record be retained.

(15) *Revise additional recordkeeping requirements for banks, casinos and brokers or dealers in securities to simplify the procedures for recording taxpayer identification numbers, and require those financial institutions to keep lists of all persons from whom taxpayer identification numbers have not been obtained:* This amendment would replace the current exemption provisions in §§ 103.34, 103.35 and 103.36 regarding taxpayer identification numbers (TINs) with a simpler requirement in section 103.38(c) that a list be maintained of all persons from whom a taxpayer identification number is not obtained. Similar procedures would be incorporated in the new additional recordkeeping requirements for foreign currency exchanges. (Amendments #10, 12, 13, 14 & 15.)

There was major opposition to this requirement, centering on: (a) What is considered a "financial interest" in the account for the purposes of obtaining the TIN of every person who has a financial interest in an account; (b) a conflict with the regulation in proposed § 103.38 (and present § 103.34(a)(4)) that directs adherences to IRS rules, which require the retention of one TIN; (c) the possible retroactivity of the requirement; (d) possible costly recordkeeping and computer system changes; (e) the ambiguity as to which accounts are included in the new requirement; and (f) the problem of obtaining all of the TINs when not all the parties are present at the time of the transaction. After review of the comments, Treasury has decided to retain the requirement, consistent with IRS rules, that only one TIN be obtained, instead of creating two different sets of requirements for obtaining TINs. The proposal also had eliminated the 45-day grace period to obtain the TIN. Treasury has decided to retain a grace period, but to reduce it to 30 days to be more consistent with IRS TIN rules. In addition, Treasury will retain the requirement contained in the proposal that additional identifying information be acquired from those non-resident aliens subject to the TIN rules, and to use the TIN rules for securities and brokers as a guide to formulating TIN rules for currency dealers and exchangers.

(16) *Clarify that additional recordkeeping requirements for banks include deposit slips and credit tickets:* This amendment would clarify that deposit slips and credit tickets should be retained as part of the paper trail already required by § 103.34 to be recorded, and that such records must stipulate whether transactions involve currency. (Amendment #11.). There was a great deal of opposition, centering primarily on: a) banks that do not have a currency line on their deposit slips; b) businesses that merely submit a register tape with the deposit and do not individually list all items; c) retention of the original as opposed to copies or microfilm; d) the $100 minimum for retention of the deposit slips, which many banks felt was too small; and e) various storage problems.

The regulation presently in effect provides that copies may be kept of any required documents; the proposed change does not alter this. This minimum amount will stay at $100, in order to maintain the consistency and uniformity of the recordkeeping requirements for banks. Treasury again notes that the originals of these slips need not be kept; copies will suffice. The proposal that the individual deposited items be listed on the slip will be deleted. The deletion was made so that businesses that merely attach a register tape to a deposit slip to indicate the total amount deposited would not have to fill out a large number of deposit slips. The requirement that a bank be able to reconstruct a deposit has not been altered.

(17) *Require foreign currency dealers to keep certain additional records:* Treasury's enforcement experience indicates that foreign currency dealers are an increasingly important component of sophisticated money laundering and tax evasion schemes and currently are subject to little or no oversight other than under the Bank Secrecy Act. (Amendment #14.)

The comments received in response to this proposal centered on the low reporting threshold of $500, and the request for a definition of a "foreign currency dealer," with a specific exemption for banks. After review of the comments, it was decided to amend the regulation to change its heading to "currency dealer or exchanger" in order to be consistent with the statute, and to define "currency dealer or exchanger" in the definition section (31 CFR 103.11) as one engaged in business as such. Banks

will be specifically exempted, as they already are subject to detailed recordkeeping requirements under Part 103. Additionally, the threshold reporting amount will be raised to $1,000, and the term "air express" will be changed to "common carrier" in order to make the terminology consistent with the rest of the Part.

(18) *Establish a uniform minimum retention period for transaction account records:* Under present regulations, bank records required to reconstruct deposits to demand deposit accounts can be destroyed two years after the transaction. However, the constraints placed on the Department by the two-year retention period have made it extremely difficult to document violations for more than one year with deposit records. The amendment to the record retention period was proposed to alleviate this problem and make the deposit record retention period consistent with the five-year retention requirement for the other records required by Part 103. (Amendment #15.)

There was major opposition to this proposal, mainly as to the increased costs associated with compliance and storage problems. Many also questioned the law enforcement utility of an increased retention period for these deposit records. As Treasury still feels that the constraints imposed on the Department by the two-year retention period make it difficult to document Bank Secrecy Act violations and tax and related financial crimes, the regulation will remain as drafted. Additionally, some commenters also wrote of the difficulty of retention of proof tapes. The regulation does not specifically require retention of proof tapes, the preamble in the Notice of Proposed Rulemaking merely mentioned proof tapes as the type of record which might be maintained by the bank to be able to reconstruct transactions at a later date.

(19) *Clarify the overall Bank Secrecy Act enforcement and compliance authority of the Assistant Secretary (Enforcement); replace references to "Administrator" of the NCUA with "Chairman of the Board;" delegate certain examination authority to the Commissioner, Internal Revenue Service; specify the criminal investigatory responsibilities of the Commissioners of Customs and Internal Revenue; and specify the requirement for periodic reports to the Assistant Secretary (Enforcement):* These amendments would: (1) Restate the overall responsibility of the Assistant Secretary for implementation and administration of Bank Secrecy Act reporting and recordkeeping requirements; (2) update regulatory language to reflect the recent change in the Assistant Secretary's title from "(Enforcement & Operations)" to "(Enforcement);" (3) correct a technical error in the delegations of Bank Secrecy Act compliance responsibility; (4) delegate to the Commissioner of Internal Revenue responsibility for the criminal investigation of all violations of Part 103 other than section 103.23; (5) restate existing delegations of investigatory responsibility; and (6) restate the requirement of periodic reports to the Assistant Secretary by agencies to which BSA compliance responsibility has been delegated. (Amendment #16.)

No real substantive issues were raised, although one commenter questioned changing the term "responsibility for assuring compliance" to "authority for assuring compliance." Further clarification is being accomplished in the final rule by changing the introductory wording in § 103.46(b) to "Authority to examine institutions to determine their compliance with the provisions of this part is delegated as follows:". New language also is being added to the section to incorporate the clarification in the Anti-Drug Abuse Act concerning what documents may be reviewed in a Bank Secrecy Act investigation. Finally, the Department's exclusive authority to impose civil penalties under the Bank Secrecy Act will be specifically stated, as will an assurance that a bank supervisory agency may report specific violations of the Act to the Department at any time.

(20) *Correct the civil penalty amount that can be assessed for willful violations of the recordkeeping requirements of this Part:* This amendment corrects a technical error in the regulations that implemented the increase in civil penalty amount made by the Comprehensive Crime Control Act of 1984. (Amendment #17.)

In order to keep the regulations as current as possible, the amendments to the civil penalty amounts now reflect civil penalties applicable to pre-1984 violations, civil penalties applicable to violations between October 1984 and October 1986 under the Comprehensive Crime Control Act, and civil penalties for violations after October 1986 under the Anti-Drug Abuse Act of 1986. A few commenters wished to have Treasury announce a "safe harbor" of allowable civil violations of the regulations prior to assessing penalties. Treasury has been given the authority and responsibility to enforce the Bank Secrecy Act, and intends to do so to the fullest extent possible. There will be no "safe harbor" of allowable violations.

(21) *A new section is being added to reference the new violation relating to the structuring of transactions:* This amendment merely incorporates into the regulations the new statutory violation of structuring currency transactions in order to avoid the reporting requirements of the Bank Secrecy Act. An addition also is being made to the civil penalty section to reference civil penalties for structuring transactions. (Amendments #17 & 18.)

In addition, readers should note that due to the passage of the Government Securities Act, Pub. L. 99-571, October 28, 1986, the Securities Exchange Act of 1934 has been amended to require government securities brokers and dealers to register with the Securities and Exchange Commission beginning July 25, 1987. Those government securities brokers and dealers presently not registered with the SEC will be required to do so, and therefore also will be subject to Part 103 Bank Secrecy Act regulations by virtue of the definition of "broker or dealer in securities" in 31 CFR 103.11(b).

Finally, because of the changes in the Bank Secrecy Act regulations that this final rule will effect, financial institutions may recognize some inconsistencies between the provisions of the regulations, as revised, and the instructions on the current version of Form 4789. Although Treasury will need to revise the Form 4789 instructions to take the regulatory changes into account, financial institutions are advised in the interim that in the event of conflict or inconsistency between a provision of the regulations and the Form 4789 instructions, the regulatory provisions shall control.

**Executive Order 12291**

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

**Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is hereby certified that this

final rule will not have a significant economic impact on a substantial number of small entities. Most of the recordkeeping and reporting requirements imposed by this final rule concern information already found in routine business records. To the extent an affected financial institution has prudent record retention practices, it will already be retaining a substantial portion of the information identified in this proposed regulation.

**Paperwork Reduction Act**

The collection of information requirements mandated by this final rule have been reviewed and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. 1505–0063.)

**Drafting Information**

The principal authors of this document are the Office of the Assistant General Counsel (Enforcement), and the Office of Financial Enforcement, Department of the Treasury.

**List of Subjects in 31 CFR Part 103**

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

## PART 103—[AMENDED]

**Amendment**

31 CFR Part 103 is amended as set forth below:

1. The authority citation for Part 103 is revised to read as follows:

**Authority:** Sec. 21 of the Federal Deposit Insurance Act, Pub. L. 91–508, Title I, 84 Stat. 1114, 1116 (12 U.S.C. 1829b, 1951–9); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–24).

2. Section 103.11 is revised to read as follows:

**§ 103.11 Meaning of terms.**

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

(a) *Bank.* Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commerical bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State;

(8) a bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611–32).

(b) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(c) *Common carrier.* Any person engaged in the business of transporting individuals or good for a fee holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(d) *Currency.* The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(e) *Currency dealer or exchanger.* A person who engages as a business in dealing in or exchanging currency, except for banks which offer such services as an adjunct to their regular services.

(f) *Domestic.* When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(g) *Financial Institution.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A currrency dealer or exchanger, including a person engaged in the business of a check casher;

(4) An issuer, seller, or redeemer of traveler's checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of such instruments within any given 30-day period;

(5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds;

(6) A telegraph company;

(7) (i) A casino or gambling casino licensed as a casino or gambling casino by a State or local government and having gross annual gaming revenue in excess of $1,000,000.

(ii) A casino or gambling casino includes the principal headquarters and any branch or place of business of the casino or gambling casino.

(8) A person subject to supervision by any state or federal bank supervisory authority.

(h) *Foreign bank.* A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(i) *Foreign financial agency.* A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(j) *Investment security.* An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in enterprise or evidences an obligation of the issuer.

(k) *Monetary instruments.* (1) Monetary instruments include:

(i) Currrency;

(ii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's

checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), traveler's checks, and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of section 103.23), or otherwise in such form that title thereto passes upon delivery;

(iii) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), traveler's checks, and money orders) signed but with the payee's name omitted; and

(iv) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(l) *Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

(m) *Secretary.* The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(n) *Transaction account.* Transaction accounts include those accounts described in 12 U.S.C. § 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(o) *Transaction in currency.* A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

(p) *United States.* The various States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(q) *Business day.* Business day, as used in this part with respect to banks, means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

3. Part 103 is amended by removing the phrase "demand deposit account" wherever it appears and inserting in its place the phrase "transaction account".

4. Section 103.22 is revised to read as follows:

**§ 103.22 Reports of currency transactions.**

(a)(1) Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000. Multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any one business day. Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(2) Each casino shall file a report of each deposit, withdrawal, exchange of currency, gambling tokens or chips, or other payment or transfer, by, through, or to such casino which involves a transaction in currency of more than $10,000. Multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any twenty-four hour period.

(3) A financial institution includes all of its domestic branch offices for the purpose of this paragraph's reporting requirements.

(b) Except as otherwise directed in writing by the Assistant Secretary (Enforcement) or the Commissioner of Internal Revenue:

(1) This section shall not require reports:

(i) Of transactions with Federal Reserve Banks or Federal Home Loan banks;

(ii) Of transactions between domestic banks; or

(iii) By nonbank financial institutions of transactions with commercial banks (however, commercial banks must report such transactions with nonbank financial institutions).

(2) A bank may exempt from the reporting requirement of paragraph (a) of this section the following:

(i) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States. For the purpose of this subsection, a retail type of business is a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portions by currency, except that dealerships which buy or sell motor vehicles, vessels, or aircraft are not included and their transactions may not be exempted from the reporting requirements of this section.

(ii) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, theater, regularly scheduled passenger carrier or any public utility.

(iii) Deposits or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities.

(iv) Withdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than $10,000 in order to pay its employees in currency.

(c) In each instance the transactions exempted under paragraph (b) of this section must be in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful, domestic business of that customer, or in the case of transactions with a local or state govenment or the United States or any of its agencies or instrumentalities, in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality. This section does not permit a bank to exempt its transactions with nonbank financial institutions (except for check cashing services licensed by state or local governments), nor will additional exemption authority be granted for such transactions (except transactions by other check cashers).

(d) After October 27, 1986, a bank may not place any customer on its exempt list without first obtaining a written statement, signed by the customer, describing the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption. The statement shall include the name, address, nature of business, taxpayer identification number, and account number of the customer being exempted. The signature, including the title and position of the person signing, will attest to the accuracy of the information concerning the name, address, nature of business, and tax identification number of the customer. Immediately above the signature line, the following statement shall appear: "The information contained above is true and correct to the best of my knowledge and belief. I

understand that this information will be read and relied upon by the Government." The bank shall indicate in this statement whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption for both deposits and withdrawals. The bank also shall indicate whether the exemption is limited to certain types of deposits and withdrawals (*e.g.*, withdrawals for payroll purposes). In each instance, the exempted transactions must be in amounts that the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer. The bank is responsible for independently verifying the activity of the account and determining applicable dollar limits for exempted deposits or withdrawals. The bank must retain each statement that it obtains pursuant to this subparagraph as long as the customer is on the exempt list, and for a period of five years following removal of the customer from the bank's exempt list.

(e) A bank may apply to the Commissioner of Internal Revenue for additional authority to grant an exemption to the reporting requirement, not otherwise permitted under paragraph (b) of this section, if the bank believes that circumstances warrent such an exemption. Such requests shall be addressed to: Chief, Currency and Banking Reports Branch, Exemption Review Staff, IRS Data Center, Post Office Box 32063, Detroit, Michigan 48232, and must be accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer required by paragraph (d) of this section.

(f) A record of each exemption granted under this section and the reason therefor must be kept in a centralized list. The record shall include the names and addresses of all banks referred to in paragraph (b)(1)(ii) of this section, as well as the name, address, business, taxpayer identification number and account number of each depositor that has engaged in currency transactions which have not been reported because of the exemption provided in paragraph (b)(2) of this section. The record concerning the group of depositors exempted under the provisions of paragraph (b)(2) of this section shall also indicate whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption.

(g) Upon the request of the Assistant Secretary (Enforcement) or the Commissioner of Internal Revenue, a bank shall provide a report containing the list of the bank's customers whose transactions have been exempted under this section and such related information as the Assistant Secretary or Commissioner shall require, including copies of the statements required in paragraph (d) of this section. The report must be provided within 15 days of the request. Any exemption may be rescinded at the discretion of the requesting official, who may require the bank to file reports required by paragraph (a) of this section with respect to future transactions of any customer whose transactions previously were exempted.

(Approved by the Office of Management and Budget under control number 1505–0063)

5. The first sentence of § 103.24 is revised to read as follows:

**§ 103.23 Reports of foreign financial accounts.**

Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons.

* * *

6. Section 103.26 is revised to read as follows:

**§ 103.26 Filing of reports.**

(a)(1) A report required by § 103.22(a) shall be filed by the financial institution within 15 days following the day on which the responsible transaction occurred.

(2) A report required by § 103.22(g) shall be filed by the bank within 15 days after receiving a request for the report.

(3) A copy of each report filed pursuant to §103.22 shall be retained by the financial institution for a period of five years from the date of the report.

(4) All reports required to be filed by § 103.22 shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by § 103.23(a) shall be filed at the time of entry into the United States or at the time of depature, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs.

(2) A report required by § 103.23(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by § 103.23 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs. Reports required by § 103.23(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by § 103.23(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20226.

(c) Reports required to be filed by § 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial acccounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by §§ 103.22, 103.23 or 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by §§ 103.22 and 103.24 may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 103.23 may be obtained from the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1505–0063)

7. Section 103.27 is revised to read as follows:

**§ 103.27 Identification required.**

Before concluding any transaction with respect to which a report is required under § 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity for whose or which account such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature

card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a drivers license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (*i.e.*, the account number of the credit card, the driver's license number, etc.) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of "known customer" or "bank signature care on file" on the report is prohibited.

(Approved by the Office of Management and Budget under control number 1505–0063)

8. The first sentence of § 103.32 is revised to read as follows:

**§ 103.32 Records to be made and retained by persons having financial interests in foreign financial accounts.**

Records of accounts required by § 103.24 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account.* * *

9. Section 103.33 introductory text, (a), and (b) are revised and the OMB control number is added to read as follows:

**§ 103.33 Records to be made and retained by financial institutions.**

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later cancelled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than $10,000 to or from any person, account, or place outside the United States.

* * * * *

(Approved by the Office of Management and Budget under control number 1505–0063)

10. Section 103.34(a) (1) introductory text and (2) are amended by removing the number "45" wherever it appears and inserting in its place the number "30", and by adding a new sentence at the end of paragraph (a)(1) to read as follows:

**§ 103.34 Additional records to be made and retained by banks.**

(a)(1) * * * Where a person is a non-resident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.

* * * * * *

11. Section 103.34 is further amended by revising paragraph (b)(1) and adding a new paragraph (b)(13) and the OMB control number to read as follows:

**§ 103.34 Additional records to be made and retained by banks.**

* * * * * *

(b) * * *

(1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);

* * * * * *

(13) Each deposit slip or credit ticket reflecting a transaction in excess of $100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

(Approved by the Office of Management and Budget under control number 1505–0063)

12. Paragraphs (a) (1) introductory and (2) § 103.35 are amended by removing the number "45" wherever it appears and inserting in its place the number "30," and by adding a sentence at the end of paragraph (a)(1) and adding the OMB control number to read as follows:

**§ 103.35 Additional records to be made and retained by brokers or dealers in securities.**

(a) * * * Where a person is a non-resident alien, the broker or dealer in securities shall also record the person's passport number or a description of some other government document used to verify his identity.

* * * * * *

(Approved by the Office of Management and Budget under control number 1505–0063)

13. Section 103.36 is amended by adding a sentence to the end of paragraph (a) and adding the OMB control number to read as follows:

**§ 103.36 Additional records to be made and retained by casinos.**

(a) * * * Where a person is a nonresident alien, the casino shall also record the person's passport number or a description of some other government document used to verify his identity.

* * * * * *

(Approved by the Office of Management and Budget under control number 1505–0063)

**§§ 103.37 and 103.38 [Redesignated as §§ 103.38 and 103.39]**

14. Sections 103.37 and 103.38 are redesignated as §§ 103.38 and 103.39, and a new § 103.37 is added to read as follows:

**§ 103.37 Additional records to be made and retained by currency dealers or exchangers.**

(a)(1) After July 7, 1987, each currency dealer or exchanger shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the currency dealer or exchanger shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the currency dealer or exchanger shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a currency dealer or exchanger has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if:

(i) It has made a reasonable effort to secure such identification, and

(ii) It maintains a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account or credit line numbers of those persons available to the Secretary as directed by him.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the currency dealer or exchanger.

(3) A taxpayer identification number for an account or credit line required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, State, local or foreign governments,

(ii) Accounts for aliens who are—

(A) Ambassadors, ministers, career diplomatic or consular officers, or

(B) Naval, military or other attaches of foreign embassies, and legations, and for members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Each currency dealer or exchanger shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;

(2) Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;

(3) A record of each exchange of currency involving transactions in excess of $1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency;

(4) Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a person authorized to sign on the account (if customer accounts are maintained in a code name, a record of the actual owner of the account);

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, or more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States;

(7) Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in excess of $100 deposited in such account through its internal recordkeeping system to its depositary institution, or to supply a description of a deposited check in excess of $100;

(8) A record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction;

(9) A system of books and records that will enable the currency dealer or exchanger to prepare an accurate balance sheet and income statement.

(Approved by the Office of Management and Budget under control number 1505–0063)

15. Paragraph (c) of newly redesignated § 103.38 is redesignated as (d), a new paragraph (c) is added, and newly redesignated paragraph (d) is revised and the OMB control number is added to read as follows:

**§ 103.38 Nature of records and retention period.**

* * * * *

(c) the rules and regulations issued by the Internal Revenue Service under 26 U.S.C. § 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(d) All records that are required to be retained by this Part shall be retained for a period of five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

(Approved by the Office of Management and Budget under control number 1505–0063)

16. Section 103.46 is amended by removing paragraph (b), by redesignating paragraph (a) as paragraph (b), by revising the introductory test of newly redesignated (b) and by revising (b)(5) and (b)(8), and by adding new paragraphs (a), (c), (d), (e) and (f) to read as follows:

**§ 103.46 Enforcement.**

(a) Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this Part, is delegated to the Assistant Secretary (Enforcement).

(b) Authority to examine institutions to determine compliance with the requirements of this Part is delegated as follows:

* * * * *

(5) To the Chairman of the Board of the National Credit Union Administration with respect to those financial institutions regularly examined for safety and soundness by NCUA examiners.

* * * * *

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, not currently examined by Federal bank supervisory agencies for soundness and safety.

(c) Authority for investigating criminal violations of this Part is delegated as follows:

(1) To the Commissioner of Customs with respect to § 103.23;

(2) To the Commissioner of Internal Revenue except with respect to § 103.23.

(d) Authority for the imposition of civil penalties for violations of this part lies with the Assistant Secretary, and in the Assistant Secretary's absence, the Deputy Assistant Secretary (Law Enforcement).

(e) Periodic reports shall be made to the Assistant Secretary by each agency to which compliance authority has been delegated under paragraph (b) of this section. These reports shall be in such a form and submitted at such intervals as the Assistant Secretary may direct. Evidence of specific violations of any of the requirements of this Part may be submitted to the Assistant Secretary at any time.

(f) The Assistant Secretary or his delegate, and any agency to which compliance has been delegated under paragraph (b) of this section, may examine any books, papers, records, c other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this Part.

17. Paragraph (a) of § 103.47 is revised and redesignated as (b), paragraph (b) is redesignated as (d), and new paragraphs

(a), (c), (e), (f), (g) and (h) are added to read as follows:

**§ 103.47 Civil penalty.**

(a) For any willful violation, committed on or before October 12, 1984, of any reporting requirement for financial institutions under this Part or of any recordkeeping requirements of § 103.22, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(b) For any willful violation committed after October 12, 1984 and before October 28, 1986, of any reporting requirement for financial institutions under this part or of the recordkeeping requirements of § 103.32, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $10,000.

(c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of § 103.32, under this part, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

* * * * *

(e) For any willful of violation § 103.53 committed after January 26, 1987, the Secretary may assess upon any person a civil penalty not to exceed the amount of coins and currency involved in the transaction with respect to which such penalty is imposed. The amount of any civil penalty assessed under this paragraph shall be reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.

(f) For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this part (except §§ 103.24, 103.25 or 103.32), the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000.

(g) For any willful violation committed after October 27, 1986, of any requirement of §§ 103.24, 103.25, or 103.32, the Secretary may assess upon any person, a civil penalty:

(1) In the case of a violation of § 103.25 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) of the transaction, or $25,000; and

(2) In the case of a violation of §§ 103.24 or 103.32 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) equal to the balance in the account at the time of the violation, or $25,000.

(h) For each negligent violation of any requirement of this Part, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed $500.

18. Part 103 is amended by adding at the end a new § 103.53 to read as follows:

**§ 103.53 Structured transactions.**

No person shall for the purpose of evading the reporting requirements of § 103.22 with respect to such transaction—

(a) Cause or attempt to cause a domestic financial institution to fail to file a report required under § 103.22;

(b) Cause or attempt to cause a domestic financial institution to file a report required under § 103.22 that contains a material omission or misstatement of fact; or

(c) Structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

Dated: March 30, 1987.

**Francis A. Keating, II,**

*Assistant Secretary (Enforcement).*

[FR Doc. 87-7797 Filed 4-6-87; 10:17 am]

BILLING CODE 4810-25-M

Federal Register

Wednesday
April 8, 1987

Part IV

# Department of Education

34 CFR Part 206

**Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program; Proposed Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 206

## Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP). These amendments are needed to implement changes to the Higher Education Act of 1965, enacted as part of the Higher Education Amendments of 1986. The proposed regulations would provide for a three-year grant period; a minimum annual award; an expansion of allowable services that can be provided to participating students; inclusion of a management plan in each grant application; and, in evaluating grant applications, consideration of an applicant's prior experience.

**DATES:** Comments must be received on or before May 26, 1987.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Dr. John F. Staehle, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB–6 (MS 6275), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB–6 (MS 6275), Washington, DC 20202. Telephone No. (202) 732–4758.

**SUPPLEMENTARY INFORMATION:** In section 101 of the Higher Education Amendments of 1986 (Pub. L. 99–498), Congress amended the Higher Education Act of 1965 by enacting a new Title IV, Subpart 5, "Special Programs For Students Whose Families Are Engaged in Migrant and Seasonal Farmwork." Subpart 5 contains a new section 418A that authorizes the HEP and CAMP programs. The new section 418A revises the previous provisions governing these programs that had been contained in the predecessor statute (section 418A of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 (Pub. L. 96–374)).

These proposed regulations for the HEP and CAMP programs would amend 34 CFR Part 206 to implement the new statutory provisions. Like the statute, the proposed regulations would expand the types of services that grant recipients may provide to participating students (§ 206.10). Other changes required by statute provide that only institutions of higher education (IHEs) or private nonprofit agencies (and not public nonprofit agencies) cooperating with IHEs are eligible to receive grants (§ 206.2); except in extraordinary circumstances, projects will be approved for three years; minimum grant awards will be $150,000 (§ 206.20); applicants must submit detailed management plans (§ 206.20); and the Secretary must consider prior experience in evaluating applications and selecting grantees (§§ 206.20, 206.30, and 206.31).

In large part, these proposed regulations derive expressly from the statute. While the public is invited to comment on any aspect of the proposed regulations, the Secretary notes four areas of particular interest.

First, under existing regulations for the HEP and CAMP programs, any child who is a migrant or other seasonal farmworker, or who is a dependent of a migrant or other seasonal farmworker, is eligible to participate in a HEP or CAMP program. The new section 418A (b) and (c) of the Higher Education Act, as amended, authorizes HEP and CAMP project recipients to conduct recruitment services to reach appropriate students who are themselves or whose parents are migrant or seasonal farmworkers. The statute does not expressely authorize the participation of children who may not live with their parents but whose guardians perform migratory or seasonal farmwork. Because the new section 418A(a) of the statute directs the Secretary to maintain and expand existing HEP and CAMP programs, and because Congress has not indicated an intent otherwise with guardians who are migrant or seasonal farmworkers, the Secretary proposes to permit HEP and CAMP grantees to conduct recruitment services to reach these persons as well (§ 206.10(b)(1)(i) and (2)(i)).

Second, proposed § 206.10(b) repeats provisions contained in the new section 418(b) and (c) of the Higher Education Act, as amended, that enumerate newly authorized services that HEP and CAMP grantees may provide. Among other things, the statute authorizes recipients of HEP grants to provide health services and weekly stipends to program participants, and recipients of CAMP grants to provide both health services and assistance to participants in obtaining stipends, student travel and other enumerated forms of financial aid. In the past, individual CAMP grantees have received authorization to use limited amounts of grant funds to provide financial aid, as necessary support services, directly to project participants. In view of Congress intent to maintain and expand existing programs, and again evidence of a contrary congressional intent, the Secretary proposes to permit CAMP grantees to continue providing that financial assistnce, as needed, to appropriate recipients.

However, the Secretary is concerned that without some reasonable limitations, the amount of program funds that a grant recipient might use to provide these support services could detract from the basic educational purposes of the HEP and CAMP programs. The Secretary therefore is considering the establishment of reasonable limits on the kinds and amounts of those health and financial support services that may be provided. Accordingly, the Secretary invites the public to comment on (1) the types of health services, stipends, travel assistance, and other financial aid that HEP or CAMP grantees may furnish or assist project participants in obtaining, (2) the persons who should be eligible to receive supportive health services, and (3) the limits, if any, on the amount of a recipient's receipt's grant that might be available for provision of those health and financial support services. The limitations, if any, will be published in the final version of the regulations.

Third, while the new section 418A(f) of the Higher Education Act, as amended, requires a minimum allocation of $150,000 for any HEP or CAMP project, it does not clarify whether this mimimum award is to be for the entire three-year project period or for each year. In § 206.20(b), the Secretary proposes to approve projects at a minimum annual basis of $150,000. Through the new statute, Congress intended to strengthen HEP and CAMP programs. Since the Department until now has funded each HEP or CAMP project at an annual level that significantly exceeds $50,000, the Secretary believes that in enacting this statutory minimum, Congress intended to ensure a minimum annual level of support of $150,000 per HEP or CAMP project.

The new section 418(e) of the Higher Education Act, as amended, directs the

Secretary in selecting grantees to consider the prior experience of each grant applicant in delivering HEP or CAMP services, and to give that prior experience "the same level of consideration given this factor for applicants" for the Special Programs for Students From Disadvantaged Backgrounds (TRIO Program). In addition, Congress expressed its intention that the HEP and CAMP projects "be administered in a manner comparable to the administration" of the TRIO Program (H. Rept. 383, 99th Cong., 1st Sess. 33). Therefore, the Secretary proposes to evaluate the prior experience of applicants for HEP and CAMP grants in a manner that is comparable to that required in 34 CFR 646.32 of the TRIO program regulations. As noted in proposes §§ 206.30 and 206.31(i), the Secretary would provide up to 15 additional points for evidence of the applicant's prior experience during the three previous fiscal years in administering and operating any HEP or CAMP project. In awarding these points, the Secretary proposes to consider the same kinds of reports and other information that applicants for TRIO projects provide and to use the same kinds of criteria as in 34 CFR 646.32(c) of the TRIO regulations. However, the Secretary proposes in § 206.31(i)(2) to consider areas of a HEP or CAMP applicant's prior experience that more specifically pertain to the unique purpose of the HEP and CAMP programs.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed reuglations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are IHEs or private nonprofit organizations that choose to seek Federal financial assistance under this program. However, the regulations would not have a significant economic impact on these institutions or agencies because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

**Paperwork Reduction Act of 1980**

Sections 206.20 and 206.31 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this proposed regulation to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for consideration and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and action for this program.

**Invitation to Comment**

Intersted persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Federal Office Building 6, Room 2145, 400 Maryland Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 206**

Colleges and universities, Education, Education of disadvantaged, Grant programs—education, Migrant labor, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Nos. 84.141 Migrant Education Program—High School Equivalency Program, and 84.149 Migrant Education Program—College Assistance Migrant Program.)

Dated: March 23, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Part 206 of Title 34 of the Code of Federal Regulations as follows:

## PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

1. The authority citation for Part 206 is revised to read as follows:

**Authority:** 20 U.S.C. 1070d–2, unless otherwise noted.

2. The citation of authority following §§ 206.1 through 206.5 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a))

3. The citation of authority following § 206.10 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(b) and (c))

4. The citation of authority following § 206.20 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (d)–(f))

5. The citation of authority following § 201.30 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (e))

6. The citation of authority following § 201.31 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (E))

7. Section 206.2 (a) and (b) is revised to read as follows:

**§ 206.2 Who is eligible to participate as a grantee?**

(a) *Eligibility.* An IHE or a private nonprofit organization may apply for a grant to operate a HEP or CAMP project.

(b) *Cooperative planning.* If a private nonprofit organization other than an IHE applies for a HEP or a CAMP grant, that agency must plan the project in cooperation with an IHE and must propose to operate the project with the facilities of that IHE.

. . . . . .

8. Section 206.4 is amended by revising paragraph (a) to read as follows:

**§ 206.4 What regulations apply to these programs?**

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply to Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

9. Section 206.5 is amended by revising paragraph (c)(1) to read as follows:

**§ 206.5 What definitions apply to these programs?**

* * * * *

(c)* * *

(1) "Act" means the higher Education Act of 1965, as amended.

* * * * *

10. Section 206.10 is amended by revising paragraphs (b)(1)(i)–(viii) and (b)(2)(i)–(iii), and by adding new paragraphs (b)(2)(iv)–(vi), to read as follows:

**§ 206.10 What types of services may be provided?**

* * * * *

(b)* * *

(1)* * *

(i) Recruitment services to reach persons who are at least 17 years of age, who themselves or whose parents or guardians have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who lack a high school diploma or its equivalent.

(ii) Educational services that provide instruction designed to help students pass an examination and obtain a certificate that meets the guidelines for high school equivalency established by the State in which the project is located.

(iii) Supportive services that include the following—

(A) Personal, vocational, and academic counseling;

(B) Placement services designed to place students in a university, college, or junior college program, or in military services or career positions; and

(C) Health services.

(iv) Information concerning and assistance in obtaining available student financial aid.

(v) Weekly stipends for high school equivalency program participants.

(vi) Housing for those enrolled in residential programs.

(vii) Exposure to cultural events, academic programs, and other educational and cultural activities usually not available to migrant youth.

(viii) Other essential supportive services, as needed, to ensure the success of eligible students.

(2)* * *

(i) Outreach and recruitment services to reach persons who themselves or whose parents or guardians have spent a minimum of 75 days the past 24 months in migrant and seasonal farmwork, and who meet the minimum qualifications for attendance at a college or university.

(ii) Supportive and instructional services, including—

(A) Personal, academic, and career counseling as an ongoing part of the program;

(B) Tutoring and academic-skill-building instruction and assistance;

(C) Assistance with special admissions;

(D) Health services; and

(E) Other services as necessary to assist students in completing program requirements.

(iii) Assistance in obtaining student financial aid that includes, but is not limited to, the following:

(A) Stipends.

(B) Scholarships.

(C) Student travel.

(D) Career-oriented work-study.

(E) Books and supplies.

(F) Tuition and fees.

(G) Room and board.

(H) Other assistance necessary to assist students in completing their first year of college or university.

(iv) Housing support for student living in institutional facilities and commuting students.

(v) Exposure to cultural events, academic programs, and other activities not usually available to migrant youth.

(vi) Other support services as necessary to ensure the success of eligible students.

* * * * *

Section 206.20 is amended by removing "and" at the end of paragraph (a), redesignating paragraph (b) as (d), and adding new pargraphs (b) and (c) to read as follows:

**§ 206.20 What must be included in an application?**

* * * * *

(b) Submit a grant application that—

(1) Covers a period of three years, unless extraordinary circumstances warrant a shorter period; and

(2) Includes an annual budget of not less than $150,000;

(c) Include a management plan that contains—

(1) Assurances that the staff has a demonstrated knowledge of and will be sensitive to the unique characteristics and needs of the migrant and seasonal farmworker population; and

(2) Provisions for—

(i) Staff inservice training;

(ii) Training and technical assistance;

(iii) Staff travel;

(iv) Student travel;

(v) Interagency coordination; and

(vi) Project evaluation; and

* * * * *

12. Section 206.30 is amended by revising paragraph (b) to read as follows:

**§ 206.30 How does the Secretary evaluate an application?**

* * * * *

(b) The Secretary awards up to 115 possible points for meeting these criteria.

* * * * *

13. Section 206.31 is amended by revising paragraph (a)(2)(ii), and adding a new paragraph (i), to read as follows:

**§ 206.31 What selection criteria does the Secretary use to evaluate an application?**

* * * * *

(a) * * *

(2) * * *

(ii) An effective plan of management, as described in § 206.20(d), that ensures the proper and efficient administration of the project.

* * * * *

(i) *Prior experience.* (15 points) (1) The Secretary considers the applicant's success, in any HEP or CAMP project conducted during the three fiscal years preceding the fiscal year for which the applicant is applying, in meeting the administrative requirements and programmatic objectives in paragraphs (a) (2) and (b)(2) of this section.

(2) The Secretary—based on information contained in the project application and in one or more of the following documents at the Secretary's disposal: performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), the application under consideration, and similar reports and applications about the other projects the applicant has managed—considers—

(i) The extent to which the project's anticipated number of students were served and given access to college or university activities as provided in the approved grant application;

(ii) The extent to which project participants persisted toward

completion of the academic programs in which they were enrolled. The Secretary considers—

(A) For a HEP project, the number of participants who successfully completed their specified courses of study and the number of participants who passed an examination and obtained a certificate that meets the guidelines for high school equivalency established by the State in which the project is located.

(B) For a CAMP project, the number of participants who completed their course of study, for the first year of the college or university attended, in good standing;

(iii) The extent to which an effective plan of management existed and was implemented to ensure the proper and cost effective administrative of the project through provisions for—

(A) Staff inservice training and technical assistance; and

(B) Coordination with other existing programs that benefit the participating students and their families;

(iv) The extent to which the project assisted—

(A) HEP graduates to be placed in universities, junior colleges, the military services, career positions, or other post-secondary school activities; and

(B) CAMP students to continue in a post-secondary program of study after completion of the CAMP project; and

(v) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of previously funded awards.

(3) The Secretary gives equal weight to each criterion listed in paragraphs (i)(2)(i)–(v) of this section.

(Authority: 20 U.S.C. 1070d–2)

[FR Doc. 87–7778 Filed 4–7–87; 8:45 am]

BILLING CODE 4000–01–M

# Reader Aids

Federal Register

Vol. 52, No. 67

Wednesday, April 8, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019

**5 CFR**

213.....11185
1201.....10875

**7 CFR**

210.....11186
272.....11021
273.....11021
301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728
910.....10729
1097.....10729
1137.....10730
1468.....10731
1472.....10731
1475.....10725
**Proposed Rules:**
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
945.....10893
994.....10984
1955.....10577
1965.....10577

**9 CFR**

78.....10554
92.....11022
102.....11024
114.....11024
**Proposed Rules:**
92.....10765
317.....10766
319.....10766

**10 CFR**

0.....11026
**Proposed Rules:**
50.....10771

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
**Proposed Rules:**
612.....11080

**14 CFR**

39.....10558, 10735, 10736
71.....10559, 11028, 11032-11034
73.....10559, 10560, 11033, 11034
95.....10737
1215.....10880
**Proposed Rules:**
39.....10581, 11081
71.....10582, 11082

**15 CFR**

371.....10741
**Proposed Rules:**
368.....10771

**17 CFR**

270.....11187
**Proposed Rules:**
240.....11083, 11089

**18 CFR**

16.....11035
271.....10741
381.....10366
**Proposed Rules:**
4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
177.....11216
**Proposed Rules:**
111.....10774

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010

234..... 11010
260..... 11010
266..... 11010
320..... 11010
322..... 11010
325..... 11010
330..... 11010
335..... 11010
341..... 11010
345..... 11010
656..... 11217

**Proposed Rules:**
200..... 10384
615..... 10774

**21 CFR**

5..... 10881
81..... 10882
172..... 10882
175..... 10883
184..... 10884
193..... 10561, 10562
510..... 10668, 11040, 11041
520..... 10668, 11041
522..... 10668
524..... 10668, 10886
529..... 10668
558..... 11040, 11041
561..... 10562
573..... 10887
1308..... 11042

**Proposed Rules:**
1301..... 11091

**23 CFR**

**Proposed Rules:**
650..... 11092

**24 CFR**

**Proposed Rules:**
905..... 10668
968..... 10668

**26 CFR**

1..... 10368, 10741, 10742
5f..... 10368
54..... 10563
602..... 10368, 10563, 10742

**Proposed Rules:**
1..... 10774
54..... 10583
602..... 10583, 10774

**28 CFR**

0..... 11043
545..... 10528

**Proposed Rules:**
549..... 10531

**29 CFR**

2644..... 10368

**Proposed Rules:**
1625..... 10584
1910..... 10586

**30 CFR**

914..... 10369, 10373
946..... 11044

**Proposed Rules:**
723..... 11287
724..... 11287
733..... 10898
845..... 11287
846..... 11287
910..... 11287
912..... 11287
921..... 11287
922..... 11287
933..... 11287
937..... 11287
939..... 11287
941..... 11287
942..... 11287
947..... 11287

**31 CFR**

103..... 11436

**32 CFR**

154..... 11219
701..... 11051
706..... 10874, 10748, 10749

**33 CFR**

**Proposed Rules:**
100..... 10593, 10594, 10905, 10906

**34 CFR**

628..... 11256

**Proposed Rules:**
206..... 11448

**36 CFR**

1..... 10670
2..... 10670
4..... 10670
7..... 10670
34..... 10670
228..... 10564

**Proposed Rules:**
9..... 10866

**37 CFR**

**Proposed Rules:**
307..... 11096

**38 CFR**

1..... 10888
17..... 11259

**Proposed Rules:**
17..... 10907

**39 CFR**

10..... 10375
111..... 10749

**40 CFR**

52..... 10751, 11259
60..... 10852, 11420
110..... 10712
180..... 10375, 10376, 10565, 10567, 11260, 11261
271..... 10568, 11263
761..... 10688
799..... 10377, 10752

**Proposed Rules:**
52..... 10596, 11287, 11288
141..... 10972
142..... 10972
143..... 10972
180..... 11292, 11293

**41 CFR**

101-20..... 11263
101-28..... 11275
201-32..... 10379

**42 CFR**

7..... 11072

**44 CFR**

64..... 10753

**Proposed Rules:**
5..... 10385
6..... 10385

**45 CFR**

Ch. II..... 11073
Ch. III..... 11073
Ch. IV..... 11073
Ch. X..... 11073
2201..... 10870

**46 CFR**

**Proposed Rules:**
154..... 10598
502..... 10912

**47 CFR**

2..... 10568
22..... 10571
73..... 10381, 10382, 10568, 10757
74..... 10568
78..... 10568

**Proposed Rules:**
90..... 10389

**48 CFR**

7..... 11074
215..... 11276
217..... 11076
252..... 11076, 11276

**Proposed Rules:**
509..... 10913

**49 CFR**

219..... 10575
1003..... 11277
1043..... 11277
1084..... 11277
1207..... 10382
1249..... 10382

**Proposed Rules:**
Ch. X..... 11295
571..... 10775
1312..... 10913
1320..... 11295

**50 CFR**

17..... 10890, 11162, 11277
301..... 10759
611..... 10761
642..... 10762
652..... 10763
672..... 10761
675..... 10761

**Proposed Rules:**
640..... 10780
651..... 10781

## List of Public Laws

**Last List April 7, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet from (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 96/Pub. L. 100-19**

Designating April 3, 1987, as "Interstate Commerce Commission Day." (Apr. 3, 1987; 101 Stat. 263; 2 pages) Price: $1.00

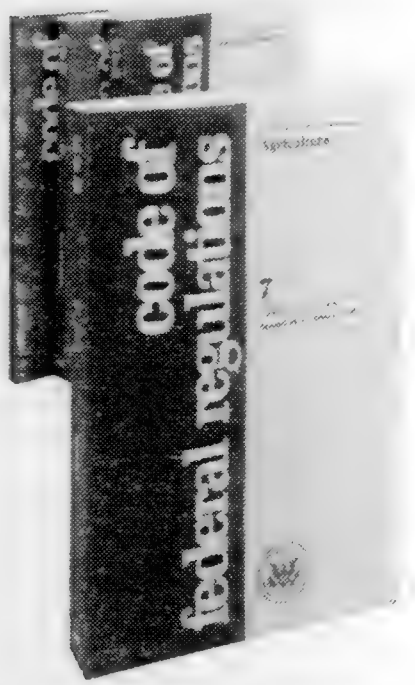


*Just Released*

# Code of Federal Regulations

**Revised as of January 1, 1987**

| Quantity | Volume | Price | Amount |
|---|---|---|---|
| _____ | Title 7—Agriculture<br>Parts 46–51 (Stock No. 869–001–00007–4) | $16.00 | $_____ |
| _____ | Parts 1000–1059 (Stock No. 869–001–00015–5) | 15.00 | _____ |
| _____ | Title 13—Business Credit and Assistance<br>(Stock No. 869–001–00034–1) | 19.00 | _____ |
| _____ | Title 14—Aeronautics and Space<br>(Part 1200–End) (Stock No. 869–001–00039–2) | 11.00 | _____ |
| _____ | Title 16—Commercial Practices<br>(Parts 0–149) (Stock No. 869–001–00043–1) | 12.00 | _____ |

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)

**Total Order** $_____

*Please do not detach*

## Order Form

**Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

**Charge to my Deposit Account No.**

[ ][ ][ ][ ][ ][ ]–[ ]

Order No._____

VISA

MasterCard

**Credit Card Orders Only**

Total charges $_____ Fill in the boxes below

Credit Card No. [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]

Expiration Date Month/Year [ ][ ][ ][ ]

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

**PLEASE PRINT OR TYPE**

**For Office Use Only.**

| | Quantity | Charges |
|---|---|---|
| Enclosed | | |
| To be mailed | | |
| Subscriptions | | |
| Postage | | |
| Foreign handling | | |
| MMOB | | |
| OPNR | | |
| UPNS | | |
| Discount | | |
| Refund | | |

L
2
S S
8
P
87
M I

4-9-87
Vol. 52 No. 68

# Federal Register

Thursday
April 9, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106
A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-9-87
Vol. 52 No. 68
Pages 11453-11610

# Federal Register

Thursday
April 9, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 68

Thursday, April 9, 1987

**Agricultural Marketing Service**
RULES
Milk marketing orders:
Southern Michigan, 11455
PROPOSED RULES
Milk marketing orders:
Louisville-Lexington-Evansville, 11475

**Agriculture Department**
*See also* Agricultural Marketing Service; Farmers Home Administration; Forest Service; Soil Conservation Service
NOTICES
Meetings:
National Plant Genetic Resources Board, 11522

**Air Force Department**
NOTICES
Meetings:
Scientific Advisory Board, 11529
(2 documents)

**Antitrust Division**
NOTICES
Competitive impact statements and proposed consent judgments:
Industrial Asphalt et al., 11566

**Army Department**
NOTICES
Meetings:
Science Board, 11529

**Blind and Other Severely Handicapped, Committee for Purchase From**
*See* Committee for Purchase From the Blind and Other Severely Handicapped

**Civil Rights Commission**
NOTICES
Meetings; Sunshine Act, 11597

**Coast Guard**
RULES
Great Lakes pilotage:
Rates increase, etc., 11468
PROPOSED RULES
Anchorage regulations:
California, 11512
Navigation aids:
U.S. Aids to Navigation System; international standards; conforming amendments, 11506
NOTICES
Committees; establishment, renewals, terminations, etc.:
Chemical Transportation Advisory Committee, 11585
Meetings:
Houston/Galveston Navigation Safety Advisory Committee, 11586
(3 documents)
Security measures to prevent unlawful acts against passengers and crews on board ships, 11587

**Commerce Department**
*See also* International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration
PROPOSED RULES
Laboratory Accreditation Program, National Voluntary; CFR Part redesignated, 11498
NOTICES
Agency information collection activities under OMB review, 11522

**Committee for Purchase From the Blind and Other Severely Handicapped**
NOTICES
Procurement list, 1987:
Additions and deletions; correction, 11529, 11598
(2 documents)

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 11528
Sri Lanka, 11528

**Defense Department**
*See* Air Force Department; Army Department

**Economic Regulatory Administration**
NOTICES
Natural gas exportation and importation:
American Central Gas Pipeline Corp., 11530
Suncor Inc., 11531

**Education Department**
NOTICES
Grants; availability, etc.:
Vocational education Indian and Hawaiian Natives program, 11530

**Employment and Training Administration**
RULES
Alien temporary employment labor certification process:
Agriculture and logging piece rates, adjustments, 11460

**Energy Department**
*See also* Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission
NOTICES
Federally funded research and development centers:
Continuous Electron Beam Accelerator Facility, Newport News, VA, 11530

**Energy Information Administration**
NOTICES
Agency information collection activities under OMB review, 11532

**Environmental Protection Agency**
PROPOSED RULES
Hazardous waste:
Identification and listing—
Exclusions, 11513

Superfund program:
Hazard ranking system, 11513
NOTICES
Agency information collection activities under OMB review, 11542

**Equal Employment Opportunity Commission**
PROPOSED RULES
Procedural regulations:
No cause determinations, 11503

**Executive Office of the President**
*See* Presidential Documents

**Farmers Home Administration**
RULES
Food Security Act of 1985; implementation:
Servicing and collections, 11456

**Federal Communications Commission**
RULES
Radio broadcasting:
Experimental, auxiliary, and special broadcast and other program distributional services
Correction, 11473
Radio stations; table of assignments:
Michigan, 11473
Texas, 11471
Virgin Islands, 11472
Wisconsin, 11472
Television stations; table of assignments:
Texas, 11472
PROPOSED RULES
Frequency allocation and radio treaty matters, etc.:
Fixed services; Government and non-government usage, 11519
Radio stations; table of assignments:
Mississippi, 11521
Utah, 11519
Vermont, 11520
Television stations; table of assignments:
Utah, 11520
Washington, 11520
NOTICES
Agency information collection activities under OMB review, 11542, 11543
(3 documents)
Radio broadcasting:
2.5 GHz (H-group channels) point-to-multipoint private operational-fixed microwave service; applications for modification, 11544
Radio services, special:
Amateur stations; privatization of special call sign system; correction, 11543
*Applications, hearings, determinations, etc.:*
Richford Communications Co. et al., 11542

**Federal Deposit Insurance Corporation**
PROPOSED RULES
Capital maintenance; risk-based capital, 11476
Unsafe and unsound banking practices:
Insured nonmember banks; subsidiary securities activities, 11492
NOTICES
Meetings; Sunshine Act, 11597
(2 documents)

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Tampa Electric Co. et al., 11536
Hydroelectric applications, 11533
Natural gas certificate filings:
Northwest Pipeline Corp. et al., 11539
Small power production and cogeneration facilities; qualifying status:
Carolina Cogeneration Co., Inc., et al., 11541
*Applications, hearings, determinations, etc.:*
Arkansas Electric Cooperative Corp. et al., 11538, 11539
(3 documents)

**Federal Highway Administration**
PROPOSED RULES
Engineering and traffic operations:
Uniform Traffic Control Devices Manual—Revision, 11502
NOTICES
Environmental statements; notice of intent:
Orange County, CA, 11594

**Federal Home Loan Bank Board**
NOTICES
Meetings:
Federal Savings and Loan Advisory Council, 11545
Receiver appointments:
Tahoe Savings & Loan Association, 11545
(2 documents)
Vernon Savings & Loan Association, 11545

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 11545

**Federal Mine Safety and Health Review Commission**
NOTICES
Meetings; Sunshine Act, 11597

**Federal Railroad Administration**
NOTICES
Exemption petitions, etc.:
Port Bienville Railroad et al., 11594

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
Carolina Mountain Holding Co. et al., 11546
Collins, Larry, et al., 11547
First Grayson Bancorp, Inc., et al., 11547
First of America Bank Corp. et al., 11546
NBD Bancorp, Inc., 11548

**Food and Drug Administration**
NOTICES
Biological product licenses:
Care for Life of Lubbock, Inc., 11548
Food additive petitions:
Nuodex, Inc., 11549
Food for human consumption:
Mirex in fish; action levels, 11549
Human drugs:
Export applications—
Lymph-Scan (Kit for the preparation of technetium TC-99m, antimony trisulfide colloid), 11550

**Forest Service**
NOTICES
Environmental statements; availability, etc.:
Eldorado National Forest, CA, 11522

**Health and Human Services Department**
*See also* Food and Drug Administration; Health Care Financing Administration; Human Development Services Office; National Institutes of Health; Public Health Service
NOTICES
Federal claims collection; interest rate on overdue debts, 11548

**Health Care Financing Administration**
PROPOSED RULES
Medicare:
End-stage renal disease services; alternative sanctions for suppliers, 11517
NOTICES
Medicare:
End-stage renal disease program; network area designations, 11550

**Health Resources and Services Administration**
*See* Public Health Service

**Housing and Urban Development Department**
RULES
Slum clearance and urban renewal:
Rental rehabilitation grant program—
Lead-based paint hazard elimination; correction, 11598
Performance adjustments to formula reallocations, 11466

**Human Development Services Office**
NOTICES
Grants; availability, etc.:
Developmental disabilities basic support, protection, and advocacy programs; Federal allotment to States, 11557

**Immigration and Naturalization Service**
NOTICES
Immigration Reform and Control Act of 1986:
Employer information, work authorizations, etc., 11567

**Indian Affairs Bureau**
RULES
Ute Tribe of Uintah and Ouray Reservation, UT; reimbursement; CFR Part removed, 11467
PROPOSED RULES
Education assistance:
Higher education grant program; administration, 11503
NOTICES
Agency information collection activities under OMB review, 11560

**Interior Department**
*See* Indian Affairs Bureau; Land Management Bureau; Minerals Management Service

**International Trade Administration**
RULES
Export licensing:
Commodity control list—
China; advisory notes, 11457
NOTICES
Antidumping:
Carton-closing staples and staple machines from Sweden, 11523
Ferrite cores (of type used in consumer electronic products) from Japan, 11524
Tuners (of type used in consumer electronic products) from Japan, 11526
Export trade certificates of review, 11523

**Interstate Commerce Commission**
NOTICES
Railroad operation, acquisition, construction, etc.:
Missouri Pacific Railroad Co., 11565
Southern Railway Co. et al., 11566
Wisconsin & Calumet Railroad Co., Inc., 11566

**Justice Department**
*See* Antitrust Division; Immigration and Naturalization Service

**Labor Department**
*See also* Employment and Training Administration
RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 11600

**Land Management Bureau**
NOTICES
Closure of public lands:
Nevada, 11562
Management framework plans, etc.:
Idaho, 11562
Meetings:
Butte District Advisory Council, 11564
Lakeview District Advisory Council, 11564
Safford District Grazing Advisory Board, 11561
Motor vehicles; off road vehicle designations:
Idaho, 11564
Oil and gas leases:
Wyoming, 11560
(3 documents)
Realty actions; sales, leases, etc.:
Nevada; correction, 11561
Survey plat filings:
California, 11561
(2 documents)
Nevada, 11561
Withdrawal and reservation of lands:
Alaska, 11563
New Mexico, 11562

**Maritime Administration**
PROPOSED RULES
Bulk preference cargoes, carriage; fair and reasonable rates determination, 11518

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
Hall-Houston Oil Co., 11565
Unocal Oil & Gas Division, 11565

**National Bureau of Standards**
PROPOSED RULES
Laboratory Accreditation Program, National Voluntary, 11498

**National Institutes of Health**
NOTICES
Meetings:
Animal Resources Review Committee, 11557
National Institute on Aging, 11558
(2 documents)
National Library of Medicine, 11558, 11559
(2 documents)
Research Grants Division study sections, 11559

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Pacific Coast groundfish, 11473
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 11527
Permits:
Foreign fishing, 11527
Marine mammals, 11526

**Nuclear Regulatory Commission**
PROPOSED RULES
Practice rules:
Initial adjudicatory decision; reactor license or permit issuance of amendment, 11475
NOTICES
Agency information collection activities under OMB review, 11575
Environmental statements; availability, etc.:
Consolidated Edison Co. of New York, Inc., 11577
*Applications, hearings, determinations, etc.:*
Commonwealth Edison Co., 11575

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
Cholesterol Week, Know Your (Proc. 5625), 11453

**Public Health Service**
*See also* Food and Drug Administration; National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
National Institutes of Health, 11559

**Securities and Exchange Commission**
RULES
Securities:
Tender offers—
All holders and best price, etc.; disclosure and dissemination of material changes; interpretation, 11458
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 11577
National Association of Securities Dealers, Inc., 11578, 11581
(2 documents)
National Securities Clearing Corp., 11580
*Applications, hearings, determinations, etc.:*
Dean Witter Reynolds Inc. et al., 11582
Public utility holding company filings, 11584

**Soil Conservation Service**
NOTICES
Environmental statements; availability, etc.:
East and Middle Forks of Massac Creek Watershed, KY, 11522

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Coast Guard; Federal Highway Administration; Federal Railroad Administration; Maritime Administration

**Treasury Department**
NOTICES
Agency information collection activities under OMB review, 11596

**Separate Parts In This Issue**

**Part II**
Department of Labor, 11600

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**
**Proclamations:**
5625.....11453

**7 CFR**
1040.....11455
1951.....11456
**Proposed Rules:**
1046.....11475

**10 CFR**
**Proposed Rules:**
2.....11475

**12 CFR**
**Proposed Rules:**
325.....11476
337.....11492

**15 CFR**
399.....11457
**Proposed Rules:**
7.....11498
280.....11498

**17 CFR**
241.....11458

**20 CFR**
655.....11460

**23 CFR**
**Proposed Rules:**
655.....11502

**24 CFR**
511.....11466
**Proposed Rules:**
511.....11598

**25 CFR**
120.....11467
**Proposed Rules:**
40.....11503

**29 CFR**
33.....11600
**Proposed Rules:**
1601.....11503

**33 CFR**
**Proposed Rules:**
60.....11506
62.....11506
66.....11506
100.....11506
110.....11512

**40 CFR**
**Proposed Rules:**
261.....11513
300.....11513

**42 CFR**
**Proposed Rules:**
405.....11517

**46 CFR**
401.....11468
**Proposed Rules:**
382.....11518

**47 CFR**
73 (6 documents).....11471–11473
74.....11474
**Proposed Rules:**
1.....11519
21.....11519
73 (5 documents).....11519–11521
74.....11519
94.....11519

**50 CFR**
663.....11473

Federal Register
Vol. 52. No. 68
Thursday. April 9, 1987

# Presidential Documents

Title 3—

## The President

**Proclamation 5625 of April 6, 1987**

## Know Your Cholesterol Week, 1987

**By the President of the United States of America**

**A Proclamation**

Heart disease and heart attacks are the primary cause of death among Americans. Scientific research has clearly established elevated blood cholesterol as one of the three major modifiable risk factors for coronary heart disease. Research has also demonstrated the encouraging news that people can reduce their risk of heart disease by lowering high blood cholesterol.

Having blood cholesterol checked is the only way to know whether we are at high risk or not. The testing of cholesterol level is the first step toward identifying and controlling a serious condition that is a major contributor to America's number one killer.

More than 20 medical, public health, and voluntary health organizations have joined with the National Heart, Lung, and Blood Institute to form the National Cholesterol Education Program. These and other organizations have endorsed "Know Your Cholesterol" as an educational theme of this national effort.

The Congress, by Public Law 100–13, has designated the week of April 5 through April 11, 1987, as "Know Your Cholesterol Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of April 5 through April 11, 1987, as Know Your Cholesterol Week. I urge all Americans to become familiar with the dangers of high blood cholesterol and to take steps to determine their cholesterol levels and discuss the implications of their cholesterol measurement at their next visit to their doctor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87–8046
Filed 4–7–87; 3:10 pm]
Billing code 3195-01–M

# Rules and Regulations

Federal Register
Vol. 52, No. 68
Thursday, April 9, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

## Milk in the Southern Michigan Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rules.

**SUMMARY:** This action suspends for the month of March 1987 the requirement in the Southern Michigan Federal milk order that a supply plant operator ship at least 30 percent of its receipts of Grade A milk to distributing plants. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The action is needed to avoid inefficient handling of milk merely for the purpose of qualifying for pool participation.

**EFFECTIVE DATE:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4829.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 11, 1987; published March 16, 1987 (52 FR 8074).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b) the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Michigan marketing area (7 CFR Part 1040).

Notice of proposed rulemaking was published in the **Federal Register** on March 16 (52 FR 8074), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views, and arguments thereon. Only one comment was received and that comment was in support of the suspension.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the month of March 1987 the following provisions of the order (7 CFR Part 1040) do not tend to effectuate the declared policy of the Act:

1. In § 1040.7(b)(1) the words "each month not less than 30 percent of the total quantity of" and "received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant,".

As suspended, that paragraph for the term of the suspension reads "A supply plant from which Grade A milk is transferred to plants described in paragraph (b)(5) of this section subject to the following conditions:"

2. In § 1040.7(b)(1), paragraph (i).

### Statement of Consideration

This action makes inoperative for the month of March 1987 the provisions requiring a supply plant operator to ship at least 30 percent of its receipts of Grade A milk to distributing plants. The suspension was requested by Michigan Milk Producers Association (MMPA), which represents producers supplying the market.

This action is needed because demands of the fluid market have declined dramatically during February and no improvement was expected in March. Thus, MMPA has found it necessary to divert milk supplies routinely associated with the fluid market to manufacturing plants in order to accommodate milk shipments from a proprietary handler supply plant unit. The suspension is needed to make inoperative the qualification provisions which require a unit of supply plants consisting of one or more plants to ship or divert 30 percent or more of the Grade A milk received at or diverted from the plants that make up the unit. With the suspension, any level of shipments from any or all plants in the unit would satisfy the qualification provisions of the order for the month of March 1987. This will ensure continued pooling of the plants since the order provides that if a supply plant qualifies as a pool plant for the months of October through March, then the plant automatically qualifies as a pool plant for the months of April through September.

The suspension was supported by the Independent Cooperative Milk Producers Association. Together with the proponent, these two cooperatives represent more than 80 percent of the producers in this market.

It is inappropriate, in view of the circumstances cited above, to require a supply plant operator to ship at least 30 percent of its Grade A receipts to distributing plants in order to pool milk associated with a supply plant for the month of March.

If the provisions were not suspended for the month of March 1987, MMPA likely would encounter considerable difficulty in pooling certain supply plants and the milk of producers regularly associated with the Southern Michigan fluid market. Without the suspension, milk would be shipped in an inefficient and costly manner to assure its continued pooling under the order. This would not serve to promote the orderly marketing of milk in the Southern Michigan marketing area

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions in the marketing area in that substantial quantities of milk from producers who are associated with the market

otherwise could be excluded from the marketwide pool, or else the milk would have to be shipped in an inefficient and costly manner, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1040**

Milk marketing orders, Milk, Dairy products.

*It is therefore ordered,* That the following language in § 1040.7(b)(1) of the Southern Michigan order is hereby suspended for the month of March 1987, as follows:

**PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA**

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1040.7 [Amended]**

2. In 7 CFR Part 1040, the following words in § 1040.7(b)(1) are suspended, "each month not less than 30 percent of the total quantity of" and "received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant,".

3. In 7 CFR Part 1040, paragraph (i) in § 1040.7(b)(1) is suspended.

Effective date: April 9, 1987.

Signed at Washington, DC, on April 3, 1987.

**Kenneth A. Gilles,**

*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 87–7862 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–02–M

---

**Farmers Home Administration**

**7 CFR Part 1951**

**Servicing and Collections**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its account servicing regulations to implement provisions of the Food Security Act of 1985. The intended effect is to provide borrowers of loans made and insured under the Consolidated Farm and Rural Development Act an annual detailed statement of their accounts upon request.

**EFFECTIVE DATE:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** John E. Distler, Chief, Accounting Systems Planning and Design Branch I, Accounting Systems Planning Division, USDA, 1520 Market Street, St. Louis, MO 63103, Telephone (314) 425–4458.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management.

The creation of a loan summary statement is required for the loan programs listed in the Catalog of Federal Domestic Assistance under titles and numbers as follows: Farm Ownership Loans, 10.407; Farm Operating Loans, 10.406; Emergency Loans, 10.404; Soil and Water Loans, 10.416; Water and Waste Disposal Systems for Rural Communities, 10.418; and Community Facilities Loans, 10.423.

The first three of these listed programs are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This final action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The Food Security Act of 1985 (Pub. L. 99–198) requires that FmHA furnish to a borrower, upon their request, a loan summary statement for any loan made or insured under the Consolidated Farm and Rural Development Act. The loan summary statement will provide a detailed status of each loan for the loan summary period. Since the enactment of the Food Security Act of 1985 did not coincide with FmHA's accounting reporting periods, the history for the period December 22, 1985, through December 31, 1985, is not available. However, the borrower received an annual statement of loan account in January 1986 which reflected the activity on loans for calendar year 1985. This included the activity for the period December 22, 1985, through December 31, 1985.

Since the loan summary statement is a new requirement, the beginning balances are also not available. Therefore, the initial loan summary statement will not include beginning balances. However, all subsequent loan summary statements will reflect the balance due at the beginning of the current loan summary period. In addition, the annual statement of loan account the borrower received in January 1986 did include the unpaid principal balance on the borrower's account as of December 31, 1985.

The statement will reflect the details of each loan for the summary period, including the interest rate, outstanding principal due at the beginning of the period, amount of payments made during the period, amount due at the end of the period, allocation of payments, total amount due on all loans at the end of the period, any delinquency, a schedule of payments due, and the manner in which the borrower may obtain more information on the status of each loan. As of December 31 of each year, a hard-copy report will be produced and forwarded to field offices to be retained in the borrower's file. In addition, at the end of each calendar quarter, a cumulative report will be produced on microfiche and retained in the Finance Office. These loan summary statements will be created by the Agency's automated accounting system. The loan summary period will begin on January 1, 1986, or the date of issuance of the last loan summary statement and end on the date of issuance of the current loan summary statement.

This change in regulations is being made to advise FmHA field offices of the procedures to be followed when a borrower requests a loan summary statement. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and the opportunity for comment are not required; this rule may be made effective less than 30 days after publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1951**

Account servicing, Credit, Loan Programs—Agriculture, Loan Programs—Housing and Community Development, Mortgages, Reporting and recordkeeping requirements, Rural areas.

Therefore, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

## PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 is revised to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; and 7 CFR 2.70.

### Subpart A—Account Servicing Policies

2. Section 1951.7 is amended by adding paragraph (h) to read as follows.

**§ 1951.7 Accounts of borrowers.**

* * * * *

(h) *Loan summary statements.* Upon request of a borrower, FmHA issues a loan summary statement that shows the account activity for each loan made or insured under the Consolidated Farm and Rural Development Act.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards annual loan summary statements to field offices for all loans made or insured under the Consolidated Farm and Rural Development Act. Retain calendar yearend Forms FmHA 389–777 , "Loan Summary Statement," in borrower files as a permanent record of borrower account activity for the year.

(2) Quarterly loan summary statements are retained in the Finance Office on microfiche. These quarterly statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. County supervisors may request copies of these quarterly or annual statements by sending Form FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) A county supervisor, at the request of a borrower, copies the applicable loan summary statement and provides the copy to the borrower. Attach a copy of Form FmHA 1951–58, "Basis for Loan Account Payment Application for Farmer Program Loans,"and a copy of the promissory note showing borrower installments to each loan summary statement provided to the borrower.

### Subpart E—Servicing of Community Program Loans and Grants

3. Section 1951.207 is amended by adding paragraph (l) to read as follows.

**§ 1951.207 General servicing actions.**

* * * * *

(l) *Loan summary statements.* Upon request of a borrower, FmHA issues a loan summary statement that shows the account activity for each loan made or insured under the Consolidated Farm and Rural Development Act.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards annual loan summary statements to field offices for all loans made or insured under the Consolidated Farm and Rural Development Act. Field offices will also receive a listing of principal installments due for community program loans with unamortized installments. Retain calendar yearend Forms FmHA 389–777, "Loan Summary Statement," in borrower files as a permanent record of borrower account activity for the year.

(2) Quarterly loan summary statements are retained in the Finance Office on microfiche. These statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending Form FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) A field office, at the request of a borrower, copies the applicable loan summary statement and provides the copy to the borrower. Upon a borrower's request a servicing office will also provide an explanation of the basis for the application of payments made by the borrower. Community program borrowers with amortized payments will receive a copy of their debt instrument not showing the borrower installments. Borrowers with unamortized debt instruments will receive a copy of "Principal Installments for Community Program Loans With Unamortized Installments" which will be provided to the borrower along with their Form FmHA 389–777.

Dated: February 26, 1987.

**Eric P. Thor,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 87–7938 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–07–M

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Docket No. 61219–6219]**

### 15 CFR Part 399

### PRC Advisory Notes: Amendments Based on COCOM Review

**AGENCY:** Export Administration, International Trade Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Export Administration maintains the Commodity Control List (CCL), which identifies those commodities subject to Department of Commerce export controls. The "Advisory Notes" in various entries of the CCL list those commodities covered by a particular entry that are more likely to be approved for export than others.

This rule adds three Advisory Notes covering the export to the People's Republic of China of various commodities, including the following:

Certain semi-conductor photodiodes covered by entry 1548A of the CCL;

Certain non-ruggedized cinema recording cameras covered by entry 1585A; and

Certain types of monocrystalline silicon covered by entry 1757A.

In addition, the heading for entry 1564A, which sets forth the types of equipment controlled by that entry, is revised.

These amendments result from the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

**EFFECTIVE DATE:** This rule is effective April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Donald Hammond, Electronic Components and Instrumentation Tech Center, Department of Commerce, Washington, DC, Telephone: (202) 377–3073, for questions on electronics and precision instruments. For questions on compounds and materials covered by entry 1757A of the Commodity Control List, contact Jeff Tripp, Capital Goods Tech Center, Department of Commerce, Washington, DC, Telephone: (202) 377–1309.

**SUPPLEMENTARY INFORMATION:**

### Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these

APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. § 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 15 CFR Part 399**

Exports, reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Part 399 continues to read as follows:

**Authority:** Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

**§ 399.1 [Amended]**

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1548A is amended by adding an Advisory Note at the end of the entry, reading as follows:

**1548A Photosensitive components, including linear and focal plane arrays, and dice and wafers therefor.**

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of semiconductor photodiodes for previously approved and installed Western civil communications equipment with a response time constant of 0.5 ns or more and with a peak sensitivity at a wavelength neither longer than 1,350 nm nor shorter than 300 nm.

(Note: The photodioides will be supplied on a replacement basis with no enhancement of the system.)

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precisions Instruments), ECCN 1564A is amended by revising the heading of the Advisory Note for the People's Republic of China to read as follows:

**1564A Electronic component assemblies, sub-assemblies, printed circuit boards, substrates and microcircuits, including packages therefor.**

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "assemblies", printed circuit boards and integrated circuits not specially designed to military standards for radiation hardening and temperature, as follows:

* * * * *

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1585A is amended by adding an Advisory Note at the end of the entry, reading as follows:

**1585A Photographic equipment.**

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of non-ruggedized cinema recording cameras, controlled by sub-paragraph (a) of this ECCN 1585A, for normal civil purposes.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1757A is amended by adding an Advisory Note at the end of the entry, reading as follows:

**1757A Compounds and materials as described in this entry.**

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of monocrystalline silicon, as follows:

(a) N-type, crystal orientation 1–1–1 with a resistivity not exceeding 100 ohm.cm;

(b) P-type, crystal orientation 1–1–1 with a resistivity not exceeding 5 ohm.cm.

Dated: April 6, 1987.

Vincent F. DeCain,

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 87–7908 Filed 4–8–87; 8:45 am]

BILLING CODE 3510–DT–M

---

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 241**

**[Rel. No. 34–24296]**

## Interpretive Release Relating To Tender Offers Rules

**AGENCY:** SEC.

**ACTION:** Interpretation.

**SUMMARY:** The Securities and Exchange Commission today authorized the issuance of its views with respect to the disclosure and dissemination of material changes in the information in tender offer materials previously provided to security holders, in accordance with Rules 14d–d(c) [17 CFR 240.14d(c)] and 14d–6(d) [17 CFR 240.14d–6(d)] of Regulation 14D, applicable to third-party tender offers, and Rule 13e–4 (d)(2) and (e)(2) [17 CFR 240.13e–4 (d)(2), (e)(2)], applicable to issuer tender offers. This release will provide guidance to the public and assist persons subject to the tender offer rules in complying with applicable requirements.

**FOR FURTHER INFORMATION CONTACT:** Persons with questions concerning the subject matter of this release or the operation of the tender offer rules should contact David A. Sirignano or Bradley D. Belt at (202) 272–3097 or Larry E. Bergmann at (202) 272–2874.

**SUPPLEMENTARY INFORMATION:** On July 11, 1986 the Commission issued Release No. 34–23421 (51 FR 25873), which announced the adoption of the all-holders and best-price amendments to the tender offer rules. In addition, *inter alia*, the Commission at that time amended existing rules concerning minimum offering periods to require that a tender offer would be required to remain open for ten business days upon the announcement of an increase or decrease in (i) the percentage of securities being sought or (ii) the consideration offered by the offeror. The Commission expressed the view that the minimum time period an offer must remain open following other material changes in the terms of the offer or information concerning the offer will depend on the facts and circumstances, including the degree of significance of

the information and the appropriate manner of dissemination.

## I. Introduction

The tender offer rules promulgated under the William Act are designed to ensure that security holders have appropriate information about the terms of the offer and sufficient time to consider such information in deciding whether to tender, sell in the market, or hold their securities. In promulgating these rules, the Commission recognized that the fluid, dynamic nature of corporate control contests could result in changed market conditions and revisions in the terms of a tender offer, which could have an impact on the investment decisions of security holders. Therefore, the rules require that material changes in the information published, sent, or given to security holders be disclosed and that the new information be disseminated in a manner reasonably designed to inform security holders of the change. The disclosure and dissemination requirements will not be effective unless security holders have sufficient time to consider and react to the new information. In two recent tender offers, a material change to a condition of the offer, specifically, a waiver of a minimum share condition, has been attempted on the last day of the offer without adequate dissemination to shareholders or time for the shareholders to determine whether to hold, sell, tender, or withdraw based on the new information.

The Commission is issuing this release to clarify its view that a waiver of a minimum share condition is a material change in the terms of an offer and to reiterate its view that compliance with Rules 14d–4(c) and 14d–6(d) and 13e–4 (d)(2) and (e)(2) requires that material changes be disseminated in a manner reasonably calculated to inform security holders of such changes and with sufficient time for security holders to absorb such new information. Thus, if a bidder makes a material change near or at the end of its offer, it will have to extend the offer to permit adequate dissemination. The obligation to provide security holders the information and time to act is not avoided by reserving the right to make the change in the initial tender offer materials. Statements in tender offer materials which state that a material change may be made without further notice or extension are misleading.

## II. Discussion

### *A. Material changes*

The Williams Act and rules are designed to ensure that security holders confronted with a tender offer for their shares of the subject company have adequate information upon which to base their investment decisions,[1] and sufficient time in which to determine whether to tender, sell, or hold their securities.[2] In section 14(d)(1), Congress required that, at the time the offer is first published, sent, or given to security holders, an offeror provide investors with appropriate disclosures about the terms of the offer, the offeror's plans or proposals with respect to the subject company, and other information concerning the offer.

In fashioning a comprehensive framework for the regulation of tender offers, Congress recognized that not all the details of the contemplated system could or should be delineated in statutory provisions. Thus, Congress vested the Commission with broad rulemaking authority to establish standards to govern the conduct of tender offers. Completion of the regulatory system was left to Commission rulemaking so that the Commission could make the disclosure meaningful and effective and could adjust the legal requirements to meet the "very fast changing phenomena" in tender offer practice.[3]

In promulgating the rules and regulations under the Williams Act, the Commission recognized that there could be changes in the information published, sent, or given to security holders that could affect their investment decisions. Accordingly, in adopting Regulation 14D and Rule 13e–4, the Commission included provisions requiring the disclosure and dissemination of such changes, where material. Rules 14d–6 and 13e–4(d) establish the disclosure requirements for bidders in making tender offers. Paragraphs 14d–6(d) and 13e–4(d)(2) thereunder, respectively, obligate the offeror to disclose material changes. Rule 14d–6(d) provides:

> *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

Similarly, Rule 13e–4(d)(2) states:

> If a material change occurs in the information previously disclosed to security holders, the issuer or affiliate shall disclose promptly such change in the manner prescribed by (e)(2) of this section.

Rules 14d–4 and 13e–4(e) specify the procedure by which offerors may disseminate the information required to be disclosed. Rule 14d–4(c) establishes the manner in which material changes in third-part offers are to be disseminated to security holders:

> *Publication of changes.* If a tender offer has been published or sent or given to security holders by one or more of the methods enumerated in paragraph (a) of this section, a material change in the information published, sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change * * *.

Rule 13e–4(e)(2) provides the dissemination requirement for issuer tender offers:

> If a material change occurs in the information published, sent or given to security holders, the issuer or affiliate shall disseminate promptly disclosure of such change in a manner reasonably calculated to inform security holders of such change.

Changes that most directly impact the security holder's investment decision are those with respect to the consideration offered and the number of shares sought. Changes in these terms are addressed by Rule 14e–1(b), as amended in July 1986, which provides that:

> no person who makes a tender offer shall * * * [i]ncrease or decrease the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders * * *.

The tender offer provisions do not specifically establish a minimum time period with respect to disclosure and dissemination of other material changes. Given the continually evolving nature of tender offer practice, it is impracticable to delineate every possible material change, its degree of significance, or the requisite time period attendant to that change. However, disclosure and dissemination of material changes must

---

[1] *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 58 (1975). *See also* S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967).

[2] Rule 14e–1(a) [17 CFR 240.14e–1(a)]requires tender offers to be held open for a minimum of 20 business days.

[3] Hearings on S. 510 Before the Securities Subcommittee of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 30 (1967).

allow security holders the opportunity effectively to consider such information and factor it into the decision whether, to tender shares, withdraw shares already tendered, sell into the market, or hold their shares.[4]

Judicial decisions have discussed the time necessary for security holders to obtain information and react to it in both the tender offer and proxy areas.[5] As stated in the Commission's release announcing adoption of the recent all-holders and best-price and other related amendments to the tender offer rules:

> As a general rule, the Commission is of the view that to allow dissemination to shareholders "in a manner reasonably designed to inform [them] of such change" [17 CFR 240.14d–4(c)], the offer should remain open for a minimum of five business days from the date that the material change is first published, sent or given to security holders. If material changes are made with respect to information that approaches the significance of price and share levels, a minimum period of ten business day may be required to allow for adequate dissemination and investor response. Moreover, the five business day period may not be sufficient where revised or additional materials are required because disclosure disseminated to security holders is found to be materially deficient. Similarly, a particular form of dissemination may be required. For example, amended disclosure material designed to correct materially deficient material previously delivered to security holders would have to be delivered rather than disseminated by publication.[6]

*B. Reservations of Rights*

Tender offer materials typically contain various reservations of rights whereby the bidder reserves the right to, among other things, extend or terminate the offer, waive conditions, increase or decrease the consideration offered or the number of shares being sought, or otherwise alter terms. The Commission recognizes that such reservations are an acceptable means of permitting the bidder to take action varying the terms of an offer, so long as the action taken would not contravene the Williams Act and rules. Nevertheless, for disclosure and dissemination purposes, the actual exercise of the right to modify the offer has a significance that is independent of the reservation of that right. Under the Williams Act, and the rules and regulations thereunder, shareholders are entitled to base their investment decision on the current terms of the offer. Thus, reservation of a right to change an offer does not render an otherwise material change immaterial and does not obviate the need for dissemination.

In this regard, the Commission specifically notes its view that a waiver by the offeror of the number of shares it has set as its fixed minimum is material and that the reservation of the right to waive such a minimum share condition does not render such waiver, when effected, immaterial. Further, the Commission is of the view that, when an offer to purchase states that the bidder reserves the right to waive a minimum share condition or other material term of the offer without notice or extension, the provision will be misleading to security holders.

Dated: April 3, 1987.

By the Commission.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–7956 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

[4] The Commission expressed this view in its amicus brief filed in the Seventh Circuit in *McDermott, Inc v. Wheelabrator- Frye, Inc.*, 649 F. 2d 489 (7th Cir. 1980). The Commission stated that a press release by the bidder on the last day of its offer, announcing an increase in the number of shares it would accept (a situation now addressed by Rule 14e–1(b)), "did not permit dissemination of the material change by means of adequate publication in a newspaper of national circulation on [that day." Brief at 20. The Commission endorsed "a brief extension of the tender offer so as to permit adequate dissemination of the material change to security holders and an opportunity for them to react to it." *Id.* The court, in overturning the preliminary injunction entered by the lower court, determined, without specifically deciding the issue, that sufficient dissemination had been achieved by the time of its expedited decision (six days from the press release date). 649 F.2d at 493.

[5] In the tender offer area, see *Electronic Specialty Co. V. International Controls Corp.*, 409 F.2d 937, 944 (2d Cir. 1969) (describing district court opinion declining to order divestiture of shares acquired in tender offer or to enjoin voting and holding that withdrawal offer lasting for eight days afforded equivalent relief to rescission offer); *Pabst Brewing Co. v. Kalmanovitz*, 551 F. Sup. 882, 893 (D. Del. 1982) (four business days sufficient time to disseminate disclosure relating to financial condition of individuals who were bidders in an any and all cash offer); *Nicholson File Co. v. H.K. Porter Co.*, 341 F. Supp. 508 (D.R.I. 1972), *aff'd*, 482 F.2d 421 (1st Cir. 1973) (curative letter and rescission offer mailed within seven days of a tender offer withdrawal date sufficient to counter any effect of misstatement). In the proxy area, see *In re Anderson, Clayton Litigation*, 519 A. 2d 669, 679 (Del. Ch. 1986) (three busines day solicitation period found not sufficient to allow security holders a reasonable opportunity to receive and consider additional soliciting material prior to the meeting). *See also Smith V. Van Gorkom*, 488 A. 2d 858, 893 (Del. 1985) ("In an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate"); Securities Exchange Act Release No. 16343 (November 15, 1979) (Commission report under Exchange Act Section 21(a), stating that when facts change prior to meeting, appropriate steps should be taken to disseminate complete and accurate information to security holders: possibilities to be considered include postponing the meeting, sending a letter to all security holders advising them of the changes that have been made, revising the proxy statement and resoliciting proxies, and/or offering new proxy cards).

[6] Rel. No. 34–23421 (July 11, 1986) at n. 70.

---

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 655**

## Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging; Adjustments to Piece Rates

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending the temporary alien agricultural and logging labor certification regulations to change the procedures for adjustment of piece rates employers offer and pay their United States and alien workers. The rule requires each piece rate to be no less than the prevailing piece rate for the crop activity in the area of intended employment. It also sets limitations on minimum productivity standards. The effect of this change is to eliminate the confusion created by the ambiguous, unclear nature of the previous provision.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas M. Bruening. Telephone: 202–535–0163.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

On June 5, 1986, the Department of Labor (DOL) published in the **Federal Register**, at 51 FR 20516, a proposed rule to amend the temporary alien agricultural and logging labor certification regulations regarding piece rates which employers seeking temporary alien labor certification offer and pay their U.S. and alien workers. Interested persons were requested to submit written comments by July 7, 1986. The comment period subsequently was reopened on August 8, 1986, for an additional thirty days in response to requests from the public. (51 FR 28599 (August 8, 1986)). This document adopts the proposed rule as the final rule.

### II. Temporary Alien Labor Certification Process

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). 8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c); 8 CFR 2.1. Pursuant to the requirement in 8 U.S.C 1184(c) that the Attorney General

consult with appropriate agencies of the Government concerning the importation of nonimmigrant (so called "H–2") workers. INS has determined that prior to granting or denying such a petition, it first will request the DOL to advise INS on the availability of qualified United States workers for the jobs offered to the H–2 aliens, and whether the wages and working conditions attached to such a job offer will adversely affect similarly employed U.S. workers.

Pursuant to the INS regulations, the Employment and Training Administration (ETA) has published regulations at 20 CFR Part 655, Subpart C, for the certification of temporary employment of nonimmigrant aliens in agriculture and logging in the United States. DOL has determined that similarly employed U.S. workers have been adversely affected by the importation of nonimmigrant aliens in agricultural employment. It has been determined further that employment of those aliens in a number of States at wages below specially computed adverse effect wage rates (AEWRs) would adversely affect the wages and working conditions of similarly employed U.S. workers. 20 CFR 655.202(b)(9) and 655.207.

### III. Piece rates in the H–2 Program

Many employers who seek certification to employ foreign workers use the piece rate method of paying workers. The DOL regulation currently in effect on piece rates under this program provides that:

> [I]n any year in which the applicable adverse effect rate is increased, employers shall adjust their piece rates upward to avoid requiring a worker to increase his or her productivity over the previous year in order to earn an amount equal to what the worker would earn if the worker were paid at the adverse effect rate.
>
> [20 CFR 655.207(c) (1983); see 43 FR 10308, 10317 (March 10, 1978).]

Historically, DOL has determined that workers should not be required to increase their level of productivity in order to earn, at a minimum, the hourly AEWR. See, *e.g.*, 20 CFR 655.207(c) (1983); 20 CFR 602.10b(a)(2) (1971). Conversely, if the employer's piece rate for a particular crop activity allowed the average worker to receive earnings at or above the AEWR, that piece rate has been acceptable. Thus, if average hourly earnings for the average worker in the preceding year equalled or exceeded the applicable AEWR, the piece rate for the crop activity did not need to be raised. This interpretation of DOL's regulation on piece rates was reflected in its issuance to ETA Regional Offices and to State Job Service Agencies in General Administration Letter (GAL) No. 48–81, Issued in September 1981.

In 1982 and 1983, the U.S. District Court for the District of Columbia, in two orders resulting from a suit filed by farmworkers (*NAACP, Jefferson County Branch* v. *Donovan*), issued an interpretation of the established regulation which differed with the Department's original intent in promulgating it. 566 F.Supp. 1202 (D.D.C. 1983); and 588 F.Supp. 218 (D.D.C. 1982). The court ruled and ordered that the piece rates be increased each time the AEWRs are increased, based upon productivity in the specific crop activity in 1977, or the first year after 1977 in which the employer first entered the program. The 1977 productivity rate is determined by dividing the 1977 AEWR by the piece rate paid for that crop activity. Under this formula, the current piece rate would be equal to the current AEWR divided by the 1977 productivity rate or the 1977 piece rate increased by the same percentage as the increase in the AEWR since 1977.

Under the court's interpretation, employers who had paid a higher than average piece rate in 1977, and whose workers received, at the time, earnings above the adverse effect level, would have been bound to maintain their workers at levels of earnings above the hourly AEWR required by 20 CFR 655.207. In order to clarify its original intent, DOL promulgated a revised rule ([20 CFR 655.207(c) (1985)]; 48 FR 40168 (September 2, 1983)) to reinstate and to reflect the original intent.

However, in *NAACP, Jefferson County Branch* v. *Brock*, 765 F. 2d 1176 (D.C. Cir. 1985, *rev'g*, Civ. No. 82–2315 (D.D.C. August 15, 1984), the D.C. Circuit ruled that DOL had not sufficiently identifed and justified a change in policy as required by the Administrative Procedure Act. This had the effect of reinstating the piece rate regulation at 20 CFR 665.207(c) as published in the **Federal Register** at 43 FR 10317, on March 19, 1978, and interpreted by the U.S. District Court for the District of Columbia in its 1982 and 1983 orders (556 F. Supp. 1202 and 558 F. Supp. 218). See *NAACP, Jefferson Country Branch* v. *Brock*, Civ. No. 82–2315, final order and judgment (D.D.C. August 21, 1985). Subsequent to this development, ETA took steps to abide by the interpretation of the court and to condition 1985 temporary alien agricultural labor certifications upon employer's assurances to pay piece rates computed according to the DC District Court's interpretations.

### IV. Considerations Involved in Reviewing Piece Rate Regulation

A DOL/USDA interagency task force was established to examine possible alternatives to the current piece rate regulation at 20 CFR 655.207(c).

A number of considerations involving basic H–2 program objectives, administrative feasibility and economic factors were carefully weighed in reviewing the piece rate issue. The major ones were:

1. Under the Immigration and Nationality Act and INS regulations, DOL has a mandate to protect the wages and job opportunities of U.S. workers. Specifically, DOL is responsible for determining whether U.S. workers are available to perform the work for which nonimmigrant foreign workers are being sought, and whether the employment of such aliens will adversely affect the wages and working conditions of similarly employed U.S. workers. Protecting the job opportunities and wages and working conditions of U.S. workers is of paramount importance when considering any aspects of the program. This objective must be balanced, however, with a concern for the ligitimate business interests of growers.

2. The AEWR is the primary wage standard designed to protect the jobs and earnings of U.S. workers. Piece rate requirements have always been defined in relation to the AEWR.

3. With the exception of the AEWR, which tends to be more than the prevailing wage, other wage and working condition requirements which are not specifically required as a minimum are related to show which are prevailing among U.S. workers similarly employed.

4. DOL has traditionally been concerned about situations where employers require increasing productivity in piece-rate-paid occupations in order to achieve a given hourly wage standard. Thus, the H–2 program regulations have contained language expressing that concern. This language was the basis for litigation brought by farmworker attorneys in 1982, which resulted in the interpretation upheld by the DC Circuit in 1985, cited above, requiring that piece rates be increased by the same proportion as the AEWR increases. The courts accepted the plaintiff's contention that the DOL rule meant that a productivity increase could not be required or result for any U.S. worker because of an AEWR increase. The courts rejected DOL's contention that the rule was meant to prevent

productivity increases required for the average U.S. worker.

5. In the H–2 program the interests of both workers and growers must be balanced. This principle has been clearly enunciated in federal court decisions.

6. Information on prevailing piece rates is collected by certain State Employment Security Agencies (SESAs) through surveys. Information is obtained by crop area and specific crop activity. The surveys, however, do not contain, for most States, sufficient information on aggregate earnings and hours worked to convert data to average hourly earnings.

7. Information on worker productivity is currently available only from payroll records of H–2 growers. These records have always been, by regulation, subject to on-site audit. These records permit calculations of whether the "average U.S. worker" earned the AEWR. The records, however, are usually not detailed enough to make this determination separately for activities paid at different piece rates with the same grower and present other problems when no U.S. workers are employed.

*Proposed Rule—Options Considered and Course Chosen*

Building on recommendations made by the DOL/USDA Task Force, DOL considered five major options and six sub-options for addressing the piece rate regulation issue. In the proposed rule published on June 5, 1986 (51 FR 20516) DOL presented a detailed analysis of the options considered, their relative merits and the reasons for its course of action. The option adopted in this rule, Option #3, is described below:

*Option 3:* Minimum piece rates would be no less than the prevailing piece rates in the area of intended employment, as determined by ETA–232 report findings. DOL will administratively review productivity requirements on job orders (firing threshold). Use 1977 as base year, on grower-by-grower basis; DOL will permit justifiable productivity requirement increases based on information submitted by individual growers.

DOL concluded that Option 3 was the best method for administering a piece rate policy in the H–2 program. This option represents the most balanced approach, taking into account the primary program responsibility to protect wages of U.S. workers, considerations of administrative feasibility and the legitimate concerns of agricultural employers that excessive piece rate earnings at levels maintained consistently above the AEWR will result in an economic disincentive to utilize domestic or certified foreign workers.

DOL recognized that this approach departs from long standing policy that piece rates be designed to yield the AEWR (20 CFR 655.202(b)(9)(ii)) and that some other options would not result in this change. See 51 FR 20516 (June 5, 1986). However, DOL believes there are too many practical weaknesses in the available tools for those other options. These weaknesses would present particularly serious problems when applying this approach to growers, crops and States coming into the program for the first time.

Under Option #3, growers would be required to offer and pay no less than the prevailing piece rate in the area of intended employment. This is currently a minimum Employment Service system-wide requirement for all agricultural employers who utilize the agricultural clearance system under the DOL regulation at 20 CFR 653.501(d)(4). The prevailing rate is determined by State Employment Service (ES) agencies and submitted in ETA–232 reports for review by ETA. Since the early 1950's, State ES agencies have been required to conduct annual prevailing wage surveys in areas where a sizeable number of migratory farmworkers are employed or requested through the agricultural clearance order system, or where one or more "H–2" foreign workers are employed. The survey is conducted during the peak of the crop activity and consists of employer and worker interviews. Collected data are crop and area specific (*e.g.*, apple picking in the Hudson Valley of New York). The surveys gather data on domestic worker wages only: H–2 workers are excluded. However, employers who hire both domestic and foreign workers at the same time are contacted for wage information on their domestic workers.

Along with requiring the payment of the prevailing piece rate as a minimum, DOL proposed to administratively review and determine the validity of productivity minimum requirements on job orders. Beginning in 1987, all H–2 growers who pay by the piece rate would be required to specify minimum productivity levels required of workers to insure job retention on their job orders if they have not done so before, and if such productivity requirements are conditions of employment. Such levels would be permitted to move upward from their 1977 levels (or first year after 1977 in the program) only if they are justified in writing to the Regional Administrator and are approved by ETA. Thereafter, any future productivity increases must be justified in a similar fashion for technological, economic or other reasons on a yearly basis. For employers entering the program for the first time, minimum productivity requirements could not exceed those which are normally required by other employers growing similar crops in the area of intended employment.

**V. Discretion in Establishing a Piece Rate Adjustment Policy**

Section 214(c) of the Immigration and Nationality Act gives the Attorney General (and his designee the Commissioner of INS) broad discretion in the admission of nonimmigrant aliens to the United States. 8 U.S.C. 1184(c); 8 CFR 2.1. With respect to determinations under the immigration laws on the availability of U.S. workers for jobs offered to nonimmigrant alien workers, and the adverse effect those aliens' employment may have on the wages and working conditions of similarly employed U.S. workers, the Secretary of Labor and DOL have been given broad discretion. See, *e.g.*, 8 CFR 214.2(b)(3)(i). This broad discretion, particularly with respect to methodologies for setting minimum wage rates under the immigration laws, has been recognized in the federal appellate and district courts. *Virginia Agricultural Growers' Association, Inc.* v. *Donovan*, 774 F. 2d 90 (4th Cir. 1985). *Florida Fruit & Vegetable Association, Inc.*v. *Brock*, 771 F. 2d 1455 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 1524 (1986); *Shoreham Co-operative Apple Producers' Association, Inc.* v. *Donovan*, 764 F. 2d 135 (2d Cir. 1985); *Rowland* v. *Marshall*, 650 F. 2d 28 (4th Cir. 1981) *(per curiam)*; *Williams* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000; *Florida Sugar Cane League* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976); and *Limoneira Co.* v. *Wirtz*, 327 F. 2d 499 (9th Cir. 1964), *aff'g* 225 F. Supp. 961 (S.D. Cal. 1963); see also *Elton Orchards, Inc.* v. *Brennan*, 508 F. 2d 493 (1st Cir. 1974); and *Flecha* v. *Quiros*, 567 F. 2d 1154 (1st Cir. 1977). These decisions acknowledge DOL's discretion in the area of wages involving nonimmigrant alien agricultural workers and form the basis for construction of DOL's temporary alien labor certification regulations. See 20 CFR 655.0(e).

This is an area in which DOL has great "discretion to reach a number of different results rather than an area of pure statutory interpretation as to which there is in theory only a single answer." (See *Building & Construction Trades Department, AFL–CIO* v. *Donovan*, 712 F. 2d 611, 619 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1069 (1984)).

## VI. Comments Received and DOL Responses

A total of 41 comments were received in response to the initial comment period. These included requests for additional time to submit more substantive observations. Another 27 comments were received in response to the second 30-day comment period. In all, 68 written comments were submitted by the public on the proposed rule: 44 from employers and their representatives; 21 from worker advocates, and 3 from State Employment Security agencies.

### *A. Employer Comments*

The employers and employer representative commenters supported the adoption of the proposed rule. In their comments they made the following major points:

(1) The proposed rule protects the wages of U.S. workers by retaining the requirement that every piece rate paid worker will earn no less than the AEWR in any given pay period.

(2) Actual job opportunities for U.S. workers are protected by providing that workers may not be discharged for productivity below the prevailing or 1977 standards, regardless of whether the workers' production equals the current AEWR or not.

(3) The proposed rule emphasizes DOL's reliance on the AEWR as the main device for preventing adverse effect on wages in agriculture.

(4) Keying the acceptability of piece rates to standards that are prevailing in the area is consistent with DOL's practice in the administration of non-agricultural certification activities.

(5) This approach will be of benefit to both employers and workers because it will permit the utilization of the piece rate as an incentive wage in agriculture which historically results in higher earnings for workers.

(6) Permitting productivity requirement increases after approval by the RA recognizes the need for a flexible approach to account for technological improvements in farming operations.

DOL concurs with these observations.

### *B. State Agency Comments*

One State agency which submitted comments fully supports DOL's proposed rule. Another agency recommended DOL choose Option #5 (no piece rate standard; permit justifiable productivity standard) primarily because of perceived confusion, complications and costs involved in determining prevailing piece rates and administering the AEWR at the same time. The third agency which commented recommended that DOL continue the requirement that the piece rate be designed to yield at least the AEWR.

As noted in the proposed rule, one of the factors examined in DOL's consideration of Option #5 was the fact that this approach would be in contradiction to the prevailing wage standard principle generally applied throughout in the labor certification program. Such an approach would effectively ignore the fact that most current H–2 employers pay on a piece rate basis, and would not permit examination of the acceptability of most wage offers in terms of standards applicable to domestic workers in the area of intended employment. DOL recognizes that Option #5 could probably be the easiest approach to administer, but does not believe that it would provide adequate protection for U.S. workers. This suggestion, therefore, was not accepted.

The State agency which recommended Option #5 also suggested that DOL hire the necessary personnel to effectively administer the AEWR, including an expansion of the sample size. As noted in the recently concluded rulemaking adopting the USDA quarterly wage survey data as the base for computing and publishing AEWRs (51 FR 24138), the information DOL uses to derive AEWRs is actually collected by the U.S. Department of Agriculture (USDA) and DOL merely indexes the USDA data on a yearly basis to determine AEWRs. DOL, therefore, does not believe this comment is relevant to the piece rate rulemaking.

DOL has not accepted the recommendation provided by the third State agency that the requirement of the piece rate being designed to yield the AEWR be retained. The practical weaknesses in the available tools for effectively administering this include: (1) The resource problems inherent in the examination of grower payroll records; (2) the problems that arise when new States and crops where no adequate payrolls records exist enter the program; and (3) the unsurmountable problem of being unable to factor into the process considerations affecting past years actual earnings which are beyond the control of the employer, such as weather, crop yield and physical capability of workers. Further, reasons for not accepting this recommendation (which also was presented by worker representatives) are discussed in the following section.

### *C. Worker Representative Comments*

Worker representatives who commented on the proposed rule were not in favor of its adoption as final. Their arguments against the rule, however, were not sufficient to persuade DOL that another course of action would be more appropriate. The primary observations presented by these commenters and DOL's response to them are presented below. While all of the comments submitted by worker representatives have been carefully considered by DOL, many of the comments were duplicative. Therefore, this section does not address each commenter separately. However, this section has been structured in a manner which responds to each significant issue raised by the comments. The comments which were totally irrelevant or outside the scope of the rulemaking are not discussed.

#### 1. Continuation of Proportional Increase Approach

*Comment:* DOL was criticized for not explaining why the current proportionate increase approach mandated by the Courts is not acceptable. In support of this general criticism, several commenters disputed DOL's observation that the proportionate increase approach would require excessive piece rate earnings at levels above the AEWR, noting that average worker earnings are almost at levels at or above the AEWR anyway.

*DOL Response:* DOL is aware that average piece rate earnings are generally at or above the AEWR. However, DOL cannot reasonably be expected to require growers to continually increase their piece rates in a straight formula manner which would have the effect of turning the AEWR into an earnings escalator rather than the minimum floor it is designed to be.

The situation in Montana is illustrative of how the formula application of the proportionate increase approach would result in unreasonable escalation of piece rates from one year to the next. In 1985, several employers in Montana applied for labor certification for irrigators. This was their first year in the H–2 program. In the absence of a published AEWR for Montana, the growers were required to offer a minimum guarantee of $3.35 per hour (the prevailing rate) to their piece rate paid workers. Actual average worker earnings in 1985 for piece rate paid workers exceeded $5.00 per hour. The computed but unpublished AEWR for Montana in 1986 is $4.87 per hour. Thus, if Montana growers had continued to pay by the piece rate in 1986 and if the AEWR had been published, the piece rate would have had to reflect an

increase of 45% in 1986 over what it had been in 1985, despite the fact that the average earnings in the previous year were in excess of the current year's unpublished AEWR.

The reasoning for DOL's rejection of the proportionate increase approach was articulated in the rulemaking of September 2, 1983, when DOL attempted to revise the piece-rate regulation "the purpose of the AEWR and the piece rate is to protect U.S. workers' wages from the adverse effect of temporary employment of nonimmigrant aliens. This protection is effected by establishing an adverse effect floor. Employers are free to pay more and workers are free to seek more wages, but the labor certification program is not the appropriate means to escalate agricultural earnings above the adverse effect level or to set an 'attractive wage'." 48 FR 40168, 40173 (September 2, 1983).

As a final point, DOL cannot agree with some commenters' observations that continuation of the proportionate increase approach (with an allowance for justifiable productivity increases) would allow for continuation of the piece rate as a management tool. DOL noted in the proposed rule that continuation of this approach would probably result in growers abandoning piece rates in favor of hourly rates plus bonuses. This is exactly what happened in 1986 with many East Coast apple growers.

2. Abandonment of Long Standing Policy on Piece Rates Yielding AEWR

*Comments:* DOL was criticized for removing the regulation that piece rates be designed to yield the AEWR (at a minimum), and there be no productivity increase required of a worker in order to attain the AEWR, and for not sufficiently justifying its departure from past practice at this time.

*DOL Response:* The impetus for this rulemaking, which modifies past practice, was provided by the U.S. Court of Appeals for the District of Columbia. Its 1985 decision invalidated the piece rate rulemaking revisions promulgated in 1983 and 1985 which represented DOL's interpretation of its previous regulation. In doing so, the Court clearly presented DOL with the opportunity to examine the piece rate issue *de novo*.

In its *de novo* examination, DOL determined that the existing regulation was vague, imprecise and unclear, both conceptually and operationally. For example, the regulation did not specify (or indicate) whether the piece rate should be designed to yield the AEWR for every worker, for the average worker, or for U.S. workers only. It did not give any indication as to what should be measured to arrive at a determination of compliance with the requirement. It did not state whether the standard should be applied on a grower-by-grower basis, for a crop or an area within a State or on a Statewide or regional basis. DOL has interpreted these provisions several times in the past, in administrative issuances to field staff and in regulations published in 1983 and 1985, but DOL's own interpretations have been extensively litigated and eventually invalidated by the Courts. This demonstrates the ambiguous, unclear nature of the provisions themselves. Therefore, DOL is now clarifying and simplifying the rule so it may be administered in a straightforward manner. The rule retains the essential piece rate tie to the AEWR in that make-up pay is required should piece-rate earnings fall below the AEWR. It properly observes the productivity increase by administratively monitoring the firing threshold. While DOL is clarifying somewhat ambiguous language in the regulations, DOL is not abandoning its concerns that appropriate wage rate standards be maintained, and that unwarranted productivity requirement increases be avoided.

3. Problems with Proposed Rule

a. *Appropriateness of Prevailing Piece Rates.*

*Comment:* Commenters presented their observations that prevailing piece rates are not appropriate, since they have already been depressed by the presence of alien workers. Supposedly, they will perpetuate depressed wage rates (both piece rates and hourly rates). The commenters submitted results of certain State agency wage surveys in support of this contention.

*DOL Response:* The data presented by commenters were examined closely by DOL and compared with similar data from State agency wage surveys in other States. While the data that was submitted do indicate that for certain crops in certain areas where H–2 workers have been certified there has been an appreciable increase in piece rates over a period of time, other data are available to show that this is not common to all areas utilizing H–2 workers. For example, piece rates in Vermont and Massachusetts increased 30% and 33% respectively between 1980 and 1986, whereas the AEWRs for those States increased only 25% and 26%. Even such heavy H–2 user States as Virginia and Maryland have shown piece rate increments of 25% over the same time span.

DOL does not dispute the commenters' contention that the presence of aliens may have had a static effect on piece rates in certain areas and in certain crops. However, under the INA, it is clear that the use of foreign workers to a certain degree is intended so long as certain minimum protections are provided to U.S. Workers, and the AEWR is the primary device for providing the protection from adverse effect. The provision in the regulations that make-up pay to the AEWR be provided is maintained to reflect DOL's continuation of past policy relying on the AEWR as the minimum protective floor.

Further, DOL does not agree with some commenters' observations that reliance on prevailing piece rates does not provide adequate minimum protection to some workers (such as apple pickers) whose actual hourly earnings when paid on a piece rate basis usually exceed the AEWR. DOL's responsibility in administering the H–2 program does not extend to guaranteeing or protecting the earnings of workers at levels above those that are designed to prevent adverse effect nor does it involve requiring that rates be set so high as to be very attractive to U.S. Workers.

b. *Adequacy of Prevailing Wage Surveys.*

*Comment:* Commenters criticized prevailing wage surveys conducted by State agencies as not adequate for purposes of this rule. Specific mention was made of DOL's acknowledgment in the proposed rule that many East Coast apple growers did not pay piece rates as required by certain Court Orders during the 1985 season; inclusion of the wages actually paid by these employers in prevailing wage survey findings would skew the findings and reward the growers for non-compliance with lawful requirements.

*DOL Response:* DOL does not agree with the criticism of State agency wage surveys. Experience has shown that these surveys have been adequate in the past for purposes of administering regulatory requirements at 20 CFR Parts 653 and 655. There is no reason to think they would be inadequate now. For States where surveys may not have been utilized in recent years, DOL plans to assure that State agencies comply with established procedures by means of on-going review and the provision of technical assistance and training.

The comment related to 1985 apple harvest piece rates, while only peripherally relevant to this rulemaking, was rendered moot by grower and court action prior to the 1986 harvest season.

As the result of DOL's requirement (in compliance with court orders) that the proportional increase interpretation of the piece-rate regulation be applied for apple picking in 1986, most growers opted to pay their workers on an hourly basis for the 1986 season. DOL's decision to permit this change in method of payment is being litigated in U.S. District Courts in Virginia and New York. DOL's refusal to permit certain Virginia apple growers to offer unspecified bonuses in addition to hourly rates also is being litigated. Further, there is no way of knowing what prevailing piece rates would have been in 1985 if the rates required by the proportional increase method had been paid. Wage surveys include both criteria (H–2 user) and non-criteria (non-H–2 user) growers, and while DOL attempted to enforce the proportional increase approach in 1985, the courts permitted non-payment and the establishment of escrows. Even if this issue had not been academic, there is no practical way to go back and reconstruct prevailing wage surveys to include wages which were not actually paid.

c. *Productivity Requirements.*

*Comment:* Some commenters stated that the proposed rule does not adequately protect workers against unjustified productivity increases. They found problems with the establishment of the 1977 base standard, and observed that the content of the USDA prepared appendix which discusses factors affecting worker productivity leaves the door open to abuses in program administration. Further, it was contended that DOL and SESA staff lack sufficient expertise to make judgments regarding legitimate or justifiable productivity changes.

*DOL Response:* The rule will effectively accomplish what has been difficult to administer and accomplish in previous piece rate rulemaking efforts. It will have the effect, for the first time, of directly regulating productivity standard requirements. The rule strengthens control of this employment factor by explicitly requiring employers to include productivity standards on their job orders if they are to be used as a basis for refusing to hire a worker or for terminating employment.

DOL finds no merit in the contention that certain factors affecting productivity discussed in the appendix to the proposed rule might be used to justify the approval of productivity increases which are not legal and job related, such as age or gender. The USDA concept paper was published for information purposes only, and was not intended to convey the impression that DOL found all the reasons discussed acceptable for the purposes of labor certification. Justifiable productivity requirement increases may be permitted by individual RAs based on documentary evidence submitted by employers showing that such increases are, in fact, warranted because of technological, horticultural, climatological, or economic changes. Such increases may be granted on a grower-by-grower or areawide basis.

DOL believes that Federal and State staff have sufficient familiarity, background and expertise in this area to make educated judgments when they are called for. Other agencies, such as State Departments of Agriculture and the Cooperative Extension Service, will be consulted in the process when needed. DOL intends to monitor the implementation of this revised procedure, and will make changes if they are warranted at a future time.

Last, the establishment of 1977 as a base year (or first year after 1977 that employer entered the program) is basically a starting point to which adjustments can be made based on justifiable reasons supported by evidence. This is the base year standard set in the order issued by the U.S. District Court for the District of Columbia in 1983 in *NAACP, Jefferson County Branch* v. *Donovan* which was not objected to by the certified nationwide class of farmworkers. See Civ. No. 82–2315, final order and judgment (D.D.C. August 21, 1985).

4. Alternatives Suggested

a. *Piece Rates Designed for Earnings Above AEWR.*

*Comment:* Some commenters suggested that DOL consider requiring growers to offer piece rates designed to yield worker earnings equal to some fixed percentage above the AEWR; *e.g.*, the AEWR plus 25%.

*DOL Response:* Adoption of this suggestion would result in DOL requiring that average worker earnings levels above the adverse effect floor be maintained. This is a result which DOL has previously rejected in considering continuation of the proportionate increase methodology (See DOL Response Under C, 1 (above)) and the requirement that piece rates be designed to yield the AEWR as a minimum (See DOL Response Under C, 2 (above)) for the same conceptual and administrative problems this suggestion poses. Further, this suggestion would create the equivalent of adverse effect piece rates, which are precluded without appropriate notice and rulemaking.

b. *Proportionate Increases with Productivity Flexibility.*

*Comment:* Some commenters suggested DOL consider continuation of the proportionate increase approach to piece rates, but address the productivity requirement issue by allowing some sort of relaxation of base standard requirements because of extenuating circumstances which can be justified by employers.

*DOL Response:* While recognizing that the element concerning productivity in this suggestion closely resembles the approach DOL will be taking to allow for flexibility, the same objections to the continuation of the proportionate increase approach discussed in DOL Response to C, 1 (above) apply. The example cited in that section illustrates what unreasonable distortions could result from application of this rigid methodology.

**Regulatory Impact**

The rule affects only those employers using non-immigrant alien workers ("H–2 visaholders") in temporary agricultural jobs paid by piece rate in fourteen States. It does not have the financial or other impact to make it a major rule, and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127; 5 U.S.C. 601 note.

At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule would not have a significant economic impact on a substantial number of entities. The small number of employers who employ nonimmigrant aliens in piece-rate-paid agricultural employment in the United States must pay the prevailing piece rate to their workers and this rule would not in that way, or otherwise, have a significant economic impact on small entities.

**Final Rule**

Accordingly, Part 655 of Chapter V of Title 20, Code of Federal Regulations is amended as follows:

## PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for Part 655 continues to read as follows:

**Authority:** 8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c); 29 U.S.C. 49 et seq; 8 CFR 214.2(h)(3)(i).

BEST COPY AVAILABLE

§ 655.202 [Amended]

2. Section 655.202 is amended by revising paragraph (b)(9)(ii) to read as follows:

§ Contents of job offers.

* * * * *

(b) * * *

(9) * * *

(ii)(A) If the worker will be paid on a piece rate basis, and the piece rate does not result at the end of the pay period in average hourly earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the adverse effect rate, the worker's pay will be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the adverse effect rate.

(B) If the employer who pays on a piece rate basis requires one or more minimum productivity standards of workers as a condition of job retention, (1) such standards shall be no more than those applied by the employer in 1977, unless the RA approves a higher minimum; or (2) if the employer first applied for temporary labor certification after 1977, such standards shall be no more than those normally required (at the time of that first application) by other employers for the activity in the area of intended employment, unless the RA approves a higher minimum.

* * * * *

§ 655.207 [Amended]

3. Section 655.207 is amended by removing paragraphs (c) and (d) and by redesignating paragraph (e) as new paragraph (c).

Signed at Washington, DC, this 2nd day of April, 1987.

William E. Brock,

*Secretary of Labor.*

[FR Doc. 87-7704 Filed 4-8-87; 8:45 am]

BILLING CODE 4510-30-M

---

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

### 24 CFR Part 511

[Docket No. R-87-1260; FR-2065]

### Rental Rehabilitation Program; Performance Adjustments to Formula Allocations

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule; suspension of 24 CFR 511.32.

**SUMMARY:** This rule suspends 24 CFR 511.32, which contains the procedures and criteria for performance adjustments to formula allocations under the Rental Rehabilitation Program. This action is being taken because numerous anomalies would have resulted from the Department's initial application of the performance adjustment regulation, at current project completion levels. At this time, the Department believes it is in the best interests of the Rental Rehabilitation Program not to implement the discretionary statutory authority to provide performance adjustments and is, therefore, suspending § 511.32, Performance adjustments to formula allocations, pending further study and possible revision or removal.

**EFFECTIVE DATE:** May 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolesar, Director, Rental Rehabilitation Division, Office of Urban Rehabilitation, Department of Housing and Urban Development, at the above address, telephone (202) 755-5970. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 17 of the United States Housing Act of 1937 (the Act) establishes a Rental Rehabilitation Program, which provides grants to States, urban counties, and units of general local government to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. The program is designed to increase the supply of standard housing units affordable to lower income families. This is achieved by (1) supplying Rental Rehabilitation funds to assist in the rehabilitation of existing units and (2) providing rental housing assistance under Section 8 of the Act to lower income families to help them afford the rent of units in projects assisted with Rental Rehabilitation program funds, or find alternative housing. Rental rehabilitation grant allocations are calculated according to a formula prescribed by the Secretary based upon statutory criteria, except where HUD makes grants directly to units of general local government in States that have elected to have HUD administer their allocations. Grants in the amount of the formula allocation are made after grantees have submitted satisfactory program descriptions to HUD.

Under section 17(b)(2)(B) of the Act, the Secretary has the discretion to adjust the formula allocation for cities, urban counties, consortia, and States administering a rental rehabilitation program by as much as 15 percent above or below the regular allocation, based upon an annual review of the grantees' past performance. Grants would then be made based upon the adjusted allocations, after the submission of satisfactory program descriptions by grantees. Section 17(b)(2)(B) requires the Secretary to establish performance criteria by regulation if the Secretary exercises his or her authority to make performance adjustments.

The interim rule (47 FR 16936, April 20, 1984), which implemented the Rental Rehabilitation Program by adding 24 CFR Part 511, contained § 511.32, Performance adjustments to formula allocation. The preamble (at page 16942), however, advised the public that the Department intended to publish a more detailed performance adjustment system by interim rule. This interim rule was published on December 10, 1985 (50 FR 50594).

The Department received four public comments in response to the December 10, 1985 interim rule, one from a State grantee and the other three from cities. Two of the cities were concerned that grantees that received waivers of the requirement in § 511.10(k), that at least 70% of the rental rehabilitation grant amount be used to rehabilitate units containing two or more bedrooms, would do poorly under the performance standard in § 511.32(f)(2). This performance standard provides up to 15 points based on the extent to which a grantee rehabilitates units containing two or more bedrooms and three or more bedrooms. It was also noted that § 511.10(k) refers to an equitable share of "grant amounts" while the performance standard measures "units." This commenter suggested that the performance standard also be based on "grant amounts."

The performance standard in § 511.32(f)(3) concerns the extent to which units were occupied by very low-income families before rehabilitation and the extent to which these families were not displaced by the rehabilitation. One commenter claimed that this standard penalized grantees that rehabilitated vacant units and recommended that the standard be subdivided; a portion of the points would be awarded under the current standard and the remainder would take into consideration percentages based on previously occupied units rather than all units.

A commenter voiced concern that the allocation of up to 30 points for financial

standards (§ 511.32(f) (4) and (5)) indicated what it considered to be a distressing change in emphasis—from encouraging production of rehabilitated units in a cost-effective manner to simply encouraging maximum leverage by the private sector.

A commenter objected to the use of thresholds, in general (§ 511.32(e)), and, in particular, to the threshold performance standard in § 511.32(e)(2), which requires that at least 80% of the grantee's rehabilitated units must have rents that are affordable to lower income families. The commenter argued that the grantee has no control over the rents currently being charged in units that were rehabilitated six years ago, for example. Another commenter suggested that affordability under § 511.32(e)(2) not be based on current Fair Market Rents, which it noted have not been increased in its State. It recommended that an annual adjustment factor methodology similar to that used to adjust contract rents in the Section 8 Program be incorporated into this threshold performance standard.

Finally, the comment from the State grantee included a recommendation that the performance of State grantees be measured against other States within a region, rather than on a nationwide basis.

Because the Department is suspending § 511.32 for the reasons stated below, it is deferring responding to these comments, but will take them into consideration in its further review of the performance adjustment system.

The Department's computer runs, made as part of the initial implementation of the performance adjustment system contained in the December 10, 1985, interim rule, produced anomalous and unintended results.

Generally, grantees with very few completed projects, but with projects that fully met most of the specific adjustment criteria (such as projects containing exclusively two or three bedroom units), were strongly favored by the system and received the maximum positive adjustment (an additional 15% grant allocation).

Grantees, however, with far more completions—even if they did generally well on most of the criteria—were not perfect on any of the criteria (which is a statistical likelihood), and tended to cluster toward the middle of the rankings. The Department did not intend that the performance adjustment system place such a high emphasis on having a few *fully* successful projects, at the expense of grantees that produced a far greater number of *generally* successful projects. The Department notes that, for the same reasons, the adjustments also tend to provide more funds to grantees that have spent less of their existing allocations—another undesirable result. (At the same time, however, the Department does not want a performance adjustment system that simply favors the larger grantees.) Because the current performance adjustment system clearly produces indefensible performance adjustments and needs further study, the Department is suspending § 511.32, Performance adjustments to formula allocations, pending further consideration of revising or completely withdrawing the performance adjustment system. Because most of the criteria contained in § 511.32 will probably be contained in any future system (if an equitable system can be devised at all), and because the current regulation, therefore, still provides some notice of the elements of grantee performance that the Department views as important, the Department is suspending § 511.32, rather than removing it, at this time.

**Other Matters**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981 (Executive Order 12291). This rule does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, nor does it significantly adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Analysis of the rule indicates that it would not have an annual effect on the economy of $100 million or more.

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have significant economic impact on a substantial number of small entities, because statutorily eligible grantees and State recipients are relatively larger cities, urban counties or States and the rental rehabilitation grant amounts to be made available to any grantee are relatively small in relation to other sources of Federal funding for State and local government in relation to private investment in rental housing.

This rule was listed as Sequence Number 924 in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424) under Executive Order 12291 and the Regulatory Flexibility Act. It is also related to Sequence Number 920 in the Semiannual Agenda (51 FR 38459), which concerns final rulemaking for 24 CFR Part 511 as a whole.

The Catalog of Federal Domestic Assistance program number applicable to this rule is 14.230.

**List of Subjects in 24 CFR Part 511**

Rental rehabilitation grants, Administrative practice and procedure, Grant programs: Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Part 511 as follows:

## PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for 24 CFR Part 511 continues to read as follows:

**Authority:** Section 17 of the United States Housing Act of 1937, 42 U.S.C. 1437o; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

**§ 511.32 Performance adjustments to formula allocation. [Suspended]**

2. Section 511.32 is suspended.

Dated: April 2, 1987.

**Jack R. Stokvis,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 87-7874 Filed 4-8-87; 8:45 am]

BILLING CODE 4210-29-M

---

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Part 120

### Reimbursement of the Ute Tribe of the Uintah and Ouray Reservation, UT

February 16, 1987.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule; removal.

**SUMMARY:** The Bureau of Indian Affairs is publishing a rule that removes 25 CFR Part 120, Reimbursement of the Ute

Tribe of Uintah and Ouray Reservation, Utah. It has been determined that there is no further need for or applicability of the rule.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mitchell Parks, (202) 343–3649.

**SUPPLEMENTARY INFORMATION:** The authority to remove this rule and regulation is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. This rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

This regulation, found in 25 CFR Part 120, Reimbursement of the Ute Tribe of the Uintah and Ouray Reservation, Utah, is being removed because it has been determined that there is no further need for the rule. The rule governed the one-time payment to those persons whose names appeared on the final roll of mixed blood-Indians that was prepared pursuant to Section 8 of the Act of August 27, 1954 (68 Stat. 868) or to their heirs or legatees. Claims for reimbursement were required to be filed not later than September 18, 1973. Final payments were made and no claims or appeals have been filed with the Bureau of Indian Affairs since that date. Therefore, there is no further need for or applicability of this rule.

Notice of proposed removal was published in 51 FR 35532 on October 6, 1986 and no comments were received.

The Department of the Interior has determined that this rule is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not constitute a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The Office of Management and Budget has informed the Bureau of Indian Affairs that the information collections contained in this regulation need not be reviewed by them under the Paperwork Reduction Act.

**List of Subjects in 25 CFR Part 120**

Indians-claims, Indians-judgment funds.

**PART 120—[REMOVED]**

Accordingly, Part 120 Chapter I of Title 25 of the Code of Federal Regulations is hereby removed and reserved.

Ross O. Swimmer,

*Assistant Secretary, Indian Affairs.*

[FR Doc. 87–7843 Filed 4–8–87; 8:45 am]

BILLING CODE 4310-02-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Part 401

[CGD 86–020]

## Great Lakes Pilotage Rates

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending the Great Lakes Pilotage regulations by increasing basic pilotage rates by thirteen percent in District 1 and six percent in District 3. No change is made in the basic rates in District 2. The revision in rates is needed to correct disparities in the manner various expenses have been recognized in the past. These changes are intended to provide parity in pilot compensation among the three Districts.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Hartke, Office of Marine Safety, Security and Environmental Protection, (G–MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 267–0217.

**SUPPLEMENTARY INFORMATION:** On May 22, 1986, the Coast Guard published a Notice of Proposed Rulemaking (51 FR 18806) with the comment period scheduled to end June 23, 1986. On June 2, 1986, the Coast Guard published a Notice of Public Hearing and Extension of Comment Period (54 FR 19759) and extended the comment period to July 2, 1986. The public hearing was held in Cleveland, Ohio on June 18, 1986. Eighteen written comments were received.

**Drafting Information**

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Commander Ronald C. Zabel, Project Attorney, Office of the Chief Counsel.

**Discussion of Comments**

A port, two port associations, two shipping associations, and a commission requested that the Coast Guard "hold the line" and not increase Great Lakes pilotage rates. The comments stated that others involved in the Great Lakes industry were not increasing costs to shippers to assist the ailing Great Lakes shipping industry. They suggested further evaluation of the effect of the rates increases on Seaway traffic. These comments asserted that pilotage is a significant cost factor, that increasing pilotage rates would result in decreased vessel traffic coming into the Great Lakes system, and that cargo diversions to coastal ports would result. A related comment from one of the port associations stated that the cost of pilotage is nearer 7½% of the total revenue for a typical round-trip voyage from Northern Europe to the Western Great Lakes, rather than the 2% to 5% of total ship operating costs as cited in the notice of proposed rulemaking. It should be noted that the commenter refers to a percent of total vessel revenue, whereas the Coast Guard used a percentage of total ship operating costs. We have asked the commenter for a copy of the report from which his data was taken, but as of this date, no additional information has been received regarding the comment.

The Coast Guard does not agree with the above comment. We believe the proposed pilotage rate increases will not have a significant impact on Great Lakes shipping.

First, the requirement to use a registered pilot is applicable only to vessels in the foreign trade. The vast majority of shipping and port activity on the Great Lakes is not related to foreign trade vessels. Overseas trade comprises a very small proportion of total shipping on the Great Lakes. A U.S. General Accounting Office report entitled *Great Lakes Shipping* (May 1986), indicates that during 1984, total overseas trade comprised only 8% (6% U.S., 2% Canada) of the total Great Lakes/St. Lawrence Seaway Traffic. The report is available from the U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, Maryland, 20877.

Second, in the Notice of proposed Rulemaking of May 22, 1986 (51 FR 18806), the Coast Guard stated that pilotage fees represented between 2% to 5% of total ship operating costs.

A study conducted by Booz, Allen & Hamilton (April 15, 1985), entitled *Transportation Cost Analysis of the St. Lawrence Seaway*, corroborates our statement. Using the data contained in the "least cost routing analysis" section, it can be calculated that the cost of pilotage is in the 1.7% to 2.6% range of total water transportation costs. A copy of the report may be obtained from the

Saint Lawrence Seaway Development Corporation, Washington, DC 20590.

The U.S. Pilotage cost for a typical ocean going vessel making a voyage into the system to Chicago to discharge steel, proceeding to Duluth to load grain, then leaving the system, would be approximately $18,646 for the round trip, which is a total of more than 3,000 miles of pilotage. The ton-mile cost is $.000231. It should be noted that pilotage costs per ton are somewhat higher for the Great Lakes than at Tidewater ports ($.52 per ton as compared to $.03) for a typical commodity such as grain, because of the many pilotage miles involved. These are the only pilotage charges for which we have authority and responsibility. This cost figure ($18,646) includes only U.S. Great Lakes pilotage charges and includes neither the all Canadian area pilotage fees nor European or other destination pilotage fees. This rate increase will add about $1,158 to the total U.S. pilotage cost of this round trip transit into and out of the system.

Seven comments stated that the rates should not be increased because the pilots themselves were willing to accept no increase this year. These comments were related to press releases by the pilot organizations for Districts 2 and 3, that contained recommendations the rates not be increased. The releases were published just prior to the publication of the notice of proposed rulemaking. The Coast Guard believes that the need for a rate increase exists. Over the years of across-the-board increases, disparities have resulted among the three Districts. Two of the comments supported rate increases to correct the disparities. The variable increases are intended to eliminate the disparity. Three comments stated that the pilot organizations should either become more efficient or accept lower compensation as the rest of the entities involved in Great Lakes shipping have had to do. This comment was countered by the District 2 pilot organization, which asserted that they were in fact being penalized for being efficient by not being granted a rate increase. The Coast Guard recognizes the importance of greater efficiency. The increases do not represent what the pilot organizations asked for, and rates established in this rule are substantially below what each pilot organization indicated it required for adequate compensation. Earlier in our rate review, pilot organizations in Districts 1, 2, and 3 had requested increases of 64%, 8.5% and 7.31% respectively.

Two comments stated that the pilot workload standards used to determine the number of pilots for which target compensation is to be included in the rate formula are excessive. One of these comments also stated that the Coast Guard has never limited any of the pilot organizations to numbers developed solely through the application of the workload standards.

The pilot workload standards of 1,000 bridge hours per pilot per season in designated waters (rivers) and 2,000 bridge hours per pilot per season in undesignated waters (lakes) resulted from a Department of Transportation Great Lakes Pilotage study completed in 1972. These workload standards were based on the hours actually being worked at that time. They have been used since 1972 as guidelines in determining the number of pilots for rate setting purposes. As part of the development of the Notice of Proposed Rulemaking (51 FR 18806), the Coast Guard reviewed the current applicability of those workload standards. This review included discussions with the three pilot organizations and accompanying pilots on pilotage assignments in each District. The pilots in 2 of the 3 Districts are operating at a level close to the workload standards. The pilots in the other District are operating at a level less than the standards. In establishing this rate increase we have used only the number of pilots resulting from the application of the workload standards. The reason for strict adherence to a pilot workload standard is to ensure that the rate increase is fully justified and that users of pilotage services do not have to pay for excess pilots. Reduction in the number of hours in the workload standard would increase the number of pilots required and, unless target compensation was reduced on a comparable basis, would necessitate greater rate increases. Of course, nothing in this rulemaking limits the number of pilots in a given District. It is up to the pilot organization to determine whether they wish to distribute available revenue over a greater number of persons.

One of these comments also stated that a particular trip averaging 11 hours requires that pilots violate the provisions of federal law, 46 U.S.C. 8104(d), that sets eight hours as the maximum length of time that a licensed individual in the deck department may be required to work in one day. A registered pilot is not a member the deck department of a vessel and is not subject to the eight hour limitation mentioned in the last sentence of 46 U.S.C. 8104(d). The definition of "United States Registered Pilot" at 46 CFR 401.110(a)(8) includes only those persons "other than a member of the regular complement of a vessel." One must be a part of the regular complement of a vessel to be a member of the deck department. The Coast Guard has consistently considered 46 U.S.C. 8104(d) as excluding registered pilots since the Great Lakes pilotage regulations were first promulgated in 1961. Because registered pilots are not subject to limitations in 46 U.S.C. 8104(d), the Coast Guard has, by regulation, provided for adequate rest periods. *See* 46 CFR 401.451.

Because application of the pilot workload standards in our rate proceedings is of significance to both the pilot organizations and the users of the system, we will continue to review the reasonableness of these standards.

A comment questioned the justification of compensating pilots at levels equal to Lake vessel masters and chief mates. A conclusion resulting from the 1972 Department of Transportation Great Lakes Pilotage Review was that target compensation for U.S. pilots used in determination of appropriate pilotage fees should be comparable to the earnings of their licensed counterparts on U.S. Great Lakes vessels. This is included in the Statement of Policy for Pilotage in the Great Lakes System, U.S. Department of Transportation, June 16, 1973. The commenter has not offered any alternatives to our compensation policy. The Coast Guard is not convinced that this longstanding policy should be changed without a compelling justification.

One comment stated that our guideline on pilot compensation contains erroneous assumptions which result in a rate which reflects lower pilo gross revenue than is proper. The comment stated that all undesignated waters should not be treated the same, that trans-lake pilotage is different from harbor pilotage, and that harbor pilotage services should be compared to that of a master for compensation purposes. Differences in compensation are based on whether the pilotage services are provided in designated waters or in undesignated waters. An additional guideline used is that pilots providing services in designated waters (46 CFR 401.405) should earn compensation equivalent to that of a master on a U.S. Great Lakes vessel, and pilots providing services in undesignated waters (46 CFR 401.410) should earn compensation equivalent to that of a first mate on a U.S. Great Lakes vessel. In the past the Coast Guard has not distinguished between types of pilotage services within undesignated waters. However, we will include as part of our continuing

review of pilot workload standards the matter of differentiating between trans-lake pilotage and harbor pilotage in undesignated waters for target pilot compensation purposes. This will require additional evaluation which cannot be completed prior to this rule being published.

At the public hearing held on June 18, 1986, regarding Great Lakes Pilotage rates, Lakes Pilots Association, Inc., (District 2) stated, among other things, that they were not treated fairly; that they have been penalized for being efficient. They stated that their press release was their way of protesting the untimeliness of the pilotage rate proposal and was also an attempt to secure more business. They said that they are complaining about the way the pilots in District 2 have been treated, and that they deserve to be fairly compensated.

The Coast Guard treats pilots in District 2 the same as all registered pilots. The Coast Guard has evaluated the financial data and has adhered to the rate setting methodology, applying it consistently in all 3 pilotage Districts.

At the public hearing on June 18, 1986, Upper Great Lakes Pilots, Inc., (District 3) stated, among other things, that there is no question that the 6% rate increase for District 3 can be easily justified, and that they are not going to turn down the rate increase proposed by the Coast Guard.

Lakes Pilots Association, Inc., requested a new rate provision which would provide that when a ship goes beyond the first bridge in any port, an additional charge of $400 be charged to the ship to compensate the pilot for the more difficult job of navigating the narrow winding river. This provision has not been included in the final rule because Great Lakes registered pilots are not compensated based on the difficulty of a particular assignment. The Coast Guard makes a distinction in target pilot compensation only with regard to designated waters versus undesignated waters, and not with respect to the relative difficulty of various individual assignments within particular designations. Additionally, as a rate increase cannot be justified for District 2, it is not appropriate to initiate a new charge. However, the requested new rate provision will be considered at future rate setting proceedings.

Upper Great Lakes Pilots, Inc., requested a new rate provision which would provide that if a ship goes to anchor or moves from one anchorage to another in undesignated waters, the ship should be charged a movage charge to cover the additional cost the pilot incurs when he boards or gets off a ship at anchor. This provision has not been included in the final rule because the Coast Guard is not aware of any additional costs that are not already included in the expense base for District 3, and because the ship is already being charged under the trans-lake 6 hour period rate (46 CFR 401.410). If, because of the anchoring procedure, a new 6 hour period is entered, the ship may be charged for an additional 6 hour period.

The United States and Canada have agreed to increase Great Lakes pilotage rates in the international sectors of the system by 13% in District 1, 0% in District 2, and 6% in District 3. Despite the fact that the 1986 shipping season is over, the Coast Guard believes this rate adjustment is necessary to eliminate the existing disparity and to provide a basis for any future adjustments negotiated with Canada.

*Evaluation:* This final rule is considered to be non-major under executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 7:30 a.m. and 3:30 p.m., Monday through Friday. Copies may also be obtained by contacting John J. Hartke, Room 1210, same address, telephone number (202 267–0217.

If the rate increase proposed in this rule were in effect for the entire 1986 season, the estimated cost would be $384,360, which would result in an overall system rate increase of 5.8%. This cost figure is the amount of additional revenue the U.S. pilots should receive under this regulation based on the projected 1986 traffic and is the increased amount that shippers would have to pay for pilotage services on the Great Lakes.

It has been estimated, and widely accepted, that pilotage fees represent somewhere between 2% to 5% of total ship operating costs. The estimated 5.8% overall rate increase multiplied by the 5% portion of total ship operating costs (assuming the highest end of the scale) equals less than a three tenths of a percent increase in total ship operating costs, which will not have a significant impact on the shipping industry. The benefit of this rule is the value of avoiding or minimizing costly delays and disruptions in shipping attributable to the failure to retain qualified pilots and to attract new qualified pilots. Almost all of the vessels transiting the system which are required to use registered pilots are foreign flag vessels. Similar size U.S. vessels have daily ship operating expenses in the range of $10,000 to $15,000. Although the daily ship operating expenses for comparable foreign vessels are typically lower, it is clear that delays in transiting the system can result in substantial additional costs to the vessel. The overall efficiency and safety of the pilotage system is enhanced by having an appropriate number of pilots available to provide the required services.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164) requires a regulatory flexibility analysis for regulations having a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Act, it is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

In the development of this rate adjustment, U.S. and Canadian shipping associations and pilots organizations were consulted.

**List of Subjects in 46 CFR Part 401**

Administrative practice and procedure, Great Lakes, Navigation (water) Reporting and recordkeeping requirements, Seamen.

**PART 401—[AMENDED]**

In consideration of the foregoing, Part 401 of Title 46 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 401 continues to read as follows:

**Authority:** 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46a

2. Section 401.405 is revised to read as follows:

**§ 401.405 Basic rates and charges on designated waters.**

Except as provided under § 401.420, the following basic rates shall be payable for all services and assignments performed by U.S. Registered Pilots in the areas described in § 401.300.

(a) *District 1.*

(1) For passage through the District or any part thereof, $10.32 for each statute mile, plus $138 for each lock transited, but with a minimum basic rate of $301 and a maximum basic rate for a through trip of $1322.

(2) For a movage in any harbor, $453.

(b) *District 2.*

(1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast Shoal, $623.

(2) Between points on Lake Erie west of Southeast Shoal, $368.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed at Detroit Pilot Boat, $1085.

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $623.

(5) Southeast Shoal to Detroit Pilot Boat, $451.

(6) Toledo or any point on Lake Erie west of Southeast Shoal to Port Huron Change Point, when pilots are not changed at Detroit Pilot Boat, $1257.

(7) Toledo or any point on Lake Erie west of Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $809.

(8) Toledo or any point on Lake Erie west of Southeast Shoal to the Detroit Pilot Boat, $623.

(9) Detroit/Windsor to any point on the Detroit River and between points on the Detroit River, $368.

(10) Detroit/Windsor or any point on the Detroit River to Port Huron Change Point or any point on the St. Clair River, $816.

(11) Detroit Pilot Boat to any point on the St. Clair River, $816.

(12) Detroit Pilot Boat to Port Huron Change Point, $634.

(13) Between points on the St. Clair River, $368.

(14) Port Huron Change Point to any point on the St. Clair River, $451.

(c) *District 3.*

(1) Between the southerly limit of the District and the northerly limit of the District or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario, $1129.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf, $947.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Michigan, $425.

(4) For a movage in any harbor, $425.

3. Section 401.410 is revised to read as follows:

**§ 401.410 Basic rates and changes on undesignated waters.**

(a) Except as provided under § 401.420 and subject to paragraph (c) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board in the undesignated waters shall be:

(1) In Lake Ontario, $243.

(2) In Lake Erie, $266.

(3) In Lakes Huron, Michigan and Superior, $228.

(b) Each time a U.S. pilot performs the docking or undocking of a ship in undesignated waters there is an additional charge of:

(1) In District 1, $232.

(2) In District 2, $205.

(3) In District 3, $217.

(c) The basic rate between Buffalo and any point on the Niagara River below the Black Rock Lock is, $523.

4. Section 401.420 is revised to read as follows:

**§ 401.420 Cancellation, delay or interruption in rendition of services.**

(a) Except as provided in this paragraph, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $38 for each hour or part of an hour during which each interruption lasts with a maximum basic rate of $601 for each continuous 24 hour period during which the interruption continues. There is no charge for an interruption caused by ice, weather, or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge shall be made for an interruption if the total interruption ends during the 6 hour period for which a charge has been made under § 401.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $38 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $601 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $227;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $38 for each hour or part of an hour including the first hour, with a maximum basis rate of $601 for each 24 hour period.

5. Section 401.428 is revised to read as follows:

**§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.**

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point the pilot shall be paid at the rate of $232 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for those services. The change points to which this section applies are designated in § 401.450.

Dated: April 1, 1987.

J.W. Kime,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87-7920 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 86-328; RM-5372]**

## Radio Broadcasting Services; Giddings, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 268C2 for Channel 269A at Giddings, Texas, and modifies the license of Station KGID(FM) to specify operation on the new frequency, at the request of Radio Lee County, Inc. A site restriction of 26.9 kilometers (16.7 miles) south of the community is required. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-328, adopted March 13, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 269A to 268C2 for Giddings.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-7890 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-290; RM-5255, RM-5264, RM-5294]

## Radio Broadcasting Services; Charlotte Amalie, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channels 241B1 and 246B to Charlotte Amalie, Virgin Islands, as that community's fifth and sixth FM channels, at the request of Bantam Broadcasting and Edward B. Reith, respectively. In addition, at the request of Virgin Islands Wireless Co., Inc., permittee of Station WVGN-FM, Channel 296A, Charlotte Amalie, Channel 287B is substituted for Channel 296A and the permit is modified to specify the new frequency, providing an additional wide coverage area FM service. A site restriction of 10.3 kilometers (6.4 miles) east of the community is required for Channel 246B. With the action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1987. The window period for filing applications on Channels 241B1 and 246B will open on May 19, 1987, and close on June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-290, adopted March 13, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended

2. Section 73.202(b), the Table of FM Allotments is amended, under Charlotte Amalie, Virgin Islands by adding Channel 241B1 and 246B and revising Channel 296A to 287B.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-7891 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-116; RM-5117, RM-5713]

## Radio Broadcasting Services; Lomira and Ripon, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channels 294A to Lomira, Wisconsin, as a first FM Service at the request of Mayville-Horizon Radio Company. Also at the request of DeNovoCom, Inc., this document substitutes Channel 241A for 240A at Ripon, Wisconsin and modifies the license of Station KYUR-FM to specify operation on the new frequency, as that community's first wide area FM station. Channel 294A at Lomira requires a site restriction of 5.6 kilometers (3.5 miles) northwest of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1987. The window period for filing applications on Channels 294A at Lomira will open on May 19, 1987, and close on June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-116, adopted March 9, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin, by adding the entry of Lomira, Channel 294A and revising Channel 240A to 241A for Ripon.

Mark N. Lipp,

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-7892 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-258; RM-5307]

## Television Broadcasting Services; Bryan, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF Television Channel 28 to Bryan, Texas, as that community's second commercial television service, at the request of SM Communications. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-258, adopted March 13, 1978, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Assignments, in the entry for Bryan, Texas, Channel 28 is added.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-7893 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-147; RM-5129]**

## Radio Broadcasting Services; Hancock, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 254C2 to Hancock, Michigan, as that community's second FM broadcast service, in response to a request from Thomas M. McNamara. Supporting comments were filed by Thomas McNamara. Since Hancock is within 320 kilometers of the common U.S.-Canadian border, Canadian concurrence has been obtained.

With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 11, 1987. The window period for filing applications will open on May 12, 1987, and close on June 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-147, adopted February 10, 1987, and released March 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, the entry for Hancock, Michigan is amended by adding Channel 254C2.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-7889 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Parts 73 and 74**

**[MM Docket No. 86-144]**

## Radio Broadcast Services; Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects the effective date of the Final Rule (First Report and Order) published in this proceeding concerning the Radio Broadcast Services and certain commercial FM channels.

**EFFECTIVE DATE:** The correct effective date of the Final Rule is April 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joel Rosenberg (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** The Final Rule was published on March 17, 1987 (52 FR 8259).

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-7887 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**50 CFR Part 663**

**[Docket No. 70101-7001]**

## Pacific Coast Groundfish Fishery; Restriction

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of fishing restriction and request for comments.

**SUMMARY:** NOAA issues this notice changing the size limit from 16.0 inches to 15.5 inches for processed sablefish caught off Washington, Oregon, and California, and seeks public comment on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and will ease compliance with the 100-pound landing limit on sablefish less than 22 inches by fixed gear. The intended effect is to allow landings of processed sablefish which were legal size before processing.

**DATES:** This action is effective 0001 hours local time, Sunday, April 5, 1987, until modified, superseded, or rescinded.

Comments will be accepted through April 24, 1987.

**ADDRESSES:** Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten at 206-526-6150, E. C. Fullerton at 213-514-6196, or the Pacific Fishery Management Council at 503-221-6352.

**SUPPLEMENTARY INFORMATION:** Since March 1983 (48 FR 8283, February 28, 1983), landings of sablefish smaller than 22 inches (total length) under § 633.22(a)(3) have been limited in order to avoid biological stress on the stock which was predicted to occur if the harvest of juveniles were not curtailed. A 16-inch size limit also was established for processed ("headed") sablefish, measured from the tip of the tail to the farthest point where the dorsal fin attaches to the body. This size limit was based on the average length of 22-inch sablefish after processing. Because the conversion is based on an average, a substantial number of 22-inch fish measure less than 16 inches when processed. As a result, fishermen who measured fish at 22 inches before processing sometimes found they had unacceptably high levels of processed sablefish smaller than 16 inches. This problem increased in early 1987 when the trip limit for 22-inch sablefish caught with fixed gear was reduced to 100 pounds (round weight).

At the March 10-12, 1987 meeting of the Pacific Fishery Management Council (Council), data were presented that indicated over 99 percent of 22-inch whole sablefish would measure at least 15.5 inches when processed. Although this 15.5-inch limit also could enable fish smaller than 22 inches to be retained in excess of the trip limit if they are processed, the biological difference between a 15.5-inch and a 16.0-inch size limit is not considered significant and is not expected to stress the sablefish resource. This change allows fishermen to keep sablefish that would have been legal if not processed, removes uncertainty over whether a 22-inch sablefish will satisfy the legal heads-off limit when processed, and eases

compliance. Accordingly, the Council recommended that the size limit for processed sablefish be changed from 16.0 to 15.5 inches.

**Secretarial Action**

The Secretary concurs with the Council's recommendation and herein changes the size limit of processed sablefish from 16.0 to 15.5 inches.

No other change to size or trip limits for sablefish as published at 52 FR 790 (January 9, 1987) is made at this time.

**Classification**

The determination to change this fishing restriction is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

This section is taken under the authority of §§ 663.22 and 663.23, and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

This notice revises a provision (52 FR 790, January 9, 1987), also issued under §§ 663.22 and 663.23, to reduce fishing levels for juvenile sablefish. This revision is a minor technical change with little biological impact, but with compliance benefits. Consequently, further delay of implementation is impracticable and contrary to the public interest, and this action is taken in final form effective Sunday, April 5, 1987.

The public has had opportunity to comment on this action. The public participated in the Groundfish Management Team, Scientific and Statistical Committee, and Council meetings in February and March 1987 that generated this change. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

**List of Subjects in 50 CFR Part 663**

Administrative practice and procedure, Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: April 6, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 87-7924 Filed 4-6-87; 3:37 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 68
Thursday, April 9, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1046

### Milk in the Louisville-Lexington-Evansville Marketing Area; Proposed Termination of a Provision of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed termination of rule.

**SUMMARY:** This notice invites written comments on a proposal to terminate a provision of the Louisville-Lexington-Evansville order. The proposed action would allow a cooperative association to be the responsible handler on milk of producers who are not members of the cooperative when such milk is delivered to pool plants of other handlers for the account of the cooperative association.

**DATE:** Comments are due on or before April 16, 1987.

**ADDRESS:** Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–2089.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the termination of the following provision of the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is being considered:

1. In § 1046.9(c), the provision "of its producer members".

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, not later than 7 days after the publication of this notice in the **Federal Register.** It is necessary that the time for responding be limited in order that the termination procedure can be completed at the earliest possible date to adapt the order to a recent change in milk handling practices in the market.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposed termination would permit a cooperative association to be the handler on milk of producers who are not members of the cooperative association when such milk is delivered to pool plants of other handlers for the account of the cooperative association.

Dairymen, Inc., requested that the proposed termination of a provision of the handler definition of the Louisville-Lexington- Evansville order be made effective in March 1987. The cooperative indicated that termination of the provision would:

(1) Facilitate the pooling of nonmember producer milk which has been pooled on the order for some time;

(2) Eliminate unnecessary reporting costs otherwise borne by the receiving city plant on such milk delivered for the account of Dairymen, Inc.;

(3) Allow the commingling of member and nonmember milk on the same farm-to-market routes and thereby lead to greater farm-to-market delivery efficiency; and

(4) Result in similar application under the Louisville-Lexington-Evansville order as applies under most other Federal milk marketing orders.

Therefore, comments are sought to determine whether the aforementioned provision should be terminated.

**List of Subjects in 7 CFR Part 1046**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1046 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on April 3, 1987.

**William T. Manley,**

*Deputy Administrator, Marketing Programs.*

[FR Doc. 87–7863 Filed 4–8–87; 8:45 am]
BILLING CODE 3410–02–M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

### Issuance or Amendment of Power Reactor License or Permit Following Initial Decision: Extension of Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On February 4, 1987 (52 FR 3442), the NRC published for public comment a proposed rule to revise its procedures that specify when a license, permit, or amendment can be issued following an initial adjudicatory decision by the presiding officer in favor of authorizing the issuance or amendment of a license or permit. The comment period for this proposed rule is to expire on April 6, 1987. The law firm of Shaw, Pittman, Potts & Trowbridge, on behalf of the Utility Nuclear Waste Management Group, has requested a thirty-day extension of the comment period. The request is granted. The extended comment period now expires on May 6, 1987.

**DATES:** The comment period has been extended and now expires May 6, 1987. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received before this date.

**ADDRESSES:** Send written comments or suggestions to the Secretary of the

Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paul Bollwerk, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–3224.

Dated at Washington, DC, this 6th day of April, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

*Assistant Secretary of the Commission.*

[FR Doc. 87–7929 Filed 4–8–87; 8:45 am]

BILLING CODE 7590–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

**12 CFR Part 325**

**Capital Maintenance; Risk-Based Capital Proposal**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Request for comments.

**SUMMARY:** Capital adequacy is one of the critical factors the Federal Deposit Insurance Corporation ("FDIC") is required to analyze in taking action on various types of applications, such as mergers and branches, and in the conduct of the FDIC's various supervisory activities related to the safety and soundness of individual banks and the banking system. In February 1985, the FDIC's Board of Directors adopted a capital regulation and related policy statement that set forth (1) minimum standards of capital adequacy for insured state nonmember banks and (2) standards for determining when an insured bank is operating in an unsafe or unsound condition by reason of the amount of its capital (50 FR 11128 (1985)). This regulation, contained in Part 325 of the FDIC's rules and regulations, 12 CFR Part 325, was designed to establish, in conjunction with the other federal bank regulatory agencies, uniform capital standards for all federally regulated banking organizations, regardless of their size. These uniform capital standards were based on ratios of primary and total capital to total assets.

While these ratios of capital to total assets are a useful tool for assessing capital adequacy, the FDIC believes that there is a need for a measure that is more explicitly and systematically sensitive to the risk profiles of individual banking organizations, including risks related to off-balance sheet activities. As a result, in February 1986 (51 FR 6126, February 20, 1987), the FDIC issued for public comment a proposal for a supplemental adjusted capital measure that the FDIC would consider in tandem with existing ratios of capital to total assets. Based in part on comments received by the FDIC on that earlier proposal and in light of extensive discussions with other federal banking agencies and the Bank of England, the FDIC has revised its February 1986 proposal.

The FDIC is seeking comment on this revised proposal, which would apply to all FDIC-insured state nonmember banks. This proposal would (1) add a risk-based capital measure (also known as a risk asset ratio) to be used in tandem with existing capital ratios and (2) amend the definition of primary capital for purposes of computing existing capital to total assets ratios. This revised proposal represents an effort to establish uniform capital standards for all federally supervised banking organizations operating in the United States and to continue the process of coordinating with regulatory authorities of other countries to establish appropriate capital standards, in accordance with the International Lending Supervision Act of 1983, 12 U.S.C. 3901.

**DATE:** Comments on the proposal must be received by June 8, 1987.

**ADDRESS:** All comments should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, or delivered to Room 6108 at the same address, between the hours of 9:00 a.m. and 5:00 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Stephen G. Pfeifer, Examination Specialist, or Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–6903.

**SUPPLEMENTARY INFORMATION:**

### Background

Capital adequacy is one of the critical factors the Federal Deposit Insurance Corporation ("FDIC") is required to analyze in taking action on various types of applications, such as mergers and branches, and in the conduct of the FDIC's various supervisory activities related to the safety and soundness of individual banks and the banking system. In February 1985, the FDIC's Board of Directors adopted a capital regulation and related policy statement that set forth (1) minimum standards of capital adequacy for insured state nonmember banks and (2) standards for determining when an insured bank is operating in an unsafe or unsound condition by reason of the amount of its capital (50 FR 11128 (1985)). This regulation, contained in Part 325 of the FDIC's rules and regulations, 12 CFR Part 325, was designed to establish, in conjunction with the other federal bank regulatory agencies, uniform capital standards for all federally regulated banking organizations, regardless of their size. These uniform capital standards were based on ratios of primary and total capital to total assets.

In addition to relying on capital to total assets ratios, the FDIC historically has taken account of many other risk factors when evaluating a bank's capital adequacy. Indeed, the nature and degree of a bank's risk exposure have always been important subjective factors in assessing capital adequacy. In view of the above, the FDIC determined that it might be useful to modify its capital requirements to be more explicitly and systematically sensitive to the risk exposure of individual banks. Consequently, in February of 1986, the FDIC requested comment on a supplemental adjusted capital measure that the FDIC proposed to consider in tandem with its existing minimum primary and total capital to total assets ratios when analyzing the capital levels of insured state nonmember banks (51 FR 6126 (1986)). The Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency also issued similar proposals (51 FR 3976 (1986) and 51 FR 10602 (1986), respectively).

Specific goals of the supplemental adjusted capital proposal were to (1) assess a capital requirement against certain off-balance sheet exposures; (2) temper disincentives inherent in the existing guidelines to hold low risk, relatively liquid assets; and (3) move U.S. capital adequacy policies into closer alignment with policies currently in use or under development in other major industrial countries. This last objective was considered of particular importance in view of increasing global banking competition and the desirability of achieving greater convergence in the measurement and assessment of capital adequacy of multinational banking organizations.

Subsequent to the issuance of the FDIC's February 1986 proposal and after reviewing the comments received, discussions were held between the

staffs of the U.S. bank regulatory agencies and the Bank of England. The Bank of England has utilized a risk asset ratio for a number of years, and early last year published a consultative paper on incorporating the credit risks associated with certain off-balance sheet items into the United Kingdom's risk asset framework. In light of the fact that both U.S. and U.K. supervisors were in the process of addressing similar issues, these joint discussions between U.S. and U.K. bank regulators provided a useful forum to explore the feasibility of bringing the bank capital requirements of the two countries into closer alignment. A proposed U.S./U.K. Agreement developed from these discussions and represents an important step toward the convergence of capital requirements among countries with major banking institutions, consistent with the terms of the International Lending Supervision Act of 1983, 12 U.S.C. 3901

The proposed U.S./U.K. Agreement encompasses (1) a common definition of primary capital that differs somewhat from the FDIC s existing Part 325 definition and (2) common risk asset categories that also differ in some respects from those contained in the FDIC's February 1986 proposal. As a result, the FDIC is requesting comment on the following risk-based capital proposal, which is based on the framework developed jointly by representatives of the Bank of England and the staffs of the Office of the Comptroller of the Currency (OCC), the Federal Reserve System (FRS) and the Federal Deposit Insurance Corporation during the latter part of 1986. A summary of the major aspects of the FDIC risk-based capital proposal is included in Appendix A and the text of the proposed Agreement between the U.K. and U.S. bank regulators is contained in Appendix B.

**Differences Between Current Proposal and February 1986 Proposal**

The FDIC's revised proposal differs in several respects from its February 1986 proposal, primarily as a result of further discussions with the OCC and the FRS, review of the public comments on the February 1986 proposal, and efforts to coordinate the proposals of the three federal banking agencies with the views of the Bank of England. Some of the major differences between this revised proposal, which is based on the proposed U.S./U.K. Agreement, and the February 1986 proposal, are discussed below.

*Definition of Capital*—First, the February 1986 proposal did not address the definition of capital. However, the FDIC believes that a common understanding of what constitutes primary capital, as incorporated in the proposed U.S./U.K. Agreement, is an essential part of any effort to achieve the convergence of capital requirements on an international basis. To that end, the FDIC's revised proposal includes a definition of primary capital that would revise the definition contained in the FDIC's Part 325 capital maintenance regulation. The revised definition of primary capital would be used in calculations for both the proposed risk-based capital ratio and for the primary and total capital to total assets ratios specified in the FDIC's Part 325 capital maintenance regulation. Thus, while the proposed risk-based measure would be used in tandem with existing measures, as was suggested in the FDIC's February 1986 proposal, the numerator of the existing primary and total capital to total assets ratios would be redefined. The revised proposal creates two categories of primary capital: *base primary capital*, which consists of certain primary capital funds that would be counted in full in the calculation of capital ratios; and *limited primary capital*, which would be included to a limited extent as primary capital in calculating capital ratios. The proposal also includes certain deductions from primary capital for purposes of calculating these capital ratios.

*Uniform Minimum Ratio for U.S. and U.K.*—Second, as set forth in the proposed U.S./U.K. Agreement, the regulatory authorities intend to set a uniform minimum acceptable ratio of adjusted primary capital to weighted risk assets, calculated from publicly available information, for banking organizations in both the United States and the United Kingdom. Moreover, the proposal is intended to serve in part as a vehicle to seek broader convergence in the assessment of the capital adequacy of international banking organizations. In contrast, the FDIC's February 1986 proposal would have applied to only U.S. banking organizations. The FDIC would expect that only sound, well-managed banking organizations without any material financial or operating deficiencies, and without any undue risk exposures or significant supervisory weaknesses, would operate at the minimum risk-based capital ratio. As the proposed U.S./U.K. Agreement points out, most institutions would be expected to operate with capital ratios above the minimum level. The actual minimum risk-based capital ratio will not be established until there is a final determination as to the appropriate primary capital definition, risk weights, and asset categories, and until the necessary financial information has been collected from the banking industry. Nonetheless, based on the terms and structure of the revised proposal, preliminary estimates using available information indicate that a minimum risk based capital ratio might possibly be established somewhere within the 5 to 7 percent range.

*Risk Categories*—Third, the FDIC's revised proposal includes five categories of weighted risk assets, to be weighted at 0, 10, 25, 50, or 100 percent, depending on the identity of the obligor and, where appropriate, on the maturity of the instrument. (See Table 1 in Appendix A.) These categories represent a change from the FDIC's February 1986 proposal, which included four categories of weighted risk assets: 0, 30, 60, and 100 percent. This change results in a somewhat lower risk weight for many of the assets originally assigned to the 30 and 60 percent weighted risk asset categories In addition, the list of assets that would be assigned to each category differs in some respects from the list proposed in the FDIC's February 1986 proposal.

*Claims on Foreign Banks and Governments*—Fourth, the FDIC's revised proposal does not distinguish between claims on foreign banks or governments based on the identity of the foreign country. The February 1986 proposal generally placed claims on foreign banks and governments of industrial countries in a lower risk category than claims on foreign banks and governments of nonindustrial countries, and generally placed short-term claims on U.S. banks in a lower risk category than similar claims on foreign banks.

*Off-Balance Sheet Risk Weights*—Fifth, in the case of off-balance sheet items, risk weights are determined by a two-step process, rather than by a simple categorization of off-balance sheet items in one of the weighted risk asset categories, as suggested in the February 1986 proposal Under the revised proposal, the face amount of each off-balance sheet item is multiplied by an appropriate "credit conversion factor," a ratio designed to translate the face amount of certain off-balance sheet exposures into rough on-balance sheet credit equivalents. (See Table 2 in Appendix A.) The resulting figure is then placed in one of the five risk asset categories and included in the asset component (i.e., the denominator) of the risk-based capital ratio. (See Tables 3 and 4 in Appendix A.) This revised treatment results in risk weights for some off-balance sheet items that are

slightly lower than the weights originally proposed.

*Consumer Loan Commitments*—Sixth, the FDIC's revised proposal includes loan commitments to consumers as a form of credit commitment that requires some capital support. The February 1986 proposal did not define such loan commitments to include commitments to extend credit to consumers.

**Similarities Between Current Proposal and February 1986 Proposal**

The general construction of many aspects of the FDIC's revised proposal remains similar to that of the FDIC's February 1986 proposal.

*Risk Asset Ratio Calculation*—First, an institution's weighted risk-based capital ratio continues to be determined by dividing its primary capital base by the sum of its weighted risk assets. The weighted risk assets are determined by assigning all assets (as well as off-balance sheet items) to appropriate risk categories. An illustration of how the proposed ratio would be calculated is contained in Table 3 of Appendix A.

*Evaluation of Capital Adequacy*—Second, this revised proposal contemplates. as did the February 1986 proposal, that the calculation of a risk-based capital ratio is only one step in evaluating capital adequacy. Many other factors must be taken into account in connection with the examination process before an overall determination of capital adequacy can be made, including the quality and diversity of the loan portfolio, the quality, trend and variability of earnings, the dividend payout ratio and the level and trend of retained earnings, liquidity and the structure of liabilities, the effectivenesss of loan and investment policies, and management's overall ability to monitor and control risks, including those risks arising from trust department operations. Of these factors, asset quality is particularly critical. Thus, while not explicitly incorporated into the proposed risk asset ratio, the assessment of capital adequacy must take account of the composition of the loan portfolio, including foreign or domestic loan concentrations, and the level and severity of *nonperforming* and *classified* assets. Adjustments based upon these factors made by examiners and supervisors will mean that the final supervisory judgment of an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the organization's risk-based capital ratio.

*Applicability*—Third, as in the February 1986 proposal, the revised risk-based asset framework contemplates that U.S. banking regulators would apply the minimum risk-based capital ratio to all banking organizations that they supervise. Thus, the FDIC would apply the proposed Agreement to all state nonmember commercial and savings banks. The application of the risk-based capital framework to both large and small banking organizations will avoid the possible introduction of a dual standard based upon size.

*Foreign Exchange and Interest Rate Risk*—Fourth, the revised proposal does not factor in all types of risk, and it contemplates, as did the February 1986 proposal, continued efforts to evaluate and refine the risk-based ratio. Under the proposed U.S./U.K. Agreement, the FDIC, the OCC, the FRS and the Bank of England are committed to continue efforts to develop techniques for factoring counterparty credit risks of interest rate swaps and other interest rate and foreign exchange contracts into the risk-based capital ratio in the near future. In addition, the proposed U.S./U.K. Agreement indicates a commitment to introduce a capital requirement for exchange rate risk. Finally, the Agreement also reflects a commitment to factor a more direct measure of overall interest rate risk into the capital ratio. Since the development of the proposed U.S./U.K. Agreement, additional discussions have been held between U.S and U.K. regulators for the purpose of devising a proposal for incorporating the counterparty credit risks of interest rate swaps and foreign exchange rate contracts into the risk-based capital framework. As a result of those discussions, the Bank of England and the Federal Reserve have agreed to issue such a proposal for public comment and the FDIC intends to evaluate the comments received by the Federal Reserve in response to that proposal. In addition, copies of the Federal Reserve proposal will be provided to interested parties upon request.

**Proposed Definition of Primary Capital**

The proposed risk-based capital ratio would relate an institution's adjusted primary capital (the numerator of the ratio) to its weighted risk assets (the denominator). One of the principal qualities of primary capital is that it is freely available to absorb current losses while permitting an organization to continue to function as a going concern. Under the proposed U.S./U.K. Agreement, primary capital is defined for purposes of the risk-based capital ratio to consist of two classes of capital funds: "*base primary capital,*" that is, capital funds treated as primary capital without limit, and "*limited primary capital,*" that is, primary capital funds that are limited to a specified percentage of base primary capital. The proposed Agreement includes a listing of the components of the two categories of primary capital. (See Appendix B.)

*Base Primary Capital*—Base primary capital consists of capital funds that are treated as primary capital *without a percentage limitation.* These capital funds include: (1) Common stockholders equity (common stock, surplus and undivided profits); (2) general reserves for unidentified losses (including the allowance for losses on loans and leases, but excluding reserves that, in effect, have been allocated for known losses, such as the "allocated transfer risk reserve"); and (3) minority interests in the equity accounts of consolidated subsidiaries.[1]

Although the proposed U.S. /U.K. Agreement includes general (valuation) reserves as a component of base primary capital, U.S. and U.K. regulators agree that provisions made against identified losses should not be regarded as primary capital. Such provisions, having been set aside to absorb identified losses, cannot be viewed as being freely available to absorb estimated or potential losses, a principal function of primary capital.

*Limited Primary Capital*—Limited primary capital consists of capital funds that are treated as primary capital *subject to a percentage limitation.* Limited primary capital is considered to be primary capital to the extent that, on a combined basis, it does not exceed 50 percent of the amount that results from subtracting *all* intangible assets from base primary capital, including those intangible assets that are otherwise considered "grandfathered" intangible assets as discussed below. Existing limited primary capital instruments in excess of this limitation would be "grandfathered" and, therefore, included in primary capital, *provided* that such limited primary capital instruments were issued prior to the final adoption of the risk-based capital ratio and provided that such limited primary capital instruments comply with the FDIC's then existing definition of primary capital and with the related restrictions on inclusion of such instruments in primary capital. However, if the grandfathering provision

[1] Although minority interests in consolidated subsidiaries are generally included in primary capital without limit, exceptions to this general rule would be made if the minority interest fails to provide any meaningful capital support to the consolidated entity. Such a situation could arise if the minority interest is entitled to a preferred claim on essentially low risk assets of the subsidiary

causes the aggregate amount of limited primary capital instruments to exceed the amount permitted under this proposal, new limited primary capital instruments would not be included as primary capital until the new limited primary capital, together with the grandfathered instruments, comply with the new proposed restriction on the amount of limited primary capital.

Limited primary capital funds include: (1) Perpetual preferred stock,[2] (2) limited-life preferred stock with an original maturity of at least 25 years; [3] (3) debt that is subordinated to deposits and that meets the new criteria set forth in the proposed U.S./U.K. Agreement for inclusion in primary capital; and (4) the amount of mandatory convertible securities issued before the final adoption of the risk-based ratio by the FDIC if such securities counted as primary capital under the FDIC's then existing Part 325 capital maintenance regulation.

*Limited-Life Preferred Stock.* Although common stockholders' equity should remain the dominant form of capital, the FDIC believes that the inclusion of some long-term limited-life preferred stock as primary capital is appropriate. In this regard, the FDIC believes it would be appropriate to include limited-life preferred stock with an original maturity of 25 years or more as a component of limited primary capital and to adjust for the amount of such preferred stock included in primary capital by discounting the preferred stock as maturity approaches. This discounting process is necessary because, as limited-life preferred stock approaches maturity, it must either be redeemed or refunded, thereby becoming more like a current liability and less like a component of capital.

The FDIC is seeking comment on the best method of discounting limited-life preferred stock for capital adequacy purposes as maturity approaches. One such discounting method would be to discount the original outstanding balance for capital assessment purposes by 20 percent each year during the instrument's last five years before maturity. The amount of outstanding limited-life preferred stock that is not included in primary capital as a result of this discounting process could be included in secondary capital, provided it meets the general criteria for inclusion in secondary capital as that term is defined in the FDIC's Part 325 capital maintenance regulation.

*Debt Instruments.* The proposed U.S./U.K. Agreement also establishes new criteria for including debt instruments in primary capital. These criteria are designed to ensure that such debt instruments (1) are permanent; (2) provide strength and loss absorption capacity and, when serious losses occur, permit the organization to continue to operate as a going concern; and (3) provide the issuer with the option, under certain conditions, to defer interest payments during periods of serious financial adversity.

The new criteria, which are essentially similar to those incorporated in the Federal Reserve Board's existing definition of perpetual debt, are:

(1) The instruments must be subordinated to deposits.

(2) The instruments can only be converted into or redeemed with equity or equity equivalents. For state nonmember banks supervised by the FDIC, this means that (a) the instrument cannot provide the holder with any right to demand repayment of principal (even in the event of nonpayment of interest), except in the event of bankruptcy, insolvency or reorganization; and (b) the issuer cannot voluntarily redeem the securities without the approval of the FDIC, except that securities may be simultaneously replaced by a like amount of capital instruments that qualify as primary capital under the U.S./U.K. Agreement's new definition.

(3) The instruments must be available to absorb losses when necessary to allow the organization to continue to operate as a going concern. Thus, the instrument must convert automatically to common or preferred stock that qualifies as primary capital in the event that the issuer's undivided profits and surplus accounts become negative.

(4) The instruments must provide the option for the issuer to defer (they may also allow the issuer to reduce or eliminate) cash interest payments if the issuer does not report a profit in the preceding period (defined as combined profits for the most recent four quarters) and/or if the issuer eliminates cash dividends on common and preferred stock. This provision is intended to provide the issuer with the option of mitigating the burden associated with interest payments during a period of severe financial stress.

Any debt instrument meeting these broad criteria, so long as the debt instrument does not contain other provisions inconsistent with safe and sound banking practices, would qualify as limited primary capital. Mandatory convertible securities, as presently defined by the FDIC, would henceforth be included in primary capital only to the extent that such instruments also satisfy the proposed criteria set forth above. Thus, mandatory convertible instruments that provide for conversion to equity and deferment of interest in accordance with the criteria specified above would qualify as primary capital. Moreover, mandatory convertible securities issued before the date that this risk-based capital ratio is finally adopted by the FDIC and that comply with the then existing, but not the new, criteria for inclusion in primary capital would be "grandfathered" as limited primary capital. However, only the amount of such mandatory convertible securities included in primary capital under the previous criteria would be grandfathered.

*Deductions for Primary Capital*—The FDIC's revised proposal and the U.S./U.K. Agreement on which the proposal is based calculate primary capital by first adding base primary capital and limited primary capital, and then deducting all intangible assets (except "grandfathered" intangible assets as discussed below), equity investments in unconsolidated subsidiaries and associated companies, and investments in certain consolidated subsidiaries, which are also discussed below.

*Intangible Assets.* All intangible assets, other than those previously approved or permitted by the FDIC under its current Part 325 capital maintenance regulation, would be deducted from primary capital. Generally, the FDIC's current Part 325 regulation includes in the capital of state nonmember banks intangible assets in the form of mortgage servicing rights. Thus, the specific intangibles that were acquired before the final adoption of the risk-based ratio and that were permitted to be included under the FDIC's then existing Part 325 capital maintenance regulation would not be deducted from primary capital. Rather, such intangibles would be grandfathered for a limited, but as yet unspecified period of time, such as the assets' useful lives or a shorter period. Intangible assets acquired after the date of final adoption of this risk-based ratio would be deducted from primary capital. It should be noted that the specific intangible assets would be grandfathered; existing dollar amounts of intangibles would not be permanently grandfathered. Although all intangibles acquired after this

---

[2] Perpetual preferred stock is defined as preferred stock that does not have a stated maturity date and that cannot be redeemed at the option of the holder.

[3] Limited-life preferred stock currently is considered to be an element of secondary capital; thus, the proposed U.S./U.K. Agreement represents a change from the FDIC's current capital requirements. The maturity of limited-life preferred stock is defined by the stated maturity date or the earliest point in time at which the instrument can be redeemed at the option of the holder, whichever occurs first.

proposal is adopted would be deducted from primary capital for the purpose of assessing capital adequacy, the FDIC may on a case-by-case basis exempt from this deduction intangibles acquired in connection with a supervisory merger involving a failing institution

Because the manner in which intangible assets are grandfathered may have a significant impact on an institution's capital ratios, the FDIC is seeking public comment on the most appropriate approach for grandfathering intangible assets, including the possible adoption of an approach that would grandfather intangible assets for the lesser of the useful lives of such intangibles or a specified period of time, such as ten or fifteen years.

While U.S. regulators intend to grandfather existing intangible assets for the purpose of calculating capital ratios, the FDIC will continue to monitor the level and quality of all intangible assets and, as it does now, to consider tangible as well as stated capital ratios in assessing an organization's overall capital adequacy. In this regard, the FDIC will expect banking organizations experiencing substantial growth, internally or through acquisitions, to maintain strong capital positions substantially above minimum supervisory ratios without significant reliance on intangibles.

*Equity Investments.* The revised risk-based capital proposal contemplates deducting equity investments in all unconsolidated subsidiaries and associated companies, including joint ventures,[4] from capital (i.e., from the numerator) as well as from the denominator of the proposed risk-based ratio and the existing Part 325 capital to assets ratios. The FDIC believes that because the assets of unconsolidated subsidiaries and associated companies are not fully reflected in a banking organization's consolidated total assets, such assets are the equivalent of off-balance sheet assets. Although these assets are not explicitly taken into account in calculating a banking organization's consolidated capital to assets ratios, they nonetheless expose the organization to risk. For this reason, the FDIC believes that it would be appropriate to view the equity capital invested in these entities as primarily supporting the risk inherent in the assets of such unconsolidated subsidiaries and joint ventures, and not generally available to support risks elsewhere in the organization. Thus, the proposal provides for the deduction of the equity capital supporting these activities from an organization's consolidated primary capital. While this treatment suggests that the assets of unconsolidated subsidiaries and joint ventures would not be included in the calculation of an organization's consolidated risk-based capital ratio, the FDIC would continue to evaluate the capital adequacy and risks of these entities and their potential impact on the consolidated organization.

*Consolidated Subsidiaries.* Under this revised proposal and the proposed U.S./U.K. Agreement, the FDIC will evaluate the activities of consolidated subsidiaries in order to determine whether to deduct investments in such activities from primary capital and, if so, how such deductions should be made. Such determinations could be made through additional amendments to the FDIC's Part 325 capital maintenance regulation for all subsidiaries engaged in certain activities, or this determination could be made on a case-by-case basis. The FDIC presently requires that investments in securities subsidiaries established pursuant to § 337.4 of its rules and regulations must be deducted when calculating the level of primary and total capital under its Part 325 capital maintenance regulation. In addition, the FDIC has proposed a revision to Part 332 of its regulations that would require investments by state nonmember banks in subsidiaries engaged in real estate development activities to be similarly deducted. In this regard, the FDIC would intend to seek public comment before implementing any proposed regulatory amendment to deduct any investments in other subsidiaries for the purpose of assessing capital adequacy.

*Interbank Holdings of Capital.* Under the proposed U.S./U.K. Agreement, the Bank of England would continue its current practice of deducting from capital all interbank holdings of capital, that is, holdings of capital securities issued by other banks. U.S. regulatory agencies have agreed to monitor banking organizations' holdings of capital instruments issued by other commercial banking organizations and may, on a case-by-case basis, require the deduction from primary capital of holdings of primary capital instruments issued by other banking organizations. Such deductions would be made in the case of reciprocal or other artificial arrangements in which banking organizations swap primary capital instruments in order to raise their capital ratios without in reality raising new capital funds. However, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from primary capital.

**Proposed Risk Weights for Assets and Off-Balance Sheet Activities**

Although the February 1986 proposal did not contemplate any changes in the manner in which primary capital is defined for purposes of a risk-based ratio, both the February 1986 proposal and this revised proposal provide that primary capital, as determined, would be compared with a banking organization's total assets weighted for risk considerations in order to determine the risk-based capital, or the risk asset, ratio. Under this revised proposal, each of a banking organization's assets is assigned to one of five risk categories and weighted according to the relative risk of that category. The determination of asset groupings and the assignment of weights primarily reflect credit risk considerations, with some sensitivity to liquidity and interest rate risk. This revised proposal, and the proposed U.S./U.K. Agreement on which it is based, contain some significant modifications from the February 1986 proposal in the manner in which certain risk weights are assigned.

*Off-Balance Sheet Credit Conversion Factors*—First, a "credit equivalent" approach is used in weighting the risks of off-balance sheet activities. Under this approach, the face amount of an off-balance sheet item is multiplied by a credit conversion factor and the resulting amount is assigned to the appropriate risk category depending upon the identity of the obligor and, in certain cases, the maturity of the instrument. The FDIC's February 1986 proposal assigned both assets and certain off-balance sheet items directly to the risk categories without the use of any credit conversion factor.

*Consumer Credit Lines*—Second, the revised proposal explicitly includes commitments to extend credit to consumers within the category of commitments for which a capital requirement is being proposed. Such consumer credit lines would be multiplied by a credit conversion factor to reach a credit equivalent amount. That amount would then be assigned to the appropriate risk category depending on the identity of the obligor. The explicit inclusion of consumer credit lines as commitments represents a change from the FDIC's February 1986 proposal.

[4] The definitions of unconsolidated subsidiaries, associated companies, and joint ventures are contained in the Instructions to the Consolidated Reports of Condition and Income issued by the Federal Financial Institutions Examination Council (FFIEC).

*Collateral and Guarantees*—Third, although the revised proposal does not explicitly recognize general forms of collateral or guarantees in calculating asset risk, the proposal recognizes collateral in the form of cash and U.S. Treasury, Government agency and Government-sponsored agency securities, as well as guarantees by the U.S. Government and Government agencies. Thus, the proposal includes in the 25 percent risk category claims fully collateralized by cash on deposit in the lending institution or by U.S. Government or Government agency securities, as well as portions of claims guaranteed by the U.S. Government or U.S. Government agencies. Claims collateralized by U.S. Government-sponsored agency debt are assigned to the 50 percent weight category. (The definitions of Government agencies and Government-sponsored agencies are discussed below in the sections that describe the 10 percent, the 25 percent, and the 50 percent risk categories.) The FDIC's proposal thus recognizes the risk-reducing effects of collateral in the form of U.S. Government securities and cash, but does not explicitly take account of any other form of collateral, guarantees or credit enhancements. However, all forms of collateral and guarantees will be considered by examiners in evaluating asset quality and will be taken into account in making an overall assessment of capital adequacy.

*Country Transfer Risk*—Fourth, this proposal does not explicitly incorporate transfer risk distinctions among foreign countries when assigning assets and off-balance sheet items to risk categories. The FDIC's February 1986 proposal placed short-term claims on U.S. banks in a lower risk category than similar claims on foreign banks. The FDIC's earlier proposal also further distinguished between claims on banks and governments in industrial versus nonindustrial countries, based on the International Monetary Fund (IMF) and World Bank's list of industrial market economies. This revised proposal treats claims on all banks, foreign and domestic, in an equivalent fashion and places in the standard risk category claims on *all* foreign governments that involve transfer risk.

Although the proposed risk-based capital ratio thus does not take account of transfer risk distinctions among foreign countries, transfer risk will continue to be monitored closely in the examination process, and banks with large exposures to high-risk countries will be required to maintain capital positions above the minimum ratios. Evaluation of transfer risk on an individual basis is consistent with the requirements of section 904 of the International Lending Supervision Act of 1983, 12 U.S.C. 3903 (a) and (b), which provides that federal banking agencies shall establish examination and supervisory procedures to assure that such foreign country exposure and transfer risk are taken into account in evaluating the capital adequacy of banking institutions.

In incorporating explicit distinctions among foreign countries in its February 1986 proposal, the FDIC had hoped that the use of simple, objective criteria to account for transfer risk would be more practical than country-by-country evaluations that would require frequent updating and publication. However, the FDIC removed from this current proposal any explicit transfer risk distinctions among foreign countries for several reasons. For one, the list of industrialized countries compiled by the IMF, while perhaps more acceptable than possible alternatives, is not based upon prudential criteria or transfer risk considerations. Moreover, it is difficult to develop simple objective criteria that effectively distinguish countries with high and low degrees of transfer risk. Finally, the treatment of country risk contained in the FDIC's February 1986 proposal could be viewed as different from the typical approach used in the risk-based capital measures of other countries, which assign a low risk weight to claims on their own governments or groups of affiliated governments, while assigning claims on all other governments to the equivalent of a standard risk category. Thus, the February 1986 proposal might have conflicted with the FDIC's stated goal of converging United States capital policies with those of other industrial countries.

While the revised proposal does not incorporate explicit transfer risk distinctions among foreign countries, transfer risk considerations are not totally absent from the proposal. Thus, as described below, local currency claims on foreign central governments are placed in a relatively low (25 percent) risk category *to the extent* the bank has local currency liabilities booked in offices located in the foreign country. The reason for this is that such claims constitute national government obligations that do not involve transfer risk. All foreign government obligations that involve transfer risk (that is, all other claims on foreign governments) are assigned to the standard (100 percent) risk category.

*Description of Risk Categories*—The types of assets and off-balance sheet items in each category and the rationale for assigning certain items to a particular category are discussed below. Generally, unless otherwise specified, short-term assets are defined as claims with a remaining maturity of one year or less; long-term assets are defined as claims with a remaining maturity of more than one year. The tables in Appendix A provide a summary of the major risk-based asset and off-balance sheet items as they pertain to state nonmember banks, and an illustration of how the proposed risk-based capital ratio would be calculated.

*Category I—Zero Weight.* For U.S. banking organizations, this category includes assets generally considered riskless, such as vault cash (domestic and foreign) and balances with and claims on Federal Reserve Banks, excluding Federal Reserve Bank stock.

*Category II—10 Percent Weight.* This category includes claims on the U.S. Government and U.S. Government agencies, that is, federal agencies whose debt obligations are explicitly guaranteed by the full faith and credit of the U.S. Government.[5] The placement of such claims in a 10 percent risk category is based on the view that, although claims on the U.S. Government bear no credit risk and are highly liquid, such claims could involve some degree of interest rate risk exposure. As footnote 1 in the proposed U.S./U.K. Agreement indicates, the Bank of England and the Federal Reserve favored the inclusion of all long-term (i.e., remaining maturity of more than one year) claims on domestic national governments and their agencies in the 25 percent risk category in order to reflect an additional adjustment for potential interest rate risk. However, the FDIC and OCC dissented from that viewpoint and contended that, until a systematic interest rate risk framework is developed, all claims on the U.S. Government should be placed in the same risk category, regardless of maturity. In view of the above, the FDIC seeks comment on the appropriate risk weighting for claims on the U.S. Government and on whether the remaining maturity of such securities should be a factor when determining the appropriate risk weight.

*Category III—25 Percent Weight.* This category includes short-term interbank claims and assets that normally have

[5] Examples of federal agencies whose debt obligations are backed by the full faith and credit of the U.S. Government include the Export-Import Bank, the Farmers Home Administration (FmHA), the Federal Housing Administration (FHA), the Government National Mortgage Association (GNMA), the Small Business Administration (SBA), and the Veterans Administration (VA).

little or no risk of default and a significant degree of liquidity. The specific items included in this category are: short-term claims (including demand deposits) on domestic depository institutions[6] and on all foreign banks[7] (including foreign central banks);[8] cash items in the process of collection, foreign and domestic; claims (including repurchase agreements) fully collateralized by cash on deposit in the lending institution or by U.S. Government or U.S. Government agency debt; portions of loans guaranteed by the U.S. Government or U.S. Government agencies; and local currency claims on foreign central governments [9] to the extent that a bank has local currency liabilities in the foreign country.

Several elements of this category differ from those included in the FDIC's February 1986 proposal. As noted above, the treatment of *short-term* claims on *foreign banks* differs from the FDIC's original proposal in that such claims on foreign banks are assigned to the same risk category as short-term claims on U.S. banks, and no distinction is made among foreign banks based upon country or origin. The decision to include in this category short-term claims (i.e., maturities of *one year* or *less*) on all banks, domestic and foreign, reflects comments received in response to the FDIC's February 1986 proposal that the inclusion in a low-risk category of only claims on U.S. banks with maturities of three months or less would discourage intermediate-term lending and could have a negative impact on the interbank funding markets.

The assignment of short-term claims on all banks, foreign and domestic, to the 25 percent category reflects a recognition of the importance of facilitating the smooth and efficient functioning of the interbank funding markets and a desire to avoid discouraging banks from holding liquid interbank claims. This treatment also reflects a recognition of the fact that national governments generally have established supervisory frameworks to promote the stability of their banking systems.

In general, the revised proposal does not explicitly recognize collateral or guarantees. However, the revised proposal includes in the 25 percent risk category claims fully *collateralized* by cash on deposit in the lending institution or by U.S. Government or Government agency securities, and portions of claims *guaranteed* by the U.S. Government or U.S. Government agencies.[10] In addition, claims on U.S. Government-sponsored agencies and claims collateralized by U.S. Government-sponsored agency debt are assigned to the 50 percent weight category. The FDIC's revised proposal thus recognizes the risk-reducing effect of collateral in the form of U.S. Government securities and cash.

The risk-based capital framework does not explicitly take account of any other form of collateral, guarantees or so-called credit enhancements. Thus, collateral in the form of foreign government debt or domestic local government debt, or guarantees issued by foreign or domestic local governments, do not affect the assignment of claims to risk categories. In addition, the proposal does not explicitly recognize guarantees in the form of the sale of risk participations in bankers acceptances or standby letters of credit, or credit enhancements in the form of standby letters of credit backing outstanding loans or investments. This latter treatment differs to some degree from the FDIC's February 1986 proposal which did recognize explicitly the sale of risk participations in bankers acceptances. The main reasons for these changes were to bring the proposed treatment of these particular items into line with the proposal's general approach to guarantees and to coordinate the FDIC's proposal with the views of the other regulatory authorities.

The regulatory authorities do not wish to discourage legitimate arrangements designed to reduce credit exposure. Thus, collateral and guarantees are currently and will continue to be considered by examiners in evaluating asset quality and are taken into account, along with other relevant factors, in making an overall assessment of capital adequacy The presence of guarantees and collateral, if prudently administered and controlled, may mean that an organization can operate with lower levels of capital (although still at or above the minimum) than would otherwise be required if the organization had not taken steps to limit its credit exposure.

Nonetheless, there are several reasons for this very limited recognition of collateral and guarantees. First, recognition of collateral more broadly would significantly complicate the measure and could greatly expand any reporting requirements established to monitor the risk-based measure. Second, the existence of collateral may not always preclude losses since legal or operational problems could arise affecting a bank's control over or access to underlying collateral. Third, guarantees are only as good as the strength of the guarantor; thus, explicit recognition of guarantees beyond what is contained in the proposal would suggest the need to make individual credit judgments on guarantors, judgments that would appear to be better left to the onsite supervisory examination process. Finally, guarantees vary in content, and may contain clauses or conditions that could limit the protection provided to the lender under certain circumstances. All of these factors suggest that the effect of collateral and guarantees on bank exposure are more appropriately evaluated in the course of the onsite examination.

The FDIC's February 1986 proposal assigned trading account assets to the 30 percent risk category. The revised proposal does not incorporate this approach; rather, all assets, including *trading account assets*, are assigned directly to the appropriate risk category depending upon the identity of the obligor and, if applicable, the maturity of the instrument. Many of the assets currently in bank trading accounts, such as U.S. Government and agency securities, short-term obligations of banks, and general obligation municipal securities, are assigned weights of 10, 25 or 50 percent, well below the 100 percent

[6] Domestic (U.S.) depository institutions are defined to include both the U.S. and foreign branches of banks and depository institutions chartered and headquartered in the U.S. The term includes U.S. chartered banks and depository institutions owned by foreigners, but excludes U.S. branches and agencies of foreign banks. In addition to banks, domestic depository institutions include mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks and depository institutions.

[7] Foreign banks are defined as organizations that are organized under laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business; *and* have the power to accept demand deposits. Claims on foreign banks are defined to include claims on the U.S. branches and agencies of the foreign banks.

[8] Such short-term claims on banks and domestic depository institutions are included in this category regardless of the form of the instrument, that is, this category includes federal funds sold, certificates of deposit, Eurocurrency placements, repurchase agreements, and bankers acceptances for which the account party is a domestic depository institution or a foreign bank

[9] Foreign governments are defined to include the central government and its ministries, departments, and agencies; they do not include state, provincial or local governments in foreign countries or government-owned enterprises. In addition, claims on foreign governments do not include claims on nongovernmental entities guaranteed by foreign governments.

[10] See footnote 5 for examples of federal agencies that are defined as U.S. Government agencies for the purpose of this risk-based capital proposal.

weight that is implicit in the FDIC's existing capital to total assets requirement. Nonetheless, the FDIC recognizes that, as banking organizations become involved in trading a wider range of nongovernment securities, it may be desirable to recognize explicitly the different risks inherent in trading account assets that are readily marketable and marked to market on a frequent basis. Thus, the FDIC seeks comment on how the risks associated with trading account assets might be assessed and how such assets might be treated in a risk-based capital framework.

The inclusion in the 25 percent risk category of *local currency claims* on foreign central governments *to the extent* a bank has local currency liabilities in the foreign country recognizes that such claims do not involve transfer risk. All other claims on foreign governments are assigned to the 100 percent risk category.

*Category IV—50 Percent Weight.* This category includes assets that are considered to have more credit risk than the assets categorized above, but generally less credit risk than the standard commercial bank loan portfolio. This category includes claims on U.S. Government-sponsored agencies, that is, agencies originally established or chartered by the federal government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government." [11] It also includes claims fully collateralized by U.S. Government-sponsored agency debt and direct claims on multinational development banks in which the U.S Government is a shareholder or contributing member. The latter would include, among other institutions, the World Bank and the Inter-American Development Bank. The 50 percent risk category also includes general obligation claims on domestic state and local governments.

If a claim is secured by two forms of collateral that are recognized explicitly in the proposal but placed in different risk categories, such as U.S. Government debt and U.S. Government-sponsored agency debt, the claim would be assigned to the higher of the two risk categories, provided that the claim is fully collateralized. Any claim that is not fully secured, based upon current market value, would be placed in the risk category appropriate for an unsecured claim to the obligor.

*Category V—Standard Risk—100 Percent Weight.* All assets not included in the categories mentioned above are to be assigned to the 100 percent standard risk category. If it appears that a claim could be assigned to more than one category, for example, a long-term claim on a bank (100 percent) secured by U.S. Government debt (25 percent), the claim should be assigned to the lower of the two risk categories and should not be included in the higher category. The bulk of the assets typically found in a bank's loan portfolio would be assigned to the 100 percent category. Such assets include: long-term claims on domestic depository institutions and foreign banks; all other claims on foreign central governments, including local currency claims on foreign central governments that exceed local currency liabilities in that foreign country (i.e., claims on foreign governments that entail transfer risk); and all other assets, including commercial and industrial loans and lease financing receivables, residential real estate and consumer loans, corporate securities and commercial paper, all other claims on foreign private obligors, investments in fixed assets, bank premises, and other real estate owned. This category also includes loans to nondepository financial institutions, such as insurance companies, mortgage companies, and finance companies, as well as loans to depository and nondepository financial institution holding companies, including bank holding companies. The 100 percent risk category also includes domestic tax-exempt state and local government revenue and industrial development bonds.

*Off-Balance Sheet Items*—The FDIC's February 1986 proposal assigned both assets and certain off-balance sheet items directly to an appropriate risk category. By contrast, this proposal follows the treatment outlined in the proposed U.S./U.K. Agreement, which provides for a two-step credit equivalent approach to determining off-balance sheet risk. The face amount of an off-balance sheet item is multiplied by a credit conversion factor (see Table 2 in Appendix A) and the resulting amount is assigned to an appropriate risk category depending upon the identity of the obligor and, in certain cases, on the maturity of the instrument.[12] The FDIC believes that the proposed credit equivalent approach provides supervisors greater flexibility for factoring future off-balance sheet instruments into a risk-based capital calculation.

*Direct Credit Substitutes.* The proposed U.S./U.K. Agreement applies a 100 percent conversion factor to direct credit substitutes, defined to include financial guarantees and standby letters of credit backing outstanding financial claims of the account party. These direct credit substitutes would include standby letters of credit, or other equivalent irrevocable obligations or surety arrangements, that back or guarantee repayment of commercial paper, tax-exempt securities, or other commercial or individual loans or debt obligations. In addition, sale and repurchase agreements and asset sales with recourse (to the extent not already included on a financial institution's balance sheet) are converted at 100 percent of their face amount.[13] Conversion of these items at the 100 percent level reflects the view that the credit risk associated with these items is broadly equivalent to the risks associated with on-balance sheet items. By issuing such instruments, a bank has the same credit risk with respect to a customer that it would have if it made a direct extension of credit to the customer. This treatment of standby letters of credit is also consistent with the fact that such exposures (1) are generally covered by statutory limits on loans to a single borrower, (2) warrant the same credit approval process as traditional loans, and (3) are treated and analyzed like loans by bank examiners and supervisors.

*Trade-Related Contingencies.* The Agreement proposes that trade-related contingencies be converted at 50 percent. Such trade-related contingencies include commercial letters of credit and performance standby letters of credit. The latter includes obligations backing the performance of nonfinancial or commercial contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit would include arrangements backing, among other things, subcontractor's and supplier's performance, labor and materials contracts and construction bids. The

[11] Examples of U.S. Government-sponsored agencies include the Banks for Cooperatives, the Federal Intermediate Credit Banks (FICB), the Federal Land Banks (FLB), the Federal Home Loan Banks (FHLB), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), and the Student Loan Marketing Association.

[12] Credit equivalent amounts of off-balance items that are secured by recognized collateral (that is, cash or debt of the U.S. Government, Government agencies or government-sponsored agencies) are assigned, as with on-balance sheet exposures, to the appropriate risk category based upon the nature of the collateral.

[13] A bank's purchases of risk participations in bankers acceptances are also included and converted at 100 percent and assigned to the appropriate category depending upon the identity of the account party

conversion of trade-related contingencies at the 50 percent level is based on the view that the counterparty involved in such contingencies has a strong incentive to meet its obligations if it wishes to continue to conduct its day-to-day business. Moreover, such contingent obligations are often short-term in nature, and the losses incurred by banks as a result of such trade-related contingencies are believed to be lower than those incurred as a result of direct credit substitute contingencies.

*Other Commitments.* The credit conversion factors proposed for other commitments, including overdraft facilities, revolving credit facilities, note issuance facilities, and commercial and consumer commitments are tied to the *original* maturity of the commitment. Maturity in this regard is defined by the earliest possible point in time that the bank can, at its option, *unconditionally* cancel its commitment to a borrower. Under this risk based capital proposal, maturity is generally not a factor in assigning loans to risk categories because once a direct loan has been made, the funds are disbursed to the borrower, the bank is fully exposed for the amount of the loan, and deterioration of a loan with a short-term stated maturity can, nonetheless, result in a long-term exposure for the lender. However, with respect to a loan commitment, the longer the term of the commitment, the greater the potential risk exposure since there is an increased likelihood that the borrower's financial circumstances or condition may change during the period the commitment is outstanding. Thus, under this risk-based capital proposal, commitments with an original maturity of one year or less would be converted at 10 percent; those with an original maturity of over one year and up to and including five years would be converted at 25 percent, and those with an original maturity of more than five years would be converted at 50 percent.

The FDIC's February 1986 proposal aggregated commitments and assigned them directly to the 30 percent risk category. Thus, this proposal places a lower weight on short- and intermediate-term commitments and a higher weight on long-term commitments than those set forth in the February 1986 proposal. In addition, the February 1986 proposal did not explicitly include in the risk categories commitments in the form of credit card and consumer commitments, which include home equity lines and mortgage commitments, as this proposal does. The FDIC is seeking comment on the proposed definition and treatment of commitments, particularly the inclusion of commitments to consumers in the form of credit card lines, home equity lines and mortgage commitments.

Commitments, for risk-based capital purposes, are defined as any arrangements that legally obligate a banking organization to purchase loans or securities, or extend credit in the form of loans or leases, participations in loans and leases, overdraft facilities, revolving credit or underwriting facilities, or similar transactions. Generally, commitments involve a written contract or agreement, or a commitment fee or some other form of consideration. For the purpose of calculating the risk asset ratio, the definition includes commitments that obligate the banking organization to extend credit to consumers or individuals in the form of retail credit cards, check credit and overdraft facilities, home equity and mortgage lines, and other similar arrangements.

Commitments are to be included in the risk asset ratio regardless of whether or not they contain "material adverse change" escape clauses or other provisions that are intended to relieve the bank of its funding obligation under certain conditions. However, lending arrangements that are unconditionally cancelable at any time at the option of the bank would not be deemed to be commitments for risk asset purposes, *provided that* the bank, in fact, makes an individual credit judgment based upon the borrower's current financial condition before *each* draw under the lending facility. Arrangements under which a banking organization agrees to extend credit for a specified period, even if unconditionally cancelable at any time, would constitute commitments if the bank does not make an individual judgment based upon the borrower s financial condition at the time each extension of credit or draw under the lending facility is granted.

Commitments with material adverse change escape clauses are included because such commitments may involve risk if a bank funds the commitment *before* the customer's condition deteriorates, or before the deterioration is recognized. Moreover, while the FDIC does not wish to discourage the use of material adverse change clauses, recent court decisions suggest that the presence of a material adverse change clause cannot necessarily be relied on in all cases to relieve a bank of its obligations pursuant to a commitment.

In the case of commitments structured as syndications, the risk asset framework includes only the banking organization's proportional share of such commitments. In addition, only the unused portion of commitments are treated as off-balance sheet items. Amounts that are already drawn and outstanding under a commitment appear on the balance sheet and such amounts, therefore, should not be included as commitments for purposes of computing the risk asset ratio.

The definition of the maturity of commitments in connection with revolving credit facilities raises a number of questions. Such arrangements typically entail (1) a commitment period during which the borrower has access to a revolving credit facility, and (2) conversion of the outstanding balance to a term loan at a specified future date. Thus, the maturity of such commitments could be defined in terms of the duration of the revolving credit facility only, or in terms of the combined period of the revolving credit facility and the term loan. The FDIC seeks public comment on the appropriate manner by which to define the maturity of these types of commitments, as well as on the broader issue of the definition of commitments incorporated in this proposal.

### Administration of a Risk-Based Capital Measure

The proposed risk-based capital ratio would be *only one* of many considerations that would be evaluated in the assessment of capital adequacy. The FDIC wishes to emphasize that the introduction of a risk-based capital ratio would in no way lessen the need for supervisors and examiners to make judgments on capital adequacy—judgments which reflect a broad mix of qualitative and quantitative considerations.

The proposed U.S./U.K. Agreement upon which the FDIC's proposal is based provides that banking authorities will, over time, *place more emphasis* on the risk-based capital ratio. However, the Agreement leaves each banking agency free to use other capital ratios in assessing capital adequacy. In this regard, the FDIC intends to at least initially use the risk-based capital ratio in *tandem* with current capital to total assets ratios. In this regard, the FDIC proposes to adopt the risk-based capital proposal as a *policy statement* rather than as a regulation and to maintain the basic structure of the existing Part 325 capital maintenance regulation. This means that individual banking organizations would still be subject to an overall constraint on total leverage, although the revised definition of primary capital proposed in the risk-based capital measure would apply to the Part 325 leverage limitation as well

as to the risk-based capital ratio. In effect, the proposed risk-based capital ratio would be used as an additional capital measure designed to encourage banking organizations to make appropriate adjustments in either the risk composition of their portfolios or their overall level of primary capital.

Under the tandem operation of the risk-based capital and the capital to total assets (leverage) ratios, banking organizations in strong financial condition and with risk-based capital ratios well above the risk-based minimum might be allowed to *reduce* their ratios of primary capital to total assets (that is, increase their leverage) to the figures closer to the existing 5.5 percent and 6.0 percent minimums that are set forth in the FDIC's Part 325 capital maintenance regulation. This would be permitted only to the extent that the banking organizations did not face significant risks not explicitly factored into the risk-based capital framework, such as sizable loan concentrations, excessive problem loans or classified assets, significant interest rate risk exposure, or other financial, managerial or operational deficiencies (including any that may arise from trust department operations), and only to the extent that such reductions in ratios of primary capital to total assets were carried out in a manner consistent with sound banking practices. The total *leverage constraints* set forth in Part 325 of the FDIC's regulations *would continue* to be in place and banking organizations would not be permitted to reduce their capital to total assets ratios below those supervisory minimums.

The use of the risk-based capital ratio in tandem with existing supervisory capital requirements would not result in inconsistent or conflicting supervisory treatment, since most banking organizations have capital to total assets ratios above the current Part 325 minimums. Thus, the proposed risk-based capital ratio and the current supervisory capital requirements would *complement* each other by providing a framework for analyzing capital in relation to risk as well as to overall leverage. As experience is gained in the application of the risk-based ratio, the FDIC may consider whether the existing capital to total assets ratios should be reduced, phased out or eliminated. In this regard, the FDIC seeks public comment on whether, in the long run, some form of total leverage constraints should be retained and what factors should be considered in making this determination.

As is the case under the FDIC's current Part 325 capital maintenance regulation, this proposal envisions that risk-based capital ratios would be calculated for *all* state nonmember banks on a consolidated basis. The risk asset framework would be employed to evaluate the capital of all state nonmember banks *regardless of size* since the rationale for relating capital needs to risk profiles applies to both large and small institutions.

This proposed U.S./U.K. Agreement indicates the intention to establish for U.S. and U.K. banking organizations a *minimum ratio* of adjusted primary capita to total assets weighted for risk. However, as stated in the proposed Agreement, most banking institutions would generally be expected to operate above the minimum acceptable risk-based capital ratio. Supervisors would still be able to establish risk-based capital ratios above the minimum standard for individual banking institutions.

The proposed U.S./U.K. Agreement does not specify the actual minimum acceptable ratio that might be adopted. However, based on the proposed definitions and framework of this proposal, preliminary estimates using available information indicate that a minimum risk-based capital ratio might possibly be established somewhere within the 5 to 7 percent range. Therefore, respondents are encouraged to consider the interrelationships between the primary capital definition, the risk weights, and the risk-based capital ratio when formulating responses to this proposal

Banking organizations will be able to comply with the risk-based capital measure in several ways, some of which do not require raising new external capital. For example, an organization can moderate its growth and/or increase its earnings retention. More importantly, however, within a risk-sensitive capital framework, an organization can raise its capital ratio by *reducing* its *risk profile*. This could be done by reducing off-balance sheet risk or by placing proportionately greater emphasis on those balance sheet activities that carry lower risk weights.

**Issues for Further Consideration**

Since the issuance of the FDIC's supplemental adjusted capital proposal in February 1986, the FDIC has received substantial public comment on the proposal and the concept of a risk-adjusted capital measure in general. The FDIC's staff has worked with the staffs of the FRS and OCC to maintain uniform capital standards for all federally supervised banking organizations in the United States. In addition, the staffs of the FDIC, FRS and OCC have coordinated with the staff of the Bank of England to reach a tentative agreement that provides the basis for this revised proposal. Nevertheless, significant questions remain and the FDIC is seeking comments in the specific areas described below.

(1) The U.S./U.K. Agreement upon which the FDIC's proposal is based provides that banking authorities will emphasize the risk-based capital ratio. However, the Agreement leaves each banking agency free to use other capital ratios in assessing capital adequacy. In this regard, the FDIC proposes to use the risk-adjusted capital ratio in *tandem* with current capital ratios. The FDIC seeks comment on whether the risk-based capital ratio should eventually replace the existing capital to total assets ratios. Stated differently, should some form of total leverage constraint be retained? What factors should be considered in making this determination? In addition, should the proposed redefinition of primary capital apply, as is now proposed, to the FDIC's current Part 325 capital maintenance regulation as well as to a risk-based capital measure, or should the proposed redefinition apply only to the proposed risk-adjusted capital measure? Furthermore, should the risk-based capital framework be incorporated into the existing Part 325 capital maintenance *regulation* or included within a less formal *policy statement?*

(2) While the proposed U.S./U.K. Agreement focuses on primary capital, it indicates that the regulatory authorities will consider other measures of capital adequacy. In addition to the FDIC s proposed ratio of primary capital to weighted risk assets, should the FDIC establish a minimum ratio of *total* capital (defined as primary capital plus secondary capital) to weighted risk assets for state nonmember banks?

(3) The U.S /U.K. Agreement proposed capital requirements for *commitments*, including commitments to extend credit to consumers, such as credit card lines, home equity lines of credit, and mortgage commitments. How should commitments be defined for risk-based capital purposes? Should different credit conversion factors be assigned to commitments on the basis of original maturity? Should the FDIC consider commitments to consumers to be different, in terms of effective risk exposure, from commitments to commercial borrowers? What is the most appropriate way to treat commitments to consumers in light of the supervisory objective of relating capital to risks undertaken by banks?

BEST COPY AVAILABLE

(4) Adoption of the proposed U.S./U.K. Agreement would modify the criteria for including certain noncommon equity instruments in primary capital. Are the criteria for defining limited forms of primary capital and the limitations that apply to these instruments reasonable? Are the criteria consistent with the concepts of loss absorption capacity and permanence, two major characteristics that determine the quality of capital instruments? How will such criteria affect the ability of organizations to raise primary capital in the form of *preferred stock* and *perpetual debt?* What is the most appropriate way to discount 25-year limited-life preferred stock for prudential purposes as it approaches maturity?

(5) The proposed U.S./U.K. Agreement defines primary capital to include *general reserves* for loan losses (that is, the valuation reserve for losses on loans and leases). The proposal also states, however, that specific reserves for identified losses should not be included in primary capital since such reserves are not generally available to absorb estimated, but unidentified, losses. Given the practical difficulty of distinguishing between specific and general reserves, the proposed Agreement provides that the banking agencies will seek comment on whether loan loss reserves should be phased out of primary capital. Valuation reserves have historically been included in U.S. bank capital ratios because they are deemed available to absorb estimated (but not identified) losses inherent in the loan portfolio. However, it could be argued that such reserves should be excluded from primary capital to the extent that such reserves actually reflect known or identified losses, or to the extent that banks are reluctant to charge off loans because such actions would reduce their primary capital ratios This argument reflects the view that the capital base exists to absorb unidentified losses and should not be inflated by the presence of a high volume of known or identified problem loans. Should valuation reserves, such as the allowance for losses on loans and leases, be excluded from primary capital or should they be retained as a component of primary capital? Alternatively, should valuation reserves be phased out of primary capital over a specified time frame? If retained as a component of capital, should valuation reserves be limited in relation to other components of primary capital?

(6) The proposed Agreement provides that *intangible assets* be deducted from primary capital for the purposes of calculating the risk-based capital ratio, but proposes to grandfather intangibles acquired before the final adoption of the risk-based capital framework. Two approaches to grandfathering are possible. One, intangibles could be grandfathered for their useful lives; or, two, they could be grandfathered for a specific period, such as 10 years, if this term is shorter than the useful lives of the intangible assets. By what method should the FDIC grandfather intangibles for purposes of deducting intangible assets from capital when calculating the FDIC's proposed risk-based capital ratio?

(7) Should risk-based capital ratios be calculated from *period-end* or *average* data?

(8) The FDIC's revised proposal establishes new criteria for the inclusion of *debt instruments* in primary capital that are essentially similar to those incorporated in the Federal Reserve Board's existing definition of perpetual debt. Any debt instrument meeting these criteria, so long as the debt instrument does not contain other provisions inconsistent with safe and sound banking practices, would qualify as primary capital under the conditions set forth in the proposed U.S./U.K. Agreement on which the FDIC's revised proposal is based. The FDIC seeks comment on whether the criteria proposed for the inclusion of debt instruments as primary capital are appropriate, or whether criteria other than those proposed would be preferable In addition, what method should be used for grandfathering existing mandatory convertible securities that qualify as primary capital under the current Part 325 capital maintenance regulation but that would not qualify as primary capital under the proposed risk-based ratio?

(9) Should the risks associated with *trading account assets* be incorporated explicitly into the risk-based capital ratio, and, if so, how might this be done? What would be the rationale in terms of risk exposure for assigning trading account assets a different weight than the weight assigned to the same assets held for investment purposes? If assets held in trading accounts are to be given a different weight than if they are held as investments, how should trading account assets be specifically defined to distinguish them from assets held for investment purposes?

(10) As the footnote in the proposed U.S./U.K. Agreement indicates, the FDIC and the OCC support the inclusion of all *direct claims* on the *U.S. Government* in the same 10 percent risk category, regardless of remaining maturity. In contrast to this proposal, the Federal Reserve has proposed to assign risk weights of 10 percent to short-term (one year or less) direct claims on the U.S. Government and 25 percent to long-term claims, thereby reflecting an additional risk adjustment for long-term securities to cover potential interest rate risk. The FDIC believes that making a maturity distinction among claims on the U.S. Government is not a meaningful way of incorporating interest rate risk. Therefore, until a more systematic interest rate risk framework is developed, the FDIC believes all claims on the U.S. Government should be placed in the same risk category, regardless of maturity. In view of the above, the FDIC seeks comment on the appropriate risk weighting for claims on the U.S. Government. In addition, should remaining maturity be a factor in this determination?

(11) The potential risks relating to *trust department* operations have not been explicitly included in the risk-based capital proposal. However, certain state nonmember banks have very significant trust department operations in relation to their commercial banking activities In some cases, the institutions are, in substance, insured trust companies that provide only incidental banking services As a result, most of the risks associated with those banks activities are fiduciary in nature and relate to the managing of trust department assets. These assets are not reported on the banks' consolidated Reports of Condition and are therefore not subject to any explicit capital requirement Should explicit capital requirements be assigned to trust department activity? If so, should capital requirements be applied to all accounts under management or just those accounts over which the bank has discretionary powers? If a capital requirement is imposed, should it be based on a percentage of the market value of trust department assets, or should capital requirements be determined on some other basis? In this regard, a recent application by a trust company for FDIC deposit insurance resulted in a commitment by the trust company to maintain 75 basis points of capital for each $100 of discretionary trust assets. If capital should be applied to significant trust department activities, at what point does the size of trust department operations become significant enough in relation to the commercial bank asset size to warrant the imposition of capital requirements for the risks associated with such fiduciary activities?

## Regulatory Flexibility Act Analysis

The FDIC does not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities, in this case small state nonmember banks, within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although state nonmember banks would presumably be required to revise certain of their reporting procedures to permit quarterly tracking of risk-based capital ratios, this proposal is designed primarily to take account of those practices, such as the increased use of off-balance sheet risk and the decline in the holdings of low-risk, liquid assets, that have been engaged in primarily by certain larger banking organizations. Moreover, rather than requiring all banking organizations to raise additional capital across the board, this proposal is directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles. While some additional reporting requirements would be imposed by this proposal, the FDIC will attempt to minimize the additional requirements, to use existing forms and collected data where possible, and to eliminate or reduce existing reporting requirements to offset to the extent possible any additional reporting burden.

## List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, State nonmember banks.

## Appendix A

**Note.**—Appendix A will not appear in the Code of Federal Regulations.

*Table 1.—Summary of Risk Weights and Major Risk Categories for State Nonmember Banks*

*0 percent*

Cash—domestic and foreign
Claims on Federal Reserve Banks

*10 percent*

Claims on the U.S. Government and its Agencies

*25 percent*

Cash items in process of collection
Short-term claims on domestic depository institutions and foreign banks, including foreign central banks
Claims (including repurchase agreements) fully collateralized by cash or U.S. Government or Agency debt
Claims (or portions thereof) guaranteed by the U.S. Government or its Agencies
Local currency claims on foreign central governments to the extent that the bank has local currency liabilities in that foreign country
Federal Reserve Bank stock

*50 percent*

Claims on U.S. Government-sponsored Agencies
Claims (including repurchase agreements) fully collateralized by U.S. Government-sponsored Agency debt
General obligation claims on states, counties and municipalities
Claims on multinational development institutions in which the U.S. is a shareholder or contributing member

*100 percent*

All other assets not specified above, including:
Claims on private entities and individuals, including commercial, consumer and real estate loans
Long-term claims on domestic and foreign banks
All other claims on foreign governments and private obligors
Industrial development bonds and other revenue bonds issued by states, counties, and municipalities
Bank premises, fixed assets and other real estate owned

*Table 2.—Summary of Off-Balance Sheet Items and Conversion Factors for State Nonmember Banks*

*Direct credit substitutes* (financial guarantees and standby letters of credit serving the same purpose)—*100 percent* credit conversion factor.

*Trade-related contingencies* (commercial letters of credit, bid and performance bonds and performance standby letters of credit)—*50 percent* credit conversion factor.

*Sale and repurchase agreements and asset sales with recourse*, if not already included on the balance sheet—*100 percent* credit conversion factor.

*Other commitments*, including overdraft facilities, revolving underwriting facilities (RUFs/NIFs), underwriting commitments, commercial and consumer credit lines. The credit conversion factors are:

*10 percent*—one year and less original maturity.[1]

*25 percent*—over one to five years original maturity.

*50 percent*—over five years original maturity.

*Credit conversion factor to be determined*

Interest rate swaps and other interest rate contracts.

Foreign exchange rate contracts.

[1] Maturity is defined as the stated maturity date or the earliest possible time at which the bank may *unconditionally* cancel the commitment, whichever occurs first.

*Table 3*

The following table illustrates the calculation of the risk-based capital ratio, as proposed in the U.S./U.K. Agreement. This example assumes a banking organization with $100,000 in total assets, $50,000 in certain off-balance sheet credit equivalent amounts, and $7,000 in adjusted primary capital as defined by the proposal.

| Risk category | On-balance sheet and credit equivalent amounts | | Risk weight | | Weighted risk assets and off-balance sheet items |
|---|---|---|---|---|---|
| 0 percent | $5,000 | × | 0 | = | 0 |
| 10 percent | 10,000 | × | 0.10 | = | $1,000 |
| 25 percent | 30,000 | × | 0.25 | = | 7,500 |
| 50 percent | 20,000 | × | 0.50 | = | 10,000 |
| 100 percent | 85,000 | × | 1.00 | = | 85,000 |
| Total (including $100,000 in total assets and $50,000 in credit equivalent off-balance sheet items, as derived from Table 4) | 150,000 | | | | 103,500 |

Adjusted primary capital—$7,000.
Risk-based capital ratio (as proposed) 7,000/$103,500=6.8%.

*Table 4*

The following table illustrates the calculation of the "credit equivalent" value of selected off-balance sheet items by multiplying the principal amount by the appropriate "credit conversion factor." Each credit equivalent value would subsequently be assigned to one of the five risk categories (See Table 3) depending on the identity of the obligor.

| Off-balance sheet item | Principal amount | | Credit conversion factor | | On-balance sheet credit equivalent amount |
|---|---|---|---|---|---|
| Standby letter of credit (financial guarantee) | $40,000 | × | 1.00 | = | $40,000 |
| Commitment with original maturity of three years | 20,000 | × | 0.25 | = | 5,000 |
| Commercial letter of credit | 10,000 | × | 0.50 | = | 5,000 |
| Total | 70,000 | | | | 50,000 |

**Appendix B**

**Note.**—Appendix B will not appear in the Code of Federal Regulations.

(The following U.S/U.K. proposed Agreement was jointly released by the U.S. and U.K. bank supervisory authorities on January 8, 1987.)

**Agreed Proposal of the United States Federal Banking Supervisory Authorities and the Bank of England on Primary Capital and Capital Adequacy Assessment**

This paper constitutes a system for the measurement of capital adequacy agreed by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation and the Bank of England. The principal objective of the paper is to promote the convergence of supervisory policies on capital adequacy assessments among countries with major banking centers. The proposal outlined below is intended to serve as a basis for consultation with the banking industry and others in the United States and the United Kingdom. The authorities concerned hope that the approach adopted by the United States and the United Kingdom will provide a basis which other countries can follow.

This paper explains the agreed proposal concerning:

(I) The components of the primary capital base of banking organizations;

(II) The deductions to be made from primary capital in computing the capital base for the calculation of a risk asset ratio;

(III) The weighting structure of risk assets and off-balance sheet activities; and

(IV) The use for supervisory purposes of a ratio of primary capital to weighted risk assets.

The paper should be read in conjunction with the attached tables which are appropriately cross-referenced.

I. Primary Capital

Primary capital represents the highest quality form of capital for banks and banking organizations (hereinafter a reference to banks should generally be taken to include banks, bank holding companies in the United States and banking groups in the United Kingdom). Within this category of capital, quality cannot be regarded as uniform and some components are undoubtedly of a higher quality than others. There are a number of elements that strengthen the balance sheets of banks to some extent, although clearly falling short of primary capital. Into this latter category may fall subordinated debt with a fixed maturity and the excess of market value over book value of some bank assets, notably bank premises and long-term investments. It is not the intention of the supervisors to ignore these items but rather to take some account of them after the basic primary capital to weighted risk asset ratio has been calculated. The supervisory authorities in both countries will therefore also take account of the ratio of total capital to weighted risk assets, as well as other qualitative factors, in their overall prudential assessment.

The components of the primary capital base represent resources which can be used to meet current losses while leaving banks able to continue operating on a going concern basis. The supervisors agree that this criterion is the most important determinant of the status of primary capital.

*Common stock/equity* (IA1), although repayable in strictly defined and limited circumstances, clearly meets the criterion as does any premium or surplus arising from the issue of common stock/equity. These, together with reserves in the form of *retained earnings* (IA2), represent the highest quality form of capital. *The minority interest in subsidiaries that are consolidated for supervisory purposes* (IA3) is also available to absorb losses.

There are no limits on the amounts of such capital that can be included in a bank's capital base for purposes of measuring capital adequacy. While it could be argued on grounds of uncertainty that it would be desirable to defer inclusion of *current year earnings* (IA2) until the end of the year in question, the U.S. and U.K. supervisory authorities have decided to include them. A realized profit arising out of the disposal of real property, for example, clearly fully meets the criterion for inclusion in primary capital.

It is, however, possible that lending or trading profits for interim periods during the year may be eroded by later or unidentified losses.

*General reserves/general provisions* (IA4) for losses resulting from charges to earnings will be included for the present in primary capital. The U.S. and U.K. supervisory authorities are agreed that provisions made against identified losses cannot and should not be regarded as capital. General reserves/general provisions are made against unidentified or potential losses and can therefore be regarded as meeting the criterion. The U.S. and U.K. supervisory authorities have reservations about those general provisions that in reality are earmarked against specific assets or categories of assets and that do not therefore satisfy the criterion of general availability. However, it is not always possible to distinguish such provisions. Therefore, while for the present all general reserves/general provisions are included as primary capital, the supervisory authorities would like to seek comment from banks, the accounting profession and other interested parties on whether such reserves should be phased out of the primary capital base.

Hidden reserves (IA5), in the form of undisclosed retained earnings, do not exist in the United States and presently are permitted only to a limited number of banks in the United Kingdom. The issue has been addressed in the European Community's Bank Accounts Directive and, within its terms, member states have the option to allow banks in their country to maintain limited hidden reserves. This option will be reviewed five years after the Directive has been implemented. The position of hidden reserves in the United Kingdom will therefore next be considered when the Bank Accounts Directive is implemented. If it is then decided that U.K. banks should not be permitted to maintain hidden reserves, they will be available for transfer to disclosed reserves. Until this occurs, the Bank of England will continue to include them as primary capital.

In addition to the elements to be allowed without limit, the supervisory authorities propose to include in primary capital, but subject to a limit, certain items that give much greater strength to a bank than subordinated debt of a fixed maturity but that have certain drawbacks as compared with common stock and other unlimited components of the primary capital base.

*Perpetual preferred shares* (IB1a) and *instruments perpetual in nature and capable of meeting current losses* (IB2), together with *long-term dated (limited-life) preferred shares* (IB1b), will be included in the primary capital base subject to a limit of 50 per cent of the unlimited elements after the deduction of intangible assets. (For example, if the unlimited items total US$100 million and there are intangibles of US$10 million, then there will be a limit of US$45 million applying to qualifying preferred shares and perpetual debt and their equivalents). Perpetual preferred shares and perpetual subordinated debt cannot be redeemed at the option of the holder and any repayment may occur only with the prior consent of the supervisory authorities. Included here are perpetual subordinated debt and certain instruments that can only be converted into primary capital instruments. The proceeds of such instruments effectively remain available to meet current lossss and leave the bank able to continue operating. Long-term dated preferred shares (25 years or more initial maturity) also provide a cushion against current losses. Such shares must be amortized for the purpose of assessing capital adequacy over the last few years of their life.

Since changes are involved in the definition of the capital base, the respective supervisory authorities will continue to include (in the United States) existing mandatory convertible securities which do not meet the new criteria (in the attached

tables at IB2 (a), (b), (c)) and (in the United Kingdom) existing revaluation reserves for bank premises.

II. Deductions From Primary Capital

The U.S. and U.K. supervisors have also agreed to propose that certain deductions should be made from the total of primary capital elements in order to derive the adjusted capital base for purposes of calculating the risk weighted capital ratio. In the United States, all future *intangible assets* will be deducted; existing allowed intangible assets will be "grandfathered." The Bank of England reaffirms its present policy of deducting all existing intangible assets (IIA).

*Investments in unconsolidated subsidiaries and associated companies* including, but not limited to, unconsolidated joint ventures, will also be deducted (IIB). For the United States, this could include certain consolidated subsidiaries as determined by U.S. regulatory authorities. The assets of such companies will not be brought into the calculation of the risk asset ratio.

The Bank of England already deducts *bank holdings of other banks capital instruments* (IIC), except for limited concessions to allow some banks to play an active role in market-making in the primary (new issues) and/or secondary markets. This policy will be maintained. The U.S. authorities accept the principle underlying this policy and will monitor bank holdings of capital instruments issued by other banks and may, as appropriate, deduct these items on a case-by-case basis.

III. The Risk Asset Ratio

(a) *General.* The risk asset ratio is calculated by applying to each broad category of assets or off-balance sheet obligations a weight reflecting the relative riskiness inherent in each. The total of weighted risk assets is then measured in relation to the adjusted capital base to derive a ratio. The U.S. and U.K. authorities intend to concentrate on the primary capital to total weighted risk asset ratio.

This section describes and explains the simple structure of weights and indicates areas where further work is required to augment the present agreed approach.

It is recognized that it would be possible to establish more weights but this would introduce greater complexity, and more onerous statistical reporting obligations, without any assurance of a significantly more efficient or effective system. The calculation of the ratio represents only one element in the assessment of capital adequacy, although it is a most important one.

The agreed framework consists of broad categories of obligor and, to some extent, of maturity. With certain important exceptions, it reflects credit risk, that is, the risk of borrower or counterparty default. In addition the Bank of England includes the net open foreign exchange position in the risk asset ratio as defined in Foreign Currency Exposure, April 1981. The U.S. authorities are committed to introducing a capital requirement for exchange rate risk. All authorities are firmly committed to the development of an approach that will enable interest rate risk to be incorporated into the framework. Some other risks—for example, of operational failures—are important but cannot readily be captured in a risk asset ratio. The agreed weighting structure takes no account of country transfer risk. Nor is commercial lending differentiated with respect to credit quality or collateral, except for the strictly limited exception for exposures secured by government securities or cash. These factors will be considered, as now, through the examination/supervisory process.

Five risk weight categories are proposed—0 percent, 10 percent, 25 percent, 50 percent and 100 percent—and the weighting for particular items is discussed below. There are some special institutional features of the U.S. and U.K. markets which require differences in treatment between the two countries; these are indicated in the text which follows.

(b) *On-balance sheet.* The weightings set out in what follows are based on relative degree of risk starting from 100 percent for a claim on a non-bank obligor, which can for these purposes be regarded as a standard risk.

(i) *Cash and all claims on the domestic central bank.* Cash and all claims on the domestic central bank (III 1, 2) are regarded as bearing no significant banking risks and therefore are assigned a weight of 0 percent. The Bank of England will also continue to give a 0 percent weight to government-guaranteed export and ship-building loans (III 3). As indicated below, the U.S. supervisory agencies place comparable U.S. Government-guaranteed claims in the 25 percent risk category (III 12).

(ii) *Short-term claims on domestic national government.* Short-term claims (remaining maturity of one year or less) on the domestic national government and on domestic national government agencies (III 4) are assigned a weight of 10 percent. (For the United States, national government agencies are defined as those agencies whose debt obligations are backed by the full faith and credit of the U.S. Government.) While short-term claims on the domestic national government bear no credit risk, such claims could involve a degree of interest rate exposure. Thus, as described below, until a more direct measure of interest rate risk is developed, such claims will be assigned to the 10 percent category.

(iii) *U.K. discount houses, gilt-edged market makers and Stock Exchange money brokers.* The Bank of England proposes a weighting of 10 percent for short-term (remaining maturity of one year or less) claims on discount houses, gilt-edged market makers and Stock Exchange money brokers. These specialist institutions have an operational relationship with the Bank, including secured borrowing facilities, and are subject to close supervision. They trade predominantly in high quality liquid assets on which their borrowing is customarily secured. For these reasons, short-term claims on this group involve less risk than short-term claims on banks. This treatment effectively reflects the special institutional structure in the United Kingdom (III 5).

(iv) *Short-term claims on domestic depository institutions and foreign banks (including foreign central banks).* The weighting for short-term claims (remaining maturity of one year or less) on domestic depository institutions and foreign banks and equivalent off-balance sheet exposures (III 6, 7, 11) reflects the lower risk generally of such claims as compared with claims on commercial obligors and longer term claims on banks. For this reason, a weighting of 25 percent for this category has been proposed. It is acknowledged that short term claims on some commercial borrowers may involve less risk than similar claims on some banks. It is considered, however, that since depository institutions are supervised and a particularly high quality is inherent in short-term-inter bank claims, the treatment proposed is broadly reasonable. Longer-term claims on depository institutions are regarded as bearing a higher risk that is generally closer in quality to claims on commercial obligors and these will be assigned a weight of 100 percent. The breakpoint at one year is admittedly arbitrary but captures most genuine short-term, inter-bank money market activity.

(v) *Longer-term claims on own (domestic) governments and analogous claims.* For U.S. banks, the weighting of long-term claims on the U.S. Government (Treasury), and for U.K. banks, the weighting of long-term claims on HM Government, does not reflect any credit risk but is designed, as a temporary measure, to be a proxy for the significant element of interest rate risk inherent in holdings of longer-term government securities. It is the intention of the U.S. authorities and the Bank of England to develop a more direct measure of interest rate risk. Pending this further work, it has been agreed that government securities with a remaining maturity of more than one year should be weighted at 25 percent (III 9).[1]

---

[1] The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) disagreed with splitting such securities according to maturity, even as a temporary measure. Optimally, an adjusted capital standard should incorporate an assessment of a bank's exposure to interest rate risk. Specific assets, however, do not necessarily expose a bank to interest rate risk; rather, interest rate risk reflects the relationship within the portfolio between the interest rate structure of assets and liabilities. Isolating a single asset on a bank's balance sheet and making a maturity distinction in order to incorporate interest rate risk into the capital ratio is inappropriate because it fails to take account of the interest rate exposure arising from other loans and securities, off-balance sheet activities, and a bank's liability structure. In the light of this concern, the OCC and FDIC recommended that banks' exposures to interest rate risk be evaluated case by case during examinations, for purposes of assessing capital adequacy, and that all U.S. Treasury securities and agency securities bearing the full faith and credit of the U.S. Government be placed in the 10 percent risk category. The other supervisory authorities agree with the logic that interest rate risk should be addressed on a portfolio, rather than an individual asset, basis but believe that until such risk can be monitored and included in capital adequacy requirements in a more systematic fashion, the proposed maturity split represents a reasonable interim step.

To be consistent with this approach, claims having an analogous nature are also to be weighted at 25 percent. Thus, for U.S. banks, all long-term claims on U.S. Government agencies (III 9), all claims collateralized by U.S. Government and U.S. Government agency debt or cash (III 10) and claims guaranteed by the U.S. Government or its agencies (III 12) will be assigned to the 25 percent category. For U.K. banks, claims collateralized by domestic national government debt or cash (III 10), most domestic national government guaranteed claims (III 12) and claims on U.K. public corporations and the rest of the public sector (III 9) will be weighted at 25 percent.

For U.S. banks, all claims on U.S. Government-*sponsored* agencies (that is, agencies that are chartered or established by the Federal Government to carry out a public purpose as specified by the U.S. Congress and whose debt obligations are not guaranteed by the full faith and credit of the U.S. Government) and all claims collateralized by U.S. Government-sponsored agency debt are assigned to the 50 percent category (III 14, 15).

Although the credit risk attaching to claims on U.K. local authorities is not the same as claims on HM Government, the Bank of England believes that they should be included in the 25 percent category rather than in the 50 percent category (III 8). The U.S. authorities propose placing general obligation claims on domestic state and local governments in the 30 percent category (III 16).

(vi) *Local currency claims on foreign central governments in foreign offices.* The treatment of assets in overseas offices of banks raises difficult conceptual and practical questions. It has been agreed, however, that local currency claims on foreign *central* governments, to the extent funded by local currency liabilities in that country, do not involve any transfer risk. A 25 percent weight will therefore be applied to both short and long-term claims. (III 13)

(vii) *Multinational development institutions.* All direct claims of U.S. banks on multinational development institutions in which the U.S. Government has shareholder or contributing member status and, similarly, all direct claims of U.K. banks on such institutions in which HM Government has the same status will be given a weight of 50 percent. This reflects the generally high quality of claims on such institutions (III 17).

(viii) *Other assets.* All assets not mentioned so far will carry a 100 percent weight (III 18, 19, 20, 21, 22). As discussed earlier, the Bank of England also already applies a weight of 100 percent to the net open foreign exchange position (III 23) and will maintain this. The U.S. authorities are committed to introducing a capital requirement for exchange rate risk.

(c) *Off-Balance Sheet*—(i) *General.* The U.S. and U.K. banking supervisory authorities believe that all off-balance sheet items giving rise to credit risk (and in addition, in time, foreign exchange and interest rate risks) should in principle be included in the risk asset ratio. The obligations should receive the risk asset weighting appropriate to the individual obligor. There is, however, an important and difficult question relating to the size of the exposure that should be weighted.

An approach to off-balance sheet items has been devised that endeavors to convert the credit risk of each instrument into a credit equivalent that can be incorporated into the risk asset framework outlined in this paper. It is recognized that the methodology employed will appear simple and approximate but it provides a logical and consistent basis for the calculation of a ratio that encompasses both on- and off-balance sheet business.

Distinctions are made between contingencies, commitments and interest rate and foreign exchange rate contracts and these are discussed separately.

(ii) *Contingencies/contingent items.* Obligations in the form of financial guarantees and equivalents (for example, standby letters of credit having the character of guarantees and, in the United Kingdom, acceptances) effectively involve from the date of the assumption of the obligation the same degree of credit risk as outstanding loans (III 24). There is no action that the bank can take to avoid the full credit risk. The supervisory authorities, accordingly, believe that these obligations should be regarded as direct credit substitutes and be weighted for their full amount, that is, the credit conversion factor is 100 percent of the principal amount. The risk asset weighting is then determined by the category of the counterparty and, where appropriate, the maturity.

Some contingencies (III 25), notably commercial letters of credit, performance bonds and performance-related standby letters of credit, involve a lesser credit risk. The key elements in this judgment are that the counterparty has a strong incentive to meet its obligations if it wishes to remain in business (thus giving these claims a somewhat higher ranking in the counterparty's list of priorities than some other claims); the obligations are often (but not invariably) short-term in maturity; and banks assert that the loss record is favorable. To make allowance for these favorable factors, it is proposed to scale down the nominal exposure by a credit conversion factor of 50 percent, before the exposure is weighted according to the category of the obligor (and where relevant maturity)—for example, the deemed credit risk equivalent of a commercial letter of credit of US$10 million would be US$5 million which in turn would be weighted according to obligor and, in some cases, maturity.

Contingencies such as indemnities for lost share certificates and bill endorsements will be excluded from the framework as they do not involve a significant credit risk.

(iii) *Commitments.* Whereas contingencies (as described above) involve the immediate assumption of a credit risk, commitments generally represent an undertaking to assume a credit risk in the future. It is recognized that this distinction is somewhat difficult to make at the margin and that it is the nature of the obligation which matters rather than the name given to the facility.

Some transactions, for example, sale and repurchase agreements and asset sales with recourse, may involve balance sheet entries and as such will attract a weighting for the full face value. Any other obligation or transaction effectively involving an immediate credit exposure will be treated as if it were on the balance sheet. Where an obligation or transaction clearly has the same effect as a financial guarantee (as, for example, certain asset sales with recourse) it will be treated as such (III 26).

For all other commitments (III 27), it is proposed to take account of maturity in determining the credit conversion factors. In so doing, maturity to some extent serves as a proxy for instrument-type. The category of exposure here giving rise to the greatest concern is the long-term contract that is equivalent in effect to an insurance arrangement in its underlying nature, most notably revolving underwriting facilities. Even if material adverse change clauses are included—and the supervisory authorities do not wish to take any action which will discourage their use—the reality is that the bank is assuming a long-term obligation to provide credit if other lenders are unwilling to do so. At the other end of the maturity spectrum, it is accepted that commitments reviewable—and unconditionally cancellable—at least annually involve less risk and that the credit conversion factor should be much lower. While a bank is at risk from an increase in credit exposures as a result of a higher than average utilization of undrawn lines, the low credit conversion factor reflects the historical stability of the undrawn amount of these lines.

The conversion factors to be applied to these commitments will, therefore, be set as follows in terms of their *original* maturity (for these purposes maturity is defined as the earliest possible time at which the bank may unconditionally cancel the commitment):

| | Percent |
|---|---|
| One year or less | 10 |
| Over one year to five years | 25 |
| Over five years | 50 |

For contingencies and commitments, the principal amount is multiplied by the conversion factor and the resulting exposure will carry the appropriate weight for the category of the counterparty (and the maturity).

(iv) *Interest rate and foreign exchange rate related transactions.* It is the firm intention of the U.S. supervisory authorities and the Bank of England to include the credit equivalent exposure on interest rate and foreign exchange rate related transactions in the risk asset ratio as soon as possible (III 28 and 29). The timing of this step is dependent on reaching final agreement on a method of calculating the credit exposure. As with other off-balance sheet transactions, this will involve estimating a deemed credit equivalent for these instruments that would be incorporated in the general framework on an obligor (and, where appropriate, maturity) basis.

IV. Primary Capital to Weighted Risk Asset Ratio

The U.S. and U.K. authorities intend to set and publish an agreed minimum level of this ratio to be applied to all banks supervised by them. In both countries most institutions will be expected to maintain their ratio at a higher level. The precise figure set for individual banks will remain confidential and will be determined in light of each institution's particular circumstances, for example, the quality and diversification of assets, liquidity, management, internal control systems and other relevant factors. These higher levels will be determined as part of the ongoing supervisory process.

**I. Components of Primary Capital**

A. Funds included *without* limit.

1. Common stock/equity and premium (United Kingdom), surplus (United States).

2. Retained earnings (including current year earnings).

3. Minority interest in consolidated subsidiaries.

4. General reserves for losses resulting from charges to earnings.

5. Hidden reserves (comprising undisclosed retained earnings)—not applicable in United States, to be phased out in United Kingdom.

B. Funds included *with* limits—items included in this category must not exceed 50 percent of the total items included in A above less intangible assets.

1. Preferred shares that:

(a) Do not mature; or

(b) Mature on a fixed date *and* have an original maturity of at least 25 years. (Amount included in primary capital would be discounted for prudential purposes as the instrument approached maturity.)

2. Subordinated debt that:

(a) Can only be converted into primary capital instruments;

(b) Is available at all times to absorb losses; and

(c) Provides that interest payments may be deferred if the issuer does not make a profit in the preceding period and/or pay dividends on common and perpetual preferred stock.

This is intended to include perpetual debt.

Note—(a) Existing mandatory convertible securities which do not meet the criteria in IB2 (for U.S. banks) and existing property revaluation reserves (for U.K. banks) are to be "grandfathered."

(b) For bank holding companies in the United States, perpetual debt issued by the parent company need not be subordinated. It must, however, be unsecured.

**II. Adjustments to Capital for Prudential Purposes**

A. Deduction of all intangible assets. (Existing intangibles currently allowed by U.S. regulatory authorities will be "grandfathered.")

B. Deduction of investments in unconsolidated subsidiaries and associated companies including, but not limited to, unconsolidated joint ventures. For the United States, this could include certain consolidated subsidiaries as determined by U.S. regulatory authorities; for the United Kingdom this also includes related securities companies.

C. Deduction of bank holdings of capital instruments of other banking organizations. (In the United States these would be monitored and deducted on a case-by-case basis.)

**III. Category of Risk**

*Weight Given*

*0 Percent*

1. Vault cash—domestic and foreign.

2. All balances with and claims on domestic central bank.

3. Domestic national government guaranteed export and ship-building loans (United Kingdom only).

*10 Percent*

4. For the United States, short-term (remaining maturity of one year or less) claims on the U.S. Government (Treasury) and on U.S. Government agencies (for the United States, national government agencies are defined as those agencies whose debt obligations are backed by the full faith and credit of the U.S. Government) For the United Kingdom, short-term (one year or less) claims on the United Kingdom and Northern Ireland Governments.

5. Short-term (one year or less) claims on discount houses, gilt-edged market makers and Stock Exchange money brokers (United Kingdom only).

*25 Percent*

6. Cash items in process of collection—foreign and domestic.

7. Short-term (one year or less) claims on domestic depository institutions and foreign banks.

8. All claims on domestic local authorities (United Kingdom only).

9. Long term (over one year) claims on domestic national government (including, for the United Kingdom, Northern Ireland) and all long-term claims on domestic national government agencies. For the United Kingdom, this includes all claims on U.K. public corporations and on the rest of the public sector.

10. All claims (including repurchase agreements) fully collateralized by domestic national government debt and (for the United States) debt of U.S. Government agencies. Also all claims collateralized by cash on deposit in the lending institution.

11. Federal Reserve bank stock (United States only).

12. Portions of loans guaranteed by domestic national government or (for the United States) domestic national government agencies.

13. All local currency claims on foreign central governments to the extent funded by local currency liabilities in that foreign country.

*50 Percent*

14. All claims on domestic national government-sponsored agencies (U.S. Government-sponsored agencies are defined as agencies whose debt obligations are not guaranteed by the full faith and credit of the U.S. Government).

15. All claims (including repurchase agreements) that are fully collateralized by domestic national government-sponsored agency debt (United States only).

16. All general obligation claims on domestic state and local governments (United States only).

17. Claims on multinational development institutions in which the domestic government is a shareholder or contributing member.

*100 Percent*

18. Long-term (over one year) claims on domestic depository institutions and foreign banks.

19. All claims on foreign governments other than local currency claims on foreign central governments funded by local currency liabilities in that foreign country.

20. The customer liability on acceptances outstanding involving standard risk obligors (United States only).

21. Domestic state and local government revenue bonds and industrial development bonds (United States only).

22. All other assets.

23. Net open position in foreign exchange (United Kingdom only).

*Off Balance Sheet Items*

The face amount of these items would be multiplied by the credit conversion factors shown below, and the resulting amount would be slotted in the appropriate risk category depending upon the identity of the obligor and the maturity of the instrument where appropriate.

24. "Direct credit substitutes" (financial guarantees and standby letters of credit serving the same purpose and, in the United Kingdom, acceptances outstanding)—100 percent credit conversion factor.

25. "Trading contingencies" (for example, commercial letters of credit, bid and performance bonds and performance standby letters of credit)—50 percent credit conversion factor.

26. Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet—100 percent credit conversion factor.

27. Other commitments, for example overdrafts, revolving underwriting facilities (for example, RUFs/NIFs), underwriting commitments, commercial and consumer credit lines. The credit conversion factors are:

10 percent—one year and less original maturity

25 percent—over one to five years original maturity

50 percent—over five years original maturity.

*Credit Conversion Factor to be Determined*

28. Interest rate swaps and other interest rate contracts.

29. Foreign exchange rate contracts.

Note—1. Maturity is defined as the earliest possible time at which the bank may unconditionally cancel the commitment.

2. Certain off balance sheet obligations, for example, indemnities for lost share certificates and bill endorsements, or "holders in due course" obligations, would not be included in capital adequacy requirements.

By Order of the Board of Directors, Dated at Washington, DC this 31st day of March 1987.

Federal Deposit Insurance Corporation

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87-7729 Filed 4-8-87; 8:45 am]

BILLING CODE 6714-01-M

---

**12 CFR Part 337**

**Unsafe and Unsound Banking Practices**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Proposed Rules.

**SUMMARY:** The FDIC is proposing to amend its regulations governing the securities activities of subsidiaries of insured nonmember banks and the affiliate relationships of insured nonmember banks with securities companies by: (1) Revising the existing requirement that such subsidiaries and affiliates must use separate offices from the bank that share no common entrance with the bank, (2) deleting the prohibition against such subsidiaries and affiliates sharing a common name or logo with the bank, and (3) establishing certain affirmative disclosure requirements to the effect that investments recommended, offered or sold by or through such subsidiary or affiliate are not FDIC insured deposits, that the subsidiary and affiliate are separate organizations from the bank, and that the obligations of the subsidiary and affiliate are not obligations of the bank and are not guaranteed, warranted, or otherwise supported by the bank.

**DATE:** Comments must be received by May 11, 1987.

**ADDRESS:** Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to, and reviewed in, Room 6108 Monday through Friday between the hours of 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Pamela E. F. LeCren, Senior Attorney, Legal Division, (202-898-3730), 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** In November 1984 the Board of Directors of the FDIC added section 337.4 to Part 337 of its regulations titled "Unsafe and Unsound Banking Practices" (12 CFR 337) (49 FR 46709, November 28, 1984). Section 337.4 governs certain securities activities of subsidiaries of insured nonmember banks as well as affiliate relationships between insured nonmember banks and certain types of securities companies. The regulation was adopted as a result of a rulemaking procedure initiated in 1982 after the Board of Directors issued a policy statement concerning the applicability of the Glass-Steagall Act (12 U.S.C. 24 (Seventh), 78, 377 and 378) to affiliates and subsidiaries of insured nonmember banks. (47 FR 38984, September 3, 1982). The policy statement concluded that the Glass-Steagall Act does not prohibit insured nonmember banks from being affiliated with securities companies or from establishing or acquiring a securities subsidiary. Inasmuch as it was also the Board of Directors' conclusion that certain indirect securities activities could pose safety and soundness and other concerns if unregulated, the FDIC sought comment on the need to adopt regulations governing such activities. The FDIC issued an advance notice of proposed rulemaking in 1982 (47 FR 42141), a proposed regulation in 1983 (48 FR 22155), and a revised proposed regulation in 1984 (49 FR 18497). The final regulation became effective on December 28, 1984.

In general the regulation was designed to protect bank safety and soundness, to ensure the legal separateness of a bank from its securities subsidiary or affiliate, and to prevent possible confusion on the part of the public which could give rise to claims against the deposit insurance fund and/or claims against the FDIC as receiver of a closed bank. The FDIC sought to achieve these ends by, among other things: (1) Prohibiting the use by an insured nonmember bank of a common name or logo with its securities subsidiary or affiliate if that subsidiary or affiliate engages in securities activities prohibited to the bank by the Glass-Steagall Act, and (2) requiring that an insured nonmember bank be physically separate and distinct in its operations from the operations of such a securities subsidiary or affiliate, this separation to be achieved by separate offices clearly identified as belonging to the subsidiary or affiliate that share no common entrance with the bank except for a common outer lobby or common corridor. (Insured nonmember banks that had become affiliated with a securities company prior to December 28, 1984, or which prior to that date established or acquired a securities subsidiary, were given until December 28, 1985 to comply with these provisions of the regulation.)

In December 1985 the FDIC received two petitions requesting that the FDIC reconsider the prohibition on the use of a common name or logo by a bank and its securities affiliate. The petitions were filed by Merrill Lynch Bank & Trust, Princeton, New Jersey and Prudential Bank & Trust, Atlanta, Georgia. Both petitioners became affiliated with a securities company prior to December 28, 1984. Prudential Bank & Trust was acquired by a company which was also affiliated with a securities firm and Merrill Lynch Bank & Trust (whose parent also owns a securities company) was formed as a newly incorporated bank. A third petition requesting that the FDIC reconsider the separate office/separate entrance requirement for a bank's subsidiary was filed by Washington Mutual Savings Bank, Seattle, Washington. Washington Mutual Savings Bank acquired a securities subsidiary prior to December 28, 1984. The FDIC subsequently received several letters from other insured nonmember banks which supported the petitions. In order to afford the FDIC sufficient opportunity to study the petitions, the Board of Directors extended the December 28, 1985 compliance deadline with the separate office/separate entrance and name provisions of the regulation for preexisting affiliate and subsidiary relationships until June 30, 1986. (51 FR 880, January 9, 1986).

At its June 16, 1986 Board of Directors meeting the FDIC's Board of Directors voted to grant the petitioners' request for reconsideration and to solicit comment on whether or not to retain, or modify in some manner, the prohibition on the use of a common name or logo and the separate office/separate entrance requirement. The Board of Directors also voted to extend the June 30, 1986 compliance deadline with these provisions to December 31, 1986 for institutions with affiliate and/or subsidiary relationships that predated the effective date of the regulation. (51 FR 23405, June 27, 1986). The compliance deadline was subsequently extended until June 30, 1987. (51 FR 45755, December 22, 1986).

The FDIC's request for comment with respect to the common name and logo and separate office/separate entrance requirement was published in the Federal Register on August 20, 1986 for a sixty-day comment period which closed on October 20, 1986. (51 FR 29658, August 20, 1986). In publishing the request for comments the Board of Directors indicated that it felt it was appropriate to solicit comment on these restrictions not only in view of the

issues raised by the petitions but in view of the passage of nearly two years since the FDIC last sought comment on, and considered the propriety of, the common name and logo prohibition and the separate office/separate entrance requirement.

The FDIC received 38 comments in response to the August 1986 publication. A summary of those comments is set forth below.

**Overall Comment Summary**

Of the 38 comments, 7 urged the FDIC to make no changes in either the common name prohibition or the separate office requirement. In brief, these commentors expressed the opinion that: (1) The use of a common name or logo by a bank and its securities subsidiary or affiliate and the sharing of office space by a bank and its securities subsidiary or affiliate is deceptive and blurs the deposit insurance issue, (2) disclosure is not sufficient to avoid depositor confusion, and (3) deleting the existing restrictions would only serve to encourage the proliferation of nonbank banks, the existence of which poses unfair competition to full service banks.

The remaining 31 comments unanimously agreed that the FDIC should eliminate the prohibition on the use of a common name or logo. Most of these comments in turn recommended that, if the FDIC still has concerns about public confusion, a disclosure requirement could be adopted. The disclosure suggestions included: (1) Prohibiting a subsidiary or affiliate from advertising or in any way indicating that the bank and the subsidiary or affiliate are the same entity, (2) requiring that the products sold by the subsidiary or affiliate bear on their face a deposit insurance disclaimer, (3) requiring specific affirmative, periodic disclosures that the subsidiary, the affiliate, and the bank are separate organizations and that the products sold by the subsidiary or affiliate are not insured deposits, (4) requiring that the subsidiary or affiliate provide customers with a written deposit insurance disclaimer at the inception of the customer relationship, and (5) prohibiting any misleading holding-out by the bank, its subsidiary, or affiliate.

The disclosure approach was urged as a more effective means than the common name prohibition of achieving the FDIC's goals as well as one that did not add costs or impede the use of a valuable asset, the goodwill attached to a company's name. Several commentors pointed to the FDIC's policy statement on the sale of retail repos (46 FR 49197, October 1981) and § 329.10(b)(3)(i) of FDIC's regulations (12 CFR 329.10(b)(3)(i)) as an example of instances in which the FDIC found disclosure sufficient to avoid depositor confusion. (Section 329.10(b)(3)(i), now rescinded, provided that then existing interest rate restrictions did not apply to certain obligations other than deposits, if, among other things, the obligations bore on their face in bold type a statement that the obligation was not an insured deposit.) It was also suggested, as an alternative to placing a disclosure requirement in the regulation, that a policy statement could be issued reminding banks and their subsidiaries or affiliates of the need to adequately disclose the nature of the products sold and whether or not they are insured by the FDIC.

Some comments indicated that even if the common name prohibition was eliminated no further disclosure requirement would be necessary because: (1) Subsections 337.4(c)(6) and 337.4(a)(2)(ix) of the regulation already require the bank and its subsidiary or affiliate to operate pursuant to independent policies and procedures designed to inform customers and prospective customers that the two organizations are separate and that the obligations, etc. of the subsidiary and/or affiliate are not insured deposits, (2) the federal securities laws, NASD rules, and state securities laws provide sufficient protection against depositor confusion, and (3) existing federal law makes it a criminal offense for a corporation to misrepresent that its obligations, etc. are FDIC insured when they are not. (18 U.S.C. 709).

On the issue of depositor confusion the FDIC specifically sought comment from banks, their securities subsidiaries, and affiliates as to what the experiences of these institutions had been over the past two years. In response thereto several comments were received from banks that have shared a common or similar name with a securities affiliate for some time (Merrill Lynch Bank & Trust, Prudential Bank & Trust, E.F. Hutton Bank, Dreyfus Consumer Bank, Resources Industrial Bank, and Leumi Bank & Trust) all of which indicated that they have not experienced any confusion between insured deposits offered by the bank and uninsured investment products offered by their affiliates.

The FDIC also sought comments on whether or not other restrictions, such as restrictions on cross selling, should be imposed if the common name prohibition was deleted from the regulation. The comments responding thereto were overwhelmingly opposed to any limitation on cross selling. Cross selling was described as a method to improve a bank's competitive position and to increase the stability of its earnings. To ban cross selling, continued the comments, would merely increase marketing costs and deprive consumers of convenience. It would also be contrary to the trend in financial services delivery to provide multiple services in one location. These commentors indicated that, absent fraud or abuse, cross selling was a positive marketing tool. Furthermore, existing restrictions in section 337.4(e) of the regulation governing transactions between the bank and its affiliate and subsidiary were sufficient to guard against abuse. Lastly, it was stated that a ban on cross selling would put banks with a securities affiliate or subsidiary at a disadvantage vis-a-vis banks that enter into contractual arrangements with non-affiliates.

Insofar as the separate office/separate entrance requirement is concerned, the remaining 31 comments were equally unanimous in urging the FDIC to eliminate or modify this restriction. The most commonly suggested modfication was that the FDIC should permit the use of clearly distinguishable office space. One comment suggested permitting the use of partitions, railings, or planters and another specifically suggested that the FDIC return to the language originally proposed by the staff for the Board of Directors' consideration in November, 1984 (*i.e.*, separate offices or office space clearly demarcated as belonging to the subsidiary or affiliate). These commentors all felt that disclosure would adequately address any depositor confusion concerns that the FDIC might have.

**Specific Objections Raised in Connection with Common Name Prohibition**

1. The prohibition is illogical and contrary to good business practice;

2. The use of a common name does not lead to public confusion. Customer confusion arises from misinformation and/or fraudulent conduct;

3. The use of a common name has no relationship to safety and soundness and will not result, without more, in a piercing of the corporate veil;

4. The prohibition increases marketing and other costs. This decreases profits which itself poses a safety and soundness problem, and deters de novo entry;

5. Use of a common name will aid banks in their competition with unregulated providers of financial services;

6. The prohibition impairs the use of a valuable asset (name recognition is an important factor in market penetration) and constitutes an unwarranted taking of property;

7. The FDIC has no authority to adversely affect the use of a name. Federal law on trade mark and trade name confers a property right and the authority to affect that right, if any, is lodged with the Patent and Trademark Office;

8. Having the same or a similar name serves an important purpose, *i.e.*, informs customers of the quality of services and alerts customers to possible conflicts of interest and tying which they will then be in a position to guard against. "People will perceive their own best interest if only they are well enough informed, and . . . the means to that end is to open channels of communication, rather than to close them." *Central Hudson Gas and Electric Corporation* v. *Public Service Commission of New York*, 425 U.S. 748, 770 (1976).

9. The name prohibition is an unlawful restriction on commercial speech. This comment cited a July 1, 1986 Supreme Court Opinion involving a ban on advertising by gambling casinos adopted by Puerto Rico *Posadas de Puerto Rico Associates* v. *Tourism Company of Puerto Rico*, 92 L. Ed. 2d. 266 (1986). Citing the rule established by an earlier case, the Court indicated that commercial speech is afforded limited first amendment protection provided it concerns a lawful activity and is not fraudulent or misleading. If the commercial speech falls within this category, then the speech may only be restricted if the government interest in doing so is substantial, the restrictions directly advance the government's asserted interest, and the restrictions are no more extensive than necessary to serve that interest. The commentor asserted that the name prohibition does not meet this test as less restrictive means (*i.e.*, disclosures) more effectively meet the FDIC's goals.

10. Having a common element in the name of a bank and its securities subsidiary or affiliate only fosters public recognition. The juxtaposition of the word "bank" and the word "securities" in the two titles will suffice to distinguish the identities of the two entities;

11. A logo is only a pictorial method of disclosing affiliation. As the regulation currently permits such disclosure, the ban on the use of a common logo is inappropriate;

12. Bank holding companies, their bank and nonbank subsidiaries and banks and their discount brokerage subsidiaries and/or affiliates are not prohibited from using common names. These is no reason for a different rule for securities companies that engage in other types of securities activities.

**Specific Objections Raised in Connection with Separate Office/ Separate Entrance Requirement.**

1. The requirement only serves to add expense, deter de novo entry, and result in the loss of walk-in trade;

2. The requirement hampers convenience and one-stop shopping and thus is anti-competitive. (The financial services market is moving toward integrated delivery of services and prohibiting the use of shared space puts banks and their securities subsidiaries and affiliates at a competitive disadvantage.);

3. The requirement bears no relationship to a piercing of the corporate veil;

4. A bank should be able to make the best of its existing branch facilities;

5. INVEST, a broker-dealer which offers investment advisory and brokerage services in bank and S&L branch offices, has done so for several years without separate offices and without evidence of confusion;

6. The separate office/separate entrance requirement is more restrictive than is necessary. While it is important for the securities services to be distinguishable, this can be achieved by less restrictive means (*i.e.*, signs, partitions, dividers, railings, or planters);

7. If the FDIC feels that there would still be a risk of customer confusion if the requirement is liberalized, the FDIC could adopt disclosure requirements which would adequately assure against such confusion;

8. The prohibition on shared space puts banks at a competitive disadvantage with banks that can offer securities services of nonaffiliates through their branch offices without any similar requirements;

9. The interaction with a customer is a more significant factor in generating confusion than the use of shared offices.

In consideration of the foregoing, and for the reasons set out below, the FDIC has determined to propose to amend section 337.4 by: (1) Revising the separate office-separate entrance requirement, (2) deleting the prohibition on the use of a common name or logo, and (3) establishing certain affirmative disclosure requirements.

**Discussion**

It was the FDIC's intention in adopting both the prohibition on the use of a common name or logo and the separate office/separate entrance requirement (as well as the other requirements with respect to subsidiaries and affiliates) to address three concerns: (1) Safety and soundness (the FDIC wants to ensure that the bank is independent and operated in a manner consistent with safe and sound banking practices); (2) protection of the insurance fund (the FDIC wants to avoid claims against the bank arising out of the public's misperception as to with whom it is dealing and in what capacity); and (3) compliance with section 21 of the Glass-Steagall Act (12 U.S.C. 378) which prohibits securities companies from taking deposits and banks from engaging in certain securities activities. The FDIC continues to believe that the common name prohibition and the separate office/separate entrance requirement are consistent with the FDIC's authority and supportable as a matter of law. The FDIC has determined, however, upon careful reconsideration that its concerns articulated above can be addressed in a less burdensome manner without jeopardizing the FDIC's goals.

In the case of the separate office/ separate entrance requirement, the FDIC is satisfied by the experience of Washington Mutual Savings Bank, Seattle, Washington that neither a separate entrance nor strict adherence to separate offices is necessary to prevent public confusion or to avoid a piercing of the corporate veil provided that: (1) The space utilized by the securities company is physically segregated in some manner and prominently identified as belonging to the securities company and not the bank, and (2) the customers are informed in writing that their investments are not FDIC insured deposits, are not obligations of the bank, and are not otherwise supported by the bank.

Washington Mutual Savings Bank acquired a full service brokerage firm in 1982 which has operated since that time out of the bank's branch offices utilizing segregated office space clearly identified as belonging to the subsidiary The subsidiary's customers are given detailed disclosures: (1) Explaining the lack of FDIC insurance coverage for the securities investments, and (2) explaining that the subsidiary is a separate organization from the bank. According to the bank's comment, the subsidiary has processed more than 130,000 investment transactions since it began operating in the bank's branches during which time not one customer has complained that he or she purchased a security believing it to be FDIC insured.

In view thereof, and commensurate with the comments which argue that maintaining the current physical separation requirement adds additional expense, deters de novo entry, and lessens the ability of banks to compete with other financial services providers who can offer their customers the convenience of one-stop shopping, the FDIC has determined to propose a more flexible physical separation standard that would be coupled with affirmative disclosure. (The disclosure requirements, discussed in detail below, apply whether or not the bank and its subsidiary or affiliate share offices.)

In the case of the prohibition on the use of a common name or logo, the FDIC has taken note of the experience of several banks that have operated for, in some cases, several years while using the same name or a similar name to that of their securities company affiliates. These banks commented that they have not experienced any evidence of customer confusion arising from the use of a similar name to that of their affiliate. In addition, the FDIC notes that several events since the adoption of the common name prohibition have demonstrated that the absence of a common name and logo has not prevented customer confidence from being shaken in a depository institution in the event of adverse disclosures concerning the depository institution's subsidiary or affiliate. For example, publicity concerning Equity Programs Investment Corp. ("EPIC"), a subsidiary of Community Savings and Loan Association, Bethesda, Maryland, played a part in precipitating a run on the savings and loan association. Although the FDIC continues to believe that a common name or logo can exacerbate a difficult situation, the FDIC anticipates that the transaction and other restrictions built into section 337.4 should generally prevent such situations from arising. In view thereof, the incremental protection provided by a different name does not appear to outweigh the costs associated therewith as the same protection can be provided by less burdensome means, *i.e.*, disclosure.

The FDIC's primary concern in connection with a common name or logo is customer confusion and possible claims against the deposit insurance fund or the FDIC as receiver. Those concerns are more directly addressed by adopting a number of affirmative disclosures requirements. (Several comments pointed out that the absence of a common name would not necessarily prevent customers from being confused about deposit insurance depending upon the manner in which the bank and its subsidiary or affiliate market their respective services and the manner in which direct customer contact is handled.) In short, customer disclosures and certain restrictions with respect to advertisements should inform the public with whom they are dealing and in what capacity. Furthermore, in terms of a piercing of the corporate veil, if the remaining requirements as to separateness are met, and absent fraud, written disclosures should adequately protect against the bank being held liable on the obligations of its subsidiary or affiliate. Accordingly, the FDIC has determined to propose to eliminate the prohibition on the use of a common name or logo by a bank and its subsidiary or affiliate and substitute in lieu thereof a system of disclosures. This would be accomplished by deleting §§ 337.4(a)(2)(iii) and 337.4(c)(5) and footnotes 5 and 8 which accompany the relevant text.

**Physical Separation Requirement**

The regulation currently requires that the bank's securities subsidiary and affiliate by physically separate and distinct from the operation of the bank. (See § 337.4(a)(2)(ii) and § 337.4(c)(2)). Footnote 4 and footnote 7 to the regulation respectively indicate that the subsidiary and the affiliate must have separate offices that share no common entrance with the bank provided, however, that access to the subsidiary's or the affiliate's offices and access to the bank's offices may be through a common outer lobby or common corridor. The proposed amendments would leave untouched the language of §§ 337.4(a)(2)(ii) and 337.4(c)(2) but would revise footnotes 4 and 7 to provide as follows: "If the subsidiary [affiliate] conducts business in the same location in which the bank conducts business, the subsidiary [affiliate] must utilize physically separate offices or office space from that used by the bank. Such offices or office space must be clearly and prominently identified as belonging to the subsidiary [affiliate] and not the bank."

It is the FDIC's intent by proposing this amendment to establish a more flexible physical separation requirement than that presently required by the regulation, *i.e.*, one which leaves the decision as to how to physically segregate the operations of the subsidiary or affiliate from the operations of the bank to the institution itself. The FDIC wishes to stress, however, that actual physical segregation must be achieved. It is the FDIC's present opinion that signs, simple decor differences (*e.g.*, a different color scheme or style of furniture) and other types of distinctions which provide at best minimal differentiation (*e.g.*, badges on sales representatives) will not satisfy the physical separation requirement. With this in mind, the FDIC invites comment on whether or not the regulation should specify what is necessary to achieve physical separation or whether the FDIC should adopt the proposed language, enforce the regulation on a case-by-case basis, and eventually adopt one or more interpretive rulings pursuant to section 337.4 based upon agency experience if compliance has been unsatisfactory.

Any subsidiary that is required to be a bona fide subsidiary, and any affiliate subject to the restriction of section 337.4(c), will be able to take advantage of the revised physical separation requirement. Such subsidiaries and affiliates will also be required to make a number of disclosures to their customers and in their advertisements. (See discussion below.) The disclosure requirements would be accomplished by adding a new footnote to paragraphs 337.4(a)(2)(ix) and 337.4(c)(6) which respectively set forth the requirement that the bank's subsidiary [affiliate] conduct business in a manner so as to inform prospective and existing customers that the subsidiary [affiliate] is a separate entity from the bank and that the investments, for which the bank is not responsible, are not FDIC insured deposits. As the affirmative disclosure requirements clarify that written disclosures given at certain specified times are necessary in order to comply with the above, the disclosure requirements are applicable regardless of whether or not the bank and the subsidiary or affiliate share offices.

**Disclosure Requirements**

The proposed amendments add a number of disclosure requirements applicable to customer dealings as well as to the advertisement of services. These requirements not only serve as a substitute for the ban on the use of a common name or logo but will, as stated above, apply equally in the case of any subsidiary that is required to be a bona fide subsidiary, and any affiliate that engages in securities activities of the type prohibited to a bank under the Glass-Steagall Act, regardless of whether or not the bank and the subsidiary, or the bank and the affiliate, share offices or, with two exceptions, share a common name or logo.

The disclosure requirements and advertising restrictions would be accomplished by adding a new footnote to section 337.4(a)(2)(ix) (to be

redesignated as (a)(2)(viii)) and by revising footnote 9 to section 337.4(c)(6) (to be redesignated as (c)(5)) and footnote 8 respectively). Section 337.4(a)(2)(ix) and section 337.4(c)(6) provide that in order to be a bona fide subsidiary (or for the affiliate relationship to be permissible) the subsidiary (or affiliate) must conduct business pursuant to independent policies and procedures designed to inform customers and prospective customers that the subsidiary (or affiliate) is a separate organization from the bank and that investments recommended, offered or sold by or through the subsidiary (or affiliate) are not bank deposits, are not insured by the FDIC, are not guaranteed by the bank, and are not otherwise obligations of the bank. Footnote 6 and 8 as added by the proposal will clarify that this language requires, but is not necessarily limited to requiring the following affirmative disclosures: (1) The subsidiary or affiliate must provide to each customer or prospective customer a written disclosure indicating that the subsidiary or affiliate is a separate organization from the bank and that any investments recommended, offered or sold by or through the subsidiary or affiliate are not obligations of the bank are not FDIC insured deposits and are not guaranteed, or otherwise supported, by the bank; (2) in the case of any advertisements, promotions, solicitations, or the like which jointly promote or discuss the services or products of the bank and the subsidiary or affiliate, the advertisement, promotion etc., must clearly and prominently contain the same disclosure as above; (3) if the bank and its subsidiary or affiliate have the same or a similar name, all written communications with the bank's customers by the subsidiary or affiliate, be they direct or indirect, must carry the same clear and prominent disclosure; and (4) if the bank's subsidiary or affiliate recommends, offers, or sells any investment instrument that is denominated with the same or a similar name to that shared by the bank and its subsidiary or affiliate, the above disclosure must be made.

The item (1) disclosure must be given when the customer relationship is established prior to the subsidiary or affiliate executing or otherwise entering into any transaction with, or on behalf of, the customer. The deposit insurance disclaimer is not required if the instruments that are recommend, offered, or sold are in fact FDIC insured deposits. This disclosure is a one-time disclosure. The item (1) disclosure must be given to customers whose relationship with the subsidiary or affiliate was established prior to the effective date of the amendment. Disclosure to such customers must occur at the time of the customer's first transaction with the subsidiary or affiliate after the disclosure requirement becomes effective.

Insured nonmember banks are required under 12 U.S.C. 1828(a) to include in their advertisements a statement to the effect that their deposits are FDIC insured except in instances in which the FDIC has exempted advertisements which do not relate to deposits or when it is impractical to include such a statement therein. Section 328.2(c) of the FDIC's regulations (12 CFR 328.2(c)) currently provides that an insured bank is not required to use the FDIC official advertising statement if it is advertising banking services jointly with an uninsured institution or advertising securities services. The existing regulation, however, does not prohibit the bank from doing so. An advertisement which jointly promotes or discusses banking services and the securities services of a subsidiary or affiliate can mislead the public, especially if the advertisement indicates that the bank is FDIC insured and especially if the bank and its subsidiary or affiliate share the same or a similar name. The FDIC is therefore proposing that all such joint advertisements carry a disclaimer with regard to deposit insurance and clearly indicate that the bank and the subsidiary or affiliate are separate organizations. We emphasize that this disclosure, as well as the one-time disclosure required when a customer relationship is established, applies regardless of whether or not the bank and its subsidiary or affiliate share offices or a similar name.

As any communication with the bank's customers by the subsidiary or affiliate could mislead those customers if the bank and its affiliate or subsidiary have the same or a similar name, it is proposed that these communications carry the deposit insurance disclaimer as well as the other information described above. For example, if the bank's subsidiary places a flier or some other type of written promotion, announcement of services or investment opportunities, or the like, in bank statements mailed to the bank's depositors, or directly sends such promotions to customers named on the bank's customer list, the promotions must disclose that the instruments are not FDIC insured deposits, that the subsidiary is a separate organization from the bank, and that the obligations of the subsidiary are not obligations of the bank. Promotions to the general public (*e.g.* newspaper, magazine, or television advertisements) do not require such disclosures (even if the subsidiary or affiliate have a similar name to that of the bank) provided that such advertisements do not jointly promote the services of the bank. While such general promotions are potentially confusing if the bank and the affiliate or subsidiary have the same or a similar name, anyone initiating a customer relationship with the subsidiary or affiliate as a result of the general promotion will receive a written disclosure disclaiming deposit insurance coverage, etc. at the inception of the customer relationship. (We specifically invite comment on whether or not this disclosure requirement should apply regardless of whether the bank and its subsidiary or affiliate share a similar name.)

The above disclosures must also be made whenever an affiliate or subsidiary of the bank recommends, offers, or sells any investment instrument that is denominated with the same name or a name similar to that shared by the bank and its subsidiary or affiliate. For example if the bank is named ABC Bank & Trust and its securities affiliate is ABC Securities Company, if the affiliate sells shares in the ABC mutual funds, the disclosure would have to be given to the customers who purchased the shares in the mutual fund. The disclosure would have to be given prior to the execution of the trade. (We invite comment on whether or not this disclosure requirement should apply when the investment instrument is denominated with a name similar to the bank's name regardless of whether or not that name is shared by the subsidiary or affiliate.)

It is the FDIC's intent to generally use the following rules in determining whether a bank and its subsidiary or affiliate have a similar name. Any two names that share one or more of the same words or initials (other than commonly used business terms or abbreviations) will be considered to be similar and will thus trigger disclosure. The use by a bank and its affiliate or subsidiary as a name of an acronym publicly associated with the other will trigger disclosure. If any two names in question differ only slightly in spelling or wording, the two names will be considered to be similar and thus trigger disclosure.

In addition to inviting comment on the items specified above, the FDIC invites comment on whether or not the

regulation should set forth the specific text which must be used to accomplish disclosure and if so, precisely how that text should read. We invite comments on whether or not the FDIC should require that customer disclosures be given in conjunction with every securities transaction entered into by the bank's subsidiary or affiliate (in all cases? or only if the bank and the subsidiary or affiliate have the same or a similar name?). Lastly, we specifically invite comments addressing the timing of the disclosures, the burdens attendant to the disclosures as proposed, alternatives to the proposed amendments, comments on whether or not the proposed amendments will adequately protect banks, and comments on whether the regulation should require that the subsidiary or affiliate obtain the customer's signature on the disclosures which would then be retained and perhaps periodically updated.

**Paperwork Reduction/Regulatory Flexibility Act Analysis**

The Paperwork Reduction Act (44 U.S.C. 501 *et. seq.*) is inapplicable to the proposed amendments as they neither establish any recordkeeping or collection of information requirement nor amend any such existing requirement.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) the FDIC's Board of Directors hereby certifies that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small entities. The FDIC's Board of Directors bases its conclusion on the belief that the proposed amendments will reduce the costs (both monetary and competitive) that are associated with the existing prohibitions on the use of a common name or logo and the requirement for separate offices that share no common entrance. For this reason the Board of Directors anticipates that the effect of the amendments would be beneficial rather than adverse. Furthermore, small entities are generally expected to share the benefits of the amendments along with larger institutions.

**List of Subjects in 12 CFR PART 337**

Banks, banking, securities, State nonmember banks.

In consideration of the foregoing, the FDIC proposes to amend Part 337 of Title 12 of the Code of Federal Regulations as follows:

## PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 continues to read as follows:

**Authority:** Sec. 6, 64 Stat. 876, 12 U.S.C. 1816; sec. 8(a), section 2[8(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 879), effective September 21, 1950, as amended by section 204 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1054), effective October 16, 1966; section 6(c)(14) of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 618), effective September 17, 1978; and section 113(g) of title I of the Act of October 15, 1982 (Pub. L. No. 97–320; 96 Stat. 1473 and 1474), effective October 15, 1982; 12 U.S.C. 1818(a); sec. 8(b), section 2[8(b)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 202 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1046), as amended by section 110 of title I of the Act of October 28, 1974 (Pub. L. No. 93–495; 88 Stat. 1506); section 11 of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 624); sections 107(a)(1) and 107(b) of title I of the Act of November 10, 1978 (Pub. L. No. 95–630; 92 Stat. 3649 and 3653); and sections 404(c), 425(b) and 425(c) of title IV of the Act of October 15, 1982 (Pub. L. No. 97–320; 96 Stat. 1512 and 1524), 12 U.S.C. 1818(b); sec. 9, 64 Stat. 881–882, 12 U.S.C. 1819; sec. 18(j)(2), 92 Stat. 3664, 12 U.S.C. 1828(j)(2), sec. 422, 96 Stat. 1469 (Pub. L. No. 97–320); sec. 11(a), section 2[11(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 884)), effective September 21, 1950, as amended by section 301(c) of title III of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1055), effective October 16, 1966; section 7(a)(3) of title I of the Act of December 23, 1969 (Pub. L. No. 91–151; 83 Stat. 375) effective December 23, 1969; sections 101(a)(3) and 102(a)(3) of title I of the Act of October 28, 1974 (Pub. L. No. 93–495; 88 Stat. 1500 and 1502), effective November 27, 1974; section 1401(a) of title XIV of the Act of November 10, 1978 (Pub. L. No. 95–630; 92 Stat. 3712), effective March 10, 1979; section 323 of title III of the Act of December 21, 1979 (Pub. L. No. 96–153; 93 Stat. 1120); section 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96–221; 94 Stat. 147), effective March 31, 1980; and section 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97–110; 95 Stat. 1514), effective December 26, 1981; sec. 11(f), section 2[11(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 885), effective September 21, 1950, as amended by section 6(c)(20) of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 619), effective September 17, 1978, 12 U.S.C. 1821(f).

2. It is proposed that footnote 4 to § 337.4(a)(2)(ii) be revised to read as follows:

[4] If the subsidiary conducts business in the same location in which the bank conducts business, the subsidiary must utilize physically separate offices or office space from that used by the bank. Such offices or office space must be clearly and prominently identified so as to distinguish the subsidiary from the bank.

**§ 337.4 [Amended]**

3. It is proposed that § 337.4(a)(2) be amended by removing paragraph (iii) and footnote 5 to paragraph (iii), by redesignating paragraphs (iv), (v), (vi), (vii), (viii) and (ix) as paragraphs (iii), (iv), (v), (vi), (vii) and (viii) respectively and by redesignating footnote 6 as footnote 5.

4. It is proposed that § 337.4(a)(2) be amended by adding footnote 6 to the end of newly redesignated paragraph (viii) to read as follows:

[5] This provision requires, but is not necessarily limited to requiring, the following: (1) the subsidiary must provide each customer or prospective customer a written disclosure indicating that the subsidiary is a separate organization from the bank, that any investments recommended, offered or sold by or through the subsidiary are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the subsidiary are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank. Disclosure must be given at the inception of the customer relationship prior to the subsidiary executing or otherwise entering into any transaction with, or on behalf of, the customer. Any customer of the subsidiary who established that relationship prior to [insert effective date of the amendment] must be given the above disclosure at the time of the customer's first transaction with the subsidiary after [insert effective date of the amendment]; (2) any advertisements, solicitations, promotions or similar communications with customers or prospective customers which jointly promote or discuss the services or products of the subsidiary and the bank must clearly and prominently state that the subsidiary and the bank are separate organizations, that the investments recommended, offered, or sold by or through the subsidiary are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the subsidiary are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank; (3) if the bank has the same name or a similar name to that of its subsidiary, all written communications with the bank's customers by the subsidiary, either directly or indirectly through the bank, must clearly and prominently indicate that the subsidiary is a separate organization from the bank, that the investments recommended, offered or sold by or through the subsidiary are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the subsidiary are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank; and (4) the above disclosure must be given if the bank's subsidiary recommends, offers, or sells any investment instrument that is denominated with the same name or a name similar to that shared by the bank and its subsidiary. Disclosure must be given prior to the execution of the trade.

5. It is proposed that footnote 7 to § 337.4(c)(1) be revised to read as follows:

[7] If the bank conducts business in the same location in which the affiliate conducts business, the bank must utilize physically separate offices or office space from that used by the affiliate. Such offices or office space must be clearly and prominently identified so as to distinguish the bank from the affiliate.

6. It is proposed that § 337.4 be amended by removing from § 337.4(c) paragraph (5) and footnote 8 to paragraph (5), by redesignating paragraph (6) as paragraph (5), by redesignating footnote 9 as footnote 8 and adding it to the end of newly redesignated paragraph (5), by redesignating footnotes (10), (11) and (12) as (9), (10) and (11) respectively, and by revising newly redesignated footnote 8 to read as follows:

[8] This provision requires, but is not necessarily limited to requiring, the following: (1) The affiliate must provide to each customer or prospective customer a written disclosure indicating that the affiliate is a separate organization from the bank, that any investments recommended, offered or sold by or through the affiliate are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the affiliate are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank. Disclosure must be given at the inception of the customer relationship prior to the affiliate executing or otherwise entering into any transaction with, or on the behalf of, the customer. Any customer of the affiliate who established that relationship prior to [insert effective date of the amendment] must be given the above disclosure at the time of the customer's first transaction with the affiliate after [insert effective date of the amendment]; (2) any advertisements, solicitations, promotions or similar communications with customers or prospective customers which jointly promote or discuss the services or products of the affiliate and the bank must clearly and prominently state that the affiliate and the bank are separate organizations, that the investments recommended, offered, or sold by or through the affiliate are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the affiliate are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank; (3) if the bank has the same name or a similar name to its affiliate, all written communications with the bank's customers by the affiliate, either directly or indirectly through the bank, must clearly and prominently indicate that the affiliate is a separate organization from the bank, that the investments recommended, offered or sold by or through the affiliate are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the affiliate are not obligations of the bank and are not guaranteed, otherwise supported, by the bank; and (4) the above disclosures must be given if the bank's affiliate recommends, offers, or sells any investment instrument that is denominated with the same name or a name similar to that shared by the bank and its affiliate. Disclosure must be given prior to the execution of the trade.

By Order of the Board of Directors.

Dated at Washington, DC, this 31st day of March, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87-7866 Filed 4-8-87; 8:45 am]

BILLING CODE 6714-01-M

---

## DEPARTMENT OF COMMERCE

## Office of the Secretary

## 15 CFR Part 7

## National Bureau of Standards

## 15 CFR Part 280

**[Docket No. 70219-7019]**

## National Voluntary Laboratory Accreditation Program

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The National Bureau of Standards proposes to revise the National Voluntary Laboratory Accreditation (NVLAP) procedures (15 CFR Part 7) in three ways. First, the concept of Laboratory Accreditation Programs (LAPs) within the larger framework of NVLAP is proposed to be eliminated. This will allow NVLAP to offer accreditation to laboratories in the most cost effective manner, be it product testing accreditation or field of testing accreditation, resulting in lower costs to the NVLAP program and to individual laboratories seeking accreditation. Second, the National Laboratory Accreditation Advisory Committee (NLAAC) is proposed to be eliminated. Advice and guidance of NLAAC were vital to NVLAP during the early years of its development. After ten successful years of operation, however, NVLAP no longer requires the expertise originally provided by the Committee.

Third, the NVLAP procedures are proposed to be redesignated as Part 280 of title 15 of the Code of Federal Regulations (CFR), thus making their placement within the CFR consistent with the location of the NVLAP Program within the National Bureau of Standards.

**DATE:** Comments on the proposed revision must be received by June 8, 1987.

**ADDRESS:** Comments on the proposed revision should be mailed to Harvey Berger, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** Harvey Berger, (301) 975-4017.

**SUPPLEMENTARY INFORMATION:**

### Background

The procedures for the National Voluntary Laboratory Program (NVLAP), were first published in the **Federal Register** on February 25, 1976 (41 FR 8163-8168). Since then, the NVLAP procedures have been amended five times: On March 9, 1979, to institute optional procedures for use by Federal agencies (designated Part 7b—44 FR 12982-12990); on April 25, 1979, to institute optional procedures for use by qualified private sector organizations (designated Part 7c—44 FR 24274-24282); on April 21, 1980, to permit inclusion of additional relevant standards and test methods in a laboratory accreditation program (LAP) established under NVLAP procedures (45 FR 26993-26994); on July 17, 1981, to add accreditation criteria to the NVLAP procedures and to replace separate criteria committees with one NVLAP advisory committee (46 FR 37029-37040); and on November 8, 1984, to update and streamline the procedures by consolidating Parts 7a, 7b and 7c into a new Part 7. The NVLAP procedures presently appear as Part 7 of title 15 of the Code of Federal Regulations.

There are three major reasons for revising the NVLAP procedures. First, the concept of Laboratory Accreditation Programs (LAPs) within the larger framework of NVLAP is eliminated. A given LAP offers a "menu" of test methods related to a specific product or service from which a laboratory may select any number for accreditation. While the range of NVLAP activities remained small, the establishment of LAPs were a convenient administrative mechanism for offering accreditation to laboratories with limited needs and interest. As the NVLAP program has expanded, however, LAPs have become increasingly cumbersome. Laboratories seeking accreditation for a specific field of testing must apply for accreditation in all LAPs applicable to the products they test, and must pay separate fees for each LAP. Eliminating the concept of LAPs will allow NVLAP to offer accreditation to laboratories in the most cost effective manner, be it product testing accreditation or field of testing accreditation. The result will be lower costs to the NVLAP program and to individual laboratories seeking accreditation. The second reason for revising the NVLAP procedures is to

eliminate provisions for a National Laboratory Accreditation Advisory Committee (NLAAC). Advice and guidance of NLAAC were vital to NVLAP during the early years of its development. After ten successful years of operation, however, NVLAP no longer requires the advice originally provided by the Committee. The third reason for revising the NVLAP procedures is to redesignate them as Part 280 of title 15 of the Code of Federal Regulations (CFR), thus making their placement within the CFR consistent with the location of the NVLAP Program within the National Bureau of Standards.

**Description of Proposed Changes**

*Elimination of LAP Concept*

Subpart B of the NVLAP procedures are revised throughout to eliminate references to Laboratory Accreditation Programs (LAPs). Other conforming changes are made as appropriate. The effect of these changes is to eliminate the LAP structure in NVLAP's process of determining what accreditations to offer to testing laboratories.

*Elimination of National Laboratory Accreditation Advisory Committee*

Section 7.5 of the present NVLAP procedures, which pertains to the establishment and functions of a National Laboratory Accreditation Advisory Committee (NLAAC), is removed in its entirety. In addition, the definition contained in section 7.4 of "Advisory Committee" is deleted. The effect of these changes is to remove all references to NLAAC from the procedures.

*Redesignation as Part 280*

Part 7 of title 15 of the Code of Federal Regulations is redesignated as Part 280 of the same title. In addition, old sections 7.6 and 7.7 are redesignated as new sections 280.5 and 280.6, thus eliminating the gap in numbering caused by the removal of the old section 7.5 pertaining to the National Laboratory Accreditation Advisory Committee. Other conforming changes are made where appropriate.

*Request for Comments*

Persons interested in commenting on this proposed revision to the NVLAP procedures contained in 15 CFR Part 7 are requested to submit their comments by June 8, 1987 to Harvey Berger, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899.

All written comments furnished in response to this notice will become part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Herbert Hoover Building, Room 6628, 14th Street between E Street and Constitution Avenue, NW., Washington, DC 20230.

*Classification*

The NVLAP procedures are rules set out under title 15 of the Code of Federal Regulations (CFR) for administering this voluntary program. These procedures have been included in the CFR so that all affected parties have a widely distributed public source for how the program operates and for determining laboratory accreditation requirements. Users of accredited laboratories may then know the requirements that the laboratories have met in demonstrating competence.

This document is not a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor will it have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if promulgated, would not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because the program that will operate under this rule, NVLAP, is entirely voluntary for the participating laboratories, and does not have a substantial economic effect upon those laboratories that do choose to participate. It is not a major federal action requiring an environmental assessment under the National Environmental Policy Act. The information collection requirements contained in the NVLAP procedures have been approved by the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 0652–0003.

**List of Subjects in 15 CFR Parts 7 and 280**

Laboratories, National Bureau of Standards, Measurement standards, Voluntary standards.

Dated: March 25, 1987.

**D. Bruce Merrifield,**

*Assistant Secretary for Productivity, Technology and Innovation.*

Dated: April 12, 1987.

**Ernest Ambler,**

*Director, National Bureau of Standards.*

For the reasons set out in the preamble, it is proposed that Title 15 of the Code of Federal Regulations be amended as follows:

**PART 7—[REDESIGNATED AS PART 280]**

1. Part 7 is redesignated as Part 280.

**PART 280—[AMENDED]**

2. The authority citation for Part 280 is revised to read as follows:

**Authority:** Sec. 2, 31 Stat. 1449, as amended (15 U.S.C. 272); 15 U.S.C. 275a; Reorg. Plan No. 3 of 1946, Part VI.

3. Subpart A is amended as follows:

A. Section 280.1 is revised to read as follows:

**§ 280.1 Purpose.**

The purpose of Part 280 is to set out procedures under which the National Voluntary Laboratory Accreditation Program (NVLAP) will function.

B. Section 280.2 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 280.2 Description and goals of NVLAP.**

(a) NVLAP is a system for accrediting testing laboratories found competent to perform specific tests or types of tests. Competence is defined as the ability of a laboratory to meet the NVLAP conditions (Section 280.32) and to conform to the criteria (Section 280.33) as tailored and interpreted for test methods, types of test methods, products, services, or standards for which the laboratory seeks accreditation.

* * * * *

(c) NVLAP offers accreditation programs on the basis of requests and demonstrated need. The specific test methods, types of test methods, products, services, or standards must be requested. The Director of the National Bureau of Standards (NBS) does not unilaterally propose or decide the scope of accreditation. Communication with other laboratory accreditation systems is fostered to encourage development of common criteria and approaches to accreditation and to promote the domestic, foreign, and international acceptance of test data produced by the accredited laboratories.

* * * * *

C. Section 280.3 is revised to read as follows:

**§ 280.3 Layout of procedures.**

Subpart A describes considerations which relate in general to all aspects of NVLAP. Subpart B describes how technical areas for accreditation are requested, developed and announced. Subpart C describes procedures for accrediting laboratories. Subpart D sets out the conditions and criteria for NVLAP accreditation.

D. Section 280.4 is revised to read as follows:

**§ 280.4 Definitions.**

*Accreditation criteria* means a set of requirements used by an accrediting body which a laboratory must meet to be accredited.

*Director of NBS* means the Director of the National Bureau of Standards or designee.

*Director of OPSP* means the Director of the NBS Office of Products Standards Policy or designee.

*Laboratory accreditation* is a formal recognition that a testing laboratory is competent to carry out specific tests or types of tests.

*Laboratory assessment* means the on-site examination of a testing laboratory to evaluate its compliance with specified criteria.

*NBS* means the National Bureau of Standards.

*NVLAP* means the National Voluntary Laboratory Accreditation Program.

*OPSP* means the NBS Office of Product Standards Policy.

*Person* means associations, companies, corporations, educational institutions, firms, government agencies at the federal, state and local level, partnerships, and societies—as well as divisions thereof—and individuals.

*Product* means a type or a category of manufactured goods, constructions, installations, and natural and processed materials, or those associated services whose characterization, classification, or functional performance is specified by standards or test methods.

*Proficiency testing* means methods of checking laboratory testing performance by means of interlaboratory tests.

*Testing laboratory* is a laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of products.

*Traceability of the accuracy of measuring instruments* is a documented chain of comparison connecting the accuracy of a measuring instrument to other measuring instruments of higher accuracy and ultimately to a primary standard.

**§ 280.5 [Removed]**

E. Section 280.5 is removed in its entirety.

**§ 280.5 [Redesignated from § 280.6]**

F. Section 280.6 is redesignated as § 280.5.

**§ 280.6 [Redesignated from § 280.7]**

G. Section 280.7 is redesignated as § 280.6.

4. Subpart B is revised to read as follows:

**Subpart B—Offering Accreditation**

280.11 Requesting news areas for accreditation.
280.12 Determination of need.
280.13 Request from a government agency.
280.14 Request from a private sector organization.
280.15 Development of technical requirements.
280.16 Coordination with federal agencies.
280.17 Announcing availability of accreditation.
280.18 Adding test methods.
280.19 Termination of accreditation activities.

## Subpart B—Offering Accreditation

**§ 280.11 Requesting new areas for accreditation.**

(a) Any person may request the Director of NBS to begin offering accreditation to testing laboratories for any specific test methods, types of test methods, products, services, or standards which are not presently being offered for accreditation by NVLAP.

(b) Each request must be in writing and should include:

(1) The scope of the proposed new accreditation, in terms of test methods, products, testing services or standards proposed for accreditation.

(2) Specific identification of the applicable standards and test methods including appropriate designations, and the organizations or standards writing bodies having responsibility for them;

(3) A statement of need including:

(i) Technical and economic reasons why the public interest would be served by offering the new accreditation;

(ii) Evidence of a national need to accredit testing laboratories for the specific scope beyond that served by an existing laboratory accreditation program in the public or private sector;

(iii) An estimate of the number of laboratories that may seek accreditation; and

(iv) An estimate of the number and nature of the users of such laboratories; and

(4) A statement of the extent to which the requestor is willing to support developmental aspects of the proposed accreditation with funding and/or personnel.

(c) The Director of OPSP may request clarification of the information required by paragraph (b) of this section.

(d) Before making a determination in response to a request under paragraph (a) of this section, the Director of NBS shall publish a **Federal Register** notice of the receipt of the request if the request complies with the requirements of paragraph (b) of this section. This notice will:

(1) Describe the scope of the proposed new accreditation;

(2) Indicate how to obtain a copy of the request; and

(3) State that anyone may submit comments on the need for the proposed accreditation to the Director of OPSP within 60 days of the date of the notice.

**§ 280.12 Determination of need.**

(a) The Director of NBS shall offer accreditation on the basis of need. Government agencies and private sector organizations may establish the need by using §§ 280.13 and 280.14.

(b) After receipt of a request under section 280.11, the Director of NBS shall analyze it to determine if a need exists for the requested accreditation. In making this determination, the Director of NBS shall consider the following:

(1) The needs and scope of the initial request;

(2) The needs and scope of the user population;

(3) The nature and content of other relevant public and private sector laboratory accreditation programs;

(4) Compatibility with the criteria referenced in Section 280.33;

(5) The importance of the requested accreditation to commerce, consumer well-being, or the public health and safety;

(6) The economic and technical feasibility of accrediting testing laboratories for the test methods, types of test methods, products, services, or standards requested; and

(7) Recommendations from written comments for altering the scope of the request by adding or deleting test methods, types of test methods, products, services or standards.

(c) If the Director of NBS decides that a need has been demonstrated, and if resources are available, the Director of OPSP shall notify interested persons of the decision to offer the requested accreditation.

(d) If the Director of NBS concludes that there is a need for accreditation but there are no resources for development, the Director of OPSP shall notify the requestor and other interested persons

of the decision not to proceed until resources become available.

(e) If the Director of NBS decides that a need for a requested new accreditation has not been demonstrated, the Director of OPSP shall notify the requestor and other interested persons of the decision and the reasons not to proceed.

**§ 280.13 Request from a government agency.**

(a) Any federal, state or local agency responsible for regulatory or public service programs established under statute or code, which has determined a need to accredit testing laboratories within the context of its programs, may request the Director of NBS to begin offering accreditation to testing laboratories for any specific test methods, types of test methods, products, services, or standards which are not presently being offered for accreditation by NVLAP.

(b) Each request should include the information required in § 280.11(b) and:

(1) A description of the procedures followed or a citation of the specific authority used to determine the need for accreditation in a new test method, type of test method, product, service or standard; and

(2) For state and local agencies, a statement of why the requested new accreditation should be of national scope.

(c) The Director of OPSP may request clarification of the information required by paragraph (b) of this section.

(d) Before deciding to offer an accreditation in response to a request under paragraph (a) of this section, the Director of NBS may publish a **Federal Register** notice of the receipt of the request indicating how to obtain a copy of the request and stating that anyone may submit comments on the need for the proposed accreditation to the requesting government agency.

(e) The Director of OPSP shall notify interested persons of the decision to proceed or not to proceed with development of new accreditation.

**§ 280.14 Request from a private sector organization.**

(a) Any private sector organization which has determined a need may request the Director of NBS to begin offering accreditation to testing laboratories for any specific test methods, types of test methods, products, services, or standards which are not presently being offered for accreditation by NVLAP, if it uses procedures meeting the following conditions:

(1) Public notice of meetings and other activities including requests for accreditation are provided in a timely fashion and are distributed to reach the attention of interested persons;

(2) Meetings are open and participation in activities is available to interested persons;

(3) Decisions reached by the private sector organization in the development of a request for accreditation represent substantial agreement of the interested persons;

(4) Prompt consideration is given to the expressed views and concerns of interested persons;

(5) Adequate and impartial mechanisms for handling substantive and procedural complaints and appeals are in place; and

(6) Appropriate records of all meetings are maintained and the official procedures used by the private sector organization to make a formal request are made available upon. request to any interested person.

(b) Each request must be in writing and should include the information required in § 280.11(b) and a description of the way in which the organization has met the conditions specified in paragraph (a) of this section.

(c) The Director of OPSP may request clarification of the information required by paragraph (b) of this section.

(d) Before deciding to offer an accreditation in response to a request under paragraph (a) of this section, the Director of NBS may publish a **Federal Register** notice of the receipt of the request. The notice will indicate how to obtain a copy of the request and will state that anyone may submit comments on the need for the proposed accreditation to the requesting private sector organization within 60 days of the date of the notice.

(e) The Director of OPSP shall notify interested persons of the decision to proceed or not to proceed with development of new accreditation.

**§ 280.15 Development of technical requirements.**

(a) Technical requirements for accreditation are specific for each test method, type of test method, product, service, or standard for which accreditation is considered, and tailor the criteria referenced in § 280.33.

(b) The Director of OPSP shall develop the technical requirements based on expert advice. This advice may be obtained through one or more informal public workshops or other suitable means.

(c) The Director of OPSP shall make every reasonable effort to ensure that the affected testing community within the scope of the accreditation is informed of any planned workshop. Summary minutes of each workshop will be prepared. A copy of the minutes will be made available for inspection and copying at the NBS Records Inspection Facility.

**§ 280.16 Coordination with Federal agencies.**

As a means of assuring effective and meaningful cooperation, input, and participation by those federal agencies that may have an interest in and may be affected by planned accreditation activities, the Director of OPSP shall communicate and consult with appropriate officials within those agencies.

**§ 280.17 Announcing offering of accreditation.**

(a) When the Director of OPSP has completed the development of the technical requirements and established a schedule of fees for accreditation, the Director of NBS shall publish a notice in the **Federal Register** that accreditation is being offered by NBS.

(b) The notice will:

(1) Identify test methods for which accreditation will be offered; and

(2) Advise how to apply for accreditation.

(c) The Director of OPSP shall establish fees in amounts that will enable NVLAP to be self-sufficient. The Director of OPSP shall revise the fees when necessary to maintain self-sufficiency.

**§ 280.18 Adding test methods.**

Written requests will be considered from any person wishing to add specific standards, test methods, or types of test methods to an established or developing accreditation activity. The Director of OPSP may choose to make them available for accreditation when:

(a) The additional standards, test methods, or types of test methods requested are directly relevant to established activities;

(b) It is feasible and practical to accredit testing laboratories for the additional standards, test methods, or types of test methods; and

(c) It is likely that laboratories will seek accreditation for the additional standards, test methods, or types of test methods.

**§ 280.19 Termination of accreditation activities.**

(a) The Director of NBS may terminate the offering of accreditation when the Director of NBS determines that a need no longer exists to accredit testing laboratories for the relevant products or

testing services. In the event that the Director of NBS proposes such a termination, a notice will be published in the **Federal Register** setting forth the basis for that determination.

(b) The notice published under paragraph (a) of this section will provide a 60-day period for submitting written comments on the proposal to terminate accreditation. All written comments will be made available for public inspection and copying in the NBS Records Inspection Facility, Room E106, Administration Building, NBS.

(c) After the comment period, the Director of NBS shall determine if public support exists for continuation of the accreditation activity in question. If public comments support continuation of the accreditation activity, the Director of NBS shall publish a **Federal Register** notice announcing continuation of the accreditation activity. If public support does not exist for continuation, the accreditation will be terminated effective 90 days after the date of the published notice of intent to terminate.

(d) If accreditation is terminated, the Director of OPSP shall no longer grant or renew accreditations following the effective date of termination. Accreditations previously granted will remain effective until their expiration date unless terminated voluntarily by the laboratory or revoked by the Director of OPSP.

5. Subpart C is amended as follows:

A. Section 280.21 is amended by revising paragraph (a) to read as follows:

**§ 280.21 Applying for accreditation.**

(a) Any laboratory may request an application for accreditation in accordance with instructions provided in notices announcing the formal offering of accreditation.

* * * * *

B. Section 280.22 is amended by revising paragraph (a) to read as follows:

**§ 280.22 Assessing and evaluating a laboratory.**

(a) Information used to evaluate a laboratory's compliance with the conditions for accreditation set out in § 280.32, the criteria for accreditation set out in § 280.33, and the technical requirements established will include:

(1) On-site assessment reports;

(2) Laboratory responses to identified deficiencies; and

(3) Laboratory performance on proficiency tests.

* * * * *

**§§ 280.26 through 280.30 [Reserved]**

C. Sections 280.26 through 280.30 are added and reserved.

6. Subpart D is amended as follows:

A. Section 280.31 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 280.31 Application for accreditation conditions and criteria.**

(a) To become accredited and maintain accreditation, a laboratory must meet the conditions for accreditation set out in § 280.32 and the criteria set out in § 280.33.

* * * * *

(c) The criteria are tailored and interpreted for the test methods, types of test methods, products, services or standards. These tailored criteria are the technical requirements for accreditation developed through the procedures of § 280.15.

* * * * *

B. Section 280.32 is amended by revising paragraphs (a)(13)(iii) and (b)(7) to read as follows:

**§ 280.32 Conditions for accreditation.**

(a) * * *

(13) * * *

(iii) Become unable to conform to any of these conditions or the applicable criteria of § 280.33 and related technical requirements.

(b) * * *

(7) Other information as may be needed.

C. Section 280.33 is amended by revising paragraphs (b)(6), (e)(6), (g)(2) and (g)(4) to read as follows:

**§ 280.33 Criteria for accreditation.**

* * * * * *

(b) * * *

(6) The laboratory shall have one or more signatories approved by the Director of OPSP to sign or have their names appear on test reports that reference NVLAP accreditation.

Approved signatories shall:

(i) Be competent to make a critical evaluation of test results; and,

(ii) Occupy positions within the laboratory's organization which makes them responsible for the adequacy of test results.

* * * * * *

(e) * * *

(6) Maintain procedures for the receipt, retention, and disposal of test items, including procedures for storage and handling precautions to prevent damage to test items which could invalidate the test results. Any relevant instructions provided with the tested item must be observed.

* * * * * *

(g) * * *

(2) The laboratory shall issue corrections or additions to a test report only by a further document suitably marked, e.g. "Supplement to test report serial number . . . . . ," which meets the relevant requirements of § 280.33(g)(1).

* * * * * *

(4) The laboratory shall ensure that all test reports endorsed with the NVLAP logo include the name of an approved signatory.

[FR Doc. 87-7713 Filed 4-8-87; 8:45 am]
BILLING CODE 3510-13-M

---

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Part 655

**[FHWA Docket No. 86-12, Notice No. 2]**

## National Standards for Traffic Control Devices; Revision of Manual on Uniform Traffic Control Devices; Supplemental Information and Extension of Comment Period

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Supplemental information to advance notices of proposed amendments; extension of comment period.

**SUMMARY:** The FHWA issued an advance notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD) which was published June 9, 1986, at 51 FR 20840 with the comment period closing July 20, 1987. The supplementary information and extension of comment period are being provided in response to a request by the National Committee on Uniform Traffic Control Devices and others that the timeframe should be extended for receipt of comments concerning substantive revisions of the manual. The comment period is being extended to September 1, 1987.

**DATE:** Written comments must be received on or before September 1, 1987.

**ADDRESS:** Submit written comments, preferably in triplicate, to FHWA Docket No. 86-12, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The

MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950–038–00000–1. The purchase of a MUTCD includes a subscription service for adopted revisions.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip O. Russell, Office of Traffic Operations, (202) 366–2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366–1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.ma. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** As discussed in the June 9, 1986, advance notice of proposed amendments to the MUTCD, the FHWA is concerned with the extent of the changes made to the 1978 MUTCD and the impact that these and future changes have on the integrity and continuity of the MUTCD. The FHWA invites responses concerning the need for reformatting or revising the MUTCD and the timeframe in which reformatting or revising should occur. This supplement to the advance notice is intended to extend the comment period and to provide an opportunity ot more fully explore needed changes to Part VI if MUTCD on Traffic Controls for Street and Highway Construction and Maintenance Operations, as they relate to the state-of-the-practice of construction and maintenance work zone traffic control device standards and management. The FHWA is continuing its initiative to review and update Part VI. To assure that all subject areas related to the control of traffic through construction, maintenance, utility, and emergency operation zones are included in this updated section and that it is understandable and useful to those who use this section of the MUTCD, the FHWA solicits comments on the content of Part VI, as well as the format of the entire MUTCD.

In addition to the questions presented in the June 9, 1986, advance notice, the FHWA intends to address a number of Part VI issues which are intended to improve the utility of the MUTCD. A plan to address a number of Part VI standards has been prepared and is available in the Docket. Comments on the following and other Part VI provisions are solicited. For example: (1) Are warrants needed for the application of the different channelizing devices? (2) Should specific traffic control devices applications be prescribed for spot utility operations, or for residential, low-speed, or low-volume work zones? (3) Are device and application standards needed for variable message signs? (4) How should Part VI be arranged to be most useful? The FHWA will use the input from the public to develop an outline for Part VI which we anticipate publishing in the **Federal Register** in December 1987. Although we are asking for comments by September 1, 1987, to the extent possible, additional input will be accepted after that date.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. For the reasons stated herein and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. Due to the preliminary nature of the inquiry, a regulatory evaluation has not been prepared at this time. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

**List of Subjects in 23 CFR Part 655**

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. Secs. 109(b) and (d), 402(a); 49 CFR 1.48(b), (c), and (n))

Issued on: March 26, 1987.

**R.A. Barnhart,**

*Federal Highway Administrator, Federal Highway Administration.*

[FR Doc. 87–7945 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Part 40

### Administration of Education Loans, Grants, and Other Assistance for Higher Education; Extension of Comment Period.

**AGENCY:** Bureau of Indian Affairs (BIA), Interior.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This Notice extends the comment period from April 2, 1987 to May 4, 1987, on the proposed rule concerning the revision of established grant and financial aid policies and the introduction of uniform procedures for the administration of the higher education grant program including requirements to improve the administrative efficiency of the program. This proposed rule was published in the **Federal Register** on March 3, 1987 (52 FR 6482). The extension of the comment period is in response to requests received from tribes and other interested parties to allow additonal time for comment.

**DATE:** Comments must be received on or before May 4, 1987.

**ADDRESS:** Comments should be mailed or delivered to: Mr. Ronal D. Eden, Acting Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs), Bureau of Indian Affairs, Mail Stop 3512 MIB, 18th and C Streets, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Ms. Esther Whalen, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, Branch of Post Secondary, Room 3524, Code 523, 18th and C Streets, NW., Washington, DC 20240, telephone number: (202) 343–4871.

**Ross O. Swimmer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 87–7841 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–02–M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1601

### Administrative Review; No Cause Determinations

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of Proposed rulemaking.

**SUMMARY:** The Equal Employment Opportunity Commission is publishing this proposed rule amending its procedural regulation (29 CFR Part 1601) to implement the Policy Statement on No Cause Determinations adopted by the Commission on December 15, 1986. The amendment provides for a review process by the Commission from District Directors' letters of determination that find no reasonable cause to believe that

unlawful employment discrimination had occurred.

**DATE:** Written comments on the proposed rule must be received on or before May 11, 1987.

**ADDRESSES:** Comments should be addressed to the Office of Executive Secretariat, Room 507, Equal Employment Opportunity Commission, 2401 E Street, NE., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's Library, Room 298, 2401 E Street, NW., Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Leonora L. Guarraia, Office of Program Operations (202) 634–6905.

**SUPPLEMENTARY INFORMATION:** The Equal Employment Opportunity Commission unanimously voted on December 15, 1986, to permit review of cases where the issuing director finds no discrimination. Currently, after the agency has determined that there is not reasonable cause to believe that unlawful employment discrimination has occurred, EEOC's procedure is to issue a letter of determination that is final when issued and that ends Commission processing of the charge. The Commission also notifies individuals who file charges of their right to file independent lawsuits. In adopting the policy Commission Chairman Clarence Thomas stated, "To further strengthen our credibility as a law enforcement agency and to enhance the public's confidence in our invetigations we are establishing this procedure to review such determinations at the request of charging parties." The Commission reviews all cause decisions in which conciliation efforts fail in determining whether to file suit. The new policy reaches cases that are not now subject to Commission review.

The proposed rule implements the new review procedure. When the field office completes an investigation and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred as to all issues or as to some but not all issues addressed in the determination, the issuing director will send a letter of determination to the parties indicating the finding. The issuance of the director's letter of determination by the field director does not terminate the Commission's administrative processing of the charge. The letter of determination will notify the charging party of his or her right to request a review of the no cause finding by the Commission within 14 days of the date of the letter of determination; and that if the charging party does not request a review of a no cause finding within 14 days of the date of the letter of determination, the District Director's letter of determination will become the final determination of the Commission on the 15th day after the date of the letter of determination. The letter of determination will include notice to the charging party that absent a request for review by the Commission he or she may bring suit in federal court within 90 days of the date of the final determination of the Commission. No separate notice of right to sue will be sent in no cause determination cases. In adopting this procedure, the Commission intends that administrative processing not end with issuance of the issuing director's letter of determination. Rather, administrative processing will include the charging party's opportunity to seek review of the issuing director's no cause determination and appeal the determination to the Commission. Administrative processing of no cause charges will end when:

1. The field director's no cause letter of determination becomes the Commission's final determination. This occurs on the 15th day following the date of the field director's letter of determination, if the charging party has not sought a review of that determination, or

2. The Commission issues a no cause decision following review.

If the review results in a reasonable cause finding, the Commission will process the charge in accordance with its normal procedures. In those instances where no reasonable cause is found as to some but not all issues of a charge, the Commission's conciliation process will begin after any review of the no cause findings in completed.

To accomplish these changes, the Commission proposes to add a new § 1601.19. Current § 1601.18 will move to § 1601.6(b) and current § 1601.19 will move to § 1601.18. Section 1601.19 will contain the review procedure. The Commission also proposes changes to §§ 1601.21 1601.24 and 1601.28.

The proposed rule exempts from the review procedure charges processed by 706 agencies under contract with the Commission. Pursuant to 29 CFR 1601.21(e) and 1601.76 the Commission already reviews determinations of charges processed by 706 agencies. The rule does not apply to Commission decisions, no cause determinations issued by the Commission, or to no cause determinations issued by headquarters directors. Those determinations are to be issued under paragraph (b) of the new § 1601.19.

In the proposed review procedure, the Commission will delegate authority to issue no cause letters of determination to the Director of the proposed Determinations Review Program, Office of Program Operations.

The Commission hereby publishes this proposed rule for public comment.

Accordingly, it is proposed to amend Part 1601 as set forth below.

For the Commission.

**Clarence Thomas,**

*Chairman.*

April 1, 1987.

## PART 1601—[AMENDED]

1. The authority citation for 29 CFR Part 1601 continues to read as follows:

**Authority:** Section 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2000e–12(a), unless otherwise noted.

**§ 1601.6 [Amended]**

**§ 1601.18 [Amended]**

2. It is proposed to amend 29 CFR 1601.6 by making the current text of the regulation paragraph (a) and by redesignating the text of section 1601.18 as paragraph (b) of § 1601.6.

**§ 1601.19 [Amended and Redesignated as § 1601.18]**

3. It is proposed to amend 29 CFR 1601.19 as followings:

Section 1601.19(b) is removed and paragraphs (c), (d), (e), (f) and (g) are redesignated as paragraphs (b), (c), (d), (e) and (f), respectively.

Redesignated § 1601.19(e) is amended as follows: The first sentence is revised as follows: "Written notice of disposition, pursuant to paragraphs (a), (b), (c) or (d) of this section, shall be issued to the person claiming to be aggrieved and to the person making the charge on behalf of such person, where applicable; in the case of a Commission charge, to all persons specified in § 1601.28(b)(2); and to the respondent.

Redesignated § 1601.19(f) is amended as follows: The second sentence is revised as follows: "The Commission hereby delegates authority to Area Directors, or Local Directors to dismiss charges pursuant to paragraphs (a), (b) and (c) of this section, as limited by sec. 1601.21(d)." The third sentence is removed.

**§ 1601.18: [Redesignated from § 1601.19]**

Section 1601.19 as amended above is redesignated as § 1601.18.

4. It is proposed to add a new § 1601.19 as follows:

**§ 1601.19 No cause determinations: procedure and authority.**

(a) Where the field office completes its investigation of a charge and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination or as to some but not all issues addressed in the determination, the issuing director shall issue a letter of determination to all parties to the charge indicating the finding. The issuing director's letter of determination shall not be final when issued. The letter of determination shall inform the charging party of the right to request a review of the determination by the Commission. The charging party, the person claiming to be aggrieved or the person on whose behalf a charge was filed may request a review of the determination within 14 days of the date of the determination by the Director, Determinations Review Program, Office of Program Operations, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507.

(1) The issuing director's letter of determination shall inform the charging party of the right to sue in federal district court within 90 days of the date that the letter of determination becomes the Commission's final determination. The Commission shall not issue a separate notice of right to sue for no cause determinations.

(2) If the charging party does not timely request a review of the issuing director's letter of determination, the letter of determination shall become the final determination of the Commission on the 15th day from the date of the issuing director's letter of determination. If the charging party submits a timely request for review of the issuing director's letter of determination, the Commission shall process the request to review and issue a final determination. If, on review, a finding of reasonable cause is made, then the Commission shall issue a reasonable cause determination and process the charge in accordance with this Part.

(3) A request for review shall be deemed timely if it is personally delivered or postmarked within 14 days after the date of the letter of determination, or if, in the absence of a postmark, it is received by mail within 19 days from the date of the letter of determination. The Director, Determinations Review Program, may for good cause shown extend the time within which a request for review must be filed.

(4) The review procedure provided in this subsection shall not apply to charges processed by 706 agencies under contract with the Commission.

(5) The Commission hereby delegates authority to District Directors or upon delegation to Area Directors or Local Directors, except in those cases involving issues currently designated by the Commission for priority review, to issue a director's no causes letter of determination. The Commission hereby delegates authority to the Director, Determinations Review Program, Office of Program Operations, to issue Commission determinations of no reasonable cause following review.

(b) In those instances in which the Commission has not delegated the authority to issue no reasonable cause determinations to field offices, and the Commission or the Program Director or designee, Office of Program Operations, finds that no reasonable cause exists to believe an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination, the Commission or the Program Director, Office of Program Operations, shall issue a letter of determination to all parties to the charge indicating the finding.

(1) A letter of determination issued under this subsection shall be final when issued, and shall inform the charging party of the right to sue in federal district court within 90 days of the date the charging party receives the letter of determination.

(2) The Commission hereby delegates authority to the Program Director, Office of Program Operations or upon delegation the Directors, Regional Programs, Office of Program Operations, except in those cases involving issues currently designated by the Commission for priority review, to issued no cause letters of determination.

(c) The Commission may on its own initiative reconsider a determination of no reasonable cause and an issuing director may, on his or her own initiative reconsider his or her determination of no reasonable cause. If the Commission or an issuing director decides to reconsider a no cause determination, a notice of intent to reconsider shall promptly issue to all parties to the charge. If such notice of intent to reconsider is issued within 90 days of receipt of the Commission's final no cause determination, and the charging party has not filed suit and did not request and receive a notice of right to sue pursuant to § 1601.28(a)(1), or (2), the notice of intent to reconsider shall vacate the charging party's right to bring suit within 90 days. If the 90 day suit period has expired, the charging party has filed suit, or the charging party had requested a notice of right to sue pursuant to § 1601.21(a)(1) or (2), the notice of intent to reconsider shall vacate the letter of determination, but shall not revoke the charging party's right to sue in 90 days. After reconsideration, the Commission or issuing director shall issue a new determination. In those circumstances where the charging party's right to bring suit in 90 days was revoked, the determination shall include notice that a new 90 day suit period shall begin upon the charging party's receipt of the determination. Where a member of the Commission has filed a Commissioner charge, he or she shall abstain from making a determination in that case.

**§ 1601.21 [Amended]**

5. It is proposed to revise 29 CFR 1601.21(a) as follows:

(a) After completing its investigation, where the Commission has not settled or dismissed a charge or made a no cause finding as to every allegation addressed in the determination under § 1601.19, the Commission shall issue a determination that reasonable cause exists to believe that an unlawful employment practice has occurred or is occurring under Title VII. A determination finding reasonable cause is based on, and limited to, evidence obtained by the Commission and does not reflect any judgment on the merits of allegations not addressed in the determination.

6. It is proposed to revise the first two sentences of 29 CFR 1601.21(d) as follows:

* * * * *

(d) The Commission hereby delegates to District Director or upon delegation, Area Directors, or Local Directors, the Program Director, Office of Program Operations or upon delegation, the Director of Systemic Programs, Office of Program Operations or the Directors, Regional Programs, Office of Program Operations the authority, except in those cases involving issues currently designated by the Commission for priority review, upon completion of an investigation, to make a determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties. Each determination issued under this section is final when the letter of determination is issued.

* * * * *

**§ 1601.24 [Amended]**

7. It is proposed to revise the first sentence of 29 CFR 1601.24(a) as follows:

(a) Where the Commission determines that there is reasonable cause to believe that an unlawful employment practice

BEST COPY AVAILABLE

has occurred or is occurring and after the review provided for in § 1601.19, the Commission shall endeavor to eliminate such practice by informal methods of conference, conciliation and persuasion.

* * * * *

§ 1601.28 [Amended]

8. It is proposed to amend 29 CFR 1601.28(b)(3) by changing the reference from § 1601.19 to § 1601.18.

[FR Doc. 87-7609 Filed 4-8-87; 8:45 am]
BILLING CODE 6570-06-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 60, 62, 66 and 100

[CGD 86-031]

### United States Aids to Navigation System

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposal publishes regulations which would conform the United States Aids to Navigation System to the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. This proposal would increase maritime safety and provide a uniform international aids to navigation system by assuring United States participation in the IALA System. This proposal is required to inform U.S. mariners of the ongoing changes, and to eliminate unnecessary information from the present regulations. A change is also made to Part 66 of Title 33 to reflect the change to a uniform international aids to navigation system. A change is made to Part 100 of Title 33 to reflect changes made in Part 62.

**DATE:** Comments must be submitted on or before May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade G. R. Wulfkuhle, Office of Navigation (G-NSR-1), U.S. Coast Guard, Room 1416, 2100 Second St., SW., Washington, DC, 20593. (202) 267-0344.

**SUPPLEMENTARY INFORMATION:** The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include name and address, identify this notice as CGD 86-031, and give the reasons for the comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received, and the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

#### Drafting Information

The principal persons involved in drafting this rulemaking are Lieutenant Junior Grade G. R. Wulfkuhle, Project Manager, Office of Navigation, and Lieutenant S. R. Sylvester, Project Attorney, Office of Chief Counsel.

#### Background

In 1982, the United States, along with most of the world's other maritime nations, became a party to the agreement which implemented the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. Called "one of the most outstanding accomplishments in the development of safety of navigation all over the world", the IALA Maritime Buoyage System promotes safety of navigation by establishing a worldwide harmonious buoyage system.

Although such a system has long been a goal of the major maritime nations, attempts at unity were unsuccessful until a series of disastrous mishaps occurred in the English Channel within a short period of time in 1971. Since that time, IALA member nations, of which the United States is one, have worked hard to bring about harmonization. The breakthrough came in 1975, when it was decided to allow two subsystems to the IALA Buoyage System, one of which called for red aids to navigating marking the port hand side of the navigable channel when following the conventional direction of buoyage, and the other allowing nations of the Western Hemisphere to retain the "red-right-returning" scheme so familiar to U.S. mariners.

The United States began conversion of the U.S. Aids to Navigation System to conform with the IALA Maritime Buoyage System in 1983, and will complete the conversion for all Coast Guard maintained aids by 1989. This proposal amends 33 CFR Part 62 to reflect these ongoing changes. The U.S. Aids to Navigation System has not changed in substance. It remains a lateral aids to navigation system. The major changes are the introduction of the yellow Special Mark, the replacement of the black and white Midchannel aids by the red and white Safe Water Mark, and the changing of some aids to navigation signals—most notably green marks which replace the older black porthand marks. United States representatives played a major role in the adaptation of the IALA Maritime Buoyage System, and most of the changes were features which the U.S. had considered adopting prior to the IALA agreement. Widespread publicity and public education efforts have resulted in U.S. mariners already becoming familiar with the changes brought forth in this proposal. Those individuals, corporations, municipalities, or states maintaining private aids to navigation would be required to bring the aids into conformity at the next scheduled maintenance period not later than December 1992.

#### Regulatory Evaluation

This proposed rule is considered to be non-major under Executive Order 12291, and non-significant under the DOT regulatory policies and procedures (44 FR 11034 February 26, 1979). The economic impact of this proposed rule has been found to be so minimal that further evaluation is unnecessary. Only very minor requirements or cost burdens are placed on the public. Owners of private aids to navigation, as stated in Part 66 of this Title, will have to comply with the marking schemes cited here. These changes may be timed to coincide with maintenance; however, they must be made by December 1992, so the economic impact should be negligible. The proposal merely describes for public record changes which have been made to the U.S. Aids to Navigation System. The Coast Guard certifies that, if adopted, this proposal will have no significant economic impact on a substantial number of small entities. No reporting or record keeping measures are required by this proposal.

#### List of Subjects in 33 CFR Parts 60, 62 and 66

Navigation (water).

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

For the reasons set out in the preamble Chapter I, Subchapter C, Parts 60, 62, 66 and 100, Title 33, Code of Federal Regulations is proposed to be amended as follows:

## PART 60—[REMOVED AND RESERVED]

1. Part 60 is removed and reserved.
2. Part 62 is revised to read as follows:

## PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

### Subpart A—General

Sec.
62.1 Purpose.
62.3 Definition of terms.
62.5 Marking of marine parades and regattas.

**Subpart B—The U.S. Aids to Navigation System**

Sec.
62.21 General.
62.23 Beacons and buoys.
62.25 Lateral aids to navigation.
62.27 Non-lateral aids to navigation.
62.29 Colors.
62.31 Shapes.
62.33 Numbers and letters.
62.35 Light characteristics.
62.37 Sound signals.
62.39 Intracoastal waterway identification.
62.40 Western Rivers Marking System.
62.43 Racons.

**Subpart C—Maritime Radiobeacons**

Sec.
62.51 General.
62.53 Carrier type operation.
62.55 Calibration service.
62.57 Caution.

**Subpart D—Public Participation**

Sec.
62.61 Recommendations.
62.63 Procedure for reporting defects and discrepancies.

**Authority:** 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333(d); 49 CFR 1.46(b).

## Subpart A—General

### § 62.1 Purpose.

(a) The Coast Guard administers the U.S. Aids to Navigation System in the navigable waters of the United States. The system consists of Federal aids to navigation operated by the Coast Guard, aids to navigation operated by the other armed services, and private aids to navigation operated by individuals, corporations, municipalities, or states.

(b) The general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the Coast Guard in establishing, maintaining, operating, changing, or discontinuing Federal aids to navigation are described in this part. Regulations concerning the marking of wrecks are found in Part 64. Regulations concerning the use of private aids are found in Part 66. Regulations concerning the marking of artificial islands and structures which are erected on or over the seabed and subsoil of the Outer Continental Shelf of the United States or its possessions are found in Part 67. Regulations concerning the marking of bridges are found in Part 118 of this chapter.

(c) The Coast Guard maintains systems of marine aids to navigation consisting of visual, audible, and electronic signals which are designed to assist the prudent mariner in the process of navigation. The aids to navigation system is not intended to identify every shoal or obstruction to navigation which exists in the navigable waters of the United States, but rather provides for reasonable marking of marine features as resources permit. The primary objective of the aids to navigation system is to mark navigable channels and waterways, obstructions adjacent to these waterways, and obstructions in areas of general navigation which may not be anticipated. Other waters, even if navigable, are generally not marked.

### § 62.3 Definition of terms.

Certain terms as used in this subchapter are defined as follows:

(a) *Aid to Navigation.* The term aid to navigation means any device external to a vessel or aircraft intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(b) *Commerce.* The term commerce, in addition to general, national and international trade and commerce of the United States, includes trade and travel by seasonal passenger craft (marine and air), yachts, houseboats, fishing boats, motor boats, and other craft whether or not operated for hire or profit.

(c) *Commandant.* The term Commandant means the Commandant of the Coast Guard.

(d) *District Commander.* The term District Commander means the commander of a Coast Guard District. Coast Guard Districts are listed in Part 3 of this chapter.

(e) *Corps of Engineers.* The term Corps of Engineers means the Corps of Engineers, Department of the Army.

(f) *Person.* The term person imparts both singular or plural, as the case demands, and includes any Federal Agency, State, Territory, possession, or public subdivision thereof, the District of Columbia, and any corportion, company, association, club, or other instrumentality.

(g) *Navigable Waters of the United States.* The term Navigable waters of the United States is defined in § 2.05–25(a) of this part.

### § 62.5 Marking of Marine Parades and Regattas.

The Coast Guard may establish aids to navigation to mark marine parades and regattas which as regulated by the Coast Guard for the purpose of protecting life and property, or to assist in the observance and enforcement of special regulations. For marine parade and regatta regulations, see Part 100 of this chapter.

## Subpart B—The U.S. Aids to Navigation System

### § 62.21 General.

(a) The waters of the United States are marked to assist navigation using the U.S. Aids to Navigation System a system in the process of conforming to the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. Since the system has not been implemented fully in U.S. waters, descriptions for the characteristics of the old system are added to the text in parenthesis as necessary. Until the conversion is complete, mariners should be familiar with both systems and alerted to the fact that changes may not be reflected immediately on published charts. The IALA Maritime Buoyage System is followed by most of the world's maritime nations and will improve maritime safety by encouraging conformity in buoyage systems worldwide. IALA buoyage is divided into two regions made up of Region A and Region B. All navigable waters of the United States follow Region B, except U.S. possessions west of the International Date Line and south of 10 degrees north latitude, which will follow IALA Region A. Lateral aids to navigation in Region A will vary slightly from those described throughout this Subpart. Non-lateral aids to navigation will be the same as those used in Region B. See notes in §§62.25 and 62.27. Appropriate nautical charts and publications must be consulted to determine whether Region A or Region B guidelines are in effect for a given area.

(b) The U.S. Aids to Navigation System is designed for use with nautical charts. Nautical charts portray the physical features of the marine environment, including soundings and other submarine features, landmarks, and other aids necessary for the proper navigation of a vessel. This crucial information cannot be obtained from other sources, even reliable navigation aids such as topographical maps, aeronautical charts, or atlases. The exact meaning of an aid to navigation may not be clear to the mariner unless the appropriate chart is consulted, as the chart illustrates the relationship of the individual aid to navigation to channel limits, obstructions, hazards to navigation, and to the total aids to navigation system.

(c) The navigator should maintain and consult suitable publications and instruments for navigation, depending on the vessel's requirements. This shipboard equipment is separate from the aids to navigation system, but is often essential to its use. The following publications are available from the U.S. Government to assist the navigator:

(1) The Light List, published by the Coast Guard and available through the Government Printing Office or

authorized nautical chart sales agents, lists all major federal aids to navigation and those private aids to navigation which have been reported to the Coast Guard, and includes a physical description of these aids and their locations.

(2) The United States Coast Pilot, published by the National Ocean Service and available through that agency or authorized nautical chart sales agents, supplements the information shown on nautical charts. Subjects such as local navigation regulations, channel and anchorage peculiarities, dangers, climatalogical data, routes, and port facilities are covered.

(3) Local Notices to Mariners are published by local Coast Guard District Commanders. Individuals may be placed on the mailing list to receive Local Notices by contacting the Chief, Aids to Navigation Branch of the appropriate Coast Guard District. These notices pass to mariners information affecting safety to navigation. Changes to aids to navigation, reported dangers, scheduled construction or other disruptions, chart corrections and similar useful marine information is made available through this publication.

(4) The Notice to Mariners is a national publication similar to the Local Notice to Mariners, published by the Defense Mapping Agency, and available by writing: Director, Defense Mapping Agency, Office of Distribution Services, Code IMA, Washington, DC 20315–0010. A letter of justification should be included in the request. This publication serves ocean-going vessels by conveying significant national and international navigation and safety information.

(5) The mariner should also listen to Coast Guard Broadcast Notices to Mariners. These broadcasts contain information on events affecting safe navigation, and occurring between publication of consecutive Local Notices to Mariners. Through Broadcast Notices to Mariners, aids to navigation changes, reported dangers, scheduled construction activities, and other similar events are passed to mariners on a timely basis. Mariners should monitor VHF–FM channel 16 to locate Coast Guard Marine Information Broadcasts.

(d) The U.S. Aids to Navigation System is primarily a lateral system which employs a simple arrangement of colors, shapes, numbers, letters, and light characteristics to mark the limits of navigable routes. This lateral system is supplemented by nonlateral aids to navigation where appropriate.

(e) Generally, lateral aids to navigation indicate on which side of the aid to navigation a vessel should pass when proceeding in the Conventional Direction of Buoyage. In navigable waters of the United States, Conventional Direction of Buoyage is the direction in which a vessel enters navigable channels from seaward and proceeds towards the head of navigation. In the absence of a route leading from seaward, the Conventional Direction of Buoyage generally follows a clockwise direction around land masses. For example, proceeding southerly along the Atlantic Coast, from Florida to Texas along the Gulf Coast, and northerly along the Pacific Coast are considered as proceeding in the Conventional Direction of Buoyage. In some instances, this direction must be arbitrarily assigned. Where doubt exists, the mariner should consult charts and other nautical publications.

(f) Although aids to navigation are maintained to a reasonable degree of reliability, the rigors of the marine environment and various equipment failures do cause discrepancies on occasion.

(g) The Coast Guard makes reasonable efforts to inform the navigator of known discrepancies, and to correct them within a reasonable period of time depending upon resources available. Occasionally, a temporary aid to navigation, which provides different but similar service, is deployed until permanent repairs can be made to the original aid. Notification of such temporary changes are made through the Notice to Mariners system.

### § 62.23 Beacons and buoys.

(a) Aids to navigation are placed on shore or on marine sites to assist a navigator to determine his position or safe course. They mark limits of navigable waters or warn of dangers or obstructions to navigation. The primary components of the U.S. Aids to Navigation System are beacons and buoys.

(b) Beacons are aids to navigation which are permanently fixed to the earth's surface. These structures range from major lighthouses to small unlighted structures called daybeacons. They may be located on land or in the water.

(1) Beacons exhibit a daymark. For small structures these are colored geometric shapes which make an aid to navigation readily visible and easily identifiable against background conditions. Generally, the daymark conveys to the mariner, during daylight hours, the same significance as does the aid's light at night. The daymark of major lighthouses and towers, however, consists of the structure itself. As a result, these daymarks do not infer lateral significance.

(2) Daymarks are also used on structures which do not exhibit lights. These aids are referred to as daybeacons.

(3) Vessels must not pass fixed aids to navigation close aboard due to the danger of collision with rip-rap or structure foundations or the obstruction or danger that the aid marks.

(c) Buoys are floating aids to navigation used extensively throughout U.S. waters. They are moored to the seabed by concrete sinkers with chain or synthetic rope moorings of various sizes and lengths connected to the buoy body.

(1) Mariners attempting to pass a buoy close aboard risk collision with a yawing buoy, the buoy's mooring, or with the obstuction which the buoy marks.

(2) Mariners must not rely on buoys alone for determining their positions due to factors limiting their reliability. Prudent mariners will use bearings or angles from fixed aids to navigation and shore objects, soundings, and various methods of electronic navigation. Buoys vary in reliability because:

(i) Buoy positions represented on nautical charts are approximate positions only due to practical limitations in positioning and maintaining buoys and their sinkers in precise geographical locations.

(ii) Buoy moorings vary in length. The mooring lengths define a "watch circle," and buoys can be expected to move within this circle. Actual watch circles do not coincide with the dots or circles representing them on charts.

(iii) Buoy positions are normally verified during periodic maintenance visits. Between visits, environmental conditions, including atmospheric and sea conditions, and seabed slope and composition, may shift buoys off their charted positions. Buoys may be set off station through collisions or be sunk or capsized. Buoys are also subject to vandalism.

### § 62.25 Lateral aids to navigation

(a) Lateral aids to navigation define the port and starboard side of a route to be followed. These aids to navigation may be either beacons or buoys.

(1) Side marks are those aids to navigation which advise the mariner to stay to one side of the aid. The most frequent use for these aids to navigation is to mark the sides of channels, however they may be used individually to mark obstructions outside of clearly defined channels. Due to the physical diversity of waterways and the maneuvering constraints on its users, sidemarks are not always placed

directly on a channel edge. Mariners should consult the appropriate nautical chart.

(2) Preferred Channel Marks mark channel junctions or bifurcations and often mark wrecks or obstructions. Preferred Channel Marks may normally be passed on either side by a vessel, but indicate to the mariner the preferred channel. Depending on the mariner's direction of travel, however, it may not always be advisable to pass these aids on either side; therefore the appropriate nautical chart should always be consulted.

(b) Colors, light rhythms, and shape significance for these aids to navigation are addressed in subsequent paragraphs of this subpart.

**§ 62.27 Non-lateral aids to navigation.**

Non-lateral aids to navigation, both fixed structures and buoys, have no lateral significance but may be used to supplement the lateral aids specified in this subpart.

(a) Lighthouses and other lights are fixed structures which vary in size from the typical major seacoast lighthouse to a small, single-pile structure. Lighthouses are placed on shore or on marine sites and are often without lateral significance. When used in this capacity, lighthouses assist the mariner to determine his position or safe course or warn of obstructions or dangers to navigation.

(b) Occasionally, day beacons or minor lights outside of the normal channel will not have lateral significance since they do not define limits to navigable waters. These aids to navigation will utilize "NB", "NR", or "NG" daymarks. These daymarks are diamond-shaped and divided into four diamond-shaped sectors. The side sectors of these daymarks are colored white, and the top and bottom sectors black, red, or green, respectively.

(c) Ranges are aids to navigation systems employing dual beacons which, when the structures appear to be in line, assist the mariner in maintaining a safe course. The appropriate nautical chart must be consulted when using ranges to determine whether the range marks the centerline of the navigable channel or the quarterline, and also what section of the range may be safely traversed. Ranges are generally, but not always, lighted and display rectangular daymarks of various colors.

(d) Large Navigational Buoys (LNB's) are set on major aid to navigation stations. They generally provide the mariner with light, sound, and radiobeacon signals, and some are equipped with radar beacons (racons). LNB's are red in color, have a forty foot diameter hull, and a tower approximately forty feet in height.

(e) Safe Water Marks serve to indicate that there is navigable water all around the aid. These aids are often used to indicate fairways or midchannels, or the seaward end of a channel.

(f) Special Marks serve not to assist navigation, but to alert the mariner to special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, traffic separation schemes, military exercise zones, ocean data acquisition systems, etc.

(g) Information and Regulatory Marks are used to alert the mariner to various warnings or regulatory matters. These marks have orange geometric shapes against a white background. The meanings associated with the orange shapes are as follows:

(1) A vertical open-faced diamond signifies danger.

(2) A vertical diamond shape having a cross centered within indicates that vessels are excluded from the marked area.

(3) A circular shape indicates that certain operating restrictions are in effect within the marked area.

(4) A square or rectangular shape will contain directions or instructions lettered within the shape.

**§ 62.29 Colors.**

(a) When proceeding in the Conventional Direction of Buoyage the lateral significance of the colors of aids to navigation is as follows:

(1) Green (or black) solid-colored aids will mark the port (left) sides of channels, and locations of wrecks or obstructions which must be passed by keeping these side marks on the port (left) hand of a vessel.

(2) Red solid-colored aids will mark the starboard (right) sides of channels, and locations of wrecks or obstructions which must be passed by keeping these side marks on the starboard (right) hand of a vessel.

(3) Preferred Channel Marks are colored with red and green (or black) horizontal bands.

(i) If the topmost band is green (or black), the preferred channel will be followed by keeping the aid on the port (left) side of a vessel.

(ii) If the topmost band is red, the preferred channel will be followed by keeping the aid on the starboard (right) side of a vessel.

(b) Safe Water Marks are red (or black) and white vertically striped. Lighted Safe Water Marks may exhibit a red spherical topmark to further aid in identification.

(c) Special Marks are colored solid yellow.

(d) Information and Regulatory Marks are colored white with international orange horizontal bands and geometric shapes.

(e) Aids to navigation will be fitted with light-reflecting material to increase their visibility in darkness. The colors of this material will convey the same lateral significance as the aid, except that letters and numbers will be white.

(f) Some exceptions to the provisions of this section may be found on the Intracoastal Waterway. See § 62.39.

(g) Aids to navigation in IALA Region A will be similar to those in IALA Region B, however port hand aids will be red when following the Conventional Direction of Buoyage, and starboard hand aids will be green. Appropriate nautical charts and publications must be consulted to determine whether Region A or Region B guidelines are in effect for a given area.

**§ 62.31 Shapes.**

(a) In order to provide ready identification, certain unlighted buoys and daymarks on minor fixed aids to navigation are differentiated by shape.

(b) Shapes will be laterally significant only when associated with the laterally significant colors, red and green (black).

(1) Cylindrical buoys, referred to as can buoys, and square daymarks indicate the left side of the channel when proceeding in the Conventional Direction of Buoyage. In order to indicate lateral significance, these aids must be either solid green (or black), or red and green (or black) horizontally banded aids where the topmost band is green (or black).

(2) Conical buoys, referred to as nun buoys, and triangular daymarks indicate the right side of the channel when proceeding in the Conventional Direction of Buoyage. In order to indicate lateral significance, these aids must be either solid red or red and green (or black) horizontally banded aids where the topmost band is red.

(c) Unlighted red (or black) and white vertically striped Safe Water buoys will be either spherical or pillar buoys. Spherical buoys are round in shape; pillar buoys consist of a wide cylindrical base topped by a smaller diameter superstructure. Fixed Safe Water aids will employ an eight-sided daymark.

(d) The shapes of lighted, sound, pillar and spar buoys have no lateral significance. Their meanings are conveyed by their numbers, colors, and light colors and rhythms.

(e) Exceptions to the provisions of this section may be found on the Intracoastal Waterway. See §62.39.

(f) Aids to navigation in Region A will be similar to those in Region B, however red unlighted buoys will be cylindrical in shape, and red daymarks will be square-shaped. Corresponding green aids will be conical-shaped or triangular. Appropriate nautical charts and publications must be consulted to determine whether Region A or Region B guidelines are in effect for a given area.

**§ 62.33 Numbers and letters.**

(a) All solid red and solid green (or black) aids are numbered, with red aids bearing even numbers and green (or black) aids bearing odd numbers. The numbers for each increase in the Conventional Direction of Buoyage. Numbers are kept in approximate sequence on both sides of the channel by omitting numbers where necessary.

(b) Only side marks are numbered. However, aids other than those mentioned above may be lettered to assist in their identification or to indicate their purpose. Sidemarks may carry letters in addition to numbers to identify the first aid to navigation in a waterway, or when new aids to navigation are added to channels with previously completed numerical sequences. Letters on lateral sidemarks will follow alphabetical order from seaward and proceeding toward the head of navigation and will be added to numbers as suffixes.

(c) Exceptions to the provisions of this section will be found on the Western Rivers System. See § 62.40.

(d) The guidelines for the display of numbers and letters on aids to navigation are identical for both Region A and Region B; red aids to navigation display even numbers, and green (or black) aids display odd numbers.

**§ 62.35 Light characteristics.**

(a) Lights on aids to navigation are differentiated by color and rhythm. Lighthouses and range lights may display distinctive light characteristics to facilitate recognition. No special significance should be attached to the color or rhythm of such lights. Other lighted aids to navigation employ light characteristics to convey additional information.

(b) When proceeding in the Conventional Direction of Buoyage, aids to navigation, if lighted, display light characteristics as follows:

(1) Green (or white) lights mark port (left) sides of channels and locations of wrecks or obstructions which are to be passed by keeping these lights on the port (left) hand of a vessel. Green lights are also used on Preferred Channel Marks where the topmost band is green (or black).

(2) Red (or white) lights mark starboard (right) sides of channels and locations of wrecks or obstructions which are to be passed by keeping these lights on the starboard (right) hand of a vessel. Red lights are also to be used on Preferred Channel Marks where the topmost band is red.

(3) Certain lights marking the Intracoastal Waterway may display reversed lateral significance. See §62.39.

(c) Yellow lights have no lateral significance. Except on the Western Rivers, see § 62.41, white lights have no lateral significance. The purpose of aids exhibiting white or yellow lights may be determined by their shape, color, letters or numbers, and the light rhythm employed.

(d) Light rhythms, except as noted in § 62.41 for the Western Rivers, are employed as follows:

(1) Aids with lateral significance display regularly flashing or regularly occulting light rhythms. Ordinarily, flashing lights (frequency not exceeding 30 flashes per minute) will be used.

(2) Preferred Channel Marks display a composite group flashing light rhythm (groups of two flashes followed by one flash).

(3) Safe Water Marks display a white Morse Code "A" rhythm (short-long flash).

(4) Special Marks display yellow (or white or amber) lights with fixed or slow flashing rhythm preferred.

(5) Information and Regulatory Marks display white lights of various rhythms.

(6) For situations where lights require a distinct cautionary significance, as at sharp turns, sudden channel constrictions, wrecks, or obstructions, a quick flashing light rhythm (frequency not less tha 60 flashes per minute) may be used.

(e) Occasionally lights use sectors to mark shoals or warn mariners of other dangers. Lights so equipped show one color from most directions and a different color or colors over definite arcs of the horizon as indicated on the appropriate nautical chart. These sectors provide approximate bearing information since the observer should note a change of color as the boundary between the sectors is crossed. As sector bearings are not precise, they should be considered a warning only and not used to determine exact bearing to the light.

**§ 62.37 Sound signals.**

(a) Often sound signals are located on or adjacent to aids to navigation. When visual signals are obscured, sound signals warn mariners of the proximity of danger.

(1) Sound signals are distinguished by their tone and phase characteristics.

(i) Tones are determined by the devices producing the sound (i.e., diaphones, diaphragm horns, reed horns, sirens, whistles, bells, and gongs).

(ii) Phase characteristics are defined by the signal's sound pattern, i.e., the number of blasts and silent periods per minute and their durations. Sound signals emanating from fixed structures generally produce a specific number of blasts and silent periods each minute when operating. Buoy sound signals are generally actuated by the motion of the sea and therefore do not emit a regular signal characteristic.

(2) Where no live watch is maintained, sound signals are normally operated continuously. However, some are equipped with fog detectors which activate sound signals when visibility falls below a predetermined limit.

(b) Mariners should not rely solely on sound signals to determine their positions for the following reasons:

(1) Distance cannot be accurately determined by sound intensity.

(2) Occasionally sound signals may not be heard in areas close to their location.

(3) Signals may not sound in cases where fog exists close to, but not at, the location of the sound signal.

(4) As buoy signals are generally activiated by sea motion, they may produce no signals when seas are calm.

(5) As previously noted, buoy positions are not always reliable. Therefore their sound signals cannot be assumed to be emanating from a fixed position.

**§ 62.39 Intracoastal waterway indentification.**

(a) In addition to the conventional signals, lateral aids to navigation marking the Intracoastal Waterway exhibit unuque yellow symbols to distinguish them from aids marking other waters.

(1) Yellow triangles will indicate that aids to navigation so marked should be passed keeping them on the starboard (right) hand of a vessel, regardless of the aid's number, color, or light color.

(2) Yellow squares will indicate that aids to navigation so marked should be passed keeping them on the port (left) hand of a vessel, regardless of the aid's number, color, or light color.

(b) The above guidelines apply for vessels traversing the Intracoastal Waterway in a southerly direction on the Atlantic Coast, in a westerly direction on the Okeechobee Waterway,

or in a northerly and westerly direction along the Gulf Coast.

**§ 62.40 Western Rivers Marking System.**

(a) A variation of the standard U.S. aids to navigation system described above is employed on the Mississippi River and tributaries above Baton Rouge, LA and on certain other rivers which flow toward the Gulf of Mexico.

(b) The Western Rivers System varies from the standard U.S. system as follows:

(1) Buoys are not numbered.

(2) Numbers on beacons do not have odd/even lateral significance, but, rather, indicate mileage from a fixed point (normally the river mouth).

(3) Diamond shaped crossing daymarks, solid red or solid green as appropriate, are used instead of triangular or square lateral daymarks where the river channel crosses from one bank to the other.

(4) Lights on green buoys and on beacons with green daymarks show a single flash which may be green or white.

(5) Lights on red buoys and on beacons with red daymarks show a double flash [Group Flashing (2)] which may be red or white.

(6) Isolated danger marks are not used.

**§ 62.41 Racons.**

(a) Aids to navigation may be enhanced by the use of radar beacons (racons). Racons, when triggered by a radar signal, will transmit a coded reply to the interrogating radar. This reply serves to identify the aid station by exhibiting a series of dots and dashes which appear on the radar display in a line emanating radially from just beyond the echo of the aid station. Although racons may be used on both laterally significant and non-laterally significant aids alike, the racon signal itself is for identification purposes only, and therefore carries no lateral significance.

(b) Racons are also used as bridge marks to mark the point of best passage.

**Subpart C—Maritime Radiobeacons.**

**§ 62.51 General.**

Maritime radiobeacons operate during specific intervals as published in Coast Guard Light Lists. For station indentification, simple characteristics consisting of combinations of dots and dashes are used. The characteristics of marker-beacons are composed of series of dashes for part of a 15 second cycle, which is followed by a silent period to complete the cycle. The transmitted power of maritime radiobeacons is adjusted to provide a useable signal at the service range which meets the operational requirement. Marker-beacons are of low power for local use only. Coast Guard maritime radiobeacons operate within the frequency band 285–325 kilocycles.

**§ 62.53 Carrier type operation.**

Radiobeacons superimpose the characteristic code on a carrier frequency which is on continuously during the period of transmission . This extends the usefulness of maritime radiobeacons to aircraft and ships employing automatic direction finders.

**§ 62.55 Calibration service.**

Special calibration radiobeacons, as listed in the current editions of the Coast Guard Light Lists, will broadcast continuously for the purpose of enabling vessels to calibrate their direction finders upon request either to the cognizant District Commander, or, if time does not permit, directly to the calibration station. Signals for requesting calibration service are described in the current editions of the Coast Guard Light Lists. In the case of sequenced radiobeacon stations, continuous transmission for calibration purposes cannot be made without interference resulting with other stations in the same frequency group.

**§ 62.57 Caution.**

(a) A vessel steering a course for a radiobeacon should observe the same precautions that apply when steering for a light or any other mark.

(b) Distance cannot be accurately determined by radiobeacon signal. Mariners must exercise extreme caution when the aid to navigation which supports the radiobeacon is not visible, and no other means of determining its distance is available.

(c) If the radiobeacon is aboard a Large Navigational Buoy (LNB) or on any marine site, particular care should be exercised to avoid the possibility of collision. In addition, caution should be exercised in using radiobeacons aboard floating aids, because of the possibility that the aid could be off station.

**Subpart D—Public Participation**

**§ 62.61 Recommendations.**

(a) The public may recommend changes to existing aids to navigation, request new aids or the discontinuation of existing aids, and report aids no longer necessary for maritime safety. These recommendations should be sent to the appropriate District Commander.

(b) Recommendations, requests, and reports should be documented with as much information as possible to justify the proposed action. Desirable informaiton includes:

(1) Nature of the vessels which transit the area(s) in question, including type, displacement, draft, and number of passengers and crew.

(2) Where practicable, the kinds of navigating devices used aboard such vessels (e.g., magnetic or gyro compasses, radio direction finders, radar, loran, and searchlights).

(3) A chartlet or sketch describing the actual or proposed location of the aid(s), and a description of the action requested or recommended.

**§ 62.63 Procedure for reporting defects and discrepancies.**

(a) Mariners should notify the nearest Coast Guard facility immediately of any observed aids to navigation defects or discrepancies.

(b) The Coast Guard cannot monitor the many thousands of aids in the U.S. Aids to Navigation System simultaneously and continuously. As a result, it is not possible to maintain every aid operating properly and on its charted position at all times. Marine safety will be enhanced if persons finding aids missing, sunk, capsized, damaged, off station, or showing characteristics other than those advertised in the *Light List*, or other publication, promptly inform the Coast Guard. When making the report to the Coast Gaurd the mariner should consult the *Light List* to ensure the correct geographical information is used due to the similarity of names and geographical areas.

(c) Procedures for reporting defects and discrepancies:

(1) *Radio messages* should be prefixed "Coast Gaurd" and transmitted directly to a Government shore radio station listed in Chapter five, Section 500D of Radio Navigational Aids Publication, 117A and 117B, for relay to the relevant District Commander.

(2) *Radio-telegraph* communication may be established by using the general call "NCG" on the 500 kilohertz frequency.

(3) *Commercial communications facilities* should be used only when vessels are unable to contact a Government shore radio station. Charges for these messages will be accepted "collect" by the Coast Guard.

**PART 66—[AMENDED]**

3. The authority citation for Part 66 is revised to read as follows:

**Authority:** 14 U.S.C. 83, 85,; 43 U.S.C. 1333; 49 49 CFR 1.46.

4. Section 66.01–10 is revised to read as follows:

**§ 66.01–10 Characteristics.**

Owners of private aids shall ensure that the characterstics of their aids conform to the standard U.S. system of aids to navigation as described in § 62.25. Owners shall conform with the requirements at the next scheduled maintenance visit but not later than December 31, 1992.

**PART 100—[AMENDED]**

5. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

6. Section 100.45 is revised to read as follows:

**§ 100.45 Establishment of aids to navigation.**

The District Commander will establish and maintain only those aids to navigation necessary to assist in the observance and enforcement of the special regulations issued under the District Commander's authority. These aids to navigation will be in accordance with Part 62 of this chapter. All other aids to navigation incidental to the holding of a regatta or marine parade are private aids to navigation as described in Part 66 of this chapter.

Dated: April 6, 1987.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard Chief, Office of Navigation.*

[FR Doc. 87–7918 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–14–M

---

**33 CFR Part 110**

**[CGD12 87–02]**

## Anchorage Regulations; San Francisco Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal to amend Anchorage 7 in San Francisco Bay by moving the southeastern corner of the anchorage 230 yards to the north. This would reduce the southern reaches of the anchorage in the shallow waters off of Treasure Island. The shifting of the boundary would also prevent damage from anchoring vessels to an existing submarine power cable and a proposed telecommunications cable.

**DATE:** Comments must be received on or before May 26, 1987.

**ADDRESS:** Comments should be mailed or hand-delivered to Marine Safety Division, Twelfth Coast Guard District, Coast Guard Island, Building 54–B, Room 250, Alameda, CA 94501. The comments will be available for inspection and copying between 7:00 a.m. and 3:00 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lt David A. Conklin at (415) 437–3465.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD12 87–02] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The proposed rules may be revised in light of comments received. All comments submitted before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will significantly aid the rulemaking process.

### Drafting Information

The drafters of this notice are Lt David A. Conklin, project officer, Twelfth Coast Guard District Marine Safety Division, and LCDR Wayne C. Raabe, project attorney, Twelfth Coast Guard District Legal Office.

### Discussion of the Proposed Regulation

Anchorage 7 primarily exists for the temporary anchorage of vessels for up to 12 hours in duration. After that the vessel would proceed to either a pier facility or an alternative anchorage ground. The anchorage presently has a submarine power cable transversing the southeastern corner. A telecommunications cable is now proposed for installation across San Francisco Bay between Oakland and San Francisco alongside the existing power cable. To prevent the possibility of damage to those cables from the anchoring of vessels, the southern boundary of Anchorage 7 would be pivoted approximately 230 yards north along Treasure Island. This change would have minimal impact on vessel anchorage since the area eliminated is infrequently used due to its shallow depth.

### Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 110

Anchorage grounds.

### Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Chapter 1 of Title 33, Code of Federal Regulations, as follows:

**PART 110—ANCHORAGE REGULATIONS**

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.224(e)(5) is revised to read as follows:

**§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, California.**

* * * * *

(e) * * *

(5) *Anchorage No. 7.* In San Francisco Bay bounded by the west shore of Treasure Island and the following lines: Beginning at the westernmost point of Treasure Island at latitude 37°49′36″ N., longitude 122°22′40″ W.; thence northwesterly to latitude 37°50′00″ N., longitude 122°22′57″ W.; thence westerly towards the San Francisco Bay North Channel to latitude 37°50′00″ N., longitude 122°23′44″ W.; thence southerly to latitude 37°49′22.5″ N., longitude 122°23′44″ W.; thence southeasterly to latitude 37°48′40.5″ N., longitude 122°23′38″ W.; thence to the shore of Treasure Island at latitude 37°49′00″ N., longitude 122°22′16″ W.

* * * * *

Dated: April 1, 1987.

**John D. Costello,**

*Vice Admiral, U.S. Coast Guard Commander, Twelfth Coast Guard District.*

[FR Doc. 87–7909 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–14–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[SW –FRL–3183–2]**

## Hazardous Waste Management System; Indentification and Listing of Hazardous Waste

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notification of availability of data and request for comment.

**SUMMARY:** Today's notice announces the availability of ground-water monitoring data for Bommer Industries Incorporated's two evaportation ponds. This data was collected by Bommer in response to the Agency's request for ground-water data obtained from their recently expanded monitoring system in an effort to more fully characterize the waste included in their petition to exclude specific wastes from hazardous waste control. The ground-water data has been included in the public docket and will be considered by the Agency in making our final delisting decision for Bommer's petition. The Agency requests public comment on this data in relation to the proposed exclusion of Bommer's waste (see 50 FR 48930–48932, November 27, 1985).

**DATES:** EPA will accept public comments on this data until May 11, 1987. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this notice as it relates to the proposed exclusion of Bommer Industries' waste by filing a request with Bruce Weddle, whose address appears below, by April 24, 1987. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variance Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this docket number: "F–87–BMAN–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The public docket where this information can be viewed is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For further information on this notice, contact Ms. Lori DeRose, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

**SUPPLEMENTARY INFORMATION:** On November 27, 1985 the Agency proposed to grant an exclusion to Bommer Industries, Incorporated under 40 CFR 260.20 and 260.22 (see 50 *FR* 48930–48932 and regulatory docket number "Section 3001—Delisting Petition (4)"). During the public comment period for that proposal, one commentor suggested that the Agency should obtain additional ground-water data from Bommer to more fully characterize any impact the petitioned waste may have had on ground-water. Subsequent to the publication of the proposed exclusion, Bommer added an additional well to their ground-water monitoring system. The monitoring data has been collected and submitted to the Agency in support of Bommer's petition. A copy of the data collected by Bommer Industries has been included in the public docket for the Agency's proposed decision (see docket number "F–87–BMAN–FFFFF"). This data will be considered and used by the Agency in making its final decision on Bommer Industries' delisting petition.

Dated: April 1, 1987.

**Bruce R. Weddle,**

*Director, Permits and State Programs Division.*

[FR Doc. 87–7832 Filed 4–8–87; 8:45 am]

BILLING CODE 6560–50–M

---

**40 CFR Part 300**

**[FRL–3141–1]**

## Intent To Revise the Hazard Ranking System

**AGENCY:** Environmental Protection Agency.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency ("EPA") is reviewing and may revise the Hazard Ranking System ("HRS"). The HRS is Appendix A to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which EPA promulgated on July 16, 1982 (47 FR 31180) pursuant to section 105(8)(A) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). The HRS is the principal mechanism EPA uses to place sites on the CERCLA National Priorities List.

This notice requests comments and information related to revising the HRS in advance of the proposed rulemaking. These comments will be taken into account by the Agency in revising the HRS.

**DATES:** *Written Comments:* EPA will accept written comments on revising the HRS until May 11, 1987.

*Public Meeting:* EPA will hold a public meeting to hear comments on revising the HRS at the location shown in "**ADDRESSES.**" This meeting will be held on May 7 and 8, 1987 from 9 a.m. to 4:30 p.m. both days. Oral presentations of comments should not exceed 15 minutes in length. A sign-up sheet for presentations will be available from 8:00 to 9:00 a.m. each day. Presentations will be scheduled on a first-come basis for that day only. Persons wishing to speak are asked to provide EPA with a copy of their comments at the time of the presentations.

**ADDRESSES:** Written Comments: Comments may be mailed to to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: HRS Staff), Office of Emergency and Remedial Response (WH–548E), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Comments will be placed in the Superfund docket. The Superfund docket is located in EPA Headquarters, Waterside Mall Subbasement, 401 M Street, SW., Washington, DC 20460 and is available for viewing by appointment only from 9 a.m. to 4 p.m. Monday through Friday excluding holidays. To obtain copies or make an appointment, contact Denise Sines at 202–382–3046.

*Public meeting:* The public meeting on the HRS will be held at the Westpark Rosslyn Hotel, 1900 N. Fort Myer Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Jane Metcalfe, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH–548E), U.S. Environmental Protection Agency, 401 M Street, SW,. Washington, DC 20460, Phone (800) 424–9346 (or 382–3000 in the Washington, DC, metropolitan area).

**SUPPLEMENTARY INFORMATION:**

Table of Contents

I. Introduction
II. CERCLA Amendments
III. Technical Issues
IV. Consideration of Comments

## I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* ("CERCLA" or "the Act") in response to the dangers posed by uncontrolled releases of hazardous substances, pollutants, or contaminants. To implement CERCLA, the Environmental Protection Agency (EPA) promulgated the revised National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to section 105 of CERCLA and Executive Order 12316 (46 FR 42237, August 20, 1981). The National Contingency Plan ("NCP"), further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA.

Section 105(8)(A) of CERCLA required that the NCP include criteria for determining priorities among releases or threatened releases for the purpose of taking remedial or removal action. Criteria were to be based upon relative risk or danger, taking into account the population at risk, the hazardous potential of the substances at a facility, the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, and other appropriate factors. The Agency developed the Hazard Ranking System ("HRS") to implement Section 105(8)(A). The HRS was codified as Appendix A of the NCP.

Section 105(8)(B) of CERCLA requires that the statutory criteria described in the HRS be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that at least 400 sites be designated for priority. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL").

*Hazard Ranking System*

The principal mechanism for placing sites on the NPL is the application of the HRS. The HRS was designed to be a screening device, one that would allow the Agency to rank sites quickly, using available data. The HRS score reflects the potential for harm to humans or the environment from migration of a hazardous substance by routes involving ground water, surface water, or air and is a composite of separate scores for each of the three possible contaminant migration routes. The score for each route is obtained by assigning numerical values (according to prescribed guidelines) to a set of factors that characterize the potential of the release to cause harm. Sites with HRS scores of 28.50 or above have been placed on the NPL.

Generally, the Agency conducts a Preliminary Assessment (PA) and a Site Inspection (SI) at a site to evaluate it for possible inclusion on the NPL. The PA and SI are low-cost, initial data-gathering efforts designed to provide input for HRS scoring.

*National Priorities List*

The purpose of the NPL is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site.

The NCP establishes that a site cannot undergo Fund-financed remedial action until it is placed on the final NPL [40 CFR 300.68(a)]. The NPL does not determine priorities for removal actions; EPA may take removal actions at any site, whether listed or not, that meets the criteria of §§ 300.65–300.67 of the NCP. Likewise, EPA may take enforcement actions under CERCLA against responsible parties regardless of whether the site is on the NPL.

Sites are placed on the NPL in accordance with informal rulemaking procedures of section 553 of the Administrative Procedures Act. The NPL now contains 703 sites. An additional 248 sites have been proposed.

## II. CERCLA Amendments

On October 17, 1986, CERCLA was amended. The Superfund Amendments and Reauthorization Act of 1986 ("SARA") requires EPA to promulgate changes to the HRS not later than 18 months after the date of enactment and implement these changes 24 months after enactment. The amendments require that EPA modify the HRS so that, "to the maximum extent feasible, it accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." Specifically, section 105(c) of SARA requires:

- An assessment of the human health risks associated with contamination or potential contamination of surface waters, either directly or as a result of the runoff of any hazardous substance, pollutant, or contaminant. This assessment should take into account the use of these waters for recreation and the potential migration of any hazardous substance, pollutant or contaminant through surface water to downstream sources of drinking water.
- An evaluation of the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release.
- An assessment of the contamination or potential contamination of the ambient air which is associated with a release or threatened release of hazardous substances.

Section 125 of SARA requires EPA, in its revision of the HRS, to specifically assess those wastes described in section 3001(b)(3)(A)(i) of the Resource Conservation and Recovery Act (RCRA). These wastes include fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels. The amendments require EPA to consider:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison with other wastes;

(2) The extent of, and potential for, release of such hazardous constituents into the environment;

(3) The degree of risk to human health and the environment posed by such constituents.

Additionally, section 118 of SARA states that EPA shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells, or has contaminated a principal drinking water supply.

The legislative history of SARA makes clear that Congress did not intend that the revised HRS become a mechanism for making detailed risk assessments; rather, it was intended to be consistent with the limited purpose of the NPL—screening sites that might, after further study, warrant fund-financed remedial action. See 132 Cong. Rec. S14931 (daily ed. Oct. 3, 1986) (Statement of Senator Baucus). Senator Baucus emphasized:

> The Congress recognizes that the Hazard Ranking System must continue to function as a screening tool that will allow the evaluation of a large number of sites in an expeditious manner. *Id.*

In order to improve the accuracy of the HRS, the Agency believes that a modest expansion of data collection activities may be necessary before a site

is proposed for the NPL to implement a revised HRS. To maximize the use of resources at the beginning of the program, EPA must target its data collection activities to specific areas that would most increase the accuracy of the HRS. As was discussed in the preamble to the current HRS (47 FR 31187, July 12, 1982), the amount of information to be collected for HRS scoring must be balanced against the cost and time required to obtain that information. EPA anticipates that several thousand releases may be evaluated in the next several years for inclusion on the NPL. In revising the HRS, the number and types of factors must be consistent with the costs of data collection, the large number of releases, and the resources appropriate for implementing the program. Comments on this notice would be most useful if they would focus on those areas of the HRS where an increase in accuracy is achievable without a significant increase in the time and costs associated with data collection.

## III. Technical Issues

As an initial step in its review of the HRS, EPA is requesting comments and information related to revision of the HRS. The comments and information should take into account the recent amendments to CERCLA and the intent of Congress for the HRS to remain a mechanism for screening sites to determine which may need additional comprehensive studies. EPA is soliciting comments on the following areas:

- Existing HRS scoring factors
- Other models for ranking hazardous substance releases
- A mechanism for including direct contact in the HRS
- A mechanism for incorporating human food chain exposures into the HRS

Each of these areas for potential HRS revision is addressed in more detail below. In addition, the Agency would like comments on any other methods for improving the accuracy of the HRS, consistent with the NPL's limited purpose. The comments should address the methodologies needed to implement any such revisions, as well as the associated data requirements and data collection costs.

### *Existing HRS Scoring factors*

EPA is considering modifying the current HRS scoring factors as discussed below. The Agency solicits comments and technical information on the appropriateness of the changes, techniques for incorporating these changes into the HRS, the additional data requirements such changes might necessitate, and the costs associated with collecting these data. In addition, the Agency would like comments and information on whether such a change would increase the accuracy of the HRS and provide better discrimination among sites.

*Ground Water Pathway.* The existing HRS evaluates the ground water pathway using either "observed release"—direct evidence of a release from a facility to ground water—or "route characteristics"—the potential for a facility to cause a release to ground water—taking into account the use of the ground water ("the aquifer of concern"), as well as the toxicity and persistence of the hazardous substances. The HRS evaluates the population drinking water from the aquifer of concern within a three-mile radius, except where there is a lateral discontinuity in the aquifer which prevents migration of contaminants. It does not take into account the direction of ground water flow, nor the potential for hazardous substances to migrate through the ground water to the drinking water wells. When the HRS was first developed, EPA believed that requiring a precise measure of the affected population would add to the time and expense of applying the HRS. Provisions for limiting the area of concern based on ground water flow direction were not included because of the lack of reliable data on direction of flow and because the direction of flow frequently varies. See the preamble to the original NCP, promulgated July 12, 1982 (47 FR 31190), for more background.

Although EPA still believes that it is very difficult to define ground water flow direction at the time of HRS scoring, the Agency is requesting public comment on the feasibility of including more general flow direction data when determining the target population potentially affected by a release of hazardous substances.

Currently, the HRS only takes into account the existing use made of ground water drawn from the aquifer of concern within three miles of the site. In its revision of the HRS, the Agency is considering modifying this factor to account for the future use of the ground water, as well as existing use. EPA would like comment on the appropriateness of such a change, as well as comment on methods for incorporating the future use of ground water into the HRS.

In response to Section 118 of SARA, EPA is soliciting comments and information on different mechanisms for giving priority in the HRS to those facilities that have caused the closing of drinking water wells or have contaminated a principal drinking water supply.

*Surface Water Pathway.* The surface water pathway of the existing HRS is scored in the same manner as the ground water pathway, using either "observed release" or "route characteristics" and taking into account the use of the surface water body, as well as toxicity and persistence of the hazardous substances. The surface water pathway does not take into account the mobility and fate of the hazardous substances in the surface water. EPA believed at the time the HRS was developed that such factors could not be determined given the amount of data available about most sites at the time of HRS scoring.

Although EPA still believes that it may be very difficult to precisely determine the mobility and fate of hazardous substances in the surface water, EPA is requesting comments on the feasibility of including such information in the surface water pathway. EPA would like information concerning readily-available and easy-to-use methods for incorporating such a factor into the HRS, the reliability of these methods to accurately assess the mobility of hazardous substances, and whether such a factor would increase the accuracy of the HRS. For example, published information on biomagnification factors could be used to evaluate the potential for a hazardous substance to bioaccumulate.

The HRS currently uses a distance of three miles to determine the target population potentially affected by a release of hazardous substances into the surface water. EPA is soliciting comments and technical information concerning the adequacy of this distance in determining the potential threat to the population from contaminated surface water, as well as alternatives for this distance.

The HRS currently assigns values for use of surface water, with drinking water receiving the highest value of three and recreation receiving a value of two. However, the population using the surface water for recreation is not taken into account in the HRS score. In response to the recent amendments to CERCLA, EPA must evaluate the need for the HRS to place a greater emphasis on the recreational use of the surface water, and would like comments on how such a change could be accomplished. For example, the Agency could evaluate the importance of recreation on a particular stream by looking at its State-designated stream classification and assigning a score. EPA would also like comments on what the weighting of

recreational use of surface waters should be in relation to drinking water use.

*Air Pathway.* The air pathway in the existing HRS is scored only via an observed release, using data that show contaminant levels at or near a facility that significantly exceed background levels. Potential air releases are currently not considered. EPA is soliciting comments and information on techniques for incorporating a route characteristics/containment component into the air pathway that would allow the Agency to rank potential releases. The comments should address the data that would be needed when considering such a component, the costs for data gathering, and the reliability of the route characteristics components in assessing potential air releases.

The existing air pathway score takes into account the population within a four-mile radius when determining the target population potentially affected by a release of hazardous substances to the air. EPA is soliciting comments on the adequacy of the existing target distance and on other distances that might more accurately reflect the harm to humans from a release of hazardous substances to the air. Comments are also solicited on whether alternative schemes to a fixed distance may be more appropriate. Included with these comments should be technical information on the methodologies available to determine the appropriate target distance limit, the reliability of these methodologies, and the data requirements and data collection costs.

*Volume and Concentration of Hazardous Waste.* In scoring all contaminant pathways of a site using the existing HRS, EPA considers the quantity of hazardous waste deposited, rather than the quantity of hazardous constituents within these wastes. EPA also does not consider the quantity of hazardous constituents released into the ground water, surface water or air, but only whether that release is significantly above background. When EPA developed the HRS, the Agency believed that determining the quantity of hazardous constituents would require a significant amount of sampling and analyses that would result in substantial delays in the ranking of sites.

The Agency has experienced difficulties in determining, even during a Remedial Investigation, the quantity of hazardous constituents within the waste. However, in response to section 105(g)(2) and section 125 of SARA, as well as the legislative history of SARA, EPA is requesting comments on the feasibility of including such information in a revised HRS. Comments should address methods to incorporate such a factor into the structure of the HRS and the amount of site-specific data necessary to accurately determine the quantity of hazardous constituents deposited. In addition, the comments should address the issue of how to calculate scores for sites for which it is not feasible to obtain such information.

EPA is also considering taking into account the concentrations of hazardous constituents in the ground water, surface water and air. The Agency is soliciting comments on the feasibility of considering environmental concentrations in the HRS, as well as simplified techniques for accomplishing this, taking into account the amount of data available at the time of HRS scoring.

Additionally, in response to section 125 of SARA, the Agency solicits comments and information concerning the quantity, toxicity, and concentrations of hazardous constituents within wastes described in section 3001(b)(3)(A)(i) of RCRA (fly ash and associated wastes), and how such characteristics compare with other types of hazardous wastes.

*Toxicity.* Currently, the HRS determines the toxicity of hazardous substances using a scheme developed by N. Irving Sax (1984). This scheme rates the toxicity of hazardous substances in ground water, surface water or air, on a scale of 0 to 3 and is primarily based on the acute toxicity of the most toxic substance present. The Agency solicits comment on how the toxicity factor could be revised to more accurately consider the effects from acute, sub-chronic, and chronic exposures. The Agency is also interested in comments concerning the number of substances that should be considered when mixtures of chemicals are being evaluated, as well as information on methodologies that might more adequately characterize the toxicity of hazardous substances. The comments should include a discussion of the data requirements, costs, and reliability of the methodologies.

*Sensitive Environments.* The existing HRS considers distance to a sensitive environment when evaluating the "targets" affected by a release of hazardous substances to surface water. The current HRS limits the definition of sensitive environments to wetlands and critical habitats of endangered species. EPA is soliciting comments on the appropriateness of modifying the HRS to better consider ecosystem effects or environmental damages and the weighting of such a factor relative to public health concerns. EPA is also soliciting comments on methodologies for evaluating damage to sensitive ecosystems and suggestions on categories of sensitive environments to be protected.

*Other Ranking Models*

In its review of the HRS, EPA is evaluating a number of alternative models used to evaluate and rank hazardous waste sites. EPA is soliciting information on other systems that might be available to rank relative risk at sites, including specific information on the technical aspects of these systems. The comments should address the data requirements and costs of these systems, and how these systems compare to the HRS in measuring risks to human health or the environment.

*Direct Contact*

For purposes of the NPL, the current HRS does not take into account direct contact with hazardous wastes (soil ingestion, inhalation, or dermal exposure). However, based on EPA's experience in cleaning up hazardous waste sites, direct contact has been one of the most significant factors in selecting a remedy. The Agency believes that it is appropriate to include such a factor in a revised HRS and is evaluating various mechanisms for doing so, either as a part of one of the current pathways (i.e., ground water, surface water or air), or as a separate pathway. The Agency solicits comments on how the structure of the HRS might be modified to include direct contact and what factors should be included in such a revision.

*Human Food Chain Impacts*

The CERCLA amendments require EPA to evaluate the effect of hazardous waste sites on natural resources that may affect the human food chain. In response to this requirement, EPA is considering incorporating a human food chain component into a revised HRS. The Agency sollcits comments on the importance of a human food chain pathway in evaluating human exposure to hazardous substances and simplified methodologies to assess these impacts. EPA is also soliciting comments on how to incorporate a substance's persistence and its tendency to bioaccumulate into the human food chain pathway. These comments should address the reliability of these methodologies in accurately assessing the food chain contamination.

## IV. Consideration of Comments

Comments on these and other issues related to HRS revisions should be sent to the location given above under the heading "**ADDRESS**". EPA will review

the comments received in response to this notice prior to issuing the proposed rule.

**List of Subjects in 40 CFR Part 300**

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water supply.

**Authority:** 42 U.S.C. 9605(8)(B)/CERCLA 105(8)(A).

Dated: March 30, 1987.

**Lee M. Thomas,**

*Administrator.*

[FR Doc. 87-7833 Filed 4-8-87; 8:45 am]

BILLING CODE 6560-50-M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 405

[HSQ-130-P]

### Medicare Program; Alternative Sanctions for Suppliers of End-Stage Renal Diseases (ESRD) Services

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** These proposed amendments would specify the sanctions that may be imposed on suppliers of ESRD services in lieu of termination of Medicare coverge of those services, the conditions under which the alternative sanctions may be imposed, and the appeal rights of sanctioned suppliers. The rules are necessary to implement a recent amendment to section 1881 of the Medicare law, to provide information about appeal rights, and to reflect other provisions of section 1881(c)(3).

The purpose is to implement the alternative sanctions provisions and ensure clear understanding of appeal rights and the bases for reinstatement of coverage after termination.

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on June 8, 1987.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-130-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-130-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** Spencer Colburn, (301) 594-3413.

**SUPPLEMENTARY INFORMATION:** .

### I. Background

The Social Security Amendments of 1972 (Pub. L. 92-603) made it possible for individuals to become entitled to Medicare on the basis of a diagnosis of end-stage renal disease. The ESRD amendments of 1978 (Pub. L. 95-292) amended the Medicare law to add several provisions applicable to ESRD services and to payment for those services. As with other providers and suppliers of Medicare services, ESRD suppliers are required to meet certain conditions for coverage of the services they furnish to Medicare beneficiaries. The basic sanction for failure to meet those conditions is termination of the provider agreement in the case of providers, and of coverage of the services in the case of suppliers. Section 2352(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amended section 1881(c) of the Medicare law to provide that if a provider is deficient only in the requirement to cooperate in achieving the goals and plans of the network of ESRD facilities to which it belongs, and that deficiency does not pose jeopardy to patient health and safety, the Secretary may impose other sanctions as an alternative to terminating coverge of the ESRD services furnished by that supplier.

### II. Proposed Changes

We would amend Subpart U of Part 405 of the Medicare rules by adding three new sections:

- Section 405.2180 would specify the basic sanction, which is termination of Medicare coverage, and the bases for reinstatement of coverage after termination. When termination is based on failure to participate in network activities and pursue network goals, coverage could be reinstated when HCFA finds that the supplier is making a reasonable and appropriate effort to comply with this requirement. When termination is based on failure to meet any of the other conditions specified in Subpart U, coverage would not be reinstated until HCFA found that the reason for the sanction had been removed and there was reasonable assurance that it would not recur.
- Section 405.2181 would describe the alternative sanctions (denial of payment for any patients accepted for care after the effective date of the sanction, and gradual reduction of payments for all patients) and the circumstances under which they might be imposed.
- Section 405.2182 would set forth the notice procedures that HCFA will follow and the appeal rights of sanctioned suppliers. HCFA would give notice to the supplier and the public at least 30 days before the effective date of the sanction. If coverage was terminated, the supplier could appeal under Part 498 of the Medicare rules, which provide for hearing before an Administrative Law Judge (ALJ) and a right to request Appeals Council review of the ALJ's decision. If an alternative sanction is imposed, the supplier would have a right to an informal reconsideration before a HCFA official who had no part in the appealed decision.

### III. Response to Comments

Because of the many comments we receive in response to **Federal Register** publication, we cannot acknowledge or respond to them individually. However, we will consider all timely comments and respond to them in the preamble to the final rule.

### IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule," a major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs on prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations

would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all suppliers of ESRD services to be small entities.

We anticipate that the alternative sanctions will be applied only in unusual circumstances and only to a few suppliers of ESRD services. Therefore, we have determined that this proposed rule is not a major rule under Executive Order 12291. We have also determined, and the Secretary certifies, that the rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 42 CFR Part 405**

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart U is amended as set forth below:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation continues to read as follows:

**Authority:** Sections 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Securiy Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr) unless otherwise noted.

2. New §§ 405.2180 through 405.2182 are added to read as follows:

**§ 405.2180 Termination of Medicare coverage.**

(a) Except as provided in § 405.2182, failure of a supplier of ESRD services to meet one or more of the conditions for coverage set forth in this Subpart U will result in termination of Medicare coverage of the services furnished by that supplier.

(b) If termination of coverage is bassed solely on a supplier's failure to participate in network activities and pursue network goals, as required by § 405.2134, coverage may be reinstated when HCFA determines that the supplier is making reasonable and appropriate efforts to meet that condition.

(c) If termination of coverage is based on failure to meet any of the other conditions specified in this subpart, coverage will not be reinstated until HCFA finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

**§ 405.2181 Alternative sanctions.**

(a) *Basis for application of alternative sanctions.* HCFA may, as an alternative to termination of Medicare coverage, impose one of the sanctions specified in paragraph (b) of this section if HCFA finds that—

(1) The supplier fails to participate in the activities and pursue the goals of the ESRD network that is designated to encompass its geographic area; and

(2) This failure does not jeopardize patient health and safety.

(b) *Alternative sanctions.* The alternative sanctions that HCFA may apply in the circumstances specified in paragraph (a) of this section include the following:

(1) Denial of payment for services furnished to patients accepted for care after the effective date of sanction, as specified in the sanction notice.

(2) Reduction of payments, for all ESRD services furnished by the supplier, by 20 percent for each 30-day period (after the effective date of sanction) that the supplier continues to be out of compliance with the requirement specified in paragraph (a) of this section.

**§ 405.2182 Notice of sanction and appeal rights.**

(a) *Notice of sanction.* HCFA gives the supplier and the general public notice of sanction and of the effective date of the sanction. The effective date of the sanction is at least 30 days after the date of the notice.

(b) *Appeal rights: Termination of Medicare coverage.* Termination of Medicare coverage of a supplier's ESRD services because the supplier no longer meets the conditions for coverage of its services is an initial determination appealable under Part 498 of this chapter.

(c) *Appeal rights: Alternative sanctions.* If HCFA proposes to apply a sanction specified in §405.2181(b), HCFA will—

(1) Give the facility notice of the proposed sanction and 15 days in which to request a hearing;

(2) If the facility requests a hearing, provide an informal hearing that includes the following:

(i) Opportunity for the facility to present, in person or in writing, to a HCFA official who was not involved in making the appealed decision, evidence and documentation to refute the finding of failure to participate in network activities and pursue network goals.

(ii) A written hearing decision.

(3) If the decision of the informal hearing supports application of the alternative sanction, provide the facility and the public, at least 30 days before the effective date of the sanction, with a written notice that specifies the effective date and the reasons for the sanction.

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance, and No. 13.774—Supplementary Medical Insurance)

Dated: December 12, 1986.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: February 24, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87-7928 Filed 4-8-87; 8:45 am]

BILLING CODE 4120-01-M

---

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 382

[Docket R-107]

### Determination of Fair and Reasonable Rates for the Carriage of Preference Cargoes on Bulk Cargo Vessels

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking: Reopening of comment period.

**SUMMARY:** This notice reopens the comment period for Docket R-107 which closed on March 17, 1987 (51 FR 45135; December 17, 1986). Requests for a one-month extension were made by counsel for Apex Marine Corp. and by counsel for Aquarius Marine Company, Atlas Marine Company, American Shipping Company, American Maritime Transport, Inc., and Moore McCormack Bulk Transport Inc. The extension would provide an opportunity for those parties to obtain information which had been requested from various sources, but which had not been received in time for them to meet the March 17 deadline. The companies maintain that the information requested is critical to comments to be furnished regarding the proposed rule. MARAD considers that the reasons for the requests are valid and the length of the reopened period is reasonable, and hereby reopens the comment period to April 17, 1987.

**DATE:** The reopened comment period will close April 17, 1987.

**ADDRESS:** Send the original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC

20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelop or postcard.

**FOR FURTHER INFORMATION CONTACT:** Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Tel. (202) 366–2323.

Dated: April 6, 1987.

By Order of the Maritime Administrator

**James E. Saari,**

*Sectetary, Maritime Administration.*

[FR Doc. 87–7921 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–81–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 21, 74, and 94

**[General Docket 82–243; FCC 86–524]**

### Fixed Service Usage of the Frequency Bands 932–935 MHz and 941–944 MHz; Establish Service and Technical Rules for Government and Non-Government

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes technical standards, coordination and licensing procedures for fixed service usage of the 932–935 MHz and 941–944 MHz bands. A First Report and Order in this docket (50 FR 4650; 2/1/85) following a Notice of Proposed Rule Making (47 FR 23491; 5/28/82) and a Further Notice of Proposed Rule Making (48 FR 12267; 3/28/83) reallocated the 932–935 MHz and 941–944 MHz bands for Government and non-Government fixed use, but did not specify procedural and technical rules. This action proposes equal access to the new bands by Government and non-Government users and proposes technical standards similar to those in other private operational fixed bands.

**DATES:** Comments are due May 4, 1987; reply comments are due June 3, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, telephone (202) 653–8116 or Ron Netro, telephone (202) 634–2443.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Notice of Proposed Rule Making in General Docket 82–243, FCC 86–524, Adopted November 25, 1986, and Released March 16, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Third Notice of Proposed Rule Making**

1. In this rule making, the Commission proposes technical standards, coordination, and licensing procedures for fixed service usage of the 932–935 MHz and 941–944 MHz bands. On November 21, 1984, the Commission reallocated these bands from a land mobile reserve to a Government and non-Government fixed service. At that time, procedural and technical rules were deferred to allow all interested parties the opportunity to comment on the specific procedures and rules to be followed in sharing this spectrum between Government and non-Government users. This *Notice* proposes licensing and coordination procedures and technical standards for the bands.

2. At present, the Government and non-Government sectors follow different frequency assignment procedures. The authority for a Government radio station to use a frequency within the United States and its Possessions is granted by the National Telecommunications and Information Administration (NTIA) of the Department of Commerce. Authority for use of a non-Government radio frequency is granted by the Commission. We propose to keep these differing procedures in place, but to place all applications for these shared frequencies on a public notice to be released by the Commission and on the agenda of NTIA's Frequency Assignment Subcommittee (FAS). For coordination purposes, non-Government applications will be submitted to the NTIA by the Commission's FAS representatives. Government applications will be submitted to the Commission's FAS representative by NTIA.

3. We are proposing a channeling plan in an attempt to guide efficient use of the new fixed bands. The plan would allocate, for point-to-point use, sixteen 25 kHz channel pairs, four 50 kHz pairs, six 100 kHz pairs, and nine 200 kHz pairs. We propose equal access to all channels by Government and non-Government users. We also request comment on whether there is a need for point-to-multipoint (multiple address) systems that should be satisfied in this allocation.

4. We are proposing standards for transmitters and antennas which we believe will provide efficient low-capacity point-to-point communications in the new fixed bands. These standards are similar to those currently used in private operational fixed bands. We are not proposing receiver standards; however, we note that NTIA specifies certain technical criteria for receivers intended for Government use.

5. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

6. This proceeding suggests a proposal which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

7. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to propose no new or modified information collection requirement on the public.

8. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 4, 1987, and reply comments on or before June 3, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

**Ordering Clause**

9. This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 332.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–7894 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 84–511; RM–4685]**

### Radio Broadcasting Services; Table of Assignments; Payson, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of proposal.

**SUMMARY:** This document denies a petition filed by Vicki L. Young, proposing to allot Class C FM Channel 248 to Payson, Utah for failure to provide a technical showing, regarding an available site for provision of city grade service. With this action, this proceeding is terminated.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 84–511 adopted March 13, 1987, and released April 2, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**Mark N. Lipp,**

*Chief, Alloctions Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–7896 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 87–71, RM–5677]**

## Radio Broadcasting Services; Table of Assignments; Hartford, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Timothy Dodge proposing the allotment of Channel 282A to Hartford, Vermont, as that community's first FM service. Canadian concurrence is required.

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Timothy Dodge, Harvest Broadcasting Services, BOX 105FM, Hinsdale, NH 03451 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–71, adopted March 2, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–7897 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 87–69, RM–5652]**

## Television Broadcasting Services; Table of Assignments; Provo, UT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Provo Television, Inc., proposing the assignment of UHF Television Channel 32 to Provo, Utah, as that community's second commercial television service.

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Aaron Shainis, Esquire, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–69, adopted March 13, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–7898 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 87–70, RM–5640]**

## Television Broadcasting Services; Table of Assignments; Olympia, WA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Hawks Prairie TV Corporation, proposing the assignment of UHF Television Channel 67 to Olympia, as that community's first local commerical television service. Canadian concurrence is required.

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: B. Jay Baraff, Exquire, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036 (Counsel for Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–70, adopted March 13, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contract.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–7899 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 87–58, RM–5408, 5464]**

## Radio Broadcasting Services; Oxford and New Albany, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Propsed rule.

**SUMMARY:** This document requests comments on two petitions for rule making. The petitions are mutally exclusive. Oxford Radio, Inc. requests the substitution of FM Channel 294C2 for 296A at Oxford, Mississippi, and modification of the license of Station WKLJ (FM), Channel 296A, to reflect Channel 294C2. A site restriction 11.7 kilometers west of the community is required to accommodate the substitution. WTMX, Inc. proposes the substitution of Channel 294C2 for 292A at New Albany, Mississippi, and modification of its license to reflect the higher class channel. A site restriction 7.2 kilometers southeast of the community is necessary for this allotment. The allotment of Channel 294C2 at New Albany is also contingent on the approval of an application (BPH86051911C) filed by Station WKTA(FM), McKenzie, Tennessee, to relocate its transmitter. At present, the proposal for a class C2 channel at New Albany would be short spaced to the 16 kilometer buffer zone of Station WKTA(FM). This proposal could provide a second wide area coverage station of Oxford or New Albany, Mississippi.

**DATES:** Comments must be filed on or before May 18, 1987, and reply comments on or before June 2, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554 In addition to filing commens with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

James J. Popham, Riley M. Murphey, Hardy & Popham, 700 Camp Street, New Orleans, LA 70130–3702, (counsel for Oxford Radio, Inc.)

Richard J. Hayes, Jr., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553, (counsel for WTMX, Inc.)

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–58, adopted February 10, 1987, and released March 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing premissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–7895 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 52, No. 68
Thursday, April 9, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Highway 88 Future Recreation Use Determination; Eldorado National Forest, El Dorado, Amador, and Alpine Counties, CA; Environmental Impact Statement; Withdrawal of Draft Environmental Impact Statement

The Eldorado National Forest Draft Environmental Impact Statement for the Highway 88 Future Recreation Use Determination is being withdrawn for further consideration.

This rescinds the Notice of Availability published in the **Federal Register** of January 30, 1987 (52 FR 3050) as amended March 5, 1987 (52 FR 6833).

For further information contact: Glenn Gottschall, Amador District Ranger, Eldorado National Forest, Star Route 3, Highway 88, Pioneer, California 95666; telephone (209) 295–4251.

Dated: April 3, 1987.

**Jerald N. Hutchins,**

*Forest Supervisor.*

[FR Doc. 87–7870 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–11–M

### Office of the Secretary

### National Plant Genetic Resources Board; Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: May 6–7, 1987.

Time: 8:30 a.m.–5 p.m., May 6. 8:30 a.m.–5 p.m., May 7.

Place: Room 104–A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–1560.

Done at Beltsville, Maryland, this 24th day of March 1987.

**Charles F. Murphy,**

*Executive Secretary, National Plant Genetic Resources Board.*

[FR Doc. 87–7939 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–[illegible]–M

### Soil Conservation Service

### East and Middle Forks of Massac Creek Watershed, KY; Environmental Statement; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East and Middle Forks of Massac Creek Watershed, McCracken County, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** Allan Heard, Assistant State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2747.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned action is to install conservation practices on approximately 3,800 acres of excessively eroding cropland that will remain in cultivation and 40 acres of excessively eroding cropland that will be converted to permanent vegetative cover. This planned action will reduce upland erosion and downstream sedimentation and pollution.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Allan Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: April 2, 1987.

**Randall W. Giessler,**

*State Conservationist.*

[FR Doc. 87–7852 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation (SIPP)—1985 Panel Wave 8; Employer Feasibility Test.

Form Number: Agency—SIPP–5814(x), SIPP–5815(x), SIPP–5816, SIPP–5817; OMB—0607–0425.

Type of Request: Revision of a currently approved collection.

Burden: 1,600 respondents; 189,610 reporting hours.

Needs and Uses: The objective of this survey is to test the feasibility of having SIPP respondents sign a release form and having employers provide the Census Bureau with information on employer contributions to the respondents medical insurance plans, life insurance plans and retirement plans.

Affected Public: Individuals or households, state or local governments, farms, businesses or other for-profit institutions; Federal agencies or employees, non-profit institutions, small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: John Griffin, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffin, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: April 1, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–7968 Filed 4–8–87; 8:45 am]

BILLING CODE 3510–07–M

---

## International Trade Administration

### Export Trade Certificate of Review; Notice of Application for Amendment to Export Trade Certificate of Review

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 84–A0033." The OETCA has received the following application for an amendment to Export Trade Certificate of Review #84–00033 which was issued on December 31, 1984 and published in the **Federal Register** on January 7, 1985 (50 FR 871).

**Summary of Application**

Applicant: International Continental Agri-Tech, Inc.; Route 2, Box 8–A, Florence, Mississippi 39073

Application #: 84–A0033

Date Deemed Submitted: March 26, 1987.

Members (in addition to applicant): Mr. R.S. Norsworthy of Florence, Mississippi.

**Amendment to Export Trade and Members**

The Applicant seeks to amend its certificate to change its Export Trade to "All Products". In addition, because Mr. G.F. Corcoran has withdrawn from the Applicant as a Member, the Applicant seeks an amendment to delete this name from the certificate.

Dated: April 2, 1987.

**George Muller,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87–7857 Filed 4–8–87; 8:45 am]

BILLING CODE 3510–DR–M

---

[A–401–004]

### Carton-Closing Staples and Staple Machines From Sweden Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of antidumpting duty administrative review.

**SUMMARY:** In response to a request by the respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on carton-closing staples and staple machines from Sweden. The review covers two manufacturer/exporters of this merchandise to the United States and generally the period December 1, 1983 through January 25, 1985. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Katherine Glover or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 20, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 38250) an antidumping duty order on carton-closing staples and staple machines from Sweden. Two respondents, Josef Kihlberg AB and Grytgols Bruks AB, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on February 12, 1986 (51 FR 5219). The Department has now conducted that administrative

review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of certain carton-closing staples in strip form and certain non-automatic carton-closing staple machines. Carton-closing staples are U-shaped wide crown fastening devices used to secure and close the flaps of corrugated paperboard cartons. They generally have crown widths of 1¼ inches or more, and cross-sectional dimensions vary from .037—.040 inches by .074.—.092 inches. The staples are made of steel, most often copper-coated or galvanized.

Non-automatic wide crown carton-closing staple machines use the wide crown staples described above and can be divided into two categories, hand-held top closing staple machines and free-standing bottom closing machines.

Such staples and staple machines are currently classifiable under items 646.2000 and 662.2065, respectively, of the Tariff Schedules of the United States Annotated.

The review covers two manufacturer/exporters, Josef Kihlberg AB and Grytgols Bruks AB, of certain carton-closing staples and staple machines from Sweden and the periods December 1, 1983 through November 30, 1984 and December 1, 1983 through January 25, 1985, respectively.

**United States Price**

In calculating United States price for Kihlberg, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the packed ex-factory, ex-warehouse, or f.o.b. price to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, U.S. and Swedish inland freight, marine insurance, brokerage fees, packing, U.S. customs duties, selling expenses, and credit expenses.

In calculating United States price for Grytgols Bruks, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, inland freight, marine insurance, and U.S. import duties. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, to provide a basis of comparison for Josef Kihlberg and Grytgols Bruks since sufficient quantities of such or similar merchandise were sold in the home market during the periods of review.

Home market price was based on the packed, ex-factory price to unrelated purchasers in the home market. Where applicable, we made adjustments for quantity discounts, credit expenses, packing and differences in the physical characteristics of the merchandise. We made further adjustments, where applicable, for indirect selling expenses in ESP calculations. No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Josef Kihlberg AB | 12/83–11/84 | |
| Staples | | ■ |
| Staple Machines | | 6.0 |
| Grytgols Bruks AB | 12/83–1/25/85 | |
| Staples | | 0 |

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication.

The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act and based on the above margins, no cash deposit of estimated antidumping duties shall be required for shipments by Grytgols Bruks AB. Because we have already published the final results of a review for a later period for Josef Kihlberg, the rate of .7 percent on staple machines established in the final results of that review (52 FR 9321) shall be required for shipments by Josef Kihlberg AB. Since the rate on staples was *de minimis* in that review, no cash deposit of estimated antidumping duties shall be required for shipments of staples by Josef Kihlberg AB.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative review, whose first shipments occurred after November 30, 1985 and who is unrelated to either a reviewed firm or any other previously reviewed firm, a cash deposit of .7 percent on staple machines established in the final results of the earlier review shall be required. No cash deposit of antidumping duties shall be required for shipments of carton-closing staples.

These deposit requirements are effective for all shipments of Swedish carton-closing staples and staple machines entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 2, 1987.

**Joseph A. Spetrini,**

*Acting Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87–7969 Filed 4–8–87; 8:45 am]

BILLING CODE 3510–DS–M

---

[A–588–016]

## Ferrite Cores (of the Type Used in Consumer Electronic Products) From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

**SUMMARY:** In response to requests by three manufacturers and/or exporters, the Department of Commerce has conducted an administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan. The review covers three manufacturers and/or exporters of this merchandise and various periods from March 1, 1983 through February 28, 1986. The review indicates the existence of dumping margins for some of the firms during the period.

As a result of the review, the Department intends to revoke the

antidumping finding with respect to Sony Corporation and Tohoku Metal Industries.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

**EFFECTIVE DATE:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/2923.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 6, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 31311) a tentative determination to revoke in part the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan (36 FR 4877, March 13, 1971) for Sony Corporation and Tohoku Metal Industries. On October 31, 1984, the Department published in the **Federal Register** (49 FR 43737) the final results of its last administrative review of the antidumping finding. We began this review of the finding under our old regulations. After the promulgation of our new regulations, three manufacturers and/or exporters requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published notices of initiation on March 14 (51 FR 8862) and April 18, 1986 (51 fR 13273).

## Scope of the Review

Imports covered by the review are magnetically soft ferrite magnets which are usually wound with wire. The merchandise is magnetized with the induction of electric current and is of the type commonly used as components in consumer electronic products such as household television receivers, projection television sets, radios, stereos and high fidelity radio systems, automobile radios, electronic home computers, etc. Ferrite cores are currently classifiable under item 535.1240 of the Tariff Schedules of the United States Annotated.

The review covers three manufacturers and/or exporters of Japanese ferrite cores and various periods from March 1, 1983 through February 28, 1986.

## United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act") as appropriate. Purchase price was based on the f.o.b. delivered price to the first unrelated purchaser in the United States. ESP was based on the c.i.f. packed delivered price to the first unrelated purchaser in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, wharfage and "B" charges (which include Japanese customs clearance fee, measurement fee and marking fee) ocean freight, marine insurance, U.S. customs duties, brokerage charges, and in ESP calculations, the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

## Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the delivered packed price to unrelated purchasers. We made adjustments where applicable, for inland freight and insurance. No other adjustments were claimed or allowed.

## Preliminary Results of the Review and Intent To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/ exporter | Time period | Margin (Percent) |
|---|---|---|
| Fuji Electrochemical Co., Ltd. | 3/1/83–10/31–84 | [1] |
| | 3/1/85–2/28/86 | 1.08 |
| Sony Corporation | 3/1/84–8/6/84 | [1] 0 |
| Tohoku Metal Industries | 3/1/83–8/6/84 | [1] 28.00 |

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results and intent to revoke in part within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments from the remaining manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (49 FR 43737, October 31, 1984).

As a result of our review, we intend to revoke the finding on Japanese ferrite cores (of the type used in consumer electronic products) manufactured and/or exported by Sony Corporation and Tohoku Metal Industries.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after Feburary 28, 1986 and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 1.08 percent shall be required. These deposit requirements are effective for all shipments of Japanese ferrite cores (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, intent to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54) of the Commerce Regulations (19 CFR 353.53a, 353.54).

Dated: April 3, 1987.

**Joseph A. Spetrini,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–7970 Filed 4–8–87; 8:45 am]

BILLING CODE 3510-DS-M

BEST COPY AVAILABLE

[A-588-014]

## Tuners (of the Type Used in Consumer Electronic Products) From Japan; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by three manufacturers and/or exporters, the Department of Commerce has conducted an administrative review of the antidumping finding on tuners (of the type used in consumer electronic products) from Japan. The review covers three manufacturers and/or exporters of this merchandise to the United States and generally the period December 1, 1982 through November 30, 1984. There were no known shipments of this merchandise to the United States by the three firms during the period, and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 23, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 5478) the final results of its last administrative review of the antidumping finding on tuners (of the type used in consumer electronic products) from Japan. We began this review of the finding under our old regulations. After the promulgation of our new regulations, three manufacturers and/or exporters requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation on May 30, 1986 (51 FR 19580). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

### Scope of the Review

Imports covered by the review are shipments of tuners (of the type used in consumer electronic products) consisting primarily of television receiver tuners and tuners used in radio receivers such as household radios, stereo and high fidelity radio systems, and automobile radios. They are virtually all in modular form, aligned and ready for simple assembly into the consumer electronic product for which they were designed. The term "consumer electronic products" includes television sets, radios, and other electronic products of the type commonly bought at retail by household consumers, whether or not used in or around the household. Excluded are complete stereophonic tuners which are consumer products themselves, but not excluded are modular-type stereophonic tuners. Tuners covered by the finding are currently classifiable under items 685.0200 and 685.3277 of the Tariff Schedules of the United States Annotated.

The review covers three manufacturers and/or exporters of Japanese tuners to the United States and generally the period December 1, 1982 through November 30, 1984. There were no known shipments of this merchandise to the United States by the three firms during the period, and there are no known unliquidated entries.

### Preliminary Results of Review

As a resule of our review, we preliminarily determine that the following margins exist during the periods indicated:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Marubeni Corp. | 9/01/84-11/30/84 | [1]23.66 |
| Murata Manufacturing Co., Ltd. | 9/01/84-11/30/84 | [1] 1.9 |
| Toa Electric Cd., Ltd. | 12/01/82-11/30/84 | [1] 1.9 |

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, in accordance with section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. The above margins do not change the current rates for cash deposits of antidumping duties for new exporters. These deposit requirements are effective for all shipments of Japanese tuners (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 2, 1987.

Joseph A. Spetrini,

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-7971 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-DS-M

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Marine Mammals; Modification of Permits; Theater of the Sea (P92, and P92B); Modification to Permits Numbered 69 and 326

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permits numbered 69 and 326 issued to Theater of the Sea, Inc., P.O. Box 407, Islamorada, Florida 33036 are modified. Permit No. 69 was issued on January 15 1975, (40 FR 4173), is modified by adding the following:

**Section B.5**

5. The Holder is authorized to conduct a human/dolphin diving program as described in the modification request. This modification is subject to periodic review by the Assistant Administrator for Fisheries and can be revoked at any time.

**Section B.6**

6. The Holder shall submit a quarterly report, listing the number of human/dolphin dives, any behavioral modifications of the animals, and any health related problems. This report should be submitted to the Office of Protected Species and Habitat Conservation, National Marine Fisheries

Service, Department of Commerce, Washington, DC 20235.

Permit No. 326 issued on April 10 1981, (46 FR 22251), as modified on August 29, 1983 (48 FR 39112), is further modified by adding the following:

Section B.4

4. The Holder is authorized to conduct a human/dolphin diving program as described in the modification request. This modification is subject to periodic review by the Assistant Administrator for Fisheries and can be revoked at any time.

Section B.5

5. The Holder shall submit a quarterly report, listing the number of human/dolphin dives, any behavioral modifications of the animals, and any health related problems. This report should be submitted to the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service,-Department of Commerce, Washington, DC 20235.

This modification became effective on April 1, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 1, 1987.

**Nancy M. Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87-7736 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-22-M

## Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Coastal. Migratory Pelagic (Mackerel) Advisory Panel, April 15, 1987, to review the report of the Council's Stock Assessment Panel to recommend levels of recretional and commercial harvest of king and Spanish Mackerel within the range of acceptable biological catch. The meeting will be held at the Ramada Inn Hotel, 5303 West Kennedy Boulevard, Tampa, Florida. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida; telephone: (813) 228-2815.

Dated: April 3, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-7922 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-22-M

## Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235 or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: April 3, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

| Code | Fishery | Regional fishery management councils |
|---|---|---|
| ABS | Atlantic Billfishes and Sharks. | New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean |
| BSA | Bering Sea Aleutian Islands Groundfish. | North Pacific. |
| GOA | Gulf of Alaska. | North Pacific. |
| NWA | Northwest Atlantic Ocean. | New England, Mid-Atlantic. |
| SNA | Snails (Bering Sea). | North Pacific. |
| WOC | Pacific Groundfish (Washington, Oregon and California). | Pacific. |
| PBS | Pacific Billfishes and Sharks. | Western Pacific. |

Activity codes which specify categories of fishing operations applied for are as follows:

| Activity code | Fishing operations |
|---|---|
| 1 | Catching, processing and other support |
| 2 | Processing and other support only |
| 3 | Other support only |
| * | Vessel(s) in support of U.S. vessels (Joint Venture) |
| ** | Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities. |

## Joint Venture

The Government of Japan has submitted an application for a squid joint venture in the NWA fishery with the BANSHU MARU NO. 6 and the BANSHU MARU NO. 7. The request is

for *Illex*, 1,000 mt and *Loligo*, 1,500 mt. The designated American partner is Point Judith Fishermen's Cooperative Association, Inc., Narragansett, RI.

[FR Doc. 87-7923 Filed 4-8-87; 8:45 am]
BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Deduction in Charges of Certain Cotton Textile Products Produced or Manufactured in the Dominican Republic

April 6, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on April 10, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

**Background**

On December 30, 1986 a notice was published in the **Federal Register** (51 FR 47043) which establishes import restraint limits for certain cotton textile products in Category 340, produced or manufactured in the Dominican Republic and exported during the period which began on December 1, 1986 and extends through May 31, 1987.

A further notice was published in the **Federal Register** on March 4, 1987 (52 FR 6595) which establishes guaranteeed access levels for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States, including Category 340.

During consultations held on March 10, 1987 between the Governments of the United States and the Dominican Republic, the United States agreed to deduct 15,633 dozen from charges made to the designated consultation level established for Category 340 for the period which began on December 1, 1986 and extends through May 31, 1987. These goods were charged to the designated consultation level because of the unavailability of proper documentation (CBI Export Declaration (Form ITA-370P)) required for entry under TSUSA 807.0010. Subsequently, documentation was provided to the U.S. Government establishing that these goods were assembled exclusively from U.S. formed and cut fabric and qualified for entry under the guaranteed access level. It was agreed, therefore, that 15,633 dozen would be charged to the guaranteed access level established for Category 340 in the directive of February 25, 1987.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct 15,633 dozen from the restraint limit established for Category 340 for the period which began on December 1, 1986 and extends through May 31, 1987. Subsequently, this same amount will be charged to the guaranteed access level established for properly certified textile products in Category 340 which are assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic during the period which began on December 1, 1986 and extends through May 31, 1987.

A description of the textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27088) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 6, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC, 20229*

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of December 18, 1986 between the Governments of the United States and the Dominican Republic, I request that, effective on April 10, 1987, you deduct 15,633 dozen from the charges made to the import restraint limit established in the directive of December 23, 1986 for Category 340, produced or manufactured in the Dominican Republic and exported during the period which began on December 1, 1986 and extends through May 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register.**

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7966 Filed 4-8-87; 8:45 am]
BILLING CODE 3510-DR-M

### Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

April 6, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 9, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

**Background**

On May 28, 1986 a notice was published in the **Federal Register** (51 FR 19249) which establishes import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1986 and extends through May 31, 1987. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 and at the request of the Government of Sri Lanka, swing is being applied to the restraint limit previously established for cotton textile products in Category 336.

The limit for Category 342 is being reduced to account for the amount of swing applied to Category 336.

Accordingly, in the letter published below, the Chairman fo the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 336 and 342.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 44607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754) November 9, 1984 (49 FR 44782) July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 6, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1986 and extends through May 31, 1987.

Effective on April 9, 1987, the directive of May 22, 1986 is further amended to include the following adjusted limits to the previously established restraint limits for cotton textile products in Categories 336 and 342, as profided under the terms of the bilateral agreement of May 10, 1983 [1]:

| Category | Adjusted 12-mo limit [1] |
|---|---|
| 336 | 71,461 dozen. |
| 342 | 180,506 dozen. |

[1] The limits have not been adjusted to account for any imports exported after May 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-7967 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable limit; and (3) administrative arrangements and adjustments may be made to resolve minor problems arising in the implementation of the agreement.

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Proposed Additions and Deletions; Correction

In FR Doc. 87-7054 appearing on page 10251 in the issue of Tuesday, March 31, 1987, make the following correction:

In the third column under services, the entry which now reads "Commissary Shelf Stocking and Custodial, Columbia Air Force Base, Mississippi", should read "Commissary Warehousing Service, Columbus Air Force Base, Mississippi".

Because of this change, the time for receipt of comments on the proposed deletion of this service is extended until May 11, 1987.

**E.R. Alley,**

*Acting Executive Director.*

[FR Doc. 87-7906 Filed 4-8-87; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board Meeting

April 3, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Airships will meet at the Pentagon, Washington, DC, Room 5D982, on May 5 and 6, 1987, from 8:00 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to review, discuss and evaluate the suitability of airships to perform certain Air Force roles and missions.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-7867 Filed 4-8-87; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Meeting

April 3, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Space-Based Radar will conduct a meeting in Colorado Springs, CO on May 6-7, 1987, from 8:00 a.m. to 5:00 p.m. each day.

The purpose of this meeting is to receive briefings on and to discuss requirements for a space-based radar system. These meetings are being held to prepare Board members to advise senior Air Force personnel on appropriate means of achieving stated requirements.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-7942 Filed 4-8-87; 8:45 am]

BILLING CODE 3910-01-M

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meetings:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 27 April 1987.

Time of Meeting: 0900-1700 hours.

Place: Headquarters, U.S. Army Strategic Defense Command, Research Park, Huntsville, Alabama.

AGENDA: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings and discussions on technology transfer of SDIO to the tactical Army. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-7943 Filed 4-8-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Vocational Education Indian Hawaiian Natives; Applications for New Awards for FY 1988

Notice Inviting Applications for New Awards under the Vocational Education Indian and Hawaiian Natives Program for use in fiscal year 1988 (CFDA No. 84.101A). This application notice is for Indian tribes only and does not apply to organizations for Hawaiian natives.

*Purpose:* Provides financial support to Indian tribes to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*).

*Deadline for Transmittal of Applications:* July 15, 1987.

*Applications Available:* April 17, 1987.

*Available Funds Anticipated:* For fiscal year 1987, the Congress appropriated $10,414,352 for Indian vocational education programs for use in fiscal year 1988. Of that amount, approximately $7,129,764 is for new awards.

*Estimated Range of Awards:* $50,000 to $500,000.

*Estimated Average Size of Awards:* $220,000.

*Estimated Number of Awards:* 32.

*Project Period:* Up to 36 months.

*Applicable Regulations:* Regulations applicable to this program include the following: (a) The regulations in 34 CFR Part 410; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

*Criteria for Evaluating Applications:* The Secretary assigns the fifteen points, reserved in 34 CFR 410.30(b), as follows: five points to the Selection Criterion (a)—Need—in 34 CFR 410.31(a) for a total of 20 points for that criterion; five points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 410.31(b) for a total of 25 points for that criterion; and five points to the Selection Criterion (c)—Quality of Key Personnel—in 34 CFR 410.31(c) for a total of 15 points for that criterion.

*For Applications or Information Contact:* Harvey Thiel or Timothy Halnon, Special Programs Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 519, Reporters Building, Washington, DC 20202–5516. Telephone (202) 732–2380 or 732–2379.

*Program Authority:* 20 U.S.C. 2313.

Dated: April 1, 1987.

**John G. Pucciano,**

*Acting Assistant Secretary for Vocational and Adult Education.*

[FR Doc. 87–7941 Filed 4–8–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

**[Notice No. 2]**

### Proposed Establishment of Federally Funded Research and Development Center (FFRDC)

**SUMMARY:** In accordance with paragraph 6.b.(2) of the Office of Federal Procurement Policy, Policy Letter No. 84–1, the Department of Energy (DOE) announces its intention to establish the Continuous Electron Beam Accelerator Facility (CEBAF) located in Newport News, Virginia, as a Federally Funded Research and Development Center (FFRDC). The facility will include a continuous beam recirculating linear accelerator of approximately one mile circumference. The accelerator will be capable of providing high-duty-factor electron beams throughout the energy range from 0.5 to 4.0 billion electron volts. The CEBAF laboratory will be a center for basic research and training related to nuclear structure and the accelerator techniques utilized to carry out that research. Related theoretical studies will be conducted, and institutional relationships will be developed to assure strong involvement of the scientific community. The unique capabilities of CEBAF will serve as a focus for research programs of the U.S. and the International scientific community for many years. The CEBAF laboratory and accelerator construction project is the highest priority new research facility in the U.S. nuclear physics program. CEBAF will have the only accelerator facility in the world capable of producing electron beams which meet the criteria of energy, duty factor, and beam intensity necessary to study minute details of nuclear structure, and thus provide new scientific knowledge about the underlying quark-gluon substructure in nuclear matter. Based upon the research plans and scope of this laboratory, the DOE has determined that the CEBAF labpratory should be designated as FFRDC.

**FOR FURTHER INFORMATION CONTACT:** Dr. David L. Hendrie, Director, Division of Nuclear Physics, Office of Energy Research, ER–23, U.S. Department of Energy, Washington, DC 20545.

**DATE:** Any comments on this proposed action must be received on or before May 11, 1987.

**ADDRESS:** Address comments to Dr. David L. Hendrie at the address listed above.

Issued in Washington, DC, on April 3, 1987.

**Ira M. Adler,**

*Deputy Director for Management Office of Energy Research.*

[FR Doc. 87–7838 Filed 4–8–87; 8:45 am]

BILLING CODE 6450–01–M

## Economic Regulatory Administration

**[ERA Docket No. 87–14–NG]**

### Natural Gas Imports; American Central Gas Pipeline Corp. Application To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of reciept on March 18, 1987, of an application from American Central Gas Pipeline Corporation (American Central) for blanket authorization to import up to 500,000 Mcf per day of Canadian natural gas, up to a maximum of 400 Bcf, over a two-year period beginning on the date of first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers including pipelines, local distribution companies and electric utilities, as well as agricultural, commercial and industrial end-users. American Central would import gas for its own account as well as for the accounts of its U.S. purchaser clients. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. American Central intends to utilize existing pipeline facilities for transportation of the volumes imported. The firm proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:**
Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Departmnt of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

**SUPPLEMENTARY INFORMATION:** The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their response on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserteed that the import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written commnents must meet the requiremets that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., May 11, 1987.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion an order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of American Central's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 31, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–7964 Filed 4–8–87; 8:45 am]

BILLING CODE 6450–01–M

---

## Application to Import Natural Gas From Canada; Suncor Inc.

**[ERA Docket No. 87–13–NG]**

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada for short-term, interruptible sales.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 16, 1987, of an application filed by Suncor Inc., (Suncor) for a blanket authorization to import from Canada up to 50 MMcf of natural gas per day and a maximum of 36.5 Bcf for a term of two years beginning on the later of April 1, 1987, the date that interruptible transportation service becomes available on the facilities of Northern Border Pipeline Company (Northern Border), or the date of ERA approval. Suncor, a Canadian corporation with its principal office in Toronto, Canada, is an affiliate of Sun Company, Inc., of Radnor, Pennsylvania, and Ontario Energy Resources Ltd., a corporation indirectly owned by the Province of Ontario, Canada.

Under the proposed import arrangement, the gas to be imported would be owned or controlled by Suncor and would be sold on a short-term, interruptable basis to local gas distribution companies serving the Midwestern States. The proposed import would enter the United states at a point on the international boundary near Port of Morgan, Montana, and would be transported through the facilities of Northern Border, as well as other interstates pipelines serving the Midwestern states.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, or notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:**
John Glynn, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482
Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

**SUPPLEMENTARY INFORMATION:** The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this proposed import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., May 11, 1987.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevent and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Suncor's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 31, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–7965 Filed 4–8–87; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

### Agency Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for clearance to the Office of Management and Budget.

**SUMMARY:** The Department of Energy (DOE) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) a brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before May 11, 1987. Last notice published Friday, April 3, 1987.

**ADDRESS:** Copies of the materials submitted to OMB may be obtained from Mr. Gross at the address below. Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. For comments relating to FERC data collections, send comments to the Attention of Mr. Rick Otis. Comments to all other DOE data collections should be sent to the Attention of Mr. Vartkes Broussalian. (Copies of your comments also should be addressed to Mr. Gross at the address below.)

**FOR FURTHER INFORMATION CONTACT:** John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2308.

**SUPPLEMENTARY INFORMATION:** If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB desk officer of your intent as early as possible.

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–11
3. 1902–0032
4. Natural Gas Pipeline Company Monthly Statement
5. Extension
6. Monthly
7. Mandatory
8. Business or other for profit
9. 46 respondents
10. 552 responses
11. 4416 hours
12. The purpose of this monthly statement is to develop statistics and studies in investigating the resonableness of the various revenue and cost of service items claimed in section 7 certificates and sections 4 and 5 rate filings. (FERC Form –11)

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–559
3. 1902–0036
4. Independent Producer Rate Change or Initial Billing Statement
5. Extension
6. On Occasion
7. Mandatory
8. Business or other profit
9. 100 respondents
10. 1644 responses
11. 822 hours
12. FERC–559 is a form required by the Commission for large independent

natural gas producers to file initial billing statements, rate increases, or certain blanket affidavits.

**Statutory Authority:** Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275– Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, March 31, 1987.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 87–7839 Filed 4–8–87; 8:45 am]

BILLING CODE 6450–01–M

---

## Federal Energy Regulatory Commission

**[Project No. 8596–001 et al.]**

### Hydroelectric Applications (Jason M. Hines et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Minor License.

b. Project No.: 8596–001.

c. Date Filed: August 29, 1986.

d. Applicant: Jason M. Hines.

e. Name of Project: Dublin Hydro.

f. Location: On the Stanley Brook in Cheshire County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jason M. Hines, P.O. Box 76, Amherst, NH 03031, (603) 654–2678.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of: (1) Reconstruction of a 17.5-foot-high, 238-foot-long concrete and stone masonry, gravity structure; (2) a proposed reservior with a surface area of 53 acres and a gross storage capacity of 260 acre-feet; (3) a proposed 16-foot by 20-foot reinforced concrete powerhouse housing one 150-kW turbine/generator unit; (4) a proposed 1,350-foot-long, 36-inch-diameter steel penstock; and (5) a proposed 150-foot-long by 15-foot-wide tailrace. The applicant estimates with the total rated capacity of 150-kW an average annual energy generation of 600,000 kWh. Existing facilities are owned by Mitchell Winigmann.

k. Purpose of Project: Project energy would be sold to Public Service of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D1.

2 a. Type of Application: Minor License.

b. Project No.: 9049–001.

c. Date Filed: September 23, 1986.

d. Applicant: Carex Hydro.

e. Name of Project: Pioneer.

f. Location: Deckers Creek, Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jean-Claude Leroy, c/o Hytech, P.O. Box 2306, Westover, WV 26502, (304) 292–6018.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of: (1) A proposed reinforced concrete dam 120 feet long, 10 feet high, and incorporating an intake, weir, and sedimentation cell; (2) a proposed reservior of one-half acre surface area and 2.5 acre-feet volume at a normal maximum surface elevation of 1,289 feet msl; (3) a proposed 42-inch-diameter steel penstock 4,200 feet long; (4) a proposed powerhouse 30 feet wide, 45 feet long, and 20 feet high enclosing two turbine-generators of 1,500 kW combined capacity; (5) a 12.5-kV transmission line 300 feet long; and (6) appurtenant facilities.

The net hydraulic head would be 233 feet. The estimated annual energy production is 5.3 GWh. Project power would be sold to Monongahela Power Company, the existing site is owned by Greer Steel Company.

k. This notice also consists of the following standard Paragraphs: A3, A9, B, C & D1.

3 a. Type of Application: Preliminary Permit.

b. Project No: 10150–000.

c. Date Filed: October 30, 1986.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Trout Creek.

f. Location: On Trout Creek, a tributary of the North Fork Skykomish River, within the Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington near the town of Index.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, 12122 196th NE., Redmond, WA 98052; (206) 885–3988.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of: (1) Three 3-foot-high, 200-foot-long diversion dams; (2) two pipelines; (3) a 30-inch-diameter, 26,600-foot-long penstock; (4) a powerhouse containing a single generating unit with an installed capacity of 4,900 kW, producing approximately 26.60 GWh of energy annually; (5) a tailrace; (6) a 9-mile-long, 115-kV transmission line tying into an existing Puget Power and Light Company line. No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $40,000.

k. Purpose of Project: Project power would be sold to Puget Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Type of Application: Preliminary Permit.

b. Project No: 10240–000.

c. Date Filed: January 12, 1987.

d. Applicant: Last Chance Hydroelectric Company.

e. Name of Project: Last Chance Diversion.

f. Location: On Bear River in Caribou County, Idaho near the town of Grace T.9S. R.41E., sec. 30, SE ¼ and sec. 31, NE ¼.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Jordan Walker, P.O. Box N, Manti, Utah 84642, (801) 835–0202.

Mr. Mike Graham, P.O. Box N, Manti, UT 84642, (801) 835–0202.

i. Comment Date: May 11, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 35-foot-high concrete dam at an elevation of 5,608 feet, owned by the Last Chance Irrigation Company; (2) an existing 8-foot-diameter, 1,500-foot-long buried penstock; (3) a powerhouse containing three generating units with an installed capacity of 2,100 kW, producing approximately 9,198,000 kwh of energy annually; and (4) an existing 3,000-foot-long, 2.5-kV Utah Power and Light Company's transmission line. No access road will be needed to conduct the studies. The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $5,000.

The proposed project would be located on lands owned by the Last Chance Irrigation Company.

k. Purpose of Project: Project power would be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No: 10242–000.

c. Date Filed: January 12, 1987.

d. Applicant: Marsh Valley Hydroelectric Company.

e. Name of Project: Marsh Valley Diversion.

f. Location: On Portneuf River in Bannock County, Idaho near the town of Lava Hot Springs, T.9S., R.37E., sec. 21 and sec. 22, W ½.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan Walker, or Mr. Mike Graham, P.O. Box N, Manti, Utah 84642 (801) 835–0202.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of: (1) The existing 21-foot-high Portneuf-Marsh Valley Canal dam at elevation 4,908 feet; (2) the existing 10-foot-wide, 5-foot-deep Portneuf-Marsh Valley canal to be gated; (3) a 60-inch-diameter, 500-foot-long buried penstock; (4) a powerhouse containing two generating units with a total installed capacity of 1,000 kW, producing approximately 4,000,000 kWh of energy annually; and (5) an existing 3,000-foot-long, 2.5-kV Utah Power and Light Company's transmission line. No access road will be needed to conduct the studies. The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $5,000.

The proposed project would be located on lands owned by the Marsh Valley Irrigation District and private parties.

k. Purpose of Project: Project power would be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 10245–000.

c. Date Filed: January 12, 1987.

d. Applicant: Grace Dam Hydroelectric Company.

e. Name of Project: Grace Dam Diversion.

f. Location: On Bear River in Caribou County, Idaho near the town of Grace. T.10S., R.40E., section 1, NE ¼.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Jordan R. Walker, P.O. Box N, Manti, UT 84642, (801) 835–0202.

Mr. Mike Graham, P.O. Box N, Manti, UT, 84602, (801) 835–0202.

i. Comment Date: May 11, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 35-foot-high concrete dam, owned by Utah Power and Light Company at an elevation of 5,553 feet; (2) an 8-foot-diameter, 50-foot-long buried penstock; (3) a powerhouse containing three generating units with an installed capacity of 2,000 kW, producing approximately 8,760,000 kWh of energy annually; and (4) an existing 3,000-foot-long, 2.5-kV Utah Power and Light Company transmission line. No access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $5,000.

The proposed project will be located on lands owned by Utah Power and Light Company.

k. Purpose of Project: Project power will be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 10255–000.

c. Date Filed: January 20, 1987.

d. Applicant: Alternative Energy Management, Inc.

e. Name of Project: Perry Hydro Project.

f. Location: On the Delaware River near Topeka, Jefferson County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. L. Joe Hamman, AEM, Inc., P.O. Box 67151, Topeka, KS 66667, 913–272–2870.

i. Comment Date: May 11, 1987.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Perry Dam and Lake, and would consist of: (1) A new 325-foot-long steel penstock approximately 22.5 feet in diameter; (2) a new powerhouse located adjacent to and along the south side of the existing stilling basin and housing a single 5000-kW generator; (3) a proposed 8-mile-long, 34.5-kV transmission line; and (4) appurtenant facilities. Applicant estimates the average annual generation would be 14,500 MWh. All energy produced would be sold to a local utility company. Applicant estimates that the cost of the work under the tems of the preliminary permit would be $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10319–000.

c. Date Filed: February 10, 1987.

d. Applicant: Barr Engineering Company.

e. Name of Project: Kettle River Dam Hydroelectric Project.

f. Location: On the Kettle River in Pine County, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John Dickson, Barr Engineering Company, 7803 Glenroy Road, Minneapolis, MN 55435, (612) 830–0555.

i. Comment Date: May 8, 1987

j. Description of Project: The applicant proposes to utilize an existing dam owned by the Minnesota Department of Natural Resources. The proposed project would consist of: (1) An approximately 900-foot-long dam whose components consist of two earth embankments, a sandstone masonry spillway, and a concrete and masonry powerhouse containing two generating units rated at 187 kW and 345 kW, respectively. The applicant proposes to refurbish the generating units and rehabilitate the powerhouse; (2) an existing reservoir with a surface area of 30 acres and a storage capacity of 230 acre-feet at powerpool elevation of 955.3 feet NGVD; (3) an existing 390-foot-long tailrace; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 3,200,000 kWh. Applicant estimates that the cost of the work to be performed under the preliminary would be $10,000.

k. Purpose of Project: Power produced at the project would be sold to either the Minnesota Light and Power Company or the United Power Association.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

**Standard Paragraphs**

*A3. Development Application*

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

*A4. Development Application*

Public notice of the filing of the initial development applicaiton, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

*A5. Preliminary Permit*

Anyone desiring to file a competing applicaiton for preliminary permit for a proposed project must submit the competing application itself, or a notice

of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

*A7. Preliminary Permit*

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

*A8. Preliminary Permit*

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10 and (9) and 4.36.

*A9. Notice of Intent*

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

*A10. Proposed Scope of Studies Under Permit*

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

*B. Comments, Protests, or Motions to Intervene*

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*C. Filing and Service of Responsive Documents*

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*D1. Agency Comments*

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and State agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825/ (b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

*D2. Agency Comments*

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

*D3a. Agency Comments*

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance

of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

*D3b. Agency Comments*

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 6, 1987.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7947 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-356-000, et al.]

## Tampa Electric Co. et al.; Electric Rate And Corporate Regulation Filings

April 2, 1987.

Take notice that the following filings have been made with the Commission:

### 1. Tampa Electric Co.

[Docket No. ER87-356-000]

Take notice that on March 30, 1987, Tampa Electric Company (Tampa Electric) tendered for filing an Agreement for Interchange Service between Tampa Electric and the Utility Board of the City of Key West, Florida (Key West). The Agreement was supplemented with Service Schedules A, B, C, D, J, and X, providing for emergency, scheduled, (short-term) economy, long-term, negotiated, and extended economy interchange service, respectively.

Tampa Electric proposes an effective date of April 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Key West and the Florida Public Service Commission.

### 2. Southern California Edison Co.

[Docket No. ER87-351-000]

Take notice that, on March 27, 1987, Southern California Edison Company ("Edison") tendered for filing Agreement No. 1 to the Edison-Azusa Interruptible Transmission Service Agreement ("Amendment") designated Rate Schedule FERC No. 160, which has been executed by Edison and the City of Azusa, California ("Azusa"):

Amendment No. 1 to the Edison-Azusa Interruptible Transmission Service Agreement

The Amendment provides for an additional interruptible transmission service Point of Receipt at Edison's Vincent Substation 500 kV bus.

The Amendment is proposed to become effective when executed by the Parties and accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Azusa.

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 3. American Electric Power Service Corp.

[Docket No. ER87-355-000]

Take notice that American Electric Power Service Corporation (AEP) on March 30, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, and Ohio Power Company, which are all AEP affiliated operating subsidiaries (and are sometimes collectively referred to as the AEP Parties) revisions to the AEP Parties' Emergency, Economy, and Non-Displacement Energy rates. The AEP Parties have increased their Emergency Energy and Non-Displacement Power and Energy Transmission demand rates and the minimum Economy Energy transmission demand rate to a cost-supported rate of 5.75 mills per kilowatt reserved per hour. AEP has requested an effective date of March 16, 1987.

Copies of this filing were served upon the Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporation Commission of Virginia, Public Service Commission of West Virginia and the appropriate utilities interconnected with the AEP Parties.

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 4. Boston Edison Co.

[Docket No. ER87-345-000]

Take notice that on March 26, 1987, Boston Edison Company ("Boston Edison") of Boston, Massachusetts, tendered for filing a proposed rate schedule to memorialize a transmission transaction involving itself and Down East Peat, L.P. ("DPLP"). Boston Edison will purchase power for DPLP, a QF, and will make transmission payments to two of the utilities, Bangor Hydro-Electric Company ("Bangor Hydro") and New England Power Company ("NEP"), who are transmitting the power from the DPLP generating facility in the State of Maine to the Boston Edison system. The transmission arrangement which is the subject of Boston Edison's rate filing involves DPLP's reimbursement to Boston Edison for the direct and indirect costs related to the Bangor Hydro and NEP transmission service.

Boston Edison states that DPLP's generating unit is expected to enter service in 1990, but that required regulatory approvals should be obtained at the present time to facilitate DPLP's financing of the generating project. Boston Edison has asked the Commission to issue an order within sixty days (1) accepting the rate filing and (2) allowing the rate schedule to become effective on the commercial operation date of the DPLP generating unit.

Boston Edison states that it has served copies of this filing upon DPLP

and the Massachusetts Department of Public Utilities.

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this document.

**5. American Electric Power Service Corp.**

[Docket No. ER87-280-000]

Take notice that American Electric Power Service Corporation (AEP) on March 27 , 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Ohio Power Company, and Wheeling Electric Company, which are all AEP affiliated operating subsidiaries (and are sometimes collectivley referred to as the AEP Parties), revisions to the AEP Parties' Short Term Power and Non-Displacement Energy rates. The AEP Parties' Short Term Power demand and energy rates have been revised to "up to" $2.00 per kilowatt per week and to "up to" 110% of the out-of-pocket cost respectivley. In addition, the AEP Parties' Non-Displacement rates have been revised to a demand rate of "up to" 25 mills per kilowatthour and an energy rate of "up to" 110% of out-of-pocket cost. These rates have previously been filed by AEP and accepted for filing by FERC and will allow the AEP Parties to charge less than the cost supported charges and thereby enhance sales and an efficient supply of electricity in a competitive market. AEP has requested an effective date of January 1, 1987.

Copies of this filing were served upon the Kentucky Public Service Commission, Public Service Commission of Indiana, Michigan Public Service Commisson, Public Utilities Commission of Ohio, State Corporate Commisson of Virginia, Public Service Commission of West Virginia and the appropriate utilities interconnected with the AEP Parties.

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

**6. Kansas Gas and Electric Co.**

[Docket No. ER87-353-000]

Take notice that Kansas Gas and Electric Company on March 30, 1987, tendered for filing a proposed change in its FERC Electric Service Tariff No. 93. The proposed Letter of Intent specifies the amount of transmission capacity requirements for four Delivery Points for the period from June 1, 1987 through May 31, 1988.

The Letter of Intent is necessary because KPL has requested a change in the amount of transmission capacity to be reserved for KPL's use and is required by the terms of the service schedule.

Copies of this filing were served upon The Kansas Power and Light Comapny and the Kansas Corporation Commission.

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Central Hudson Gas & Electric Corp.**

[Docket No. ER87-267-000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on March 26, 1987 tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated February 9, 1987 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $6.903.08 to $6.060.58 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, an increase in the monthly Tranmsission Charge from $5,675.81 to $6,036.82 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $3.402.53 to $3.572.66 in accordance with Article IV.2. of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Subsection 35.3 of the Commisson's Regulations to permit this proposed increase to become effective January 1, 1987.

Copies of filing by Central Hudson were served upon:

New York State Electic and Gas Corp. 4500 Vestal Parkway, East Binghamton, NY 13902

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

**8. Central Power and light Co.**

Docket No. ER87-342-000

Take notice that on March 25, 1987, Central Power and Light Company ("CPL") tendered for filing a revised annual facilities charge (payable in twelve equal monthly installments) for firm transmission service to Houston Lighting & Power Company ("HL&P") pursuant to the multiyear Transmission Services Agreement Between CPL and HL&P . Under the agreement, CPL will provide firm transmission service in calendar year 1987 for 300 megawatts of power and associated energy purchased by HL&P from the City of Austin, Texas and for 400 megawatts of power and associated energy purchased by HL&P from City Public Service of San Antonio, Texas. CPL has requested an effective date of January 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been sent to the Public Utility Commission of Texas and to Houston Lighting & Power Company.

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

**9. Consumers Power Co.**

[Docket No. ER87-352-000]

Take notice that Consumers Power Company ("Consumers Power") on March 30, 1987, tendered for filing a standard Schedule of Rates Governing Electric Transmission Service, which are proposed to supersede the rates for transmission service contained in Contract Rate TR, which were issued under authority of the order of the Federal Energy Regulatory Commission dated June, 1985 in Case No. ER85-228-001. Consumers Power states that the superseding Schedule of Rates will continue to make electric transmission service available to any neighboring utility located in its service area.

Consumers Power has also tendered for filing addendums containing superseding transmission service rates to be incorporated in the following agreements:

1. Coordinated Operating Agreement between Consumers Power and the Members of the Municipal and Cooperative Pool (MCP)—(FERC No. 53).

2. Coordinated Operating Agreement between Consumers Power and the City of Lansing—(FERC No. 49).

3. Coordinated Operating Agreement between Consumers Power and the City of Holland—(FERC No. 50).

4. Transmission Service Agreement between Consumers Power and Michigan Public Power Agency (MPPA) dated as of December 20, 1985—(FRC No. 60).

The proposed weekly rate for transmission service is $.35 per kW of billing demand at 130,000 volts, and $.46 per kW of billing demand at 46,000 volts. This compares to current TR rates of $.30 (at 138,000 volts) and $.40 (at 46,000 volts) per kW of billing demand. The proposed daily rate for transmission service is $.07 per kW of billing demand at 138,000 volts, and $.09 per kW of billing demand at 46,000 volts. This compares to current TR daily rates of $.06 mills per kW of billing demand (at 138,000 volts) and $.08 per kW of billing demand (at 46,000 volts). Consumers Power states that superseding transmission rates proposed to be incorporated in the four agreements described above are consistent with the proposed

superseding rates for Contract Rate TR. In addition, the filings propose to increase the transmission rate for Emergency Energy transactions under the three coordinated operating agreements described above from 2.5 to 2.9 mills per kilowatt hour.

Consumers Power requests that the superseding rates for electric transmission service be placed in effect on June 1, 1987.

A copy of the filing was served upon the Michigan Public Service Commission and the parties to the above-described agreements.

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

**10. Consumers Power Co.**

[Docket No. ER87-354-000]

Take notice that Consumers Power Company ("Consumers") on March 30, 1987 tendered for filing "Consumers Power Company Service Agreement Wholesale for Resale Electric Service" (Wholesale Service Agreement); "Transmission Service Agreement Between Consumers Power Company and Southeastern Michigan Rural Electric Cooperative, Inc." (Transmission Service Agreement); and "Amendment No. 1 to Transmission Service Agreement".

The Wholesale Service Agreement supercedes and cancels three earlier agreements for service at three separate delivery points. The Wholesale Service Agreement provides for service to those three delivery points and to a new point of delivery all in the same agreement.

The Transmission Service Agreement and Amendment No. 1 thereto provide for transmission of up to 6,000 kW of electric capacity and energy purchased by Southeastern Michigan Rural Electric Cooperative, Inc. (SEMREC) from the Lansing Board of Water and Light.

Consumers states that copies of the filing were served on Southeastern Michigan Rural Electric Cooperative, Inc. and the Michigan Public Service Commission.

*Comment date:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

**11. Delmarva Power & Light Co.**

[Docket No. ER87-349-000]

Take notice that Delmarva Power & Light Company ("Delmarva") on March 27, 1987, tendered for filing proposed Supplement No. 1 to Supplement No. 9 to its FERC Rate Schedule No. 71. This Supplement, filed at the request of the Easton Utilities Commission and Town of Easton, Maryland ("Easton") and with Delmarva's agreement, reduces energy sales to Easton from 7-10 NW per hour of energy to 5 MW per hour. In addition, it is agreed that Delmarva's compensation for said energy will be reduced from 4.3¢ per kWhr to 3.4¢ per kWhr and that the "average cost" calculation used for the monthly fuel adjustment be replaced with one that uses "New York Harbor Contract Cargo Prices" index for No. 6, 1% sulfur oil as its basis. Copies of the filing were served upon Easton, and the Maryland Public Service Commission.

*Comment Dates:* April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

**12. Delmarva Power & Light Co.**

[Docket No. ER87-350-000]

Take notice that Delmarva Power & Light Company ("Delmarva") on March 27, 1987, tendered for filing proposed Supplement No. 6 to its FERC Rate, Schedule No. 63. This Supplement, filed at the request of the Town of Berlin, Maryland ("Berlin") increases the mixinum level of parallel generation under the provisions of the Service Agreement between Delmarva and Berlin from 2800 kW to 3600 kW. Copies of the filing were served upon Berlin and the Maryland Public Service Commission.

*Comment date:* April 16, 1987, in accordance with Strandard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7946 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3033-004]

**Arkansas Electric Cooperative Corporation, et al; Application for Transfer of License (Major)**

April 7, 1987.

Take notice that Arkansas Electric Cooperative Corporation (AECC), Riceland Electric Cooperative, Inc., and C&L Electric Cooperative Corporation, licensee for Lock and Dam No. 2 Project, have requested that AECC be made the sole licensee for Project No. 3033. The license was issued on August 10, 1983, and would expire on August 1, 2033. The project is located on the Arkansas River in Desha and Arkansas Counties, Arkansas, and is currently under construction.

Correspondence with the applicants should be directed to: Robert M. Lyford, Staff Attorney, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219, Fred Carlisle, Manager, Riceland Electric Cooperative, Inc., P.O. Box 906, Stuttgart, Arkansas 72160, and W.H. Frizzell, Manager, C&L Electric Cooperative Corporation, P.O. Drawer 9, Star City, Arkansas 71667.

*Comments, Protests, or Motions to Intervene*—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 18, 1987.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each

representative of the applicant specified in the second paragraph of this notice.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7950 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Project No. 3034-004]

**Arkansas Electric Cooperative Corporation, et al.; Application for Transfer of License (Major)**

April 7, 1987.

Take notice that Arkansas Electric Cooperative Corporation (AECC), Riceland Electric Cooperative, Inc., and C&L Electric Cooperative Corporation, licensee for Lock and Dam No. 3 Project, have requested that AECC be made the sole licensee for Project No. 3034. The license was issued on August 10, 1983, and would expire on August 1, 2033. The project is located on the Arkansas River in Jefferson and Lincoln Counties, Arkansas, and is currently under construction.

Correspondence with the applicants should be directed to: Robert M. Lyford, Staff Attorney, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219, Fred Carlisle, Manager, Riceland Electric Cooperative, Inc., P.O. Box 906, Stuttgart, Arkansas 72160, and W. H. Frizzell, Manager, C&L Electric Cooperative Corporation, P.O. Drawer 9, Star City, Arkansas 71667.

*Comments, Protests, or Motions to Intervene*—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 22, 1987.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST, OR "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the second paragraph of this notice.

Lois D. Cashell,

*Acting Secretary*

[FR Doc. 87-7951 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Project No. 3044-004]

**Arkansas Electric Cooperative Corp. and Arkansas Valley Electric Cooperative Corp.; Application for Transfer of License (Major)**

April 7, 1987.

Take notice that Arkansas Electric Cooperative Corporation (AECC), and Arkansas Valley Electric Cooperative Corporation (AVECC), licensee for Lock and Dam No. 9 Hydropower Project, have requested that AECC be made the sole licensee for Project No. 3044. The license was issued on July 20, 1983, and the project is currently under construction. The project is located on the Arkansas River in Pope and Conway Counties, Arkansas.

Correspondence with the applicants should be directed to: Robert M. Lyford, Staff Attorney, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219 and Robert Agee, Manager, Arkansas Valley Electric Cooperative Corporation, P.O. Box 47, Ozark, Arkansas 72949.

*Comments, Protests, or Motions to Intervene*—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 15, 1987.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the second paragraph of this notice.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-7952 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket Nos. CP87-272-000, et al.]

**Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Northwest Pipeline Corporation**

[Docket No. CP87-272-000]

April 2, 1987.

Take notice that on March 27, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-272-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate a mainline tap and appurtenant facilities necessary to tie its Moxa-Opal supply lateral to its mainline at a point south of its Muddy Creek Compressor Station, and the flexibile operation of its existing Moxa-Opal supply lateral and the downstream terminus of its existing Moxa supply trunk either as gas transmission facilities or as system supply gas facilities; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that in 1978, Northwest constructed a 12-inch supply pipeline (Moxa Trunk) to connect the Moxa Arch field to its mainline. During 1986, Northwest constructed a 16-mile, 16-inch supply lateral (Moxa-Opal Lateral) to connect the Moxa Trunk to its Opal Liquids Extraction Plant. It is further stated the Moxa-Opal lateral was designed to transport natural gas and associated liquids from the Moxa Arch gathering system to the Opal plant to provide the most effective processing of the raw gas being produced from the Moxa Arch.

Northwest avers due to the proximity of the Moxa-Opal lateral to its 22-inch Ignacio-Sumas mainline, Northwest has determined that, with only minor facility modifications, it could utilize the Moxa-Opal lateral as a partial mainline loop, occasionally, to help alleviate the

capacity constraint for volumes flowing south from Muddy Creek. Northwest estimates that such utilization would provide an additional approximately 28 MMcf/d of throughput on its mainline from Muddy Creek to Green River, and that this additional capacity would be available only on an interruptible basis since it would be contingent upon Northwest's ability to forego, from time to time, the use of the Moxa-Opal lateral as a system supply lateral.

Northwest requests certificate authorization for the construction and operation of one 12-inch mainline tap and approximately 30 feet of 12-inch pipeline to connect its 22-inch mainline with the Moxa-Opal supply lateral. Northwest states the proposed tap would be located south of the Muddy Creek Compressor Station in Lincoln County, Wyoming. Northwest further states all of the proposed facilities would be located on existing right-of-way owned by Northwest and, other thn disturbing the local pipeline cover, the proposed construction would have an insignificant environmental impact. The estimated cost of the subject facilities is approximately $99,700.

Northwest also requests that the Commission authorize the operation of the Moxa-Opal supply lateral and the terminus of the Moxa Trunk as transmission facilities, when not required to operate in their primary mode as gas supply facilities. Northwest would utilize the proposed interconnection to the mainline, the Moxa-Opal Lateral, and the terminus of the Moxa Trunk as a 15-mile loop of its mainline.

Comment date: April 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

**2. K N Energy, Inc.**

[Docket No. CP87-261-000]

April 3, 1987.

Take notice that on March 24, 1987, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP87-261-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder requesting authority to construct, operate and abandon certain pipeline and compression facilities all as more fully set forth in the application on file at the Commission and open for public inspection.

More specifically, K N proposes to:

(1) Abandon 21.3 miles of 4-inch and 4½-inch pipeline and 3½-inch loop segments from Buckboard Junction to near Otis, Colorado and replace with 6-inch pipeline;

(2) Abandon 2.4 miles of 4-inch pipeline near Springdale Storage Field in Colorado and replace with 6-inch pipeline;

(3) Abandon 3.8 miles of 1¼-inch pipeline near Pleasanton, Nebraska and replace with 2-inch pipeline;

(4) Abandon 5.6 miles of predominantly 6-inch pipeline near Nelson, Nebraska and replace with 4-inch pipeline;

(5) Abandon 1.2 miles of 1⅛-inch pipeline near Speed, Kansas and replace with 2-inch pipeline; and

(6) Retire three (3) 125 horsepower reciprocating compressor units and ancillary equipment located at Northport, Nebraska Compressor Station.

K N states that the estimated total cost of these projects would be approximately $1.564 million. K N further states that the facilities abandonment, construction and operation sought herein are independent of one another and are needed in order to maintain reliable service, to alleviate potential safety problems, to remove localized capacity constraints, and to enhance operating flexibility and efficiency. Finally, K N advises that no new markets are proposed and that the proposal would not significantly affect the operation of its transmission system.

Comment date: April 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

**3. Panhandle Eastern Pipe Line Company**

[Docket No. CP87-262-000]

April 3, 1987.

Take notice that on March 25, 1987, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-262-000 an application pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving abandonment of the Taloga Compressor Station (Taloga) and related facilities in Morton County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle submits that the abandonment of the facilities proposed by this application are in the public interest due to depletion of gas supplies in the area and the decline of anticipated future gas production which would require that the station be in place. The facilities Taloga proposes to abandon consist of three compressor units totaling approximately 2,200 horsepower, buildings, and related facilities. Panhandle indicates that the abandonment would also result in reduced operating expenditures for labor and equipment maintenance. Taloga will be abandoned in place at an estimated cost of $30,000, upon receipt of appropriate abandonment authority from the Commission, it is stated. Panhandle further states the Elkhart Station can compress production from the vicinity of Taloga efficiently and economically.

Comment date: April 24, 1987, in accordance with Standard Paragraph F at the end of this notice.

**4. Williston Basin Interstate Pipeline Company**

[Docket No. CP87-253-000]

April 3, 1987.

Take notice that on March 16, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-253-000, an application pursuant to section 7(c) of the Natural Gas Act for authorization for a one-time accounting balance of non-redelivered exchange volumes between Williston Basin and K N Energy, Inc. (K N), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that gas exchange agreements (Fremont County Exchange) dated October 20, 1965, and February 5, 1971, with K N have been operated as non-jurisdictional field exchanges. Williston Basin states that due to the loss of all of Williston Basin's gas sources connected to K N's gathering system and the continued delivery of K N's gas into Williston Basin's gathering system, the exchange agreements have become a transportation service on Williston Basin's part with redelivery of K N's gas at the interconnection of the two parties natural gas transmission pipelines near the Riverton Dome Plant in Fremont County, Wyoming. Williston Basin further states that authority for this transportation service was granted in Docket No. CP85-534-000.

Williston Basin states that a second gas exchange agreement with K N (Madden Field Exchange) dated March 31, 1978, is operated as a non-jurisdictional field exchange in the Madden Field located in Fremont and Natrona Counties, Wyoming.

Williston Basin further states that because of past facility limitations, an out-of-balance has occurred in the exchange agreements, but in opposite directions. It is explained that to facilitate the expeditious and equitable solution to the existing imbalances of the Fremont County Agreement and the

Madden Agreement, Williston Basin requests authority for a one-time accounting balance of equivalent volumes with K N under these exchanges. Subsequent to this balancing, Williston Basin states that it would be able to maintain these exchanges in balance independently.

It is stated that no additional facilities are proposed by this application.

Comment date: April 24, 1987, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs:**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7948 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF84-91-004, et al.]

**Carolina Cogeneration Company, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.**

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

April 3, 1987.

Take notice that the following filings have been made with the Commission.

**1. Carolina Cogeneration Company, Inc.**

[Docket No. QF84-91-004]

On March 24, 1987, Carolina Cogeneration Company, Inc. (Applicant), c/o SJE Investments, 1960 Lincoln Park West, Suite 2702, Chicago, Illinois 60614, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Craven County, North Carolina. The facility will consist of a combustion turbine generating unit and a heat recovery steam generator. Steam produced from the facility will be used in an integrated chemical process facility to produce merchant carbon dioxide ($CO_2$). The electric power production capacity of the facility will be 84 MW. The primary energy source will be synthetic fuel gas. Installation of the facility is scheduled to begin in July 1987.

**2. Mobil Oil Corporation**

[Docket No. QF87-335-000]

On March 23, 1987, Mobil Oil Corporation (Applicant), of Billingsport Road, Paulsboro, New Jersey, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located adjacent to Applicant's oil refinery in Paulsboro, New Jersey. The facility will consist of three combustion turbine generators, three waste heat recovery steam generators (HRSG), one automatic extraction non-condensing steam turbine generator, and one non-condensing steam turbine generator. Extraction and exhaust steam from the steam turbines will be used within Applicant's oil refinery. The net electric power production capacity of the facility will be 146 MW. The primary energy source will be natural gas and refinery gas. The facility is scheduled to commence operation in the third quarter of 1989.

**3. Tastykake, Inc.**

[Docket No. QF87-338-000]

On March 26, 1987, Tastykake, Inc. (Applicant), of 2801 Hunting Park Avenue, Philadelphia, Pennsylvania 19129, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Applicant's bakery on Hunting Park Avenue in Philadelphia, Pennsylvania. The facility will consist of a combustion turbine generator and a waste heat recovery steam generator (HRSG). Steam from the HRSG will be utilized by Applicant for bakery processes and heating requirements. The primary energy source will be natural gas, with oil used when natural gas is not available. The maximum net electric power production capacity of the facility will be 3.6 MW. Construction of the facility is expected to begin in August 1987.

**Standard Paragraphs:**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7949 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3183-4]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Patricia Minami, (202) 382–2712 (FTS 382–2712) or Jackie Rivers, (202) 382–2740 (FTS 382–2740).

**SUPPLEMENTARY INFORMATION:**

**Office of Air And Radiation**

*Title:* Lead Additive Report for Refineries and Importers, and for Manufacturing Facilities or Sites (EPA ICR #0232). (This is a revision of an existing collection.)

*Abstract:* The lead phasedown program was designed to reduce adverse health effects associated with automotive lead emissions. This renewal of the basic program includes the reduction of burden hours related to the phased end of the lead banking and trading provisions. Gasoline importers, refineries, and lead additive manufacturers must submit quarterly reports pertaining to the inventory and transfer of lead additives used in gasoline. EPA uses the information to identify and prosecute violaters and to monitor the effectiveness of the program in achieving its objectives.

*Respondents:* Gasoline importers, refineries, and lead additive manufacturers.

*Estimated Annual Burden:* 17,594 hours.

*Title:* NSPS for Kraft Pulp Mills (EPA ICR #1055). (This is a revision of a currently approved collection.)

*Abstract:* Kraft pulp mills must notify EPA of construction; of each modification, startup, shutdown, and malfunction; and of the results of each performance test. They install, calibrate, and maintain continuous monitoring systems to record opacity, total reduced sulfur (TRS) emissions, temperature, and (for scrubbers) pressure. Also, respondents record and maintain (a) data from all tests and the continuous monitoring system, and (b) data on any startup, shutdown, and malfunction in the operation of the affected facility, its controls, and the monitoring systems. They must also calculate TRS emissions daily and report excess emissions semiannually. The States and/or EPA use the data to ensure compliance with the standards, to target inspections, and, when necessary, as evidence in court.

*Respondents:* Owners or operators of kraft pulp mills.

*Estimated Annual Burden:* 13,754 hours.

Agency PRA Clearance Requests Completed by OMB

None received since the last notice was published.

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Nicholas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: April 3, 1987.

**Daniel J. Fiorino,**

*Director, Information and Regulatory Systems Division.*

[FR Doc. 87–7834 Filed 4–8–87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**[File Nos. BP–860109AC and BP–860331AD; MM Docket No. 87–60]**

### Applications for Consolidated Hearing; Richford Communications Co. and James Richford

1. The Commission has before it the following mutually exclusive applications for a new AM station:

| Applicant City, and State | File No. | MM Docket No. |
|---|---|---|
| A. Richford Communications Company, Bangor, ME | BP9–860109AC | 87–60 |
| B. James E. Richford, Orono, ME | BP–860331AD | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings, are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the cooresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue heading; Applicant(s)*

1. Contingent-Comparative,.....All Applicants.
2. 307(b),.....All Applicants.
3. Ultimate,.....All Applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

**Larry D. Eads,**

*Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–7905 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

### Information Collection Requirements Approval by Office of Management and Budget

March 31, 1987.

The following information collection requirements have been approved by the Office of Managment and Budget under the Paperword Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0099

Title: Annual Report Form M (Telephone Companies)

Form No.: FCC Form M

The approval on Form M has been extended through 3/31/90. The current edition with an expiration date of 3/31/87 will remain in use until updated forms are available.

OMB No.: 3060–0105

title: Common Carrier and Satellite Radio Licensee Qualification Report

Form No.: FCC 430

The approval on form FCC 430 has been extended through 3/31/90. The November 1984 edition with an expiration date 3/31/87 will remain in use until updated forms are available.

OMB No.: 3060–0113

Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines

Form No.: FCC 396

The Approval on form FCC 396 has been extended through 7/31/87. The May 1986 edition with a previous expiration date of 1/31/87 will remain in use until 7/31/87.

OMB No.: 3060–0120

Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines

Form No.: FCC 396-A

The approval on form FCC 396-A has been exteneded through 7/31/87. The January 1984 edition with a previous expiration date of 1/31/87 will remain in use until 7/31/87.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–7900 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

## Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 1, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None

Title: Section 15.312(c), Authorization required (on-site verification of field disturbance sensors)

Action: New collection

Respondents: Manufacturers of perimeter protection systems operating in the bands 54–72 or 76–88 MHz

Frequency of Response: Recordkeeping requirement on occasion

Estimated Annual Burden: 200 Recordkeepers; 3,600 Hours

Needs and Uses: Field disturbance sensors operating in the low VHF region of the spectrum have the potential to cause interference to television broadcasting and other radiocommunication signals. To prevent interference the Commission is requiring manufacturers of perimeter protection systems to test each system upon installation to ensure that technical standards continue to be met at the installation site. The manufacturers must maintain lists of all installations and records of measurments taken for each installation. This information must be made available to the Commission upon request.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–7901 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

## Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 30, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington DC 20503, (202) 395–4814.

OMB No.: 3060–0245.

Title: Section 74.537, Temporary Authorizations.

Action: Extension.

Respondents: Licenses of aural broadcast studio transmitter link (STL) of intercity relay station.

Frequency of Response: On occasion.

Estimated Annual Burden: 50 Responses; 200 Hours.

Needs and Uses: Section 74.537 requires licensees of aural broadcast studio transmitter link (STL) or intercity relay station to file an informal request for special temporary authorization for operations of a temporary nature. Data is used by FCC staff to insure that temporary operation will not cause interference to existing stations.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–7902 filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

[FCC 87–35]

## Privatization of Special Call Sign System For Amateur Stations; Pleading Cycle Established in PRB–3; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice regarding privatization of special call sign system; correction.

**SUMMARY:** On February 12, 1987, the Commission published a Notice regarding privatization of special call sign system for Amateur Stations (52 FR 4530). Inadvertently, page two of that document was omitted. For the convenience of the reader, the entire text of that Notice is set forth below.

**FOR FURTHER INFORMATION CONTACT:** Maurice DePont, (202) 632–4964.

**William J. Tricarico,**

*Secretary.*

February 3, 1987.

By letter of June 17, 1986, the American Radio Relay League, Inc. expressed an interest in finding a way by which requests for specific call signs for amateur stations can be honored through a system administered in the private sector. Callbook Magazine, Gordon Girton and Central Alabama VEC have also expressed an interest in such a system. The FCC favors the implementation of such a system if it can be accomplished with no additional cost or workload to the FCC. The purpose of this Public Notice is to solicit comments and proposals on this matter from interested persons so that a determination can be made as to whether to proceed with its implementation.

There is a large demand in the Amateur service for call signs of choice. Because of limited resources, the FCC cannot honor requests for specific call signs. The FCC assignment system is totally automated: call signs are assigned on the station license from alphabetized lists arranged according to mailing address and operator license class.

It appears that a practical approach would be for the actual station licensing function—including the assignment of a call sign—to be performed by the FCC before the private sector becomes involved. Then, upon the licensee's request, a Special Call Sign Coordinator (SCSC) in the private sector would assign one or more supplemental special call signs. The selection system for determining which licensees would be eligible for which call signs would be the prerogative of the SCSC. A special call sign could be used in lieu of the FCC-assigned call sign during the station identification procedure required by §97.84. The assignment of a special call sign would be a service for the licensee, not a condition of FCC licensing nor a service replacing the FCC. The SCSC would maintain a data base of assigned special call signs for use in monitoring and compliance work. Special call sign assignments would not be incorporated into the FCC's license data base.

The FCC would discontinue processing requests for call sign changes. (The FCC now systematically assigns a different call sign upon request when the licensee changes mailing address to a different region or upgrades to a higher operator class).[1] All call signs currently assigned to amateur stations would be frozen. All new stations, regardless of the licensee's operator class, would be assigned a 2 X 3 format call sign from the prefix block NA-NZ. All other call signs would be made available to the SCSC for assignment as special call signs. Furthermore, as call signs which are currently in use are dropped from the FCC data base due to failure to renew the license, they would be available to the SCSC for assignment as special call signs.

It appears that it would be more manageable if a single organization serves as the SCSC. However, we invite comments with respect to whether there should be only one or multiple SCSC's. Our preliminary view is that having one SCSC would promote a more efficient system by substantially simplifying the special call sign assignment process. If multiple SCSC's assigned special call signs, each would have to be aware of the other's assignments in progress at all times. Otherwise, the same special call sign could be assigned to different stations. The logistics of handling this situation appear to be difficult.

A single SCSC would minimize the number of points of contact between the SCSC and the FCC. As the number of SCSC's increased so would the administrative burden upon the FCC. This benefit is especially important considering the likelihood of limited agency resources in coming years.

Moreover, if there were multiple SCSC's it would be likely that each would use a different selection system unless performance standards were established. There could be considerable inconsistency in the assignments. For instance, a call sign available only to an Amateur Extra operator under one SCSC's system might be available to a lower class operator under another SCSC's selection system.

The special call sign assignment system that we envision would be operated on a not-for-profit basis but the SCSC could recover reasonable out-of-pocket administrative costs.

*SCSC Selection Criteria:*

1. Ability to assign call signs to amateur stations in an efficient and objective manner;
2. Ability to provide an accurate on-line access data base of assigned special call signs for monitoring and compliance work;
3. Ability to minimize the FCC resources required in the establishment of the special call sign system; and
4. Ability to minimize the cost to the licensee for administering the system.

Parties wishing to file formal comments on the issues raised herein, to raise additional or conflicting issues or to submit a proposal to be an SCSC should do so by filing an original and four copies with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554, on or before April 23, 1987. Reply comments may be filed on or before May 22, 1987. Proposals must respond to the above selection criteria and must state the estimated annual burden of administering the system and maintaining the data base. All filings should refer to PRB–3.

Copies of letters from ARRL, Central Alabama VEC, Callbook Magazine and any subsequently filed documents in this matter may be obtained from the FCC's contractor for public records duplication, International Transcription Services, Inc., 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325, (717) 337–1433 or Suite 140, 2100 M Street, NW., Washington, DC 20037, (202) 875–3800. Any documents related to this matter will also be available for inspection and copying in the Private Radio Bureau Public Reference Room, 1270 Fairfield Road (Route 116 West), Gettysburg. PA 17325

For further information contact the Personal Radio Branch at (202) 632–4964.

[FR Doc. 87–7903 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

[1] See Public Notice *Amateur Radio Station Call Sign Assignment System* dated November 8, 1985.

## Private Radio Bureau Opens Period for Filing of 2.5 GHz (H-Group Channels) Applications for Modifications of Authorizations

On May 11, 1987, the Private Radio Bureau will begin accepting applications for modifications to stations operating on the 2.5 GHz point-to-multipoint Private Operational-Fixed Microwave Service (OFS) H-group channels. A Public Notice will be released in the near future explaining when applications for new stations will be accepted.

The filing of applications for the H-group channels was suspended as of December 31, 1983, due to the large number of applications received during the original filing period (*See Public Notice*, Mimeo 1207, released December 6, 1983). Those applications have now been disposed of, thus permitting the acceptance of other applications.

Licensees of existing OFS stations operating or authorized on the H-group channels will have a one week filing window to submit applications for both substantial and minor modifications to their authorizations (*See* 47 CFR 1.962 for the distinction between substantial and minor modifications). This one week filing window will open May 11, 1987 and continue through the close of business on May 15, 1987.

Applications for assignment of authorization and transfer of control will not be subject to this filing window. These types of requests will be accepted immediately upon release of this Public Notice.

Applicants are reminded that requests for certain modifications to existing authorizations must be accompanied by a frequency engineering analysis. *See* 47 CFR 94.15 and 94.63(e). Further, modification applications which request a change in station location must include a showing that the proposed transmitter site will not be located less than 50 miles from any previously authorized co-channel station or less than 50 miles from any other station previously authorized to the same applicant. Applications proposing stations within 50 miles of a previously authorized co-channel station will be accepted for filing only if they include both (1) a detailed analysis demonstrating that an exception to the 50 mile separation criterion for H-channels is warranted and (2) a

statement to the effect that all parties affected have agreed to accept the higher level of interference.

If the Commission receives applications which create mutually exclusive situations and there are no material differences in the applications which would require a comparative hearing, the modification applications will be chosen for grant by the randon selection process as set forth in Section 1.972 of the Commission's Rules. Applicants are encouraged to consider any settlement proposals which may be proffered. The Commission will only consider settlement agreements which eliminate mutual exclusivity for an entire area. All settlement agreements are subject to final approval by the Commission.

Beginning April 1, 1987, the Commission will require a $135 fee to accompany most applications. Public safety, governmental, and all transfer of control applications are exempt from fees and should continue to be filed at the Private Radio Bureau's Licensing Division in Gettysburg, Pennsylvania, 17326. Applications which require a fee must be filed at the designated receipt location: Federal Communications Commission, Microwave Service, P.O. Box 360850M, Pittsburgh, PA 15251–6850. Applications which require a fee may also be filed in person or by courier between the hours of 9 a.m. and 3 p.m., Monday through Friday, at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA, 15259; Attn: Wholesale Lockbox Shift Supervisor. The effective filing date of an application requiring a fee is the date upon which it is received at the Commission's authorized receipt location in Pittsburgh and not the date it is received in Gettysburg. For more information regarding the Commission's fee program, consult the *Report and Order* in General Docket No. 86–285, released February 17, 1987.

Applications not filed in accordance with the above or other requirements of the Commission will be dismissed as defective. For further information, contact Michael B. Hayden at (717) 337–1421.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–7904 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL HOME LOAN BANK BOARD

### Tahoe Savings & Loan Association, South Lake Tahoe, CA; Appointment of Receiver

Notice is hereby given that the Superior Court for the County of Los Angeles has confirmed the appointment by the Savings and Loan Commissioner for the State of California ("Commissioner") of a receiver for Tahoe Savings and Loan Association, South Lake Tahoe, California ("Tahoe"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Commissioner of the appointment as receiver for Tahoe, for the purpose of liquidation, effective April 3, 1987.

Dated: April 3, 1987.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–7858 Filed 4–8–87; 8:45 am]

BILLING CODE 6720–01–M

### Tahoe Savings & Loan Association, South Lake Tahoe, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. § 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Tahoe Savings and Loan Association, South Lake Tahoe, California on April 3, 1987.

Dated: April 3, 1987.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–7859 Filed 4–8–87; 8:45 am]

BILLING CODE 6720–01–M

### Vernon Savings & Loan Association; Vernon, TX; Appointment of Receiver

Notice is hereby given that the Savings and Loan Commissioner for the State of Texas ("Commissioner") appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as receiver for Vernon Savings and Loan Association ("Vernon"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1) (1982), the FSLIC accepted the tender of the Commissioner of the appointment as receiver for Vernon, for the purpose of liquidation, effective March 20, 1987.

Dated: April 3, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–7860 Filed 4–8–87; 8:45 am]

BILLING CODE 6720–01–M

### Federl Savings and Loan Advisory Council Meeting

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** This notice amends the previous notice published in the **Federal Register** on April 6, 1987 (52 FR 10929) to add additional topics to the Federal Savings and Loan Advisory Council meeting scheduled for April 22, and 23.

**DATES:** April 22, 1987, 9:00 a.m.—4:00 p.m.; April 23, 1987, 9:00 a.m.—11:30 a.m.

**ADDRESS:** Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G Street, NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:**

John M. Buckley, Jr. (202/377–6577).
Debra J. Ahearn (202/377–6924).

**SUPPLEMENTARY INFORMATION:**

Additional proposed topics:

Classification of Assets.
Appraisals Standards

**Jeff Sconyers,**

*Secretary to the Federal Home Loan Bank Board.*

April 6, 1987.

[FR Doc. 87–7925 Filed 4–8–87; 8:45 am]

BILLING CODE 6720–01–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 573.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–011045–001.

BEST COPY AVAILABLE

Title: Trans-Atlantic Revenue Apportionment Agreement.

Parties:

Atlantic Container Line, B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM) Trans Freight Lines
Gulf Container Line (GCL), B.V.
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would change the definition of "cargo units" from revenue tons to container units, with appropriate conversion formulae for any non-containerized cargo carried under the agreement.

Agreement No.: 203–011075–001.

Title: Central America Discussion Agreement.

Parties:

United States/Central America Liner Association
Ecuadorian Line, Inc.

Synopsis: The proposed amendment would admit Nordana Line, Inc.; Flagship Container Line, Inc.; Concorde Shipping, Inc. and Nexos Line to membership in the agreement. The parties have requested a shortened review period and a temporary waiver of the Commission's format requirements.

Agreement No.: 224–011088.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles (Port)
Matson Terminals, Inc. (Matson)

Synopsis: The proposed agreement would permit the Port to lease 93.2 acres of land and 2,203 linear feet of wharf at Berths 206–209 in the Port of Los Angeles to Matson until January 31, 1991.

By Order of the Federal Maritime Commission.

Dated: April 6, 1987.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–7907 Filed 4–8–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Carolina Mountain Holding Co. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 29, 1987.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Carolina Mountain Holding Company*, Highlands, North Carolina; to engage *de novo* through its subsidiary, CM Mortgage, Inc., Highlands, North Carolina, in originating, selling, and servicing mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *West Tennessee Bancshares, Inc.*, Bartlett, Tennessee; to engage *de novo* through its subsidiary, Bartlett Securities Corporation, Bartlett, Tennessee, in discount securities brokerage services and will not underwrite or participate in the underwriting or any security pursuant to section 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Tennessee and adjacent states. Comments on this application must be received by April 27, 1987.

Board of Governors of the Federal Reserve System, April 3, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–1820 Filed 4–6–87; 8:45 am]

BILLING CODE 6210–01–M

### First of America Bank Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a

hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* Kalamazoo, Michigan, and First of America Bancorporation—Illinois, Inc., Libertyville, Illinois; to acquire 100 percent of the voting shares of BancServe Group, Inc., Rockford, Illinois, and thereby indirectly acquire City National Bank & Trust Company of Rockford, Rockford, Illinois, and Boone State Bank, Belvidere, Illinois.

In connection with this application, Applicants also propose to acquire BancServe Credit Life Insurance Company, Rockford, Illinois, and thereby engage in underwriting credit, accident, and health insurance which is directly related to an extension of credit pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 3, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7822 Filed 4-8-87; 8:45 am]

BILLING CODE 6210-01-M

## First Grayson Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 27, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Grayson Bancorp, Inc.,* Grayson, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Grayson, Grayson, Kentucky. Comments on this application must be received by April 29, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mercantile Bankshares Corporation,* Baltimore, Maryland; to acquire 100 percent of the voting shares of The Eastville Bank, Eastville, Virginia.

2. *Mountaineer Bankshares of West Virginia, Inc.,* Martinsburg, West Virginia; to acquire 100 percent of the voting shares of Mercantile Bancorp, Inc., Moundsville, West Virginia, and thereby indirectly acquire Mercantile Banking and Trust Company, Moundsville, West Virginia. Comments on this application must be received by April 30, 1987.

3. *Mountaineer Bankshares of West Virginia, Inc.,* Martinsburg, West Virginia; to acquire 100 percent of the voting shares of Morgan Bancorp, Inc., Berkeley Springs, West Virginia, and thereby indirectly acquire Morgan County State Bank, Inc., Berkeley Springs, West Virginia. Comments on this application must be received by April 30, 1987.

4. *State Bancorp, Inc.,* Bruceton Mills, West Virginia; to acquire 100 percent of the voting shares of Terra Alta Bank, Terra Alta, West Virginia. Comments on this application by April 28, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Citizens BancStock, Inc.,* Morgan City, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in St. Mary Parish, Morgan City, Louisiana. Comments on this application must be received by April 28, 1987.

2. *Southeast Banking Corporation,* Miami, Florida; to acquire 100 percent of the voting shares of The West Florida Bank, Pensacola, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation,* Midland, Michigan; to acquire 100 percent of the voting shares of Manufacturers Bank of Bay City, Bay City, Michigan.

2. *First Wisconsin Corporation,* Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Bank of the North Shore, Northbrook, Illinois, and thereby indirectly acquire North Shore Bancorp, Inc., Northbrook, Illinois.

Board of Governors of the Federal Reserve System, April 3, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7823 Filed 4-8-87; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Larry Collins, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Larry Collins,* Portland, Tennessee; to acquire up to 51 percent of the voting shares of Volunteer State Bancshares, Inc., Portland, Tennessee, and thereby indirectly acquire Volunteer State Bank, Portland, Tennessee.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Gary L. Dickinson,* Chillicothe, Missouri; to acquire 68.84 percent of the

voting shares of First Bancshares of Kirksville, Inc., Kirksville, Missouri, and thereby indirectly acquire First National Bank of Kirksville, Kirksville, Missouri.

2. *First Citizens National Bank Employee Stock Ownership Plan and Trust*, Dyersburg, Tennessee; to acquire 4.31 percent of the voting shares of First Citizens Bancshares, Inc., Dyersburg, Tennessee, and thereby indirectly acquire First Citizens National Bank, Dyersburg, Tennessee.

Board of Governors of the Federal Reserve System, April 3, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7821 Filed 4-8-87; 8:45 am]

BILLING CODE 6210-01-M

## NBD Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 28, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire NBD Securities, Inc., Detroit, Michigan, and thereby expand its nonbanking activities to include the sale of precious metals, including gold and silver bullion and coins, upon the order of and as agent for the account of its customers. NBD Securities will also act as agent for account of customers, for the purchase and sale, of shares of both loads and no load mutual funds and unit investment trusts pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 3, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7824 Filed 4-8-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulation (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the HHS Assistant Secretary for Management and Budget in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 14.25% for the quarter ended December 31, 1986. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 2, 1987.

**S. Anthony McCann,**

*Assistant Secretary for Management and Budget.*

[FR Doc. 87-7933 Filed 4-8-87; 8:45 am]

BILLING CODE 4150-04-M

## Food and Drug Administration

**[Docket No. 87N-0068]**

### Care for Life of Lubbock, Inc.; Revocation of U.S. License No. 890

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 890) and the product license issued to the Care for Life of Lubbock, Inc., for the manufacture of Source Plasma. In a letter dated August 4, 1986, the firm requested that its establishment and product licenses be revoked and waived an opportunity for a hearing.

**DATES:** The revocation of the establishment license and product license was effective on October 15, 1986.

**FOR FURTHER INFORMATION CONTACT:** Adele S. Seifried, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

**SUPPLEMENTARY INFORMATION:** FDA has revoked the establishment license (U.S. License No. 890) and product license issued to the Care for Life of Lubbock, Inc., for the manufacture of Source Plasma. The Care for Life of Lubbock, Inc., was located at 2415 A Main St., Lubbock, TX 79401.

On April 21 through 25 and 30, 1986, FDA inspected Care for Life of Lubbock, Inc. This inspection revealed serious deviations from the applicable biologics regulations. These deviations included, but were not limited to: (1) The former assistant manager routinely directed that donor suitability determinations, including predonation tests and medical history questions, be eliminated or abbreviated (21 CFR 640.63(c)); (2) unapproved individuals performed medical examinations (21 CFR 601.12 and 640.63(b)); and (3) medical examination forms contained the signatures of persons who did not perform the examinations (21 CFR 601.12(a) and 640.63).

Because the deviations represented a significant danger to health, FDA suspended the establishment license (U.S. License No. 890) on May 30, 1986.

Subsequent to the suspension, on June 12 and 13, 1986, the agency reviewed new donor records, dated January 27 through 30, 1986. All physical examination forms on these dates bore the signature of the approved physician, signifying that he had performed the medical examinations and reviews for

each donor. However, close examination of 25 records revealed entries that differed from those customarily used by the approved physician. The approved physician acknowledged that some of the entries did not appear to be his entries, and that most likely he did not perform these examinations. The approved physician, the responsible head, and the center manager stated that they did not know who performed these medical examinations.

FDA's investigation revealed that the firm's responsible head failed to exercise control of the establishment in all matters relating to compliance with the regulations. The responsible head stated that he may have made entries in medical records after the fact for critical elements of physical examinations. As required by 21 CFR 606.160(a), records must be maintained concurrently with the performance of work, identify the person performing that work, and provide a complete history of the work performed. In FDA's judgment, the firm's practices raised serious questions as to the ability of the responsible head and other managers to fulfill their duties competently.

By letter dated June 6, 1986, the firm requested that revocation of license be placed in abeyance. Based on the willful nature of the violations discovered during the FDA inspections and investigation, FDA denied the firm's request.

As provided in 21 CFR 601.5(b), FDA issued a letter on July 25, 1986, notifying the licensee of FDA's intention to revoke U.S. License No. 890, setting forth grounds for the revocation, and offering an opportunity for a hearing on the proposed revocation. In a letter dated August 4, 1986, Care for Life of Lubbock, Inc., requested that its establishment and product licenses be revoked and waived an opportunity for a hearing. The agency granted the licensee's request by letter to the firm dated October 15, 1986, issued under 21 CFR 601.5(a), which revoked the establishment license (U.S. License No. 890), and the product license of Care for Life of Lubbock, Inc. FDA has placed copies of the letters dated May 30, June 6, July 25, August 4, and October 15, 1986, on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Accordingly, under 21 CFR 12.38 and the Public Health Service Act (section 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Office of Biologics Research and Review (21 CFR 5.68), the establishment license (U.S. License No. 890) and product license issued to Care for Life of Lubbock, Inc., for the manufacture of Source Plasma were revoked effective October 15, 1986.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: April 2, 1987.

**Gerald F. Meyer,**

*Acting Deputy Director, Center for Drugs and Biologics.*

[FR Doc. 87–7828 Filed 4–8–87; 8:45 am]

BILLING CODE 4160–01–M

---

**[Docket No. 84F–0246]**

## Nuodex, Inc.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (FAP 4B3799) proposing that the food additive regulations be amended to provide for the safe use of 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane, 5-hydroxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane, and 5-hydroxypoly(methyleneoxy)methyl-1-aza-3,7-dioxabicyclo(3.3.0)-octane as a microbicide in aqueous mixtures used in the manufacture of paper and paperboard that contact food. The petition was withdrawn by Nuodex, Inc.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 6, 1984 (49 FR 35244), FDA published a notice that it had filed a petition (FAP 4B3799) from Nuodex, Inc., Turner Place, P.O. Box 365, Piscataway, NJ 08854, that proposed to amend the food additive regulations to provide for the safe use of 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane, 5-hydroxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane, and 5-hydroxypoly(methyleneoxy)methyl-1-aza-3,7-dioxabicyclo(3.3.0)octane as a microbicide in aqueous mixtures used in the manufacture of paper and paperboard articles that contact food. Nuodex, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 31, 1987.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–7827 Filed 4–8–87; 8:45 am]

BILLING CODE 4160–01–M

---

**[Docket No. 87D–0054]**

## Insecticide; Retention of Action Level for Mirex in Fish

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it is retaining the action level for residues of the insecticide mirex in fish. The Environmental Protection Agency (EPA) recently announced the revocation of all its existing tolerances for residues of mirex in or on raw agricultural commodities (51 FR 45114). In the notice announcing the revocation, EPA recommended that FDA retain its current action level for mirex in fish and that no additional action levels be established for foods regulated by FDA. Based on EPA's recommendation, FDA is reaffirming the current action level for residues of mirex in fish as established in Compliance Policy Guide 7141.01, Attachment B.11.

**DATE:** Written comments by June 8, 1987.

**ADDRESSES:** Written comments and requests for single copies of Compliance Policy Guide 7141.01, Attachment B.11, should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 17, 1986 (51 FR 45114), EPA published a notice revoking all of the pesticide tolerances for residues of the chemical dodecachlorooctahydro-1,3,4-metheno-2*H*-cyclobuta[*cd*]-pentalene (mirex) on all raw agricultural commodities. This action by EPA was taken to remove pesticide tolerances for which registered uses have been cancelled. In the notice revoking the tolerances, and in a December 3, 1986, letter to FDA, EPA recommended that the current action level of 0.1 part per million established by FDA for residues of mirex in fish be retained. It was also recommended that no action levels be established for FDA

regulated products to replace the revoked tolerances.

FDA has reevaluated its current action level for residues of mirex in fish and accepts EPA's recommendation to retain the 0.1 part per million action level as it appears in Compliance Policy Guide 7141.01, Attachment B.11. There had not previously been an established tolerance for mirex in fish. Therefore, the retention of the action level does not constitute the creation of a new or replacement action level for a revoked tolerance or a change in any enforcement policy. This action level will remain in effect until further notice. FDA will reassess this action level as new data become available.

Copies of EPA's recommendation, a memorandum to all FDA Regional and District Offices announcing this decision, and the current FDA Compliance Policy Guide 7141.01, Attachment B.11, are on file in the Dockets Management Branch. Requests for single copies of the FDA Compliance Policy Guide should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above).

Interested persons may submit written comments, data, and information regarding this action level to the Dockets Management Branch (address above). Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 1, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-7826 Filed 4-8-87; 8:45 am]

BILLING CODE 4160-01-M

---

## Food And Drug Administration

**[Docket No. 87N-0096]**

### Drug Export; Lymp-Scan (Kit for the Preparation of Technetium TC-99m, Antimony Trisulfide Colloid)

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Cadema Medical Products, Inc., has filed an application requesting approval for the export of the product Lymph-Scan (Kit for the preparation of Technetium TC-99m Antimony Trisulfide Colloid) to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca. Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its reveiw of the application. To meet this requirement, the agency is providing notice that Cadema Medical Products, Inc., Middletown, NY, has filed an application requesting approval for the export of the product Lymph-Scan (Kit for the preparation of Technetium TC-99m Antimony Trisulfide Colloid) to Canada. The application was received and filed in the Center for Drugs and Biologics on March 16, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 20, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: April 2, 1987

**Daniel L. Michels,**

*Director, Office of Compliance, Center for Drugs and Biologics.*

[FR Doc. 87-7829 Filed 4-8-87; 8:45 am]

BILLING CODE 4160-01-M

---

## Health Care Financing Administration

**[HSQ-143-PN]**

### Medicare Program; End Stage Renal Disease Program: Revised Network Area Designations

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed notice.

**SUMMARY:** This notice would provide for 17 End Stage Renal Disease (ESRD) network areas, set forth the geographic areas of the new network organizations and the criteria used to designate the new areas. This notice also proposes evaluation criteria and performance indicators for monitoring the performance of network organizations.

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on June 8, 1987.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-143-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-143-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW.,

Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

**FOR FURTHER INFORMATION CONTACT:** Spencer Colburn, (301) 594–3413.

**SUPPLEMENTARY INFORMATION:**

## I. Background

*Previous Legislative Activity and Regulations*

The Social Security Amendments of 1972 (Pub. L. 92–603) extended Medicare coverage to individuals with end-stage renal disease (ESRD) who require dialysis or transplantation. The End-Stage Renal Disease Amendments of 1978 (Pub. L. 95–292) authorized the establishment of ESRD network areas and network organizations under the Medicare program, consistent with the criteria the Secretary finds appropriate to assure the effective and efficient administration of ESRD program benefits.

In June 1984, Congress (House Report 98–861, p. 1336) directed the Secretary to consider consolidating the existing 32 network areas.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272) was enacted. Section 9214 of that law requires the Secretary to maintain renal disease network organizations as authorized under section 1881(c) of the Act and not merge the network organizations into other organizations or entities. The Secretary was permitted to consolidate network organizations, but only if such consolidation did not result in fewer than 14 such organizations being permitted to exist.

Consistent with section 9214 of Pub. L. 99–272, we published a notice of proposed rulemaking on April 15, 1986 (51 FR 12714), and a final rule on August 26, 1986 (51 FR 30356). These regulations permit the Secretary to redesignate the ESRD networks and improve their administration. At the same time we published the final rule, we also published a final notice (51 FR 30434) that provided for 14 networks and set forth geographic areas of the new network organizations (are designations) under the ESRD program.

For more detailed explanations of each of the above **Federal Register** documents, refer to the preambles to those documents.

*Omnibus Budget Reconciliation Act of 1986*

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99–509) was enacted. Sections 9335(d) through (h) of Pub. L. 99–509 amend, in several ways, section 1881(c) of the Act. The specific provisions that this notice would implement require the Secretary to—

- Establish at least 17 ESRD network areas not later than May 1, 1987 (section 9335(d)(1) and (2)).
- Designate, not later than July 1, 1987, a network administrative organization for each area that will establish a network council of renal dialysis and transplant facilities located in the area and a medical review board (section 9335(d)(1) and (2)).
- Consult with professional and patient organizations regarding the redesignation of network areas and publish in the **Federal Register** a description of each network area and the criteria on the basis of which network determinations were made (section 9335(d)(1)).
- Publish in the **Federal Register** the criteria, standards and procedures to evaluate an applicant organization's ability to perform or actual performance of required network functions (section 9335(d)(1)).
- Evaluate each applicant network organization based on quality and scope of services and not accord more than 20 percent of the weight of the evaluation to the element of price (section 9335(d)(1)).
- Terminate an agreement with a network administrative organization (network organization) only if he finds, after applying published standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If an agreement is to be terminated, the Secretary must select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition (section 9335(d)(1)).

Additionally, if the Secretary designates a network organization for an area that was not previously designated for that area, the statute requires the Secretary to offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area (section 9335(d)(3)).

Section 9335 of Pub. L. 99–509 contains other provisions that amend section 1881(c) of the Act relating to the ESRD networks. We will implement these provisions through the publication of separate proposed and final regulations in the **Federal Register**. Specifically, the statute requires ESRD network organizations to—

- Establish a network council of renal dialysis and transplant facilities located in each area and a medical review board (section 9335(d)(1)) with at least one patient representative as a member of each network council and each medical review board (section 9335(e)).
- Encourage participation in vocational rehabilitaton programs and develop criteria and standards relating to such encouragement (section 9335(f)(1), (2), and (4), and (h)).
- Report on those facilities and providers not providing appropriate medical care (section 9335(f)(3)).
- Implement a procedure for evaluating and resolving patient grievances (section 9335(f)(5)).
- Conduct onsite reviews of individual ESRD facilities as directed by the Secretary or medical review board and utilize standards of care established by the network organization to assure proper medical care (section 9335(f)(5)).
- Collect, validate, and analyze ESRD program data (section 9335(f)(5)).
- Provide data to the national ESRD data registry established under section 1881(c)(7) of the Act (section 9335(f)(5)).

In addition, the statute requires that the medical review board include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and at least one patient representative (sections 9335(d)(1) and (e)). It also encourages facility cooperation with network organizations by requiring that ESRD facilities and providers follow the recommendations of the medical review board (section 9335(g)).

*Meeting with Interested National Organizations*

In accordance with the provisions of section 9335(d) of Pub. L. 99–509, we invited every national renal professional and patient organization to provide counsel with respect to the network area designations and to submit proposed network area configurations. We scheduled a meeting with interested groups on December 3, 1986. Eight of the national organizations attended the meeting and discussed network area designation criteria and specific area configuration proposals. Two written proposals were submitted. The following organizations participated in the meeting:

American Nephrology Nurses Association
The Forum of End Stage Renal Disease Networks (Forum)
National Association of Patients on Hemodialysis and Transplantation (NAPHT)
National Dialysis Association
National Kidney Foundation
National Renal Administrators Association

Renal Physicians Association (RPA) United Network of Organ Sharing

The attendees presented their views on the criteria set forth in the August 26, 1986 notice, alternative criteria, and the relative importance of each of these. During the discussion, a consensus emerged regarding the criteria to be used as a basis for area designation, which is reflected by the following.

A. *Patient Population*—The attendees agreed that patient population is the most crucial factor, for a number of reasons, in the designation of network areas. Since Congress has provided a network funding mechanism based on the number of treatments provided within the network area, this criterion would determine the funding level of each network organization. Therefore, the application of this criterion could determine if there is a sufficient level of funding to ensure the survival of small network organizations and a basic level of services provided to the beneficiaries, the providers and HCFA. Appropriate application of this factor would prevent the growth of disparities among the services provided to ESRD beneficiaries throughout the country.

B. *Correspondence to State Boundaries*—This factor is important for several reasons. The network organizations are responsible for the collection and validation of program data. HCFA program needs require these data on a Statewide basis. To the extent possible, conforming network boundaries to State boundaries would allow each network organization the opportunity to address individual State problems and conduct Statewide studies. In addition, this criterion would enable the State health departments ready access to Statewide information.

A number of States administer kidney programs that provide funding and services for dialysis beneficiaries. These programs frequently use network services for data collection and analysis. Combining part of a State with another State for network purposes may result in administrative difficulties for the State programs. Integrity of State programs is also important for the application of survey and certification requirements and the development of vocational rehabilitation programs. For the benefit of the Medicare beneficiaries, the group believes that splitting States and placing parts of the State into two or more network areas would create undesirable and uneven provision of the required services.

C. *Maintenance of Current Patient Referral Patterns Represented by the Current Network Structure*—To the extend possible, the group agreed that the current network configurations should be maintained. Maintenance or consolidation of several of the current network areas minimizes the disruption of the network program and builds upon the relationships among the providers that have developed over the past years of the renal program.

D. *Administrative Considerations*—In addition, the group recognized that HCFA may have special needs to effectively administer and conduct oversight of the new network organizations. Such considerations may include designations within HCFA regional office boundaries and limiting the number of organizations. This criterion received the lowest priority for designating the areas.

*Submitted Proposals*

Following the meeting, members of the Forum, NAPHT, and RPA met and developed and submitted the following recommendations for the designation of network areas. The old network areas refer to the designations prior to the August 26, 1986 final notice (51 FR 30434).

| New network area | Old network area [1] |
|---|---|
| 1 | 1, 2 |
| 2 | 3 (Except NV) |
| 3 | 4 (Except NV) |
| 4 | 5, 6 (Plus NV) |
| 5 | 7, 8, 13 |
| 6 | 9, 10, 12 |
| 7 | 11 |
| 8 | 14 |
| 9 | 15 |
| 10 | 16, 17 |
| 11 | 18 |
| 12 | 19 |
| 13 | 20, 21 |
| 14 | 22 |
| 15 | 23, 29, 31 |
| 16 | 24 |
| 17 | 25 |
| 18 | 26, 27, 28 |
| 19 | 30 |
| 20 | 32 |

[1] The existing network areas are reprinted as an appendix to this notice.

Additionally, the National Renal Administrators Association submitted a proposal, and we had developed several models of possible configurations. Among all of the proposals there was substantial consensus with respect to many parts of the country. However, no single configuration meets all criteria. In order to compare proposed configurations, we tried to quantify an aggregate score for meeting all criteria.

We expressed the degree of conformance of each proposed configuration as a percentage by identifying whether each proposed area in the configuration—

- Had a patient population distribution within one standard deviation from the mean for all proposed areas;
- Correspond to State boundaries; and
- Preserved existing network boundaries and recognized established medical trade areas.

We then divided the number of criteria met under each proposal by the total number of criterion elements for all proposed areas (which varied among configurations depending on the total number of areas proposed) and multiplied the result by 100.

Using this methodology, we found that the proposal from Forum, NAPHT, and RPA met 66 percent of the considered criteria (that is, patient population distribution, State boundaries, and medical trade areas and old network boundaries). However, only 40 percent of their proposed areas corresponded to State boundaries. Their proposal gave the greatest weight to existing network boundaries.

## II. Provisions of the Proposed Notice

This proposed notice would implement new network area designations and set forth the criteria, standards and procedures we would use to evaluate new network organizations as required by section 9335(d) of Pub. L. 99–509. As we stated in the August 26, 1986 notice, we would also issue area designations through revisions to the ESRD Facility Manual and the Provider Reimbursement Manual. We would require facilities to notify patients of the area designation changes, and we would notify patient advocacy groups (for example, The National Association of Patients on Hemodialysis and Transplantation and The National Kidney Patients Association) directly.

*Network Area Designations*

We used the Forum/NAPHT/RPA proposal as a basis for developing our proposal of the network designations in this notice. However, because so few of their proposed areas correspond to State boundaries, we could incorporate few of their areas directly. We revised the areas, first, to conform to State boundaries and to reduce their proposed 20 areas to 17 areas. We did not maintain a rigid objective of ensuring that each area's patient population was within one standard deviation of the mean. (Neither had the Forum/NAPHT/RPA proposal; only 70 percent of their proposed areas met that criterion.) Rather, based on our discussions with

the industry representatives, we concluded that it was most important, regarding patient population, that each area had a sufficient number of patients to ensure adequate funding. It had been suggested that 2,500 patients was a reasonable minimum number, and all the areas recommended by Forum/NAPHT/RPA exceeded that number. Since the smallest population area they had proposed met the other criteria, especially conformance to State boundaries, we accepted that area.

We identified six States that had large patient populations such that the State might independently constitute one or more network areas: California, New York, Texas, Illinois, Florida, and Pennsylvania. (Florida, Texas, Louisiana, Indiana, North Carolina, Connecticut, and New Jersey are the single-State areas of the existing networks.) We especially considered dividing California into two areas. However, we finally decided that the operational advantages of conforming State boundaries required that each area be comprised of at least one entire State and that no area boundaries divide a State.

Accordingly, we are proposing to establish the States of California, New York, Texas, and Illinois to be distinct, single State network areas. We are not proposing the same for Florida and Pennsylvania because each has a neighboring State that we would include in the area, in Florida's case, Georgia; in Pennsylvania's case, Delaware.

Several other States have been divided among two or more networks under the existing designation, and the Forum/NAPHT/RPA proposal generally would have preserved these divisions. The States affected are Michigan, Ohio, Nebraska, Illinois, Wisconsin, Virginia, Alabama, Arkansas, Georgia, and Missouri. Some States (that is, Pennsylvania, and Virginia) would have been divided among three areas under the Forum/NAPHT/RPA proposal. Some proposed areas would have assigned very small portions of a State (that is, Nebraska, Virginia, and Alabama) to a network area dominated by other States. Again, on review of each instance, we concluded that the greater benefit could be realized by maintaining each State wholly within a single network.

The areas of the Forum/NAPHT/RPA proposal that we would change follow:

- *Upstate New York*—We combined Upstate New York with New York City to maintain a single State network area. Upstate New York includes approximately 1,000 beneficiaries, and we believe that the beneficiaries would be better served by maintaining the State wholly within one area.
- *New Jersey, Puerto Rico and the Virgin Islands*—Although Puerto Rico and the Virgin Islands constitute one of the existing areas of their own, they have too few patients to support an autonomous area under the new funding authority. In this case, market areas and referral patterns are also not a substantial consideration. Because of geographic proximity, we considered including them in a network area with Florida. However, we also noted that, for most other purposes, Puerto Rico and the Virgin Islands are included in HHS Region II along with New York and New Jersey. It did not seem appropriate to combine them with New York since New York, as a network area in itself, already would account for the second largest number of patients. Therefore, we propose to combine Puerto Rico and the Virgin Islands with New Jersey. This network constitutes the remainder of HHS Region II. Establishing this area would satisfy the population and State boundary criteria and merge two existing network areas (29 and 32).
- *Western Pennsylvania and Northeastern Ohio*—We propose combining those counties of Western Pennsylvania in existing Network 22 with the counties of Eastern Pennsylvania and Delaware, in existing Network 24, and those with Northeastern Ohio counties in existing Network 22 the rest of Ohio, Indiana, and Kentucky. We believe that conforming to State boundaries would provide for a more appropriate patient population and prudent allocation of network resources.
- *Maryland; Washington DC; West Virginia and Virginia*—We would combine Maryland Virginia, West Virginia, and Washington, DC. That combination would merge the referral areas of two existing networks (23 and 31), conform to State boundaries, and provide a better patient distribution for network funding.
- *Iowa, Kansas, Missouri and Nebraska*—This network area is the same as HHS Region VII and would be established by merging two existing network areas (8 and 9).
- *Michigan*—We would combine the lower peninsula of Michigan with North Dakota, South Dakota, Minnesota, Wisconsin, and the upper peninsula of Michigan, which would conform to State boundaries and long-established patient referral patterns and would provide a more equitable patient distribution. We would remove Nebraska and Iowa from this area (existing Network 8) and combine them with Missouri and Kansas (existing Network 9).
- *California*—Although this single State network would serve a very large patient population, we believe that maintaining a Statewide designation would best serve the beneficiaries' interests. We believe that Statewide networks would be more conducive to developing vocational rehabilitation programs.
- *Florida and Georgia; North Carolina and South Carolina*—The Forum/NAPHT/RPA proposal identified this combination as an acceptable alternative configuration, although not their first choice, for the southeastern region. We would incorporate this option.

While no single plan is without disadvantages, we believe that this configuration would provide the best service to the beneficiaries and the most prudent use of funds possible under the constraints of the law. This revised configuration would meet more than 75 percent of the criteria. All the proposed designations conform to State boundaries, and nearly 65 percent of the proposed areas meet the other key criteria. These designations, upon being finalized, would not be irrevocable, but could be adjusted periodically based on our contract experience with the network organizations and changes in location and number of ESRD beneficiaries. Accordingly, we propose the following network area configurations:

**Network Area #1**

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

**Network Area #2**

New York

**Network Area #3**

New Jersey
Puerto Rico
Virgin Islands

**Network Area #4**

Delaware
Pennsylvania

**Network Area #5**

District of Columbia
Maryland
Virginia
West Virginia

**Network Area #6**

North Carolina
South Carolina

**Network Area #7**

Florida
Georgia

**Network Area #8**

Alabama
Mississippi
Tennessee

**Network Area #9**

Indiana
Kentucky
Ohio

**Network Area #10**

Illinois

**Network Area #11**

Michigan
Minnesota
North Dakota
South Dakota
Wisconsin

**Network Area #12**

Iowa
Kansas
Missouri
Nebraska

**Network Area #13**

Arkansas
Louisiana
Oklahoma

**Network Area #14**

Texas

**Network Area #15**

Arizona
Colorado
New Mexico
Utah
Wyoming

**Network Area #16**

Alaska
Hawaii
Idaho
Montana
The Trust Territories of the Pacific Islands
Oregon
Washington
American Samoa
Guam

**Network Area #17**

California

*Evaluation Criteria*

Section 9335(d)(1) of Pub. L. 99–509 requires us to publish the criteria, standards and procedures that will be used to evaluate the performance of network organizations and the potential capabilities of an applicant organization with respect to the statutory duties of the network organizations. We propose to evaluate the following areas in assessing the capabilities of organizations that submit proposals in response to the request for contract proposals.

I. Understanding of Work and Approach
  A. Analysis of scope and purpose
  B. Technical approach
II Experience
  A. Developing and conducting medical review programs
  B. Managing data and conducting data analysis and studies
  C. Coordinating work groups in the health field
III. Personnel
  A. Project Director
  B. Subordinate staff
IV. Management Plan

Based on our experience in evaluating network funding requests, network performance, and the network on-site assessment program, as well as our experience in evaluating other contractors, including the State survey agencies, we propose to use the following evaluation criteria and performance indicators to assess the effectiveness or potential effectiveness of network organizations. We believe that these criteria would provide an unbiased and effective mechanism for performance assessment. Although these criteria are written as they would apply to applicant organizations, they may also be used to evaluate the actual performance of the existing network organizations.

| Criteria | Evaluation indicator |
|---|---|
| **I. Medical Review** | |
| A *General* | |
| The network organization appoints a qualified Medical Review Board. | The network demonstrates an ability to appoint, a medical review board in accordance with the regulatory requirements. |
| The network develops and adopts criteria for the evaluation of patient care and for encouraging participation in vocational rehabilitation programs and network goals for placing patients in settings for self care and transplantation. | The network demonstrates an ability to adopt criteria and standards for the evaluation of the quality and appropriateness of patient care. |
| B. *Case Review:* | |
| The network develops a protocol for the receipt and review of a representative sample of individual patient cases per month | The network proposes a mechanism to identify individual cases for review against criteria and standards established under I.A. |
| The review of individual cases includes the evaluation of at least:. —Individual care plans. —Long term and short term plans, —Appropriateness of treatment modality, —Adverse effects, —Incident reports involving the patient, and —Patient suitability for home dialysis, transplantation and vocational rehabilitation. | The network proposes a mechanism to evaluate these areas. |
| C. *Systems Assessment:* | |
| The network successfully identifies specific network problems in the delivery of patient care. | Proposed studies and a written mechanism to implement resultant actions or suggestions |
| The organization assists individual facilities and acts to resolve identified problems within the network area. | Proposed activities required of facilities to improve care. |
| The network is aware of and assists facilities in correcting internal problems that interfere with meeting program requirements. The network documents these activities. | The network proposes policies and procedures to gain voluntary compliance from facilities in meeting HCFA goals and objectives. Recalcitrant facilities will be reported to HCFA. |
| The newtowrk develops a protocol to select a sample of member facilities for evaluation of patient placement. | The network proposes to use established criteria and standards to evaluate the procedures used at each facility in assessing patients for placement in appropriate treatment settings. |
| The network heightens both patient and physician interest and awareness of alternative treatment modalities and facilitates entry into those treatment modalities when medically indicated | The network proposes to initiate patient and professional education and information activities in this area. Other initiatives to increase the percentage of patients or alternative treatments are proposed and implemented. |
| The network objectively assesses and assists facilities' efforts to correct problems identified through the network medical review program | The network proposes to develop a review mechanism to determine if benefits are achieved from the medical review programs. |
| D. *Patient Services Evaluation* | |
| The network assists ESRD beneficiaries in obtaining access to all types and levels of care. | The network has mechanisms to assist patients in obtaining access to care with respect to proper treatment settings and treatment schedules compatible with patient employment. |
| The network is responsive to patient concerns and encourages responsible patient participation. Responsiveness is documented | Proposed methods of assuring appropriate consumer representation |
| The network provides, maintains, and directs an effective patient grievance mechanism: —Standard policies and procedures, —Evaluation of complaints legitimacy, —Rationale for complaints not pursued is documented, —Investigation, —Corrective actions, —Follow-up of corrective action, —Notification of parties concerned and resolution/corrective action is clearly explained, and —The network assumes the responsibility of assuring that a result is obtained | Documented procedures |
| *II. Data Activities* | |
| The network maintains a patient and facility specific data system that meets the needs of the network and HCFA requirements. | The proposed data system includes at least the required specific data items as specified by HCFA. |
| Data handling is physically and administratively structured to assure patient privacy and confidentiality | Information must be released only in accordance with the provisions of the contract or as otherwise specified in writing by HCFA. |
| The network data management system provides for collection, analysis, verification and reporting on a timely basis. | The network proposes to meet its obligation in providing information to HCFA as specified in the provisions of the contract or other program instruction |
| The network is aware of and assists facilities in correcting internal problems that interfere with meeting program requirements. These activities are documented. | The network proposes policies and procedures to gain voluntary compliance from its facilities in meeting data gathering requirements |
| The network data system is adequate to support current activities, including the activities of the medical review board. | The network proposal assures that there will be no curtailment of network activities due to a lack of data or meaningful analysis. A periodic analysis of patient morbidity and mortality trends will be performed. Data findings that may be indicative of inadequate patient care will be tracked and reported to the medical review board |
| The network has established a periodic internal audit procedure to assure the effectiveness of its system and its performance in: submitting reports, meeting deadlines, and identifying and correcting errors. | The network proposes procedures to identify and correct problems in its data activities. The network has planning activities to identify and address future data needs. |
| *III. Program Administration and Management* | |
| The network plans and manages network activities to enhance the achievement of ESRD national priorities. | Contract proposal; deliverables |

| Criteria | Evaluation indicator |
|---|---|
| *Record Systems* | |
| The network maintains all appropriate systems in a standardized manner. | Organization's records must be maintained in accordance with sound business practices |
| The network maintains an effective liaison role to the Federal government | The network proposal clearly indicates that there will be specific individuals in the network organization to coordinate communications with HCFA. The network will adhere to specific reporting mechanisms specified in the contract |
| The network arranges, as required, to have audits performed and audit reports sent to HCFA. | External (independent) audit. |

### III. Request for Proposals

We would develop separately an announcement of a request for proposals (RFP) to solicit prospective contractors as the new ESRD network organizations for the newly designated areas. We would publish the announcement in the Commerce Business Daily (CBD) for 15 consecutive days. During those 15 days, interested parties could request copies of the RFP. On the fifteenth day that the announcement appears in the CBD, we would distribute copies of the RFP to existing organizations that we feel currently have the expertise to perform network organization functions and any other parties that request copies. We would accept proposals within 30 days from the date that we issue copies of the RFP.

### IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed notice such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed notice such as this would not have a significant economic impact on a substantial number of small entities.

Because ESRD networks are such a small activity, with a total FY 1987 budget of less than $6 million, these changes do not meet any of the criteria for a major rule under Executive Order 12291, and a regulatory impact analysis is not required. However, the planned reductions in numbers of network areas and organizations will clearly affect all or almost all existing network organizations. Since these organizations are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are not the kind of small entities to which the Regulatory Flexibility Act is usually considered to apply. Nontheless, they are small organizations and a substantial number of them would experience a significant adverse economic effect as a result of our changes. Therefore, the following discussion, in combination with other sections of this notice, serves as a voluntary regulatory flexibility analysis.

Existing network organizations would be affected only when we actually redesignate network areas and make arrangements with new network organizations. We do not expect the redesignation of network areas to have an adverse affect on ESRD facilities or beneficiaries. Rather, to the extent that network performance relative to available resources is enhanced, the entire ESRD program would benefit.

The criteria for the designation of these new network areas would have a potential impact upon the networks, the beneficiaries, and the facilities. For example, one of the criteria that we propose to use as a basis for area designation is patient population. This criterion would determine the funding level of each network organization because the network funding mechanism is based on the number of treatments provided within the network area. (Section 1881(b)(7) of the Act, as amended by section 9335(j) of Pub. L. 99–509 requires the Secretary to reduce the amount of each composite rate payment for each treatment by $0.50 and provide for the payment of such amount to meet the necessary and proper administrative costs of the network organization in the area where the treatment is provided.)

Following are the area designations and the total number of patients per area:

| Network | Number of patients |
|---|---|
| 1 | 3,791 |
| 2 | 7,164 |
| 3 | 4,233 |
| 4 | 4,618 |
| 5 | 5,030 |
| 6 | 3,799 |
| 7 | 6,660 |
| 8 | 4,485 |
| 9 | 5,343 |
| 10 | 3,549 |
| 11 | 4,792 |
| 12 | 3,175 |
| 13 | 2,964 |
| 14 | 5,422 |
| 15 | 2,789 |
| 16 | 2,594 |
| 17 | 8,726 |

For purposes of estimating revenue, we have assumed that the average number of dialysis treatments per week is 2.6 at $.50 per treatment. We assume an allocation of $67.60 per patient per year. The smallest area would thus be allocated about $175,000 and the largest area would be allocated nearly $600,000.

The patient population criterion should ensure that there is a sufficient level of funding to ensure the survival of small network organizations and ensure a basic level of services provided to the beneficiaries and the providers. Appropriate application of this factor could prevent the growth of disparities among the services provided to the ESRD beneficiaries throughout the country.

We intend to replace existing network organizations with a more effective and efficient system. The health care delivery system generally is capable of coordinating the delivery of needed services without reliance on special additional organizations such as the ESRD networks. As a desirable by-product, these changes would reduce the regulatory burden on the suppliers of ESRD services, while continuing to assure the health and safety of Medicare beneficiaries.

In conclusion, although our proposed evaluation criteria may appear to be burdensome, we have made an effort to assure that network areas of sufficient size would perform these functions. Also, these criteria should result in a good management information system defining patients' treatment modalities and a quality control system that justify the costs and burden imposed on the networks and which are expected to benefit the beneficiary and society. We believe that the adverse economic impact of this notice would be limited to the affected entities and their immediate employees. Such adverse consequences as may be anticipated would not be of sufficient magnitude to offset the advantages to be gained by anticipated improvements in efficiency, effectiveness, economy, and quality of care.

### V. Response to Comments

Because of the large number of comments we receive on proposed

regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

**VI. Collection of Information Requirements**

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980.

(44 U.S.C. 3501 et seq.)

(Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: February 18, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: March 13, 1987.

**Otis R. Bowen,**

*Secretary.*

**Appendix—Existing ESRD Network Areas**

*ESRD network No. 1*

American Samoa, Guam, Hawaii, The Trust Territory of the Pacific Islands.

*ESRD network No. 2*

The State of Alaska.
The State of Idaho.
The State of Montana.
The State of Oregon.
The State of Washington.

*ESRD network No. 3*

The following counties in Northern California: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, Yuba.

The State of Nevada excluding Clark County which is included in Network area 4.

*ESRD network No. 4*

The following counties in Southern California: Imperial, Inyo, Kern, Kings, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, Ventura.

The following county in Southern Nevada: Clark.

*ESRD network No. 5*

The State of Colorado.

The State of Utah excluding the Navaho Reservation portion of San Juan County which is in Network area 6.

The State of Wyoming.

The following counties in the State of Nebraska: Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux.

*ESRD network No. 6*

The State of Arizona.
The State of New Mexico.
The Navaho Reservation portion of San Juan County, Utah.

*ESRD network No. 7*

The State of Minnesota.
The State of North Dakota.
The State of South Dakota.

The following counties in the State of Michigan: Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon, Schoolcraft.

The following counties in the State of Wisconsin: Ashland, Bayfield, Burnett, Douglas, Iron, Price, Sawyer, Washburn.

*ESRD network No. 8*

Composed of:

The State of Iowa.

The State of Nebraska excluding the following counties which are included in Network area 5: Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux.

The following counties in the State of Illinois: Henry, Mercer, Rock Island.

*ESRD network No. 9*

The State of Kansas.

The State of Missouri excluding the following counties which are included in Network area 18: Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard.

The following counties in the State of Illinois: Clinton, Madison, Monroe, St. Clair.

*ESRD network No. 10*

The State of Arkansas excluding the following counties which are included in Network area 18: Crittenden, Mississippi.

The State of Oklahoma.

*ESRD network No. 11*

The State of Texas.

*ESRD network No. 12*

The State of Louisiana.

*ESRD network No. 13*

The State of Wisconsin excluding the following counties which are included in Network area 7: Ashland, Bayfield, Burnett, Douglas, Iron, Price, Sawyer, Washburn.

*ESRD network No. 14*

The State of Michigan excluding the following counties which are included in network area number 7: Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon, Schoolcraft.

*ESRD network No. 15*

The State of Illinois excluding the following counties which are included in Network area 8: Henry, Mercer, Rock Island, and the following counties which are included in Network area 9: Clinton, Madison, Monroe, St. Clair.

*ESRD network No. 16*

The State of Indiana.

*ESRD network No. 17*

The State of Kentucky.

The following counties in the State of Ohio: Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Miami, Montgomery, Preble, Shelby, Warren.

*ESRD network No. 18*

The State of Alabama excluding the following county which is included in network area number 20: Russell.

The State of Mississippi.

The State of Tennessee.

The following counties in the State of Arkansas: Crittenden, Mississippi.

The following counties in the State of Georgia: Catoosa, Dade, Walker.

The following counties in the State of Missouri: Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard.

The following counties in the State of Virginia: Scott, Washington.

*ESRD network No. 19*

The State of Florida.

*ESRD network No. 20*

The State of Georgia excluding the following counties which are included in network area number 18: Catoosa, Dade, Walker.

The State of South Carolina.

The following county in the State of Alabama: Russell.

*ESRD network No. 21*

The State of North Carolina.

*ESRD network No. 22*

Composed of the State of Ohio excluding the following counties which are included in network area number 17: Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Miami, Montgomery, Preble, Shelby, Warren.

The following counties of Western Pennsylvania: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Clarion, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington, Westmoreland.

*ESRD network No. 23*

The District of Columbia.

The following counties in the State of Virginia: Arlington, Fairfax, Loudoun, Prince William.

The following counties in the State of Maryland: Calvert, Charles, Montgomery, Prince Georges, St. Marys.

*ESRD network No. 24*

The State of Delaware.

The following counties of Eastern Pennsylvania: Adams, Berks, Bucks, Carbon, Centre, Dauphin, Delaware, Franklin, Jefferson, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Chester, Clearfield, Clinton, Columbia, Cumberland, Montgomery, Montour, Northampton, Morthumberland, Perry, Pike, Philadelphia, Schuylkill, Snyder, Union, Wayne, Wyoming, York.

*ESRD network No. 25*

The following counties of Metropolitan New York: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester.

*ESRD network No. 26*

The State of New York excluding the following counties which are included in Network area 25: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester.

The following counties in the State of Pennsylvania: Bradford, Susquehanna, Sullivan, Tioga.

*ESRD network No. 27*

The State of Connecticut.

*ESRD network No. 28*

The State of Maine.
The State of Massachusetts.
The State of New Hampshire.
The State of Rhode Island.
The State of Vermont.

*ESRD network No. 29*

Puerto Rico, Virgin Islands.

*ESRD network No. 30*

The State of Virginia excluding the following counties which are included in Network area 18: Scott, Washington, and the following counties which are included in Network area 23: Arlington, Fairfax, Loudoun, Prince William.

The State of West Virginia.

*ESRD network No. 31*

The State of Maryland excluding the following counties which are included in Network area 23: Calvert, Charles, Montgomery, Prince Georges, St. Mary's

*ESRD network No. 32*

The State of New Jersey.

[FR Doc. 87–7927 Filed 4–8–87; 8:45 am]

BILLING CODE 4120–03–M

## Office of Human Development Services

### Intent to Reallot Basic Support and Protection and Advocacy Funds to States for Developmental Disabilities Expenditures; reallotment of funds

**AGENCY:** Administration on Developmental Disabilities, Office of Human Development Services, HHS.

**ACTION:** Notice of intent to reallot funds.

**SUMMARY:** The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which are not available to the Trust Territories of the Pacific and funds which will not be obligated or expended by any other State prior to September 30, 1987. This notice is given in accordance with section 125(d) of the Developmental Disabilities Assistance and Bill of Rights Act. To identify States that do not intend to obligate or expend funds by September 30, 1987, and to identify those States that wish to be considered for receipt of additional funds under this reallotment, each State or Territory must provide the following information in writing:

(1) The amount of funds that will not be obligated or expended by September 30, 1987, under its approved State Plan. If all funds will be obligated, provide a statement to that effect;

(2) The amount of additional funds that can be obligated or expended by September 30, 1987, if any; or

(3) A statement that no additional funds can be used by that date.

This information will be used to calculate the amounts to be reallotted. It should be submitted no later than May 11, 1987 to: Bettye J. Mobley, Grants and Contracts Management Division, Office of Human Development Services, Department of Health and Human Services, 200 Independence Avenue, SW., Room 341F.4 HHH Bldg., Washington, DC 20201.

A State or Territory which does not provide the written notice as described above will not receive a reallocation of additional funds for Fiscal Year 1987.

**FOR FURTHER INFORMATION CONTACT:** Bettye J. Mobley, (202) 245–7220.

Dated: March 25, 1987.

**Robert Stovenour,**

*Acting Commissioner, Administration on Developmental Disabilities.*

Approved: April 3, 1987.

**Jean K. Elder,**

*Assistant Secretary for Human Development Services-Designate.*

FR Doc. 87–7885 Filed 4–8–87; 8:45 am]

BILLING CODE 4130–01–M

## National Institutes of Health

### Animal Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, May 19–20, 1987, National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on May 19 from 1 p.m. to approximately 3 p.m. for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 19 from 8:30 a.m. to approximately 12 noon and from approximately 3 p.m. to 5 p.m., and on May 20 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications submitted to the Animal Resources Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources,

National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496–5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: April 2, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–7877 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute on Aging; National Advisory Council on Aging; Meeting

Pursuant to Pub. L 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA), on May 19–20, 1987, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Tuesday, May 19, from 10:30 a.m. until noon for a status report by the Director, National Institute on Aging, and a report on the role of genetic controls on the aging process. It will be open to the public on Wednesday, May 20, from 9:00 a.m. until adjournment for a report on the NIA Intramural Program, a report on the ad hoc Committee on Program and a report on current and future research activities in health services delivery. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C and sec. 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on May 19 from 1:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you contact Mrs. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C05, Bethesda, Maryland 20892, (301/496–9322), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: April 2, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–7878 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute on Aging; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, April 20–22, 1987, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 9:00 a.m. on Monday, April 20 until approximately 4:00 p.m. and will again be open to the public from 9:00 a.m. on Tuesday, April 21, until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 20 from 4:00 p.m. until recess, and again on April 21 from 4:00 p.m. until adjournment on April 22 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496–9322) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: April 2, 1987.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 87–7879 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

## National Library of Medicine; Board of Regents, the Extramural Programs and Pricing Subcommittees; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on May 28–29, 1987, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meetings of the Extramural Programs and the Pricing Subcommittees on the preceding day, May 27, from 2 to 3 p.m., in the 5th-floor Conference Room of the Lister Hill Center Building and from 3 to 4 p.m. in Conference Room "A" of the Library, respectively.

The meeting of the Board will be open to the public from 9 a.m. to 5:15 p.m. on May 28 and from 9 a.m. to appoximately 12 noon on May 29 for administrative reports and program discussions. The entire meeting of the Pricing Subcommittee will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on May 27, will be closed to the public, and the regular Board meeting on May 29 will be closed from approximately 12 noon to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: April 2, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–7880 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

### National Library of Medicine, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on May 18 and 19, 1987, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4 p.m. on May 18, 1987, and from 8:30 a.m. to approximately 12 noon on May 19, 1987, for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 18, from approximately 4 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive information.

Dated: April 2, 1987.

Betty J. Beveridge,

*NIH Committee Management Officer, NIH.*

[FR Doc. 87–7881 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

### Research Grants Division Study Section; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for May 1987, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

| Study section | May 1987 meetings | Time | Location |
|---|---|---|---|
| Behavioral and Neurosciences-1, Ms. Janet Cuca, Rm. A13, Tel. 301–496–5352 | May 28–29 | 8:30 | Wellington Hotel, Washington, DC |
| Behavioral and Neurosciences-2, Ms. Janet Cuca, Rm. A13, Tel. 301–496–5352 | May 15 | 8:30 | Room 4, Bldg. 31A, Bethesda, MD |
| Biomedical Sciences-1, Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067 | May 21–22 | 8:30 | Room 6, Bldg. 31C, Bethesda, MD |
| Biomedical Sciences-2, Dr. Charles Baker, Rm. A10, Tel. 301–496–7150 | May 20–21 | 8:30 | Holiday Inn, Bethesda, MD |
| Biomedical Sciences-3, Mr. Gene Headley, Rm. A25, Tel. 301–496–7287 | May 13–14 | 8:30 | Holiday Inn, Georgetown, DC |
| Biomedical Sciences-4, Dr. Charles Baker, Rm. A10, Tel. 301–496–7150 | May 13–14 | 8:30 | Ramada Inn, Bethesda, MD |
| Biomedical Sciences-5, Dr. Bert Wilson, Rm. A25, Tel. 301–496–7600 | May 14–15 | 8:30 | Room 8, Bldg. 31C, Bethesda, MD |
| Biomedical Sciences-6, Dr. Melvin Gottlieb, Rm. A10, Tel. 301–496–3117 | May 18–20 | 8:30 | Ramada Inn, Bethesda, MD |
| Biomedical Sciences-7, Dr. Daniel Eskinzai, Rm. A25, Tel. 301–496–7287 | May 11–13 | 8:30 | Crowne Plaza, Rockville, MD |
| Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301–496–7510 | May 14–15 | 8:30 | Ramada Inn, Bethesda, MD |
| Clinical Sciences-2, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477 | May 18–19 | 8:30 | Wellington Hotel, Washington, DC |
| Clinical Sciences-3, Dr. Nicholas Mazarella, Rm. A27, Tel. 301–496–1069 | May 7 | 8:30 | Crowne Plaza, Rockville, MD |
| Clinical Sciences-4, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477 | May 20–21 | 8:30 | Wellington Hotel, Washington, DC |

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.983, National Institutes of Health, HHS)

Dated: April 2, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–7882 Filed 4–8–87; 8:45 am]

BILLLNG CODE 4140–01–M

## Public Health Service

### National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 51 FR 28135, August 5, 1986) is amended to reflect the changes indicated below in the titles of the programs of the National Institute of Neurological and Communicative Disorders and Stroke (NINCDS) (HNQ), and the National Institute of Environmental Health Sciences (NIEHS) (HNV). These changes will reflect the organizations' reporting relationship to the Director, NINCDS, and the Director, NIEHS.

*Section HN–B, Organization and Functions* is amended by retitling the following programs, as indicated:

(1) Under the heading *National*

*Institute of Neurological and Communicative Disorders and Stroke (HNQ):*

| Former Title | Revised Title |
|---|---|
| (a) Intramural Research Progam (HNQ–2) | Division of Intramural Research (HNQ2) |
| (b) Fundamental Neurosciences Program (HNQ–3) | Division of Fundamental Neurosciences (HNQ3) |
| (c) Communicative Disorders Program (HNQ–4) | Division of Communicative Disorders (HNQ4) |
| (d) Stroke and Trauma Program (HNQ–6) | Division of Stroke and Trauma (HNQ6) |
| (e) Extramural Activities Program (HNQ–7) | Division of Extramural Activities (HNQ7) |
| (f) Convulsive, Developmental, and Neuromuscular Disorders Program (HNQ–8) | Division of Convulsive, Developmental, and Neuromuscular Disorders (HNQ8) |
| (g) Demyelinating, Atropic, and Dementing Disorders Program (HNQ–9) | Division of Demyelinating, Atropic, and Dementing Disorders (HNQ9) |

(2) Under the heading *National Institute of Environmental Health Sciences (HNV):*

| Former Title | Revised Title |
|---|---|
| (a) Intramural Research Program (HNV–2) | Division of Intramural Research (HNV2) |
| (b) Extramural Program (HNV–3). | Division of Extramural Research and Training (HNV3) |
| (c) Toxicology Research and Testing Program (HNV–5) | Division of Toxicology Research and Testing (HNV5) |
| (d) Biometry and Risk Assessment Program (HNV–6) | Division of Biometry and Risk Assessment (HNV6) |

Dated: April 1, 1987.

**Wilford J. Forbush,**

*Director, Office of Management, PHS.*

[FR Doc. 87–7936 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone: (202) 395–7340.

Title: Application Process Contract, 25 CFR 271.

Abstact: Indian tribes can request to enter into a contract or contracts to plan, conduct and administer programs or portions thereof, now administered by the Bureau of Indian Affairs. Information collected in 25 CFR Part 271 is necessary to evaluate the contract application and to monitor and evaluate any contract which is subsequently issued.

Frequency: Upon initial application.

Description of Respondents: Indian tribes desiring to contract Bureau programs.

Annual Responses: 1,430.

Annual Burden Hours: 24,655.

Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

**John D. Geary,**

*Acting Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).*

[FR Doc. 87–7842 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–02–M

### Bureau of Land Management

[WY–920–07–4111–15; W–75831]

### Proposed Reinstatement of Terminated Oil and Gas Lease; Campbell County, WY

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–75831 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–75831 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87–7846 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–07–4111–15; W–79753]

### Proposed Reinstatement of Terminated Oil and Gas Lease; Converse County, WY

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–79753 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–79753 effective July 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87–7847 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–07–4111–15; W–97827]

### Proposed Reinstatement of Terminated Oil and Gas Lease; Park County, WY

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–97827 for lands in Park County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate

lease W–97827 effective February 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87–7848 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–22–M

---

[NV–943–07–4212–10; Nev–058218]

## Nevada; Land Reconveyed to the United States; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction notice.

**SUMMARY:** This notice provides a correction to the legal description published regarding a reconveyance to the U.S. by the Las Vegas Valley Water District.

**EFFECTIVE DATE:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520 (702) 784–5481.

**SUPPLEMENTARY INFORMATION:** In **Federal Register** document 79–36539 on page 68038 in the issue of Wednesday, November 28, 1979, make the following correction:

Line 5 of the legal description should read "162, 163, and 164."

**Robert G. Steele,**

*Deputy State Director, Operations.*

[FR Doc. 87–7871 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–HC–M

---

[NV–930–07–4212–22]

## Filing of Plat Survey; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plats of survey.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

**DATES:** Filings were effective at 10 a.m., on March 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784–5484.

**SUPPLEMENTARY INFORMATION:** The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada.

**Mount Diablo Meridian, Nevada**

T. 13 N., R. 19 E.—Dependent Resurvey
T. 14 N., R. 19 E.—Dependent Resurvey and Subdivisions
T. 14 N., R. 20 E.—Dependent Resurvey and Subdivisions
T. 15 N., R. 20 E.—Dependent Resurvey and Subdivisions

The survey of T. 13 N., R. 19 E., was executed to meet certain administrative needs of the Bureau of Indian Affairs. The remaining listed surveys were executed to meet certain administrative needs of the U.S. Forest Service.

Dated: April 1, 1987.

**Robert G. Steele,**

*Deputy State Director, Operations.*

[FR Doc. 87–7869 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–HC–M

---

## Arizona, Safford District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

**DATE:** Friday, May 15, 1987; 9:00 a.m.

**ADDRESS:** BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with Pub. L. 92–463. The agenda for the meeting will include:

1. Instruction Memo on nonuse of Grazing preference.
2. Licensing holdover calves.
3. Update on Wilderness Study areas.
4. Safford District Resource Management Plan Preplanning.
5. San Pedro Bill.
6. BLM management update.
7. Business from the floor.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:00 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, May 14, 1987.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: April 2, 1987.

**Ray A. Brady,**

*District Manager.*

[FR Doc. 87–7851 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–32–M

---

[CA–940–07–4520–12 (Group 820)]

## Filing of Plat of Survey; Humboldt County, CA

April 1, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

**Humboldt Meridian, Humboldt County**

T. 11 N., R. 4 E. and R. 5 E.

2. This plat representing the dependent resurvey of a portion of the Second Standard Parallel North, along the south boundaries of Township 11 North, Ranges 4 and 5 East, and the metes-and-bounds survey of Tracts 38 and 39, Township 11 North, Range 4 East, Humboldt Meridian, California, under Group No. 820, California, was accepted March 18, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Six Rivers National Forest, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

**Herman J. Lyttge,**

*Chief, Records and Information Section.*

[FR Doc. 87–7854 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–40–M

---

[CA–940–07–4520–12 (Group 948)]

## Filing of Plat of Survey; Kern County, CA

April 1, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

**Mount Diablo Meridian, Kern County**

T. 25 S., R. 35 E. and T. 25 S., R. 34 E.

2. These plats represent the following:

(a) This plat represents the dependent resurvey of a portion of the south boundary and subdivisional lines, and the survey of the subdivision of sections 34 and 35, Township 25 South, Range 35 East, MDM, California.

(b) This plat represents the dependent resurvey of a portion of the south boundary of Township 25 South, Range 34 East, MDM California.

(c) This plat represents the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, the survey to complete certain subdivisional lines, the survey of the subdivision of sections 3, 4, 5 and 6, and the metes-and-bounds survey of lot 5, in section 3, Township 25 South, Range 35 East, MDM, California.

3. These plats are under Group No. 948, California, and were accepted March 19, 1987.

4. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

5. This plat was executed to meet certain administrative needs of the Sequoia National Forest, U.S. Forest Service.

6. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

**Herman J. Lyttge, Chief,**

*Public Information Section.*

[FR Doc. 87–7855 Filed 4–8–87; 8:45 a.m]

BILLING CODE [illegible]

---

**[NV–930–07–4333–11: NV 5–87–16]**

## Nevada; Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the Mint 400 Off Highway Vehicle (OHV) Race

**ACTION:** Temporary closure of certain Public Lands in the Las Vegas District, Clark County, Nevada, on and adjacent to the Mint 400 OHV race course, on May 9, 1987. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittees and right-of-way grantees.

**SUPPLEMENTARY INFORMATION:** Certain public lands in the Las Vegas District, Clark County, Nevada, will be temporarily closed to public access from 0001 hours, May 9, 1987 to 0600 hours May 10, 1987, to protect persons, property, and public land resources on and adjacent to the 1987 Mint 400 OHV race course. These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1987 Mint 400 OHV race course. The following lands restricted or closed are described as: Hidden Valley area; T. 24 S., R. 61 E., all of sections 4, 5, 7, 8, 17, 18, 19, 20, 25, 30, 31, and 36. Sheep Mountain area; T. 25 S., R. 60 E., all of sections 7, 8, 16, 17, 20, 21, 27, 28, 33, and 34; T. 26 S., R. 60 E., all of sections 2, 3, 10, and 11. McCullough Pass area; T. 25 S., R. 61 E., all of sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 32, T. 25 S., R. 62 E., all of sections 18, 19, and 30. Eldorado Valley area; T. 25 S., R. 62 E., all of sections 10, 14, 15, 16, 17, 19, 20, 22, 23, 27, 28, 33, 34, 35, and 36; T. 25 S., R. 63 E., all of sections 7, 8, 17, 18, 19, 20, 29, 30, and 32. The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM offices: the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126 (702) 388–6403, and the Stateline Resource Area Office, P.O. Box 7384, Las Vegas, Nevada 89125, (702) 388–6627.

Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: April 2, 1987.

**Ben F. Collins,**

*District Manager, Las Vegas District.*

[FR Doc. 87–7850 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–HC–M

---

**[NM–940–07–4220–11; NM 10953]**

## Proposed Continuation of Withdrawal, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture proposes that an 80.00-acre withdrawal for the Upper End Campground (formerly Roberts Recreation Area) continue for an additional 20 years. The land would remain closed to location and entry under the mining laws and would remain open to leasing under the mineral leasing laws.

**DATE:** Comments should be received by July 8, 1987.

**ADDRESS:** Comments should be sent to: New Mexico State Director, P. O. Box 1449, Sante Fe, NM 87504–1449.

**FOR FURTHER INFORMATION CONTACT:** Kay Thomas, BLM, New Mexico State Office, 505–988–6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawals made by Public Land Order No. 5511 dated August 26, 1975, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**New Mexico Principal Meridian**

*Gila National Forest*

Upper End Campgound (formerly Lake Roberts Recreation Area).
T. 15 S., R. 13 W.,
Sec. 2, S½NE¼.

The area described contains 80.00 acres in Grant County.

The withdrawal is essential for protection of substantial capital improvements on the Mimbres Ranger District, Gila National Forest. The withdrawal closed the described lands to mining but not mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 27, 1987.

**Monte G. Jordan,**

*Associate State Director.*

[FR Doc. 87–7856 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–FB–M

---

**[ID–040–07–4212–08]**

## Salmon District; Challis MFP Plan Amendment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent to prepare a category I Amendment to the Challis Management Framework Planning

Document, Challis Resource Area, Salmon District, ID.

**SUPPLEMENTARY INFORMATION:** In accordance with 43 CFR 1610.2(c) and 1610.3–1(d), Notice is hereby given of intent to prepare a planning amendment document.

This notice also constitutes the scoping notice required by regulations for the National Environmental Policy Act (40 CFR 1507.7).

1. Description of the proposed planning action: The proposed action is to amend the Challis Management Framework Plan (MFP) completed on July 26, 1979. The Category I planning amendment will be based upon existing statutory requirements and policies and will carry out the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). The MFP amendment and accompanying Environmental Assessment (EA) will provide the basis for modifying the Lands section of the MFP to provide for land tenure adjustment opportunities.

2. Identification of the geographic area involved: The Challis Resource Area is located in Custer County, Idaho.

3. The general types of issues anticipated: The proposed amendment will address changes in the Sales/Exchange sections of the existing MFP resulting from an inventory of the public land.

4. Disciplines to be represented and used to prepare the Lands Amendment would be an interdisciplinary team including but not limited to: Wildlife, range, wilderness, recreation, minerals, archaeology, watershed, endangered species, soils, lands and realty.

5. The kind and extent of public participation opportunities to be provided: Public participation will be carried out through several comment periods to be announced in the federal register, local newspapers and B.L.M. news releases. There is a specific comment period for the Governor to inform and seek comments from state and local agencies.

6. The times, dates and location scheduled or anticipated for any public meetings, hearings, conferences or other gatherings, as known at this time: At this time, no schedule for public meetings has been developed. Most of the public input will be handled through written comments.

7. The name, title, address and telephone numbers of the Bureau of Land Management official who may be contacted for further information: Robert H. Hale, Challis Area Manager, P.O. Box 430, Salmon, Idaho 83467, Phone: (208)–756–5400

8. The location and availability of documents relevant to the planning process: When completed the documents will be available for public review at the Salmon District Office, Highway "93" South, Salmon, Idaho.

Dated: March 4, 1987.

**Jerry W. Goodman,**

*District Manager.*

[FR Doc. 87–7853 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–MC–M

---

**[AK–932–07–4220–10; F–14988]**

## Alaska; Opportunity for Public Hearing and Republication of Proposed Withdrawal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Air Force has filed an application to withdraw approximately 4,108 acres of public land as a buffer zone for the Indian Mountain Research Site. The lands will remain closed to surface entry, mining and mineral leasing under Public Land Order (PLO) No. 5184. This notice closes the land for up to 2 years from selection by the State of Alaska, the only form of appropriation authorized by PLO 5184.

**EFFECTIVE DATE:** Comments must be received on or before July 8, 1987.

**ADDRESS:** comments and meeting requests should be sent to: Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, (907) 271–5477.

On March 23, 1987, the U.S. Army Corps of Engineers, refiled an application for the Department of the Air Force to amend Public Land Order (PLO) No. 5164 of February 28, 1972, and withdraw the following described lands from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws.

**Kateel River Meridian (Unsurveyed)**

T. 7 N., R. 24 E.,
- Sec. 13, S2N2S2 and S2S2, those lands lying outside of PLO 3942;
- Sec. 14, S2NW4SW4 and S2S2, those lands lying outside of PLO 3942;
- Sec. 15, S2, S2S2N2;
- Sec. 16, E2SE4;
- Sec. 17, E2NE4, E2E2SE4;
- Sec. 22, those lands lying outside of PLO 5164;
- Sec. 23, those lands lying outside of PLOs 3942 and 5164;
- Sec. 24, those lands lying outside of PLOs 1910, 3942 and 5164;
- Sec. 25, W2E2E2, W2E2, W2, those lands lying outside of PLO 5164;
- Sec. 26, those lands lying outside of PLO 5164;
- Sec. 27, those lands lying outside of PLO 5164;
- Sec. 28, E2NE4NE4;
- Sec. 34, N2N2, those lands lying outside of PLO 5164, N2S2N2;
- Sec. 35, S2NW4NW4, N2N2N2, those lands lying outside of PLO 5164, S2NE4NE4;
- Sec. 36, NW4NE4, N2NW4.

The area described contains approximately 4,108 acres.

A notice of the proposed withdrawal was published in the **Federal Register** on April 12, 1985, Vol. 50, No. 71, page No. 14461, Document No. 85–8873; and corrected on May 23, 1985, Vol. 50, No. 100, page No. 21359, Document No. 85–12393, which segregated the subject lands from operation of the public laws for a period of 2 years (43 CFR 2310.2(a)). This period expired on April 12, 1987, without the necessary action being taken.

The purpose of the withdrawal is to provide a buffer zone around lands previously withdrawn by PLO 5164 as Indian Mountain Air Force Research Site. The two areas will encompass approximately 4,555 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of the publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal

application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the applicant agency.

Julienne M. Gibbons,

*Acting Chief, Branch of Land Resources.*

[FR Doc. 87-7865 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-JA-M

---

[ID-010-07-4333-08]

## Off-Road Recreation Vehicle Use; Idaho

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Proposed amendment of Owyhee management framework plan (MFP) to allow off-road recreation vehicle use (ORV) in the Murphy Hills area.

**SUMMARY:** Notice is hereby given that the BLM-Boise District Office is proposing to amend the Owyhee Management Plan (MFP) to allow ORV use in the Murphy Hills area of the Owyhee Resource Area.

The proposed amendment modifies the original Range Management Decision RM-1.2 which reads as follows: "Prohibit all off-road vehicle (ORV) use, including organized events, on those portions of the spring range (shown on Owyhee Resource Area ORV Implementation Plan Overlay #66e) that are actually being utilized in a given year—April 1 to June 15. Dates and areas are identified on the overlay."

The amended decision would read as follows:

"The decision is to limit all off-road vehicle use, including competitive and noncompetitive (casual use), to travel on existing roads, ways (two-wheel tracks), trails (single tracks) and sand washes, except as otherwise posted, in the Murphy Hills Area year around as shown on the Off-Road Vehicle Management overlay #66e.

The Murphy Hills Area will be intensively managed for off-road vehicle recreation use in conjunction with continued livestock grazing and other resource uses. Recreation management actions (including facilities) will be provided as needed to deal with increasing ORV recreation use and to mitigate impacts to other resources which result from ORV use. Monitoring of ORV use in the area will be done to determine ongoing impacts to other resource values. Additional administrative restrictions would be imposed on ORV use and/or additional recreation facilities would be constructed if monitoring indicates problems."

### Availability

Individuals wishing to review the proposed plan amendment can obtain a copy from the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, or by contacting Daniel "Buddy" Arvizo, Area Manager at the above address or by calling (208) 334-1582.

### Protest Procedure

Individuals wishing to protest the proposed plan amendment should send their protest to the Director, Bureau of Land Management, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Protests must be received on or before May 15, 1987—The end of the 30 day protest period.

The protest must contain the following information:

—The name, address, telephone number, and the interest of the person filing the protest.
—A statement of the part or parts of the decision being protested.
—A copy of all documents addressing the decision that was submitted during the planning amendment process by the protesting party or any information the protesting party has that is relevant to the protest.
—A short concise statement explaining why the proposed decision is wrong.

If no protests are received, the proposed plan amendment will become the final decision when approved by the Idaho State Director. If protests are received, the decision shall be withheld until final action on the protest has been completed.

J. David Brunner,

*District Manager.*

[FR Doc. 87-7840 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-GG-M

---

[MT-070-07-4322-01-ADVB]

## Butte District Advisory Council Meeting; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the Butte District Advisory Council will be held Wednesday, and Thursday, May 6 and 7, in the Butte District office conference room, 106 North Parkmont (Industrial Park), Butte, Montana. The meeting will begin at 1:00 p.m. on May 6. The agenda will include (1) election of officers, (2) a discussion of various aspects of the recreation program, (3) a review of the Centennial Mountains wilderness study, (4) the timber program, (5) the district's use of volunteers, (6) an update on the district's weed control program, and (7) an in-depth examination of the district's participation as a pilot district in the Bureau's productivity pilot exercise to develop improved operating procedures.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

James A. Moorhouse,

*District Manager.*

April 3, 1987.

[FR Doc. 87-7944 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-DN-M

---

[OR-010; OR-010-07-4410-10; GP7-129]

## Notice of Advisory Council Tour

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of tour May 15, 1987.

**SUMMARY:** The tour will center around the Plush, OR area including the Warner Potholes Area, Big Rock Pipeline, and the Windy Hollow riparian water structures. The tour will begin at the Lakeview District Office at 8:00 a.m. The public is invited to attend the tour. However, due to the terrain to be traversed, special transportation arrangements are needed. Members of the public who wish to attend the tour and/or make a statement to the Advisory Council should notify the District Office by 5/8/87.

**FOR FURTHER INFORMATION CONTACT:** Dick Harlow, Lakeview District Office, P.O. Box 151, Lakeview, OR 97630, (Telephone: 503-949-2177).

Dated: April 2, 1987.

Dick Harlow,

*Associate District Manager.*

[FR Doc. 87-7954 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-33-M

## Minerals Management Service

### Development Operations Coordination Document; Hall-Houston Oil Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7257, Block A–97, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

**DATE:** The subject DOCD was deemed submitted on April 2, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 3, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–7844 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–MR–M

### Development Operations Coordination Document; Unocal Oil and Gas Division

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Unocal Oil & Gas Division has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 0204, OCS 0208, and OCS–G 8421, Blocks 38, 42 and 43, respectively, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 30, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 1, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–7845 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–MR–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31008]**

### Missouri Pacific Railroad Co.; Trackage Rights; St. Louis Southwestern Railway Co.; Exemption

The St. Louis Southwestern Railway Company (SSW) has agreed to grant local trackage rights to Missouri Pacific Railroad Company (MP) beginning at point of switch 2225+90 (MP milepost 387.58) and ending at point of switch 2281+20 (MP milepost 388.70), a distance of approximately 1.12 miles in Pine Bluff, Jefferson County, AR. The trackage rights agreement became effective on March 24, 1987.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co. —Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: March 27, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7875 Filed 4–8–87; 8:45 am]

BILLING CODE 7035–01–M

BEST COPY AVAILABLE

[Finance Docket No. 30971]

**Wisconsin and Calumet Railroad Co., Inc.; Modified Rail Certificate**

On January 2, 1987, a notice was filed by the Wisconsin and Calumet Railroad Company, Inc. (W&C), for a modified certificate of public convenience and necessity under 49 U.S.C. 1150.23. By contract with the Wisconsin River Rail Transit Commission (WRRTC), W&C is authorized to operate the 37.22-mile rail line in the State of Wisconsin between Madison (milepost 138.57) and Janesville (milepost 101.35).

Prior to abandonment, the line was owned and operated by the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (MILW). The line was recommended for abandonment in Docket No. AB–7 (Sub-No. 101), *Chicago, M., St. P., & Pacific R. Co.—Abandonment—Janesville to Madison, WI, and Burlington to Beloit, WI* (not printed), served September 1, 1986; MILW's Reorganization Court thereafter authorized abandonment.

The line was acquired from MILW by the Wisconsin Department of Transportation. Operation of the line is the responsibility of the WRRTC, a public agency within the State of Wisconsin. WRRTC contracted with W&C to operate the line.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: March 31, 1987

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7876 Filed 4–8–87; 8:45 am]

BILLING CODE 7035–01–M

---

[Finance Docket No. 31016]

**Southern Railway Co.; Trackage Rights Granted by Norfolk and Western Railway Co.; Exemption**

Norfolk and Western Railway Company (NW) has agreed to grant over-head trackage rights to Southern Railway Company (Southern) between the following points:

(1) between MP N–132.0 at Burkeville, Virginia, and MP N–133.4 at the junction with a connection track between Southern and NW at Burkeville, Virginia, a distance of approximately 1.4 miles;

(2) between MP N–133.4 at the junction with a connection track between Southern and NW at Burkeville, Virginia, and MP N–189.7, which also is MP P–0.0, at Phoebe, Virginia, a distance of approximately 56.3 miles;

(3) between MP P–0.0 at Phoebe, Virginia, and MP P–16.3± at the point of connection between Southern and NW between Kinney and Montview Yards at Lynchburg, Virginia, a distance of approximately 16.3 miles; and

(4) over the Farmville Belt Line between MP B–0.0 at the junction with the NW line described in (2) at Burkeville, Virginia, and MP B–37.0 at the junction with the same NW line at Pamplin, Virginia, a distance of approximately 37 miles.

The trackage rights will be effective on April 6, 1987.

This notice is filed under 49 CFR 1180.2(d) (3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: April 6, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–8030 Filed 4–8–87; 8:45 am]

BILLING CODE 7035–01–M

---

## DEPARTMENT OF JUSTICE

### Antitrust Division

**Competitive Inspect Statement and Proposed Final Judgment, United States v. Industrial Asphalt, et al.**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comment it received on the Competitive Impact Statement and proposed Final Judgment in *United States v. Industrial Asphalt, et al.*,

Civil No. 85–4631 JGD(JRx), United States District Court for the Central District of California, together with the response of the United States to this comment.

Copies of the response and the public comment are available on request for inspection and copying in Room 3233, Antitrust Division, Department of Justice, Washington, DC, and for inspection at the Office of the Clerk of the United States District Court for the Central District of California, in Los Angeles.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

**U.S. Department of Justice**

*Antitrust Division*

April 1, 1987.

Mr. F.W. Schafer,

*Chevron Corporation, 225 Bush Street, San Francisco, CA 94104–4289*

Dear Mr. Schafer: We have received your letter of March 6, 1987, concerning the Competitive Impact Statement and proposed Final Judgment in *United States v. Industrial Asphalt et al., Civil No. 85–4631 JGD(JRx) (C.D. Cal.)*.

You state that the purpose of your letter is to correct an implication of a sentence in the Competitive Impact Statement. The implication is that all of the Lakeside plant production of asphalt concrete available to Chevron has been and is being supplied to Industrial Asphalt. You set forth percentages that you say reflect certain sales in 1984, 1985, and 1986 to customers other than Industrial Asphalt.

Assuming that your percentages are correct, our analysis of the competitive effects of the proposed Final Judgment, as set out in the Competitive Impact Statement, nevertheless remains the same. The relevant provision of the proposed decree is intended to make clear that Industrial Asphalt cannot serve as the exclusive marketing agent for, or otherwise control, the Lakeside plant's output.

Sincerely yours,

Gary R. Spratling,

*Chief, San Francisco Office.*

**Chevron Corp.**

March 6, 1987.

Mr. Gary R. Spratling,

*Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102*

Dear Mr. Spratling: This responds to the notice given in the **Federal Register** dated February 5, 1987 of the opportunity to submit comments on the proposed Final Judgment that would settle the above noted case. Chevron Corporation submits the following information to correct one aspect of the facts as stated in the Justice Department's Competitive Impact Statement.

In Part III of the Competitive Impact Statement it is correctly stated that in 1981 Chevron's predecessor in interest had unsuccessfully attempted to sell its interest in the Lakeside Asphalt plant along with its interests in other such plants that were sold at that time. The next sentence then states:

"Despite the failure to transfer this plant interest along with the rest of the company, Industrial Asphalt Inc. and its successor, the entity created by the subject merger, have continued as the de facto marketers of the output of the plant" (52 FR No. 24, p. 3718).

The implication of the quoted sentence in its context is that all of the Lakeside production of asphalt concrete available to

Chevron U.S.A., which manages this interest, has been and is being supplied to Industrial Asphalt. That is not correct. In fact, although Chevron U.S.A. has continued to make sales to Industrial Asphalt, it also makes substantial sales from the Lakeside plant to other customers. Sales to the latter have risen from 26.5% of Chevron's total sales from the plant in 1984 to 41% and 48% of such sales in 1985 and 1986, respectively.

Chevron Corporation appreciates this opportunity to correct the record in this regard.

Sincerely yours,

Irwin Lichtblau.

[FR Doc. 87-7565 Filed 4-8-87; 8:45 am]

BILLING CODE 4410-01-M

---

## Immigration and Naturalization Service

[INS Number: 1011-87]

## Immigration Reform and Control Act; Notice to Employers and Persons Desiring Work Authorizations; Proposed Court Dismissal of Classwide Work Authorization Claims

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Informational notice.

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to provide information for employers about the New Immigration Law and also information to persons interested in obtaining employment authorization. In addition, pursuant to the Court's direction in a proposed stipulated dismissal of the work authorization claims in the case of *Catholic Social Services, Inc., et al. v. Edwin Meese, III,* Civil No. S-86-1343-LKK (Eastern District of California), this notice as part of the **Federal Register** publication of an employer brochure, described in the stipulated dismissal, is intended to constitute notice to the class, as later defined, of the proposed dismissal with prejudice of the classwide work authorization claims.

### Introduction

On March 23, 1987, United States District Court Judge Lawrence K. Karlton approved a "Stipulation of Partial Settlement in Class Action" which will result in the dismissal with prejudice against renewal of claims by aliens, who are potentially eligible for benefits under the Immigration Reform and Control Act of 1986, to obtain work authorization papers from the Immigration and Naturalization Service prior to the time when formal "amnesty" applications may be filed. This notice is intended to explain the scope and effect of the proposed dismissal of these claims.

### Persons Affected

The individuals affected by the proposed dismissal of the claims to obtaining work authorization from the Service are all those persons included in the nationwide class certified by the Court on November 24, 1986, which includes persons who are potentially eligible for the so-called "amnesty" benefits of the Immigration Reform and Control Act ("Reform Act" or "IRCA") contained in section 245A and section 210 of the Immigration and Nationality Act, as amended by the Reform Act, Pub. L. 99-603, 100 Stat. 3359 (1986). Specifically, the class defined by the Court consists of: "All persons who have been or may be apprehended and have been or may be deported or issued voluntary departure by defendant [Immigration and Naturalization Service] (1) who are believed by defendant to be deportable aliens who can establish a prima facie claim for adjustment of status to temporary resident under section 245A(e)(1) of the INA, as amended, *or;* (2) who are believed by defendant to be deportable or excludable aliens who can establish a nonfrivolous claim for adjustment of status to temporary resident under section 210(d)(1) of the INA, as amended."

### Nature of Claims Being Extinguished

The class as certified by the District Court is challenging the Service's implementation of the Reform act in a number of respects in the case of *Catholic Social Services, Inc., et al. v. Edwin Meese, III,* Civil No. S-86-1343-LKK (Eastern District of California). The Seventh and Eighth Claims for Relief in the plaintiffs' Second Amended Complaint, dated February 27, 1987, pertain to the Service's policy of not giving work authorization to aliens who present nonfrivolous or prima facie claims to "amnesty" relief under section 210 and 245A, respectively, if those aliens were apprehended by the Service prior to November 6, 1986 (the date of enactment of the Reform Act) and had been released as of that date, or if those aliens voluntarily surrender themselves to the Service.

More specifically, section 210 of the INA allows certain aliens who have performed at least 90 days of seasonal agricultural services in the United States in the year ending May 1, 1986, to obtain lawful temporary resident, and later lawful permanent resident, status under our immigration laws, while section 245A of the INA provides similar potential benefits to otherwise qualifying aliens who have entered the United States and have continuously resided here in an illegal status since before January 1, 1982. The application period for "special agricultural worker" or "SAW" benefits under section 210 will begin on June 1, 1987, and the "legalization" application period for benefits under section 245A will begin on May 5, 1987.

Both section 210(d)(1) and section 245A(e)(1) of the INA provide for a grant of work authorization to an alien who is otherwise eligible for adjustment of status to lawful temporary resident under these "amnesty" provisions if the alien "is apprehended before the beginning" of the relevant period during which formal applications for these "amnesty" benefits may be filed. The Service's policy under these statutes excludes aliens from eligibility for "preapplication period work authorization" if the aliens were apprehended and released from custody prior to November 6, 1987, or if the aliens merely seek to apply for work authorization by presenting or attempting to surrender themselves to the Service.

In their Second Amended Complaint, the plaintiffs allege that "Defendant's policy and practice of denying employment authorization to aliens eligible for legalization who were apprehended before the enactment of IRCA violates INA section 245A(e) and section 210(d) and the Fifth Amendment Due Process Clause" (Seventh Claim), and that "Defendant's policy and practice of refusing to treat persons who voluntarily surrender to the INS as having been apprehended, and the refusal to grant employment authorization, violates INA section 245A(e) and section 210(d) and the Fifth Amendment Due Process Clause" (Eighth Claim). These claims will be dismissed with prejudice and may not be renewed by any class member in accordance with a stipulation approved by the District Court on March 23, 1987.

### The Terms of the Stipulation

The body of the March 23, 1987 "Stipulation Of Partial Settlement In Class Action" provides:

"The parties have agreed to settle plaintiffs' Seventh Claim for Relief ('Failure to Grant Employment Authorization to Persons Apprehended Before Enactment of IRCA') and plaintiffs' Eighth Claim for Relief ('Failure to Grant Employment Authorization to Persons Who Voluntarily Surrender to the INS') in this class action as set forth in Plaintiffs' Second Amended Complaint, as follows:

"1. Defendant shall amend its draft brochure entitled 'Information for Employers About the New Immigration Law,' a copy of which is attached hereto, to provide the following language under the subheading entitled, **'You May Ask the Illegal Alien the Following Questions:'**:

'1. Do you claim to qualify for the legalization provisions of the new immigration law?

2. Do you intend to apply for legal status and seek interim work authorization from INS?

**If the illegal alien's answers are in the affirmative, the alien is authorized to work and you may hire the alien without fear of penalty until September 1, 1987.** The fact that the alien intends to apply for legalization or SAW status should be noted on the verification form (sample attached) designated by the INS when it becomes available.'

The heading to this subsection and the sentence 'If the illegal alien's answers are in the affirmative, the alien is authorized to work and you may hire the alien without fear of penalty until September 1, 1987' shall be in bold print.

"2. Defendant shall submit a copy of the amended brochure to plaintiffs' counsel for review as soon as defendant has redrafted the brochure in final form. If any changes other than those set forth in ¶ 1 have been made, plaintiffs may notify defendant within 48 hours that they elect to withdraw from this stipulation. The plaintiffs may thereupon renew their request for preliminary injunctive relief respecting the Seventh and Eighth Claims for Relief in the Second Amended Complaint.

"3. No later than April 3, 1987, defendant shall cause to be submitted for publication as an informational notice in the **Federal Register** the contents of said brochure as amended pursuant to ¶ 1 of this stipulation. Defendant shall also cause to be published and disseminated to the public 500,000 copies of said amended brochure.

"4. Subject to the Court's approval of this settlement on behalf of the class and plaintiffs' election to go forward after reviewing the amended brochure and defendant's compliance with each of the preceding paragraphs of this stipulation, plaintiffs shall dismiss with prejudice on behalf of the entire class plaintiffs' Seventh and Eighth Claims for Relief as set forth in Plaintiffs' Second Amended Complaint in this action.

"5. Nothing in this stipulation shall be deemed to constitute plaintiffs' approval of defendant's proposed regulations implementing the Immigration Reform and Control Act of 1986. Nor shall anything in this stipulation limit defendant's authority to revise, amend or promulgate regulations under the Administrative Procedure Act. Should defendant hereafter revise, amend or promulgate regulations under the Administrative Procedure Act that are inconsistent with this stipulation, plaintiffs shall have the right to reinstitute their Seventh and Eighth Claims for Relief as set forth in Plaintiffs' Second Amended Complaint in this action.

"6. Upon approval by the Court of this settlement, this settlement shall be binding on defendant, plaintiffs and all members of the class certified by the Court on November 24, 1986."

*Further Information*

Class members desiring further information should contact one of the following attorneys representing the named plaintiffs or the plaintiff class:

Ralph Santiago Abascal, Stephen Rosenbaum, Jose R. Padilla, California Rural Legal Assistance, Inc., 2111 Mission Street, Suite 401, San Francisco, California 94110, Telephone: (415) 864–3405

Peter A. Schey, National Center for Immigrants' Rights, Inc., 256 South Occidental Boulevard, Los Angeles, California 90057, Telephone: (213) 388–8693

Michael Rubin, Altshuler & Berzon, 177 Post Street, Suite 600, San Francisco, California 94108, Telephone: (415) 421–7151

Robert Rubin, Ignatius Bau, National Refugee Rights Project, San Francisco Lawyers' Committee for Urban Affairs, 301 Mission Street, Suite 400, San Francisco, California 94105, Telephone: (415) 543–9444.

**The Brochure for Employers**

In accordance with the "Stipulation Of Partial Settlement In Class Action" set forth above, the text of the brochure for employers describing important features of the new law is as follows:

BILLING CODE 4410–10–M

# Information for Employers About The New Immigration Law

# Information for Employers About The New Immigration Law

The Immigration Reform and Control Act of 1986 will affect all American employers. The Immigration and Naturalization Service (INS) is in the process of preparing regulations and other materials to implement this law. More detailed information and forms will be available in the near future. Until then, this fact sheet will address some issues such as:

- What do I do now?
- What about workers hired before the law passed?
- How do I deal with illegal workers who may qualify to be legalized?

Good faith and common sense in the hiring process can accomplish the goals of the Immigration Reform and Control Act of 1986 and Title VII of the Civil Rights Act of 1964.

## General Principles for Employers:

- Commit to employ only U.S. citizens and aliens authorized to work in the United States. This is America's policy and should be yours as well.
- Consider displaying the attached poster to inform your workforce and job applicants of your support of this national policy.
- Follow the same procedures for all new hires.
- Do not discharge present employees or refuse to hire new employees based on foreign appearance or language.

## Interim Procedures for Employees Hired After November 6, 1986, the date the Immigration Act became law.

From now until June 1, 1987 you should inform, either verbally or in writing, each new job applicant that you:

- Hire only United States citizens and aliens lawfully authorized to work in the United States.
- Will require all new employees to complete the designated employers verification forms when they become available. A one-page model draft form is attached for your information. Final forms will be available by June 1, 1987, when the eligibility verification procedures become effective.

You should ask each new person hired the following questions:

1. Are you a U.S. citizen
   or
2. Are you an alien lawfully authorized to work in the United States?

We suggest that you note his or her answers on your employment records. There is no requirement to review any documentation at this time.

## After June 1, 1987, follow these procedures:

- Hire only citizens and aliens lawfully authorized to work in the United States.
- Continue to advise all new job applicants of your policy to such effect.
- Require all new employees to complete and sign the verification form designated by INS to certify that they are eligible for employment.
- Examine documentation presented by new employees, record information about the documents on the verification form, and sign the form.
- Retain the form for three years or for one year past the end of employment of the individual, whichever is longer.
- If requested, present the form for inspection by INS or Department of Labor officers. No reporting is required.

## Considerations Regarding Employees Hired before November 7, 1986.

- There is no requirement to verify status of employees hired before November 7, 1986, but if you choose, you can do so as described in the prior section. If you choose to verify status of pre-November 7, 1986 hires, you should do so for all employees.
- No employer sanctions penalties can be imposed against you for merely retaining an illegal alien in your workforce hired before November 7, 1986.
- The fact that an illegal alien was on your payroll before November 7, 1986, does not give him or her any right to legally remain in the United States. Unless such alien is legalized or otherwise obtains permission from the INS to remain in the United States, he or she is subject to apprehension and removal.

## Advice To Employers Regarding Employees or Applicants Known to be Illegal Aliens.

Under the new law certain illegal aliens may apply to the INS for legal resident status:

- Legalization program — Residents in the United States since January 1, 1982 in unlawful status may apply beginning May 5, 1987.
- Special Agricultural Worker (SAW) Program — Field workers in perishable agricultural commodities for a 90-day period, from May 1, 1985 – May 1, 1986, may apply beginning June 1, 1987.

Various voluntary organizations, churches, state or local government agencies, unions, business

organizations, community groups, growers associations and individuals will be designated by the INS to advise aliens and help them prepare their applications.

## You Should:

- Advise an undocumented alien that legalization and SAW assistance is available from an INS designated entity.

- Assist past and present employees who may qualify by providing documentation of employment history. Employment documentation furnished by employers and presented by legalization applicants will be used only to determine the applicant's eligibility and will not be used by the government against the employer except in cases of application fraud by the employee, or document fraud by the employer.

## You May Ask the Illegal Alien the Following Questions:

1. Do you claim to qualify for the legalization provisions of the new immigration law?

2. Do you intend to apply for legal status and seek interim work authorization from INS?

**If the illegal alien's answers are in the affirmative, the alien is authorized to work and you may hire the alien without fear of penalty until September 1, 1987.** The fact that the alien intends to apply for legalization or SAW status should be noted on the verification form (sample attached) designated by the INS when it becomes available.

## For More Information

Further information will be distributed in future months. Please check your telephone directory for **Ask Immigration**. This is available through most local INS offices. Additional information will be available through local community organizations and the news media, or write to:

Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

Attention: Employer Facts

# *The American Policy is our Policy:*

## We Hire Only U.S. Citizens and Lawfully Authorized Alien Workers

**Provided by:**
**The Immigration and Naturalization Service**
**Washington, D.C. 20536**

# EMPLOYMENT ELIGIBILITY VERIFICATION

**1 EMPLOYEE INFORMATION AND VERIFICATION:** (To be completed and signed by employee.)

| Name: (Print or Type) Last | First | Middle | Maiden |
|---|---|---|---|
| Address: Street Name and Number | City | State | ZIP Code |
| Date of Birth (Month/Day/Year) | | Social Security Number | |

**I attest, under penalty of perjury, that I am (check a box):**

- ☐ A citizen or national of the United States.
- ☐ An alien lawfully admitted for permanent residence (Alien Number A _____).
- ☐ An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A _____, or Admission Number _____, expiration of employment authorization, if any _____)

**I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.**

| Signature | Date (Month/Day/Year) |
|---|---|

PREPARER/TRANSLATOR CERTIFICATION (If prepared by other than the individual) I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge

| Signature | Name (Print or Type) | | |
|---|---|---|---|
| Address (Street Name and Number) | City | State | Zip Code |

**2 EMPLOYER REVIEW AND VERIFICATION:** (To be completed and signed by employer.)

Examine one document from those in List A and check the correct box, ***or*** examine one document from List B ***and*** one from List C and check the correct boxes. Provide the ***Document Identification Number*** and ***Expiration Date***, for the document checked in that column.

| List A<br>Identity and Employment Eligibility | | List B<br>Identity | and | List C<br>Employment Eligibility |
|---|---|---|---|---|
| ☐ United States Passport | | ☐ A State issued driver's license or I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes.<br>(Specify State)_____) | | ☐ Original Social Security Number Card (other than a card stating it is not valid for employment) |
| ☐ Certificate of United States Citizenship | | ☐ U.S. Military Card | | ☐ A birth certificate issued by State, county, or municipal authority bearing a seal or other certification |
| ☐ Certificate of Naturalization | | ☐ Other (Specify document and issuing authority) | | ☐ Unexpired INS Employment Authorization<br>Specify form<br># _____ |
| ☐ Unexpired foreign passport with attached Employment Authorization | | | | |
| ☐ Alien Registration Card with photograph | | | | |
| ***Document Identification*** | | ***Document Identification*** | | ***Document Identification*** |
| # _____ | | # _____ | | # _____ |
| ***Expiration Date (if any)*** | | ***Expiration Date (if any)*** | | ***Expiration Date (if any)*** |
| _____ | | _____ | | _____ |

**CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine, relate to the individual named, and that the individual, to the best of my knowledge, is authorized to work in the United States.**

| Signature | Name (Print or Type) | Title |
|---|---|---|
| Employer Name | Address | Date |

Form I-9 (03/20/87)
OMB No. 1115-0136

U.S. Department of Justice
Immigration and Naturalization Service

## Employment Eligibility Verification

NOTICE: Authority for collecting the information on this form is in Title 8, United States Code, Section 1324A. It will be used to verify the individual's eligibility for employment in the United States. Failure to present this form for inspection to officers of the Immigration and Naturalization Service or Department of Labor within the time period specified by regulation, or improper completion or retention of this form may be a violation of 8 USC §1324A and may result in a civil money penalty.

### Section 1. Employee's/Preparer's instructions for completing this form.

*Instructions for the employee.*

All employees, upon being hired, must complete Secton 1 of this form. Any person hired after November 6, 1986 must complete this form. (For the purpose of completion of this form the term "hired" applies to those employed, recruited or referred for a fee.)

All employees must print or type their complete name, address, date of birth, and Social Security Number. The block which correctly indicates the employee's immigration status must be checked. If the second block is checked, the employee's Alien Registration Number must be provided. If the third block is checked, the employee's Alien Registration Number *or* Admission Number must be provided, as well as the date of expiration of that status, if it expires.

All employees must sign and date the form.

*Instructions for the preparer of the form, if not the employee.*

If the employee is assisted with completing this form, the person assisting must certify the form by signing it, and printing or typing his or her complete name and address.

### Section 2. Employer's instructions for completing this form.

(For the purpose of completion of this form, the term "employer" applies to employers and those who recruit or refer for a fee.)

Employers must complete this section by examining evidence of identity and employment authorization, and:

- checking the appropriate box in List A *or* boxes in both Lists B and C;
- recording the document identification number and expiration date (if any);
- recording the type of form if not specifically identified in the list;
- signing the certification section.

*NOTE: Employers are responsible for reverifying employment eligibility of aliens upon expiration of any employment authorization documents, should they desire to continue the alien's employment.*

Copies of documentation presented by an individual for the purpose of establishing identity and employment eligibility may be copied and retained for the purpose of complying with the requirements of this form and no other purpose. Any copies of documentation made for this purpose should be maintained with this form.

Employers may photocopy or reprint this form, as necessary, for their use.

*RETENTION OF RECORDS.*

After completion of this form, it must be retained by the employer during the period beginning on the date of hiring and ending:

- three years after the date of such hiring, or;
- one year after the date the individual's employment is terminated, whichever is later.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0136
Form I-9 (03, 20, 87)

BILLING CODE 4410-10-C

Reservation

This notice is set forth solely to provide general information and guidance to employers and to provide notice to the class of the proposed dismissal of the classwide work authorization claims as described above. Except as provided in the above-described stipulation, the publication of the Employer Brochure is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter. The publication of the Notice to persons desiring employment authorization from the Immigration and Naturalization Service of the proposed Court dismissal of classwide work authorization claims does affect the claims of certain individuals as described herein.

Dated: April 3, 1987.

Alan C. Nelson,

*Commissioner.*

[FR Doc. 87-7816 Filed 4-8-87; 8:45 am]

BILLING CODE 4410-10-M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information, collection: Grant and Cooperative Agreement Provisions.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Occasionally, Quarterly, Semi-Annually.

5. Who will be required or asked to report: Grantees and Cooperators.

6. An estimate of the number of responses: 166.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,550.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The Division of Contracts uses provisions in its grants and cooperative agreements to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the grantee/cooperator are settled.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Richard D. Otis, Jr., (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8585.

Dated at Bethesda, Maryland this 6th day of April 1987.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

*Director, Office of Administration.*

[FR Doc. 87-7930 Filed 4-8-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-454 and 50-455]

### Commonwealth Edison Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66, issued to Commonwealth Edison Company (the licensee), for operation of Byron Stations, Units 1 and 2, respectively, located in Ogle County, Illinois.

The amendment proposed by the licensee would change Technical Specification 3/4.7.5 to allow plant operation with the essential service water pump discharge temperature greater that 80°F, but less than 98°F, with no cooling tower fans running. Operation in this condition would be allowed during the Ultimate Heat Sink cooling tower performance testing. This proposed amendment is in accordance with the licensee's application dated March 24, 1987.

The Commission has made a proposed determination that the amendments request involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments involve temporary operation of the essential service water (ESW) system with the ESW pump discharge temperature greater than 80°F and no cooling tower fans running. The limiting previously evaluated accident which is dependent upon ultimate heat sink cooling is a large break loss of coolant accident with loss of offsite power. The probability of occurrence of a large break loss of coolant accident with loss of offsite power is not affected by operation of ESW cooling tower fans.

The consequences of a large break loss of coolant accident with loss of offsite power will not be significantly increased by operating the ESW system with ESW pump discharge temperature greater than 80°F and no cooling tower fans running. This is because the heat removal capability of the cooling towers will not be reduced by not placing all four fans in operation at the time the ESW pump discharge temperature exceeds 80°F. It is not necessary to start all four fans when the water reaches 80°F during the cooling tower performance testing because operators involved with conducting this test will continually be aware of ESW temperature during the test. Cooling tower fans will be energized as necessary to avoid exceeding 98°F. In any event, Technical Specification 3/4 7.5 would require a reactor shutdown if 98°F is exceeded.

Operation of the plant in accordance with these proposed amendments will not change the design of the ESW system. Operation of the ESW system will remain within original design limits during performance testing of the cooling towers. Other systems which depend on ESW cooling will not be affected. Consequently, performance of the cooling tower testing with an ESW pump discharge temperature greater than 80°F and no fans running will not create the possibility of a new or different kind of accident.

The capability of the ESW system to remove heat will not be affected by operation of the system in accordance with the proposed amendments. As long as the cooling tower fans are started prior to reaching 98°F, the temperature limit of 98°F will not be exceeded. Therefore, the margin of safety has not been significantly reduced.

Based on the foregoing reasons, the staff believes these proposed amendments involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date page number of this **Federal Register** notice.

By May 11, 1987, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendmets before the expiration of the 30-day notice period, provided that it final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments reveeived. Should the Commision take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-fire telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Director, Project Directorate No. 3, Division of PWR Licensing-A: petitioner' name and telephone number; date petition was mailed; plant name; and publication data and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Isham, Lincoln and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a) (1) (i) through (v) and 2.714 (d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Dated at Bethesda, Maryland, this 2 day of April 1987.

For the Nuclear Regulatory Commision.

**Steven A. Varga,**

*Director, Project Directorate #3, Division of PWR Licensing-A.*

[FR Doc. 87–7932 Filed 4–8–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-247]

**Consolidated Edison Co. of New York, Indian Point Nuclear Generating Unit No. 2; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-26 issued to Consolidated Edison Company of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 2 located in Westchester County, New York.

**Environmental Assessment**

*Identification of Proposed Action*

The amendment would consist of changes to the operating license authorizing an extension to expiration date for the Unit 2 Facility Operating License DPR-26 from October 14, 2006 to September 28, 2013.

The amendment to the Technical Specification (TS) is responsive to the licensee's application dated December 27, 1985, as supplemented December 31, 1986, January 27, 1987 and March 3, 1987. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Dates of Facility Operating License No. DPR-26, Consolidated Edison Company of New York, Indian Point Nuclear Generating Unit No. 2, Docket No. 50-247," dated March 31, 1987.

*Summary of Environmental Assessment*

The NRC staff has reviewed the potential environmental impact of the poposed change in the expiration dates of the Operating Licenses for Indian Point Unit No. 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Relating to Operation of the Indian Point Nuclear Generating Plant Unit No. 2" September 1972, and more recent NRC policy.

*Radiological Impacts*

Although the population in the vicinity of Indian Point Unit No. 2 has increased, it is lower than projections reviewed in the FES, and the site requirements of 10 CFR Part 100 are still met with regard to Exclusion Area Boundary, Low Populator Zone, and nearest population center distances. In addition, the proposed additional years of reactor operation do not increase the annual public risk for reactor operation.

With regard to normal plant operation, the licensee complies with NRC guidance and requirements for keeping radiation exposure "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate.

*Non-Radiological Impacts*

The NRC review identified no additional degradation of the habitat surrounding Indian Point Unit No. 2 with regard to indigenous plant and animal species for the additional years of facility operation. In addition, the National Pollutant Discharge Elimination System permit provides additional environmental protection.

**Finding of no Significant Impact**

The staff has reviewed the proposed change to the expiration date of the Indian Point Unit No. 2 Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commssion has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendments dated December 27, 1985, as supplemented December 31, 1986 and January 27, 1987, (2) the Final Environmental Statement Relating to Operation of Indian Point Nuclear Generating Unit No. 2 issued September 1972, and (3) the Environmental Assessment dated March 31, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, 20555 and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Bethesda, Maryland, this 31st day of March, 1987.

For the Nuclear Regulatory Commisison.

**Steven A. Varga,**

*Director, Project Directorate #3 Division of PWR Licensing-A.*

[FR Doc. 87-7931 Filed 4-8-87; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-24288; File No. SR-AMEX-87-7]

**Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Expansion and Extension of the Near Term Options Expiration Pilot**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 13, 1987 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to expand, to the February and March cycles, the stock options pilot program, which provides for four expiration months—including two near-term months. In addition, the Amex proposes to extend for an additional one year, the entire stock options pilot program. The details of these proposals are set forth below in Item 3.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In June 1985, in conjunction with the other options exchanges, the Amex implemented a one-year stock option pilot program (see SR-AMEX-85-16) for certain January cycle stock options.

Under the terms of the pilot, the traditional January trading cycle was altered to ensure that (i) one-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times.

In July 1986, the Exchange received approval to expand the pilot to all Amex-traded January cycle stock options and to extend the pilot an additional six months (See SR-AMEX-86-21).

Approval is now pending to extend the pilot program an additional four months (see SR-AMEX-87-3) to May 1987.

The purpose of the pilot program is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the trading of the January cycle options and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchange has found the pilot has improved investors' interest in trading such options.

In addition, a consensus has developed both to continue the pilot and to expand it to stock options trading on February and March cycles. Even if the pending four month extension is approved it will be necessary to extend for an additional year the entire pilot program in order to have sufficient time to phase-in and assess the trading of the February and March cycle options.

Therefore, the Exchange proposes to extend the pilot program an additional one year beyond the proposed four month extension and expand the pilot program to include options traded on the February and March cycles. The implementation of the February and March cycles on the pilot program will follow the January cycle paradigm. For March cycle options, the Exchange proposes that it may phase in such options at the March expiration by adding the two near term months (April and May). Similarly, the February cycle options will be phased in at the May expiration by adding June and July expirations. A chart detailing the proposed expansion of the pilot program is set forth in Exhibit 2.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by continuing and expanding a pilot program tailored to meet investors preferences for stock options with near-term expiration cycles. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The AMEX believes that the proposed rule change will not impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 30, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 1, 1987.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 87-7955 Filed 4-8-87; 8:45 am]

BILLING CODE 8010-01-M

---

[Rel. 34-24292; File No. SR-NASD-87-15]

## Self-Regulatory Organizations; Granting Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. to Extend the Period of Effectiveness of the Pilot Program With the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. for the Exchange and Distribution of International Securities Information

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The National Assosication of Securities Dealers, Inc. ("NASD") hereby requests that the Securities and Exchange Commission ("SEC") extend the period of effectiveness of the NASD's Pilot Program for the exchange of quotation information between The International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("Exchange"), formerly The Stock Exchange, London, England. This matter was the subject of three (3) previous filings made by the NASD, File Nos. SR-NASD-86-4, SR-NADS-86-26 and SR-NASD-86-35. Each of those filings was approved timely by the Commission to enable continuous operation of the Pilot Program from April 22, 1986 through April 3, 1987. The NASD is seeking the extention of this approval for two (2) months until June 3, 1987.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purposes of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule filing is to obtain an extension of the SEC's temporary approval of the Pilot Program through June 3, 1987. Absent such an extension, the NASD's link with the Exchange will terminate on April 3, 1987.

The Pilot Program, which is the first transatlantic communication link of its kind between major domestic and foreign equities marketplaces, provides a unique opportunity to gather an analyze informatin leading to the efficient and effective development of international trading, related regulatory programs and potentially new systems designs. As currently structured, the Pilot Program provides for the exchange of market data, between the NASD and the Exchange, without charge, on a group of securities of international interest and the transmission of that data by the recipient (NASD or Exchange) to its current subscribers as part of either NASDAO Level ⅔, TOPIC, or TOPICLINE service. When the Pilot Program was originally filed (*i.e.*, File No. SR–NASD–86–4), the NASD requested the SEC's approval of the Pilot for a two year period. At the SEC's request, however, the NASD has acquiesced in the Agency's approval of the Pilot for shorter, consecutive time periods.

This tentative approach is not traceable to any regulatory concern, actual or potential, arising from the linkage's daily operation. Rather, the SEC's reluctance to approve the Pilot Program for a two year term relates to the fact that the broker-dealers able to access quotes disseminated via the linkage are not assessed an additional fee for that access. This issue was raised by one vendor of securities market information (hereinafter referred to as the "Vendor") during the SEC's notice and comment procedure on the original rule filing (File No. SR–NASD–86–4).[1] Vendor claimed that this aspect of the Pilot Program was anticompetitive because Vendor could not obtain access to linkage data (particularly market marker's quotations) from the NASD or the Exchange on the same terms as participating brokers, *i.e.*, at no cost. Further, Vendor maintained that the NASD was utilizing its status as a self-regulatory organization to impede competition from Vendor by virtue of the NASD's receiving quotation information from the Exchange on a preferential basis.

Without conceding the merits of any legal or economic arguments previously raised by Vendor, the NASD and the Exchange are re-examining the access terms governing the Pilot Program linkage. The Exchange is currently surveying its member firms to gather objective data that is critical to any decision to modify the present access terms for the Pilot Program. Certain information being obtained is intended to respond to specific questions raised by the Commission staff. After the Exchange and the NASD have had an opportunity to analyze this data, it is expected that pertinent information will be incorporated into a filing submitted to the SEC. On the basis of the statistical findings from the Exchange's survey, it might be appropriate for the NASD and the Exchange's to narrow the universe of firms/terminals accessing linkage data at no cost. If so, the Pilot Program would be amended through a subsequent rule filing pursuant to Rule 19b-4 [17 CFR 240.19b-4] under the Securities Exchange Act of 1934 (the "Act").

Accordingly, the NASD requests an extension of the SEC's temporary approval of the Pilot Program for two (2) months until June 3, 1987. This extension should allow sufficient time for completion of the Exchange's survey, analysis of the survey results, and preparation of another rule filing to seek Commission approval of the Pilot Program for a full two year term. During the requested extension, only information on a limited group of securities of international interest will be exchanged on a like kind basis in lieu of separate and offsetting monetary transfers. Further, the NASD and the Exchange will not introduce an automatic execution linkage during the additional period.

[1] *See* letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, Counsel for Instinet Corporation, to John Wheeler, Secretary , SEC, dated April 16, 1986. *See also* Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15989 (April 29, 1986).

The NASD believes that the Pilot Program and the requested extension thereof, are consistent with sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. . . ." Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of approval for the Pilot Program will foster significant progress toward these ends by providing the cooperative regulatory environment and operating experience necessary to realize these goals in the international marketplace.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

In its first release announcing temporary approval of the Pilot Program, the Commission articulated arguments made by Vendor regarding the competitive impact that the Program may have on Vendor. These arguments were summarized in the preceding section. In this regard, the NASD and the Exchange have committed to re-examine the existing access terms, and if appropriate, to narrow the universe of firms and/or terminals permitted access to linkage data at no cost. Hence, the NASD and the Exchange are making a good faith effort to address the perceived competitive concerns raised by Vendor and reiterated by the SEC in its original release. In light of these factors, the NASD believes that no additional competitive burden would be created by the SEC's extension of the Pilot Program.

During the period of extension requested herein, no use will be made of the information exchange for purposes of operation of an automatic execution system. Given the limited numbers of securities involved, the limited use to be made of the information exchange, and

the Association's efforts to address the competitive issues previously raised, the NASD submits that the benefits to be derived from the further extension of the Pilot Program significantly outweigh any perceived burden upon competition and materially advance the purposes to be served under the above-referenced sections of the Act.

*C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received from Members, Participants or Others*

Not applicable.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**, and, in any event, by April 2, 1987, the last business day before the expiration date for the Pilot Program. The NASD believes that the continuation of the Pilot Program provides an opportunity to develop additional information leading to the efficient and effective development of international trading, related regulatory programs and the potential for new system designs. Accordingly, the NASD believes that good cause exists to accelerate the effectiveness of the rule change to no later than April 2, 1987.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the Pilot Program while allowing the NASD to gather data in response to the Commission staff's inquiries concerning the feasibility of narrowing the universe of firms and terminals accessing linkage data at no cost. The Commission has requested that the NASD gather and analyze the relevant data necessary to amend its permanent rule filing no later than April 15, 1987. Accordingly, the Commission does not believe that the linkage should be terminated while these efforts are ongoing.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those communications that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–15 and should be submitted by April 30, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 2, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–7957 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. 34–24293; File No. SR–NSCC–87–2]**

## Proposed Rule Change by National Securities Clearing Corp.

Relating to an amendment to National Securities Clearing Corporation's ("NSCC") Rules concerning the Interregional Interface Service; Notice and Immediate Effectiveness of Proposed Rule Change.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 26, 1987, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Amend National Securities Clearing Corporation's ("NSCC") SCC Division Rules as follows:

Interregional Interface Service

Rule 40. The Corporation may establish a service in conjunction with one or more Registered Clearing Agencies to be known as the Interregional Interface Service and may provide such service to any Member which has executed such agreement with the Corporation as the Corporation may from time to time require. The Corporation may enter into such agreements as it may deem appropriate with any other Registered Clearing Agencies which agreements shall govern Interregional Interface Service transactions between the Corporation and such other Registered Clearing Agency. The Corporation may from time to time establish procedures which shall be applicable to the operation of the Interregional Interface Service.

The Interregional Interface Service shall provide a means whereby a Member may settle trades submitted to the Corporation for comparison through another Registered Clearing Agency or may settle trades submitted to another Registered Clearing Agency through the Corporation. Notwithstanding the above, the Corporation and one or more Registered Clearing Agencies may agree upon from time to time to include additional transactions in the Interregional Interface Service and additional services in one or more interfaces between the Corporation and the Registered Clearing Agencies.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

Pursuant to NSCC Rule 40, NSCC may enter into agreements with other

registered clearing agencies to establish an Interregional Interface Service. Rule 40 also provides that such Service shall provide a means whereby trades compared at one clearing agency can be settled at another clearing agency. NSCC offers certain services, however, which do not provide for the settlement of compared trades, but which it believes would be useful to include in interfaces with other clearing agencies. For example, NSCC currently offers the National Municipal Comparison System, which provides for the comparison of transactions in municipal securities, which service currently is provided to regional clearing agencies. In addition, NSCC offers the Automated Customer Account Transfer ("ACAT") Service, which service it intends to provide to regional clearing agencies.

The purpose of the proposed rule change is to amend Rule 40 to make clear that NSCC can establish interfaces with other clearing agencies that offer a variety of services, and that such interfaces are not limited to the settlement of compared trades.

Since the proposed rule change will enhance the linking of clearance and settlement facilities, and thus will enhance the national clearance and settlement system, the rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No comments on the proposed rule change have been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, or the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by April 30, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 2, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–7958 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. 34–24294; File No. SR–NASD–87–3]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

Relating to Last Sale Reports of Transactions in NASDAQ National Market System Securities Executed between 4:00 and 5:00 p.m. Eastern Time.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and an amendment thereto on March 19, 1987, as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed amendment to Schedule D to the NASD By-Laws would require transactions in NASDAQ National Market System ("NASDAQ/NMS") securities executed between 4:00 p.m. and 5:00 p.m. Eastern Time to be reported through the NASD's Transaction Reporting System no later than 5:00 p.m. Eastern Time.

**II. Self-Regulatory Organization's Statements Regarding the Proposed Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

**(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The proposed amendment to Schedule D to the NASD By-Laws would require last sale reports of transactions in NASDAQ/NMS securities executed between 4:00 p.m. and 5:00 p.m. Eastern Time to be transmitted through the NASD's Transaction Reporting System no later than 5:00 p.m. Eastern Time.

Currently, Section 2 of Part X of Schedule D to the NASD By-Laws requires transactions in NASDAQ/NMS securities that are executed outside the hours of operation of the Transaction Reporting System, that is, outside the hours of 9:30 a.m. and 4:00 p.m. Eastern Time, to be reported to the NASD, on a weekly basis, via Form T. Information submitted on the weekly Form T is not included, however, in daily market activity summaries and is not currently integrated into the NASD's automated surveilliance systems.

The NASD believes that requiring last sale reports of transactions in NASDAQ/NMS securities executed between 4:00 p.m. and 5:00 p.m. Eastern Time to be transmitted through the NASDAQ System by 5:00 p.m. Eastern Time, rather than reported via Form T on a weekly basis, will capture approximately 80% of the transactions that are executed after the close of the market. The proposed requirements will thereby increase the scope and effectiveness of the NASD's automated

surveillance programs and also will permit the dissemination of more accurate information to the news media with respect to the volume of daily trading.

Last sale reports required by the proposed amendments will affect only daily volume totals. They will not affect the calculation of daily high, low, and last prices, which will continue to be established as of 4:01:30 p.m. Eastern Time.

The NASD believes that the proposed amendment is consistent with section 15A(b)(6) of the Act, which provides that the rules of a registered securities association shall be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The NASD also believes that the proposed amendment is consistent with the provisions of section 11A of the Act. Section 11A(a)(1)(C)(iii) states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to broker/dealers and investors of quotation and transaction information. The proposed rule change will expand the amount of last sale transaction information that will be reported directly into the NASDAQ system, thereby enhancing the accuracy and currency of the information available to broker/dealers and investors.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed amendment will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–87–3 and should be submitted by April 30, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 2, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–7859 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–15660; File No. 812–6566]**

## Dean Witter Reynolds Inc., et al.; Application for Exchange Privileges and Contingent Deferred Sales Charges

April 2, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an Order Amending Existing Orders under the Investment Company Act of 1940 ("1940 Act").

---

*Applicants:* Dean Witter Reynolds Inc. ("Dean Witter"), Dean Witter California Tax-Free Income Fund, Dean Witter Convertible Securities Trust, Dean Witter Developing Growth Securities Trust, Dean Witter Dividend Growth Securities Inc., Dean Witter Government Securities Plus, Dean Witter High Yield Securities Inc., Dean Witter Industry-Valued Securities Inc., Dean Witter New York Tax-Free Income Fund, Dean Witter Natural Resource Development Securities Inc., Dean Witter Option Income Trust, Dean Witter Tax-Exempt Securities Inc., Dean Witter U.S. Government Securities Trust, Dean Witter World Wide Investment Trust, Dean Witter/Sears Liquid Asset Fund Inc., Dean Witter/Sears Tax-Free Daily Income Fund Inc., Dean Witter/Sears U.S. Government Money Market Trust, and Dean Witter Tax-Advantaged Corporate Trust.

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of section 22(d), and approval of exchange offers requested under section 11(a).

*Summary of Application:* Applicants seek an order which will permit exchanges of shares to be made among certain registered open-end, management investment companies (the "Funds") which are sold either with contingent deferred sales charges ("CDSL"), front-end sales charges ("FESL"), or without such sales charges ("NL"), providing for a sales charge to be imposed only once in the case of a purchase and subsequent exchange(s). The applicable sales charge would either be imposed at the time of sale (in the case of shares originally purchased in Funds sold with a FESL) or upon the first exchange into a Fund sold with a FESL (in the case of shares originally purchased in Funds sold with a CDSL). The order requested will amend prior SEC orders (Investment Company Act Release Nos. 13126 (March 30, 1983), 13673 (December 14, 1983), and 13782 (February 22, 1984)) ("Prior Orders"), which (1) permit the imposition and waiver of the CDSL, (2) permit exchanges of shares between Dean Witter Funds sold with a CDSL, and (3) permit exchanges of shares between Fund sold with a CDSL and certain money market Funds which are sold without a sales charge.

*Filing Date:* The application was filed on December 18, 1986, and amended on March 18, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 27, 1987. Request a hearing in writing given the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by

mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC. 450 5th Street N.W., Washington, D.C. 20549. Applicants, One World Trade Center, New York, New York 10048 Attention: Sheldon Curtis, Esq.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney (202) 272–3037 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

**Applicants' Representations**

1., Dean Witter, a Delaware corporation, is a registered broker-dealer and, through its InterCapital Division, is a registered investment adviser under the Investment Advisers Act of 1940. Dean Witter is the investment manager of Dean Witter World Wide Investment Trust with responsibility for North and South American investments, is the sole investment adviser to the other Funds, and is expected to be the sole investment adviser to Funds established in the future. Dean Witter is the principal underwriter for shares of Funds sold with a CDSL (referred to as the "CDSL Funds"), Funds sold with a FESL (referred to as the "FESL Funds") and Dean Witter Tax-Advantaged Corporate Trust (this Fund and the other Funds sold without a contingent deferred or front-end sales charge referred to as the "NL Funds"). Shares of the CDSL Funds redeemed within six years of purchase are subject to a CDSL under most circumstances. Dean Witter receives the proceeds of the CDSL.

2. Applicants propose to permit exchange among CDSL Funds, FESL Funds and NL Funds, in accordance with (1) the requirements of Section 11(a) and Rule 22d–1 under the 1940 Act, (2) the Prior Orders of the SEC, and (3) the relief requested in the application. Applicants have requested an order under Section 6(c) amending Prior Orders granting exemption from Section 22(d) of the 1940 Act so as to include within the definition of "Free Shares" (which are not subject to any CDSL on their ultimate redemption for cash) shares of CDLS Funds which have been acquired through an exchange of shares of one of the FESL Funds, either directly or with one or more intervening exchanges through NL Funds, including shares of FESL Funds (and of NL Funds, in the case of intervening exchanges) acquired through reinvestment of dividends and capital gains distributions (referred to as "dividend shares"). Applicants have requested approval under section 11(a) of the 1940 Act to permit shares of the CDSL Funds, whether acquired directly or through an exchange, including dividend shares, to be exchanged, either directly or with one or more intervening exchanges through NL Funds, for shares of FESL Funds upon payment of the applicable CDSL. When shares of a CDSL Fund are exchanged into a NL Fund, the investment period, or "year since purchase payment made," will be frozen for the period of time the shareholder remains in the NL Fund. If the shareholder redeems out of the NL Fund, he is then subject to a CDSL which will be computed based upon the period of time the shareholder actually held shares in the CDSL Fund. However, if the shareholder exchanges such shares back into a CDSL Fund from the NL Fund, no CDSL is imposed on such exchange, and the investment period previously frozen when shares were first exchanged for shares of a NL Fund resumes on the date shares of a CDSL Fund are reacquired. Thus, the CDSL is imposed only upon an ultimate redemption and the amount of the applicable charge is based upon the aggregate time the shareholder was invested in a CDSL Fund. There is no limit as to the number of exchanges that are permitted or the number of NL Funds or CDSL Funds into which exchanges can be made, but Applicants may suspend or otherwise restrict operation of the exchange privilege at any time. See the application and Prior Orders for a more complete description of the operation of the CDSL and offers of exchange.

3. Applicants have further requested an order amending and clarifying the terms of a Prior Order (Investment Company Act Release No. 13782, February 22, 1984) (a) to permit deferral of the CDSL when shares of a CDSL Fund are exchanged for shares of a NL Fund (not only a named money market Fund as in that Prior Order), and upon any combination of subsequent exchanges of such NL Fund shares for shares of another NL Fund or CDSL Fund (thereby permitting the CDSL to be imposed on redemption for cash of any shares of any NL Fund so acquired); and (b) to allow the NL Funds, the CDSL Funds, and Dean Witter (i) to offer shares of the NL Funds in exchange for shares of the CDSL Funds (and in exchange for shares of other NL Funds acquired in exchange for shares initially purchased in CDSL Funds) and (ii) to offer shares of the CDSL Funds in exchange for shares of the NL Funds that were acquired through one or more exchanges of shares initially purchased in CDSL Funds.

4. The CDSL Funds presently bear certain distribution expenses pursuant to Plans of Distribution adopted under Rule 12b–1 of the 1940 Act (the "Plans"). Each Plan provides in substance that the CDSL Fund will pay a monthly fee to Dean Witter to compensate it for the services provided in distributing the shares of such Fund. The fees of the presently existing Plans ("12b–1 fees") are paid at the annual rate of either 1%, 0.85% or 0.75% (depending on the CDSL Fund) (and, in the case of Dean Witter U.S. Government Securities Trust, 0.65% on amounts of over $10 billion) of the lesser of (a) the average daily aggregate gross sales of the CDSL Fund's shares since inception of the CDSL Fund (or, in the case of CDSL Funds which adopted Plans after commencement of operations, since the inception of the Plan), not including reinvestments of dividends or capital gains distributions, less the average daily aggregate net asset value of the CDSL Fund's shares redeemed since the CDSL Fund's (Plan's) inception upon which a CDSL has been imposed or waived, or (b) the CDSL Fund's average daily net assets (or, in the case of CDSL Funds which adopted Plans after commencement of operations, the CDSL Fund's average daily net assets attributable to shares issued since commencement of the Plan).

5. Upon any exchange out of a CDSL Fund, the base of aggregate purchase payments of such CDSL Fund (for purposes of calculating its 12b-1 fee) will be reduced on the basis that the investor's Free Shares are exchanged first and, if the exchanged amount exceeds their value, with the assumption that an exchange is made of shares held (or deemed to be held, as a result of prior exchanges) by the investor for the longest period of time within the applicable six-year period. The purchase of shares of a CDSL Fund through an exchange is treated as a new purchase for purposes of the Plan of such CDSL Fund.

6. Applicants now intend to impose a waiting period (presently thirty days, although such period may be changed as Applicants deem appropriate) on the first exchange which may be made after the original purchase of shares of a

CDSL Fund. In evaluating the continued appropriateness of the Plans adopted by the CDSL Funds pursuant to Rule 12b–1 and in making a determination of whether to continue a Plan, the Directors and Trustees of the CDSL Funds will consider, among other things, the direct and indirect expenses that Dean Witter has incurred in promoting sales of shares of a Fund and, in this regard, will review the extent to which the expenses incurred by Dean Witter pursuant to a Plan have, in effect, been offset through the payment of compensation under the Plan by the Fund and through the receipt of the CDSL.

7. The requested order is necessary and appropriate in the public interest, and consistent with the protection investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants would be precluded from offering a complex-wide exchange privilege in the absence of the requested exemptive relief. The proposed offers of exchange are fair and equitable to the Funds and the shareholders of each Fund while at the same time giving shareholders a high degree of flexibility in their financial planning. It also would be fair and equitable and in the public interest and in the interest of shareholders for shares upon which a CDSL or FESL has previously been paid (as described in the application), or which were Free Shares of a CDSL Fund prior to an earlier exchange for shares of a FESL Fund, or which, on such an earlier exchange, were attributable to the appreciation in value of CDSL Fund shares, or which are dividend shares, to be included within the definition of "Free Shares"; that is, for such shares not to be subject to the CDSL. Applicants believe that it is fair to require that a sales charge be paid only *once* in the case of exchanges among investment companies in the same complex, and that it is fair for Free Shares to retain their character as such despite exchanges among FESL Funds and NL Funds. Inasmuch as, under the terms of the Prior Orders, amounts representing the appreciation in value of shares of CDSL Funds become Free Shares on an exchange to another CDSL Fund, Applicants submit that it is also fair to include shares exchanged from FESL Funds which are attributable to such appreciation within the definition of Free Shares.

8. Applicants also believe that it would be fair and equitable and in the public interest and in the interest of shareholders to permit an offer of exchange whereby shares of the CDSL Funds upon which neither a FESL nor CDSL has been paid and which would otherwise be subject to a CDSL on their ultimate redemption for cash to be exchanged, either directly or with one or more intervening exchanges through NL Funds, for shares of FESL Funds upon payment of the applicable CDSL. Applicants state that it is fair for shareholders of a CDSL Fund to pay an applicable CDSL on an exchange to a FESL Fund because investors purchasing shares of a FESL Fund directly would pay a sales charge in connection with that purchase, and permitting an exchange under these conditions provides such investor with additional investment flexibility without detriment to the investor or the Funds.

9. Applicants finally submit that expanding the scope of the Prior Orders to encompass existing and future NL Funds, and clarifying the Prior Orders' terms encompassing any combination of subsequent exchanges of NL Fund shares (acquired in exchange for shares of a CDSL Fund) for shares of another NL Fund or CDSL Fund, is fully consistent with the basis upon which the Prior Orders were granted.

**Applicants' Conditions:**

If the requested order is granted, the Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicants will comply with the provisions of proposed Rule 11a–3 under the 1940 Act when and if it is adopted by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–7962 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. 35–24364]**

## Filings Under the Public Utility Holding Company; Application

April 2, 1987.

Notice is hereby given that the following filing(s) has/have made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 27, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**National Fuel Gas Company (70–7046)**

National Fuel Gas Company ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, and its subsidiary, Seneca Resources Corporation ("Seneca"), 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order in this proceeding, dated January 15, 1987 (HCAR No. 24258), National's authority to issue and sell prior to December 31, 1986, in one or more transactions pursuant to Rule 415 under the Securities Act of 1933, at competitive bidding, an aggregate of not to exceed one million authorized but unissued shares of its common stock, no par value ("Common Stock") was extended through December 31, 1988. Alternatively, National was authorized to issue and sell all or a portion of the Common Stock through a continuous offering shelf registration.

National rejected the only two competitive bids received for the sale of the Common Stock, and is persuaded that in light of the current market for its common stock, the fact that such market is believed to consist of a limited number of small institutional investors, the need for a large retail effort to attract many buyers and the inherent time delays associated with competitive bidding, the interests of National's investors and the public require National to utilize the marketing capability of a single comprehensive underwriting group to arrange a public offering. National, therefore, requests an

exception from the Commission's competitive bidding rules under Rules 50(a)(5), and permission to begin negotiating the terms and conditions, and fees and expenses for such offering. It may do so.

**The Southern Company (70–7200)**

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a post effective amendment to its declaration filed pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

An order was issued in this proceeding on March 3, 1986 (HCAR No. 24038) authorizing Southern to issue and sell up to 2,500,000 shares of authorized common stock at competitive bidding, and reserving jurisdiction over the issuance and sale of the remaining 7,500,000 shares pending completion of the record. Southern stated that it may later request that all or part of the stock sales be excepted from the competitive bidding requirements of Rule 50 should circumstances develop which make such an exception in the best interest of Southern and its investors and consumers. Southern now proposes that the authorization of March 3, 1986 be extended through March 31, 1989.

**Hawaii and Electric Industries, Inc., et al. (70–7359)**

Hawaiian Electric Industries, Inc. ("Industries"), a Hawaii corporation and an exempt holding company under section 3(a)(1) of the act and Rule 2 promulgated thereunder, and its electric utility subsidiary company, Hawaiian Electric Renewable Systems, Inc. ("HERS"), both of 900 Richards Street, Honolulu, Hawaii 96813, have filed an application pursuant to sections 9(a)(2) and 10 of the Act.

Industries owns all of the outstanding common stock of Hawaiian Electric Company, Inc ("HECO"), a Hawaii corporation and an operating public utility on the Island of Oahu. HECO has two wholly owned electric utility subsidiaries, Hawaii Electric Light Company, Inc. ("HELCO"), a Hawaii coporation, which provides electric service to the Island of Hawaii, and Maui Electric Company, Limited, which provides electric service to the Islands of Maui and Lanai. All of these islands are within the State of Hawaii. Industries owns all of the outstanding common stock of HERS, a Hawaii corporation organized to own and/or operate alternate energy and cogeneration facilities. HERS owns and operates Hawaii's largest windfarm at Kahuku on the Island of Oahu. Industries has other subsidiaries which are engaged in investment, real estate development, and inter-island transportation services.

HERS proposes to acquire all of the capital stock of Lalamilo ventures, Inc. ("LVI"), a California corporation, for a nominal consideration ($1.00). LVI owns and operates a windfarm situated at Waikoloa on the Island of Hawaii, consisting of 120 wind machines which were installed in 1985 with a capacity of 2300 kilowatts. LVI presently sells all of the electric energy generated at its windfarm to an agency of the County of Hawaii and HELCO. Prior to the acquisition of the capital stock of LVI by HERS, LVI will return to its present sole stockholder approximately $117,000 on deposit in an escrow account to secure performance of an agreement between LVI and the County of Hawaii. Immediately after the acquisition of the capital stock of LVI by HERS, LVI will be merged into a wholly owned subsidiary of HERS incorporated under the laws of Hawaii.

It is stated that the transaction is consistent with the program of Industries to have a number of subsidiaries engaged in alternate energy projects, including wind energy. It is also stated that LVI has a substantial tax basis in its assets and thus all of the capital stock of LVI is being acquired rather than its assets.

**Jersey Central Power and Light Company (70–7368)**

Jersey Central Power and Light Company ("Jersey Central"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application pursuant to section 6(b) of the Act.

Jersey Central proposes to issue a secured note ("Note") for up to $2.8 million, pursuant to a term-loan agreement with Horizon Bank, at an annual interest rate of 7.8%, in order to finance the cash purchase of approximately 9.7 acres and two buildings that Jersey Central currently occupies as its corporate headquarters ("Headquarters") under a lease from Northwestern Mutual Life Insurance Company. The Note will: (i) Mature on June 1, 1992; (ii) be payable in installments over five years; (iii) be prepayable from time-to-time at various premiums above the amount of such prepayment; and (iv) be secured by a purchase money first mortgage lien on the Headquarters. Jersey Central's first mortgage bond indenture provides that the lien of that indenture will constitute a second lien on the property.

**Southern Electric Generating Company, et al. (70–7371)**

Southern Electric Generating Company ("SEGCO"), 600 North 18th St., Birmingham, Alabama 35291, and its parents, Alabama Power Company ("Alabama"), 600 North 18th St., Birmingham, Alabama 35291 and Georgia Power Company ("Georgia"), 333 Piedmont Avenue NE., Atlanta, Georgia 30308, subsidiaries of the Southern Company, a registered holding company, have filed an application-declaration pursuant to section 9(a), 10, and 12(b) of the Act and Rule 45 thereunder.

By prior Commission order, SEGCO was authorized to amend its Installment Sales Agreement ("Agreement"), dated June 1, 1975, with The Industrial Developmental Board of the Town of Wilsonville, Alabama ("Board"), providing for the financing of the acquisition of pollution control facilities for its Gaston Steam Plant, by causing the Board to issue and sell $8.6 million of pollution control revenue bonds ("Series B") (HCAR No. 22641, September 21, 1982). The Series B bonds bear an 11% interest rate, and nature on June 1, 1982. SEGCO now proposes to further amend the Agreement to provide for the refunding of the Series B bonds with Series C bonds ("Bonds"). The Bonds will mature from one to thirty years from the date of issuance, and may contain a mandatory sinking fund and may be redeemable in ten years from issuance.

Alabama will guarantee SEGCO's performance under the Agreement, and Georgia will agree to reimburse Alabama for payments made under the guaranty in proportion to Georgia's *pro rata* ownership share of SEGCO's equity securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirly E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–7981 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

---

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 87–024]

### Chemical Transportation Advisory Committee; Reestablishment

**SUMMARY:** USCG announces the reestablishment of the Chemical Transportation Advisory Committee.

BEST COPY AVAILABLE

The purpose of the Committee is to provide advice and consultation to the Coast Guard's Office of Marine Safety, Security and Environmental Protection with respect to water transportation of hazardous materials in bulk.

**FOR FURTHER INFORMATION CONTACT:** Commander Robert Tanner, U.S. Coast Guard (G–MTH–1), Washington, DC 20593–0001. (202) 267–1577.

Dated: April 3, 1987.

**W.P. Hewel,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.*

[FR Doc. 87–7914 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–14–M

---

[CGD 87–021]

## Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the fourteenth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 28, 1987 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the Committee.
3. Presentation of any additional new items for consideration of the Committee.
4. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander D. F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6901.

Dated: March 19, 1987.

**Peter J. Rots,**

*Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.*

[FR Doc. 87–7917 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–14–M

---

[CGD 87–023]

## Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 7, 1987 at the Houston Yacht Club, 3620 Miramar Drive, LaPorte, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6901.

Dated: March 19, 1987.

**Peter J. Rots,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 87–7915 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–14–M

---

[CGD 87–022]

## Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 7, 1987 at the Houston Yacht Club, 3620 Miramar Drive, LaPorte, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6901.

Dated: April 1, 1987.

**Peter J. Rots,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 87-7916 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-14-M

---

[CGD 87-019]

## Measures to Prevent Unlawful Acts Against Passengers and Crews On Board Ships

March 31, 1987.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice.

**SUMMARY:** This Notice publishes the International Maritime Organization Circular 443, 1986, on Measures to Prevent Unlawful Acts Against Passengers and Crews On Board Ships. Circular 443 contains a set of recommended preventative security measures which should be utilized by both passenger vessels and the facilities which serve them, to increase the safety and security of passengers and crews. Adoption of these guidelines, in coordination with increased emphasis on passenger terminal and vessel security by Coast Guard Captain of the Port offices, will provide improved levels of security for passenger vessel operations in U.S. ports.

**FOR FURTHER INFORMATION CONTACT:** LT Patrick T. KEANE, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-2) at (202) 267-0475.

**DRAFTING INFORMATION:** The principal person involved in drafting this Notice is Lieutenant Patrick T. KEANE, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-2).

### Background

The October 7th, 1985 hijacking of the ACHILLE LAURO and murder of a U.S. citizen, resulted in the Coast Guard and State Department drafting a resolution for submission to the International Maritime Organization (IMO) Assembly in London in November 1985 on measures to protect passengers and crews onboard ships. The measures were reviewed and endorsed by both the Facilitation and Legal Committees of the IMO in March and April 1986, respectively. On September 12, 1986 the IMO unanimously adopted recommended preventative security measures. The measures are published in IMO Circular 443 dated 26 SEP 86.

The purpose of the IMO measures is to assist member governments in reviewing and strengthening port and vessel security. They include detailed and practical technical measures which may be employed to ensure the security of passengers and crews on board ships by reducing the vulnerability to unlawful acts.

Concurrently, the Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. 99-399, August 26, 1986, was enacted. This legislation specifically recognizes the international aspects of terrorism and the desirability of internationlly coordinated action. Title IX of this law, the International Maritime And Port Security Act addresses maritime terrorism and is codified in Title 46, U.S. Code at 46 U.S.C. App. 1801 et seq. and 33 U.S.C. 1226. In addition to promoting efforts of the International Maritime Organization to develop measures to improve international seaport and shipboard security, it requires the Secretary of Transportation to evaluate the security measures and the threat of terrorism at U.S. and foreign ports. It amends existing legislation (Ports And Waterways Safety Act of 1972) to allow the Secretary of Transportation to take action to prevent or respond to an act of terrorism, which includes the authority to carry out or require specific measures and procedures.

The Secretary of Transportation, in consultation with the Secretary of State must implement a plan to assess the effectiveness of security at foreign ports. The Secretary of State is required to issue travel advisories with respect to those ports which the Secretary of Transportation finds have inadequate security. The President may suspend the right of any passenger vessel common carrier to operate to and from, and the right of any U.S. passenger vessel to utilize, any port in a foreign nation which permits the use of territory under its jurisdiction for terrorists or terrorist groups which knowingly use the illegal seizure of passenger vessels or threat thereof as an instrument of policy.

The IMO Measures are intended to be applicable to passenger ships making international voyages of 24 hours or more and the facilities which service them, however, they provide guidance on measures that could be applicable to all port and vessel operations. They address measures and equipment to prevent weapons or other dangerous devices being taken aboard ships, use of restricted access on terminals and on board ships, designation of security personnel, their evaluation and training, and detailed survey and inspection procedures and planning.

### Implementation Strategy

Since all U.S. ports and passenger vessels are unique, the Coast Guard feels that an antiterrorism preventative security program can best be implemented on a port-by-port and ship-by-ship basis, utilizing the IMO approved measures as guidelines. The local Coast Guard Captains of the Port have excellent rapport and liaison with the local port officials and vessel owners and are therefore in a position to coordinate voluntary compliance with the IMO measures. Internal Coast Guard program guidelines and policy are being established and promulgated by the Port Safety and Security Program Director in U.S. Coast Guard Headquarters. A program of mandatory regulatory requirements under the authority of 33 U.S.C. 1226 is not considered necessary or appropriate at this time.

Recognizing the need for implementation of preventative security measures on a local basis, the Coast Guard is assisting the cooperative efforts of vessel operators and port authority/terminal operators. The Coast Guard has established local Port Readiness Committees (PRCs), for liaison with the participating agencies concerning the issues of port security. The PRC's include a Security Sub-Committee, with members from the maritime industry, to coordinate security and security operations including waterside security, shoreside security, personnel access control, physical security, onboard vessel security, and intelligence.

Through these committees, Coast Guard Captains of the Port are tasked with assisting industry in implementing the procedures and equipment outlined in the IMO Measures. Periodic security assessments are being conducted to evaluate existing procedures and equipment and identify potential improvements.

The maritime industry has been cooperating in the Coast Guard's efforts to reduce the risk of terrorism in U.S. ports. Many U.S. cruise ship terminals and the passenger vessels using them have already designated security personnel and are developing contingency plans in accordance with the Measures and it is expected that the remaining ships and terminals will be doing so in the near future.

Ports and vessels should now be conducting a Security Survey as outlined in the Measures (Annex 1), or an appropriate equivalent. Action then needs to be taken utilizing Security Measures and Procedures (Annex 2) of the IMO Measures to identify and

correct those deficiencies discovered by the surveys.

It is anticipated that voluntary action by ports and vessels to reduce vulnerability to terrorist acts will preclude the need for development of mandatory regulations to meet this threat. To facilitate these voluntary actions and to provide information to the travel industry and public on the measures being taken, IMO Circular 443 is reprinted as an attachment to this notice.

Dated: April 3, 1987.

J.W. Kime,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

**Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships**

**1. Introduction**

1.1 Assembly resolution A.584(14) directed that internationally agreed measures should be developed, on a priority basis, by the Maritime Safety Committee to ensure the security of passengers and crews on board ships and authorized the Maritime Safety Committee to request the Secretary-General to issue a circular containing information on the agreed measures to governments, organizations concerned and interested parties for their consideration and adoption.

1.2 The text of Assembly resolution A.584(14) is attached at appendix 1.

**2. Definitions**

For the purpose of these measures:

.1 *Designated Authority* means the organization or organizations or the administration or administrations identified by or within the Government as responsible for ensuring the development, implementation and maintenance of port facility security plans or flag State ship security plans, or both.

.2 *Port Facility* means a location within a port at which commercial maritime activities occur affecting ships covered by these measures.

.3 *Passenger Terminal* means any area within the port facility which is used for the assembling, processing, embarking and disembarking of passengers and baggage.

.4 *Port Facility Security Plan* means a comprehensive written plan for a port facility which identifies, *inter alia*, regulations, programmes, measures and procedures necessary to prevent unlawful acts which threaten the passengers and crews on board ships.

.5 *Port Facility Security Officer* means the person in a port responsible for the development, implementation and maintenance of the port facility security plan and for liaison with the ships' security officers.

.6 *Operator* means the company or representative of the company which maintains operational control over the ship while at sea or dockside.

.7 *Ship Security Plan* means a written plan developed under the authority of the operator to ensure the application of measures on board ship which are designed to prevent unlawful acts which threaten passengers and crews on board ships.

.8 *Operator Security Officer* [1] means the person designated by the operator to develop and maintain the ship security plan and liaise with the port facility security officer.

.9 *Ship Security Officer* [1] means the master or the person on board the ship responsible to the master and operator for on-board security, including implementation and maintenance of the ship security plan and for liaison with the port facility security officer.

**3. General Provisions**

3.1 Governments, port authorities, administrations, shipowners, operators, shipmasters and crews should take all appropriate measures against unlawful acts threatening passengers and crews on board ships. The measures implemented should take into account the current assessment of the likely threat together with local conditions and circumstances.

3.2 It is desirable that there be appropriate legislation or regulations which, *inter alia*, could provide penalties for persons gaining or attempting to gain unauthorized access to the port facility and persons committing unlawful acts against passengers or crews on board ships. Governments should review their national legislation, regulations and guidance to determine their adequacy to maintain security on board ships.

3.3 The measures contained in this document are intended for application to passenger ships engaged on international voyages [2] of 24 hours or more and the port facilities which serve them. Certain of these measures may, however, also be appropriate for application to other ships or port facilities if the circumstances so warrant.

3.4 Governments should identify a designated authority responsible to ensure the development, implementation and maintenance of ship and port facility security plans. The designated authority should co-ordinate with other relevant domestic agencies to ensure that specific roles and functions of other agencies and departments are agreed and implemented.

3.5 Governments should notify the Secretary General of progress made in the implementation of security measures. Any useful information, which might assist other governments in their implementation of measures, on any difficulties and problems which arose and were overcome during implementation of the security measures, should be forwarded with the notification. The designated authority should cooperate with similar authorities of other governments in the exchange of appropriate information.

3.6 Governments concerned with an act of unlawful interference should provide the Organization with all pertinent information concerning the security aspects of the act of unlawful interference as soon as practicable after the act is resolved. Further information and a reporting format is given in appendix 2.

3.7 In the process of implementing these measures, all efforts should be made to avoid undue interference with passenger services and take into account applicable international conventions.

3.8 Governments and port authorities should ensure the application of these measures to ships in a fair manner.

**4. Port Facility Security Plan**

4.1 Each port facility should develop and maintain an appropriate port facility security plan adequate for local circumstances and conditions and adequate for the anticipated maritime traffic and the number of passengers likely to be involved.

4.2 The port facility security plan should provide for measures and equipment as necessary to prevent weapons or any other dangerous devices, the carriage of which is not authorized, from being introduced by any means whatsoever on board ships.

4.3 The port facility security plan should establish measures for the prevention of unauthorized access to the ship and to restricted areas of the passenger terminal.

4.4 The port facility security plan should provide for the evaluation, before they are employed, of all persons responsible for any aspect of security.

---

[1] The operator security officer functions may be assigned to the ship security officer on board the ship.

[1] The operator security officer functions may be assigned to the ship security officer on board the ship.

[2] Voyages invlude all segmented voyages.

4.5 A port facility security officer should be appointed for each port facility. The port facility security plan should identify the security officer for that port facility.

4.6 The responsibilities of the port facility security officer should include, but not be limited to:

.1 Conducting an initial comprehensive security survey in order to prepare a port facility security plan, and thereafter regular subsequent security inspections of the port facility to ensure continuation of appropriate security measures;

.2 Implementing the port facility security plan;

.3 Recommending modifications to the port facility security plan to correct deficiencies and satisfy the security requirements of the individual port facility;

.4 Encouraging security awareness and vigilance;

.5 Ensuring adequate training for personnel responsible for security;

.6 Maintaining records of occurrences of unlawful acts which affect the operations of the port facility;

.7 Coordinating implementation of the port facility security plan with the competent operator security officers; and

.8 Coordinating with other national and international security services, as appropriate.

4.7 Security measures and procedures should be applied at passenger terminals in such a manner as to cause a minimum of interference with, or delay to, passenger services, taking into account the ship security plan.

**5. Ship Security Plan**

5.1 A ship security plan should be developed for each ship. The plan should be sufficiently flexibile to take into account the level of security reflected in the port facility security plan for each port at which the ship intends to call.

5.2 The ship security plan should include measures and equipment as necessary to prevent weapons or any other dangerous devices, the carriage of which is not authorized, from being introduced by any means whatsoever on board a ship.

5.3 The ship security plan should establish measures for the prevention of unauthorized access to the ship and to restricted areas on board.

5.4 A ship security officer should be appointed on each ship. The ship security plan should identify the ship security officer.

5.5 The operator security officer should be responsible for, but not be limited to:

.1 Conducting an initial comprehensive security survey and thereafter regular subsequent inspections of the ship;

.2 Developing and maintaining the ship security plan;

.3 Modifying the ship security plan to correct deficiencies and satisfy the security requirements of the individual ship;

.4 Encouraging security awareness and vigilance;

.5 Ensuring adequate training for personnel responsible for security; and

.6 Co-ordinating implementation of the ship security plan with the competent port facility security officer.

5.6 The ship security officer should be responsibile for, but not limited to:

.1 Regular inspections of the ship;

.2 Implementing and maintaining the ship security plan;

.3 Proposing modifications to the ship security plan to correct deficiencies and satisfy the security requirements of the ship;

.4 Encouraging security awareness and vigilance on board;

.5 Ensuring that adequate training has been provided for personnel responsible for security;

.6 Reporting all occurrences or suspected occurrences of unlawful acts to the port facility security officer and ensuring that the report is forwarded, through the master, to the operator for submission to the ship's flag State's designated authority; and

.7 Co-ordinating implementation of the ship security plan with the competent port facility security officer.

**6. Annexes**

The annexes attached hereto contain information which may be useful when developing or improving security measures.

**Appendix 1—Resolution A.584(14)**

Adopted on 20 November 1985.

*Measures to Prevent Unlawful Acts Which Threaten the Safety of Ships and the Security of Their Passengers and Crews*

The Assembly,

Recalling Article 1 and Article 15(j) of the Convention on the International Maritime Organization concerning the purposes of the Organization and the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

Noting with great concern the danger to passengers and crews resulting from the increasing number of incidents involving piracy, armed robbery and other unlawful acts against or on board ships, including small craft, both at anchor and under way,

Recalling resolution A.545(13) which urged action to initiate a series of measures to combat acts of piracy and armed robbery against ships and small craft at sea,

Recognizing the need for the Organization to assist in the formulation of internationally agreed technical measures to improve security and reduce the risk to the lives of passengers and crews on board ships,

1. Calls upon all Governments, port authorities and administrations, shipowners, ship operators, shipmasters and crews to take, as soon as possible, steps to review and, as necessary, strengthen port and on-board security;

2. Directs the Maritime Safety Committee, in co-operation with other committees, as required, to develop, on a priority basis, detailed and practical technical measures, including both shoreside and shipboard measures, which may be employed by Governments, port authorities and administrations, shipowners, ship operators, shipmasters and crews to ensure the security of passengers and crews on board ships;

3. Invites the Maritime Safety Committee to take note of the work of the International Civil Aviation Organization in the development of standards and recommended practices for airport and aircraft security;

4. Authorizes the Maritime Safety Committee to request the Secretary-General to issue a circular containing information on the measures developed by the Committee to Governments, organizations concerned and interested parties for their consideration and adoption.

**Appendix 2.—Reports of Unlawful Acts**

1. To safeguard maritime interests against unlawful acts which threaten the security of passengers and crews on board ships, reports on incidents and the measures taken to prevent their recurrence should be provided to the Organization as soon as possible by the flag and port state, as appropriate. This information will be utilized in updating or revising these agreed measures, as necessary.

2. Use of the following report format is recommended for conveying information for such purposes:

REPORT ON AN UNLAWFUL ACT

Date: ———

1. Ship or Port Area Description:

Name of Ship ———————————

Flag ———————————

Master ———————————

Port Facility Security Officer ———————————

2. Brief Description of Incident or Threat

———————————

Date, Time and Place of Incident or Threat —

3. Number of Alleged Offenders:
Passenger ——— Crew ——— Other ———
4. Method Utilized To Introduce Dangerous Substances or Devices Into the Port Facility or Ship
Persons ———:
Baggage: ——— Cargo: ——— Ship Stores: ——— Other: ———
5. Type of Dangerous Substances or Devices Used, With Full Description:
Weapon ———
Explosives ———
Other ———
6. (a) Where Were the Items Described in Section 5 Above Concealed, if Known? ———

(b) How Were the Items Described in Section 5 Above Used and Where?

—(c) How Were the Security Measures Circumvented?

7. What Measures and Procedures are Recommended To Prevent Recurrence of a Similar Event?

8. Other Pertinent Details:

## Annex 1—Security Surveys

### 1. General

1.1 In order to prepare security plans, an initial comprehensive security survey should be undertaken to assess the effectiveness of security measures and procedures for the prevention of unlawful acts and determine the vulnerability of the port facility or the ship, or both, to such acts.

1.2 The results of this security survey should be used to determine the security measures necessary to counter the threat both at the port facility and on board ships taking into consideration local conditions.

1.3 The level of security may vary from port to port, from ship to ship and from time to time. Liaison between security officers is important to ensure the best utilization of ship and shore resources.

1.4 The survey should determine what needs to be protected, what security measures are already in effect, and what additional security measures and procedures are required.

1.5 The security survey should be periodically reviewed and the security plans updated as necessary.

### 2. Port Facility Security Survey

2.1 The port facility security survey may be divided into two parts, the initial preliminary assessment and an on-scene security survey.

*2.1.1 Preliminary Assessment*

2.1.1.1 Prior to commencing the survey the port facility security officer should obtain current information on the assessment of threat for the locality and should be knowledgeable about the port facility and type of ships calling at the port. He should study previous reports on similar security needs and know the general layout and nature of the operations conducted.

2.1.1.2 The port facility security officer should meet with appropriate representatives of the port facility, of the operator, or of both of them, to discuss the purpose and methodology of the survey.

2.1.1.3 The port facility security officer should obtain and record the information required to conduct a vulnerability assessment, including:

.1 The general layout of the port facility and terminal including topography, building locations, etc.;

.2 Areas and structures in the vicinity of the port facility such as, fuel storage depots, bridges, locks, etc.;

.3 The degree of dependence on essential services, such as electric power, communications, etc.;

.4 Stand-by equipment to assure continuity of essential services;

.5 Locations and functions of each actual or potential access point;

.6 Numerical strength, reliability and function of staff, permanent labour and casual labour forces;

.7 The details of existing security measures and procedures, including inspection, control and monitoring procedures, identification documents, access control procedures, fencing, lighting, fire hazards, storm drains, etc.;

.8 The equipment in use for protection of passengers, crews and port facility personnel;

.9 All vehicle traffic or services which enter the port facility; and

.10 Availability of other personnel in an emergency.

*2.1.2 On-scene Security Survey*

2.1.2.1 The port facility security officer should examine and evaluate the methods and procedures used to control access to ships and restricted areas in the port facility, including:

.1 Inspection, control and monitoring of persons and carry-on articles;

.2 Inspection, control and monitoring of cargo, ship stores, and baggage; and

.3 Safeguarding cargo, ship stores and baggage held in storage within the port facility.

2.1.2.2 The port facility security officer should examine each identified point of access to ships and restricted areas in the port facility and evaluate its potential for use by individuals who might be engaged in unlawful acts. This includes persons having legitimate access as well as those who seek to obtain unauthorized entry.

2.1.2.3 The port facility security officer should examine and evaluate existing security measures, procedures and operations under both emergency and routine conditions, including:

.1 Established safety procedures;

.2 Restrictions or limitations on vehicle access to the port facility;

.3 Access of fire and emergency vehicles to restricted areas and availability of parking and marshalling areas;

.4 The level of supervision of personnel;

.5 The frequency and effectiveness of patrols by security personnel;

.6 The security key control system;

.7 Security communications, systems and procedures; and

.8 Security barriers and lighting.

### 3. Ship Security Survey

3.1 The ship security survey may be divided into two parts, the initial preliminary assessment and an on-scene security survey.

*3.1.1 Preliminary Assessment*

3.1.1.1 Prior to commencing the ship security survey, the operator security officer should take advantage of such information as is available to him on the assessment of threat for the ports at which the ship will call or at which passengers embark or disembark and about the port facilities and their security measures. He should study previous reports on similar security needs.

3.1.1.2 Where feasible, the operator security officer should meet with appropriate persons on the ship and in the port facilities to discuss the purpose and methodology of the survey.

3.1.1.3 The operator security officer should obtain and record the information required to conduct a vulnerability assessment, including:

.1 The general layout of the ship;

.2 The location of areas which should have restricted access, such as bridge, engine-room, radio-room etc.;

.3 The location and function of each actual or potential access point to the ship;

.4 The open deck arrangement including the height of the deck above the water;

.5 The emergency and stand-by equipment available to maintain essential services;

.6 Numerical strength, reliability and security duties of the ship's crew;

.7 Existing security and safety equipment for protection of passengers and crew; and

.8 Existing security measures and procedures in effect, including inspection, control and monitoring equipment, personnel identification documents and communication, alarm, lighting, access control and other appropriate systems.

*3.1.2 On-scene Security Survey*

3.1.2.1 The operator security officer should examine and evaluate the methods and procedures used to control access to ships, including:

.1 Inspection, control and monitoring of persons and carry-on articles; and

.2 Inspection, control and monitoring of cargo, ship's stores and baggage.

3.1.2.2 The operator security officer should examine each identified point of access, including open weather decks, and evaluate its potential for use by individuals who might be engaged in unlawful acts. This includes individuals having legitimate access as well as those who seek to obtain unauthorized entry.

3.1.2.3 The operator security officer should examine and evaluate existing security measures, procedures and operations, under both emergency and routine conditions, including:

.1 Established security procedures;

.2 Response procedures to fire or other emergency conditions;

.3 The level of supervision of the ship's crew, vendors, repair technicians, dock workers, etc.;

.4 The frequency and effectiveness of security patrols;

.5 The security key control system;

.6 Security communications systems and procedures; and

.7 Security doors, barriers and lighting.

**4. Periodic Security Inspections**

Security inspections should be undertaken on a periodic basis to permit a review and updating of the initital comprehensive security survey and possible modification of the port facility and ship security plans.

**5. Report**

5.1 From the information obtained during the survey assessment and inspection, the respective security officer should assess the vulnerability of the port facility, ship, or both.

5.2 The report should contain, as appropriate, recommendations for new or revised security measures and procedures.

5.3 The report will form the basis for development or revision of security plans, should be confidential and have limited distribution.

**Annex 2—Security Measures and Procedures**

**1. General**

1.1 Port facility security measures and procedures and ship security measures and procedures should take account of the recommendations contained in the report described in paragraph 5 of annex 1.

**2. Port Facility Security**

2.1 Security measures and procedures reduce port facility vulnerability. Increased levels of threat will have a significant influence on the number and type of security measures used and the degree of measures and procedures adopted. During short periods of heightened threat, increased security can be achieved through the use of additional manpower.

2.2 The following on-scene security measures should be considered.

.1 Restricted areas;

.2 Security barriers;

.3 Security lighting;

.4 Security alarms and communication systems; and

.5 Access control and identification.

*2.2.1 Restricted Areas*

The establishment of restricted areas helps control and channel access, improves security and increases efficiency by providing degrees of security compatible with the port facility's operational requirements. Restricted areas may be further subdivided depending on the degree of restriction or control required to prevent unauthorized access.

2.2.2 Security Barriers

2.2.2.1 The boundary between restricted and uncontrolled areas should be clearly defined. This can be achieved by security barriers which prevent access except at authorized points. Where permanent security barriers are appropriate, security fences have proven effective.

2.2.2.2 The purpose of security barriers is to:

.1 Delineate the area to be protected;

.2 Create a physical and psychological deterrent to persons attempting unauthorized entry;

.3 Delay intrusion, enabling operating personnel and security guards to detect, and, if necessary, apprehend intruders; and

.4 Provide designated and readily identifiable places for entry of personnel and vehicles into areas where access is restricted.

2.2.2.3 Openings in security barriers should be kept to a minimum and secured when not in use.

2.2.2.4 Security fences and other barriers should be located and constructed so as to prevent the introduction of dangerous substances or devices, and should be of sufficient height and durability to deter unauthorized passage.

2.2.2.5 Security fence lines should be kept clear of all obstructions.

2.2.2.6 The effectiveness of a security fence against penetration depends to a large extent on the construction employed. The total height of the security fencing should be not less than 2.50 metres.

2.2.2.7 Natural barriers such as water, ravines, etc., can sometimes be effectively utilized as part of the control boundary. However, they may require supporting safeguards (i.e., fencing, security patrols, surveillance, anti-intrusion devices, lighting) especially during high threat periods.

2.2.2.8 The roofs of buildings may also provide a possible route for unauthorized access to the restricted area. Safeguards should be taken to prevent such access by these routes.

2.2.2.9 Restricted areas partly surrounded by water may required security barriers with sufficient illumination during night hours and, if on navigable waters, frequent and unscheduled patrols by boat or ashore on foot, or both. Illumination of these areas must be of a type and so placed that it does not interfere with safe navigation.

*2.2.3 Security Lighting*

2.2.3.1 Security lighting with uninterrupted power supply is an important element in a security program.

2.2.3.2 The primary system should consist of a series of lights arranged to illuminate a specific area continously during the hours of darkness or restricted visibility. In some circumstances, it may be preferable to use such lighting systems only in response to an alarm.

2.2.3.3 Floodlights may be used to supplement the primary system and may be either portable or fixed. Floodlights when used should have sufficient flexibility to permit examination of the barrier under observation and adjacent unlighted areas.

2.2.3.4 Multiple circuits may be used to advantage in the security lighting system. Circuits should be so arranged that the failure of any one lamp will not affect a series of others.

2.2.3.5 Controls and switches for security lighting should be protected at all times.

2.2.3.6 Where fences and other barriers are to be illuminated, it is

important to ensure that the intensity of illumination is adequate for the purpose.

*2.2.4 Security Alarms and Communication Systems*

2.2.4.1 Intrusion detection systems and alarm devices may be appropriate as a complement to guards and patrols during periods of increased threat.

2.2.4.2 Immediate response capability by guards to an alarm from an intrusion detection system or device is important if its use is to be effective. Alarms may be local, i.e. at the site of the intrusion, provided at a central location or station, or a combination of both.

2.2.4.3 A wide variety of intrusion detection systems and devices are available for possible use. These systems include those which are sensitive to:

.1 Breaking of an electrical circuit;
.2 Interruption of a light beam;
.3 Sound;
.4 Vibration;
.5 Motion; or
.6 Capacitance change in an electrical field.

2.2.4.4 In view of the wide range of technical matters which must be taken into account in deciding upon the device or system best suited for application in each environment and for each task, it is prudent to obtain the advice of a qualified expert before a decision is made on the system or device to be used.

2.2.4.5 A means of transmitting discreet or covert signals by radio, direct-line facilities or other similarly reliable means should be provided at each access point for use by the control and monitoring personnel to contact police, security control, or an emergency operations centre in the event assistance is required. An additional public or overt communications system would be useful to obtain information on advice or routine matters.

*2.2.5 Access Control and Identification*

2.2.5.1 Persons and their property, before being permitted to proceed beyond access points, should be subject to routine inspection or control and monitoring, or both.

2.2.5.2 It is recommended that port facility employees, vendors, operators' personnel, assigned law enforcement officials and others, whose official duties require them to pass through the access point, should prominently display a tamper resistant identification card. This procedure should be closely monitored and strictly enforced to preserve the integrity of the inspection, control and monitoring processes and the security of the passenger terminal and ships. Approved means of identification and the procedures to be followed should be specifically provided for in the security plan.

2.2.5.3 An effective means of identification is a card which incorporates a photograph of the individual as an integral part. These should show the relevant details of the holder, e.g., name, description, or other pertinent data. The provision of a photograph is recommended in order to prevent misuse of the card by unauthorized persons.

2.2.5.4 To prevent substitution of a photograph and subsequent illegal use, the entire card should be sealed in a plastic container, preferably of a type which will mutilate the photograph and card if tampered with.

2.2.5.5 The number and types of different styles of identification cards in the port area should be limited in order to avoid control problems for security staff and the administration of the identification programme.

2.2.5.6 Identification cards should be issued by an appropriate control authority, such as a port authority or ship operator. Strict card control and accountability procedures should be established and maintained.

2.2.5.7 Persons who refuse to submit to security clearance at an access point must be denied entry.

2.2.5.8 Persons denied entry for refusal to submit to security clearance, or for other security reasons should be, if possible, identified and reported to appropriate security personnel.

2.2.5.9 A booth or other area in which a manual search can be conducted is advisable. The access points should, as appropriate, be equipped with metal detectors to expedite the security clearance of people.

2.2.5.10 All items should be subject to inspection, appropriate to the risk of unlawful acts, prior to being placed on board ships. Such inspection methods may include hand search, electronic screening, the use of dogs, or other means.

2.2.5.11 Tables on which baggage may be searched should be provided at the appropriate access points. Such tables should be high enough to permit inspection without requiring the examiner to bend. They also should be sufficiently wide to provide some measure of separation of the baggage from the passenger. The latter should be able to witness the examination, but should not be in a position to interfere with the examiner.

**3. Ship Security**

3.1 The master's traditional authority in matters of ship security remains unchanged. Maintaining ship security is an ongoing task. Additional security measures should be implemented to counter increased risks when warranted.

3.2 Ship security should be continually supervised by the ship security officer. A properly trained crew is in itself a strong deterrent to being subjected to unlawful acts.

3.3 Communication and co-operation with the port facility in security matters should be maintained.

3.4 The following on-board security measures should be considered:

.1 Restricted areas;
.2 Deck and overside lighting;
.3 Access control and identification; and
.4 Security alarms and communication systems.

*3.4.1 Registered Areas*

3.4.1.1 The establishment of restricted areas on board ships (e.g., bridge, engine-room, radio-room etc.) is recommended.

3.4.1.2 The use, number and distribution of master keys on-board ships should be controlled by the master.

3.4.1.3 The ship security plan should provide for immediate corrective action in the event of security being compromised by potential misuse or loss of keys.

*3.4.2 Deck and Overside Lighting*

3.4.2.1 While in port, an anchor or underway the ship's deck and overside should be illuminated in periods of darkness and restricted visibility, but not so as to interfere with the required navigation lights and safe navigation.

*3.4.3 Access Control and Identification*

3.4.3.1 Crew members should carry at all times a photo identification document.

3.4.3.2 When visitors to the ship are permitted their embarkation and disembarkation should be closely controlled.

3.4.3.3 All vendors should have an identification document prior to boarding the ship or should be escorted at all items on board the ship.

*3.4.4 Security Alarms and Communication Systems*

3.4.4.1 Security alarms and devices may be appropriate in restricted areas and at access points to the ship, as a complement to guards and patrols. Immediate appropriate response to an

alarm is important if the security alarms and devices are to be effective.

3.4.4.2 In view of the wide range of technical matters which must be taken into account in deciding upon the device or system best suited for application in each environment, it is prudent that the advice of a qualified expert be obtained before a decision is made on the system or device to be used.

3.4.4.3 A means of discreet or covert communications by radio, direct-line facilities or other reliable means should be provided in each restricted zone and at each access point for use by security or operating personnel to contact the ship security officer in the event assistance is required.

**Annex 3—Security Training**

**1. General**

A continuous and thorough training programme should support measures taken to safeguard the security of passengers and crews on board ships. Basic guidance for development of security training and education is given in the following paragraphs.

**2. Criteria**

Security training should meet the following criteria:

.1 Be comprehensive;

.2 Have an adequate number of qualified instructors;

.3 Have an effective system of presentation;

.4 Use adequate training equipment and aids; and

.5 Have a clearly defined objective, i.e. the attainment of an established minimum standard of proficiency, knowledge and skill to be demonstrated by each individual.

**3. Port Facility Security Personnel Training**

*3.1 Security Officer and Appropriate Staff*

The port facility security officer and appropriate port facility staff should have knowledge and, as necessary, receive training in some or all of the following, as appropriate:

.1 Security administration;

.2 Relevant international conventions, codes and recommendations;

.3 Responsibilities and functions of other involved organizations;

.4 Relevant government legislation and regulations;

.5 Risk, threat and vulnerability assessments;

.6 Security surveys and inspections;

.7 Ship security measures;

.8 Security training and education;

.9 Recognition of characteristics and behavioral patterns of persons who are likely to commit unlawful acts;

.10 Inspection, control and monitoring techniques;

.11 Techniques used to circumvent security measures;

.12 Dangerous substances and devices and how to recognize them;

.13 Ship and local port operations and conditions; and

.14 Security devices and systems.

*3.2 Inspection, Control and Monitoring*

Instruction and, where appropriate, training for persons assigned to conduct inspection, control and monitoring at a port facility should take into consideration, as appropriate:

.1 Responsibilities under the port facility plan or ship security plan;

.2 Inspection, control and monitoring regulations or policies and pertinent laws,

.3 Detection and identification of fire-arms, weapons and other dangerous substances and devices;

.4 Operation and testing of security equipment;

.5 Manual search methods of persons, baggage, cargo and ship's stores;

.6 Emergency procedures;

.7 Recognition of characteristics and behavioural patterns of persons who are likely to commit unlawful acts;

.8 Human relations techniques; and

.9 Techniques used to circumvent security measures.

*3.3 Guards*

Port facility guards who are assigned either to specific fixed locations or to patrols for the purpose of preventing unauthorized access to areas should receive a general briefing on the training subjects recommended for the port facility security officer. Initial and subsequent training shoud emphasize techniques for:

.1 Entry control;

.2 Patrols, observation and communications;

.3 Inspection, identification and reporting;

.4 Person, building and vehicle searches;

.5 Apprehension of suspects;

.6 Self-defence;

.7 Recognizing dangerous substances and devices;

.8 Human relations; and

.9 First aid.

**4. Ship Security Personnel Training**

*4.1 Operator Security Officer and Appropriate Staff*

The operator security officer and appropriate staff should have knowledge and, as necessary, receive training in some or all of the following, as appropriate:

.1 Security administration;

.2 Relevant international conventions, codes and recommendations;

.3 Responsibilities and functions of other involved organizations;

.6 Operation of technical aids to security, if used;

.7 Recognition of characteristics and behavioural patterns of persons who may be likely to commit unlawful acts;

.8 The detection and recognition of dangerous substances and devices;

.9 Port and ship operations; and

.10 Methods of physical searches of persons and their baggage.

*4.3 Inspection, Control and Monitoring Personnel*

Instruction and training, as appropriate, for persons assigned to conduct inspection, control and monitoring on board ships should take into consideration, as appropriate, the folowing:

.1 Responsibilities under the port facility or ship security plan;

.2 Inspection, control and monitoring regulations or policies and pertinent laws;

.3 Detection and identification of firearms, weapons and other dangerous substances and devices;

.4 Relevant government legislation and regulations;

.5 Risk, threat and vulnerability assessments;

.6 Security surveys and inspections;

.7 Ship security measures;

.8 Security training and education;

.9 Recognition of characteristics and behavioural patterns of persons who are likely to commit unlawful acts;

.10 Inspection, control and monitoring techniques;

.11 Techniques used to circumvent security measures;

.12 Dangerous substances and devices and how to recognize them;

.13 Ship and local port operations and conditions; and

.14 Security devices and systems.

*4.2 Ship Security Officer*

The ship security officer should have adequate knowledge of and, if necessary, training in the following, as appropriate:

.1 The ship security plan and related emergency procedures;

.2 The layout of the ship;

.3 The assessment of the risk, threat and vulnerability;

.4 Methods of conducting security inspections;

.5 Techniques used to circumvent security measures;

.4 Operation and testing of security equipment, if used;

.5 Physical search methods of persons, baggage, cargo and ship's stores;

.6 Emergency procedures;

.7 Recognition of charateristics and behavioural patterns of persons who are likely to commit uplawful acts;

.8 Human relations techniques; and

.9 Techniques used to circumvent security measures.

*4.4 Ship's Crew*

Crew members having specific security duties should know their responsibilities for ship security as described in the ship security plan and should have sufficient knowledge and ability to perform their assigned duties.

**5. Law Enforcement Personnel**

Appropriate law enforcement personnel, when not directly involved in or responsible for port facility security, should receive a general briefing to become familiar with port and ship operations and the training of port facility and ship operator security personnel. They should also be orientated regarding inspection, control and monitoring and the security plans.

**Annex 4—Exchange of Information**

1. The prompt and continuing dissemination and exchange of information will assist the maintenance of effective port and ship security procedures and will enable States, port facilities, operators and shipmasters to adjust their procedures in response to changing conditions and the specific or general threats.

2. Effective port and ship security requires efficient two-way communications for the exchange of information at all levels both domestic and with the governments and organizations concerned. The prompt, clear and orderly dissemination of such information is vital to the success of the security programme.

[FR Doc. 87-7919 Filed 4-8-87; 8:45 am]
BILLING CODE 4910-14-M

## Federal Highway Administration

### Environmental Impact Statement; Orange County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway widening project in Orange County, California.

**FOR FURTHER INFORMATION CONTACT:** C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809. Telephone: (916) 551-1310.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to widen Interstate 5 (The Santa Ana Freeway), an existing six-lane facility. The limits of the project are between State Route 22 (The Garden Grove Freeway) and State Route 91, a distance of 8.1 miles. The project is needed to relieve current congestion and to provide capacity for future traffic. This proposal is a Tier II component of a package of multi-modal transportation improvements within the Santa Ana Transportation Corridor (SATC), Orange County, California.

Alternatives being considered for the freeway widening project are:

1. Widen by two lanes using minimally acceptable design standards and a design variation with a High Occupancy Vehicle (HOV) lane.

2. Widen by two lanes plus two auxiliary lanes using desirable design standards with mixed-flow lanes exclusively and a design variation with two lanes being High Occupancy Vehicle (HOV) lanes.

3. Widen by four lanes plus two auxiliary lanes using desirable design standards with mixed-flow lanes exclusively and a design variation with two of the four lanes being High Occupancy Vehicle (HOV) lanes.

4. No Project: a "no-build" option. No physical improvements or modifications to the facility.

As an integral component of preparing the EIS, Caltrans will conduct a formal environmental scoping meeting on Wednesday, April 15, 1987 in the City of Anaheim, California, Anaheim City Council Chambers, 200 South Anaheim Blvd., Anaheim, CA 92803 at 7:30 p.m. Federal, State, and local agencies have been formally invited to participate in this meeting in order to identify significant environmental issues to be considered in the EIS. An advertisement and press release will be published in newspapers in the corridor. As the DEIS is being prepared, Caltrans will conduct informal meetings to inform the public of the status of the project.

To ensure that the full range of issues relating to these proposed alternatives are addressed and incorporated into the planning process, your comments are being solicited. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The Regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: April 1, 1987.

**C. Glenn Clinton,**

*District Engineer, Sacramento, CA.*

[FR Doc. 87-7849 Filed 4-8-87; 8:45 am]
BILLING CODE 4910-22-M

## Federal Railroad Administration

### Petitions for Exemption or Waiver of Compliance; Port Bienville Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before May 26, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

**Port Bienville Railroad**

[Waiver Petition Docket Number RSGM–86–28]

The Port Bienville Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives are operated within a fenced and guarded industrial park in addition to approximately 8½ miles of main track located in a wooded unpopulated area along the Louisiana border near Waveland, Mississippi. The carrier indicates there have been no reported incidents of vandalism or injury due to broken glass.

**Wilmington Terminal Railroad, Inc.**

[Waiver Petition Docket Number RSGM–86–29]

The Wilmington Terminal Railroad, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. The locomotives operate totally within the North Carolina ports complex which is fenced in completely and has security guards. Industries and businesses in the area have not experienced any acts of vandalism relating to broken windows. The petitioner indicates that they are a new railroad and to replace all glazing in their locomotives would create an undue financial hardship with their limited operating budget.

**National Railroad Foundation and Museum**

[Waiver Petition Docket Number RSGM–86–30, SA–86–9 and LI–86–5]

The National Railroad Foundation and Museum seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223), the Safety Appliance Standards (49 CFR Part 231), and the Locomotive Safety Standards (49 CFR Part 229) for one locomotive. The locomotive is not equipped with glazing that complies with 49 CFR Part 223. The locomotive design does not provide for modifications permitting installation of corner pulpit steps on the short frame (49 CFR 231.30) and is not equipped with a slip slide alarm (49 CFR 229.115). The petitioner states that the locomotive is used exclusively in slow speed tourist service. The majority of the track is located on United States Navy property and is, therefore, under the protection of Naval Security Police. The locomotive is involved in minimal swtiching and light tonnage operations over track free of significant grades. Further, the petitioner states that it does not currently have access to an inspection pit and, therefore, seeks a waiver of compliance of the 92-day locomotive inspection (49 CFR 229.23).

**New Jersey Transit Rail Operations**

[Waiver Petition Docket Number RSGM–86–31]

The New Jersey Transit Rail Operations (NJTRO) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for six E–8A locomotives. The petitioner indicates that due to accelerated capital maintenance programs and subsequent decrease in equipment availability coupled with an increase in ridership, these units are being activated for service on the New Jersey Coast Line. The NJTRO is requesting a temporary waiver to allow time to complete the retrofit program and continue to meet the rail service demands of the communities. The NJTRO expects to complete the retrofitting of these six locomotives with certified glazing prior to the end of March 1987.

**Norfolk and Western Railway Company**

[Waiver Petition Docket Number LI–87–1]

The Norfolk & Western Railway Company (N&W) seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR 229.45 and 229. 46) for 50 of its fleet of 2,670 locomotives.

The temporary waiver sought by the N&W would permit the continued use of the subject locomotives for a period of up to 3 years. Within this period of time, these locomotives would be retired from service.

A deficiency exists on these locomotives because of a unique air piping design of the independent air brake system. With this system, it is possible to have an indication of brake cylinder air pressure at the cab gauge when actually the locomotive air brakes are released. The air gauge indication is measured at a point between the air guage and the brake cylinder cutout valve rather than a point between the cutout valve and the brake cylinder.

This extension is requested because the air piping design for these locomotives was a standard arrangement used by the locomotive builders for certain locomotives built prior to 1963. The carrier states that since these locomotives have operated for several years without incident and the units are near retirement. They are hard put to spend money on a modification program.

**Southern Railway Co.**

[Waiver Petition Docket Number LI–87–5]

The Southern Railway (SOU) seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR 229.45 and 229. 46) for 111 of its fleet of 2,670 locomotives.

The temporary waiver sought by the SOU would permit the continued use of the subject locomotives for a period of up to 3 years. Within this period of time, these locomotives would be retired from service.

A deficiency exists on these locomotives because of a unique air piping design of the independent air brake system. With this system, it is possible to have an indication of brake cylinder air pressure at the cab gauge when actually the locomotive air brakes are released. The air gauge indication is measured at a point between the air gauge and the brake cylinder cutout valve rather than a point between the cutout value and the brake cylinder.

This extension is requested because the air piping design for these locomotives was a standard arrangement used by the locomotive builders for certain locomotives built prior to 1963. The carrier states that since these locomotives have operated for several years without incident and the units are near retirement. They are hard put to spend money on a modification program.

**The Long Island Rail Road**

[Waiver Petition Docket Number LI–87–2]

The Long Island Rail Road (LIRR) seeks a temporary waive of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) for 24 of its fleet of 72 locomotives.

The temporary waiver sought by the LIRR would permit the continued use of 24 locomotives with overdue 24 month air brake work. The relief is requested for a period of 6 months. The time extension is needed because the LIRR has encountered extensive delays in delivery of replacement air brake portions. Many air brake components ordered in the spring of 1986 have not yet been received.

The delay in delivery of the air brake equipment is due to the relocation of WABCO's passenger air brake equipment division from Wilmerding, Pennsylvania, to Spartanburg, South Carolina.

Issued in Washington, DC, on April 3, 1987.

J.W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 87-7861 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-62-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: April 3, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC. 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0976
*Form Number:* 990-W
*Type of Review:* Revision
*Title:* Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Trusts
*Description:* Form 990-W is used by tax-exempt trusts to figure estimated unrelated business income tax liability and the amount of each installment payment. Form 990-W is a worksheet only. It is not required to be filed.
*Respondents:* Businesses, Non-profit institutions
*Estimated Burden:* 7,270 hours
*OMB Number:* New
*Form Number:* 8610
*Type of Review:* New
*Title:* Annual Low-Income Housing Credit Agencies Report
*Description:* Form 8610 is used as a transmittal form for Forms 8609, Low-Income Housing Credit Allocation Certification. Form 8610 is completed by state and local housing credit agencies.
*Respondents:* State or local governments
*Estimated Burden:* 50 hours
*OMB Number:* 1545-0720
*Form Number:* 8038, 8038-G, 8038GC, and 8038-T
*Type of Review:* Revision
*Title:* 1. Information Return for Tax-Exempt Private Activity Bond Issues; 2. Information Return for Tax-Exempt Governmental Bond Issues; 3. Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues; and 4. Arbitrage Rebate.
*Description:* Forms 8038, 8038-GC, and 8038-G collect the information that IRS is required to collect by Code section 149(e). IRS uses the information to complete the required study of tax-exempt bonds (requested by Congress). IRS also uses the information to assure that tax-exempt bonds are issued consistent with the rules of Internal Revenue Code sections 141 through 149. Form 8038-T is used to implement the arbitrage rebate requirement.
*Respondents:* State or local governments, Businesses, Non-profit institutions
*Estimated Burden:* 110,772 hours

Clearance Officer: Garrick Shear (202) 566-6150
Internal Revenue Service
Room 5571
1111 Constitution Avenue, NW.,
Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880
Office of Management and Budget
Room 3208, New Executive Office Building
Washington, DC 20503

**U.S. Customs Service**

*OMB Number:* 1515-0082
*Form Number:* CF 226
*Type of Review:* Extension
*Title:* Record of Vessel Foreign Repair or Equipment
*Description:* The master/commander of a vessel engaging in foreign or coastal trade, or intended to be employed in such trade, must declare at the port of first arrival from all foreign countries, any equipment, repair parts, or materials purchased for the vessel or any expenses incurred in a foreign country.
*Respondents:* Businesses
*Estimated Burden:* 4,074
*Clearance Officer:* B.J. Simpson (202) 566-7529
U.S. Customs Service
1301 Constitution Avenue NW.,
Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880
Office of Management and Budget
Room 3208, New Executive Office Building
Washington, DC 20503

Dale A. Morgan,

*Departmental Reports Management Officer.*

[FR Doc. 87-7830 Filed 4-8-87; 8:45 am]

BILLING CODE 4810-25

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 68
Thursday, April 9, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CIVIL RIGHTS COMMISSION**

April 6, 1987.

**PLACE:** 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

**DATE AND TIME:** Thursday, April 16, 1987, 9:00 a.m.–5:00 p.m.

**STATUS OF MEETING:** Open to the public.

**MATTERS TO BE CONSIDERED:**

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV. Recharter of Colorado SAC
V. Unicon School Desegregation Report
VI. Briefing by Regional Directors on Plans for the Reorganized Regions

**PERSON TO CONTACT FOR FURTHER INFORMATION:** Thomas Olson, Press and Communications Division, (202) 376–8105.

**William H. Gillers,**

*Solicitor.*

[FR Doc. 87–8031 Filed 4–7–87; 1:29 pm]

BILLING CODE 6335–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C 552b), notice is hereby given that at 6:40 p.m. on Friday, April 3, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the request submitted by Foothill Thrift and Loan, Salt Lake City, Utah, an operating noninsured industrial bank, for waiver of a condition imposed by the Corporation in approving its application for Federal deposit insurance.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: April 7, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87–8016 Filed 4–7–87; 12:00 pm]

BILLING CODE 6714–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C 552b), notice is hereby given that at 2:34 p.m. on Saturday, April 4, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the request submitted by Foothill Thrift and Loan, Salt Lake City, Utah, an operating noninsured industrial bank, for waiver of a condition imposed by the Corporation in approving its application for Federal deposit insurance.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, the Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: April 7, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87–8017 Filed 4–7–87; 8:45 am]

BILLING CODE 6714–01–M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

April 6, 1987.

**TIME AND DATE:** 10:00 a.m., Thursday, April 9, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** After the oral argument the Commissioners will also consider and act upon the following:

4. *Sec. Labor/Andy Brackner v. Jim Walter Resources,* SE 86–69–D. (Consideration of motion to reconsider dismissal of a petition for discretionary review).

It was determined by a unanimous vote of Commissioners that this item be added to the agenda and no earlier announcement of the addition was possible. 5 U.S.C. 552b(e)(1).

**CONTACT PERSON FOR MORE INFO:** Jean Ellen, (202) 653–5629.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 87–7988 Filed 4–7–87; 9:57 am]

BILLING CODE 6735–01–M

# Corrections

Federal Register
Vol. 52, No. 68
Thursday, April 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Additions and Deletions

*Correction*

In notice document 87-7049 appearing on page 10129 in the issue of Monday, March 30, 1987, make the following correction:

In the third column, the second line should read "7220-01-024-5997".

BILLING CODE 1505-01-D

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Part 511

[Docket No. R-87-1291, FR-2243]

### Lead-Based Paint Hazard Elimination in Community Development Block Grant, Urban Development Action Grant, Secretary's Fund, Section 312 Rehabilitation Loan, Rental Rehabilitation and Urban Homesteading Programs

*Correction*

In rule document 87-3280 beginning on page 4870 in the issue of Tuesday, Feburary 17, 1987, make the following correction:

**§ 511.11 [Corrected]**

On page 4884 in the first column, in § 511.11(f)(3)(iii)(B), beginning with the fourth line, the remainder of paragraph (B) is corrected to read as follows:

"lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.".

BILLING CODE 1505-01-D

Federal Register

Thursday
April 9, 1987

Part II

# Department of Labor

Office of the Secretary

29 CFR Part 33

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 33

## Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor

**AGENCY:** Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This regulation implements Section 504 of the Rehabilitation Act of 1973, as amended, by requiring the Department of Labor to ensure that its programs and activities do not discriminate against qualified handicapped persons. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for handicapped person and qualified handicapped person, and establishes a complaint mechanism for resolving allegations of discrimination.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Noelia Fernandez, Equal Opportunity Specialist, Directorate of Civil Rights, 200 Constitution Avenue NW., Room N–4123, Washington, DC 20210. Telephone (202) 523–9062 (VOICE) or 523–7090 (TTY).

**SUPPLEMENTARY INFORMATION:** On July 2, 1985, the Department of Labor published a Notice of Proposed Rulemaking (NPRM) for the enforcement of the federally conducted aspects of Section 504 of the Rehabilitation Act of 1973, as amended (50 FR 27298). The comment period for this NPRM extended through August 16, 1985. On September 10, 1985, a notice was published in the **Federal Register** reopening the comment period through October 25, 1985, in order to give more people the opportunity to submit comments to the Department (50 FR 36885).

By the close of the first comment period, the Department had received 13 letters, most of which addressed more than one section of the proposal. No comments were received during the second comment period. Five letters were from groups/associations representing handicapped individuals (two of these letters were sent of behalf of a number of organizations); five were from State or local agencies; and two were from Congressional committees. Additionally, one office within the Department requested that the meaning of one particular provision be clarified.

Most commenters addressed explicitly one or more of the specific provisions of the regulations. We respond to the specific comments in the Section-by-Section analysis. In addition, eight commenters also expressed concerns of a general nature without identifying a particular section of the regulation. These comments dealt primarily with: (1) The Department's adherence to the Justice Department's prototype regulation; (2) an alleged deviation of the proposed rule from the regulations for federally assisted programs; and (3) expansion of the initial comment period.

With respect to the comment regarding adherence to the DOJ prototype, the Department did adopt certain sections of the prototype. This action was in accordance with Executive Order 12250 which states, in pertinent part:

> Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). *To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order* and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect. (Section 1–402.) (Emphasis added.)

Based on the above mandate, the Department believes that the use of portions of the prototype regulation is appropriate. A brief discussion of item 2 is contained in the Background section below and under related topics within the Section-by-Section Analysis. The request for an expansion of the comment period was honored with the September 10, 1985, notice in the **Federal Register** which reopened the comment period for an additional 45 days.

The decisions made by the Department in response to the comments received were the result of a thorough consideration of the merits of the points of view expressed in the comments and not the number of commenters addressing any one point.

### Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Labor. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).)

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies be submitted to the appropriate authorizing committees of Congress and that such regulations take effect no earlier than the thirtieth day after they have been so submitted. The Department of Labor is submitting this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped, and to the House Committee on Education and Labor and its Subcommittee on Select Education. The regulation will become effective on May 11, 1987.

This regulation has been reviewed by the Department of Justice (DOJ) under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298), and by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. The rule applies only to Department of Labor programs and activities and therefore does not have an impact on small entities. Accordingly, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

### Section-By-Section Analysis and Response to Comments:

In response to comments received, this final rule contains minor revisions from the rule which was proposed. However, these revisions have not materially modified the regulation. The substantive nondiscrimination obligations of the Department remain identical to those established for programs or activities receiving Federal financial assistance despite some language differences between the regulations for the two programs. (*See* 28 CFR Part 41, Section 504 coordination

regulation for federally assisted programs.)

*Section 33.1 Purpose*

No comments were received on this section and it is adopted as proposed.

Section 33.1 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

*Section 33.2 Application*

No comments were received on this section and it is adopted as proposed.

The regulation applies to all programs or activities conducted by the Department of Labor. By this, we mean programs or activities carried out by the Department either directly or through contractors acting on its behalf. In addition to employment, federally conducted programs and activities fall into two categories: those involving general public contact as part of ongoing agency operations and those directly administered by agencies for program beneficiaries. Activities in the first category would include communication with the public (*e.g.*, telephone contacts, office walk-ins or interviews, oral or visual public information). The second category includes programs that provide Federal services or benefits (*e.g.*, coal mine workers' compensation, labor certification for alien workers).

Currently, all Department of Labor programs and activities covered by this regulation are conducted under 15 major administrative components (*i.e.*, administrations, offices, commissions, etc.).

*Section 33.3 Definitions*

We received comments on four definitions in this section—"Auxiliary aids," "Facility," "Handicapped person," and "Qualified handicapped person."

One commenter suggested incorporating a definition for "reasonable accommodation." Traditionally, Government regulations have not used the term "reasonable accommodation" outside of the employment context. In the context of participation and services, we have employed other terms to convey the concepts that reasonable accommodation embodies, *e.g.*, auxiliary aids, related services, academic adjustments. Since this regulations provides that all employment-related matters arising under this rule shall be governed by the regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, use of the term "reasonable accommodation" will be limited to that context. (*See* section 33.7.)

"Auxiliary aids." "Auxiliary aids" means, for purposes of this regulation, services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Department's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 33.11(a)(1), they may also be necessary to meet other requirements of the regulation. Two commenters responded to this definition, and their comments are discussed in connection with § 33.11(a)(1). This definition is unchanged from the proposal.

"Facility." The definition of "facility" is adopted as proposed. It is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted. The two commenters who addressed this definition opposed the deletion. As we stated in the proposal, the phrase "or interest in such property," has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Department regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Department.

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Two commenters stated that we should include examples of handicapping conditions. However, a careful reading of the proposal clearly demonstrates that the definition includes sufficient examples for guidance, and nothing would be gained by adding additional examples. Therefore, the definition is adopted as proposed.

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32). This definition is adopted as proposed.

Paragraph (a) defines "qualified handicapped person" with regard to any program under which a person is required to perform services or achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of the program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It concluded, therefore, that the school was not required by § 504 to make modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

Consistent with the Court's reasoning, under this definition, the Department is expected to make modifications in order to enable a qualified handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered or perform the required services.

Eight commenters addressed this definition. They objected to the revised definition for a variety of reasons. Three stated that the Department incorrectly used *Davis* as the justification for explaining the differences in the definition of qualified handicapped individual between the federally assisted and the federally conducted regulations. These commenters argued that the Supreme Court upheld the validity of the existing federally assisted program regulations in *Consolidated Rail Corp.* v. *Darrone*, 104 S. Ct. 1248 (1984) and in *Alexander* v. *Choate*, 105 S. Ct. 712 (1985). This reliance on the Court's actions in both *Darrone* and *Choate* is misplaced. In *Darrone*, the

Court ruled on a series of issues, the most important of which was under what circumstances section 504 applied to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified handicapped person." Similarly, even though the Court in *Choate* deferred at points to the coordination regulations for federally assisted programs, it did not address any issues dealing with the definition of "qualified handicapped person." The main question addressed by the Court was whether proof of discriminatory intent is always required to establish a violation of section 504, or whether that law is also violated by conduct that has a discriminatory effect.

Five commenters urged the Department to incorporate into the definition a requirement that reasonable accommodations be considered in determinations on whether a particular individual meets the essential eligibility requirements. Even though the definition does not, by its explicit terms, include a reference to "reasonable accommodation," we recognize a direct link between qualification and accommodations. In other words, the determination of whether a person is qualified must, of necessity, include an assessment of the essential functions of the program or activity, the person's abilities, and the accommodations, if any, which might be needed. Some handicapped people will not need an accommodation in order to participate or perform, others will. Under the definition in this regulation, as long as a person meets the essential eligibility requirements and the accommodation in question does not result in a fundamental change in the nature of the program or activity, the individual will be deemed qualified.

As perceived by some commenters, under this definition of "qualified handicapped person," the individual would have an additional burden of demonstrating that participation in a program would not cause a modification that would result in a fundamental alteration of a program. This was not, however, the intent of the Department. Therefore, we have added language to the definition of "qualified handicapped person" to make it clear that the Department has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Department must follow the procedures established in §§ 33.9(a)(2) and 33.11(e), which are discussed below.

For programs or activities that do not require a person to perform a service or achieve a level of accomplishment, paragraph (b) applies. Paragraph (b) adopts the definition in the coordination regulation applicable to persons who are participants or beneficiaries of services (28 CFR 41.32(b)). Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity. In other words, a less stringent standard applies in the absence of the obligation to perform services or achieve a certain level of accomplishment. This paragraph is adopted as proposed.

Three commenters raised questions regarding the impact of the regulation on employment practices. Nothing in this Part changes the existing regulations, including definitions, applicable to employment. However, we have added a new paragraph (c) which defines the term "qualified handicapped person" for purposes of employment. This definition appears in the EEOC's regulation at 29 CFR 1613.702(f) and has been made applicable to this Part by § 33.7.

*Section 33.4 Self-evaluation*

This section requires the Department to conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process mandates consultation with handicapped persons, organizations representing handicapped persons, or other interested persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). This section is adopted as proposed. Three commenters addressed this provision and supported its inclusion in the regulation.

*Section 33.5 Notice*

Section 33.5 requires the Department to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation, consistent with the provision at 28 CFR 41(b)(1) of the coordination regulation. However, since the methods of achieving notification are of an infinite variety, the regulation does not mandate adoption of any particular type of notice. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Department's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. This provision is adopted as proposed. The two commenters who addressed this section supported its inclusion in the regulation, and offered suggestions about its implementation.

*Section 33.6 General prohibitions against discrimination*

Section 33.6 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). It is adopted as proposed. Three commenters expressed concern that the language at 28 CFR 41.51(b)(1)(v) had not been included. We read that particular provision to prohibit *recipients* from providing significant assistance to an agency, organization or person, *i.e.*, subrecipient, that discriminates on the basis of handicap. Clearly, the provision is not applicable in the context of this rule which applies only to Department of Labor conducted programs and activities.

Paragraph (a) restates the nondiscrimination mandate of section 504. No comments were received on this provision. The remaining paragraphs in section 33.6 establish the general principles for analyzing whether any particular action of the Department violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Department violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in section 33.6. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b)(1) prohibits overt denials of equal treatment of handicapped persons. More specifically, paragraph (b)(1)(iii) requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. See also, the later sections on program accessibility (sections 33.9–33.10) and communications (section 33.11) which are specific applications of this principle. The Department may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of presumptions that absolutely exclude certain classes of disabled persons (*e.g.* epileptics, hearing-impaired persons,

persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption would be permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. For example, it would be permissible to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a driver's license; but it may not be permissible to automatically disqualify all those who are blind in just one eye. One commenter objected to the use of an irrebuttable presumption in certain instances. However, as the example demonstrates, there are some handicaps which, by their very nature, preclude individuals from performing certain activities. Accordingly, this provision is unchanged from the proposal.

Despite the mandate of paragraph (d) that the Department administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv) permits the Department to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the Department's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in a program that is not designed to accommodate handicapped persons. No comments were received on this provision.

Paragraph (b)(3) prohibits the Department from utilizing criteria or methods of administration that deny handicapped persons access to the Department's programs or activities. The phrase "criteria or methods of administration" refers to official written departmental policies and the actual practice of the Department. This paragraph prohibits both blatantly exclusionary policies or practices and non-essential policies and practices that are neutral on their face, but which deny handicapped persons an effective opportunity to participate. No comments were received on this provision.

Paragraph (b)(4) specifically applies the prohibition enunciated in section 33.6(b)(3) to the process of *selecting* sites for construction of new facilities to be used by the Department. No comments were received on this provision.

The five commenters responding to proposed paragraph (b)(5) recommended its deletion. In general, they argued that the language is ambiguous, misleading or in some instances, inconsistent with the tenets of section 504 which, according to them, require that buildings owned or leased by the Department be accessible to handicapped persons. These comments reflect a misunderstanding of both the language and the purpose of paragraph (b)(5). Paragraph (b)(5) must be read in conjunction with paragraph (b)(4) which deals only with the accessibility of a site, *i.e.*, a parcel of land, for the purpose of leasing a building of constructing new facilities for use by the Department. Paragraph (b)(4) requires the Department to consider the accessibility needs of handicapped persons before making a decision regarding the selection of a particular location. This means that the Department would have to evaluate where the parcel is located (*e.g.*, at the top of a steep incline), the availability of transportation routes, the necessity for curb ramps and other modifications to the streets, etc., to determine whether the site meets the accessibility requirements. In other words, paragraph (b)(4) articulates standards applicable to future selections of sites. Paragraph (b)(5) merely clarifies the applicability of (b)(4) by stating that it does not apply where the Department is already firmly established on a site, whether through ownership or lease arrangement, and no future move is contemplated. However, paragraph (b)(5) would not exempt the Department from ensuring that the buildings and facilities on that site meet, as applicable, the accessibility standards for new construction, additions, or alterations (*see*, the discussion below regarding section 33.9 and 33.10). Moreover, in situations where the Department is leasing a building, the prohibitions contained in the (b)(4) site selection provision would be applicable to the deliberations regarding renewal of the lease.

Paragraph (b)(7) prohibits the Department from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certifications or by establishing requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap.

This paragraph also expressly excludes the programs or activities of licensees or certified entities themselves from the scope of these regulations. Such programs or activities are not themselves federally conducted programs or activities (nor are they programs or activities receiving Federal financial assistance) merely by virtue of the Federal license or certificate. No comments were received on this provision.

*Section 33.7 Employment*

This provision is adopted as proposed. It requires the Department to ensure that applicants for employment and employees are not discriminated against on the basis of handicap. The three commenters who addressed this provision indicated that the rule's treatment of employment was not sufficiently comprehensive because it: (1) Does not enumerate the employment practices covered (*e.g.*, hiring, promotion, assignment); (2) does not say what must be done to avoid or correct possible discrimination (*e.g.*, reasonable accommodation, review of preemployement tests, limitations on preemployment inquiries and the use of medical examinations); and (3) does not define a "qualified handicapped person" with respect to employment.

Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra, Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985); *cf. McGuinness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984).

Courts uniformly have held that in order to give effect to Section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, section 33.7 (Employment) of this rule adopts the definitions, regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, Subpart G. In addition to this section, § 33.12(b)(1) specifies that the Department will use the existing EEOC procedures to resolve allegations of employment discrimination.

Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the Department has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient.

*Section 33.8 Program accessibility: Discrimination prohibited*

No comments were received on this section and it is adopted as proposed.

Section 33.8 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 33.9 and 33.10.

*Section 33.9 Program accessibility: Existing facilities*

This section is adopted as proposed.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.58) with certain modifications. Thus, section 33.9 requires that a Department program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. However, section 33.9 makes clear that the Department is not necessarily required to make each of its existing facilities accessible (section 33.9(a)(1)) and, unlike 28 CFR 41.56–41.57, places explicit limits on the Department's obligation to ensure program accessibility (section 33.9(a)(2)).

Paragraph (a)(2) codifies recent case law that defines the scope of the Department's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Department is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in section 33.11(e). This provision provoked responses from six commenters. They were critical of the "undue financial and administrative burdens" language, favoring its deletion on the ground that no exception of this kind appears in the coordination regulations for federally assisted programs.

It is true that the "undue financial and administrative burdens" language is not found in the coordination regulations for federally assisted programs. However, since the promulgation of those regulations, the Federal courts have recognized that financial and administrative burdens are legitimate considerations in determining whether the failure to provide accommodations is discriminatory under Section 504.

As explained in the preamble to the Department's proposal, the "undue financial and administrative burdens" language is based on the Court's holding in *Davis* that Section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Moreover, since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought under Section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association (APTA)* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981).

The provision in paragraph (a)(2) is also supported by the Supreme Court's decision in *Choate, supra*, which involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. In *Choate*, plaintiffs argued that this reduction violated Section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that Section 504 reaches "some conduct" which has a disparate impact, but held that the reduction in inpatient care coverage was not the sort of disparate impact discrimination prohibited by Section 504 or its implementing regulations (*id.* at 720). Relying on *Davis*, the Court said that under Section 504 a balance must be struck between the rights of the qualified handicapped to "meaningful access to the benefits that the grantee offers" and the legitimate interests of Federal grantees in preserving the integrity of their programs (*id.* at 720–722).

Thus, *Choate* supports the position that, in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs or administrative burdens that the refusal to undertake the accommodations is not discriminatory. The *APTA* and *Dopico* decisions make clear that financial burdens can limit the obligation to comply with Section 504. *See also, New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982).

Two commenters also argued that inclusion of the undue burdens provision was inconsistent with a position taken by Vice President Bush in a letter of March 21, 1983, announcing the Administration's decision not to revise the coordination regulation for federally assisted programs. The Department's decision to include the undue burdens language does not conflict with the position taken by Vice President Bush on the guidelines for federally assisted programs. In his letter, the Vice President stated that "extensive change of the existing 504 coordination regulations was not required, and that with respect to those few areas where clarification might be desirable, the courts are currently providing useful guidance and can be expected to continue to do so in the future." One element of that "useful guidance" obviously comes from interpretations of the Supreme Court's holdings in *Davis* and *Choate*.

Paragraph (a)(2), however, does not relieve the Department of all obligations to handicapped persons. Even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Department must still take all reasonable actions to open participation in the Department's program to disabled persons to the fullest extent possible.

In our view, compliance with section 33.9(a) will not result, in most cases, in undue financial and administrative burdens on the Department. Further, the regulations incorporate, at section 33.9(b), procedures to ensure that an "undue burdens" decision is made only after taking numerous factors into consideration. Specifically, whenever a Department official believes that the proposed accommodation would result in a fundamental alteration of the program or undue burdens, paragraph (b)(1) requires the appropriate Department official to prepare a report for the Secretary of Labor. The Department official is also required to make reasonable efforts to ensure that the person(s) to be accommodated has an opportunity to provide information which would be relevant to the determination. Paragraph (b)(2) provides that the burden of proving that

compliance with section 33.9(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Department. Paragraph (b)(3) provides that the decision that compliance would result in such alteration or burdens must be made by the Secretary after considering all departmental resources available for use in the funding and operations of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. This decision would represent the final administrative decision of the Department, and, therefore, would be subject to judicial review. The commenters who addressed these procedures were very supportive of them.

Four commenters recommended that the decision that an action would result in undue burdens be based on the resources of the Department as a whole. We decline to accept this recommendation. The Department believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens because parts of the Department's budget are earmarked for specific purposes.

Paragraphs (e) and (f) establish time periods for complying with the program accessibility requirement. Consistent with the requirements contained in the coordination regulation for federally assisted programs (28 CFR 41.57(b)), the Department must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken witnin sixty days.

*Section 33.10 Program accessibility: New construction and alterations.*

This section is adopted as proposed. With respect to new construction, overlapping coverage exists under sections 502 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 33.10 provides that buildings constructed or altered by, on behalf of, or for the use of the Department shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with the "Uniform Federal Accessibility Standards" adopted by the General Services Administration pursuant to the Architectural Barriers Act (ABA), 41 CFR Part 101–19.600 to 101–19.607 (1985). It is appropriate to adopt the existing ABA standard for Section 504 compliance because new and altered buildings subject to this regulation are also subject to the ABA.

Two commenters expressed concern that buildings leased by the Department after the effective date of this regulation would not be required to meet the new construction standard, as long as the requirements of section 33.9 were met. This is not inappropriate because section 504 does not require that the Department establish an environment which is totally barrier-free. Some physical barriers may exist so long as they do not hinder the full participation of handicapped persons in each program or activity. Under the ABA, the Department must ensure that all facilities that it constructs, alters or leases meet the accessibility requirements prescribed by the General Services Administration. The Department will ensure compliance with the ABA standard.

*Section 33.11 Communications.*

This section is adopted as proposed. It requires the Department to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, employees, participants, and members of the public. These steps include procedures for: determining when auxiliary aids are necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the Department's program or activity (section 33.11(a)(1)); providing an opportunity for handicapped persons to request the auxiliary aids of their choice; and giving primary consideration to the expressed choice of the individual (section 33.11(a)(1)(i)). The Department shall provide such auxiliary aids at no cost to the individual unless the Department demonstrates that another effective means of communication exists or that use of the means chosen would not be required under section 33.11(e). As under section 33.9, paragraph 33.11(e) places a limit on the Department's obligation to ensure effective communication. Two commenters objected to the use of the "burden" language in paragraph (e). The Department's reasons for retaining this language have been set forth in the discussion under section 33.9(a)(2), above. The process for determining whether a proposed action would fundamentally alter the nature of a program or cause undue financial and administrative burden is also the same as that described in section 33.9(a)(2).

In general, the Department will make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities; (2) the opportunity to request a particular mode of communication; and (3) the Department's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective. In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision impaired persons, effective communication might be achieved by several means, including readers and audio recordings. The Department will also have to ensure effective communication with vision impaired and hearing impaired persons involved in hearings conducted by the Department by providing auxiliary aids, as appropriate, at the proceedings. If sign language interpreters are necessary, the Department may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (section 33.11(a)(1)(ii). For example, the Department need not provide wheelchairs, eye glasses, or hearing aids to applicants or participants in its programs.

One commenter suggested that section 33.11(a)(1)(ii) be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted. In our opinion, it is less clear than the existing formulation which parallels the requirements of the Federal Government's section 504 regulations for federally assisted programs by distinguishing between communications that are necessary to obtain the benefits of Federal programs and those that are of a purely personal nature. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between patrons.

*Section 33.12 Complaint handling procedures.*

This section has been adopted essentially as proposed. Section 33.12(c)

BEST COPY AVAILABLE

was modified in response to comments that this section failed to inform the public where complaints should be filed. In general, this section describes departmental procedures for complaints alleging handicap discrimination. Complaints other than those alleging discrimination in employment will be processed in accordance with paragraphs (c) through (n). As set forth in section 33.7, paragraph (b)(1) provides that employment complaints will be processed according to procedures established in regulations of the EEOC, 29 CFR Part 1613. Paragraph (b)(2) provides that complaints based upon program inaccessibility which raise "undue burdens" or "fundamental alteration of the program" modification issues will be handled in accordance with sections 33.9(b) and 33.11(e), as applicable.

If the Department determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and attempt referal to the appropriate Government entity (section 33.12(f)). One commenter questioned the propriety of this posture and suggested that the Department should have an absolute obligation to refer the complaint to the appropriate agency. The Department thinks that it should not act as a guarantor in this process; and that the procedures it has adopted are sufficient.

Paragraph (h) is intended to encourage the process of conciliation by requiring that all parties be given the opportunity to resolve the complaint on an informal basis at any time prior to the issuance of the determination.

Paragraph (n) requires the Department to respond to requests by the Architectural and Transportation Barriers Compliance Board (ATBCB) for information on the status of complaints alleging that a building subject to the Architectural Barriers Act or section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons. One commenter questioned why the Department would wait for a request from the ATBCB, rather than requiring an automatic notification to the ATBCB of any complaint involving the Architectural Barriers Act or section 502. In 1983, the Department and the ATBCB signed a Memorandum of Agreement which stipulates that DOL would, among other things, "develop a system of tracking and resolving complaints which adheres to the standards and timetables set forth in ATBCB regulations." The provision adopts the procedure outlined in the Agreement between the Department and ATBCB.

*Section 33.13 Intimidation and retaliation prohibited.*

No comments were received on this section and it is adopted as proposed.

Section 33.13 prohibits the discharge, intimidation, retaliation, threat, coercion or other discrimination against a person(s) who has exercised a privilege under this regulation.

**List of Subjects in 29 CFR Part 33**

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Signed at Washington, DC, this 2nd day of April, 1987.

**William E. Brock,**

*Secretary of Labor.*

For the reasons set forth in the preamble, Title 29, Subtitle A of the Code of Federal Regulations, is amended by adding a new Part 33 as set forth below.

## PART 33—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF LABOR

Sec.

33.1 Purpose.
33.2 Application.
33.3 Definitions.
33.4 Self-evaluation.
33.5 Notice.
33.6 General prohibitions against discrimination.
33.7 Employment.
33.8 Program accessibility: Discrimination prohibited.
33.9 Program accessibility: Existing facilities.
33.10 Program accessibility: New construction and alterations.
33.11 Communications.
33.12 Complaint handling procedures.
33.13 Intimidation and retaliation prohibited.

**Authority:** 29 U.S.C. 794.

### § 33.1 Purpose.

The purpose of this Part is to effectuate Section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended Section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 33.2 Application.

This Part applies to all programs or activities conducted by the Department of Labor.

### § 33.3 Definitions.

For purposes of this Part, the term—

*"Assistant Attorney General"* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*"Assistant Secretary for Administration and Management"* (ASAM) means the Assistant Secretary for Administration and Management in the Department of Labor.

*"Auxiliary aids"* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department of Labor. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. Persons with manual impairments may need other specially adapted equipment.

*"Complete complaint"* means a written statement that contains the complainant's name and address and describes the actions in sufficient detail to inform the Department of the nature and date of the alleged violation of Section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*"Department"* means the Department of Labor.

*"Director"* means the Director, Directorate of Civil Rights (DCR), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, or his or her designee.

*"Facility"* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"*Handicapped person*" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is

regarded as having such an impairment. As used in this definition, the phrase:

(a) "Physical or mental impairment" includes—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(b) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result or the attitudes or others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by the Department as having such an impairment.

"*Qualified handicapped person*" means—

(a) With respect to any program or activity of the Department under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Department can demonstrate would result in a fundamental alteration in its nature;

(b) With respect to any other Department program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity, and

(c) With respect to employment, as set forth in 29 CFR 1613.702(f), a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used:

(1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question, or

(2) Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

"*Section 504*" means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this Part, Section 504 applies only to programs or activities conducted by Executive agencies and not to programs or activities which receive Federal financial assistance.

### § 33.4 Self-evaluation.

(a) The Department shall, by May 11, 1988, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this Part, and, to the extent modification of any such policies and practices is required, the Department shall proceed to make the necessary modifications.

(b) The Department shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

### § 33.5 Notice.

The Department shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this Part and its applicability to the programs or activities conducted by the Department, and make such information available to them in such manner as the ASAM finds necessary to apprise such persons of the protections against discrimination assured them by Section 504 and this regulation.

### § 33.6 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

(b)(1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Department may not deny a qualified handicapped person the opportunity to participate in programs or activities despite the existence of permissibly separate or different programs or activities.

(3) The Department may not, directly or through contractual or other arrangements, utilize criteria or methods

of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Department; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The provisions of paragraph (b)(4) of this section do not apply to sites or locations at which the Department owns or leases buildings on the date the regulations in this Part become effective.

(6) The Department, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(7) The Department may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. This Part does not apply to the programs or activities of non-departmental entities that are licensed or certified by the Department of Labor.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this Part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

**§ 33.7 Employment.**

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

**§ 33.8 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in §§ 33.9 and 33.10 of this Part, no qualified handicapped person shall, because the Department's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

**§ 33.9 Program accessibility: Existing facilities.**

(a) *General.* The Department shall operate such program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(b)(1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available for use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (b)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents the final administrative action of the Department.

(3) The Department has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or undue burdens.

(c) If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that qualified handicapped persons receive the benefits and services of the program or activity.

(d) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Alterations to existing buildings shall be made in accordance with the provisions of § 33.10 of this Part. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(e) *Time period for compliance.* The Department shall comply with the obligations established under this section within sixty days of the effective date of this Part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this Part, but in any event as expeditiously as possible.

(f) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Department shall

develop, within six months of the effective date of this Part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons and organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Department's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

**§ 33.10 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered after the effective date of this Part by, on behalf of, or for the use of the Department shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons in accordance with the requirements of the Uniform Federal Accessibility Standards adopted by the General Services Administration at 41 CFR Part 101–19.600 to 101–19.607 (1984).

**§ 33.11 Communications.**

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(i) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the requests of the handicapped person.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Department communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs), or equally effective telecommunications systems shall be used.

(b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signage at a primary entrance to each of its accessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The Department shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the Department's programs or activities. If the Department uses recruitment materials, informational publications, or other materials which it distributes or makes available to participants, beneficiaries, referral sources, applicants, employees, or the public, it shall include in those materials or publications a statement of the policy described in § 33.6 of this Part and information as to complaint procedures. The requirements of this paragraph may be met either by including applicable inserts in existing materials and publications or by revising and reprinting such materials, as appropriate.

(e) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available or use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (e)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents the final administrative action of the Department.

(3) The Department has the burden of proving that compliance with paragraphs (a) through (d) of this section, as applicable, would result in such alteration or undue burdens.

(f) If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

**§ 33.12 Complaint handling procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by DOL.

(b)(1) Complaints alleging violations of Section 504 with respect to employment shall be processed according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) Complaints based upon program inaccessibility in violation of section 504 will be governed by the procedures at §§ 33.9(b) and 33.11(e) of this Part, as applicable.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Directorate of Civil Rights (DCR). Complaints may be delivered or mailed to the Director, Directorate of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4123, Washington, DC 20210.

(d) All complaints must be filed within 180 days of the alleged act of

discrimination. The Director may extend this time period for good cause.

(e) Where a complaint contains insufficient information, the Director shall seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been utilized to locate him or her, or the information is not furnished within 30 days of the date of such request, the complaint may be dismissed upon notice sent to the complainant's last known address.

(f) If the Director receives a complaint over which the Department does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(g) The Director shall accept and investigate all complete complaints which are timely filed, are within the Department's jurisdiction, and state an allegation(s) which, if true, would violate section 504 or its implementing regulations.

(1) Where the Director determines that the complaint will be investigated, he or she will notify the complainant(s) and the appropriate Department official(s).

(2) Such notification will advise the parties that a determination on the merits of the complaint will be issued within 180 days of the date of notification unless the matter is resolved informally prior to that time.

(3) If, during the course of the investigation, the Department official states that he or she believes that resolution of the complaint would require a fundamental alteration of the program or undue financial and administrative burdens, the complaint will proceed in accordance with §§ 33.9(b) and 33.11(e) of this Part, as applicable.

(h) At any time prior to the issuance of the determination the parties to the complaint may resolve the complaint on an informal basis. For this purpose, the Director shall furnish, to the extent permitted by law, a copy of the investigative file to the complainant and the appropriate Department official. If the complaint is resolved, the terms of the agreement shall be reduced to writing and entered as part of the official file by the Deputy Assistant Secretary for Administration and Management (Deputy ASAM).

(i) If informal resolution is not achieved, the Deputy ASAM shall issue a determination on the merits which notifies the parties to the complaint of the results of the investigation and includes—

(1) The findings of fact and conclusions of law;

(2) A remedy and/or corrective action, as appropriate, for each violation found; and

(3) A notice of the right to appeal to the Assistant Secretary for Administration and Management (ASAM).

(j)(1) An appeal of the Deputy ASAM's determination may be filed with the ASAM by any party to the complaint. Such appeal must be filed within 30 days of receipt of the determination. The ASAM may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the ASAM. The ASAM's determination shall be based upon the written record which may include, but is not limited to, the determination made by the Deputy ASAM, the investigative file, and any other materials submitted by the parties pursuant to a request from the ASAM.

(k) The ASAM shall notify all parties of his or her determination on the appeal within 90 days of the receipt of the appeal. The ASAM's determination represents the final administrative decision by the Department.

(l) The time limits cited in paragraphs (g)(2) and (k) of this section may be extended with the permission of the Assistant Attorney General.

(m) The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

(n) The Director shall respond to requests by the Architectural and Transportation Barriers Compliance Board for information on the status of any complaint alleging that buildings that are subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), are not readily accessible and usable to handicapped persons.

**§ 33.13 Intimidation and retaliation prohibited.**

No person may discharge, intimidate, retaliate, threaten, coerce or otherwise discriminate against any person because such person has filed a complaint, furnished information, assisted or participated in any manner in an investigation, review, hearing or any other activity related to the administration of, or exercise of authority under, or privilege secured by Section 504 and the regulations in this Part.

[FR Doc. 87–7883 Filed 4–8–87; 8:45 am]
BILLING CODE 4510–23–M

# Reader Aids

Federal Register

Vol. 52, No. 68

Thursday, April 9, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453

**5 CFR**

213.....11185
1201.....10875

**7 CFR**

210.....11186
272.....11021
273.....11021
301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728
910.....10729
1040.....11455
1097.....10729
1137.....10730
1468.....10731
1472.....10731
1475.....10725
1951.....11456
**Proposed Rules:**
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
945.....10893
994.....10984
1046.....11475
1955.....10577
1965.....10577

**9 CFR**

78.....10554
92.....11022
102.....11024
114.....11024
**Proposed Rules:**
92.....10765
317.....10766
319.....10766

**10 CFR**

0.....11026
**Proposed Rules:**
2.....11475
50.....10771

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
**Proposed Rules:**
325.....11476
337.....11492
612.....11080

**14 CFR**

39.....10558, 10735, 10736
71.....10559, 11028, 11032-11034
73.....10559, 10560, 11033, 11034
95.....10737
1215.....10880
**Proposed Rules:**
39.....10581, 11081
71.....10582, 11082

**15 CFR**

371.....10741
399.....11457
**Proposed Rules:**
7.....11498
280.....11498
368.....10771

**17 CFR**

241.....11458
270.....11187
**Proposed Rules:**
240.....11083, 11089

**18 CFR**

16.....11035
271.....10741
381.....10366
**Proposed Rules:**
4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
177.....11216
**Proposed Rules:**
111.....10774

**20 CFR**

10 ..... 10486
200 ..... 11010
209 ..... 11010
210 ..... 11010
216 ..... 11010
217 ..... 11010
230 ..... 11010
234 ..... 11010
260 ..... 11010
266 ..... 11010
320 ..... 11010
322 ..... 11010
325 ..... 11010
330 ..... 11010
335 ..... 11010
341 ..... 11010
345 ..... 11010
655 ..... 11460
656 ..... 11217

**Proposed Rules:**

200 ..... 10384
615 ..... 10774

**21 CFR**

5 ..... 10881
81 ..... 10882
172 ..... 10882
175 ..... 10883
184 ..... 10884
193 ..... 10561, 10562
510 ..... 10668, 11040, 11041
520 ..... 10668, 11041
522 ..... 10668
524 ..... 10668, 10886
529 ..... 10668
558 ..... 11040, 11041
561 ..... 10562
573 ..... 10887
1308 ..... 11042

**Proposed Rules:**

1301 ..... 11091

**23 CFR**

**Proposed Rules:**

650 ..... 11092
655 ..... 11502

**24 CFR**

511 ..... 11466

**Proposed Rules:**

511 ..... 11598
905 ..... 10668
968 ..... 10668

**25 CFR**

120 ..... 11467

**Proposed Rules:**

40 ..... 11503

**26 CFR**

1 ..... 10368, 10741, 10742
5f ..... 10368
54 ..... 10563
502 ..... 10368, 10563, 10742

**Proposed Rules:**

1 ..... 10774
54 ..... 10583
602 ..... 10583, 10774

**28 CFR**

0 ..... 11043
545 ..... 10528

**Proposed Rules:**

549 ..... 10531

**29 CFR**

33 ..... 11600
2644 ..... 10368

**Proposed Rules:**

1601 ..... 11503
1625 ..... 10584
1910 ..... 10586

**30 CFR**

914 ..... 10369, 10373
946 ..... 11044

**Proposed Rules:**

723 ..... 11287
724 ..... 11287
733 ..... 10898
845 ..... 11287
846 ..... 11287
910 ..... 11287
912 ..... 11287
921 ..... 11287
922 ..... 11287
933 ..... 11287
937 ..... 11287
939 ..... 11287
941 ..... 11287
942 ..... 11287
947 ..... 11287

**31 CFR**

103 ..... 11436

**32 CFR**

154 ..... 11219
701 ..... 11051
706 ..... 10374, 10748, 10749

**33 CFR**

60 ..... 11506
62 ..... 11506
66 ..... 11506
100 ..... 11506
110 ..... 11512

**Proposed Rules:**

100 ..... 10593, 10594, 10905, 10906

**34 CFR**

628 ..... 11256

**Proposed Rules:**

206 ..... 11448

**36 CFR**

1 ..... 10670
2 ..... 10670
4 ..... 10670
7 ..... 10670
34 ..... 10670
228 ..... 10564

**Proposed Rules:**

9 ..... 10866

**37 CFR**

**Proposed Rules:**

307 ..... 11096

**38 CFR**

1 ..... 10888
17 ..... 11259

**Proposed Rules:**

17 ..... 10907

**39 CFR**

10 ..... 10375
111 ..... 10749

**40 CFR**

52 ..... 10751, 11259
60 ..... 10852, 11420
110 ..... 10712
180 ..... 10375, 10376, 10565, 10567, 11260, 11261
271 ..... 10568, 11263
761 ..... 10688
799 ..... 10377, 10752

**Proposed Rules:**

52 ..... 10596, 11287, 11288
141 ..... 10972
142 ..... 10972
143 ..... 10972
180 ..... 11292, 11293
261 ..... 11513
300 ..... 11513

**41 CFR**

101-20 ..... 11263
101-28 ..... 11275
201-32 ..... 10379

**42 CFR**

7 ..... 11072

**Proposed Rules:**

405 ..... 11517

**44 CFR**

64 ..... 10753

**Proposed Rules:**

5 ..... 10385
6 ..... 10385

**45 CFR**

Ch. II ..... 11073
Ch. III ..... 11073
Ch. IV ..... 11073
Ch. X ..... 11073
2201 ..... 10870

**46 CFR**

401 ..... 11468

**Proposed Rules:**

154 ..... 10598
382 ..... 11518
502 ..... 10912

**47 CFR**

2 ..... 10568
22 ..... 10571
73 ..... 10381, 10382, 10568, 10757, 11471-11473
74 ..... 10568, 11474
78 ..... 10568

**Proposed Rules:**

1 ..... 11519
21 ..... 11519
73 ..... 11519-11521
74 ..... 11519
90 ..... 10389
94 ..... 11519

**48 CFR**

7 ..... 11074
215 ..... 11276
217 ..... 11076
252 ..... 11076, 11276

**Proposed Rules:**

509 ..... 10913

**49 CFR**

219 ..... 10575
1003 ..... 11277
1043 ..... 11277
1084 ..... 11277
1207 ..... 10382
1249 ..... 10382

**Proposed Rules:**

Ch. X ..... 11295
571 ..... 10775
1312 ..... 10913
1320 ..... 11295

**50 CFR**

17 ..... 10890, 11162, 11277
301 ..... 10759
611 ..... 10761
642 ..... 10762
652 ..... 10763
663 ..... 11473
672 ..... 10761
675 ..... 10761

**Proposed Rules:**

640 ..... 10780
651 ..... 10781

## List of Public Laws

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List April 8, 1987**

4-10-87
Vol. 52 No. 69

# federal register

Friday
April 10, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

L
2
S
9
P
0
87
M I

4-10-87
Vol. 52 No. 69
Pages 11611-11806

# Federal Register

Friday
April 10, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 69

Friday, April 10, 1987

**Agricultural Marketing Service**
RULES
Lemons grown in California and Arizona, 11615
Marketing orders; expenses and rates of assessment, 11616
Oranges (navel) grown in Arizona and California, 11615

**Agriculture Department**
*See also* Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation
NOTICES
Privacy Act:
Systems of records, 11715

**Alcohol, Tobacco and Firearms Bureau**
PROPOSED RULES
Alcohol; viticultural area designations:
San Benito, CA, 11689

**Animal and Plant Health Inspection Service**
RULES
Exportation and importation of animal and animal products:
Pork hams; importation, 11622

**Army Department**
NOTICES
Meetings:
Science Board, 11728

**Bonneville Power Administration**
NOTICES
Aluminum smelters in Pacific Northwest; conservation/modernization program; decision, 11731

**Coast Guard**
RULES
Anchorage regulations:
California, 11645
Drawbridge operations:
Florida, 11646
PROPOSED RULES
Drawbridge operations:
North Carolina, 11695
Regattas and marine parades:
Annual marine events within Second Coast Guard District, 11693

**Commerce Department**
*See* Economic Development Administration; International Trade Administration; National Oceanic and Atmospheric Administration

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
India, 11723
Indonesia, 11726
Taiwan, 11725
Export visa requirements; certification, etc.:
Indonesia, 11726
Nepal, 11724

**Commodity Credit Corporation**
RULES
Loan and purchase programs:
Honey price support program, 11617–11619 (2 documents)
NOTICES
Contract fees, annual:
Grain and rice storage agreement, uniform, 11716

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 11796

**Defense Department**
*See also* Army Department
NOTICES
Meetings:
Integrated Long-Term Strategy Advisory Committee, 11727
Travel per diem rates, civilian personnel, 11727

**Economic Development Administration**
RULES
Nondiscrimination on the basis of age in federally-assisted programs or activities, 11626

**Education Department**
NOTICES
Grants; availability, etc.:
Handicapped individuals; special recreation program, 11729
Funding priorities, 11800
Handicapped youth program; transitional planning services, 11729
(3 documents)
Special projects and demonstrations for providing supported employment services to severely disabled individuals, 11729
Meetings:
Indian Education National Advisory Council, 11729
Postsecondary education:
Guaranteed student loan, SLS, PLUS, and consolidation loan programs; special allowances, 11730

**Employment and Training Administration**
NOTICES
Adjustment assistance:
A. Brandt Co. et al., 11766

**Employment Standards Administration**
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 11765

**Energy Department**
*See also* Bonneville Power Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration

NOTICES
Committees; establishment, renewals, terminations, etc.:
Innovative Control Technology Advisory Panel, 11731

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
North Carolina, 11647
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 11696
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 11749
Weekly receipts, 11750
Health risk assessment; guidelines, etc.:
Chlorinated dibenzo-p-dioxins and dibenzofurans, 11749
Meetings:
Biotechnology Science Advisory Committee, 11750

**Equal Employment Opportunity Commission**
NOTICES
Meetings; Sunshine Act, 11796

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
RULES
Aircraft products and parts, certification:
Peterson Aviation, Inc.; special conditions for use of anti-detonation injection system provisions, 11627
Airworthiness directives:
Avions Pierre Robin, 11633
Beech, 11630, 11634
(2 documents)
Piper, 11631
Societe Nationale Industrielle Aerospatiale, 11639
PROPOSED RULES
Airworthiness directives:
Boeing, 11663
CASA, 11664
NOTICES
Advisory circulars; availability, etc.:
Aircraft tires; inspection, retread, repair and alterations, 11793
Airport noise compatibility program:
Scottsdale Municipal Airport, AZ, 11794
Meetings:
Aeronautics Radio Technical Commission, 11795

**Federal Communications Commission**
RULES
Practice and procedure:
Equal Access to Justice Act; implementation, 11652
Radio and television broadcasting:
Oversight; clarifications and editorial corrections, etc., 11653

**Federal Deposit Insurance Corporation**
PROPOSED RULES
Capital maintenance, 11660
NOTICES
Meetings; Sunshine Act, 11796, 11797
(2 documents)

**Federal Emergency Management Agency**
PROPOSED RULES
Flood elevation determinations:
Alabama et al., 11702

**Federal Energy Regulatory Commission**
NOTICES
Hydroelectric applications, 11731
Meetings; Sunshine Act, 11797
*Applications, hearings, determinations, etc.:*
FMP Operating Co., 11735
Newmont Oil Co., 11736
Phillips 66 Natural Gas Co., 11736
Phillips Petroleum Co., 11736
Union Oil Co. of California et al., 11737

**Federal Home Loan Bank Board**
NOTICES
*Applications, hearings, determinations, etc.:*
First Federal Savings & Loan Association of Canton, 11751
Gateway Federal Savings & Loan Association, 11751
Peoples Savings Bank, F.S.B., 11751
St. Paul Federal Bank for Savings, 011751
Washington Federal Savings Bank, 11751

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 11796
(2 documents)
*Applications, hearings, determinations, etc.:*
Meyers, Gerald C., et al., 11751
Peoples Bancshares, Inc., 11752

**Financial Management Service**
*See* Fiscal Service

**Fiscal Service**
NOTICES
Surety companies acceptable on Federal bonds:
Public Service Mutual Insurance Co., 11795

**Fish and Wildlife Service**
NOTICES
Endangered and threatened species permit applications, 11755

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Morantel tartrate, 11642
Food additives:
Polymers—
Isobutylene-butene copolymers, 11641
NOTICES
Human drugs:
Dipyridamole; drug efficacy study implementation; approval withdrawn, 11753

**Foreign Claims Settlement Commission**
PROPOSED RULES
Freedom of Information Act; implementation
Uniform fee schedule and administrative guidelines, 11712

**Health and Human Services Department**
*See also* Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Public Health Service

RULES
Medicare programs:
Fraud and abuse; civil monetary penalties and exclusions for assistants at cataract surgery, 11649
NOTICES
Agency information collection activities under OMB review, 11752

**Health Care Financing Administration**
RULES
Medicare and Medicaid:
Reporting and recordkeeping requirements, 11647

**Health Resources and Services Administration**
*See also* Public Health Service
NOTICES
Meetings; advisory committees:
May, 11754

**Hearings and Appeals Office, Energy Department**
NOTICES
Special refund procedures; implementation, 11737

**Housing and Urban Development Department**
RULES
Manufactured home procedural and enforcement regulations:
State administrative agencies; list revision, 11644
Mortgage and loan insurance programs:
Maximum mortgage limits for high-cost areas, 11643
PROPOSED RULES
National Housing Act; implementation:
Mutual insurance programs; direct endorsement processing, 11686
NOTICES
Grants; availability, etc.:
Neighborhood development demonstration program, 11802

**Immigration and Naturalization Service**
RULES
Nonimmigrant classes:
Nonimmigrant classification; change to (N) status, 11621
Nonimmigrants; documentary requirements; waivers, etc.:
Waiver of excludability (Form I-191), 11620
PROPOSED RULES
Immigration:
Adjustment of status to that of persons admitted for permanent residence
Cuban Adjustment Act applicants; local police clearance, 11659

**Indian Affairs Bureau**
NOTICES
Reservation establishment, additions, etc.:
Pueblo Santa Ana, NM, 11756

**Interior Department**
*See* Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

**International Trade Administration**
RULES
Export licensing:
Policy clarifications, 11640
NOTICES
Antidumping:
Bicycle speedometers from Japan, 11720
Tapered roller bearings and parts, finished or unfinished, from—
Hungary, 11721
Japan, 11722
Romania, 11722
Export privileges, actions affecting:
Wellems, Jeanette, et al., 11717

**International Trade Commission**
NOTICES
Import investigations:
Stainless steel butt-weld pipe fittings from Japan, 11759

**Interstate Commerce Commission**
NOTICES
Railroad services abandonment:
Baltimore & Ohio Railroad Co., 11760
New York, Susquehanna & Western Railway Corp., 11760

**Justice Department**
*See* Foreign Claims Settlement Commission; Immigration and Naturalization Service; Justice Statistics Bureau; Juvenile Justice and Delinquency Prevention Office

**Justice Statistics Bureau**
NOTICES
Cooperative agreements:
National drug enforcement data clearinghouse, 11760

**Juvenile Justice and Delinquency Prevention Office**
NOTICES
Meetings:
Missing Children Advisory Board, 11764

**Labor Department**
*See* Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefits Administration

**Land Management Bureau**
NOTICES
Environmental statements; availability, etc.:
Phoenix Wilderness study areas, AZ, 11756
Withdrawal and reservation of lands:
Utah, 11756, 11757
(2 documents)

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
Abednego Coal Co., 11767
Eastern Coal Corp., 11767
H L & W Coal Co., 11767
Lady Blue Coal Inc., 11768
L.G. Everist, Inc., 11768
Peabody Coal Co., 11769
Raco Mining Co., 11769
Rushton Mining Co., 11770
U.S. Steel Mining Co., Inc., 11770

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
Chevron U.S.A. Inc., 11757
Conoco Inc., 11757
Hall-Houston Oil Co., 11758

**National Oceanic and Atmospheric Administration**
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 11713
NOTICES
Meetings:
Emergency striped bass research study, 11723
North Pacific fur seals, 11723

**National Park Service**
NOTICES
Concession contract negotiations:
Forever Living Products, Inc., 11758
Guest Services, Inc., 11758

**National Science Foundation**
NOTICES
Meetings:
Biochemistry Advisory Panel, 11786
Biological Instrumentation Advisory Panel, 11786
Developmental Neuroscience Program Advisory Panel, 11786
Engineering Advisory Committee, 11786
Ethics and Values Studies Advisory Panel, 11787
Prokaryotic Genetics Advisory Panel, 11787
Sociology Advisory Panel, 11787

**Nuclear Regulatory Commission**
NOTICES
*Applications, hearings, determinations, etc.:*
Niagara Mohawk Power Corp., 11787

**Occupational Safety and Health Administration**
NOTICES
State plans; standards approval, etc.:
New Mexico, 11771

**Pension and Welfare Benefits Administration**
NOTICES
Employee benefit plans; prohibited transaction exemptions:
IBI, Inc., et al., 11771
Samuel Francis Russ, Jr. Keogh Plan, et al., 11773

**Personnel Management Office**
PROPOSED RULES
Restoration to duty from military service or compensable injury, 11657
NOTICES
Agency information collection activities under OMB review, 11789

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
POW Recognition Day, National Former (Proc. 5626), 11611
Small Business Week (Proc. 5627), 11613

**Public Health Service**
*See also* Food and Drug Administration; Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration, 11754
Surgeon General Office, 11754

**Securities and Exchange Commission**
PROPOSED RULES
Financial statements (Regulation S-X):
Independent accountants; mandatory peer review, 11665
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 11789
National Association of Securities Dealers, Inc., 11792
Options Clearing Corp., 11792
*Applications, hearings, determinations, etc.:*
American Southwest Finance Co.; correction, 11792

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Permanent program submission:
Ohio, 11692

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See also* Coast Guard; Federal Aviation Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Trans Global Airlines, Inc., 11793

**Treasury Department**
*See* Alcohol, Tobacco and Firearms Bureau; Fiscal Service

**Western Area Power Administration**
NOTICES
Power rate adjustments:
Rio Grande Project, NM, 11744

---

**Separate Parts In This Issue**

**Part II**
Department of Education, 11800

**Part III**
Department of Housing and Urban Development, 11802

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**
**Proclamation:**
5626 ..... 11611
5627 ..... 11613

**5 CFR**
**Proposed Rules:**
353 ..... 11657

**7 CFR**
907 ..... 11615
910 ..... 11615
925 ..... 11616
927 ..... 11616
1434 (2 documents) ..... 11617–11619

**8 CFR**
212 ..... 11620
248 ..... 11621
**Proposed Rules:**
245 ..... 11659

**9 CFR**
94 ..... 11622

**12 CFR**
**Proposed Rules:**
325 ..... 11660

**13 CFR**
311 ..... 11626

**14 CFR**
21 ..... 11627
23 ..... 11627
39 (5 documents) ..... 11630–11639
**Proposed Rules:**
39 (2 documents) ..... 11663, 11664

**15 CFR**
370 ..... 11640
376 ..... 11640
399 ..... 11640

**17 CFR**
**Proposed Rules:**
210 ..... 11665
239 ..... 11665
240 ..... 11665
279 ..... 11665

**21 CFR**
177 ..... 11641
558 ..... 11642

**24 CFR**
201 ..... 11643
203 ..... 11643
234 ..... 11643
3283 ..... 11644
**Proposed Rules:**
200 ..... 11686

**27 CFR**
**Proposed Rules:**
9 ..... 11689

**30 CFR**
**Proposed Rules:**
935 ..... 11692

**33 CFR**
110 ..... 11645
117 ..... 11646
**Proposed Rules:**
100 ..... 11693
117 ..... 11695

**40 CFR**
52 ..... 11647
**Proposed Rules:**
52 ..... 11696

**42 CFR**
400 ..... 11647
482 ..... 11647
1001 ..... 11649
1003 ..... 11649

**44 CFR**
**Proposed Rules:**
67 ..... 11702

**45 CFR**
**Proposed Rules:**
503 ..... 11712

**47 CFR**
1 ..... 11652
73 ..... 11653

**50 CFR**
**Proposed Rules:**
642 ..... 11713

OL
2
S S
9
P
O
87
M I

Federal Register
Vol 52, No. 69
Friday, April 10, 1987

# Presidential Documents

Title 3—

## The President

Proclamation 5626 of April 8, 1987

## National Former POW Recognition Day, 1987

By the President of the United States of America

A Proclamation

More than 80,000 Americans living today are former prisoners of war. Many of these courageous men and women were subjected for months and years to brutal and inhumane treatment by their captors, in violation of international codes and customs for the treatment of prisoners of war. Many prisoners died or were disabled; all suffered prolonged and extraordinary hardships. The members of their families also endured torment, the agony of prolonged separation or of having no word of their loved ones.

The great courage and sacrifices of American prisoners of war and their families will live in the memory of our countrymen forever. These patriots—who served and suffered and prevailed for love of our country—deserve every tribute from a Nation proud and solemnly grateful for their faith and their valor.

The Congress, by Senate Joint Resolution 47, has designated April 9, 1987, as "National Former POW Recognition Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 9, 1987, National Former POW Recognition Day, and I urge all Americans to acknowledge the special debt we owe to our fellow citizens who underwent a great ordeal in the service of our country, and to their families. I also call upon government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-8239
Filed 4-9-87; 11:10 am]
Billing code 3195-01-M

# Presidential Documents

**Proclamation 5627 of April 8, 1987**

## Small Business Week, 1987

**By the President of the United States of America**

**A Proclamation**

An essential part of our heritage as Americans is our free enterprise system. America's millions of small business men and women exemplify the freedoms we all have—the freedoms to produce and create wealth as we choose, to earn and save and invest, to make opportunities for ourselves and others. Our rights to life, liberty, and the pursuit of happiness include and presuppose these rights, and our system of limited constitutional government enshrines them and protects them equally for all. We should be extremely grateful to all entrepreneurs for reminding us in their daily lives of the blessings and importance of economic freedom.

We can also be grateful for small business men and women's tremendous contributions to our economy, our competitiveness, and our entire way of life. They create wealth. They develop new products and services, enhance existing ones, offer jobs and opportunities to millions of other Americans, and help fuel our economic expansion for the benefit of all. Their innovation, initiative, and example prompt hundreds of thousands of Americans, including young people, to join their ranks and start their own small businesses each year. In just this way, through the years, have America's communities been born, our people employed, our towns and cities grown.

The creativity, confidence, and skills of small business men and women help ensure that America will continue to grow and prosper in freedom and opportunity. That is a source of great pride to every American.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week of May 10 through May 16, 1987, as Small Business Week, and I urge all Americans to join with me in saluting our small business men and women by observing that week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-6240
Filed 4-9-87; 11:11 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 52, No. 69
Friday, April 10, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 907

[Navel Orange Regulation 655]

### Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 655 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period April 10, 1987, through April 16, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

**DATE:** Regulation 655 (§ 907.955) is effective for the period April 10, 1987, through April 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee met publicly on April 7, 1987, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 1 vote a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

**List of Subjects in 7 CFR Part 907**

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

### PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.955 Navel Orange Regulation 655 is added to read as follows:

**§ 907.955 Navel Orange Regulation 655.**

The quantities of navel oranges grown in California and Arizona which may be handled during the period April 10, 1987, through April 16, 1987, are established as follows:

(a) *District 1:* 1,750,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

Dated: April 8, 1987.

**Eric M. Forman,**

*Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8202 Filed 4–9–87; 8:45 am]
BILLING CODE 8410–02–M

### 7 CFR Part 910

[Lemon Regulation 556]

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 556 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period April 12–18, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 556 (§ 910.856) is effective for the period April 12–18, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington DC 20250, telephone (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has

been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this section will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on April 7, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 1 vote a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is very slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of Subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, and Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.856 is added to read as follows:

**§ 910.856 Lemon Regulation 556.**

The quantity of lemons grown in California and Arizona which may be handled during the period April 12 through April 18, 1987, is established at 325,000 cartons.

Dated: April 8, 1987.

Eric M. Forman,

*Acting Director, Fruit and Vegetable Division, Agriculture Marketing Service.*

[FR Doc. 87–8201 Filed 4–9–87; 8:45 am]

BILLING CODE 3410–02–M

---

**7 CFR Parts 925 and 927**

## Expenses and Assessment Rates for Specified Marketing Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 925 for the 1986–87 fiscal period. Marketing Order 927 expenses are increased for the 1986–87 fiscal period. Funds to administer these programs are derived from assessments on handlers.

**EFFECTIVE DATES:** December 1, 1986–November 30, 1987 (§ 925.206); July 1, 1986–June 30, 1987 (§ 927.226).

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601 through 674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 22 handlers of California desert grapes and 96 handlers of California-Oregon-Washington winter pears who will be subject to regulation under these marketing orders during the course of the respective season for each specified commodity. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers are believed to be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. Each marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of each period. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budgets are formulated and discussed in public meetings, thus all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is a derived figure. It is merely applying a rate per unit of the commodity (e.g. per pound, ton, box, carton, etc.), to the estimated production in order to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season

starts and expenses are incurred on a continuous basis, therefore budget and assessment rate approval must be expedited in order that the committees will have funds to pay their expenses.

While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handlers which do not impose a significant economic impact on the small entities involved.

Based on the foregoing, the Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public rulemaking procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the Act.

**List of Subjects**

*7 CFR Part 925*

Marketing agreements and orders, Grapes (California).

*7 CFR Part 927*

Marketing agreements and orders, Pears (Oregon, Washington, California).

1. The authority citation for 7 CFR Parts 925 and 927 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 925.206 is added to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

**PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA**

**§ 925.206 Expenses and assessment rate.**

Expenses of $43,300 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.003 per 22-pound container of grapes is established for the fiscal period ending November 30, 1987.

**PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, AND DOYENNE DU COMICE, VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA**

**§ 927.226 [Amended]**

3. Section 927.226 is amended by changing "$2,149,613" to "$2,649,613."

Dated: April 6, 1987.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–7937 Filed 4–9–87; 8:45 am]

BILLING CODE 3410–02–M

---

**Commodity Credit Corporation**

**7 CFR Part 1434**

## Honey Price Support Regulations Governing 1986–1990 Crops

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends the Honey Price Support Regulations to provide: (1) That the Secretary of Agriculture shall make price support available to producers through loans, purchases or other operations, as determined and announced annually by the Secretary, (2) that the honey container requirements may be waived by Commodity Credit Corporation (CCC) when producers agree to redeem, under the lower repayment option provision and within a period of time determined by CCC, honey pledged as collateral for price support loans, and (3) for certain miscellaneous amendments.

**DATES:** *Effective Dates:* April 9, 1987. Comments must be received on or before May 11, 1987, in order to be assured of consideration.

**ADDRESS:** Send comments on the interim rule to Director, Cotton, Grain and Rice Price Support Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be made available for public inspection in Room 3627—South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ross Ballard, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447–4704.

**SUPPLEMENTARY INFORMATION:** Information collection requirements contained in this regulation (7 CFR Part 1434) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35, and have been assigned OMB clearance numbers 0560–0040 and 0560–0087.

This interim rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that provisions of this interim rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this interim rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an environmental assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

**A. Loans, Purchases, or Other Operations**

Section 201 of the Agricultural Act of 1949, as amended (the "1949 Act"), was amended by section 1041 of the Food Security Act of 1985 (the "1985 Act") to provide that "[f]or each of the 1986 through 1990 crops of honey, the price of honey shall be supported through loans, purchases, or other operations" and specified: (1) The loan and purchase levels for honey for the 1986 and 1987 crop years and (2) the formula for determining the loan and purchase levels for 1988 through 1990 crops of honey.

Section 201 of the 1949 Act was also amended by section 1041 of the 1985 Act to provide that for the 1986 through 1990 crops of honey, the Secretary may permit producers to repay their price support loans at the lesser of the loan level or a level determined by the Secretary that will: (i) Minimize the number of loan forfeitures; (ii) not result in excessive total stocks of honey; (iii) reduce the costs incurred by the Federal Government in storing honey; and (iv) maintain the competitiveness of honey in domestic and export markets.

The Honey Price Support Regulations governing 1986–1990 crops of honey (the "regulations") were amended (interim rule published July 17, 1986, 51 FR 2585) to permit honey producers to repay their price support loans at a level lower than the loan level. The lower level was to be determined and publicly announced by the Secretary, or a designee on a weekly basis.

Currently, the regulations provide at 7 CFR 1434.1 that "[p]rice support will be made available through loans on and purchases of eligible honey." It has been determined that the regulations should be amended to provide for an annual determination and announcement by the Secretary as to whether price support would be made available to producers through loans, purchases or other operations.

The method by which price support is made available becomes more important in view of the authority now provided the Secretary to permit producers to repay their loans at a level lower than the support level which will: (1) Minimize the number of loan forfeitures; (2) not result in excessive stocks of honey; (3) reduce the costs incurred by the Federal Government in storing honey; and (4) maintain the competitiveness of honey in domestic and export markets.

An annual determination of the method by which price support would be made available to producers will permit the Secretary to best maintain the competitive relationship of honey in domestic and export markets after taking into consideration the cost of producing honey, supply and demand conditions, and world prices of honey.

**B. Eligible Container Requirements**

Currently, the regulations at 7 CFR 1434.7(c) provide specific requirements for containers in which honey must be packed in order to be eligible for price support. Since honey that is offered for price support loans or purchases may have to be stored by the producer or CCC for periods longer than is customary in commercial transactions, the container requirements protect CCC and the producer from problems which may arise due to long storage. In addition, the container requirements provide cost effective storage and handling, and honey in uniform size storage containers can be more efficiently disposed of by CCC.

Under the lower repayment option, a producer may redeem his honey in a short period of time after obtaining a price support loan. In such case, honey containers suitable for long term storage and of a uniform size are not necessary. This interim rule permits producers, who agree to redeem honey pledged as collateral, to utilize the type of containers suitable for their own purposes rather than use the type of containers required by the regulations.

Accordingly, the container requirements in the regulations (7 CFR 1434.7(c)) are amended to provide that CCC may waive the container requirements if a producer agrees to redeem, pursuant to the lower loan repayment option provision and within a period of time determined by CCC, honey pledged as collateral for a price support loan.

**C. Miscellaneous Changes**

*1. Limitation of Waiver Authority*

It has been determined that § 1434.2(c) which provides that the authority provided in the regulations to administer the honey price support program does not include authority to modify or waive any provisions of the regulations should be deleted. It is believed that this provision is not necessary because it merely recites the established law that provisions of the regulation cannot be waived except where specifically provided in the regulation. Its inclusion in the regulation may cause some confusion when specific waiver provisions are included in the regulations such as the amendment set forth above.

*2. Definition of Term*

It has been determined that the definition of the term "the regulations in this subpart" in § 1434.34(f) should be deleted. The term is defined as the regulations contained in this subpart together with amendment thereto and notices published in the **Federal Register**. It is believed that this provision is not necessary because it merely recites the established law that subsequent amendments and notices published in the **Federal Register** constitute part of the applicable program requirements.

**Need for Immediate Action**

Since it is necessary to implement the 1987 honey price support program shortly and since this interim rule amends the regulation to provide that: (1) The Secretary shall determine and announce annually whether price support would be made available through loans, purchases, or other operations and that (2) CCC may waive the honey container requirements for producers who agree to redeem their honey pursuant to the lower repayment option provision and within a period of time determined by CCC, it has been determined that it is impractical and contrary to the public interest for CCC to comply with any further rulemaking requirements with respect to this interim rule. Therefore, this interim rule shall become effective upon the date of filing with the Director, Office of the Federal Register. However, comments with respect to this interim rule are requested and should be submitted on or before May 11, 1987, in order to be assured of consideration. This interim rule will be reviewed and a final rule will be published in the **Federal Register** as soon as possible after the comment period.

**List of Subjects in 7 CFR Part 1434**

Honey, Loan programs—agriculture, Price support programs, Warehouse.

**PART 1434—HONEY**

Accordingly, the regulations at 7 CFR Part 1434 are amended to read as follows:

1. The authority citation for 7 CFR Part 1434 continues to read as follows:

**Authority:** Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); sec. 5, 62 Stat. 1072 (15 U.S.C. 714c); secs. 201, 401, 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421).

2. Section 1434.1 is amended by removing the second sentence and adding in lieu thereof the following two sentences:

**§ 1434.1 General statement.**

* * * Price support on eligible honey will be made available through loans, purchases, or other operations as determined and announced annually by the Secretary. Only the provisions of this regulation governing the type of price support operation announced by the Secretary for a crop year shall be applicable. * * *

**§ 1434.2 [Amended]**

3. Section 1434.2 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

**§ 1434.7 Eligible honey.**

4. Section 1434.7 is amended by adding after the second sentence of paragraph (c) introductory text, the following sentence.

* * * * *

(c) * * *

However, the container requirements provided in this paragraph (c) may be waived by CCC if a producer agrees to redeem, pursuant to the lower loan repayment provisions contained in § 1434.25(d) and within a time period specified by CCC, honey pledged by the producer for a price support loan.

* * * * *

**§ 1434.34 [Amended]**

5. Section 1434.34 is amended by removing paragraph (f) and redesignating paragraphs (g) and (h) as paragraphs (f) and (g), respectively.

Signed at Washington, DC on April 3, 1987.

**Vern Neppl,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87-7940 Filed 4-9-87; 8:45 am]

BILLING CODE 3410-05-M

---

**7 CFR Part 1434**

## Honey Price Support Regulations Governing 1986–1990 Crops

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts without change, the interim rule published in the **Federal Register** on July 17, 1986 (51 FR 25851). The interim rule amended the regulations at 7 CFR Part 1434 to implement the amendment to section 201(b) of the Agricultural Act of 1949 ("1949 Act") (7 U.S.C. 1446(b)) made by section 1041 of the Food Security Act of 1985 for the 1986–1990 crops of honey. The amended provisions principally relate to the Secretary of Agriculture's authority to permit honey producers to repay their price support loans at a level lower than the price support level. The interim rule also (a) defined adulterated honey and made producers who knowingly pledge adulterated or imported honey ineligible for price support benefits for 3 years, (b) established the loan period at nine months, and (c) made a minor change with respect to the loan application procedure.

**EFFECTIVE DATE:** April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ross D. Ballard, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447–4704.

**SUPPLEMENTARY INFORMATION:**

Information collection requirements contained in this regulation (7 CFR Part 1434) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C Chapter 35, and have been assigned OMB clearance numbers 0560–0040 and 0560–0087.

This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases; Number 1051, as found in the Catalog of Federal Domestic Assistance.

### Interim Rule

On July 17, 1986, an interim rule was published in the **Federal Register** at 51 FR 25851 which amended the Honey Price Support Regulations governing 1986–1990 crops. The interim rule amended the regulations (7 CFR Part 1434) to implement the amendments to section 201(b) of the 1949 Act made by section 1041 of the Food Security Act of 1985.

The interim rule included a number of changes in the regulation to permit producers to repay their price support loans at the loan level or a level which is less than the loan level as determined by the Secretary. The amended provisions also included a definition of adulterated honey and provided that producers who knowingly pledge adulterated or imported honey for price support loans will be ineligible for price support benefits for 3 years. The rule also provided that the Department will announce the loan repayment levels weekly; interest will not be assessed on loans redeemed at the lower repayment levels; and that pledged honey redeemed at the lower repayment levels shall not be eligible to be pledged as collateral for a new loan.

A comment period on the interim rule was provided through August 18, 1986. The Department received a total of six comments with respect to the interim rule. However, no comments addressed the amended provisions. Commentors addressed the loan availability period and honey container requirements currently found at 7 CFR 1434.4(a) and 1434.7(c). Since no comments were received with respect to the provisions in the interim rule, it has been determined that the interim rule should be adopted as a final rule.

All comments received are on file and available for public inspection in Room 3627-South Building, 14th and Independence Avenue, SW., Washington, DC 20013.

### List of Subjects in 7 CFR Part 1434

Honey, Loan programs—Agriculture, Price support programs, Warehouse.

### Final Rule

Accordingly, the interim rule published at 51 FR 25851, which amended 7 CFR Part 1434, is hereby adopted as a final rule without change.

**Authority:** Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); sec. 5, 62 Stat. 1072 (15 U.S.C. 714c); secs. 201, 401, 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421).

Signed at Washington, DC, on April 6, 1987.

Milt J. Hertz,

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87-8075 Filed 4-9-87; 8:45 am]

BILLING CODE 3410-05-M

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 212

[INS Number: 1001-87]

## Documentary Requirements; Nonimmigrations; Waivers; Admission of Certain Inadmissible Aliens; Parole

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides for the approval of applications pursuant to 212(c) of the Immigration and Nationality Act for certain aliens who wish to depart from the United States and later return to their unrelinquished domicile in the United States. The approval would be in effect only for the specific grounds of exclusion and/or deportation described in the application for which relief is granted. This modification is intended to reduce the paperwork burden for frequent travelers and the Service.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Margaret M. Smitherman, Senior Immigration Examiner, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3320.

**SUPPLEMENTARY INFORMATION:** Section 212(c) of the Immigration and Nationality Act ("the Act"), 8 U.S.C 1182, provides that aliens lawfully admitted for permanent residence who temporarily proceed abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven continuous years, may be admitted in the discretion of the Attorney General without regard to the exclusionary provisions of paragraphs (1) through (25) and paragraphs (30) and (31) of section 212(a) of the Act. As a result of administrative and judicial decisions, section 212(c) has been held not only to authorize discretionary relief from exclusion but also from deportation, as well as advance permission to return to the United States, for aliens who would otherwise be excludable pursuant to those paragraphs. In all cases, application for relief is filed on Form I-191, Application for Advance Permission to Return, filed with the Service office having jurisdiction over the alien's place of residence, the inspector at the port or entry or the immigration judge, depending on whether the alien is seeking advance permission to return before foreign travel, entry after such travel, or relief from exclusion or deportation.

Generally, 212(c) applications have been granted only for a single entry made within one year. In *Matter of Wolf*, 12 I&N Dec. 736 (BIA 1968), it was held that a 212(c) application cannot be granted for an indefinite period and must be somewhat limited in time. However, no specific time limit was set. The Service proposed to grant these applications in increments of up to five years, in order to reduce the need for repeated readjudication of 212(c) applications for travelers who frequently go abroad for business or personal reasons and must obtain Service permission prior to reentry.

The notice of proposed rulemaking was published on April 29, 1986 at 51 FR 15912 with a 60-day comment period. Only two comments were received by the Service during the period. One commenter suggested that the proposal be reconsidered and the other commenter opposed the proposal. Both were of the opinion that *Matter of Wolf*, supra, was improperly cited. They indicated that approving section 212(c) applications in increments of up to five years would be more restrictive than the current rule, because the Board of Immigration Appeals (BIA) has ruled in *Matter of Przygocki*, 17 I&N Dec. 361 (BIA 1982), that there is no conditional grant of relief under 212(c).

*Matter of Przygocki* held that an immigration judge did not have authority to grant section 212(c) relief subject to a condition subsequent. The judge had determined that the alien, a lawful permanent resident in deportation proceedings as a result of criminal convictions resulting from drug dependency; should be granted 212(c) relief subject to his not violating any criminal laws for five years. The judge had by further order provided that if the respondent was convicted of an offense within the five years, the application for relief was automatically revoked and the respondent would be deported. Such "conditional" orders had been common under the predecessor section of 212(c), which expressly authorized conditions. The BIA held that in the absence of statutory and regulatory sanctions for "conditional" section 212(c) waivers of inadmissibility, there was no authority for the continued use of such grants of relief.

The Service has reviewed the case law and has concluded that *Przygocki* and *Wolf* are inconsistent and that *Przygocki* overrules *Wolf*. *Matter of Smith*, 11 I&N Dec. 325 (BIA 1965), was decided after *Tibke v. INS*, 335 F.2d 42 (C.A. 2, 1964), which held that aliens who entered the United States as immigrants could apply for adjustment to lawful permanent resident status under section 245. *Smith* held that an application for 212(c) relief could be adjudicated in a deportation proceeding together with an application under section 245; the effect was to enable certain aliens, otherwise subject to deportation, to be adjusted to lawful permanent resident status rather than be deported.

*Matter of Wolf*, 12 I&N Dec. 736 (BIA 1968), decided after *Smith*, involved a lawful permanent resident who was excludable under section 212(a)(22) and thus ineligible for citizenship because he had applied for and been relieved from service in the Armed Forces because of alienage. As a businessman who took frequent short trips outside the United States, he had three times applied for and received advance permission under section 212(c), and then requested blanket advance permission. The BIA upheld the district director's denial of blanket permission, stating that it would in effect be a grant of an unlimited and absolute waiver of excludability under section 212(a)(22), a power which the BIA felt had not been granted to the Attorney General. However, the BIA did direct the district director to authorize reentry for a period not exceeding three years.

Since *Wolf*, the BIA has recognized that approval of a 212(c) application is full and independent deportation relief like that under section 244 (suspension of deportation), section 245 (adjustment of status), and section 249 (registry). *Matter of Silva*, 16 I&N Dec. 26 (BIA 1976), following *Francis v. INS*, 532 F.2d 268 (C.A. 2, 1976), and *Matter of Hom*, 16 I&N Dec. 112 (BIA 1977).

While *Przygocki* could be distinguished from *Wolf* on the ground that it involved a condition subsequent, this would be a distinction without a difference. The effect of the case law is to grant permanent relief from excludability with respect to the situations covered by the section 212(c) application; the alien is not adjusted and deportation is stayed permanently (absent fraud in the application or later-occurring grounds of exclusion). There is no three-year limit, nor are these cases subject to continued periodic review. It would be an abuse of discretion for the Service to deny an application it had

previously granted, based on the same facts. Such a readjudication constitutes a paperwork burden on the Service and the public which serves no purpose. In view of this, we find no logical basis for placing a time limit on the approval period of an application under section 212(c).

Accordingly the proposed regulation has been modified to eliminate the proposed five-year limit on a section 212(c) waiver.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, does not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291.

**List of Subjects in 8 CFR Part 212**

Aliens, Exclusion, Waivers of inadmissibility.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

## PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 continues to read as follows:

**Authority:** Secs. 101, 103, 212, 214, 235, 236, 238, and 242 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, and 1182c).

2. Section 212.3 is revised to read as follows:

**§ 212.3 Application for the exercise of discretion under section 212(c).**

(a) *Jurisdiction.* An application for the exercise of discretion under section 212(c) of the Act shall be submitted on Form I–191, Application for Advance Permission to Return to Unrelinquished Domicile, to the district director in charge of the area in which the applicant's intended or actual place of residence in the United States is located prior to, at the time of, or at any time subsequent to the applicant's arrival in the United States. The application shall describe all grounds of excludability or deportability known to the applicant and all material facts relating to such grounds.

(b) *Validity.* An application may, in the discretion of the district director, be approved. Once granted, the approval is valid indefinitely; however, the approval covers only the specific grounds of excludability or deportability described in the application; an applicant who failed to describe any such ground(s) or material facts existing at the time of approval remains excludable or deportable therefor. If the applicant subsequently becomes excludable or deportable on other grounds, a new application must be filed with the appropriate district director.

(c) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reason(s) for denial. No appeal shall lie from the denial.

(d) *Renewal before Immigration Judge.* The application may be renewed during proceedings before an immigration judge under sections 235, 236, and 242 of the Act and this chapter. An application for the exercise of discretion under 212(c) of the Act may be submitted to an immigration judge in the course of proceedings under sections 235, 236, and 242 of the Act and this chapter shall be adjudicated by the immigration judge in such proceedings, regardless of whether the applicant has made such application previously to the district director. When an appeal may not be taken from a decision of an immigration judge excluding the alien but the alien has applied for the exercise of discretion under section 212(c) of the Act, the alien may appeal the denial of such application to the Board of Immigration Appeals in accordance with the provisions of § 236.5(b) of this chapter.

Dated: March 23, 1987.

**Richard E. Norton,**

*Associate Commissioner, Examinations.*

[FR Doc. 87–8010 Filed 4–9–87; 8:45 am]

BILLING CODE 4410–10–M

---

**8 CFR Part 248**

**[INS Number: 1000–87]**

## Change of Nonimmigrant Classification

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule change will implement section 312 of Pub. L. 99–603, the Immigration Reform and Control Act of 1986, to facilitate an application for a change to nonimmigrant (N) status while in the United States.

**DATES:** Interim rule effective November 6, 1986. Comments must be received on or before May 11, 1987.

**ADDRESS:** Submit written comments, in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–5014.

**SUPPLEMENTARY INFORMATION:** On November 6, 1986, President Reagan signed Pub. L. 99–603 into law. Section 312 of that law amended section 101(a)(15) of the Act to create a new nonimmigrant section (N). The rule revision will provide instructions that a change to the new (N) status from another lawful status is requested for under section 248 on Form I–506.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is impracticable and unncessary as the changes have been mandated by the passage of Pub. L. 99–603.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the definition of section 1(b) of E.O. 12291.

**List of Subjects in 8 CFR Part 248**

Aliens, Eligibility, Ineligible classes, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

## PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

1. The authority citation for Part 248 is revised to read as follows:

**Authority:** Secs. 101, 214, 247, 248, 103, as amended (8 U.S.C. 1101, 1103, 1184, 1257, 1258); and Pub. L. 99–603.

2. In § 248.1, a new paragraph (e) is added to read as follows:

**§ 248.1 Eligibility.**

* * * * *

(e) *Change of nonimmigrant classification to that as described in section 101(a)(15)(N).* An application for change to N status shall not be denied on the grounds the applicant is an intending immigrant. Change of status shall be granted for three years not to exceed termination of eligibility under section 101(a)(15)(N) of the Act. Employment authorization pursuant to section 274(A) of the Act may be granted to an alien accorded nonimmigrant status under section 101(a)(15)(N) of the Act.

BEST COPY AVAILABLE

Employment authorization is automatically terminated when the alien changes status or is no longer eligible for classification under section 101(a)(15)(N) of the Act.

Dated: March 19, 1987.

**Richard E. Norton,**

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 87-8009 Filed 4-9-87; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 94

**[Docket No. 86-071]**

### Importation of Certain Pork Hams

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the regulations concerning the importation into the United States of pork and pork products. The regulations, which regulate the importation of hams in order to help prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholers, and swine vesicular disease, are amended to allow the importation, under specified conditions, of certain pork hams. It has been determined that such hams can be imported into the United States without presenting a significant risk of introducting any of the specified diseases.

**EFFECTIVE DATE:** April 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark Dulin, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8499.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 9 CFR Part 94 (referred to below as the regulations), among other things, regulate the importation into the United States of pork and pork products in order to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease.

With regard to these regulations, the Parma Ham Consortium in Italy requested that the regulations be amended to allow the importation into the United States of pork hams processed in accordance with certain procedures used by the Consortium. Prior to the effective date of this document such hams were not allowed to be imported into the United States because of foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease.

The Department considered this request and conducted research concerning the procedures used by the Parma Ham Consortium. The Department also developed provisions which were designed to allow the importation of such pork hams from countries where foot-and-mouth disease, African swine fever, hog cholera, or swine vesicular disease exists, without presenting a significant risk of introducing these diseases.

On February 18, 1986, a document was published in the **Federal Register** (51 FR 5718-5720) which proposed to amend the regulations to include the newly developed provisions. On April 29, 1986, another document was published in the **Federal Register** (51 FR 15913) extending the comment period on the proposal to May 29, 1986. One hundred and seventy eigth (178) comments were received in response to the proposal. They were from individuals, trade associations, veterinary medical groups, and businesses.

Three of the comments did not address the proposed amendments; 31 of the comments were negative; 1 comment was positive but suggested changes; and 143 comments were unequivocally positive, supporting the proposed amendments in their entirety without change. The negative comments received, and the positive comment which suggested changes, are discussed below.

#### Comments

Most of the negative comments received in response to the proposed regulations questioned whether the disease risk posed by hams which would be imported into the United States under the proposed regulations is acceptable and whether the proposed regulations are adequate to help ensure that foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease are not imported into the United States.

One commenter stated that the proposed regulations include no provision for identifying the individual ham. Another commenter stated that some system should be included in the regulations to require individual identification of the ham from the farm to the slaughtering facility.

No changes are made based on these comments. Fresh hams moving from the slaughtering facility to the processing establishment would be required to be accompanied by a numbered certificate issued by an authorized individual and stating that the hams has come from hogs which were not on any premises where foot-and-mouth disease, African swine fever, rinderpest, hog cholera, or swine vesicular disease existed within 60 days prior to slaughter. The regulations as proposed would also require that hams be individually identified at the slaughtering establishment with a hot iron brand or an ink seal showing the identification number of the establishment. Individual hams would also be required to be identified at the processing establishment by a button seal showing the month and year the ham entered the establishment.

The Animal and Plant Health Inspection Service (APHIS) believes that this combination of identification procedures would be adequate to ensure that individual hams are identified, and can be traced from slaughter to the farm or origin.

Nine commenters stated that the proposed regulations provide no means of determining or monitoring the age of individual hams. No changes are made in the proposed regulations based on these comments. The regulations as proposed provide a battery of controls designed to ensure that individual hams are processed the required period of time. These controls include: (1) The placement of a hot iron brand or in seal on the ham at the slaughtering establishment, showing the identification number of the slaughtering establishment; (2) the requirement that the ham be accompanied from the slaughtering facility to the processing establishment by a numbered certificate; (3) the requirement that original records identifying the ham by the date it entered the processing establishment, by the slaughtering facility from which it came, and by the number of the certificate which accompanied it from the slaughtering facility to the processing establishment, be maintained; (4) the placement of a button seal on each ham stating the month and year the ham entered the processing establishment; and (5) the hot iron branding of the ham with the identifying number of the processing establishment and the date salting of the ham began. The Animal and Plant Health Inspection Service believes that these controls taken together are adequate to identify individual hams and ensure that they have been processed for the full 400 days.

The issue of possible contamination of hams by workers in the processing establishment or by other hams entering the processing establishment was also raised by nine commenters. APHIS has carefully considered these comments and has determined that the regulations as proposed were insufficient to prevent such contamination. The regulations are therefore amended to include provisions that workers in processing establishments who work with fresh hams coming into the establishment either be prohibited, for a 24-hour period after handling such hams, from handling hams which have progressed in the aging/curing process beyond the final wash stage, or be required to shower and change into a clean set of clothing before handling hams which have progressed in the aging/curing process beyond the final wash stage. It appears that these amendments would minimize the possibility that hams already being processed could be contaminated by fresh hams or by workers handling fresh hams.

Eleven of the commenters stated that the disease risk presented by the importation of hams under the proposed regulations would be unacceptable. Several of these commenters suggested that *any* disease risk is unacceptable. No changes are made based on these comments. Meat and meat products are now imported into the United States, and have been imported into the United States for many years. The disease risk associated with the importation of pork hams under the proposed regulations appears to be equal to or less than that associated with the importation of other animal products which have been safely imported for many years without introducing exotic diseases of concern.

Nine comments addressed various related issues concerning enforcement of the proposed regulations and inspection of processing establishments. The various suggestions made by these commenters were: (1) To require that USDA inspect processing establishments at least four times per year; (2) to require that the USDA inspect processing establishments on a continuous basis; (3) to require that the USDA inspect foreign processing establishments as frequently as they inspect meat processing establishments in the United States; and (4) to conduct unannounced inspections of processing establishments.

No changes are made based on these comments. The proposed regulations state that inspections are "anticipated" to occur up to four times per year. This provision allows USDA personnel to conduct inspections as deemed necessary to ensure compliance with the regulations. Amending the proposed regulations to require a minimum number of inspections would lock personnel into an inspection routine which may not be necessary, and could preclude, because of the limited number of personnel available, conducting additional inspections at processing establishments where they are needed. Also, it does not appear that continuous inspection by USDA inspectors is necessary or feasible. In the United States, USDA inspectors continuously monitor meat processing facilities. However, these activities are conducted by the Food Safety and Inspection Service of the Department, which is charged with protecting the health of the public. Such continuous monitoring is not conducted by APHIS. Foreign establishments processing hams for importation into the United States under the proposed regulations would be required to comply with all applicable rules and regulations concerning the importation of meat and meat products into the United States, including rules and regulations promulgated by the Food Safety and Inspection Service of the Department. (See proposed 9 CFR 94.17, footnote 1, (51 FR 5717); 9 CFR Part 327). Finally the regulations as proposed already require that processing establishments allow unannounced inspections. (See proposed 9 CFR 94.17(k) (51 FR 5717).)

Some of the comments suggested that foreign inspections and certifications are not reliable. It has been USDA's experience that foreign inspections and certifications are reliable. All of the regulations governing the importation into the United States of animals or animal products depend in part upon inspections and certifications completed by foreign personnel in the country of origin of the shipment. USDA has not encountered problems with this system.

One commenter questioned USDA requirements concerning trichina in United States-produced hams and foreign-produced hams. Data from research in the United States indicate that trichinae-infected hams are safe for human consumption after salting and 35 days of dry curing. The proposed regulations required 400 days of salting and curing, which is more than sufficient to produce a trichinae-free product.

Three comments suggested that compliance with the proposed regulations would decrease over time. No changes are made based on these comments. APHIS does not anticipate that compliance will decrease over time. This has not proven to be the case in connection with other regulations concerning the importation of meat and meat products. The proposed regulations include provisions for the inspection of processing establishments and for the maintenance of various records. Continuing compliance with the regulations will be assured by unannounced inspection and testing as long as the country involved is infected with any of the diseases of concern. If inspections or testing demonstrate that an establishment is not complying with the requirements, the approval of the establishment will be withdrawn.

A group of commenters also questioned the accuracy and reliability of research conducted by the USDA which demonstrates that hams processed as set forth in the proposed regulations would be free of the viruses of foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. Six of these comments stated that the USDA research has not been published or subjected to peer review, and for those reasons cannot be relied upon.

In this particular case, USDA believes that the review of this project, both the protocol review prior to initiation of the studies, and the review of results obtained, were comparable to classical peer review of research studies. In addition, USDA results were confirmed by independent tests performed in Italy using similar swine and similar processing conditions. These tests all confirmed that foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease viruses are all inactivated in less than 400 days of processing as would be required in the proposed regulations.

One comment stated that other relevant research had been ignored by APHIS in developing the proposed regulations. As stated by the commenter, earlier research had been conducted on the survival of swine vesicular disease virus in dried pepperoni and salami sausages. That research indicated that the virus could survive for 400 days. However, the products involved in the study and the processsing and storage conditions used are not comparable to the products, processing, and storage conditions proposed in the document of February 18, 1986. The results of the earlier study are therefore not relevant to the proposed regulations.

Five comments generally questioned the reliability of the product testing, citing the variation between the United States and Italian test results on the survival times of the various viruses of concern. It is true that there were minor differences in the test results. In general,

the viruses of concern appeared to become inactivated earlier in the Italian studies than in the United States studies. APHIS believes that the differences are attributable to two related factors. First, the swine in the two tests were slaughtered differently. APHIS believes that the slaughter method used for the Italian tests, which produced more exertion on the part of the swine prior to their deaths, tended to lower the level of viruses in these animals. Second, the swine slaughtered for the United States tests were slaughtered at the height of infection and with maximum levels of virus in all tissues (peak viremia). In fact, APHIS believes that the swine used for the United States studies, which were visibly ill when they were slaughtered, were infected with a much higher level of virus than would generally occur in a natural outbreak of disease because they were artificially inoculated with strains of virus which produced especially high levels of virus. Also, animals which are visibly ill, as were the animals used in the United States tests, would probably not pass antemortem inspections and would not be processed into hams for importation under the proposed regulations into the United States. In other words, the United States tests involved a "worst case scenario." In designing the regulations, the test results, including the variations between them, were considered. The processing period required under the proposed regulations is long enough to cover a "worst case scenario." Three commenters expressed doubt that under commercial processing conditions virus survival would be the same as in laboratory tests, where conditions were carefully controlled. However, the proposed regulations require processing establishments to process their product under the same, carefully controlled conditions used for the tests. If the physical plant of the establishment is not capable of producing hams under the required conditions, or if a processing establishment fails to produce hams under the required conditions, the processing establishment would not be approved or approval would be withdrawn and hams from that establishment would not be allowed to be imported into the United States.

One commenter stated that they had reviewed the testing data released by the USDA, and that they had found the study was not complete in that it did not contain a description of the specific processing procedure used to process the hams tested. It is correct that the published article did not detail the entire processing procedure. However, the procedure used in the testing was the same as that which would be required under the proposed regulations.

One commenter questioned the proposed requirement that hams come "from a country determined by the Deputy Administrator, Veterinary Services, to have laws requiring the immediate reporting to the national veterinary services in that country of any premises found to have swine infected with foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease." The commenter pointed out that even when a country has such laws, diseases are not necessarily reported. The commenter drew attention to the fact that foot-and-mouth disease affects not only swine, but also ruminants. After careful consideration of this comment, APHIS has determined that the proposed regulations should be amended to require that hams come from a country which has laws requiring the immediate reporting of any premises found to have any animal affected with the diseases of concern, and to require that the country enforce such laws.

One commenter expressed concern about the reporting of diseases found in countries outside of the country where the hams might be processed. No changes are made based on this comment. The proposed regulations provide that the hams come from swine which have never been outside the country in which the hams are processed. This proposed requirement would preclude processors from obtaining swine from other countries. (See proposed 9 CFR 94.17(a)).

Finally, one comment was received which was in favor of the proposed regulations, but which suggested several changes. One change suggested was to require that the foot of the swine be removed before processing the ham. As stated by the commenter, this procedure was followed during USDA research. Therefore, because tissue from the foot was not tested to ensure that all viruses were killed by processing, and no data is available to demonstrate the disease risk posed by leaving the foot in place, the regulations are amended to require that the foot be removed prior to processing the ham, and

The commenter also suggested the regulations be amended to require that a button seal be required by the laws of the country of origin of the ham, and that proposed 9 CFR 94.14(n) be amended to add a requirement that certificate accompanying the ham at the time of importation into the United States be "issued by an entity which has received, from the national government, enforcement responsibility for the protection of the denomination [sic] of origin and production characteristics of the ham." No changes are made in the regulations based on these suggested changes. These changes appear to be unnecessary because if the requirements of the regulations regarding the button seal and certificate are not followed, the hams could not be imported into the United States.

Eight of the commenters addressed economic problems they believe would be raised by the proposed regulations. The commenters stated that the proposed regulations were "unfair" to U.S. pork businesses, they would contribute to the U.S. foreign trade imbalance, and that *all* foreign products should be barred from the United States. One commenter also stated that the economic effect of the proposed regulations would be greater than stated in the document of February 18, 1986. This comment, however, was contradicted by another comment which emphatically agreed with the proposal that imports under the proposed regulations would be quantitatively and economically insignificant.

No changes are made based on these comments. APHIS is authorized by statute to regulate the importation of meat and other animal products only for the purpose of preventing the importation into the United States of foreign animal diseases. APHIS does not have authority to regulate the importation of meat and other animal products for economic reasons.

**Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579–0015.

**Executive Order 12291 and Regulatory Flexibility Act**

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition employment, investment, productivity, innovation, or the ability of

United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the number of pork hams that will be imported annually by small entities under the provisions will be an insignificant number compared to all pork hams imported into the United States by small entities.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule relieves restrictions. Accordingly, prompt action should be taken to delete the unnecessary restrictions. Therefore, in accordance with the provisions of 5 U.S.C. 553(d), this final rule is made effective upon signature.

**Executive Order 12372**

This program/activity is listed in the catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, Subpart V).

**List of Subjects in 9 CFR Part 94**

Animal diseases, imports Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African Swine Fever, Exotic Newcastle Disease, Foot-and-Mouth Disease, Fowl, Garbage, Hog Cholera, Lethal Avian Influenza (AI), Rinderpest, Swine Vesicular Disease.

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, Part 94, Title 9, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 94 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. A new § 94.17 is added to read as follows:

**§ 94.17 Certain hams.**

Notwithstanding any other provisions in this part, a ham shall not be prohibited from being imported into the United States if it meets the following conditions:

(a) The ham came from a swine that was never out of the country in which the ham was processed;

(b) The ham came from a country determined by the Deputy Administrator, Veterinary Services, to have and to enforce laws requiring the immediate reporting to the national veterinary services in that country any premises found to have any animal infected with foot-and-mouth disease, rinderpest, African Swine fever, hog cholera, or swine vesicular disease;

(c) The ham came from a swine that was not on any premises where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists or had existed within 60 days prior to slaughter;

(d) The ham was accompanied from the slaughtering facility to the processing establishment by a numbered certificate issued by a person authorized by the government of the country of origin stating that the provisions of paragraphs (a) and (c) of this section have been met;

(e) The ham was processed as set forth in paragraph (i) of this section in only one processing establishment;[1]

(f) The ham was processed in a processing establishment that prior to the processing of any hams in accordance with this section, was inspected by a veterinarian of Veterinary Services and determined by the Deputy Administrator, Veterinary Services, to be capable of meeting the provisions of this section for processing hams for importation into the United States;

(g) The ham was processed in a processing establishment for which the operator of the establishment has signed an agreement with Veterinary Services within 12 months prior to receipt of the hams for processing, stating that all hams processed for importation into the United States will be processed only in accordance with the provisions of this part;

(h) The ham was processed in a processing establishment where workers who handle fresh hams entering the establishment either are prohibited, for a period of 24 hours after handling such hams, from handling in the establishment hams which have progressed in the aging/curing process beyond the final wash stage, or are required to shower and put on a full, clean set of clothes before handling hams in the establishment which have progressed in the aging/curing process beyond the final wash stage.

(i) The ham was processed for a period of not less than 400 days in accordance with the following conditions: after slaughter the ham was held at a temperature of 0°–3°C. (32°–34.7°F.) for a minimum of 72 hours during which time the "aitch" bone and the foot was removed and the blood vessels at the end of the femur were massaged to remove any remaining blood; thereafter the ham was covered with an amount of salt equal to 4–6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 5–7 days on racks in a chamber maintained at a temperature of 0°–4°C. (32°–39.2°F.) and at a relative humidity of 70–85 percent; thereafter the ham was covered with an amount of salt equal to 4–6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 21 days in a chamber maintained at a temperature of 0°–4°C. (32°–39.2°F.) and at a relative humidity of 70–85 percent; thereafter the salt was brushed off the ham; thereafter the ham was placed in a chamber maintained at a temperature of 1°–6°C. (33.8°–42.8°F.) and at a relative humidity of 65–80 percent for between 52 and 72 days; thereafter the ham was brushed and rinsed with water; thereafter the ham was placed in a chamber for 5–7 days at a temperature of 15°–23°C. (59°–73.4°F.) and a relative humidity of 55–85 percent; thereafter the ham was placed for curing in a chamber maintained for a minimum of 314 days at a temperature of 15°–20°C. (59°–68°F.) and at a relative humidity of 65–80 percent at the beginning and increased by 5 percent every 2½ months until a relative humidity of 85 percent was reached; and during all of the procedures described above the ham had no contact with any meat or animal product other than pork fat that was treated to at least 76°C. (168.8°F.) that may have been placed over the ham during curing;

(j) The ham bears a hot iron brand or an ink seal (with the identifying number of the slaughtering establishment) which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, bears a button seal (approved by the Deputy Administrator, Veterinary Services, as being tamper-proof) on the hock that states the month

[1] As a condition of entry into the United States, pork and pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR Part 301 *et seq.*), including requirements that the pork or pork products be prepared only in approved establishments.

and year the ham entered the processing establishment and a hot iron brand (with the identifying number of the processing establishment and the date salting began) which were placed thereon at the processing establishment immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin;

(k) The ham came from an establishment where a person authorized by the veterinary services of the national government of the country of origin to conduct activities under this paragraph, maintained original records (which shall be kept for a minimum of two years) identifying the ham by the date it entered the processing establishment, by the slaughtering facility from which it came, and by the number of the certificate which accompanied the ham from the slaughtering facility to the processing establishment, and where such original records are maintained under lock and key by such person, with access to such original records restricted to officials of the government of the country of origin, officials of the United States government, and such person maintaining the records;

(l) The ham came from a processing establishment which allows the unannounced entry into the establishment of Veterinary Services personnel, or other persons authorized by the Deputy Administrator, Veterinary Services, for the purpose of inspecting the establishment and records of the establishment;

(m) The ham was processed in a country which has been determined by the Deputy Administrator, Veterinary Services, to be free of rinderpest, and which has through its veterinary services submitted to the Deputy Administrator, Veterinary Services, a written statement stating that it conducts a program to authorize persons to supervise activities specified under this section;

(n) The ham came from a processing establishment that has entered into a trust fund agreement executed by the operator of the establishment or a representative of the establishment and Veterinary Services, and that pursuant to the trust fund agreement is current in paying all costs for a veterinarian of Veterinary Services to inspect the establishment (it is anticipated that such inspections will occur up to four times per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, the operator of the processing establishment shall deposit with the Deputy Administrator, Veterinary Services, an amount equal to the approximate costs for a veterinarian to inspect the establishment one time, including travel, salary, subsistence, administrative overhead and other incidental expenses (including an excess baggage provision up to 150 pounds), and as funds from that amount are obligated, bills for costs incurred based on official accounting records will be issued to restore the deposit to its original level. Amounts to restore the deposit to its original level shall be paid within 14 days of receipt of such bills.

(o) The ham is accompanied at the time of importation into the United States by a certificate issued by a person authorized to issue such certificates by the veterinary services of the national government of the country of origin, stating that the ham was processed for at least 400 days and that all of the provisions of this section (9 CFR 94.17) have been complied with.

Done at Washington, DC, this 8th day of April, 1987.

**Claude J. Nelson,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 87-8132 Filed 4-8-87; 12:03 pm]

BILLING CODE 3410-34-M

---

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### 13 CFR Part 311

[Docket No. 70220-7020]

### Civil Rights Requirements on EDA Assisted Projects; Age Discrimination

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Economic Development Administration's (EDA) Civil Rights regulations to include recent final rules promulgated by the Department of Commerce (DOC) at 15 CFR Part 20 ("DOC rule"). The DOC rule establishes procedures to implement the Age Discrimination Act (The Act) of 1975, as amended. The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. EDA needs to amend its regulations to assure conformity to the DOC rule.

**EFFECTIVE DATE:** September 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** David Lasky, Chief of Civil Rights Branch, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7327, Washington, DC 20230, (202) 377-5575.

**SUPPLEMENTARY INFORMATION:** EDA is amending its Civil Rights requirements at 13 CFR Part 311 to include recent DOC regulations. The DOC regulations were published on August 13, 1986, in the Federal Register (FR) (51 FR 28925) and became effective on September 12, 1986. The Supplementary Information provided in 51 FR 28925 is appropriate for this EDA final rule. The Supplementary Information for the DOC regulation discusses the history, background, scope and coverage of the rule.

Because this rule relates to grants, benefits and contracts, it is exempt from all requirements of section 553 of the Administrative Procedure Act (APA) (51 U.S.C. 553) including Notice and opportunity to comment and delayed effective date.

No other law requires that Notice and opportunity for comment be given for this rule.

Since Notice and opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 3518(c) of the Paperwork Reduction Act of 1980 and 5

CFR 1320.3(c), the information contained in this regulation is not subject to the Office of Management and Budget review and approval.

**List of Subjects in 13 CFR Part 311**

Civil rights, Aged, Grants administration.

For the reasons set out in the preamble, Title 13, Chapter III, Part 311 is amended as set forth below.

**PART 311—CIVIL RIGHTS REQUIREMENTS ON EDA ASSISTED PROJECTS**

1. The authority citation for Part 311 is revised to read as follows:

**Authority:** Sec. 701. Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); sec. 1–105, Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended); Age Discrimination Act of 1975, as amended, 42 U.S.C. sec. 6101 *et seq.* and the government wide regulations implementing the Act, 45 CFR Part 90.

2. Section 311.1 is amended by adding paragraph (a)(5) and by revising paragraph (c) as follows:

**§ 311.1 Introduction.**

(a) * * *

(5) The Department of Commerce (DOC) has promulgated a regulation prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance. This regulation, published at 15 CFR Part 20 (51 FR 28925, August 13, 1986) applies to EDA applicants and recipients.

* * * * *

(c) Failure to comply with provisions described in this part, will result in enforcement in accordance with DOC regulations at 15 CFR Parts 8, 8b, 20, or will result in other sanctions and legal actions, as appropriate.

* * * * *

3. Section 311.3 is amended by revising paragraph (d) as follows:

**§ 311.3 Requirements for applicants, grantees, borrowers, and "other parties".**

* * * * *

(d) Applicants for and recipients of EDA financial assistance shall meet all the requirements set forth in 15 CFR Part 8b, Subparts A, B, C, and E and in 15 CFR Part 20.

Dated: December 1, 1986.

**Orson G. Swindle III,**

*Assistant Secretary for Economic Development.*

[FR Doc. 87–7972 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–24–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 21 and 23**

**[Docket No. 018CE, Special Conditions No. 23–ACE–18]**

## Special Conditions; Petersen Aviation, Inc., Modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued to become part of the type certification basis for Beech Aircraft Corporation Model 33 Series, Model 35 Series, and Model 36 Series airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Oscar Ball, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

**SUPPLEMENTARY INFORMATION**

**Background**

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Beech Model 33 Series, Model 35 Series, and Model 36 Series airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engines in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the applicable airworthiness standards were promulgated. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for these ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent methanol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid systems to meet essentially the same standards as the airplane fuel system. Similar special conditions were published in the **Federal Register** on August 25, 1986 (51 FR 30206/30207).

**Type Certification Basis**

The certification basis for the Beech Aircraft Corporation Model 33 Series, Model 35 Series, and Model 36 Series airplanes (TC 3A15) is Part 3 of the Civil Air Regulations, as amended to May 15, 1956, and Amendment 3–8; in addition, for the Models A36TC and B36TC only, §§ 23.909, 23.1043, 23.1527(b), and 23.1583(a), as amended by Amendment 23–7 and §§ 23.959, 23.967(a)(5), and 23.1121(b) as amended by Amendment 23–18 of the Federal Aviation Regulations, Part 23, dated February 1, 1965; and for the Model B36TC only, § 23.1545(a) as amended by Amendment 23–23 of the Federal Aviation Regulations Part 23, dated February 1, 1965.

Part 36 through Amendment 36–10 of the Federal Aviation Regulations is applicable to the following Model/Serial Numbers, F33A (S/N CE–891 and after), V35B (S/N D–10313 and after), F33C (S/N CJ–156 and after), A36 (S/N E–1609 and after), A36TC (S/N EA–1 through EA–241 and EA–243 through EA–272), B36TC (S/N EA–242, EA–273 and after).

Applicable equivalent safety findings are as follows: CAR 3.664 and CAR 3.757

for Model V35B (S/N D–9948 and after), A36 (S/N E–927 and after), F33A (S/N CE–674 and after), F33C (S/N CJ–129 and after), A36TC (all serials); CAR 3.387 for Model V35B (all serials), A36 (all serials), F33A (all serials), F33C (all serials), A36TC (all serials), B36TC (all serials).

For all models, these special conditions are applicable when ADI systems are installed.

**Discussion of Comments**

Two commenters responded to Notice No. 23–ACE–18, published in the **Federal Register** on August 21, 1986. The closing date for comments was September 22, 1986.

One commenter, representing the general aviation manufacturers, in commenting on the several ADI special condition proposals, stated that the general aviation community, in general, has no experience with the use of anti-detonant injection systems. However, such systems were used extensively by the military services and large commercial operators from about 1940 through 1960. In spite of obvious performance dividends, commercial operators spared no efforts to delete or limit the use of ADI systems and a review of that experience is considered indispensible for the formulation of new rules.

The FAA agrees that the general aviation experience level with ADI systems is very low. However, commercial operators discontinued using ADI systems because of the limitation on the system's use and the complexity/maintenance problems with the ADI systems used on large reciprocating engines. On transport airplanes, ADI was used for power augmentation. Its operating regime was such that an ADI system failure, or even a temporary malfunction, on an engine being operated at ADI-augmented power could cause engine damage requiring shutdown, if not complete engine failure. In contrast, these ADI systems are not for power augmentation, but for detonation suppression.

The commenter states that a brief review of technical literature indicates that the following factors appear to be the most significant and need evaluation:

1. Water-methanol provides better performance to either water alone or water ethanol.

The FAA agrees that water-methanol provides better performance and notes that water-methanol is the ADI fluid planned for this system. However, for this purpose, the "better performance" relates only to detonation suppression and not with any actual increase in power.

2. The injected fluid must suppress detonation throughout the intended flight envelope.

The FAA agrees that detonation should be suppressed any time it occurs. This ADI system is designed to operate automatically during those times when the engine is producing 75 percent or more of its rated takeoff power or when the head temperature exceeds 400 °F. Cruise at less than 75 percent power or a head temperature of less than 400 °F does not require ADI detonation suppression. At cruise power, detonation from excessive leaning of mixture or from overheating of the cylinders may be suppressed in the normal manner; i.e., enriching the mixture; however, the automatic feature of the ADI system will turn on ADI fluid any time the head temperature exceeds 400 °F.

3. The fluid must begin flowing before power is increased to the augmented rating.

The FAA disagrees with the commenters imposition of a strict interpretation of previous practices on ADI systems. This ADI system is designed for detonation suppression only and not augmentation. It is not critical to engine operation that the ADI fluid must be flowing before power is increased.

4. The engine power must be reduced immediately (automatically) should the fluid supply be interrupted or exhausted.

The FAA disagrees for the same reasons as stated in No. 3 above.

5. The system must prevent operation of the engine at ratings in excess of those normally limited by detonation unless the fluid is flowing.

The FAA does not agree that the engine must be prevented from operating above 75 percent of takeoff power level without ADI. The FAA has reviewed the conditions that the engine would experience while operating above 75 percent of takoff power without ADI and has concluded that for the limited period for which these conditions may occur, appropriate engine inspections have been published in the airframe flight manual to assure continued safe engine operation.

The commenter further states that the following additional considerations need to be addressed:

1. Due to the performance differences in the anti-detonation mixture combinations available, some means must be available to identify the ADI fluid content.

The FAA agrees and will require the applicant to supply adequate instructions on the formulation, handling, and identity of the ADI fluid. Again, performance considerations are to be taken in the context of detonation suppression only to maintain the usable power level. This ADI system is not to be used in the context of an increased power level as is the case of ADI-augmented power.

2. Review of recent misfueling accidents indicates that some protection should be provided to avoid the wrong fluid being put into the ADI system.

The FAA agrees that precautions should be taken to avoid the wrong fluid being put into the ADI fluid tank, but does not agree with the comparison. The engines used in these installations can and will operate on autogas without the ADI system.

3. The deletion of slosh and vibration tests, which would have been required in § 23.965(b), is not justified.

The FAA does not agree. Section 23.965(b) states, in part: "Each fuel tank with large, unsupported, or unstiffened flat areas must . . ." meet certain slosh and vibration tests. The ADI fluid tank surfaces, as proposed, do not fit the definition of large, unsupported, or unstiffened flat areas.

4. It is presumptuous to delete § 23.975(a)(4) (interconnected tank vent requirement).

The FAA deleted the requirement because the ADI system under consideration, as proposed, incorporates one tank per system. If multiple tanks are proposed, the requirements of § 23.975(a)(4) will be imposed.

5. It does not appear appropriate to delete § 23.1141(e) on the basis of turbine engine applicability. Indeed, satisfaction of prior experience clearly indicates that this requirement should be imposed.

The FAA has further considered this issue and concluded that the commenter is correct. Section 23.1141(e) has been added to the special conditions but the lead-in phrase, "for turbine-engine-powered airplanes," has been cited as being nonapplicable.

6. No mention is made of the maintenance involved. Current time between overhauls (TBO) for small engines ranges upward to 2,000 hours and beyond. The 150-hour endurance test per § 33.49 will not ensure that the service life of the engine will not be adversely affected, particularly in view of the excessive corrosion that ADI fluid caused during its military and airline use. Thus, extreme caution is needed in pushing TBOs beyond 150 hours at this stage of development. Hidden in this is the unknown effect on engine parts that could be subject to shrinkage or expansion from alcohol. The airplane

Pilot's Operating Handbook (POH) should include such limitations and cautions as are found necessary to ensure safe operation of the airplane considering the effects of ADI on the engine.

The FAA agrees that such limitations and cautions that are found necessary to assure safe operation should be furnished to the airplane owner/operator by whatever means are appropriate to the certification basis of the airplane; i.e., POH, placards, etc. Time between overhauls (TBO) beyond the 150-hour requirement for certification are not an FAA requirement. Overhaul periods are actually based on engine condition, as monitored through periodic inspections. The periodic maintenance schedule is unchanged.

7. Section 4b.420(f), which required that there be adequate ADI tank capacity, and 4b.420–1 policy, which detailed the matter, should be considered.

The FAA does not agree. The cited CAR 4b sections apply to ADI augmented power and are not appropriate here. The times derived from the referenced sections would be only a few minutes; the proposed system is designed to suppress detonation 30 minutes or more.

8. Section 4b.471(c), which required automatic control of fluid flow and a separate control for the pump, should be considered.

The FAA disagrees; automatic control may be furnished but is not required. A separate control for the pump is part of the system.

9. Adequate service testing should be required, prior to STC approval, to ensure that airplane reliability is not degraded.

The FAA agrees and will require testing prior to approval to assure that the system does not cause an unsafe condition on the airplane.

10. A failure and effects analysis covering the added system including effect on existing systems should be required.

The FAA encourages failure modes and effects analysis (FMEA) and applicants frequently conduct an FMEA to show compliance to the rules; however, the FAA does not mandate this method for other Part 23 systems at this time and does not agree that it should be required of the ADI system.

11. The safety aspects of the additional fuel management responsibilities for the pilot in servicing and operating the airplane should be considered.

The FAA agrees and will evaluate the added workload in managing and operating the system; the current airworthiness standards require the FAA to do this. This is not a special conditions issue.

The commenter asked the following questions:

1. How will the use of autogas and ADI fluid affect engine power and airplane performance?

The FAA stated in the notice that the engine will have been type certificated for autogas and ADI prior to airplane STC. The technical data leading to FAA approval of the engine showed no degradation of power.

2. What testing will the FAA require to ensure POH performance is not degraded?

The FAA will assure that all requirements for minimum performance are maintained.

3. The Notice of Proposed Rulemaking (NPRM) is not clear as to which specific models are to be modified. Several different engines have been used in the "Model 33 Series, 35 Series, 36 Series, 95 Series and 55 Series." Is Petersen planning to modify turbo-charged engines? High altitude operation of these engines on autogas could present special problems.

The FAA received an application for, and these proposed special conditions apply to, all Beech Models on TC 3A15 with normally aspirated engines that have been approved for autogas and ADI. The FAA has received no applications for adding ADI on turbocharged engines and, at this time, there are not turbocharged engines approved for autogas.

4. The NPRM lists § 23.977(a)(2). Shouldn't this be § 23.977(a)(1)?

The FAA agrees; the typographical error has been corrected.

Another commenter, representing an aviation foundation, ". . . takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc. ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude nonflammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water. According to Perry's *Chemical Engineer's Handbook*, Sixth Edition, McGraw Hill, 1984, page 12–14, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75 °F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

## Conclusion

This action affects only the Beech Model 33 Series, Model 35 Series, and Model 36 Series airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the models and series of airplane identified in these final special conditions.

## List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

## Citation

The authority citation for these special conditions is as follows:

**Authority:** Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

## Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Beech Model 33 Series, Model 35 Series, and Model 36 Series airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951(a) and (b); § 23.953, § 23.954, § 23.955(a) and (c)(1); § 23.959; § 23.961; § 23.963(a), (d), and (e); § 23.965(a)(1); § 23.967(a) (1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.963(a), (b),

and (c); § 23.975(a) (1), (2), (3), (5), (6), and (7); § 23.977(a) (1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141, § 23.1143(a), (e), and (f); § 23.1189(a) and (c); and § 23.1337(a), (b)(1), (2), (3), and (4), and (c) of Part 23 of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in section 1 of these special conditions, as appropriate. In addition, certain Part 23 requirements listed in Special Condition No. 1 are reworded for ADI systems, as follows:

(a) In § 23.955(a), General. In the first sentence, replace, "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown . . ." with "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown . . ."

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the phrase, "of a single engine airplane" is not applicable to ADI systems.

(d) In § 23.971, replace paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude". Replace paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)."

(e) In § 23.991, replace paragraph (a) with "(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine. In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph for ADI systems to read, "(e) Be located with respect to any pressure or flow sensing device such that the blockage of the filter will be detected by this device."

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777 which are incorporated by reference are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555 which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the phrase "for turbine-engine-powered airplanes" is not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add, "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI filler openings must be conspicuously marked at or near the filler cover with: (a) The words "ADI fluid meeting the Petersen Aviation, Inc., specification"; and (b) the capacity of the tank in either pounds or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri, on April 1, 1987.

**Paul K. Bohr,**

*Director, Central Region.*

[FR Doc. 87–7980 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–13–M

---

## 14 CFR Part 39

**[Docket No. 86–CE–74–AD; Amdt. 39–5598]**

## Airworthiness Directives; Beech Aircraft Corporation Model A36TC Bonanza Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Beech Model A36TC airplanes which requires the modification of the fuel system in accordance with Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985. Investigations of accidents involving Model A36TC airplanes following loss of engine power revealed that flooding may occur either as a result of the pilots' inadvertent selection of the emergency fuel pump switch to "ON" while attempting to retract the flaps, or as a result of the pilots' improper selection/position of the auxiliary/emergency fuel pump switches relative to fuel flow. The potential exists for inappropriate pilot actions in normal and emergency procedures which could cause engine combustion to cease due to an excessively rich fuel-air mixture. The requirements of this AD will reduce the potential for power interruptions due to flooding by removing the emergency fuel pump switch from the current location adjacent to the flap switch.

**EFFECTIVE DATE:** May 14, 1987.

*Compliance:* As prescribed in the body of the AD.

**ADDRESSES:** Beech Mandatory Service Bulletin No. 2033, dated August 1985, applicable to this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681–9111. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. James M. Peterson, Aerospace Engineer, Aircraft Certification Office, ACE–140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4427.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the fuel system as described in Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985, on certain Beech Model A36TC airplanes was published in the **Federal Register** on January 7, 1987 (52 FR 551). The proposal resulted from investigations of accidents involving Beech Model A36TC airplanes following loss of engine power which revealed that flooding may occur as a result of the pilots' inadvertent selection of the emergency fuel pump switch to "ON" while attempting to retract the flaps. This is primarily due to the location of the emergency fuel pump switch in close proximity to the flap switch on the upper-center instrument sub-panel.

The flaps are typically raised shortly after take-off, before significant altitude is gained. Therefore, if the engine failed due to incorrect use of the emergency fuel pump, sufficient time may not exist to identify the cause, rectify the situation and restart the engine before the aircraft strikes the earth.

It is also possible that engine flooding can occur due to the pilots' improper selection/position of the auxiliary/emergency fuel pump switches relative to fuel flow.

Beech Aircraft Corporation issued Beechcraft Mandatory Service Bulletin No. 2033 in August 1985 to minimize the possibility of engine flooding. This Service Bulletin modifies the Model A36TC fuel system, allowing the function of the emergency fuel pump switch to be incorporated with the auxiliary fuel pump switch. The emergency pump switch is thus removed from the upper-center instrument sub-panel.

Interested persons have been afforded an opportunity to comment on the

proposal. One commenter responded with two comments. The first comment requested that the AD summary and supplemental information be revised to include a statement that engine flooding can occur due to improper position/selection of the auxiliary/emergency fuel pump switches relative to fuel flow. The commenter refers to four previous A36TC accidents which resulted from engine stoppages. The FAA's investigations of these four accidents did not reveal that the engine stoppages resulted from improper selection or positioning of the auxiliary or emergency fuel pump switch.

In an accident subsequent to the four referred to, it was concluded that the probable cause of the accident was inadvertent selection of the emergency fuel pump instead of the flap switch. It was this accident which most prompted the issuance of this AD. The foregoing notwithstanding, the comment does have merit to clarify and emphasize the hazards associated with improper position/selection of the auxiliary/emergency fuel pump switches under any circumstances. Accordingly, the summary and supplemental information sections of the Final Rule reflect this change.

The second comment was a request for clarification of who will bear the cost of compliance with this AD. The FAA agrees and the Final Rule reflects that the kit and labor costs associated with incorporation of Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985, will be voluntarily absorbed by Beech. This does not affect the FAA certification that this is not a major or significant rule or that it will not affect small entities.

The FAA has determined that this regulation only involves approximately 271 airplanes. Beech will provide the kit and labor costs associated with the incorporation of Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985. The cost to the private sector is therefore estimated to be zero. This lack of cost precludes the AD from having a significant economic impact on any small entity under the criteria of the Regulatory Flexibility Act.

Therefore, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Beech:** Applies to Model A36TC (Serial Numbers EA-1 through EA-241, and EA-243 through EA-272) airplanes certificated in any category.

*Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To reduce the possibility of engine flooding caused by inadvertent pilot action, accomplish the following:

(a) Modify the fuel system as described in Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine the document(s) referred to herein at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on May 14, 1987.

Issued in Kansas City, Missouri, on March 30, 1987.

**Paul K. Bohr,**

*Director, Central Region.*

[FR Doc. 87-7978 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 86-CE-70-AD; Amdt. 39-5600]**

## Airworthiness Directives; Piper Aircraft Corporation (Ted Smith Aerostar) Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Aircraft Corporation (Ted Smith Aerostar) Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P and PA-60-700P airplanes, which requires a one-time removal and inspection of the exhaust system for each engine, and replacement of failed parts. Reinstallation of the exhaust system requires special attention to the alignment, installation sequences and use of a high temperature lubricant. This action is prompted by occurrences of cracked or failed components which have caused substantial damage and an accident. The inspection and reinstallation will remove any damaged parts from service and will result in a properly aligned system installation which will prevent premature failure of the systems.

**EFFECTIVE DATE:** May 15, 1987.

*Compliance:* Required within the next 50 hours time-in-service after the effective date of this AD, unless previously accomplished.

**ADDRESSES:** Piper Service Bulletin No. 818, dated February 25, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, Telephone (305) 567-4366. This information may be examined in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; Telephone (404) 991-3810.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a one-time removal and inspection of the exhaust system for cracks or deformed parts, the replacement of failed parts and proper reinstallation of the exhaust system for each engine on certain Piper Aircraft Corporation Model PA-60 Series

airplanes was published in the Federal Register on December 31, 1986 (51 FR 47251). The proposal resulted from at least six reports of Piper PA-60 Series airplane exhaust system failures which resulted in substantial airplane damage and at least one accident. The failure often is a broken flange at the turbocharger allowing the tailpipe to fall away; consequently, hot exhaust gas impinges on controls and structures. In certain reports the engine controls seized as a result of the hot exhaust gases. Others report substantial airplane wing structure damages. The FAA evaluation indicates that the exhaust system should be installed in a specified sequence using a high temperature lubricant to prevent misalignment and the introduction of high stress into the system. Piper Aircraft Corporation has issued Service Bulletin No. 818, dated February 25, 1986, to describe removal, inspection, and reinstallation of the exhaust system on these airplanes. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other Piper Model PA-60 Series airplanes of the same type design, this AD is being issued requiring a one-time removal and inspection of the exhaust system for cracks or deformed parts, the replacement of failed parts and proper reinstallation of the exhaust system for each engine on Piper Aircraft Corporation Model PA-60 Series airplanes.

Interested persons have been afforded an opportunity to comment on the proposal. Only one commenter responded and opposed the proposed AD. No objections were received on the FAA determination of the related cost to the public.

Comments on the proposed AD have been paraphrased for brevity. The commenter suggested that the exhaust system could be easily inspected visually, in place, by a qualified mechanic; that the turbocharger rotors and waste gate valves are the only moving parts in the exhaust system to cause failures and this inspection will not reveal problems in these components; that an exhaust system that does not leak is already properly aligned or has realigned during the heat/cool cycles of operation; that slip joints may be properly lubricated without disassembly and that the proposed AD will do more harm than good to the existing aircraft exhaust system.

Due consideration has been given to the commenter's response; however, the FAA does not concur. A qualified mechanic cannot always detect leaks, pin holes and/or cracks in exhaust systems, nor can impending failures be predicted with any degree of certainty. There are other failure modes besides moving parts that must be considered in an evaluation of the complete exhaust system. Induced stress levels in any or all components, caused by misalignment during improper installation, can be increased greatly by the high temperatures of the exhaust system operating environment and, in some cases, can cause component failure as a result of exceeding design limits. Misaligned exhaust systems may, in some cases, seal themselves but do not properly align themselves during the heating and cooling cycle. Slip joints cannot be properly inspected for leaks and/or binding and cleaned or lubricated with the lubricant specified in the Service Bulletin and this AD without disassembly.

Finally, the FAA does not agree that dismantling the exhaust system, cleaning and visually inspecting each component, replacing all unservicable parts and reinstalling system in accordance with precise, detailed instructions could do more harm than it can correct.

Accordingly, the proposal is adopted without substantive change. One editorial change was made by listing the new address of the FAA Atlanta Aircraft Certification Office.

The FAA has determined that this regulation only involves 890 airplanes at an approximate one-time cost of $1,000 for each aircraft or a total one-time fleet cost of $890,000. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Piper Aircraft Corporation (Ted Smith Aerostar):** Applies to the following models and serial numbers of airplanes certificated in any category:

| Model | Serial numbers affected |
|---|---|
| PA-60-600 (Aerostar [illegible]) | 60-0001-003 through 60-0933-8161262 |
| PA-60-601 (Aerostar 601). | 61-0001-004 through 61-0680-8162157. |
| PA-60-601P (Aerostar 601P). | 61P-0157-001 through 61P-[illegible]-8-83-62. |
| PA-60-602P (Aerostar 602P). | 62P-0750-8165001 and 62P-0861-8165002 through 62P-0932-8165055 and 60-8265001 through 60-8365021. |
| PA-60-700P (Aerostar 700P). | 60-8423001 through 60-8423025. |

*Compliance:* Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failed exhaust system components, accomplish the following on each engine:

(a) For affected Model PA-60-600 airplanes, remove the exhaust system components by accomplishing the following steps:

(1) Remove engine cowling.

(2) Remove exhaust stack support clamp from stack.

(3) Disconnect all stack flanges and remove complete exhaust stack assembly from each side.

(b) For affected Models PA-60-601, 601P, -602P, and -700P airplanes, remove the exhaust system components by accomplishing the following steps:

(1) Remove engine cowling.

(2) Loosen clamp on turbocharger exhaust port and slide rear section of exhaust stack aft and out.

(3) Disconnect waste gate control linkage and remove clamp attaching turbocharger waste gate.

(4) Slide waste gate section aft and out.

(5) Loosen balance tube end and center clamps, and compress balance tube.

(6) Disconnect all stack flanges and remove forward section of exhaust stack from each side.

(c) For all affected airplanes, visually inspect all exhaust system components by accomplishing the following:

(1) Clean and inspect all welds for cracks and pin holes, using a dye penetrant procedure.

(2) Inspect clamps, clamp bolts, and supports for condition and security of attachment.

(3) Inspect slip joints for signs of leaks and/or binding.

(4) Inspect stack flange mating surfaces for cracks or burns.

(5) Inspect turbocharger mounting flange on waste gate for cracks or burns.

(6) Rotate waste gate control lever to insure proper operation.

(7) Inspect gaskets for signs of leaks. Discard gaskets at each disassembly.

(d) For all affected airplanes, inspect using dye penetrant procedures, the turbocharger attachment flange on aft section exhaust pipe for cracks, especially in the welds.

(e) Prior to further flight, replace all unserviceable parts including all used gaskets.

(f) For affected Model PA–60–600 airplanes, install the exhaust system by accomplishing the following steps:

(1) Prior to reassembly, clean up all slip joints and apply Fel-Pro antiseize lubricant (Type C5–A), Piper Part Number 912–012, to exhaust pipes at slip joints.

(2) Slide forward and aft sections together. Replace parts that do not assemble freely without binding.

(3) Place new flange gaskets into position and place exhaust system onto cylinder studs at exhaust ports. Install flange nuts loosely.

(4) Partially tighten all nuts. Never fully tighten any part of the exhaust system before proceeding to another part on the same side of the engine.

(5) Inspect slip joint after stacks are installed to assure proper alignment and freedom from binding when flange nuts are tightened.

(6) Tighten each part on one side of the engine uniformly until a torque of 205–215 inch pounds has been applied.

(7) Install exhaust stack support clamp onto stack, and adjust support rod ends so that clamp can be moved along stack by hand. Distance between stack and tunnel surface should be .50 inch minimum to 1.60 inch maximum on left stack; .75 inch minimum to 1.60 inch maximum on right stack. Replace parts which do not fall within this range.

(8) Start and run engine in accordance with the appropriate flight manual, shut down engine and check for leaks and correct as required.

(9) Install cowling.

(g) For affected Models PA–60–601, –601P, 602P, and –700P airplanes, install the exhaust system by accomplishing the following:

(1) Prior to reassembly, clean all slip joints and apply Fel-Pro antiseize lubricant (Type C5–A), Piper Part Number 912–012, to exhaust pipes and waste gates at all slip joints.

(2) Slide first and second sections of exhaust stack together. Replace parts that do not assemble freely without binding.

(3) Position stack flanges and new gaskets onto exhaust ports. Install flange nuts loosely.

(4) Install V-clamp onto turbocharger waste gate flange with opening aft.

(5) Position new gasket on waste gate turbocharger exhaust port. Spread V-clamp on turbocharger waste gate flange and install waste gate onto exhaust pipe and turbocharger. Install clamp nut loosely.

(6) Install V-clamp and new gasket on turbocharger exhaust port. Spread V-clamp and install aft section of exhaust stack onto turbocharger and waste gate. Install clamp nut loosely.

(7) Install balance tube, insuring that ends extend into clamps beyond slits in tube ends, and install end clamp bolts loosely.

(8) Starting at the front of the engine and working aft, partially tighten all nuts. Never fully tighten any part of the exhaust system before proceeding to another part on the same side of the engine.

(9) Reinspect all joints after parts are installed to assure proper alignment and freedom from binding when nuts are fully tightened.

(10) Tighten each part on one side of the engine uniformly, starting at front of engine and working aft. Torque flange nuts to 205–215 inch pounds and V-clamp nuts to 45–50 inch pounds.

(11) After completing both sides of engine, tighten balance tube clamps.

(12) Reconnect and adjust waste gate control linkage per Aircraft Maintenance Manual.

(13) Start and warm engine in accordance with appropriate flight manual, shut down engine, check for evidence of leaks and correct as necessary. Retorque V-clamps to 45–50 inch pounds.

(14) Install cowling.

(h) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(i) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**Note.**—Piper Aircraft Corporation Service Bulletin No. 818, dated February 25, 1986, pertains to the subject addressed by this AD.

This amendment becomes effective on May 15, 1987.

Issued in Kansas City, Missouri, on March 31, 1987.

**Joseph T. Brennan,**

*Acting Director, Central Region.*

[FR Doc. 87–7979 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–13–M

---

## 14 CFR Part 39

**[Docket No. 87–CE–12–AD; Amdt. 39– 5601]**

## Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Avions Pierre Robin Model R2160 airplanes, which requires a visual inspection of the rudder bar for cracks and a subsequent modification to preclude the formation of additional cracks. A report of cracks has been received which may cause loss of control of the airplane. This inspection and modification will detect and correct these cracks and preclude the loss of rudder control.

**EFFECTIVE DATE:** April 20, 1987.

*Compliance:* As prescribed in the body of the AD.

**ADDRESSES:** Service Bulletin (S/B) No. 109, dated April 28, 1986, applicable to this AD may be obtained from Avions Pierre Robin, Aerodrome de DIJON-Val-Suzon, Darois, Fontaine-Les-Dijon, France F–21121. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Anderson, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Foreign FAR 23 Section, Central Region ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

**SUPPLEMENTARY INFORMATION:** The manufacturer, Avions Pierre Robin, received a report that fatigue cracks had been found in the rudder bar of an Australian registered Avions Pierre Robin airplane. As a result, Avions Pierre Robin has issued S/B No. 109, dated April 28, 1986, which requires a visual inspection of the rudder bars for cracks in the area where the vertical and horizontal tubes are joined, and subsequent reinspections every 100 hours time-in-service (TIS) until the area is reinforced. The French Civil Aviation Authority, the Director Generale de l'Aviation Civile (DGAC), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in France, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes by issuing a French AD No. 86–148–(A)R1, dated November 26, 1986. On airplanes operated under French registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the

certification of the DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Avions Pierre Robin S/B No 109, dated April 28, 1986, and the mandatory classification of this service bulletin by the DGAC. Based on the foregoing, the FAA has determined that the condition described herein is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring a visual inspection of the rudder bars for cracks in the area where the vertical and horizontal tubes are joined, and incorporating the manufacturer's specified modification within 100 hours TIS on Avions Pierre Robin Model R2160 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Avions Pierre Robin:** Applies to Model R2160 (all serial numbers) airplanes certificated in any category.

*Compliance:* Required as indicated, unless already accomplished.

To preclude the loss of rudder control, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, visually inspect for cracks the area of each rudder bar adjacent to the point where the vertical and horizontal tubes are joined in accordance with the instructions of Avions Pierre Robin Service Bulletin (S/B) No. 109, dated April 28, 1986 (hereinafter referred to as APR S/B No. 109). If any crack is found, before further flight, reinforce all the rudder bars in accordance with the modification specified in APR S/B No. 109.

(b) Within the next 100 hours TIS after the effective date of this AD, unless previously modified in accordance with paragraph (a) of this AD, reinforce all the rudder bars in accordance with the modification specified in APR S/B No. 109.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain a copy of the document referred to herein upon request to Avions Pierre Robin, Aerodrome de DIJON-Val-Suzon, Darois, Fontaine-Les-Dijon, France F-21121; or may examine the document referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on April 20, 1987.

Issued in Kansas City, Missouri, on April 3, 1987.

Paul K. Bohr,

*Director, Central Region.*

[FR Doc. 87-7982 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 87-CE-11-AD; Amdt. 39-5599]**

## Airworthiness Directives; Beech Aircraft Corporation Models 65-A90; 65-A90-1 (U-21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 65-A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C (C-12F); 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (C-12F), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), AD 87-04-14, applicable to Beech Aircraft Corporation Models 65-A90; 65-A90-1 (U-21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 65-A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C (C-12F); 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (C-12F), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C airplanes, and codifies the corresponding emergency AD letter dated February 23, 1987, into the Federal Register. This AD requires modification of the elevator trim cable system to prevent the elevator trim cable from becoming partially disengaged from the manual or electric trim cable pulley which can inhibit movement of the elevator trim tab and increase the elevator control forces, and in addition, the aft cable guard will be modified or sealed, to provide moisture protection.

**EFFECTIVE DATE:** April 14, 1987, to all persons except those to whom it has already been made effective by priority letter from the FAA dated February 23, 1987.

*Compliance:* As prescribed in the body of the AD.

**ADDRESSES:** Beechcraft Mandatory Service Bulletin No. 2028, Rev. III, revised February 1987, applicable to this AD may be obtained from Beechcraft Aero and Aviation Centers or Beech Aircraft Corporation, Commercial Service Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Dale A. Vassalli, Aerospace Engineer, ACE-130W, Wichita Aircraft

Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209; Telephone (316) 946-4419.

**SUPPLEMENTARY INFORMATION:**

Airworthiness Directive 86-20-03, Amendment 39-5413 published September 10, 1986, in the **Federal Register**, page No. 32202 thru 32204, applicable to Beech Aircraft Corporation Models 65-90; 65-A90; 65-A90-1 (U-21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 65-A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C; 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C airplanes, requires modification of the elevator trim cable system. Subsequent to the issuance of AD 86-20-03 the FAA became aware of an incident wherein an aft cable guard installed per Beechcraft Service Bulletin No. 2028, Revision II, in accordance with AD 86-20-03, had experienced a frozen elevator trim control during flight. The investigation of the incident determined that moisture, which had accumulated in the elevator trim tab aft cable guard, froze at altitude and jammed the elevator trim control. It has been determined that the elevator trim tab aft cable guard on these airplanes are subject to moisture contamination, which can result in an unsafe flight condition. Therefore, the FAA is superseding AD 86-20-03 by requiring that the elevator trim tab aft cable guard be protected against moisture.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corresponding action was required, and that notice and public procedure thereon was impracticable and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by priority mail letter dated February 23, 1987. The AD became effective immediately as to these individuals upon receipt of that letter, and is identified as AD 87-04-24. Subsequent to issuance of AD 87-04-24, the FAA has been informed by Beech Aircraft Corporation that the Model B200C (UC-12F) airplanes (S/N BU-1 thru BU-12) are being modified and therefore were removed from the AD effectivity list. Since the unsafe condition described therein may still exist on other Beech Aircraft Corporation Models 65-A90; 65-A90-1 (U21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 65A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C (C-12F); 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (C-12F), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C airplanes, the AD is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption "**ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Beech Aircraft Corporation:** Applies to the following Beech airplanes certificated in any category.

| Models | Serial Numbers (S/N) | Reference Service Instruction No. |
|---|---|---|
| 65-A90, B90, C90, C90A | LJ-114 thru LJ-1139 | Beechcraft Mandatory Service Instruction No. 2028, Rev. III, revised February 1987 |
| E90 | LW-1 thru LW-347 | |
| F90 | LA-2 thru LA-236 | |
| 200, B200 | BB-2; BB-6 thru BB-1211; BB-1213 thru BB-1253; BB-1255 thru BB-1261; BB-1263 thru BB-1267. | |
| 200C, B200C | BL-1 thru BL-112 and BL-124 thru BL-127 | |
| 200CT, B200CT | BN-1 thru BN-4 | |
| 200T, B200T | BT-1 thru BT-31 | |
| 300 | FA-1 thru FA-38 and FA-40 thru FA-50 | |
| 1900 | UA-1 thru UA-3 | |
| 1900C | UB-1 thru UB-62 | |
| H90 (T-44A) | LL-1 thru LL-18, LL-20 thru LL-31, LL-33 thru LL-40, LL-42 thru LL-48, and LL-50 thru LL-61 | Beech T-44A Service Instructions No. T-44A-0056, Rev 1 |
| A200 (C-12A) | BD-1 thru BD-30 | Beech C-12 Service Instructions No. C-12-0103, Rev. 1. |
| A200 (C-12C) | BC-1 thru BC-75 | |
| A200CT (C-12D) | BP-1, BP-22, BP-24 thru BP-39; BP-40 and BP-45 | |
| A200CT (RC-12D) | GR-1 thru GR-13 | |
| A200CT (RC-12G) | FC-1 thru FC-3 | |
| A200CT (FWC-12D) | BP-7 thru BP-11 | |
| A200C (UC-12B) | BJ-1 thru BJ-66 | |
| A200CT (C-12D) | BP-46 thru BP-51 | Beech C-12 Service Instructions No. C-12-0112 |
| A200CT (C-12F) | BP-52 thru BP-63 | |
| B200C (C-12F) | BL-73 thru BL-112 and BL-118 thru BL-123 | |

| [redacted] | Serial Numbers (S/N) | Reference Service Instruction No |
|---|---|---|
| 65-A90-1 (U-21A) | LM-1 thru LM-63, LM-65, LM-67 thru LM-69, LM-71 thru LM-107, and LM-112 thru LM-124 | Beech U-21 Service Instruction No U-21-0002, Rev. 1 |
| 65-A90-1 (JU-21A) | LM-64, LM-66, LM-70 | |
| 65-A90-1 (U-21G) | LM-125 thru LM-141 | |
| 65-A90-1 (RU-21A) | LM-108 thru LM-111 | |
| 65-A90-2 (RU-21B) | LS-1 thru LS-3 | |
| 65-A90-3 (RU-21C) | LT-1 and LT-2 | |
| 65-A90-4 (RU-21H) | LU-1 thru LU-16 | |

*Compliance:* Required as indicated after the effective date of this AD, unless previously accomplished.

To preclude malfunction of the elevator trim cable system, accomplish the following:

(a) Within the next 10 hours time-in-service, perform the following:

(1) For Models 65-A90, B90, C90, C90A airplanes (S/N LJ-114 thru LJ-1110), and Model E90 airplanes (S/N LW-1 thru LW-347), which have complied with AD 86-20-03, paragraph (b), and for Model C90A airplanes (S/N LJ-1111 thru LJ-1139), which have a redesigned elevator trim cable system installed at the Beech factory without moisture protection; modify the elevator trim system in accordance with Part IV of Beechcraft Service Bulletin No. 2028, Rev. III, dated February 1987.

(2) For Model F90 airplanes (S/N LA-2 thru LA-235); Models 200 and B200 airplanes (S/N BB-2, BB-6 thru BB-1211 and BB-1213 thru BB-1217); and for Models 200C and B200C airplanes (S/N BL-1 thru BL-112 and BL-124); and for Models 200CT and B200CT airplanes (S/N BN-1 thru BN-4); Models 200T and B200T airplanes (S/N BT-1 thru BT-30), which have complied with AD 86-20-03, paragraph (b), and for Model F90 airplanes (S/N LA-236); and for Models 200 and B200 airplanes (S/N BB-1218 thru BB-1253, BB-1255 thru BB-1261, BB-1263 thru BB-1267); and for Model B200C airplanes (S/N BL-125 thru BL-127); and for Model B200T airplanes (S/N BT-31), which have a redesigned elevator trim cable system installed at the Beech factory without moisture protection; modify the elevator trim system in accordance with Part V of Beechcraft Service Bulletin No. 2028, Rev. III, dated February 1987.

(3) For Model 1900 airplanes (S/N UA-1 thru UA-3) and for Model 1900C airplanes (S/N UB-1 thru UB-44), which have complied with AD 86-20-03, paragraph (b), and for Model 1900C airplanes (S/N UB-45 thru UB-62), which have a redesigned elevator trim cable system installed at the Beech factory without moisture protection; modify the elevator trim system in accordance with Part VI of Beechcraft Service Bulletin No. 2028, Rev. III, dated February 1987.

(b) For those airplanes that have not been modified in accordance with paragraph (b) of AD 86-20-03, within the next 25 hours time-in-service, accomplish the following:

(1) Check the operation of the elevator trim system and mark the elevator trim indicator scale in accordance with Part I or Part II of Beech Service Bulletin No. 2028, Rev. III, dated February 1987.

(2) For Models 65-A90, B90, C90, C90A, and E90 airplanes, mark the elevator trim tab push rods in accordance with Part I or Part II of Beech Service Bulletin No. 2028, Rev. III, dated February 1987.

Note.—The following airplanes have been previously marked by the manufacturer per paragraphs (a)(1) and (a)(2) of AD 86-20-03:

Models C90A (S/N LJ-1077 thru LJ-1110), F90 (S/N LA-223 thru LA-235), B200 (S/N BB-1193 thru BB-1217), B200C (S/N BL-72 thru BL-112 and BL-124), 300 (S/N FA-1 thru FA-38 and FA-40 thru FA-50), 1900 (S/N UA-1 thru UA-3), and 1900C (S/N UB-9 thru UB-44).

(3) Place the Elevator Trim System Preflight Check Procedure, shown in Attachment 1 of this AD, in the Limitations Section of the FAA Approved Airplane Flight Manual for the Models 65-A90, B90, C90, E90, and 200T/200CT airplanes; and the Limitations Section of the Pilot's Operating Handbook and the FAA Approved Airplane Flight Manual for the Models C90, C90A, F90, 200/200C, B200/B200C, B200T, B200CT, 300, and 1900/1900C airplanes.

(c) Prior to May 15, 1987, modify the elevator trim system on all airplanes which have not complied with the requirements of paragraph (a) of this AD, in accordance with Part III of Beechcraft Service Bulletin No. 2028, Rev. III, dated February 1987.

(d) Compliance with paragraph (b) of this AD is no longer necessary after the modification required in paragraph (c) of this AD is accomplished.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(f) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beechcraft Aero and Aviation Centers or Beech Aircraft Corporation, Commercial Service Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine copies of the document(s) referred to herein at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 86-20-03, Amendment 39-5413.

This amendment becomes effective on April 14, 1987, to all persons except those to whom it has already been made effective by priority letter from the FAA dated February 23, 1987, and is identified as AD 87-04-24.

Issued in Kansas City, Missouri, on March 30, 1987.

**Paul K. Bohr,**

*Director, Central Region.*

**Attachment 1**

[87-04-24]

*Operating Limitation*

The Elevator Trim System Preflight check procedure, as defined below, must be conducted prior to each flight.

To verify that the elevator trim cable is not fouled or disengaged from the cable drum, the following Elevator Trim System Preflight Check is required prior to each flight of the Beech Model 65-A90, B90, C90, C90A, E90, F90, 200, B200, 200C, B200C, 200CT, B200CT, 200T, B200T, 300, 1900 and 1900C airplanes:

Cockpit.

1. Control Locks—*Remove.*

2. Elevator. Trim:

a. All airplanes except 1900/1900C—Set to "O" Units.

b. 1900/1900C airplanes—*Set Two Units Nose Up.*

Caution

The elevator trim system must not be forced past the limits which are indicated on the elevator trim indicator scale either manually, electrically (except Model 300) or by action of the autopilot (except Model 300).

Tail Section.

1. Elevator Trim Tab.

a. *Verify* "O" (*Neutral*) *Position.*

2. On Model 65-A90, B90, C90, C90A and E90 airplanes, the elevator trim tab "O" (neutral) position is determined by observing that the alignment marks on the elevator trim tab pushrods align with the alignment marks on the elevator (See Figure 1 or 2 below), when the elevator is resting against the downstops.

BILLING CODE 4910-13-M

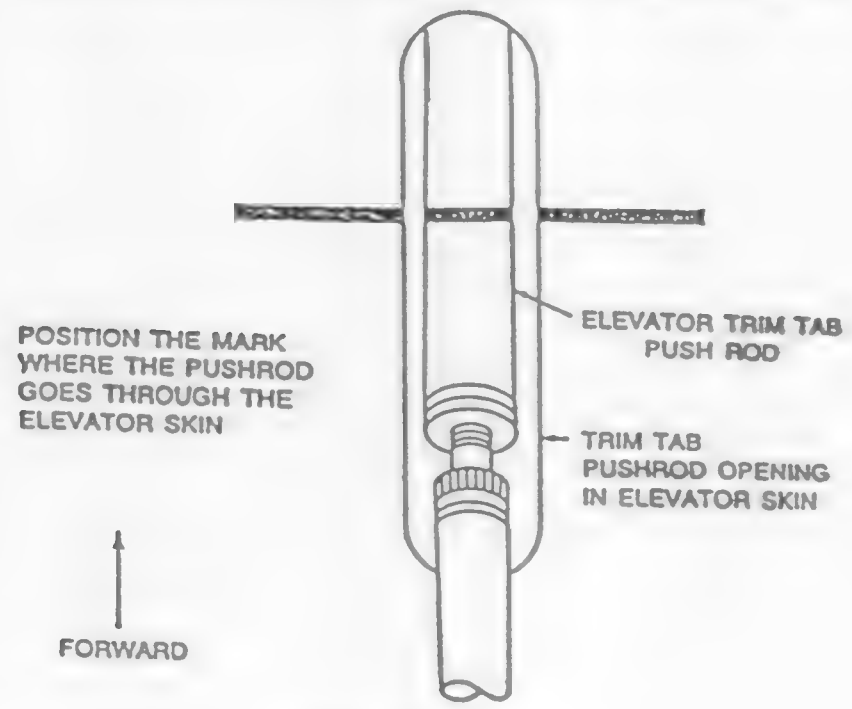


Pushrod Marking (Temporary)
Figure 1

87-04-24

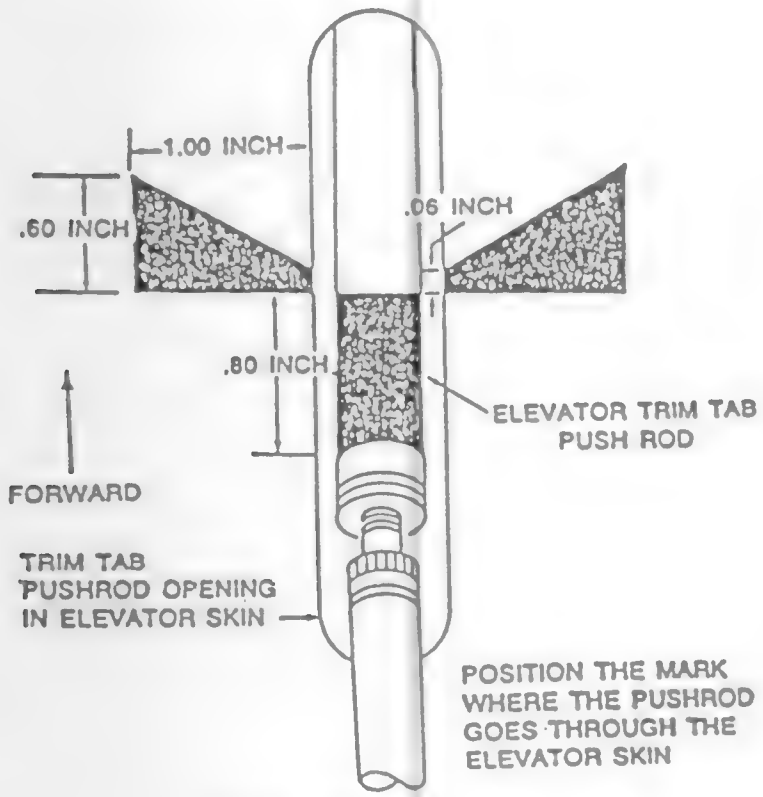


Pushrod Marking (Permanent)
Figure 2

BILLING CODE 4910-13-C

3. On Model F90, 200 Series, 300 and 1900/1900C airplanes, the elevator trim tab "O" (neutral) position is determined by observing that the trailing edge of the elevator trim tab aligns with the trailing edge of the elevator, when the elevator is resting against the downstops.

Warning

The above Preflight Inspection check *Must* be repeated prior to take-off if the elevator trim is allowed to reach limit travel at any time prior to take-off as a result of *Manual, Electrical* (except Model 300) OR *Autopilot* (except Model 300) *Operation* of the trim system.

[FR Doc. 87-7981 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Part 39

**[Docket No. 83-ASW-33, Amdt. 39-5534]**

## Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA315, SE3160, SA316, and SA319 Series Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment amends an existing airworthiness directive (AD) which imposes a finite service life for certain original and repaired main gearbox support "A" frame assemblies installed on Aerospatiale Model SA315, SE3160, SA316, and SA319 series helicopters. This amendment is needed to remove the finite life for certain "A" frames when used on a Model SE3160 helicopter for the reason that these "A" frames have been determined to have an unlimited service life when used on Model SE3160 helicopters.

**EFFECTIVE DATE:** May 11, 1987.

The incorporation by reference of certain publications in the regulations is approved by the Director of the Federal Register as of May 11, 1987.

*Compliance:* As prescribed in the AD.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2710 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support. These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

**FOR FURTHER INFORMATION CONTACT:** John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium APO New York 09667, or James H. Major, Rotorcraft Standards Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, telephone number (817) 624-5117.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Amendment 39-4787 (49 FR 2239), AD 84-01-03 was published in the **Federal Register** on November 10, 1986 (51 FR 40811). AD 84-01-03 currently imposes a finite service life for certain original and repaired main gearbox support "A" frame assemblies and requires replacement of certain affected assemblies within 50 hours' time in service for Aerospatiale Model SA315, SA316, and SA319 series helicopters. The AD also presently contains an incorporation by reference statement.

After issuing Amendment 39-4787, the FAA determined that the finite service life for certain "A" frame assemblies used on Model SE3160 helicopters may be increased from 11,000 hours to unlimited hours' time in service as stated in Aerospatiale Alouette Service Bulletin (SB) No. 01.49, Revision 1, and that an additional model should be added to the AD. Therefore, Amendment 39-4787 is amended by incorporating by reference the information in SB No. 01.49, Revision 1, dated May 30, 1986. In addition, the applicability statement and paragraph (b) are amended to add the Model SE3160.

No comments were received on the notice proposal; therefore, the proposal is adopted without change.

The FAA has determined that this regulation only involves one helicopter model of which fourteen are registered in the United States. It relieves a requirement for this model and imposes no additional economic burden. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "For Further Information Contact."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

### Adoption of the Amendment

### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. By amending Amendment 39-4787 (49 FR 2239), AD 84-01-03, as follows:

a. Revise the applicability statement by adding "SE3160" between SA315 and SA316.

b. Revise paragraph (b) and its note paragraph to read as follows:

* * * * *

(b) For Models SE3160, SA316, and SA319 series helicopters, comply with Alouette SB No. 01.49, Revision 1, dated May 30, 1986, within 50 hours' time in service after the effective date of this AD amendment. This bulletin establishes a finite service life for certain identified original and repaired "A" frame assemblies for these helicopters and permits only one-time replacement/repair of an eye end-fitting on each "A" frame assembly. Replacing a repair eye end-fitting with another repair eye end-fitting is prohibited.

**Note:** Revision A of the service bulletin establishes for the Model SE3160 an 11,000-hour service life limit for certain original and repaired "A" frames and a 5,500-hour service life limit for certain other original and repaired "A" frames. Revision 1, dated May 30, 1986, instituted on Model SE3160 helicopters an unlimited service life for original "A" frames whose serial number is preceded by letters other than "RO". (Frames with RO serial numbers retain the 11,000-hour and 5,500-hour service life.) For Model SE3160 helicopters, a repair eye end-fitting is limited to 5,500 hours service life.

For the Models SA316 B and C and SA319B helicopters, the service bulletin, Revision A and 1, retains the present 3,200 or 1,600-hour service life limit for certain original and repaired "A" frames and eye end-fittings and establishes a 1,600-hour service life for certain other original and repair eye end-fittings.

* * * * *

This amendment amends Amendment 39-4787 (49 FR 2239), AD 84-01-03.

This procedure shall be done in accordance with Aerospatiale Alouette SB No. 01.49, Revision 1, dated May 30, 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1). Copies may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention:

Customer Support. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

Issued in Fort Worth, Texas, on March 3, 1987.

Don P. Watson,

*Acting Director, Southwest Region.*

[FR Doc. 87-7987 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Parts 370, 376 and 399

[Docket No. 70340-7040]

### Clarifications of Export Licensing Policy

**AGENCY:** Export Administration, International Trade Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule, which neither expands nor limits the provisions of the Export Administration Regulations, clarifies existing export licensing policy.

Section 370.11 is amended to explain how an exporter may request notification from the Office of Export Licensing when an export license application or reexport request is reviewed by COCOM, an international security export control system. Section 376.14 is amended to clarify export policy on certain crime control and detection commodities. In addition, Supplement No. 1 to § 399.1 (the Commodity Control List) is amended to correct the formula for calculating the "average seek time" of disc drives controlled by entry 1565A.

**EFFECTIVE DATE:** This rule is effective April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Muldonian or John Black, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

**SUPPLEMENTARY INFORMATION:**

### Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection of information has been approved by the Office of Management and Budget under control number 0625-0001.

### List of Subjects in 15 CFR Parts 370, 376 and 399

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

### PARTS 370, 376, AND 399—[AMENDED]

Accordingly, the Export Administration Regulations 15 CFR Parts 370, 376, and 399 are amended as follows:

1. The authority citation for Parts 370 and 376 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

3. Paragraph (c) of § 370.11 is revised to read as follows:

**§ 370.11 Information to exporters.**

* * * * *

(c) *Request for notification of COCOM review of application.* The United States participates in an international security export control system. The Coordinating Committee (COCOM) of this system reviews proposed transactions to export or reexport certain strategic commodities or technical data to the People's Republic of China and to Country Groups Q, W and Y. The Office of Export Licensing refers certain export license applications and requests for reexport authorization to COCOM for review. Such referral will add two months or more to the usual processing time.

The Office of Export Licensing will notify the applicant, upon request, when a proposed export or reexport is referred to COCOM for review. Request for notification should be made at the time the license application or reexport request is submitted by inserting the phrase "notification of COCOM review requested" in Item 15 of Form ITA-622P, Application for Export License.

* * * * * *

4. Paragraph (a) of § 376.14 is amended by inserting a sentence before the final sentence and revising the final sentence, as follows:

**§ 376.14 Crime control and detection commodities.**

(a) *Export license requirements.* * * * Applications for validated export licenses for "specially designed implements of torture" will be denied. Applications for other items controlled under this section will generally be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

* * * * *

**§ 399.1 [Amended]**

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the definition of "average seek time" (in paragraph (c) under "access rate") in Advisory Note 16 to read as follows:

1565A Electronic computers, "related equipment," equipment or systems containing electronic computers, and specially designed components and accessories for these electronic computers and "related equipment."

* * * * *

*Advisory Note 16:* The following are definitions of terms used in ECCN 1565A:

*"access rate"*—

(c) Of a seek mechanism ($R_{as}$)—

* * * * *

'average seek time' ($t_{as}$)—

The sum of the 'maximum seek time' ($t_{smax}$) and twice the 'minimum seek time' ($t_{smin}$), divided by three.

Thus:

$$T_{as} = \frac{T_{smax} + 2T_{smin}}{3}$$

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and Their Manufactures), ECCN 5680B is amended by removing the Advisory Note.

Dated: April 7, 1987.

**Vincent F. DeCain,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 87-8042 Filed 4-9-87; 8:45 am]

BILLING CODE 3510-DT-M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 177

**[Docket No. 86F-0263]**

## Indirect Food Additives; Polymers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of isobutylene-butene copolymers in the manufacture of expanded foam-polystyrene articles and in release coatings on backings or linings for pressure-sensitive adhesive labels. This action responds to a petition filed by Permethyl Corp.

**DATES:** Effective April 10, 1987; objections by May 11, 1987. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 177.1430 effective on April 10, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of July 14, 1986 (51 FR 25404), FDA announced that a food additive petition (FAP 6B3925) had been filed by Permethyl Corp., Frazer, PA 19355, proposing that § 177.1430 *Isobutylene-butene copolymers* (21 CFR 177.1430) be amended to provide for the safe use of isobutylene-butene copolymers in the manufacture of foam-polystyrene articles and in release coatings or linings for pressure-sensitive adhesive labels.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that the regulations should be amended as set forth below. For clarity, the agency is changing the format for § 177.1430. Although this regulation is restructured, the changes have not affected the status of the previously listed uses of these copolymers.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before May 11, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 177**

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

## PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1430 is revised to read as follows:

**§ 177.1430 Isobutylene-butene copolymers.**

Isobutylene-butene copolymers identified in paragraph (a) of this section

BEST COPY AVAILABLE

may be safely used as components of articles intended for use in contact with food, subject to the provisions of this section.

(a) For the purpose of this section, isobutylene-butene copolymers consist of basic copolymers produced by the copolymerization of isobutylene with mixtures of *n*-butenes such that the finished basic copolymers contain not less than 45 weight percent of polymer units derived from isobutylene and meet the specifications prescribed in paragraph (b) of this section when tested by the methods described in paragraph (c) of this section.

(b) Specifications:

| Isobutylene-butene copolymers | Molecular weight (range) | Viscosity (range) | Maximum bromine value |
|---|---|---|---|
| 1. Used as release agents in petroleum wax complying with § 178.3710 of this chapter | 300 to 5,000 | 40 to 20,000 seconds Saybolt at 200 °F | 40 |
| 2. Used as plasticizers in polyethylene complying with § 177.1520 and in polystyrene complying with § 177.1640 of this chapter | 300 to 5,000 | 40 to 20,000 seconds Saybolt at 200 °F | — |
| 3. Used as components of nonfood articles with §§ 175.300, 176.170, 176.210, 177.2260(d)(2), 177.2800, and 178.3570 (provided that addition to food does not exceed 10 parts per million), or § 176.180 of this chapter | 300 to 5,000 | 40 to 20,000 seconds Saybolt at 200 °F | — |
| 4. Used as production aids in the manufacture of expanded (foamed) polystyrene articles complying with § 177.1640 of this chapter | 150 to 5,000 | Less than 20,000 seconds Saybolt at 200 °F | — |
| 5. Used in release coatings on backings or linings for pressure-sensitive adhesive labels complying with § 175.125 of this chapter | 150 to 5,000 | Less than 20,000 seconds Saybolt at 200 °F. | — |

(c) The analytical methods for determining whether isobutylene-butene copolymers conform to the specifications in paragraph (b) are as follows:

(1) *Molecular weight.* Molecular weight shall be determined by American Society for Testing and Materials (ASTM) method D2503–82, "Standard Test Method for Molecular Weight (Relative Molecular Mass) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) *Viscosity.* Viscosity shall be determined by ASTM method D445–74, "Test for Kinematic Viscosity of Transparent and Opaque Liquids," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(3) *Maximum bromine value.* Maximum bromine value shall be determined by ASTM method D1492–78, "Standard Test Method for Bromine Index of Aromatic Hydrocarbons by Coulometric Titration," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(d) The provisions of this section are not applicable to isobutylene-butene copolymers used as provided under § 175.105 of this chapter.

Dated: March 24, 1987.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–8002 Filed 4–9–87; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Morantel Tartrate

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc., providing for removal of the label statement requiring overnight withholding of feed prior to treating cattle with a Type C morantel tartrate feed.

**EFFECTIVE DATE:** April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 92–444 providing revised labeling for use of 0.44 to 4.4 grams of morantel tartrate per pound of Type C cattle feed to be used for removal and control of mature gastrointestinal nematode infections. The revision provides for removing the statement that nonmedicated feed be withheld overnight prior to treatment.

The supplement is approved and 21 CFR 558.360(d)(3) is amended accordingly.

Approval of this supplement does not change the approved conditions of use of the drug. Data in the original application demonstrated that the overnight withholding of feed is not necessary; the statement was included to reflect usual practice in the beef cattle husbandry. The animal still receives the same amount of drug. Approval did not require new effectiveness or safety data. Therefore, a freedom of information summary for approval of the supplement is not required.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.360 [Amended]**

2. In § 558.360 *Morantel tartrate* in paragraph (d)(3) by removing "Withhold feed overnight prior to treatment to ensure ration will be readily consumed."

Dated: April 3, 1987.

**Richard A. Carnevale,**

*Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.*

[FR Doc. 87–8004 Filed 4–9–87; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 201, 203, and 234**

**[Docket No. N-87-1683; FR-2338]**

# Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of revisions to FHA maximum mortgage limits for high cost areas.

**SUMMARY:** This notice adds the following localities, recently approved by the Department, to the annual HUD list of areas (October 1, 1986, 51 FR 34961) which are eligible for high cost mortgage limits under the National Housing Act and its amendments: Talbot County, Maryland; Huntsville, Alabama MSA; Bradenton, Florida MSA; and Little Rock, Arkansas.

This notice also revises the list by (1) adding the mortgage limits for Currituck County, North Carolina; Burleigh and Morton Counties, North Dakota; and Orange County, New York PMSA, which were inadvertently omitted from the annual list, (2) changing the two family mortgage limits for the Chicago, Illinois PMSA; Lake County, Illinois PMSA, Joliet, Illinois PMSA; and Aurora-Elgin Illinois PMSA, and (3) revising the limits for Middlesex County, Connecticut.

**EFFECTIVE DATE:** April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755-6720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160; telephone (202) 755-5210; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

## Background

The National Housing Act (NHA) (12 U.S.C. 1710 through 1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Developoment Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high cost limits for combination manufactured homes and lots and individual lots, and specified the special high cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area".

On October 1, 1986 (51 FR 34961), the Department published its annual complete listing of areas eligible for "high cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act and their applicable limits.

This notice adds the following localities recently approved by the Department to the annual HUD list of areas (October 1, 1986, 51 FR 34961) which are eligible for high cost mortgage limits under the National Housing Act and its amendments: Talbot County, Maryland; Huntsville, Alabama MSA; Bradenton, Florida MSA; and Little Rock, Arkansas.

The notice also revises the list by (1) adding the mortgage limits for Currituck County, North Carolina; Burleigh and Morton Counties, North Dakota; and Orange County, New York PMSA, which were inadvertently omitted from the annual list and (2) changing the two family mortgage limits for the Chicago, Illinois PMSA; Lake County, Illinois PMSA; Joliet, Illinois PMSA; and Aurora-Elgin, Illinois PMSA.

These amendments to the high cost areas appear in two parts. Part I explains high cost limits for mortgage insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under sections 203(b) or 234(c) of the National Housing Act.

## National Housing Act High Cost Mortgage Limits

### *I. Title I: Method of Computing Limits*

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Talbot County, Maryland has a one family limit of $90,000. The combination home and lot loan limit for Talbot County is $90,000 × .80, or $72,000.

B. *Section 2(b)(1)(E). Lot only (excluding Alaska, Guam and Hawaii):* To determine the high cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Talbot County, Maryland has a one family limit of $90,000. The lot only loan limit for Talbot County is $90,000 × .20, or $18,000.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 × 140%.)
2. For combination manufactured homes and lots: $75,600 ($54,000 × 140%.)
3. For lots only: $18,900. ($13,500 × 140%.)

### *II. Title II: Updating of FHA 203(b), 234(c), and 214 Area Wide Mortgoge Limits*

HUD Field Office

| Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| **Region I** | | | | |
| **Hartford, CT** | | | | |
| Middlesex County | $90,000 | $101,300 | $122,650 | $142,650 |
| **Region II** | | | | |
| **New York, NY** | | | | |
| Orange County, NY PMSA: Orange County | 90,000 | 101,300 | 122,650 | 142,650 |

| HUD Field Office<br>Market area designation and local jurisdictions | 1-family and condo unit | 2-family | 3-family | 4-family |
|---|---|---|---|---|
| **Region III** | | | | |
| **Baltimore, MD** | | | | |
| Talbot County | 90,000 | 101,300 | 122,650 | 142,650 |
| **Region IV** | | | | |
| **Birmingham Office** | | | | |
| Huntsville, AL MSA, Madison County | 78,600 | 88,500 | 107,550 | 124,100 |
| **Region IV** | | | | |
| **Greensboro Office** | | | | |
| Currituck County | 76,500 | 86,000 | 104,500 | 120,500 |
| **Region IV** | | | | |
| **Tampa Office** | | | | |
| Bradenton, FL MSA, Manatee County | 72,350 | 81,500 | 99,050 | 114,300 |
| **Region V** | | | | |
| **Chicago Office** | | | | |
| Chicago, IL PMSA | | | | |
| Cook County, DuPage County, McHenry County | 87,250 | 98,300 | 119,400 | 137,800 |
| Lake County, IL PMSA | | | | |
| Lake County | 87,250 | 98,300 | 119,400 | 137,800 |
| Joliet, IL PMSA | | | | |
| Grundy County, Will County | 87,250 | 98,300 | 119,400 | 137,800 |
| Aurora-Elgin, IL PMSA | | | | |
| Kane County, Kendall County | 87,250 | 98,300 | 119,400 | 137,800 |
| **Region VI** | | | | |
| **Little Rock Office** | | | | |
| Little Rock, AK MSA | | | | |
| Faulkner County, Lenoke County, Pulaski County, Saline County | 82,150 | 92,550 | 112,450 | 129,750 |
| **Region VIII** | | | | |
| **Fargo Office** | | | | |
| Fargo-Moorhead, ND-MN MSA: | | | | |
| Cass County, ND | 77,900 | 87,750 | 106,600 | 123,000 |
| Grand Forks, ND | 72,500 | 81,650 | 99,250 | 114,500 |
| Other areas: | | | | |
| Burleigh County | 70,750 | 79,700 | 96,850 | 111,750 |
| Morton County | 70,750 | 79,700 | 96,850 | 111,750 |

Dated: April 1, 1987.

**James E. Schoenberger,**

*Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 87-8102 Filed 4-9-87; 8:45 am]

BILLING CODE 4210-27-M

## 24 CFR Part 3283

**[Docket No. R-87-1331; FR-2329]**

## Revision of HUD's List of State Administrative Agencies

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule updates HUD's list of State administrative agencies that have been fully or conditionally approved by the Secretary to enforce HUD's manufactured home construction and safety standards.

**EFFECTIVE DATE:** May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Robert Fuller, Chief, Compliance Branch, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6920. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 623 of the National Mobile Home Construction and Safety Standards act of 1974 (Act) gives each State the authority to: (1) Assume the responsibility for the enforcement of the Department's manufactured home construction and safety standards; (2) submit a State plan to enforce such HUD standards to the Secretary for approval; and (3) designate a State agency or agencies (SAA) to administer its manufactured home enforcement plan.

The Department compiles and maintains a list of State administrative agencies, which list is included in HUD's guidelines for the content of consumer manuals to be provided to manufactured home purchasers by manufacturers.

Since this final rule only updates the list of SAA's, the Department believes it is unnecessary to solicit public comment before publication of this rule for effect.

The Department's revision of its list of State administrative agencies constitutes an internal administrative procedure that 24 CFR 50.20 excludes from the requirements of 24 CFR Part 50—the HUD rules implementing section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule is not a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because it only updates HUD's list of state administrative agencies that enforce the Department's manufactured home construction and safety standards.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1986 under Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects in 24 CFR Part 3283**

Mobile homes, Consumer protection, Warranties.

Accordingly, the Department amends 24 CFR Part 3283 as follows:

## PART 3283—MANUFACTURED HOME CONSUMER MANUAL

1. The authority citation for 24 CFR Part 3283 continues to read as follows:

**Authority:** Secs. 617 and 625 of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5416 and 5424; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Sections 3283.102 (c) and (d) are revised to read as follows:

**§ 3283.102 Statements about the Act and its protections.**

* * * * * *

(c) The manual should include a list of the State Administrative Agencies (SAAs) that have been approved or

conditionally approved under § 3282.305 of this part. The list should include all SAAs listed in this section as of the date the manual or revision is prepared for printing. Manufacturers may contact HUD for any update to the SAA list that appears in this section by sending a stamped, self-addressed envelope to: List Control, Office of Manufactured Housing and Regulatory Functions, Room 4224, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000.

The following States have been approved or conditionally approved to act as SAAs:

*State, Agency Name, Address and Telephone Number*

Alabama—Alabama Manufactured Housing Commission, 908 South Hull Street, Montgomery, Alabama 36130–3401, (205) 261–4036

Arizona—Office of Manufactured Housing, 801 E. Jefferson, Suite 202, Phoenix, Arizona 85034, (602) 255–4072

Arkansas—Manufactured Home Commission, 1022 High Street, Suite #505, Little Rock, Arkansas 72202, (501) 371–1641

California—Manufactured Housing Section, Division of Codes & Standards, Department of Housing and Community Development, P.O. Box 31, Sacramento, California 95801, (916) 323–9803

Colorado—Division of Housing, Department of Local Affairs, 1313 Sherman Street, Room 419, Denver, Colorado 80203, (303) 866–2033

Florida—Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, Neil Kirkman Building, Room A 129, 2900 Apalachee Parkway, Tallahasse, Florida 32301–8209, (904) 488–7657

Georgia—State Fire Marshal's Office, Manufactured Homes Division, 620 West Tower, No. 2 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334, (404) 656–2064

Idaho—Department of Labor and Industrial Service, 277 North Sixth Street, Boise, Idaho 83720, (208) 334–3896

Indiana—Department of Fire Prevention and Building Safety, Industrialized Building Systems/Code Enforcement Div., 1099 N. Meridian Street, Suite 900, Indianapolis, Indiana 46204, (317) 232–1405

Iowa—Building Code Bureau, Division of the State Fire Marshall, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, (515) 281–3807

Kentucky—Department of Housing, Building and Construction, U.S. 127 South Building, Frankfort, Kentucky 40601, (502) 564–3626

Louisiana—Mobile Home Division, 1033 North Lobdell Avenue, Baton Rouge, Louisiana 70806, (504) 925–4911

Maine—Manufactured Housing Board, Department of Professional and Financial Regulation, State House Station 32, Augusta, Maine 04333, (207) 289–2955

Maryland—Building Codes Administration-DECD, Department of Economic and Community Development, 45 Calvert Street, Annapolis, Maryland 21401, (301) 974–2701

Michigan—Department of Commerce, Mobile Home Division, Corporation & Securities Bureau, 6546 Mercantile Way, P.O. Box 30222, Lansing, Michigan 48909, (517) 334–6203

Minnesota—Department of Administration, Building Codes and Standards Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101, (612) 296–4628

Mississippi—Office of the Fire Marshall, 416 Woolfolk Building, P.O. Box 22542, Jackson, Mississippi 39205–2542, (601) 359–1061

Missouri—Public Service Commission, Mobile Homes and Recreational Vehicles Division, P.O. Box 360, Jefferson City, Missouri 65102, (314) 751–7119

Nebraska Department of Health, Division of Housing and Environmental Health, 301 Centennial Mall South, P.O. Box 95007, Lincoln, Nebraska 68509, (402) 471–2541

Nevada—Manufactured Housing Division, Nevada Department of Commerce, Capitol Complex, Carson City, Nevada 89710, (702) 885–4298

New Jersey—Department of Community Affairs, Division of Housing and Development-BCCE, CN 805 Manufactured Housing Construction, Trenton, New Jersey 08625–0804, (609) 292–7142

New Mexico—Regulation and Licensing Department, Manufactured Housing Division, Santa Fe, New Mexico 87503, (505) 827–6340

New York—Housing and Building Codes Bureau, Division of Housing and Community Renewal, One Fordham Plaza, Bronx, New York 10458
(212) 519–5273 (Kessner)
(212) 488–4910 (Jordan)

North Carolina—Department of Commerce, Council, Boards & Government Relations Division, P.O. Box 26307, Raleigh, North Carolina 27611, (919) 733–3901

Oregon—Department of Commerce, Building Codes Division, MHRV Section, 401 Labor and Industries Building, Salem, Oregon 97310, (503) 378–8451

Pennsylvania—Division of Manufactured Housing, Department of Community Affairs, Room 509, Forum Building, Harrisburg, Pennsylvania 17120, (717) 787-9682

Rhode Island—Department of Community Affairs, Building Commission, 1270 Mineral Spring Avenue, North Providence, Rhode Island 02904, (401) 277–3033

South Carolina—Manufactured Housing Section, Budget and Control Board, Division of General Services, 300 Gervais Street, Columbia, South Carolina 29201, (803) 758–5378

South Dakota—Department of Commerce and Regulation, Commercial Inspection, 118 W. Capitol, Pierre, South Dakota 57501, (605) 773–3697

Tennessee—Department of Commerce and Insurance, Division of Fire Prevention, 1808 West End Building, Suite 500, Nashville, Tennessee 37219–5319, (615) 741–7170

Texas—Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711, (512) 463–5520

Utah—Department of Business Regulation, Contractors Division-MH & RV, P.O. Box 45802, Salt Lake City, Utah 84145, (801) 530–6727

Virginia—Division of Building Regulatory Services, Department of Housing and Community Development, 205 N. 4th Street, Room M–4, Richmond, Virginia 23219, (804) 786–4846

Washington—Department of Labor and Industries, Construction Compliance Inspection, 520 S. Water Street, Olympia, Washington 98504, (206) 586–0215

Wisconsin—Department of Industry, Labor and Human Relations, Safety and Building Division, P.O. Box 7969, Madison, Wisconsin 53707
(608) 266–1748
(608) 267–7935 (Turner)

(d) The manual should state that the Department of Housing and Urban Development (HUD) is the Federal agency administering the Act and that any questions concerning the Act or a consumer's rights under the Act should be directed to HUD. The manual should advise consumers that in order to contact HUD, they should refer to the Department of Housing and Urban Development under listings for the U.S. Government in their telephone book. In calling or writing the local HUD office, consumers should be directed to address their inquiry or call to the "Consumer Complaint Officer" in their local HUD or FHA Office. Consumers should be advised that they may contact the Central HUD Office directly by writing or calling the Office of Manufactured Housing and Regulatory Functions, Compliance Branch, telephone (202) 755–6920 or (202) 755–6584. (These are not toll-free numbers.)

Dated: April 2, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 87–7698 Filed 4–9–87; 8:45 am]

BILLING CODE 4210–27–M

---

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 110

[CGD12 86–13]

### Anchorage Regulations; San Francisco Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing the designation of San Francisco Bay Anchorage No. 3, Belvedere Cove, as a Federal General Anchorage because of continued multi-use conflicts, lack of significant anchorage use, and the availability of other nearby anchorage areas.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Stephen J. Danscuk at (415) 437–3465.

**SUPPLEMENTARY INFORMATION:** On 24 November 1986 the Coast Guard

published a Notice of Proposed Rulemaking in the **Federal Register** for these regulations (51 FR 42269). Interested persons were requested to submit comments and 4 comments were received.

**Drafting Information**

The drafters of these regulations are Lieutenant Stephen J. Danscuk, project officer, Twelfth Coast Guard District Marine Safety Division, and Lieutenant Commander Wayne Raabe, project attorney, Twelfth Coast Guard District Legal Office.

**Discussion of Comments**

Four comments were received on the proposed regulations. All four recommended reconsideration of the removal of the Federal anchorage designation and protested the elimination of a convenient anchorage. Three responses mentioned the sheltered, uncrowded nature of the cove and the lack of other nearby safe anchorage for small vessels. One response cited personal use of the anchorage area and the physical, visual and aesthetic attributes of the area as a reason for continued designation as a Federal general anchorage. Finally, one respondent stated his rights as a citizen to use of the navigable waters was no less than that of small boaters or sailing classes.

The Coast Guard acknowledges that limited use of the anchorage area by individuals may occur. However, the Coast Guard does not believe that this limited use or the comments received are sufficient cause for continued designation as a Federal anchorage. Sufficient sheltered small boat anchoring exists in the immediate vicinity in the Richardson Bay Special Anchorage Area or in nearby San Francisco Bay Anchorages 4 or 10. These alternate anchorage areas are within 4 nautical miles of Belvedere Cove. Further, the Coast Guard does not believe that simple aesthetic attributes of an area are sufficient grounds for continued designation as a federal anchorage ground. The Coast Guard's primary concern is safety on the navigable waters. Significant multi-use conflicts currently exist in the area between anchored vessels, mooring floats, sailing classes, and other small boats which continue to pose a safety hazard to vessels and other users, and would be reduced by removing the designation of this area as an anchorage ground. Accordingly, in view of the continued multi-use conflicts, lack of significant anchorage use, the availability of other nearby anchorage areas, and the non-substantial response indicating a continuing need for this anchorage, the Coast Guard concurs with the proposed removal of Belvedere Cove as a Federal General Anchorage and finds it appropriate as a change to existing federal regulations.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. There is no economic impact associated with removal of the designation of Belvedere Cove as a general anchorage.

Since the impact of this proposal is expected to be minimal the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Final Regulations**

In consideration of the foregoing, Chapter 1, Part 110, of Title 33, Code of Federal Regulations, is amended as follows:

## PART 110—ANCHORAGE REGULATIONS

### Subpart B—Anchorage Grounds

1. The authority citation for Part 110 Subpart B continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

* * * * *

**§ 110.224 [Amended]**

2. By removing Anchorage No. 3 from Table 110.224(d)(1) in § 110.224.

3. By removing paragraph (e)(1), Anchorage No. 3, from § 110.224.

4. By redesignating paragraphs (e)(2) through (e)(21) as paragraphs (e)(1) through (e)(20) in § 110.224.

Dated: March 4, 1987.

**John D. Costello,**

*Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.*

[FR Doc. 87–7913 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 117**

**[CGD7 86–56]**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMAMARY:** At the request of Forida State Senator James A. Scott, the Coast Guard is changing the regulations governing the Oakland Park Boulevard bridge at Fort Lauderdale by extending the hours during which bridge openings are limited. This change is being made because of complaints about vehicular traffic delays. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brodie Rich at (305) 536–4103.

**SUPPLEMENTARY INFORMATION:** On January 15, 1987, the Coast Guard published proposed rules (52 FR 1636) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated January 27, 1987. In each notice, interested persons were given until March 2, 1987, to submit comments.

**Drafting Information**

The drafters of these regulations are Mr. Brodie Rich, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

**Discussion of Comments**

Seven comments were received. Four commenters supported the change as proposed. Two commenters asked that restrictions on bridge openings apply throughout the year, rather than seasonally. The Coast Guard has carefully reviewed the data on highway traffic and bridge openings and we believe that year-round regulations are not justified at this time. One commenter asked that the bridge be required to open at any time for commercial vessels carrying passengers. The existing regulations for drawbridges across the Atlantic Intracoastal Waterway from St. Marys River to Miami provide that vessels in a situation where a delay would endanger life or property must be passed through bridges at any time (33 CFR 117.261(a)). We believe that this provision is sufficient to address situations where bridges must be opened immediately to provide for the safety of navigation, including

passenger vessels. The final regulation is unchanged from the proposed rule published on January 15, 1987.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulation exempts tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261, paragraph (ff) is revised to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.**

* * * * *

(ff) *Oakland Park Boulevard Bridge, mile 1060.5 at Fort Lauderdale.* The draw shall open on signal; except that from November 15 through May 15 from 7 a.m. to 10 p.m., Monday through Friday, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, and from 10 a.m. to 10 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: March 26, 1987.

**H.B. Thorsen,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 87–7912 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[A–4–FRL–3183–5]**

### North Carolina $SO_2$ Regulations; Clarification of Air Quality Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; clarification of State Implementation Plan.

**SUMMARY:** On December 7, 1982 (47 FR 54939), EPA approved for all but 24 sources a revision to North Carolina regulation 15 NCAC 2D.0516 which relaxed the sulfur dioxide ($SO_2$) limit for fuel-burning sources from 1.6 pounds per million BTU heat input (lb/mBTU) to 2.3 lb/mBTU. Some of these 24 sources are undergoing additional analysis in order for EPA to approve the relaxed limit. However, Celanese Fibers Operations, Salisbury, Rowan County, North Carolina will remain at the current EPA-approved State implementation plan (SIP) limit of 1.6 lbs/mBTU and is required to do so by State permit.

**ADDRESSES:** Copies of the material submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, U.S. EPA, 401 M Street SW., Washington, DC 20460
United States Environmental Protection Agency, Region IV—Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365
Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Peddicord, Air Programs Branch, EPA Region IV at the above address and telephone FTS 257–2864 or commercial (404) 347–2864.

**SUPPLEMENTARY INFORMATION:** On December 7, 1982 (47 FR 54939), EPA approved, for all but 24 sources in the State of North Carolina, a revision to State regulation 2D.0516 which relaxed the $SO_2$ limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in $SO_2$ emissions for all fuel-burning sources from 2.3 lb/mBTU heat input to 1.6 lb/mBTU by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the $SO_2$ stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, **Federal Register** final rule that if future modeling could show that the relaxed $SO_2$ limit of 2.3 lb/mBTU was adequate to protect the NAAQS, the stepdown requirement could be eliminated for other sources as well.

Celanese Fibers Operation in Rowan County, North Carolina is now and will remain at the 1.6 lb/mBTU limit. The plant is limited by Construction/Operation Permit No. 3325R10.

This notice serves to inform the public of this source in North Carolina which will remain at 1.6 lb/mBTU. Copies of the permits and correspondence are available at the EPA Region IV Office.

Dated: March 30, 1987.

**Lee A. DeHihns III,**

*Acting Regional Administrator.*

[FR Doc. 87–7835 Filed 4–9–87; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Health Care Financing Administration**

**42 CFR Parts 400 and 482**

**[OMB–13–F]**

### Medicare and Medicaid Programs; OMB Control Numbers for Collection of Information Requirements Contained in HCFA Regulations

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule and correction notice.

**SUMMARY:** This final rule amends a general HCFA regulation that displays control numbers assigned by the Office of Management and Budget (OMB) to approved "collection of information" requirements contained in regulations governing the Medicare and Medicaid programs. It also serves as a correction notice to the preamble of another rule in which we stated in error that OMB approval was required for certain regulation sections.

This rule is issued in accordance with OMB regulations for controlling paperwork burdens on the public and serves as notice that the cited collections of information are approved.

**EFFECTIVE DATE:**

1. For revision to 42 CFR 400.310, April 10, 1987.
2. For correction to the preamble affecting Part 482, September 15, 1986.

**FOR FURTHER INFORMATION CONTACT:** Tom Brennan, (301) 594–8651.

**SUPPLEMENTARY INFORMATION:**

**General Information**

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), Federal agencies are required to obtain Office of Management and Budget (OMB) approval of "collection of information" requirements that are contained in any regulations published by the agencies. To implement provisions of this Act, OMB has established regulations under Part 1320 of title 5 of the Code of Federal Regulations (CFR). The OMB regulations require Federal agencies (1) to notify the public that a collection of information requirement has been approved by OMB by issuing a notice in the **Federal Register**, and (2) to display the control number assigned by OMB after approval of the requirement as part of the agency's regulatory text.

To comply with the OMB requirement that HCFA include in its regulations the OMB control numbers assigned, we have established a general regulation under 42 CFR 400.310 to display valid OMB control numbers and applicable regulation sections as a means of notifying the public that the information collection requirements have been approved (49 FR 4476). We update this regulation routinely to add the most recent OMB control numbers or to delete entries that are no longer in effect.

**Provisions of These Regulations**

*I. New Approvals*

In the preamble of final rules containing information collection requirements, we identify sections of the regulations for which we requested assignment of an OMB control number. Control numbers have been assigned for the following documents published in the **Federal Register:**

Recognition of State Reimbursement Control System (51 FR 15481), §§ 403.304, 403.306, 403.312, 405.316, 403.318 and 403.320 through 403.322.

Conditions of Participation for Hospitals (51 FR 22010), §§ 482.12, 482.22, 482.27, 482.41, 482.53, 482.56, 482.57 and 482.60 through 482.62. (Although the preamble to this rule identified a number of other sections as requiring OMB approval (§§ 482.21, 482.24 through 482.26, 482.42 and 482.51 through 482.52), OMB has determined that they do not require approval and they are not subject to requirements of 5 CFR Part 1320; see "Correction" section below.)

We also submit for OMB approval information collection requirements that we identify in existing regulations. After the approval is obtained, we publish a notice in the **Federal Register** indicating whether the action is a new approval or reapproval. (Before May 2, 1983, it was not necessary to publish OMB control numbers in agency regulations (5 CFR 1320.2); hence, occasionally an item will be identified for inclusion in our table at § 400.310 based on an OMB reapproval action.) We are adding the following reapproved items to § 400.310 based on this process:

Sections 441.255 through 441.259, Consent for sterilization by hysterectomy (51 FR 19806);

Section 405.552, Payment for anesthesiology services (51 FR 21625); and

Section 405.1725, Disaster preparedness requirements for clinics, rehabilitation agencies and public health agencies as providers of outpatient physical therapy and/or speech pathology services (51 FR 30913).

*II. Redesignation of Sections*

We are also revising the table at § 400.310 to delete all paragraph and subparagraph designations. When we request OMB approval, we generally request and receive approval of all recordkeeping and reporting requirements in the entire section. Listing individual paragraphs serves no useful purpose and makes the table cumbersome. In general, future notices of OMB approvals will not contain paragraph and subparagraph designations. In those exceptional instances where the regulations have been amended several times, in which OMB may have assigned different control numbers to recordkeeping requirements in the same section at different times, we give all approval numbers.

*III. Technical Changes*

We are revising section numbers in § 400.310 to reflect recodification of requirements that have not changed. OMB routinely assigns the same control number to the recodified sections. Consequently:

Section 405.474 is now § 412.71.
Section 405.476 is now § 412.92.
Section 405.1042 is now § 482.30.

There are a few instances in which section numbers in current § 400.310 are out of strict chronological sequence. We are making the necessary changes to rectify these oversights.

**Correction**

When a final rule is published before we obtain an OMB control number, we include a statement in the preamble to that rule alerting the public to sections of the rule that are subject to OMB regulations at 5 CFR Part 1320 and indicating that we will issue notice in the **Federal Register** when OMB approval is obtained. In the preamble to the final rule concerning Conditions of Participation for Hospitals, published on June 17, 1986 at 51 FR 22010, under item V.C., Paperwork Burden, on page 22039, we identified a number of sections of the regulations that contain information collection requirements. In this listing, we incorrectly included 42 CFR 482.21, 482.24 through 482.26, 482.42 and 482.51 through 482.52 as subject to OMB approval. These sections do not contain information collection requirements subject to 5 CFR Part 1320. We are correcting the preamble statement on page 22039, column 2, paragraph C, deleting the references to §§ 482.21, 482.24 through 482.26, 482.42 and 482.51 through 482.52. The correction is effective September 15, 1986, which was the effective date of the document being corrected. Although the inclusion of these sections was in error, and we are unaware that any party took or failed to take action that would be disadvantageous to them based on that error, we will consider any problem resulting from a September 15, 1986 effective date on a case by case basis.

**Waiver of Proposed Rulemaking and Delay in Effective Date**

This regulation and correction notice merely update our display of OMB control numbers for approved collection of information requirements contained in HCFA regulations and correct a previously published preamble. They are technical in nature. To publish either in proposed form is unnecessary and would serve no useful purpose. Therefore, we find good cause to waive notice of proposed rulemaking.

We are publishing this final rule without the usual 30-day delay in effective date. The rule is technical in nature, and it is unnecessary and would serve no useful purpose to delay the effective date beyond the date of publication. The correction notice is also technical in nature and it would serve no useful purpose to delay the effective date beyond the date the document it is correcting was published. Therefore, we find good cause to waive a delay in effective date.

**Impact Analysis**

As noted above, this regulation is technical in nature and merely updates the display of OMB control numbers of approved collection of information requirements contained in HCFA regulations. Therefore, the Secretary has determined that this document does not meet the criteria for a major rule as defined in section 1(b) of Executive

Order 12291. In addition, the Secretary certifies, consistent with the Regulatory Flexibility Act, that this document would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 42 CFR Part 400**

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 400 is amended as follows:

## PART 400—INTRODUCTION: DEFINITION

1. The authority citation for Part 400 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is revised to read as follows:

**§ 400.310 Display of currently valid OMB control numbers.**

| Sections in 42 CFR that contain collections of information | Current OMB control number |
|---|---|
| 403.232, 403.239–403.258 | 0938–0264 |
| 403.304, 403.306, 403.312, 403.316, 403.318 and 403.320–403.322 | 0938–0473 |
| 405.165, 405.170 | 0938–0454 |
| 405.262 | 0938–0267 |
| 405.334, 405.336 | 0938–0465 |
| 405.481 | 0938–0285 |
| 405.552 | 0938–0285 |
| 405.1121–405.1128, 405.1136, 405.1137 | 0938–0364 |
| 405.1201, 405.1202, 405.1221, 405.1223–405.1226, 405.1228, 405.1229 | 0938–0365 |
| 405.1315, 405.1317 | 0938–0368 |
| 405.1413, 405.1414, 405.1416 | 0938–0338 |
| 405.1627, 405.1629 | 0938–0308 |
| 405.1632 | 0938–0454 |
| 405.1716, 405.1717, 405.1720, 405.1721, 405.1722, 405.1725, 405.1736 | 0938–0336 |
| 405.2111–405.2114, 405.2123, 405.2134 405.2137, 405.2139 | 0938–0386 |
| 412.44 | 0938–0445 |
| 412.71 | 0938–0288 |
| 412.92 | 0938–0308 |
| 412.118 | 0938–0337 and 0938–[illegible] |
| 413.30 | 0938–0337 |
| 416.47 | 0938–0266 |
| 417.412–417.414, 417.418, 417.424, 417.426, 417.428, 417.430, 417.432, 417.436, 417.444, 417.446, 417.454, 417 460, 417.474, 417.476, 417.478, 417.480, 417.481, 417.486, 417.488, 417.492, 417.494, 417.520, 417.522, 417.532, 417.548, 417.560, 417.566, 417.568, 417.570, 417.572, 417.576, 417.586, 417.592, 417.594, 417.596–417.598, 417.604, 417 608, 417.616, 417.620, 417.624, 417.632, 417.650, 417.662, 417.690, 417.801, 417.808, 417.810 | 0938–0406 |
| 418.22, 418.26, 418.56, 418.58, 418.70, 418.74, 418.100 | 0938–0302 |
| 431.55 | 0938–0295 |
| 431.630 | 0938–0445 |
| 431.800 | 0938–0431 |
| 432.50 | 0938–0459 |
| 433.112 | 0990–0058 and 0938–0247 |
| 433.116 | 0938–0247 and 0938–0442 |
| 433.117 | 0990–0058 and 0938–0247 |
| 433.139 | 0938–0459 |
| 434.6–434.20, 434.23–434.27, 434.30, 434.32, 434.36, 434 50, 434.53, 434 55 | 0938–0326 |
| 441.56, 441.58, 441.60, 441.61 | 0938–0354 |
| 441.255–441.259 | 0938–0481 |
| 441.301 | 0938–0449 |
| 441.302 | 0938–0268 and 0938–[illegible] |
| 441.303 | 0938–0272 and 0938–0449 |
| 442.307, 442.308, 442.309, 442.311, 442.313, 442.314, 442.318, 442.319, 442.320 | 0938–0370 |
| 442.402, 442.404–442.407, 442.412, 442.413, 442.417, 442.421, 442.423–442 425, 442.427, 442.430, 442.434, 442.441, 442 443, 442 457 442 460, 442.463, 442.466, 442.468, 442.475, 442.482–442.487, 442.490, 442.292, 442.497, 442.500–442.503, 442.505, 442 506, 442.512 | 0938–0366 |
| 447.30 | 0938–0067 |
| 447.31 | 0938–0287 |
| 447.53 | 0938–0429 |
| 456.654 | 0938–0445 |
| 466.70, 466.72, 466.74, 466.76, 466 80, 466.94 | 0938–0445 |
| 473.18, 473.34, 473.36, 473.42 | 0938–0443 |
| 474.36, 474.38–474.40 | 0938–0444 |
| 476.104, 476.105, 476.116, 476.134 | 0938–0426 |
| 482.12, 482.22, 482.27, 482.30, 482.41, 482.53, 482.56, 482.57 and 482 60–482 62 | 0938–0328 |
| 488.56, 488 60, 488 64 | 0938–0267 |

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Programs; No. 13.773, Medicare Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 5, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: April 2, 1987.

**S. Anthony McCann,**

*Assistant Secretary for Management Budget.*

[FR Doc. 87–8018 Filed 4–9–87; 8:45 am]

BILLING CODE 4120–01–M

---

## Office of the Secretary

## 42 CFR Parts 1001 and 1003

## Medicare Program; Fraud and Abuse; Civil Monetary Penalties and Exclusions for Assistants at Cataract Surgery

**AGENCY:** Office of Inspector General (OIG), Office of the Secretary, HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** This final rule implements section 9307 of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 1895(b)(16) of Pub. L. 99–514, the Tax Reform Act of 1986, by providing the imposition of civil monetary penalties (CMPs) and exclusions against physicians billing the Medicare program or program beneficiaries for services of an assistant at surgery for cataract operations where prior approval has not been granted. The purpose of these regulations is to strengthen existing OIG penalty and exclusion authorities, and to prevent specific abusive and fraudulent practices against the Medicare program with regard to the use of assistants at surgery where not medically necessary.

**DATES:** *Effective Date:* These regulations are effective on April 10, 1987.

*Comment period:* Although these regulations are final we will consider comments on these regulatory revisions received by June 9, 1987. To assure consideration, comments must be mailed and delivered to the appropriate address, as provided below, and must be received by 5:00 p.m.

**ADDRESS:** Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–8–FC, Room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer you may deliver your comments to Room 5643, 300 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–8–FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection beginning approximately two week after publication in Room 5643, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m. (202) 472–5270.

**FOR FURTHER INFORMATION CONTACT:** Clarke Bowie, Office of Investigations, (301) 594–1827.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Prior to the passage of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Medicare program generally provided coverage for services performed by assistants at surgery during routine cataract operations. The Health Care Financing Administration (HCFA) permitted Medicare Part B carriers to make specific determinations as to whether or not services of an assistant at surgery during cataract surgery were medically necessary. For the most part, each Medicare carrier has made these determinations as to the use of assistants at surgery based on the generally accepted practice among ophthalmologists in the geographic area it services.

Findings contained in two reports issued by the HHS Office of Inspector

General—*Review of Medicare Payments for Assistant Surgeon Services During Cataract Surgery* (No. 01-52001, June 1985) and *Medicare Cataract Implant Surgery* (No. OAI-85-IX-046, March 1986)—specifically indicated that the use of an assistant at surgery during routine cataract surgery did not appear medically necessary in most situations. In addition, these studies found that such assistance during a cataract operation was often being provided by a surgical technician or by an operating room nurse. The studies further cited as evidence the practices of many primary ophthalmic surgeons who do not use assistants at surgery.

*Section 9307 of Pub. L. 99-272*

Section 9307 of Pub. L. 99-272 specifically amended section 1154(a)(8) and added a new section 1862(a)(15) to the Social Security Act by denying Medicare payment for services of an assistant at surgery during cataract operations. Under this provision, an assistant at surgery is prohibited from billing the Medicare program or the program beneficiary for charges for services that have not received prior approval from the local Peer Review Organization (PRO) or the Medicare Part B carrier. In addition, the primary surgeon under this provision is prohibited from including such charges for services performed by an assistant at surgery in his or her bill. To enforce this provision and to protect program beneficiaries from out-of-pocket costs, section 1842(k) (1) and (2) of the Act has also been added to give the Secretary specific authority to impose the same penalty provisions that apply to section 1842(j) of the Act for violations of the physician fee freeze.

*Referral of Violations to the OIG*

The responsibility for making determinations of civil monetary penalties (CMPs) and exclusions under this provision will rest with the OIG. HCFA will refer all cases for possible sanction and CMP action to the OIG for a determination under the OIG's present sanction and CMP authorities. Program instructions issued by HCFA (Medicare Peer Review Organization Manual, Transmittal No. 12) specifically establish set procedures by which the primary surgeon may request prior approval from the PRO for the use of an assistant at surgery when complicating medical conditions exist. The development and implementation of these procedures and case referrals remain the specific responsibility of HCFA and are not contained as part of this rulemaking.

*Use of an Assistant at Surgery Where Neither the Program Nor the Beneficiary is Billed*

As long as there is no request for payment made to either the Medicare program *or* the program beneficiary, the statute does not specifically preclude the use of an assistant at cataract surgery. While there may be some concern that the mere use of an assistant at cataract surgery during such procedures may impact on, and be included in, the primary surgeon's fee, we believe that any potential adverse effects from this circumvention should be effectively precluded by the special charge limitations established on physicians' fees for cataract surgery under section 9334 of Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986.

## II. Provisions of the Regulations

Under these regulations, if (1) a physician knowingly and willfully bills for charges for services performed as an assistant at surgery during a routine cataract operation, or has charges for such services billed for him or her by the primary surgeon as part of that primary physician's bill, and (2) prior approval from the appropriate PRO or carrier for the use of such an assistant has not been obtained, the OIG may (a) bar the physician, or physicians, from participation in the Medicare program for a period not to exceed 5 years, in accordance with section 1862(d)(2) and (3) of the Act, and (b) impose civil monetary penalties in the same manner as such penalties authorized under section 1128A(a) of the Act. [Section 1895(b)(16) of Pub. L. 99-514, the Tax Reform Act of 1986, specifically provides that for surgical procedures performed during the period April 1, 1986 to December 15, 1986, a carrier will be deemed to have approved the use of an assistant at surgery before the surgery was performed if the carrier determined, after the operation, that the use of such an assistant was appropriate based on a complicating medical condition before or during the surgery.] Specifically, these regulations:

- Include a new 42 CFR 1002.104 stating that the OIG will utilize existing procedures contained in the current regulatory provisions pertaining to fraud and abuse determinations when determining the length of an exclusion and the amount of monetary penalty and assessment applicable to physicians who are to be sanctioned. The notification, effectuation and appeal procedures under existing regulations will also be used for violations of the assistant at cataract surgery provision.
- Specify that exclusions from the Medicare program based on violations of the assistant at cataract surgery provision will be for a period not exceeding 5 years. Any physician excluded under this provision will not be automatically reinstated into Medicare program participation until an application for reinstatement is made and approved by the OIG.
- Provide that if an exclusion is for the full 5 years, the OIG will have to automatically approve an application for reinstatement. If the physician was also excluded for a longer period of time under another sanction provision, the 5 year maximum exclusion period will not be applicable.
- Modify existing regulations at 42 CFR 1003.102 to include violations of billing for charges for services as or for an assistant at cataract surgery as a basis for imposing penalties.

## III. Waiver of Proposed Rulemaking

In enacting section 9037 of Pub. L. 99-272, Congress set forth a clear approach for addressing situations involving the billing for the services of an assistant at surgery during cataract operations. Since that aspect of the law dealing with the penalty provisions for such violations is explicit in its requirements, with virtually no room for policy discretion on our part, we believe it is impractical and unnecessary in this instance to publish a notice of proposed rulemaking and request public comments before issuing final regulations. While we are waiving proposed rulemaking procedures as noted in the summary, we are providing for a comment period so that interested parties may raise comments or suggestions.

Because of the number of comments we receive, we cannot acknowledge or respond to them individually. However, if we publish changes in a revised final rule as a result of the comment period, we will respond to the comments received in the preamble of that document.

## IV. Impact Analysis

*Executive Order 12291*

We have determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. Under those criteria, a rule is classified as major if it would have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry or a geographic region; or cause significant adverse effects on business

or employment. As this rule is expected to have an annual impact of $100 million or less, no impact analysis is required.

*Regulatory Flexibility Analysis*

Consistent with the Regulatory Flexibility Act of 1980, Pub. L. 96–354, U.S.C. 604(a), we prepare a regulatory flexibility analysis when the agency issues certain regulations that would have a significant economic impact on a substantial number of small businesses. The analysis is intended to explain what effect the regulatory action by the agency has on small businesses and other small entities, and to develop lower cost or burden alternatives. The law on which these regulations are based is specific in nature, and there is little leeway in implementing the requirements. While some of the sanctions that the Federal Government will impose as a result of these regulations will have an impact on physicians, we do not anticipate that a substantial number of physicians will be significantly affected by these regulations. Therefore, the Secretary certifies that a regulatory flexibility analysis is not required for this rulemaking.

**List of Subjects**

*42 CFR Part 1001*

Abuse, Administrative practice and procedures, Cancer hospitals, Christian Science sanitoria, Clinics, Contracts (agreements), Conviction, Convicted, Courts, Discharges and transfers, Exclusion, Fraud, Health care, Health facilities, Health maintenance organizations, Health professions, Health suppliers, Information (disclosure), Inpatient hospital services, Lawyers, Medicaid, Medicare, Outlier cases, Penalties, Prospective payment, Provider agreements, Referral centers, Renal transplantation centers, Reporting and recordkeeping requirements, Rural health clinics, Supervision, Sole community hospitals, Termination procedures, Utilization and quality control Peer Review Organizations.

*42 CFR Part 1003*

Administrative practice and procedures, Archives and records, Grant programs—social programs, Maternal and Child Health, Medicaid, Medicare, Penalties.

**TITLE 42—PUBLIC HEALTH**

A. 42 CFR Chapter V, Part 1001 is amended as set forth below:

**PART 1001—PROGRAM INTEGRITY—MEDICARE**

1. The authority citation for Part 1001 is revised to read as follows:

**Authority:** Secs. 1102, 1128, 1842(j), 1842(k), 1862(d), 1862(e), 1866(b)(2)(D), (E) and (F), and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh), unless otherwise noted.

2. The Table of Contents for Subpart B is amended by adding an entry for § 1001.104.

**Subpart B—Suspension, Exclusion or Termination of Practitioners, Providers, Suppliers of Services and Other Individuals**

* * * * *

Sec.

1001.104 Sanctions and exclusion for the billing for charges of services by or as an assistant at surgery during cataract operations.

* * * * *

3. In Subpart B, § 1001.100 is revised to read as follows:

**§ 1001.100 Basis and scope.**

This subpart implements sections 1128, 1842(j), 1842(k) and 1862(d) and (e) of the Act. It sets forth criteria and procedures for—

(a) Excluding (1) practitioners, providers, and suppliers of services who have defrauded or abused the Medicare program, (2) Physicians who have violated the billing restrictions of section 1842(k) of the Act by billing for services performed by, or as, an assistant at cataract surgery, or (3) For those physician practitioners who are not participating physicians, who have violated the billing restrictions of section 1842(j) of the Act, and

(b) For suspending practitioners and other individuals convicted of crimes related to their participation in the delivery of medical care or services under the Medicare, Medicaid or the social services programs.

* * * * *

4. Subpart B is amended by adding a new § 1001.104 to read as follows:

**§ 1001.104 Sanctions and exclusion for the billing for charges of services by or as an assistant at surgery during cataract operations.**

(a) Whenever the OIG determines that—

(1) A physician knowingly and willfully bills for charges of services as an assistant at surgery during a routine cataract operation, or includes in his or her bill the services of an assistant at surgery during a routine cataract operation, and

(2) Prior approval for use of such an assistant has not been obtained from the appropriate Peer Review Organization or Medicare carrier, the OIG may exclude either one or both physicians from program participation for a period of up to five years, impose a civil monetary penalty against the physician (or physicians), or both. [For cataract operations performed during the period April 1, 1986 to December 15, 1986, a carrier will be deemed to have approved the use of an assistant at surgery before the surgery was performed if the carrier determined, after the operation, that the use of such an assistant was appropriate based on a complicating medical condition before or during the surgery.]

(b) If the OIG makes a determination under paragraph (a) of this section that involves a civil monetary penalty, the OIG will use the penalty determination, notification, effectuation, and appeal procedures contained in §§ 1003.100 through 1003.130 of this chapter.

(c)(1) If the OIG makes a determination under paragraph (a) of this section and proposes to exclude a physician, or physicians, from Medicare program participation without imposing a civil monetary penalty, the OIG will use the determination, notification, effectuation, appeal, and reinstatement procedures contained in §§ 1001.100 through 1001.115 and §§ 1001.130 through 1001.134.

(2) In excluding a physician, or physicians, under paragraph (a) of this section, the exclusion period determined under § 1001.114 may not exceed five years.

5. In Subpart B, § 1001.134 is amended by revising paragraph (d) to read as follows:

**§ 1001.134 Notice of action on request for reinstatement.**

* * * * *

(d) The OIG must automatically reinstate a physician excluded exclusively on the basis of §1001.102 or § 1001.104 if that exclusion has been in affect for five years.

B. 42 CFR Chapter V, Part 1003 is amended as set forth below:

**PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS**

1. The authority citation for Part 1003 is revised to read as follows:

**Authority:** Secs. 1102, 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395u(j) and 1395u(k)).

2. In § 1003.100, paragraph (a) is revised to read as follows:

**§ 1003.100 Basis and purpose.**

(a) *Basis.* This part implements sections 1128(c), 1128A, 1842(j), and 1842(k) of the Social Security Act (42 U.S.C. 1320a–7(c), 1320a–7a, 1395u(j), and 1395u(k)).

* * * * *

3. Section 1003.102 is amended by revising paragraph (b) introductory text and adding paragraph (b)(3) to read as follows:

**§ 1003.102 Basis for civil money penalties and assessments.**

* * * * *

(b) The OIG may impose a penalty against any person whom it determines in accordance with this part:

* * * * *

(3) Is a physician who has knowingly and willfully—

(i) Billed for services as an assistant at surgery during a routine cataract operation, or

(ii) Included in his or her bill the services of an assistant at surgery during a routine cataract operation; and has not received prior approval from the appropriate Peer Review Organization or Medicare carrier for such services based on the existence of a complicating medical condition.

* * * * *

(Catalog of Federal Domestic Assistance Programs, No. 13.744, Medicare—Supplementary Medical Insurance Program)

Dated: February 18, 1987.

R.P. Kusserow,

*Inspector General, Department of Health and Human Services.*

Approved: March 5, 1987.

Otis R. Bowen,

*Secretary.*

[FR Doc. 87–7746 Filed 4–9–87; 8:45 am]

BILLING CODE 4150–04–M

---

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 1**

**[FCC 87–59]**

### Procedural Rules; Implementation of Amendments to Equal Access to Justice Act Amendments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The FCC has adopted rule amendments to implement changes to the Equal Access to Justice Act (EAJA). The EAJA provides for the award of attorney's fees to qualified parties who prevail over the Government in certain administrative proceedings. The EAJA requires each government agency to establish uniform procedures for implementing the Act.

The amended rules provide instruction to eligible parties who seek to recover attorney's fees from the Commission, consistent with recent amendments to the EAJA enacted by Congress.

**EFFECTIVE DATE:** February 5, 1987.

**FOR FURTHER INFORMATION CONTACT:** James B. Mullins, Office of General Counsel, Federal Communications Commission, Washington, DC 20554, (202) 254–6530.

**SUPPLEMENTARY INFORMATION:**

**Federal Communications Commission**

*Order*

Adopted: February 5, 1987.
Released: March 3, 1987.

By the Commission.

In the matter of Equal Access to Justice Act Rules, FCC 87–59.

1. The rules set forth herein are designed to implement amendments to the Equal Access to Justice Act (EAJA), Pub. L. 99–80, 99 Stat. 183, 5 U.S.C. 504. The EAJA provides for the award of attorney's fees and other expenses to qualified parties who prevail over the Federal Government in certain administrative and court proceedings. The EAJA requires that each agency establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. The EAJA, which had expired on September 30, 1984, was reauthorized by Pub. L. 99–80, which made several substantial changes to the EAJA. These rules reflect those changes and largely follow the model rules recommended by the Administrative Conference of the United States. *See* 51 FR 16659 (May 6, 1986).

2. In reauthorizing the EAJA, Congress made the following amendments relevant to the Commission:

1. The Act is applicable to any case commenced after October 1, 1984.

2. Net worth ceilings for eligible parties have been raised to $2,000,000 for individuals and $7,000,000 for partnerships, corporations and certain other entities.

3. Units of local government that fall under the ceilings of net worth and number of employees have been made eligible for fee awards.

4. The position of the agency that must be substantially justified has been specifically defined to include the underlying action or failure to act on which the relevant proceeding is based as well as the agency's position in litigation.

5. Whether or not the position of the agency was substantially justified is to be determined based on the administrative record of the proceeding as a whole adduced during the course of the adjudication for which fees and other expenses are sought.

3. We find that prior notice and comment procedures are unnecessary to implement the rule amendments because the revisions involve general rules of agency organization, practice or procedure. *See* 5 U.S.C. 553(b)(3)(A). Pursuant to § 1.427(b) of the Commission's Rules the rule amendments are effective February 5, 1987. See 47 CFR 1.427(b).

4. The rules are issued pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r); and the Equal Access to Justice Act, Pub. L. 99–80, 5 U.S.C. 504(c)(1).

5. In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we hereby certify that these rules will not have a significant economic impact upon a substantial number of small entities. The EAJA itself may have an impact since it applies to individuals and small business entities. It represents a congressional determination that small entities should not bear the burden of litigation where the Government's position is not substantially justified. The rules simply implement the EAJA, carrying out congressional intention, and do not, by themselves, impose significant economic burdens or benefits. This certification shall be provided to the Chief Counsel for Advocacy of the Small Business Administration.

The officials responsible for this action are the following Commissioners: Mark S. Fowler, Chairman, James H. Quello, Mimi Weyforth Dawson, Dennis R. Patrick, Patricia Diaz Dennis.

**List of Subjects in 47 CFR Part 1**

Administrative practice and procedure.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

**PART 1—PRACTICE AND PROCEDURE**

Chapter I of Title 47 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Part 1 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.1502 is revised to read as follows:

**§ 1.1502 When the EAJA applies.**

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in Subpart B of these rules, had been filed with the Commission within 30 days after August 5, 1985.

3. Section 1.1503 is amended by revising paragraph (a) to read as follows:

**§ 1.1503 Proceedings covered.**

(a) The EAJA applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Any proceeding in which this Agency may fix a lawful present or future rate is not covered by the EAJA. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications."

* * * * *

4. Section 1.1504 is amended by revising paragraphs (b)(1), (b)(2), (b)(5), (c) and (f) to read as follows:

**§ 1.1504 Eligibility of applicants.**

* * * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

* * * * *

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

* * * * *

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the Administrative Law Judge determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the Administrative Law Judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

* * * * *

5. Section 1.1505 is amended by revising paragraph (a) to read as follows:

**§ 1.1505 Standards for awards.**

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection either with a proceeding, or with a significant and discrete substantive portion of a proceeding, unless the Administrative Law Judge determines that the position of the Commission over which the applicant has prevailed was substantially justified. The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on the appropriate Bureau (see § 1.21 of this chapter) whose representative shall be called "Bureau counsel" in this subpart. To avoid an award a Bureau must demonstrate that its position was substantially justified in law and fact or that special circumstances make an award unjust.

* * * * *

6. Section 1.1511 is amended by revising paragraph (b) to read as follows:

**§ 1.1511 Contents of application.**

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

* * * * *

7. Section 1.1526 is amended by revising paragraph (a) to read as follows:

**§ 1.1526 Further proceedings.**

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

[FR Doc. 87-7886 Filed 4-9-87; 8:45 am]
BILLING CODE 6712-01-M

---

## 47 CFR Part 73

## Oversight of Radio and TV Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Order amends broadcast regulations in 47 CFR Part 73. Amendments are made to correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

**EFFECTIVE DATE:** April 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC. 20554.

**FOR FURTHER INFORMATION CONTACT:** Steve Crane, Mass Media Bureau, (202) 632–5414.

**SUPPLEMENTARY INFORMATION:** In this Order, modifications are made to update, delete, clarify or correct regulations in Title 47, Code of Federal Regulations. Adopted March 19, 1987 and released March 27, 1987.

**Federal Communications Commission**

*Order*

Adopted: March 19, 1987.
Released: March 27, 1987.

By the Chief, Mass Media Bureau.

In the matter of oversight of the radio and TV broadcast rules.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) In BC Docket 82–187 the Commission adopted a series of amendments to the technical rules to reflect changes in international agreements. (*See Report and Order*, 49 FR 32357, August 14, 1984).

One of the modifications was the removal of paragraph (d) in § 73.28, Assignment of stations to channels.

There remains a cross reference to this eliminated paragraph in the Note following paragraph (b) in § 73.24, Broadcast facilities, showing required.

The Note is amended herein to correct this inaccurate reference. (See amendment 2.)

(b) The following corrections are made in § 73.182, Engineering standards of allocation:

(i) The opening sentences of paragraph (d) is missing part of the rule's text pertaining to primary, secondary and intermittent service areas; it is restored here.

(ii) A cross reference in paragraph (d) to § 73.11 is corrected to read § 73.14;

(iii) Two cross references to paragraph (v), as stated in paragraph (m), are corrected to cross reference paragraph (s); and

(iv) The costs reference to paragraph (w), found in footnote 2 to the Table in paragraph (s), is revised to read paragraph (t). (See amendment 3.)

(c) A typographical error exists in subparagraph (d)(1) of § 73.313, Prediction of coverage. It is corrected so the affected sentence correctly states "At least *one* (emphasis added) radial must include . . . ." (See amendment 4.)

(d) The Metric Conversion Act of 1975 directed conversion of measurement units in the Federal rules and regulations to the international system of units—the metric system. The Commission has carried out this mandate in a series of proceedings. One of these was the Order adopted May 17, 1985 (*See Order, Radio and TV Broadcasting; Metrication of Rules*, 50 FR 23697, June 5, 1985).

In that Order, an amendment was made in § 73.611, Reference points and distance computations, that revised the text of paragraph (d) by directing the rule user to ". . . see paragraph (c) of § 73.208" for pertinent distance calculations.

Unintentionally, the rule was drafted in such a way that the amended paragraph (d) was retained as the sole text of the rule, and the balance, paragraphs (a), (b) and (c), was removed. This mistake is corrected here by reinstating paragraphs (a), (b) and (c) and designating the current text as paragraph (d), as was originally conceived. (See amendment 5.)

(e) Note 9 of Figure 6 in § 73.699, TV engineering charts, uses the archaic terms "me" (megacycles) and "cycles per second". Corrections are made here to contemporize the terms to MHz (megahertz) and Hz (Hertz). (See amendment 6.)

(f) The specifications for the maximum amount of time the FCC allows to construct broadcast and auxiliary stations is stated in § 73.3598. The types of stations are divided into two groups, TV stations in paragraph (a) and other broadcast, auxiliary and ITF stations in paragraph (b). There are distinct headings for each type station, which should be printed in italics but are not. A change to italics is made by this Order. (See amendment 7).

(g) Amendments are made to the listing of certain FCC policies as follows:

(i) Public notice was given in the **Federal Register** on July 18, 1986 providing additional clarification of the procedures adopted in BC Docket 80–90 (Modification of FM broadcast station rules to increase the availability of commercial FM broadcast assignments. 48 FR 29486, June 27, 1983). The **Federal Register** citation for this Public Notice is added as paragraph (d) to § 73.4107, which is the policy listing pertaining to this subject.

(ii) A new policy listing is added herein pertaining to transmitter site map submissions required by FCC Forms 301 and 340. The citation is the Memorandum Opinion and Order and Public Notice adopted on October 24, 1986 and will be designated § 73.4108, FM transmitter site map submissions.

(iii) Section 73.4140, Minority ownership, will have an additional citation added to the three currently stated therein. It is the Report and Order in Docket 82–797 adopted December 21, 1984. Also, the citation to "General Docket 82–297" in paragraph (c) of this policy listing is revised to correctly read General Docket 82–797. (See amendments 8, 9, and 10).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Accordingly, *It Is Ordered*, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and § 0.61 and 0.283 of the Commission's Rules, Parts 73 of the FCC Rules and Regulations *Is Amended* as set forth, effective on the date of publication in the **Federal Register**.

6. For further information on this *Order*, contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission.

**James C. McKinney,**

*Chief, Mass Media Bureau.*

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154 and 303.

2. Section 73.24 is amended by revising the Note following paragraph (b) to read as follows:

**§ 73.24 Broadcast facilities; showing required.**

* * * * * *

(b) * * *

**Note.**—With respect to new Class II–A stations or to stations for which applications were accepted for filing before July 13, 1964, the provisions of **Note** 1 of § 73.37 of this chapter shall apply. Special provisions concerning interference from Class II–A to stations of other classes authorized after October 30, 1961, are contained in § 73.22(d) of this chapter and **Note** 3 to § 73.21 of this chapter. The level of interference shall be

computed pursuant to §§ 73.182 and 73.186 of this chapter.

* * * * *

3. Section 73.182 is amended by revising footnote 2 to the Table in paragraph (s) and by revising paragraphs (d) and (m) to read as follows:

**§ 73.182 Engineering standards of allocation.**

* * * * *

(d) The several classes of AM broadcast stations have in general three service areas, i.e., primary, secondary and intermittent service areas. (See § 73.14 for the definitions of primary, secondary and intermittent service areas.) Class I stations render service to all three areas. Class II stations render service to a primary area but the secondary and intermittent service areas may be materially limited or destroyed due to interference from other stations, depending on the station assignments involved. Class III and IV stations usually have only primary service areas, as interference from other stations generally prevents any secondary service and may limit the intermittent service area. However, complete intermittent service may be obtained in many cases depending on the station assignments involved.

* * * * *

(m) Objectionable interference from a station on the same channel shall be considered to exist to a station when, at the field strength contour specified in paragraph (s) of this section with respect to the class to which the station belongs, the field strength of an interfering station (or the root-sum-square value of the field strengths of two or more interfering stations) operating on the same channel, exceeds for ten (10) percent or more of the time the value of the permissible interfering signal set forth opposite such class in paragraph (s) or this section.

* * * * *

(s) * * *

"[2] For adjacent channel, see paragraph (t) of the section.";

* * * * *

4. Section 73.313 is amended by revising paragraph (d)(1) to read as follows:

**§ 73.313 Prediction of coverage.**

* * * * *

(d) * * *

(1) Profile graphs must be drawn for eight radials beginning at the antenna site and extending 16 kilometers therefrom. The radials should be drawn for each 45° of azimuth starting with True North. At least one radial must include the principal community to be served even though it may be more than 16 kilometers from the antenna site. However, in the event none of the evenly spaced radials include the principal community to be served, and one or more such radials are drawn in addition, these radials must not be used in computing the antenna height above average terrain.

* * * * *

5. Section 73.611 is revised to read as follows:

**§ 73.611 Reference points and distance computations.**

(a) In considering petitions to amend the Table of Allotments (§ 73.606(b)), the following reference points shall be used by the Commission in determining assignment separations between communities:

(1) Where transmitter sites for the pertinent channels have been authorized in communities involved in a petition to amend the Table of Allotments, separations between such communities shall be determined by the distance between the coordinates of the authorized transmitter sites in the respective communities as set forth in the Commission's authorizations therefor.

(2) Where an authorized transmitter site is available for use as a reference point in one community but not in the other for the pertinent channels, separations shall be determined by the distance between the coordinates of the transmitter site as set forth in the FCC's authorization therefor and the coordinates of the other community as set forth in the publication of the United States Department of the Interior entitled, Index to *The National Atlas of the United States of America.* If this publication does not contain the coordinates for said other community, the coordinates of the main post office thereof shall be used.

(3) Where no authorized transmitter sites are available for use as reference points in both communities for the pertinent channels, the distance between the two communities listed in the above publication shall be used. If said publication does not contain such distance, the separation between the two communities shall be determined by the distance between the coordinates thereof as set forth in the publication. Where such coordinates are not contained in the publication, the coordinates of the main post offices of said communities shall be used.

(4) Where the distance between the reference point in a community to which a channel is proposed to be assigned and the reference point in another community or communities does not meet the minimum separation requirements of § 73.610, the channel may be assigned to such community upon a showing that a transmitter site is available that would meet the minimum separation requirements of § 73.610 and the minimum field strength requirements of § 73.685. In such cases, where a station is not authorized in the community or communities to which measurements from the proposed channel assignment must be made pursuant to § 73.610 a showing should also be made that the distance between suitable transmitter sites in such other community or communities and the proposed transmitter site for the new channel meet the Commission's minimum spacing and coverage requirements.

(b) Station separations in licensing proceedings shall be determined by the distance between the coordinates of the proposed transmitter site in one community and

(1) The coordinates of an authorized transmitter site for the pertinent channel in the other community; or, where such transmitter site is not available for use as a reference point,

(2) The coordinates of the other community as set forth in the Index to *The National Atlas of the United States of America;* or if not contained therein,

(3) The coordinates of the main post office of such other community.

(4) In addition, where there are pending applications in other communities which, if granted, would have to be considered in determining station separations, the coordinates of the transmitter sites proposed in such applications must be used to determine whether the requirements with respect to minimum separations between the proposed stations in the respective cities have been met.

(c) In measuring assignment and station separations involving cities listed in the Table in combination, where there is no authorized transmitter site in any of the combination cities on the channel involved, separation measurements shall be made from the reference point which will result in the lowest separation.

(d) To calculate the distance between two reference points see paragraph (c), § 73.208. However, distances shall be rounded to the nearest tenth of a kilometer.

6. Section 73.699 is amended by revising Note 9 of Figure 6 to read as follows:

**§ 73.699 TV engineering charts.**

* * * * *

Figure 6 * * *

Notes

* * * * *

(9) The burst frequency shall be 3.579545 MHz. The tolerance on the frequency shall be ±10 Hz with a maximum rate of change of frequency not to exceed 1/10 Hz per second.

* * * * *

7. Section 73.3598 is amended by italicizing the introductory headings of paragraphs (a) and (b). As revised, the headings to paragraphs (a) and (b) read as follows:

**§ 73.3598 Period of construction.**

(a) *TV broadcast stations.* * * *

(b) *Other broadcast, auxiliary and Instructional TV Fixed Stations.* * * *

8. Section 73.4107 is amended by adding new paragraph (d) to read as follows:

**§ 73.4107 FM broadcast assignments, increasing availability of.**

* * * * * *

(d) See Public Notice, 51 FR 26009, July 18, 1986.

9. Section 73.4108 is added to the Listing of FCC policies to read as follows:

**§ 73.4108 FM transmitter site map submissions.**

See Memorandum Opinion and Order and Public Notice, adopted October 24, 1986, 1 FCC Rcd 381 (1986); 51 FR 45945, December 23, 1986.

10. Section 73.4140 is amended by revising paragraph (c); by correcting the spelling of the term Minority in the section title; and by adding new paragraph (d) to read as follows:

**§ 73.4140 Minority ownership; tax certificates and distress sales.**

* * * * * *

(c) See Policy Statement, General Docket 82–797, FCC 82–523, adopted December 2, 1982. 92 FCC 2d 849; 48 FR 5943, February 9, 1983.

(d) See Report and Order, General Docket 82–797, FCC 84–647, adopted December 21, 1984. 99 FCC 2d 1249; 50 FR 1239, January 10, 1985.

[FR Doc. 87–7888 Filed 4–9–87; 8:45 am]

BILLING CODE 6712–01–M

# Proposed Rules

Federal Register
Vol. 52, No. 69
Friday, April 10, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 353

### Restoration to Duty From Military Service or Compensable Injury

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to revise its regulations governing the restoration rights of employees who perform military duty or are injured on the job. This revision is being proposed together with a comprehensive revision of Chapter 353 of the Federal Personnel Manual (FPM). The principal purpose of the revision is to update, simplify, and clarify the regulations and instructions. A copy of FPM Chapter 353, which contains specific policies, advice, and guidance to agencies amplifying these regulations, is available upon request from the contact office shown below.

**DATE:** Comments must be submitted on or before June 9, 1987.

**ADDRESS:** Send or deliver comments to Donald L. Holum, Chief, Staffing Policy Analysis Division, Career Entry Group, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Raleigh M. Neville, (202) 632–6817.

**SUPPLEMENTARY INFORMATION:** Part 353 provides restoration rights to exployees who perform military duty or sustain compensable injuries or illnesses. These rights are based on 38 U.S.C. 2021 *et seq.* and 5 U.S.C. 8151, respectively, both of which were enacted 11 years ago. The implementing regulations have not been substantively amended since that time. OPM has closely monitored the application and interpretation of the regulations and corresponding FPM provisions and has determined they are in need of a thorough revision to delete obsolete provisions; reflect changes in law, Merit Systems Protection Board (MSPB) and court decisions; clarify certain concepts; and put the material into a more useful format. The following are among the more important changes being proposed:

—Revises § 353.102 to clarify that restoration rights following compensable injury apply only to Federal employees. Also, adds a definition of "equivalent position" and includes "furlough" in the definition of "leave of absence."

—Deletes material in §§ 353.104 and 353.105 pertaining to how employees on military duty or injury compensation are to be carried. (This information is covered in more detail in FPM Chapter 353.)

—Revises § 353.106 pertaining to notification of rights and obligations to make clear that an employee has an obligation to use due diligence in ascertaining his or her rights, and to return to duty as soon as he or she is able.

—Revises § 353.201(b) to provide that an employee whose position is reclassified during his or her absence is entitled to be considered for the regraded position in accordance with the provisions of Part 335 of this chapter.

—Revises § 353.201(c) to clarify that the prohibition on demoting or separating an employee absent on military duty applies only when the individual has restoration rights under Title 38 of the U.S. Code.

—Revises § 353.203 to clarify that OPM will provide placement assistant to an employee returning from military duty when it is not feasible for the employing agency to restore the individual.

—Revises § 353.302 to change the focus from the time limits to who is entitled to mandatory restoration.

—Deletes material in § 353.303 pertaining to the position to which restored to reflect the provisions of 38 U.S.C. 2021(a)(A)(i) and the expiration of the so-called Whitten Amendment that effectively removed the requirement to obligate the position of an employee entering military service.

—Deletes material in § 353.305 pertaining to conflicting restoration rights, since conflicting restoration rights should rarely be an issue. (These rights are discussed in FPM Chapter 353.)

—Deletes most of the material in § 353.308 on notice of appeal rights. The right to appeal is covered in the new § 353.104.

—Adds a new § 353.306 specifying that Reservists are entitled to a leave of absence to perform military duty.

—Revises § 353.401 to remove repetitive and unnecessary material and to clarify that employees of the legislative and judicial branches do not have appeal rights to the MSPB. Also provides a limited right for partially recovered employees to appeal an agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

—Transfers material in Subpart E on the restoration rights of TAPER (temporary appointments pending establishment of a register) employees to § 353.305.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined by section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to internal Federal personnel matters.

**List of Subjects in 5 CFR Part 353**

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM proposes to amend Part 353 of Title 5, Code of Federal Regulations, as follows:

1. The authority citation for Part 353 is revised to read as follows:

**Authority:** 38 U.S.C. 2021 *et seq.*, and 5 U.S.C. 8151.

2. The heading for Part 353 is revised to read as follows:

## PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

3. Section 353.101 is revised to read as follows:

**§ 353.101 Scope**

The rights and obligations of employees and agenices in connection with leaves of absence or restoration to duty following military service under 38

U.S.C. 2021, *et seq.*, and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part and to corresponding material published in Chapter 353 of the Federal Personnel Manual.

4. Section 353.102 is amended by removing the paragraph designations and alphabatizing the definitions the defention revising the definitions of "Agency," "Leave of absence," and "Military duty," and adding the definition of "Equivalent position" to read as follows:

**§ 353.102 Definitions.**

* * * * *

"Agency" means (1) with respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and (2) with respect to restoration following military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia.

"Equivalent position" means a position at the same grade and pay with the same senority and civil service status. Other factors such as promotion potential of the position, supervisory responsibilities, duties of the position, or placement within an organizational structure are not relevant.

* * * * *

"Leave of absence" means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

"Military duty" means a period of (1) active duty for training or for service in the Armed Forces of the United States; (2) inactive duty training in the Armed Forces of the United States; and (3) active duty in the Public Health Service that is covered by 37 U.S.C. 2024(b). For the purpose of this paragraph, full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. Inactive duty training performed by a member of the National Guard under 32 U.S.C. 502 or 36 U.S.C. 206, 301, 309, 402, or 1002 is considered inactive duty training in the Armed Forces of the United States.

5. In § 353.103, paragraph (c) is redesignated as paragraph (b), and the original paragraph (b) is redesignated as paragraph (c). Both paragraphs are revised to read as follows:

**§ 353.103 Persons covered.**

* * * * *

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.305 covers the restoration rights of employees serving under temporary appointment pending establishment of register (TAPER).

**§§ 353.104 and 353.105 [Removed]**

6. Sections 353.104 and 353.105 are removed.

7. Section 353.106 is redesignated as §353.104 and revised to read as follows:

**§ 353.104 Rights and obligations.**

When an agency separates, furloughs, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee of his or her rights, obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title. However, this does not relieve an employee of the obligation to exercise due diligence in ascertaining his or her rights, or to seek reemployment within the time limits provided by chapter 43 of Title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

**§ 353.107 [Redesignated as § 353.105]**

8. Section 353.107 is redesignated as § 353.105.

9. Section 353.201 is revised to read as follows:

**§ 353.201 Personnel actions.**

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of compensable injury or military duty can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of injury or military duty shall be considered for that position in accordance with the provisions in Part 335 of this chapter.

(c) An employee with restoration rights, absent on military duty, may not be demoted or separated (other than military separation). If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay.

(d) An employee absent because of compensable injury is subject to the same terms and conditions of employment with respect to demotion, separation, reduction in force (RIF), etc., as though he or she had not been injured. An employee who receives compensation during a period of LWOP or separation not due to compensable injury (e.g., expiration of appointment or RIF) or during a period when he or she would not normally be expected to work (e.g., seasonal employment) is not entitled to any greater rights or benefits than he or she would have received if not entitled to workers' compensation.

10. Section 353.203 is revised to read as follows:

**§ 353.203 OPM placement assistance.**

OPM will provide placement assistance to employees returning from military duty or compensable injury when the employing agency has been abolished and its functions were not transferred to another agency. Upon request, OPM will also provide placement assistance to an employee returning from military duty when it is not feasible for the employing agency to restore the individual.

**§ 353.301 [Removed]**

11. Section 353.301 is removed.

12. Section 353.302 is redesignated as § 353.301 and revised to read as follows:

**§ 353.301 Military returnees and injured employees who recover within 1 year.**

The following individuals are entitled to mandatory restoration rights to their former positions or equivalent ones.

(a) An individual returning from military duty who is entitled to restoration rights under 38 U.S.C. 2021 or 2024 (a), (b), or (c). This eligible individual must be restored as soon as possible after making application but in no event later than 30 days after the application is received by the agency.

(b) An individual who fully recovers from a compensable injury within 1 year of the date compensation begins, or from the time compensable disability recurs if the recurrence begins after the employee resumes regular employment with the United States. Such an individual must

be restored immediately and unconditionally.

13. Section 353.304 is redesignated as § 353.302 and revised to read as follows:

**§ 353.302 Physical disqualification.**

An individual who is physically disqualified for the former position or equivalent because of disability sustained during military service or because of compensable injury shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case. For an employee who sustains a compensable injury, this right applies for a period of 1 year from the date compensation begins.

**§§ 353.303, 353.305, and 353.308 [Removed]**

14. Sections 353.303, 353.305, and 353.308 are removed.

**§ 353.307 [Redesignated as § 353.303]**

15. Section 353.307 is redesignated as § 353.303.

**§ 353.306 [Redesignated as § 353.304]**

16. Section 353.306 is redesignated as § 353.304.

17. Section 353.501 is redesignated as § 353.305 and revised to read as follows:

**§ 353.305 Restoration rights of TAPER employees.**

An employee serving in the competitive service under a TAPER appointment under § 316.201 of this chapter (other than an employee serving in grade GS–16, GS–17, or GS–18), is entitled to be restored to the position he or she left, or an equivalent position in the same geographical area.

18. A new § 353.306 is added to read as follows:

**§ 353.306 Leaves of absence.**

Documentation, reporting, and other requirements relating to leaves of absence shall be specified from time to time in the FPM System. The following employees are entitled under Title 38 of the U.S. Code, to a leave of absence in connection with military duty.

(a) A member of a Reserve component who performs active duty for training or inactive duty (38 U.S.C. 2024(d)).

(b) An employee who reports for enlistment, induction, or physical examination (38 U.S.C. 2024(e)).

19. Section 353.401 is revised to read as follows:

**§ 353.401 Appeals to the Merit Systems Protection Board.**

(a) Except as provided below, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore or improper restoration. All appeals are to be submitted in accordance with the MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in Parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

**Subpart E—[Heading Removed]**

20. The heading for Subpart E is removed.

[FR Doc. 87–7707 Filed 4–9–87; 8:45 am]

BILLING CODE 6325–01–M

---

## DEPARTMENT OF JUSTICE

**Immigration and Naturalization Service**

**8 CFR Part 245**

**[INS Number: 1002–87]**

**Adjustment of Status; Persons Admitted for Permanent Residence**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This regulatory change will require that all future applicants for permanent residence under the Cuban Adjustment Act submit with their application local police clearances from every jurisdiction in the United States where they have lived for six months or more. This action is necessary because the number of applicants has decreased to the point where the automated record checks previously conducted are no longer practical.

**DATE:** Written comments must be received by May 11, 1987.

**ADDRESS:** Please submit written comments, in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Jospeh D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3320.

**SUPPLEMENTARY INFORMATION:** Currently, applicants who apply for permanent residence under the Cuban Adjustment Act of November 2, 1966 must submit with their application local police clearances from jurisdictions where they lived in the United States for six months, except from certain jurisdictions from which the Service has been able to obtain automated record checks of possible criminal history. The Service proposes to delete the exceptions. Since April 1985, the Service has processed over 70,000 applications for permanent residence under the Cuban Adjustment Act from Cubans who entered the United States during the Mariel boatlift. The number of new applications has decreased significantly. An automated record check system had been set up in certain states to handle the large amount of requests as efficiently as possible. With the anticipated decreased workload, it is no longer practical to continue this system. Under the proposed regulation, persons who file their application on or after the effective date of the regulation will have to submit local police clearances from every jurisdiction in the United States in which they reside for six months or more after their 14th birthday.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule, if promulgated, will not have a significant impact on a substantial number of small entities.

This order is not a major rule within the definition of section 1(b) of E.O. 12291.

**List of Subjects in 8 CFR Part 245**

Aliens, Immigration and Nationality Act, Immigration, Passports, Visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

**PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENTS**

1. The authority citation for Part 245 continues to read as follows:

**Authority:** Secs. 101, 103, 201, 203, 204, 212, 245, and 247 of the Immigration and Nationality Act; 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218 (8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255, and 1257).

2. In § 245.2, paragraph (a)(3)(iv) is revised to read as follows:

**§ 245.2 Application.**

(a) * * *

(3) * * *

(iv) *Under the Act of November 2, 1966.* An application for adjustment of status is made on Form I–485A. There is no fee required in an application for the benefits of this Act. The application must be accompanied by Form I–643, Health and Human Services Statistical Data Sheet. The application must also include a clearance from the local police jurisdiction for any area in the United States where the applicant has lived for six months or more since his or her 14th birthday.

* * * * *

Dated: March 19, 1987.

**Richard E. Norton,**

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 87–8011 Filed 4–9–87; 8:45 am]

BILLING CODE 4410–10–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 325

### Capital Maintenance

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Deposit Insurance Corporation ("FDIC") is proposing to amend its capital regulation based on its experience in implementing this regulation since it became effective in April 1985. The proposed amendments would; (1) Clarify and revise certain definitions, (2) reserve the authority of the FDIC with respect to the definitions of "primary capital" and "secondary capital," (3) specify that the terms and conditions to which capital instruments are subject must be consistent with safe and sound banking practices, and (4) limit the circumstances in which the FDIC will not approve a proposed merger transaction solely because the resulting entity does not meet the FDIC's mimimum capital requirement. These proposed amendments will benefit both the FDIC and insured banks by providing the FDIC with greater flexibility in administering its capital regulation.

**DATE:** Comments must be received by June 9, 1987.

**ADDRESS:** All comments should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898–6903.

**SUPPLEMENTARY INFORMATION:** On February 11, 1985, the Board of Directors of the FDIC adopted a final rule on capital maintenance (12 CFR Part 325) which became effective on April 18, 1985. 50 FR 11128 (1985). The Office of the Comptroller of the Currency ("OCC") and Board of Governors of the Federal Reserve System ("FRB") took similar action during the first half of 1985, resulting in the establishment of uniform minimum capital standards for all federally supervised banking organizations. In light of the FDIC's experience in implementing its capital regulation since that time, the Board of Directors believes that certain definitions and other provisions of the regulation should be modified. Therefore, the FDIC proposes to amend Part 325 as discussed below.

### Proposed Revisions to Definitions

*Assets Classified Loss*

The FDIC calculates primary capital as of the dates that examinations are conducted and at dates between examinations. While the longstanding practice of the FDIC has been to calculate examination date capital ratios by deducting from capital the amount of assets classified loss as of that date, the existing definition of "assets classified loss" is ambiguous in this respect. In addition, the definition incorporates the term "bank," which refers only to insured state nonmember banks, instead of the broader term "insured bank." Because the FDIC measures the primary capital of insured banks in certain circumstances, the definition of "assets classified loss" should extend to insured banks in general. Therefore, the FDIC has proposed to revise this definition accordingly.

*Subordinated Note or Debenture*

In order for an obligation to satisfy the definition of "subordinated note or debenture," a form of secondary capital, the instrument must meet certain requirements. Those pertaining to subordination and minimum maturity have led to implementation questions since the regulation became effective in April 1985. Two other requirements that have been part of the FDIC's policies for subordinated debt for at least five years have not previously been included in the definition.

The capital regulation's definition of a subordinated note or debenture incorporated relevant portions of the definition of this term that appeared in the FDIC's deposit interest rate regulations (12 CFR Part 329) that were in effect when Part 325 was adopted in 1985. Part 329 was subsequently amended by the FDIC effective April 1, 1986, as a result of the completion of the elimination of rate ceilings on interest-bearing deposits. The amended interest rate regulation deleted the previous version's provision on subordinated notes and debentures. Because it was simply carried over from the FDIC's interest rate regulations, the subordinated debt definition in Part 325 indicates (as it did in Part 329 prior to its amendment) that such debt obligations must be subordinated to the claims of depositors, but it makes no mention of subordination to the claims of other creditors. Nonetheless, because subordinated notes are treated as secondary capital, the FDIC believes that and, when asked, has indicated that subordinated notes, by their very nature from a capital adequacy perspective, must be subordinate to all but equity capital accounts. To clarify the issue of subordination, the FDIC proposes to amend its subordinated debt definition.

In this regard, the FDIC notes that the OCC's capital regulation (12 CFR Part 3) indirectly provides for the general subordination of a subordinate note or debenture issue by a national bank by mandating that such debt must be approved as capital by the OCC in order to qualify as secondary capital. The separate OCC rule governing subordinated debt as capital (12 CFR 5.47) requires that to obtain approval for an issue, it must comply with certain requirements, one of which deal with the priority of subordinated note-holders over other creditors of the bank. The *Comptroller's Manual for Corporate Activities* contains a model general subordination clause and states that substantially this same clause must appear in every subordinate note or debenture.

In order for an obligation to qualify as a subordinate note or debenture under Part 325, it must satisfy a Seven-year minimum maturity requirement although an obligation with a shorter original maturity is permissible in "exigent circumstances." The FDIC proposes to amend the regulation to delegate to the Director of the Division of Bank

Supervision the authority to determine whether such circumstances exist when a bank proposes to issue subordinate debt with an original maturity that is less than the seven years that would otherwise be required.

The addition, banks periodically seek to issue subordinated debt instruments which contain a provision permitting the bank at its option to redeem the debt on or after a specified date prior to its contractual maturity date. Since the definition of subordinated debt prescribes a "maturity" of at least seven years, the FCIC has been questioned as to the meaning of this term when a debt instrument has an optional redemption ("call") provision. The FDIC has taken the view that an optional redemption feature that allows the issuing bank to call all or part of a subordinated debt issue in less than seven years should not prevent an issue with a contractual maturity of seven years or more from satisfying the minimum maturity requirement provided the FDIC does not grant advance consent to the redemption of the debt at its call date when the debt is being issued. Accordingly, the FDIC proposes to add an interpretive rule to Part 325 that will set forth this position.

Section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)) provides that an insured state nonmember bank must obtain the consent of the FDIC prior to the retirement of any part of its capital notes or debentures. To ensure that all parties involved, including future holders of the notes or debentures, are aware of the requirements of section 18(i)(1), the FDIC has for many years required issues of subordinated debt to include a statement concerning the prior consent rule in the debt instrument and related agreements. The FDIC proposes to amend the subordinate debt definition to incorporate this disclosure policy.

Consistent with the provisions of the subordinated debt definition concerning the subordination of the obligation and its unsecured status and with the statutory prior consent for retirement rule, the FDIC has, for at least five years, required new issues of bank-to-bank subordinate debt to include a specific waiver of the right of offset by the lending institution. In order to assure that bankers are aware of this policy when they are planning new issues of subordinate debt, the FDIC proposes to make this waiver policy an explicit part of the definition.

*Total Assets*

For purposes of Part 325, "total assets" uses an average dollar amount for total assets that this taken from a bank's most recent quarterly Call Report. The current definition also discloses the locations in the commercial bank and the savings bank Call Reports where this average is reported. Because the savings bank Call Reports were extensively revised as of the March 31, 1986 report date, the disclosure of where the average of total assets may be found would be updated accordingly.

**Reservation of Authority**

Section 325.5(c) currently permits the FDIC to deduct from primary capital any capital instrument or balance sheet entry that would otherwise increase an insured bank's primary capital but which fails to provide capital support in the form of a cushion to absorb losses. However, this provision of the regulation does not address similar situations that might relate to secondary capital.

While Part 325 authorizes the FDIC to make deductions from capital when appropriate, the regulation does not allow for the possibility that new types of capital instrument or particular balance sheet accounts not specifically identified as components of primary or secondary capital in the definitions of those terms (§§ 325.2(h) and (i)) may be functionally equivalent to certain capital components. The absence of authority for the FDIC to accommodate such instruments or accounts within its capital adequacy framework restricts the FDIC's flexibility when these developments occur. For example, the Federal Reserve Board has recently decided to treat perpetual debt issues that satisfy certain conditions as a primary capital component for bank holding companies based on a determination that such debt is the functional equivalent of perpetual preferred stock, a primary capital component. The FDIC also recognizes that some banks establish valuation allowances for debt securities or for other real estate owned that are created in the same manner as, i.e., through charges to expense, and serve the same purpose as the allowance for loan and lease losses. However, only this latter allowance can qualify as primary capital at present.

To remedy this situation, the FDIC proposes to amend its existing § 325.5(c) along the lines of the reservation of authority provision contained in the OCC's capital regulation (12 CFR 3.5). The authority so reserved would exercisable by the Director of the Division of Bank Supervision on behalf of the Board of Directors of the FDIC. Such a change would also be consistent with the Federal Reserve Board's capital adequacy guidelines which "give the Board flexibility to adjust capital requirements and definitions to changes in the economy, in financial markets, and in banking practices." 50 FR 16060 (1985).

**Covenants Inconisitent With Safe and Sound Banking Ppractices**

The mission of the FDIC and its Division of Bank Supervision includes a responsibility for promoting safe and sound banking practices. Section 325.1 of the FDIC's capital regulation states that the FDIC "must evaluate capital, as an essential component, in determining the safety and soundness of banks it insures and supervises." Therefore, as an integral part of its evaluation of capital, the FDIC must consider whether any of the instruments that a bank would count as part of its capital structure includes covenants, terms, or restrictions which raise safety and soundness concerns. The FDIC been encountering debt instruments that were intended by their issuers to qualify as primary or secondary capital which contained or were covered by such covenants, terms, or restrictions.

The FDIC's Statement of Policy on Capital, which was adopted at the same time as its capital regulation, provides that "issues of perpetual preferred stock [must] be consistent with safe and sound banking practices." 50 FR 11141 (1985). While the FDIC believes that such a condition applies implicitly to all capital instruments, it proposes to make this condition explicit by adding a new § 325.5(f) to its capital regulation and by providing in an interpretive ruling examples of covenants, terms, and restrictions that are considered inconsistent with safe and sound banking practices. The language of the proposed new section is drawn from the FRB's capital guidelnes (12 CFR Part 225, Appendix A) as are certain of the examples in the interpretive ruling. Other examples are taken from criteria first adoted by the FRB and the OCC in 1976 for evaluating debt issues as additions to bank's capital structure. 41 FR 26200 (1976) and 41 FR 47969 (1976), respectively.

**Merger Transactions Subject to FDIC Approval**

Section 18(c)95) of the Federal Deposit Insurance Act ("FDI Act") mandates that, for every merger transaction that requires the agency's prior written approval, the FDIC "shall take into consideration the financial and managerial resources and future prospects of the existing and proposed

BEST COPY AVAILABLE

institutions." While the FDIC is required to consider these factors, an insured bank merger transaction may produce a resulting institution whose deposits will be insured by another federal insurance agency (e.g., the Federal Savings and Loan Insurance Corporation) and for which the FDIC will provide no residual insurance coverage. In such transactions where the FDIC has no further exposure, the Board of Directors believes that the FDIC should not be precluded from granting its consent to a proposed merger solely because the resulting entity does not meet the minimum capital requirement precribed in Part 325. Therefore, the current language of § 325.3(c)(4), which bars the FDIC from approving merger transactions when the resulting entity does not meet the FDIC's minimum capital requirements, regardless of the insurance status of the resulting entity, would be revised.

**Regulatory Flexibility Analysis—Paperwork Reduction Act**

The proposed amendments to Part 325 are not expected to have any significant impact on banks, including small banks.

To the extent that the proposed provison on reservation of authority increases the flexibility of the FDIC in dealing with individual bank situations, all banks, including small banks, will benefit. In this regard, the FDIC is currently required by statute to consider bank capital in a number of situations. These include applications for deposit insurance, branching, mergers, and relocations of offices. In addition, under sections 8(a) and (b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a), (b)) the FDIC is charged with the responsibility of requiring corrective action when an insured bank is in an unsafe or unsound condition or when a state nonmember bank is operating in a unsafe or unsound manner. In addition, the International Lending Supervision Act (12 U.S.C. 3907(a)(1)) requires the FDIC to "cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate federal banking agency deems appropriate."

In carrying out its responsibilities the FDIC has always considered the capital adequacy of banks. However, it was not until late 1981 that the FDIC promulgated a written policy to inform banks and the public of its beliefs concerning capital and capital adequacy. 46 FR 62694 (1981). The capital maintenance regulation which the FDIC is proposing to amend became effective April 18, 1985. The FDIC's actual experience in implementing Part 325 over the past two years has revealed particular aspects of the regulation that are in need of clarification or further resolution. The proposed amendments would better inform the banking industry and the public about the standards the FDIC uses in assessing capital adequacy and how the FDIC exercises its statutory duties with regard to the safety and soundness of banks in its consideration of capital adequacy.

This proposal does not duplicate, overlap, or conflict with any existing federal laws and regulations governing insured banks or with the FDIC's responsibilities pursuant to sections 6, 8, and 18 of the Federal Deposit Insurance Act (12 U.S.C. 1816, 1818, 1828).

The proposed amendments neither alter any existing nor create any new recordkeeping or reporting requirements. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not applicable.

**List of Subjects in 12 CFR Part 325**

Bank deposit insurance; Banks, banking; Federal Deposit Insurance Corporation; Capital adequacy; State nonmember banks.

The FDIC proposes to amend Part 325 of Title 12 of the Code of Federal Regulations as follows:

## PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 3907, 3909.

2. Paragraphs (a), (j), and (k) of § 325.2 would be revised as follows:

**§ 325.2 Definitions**

(a) *Assets classified loss.* The term "assets classified loss" means:

(1) When measured as of the date of examination of an insured bank, those assets that have been determined by an evaluation made by a State or Federal bank examiner as of that date to be a loss; and

(2) When measured as of any other date, those assets: (i) That have been determined by an evaluation made by a State or Federal bank examiner at the most recent examination of an insured bank to be a loss, and (ii) that have not been charged off from an insured bank's books or collected.

* * * * *

(j) *Subordinated note or debenture.* The term "subordinated note or debenture" means an obligation other than a deposit obligation that:

(1) Bears on its face, in boldface type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation;

(2)(i) Has a maturity of at least seven years, or (ii) in the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least seven years; provided that the Director of the Division of Bank Supervision may permit the issuance of an obligation or issue with a shorter maturity or average maturity if he has determined that exigent circumstances require the issuance of such obligation or issue; provided further that the provisions of this paragraph (j)(2) shall not apply to mandatory convertible debt obligations or issues;

(3) States expressly that the obligation (i) is subordinated and junior in right of payment to the issuing bank's liabilities to its depositors and to the bank's other liabilities to its general and secured creditors, and (ii) is ineligible as collateral for a loan by the issuing bank;

(4) Is unsecured;

(5) States expressly that the issuing bank may not retire any part of its obligation without the prior consent of the FDIC; and

(6) Includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

(k) *Total assets.* The term "total assets" means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Reports), as these reports may from time to time be changed, as of the most recent report date, plus the allowance for loan and lease losses, minus assets classified loss, and minus intangible assets other than mortgage servicing rights. The average of total assets is found in the Call Report schedule of quarterly averages.

* * * * *

3. Paragraph (c)(4) of § 325.3 would be revised as follows:

**§ 325.3 Minimum capital requirement.**

* * * * *

(c) * * *

(4) In any merger, acquisition or other types of business combination where the FDIC must give its approval, where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, and where the resulting entity is either insured by the FDIC or not otherwise federally insured, approval will not be granted when the resulting entity does not meet the minimum capital requirement.

4. Paragraph (c) of § 325.5 would be amended as follows:

**§ 325.5 Miscellaneous**

* * * * *

(c) *Reservation of authority.* Notwithstanding the definitions of "primary capital" and "secondary capital" in §§ 325.2(h) and 325.2(i), the Director of the Division of Bank Supervision may, if he finds a newly developed or modified capital instrument or a particular balance sheet entry or account to be the functional equivalent of a component of primary or secondary capital, permit one or more insured banks to include all or a portion of such instrument, entry, or account as primary or secondary capital, permanently or on a temporary basis, for purposes of this part. Similarly, the Director of the Division of Bank Supervision may, if he finds that a particular primary or secondary capital component or balance sheet entry or account has characteristics or terms that diminish its contribution to an insured bank's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from primary or secondary capital.

5. A new § 325.5(f) would be added as follows:

**§ 325.5 Miscellaneous**

* * * * *

(f) *Restrictions relating to capital components.* To qualify as primary or secondary capital, a capital instrument must not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

6. New § 325.101 and § 325.102 would be added as follows:

**§ 325.101 Optional redemption provision in a subordinated note or debenture.**

This interpretive rule describes the effect of the presence of an optional redemption provision on the minimum maturity provision of a "subordinated note or debenture" as defined in § 325.2(j). An optional redemption ("call") provision exercisable by the issuing bank in less than seven years will not be deemed to constitute a maturity of less than seven years for the purposes of this part, provided:

(a) The obligation otherwise has a stated contractual maturity of at least seven years;

(b) The call is exercisable solely at the discretion or option of the issuing bank, and not at the discretion or option of the holder of the obligation; and

(c) The call is exercisable only with the express prior consent of the FDIC uder 12 U.S.C. 1828(i)(1) at the time early redemption or retirement is sought, and such consent has not been given in advance at the time of issuance of the obligation.

**§ 325.102 Covenants inconsistent with safe and sound banking practices.**

This interpretive rule provides examples of covenants, terms, and restrictions that a capital instrument must not contain or be covered by in order for the instrument to qualify as primary or secondary capital. These examples are not intended to be an exhaustive listing of such covenants; other covenants that are not expressly listed in this interpretive rule may be inconsistent with safe and sound banking practices. A covenant, term, or restriction is inconsistent with safe and sound banking practices if it:

(a) Unduly interferes with the ability of the issuer to conduct normal banking operations;

(b) Results in significantly higher dividends or interest payments in the event of a deterioration in the financial condition of the issuer;

(c) Impairs the ability of the issuer to comply with statutory or regulatory requirements regarding the disposition of assets or incurrence of additional debt; and

(d) Limits the ability of the FDIC or a similar regulatory authority to take any necessary action to resolve a problem bank or failing bank situation.

By order of the Board of Directors. Dated at Washington, DC, this 31st day of March, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87-8015 Filed 4-9-87; 8:45 am]

BILLING CODE 6714-01-M

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 86-NM-216-AD]**

## Airworthiness Directives; Boeing Model 737 and 757 Airplanes

**AGENCY:** Federal Aviation Administation (FAA), DOT.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws a Notice of Proposed Rulemaking (NPRM), applicable to certain Boeing Model 737 and 757 airplanes, which would have required reworking the accumulator isolation valve. Since the issuance of the notice, the FAA has determined that the hydraulic system system will retain stored hydraulic energy, due to fluid compression and component expansion, and will provide at least 15 minutes of parking brake pressure after normal hydraulic pressure is lost. This is adequate time to perform an emergency evacuation in the event the brake accumulator is not available. Accordingly, the NPRM is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations by adding a new airworthiness directive (AD) was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 15, 1986 (51 FR 44921). The proposal would have required reworking brake accumulator isolation valves on Boeing Model 737-300 and 757-200 series airplanes.

The NPRM was prompted by reports of seized accumulator isolation valves. Seizing of the valves in the closed position would block the accumulator pressure from the parking brake. In the absence of normal hydraulic power, this condition could result in the inability to set the parking brake, or the loss of parking brake pressure, depending on when the system hydraulic pressure was lost. When an emergency condition exists requiring emergency evacuation, the engines are shut down, which results in loss of normal hydraulic systems. If the brake accumulator isolation valve were to seize in the closed position, and the engines were not operating, the parking brake could not be set. If the brake accumulator isolation valve were to seize in the closed position, and the engines were running, the parking brake pressure could bleed off, allowing the airplane to move when parked on a slooping surface or due to wind. If an emergency evacuation were taking place, the movement of the airplane would pose a hazard to deplaning passengers and crew.

Interested parties were afforded the opportunity to comment on the proposal. Due consideration has been given to the comments received.

The Boeing Company disagreed with the proposal based on the unsafe condition addressed. Boeing presented FAA with data determined by analysis and confirmed by laboratory testing, which indicate that the hydraulic system retains stored hydraulic energy due to fluid compression and component expansion, and acts like an accumulator; this will provide at least 15

minutes of parking brake pressure after normal hydraulic pressure is lost. Further, it was noted that Airplane Flight Manual and Operations Manual procedures for emergency evacuation direct the crew to set the parking brake prior to shutting down engines. The FAA has considered this information and has determined that 15 minutes is adequate time to complete an emergency evacuation after the engines are shut down. Therefore, the unsafe condition addressed in the NPR cannot be established, and withdrawal of the NPRM is appropriate.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another Notice in the future, or commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Withdrawal**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration withdraws a proposal to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By withdrawing the proposed airworthiness directive, Docket 86-NM-216-AD, published in the Federal Register on December 15, 1986 (51 FR 44921), FR Doc. 86-27974.

Issued in Seattle, Washington, on April 1, 1987.

Wayne J. Barlow,

*Director, Northwest Mountain Region.*

[FR Doc. 87-7984 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 39**

**[Docket No. 87-NM-38-AD]**

**Airworthiness Directives; CASA Model C-212 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive, (AD), applicable to CASA Model C-212 series airplanes, that would require installation of an artificial stall warning system. This proposal is prompted by reports that inadequate natural stall warning may exist on CASA Model C-212 airplanes. This condition, if not corrected, could lead to an inadvertent stall condition.

**DATES:** Comments must be received no later than May 15, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-38-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur D. Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-38-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**Discussion**

A special FAA team was recently dispatched to Madrid, Spain to review the stall characteristics of the CASA Model C-212 airplane. The FAA team determined that the natural stall warning was inadequate. Although the Model C-212 airplanes have exhibited excellent flight service experience, and the flight crew does not normally operate in the flight region of airplane stall, it may be possible for a flight crew to inadvertently approach stall conditions. It is necessary to provide adequate stall warning by requiring installation of artificial stall warning equipment.

Since this condition may exist on other airplanes of this type design, an AD is proposed that would require installation of an artificial stall warning system.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Estimated cost of parts is $1,000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $59,200.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,480). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

CASA: Applies to all Model C-212 series airplanes including Indonesian manufactured C-212's Serial Numbers 64N and 73N, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent stalls, accomplish the following:

A. Within 30 days after the effective date of this AD, install an artificial stall warning system in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Seattle, Washington.

B. Adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Federal Aviation Administration, Standardization Branch, ANM-113, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 1, 1987.

Wayne J. Barlow,

*Director, Northwest Mountain Region.*

[FR Doc. 87-7983 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 210, 239, 240 and 279

**[Release 33-6695, 34-24289, 35-24360, IC-15655, IA-1064, S7-13-87]**

### Independent Accountants; Mandatory Peer Review

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commission is publishing for comment proposed amendments to its rules that would require that financial statements included in filings with the Commission be certified by an independent accountant which has undergone a peer review of its accounting and audit practice within the last three years. Available information supports the position that peer review contributes to the improvement of the quality of audits, which in turn improves the reliability of financial statements. The Commission anticipates that the rules, if adopted, would be effective approximately eighteen months after the date of their adoption.

**DATE:** Comments should be received by the Commission on or before July 9, 1987.

**ADDRESS:** Comments should refer to File S7-13-87 and should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549. All comments will be available for public inspection at the Commission's Public Reference Room.

**FOR FURTHER INFORMATION CONTACT:** John A. Heyman or Robert E. Burns (202-272-2130), Office of the Chief Accountant, Securities and Exchange Commission, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION**

**Contents**

I. Executive Summary
II. Discussion of Peer Review and Audit Quality Controls
  A. Background
  B. The Concept of Peer Review
    1. The Nature of Quality Control
    2. The Nature of Peer Review
  C. Benefits of Peer Review
  D. Costs of Peer Review
    1. Peer Review Fees
    2. Internal Costs
III. Discussion of Proposed Rules
  A. Peer Review Standards
  B. Alternative Methods of Obtaining Peer Review
  C. Requirements for PROs
  D. Commission Oversight of PROs
  E. Commission Supervised Peer Reviews
  F. Scope of Requirement
  G. Transition Provisions
  H. Effects of Failure to Comply
  I. Effects on Registrants
IV. Regulatory Flexibility Act Anaylsis
V. Requests for Comments
VI. List of Subjects in CFR Parts 210, 239, 240 and 279
VII. Text of Proposed Rules

### I. Executive Summary

The Commission is publishing for comment proposed amendments to its rules that would require that financial statements included in filings with the Commission, in order to be certified, be examined by an independent accountant which has undergone a peer review of its accounting and audit practice within three years of the date of the completion of the examination. The Commission anticipates that the rules, if adopted, would be effective approximately eighteen months after the date of their adoption.

The Commission has previously stated that it believes that peer review contributes to improving audit quality. Recently, several private-sector bodies have recommended that peer review be mandatory for accountants whose reports are filed with the Commission. In addition, one governmental body has adopted, and one is considering the issue of, mandatory peer review. It is therefore appropriate that the Commission address the issue of mandatory peer review at this time.

The Commission's experience with both quality control reviews conducted pursuant to the settlement of enforcement actions against accountants and the current voluntary peer review program provides evidence that peer review is a good test of an accountant's quality controls. Data exists that supports the view that peer reviews contribute to the improvement of the quality of audits.

Generally accepted auditing standards ("GAAS") require an accountant to establish and adhere to a system of audit quality controls which is sufficient to provide a reasonable assurance that audits are conducted in accordance with GAAS. The objective of peer review is to test the adequacy of, and compliance with, the audit quality control system required by GAAS. As GAAS already requires the establishment of quality controls the major incremental cost which mandatory peer review should cause an accountant to incur is the fee paid triennially to the peer reviewer. Information available to the Commission indicates that peer review fees for accounting firms with twenty or less professionals average $600 per partner annually, and that the per partner cost to larger firms would generally be lower.

The proposed rule would amend the Regulation S-X definition of "certified" financial statements to require that such financial statements be examined by an independent accountant which has undergone a peer review within the three years preceding the date of the completion of the examination.[1]

[1] See footnote 53.

Accountants would have the option of satisfying the requirement by undergoing a peer review under the auspices of an acceptable peer review organization ("PRO") or, alternatively, by having their peer review supervised directly by the Commission.

The proposed rules include standards relating to the qualifications for peer reviewers, the study of the accountant's system of, and compliance with, audit quality controls, the documentation of the peer review and the preparation of the peer review report, and the accountant's response thereto. The proposed peer review standards provide that peer reviews must include the selection and review of a sample of audit engagements which is representative of the accountant's accounting and auditing practice. While not incorporated in the text of the proposed rules, the Commission wishes to solicit comments on whether any final rules should specifically require the selection and review of audits which are the subject of private litigation or Commission investigations.

The proposed rule indicates the functions a PRO must perform for the peer reviews conducted under its auspices to satisfy the requirements of the rule. PROs would be required to supervise the peer reviews performed under their auspices, through the establishment of peer review policies and procedures, the review of the peer reviewers' work and the review and evaluation of the peer review reports and the reviewed accountants' responses thereto, to insure that peer reviews are conducted in accordance with the standards stated in the proposed rule. Additionally, PROs would be required to appoint a body of at least three independent individuals to represent the public interest in overseeing the PRO's activities.

The proposed rules would not grant PROs the authority to discipline an accountant, nor would it prohibit disciplinary action by PROs. Further, any disciplinary action taken by a PRO would not have the direct effect of prohibiting an accountant from certifying financial statements to be filed with the Commission. If an accountant leaves a PRO, the accountant may continue to certify financial statements included in filings with the Commission by having a peer review performed under the auspices of another PRO or under the direct supervision of the Commission. A PRO would be required to notify the Commission when an accountant failed or refused to take appropriate actions to correct any deficiency in the accountant's system of, or compliance with, audit quality controls which caused that system to fail to provide reasonable assurance that audits are conducted in accordance with GAAS.

Both the PRO and its body of public interest representatives would be subject to Commission oversight. That oversight would include the review of peer review workpapers by the Commission.

Accountants choosing not to participate in the peer review program of a PRO would have their peer review directly supervised by the Commission. The accountant would select a peer reviewer meeting the requirements of the rule, which would then prepare policies and procedures to be utilized in the peer review which meet the requirements of the rule. The Commission would perform the functions otherwise performed by a PRO for a peer review conducted under its auspices.

The proposed rules would apply to all filings under the Securities Act of 1933 ("the Securities Act"), the Securities Exchange Act of 1934 ("the Exchange Act"), the Public Utility Holding Company Act of 1935 ("the Holding Company Act"), the Investment Company Act of 1940 ("the Investment Company Act") and the Investment Advisers Act of 1940 ("the Investment Advisers Act"). The proposed rules would not apply to accountants certifying the financial statements of brokers or dealers filed pursuant to Rule 17a-5 under the Exchange Act.

Foreign auditors would be exempt, as would accountants certifying the financial statements of businesses acquired or to be acquired required by Rule 3-05 of Regulation S-X or other similar rules [2] if the entity is not subject to Commission reporting requirements. The proposed rule includes transition provisions which would allow an accountant which first becomes subject to the rule after its effective date a period of eighteen months to complete its initial peer review, provided that audits of financial statements filed with the Commission in the interim are reviewed by an accountant which meets the qualifications for a peer reviewer.

Under the proposed rules, the definition of certified financial statements would also require that the accountant performing the examination have established and be maintaining a quality control system meeting the requirements of GAAS. An accountant's compliance with the peer review requirement would create a presumption that such a system is being maintained and adhered to. However, if it appears to the Commission that (i) an accountant is not maintaining or adhering to the system of audit quality controls required by GAAS, or (ii) deficiencies existed indicating that the accountant's system of, or compliance with, audit quality controls does not provide reasonable assurance that audits were being conducted in accordance with GAAS [3] and those deficiencies are not being adequately corrected and/or appropriate interim measures are not being taken, then, in either case, the Commission would have the discretion to issue a preliminary determination that the accountant does not satisfy the requirements set forth in the definition for "certified" financial statements. This preliminary determination would be based on the Commission's review, to the extent it deems necessary, of the peer review report, the peer reviewer's letter, the accountant's response thereto, the peer review workpapers, and any other relevant information brought to the Commission's attention. Commencing 15 days after the delivery of the preliminary determination, any future financial statements examined by that accountant would fail to meet the requirement for certified financial statements as defined in Rule 1-02(f) of Regulation S-X. The accountant would have the right, however, to petition the Commission for a hearing on the issue. If such a petition were filed, the preliminary determination would not become final, and a proceeding for determining whether the accountant satisfies the requirements in the definition would be initiated in accordance with the Commission's Rules of Practice, 17 CFR 201.

The failure of an accountant to undergo a required peer review would cause, without further action by a PRO or the Commission, future financial statements examined by that accountant to fail to meet the requirement for certified financial statements as defined in Rule 1-02(f) of Regulation S-X.

The Commission is also requesting comments on means other than mandatory peer review, including but not limited to a disclosure requirement, by which the Commission could (i) encourage the use of peer review to improve the quality of registrant's audits, and (ii) adequately inform

[2] See footnote 56.

[3] The existence of such deficiencies in an accountant's system of, or compliance with, audit quality controls should normally result in the issuance of other than an unqualified peer review report.

investors of the quality of the registrant's audits.

## II. Discussion of Peer Review and Audit Quality Controls

### *A. Background*

The Commission has long supported the concept of peer review as a way of providing added assurance to investors, creditors and clients that an accountant is consistently complying with professional standards. Since at least 1975 the Commission has either required or accepted a review of an accountant's quality controls as a condition of settling enforcement actions in appropriate cases. Further, the Commission has identified peer review as the single most important element of the accounting profession's response to the various recommendations for self-initiated reform made by the Congress, the Commission and others during the 1977 hearings conducted by the U.S. Senate Subcommittee on Reports, Accounting and Management.[4]

Recently several private sector bodies have suggested that membership in the SECPS or a similar quality control organization should be mandatory for accountants whose reports are filed with the Commission. For example, the AICPA Council, in October 1986, endorsed and authorized an AICPA membership vote on a recommendation by the Special Committee on Standards for Professional Conduct of CPAs that firms containing AIPCA members should be required to join the SECPS if they audit one or more SEC clients.[5] The National Commission on Fraudulent Financial Reporting ("NCFFR") has also, as one of its tentative conclusions, recommended mandatory membership for accountants whose reports are filed with the Commission.[6] Additionally, proposals by Price Waterhouse [7] and the chief executive officers of seven other major accounting firms [8] both called for mandatory peer review for accountants practicing before the Commission.[9]

One governmental body has adopted, and another is considering adopting, requirements for the mandatory peer review of accountants in connection with the audits of certain financial statements filed for regulatory purposes. As a result of its hearings on the quality of the audits of the recipients of federal assistance funds performed by accountants under the Single Audit Act, the House Committee on Government Operations has recommended [10] that the General Accounting Office ("GAO") revise its standards to provide that accountants performing such audits undergo periodic peer review.[11] Also, in January 1986, the Rural Electrification Administration adopted rules [12] which require accountants certifying the financial statements of borrowers to belong to and participate in an approved peer review program.

Finally, at a roundtable discussion with the Commission on financial reporting and the role of the independent auditor, participants expressed the view that

> the peer review process of the AICPA's Division for Firms has served an important and effective role in the regulatory system for the past ten years. Nevertheless, various participants voiced recommendations for improvement including mandatory membership, increased involvement by the Commission, and more effective disciplinary action.[13]

In view of these recent developments and the Commission's previous conclusions regarding the benefits of peer review, it is appropriate to consider at this time whether peer review should be mandatory for accountants that certify certain financial statements which are included in filings with the Commission.

The Commission, through Regulation S–X, has set forth the form, content, and requirements for financial statements required to be filed pursuant to the federal securities laws, including the requirements for notes to the financial statements and for related schedules. The Commission's broad authority to establish such requirements includes its specific authority to require independent audits of registrants,[14] to define technical and accounting terms,[15] to prescribe the reports and information to be filed,[16] and to prescribe the form in which information is set forth and the methods to be followed in the preparation of reports.[17] The

---

[4] *See, e.g., Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role*, 94th Congress, 2nd Session (July 1978). In September 1977, the American Institute of Certified Public Accountants ("AICPA") created a new Division of CPA Firms and, within that Division, an SEC Practice Section ("SECPS"), which includes a Public Oversight Board ("POB") composed of distinguished individuals from outside the profession. According to the POB's 1985–1986 Annual Report, 178 accountants (firms or individuals) that audit public companies were members of the SECPS as of June 30, 1986. Those members audited approximately 8,730 or 83.9% of all publicly traded companies. Those companies account for approximately 99.4 percent of the total revenues of all publicly traded companies. Approximately 1,700 publicly traded companies were audited by approximately 625 accountants who were not SECPS members. The POB's report was based on an analysis of the accountants which audit the companies listed in the 15th edition of *Who Audits America*.

These and other related statistics in this release do not include accountants which would be subject to the proposed rule only because they audit investment advisers required to file solely pursuant to the Investment Advisers Act. There are approximately 600 investment advisers that are required to file audited balance sheets with the Commission. The Commission is presently unable to determine such peer review related statistics, and is specifically requesting comments containing data on the number of accountants which have and have not been peer reviewed that would be subject to the proposed rule due solely to investment adviser clients.

[5] *See, Report of the Special Committee on Standards of Professional Conduct for Certified Public Accountants*. The balloting of the AICPA membership began on January 29, 1987 and will conclude on March 30, 1987.

[6] *See* "Initial Conclusions of the National Commission on Fraudulent Financial Reporting," address by James C. Treadway, Jr. to the AICPA, October 21, 1986. NCFFR's tentative recommendation has been endorsed by the Financial Executives Institute. *See FEI Position* (February, 1987); Financial Executives Institute.

[7] *See* "Challenge and Opportunity for the Accounting Profession: Strengthening the Public's Confidence," Price Waterhouse (1985).

[8] *See* "The Future Relevance, Reliability, and Credibility of Financial Information—Recommendations to the AICPA Board of Directors" (April, 1986).

[9] The Price Waterhouse proposal would require peer review through mandatory membership in a statutory self-regulatory organization. The proposal of the other firms would mandate SECPS membership.

[10] *See* House Committee on Government Operations, *Substandard CPA Audits of Federal Financial Assistance Funds: The Public Accounting Profession is Failing the Taxpayers;* House Report 99–970, 99th Congress, 2nd Session (1986).

[11] The Committee recommended that "Before establishing a peer review standard, however, the GAO should determine whether current peer review procedures are excessively expensive—especially for smaller firms. If such is found to be the case, GAO should work with the public accounting profession and Inspectors General to develop reasonably priced alternative peer review procedures." H.R. 99–970 *supra*, at 29.

[12] 51 FR 2788 *et seq.* (January 21, 1986).

[13] *See* "SEC Roundtable—Financial Reporting and the Role of the Independent Auditor—June 3, 1986."

[14] Sections 7, 10, and Schedule A of the Securities Act, sections 12(b), 13(a) and 17(e) of the Exchange Act, sections 5(b), 10(a), and 14 of the Holding Company Act, sections 8(b) and 30(e) of the Investment Company Act, section 203(c) of the Investment Advisers Act; 15 U.S.C. 77g, 77j, 77aa, 78*l*, 78*m*, 78q(e) 79e(b), 79j(a), 79n, 80a–8(b), 80a–29(e), 80b–3(a).

[15] Section 19 of the Securities Act, section 3(b) of the Exchange Act, section 20(a) of the Holding Company Act, section 38(a) of the Investment Company Act; 15 U.S.C. 77s, 78c, 79t(a), 80a–37(a).

[16] Sections 7 and 10 of the Securities Act, sections 12(b), 13(a), and 13(b) of the Exchange Act, section 14 of the Holding Company Act, section 30 of the Investment Company Act, sections 203 and 204 of the Investment Advisers Act; 15 U.S.C. 77g, 77j, 78*l*, 78m, 79n, 80a–29, 80b–3, 80b–4.

[17] Section 19(a) of the Securities Act, section 13(b) of the Exchange Act, section 20(a) of the Holding Company Act, sections 31(c) and 38(a) of the Investment Company Act; 15 U.S.C. 77s, 78m, 79t(a), 80a–30(c), 80a–37(a).

Commission also has general authority to make such rules and regulations as may be necessary to implement the provisions of the securities laws.[18] Pursuant to the Commission's specific authority to prescribe the reports to be filed and to define terms, and pursuant to its general rulemaking authority, the proposed rules would amend the definition of certified financial statements in Rule 1–02(f) of Regulation S–X to include the requirement that the financial statements be examined by an independent public or certified public accountant which is in compliance with peer review requirements specified in the proposed new Article 1A and which is maintaining and adhering to a quality control system meeting the requirements of GAAS.

Based on its experience with the peer reviews performed pursuant to the settlement of enforcement actions and in overseeing the current voluntary peer review program, and its review of available information concerning the effectiveness of peer review, the Commission believes that peer review contributes to the improvement of the overall quality of audits through the more effective application of professional standards. As a result of improved audits, the Commission believes that the completeness and accuracy of financial disclosure is improved and the integrity of the financial reporting process is enhanced. Because of the benefits received by investors in the form of an improved disclosure process, the Commission believes that the proposed rules are reasonably related to implementing the provisions of the securities laws.

*B. The Concept of Peer Review*

As previously outlined by the Commission,[19] the underlying concept of peer review is to provide a regular examination and evaluation of the work of each accountant which audits publicly-held clients in order to assess whether that accountant's work conforms to the high standard expected of those who assume the responsibilities of independent accountants under the federal securities laws. To be successful, a peer review must satisfy three objectives. First, it must incorporate and apply meaningful standards of quality control to both the work of the reviewer and of the accountant being reviewed. Second, it must be structured in such a manner as to assure independence in fact and promote public confidence in the credibility of the peer review process. Third, the peer review process must be sufficiently open to examination by representatives of the public interest, including the Commission, so that each may discharge its oversight responsibilities. The peer review standards and other provisions included in the proposed rules are based on these concepts.

1. The Nature of Quality Control

The practice of public accounting has been, throughout the larger part of its history, a basically individual endeavor involving the exercise of professional judgment. As the size of businesses grew, the audit function became concomitantly more complex and the size of many accounting firms increased to keep pace with the needs of clients. As a result, the practice of public accounting, particularly auditing, became increasingly institutionalized.

This institutionalization of auditing gave rise to a need for mechanisms more formal and consistent than individual judgments to provide firms with effective managerial and professional controls over the practice. "Audit manuals" were developed by many firms to provide guidelines in various areas, forms and checklists were standardized and other steps were taken, both by individual firms and by professional groups, to help provide the necessary controls. As the complexity of accounting and auditing grew, these mechanisms also became increasingly complex.[20]

None of these mechanisms, however, can take the place of the exercise of individual professional judgment. Rather, they serve to help confine such judgments to nonroutine matters and to ensure that such judgments are made within an established framework and are subject to appropriate review.

The basic framework of the "quality control system" of every public accounting practice is provided by the authoritative auditing literature. Adherence to GAAS is required in connection with any audit report issued and the body of literature promulgated by the AICPA's Auditing Standards Board provides extensive guidance on compliance with these standards. Basic concepts of quality control were themselves codified in the auditing literature in 1974 with the issuance of Statement on Auditing Standards ("SAS") No. 4, "Quality Control Considerations for a Firm of Independent Auditors." That pronouncement was later superseded by SAS No. 25, "The Relationship of Generally Accepted Auditing Standards to Quality Control Standards."[21]

2. The Nature of Peer Review

Peer review (or "quality control review") is, in effect, the "auditor's audit"—an independent examination of an accountant's quality control system by other accountants engaged in public practice and thus expert in matters of accounting and auditing. These reviews evaluate whether a reviewed accountant's system of quality control for its accounting and auditing practice is appropriately comprehensive and suitably designed for the accountant and whether its quality control policies and procedures are adequately documented, communicated to professional personnel and complied with to provide the accountant with reasonable assurance of conforming with the standards of the profession.

Peer review is a two part process, somewhat analogous to an auditor's review of a client's system of internal accounting control. The evaluation is accomplished through:

(i) Study and evaluation of a reviewed accountant's policies and procedures that comprise its quality control system; and

(ii) Review for compliance with a reviewed accountant's quality control policies and procedures by—

—Review at each organizational or functional level within the organization; and

—Review of selected engagement working paper files and reports.

Reviews are thus conducted at several different levels. The system of quality control itself is being reviewed, within the context of the particular

---

[18] Section 19 of the Securities Act, section 23(a) of the Exchange Act, section 20(a) of the Holding Company Act, section 38(a) of the Investment Company Act and section 211(a) of the Investment Advisers Act; 15 U.S.C. 77s, 78w, 79t(a), 80a–37(a), 80b–11(a).

[19] *See, e.g., Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role*, 94th Congress, 2nd Session (July 1978).

[20] For example, quality control policies and procedures, such as pre-issuance review of public company audits by experienced personnel not otherwise associated with the engagement, and periodic rotation of audit partners (where practical), are believed to be widely recognized as essential elements of an effective quality control system. Many of these kinds of quality control policies and procedures have evolved in practice as accountants have sought to provide themselves with reasonable assurance of conforming with GAAS in audit engagements. In addition to seeking to fulfill public expectations for reliable audits, accountants would naturally want to take appropriate steps to minimize exposure to the risks attendant to an alleged or actual audit failure.

[21] AICPA Professional Standards AU section 161. A discussion of the necessary elements of a system of audit quality practices and procedures is contained in Statement on Quality Control Standards No. 1 (AICPA Professional Standards QC section 10).

accountant's professional practice, against the framework established by SAS No. 25. The actual conduct of the accountant's accounting and auditing practice is measured against:

(i) Generally accepted auditing standards;

(ii) The guidelines provided by the authoritative literature under GAAS; and

(iii) The quality control policies and procedures established by the accountant.

The conduct of the accountant's practice is also being examined in terms of the judgments made in applying generally accepted accounting principles ("GAAP"), since engagement reviews include a review of the related financial statements.

*C. Benefits of Peer Review*

The Commission's 1985 Annual Report to Congress stated that—

> The Commission believes the peer review process contributes significantly to improving quality controls of members and thus should enhance the consistency and quality of practice before the Commission.[22]

The Commission recognizes that numerous factors affect the quality of an accountant's accounting and auditing practice, and that peer review cannot prevent isolated breakdowns in audit quality controls and the resultant audit failures. However, the Commission has previously stated that it believes that undergoing a peer review reinforces an accountant's commitment to the maintenance of adequate audit quality controls.[23] Further, the Commission staff's experience with quality control reviews conducted pursuant to SEC enforcement actions as well as in overseeing the peer review program of the SECPS provides evidence that peer review is a good test of an accountant's quality controls. Peer reviewers have made extensive constructive criticisms of accountant's controls, raised and resolved substantive accounting and auditing questions, and suggested corrective actions, such as additional audit work, the revision of financial statements, the reassignment of personnel, the issuance of new or revised guidance to personnel on specific accounting and/or auditing matters and special training or supervision of personnel. Others have also recognized and discussed the benefits of peer review.[24]

Studies performed by the Commission staff and the GAO indicate that peer review affects the quality of audits. A Commission staff study of the 48 enforcement actions brought by the Commission against accountants from 1981 through 1986 found that 33 of the actions were brought against accountants which had not, at the time the allegedly deficient audit was conducted, undergone a peer review.[25] The remaining 15 actions were brought against accountants which had undergone peer review as a result of their voluntary membership in the SECPS or the Private Companies Practice Section ("PCPS") of the AICPA Division for CPA Firms.[26] Accountants which have undergone peer review have annually audited between 77 and 86 percent of all registrants during the same time period. The results of the study therefore show that the incidence of enforcement actions against accountants which had not undergone peer review was approximately eleven times higher than that for accountants which had been peer reviewed.

The Commission recognizes that factors other than peer review may contribute to this result (e.g., an accountant's size, its experience in auditing registrants or the possibility that accountants with better audit quality controls are more likely to voluntarily undergo peer review). There is presently a close correlation between the size of accounting firms and their peer review status (i.e., a greater percentage of larger accounting firms presently undergo peer review than smaller ones), and the available data was not sufficient to enable the staff to isolate the effect of peer review status or size on the results.

However, the Commission notes that when the audits performed by, and enforcement actions against, accountants which audit 30 or more registrants [27] are excluded, there is still a significant difference between the incidences of enforcement actions against accountants which have been peer reviewed and those which have not undergone peer review, even though both groups are comprised of accountants which are similar in size when measured in terms of the number of registrant clients.[28] Specifically, thirty-one actions were brought against accountants which had not been peer reviewed prior to conducting the audit in question, compared to two actions brought against the accountants which had undergone peer review. However, accountants which had been peer reviewed conducted approximately 33 percent of the audits.

The staff of the Commission also studied the nature of the audit problems identified in enforcement actions. The results indicate that a substantial number of the actions against accountants which had not undergone peer review disclosed a general audit failure due to significant lack of audit quality controls, a failure to apply basic auditing procedures and/or an absence of a working understanding of basic GAAP. In contrast, the actions brought against accountants which had been peer reviewed disclosed far fewer such problems, and were more often related to isolated breakdowns in audit quality controls or the inappropriate application of GAAS or GAAP to relatively complex transactions or events. A similar pattern resulted when the actions were classified based on the size, rather than the peer review status, of the accountant.[29] This appears to be due to the fact that, as previously stated, there is presently a close correlation between size and peer review status. As a result, the "peer reviewed" and "large" groups, and the "not peer reviewed" and "small" groups, in this study contained largely the same accountants.

The Commission believes that these studies, when viewed in total, may indicate that peer review is a factor affecting the difference in the incidence of, and the nature of the audit problems identified in, the enforcement actions against accountants which have been peer reviewed as opposed to those which have not. However, it is not possible to conclude from these data whether peer review is the dominant factor, or the relative significance of peer review as a factor in comparison to the effect of an accountant's size or

---

[22] U.S. Securities and Exchange Commission Fifty-First Annual Report, p. 17–18.

[23] *See, generally*, U.S. Securities and Exchange Commission Forty Seventh Annual Report at p.29.

[24] *See, e.g., Peer Review: Its Impact on Quality Control*, Journal of Accountancy (July, 1981); *Peer Review: Enhancing Quality Control*, Journal of Accountancy (October, 1983); *The AICPA Division for Firms: Problems and a Challenge*, Journal of Accountancy (August, 1984); and *Measuring the Effectiveness of the Peer Review Program*, The Ohio CPA Journal (Autumn 1986).

[25] In eight instances the accountant underwent peer review subsequent to the completion of the audit in question.

[26] PCPS members are also required to undergo triennial peer reviews. Approximately 180 public companies are audited by approximately 120 accountants which are PCPS members only. Certain membership requirements and peer review standards of the PCPS differ from those of the SECPS, and the POB and the Commission do not oversee the activities of the PCPS. However, the nature of the peer review required by each body is similar.

[27] The 1986 POB report indicates that as of June 30, 1986 there were 13 such firms which, in total, audited 78 percent of all public companies.

[28] Accountants in each group had an average of three registrant clients.

[29] Accountants with more than five registrant clients were classified as "large"; those with five or less were classifed as "small".

other possible factors. The Commission is therefore specifically requesting comments on the extent to which peer review status, accountants' size or other factors are the cause of the differences observed in these studies.

A recent study by the GAO of audits performed under the Single Audit Act also indicated that peer review has an effect on audit quality. The GAO reviewed 150 governmental audits, 77 of which were performed by accountants which had been peer reviewed and 73 of which were performed by accountants which had not.[30] Of the audits performed by accountants which had not been peer reviewed, 59 percent were found to be unsatisfactory, compared to 18 percent of those performed by accountants which had been peer reviewed. The percentages of audits with "severe standards violations" were 41 percent and 2 percent, respectively, for the two groups of accountants.

Peer review also contributes to the improvement of audit quality through its periodic identification and correction of weaknesses in an accountant's audit practices and procedures. Statistics published by the POB indicate improvement in the audit practices of member firms. Since the SECPS peer review program began in 1978, 16.3 percent of initial peer reviews have resulted in the issuance of a modified (i.e., qualified or adverse) peer review report, while only 7.4 percent of the reports on subsequent (i.e., second and third) peer reviews were modified. Also, the percentage of individual audits reviewed which were found to be substandard in the application of GAAP or GAAS has decreased from 3.5 percent in 1981 to 0.8 percent in 1985. The 1985–1986 POB Report further states that "Comparison of the letters of comments issued in 1985 with those issued to the same firms on the prior review indicates that most firms, including those that received unqualified reports on both reviews, had improved their quality control systems in the three-year period." The Commission recognizes that factors other than peer review, such as accountants' reactions to the increasing incidence of litigation, may have contributed to these improvements over time. On the other hand, it also recognizes that peer reviews have identified and resulted in the correction of audit quality control weaknesses which were not identified by the reviewed accountant on its own. The Commission is specifically requesting that commentators discuss the extent to which these observed improvements in the quality of audits are the result of the effects of peer review or other factors.

Aside from the evidence supporting the benefits of peer review provided by the Commission's experience with peer review and these studies, there appears to be a significant public acceptance that peer reviews are effective. A recent survey [31] of individuals familiar with the work of accountants or who invest in equity securities [32] conducted for the AICPA by Louis Harris and Associates, Inc. revealed that the majority of those who were aware of the current peer review programs believed that the fact that an accountant had been peer reviewed would be a factor they would consider if they were choosing an auditor. In addition, the majority believed that peer review should be mandatory for auditors of public companies.

These studies contribute to the view that peer review both is effective, and is accepted as being effective, in improving audit quality. However, the Commission is specifically requesting that commentators discuss, and provide empirical data on, the effect (or lack thereof) that peer review has on the quality of an accountant's accounting and auditing practice.

*D. Costs of Peer Review*

The Commission recognizes that the adoption of a mandatory peer review rule would require accountants to incur certain costs. Primarily, accountants would incur the direct cost of fees paid to the peer reviewers. This cost may raise the total cost of auditing registrants to an accountant that is not now undergoing peer review but is providing or intends to provide auditing services to registrants. Additionally, some may believe that such a rule may increase the costs incurred by an accountant in developing, documenting and maintaining its audit quality control practices and procedures.

1. Peer Review Fees

A survey by the AICPA of SECPS peer reviews performed in 1984 by AICPA appointed teams indicated that the fees for those reviews ranged from $2,600 every three years for a firm of two professionals to $8,700 every three years for a firm of 30 professionals. More recently, the AICPA surveyed the 52 accounting firms which are members of the SECPS or PCPS which have less than 20 professionals and audit at least one SEC client. The responses [33] to that survey indicated fees for peer reviews performed between 1984 and 1986 by another accountant, an AICPA appointed team or a team appointed by a state CPA society [34] ranged from $2,600 for the one sole practitioner surveyed to an average of $6,400 for the two largest firms (eight partners and an average of 17 total professionals) responding. Based on this data, the Commission estimates that the average cost of a peer review fee to each of the estimated 500 accountants that presently audit registrants [35] would be approximately $4,500 every three years, or approximately $500 annually per registrant-client.[36] In general, it is estimated that the annual cost per partner for accounting firms with twenty or less professionals would average approximately $600, and that the per partner cost for larger accounting firms would generally be lower.

---

[30] *See generally*, Comptroller General of the United States, U.S. General Accounting Office, Report to the Chairman, Legislation and National Security Subcommittee, House Committee on Government Operations: *CPA Audit Quality Inspectors General Find Significant Problems* (December 1985); and AICPA, Report of the Task Force on the Quality of Audits of Governmental Audits—Final Draft (February 1987). The statistics in this paragraph are based on data made available to the Commission which was compiled by the AICPA for use in the preparation of the final draft of the Task Force Report.

[31] *See, A Survey of the Perceptions, Knowledge and Attitudes Towards CPAs and the Accounting Profession*, Louis Harris and Associates, Inc. (October, 1986).

[32] The groups surveyed included owners and managers of small and medium-sized businesses, executive officers and audit committee members of large corporations, senior bank loan officers, Federal and state officials who deal with financial related issues, members of the financial media, accounting academics and securities analysts.

[33] The survey also sought information on the costs incurred by accountants in preparing for their initial peer review, the effects of peer review on their audit quality control practices and procedures, and other information on the costs and benefits of peer review. A copy of the summary of the results prepared by the AICPA staff has been placed in the public file under the S7 file number mentioned at the beginning of this release.

[34] Under the SECPS program, an accountant may choose to have its peer review performed by (i) a review team appointed by the SECPS from a pool of reviewers provided by each member firm, (ii) another accountant engaged by the reviewed accountant (a "firm-on-firm" review), or (iii) a review team appointed by a state CPA society.

[35] Of the 625 accountants presently auditing registrants which are not members of the SECPS, approximately 125 undergo peer review pursuant to their membership in the PCPS. The fees for PCPS peer reviews are slightly lower than those for SECPS peer reviews. Those accountants may experience a small increase in their peer review fee costs if the proposed rules are adopted.

[36] This estimate is based on three registrant clients per accountant, which is the average number of registrants audited by accountants which presently do not undergo peer review. The presentation of this statistic does not, however, reflect an assumption that any accountant will seek to recover this cost only from registrant (as opposed to all) clients, or that any or all of the cost will be recovered from clients.

Of course, the peer review fee for a specific accountant may vary from any such estimate, due to the size of the accountant's practice, the number and complexity of its audits and the nature of its audit quality practices and procedures. Additionally, fees for firm-on-firm reviews may vary from those performed by a team of individuals. The Commission is specifically requesting additional information from commentators on the cost of peer review. Data is requested on the costs of peer review on a per partner or per professional staff basis. Information is also requested on the nature of the accounting firms (number of partners, professional staff and publicly-held clients) which are not presently subject to peer review and which would, therefore, be affected if the proposed rules were adopted. Commentators are also specifically invited to address the extent, if any, to which the fees for peer reviews performed under the auspices of any other PRO which may be formed, or those obtained outside the auspices of a PRO, might be expected to vary from those being experienced under the current AICPA program.

2. Internal Costs

The AICPA survey also requested information on the nature and amount of the costs, if any, incurred by accountants in preparing and/or documenting their audit quality control systems for their initial peer review. Such costs could include, for example, the cost of the internal development or documentation of a quality control system, the purchase of a quality control manual from another accountant, the hiring of professional personnel or an outside consultant to oversee the development and implementation of quality control procedures and/or special training for professional staff.

Some believe that peer review should not cause an accountant to incur significant incremental costs since the review is intended to evaluate whether an accountant's system of quality control meets the objectives otherwise required by professional standards. Statement on Auditing Standards ("SAS") No. 25 requires that an accountant

> Establish quality control policies and procedures to provide it with a reasonable assurance of conforming with generally accepted auditing standards in its audit engagements.

SAS No. 25 further states that

> The nature and extent of a firm's quality control policies and procedures depend on factors such as its size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations.

Therefore, a peer review tests the existence of and compliance with an audit quality control system that should already be in place for an accountant to be complying with GAAS.

Others, however, may believe that mandatory peer review would cause affected accountants to incur significant incremental costs in preparing, documenting and maintaining their audit quality control systems. The majority of the accountants responding to the AICPA survey indicated that preparing for their initial peer review required them quality control document [37] and perform an initial internal inspection.[38] The respondents reported that an average of 50 hours were expended in developing the quality control document (hours expended on internal inspection were not provided). However, since both a quality control document which is appropriate based on the accountant's size, the nature of its practice, and the other factors enumerated in SAS No. 25, and a similarly appropriate internal inspection program would appear necessary for effective compliance with SAS No. 25, the Commission is unable to determine whether, or to what extent, the costs incurred by these accountants represent incremental costs directly related to peer review.

The Commission is therefore specifically requesting comment on whether mandatory peer review will cause accountants to incur significant incremental costs in initially preparing and documenting their quality control systems, and, if so, information on the types and amounts of costs involved. The Commission also requests similar information on the incremental costs an accountant would incur in maintaining and adhering to such a system.

The Commission recognizes that accountants that elect to obtain their peer review under the auspices of a PRO will likely incur a cost in supporting some or all of the expenses of operating the PRO.[39] Some of the costs incurred in operating a PRO, and the related support required of the accountants participating in its program, may relate to activities undertaken by the PRO which are not required under the proposed rule. On the other hand, where an accountant chooses to have its peer review directly supervised by the Commission, the Commission intends to charge the accountant a fee pursuant to the Independent Offices Appropriation Act.[40] Under that act the fee charged would generally be the lower of the costs incurred by the Commission in performing this functions or the benefit or value to the accountant as measured, for example, based on the amount the accountant would have had to pay to a PRO to perform the supervisory and public interest functions required under the rule. The Commission specifically requests comments on the specific method of calculating this fee.

An accountant which chooses to obtain its peer review under the auspices of a PRO may incur a cost (whether in the form of membership or support fees, or the costs of complying with requirements imposed by the PRO which exceed those in the proposed rule) which exceeds the fee the Commission would have charged. The Commission has considered this cost and has determined that, since the proposed requirement would allow each accountant to choose whether to obtain its peer review under the auspices of a PRO or under Commission supervision, this additional cost associated with PRO affiliation is the subject of the cost-benefit analysis that each accountant would perform in deciding which of the two alternative means it will use to obtain its peer review.

Finally, the Commission is also requesting comments addressing any other types of cost (quantified to the extent practicable) which the rule, if adopted, would impose on accountants or registrants, and whether the rule, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Commentators are requested to discuss both the potential competitive effects of the proposed rule, if adopted, on accountants which currently audit registrants, whether, and to what extent, the proposed rule would create a barrier to accountants seeking to enter into the business of auditing registrants, and any means by which such a barrier, if one would be created, could be lessened. Comments on the potential effect of the rule on competition will be considered

---

[37] A quality control document is the written documentation of an accountant's audit quality control practices and procedures.

[38] The internal inspection by an accountant of its compliance with its audit quality control practices and procedures is one of the elements of audit quality control enumerated in Statement on Quality Control Standards No. 1.

[39] For example, costs of operating the SECPS and POB are presently funded by dues paid by SECPS members and by funds provided by the AICPA from its general revenues. SECPS members presently pay annual dues of $15 per professional, limited to $100 for firms with less than five SEC clients.

[40] *See*, 31 U.S.C. 9701.

by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

## III. Discussion of Proposed Rules

### *A. Peer Review Standards*

The objective of peer review is to determine whether the reviewed accountant is maintaining and applying audit quality controls which, in accordance with the standard established by GAAS, provide a reasonable assurance of compliance with GAAS in the conduct of audit engagements. To insure that the objective is met, PROs and accountants performing Commission supervised peer reviews would be required to adopt peer review policies and procedures which provide for compliance with the peer review standards contained in the proposed rule. Those peer review standards represent what the Commission believes must, at a minimum, be encompassed in a peer review for it to meet its objective.

The peer review standards contained in the proposed rule address the qualifications for a peer reviewer, the study of the accountant's system of audit quality control, the review of the compliance with that system, documentation of the peer review, the preparation of a written peer review report, and the response by the reviewed accountant to the peer review report.

The proposed standards relating to the qualifications of peer reviewers require the reviewer to possess the requisite independence and technical training. While the independence rules of Article 2 of Regulation S–X, 17 CFR 210.2-01 *et seq.*, and the related interpretations contained in Section 600 of the Codification of Financial Reporting Policies[41] do not apply to peer review, the concepts of independence for auditors and peer reviewers are the same. Therefore, to be sufficiently independent, a peer reviewer cannot have any material family relationships or shared financial interests with the accountant to be reviewed.

The existence of family relationships must be considered both in the selection of the individuals who will perform the peer review and in the selection of a peer reviewing accounting firm if that method of review is used. Family relationships between the accountant being reviewed and any of the individuals performing a portion of the peer review would impair independence. In the case of a peer review performed by a firm of accountants, family relationships at the senior management level (i.e., chief executive or senior technical partners) of the reviewing accountant would impair independence; however, a family relationship involving a partner or employee of the reviewing firm who is not at the senior management level and does not participate in the peer review would usually not impair independence.

The independence of a peer reviewer would be impaired due to a shared financial interest if it had performed correspondent work for, or been referred work by, the accountant to be reviewed, or vice versa, and the related fees (whether paid directly by the client or by the other accountant) were material to either accountant. Finally, reciprocal peer reviews would be prohibited.

Accountants possessing the requisite technical training to perform peer reviews would be currently active at the supervisory level in the practice of public accounting, should be experienced in SEC matters and would have (or be associated with a firm which has) received an unqualified report on its latest peer review.

The proposed peer review standards would require the study and evaluation of the accountant's quality control system to determine whether it is sufficient to meet the minimum requirements of GAAS.[42] At a minimum, this study would include, but not be limited to, quality control procedures and practices relating to the monitoring of independence, the consultation within or outside the firm on accounting and auditing questions, the supervision of audit work, the hiring, professional development and advancement of personnel, the acceptance and continuation of clients, and the internal inspection of the accountant's own compliance with its policies and procedures.

The review of the compliance with the accountant's system of audit quality controls required by the proposed peer review standards would include the review of the report, related financial statements and workpapers for a selection of audit engagements which is representative of the accountant's accounting and auditing practice. In selecting audit engagements, the reviewer should consider, among other things, the types of industries and client sizes, the number of engagement hours, the supervisory personnel assigned and the need to give adequate attention to complex or high-risk engagements, and the audits of registrants and new clients.

The proposed rules would require that the documentation of the peer review be adequate to indicate the work performed and the results thereof, to demonstrate that peer review standards and the related policies and procedures have been complied with, and to provide a record of the basis for the peer reviewer's opinion.

Peer reviewers would be required to issue a report indicating the general scope of the review, including any restrictions thereon, and expressing an opinion on whether the reviewed accountant's system of audit quality control was sufficient to meet the requirements of GAAS and whether the compliance with that system was sufficient to provide a reasonable assurance that audits were being conducted in accordance with GAAS. The report would be required to indicate the nature of any exception taken as to the reviewed accountant's system of, or compliance with, the audit quality controls required by GAAS. The proposed rules would also require the peer reviewer to issue a letter, accompanying the peer review report, describing any deficiencies in the system of, or compliance with, audit quality controls which create more than a remote possibility of non-compliance with GAAS and the effect, if any, those deficiencies had on the peer review opinion.

Reviewed accountants would be required to respond, in writing, to the deficiencies identified by the reviewer, indicating the corrective actions planned or taken or the reason the accountant disagrees with the findings of the peer reviewer and/or believes no corrective actions are required. The proposed rule would require that the peer review policies and procedures utilized specify an appropriate time period within which the review is to be completed and the peer review report and any accompanying letter and reviewed accountant's response issued.[43]

Finally, PROs would be required to adopt policies and procedures for determining in what circumstance a reviewed accountant should be revisited to determine that actions described in its response to the peer review report as planned have been taken.

---

[41] *See generally*, Ped. Sec. L. Rep. CCH ¶ 73,251 *et seq*

[42] As previously stated, SAS No. 25 requires that an accountant establish quality control procedures that provide a reasonable assurance of compliance with GAAS.

[43] The proposed rules would require that these documents be submitted to the PRO or, for Commission supervised peer reviews, the Commission, within 15 days of the issuance of the peer review report.

The proposed rule indicates that the peer review policies and procedures established by a PRO or utilized in a Commission supervised peer review would be required to provide for, among other things, the selection and review of an appropriate sample of audit engagements. The proposed rule does not specify the factors which should be considered in selecting individual engagements for review. However, the Commission wishes to consider whether a final rule should include a requirement that the selection of engagements for review should include audits that are alleged to be deficient in the application of GAAS either in private litigation or Commission or other regulatory agency investigations or litigation ("contested audits").

Current SECPS peer review standards indicate that the engagements selected for review should provide a reasonable cross-section of the accountant's accounting and auditing practice. However, SECPS standards do not specifically require the reviewer to select contested audits for review and provide that, in certain circumstances, the accountant may restrict the peer reviewer's access to such audits without causing a scope limitation which would require a modification of the peer reviewer's opinion.[44]

In addition to requiring that they undergo peer review, the SECPS requires members to report to the Special Investigations Committee ("SIC") litigation and regulatory agency investigations which allege deficiencies in an audit of an SEC client. The SIC reviews the matter to determine whether the alleged audit failure indicates a weakness in the accountant's system of audit quality control which requires remedial action, or whether an inadequacy in professional standards may exist. The SIC's current policy does not call for a review of the specific audit in question; rather, the SIC's policy is to generally base its decision on a review of the complaint and the related financial statements and, if considered necessary, a review of the accountant's audit quality control system and possibly a review of other audits performed by the office or individuals or in the same industry.[45]

The Commission wishes to consider whether the effectiveness of the peer review process in contributing to the improvement in audit quality could be increased by a peer review standard requiring the review of contested audits and is soliciting comments on this question. Such a requirement could be accomplished through a provision in the Commission's rules specifying that the sample of audits selected for review should include an appropriate sample of contested audits, or a provision requiring the selection and review of contested audits in addition to the normal peer review sample, or a combination of both. Commentators should address the effectiveness of these alternatives. Additionally, the Commission wishes to consider the other effects such a requirement could have, and whether those effects outweigh the potential benefits to the effectiveness of peer review.

Not all contested audits are in fact deficient in the application of GAAS. Also, audit failures result from a variety of causes, not all of which can always be detected and corrected by peer review whether or not peer review includes the review of contested audits. Nonetheless, the inclusion of an appropriate sample of contested audits in the scope of a peer review might increase the chance that deficiencies in an accountant's system of, or compliance with, audit quality controls will be identified and corrected. This in turn could improve the ability of peer review to contribute to improving the quality of audits.

To the extent private litigants attempt to use information contained in the peer review workpapers in litigation involving alleged audit deficiencies, a rule requiring the selection and review of contested audits could make the information contained in those peer review workpapers more relevant to the litigation.

In light of the forgoing, the Commission is specifically requesting comments on the extent to which a rule requiring the peer reviewers to specifically select and review contested audits would contribute to the effectiveness of peer review. The Commission also seeks comment on the nature and extent of the possible impact of such a rule on litigation.

The Commission also wishes to examine, and is specifically requesting comment on, whether a different approach to the review of contested audits would better contribute to improvement in the quality of audits. For example, if the Commission were to decide that the review of contested audits is appropriate, it could instead require PROs to establish a function, similar to the current AICPA's SIC, but which would, however, specifically review the workpapers for the contested audit to determine whether an indication that a weakness in the accountant's system of, or compliance with, audit quality controls may exist. An accountant which undergoes Commission supervised peer review would instead engage another accountant to perform such a review. The advantage to this approach would be that it would result in a more timely review of contested audits, and thus would allow for more timely implementation of any necessary quality control improvements. Commentators are invited to address whether and why this, or some other approach, is preferable.

Finally, the Commission wishes to consider, and is requesting comments on, whether, and to what extent, the concerns over the potential effect on litigation discussed above would be alleviated by the inclusion in any rule which requires the review of contested audits (whether as a part of the peer review or an SIC-type function) of a provision that, for the purpose of the review, the reviewer is simply to assume that the plaintiffs' allegations are correct, and, based on that assumption,

---

[44] SECPS peer review standards state: "In that connection, the review team should discuss with the reviewed firm whether litigation, proceedings, or investigations (reported to the SIC) commenced since the date of the firm's last peer review involve the same offices, industries, audit areas, or engagement personnel involved in such matters in the recent past, and whether the firm has considered any such patterns in the scope of its own inspection or other internal review programs. The review team, giving due regard to the fact that such litigation, proceedings, and investigations will ordinarily involve unproven allegations, should consider this information in setting the scope of the review." (SECPS Manual, p. 2-12 and 2-13.)

SECPS peer review standards also state: "A reviewed firm may have legitimate reasons for not permitting the working papers for certain engagements to be reviewed. For example, the financial statements of an engagement selected for review may be the subject of litigation or investigation by a governmental authority, or the firm may have been advised by a client that it will not permit the working papers for its engagement to be reviewed. The review team should satisfy itself as to the reasonableness of the explanation; if the team is not satisfied, the matter should be reported to the reviewed firm's managing partner, and the review team should consider what other action may be appropriate in the circumstances. If the engagements so excluded from the review process are few in number and the review team concludes that the engagements so excluded do not materially affect the review coverage, then the review team ordinarily would conclude that the scope of the review had not been unduly restricted. In order to reach such a conclusion, the review team should review other engagements in a similar area of practice and review other work of supervisory personnel who participated in the excluded engagements." (SECPS Manual, p. 2-13.)

[45] In September 1986, the SECPS Executive Committee appointed a task force to re-evaluate the objectives, operations and procedures of the SIC and the nature of the information provided to the Commission and the public on the SIC's activities. The task force presented its preliminary recommendations to the Executive Committee on March 4, 1987. The Executive Committee is expected to consider and take action on the task force's final report in April, 1987.

is to reach a conclusion as to whether the circumstances indicate weaknesses in the reviewed accountant's system of quality control policies and procedures. This approach, which may affect the relevance of the peer reviewer's observations in private litigation, was utilized in several peer reviews conducted prior to the formation of the SECPS pursuant to settlements of administrative proceedings between accountants and the Commission.[46]

*B. Alternative Methods of Obtaining Peer Review*

Peer review programs, to be effective, require an organization comprised of, or employing, persons trained in accounting and auditing. This is necessary to assure that adequate peer review standards, policies and procedures are established and followed, and to evaluate the results of peer reviews and determine whether quality control weaknesses identified in peer reviews are being adequately corrected. Also, oversight by representatives of the public interest is necessary to provide credibility through an independent evaluation and report to the public of the effectiveness of private-sector quality control programs.

Both functions can be performed either directly by the Commission or by the private sector (subject to Commission oversight). The private sector approach currently embodied in the SECPS and POB structure has proved both effective and efficient, and the Commission believes that private-sector supervision should be an available alternative under mandatory peer review. Therefore, the proposed rules provide that an accountant may satisfy the peer review requirement by participating in the peer review program of a PRO. The functions a PRO must perform for it, and the peer review performed under its auspices, to be acceptable are discussed under "Requirements for PROs."

On the other hand, the Commission recognizes that some accountants may not want to participate in the peer review program of any of the PROs formed, and therefore is proposing an alternative means of obtaining the required peer review. As previously stated, the function performed by a PRO (and its related public interest representatives) can also be performed by the Commission. Therefore, the proposed rules provide that an accountant may elect to obtain its peer review outside the auspices of a PRO, in which case the peer review would be directly supervised by the Commission, through the Office of the Chief Accountant ("OCA"). This method of undergoing peer review is discussed under "Commission Supervised Peer Reviews."

*C. Requirements for PROs*

The proposed rules specify the functions a PRO must perform for the PRO, and the peer reviews performed under its auspices, to be acceptable.

A PRO meeting the requirements of the rule would be required to cause the peer reviews performed under its auspices to be conducted in accordance with the previously discussed proposed peer review standards. The purpose of those standards is to insure that the objectives of peer review are met. To accomplish this, PROs would be required to establish peer review policies and procedures which meet or exceed the requirements of the peer review standards.

A PRO would require the accountants participating in its program to submit to it their peer review report, including any supplemental document describing the deficiencies in or containing suggestions for improvements in the accountant's system of, or compliance with, audit quality controls (collectively referred to herein as the "peer review report"), together with a description by the reviewed accountant of the actions taken or planned to correct any weaknesses identified in the report.

The proposed rules do not mandate that a PRO require a reviewed accountant to take appropriate actions to correct any weaknesses identified in the report, but rather require the PRO to determine whether the corrective actions taken or planned are appropriate. A PRO would be required to notify the Commission in writing [47] if it determines that the reviewed accountant has failed to take or plan [48] appropriate actions to correct [49] any deficiencies in the system of, or compliance with, audit quality controls which caused that system to fail to provide a reasonable assurance that audits are conducted in accordance with GAAS.

While the proposed rule would require PROs to determine the adequacy of a reviewed accountant's corrective actions, it would not give PROs the authority to prohibit an accountant from certifying financial statements to be filed with the Commission due either to an accountant's failure to undergo the required peer review or failure to take or plan steps to adequately correct any material weaknesses in its system of, or compliance with, audit quality controls. A PRO would not, however, be prohibited from imposing sanctions upon an accountant, but such sanctions would have to be imposed based on the authority voluntarily granted to the PRO by the accountants subject thereto. The authority to determine that the financial statements examined by an accountant would not meet the Rule 1–02(f) definition of "certified" because of that accountant's lack of an adequate system of, or compliance with, audit quality controls would rest solely with the Commission.

Finally, the PRO would be required to submit to the Commission and make available to the public [50] the peer review reports and the reviewed accountant's response thereto submitted to the PRO.

As previously stated, peer review, to be credible, must also be overseen by representatives of the public interest as well as persons trained in accounting and auditing. While both functions can be performed by the Commission for

---

[46] *See, e.g.*, Accounting Series Release No. 209, *In the Matter of S.D. Leidesdorf & Co., Kenneth Larson, Joseph Grendi* (February 16, 1977).

[47] PROs would be required to review the peer review reports and accountants' responses thereto, and to make any required notifications to the Commission, within 45 days of the receipt of the peer review report. In this regard, the peer review standards included in the proposed rule would require PROs to establish policies requiring the completion of the reviews within specific time periods. Absent such a requirement, an accountant could seek to postpone such a determination and notification by delaying the completion of its peer review.

[48] The Commission recognizes that the time necessary to implement certain corrective action may preclude complete implementation prior to the submission to the PRO of a reviewed accountant's response to the peer review report, and that as a result the response can only indicate that such actions are planned. In this regard, the Commission would expect that a PRO, in evaluating the adequacy of a reviewed accountant's response, will generally expect corrective action to be taken on as timely a basis as is practical. Additionally, the peer review standards contained in the proposed rule would require the policies and procedures established by the PRO to contain guidelines for determining in what circumstances a reviewed accountant should be revisited to determine that the planned actions have been taken.

[49] The corrective actions contemplated include both the improvements in its system of and/or compliance with audit quality controls that a reviewed accountant takes or plans to take and other, usually interim, corrective measures such as the scheduling of a special or accelerated peer review or the hiring of an outside consultant to review audit reports, accompanying financial statements and/or related workpapers. Therefore, a report to the Commission would be required where the PRO believed it was necessary, but the reviewed accountant refused, to take interim measures notwithstanding other corrective actions.

[50] The requirement for public availability would be satisfied by the PRO making the documents available for public inspection and copying at its headquarters and furnishing copies by mail upon written request.

peer reviews conducted under its direct supervision, PROs will generally be comprised of accountants in public practice and who therefore cannot themselves perform the public oversight function. For this reason, the proposed rule would require that the activities of a PRO be overseen by a body of not less than three independent individuals appointed to represent the public interest. The proposed rule would define an independent individual as one who is not affiliated with any accountant which undergoes its peer review under the auspices of the related PRO. The Commission is specifically requesting comments on this definition.

This oversight body shall evaluate the effectiveness of the PRO's peer review program and the PRO's compliance with the Commission's requirements. This body would be required, at least annually, to report to the Commission and to the public on its assessment of the effectiveness of the PRO's peer review program and the PRO's compliance with the stated requirements of a PRO.

The proposed rule does not specify the organizational form or structure to be utilized by a PRO, and no specific form or structure would required. Any organization which performs the functions required of a PRO by the proposed rule would be acceptable.

*D. Commission Oversight of PROs*

The Commission would oversee the peer review process through its oversight of the PROs and the public oversight bodies. Such oversight would include, to the extent the Commission deems necessary, periodic reviews [51] of the activities of both groups, including meetings with their representatives and the review of their written policies and procedures, to determine that the rule's requirements for the organization and activities of each group are being met.

In connection with the oversight of its activities, a PRO would be required to grant access to peer review workpapers to the Commission. The Commission's review of the peer review workpapers would permit it to judge the efficacy of a PRO's peer review program and to determine that the requirements of the rule are being met. Just as the Commission's previous conclusions concerning the efficacy of the SECPS's program have been reached without the review of all peer review workpapers, it would usually not be necessary for the Commission to review all peer review workpapers to judge the efficacy of a PRO's program or its compliance with the Commission's requirements. However, all workpapers would be available to the Commission. Additionally, a PRO would be required to provide to the Commission, upon its request, the workpapers for a specific peer review. Accordingly, a PRO would be required to retain all peer review workpapers for a period of 180 days after the submission of the related peer review report to the Commission and, additionally, to retain indefinitely the workpapers for any specific peer review if advised to do so by the Commission.

If it appears to the Commission that a PRO is not satisfying the requirements for a peer review organization set out in the peer review rules, the Commission may issue a preliminary determination that the PRO fails to meet those requirements, and the peer reviews conducted under its auspices subsequent to that determinations would, therefore, fail to satisfy the peer review requirement. The Commission's preliminary determination would be based on a review of the PRO's policy and procedures or the application of such policies and procedures in the conduct, supervision or review of peer reviews, and any other relevant and available information. A PRO may be considered to have failed to satisfy the requirements of the rules if deficiencies in the PRO's policies or procedures or their application in the conduct of peer reviews causes (or a planned change in a PRO's policies and procedures would cause) peer reviews conducted under the auspices of that PRO to fail to meet the objectives and standards of in the rule, or if the PRO is otherwise failing to meet the requirements of the rule.

Such a preliminary finding would become final fifteen calendar days after its delivery to the PRO unless, during that period, the PRO filed with the Commission a petition indicating its intention to file a written statement demonstrating how it satisfies (or how, after a planned change, it would satisfy) the PRO rule requirements. The PRO would be required to file such a written statement within fifteen days after the filing of the petition. To be successful, the PRO would be required to make a showing satisfactory to the Commission that the PRO's policies and procedures, or their application in the conduct of peer review, do cause (or, in the case of planned changes in the PRO's policies and procedures, would cause) peer reviews conducted under its auspices to meet the objectives and standards of the rule, or that the PRO is otherwise complying with the requirements of the rule.

The Commission would consider such a written statement within thirty calendar days of its receipt. If a satisfactory showing is made, no final determination would be issued. If the PRO fails to make a satisfactory showing, the Commission would issue a final order determining that the PRO fails to meet the requirements of the rule.

The final effectiveness of a Commission determination, whether issued after the consideration of a PRO's written statement or due to the lapse of the fifteen day period after the delivery of a preliminary finding, would not affect the status of peer reviews performed under the auspices of the PRO for which the peer review reports were submitted to the Commission prior to the effective date of the determination. Additionally, in order not to create an undue hardship upon an accountant whose peer review was either being conducted under the auspices of the PRO at the date of such a determination, or whose peer review had been recently completed and submitted to such PRO which in turn had not yet submitted it to the Commission, the proposed rule would allow the Commission to accept, subject to such terms and conditions as the Commission may specify, such peer review submitted to it after the date of a final determination as meeting the requirement of the peer review rule.

A PRO determined not to meet the requirements of the rule would be allowed, no more than once annually, unless the Commission allows otherwise, to apply for a redetermination.

*E. Commission Supervised Peer Reviews*

Accountants which desire not to participate in the peer review program of a PRO may, instead, undergo a peer review in which the Commission performs the functions of a PRO and therefore directly supervises the peer review. The following describes the manner in which these peer reviews would be conducted under the proposed rule.

An accountant choosing this method of obtaining peer review would select a peer reviewer meeting the qualifications for peer reviewers set forth in the peer review standards. The accountant would advise the OCA of the peer reviewer selected and provide sufficient information to support the position that the accountant selected meets the qualifications for a peer reviewer.

[51] The Commission would make an initial determination as to the acceptability of each PRO and its respective public oversight body before the commencement of peer reviews under its program on the basis of its written policies and procedures.

The peer reviewer, once selected, would be required to prepare detailed policies and procedures to be used in performing the peer review. Prior to the commencement of the review the policies and procedures would be submitted to OCA, which would determine whether they are adequate to provide for compliance with the peer review standards.[52]

The peer reviewer would also advise OCA of the expected dates for the peer review, so that OCA could, at its discretion, monitor and/or test the work and attend any conferences between the reviewer and reviewed accountant concerning the progress and results of the review. At the completion of the review OCA would, to the extent it deemed necessary, review the work of the peer reviewer to determine that it complied with peer review standards, policies and procedures and was therefore sufficient to meet the objectives of peer review.

The peer review report and the reviewed accountant's response indicating the actions planned or taken to correct any weaknesses identified in the report would be submitted directly to OCA, which would review the adequacy of the accountant's corrective actions. The Commission would make these reports (including any accompanying letter) and the reviewed accountants' responses available to the public.

*F. Scope of Requirement*

The proposed rule would amend the definition of "certified" contained in Rule 1–02(f) of Regulation S–X to indicate that financial statements, to be certified, must have been examined by an independent public or certified public accountant which, as of the date of the completion of the examination,[53] was in compliance with the requirements for peer review and audit quality controls.[54]

In general, the proposed rule is intended to apply to all financial statements which are required to be certified which are included in documents filed with the Commission. The proposed rule does, however, specifically exempt financial statements examined by foreign auditors, accountants certifying certain financial statements of businesses acquired or to be acquired filed pursuant to Rule 3–05 of Regulation S–X or other similar rules, and accountants certifying the financial statements of brokers or dealers filed pursuant to Rule 17a–5 under the Exchange Act.

Foreign auditors certifying either the financial statements of foreign private issuers or financial statements filed pursuant to Rule 3–09 of Regulation S–X (separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons) would be exempt from the rule. The proposed rule would also not apply to foreign auditors upon whose work another auditor relies and whose report is therefore included in a filing pursuant to Rule 2–05. The Commission encourages foreign auditors of registrants to undergo peer review, and similarly would encourage the development of peer review programs by the accounting professions of countries whose issuers' securities are offered and traded in the United States. However, the Commission understands that extending mandatory peer review requirements to foreign auditors is not practical at this time.[55]

The proposed rule would also exempt accountants certifying the financial statements of businesses acquired or to be acquired if the company acquired or being acquired is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act.[56] While the quality of the audits of such financial statements is important, requiring peer review in these circumstances could impair the ability of privately-held companies to merge with or be sold to registrants. Therefore, the Commission believes that an exemption for these circumstances is warranted.

Also exempt under the proposed rule would be accountants certifying the financial statements of brokers or dealers filed pursuant to Rule 17a–5 under the Exchange Act. The Commission's tentative decision to exempt these accountants is based on its belief that extending mandatory peer review to those reports involves different cost and benefit considerations.

Every broker or dealer (with defined exceptions) registered under Section 15 of the Exchange Act must file an audited financial statement with the Commission within 60 days following its year-end. Rule 17a–5 requires the audit of such financial statements to be performed in accordance with GAAS but, unlike Rule 2–02(b) of Regulation S–X, specifically indicates certain objectives of the audit and certain considerations as to the extent and timing of audit procedures.[57] Additionally, the monitoring of a broker's or dealer's financial condition and its adherence to Commission rules is augmented by the periodic inspections performed by the self-regulatory organizations ("SROs") and any examinations conducted by the Commission.

The proposed rules do not exempt accountants certifying the balance sheets of investment advisers which are required to be filed with the Commission. While both investment advisers and broker-dealers are subject to periodic examinations, the examinations of broker-dealers performed by the SROs or the Commission are more frequent and focus very heavily on the firms' compliance with the rules designed for the protection of customers. For example, broker-dealers which engage in a general securities business are generally examined on an annual basis, and those which do not hold customers' funds or securities are examined at least every two to three years. Those examinations include the testing of the firms' compliance with all Commission and SRO financial responsibility rules, including the currency and accuracy of books and records, safekeeping and segregation of securities, clearing and bonding arrangements, verification of financial reports filed, and the net capital and customer reserve fund computations to assure that there are sufficient liquid assets to cover indebtedness to customers. On the other

---

[52] Alternatively, the peer reviewer could utilize the policies and procedures of any acceptable PRO.

[53] SAS No. 1 (AU section 530.01) provides that "[g]enerally, the date of the completion of the field work should be used as the date of the independent auditor's report." Therefore, the date of the accountant's report would indicate the date of the completion of the examination for the purposes of the proposed rule.

[54] The proposed rules also include amendments to Item 21(a)(2) of Form S–18 and Schedule G of Form ADV to indicate that the requirements of Rule 1–02(f) and Article 1A of Regulation S–X apply to those forms. Article 1 of Regulation S–X presently does not apply to financial statements included in filings on those forms. Form ADV is used for the registration of investment advisers with the Commission and with the states. The proposed amendment to Schedule G would be limited to the balance sheets of investment advisers required to be filed with the Commission. The Commission will bring the proposal to the attention of the North American Securities Administrators Association for its consideration of whether the proposed amendment should also apply to filings with the States.

[55] The Commission's staff has historically made certain inquiries of foreign auditors concerning their professional qualifications and training, the professional standards in their respective countries and the procedures utilized to insure the necessary compliance with U.S. GAAS.

[56] Those financial statements are required, dependent on the specific circumstances, by Rule 3–05 of Regulation S–X, Item 17(b)(7) of Form S–4, Item 17(b)(5) of Form F–4, Item 21(d) of Form S–18, Item 6(d) of Form N–14 or Item 14(b)(3)(ii)(A) of Schedule 14A.

[57] *See*, Securities Exchange Act Rules 17a–5 (g) and (h).

hand, investment advisers who hold customers' funds or securities are examined no more frequently than once every five years, and the scope of those examinations is less detailed. As a result, the benefit to be derived from the mandatory peer review of the accountants of broker-dealers may not outweigh the associated costs, while such may not be the case with respect to the accountants for investment advisers.

The current definition of certified financial statements contained in Rule 17a–5(i)(5) refers to the definition in Rule 1–02 of Regulation S–X. To achieve the proposed exemption of accountants certifying the financial statements of brokers or dealers, the proposed rules include an amendment to Rule 17a–5(i)(5) that would exclude the peer review requirement and the related requirement for audit quality controls from the Rule 17a–5 definition. Should the Commission decide, upon the adoption of a final rule, to include within the scope of the rule the accountants certifying the financial statements filed pursuant to Rule 17a–5, such inclusion would be accomplished by not adopting the proposed amendment to Rule 17a–5(i)(5), in which case the requirements of amended Rule 1–02(f), and its companion Article 1A of Regulation S–X would apply to these filings.

The Commission is specifically requesting comment on the appropriateness of the proposed exemptions for foreign auditors and for accountants certifying certain financial statements of businesses acquired or to be acquired. Comments are also requested on the proposed exemption for accountants certifying the financial statements of broker-dealers filed pursuant to Rule 17a–5 and the proposed inclusion of the accountants for investment advisers. Finally, the Commission specifically requests comments discussing other groups of accountants, financial statements or registrants for which an exemption may be warranted.

*G. Transition Provisions*

The Commission would allow approximately 18 months after the adoption of any final rule for the completion of initial peer reviews. The proposed transition provisions have been designed to eliminate instances in which a registrant would be required to have its financial statements reaudited by another accountant due to the prior accountant's decision not to, or failure to, comply with the rule. Since the proposed rule would define certified financial statements as those examined by an accountant which, as of the date of the completion of the audit, was in compliance with the requirement for peer review, financial statements certified prior to the effective date of the rule would continue to satisfy the requirements for certified financial statements regardless of whether an accountant elects to comply with the rule and undergo a peer review when the rule becomes effective. Similarly, if an accountant initially complies with the rule but later terminates, or is determined by the Commission not to be in, compliance, financial statements certified prior to the date of such termination or determination shall continue to be acceptable.

The transition provisions relating to accountants that first become subject to the rule after its effective date are similarly designed to reduce the need for reaudits, reduce delays in initial public offerings or initial filings or unduly restrict an accountant's ability to accept a registrant as a new client. The proposed rule provides that where an accountant becomes subject to mandatory peer review due to an initial filing by an existing client or the acceptance of a registrant as a new client, the accountant shall have 18 months from the date of the initial filing or the acceptance of the client to complete its initial peer review. During that 18 month period (or until the initial peer review is completed, if sooner), the financial statements certified by that accountant which are to be filed with the Commission, together with the related accountant's report and audit workpapers, would have to be reviewed by an accountant (firm or individual) which meets the qualifications for a peer reviewer.

The proposed rule also includes a transition provision relating to those instances in which filings include financial statements for periods during which a registrant was not subject to the reporting requirements of the Exchange Act, and those financial statements have been certified for different periods by different accountants. In those instances, only the accountant certifying the financial statement for the most recent fiscal year need comply. In this way, a company making an initial filing whose accountant declines to become subject to mandatory peer review would be required to engage another accountant only with respect to the latest fiscal year to be included in the filing. The financial statements for the earlier periods would, for the initial filing, and any subsequent periodic filings, meet the Regulation S–X definition of certified without the previous accountant's compliance with the peer review requirement.

The proposed rules do not include provisions specifying whether the merger or dissolution of an accounting practice would necessitate a new peer review. Tentatively, the Commission believes that those matters should be the subject of the peer review policies and procedures established by a PRO or, with respect to accountants whose peer reviews are directly supervised by the Commission, should be decided on a case-by-case basis.

Generally the Commission would only require a new peer review of accounting practices resulting from the dissolution of a firm which had undergone peer review within the last three years if a new firm included a significant number of professionals who were not associated with the previous firm or a new firm did not adopt a system of audit quality control practices and procedures which was substantially identical to that utilized by the previous firm.

Similarly, a new peer review would generally not be necessary upon the merger of two accounting practices if the combined firm adopted a system of audit quality control practices and procedures which had been peer reviewed within the last three years, and if that peer review had indicated that the system included adequate policies and procedures concerning the pre-merger review of the quality of the accounting and auditing practice of another accountant in a potential merger.

Commentators are specifically requested to discuss these guidelines, and whether the establishment of specific policies concerning the merger and dissolution of accounting practices should be a function of the PROs or should be included in any final rules adopted by the Commission.

*H. Effects of Failure to Comply*

The proposed rules would require that, for financial statements filed with the Commission to comply with the Regulation S–X definition of "certified", the accountant examining and reporting on the financial statements must (i) be in compliance with the peer review requirement and (ii) have established and be complying with an audit quality control system meeting the requirements of GAAS. Failure to satisfy either requirement would result in the financial statements not being considered to be "certified."

In determining whether an accountant has satisfied these two requirements, the proposed rule provides that if the accountant satisfies the first

requirement (compliance with the peer review rule), there will be a presumption that the accountant has satisfied the second (the accountant's maintenance of and adherence to an adequate quality control system). The Commission, however, after reviewing, to the extent it deems necessary, a peer review report, the accompanying letter and the accountant's response thereto, the peer review workpapers, and other relevant information brought to its attention, may determine that the presumption has been negated and that, despite undergoing a peer review, an accountant lacks an adequate quality control system or has not been adhering to such a system.

It should be noted that the proposed rule does not premise the presumption on an accountant having had a peer review, but on compliance with the peer review rule. If an accountant therefore has not had a peer review, but instead is exempt from the rule or has complied with one of the transition provisions, then the accountant will be deemed to have satisfied the requirements of the peer review rule and the presumption would apply. For example, if an accountant becomes subject to the peer review rule because financial statements the accountant has audited are filed with the Commission for the first time, the accountant will have complied with the peer review rule by having its report and workpapers, and the financial statements of the registrant, reviewed by an accountant meeting the requirements to be a peer reviewer. This compliance will trigger the presumption that the accountant has met the requirement for having and using quality controls meeting the requirements of GAAS.

As noted above, the accountant's failure to comply with either the peer review requirement or the requirement to maintain and adhere to adequate quality controls would result in financial statements examined by that accountant failing to meet the requirements to be "certified" as defined in Rule 1–02(f) of Regulation S–X. An accountant that fails to undergo a required peer review would clearly fail to satisfy the peer review rule and, without any Commission action, the financial statements thereafter examined by that accountant would not be considered "certified". Further, when an accountant has undergone a peer reviews there may be situations where the results of the peer review, or other information brought to the Commission's attention, indicate that the presumption described above may have been negated. Questions may be raised as to the accountant's quality control system, its adherence to that system, or the adequacy of the accountant's efforts to correct any deficiencies in, or compliance with, its system so that there will be the required reasonable assurance of the accountant conforming with GAAS in its audit engagements. Under the proposed rule, therefore, the Commission would have the discretion to preliminarily determine whether the accountant has and adheres to the necessary quality controls.

OCA, in determining whether to recommend that the Commission issue a preliminary determination that an accountant has failed to comply with the proposed rule's requirement for the establishment of and adherence to audit quality controls meeting the requirements of GAAS, would generally review the peer review report, the accompanying letter from the peer reviewer, the accountant's response thereto, the peer review workpapers and any required notification from a PRO and such other information as may be available to it to consider whether (i) the peer review has identified material weaknesses in an accountant's system of, or compliance with, audit quality controls which cause there to be a lack of a reasonable assurance of compliance with GAAS and (ii) the accountant has failed or refused to take or plan adequate actions to correct such material deficiencies.

The nature of the deficiencies in an accountant's system of, or compliance with, audit quality controls which might cause OCA to refer a matter to the Commission are those which, because they result in the lack of a reasonable assurance of the accountant's compliance with GAAS, should cause the peer reviewer to issue other than an unqualified opinion. Historically, the majority of the unqualified opinions issued in SECPS peer reviews have been accompanied by letters in which the peer reviewer noted deficiencies in the accountant's system of, or compliance with, audit quality controls which, in the peer reviewer's opinion, did not cause the lack of the reasonable assurance required by GAAS. The Commission, based on its experience in reviewing the work of the SECPS, believes that the peer reviewers' characterizations of those deficiencies as not being of the nature requiring a qualification of the peer review opinion, has generally been appropriate; and that such deficiencies would not, under the proposed rule, be of the nature which might cause OCA to refer a matter to the Commission. Thus, OCA, in determining whether to refer a matter to the Commission, would attach significant importance to the peer reviewer's overall opinion on the reviewed accountant's compliance with the audit quality control requirements of GAAS and its characterization of any weaknesses in the accountant's audit quality controls.

Additionally, OCA would only refer a matter to the Commission if it believed that any material deficiencies were not being adequately and diligently corrected. PROs would be required to determine whether or not an accountant has taken or planned adequate corrective actions, and to notify OCA when an accountant has failed or refused to do so with respect to material quality control deficiencies. OCA would place considerable weight on the opinion of a PRO as to acceptability of planned corrective actions and as to adequacy of any interim measures (for example, the use of an outside consultant) to be used to provide a reasonable assurance of compliance with GAAS pending the completion of corrective actions.[58]

Under the proposed rule, the Commission would have the discretion to issue a preliminary determination that an accountant was not in compliance with the rule, and therefore that financial statements that the accountant examined would not be "certified" within the meaning of Regulation S–X. Such a preliminary determination would only be issued where it appears to the Commission that an accountant's system of audit quality controls does not meet the requirements of GAAS or that an accountant's compliance with its system does not provide reasonable assurance that audits will be conducted in accordance with GAAS.

If the Commission issues such a preliminary determination, it will become final fifteen days after it is served on the accountant, unless the accountant files a petition with the Commission for a hearing on the issue. If no petition is filed and the preliminary determination becomes final, then financial statements examined by that accountant would no longer be considered "certified" within the meaning of Regulation S–X. The Commission recognizes, however, that a change on such short notice in the accountant's ability to have its examination of a registrant's financial statements qualify as a "certification" of those financial statements could impose

[58] As previously discussed, the Commission would also expect a PRO to consider the adequacy of any necessary interim measures in determining the overall adequacy of a reviewed accountant's taken or planned corrective actions.

a hardship on registrants that are in the process of having an audit conducted by that accountant. For this reason the Commission, under the proposed rule, would have the discretion to accept as "certified" financial statements filed after its final determination in order to permit the accountant to complete any or all audits in progress at the date of the Commission's determination. The acceptance of these financial statements, however, would be subject to such terms and conditions as the Commission may consider appropriate. Generally, the Commission would only permit such financial statements to be filed within 180 days of the Commission's determination, and the accountant's report, together with the related workpapers and financial statements for each audit, would be required to be reviewed by an accountant meeting the qualifications of a peer reviewer.

If the accountant files a petition for a hearing before the expiration of the fifteen-day period following service of the preliminary determination, then the determination would not become final and the financial statements examined by the accountant would continue to be considered "certified" pending completion of the hearing. These proceedings would be conducted in accordance with the Commission's Rules of Practice, 17 CFR Part 201. Should the Commission find that the accountant does not satisfy the quality control or peer review requirements in the proposed rule, then future financial statements examined by that accountant would not be considered to be "certified". As with the situation where no petition for a hearing is filed, however, the Commission may, under similar terms and conditions, permit the accountant to complete audits in progress at the conclusion of the proceedings.

At any time following the final determination that an accountant's examination does not satisfy the requirements for a "certification" of financial statements, the accountant may file an application for a new determination by the Commission finding that the accountant now satisfies these requirements. The application would be accompanied by an affidavit, signed by the applicant, explaining the accountant's satisfaction of the quality control and peer review requirements. If the applicant is an accounting firm, the affidavit would be signed by someone authorized to act on behalf of the firm and who has personal knowledge of the information and statements made in the affidavit. Only one application would be permitted within any twelve month period unless the Commission, in its discretion, permits an additional application to be filed.

The Commission specifically requests comment on this method of implementing the rule and suggestions for alternative methods.

*I. Effects on Registrants*

The proposed rules are not expected to impose a significant cost on registrants.

The Commission is unable to determine to what extent the additional costs imposed on accountants by a mandatory peer review requirement would be passed on to registrants through an increase in audit fees. However, the information available concerning the costs to be incurred by accountants as the result of mandatory peer review suggests that such costs, even if totally recovered from clients, would generally not cause a significant increase in audit fees.

A registrant may be forced to change accountants if its current accountant declines to become subject to mandatory peer review. The Commission does not believe that this would impose a significant cost on registrants, but specifically requests comments on the costs a registrant would incur in these circumstances.

If the proposed rule is adopted, registrants would be limited to choosing an accountant which was willing to comply with the rule. In this regard, the Commission is specifically requesting comments on whether the proposed rule, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

A registrant's obligation to determine its accountant's compliance with the proposed rule would not differ from a registrant's present obligation to determine that its accountant is appropriately qualified under Article 2 of Regulation S–X. Presently an accountant, by its signing of the accountant's report, represents that it has complied with the licensing and independence requirements of Rule 2–01 of Regulation S–X. An accountant would represent its compliance with the proposed rules, if adopted, in the same manner.

## IV. Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an initial regulatory flexibility analysis of the economic impact which the amendments proposed herein, if adopted, will, have on small entities. This analysis is attached to this release.

## V. Requests for Comments

The Commission invites written comments from accountants, preparers and users of financial statements, and other interested parties on any and all aspects of the proposed rules. The Commission is specifically requesting commentators to include:

(a) Comments on the effectiveness of peer review in improving audit quality and the reliability of financial statements of the type described under "Benefits of Peer Review". The Commission is especially interested in receiving comments from accountants who have undergone or performed peer reviews discussing the benefits derived from peer review and its effectiveness in improving the quality of audits;

(b) Information concerning the number and types of accountants which would be affected by the inclusion of investment advisers as requested in footnote 4;

(c) Information on the costs which accountants would incur as a result of mandatory peer review of the type requested under "Costs of Peer Review";

(d) Discussions of the benefits and problems associated with a specific requirement for the selection and review of contested audits in response to the questions raised under "Peer Review Standards";

(e) Comments on the proposed or other exemptions as requested under "Scope of Requirement";

(f) Comments on the proposed transition provisions, including the issues relating to the merger or dissolution of accounting practices;

(g) Information on the potential costs to registrants and potential competitive impact as requested under "Effects on Registrants" and "Costs of Peer Review";

(h) comments on the proposed method, as described under "Effects of Failure to Comply", of sanctioning an accountant's failure to take or plan adequate actions to connect any material deficiencies in their system of, or compliance with, audit quality controls; and

(i) Comments on the specific requirements for PROs, public oversight bodies (including the definition of an independent individual) and peer review standards contained in the text of the proposed rule.

The Commission also requests that commentators compare generally the costs and benefits that would result from mandatory peer review, including whether mandatory peer review is necessary or advisable given the level of participation in the current voluntary

program indicated by the statistics included in footnote 4.

In this regard, the Commission also requests that commentators discuss means other than mandatory peer review by which the Commission could improve the quality of registrant audits or provide information to investors on whether accountants have been peer reviewed. In particular, the Commission requests comments on mandatory disclosure of accountants' peer review status as an alternative to mandatory peer reviews. On July 19, 1985, the Commission, in connection with proposed amendments to its proxy rules,[59] proposed an amendment to Item 9 of Schedule 14A that would have required that a registrant disclose whether its independent accountant was a member of an organization that had a peer review program and an independent oversight function.[60] On November 4, 1986, the Commission, in adopting final rules amending its proxy requirements, did not adopt the proposed disclosure requirement.[61] Instead, the Commission announced its intention to "reconsider this proposal after the completion of related private sector initiatives and a review of the concept of mandatory peer review."[62]

Accordingly, the Commission intends to consider, and commentators are invited to address, the advantages and/or disadvantages of mandatory peer review compared to those of a disclosure requirement,[63] or any other possible course of action. Commentators are specifically asked to address (i) whether a disclosure requirement would result in a substantial increase in the number of accountants voluntarily undergoing peer review, and whether a significant percentage of accountants would be likely to continue to forgo peer review; (ii) whether an accountant's peer review status is an appropriate subject for mandatory disclosure in registration statements, periodic reports or proxies, (*i.e.* would such information be of significant value to investors and, if such information would not be useful, why mandatory peer review would lead to significant benefits for investors); (iii) the nature of the further disclosure obligation, if any, such a requirements would impose on registrants if an accountant received a qualified peer review report; and (iv) the relative costs and benefits of a mandatory disclosure requirement in comparison with a mandatory peer review requirement.

[59] See, Release No. 33–6592 (July 19, 1965) [50 FR 29409].

[60] The proposal would have required disclosure of whether or not the principal accountant was subject to peer review, whether or not a peer review had taken place and the date of the most recent peer review report. Further, the proposing release stated that if the peer review report was qualified, registrants needed to consider disclosing that fact and possibly disclosing the nature of the qualifications and the status of the effort to correct deficiencies.

[61] *See* Release No. 33–6676 (November 4, 1986) [51 FR 42048].

[62] *Id.*

[63] The Commission, in considering the alternative of a disclosure requirement, will also consider disclosure standards that differ from the specific requirements proposed in Release No. 33–6592. Among the alternatives on which the Commission seeks comment is an approach that would require disclosure of whether the accountant was a member of an organization which had a peer review program, but would not require disclosure concerning the date or results of the latest peer review. Other forms of disclosure, other that pursuant to the proxy rules, will also be considered; for example, disclosure within or accompanying the accountant's report of whether the accountant has undergone peer review. Commentators should therefore address any form of disclosure requirement which they believe would be appropriate.

**List of Subjects in 17 CFR Parts 210, 239, 240, and 279**

Accounting, Investment advisers, Reporting and recordkeeping requirements, Securities.

**Text of Proposed Rules**

In accordance with the foregoing, Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

**Authority:** Secs. 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933, 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26); secs. 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78l, 78m, 78n, 78o(d), 78w(a); secs. 5(b), 10(a), 14 and 20(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79j(a), 79n, 79t(a); secs. 8, 20, 30, 31, and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a); secs. 203, 204 and 211 of the Investment Advisers Act of 1940, 15 U.S.C 80b–3, 80b–4, 80b–11, unless otherwise noted.

2. By revising paragraph (f) of § 210.1–02 to read as follows:

**§ 210.1–02 Definitions of terms used in Regulation S–X.**

. . . . . .

(f) *Certified*—The term "certified." when used to describe financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant that, as of the date of the completion of the examination:

(1) Was in compliance with the peer review requirement of § 210.1A–01; and

(2) Has established a system of audit quality controls meeting the requirements of generally accepted auditing standards and whose compliance with that system provides reasonable assurance that audits will be conducted in accordance with generally accepted auditing standards. For the purpose of this paragraph (f), an accountant satisfying paragraph (f)(1) of this section shall be presumed to have satisfied paragraph (f)(2) of this section, unless otherwise determined by the Commission pursuant to § 210.1A–05.

3. By adding § § 210.1A–01, 210.1A–02, 210.1A–03, 210.1A–04 and 210.1A–05 (new Article 1A) as follows:

**Article 1A—Peer Review of Accountants**

**§ 210.1A–01 Peer Review Requirement.**

An accountant certifying financial statements filed with the Commission shall have undergone a peer review of its accounting and auditing practice within the three years prior to the completion of an examination of financial statements filed with the Commission after [18 months after the adoption of this rule]. Such peer review is to be performed either under the auspices of a peer review organization meeting the requirements of § 210.1A–03 or in the manner specified by § 210.1A–04.

(a) The term "accountant" as used in this Article and in paragraph (f) of § 210.1–02 shall, for a firm composed of more than one individual, refer to the firm and not the individual members or employees of the firm.

(b) *Exemptions.* (1) This section shall not apply to foreign accountants (i) certifying financial statements of foreign private issuers, (ii) certifying financial statements filed pursuant to § 210.3–09, or (iii) whose report is included in a filing pursuant to § 210.2–05.

(2) This section shall not apply to accountants certifying only financial statements filed pursuant to § 210.3–05, Item 17(b)(7) of Form S–4, Item 17(b)(5) of Form F–4, Item 21(d) of Form S–18, Item 6(d) of Form N–14 and Item 14(b)(3)(ii)(A) of Schedule 14A where such financial statements are of an entity not subject, as of the date of the filing, to the reporting requirements of

section 13(a) or 15(d) of the Securities Exchange Act of 1934.

(3) Where the filing includes audited financial statements for periods during which a registrant was not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and such financial statements are certified by different accountants as to different fiscal years or periods, this section shall apply only to the accountant certifying the financial statements for the most recent fiscal year.

(4) When an accountant first becomes subject to the provisions of this section by virtue of the filing with the Commission of financial statements certified by that accountant, the financial statements certified by that accountant shall continue to be acceptable for a period of eighteen months pending the completion of an initial peer review. Such eighteen month period shall commence upon the acceptance of a client already required to file certified financial statements with the Commission or the initial filing by an existing client. *However,* during such eighteen month period (or until the completion of an initial peer review, if sooner), each report filed with the Commission, together with the related financial statements and workpapers, shall be reviewed by an accountant meeting the qualifications for a peer reviewer set forth in paragraph (a) of § 210.1A–02.

**§ 210.1A–02 Peer Review Standards.**

Peer reviews meeting the requirements of § 210.1A–01 shall be conducted pursuant to the following standards.

(a) Accountants (individual and firms) serving as peer reviewers shall be:

(1) Be independent from the accountant being reviewed. For example, (i) material family relationships between those individuals conducting or consulting on the peer review (and, in the case of a peer review conducted by a firm of accountants, the senior management of the reviewing firm) and the accountant being reviewed, (ii) financial interests shared with the accountant to be reviewed, and (iii) reciprocal peer reviews shall, in any such cases, result in the peer reviewer lacking independence.

(2) Currently active at the supervisory level in the practice of public accounting, experienced in matters relating to accounting by, and the auditing of, registrants, and shall have (or be associated with a firm which has) received an unqualified report on its most recent peer review.

(b) The peer review shall cover, at a minimum, the accountant's practice year which most recently ended prior to the completion of the peer review. An accountant may specify, but once specified may not change without an appropriate reason, any consecutive twelve month period as its practice year.

(c) The peer review shall include the study and evaluation of the accountant's quality control policies and procedures for the monitoring of independence from its audit clients within the meaning of § 210.2–01; the assignment of personnel to engagements; consultation within the firm or with other accountants on accounting and auditing questions; the supervision of audit work; the hiring, professional development and advancement of personnel; the acceptance and continuation of clients; and the internal inspection of the accountant's own compliance with its policies and procedures, to ascertain whether such policies and procedures are sufficient to provide a reasonable assurance that the accountant complies with generally accepted auditing standards in the conduct of audit engagements.

(d) The peer review shall include a review of the accountant's compliance with its quality control policies and procedures. That review of compliance shall include the review of auditors' reports issued by the accountant and related financial statements and workpapers for a selection of audit engagements that is representative of the accountant's accounting and auditing practice.

(e) The documentation of the peer review shall be adequate to indicate the work performed by the peer reviewer and the results thereof, to demonstrate that peer review standards and the related policies and procedures have been complied with, and to provide a record of the basis for the peer reviewer's opinion.

(f) (1) Peer reviewers shall issue a report indicating the general scope of the peer review, including any restrictions thereon, and expressing an opinion on whether the reviewed accountant's system of audit quality control, and the degree of compliance with that system, were sufficient to provide reasonable assurance that audits were being conducted in accordance with generally accepted auditing standards. The nature of any exceptions taken shall be clearly set forth.

(2) The peer reviewer shall also issue an accompanying letter describing any deficiencies in the system of, or compliance with, audit quality controls which create more than a remote possibility of noncompliance with generally accepted auditing standards and the effect, if any, those deficiencies had on the peer review opinion. The peer review report shall state whether such a letter has been issued. No letter shall be required if there were no such deficiencies.

(g) The reviewed accountant shall respond in writing to the letter, if any, issued pursuant to paragraph (f) of this section, indicating the corrective action taken or planned or the reason the reviewed accountant disagrees with the peer reviewer's findings and/or believes no corrective actions are necessary.

(h) PROs meeting the requirements of § 210.1A–02 shall determine when a reviewed accountant should be revisited to determine that planned or scheduled corrective actions described in the response required by paragraph (g) of this section have been taken. For peer reviews conducted under § 210.1A–04, the Commission shall make this determination.

**§ 210.1A–03 Requirements for peer review organizations.**

A peer review organization ("PRO") shall, for the peer reviews performed under its auspices to satisfy the peer review requirement of § 210.1A–01,

(a) Require each accountant which undergoes peer review under its auspices to submit to the PRO, within 15 days after the issuance of the relevant peer review report,

(1) Such report and the peer reviewer's letter, if any, describing the deficiencies in the accountant's system of or compliance with audit quality controls required by paragraph (f) of § 210.1A–02, and

(2) The response required by paragraph (g) of § 210.1A–02 to the peer review report and the peer reviewer's letter, including the accountant's plans to correct any weaknesses or implement any suggested improvements noted therein;

(b) Administer the peer reviews conducted pursuant to its program by:

(1) Establishing specific peer review policies and procedures which provide for peer reviews to be conducted in accordance with the standards set forth in § 210.1A–02;

(2) Reviewing the peer reviews conducted pursuant to its program to ascertain whether they have been performed in accordance with the PRO's policies and procedures; and

(3) Reviewing the peer reviewers' reports and letters and the responses of the reviewed accountants submitted to it to determine whether the corrective actions taken or planned by the

BEST COPY AVAILABLE

reviewed accountant are adequate. A PRO shall notify the Office of the Chief Accountant of any instances where it, as the result of such review, determines that the reviewed accountant's system of audit quality controls, or its compliance with that system, is materially deficient in that the system and/or the degree of compliance with the system failed to provide a reasonable assurance of the accountant complying with generally accepted auditing standards in the conduct of its audit engagements, and that the reviewed accountant has not corrected such deficiences or, if the deficiencies cannot be immediately corrected, has not established and is not diligently pursuing an adequate plan or schedule for the correction of such deficiencies;

(c) Make the documents submitted to it pursuant to paragraphs (a) (1) and (2) of this section, available for public inspection at its place of business and provide copies of such documents upon written request;

(d) Appoint a body of not less than three independent individuals acceptable to the Commission to represent the public interest in the oversight of the PRO's activities. Such body shall oversee the PRO's activities in complying with the requirements of this section and shall evaluate the effectiveness of the PRO's peer review program. Not less than annually such body shall report to the public and the Commission on the results of its oversight of the PRO's compliance with the requirements of this section and on its assessment of the effectiveness of the PRO's peer review program. For the purposes of this paragraph (d), a person shall not be deemed to be independent if he is affiliated with an accountant whose peer review is performed under the auspices of the PRO;

(e) Be subject to review by the Commission of its activities and the activities of its public interest representatives, including, as the Commission deems necessary, meetings with its representatives and the review of its written policies and procedures. A PRO shall, within 45 days after receiving a peer reviewer's report, submit to the Commission (1) the peer reviewer's report and any accompanying letter required by paragraph (f) of § 210.1A–02, (2) the reviewed accountant's response required by paragraph (g) of § 210.1A–02, and (3) any notification required by paragraph (b)(3) of this section. A PRO shall grant access to the peer review policies and procedures, and to the workpapers documenting the performance of peer reviews, to the Commission. Further, a PRO shall provide to the Commission, upon its request, the workpapers documenting any peer review the Commission may specify. A PRO shall be required to retain, or require the peer reviewer to retain, peer review workpapers for a period of 180 days after the submission of the related peer review report to the Commission, except that a PRO shall retain, or require the peer reviewer to retain, indefinitely the peer review workpapers for any peer review specified by the Commission.

(f) (1) When it appears to the Commission that a PRO is not satisfying the requirements of paragraphs (a) through (e) of this section, the Commission may issue a preliminary determination that the PRO does not meet the requirements of § 210.1A–03.

(2) A preliminary determination by the Commission under paragraph (f)(1) of this section shall become final fifteen calendar days after service by certified or registered mail directed to the last known business address of the PRO, unless within such fifteen day period the PRO files a petition with the Commission requesting the opportunity to submit a written statement to demonstrate that the PRO satsifies the requirements of § 210.1A–03. Such written statement shall be made by affidavit filed within fifteen calendar days after the filing of a petition under this paragraph.

(3) On or before thirty calendar days following the filing of a written statement pursuant to paragraph (f)(2) of this section, the Commission by order shall determine, on the basis of the materials submitted to the Commission by the PRO and the staff, including the staff's response to the PRO's written statement, whether the PRO satisfies the requirements of § 210.1A–03.

(4) Notwithstanding a final determination by the Commission under paragraphs (f) (2) or (3) of this section that a PRO does not satisfy the requirement of § 210.1A–03, the Commission, in its discretion and upon such terms and conditions as it may specify, may determine that any or all peer reviews being conducted under the auspices of such PRO as of the date of the Commission's determination meet the requirements of § 210.1A–01.

(5) The Commission may, on its own motion or upon the application of a PRO that has been determined by the Commission not to satisfy the requirements of § 210.1A–03 pursuant to paragraphs (f) (2) or (3) of this section, issue an order determining that a PRO satisfies the requirements of § 210.1A–03. In the case of an application by a PRO, the Commission shall issue a determination, based on the materials contained in the application and the staff's response, within thirty calendar days following the filing of the application. Each application shall be supported by an affidavit addressing the PRO's satisfaction of the requirements of § 210.1A–03. One original and four copies of the application shall be filed with the Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Each application shall include as exhibits:

(i) A copy of any Commission order naming the PRO issued pursuant to paragraphs (f) (1) or (3) of this section, and

(ii) An undertaking by the PRO immediately to notify the Commission in writing if any information submitted in support of the application, while pending, becomes false or misleading.

(6) A PRO shall not submit an application under paragraph (f)(5) of this section more than once within any twelve-month period, except as the Commission may in its discretion permit.

(7) Action by the Commission under this paragraph (f) shall be taken in accordance with the provisions of Rule 27 of the Commission's Rules of Practice, 17 CFR 201.27, applicable to adjudications under the Securities Exchange Act of 1934, not required to be determined on the record after notice and opportunity for hearing.

**§ 210.1A.04 Commission supervised peer review.**

Accountants not participating in the peer review program of a PRO meeting the requirements of § 210.1A–03 shall undergo peer review in the following manner:

(a) The accountant shall select a peer reviewer meeting the qualifications set forth in paragraph (a) of § 210.1A–02. The accountant shall inform the Office of the Chief Accountant of the identity of the peer reviewer and submit sufficient information to support the position that the reviewer meets such qualifications.

(b) The peer reviewer shall use peer review policies and procedures which provide for the peer review to be conducted in accordance with the standards set forth in § 210.1A–02. Such policies and procedures shall be reviewed and approved by the Commission prior to the commencement of the peer review.

(c) The peer reviewer shall notify the Office of the Chief Accountant of the expected dates for the peer review so that the Commission may, to the extent

it deems necessary, monitor and test the manner in which the peer review is being conducted, attend conferences between the peer reviewer and the reviewed accountant at which the progress or findings of the review are discussed, and review the peer review workpapers to determine that peer review standards have been complied with.

(d) The peer review report, the peer reviewer's letter, if any, describing the deficiencies in the accountant's system of or compliance with audit quality controls and the reviewed accountant's response thereto required by paragraphs (f) and (g) of § 210.1A–02 shall be submitted to the Office of the Chief Accountant, within 15 days of the issuance of the peer reviewer's report.

**§ 210.1A–05 Accountant's Failure to comply with § 210.1–02(f).**

(a) When it appears to the Commission that an accountant's system of audit quality controls does not meet the requirements of generally accepted auditing standards or that an accountant's compliance with such system does not provide reasonable assurance that audits will be conducted in accordance with generally accepted auditing standards, the Commission may issue a preliminary determination that the accountant does not satisfy the requirements of § 210.1–02(f)(2). The Commission shall specify the basis for this preliminary determination, which may be based on the accountant's peer review reports, peer reviewer's letters and accountant's responses required by paragraphs (f) and (g) of § 210.1A–02, the peer reviewer's workpapers and any other relevant information which has come to the attention of the Commission.

(b) A preliminary determination by the Commission under paragraph (a) of this section shall become final fifteen calendar days after service by certified or registered mail directed to the last known business or residence address of the accountant, unless within such fifteen day period the accountant files a petition for a determination by the Commission on the record after notice and opportunity for a hearing.

(c) Following the filing of a petition pursuant to paragraph (b) of this section, the Commission by order shall determine, on the record after notice and opportunity for a hearing, whether the accountant satisfies the requirements of § 210.1–02(f)(ii). Proceedings under this paragraph shall be conducted in accordance with the Rules of Practice to the extent that they are not inconsistent with this rule [17 CFR Part 201].

(d) Notwithstanding a Commission determination under paragraph (b) or (c) of this section that an accountant does not satisfy the requirements of § 210.1–02(f)(ii), the Commission, in its discretion and upon such terms and conditions as it may specify, may deem financial statements relating to any or all audits in progress as of the date of such determination to be certified for the purpose of § 210.1–02(f).

(e) The Commission may, on its own motion or upon the application of an accountant that has been determined by the Commission not to satisfy the requirements of § 210.1–02(f)(2) pursuant to paragraph (b) or (c) of this section, issue an order determining that an accountant satisfies the requirements of § 210.1–02(f)(2). In the case of an application by an accountant, the Commission shall issue a determination, based on the materials contained in the application and the staff's response, within thirty calendar days following the filing of the application. Each application shall be supported by an affidavit, manually signed by the applicant, addressing the accountant's satisfaction of the requirements of § 210.1–02(f)(2). One original and four copies of the application shall be filed with the Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Each application shall include as exhibits:

(1) A copy of any Commission order naming the accountant issued pursuant to paragraph (a) or (c) of this section;

(2) A copy of the accountant's most recent peer review report, peer reviewer's letter, and accountant's response, required by paragraphs (f) and (g) of § 210.1A–02;

(3) An undertaking by the applicant immediately to notify the Commission in writing if any information submitted in support of the application, while pending, becomes false or misleading.

(f) An accountant shall not submit an application under paragraph (e) of this section more than once within any twelve month period, except as the Commission may, in its discretion, permit.

(g) Action by the Commission pursuant to paragraph (e) of this section shall be taken in accordance with the provisions of Rule 27 of the Commission's Rules of Practice, 17 CFR 201.27, applicable to adjudications under the Securities Exchange Act of 1934, not required to be determined on the record after notice and opportunity for hearing.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read in part, as follows:

**Authority:** The Securities Act of 1933, 15 U.S.C. 77a, et seq. * * *

4. By amending Item 21(a)(2) to Form S–18 (§ 239.28) to add the following:

**§ 239.28 Form S–18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $7,500,000.**

**Form S–18**

* * * * *

*Item 21. Financial Statements*

(a) General

* * * * *

(2) * * * Additionally, the definition of certified set forth in paragraph (f) of Article 1–02 of Regulation S–X (17 CFR 210.1–02) shall apply to such financial statements, and the related peer review requirement of Article 1A of Regulation S–X (17 CFR 210.1A) shall apply to independent accountants certifying such financial statements.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read, in part as follows:

**Authority:** Sec. 23, 48 stat 901, as amended by 15 U.S.C. 78w * * *

6. By revising paragraph (i)(5) of § 240.17a–5 to read as follows:

* * * * *

**§ 240.17a–5 Reports to be made by certain brokers and dealers.**

* * * * *

(i) * * *

(5) *Definitions.* For the purpose of this rule, the terms "audit" (or "examination"), and "accountant's report", shall have the meanings given in § 210.1–02 of Regulation S–X. The term "certified", when used in regard to financial statements, shall have the meaning given in paragraph (f) of § 210.1–02 of Regulation S–X, except that subparagraphs (i) and (ii) of paragraph (f) shall not apply.

* * * * *

## PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 279 continues to read as follows:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

8. By revising instruction 1B to Schedule G of Form ADV to read as follows:

**Schedule G of Form ADV—Balance Sheet**

1. The balance sheet must be:

A. * * *

B. Audited by an independent public accountant. When the balance sheet is required in a filing of this form with the Commission, the accountant, as of the date of the completion of the examination, shall be in compliance with the peer review requirement of § 210.1A–01.

* * * * *

By the Commission.

**Shirley E. Hollis,**

*Assistant Secretary.*

April 1, 1987.

**Initial Regulatory Flexibility Analysis**

This initial regulatory flexibility analysis, which relates to proposed amendments to Regulation S–X that would require accountants' reports included in filings with the Commission to be signed by an independent accountant who has undergone a peer review of its accounting and audit practice within the past three years, has been prepared in accordance with 5 U.S.C. 603.

*1. Reasons for Proposed Action*

As discussed in the sections of the release entitled "Background" and "Benefits of Peer Review", the Commission believes that data exists that supports the position that peer reviews improve the quality of audits, which in turn improves the reliability of financial statements.

Recently, several private sector organizations have suggested that membership in an organization conducting peer reviews should be mandatory for auditors of Commission registrants. For example, the American Institute of Certified Public Accountants ("AICPA") is in the process of soliciting its membership for a vote on whether a recommendation by the Special Committee on Standards for Professional Conduct of CPAs should be adopted to require firms containing AICPA members to join its peer review program conducted by the SEC Practice Section ("SECPS") if they audit one or more SEC registrants. The National Commission on Fraudulent Financial Reporting has also tentatively concluded that peer reviews should be mandatory for accountants practicing before the Commission. Price Waterhouse and the chief executive officers of seven other major accounting firms have called for mandatory peer review. In addition, the Committee on Government Operations of the U.S. House of Representatives has recommended that the General Accounting Office ("GAO") revise its standards to provide that accountants performing audits under the Single Audit Act of the recipients of federal assistance funds undergo periodic peer reviews. The Committee further stated that if current peer review procedures are excessively expensive for small firms then GAO should work with the accounting profession and others to develop reasonably priced peer review procedures. Finally, the Rural Electrification Administration has adopted rules requiring accountants certifying the financial statements of borrowers to belong to and participate in an approved peer review program. *See* 51 FR 2788 *et seq.* (January 21, 1986).

In view of the statistics quoted in the release concerning the potential benefits of peer review and the Commission's previous conclusions that peer review contributes to the improvement in audit quality (*see* U.S. Securities and Exchange Commission Fifty–First General Report, p. 17–18), it is appropriate at this time for the Commission to consider such a requirement.

*2. Objectives*

The objective of the proposed rule is to enhance the quality of audits of Commission registrants. This improvement in practice should result from the correction of deficiencies in firms' quality control systems as those deficiencies are identified by the peer reviewers. The goal will be to have each firm maintaining and complying with a system of quality controls that meets or exceeds professional standards.

Under generally accepted auditing standards ("GAAS"), the quality control systems established by firms may vary depending on a firm's size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations. Statements on Auditing Standards No. 25; AICPA Professional Standards AU section 161.02. The required documentation concerning the firm's quality controls and compliance with those controls may also vary, depending on the firm's size, structure and nature of practice. Statement on Quality Control Standards No. 1; AICPA Professional Standards QC section 10.09. The objective of the rule, therefore, is not to have all firms adhering to the same quality control system, but for each firm to establish a system suitable to its practice and in line with these professional standards.

*3. Legal Basis*

The Commission is proposing the rules requiring auditors of Commission registrants to have received a peer review pursuant to the authority in sections 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933, 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26); sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a); sections 5(b), 10(a), 14, and 20(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79j(a), 79n, 79t(a); and sections 8, 20, 30, 31, and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), and sections 203, 204 and 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–3, 80b–4, 80b–11.

*4. Small Entities Subject to the Rule*

The proposed rule would require accountants auditing SEC registrants to undergo a peer review ever three years. The accountant may elect to have the peer review either conducted under the auspices of a peer review organization ("PRO") or directly overseen by the Commission. The PRO that would come closest to qualifying under the proposed rule would be the SECPS. It has been estimated that 178 of the approximately 800 auditors of those SEC registrants which are public companies are members of the SECPS peer review program.[1] These 178 firms, however, audit over 83% of all public companies. It has been estimated that the 625 firms that currently are not participating in this peer review program are smaller firms, auditing approximately 1700 registrants. While the Commission has not defined "small accountant" for Regulatory Flexibility Act purposes, the regulations adopted by the Small Business Administration provide that an accounting firm (including its affiliates) with not more than § 4 million in annual receipts is to be considered "a small entity". 13 CFR 121.2. The Commission does not have data on the revenues of the 625 accounting firms which are not currently participating in the SECPS peer review program; however, it is considered probable that a substantial number of such firms could be considered "small" within the Small Business Administration's definition. Not all of the registrants audited by

[1] Approximately 125 additional auditors of Commission registrants participate in a peer review program conducted by the AICPA's Private Companies Practice Section ("PCPS"). The PCPS, however, does not have a public oversight body, and does not satisfy other criteria for a PRO set forth in the proposed rules.

these firms, however, are "small entities" as defined by the Commission for the purpose of the Regulatory Flexibility Act.

A small issuer for purposes of the Regulatory Flexibility Act is defined by Rule 157 under the Securities Act, 17 CFR 230.157, as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and that is engaged or proposing to engage in an offering of securities which does not exceed $5 million. While the Commission has no data on the number of small issuers in existence, in the recent experience of the Commission, several hundred small issuers file registration statements with the Commission each year.

In addition, a "small business" or "small organization" for purposes of the Regulatory Flexibility Act is defined by Rule 0–10 under the Investment Company Act of 1940, 17 CFR 270.0–10, as an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. As of March 31, 1986, about 1300 of 2592 active registered investment companies would be small entities as defined by Rule 0–10.

The current proposals would not affect broker/dealers whose financial statements are filed pursuant to Rule 17a–5 under the Exchange Act, 17 CFR 240.17a–5. The Commission, however, is soliciting comments on whether to include such entities. Rule 0–10(c) under the Exchange Act, 17 CFR 240.0–10(c), indicates that a "small entity" or "small organization" for the purposes of the Regulatory Flexibility Act shall mean a broker or dealer that (1) had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d), 17 CFR 240.17a–5(d), or if not required to file such statements, a broker or dealer that had total capital of less than $500,000 on the last business day of the preceding fiscal year, and (2) is not affiliated with any person that is not a small business or small organization as defined in this section. As of the fourth quarter for 1985 approximately 7,040 broker/dealers were small entities or organizations as defined by this rule.

Finally, a "small business" or "small organization" for purposes of the Regulatory Flexibility Act is defined by Rule 0–7 under the Investment Advisers Act of 1940, 17 CFR 275.0–7, as an investment adviser that manages assets with an aggregate value of $50 million or less. If the adviser's business is not limited to managing accounts, the assets of its advisory business must also not exceed $50,000 at the end of its most recent fiscal year. Approximately 300 investment advisers, which would be affected by adoption by the proposed rules because they are required to file certified balance sheets with the Commission, would be small entities as defined by Rule 0–7.

*5. Reporting, Recordkeeping and Other Compliance Requirements*

The proposed rule would require accounting firms to maintain quality control systems and document both that system and compliance with the system in accordance with professional standards. Under these standards, the type of system developed by a firm and the related documentation may vary from firm to firm depending on the firm's size, the degree of operating autonomy allowed its personnel and its practice office, the nature of the firm's practice, the firm's organization and appropriate cost-benefit considerations. Statements on Auditing Standards No. 25, AICPA Professional Standards AU section 161.02; Statement on Quality Control Standards No. 1, AICPA Professional Standards QC sections 10.06 and 10.09. The records kept will therefore vary from firm to firm, with smaller firms generally maintaining and documenting a smaller, simpler system than larger firms.

The systems maintained by the firms, and the firms' compliance with those sytems will be examined by peer reviewers in accordance with the peer review standards set forth in the proposed rule. Under these standards, the documentation of a peer review must be adequate to indicate the work performed and the results of that work, to demonstrate that the peer review standards and related policies and procedures have been complied with, and to provide a basis for the peer reviewer's opinion. For those peer reviews conducted under the auspices of a PRO, the Commission staff will have sufficient access to the peer review workpapers to allow it to reach a judgment as to the efficacy of the PRO's peer review program. It is anticipated that those wishing to establish a PRO will inform the Commission of the procedures the PRO would use for documenting peer reviews, and the Commission will determine whether the procedures are sufficient to meet the requirements and objectives of the proposed rule. The procedures established by PROs may vary depending on the nature of their membership and other factors. The workpapers and records maintained by a PRO for each peer review may also vary depending on the size and nature of firm that was the subject of the peer review.

In addition, under the proposed rule a public file would be maintained by the PRO, or by the Commission for peer reviews directly supervised by the Office of the Chief Accountant, for peer reviewers' reports and letters, and reviewed accountants' responses to those reports and letters.

The proposed rule, however, will not impose additional reporting, recordkeeping or other compliance requirements on Commission registrants, other than having the auditor's report signed by a firm that has had a peer review complying with the proposed rule within the last three years. Approximately 85% of all public companies (based on figures published by the Public Oversight Board for the SECPS) currently have auditors that participate in a peer review program. This percentage may increase if the AICPA votes to adopt mandatory SECPS membership for firms with AICPA members having one or more SEC clients, as discussed in item 1 above. Registrants will not, in any event, have a specific disclosure or recordkeeping requirement under the rule.

*6. Overlapping or Conflicting Federal Rules*

As noted in item 1 above, the Rural Electrification Administration ("REA") adopted rules in January 1986 that require accountants certifying the financial statements of borrowers to belong to and participate in an approved peer review program. One of the programs acceptable to the REA is the program conducted by the SECPS. *See* 7 CFR 1789.9(c). Provided this and similar programs would also be acceptable to the Commission, there would be a duplication of rules. This duplication is necessary, however, because of the significantly greater number of accountants auditing SEC registrants than auditing REA borrowers, and the fact that not all auditors of SEC registrants are auditors of REA borrowers. In addition, although the rules would overlap, it appears likely that accountants subject to both sets of rules could satisfy both through membership in a single PRO. Accordingly, such accountant should not encounter significant additional expense in complying with the Commission's proposed rules. Moreover, there does not appear to be any conflicts between the REA's rules and the Commission's proposed rules.

The House Committee on Government Operations has also recommended that GAO revise its standards to require

accountants auditing recipients of Federal assistance funds undergo peer reviews. As GAO has not yet proposed any mandatory peer review rules, the Commission cannot predict how many of the accounting firms auditing Commission registrants that do not presently undergo peer review would be subject to the GAO's rules or whether any such rules would duplicate, overlap or conflict with the Commission's proposed rules.

*7. Significant Alternatives*

In July 1985 the Commission published for comment a proposal to amend Item 9(b) of Schedule 14A to call for disclosure by the registrant of whether its accountant is a member of an organization that has a peer review requirement for member firms and, if so, whether the accountant has undergone a peer review and the date of the most recent peer review report. The text of the proposing release (Release No. 33–6592 [July 1, 1985], 50 FR 29409) noted that registrants should consider whether Rule 14a–9, 17 CFR 240.14a–9, would require disclosure of the nature of any qualifications of the report and the status of the accountant's efforts to correct deficiencies that were the basis for such qualifications.

Based on the comments received on the proposal and the Office of the Chief Accountant's ("OCA") experience regarding peer reviews, OCA recommended that the Commission consider adoption of a disclosure requirement focusing solely on the accountant's membership in a peer review organization, rather than on the nature of the peer review report. After full consideration of OCA's recommendation and the comments received on the earlier proposal, on November 4, 1986, the Commission voted not to adopt OCA's recommendation. Instead of adopting such a rule, the Commission instructed the staff to consider the issues involved in directly mandating peer review.

The Commission could exempt small accountants from the proposed amendments. Doing this, however, may not provide the additional degree of needed investor protection peer review would likely bring. Based on the data cited in the release the Commission does not believe that the additional costs of peer review to the great majority of small accountants should be prohibitively great; however, it is soliciting comments on the cost of peer review to small firms and the extent to which the peer review requirement may be a barrier to small firms wishing to initiate a practice before the Commission. Also, it should be emphasized that, as noted in item 2 above, the quality control systems to be adopted by firms and their documentation of those systems may vary from firm to firm depending on the firm's size and other factors including cost-benefit considerations.

Under the proposed rules, PROs may adopt differing procedures based on the nature of their membership or other criteria provided their program satisfies the requirements and objectives of the proposed rule. An organization whose primary membership consists of small firms auditing "small entities" may therefore have different peer review procedures than a PRO whose membership consists principally of large firms. The design and performance of the peer review procedures may therefore be adjusted by the PROs to correlate to the types of quality control systems used by its membership. Also, should a small firm decide that the cost of membership and participation in a PRO's peer review program is excessive, it may elect to have its peer review directly reviewed by the Commission. Such an election, however, would still result in the payment of a fee to a peer reviewer and a fee the Commission for its supervisory services. *See* 31 U.S.C. 9701. It is anticipated, however, that the Commission's supervisory fee would be less than the membership fee charged by a PRO.

Similarly, the proposed rules do not exempt "small entities" or provide extended times for the auditors of small entities to qualify under the rule. It is believed by the Commission that the auditors of most large entities already belong to the SECPS, and are therefore currently subject to a peer review program. The time periods and scope of the proposed rule were therefore selected based on the needs and abilities of small entities and their accounting firms. There is little reason to further restrict the benefits of the proposed rule by exempting small entities from the rule or its timing. It should be noted, however, that the Commission is also requesting comments on the possibility of requiring disclosure of either membership in a PRO or the receipt of a peer review, as an alternative to mandatory peer review. Disclosure, instead of mandatory peer review, might benefit those small firms which do not believe that, under their particular circumstances, the benefits of peer review exceed its cost.

*8. Solicitation of Comments*

The Commission encourages the submission of comments with respect to any aspect of this initial regulatory flexibility analysis. Such comments will be considered in the preparation of the final regulatory analysis if the proposed rules are adopted. The Commission is especially interested in any empirical data on the costs and/or benefits of the proposed rules. In particular, estimates on the costs and benefits of the rules as they apply to small entities are requested. Comments on the initial regulatory flexibility analysis will be placed in the same public file as that designated for comments on the proposed rule. All comments on this analysis should therefore refer to the same S7 file number as that designated at the beginning of this release. These comments will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[FR Doc. 87–7960 Filed 4–9–87; 8:45 am]
BILLING CODE 8010–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 200

[Docket No. R–87–1323; FR–2241]

### Mutual Insurance Programs Under the National Housing Act; Direct Endorsement Processing

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise 24 CFR 200.163 which implements HUD's Direct Endorsement Program, to establish a dual certification procedure. At present, the mortgagee's underwriter is required to certify as part of the application process that a prescribed set of statutory and regulatory requirements have been met for the purpose of endorsement for insurance. The underwriter, under the existing regulations, certifies that (1) the property and the mortgagor meet HUD's eligibility requirements, and (2) the mortgage has been closed as required by HUD. While the underwriter makes certifications, the mortgagee is ultimately accountable. Under the proposed dual certification procedure, the underwriter will certify as to the findings of eligibility of the property and mortgagor. The Direct Endorsement Mortgagee (through its authorized representative) will then certify as to

matters relating to the actual closing of the loan. The rule will accelerate mortgage processing and case submissions to HUD, and will also set forth more explicitly the responsibilities of mortgagees and their underwriters under the Direct Endorsement Program.

**DATE:** Comments are due May 11, 1987.

**ADDRESS:** Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection and copying during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Morris E. Carter, Director, Single Family Development Division, Office of Single Family Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–6720. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On March 22, 1983, HUD published regulations at 48 FR 11928 for a new program involving direct underwriting of insured single family mortgage loans by approved mortgage lenders. (See 24 CFR 200.163– 200 through 164.) Under this program, the lender has the responsibility for underwriting and closing the mortgage loan and for submission of the loan to HUD for insurance endorsement, without need of any prior HUD commitment. This Direct Endorsement Program does not replace the existing mortgage insurance application procedure, but is available in addition to the existing procedure. The purpose of the new program is to simplify and expedite the process by which mortgages can secure mortgage insurance endorsements from HUD.

Experience under the program has demonstrated that participating mortgagees have assumed their role in the processing of FHA-insured mortgages responsibly and effectively. To maintain a high quality of underwriting, most mortgagees have consolidated their underwriting activities into central locations covering a number of branches, field offices, and in some cases, the mortgagee's nationwide lending activity.

At each step in the processing, *i.e.*, appraisal review, credit review, submission for endorsement, the documents are sent to the mortgagee's underwriter and upon approval, are returned to the originating office. Concern has been expressed by the industry that the final submission of the closed mortgage package to the underwriter for review and certification creates unnecessary delays in submitting cases to HUD.

While current regulations require underwriters to certify as to all phases of loan processing, the underwriter certifies for and on behalf of the mortgagee. However, both the mortgagee and underwriter can be held accountable and, in the event of importer processing, the mortgagee may be sanctioned in accordance with § 200.163(h), and the underwriter in accordance with 24 CFR Part 24. The dual certification procedure authorized in this rule in no way lessens mortgagee responsibility—it merely separates those functions that relate to underwriting and approval from those associated with closing and insuring. (Also, it should be noted that there is nothing to prevent the underwriter from being designated by the mortgagee to sign both certificates. However, where a loan correspondent is involved, under 24 CFR 203.5, the loan correspondent must close in its own name, and may not underwrite direct endorsement loans for submission to HUD/FHA.)

Specifically, this rule would permit a representative of the mortgage (who does not need to be the underwriter) to certify as to the following closing-related items: (A) That the mortgage contains certain provisions required under specific sections in Parts 203, 221 or 234, as applicable; (B) that the mortgage covers real estate held in fee or under a renewable 99-year leasehold; (C) that any GPM (graduated payment mortgage), modified GPM, GEM (growing equity mortgage) or ARM (adjustable rate mortgage) meets relevant regulatory requirements; (D) that the property meets applicable flood plain requirements; (E) that the stated mortgage amount meets applicable regulatory requirements; (F) that the mortgagor has made the required minimum investment; (G) that a mortgage involving refinancing does not exceed the specified maximum mortgage amounts for such mortgages; and (H) for a property in an outlying area, that the requirements of 24 CFR 203.18(d) are met.

One certification by the underwriter (§ 200.163(c)(21) required under the current regulations is proposed to be removed by this rule as unnecessary. Section 200.163(c)(21) requires a certification with respect to the mortgage's negotiated interest rate. The certification is unnecessary, since the rate is not subject to FHA approval and the mortgagor and mortgagee are free to set whatever rate they may agree upon.

Also, the underwriting certification that regulatory requirements with respect to any secondary liens are met (current § 200.163(c)(15), proposed § 200.168(c)(7)) is expanded to also cover junior liens held by a non-governmental agency pursuant to §§ 203.32 (c) and (d) or §§ 234.55 (c) and (d). Those sections were revised at 50 FR 20903, May 21, 1985 to include such non-governmental junior liens.

**Findings and Other Information**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely provides for a more efficient loan processing procedure, which should prove beneficial to both small and large entities.

Certifications are exempt from approval by the Office and Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3502) provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address and the nature of the instrument. The requirements described in § 200.163(b)(5)(xi) and (c) of this rule are exempt from OMB approval because the Department provides the language and

the mortgagee need only certify to the accuracy of the information by its signature.

This rule was listed as item number H–29–86 (Sequence Number 802) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38426); pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

(The catalog of Federal Domestic Assistance numbers are 14.105 through 14.165)

**List of Subjects in 24 CFR Part 200**

Administrative practice and procedure, Mortgage insurance, Homeownership.

Accordingly, 24 CFR Part 200 is amended as follows:

**PART 200—INTRODUCTION**

1. The authority citation for 24 CFR Part 200 continues to read as follows:

**Authority:** Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart G is issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a).

2. Section 200.163 is proposed to be amended by adding a new paragraph (b)(5)(xi), and by revising paragraphs (c) and (d)(6), to read as follows:

**§ 200.163 Direct endorsement.**

* * * * *

(b) * * *

(5) * * *

(xi) A mortgagee closing certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee (or loan correspondent sponsored by the mortgagee) who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement and certifying that the mortgage complies with the requirements of this paragraph (b). This mortgage certification is in addition to any certifications required of the mortgagee or the mortgagor (or both) on HUD forms 92800 and 92900. The certification shall include (in addition to any supplemental certification items prescribed and published under paragraph (f) of this section) each of the below-listed certification items which apply to the mortgage loan submitted for endorsement:

(A) That the mortgage satisfies the requirements (as appropriate) of 24 CFR 203.17, or the requirements of 24 CFR 221.5, 221.25, 221.30, 221.32, 221.35, 221.40, and 221.45 or 234.25;

(B) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which otherwise meets the requirements of 24 CFR 203.37, or 203.37 as incorporated by reference in § 222.1, or § 234.65;

(C) That any graduated payment mortgage meets the requirements established under 24 CFR 203.45 or 234.75; any modified graduated payment mortgage meets the requirements established under 24 CFR 203.46 or 234.76; any growing equity mortgage meets the requirements established under 24 CFR 203.47 or 234.77; and any adjustable rate mortgage meets the requirements established under 24 CFR 203.49 or 234.79;

(D) That the property covered by the mortgage meets the flood plain requirements set forth in § 203.16a, or § 203.16a as incorporated by reference in § 221.1, or § 234.17;

(E) That the stated mortgage amount (*1*) satisfies the requirements of 24 CFR 203.18, 203.18a, 203.18b, 203.29, or § 203.29 as incorporated by reference in §§ 221.1, 221.10, 221.11, 221.20, 221.50, 234.27, or 234.49, as applicable; and (*2*) for a mortgage given to refinance a mortgage, the stated amount satisfies the limitations set forth in paragraph (b)(5)(xi)(E)(*1*) of this section, and any further limitation prescribed by the Secretary;

(F) That the mortgagor has made the minimum investment required by 24 CFR 203.19, 221.50 or 234.28, and no prepaid expenses other than those listed in 24 CFR 221.54 and those specifically approved by the Secretary were included in determining the mortgagor's minimum investment;

(G) That for a mortgage involving refinancing to be insured under 24 CFR 221.21, the mortgage, in addition to the limitations contained in §§ 221.10, 221.11 and 221.20, does not exceed the estimated cost of repair and rehabilitation and the amount required to refinance the existing indebtedness secured by the property;

(H) That for a property located in an outlying area, the mortgage meets the requirements of 24 CFR 203.18(d); and

(I) That a mortgage to be insured under section 234(c) of the National Housing Act meets the requirements of 24 CFR 234.59.

(c) *Underwriter Certification.* The underwriter shall personally review the appraisal report and credit application (including the analysis performed on the worksheets) and shall certify, for and on behalf of the mortgagee on a form prescribed by the Secretary, that the proposed mortgage complies with HUD underwriting requirements. For each mortgage reviewed, this Underwriter Certification shall include an indentification of the mortgage by type, as identified under § 200.163(a)(3); a statement that the underwriter has personally reviewed the relevant documents; and a statment that the mortgage complies with the requirements of this paragraph (c). The Underwriter Certification is in addition to any certifications required of the mortgagee, the mortgagor, or both on HUD forms 92800 and 92900. The Underwriter Certification shall include (in addition to any supplemental certification items prescribed and published under paragraph (f) of this section) each of the below-listed certification items which apply to the mortgage loan submitted for endorsement:

(1) That the mortgaged property is located in a community where the housing standards meet the requirements of the Secretary as required by 24 CFR 203.40;

(2) That there is located on the mortgaged property a dwelling unit designed principally for residential use for not more than four families, as required by 24 CFR 203.38, or by 203.38 as incorporated by reference in § 221.1;

(3) That the mortgator's monthly mortgage payments will not be in excess of his or her reasonable ability to pay, as required under 24 CFR 203.21, or § 203.21 as incorporated by reference in § 221.1, or as required under § 234.36;

(4) That the mortgagor's income is and will be adequate to meet the periodic payments required for the mortgage submitted for insurance, as required by 24 CFR 203.33, or 203.33 as incorporated by reference in § 221.1, or § 234.56;

(5) That the mortgagor's general credit standing is satisfactory, as required under 24 CFR 203.34, or 203.34 as incorporated by reference in § 221.1, or § 234.57;

(6) That the buildings on the property secured by the mortgage comply with the applicable property standards issued by HUD as required by 24 CFR Part 200, Subpart S, for proposed construction, and the standards set forth in HUD Handbooks 4905.1, for existing construction, and 4940.4, for rehabilitation construction;

(7) In cases where the mortgaged property is subject to (i) a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State or local government agency or instrumentality or (ii) a second mortgage held by a mortgagee that is not a

Federal, State or local governmental agency or instrumentality or (iii) a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured;
that the applicable requirements of 24 CFR 203.32 (b), (c) or (d), 203.32 (b), (c) or (d) as incorporated by reference in § 221.1, or § 234.55 are met;

(8) That the property designed for a two-, three- or four-family residence has one of the dwelling units occupied by the mortgagor, as required by 24 CFR 221.12;

(9) For a condominum unit, that the mortgaged property is in a project that has been approved by HUD under 24 CFR 234.26;

(10) In the case of proposed or new construction to which 24 CFR 203.12 is applicable, that the property covered by the application for insurance meets the requirements of 24 CFR 203.12(c); and

(11) That the property covered by the mortgage is not located in an area that is precluded from receiving Federal financial assistance pursuant to the Coastal Barrier Resources Act (Pub. L. 97–349).

(d) * * *

(6) That all necessary certifications are made in accordance with paragraphs (b) and (c) of this section.

* * * * *

Dated: March 25, 1987.

**James E. Schoenberger,**

*Acting General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.*

[FR Doc. 87–8041 Filed 4–9–87; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

**[Notice No. 628]**

### San Benito Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in California to be known as "San Benito." This proposal is the result of a petition submitted by Almaden Vineyards, a winery and grape grower in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable winemakers to label wines more precisely and will help consumers to better identify the wines they purchase.

**DATES:** Written comments must be received by May 26, 1987.

**ADDRESSES:** Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 628).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at:

ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

**SUPPLEMENTARY INFORMATION:**

#### Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American vitcultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

#### Petition

ATF has received a petition from Almaden Vineyards, proposing an area in San Benito County, California, as a viticultural area to be known as "San Benito." The proposed area contains about 45,000 acres of land, of which approximately 2,500 are currently planted to grapes. The area is located along and near the San Benito River, approximately two miles south of Hollister, California. The petitioner states that at least three major wineries are operating within the area, and that approximately 23 different varieties of wine grapes are grown there. The proposed area is located inside the approved "Central Coast" viticultural area and contains within it the approved "Paicines," "Cienega Valley," and "Lime Kiln Valley" areas. (See the discussion of overlapping viticultural areas below, under "BOUNDARIES OF THE AREA.")

#### Name of the Area

The association of the name "San Benito" with the proposed viticultural area goes back far into history. The San Benito River flows through the area, and one of the principal streets of nearby Hollister was already called "San Benito Street" in 1874, when the surrounding territory, including the proposed viticultural area, was organized as "San Benito County." (See *Crimes and Career of Tiburcio Vasquez*, San Benito County Historical Society, pp. Nine and Seventeen.) The town of San Benito is about 15 miles southeast of the proposed area, and San Benito Mountain is about 30 miles farther southeast, near the source of the San Benito River and the eastern boundary of San Benito County.

The history of viticulture in the proposed area was described by John P. Ohrwall in a talk given to the San Benito County Historical Society on July 29, 1965. A copy of the talk was submitted to ATF by the petitioner. In that talk, Mr. Ohrwall related that the first vineyard in San Benito County was planted near the proposed viticultural area by Theophile Vache in the early 1850's. Other vineyards were planted too, and the area where vineyards were sited became known locally as the "Vineyard District." Before the end of the nineteenth century, the vineyard planted by Vache had been named "San Benito Vineyard," and, under that name, wines made in the area "were said to

have won prizes at various expositions and fairs, including some held in France and Italy" (quote from Ohrwall). Gradually, additional vineyards and wineries were established in the proposed viticultural area. In the 1950's, Almaden Vineyards arrived and began greatly expanding the area's grape acreage. Today, Almaden is the dominant grape grower in the area.

Unfortunately, the original vineyard planted by Theophile Vache is no longer in production, because the soil in that vicinity has become permeated with boron salts. (See the discussion of boron below, under "GEOGRAPHY OF THE AREA.") Thus, the original "San Benito Vineyard" is excluded from the proposed viticultural area for a geographical reason, but the name that this vineyard gave to the viticultural area remains.

Although there are some scattered grape plantings elsewhere in San Benito County, by far the preponderance of viticulture in that county is practiced in the geographical area proposed by the petitioner. According to the petitioner, 95 percent of the vinifera grapes from San Benito County are grown in the proposed area. The other 5 percent are grown in other areas with different climates, according to the petitioner, who declares, "We are not aware of any other area within San Benito County that could be known as 'San Benito' or that would have comparable climatic and growing conditions." ATF agrees with these assertions, since it appears likely that much of the other 5 percent of the vinifera in San Benito County is planted in the already-established "Pacheco Pass' viticultural area (located north of Hollister, straddling the border of San Benito and Santa Clara Counties).

Further evidence was offered by the petitioner, concerning its use of the name "San Benito" on wine labels. Since 1959, labels have appeared on wines of the petitioner, made from grapes from the proposed area, indicating "San Benito" or "San Benito County" as the appellation of origin.

### Geography of the Area

The petitioner presented evidence that the proposed viticultural area is distinguished geographically from the surrounding areas, as follows:

(a) To the north, the area is distinguished from the Hollister Valley by a relative absence of fog. There are presently few or no grapes grown in the Hollister Valley, but if there were, according to the petitioner, they would be of different character from grapes grown in the proposed area. According to the petitioner, "Even an extra hour of fog daily, which is the situation around Hollister, can create a different characteristic in the wine. The grapes would be slower ripening and would result in higher acid."

(b) Additionally, the proposed area is distinguished from certain areas to its north and northeast which are burdened, to quote the petitioner, with "a high amount of boron in the water which deforms and destroys the leaves; the vines cannot grow properly and the grapes cannot ripen." This area of boron contamination includes the site of the original "San Benito Vineyard" discussed above.

Boron contamination is a natural feature of the subsoil north of the proposed viticultural area. Groundwater percolating through this subsoil dissolves some of the boron salts. If such groundwater is later drawn up through wells and used for irrigation, boron contamination begins to build up in the topsoil. This apparently is what happened over a period of years in the original "San Benito Vineyard" land. Although famous for grapes for 50–75 years, that land today is unsuitable for viticulture.

By contrast, vineyards inside the proposed area are irrigated by water from "deep wells with an extremely low level of boron. There is no toxicity and this condition is monitored on a yearly basis," the petitioner states.

(c) The eastern, southern, and western boundaries of the proposed area correspond closely to a climatic change as indicated in *Western Garden Book*, published by Sunset Books. According to this book, the area inside the proposed viticultural area is an "inland area with some ocean influence" which moderates the climate. By contrast, the surrounding areas to the east, south, and west are designated as areas with more "sharply defined seasons," due to their more mountainous elevations.

(d) Distinctions to the east and west, and to a lesser extent to the south as well, exist on the basis of topography. Those neighboring areas are, for the most part, too steeply sloped to be suitable for viticulture. This topographic distinction is apparent from examination of the applicable U.S.G.S. maps.

(e) Finally, the mountain areas to the east and west of the proposed area would generally be too cold for viticulture, according to a statement made to ATF by the University of California Farm Advisor for San Benito County.

### Boundaries of the Area

The boundaries of the proposed viticultural area may be found on six U.S.G.S. maps of the 7.5 minute series, titled Hollister Quadrangle, Tres Pinos Quadrangle, Quien Sabe Valley Quadrangle, Mt. Harlen Quadrangle, Paicines Quadrangle, and Cherry Peak Quadrangle. The boundaries would be as described in the proposed § 9.110. These boundaries are slightly altered from the boundaries proposed in the petition, so that the San Benito viticultural area, as proposed in this document, would completely encompass the following approved viticultural areas: "Lime Kiln Valley" (§ 9.27), "Cienega Valley" (§ 9.38), and "Paicines" (§ 9.39). Moreover, the proposed "San Benito" vitcultural area would lie entirely within the approved "Central Coast" area (§ 9.75).

In establishing a viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined that the differences between a larger area and its surroundings. It is possible for a viticultural area to contain smaller approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the enconomy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

**Public Participation—Written Comments**

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the "San Benito" viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all the circumstances, whether a public hearing will be held.

**List of Subjects in 27 CFR Part 9**

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

**Drafting Information**

The principal author of this document is Steve Simon, FAA, Wine and Been Branch, Bureau of Alcohol, Tobacco and Firearms.

**Issuance**

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

*Paragraph A.* The authority citation for Part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

*Par. B.* The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.110, to read as follows:

* * * * *

**Subpart C—Approved American Viticultural Areas**

* * * * *

Sec.
9.110 San Benito.
* * * * *

*Par. C.* Subpart C of 27 CFR Part 9 is amended by adding § 9.110, which reads as follows:

**§ 9.110 San Benito.**

(a) *Name.* The name of the viticultural area described in this section is "San Benito."

(b) *Approved maps.* The appropriate maps for determining the boundaries of San Benito viticultural area are six U.S.G.S. maps. They are titled:

(1) Hollister Quadrangle, 7.5. minute series, 1955 (photorevised 1971).

(2) Tres Pinos Quadrangle, 7.5. minute series, 1955 (photorevised 1971).

(3) Quien Sabe Valley Quadrangle, 7.5. minute series, 1968.

(4) Mt. Harlan Quadrangle, 7.5. minute series, 1968.

(5) Paicines Quadrangle, 7.5. minute series, 1968.

(6) Cherry Peak Quadrangle, 7.5. minute series, 1968.

(c) *Boundary*—(1) *General.* The San Benito viticultural area is located in San Benito County, California. The starting point of the following boundary description is the point where the eastern border of Section 17 of Township 15 South, Range 7 East, crosses the latitude 36°37'30" (on the Cherry Peak map).

(2) *Boundary Description*—(i) From the starting point westward along latitutde 36°37'30" to the Range Line R.6E./R.7E. (on the Paicines map).

(ii) Then northward along that range line to the southern border of Section 1, Township 15 South, Range 6 East.

(iii) Then westward along that southern border to the western border of the same section.

(iv) Then northward along that western border to the 800-foot contour line.

(v) Then northwestward along that contour line to the Township Line T.14S./T.15S.

(vi) Then westward along that township line to the southern border of Section 34, Township 15 South, Range 6 East.

(vii) Then continuing westward along that southern border to the 1200-foot contour line.

(viii) Then generally northwestward along that contour line until it crosses for the second time the southern border of Section 28, Township 14 South, Range 6 East.

(ix) Then westward along that southern border to the 1400-foot contour line.

(x) Then following the 1400-foot contour line through the following sections: Sections 28, 29, and 30, Township 14 South, Range 6 East; Section 25, Township 14 South, Range 5 East; Sections 30, 19, 20, and returning to 19, Township 14 South, Range 6 East; to the point where the 1400-foot contour line intersects the section line between Sections 19 and 18, Township 14 South, Range 6 East.

(xi) From there in a straight line due northward to the 1200-foot contour line in Section 18, Township 14 South, Range 6 East.

(xii) Then following the 1200-foot contour line generally northwestward to the northern border of Section 10, Township 14 South, Range 5 East (on the Mt. Harlan map).

(xiii) Then following that northern border northwestward to the 1600-foot contour line.

(xiv) Then following the 1600-foot contour line generally northward to an unimproved road.

(xv) Then looping southward along the unimproved road and continuing eastward past the designated "Spring" and then northward parallel with Bonanza Gulch to the Vineyard School on Cienega Road (on the Hollister map).

(xvi) From there in a straight line northeastward, crossing Bird Creek and the San Benito River, to the northwestern corner of Section 19, Township 13 South, Range 6 East (on the Tres Pinos map).

(xvii) From there following the northern border of Sections 19 and 20, Township 13 South, Range 6 East, to the northeastern corner of Section 20.

(xviii) From there in a straight line due eastward to the Range line R.6E./R.7E.

(xix) Then southward along that Range line to the Township line T.13S./T.14S.

(xx) Then eastward along that Township line to the eastern border of

Section 6, Township 14 South, Range 7 East (on the Quien Sabe Valley map).

(xxi) Then southward along the eastern border of Sections 6, 7, and 18, Township 14 South, Range 7 East, to the northern border of Section 20, Township 14 South, Range 7 East (on the Cherry Peak map).

(xxii) Then eastward along that northern border to the eastern border of Section 20.

(xxiii) Then southward along the eastern border of Sections 20, 29, and 32, Township 14 South, Range 7 East, and continuing southward along the eastern border of Sections 5, 8, and 17, Township 15 South, Range 7 East, to the starting point.

Approved: April 2, 1987.

**Stephen E. Higgins,**

*Director.*

[FR Doc. 87-8001 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-31-M

---

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 935

### Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio as amendment to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment consist of proposed changes to Ohio's Reclamation Board of Review (RBR) procedural rules. One of the proposed amendments was submitted in response to a required amendment imposed on the State with the approval of the RBR rules published in the **Federal Register** on May 6, 1986 (51 FR 16677).

This notice sets forth the times and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

**DATES:** Written comments from the public not received by 4:30 p.m., May 11, 1987 will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. If requested, a public hearing on the proposed amendment will be scheduled for April 30, 1987. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by April 27, 1987. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will not be held. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

**ADDRESSES:** The public hearing, if requested, is scheduled for 1:00 p.m., in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Columbus Field Office.

Office of Surface Mining Reclamation and Enforcment, Room 5131, 1100 "L" Street, NW., Washington, DC 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224

**FOR FURTHER INFORMATION CONTACT:** Ms Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Ohio Program**

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.** Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

**II. Submission of Revisions**

By letter dated January 28, 1987, the Ohio Department of Natural Resources, Division of Reclamation submitted proposed amendments to the Reclamation Board of Review (RBR) rules at OAC sections 1513-3-02, 1513-3-03, 1513-3-04, 1513-3-08, 1513-3-19, and 1513-3-21. The proposed changes include amending O.A.C. 1513-3-02(D)(5) and (6), 1513-3-04(d)(6) and 1513-3-19(F)(1), (2), (3), and (4) to reflect changes in the statutory language of O.R.C. 1513.02(F)(3). The amendments change "an escrow account" to "a penalty fund". O.A.C. 1513-3-03(F) is amended to include language prohibiting *ex parte* Communications between the Board and parties, or representatives of parties, regarding substantive issues of a pending case. O.A.C. 1513-3-08(G) is amended to include language prohibiting the Board from granting temporary relief in cases where such relief would result in the issuance of a coal mining and reclamation permit. The amendments proposed in O.A.C. 1513-3-21(E)(3), (4) and (5) were required by OSMRE so that the Ohio rule would be no less effective than the Federal counterpart regulations. The amendment sets forth the standards which the Board will apply in determining whether an award of costs and attorneys' fees is appropriate in a case before the Board.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSMRE's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendment. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

### III. Procedural Matters

*1. Compliance with the National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

*2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

*3. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 935**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 3, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87-8067 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-05-M

---

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CGD2 87-01]

### Special Local Regulations; Annual Marine Events Within the Second Coast Guard District

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule will establish permanent special local regulations for marine events within the Second Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is taken to insure the safety of life during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event.

**DATE:** Comments must be received on or before May 11, 1987.

**ADDRESSES:** Comments should be mailed to: Commander, (bt), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103. The comments will be available for inspection and copying at Offices of Commander (bt), Second Coast Guard District Office, 1430 Olive Street, St. Louis, MO 63103-2398. Normal office hours are between 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays. Comments may also be hand delivered.

**FOR FURTHER INFORMATION CONTACT:** LCDR B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103-2398 (314) 425-5971.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2 87-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this regulation are LCDR B.J. Willis, Second Coast Guard District Boating Technical Branch and LT R. E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

**Discussion of Proposed Regulations**

Each year various public and private organizations sponsor marine events on navigable waters within the Second Coast Guard District. These events include slow moving boat parades, raft races, high speed hydroplane races, steamboat races, fireworks displays, and other water related events. The nature of many of these events is such that special local regulations are deemed necessary in order to insure the safety of life during the events. Most of the events which have been determined to require the promulgation of such regulations are annual events, held in approximately the same location and during the same general period of time each year. Because of the recurring annual nature of these events, the Commander of the Second Coast Guard District has decided to promulgate a permanent amendment to Part 100 of Title 33 of the Code of Federal Regulations. This will preclude the necessity of separate publication of a special local regulation for each event on an annual basis. In the future, public notice of the particulars of these recurring events will be provided in local notices to mariners and specially issued regatta notices. It should be noted that Table 1 in the regulation is not a complete list of all annual marine events which occur in the Second Coast Guard District, but only those which have been determined by the District Commander to require the issuance of special local regulations in order to insure the safety of life.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated areas will be in effect for a short period of time. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 (b) and 33 CFR 100.35.

2. Part 100 is amended by adding a § 100.201, to read as follows:

**§ 100.201 Annual marine events within the Second Coast Guard District**

Permanent special local regulations are hereby established for the marine events listed in Table 1. These regulations will be effective annually, for the duration of each event, on or about the dates indicated in Table 1. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in local notices to mariners. To be placed on the mailing list for such notices, contact: Commander (oan), Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103–2398.

(a) The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(b) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(d) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(e) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

**Table One**

*Kentucky Derby Festival Steamboat Race*

Sponsor: Kentucky Derby Festival Inc.
Date: Late April
Location: Ohio River, mile 604, near Louisville, KY

*Memphis in May Canoe & Kayak Race*

Sponsor: Outdoors, Inc.
Date: Early May
Location: Lower Mississippi River, mile 738.5, near Memphis, TN

*Great Tennessee River Raft Race*

Sponsor: Tennessee Jaycee Foundation
Date: Early June
Location: Tennessee River, mile 470.5, near Chattanooga, TN

*Steamboat Days*

Sponsor: Peoria Convention & Visitors Bureau
Date: Middle June
Location: Illinois River, mile 162.3, near Peoria, IL

*Riverbend Festival Formula I Outboard Races*

Sponsor: Friends of the Festival, Inc.
Date: Middle June
Location: Tennessee River, mile 463.5, near Chattanooga, TN

*Outboard Power Boat Races & Fireworks*

Sponsor: Tri-State Fair and Regatta
Date: Late June
Location: Ohio River, mile 327.0, near Ironton, OH

*New Martinsville Regatta*

Sponsor: New Martinsville Regatta Inc.
Date: Early July
Location: Ohio River, mile 129.5, near New Martinsville, WV

*Riverfest*

Sponsor: Riverfest Inc.
Date: Early July
Location: Upper Mississippi River, mile 697.0, near Lacrosse, WI

*Budweiser Indiana Governors Cup*

Sponsor: Madison Regatta, Inc.
Date: Early July
Location: Ohio River, mile 557.0, near Madison, IN

*Clinton Riverboat Days*

Sponsor: Riverboat Days Inc.
Date: Early July
Location: Upper Mississippi River, mile 519.0, near Clinton, IA

*V.P. Fair*

Sponsor: V.P. Fair Foundation
Date: Early July
Location: Upper Mississippi River, mile 179.2, near St. Louis, MO

*Freedom Festival/Thunder on the Ohio*

Sponsor: Thunder on the Ohio
Date: Middle July
Location: Ohio River, mile 792.0, near Evansville, IN

*Steubenville River Regatta*

Sponsor: Ft. Pitt Dis. & River Regatta Committee
Date: Middle July
Location: Ohio River, mile 66.0, near Steubenville, OH

*Ramblin Raft Race*

Sponsor: American Rafting Assn.
Date: Middle July
Location: Upper Mississippi River, mile 856.0, near Minneapolis, MN

*Port of Sioux City River-Cade*

Sponsor: Port of Sioux City River-Cade Assn.
Date: Middle July
Location: Missouri River, mile 731.0, near Sioux City, IA

*Huntington-Miller Classic Powerboat*

Sponsor: Tri-State Fair and Regatta
Date: Late July
Location: Ohio River, mile 307.5, near Huntington, WV

*Oakmont Yacht Club Regatta*

Sponsor: Oakmont Yacht Club
Date: Late July
Location: Allegheny River, mile 12.0, near Oakmont, PA

*Minneapolis Aquatennial Flotilla & Frolic*

Sponsor: Minneapolis Aquatennial Assn.
Date: Late July
Location: Upper Mississippi River, mile 813.0, near Hastings, MN

*Minneapolis Aquatennial Formula I Grand Prix*

Sponsor: Minneapolis Aquatennial Assn.
Date: Late July
Location: Upper Mississippi River, mile 854.8, near Minneapolis, MN

*Pittsburgh Three Rivers Regatta*

Sponsor: Pittsburgh Three Rivers Regatta
Date: Late July
Location: Ohio, Allegheny & Monongahela Rivers, miles 00.0, near Pittsburgh, PA

*Ohio River Festival Regatta*

Sponsor: Ohio River Festival Inc.
Date: Early August
Location: Ohio River, mile 220.0, near Ravenswood, WV

*Annual Fernbank Regatta*

Sponsor: Ohio Valley Motorboat Racing Assn.
Date: Early August
Location: Ohio River, mile 483.0, near Fernbank, OH

*Beaver County River Regatta*

Sponsor: Beaver County River Regatta Inc.
Date: Middle August
Location: Beaver River, mile 000.0, near Bridgewater, PA

*Hoosier Boy Regatta*

Sponsor: Indiana Outboard Assn.
Date: Middle August
Location: Ohio River, mile 505.5, near Rising Sun, IN

*Armstrong Co. Chamber of Commerce Regatta*

Sponsor: Three Rivers Outboard Racing Assn.
Date: Middle August
Location: Allegheny River, mile 44.0, near West Kittanning, PA

*Power Boat Racing/Anything That Floats*

Sponsor: Kanawha River Navy
Date: Middle August
Location: Kanawha River, mile 58.0, near Charleston, WV

*Ohio River Championship River Days*

Sponsor: Riverdays Committee
Date: Late August
Location: Ohio River, mile 355.5, near Portsmouth, OH

*Annual Charleston Sternwheel Regatta*

Sponsor: Charleston Festival Commission
Date: Late August
Location: Kanawha River, mile 58.0, near Charleston, WV

*Ft. Smith United Way Raft Race*

Sponsor: United Way of Ft. Smith Inc.
Date: Early September
Location: Arkansas River, mile 308.5, near Ft. Smith, AR

*Air Show*

Sponsor: Steamboat Days Festival Inc.
Date: Early September
Location: Ohio River, mile 602.0, near Louisville, KY

*Hudy Gold/WEBN Fireworks*

Sponsor: WEBN Radio
Date: Late August
Location: Ohio River, mile 470.0, near Cincinnati, OH

Dated: April 1, 1987.

**R.T. Nelson,**

*Rear Admiral (Lower Half), U.S. Coast Guard Commander, Second Coast Guard District.*

[FR Doc. 87-7910 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-14-M

---

**33 CFR Part 117**

**[CGD5-87-007]**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the Town of Wrightsville Beach, North Carolina, the Coast Guard is considering a change in the regulations governing operation of the drawbridge across the AICWW, mile 283.1, at Wrightsville Beach, North Carolina, to extend the hourly opening schedule now in effect from May through October to year round. This proposal is being made because both vehicular traffic and drawbridge opening counts for pleasure craft remain high during the "off-season" months. The steady increase of vehicular traffic and bridge openings for the past three years has resulted in increased traffic congestion and delays to the people living and working in the Town of Wrightsville Beach. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

**DATE:** Comments must be received on or before May 26, 1987.

**ADDRESSES:** Comments should be mailed to Commander(oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 609. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, at the above address, or telephone number (804) 398-6222.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

### Drafting Information

The drafters of this notice are Ann B. Deaton, project officer, and CDR Robert J. Reining, project attorney.

### Discussion of Proposed Regulations

The current regulations for this bridge only require that the draw open on the hour from 7 a.m. to 7 p.m. for the passage of pleasure craft from May through October. The draw opens on demand at all other times. Commercial, government-owned, and vessels in distress are also passed on demand.

The Town of Wrightsville Beach has requested that this hourly opening schedule be extended to include the months of November through April because both highway and pleasure boat traffic continue to be heavy during most of these "off-season" months. The random bridge openings now occurring during these months result in traffic congestion and delays to highway users who live and work in the Town of Wrightsville Beach. This drawbridge is the only highway route into and out of town.

A review of highway and drawbridge logs for the past three years revealed that highway and drawbridge opening counts during the "off-season" months, with the exception of January and February, were as high or higher than those during the currently regulated peak boating season. The month of November had the highest drawbridge opening count throughout the year, followed by April. Only openings for pleasure craft were counted in these totals. Further, the data review shows a steady increase in both highway counts and drawbridge openings for pleasure craft during the "off-season" months for the past three years. These figures appear to support the town's view that Wrightsville Beach is becoming less of a summer resort, and more of a year-round community. As it does, highway traffic is increasing. As previously mentioned, during the months of January and February, drawbridge openings for pleasure craft drop drastically. At the same time, however, highway traffic across the bridge remains fairly constant compared to the remainder of the year. In the absence of any information to indicate that there is a need for more frequent openings during those months, separate regulations have not been proposed for the months of

January and February. This should avoid confusion on opening times for both motorists and boaters.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that this proposal will have no effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.821, paragraph (c) is revised to read as follows:

**§ 117.821 Atlantic Intracoastal Waterway, Bogue Sound to Wrightsville Beach.**

* * * * *

(c) (1) Except from 7 a.m. to 7 p.m., the draw of the SR 74 bridge, mile 283.1, at Wrightsville Beach shall open on signal.

(2) From 7 a.m. to 7 p.m. the draw shall open only on the hour for the passage of pleasure vessels.

(3) If a pleasure vessel is approaching the drawbridge and cannot reach the draw exactly on the hour, the drawtender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching pleasure vessel and any other pleasure vessels that are waiting to pass.

(4) The draw shall open on signal for public vessels of the United States, State or local vessels used for public safety, commercial vessels, and vessels in distress.

Dated: March 24, 1987.

**B.F. Hollingsworth,**

*Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 87–7911 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–14–M

---

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[A–5–FRL–3184–5]**

**Approval and Promulgation of Implementation Plans; Indiana**

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Supplemental notice of reproposed rulemaking.

**SUMMARY:** In the December 29, 1983 (48 FR 57313), **Federal Register,** the USEPA proposed disapproval of draft regulations submitted by Indiana as part of its lead State Implementation Plan (SIP). In response to USEPA's proposed rulemaking, the State committed to correct the deficiencies listed in the notice. As a result, on September 29, 1984 (49 FR 38297), USEPA proposed to approve the Indiana lead SIP. On January 2, 1985 (50 FR 123), USEPA extended the public comment period at the request of the State of Indiana. Public comments which were received in response to the December 29, 1983, and September 29, 1984, proposals will be addressed when USEPA takes final rulemaking action on the lead SIP.

Among the comments received was the assertion that certain sources engaged in lead recovery operations in the State were not included in the plan proposed in the September 29, 1984, **Federal Register.** USEPA re-examined the emission inventory and determined that the State had failed to include process lead fugitive emissions in estimating the lead emissions from certain sources. On April 19, 1985, the State committed to resolve these deficiencies in its emission inventory, as well as additional problems which USEPA had recognized since its proposals.

Since the publication of the proposed approval and the extension of the public comment period, Indiana has submitted additional information to satisfy the major deficiencies identified by USEPA. These were submitted to USEPA on July 8, 1985, July 12, 1985, December 5, 1986, and December 16, 1986.

The purpose of today's notice is to announce receipt of the additional information for the Indiana lead SIP, discuss the results of USEPA's review, and repropose rulemaking actions on the plan.

**DATE:** Comments on this revision and on the proposed USEPA action must be received by June 9, 1987.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management (IDEM), 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Tenner, (312) 886–6034.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 5, 1978, USEPA promulgated National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258). Both primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu g/m^3$), maximum arithmetic mean as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (Act) requires each State to submit a plan which provides for the attainment and maintenance of the primary and secondary NAAQS.

The general requirements for a SIP are outlined in section 110(a)(2) of the Act and USEPA regulations at 40 CFR Part 51. Specific requirements for developing a lead SIP are set forth in 40 CFR Part 51 Subpart G [1] and the manual entitled "Updated Information on Approval and Promulgation of Lead Implementation Plans", July 1983. These provisions require the submission of air quality data, emissions data, air quality modeling, control strategies, demonstrations that the NAAQS will be attained within the timeframe specified

[1] The lead SIP requirements were formerly codified in a separate Subpart, Subpart E, but these were recodified and redistributed within Subpart G, Control Strategy, on November 7, 1986 (51 FR 40655). Many of the former Subpart E requirements specific to lead are now found in 40 CFR 51.117

by the Act, and provisions for insuring maintenance of the NAAOS.

Under 40 CFR 51.117 (formerly 40 CFR 51.80) an attainment demonstration is required: (1) In the vicinity of the following sources which emit 5 or more tons of lead per year—primary lead smelters, secondary lead smelters, primary copper smelters, lead gasoline additive plants, and lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day, (2) in the vicinity of any other stationary source that emits 25 or more tons of lead per year, or (3) in any other area that has had measured lead concentrations in excess of the NAAQS since January 1, 1974. Any source which meets the requirements of either (1) or (2) above is considered a "point source" for the purposes of today's rulemaking.

In addition, USEPA established lead monitoring and data handling requirements in a September 3, 1981, **Federal Register** notice (46 FR 44159), which was codified at 40 CFR Part 58. Indiana's responses to all of these requirements are addressed in today's notice.

## II. Indiana's Lead SIP

The State of Indiana provided several submittals to USEPA on the following dates: July 8, 1985, July 12, 1985, December 5, 1986, and December 16, 1986. Included in these submittals was a regulation limiting lead emissions, 325 IAC 15–1.

### *Rule 325 IAC 15–1 on Lead Emission Limitations*

On July 30, 1986, the Indiana Air Pollution Control Board (IAPCB) preliminarily adopted 325 IAC 15–1. On September 30, 1986, the IDEM submitted 325 IAC 15–1 to USEPA for parallel processing. On December 3, 1986, the IAPCB adopted revised 325 IAC 15–1, which was modified based on public comments. This revised rule was submitted to USEPA on December 16, 1986. It was promulgated for State purposes on January 27, 1987 and resubmitted to USEPA on February 18, 1987.

The rule is divided as follows:

| | |
|---|---|
| 325 IAC 15–1–1 | Applicability |
| 325 IAC 15–1–2(a) | Source-specific provisions for: Refined Metals, Indianapolis; Chrysler Corporation Foundry, Indianapolis; Delco Remy Division of General Motors Corporation, Muncie; Oxide and Chemical Corporation, Brazil; U.S.S. Lead Refinery, East Chicago; and Hammond Lead Products, Inc. HLP (Halox Division and Halstab Division), Hammond |
| 325 IAC 15–1–2(b) | Operation and Maintenance Programs |
| 325 IAC 15–1–3 | Control of Fugitive Lead Dust |
| 325 IAC 15–1–4 | Methods to Determine Compliance |

Rule 325 IAC 15–1 applies only to those sources specifically listed in 325 IAG 15–1–2. Unless otherwise noted in the rule, compliance is required immediately. The site-specific emission limits and other requirements for these sources contained in 325 IAC 15–1–2 are discussed below. All of the subject sources are to submit operations and maintenance programs designed to prevent deterioration of control equipment performance to the IDEM by June 1, 1987. These will be incorporated into individual operating permits. USEPA requested and the Indiana Office of Air Management (IOAM) agreed to submit these operations and maintenance programs to USEPA for comment prior to the State's approval of them and for information after the State adopts them.

325 IAC 15–1–3 requires all sources listed in 325 IAC 15–1–2 to comply with the following fugitive dust requirements:

(1) No source shall create or maintain outdoor storage of bulk materials containing more than 1.0% lead by weight of less than 200 mesh size particles.

(2) All materials containing more than 1.0% lead by weight of less than 200 mesh size particles shall be transported in closed containers or by enclosed conveying systems.

(3) Control programs shall be designed to minimize emissions of lead from all fugitive emission points. The programs shall include good housekeeping practices for the clean-up of spills and for minimizing emissions from loading and unloading areas as applicable. The program shall be submitted to the IOAM on or before June 1, 1987. The State shall submit these fugitive lead control plans to USEPA for approval as SIP revisions. Indiana has indicated to USEPA that it intends to submit these plans to USEPA as revisions to the Indiana SIP by December 31, 1987. USEPA requests that the State affirm this as a commitment during the public comment period.

325 IAC 15–1–4(a) establishes a stack test (USEPA Reference Method 12, Appendix A of 40 CFR Part 60 and 325 IAC 3–2, Source Sampling Procedures) as the method for determining compliance with the emission limits in 325 IAC 15–1–2. 325 IAC 15–1–4(b) requires sources with restrictions on their hours of operation to maintain logs indicating the actual hours of operation and submit quarterly summaries of these logs to the IDEM.

### *Action*

USEPA proposes to approve 325 IAC 15–1, subject to the submittal of additional requirements as described later in today's notice.

### *Indiana Lead Sources*

The Indiana plan addresses areas of the State where there are sources that have significant lead emissions which have the potential to cause violations of the lead NAAQS. According to the plan, these include both mobile and stationary source related sites.

#### A. Mobile Source Related Sites

1. Lake County—The Frank Borman Expressway (I–80/94) east of Cline Avenue (Indiana 912) to a point east of Indianapolis Boulevard (Indiana 52/US–20).

2. Clark County—Jeffersonville monitoring site at the junction of I–65/US–62.

3. Floyd County—See discussion in Other Sites below.

The Frank Borman Expressway was included as a study area due to the high volume of vehicular traffic. The geographic area was considered to be dominated by lead emissions from mobile sources. Indiana submitted analysis for this site to demonstrate that the area is attaining the NAAQS. The analysis demonstrated that using the highest valid ambient quarterly lead level of 0.80 $\mu g/m^3$ (third quarter, 1982), the projected future (i.e., in three years) ambient lead concentration is calculated to be 0.78 $\mu g/m^3$. (Note, actual monitored data for 1985 shows a maximum quarterly average concentration of 0.29 $\mu g/m^3$.)

This demonstrates that the lead standard was attained in the Lake County study area in 1982 and will be maintained through continuation of the Federal program to phase down lead in leaded gasoline. Therefore, USEPA is proposing approval of this portion of the plan.

USEPA has also identified the Jeffersonville monitor in Clark County at the junction of I–65 and US–62 as being a mobile source related site. There are no significant lead point sources in the vicinity of this monitor.

An analysis was conducted by a contractor for USEPA. The analysis demonstrated that using the highest recorded ambient quarterly average of 1.74 $\mu g/m^3$ (fourth quarter, 1978), the projected future quarterly average is 0.67 $\mu g/m^3$. (Note, actual monitored data for 1985 shows a maximum quarterly average concentration of 0.20 $\mu g/m^3$.)

Therefore, the recent ambient air quality data verify that the standard for lead has been attained at the

Jeffersonville lead monitor since 1979. Continued attainment is expected through the Federal program to phase-down lead in leaded gasoline. As a result, USEPA is proposing approval of this portion of the Plan.

B. Stationary Source Related Sites

Title 40 CFR 51.117 requires that a lead plan must address all areas in the vicinity of "point sources" of lead and any other areas that have had measured lead air concentrations in excess of the NAAQS since January 1974. The State identified the following as its lead point sources:

1. *Refined Metals Inc.*, a secondary lead smelter located in Indianapolis (Marion County).
2. *U.S.S. Lead Refinery*, a secondary lead smelter in East Chicago (Lake County).
3. *Oxide and Chemical*, a lead oxide manufacturing plant located in Brazil (Clay County).
4. *G.M. Delco Remy*, a lead-acid storage battery manufacturing plant located in Muncie (Delaware County).
5. *Chrysler Corporation Foundry*, a grey iron foundry located in Indianapolis (Marion County).
6. *Hammond Lead Products*, lead oxide manufacturing plant located in Hammond (Lake County).

In addition, USEPA has identified Quemetco, a secondary lead smelter located in Indianapolis (Marion County) as a possible lead point source.

Each of these seven sources are addressed below:

1. *Refined Metals.* Regulation 325 IAC 15–1 requires Refined Metals to:

a. Install and operate hooding systems by June 1, 1987, for the blast furnace's skip hoist and charging area, the blast furnace's slag and tapping area, the casting area, the refinery kettles, and the lead dust furnace charging area. The hooding systems required for the operations listed above shall at least have a minimum of 90% capture efficiency. The emissions shall be vented to a control device with 99.5% control efficiency.

b. Install and operate enclosed screw conveyors by June 1, 1987, to transport lead flue dust to the lead dust furnace.

c. Comply with the emission limits for its M–1 baghouse stack, M–2 baghouse stack, and blast furnace fugitive emissions by June 1, 1987.

d. Limit the hours of operations for those sources whose emissions are specifically restricted by limits in 325 IAC 15–1–2(a)(1) to not more than 2,080 hours/quarter.

*Modeled Attainment Demonstration:* Indiana performed a computer dispersion modeling analysis consistent with USEPA Modeling Guidelines of the area surrounding Refined Metals. The maximum predicted quarterly concentration was 1.34 $\mu g/m^3$ for the third quarter of 1980 at a receptor located along the fenceline approximately 100 meters (m) northeast of the emission sources. Adding a 0.15 $\mu g/m^3$ background value[2] results in a total predicted concentration of 1.49 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Refined Metals. Additional discussion of this analysis may be found in the Technical Support Document located at Region V.

*Action:* The proposed control measures, the implementation of fugitive dust control procedures, and the emission limits were evaluated by USEPA and were determined to meet the requirements of the Clean Air Act. Therefore, USEPA proposes approval of the Indiana lead Plan for Refined Metals, Inc.

2. *U.S.S. Lead Refinery.* U.S.S. Lead is not currently in operation. Should U.S.S. Lead seek to operate its facility in East Chicago in the future, 325 IAC 15–1 limits the operating hours for its blast furnace stack, blast furnace fugitive emissions, refining kettles fugitive emissions, casting fugitive emissions, and the reverbatory furnace fugitive emissions to 334 hours per quarter. In addition, U.S.S. Lead is required to meet the lead emission limits in Indiana Rule 325 IAC 15–1–2(a)(5) for these same sources. (Emissions from the reverbatory furnace stack were neither included in Indiana's modeling demonstration nor in its rule. Therefore, the reverbatory furnace stack is assumed to have a 0.000 lbs/hour limit in Indiana's plan and is being so proposed.) U.S.S. Lead is also required to implement the fugitive dust control procedures specified in 325 IAC 15–1–3(a).

*Modeled Attainment Demonstration:* The maximum predicted quarterly concentration was 1.35 $\mu g/m^3$ during the first quarter of 1978 at a receptor located along the fenceline approximately 130 m east of the emission sources. Adding the 0.15 $\mu g/m^3$ background value results in a total concentration of 1.50 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of U.S.S. Lead. Additional discussion may be found in the Technical Support Document located at Region V.

*Action:* The proposed control measures, the implementation of the fugitive dust control procedures specified in Indiana rule 325 IAC 15–1–3(a), and the emission limits were evaluated by USEPA and were determined to meet the requirements of the Clean Air Act. Therefore, USEPA proposes approval of the Indiana Lead Plan for U.S.S. Lead.

3. *Oxide and Chemical Corporation.* Rule 325 IAC 15–1 requires Oxide and Chemical to limit its operation of the Franklin reactor to no more than 670 hours per quarter and to comply with lead emission limits specified in 325 IAC 15–1–2(a)(4) for Barton Reactors Nos. 1, 2, 3, and 4; Rake Furnace Kiln #2; and the Franklin Reactor. The facility is also required to implement the fugitive lead control program required by 325 IAC 15–1–3(a). The maximum predicted quarterly concentration was 1.34 $\mu g/m^3$ for the first quarter of 1976 at a receptor located along the fenceline approximately 100 m from the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total concentration of 1.49 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Oxide and Chemical. Additional discussion may be found in the Technical Support Document located at Region V.

*Action:* The control measures, the implementation of the fugitive dust control procedures, and the emission limits were evaluated by USEPA and were determined to meet the requirements of the Clean Air Act. Therefore, USEPA proposes approval of the Indiana lead Plan for Oxide and Chemical.

4. *Hammond Lead Products, Inc.* Hammond Lead Products has two facilities in Hammond, separated by several miles. The newer facility is the Halstab Division, regulated by 325 IAC 15–1–2(a)(7). The older facility consists of an old Halstab Plant, since closed, and the HLP-Halox Division, regulated by 325 IAC 15–1–2(a)(6).

*Halstab Plant:* Control measures in 325 IAC 15–1–2 for the new Halstab Plant include implementation of operation and maintenance procedures for the air pollution control devices, limiting the hours of operation for sources whose emissions are vented

[2] A 0.15 $\mu g/m^3$ background was consistently used in Indiana's lead plan. This background level was suggested in three documents developed by contractors. They are: (1) "Development of an Example Control Strategy for Lead" (draft), January 29, 1979; (2) "Technical Support Document for the Vehicular Lead Analysis for the State of Indiana (Hammond Area)", October 1979; and (3) "Technical Support Document for the Vehicular Lead Analysis for the State of Indiana (Jeffersonville Area)", October 1979. It was also used in the adjoining State of Kentucky lead plan. USEPA and Indiana have evaluated this suggested background level and find it acceptable.

through certain named stacks (S–1, S–9, S–10, S–11, S–12, S–13, S–14, S–15, and S–16), and setting hourly emission limits for these stacks and others.

*Modeled Attainment Demonstration (Halstab Plant):* The maximum adjusted quarterly predicted concentration was 1.13 $\mu g/m^3$ for the third quarter of 1978, at a receptor located along the fenceline approximately 200 m north of the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total concentration of 1.28 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Hammond Lead Halstab Plant.

*HLP-Halox Plant:* The Plan requires the Halox Plant to achieve compliance with the lead emission limits in 325 IAC 15–1–2(a)(6) by June 1, 1987. In addition, Hammond Lead is required to further investigate fugitive emissions (see discussion below).

*Modeled Attainment Demonstration (Halox Plant):* The maximum adjusted quarterly predicted concentration was 1.07 $\mu g/m^3$ for the third quarter of 1978, at a receptor located along the fenceline approximately 200 m north of the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total concentration of 1.22 $\mu g/m^3$, thus predicting attainment of the lead NAAQS in the vicinity of Hammond Lead HLP-Halox Plant. Additional discussion may be found in the Technical Support Document located at Region V.

*Monitored Violations—HLP-Halox Plant:* Notwithstanding the modeled attainment demonstration, USEPA noted in Indiana's data that the ambient lead monitors near this plant continue to measure violations of the lead standard, despite some of the measures previously taken by Hammond Lead to reduce the lead emissions from the Halox plant. USEPA notified Indiana of this deficiency and requested the State to investigate the possible inconsistency between the monitoring and modeling data.

The State was unable to determine if the discrepancy was due to all emission points not yet being in compliance with the regulation (compliance is not required until June 1, 1987), modeling under-predictions, or an incomplete emission inventory used in the modeling. To resolve this issue, the State, in 325 IAC 15–1–2(a) (B), (C), and (D), required Hammond Lead to investigate this discrepancy and included in the rule a schedule for implementing the study and adopting additional measures, if needed, to assure attainment and maintenance of the lead NAAQS.

More specifically, the rule requires Hammond Lead to investigate and submit an interim report to IDEM on or before June 30, 1987, on the nature, cause, and magnitude of fugitive emissions which escape through its 25 roof ventilators and from other processes and exhaust systems. By December 31, 1987, Hammond Lead must submit a revised and complete emission inventory of its lead sources, a final report on the result of the investigations referenced above, and a list of additional control strategies under consideration. By June 30, 1988, Hammond Lead must submit to IDEM revised lead emission limits, if necessary, and control measures to achieve compliance with these limits. IDEM will recommend a revised control strategy to the IAPCB for adoption. Hammond Lead Products will be required to comply with the revised control strategy adopted by the Board as expeditiously as practicable, but no later than December 31, 1989.

*Action:* The control limitations, fugitive dust control measures, operating restrictions, attainment plan, and further studies for the Hammond Lead Product's Halox and Halstab Plants were evaluated by USEPA and were determined generally to meet the requirements of the Clean Air Act. USEPA concurs with the State on the need for further study and is including the study in its rulemaking on the SIP.

USEPA proposes to approve the Indiana lead plan for Hammond Lead-Halstab. Additionally, USEPA proposes to approve the Indiana lead plan for Hammond Lead-Halox, if during the public comment period, the State submits a more detailed schedule of the Hammond Lead study, with interim and enforceable dates of progress. This schedule should include increments of progress on the collection of additional data and an inventory of sources, selection of control measures, and the adoption of these control measures so as to ensure that the final compliance date will be met. Furthermore, the revised selected control measures, if necessary, must be submitted to USEPA as a SIP revision on or before December 31, 1988.

If no such schedule is submitted, USEPA will disapprove Indiana's overall plan for Hammond Lead-Halox, but will approve the emission limitations and other requirements within the Plan, as interim measures towards the assurance of the attainment and maintenance of the lead NAAQS in the vicinity of that plant.

5. *GM Delco Remy.* Rule 325 IAC 15–1–2(a)(3) requires installation of ductwork to vent the emissions from the three vacuum cleaning lines through the Central Tunnel Systems' control devices and stacks by June 1, 1987. Further, 325 IAC 15–1–2(a)(3) contains enforceable emission limits for the lead sources at Delco Remy and 325 IAC 15–1–3 specifies procedures for controlling fugitive lead dust at the facility.

*Modeled Attainment Demonstration:* The maximum predicted quarterly concentration was 0.97 $\mu g/m^3$ for the third quarter of 1980, at a receptor located along the fenceline approximately 120 m from the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total concentration of 1.12 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Delco Remy. Additional discussion may be found in the Technical Support Document located at Region V.

*Action:* The control measures were evaluated by USEPA and were determined to meet the requirements of the Clean Air Act. Therefore, USEPA is proposing approval of the Indiana lead SIP for GM Delco Remy.

6. *Chrysler Corporation.* The only lead emissions at Chrysler are from the cupola. The control strategy restricts the cupola stack to a 0.55 lbs/hr limit and the fugitive emissions to 1.894 lbs/hr. Control measures are in place, and the source should currently be in compliance with both emission limitations.

*Modeled Attainment Demonstration:* The maximum adjusted predicted quarterly concentration was 1.22 $\mu g/m^3$ for the third quarter of 1980, at a receptor located approximately 170 m northeast of the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total predicted concentration of 1.37 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Chrysler.

*Action:* The emission limitations were evaluated by USEPA and determined to meet the requirements of the Clean Air Act. Therefore, USEPA is proposing approval of the Indiana lead SIP for Chrysler Corporation.

7. *Quemetco.* Quemetco is a secondary lead smelter in Indianapolis. USEPA initially identified Quemetco as a possible point source; i.e., greater than 5 tons/year emissions. On April 13, 1984, and May 4, 1984, the State confirmed that the blast furnace at Quemetco was permanently shut down and has been deleted from the emission inventory. On May 4, 1984, the State submitted a revised emission inventory for Quemetco which includes all stack and process fugitive lead emissions. This inventory shows that Quemetco currently emits less than 5 tons/year of

lead, because of the recent installation of additional controls. The revised emissions inventory includes emissions from two newly installed capture hoods on the casting operations and the reverberatory furnace tapping area, which are vented to a baghouse. Additional information on these controls was contained in a May 4, 1984, submittal.

These controls also limit total suspended particulate (TSP) emissions at Quemetco. However, these controls limit TSP emissions to a greater extent than is necessary to meet the TSP SIP requirements. Thus, there are no Federal requirements to keep these controls operating at their current calculated efficiency.

40 CFR 51.117 requires a demonstration of attainment in the vicinity of secondary lead smelters which emit 5 tons or more of lead per year. Prior to the installation of the capture hoods discussed above, which are not currently federally required, emission estimates for Quemetco exceeded 5 tons/year. As a result, a demonstration of attainment is still required to ensure that control measures are adequate to protect the lead NAAQS.

On May 4, 1984, the State of Indiana submitted a dispersion modeling analysis based on the Climatological Dispersion Model (CDM). Although the modeling analysis predicted that the lead emissions from Quemetco will not result in a violation or interfere with attainment of the lead NAAQS, USEPA can no longer accept this outdated analysis, which did not use the current reference model, Industrial Source Complex Long Term (ISCLT), and did not use sufficient meteorological data. Thus, a modeling analysis consistent with USEPA modeling guidelines is still required.

*Action:* The State has committed to review its lead source inventory to ensure that Quemetco, and other smaller sources which emit significant quantities of lead, do not have the potential to violate the lead NAAQS. It further committed to modify 325 IAC 15–1, if necessary, to assure that lead emissions from these smaller sources do not threaten the lead NAAOS and that their emissions do not increase above 5 tons/year.

This proposed revision to the rule will provide an enforceable mechanism to prevent Quemetco from increasing its current lead emissions. Therefore, USEPA proposes approval of the Indiana lead SIP for Quemetco, provided that the State submits as a revision to its SIP a preliminarily adopted version of this rule to USEPA during the public comment period and an adopted version of the rule prior to USEPA completing rulemaking on Indiana's lead plan. Additionally, the State must submit during the public comment period an attainment demonstration for Quemetco consistent with USEPA modeling guidelines. USEPA proposes to approve these as part of Indiana's plan.

8. *Other Sites—New Albany—Floyd County.* USEPA reviewed all of its ambient monitoring data collected since 1974 and discovered that a violation of the standard occurred during the fourth quarter of 1978 at a site in New Albany in Floyd County. This area was not included in any of the mobile source or stationary source related sites listed above because of insufficient emissions data.

USEPA proposed disapproval of the New Albany plan in Floyd County in the December 29, 1983 (48 FR 57318), **Federal Register**, because the State had failed to submit information addressing this previously measured violation or to make a demonstration that the current plan would assure attainment and maintenance of the lead standard in Floyd County.

40 CFR 51.117 requires that an analysis must be made in the vicinity of a monitor that has recorded a lead violation since 1974. During the fourth quarter of 1978, a concentration of 1.78 $\mu g/m^3$ was measured at the New Albany monitor, which was determined by the State to be caused by mobile source emissions. These emissions have subsequently been reduced due to the Federal phaseout of lead in gasoline. The State's submittal of April 13, 1984, contained an analysis using a 1978 base year and a 1984 projection year. This analysis demonstrated attainment of the lead NAAQS well before the projection year, and is consistent with the general rollback procedures for the lead SIPs. Therefore, it is considered to be acceptable.

The maximum measured quarterly average during the most recent year (1981) of available data (0.52 $\mu g/m^3$) is consistent with the projected maximum quarterly average of 0.52 $\mu g/m^3$. The monitor was discontinued after that year because the readings were so low.

*Action:* USEPA is proposing approval of the lead SIP for the New Albany area.

*Gary—Lake County (U.S. Steel):* The emission inventory indicates that the current lead emissions from U.S. Steel in Gary are less than 25 tons/year. 40 CFR 51.117 does not require a demonstration of attainment in such an area. However, to assure that the SIP is adequate to maintain the standard, USEPA required the State to install and operate an ambient lead monitor near this source. The State began to analyze for lead at the Gary Federal Building site in 1983 (the closest State-operated monitor at that time to U.S. Steel). The maximum measured quarterly average to date is 0.83 $\mu g/m^3$ (1985, 3rd quarter).

*Action:* USEPA proposes approval of the Indiana lead SIP for the U.S. Steel area in Gary.

*Burns Harbor—Porter County (Bethlehem Steel):* On November 21, 1983, the State committed to install a monitor to measure the impact of the lead emissions from Bethlehem Steel. The emission inventory indicates that the current lead emissions from Bethlehem Steel in Porter County are less than 25 tons/year. 40 CFR 51.117 does not require a demonstration of attainment in such an area. However, to assure that the SIP is adequate to maintain the NAAOS, USEPA required the State to install and operate an ambient lead monitor near this source.

On May 4, 1984, Indiana stated that Bethlehem Steel began to monitor for lead in May 1983, at two sites. The maximum measured quarterly average to date is 0.11 $\mu g/m^3$ (1984, 1st quarter). Because the measured values over a 3-year period were so low, the State discontinued (with USEPA approval) analysis of lead at these two sites in 1986.

*Action:* USEPA proposes approval of the Indiana lead SIP for the Bethlehem Steel area.

*East Chicago—Lake County (Inland Steel and LTV Steel):* The emission inventory indicates that the current lead emissions from Inland Steel and LTV Steel in Lake County are less than 25 tons/year each. Although the emissions levels do not trigger the need for an attainment demonstration, pursuant to 40 CFR 51.117, the existence of measured violations in East Chicago since January 1, 1974, does necessitate an attainment demonstration. Furthermore, USEPA required the State to submit all available lead data for this area and to ensure that it is quality assured and representative.

*Attainment Demonstration*—The State's modeling analysis for the East Chicago area around Inland Steel and LTV Steel was submitted on April 13, 1984, and May 4, 1984. It predicts attainment in the Inland Steel/LTV Steel area. USEPA's review of this modeling is contained in a memorandum entitled "Indiana Lead SIP," dated June 15, 1984. USEPA finds that this modeling satisfies the requirements of 40 CFR 51.117 for a demonstration of attainment.

*Monitoring Program:* In the December 16, 1986, submittal, Indiana provided all lead data for the period 1983–1986 (2nd

quarter) for the three monitors near Inland Steel and LTV Steel. All the measured concentrations were less than half of the NAAOS during this period.

*Action:* USEPA proposes to approve the Indiana lead SIP for the Inland Steel/LTV Steel area in East Chicago.

*Bluffton—Wells County (Corning Glass):* The Bluffton area in the vicinity of the Corning Glass Company was identified as an area impacted by a major lead source. On November 21, 1983, however, the State indicated that this source was permanently shut down and has been taken out of the State's emission inventory. Further, Indiana indicated that if the source were to resume operation in the future, it would be subject to New Source Review. Consequently, no control strategy is necessary for this source. USEPA is proposing approval of this portion of the Plan.

C. Monitoring Plans

On September 3, 1981 (46 FR 44159), USEPA published its final rules pertaining to Ambient Lead Monitoring and Data Handling, codified at 40 CFR Part 58. The rules call for the development of a State monitoring plan for lead and its inclusion into the surveillance and ambient monitoring program. These plans must meet USEPA's monitoring requirements, including scheduling requirements, requirements concerning the establishment of a monitoring network, and data handling and reporting procedures.

On November 30, 1981, the State of Indiana submitted to USEPA a revision to its SIP which provides for the establishment of an air quality surveillance network for lead. The submittal included a description of the proposed network and commits the State to the implementation of statewide State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS), operated in accordance with the criteria given in Subpart B of 40 CFR Part 58, Appendix E, Section 7. Ambient air quality monitoring methodologies used in the SLAMS network will either follow those in 40 CFR Part 58, Appendix E, or will be equivalent. The quality assurance procedures of Appendix A of 40 CFR Part 58 will be followed in operating its SLAMS sites and processing/analyzing the air quality data.

The lead monitoring stations will be reviewed on an annual basis and modified as needed to eliminate unnecessary sites or to correct inadequacies indicated by the annual review. No changes will be made to the network unless prior approval is given by USEPA. The annual SLAMS summary report will be submitted to USEPA by July 1 of each year.

USEPA's original review of the Indiana lead monitoring plan revealed that it met all applicable requirements, with the exception of 40 CFR Part 58, Appendix D, Section 2.7, which requires lead monitoring in the vicinity of significant lead sources. In an October 19, 1983, letter, USEPA informed the State that it was required to install lead monitors in these areas. The State of Indiana has installed lead monitors in certain identified areas as documented in its May 4, 1984, submittal and May 21, 1984, letter (which includes maps showing locations of monitors near stationary sources). In 1986, Indiana notified USEPA that six lead stations were discontinued due to historically low measured values.

In the December 16, 1986, submittal, Indiana provided all lead measurements for the period 1983–1986 (2nd or 3rd quarter). Source-oriented monitors are located near Hammond Lead-Halox, U.S.S. Lead, Refined Metals, and Delco Remy (note, the Delco Remy monitor was shutdown in the 3rd quarter of 1986 due to low monitored values—i.e., less than or equal to 0.12 $\mu g/m^3$ over the past three years). Although Hammond Lead-Halstab (new plant) is near the U.S.S. Lead oriented site, an additional site oriented to this plant is planned for the early spring of 1987. Oxide and Chemical previously operated two lead monitors near its plant during 1981. This limited monitoring data showed attainment of the lead standard. Because the final rule restricts the hours of operation for the Franklin Reactor, the State and USEPA believe that a new monitor is not necessary at this time in the vicinity of Oxide and Chemical.

In addition, a lead monitor is located 0.6 km northwest of Quemetco in Indianapolis. The sampling frequency at this site will be increased to once every day starting January 1987. Because of siting constraints (i.e., wooded area, railroad tracks, and lack of power), it is not practical to locate a site closer to this facility.

Recent lead monitor data show violations of the quarterly lead standard in the vicinity of Hammond Lead, Refined Metals, and U.S.S. Lead. Since U.S.S. Lead shut down in early 1986, no monitored violations have occurred. It is anticipated that the installation of new hooded systems at the Refined Metals plant in Indianapolis will eliminate the violations in the vicinity of this source. The sampling frequency at the Refined Metals site on South Arlington Avenue will be increased to once every two days, starting January 1987.

For the Hammond Lead site, full compliance with the emission limits in the rule is predicted to result in attainment at the Summer Street site. However, 325 IAC 15–1 requires Hammond Lead to investigate further fugitive emissions not regulated by 325 IAC 15–1. The rule requires the development of an alternative control strategy, if necessary, by June 30, 1988. This control strategy will be designed to assure attainment and maintenance of the lead standard and will eliminate any uncertainty as to the adequacy of the current control strategy. The sampling frequency at the Summer Street site will be increased to once every two or three days in early spring 1987.

*Action:* USEPA is proposing final approval of the revised Indiana Air Quality Surveillance Plan, including the recent deletions.

D. New Source Review (NSR)

In order to satisfy this requirement, USEPA published in the **Federal Register** on November 19, 1986 (51 FR 41876), a notice of proposed rulemaking on Indiana New Source Review (NSR) for lead (Rule 325 IAC 2–1–1). If USEPA ultimately approves this plan, as proposed, this requirement of the Indiana lead plan will be satisfied.

## III. Conclusion

USEPA has reviewed the State submittals and is proposing the following:

| Study areas | USEPA's proposed action |
|---|---|
| A. Mobile source related sites | |
| 1. Frank Borman Expressway (I–80/94) west of Cline Avenue (Indiana 912) to a point east of Indianapolis Boulevard (Indiana 152/US–20) (Lake County) | Approval. |
| 2. Jeffersonville Monitoring Site at Junction of I–65/US–62 (Clark County) | Approval. |
| 3. New Albany—Floyd County | Approval. |
| B. Stationary source related sites | |
| 1. Refined Metals, Inc., Indianapolis—Marion County | Approval. |
| 2. U.S.S. Lead Refinery, East Chicago—Lake County | Approval. |
| 3. Oxide and Chemical, Inc., Brazil—Clay County | Approval. |
| 4. Hammond Lead Products, Hammond—Lake County | Approval, provided the State submits additional enforceable increments of progress for its additional studies and commits to submit the revised control strategy, if necessary, as a SIP revision. |
| 5. G.M. Delco Remy, Muncie—Delaware County | Approval. |
| 6. Chrysler Corporation Foundry, Indianapolis—Marion County | Approval. |

BEST COPY AVAILABLE

| Study areas | USEPA's proposed action |
|---|---|
| 7. Quemetco, Indianapolis—Marion County | Approval, provided an approvable revised State rule is submitted along with an up-to-date attainment demonstration |
| C. Other sites | |
| 1. U.S. Steel, Gary—Lake County | Approval |
| 2. Bethlehem Steel, Burns Harbor—Porter County | Approval |
| 3. Inland Steel and LTV Steel, East Chicago—Lake County | Approval |
| 4. Corning Glass, Bluffton—Wells County | Approval |
| D. Ambient lead monitoring plan | Approval. |
| E. New source review | Approval (Subject of separate rulemaking action). |

USEPA is proposing for approval the Indiana lead SIP, including 325 IAC 15–1, with the understanding that the State will submit as a revision to its SIP:

(1) A commitment during the public comment period to submit the control programs required by 325 IAC 15–1–3(a)(3) to USEPA as a revision to the Indiana SIP by December 31, 1987.

(2) Additional specific increments of progress for the Hammond Lead Products "further study" to be submitted during the public comment period;

(3) The revised control strategy, if necessary, for Hammond Lead Products, to be submitted on or before December 31, 1988;

(4) A revised 325 IAC 15–1 which provides an enforceable mechanism to prevent Quemetco and other smaller sources, if appropriate, from increasing their lead emissions above 5 tons/year, to be submitted during the public comment period; and

(5) An attainment demonstration for Quemetco consistent with USEPA modeling guidelines, to be submitted during the public comment period.

If USEPA ultimately approves 325 IAC 15–1 and the other requirements in Indiana's lead plan, this approval will not affect in any way the existing SIP requirements as they apply to the sources in the lead plan, i.e., the sources remain bound by the existing TSP, opacity, volatile organic compound, etc. SIP requirements.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) If USEPA ultimately disapproves any portion of Indiana's lead SIP, this too will not have a significant economic impact on a substantial number of small entities, because it will impose no new requirements on any source.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: January 30, 1987.

**Frank M. Covington,**

*Acting Regional Administrator.*

[FR Doc. 87–8034 Filed 4–9–87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA–6909]

### Proposed Flood Elevation Determinations; Alabama et al.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001 through 4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

### PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1987, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **ALABAMA** | |
| **Childersburg (city), Talladega County** | |
| *Coosa River* | |
| About 1.1 miles downstream of 12th Avenue | *413 |
| About 4000 feet upstream of Norfolk Southern Railway | *414 |
| *Talisseehatchee Creek* | |
| At mouth | *414 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|
| About 0.7 mile upstream of confluence of Four-mile Branch | *418 |
| *Town Creek* | |
| At mouth | *416 |
| About 1000 feet upstream of Park Lane | *432 |
| *Griffin Branch: Within community* | *417 |
| *Talladega Creek.* | |
| Just downstream of Norfolk Southern Railway | *415 |
| About 1.7 miles upstream of Norfolk Southern Railway | *418 |

**Maps available for inspection** at the City Hall, 118 6th Avenue, SW., Childersburg, Alabama

Send comments to The Honorable B.J. Meeks Mayor, City of Childersburg, City Hall, 118 6th Avenue, S.W., Childersburg, Alabama 35044

**Demopolis (city), Marengo County**

| | |
|---|---|
| *Tombigbee River* | |
| About 0.9 mile downstream of Demopolis Lock and Dam | *92 |
| About 3.2 miles upstream of Demopolis Lock and Dam | *93 |
| *Black Warrior River* | |
| About 4.4 miles upstream of confluence with Tombigbee River | *93 |
| About 5.3 miles upstream of confluence with Tombigbee River | *94 |

**Maps available for inspection** at the City Hall, P.O. Box 580, Demopolis, Alabama.

Send comments to The Honorable Austin Caldwell, Mayor, City of Demopolis, City Hall, P.O. Box 580, Demopolis, Alabama 36732

**Flomaton (town), Escambia County**

| | |
|---|---|
| *Big Escambia Creek* | |
| About 0.6 mile downstream of Louisville & Nashville Railroad | *65 |
| About 1.2 miles upstream of U.S. Highway 31 | *78 |

**Maps available for inspection** at the City Hall, P.O. Box 632, Flomaton, Alabama

Send comments to The Honorable Frank Davis, Mayor, Town of Flomaton, City Hall, P.O. Box 632, Flomaton, Alabama 36441

**Jackson (city), Clarke County**

| | |
|---|---|
| *East Bassett Creek.* | |
| About 500 feet downstream of Depot Road | *34 |
| About 2.45 miles upstream of Depot Road | *45 |
| *Tombigbee River.* | |
| About 1150 feet downstream of Norfolk Southern Railway | *35 |
| About 2.18 miles upstream of Norfolk Southern Railway | *36 |

**Maps available for inspection** at the City Hall, P.O. Box 1096, Jackson, Alabama

Send comments to The Honorable James Arrington, Mayor, City of Jackson, City Hall, P.O. Box 1096, Jackson, Alabama 36545

**Stevenson (city), Jackson County**

| | |
|---|---|
| *Bengis Creek* | |
| About 0.85 mile downstream of Kentucky Street | *607 |
| About 1.17 miles upstream of the Louisville and Nashville Railroad | *618 |
| *Crow Creek* | |
| Just downstream of Lee Highway | *607 |
| About 0.5 mile upstream of the Louisville and Nashville Railroad | *611 |
| *Bengis Creek Tributary:* | |
| At mouth | [illegible] |
| Just downstream of Carroll Street | *619 |

**Maps available for inspection** at the City Hall, 296 West Main Street, Stevenson, Alabama.

Send comments to The Honorable Carl Allen, Mayor, City of Stevenson, City Hall, 296 West Main Street, Stevenson, Alabama 35772.

*Sylacauga (city), Talladega County*

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|
| *Upper Shirtee Creek* | |
| About 750 feet downstream of Old U.S. Highway 280 | *517 |
| About 2430 feet upstream of U.S. Highway 280 | *544 |
| *Tributary No. 1* | |
| At mouth | *529 |
| About 400 feet upstream of Airport Road | *544 |
| *Tributary No. 2:* | |
| At mouth | *539 |
| About 2580 feet upstream of mouth | *545 |
| *Tributary No. 3:* | |
| At mouth | *539 |
| About 2750 feet upstream of mouth | *545 |
| *Darby Branch* | |
| About 800 feet downstream of 4th Street | *529 |
| Just downstream of Quarry Road | *574 |
| Just upstream of Quarry Road | *580 |
| Just downstream of U.S. Highway 280 | *592 |
| Just upstream of U.S. Highway 280 | *599 |
| Just upstream of Pinecrest Road | *631 |
| *Big Ditch* | |
| Just upstream of 8th Street | *530 |
| About 470 feet upstream of Bay Street | *587 |
| *Shirtee Creek* | |
| Just downstream of Odena Road | *465 |
| Just downstream of 6th Street | *533 |
| *Crooked Creek* | |
| About 0.80 mile downstream of State Highway 148 | *520 |
| About 0.62 mile upstream of Backyard Road | *552 |

**Maps available for inspection** at the City Hall, P.O. Box 390, Sylacauga, Alabama.

Send comments to The Honorable John Floyd, Mayor, City of Sylacauga, City Hall, P.O. Box 390, Sylacauga, Alabama 35150

**Vernon (city), Lamar County**

| | |
|---|---|
| *Yellow Creek* | |
| About 1.1 miles downstream of State Highway 17 | *270 |
| About 1.6 miles upstream of Columbus Avenue East | *293 |
| *Tributary No. 1* | |
| About 1250 feet downstream of Yellow Creek Road | *273 |
| About 2100 feet upstream of State Highway 18 | *304 |
| *Buck Creek.* | |
| About 1500 feet downstream of State Highway 18 | *281 |
| About 2500 feet upstream of State Highway 18 | *293 |
| *Town Branch* | |
| About 700 feet downstream of State Highway 17 | *288 |
| About 1.6 miles upstream of First Street Northwest | *338 |

**Maps available for inspection** at the City Hall, P.O. Box 357, Vernon, Alabama.

Send comments to The Honorable Homer C. Smith, Mayor, City of Vernon, City Hall, P.O. Box 357, Vernon, Alabama 35592

**ARKANSAS**

**Independence County**

| | |
|---|---|
| *Blue Creek* | |
| At confluence with Miller Creek | *286 |
| Downstream side of State Route 25/233 | *302 |
| Approximately 1,600 feet upstream of County Route 97 | *341 |
| *Pfeiffer Creek.* | |
| At confluence with Miller Creek | *279 |
| Upstream side of County Route 235 | *357 |
| 40 feet upstream of County Route 87 | *392 |
| *Polk Bayou:* | |
| At confluence with White River | *266 |
| At State Route 69 bypass | *280 |
| *Dry Run Creek.* | |
| At confluence with Polk Bayou | *267 |
| Approximately 1,350 feet upstream of State Route 106 | *285 |
| *Tributary to Miller Creek:* | |
| At confluence with Miller Creek | *293 |
| Approximately 1,350 feet upstream from confluence with Miller Creek | *297 |

**Maps available for inspection** at the County Judge's Office, County Courthouse, Batesville, [illegible]

Send comments to The Honorable David Wyatt, Independence County Judge, County Courthouse, Batesville, Arkansas 72501.

**CALIFORNIA**

**Orinda (City), Contra Costa County**

| | |
|---|---|
| *San Pablo Creek* | |
| 50 feet upstream of Bear Creek Road at EB mud erosion control dam | *340 |
| 150 feet above confluence with Lauterwasser Creek | *391 |
| 50 feet downstream of Orinda Way | *403 |
| At confluence with Overhill Creek | *477 |
| 150 feet downstream of Brookside Road | *526 |
| *Lauterwasser Creek.* | |
| At confluence with San Pablo Creek | *390 |
| North crossing at Miner Road | *423 |
| 100 feet upstream of Oak Arbor Road | *437 |
| 150 feet upstream of Lombardy Lane | *467 |
| 3,400 feet upstream of Lombardy Lane | *537 |
| *Cascade Creek* | |
| At confluence with San Pablo Creek | *391 |
| 870 feet above confluence with San Pablo Creek | *416 |
| 1,920 feet above confluence with San Pablo Creek | *470 |
| *Overhill Creek* | |
| 320 feet above confluence with San Pablo Creek at Moraga Way | *475 |
| 1,240 feet above confluence with San Pablo Creek | *511 |
| 2,000 feet above confluence with San Pablo Creek | *532 |
| *Moraga Creek:* | |
| Corporate limits of the City of Orinda at Ivy Drive | *517 |
| 100 feet upstream of Lavenida Drive | *548 |
| 100 feet upstream of El Camino Moraga | *575 |
| 20 feet downstream of Pacific Gas and Electric Access Road | *605 |

**Maps are available for inspection** at City Hall, 26 Orinda Way, Orinda, California

Send comments to Mayor Joseph Harb, City Hall, 26 Orinda Way, Orinda, California 94563

**Sutter County (Unincorporated Areas)**

| | |
|---|---|
| *Auburn Ravine:* 100 feet downstream from the center of Pleasant Grove Road | *46 |
| *Auburn Ravine:* At a point 150 feet north of the stream and 150 feet west of the Union Pacific Railroad | *1 |
| *Curry Creek:* At Center of Keys Road, 450 feet east of its eastern intersection with Pleasant Grove Road | *41 |
| *Curry Creek Bypass:* 250 feet downstream from the center of Pleasant Grove Road | *39 |
| *East Side Canal* 350 feet downstream from the center of Pacific Avenue | [illegible] |
| *Howsley Creek:* 250 feet upstream from the center of Pleasant Grove Road | *43 |
| *King Slough:* 275 feet upstream from the center of Pleasant Grove Road | *45 |
| *North King Slough:* At center of Catlett Road, 300 feet east of the Union Pacific Railroad | *39 |
| *Pleasant Grove Creek.* At center of Fifield Road, 450 feet west of its intersection with Pleasant Grove Road | *43 |
| *Pleasant Grove Creek Bypass.* 150 feet upstream from the center of Pleasant Grove Road | *44 |
| *Pleasant Grove Creek Canal:* At the intersection of Pacific Avenue and Howsley Road | *37 |
| *Bear River:* At the intersection of Kempton and Pleasant Grove Roads | [illegible] |
| *Cross Canal.* At Center of State Highway 70 and 99, 1 mile south of it intersection with Howsley Road | *30 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Sacramento River:* At the intersection of Girdner and Wood Roads | *45 |
| *Sutter Bypass:* At the intersection of Laurel Avenue and State Highway 99 | *35 |
| **Maps are available for review** at the Planning Department, County Administration Building, 463 Second Street, Yuba City, California 95991 | |
| Send comments to Mr. Larry Combs, County Administrator, 463 Second Street, Yuba City, California 95991 | |
| **COLORADO** | |
| **Hinsdale County** | |
| *Lake Fork of Gunnison River:* | |
| 2,080 feet upstream of Vine Street, South of Lake City | *8,687 |
| 150 feet upstream of Spring Street, 420 feet south of Lake City corporate limits | *8,669 |
| 190 feet downstream of Lake City corporate limits | *8,630 |
| 2,050 feet downstream of San Juan Drive | *8,590 |
| *Henson Creek* | |
| At Lake City corporate limits | *8,685 |
| 900 feet upstream of Gunnison Avenue | *8,686 |
| **Maps are available for inspection** at the Hinsdale County Courthouse, County Administrator's Office, Henson Street, Lake City, Colorado. | |
| Send comments to Mr. Robert Skerry, Chairman, Board of Hinsdale County Commissioners, P.O. Box 403, Lake City, Colorado 81635 | |
| **Lake City (City), Hinsdale County** | |
| *Lake Fork of Gunnison River* | |
| Just upstream of Henson Creek at Lake City corporate limits | *8,667 |
| 450 feet downstream of 9th Street Bridge | *8,632 |
| *Henson Creek* | |
| 250 feet upstream of Lake Fork of Gunnison River | *8,667 |
| Just upstream of Gunnison Avenue | *8,676 |
| At Hinsdale County corporate limits | *8,685 |
| **Maps are available for inspection** at the Hinsdale County Courthouse, County Administrator's Office, Henson Street, Lake City, Colorado | |
| Send comments to Mayor Robert E. Hall, P.O Box 544, Lake City, Colorado 81235. | |
| **FLORIDA** | |
| **Columbia County (Unincorporated Areas)** | |
| *Sante Fe River:* | |
| At western county boundary | *34 |
| At confluence of Olustee Creek | [illegible] |
| *Alligator Lake.* Entire shoreline | *104 |
| **Maps available for inspection** at the Building Official's Office, County Annex Building, P O Drawer 1529, Lake City, Florida. | |
| Send comments to The Honorable James Montgomery, Chairman, County Commission, Columbia County, County Annex Building, P.O. Drawer 1529, Lake City, Florida 32056 | |
| **Lake City (City), Columbia County** | |
| *Alligator Lake* Along shoreline | *104 |
| *Montgomery Outlet Stream* | |
| At mouth | *104 |
| Just downstream of service road east of South Marion Street | *104 |
| Just upstream of South Marion Street | *109 |
| Just downstream of South First Street | *110 |
| Just upstream of Columbia City Road | *115 |
| About 500 feet upstream of Alamo Drive | *131 |
| *Montgomery Lake:* Along shoreline | *131 |
| **Maps available for inspection** at the Building Official's Office, City Building, 150 North Alachua, Lake City, Florida | |
| Send comments to The Honorable Faye Bowling, Acting City Manager, City of Lake City, City Building, 150 North Alachua, Lake City, Florida 32056 | |
| **Suwannee County (Unincorporated Areas)** | |
| *Suwannee River:* | |
| At confluence of Santa Fe River | *32 |
| Just upstream of State Road 250 | *59 |
| About 3.5 miles upstream of Interstate 75 | *85 |
| *Santa Fe River:* | |
| At mouth | *32 |
| About 0.7 mile upstream of confluence of Ichetucknee River | *34 |
| **Maps available for inspection** at the County Coordinator's Office, County Courthouse, 224 Pine Avenue, Live Oak, Florida | |
| Send comments to The Honorable Clarence Crowe, Chairman, County Commission, Suwannee County, County Courthouse, 224 Pine Avenue, Live Oak, Florida 32060. | |
| **GEORGIA** | |
| **Chattahoochee County (Unincorporated Areas)** | |
| *Chattahoochee River:* | |
| About 9.0 miles downstream of confluence of Ochwhee Creek | *212 |
| At the confluence of Upatoi Creek | *224 |
| **Maps available for inspection** at the Office of the Board of Commissioners, County Courthouse, P.O. Box 596, Cusseta, Georgia | |
| Send comments to The Honorable Walter F Rosso, Chairman, Board of County Commissioners, Chattahoochee County, County Courthouse, P.O. Box 596, Cusseta, Georgia 31805. | |
| **ILLINOIS** | |
| **Forsyth (Village), Macon County** | |
| *Stevens Creek:* | |
| Just upstream of Weaver Avenue | *657 |
| About 2,600 feet upstream of Weaver Avenue | *658 |
| **Maps available for inspection** at the Village Hall, 424 Elwood, Forsyth, Illinois | |
| Send comments to The Honorable Dale E. Aupperle, Mayor, Village of Forsyth, Village Hall, 424 Elwood, Forsyth, Illinois 62535. | |
| **ILLINOIS** | |
| **Northbrook (village), Cook County** | |
| *Underwriters Tributary:* | |
| At mouth | *651 |
| Just upstream of Helen Drive | *666 |
| *Techny Drain.* | |
| Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad | *640 |
| About 1,200 feet upstream of Fox Glove Drive | *668 |
| *South Fork Techny Drain:* | |
| At mouth | *652 |
| About 300 feet upstream of Wood Drive | *666 |
| **Maps available for inspection** at the Office of the Village Manager, Northbrook Village Hall, 1225 Cedar Lane, Northbrook, Illinois | |
| Send comments to The Honorable Lucinda Kasperson, Village President, Village of Northbrook, Village Hall, 1225 Cedar Lane, Northbrook, Illinois 60062. | |
| **KENTUCKY** | |
| **Whitesburg (city), Letcher County** | |
| *North Fork Kentucky River:* | |
| About 1.06 miles downstream of confluence of Sandlick Creek | *1,124 |
| About 1.4 miles upstream of Palisade Drive | *1,177 |
| **Maps available for inspection** at the City Hall, Whitesburg, Kentucky. | |
| Send comments to The Honorable James D. Asher, Mayor, City of Whitesburg, City Hall, Whitesburg, Kentucky 41858 | |
| **MAINE** | |
| **Durham (town), Androscoggin County** | |
| *Androscoggin River:* | |
| 200 feet upstream of downstream corporate limits | *81 |
| 100 feet upstream of Worumbo Mill Dam | *108 |
| 250 feet downstream of confluence of Dyer Brook | *122 |
| 500 feet downstream of upstream corporate limits | *127 |
| **Maps available for inspection** at the New Town Offices, Durham, Maine. | |
| Send comments to The Honorable Barbara Chesley, Chairman of the Town of Durham Board of Selectmen, Androscoggin County, Town Offices, R.R. 2, Box 1908, Lisbon Falls, Maine 04252 | |
| **Mattawamkeag (town), Penobscot County** | |
| *Penobscot River:* | |
| At downstream corporate limits | *191 |
| At confluence of Mattawamkeag River | *202 |
| At upstream corporate limits | *240 |
| *Mattawamkeag River:* | |
| At confluence with Penobscot River | *202 |
| Approximately 1.7 miles upstream of Maine Central Railroad Bridge | *212 |
| **Maps available for inspection** at the Town Vault, Mattawamkeag, Maine | |
| Send comments to The Honorable Clifford Davies, First Selectman of the Town of Mattawamkeag, Penobscot County, Town Hall, P.O. Box 260, Mattawamkeag, Maine 04459 | |
| **MICHIGAN** | |
| **Au Sable (township), Iosco County** | |
| *Au Sable River.* | |
| At mouth | *584 |
| About 1400 feet upstream of River Road | *585 |
| *Lake Huron:* Shoreline | *584 |
| **Maps available for inspection** at the Township Hall, 311 Fifth Street, Oscoda, Michigan. | |
| Send comments to The Honorable Dale Lamrock, Supervisor, Township of Au Sable, Township Hall, 311 Fifth Street, Oscoda, Michigan 48750 | |
| **Hamlin (township), Mason County** | |
| *Lake Michigan* Along shoreline | *584 |
| *Hamlin Lake:* Within community | *595 |
| **Maps available for inspection** at the Township Hall, Box 647, 3775 North Jebavy Drive, Ludington, Michigan. | |
| Send comments to The Honorable William L Organ, Supervisor, Township of Hamlin, Township Hall, Box 647, 3775 North Jebavy Drive, Ludington, Michigan 49431 | |
| **Hillsdale (city), Hillsdale County** | |
| *St. Joseph River:* | |
| About 2,800 feet downstream of Mechanic Street | *1,068 |
| About 400 feet upstream of South Street | *1,088 |
| About 450 feet upstream of South Street | *1,097 |
| About 800 feet upstream of Griswold Street | *1,097 |
| *Baw Beese Lake:* Within community | *1,099 |
| **Maps available for inspection** at the City Hall, Corner of Broad and Hillsdale, Hillsdale, Michigan. | |
| Send comments to The Honorable Herbert H. Hine, Mayor, City of Hillsdale, Corner of Broad and Hillsdale, Hillsdale, Michigan 49242 | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Sebewaing (village), Huron County** | |
| *Saginaw Bay:* Within community | *584 |
| *Sebewaing River:* | |
| At mouth | *584 |
| At confluence of State Drain | *593 |
| *State Drain:* Within community | *593 |
| **Maps available for inspection** at the Village Hall, 108 W. Main, Sebewaing, Michigan. | |
| Send comments to The Honorable Walter Engeohart, Village President, Village of Sebewaing, Village Hall, 108 W. Main, Sebewaing, Michigan 48759. | |
| **Summit (township), Mason County** | |
| *Lake Michigan:* Along shoreline | *584 |
| *Bass Lake:* Along shoreline | *584 |
| **Maps available for inspection** at the Township Hall, 6019 South U.S. 31, Ludington, Michigan. | |
| Send comments to The Honorable Edward S. Iteen, Supervisor, Township of Summit, Township Hall, 6019 South U.S. 31, Ludington, Michigan 49431. | |
| **MINNESOTA** | |
| **Carver County (unincorporated areas)** | |
| *Minnesota River:* | |
| About 3.7 miles downstream of County Highway 9 | *725 |
| About 500 feet upstream of State Highway 25 | *732 |
| *South Fork Crow River:* | |
| About 700 feet upstream of county boundary | *934 |
| Just downstream of County Highway 30 | *952 |
| *Mapes Creek:* Within community | *935 |
| **Maps available for inspection** at the Planning and Zoning Office, 600 East Fourth Street, Chaska, Minnesota. | |
| Send comments to The Honorable Earl F. Gnaw, Chairman, County Board, Carver County, 600 East Fourth Street, Chaska, Minnesota 55318. | |
| **Sibley County (unincorporated areas)** | |
| *Minnesota River:* | |
| About 1,300 feet downstream of State Highway 25 | *730 |
| About 0.8 mile upstream of State Highway 93 | *784 |
| **Maps available for inspection** at the Planning and Zoning Office, P.O. Box 171, Gaylord, Minnesota. | |
| Send comments to The Honorable Robert Bade, Chairman, County Board, Sibley County, P.O. Box 171, Gaylord, Minnesota 55334. | |
| **MISSOURI** | |
| **Bigelow (village), Holt County** | |
| *Missouri River:* Within community | *866 |
| **Maps available for inspection** at the Sportman Lodge, Bigelow, Missouri | |
| Send comments to The Honorable Georgia Stone, Chairman of the Board of Trustees, Village of Bigelow, Sportman, Missouri 64425. | |
| **Big Lake (village), Holt County** | |
| *Missouri River:* | |
| At Intersection of U.S. Highway 159 and State Highway 111 | *861 |
| About 1.2 miles south of intersection of State Highway 111 and State Highway 118 | [illegible] |
| **Maps available for inspection** at the City Building, Big Lake, Missouri. | |
| Send comments to The Honorable Donald C. Gilmore, Chairman on the Board of Trustees, Village of Big Lake, RR1, Box 227, Bigelow, Missouri 64425. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Charlton County (unincorporated areas)** | |
| *Missouri River:* | |
| About 0.4 mile downstream of confluence of Little Charlton River | *628 |
| About 6.7 miles upstream of confluence of Grand River | *651 |
| **Maps available for inspection** at the County Courthouse, Keytesville, Missouri | |
| Send comments to The Honorable Larry Peters, Presiding Commissioner, Charlton County, County Courthouse, Keytesville, Missouri 65261. | |
| **Corning (town), Holt County** | |
| *Missouri River:* Within community | *879 |
| **Maps available for inspection** at the Town Clerk's Residence, Rt. 1, Box 39C, Corning, [illegible] | |
| Send comments to The Honorable John Stout, Chairman of the Board of Trustees, Town of Corning, P.O. Box 553, Corning, Missouri 64435. | |
| **Craig (city), Holt County** | |
| *Missouri River:* Within community | *871 |
| **Maps available for inspection** at the City Hall, Craig, Missouri. | |
| Send comments to The Honorable Frank B. Gates, Mayor, City of Craig, City Hall, Craig, Missouri 64437. | |
| **Forest City (city), Holt County** | |
| *Missouri River:* | |
| At Intersection of Burlington Northern railroad and B Street | *850 |
| At Intersection of Burlington Northern railroad and Collins Street | *851 |
| **Maps available for inspection** at the Mayor's Office, City Hall, P.O. Box 222, Forest City, Missouri. | |
| Send comments to The Honorable Greg Book, Mayor, City of Forest City, City Hall, P.O. Box 222, Forest City, Missouri 64451. | |
| **Fortescue (town), Holt County** | |
| *Missouri River:* Within community | *861 |
| **Maps available for inspection** at the Chairman's Home, Fortescue, Missouri | |
| Send comments to The Honorable Quentin Goolsby, Chairman of the Board of Trustees, Town of Fortescue, Fortescue, Missouri 64452. | |
| **Holt County (Unincorporated Areas)** | |
| *Missouri River:* | |
| At confluence of Nodaway River | *833 |
| At northern county boundary | *885 |
| **Maps available for inspection** at the County Clerk's Office, Oregon, Missouri | |
| Send comments to The Honorable John Killin, Presiding Commissioner, Holt County, Holt County Courthouse, Oregon, Missouri 64443. | |
| **Lake St. Louis (City), St. Charles County** | |
| *Peregue Creek* | |
| Just downstream of North Outer Road | *491 |
| Just downstream of Lake St. Louis Dam | *492 |
| Just upstream of Lake St. Louis Dam | *505 |
| About 1.2 miles upstream of U.S. Highway 40 | *516 |
| **Maps available for inspection** at the City Hall, 1000 Lake St. Louis Boulevard, Lake St. Louis, Missouri | |
| Send comments to The Honorable Steve Linehan, Mayor, City of Lake St. Louis, 1000 Lake St. Louis Boulevard, Lake St. Louis, Missouri 63367. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Mound City (City), Holt County** | |
| *Missouri River:* | |
| At the intersection of Interstate 29 and Burlington Northern railroad | *866 |
| About 1000 feet west of intersection of Highway N and North Street | *867 |
| **Maps available for inspection** at the City Hall, 205 East Sixth Street, Mound City, Missouri. | |
| Send comments to The Honorable Dellie Elton, Mayor, City of Mound City, City Hall, 205 East Sixth Street, Mound City, Missouri 64470 | |
| **Perry County (Unincorporated Areas)** | |
| *Mississippi River:* | |
| At southern county boundary | *370 |
| About 2.0 miles upstream from confluence of Old River | *393 |
| *Apple Creek:* | |
| About 2.7 miles downstream of U.S. Highway 61 | *388 |
| About 1.7 miles upstream of U.S. Highway 61 | *420 |
| **Maps available for inspection** at the County Courthouse, 15 West Ste. Manes, Perryville, Missouri | |
| Send comments to The Honorable Karl Klaus, Presiding Commissioner, Perry County, County Courthouse, 15 West St. Manes, Perryville, Missouri 63775. | |
| **MONTANA** | |
| **Lake County** | |
| *Lower Swan River:* | |
| Approximately 100 feet upstream of the Flathead County line | *3,034 |
| Approximately 800 feet upstream of Johnson Creek at Swan Lake | *3,073 |
| *Upper Swan River:* | |
| At downstream limit of detailed study | *3,095 |
| Approximately 3120 feet downstream of the confluence with Whitetail Creek | *3,120 |
| Approximately 4350 feet downstream of the confluence with South Woodward Creek | *3,172 |
| At confluence with Cedar Creek | *3,233 |
| Approximately 120 feet downstream of the confluence with Lion Creek | *3,358 |
| At the confluence with Jim Creek | *3,417 |
| Approximately 320 feet upstream of the confluence with Alder Creek | *3,430 |
| At Missoula County Line | *3,503 |
| **Maps are available for inspection** at the Lake County Planning Division, County Courthouse, Polson, Montana. | |
| Send comments to Mr. Donald Peterson, Chairman, Lake County Board of Commissioners, County Courthouse, Polson, Montana 59860 | |
| **NEW HAMPSHIRE** | |
| **Farmington (town), Strafford County** | |
| *Cocheco River:* | |
| At downstream corporate limits | *236 |
| At Watson's Cross Road | *256 |
| Approximately 0.6 mile upstream of confluence of Ela River | *314 |
| *Mad River:* | |
| Confluence with Cocheco River | *276 |
| At State Route 11 | *319 |
| Approximately .4 mile upstream of State Route 11 | *360 |
| Approximately 0.3 mile downstream of New River Road | *395 |
| At downstream side of New River Road | *435 |
| Approximately 0.4 mile upstream of New River Road | *483 |
| Approximately 0.7 mile upstream of New River Road | *515 |
| Upstream side of Hornetown Road | *573 |
| *Ela River:* | |
| At confluence with Cocheco River | *310 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 0.5 mile downstream of Spring Street | *336 |
| At upstream side of Spring Street | *365 |
| At upstream corporate limits | *384 |
| *Dames Brook:* | |
| At confluence with Cocheco River | *261 |
| Approximately 170 feet upstream of Elm Street | *266 |
| *Kicking Horse Brook:* | |
| At confluence with Dames Brook | *266 |
| At downstream side of Winter Street | *277 |
| Approximately 40 feet upstream of Glen Street | *325 |
| Approximately 96 feet upstream of Charles Street | *380 |
| **Maps available for inspection** at c/o Planning Board, Town Hall, Farmington, New Hampshire. | |
| Send comments to The Honorable John Scurton, Chairman of the Town of Farmington Board of Selectmen, Strafford County, Town Hall, Farmington, New Hampshire 03835 | |
| **NEW YORK** | |
| **Fayette (Town), Seneca County** | |
| *Seneca Lake:* Entire shoreline within community | *449 |
| *Seneca River:* | |
| At eastern corporate limits | *448 |
| Upstream side of State Route 96A | *449 |
| *Cayuga Lake:* Entire shoreline within community | *386 |
| **Maps available for inspection** at the Town Clerk's Office, 2932 Route 96, Waterloo, New York. | |
| Send comments to The Honorable Gail Abbott, Supervisor for the Town of Fayette, Seneca County, 3430 Route 89, Seneca Falls, New York 13148 | |
| **Lodi (Town), Seneca County** | |
| *Seneca Lake:* Entire shoreline within community | *449 |
| **Maps available for inspection** in c/o Louis Jennings, Town Clerk, East Seneca Street (10 a.m.–4 p.m., Monday–Friday). | |
| Send comments to The Honorable Francis Hurd, Supervisor of the Town of Lodi, Seneca County, Box 185, Lodi, New York 14860 | |
| **Ovid (Town), Seneca County** | |
| *Cayuga Lake:* Entire shoreline within community | *386 |
| *Seneca Lake:* Entire shoreline within community | *449 |
| **Maps available for inspection** in c/o Cynthia J. Xavier, Town Clerk, 7122 Orchard Street, Ovid, New York | |
| Send comments to The Honorable Lawrence Wilkins, Supervisor for the Town of Ovid, Seneca County, R.D. 2, Box 93, Route 414, Ovid, New York 14521 | |
| **Starkey (Town), Yates County** | |
| *Seneca Lake:* Entire shoreline within community | *449 |
| **Maps available for inspection** at the Town Hall, 40 Seneca Street, Dundee, New York | |
| Send comments to The Honorable Edward J. Raps, Supervisor for the Town of Starkey, Yates County, 35 Main Street, Dundee, New York 14837 | |
| **Torrey (Town), Yates County** | |
| *Seneca Lake:* Entire shoreline within community | *449 |
| *Keuka Lake Outlet:* | |
| Confluence with Seneca Lake | *449 |
| Downstream side of CONRAIL bridge | *459 |
| At upstream side of Route 14 Bridge | *473 |
| **Maps available for inspection** at the Torrey Town Clerk's Office, Geneva Street, Dresden, New York. | |
| Send comments to The Honorable Patrick Flynn, Supervisor for the Town of Torrey, Yates County, Box 280, Dresden, New York 14441. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Varick (Town), Seneca County** | |
| *Seneca Lake:* Entire shoreline within community | *449 |
| *Cayuga Lake:* Entire shoreline within community | *386 |
| **Maps available for inspection** at the Town Clerk's Home, 1736 Route 336, Romulus, New York | |
| Send comments to The Honorable Robert Hayssen, Supervisor for the Town of Varick, Seneca County, 2221 Lake Road, Seneca Falls, New York 13148. | |
| **OHIO** | |
| **Garfield Heights (City), Cuyahoga County** | |
| *Mill Creek:* | |
| About 800 feet downstream of Broadway | *790 |
| Just downstream of McCracken Road | *842 |
| **Maps available for inspection** at the City Hall, 5555 Turney Road, Garfield Heights, Ohio. | |
| Send comments to The Honorable Thomas J. Longo, Mayor, City of Garfield Heights, City Hall, 5555 Turney Road, Garfield Heights, Ohio 44125 | |
| **OKLAHOMA** | |
| **Tishomingo (City), Johnston County** | |
| *Pennington Creek:* | |
| At downstream corporate limits | *640 |
| Upstream side of Twelfth Street | *644 |
| Approximately 100 feet upstream of New Low Water Dam | [illegible] |
| Approximately 1,000 feet downstream of upstream corporate limits | *665 |
| *Pennington Creek Tributary 1:* | |
| Downstream side of Kemp Avenue | *640 |
| 100 feet downstream of State Route 22 | *651 |
| **Maps available for inspection** at 201 South Capitol Street, Tishomingo, Oklahoma. | |
| Send comments to The Honorable Wesley Lemons, Mayor of the City of Tishomingo, Johnston County, 201 South Capitol Street, Tishomingo, Oklahoma 73460. | |
| **Wyandotte (Town), Ottawa County** | |
| *Lost Creek:* Approximately 250 feet upstream of Lost Creek County highway | *758 |
| **Maps available for inspection** at the Town Hall, Wyandotte, Oklahoma. | |
| Send comments to The Honorable Thomas Derwin, Mayor of the Town of Wyandotte, Ottawa County, P.O. Box 251, Wyandotte, Oklahoma 74370. | |
| **PENNSYLVANIA** | |
| **Fayette (Township), Juniata County** | |
| *Lost Creek:* | |
| Approximately 1,200 feet downstream of State Route 35 | *560 |
| Downstream side of State Route 35 | *566 |
| Approximately 500 feet upstream of [illegible] Route 35 | *589 |
| *Little Lost Creek:* | |
| Approximately 2,750 feet downstream side of State Route 35 | *612 |
| Upstream side of State Route 35 | *629 |
| Upstream side of County Route 235 | *640 |
| Upstream side of LR34034 | *655 |
| **Maps available for inspection** at c/o Ms. Joyce Hart, Township Secretary, R.D. 1, Cocolamus, Pennsylvania | |
| Send comments to The Honorable Delbert Seiler, Chairman of the Township of Fayette Board of Supervisors, Juniata County, P.O. Box 145, McAlisterville, Pennsylvania 17049. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Greenwood (Township), Juniata County** | |
| *Cocolamus Creek:* | |
| At downstream corporate limits | *475 |
| Approximately 1,575 feet upstream of downstream corporate limits | *481 |
| **Maps available for inspection** at the Township Building, Route 235, Greenwood, Pennsylvania. | |
| Send comments to The Honorable Ronald Chubb, Chairman of the Township of Greenwood Board of Supervisors, Juniata County, R.D. 1, Millerstown, Pennsylvania 17062. | |
| **Lack (Township), Juniata County** | |
| *Tuscarora Creek:* | |
| Approximately 1,300 feet downstream of confluence with George Creek | [illegible] |
| Approximately 160 feet upstream of Legislative Route 34001 | *704 |
| **Maps available for inspection** at the Township Secretary's Office, East Waterford, Pennsylvania. | |
| Send comments to The Honorable Paul Clouser, Chairman of the Township of Lack Board of Supervisors, Juniata County, R.D. 1, East Waterford, Pennsylvania 17021. | |
| **Tuscarora (Township), Juniata County** | |
| *Tuscarora Creek:* | |
| Approximately 2,300 feet downstream of LR 34068 | *607 |
| Upstream side of LR 34068 | *611 |
| Upstream corporate limits | *613 |
| *Laurel Run:* | |
| Approximately 2,000 feet downstream of T-309 (extended) | [illegible] |
| Downstream side of T-309 (extended) | [illegible] |
| Approximately 1,350 upstream of State Route 75 | [illegible] |
| *Laurel Run (east):* | |
| Side channel approximately 900 feet upstream of Flint Hollow Road | *610 |
| Side channel approximately 600 feet downstream of State Route 75 | [illegible] |
| *Laurel Run (west):* | |
| Side channel approximately 100 feet upstream of State Route 75 | *678 |
| Side channel approximately 1,200 feet upstream of State Route 75 | *695 |
| **Maps available for inspection** in c/o Eleanor Page, Township Secretary, R.D. #1, Honey Grove, Pennsylvania. | |
| Send comments to The Honorable Homer Hutchinson, Chairman of the Township of Tuscarora Board of Supervisors, Juniata County, R.D. #1, Honey Grove, Pennsylvania 17035. | |
| **West Perry (Township), Snyder County** | |
| *West Branch Mahantango Creek:* | |
| Approximately 240 feet downstream of Legislative Route 34010 | *618 |
| Upstream side of State Route 35 | [illegible] |
| Approximately 300 feet upstream of Township Route 306 | *665 |
| **Maps available for inspection** at Mr. Elmer Apple's Residence, Township Secretary, Star Route, Richfield, Pennsylvania. | |
| Send comments to The Honorable Howard Benner, Chairman of the Township of West Perry Board of Supervisors, Snyder County, R.D. 2, Mt. Pleasant Mills, Pennsylvania 17853. | |
| **TENNESSEE** | |
| **Cocke County (Unincorporated Areas)** | |
| *French Broad River:* | |
| About 0.7 mile downstream of the confluence of Clay Creek | *1,001 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|
| About 2.0 miles upstream of Good Hope Branch | *1,063 |
| *Pigeon River:* | |
| At mouth | *1,017 |
| Just downstream of Greasy Cove Road | *1,179 |
| *Sinking Creek:* | |
| At mouth | *1,031 |
| Just upstream of Norfolk Southern Railway | *1,036 |
| Just downstream of the upstream crossing of U.S. Route 411 | *1,112 |
| Just upstream of the upstream crossing of U.S. Route 411 | *1,120 |
| At Carson Springs Road | *1,493 |
| *Cosby Creek* | |
| Just downstream of Ball Park Road | *1,321 |
| Just downstream of State Route 32 | *1,649 |
| *Indian Camp Creek:* | |
| At mouth | *1,403 |
| About 1.4 miles upstream of mouth | *1,547 |

**Maps available for inspection** at the County Executive's Office, County Courthouse, Newport, Tennessee

Send comments to The Honorable Charles Lewis Moore, County Executive, Cocke County, County Courthouse, Newport, Tennessee 37821

**TEXAS**

**Archer County**

| | |
|---|---|
| *Holliday Creek.* | |
| Confluence with Lake Wichita | [illegible] |
| Downstream side of FM 1954 | *1,005 |
| *Holliday Creek Tributary:* | |
| Confluence with Holliday Creek | *999 |
| Downstream side of U.S. Route 82 and 277 | *1,018 |
| *Pecan Creek:* | |
| Confluence with Lake Wichita | [illegible] |
| At FM 1954 | *1,004 |
| *Lake Wichita:* Entire shoreline within community | *986 |

**Maps available for inspection** at the County Courthouse, Archer City, Texas

Send comments to The Honorable William Holder, Archer County Judge, Archer County Courthouse, Archer City, Texas 76351

**Jacksboro (City), Jack County**

| | |
|---|---|
| *Stream LCC-1:* | |
| Confluence with Little Cleveland Creek | *1,020 |
| Approximately 50 feet upstream of Archer Street | *1,084 |
| *Stream LCC-1 Diversion Channel:* | |
| Confluence with Stream LCC-1 | *1,041 |
| Divergence of Stream LCC-1 | *1,049 |
| *Stream LCC-2:* | |
| Downstream corporate limits | *1,054 |
| Approximately 50 feet upstream of upstream corporate limits | *1,085 |
| *Lost Creek* | |
| Downstream corporate limits | *983 |
| Confluence of Stream LC-3 | *1,032 |
| Approximately 100 feet upstream Abandoned Chicago Rock Island Pacific Railroad | *1,051 |
| *Lake Jacksboro Spillway Channel:* | |
| Confluence with Lost Creek | *983 |
| Lake Jacksboro Spillway | *1,023 |
| *LC-1* | |
| Upstream side of County Road | *1,034 |
| Upstream corporate limits | *1,044 |
| *Stream LC-2* | |
| Confluence with Lost Creek | *1,025 |
| Approximately 2,000 feet upstream of confluence with Lost Creek | *1,070 |
| *Stream LC-3:* | |
| Confluence with Lost Creek | *1,032 |
| Approximately 200 feet upstream of upstream corporate limits | *1,092 |
| *Rock Quarry Reservoir:* | |
| Confluence with Stream LC-3 | *1,075 |
| Divergence from Stream LC-3 | *1,084 |

**Maps available for inspection** at the City Hall, Archer Street, Jacksboro, Texas

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|

Send comments to The Honorable F.C. Herd, Mayor of the City of Jacksboro, Jack County P.O. Box 254, Jacksboro, Texas 76056

**UTAH**

**City of Duchesne, Duchesne County**

| | |
|---|---|
| *Strawberry River:* At South Boundary Street | *5,498 |
| *Duchesne River:* 120 feet upstream from center of Center Street | *5,518 |
| *Indian Creek:* 100 feet upstream from confluence with Strawberry River | *5,514 |

**Maps are available for review** at the Planning Department, 165 S. Center, Duchesne, Utah [illegible]

Send comments to The Honorable Rojean Addley, Mayor, Duchesne City Corporation, 165 S Center, Duchesne, Utah 84021.

**City of Manti, Sanpete County**

| | |
|---|---|
| *South Creek:* | |
| Intersection of Main Street (U.S. Highway 89) and 300 South Street | #1 |
| Intersection of 200 South Street and 400 West Street | #1 |
| Intersection of 400 South Street and 400 West Street | #1 |

**Maps are available for inspection** at Office of City Recorder, 50 South Main Street, Manti, Utah

Send comments to Mayor Marjone Peterson, 50 South Main Street, Suite #1, Manti, Utah 84642

[illegible]

**Barnet (Town), Caledonia County**

| | |
|---|---|
| *Connecticut River:* | |
| Approximately 2,400 feet downstream of McIndoes Dam | *433 |
| Upstream side of McIndoes Dam | *466 |
| At confluence of Passumpsic River | *470 |
| Approximately 240 feet downstream of Commerford Dam | *484 |
| Approximately 1.1 miles upstream of Commerford Dam | *659 |
| *Passumpsic River:* | |
| At confluence with Connecticut River | *470 |
| Upstream side of East Barnet Dam | *497 |
| Approximately 300 feet downstream of Passumpsic Dam | *513 |
| Approximately 925 feet upstream of Passumpsic Dam | *534 |
| *Stevens River:* | |
| At confluence with Connecticut River | *468 |
| Approximately 100 feet upstream of State Route 8 | *557 |
| Approximately 450 feet upstream of Town Highway 56 | *648 |
| Approximately 70 feet upstream of Mill Dam | *745 |
| Approximately 150 feet upstream of State Route 1 | *768 |
| Upstream side of Harvey Lake Dam | *895 |

**Maps available for inspection** at the Town Clerk's Office, Town Office, Barnet, Vermont 05821

Send comments to The Honorable Rodney Mitchell, Chairman of the Town of Barnet Board of Selectmen, Caledonia County, Town Office, Barnet, Vermont 05821.

**Norwich (Town), Windsor County**

| | |
|---|---|
| *Connecticut River* | |
| At downstream corporate limits | *388 |
| At upstream corporate limits | *399 |
| *Ompompanuosuc River* | |
| Approximately 200 feet downstream of State Route 132 | *398 |
| Approximately 40 feet upstream of the upstream corporate limits | *412 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | # Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|
| *Bloody Brook* | |
| Approximately 50 feet downstream of Elm Street | *465 |
| Approximately 1.1 miles upstream of Turnpike Road (5th upstream crossing) | *831 |
| *New Boston Brook* | |
| Approximately 3,450 feet upstream of confluence with Bloody Brook | *728 |
| Approximately 1.2 miles upstream of confluence with Bloody Brook | *737 |

**Maps available for inspection** at the Town Clerk's Office, Tracy Hall, Norwich, Vermont

Send comments to The Honorable Morgan Goodnch, Chairman of the Town of Norwich Board of Selectmen, Windsor County, P.O. Box 376, Norwich, Vermont 05055

**WASHINGTON**

**Asotin (City), Asotin County**

| | |
|---|---|
| *Asotin Creek* | |
| 140 feet downstream of State Highway 129 (First Street) | *752 |
| Above Second Street | *781 |
| Above Costley Lane Bridge | *775 |
| At Western corporate limits, 660 feet above Costley Lane Bridge | *777 |
| *Asotin Creek Right Overbank:* Between First and Second Streets | #1 |

**Maps available for inspection** at City Hall, 130 Second Street, Asotin, Washington

Send comments to Mayor Robert Alexander, City Hall, 130 Second Street, Asotin, Washington 99402

**Asotin County**

| | |
|---|---|
| *Grande Ronde River* | |
| 700 feet above center line of Snake River | 834 |
| Approximately 1.1 miles above center line of Snake River | *848 |
| Approximately 2.1 miles above center line of Snake River and 170 feet from Section Line between Sections 23 & 24 | *863 |
| *Asotin Creek* | |
| 140 feet downstream of State Highway 129 (First Street) | *752 |
| Above Costley Lane Bridge | *775 |
| At upstream side of Morgan Road Bridge | *815 |
| At Unnamed Bridge approximately 1.2 miles above Morgan Road Bridge | *891 |
| 120 feet below confluence of George Creek | 937 |

**Maps are available for inspection** at the Asotin County Courthouse, 135 Second Street, Asotin, Washington

Send comments to Mr. Neil Ausman, Asotin County Commissioner, P.O. Box 250, Asotin, Washington 99402

[illegible]

**Evanston (City), Uinta County**

| | |
|---|---|
| *Bear River* | |
| Approximately 4000 feet downstream of Avenue C at corporate limits | *6698 |
| Just downstream of Holland Drive | *6727 |
| Approximately 100 feet upstream of County Road | *6738 |
| Approximately 150 feet upstream of Route 89 | *6744 |
| Just downstream of Interstate 80 | *6766 |
| Approximately 3000 feet upstream of Interstate 80 | *6785 |

**Maps are available for inspection** at the Assistant Engineer's Office, 33 Independence Circle, Evanston, Wyoming

Send comments to Mayor Dennis Ottley, 1200 Main Street, Evanston, Wyoming 82930

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Alabama | Carbon Hill, (City), Walker County. | Lost Creek | About 0.5 mile downstream of U.S. Highway 78 | *402 | *402 |
| | | | About 1.2 miles upstream of Howard Road | None | *425 |
| | | Poplar Tributary | About 0.5 mile downstream of Widow's Lane Road | None | *402 |
| | | | Just downstream of Poplar Street | None | *428 |
| | | | Just upstream of Poplar Street | None | *446 |
| | | | About 850 feet upstream of 8th Avenue | None | *476 |
| | | Allen Creek | At mouth | None | *418 |
| | | | About 1450 feet upstream of Nubbin Ridge Road | None | *424 |

Maps available for inspection at the City Hall, P.O. Drawer 459, Carbon Hill, Alabama.

Send comments to The Honorable H.V. Atkins, Mayor, City of Carbon Hill, City Hall, P.O. Drawer 459, Carbon Hill, Alabama 35549.

| | | | | | |
|---|---|---|---|---|---|
| Arizona | City of Prescott, Yavapai County | Willow Creek Reservoir Tributary | Willow Creek Road | *5,156 | None |
| | | | 1.0 mile above Willow Creek Road | *5,250 | None |
| | | | 1.6 miles above Willow Creek Road | *5,305 | None |
| | | | 2.2 miles above Willow Creek Road | *5,365 | None |
| | | | 2.7 miles above Willow Creek Road | *5,419 | None |
| | | Willow Creek Tributary | At confluence with Willow Creek | *5,197 | None |
| | | | 0.3 mile above confluence with Willow Creek | *5,218 | None |
| | | | 0.41 mile above confluence with Willow Creek | *5,228 | None |
| | | | Upstream side of Pleasant Valley Road Bridge | *5,246 | None |
| | | | 0.07 mile above Horizon Hills Road | *5,251 | None |
| | | Willow Creek (with levee) | Downstream of corporate limits | *5,167 | None |
| | | | 0.18 mile above Willow Creek Road Bridge | *5,173 | None |
| | | | Lorraine Drive | *5,187 | None |
| | | Willow Creek (without levee) | Downstream corporate limits | *5,167 | *5,167 |
| | | | 0.18 mile above Willow Creek Road Bridge | *5,174 | *5,174 |
| | | | 0.55 mile above Willow Creek Road Bridge | *5,188 | *5,186 |
| | | | 1.55 miles above Willow Creek Road Bridge | *5,226 | 5,226 |
| | | | Upstream corporate limits | *5,245 | *5,243 |

Maps are available for inspection at the City Engineer's Office, 221 South Cortez Street, Prescott, Arizona.

Send comments to Mayor Jem Wagner, P.O. Box 2059, Prescott, Arizona 86302.

| | | | | | |
|---|---|---|---|---|---|
| California | Colton (City), San Bernardino County. | Warm Creek | City of Colton Corporate Limits | none | #940 |
| | | | Upstream of San Bernardino Freeway | none | #955 |
| | | | Downstream of San Bernardino Freeway | none | #957 |
| | | | Southern Pacific Railroad | none | #957 |
| | Reche Canyon Channel | City of Colton Corporate limits (most upstream limit of study). | *1304 | *1,304 | |
| | | | Mobile Home Road | *1244 | *1,244 |
| | | | Barton Road | *1041 | *1,041 |
| | | | Confluence with San Timoteo Wash A Baseline | *930 | *931 |
| | | | Confluence with Santa Ana River | *925 | *925 |
| | | San Timoteo Wash A | Hunts Lane | None | *934 |
| | | | Confluence with San Timoteo Wash B Baseline | None | *941 |
| | | | Interstate 15 | none | *941 |
| | | | Mt. Vernon Avenue | none | *939 |
| | | | Confluence with Reche Canyon Channel | none | *939 |
| | | San Timoteo Wash B | Confluence with San Timoteo Wash A | none | *966 |
| | | | Interstate 15 | none | *961 |
| | | | Limit of Study | none | *952 |

Maps are available for inspection at City Hall, 650 N. La Cadena Drive, Colton, California.

Send comments to Mayor Robert Huntoon, 650 N. La Cadena Drive, Colton California 92324.

| | | | | | |
|---|---|---|---|---|---|
| California | City of Napa, Napa County | Napa River | Downstream corporate limits, 1.8 miles downstream of State Highway 12. | *9 | *7 |
| | | | Just downstream of Imola Avenue | *10 | *12 |
| | | | Just upstream of Third Street | *17 | *19 |
| | | | Approximately 200 feet upstream of Lincoln Avenue | *24 | *25 |
| | | | Approximately 1000 feet downstream of the confluence with Milliken Creek: | | |
| | | | —east [redacted] Levee | *25 | *27 |
| | | | —west [redacted] levee | *25 | [redacted] |

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Just downstream of Transcas Road (this location was formerly outside of the corporate limits) | | |
| | | | —east of levee | None | *30 |
| | | | —west of levee | None | *28 |

Maps are available for inspection at the City of Napa Public Works Department, Napa California

Send comments to Mayor Robert Pelusi, City Hall, P.O. Box 660, Napa, California, 94559.

| | | | | | |
|---|---|---|---|---|---|
| California | City of Sacramento Sacramento County | Sacramento River | Approximately 700 feet downstream of Pioneer Memorial Bridge | None | *30 |
| | | | At downstream corporate limits | None | *24 |
| | | Morrison Creek | At Western Pacific Railroad | *13 | *15 |
| | | | At Meadowview Road | *15 | *16 |
| | | | At Franklin Boulevard | *16 | *17 |
| | | | Approximately 400 feet upstream of Stockton Boulevard | *24 | *24 |
| | | | Just downstream of Logan Street Extention | None | *28 |
| | | | At Florin Perkins Road | *41 | *40 |
| | | | Just downstream of Central California Traction Railroad | *42 | *43 |
| | | | Approximately 300 feet downstream of Elk Grove Florin Road | None | *46 |
| | | Elder Creek | Just downstream of Franklin Boulevard | *16 | *17 |
| | | | Approximately 200 feet downstream of Center parkway | *18 | *20 |
| | | | Just downstream of U.S. highway 99 | *20 | *23 |
| | | Florin Creek | Approximately 150 feet downstream of Franklin Boulevard | *16 | *17 |
| | | | Just downstream of Brookfield Drive | *17 | *18 |
| | | | Just upstream of Center Parkway | *18 | *20 |
| | | | Just downstream of Florin Perkins Road | *36 | *37 |
| | | Laguna Creek | Just upstream of Franklin Boulevard | *18 | *18 |
| | | | Approximately 150 feet downstream of Sheldon Road | *22 | *23 |
| | | Unionhouse, Creek | Just downstream of Franklin Boulevard | *15 | *16 |
| | | | Approximately 300 feet upstream of Center Parkway | *18 | *20 |
| | | | Approximately 120 feet upstream of U.S Highway 99 | *24 | *26 |
| | | | Just downstream of Stockton Boulevard | *26 | *27 |

Maps are available for inspection at City Hall, Department of Public Works, 915 I Street, Room 207, Sacramento, California

Send comments to Mayor Anne Rudin, City Hall, 915 I Street, Room 205, Sacramento, California 95814

| | | | | | |
|---|---|---|---|---|---|
| California | City of Stockton, San Joaquin County. | San Joaquin River | At downstream corporate limits | None | *7 |
| | | | At Navy Drive | *8 | *8 |
| | | | Just upstream of State Highway 4 | *11 | *11 |
| | | | Along Atchison Topeka and Santa Fe Coal Road on Roberts Island | None | *7 |
| | | | In North Stockton at the intersection of March Lane and Quail Lakes Drive | None | *7 |
| | | | Wright Tract between the Corporate limits and Fourteen Mile Slough | None | *7 |
| | | | Along Manners Drive North of Lower Mosher Creek | None | *7 |
| | | | In North Stockton at he intersection of Wagner Heights Road extended and an unnamed road located approximately 850 feet southwest of the intersection of Wagner Heights Road and Lucille Avenue | None | *7 |
| | | Calaveras River | At the intersection of Pershing Avenue and Monterey Avenue | None | *11 |
| | | | At the intersection of Buena Vista Avenue and Lucerne Avenue | None | *8 |

Maps are available for inspection at the Department of Public Works, 425 N. El Dorado Street, Stockton, California.

Send comments to Mayor Barbara Fass, City Hall, 425 N. El Dorado Street, Stockton, California 95202

| | | | | | |
|---|---|---|---|---|---|
| Hawaii | Hawaii County | Waikoloa Stream | Approximately 7,350 feet downstream of Lindsey Road | None | *2,547 |
| | | | Approximately 50 feet downstream of Lindsey Road | None | *2,668 |
| | | | Approximately 20 feet downstream of Kawahae-Waimea Road | None | *2,676 |
| | | | Approximately 5,450 feet upstream of Kawahae-Waimea Road | None | *2,875 |
| | | Kamuela Stream No. 1 | At confluence with Waikoloa Stream | None | *2,674 |
| | | | Approximately 20 feet upstream of Kamamalu Street | None | *2,725 |
| | | | Approximately 1,650 feet upstream of Kamamalu Street | None | *2,748 |
| | | Waiakea Stream | At Kilauea Avenue | *7 | *10 |
| | | | Approximately 10 feet downstream of Komohana Street | None | *313 |
| | | | Approximately 100 feet upstream of Kawaiani Street | None | *471 |
| | | | Approximately 1,580 feet upstream of Kupulau Road | None | *628 |
| | | Waiakea Tributary No. 1 | At confluence with Waiakea Stream | None | *312 |
| | | | 400 feet upstream of Komohala Drive | None | *368 |
| | | | 200 feet upstream of Malanani Place | None | *385 |
| | | | Approximately 2,480 feet upstream of Malanani Drive | None | *440 |
| | | Waiakea Tributary No. 2 | At confluence with Waiakea Stream | None | *321 |
| | | | At centerline of Komohala Drive | None | *370 |
| | | | Approximately 3,000 feet upstream of Komohala Drive | None | *441 |
| | | Waiakea Tributary No. 3 | Approximately 20 feet upstream of confluence with Waiakea Stream | None | *361 |
| | | | Approximately 2,700 feet upstream of confluence with Waiakea Stream | None | *402 |

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 5,200 feet upstream of confluence with Waiakea Stream. | None | *475 |
| | | Palai Stream | Approximately 160 feet upstream of confluence with Waiakea Pond. | None | *10 |
| | | | 20 feet upstream of West Kawili Street | None | *41 |
| | | | At Kahaopea Road | None | *89 |
| | | | At confluence with Four Mile Creek | None | *140 |
| | | | Approximately 70 feet upstream of Kinoole Street | None | *197 |
| | | Palai Stream (Above Haihai Street) | 100 feet upstream of Haihai | None | *460 |
| | | | 50 feet upstream of Lemamo Street | None | *516 |
| | | | 30 feet upstream of Alaloa Road | None | *580 |
| | | | Approximately 1,130 feet upstream of Alaoli Street | None | *649 |
| | | Palai Stream A | Approximately 1,930 feet downstream of Momi Street | None | *582 |
| | | | 80 feet downstream of Momi Street | None | *620 |
| | | | Approximately 650 feet upstream of Ainaola Drive | None | *650 |
| | | Palai Stream B | At confluence with Palai Stream | None | *564 |
| | | | 100 feet upstream of Momi Street | None | *624 |
| | | Palai Stream C | At Haihai Street | None | *563 |
| | | | Approximately 900 feet upstream of Kupulau Road | None | *631 |
| | | Palai Stream D | At confluence with Palai Stream | None | *580 |
| | | | Approximately 2,500 feet upstream of confluence with Palai Stream | None | *690 |
| | | Palai Stream E | At confluence with Palai Stream | None | *572 |
| | | | Approximately 1,200 upstream of Alaloa Road | None | *649 |
| | | Palai Stream F | At confluence with Palai Stream | None | *500 |
| | | | 840 feet upstream of confluence with Palai Stream | None | *537 |
| | | Four mile Creek | At confluence with Palai Stream | None | *140 |
| | | | 50 feet downstream of Kanoelehua Avenue | None | *185 |
| | | | At confluence of Four Mile Creek Tributary No. 1 | None | *203 |
| | | | 540 feet upstream of confluence with Four Mile Creek Tributary No. 2. | None | *285 |
| | | | Approximately 2,550 feet upstream of confluence with Four Mile Creek Tributary No. 2 | None | *370 |
| | | | 650 feet upstream of Ainalako Road | None | *540 |
| | | Four Mile Creek Tributary No. 1 | At confluence with Four Mile Creek | None | *203 |
| | | | Approximately 1,600 feet upstream of confluence with Fourt Mile Creek | None | *245 |
| | | Four Mile Creek Tributary No. 2 | 2,000 feet upstream of confluence with Four Mile Creek. | None | #1 |
| | | Four Mile Creek Tributary No. 3 | At confluence with Four Mile Creek | None | *527 |
| | | | 930 feet upstream of Ainalako Road | None | *547 |
| | | Honokaa Drainage No. 1 | 100 feet downstream of Mamane Street | None | *1,091 |
| | | | 70 feet upstream of Mamalahoa Highway | None | *1,340 |
| | | | 970 feet upstream of Mamalahoa Highway | None | *1,422 |
| | | Honokaa Drainage No. 2 | 350 feet downstream of Koa Street | None | *1,012 |
| | | | 40 feet upstream of Lehua Street | None | *1,254 |
| | | | 930 feet upstream of Lehua Street | None | *1,374 |
| | | Honokaa Drainage No. 3 | 60 feet downstream of Mamane Street | None | *1,096 |
| | | | 3,680 feet upstream of Mamane Street | None | *1,457 |
| | | Honokaa Drainage A | 90 feet downstream of Mamane Street | None | *1,069 |
| | | | 150 Feet upstream of Mamalahoa Highway | None | *1,269 |
| | | Honokaa Drainage B | 75 feet upstream of Mamane Street | None | *1,095 |
| | | | 400 feet upstream of Ohia Street | None | *1,153 |
| | | Honokaa Drainage C | 170 feet downstream of Mamane Street | None | *1,087 |
| | | | 130 feet upstream of Mamane Street | None | *1,112 |
| | | Honokaa Drainage D | Approximately 1,380 feet downstream of Mamalohoa Highway. | None | *1,186 |
| | | | Approximately 950 feet downstream of Mamalahoa Highway. | None | *1,228 |
| | | Keopu Drainageway | 60 feet downstream of Alii Drive | None | *9 |
| | | | 40 feet upstream of Hawaii Belt Road | None | *222 |
| | | | Approximately 2,350 feet downstream of Mamalahoa Highway | None | *1,140 |
| | | | 25 feet upstream of Mamalahoa Highway | None | *1,520 |
| | | | 1,970 feet upstream of Mamalahoa Highway | None | *1,814 |
| | | Keopu Drainageway | 410 feet downstream of Alii Overflow Drive | None | *10 |
| | | | 60 feet upstream of Hawaii Belt Road | None | *167 |
| | | | At divergence from Keopu Drainageway | None | *563 |
| | | Hienaloli Drainageway | 340 feet upstream of Kuakini Highway (State Highway 11) | None | *49 |
| | | | 40 feet upstream of Hawaii Belt Road | None | *250 |
| | | | 15 feet upstream of Mamalohoa Highway | None | *1,492 |
| | | | 3,060 feet upstream of Mamalahoa Highway | None | *1,860 |
| | | Hienaloli Drainageway Splitflow | At confluence with Hienaloli Drainageway | None | *150 |
| | | | 270 feet upstream of Hawaii Belt Road | None | *262 |
| | | Waiaha | Centerline of Alii Drive | None | *16 |
| | | | 60 feet downstream of Hawaii Belt Road | None | *357 |
| | | | 20 feet upstream of Mamalahoa Highway | None | *1,500 |
| | | | 3,240 feet upstream of Mamalahoa Highway | None | *1,978 |
| | | Waiaha Drainageway Tributary | At confluence with Waiaha Drainageway | None | *1,447 |
| | | | 30 feet upstream of Mamalahoa Highway | None | *1,500 |
| | | | 2,065 feet upstream of Mamalahoa Highway | None | *1,805 |
| | | Waiaha Drainageway Splitflow No. 1 | At confluence with Waiaha Drainageway | None | *357 |
| | | | At centerline of Hualalai Road | None | *432 |
| | | | 1,820 feet upstream of Hualalai Road | None | *528 |
| | | Waiaha Drainageway Spitflow No. 2 | 640 feet downstream of Alii Drive | None | *11 |
| | | | 100 feet upstream of Hawaii Belt Road | None | *315 |
| | | | At divergence from Waiaha Drainageway | None | *587 |

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Waiaha Drainageway | At confluence with Waiaha Drainageway | None | *41 |
| | | Spitflow No. 3 | 50 feet upstream of Kuakini Highway (State Highway 11) | None | *137 |
| | | | At divergence of Waiaha Drainageway | None | *166 |
| | | Holualoa Drainageway | 45 feet upstream of Alii Drive | None | *11 |
| | | | 60 feet upstream of Hawaii Belt Road | None | *322 |
| | | | 20 feet downstream of Hualalai Road | None | *980 |
| | | | 2,935 feet upstream of Mamalahoa Highway | None | *1,704 |
| | | Holualoa Drainageway Tributary | At confluence with Holualoa Drainageway | None | *1,193 |
| | | | 380 feet upstream of Mamalahoa Highway | None | *1,392 |
| | | Horseshoe Bend Drainageway | At confluence with Holualoa Drainageway | None | *164 |
| | | | 70 feet downstream of Hawaii Belt Road | None | *340 |
| | | | 15 feet upstream of Hualalai Road | None | *870 |
| | | | 50 feet upstream of Mamalahoa Highway | None | *1,452 |
| | | | 720 feet upstream of Mamalahoa Highway | None | *1,579 |
| | | Kaumalumalu Drainageway | 20 feet downstream of Alii Drive | None | *12 |
| | | | At centerline of Kuakini Highway (State Highway 11) | None | *452 |
| | | | 15 feet upstream of Mamalahoa Highway | None | *1,082 |
| | | | 2,740 feet upstream of Mamalahoa Highway | None | *1,538 |
| | | South Kona | At mouth | None | *14 |
| | | Watercourse No. 1 | At centerline of Mamalahoa Highway | None | *1,512 |
| | | | Approximately 6,390 feet upstream of Mamalahoa Highway | None | *2,184 |
| | | South Kona Watercourse No. 3 | At mouth | None | *14 |
| | | | 20 feet upstream of Mamalahoa Highway | None | *1,380 |
| | | | Approximately 7,250 feet upstream of Mamalahoa Highway | None | *2,224 |
| | | South Kona Watercourse No. 7 | At confluence with South Kona Watercourse No 8 | None | *440 |
| | | | At centerline of Mamalahoa Highway | None | *1,445 |
| | | | Approximately 5,990 feet upstream of Mamalahoa | None | *2,678 |
| | | South Kona Watercourse No. 8 | 95 feet above mouth | None | *15 |
| | | | At centerline of Mamalahoa Highway | None | *1,420 |
| | | | Approximately 5,620 feet upstream of Mamalahoa Highway | None | *2,714 |
| | | South Kona Watercourse No. 19 | At confluence with South Kona Watercourse No. 20 | None | *720 |
| | | | 20 feet upstream of Mamalahoa Highway | None | *964 |
| | | | Approximately 2,820 feet upstream of Mamalahoa Highway | None | *1,395 |
| | | South Kona Watercourse No. 20 | 25 feet upsteam of mouth | None | *10 |
| | | | At centerline of Mamalahoa Highway | None | *928 |
| | | | Approximately 2,750 feet upstream of Mamalahoa Highway | None | *1,340 |
| | | South Kona Watercourse No. 24 | At confluence with South Kona Watercourse No 25 | None | *680 |
| | | | At centerline of Mamalahoa Highway | None | *866 |
| | | | Approximately 1,850 feet upstream of Mamalahoa Highway. | None | *1,131 |
| | | South Kona Watercourse No. 25 | 100 feet upstream of mouth | None | *9 |
| | | | At centerline of Hookena Road | None | *400 |
| | | | Approximately 1,200 feet upstream of Mamalahoa Highway | None | *1,065 |
| | Maps are available for inspection at Hawaii County Department of Public Works, 25 Aupuni Street, Hilo, Hawaii | | | | |
| | Send comments to Mayor Dante Carpenter, Hawaii County Office Building, 25 Aupuni Street, Hilo, Hawaii 96745. | | | | |
| North Dakota | Enderlin (City), Ransom County | Maple River | At upstream face of County Road 55 | None | *1,075 |
| | | | At downstream of face State Highway 46 | *1,085 | *1,086 |
| | | | At a point 1,720 feet north of a point 800 feet northwest along Soo Line Railroad from its crossing with State Highway 46 | None | *1,090 |
| | | South Branch Maple River | At a point 200 feet downstream from the downstream face of Railway Street | *1,081 | *1,080 |
| | | | At upstream face of Railway Street | *1,081 | *1,082 |
| | | | At a point 800 feet west of a point 200 feet south along County Road 5 from its intersection with County Road 14. | None | *1,088 |
| | Maps are available for review at the Enderlin City Hall, 327 Railway Street, Enderlin, North Dakota | | | | |
| | Send comments to The Honorable Edward G. Morrow, Mayor, City of Enderlin, P.O. Box 65, Enderlin, North Dakota 58072 | | | | |
| Tennessee | Town of Newport, Cocke County | Pigeon River | About 1.9 miles downstream of McMahan Street | None | *1,034 |
| | | | About 0.8 mile upstream of Broadway | *1,068 | *1,067 |
| | | Sinking Creek | At mouth | None | *1,031 |
| | | | About 0.43 mile upstream of Broadway | None | *1,056 |
| | Maps available for inspection at the City Hall, Newport, Tennessee. | | | | |
| | Send comments to The Honorable Jeanne Wilson, Mayor, Town of Newport, City Hall, Newport, Tennessee 37821 | | | | |
| Texas | Missouri City, City, Fort Bend and Harris Counties | Mustang Bayou | Approximately .30 mile upstream of Turtle Creek Drive | *76 | *75 |
| | | Fondren Division Channel | At downstream corporate limits | None | *61 |
| | | | Approximately 1,700 upstream of McLain Boulevard | None | *65 |
| | | Brazos River | West side of Missoun Pacific Railroad at southernmost corporate limits | *65 | *64 |
| | | Oyster Creek | At upstream corporate limits | None | *67 |
| | Maps available for inspection at the City Hall, 1522 Texas Parkway, Missouri City, Texas (hours 9–5 Monday–Friday) | | | | |
| | Send comments to The Honorable John Knox, Mayor of the City of Missouri City, Fort Bend and Harris Counties, P.O. Box 686, Missouri City, Texas 77459 | | | | |
| Vermont | Lyndon, Town, Caledonia County | Passumpsic River | Upstream side of Lyndonville Electric Company Dam. | *680 | *677 |

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 150 feet downstream of confluence of Hawkins Brook. | *686 | *681 |
| | | | Approximately 75 feet upstream of U.S. Route 5 (Chapel Street). | *707 | *702 |
| | | | Approximately 670 feet upstream of State Route 122 (Central Street) | *706 | *704 |
| | | | Approximately 40 feet downstream of Canadian Pacific Railroad (first upstream crossing) | *715 | *711 |
| | | | At confluence of West Branch Passumpsic River | *716 | *713 |
| | | East Branch Passumpsic River | At State Route 114 | *717 | *713 |
| | | | Approximately 1,200 feet upstream of confluence of Mountain Brook | *778 | *773 |
| | | West Branch Passumpsic River | At confluence with Passumpsic River | *716 | *713 |
| | | Calendar Brook | At confluence with West Branch Passumpsic River | None | *728 |
| | | | Approximately 0.5 mile upstream of U.S. Route 5 | *738 | *735 |
| | | Hawkins Brook | At confluence with Passumpsic River | *686 | *681 |
| | | | At Town Highway 6 (Severence Hill Road) | *707 | *706 |
| | | Millers Run | At confluence with Passumpsic River | *709 | *705 |
| | | | Approximately 100 feet upstream of Interstate Route 91 | *714 | *711 |
| | | | Approximately 50 feet upstream of Town Highway 31 | *718 | *713 |
| | | | At Town Highway 26 | *724 | *720 |
| | | Wheelock Branch Brook | At confluence with Passumpsic River | *708 | *703 |
| | | | Upstream side of Mill Street | None | *722 |

Maps available for inspection at the Town Clerk's Office, Lyndon, Vermont

Send comments to The Honorable Robert D. Lawrence, Town Clerk of Lyndon, Caledonia County, P.O. Box 167, Lyndon, Vermont 05851.

| | | | | | |
|---|---|---|---|---|---|
| | Weathersfield (Town), Windsor County. | Connecticut River | At downstream corporate limits | None | *312 |
| | | | Approximately 1,600 feet upstream of Downer Hill Road (extended). | None | *315 |
| | | | At upstream side of State Route 103 bridge | None | *319 |
| | | | At upstream corporate limits | None | *320 |
| | | Black River | Approximately 460 feet downstream of State Route 106 Bridge. | None | *532 |
| | | | Approximately 4,980 feet downstream of Covered Bridge. | None | *552 |
| | | | Approximately 1,860 feet upstream of Covered Bridge | None | *600 |
| | | | At upstream corporate limits | None | *625 |
| | | North Branch Black River | Approximately 1,025 feet downstream of State Route 131 | None | *561 |
| | | | Downstream side of Little Ascutney Road bridge | None | *599 |
| | | | Upstream side of Ascutney Basin Road bridge | None | *626 |
| | | | Approximately 100 feet upstream of upstream corporate limits. | None | *654 |

Maps available for inspection at the Town Offices, Ascutney, Vermont

Send comments to The Honorable Robert Carney, Chairman of the Town of Weathersfield Board of Selectmen, Windsor County, Town Hall, Drawer E, Ascutney, Vermont 05030

Issued: April 2, 1987.

Harold T. Duryee,

*Administrator, Federal Insurance Administration.*

[FR Doc. 87-8012 Filed 4-9-87; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

### 45 CFR Part 503

### The Freedom of Information Reform Act of 1986; Proposed Fee Schedule and Guidelines

**AGENCY:** Foreign Claims Settlement Commission of the United States.

**ACTION:** Notice and request for public comment on Proposed Guidelines and Fee Schedule implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570.

**SUMMARY:** Under the terms of the Freedom of Information Reform Act of 1986, the Foreign Claims Settlement Commission of the United States ("the Commission") is required to promulgate for public notice and comment a proposed new schedule of fees to be charged and guidelines to be followed in its processing of requests for records under the Freedom of Information Act. As required by the legislation, the Commission has developed these proposed regulations pursuant to, and in conformity with, the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on pages 10012-10019 of the **Federal Register** on March 27, 1987.

**DATE:** Comments must be received before April 17, 1987.

**ADDRESS:** Send comments to the Foreign Claims Settlement Commission of the United States, 1111 20th Street, NW., Room 400, Washington, DC 20579.

**FOR FURTHER INFORMATION CONTACT:** David E. Bradley 202-653-5883.

For the reasons set out in the preamble, 45 CFR Part 503 is amended as follows:

### PART 503—[AMENDED]

1. The authority citation for 45 CFR Part 503 is amended by adding the following:

**Authority:** Sec. 1803, Pub. L. 99-570, 100 Stat. 3207 (5 U.S.C. 552); 52 FR 10012-10019.

2. Section 503.14 of Chapter V of Title 45 of the *Code of Federal Regulations* is proposed to be revised as follows:

**§ 503.14 Fees for services.**

The following provisions shall apply in the assessment and collection of fees for services rendered in processing requests for disclosure of Commission records under this Part.

(a) *Fee for duplication of records.* $0.15 per page.

(b) *Search and review fees.* (1) Searches for records by clerical personnel—$2.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—$5.50 per quarter hour spent searching for any record or reviewing a record to determine whether it may be disclosed, including time spent in copying any record.

(c) *Certification and validation fee.* $1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees*—(1) *Commercial use requests.* Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) *Requests from representatives of news media.* Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages: *Provided,* however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) *Requests from educational and non-commercial scientific institutions.* Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; Provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education, which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(4) *All other requests.* Where a request seeks disclosure of records to a person or entity other than one coming within paragraphs (d)(1), (2) and (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this Part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(h) *Advance payments.* (1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than $250.00, the requester may be required to pay the fees in advance in order to obtain completion of such processing.

(2) If a requester has previously failed to make timely payment (i.e., within 30 days of billing date) of fees charged under this Part, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of such pending or new request.

(3) With regard to any request coming within paragraphs (h) (1) and (2) of this section, the administrative time limits set forth in §§ 503.10 and 503.11 of this part will begin to run only after the requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

**Bohdan A. Futey,**

*Chairman.*

[FR Doc. 87–8153 Filed 4–9–87; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 642

### Coastal Migratory Pelagic Resources (Mackerels)

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an FMP amendment and request for comments.

**SUMMARY:** NOAA issues this notice that the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) have resubmitted Amendment 2 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources (Mackerels) (FMP) for review by the Secretary of Commerce (Secretary) and are requesting comments from the public. Copies of the amendment may be obtained from the addresses below.

**DATE:** Comments on the amendment should be submitted on or before May 5, 1987.

**ADDRESSES:** All comments should be sent to Craig R. O'Connor, Acting Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, FL 33702. .

Copies of the FMP, the amendment, and supporting documentation are available upon request from the South Atlantic Fishery Management Council,

Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699; and the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 W. Kennedy, Boulevard, Tampa, FL 33609.

**FOR FURTHER INFORMATION CONTACT:** William N. Lindall (Regional Plan Coordinator), 813–893–3721.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act requires that each regional fishery management council submit any fishery management plan or amendment it prepares to the Secretary for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the FMP or amendment, must immediately publish a notice that it is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the FMP or amendment.

This amendment proposed measures to minimize overfishing of the Spanish mackerel stock in the Gulf of Mexico and to rebuild and maintain the stock at a maximum sustainable yield level through flexible management procedures. On June 29, 1984 (49 FR 26809), the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for the FMP.

A notice of availability for Amendment 2 was published on February 18, 1987 (52 FR 4924). Because the amendment, as submitted at that time, was determined to be inconsistent with the national standards of the Magnuson Act, it was withdrawn (52 FR 6357, March 3, 1987) for reconsideration by the Councils. The public was informed (52 FR 7463, March 11, 1987) that when the amendment is resubmitted to the Secretary for review the comment period will be 30 days.

Regulations proposed by the Council and based on this amendment are scheduled to be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: April 6, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–8038 Filed 4–9–87; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 69
Friday, April 10, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of new system of records.

**SUMMARY:** The United States Department of Agriculture (USDA), in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), proposes to establish a new system of records: USDA/FS–49, Roster of Forestry and Natural Resources Expertise. This system of records is necessary for the USDA, Forest Service, International Forestry Staff, Forestry Support Program to identify and locate qualified experts for short-term and long-term international assignments with forestry or natural resources development projects of the USDA, Forest Service, the United States Agency for International Development, the United States Peace Corps, and other cooperating agencies and organizations.

**DATES:** Public comments must be received by May 11, 1987. This system shall take effect without further notice on June 9, 1987, unless modified by a subsequent notice to incorporate comments received from the public.

**ADDRESS:** Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of that system be published for comment, USDA invites comments on all portions of this notice. Interested persons may submit written comments to: Mr. Patrick B. Durst, Forestry Support Program, International Forestry Staff, USDA Forest Service, P.O. Box 96090, Washington, DC 20013–6090. All comments submitted will be available for public inspection during business hours in Room 1208 at 1621 North Kent Street, Rosslyn Plaza East, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Patrick B. Durst, Special Projects Coordinator, Forestry Support Program, International Forestry Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013–6090. Telephone: (703) 235–2432 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Under a Resources Support Services Agreement (#BST–5519–R–AG–2188) with the United States Agency for International Development, the USDA identifies technically qualified and culturally adaptable professionals in forestry and related natural resources to assist the U.S. Agency for International Development and cooperating agencies and organzations in implementing forest-based economic development projects in developing countries. Highly skilled and specialized experts are often required to provide advice and assistance regarding these projects. The purpose of this system of records is to provide the USDA, Forest Service, International Forestry Staff, Forestry Support Program with an efficient program of identifying and locating the needed experts who are interested and willing to accept short-term and long-term international forestry or natural resources assignments.

The new system will allow the USDA, Forest Service to maintain records on the availability, skills, education, language capabilities, experience, and other characteristics of potential advisers and contractors interested in international assignments. The system of records will help the Forest Service identify potentially qualified individuals for international assignments in a more fair and unbiased manner than would be possible without the system. All individuals interested in international forestry assignments will be accepted into the system, and screening for specific assignments will be conducted using "blind" computer searches that select potential advisers on the basis of their skills and abilities. The system of records will also contain the addresses and phone numbers where individuals can be contacted.

Dated: April 6, 1987.

**Douglas W. MacCleery,**

*Deputy Assistant Secretary for Natural Resources and Environment.*

**USDA/FS–49**

**SYSTEM NAME:**

USDA/FS–49, Roster of Forestry and Natural Resources Expertise.

**SYSTEM LOCATION:**

The records in this system are maintained at the office of the USDA, Forest Service, International Forestry Staff, P.O. Box 96090, Washington, DC 20013–6090.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system includes records of individuals from local, State and Federal agencies, the private sector, and the university community who are seeking international assignments in forestry or natural resources with the Forest Service, the United States Agency for International Development, the United States Peace Corps, or other cooperating agencies and organizations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system consists of a summary of each applicant's qualifications, a resume or other documentation providing detailed information relative to education and/or experience, and related correspondence. The system will also contain the addresses and phone numbers where individuals can be contacted.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 1302; 7 U.S.C. 1736; and 22 U.S.C. 2386–2388, 2392, 2513.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

(1) Information from this system of records is used by authorized agency officials to identify and locate qualified forestry and natural resources professionals for international assignments. Information is made available to agency contracting offices to determine if Federal employees with required qualifications are available for specific international assignments, or to initiate development of an acquisition and to facilitate competitive selection in the issuance of agency acquisitions. Referral of information is also made to authorized individuals of other Federal agencies or international organizations seeking technically qualified individuals in the fields of forestry and natural resources, and to current U.S. Agency

for International Development contractors seeking qualified professionals to perform authorized international forestry and natural resources tasks for United States Government agencies;

(2) Disclosure to the Department of Justice for use in litigation when USDA, or any component thereof; or any employee of USDA in his or her official capacity; or any employee of USDA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or the United States, where USDA determines the litigation is likely to affect USDA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by USDA to be relevant and necessary to the litigation, provided, however, that in each case, USDA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(3) Disclosure in a proceeding before a court or adjudicative body before which USDA is authorized to appear, when USDA or any component thereof; or any employee of USDA in his or her official capacity; or any employee of USDA in his or her individual capacity where USDA has agreed to represent the employee; or the United States, where USDA determines that litigation is likely to affect USDA or any of its components, is a party to litigation or has an interest in such litigation and USDA determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, USDA determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(4) Referral to the appropriate agency, where Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or particular program statute, or by rule, regulation, or order issued pursuant thereto;

(5) To answer congressional inquiries made at the request of the individual from whose record information is disclosed.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders at the agency address listed above; qualification summaries are maintained in an automated database for easy retrieval.

**RETRIEVABILITY:**

Paper records are indexed alphabetically and/or by identification number. Automated records may be retrieved by experience, education, language capability, employment status or other criteria required for the successful conduct of proposed assignments or acquisitions.

**SAFEGUARDS:**

All records containing personal information are maintained in secured file cabinets and in secured computer rooms.

**RETENTION AND DISPOSAL:**

Until the National Archives and Records Administration determines an appropriate retention and disposal schedule for these records, they will be retained indefinitely in accordance with Forest Service Handbook 6209.11, Records Management Handbook.

**SYSTEMS MANAGER AND ADDRESS:**

Special Projects Coordinator, Forestry Support Program, International Forestry Staff, USDA Forest Service, P.O. Box 96090, Washington, DC 20013–6090.

**NOTIFICATION PROCEDURE:**

Individuals may request information regarding this system of records, or information as to whether the system contains records pertaining to them from the Special Projects Coordinator, Forestry Support Program (address above). A request for information should contain name, address, and particulars involved (for example, the date of action giving rise to the inquiry or complaint).

**RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to or amend records pertaining to themselves should submit a written request to the Special Projects Coordinator, Forestry Support Program (address above). The envelope and letter should be marked "Privacy Act Request."

**CONTESTING RECORD PROCEDURES:**

Same as record access procedures.

**RECORD SOURCE CATEGORIES:**

Information in this system comes from applicants for agency acquisition or Federal employees interested in international forestry or natural resources development assignments.

[FR Doc. 87–8076 Filed 4–9–87; 8:45 am]

BILLING CODE 3410–11–M

## Commodity Credit Corporation

## Uniform Grain and Rice Storage Agreement Fees; 1987–88 Contract Year

**AGENCY:** Commodity Credit Corporation.

**ACTION:** Notice of 1987–88 contract year application and inspection fees.

**SUMMARY:** The purpose of this notice is to publish a schedule of 1987–88 application and inspection fees to be paid to Commodity Credit Corporation (CCC) by grain and rice warehousemen requesting to enter into a storage agreement with CCC in accordance with the regulations governing the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed (7 CFR 1421.5551 *et seq.*). The fees are charged by CCC to defray the costs of contract application processing and warehouse inspections of warehouses operated by such warehousemen who do not have such an existing storage agreement.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Steven Closson, Chief, Storage Contract Branch, Warehouse Division, ASCS, USDA, Room 5962—South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5647.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment.

Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act requires that in carrying out purchasing and selling operations and in the warehousing, transporting, or handling of agricultural commodities, CCC use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangement of trade and commerce.

Pursuant to these provisions, CCC enters into storage agreements with private grain and rice warehousemen to provide for the storage of commodities owned by CCC or pledged as security to CCC for price support loans. CCC examines all grain and rice warehouses for which a warehouseman has requested approval of a new storage agreement to determine whether the warehouseman satisfies the standards of approval or has the ability to do so. Application procedures include review of an applicant's financial statement, establishment of net worth, verification of licensing requirements, and other contract administrative procedures.

The regulations found at 7 CFR 1421.5558 provide that all grain and rice warehousemen who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and inspection fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination.

A review of the funds generated from the fees collected under the United States Warehouse Act (USWA) indicates that they are sufficient to cover the costs associated with processing an application for a USWA license. Because the application process for a storage agreement is a separate process from the licensing process and requires essentially the same time, it was determined that the fee schedule for both UGSA applications and USWA should be similar. However, for those warehousemen having a USWA license and seeking a storage agreement or seeking both a USWA license and storage agreement some aspects of the application process are duplicative in nature. A reduced fee will be collected by CCC to offset contract administrative cost only from federally licensed warehousemen to reflect the lower costs incurred in the areas where duplicate requirements exist such as for warehouse examination and financial statement review.

**Determination**

The application and inspection fees set forth herein will be collected for the 1987–88 contract year by CCC from all warehousemen requesting to enter into a Uniform Grain Storage Agreement or Uniform Rice Storage Agreement who do not have such an existing agreement with CCC.

**Application and Inspection Fees**

The fee shall be computed at the rate of $10 for each 10,000 bushels of storage capacity or fraction thereof but the fee shall be not less than $100 nor more than $1,000; however, if the applicant is licensed under the United States Warehouse Act or is applying for such a license, the fee shall be computed at the rate of $2.50 per 10,000 bushels of storage capacity or fraction thereof but not less than $25 nor more than $250.

Before any original application is processed or inspection is made, the applicant shall deposit with CCC the amount of the fee prescribed. Such deposit shall be made in the form of a check, draft or post office or express money order payable to the order of "Commodity Credit Corporation."

Signed at Washington, DC, on April 6, 1987.

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–8074 Filed 4–9–87; 8:45 am]

BILLING CODE 3410–05–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Docket Nos. 6673–01, 6673–02, 6673–03]**

### Actions Affecting Export Privileges, Jeanette Wellems, Steuerungstechnik und Messgeraete, a/k/a S.M.G., a/k/a Stemege, JI&C Ltd.

In the matter of Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, a/k/a S.M.G., a/k/a Stemege and doing business as JI&C Ltd., Respondents, Dockets Nos. 6673–01, 6673–02, and 6673–03.

**Summary**

The Recommended Decision and Order of the Administrative Law Judge is affirmed. Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, a/k/a S.M.G., a/k/a Stemege, with an address at 4 Wohllebengasse 15, A–1041 Vienna, Austria is denied U.S. export privileges for 15 years from the date of this order. The charges against JI&C Ltd., 4 Wohllebengasse 15, A–1041 Vienna, Austria are dismissed.

**Order**

On March 5, 1987, the Administrative Law Judge entered an order in the above referenced matter. The order was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. App. 2401 through 2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.23 for final action. Having examined the record and based on the facts addressed in ths case, I affirm the order of the Adminstrative Law Judge.

This constitutes final agency action in this matter.

Dated: April 6, 1987.

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

*Summary of Decision and Order*

In the matter of Jeanette Wellems, individually and doing business as Steuerungstechnik and Messgeraete, a/k/a S.M.G. a/k/a Stemege and doing business as JI&C Ltd., Respondents, Docket Nos. 6673–01, 6673–02, and 6673–03.

*Appearance for Respondents: Dr. Ingo Gutjahr, Verteidiger in Strafsachen, 1080 Wien, Wickenburggasse 5, Austria.*

*Appearance for Agency:* Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th and Constitution Avenue, NW., Washington, DC 20230.

For JI&C Ltd., 4 Wohllebengasse 15, A–1041 Vienna, Austria, charges are dismissed. For the following parties, U.S. export privileges are denied for 15 years from the date that this Order is affirmed by the Assistant Secetary for trade Administration.

**Decision**

Jeanette Wellems, individually and doing business as Steuerungstechnik and Messgeraete, a/k/a S.M.G. a/k/a Stemege 4 Wohllebengasse 15, A–1041 Vienna, Austria.

*Procedural Background*

On June 19, 1986 the Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce (the "Agency"), issued a charging letter against Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, and doing business as JI&C Ltd. This letter was issued under the authority of section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 (1982), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985)) (the "Act"), and under the authority of Part 388 of the Export Administration Regulations (currently codified at 15 CFR Pats 368 through 399 (1986)) (the "Regulations"). The letter charged that Respondents had violated §§ 387.3 and 387.4 of the Regulations in the 1981–1982 export of U.S.-origin goods from the United States to Austria through the Federal Republic of Germany.

Respondent Wellems filed a July 24, 1986 answer to the charging letter. Neither Respondent nor Agency Counsel requested a hearing. Consequently, this matter is decided on the record without a hearing. Respondent Wellems and Agency Counsel made submissions for the record, which was closed for decision December 17, 1986.

*Arguments of the Parties*

Agency Counsel asserted that, from October 10, 1981 through March 25, 1982, Respondent Wellems conspired with three other individuals to acquire U.S.-origin goods, exported from the United States through the Federal Republic of Germany to Austria, without the required U.S. validated licenses and reexport authorizations, in violation of the Act and the Regulations. Pursuant to the alleged conspiracy, according to Agency Counsel, an application for a validated license, for an export of these U.S.-origin goods from the United States to the Federal Republic of Germany, misrepresented that the end use of the goods was to be in the Federal Republic of Germany, when in fact the intention was to reexport them from there to Respondent Steuerungstechnik und Messgeraete in Austria. Agency Counsel further asserted that, in February-March 1982, four shipments of U.S.-origin goods were made, pursuant to this conspiracy, from the United States to the Federal Republic of Germany and thence to Respondent Steuerungstechnik und Messgeraete in Austria, with no U.S. authorization for such reexport to Austria.

Respondent Wellems answered with three arguments. First, she contended that during 1981–82 she worked at S.M.G. only as a part-time secetary and accordingly "had no influence on the transactions [done by S.M.G.] and did not [sic] now about them" (Respondent's July 24, 1986 Filing 2). Second, Respondent Wellems argued that she may not be sanctioned "for doing anything in Austria which is not forbidden by Austrian law" (*id.* last page; Respondent's October 10, 1986 filing). Third, as to JI&C Ltd., she claimed that it had "never ordered or received anything from " the other alleged co-conspirators, and also that she was "manager" of this firm only in 1984 (Respondent's July 24, 1986 filing, last page).

In reply, Agency Counsel agreed that documentation submitted by Respondent Wellems showed that she no longer does business as JI&C Ltd., and accordingly Agency Counsel did not oppose deletion of JI&C Ltd. as a Respondent in this proceeding. But Agency Counsel submitted its own documentation in support of its charge that Respondent Wellems herself actively participated in the alleged 1981–82 violations of the Regulations. As to Respondent Wellems' argument based on Austrian law, Agency Counsel contended that is is U.S. law that controls the instant proceeding.

*Related Persons*

Agency Counsel requested that JI&C Ltd. land one individual be named as related persons because of their relationships to Respondent Wellems (Agency Counsel's November 20, 1986 Submission 2 n.2). Section 388.3(c) of the Regulations provides that an order may be made applicable to a related person "after notice and opportunity for comment . . . ." The record does not reflect that either JI&C Ltd. or this individual has as yet been given such notice and opportunity for comment. (Although orders and filing served on Respondent Wellems in this proceeding have mentioned JI&C Ltd., it is her claim accepted by Agency Counsel, that she no longer does business as JI&C Ltd.)

Consequently, before either JI&C Ltd. or the individual may be named a related person, the record must show that such person has been afforded notice and opportunity for comment, as through a proceeding initiated by Agency Counsel under § 388.3(c). If, after such a proceeding, the record so warrants, such person will then be named a related person.

*Findings*

The record of the instant proceeding warrants the following findings. During the period from October 30, 1981 through March 24, 1982, Respondent Wellems conspired with three other individuals to bring about violations of the Act and the Regulations. Her active participation in the conspiracy alleged by Agency Counsel is amply demonstrated by the documentation submitted by Agency Counsel.[1]

Of the other three individuals involved in the conspiracy, one was another official of the Austrian company Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege. The second was a German-born resident of the United States, and the third was an official of an FRG company. The purpose of the conspiracy was for Respondent Wellems, Steuerungstechnik und Messgeraete, and the co-conspirator who was also an official of that company to acquire U.S.-origin goods in Austria without having obtained the validated export licenses and reexport authorizations required by the Regulations.

---

[1] See, e.g., Agency Counsel's November 20, 1986 Submission, Exhibits 4–5, 7–9, 11–16, which are telexes showing Respondent Wellems' active role in the transactions at issue in this proceeding, the Exhibits 5–6, which suggest Respondent Wellems' participation in a meeting involved with these transactions. As to another aspect of this Submission, it may further be noted that it appears to contain the following typographical errors. On page 4, fourth last line of text, Exhibit 10 should apparently be excluded from the listing of telexes. On page 6, the second last line of text should apparently cite Exhibit 15, rather than Exhibit 16; and the following line of text should apparently cite Exhibit 16, rather than Exhibit 17. On page 8, the fourth line of text should apparently cite Exhibit 19, rather than Exhibit 18. On page 9, in the second line of the text paragraph that begins there, the license number should apparently be A599082, rather than A599082; and the same apparent typographical error occurs again three lines of text later.

To implement this conspiracy, Respondent Wellems and the other conspirators engaged in a series of overt acts. Respondent Wellems, Steuerungstechnik und Messgeraete, and the co-conspirator who was also an official of that company requested certain U.S.-origin goods from the U.S. resident co-conspirator. He exported them, in four separate shipments, to the company of the FRG conspirator in the Federal Republic of Germany, who then reexported them to Steuerungstechnik und Messgeraete in Austria. These four exports and reexports, which occurred in February and March of 1982, are identified in Schedule A of the June 19, 1986 charging letter; and this Schedule A is incorporated herein by this reference.

For the export from the United States to the Federal Republic of Germany, the conspirator who was a U.S. resident applied for a validated license, representing that the FRG co-conspirator's company was to be the ultimate consignee and that the Federal Republic of Germany was to be the country of ultimate destination. The involvement in the transaction of Respondent Wellems and Steuerungstechnik und Messgeraete and the co-conspirator also in that company was nowhere disclosed in the license application. Consequently, the application contained false and misleading statements of material fact.

Once the FRG conspirator received in the Federal Republic of Germany each of the four shipments from the United States, as noted above he reexported them to Austria to Steuerungstechnik und Messgeraete. For such reexport, a U.S. authorization was required; and none has been obtained. Respondent Wellems knew or had reason to know that these U.S.-origin goods had been acquired on behalf of her and Steuerungstechnik und Messgeraete and that they were to be shipped to Austria without the authorization required by the Regulations. Respondent Wellems does business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege.

As to JI&C Ltd., the record does not establish any participation by it in any of the October 1981–March 1982 activities described above. According to one of the documents filed by Respondent Wellems, the Articles of Incorporation for this company were not signed until October 20, 1982 (Respondent's October 20, 1986 submission). Further, the record does establish that Respondent Wellems has not been a "managing director" of the company since September 1984.

*Conclusions*

The record requires the following conclusions. For Respondent JI&C Ltd., the charges are dismissed. For Respondent Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, the conclusion is that she violated § 387.4 of the Regulations for each of the four shipments to Steuerungstechnik und Messgeraete in Austria without the required authorization, and that she violated § 387.3 for conspiring to bring about a violation of the Act and the Regulations.

Respondent Wellems' argument that her actions in Austria should be measured only by Austrian law is unpersuasive. Her participation, as described above, in the four shipments of U.S.-origins goods from the United States through the Federal Republic of Germany to Austria, and her participation described above in the conspiracy related to these shipments, may fairly be subjected to the provisions of the Act and the Regulations. Judged by the standards of these provisions, she violated § 387.3 and 387.4 of the Regulations; and nothing in the Act or the Regulations provides that her claimed compliance with Austria law would constitute a valid defense.

All five of Respondent Wellems' violations of the Regulations involved U.S.-origin commodities that are controlled under the Act for national security reasons, as alleged in the charging letter. For such violations, an order denying the U.S. export privileges of Respondent Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, for 15 years from the date a final order becomes effective in this proceeding is appropriate.

**Order**

Accordingly, pursuant to the authority delegated to the undersigned by Part 388 of the Regulations, it is hereby ordered as follows:

1. All outstanding validated export licenses in which Respondent Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

2. For a period of 15 years from the date that this Order is affirmed, Respondent Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, 4 Wohllebengasse 15, A–1041 Vienna, Austria, and the successors, assignees, officers, partners, representatives, agents, and employees of such Respondent are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data, in whole or in part, exported from the United States or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation, directly or indirectly, in any manner or capacity:

a. As a party or as a representative of a party to a validated export license application submitted to the Department;

b. In preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith;

c. In obtaining from the Department or using any validated or general export license or other export control document;

d. In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, that are exported or to be exported from the United States or that are otherwise subject to the Regulations; and

e. In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data that are subject to the Act and the Regulations.

3. Such denial of export privileges may, after notice and opportunity for comment, also be made applicable to any person, firm, corporation, or business organization with which Respondent Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

4. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data that are subject to such denial of export

privileges, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, or whereby such Respondent may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly:

A. Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for such Respondent; or

b. Order, buy receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

5. In accordance with section 13(c) of the Act and § 388.16 of the Regulations, the foregoing constitutes the Decision and Order of the undersigned in this proceeding. The Order shall become effective if and when it is affirmed by the Assistant Secretary for Trade Administration, to whom the Secretary has delegated his responsibilities under section 13(c).

Dated: March 5, 1987.

**Thomas W. Hoya,**

*Administrative Law Judge.*

[FR Doc. 87-8023 Filed 4-9-87; 8:45 am]

BILLING CODE 3510-DT-M

---

[A-588-038]

## Bicycle Speedometers From Japan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On November 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers eighteen manufacturers and/or exporters of this merchandise to the United States and the period November 1, 1984 through October 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from one manufacturer. Based on our analysis of the comments received, the final results of review are changed from those presented in the preliminary results.

**EFFECTIVE DATE:** April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Fargo or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

**SUPPLEMENTARY INFORMATION:**

### Background:

On November 18, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 41363) the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of Review

Imports covered by the review are shipments of bicycle speedometers, currently classifiable under items 711.9300, 711.9820 and 732.4200 of the Tariff Schedules of the United States Annotated.

The review covers eighteen manufacturers and/or exporters of Japanese bicycle speedometers to the United States and the period November 1, 1984 through October 31, 1985.

### Analysis of Comment Received

We gave interested parties the opportunity to comment on the preliminary results. Asahi Keiki Mfg. Co., a respondent, submitted written comments.

Comment 1: Asahi contends that the scope of the finding does not include bicycle or exercycle speedometer parts or attachments. Separate price comparisons of parts and attachments, such as the cable and gear unit, should not be made. If comparisons are to be made on components sold separately, then the prices of the cable and gear unit should be added to that of the head so that comparisons can be made directly with total units of bicycle speedometers sold in the home market.

*Department's Position:* We disagree. Bicycle and exercycle speedometers consist of three discrete elements: Head, gear unit, and cable. Asahi shipped the elements either packed in individual boxes or packed in bulk. Regardless of how packed, the speedometer contains three discrete elements that are put together by the customer at the time of installation on the bicycle. Indeed, we are not aware of any instance in which the three elements are assembled into a total speedometer prior to importation into the United States. Furthermore, the head, gear unit, and cable have no use other than to be joined together as a speedometer, and we have no evidence that a separate market exists for the individual elements. Further, a comparison of the records of the Treasury Department's original investigation in this case and the current review shows no evidence of any change by Asahi in either the shipping or pricing method since the original investigation. In both instances, Asahi shipped in both individual and bulk packing; the Treasury Department in its analysis made no distinction between these two types of shipments. In both instances, the company provided, and the Treasury Department used in its analysis, separate prices for each of the three separate speedometer elements. Based on this evidence we conclude that all three separate elements were included in the scope of the investigation.

In our analysis for this review we calculated the value of a total unassembled bicycle speedometer (head, gear unit, and cable) to the United States by adding the prices of the three elements when such elements were sold by the same manufacturer and shipped during the review period. We did not consider whether such elements were shipped together or separately. Where sale quantities of the various elements differed over the period of the review, we did not include in the review the excess elements that could not be matched with quantities of other elements to comprise total speedometers. We based foreign market value upon the price of a total home market unassembled speedometer.

*Comment 2:* Asahi contends that price comparisons were made on both sales by Asahi Keiki through N.S.I. and then again on N.S.I.'s resales to each of its U.S. customers.

*Department's Position:* Asahi listed in its response sales to three unrelated U.S. customers and sales through its U.S. subsidiary, N.S.I. Asahi now claims that the sales to the unrelated U.S. customers are the same sales as those from N.S.I. to the U.S. customers.

This is new information, untimely filed, that contradicts the original submission. It was not submitted in time to conduct verification. Additionally, this submission was made on the last day of the comment period, effectively precluding the petitioner from

responding. It will not be considered in this review.

*Comment 3:* Asahi contends that in making separate price comparisons between NSI's sales of speedometer heads sold to Allegheny International and Diversified Products Corporation, and speedometers sold in the home market, the Department erred in not making an adjustment to the home market price for differences in merchandise.

*Department's Position:* The Department did not make an adjustment to the sales from Asahi to Allegheny International and Diversified Products Corporation because the response indicated that it sold complete speedometer units to these firms. No other difference in merchandise adjustment was claimed.

*Comment 4:* The Department erred in the amount of the adjustment for differences in packing costs. The respondent contends that the difference in packing costs between sales in the home market and sales to the U.S. used in calculating a separate margin for NSI should have been the same as that used in price comparisons on NSI's sales to its U.S. customers.

*Department's Position:* The Department used the cost of U.S. packing that NSI reported in its response and compared that to the cost of packing in the home market. We added or subtracted the difference from the home market price.

*Comment 5:* The Department should publish separate cash deposit rates for bicycle and exercycle speedometers. It acknowledged a distinction between bicycle and exercycle speedometers when it announced a separate cash deposit rate for double gear hub exercycle speedometers in its April 30, 1984 notice (49 FR 18336) (SIC).

*Department's Position:* Exercycle speedometers and digital speedometers are both within the scope of the finding. There is no reason to publish separate rates for exercycle speedometers. The April 30, 1984 notice referred to was issued as a result of a court remand directing the Department to calculate a dumping margin for double-gear hubdrive speedometers, since it had not previously done so. The Department's subsequent final results of review notice for the 1980–81 period, makes no mention of separate rates for different products. (49 FR 24226).

*Comment 6:* Since the weighted average margin issued by the Department in its preliminary results notice on only bicycle speedometers sold by Asahi was 0.03 percent, the cash deposit for any new shipper of Asahi bicycle speedometers should be waived.

The rate for exercycle speedometers should be based solely on the rate determined for N.S.I., the sole importer of Asahi's exercycle speedometers.

*Department's Position:* The Department's preliminary notice included all items covered by the finding. The term "bicycle speedometers" has been clarified in previous notices and needs no in-depth definition with every publication. The weighted average margin and cash deposit rate for Asahi, regardless of type of speedometer exported is 17.74 percent, based on analysis of the direct exports it listed in its response.

The Department does not list separate cash deposit rates for different items included in the class or kind of merchandise subject to a finding.

**Final Results of Review**

Based on our analysis of the comments received, the final results of our review are the same as those presented in our preliminary results of review, and we determine that the following margins exist for the period November 1, 1984 through October 31, 1985:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| All New Firms | 17.74 |
| Asahi Keiki Mfg. Co | [1] 17.74 |
| Asahi Keiki Mfg. Co Co., Ltd | [1] 17.74 |
| Asahi Keiki Mfg. Co./Noma Enterprises Co., Ltd | [1] 17.74 |
| Asahi Keiki Mfg. Co./Nippon Seiki Co., Ltd | [1] 17.74 |
| Asahi Keiki Mfg. Co./ Royal Industries Ltd | [1] 17.74 |
| Asahi Keiki Mfg. Co./Yagami Corporation | .03 |
| Asahi Keiki Mfg. Co./N.S.I. International | 4.95 |
| Asahi Keiki Mfg. Co./Diversified Products Corporation | 6.53 |
| Asahi Keiki Mfg. Co./Allegheny International | 17.74 |
| Asahi Keiki Mfg. Co./Roadmaster Corporation | 0 |
| Tsuyama Mfg. Co., Ltd | .07 |
| Tsuyama Mfg. Co./Kozaki Trading Co., Ltd | 0 |
| Tsuyama Mfg. Co./Yagami Corporation Co., Ltd | 6.31 |
| Tsuyama Mfg. Co./Kuwahara Co., Ltd | 2.34 |
| Tsuyama Mfg. Co./Asia Machinery Co., Ltd | 0 |
| Tsuyama Mfg. Co., Ltd./H. Tano & Co., Ltd | 0 |
| Tsuyama Mfg. Co., Ltd./Mitsui & Co., Ltd | 17.74 |
| Tsuyama Mfg. Co., Ltd./Shinwa Trading Co., Ltd | 0 |
| Fujimoto Trading Co | [1] 17.74 |

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties based upon the above margins. Since the margin for Tsuyama Mfg. Co., Ltd. and Asahi Keiki Mfg. Co./Yagami Corporation are less than 0.05 percent and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for these firms. For future shipments from the remaining manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the antidumping duty order (49 FR 24420 June 13, 1984) for each of those firms. For any entries from a new exporter not covered by this review, whose first shipments occurred after October 31, 1985 and who is unrelated to any reviewed firm, a cash deposit of 17.74 percent shall be required. These deposit requirements and waivers are effective for all shipments of Japanese bicycle speedometers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 3, 1987.

**Joseph A. Spetrini,**

*Acting Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87-8080 Filed 4-9-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-437-601]

## Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

BEST COPY AVAILABLE

**SUMMARY:** On March 20, 1987, we received a request from the respondent in the antidumping duty investigation of tapered roller bearings from the Hungarian People's Republic (Hungary) that the final determination be postponed as provided for in section 735(a)(2)(A). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of tapered roller bearings from Hungary have been made at less than fair value until not later than May 4, 1987.

**EFFECTIVE DATE:** April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann or Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3965 or (202) 377–1756.

**SUPPLEMENTARY INFORMATION:** On September 19, 1986, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of tapered roller bearings from Hungary are being, or are likely to be, sold at less than fair value (51 FR 33284). We issued our preliminary affirmative determination on February 2, 1987 (52 FR 3836, February 6, 1987). That notice stated that we would issue a final determination on or before April 20, 1987. On March 20, 1987, Magyar Gordulusopagy Muvek, the respondent, requested that we extend the period for the final determination until May 4, 1987, in accordance with section 735(a)(2)(A) of the Act. The respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 4, 1987.

This notice is published pursuant to section 735(d) of the Act.

Joseph A. Spetrini,

*Acting Deputy Assistant Secretary for Import Administration.*

April 3, 1987.

[FR Doc. 87–8084 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–604]

## Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Japan

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received a request from a respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Japan, have occurred at less than fair value until not later than August 10, 1987. We are also postponing our public hearing from May 19, 1987, until June 30, 1987.

**EFFECTIVE DATE:** April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Marie Kissel (202–377–3798) or Mary S. Clapp (202–377–1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On September 19, 1986, we published a notice in the **Federal Register** (15 FR 33286) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether tapered roller bearings from Japan are being, or are likely to be, sold at less than fair value. On October 16, 1986, the International Trade Commission determined that there is a reasonable indication that imports of tapered roller bearings from Japan are materially injuring a U.S. industry (U.S. ITC Pub. No. 1899, October 1986). On March 27, 1987, we published a preliminary determination of sales at less than fair value with respect to this merchandise (52 FR 9905). The notice stated that if the investigation proceeded normally, we would make our final determination by June 8, 1987.

On March 31, 1987, NTN Toyo Bearing Co., Ltd., a respondent in this investigation, requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. This respondent accounts for a majority of the exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than August 10, 1987.

### Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on June 30, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B–099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 23, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Joseph A. Spetrini,

*Acting Deputy Assistant Secretary for Import Administration.*

April 3, 1987.

[FR Doc. 87–8085 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–485–602]

## Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On March 30, 1987, we received a request from the respondent in the antidumping duty investigation of tapered roller bearings from the Socialist Republic of Romania (Romania) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of tapered roller bearings from Romania have been made at less than fair value until not later than May 4, 1987.

**EFFECTIVE DATE:** April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann (202) 377–3965 or Mary Jenkins (202) 377–1756, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On September 19, 1986, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of tapered roller bearings from Romania are being, or are likely to be, sold at less than fair value (51 FR 33284). We issued our preliminary affirmative determination on February 2, 1987 (52 FR 3838, February 6, 1987). That notice stated that we would issue a final determination on or before April 20, 1987. On March 30, 1987, Technoimportexport, the respondent, requested that we extend the period for the final determination until May 4, 1987, in accordance with section 735(a)(2)(A) of the Act. The respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 4, 1987.

This notice is published pursuant to section 735(d) of the Act.

**Joseph A. Spetrini,**

*Acting Deputy Assistant Secretary for Import Administration.*

April 6, 1987.

[FR Doc. 87–8086 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DS–M

## National Oceanic and Atmospheric Administration

### National Marine Fisheries Service; Emergency Striped Bass Research Study; Meeting

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 96–118).

**DATE:** The meeting will convene on Thursday, May 21, 1987, at 10:00 a.m., and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

**ADDRESS:** Large Buffet Room, Department of the Interior Cafeteria, U.S. Department of the Interior Building, C Street between 18th and 19th Streets N.W., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** David G. Deuel, Office of Resource Investigations, National Marine Fisheries Service, Washington, DC 20235; Telephone: (202) 673–5359.

Dated: March 6, 1987.

**Joseph W. Angelovic,**

*Deputy Assistant Administrator for Science and Technology.*

[FR Doc. 87–8039 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–22–M

### North Pacific Fur Seals; Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice is to announce a meeting to discuss the status of North Pacific fur seal issues in preparation for international consultations on the same subject in early June. The consultations are for the purpose of sharing information with Canada, Japan, and the Soviet Union and exploring the possibility of entering into a new international agreement. The Interim Convention on Conservation of North Pacific Fur Seals expired in October 1984.

**DATE:** May 7, 1987, 2:00 p.m. to 4:00 p.m.

**ADDRESS:** National Marine Fisheries Service, Room 928, 1825 Connecticut Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Christina Terpak-Malm, Office of International Fisheries (F/M31), National Marine Fisheries Service, Washington, DC 20235, (202) 673–5281.

Dated: April 7, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 87–8066 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Levels for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

April 7, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 3, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

In November 1986, the Governments of the United States and India reached agreement establishing a new bilateral agreement relating to trade in cotton, wool, man-made fiber, silk blend and vegetable fiber textiles and textile products for the period January 1, 1987 through December 31, 1991. The new agreement establishes, among other things, specific limits for:

Categories 310/318, 313, 315, 335, 336/636, 337, 338/339/340, 341, 342, 347/348 and 363 and a group limit for Group II (Categories 300, 301, 311, 312, 314, 316, 317, 319, 320, 330–334, 345, 349–359, 360–362, 369, 600–605, 630–635, 637–659, 665–670 and 831–859). Further consultations were held in February 1987 establishing individual limits for Categories 396–S (only TSUSA number 336.2840), 640, 641 and 642, produced or manufactured in India and exported during the twelve-month period which begins on January 1,

1987 and extends through December 31, 1987 within Group II.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in India and exported during 1987, in excess of the designated restraint limits.

A description of textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

## Committee for the Implementation of Textile Agreements

April 7, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of February 6, 1987 between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 13, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint levels:

| Category group II | 12-mo level of restraint[1] |
|---|---|
| 300, 301, 311, 312, 314, 316, 317, 319, 320, 330–334, 345, 349–359, 360–362, 369, 600–605, 630–635, 637–659, 665–670, and 831–859. | 145,000,000 sq yds equivalent. |
| 310/318 | 6,000,000 sq yd. |
| 313 | 19,500,000 sq yd. |
| 315 | 8,000,000 sq yd. |
| 335 | 173,954 doz. |
| 336/636 | 430,500 doz. |
| 337 | 85,631 doz. |
| 338/339/340 | 1,211,191 doz. |
| 341 | 2,650,845 doz. of which not more than 1,590,507 doz. shall be in shirts and blouses made from fabrics with two or more colors in the warp and/or the filling in TSUSA numbers 384.4608, 384.4610, and 384.4612. |
| 342 | 399,000 doz. |
| 347/348 | 275,268 doz. |
| 363 | 20,000,000 nos. |
| 369–S[2] | 790,000 pds. |
| 640 | 125,000 doz. |
| 641 | 740,000 doz. |
| 642 | 220,000 doz. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 369, only TSUSA number 366.2840.

In carrying out this directive, cotton, and man-made fiber textile products in the foregoing categories, with the exception of Categories 300, 301, 311, 312, 314, 316, 317, 319, 320, 360–362, 369, 600–605, 665–666, 669, 670 and 831–859, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986, shall be charged against the restraint limits established for such goods during those periods to the extent of any unfilled balances. In the event the limits established during those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The 1987 restraint limits are subject to adjustment in the future, as applicable, according to the provisions of the bilateral agreement of February 6, 1987, between the Governments of the United States and India which provide, in part, that: (1) Group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-8081 Filed 4-9-87; 8:45 am]

BILLING CODE 3510-DR-M

## New Export Visa Arrangement for Certain Cotton Textile Products Produced or Manufactured in Nepal

April 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 15, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

### Background

Under terms of the Bilateral Cotton Textile Agreement of June 1, 1986, the Governments of the United States and Nepal have exchanged letters establishing a new export visa arrangement on July 28 and August 18, 1986.

Effective on April 15, 1987, commercial shipments of cotton textile products in Categories 300–369 exported on and after April 15, 1987 must be accompanied by a valid and correct visa described in the enclosed letter to the Commissioner of Customs. Merchandise imported for the personal use of the importer and not for resale, does not require a visa for entry and shall not be charged to restraints.

A list of the issuing authorities and a facsimile of the visa stamp are published as enclosures to the letter to the Commissioner of Customs.

Interested persons are advised to take all necessary steps to ensure that cotton textile products, produced or manufactured in Nepal and exported on and after April 15, 1987, which are to be entered or withdrawn from warehouse for consumption in the United States will meet the requirements set forth in this notice.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 3, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of June 1, 1986, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 15, 1987, entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton textiles and textile articles in Categories 300–369, including, if any, part categories or merged categories, except Categories 353 and 354, produced or manufactured in Nepal and exported on and after April 15, 1987 from Nepal for which the Government of Nepal has not issued an appropriate visa fully described below.

A visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear in the front of the original commercial invoice. The original visa shall not be stamped on the duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States of America. Duplicates of the invoice may not be used for this purpose.

The visa stamp shall include the standard nine digit visa number (serial number), beginning with one numerical digit for the last digit of the calendar year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO), and six digit numerical serial number identifying the shipment; e.g. 7NP123456.

The stamp shall also include the date the visa was issued, the signature of an official from the authorized issuing authority and the correct category(s), part category(s) or merged category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tarriff Schedules of the United States Annotated (TSUSA).

The visa must not be accepted and entry must not be permitted if the shipment does not have a visa, or if the visa number, date, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way.

If the quantity indicated on the visa is more than that of the shipment, you shall permit entry and if quotas are in force you shall charge the actual quantity in the shipment to the restraint level (and not the visa quantity).

If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted and a new visa or visa waiver shall be required.

If the visa is not acceptable then a new visa must be obtained from the Nepalese Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Nepalese Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of the visaed invoice for use in obtaining a new correct original visaed invoice or a visa waiver.

Merchandise imported for the personal use of the importer and not for resale will not require a visa and shall not be charged to restraints.

You are further directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption, or designated shipments of textiles and textile articles, produced or manufactured in Nepal, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

A list of the issuing authorities and a facsimile of the visa stamp are enclosed with this letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

The actions taken with respect to the Government of Nepal and with respect to imports of cotton textiles and textile articles from Nepal have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register**.

Sincerely,

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Exemplar of the Signatures of the Officials Authorized to Issue and Sign the VISA Relating to the Export of Readymade Garments**

1. Mr. Rajpati Saran Singe
2. Mr. Ananda Karki
3. Mr. Riddni Man Shrestha
4. Mr. Achyut Thapa
5. Mr. Kuldip Singh Rathaur

[FR Doc. 87-7802 Filed 4-9-87; 8:45 am]

BILLING CODE 3510-DR-M

---

## Import Charges for Man-Made Fiber Headwear in Category 659-H, Produced or Manufactured in Taiwan

April 7, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 8, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, please call (202) 377-3715.

**Background**

A CITA directive published in the **Federal Register** on January 6, 1987 (52 FR 447) established import restraint limits for cotton, wool, man-made fiber, silk blend and other vegetable textiles

and textile products, including man-made fiber headwear in Category 659–H (only TSUSA numbers 703.0510, .0520, .0530, .0540, .0550, .0560, .1000, .1610, .1620, .1630, .1640 and .1650), produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

In consultations held May 21 and 22, 1985 between the Coordination Council for North American Affairs (CCNAA) and the American Institute in Taiwan (AIT), agreement was reached with regard to understated weight on entry documents in imports of man-made fiber headwear in Category 659–H during 1983 and 1984. As a result, the CCNAA and AIT agreed that 275,032 pounds would be charged to the 1987 limits for Category 659–H.

Accordingly, in the letter published below, the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to charge 275,032 pounds to the restraint limit established for Category 659–H for the period which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 7, 1987.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229*

Dear Mr. Commissioner: To facilitate implementation of the U.S. textile and apparel program, I request that, effective on April 8, 1987, you charge 275, 032 pounds to the limit established in the directive of December 23, 1986 for man-made fiber headwear in Category 659–H [1], produced or manufactured in Taiwan and exported during the period which began on January 1, 1987 and extends through December 31, 1987. This charge is for goods imported during 1983 and 1984.

[1] In Category 659, only TSUSA numbers 703.0510, .0520, .0530, .0540, .0550, .0560, .1000, .1610, .1620, .1630, .1640 and .1650.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8082 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DR–M

## Adjustment of Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 13, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

A CITA directive dated July 1, 1986 (51 FR 23807) established limits for certain specified categories of cotton, wool and man-made fiber textile products within the aggregate, including Category 639, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended, between the Governments of the United States and Indonesia, carryforward is being applied to the restraint limit established for Category 639. The limit for Category 639 has been filled. This adjustment will reopen the category.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 6, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of June 25, 1986 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987.

Effective on April 13, the directive of June 25, 1986 is hereby further amended to adjust the previously established restraint limit for Category 639 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended to a level of 467,142 dozen.[1] [2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8020 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DR–M

## Amendment to the Export Visa Requirement for Certain Man-Made Fiber Textiles and Textile Products from Indonesia

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of

[1] The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to reflect any imports exported after June 30, 1986.

Customs to be effective on April 13, 1987. For further information contact Pamela Smith, International Trade Specialist (202) 377–4212.

**Background**

A CITA directive dated February 1, 1980, as amended, was published in the **Federal Register** (45 FR 8084) which established an export visa arrangement for entry into the United States for consumption, or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia.

As a result of discussions held between representatives of the Governments of the United States and Indonesia, the U.S. Government has agreed, according to the terms of the notes exchanged on February 19th and March 23, 1987 and pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Agreement of August 21, 1981, as amended, to suspend the visa requirement for merchandise in Category 639 exported from Indonesia with visas issued after July 1, 1986 and until further notice. Pending resolution of a trade problem that has arisen concerning export visas issued by the Government of Indonesia, merchandise in Category 639 exported from Indonesia must be accompanied by a visa waiver obtained from the Embassy of Indonesia (2020 Massachusetts Avenue NW., Washington, DC 20036–202/775–5200), and authorized by an official of the Office of Textiles and Apparel, of the United States Department of Commerce. Merchandise in Category 639 entered under a visa waiver will be charged to the existing restraint limit.

Accordingly, in the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the directive which establishes the export visa arrangement under the bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 29754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 6, 1987.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1980, as amended, by the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry into the United States of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Indonesia for which that government had not issued an appropriate export visa.

Effective on April 13, 1987 and until further notice, the directive of February 1, 1980, as amended, is hereby further amended to suspend the previously established export visa requirement for goods in Category 639 with visas issued after July 1, 1986 and until further notice. Instead, you are directed to prohibit entry of merchandise from Indonesia in Category 639 not accompanied by a visa waiver issued by the Embassy of Indonesia (2020 Massachusetts Avenue, NW., Washington, DC 20036—202/775–5200), and authorized by an official of the Office of Textiles and Apparel of the United States Department of Commerce.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8021 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Advisory Committee on Integrated Long-Term Strategy; Meeting

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Advisory Committee on Integrated Long-Term Strategy will meet in closed session on 30 April 1987 in the Old Executive Office Building, Washington, DC.

The mission of the Advisory Committee on Integrated Long-Term Strategy is to provide the Secretary of Defense and the Assistant to the President for National Security Affairs with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war. At this meeting the Committee will hold classified discussions of national security matters dealing with long term strategy and policy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [U.S.C. App. II, (1982)], it has been determined that this Advisory Committee meeting concerns matters listed in 5 U.S.C. section 552(c)(1)(1982), and that accordingly this meeting will be closed to the public.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

April 6, 1987.

[FR Doc. 87–8013 Filed 4–9–87; 8:45 am]

BILLING CODE 3810–01–M

### Per Diem, Travel and Transportation Allowance Committee

**AGENCY:** Per Diem, Travel and Transportatoin Allowance Committee.

**ACTION:** Publication of Changes in Per Diem Rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personel Per Diem Bulletin Number 139. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 139 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**EFFECTIVE DATE:** April 1, 1987.

**SUPPLEMENTARY INFORMATION:** This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distributions of Civilian Per Diem Bulletins by mail ws discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

**Civilian Personnel Per Diem Bulletin Number 139 to the Heads of the Executive Departments and Establishments**

Subject: Maximum per diem rates for official travel in Alaska, Hawaii, the Comonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702 (a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 138 except for the cases identified by asterisk * which rates are effective on the date of this Bulletin unless othewise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

| Locality | Maximum rate |
|---|---|
| Adak* [1] | $19 |
| Anaktuvuk Pass | 140 |
| Anchorage* | 125 |
| Atqasuk | 215 |
| Barrow* | 150 |
| Bethel | 124 |
| Cold Bay | 120 |
| Coldfoot | 122 |
| College | 105 |
| Cordova* | 118 |
| Deadhorse | 113 |
| Dillingham | 114 |
| Dutch Harbor-Unalaska | 127 |
| Eielson AFB | 105 |
| Elmendorf* | 125 |
| Fairbanks | 105 |
| Ft. Richardson* | 125 |
| Ft. Wainwright | 105 |
| Homer* | 115 |
| Juneau | 109 |
| Katmai National Park | 148 |
| Kenai* | 104 |
| Ketchikan* | 105 |
| King Salmon [3] | 134 |
| Kodiak* | 118 |
| Kotzebue* [3] | 136 |
| Murphy Dome [3] | 105 |
| Noatak* | 136 |
| Nome* | 129 |
| Noorvik* | 136 |
| Petersburg | 113 |
| Point Hope | 160 |
| Point Lay | 179 |
| Prudhoe Bay | 113 |
| St. Paul Island | 115 |
| Sand Point | 103 |
| Shemya AFB [2] | [illegible] |
| Shungnak* | 136 |
| Sitka-Mt. Edgecombe* | 110 |
| Skagway | 113 |
| Spruce Cape* | 118 |
| St. Mary's | 100 |
| Tanana* | 129 |
| Valdez* | 147 |
| Wainwright | 165 |
| Wrangell | 113 |
| Yakutat | 110 |
| All other localities [3] | 91 |
| American Samoa | 81 |
| Guam M.I | 93 |
| Hawaii: | |
| Hawaii, Island of: | |
| Hilo | 59 |
| Other | [illegible] |
| Kauai, Island of: [4] | |
| 12-20—3-31 | 127 |
| 4-1—12-19 | 91 |
| Oahu | [illegible] |
| All Other Islands | [illegible] |
| Johnston Atoll [2] | 23 |
| Midway Islands [1] | 13 |
| Northern Mariana Islands: | |
| Rota | 76 |
| Saipan | 92 |
| Tinian | 68 |
| All Other Islands | 20 |
| Puerto Rico: | |
| Bayamon: | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Carolina: | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Fajardo (Including Luquillo): | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Ft. Buchanan (Incl GSA Service Center, Guaynabo): | |
| 12-16—5-15 | 134 |
| 5-16—5-15 | 107 |
| Roosevelt Roads: | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| Sabana Seca: | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| San Juan (Including San Juan Coast Guard Units): | |
| 12-16—5-15 | 134 |
| 5-16—12-15 | 107 |
| All Other Localities | 107 |
| Virgin Islands of U.S.: | |
| 12-1—4-30 | 156 |
| 5-1—11-30 | 126 |
| Wake Island [2] | [illegible] |
| All Other Localities | 20 |

[1] (Effective 12-1-86) Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility; when quarters are obtained through Aleutian Contractors, a daily travel per diem allowance of $89 is prescribed to cover the cost of lodging, meals and incidential expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] This rate is effective 17 February 1987.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

April 6, 1987.

[FR Doc. 87-8014 Filed 4-9-87; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), annuncement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 20-23 April 1987.

Times of Meeting: 0800-1700 hours each day.

Place: HQ WESTCOM and HQ PACOM.

Agenda: The Army Science Board Ad Hoc Subgroup on Defense of the Aleutians will meet with the Commanding Generals of WESTCOM and PACOM to discuss Indications and Warning, Air Defense and other pertinent issues. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-8122 Filed 4-9-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

[CFDA No.: 84, 128A]

### Invitation for Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Severely Disabled Individuals for Fiscal Year 1987

*Purpose:* To provide grant support to a public or nonprofit rehabilitation facility, designated State unit, or other public or private agency or organization for a project of national scope to provide community-based supported employment services to individuals with severe handicaps.

*Deadline for Transmittal of Applications:* June 10, 1987.

*Applications Available:* April 17, 1987.

*Available Funds:* $200,000.

*Estimated Average Size of Award:* $200,000.

*Estimated Number of Awards:* 1.

*Project Period:* Not to exceed 36 months.

*For Applications or Further Information Contact:* Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3322 (Switzer Building, M/S–2312), Washington, DC 20202. Telephone: (202) 732–1349.

**Program Authority:** 29 U.S.C. 777a(d)(1).

Dated: April 6, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–8093 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

---

[CFDA No.: 84.128A]

### Invitation for Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Transitional Planning Services to Youths With Severe Handicaps for Fiscal Year 1987

*Purpose:* To provide grant support to a public agency in a predominantly rural western State to develop, expand, and disseminate model statewide transitional planning services for youths with severe handicaps.

*Deadline for Transmittal of Applications:* June 10, 1987.

*Applications Available:* April 17, 1987.

*Available Funds:* $150,000.

*Estimated Average Size of Award:* $150,000.

*Estimated Number of Awards:* 1.

*Project Period:* Not to exceed 36 months.

*For Applications or Further Information Contact:* Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3322—M/S 2312), Washington, DC 20202. Telephone: (202) 732–1349.

**Program Authority:** 29 U.S.C. 777a(e).

Dated: April 6, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–8090 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

---

[CFDA No.: 84.128A]

### Invitation for Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Transitional Planning Services to Youths With Severe Handicaps for Fiscal Year 1987

*Purpose:* To provide grant assistance to a public agency in a predominantly urban State in New England to support an existing model statewide transitional planning services program for youths with severe handicaps.

*Deadline for Transmittal of Applications:* June 10, 1987.

*Applications Available:* April 17, 1987.

*Available Funds:* $150.000.

*Estimated Average Size of Award:* $150,000.

*Estimated Number of Awards:* 1.

*Project Period:* Not to exceed 36 months.

*For Applications or Further Information Contact:* Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3322, M/S 2312), Washington, DC 20202. Telephone: (202) 732–1349.

**Program Authority:** 29 U.S.C. 777a(e).

Dated: April 6, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–8088 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

---

[CFDA No.: 84.128A]

### Invitation for Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Transitional Planning Services to Youths With Severe Handicaps for Fiscal Year 1987

*Purpose:* To provide grant support to a public agency or nonprofit private organization in a predominantly rural southwestern State to develop, expand, and disseminate model statewide transitional planning services for youths with severe handicaps.

*Deadline for Transmittal of Applications:* June 10, 1987.

*Applications Available:* April 17, 1987.

*Available Funds:* $150.000.

*Estimated Average Size of Award:* $150,000.

*Estimated Number of Awards:* 1.

*Project Period:* Not to exceed 36 months.

*For Applications or Further Information Contact:* Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3322, M/S—2312), Washington, DC 20202. Telephone: (202) 732–1349.

**Program Authority:** 29 U.S.C. 777a(e).

Dated: April 6, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–8089 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

---

## National Advisory Council on Indian Education; Partially Closed Meeting

**AGENCY:** National Advisory Council on Indian Education, Education.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATES:** April 28, 1987, 8:30 a.m. until conclusion of business, approximately 9:00 a.m. (Closed, if necessary)

April 28, 1987, approximately 9:00 a.m. until conclusion of business (Open)

April 29, 1987, 9:00 a.m. until conclusion of business (Open).

**ADDRESS:** Red Lion Inn-Coliseum, 1225 N. Thunderbird Way, Portland, OR 97227 (503/235–8311)

**FOR FURTHER INFORMATION CONTACT:** Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street NW., Suite 574, Washington, DC 20036 (202/634–6160)

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

On April 28, 1987, the closed portion (if necessary) of the meeting will start at approximately 8:30 a.m., and will end at the conclusion of business, approximately 9:00 a.m. The agenda will consist of discussion of an investigatory record which is confidential.

On April 28–29, 1987, starting at approximately 9:00 a.m. (on April 28, 1987), the meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report.
(2) Executive Director's Report.
(3) Action on previous minutes.
(4) Election of Officers.
(5) Committee discussions and reports.
(6) NACIE Budget—FY '87.
(7) Plans for future NACIE activities.
(8) Regular Council business.
(9) Public Testimony.
(10) On-site visits (April 29, 1987).

The closed portion of the meeting will touch upon investigatory records and matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (6) and (7) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the partially closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: April 2, 1987. Signed at Washington, DC.

**Lincoln C. White,**

*Executive Director, National Advisory Council on Indian Education.*

[FR Doc. 87–8101 Filed 4–9–87; 8:45 am]

BILLING CODE 4000-01-M

## Office of Postsecondary Education

### Guaranteed Student Loan Program, SLS Program, Plus Program, and Consolidation Loan Program

**AGENCY:** Department of Education.

**ACTION:** Notice of special allowance for quarter ending December 31, 1986.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Pursuant to the requirements of section 252 of Pub. L. 99–177, Balanced Budget and Emergency Deficit Control Act of 1985 (popularly known as the Gramm-Rudman-Hollings Act), the President issued a sequestration order on February 4, 1986, directing implementation of the reductions contained in the law. Congress ratified and affirmed the order as law (Pub. L. 99–366; July 31, 1986). Section 256 of Pub. L. 99–177 provides that if a sequestration order is issued, the special allowance formula for loans after the order takes effect and before the end of the fiscal year is adjusted by reducing the rate provided in section 438(b)(2)(A)(iii) of the Higher Education Act by 0.4 percent. The reduction will apply to the first four special allowance payments on loans made on or after March 1, 1986, and before October 1, 1986. Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending December 31, 1986, the special allowance will be paid at the following rates:

| | Applicable interest rate (percent) | Annual special allowance rate (percent) | Special allowance rate % for quarter ending December 31, 1986 |
|---|---|---|---|
| I. GSLP, PLUS or Consolidation loans made prior to October 1, 1981: | | | |
| | 7 | 2.125 | 0.53125 |
| | 9 | 0.125 | 0.03125 |
| II. GSLP, SLS or PLUS loans made on or after October 1, 1981 for periods of enrollment beginning prior to November 16, 1987; Consolidation loans made on or after October 1, 1981, but prior to October 17, 1986: | | | |
| A. Loans *not* subject to sequester order (Pub. L. 99–177) | 7 | 2.01 | 0.5025 |
| | 8 | 1.01 | 0.2525 |
| | 9 | 0.01 | 0.00[illegible] |
| | 12 | 0.00 | 0.00 |
| | 14 | 0.00 | 0.00 |
| B. Loans subject to sequester order (Pub. L. 99–177) | 7 | 1.61 | 0.4025 |
| | 8 | 0.61 | 0.1525 |
| | 9 | 0.00 | 0.00 |
| | 12 | 0.00 | 0.00 |
| III. GSLP loans for periods of enrollment beginning on or after November 16, 1986; SLS or PLUS loans for periods of enrollment beginning on or after November 16, 1986, but before July 1, 1987; Consolidation loans made on or after October 17, 1986: | | | |
| | 7 | 1.76 | 0.44 |
| | [illegible] | [illegible].76 | 0.19 |
| | [illegible] | 0.00 | 0.00 |
| | 10 | 0.00 | 0.00 |
| | 11 | [illegible].00 | [illegible].00 |
| | 12 | [illegible].00 | 0.00 |
| | 13 | [illegible].00 | 0.00 |
| | 14 | 0.00 | 0.00 |

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

*(a) Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (5.51 percent for the quarter ending December 31, 1986);

*(b) Step 2.*

Subtract from that average the applicable interest rate of loans for which a holder is requesting payment;

*(c) Step 3.*

(1) Add 3.5 percent to the remainder, and, in the case of loans made before

October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.1 percent to the remainder, in the case of loans subject to the sequester order issued pursuant to Pub. L. 99–177; or

(3) Add 3.25 percent in the case of (i) GSLP loans for periods of enrollment beginning on or after November 16, 1986, (ii) SLS or PLUS loans for periods of enrollment beginning on or after November 16, 1986, but before July 1, 1987, or (iii) Consolidation loans made on or after October 17, 1986; and

*(d) Step 4.*

Divide the resulting percent in Step 3 (either (c)(1), (c)(2), or (c)(3), as applicable) by four.

**FOR FURTHER INFORMATION CONTACT:** Ralph B. Madden, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245–2475.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: April 7, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 87–8094 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Innovative Control Technology Advisory Panel; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I hereby certify that establishment of the Innovative Control Technology Advisory Panel (ICTAP) is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101–6.10.

The purpose of the Panel is to provide the Secretary of Energy, through the Under Secretary, with advice and recommendations on activities related to the development of innovative technologies to control emissions associated with acid deposition.

Further information regarding this Advisory Committee may be obtained from Gloria Decker (202–586–8990).

Issued in Washington, DC, on April 7, 1987.

**Charles R. Tierney,**

*Advisory Committee Management Officer.*

[FR Doc. 87–8095 Filed 4–9–87; 8:45 am]

BILLING CODE 6450–01–M

## Bonneville Power Administration

**[BPA File No. DSC–6(c)]**

### Proposed Implementation of a Conservation Program Designed To Modernize Aluminum Smelters in the Pacific Northwest

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of decision.

**SUMMARY:** On February 23, 1987, BPA issued a Record of Decision with respect to the proposed implementation of a conservation program designed to modernize aluminum smelters in the Pacific Northwest.

The decision finds that the proposed program is consistent with the 1986 Northwest Conservation and Electric Power Plan (Plan) developed by the Northwest Power Planning Council (Council). The Council found the proposed program consistent with the Plan on March 18, 1987. This notice is made pursuant to 16 U.S.C. 839d(c)(4).

For further information, contact Donna L. Geiger, BPA Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212. Telephone numbers, Voice/TTY, for the Public Involvement Office are (503) 230–3478 in Portland; toll free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada and California.

Issued in Portland, Oregon, on April 1, 1987.

**Robert E. Ratcliffe,**

*Acting Administrator.*

[FR Doc. 87–17963 Filed 4–9–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project No. 2613–003, et al.]**

### Hydroelectric Applications (Milstar Manufacturing Corp., et al.); Applications Filed

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Transfer of License.

b. Project No.: P–2613–003.

c. Date Filed: February 13, 1987.

d. Applicants: Milstar Manufacturing Corporation, Central Maine Power Company, Scott Paper Company, Madison Paper Industries, Augusta Development Corporation, and The Merimil Limited Partnership.

e. Name of Project: Moxie Storage.

f. Location: On the Moxie Stream in Somerset County, Maine.

g. Filed Pursuant to: Section 9 of the Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David T. Flanagan, Vice President, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. Comment Date: May 18, 1987.

j. Description of Transfer: On June 11, 1969, a major license was issued to the Kennebec River Pulp & Paper Company (Kennebec), the Central Maine Power Company (CMP), the Scott Paper Company (Scott), the Milstar Manufacturing Corporation (Milstar), and the Bates Manufacturing Company, Inc. to construct, operate, and maintain the Moxie Storage Project No. 2613. On June 14, 1978, the Commission approved a transfer of license from the Kennebec Augusta Development Corporation (ADC), Scott and Milstar to Madison Paper Corporation, ADC, CMP, Scott and Milstar. Milstar is currently in the process of liquidating and will in the near future cease to exist, therefore, the transfer of Milstar's interest in the license to the Merimil Limited Partnership is necessary.

k. This notice also consists of the following standard paragraphs: B & C.

2 a. Type of Application: Transfer of License.

b. Project No.: 3195–020.

c. Date Filed: February 12, 1987.

d. Applicant: Joseph M. Keating and Sayles Hydro Associates.

e. Name of Project: Sayles Flat Hydroelectric Project.

f. Location: On the South Fork American River, near Twin Bridges, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Edwin F. Feo, Esq., Lillick, McHose & Charles, 725 South Figueroa Street, Suite 1200, Los Angeles, CA 90017–2513, (213) 488–7100.

Louis Rosenman, Esq., LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Ave. NW., Suite 1100, Washington, DC 20036, (202) 457–7500.

i. Comment Date: May 13, 1987.

j. Proposed Action: Joseph M. Keating proposes to transfer his license for Project No. 3195 to Sayles Hydro

Associates to facilitate completion of the project. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license.

Sayles Hydro Associates is a general partnership organized under the laws of the State of California.

k. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Conduit Exemption.

b. Project No.: 10309–000.

c. Date Filed: February 2, 1987.

d. Applicant: Ronald K. Vaughn.

e. Name of Project: Flying W.

f. Location: On an irrigation pipe in T20N, R9E, near Emmett in Valley County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Richard K. Linville, P.O. Box 578, Emmett, ID 83617, (208) 365–3525.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would use an existing irrigation conduit and would consist of a powerhouse containing one generating unit with a rated capacity of 7.5 kW. The average annual energy production would be 43,800 kWh.

k. Purpose of Project: Project power would be used at the Flying W Lodge.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

4 a. Type of Application: Exemption (5 MW).

b. Project No.: 8682–002

c. Date Filed: January 27, 1987.

d. Applicant: City of Colonial Heights, Virginia.

e. Name of Project: Lakeview Dam Hydroelectric Project.

f. Location: On Swift Creek in the City of Colonial Heights, Chesterfield County, Virginia.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. Comment Date: May 13, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing hollow slab and buttress type dam 418 feet long with a maximum height of 38.6 feet; (2) an existing reservoir with a normal surface area of 38 acres and a storage capacity of 610 acre-feet; (3) two existing reinforced concrete conduits 8 feet high and 10 feet wide; (4) a proposed reinforced concrete powerhouse 40 feet long, 25 feet wide, and 30 feet high housing two 200–kW hydropower units; (5) a proposed tailrace; (6) a proposed 13.2–kV transmission line approximately 600 feet long; and (7) appurtenant facilities. The applicant estimates that the average annual energy generation would be 1.7 GWh. The dam is owned by the City of Colonial Heights, Virginia.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 10227–000.

c. Date Filed: January 2, 1987.

d. Applicant: City of Manassas, Virginia.

e. Name of Project: Summersville Dam.

f. Location: On the Gauley River near Summersville, Nicholas County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Marcos A. Alegre, Harwood Beebe Company, Inc., 364 South Pine Street, P.O. Box 2646, Spartansburg, SC 29304, (803) 585–0185.

i. Comment Date: May 15, 1987.

j. Competing Application: Project No. 10226–000; Date Filed: 1/2/87; Due Date: April 3, 1987.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Summersville Dam and reservoir and would consist of: (1) A proposed concrete-lined power tunnel 20 feet in diameter and 200 feet long branching into three penstocks; (2) a proposed reinforced concrete powerhouse housing two 40,000–kW and one 20,000–kW hydropower units; (3) a proposed tailrace; (4) a proposed transmission line connecting with a 345–kV Appalachian Power Company line or a 138–kV Monogahela Power Company line; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 255 GWh and that the cost of the work to be performed under the permit would be $280,000. The applicant proposes to sell most of the energy to a public or private utility, to utilize the energy within the utility systems of the Municipal Electric Power Association of Virginia, and to utilize the energy for the requirements of the City of Manassas.

l. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

6 a. Type of Application: Major License (over 5 MW).

b. Project No.: 9754–000

c. Date Filed: December 30, 1985.

d. Applicant: Rio Hydroelectric Associates.

e. Name of Project: Rio Hydroelectric Project.

f. Location: On the Mongaup River in Sullivan and Orange Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John N. Webster, Rio Hydroelectric Associates, c/o So. N.H. Hydroelectric Dev. Corp., P.O. Box 1073, Dover, NH 03820, (207) 384–5334.

i. Comment Date: May 18, 1987.

j. Description of Project: The proposed project would consist of existing project facilities currently owned by Orange and Rockland Utilities, Inc., including: (1) The Rio Dam, a composite structure comprised of an eastern earthen embankment 450 feet long, a center concrete gravity dam-spillway section 265 feet long and 101 feet high flanked on both sides by 100-foot long concrete abutments, and a western earthern embankment, 550 feet long; (2) trashracks and an intake structure; (3) Rio Reservoir, an impoundment with a surface area of 370 acres and a storage capacity of 13,110 acre-feet at spillway crest elevation of 810 feet mean sea level; (4) an 11-foot diameter collapsed 7100-foot long wood stave penstock attached to a 400-foot long steel penstock section; (5) a powerhouse with a total installed rated capacity of 11 MW; (6) a 300-foot long tailrace; (7) a 69 kV transmission line, 1100 feet long; and new project facilities to include: (8) a 7100-foot long steel or fiberglass penstock to replace the wood stave penstock; (9) a 3.5-foot diameter minimum-flow penstock, 65 feet long; (10) a powerhouse to use minimum flows with an installed capacity of 500 kW; (11) a 500-foot long tailrace; and (12) other appurtenances. The average annual energy generation is 31,000,000 kWh.

k. Purpose of Project: Project energy would be sold to Orange and Rockland Utilities, Inc.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

7 a. Type of Application: Preliminary Permit.

b. project No.: 10208–000.

c. Date Filed: December 22, 1986.

d. Applicant: Enterprise Power Inc.

e. Name of Project: Enterprise Hydroelectric.

f. Location: On the Enterprise Canal shiphon at the Teton River crossing in Fremont County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Contact Person: Mr. G.L. Smith, P.O. Box 1016, Idaho Falls, ID 83402, (208) 529–8115.

i. Comment Date: May 18, 1987.

j. Description of Project; The proposed project would utilize excess flows in the Enterprise Canal, using existing works including: (1) A 300-foot-long diversion structure in the Falls River; (2) a 10-foot by 28-foot gated intake structure; (3) an 8-mile-long irrigation canal; and (4) a 60-inch-diameter steel siphon; and would consist of: (1) A penstock connecting to the siphon; (2) a powershouse containing a generating unit rated at 1,200 kW, producing an average annual output of 5.5 Gwh; (3) a tailrace discharging into the Teton River; and (4) an intertie to the electric distribution lines at the site. The estimated cost of permit activities is $20,000.

k. Purpose of Project: Generated power would be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs; A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. project No.: 10210–000.

c. Date Filed: December 30, 1986.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Harlan Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Harlan Creek, King County, Washington. Township 26N and Range 12E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project; The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,600 feet msl; (2) a penstock 12,000 feet long and 24 inches in diameter leading to; (3) a powerhouse at elevation 1,200 feet msl containing a single turbine/generator unit with a capacity of 2,330 kW operating at 1,400 feet of hydraulic head; and (4) a 4-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 10.2 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs; A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. project No.: 10212–000.

c. Date Filed: December 30, 1986.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Martin Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Martin Creek, King County, Washington. Township 26N and Range 12E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98052, (202) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would consist of: (1) Two diversion structures with inlet elevations of 2,800 feet msl; (2) a bifurcated penstock 12,000 feet long and 60 inches in diameter leading to; (3) a powerplant at elevation 1,400 feet msl containing a single turbine/generator unit with a capacity of 7,642 kW operating at 1,400 feet of hydraulic head; and (4) a 0.3-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 33.5 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs; A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10274–000.

c. Date Filed: January 28, 1987.

d. Applicant: Cascade River Hydro.

e. Name of Project: Sibley Creek.

f. Location: On Sibley Creek within the Snoqualmie-Mt. Baker National Forest in T35N, R12E, near Marblemount in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey 12122–196th Avenue NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete ditch intake structure buried in the stream at elevation 2,600 feet; (2) a 6,000-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 2,980 kW; and (4) a 7-mile-long transmission line. Applicant estimates the average annual energy production to be 13.08 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10305–000.

c. Date Filed: January 30, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Hidden Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Hidden Creek, Whatcom County, Washington. Township 37N and Range 9E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey 12122–196th NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 3,000 feet msl; (2) a penstock 6,000 feet long and 24 inches in diameter leading to; (3) a powerplant at elevation 800 feet msl containing a single turbine/generator unit with a capacity of 4,805 kW operating at 2,200 feet of hydraulic head; and (4) a 10-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 21.04 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 10308–000.

c. Date Filed: January 30, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Park Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Park Creek, Whatcom County, Washington. Township 37N and Range 8E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey 12122–196th NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,000 feet msl; (2) a penstock 7,000 feet long and 24 inches in diameter leading to; (3) a powerplant at elevation 1,000 feet msl containing a single turbine/generator

unit with a capacity of 2,124 kW operating at 1,000 feet of hydraulic head; and (4) a 7-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 9.3 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

**Standard Paragraphs**

*A3. Development Application*

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

*A5. Preliminary Permit*

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

*A7. Preliminary Permit*

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

*A8. Preliminary Permit*

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be file in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

*A9. Notice of Intent*

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

*A10. Proposed Scope of Studies Under Permit*

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

*B. Comments, Protests or Motions to Intervene*

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*C. Filing and Service of Responsive Documents*

Any filings must bear in all capital letters the title "Comments", "Recommendations For Terms and Conditions", "Notice of Intent To File Competing Application", "Competing Application", "Protest" or "Motion To Intervene", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies requried by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*D2. Agency Comments*

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

*D3a. Agency Comments*

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local

agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

*D3b. Agency Comments*

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 7, 1987.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8008 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket Nos. CI83-10-001, CI83-11-001 and CI87-188-000]**

## FMP Operating Co., a Limited Partnership; Applications for Permanent Abandonment and Blanket Limited-Term Certificate

April 6, 1987.

Take notice that the Applicant listed herein has filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service and for a blanket limited-term certificate to sell natural gas in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protests with reference to said applications should on or before April 13, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file petitions to intervene in accordance with the Commission's rules.

**Lois D. Cashell,**

*Acting Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI83-10-001, B, Dec. 19, 1986 [1]. | FMP Operating Company, a Limited Partnership, P.O. Box 60004, New Orleans, Louisiana 70160-0004. | Florida Gas Transmission Company, Matagorda Island Blocks 527 and 555, Offshore Texas. | ([2]) | |
| CI83-11-001, B, Dec. 19, 1986 [1]. | ..... | ..... | ([2]) | |
| CI87-188-000, A, Dec. 19, 1986 [1]. | ..... | Various Purchases, Matagorda Island Blocks 527 and 555, Offshore Texas. | ([3]) | |

[1] These applications were noticed on January 13, 1987. However, that notice did not include Applicant's additional request received February 19, 1987, to grant Applicant permanent abandonment in lieu of the limited-term abandonment previously requested. Such request was made in response to Florida Gas Transmission's protest to the original applications.

[2] Applicant requests permanent abandonment of gas sales to Florida Gas Transmission Company. The contract has terminated effective December 7, 1986, and buyer has ceased taking the gas. Applicant's well(s) produce NGPA section 102(d) gas and Applicant's deliverability is 38 MMcf/day.

[3] Applicant requests a blanket limited-term certificate with pregranted abandonment for a term to expire on September 1, 1989, in order to make spot-market sales for resale in interstate commerce of gas subject to the abandonment in Docket Nos. CI83-10-001 and CI83-11-001. Applicant requests that the filing requirements of Parts 154 and 271 of the Commission's Regulations be waived and in lieu thereof, Applicant is willing to accept reporting requirements.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession, F—Partial Succession.

[FR Doc. 87-8049 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-357-000]

## Newmont Oil Co; Application for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonments

April 7, 1987.

Take notice that on March 10, 1987, Newmont Oil Company (Newmont), 600 Jefferson, 9th Floor, Houston, Texas 77002, filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking (i) a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of certain natural gas, with pre-granted abandonment and (ii) a blanket limited-term abandonment, all for a term from April 1, 1987 through March 31, 1990, as more fully described in the Application which is on file with the Commission and open for public inspection.

Newmont states that the authority as requested is consistent with the Commission's rules and regulations and is necessary for Newmont to make short-term, best efforts and spot gas sales. Further, Newmont states that, absent such authorization, the flexibility and efficiency necessary for successful operation in the spot market would be hindered, and gas would be shut-in or significantly excluded from the market-place.

Specifically, Newmont requests that the Commission authorize Newmont:

(i) To make sales for resale in interstate commerce for a period of three years, with pre-granted abandonment of any such sale, without supply or market limitations, of gas subject to the Commission's NGA jurisdiction that is produced from various interests owned by Newmont:

(ii) To abandon for a three-year term sales for resale of gas subject to the Commission's NGA jurisdiction and previously certificated by the Commission, to the extent that such gas is released from contract by interstate pipelines for resale to third parties; and

(iii) A waiver of Part 154 of the Commission's Regulations concerning the establishment of rate schedules for any sales made under (i).

Certain sales proposed to be made by Newmont will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Newmont. The sales volumes, prices, purchasers, delivery points, and supply source will vary. Newmont proposes to sell and deliver to various short-term and spot gas purchasers all or a portion of the gas Newmont determines is available for sale at terms acceptable to Newmont for a particular time frame. Newmont will not be obligated to sell gas pursuant to any nomination or proposed nomination until the exact volumes, terms and conditions, and prices are agreed to by Newmont and a purchaser. The actual contract between Newmont and the short-term and spot gas purchaser may be for all or any portion of the quantity which was set out in the nomination or proposed nomination. Further, Newmont proposes to make sales on a best efforts basis where the price and term are agreed upon but there is no requirement on the purchaser or Newmont to sell a specific volume.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000.

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8050 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-385-000]

## Phillips 66 Natural Gas Co.; Application

April 7, 1987.

Take notice that on March 23, 1987, Phillips 66 Natural Gas Company (Phillips 66 NGC), of 990-G Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Commission's Regulations, to grant authorization for (1) blanket limited-term abandonment of sales for resale of all gas owned by Phillips 66 NGC and subject to Natural Gas Act jurisdiction; (2) blanket limited-term certificate to make sales for resale of such gas; (3) pregranted abandonment of any sales to alternate purchasers; and (4) waiver of requirements for filing and maintaining rate schedules during the limited-term abandonment.[1]

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8051 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-384-000]

## Phillips Petroleum Co.; Application

April 7, 1987.

Take notice that on March 23, 1987, Phillips Petroleum Company (Phillips), of 990-G Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Commission's Regulations, to grant authorization for (1) blanket limited-term abandonment of sales for resale of all gas owned by Phillips and its co-owners which is priced at or below the NGPA section 109 maximum lawful price and subject to

---

[1] The above requests are similar to those authorized by the Commission's recent orders in *Southern Natural Gas Company* Docket No. CI86-371-000, 36 FERC par. 61,401 (September 29, 1986); *Sonat Exploration Company*, Docket No. CI86-403-000, 37 FERC par. 61353 (December 29, 1986); and *ANR Pipeline Company, et al.*, Docket No. CI86-637-000, *et al.*, 38 FERC par. 61,046 (January 21, 1987).

Natural Gas Act jurisdiction; (2) blanket limited-term certificate to make sales for resale of such gas; (3) pregranted abandonment of any sales to alternate purchasers; and (4) waiver of requirements for filing and maintaining rate schedules during the limited-term abandonment.[1]

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell

*Acting Secretary.*

[FR Doc. 87-8052 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-399-000]

## Union Oil Co. of California, and Union Exploration Partners, Ltd.; Application

April 7, 1987.

Take notice that on March 27, 1987, Union Oil Company of California (Union) and Union Exploration Partners, Ltd. (UXP), of 1201 West 5th Street, Suite 902, Los Angeles, California 90017, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c and 717f, and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 157, to extend and amend its Order Permitting and Approving Limited-Term Abandonments and Granting Blanket Sales Certificates with Pregranted Abandonment issued in *Marathon Oil Company*, Docket Nos. CI85-651-001, *et al.* Approval of this Application will allow the UNIMART marketing program to be continued for an additional three-year period, or through March 31, 1990, and will permit Union and UXP to include all NGPA categories of natural gas for sale in UNIMART.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-8053 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

---

[1] The above requests are similar to those authorized by the Commission's recent orders in *Southern Natural Gas Company* Docket No. CI86-371-000, 36 FERC par. 61,401 (September 29, 1986); *Sonat Exploration Company* Docket No. CI86-403-000, 37 FERC par. 61353 (December 29, 1986); and *ANR Pipeline Company, et al.* Docket No. CI86-637-000, *et al.*, 38 FERC par. 61,046 (January 21, 1987).

---

## Office of Hearings and Appeals

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice explaining procedures for processing refund applications in crude oil refund proceedings under 10 CFR Part 205, Subpart V.

**SUMMARY:** This notice considers the comments received by the Office of Hearings and Appeals (OHA) in response to its August 8, 1986 order implementing the Department of Energy's modified policy for restitution of crude oil overcharges, notice of which was published in 51 FR 29689 (August 20, 1986). DOE's new policy was issued in connection with the settlement of the DOE Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.). The policy specifies that 20 percent of crude oil overcharges will be set aside to satisfy refund claims and 80 percent will be disbursed to the state and federal governments for indirect restitution. This notice analyzes the comments and explains the procedures which the OHA will follow in processing applications filed under the DOE's Subpart V regulations for refunds of the crude oil overcharge funds.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); (202) 586-2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** As part of the settlement approved in the Department of Energy Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.), the DOE agreed to revise its restitutionary policy for crude oil overcharge cases. Accordingly, the DOE issued a Statement of Modified Restitutionary Policy in Crude Oil Cases on July 28, 1986. 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP announces a refund process for restitution of crude oil overcharges using the special refund procedures codified at 10 CFR Part 205, Subpart V. DOE will reserve initially 20 percent of crude oil overcharge funds to satisfy claims and disburse 80 percent of the funds to the State and Federal governments for indirect restitution. The DOE's Office of Hearings and Appeals (OHA) will accept and process refund applications from persons who can show they were injured by crude oil overcharges. After all valid claims are paid, unclaimed funds will be divided equally between the State and Federal governments. The Federal government's share of the unclaimed funds will be deposited into the general fund of the Treasury of the United States.

On August 8, 1986, the OHA issued an order announcing its intention to apply DOE's modified policy in all present and future Subpart V proceedings involving alleged crude oil violations. Refund proceedings then pending before the OHA to which the MSRP applies were listed in the Appendix to the order. Notice of the August 8 order was published at 51 FR 29689 (August 20, 1986). The order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning appropriate procedures to follow in processing refund applications in crude oil refund proceedings. In addition, the order stated that Applications for Refund may now be filed, and noted that it is not necessary to file applications in each of the refund proceedings listed in the Appendix.

The August 8 order summarized the OHA's preliminary view of the type of refund process and procedures that would be appropriate in the crude oil cases:

> We expect that many potential claimants in the oil industry itself—refiners, resellers

and retailers—will waive their claims for crude oil refunds in Subpart V proceedings and elect instead to take refunds under one of the escrow funds established under the settlement. In addition, most members of certain groups of petroleum product consumers who are participating in the settlement can also be expected to waive their Subpart V rights: surface transporters (buses, trucks and taxis), water transporters, railroads, airlines and oil burning electric utilities. However, other large consumers of petroleum products that are not covered by one of the escrow accounts established under the settlement are now in a position to file claims. It is likely on the basis of existing OHA precedent in the refund area that refunds made to successful claimants will be calculated according to a volumetric method, in which the amount of money available will be appropriated over all gallons of produce sold. *See* 48 FR 57608 (1983). It is also likely that small consumers will not receive refunds, since any refunds they receive will be smaller than the cost of processing their applications. We seek comments on the appropriateness of applying these precedents in crude oil refund proceedings.

51 FR at 29691.

The present notice considers the comments which the OHA received in response to the August 20 notice, and provides further guidance to assist claimants who wish to file refund applications for crude oil moneys under the Subpart V regulations.

## I. Background

Before considering the comments, this notice provides a general background discussion. The DOE uses Subpart V proceedings to make refunds of oil overcharge funds to injured persons. *See* 44 FR 8566 (February 9, 1979). In the crude oil area, early Subpart V decisions permitted injured persons to file claims, and proposed to devide the remaining crude oil overcharge funds among the states, based on their proportionate consumption of refined petroleum products. *Office of Enforcement,* 9 DOE ¶ 82,521 (1982) *(Alkek); see also Office of Enforcement,* 9 DOE ¶ 82,553 (1982) *(Adams); Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) *(Amoco); A. Johnson & Co., Inc.* 12 DOE ¶ 85,102 (1984) *(A. Johnson).* Although more than 60 claims wer initially filed (mostly by refiners) in these early cases, major policy questions were unresolved, and these claims were not decided by OHA before the recent crude oil settlement.

On September 13, 1983, the United States District Court in Kansas referred the question of who was injured and in what amounts by the crude oil overcharges in the Stripper Well proceeding to the OHA for fact-finding. The court also solicited DOE's view on the proper means of restitution in the case. 578 F. Supp. 586 (D. Kan. 1983). In its decision to refer the matter to OHA, the court observed that although each party had a strong opinion on what remedy was best, there were no facts in the record on which to base a decision. 578 F. Supp. at 595.

After announcing procedures and some tentative conclusions, OHA held an evidentiary hearing over a 22-day period between June and October 1984. Sixty-four public and private entities participated in the evidentiary proceedings. The OHA accumulated a record of nearly 13,000 pages of written and oral testimony.

On June 21, 1985, the OHA submitted its fact-finding report to the court. *Report of the Office of Hearings and Appeals, In Re: The Department of Energy Stripper Well Exemption Litigation,* Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). The OHA Report concluded that it was generally impossible to trace the overcharges through any particular refiner's marketing system, and no methodology had been suggested which even attempted to accomplish this result. However, using sophisticated econometric techniques, some reasonable assumptions, and evidence in the record showing the movement of refined product prices in relation to crude oil costs over time, OHA was able to arrive at conclusions with a high degree of certainty regarding injury at the refiner level. The OHA determined that domestic refiners as a class absorbed between 2.7 and 8.1 percent of the crude oil overcharges, and that refiners passed on the remainder to the national petroleum distribution network and to consumers (end-users) of petroleum products by increasing the prices of the refined petroleum products which they sold.

DOE also submitted its 1985 crude oil refund policy statement to the court. It recommended that restitution to parties injured by crude oil overcharges should not be attempted, and that the Stripper Well overcharges be placed in escrow and held until the fall of 1986. As a practical matter, DOE's 1985 policy statement placed a moratorium on the processing of claims for restitution which had already been submitted to OHA in curde oil Subpart V cases. As noted in the MSRP:

> It was in that context that the parties to MDL 378 discussed the settlement of issues pertaining to the disposition of the court's escrow. In view of the similarity of restitutionary problems confronting the Department in other crude oil cases, and the uniform treatment of all such cases in the 1985 policy statement, DOE concluded that the settlement negotiations provided an appropriate vehicle for exploring the resolution of those issues in all crude oil [illegible]

51 FR 27899 at 27900 (August 4, 1986).

The settlement which led to DOE's modified restitutionary policy was the result of seven months of extensive negotiations among the various public and private interests to determine an appropriate disposition of crude oil overcharge funds. The scope of the settlement was extremely broad. It applies to the following three different types of crude oil overcharges:

> It addresses the distribution of crude oil violation funds obtained in cases alleging violations of the regulations governing the first sale of crude oil (10 CFR Part 212, Subpart D), the crude oil reseller regulations (10 CFR Part 212, Subparts F and L), and the entitlements regulations (10 CFR 211.66, 211.67, 211.69).

51 FR 27899 at 27900. Moreover, it considered the interests of all potential crude oil claimants: Those who were parties to the court case, MDL 378, and others who were injured by crude oil overcharges. Finally, it applies to crude oil moneys in the MDL 378 escrow, to crude oil moneys now in the DOE escrow, and to crude oil moneys obtained in other pending administrative and court proceedings.

For claimants who were parties to MDL 378, the settlement establishes a mechanism through individual escrow accounts for each group to receive a portion of the funds from the Stripper Well escrow, including refiners, resellers of refined petroleum products, retailers of gasoline and diesel fuel, agricultural cooperatives, domestic airlines, investor-owned utilities, surface transporters (fleet operators of trucks, buses and taxis), and rail and water transporters (railroads and operators of barges and American flag vessels). While the amounts each group will receive under the settlement were arrived at through negotiations, they were based on the sum of crude oil violation funds already collected plus the amount DOE believes it will recover in the future. For purposes of the settlement that total amount was estimated to be $4 billion. Consequently, as a condition to submitting a claim for a refund from any of these escrows, claimants are required to sign a waiver releasing any claims they might have against all other crude oil overcharge funds.

The settlement also provides a mechanism—implemented in DOE's MSRP—for other claimants to file for a refund from crude oil overcharges. Under the MSRP, those other persons will be allowed to submit refund claims

to the OHA under Subpart V, and they will be paid from funds collected by the Department in crude oil cases other than MDL 378. OHA will establish an initial reserve fund for these claims of up to 20 percent of all crude oil overcharge funds subject to Subpart V proceedings. The remaining 80 percent, and any unclaimed funds, will be divided between the State and Federal governments as representatives of the energy-consuming public.

## II. Discussion of Comments Received

### *A. Introduction*

In response to our publication of the August 8, 1986 order implementing the MSRP in the **Federal Register**, 51 FR 29689 (Aug. 20, 1986), the Office of Hearings and Appeals received eleven comments. Those submitting comments were: Farmers Union Central Exchange, Inc. (CENEX); the Transit Authority Refund Claimants Task Force; the American Public Transit Association; the Washington Metropolitan Area Transit Authority; Energy Watch, Inc.; System Fuels Inc.; a group of Ocean Carriers (I); the National Air Transportation Association; Philip P. Kalodner; various States, Territories and Possessions of the United States; and a second group of Ocean Carriers (II).

In general, the comments were brief since it was already made clear in the MSRP and the OHA's August 8, 1986 order implementing the MSRP that the crude oil refund process will be modeled after the process the OHA has used to evaluate claims based on refined product overcharges in previous Subpart V cases. Indeed, this has been confirmed in decisions issued by OHA since the August 8, 1986 order. As in non-crude oil cases, applicants will be required to document their purchase volumes and to demonstrate that they were injured by the alleged overcharges. The standards for showing injury which the OHA has used in analyzing claims for petroleum product overcharge funds will also apply to claims based on crude oil overcharges. *See, e.g., Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986), *citing Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). Refunds to successful claimants will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil overcharge moneys by the total United States consumption of petroleum products during the period of price controls (August 1973 through January 1981).

Next, we will discuss matters addressed in the comments that merit general attention. We will also consider a number of case-specific matters raised by individual commenters. Finally, for general guidance we will summarize the procedures OHA will apply in crude oil refund proceedings under Subpart V.

### *B. Pre-existing Subpart V Cases*

The first area to consider concerns the manner in which the new crude oil restitutionary policy will apply to "pre-existing" crude oil Subpart V cases. This group consists of over 300 individual refund proceedings, including three large consolidated decisions (*Adams, Alkek* and *A. Johnson*) and the crude oil portions of "global" settlements (such as *Amoco*). These proceedings were announced several years before the settlement and the MSRP. The claims period in those cases has long since expired. However, as Ocean Carriers I have pointed out, no claims have yet been paid pursuant to those Subpart V procedures because of "major uncertainties as to DOE's policy for making refunds." Ocean Carriers I Comment at 4. They maintain that those proceedings should be reopened because of the fundamental change in DOE's crude oil refund policy reflected in the MSRP. Many consumers, including the Ocean Carriers, did not file individual claims in these proceedings, and in light of DOE's stated policy not to accept claims, it would have made little sense for them to do so. Ocean Carriers I Comment at 5. The States take the opposite position, contending that the early Subpart V crude oil cases should not be reopened for new claims, and that all moneys attributable to those cases be immediately paid out to the states and federal government as unclaimed funds. States Comment at 4. We agree that these cases should be reopened. The purpose of these Subpart V proceedings has always been to make equitable restitution to persons injured by crude oil overcharges, *see* 44 FR 8566 (February 9, 1979), and the OHA has authority under the governing regulations to issue ancillary orders to ensure that restitution is achieved. 10 CFR 205.288. That purpose should not now be frustrated by foreclosing direct restitution in these proceedings solely because of the passage of time Moreover, the period for end-users to file claims in these proceedings was never formally "opened." *See, e.g., Alfred B. Alkek*, 9 DOE ¶ 82,521, at 85,136; *see also Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553; *Amoco Brand Committee*, 10 DOE ¶ 82,556. OHA will therefore issue supplemental orders reopening the claims process in these proceedings. Notice of these actions will be published in the **Federal Register**.

### *C. Size of Reserve and Timing of Payments*

In a related area, a number of commenters expressed opinions on the size of the reserve which the OHA should maintain for the payment of crude oil refund claims. Comments from potential claimants urged OHA to reserve more than 20 percent of the funds to avoid a possible shortfall in the amount required for payments to injured persons. However, the settlement permits only downward adjustment of the reserve from the initial 20 percent figure. The States advocated that less than 20 percent of the crude oil Subpart V funds be reserved for claimants. Since the OHA has had no experience in the crude oil refund area since the issuance of the MSRP, we believe that any action to adjust the reserve at this time would be premature.

We have also received comments that addressed the timing of payments under the Subpart V process, both to applicants and to state and federal governments. Commenters who represent potential applicants urge OHA to consolidate all crude oil refunds into one lump sum payment. The States press for immediate distribution of all moneys representing refunds to the states for indirect restitution. It is too early in the Subpart V process for the OHA to be able to make any definitive statements about the timing of refunds. It is clear that we are faced with a "rolling" process in which moneys will flow into and out of the escrow account as settlements are made and refunds determined. OHA will adhere to the Subpart V regulations which govern this process in order to give reasonable notice to the public of proposed refund procedures and to allow for the submission of applications for refund. Amounts not reserved for claims will be distributed promptly to State and Federal governments.

### *D. Calculation of Refunds*

The next matter concerns the calculation of refund amounts in crude oil cases.[1] The August 8, 1986 order

[1] It should be noted that the method of calculating refunds relates only to the fair allocation of funds in the reserve to claimants to make restitution for the injury they suffered. *Cf.* Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, section 3003(b) (Subpart V proceedings should establish the amount of injury claimants experienced from oil overcharges). This discussion has nothing to do with the amount of money that is reserved to pay claims, which was discussed at a previous point in this notice.

contemplated using a volumetric method for allocating the overcharges among each gallon of refined petroleum products sold in the United States during the period of federal price controls. That allocation would be made by dividing crude oil overcharge moneys ("the numerator") by the total U.S. consumption of petroleum products during the period of price controls ("the denominator"). 51 FR at 29691. *See Mountain Fuel,* 14 DOE ¶ 85,475 (1986); *A. Tarricone, Inc.,* Case No. KEF-0049 (proposed decision, September 23, 1986). Comments generally supported the volumetric approach, and because of its virtues we have determined that it should be followed in these cases. The volumetric approach presumes that alleged crude oil violations were spread equally and therefore increased the price of all gallons of petroleum products, rather than attempting to tie violations to any specific transactions. In fact, nearly all of the funds involved in these proceedigns were obtained through consent orders in which no actual violations were conceded. Moreover, during the period of price controls the Entitlements Program widely dispersed the impact of crude oil overcharges among domestic refiners, and caused the market price of all petroleum products to increase. *See generally* OHA Report. For these reasons, the volumetric method offers the fairest and most reasonable method for apportioning the crude oil overcharges involved over the products sold in the United States during the period of controls. The volumetric approach is also efficient, having been used by the OHA in hundreds of prior Subpart V refund proceedings involving refined petroleum products, and we conclude that it is equally suited for the crude oil area.

Both groups of Ocean Carriers maintained that the volumetric calculation should be modified in certain respects. First, Ocean Carriers I claimed that the denominator used by DOE in the cases cited above was inflated because it included petroleum consumption for the entire years 1973 and 1981. This is not correct. As we stated in *Mountain Fuel,* the denominator is "an estimate of the number of gallons of petroleum products consumed in the United States *during the period August 1973 through January 1981* (2,020,997,335,000)." 14 DOE at 88,868 n.4 (emphasis added). Second Ocean Carriers I and II contended that "the only fair way to calculate the volumetric refund amount is to include in the numerator *all* monies attributable to crude oil overcharges, including the *Stripper Well* monies." Ocean Carriers I Comment at 9; *see also* Ocean Carriers II Comment at 10.[2] They reasoned that since the denominator includes all refined products, and therefore crude oil, consumed in the United States during the period, it would be inconsistent and unfair if the numerator did not reflect all crude oil overcharges related to that consumption. The Carriers contend that the claimants in these Subpart V proceedings were injured by the Stripper Well overcharges just as much as by the crude oil overcharges of the many firms listed in the appendix to the August 20, 1986 **Federal Register** notice. For this reason, they contend that their refunds should take that injury into account. *Id.*

For the reasons explained below, we think the Ocean Carriers' position has considerable merit on both theoretical and practical grounds. To be equitable, restitution in Subpart V crude oil proceedings should reflect the amount of injury suffered from all crude oil overcharges, regardless of their source.

The volumetric method bases the calculation of refunds on an apportionment of crude oil overcharges over each gallon of product consumed in the United States during the period of price controls. These crude oil overcharges had the same general effect—they all caused the market price of each gallon of petroleum products to increase. Since the denominator includes all gallons of products consumed during controls, a fair volumetric apportionment should attempt to include in the numerator all alleged crude oil overcharge moneys received (including those that will be received in the future, assuming a reasonable degree of certainty as to the amount of future recoveries). In fact, this methodology was followed in the Stripper Well settlement, which addressed crude oil violation moneys contained in both the MDL 378 escrow and the DOE escrow, as well as DOE's estimated recovery of additional crude oil overcharges in the future, and provided for a joint resolution of refund claims based on those overcharges. The sum of these amounts—$4 billion—was the starting point for determining how much each group of parties to MDL 378 would receive in the settlement. Refunds to injured persons who were not parties to MDL 378, or non-waiving parties, are paid from the DOE escrow.[3] As stated by Judge Theis, the settlement agreement provides "an opportunity in special refund proceedings pursuant to 10 CFR Subpart V for non-settling [non-] waiving claimants to submit any claims of injury from an alleged crude oil violation." *In Re: The Department of Energy Stripper Well Exemption Litigation,* MDL No. 378 (D. Kan., July 7, 1986) (opinion and order approving settlement), slip op. at 13.

In order to treat Subpart V claimants on a fair restitutionary basis, the volumetric calculation must recognize that the total amount of all crude oil overcharges (including future recoveries) is much larger than the amount in each specific case made subject to Subpart V proceedings. In fact, use of only the crude oil overcharge amount available in each specific case made subject to Subpart V proceedings results in the *smallest* possible per-gallon allocaton of crude oil overcharges. As discussed below, additional crude oil overcharge amounts can be included in the numerator. These different numerator amounts result in a range of possible volumetric overcharge calculations that could be used in crude oil Subpart V proceedings.

The highest volumetric calculation would include all crude oil overcharges collected and to be collected in the future. For purposes of the settlement negotiations, that amount was estimated to be $4 billion. This number included crude oil overcharge moneys from several sources: (i) The amount then in the DOE escrow; (ii) the amount in the MDL 378 escrow; and (iii) the amount of estimated future recoveries. That figure could even be increased by an additional $2 billion to account for the crude oil overcharges determined in *United States v. Exxon Corp.,* 561 F. Supp. 816 (D.D.C. 1983). Inclusion of the Exxon overcharges would produce a total crude oil overcharge recovery figure of $6 billion and yield the highest volumetric overcharge in the range, approximately $0.003 per gallon of petroleum products purchased.

[2] The Transit Authority Refund Claimant Task Force makes a similar argument, urging OHA to deduct from the denominator the volumes of refined products sold to the groups of MDL 378 parties for whom specific escrow accounts were established in the settlement. Although this type of adjustment has some appeal, it would be too difficult to implement as a practical matter. All of the volumes that passed through petroleum product resellers and retailers were ultimately consumed by end-users, some of whom may apply for refunds themselves, and this could produce double or even triple counting of volumes. Because of these difficulties, accurately adjusting the number of gallons in the denominator might delay the crude oil refund process for several years. That result would defeat one of the principal purposes of the settlement: achieving an expeditious resolution of all crude oil refund claims.

[3] Different groups of claimants are to receive restitution either from the MDL 378 escrow or from another escrow account. Refunds to refiners and members of other groups that were parties to MDL 378 are paid from the MDL 378 escrow.

Inclusion of the entire $4 billion in total estimated recoveries alone, while excluding the Exxon overcharges, yields an overcharge amount of approximately $0.002 per gallon. This is the second highest figure in the range. The next largest refund formulation would take the $4 billion figure of estimated total recoveries, reduce it by $415 million—the amount being refunded in MDL 378 to firms in the petroleum product distribution chain (refiners, resellers and retailers)—and would yield an overcharge amount of approximately $0.0018 per gallon.

Another approach would be to include the $1.4 billion in the MDL 378 escrow at the time of settlement, minus the $415 million refunded to refiners, resellers and retailers, or $985,000,000, plus the crude oil overcharges that were in DOE's escrow account at the time of the settlement. The sum of these two figures is $1,654,662,389 which yields an initial volumetric overcharge amount of approximately $0.0008 per gallon. Under this formulation, as additional crude oil violation amounts are received in the future the volumetric overcharge amount would be increased. This "full party" approach would eliminate the need to consider any questions of "upstream" overcharge absorption by the refiners, resellers and retailers who supplied products to end-user claimants, since the amount of injury attributed to those intermediaries in the distribution chain is excluded from the numerator.

Finally, the lowest possible overcharge allocation in the range would exclude the Stripper Well overcharges entirely and include in the numerator only the amount of crude oil overcharges in the DOE escrow account at the time of the settlement ($669,662,389). This yields a volumetric overcharge of approximately $0.0003 per gallon.

Some of the volumetric formulations in the range described above have evident drawbacks. For example, the circumstances of the Exxon litigation can be distinguished, since the remedy devised by the District Court—refunds to state governments for the benefit of all consumers—was already completed before the Stripper Well settlement was concluded. In contrast, the lowest number (about one-tenth of the largest number in the range) is small in comparison and may not accurately reflect the level of injury suffered by Subpart V claimants. It clearly does not treat Subpart V claimants on a par with parties who received restitution from the MDL 378 escrow, since it would use a different, much smaller number for total crude oil overcharge recoveries. *Cf.* Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, section 3003(b) (Subpart V proceedings should establish the amount of injury claimants experienced from oil overcharges). Use of the smallest number in the range would also be most likely to produce repetitive claims and the need for administrative reprocessing because claimants would have to reapply for additional refunds as DOE received additional crude oil moneys.

We have concluded that the "full parity" method described above best achieves the restitutionary objectives of the settlement and should be used to calculate the volumetric overcharge amount in crude oil proceedings under Subpart V. This would produce a current volumetric refund amount of $0.0008 per gallon. The "full parity" approach compensates refund recipients in MDL 378 and in Subpart V proceedings on an equal footing and most fairly and equitably effectuates restitution for the injury they suffered as a result of crude oil overcharges. It is also the most administratively efficient for Subpart V proceedings since it tends to eliminate repetitive reapplications and obviates the need to consider nettlesome questions of "upstream" overcharge absorption by middlemen in the oil distribution chain.

**E. Standards for Showing Injury**

The next area of general interest concerns the standards for showing injury in crude oil refund proceedings under Subpart V. Several commenters advocated the use of the well-established presumption of injury for end-users (ultimate consumers), provided their business was unrelated to the petroleum industry. Others submitted comments that urged OHA to use presumptions of injury for resellers and retailers based on those adopted in various major refiner refund proceedings. A number of comments urged OHA to follow Subpart V precedents and permit claimants to use estimates to establish the number of gallons of petroleum products purchased. Related comments requested guidance on whether it was necessary for applicants to identify their suppliers in order to receive a refund. Finally, the States contend that Paragraph IV.B.1 [4] of the Settlement Agreement bans the use of these presumptions in Subpart V proceedings, and requires end-user claimants to submit detailed evidence of injury in order to receive refunds for crude oil overcharges.

The OHA intends to apply relevant precedents established in the petroleum product refund area to crude oil Subpart V proceedings. The States are incorrect in claiming that Paragraph IV.B.1 supports the position that no presumptions are to be permitted in crude oil Subpart V proceedings. To the contrary, Paragraph IV.B.1 specifically indicates that the settlement does not amend the Subpart V regulations. Section 205.282(e) of these regulations explicitly provides for the use of appropriate presumptions of injury in any Subpart V claim, and OHA has employed presumptions in thousands of refund cases since 1981. Presumptions are necessary because the Department's primary restitutionary policy is to pay injured persons, *i.e.* to do direct restitution. To achieve this, refund procedures must take account of the complexity of oil overcharge proceedings, difficulty in actually proving an overcharge, passage of time, difficulties in locating records and relevant market data, and the agency's expertise in the structure of the industry and its functioning during the period of controls. The Settlement Agreement itself took account of these factors and did not require any party to the Stripper Well Litigation to provide proof of injury in order to receive a refund. The settlement specified that there shall be a Subpart V claims process for injured persons who were not parties to the Stripper Well Litigation. The imposition of new standards for proof of injury

---

[4] Paragraph IV.B.1 provides as follows:

B. Pending and Future Proceedings. DOE and the States agree:

1. *Modification of Policy.* In order to carry out its remedial authority under the ESA and EPAA, within 20 days following the date of the Approval Order, DOE will issue a modification of the Statement of Restitutionary Policy concerning Alleged Crude Oil Violations issued on June 21, 1985 (50 FR 27400; July 2, 1985). DOE will publish that modification (hereinafter the Modified Policy) in the Federal Register. The Modified Policy will state that the policy of DOE is to process applications for refunds pursuant to existing Subpart V regulations and that in such administrative proceedings involving Alleged Crude Oil Violations, OHA will continue to require that each claimant must affirmatively demonstrate that it has been injured by the alleged violation and that is should therefore receive a refund. *See e.g. Office of Special Counsel/Tenneco Oil Co.*, 9 DOE ¶ 82,538 at 85,206 (1982). The Modified Policy will state that individuals claiming such injury may file claims but OHA will not accept claims on behalf of classes, associations or trade groups. Nothing in the Modified Policy will preclude a claimant from attempting to prove injury through the use of econometric evidence of the type that was submitted in the Stripper Well evidentiary proceedings before the OHA nor preclude OHA from using the findings contained in the Report of the Office of Hearings and Appeals, *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., filed June 21, 1985). Nothing contained herein may be construed to amend the Subpart V regulations.

BEST COPY AVAILABLE

would be inconsistent with this provision.

The *Tenneco* decision cited in the settlement established procedures for distributing funds remitted by the firm pursuant to a DOE consent order. The *Tenneco* refund procedures incorporated several different kinds of presumptions. For example, firms that had already received refunds directly from Tenneco were presumed to be ineligible for further refunds from OHA. 9 DOE ¶ 82,538 at 85,201. Spot purchasers of Tenneco products were also presumed to be ineligible for refunds under Subpart V. *Id.* End users were not required to show they absorbed any overcharges in order to receive a refund. 9 DOE ¶ 82,538 at 85,202. Under the *Tenneco* standard an end-user had only to prove its volume of purchases from Tenneco in order to establish injury and receive a refund. *See, e.g., Tenneco Oil Co./Defense Logistics Agency,* 9 DOE ¶ 82,588 (1982). This is the same standard that OHA will apply in deciding crude oil refund claims submitted by end-users under Subpart V. The States' position confuses the requirement of showing absorption of overcharges, which was applied to refiners and resellers in adjudicating refund claims under Subpart V for refined petroleum product overcharges, with the different standard applied in those proceedings to end-users. Refiners and resellers (unlike end-users of refined petroleum products) had the opportunity under DOE statutes and regulations to pass through overcharges in the prices of the same products resold within the same regulated industry. Far from supporting the States' position, the page of the *Tenneco* decision cited in the Settlement Agreement does not relate at all to end-user claimants, but deals instead with Entitlements Program participants, *i.e.* refiners, and allocation claimants.[5] *Id.* at 85,206. Thus, the language on which the States rely is irrelevant to the treatment of end-user claimants. *Id.*

The States' position is insupportable as a matter of common sense as well. Under the presumptions we are adopting for crude oil refunds, end-users (ultimate consumers) whose businesses are unrelated to the petroleum industry need establish only the volume of petroleum products they purchased during the controls period to prove that they were injured by crude oil overcharges; they do not have to submit any further evidence to prove that they absorbed the overcharges. This policy furthers important practical goals. Analysis of the impact of crude oil overcharges on end-users is beyond the scope of a refund proceeding. *See Office of Enforcement: In the Matter of PVM Oil Associates, Inc.,* 10 DOE ¶ 85,072 (1983) at 88,308. End-users generally were not subject to price controls and were not required to keep records which justified selling price increases by reference to cost increases. If, for example, a brick manufacturer filed a claim for a refund on the fuel oil it purchased during the period August 1973 through January 1981, it is only reasonable to conclude that the firm was harmed by the amount of the crude oil overcharges allocated to the fuel oil which it used to manufacture bricks. Performing an economic analysis of the effect of the overcharges on the price of bricks would be duplicative.[6] Using the approach advocated by the States would be costly and inefficient and would mean that virtually no end-users would receive restitution for the crude oil overcharges they suffered. *See Greater Richmond Transit Co.,* 15 DOE ¶ 85,028 at 88,050.

This standard for end-users has recently been described in a shorthand fashion as a "presumption of injury," but its use was based on the practical considerations noted above, a factor also underlying the standard for proving injury from antitrust violations (courts do not attempt to determine whether first purchasers were able to "pass on" the effects of the violation).[7] *See* Additional Comments of Philip P. Kalodner at 5–20, summarizing the development of OHA caselaw regarding refunds to end-user claimants. All of the presumptions we are adopting are rebuttable, and any interested party can submit evidence to show that a refund applicant in fact was able to pass on the crude oil overcharges or is not otherwise eligible to receive the refund which it seeks.

Three matters mentioned above deserve further discussion. The first question is whether applicants must identify their suppliers and prove their exact gallonage to receive refunds. In view of the finding in the OHA Report that crude oil overcharges increased the prices to consumers of all domestic petroleum products, applicants need not identify their suppliers in order to receive refunds. OHA Report, Fed. Energy Guidelines ¶ 90,507 at 90,620. For purposes of these crude oil overcharge proceedings, it matters only that the applicant purchased petroleum products in the United States market during the period August 1973 through January 1981. Following OHA precedent, reasonable estimates of purchase volumes will be permitted.

The second question is whether the presumptions of injury for resellers and retailers used in recent refined product Subpart V cases, such as *Marathon Petroleum Co.,* 14 DOE ¶ 85,269 (1986), should be permitted in crude oil refund proceedings. *See, e.g.,* Energy Watch Comment. These presumptions will *not* apply here. Applicants for crude oil refunds must show injury. 51 FR at 27901. There is an important distinction between product refund cases under Subpart V and crude oil cases which is particularly relevant to this issue. In a case like *Marathon,* in which refunds are made for alleged overcharges in sales of refined products, the overcharges were confined to purchasers of Marathon products, and the presumptions of injury for Marathon resellers reflect this fact. By contrast, market prices for refined products generally increased when crude oil overcharges occurred, and all resellers—regardless of their suppliers—were therefore affected by crude oil overcharges. Accordingly, a reseller or retailer must submit additional evidence to show the extent to which it absorbed crude oil overcharges. Under the circumstances, resellers and retailers will not be permitted to use presumptions to show they were injured in crude oil refund cases. These classes of applicants may, however, use the type of econometric evidence that was submitted to OHA in the Stripper Well proceeding to show that they were injured by crude oil overcharges. 51 FR at 27901; Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, section 3003(b)(2).

Finally, we should note that utilities have been permitted to receive refunds in Subpart V refund proceedings only to

---

[5] In fact, the page of the Tenneco decision cited in the Settlement Agreement specifically provides that allocation claimants "need not conclusively establish all of the elements of a violation on Tenneco's part and resulting injury on the claimant's part." 9 DOE at 85,206. Instead, "an applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of the injury which was sustained by the claimant." Id.

[6] By contrast, petroleum refiners and resellers had the opportunity under DOE statutes and regulations to pass through increased costs of refined petroleum products by raising the prices of the very same products that they charged to their customers. Since regulated firms in the petroleum industry were required to keep records showing how their cost increases justified price increases, OHA has generally examined the question of absorption versus passthrough when considering large refund applications submitted by these firms.

[7] *See* Hanover Shoe, Inc. v. United Machine Corp., 392 U.S. 481 (1968); Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). This approach to end-user claims has also been applied to private enforcement actions brought under section 210 of the Economic Stabilization Act. Eastern Airlines, Inc. v. Atlantic Richfield Co., 609 F.2d 497 (Temp. Emer. Ct. App. 1979).

the extent that they notify the applicable state regulatory body and pass on the entirety of the refund to their retail customers. For example, in *A. Tarricone, Inc./Consolidated Edison Company of New York, Inc.*, 15 DOE ¶ 85,038 (1986), the utility received a refund based upon its purchases of product after it had certified "that as a regulated utility it will notify [the state utility commission] of any refund received and will also pass such refund on to its retail customers on a dollar for dollar basis." 15 DOE at 88,074. To receive a refund in any crude oil refund proceeding, a regulated utility will have to submit a similar certification.

*F. Case-Specific Comments*

We will next direct our attention to two case-specific comments that were received in response to the August 20, 1986 **Federal Register** notice. The first of these comments was submitted by CENEX, and the second was submitted by the National Air Transportation Association (NATA).

CENEX is a large regional agricultural cooperative headquartered in St. Paul, Minnesota, whose members include local cooperatives located throughout the northern tier states. One of the Subpart V crude oil cases, No. HEF-0359, involves an April 1981 consent order between CENEX and DOE which settled in alleged $0.13 per barrel posted price violation by the cooperative for $150,000.

Refund procedures for the CENEX consent order were established in *A. Johnson*, 12 DOE ¶85,102 (1984), and the funds will be subject to claims under the MSRP. CENEX claims that consolidating the CENEX consent order funds with all other crude oil moneys in DOE's escrow is improper since the oil was used by its refineries, and any overcharges from the posted price violation were not dispersed by the Entitlements Program, but borne exclusively by its member-cooperatives. CENEX asserts that despite the waivers it has executed to receive MDL 378 refunds (both as a refiner and a cooperative) which released all claims against crude oil moneys subject to Subpart V, its members were the only one injured by its posted price violations, and it should be allowed to filed a claim for crude oil refunds.

We do not believe that the position taken by CENEX is correct; however, we will not in this notice make a final determination on any claim. As a party to MDL 378, CENEX agreed to the consolidation of all types of alleged crude oil violations for purposes of the settlement and the MSRP, even though it knew or should have known that the funds in OHA Case No. HEF-0359 would be subject to general claims, rather than refunded exclusively to its members. *See* 51 FR at 27900 (settlement "addresses the distribution of crude oil violation funds obtained in cases alleging violations of the regulations governing the first sale of crude oil . . . ."). In our view, CENEX must live with the consequences of its participation in the settlement negotiations. The releases which it must execute to receive refunds from the MDL 378 escrows clearly indicate that the firm waives its Subpart V claims. CENEX (and any of its members) may nevertheless file claims for portions of the Subpart V crude oil moneys, and we will consider their arguments in detail at that time. It should be obvious from the foregoing, however, that CENEX and its members have a substantial burden to prove that they should receive crude oil refunds under Subpart V.

The NATA is a national trade association representing the resellers of aviation fuels known as "fixed base operators." According to NATA, most of its members are planning to take refunds from MDL funds through the resellers escrow, and they will be required to waive their claims against the Subpart V moneys. However, NATA points out that some of its members also operate flight schools and air taxis in which they are end-users of aviation fuel. NATA's comment asked OHA to advise it whether its "dual purchaser" members waive their right to file for Subpart V refunds if they obtain an MDL 378 refund from the resellers escrow. It seems clear that the NATA resellers which elect to file for resellers escrow refunds waive their rights to file for Subpart V refunds as end-users, based on the language of the Resellers Notice of Settlement and the actual text of the resellers waiver and withdrawal of claims provisions in the Settlement Agreement at Exhibit B. Moreover, this position was also stated by former ERA Solicitor Carl A. Corrallo in the June 12, 1986 hearing on the settlement before Judge Theis. *See* Transcript of June 12, 1986 Hearing, MDL No. 378 (D. Kan.) at 23–34. Likewise, in the July 7, 1986 order approving the settlement, Judge Theis indicated the court's view that "all parties and claimants receiving funds under the agreement will waive any further claims to crude oil refunds." *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., Jul. 7, 1986) (opinion and order approving settlement), slip op. at 13. The court also stated that the claims procedures established for the various MDL 378 escrows adequately compensated parties for the claims they waived. *Id.* at 22. As noted above, the MSRP and the OHA's August 8, 1986 order implementing the MSRP also state that MDL 378 parties who execute waivers cannot also apply for refunds under Subpart V.

**III. Summary of Crude Oil Refund Procedures**

The guidelines which follow provide a general summary of the standards which the OHA will apply in crude oil refund proceedings, under Subpart V. It should be recognized, however, that under those regulations, standards and procedures governing the evaluation of refund claims must be contained in a final Decision and Order issued pursuant to 10 CFR 205.282(c) and published in the **Federal Register**. All Subpart V refund proceedings involving alleged crude oil violations where the claims deadlines have expired before issuance of the MSRP will be reopened for claims by issuance of appropriate orders in the near future. All cases involving alleged crude oil violations where a Proposed Decision and Order establishing procedures has been issued will be finalized pursuant to § 205.282(c). It is likely that funds from many different cases will be consolidated to maximize the administrative efficiency of the process. *See, e.g., A. Tarricone, Inc.*, Fed. Energy Guidelines ¶ 90,060 (proposed decision, September 23, 1986) (consolidation of 28 cases). OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Because the process is new, adequate notice to the public of the opportunity to submit claims is important. 10 CFR 205.283(b). Although no deadline will be established in this notice for the submission of claims or the payment of refunds, final Decisions and Orders in these cases will set deadlines for the submission of refund applications. Amounts not reserved for the payment of claims will be distributed to State and Federal governments.

As in non-crude oil cases, applicants will be required to document their purchase volumes and demonstrate that they were injured. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,474 (1986). Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 (1986). Applicants who were end-users (ultimate consumers) of petroleum products whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged

crude oil overcharges, and need not submit any further evidence of injury beyond volumes of product purchased in order to receive a refund. *Id.* It is not necessary for applicants to identify their supplier of petroleum products in order to receive a refund. Resellers and retailers of petroleum products must submit detailed evidence of injury, and may not use presumptions of injury established by OHA in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type used in the OHA Report to the District Court in the Stripper Well litigation, MDL No. 378 (D. Kan.), Fed. Energy Guidelines ¶ 90,507 (June 19, 1985), and OHA intends to use the Report in evaluating refund applications submitted under Subpart V. Parties to MDL 378 who received refunds from one of the escrows established in the settlement will have waived their rights to apply for crude oil refunds under Subpart V.

Refunds will be calculated using a volumetric method in which the amount of crude oil overcharge funds will be divided by the total United States consumption of refined petroleum products during the period of price controls (August 1973–January 1981). The numerator of this volumetric refund calculation will include the $1.4 billion in the MDL 378 escrow at the time of the settlement, minus the $415 million refunded to refiners, resellers and retailers, or $985 million, plus the crude oil overcharges in DOE's escrow account at the time of the settlement. As indicated earlier, the latter amount is $669,662,389. The sum of these two figures is $1,654,662,389, which yields an initial volumetric refund of approximately $0.0008 per gallon. This calculation is subject to further adjustment as additional crude oil moneys become available in the DOE escrow and are made subject to the crude oil claims process.

No application forms will be provided. Instead, end-users should submit the material outlined below in the form of a letter. The letter should include the following information: (a) A short description of the applicant's business and use of petroleum products; (b) the total number of gallons of domestic petroleum products used during the period August 19, 1973 through January 27, 1981 broken down by product; (c) an explanation of how the applicant obtained the volume figures above; (d) a statement that the applicant, its parent firm, affiliates, etc., have not elsewhere waived their right to a refund; and (e) if the applicant did business under more than one name or a different name during the period of price controls, a list of the names which it used. Resellers and retailers should submit all of the information outlined above, plus additional evidence to show that the applicant was injured, *i.e.* that it did not pass all overcharges through to its own customers. The telephone number for a contact person who can answer questions about the application should be provided, and the letter should indicate the name and address of the person who should receive the refund check. The application should be typed or printed, and mailed to the following address:

Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585

A current taxpayer identification number or Social Security number must also be included in the letter. Applicants may be required to submit additional information to document their refund claims.

Under the MSRP, up to 20 percent of the alleged crude oil violation amount may be reserved for the payment of claims to injured persons. For the present time, OHA has decided to reserve the entire 20 percent to ensure that adequate funds will be available for refunds. The remaining 80 percent of the funds will be disbursed to state and federal governments for indirect restitution under the formulae governing those disbursements which are specified in the Settlement Agreement. However, those funds are subject to the same reporting requirements as all other crude oil moneys received by the States under the settlement.

Dated: April 6, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 87–8097 Filed 4–9–87; 8:45 am]

BILLING CODE 6450–01–M

## Western Area Power Administration

## Rio Grande Project; Rate Order

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of a rate order—Rio Grande Project.

**SUMMARY:** Notice is given of Rate Order No. WAPA–28 of the Under Secretary of the Department of Energy for placing an increased power rate into effect on an interim basis beginning on the first day of the April 1987 billing period for power marketed by the Western Area Power Administration (Western) from the Rio Grande Project. This is a minor rate adjustment.

The wholesale composite power rate for all project firm power is 36.92 mills per kilowatthour (kWh). This is an increase of about 6.07 mills over the previous rate for firm energy and capacity. The rate was last adjusted in 1984.

The rate order further explains the rate adjustment and discusses the principal factors leading to the decisions on the rate increase and responds to the comments offered during the rate adjustment proceeding.

**EFFECTIVE DATE:** The rates will become effective on the first day of the April 1987 billing period.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Marlene Moody, Deputy Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (810) 524–5493

Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1535

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5581

**SUPPLEMENTARY INFORMATION:** By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664, December 14, 1983), as amended (51 FR 19744, May 30, 1986), the Secretary of Energy delegated to the Administrator of Western the authority to develop power and transmission rates; to the Under Secretary of the Department of Energy the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission the authority to confirm, and approve, and place in effect on a final basis, to remand, or to disapprove such rates.

The proposed rate adjustment and a 30-day customer consultation and comment period were initiated on May 30, 1986, with an announcement of the proposed rate adjustment published in the **Federal Register** at 51 FR 19600. On May 22, 1986, letters were sent to customers and other interested parties with copies of the rate brochure dated May 1986 and an agenda announcing an informal public meeting to be held May 30, 1986. Written comments were accepted through July 14, 1986.

Public comments received have been considered in the preparation of the rate order. Corrections were made to the

final revised FY 1985 PRS in February 1987, and a composite rate of 36.92 mills per kWh was determined as a result of this updated PRS.

Rate Order No. WAPA-28 confirming and approving an increased power rate on an interim basis is hereby issued, and the rate will be promptly submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Washington, DC, March 27, 1987.

**Joseph F. Salgado,**

*Under Secretary.*

**Department of Energy Under Secretary**

*Order Confirming, Approving, and Placing an Increased Power Rate in Effect on an Interim Basis*

March 27, 1987.

In the matter of: Western Area Power Administration—Rio Grande Project Power Rate; Rate Order No. WAPA-28.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, Chapter 1093, 32 Stat. 388 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Rio Grande Project (RGP) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664, December 14, 1983), as amended (51 FR 19744, May 30, 1986), the Secretary of Energy delegated the authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); the authority to confirm, approve, and place in effect such rates on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand or to disapprove those rates to the Federal Energy Regulatory Commission (FERC). The rate order is issued pursuant to the delegation to the Administrator and the Under Secretary and the rate adjustment procedures at 10 CFR Part 903, published at 50 FR 37837 on September 18, 1985.

**Background**

Project History

The RGP initially was authorized as an irrigation project by the Act of February 25, 1905, chapter 798, 33 Stat. 814. Elephant Butte Dam was completed in 1916. The construction of Caballo Dam, a flood control and reregulating structure located downstream from Elephant Butte, took place in accordance with the Convention on Rectification of the Rio Grande, February 1, 1933, 48 Stat. 1621. The Caballo Dam was completed in 1938.

The Interior Department Appropriation Act, 1938, chapter 570, 50 Stat. 564, allowed for power facility construction and provided for the application of power revenues toward repayment of the project. The Elephant Butte Powerplant and a 115-kV transmission system were constructed between 1938 and 1940. Additional transmission features were added between 1941 and 1952. Parts of the transmission system were sold in FY's 1973, 1979, and 1983 so that now the power system consists of the Elephant Butte Switchyard and the Elephant Butte Powerplant. The project is operated primarily as an irrigation water supply project. Power generation is incidental and secondary in priority. The project power system is connected to the system of Plains Electric Generation and Transmission Cooperative (Plains) at the Elephant Butte Switchyard.

Present customers for the project power are Plains and the City of Truth or Consequences, New Mexico.

During the first 10 years of operation (1941-1950), when the water supply was adequate, the project repaid $1,696,207 of the power investment and $1,004,680 in interest on the investment. Beginning in 1951 and continuing through 1979, the project has had annual deficits mainly due to a long-term shortage of water supply for generation. Above normal water conditions have occurred from 1980 through 1985.

The project power system was designed to operate year-round; however, due to the low water from 1950 through 1979, generation was confined to about 8 months a year, from February through September. In the mid-1960s, Colorado River Storage Project (CRSP) power became available for sale in New Mexico. Joint RGP and CRSP power sales contracts were negotiated with the RGP preference customers, and arrangements between the projects were made. As a result of these arrangements, RGP power has been firmed up by CRSP power during the summer season. This has made it possible for RGP to sell 24 MW of power during the summer season at firm rates, compared to roughly 9 MW previously. Through seasonal agreements, 51,568,000 kWh were sold to Plains as excess nonfirm winter season energy from FY 1983 through FY 1985 at rates from 20-22 mills per kWh.

Power Repayment Studies

A Power Repayment Study (PRS) for the RGP is prepared annually by Western with the cooperation of Reclamation to ensure that revenues will be adequate to repay costs. Power generation and project operational data are provided by Western and Reclamation. A PRS is prepared in accordance with RGP authorizing legislation, the Reclamation Project Act of 1939, other applicable statutes, and with DOE Order No. RA 6120.2 on power marketing administration financial reporting.

The studies array historic income, expense, and investments to be repaid from power revenues, along with estimates for future years. The studies show the annual repayment of power production and transmission costs, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project. The studies also show yearly estimated revenues and expenses over the remainder of the study period, the estimated amount of Federal investment repaid during each year, and the total estimated amount of Federal investment remaining to be repaid at the end of each year. Revenue is applied in a manner that minimizes RGP revenue requirements by repaying the highest interest bearing investments first while ensuring that all investments are paid within their allowed repayment periods. The studies determine revenue requirements but do not deal with rate design.

A final revised FY 1985 PRS was completed in April 1986. This study was run using actual, rather than estimated, data for FY 1985 and used an interest rate of 11.375 percent for FY 1986 and beyond. The increased interest rates for replacements and additions and increases in the operation and maintenance (O&M) expenses have significantly increased the project operating expenses. As a result of the increased interest and O&M expense, the project revenues are not sufficient to meet repayment requirements. The final revised FY 1985 PRS showed that a composite rate of 37.32 mills/kWh was necessary to repay project obligations in a timely manner. The final revised FY 1985 PRS was updated in February 1987 to incorporate changes. These changes were to (1) reduce the projected expense for movable property by $10,000 annually for FY 1991 and beyond, (2) correct the audit expense to show $25,000 annually instead of $45,000 annually for FY 1991 and beyond, and

(3) recalculate the historic deficit and correct arithmetic errors for the years 1980 through 1985. This updated final revised FY 1985 PRS produced the composite rate of 36.92 mills/kWh.

Existing and Increased Rates

The increased rates which are the subject of this rate order supersede the existing rates as follows:

| | Existing rate | Increased rate |
|---|---|---|
| Firm Energy—mills/kWh | 30.85 | 36.92 |
| Effective date | October 1984 billing period. | April 1987 billing period |
| Rate schedule | RGP-F2 | RGP-F2. |

Since the annual sales for Rio Grande are usually less than 100 million kWh, Western has determined that this is a minor rate adjustment.

Public Notice and Comments

Published "Procedures for Public Participation in Power and Transmission Rate Adjustments" for power marketed by Western and other power marketing administrations have been followed in the development of these rates. The following discussion summarizes the steps Western took to assure involvement of interested parties in the rate process.

1. Advanced announcement was made to the customers that a power rate adjustment was being considered and that preliminary studies indicated the composite rate would need to be increased from the existing rate to about 37.32 mills per kWh.

2. A **Federal Register** notice (51 FR 19600, May 30, 1986) announced the commencement of a public consultation and comment period.

3. A letter dated May 22, 1986, was sent to the project's customers and other interested parties announcing an informal public meeting and also transmitting a brochure dated May 1986, which provided information on the proposed adjustment.

4. An informal public meeting was held May 30, 1986, in Albuquerque, New Mexico. Western explained the need for the rate increase and presented the results of the FY 85 revised PRS completed April 1986, upon which the proposed rate increase was based. The composite rate proposed for firm energy and capacity was 37.32 mills per kWh. Customer representatives asked questions and provided preliminary comments. Some questions were answered during the meeting and others were answered later in writing.

5. The consultation and comment period (May 30 through July 14, 1986) provided for the receipt of oral and written comments.

Certification of Rates

With the new rate in effect, the Administrator has certified that RGP power will be sold at the lowest possible rate consistent with sound business principles. The rate has been developed in accordance with administrative policies and applicable laws.

*Discussion*

The discussion below relates to PRS issues, the customer comments (received from only one customer), and to procedural matters. There were no rate design issues raised during the public consultation and comment period.

Project Integration

Comments received about project integration suggest that due to the benefits of integrating the Rio Grande, Collbran, and Colorado River Storage Projects, Western should consider implementing an integrated rate effective April 1987.

Western recognizes the benefits of integration and is proceeding with plans to establish an integrated project rate at the earliest possible date. Due to the length of time required for the public process, the integrated project rate is expected to become effective between June and October 1987.

Because the initial power investment in the Rio Grande Project must be repaid by the end of FY 1990, Western is not willing to defer a rate increase pending the establishment of an integrated rate because any delay in the establishment of the integrated rate would jeopardize timely repayment of the RGP power investment.

Operation and Maintenance

Comments received about O&M costs centered on views that: (1) An average increase of 36 percent in projected O&M expenses is unreasonable; (2) Western's O&M, which varies from a high of $112,000 in 1986 to a low of $43,000 in 1987, may include costs for replacements or additions that should be capitalized; (3) Reclamation O&M-administrative and general (A&G) expense seems high given the size and type of the project; (4) movable equipment amortization appears to be too large for a project of this size; and (5) Elephant Butte Powerplant and Caballo Dam payroll and materials and supplies expense are inappropriately increasing even though the plant is being automated. Each of these questions will be addressed in the following sections.

*Average Increase in O&M:* While the commenter has chosen to compare the projections in the FY 1983 revised PRS to the projections in the final revised FY 1985 PRS, Western feels that it is more appropriate to compare the future projections to the actual historical O&M. The following table shows both historical and projected O&M expenses.

| FY | Historical O&M (dollars) | FY | Projected O&M expense (dollars) [1] |
|---|---|---|---|
| 1981 | 762,440 | 1986 | 1,206,675 |
| 1982 | 852,450 | 1987 | 1,164,739 |
| 1983 | 1,128,826 | 1988 | 1,248,739 |
| 1984 | 889,552 | 1989 | 1,208,313 |
| 1985 | 918,302 | 1990 | 1,271,313 |

[1] Projected O&M is taken from the FY 1985 budgets.

The historical O&M expense increased from $762,440 to $918,302 from FY 1981 to FY 1985. This is an average annual increase of 4.8 percent. From FY 1985 to FY 1990, O&M is projected to increase from $918,302 to $1,271,313, an average annual increase of 7.5 percent. Part of the increase in projected costs is due to the inclusion of the independent audit expense, which is $75,000 in FY 1986 and $45,000 in both FY 1988 and FY 1990. These audits are a new expense, are required every 2 years, and will be a permanent O&M expense.

*Western's O&M:* Western's O&M expenses consist primarily of wheeling expense, direct labor for rate calculation and public process, administrative and general expense, power billing expense, and independent audit expense. None of these expenses should be capitalized, and there are no replacements or additions included in O&M.

The fluctuations in these projected expenses are due to independent audits on the project which are required by Department of Energy Order No. RA 6120.2 at least every 2 years. This expense has not been included in previous PRSs. A breakout of the audit expense follows:

| | [illegible] | 1987 | [illegible] | [illegible] | [illegible] |
|---|---|---|---|---|---|
| Western's O&M less [illegible] Expense (dollars) | 53,000 | 59,000 | 60,000 | 61,000 | 61,000 |
| [illegible] Expense (dollars) | 75,000 | 0 | 45,000 | 0 | 45,000 |
| Total O&M Expense (dollars) | 128,000 | [illegible] | 105,000 | 61,000 | [illegible] |

Estimates beyond FY 1990 are projected at $86,000, including an

average of $25,000 per year for audits. In reviewing the final revised FY 1985 PRS, Western noted that the $45,000 audit expense for FY 1990 was carried over to future years. The amount should have been an average of $25,000 annually for FY 1991 and beyond. Western has made this correction in the PRS; however, the $20,000 difference is small and does not affect the overall rate.

*Administrative and General Expenses:* Payroll is the largest single item of Reclamation A&G expenses and includes a percentage of the payroll expenses for the Chief of Power and Storage Division (100 percent) and part of the division staff (55 percent), the Project Superintendent and his staff (30 percent), the Chief of Administrative Services Division and his staff (48 percent), and the Chief of Water and Land Division (2 percent). Power has responsibility to pay approximately 50 percent of the above listed A&G expenses.

Past experience shows that Reclamation O&M–A&G expenses projected for FY 1986 through FY 1990 are reasonable. From FY 1981 through FY 1985, the portion of Reclamation O&M budget that went to A&G expenses ranged from a low of 51.6 percent in FY 1983 to a high of 76.2 percent in FY 1985. Projections of Reclamation O&M expenses include 51.3 percent for A&G in FY 1986 and 53.1 percent in FY 1986 through FY 1990.

Movable Equipment Amortization: Western took a much closer look at the movable equipment in the final revised FY 1985 PRS, and determined that some items previously classified as additions or replacements should have been classified as movable equipment. Movable equipment is amortized and charged to O&M over a 5-year period. The following table lists the items now classified as movable equipment for the period FY 1986, 1990. Items previously called additions are indicated with an "A," replacements with an "R."

| Item | Total (dollars) |
|---|---|
| 1986 | |
| Vehicles | 40,000 |
| Service Truck | 50,000 A |
| Telescopic Crane | 160,000 A |
| 1988 | |
| Vehicles | 50,000 |
| Crawler/Tractor | 120,000 R |
| Powerplant Jib Crane | 20,000 A |
| 1989 | |
| Vehicles | 20,000 |
| Word Processor | 10,000 A |
| 1990 | |
| Loader/Backhoe | 60,000 R |
| Office Copier | 10,000 R |
| Vehicles | 20,000 |

Vehicle purchases are a new movable equipment item because of a change in the General Services Administration policy which requires Reclamation to begin purchasing its own vehicles in FY 1986. This amount is higher in FY 1986 and 1988 than in FY 1989 and 1990 because of initial vehicle purchases. Western agrees with the customer's comment that $112,000 annually beyond FY 1990 is too high a level of purchase because the initial vehicle expense will not be repeated.

Therefore, Western has lowered the movable equipment expense by $10,000 annually for 1991 and beyond. However, the overall rate has not been affected by this change.

Reclamation has confirmed that all of the movable equipment is required, regardless of the size of the project.

Payroll and Materials and Supplies Expense: Funds were diverted from the O&M budget in FY 1985 to take care of an emergency unit overhaul. Therefore, the actual O&M amount shown in 1985 is low. The O&M work delayed by the emergency unit overhaul must be rescheduled resulting in higher budgets for the following years.

The Branch Chief position at the Elephant Butte Powerplant was filled at approximately $40,000 per year.

Reclamation expects powerplant automation to be completed in FY 1987. At that time the units will be controlled by a unit controller at Elephant Butte Powerplant rather than by supervisory control from another Reclamation facility. Although Reclamation anticipates a reduction in the powerplant work force due to automation, it is also expected that maintenance costs will increase and offset the decrease in personnel costs.

Replacements

The commentor stated that the historical trend in replacements does not justify the projected replacements increase for FY 1986 to 1990. The commentor feels that the calculated IDC is high given the actual investment in replacements; and that the extraordinary O&M (EOM) expenses, constituting 50 percent of the replacement cost, are quite large.

The historical replacements shown in the final revised FY 1985 PRS for FY 1984–1985 are considerably less than the actual replacements made. Most of the replacements scheduled for those years were completed, but were not transferred from "Construction Work in Progress" to "Plant in Service" until FY 1986. This is the reason for the great difference in the replacement figures between the FY 1983 and the final revised FY 1985 PRS for years 1984 through 1986. A comparison of the totals of those 3 years are as shown in the following table:

| FY year | FY 1983 Powerplant PRS (dollars) | FY 1985 Powerplant PRS (dollars) | FY Dollar- (dollars) |
|---|---|---|---|
| 1984 | 106,000 | 10,496 | (95,504) |
| 1985 | 132,000 | 0 | (132,000) |
| 1986 | 221,000 | 590,435 | 369,435 |
| Subtotal | 459,000 | 600,931 | 141,931 |
| 1987 | 74,000 | 274,231 | 200,231 |
| 1988 | 60,634 | 462,903 | [illegible] |
| 1989 | 108,835 | 609,129 | 500,294 |
| 1990 | 776,866 | [illegible] | (407,974) |
| Total | 1,479,335 | 2,316,086 | 836,751 |

The differences are primarily due to (1) revised estimates for future year replacements which normally change as the future year draws closer and a more accurate estimate can be made, (2) the inclusion of $238,351 of IDC which had not previously been included in the PRS, and (3) the addition of $960,846 for EOM expenses.

IDC had not been calculated in previous PRSs as required in section 11 of DOE Order No. RA 6120.2. Each year the Secretary of the Treasury provides Western with the interest rate to be used in calculating IDC and interest on the investment. This rate is the "yield rate," which is the average yield during the preceding fiscal year on interest bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity. The average yield is computed as the average during the fiscal year of the daily bid prices. Where the average yield so computed is not a multiple of one-eighth of 1 percent, the yield rate is rounded to the multiple of one-eighth of 1 percent nearest such average yield.

The specific interest rate to be used for each replacement is the interest rate for the year in which construction is initiated. In FY's 1,984, 1985, and 1986, this yield rate was 10.75, 12.375, and 11.375 percent, respectively. Beginning on October 1, 1983, IDC was compounded annually.

Extraordinary maintenance is maintenance that is of an infrequent or unusual nature such as a unit overhaul, painting of penstocks, or a generator rewind. Although this type of maintenance is at first done with O&M funds, it is actually maintenance that should be classified and capitalized as either additions or replacements. The following list shows the EOM items that have been reclassified as replacements:

Powerplant crane.
Unit overhaul (2).
Repair draft tube gate/guide.
Painting of penstocks.
Concrete repair.

Generator rewind (1 and 3).
Rock scaling.
Generator cooling water system.
Elephant Butte Dam sediment survey.

Capital Expenditures

The commentor was also concerned about the considerable increase in the projection of capital expenditures. Western has stated that the primary causes are increases in the projected costs of powerplant modifications, powerplant emergency station service equipment, and other miscellaneous increases and items not previously projected. In response to the commenter's data request, Western has stated that the main reasons for the increase are: (1) Higher projections of project costs, including IDC; and (2) EOM expenses capitalized as additions. The average capital expenditure for 1981 to 1985 was $195,800, while Western is projecting an average capital expenditure from 1986 to 1990 of $277,800, an increase of approximately 42 percent.

The historical additions shown in the records for FY 1981 through FY 1985 are misleading. The FY 1984–1985 additions (final revised FY 1985 PRS) are recorded as zero. However, most of the additions scheduled for those years were completed, but will not be transferred from "Construction Work in Progress" to "Plant in Service" accounts until FY 1986 or FY 1987. This is the reason for the great difference in the addition's figures between the FY 1983 and the FY 1985 PRSs for years 1984 through 1986, as shown in the following table, and also the reason why a direct comparison between FY 1985 and prior and the years after FY 1985 would be inaccurate.

| FY year | FY 1983 PRS (dollars) | FY 1985 PRS (dollars) | Difference (dollars) |
|---|---|---|---|
| 1981 | 134,836 | 134,836 | 0 |
| 1982 | 428,886 | 428,886 | [illegible] |
| 1983 | 484,033 | 484,033 | [illegible] |
| 1984 | 179,000 | [illegible] | (179,000) |
| 1985 | 70,000 | 0 | (70,000) |
| 1986 | 80,000 | 176,947 | 96,947 |
| 1987 | 125,000 | 793,060 | [illegible] |
| Subtotal | 1,501,755 | 2,017,762 | 516,007 |
| 1988 | [illegible] | 26,736 | [illegible] |
| 1989 | [illegible] | 103,844 | 103,844 |
| 1990 | [illegible] | 285,357 | 285,357 |
| Total | 1,501,755 | 2,433,699 | 931,944 |

The differences in FY 1987–1990 are primarily due to (1) revised estimates for future year additions which normally change as the future year draws closer and a more accurate estimate can be made, (2) the inclusion of $172,901 of IDC which had not previously been included in the PRS, and (3) the addition of $56,146 for EOM.

IDC had not been calculated in previous PRSs, as required in section 11 of DOE Order No. RA 6120.2. The specific interest rate to be used for each addition is the interest rate for the year in which construction is initiated. In FY's 1984, 1985, and 1986, this yield rate was 10.75, 12.375, and 11.375 percent, respectively. Beginning on October 1, 1983, IDC has been compounded annually.

Riprap at Caballo Dam and liner repair in the outside tunnels are additions that had been previously classified as EOM.

Interest Rate

The commentor's last area of concern was the interest rate applied to power investments and replacements. The rate of 11.375 percent for the years 1986 and beyond, used by Western in its projections, seemed high to the commentor compared to the current interest rates of Federal securities. The commentor asserted that the average yield rate for 1985 securities of 10 years and longer to maturity was approximately 10.8 percent, which is considerably lower than the 11.375 percent used by Western.

DOE Order RA 6120.2 states that interest rates are to be obtained from the Secretary of the Treasury and based on the preceding fiscal year yield rate on Federal marketable securities with 15 years or more remaining to maturity. Western uses the latest available interest figure at the time the projections are made for future years. The letter from the Department of the Treasury, dated October 16, 1985, states, "The interest rate . . . is 11.40% which adjusted to the nearest 1/8th of 1% is 11 3/8%."

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969 and section D of the Department of Energy guidelines published in the **Federal Register** on February 23, 1982 (47 FR 7976), Western has followed the process described below in conducting environmental evaluations of the rate adjustment.

Section D of the DOE guidelines states that the level of documentation required for rate increases for power marketing administrations depends upon the size of the rate increase as it relates to the rate of inflation since the last rate increase. The Consumer Price Index (published by the Department of Labor) was used to estimate the rate of inflation from the date of the last rate increase to the planned date of the new increase. Because the power rate increase is 19 percent, which is expected to exceed the rate of inflation over the interval since the last rate adjustment, it was determined that an Environmental Assessment (EA) was required. Western prepared an EA which was submitted to DOE. DOE issued a "Finding of No Significant Impact" on September 23, 1986. These documents are on file in Western's offices.

Executive Order 12291

The DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western has received an exemption from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, and other supporting material, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84111; in the Office of the Director, Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and in the Office of the Assistant Administrator for Washington Liaison, Room 8G061, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Submission to the FERC

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

In view of the foregoing the pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve and place in effect Rate Schedule RGP–F3 on an interim basis, effective on the first day of the April 1987 billing period. The rate shall remain in effect on an interim basis pending FERC confirmation and approval of this or a substitute rate on a final basis, or until superseded.

Issued in Washington, DC, March 27, 1987.

**Joseph F. Salgado,**

*Under Secretary.*

**Department of Energy, Western Area Power Administration**

*Rate Schedule RGP-F3 (Supersedes Schedule RGP-F2)—Rio Grande Project, New Mexico, Texas—Schedule of Rates for Wholesale Firm Power Service*

*Effective:* Beginning on the first day of the April 1987 billing period.

*Available:* In the area served by the Rio Grande Project.

*Applicable:* To wholesale power customers for wholesale firm power service supplied through one meter at one point of delivery.

*Character and Conditions of Service:* Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

*Monthly Rate—Demand Charge:* $7.85 kilowatt of billing demand.

*Energy Charge:* 18.46 mills per kilowatthour of use.

*Billing Demand:* The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

*Adjustments—*

*For transformer losses:* If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

*For power factor:* None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[FR Doc. 87-8098 Filed 4-8-87; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3184-6]

### Risk Assessment Forum Report on Dioxin Toxicity Eqivalency Factors; Availability

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice of availability of Risk Assessment Forum report.

**SUMMARY:** This notice announces the availability of an EPA Risk Assessment Forum report entitled "*Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and Dibenzofurans (CDDs and CDFs).*" The report provides interim guidance for Agency scientists on assessing risks for dioxins other than 2,3,7,8-TCDD.

**ADDRESSES:** To obtain a copy of the document, interested parties should contact the ORD Publications Center, CERI, U.S. Environmental Protection Agency (EPA), 26 W. St. Clair St., Cincinnati, OH 45268, (513) 569-7562 (FTS: 684-7562).

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Tuxen, Technical Liaison, Risk Assessment Forum, U.S. Environmental Protection Agency, 401 M Street SW. Washington, DC 20460, or call (202) 475-6743.

**SUPPLEMENTARY INFORMATION:** Since the 1970s, the Agency has faced many environmental issues involving 2,3,7,8-tetrachlorodibenzo-p-dioxim (2,2,7,8-TCDD), a chemical that has several significant toxic effects at very low doses in animals. Fewer toxic effects have been definitively demonstrated in humans. EPA has utilized this relatively extensive data base to generate risk assessments on 2,3,7,8-TCDD in herbicides, soil, water, fish, and combustion emissions.

Many other members of "the extended dioxin family"—consisting of 75 CDDs and 135 CDFs—are also present in the environment. While there is a dearth of specific toxicological data by which to judge the human health and environmental significance of these compounds, there is concern among scientists that many of these closely related chemicals may have toxicological properties similar to those of 2,3,7,8-TCDD, but possibly expressed at higher doses.

The Forum report adopts the use of weighting factors (TCDD "Toxicity Equivalency Factors" or TEFs) for interpreting the human health significance of mixtures of CDDs and CDFs. The use of TEFs allows the Agency to estimate quantitatively the toxicity of CDD/CDF mixtures in terms of "2,3,7,8-TCDD equivalents," which, in turn, can be evaluated through existing procedures for assessing the health significance of exposure to 2,3,7,8-TCDD. This approach is consistent with principles set forth in EPA's risk assessment guidelines for chemical mixtures issued on September 24, 1986 (51 FR 34014).

The TEFs are subject to change as new data becomes available. The TEF approach thus constitutes an *interim* science policy based on a rational, but not definitive, evaluation of the available scientific data. The Forum report recommends that EPA sponsor additional research that would allow the Agency to adopt more definitive approaches as new data are developed.

The report incorporates suggestions from external peer reviewers and a special panel of EPA's Science Advisory Board.

Dated: April 1, 1987.

**Vaun A. Newill,**

*Assistant Administrator for Research and Development.*

[FR Doc. 87-8035 Filed 4-9-87; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3184-1]

### Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, EPA.

Availability of Environmental Impact Statements Filed March 30, 1987 through April 03, 1987.

*EIS No. 870111,* DSuppl, FAA, NH, Lebanon Municipal Airport Runway 18 Extension, Outer Marker with Compass Locator Facility Installation, Grafton County, Due: May 26, 1987, Contact: Kermit Wiesselguist (617) 273-7204.

*EIS No. 870112,* Final, EPA, OH, Andrew W. Breidenbach Environmental Research Center, Full Containment Facility, Hamilton County, Due: May 11, 1987, Contact: Russell Kulp: (202) 382-2172.

*EIS No. 870113,* Draft, MMS, HI, PAC, Hawaiian Archipelago and Johnston Island Exclusive Economic Zones, Marine Mineral Sale, Leasing, Due: June 25, 1987, Contact: Robert Paul (213) 514-6148.

*EIS No. 870114,* Final, FHW, VA, VA-600 Improvement, VA-603 to VA-762, Smyth County, Due: May 11, 1987, Contact: James Tumlin (804) 771-2371.

*EIS No. 870115,* Draft, COD, OK, TX, Denison Dam—Lake Texoma Reevaluation Plan, Water Resource Problems and Needs, Red River, Due: May 26, 1987, Contact: Paul Mace (918) 581-7857.

*EIS No. 870116,* Final, BLM, AZ, Phoenix Resource Area, Wilderness Study Areas, Designation, Due: May 11, 1987, Contact: Bill Carter (602) 863-4464.

*EIS No. 870117,* Final, USN, CA, Target Ranges R-2510 (West Mesa) and R-2512 (East Mesa), Range Safety Zones, Land Acquisition and Management on Non-Federal Lands, Naval Air Facility El Centro, Imperial County, Due: May 11, 1987, Contact: Dana Sakamoto (415) 877-7590.

*EIS No. 870118,* Final, FHW, CO, CO–7/ Forest Highway 26 Reconstruction, Meeker Park to US 36 in Estes Park, Boulder and Larimer Counties, Due: May 11, 1987, Contact: R.E. Arensdorf (303) 236–3468.

*EIS No. 870119,* Final, BOP, GA, Jesup Federal Correactional Institution Complex, Construction and Operation, Wayne County, Due: May 11, 1987, Contact: Loy Hayes (202) 272–6535.

*EIS No. 870120,* Draft, NPS, CA, Decker Canyon Management and Development Concept Plan, Santa Monica Mountains National Recreation Area, Los Angeles and Ventura Counties, Due: June 8, 1987, Contact: Nancy Ehorn (818) 888–3440.

**Amended Notice**

*EIS No. 870051,* Draft, USN, CA, San Francisco Bay Battleship Battlegroup and Cruiser Destroyer Group Homeporting, Construction and Operation, San Francisco County, Due: April 14, 1987, Published FR 2–13–87—Review period extended.

Dated: April 7, 1987.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 87–8079 Filed 4–9–87; 8:45 am]

BILLING CODE 6560–50–M

---

**[ER-FRL-3184-2]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 23, 1987 through March 27, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated February 7, 1986 (51 FR 4804).

**Draft EISs**

*ERP No. D–BLM–J70011–ND,* Rating EC2, N. Dakota Resource Mgmt. Plan, ND. Summary: EPA recommends that the final EIS specifically state how the consultation process with State and federal wildlife management agencies regarding mitigation aspects of oil and gas leasing, coal leasing, and surface land management will occur. The EIS should augment its description of grassland conditions, and analyze compliance with the State ambient and emission standards for hydrogen sulfide. North Dakota public lands contain very few riparian areas, therefore, these areas could be selected as demonstration areas, consistent with the BLM policy guidance on riparian lands.

*ERP No. D–CDB–C89027–NY,* Rating EC2, Metrotech Site Development Project, Construction and/or Rehabilitation, UDAG, NY. Summary: EPA's review of the draft EIS highlighted potential impacts to air quality, sewage treatment facilities, municipal water supply, and cultural resources that may result from implementing the proposed project. Accordingly, EPA requested that additional information be presented in the final EIS to address these concerns.

*ERP No. DB–FHW–A41947–HI,* Rating EC2, Interstate H–3 Freeway Construction, Halawa Interchange to Halekou Interchange, Reevaluation, 404 Permit, HI. Summary: EPA expressed concerns about possible project impacts to ground water quality. EPA requested additional analysis regarding the utility of the basal aquifer and potential impacts to the aquifer from roadway runoff and spills. EPA noted that it proposes to make a determination that the Honolulu County area has an aquifer that is a sole or principal source of drinking water, which the H–3 highway project could adversely impact. EPA requested that the "sole source" issue be addressed.

*ERP No. D–FHW–K40158–CA,* Rating EC2, I–5 and Santa Ana Freeway Widening and Interchange Reconstruction, CA–22/57 Interchange to CA–55, 404 Permit, CA. Summary: EPA expressed environmental concerns because the draft EIS did not: (1) Adequately describe the serious air quality problems in the project area; (2) Fully describe the assumptions used in the High-Occupancy Vehicle lanes analysis; (3) Adequately address conformity with the State Implementation Plan; and (4) Discuss the cumulative air quality impacts from adjoining I–5 highway projects. EPA requested that the final EIS address these four issues more thoroughly.

*ERP No. D–SCS–D36105–WV,* Rating LO, Howard Creek Watershed Flood Control and Watershed Protection, WV. Summary: EPA had no objections to the development and implementation of the project, as proposed.

**Final EISs**

*ERP No. F–BLM–K03016–CA,* San Joaquin Valley Pipeline and Ancillary Facilities Project, Construction, 404 Permit, Right-of-Way Grant, Weir Station to Martinez Oil Refinery, CA. Summary: EPA expressed continuing concerns about the pipeline project's water quality impacts. EPA requested that the California State Lands Commission and BLM continue to coordinate with the Army Corps of Engineers (COE) and EPA to ensure that the COE's nationwide Clean Water Act (CWA) Sect. 404 permit conditions are met during the pipeline construction phase. EPA also requested that it be kept informed of the progress in carrying out mitigation measures adopted in the BLM's Record of Decision.

*ERP No. F2–BLM–K65064–CA,* Alturas Resource Area, Pit River Canyon and Tule Mtn. Wilderness Study Areas, Wilderness Recommendations, Designation or Non-Designation, CA. Summary: EPA had no comments to offer on the final EIS.

*ERP No. F–COE–K36088–CA,* Coyote Creek Flood Control Project, Facilities Construction, Sections 10 and 404 Permits, CA. Summary: EPA's review indicated that the final EIS adequately addressed the project's environmental impact. In order to ensure the maintenance of water quality and protected beneficial uses, EPA recommended that commitments to mitigation, channel maintenance requirements, and design modifications be made prior to the issuance of the CWA Section 404 dredge-and-fill permit.

*ERP No. FS–SCS–G34037–LA,* Bell City Watershed Protection and Flood Control Plan, Additional Channel Work, LA. Summary: EPA has no objections to the proposed action as described.

Dated: April 7, 1987.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 87–8080 Filed 4–9–87; 8:45 am]

BILLING CODE 6560–50–M

---

**[OPTS–00080; FRL–3184–7]**

## Biotechnology Science Advisory Committee; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of open meeting.

**SUMMARY:** There will be a 1-day meeting of the Biotechnology Science Advisory Committee. The meeting will be open to the public. The Committee will discuss the definition of environmental release, the definition of pathogen, and greenhouse containment guidelines.

**DATE:** The meeting will be held on Monday, April 27, starting at 9 a.m. and ending at approximately 5:30 p.m.

**ADDRESS:** The meeting will be held at: The Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Environmental Protection Agency, The

TSCA Assistance Office, Office of Pesticides and Toxic Substances (TS–799), 401 M St., SW., Washington, DC 20460 (202–554–1404).

**SUPPLEMENTARY INFORMATION:** Attendance by the public will be limited to available space. The TSCA Assistance Office will provide rosters of the committee members and additional information, upon request after April 10, 1987. A summary of the meeting will be available from that office at a later date.

Dated: April 8, 1987.

**Victor J. Kimm,**

*Deputy Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 87–8147 Filed 4–9–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL HOME LOAN BANK BOARD

[No. AC–586]

### First Federal Savings and Loan Association of Canton, Canton, OH; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 6, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Canton, Canton, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–8071 Filed 4–9–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–589]

### Gateway Federal Savings & Loan Association, Cincinnati, OH; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 31, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Gateway Federal Savings and Loan Association, Cincinnati, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Cincinnati, Post Office Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–8072 Filed 4–9–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–588]

### Peoples Savings Bank, F.S.B., Monroe, MI; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 27, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Peoples Savings Bank, F.S.B., Monroe, Michigan for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–8070 Filed 4–9–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–587]

### St. Paul Federal Bank for Savings, Chicago, IL; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 27, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of St. Paul Federal Bank for Savings, Chicago, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–8069 Filed 4–9–87; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–590]

### Washington Federal Savings Bank, Hillsboro, OR; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 27, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Washington Federal Savings Bank, Hillsboro, Oregon for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101–1693.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–8073 Filed 4–9–87; 8:45 am]

BILLING CODE 6720–01–M

## FEDERAL RESERVE SYSTEM

### Gerald C. Meyers et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board

of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gerald C. Meyers*, Riverside, Illinois; to acquire 11.20 percent of the voting shares of Valley Banc Services Corp., Antioch, Illinois, and thereby indirectly acquire State Bank of Hinkley, Hinkley, Illinois, and State of Bank of Osco, Osco, Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dr. F.A. Barnett*, Paris, Missouri; to acquire 18.76 percent of the voting shares of Paris Bancshares, Inc., Paris, Missouri, and thereby indirectly acquire Paris National Bank, Paris, Missouri.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8006 Filed 4-9-87; 8:45 am]

BILLING CODE 6210-01-M

## Peoples Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 2, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *People Bancshares, Inc.*, Lewisville, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank and Loan Company, Lewisville, Arkansas.

Board of Governors of the Federal Reserve System, April 6, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8007 Filed 4-9-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 27, 1987.

**Public Health Service (PHS)**

(Call Reports Clearance Officer on 202-245-2100 for copies of Package)

*Food and Drug Administration*

Subject: Application for Commission—Extension—(0910-0010)
Respondents: Individuals or households

Subject: Investigational New Drug Application—21 CFR Part 312—Reinstatement—(0910-0162)
Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Subject: Current Good Manufacturing Practices for Finished Pharmaceuticals—21 CFR Part 211—Reinstatement—(0910-0139)
Respondents: Businesses or other for-profit; Small businesses or organizations

*National Institutes of Health*

Subject: Survey of Physician's Practice Behaviors Related to the Prevention of Lung Disease—New—
Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

*Health Resources Services Administration*

Subject: HRSA Competing Training Grant Application—Revision—(0915-0060).
Respondents: Non-profit institutions
OMB Desk Officer: Shannah Koss

*Social Security Administration*

(Call Reports Clearance Officer on 301-594-5706 for copies of package)
Subject: Public Assistant Agency Information Request—Extension—(0960-0095)
Respondnets: State or local governments; Non-profit institutions.

*Health Care Financing Administration*

(Call Reports Clearance Officer on 301-594-8650 for copies of package)
Subject: Home Health Agency Cost Report—Extension—(0938-0022)—HCFA-1728-86
Respondents: Businesses or other for-profit; Non-profit institutions

Subject: Questionnaire Concerning Forged Check—Extension—(0938-0205)—HCFA-451
Respondents: Individuals or households

Subject: Third Party Premium Billing Request—Extension—(0938-0041)—HCFA-2384
Respondents: Individuals or households
OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS/FDA: 202-245-2100
HCFA: 301-594-8650
SSA: 301-594-4706

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer).

Dated: April 7, 1987

**James F. Trickett,**

*Director, Office of Administrative and Management Services.*

[FR Doc. 87-8022 Filed 4-9-87; 8:45 am]

BILLING CODE 4150-04-M

**Food and Drug Administration**

**[Docket No. 77N-0240; DESI 12836]**

## Dipyridamole; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Applications

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of new drug applications (NDA's) for certain single-entity coronary vasodilators containing dipyridamole insofar as they provide for the indication lacking substantial evidence of effectiveness. FDA offered an opportunity for a hearing, but no hearing was requested for these products.

**EFFECTIVE DATE:** May 11, 1987.

**ADDRESS:** Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 12836 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 2857, 301-295-8041.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** on January 15, 1987 (52 FR 1663), the Acting Deputy Director of the Center for Drugs and Biologics revoked a temporary exemption for drug products containing dipyridamole. The exemption permitted these products to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. The notice also offered an opportunity to request a hearing on the proposal to withdraw approval of the NDA's for these products insofar as they provide for the indication, long term therapy of chronic angina pectoris. The proposal was based on the conclusion that the data submitted in support of this indication did not constitute substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.126. In a notice published in the **Federal Register** of February 23, 1987 (52 FR 5501), the January 15, 1987 notice was amended by adding 16 conditionally approved applications.

As stated in the notice of opportunity for hearing, the failure to request a hearing constitutes an election not to make use of the opportunity for a hearing. Accordingly, this notice withdraws approval, insofar as they pertain to the indication, long term therapy of chronic angina pectoris, of the following new drug applications that were listed in the January 15, 1987 notice and for which no hearing was requested:

1. ANDA 12-836; Persantine Tablets containing 25 milligrams (mg) of dipyridamole per tablet; Boehringer Ingelheim Pharmaceuticals, Inc., 90 East Ridge, Ridgefield, CT 06877.

2. ANDA 86-758; Persantine Tablets containing 75 mg dipyridamole per tablet; Boehringer Ingelheim.

3. ANDA 86-759; Persantine Tablets containing 50 mg of dipyridamole per tablet; Boehringer Ingelheim.

4. ANDA 86-981; Dipyridamole Tablets containing 25 mg of the drug per tablet; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Capiague, NY 11726.

5. ANDA 87-664; Dipyridamole Tablets containing 75 mg to the drug per tablet; Ascot Hospital Pharmaceuticals, Inc. 8050 North Lawdale Ave., Skokie, IL 60076.

6. ANDA 87-676; Dipyridamole Tablets containing 25 mg of the drug per tablet; Mylan Pharmaceuticals, Inc., P. O. Box 4293, Morgantown, WV 26505 (withdrew hearing requests).

7. ANDA 87-688; Dipyridamole Tablets containing 25 mg of the drug per tablet; Ascot.

8. ANDA 87-710; Dipyridamole Tablets containing 25 mg of the drug per tablet; Vargard Laboratories,101-107 Sampson St., Glasgrow, KY 42141

9. ANDA 87-829; Persantine-50 Tablets containing 50 mg dipyridamole per tablet; Boehringer Ingelheim.

10. ANDA 87-832; Persantine-75 Tablets containing 75 mg dipyridamole per tablet; Boehringer Ingelheim.

11. ANDA 87-882; Dipyridamole Tablets containing 50 mg of the drug per tablet; Mylan Pharmaceuticals (withdrew hearing request).

12. ANDA 87-883; Dipyridamole Tablets containing 75 mg of the drug per tablet; Mylan Pharmaceuticals (withdrew hearing request).

13. ANDA 88-263; Dipyridamole Tablets containing 50 mg of the drug per tablet; Vangard Laboratories.

14. ANDA 88-264; Dipyridamole Tablets containing 75 mg of the drug per tablet; Vangard Laboratories.

15. ANDA 88-434; Dipyridamole Tablets containing 50 mg of the drug per tablet; Ascot.

16. ANDA 88-512; Dipyridamole Tablets containing 25 mg of the drug per tablet; West-Ward, Inc., 465 Industrial Way West, Eatontown, NJ 07724.

17. ANDA 88-513; Dipyridamole Tablets containing 50 mg of the drug per tablet; West-Ward, Inc.

18. ANDA 88-624; Dipyridamole Tablets containing 75 mg of the drug per tablet; West-Ward, Inc

Any drug product that is identical, related, or similar to these products and is not the subject of an approved new drug application, a pending hearing request, or the amendment published in the **Federal Register** on February 23, 1987, is covered by the new drug applications listed above and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above). This withdrawal of approval does not apply to the products for which a hearing was requested. The requests are now under review and will be subject of a future **Federal Register** notice.

The Acting Director of the Center for Drugs and Biologics finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the products named above will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of the applications listed above and all their amendments and supplements insofar as they pertain to the indication, long term therapy of chronic angina petoris, is withdrawn effective May 11, 1987. Shipment in interstate commerce of these products or any identical, related, or similar product that is not the subject of an approved new drug application or a pending hearing request will then be unlawful.

This notice is issued under the Federal Food, Drug and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authoirty delegated to the Acting Director of the Center for Drugs and Biologics (21 CFR 5.82)

Dated: April 1, 1987.

**Gerald F. Meyer,**

*Acting Deputy, Center for Drugs and Biologics*

[FR Doc. 87-8003 Filed 4-9-87; 8:45 am]

BILLING CODE 4160-01-M

**Health Resources and Services Administration**

**Advisory Committees; Meetings**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1987:

*Name:* National Advisory Council on Nurse Training

*Date and Time:* May 11–13, 1987, 9:00 a.m.

*Place:* Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open on May 12, 9:00 a.m.—12:30 p.m.

Closed for remainder of meeting.

*Purpose:* The Council advisers the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Admendments of 1985 (Pub. L. 99–92). The Council also performs final review of grant applications for Federal assistance, and makes recommendations to the Administrator, HRSA.

*Agenda:* Agenda items for the open portion of the meeting will cover announcements; consideration of minutes of the previous meeting; reports by the Director, Bureau of Health Professions, the Director, Division of Nursing, and staff reports. The meeting will be closed to the public on May 12, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advanced Nurse Training Education applications, Nurse Practitioner/Nurse Midwifery, and Special Project Grants applications. The closing is in accordance with the provisions set forth in section 552b(c)(b), Title 5, U.S. Code and the Determination by the Administrator, Health Resources and Services Administration, pursuant to section 10(d) of Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should write to or contact Dr. Mary S. Hill, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–04, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Agenda items are subject to change as priorities dictate.

Dated: March 26, 1987.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 87–7993 Filed 4–9–87; 8:45 am]

BILLING CODE 4160–15–M

**Public Health Service**

**Health Resources and Services Administration; Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986; Delegation of Authority**

Notice is hereby given that in furtherance of the delegation of March 16, 1987 (52 FR 9542) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate, all the authority delegated, excluding the authority under section 4229(b), to the Assistant Secretary for Health under the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 concerning the development and implementation of a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level and other purposes, excluding the authories to issue regulations, and submit reports to Congress.

This delegation became effective on April 2, 1987.

Dated: April 2, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

[FR Doc. 87–7934 Filed 4–9–87; 8:45 am]

BILLING CODE 4160–17–M

**Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority**

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHS) (42 FR 61318, December 2, 1977, as amended most recently at 52 FR 9219, March 23, 1987) is amended to reflect: (1) Establishment of an Office of the Surgeon General; (2) transfer of functions of the Division of Commissioned Personnel Operations (CPOD), Office of Personnel Management, Office of Management, into the new Office of the Surgeon General; and (3) revision of the Office of Personnel Management statement by eliminating the CPOD functions.

**Office of the Assistant Secretary for Health**

*Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–10, Organization,* add to the list of organizations item 18. Office of the Surgeon General (HAN).

*Under Section HA–20, Functions,* after the title and statement for the Office of Emergency Preparedness (HAP), add the following title and statement:

*Office of the Surgeon General (HAN).* Under the direction of the Surgeon General the Office provides staff support to the Surgeon General for (1) release of reports of the Surgeon General such as: "Smoking and Health" and "Healthy People" under authority of the Secretary of Health and Human Services (15 U.S.C. 1337); (2) management of the personnel system of the Commissioned Corps, under the aegis of the ASH, including recruitment and retention of commissioned officers; (3) activities relating to membership on the Board of Regents of the Uniformed Services University of the Health Sciences and as principal health official for PHS on all matters related to policies affecting PHS faculty and students (10 U.S.C 2113(a)(3); (4) activities related to responsibilities on other boards, including the (a) National Library of Medicine; (b) Armed Forces Institute of Pathology (AFIP); (c) Gorgas Memorial Institute on Tropical Medicine; (d) AMA House of Delegates; (e) Executive Committee, Association of Military Surgeons of the United States.

The Office provides support to the Surgeon General (5) in issuing warnings to the public on health hazards (6) for review of the particulars of Department of Defense (DoD) plans for transportation, open testing and disposal of lethal chemicals and biological agents and in recommending precautions necessary to protect the public health and safety binding on the Secretary, DoD, which can only be overridden by the President (P.L. 91–441) (50 U.S.C. 15–12 (2,3)); (7) in serving as the focal point for communication with professional societies to receive, solicit and channel concerns regarding health policy; and (8) in representing PHS at national and international health and professional meetings to interpret PHS philosophy, policies, organizational responsibilities and programs.

*Division of Commissioned Personnel (HAN2).* The Division supports the Surgeon General to (1) administer a comprehensive personnel management program for the Public Health Service

Commissioned Corps; (2) perform all operating functions associated with the Commissioned Corps personnel system; (3) provide advice and counsel concerning rights and benefits to members of the Corps; (4) provide guidance and assistance to the OASH and the PHS agencies concerning personnel management of the Commissioned Corps; and (5) serve as the central repository for all records reflecting the service and status of members of the Corps.

*Under Section HA–20, Functions, Office of Management (HAU), after the title Office of Personnel Management (HAU3),* delete reference to . . . "(1) Uniform Service, PHS Commissioned Officers" and change the statement reflecting personnel management systems to read "provides leadership and direction in the planning and implementation of comprehensive personnel management system for PHS Federal career, career-conditional and other employees; . . .".

**Delegations of Authority**

*Section H–30, Delegation of Authority.* Notice is hereby given that pursuant to these organization changes within the Office of the Assistant for Health, the following delegation actions were taken:

Pursuant to the delegations of authorities vested in the Assistant Secretary for Health by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Surgeon General the authority to:

1. Appoint individuals in the Reserve Corps of the PHS Commissioned Corps pursuant to 42 U.S.C. 204;

2. Terminate commissions of Reserve Corps Officers without the consent of the officers concerned pursuant to 42 U.S.C. 209(a)(2);

3. Make or terminate temporary promotions of regular and Reserve Corps officers pursuant to 42 U.S.C. 211(a), (k), and (l); and

4. Prescribe titles, appropriate to the several grades, for PHS commissioned officers, other than medical officers, pursuant to 42 U.S.C. 207(b).

This authority may be exercised by and redelegated only to officials of the Public Health Service who are required to be appointed by the President, by and with the advice and consent of the Senate.

The Assistant Secretary for Health has delegated to the Surgeon General, with authority to redelegate, all authorities vested in the Assistant Secretary for Health which are necessary to administer the PHS Commissioned Corps Personnel System, including, but not limited to authorities contained in Titles 5, 10, 37 and 42 of the United States Code; regulations issued pursuant thereto; and Reorganization Plan 3 of 1966, but excluding the authority to:

1. Create special temporary positions in the grade of Assistant Surgeon General;

2. Determine the numerical requirements of the Commissioned Corps; (After the numerical requirements of the Commissioned Corps have been established, the requirements in each grade in each category of the Commissioned Corps will be established by the Assistant Secretary for Health or his designee.)

3. Waive entrance qualificaitons for original appointment to the Reserve Corps in time of war or national emergency;

4. Investigate commissioned officers in the interests of the national security;

5. Approve personnel policies which apply both to the Commissioned Corps and Civil Service personnel Systems;

6. Administer the Board for Correction of PHS Commissioned Corps Records (10 U.S.C. 1552); and

7. Prescribe regulations pertaining to the PHS Commissioned Corps.

All delegations heretofore issued by the Assistant Secretary for Health to the Director, Office of Management, pertaining to the PHS Commissioned Corps Personnel System, except the authority under 10 U.S.C. 1552 concerning the Board for Correction of PHS Commissioned Corps Records have been revoked. However, redelegations of these authorities by the Director, Office of Management, may continue until new delegations are made, provided they are consistent with the delegation herein to the Surgeon General.

This delegation of authorities was effective on March 30, 1987.

Dated: March 30, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

[FR Doc. 87–7935 Filed 4–9–87; 8:45 am]

BILLING CODE 4160–17–M

---

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permits; Sea World, Inc., et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–716347

*Applicant:* Sea World, Inc., San Diego, CA.

In 52 FR 8984, March 20, 1987, the Notice of Receipt for this application stated the applicant of PRT–716347 was Sea World of Florida. This is in error, as the applicant should read Sea World, Inc., San Diego, CA. The public comment period will not be extended and will terminate April 20, 1987.

PRT–717177

*Applicant:* San Francisco Zoological Garden, San Francisco, CA.

The applicant requests a permit to import one male and one female great Indian one-horned rhinoceros (*Rhinoceros unicornis*) to be taken from the wild in the Royal Chitwan National Park, Nepal for the purpose of genetic enrichment for the captive breeding program and for conservation education. These animals are to be included in the American Association of Zoological Parks and Aquariums' Species Survival Plan program for great Indian one-horned rhinoceros.

PRT–716947

*Applicant:* Frank Buck Bring 'Em Back Alive, Inc., Sarasota, FL.

The applicant requests a permit to export and reimport six female Asian elephants (*Elephas maximum*) for the purpose of enhancement of survival through public display and conservation education.

PRT–716941

*Applicant:* Robert F. Fortier, Ripley, MS.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT–715414

*Applicant:* Frank Preston, Phillipsburg, NJ.

The applicant requests a permit to import a trophy of a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by Phil van der Merwe, Skietkuil, Hutchinson, Cape Province, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance

of this herd and thereby enhance the likelihood of the survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 7, 1987.

**R.K. Robinson,**

*Chief, Branch of Permits Federal Wildlife Permit Office.*

[FR Doc. 87-8104 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-55-M

## Bureau of Indian Affairs

### Pueblo of Santa Ana, NM.; Determination

March 25, 1987.

Pursuant to section 6(b)(2) of the Act of October 28, 1986, Pub. L. 99-575, 100 Stat. 3243, the determination is hereby made that no consents to easements are required for private easements of access as described in section 6(b)(1). The Pueblo of Santa Ana, New Mexico, and the Secretary of the Interior received applications for private easements before the date specified in section (6)(b)(1)(B).

Further, the provisions of section 1 (a) and (b) shall become effective on the day on which this Notice is published in the **Federal Register**, as provided in section 6(b)(1).

**Ross O. Swimmer,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 87-7992 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

[FES87-15]

### Availability of Phoenix Final Wilderness Environmental Impact Statement

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of availability of Phoenix final wilderness environment impact statement.

**SUMMARY:** The Final Phoenix Wilderness Environmental Impact Statement assesses the environmental consequences of managing six wilderness study areas as wilderness or nonwilderness. The alternatives assessed include:

(1) An "All Wilderness Alternative" for each wilderness study area and

(2) A "No Wilderness Alternative" for each wilderness study area.

The names of the wilderness study areas, their total acreages, and the proposed actions for each are as follows:

Mount Wilson—24,821 acres (all suitable)
Hells Canyon—9,379 acres (all nonsuitable)
White Canyon—6,938 acres (all nonsuitable)
Picacho Mountains—6,400 acres (all nonsuitable)
Coyote Mountains—5,080 acres (all suitable)
Baboquivari Peak—2,065 acres (all suitable).

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

**FOR FURTHER INFORMATION CONTACT:** Henri R. Bisson, Acting District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, Telephone (602) 863-4464.

**SUPPLEMENTARY INFORMATION:** Copies of the environmental impact statement may be obtained from the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Copies are also available for inspection at the following locations.

Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240
Arizona State Office, Bureau of Land Management, Public Room, 3rd Floor, 3707 North 7th Street, Phoenix, Arizona 85011
Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401

Dated: April 2, 1987.

**Bruce Blanchard,**

*Director, Office of Environmental Project Review.*

[FR Doc. 87-7690 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-32-M

[U-1361, U-18619, and U-42919]

### Utah; Proposed Continuation of Withdrawal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation proposes that a 1,362.47-acre withdrawal for the Jensen Unit, Ute Indian Unit and Vernal Unit, Central Utah Project, continue until December 31, 2090. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

**ADDRESS:** Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, UT 8411.

**FOR FURTHER INFORMATION CONTACT:** Lillie Hikida, Utah State Office, (801) 524-3074.

The Bureau of Reclamation proposes that the existing land withdrawals made by Public Land Order No. 4385 of March 19, 1968, Public Land Order No. 5613 of February 7, 1977, and Secretarial Order of June 11, 1943, be partially continued until December 31, 2080, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 10 miles northeast of Vernal and aggregate 1,362.47 acres in Uintah County, Utah.

The purpose of the withdrawals is to protect the Red Flat Dam Reservoir and related facilities, part of the Jensen Unit; the Halfway Hollow Reservior, part of the Ute Indian Unit; and the Steinaker Dam, Reservoir and related facilities, part of the Vernal Unit. The withdrawals segregate the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: April 2, 1987.

**Orval L. Hadley,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-7974 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-DQ-M

---

[U-0146858]

## Proposed Continuation of Withdrawal; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation proposes that a 1,471.99-acre withdrawal for the Upalco Unit, Central Utah Project, continue until December 31, 2010. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

**ADDRESS:** Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, UT 84111.

**FOR FURTHER INFORMATION CONTACT:** Lillie Hikida, Utah State Office, (801) 524-3074.

The Bureau of Reclamation proposes that the existing land withdrawal made by Public Land Order No. 4192 of April 10, 1967, be continued until December 31, 2010, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 140 miles east of Salt Lake City, and aggregate 1,471.99 acres in Duchesne County, Utah.

The purpose of the withdrawal is to protect the Upalco Unit of the Central Utah Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of his notice, all persons who wish to submit comments suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to ihe undersigned officer at the addressed specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued aand if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: April 2, 1987.

**Orval L. Hadley,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-7973 Filed 4-2-87; 8:45 am]

BILLING CODE 4310-DQ-M

---

## Minerals Management Service

## Outer Continental Shelf Development Operations Coordination; Chevron U.S.A. Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Note of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3336, Block 35, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 2, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executive of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 3, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OSC Region.*

[FR Doc. 87-7989 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-MR-M

---

## Outer Continental Shelf Development Operations Coordination; Conoco Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Conoco Inc., Unit Operator of the West Delta—Grand Isle Federal Unit Agreement No. 14-08-001-2454, has submitted a DOCD describing the activities it proposes to conduct on the West Delta—Grand Isle Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

**DATE:** The subject DOCD was deemed submitted on March 24, 1987.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m. Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Towner; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development: Development and Unitization Section; Unitization Unit; Phone (504) 736-2641.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and

procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 3, 1987

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-7990 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-MR-M

---

## Outer Continental Shelf; Development Operations Coordination; Hall-Houston Oil Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5423, Block 216, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 1, 1987. Comments must be received on or before April 27, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 3, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-7991 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-MR-M

---

## National Park Service

## Intent to Negotiate Concession Contract; Forever Living Products, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that ninety (90) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Forever Living Products, Inc. authorizing it to continue to provide food, beverage, merchandising, trailer village, marina and related facilities and services for the public at Lake Mead National Recreation Area, Nevada for a period of twenty five (25) years from January 1, 1988 through December 31, 2012.

The proposed contract requires a construction and improvement program which was previously described in the Environmental Impact Statement (September 11, 1986 FES-86-27) for the General Management Plan for Lake Mead National Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the nintieth (90th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

**W. Lowell White,**

*Acting Regional Director, Western Region.*

[FR Doc. 87-8045 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-70-M

---

## Intent To Negotiate Concession Contract; Guest Services, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Regional Director of the Pacific Northwest Region of the National Park Service, proposes to negotiate a concession contract with Guest Services, Inc., authorizing it to continue to provide overnight accommodations, food and beverage facilities and services, merchandising facilities and services, automobile gasoline stations, camper supplies and services, and ski touring for the public at Mount Rainier National Park in the State of Washington. The contract will be for a period of twenty-five (25) years from January 1, 1987, through December 31, 2012, and is conditioned upon completion of an improvement program.

This proposed contract requires a construction and improvement program. The construction and improvement program required was previously addressed in the enviromental impact statement prepared for a master plan at Mount Rainier National Park and is in conformance with the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) (40 CFR Parts 1500 through 1508).

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1991, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the

renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should write to the Superintendent, Mount Rainier National Park, Tahoma Woods, Star Route, Ashford, Washington 98304 or call Mr. Phil Parker, Concession Manager, (206) 442–5193, for a copy of the Statement of Requirements describing the opportunity offered and including the application requirements.

Dated: December 9, 1986.

**William J. Briggle,**

*Acting Regional Director, Pacific Northwest Region.*

[FR Doc. 87–8078 Filed 4–9–87; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–376 (Preliminary)]**

### Certain Stainless Steel Butt-Weld Pipe Fittings from Japan

**AGENCY:** International Trade Commission.

**ACTION:** Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–376 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of stainless steel butt-weld pipe and tube fittings, under 14 inches in inside diameter, provided for in item 610.89 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 18, 1987.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** April 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bruce Cates (202–523–0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161. Information may also be obtained via electronic mail by assessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

**SUPPLEMENTARY INFORMATION:**

### Background

This investigation is being instituted in response to a petition filed on April 2, 1987, by Flowline Corp., New Castle, PA., a U.S. producer of certain stainless steel butt-weld pipe fittings.

### Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

### Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

### Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 27, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Cates (202–523–0369) not later than April 24, 1987, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

### Written Submissions

Any person may submit to the Commission on or before April 30, 1987, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: April 7, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–8043 Filed 4–9–87; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-No. 134X)]

### The Baltimore and Ohio Railroad Co.; Abandonment Exemption in Ross County, OH; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 13.36-mile line of railroad between milepost 74.45 near Thrifton and milepost 87.81 near Musselman, in Ross County, OH.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.[1]

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective May 10, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by April 20, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 30, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 30, 1987.

[1] Notice was filed 2 days after applicant served notice on the appropriate state agency. To comply with the 10-day prior notice requirement, the Commission's acceptance of the notice was delayed by 8 days.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-8036 Filed 4-9-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-286 (Sub-No. 1X)]

### The New York, Susquehanna and Western Railway Corp.; Abandonment Exemption in Bergen County, NJ; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its .87-mile line of railroad between valuation stations 941+14.9 and 987+50, in Garfield, Bergen County, NJ.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complaintant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective May 10, 1987, (unless stayed pending reconsideration). Petitions to stay must be filed by April 20, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 30, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: William P. Quinn, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 6, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-8037 Filed 4-9-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Bureau Justice Statistics

### Availability of Funds; National Drug Enforcement Data Clearinghouse Applications for Awards

**AGENCY:** Department of Justice (DOJ), Bureau of Justice Statistics (BJS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of funds (up to $1.5 million) to develop and operate a National Drug Enforcement Data Clearinghouse during a 24-month period and solicits applications for an assistance award. BJS will make one award of a cooperative agreement in response to this solicitation.

**DATE:** Proposals must be postmarked no later than June 24, 1987.

Note.—Applications are invited from public agencies and private non-for-profit organizations only. Participation by profit-making organizations is permissible only as contractors providing goods or services required by eligible applicants.

**ADDRESS:** Application forms and/or additional copies of this notice are available upon request at the following location: Bureau of Justice Statistics (BJS), 633 Indiana Avenue, NW., Room 1142, Washington, DC 20531, Telephone No. (202) 724-7770.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Lindgren, Associate Deputy Director, BJS, at 633 Indiana Avenue, NW., Washington, DC 20531; telephone (202) 724-7759.

**SUPPLEMENTARY INFORMATION:**

**National Drug Data Enforcement Clearinghouse: Outline of Solicitation**

I. Introduction
II. Description of the Problem
III. Scope of Desired Work
IV. Dollar Amount and Duration
V. Eligibility Requirements
VI. Major Responsibilities of the Successful Applicant
VII. Application Requirements
VIII. Procedures and Criteria for Selection
IX. Deadline for Submission
X. Civil Rights Compliance
XI. Letter of Intent
XII. Funding Period

## I. Introduction

Subtitle K, section 1302, of the Anti-Drug Abuse Act of 1986 (entitled the "State and Local Law Enforcement Assistance Act of 1986") authorizes the U.S. Department of Justice, Bureau of Justice Assistance (BJA) to make discretionary grants to States, for the use of State and local governments, for the purpose of enforcing State and local laws similar to those established in the Controlled Substances Act (21 U.S.C. 801 *et. seq.*) and to provide for:

*A. Apprehension*

Provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons who violate State and local laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons.

*B. Prosecution*

Provide additional personnel, equipment, facilities, (including upgraded and additional law enforcement crime laboratories), personnel training, and supplies for more widespread prosecution of persons accused of violating such State and local laws and to pay operating expenses in connection with such prosecution.

*C. Adjudication*

Provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State and local laws, to pay operating expenses in connection with such adjudication, and to provide quickly, temporary facilities in which to conduct adjudications of such cases.

*D. Detention and rehabilitation*

Provide additional public correctional resources for the detention of persons convicted of violating State and local laws relating to the production, possession, or transfer of controlled substances and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State and local laws.

*E. Eradication*

Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

*F. Treatment*

Provide programs which identify and meet the needs of drug-dependent offenders.

*G. Major drug offenders*

Conduct demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosecution of major drug offenders by providing additional resources, such as investigators and prosecutors, to identify major drug offenders and move these offenders expeditiously through the judicial system.

Section 1309 of the Act gives BJA the authority to provide discretionary grants to public agencies and private non-profit organizations to assit in the achievement of the purposes enumerated in section 1302. In addition, section 1303(1) of the Act requires that, in order to request grants under the Act, each State must submit to BJA "a statewide strategy for the enforcement of State and local laws relating to the production, possession, and transfer of controlled substances." Finally, section 1306(a)(1) of the Act indicates that each State which receives such a grant must submit to BJA, for each year in which funds are received, "an assessment of the impact of such activities on meeting the needs identified in the State strategy."

To implement these provisions of the Act, BJA announced a Narcotics Control Discretionary Grant Program in the **Federal Register** of March 19, 1987 (Vol. 52, No. 53, pp. 8661–8676). As part of this program, it was announced in the same **Federal Register** (p. 8666) that there would be a BJS Drug Enforcement Data Clearinghouse.

BJA is authorized to transfer funds to BJS for such a purpose by section 807(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Justice Assistance Act of 1984.

Section 509 of the Anti-Drug Abuse Act of 1986 authorizes the U.S. Department of Health and Human Services (HHS), through its Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), to establish a clearinghouse to:

- Disseminate relevant publications from HHS and the Department of Education
- Disseminate information on health effects of alcohol and drug abuse
- Collect and disseminate information concerning successful alcohol and drug abuse education and privention curricula, and
- Collect and disseminate information on school-based alcohol and drug abuse education and prevention programs.

ADAMHA Intends to establish a National Clearinghouse for Alcohol and Drug Information (NCADI) in HHS as soon as possible through interagency agreements with the Department of Education. ADAMHA plans to issue an RFP in May, 1987, for a contract to develop and operate NCADI. For more information on the ADAMHA clearinghouse, contact Robert W. Denniston, (301) 443-0373.

In order to enable States, localities and the Federal government to have the appropriate quality and quantity of drug enforcement information available, including that required to build State strategies and to assess discretionary fund program impact, BJA will establish a National Drug Enforcement Data Clearinghouse (NDEDC) through an interagency agreement with the Bureau of Justice Statistics. The product of this clearinghouse is for the direct use of State and local law enforcement and criminal justice system practitioners, as well as others in need of information on drugs and the justice system. Work of this clearinghouse will be coordinated with the ADAMHA clearinghouse on health, education, prevention and alcohol abuse to minimize any duplication; the NDEDC is not authorized to perform functions in any of these areas other than the normal coordination requirements. The ADAMHA clearinghouse includes a much greater level of outreach and material development than the NDEDC.

The NDEDC project is to be funded as a cooperative agreement. The basis for the cooperative agreement is the substantial involvement that BJS has in the development of statistical information about drugs, crime and the criminal justice system and in providing data and information to:

(a) States to support the formulation of State strategies i.e., and

(b) State and local government law enforcement or criminal justice personnel who are directly responsible for apprehension, prosecution, adjudication, detention or treatment. The Bureau and the successful applicant will exercise joint general approval over the entire project and for all critical phases of the project. In addition, the Bureau's substantial involvement will include, but not be limited to, reviewing and commenting on drafts of the project deliverables specified in VI. F. of this solicitation, approving the final drafts prior to submission for publication, and approving in advance any changes in staffing key project positions.

BEST COPY AVAILABLE

**II. Description of the Problem**

Statistics related to drug abuse and the justice system are collected, stored, and retrieved in a wide variety of geographical locations and organizational elements. Persons in need of such statistics must now contact the various producers of these data, necessitating many telephone calls or letters to obtain the data. There are no central sources within the Federal Government where the potential user can obtain the needs data.

Types of justice system organizational elements include:

- Government jurisdictions and units (e.g., Federal, State, and local);
- Regional cooperative (e.g., Southeast Florida Drug Task Force);
- Research centers;
- Hot lines;
- Treatment centers.

Types of information of interest includes items such as:

- Prevalence and incidence of drug crimes;
- Relation of drugs to crime;
- Offender and victim characteristics (e.g., age, race, sex, income, education, drug use history, criminal history);
- Civil and Criminal justice system processing of drug offenders and of nondrug offenders with drug use histories;
- Illegal drug production and distribution sources;
- Narcotics control programs and strategies;
- Research studies in selected sites or for selected subgroups of drug users (e.g., prisoners, arrestees).

There is likely to be some duplication in the information produced by various sources. In addition, there are likely gaps in needed information. Further, there are probably flaws in the quality of some information. Finally, some information may be being withheld from public consumption for reasons related to crime intelligence.

**III. Scope of Desired Work**

The clearinghouse will be physically located outside of BJS. It could be anywhere in the United States.

The purposes of the clearinghouse include:

- Compile and standardize, where possible, narcotics control information on drugs and the justice system currently found in various research centers, the private sector, and jurisdictional elements (e.g., Federal, regional, State, and local).
- Improve access to statistical information about drugs and the justice system (e.g., drug abuse, drug law enforcement, treatment of users and offenders).
- Identify indicators that enable the justice system to monitor narcotics production, use and control.
- Make statistical information on drugs and the justice system available in a manner that is accessible, understandable and usable to technical and non-technical audiences, including policymakers and the general public.
- Refer requesters to other clearinghouses, such as the one maintained by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) of the Department of Health and Human Services (HHS), or to the data producers when such organizations or individuals can better serve the needs of the user.

To allow development of technical and non-technical reports or to meet specific data requirements, the clearinghouse must allow BJS and other authorized persons access to the information resources at all times.

**IV. Dollar Amount and Duration**

One cooperative agreement will be awarded. The project period for this effort will be 24 months. Section VI., below, outlines the major activities and tasks to be completed during the project period. Up to $1.5 million has been allocated for one project award this fiscal year, to cover a 24 month project.

The applicant may propose the establishment of a fee-for-service system for charging fees to users for selected services if such a method does not unnecessarily limit the availability of needed information. No charges would be made to State or local government users for routine services.

Applicants must propose a cost-effective budget that specifically relates the costs to the tasks to be undertaken in the first and second (12-month) phase of the project. Funding beyond the initial 24 month period will depend on availability of appropriated funds.

**V. Eligibility Requirements**

Pursuant to the limitations of section 1309 of the Anti-Drug Abuse Act of 1986, applications are invited from public agencies and private not-for-profit organizations only. Participation by profit-making organizations is permissible only as contractors providing goods or services required by eligible applicants.

Eligible organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Together, co-applicants must meet the eligibility requirements specified in A. and B. below.

The applicant must have experience in the following areas in order to be eligible for consideration:

A. Prior experience in using information and statistics on drugs and/or the justice system.

B. Demonstrated knowledge of information and statistical quality issues as they relate to existing sources and users of drug data in the justice system.

The applicant must have the management and financial capability to implement effectively a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

**VI. Major Responsibilities of the Successful Applicant**

The organization selected to conduct this project will be responsible for all aspects of the project, whether carried out directly or contracted to other organizations or individuals, and for the timely development of all tasks.

The successful applicant will have specific responsibility for developing a design and appropriate methods that are responsive to the goals and end products of the project as outlined in the solicitation. A project advisory board (including members from State and local government) will be appointed by the successful applicant, with the concurrence of BJS and will meet at least twice a year during the course of the project to review plans and progress on specific project tasks. In addition, because this project will be awarded as a cooperative agreement, BJS and the successful applicant will exercise joint general approval for the entire project and for all critical phases of the project.

In addition to submitting all financial and progress reports required by this agency, the grantee will be responsible for the following:

A. A revised implementation plan which incorporates the recommendations of BJS staff within 60 days of award.

B. An inventory and evaluation of existing data on drugs and the justice system (e.g., data bases, publications, studies) in Federal, State, and local government as well as the private sector. The evaluation must include an assessment of the—

1. Reliability and validity of data
2. Adequacy of the data for policy making
3. The systems that produce data for administrative and operational purposes.

C. Identification of justice system data gaps (e.g., no data, inadequate data, conflicting data, inaccurate data).

D. Establishment of a clearinghouse/reference function, including:

1. Archiving hard copy (books, printouts, etc.) and machine readable copy (as available) of drug related data

2. Toll-free 800 telephone number with—

- Access to one or more information specialists from 8:30 a.m. to 8:00 p.m. E.S.T.
- 24 hour access via answering machine

3. Remote computer terminal access with 24 hour access

4. Document pickup or distribution methods, including producing special computer tabulations of data available only on magnetic data tape

5. Advertising the availability of this clearinghouse/service

6. Resource staff qualified to respond to inquiries for statistical information, provide requested data, advise requester of data limitations, discuss possible interpretations of the data, and refer requester to other sources of drug information such as the clearinghouse maintained by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) of the Department of Health and Human Services (HHS), as appropriate

7. Maintaining a continuing log of requests and responses, classifying requests by type of request, type of requester, intended use of the data and time required to fill the request.

E. Data tapes obtained and prepared under this award are to be:

1. Compatible with existing BJS datasets

2. Submitted to BJS in compliance with *A Style Manual for Machine-Readable Data Files and Their Documentation* (available from a BJS reading room).

F. Documents to be produced under this award in camera-ready copy are:

1. *Drug data telephone contacts*, to be modeled on *BJS Telephone Contacts '87* (available from a BJS reading room) and to include persons throughout the Government, private sector and elsewhere who are the best able to discuss the data available from various sources and the possible interpretations of these data.

2. *Drug data digest*, to be modeled after the BJS *Sourcebook of Criminal Justice Statistics* (available from a BJS reading room)

3. One or more BJS Special Reports, modeled after existing BJS Special Reports, to analyze in-depth topics mutually agreed upon by the successful applicant and BJS. (Topics do not need to be specified in the application).

G. A plan to facilitate coordination with any other drug abuse clearinghouse and other producers of statistical information on drugs, drug use, and drugs and crime (e.g., the planned National Clearinghouse on Alcohol and Drug Information of the Alcohol, Drug Abuse and Metal Health Administration (ADAMHA) in the U.S. Department of Health and Human Services).

H. Archiving State justice strategies submitted with application for drug block grant funds.

I. Proposing how to evaluate and develop comparative and longitudinal data bases of State justice strategy data. (The implementation of this plan would not occur during the first 12 months of this award.)

J. Proposing a method for evaluating and modifying the cooperative agreement and clearinghouse function, if needed.

Since this project will be awarded as a cooperative agreement, rather than a grant or contract, BJS will work closely with the recipient and will collaborate with the recipient in making major decisions throughout the course of the project including the final clearinghouse design, definitions of terminology, advisory board members, subjects of topical reports, etc. Any and all noncompetitive contracts in excess of $10,000 (with the exception of clerical support services) proposed by the successful applicant are subject to prior agency approval based on an adequate sole source justification. In addition, it is expected that the recipient will work cooperatively with other organizations in areas of mutual interest.

## VII. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget, and a budget narrative.

In submitting collaborative applications between two or more organizations, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

Proposal should address all of the following areas:

*A. Project Abstract*

*B. Organizational Capability*

In addition to the standard assurance provided in the Application for Federal Assistance, applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly.

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria established in Section V. of this solicitation. Applicants must concisely describe how their organizational experience and capabilities will enable them to achieve the goals and objectives of the study.

*C. Understanding Project Goals and Objectives*

Applicants must discuss their understanding of the goals and objectives of the project and the nature of the problem. The applicants should outline the specific objectives that will be addressed and describe the related data plans. Applicants should also discuss the products and services that will be developed and their potential contribution to our knowledge about drugs and the justice system. Applicants should also show how this project will help State and local law enforcement and criminal justice agencies.

*D. Implementation Plan*

Applicants must present a detailed statement of work, including a design and methodology for implementing the requirements described in Section VI and describe how they will allocate the available resources to implement the strategy. At a minimum, the plan must include:

1. An organizational chart depicting the roles and describing the responsibilities of key organizational components

2. A list of key personnel responsible for managing and implementing the project, including present position descriptions and qualifications of key personnel

3. A concise discussion of the strategy to implement the requirements of Section VI

4. A detailed time-task plan for the 24-month project period (broken into two 12-month periods), clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the products and services identified in Section VI.

*E. Budget*

Applicants shall provide a detailed budget for each 12 month period of the project with a detailed justification for all costs, including the bases for computation of these costs. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. Applicants should highlight innovative, cost-effective measures of their proposals.

**VIII. Procedures and Criteria for Selection**

The evaluation of applications will be a three-step process. The applicants' organizational capability (as discussed in Sections V, VII and below) will be evaluated first. Applications from organizations determined not to meet these standards will not be further evaluated. The second step will be an evaluation of "understanding of the problem" and "implementation plan," as discussed in Section VII and below. Finally, the budgets of those applicants evaluated as qualified in steps one and two will be evaluated.

An applicant conference may be held and negotiations with more than one finalists may be held, if necessary, before a recipient is selected.

Applicants will be reviewed in terms of their responsiveness to the specifications of the solicitation, their organizational capability to achieve the goals and objectives of the project, their attention to substantive issues in the design, their implementation plan, and the cost-effectiveness of the proposed budget. All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria:

*A. Understanding of the Problem (25 Points)*

Proposals will be evaluated in terms of their understanding of both the substantive issues and the goals and objectives of the project.

*B. Implementation Plan (40 Points)*

The appropriateness of allocation of resources to accomplish the goals and objectives within the 24-month project period will be evaluated. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organization, and individuals' roles and responsibilities for the completion of significant tasks and development of products. Applicants must demonstrate that they are able to meet the needs of clearinghouse data retrieval and dissemination during the time specified. The proposal must show how needs of clearinghouse users will be met, with a particular emphasis on requirements of State and local law enforcement and criminal justice agencies.

*C. Organizational Capability (20 Points)*

The proposals will be evaluated on—

- The extent and quality of organizational and staff experience in the design and implementation of national statistical efforts of comparable content and scope
- The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds.

*D. Budget (15 Points)*

Applicants must include a 24-month budget, broken into two 12-month phases, with a detailed narrative justifying the costs. Applications will be rated based on the cost-competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the tasks to be accomplished.

Final decisions regarding the award of this cooperative agreement are reserved to the Director, BJS.

**IX. Deadline for Submission**

One signed original and five copies of the application must be mailed or delivered to the Director, Bureau of Justice Statistics, Room 1164–B. U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531, by 5:30 p.m. on June 24, 1987. Specifically, those applications mailed to the above address must be postmarked before June 24, 1987. The necessary forms for applications may be obtained by writing to BJS. Questions regarding the solicitation may be directed to Sue A. Lindgren, (202) 724–7759, or at the above address.

**X. Civil Rights Compliance**

A. All recipients of BJS assistance including any contractors, must comply with the non-discrimination requirements of the Justice Assistance Act; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

**XI. Letter of Intent**

Interested applicants should submit a letter indicating their intention to apply by 30 days prior to the proposal due date.

**XII. Funding Period**

The funding period for this project will commence on or about September 1, 1987.

Approved.

**Dr. Steven R. Schlesinger,**

*Director, Bureau of Justice Statistics.*

[FR Doc. 87–8077 Filed 4–9–87; 8:45 am]

BILLING CODE 4410–18–M

---

## Office of Juvenile Justice and Delinquency Prevention

### Advisory Board On Missing Children; Meeting

Swearing in ceremonies for the Attorney General's new Advisory Board on Missing Children will take place during a Press Conference on April 23, 1987 at 8:00 p.m. The Press Conference will be held in Ballroom A of the Vista International Hotel, 1400 M Street, NW., Washington, DC.

The Attorney General's Advisory Board will convene to conduct a business meeting on April 24, 1987 at 8:30 a.m. The meeting will be held at the Vista International Hotel in the Ash Lawn North room. Public comment will be heard at 3:00 p.m.

For further information, please contact Michelle Easton, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–7655.

Approved:

Dated: April 7, 1987.

**Verne L. Speirs,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 87–8005 Filed 4–9–87; 8:45 am]

BILLING CODE 44–1018–M

DEPARTMENT OF LABOR

**Employment Standards Administration, Wage and Hour Division**

**Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Alabama:
AL87–4 (January 2, 1987)—p. 8
District of Columbia:
DC87–1 (January 2, 1987)—pp. 90, 92
Massachusetts:
MA87–3 (January 2, 1987)—p. 401
New York:
NY87–2 (January 2, 1987)—p. 689
New York:
NY87–12 (January 2, 1987)—p. 790
Pennsylvania:
PA87–1 (January 2, 1987)—pp. 844, 846
Pennsylvania:
PA87–2 (January 2, 1987)—pp. 856, 858
Pennsylvania:
PA87–9 (January 2, 1987)—pp. 926–928
Pennsylvania:
PA87–11 (January 2, 1987)—p. 940
Pennsylvania:
PA87–14 (January 2, 1987)—pp. 948–949
Pennsylvania:
PA87–15 (January 2, 1987)—p. 958
Pennsylvania:
PA87–16 (January 2, 1987)—p. 962
Pennsylvania:
PA87–17 (January 2, 1987)—pp. 964–965
Pennsylvania:
PA87–19 (January 2, 1987)—pp. 978–979
Pennsylvania:
PA87–20 (January 2, 1987)—pp. 984–985
Pennsylvania:
PA87–21 (January 2, 1987)—pp. 990–991
Pennsylvania:
PA87–22 (January 2, 1987)—p. 994, pp. 996–997
Tennessee:
TN87–3 (January 2, 1987)—p. 1087

*Volume II*

Illinois:
IL87–1 (January 2, 1987)—p. 75
Illinois:
IL87–13 (January 2, 1987)—pp. 178–179
Indiana:
IN87–1 (January 2, 1987)—p. 236
Indiana:
IN87–2 (January 2, 1987)—p. 250
Indiana:
IN87–3 (January 2, 1987)—pp. 268–269
Indiana:
IN87–5 (January 2, 1987)—p. 292
Indiana:
IN87–6 (January 2, 1987)—p. 302
Ohio:
OH87–29 (January 2, 1987)—pp. 818, 833
Texas:
TX87–1 (January 2, 1987)—pp. 914–916
Texas:
TX87–21 (January 2, 1987)—p. 976

*Volume III*

California:
CA87–2 (January 2, 1987)—pp. 46–62b
Montana:
MT87–1 (January 2, 1987)—p. 167

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50

Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of April 1987.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 87–7812 Filed 4–9–87; 8:45 am]

BILLING CODE 4510–27–M

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A. Brandt Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 30th day of March 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| A. Brandt Co. (Workers) | Ft. Worth, TX | 3/30/87 | 3/9/87 | 19,419 | Wood chairs and parts. |
| Baxter Travenol Lab. (Workers) | Mtn Home, AR | 3/30/87 | 2/23/87 | 19,420 | Pharmaceutical |
| Bay Shipbldg. Corp. (Workers) | Sturgeon Bay, WI | 3/30/87 | 3/2/87 | 19,421 | Shipbldg. and repair. |
| Bedford Coat & Suit Co. (Workers) | Boston, MA | 3/30/87 | 3/11/87 | 19,422 | Women's jackets |
| Borg Textile Corp. (LOC) | Jefferson, WI | 3/30/87 | 3/20/87 | 19,423 | Knitted deep pile fabric. |
| Britton Drilling Co. (Workers) | Midland, TX | 3/30/87 | 2/6/87 | 19,424 | Oil drilling |
| CFC Wireline Inc. (CO) | Grand Prairie, TX | 3/30/87 | 3/19/87 | 19,425 | Logging & perf. oil serv. |
| Champlin Petroleum (CO) | Ft. Worth, TX | 3/30/87 | 3/2/87 | 19,426 | Crude oil. |
| Champlin Petroleum (CO) | Wilmington, L/B CA | 3/30/87 | 3/2/87 | 19,427 | Crude oil |
| Champlin Petroleum (CO) | Rock Springs, WY | 3/30/87 | 3/2/87 | 19,428 | Crude oil |
| Climax Molybdenum Co. (Workers) | Empire, CO | 3/30/87 | 2/7/87 | 19,429 | Molybdenum alloy |
| Coats & Clark, Inc. (Workers) | Newport News, VA | 3/30/87 | 3/13/87 | 19,430 | Sewing notions. |
| Deming Div. of Crane (USWA) | Salem, OH | 3/30/87 | 3/20/87 | 19,431 | Small industrial pumps. |
| Esso Exploration, Inc. (Workers) | Houston, TX | 3/30/87 | 3/23/87 | 19,432 | Crude oil |
| Fina Oil & Chemical Co. (Workers) | Midland, TX | 3/30/87 | 3/19/87 | 19,433 | Exp/ ref/ sell crude oil. |
| Flusche Supply, Inc. (Workers) | Electra, TX | 3/30/87 | 3/17/87 | 19,434 | Oilfield supplies. |
| G/A/F Chemicals, Corp. (Workers) | Bound Brook, NJ | 3/30/87 | 3/20/87 | 19,435 | Roofing granules |
| Georgia Convertors, Inc. (CO) | Bremen, GA | 3/30/87 | 3/20/87 | 19,436 | Dress trouser/walk shorts |
| (The) Hoosier Panel, Co. (CO) | New Albany, IN | 3/30/87 | 3/18/87 | 19,437 | Hardwood plywood and doors. |
| Hughes Tool Co. (Workers) | Corsicana, TX | 3/30/87 | 3/12/87 | 19,438 | Oilfield equipment |
| Johnson Controls Inc. (Workers) | Milwaukee, WI | 3/30/87 | 3/20/87 | 19,439 | Parts for controls. |
| L.D. Van Valkenburg Co. (Workers) | Chicopee, MA | 3/30/87 | 3/11/87 | 19,440 | Buying imported products. |
| LTV Energy Prod. (Workers) | Houston, TX | 3/30/87 | 3/13/87 | 19,441 | Oilfield drilling equipt. |
| LaFarge Corp. (USAWA LU) | Alpena, MI | 3/30/87 | 3/16/87 | 19,442 | Shipment of cement. |
| NIBCO, Inc. (CO) | Augusta, AR | 3/30/87 | 3/16/87 | 19,443 | Brass plumbing and heating. |
| Orange County Coat Co. (ILGWU) | Newburah, NY | 3/30/87 | 3/16/87 | 19,444 | Women's outerwear |
| Pacific Chloride, Inc. (IAM&AW) | Beaverton, OR | 3/30/87 | 3/19/87 | 19,445 | Storage batteries. |
| Perrella Gloves Inc. (ACTWU) | Gloversville, NY | 3/30/87 | 3/17/87 | 19,446 | Leather gloves. |
| Petco (Workers) | Odessa, TX | 3/30/87 | 2/11/87 | 19,447 | Oilfield services |
| (The) Protech Grp Inc. (Workers) | Munster, IN | 3/30/87 | 3/14/87 | 19,448 | Steel sheet and strip |
| SSM Partnership (Workers) | Tulsa, LA | 3/30/87 | 3/23/87 | 19,449 | Oil and gas |
| Sealed Power Div. (UAW) | Muskegon, MI | 3/30/87 | 3/23/87 | 19,450 | Engine parts. |
| Terry Corp. (CO) | Windsor, CT | 3/30/87 | 3/23/87 | 19,451 | Steam turbines. |
| Terry R. White O/FConst (Workers) | Carmi, IL | 3/30/87 | 3/9/87 | 19,452 | Install oil wells. |
| Verson Allsteel Press (Workers) | Dallas, TX | 3/30/87 | 3/3/87 | 19,453 | metal forming presses. |
| (The) West Bend Co. (A.I.W.A.) | West Bend, WI | 3/30/87 | 3/16/87 | 19,454 | Cookware appliances |
| Werzalit of America (Workers) | Bradford, PA | 3/30/87 | 3/23/87 | 19,455 | Mfg and sales of table tops. |
| Westmoreland Plastics (Workers) | Latrobe, PA | 3/30/87 | 3/19/87 | 19,456 | Thermoplastics |

[FR Doc. 87–8056 Filed 4–9–87; 8:45 am]

BILLING CODE 4510–30–M

**Mine Safety and Health Administration**

[Docket No. M-87-72-C]

**Abednego Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Abednego Coal Company, HC 81 Box 1624, Hinkle, Kentucky 40953 has filed a petition to modify the appliction of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15–15033) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Peitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8057 Filed 4–9–87; 8:45 am]

BILLING CODE 4510–43–M

---

[Docket No. M-87-84-C]

**Eastern Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard**

Eastern Coal Corporation, P.O. Box 219, Stone, Kentucky 41567 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Stone No. 4 Mine (I.D. No. 15–02096), its A–5 Mine (I.D. No. 15–07132), its Pegs Branch Mine (I.D. No. 15–09866), and its PC No. 2 Mine (ID. No. 15–15378), all located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery powered machines.

2. As an alternate method, petitioner proposes to install a battery plug locking mechanism, which will be affixed by permanent weld to the frame of each scoop in lieu of padlocks. The mechanism will consist of a fabricated metal bracket of ¼ inch plate-steel and a spring tensioned brass plunger with a handle. These locking mechanisms will be designed, installed and used to prevent the threaded rings from unintentionally loosening.

3. Petitioner states that the locking mechanisms will be easier to maintain than padlocks because there are no keys to be lost, there will be no lost padlocks and mud cannot get into the workings as with a padlock.

4. Miners who couple and uncouple battery plugs on these machines will be trained in the proper use of the locking devices, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 1, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8058 Filed 4–9–87; 8:45 am]

BILLING CODE 4510–43–M

---

[Docket No. M-87-55-C]

**H L & W Coal Co. Petition for Modification of Application of Mandatory Safety Standard**

H L & W Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its H L & W Slope (I.D. No. 36–07825) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the

steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8059 Filed 4–9–87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M–87–7–M]**

## L.G. Everist, Inc.; Petition for Modification of Application of Mandatory Safety Standard

L.G. Everist, Inc., 3955 Youngfield, Golden, Colorado 80401 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Mount Olivet Development (I.D. No. 05–04206) located in Jefferson County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. Petitioner states that people working near audible backup alarms become insensitive to them over a period of time and tend to mentally "block-out" the sound.

3. As an alternate method, petitioner proposes to use a Doppler Radar device to alert the operator of impending collisions during back up. Petitioner feels that this device will not tend to cause immunity like the present back-up alarms.

4. In support of this request, petitioner states that normal operation of the pit will be excavation by hydraulic backhoe to stockpile and load-out with a single front-end loader. Light vehicular and foot traffic will be excluded from the load-out site at all times. Haul trucks will be over-the-road tractors with 30-foot end-dump trailers. Drivers will be required to stay in the trucks, and the site will be fenced and signed to exclude trespassers. The traffic pattern at the site will limit back up by the front-end loader to that part of the load-out cycle when the front-end loader is backing away from the stockpile with a full bucket.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8060 Filed 4–9–87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M–87–76–C]**

## Lady Blue Coal Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lady Blue Coal Inc., P.O. Box 40, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15–14694) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8061 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-63-C]

**Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Peabody Coal Company, P.O. Box 14495, St. Louis, Missouri 63178 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundments and impounding structures; abandoment) to its Rogers County No. 2 Mine (I.D. No. 34-00274) and its associated Fresh Water Lake (MSHA I.D. No. 1211-OK-9-001) located in Craig County, Oklahoma. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that prior to abandonment of any water, sediment, or slurry impoundment and impounding structure, the person owning, operating or controlling such an impoundment and impounding structure shall submit a plan for abandonment based on current, prudent engineering practices which shall contain provisions to preclude the probability of future impoundment of water, sediment, or slurry, provide for major slope stability, and include a schedule for the plan's implementation.

2. Petitioner requests a modification of the requirement of the standard for an abandonment plan which shall contain provisions to preclude the probablity of future impoundment of water. In further support of this request petitioner states that the size of the pond has been reduced significantly, and is only used as a utility pond for suppression of road dust. Normal maintenance to insure the continued integrity of the pond will continue to be performed.

3. Petitioner states that an alternate method of abandonment was implemented prior to September 4, 1986 by construction of a structure modification limiting potential storage to less than 20 acre feet and less than 20 feet high. Future reclamation plans will eventually be designed to totally reclaim the area to specifications to satisfy the State of Oklahoma, Mines and Minerals Development and the Federal Office of Surface Mining when mine operations end.

4. The pond was constructed in mid-1975 prior to MSHA dam standards. It was used for a minor haulroad dust suppression water source. On June 24, 1980, an initial plan package was submitted to MSHA District 10. The Plan was turned down because the apparent slope stability factor was only 1.21 at higher pool levels. However, the structure was classified as a low potential hazard structure of small size. On August 28, 1981, an addendum was submitted which included a proposal to flatten slopes to 3:1, install a 24 inch CMP as a principal spillway and lower the emergency spillway. After resubmission of additional information, MSHA approved the new plan on November 29, 1982 without a CMP. Mine operation continued to pump water from pond for mine use, maintaining a low operating pool of 20 acre feet or less; therefore, the proposed work was never done.

5. When even lower production became a reality and total mine reclamation was being planned, a modification plan was submitted on August 22, 1985 for abandonment reducing it from an MSHA pond to even smaller utility fresh water pond. MSHA approval was received August 27, 1985. Final configuration work was then completed, which included a lower 25-foot wide open channel spillway at an elevation of 833 and 14.8 acre feet normal pool, and a 100-year storm level of 834.6 feet at 18.8 acre feet of storage. The pond as it is now will not change configuration with current use as a small utility pond for suppression of road dust, and further, it cannot be altered again without other approved design. Normal maintenance to ensure the continued intergrity of the pond will continue to be performed by Peabody in compliance with other regulatory agencies. Final reclamation at mine closing will be of specifications to meet Oklahoma Mines and Minerals, and Federal Office of Surface Mining standards. Peabody will also notify MSHA of any and all final reclamation disposition.

6. Petitioner states that the proposed alternate method of abandonment will guarantee the same measure of protection of miners. The aforementioned modification plan work was undetaken as a safety precaution in accordance with MSHA Policy which allowed for abandonment in this manner. Additionally, abandonment from MSHA jurisdiction to a small, live pond with less than 20 acre feet of storage will eliminate the requirement of weekly inspection reporting.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8062 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-73-C]

**Raco Mining Co.; Petition for Modification of Application of Mandatory Safety Standard**

Raco Mining Company, Rt. 2 Box 563, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-15085) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards. Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 1, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8063 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-44-C]**

## Rushton Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Rushton Mining Company, P.O. Box 589, Philipsburg, Pennsylvania, 16866 has filed a petition to modify the application of 30 CFR 77.900 (low- and medium-voltage circuits serving portable or mobile three-phase alternating current equipment; circuit breakers) to its Rushton Mine (I.D. No. 36-00856) located in Centre County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that low- and medium-voltage circuits supplying power to portable or mobile three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained and equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and over-current.

2. As an alternate method, petitioner proposes to utilize a combination motor controller, of adequate interrupting capacity, to function as a suitable circuit breaker. Petitioner also proposes to utilize a ground monitoring device which drops out at 40 to 60 percent voltage to act as the undervoltage protection for the circuit. In further support of this request, petitioner states that:

(a) The combination motor controller system will be utilized when providing protection for single motor circuits;

(b) The use of combination motor controllers for the circuit protection does provide standardization of electrical equipment in processes comprised of both stationary and mobile three phase equipment;

(c) The point of circuit interruption is essentially the same physical location, whether the circuit breaker or motor controller opens the circuit. The circuit breaker and the motor controller are located in the same enclosure and physically separated by several inches;

(d) The motor controller is of adequate capacity for the intended circuit interrupting duty;

(e) Ground fault, overload and the ground monitor when activated, open the motor controller, thereby deenergizing the protected circuit. The motor controller will remain open until the fault condition is corrected and the protective devices are annually reset;

(f) Magnetic only circuit breaker, which is part of the combination controller, provides short circuit protection;

(g) The Ensign 6314-024 ground monitor will drop out before reaching 60%-40% input voltage level, lockout the contactor, and thereby provide undervoltage protection for the circuit; and

(h) If the motor sizes are increased, the combination motor controller will be upgraded to provide the same degree of interrupting capacity safety factor as specified in the original design.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards. Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 1, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8064 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-68-C]**

## U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Maple Creek Mine (I.D. No. 36-00970) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to deteriorating roof conditions and numerous massive roof falls, certain return air-course of the mine cannot be safely traveled.

3. As an alternate method, petitioner proposes to establish mesuring stations where air and methane readings will be taken daily, and the results recorded in a book maintained on the surface. In further support of this request, petitioner states that:

(a) A date board will be maintained at each measuring station which will contain the initials, date and time of the readings;

(b) A diagram indicating the direction of air flow in the vicinity of each

measuring station will be posted at that measuring station;

(c) The vicinity of each measuring station and access thereto will be maintained in a safe and travelable condition;

(d) Signs will be posted along the track haulage roads designating the location of each monitoring station;

(e) Methane will not be allowed to accumulate in the subject return air course in excess of legal limits, and if a marked variation in air quality is recorded, as determined by readings taken at each monitoring station, immediate action will be taken to determine the cause and appropriate corrective action taken where necessary;

(f) The subject return aircourses will at no time be utilized as primary return aircourses for the ventilation provided to the working sections through which miners are required to travel; and

(g) Persons working in the area for the purpose of providing safe access to and from the measuring stations will be limited to a maximum of four at any given time. Each person working in the affected area will be required to wear or carry a self-rescue device at all times. Each person working in the affected area will be able to reach a separate split of air within a reasonable period of time.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: March 31, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8065 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

---

## Occupational Safety and Health Administration

## New Mexico State Standards; Approval

**1. Background**

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the Federal Register (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Technical Advisory Committee recommendation to the Environmental Improvement Division.

2. Notice of public hearing published in a newspaper of general circulation in the State at least thirty (30) days prior to the date of such hearing.

3. Public hearing conducted by the Environmental Improvement Board.

4. Filing of adoption regulations, amendments, or revocations under the State Rules Act.

Section 1952.363 of Subpart DD sets forth the State's schedule for adoption of Federal standards. By letter dated October 2, 1986, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the Plan, the State submitted standards comparable to 29 CFR 1910.401, Commercial Diving Operations (Amended) (50 FR 1050, January 8, 1985); 29 CFR 1910.1029, Coke Oven Emissions (Amended) (50 FR 37353, September 13, 1985); 29 CFR 1910.1047, Ethylene Oxide (Amended) (50 FR 41494, October 11, 1985); 29 CFR 1910.1200, Hazard Communication (Amended) (50 FR 48758-59, November 27, 1985); and 29 CFR 1910.1043, Cotton Dust (Amended) (50 FR 51173, December 13, 1985).

These standards which are contained in New Mexico Occupational Health and Safety Regulations Section 200—General Industry Standards were promulgated after public hearings held on June 11 and 12, 1986.

**2. Decision**

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and accordingly are approved.

**3. Location of Supplement for Inspection and Copying**

A copy of the standards supplement, along with the approved Plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor–OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Director, Environmental Improvement Division, 1190 St. Francis Drive, Room 2200, Santa Fe, New Mexico 87501; and the Office of State Programs, 200 Constitution Ave., NW., Room N3700, Washington, DC 20210.

**4. Public Participation**

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposals and making the Regional Administrator's approval effective upon publication for the following reasons:

1. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

The decision is effective April 10, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Dallas, Texas, this 20th day of February, 1987.

**Gilbert J. Saulter,**

*Regional Administrator.*

[FR. Doc. 87-8055 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-26-M

---

## Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 87-30; Exemption Application No. D-6397 et al.]**

## Grant of Individual Exemptions; IBI, Inc. Profit Sharing Plan et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of

the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**IBI, Inc. Profit Sharing Plan and Trust Agreement and IBI, Inc. and Top Home Center, Inc. Defined Benefit Pension and Trust (the Plans)**

[Prohibited Transaction Exemption 87–30; Exemption Application Nos. D–6397 and D–6398]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, for a period of 5 years, to the proposed sales by IBI, Inc. (IBI) of contracts for deed to the Plans, nor to the guarantee of repayment by certain shareholders of IBI, provided that the terms and conditions of such sales are at least as favorable to the Plans as those which the Plans could receive in similar transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1987 at 52 FR 3361.

For further information contact: Alan Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Maurice S., Rawling, M.D., P.C., Defined Benefit Plan and Trust (the Plan), Located in Chattanooga, TN**

[Prohibited Transaction Exemption 87–31; Exemption Application No. D–6688]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, [1] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of a parcel of real property and the improvements thereon to the Georgia Winery, Inc., a disqualified person with respect to the Plan, provided the Plan receives no less than fair market value for property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 3, 1987 at 52 FR 3362.

For further information contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**Allen-Tamarak, Inc. Profit Sharing Plan and the Allen-Tamarak, Inc. Money Purchase Pension Plan (collectively, the Plans)**

[Prohibited Transaction Exemption 87–32; Exemption Application Nos. D–6700 and D–6701]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a loan (the Loan) of $75,000 by the individual accounts in the Plans of Mr. Francis F. Allen to Bermuda Research Corporation, a party in interest with respect to the Plans, provided the terms of the Loans are at least as favorable to the Plans as those obtainable in an arm's lenght transaction with an unrelated party.

For a more compete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemtion published on February 3, 1987 at 52 FR 3363.

For further information contact: Ms Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**Maryville-Alcoa Newspapers, Inc. Profit Sharing Plan (the Plan, Located in Maryville, TN**

[Prohibited Transaction Exemption 87–33; Exemption Application No. D–6765]

*Exemption*

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of a certain parcel of real property (the Property) by the Plan to Tutt S. Bradford, party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either the sum of $75,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1987, at 52 FR 3364.

For further information contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Pottsville Orthopedic Associates Pension Plan (the Plan), Located in Pottsville, PA**

[Prohibited Transaction Exemption 87–34; Exemption Application No. D–6845]

*Exemption*

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed

[1] Because Maurice S. Rawlings is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

cash sale by the Plan of six units (the Units) representing limited partnership interests in the American Rehab Center-Pottsville to Pottsville Orthopedic Associates, the sponsor of the Plan, provided that the sales price is the higher of either the fair market value of the Units or the Plan's total costs in connection with the acquisition and holding of the Units at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 23, 1986 at 51 FR 45964.

Notice to interested persons: The applicant represents that it was unable to notify interested persons within the time period specified in the Federal Reigster notice published on December 23, 1986. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by January 21, 1987.

Interested persons were informed that they had until February 20, 1987, to comment or request a hearing with respect to the proposed exemption. No comments or hearing requests were received by the Department.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Jamestown Clinic, Ltd. Employee Retirement Plan (the Plan), Located in Jamestown, North Dakota**

[Prohibited Transaction Exemption 87–35; Exemption Application No. D–6936]

*Exemption*

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain improved real property to Medical Properties, Inc., a party in interest with respect to the Plan; provided that such sale is on terms no less favorable to the Plan than the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1978 at 52 FR 3366.

For further information contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of April, 1987.

Elliot I. Daniel,

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87–8047 Filed 4–9–87; 8:45 am]

BILLING CODE [illegible]

---

[Application No. D–6746 et al.]

**Proposed Exemptions; Samuel Francis Ross, Jr. Keogh Plan, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are

summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Samuel Francis Ross, Jr. Keogh Plan, Profit Sharing Retirement Plan (the Plan), Located in Belleville, IL**

[Application No. D–6746]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan by the Plan of the lesser of $19,341 or 25% of the Plan's assets (the Loan) to Samuel Francis Ross, Jr. (Mr. Ross), a disqualified person with respect to the Plan, provided that the terms of the proposed Loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the proposed Loan.[1]

*Summary of Facts and Representations*

1. The Plan is a frozen Keogh plan of which Mr. Ross is sole participant. As of March 21, 1986, Mr. Ross' fully vested account balance in the Plan was $64,471.88.

2. The Plan proposes to lend to Mr. Ross the lesser of $19,341 or 25% of the Plan's assets secured by a second mortgage on Mr. Ross' personal residence located at 416 Oak Hill Drive in Belleville, Illinois (the Residence). The applicant represents that the Loan will be used in its entirety to reduce the outstanding first mortgage on the Residence held by Magna Bank of Belleville, Illinois, an unrelated third party. The first mortgage currently outstanding against the Residence amounts to $63,611. The Loan would be at the rate of 11% per annum payable in equal monthly installments of principal and interest for a period of fifteen years. The applicant represents that the interest rate charged on the Loan is the usual and customary rate currently charged by local financial institutions on similar loans.

3. On July 7, 1986, Scott M. Tade, of Tade Appraisal Company in Belleville, Illinois, estimated the fair market value of the Residence as of July 3, 1986 to be $239,000.

4. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 4975(c)(2) of the Code because: (a) The rate of return to the Plan will be substantially higher than its other investments; (b) The Loan will be secured by the Residence, which has an appraised value of at least 150% of all mortgage indebtedness; and (c) No more than 25% of the Plan's assets will be invested in the Loan.

Notice of interested persons: Because Mr. Ross is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For further information contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Wells Fargo Bank, N.A. (the Bank), Located in San Francisco, CA**

[Application No. D–6770]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to: (1) The proposed purchase and sale of stocks between collective investment index funds (the Index Funds) sponsored by the Bank; (2) the proposed purchase and sale of stocks between the Index Funds and various model-driven collective investment funds (the Model-Drive Funds); (3) the proposed purchase and sale of stocks between Model-Driven Funds; and (4) the proposed purchase and sale of stocks between Index or Model-Driven Funds and various large pension plans (the Large Plans), under the terms and conditions set forth in this notice of proposed exemption.

*Summary of Facts and Representations*

1. The Bank provides investment advisory and trust services to many qualified pension and profit sharing plans (the Plans). The Bank sponsors and maintains the Index and Model-Driven Funds (collectively, the Funds) for the investment of Plan assets.

2. The Index Funds are collective investment funds that invest in common stocks listed in various stock price indices in the same relative proportions as are used by the relevant index. Currently the Bank has two Index Funds, the Equity Index Fund, which relies on the Standard & Poor's 500 Composite Stock Price Index (the S&P 500) and the Extended Equity Market Fund, which utilitizes the Wilshire 5000 Index (the Wilshire 5000). The Index Funds are passively managed, in that the choice of stocks purchased and sold, and the volume purchased and sold are made according to predetermined third party indices rather than according to active evaluation of the investments. A Plan invests in each Index Fund in a similar manner: A plan invests cash and/or in-kind contributions and receives investment units (Units) representing the Plan's proportional interest in the assets held by the Index Fund. When a Plan wants to liquidate its investment, it receives cash or in-kind distributions from the Fund in exchange for Units. Investments or withdrawals generally occur only on previously announced scheduled "opening" dates four times monthly. On these scheduled openings, the Bank on behalf of each Fund nets investments (including dividends received on stocks held by the Fund) in and withdrawals from the Fund against each other, and makes sales of purchases of Fund assets only as the aggregate amount invested in a Fund rises or falls. Transaction costs for investments or withdrawals are allocated amongst the Plans triggering the transaction on a given scheduled opening date. In addition, the S&P 500 and the Wilshire 5000 Index will occasionally add or delete a stock or change the relative capital weighting of a stock. The criteria for such changes are established and maintained by the respective Index. Generally, the addition or deletion of stock from the S&P 500 will require a mirror transaction in the Extended Equity Market Fund, in that stocks added to or deleted from the S&P 500 usually become necessary deletions from or additions to the Extended Equity Market Fund. These changes in the underlying Index are infrequent, although the radical shifts in the availability of equity stocks occasioned by recent corporate takeover activity has increased the frequency of changes in the Index. The Bank estimates that changes in the Index itself requiring shifts in an Index Fund's holdings occur on an average of twice monthly.

[1] The applicant represents that Mr. Ross is the sole participant in the Plan (a Keogh plan). Accordingly, there is no jurisdiction under Title I of the Act pursuant to 20 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Finally, the Bank may also make dispositions of stocks listed in the S&P 500 Index Fund or Extended Equity Market Fund if the subject company has filed or appears likely to file for protection under bankruptcy laws. The Bank generally excludes no more than a handful of companies from Index Fund portfolios for this reason at any given time.

3. The applicant represents that if an Index Fund is required to engage in stock transactions because of one of the triggering situations described above, it must do so in the open market. By doing so, the Index Fund incurs substantial transactions costs including broker's commissions, the "marketmaker's spread" (the amount charged by the exchange specialist for accepting market risk in the stock price during the transctions), and the possible negative market impact of large block trades. The Bank is requesting an exemption to allow the direct cross-trades of stock between an Index Fund and other Index Funds. The applicant represents that approximately 11% of its Index Fund stock transactions would be eligible for such cross-trades and that these cross-trades would generate substantial transactions cost savings for the Index Funds, and therefore, for the investing Plans. The combination of a predetermined portfolio and increases or decreases in Fund assets being determined by the decision of Plan asset managers to invest or withdraw from the Index Fund means that the Bank on behalf of the Index Fund has no discretion as to which stocks to buy or sell or as to when to engage in these transactions.

Some Plans many also be managed in whole or in part by the Bank in the same manner as the Index Funds described above on an individual or stand-alone portfolio basis. An index portfolio for an individual Plan requires assets of at least $30,000,000 in order to effectively implement the indexing investing strategy. Such an index portfolio functions in the same way an Index Fund with one participating Plan. Therefore, references to Index Fund include such index portfolios.

4. The Model-Driven Funds are collective investment funds with portfolios which are determined by intricate models which examine the structural aspects of the stock market rather than the underlying stock value. Each Model-Driven Fund is a transformation of the S&P 500. An example is the Asset Allocation Funds. The Bank allocates asset allocation fund investments between S&P 500 common stocks, long-term U.S. Treasury Bonds, and money market instruments according to a computer model which uses objectively-determined data including: (1) Earnings, dividends, and price-earnings ratios for S&P 500 common stocks; (2) current yields on corporate bonds and money market instruments; (3) historical standard deviations and correlations of and between asset classes. The common stock portion of an asset allocation fund is invested in an S&P 500 Index Fund. When the asset allocation model requires a shift in the relative holdings of different classes of assets, the fund will invest in or withdraw funds from the S&P 500 Index Fund.

The Model-Driven Funds are passively managed funds just like the fundamental S&P 500 Index Fund. The investor in such a fund is not hiring an investment manager who actively monitors the market and buys or sells stocks based on evaluation of a particular stock's anticipated performance and its undervaluation or overvaluation by the market. Instead, an investor is hiring a concept. As with the Index Funds, there are discrete Model-Driven Funds for different groups of investors. For example, there are separate asset allocation funds for personal trusts and for foreign and charitable organizations. In addition, the Bank allows large individual investors (those with investments exceeding approximately $30 million) to establish separate accounts managed as Model-Driven Funds. Each of these discrete Funds or accounts is considered a Model-Driven Fund for purposes of this application.

5. The Model-Driven Funds enter the stock market for essentially the same reasons as the Index Funds: To account for changes in the model-determined portfolio and to account for aggregate investments in or withdrawals from the Model-Driven Fund. By cross-trading with other Model-Driven or Index Funds, Model-Driven Funds required by portfolio requirements or changes in Fund participation to acquire or dispose of stocks will be able to reduce the transaction costs.

6. Trades may also occur between Funds and Large Plans whose investment portfolio is not controlled by an index or model. The applicant represents that the Large Plans will have assets in excess of $50 million. Such trades will occur only when the Large Plans' fiduciaries, which are independent of the Bank, are fully informed of the cross-trade technique, provide advance written approval of such transactions, and are fully apprised of the transaction results. Further, cross-trades involving Large Plans would be limited to those situations where the Bank's advising role is restricted to either managing a portion of the Large Plan's assets through one or more of the Bank's passive investment strategies or acting as a trading adviser in a Large Plan portfolio restructuring. The most frequent scenario for Large Plan stock transaction would be as follows: A Large Plan decides through its independent fiduciaries to reallocate a portion of its assets currently invested by active investment managers into a passive fund with the Bank's assistance. The Bank and the Large Plan arrange to either invest in an existing Index Fund or Model-Driven Fund, or set up a separate account with the Bank to be managed as an Index or Model-Driven Fund. The Large Plan's current active portfolio must be liquidated to the extent necessary to replicate the desired Index or Model-Driven Fund. Generally, these restructurings occur in connection with a Large Plan decision to invest in one of the Bank's passive funds. However, some Large Plans have asked the Bank to carry out a restructuring program for them independent of future investments in the passive funds. In this instance, the Bank's only role as to the Large Plans is that of a "trading adviser" carrying out a Large Plan-initiated liquidation or equity restructuring.

7. The applicant further represents that when a Large Plan comes to the Bank to invest in a passive fund or to arrange its own passively managed portfolio, the Large Plan's assets must be transformed into an Index or Model-Driven Fund portfolio. In implementing the transformation, the Bank is limited by the stated portfolio, as to the transactions it can make. In these situations, the Bank is not in any kind of active investment advising role. The impetus for the investment comes from the independent fiduciaries of these Large Plans. Given such an investment by a Large Plan, the Bank's role is limited to recreating the required portfolio. By performing cross-trades with Index or Model-Driven Funds where possible, the Bank reduces the overall transactions costs incurred by both parties to the cross-trade. The Bank has a similar lack of discretion in the case or Large Plans which request the Bank to restructure (generally liquidate) a portfolio. The Bank then acts as the trading advisor to the Large Plan, arranging for the stock transactions within a stated time so as to minimize transaction costs. The opportunity to engage in cross-trades with Index and/or Model-Driven Funds occurs only when those Funds are required to

purchase the same stock which the large Plan is selling.

8. The applicant represents that when any of the Funds is required to make a sale or purchase of stocks on the market, the Fund, and any Plan(s) which may have invested or withdrawn Funds, bears substantial transactions costs, primarily in the form of brokerage commissions. The applicant represents that the average brokerage commission paid by the Bank for substantial transactions is 5 cents per share. The commission paid for the cross-trades is only 1 cent per share, which reflects the record-keeping costs of the brokers. In this regard, the applicant represents that the brokers are able to provide record-keeping services more economically than the Bank itself could. The applicant further represents that all the brokers to be used in the cross-trades will be unrelated to and independent of the Bank. The applicant estimates that if the Index Funds could have utilized this proposed exemption for the period January 1, 1986 to June 30, 1986, the Index Funds would have saved approximately $5,000,000 in commissions. In addition, the cross-trades between Funds and between Funds and Large Plans will avoid the negative market impact caused by large block transactions. The Bank will use the closing price on the day of the trade for shares listed on a national exchange or NASDAQ to set the share price for all cross-trades.

9. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) The Index and Model-Driven Funds will sell or buy stocks only according to their various "trigger" mechanisms and when a Plan invests in or withdraws from such a Fund; (b) the Large Plans will engage in cross-trades only in situatins where the Bank has no discretion with respect to the investment decision; (c) the price for the stocks will be the closing price for those stocks on the day of trading; (d) the Funds and Large Plans will save significant amounts of money on brokerage commissions; and (e) the Bank will receive no additional fees as a result of the proposed cross-trades.

Notice to interested persons: A notice will be mailed by first class mail to each Plan which invests in the Funds. The notice will contain a copy of the notice of pendency of exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment on or request a hearing regarding the proposed exemption. Such notice will be sent to the above-named parties within two weeks of the publication of the notice of pendency of exemption in the **Federal Register.**

For further information contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Castro Convertible Employee's Retirement Trust (the Plan), Located in New Hyde Park, NY**

[Application No. D–6813]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the leasing of certain real property by the Plan to Castro Convertible Corporation (the Employer), provided that all of the terms of such lease are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: March 18, 1986.

*Summary of Facts and Representations*

1. The Plan is a profit sharing plan with an estimated 230 participants. The Plan had total assets of $3,258,275 as of June 30, 1984. The trustees of the Plan are Bernard Castro and Theresa Castro (the Trustees). The Employer is a manufacturer asnd retailer of furniture and furnishings consisting primarily of convertible sofas and chairs.

2. In 1962 the Plan acquired certain real property located at 2475 Central Park Avenue, Yonkers, New York (the Property). The Property was acquired from an unrelated third party for a purchase price of $88,600. The Property is an irregular shaped lot containing an area of 10,894 square feet. The Property is improved with a single story structure containing approximately 3,000 square feet. The remaining 7,894 square feet are used for parking and driveways which service the structure. The Property is located in a commercial, retail and business district. The applicant represents that the highest and best use of the Property is as a retail store for a single tenant occupancy.

3. Since its acquisition in 1962, the Property has been leased to the Employer on a month-to-month basis (the Old Lease), for use as a retail showroom for the Employer's products and related offices. The Old Lease was at all times on a "net, net" basis so that in addition to the basic rental, the Employer has been responsible for the payment of all taxes and assessments, the making of all repairs to the Property (structural and otherwise) and for all expenses incurred in connection with the operation and maintenance of the Property.

4. The applicant represents that at all times from the date of acquisition of the Property in 1962, until and including June 30, 1984, the Employer paid to the Plan a rental equal to the fair market rental value for the Property and that the terms of the Old Lease were, in all respects, at least as favorable to the Plan as those of an arm's-length lease transaction with an unrelated party.[2]

5. The Plan desires to continue leasing the Property to the Employer on a "net, net" basis, with an annual rental calculated to produce a net 10 percent return on the fair market value of the Property. An independent appraisal of the Property was performed by John A. Munro, MAI, CRE, SRPA (the Appraiser). The Appraiser established the fair market value of the Property at $375,000 as of December 9, 1985. It is intended that the appraised value of the Property will be updated every 3 years. The Plan and the Employer entered into a 10 year lease commencing July 1, 1985 and ending June 30, 1995 (the New Lease) at a minimum annual rate of $37,500. The New Lease will contain a provision to adjust the annual rate upward (but not downward) on a triannual basis to yield a net 10 percent return on the appraised value of the Property. The Property comprised 10 percent of the Plan's assets as of June 30, 1984.

6. Mr. George M. Garfunkel will serve as the independent fiduciary for the Plan (Mr. Garfunkel). Mr. Garfunkel, who was admitted to practice law in the State of New York in 1964, assumed his responsibilities as independent fiduciary on March 18, 1986. He is a partner in the law firm of Garfunkel, Wild & Travis, P.C., Great Neck, New York. Mr. Garfunkel's area of specialization includes real estate, taxation and pension law. In his more than 20 years of practice, Mr. Garfunkel has

[2] The Department expresses no opinion with respect to the applicability of section 414 of the Act in this instance. The applicant represents that for the Plan's fiscal year ending June 30, 1985, the Employer paid excise tax in the sum of $1,876 in connection with the Old Lease. The Employer shall pay any additional excise tax properly assessed by the Internal Revenue Service in connection with the Old Lease and the New Lease within 60 days of the granting of the requested exemption.

negotiated, evaluated, and drafted numerous commercial lease agreements. Moreover, as an expert in pension law, Mr. Garfunkel is aware of his duties and responsibilities as a fiduciary under the Act. Mr. Garfunkel has heretofore not been involved in the subject leases and has no previous relationship with either the Plan or the Employer.

7. Mr. Garfunkel represents by letter of July 25, 1986 that he has reviewed the Plan documents, the New Lease, and the December 9, 1985 appraisal of the Property performed by John A. Munro, MAI. He states that in his opinion, the New Lease is a market place arrangement between landlord and tenant for transactions of this type and represents a reasonable and fair return to the Plan and its beneficiaries. Mr. Garfunkel represents that he has examined the Plan's investment portfolio as reported by the certified financial statements of June 30, 1985, prepared by Margolin, Winer & Evans, certified public accountants. He states that the 10 percent return to the Plan on its investment in the Property is an appropriate and desirable investment.

8. Mr. Garfunkel represents that he will regularly monitor all aspects of the New Lease throughout its term. Specifically, he will be actively involved and monitor the rental adjustments called for in the third, sixth and ninth years of the New Lease to be certain that the annual rental is equal to an amount equal to the fair market rental value of the Property.

9. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The New Lease provides a fair rate of return to the Plan;

(b) The Plan will receive a fair market rental rate as determined by a qualified independent appraisal, and

(c) The Plan's independent fiduciary has determined that the New Lease is in the interests of and protective of the Plan and its participants and beneficiaries.

For further information contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–9194. (This is not a toll-free number.)

**American Income Property Fund (the Fund), Located in Chicago, IL**

[Application No. D–6830]

*Proposed Exemption*

Section I. Exemption for certain transactions involving the fund

(a) Effective July 1, 1986, the restrictions of sections 406(a), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions between parties in interest and the fund: General.*

Any transaction between a party in interest with respect to a plan which has an interest in the Fund (the Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not American Realty Advisors (American Realty) or one of its affiliates, any other Fund maintained by American Realty, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of any other Participating Plans maintained by the same employer or employee organization in the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special transactions not meeting the criteria of section I(a)(1) between employers of employees covered by a multiemployer plan and the fund*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan [as defined insection 3(37)(A) of the Act and section 414(f)(1) of the Code] that is a Participating Plan and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction acquisition or holding—

The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets of the Fund, and the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, sales, or holdings of employer securities and employer real property*

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to American Realty or to the employer, or any affiliate of American Realty or the employer in connection with tthe acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither American Realty nor any of its affiliates is an affiliate of the issue of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Fund, not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. American Realty, its affiliates, and any collective investment fund maintained by American Realty or its affiliates, shall be considered to be persons independent of the issuer if American Realty is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan [as defined in section 407(d)(3) of the Act], the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which American Realty or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which American Realty or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) Effective July 1, 1986, the restrictions of section 406(a)(1) (A)

through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)( (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Certain leases and goods.* The furnishing of goods to the Fund by a party in interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party in interest and the incidental furnishing of goods to such party in interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Funds;

(B) The party in interest is not American Realty, any affiliate of American Realty, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing or real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the prior to the transaction.

(2) *Transaction involving places of public accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party in interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) Effective July 1, 1986, the restrictions of secton 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reasons of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not American Realty or an affiliate of American Realty.

(d) Effective July 1, 1986, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c) (1) (A) Through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authuorized in writing by a fiduciary of the Participating Plan who is independent of American Realty and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess holdings exemption for employee benefit plans

(a) Effective July 1, 1986, the restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c) (1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if: (1) The acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund: (2) the requirements of either paragraph (a) (1) or paragraph (a) (2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of American Realty or American Realty's affiliates, the terms of the transaction are not less favorable to the Fund than the terms generally available is arm's length transaction between unrelated parties.

(b) American Realty or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of American Realty or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of American Realty or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and general rules

For the purposes of this exemption,

(a) The term "Fund" shall include any collective investment fund that may hereafter be established, operated and managed by the Fund Sponsors, or by American Realty or its affiliate in essentially the same manner as the American Income Property Fund.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act [or a "member of the family" as that term is defined in section 4975(e)(6) of the Code], or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer [treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer] who has made contributions to or under a muitiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquistion or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions consummated pursuant to this proposed exemption.

*Preamble*

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption (PTE) 80–51 (45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which, in part, are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

*Summary of Facts and Representations*

1. The Fund, which was established on June 23, 1986 under the terms of the American Income Property Fund Group Trust Agreement (the Group Trust Agreement), is a closed-end, commingled, limited life trust, qualifying as a group trust described in Revenue Ruling 81–100, 1981–1 C.B. 326. The Fund provides pension and profit sharing plans and certain governmental plans described in section 818(a)(6) of the Code with a medium for pooling a portion of their funds for investment in a portfolio of income-producing real estate and participating mortgages. The Participating Plans in the Fund are qualified as trusts under section 401(a) of the Code and exempt from Federal income taxation under Code section 501(a).

2. The Fund invests primarily in long-term real estate-related investments although cash reserves and funds being held, pending opportunities for long-term investments, are placed in short-term investment vehicles. The Fund may hold title to real property, receive income therefrom as well as interests in portfolios of participating mortgages. The Fund has a liquidation date of December 31, 2003. This date may be extended with the approval of the Participating Plans owning 80 percent of the outstanding units (the Units) of the Fund. The Fund may be terminated earlier if so directed by Participating Plans owning four-fifths of the outstanding Units, or as the Fund's assets are liquidated. Then, the Fund will distribute the proceeds from the liquidation of its investments to the Participating Plans. It is anticipated that real estate investments will provide the Participating Plans with attractive returns and aid their fiduciaries in achieving the diversification required under the Act.

3. The Fund Sponsors are Rubloff Development Corporation (Rubloff Development), a privately-held Delaware corporation engaged in real estate development and management; Fiduciary Management Associates (FMA), a privately-held Delaware corporation which currently manages approximately $400 million in total assets for employee benefits plans and other entities, and which is registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940; and Mercantile Realty Partners (Mercantile), a privately-held Illinois partnership engaged in mortgage banking.

4. The initial Fund Trustees are Messrs. Robert F. Carr III; John J. Borland, Jr.; Alan R. Edelson; Philip Edward Arnold; Edwin N. Homer; and Thomas J. McCarthy. The Trustees are officers, directors or shareholders of, and they receive compensation from the general partners of American Realty, the

Fund's investment manager and/or related organizations. The Trustees are not compensated by the Fund. A Trustee may be removed for or without cause by unanimous decision of the unaffected Trustees at a duly constituted meeting or by the affirmative vote of the holders of two-thirds of the outstanding Units. To be duly constituted, a meeting will require the participation of a least two-thirds of all current Trustees.

5. In accordance with the Group Trust Agreement, the Trustees have entered into an investment management agreement (the Investment Management Agreement) under which the Trustees have, subject to certain limitations, delegated the responsibilities for managing the assets of the Fund to American Realty, an Illinois general partership formed in 1986 to engage in real estate development, management, sales and other services. The general partners of American Realty are FMA Realty, Inc., a Delaware corporation and a subsidiary of FMA; Rubloff Development; and Mercantile. American Realty has filed an application with the Securities and Exchange Commission for registration under the Investment Advisers Act of 1940 and it has acknowledged in the Investment Management Agreement its fiduciary responsibilities to the Fund in accordance with section 3(38) of the Act. The officers and directors of the partners of American Realty, most of whom serve as the Trustees, have extensive experience and expertise in the area of real estate management and investment.[3]

6. Interests in the Fund may only be held by plans meeting the requirements of Code section 401(a) and/or 818(a)(6). Participating Plans invest in the fund pursuant to the terms of a detailed offering circular (the Private Placement Memorandum) prepared by the Fund Sponsors. The Private Placement Memorandum describes the management, operation, investment objectives, income tax consequences and the compensation to be received by American Realty and its affiliates from the Fund. Participation in the Fund is achieved by allowing each Participating Plan to purchase Units of ownership. To participate, a Participating Plan is required to make a minimum purchase of two Units. Each Unit will cost $500,000. The minimum aggregate subscription is 30 Units ($15 million) and the maximum subscription is 200 Units ($100 million). If fewer than 30 Units ($15 million) of subscriptions have been received by no later than June 30, 1988, the Fund will terminate. The Participating Plans are cautioned in the Private Placement Memorandum not to invest more than 5 percent of their assests in the Fund in order to assure adequate diversification. As an outside limit, no Plan is permitted to invest over 20 percent of its net worth in the Fund unless the Plan is an "accredited investor" within the meaning of Rule 501 of Regulation D of the Securities and Exchange Commission. Finally, as required by Rev. Rul. 81–100, the interests of any Participating Plan in the Fund may not transferred or assigned to third parties.

7. None of the individual Trustees nor any employees, officers, directors or shareholders of the corporate general partners of American Realty or its affiliates will serve as a fiduciary of any Participating Plan (except to the extent that they are fiduciaries by reason of the Participating Plan's investment in the Fund), or as a director, or officer of any sponsor of any Participating Plan. Notwithstanding the above, FMA may, in certain instances, also serve as the investment manager of some of the assets of one or more Participating Plans provided that one of the assets managed by FMA may be invested in the Fund and further, that FMA exercises no influence or control over the Participating Plan's decision to invest any assets in the Fund.[4] Such investment decisions will be left to plan fiduciaries who will determine whether the investment is appropriate considering the overall investments, policies and objectives of the particular plan desiring to invest in the Fund.

8. Because the interest of any Participating Plan in the Fund is not assignable or transferrable to third parties, fiduciaries desiring to invest a Participating Plan's assets in the Fund will be fully advised to consider the long-term nature of the investment. If, however, a Participating Plan wishes to dispose of its investment in the Fund, it may notify the Trustees in writing that it wishes to redeem its Units in the Fund. To permit a redemption of the Units, American Realty may, under certain cirumstances, sell assets of the Fund provided American Realty determines that it is not disadvantageous to the Fund or the remaining Participating Plans to do so.

In addition, upon receipt of any request for redemption from a Participating Plan, before selling any property of the Fund or attempting to sell Units to a new plan, American Realty may notify all existing Participating Plans of the availability of additional Units which may be purchased proratably at a price not less than the then existing Unit net asset value, at which point the withdrawing Participating Plan's Units will be redeemed and reissued to those Participating Plans making additional contributions. Alternatively, unless contrary to the best interests of the Fund, American Realty will apply 50 percent of the net cash flow from the Fund to redeem the Units of any Participating Plan desiring redemption.

9. Pursuant to the Investment Management Agreement, American Realty will receive a fee from the Fund based upon the value of the assets under management.[5] No other fees or compensation will be paid to American Realty or its affiliates for services rendered to the Fund.

In addition, the Fund will pay all legal, accounting, advertising, promotional and other expenses incurred in connection with the organization and formation of the Fund and the distribution of the Units (excluding securities sales commissions, if any) up to a maximum amount equal to the greater of $125,000 or .5 percent of the aggregate capital contributions of the Participating Plans with the excess, if any, to be borne by American Realty. American Realty will pay the salaries of its administrative employees and the costs of the office space and facilities required by the Fund and American Realty. Except as otherwise provided, the Fund will pay all costs and expenses incurred in connection with the Fund's affairs including all expenses of acquiring, owning, operating and disposing of all properties, expenses and fees for the services of on-site real

[3] It is anticipated that future group trusts (the Future Funds) will be jointly sponsored by the Fund Sponsors. It is further anticipated that American Realty will be retained as the investment manager for the Future Funds. It is represented that all material representations with respect to the Fund in this propsoed exemption will also apply to all Future Funds.

[4] To the extent that, in the ordinary course of business, FMA, American Realty or any of their affiliates provides "investment advice" to a Participating Plan within the meaning of regulation 29 CFR 2510.3–21(c)(ii)(1)(B) and recommends an investment of the plan's assets in the Fund, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate the advisers from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984.) The Department is unable to conclude that fiduciary self dealing of this type (if present) is in the interests or protective of plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition or sales of Units in the Fund to section 406(a) violations only.

[5] The Department is not proposing an exemption for the receipt of fees beyond that provided by section 408(b)(2) of the Act.

estate management personnel and leasing commissions to third parties, fees of legal counsel, accountants, appraisers, unaffiliated real estate brokers or for architectural or engineering or any other studies of proposed or existing investments. American Realty will receive no compensation or fees except as previously described.

When appropriate, the Fund will pay fees for real estate management and leasing services. Neither American Realty nor any other party in interest will be providing such services or be receiving such fees unless a prohibited transaction exemption is first obtained from the Department for such services and fees. No such exemption is requested at this time.

10. Because each Participating Plan will incorporate as part of such plan the terms, provisions and conditions of the Group Trust Agreement, the Fund will occupy a position equivalent to the trust created under such Participating Plan. Accordingly, pursuant to Revenue Ruling 81–100, it is the position of the Department that a "party in interest" or "disqualified person" as defined in the Act with respect to a Participating Plan may be viewed as party in interest with respect to the Fund. Accordingly, a transaction between such party and the Fund may be viewed as a prohibited transaction as described in section 406 of the Act, section 4975(c) of the Code, or both.

The applicant represents that if the Fund is unable to enter into transactions with certain persons because such persons are parties in interest with respect to a Participating Plan, the Fund's ability to make its investments prudently and conduct its operations solely for the benefit of the Participating Plans will be unduly restricted. In addition, the purchase and sale of Units of participation in the Fund may be considered a prohibited sale or transfer of assets between a Participating Plan and the Trustees that is not exempted by operation of the statutory exemption provided in section 408(b)(8) of the Act because the Fund is not maintained by a bank or an insurance company.

11. The applicant requests both retroactive and prospective relief for many of those classes of transactions between the Fund and certain parties in interest which were afforded exemptive relief in PTE 80–51. The applicant proposes that such classes of transactions be subject to similar conditions, limitations and restrictions as those delineated with respect to those transactions afforded exemptive relief under PTE 80–51.

12. The Trustees are authorized to designate an independent auditor (the Independent Auditor) to examine the books and records of the Fund. The Trustees have retained Arthur Andersen and Company, an independent certified public accounting firm to prepare a balance sheet, profit and loss statement and a statement of change in financial position for the Fund as of the end of each calendar year, which will be distributed to each Participating Plan within 90 days after the close of the calendar year. The financial statements will show all fees paid to American Realty and all distributions and new investments made within the year.

Furthermore, at least quarterly, each Participating Plan will receive from the Trustees a balance sheet and a statement of all property purchased since the date of the last quarterly report. From time to time, the Fund will provide whatever other information is reasonably requested by the Participating Plans.

All records pertaining to the Fund will be available for inspection during reasonable business hours by fiduciaries or other representatives of a Participating Plan. American Realty has notified each Participating Plan that it will be available to discuss matters pertaining to the Fund with any of them.

In addition, appraisals of Fund properties will be made at least annually by independent appraisers. These appraisals will be included in the above yearly reports.

13. The Independent Auditor's audit and examination procedures have been specifically designed for group real estate investment vehicles, such as the Fund. The Independent Auditor will examine the history of ownership in acquired property to ensure that neither the Fund Sponsors, American Realty nor their affiliates have ever had an interest in the property. The Independent Auditor will perform tests, on a sample basis, to ensure that, except as specifically provided in the exemption, lease transactions are not entered into with parties related to American Realty or the Fund Sponsors, their affiliates, or any investors in the Fund except to the extent these tests are obviated by the issuance of a prohibited transaction exemption. The Independent Auditor will recompute American Realty's investment management fee to ensure compliance with the Fund, the Private Placement Memorandum and the Investment Management Agreement. The Independent Auditor will maintain documentation of all materially relevant Fund matters and review the file for completeness. In addition, the Independent Auditor will verify cash in all bank accounts in which the Fund maintains deposits. Finally, the Independent Auditor will confirm all aspects of the sale agreement with those parties selling properties to the Fund, including a verification that no "side agreements" exist.

14. In summary, it is represented that the subject transactions meet the criteria of section 408(a) of the Act because: (a) The Fund will provide the Participating Plans with the benefits of the expert knowledge and experience of American Realty and the Fund Sponsors with respect to real estate investments; (b) each of the protections provided to the Participating Plans and their participants and beneficiaries by PTE 80–51 will be satisfied for the subject transactions, except that the Fund is privately maintained; (c) the decisions to invest in the Fund are made by knowledgeable fiduciaries of large employee benefit plans on the basis of a detailed offering circular; furthermore, such fiduciaries are unrelated to the Trustees, the Fund Sponsors, American Realty or any of American Realty's affiliates; and (d) an Independent Auditor will audit the operations of the Fund on an annual basis.

For further information contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**C. Fred Deuel & Associates, Inc. Profit Sharing Plan (the Plan), Located in St. Petersburg, FL**

[Application No. D–6886]

*Proposed Exemption*

The Department is considering granting and exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of August 29, 1983 of a certain parcel of improved real property (the Property) to Mr. C. Fred Deuel (Mr. Deuel), a party in interest with respect to the Plan, for $42,300, provided that such amount was not less than the fair market value of the Property on the date of the sale.

Effective Date: If the proposed exemption is granted, the exemption will be effective August 29, 1983.

BEST COPY AVAILABLE

*Summary of Facts and Representations*

1. The Plan is a defined contribution plan which, as of August 31, 1986, had approximately 42 participants and total net assets of $845,655.20. Mr. Deuel and Mr. Grady Johnson (Mr. Johnson) are the trustees of the Plan (the Trustees). Mr. Deuel is the president and majority shareholder of C. Fred Deuel & Associates, Inc. (the Employer), the Plan's sponsor. Mr. Johnson is the treasurer and a sharholder of the Employer.

2. The Property is a parking lot on the southwest corner of 1st Avenue North and 16th Street, St. Peterburg, Florida. The Plan purchased the Property in September 1971 from an unrelated party for $22,000. The Plan leased the Property to the Employer from the date of purchase until August 1983, at which time the Plan sold the Property to Mr. Deuel for $42,300 in cash. During the time the Plan leased the Property to the Employer, the Plan received a total of $8,701.10 in rent from the Employer, which was less than the fair market rental value of the Property. The Employer's business is situated on an adjoining site, which is owned by Mr. Deuel. The Property was used as a parking lot for the employees of the Employer. The Employer made certain improvements to the Property in order to make the Property serviceable as a parking lot. The Employer paid for these improvements. The applicant states that the market value of these improvements was included in the purchase price for the Property which the Plan received.

3. The Property was appraised on August 19, 1983 by Bert F. Finch, Jr., M.A.I. (Mr. Finch), and independent real estate appraiser in St. Petersburg, Florida, as having a fair market value of $42,300. Mr. Finch states that the appraisal included the market value of the parking lot improvements ($8,300) in use with the underlying land. By letter dated February 6, 1987, Mr. Finch represents that consideration has been given to any possible special value of the Property to Mr. Deuel as a result of the ownership by Mr. Deuel of property adjacent to the Property. However, Mr. Finch states that the fair market value of Property, as of the date of the previous appraisal, was not enhanced by the fact that Mr. Deuel owns the adjacent property.

4. The applicant states that Form 5330, Return of Initial Excise Taxes Relating to Pension and Profit Sharing Plans, will be filed with the Internal Revenue Service and that all appropriate excise taxes for the previous leasing of the Property to the Employer will be paid by the Employer within 60 days of the date of a grant of an exemption for the past sale of the Property. In addition, Mr. Finch has provided an independent apraisal of the fair market rental value for the Property during the lease. The Employer agrees to pay all additional back rent, plus interest on such rent, which the Plan is due for the Employer's past use of the Property based on the difference between the rental amounts paid under the lease and the fair market rental value for the Property, as established by Mr. Finch's appraisal.

5. The applicant represents that the Plan sold the Property to the Employer because the Trustees believed that the Plan's revenues could be increased if the Property were sold and the proceeds reinvested in other assets. In addition, the Plan did not pay any commissions or other expenses with respect to the sale.

6. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (a) The sale was a one-time cash transaction; (b) the Plan received fair market value for the Property as established at the time of the transaction by an independent, qualified appraiser; (c) no brokerage commissions or other expenses were charged to the Plan in connection with the sale; and (d) the transaction allowed the Plan to divest itself of the Property and reinvest the sale proceeds in investments yielding a greater rate of return.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 532–8881. (This is not a tool-free number.)

**The Budd Profit Sharing Plan (the Plan), Located in Short Hills, NJ**

[Application No. D–6939]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan by the Plan of $300,000 to Budd Larner Gross Picillo Rosenbaum Greenberg & Sade, P.C., the Plan sponsor, under the terms and conditions described in this notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated third party.

*Summary of Facts and Representations*

1. Budd Larner Gross Picillo Rosenbaum Greenberg & Sade, P.C., the Plan sponsor (the Plan Sponsor), is a law firm located in Short Hills, New Jersey.

2. The Plan had in excess of $1,400,000 in assets and had 70 participants, both as of August 31, 1985. The Trustees of the Plan are David R. Gross, Mark D. Larner, and Michael M. Rosenbaum.

3. The Plan proposes to lend $300,000 (the Loan) to the Plan Sponsor to pay for capital improvements made to premises recently leased by the Plan Sponsor for its principal offices. The total amount of the Loan shall not, in any event, exceed 25% of the total assets of the Plan.

4. The proposed Loan will be repaid in principal payments in the amount of $15,000 on the last day of each of March, June, September, and December over the life of the Loan. Interest payments shall be made monthly on the last day of each calendar month, and shall be computed on the then outstanding balance of principal at the rate of 2% over the prime lending rate of Midatlantic National Bank of Newark, New Jersey, as determined on the first day of January and July in each calendar year. The term of the Loan shall be for five years. The Loan will be secured by a first lien on all of the Plan Sponsor's assets, including leasehold improvements, furniture and fixtures and accounts receivable. Accounts receivable, as of May 31, 1986, were approximately $2,279,000. The aforesaid first lien will be evidenced by a Security Agreement and Financing Statement (UCC–1) on all said assets. The applicant represents that at the present time there are no other obligations of the Plan Sponsor for which any of its assets or accounts receivable are pledged as security and that no such pledging is anticipated during the term of the Loan.

5. H. Charles Hess, CPA (Mr. Hess), of the Millburn, New Jersey accounting firm of Hess, Keeley & Co., has agreed to serve as the independent fiduciary of the Plan with respect to the Loan. Mr. Hess represents that he is qualified to serve in this capacity by virtue of his significant ERISA experience, and is aware of the duties, responsibilities and liabilities entailed in acting as independent fiduciary with respect to the Loan. Mr. Hess further represents that he is not in any way related to the Plan Sponsor, the Plan or any of the principals thereof.

Mr. Hess represents that the proposed transaction is in the best interest of the

Plan and its participants and beneficiaries since it provides the Plan a rate of return which is greater than that generally available to the Plan in the market place. Mr. Hess further states that the proposed Loan would be adequately secured by the accounts receivable of the Plan Sponsor.

Finally, Mr. Hess states that after having examined the Plan's investment portfolio, considered the Plan's liquidity requirements and examined the diversification of the Plan's assets, he has concluded that the proposed transaction complies with the Plan's investment objectives and policies.

In his capacity as independent fiduciary, Mr. Hess will monitor the proposed transaction throughout its term on behalf of the Plan and will have authority to enforce the rights of the Plan and ensure that the terms of the proposed transaction are adhered to, specifically including, but not limited to, ensuring that the value of the collateral securing the proposed Loans remains at no less than 200% of the outstanding balance of the Loan.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria under section 408(a) of the Act because: (a) The Loan will be approved, monitored, and enforced by an independent fiduciary; (b) the Loan will be secured by the value of the accounts receivable of the Plan Sponsor, which will at all time be no less than 200% of the outstanding balance of the Loan; (c) the Loan will be for no more than 25% of the Plan's assets; and (d) the Plan's independent fiduciary has determined that the Loan is prudent and in the best interest of the participants and beneficiaries of the Plan.

for further information contact: Joseph L. Roberts III of the Department, telephone (202) 523–9194. (This is not a toll-free number.)

**Simpson Manufacturing Co., Inc. Profit Sharing Plan (The Plan), Located in San Leandro, CA**

[Application No. D–7002]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Plan of a parcel of real property located at 1450–1532 Doolittle Drive, San Leandro, California (the Property) to Simpson Manufacturing Co., Inc. (Simpson), for $2,500,000 in cash, including the repayment by the Plan of the loan financing the Property to Bank of America N.T. & S.A. (the Bank), provided the sales prices was not less than the fair market value of the Property on the date of the sale.

Effective Date: If this proposed exemption is granted, it will be effective December 22, 1986.

*Summary of Facts and Representations*

1. The Plan is a defined contribution profit sharing plan which had 92 active participants as of December 31, 1985. Simpson, the Plan sponsor, is a manufacturer of pre-fabricated housing products.

2. In December, 1982, the Plan purchased the Property for $328,000, subject to a $260,000 note and deed of trust. The $260,000 was loaned (the Loan) to the Plan by the Bank, which was also the Plan's trustee. Also in December, 1972 the Plan entered into a 10 year lease agreement (the Lease) with Simpson for the Property. Effective December 1, 1982, the Lease was renewed (the Renewal), with Simpson Strong-Tie Company, Inc. (Strong-Tie) and Simpson Structures, Inc. (Structures), two wholly-owned subsidiaries of Simpson, as lessees.

3. Simpson applied to the Department in 1984 for an exemption to permit the continuation of the Renewal and the Loan beyond July 1, 1984. Simpson represented that the Lease, the Renewal and the Loan were all exempt from the prohibited transaction restrictions of sections 406 and 407(a) of the Act and section 4975 of the Code until June 30, 1984 by virtue of sections 414 and 2003 of the Act.[6] The Department exempted the continuation of the Loan, effective July 1, 1984, and the continuation of the Renewal for the period from December 4, 1984 through December 31, 1987, in PTE 85–105.

4. In PTE 85–105, Simpson represented that on or before December 31, 1987, the Property would be sold by the Plan or otherwise disposed of, or an additional exemption to continue the arrangement beyond December 31, 1987 would be sought. On December 22, 1986, the Plan sold the Property to Simpson for $2,500,000 in cash. No commissions were paid on the sale. Mr. Steven Chan, M.A.I., an independent appraiser in San Leandro, California, appraised the Property as having a fair market value of $2,500,000 as of December 15, 1986. on December 22, 1986, the Plan also repaid the Loan to the Bank. No prepayment or other penalty was charged to the Plan in connection with repayment of the Loan.

5. Mr. William Figara, president of the Alpha Capital Company, an independent investment advisory firm located in Oakland, California, has been the independent fiduciary for the Plan appointed in connection with the transactions exempted by PTE 85–105. Mr. Figara represents that he examined the facts surrounding the subject transactions as of December 16, 1986, and at that time he determined that the sale of the Property would be in the best interests of the Plan and of its participants and beneficiaries. Mr. Figara approved of the appointment of Mr. Chan as the independent appraiser. Mr. Figara represented that the sale of the Property to Simpson would have all of the attributes and safeguards of an arm's-length transaction with a third party. In addition, as a result of the sale, the liquidity of Plan assets would be increased and there would be an opportunity for greater diversification of Plan assets.

6. In summary, the applicant represents that the subject transaction met the criteria of section 408(a) of the Act because: (1) The sale was a one-time transaction for cash, and no commissions were paid on the sale; (2) the subject transactions enabled the parties to end on-going relationships which would have required additional exemptive relief; (3) the sales price for the Property was determined by Mr. Chan, a qualified, independent appraiser; and (4) the transactions were approved by Mr. Figara, the Plan's independent fiduciary, who determined they were appropriate for the Plan and in the Plan's best interest before the Plan engaged in the transactions.

For further information contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Dayton Area Building and Construction Industry Investment Plan (the Program), Located in Dayton, OH

[Application Nos. D–7003 and D–7004]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is

[6] The Department expresses no opinion, either in Prohibited Transaction Exemption 85–105, 50 FR 24600, June 11, 1985 (PTE 85–105) or in this proposed exemption, as to whether the Lease, the Renewal and the Loan were statutorily exempt until June 30, 1984 by reason of sections 414 and 2003 of the Act.

granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed participation by employee benefit plans in construction loans through the Program where such loans are already committed to by certain lending institutions to parties in interest with respect to such plans, provided that the terms of the loans are not less favorable to the plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described herein are complied with during the operation of the Program.

*Summary of Facts and Representations*

1. Employee benefit plans (the Plans) co-sponsored by local building and construction industry unions [7] affiliated with the Dayton Building Trades Council and local associations affiliated with the West Central Ohio Division of the Associated General Contractors Association and/or other employer associations representing building and construction industry employers in the Dayton area are in the process of establishing the Dayton Area Building and Construction Industry Foundation (the Foundation). The following Plans will be part of the Foundation and participate in the Program: Miami Valley Carpenters District Council Pension Plan and Trust; International Brotherhood of Electrical Workers Local No. 82 Joint Pension Plan and Trust; Bricklayers and Masons Local No. 22 Pension Plan and Trust; Iron Workers District Council of Southern Ohio and Vicinity Pension Plan and Trust; Ohio State Roofers and Waterproofers District Council Pension Plan and Trust; Plumbers and Pipefitters Local No. 162 Pension Plan and Trust; and Sheet Metal Workers' Local Union No. 224 Pension Plan and Trust. The jurisdiction covered by the Plans is the Dayton, Ohio area.

The Foundation will provide a procedure and system whereby member plans may invest in construction mortgage loans. The Foundation is to be administered by a Board of Trustees (the Trustees). Every employee benefit plan participating in the Foundation will name two trustees to serve on its Board, one union trustee and one management trustee. The Trustees are required and directed by the Foundation Agreement to establish and administer the Program.

2. The Trustees are developing a package of documents for the operation and administration of the Program. The Trustees are also contacting every bank, savings and loan association and insurance company, as defined in Part B of Prohibited Transaction Exemption 76–1 (PTE 76–1, 41 FR 12740, pg. 12743, March 6, 1976), in the jurisdiction covered by the Foundation, and requesting that such entities allow the Foundation to participate in all construction mortgage loans of $200,000 or more in which such lending institutions have made a legally enforceable commitment.[8]

All institutions agreeing to participate with the Foundation will agree to: (a) Notify the Trustees (or Administrative Manager) of the Foundation of all applications for construction mortgage loans which have been approved by the institution and consented to be submitted by the borrower; and (b) supply the Trustees with any requested data and information concerning the loans. The applicants represent that all lending institutions will affirmatively recommend that borrowers consent to the submission of the loan documents to the Program. In this regard, the applicants represent that the borrower refusal rate will constitute 12% to 20% of all transactions. Upon receipt of this information from the institutions, the Foundation will notify the trustees or other designated representatives of every participating Plan of all information received by them. The trustees of the participating Plans will then determine whether they intend to participate in a specific construction loan and, if so, the amount of their participation.

3. The Foundation will accumulate the responses from all of the participating Plans and will then advise the lending institution of the Foundation's desire to participate in a loan and, if so, the amount of the participation. The amount of the participation will be the amount of the aggregate participation by the individual Plans. Each said loan will be deemed and construed to constitute a separate and distinct legal transaction and will be documented as a separate trust. The Foundation will maintain its books and records of accounts accordingly.

4. Each participating Plan will, within 30 days of its determination and notification of its intention to participate in a specific construction mortgage loan, forward the amount of its participation to the lead lending institution. The lead lending institution will keep all such advances productively invested until advances are required to be made to the borrower. The earnings on such advances will be a part of the advance and any excess will be remitted by the institution to the participating Plans.

5. The Foundation will keep proper books and records to account for all advances from participating Plans and all returns of principal and/or income from the lending institution making the loan. All returns of principal and/or interest by the lending institution for participation in any construction mortgage loan will be returned to the trustees of the participating Plan(s) within five days after receipt. Periodically, the Foundation will report to the trustees of the participating Plans and to the affiliated local unions and management associations on its operations. No Foundation Trustee will receive any compensation for his services to the Foundation or the Program. The Foundation may incur reasonable expenses for necessary professional services to implement and operate the Program and may obtain from the lead mortgage lenders and/or the participating Plans reimbursement for reasonable expenses actually incurred. No part of the principal or income of any investment will be received or retained by the Foundation or its Trustees.

6. Because some construction loans may be made to parties in interest with respect to the participating Plans, such as contributing employers, the applicants seek an exemption from section 406(a) of the Act for the transactions. The applicants represent that the Program documents will provide that a trustee of any Plan which has an interest in the employer entity involved in a construction project to be financed by a commitment must: (a) Abstain himself from voting on a participation determination; (b) absent himself from that portion of the Plan trustees' meeting when the issue of the purchase of such participation is under discussion and consideration; and (c) represent on the record that he has not attempted to exert any influence on any trustee regarding the participation. The applicants further represent that, because of such Program document language, no relief from section 406(b) of the Act for Program transactions is requested.[9]

[7] All of the local unions are local affiliates of international unions affiliated with the AFL–CIO Building and Construction Trades Section.

[8] Part B of PTE 76–1 provides, in general, exemptive relief from section 406(a) of the Act for construction loans made by multiple employer plan to a participating employer if, inter alia, the decision to make the loans is made on behalf of the plan by a bank, savings and loan association or insurance company as described in that exemption.

[9] In this exemption, the Department expresses no opinion as to whether transactions involving construction loans to parties in interest will involve

Continued

7. The applicants represent that lending institutions will have made a formal and legally binding commitment to make the construction mortgage loan before the opportunity for participation by the Plans is distributed through the Program. The applicants represent that the Foundation will receive from all cooperating lending institutions all qualified loan commitments for consideration whether or not such commitments are for local or non-local developers or construction projects or union-built or non-union built construction projects. The applicants further represent that the Foundation will not participate in a loan unless it is at or above the prevailing market rate of interest and value for comparable loans.[10] In no event will participating plans either individually or in the aggregate acquire more than a 50% participation in any one loan.

8. The applicants represent that participating plans will invest *ab initio* together with a lending institution and will not be purchasing participation interest from such lending institution. As well, the applicants represent that the participating Plans will receive their pro rata share of the points charged by the lending institution to the extent such points represent a return on the loan and not compensation and/or reimbursement to the lending institution for actual expenses incurred and/or services rendered in servicing the construction mortgage loan. A Plan's pro rata share will be the ratio of the amount of the Plan's funding participation to the total amount of the loan. To the extent the above transactions, or any other transactions between the Plans and the lending institutions, constitute violations of section 406 of the Act, the Department is not proposing relief for such transactions.

9. The applicants represent that, in the event of a default by a borrower, the lead lending institution will have responsibility to enforce the rights of all of the lenders, including participating interest holders, under the loan. The applicants further represent that all of the loans subject to the Program will remain in the portfolio of the lead lending institution and thus not be transferred to other lenders.

10. The applicants represent that before a loan is made, the Foundation will receive from the lead lender a written commitment for permanent financing from a person other than a Plan which is a member of the Foundation to enable full repayment of the loan upon completion of construction. In addition, the Foundation will not accept loan participations by any Plan which would, as to any individual loan participation, exceed 10% of the assets of the Plan, or in the aggregate with all other construction loan participations, exceed 25% of the assets of the Plan. Further, the Foundation will maintain or cause to be maintained for a period of six years from the date of each loan participation such records as are necessary to enable the Department, the Internal Revenue Service, the Plan's participants and beneficiaries, any employer of plan participants and beneficiaries, or any employee organization whose members are covered by the Plans to determine whether all conditions of the exemption have.

11. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Trustees of each participating Plan will have sole and exclusive authority to cause the Plan to participate in a loan; (b) the lending institutions will have made a legally enforceable commitment to make a construction loan before the Plans consider participation in a loan; and (c) no more than 10% of the assets of any participating plan may be invested in any individual loan participation and no more than 25% of a plan's assets may be invested in construction loans in the aggregate.

Notice to Interested Persons: Notice to interested persons will be provided within 30 days of the date of publication of this notice in the **Federal Register**. Notice will include a copy of this notice as published in the **Federal Register** and a statement informing interested persons of their right to comment. Comments to the Department are due within 60 days of the date of publication of this notice.

For further information contact: Betsy Scott of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

---

transactions as described in section 406(b) of the Act. As well, the Department is not expressing an opinion as to whether the structure, maintenance, and operation of the Program, including the participation with the lending institutions in construction loans to non-parties in interest, will violate provisions of Part 4 of Title I of the Act. The Department notes, as stated in the preamble to Part B of PTE 76–1, 41 FR 12743, that a loan made to a non-party in interest may give rise to a prohibited transaction if, for example, the loan is made in the context of an arrangement for a specific participating employer to furnish a portion of the construction and such employer has a controlling influence over the plan's decision to make the loan.

[10] The Department notes that to the extent the fiduciaries of the participating Plans restrict their consideration of investment opportunities for non-economic reasons, such conduct may involve certain violations of Part 4 of Title I of the Act which violations, if present, would not be provided relief by this exemption.

In this regard, section 404(a)(1) of the Act requires among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. To act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his plan. Because construction loans are investments which would be selected, if at all, in preference to alternative investments, a loan would not be prudent if it provided a plan with less return in comparison to risk than comparable investments available to the plan, or if it involved a greater risk to the security of plan assets than other investments offering a similar return.

The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in construction loans, a fiduciary must ordinarily consider only factors relating to the interest of plan participants and beneficiaries in their retirement income. For example, a decision to make a loan may not be influenced by a desire to stimulate the construction industry and generate employment, unless the loan, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan. (See Advisory Opinion 81–12A, January 13, 1981).

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of April, 1987.

**Elliot I. Daniel,**

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87-8048 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and Time: April 27-28, 1987, 9:00 a.m.-5:00 p.m., April 27, 1987, 8:30 a.m.-3:00 p.m., April 28, 1987.

Place: National Science Foundation, 1800 "G" Street, NW., Room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9571.

Minutes: Mrs. Mary Poats at the above address.

Purpose of Meeting. To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

April 6, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87-7997 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Committee for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting.

Name: Advisory Panel for Biochemistry.

Date: Monday and Tuesday, April 27 and 28, 1987 from 9:00 am to 5:00 pm.

Place: Historic Inns of Annapolis, Annapolis, Maryland.

Type of meeting: Closed.

Contact person: H. T. Huang, Program Director and Estella K. Engel, Associate Program Director, Biochemistry Program, Room 325, Telephone (202) 357-7945.

Purpose of advisory panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 97-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

April 6, 1987.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 87-7994 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Biological Instrumentation; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biological Instrumentation.

Date and time: Monday, April 27, 1987 from 8:30 a.m. to 7:00 p.m. Tuesday, April 28, 1987 from 8:00 a.m. to 5:00 p.m. Wednesday, April 29, 1987 from 8:00 a.m. to 5:00 p.m.

Place: San Diego Supercomputer Center La Jolla, CA 92138.

Type of meeting: Closed.

Contact person: John C. Wooley, Program Director, Biological Instrumentation, Room 325E, Telephone 202/357-7652.

Purpose of advisory panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 97-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 6, 1987.

[FR Doc. 87-7995 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Developmental Neuroscience Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Neuroscience Program.

Date & time: April 27, 28, 29, 1987: 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 2000 L Street, NW., Washington, DC. Meeting is to be held in room 613.

Type of meeting: Part open—Open Tuesday 4/28/87—1:00 p.m. to 2:00 p.m., Closed 4/27/87 9:00 a.m. to 5:00 p.m., Closed 4/29/87 9:00 a.m. to 5:00 p.m.

Contact person: Dr. Frank D. Collins, Program Director for Developmental Neuroscience Program, Room 320, National Science Foundation, Washington, DC. 20550, Telephone (202) 357-7042.

Summary minutes: May be obtained from the Contact Person at the above stated address.

Purpose of meeting: To provide advice and recommendations concerning support for research in the Developmental Neuroscience Program.

Agenda: Open—General discussion of research trends and opportunities in Developmental Neuroscience. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

April 6, 1978.

[FR Doc. 87-7996 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Ethics and Values Studies

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ethics and Values Studies.

Date & time: April 27, 1987, 8:30 a.m. to 5:00 p.m., April 28 1987, 8:30 a.m. to 5:00 p.m.

Place: Room 628, National Science Foundation, 1800 G Street NW., Washington, DC.

Type of meeting: closed.

Contact Person: Dr. Rachelle Hollander, Coordinator, Ethics and Values Studies, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9894.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of meeting: To provide advice and recommendations concerning support for research and related activities in this field.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act

M. Rebecca Winkler,

*Committee Management Officer.*

April 6, 1987.

[FR Doc. 87-7998 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Prokaryotic Genetics; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Prokaryotic Genetics.

Date & time: Monday, April 27—Wednesday, April 29, 1987 8:30 a.m.—5:00 p.m.

Place: INN by the SEA, 7830 Fay Avenue, La Jolla, California 92037.

Type of meeting: closed.

Contact person: Dr. Philip D. Harriman, Program Director, Prokaryotic Genetics; (202) 357-9687.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463, the Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Rebecca Winkler,

*Committee Management Officer.*

April 6, 1987.

[FR Doc. 87-8000 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Sociology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.

Date/time: April 27, 1987, 9:00 a.m. to 5:30 p.m., April 28, 1987, 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Room 1243.

Type of meeting: Closed.

Contact person: Mark Abrahamson, Program Director for Sociology or Stanley Presser, Associate Program Director for Sociology, Room 316, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7802.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in the Sociology Program.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

April 6, 1987.

[FR Doc. 87-7999 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-410]

## Niagara Mohawk Power Corp.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commisson) is considering issuance of an amendment to Facility Operating License No. NPF-54 issued to Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas and Electric Corporation, New York Electric and Gas Corporation, and Long Island Lighting Company (the licensee)[1], for operation of the Nine Mile Point Nuclear Station Unit 2 plant, located in Oswego County, New York.

The amendment would revise the trip setpoint and allowable value for the Main Steamline Isolation Valve (MSIV) closure in Table 2.2.1-1 and to change the valve designations in Table 3.6.1.2-1 and 3.6.3-1. These changes have been requested to support the change from MSIV ball valves to MSIV wye-pattern globe valves.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The proposed changes to the MSIV closure setpoints will not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes have no effect on the outcome of the limiting

[1] Niagara Mohawk Power Corporation is authorized to act as agent for the other listed owners and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

accident and transient analyses contained in the FSAR. These analyses include: (1) Closure of all main steam isolation valves with reactor scram via position switch signals to the reactor protection system (RPS); (2) steam line break outside containment; and (3) loss of plant instrument or services air. The worst case overpressurization transient, MSIV closure with flux scram, was not affected since failure of direct position scram was assumed, and this is not affected by the MSIV closure setpoint.

The proposed changes to the MSIV closure setpoints do not create the possibility of a new or different kind of accident from any accident previously evaluated because these changes are required for the wye-pattern globe valves to perform the equivalent function as the previously installed ball valves. This is because of physical differences in the two types of valves.

The proposed changes to the MSIV closure setpoints will not involve a significant reduction in a margin of safety because the effect on transients of a delayed scram signal resulting from the new trip setpoints has been evaluated by the licensee and only two transient analyses which assme this scram function were identified. These are the manual closure of all main steam isolation valves and the pressure regulator controller failure. Of these two events, the manual closure is more limiting. The licensee determined that the resulting change in the critical power ratio (CPR) operating limit as defined in Section 2.0 of the Technical Specifications is the only parameter affected for these events and that change is insignificant.

The changes to the valve designations on Tables 3.6.1.2–1 of the Technical Specifications reflect the change from ball valves to wye-pattern globe valves.

(1) These proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the licensee has reviewed the effect of this change on transient and accident analyses and determined there are no changes required to these analyses as result of the change to the wye-pattern globe valves.

(2) These proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The licensee has stated these valves will meet the same design criteria and commitments in the FSAR which were applicable to the MSIV ball valves. These include seismic and environmental qualifications, ASME Code class, the requirements in IEEE 279, inservice inspection and quality assurance requirements, stress analysis design and commitments, jet impingement design requirements and heavy load evaluations. These valves will also undergo preoperational and startup testing in accordance with FSAR and, as discussed above, will perform a function equivalent to the previously installed ball valves. In addition, the MSIV closure time (3 to 5 seconds) and leakage criteria (less than or equal to 6 SCFH) will remain the same.

The MSIV wye-pattern globe valves require pneumatic assistance to close within technical specification time limits. The pneumatic accumulators and associated piping and check valves are safety-related. A failure in one of these lines could affect the ability of an MSIV to close within technical specification time requirements, but it would not affect the closure time of the redundant MSIV. Failure of one MSIV to close has already been considered and therefore is not a new or different kind of accident.

[3) These proposed changes do not involve a significant reduction in a margin of safety. Inasmuch as the leakage rate remains unchanged from that analyzed in the FSAR and the Safety Evaluation Report, the change from ball to wye-pattern globe valves will not increase the dose consequences. The licensee has also stated the effect of the change to wye-pattern globe valves on the diesel generator and power distribution systems is negligible.

The licensee evaluated the changes in the margins of safety for the change from the ball to the wye-pattern globe valves and identified the following reductions in the margins of safety:

(a) The calculated increases in the final peak clad temperature (PCT) is about 1°F for the most limiting large break and 2°F for small breaks. These changes are not significant changes to the margins of 278°F and 476°F, respectively.

(b) The calculated peak vessel pressure has also changed frm 1268 psi to 1271 psi compared to an allowable of 1375 psi. This change in margin is also not significant.

The Commission is seeking public comments on this proposed determination. Any comments reviewed within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By May 11, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel (Bethesda), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Penfield Library, State University College, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 7th day of April 1987.

For the Nuclear Regulatory Commission.

**Anthony Bournia,**

*Acting Director, BWR Project Directorate No. 3, Division of BWR Licensing.*

[FR Doc. 87–8068 Filed 4–8–87; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Agency Information Collection Activities Under OMB Review; Request for Extension of SF 2808 Submitted to OMB for Clearance

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35), this notice announces a request to extend a public information collection previously cleared by the Office of Management and Budget. SF 2808, Designation of Beneficiary Under the Civil Service Retirement System, is completed by Federal employees and annuitants to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement System in the event of death. There are 2,000 individuals who respond annually for a total public burden of 500 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

**DATES:** Comments on this proposal should be received within 10 working days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Stret, NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

[FR Doc. 87–8099 Filed 4–9–87; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24303; File No. SR–Amex–86–24]**

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

On September 24, 1986, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the number of traders of non-equity options on the Exchange floor. The Amex proposed to implement this increase by adopting a Limited Trading Permits Plan ("Plan") which would allow the Exchange to issue up to 36 trading permits.

The proposal was noticed in Securities Exchange Act Release No. 23702 (October 10, 1986), 51 FR 37802 (October 24, 1986). The Commission received two comment letters regarding

[1] 5 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

the proposal from the Chicago Board Options Exchange, Inc. ("CBOE"), and a letter from the Amex clarifying certain aspects of the proposal. The substance of these letters is discussed in detail below.

## I. Description of the Proposal

The Plan provides for the creation of 36 Limited Trading Permits ("LTPs") which enable a holder to trade any Amex options product other than individual stock options.[3] In order to ensure that the Amex's Institutional Index ("XII") option, a relatively new index product, attracts sufficient market makers to provide a deep and liquid market, the Plan requires that one-third of an LTP holder's total trading activity (calculated on a quarterly basis on the number of contracts traded) be in XII.[4]

To implement the Plan, the proposal provides that each Amex regular and options principal member be issued one right to obtain 1/24 th of an LTP,[5] which right will be valid for 30 days from the date of issuance. During this period, the rights may be traded freely in an Exchange administered auction market, similar to the current seat market, or they may be traded privately. At the end of the 30 day offering period any options rights which have not been exchanged for an LTP will expire.

In order to acquire an LTP, a person must obtain 24 rights during the offering period,[6] pay the first installment of an initial Exchange fee, and file with the Exchange an application for approval of the LTP within 30 days of the end of the rights offering.[7] An LTP may be transferred at any time upon approval by the Exchange of the transferee and upon payment of applicable initiation and processing fees. An LTP also may be leased at any time pursuant to a special transfer agreement. If an LTP is not renewed annually by payment of the applicable fee, it will expire and cannot be reissued.

LTP holders may not participate in any distribution of the assets of the Exchange on dissolution or liquidation, nor may they vote in elections for Governors or on changes to the Constitution. In addition, they are prohibited from participating in the Gratuity Fund. In all other respects, LTP holders will be subject to the duties and obligations of members of the Exchange.

The Amex states in its rule filing that a number of factors prompted it to propose the LTP Plan to increase the Exchange's floor trading capability in non-equity options products. First, the Amex anticipates that traders who formerly held Options Trading Permits ("OTPs") and concentrated their trading activity in XMI,[8] will spend less of their time in the XMI crowd in the future because they are now entitled to trade individual stock options. Second, the Exchange believes that its recently introduced broad-based index, the XII,[9] needs additional traders to foster market depth and liquidity. Third, the Amex is considering other new options products which could potentially add to the need for more floor traders.

## II. Summary of Comments

The Commission received two comment letters from the CBOE concerning the Amex's proposed LTP Plan. The CBOE's initial letter,[10] dated November 14, 1986, expressed the opinion that the Plan was inconsistent with a 1977 Commission release on options floor trading,[11] because it would induce LTP holders to engage in riskless or pre-arranged proprietary trades in order to meet the Plan's one-third XII trading activity requirement ("one-third requirement"). The CBOE stated that LTP holders would be primarily interested in trading the Amex's XMI option, and would effect proprietary trades in XII principally to comply with the one-third requirement.[12] The CBOE argued that increased proprietary XII trading by LTP holders, effected without a concommittent increase in public customer order flow, would present a false appearance of increased public interest in the option. This activity could inappropriately induce XII options trading by other individuals, and divert public order flow from other exchanges' index options to XII.[13]

In response to the CBOE's November letter, the Amex submitted a letter to the Commission in support of the one-third requirement.[14] The Amex expressed the opinion that the Plan as initially formulated, and the Exchange's current surveillance procedures, were adequate to detect trading activity in XII involving riskless or pre-arranged transactions. The Amex also stated that the one-third requirement would, in practice, require an LTP holder to spend at least some significant portion of his time on the floor in the XII crowd, and was intended by the Exchange to encourage LTP holders to provide market making support to a new product.[15]

---

[3] Currently, this would include the Amex Major Market Index ("XMI") option, the Institutional Index ("XII") option, and industry group and interest rate options, as well as other new products that may be introduced by the Amex in the future.

[4] For example, if an LTP holder's total trading actitity in non-individual stock options in one quarter equaled 1,500 contracts, 500 of these contracts would be required to be in XII in order for the holder to meet the trading activity requirements.

[5] In the case of a leased membership, the options right will be issued to the lessor.

[6] To avoid inequitable results in the event one or more members fail to make their rights available for sale, the Exchange is authorized to issue an LTP for fewer than 24 rights if a person, despite good faith efforts, has been unable to buy the necessary number of rights in the market. Such person would be required to pay the Exchange an amount approximating the amount that would have been required to purchase the needed rights had they been for sale. In no event, however, will more than 36 LTPs be issued.

[7] An organization may acquire beneficial ownership of an LTP, but each LTP must be held in the name of an individual who meets the qualifications applicable to options principal members. Nominees holding LTPs owned by a single individual must be associated with that individual in a firm or corporation, and an LTP holder affiliated with a firm or corporation must qualify it as a member organization if it is not already so qualified. Persons or firms acquiring LTPs must initiate activation of the LTP by filing an application with the Exchange within 30 days of the end of the options rights offering. Failure to take such steps would result in forfeiture of the LTP, which would be deemed expired.

[8] In May 1984 the Amex adopted an Option Trading Permits Plan, for the purpose of increasing the number of non-equity options traders on the Exchange floor. *See* File No. SR–Amex–84–13, approved by the Commission in Securities Exchange Act Release No. 21130 (July 10, 1984), 49 FR 29172. The holder of an OTP was entitled to trade non-equity options for his own account for a two year period, after which time the trader could acquire an options principal membership ("OPM") upon payment of an additional fee. A total of 108 permits were issued pursuant to this Plan, and all of these permits were converted into OPMs in September 1986.

[9] The Commission approved the introduction of the XII option in August 1986. *See* Securities Exchange Act Release No. 23573 (August 28, 1986), 51 FR 31859.

[10] Letter to Jonathan G. Katz, Secretary, SEC, from Arne R. Rode, General Counsel, CBOE, dated November 14, 1986.

[11] *See* Securities Exchange Act Release No. 13433 (April 5, 1977), 11 SEC Dock. 2194, wherein the Commission commented on the legality of floor members' proprietary trading in options on MGIC Investment Co. stock. The Commission found that floor members on both the Amex and the CBOE appeared to be substantially increasing their proprietary trading in certain dually traded options in an attempt to induce the purchase or sale of these options on their exchanges instead of other options exchanges on which the same class was traded. The Commission stated that trading activity motivated by this purpose may be inconsistent with the Act. *See* disussion in text *infra*.

[12] The CBOE contended that the majority of XII trades would be proprietary because of the limited public customer business in XII to date. For example, in December 1986, out of a total of 8,608 contracts per day in XII, only 2,231 of these contracts involved public customers.

[13] The CBOE trades an index on the Standard & Poor's 500 ("SPX") which also provides for European settlement and is generally perceived as a direct competitor of XII.

[14] *See* letter to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, from James Duffy, Legal & Regulatory Policy Division, Amex, dated December 23, 1986 ("Amex Letter").

[15] The CBOE submitted a second letter to the Commission, dated January 27 1987, commenting

Continued

### III. Trading Activity Requirement

In February 1987, the Amex responded to the concerns raised by the CBOE by proposing to adopt certain procedures in connection with the LTP Plan's one-third trading activity requirement.[16] The procedures require each LTP holder to execute 50% of his XII transactions (calculated quarterly by number of contracts traded) in person, rather than through a broker. Second, the procedures reiterate the Exchange's policy that an options trader's transactions not be effected solely for the purpose of meeting a zone requirement (*i.e.*, the one-third requirement), and state that the Exchange will view as inconsistent with the one-third requirement transactions which appear to constitute an irregular pattern of trading in XII. The procedures specifically cite as inconsistent activity a trader effecting a percentage of trader-to-trader transactions significantly greater than the percentage of trader-to-trader transactions in XII generally.

### IV. Discussion

In the past, the Commission has approved proposals to create limited membership classes designed to encourage market maker participation in a new or developing market for an option product.[17] Historically, the commission has taken the position that decisions concerning the implementation and characteristics of a plan designed to increase the number of traders on an exchange floor, were best left to the business judgment of an exchange, as long as the procedures adopted were not inconsistent with the purposes of the Act. Viewed in this context, the LTP Plan appears to be designed for the legitimate business purpose of attracting market makers to non-equity options. Before approving the plan, however, the Commission has had to consider whether the Plan's procedures—most notably the one-third trading activity requirement—would induce pre-arranged or riskless trading by market makers.

The Commission believes that the Plan proposed by the Amex adequately addresses concerns regarding whether the one-third requirement would create an incentive for inappropriate trading activity. The Commission consistently has stated that proprietary floor trading by options traders effected for the purpose of increasing aggregate trading volume in an options class, and thereby inducing the purchase or sale of that class, violates sections 9 and 10 of the Act.[18] While the Plan proposed by the Amex does raise concerns regarding excessive proprietary trading by LTP holders in XII in order to fulfill the one-third requirement, the Commission believes, for the following reasons, that the procedures adopted by Amex will decrease substantially the potential for trading abuses in XII.

First, the procedures adopted by Amex require, for purposes of the one-third requirement, that an LTP holder execute in person, rather than through a broker, 50% of his XII transactions. This requirement is intended to ensure that LTP holders spend significant time in the XII crowd in order to fulfill the one-third requirement. The Commission believes that this physical presence requirement should dissuade LTP holders from attempting to meet the one-third requirement without contributing to the maintenance of a liquid market in XII.

Second, the Amex procedures clearly state that an LTP holder's transactions may not be effected solely for the purpose of meeting a zone requirement, and that the Exchange will view as inconsistent with the one-third requirement "transactions of a trader which appear to constitute an irregular pattern of trading in XII."[19] Specifically, the Plan's procedures require the Amex to view as inconsistent with this requirement market maker-to-market maker transactions of a percentage significantly greater than the percentage of such transactions in XII generally. The Commission believes that this provision should ensure that LTP holders do not engage in trading which is motivated by non-economic considerations, and that LTP holders' trading in part be effected to accomodate public customer orders.

Third, the Exchange is obligated to surveil trading in XII by LTP holders generally, and with a particular focus on proprietary trading. In this regard the Amex has in place procedures to monitor options trading and ensure that LTP holders' trading in XII is done for the purpose of contributing to the maintenance of a fair and orderly market, and not solely to fulfill the one-third requirement.[20] The Exchange will refer transactions which appear to have been riskless to its Floor Performance Committee, which is authorized to impose penalties if it determines that transactions were inconsistent with an LTP's responsibilities. Trading violations also my be referred to the Amex's Compliance Division for appropriate disciplinary action. In addition, the Exchange will issue a circular to LTP holders advising them that transactions which are inconsistent with their market making responsibilities will not be counted toward meeting their one-third requirement. In this regard, it will not be necessary for the Amex to prove that a market maker's XII trades were prearranged or executed in order to artificially increase the appearance of activity in the option, but rather that a market maker's relative lack of trading with public customer orders evidenced a failure to comply with the trader's market making responsibilities. The Commission expects the Amex agressively to discipline any market maker whose percentage of transactions with other market makers in XII significantly exceeds the percentage of such transactions in XII generally.

### V. Conclusion

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[21] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change is approved.

---

that absent an in-person trading requirement, nothing in the LTP Plan would prevent permit holders from effecting their XII trades through the use of orders entered with floor brokers or other market makers. The CBOE stated that because trading activity would be measured in terms of contract volume rather than number of transactions, the one-third requirement also could be satisfied by a few large transactions initiated in-person. *See* letter to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, from Arne R. Rode, General Counsel, CBOE, dated January 27, 1987.

[16] *See* letter to Brandon Becker, Associate Director, Division of Market Regulation, SEC, from Paul Stevens, Executive Vice President—Operations, Amex, dated February 24, 1987.

[17] *See* note 8, *supra*. The issuance of OTPs by the Amex was intended to encourage trader participation in Exchange-traded option products other than individual stock options, particularly XMI.

[18] Securities Exchange Act Release No. 13433, *supra* note 11. Trading activity of this nature is particularly harmful where competition exists between markets for functionally similar products, such as broad-based stock index options. In addition, such trading may be viewed as inconsistent with a market maker's obligation under section 11(b) of the Act, and Rule 11b–1 thereunder. *See* Securities Exchange Act Release No. 17574 (February 25, 1981), 46 FR 15134.

[19] Amex Rule 958 prohibits an Amex Registered Trader from entering into transactions that are inconsistent with a course of dealings "reasonably calculated to contribute to the maintenance of a fair and orderly market."

[20] *See* Amex Letter, *supra* note 14, at 7.

[21] 15 U.S.C. 78f (1982).

[22] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Dated: April 6, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-8029 Filed 4-9-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24302; File No. SR-OCC-87-4]**

## Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on March 13, 1987, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal allows OCC clearing members to pledge positions in individual non-proprietary market-maker accounts. The Commission is publishing notice to solicit comment on the rule change.

The proposal amends OCC's rules and Pledge Account Agreement to enable clearing members to pledge long options positions in individual non-proprietary market-maker accounts. OCC rules allow clearing members to establish and maintain pledge accounts. Each pledge account must be associated with a primary account of the clearing member. Until recently, systems constraints at pledgee banks required the pledge account to be associated with he clearing member's proprietary market-maker or specialist account or a combined market-maker or specialist account. OCC has been advised that the constraint no longer exists at OCC's pledgee banks and is adjusting its rules to allow pledge accounts associated with individual non-proprietary market-maker or specialist accounts. OCC states the proposal will make individual non-proprietary market-maker positions available for collateralization and, as a result, will lower clearing members' borrowing costs and facilitate financing.

This rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after notice is published in the **Federal Register**. Please file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-87-4 and should be submitted by May 1, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 3, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-8028 Filed 4-9-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[File No. 22-16539]**

## Application and Opportunity for Hearing; American Southwest Finance Co., Inc.; Correction

April 6, 1987.

This document corrects a notice published in the March 25, 1987 issue of the **Federal Register** (52 FR 9597) FR Doc. 87-6496 as follows:

1. The name of the company in the heading and in the introductory phrase of the document is corrected to read "American Southwest Finance Co., Inc."

2. In the next to the last paragraph of the document the date for requesting a hearing is corrected to read "April 24, 1987."

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-8029 Filed 4-9-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24297; File No. SR-NASD-87-10]**

## Self-Regulatory Organizations; Proposed Rule Change; National Association of Securities Dealers, Inc.; Relating to Buy-ins of Short Securities Positions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends section 59 of the NASD Uniform Practice Code to require buy-ins for cash or guaranteed delivery for NASDAQ securities (where the buyer is a customer other than another NASD member) upon the failure of a clearing corporation to effect delivery pursuant to a buy-in notice.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change was considered by the NASD as a result of the study of short sales in the NASDAQ market conducted on behalf of the NASD in early 1986.

One of the areas examined in the short-sale study was the relationship between short selling and clearing

---

[23] 17 CFR 200.30-3(a)(12) (1986).

corporation short interest (fails to deliver), as evidenced by the inability to deliver or election by a clearing participant to withhold delivery of securities to the clearing corporation. The short condition can exist indefinitely in a continuous net settlement system because the rules and procedures of the clearing corporations permit outstanding long or short positions to be carried forward on an ongoing basis. Clearing corporation procedures provide that open positions are marked to the market daily, with market price fluctuations being reflected in a participant's daily cash settlement. This effectively insulates both the clearing corporation and broker-dealer participants from financial losses.

A problem revealed by the short-sale study concerned instances in which a long clearing-broker did not receive securities from a clearing corporation, especially in situations where there were high levels of short selling in conjunction with large amounts of clearing-short interest. In some circumstances, when a long clearing-broker initiated a buy-in, it was retransmitted to a short clearing-broker who was also a short seller and thereby unable to satisfy the request for certificates.

The proposed rule change would cure this problem for transactions in NASDAQ securities where the buyer is a public customer. Under the provisions of the amendment, upon a failure of a clearing corporation to make delivery of securities, members will be required to close the contract by purchasing for cash or guaranteed delivery any portion of the securities not delivered through the clearing corporation buy-in process. The NASD believes that this provision will eliminate the problems of non-delivery found to exist in the short-sale study.

The NASD believes that the propsed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest. The proposed rule change will facilitate customer's ability to obtain delivery of securities and should aid in preventing short-sale abuses in the NASDAQ marketplace.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The NASD solicited comments from members regarding the proposed rule change in Notice to Members 86–59. A total of 17 responses were received. Copies of the Notice to Members and Comment letters have been submitted to the Commission as Exhibit 2 to this filing. The most frequent area of comment related to the impact of the rule on utilization of warrants as a method of capital raising and the arbitrage of positions in those warrants. The NASD Board of Governors considered the comments and made several changes to the proposals based upon such review. The NASD responded to these and other comments in the filing with the Commission.

**III. Dates of Effectiveness of the Proposed Rule Change in Timing of Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–NASD–87–10 and should be submitted by May 1, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 3, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8026 Filed 4–9–87; 8:45 am]

BILLING CODE 8010–01–M

---

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Order 87–4–5; Dockets 32608 and 39229]**

### Proposed Revocation of the Section 401 Certificates of Trans Global Airlines, Inc.; Order To Show Cause

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of order to show cause.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue orders revoking the certificates of Trans Global Airlines, Inc., issued under section 401 of the Federal Aviation Act.

**DATE:** Persons wishing to file objections should do so no later than April 20, 1987.

**ADDRESSES:** Responses should be filed in Dockets 32608 and 39229 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590, and should be served on the parties lised in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Janet A. Davis, Air Carrier Fitness Division, P–56, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–2341.

Dated: April 2, 1987.

**Matthew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 87–8100 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–62–M

---

## Federal Aviation Administration

**[AC No. 145–4A]**

### Proposed Advisory Circular—Inspection, Retread, Repair, and Alterations of Aircraft Tires

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Request for comments on proposed Advisory Circular (AC) 145–

4A, Inspection, Retread, Repair, and Alterations of Aircraft Tires.

**SUMMARY:** The proposed AC 145–4A provides changes to AC 145–4 guidelines for acceptable practices regarding qualification of retreaders to make tire sidewall repairs one-ply deep, improved tire bead inspection, information related to upper service limits for retreaded tires, and minor editorial changes.

**DATE:** Comments must be received on or before May 26, 1987.

**ADDRESS:** Send all comments on the proposed AC to: Federal Aviation Administration, Attention: General Aviation and Commercial Branch, AFS–340, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Angelo R. Mastrullo, Aviation Safety Inspector (AFS–340), at the above address, telephone: (202) 267–3805.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under "For Further Information Contact." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments they may desire. Comments should be identified as pertaining to AC 145–4A and submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the General Aviation and Commercial Branch before issuing the final AC.

### Background

Under the present acceptable practices regarding high speed (operated above 120 mph) aircraft tire repairs outlined in the present AC 145–4, damage to a tire sidewall that penetrates the tire's outer ply is not repairable. Two aircraft tire retreaders have requested FAA to reconsider that restriction and allow for limited repairs to be made to tire sidewalls down to the outermost ply. The retreaders maintain that the present acceptable repair practices have resulted in the rejection of numerous valuable aircraft tires that, except for the slight damage pentrating into the outermost ply of the sidewall, could be safely repaired and retreaded. In response to this concern, this proposed AC contains new quidelines for repairs to sidewall rubber of tires designed for operation above 120 mph. In the interim, retreaders who desire to make such repairs should subject the repaired and retreaded tire to the dynamic test requirements of paragraph 7 in AC 145–4. One retreader satisfactorily completed such testing and has been given interim authorization to make such repairs in accordance with the new guidelines outlined in proposed AC 145–4A.

The proposed AC also contains improved tire bead inspection guidelines, information related to an upper service limit for retreading tires, and minor editorial changes.

Both AC 145–4 and proposed AC 145–4A were developed by the FAA using input from the tire and airline industries concerning development, qualification, and approval of aircraft tire repair and retread process specifications, and the use of special nondestructive inspection (NDI) techniques. The FAA believes it is necessary to afford those persons and any other interested party an opportunity to comment on the proposed AC 145–4A.

Issued in Washington, DC, on March 30, 1987.

William T. Brennan,

*Acting Director of Flight Standards.*

[FR Doc. 87–7985 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–13–M

## Airport Noise Compatibility Program; Scottsdale Municipal Airport, Scottsdale, AZ

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Scottsdale, Arizona, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 7, 1986, the FAA determined that the noise exposure maps submitted by the city of Scottsdale under Part 150 were in compliance with applicable requirements. On December 19, 1986, the Administrator approved the "Scottsdale Municipal Airport Noise Compatibility Program." Most of the recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the "Scottsdale Municipal Airport Noise Compatibility Program," is December 19, 1986.

**FOR FURTHER INFORMATION CONTACT:** Herbert W. Hyatt, Environmental Protection Specialist, AWP–611.2, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, (213) 297–1534. Documents reflecting this FAA action may be obtained from the same individual.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the "Scottsdale Municipal Airport Noise Compatibility Program", effective December 19, 1986.

Under section 104 (a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor, with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and ASNA, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and

responsibilities of the Administrator, prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action, or approval to implement specific noise compatibility measures, may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program, nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division, in Los Angeles, California.

The city of Scottdale, Arizona submitted to the FAA on June 19, 1985, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 1984 through January 1986. The city of Scottsdale, Arizona Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on February 7, 1986. Notice of this determination was published in the **Federal Register** on March 7, 1986.

The Scottsdale Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion through the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 26, 1986, and was requied by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained fourteen propose actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore was approve by the Administrator, effective December 19, 1986.

Outright approval was granted for twelve of the fourteen specific program elements. Two measures: (1) FAR Part 36 stage 2 compliance for use of Runway 21 for landings and Runway 3 for departures, and (2) right turns for noise abatement as soon as practical when departing Runway 21, are disapproved for safety reasons.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 19, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administative offices of the city of Scottsdale, Arizona.

Issued in Hawthorne, California, on March 13, 1987.

**Herman C. Bliss,**

*Manager, Airports Division FAA, Western-Pacific Region.*

[FR Doc. 87-7986 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

## Radio Technical Commission for Aeronautics (RTCA); Special Committee 150; Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on May 6-8, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) approval of the minutes of the Fourteenth Meeting; (3) report of working group activities; (4) update on Data Collection Programs; (5) continued development of MSPS; (6) task assignments; (7) other business; and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 6, 1987.

**Wendie F. Chapman,**

*Designated Officer.*

[FR Doc. 87-7977 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

[Dept. Circ. 570, 1986 Rev., Supp. No. 16]

## Surety Companies Acceptable on Federal Bonds: Termination of Authority; Public Service Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Public Service Mutual Insurance Company, under the United States Code, Title 31, sections 9304 through 9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 51 FR 23948, July 1, 1986.

With respect to any bonds currently in force with Public Service Mutual Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2119.

Dated: March 27, 1987.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 87-7975 Filed 4-9-87; 8:45 am]

BILLING CODE 4810-35-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 69
Friday, April 10, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL RESERVE SYSTEM**
Board of Governors

**TIME AND DATE:** 10:00 a.m., Wednesday, April 15, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed revisions to the Board's Regulation F (Securities of State Member Banks).

Discussion Agenda

2. Publication for comment of a proposed amendment to Regulation T (Credit by Brokers and Dealers) to revise the definition of OTC margin bonds to include mortgage related securities.

3. Proposals regarding fees for examinations of Edge Act corporations, inspections of bank holding companies, and processing applications for banks and bank holding companies. (Proposed earlier for public comment; Docket No. R–0584)

4. Proposed revisions to the Board's Rules Regarding Availability of Information.

5. Any items carried forward from a previously announced meeting.

**Note.**—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 8, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–8731 Filed 4–8–87; 11:04 am]

BILLING CODE 6210–01–M

---

**FEDERAL RESERVE SYSTEM**
Board of Governors

**TIME AND DATE:** Approximately 11:00 a.m., Wednesday, April 15, 1987, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 8, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–8130 Filed 4–8–87; 11:04 am]

BILLING CODE 6210–01–M

---

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** Wednesday, April 15, 1987, 10:00 a.m.

**LOCATION:** Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*State/Local Programs: Update*

The staff will brief the Commission on the fiscal year 1987 state and local cooperative programs. State and local officials will participate.[1]

For a recorded message containing the latest agenda information, call: 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

April 8, 1987.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 87–8149 Filed 4–8–87; 12:27 pm]

BILLING CODE 6355–01–M

[1] For this meeting, the Commission has voted to waive its policy prohibiting participation by outside parties in Commission meetings.

---

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DATE AND TIME:** 10:00 am (Eastern Time) Monday, April 20, 1987.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

**STATUS:** Part will be open to the public and part will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Open

1. Announcement of Notation Vote(s)
2. Report on Commission Operations (Optional)
3. Amendments to EEOC Freedom of Information Act Regulations

Closed

1. Litigation Authorization; General Counsel Recommendations.

**Note.**—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued: April 8, 1987.

**Cynthia C. Matthews,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 87–8203 Filed 4–8–87; 3:59 pm]

BILLING CODE 6750–06–M

---

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, April 14, 1987, to consider the following matters:

*Summary Agenda:* No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

**Disposition of Minutes of Previous Meetings**

*Application for Consent To Purchase Assets and Assume Liabilities*

The Cortland Savings and Banking Company, Cortland, Ohio, an insured State member bank, for consent to purchase assets of and assume the liability to pay deposits made in the Mantua, Ohio, branch of First Nationwide Bank, a Federal Savings Bank, San Francisco, California, a non-FDIC-insured institution.

*Application for Consent To Purchase Assets and Assume Liabilities and for Consent To Merge and Establish Branches*

The Savings & Trust Company of Pennsylvania, Indiana, Pennsylvania, an insured State nonmember bank, for consent to purchase the assets of and assume the liabilities of Union Bancorp of Du Bois, Pennsylvania, Inc., Du Bois, Pennsylvania, for consent to merge, under its charter and title, with The Union Banking & Trust Company of Du Bois, Pennsylvania, Du Bois, Pennsylvania, and for consent to establish the four offices of The Union Banking & Trust Company of Du Bois, Pennsylvania as branches of the resultant bank.

*Ratification of an Approval of an Application for Consent to Merge and Establish One Branch*

Citizens Bank & Trust Company, Eastman, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Williams Banking Company, Rhine, Georgia, and for consent to establish the sole office of Williams Banking Company as a branch of the resultant bank.

*Reports of Committee and Officers*

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report, December 31, 1986

**Discussion Agenda**

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 893–3813.

Dated: April 7, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87–8151 Filed 4–8–87; 12:27 pm]

BILLING CODE 6714–01–M

---

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, April 14, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

*Summary Agenda:* No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

**Note.**—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for consent to purchase assets and assume liabilities and to establish two branches:

Hasting City Bank, Hastings, Michigan, an insured State nonmember Bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Bellevue, Michigan, and Nashville, Michigan, branches of Comerica Bank—Battle Creek, Battle Creek, Michigan, and for consent to establish those two branches of Comerica Bank—Battle Creek as branches of Hastings City Bank.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

This meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: April 7, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87–8152 Filed 4–8–87; 12:27 am]

BILLING CODE 6714–01–M

---

**FEDERAL ENERGY REGULATORY COMMISSION**

April 8, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–4109), 5 U.S.C. 552b:

**TIME AND DATE:** April 15, 1987, Approximately 2:00 (following open Commission meeting).

**PLACE:** 825 North Capitol Street, NE., Washington, DC 20426, Room 9306.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

(1) Docket No. IN84–2–000, Pioneer Production Company.
(2) Fred E. Long, Petroleum Management, Inc., Nue-Wells Pipe Line Company and Southern Gas Pipeline Company.
(3) Stephens Production Company.
(4) Various Producer-Owned Natural Gas Processing Plants.
(5) Project No. 9000 (Morrow Dam), STS Consultants, Ltd.
(6) Project No. 9140 (Elizabethtown Hydro Project), Charles F. Heimerdinger.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87–8177 Filed 4–8–87; 3:29 pm]

BILLING CODE 6717–01–M

Federal Register

Friday
April 10, 1987

Part II

# Department of Education

**Office of Special Education and Rehabilitation Services**

**Projects for Initiating Special Recreation Programs for Individuals with Handicaps; Final Annual Funding Priority for Fiscal Year 1987 and Invitation for Applications for New Awards; Notices**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitation Services

### Projects for Initiating Special Recreation Programs for Individuals With Handicaps

**AGENCY:** Department of Education.

**ACTION:** Notice of Final Annual Priority for Fiscal Year 1987.

**SUMMARY:** The Secretary announces annual funding priority for grants for Initiating Special Recreation Programs for Individuals with Handicaps. The Secretary announces a single priority to support applications for recreation programs which provide individuals with handicaps with the opportunity for contact with non-handicapped peers, other than recreational service personnel, during at least part of the recreational program. The objective of this contact should be the eventual integration of individuals with handicaps into existing community recreational programs which serve non-handicapped persons.

**EFFECTIVE DATE:** This final annual funding priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this final priority, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Frank S. Caracciolo, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, Room 3320, Switzer Building, 400 Maryland Avenue SW., MS 2312, Washington, DC 20202, Telephone: (202) 732–1340.

**SUPPLEMENTARY INFORMATION:** Grants for Individuals with Handicaps are authorized by section 316 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777f). Program regulations are established at 34 CFR Part 378. The purpose of the Special Recreation Programs for Individuals with Handicaps is to support projects which initiate recreational activities for individuals with handicaps to aid in their mobility, socialization, independence, and community integration.

*Eligible Applicants*

State and public or other nonprofit agencies and organizations are eligible to apply for grants under this program.

*Funds Available*

In FY 1986, $2,105,000 was available to fund twenty-nine one-year projects. In FY 1987, $2,330,000 is available to fund thirty-three projects. Project periods will be for thirty-six months.

*Final Priority*

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give absolute preference to applicants who propose projects to integrate individuals with handicaps into existing community recreational programs. The purpose of this priority is to support applications which propose to develop exemplary recreational programs that aid individuals with handicaps in their mobility, socialization, independence, and community integration. Specifically, applications under this priority must propose recreational programs which provide the opportunity for individuals with handicaps to have contact with non-handicapped peers, other than recreational service personnel, during at least part of the recreational program. The objective of this contact should be the eventual integration of individuals with handicaps into existing community recreational programs which serve non-handicapped persons. Applicants will be evaluated according to criteria which appear in the program regulations at 34 CFR 378.31.

**Summary of Comments and Responses**

A Notice of Proposed Annual Funding Priority was published in the **Federal Register** on October 14, 1986 at 51 FR 36591 for Special Recreation Programs for Individuals with Handicaps. Twelve comments were received in response to the notice.

*Comment.* All twelve of the commenters supported the priority. One of the twelve supporting the priority also requested multi-year funding.

*Response.* All of the available funding will be used to support this priority. As mandated by the Rehabilitation Act Amendments of 1986, three-year grants will be awarded to projects funded under this program.

*Projects to be funded*

All funds available under this program in fiscal year 1987 will be used to support project applications submitted in response to this priority.

**Authority** 29 U.S.C. 777(f).

(Catalog of Federal Domestic Assistance No. 84.128, Rehabilitation Services—Special Projects)

Dated: March 31, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–8091 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

---

**[CFDA No.: 84.128J]**

### Inviting Applications for New Awards Under Projects for Initiating Special Recreation Programs for Individuals with Handicaps for Fiscal Year 1987

*Purpose:* The purpose of this program is to support projects which initiate recreational programs for individuals with handicaps to aid in their mobility, socialization, independence, and community integration.

*Deadline for Transmittal of Applications:* June 5, 1987.

*Applications Available:* April 20, 1987.

*Available Funds: $2,330,000.*

*Estimated Range of Awards:* $50,000 To $90,000.

*Estimated Average Size of Awards:* $70,000.

*Estimated Number of Awards:* 33.

*Project Period:* 36 months.

*Applicable Regulations:* (a) Regulations governing projects for Initiating Special Recreation Programs for Individuals Handicaps in 34 CFR Parts 369 and 378, (b) Education Department General Administration Regulations (EDGAR), in 34 CFR Parts 74, 75, 77, and 78; and (c) the Notice of Final Priority published in this issue of the **Federal Register.**

*For Applications or Information Contact:* Frank S. Caracciolo, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3320 Switzer Building, MS 2312, Washington, DC 20202. Telephone: (202) 732–1340.

*Program Authority:* 29 U.S.C. 777(f).

Dated: April 6, 1987.

**Madeleine Will,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 87–8092 Filed 4–9–87; 8 45 am]

BILLING CODE 4000–01–M

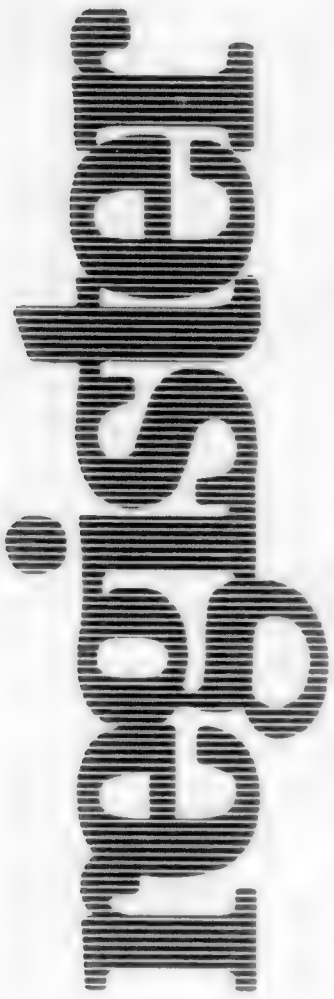

Friday
April 10, 1987

Part III

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**Neighborhood Development Demonstration Program; Fund Availability for Fiscal Year 1987; Notice**

BEST COPY AVAILABLE

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Community Planning and Development**

[Docket No. N-87-1675; FR-2301]

## Neighborhood Development Demonstration Program; Fund Availability for Fiscal Year 1987

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of fund availability.

**SUMMARY:** Funds have been appropriated for Fiscal Year 1987 for HUD to carry out, for a second round, the Neighborhood Development Demonstration program under section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). The purpose of this program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from individuals, businesses, and non-profit and other organizations located within established neighborhood boundaries. The Federal funds are incentive funds to promote the development of this concept, and to encourage neighborhood organizations to become more self-sufficient in their development activities. Up to 30 percent of previous participants in this program may be selected to participate in the second round of the demonstration; the remainder will be selected from among new applicants. All applicants, including previous participants, are to compete through the same selection process.

**DATES:** Effective April 10, 1987.

Application due date: Applications are due by July 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Melvin W. Gunn, Office of Procurement and Contracts, Community Services Division (ACC–MG), Department of Housing and Urban Development, Room 5252, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755–5662. (This is not a toll-free number.) (Use this mailing address to obtain copies of the Request for Grant Applications, which provides further information on the Demonstration. See Part IV of this Notice.)

**SUPPLEMENTARY INFORMATION:**

This document (1) notifies the public of the availability of funds for the Demonstration; (2) identifies the objectives of the program; (3) describes the method of allocation and distribution of funds; (4) defines eligible neighborhood development organizations; (5) sets forth eligible neighborhood development activities; (6) sets forth application requirements for the funds; (7) identifies the selection criteria for the award of funds; and (8) specifies grantee reporting requirements.

*Before requesting a grant application package as provided for under Part IV, organizations should carefully review this notice, particularly the eligibility factors under Part III.* Many organizations that spent time and effort preparing applications for first round assistance were determined to be ineligible under the statutory requirements.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

The information collection requirements contained in this Notice have been approved by OMB and the assigned OMB control number is 2535–0084.

## Notice of Fund Availability

### I. Background

*A. Legislation*

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181) authorized the Neighborhood Development Demonstration program. The report of the Senate Committee on Banking, Housing, and Urban Affairs referred to the new authority as a:

> Demonstration Program to assist neighborhood organizations to carry out community development activities through an innovative matching grant mechanism. Designed to encourage greater financial self-sufficiency on the part of non-profit neighborhood development groups, the program would provide federal matching funds of up to $50,000 per organization on the basis of charitable contributions which organizations raise from individuals, businesses, and religious institutions in their areas. Different matching ratios would be established for participating organizations based upon the size and economic condition of the community in which those organizations operate, although the ratio could not be lower than 50/50. S. Rep. No. 142, 98th Cong., 1st Sess. 29 (1983).

For Fiscal Year 1987, Congress appropriated [1] $2 million to fund the program. HUD may use no more than five percent of this amount for HUD administrative or other expenses in connection with the demonstration. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and non-profit and other organizations located within established neighborhood boundaries. Federal payments will be made on a quarterly basis, beginning with the first quarter of the one-year period, as neighborhood organizations report and verify the amount of funds raised from private sector sources during the previous quarter.

*B. Program Objectives*

The Neighborhood Development Demonstration program is designed to determine the ability of neighborhood organizations to fund and implement neighborhood development activities, using cooperative efforts and monetary support from individuals, businesses and non-profit and other organizations located within the neighborhood boundaries. The Federal matching funds are incentive funds to promote the development of this concept and to encourage neighborhood organizations to become more self-sufficient in their development activities.

The Neighborhood Development Demonstration program has the following objectives:

—To evaluate the degree to which new monetary contributions and other private sector support can be generated and new activities undertaken at the neighborhood level through Federal incentive funding;

—To determine th correlation, if any, between the demographics of a neighborhood (*i.e.*, the income level of its occupants, the amount of non-residential development, the percent of persons employed, the tenant/homeowner breakdown, the racial/ethnic makeup of the neighborhood, etc.) and the neighborhood organization's ability to raise funds within the neighborhood boundaries;

—To determine the correlation, if any, between the type of neighborhood improvement activities proposed and the success of fund-raising efforts; and

—To determine the correlation, if any, between the characteristics of an

[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986).

organization and the success of its fund-raising efforts.

## II. Allocation and Distribution of Funds

The Department proposes to make grants, in the form of matching funds, to eligible neighborhood development organizations. Grantee organizations may receive a maximum of $50,000 in Federal matching funds in a single program year. The amount of Federal matching funds that an organization may receive depends in part upon the amount of monetary contributions raised from within the established neighborhood boundaries in the preceding quarter. *Funds raised from organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, and any in-lieu-of-cash contributions cannot be used to match Federal funds. Such contributions may, however, be used to carry out project activities.* The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a period of one to three years.

Maximum Federal matching ratios are to be established in accordance with the statutorily required "smallest number of households or greatest degree of economic distress" criteria. Subject to the statutory maximum of $50,000.00, the Federal match will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered, and the matching ratio determined, based on application of these two criteria. Applications will be ranked on *each* of the two criteria. Applications best satisfying *either* criterion will be placed in the matching ratio category eligible to receive six Federal dollars for each neighborhood dollar. Applications placed in the other matching ratio categories will receive proportionally less, with those in the matching ratio category least satisfying either test being eligible to receive one Federal dollar for each neighborhood dollar.

Any application selected for the award of Federal funds that proposed a matching funds ratio *in excess* of the ratio HUD determines for it will be offered an award of funds at the HUD-determined ratio. However, any application selected for award that proposed a match *below* the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment will be governed by the amount of verified, qualifying monetary contributions received in the preceding quarter, multiplied by the appropriate matching funds ratio.

## III. Eligibility

**Note.—Organizations are cautioned that, to avoid wasted effort, they should carefully review the following requirements. Over 39 percent of the 281 applications received in 1984 were ineligible under these statutory requirements.**

### *A. Eligible Neighborhood Development Organizations*

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or in general, an organization serving a large area of the city. It must meet all of the following statutory requirements:

(1) The organization must carry out its activities in an area that meets the Urban Development Action Grant Program eligibility requirements for Federal assistance under section 119(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5218) and the Department's implementing regulation at 24 CFR Part 570, Subpart G. These provisions require, among other things, that a neighborhood must be located in a governmental jurisdiction or pocket of poverty that is found to be distressed area and secondly, that the governmental jurisdiction in which an area is located must have demonstrated results in providing housing and employment for low- and moderate-income persons and members of minority groups. The neighborhood organization must be located in an area currently meeting the following distress criteria in order for the neighborhood organization to be able to apply:

(i) A city or an urban county that meets the distress criteria required as a condition for assistance under the Urban Development Action Grant program, under section 119(b)(1) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.452; OR

(ii) An area that has been approved by the Department for assistance under the Urban Development Action Grant Program as a "pocket of poverty" under section 119(b)(2) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.466.

The second test of UDAG eligibility, including housing and equal opportunity requirements, will be applied following receipt of the applications by HUD. In order to be eligible under these criteria, the city or urban county in which the applicant is located must have previously demonstrated results in providing housing for low- and moderate-income persons and in providing equal opportunity in housing and in employment for low- and moderate-income persons and members of minority groups, in accordance with the requirements for assistance under the Urban Development Action Grant Program set forth at section 119(b)(1) of the Housing and Community Development Act of 1974 and the Department's implementing regulations at 24 CFR 570.453.

(2) The organization must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates.

(3) The organization must have conducted business for a least three years before the date of its application.

(4) The organization must be responsible to the residents of the neighborhood it serves, with no less than 51 percent of the members of its governing body being residents of the neighborhood.

(5) The organization must have conducted one or more eligible neighborhood development activities, as defined in Section B below, which primarily benefit low- and moderate-income residents of the neighborhood. For purposes of the preceding sentence, "low- and moderate income residents" means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by HUD, with adjustments for smaller and larger families.

### *B. Eligible Neighborhood Development Activities*

Funds may be used by eligible neighborhood development organizations to develop or carry out a project designed to achieve the following:

(1) Create permanent jobs in the neighborhood;

(2) Establish or expand businesses within the neighborhood;

(3) Develop new housing, rehabilitate existing housing, or manage housing stock within the neighborhood;

(4) Develop delivery mechanisms for essential services that have lasting benefits for the neighborhood, such as Fair Housing counseling services, child

care centers, youth training, or health services; or

(5) Plan, promote, or finance voluntary neighborhood improvement efforts, such as establishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, or establishing an on-going street and alley cleanup program.

*C. Equal Opportunity Requirements*

The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(1) The requirements of Title VIII of the Civil Rights Act of 1968; (42 U.S.C. 3601 through 3619) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 through 6107) and the prohibition against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60;

(3) The requirements of section 3 of the Housing and Urban Develpment Act 1968, 12 U.S.C. 1701u (see § 570.607(b) of this Chapter); and

(4) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

*D. Other Federal Requirements*

In addition to the Equal Opportunity Requirements set forth above, grantees must comply with the following requirements:

(1) Ineligible Contractors

The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) Flood Insurance

No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part may be located in an area that has been identified by the Federal Emergency Management Agency [FEMA] as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)

(3) Lead-based Paint

The requirements, as applicable, of the Lead-Based Paint Poisioning Prevention Act (42 U.S.C. 4821 through 4846) and implementing regulations at 24 CFR Part 35.

(4) Applicability of OMB Circulars

The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122, with respect to the acceptance and use of assistance by private nonprofit organizations.

**IV. Application Process**

*A. Application Requirements*

(1) There are three steps in the application submission process:

(i) Organizations must determine first whether they are in an area or pocket of poverty currently eligible for assistance under the Urban Development Action Grant (UDAG) program. Organizations that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress which are used in determining which cities and urban counties are potentially eligible applicants under the Urban Development Action Grant program are advised to consult two notices published by the Department in the **Federal Register** entitled, "Urban Development Action Grant; Revised Minimum Standards for Small Cities" (50 FR 42822, October 22, 1985) and "Urban Development Action Grant; Revised Minimum Standards for Large Cities and Urban Counties" (51 FR 5413, February 13, 1986). These notices identify, among other things (1) the most current minimum standards of physical and economic distress for cities and urban counties and (2) those cities and urban counties that currently meet the minimum standards. In addition, it is possible for an applicant to be eligible on the basis of its neighborhood's being located in a "pocket of poverty." See 24 CFR 570.466. Organizations that need further help in determining their eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). The city or county community development office serving a neighborhood organization should be able to provide the HUD Field Office contact number if assistance is needed. If unable to obtain a local contact, the HUD Headquarters contact for both UDAG and Neighborhood Development Demonstration programmatic information is Mrs. Joyce Walther, telephone number (202) 755–5662. (This is not a toll-free number.)

(ii) Organizations in an area that is eligible for funding under the UDAG program that wish to apply must send a request in writing, with two self-addressed labels, for a "Request for Grant Application" (RFGA) package from Mr. Melvin Gunn in the HUD Office of Procurement and Contracts, as identified under "**FOR FURTHER INFORMATION CONTACT**". The RFGA contains the forms and other information regarding the administration of the demonstration, including relevant provisions from OMB Circulars A–110 and A–122. (This Notice of Fund Availability summarizes major provisions of the RFGA.)

(iii) An original and three copies of an application must be submitted to the address stated under "**FOR FURTHER INFORMATION CONTACT**" earlier in this notice to initiate the application review process. HUD will accept only one application per neighborhood organization.

(2) Each application must contain the following, as required by the Request for Grant Application:

(i) A transmittal letter, a table of contents referenced to numbered pages, and Standard Form SF–424;

(ii) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(iii) A completed fact sheet that lists neighborhood and organizational characteristics contained elsewhere in the application narrative;

(iv) Evidence that the applicant meets eligibility and other criteria, including the following:

—A legible map, with street names, from the city community development or planning office delineating the applicant's neighborhood. Census tract, block or enumeration district references and zip code references

must also be delineated on the map or on other maps submitted;
—A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;
—The size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by its ethnic composition.
—A list of the names of the neighborhood organization's governing body members and their addresses (with zip codes), noting those who reside, and (separately) those who conduct business, in the neighborhood.
—A statement of the percentage of the members of the neighborhood organization who are neighborhood residents, the percentage of neighborhood residents who conduct business in the neighborhood, and the percentage of neighborhood businesses conducted by nonresidents;
—Identification of the applicant organization's past and current neighborhood projects, including those eligible as neighborhood development activities as defined under paragraph III B;
—A description of the means by which the governing body members account to the residents of the neighborhood, including the method and frequency of selection of members of the governing body, the consultation process, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (*i.e.,* a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);
—Evidence of the applicant's sound financial management, determined from its financial statements or audits;
—A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's housing and community development plans. (In lieu of this certification, evidence may be presented that the local government did not respond within 30 days of the organization's request for such a letter); and
—A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(v) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(vi) A project management plan, including a schedule of tasks for both fund raising and project implementation; and

(vii) A project budget and budget narrative.

**V. Selection Criteria for Award of Funds**

Applications will be evaluated on the basis of the Factors for Award outlined below:

*A. Neighborhood/Organizational Qualifications*

(1) The degree of economic distress within the neighborhood;

(2) The extent of neighborhood participation in the proposed activities, as indicated by the proportion of the households and businesses in the neighborhood involved that are members of the eligible neighborhood development organization;

(3) The record of demonstrated measurable achievements in one or more of the activities specified under III B, including benefits to low- and moderate-income residents, plus evidence of promoting fair housing activities, if the applicant has previously sponsored projects involving housing; and

(4) The extent to which the governing body of the organization reflects the demographics of the neighborhood.

*B. Project Qualifications*

(1) The extent of monetary contributions available that are to be matched with Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. (HUD will waive the scoring under this provision and assign full points in the case of an application submitted by a small eligible organization, an application involving activities in a very low income neighborhood, or an application that is especially meritorious);

(2) The extent to which a strategy has been developed for achieving greater long term private sector support;

(3) The extent to which the proposed activities will benefit persons of low and moderate income, including promotion of equal employment and fair housing objectives. If emphasis is to be placed on economic development, low and moderate income relationships should be described; and

(4) The quality of the management plan submitted for accomplishing one or more of the activities specified under III B, including evidence of sound financial management of organizational activities, the experience and capability of the organization's director and staff and coordination efforts involved, including working relationships with local government when applicable.

**VI. Reporting Requirements**

In addition to complying with relevant provisions of OMB circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the demonstration, such as changes in the governing body membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through Federal funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the demonstration, and a report on successful projects that will be distributed to other neighborhood organizations.

**VII. Environmental Reviews**

For all proposed actions or activities that are not considered a categorical exclusion as set forth in 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the

National Environmental Policy Act (NEPA). Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other appropriate requirements of environmental statutes, executive orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

**Authority:** Sec. 123, Housing and Urban-Rural Recovery Act of of 1983 (Pub. L. 98-181); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C 3535(d)).

Dated: April 2, 1987.

**Jack R. Stokvis,**

*General Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 87-8103 Filed 4-9-87; 8:45 am]

BILLING CODE 4210-29-M

# Reader Aids

Federal Register

Vol. 52, No. 69

Friday, April 10, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613

**5 CFR**

213.....11185
1201.....10875

**Proposed Rules:**
353.....11657

**7 CFR**

210.....11186
272.....11021
273.....11021
301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615
910.....10729, 11615
925.....11616
927.....11616
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1951.....11456

**Proposed Rules:**
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
945.....10893
994.....10984
1046.....11475
1955.....10577
1965.....10577

**8 CFR**

212.....11620
248.....11621

**Proposed Rules:**
245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024

**Proposed Rules:**
92.....10765
317.....10766
319.....10766

**10 CFR**

0.....11026

**Proposed Rules:**
2.....11475
50.....10771

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557

**Proposed Rules:**
325.....11476, 11660
337.....11492
612.....11080

**13 CFR**

311.....11626

**14 CFR**

21.....11627
23.....11627
39.....10558, 10735, 10736, 11630-11639
71.....10559, 11028, 11032-11034
73.....10559, 10560, 11033, 11034
95.....10737
1215.....10880

**Proposed Rules:**
39...10581, 11081, 11663, 11664
71.....10582, 11082

**15 CFR**

370.....11640
371.....10741
376.....11640
399.....11457, 11640

**Proposed Rules:**
7.....11498
280.....11498
368.....10771

**17 CFR**

241.....11458
270.....11187
**Proposed Rules:**
210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**

16.....11035
271.....10741
381.....10366
**Proposed Rules:**
4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
177.....11216
**Proposed Rules:**
111.....10774

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217
**Proposed Rules:**
200.....10384
615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883
177.....11641
184.....10884
193.....10561, 10562
510.....10668, 11040, 11041
520.....10668, 11041
522.....10668
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642
561.....10562
573.....10887
1308.....11042
**Proposed Rules:**
1301.....11091

**23 CFR**

**Proposed Rules:**
650.....11092
655.....11502

**24 CFR**

201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644
**Proposed Rules:**
200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**

120.....11467
**Proposed Rules:**
40.....11503

**26 CFR**

1.....10368, 10741, 10742
5f.....10368
54.....10563
602.....10368, 10563, 10742
**Proposed Rules:**
1.....10774
54.....10583
602.....10583, 10774

**27 CFR**

**Proposed Rules:**
9.....11689

**28 CFR**

0.....11043
545.....10528
**Proposed Rules:**
549.....10531

**29 CFR**

33.....11600
2644.....10368
**Proposed Rules:**
1601.....11503
1625.....10584
1910.....10586

**30 CFR**

914.....10369, 10373
946.....11044
**Proposed Rules:**
723.....11287
724.....11287
733.....10898
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
935.....11692
937.....11287
939.....11287
941.....11287
942.....11287
947.....11287

**31 CFR**

103.....11436

**32 CFR**

154.....11219
701.....11051
706.....10374, 10748, 10749

**33 CFR**

60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646
**Proposed Rules:**
100.....10593, 10594, 10905, 10906, 11693
117.....11695

**34 CFR**

628.....11256
**Proposed Rules:**
206.....11448

**36 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564
**Proposed Rules:**
9.....10866

**37 CFR**

**Proposed Rules:**
307.....11096

**38 CFR**

1.....10888
17.....11259
**Proposed Rules:**
17.....10907

**39 CFR**

10.....10375
111.....10749

**40 CFR**

52.....10751, 11259, 11647
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261
271.....10568, 11263
761.....10688
799.....10377, 10752
**Proposed Rules:**
52.....10596, 11287, 11288, 11696
141.....10972
142.....10972
143.....10972
180.....11292, 11293
261.....11513
300.....11513

**41 CFR**

101-20.....11263
101-28.....11275
201-32.....10379

**42 CFR**

7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649
**Proposed Rules:**
405.....11517

**44 CFR**

64.....10753
**Proposed Rules:**
5.....10385
6.....10385
67.....11702

**45 CFR**

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870
**Proposed Rules:**
503.....11712

**46 CFR**

401.....11468
**Proposed Rules:**
154.....10598
382.....11518
502.....10912

**47 CFR**

1.....11652
2.....10568
22.....10571
73.....10381, 10382, 10568, 10757, 11471-11473, 11653
74.....10568, 11474
78.....10568
**Proposed Rules:**
1.....11519
21.....11519
73.....11519-11521
74.....11519
90.....10389
94.....11519

**48 CFR**

7.....11074
215.....11276
217.....11076
252.....11076, 11276
**Proposed Rules:**
509.....10913

**49 CFR**

219.....10575
1003.....11277
1043.....11277
1084.....11277
1207.....10382
1249.....10382
**Proposed Rules:**
Ch. X.....11295
571.....10775
1312.....10913
1320.....11295

**50 CFR**

17.....10890, 11162, 11277
301.....10759

611.....10761
642.....10762
652.....10763
663.....11473
672.....10761
675.....10761

**Proposed Rules:**
640.....10780
642.....11713
651.....10781

## LIST OF PUBLIC LAWS

**Last List April 8, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**H.R. 1505/Pub. L. 100-20**

Making technical corrections relating to the Federal Employees' Retirement System. (Apr. 7, 1987; 101 Stat. 265; 1 page) Price: $1.00

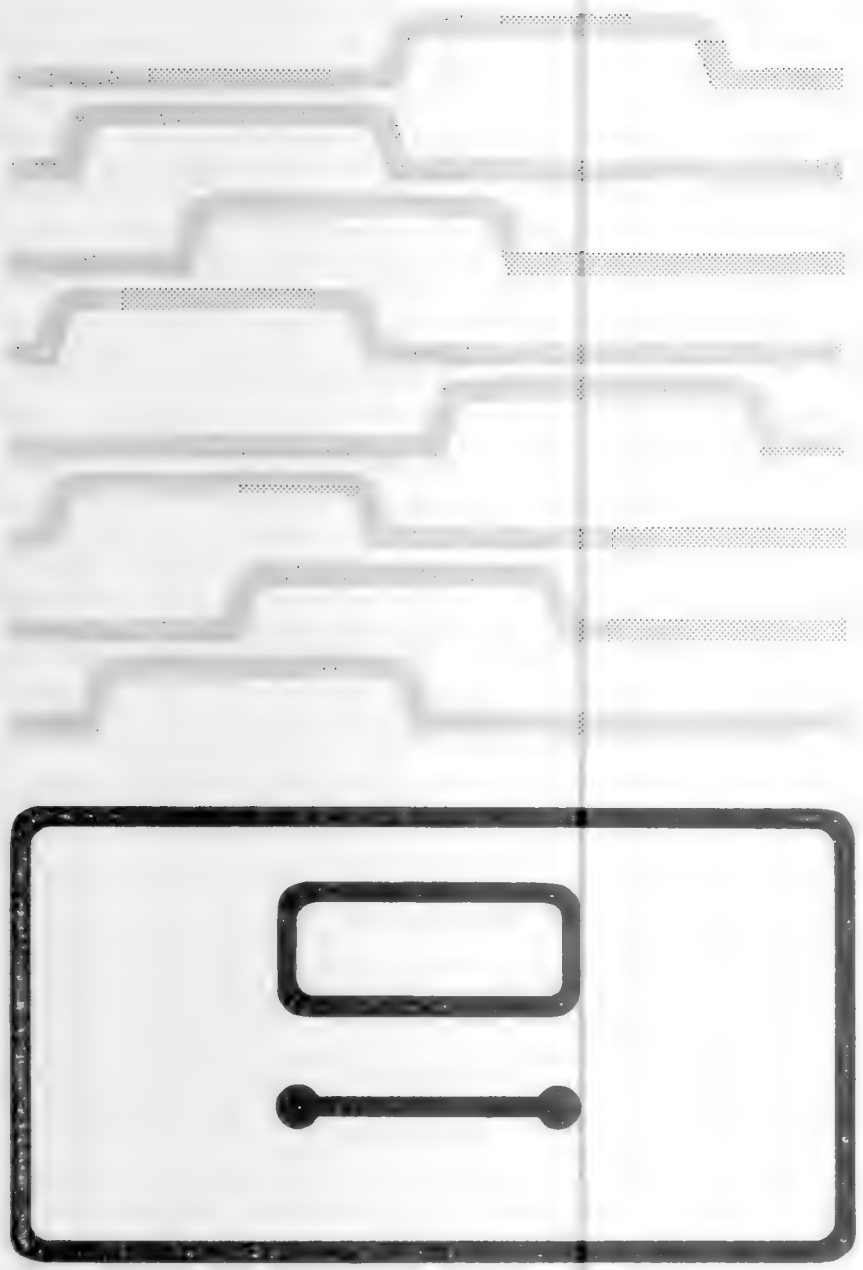

New edition now available . . . .

# Guide to Record Retention Requirements

## in the Code of Federal Regulations (CFR)

Revised as of January 1, 1986

This useful reference tool, compiled from agency regulations, is designed to assist industry, business, the professions, and other sectors of the public with their Federal record-keeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

*Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402–9325.*

**Price $10.00**

---

## Publication Order Form

Order processing code: ***6135**

☐ **YES,** please send me the following indicated publications:

____ copies of the **GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR** at **$10.00 per copy,** S/N 022-003-01123-4

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are good through 2 87. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

**Please Type or Print**

2. _____
(Company or personal name)

_____
(Additional address attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

( )
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐

☐ VISA, CHOICE or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date) *Thank you for your order!*

_____
(Signature) (Rev 8-86)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325.

L
2
S
0
P
3
87
M I

4-13-87
Vol. 52 No. 70

# federal register

Monday
April 13, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

L
2
S S
0
P
3
87
M I

4-13-87
Vol. 52 No. 70
Pages 11807-11980

# Federal Register

Monday
April 13, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 70

Monday, April 13, 1987

**Agency for International Development**
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 11817

**Agriculture Department**
*See also* Commodity Credit Corporation; Food and Nutrition Service; Food Safety and Inspection Service; Forest Service
NOTICES
Meetings:
Equal Opportunity Citizens' Advisory Committee, 11843

**Air Force Department**
NOTICES
Environmental statements; availability, etc.:
Low altitude flight operations, 11844
Meetings:
Scientific Advisory Board, 11845
Privacy Act; systems of records, 11845

**Army Department**
NOTICES
Agency information collection activities under OMB review, 11846
(3 documents)
Privacy Act; systems of records, 11847

**Commerce Department**
*See* International Trade Administration

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Korea; correction, 11844

**Commodity Credit Corporation**
NOTICES
Loan and purchase programs:
Grain premium and discount schedules, 11843

**Conservation and Renewable Energy Office**
NOTICES
Consumer products, energy conservation program:
Central air conditioners, heat pumps; test procedures, 11855

**Defense Department**
*See also* Air Force Department; Army Department; Defense Logistics Agency; Uniformed Services University of the Health Sciences
NOTICES
Meetings:
Science Board task forces, 11844
U.S. Court of Military Appeals Code Committee, 11844

**Defense Logistics Agency**
NOTICES
Procurement:
Commercial activities, performance; program studies (OMB A-76 implementation), 11849

**Education Department**
NOTICES
Meetings:
Bilingual Education National Advisory and Coordinating Council, 11855

**Energy Department**
*See* Conservation and Renewable Energy Office; Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Hazardous waste:
Burning of waste fuel and used oil fuel in boilers and industrial furnances; technical corrections, 11819
Toxic substances:
Significant new uses—
Methyl n-butyl ketone, 11822
NOTICES
Air pollution control; new motor vehicles and engines:
California pollution control standards—
Hearing, 11880
Pesticides; emergency exemption applications:
Dinoseb, 11881
Toxic and hazardous substances control:
Premanufacture notices receipts; correction, 11914

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
RULES
Control zones and transition areas, 11815
PROPOSED RULES
VOR Federal airways, 11828
NOTICES
Exemption petitions; summary and disposition, 11903
Meetings:
National Airspace Review Enhancement Program Advisory Committee, 11905

**Federal Communications Commission**
RULES
Radio stations; table of assignments:
Texas et al., 11825
PROPOSED RULES
Common carrier services, etc.:
Domestic fixed radio services—
Minimum antenna gain, 11838
Radio stations; table of assignments:
Arkansas et al., 11840
California, 11837
Montana, 11842
NOTICES
Agency information collection activities under OMB review, 11882
Radio services, special:
Amateur stations; special call sign system privatization, 11884
Rulemaking proceedings; petitions filed, granted, denied, etc., 11883
*Applications, hearings, determinations, etc.:*
Christina Communications et al., 11883

**Federal Emergency Management Agency**
NOTICES
Agency information collection activities under OMB review, 11884

**Federal Energy Regulatory Commission**
NOTICES
Meetings; Sunshine Act, 11911
Natural gas certificate filings:
Algonquin Gas Transmission Co. et al., 11863
Preliminary permits surrender:
Lewis County Public Utility District No. 1 et al., 11865
*Applications, hearings, determinations, etc.:*
ANR Pipeline Co., 11866
Arkla Energy Resources et al., 11866
Consolidated Gas Transmission Corp., 11872
Granite State Gas Transmission, Inc., 11873
Great Lakes Gas Transmission Co., 11873
Kentucky West Virginia Gas Co., 11874
Mississippi River Transmission Corp., 11874
Panhandle Eastern Pipe Line Co., 11874, 11875 (2 documents)
Southern Natural Gas Co., 11875
Southern Natural Gas Co. et al., 11875
Tejas Power Corp., 11878
Transcontinental Gas Pipe Line Corp., 11878
Trunkline Gas Co., 11878
United Gas Pipe Line Co., 11879
Valley Gas Transmission, Inc., 11879
Western Gas Interstate Co., 11879

**Federal Maritime Commission**
PROPOSED RULES
Shipping in U.S./Peru trade, actions to adjust or meet unfavorable conditions, 11832

**Federal Railroad Administration**
NOTICES
Exemption petitions, etc.:
West Virginia Railroad Maintenance Authority, 11905

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
Peoples Ltd. et al., 11884

**Financial Management Service**
*See* Fiscal Service

**Fiscal Service**
NOTICES
Harbor maintenance tax:
St. Lawrence Seaway toll rebate program, 11909

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Amikacin sulfate injection, 11816
NOTICES
Animal drugs, feeds, and related products:
Monensin for use in quail, 11886
Food additive petitions:
Sumitomo Chemical America, Inc., 11887
Food protection unicode; model, 11885

**Food and Nutrition Service**
RULES
Food stamp program:
Community mental health centers, credit unions, and farm self-employment losses, 11811

**Food Safety and Inspection Service**
PROPOSED RULES
Meat and poultry inspection:
Cheese and cheese substitutes, labeling; pizza standard; withdrawn, 11828

**Forest Service**
NOTICES
Boundary establishment, descriptions, etc.:
Tongass National Forest, AK, 11843

**General Services Administration**
RULES
Acquisition regulations:
Contractor financial difficulty, bankruptcy, etc., 11825

**Health and Human Services Department**
*See* Food and Drug Administration; Public Health Service

**Health Resources and Services Administration**
*See* Public Health Service

**Indian Affairs Bureau**
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
Yokayo Tribe of Indians, 11888

**Interior Department**
*See also* Indian Affairs Bureau; Land Management Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office
NOTICES
Meetings:
National Strategic Materials and Minerals Program Advisory Committee, 11887

**International Development Cooperation Agency**
*See* Agency for International Development

**International Trade Administration**
NOTICES
Antidumping:
Synthetic methionine from Japan; correction, 11914

**Justice Department**
*See* Parole Commission

**Land Management Bureau**
NOTICES
Environmental statements; availability, etc.:
Coal resource; maximum economic recovery and fair market value; Colorado, 11888
Realty actions; sales, leases, etc.:
Nevada, 11889

**National Archives and Records Administration**
NOTICES
Agency records schedules; availability, 11890

**National Highway Traffic Safety Administration**
NOTICES
Fuel economy standards:
Light trucks; petition denied, 11906

**National Park Service**
NOTICES
Environmental statements; availability, etc.:
Santa Monica Mountains National Recreation Area, Decker Canyon, CA, 11890
Meetings:
National Capital Memorial Advisory Commission, 11889

**National Science Foundation**
NOTICES
Agency information collection activities under OMB review, 11891
(2 documents)
Meetings:
Astronomical Sciences Advisory Committee, 11891
Atmospheric Sciences Advisory Committee, 11892
Chemistry Advisory Committee, 11892
Computer and Computation Research Advisory Committee, 11892

**Parole Commission**
NOTICES
Meetings; Sunshine Act, 11912, 11913
(2 documents)

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
Education Day, U.S.A. (Proc. 5628), 11809
ADMINISTRATIVE ORDERS
International Fund for Ireland and North Ireland; U.S. contributions (Presidential Determination No. 87-12 of March 17, 1987), 11807

**Public Health Service**
*See also* Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Centers for Disease Control, 11887

**Reclamation Bureau**
RULES
Projects governed by Federal reclamation laws; acreage limitations and full-cost pricing, etc., 11938

**Research and Special Programs Administration**
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 11906, 11907
(2 documents)

**Securities and Exchange Commission**
NOTICES
Meetings; Sunshine Act, 11913
Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 11892, 11893
(2 documents)
Philadelphia Stock Exchange, Inc., 11894
*Applications, hearings, determinations, etc.:*
Banco de Santander, S.A. de C., 11895
Dean Witter CMO Inc., 11897
Freedom Investment Trust II, 11899
Salomon Brothers Inc., 11900

**Selective Service System**
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 11830

**Small Business Administration**
NOTICES
Disaster loan areas:
Massachusetts, 11902
(2 documents)
Mississippi, 11902

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Permanent regulatory program; definitions; hearing, 11829

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See also* Federal Aviation Administration; Federal Railroad Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration; Urban Mass Transportation Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 11903
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 11903

**Treasury Department**
*See also* Fiscal Service
NOTICES
Agency information collection activities under OMB review, 11909

**Uniformed Services University of the Health Sciences**
NOTICES
Privacy Act; systems of records, 11849

**Urban Mass Transportation Administration**
RULES
Charter service (buses, etc.), 11916

**Veterans Administration**
NOTICES
Meetings:
Career Development Committee, 11910

---

**Separate Parts in This Issue**

**Part II**
Department of Transportation, Urban Mass Transportation Administration, 11916

**Part III**
Department of the Interior, Bureau of Reclamation, 11938

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**

**Proclamations:**
5628 ..... 11809

**Administrative Orders:**

Presidential Determinations:
No. 87-12 of
March 17, 1987 ..... 11807

**7 CFR**
271 ..... 11811
272 ..... 11811
273 ..... 11811
274 ..... 11811
278 ..... 11811

**9 CFR**

**Proposed Rules:**
317 ..... 11828
319 ..... 11828
381 ..... 11828

**14 CFR**
71 ..... 11815

**Proposed Rules:**
71 ..... 11828

**21 CFR**
522 ..... 11816

**22 CFR**
212 ..... 11817

**30 CFR**

**Proposed Rules:**
700 ..... 11829

**32 CFR**

**Proposed Rules:**
1662 ..... 11830

**40 CFR**
261 ..... 11819
266 ..... 11819
721 ..... 11822

**43 CFR**
426 ..... 11938

**46 CFR**

**Proposed Rules:**
586 ..... 11832

**47 CFR**
73 ..... 11825

**Proposed Rules:**
21 ..... 11838
73 (3 documents) ..... 11837, 11840–11842
94 ..... 11838

**48 CFR**
542 ..... 11825

**49 CFR**
604 ..... 11916

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

# Presidential Documents

Title 3—

## The President

Presidential Determination No. 87–12 of March 17, 1987

## Presidential Certification To Permit US Contributions to the International Fund for Ireland and North Ireland

**Memorandum for the Secretary of State**

Pursuant to Section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (P.L. 99–415), I hereby certify that: (1) the Board of the International Fund established by the Anglo-Irish Agreement is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland.

You are requested to report this determination to the Congress immediately.

This determination shall be effective immediately and shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
*Washington, March 17, 1987.*

[FR Doc. 87–8303
Filed 4–9–87; 3:10 pm]
Billing code 3195–01–M

# Presidential Documents

**Proclamation 5628 of April 9, 1987**

## Education Day, U.S.A., 1987

**By the President of the United States of America**

**A Proclamation**

Parents and educators recognize a sacred trust to help children learn about the world in which we live, about all that has gone before, and about all that can be. This trust includes teaching our children about the whole of civilization and humanity's quest for truth, so that they will learn the great lesson that wisdom, love, decency, moral courage, and compassion, as well as technical knowledge and sharpened skills, must be part of everyone's education and everyone's lifework.

American history teaches this lesson well, and American culture, both its weaknesses and its strengths, testifies to its importance. But this lesson needs continual reinforcement. Because education is vital to our children and to the future of all Americans, we do well to call attention to the unflagging efforts of the many people who stress excellence and completeness in education. One of them is the leader of the worldwide Lubavitch movement of Hasidic Judaism, Rabbi Menachem Mendel Schneerson, whose 85th birthday falls on April 10. The Lubavitch movement has fostered teaching of the ethical values that make civilization possible and that enrich life for everyone. We can be most grateful for all who seek to endow our children with the precious heritage that others have built and preserved for us.

In recognition of Rabbi Schneerson's achievements and in celebration of his 85th birthday, the Congress, by House Joint Resolution 200, has designated April 10, 1987, as "Education Day, U.S.A." and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, April 10, 1987, as Education Day, U.S.A., and call upon the people of the United States, and in particular our teachers and other educational leaders, to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-8318
Filed 4-9-87; 4:30 pm]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 271, 272, 273, 274 and 278

[Amdt. No. 288]

## Food Stamp Program; Community Mental Health Centers, Credit Unions and Farm Self-Employment Losses

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action finalizes the interim rule published on February 25, 1986 which implemented three Food Stamp Program provisions contained in the Food Security Act of 1985. The first provision allows Food Stamp Program participation by publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). The second provision allows certain federally insured credit unions to redeem food stamps and the third provision permits farm self-employment losses to be offset against other household income. This action also includes technical amendments to current regulations concerning alcoholic and drug addiction treatment and rehabilitation programs.

**EFFECTIVE DATE:** This final action is effective retroactive to February 25, 1986.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302, or by telephone at (703) 756–3429.

**SUPPLEMENTARY INFORMATION:**

### Classification

*Executive Order 12291*

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The effect of this action on the economy will be less than $100 million a year. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the rule as "not major".

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule Related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–12). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies are affected to the extent that they administer the Program. Publicly operated community mental health centers will be affected because of changes to allow for the residents' participation in the Program. Self-employed farmers whose farm operations show losses will be affected because of changes in policy to determine eligibility and benefits for these farmers. The rule will also affect retail food stores and wholesale food concerns and credit unions which accept and redeem food stamps, respectively. However, while the rule may affect a substantial number of small entities, the effect on the entities will not be significant.

*Paperwork Reduction Act*

The provisions in this regulation concerning mental health centers and offsetting losses for farmers do not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The reporting requirements relating to the provision on the redemption of food stamps have been approved by OMB under OMB number 0584–0085.

*Publication Less Than 30 Days Prior to Effective Date*

Except for the addition of clarifying language, the provisions of the interim rule published February 25, 1986, to be implemented not later than 30 days thereafter, are being adopted without change. Thus, the substantive provisions of this final rule have been in effect since March 27, 1986. For this reason, good cause is found pursuant to 5 U.S.C. 553(d) for implementation of this rule less than 30 days after publication.

### Background

On February 25, 1986 the Department published an interim rule at 51 FR 6511 which implemented the Food Security Act of 1985 provisions on community mental health centers, retail food stores, wholesale food concerns and credit unions. The Department accepted comments on this rulemaking through May 28, 1986. Nine letters were received which addressed the provisions of the interim rule. The major concerns raised by the commenters are discussed below. Comments which are not relevant to the final rulemaking or which address issues not related to the rulemaking process are not discussed. An explanation of the rationale of the rules is contained in the preamble of the interim rule. For a full understanding of the provisions of this rule the reader should refer to the preamble of that rule.

*Community Mental Health Centers*

In accordance with section 3(f) of the Food Stamp Act of 1977 (7 U.S.C. 2012(f)) as amended by section 1501 of the Food Security Act of 1985, the interim rule established that Food Stamp Program participation is allowed for publicly operated community mental health centers which conduct residential

programs for drug addicts and/or alcoholics under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). In addition, the interim rule provided that publicly operated community mental health centers which treat drug addicts or alcoholics now meet the definition of a retail food store and can be authorized to use food stamps at a designated wholesale food concern. Prior to the Food Security Act, on-going participation in the Program was limited to private, nonprofit centers which operate drug addiction or alcoholic rehabilitation programs.

This interim rule also revised the definition of "Drug addiction and alcoholic treatment and rehabilitation program" in § 271.2 to remove references to now repealed laws. This revision is consistent with the change made to the Food Stamp Act definition of these programs by the Food Security Act.

After publication of the interim rule, several questions were raised about the status of private, nonprofit centers because of the addition of the phrase at § 273.11(e)(1), "or is *funded* under part B of title XIX of the Public Health Service Act. . . ." (emphasis added). The Department was informed that the use of the word "funded" concerning community mental health centers in the interim rule could result in removing already participating private, nonprofit centers from eligibility in the Food Stamp Program. Since some of the private, nonprofit centers already participating in the Food Stamp Program do not actually receive funds under part B, a question was raised about their eligibility. It was never the Department's intent to remove or prevent from future participation from the Program private, nonprofit centers that while eligible, do not elect to receive funding under the Public Health Service Act or which are eligible to receive funds but do not because the funds are not available. The Department notified State agencies not to remove any of these private, nonprofit centers from participation in the program pending publication of this final rule. The word "funded" is not used in the Food Stamp Act, as amended by the Food Security Act. Section 3(f) of the Act states that the definition of a drug addiction or alcoholic treatment and rehabilitation program "means any such program conducted by a private nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide treatment that can lead to the rehabilitation of drug addicts or alcoholics". The interim rule in § 271.2 defined drug addiction or alcoholic treatment and rehabilitation program in the same way as the Act and does not mention the word "funded". However, in § 273.11(e)(1) and § 278.1(e) the word funded was used in the interim rule. Consistent with the language of the Act, the Department is removing the word "funded" from § 273.11(e)(1) in this final action. Therefore, the last sentence of the section, after removing everything after "FNS as a retailer", will read "or is under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.)." This final rule also makes corresponding changes in § 278.1(e) by deleting the word "funded" in the first sentence. However, the Department believes that the word "under" should be construed here as meaning that a center should meet the criteria which would make it *eligible* to receive funds, even if it does not actually receive funding under part B of title XIX. Clearly, the legislative language assumes some connection to part B of title XIX and the Department wants to ensure that the centers are actually bona fide treatment centers. Part B of title XIX of the Public Health Service Act requires that to be eligible to receive funds for its operation under the Act community mental health centers must meet Federal requirements and additional State requirements. In this final rule language has been added to the definition of *"Drug addiction or alcoholic treatment and rehabilitation program"* in § 271.2 to the effect that "under part B of title XIX of the Public Health Service Act" is defined as meeting the criteria which would make it eligible to receive funds. It will be necessary for the State agencies to determine whether unfunded treatment centers would have met the criteria to be found eligible for funding under Part B of title XIX before FNS approves them as retailers or before the State certifies residents for food stamps.

Two commenters noted that the interim regulations failed to provide State agencies with information or guidance regarding how FNS field staff can determine if a center is certified to receive funding or is eligible to receive funding under the Public Health Service Act. In the past, treatment centers wishing to be authorized as retailers so that they could redeem food stamps through wholesalers have provided verification of their status so that they could be authorized as retailers. This procedure remains unchanged. Because this procedure remains unchanged the language of the interim rule is adopted without change. If the center does not have verification of their eligibility for funding they can obtain documentation from the State-level office which accepts applications for eligibility of funding under part B of title XIX of the Public Health Service Act.

One commenter wanted the Department to clarify that if any public or private center that is *not* authorized by FNS to redeem food stamps as a retailer provides meals to the President, *and* the resident uses this meal program, then that resident should not be eligible to participate in the Food Stamp Program. The commenter misunderstands the policy governing residents of community mental health centers. The eligibility of these residents is not affected by whether the center has been authorized to redeem food stamps as a retailer. On June 8, 1979, the Department published an interim rule which included an amendment to provide that alcoholic and drug addiction treatment and rehabilitation programs do not have to be authorized as retail food stores in order for their residents to be certified to participate in the Program. These programs are authorized as retailers only if they wish to redeem food stamps through wholesalers. However, through an oversight, § 273.1(e) was not changed in the June 8, 1979 rule and continues to require authorization of these programs as a condition of certification of residents. This rule makes technical amendments to §§ 273.1(e) and 273.11(e) to clarify that it is not necessary for treatment programs to be authorized as retailers in order for their residents to participate in the Program. However, if a treatment program has been authorized by FNS as a retailer, it is not necessary for the State agency to verify that the treatment program qualifies under part B of title XIX of the Public Health Service Act (42 U.S.C. 300X et seq.) prior to certifying its residents. This verification will have been made by FNS in authorizing the treatment program as a retailer. Residents of centers that are not authorized as retail food stores may participate in the Program in accordance with § 273.1(f)(2) as long as the center is eligible for funding under the Public Health Service Act and the residents meet the eligibility criteria otherwise required of food stamp recipients. However, if the center is not authorized as a retail food store, it may not redeem food stamps through wholesalers. The center must use residents' food stamps at other, authorized retail food stores.

*Redemption of Food Stamps by Credit Unions*

Prior to the publication of the interim rule, the Food Stamp Program regulations provided that only those

financial institutions insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) could redeem food stamps for retail food stores and wholesale food concerns participating in the program. Consistent with section 1522 of the Food Security Act of 1985 the interim rule provided that financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership may also redeem food stamps.

One commenter expressed concern that there will be limitations on the redemption of food stamps by credit unions in the State of Wisconsin because many credit unions in Wisconsin are not insured under the Federal Credit Union Act. The Food Security Act of 1985 is very explicit in specifying that credit unions must be insured under the Federal Credit Union Act in order to be allowed to redeem food stamps. Therefore, the Department has no discretion to allow credit unions not insured under the Federal Credit Union Act to redeem food stamps. In any event, the Department has learned that while many credit unions in Wisconsin are not insured under the Federal Credit Union Act, the majority of them are in the process of obtaining such insurance. The interim provision concerning the redemption of food stamps by credit unions is adopted by this final rule without change.

*Offsetting Losses of Self-Employed Farmers*

The interim rule, consistent with section 1509 of the Food Security Act of 1985 required farm self-employment losses to be offset against other countable income in a household. Prior to this such offsetting was not allowed.

Several commenters stated that the interim rule at § 273.11(a)(2)(iii) failed to clearly specify how the farm losses were to be applied in the budgeting process. The current regulations at § 273.11(a)(2)(iii) provide for all self-employment income and expenses to be calculated together. We had hoped to issue form FNS–386, the Application Worksheet soon after the rule was published. This form provides step-by-step instructions on how the computation of benefits is handled. However, it was decided to delay the revisions to the Application for Food Stamps and the Application Worksheet so that changes resulting from several interim and final rulemakings could be included. These rules are: Community Mental Health Centers, Credit Unions and Farm Self-Employment Losses—2/25/86; Eligibility, Certification and Notice Provisions and Technical Amendments—3/28/86; Provisions on Earned Income, Shelter and Dependent Care Deductions, Resource Limits and Sales Tax on Food Stamp Purchases—4/1/86; and Nondiscretionary Provisions of the Food Security Act 1985—5/21/86.

The Application Worksheet has now been revised and sent to all FNS Regional Offices for distribution to State agencies. This worksheet shows how farm losses are to be handled in the budgeting process. Losses from farm self-employment enterprises are offset in two phases. The first phase is an offsetting against non-farm self-employment income. The second phase is offsetting against the total of earned and unearned income. In addition, FNS Policy Memo 86–13 dated April 7, 1986 describes the procedure for offsetting farm losses against other income. In this final rule the Department has added more specific language to § 273.11(a)(2)(iii) to clarify this area as requested by the commenters.

One commenter stated that no basis in law could be found for a new definition of self-employment income (the preamble to the regulations explained that $1,000 is to be used to determine whether a farmer is self-employed). The Department was describing who would be considered a self-employed farmer, not trying to define self-employment income. Another commenter wanted a definition of minimum gross revenue somewhat larger than $1,000. It is true that the $1,000 figure pertaining to a self-employed farmer is not in the Act. However, the Department believes that in order to ensure uniform treatment some criteria is needed to identify a person as a self-employed farmer. The Department wanted to give some direction to State and local welfare agencies in order to implement the farm loss provision. In the absence of any specific legislative direction in this area, the Department tried to determine a precedent for defining a self-employed farmer. The Department used in the interim regulations the definition from the 1982 Census of Agriculture, published by the Bureau of the Census. It was believed that using the $1,000 figure from the Census of Agriculture was preferable to arbitrarily picking a figure. The Department continues to believe this is preferable and consequently the final rule is unchanged in this area.

A few commenters felt that we should narrow the definition of "farming enterprise", as regulations do not specify if the farm loss provision was intended to apply only to farmers involved in the production of agricultural products (e.g., fruit and vegetables) as opposed to other categories of farmers (shrimp farmers, raising worms, growing Christmas trees). The Department does not see a basis for arbitrarily eliminating as farmers those persons not growing fruits and vegetables. The Internal Revenue Code, § 31.3121(g)–1, mentions that the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, ranches, nurseries and orchards, among others. By limiting the application of this provision to only farmers involved in the production of fruits and vegetables, the variety of farming enterprises used by households to produce income would not be accounted for. Consequently, the final rule remains unchanged in this area.

One commentor felt that information was needed on whether land owners meet the definition of a farmer and receive the farm loss offset or whether the individual who rents or leases the land from the land owner and actually does the farming gets the farm loss offset. The Department has established the position in response to inquiries that the individual who qualifies as a farmer is the one who has direct involvement in the agricultural activity, i.e., the individual actively participating in the growing/harvesting of the crop.

Still another commentor said that the regulations should be revised to coincide with the requirement in the preamble that the losses of the self-employed farmer should be prorated in the same manner used to prorate the income. The Department decided that for purposes of clarification we will adopt this suggestion. This final action adds to the regulations, at § 273.11(a)(2)(iii), the requirement that farm offsets must be prorated over the year in a manner comparable to that used for self-employment income.

Finally, clarification was requested on how to average farm income if farm work is done for three months out of a year. Does the eligibility worker average this income over the year or average only during the three months? In accordance with 7 CFR 273.11(a)(1)(iii), self-employment income which is intended to meet the household's needs for only part of the year and is received only in some months does not represent the household's annual support and must be averaged over the period of time the income is intended to cover. There is no need for a further clarification of this in the regulation.

*Implementation*

The implementation section of the interim rule stated that State agencies shall implement the requirements regarding publicly operated community mental health centers, offsetting farm self-employment losses and credit unions not later than thirty days after the publication of the interim rule. Publication occurred on February 25, 1986.

The Department received several comments on the short timeframe for implementing this rule. The commentors felt that an implementation date of 30 days from the date of publication was unrealistic. They further stated that the interim regulations were not received by the State agencies until three weeks prior to implementation and that it is impossible to change computer systems, write and release manual material and train on this material in such a short time period. The Department acknowledges the tight implementation timeframe and is sensitive to State agency administrative problems which can arise. Whenever possible the Department tries to allow at least 60 days for implementation. However, the Department was concerned about economic difficulties being experienced by certain farm families and the effect of delayed implementation on those families. We do distribute advance copies of the rules to our Regional offices to share with their respective State agencies usually on the same day that we receive OMB clearance and/or deliver the rule to the Office of the Federal Register for official publication. This process is intended to speed up dissemination of rulemakings to the State agencies.

Since most of the provisions in the interim rule are being adopted without change the provisions of this final rule have, for the most part, already been implemented. Consistent with the memorandum to all FNS Regional Directors dated June 23, 1986, the removal of the word "funded" from the rule is effective on February 25, 1986 and shall be implemented retroactive to not later than March 27, 1986. Consequently, the interim provision concerning implementation is adopted by this final rule without change, i.e., the provisions on community mental health centers, farm self-employment losses, and the provision allowing federally insured credit unions to redeem food stamps are effective retroactive to February 25, 1986. Credit unions were allowed to begin accepting food stamps for redemption not later than March 27, 1986.

List of Subjects

*7 CFR Part 271*

Administrative practice and procedures, Food Stamps, Grant programs—social programs.

*7 CFR Part 272*

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 273*

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting requirements, Social Security, Students.

*7 CFR Part 274*

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 278*

Administrative practice and procedure, Banks, Banking claims, Food stamps, Groceries—retail groceries, general line—wholesaler, Penalties.

Therefore, 7 CFR Parts 271, 272, 273, 274 and 278 are amended as follows:

1. The authority citation for Parts 271, 272, 273, 274 and 278 is revised to read as follows:

Authority: 7 U.S.C. 2011–2029.

## PART 271—GENERAL INFORMATION AND DEFINITIONS

2. The amendment to § 271.2 to amend the definition of "Insured financial institution", as published at 51 FR 6513, February 25, 1986, is adopted as final without change.

3. The amendment to § 271.2 to amend the definition of "Retail food store", as published at 51 FR 6513, February 25, 1986, is adopted as final without change.

4. The amendment to § 271.2 to revise the definition of "Drug addiction or alcoholic treatment and rehabilitation program" as published at 51 FR 6513, February 25, 1986, is adopted as final and a new sentence is added to the end of the paragraph to read as follows:

**§ 271.2 Definitions.**

* * * * *

*"Drug addiction or alcoholic treatment and rehabilitation program"*

* * * Under part B of title XIX of the Public Health Service Act is defined as meeting the criteria which would make it eligible to receive funds, even if it does not actually receive funding under part B of title XIX.

* * * * *

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

5. The amendment to § 272.1 to add a new paragraph (g)(72), as published at 51 FR 6513, February 25, 1986, is adopted as final and a new paragraph (g)(86) is added to read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(g) *Implementation.* * * *

(86) *Amendment No. 288.* The removal of the word "funded" from the last sentence in § 273.11(e)(1), the amendments to the first and fourth sentences in § 278.1(e), and the revision of paragraph (a)(2)(iii) in § 273.11 are effective February 25, 1986 and shall be implemented not later than March 27, 1986.

* * * * *

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

**§ 273.1 [Amended]**

6. In § 273.1(e), the first sentence is amended by removing the phrase "and the institution has not been authorized to accept coupons" at the end and putting a period after the word "services".

7. The amendment to § 273.1 to amend paragraph (f)(2)(i), as published at 51 FR 6514, February 25, 1986, is adopted as final without change.

**§ 273.10 [Amended]**

8. The amendment to § 273.10, to add a new sentence at the end of paragsaph (e)(1)(i)(A), as published at 51 FR 6514, February 25, 1986, is adopted as final without change.

9. In § 273.11:

a. Paragraph (a)(2)(iii) is revised.

b. Paragraph (e)(1) is revised.

The revisions read as follows:

**§ 273.11 Action on households with special circumstances.**

(a) *Self-employment income.* * * *

(2) *Determining monthly income from self-employment.* * * *

(iii) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less a 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household. If the cost of producing

self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. Losses from farm self-employment enterprises shall be offset in two phases. The first phase is an offsetting against non-farm self-employment income. The second phase is offsetting against the total of earned and unearned income. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000 or more from the farming enterprise. The standard deduction, dependent care, and shelter costs shall be computed in accordance with § 273.9(d) and subtracted to determine the monthly net income of the household. Net losses from the self-employment income of a farmer shall be prorated over the year in accordance with § 273.11(a)(1).

* * * * *

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. Resident addicts and alcoholics shall have their eligibility determined as a one-person household. The State agency shall certify residents of addict/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(2). Prior to certifying any residents for food stamps, the State agency shall verify that the treatment center is authorized by FNS as a retailer if the center wishes to redeem coupons through a wholesaler or, if it is not authorized by FNS as a retailer that it is under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) (as defined in "*Drug addiction or alcoholic treatment and rehabilitation program*" in § 271.2). The guidelines for issuing FNS authorizations to these treatment centers are set forth in § 278.1(e).

* * * * *

## PART 274—ISSUANCE AND USE OF FOOD COUPONS

10. The amendment to § 274.10 to amend paragraph (d)(1), as published at 51 FR 6514, February 25, 1986, is adopted as final without change.

## PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

11. In § 278.1(e) the first sentence is amended by removing the word "certified" and the remainder of the sentence and adding in its place the words "under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) (in accordance with the definition in "*Drug addiction or alcoholic treatment and rehabilitation program*" in § 271.2). The second and third sentences are removed, and the fourth sentence is revised to read as follows:

**§ 278.1 Approval of retail food stores and wholesale food concerns.**

* * * * *

(e) *Treatment programs.* * * * Approval to participate is automatically withdrawn once the treatment and rehabilitation program no longer meets the criteria which would make it eligible for funding under part B of title XIX (in accordance with the definition in "*Drug addiction or alcoholic treatment and rehabilitation program*" in § 271.2).

* * * * *

**§ 278.5 [Amended]**

12. The amendment to § 278.5 to amend paragraph (a)(1), as published at 51 FR 6514, February 25, 1986, is adopted as final without change.

**§ 278.9 [Amended]**

13. The amendment to § 278.9 to add a new paragraph (c), as published at 51 FR 6513, February 25, 1986, is adopted as final without change.

Dated: April 6, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-8040 Filed 4-10-87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 87-AGL-1]**

### Alteration to Control Zone and Transition Area; Evansville, IN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to alter the existing Evansville, Indiana, control zone and transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Evansville Dress Regional Airport.

The intended effect of this action is to eliminate the extensions to the control zone; decrease the transition area radius; and, increase the width of the transition area extension.

**EFFECTIVE DATE:** 0901 UTC, July 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:**

**History**

On Friday, February 13, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Evansville, IN, control zone and transition area (52 FR 4629).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations alters the present control zone and transition area to eliminate the extensions to the control zone; decrease the transition area radius; and, increase the width of the transition area extension. The transition area modification will decrease the present 10-mile radius to an 8.5-mile radius, and will increase the width to each side of the transition area extension from 2 miles to 4.75 miles.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter

that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Evansville, IN [Amended]

Within a 5-mile radius of Evansville Dress Regional Airport (lat. 38°02'17" N., long. 87°31'50" W.).

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Evansville, IN [Amended]

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of Evansville Dress Regional Airport (lat. 38°02'17" N., long. 87°31'50" W.); and within 4.75 miles each side of the Evansville VORTAC 060 radial, extending from the 8.5 mile radius area to the VORTAC.

Issued in Des Plaines, Illinois, on March 31, 1987.

Teddy W. Burcham,

*Manager, Air Traffic Division.*

[FR Doc. 87-8109 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-13-M

---

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

**Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Amikacin Sulfate Injection**

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bristol Laboratories providing for safe and effective use of amikacin sulfate injection in dogs for treating certain urinary tract, skin, and soft tissue infections.

EFFECTIVE DATE: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755, is the sponsor of supplemental NADA 127-892, which provides for intramuscular or subcutaneous injection of a 50-milligram-per-milliliter solution of amikacin sulfate (AMIGLYDE-V®) in dogs for the treatment of genitourinary tract infections (cystitis) caused by susceptible strains of *Escherichia coli* and *Proteus* spp. and skin and soft tissue infections caused by susceptible strains of *Pseudomonas* spp. and *E. coli*. The application is approved and 21 CFR 522.56 is added accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. By adding § 522.56 to read as follows:

§ 522.56 Amikacin sulfate injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 50 milligrams of amikacin (as the sulfate).

(b) *Sponsor.* See 000015 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 5 milligrams per pound of body weight twice daily.

(2) *Indications for use.* The drug is used in dogs for treatment of genitourinary tract infections (cystitis) caused by susceptible strains of *Escherichia coli* and *Proteus* spp. and skin and soft tissue infections caused by susceptible strains of *Pseudomonas* spp. and *E. coli*.

(3) *Limitations.* The drug is administered intramuscularly or subcutaneously. Treat dogs with skin and soft tissue infections for a minimum of 7 days and those with genitourinary infections for 7 to 21 days or until culture is negative and asymptomatic. If no response is observed after 3 days of treatment, therapy should be discontinued and the case reevaluated. Maximum duration of therapy should not exceed 30 days. Systemic aminoglycoside therapy is contraindicated in dogs with seriously impaired renal function. Not for use in breeding dogs as reproductive studies have not been conducted. Use with extreme caution in dogs in which hearing acuity is required for functioning. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 6, 1987.

Gerald B. Guest,

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-8115 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-01-M

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**

**Agency for International Development**

**22 CFR Part 212**

**Implementation of Freedom of Information Act**

**AGENCY:** Agency for International Development, (A.I.D.), DCA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Agency for International development is amending its public information regulations to implement certain provisions of the Freedom of Information Act Reform Act of 1986, Pub. L. 99–570 and OMB Uniform Freedom of Information Act Fee Schedule and Guidelines 52 FR 10012 (March 27, 1987).

**DATES:** Interim rule effective May 25, 1987. Comments must be received on or before May 13, 1987.

**ADDRESS:** Mail comments to Rhea Johnson, XA/PI, Room 4889 NS A.I.D., Washington, DC 20523.

**FOR FURTHER INFORMATION CONTACT:** XA/PI, Mr. Rhea Johnson, telephone (202) 647–4220.

**SUPPLEMENTARY INFORMATION:** Agencies are required to issue regulations to implement the provisions of the Freedom of Information Act of 1986 in conformance with OMB's fee schedule and guidelines by April 25, 1987. In order to meet this deadline it was necessary to issue the amendments as an interim rule. Following the close of the comment period the amendments will be issued as a final rule.

The terms, definitions and fee schedules of this interim rule are fully consistent with OMB's notice and request for public comment and final publication of fee schedule and guidelines. 52 FR 1992 (January 16, 1987) and 52 FR 10012 (March 27, 1987).

This rule also amends Part 212 to reflect the changes to the law enforcement provisions of the Freedom of Information Act.

This action will not have a significant economic impact on a substantial number of small entities; does not constitute a "major rule" under Executive Order No. 12291; and does not constitute a major Federal action significantly affecting the quality of the human environment.

**List of Subject in 22 CFR Part 212**

Public information.

For the reasons set forth in the preamble, 22 CFR Part 212 is amended as follows:

1. The authority citation for Part 212 is revised to read as follows:

**Authority:** Section 621 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381; the Freedom of Information Act, as amended; 5 U.S.C. 552.

2. Section 212.35 is revised to read as follows:

**§ 212.35 Schedule of fees and methods of payment for services rendered.**

(a) *Definitions.* (1) "Direct costs" means those expenditures which the Agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" is distinguished from "review" (see paragraph (a)(4) of this section).

(3) "Duplication" refers to the process of making a copy of a document available to the FOIA requester. Copies can take the form of paper copy, micro film, audio-visual materials among others and will be in a form that is reasonably usable by requesters.

(4) "Review" refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g. doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Agency will determine the use to which a requester will put the documents requested. Where the Agency has reasonably cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Agency may seek additional clarification before assigning the request to a specific category.

(6) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news" who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged.* The following specific fees shall be applicable with respect for services rendered as outlined below:

(1) *Commercial use requesters.* Fees will cover the full direct costs of searching for, reviewing for release, and duplicating the records requested. Search costs are $11.00 an hour. Review costs are $24.00 an hour. Duplicating costs are 20¢ a page. Search costs will be assessed even though no records may be found or, after review, there is no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.* The Agency will provide documents to requesters in this category for the cost of reproduction alone (20¢ a page), excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters eligible for free search must reasonably describe the records sought.

(3) *Requesters who are representatives of the news media.* The Agency will provide documents to requesters in this category for the cost of reproduction alone (20¢ a page) excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters eligible for free search must reasonably describe the records sought.

(4) *All other requesters.* The agency will charge requesters who do not fit into any of the categories in paragraphs (b) (1), (2), and (3) of this section, fees which recover the full direct cost of search for the reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. The hourly rates outlined in paragraph (b)(1) of this section will prevail. Requesters must reasonably describe the records sought. Moreover, requests from subjects for records about themselves filed in the Agency's systems of records will continue to be treated under the fee provision of the Privacy Act of 1975.

(c) *Non Payment of fees.* (1) The Agency will begin assessing interest charges on the 31st day following the day in which the requester is advised of the fee charged. Interest will be at the rate prescribed in section 3717 of Title 31, USCA.

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the billing date), the Agency will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or a pending request from the requester.

(3) When the Agency acts under paragraph (c) (1) or (2) of this section the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e. 10 working days from receipt of initial request and 20 working days from receipt of appeals from initial denial plus permissible extentions of these time limits) will begin only after the Agency has received fee payments described above.

(d) *Advance payments.* Where the Agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00 the Agency will require a requester to make an advance payment of the entire fee before continuing to process the request.

(e) *Waiving or reducing fee.* In accordance with section (4)(A)(ii) of the FOIAct the Agency will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(f) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the FOIAct, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together so that, except for commercial use requesters, the Agency will not begin to assess fees until after providing the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, the agency will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than the cost of processing the fee collected, there will be no charge to the requester.

(g) *Other provisions.*

(1) Charges for Unsuccessful Search. The Agency will assess charges for time spent searching, even if the Agency fails to locate the records or if records located are determined to be exempt from disclosure.

(2) Aggregating Requesters. When the Agency reasonably believes that a requester is attempting or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency will aggregate any such requesters and charge accordingly.

(3) Effect of the Debt Collection Act of 1982 (Pub. L. 97–365). The Agency will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

(4) *Remittances.* (i) Remittances will be in the form of either a personal check or bank draft drawn on a bank in the United States, a money order, or cash.

(ii) Remittances shall be made payable to the order of the U.S. Treasurer and mailed to the Director, Office of Public Inquiries, Bureau for External Affairs, Agency for International Development, Washington, DC 20523. The Agency will assume no responsibility for cash which is lost in the mail.

(iii) A receipt for fees paid will be given only upon request.

(iv) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases an advance deposit may be required. The requester is at any time welcome to confer with knowledgeable Agency personnel in an attempt to formulate the request in a manner which will reduce the fee and meet the needs of the requester. A request will not be deemed to have been received until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

3. Section 212.41 is amended by revising paragraph (g) as follows:

**§ 212.41 Exemptions from the publication and disclosure requirements of subparts B, C, D.**

* * * * * *

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (1) could reasonably be expected to interfere with enforcement proceedings; (2) would deprive a person of a right to a fair trial or an impartial adjudication; (3) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (4) could reasonably be expected to disclose the identity of a

confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (5) would disclose techniques and procedure for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (6) could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

4. Section 212.42 is added to read as follows:

**§ 212.42 Exemption from 5 U.S.C. 552.**

Whenever a request is made which involves access to records described in paragraph (g) of § 212.41 and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

Dated: March 3, 1987.

**Rhea Johnson,**

*Director, Office of Public Affairs, Bureau for External Affairs.*

[FR Doc. 87-8126 Filed 4-10-87; 8:45 am]

BILLING CODE 6116-01-M

---

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 261 and 266

[SW-FRL-3183-3]

### Hazardous Waste Management System; Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces; Technical Corrections

**AGENCY:** Environmental Protection Agency.

**ACTION:** Technical corrections to hazardous waste fuel/used oil fuel rules.

**SUMMARY:** On November 29, 1985, EPA promulgated a final rule regulating hazardous waste fuels and certain used oil fuels. EPA has since identified several provisions that require correction or clarification. This notice makes those changes and modifies the previous package accordingly.

**EFFECTIVE DATE:** April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free, at (800) 424-9346 or (202) 382-3000. For technical information contact Robert Holloway, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

### I. Technical Corrections to Rule

#### *A. Notification*

The rules of hazardous waste fuels indicate that marketers and burners of hazardous waste fuels must submit a one-time notification to EPA describing their waste as fuel activities. See §§ 266.34(b) and 266.35(b). Marketers, transporters, and burners of off-specification used oil fuel likewise are required to file a one-time notification. See §§ 266.43(b)(3) and 266.44(b). This requirement first took effect on January 29, 1986, and also applies to facilities commencing hazardous waste fuel or off-specification used oil fuel management activities after that date. Section 3010(a) of RCRA, as amended by the 1984 amendments, requires producers, marketers and burners of hazardous waste or used oil fuel to notify the Agency "(n)ot later than fifteen months after the date of enactment" of the statutory amendments of February 8, 1986. This statutory notification is a prerequisite to interim status. H. Rep. No. 198 at 41. The Administrator may waive the statutory notification requirement for certain types of facilities. RCRA section 3010(a).

There is considerable confusion in the regulations as to whether the notification requirement in the rules implements the section 3010(a) requirement (and hence is a prerequisite to interim status), or whether it implements general information-gathering authorities (e.g., section 3007(a)). In addition, neither the statute nor the regulation clearly indicate which facilities are subject to the section 3010(a) notification requirement. The statutory requirement could apply to facilities in existence on November 8, 1984, or to those in existence on the date when notification is due, February 8, 1986. In today's notice, EPA clarifies both of these issues.

With respect to the issue of which facilities were subject to the section 3010 notification requirement, neither the statutory language nor its legislative history provides these alternatives, and EPA did not address the issue in the November 29, 1985, rules. Indeed, the issue may have been further confused by the addition of a regulatory notification requirement which took effect on January 29, 1986, and continued thereafter for facilities commencing activities after that date.

To avoid further confusion, EPA is taking the following positions. First, the notification requirements in the regulation are in addition to, not in replacement of, the statutory 3010 notification requirements. Second, because of the lapsed time since the publication of the rule and the date of statutory notification and because EPA believes a facility could reasonably have chosen either interpretation, EPA believes that a facility will have failed to meet the section 3010(a) requirement only if it was in existence on *both* November 8, 1984, and February 8, 1986, and did not notify by February 8, 1986. (In this regard, facilities notifying on January 29, 1986, who were in existence on November 8, 1984, would be deemed to satisfy this requirement.)

The most important clarifying change we are making today is to indicate that the notification requirement in the regulations does not implement section 3010(a), and so is *unrelated* to eligibility for interim status. This is shown by the commencement of the regulatory requirement on January 29, 1986, for facilities in existence on November 29, 1985 (rather than any of the possible statutory dates), and by the fact that the regulatory notification applies to facilities commencing waste fuel activities after February 8, 1986.

However, section 3010(a) notification, where required, is still a prerequisite for interim status. Thus, facilities in existence on November 8, 1984, and February 8, 1986, must have provided a 3010(a) notice by February 8, 1986, in order to qualify for interim status. (Conversely, facilities not in existence on both of these dates are not required to notify as a prerequisite to obtaining interim status.)

Since §§ 266.31, 266.34, and 266.35 indicate erroneously that the notification requirement applies "under section 3010", we are striking this reference. Thus, the notification continues to be required under the regulations but is not a prerequisite for interim status. (Notification may continue to be provided on EPA Form 8700-12. We note, however, that this form refers to section 3010(a). It should be understood that this reference does not apply in all cases, and that the notification is in reality required

pursuant to other RCRA information-gathering authorities.)

*B. Regulation of Hazardous Waste Fuel Blending Tanks*

Another feature of the November 29 rules that could be better articulated involves regulation of tanks used to blend hazardous waste fuels. These tanks are found most often at hazardous waste fuel marketers' facilities, where hazardous wastes are blended with oil and other materials to produce hazardous waste fuels. Tanks can also be used to settle out impurities such as bulk solids and water in the course of hazardous waste fuel production.

Several persons have questioned whether these tanks are considered to be exempt recycling units. We believe a fair reading of the rules reflects the Agency's intent that these tanks be regulated, not exempt.

The current rules require marketers and burners to comply with all "applicable" storage standards, and thus do not address specifically the case of hazardous waste fuel blending tanks. See §§ 266.34(c), 266.35(c). The preamble likewise does not speak directly to the issue of fuel blending tanks. The preamble does, however, articulate a strong policy to regulate hazardous waste fuels cradle to grave, to regulate hazardous waste fuel marketers strictly, and to remove certain existing regulatory anomalies that had resulted in gaps in regulatory coverage. Thus, EPA stated that

> *all* storage of *all* hazardous waste fuels is subject to regulation. . . . The Agency is today regulating the storage (and transportation) of any hazardous waste used to produce a fuel and of any hazardous waste fuel so produced. . . . As proposed, today's rules subject hazardous waste fuels to storage (and other) controls. This includes storage by the initial marketers (e.g., processors, blenders), storage by subsequent marketers (e.g., distributors); and storage by burners. 50 FR at 49198 (emphasis original).

In the same discussion, the Agency emphasized that it was eliminating existing regulatory exemptions for non-sludge wastes which are hazardous solely because they exhibit a characteristic of hazardous waste. *Id.* The Agency also eliminated an exemption for blended hazardous waste fuels produced by a person who neither generated nor burned the fuel. *Id.* at 49168/1. The Agency took these steps because the exemptions were without environmental basis, and interfered with the announced goals of controlling hazardous waste fuels cradle to grave. Such exemptions also interfered with another stated Agency goal of strictly controlling hazardous waste fuel marketers' activities, and making certain that storage of both marketers' incoming hazardous waste and outgoing hazardous waste fuels is fully regulated. *Id.* at 49199.

Given that a chief, articulated purpose of the November 29 rules was to control storage of hazardous wastes used to produce fuels, to further control storage of the hazardous waste fuels once produced, and that the Agency was at pains to remove anomalous exemptions relating to storage from the rules, the Agency believes it clear that storage controls apply to hazardous waste fuel blending tanks. It simply makes no sense to enact a cradle to grave regulatory system but to leave a gap for the blending operation. The Agency notes further that where it wished an activity relating to hazardous waste fuel management to remain exempt, it provided a specific regulatory exemption, as for the act of burning. There is no explicit exemption for blending tank storage. We consequently are clarifying in today's notice that the reference to "applicable" storage standards in the hazardous waste rules subjects hazardous waste fuel blending tanks (along with all other hazardous waste fuel storage devices) to storage regulations.

*C. Exemption of Coke and Coal Tar Produced From Coal Tar Decanter Sludge by the Iron and Steel Industry*

It has come to the Agency's attention that certain iron and steel facilities may be combining various hazardous wastes with their coke and coal tar and claiming that the resulting fuel is exempt from regulation. This practice is not intended to result in an exempt fuel except when EPA Hazardous Waste No. K087 is involved. In response to industry comment, EPA exempted from regulation coke and coal tar produced from iron and steel industry coal tar decanter sludge (Hazardous Waste K087) on the grounds that coke and coal tar so produced contain the same concentrations of hazardous constituents as coke and coal tar produced without the hazardous waste sludge. 50 FR at 49170–171. The Agency was absolutely explicit that coke and coal tar produced from Hazardous Waste K087 were the only waste fuels being exempted. *Id.* Likewise, the comments on this issue, from the American Iron and Steel Institute and from Koppers, referred only to coke and coal tar produced from Hazardous Waste K087.

EPA mistakenly codified this exemption as applying to iron and steel industry coke and coal tar produced from *any* iron and steel industry hazardous waste, rather than just from waste K087. This obviously was neither the Agency's intent, nor commenters', since all discussion on this issue has involved exclusively use of K087 in the coking and coal tar processes. We consequently are correcting the language of the exemption to indicate that it applies only to coke and coal tar produced from coal tar decanter sludge (EPA Hazardous Waste K087).

*D. Notification by Burners of Used Oil Meeting the Fuel Specification*

EPA indicated in the preamble to the final regulations that "burners who first claim that used oil fuel meets the specifications" must notify EPA or an authorized state of their used oil fuel management activity. 50 FR at 49195/3. The Agency neglected, however, to include this requirement in the used oil fuel burner regulations (although the parallel notification requirement for marketers who first claim that used oil fuel meets the specification is included in the rules for used oil fuel marketers. See § 266.43(a)(2)).

The Agency also indicated, however, that notification requirements ordinarily do not apply to burners of specification used oil fuel. 50 FR 49195, 49196. This language only apparently conflicts with the preamble language cited above. EPA intended that burners who generate and burn their own specification oil are not required to notify. In contrast, burners who receive off-specification oil from a marketer and blend it themselves must notify, since they are otherwise prohibited from receiving shipments of off-specification used oil from marketers. See § 266.43(b)(5)(A). Accordingly, we are also clarifying in today's rule that burners who generate and burn their own specification used oil fuel—the only burners not affected by the requirement in § 266.43(b)(5)(A)—are not required to notify.

In light of the Agency's clear intent and inadvertent omission, we feel justified in conforming the rule for burners to reflect the preamble statement and parallel regulations. Thus, used oil fuel burners who are the first person to claim that used oil fuel meets the specification—but do not themselves generate such oil—must file a one-time notification of their activities with the Agency. As a practical matter, we expect this requirement to affect only burners engaged in blending activities.

*E. Change to § 261.3(c)*

The final rules included a conforming change to § 261.3(c)(2)(ii)(B) referring to materials exempted under

"§ 261.3(a)(3)(iv), (vi), (vii), or (viii)". This reference should be to the wastes exempted by § 261.6(a)(3)(v)–(ix). We are correcting this erroneous reference in today's notice.

*F Definition of Marketer*

Marketers of hazardous waste fuels and off-specification used oil fuels are subject to a number of regulatory requirements including notification, invoice (for used oil), certification, manifest (for hazardous waste), and storage standards for hazardous waste. A question has been raised whether processors and blenders who send used oil to brokers or distributors rather than to ultimate burners are marketers of used oil fuels.

These types of processors and blenders are marketers under the rules. The rules for hazardous waste fuel marketers indicate explicitly that "persons who receive hazardous waste from generators and produce, process or blend hazardous waste from these hazardous wastes" are marketers. See § 266.34. Although the parallel provision for used oil fuel marketers does not contain this language (due to inadvertent omission), the Agency was at pains to indicate that intermediate processors and blenders are marketers, notwithstanding lack of sale to burners. Thus, the Agency stated that "EPA is adopting today a system to track hazardous waste fuel and off-specification used oil fuel from the initial marketers (e.g., processors, blenders, distributors, or generators who market to burners) through intermediaries (e.g., transporters, distributors) to the industrial users who burn the fuel for energy recovery." 50 FR at 49196/2. To the same effect, see 50 FR 49198/2 (storage controls apply to "storage by the initial marketer (e.g. processors, blenders), storage by subsequent marketers (e.g. distributors), and storage by burners").

The only persons who are *not* marketers are initial generators and transporters who do not not sell directly to burners, and subsequent transporters and brokers who do not take ownership of the oil. Section 266.43(a)(1) and 50 FR 49195/1. An example is an industrial facility that generates used oil in the course of its operations. This type of initial generator does not know that its oil could be a fuel. Processors and blenders, on the other hand, are in the used oil business and know that fuel use is the only reasonable disposition of the used oil they process. Thus, virtually by definition, processors and blenders produce a used oil or fuel. We note that Congress took this view in the 1984 RCRA amendments, stating that hazardous waste fuel requirements applied to both "blenders and distributors". H. Rep. No. 198 at 40. Likewise, in discussing used oil, Congress provided an example of a used oil processor removing contaminants from used oil and selling the processed oil to a retail dealer as an entity to be regulated as a used oil fuel facility. *Id.* at 69. (Should any blenders or processors deal exclusively with the handful of rerefiners in the country, or if they are processing used oil exclusively for road oiling (an illegal activity in many jurisdictions) they could conceivably argue that they are not marketing used oil fuel. These are very unlikely scenarios, and the Agency knows of no other circumstances when a processor or blender would be dealing with intermediaries and not be producing a used oil fuel.)

In light of the Agency's explicit statements, Congressional statements in legislative history, and the fact that any reading eliminating processors and blenders from the existing rules would result in the very type of unintended loophole the rules and statute were intended to prevent, we think the only sensible reading of the current rules is that initial blenders and processors of used oil (except those who generate the waste itself and send it to a person who does not burn it) are marketers. We have added one clarifying sentence to the current rules to make this point more explicit, and incorporated the parallel language from the definition of marketer for hazardous waste fuel.

*G. Typographical Errors*

Today's notice also corrects several miscellaneous typographical errors and omissions in the rule.

**II. Regulatory Impact**

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Since this notice makes technical corrections and does not change the previously approved final rule, this rule is not a major rule, and, therefore no Regulatory Impact Analysis is required.

**List of Subjects in 40 CFR Parts 261 and [illegible]**

Hazardous waste, Recycling.

**J. W. McGraw,**

*Acting Assistant Administrator for Solid Waste and Emergency Response.*

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

1. The authority citation for Part 261 continues to read as follows:

**Authority:** Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. Section 261.3 is amended by revising paragraph (c)(2)(ii)(B) to read as follows:

**§ 261.3 Definition of hazardous waste.**

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Waste from burning any of the materials exempted from regulation by § 261.6(a)(3)(v–ix).

* * * * *

2. Section 261.6 is amended by revising paragraph (a)(3)(vii) to read as follows:

**§ 261.6 Requirements for recycable [illegible]**

(a) * * *

(3) * * *

(vii) Coke and coal tar from the iron and steel industry that contains EPA Hazardous Waste No. K087 (Decanter tank tar sludge from coking operations) from the iron and steel production process;

* * * * *

**PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF WASTE MANAGEMENT FACILITIES**

1. The authority citation for Part 266 continues to read as follows:

**Authority:** Sections 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6924, and 6934].

**Subpart D—Hazardous Waste Burned for Energy Recovery**

2. Section 266.31 is amended by revising paragraph (a)(1) to read as follows:

**§ 266.31 Prohibitions.**

(a) * * *

(1) To persons who have notified EPA of their hazardous waste fuel activities and have a U.S. EPA Identification Number; and

* * * * *

3. Section 266.34 is amended by revising paragraphs (e)(1)(i), (ii) and the

BEST COPY AVAILABLE

first sentence of paragraph (b) to read as follows:

**§ 266.34 Standards applicable to marketers of hazardous waste fuel.**

* * * * *

(b) *Notification.* Notification of hazardous waste fuel activites. * * *

* * * * *

(e) * * *

(1) * * *

(i) The burner or marketer has notified EPA and identified his waste-as-fuel activities; and

(ii) If the recipient is a burner, the burner will burn the hazardous waste fuel only in an industrial furnace or boiler identified in § 266.31(b).

* * * * *

4. Section 266.35 is amended by revising the introductory paragraph and paragraphs (c)(3), (d)(1) and the first sentence of paragraph (b) to read as follows:

**§ 266.35 Standards applicable to burners of hazardous waste fuel.**

Owners and operators of industrial furnaces and boilers identified in § 266.31(b) that burn hazardous waste fuel are "burners" and are subject to the following requirements:

(b) *Notification.* Notification of hazardous waste fuel activities. * * *

(c) * * *

(3) For new storage facilities, the applicable provisions of Subparts A through L of Part 264, and Parts 270 and 124 of this chapter;

(d) * * *

(1) He has notified EPA and identified his waste-as-fuel activities; and

* * * * *

## Subpart E—Used Oil Burned for Energy Recovery

5. Section 266.43 is amended by revising paragraph (a) introductory text to read as follows:

**§ 266.43 Standards applicable to marketers of used oil burned for energy recovery.**

(a) Persons who market used oil fuel are termed "marketers". Except as provided below, marketers include generators who market used oil fuel directly to a burner, persons who receive used oil from generators and produce, process, or blend used oil fuel from these used oils (including persons sending blended or processed used oil to brokers or other intermediaries), and persons who distribute but do not process or blend used oil fuel. The following persons are not marketers subject to this subpart:

* * * * *

6. Section 266.44 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 266.44 Standards applicable to burners of used oil burned for energy recovery.**

* * * * *

(b) *Notification.* Burners of off-specification used oil fuel, and burners of used oil fuel who are the first to claim that the oil meets the specification provided under § 266.40(e), except burners who burn specification oil that they generate, must notify EPA stating the location and general description of used oil management activities. Burners of used oil fuel that meets the specification who receive such oil from a marketer that previously notified EPA are not required to notify. Owners and operators of used oil-fired space heaters that burn used oil fuel under the provisions of § 266.41(b)(2) are exempt from this notification requirement. * * *

* * * * *

[FR Doc. 87-8033 Filed 4-10-87; 8:45 am]

BILLING CODE 6560-50-M

---

## 40 CFR Part 721

[OPTS-50532A; FRL-3185-3]

## Methyl n-Butyl Ketone; Determination of Significant New Use

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) that requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of methyl n-butyl ketone (MBK) (CAS Number 591-78-6) for any use. EPA believes that this action is necessary because MBK may be hazardous to human health, and any use of MBK and activities associated with such use may result in significant human exposure. The required notice will furnish EPA with the opportunity to evaluate the intended use, and, if necessary, prohibit or limit that activity before it occurs.

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on April 27, 1987. This rule becomes effective on May 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404).

**SUPPLEMENTARY INFORMATION:**

### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a significant new use. This determination is made by rule after consideration of all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they commence the manufacture, import, or processing of the substance for that use.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d) (1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

### II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in the cited **Federal Register** document, and interested persons should refer to that document for further information. These general provisions apply to this SNUR, except as provided

in § 721.385(b)(1). On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions, some of which would apply to this SNUR.

### III. Summary of This Rule

EPA is designating any use of MBK as a significant new use of this chemical substance. This rule requires persons who intend to manufacture, import, or process MBK for any use to notify EPA at least 90 days before such manufacture, import, or processing.

### IV. Discussion of the Chemical Substance

*A. Production and Use Data*

MBK has been used as a solvent for lacquers, and in lacquer and varnish removers. Other uses include as a solvent for oils, fats, and waxes.

MBK can be produced commercially by the catalyzed reaction of acetic acid with ethylene under pressure, or from 1-hexene catalyzed by 1,4-benzoquinone. The TSCA Chemical Substances Inventory listed 1977 U.S. manufacture or import of between 1,000,000 and 10,000,000 pounds. Evidence developed during the mid-1970s of the neurotoxicity of MBK has led to voluntary industry control and reduction of use since then. The only MBK manufacturer in the U.S. discontinued commercial production in 1979, and in 1980 and 1981 sold all remaining stockpiles. This company has indicated that it does not plan to resume manufacture of MBK. No importers of MBK were identified. It is not likely that MBK has been processed or used subsequent to 1982.

EPA did not receive any comments in response to the proposed SNUR (July 7, 1986, 51 FR 24551) that would indicate that manufacture, import, or processing of MBK for commercial purposes subject to this rule has resumed. The only comment received by the Agency concerned the distribution of small quantities for research and development (See Unit IX).

*B. Human Health Effects*

EPA has extensive data on the human health effects of MBK. Peripheral neuropathy resulting from MBK exposure has been observed in humans. These observations have been supported by similar results in toxicological testing on several species of laboratory animals.

The toxic effects of human exposure to MBK were first noted in 1973, when 86 out of 1,161 workers in a treated fabrics plant in Ohio developed peripheral neuropathy. The neurological pattern of the disorders was distal sensory and motor disorder with minimal reflex loss. Symptoms were similar to neurotoxic effects induced by n-hexane. Subsequent studies from other industries where humans were occupationally exposed to MBK have reported identical symptoms. These neurotoxic effects have been reproduced in several studies on laboratory animals.

It is generally believed that MBK is metabolized readily to 2,5-hexanedione, which is the chemical substance eliciting the toxic effect. 2,5-Hexanedione is believed to react irreversibly with amine side chains on neurofilaments. This may then lead to axonal degeneration of the distal parts of vulnerable neuronal processes, accompanied by axonal swelling and myelin breakdown. At low doses, peripheral nervous system axons are selectively affected; larger doses are more likely to cause damage to central nervous system fibers in the spinal pathway. This substance may produce some degree of permanent nerve damage in some affected individuals.

Other toxic effects observed to have been caused by exposure to MBK include testicular atrophy in rats, and a moderate irritant effect on the skin, eyes, and mucous membranes of humans and laboratory animals.

*C. Past and Current Exposure Data*

During the early to mid-1970s there was considerable opportunity for human exposure to MBK. In 1981, the National Institute for Occupational Safety and Health (NIOSH) estimated that more than 190,000 persons per year were potentially occupationally exposed to MBK. This estimate was based upon the results of the National Occupational Hazard Survey, conducted in 1972 to 1974. NIOSH also estimated that MBK was used in 49 major Standard Industrial Classification industry divisions. Because the production of MBK ended in 1979, few, if any, persons should actually be exposed at the present time. EPA does not expect this situation to change unless MBK is manufactured, imported, or processed for use again.

Exposure to MBK has been primarily via inhalation or skin contact. Exposure is mainly to MBK vapor, although skin and eye contact with the liquid is possible. In the past, concentrations have been measured in MBK manufacturing, processing, and use facilities and have ranged from below 0.01 mg/M$^3$ to as high as 746 mg/M$^3$. Average concentration levels were usually reported to be between 40 and 60 mg/M$^3$.

*D. Regulatory Background*

The Occupational Safety and Health Administration (OSHA) permissible exposure limit for MBK is an 8-hour time-weighted average (TWA) of 100 ppm (410 mg/M$^3$). The immediately dangeous to life and health level is 5,000 ppm. The American Conference of Governmental Industrial Hygienists recommends an 8-hour TWA of 5 ppm (20 mg/M$^3$) with no separate short-term exposure limit. The NIOSH-recommended 10-hour TWA is 1 ppm (4.10 mg/M$^3$).

Neuropathies resulting from MBK exposure have been observed in humans from air concentrations reported to be as low as 9 ppm. It is also likely that dermal exposure to liquid MBK would elicit these same neurotoxic effects. For these reasons, the OSHA permissible exposure limit of 100 ppm may not adequately protect against unreasonable risk in the event of resumed manufacture, import, processing, or use.

### V. Objectives and Rationale for This Rule

MBK is a known neurotoxicant and is not currently manufactured, imported, processed, or used for commercial purposes. MBK is not subject to any Federal regulation that would notify the Federal government of activities that might result in adverse exposures to this substance or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occur.

EPA believes that the resumption of any use of MBK and the related manufacture, import, or processing of MBK for such use has a high potential to increase the magnitude and duration of exposure to this substance and to change the type or form of exposure from that which currently exists. Given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to MBK at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to designate any use of MBK as a significant new use of this chemical substance. Persons intending to manufacture, import, or process MBK for use are required to notify EPA 90 days before they begin such manufacuture, import, or processing. Advance notification will allow EPA the opportunity to evaluate the intended activities and to protect against adverse exposures to MBK before they can occur.

Because EPA is concerned about potential exposure during the entire life cycle of MBK, the Agency has modified § 721.5(a)(2) to require any

manufacturer, importer, or processor who intends to distribute MBK in commerce to submit a notice.

## VI. Alternatives

In the proposed SNUR, EPA considered alternative regulatory actions for MBK. In the absence of comments on the regulatory approach discussed in the proposal, EPA has decided to proceed with the promulgation of a SNUR for this substance.

## VII. Applicability of Proposal To Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR rather than after the promulgation of a final rule. If uses begun during the proposal period of the SNUR were considered ongoing as of the date of promulgation, it would be difficult for the Agency to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final.

Thus, persons who began commercial manufacture, import, or processing of MBK for a proposed significant new use designated in this rule between proposal and promulgation of the SNUR must cease that activity before the effective date of this rule. To resume their activities, these persons must comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## VIII. Test Data and Other Information

Although EPA has a considerable amount of test data on the potential adverse effects of MBK to human health, EPA lacks data on the potential adverse effects of MBK to the environment. EPA recognizes that, under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential risks that may be posed by a significant new use of MBK, EPA encourages significant new use notice submitters to conduct tests that would permit a reasoned evaluation of the substance's toxic potential to the environment when utilized for an intended use.

Significant new use notices submitted with such test data would improve EPA's ability to make a reasoned evaluation of the environmental effects of MBK. Test data should be developed in accordance with TSCA Good Laboratory Practices Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the enviromental effects of the substance. EPA encourages persons to consult with the Agency before selecting a testing protocol.

In addition to environmental effects test data, EPA encourages significant new use notice submitters to develop and submit relevant exposure and release data on this substance. Notice submitted with such exposure and release data would improve EPA's ability to make an evaluation of the human exposure and environmental release potential when MBK is utilized for an intended significant new use.

Finally, EPA urges persons to submit information on potential benefits of this substance and information on risks posed by the substance compared to risks posed by potential substitutes.

## IX. Comment on Proposed Rule

During the 60-day comment period following the publication of the proposed rule (51 FR 24551), one comment was received. The commenter stated that though MBK has not been produced in commercially significant quantities for a number of years, it has been continuously available in minute quantities for use as analytical standards and reference materials.

EPA did not consider this use in the SNUR because an exemption for these activities is set forth in section 5(h)(3) of TSCA. That section of TSCA states:

The requirements of subsections (a) and (b) do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—

(A) Scientific experimentation or analysis, or

(B) Chemical research on, or analysis of such substance or another substance, including such research or analysis for development of a product, if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

Thus, persons who manufacture, import, or process a chemical substance in small quantities solely for research and development (R&D) can conduct the R&D concerning a significant new use without submitting a notice. However, the manufacturer or importer of such a substance must comply with the requirements of 40 CFR 720.36 and 720.78(b).

## X. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of MBK. EPA estimates that the cost of filing a significant new use notice will be between $1,400 and $8,000. The Agency's complete economic analysis is available in the public record for this rule (OPTS–50532A).

## XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50532A). The record includes the following basic information considered by the Agency in developing this rule:

1. Economic analysis of the significant new use rule for MBK.
2. A chemical hazard information profile for MBK.
3. Comment received on the proposed significant new use rule.

A public version of this record is available in the OTS Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. NE–G008, 401 M St., SW., Washington, DC.

## XII. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. Even if EPA received 50 significant new use notices, the direct cost of the rule would be under one million dollars. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that

impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review by Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, because EPA has no evidence of recent commercial manufacture, import, processing, or use of MBK, EPA believes that few manufacturers, importers, or processors will submit significant new use notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

*C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned them the OMB control number 2070-0038.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Significant new uses.

Dated: April 3, 1987.

John A. Moore,

*Assistant Administrator for Pesticides and Toxic Substances.*

**PART 721—[AMENDED]**

Therefore, 40 CFR Part 721 is amended as follows:

1. The authority citation for Part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2004 and 2607.

2. By adding a new § 721.385 to read as follows:

**§ 721.385 Methyl n-butyl ketone.**

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance methyl n-butyl ketone, CAS Number 591-78-6, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use.

(b) *Specific Requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070-0038)

[FR Doc. 87-8160 Filed 4-10-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 86-208; RM-5115, 5197, 5212, 5394]**

## Radio Broadcasting Services; Windcrest and Fentress, TX et al.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 251C1 for Channel 252A at Austin, Texas and modifies the license of Station KHFI-FM to specify operation on the new frequency, at the request of Capitol Cities Broadcasting Corporation. A restricted site of approximately 4.5 kilometers (2.8 miles) southwest of the community is required. Concurrence by the Mexican government has been obtained. This action further dismisses the proposals to allot Channel 251A to either New Braunfels (RM-5394) or Windcrest (RM-5115), Texas at the request of the petitioners, Donald L. Freed and National Enterprises, Inc., respectively. In addition the petition of Fentress FM Project (RM-5212), proposing the allotment of Channel 251A to Fentress, Texas is dismissed for failure to demonstrate community status. With this action, this proceeding is terminated.

**EFFECTIVE DATES:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-208, adopted February 10, 1987, and released April 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 252A to 251C1 for Austin.

Mark N. Lipp,

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-8165 Filed 4-10-87; 8:45 am]

BILLING CODE 6712-01-M

## GENERAL SERVICES ADMINISTRATION

**48 CFR Part 542**

**[APD 2800.12 CHGE 42]**

## General Services Administration Acquisition Regulation; Bankruptcy, Insolvency or Dissolution of Business

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to add Subpart 542.70 to provide guidance to contracting officers on dealing with situations where a contractor is experiencing financial difficulty, has filed for bankruptcy, or is dissolving its business. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Spagnola, Jr., Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Room 4031, Washington, DC 20405, (202) 523-4768.

**SUPPLEMENTARY INFORMATION:**

Background

This rule was published in the Federal Register for public comment on September 11, 1986 (51 FR 32340). The Office of Federal Procurement Policy

responded by indicating that they had no objection to the substance of the coverage, but recommended the coverage be considered for inclusion in the Federal Acquisition Regulation (FAR). A copy of this rule is being forwarded to the Chairman of the Civilian Agency Acquisition Council with a suggestion that it be considered for inclusion in the FAR. No other public comments were received. Comments received from various GSA activities were considered and adopted when appropriate.

**Impact**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule simply elaborates on existing regulations to provide additional guidance to GSA contracting officers on handling situations where a contractor is experiencing financial difficulty, has filed for bankruptcy, or is dissolving its business. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**List of Subjects in 48 CFR Part 542**

Government procurement.

1. The authority citation for 48 CFR Part 542 continues to read as follows:

**Authority: 40 U.S.C. 486(c).**

2. The table of contents for Part 542 is amended by adding Subpart 542.70 and related sections to read as follows:

**PART 542—CONTRACT ADMINISTRATION**

**Subpart 542.70 Bankruptcy, Insolvency or Dissolution of a Business**

Sec.

542.7000 Scope of subpart.
542.7001 General.
542.7002 Procedures.
542.7002–1 Contractor experiencing financial difficulty.
542.7002–2 Contractor that has filed for bankruptcy.
542.7002–3 Contractor dissolving business.

3. Subpart 542.70 is added to read as follows:

**Subpart 542.70 Bankruptcy, Insolvency or Dissolution of a Business**

**542.7000 Scope of subpart.**

This subpart prescribes the procedures to be followed when a contractor is found to be in financial difficulty or has filed for bankruptcy.

**542.7001 General.**

Prompt action is vital in the case of a contractor who has been determined insolvent or who has filed under any of the applicable laws relating to bankruptcy, insolvency, and dissolution of businesses (11 U.S.C. 1 et seq.) to assure that the Government's rights are protected in any formal proceedings. Terminated contracts as well as current contracts with the contractor must be considered in any action contemplated. Contracting officers may be advised of such difficulties by the cognizant quality assurance specialist (QAS) via GSA Form 1679, Contract Administration, contracting officer's representatives (COR), the Office of Finance, the Office of Inspector General, or other means, e.g., newspaper items, Dun and Bradstreet, an industry association, prime contractors, subcontractors or vendors, industry competitors, other Federal agencies, or financial institutions. The contracting officer shall verify the accuracy of the information received and when appropriate follow the procedures outlined in section 542.7002.

**542.7002 Procedures.**

**542.7002–1 Contractor experiencing serious financial difficulty.**

When a contractor is experiencing serious financial difficulties the contracting officer shall proceed as follows:

(a) Determine whether the contractor is delivering supplies and/or performing the services within the timeframes specified in the contract and whether the contractor is making satisfactory progress in connection with future deliveries or performance. Obtain, if needed, the recommendations of the appropriate QAS or COR.

(b) If a determination is made that the contractor has failed without excuse to deliver or perform in accordance with the terms of the contract or has failed to make progress so as to endanger performance of the contract, the contracting officer should consider terminating the contract for default in accordance with the procedures outlined at FAR 49.402–3 and the Termination for Default clause in the contract.

(c) If contract termination is not considered necessary, continue to monitor contract(s) by requesting that the QAS or COR visit the contractor's plant or the work site more often than usual to ascertain that progress is being made.

(d) If a small business contractor is involved, notify the regional Small Business Administration (SBA) office.

(e) If the contract has a performance bond and/or payment bond, the bonding company should be notified if the circumstances of the particular case dictate such notification.

**542.7002–2 Contractor that has filed for bankruptcy.**

When a contractor has filed for bankruptcy, the contracting officer shall proceed as follows:

(a) Notify the contracting director, assigned counsel, the Office of Finance and other interested parties.

(b) Determine whether the contractor is performing in accordance with the terms of the contract and/or is making satisfactory progress towards completion of the contract. If a determination is made that the contractor has failed without excuse to deliver or perform in accordance with the terms of the contract or failed to make progress so as to endanger performance of the contract, the contracting officer should consider terminating the contract for default in accordance with the procedures outlined at FAR 49.402–3 and the Termination for Default clause in the contract. Termination must not be effected without concurrence of assigned counsel, who will coordinate such action with the assigned Assistant United States Attorney.

(c) Determine the status of and provide for the protection and disposition of Government-owned property, if applicable.

(d) If special safeguards for Government property controlled by the contractor are needed, the contracting officer should determine the names, addresses, and phone numbers of the local Government officials concerned in the bankruptcy proceedings, e.g., sheriff, marshal, or the Receiver or Trustee in bankruptcy, if assigned.

(e) Transmit immediately all relevant communications to assigned counsel; e.g., notice of bankruptcy, notice of meeting of creditors, plan of arrangement, status of such plan, claims bar date and address of the Bankruptcy Court where proceedings were filed. Assigned counsel shall immediately transmit a copy of the notice of bankruptcy to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(f) Prepare, in consultation with assigned counsel, the preliminary, contingent and, after reprocurement (if any), final proof of claim. Such proofs of claim will be forwarded by the assigned counsel to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(g) Consult with assigned counsel regarding possible setoffs of Government claims from retained and unpaid contractor earnings.

(h) Advise the Inspector General whenever there is reason to believe that the contractor may have fraudulently transferred assets before filing for bankruptcy. Also advise the Inspector General in any case where the contracting officer is aware of an ongoing audit or investigation of the contractor.

**542.7002-3 Contractor dissolving business.**

Upon receipt of information that a contractor intends to dissolve his business or to cease operations for whatever reason, e.g., because of retirement, fire sale of business (without public notice), etc., the contracting officer shall verify the accuracy of the information. If the information is accurate, the contracting officer shall request the QAS or COR verify status of contract(s) and notify other directly interested parties. However, the QAS or COR should not be requested to make special contract administration visits unless all other efforts to obtain the necessary information have failed. If a claim against the contractor is either pending or outstanding, notify assigned counsel and simultaneously obtain information that would aid in finalizing the amount of claim(s).

Dated: April 1, 1987.

Richard H. Hopf, III,

*Acting Associate Administrator for Acquisition Policy.*

[FR Doc. 87-8121 Filed 4-10-87; 8:45 am]

BILLING CODE 6820-61-M

# Proposed Rules

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 317, 319, and 381

[Docket No. 78-733N]

### Labeling for Meat and Poultry Products With Cheese Substitutes; Revised Pizza Standard

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of withdrawal of proposal.

**SUMMARY:** A proposed rule was issued by the Food Safety and Inspection Service (FSIS) to establish certain labeling requirements for meat and poulty products containing cheese substitutes and to amend the Federal meat inspection regulations on the standard for pizza. The Department has determined that the proposal should be withdrawn, and it is terminating the rulemaking in this matter.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashland L. Clemons, Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

**SUPPLEMENTARY INFORMATION:** A proposed rule was issued by FSIS in 1973 (38 FR 16363) to allow the use of uncooked meat in pizza products and to identify a minimum cheese requirement in pizzas with meat or sausage. A final rule was not issued. In 1983, a new proposed rule (48 FR 35654) was issued, withdrawing and superseding the previous proposal, to establish certain labeling requirements for meat and poultry products containing cheese substitutes and to amend the Federal meat inspection regulations on the standard for pizza (9 CFR 319.600) to require a minimum cheese content and to clarify that only cooked meat or meat food products can be used in pizza with meat.

The Department received 5,543 written comments to the proposed rule concerning standards for meat pizzas and the labeling of meat and poultry products containing cheese substitutes. The majority of comments (5,155) was submitted by consumers. Many of the commenters opposed the proposed rule for various reasons.

A comment in opposition to the proposed rule, submitted by the Pillsbury Company of Minneapolis, Minnesota, pointed out that a different labeling scheme for cheese substitutes implied that these products are "inferior" to natural cheese. Research conducted by the company indicates that there is very little difference between cheese substitutes and cheese from a nutritional or organoleptic standpoint. The company further pointed out that cost savings from the use of cheese substitutes benefits manufacturers and consumers, and that as such, there was no need for a change in the existing standard.

Some commenters opposed the requirement that product names must be qualified when a cheese substitute is used in place of or in combination with cheese. These commenters pointed out that the use of cheese substitutes is made known to consumers through the ingredients statement disclosure. Because the use of cheese substitutes is already required on product labeling, these commeters contended that costs incurred by labeling changes were unwarranted.

Some commenters also opposed the proposed rule on the basis that it would prohibit meat pizzas from being formulated entirely with cheese substitutes in place of cheese. For dietary reasons these commenters desired the ability to purchase meat pizzas that contain no dairy products.

The Department believes that those comments in opposition to the proposed rule are persuasive. In addition, approximately 4,000 comments were received relating to the proposed clarification of existing requirements that pizzas may contain only cooked meat. Seventy-five percent of these comments supported the current requirement. The cooked meat requirement is understood by the regulated industry and enforced through prior label approval and inspection mechanisms. As such, the Department does not believe that a regulatory change is warranted to clarify a requirement that is understood by all parties that must apply the requirement.

Upon reconsideration of the issues involved in this proceeding, the Department has concluded that the proposed new requirements are not necessary and the proposed rule should not be promulgated as a final rule. Therefore, the Department is withdrawing the proposal and terminating rulemaking proceedings in this matter.

Done at Washington, DC, on April 7, 1987.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 87-8145 Filed 4-10-87; 8:45 am]
BILLING CODE 3410-DM-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 87-AGL-2]

### Proposed Alteration of VOR Federal Airway Between Zanesville, OH, and Kokomo, IN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the description of Federal Airway V-214 between Zanesville, OH, and Kokomo, IN. The Indianapolis Air Route Traffic Control Center (ARTCC) has been resectorized and V-214 has been identified for deletion so as not to complicate new arrival routes to Cincinnati and Columbus, OH, terminal areas. This action would decrease en route and terminal delays, increase safety, reduce coordination procedures and controller workload.

**DATE:** Comments must be received on or before May 25, 1987.

**ADDRESS:** Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 87-AGL-2, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and

5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An infomal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AGL–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–214 between Kokomo, IN, VORTAC and Appleton, OH, VORTAC. In order to improve traffic flow in that area, FAA plans to resector certain sections in the Indianapolis ARTCC to enhance traffic flow into Cincinnati, OH, and Columbus, OH, terminal areas. This action would decrease en route and terminal delays, increase safety, reduce coordination procedures and controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR Federal Airways.

**The Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V–214 [Amended]**

By deleting the words "Richmond, IN: INT Richmond 097° and Appleton, OH, 236° radials; INT Appleton 236° and substituting the words "Richmond, IN. From INT Appleton, OH, 236°T(238° M)"

Issued in Washington, DC, on April 3, 1987.

**Harold H. Downey,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87–8111 Filed 4–10–87; 8:45 am]

BILLING CODE [illegible]

---

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 700**

**Permanent Regulatory Program; Definitions**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; notice of hearing.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior proposes to amend its rules to add a definition of the terms *OSM* and *OSMRE*. These terms if adopted will be cross-referenced in the Federal programs established by OSMRE for the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. Upon request, OSMRE will hold hearings in these States to receive testimony as to whether unique conditions exist in any of these States relating to the proposed definition.

**DATE:** *Public Hearing:* Upon request, OSMRE will hold a public hearing on the proposal in a Federal program State at a time and on a date to be announced prior to the hearing. OSMRE will accept a request for a public hearing in a Federal program State until 5:00 p.m. Eastern Time on April 30, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

**ADDRESSES:** *Public Hearings:* The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

*Request for public hearings:* Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–5241 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:** On March 31, 1987 (52 FR 10352) OSMRE published a proposed rule which among other things would revise existing 30 CFR 700.5 by adding a definition of the terms *OSM* and *OSMRE* to mean the Office of Surface Mining Reclamation and Enforcement established under Title II of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* The definition would apply throughout 30 CFR Chapter VII. The proposed definition also would apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

Any person interested in participating at a hearing in any of the Federal program States should inform Mr. DeVito (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing by 5:00 p.m. Eastern Time on April 30, 1987. If no one has contacted Mr. DeVito to express an interest in participating in a hearing by that date, no hearing will be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record. Those who wish to comment on the proposed rule but not to attend a public hearing may do so by submitting written comments. The March 31, 1987 notice contains detailed instructions, including addresses, for anyone wishing to submit written comments on the proposed rule.

Dated: April 7, 1987.

**Jed D. Christensen,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–8129 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–05–M

## SELECTIVE SERVICE SYSTEM

## 32 CFR Part 1662

## Rules Regarding Availability of Information; Freedom of Information Reform Act

**AGENCY:** Selective Service System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Selective Service System proposes to amend its Rules Regarding Availability of Information to implement the Freedom of Information Reform Act (FOI Reform Act), Pub. L. 99–570, in accord with OMB Guidelines (52 FR 10017) by revising the schedule of fees applicable to requests for records pursuant to the Freedom of Information Reform Act (FOIA).

**DATE:** Comments on this proposal should be received by April 20, 1987 so that the System can meet the statutory requirement to publish revised FOIA fee regulations in final form no later than April 25, 1987. A short comment period is appropriate in light of the fact that these regulations directly follow, almost verbatim, the OMB final guidance. The affected public received notice through OMB's proposed guidance that agencies would be required to issue implementing regulations based on OMB's final guidance. OMB provided a 30-day public comment period prior to publications of its final guidance.

**ADDRESS:** Interested parties are invited to submit written comments to Selective Service System, ATTN: General Counsel, Washington, D.C. 20435.

**FOR FURTHER INFORMATION CONTACT:** Henry N. Williams, General Counsel, Selective Service System, Washington, DC. 20435, Phone (202) 724–1167.

**SUPPLEMENTARY INFORMATION:** The FOI Reform Act requires each agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the Freedom of Information Act . . . ." This schedule conforms to the guidelines promulgated by the Office of Management and Budget (OMB) on March 27, 1987 (52 FR 10017).

### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.), I have determined that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

### List of Subjects in 32 CFR Part 1662

Freedom of Information Act, Selective Service System.

Dated: April 8, 1987.

**Wilfred L. Ebel,**

*Acting Director.*

The proposed regulations are set forth below.

## PART 1662—FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES

1. The authority citation for Part 1662 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1662.6 is revised to read:

### § 1662.6 Fee schedule; waiver of fees.

(a) Definitions—For the purposes of this section:

(1) "Direct costs" mean those expenditures which the Selective Service System (SSS) actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent lookng for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. "Search" should be distinguished from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (a)(4) below). Searches may be done manually or by computer using existing programming.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise to prepare them for release. Review does not include time spent

resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use request" refers to a request from or on behalf of one who seeks information for the use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category the agency must determine the use to which a requester will put the documents requested. Moreover where there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency may seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in (a)(5) above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(b) Fees to be Charged—Categories of Requesters. There are four categories of FOIA requesters: commercial use requesters; education and non-commercial scientific institutions; representatives of the news media; and other requesters. The FOI Reform Act prescribes specific levels of fees for each of these categories:

(1) Commercial use requesters—A request for documents for commercial use will be assessed charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the record sought. Commercial use requesters are not entitled to two hours of free search time near 100 free pages of reproduction of documents. The cost of searching for an reviewing records will be recovered even if there is utimately no disclosure of records (see (5) below).

(2) Educational and Non-commercial Scientific Institution Requesters—Documents to requesters in this category will be provided for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is bieng made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) Requesters who are Representatives of the News Media—Documents will be provided to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in (a)(8) above, and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(4) All Others Requesters—The agency will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for an reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in the agency's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(c) *Assessment and collection of fees*—(1) *Aggregated requests.* If the Records Manager reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Records Manager may aggregate any such requests accordingly.

(2) *Payment procedures*—(i) *Fee payment.* The Records Manager may assume that a person requesting records pursuant to this Part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (4) below. Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage payment.

(ii) *Advance payment.* (A) The Records Manager may require advance payment of any fee estimated to exceed $250. The Records Manager may also require full payment in advance where a requester has previously failed to pay fees in a timely fashion.

(B) If the Records Manager estimates that the fees will likely exceed $25, he will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Late charges.* The Records Manager may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A.

(4) *Waiver or reduction of fees.* (i) Standards for determining waiver or reduction. The Records Manager shall grant a waiver or reduction of fees chargeable under this section where it is

determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Selective Service System and is not primarily in the commercial interest of the requester. The Records Manager shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relation of the records to the operations or activities of the System;

(B) The information value of the information to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's personal interest, if any, in the disclosure requested; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(ii) Contents of request for waiver. The Records Manager will normally deny a request for a waiver of fees that does not include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use and from the release of the requested documents; and

(D) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(iii) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if not responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Records Manager shall apply the standards set out in paragraph (4) above in determining whether to waive or reduce fees.

**Appendix A to § 1662.6—Freedom of Information Fee Schedule**

Duplication:

| | |
|---|---|
| Photocopy, per standard page | $.10 |
| Paper Copies of microfiche, per frame | $.10 |

Search and review:

Salary of the employee (the basic rate of pay of the employee plus 16 percent of that rate to cover benefits), performing the work of manual search and review.

Computer search and production:

For each request the Records Manager will separately determine the actual direct costs of providing the service, including computer search time, tape or printout production, and operator salary.

Special services:

The Records Manager may agree to provide and set fees to recover the costs of special services not covered by the Freedom of Information Act, such as certifying records or information, packaging and mailing records, and sending records by special methods such as express mail. The Records Manager may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate per-page fees reflecting the cost of operation and maintenance of those machines.

Fee waivers:

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Records Manager will not asses fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time.

The Records Manager will waive in full fees that total less that $1.00 or that are less than the average cost of collecting fees.

The Records Manager will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the System and is not primarily in the commercial interest of the requester.

[FR Doc. 87–8206 Field 4–10–87; 8:45 am]
BILLING CODE 8015–01–M

## FEDERAL MARITIME COMMISSION

**46 CFR Part 586**

**[Docket No. 87–6]**

## Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Peru proposes rules suspending the tariffs of Peruvian-flag carriers in that trade unless certification is received ensuring that these conditions no longer exist. The effect of the rule will be to adjust or meet unfavorable conditions by imposing burdens on Peruvian-flag carriers which approximate those imposed on non-Peruvian-flag carriers by Peruvian laws and regulations.

**DATE:** Comments due on or before May 13, 1987.

**ADDRESS:** Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:**

Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876, as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are set forth at 46 CFR 585.3. Among these are conditions which: (1) Preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national-flag

or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors, 46 CFR 585.3 (a), (b) and (d).

**Background**

The Commission has received a number of complaints from shippers, shippers' associations, freight forwarders and third-flag carriers regarding conditions in the United States/Peru trade ("Trade"). In addition, certain comments filed in connection with a proposed equal access agreement among U.S. and Peruvian-flag carriers (Agreement No. 204–010986)[1] cited certain potential adverse conditions in the Trade. Those commenting contend that actions taken by the Government of Peru have created actual or potential unfavorable conditions in the Trade. Although the Commission has not received a formal petition for rulemaking under Section 19, a number of those commenting request that the Commission, on its own motion, take action under Section 19 to remedy the alleged unfavorable conditions.

These complaints arise out of the enactment, implementation and enforcement by the Government of Peru of Supreme Decree No. 009–86–TC [2] ("Supreme Decree"), which became effective on February 28, 1986, and which reserves for Peruvian-flag carriers 100 percent of all imported and exported ocean freight generated by Peru's foreign trade. The amount of cargo reserved by the Supreme Decree for Peruvian-flag carriers may be reduced as follows: (1) On the basis of strict reciprocity;[3] (2) pursuant to government or commercial agreements [4] among non-Peruvian and Peruvian-flag carriers, preferably including Compania Peruana de Vapores ("CPV"), the Peruvian state shipping line; or (3) when the Peruvian Director General of Maritime Transportation or Peruvian Consuls grant non-Peruvian-flag or non-associate carriers authorization to carry Peruvian export or import cargoes. Authorization for the use of non-Peruvian-flag or non-associate carriers may be granted in the form of a waiver or cargo manifest certification when Peruvian-flag or associate carriers are not available and in position within 12 days [5] following the proposed date of shipment of non-perishable products, or within 4 days in the case of perishable products, or when no Peruvian-flag carrier serves the relevant port.

During March, 1986, following the implementation of the Supreme Decree, the Commission received a number of communications from shippers, shippers' associations, and carriers expressing concern over the inability of shippers to select their preferred carriers and of non-Peruvian-flay carriers to operate freely in the Trade. Shippers alleged that service levels would be inadequate if third-flag carriers were eliminated from the Trade. Further, they alleged that Peruvian-flay carriers' service was unreliable and inadequate. Comments reported that shippers had become reluctant to use non-Peruvian-flag carriers because of penalties that may be incurred for violating the Supreme Decree.

In order to obtain further information regarding conditions in the Trade, the Commission issued a Notice in the **Federal Register** on April 22, 1986 (51 FR 15069) ("April Notice"), requesting interested persons to submit views, arguments or data relating to the impact of the Government of Peru's Supreme Decree, no later than May 18, 1986.[6]

The April Notice indicated that, based on the comments received, the Commission would evaluate conditions in the Trade and determine whether action pursuant to Section 19 was warranted. The April Notice further indicated that the Commission was requesting the Department of State to continue and intensify its efforts to reach a resolution to this matter through diplomatic channels with the Government of Peru.

Comments to the April Notice were received from 17 interested parties. Those commenting included shippers, shippers' associations, Peruvian and non-Peruvian-flag carriers.

Comments filed by shippers, shippers' associations and non-Peruvian carriers generally alleged that: (1) The Government of Peru's waiver system is severely restricting the participation of third-flag carriers in the Trade and has caused at least one carrier to cancel port calls; (2) certain shippers prefer the service of Chilean-flag carriers in the Trade;[7] (3) shippers are experiencing a deterioration of service and a rise in cost associated with this deterioration; (4) U.S.-flag carriers are currently being permitted to operate in the trade even though no commercial agreement between U.S. and Peruvian-flag carriers exists;[8] and (5) negotiations between the Peruvian-flag carriers and Peruvian Government on the one hand, and the non-Peruvian-flag carriers and U.S. and Chilean Governments on the other, have not produced any guarantees from the Peruvians for open access to the Trade.

Joint comments were filed by CPV and Neptuno. They contended that implementation of the Supreme Decree and other Peruvian decrees have not and will not result in conditions unfavorable to shipping in the Trade, and, therefore, Commission action under section 19 is unnecessary. CPV and Neptuno stated that the Supreme Decree merely continues, with certain modifications, Peruvian rules and regulations contained in prior Peruvian decrees or laws. They interpreted the provisions of the Supreme Decree as alllowing the carriers of the bilateral trading partner to carry up to 50 percent of the cargoes in that trade on the basis of reciprocity. Further, they noted that if Peruvian-flag or associate carriers are not available within the required time period, a wavier for the shipment of those import of export cargoes would be granted immediately to the rquesting non-Peruvian-flag or non-associate carrier. CPV and Neptuno gave a number of reasons for the Peruvian cargo reservation decrees, including the necessity for supporting a Peruvian

---

[1] This agreement was filed with the Commission on August 24, 1986, but has not become effective. The Commission requested further information on the agreement. However, to date no response from the parties has been received.

[2] Supreme Decree No. 009–86–TC amended Supreme Decree No. 036–82–TC, which reserves Peruvian import and export cargoes for Peruvian-flag vessels and sets out waiver and cargo manifest certification requirements. While Supreme Decree No. 036–82–TC has been in place since September, 1982, apparently, non-associate and non-Peruvian-flag carriers were allowed to operate freely in the Trade.

[3] *E.g.*, U.S. carriers' access to Peruvian cargoes will be proportional to Peruvian carriers' access to U.S. cargoes.

[4] Non-Peruvian-flag carriers which become parties to such commercial agreements may be granted associate status upon approval by the Peruvian Government. Associate carriers are generally excepted from cargo manifest certification and waiver requirements under Supreme Decree Nos. 009–86–TC and 036–82–TC.

[5] Supreme Decree No. 033–86–TC of June 11, 1986, modified Supreme Decree No. 009–86–TC by reducing the number of days a shipment must wait for a Peruvian or associate carrier from 15 days to 12 days.

[6] On May 15, 1986, the Commission granted a request by certain carriers in the Trade to extend the due date for all comments from May 18 to June 18, 1986.

[7] Prior to the implementation of the Supreme Decree in February, 1986, Chilean-flag carriers transported approximately 35 pecent of the cargoes in the Trade (source: Bureau of Census).

[8] CPV and Naviera Neptuno, S.A. ("Neptuno"), a privately-owned Peruvian-flag carrier, explained in their comments that the Government of Peru had agreed to grant U.S.-flag carriers associate status even though a commercial agreement among U.S. and Peruvian-flag carriers was not yet in effect.

merchant marine and the fact that Chilean-flag carriers had increased their share of general cargo carried in the Trade from 7 percent in 1982, to 33 percent in 1985.

On June 17, 1986, the Department of State transmitted to the Commission a diplomatic note from the Government of Peru. In this note, the Peruvian Government requested a six-month extension of the Commission's deadline for submitting comments in response to the April Notice, and guaranteed that over this period there would be no interruption of services or disruption in the Trade. Before acting on the Government of Peru's request for a six-month extension, the Commission sought clarification from the Peruvian Government, through the Department of State, regarding the status of U.S. and third-flag carrier opeations in the Trade, and the effect on those carriers of the guarantee referred to by the Government of Peru. On August 19, 1986, the Department of State transmitted to the Commission a comunique from the Government of Peru in which it provided certain assurances ("Assurances") regarding the implementation of the Supreme Decree and clarified points made in its diplomatic note of June 17, 1986.

In its communique, the Government of Peru assured that Peruvian regulations allow third-flag carriers to operate in the Trade in accordance with established rules, and that over the six-month period it would not levy and fines on third-flag carriers operating in the Trade for noncompliance with the Supreme Decree. Further, the Government of Peru informed the Commission that the Government of Chile had on August 7, 1986, implemented Resolution No. 2 which excludes Peruvian-flag carriers from operating in certain Chile/third-country trades including the Chile/United States trade.[9]

On August 27, 1986, the Commission issued a Notice in the **Federal Register** (51 FR 30543) ("August Notice"), stating the following:

> By removing the threat of penalties for noncompliance with the waiver and cargo manifest certification requirements, the communique from the Government of Peru is taken by the Commision to mean, in effect, that shippers will be allowed to select the carrier of their choice and all carriers, including U.S. and third-flag, will have free and open access to the U.S./Peru trade. Based on this understanding, the Commision is hereby serving notice that it will defer any action pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, with respect to the implementaion of the February Decree, for a period of six months from the date of publication of this Notice in the **Federal Register** provided the assurances given in the Peruvian communique transmitted to the Commision on August 19, 1986, are observed.

Further, the Commission's August Notice advised that it did not see a need for extending the comment period, as requested by the Government of Peru, but noted that it would expect interested parties to advise the Commision promptly if they believe that conditions in the Trade warrant further Commission action.

Subsequent to the issuance of the August Notice, there were further exchanges of letters between the Commission and the Department of State regarding the ability of shippers to select their preferred carriers and non-Peruvian-flag carriers to operate freely in the Trade, under the Peruvian Assurances. Based on information obtained from the Government of Peru, the Department of State reported to the Commission that the waiver requirement remained in effect, even though the Government of Peru would not impose fines over the six-month period ending February 27, 1987, for use of non-Peruvian-flag carriers without waivers. The Department of State further advised that because shippers are not prepared to incur the risks of shipping without waivers, the Peruvian Assurances have not been widely tested.

During the six-month period from August 27, 1986, through February 27, 1987, the Commission also received communications from shippers, shippers' associations, freight forwarders, non-Peruvian-flag carriers and the Government of Peru.

Many of the shippers and freight forwarders commenting complained that they had been unable to use the frequent and dependable service of third-flag carriers in the Trade because of the Government of Peru's waiver system and exclusion of Chilean-flag carriers from the Trade. They contended that waivers for use of third-flag carriers and, in one instance, for use of a U.S.-flag carrier, have been denied. As a result, these parties stated that they have been forced to use the unreliable and inadequate services of Peruvian-flag carriers, particularly CPV. They noted that, as a result, they had experienced long delays and shutouts caused by insufficient capacity. Cases of increases in costs were reported by several shippers due to their inability to use their preferred carrier. They urged the Commission and Department of State to take whatever actions were necessary to open the Trade to third-flag carriers.

Compania Sud Americana de Vapores ("CSAV"), a Chilean-flag carrier, commented that, even prior to the implementation of Peru's Resolution No. 044–86–TC/AC,[10] shippers had been unable to obtain waivers from Peruvian Consuls in order to employ it. CSAV contended that most shippers and consignees have been unwilling to take the risk of failing to comply with the waiver and cargo manifest certification requirements of Peruvian law.

On February 20, 1987, the Department of State transmitted to the Commission a note from the Government of Peru which included a list of vessel sailing schedules in the Trade. In its note, the Government of Peru stated that it was providing the list to illustrate that, with the exception of Chilean-flag carriers, third-flag carrier participation in the Trade had increased since September, 1986.

After the six-month period ended on February 27, 1987, the Commission received additional communications from shippers' associations, Peruvian-flag carriers, third-flag carriers and a U.S.-flag carrier which, for the most part, reported on developments over that period. Shippers for Competitive Ocean Transport ("SCOT") reiterated its concern over the lack of third-flag service in the Trade and the inadequate service of CPV. SCOT contended that the waiver system places severe administrative burdens on shippers, and causes delays and reductions in customer service. SCOT noted that waivers are seldom granted for use of third-flag carriers. SCOT also mentioned that, in at least one recent case, a letter of credit was used to implement the Government of Peru's cargo reservation policies. SCOT explained that the U.S. shipper received a letter of credit wherein the Peruvian customer had specified that a Peruvian-flag or associate carrier must be used for shipment of the cargo. Further, SCOT stated that Peruvian laws discourage other third-flag carriers from entering the Trade.

CPV, Neptuno and Empresa Naviera Santa, S.A. ("Santa"), three Peruvian-flag carriers, as well as Lykes Brothers Steamship Co., Inc., a U.S.-flag carrier, submitted comments which contended that over the six-month period Peruvian and U.S.-flag service in the Trade has

[9] On September 26, 1986, it was reported by the Department of State that the Government of Chile had implemented Resolution No. 2 because of the Government of Peru's decision to apply the Supreme Decree to Chilean carriers. The Department further explained that on September 15, 1986, the Government of Peru issued Ministerial Resolution No. 044–86–TC/AC, which excludes Chilean-flag vessels from transporting cargo in certain Peru/third-country trades because of the Government of Chile's refusal to lift Resolution No. 2.

[10] *See* n. 9, *supra.*

improved and is now adequate for meeting shipper needs. The Peruvian-flag carriers stated they believe that waivers have been granted liberally during this period, but that due to the upgraded service, few applications have been made.

Great Lakes Transcaribbean Line ("GLTL"), a third-flag carrier operating in the Trade from ports on the Great Lakes to ports in Peru, commented that it had previously advised the Commission that CPV was willing to enter into commercial negotiations regarding GLTL's access to the Trade. GLTL noted, however, that no commercial agreement has so far been reached. GLTL reported that it had served the Trade over the six-month period on the basis that no fines would be imposed for noncompliance with the Supreme Decree. Now that the six-month period hs expired, GLTL contended that the risk of fines has returned. GLTL requested the Commission to take appropriate action to ensure its access to the Trade.

CSAV commented that the six-month deferral period has failed to reopen the Trade to all non-Peruvian-flag carriers and has not permitted shippers to select their preferred carriers. CSAV also stated that there has been a continuous effort by the Government of Chile to resolve the situation between Peru and Chile, but that no progress hs been made.

**Discussion**

On the basis of all the information received to date, the Commission has reason to believe that unfavorable conditions may in fact exist in the foreign oceanborne trade between the United States and Peru. It appears tht the Government of Peru, through its laws and regulations, has imposed burdens on non-Peruvian-flag carriers which are not experienced by Peruvian-flag carriers and has imposed restrictions on the movement of United States' goods to that country through the implementation of its waiver system, cargo manifest certification requirement and, at least in one instance, through its letter of credit requirement. The restricitons imposed by the Government of Peru appear to have had an injurious effect on carriers, shippers and the Trade, generally.

U.S. shippers and receivers are deterred or restricted from using the carrier of their choice by the Supreme Decree. They advise that they have been reluctant to employ non-Peruvian-flag carriers despite the Government of Peru's stated policy that it would not impose fines for noncompliance with the Supreme Decree for the six-month period ending February 27, 1987. The record shows that waivers have been denied for the use of third-flag carriers and, in one instance, for the use of a U.S.-flag carrier.

There may be additional discriminatory effects on U.S. shippers. Peruvian Resolution No. 044–86–TC/AC excludes Chilean-flag carriers from Peru/third-country trades with the exception of the Peru/Europe trade when carrying cargoes covered by the European South Pacific and Magellan Conference. Thus, the practical effect of Peruvian Resolution No. 044–86–TC/AC is to deny U.S. shippers the ability to employ Chilean-flag carriers which, prior to the implementation of the Supreme Decree, where the major third-flag carriers in the Trade.[11] Chilean-flag carriers are said to provide efficient, low-cost service in the Trade. The denial of such service, coupled with the fact that Chilean-fag carriers are currently allowed to operate within the Peru/Europe trade, may effectively create conditions unfavorable to shipping in the U.S. trades by discriminating against U.S. shippers in the U.S. trade with Peru vis-a-vis their competitors shipping cargoes between Europe and Peru. The result of these restrictions on shipping service in the Trade may be to put at risk the Peruvian markets of U.S. shippers, and bring about the loss of these markets to European competitors.

Non-Peruvian-flag or non-associate carriers find themselves in a position where it is unlawful for them to carry cargoes in the Trade without obtaining waivers or cargo manifest certifications. While U.S.-flag carriers are able to operate freely in the Trade, they nevetheless are technically required under Peruvian law to become associate carriers in order to gain free access to the Trade. Peruvian-flag carriers which compete for U.S. export and import cargoes are subjected to none of the impediments imposed on non-Peruvian-flag carriers by Peruvian cargo reservation laws.

The comments and data provided by the Government of Peru and Peruvian-flag carriers did not satisfactorily refute the apparent conditions unfavorable to shipping in the Trade.[12] The Government of Peru and the Peruvian-flag carriers did not dispute the fact that waivers or cargo manifiest certifications are required for cargoes shipped on non-Peruvian-flag or non-associate carriers and are granted only when Peruvian-flag or associate carriers are unavailable within the required time period. Further, while the Government of Peru had previously assured the Department of State that letters of credit would not be used to implement its cargo reservation policies, a recent letter of credit under which a shipment from the U.S. was to be made specified that a Peruvian-flag or associated carrier be used.

Nor do the allegations made regarding adequacy of service dispose of the matter before us. Adequacy of service is not necessarily the primary consideration in Section 19 proceedings.[13] The issue, while important, is not determinative here, given the scope of the Peruvian cargo reservation decrees. Nevertheless, the fact that the Peruvian cargo reservation decrees impose burdens and restrictions on non-Peruvian-flag carrier participation in the Trade and may, as a result, deny shippers their preferred choice of carrier, tends to call into question the adequacy of service in the Trade.

For reasons stated above, the Commission finds it necessary and appropriate to propose action to adjust or meet apparent conditions described above which it finds unfavorable to shipping in the Trade. Therefore, pursuant to Section 19 and 46 CFR Part 585, the Commission will initiate, on its own motion, a proposed rulemaking to address those conditions.

The proposed rule allows Peruvian-flag carriers 25 days from the date of publication of a final rule in which to act to avoid suspension of their tariffs in the Trade. Such carriers may obtain authorized status by filing with the Commission a certificate from the Government of Peru stating unequivocally that no law, regulation or practice precludes any non-Peruvian-flag vessel from competing in the Trade on the same basis as any other vessel. If a Peruvian-flag carrier fails to submit the required certificate within 25 days, its tariffs will be suspended 5 days subsequently. Section 13(b)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(3), subjects a carrier which accepts or handles cargo for carriage

[11] *See* n. 7, *supra*.

[12] The data provided by the Government of Peru in its note of February 20, 1987, is of questionable relevance. For example, it does not indicate the type of carriage (*i.e.*, liner, bulk or tramp) performed by the vessels listed, nor does it indicate the amount of cargo carried by those vessels. Finally, the claimed increase in third-flag carrier access to the Trade does not take into account past substantial participation of Chilean-flag carriers.

[13] *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, No. 82–58, Interim Report on Current Status of Proceedings, 21 S.R.R. 1621, 1626–1627 (February 25, 1983).

under a tariff which has been suspended to a civil penalty of up to $50,000 for each shipment.

Unless implementation of the waiver system and cargo manifest certification requirement in the Trade is suspended, Peruvian-flag carriers could not obtain authorized status. Suspension of fines for violations of the Supreme Decree would not by itself serve to confer authorized status. The very existence of the waiver system and cargo manifest certification requirement appears to deter shippers from using non-Peruvian-flag carriers. Indications are that these requirements, even when made subject to some form of penalty immunity, have a chilling effect on a shipper's selection of the carrier of its choice.

The Commission recognizes that the proposed rule has implications for the situation which has developed between the Governments of Peru and Chile. Because the Peruvian-flag carriers could only obtain authorized status upon their submission to the Commission of a certificate stating that no law, regulation or practice of the Government of Peru will preclude non-Peruvian-flag carriers from competing in the Trade, authorized status could not be granted as long as Chilean-flag carriers were excluded from the Trade. While the situation existing between the Governments of Peru and Chile might best be resolved on a bilateral basis, that situation will not necessarily prevent the Commission from taking whatever ultimate action is deemed necessary and appropriate in the U.S.Peru trade in this proceeding. However, the Commission invites the Governments of Peru and Chile to submit their views regarding this matter.

In order to provide proper notice and a fair opportunity to respond to the proposed action, the Commission is giving all interested parties 30 days from the date of publication of this Notice in the **Federal Register** to file comments and additional factual submissions relating to conditions in the Trade. To the extent possible, all factual assertions should be attested to and accompanied by supporting documentation.

**List of Subjects in 46 CFR Part 586**

Cargo vessels, Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, it is proposed to add a Part 586 to Title 46 of the Code of Federal Regulations to read as follows:

## PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES/PERU TRADE ("THE TRADE")

Sec.

586.1 Conditions unfavorable to shipping in the Trade.
586.2 Peruvian-flag carriers without authorized status—suspension of tariffs.

**Authority:** 46 U.S.C. app. 876(1)(b); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

### § 586.1 Conditions unfavorable to shipping in the Trade.

(a) The Federal Maritime Commission has determined that the Government of Peru has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(b) Peruvian law provides for a waiver system and cargo manifest certification requirement whereby non-Peruvian-flag carriers and non-associate carriers may carry reserved cargo in the event that Peruvian-flag or associate carriers are not available within 12 days following the proposed date of shipment of non-perishable products, or within 4 days for perishable products. Further, letters of credit under which U.S. goods are shipped to Peru have, in at least one case, specified that Peruvian-flag or associate carriers must be used. The enforcement of the waiver, cargo manifest certification, and letter of credit requirements, and their accompanying potential penalties, discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

### § 586.2 Peruvian—flag carriers without authorized status—suspension of tariffs.

(a)(1) On a date 30 calendar days from the date of publication of a final rule in the **Federal Register**, the following tariffs and all amendments thereto, insofar as they relate to the Trade, shall be suspended, unless the enumerated Peruvian-flag carriers first obtain authorized status pursuant to paragraph (b) of this section:

**Compania Peruana de Vapores (CPV)**

FMC No. 14—Applicable BETWEEN U.S. Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.

FMC No. 15—Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.

FMC No. 16—Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

**Empresa Naviera Santa, S.A.**

FMC No. 3—Applicable FROM Rail Container Terminals at U.S. Pacific Coast Ports TO Ports in South America.

FMC No. 4—Applicable FROM U.S. Gulf and Atlantic Ports TO Ports in South America.

FMC No. 5—Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.

FMC No. 6—Applicable FROM Ports in South America TO U.S. Gulf and Atlantic Ports.

**Naviera Amazonica Peruana, S.A. (Peruvian Amazon Line)**

FMC No. 3—Applicable FROM U.S. Gulf, Atlantic and West Coast Ports TO Brazilian Amazon River Ports, West Coast Central and South America, West Coast Mexico and West Coast Canada

AND

FROM Brazilian Amazon River Ports, West Coast Central and South America, West Coast Mexico and West Coast Canada TO U.S. Gulf, Atlantic and West Coast Ports.

**Naviera Neptuno, S.A.**

FMC No. 1—Applicable BETWEEN South Atlantic and Gulf Ports AND Ports in the Caribbean, Ports on the North, East and West Coast of South America (Including Brazil), Ports on the East and West Coast of Central America, and all Ports in Mexico.

FMC No. 2—Applicable BETWEEN U.S. Atlantic Coast Ports AND Ports on the West Coast of South America.

FMC No. 4—Applicable BETWEEN ports in Florida AND Ports in Peru.

FMC No. 5—Applicable BETWEEN U.S. Pacific Ports AND Peru and Pacific Coast Ports in Chile, Columbia and Ecuador.

FMC No. 6—Applicable BETWEEN U.S. Gulf Ports AND Ports in Peru, Chile and Ecuador.

**Naviera Universal, S.A. (Uniline)**

FMC No. 2—Applicable FROM U.S. Great Lakes, St. Lawrence River Ports and U.S. East Coast Ports and Ports in Puerto Rico TO Ports in Central and South America, Haiti and the Dominican Republic.

(2) Other tariffs which may be filed by or on behalf of the carriers listed in paragraph (a)(1) of this section or other Peruvian-flag carriers in the Trade shall also be suspended if the conditions of paragraph (b) of this section are not met.

(3) The right of the carriers listed in paragraph (a)(1) of this section, or any other Peruvian-flag carrier in the Trade to use the following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points, will, absent compliance with paragraph (b) of this section, be suspended:

**Atlantic & Gulf/West Coast of South America Conference**

FMC No. 3—Applicable FROM Points and Ports in the U.S. TO Points and Ports in Peru, Chile and Bolivia.

FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the U.S.

FMC No. 6—Applicable FROM U.S. Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

(4) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(b)(1) In order to avoid suspension of its tariffs pursuant to paragraph (a) of this section, or to reinstate tariffs suspended for previous failure to follow the procedures prescribed herein, each Peruvian-flag carrier enumerated in paragraph (a)(1) of this section must secure authorized status from the Federal Maritime Commission.

(2) Authorized status shall be conferred upon a Peruvian-flag carrier upon that carrier's submission to the Commission within 25 calendar days of the date of pulication of a final rule in the Federal Register of a certificate from the Government of Peru stating unequivocally that no law, regulation or policy of the Government of Peru will:

(i) Preclude any non-Peruvian-flag carrier from competing in the Trade on the same basis as any other carrier;

(ii) Result in less than meaningful and competitive access by any non-Peruvian-flag carrier, to cargo designated as reserved under Supreme Decree No. 009–86–TC; and

(iii) Impose any administrative burden, including but not limited to the necessity to secure a waiver or cargo manifest certification based on the national status of the carrier, or otherwise discrimination against any non-Peruvian-flag carrier in the Trade.

(3) If no such submission is made, the tariffs identified in paragraph (a) of this section shall be suspended effective five calendar days after the expiration of the 25-day period.

(c) When the tariff of a non-Peruvian-flag carrier has been suspended for failure to secure authorized status, that carrier may apply for authorized status by submitting to the Commission the certification described in paragraph (b)(2) of this section. Reinstatement of the tariff will occur upon Commission review and approval of the certification.

(d) Upon conferment of authorized status, the Commission may require periodic reports from the Peruvian-flag carriers in order to monitor conditions in the Trade.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–8197 Filed 4–10–87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 87–74, RM–5649]**

**Radio Broadcasting Services; Oxnard, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by KUTE, Inc., licensee of Station KUTE, Glendale, California, proposing the substitution of either Channel 275A or 279A in lieu of Channel 271A at Oxnard, California. This would allow Station KUTE to relocate its transmitter site. Since channel 271A in Oxnard is an "omnibus" allotment from MM Docket No. 84–231, and since the filing window period has not opened, the substitution can only be made upon a showing of compelling need or Commission error. In addition to eliciting comments concerning the compelling need showing, this proceeding also requests comments concerning a short-spacing increase from the proposed transmitter location site.

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Irving Gastfreund

Barry J. Fleishman

Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey 1120 Connecticut Avenue NW., Washington, DC 20036. (counsel for KUTE, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–74, adopted March 11, 1987, and released April 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time of Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–8167 Filed 4–10–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 21 and 94

[Docket No. 87-47; RM-5192; FCC 87-78]

## Amendment of the Commission's Rules To Provide for a Minimum Antenna Gain of 34.0 dBi for the 10,550-10,680 MHz Band

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Proposed rules.

**SUMMARY:** The FCC has adopted this Notice of Proposed Rule Making (Notice) which sets forth for review antenna standards specified in §§ 21.108(c) and 94.75(b) of the Commission's Rules. This action is taken in response to a Petition for Rulemaking filed by Harris Corporation—Farinon Division ("Harris"). After review of the Petition, the F.C.C. concluded that a rulemaking is needed to assess the potential for new and increased interference to licensees and permittees operating on cochannel or adjacent channels which could result from F.C.C. action adopting a minimum antenna gain of 34 dBi instead of the present 38 dBi for point-to-point users, and a more relaxed "side lobe" suppression standard.

**DATES:** Comments are due on or before May 26, 1987. Reply comments must be received on or before June 9, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Donald L. McClure, Domestic Facilities Division, Common Carrier Bureau (202) 634-1774.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, Gen. Docket No. RM-5192, adopted March 2, 1987, and released April 6, 1987. The complete text of this action is available for inspection and copying in the Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the International Transcription Service, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

### Summary of Notice

On September 10, 1985, "Harris" filed a Petition for Rulemaking requesting that proceedings be initiated looking toward the amendment of the tables of Antenna Standards in §§ 21.108(c) and 94.75(b) of the Commission's Rules to provide a minimum antenna gain of 34 dBi vice the present 38 dBi standard for the 10,550-10,680 MHz band. The specific point-to-point microwave band segments are 10,550-10,565 MHz (Channel Group A) and 10,615-10,630 MHz (Channel Group B). Additionally, the Notice contains a recommendation that the "side lobe suppression" standards associated with 38 dBi be amended to comport with the 34 dBi antenna gain standard. The proposed "side lobe suppression" standard being less stringent than the present standard.

2. The Notice further states that the 34 dBi antenna gain standard was adopted for Digital Termination Station users operating in the 10,550-10,680 MHz band in the First Report and Order (1st R&O) in General Docket 79-186, FCC 81-18, 49 RR 2d 509 (January 14, 1981), and that there is no reasonable basis to forego applying this standard to point-to-point users in the 10,550-10,680 MHz band. Also, the Notice contends that adoption of the 34 dBi antenna gain standard instead of 38 dBi will permit the use of an antenna diameter of two feet in lieu of 3.25 feet, and that this will result in lower antenna costs. Finally, the Notice requested comment as to whether F.C.C. action adopting the proposed standard could or might generate significant new or increased interference that could adversely impact licensees and/or permittees operating on cochannel and adjacent channels in the 10,550-10,680 MHz band.

### Ex Parte Contacts

3. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible ex parte contacts.

### Initial Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will enable point-to-point users operating in the 10,550-10,680 MHz band to utilize antennas having a diameter of two (2) feet instead of 3.25 feet. The two (2) foot antenna is less costly to manufacture and will occupy less space on congested metropolitan rooftops. Hence, point-to-point users will be able to avoid significant costs in the purchase and installation of these antennas. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's decision.

5. Accordingly, pursuant to the authority contained in section 4(i) and (303) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, we hereby give Notice of our intent to adopt the rule provisions set forth below. The Secretary shall cause a copy of the Notice to be sent to the Chief, Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) 1981.

### List of Subjects

*47 CFR Part 21*

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

*47 CFR Part 94*

Communications equipment, Radio, Reporting and recordkeeping requirements.

Parts 21 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority. 47 U.S.C. 154, 303.

2. Section 21.108 is amended by revising the table of Antenna Standards in paragraph (c) to read as follows:

§ 21.108 [Amended]

* * * * *

(c) Directional antennas shall meet the performance standards [for parallel polarization] indicated in the following table:

ANTENNA STANDARDS

| Frequency (MHz) | Category | Maximum beam width to 3 dB points (included angle in degrees) | Minimum antenna gain (dBi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibles | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 2,500 to 5,000 | A | n/a | 35.0 | 23 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 35.0 | 20 | 24 | 28 | 32 | 32 | 32 | 32 |
| 5,000 to 10,550 | A | n/a | 35.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 35.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 10,550 to 10,680 | A | 3.4 | 34.0 | 20 | 24 | 28 | 33 | 35 | 40 | 50 |
| | B | 3.4 | 34.0 | 20 | 24 | 28 | 32 | 35 | 35 | 39 |
| 17,700 to 18,820 | A | n/a | 35.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 35.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 18,920 to 19,700 | A | n/a | [1] 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | [1] 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 21,200 to 23,600 | A | n/a | 35.0 | 25 | 29 | 33 | 36 | 42 | 55 | |
| | B | n/a | 35.0 | 20 | 24 | 28 | 32 | 35 | 35 | 36 |
| 31,000 to 31,300 | n/a | [2] 4.0 | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |
| Above 31,300 | A | n/a | 35.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 35.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |

[1] Digital Termination User Station antennas shall meet performance Standard B and have a minimum antenna gain of 34 dBi.
[2] The minimum front-to-back ratio shall be 38 dBi.

**Note.**—Stations must employ an antenna that meets the performance standards for category A, except that in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

*Part 94 of Title 47 of the Code of Federal Regulations is to be amended as follows:*

## PART 94—PRIVATE OPERATIONAL—FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

2. Section 94.75 is amended by revising the table of Antenna Standards in paragraph (b) to read as follows:

**§ 94.75 Antenna limitations.**

* * * * *

(b) Directional antennas shall need the performance standards (for parallel polarization) indicated in the following table:

ANTENNA STANDARDS

| Frequency (MHz) | Category | Maximum beam width to 3 dB points (included angle in degrees) | Minimum antenna gain (dBi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibles | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 952 to 960 [1] [4] | A | 14.0 | n/a | | | 11 | 14 | 17 | 20 | 24 |
| | B | 20.0 | n/a | | | | 10 | 13 | 15 | 20 |
| 1,850 to 2,690 [2] | A | 5.0 | n/a | 12 | 18 | 22 | 25 | 29 | 33 | 39 |
| | B | 5.0 | n/a | | 18 | 20 | 20 | 25 | 28 | 36 |
| 6,525 to 6,875 | A | 1.5 | n/a | 29 | 29 | 32 | 34 | 38 | 41 | 49 |
| | B | 2.0 | n/a | 21 | 25 | 29 | 32 | 35 | 39 | 45 |
| 10,550 to 10,680 | A | 3.4 | 34.0 | 20 | 24 | 28 | 33 | 35 | 40 | 50 |
| | B | 3.4 | 34.0 | 20 | 24 | 28 | 32 | 35 | 35 | 39 |
| 12,200 to 13,250 [5] | A | 1.0 | n/a | 23 | 28 | 35 | 39 | 41 | 42 | 50 |
| | B | 2.0 | n/a | 20 | 25 | 28 | 30 | 32 | 37 | 47 |
| 17,700 to 19,700 [3] | A | n/a | 35.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 35.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 21,200 to 23,600 [5] | A | n/a | 35.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 31,000 to 31,300 | n/a | 74.0 | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |

ANTENNA STANDARDS—Continued

| Frequency (MHz) | Category | Maximum beam width to 3 dB points (included angle in degrees) | Minimum antenna gain (dBi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibles | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 27,500 to 29,500 | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 25 | 32 | 35 | 36 | 36 |
| 38,600 to 40,000 | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |

[1] Except for frequencies listed in § 94.65(a)(1) where omnidirectional antennas may be used.
[2] Except for 2,150–2,160 MHz, where the maximum beamwidth is 360 and except for frequencies in the 2,500–2,690 MHz band where standards contained in § 94.95 apply.
[3] Except as provided in § 94.199 for Digital Termination System antennas.
[4] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (1) The minimum on-beam forward gain must be at least 10 dBi, and (2) the minimum front-to-back ratio must be at least 20 dB.
[5] Except as provided in § 94.91.
[6] Except for temporary-fixed operations in the band 13,200–13,250 MHz with output powers less than 250 mW and as provided in § 94.90.

**Note.**—Stations in this service must employ an antenna that meets the performance standards for category A, except that, in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-8170 Filed 4-10-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 87-73; RM-4961, etc.]**

## Radio Broadcasting Services in Benton, El Dorado, Hampton, Harrison, Mena, Sherwood, AR; Homer, LA; Sallisaw and Vinita, OK; and Hooks and Kilgore, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on eleven mutually exclusive petitons for rule making in the states of Arkansas, Louisiana, Oklahoma and Texas. Three of the petitions propose new allotments at: Mena, Arkansas on Channel 242C1; Sherwood, Arkansas on Channel 294A; and Homer, Louisiana on Channel 294C2. Eight of the petitions propose modifications of license at: Benton, Arkansas by substituting Channel 294C2 for Channel 296A; El Dorado, Arkansas by substituting Channel 241C1 for Channel 240A; Hampton, Arkansas by substituting Channel 295C2 for Channel 296A; Harrison, Arkansas by substituting Channel 242C2 for Channel 244A; Vinita, Oklahoma by substituting Channel 241C2 for Channel 240A; Sallisaw, Oklahoma by substituting Channel 241C2 for Channel 240A; Hooks, Texas by substituting Channel 241C2 for Channel 240A; and Kilgore, Texas by substituting Channel 241C2 for Channel 240A.

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Service List

David G. Rozelle, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel for DLB Broadcasting Corp.)

M. Anne Swanson, Spiegel & McDermott, 1350 New York Avenue NW., Washington, DC 20005–4798, (Counsel for Demaree Enterprises, Inc.)

C.R. Crisler, Double Eagle Broadcasting, P.O. Box 6324, Fort Smith, AR 72906 (Consultant to Douglas S. Harlan)

Lawrence J. Bernard, Jr., Esq., Ward & Mendelsohn, P.C., 1100 Seventeenth Street NW., Suite 900, Washington, DC 20036 (Counsel to Harrison Radio Station, Inc.)

Eugene T. Smith, Esq., 715 G Street SE., Washington, DC 20003 (Counsel to Texarkana Broadcasting, Inc.)

Robert W. Coll, Esq., McKenna, Wilkinson & Kittner, 1150 Seventeenth Street NW., Washington, DC 20036 (Counsel to Noalmark Broadcasting Corp.)

KIXK, Inc., c/o Charles R. Shinn, President, P.O. Box 1901, El Dorado, AR 71731 (Petitioner for El Dorado, AR)

Robert S. Stone, Esq., McCampbell & Young, 2021 Plaza Tower, P.O. Box 550, Knoxville, TN 37901–0550 (Counsel for Southern Arkansas Radio Co.)

J. Boyd Ingram, P.O. Box 73, Batesville, MS 38606 (Consultant to Homer Broadcasters)

Mark E. Fields, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to Bridges Broadcasting Services)

Dan Winn & Associates, P.O. Box 214, Little Rock, AR 72203 (Consultant to Sherwood Broadcasting Corporation)

**FOR FURTHER INFORMATION CONTACT:** D. David Weston, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–73, adopted March 10, 1987, and released April 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800,

2100 M Street NW., Suite 140, Washington, DC 20037.

The eleven mutually exclusive petitions were filed by: (1) Bridges Broadcasting Service, licensee of Station KAKI (FM), (Channel 296A), Benton, Arkansas, requesting the substitution of Channel 294C2 for Channel 296A and modification of its license to specify operation on Channel 294C2, as that community's first wide coverage area FM station (RM–4961). A site restriction of 8.8 kilometers (5.5 miles) east of the community is required; (2) KIXK, Inc., licensee of Station KIXK(FM), (Channel 240A), El Dorado, Arkansas, requesting the substitution of Channel 241C1 for Channel 240A and modification of its license to specify operation of Channel 241C1, as that community's first wide coverage area FM station (RM–5381). The channel can be allotted in compliance with the minimum distance separation requirements at Station KIXK's present transmitter site. However, finalization of this proposal is contingent upon: (a) The outcome of a pending case in the U.S. Court of Appeals for the District of Columbia, [*James Reeder* v. *FCC & USA*, Case No. 86–1045] and (b) the reconsideration of a proposal to allot Channel 241A to Ruston, Louisiana; (3) Southern Arkansas Radio Company, licensee of Station KKOL(FM), (Channel 296A), Hampton, Arkansas, requesting the substitution of Channel 295C2 for Channel 296A and modification of its license to specify operation on Channel 295C2, as that community's first wide coverage area FM station (RM–5615). A site restriction 9.3 kilometers (5.8 miles) of the community is required. (4) Harrison Radio Station, Inc., licensee of Station KCWD(FM), (Channel 244A), Harrison, Arkansas, requesting the substitution of Channel 242C2 for Channel 244A and modification of its license to specify operation of Channel 242C2, as that community's first wide coverage area FM station (RM–5411). A site restriction 12.9 kilometers (8 miles) south of the community is required; (5) Douglas S. Harlan requesting the allotment of Channel 242C1 to Mena, Arkansas, as that community's second FM channel (RM–5339). Channel 242C1 can be alloted to Mena in compliance with the minimum distance separation requirements; (6) Sherwood Broadcasting Corporation, requesting the allotment of Channel 294A to Sherwood, Arkansas as that community's first FM channel (RM–5488). Channel 294A can be alloted to Sherwood in compliance with the minimum distance separation requirements; (7) Homer Broadcasters, requesting the allotment of Channel 294C2 to Homer, Louisiana as that community's second FM channel (RM–5286). A site restriction of 31.4 kilometers (19.1 miles) west of the community is required. However, it can be allotted with a site restriction 3.8 kilometers west if a pending application (BPH–860805IB) filed by Station KNAN(FM) (Channel 291), Monroe, Louisiana is approved; (8) Demaree Enterprises, Inc., licensee of Station KKID–FM (Channel 240A), Sallisaw, Oklahoma, requesting the substitution of Channel 241C2 for Channel 240A and modification of its license to specify operation on Channel 241C2 as that community's first wide coverage area FM station (RM–5508). The channel can be allotted in compliance with the minimum distance separation requirements at Station KKID–FM's present transmitter site; (9) DLB Broadcasting Corporation, licensee of Station KITO(FM), (Channel 240A), Vinita, Oklahoma, requesting the substitution of Channel 241C2 for Channel 240A and modification of its license to specify operation of Channel 241C2 as that community's first wide coverage area FM station (RM–5291). A site restriction 23.2 kilometers (14.4) miles southeast of the community is required. Although the site restriction is currently short spaced to the 16 kilometer buffer zones of Station KWEN (Channel 238) and Station KRAV (Channel 243), Tulsa, Oklahoma both stations have pending applications (BMPH–850917IG) and BMPH–860206IA) to relocate their transmitter sites which will resolve the problem. However, any finalization of this proposal must await the issuance of a license for each Tulsa station to operate at its new site; (10) Texarkana Broadcasting, Inc. licensee of Station KLLI(FM) (Channel 240A), Hooks, Texas requesting the substitution of Channel 241C2 for Channel 240A and the modification of its license to specify operation on Channel 241C2 as that community's first wide coverge area FM station (RM–5314). Channel 241C2 can be allotted to Hooks in compliance with the minimum distance separation requirements. In connection with the requested upgrade we shall reallocate Channel 240A to Hooks, Texas (currently allotted to New Boston, Texas) to reflect its actual usage in Hooks, Texas; and (11) Noalmark Broadcasting Corporation licensee of Station KKTX(FM) (Channel 240A), Kilgore, Texas requesting the substitution of Channel 241C2 for Channel 240A and modification of its license to specify operation on Channel 241C2 as that community's first wide coverage area FM Station (RM–5421). The channel can be allocated in compliance with the minimum distance separation requirements at Station KKTX(FM)'s application site (BPH–860203IC). This *Notice* solicits comments and showings to aid the Commission in the comparative evaluation of the conflicting proposals to determine which communities will receive allotments. A basic issue to be decided concerns the preference to be accorded a new primary service represented by a new allotment *vis-a-vis* an increase in existing service represented by a modification proposal. Based on existing policies and procedures we are initially proposing allotments which favor new primary services at: (1) Mena, Arkansas (Channel 242C1); (2) Sherwood, Arkansas (Channel 294A) and (3) Homer, Louisiana (Channel 294C2). Modification requests which do not conflict with the new service allotments are proposed at: (1) El Dorado, Arkansas (Channel 241C1 for Channel 240A) (2) Vinita, Oklahoma (Channel 241C2 for Channel 240A) and (3) Kilgore, Texas (Channel 241C2 for Channel 240A). Modification proposals which are precluded by the allotment of a new primary service are: (1) Benton, Arkansas (Channel 242C2 for Channel 296A); (2) Hampton, Arkansas (Channel 295C2 for Channel 296A); (3) Harrison, Arkansas (Channel 242C2 for Channel 244A); (4) Sallisaw, Oklahoma (Channel 241C2 for Channel 240A) and (5) Hooks, Texas (Channel 241C2 for Channel 240A). However, since this *Notice* invites comments from all proponents and requests further showings to demonstrate a preference under allocation priorities, we are provisionally proposing allotments at all communities pending evaluation of the comments and showings received.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

BEST COPY AVAILABLE

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8166 Filed 4-10-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 87-59, RM-5535]**

## Radio Broadcasting Services; Outlook, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Timothy D. Martz, proposing the allocation of FM Channel 289 to Outlook, Montana, as that community's first FM broadcast service. Canadian concurrence is required for the allocation of this channel

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Jerry V. Haines, Wiley & Rein, 1776 K Street NW., Washington, DC 20006 (counsel for the petitioner)

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheurele, Mass Media Bureau, (202) 634-6350.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Dockst No. 87-59, adopted February 20, 1987, and released April 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibits in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8163 Filed 4-10-87; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of Advocacy and Enterprise, Citizens' Advisory Committee on Equal Opportunity; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), an announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: May 4–6, 1987.

Place: Omni Northstar Hotel, 618 Second Avenue South, Minneapolis, Minnesota 55402.

Time: 8:30 a.m.–5:00 p.m.

Purpose:

—Advise the Secretary on the effectiveness of compliance program directives;
—Review all aspects of the Department's policies, practices, and procedures on Equal Opportunity;
—Recommend changes in Department rules, regulations, and orders to assure USDA activities are free from discrimination;

Additionally, the Committee will focus on:

—Operational programs in the Animal and Plant Health Inspection Service (APHIS);
—The reports on findings of EEO Program Reviews in Arkansas and Florida; and
—USDA initiatives regarding the employment of and services to Hispanic and American Indian persons.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Lawrence Cavallaro, Acting Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, 14th & Independence Avenue SW., Room 1226, South Building, Washington, DC 20250, (202) 447–5681.

Written statements may be submitted until April 27.

**Lawrence Cavallaro,**

*Acting Associate Director, Equal Opportunity, Office of Advocacy and Enterprise.*

[FR Doc. 87–8207 Filed 4–10–87; 8:45 am]

BILLING CODE 3410–94–M

### Commodity Credit Corporation Premiums for High-Quality Grain; Request for Public Comment

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Request for public comment.

**SUMMARY:** Pursuant to the provisions of section 305 of the Grain Quality Improvement Act of 1986, Pub. L. 99–641, the Commodity Credit Corporation (CCC) is soliciting comments on the feasibility and appropriateness of adjusting CCC grain premium and discount schedules used under the price support loan program. Adjustments to the premium and discount schedules are contemplated in order to improve the quality of U.S. grain for domestic and export markets.

**DATE:** Comments must be submitted on or before April 24, 1987.

**ADDRESS:** Comments must be submitted in writing to Jerry Kretsch, Commodity Operations Division, USDA, ASCS, Room 5755 South Building, P.O. Box 2415, Washington, DC 20013, telephone (202) 447–4069. Users of an express delivery service should address such correspondence to: 12th and Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1–27(b)).

**FOR FURTHER INFORMATION CONTACT:** Jerry Kretsch, address as above, telephone (202) 447–4069.

**SUPPLEMENTARY INFORMATION:** The Grain Quality Improvement Act of 1986, Pub. L. 99–641, amending the United States Grain Standards Act (7 U.S.C. 71 et seq.), became effective November 10, 1986. Section 305 of the Grain Quality Improvement Act provides:

**Study of Premiums for High-Quality Grain**

(a) *Study.* After public comment from and in consultation with grain producers, grain merchants, grain processors, and grain exporters, the Secretary of Agriculture shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules—

(1) to encourage the delivery, storage, and export of high-quality, clean grain; and

(2) to offer incentives to minimize the quantity of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation.

(b) *Report.* Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit a report describing the results of the study required under subsection (a), together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

The CCC is soliciting comments on the feasibility and appropriateness of adjusting CCC grain premium and discount schedules to encourage delivery, storage, and export of high-quality clean grain. Comments are also requested from all interested parties on the manner in which the CCC discount schedules would be adjusted to offer incentives to producers to deliver higher-quality grain to CCC.

This request for public comment does not constitute notification that changes to the CCC grain premium and discount schedules are or will be made.

(Sec. 305, Pub. L. 99–641, Grain Quality Improvement Act of 1986 (7 U.S.C. 74))

Signed at Washington, DC, on April 1, 1987.

**Milt Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–8146 Filed 4–10–87; 8:45 am]

BILLING CODE 3410–05–M

## Forest Service

### Exterior Boundary Changes; Tongass National Forest, AL

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The Alaska National Interest Lands Conservation Act of December 2, 1980 (Pub. L. 96–487, 94 Stat. 2371; 16 U.S.C. 3210) changed the exterior boundary of the Tongass National Forest, Alaska, in four locations with a net addition of 1,463,380 acres.

Legal descriptions and maps of the Brabazon Range, the Juneau Ice Field, and the Kates Needle additions and the Brabazon Range exclusion are now on

file for public inspection at the following offices:

Chief, Forest Service, USDA, South Agriculture Building, Room 4238, 12th and Independence Avenue, SW., Washington, DC 20013, (all four changes)
Regional Forester, Alaska Region, P.O. Box 021628, Juneau, AK 99802–1628, (all four changes)
Forest Supervisior, Tongass NF-Chatham Area, 204 Siginaka Way, Sitka, AK 99835, (all four changes)
Forest Supervisor, Tongass NF-Stikine Area, P.O. Box 309, Petersburg, AK 99833, (Kates Needle addition only)

**FOR FURTHER INFORMATION CONTACT:** Charles Low, Lands, Minerals, and Watershed Staff, Alaska Region, P.O. Box 021628, Federal Office Building, Juneau, AK 99802, (907) 586–7847.

Dated: March 24, 1987.

**Michael A. Barton,**

*Regional Forester, Alaska Region.*

[FR Doc. 87–8148 Filed 4–10–87; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber Silk Blends and Other Vegetable Fiber Textiles and Textile Products From the Republic of Korea; Correction

April 7, 1987.

In the **Federal Register** notice and the letter to the Commissioner of Customs published in January 14, 1987 (52 FR 1519) reference to the restraint periods for textiles and textile products in Group VI, and individual categories within the group, should be corrected as follows:

| Category | Restraint period |
|---|---|
| Group VI | |
| 369–L, 670–L/870, as a group. | Jan. 1–Dec. 31, 1986. |
| 369–L | Jan. 1–Dec. 31, 1986. |
| 670–L | Jan. 1–Dec. 31, 1986. |

In the letter to the Commissioner of Customs, the restraint limits should be corrected as follows:

| Category | Restraint limit |
|---|---|
| Group VI | |
| 369–L, 670–L/870, as a group. | 58,300,000 square yard equivalent. |
| 369–L | 500,000 pounds. |
| 670–L/870 | 32,000,000 pounds of which not more than 26,000,000 pounds shall be in TSUSA numbers 706.3415, 706.4130 and 706.4135,. |

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8108 Filed 4–10–87; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on B–1B Defensive Avionics Review Subgroup

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on B–1B Defensive Avionics Review Subgroup will meet in closed session on May 12–13, 1987 at the Eaton Corporation, Deer Park, New York.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate the status of the Air Force B–1B Defensive Avionics Program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

[FR Doc. 87–8143 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

### U.S. Court of Military Appeals Code Committee Meeting

**ACTION:** Notice of public hearing.

**SUMMARY:** This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on April 29, 1987, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442–0001. The agenda for this meeting will include consideration of the proposed changes to the Manual for Courts-Martial, United States, 1984, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

**DATE:** April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442–0001; telephone (202) 272–1448.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

[FR Doc. 87–8218 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Air Force

### Intent to Prepare Environmental Impact Statement; Low Altitude Flight Operations

The United States Air Force, Department of Defense, will prepare a generic Environmental Impact Statement (EIS) for low altitude flight oprations. This generic EIS will include all Air Force, Air National Guard and Air Force Reserve low altitude aircraft operations.

Low altitude airspace is required for diverse activities such as training, research, development, test and evaluation programs. Air crew proficiency is essential in such missions as air defense, air superiority, close strategic and tactical bombing, low altitude refueling and strategic/tactical airlift. Although low level missions will be conducted throughout the country over varied terrain, the environmental impacts and the methodologies used to analyze those impacts do not vary significantly. The Air Force believes the best way to analyze these similar actions is to treat their common features in a single generic EIS and then tier from that EIS for future EISs and environmental assessments.

The Air Force proposes to adopt a process based on environmental considerations to identify and evaluate future site-specific airspace training areas. The EIS will analyze the range of environmental impacts that might be expected at the site-specific level, from future proposals. Alternatives to this

process will not be addressed. Altitudes to be assessed range from 100 feet above ground level (AGL) for fixed wing aircraft and 50 feet AGL for rotary wing aircraft to a maximum altitude of 3,200 feet AGL.

The Air Force will conduct scoping meetings to determine the nature, extent and scope of the issues and concerns that should be addressed in the generic EIS. Dates and places are as follows:

28 April 87-Boston MA, World Trade Convention Center
29 April 87-Raleigh NC, Holiday State Capital
30 April 87-Tallahassee FL, Ramada North
11 May 87-Rapid City SD, Alex Johnson
12 May 87-Denver CO, Stouffer Concourse
13 May 87-Kansas City MO, Alameda Plasa
14 May 87-Dallas TX, Sheraton Park Central
26 May 87-Reno NV, The Nugget
28 May 87-Seattle WA, Seattle Sheraton
9 June 87-Anchorage AK, Eagan Convention Center

For further information concerning the generic EIS for low altitude flight operations, contact HQ SAC/DEV (Dr. Hugh Stirts), Offutt AFB NE 68113–5001, Telephone: (402) 294–5854.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–8106 Filed 4–10–87; 8:45 am]

BILLING CODE 3910-01-M

## USAF Scientific Advisory Board; Meeting

April 7, 1987.

The Technology Panel of the USAF Scientific Advisory Board's Ad Hoc Committee on Space-Based Radar will conduct a meeting at The Aerospace Corporation on April 28, 1987, from 8:00 A.M. to 5:00 P.M.

The purpose of this meeting is to discuss the Panel's approach to addressing technology issues relevant to Air Force requirements for a space-based radar system.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–8107 Filed 4–10–87; 8:45 am]

BILLING CODE 3910-01-M

## Privacy Act of 1974; System of Records Notice

**AGENCY:** Department of the Air Force (DAF), DoD.

**ACTION:** Notice of a new Air Force System of Records.

**SUMMARY:** The Air Force is publishing for any public comment a new record system being added to its inventory of systems of records subject to the Privacy Act of 1974.

**EFFECTIVE DATE:** This proposed action will be effective without further notice on May 13, 1987, unless comments are received which would result in a contrary determination.

**ADDRESS:** Send any comments to Major James J. Valdez, USAF, HQ USAF/DADQ, Room 4A–1088, The Pentagon, Washington, D.C. 20330–5024, Telephone (202) 694–3431, Autovon: 224–3431.

**FOR FURTHER INFORMATION:**
Contact Major James J. Valdez above.

**SUPPLEMENTARY INFORMATION:** The Air Force systems of records inventory subject to the Privacy Act of 1974, Title 5, United States Code, Section 552a (Pub. L. 93–579) has been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22332) May 29, 1985 (compilation)
FR Doc. 85–14122 (50 FR 24672) June 12, 1985
FR Doc. 85–15082 (50 FR 25737) June 21, 1985
FR Doc. 85–26775 (50 FR 46477) November 8, 1985
FR Doc. 85–29261 (50 FR 50337) December 10, 1985
FR Doc. 86–2527 ((51 FR 4531) February 5, 1986
FR Doc. 86–4546 (51 FR 7317) March 3, 1986
FR Doc. 86–10044 (51 FR 16735) May 6, 1986
FR Doc. 86–11696 (51 FR 18927) May 23, 1986
FR Doc. 86–25787 (51 FR 41382) November 14, 1986
FR Doc. 86–25788 (51 FR 41402) November 14, 1986
FR Doc. 86–27635 (51 FR 44332) December 9, 1986

A new system report as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on March 19, 1987, pursuant to paragraph 4b of Appendix I of OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

**F010 AF A**

**SYSTEM NAME:**

010 AF A Automated Orders Data System.

**SYSTEM LOCATION:**

Any location where temporary duty travel orders are published at all levels down to and including Air Force squardrons. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Air Force civilian employees and military members who perform temporary duty travel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All temporary duty travel orders published by the organization maintaining the system also contains identification data on individuals who perform travel.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by, as implemented by the DoD Joint Travel Regulations.

**PURPOSE(S):**

Used to prepare temporary duty travel orders and to determine status of individual orders.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on computer.

**RETRIEVABILITY:**

Filed by name, Social Security Number, or Air Force Service Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the records in performance of their official duties who are properly screened for need-to-know. Records are protected by computer system software.

**RETENTION AND DISPOSAL:**

Orders are maintained for one year after the year in which they are published. Identification data is maintained until the individual is reassigned.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Administration, Headquarters United States Air Force, Washington, D.C. Local System

Manager: Base director or Chief of Administration.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the local system manager.

RECORD ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the local system manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

RECORD SOURCE CATEGORIES:

Information is obtained from personnel records and travel order requests prepared by clerical staff serving the individual traveler.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87–8139 Filed 4–10–87; 8:45 am]

BILLING CODE 3810-01-M

---

## Department of the Army

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Public Information Collection Requirement Submitted to OMB for Review.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Extension.

Tender of Service and Letter of Intent for Personal Property HHG and unaccompanied Baggage (OMB No. 0702–0022)

Since household goods move at government expense, data is needed to choose the best service at least cost. The information provided amounts to a bid for contract to transport household goods and unaccompaned baggage. The best service for least cost carrier receives the contract.

Businesses or other for profit, small businesses or organizations

Responses: 600

Burden Hours: 12,400.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson David Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

**SUPPLEMENTAL INFORMATION:** A copy of the information collection proposal may be obtained from Ms. Angela R. Petranca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

Patrica H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87–8136 Filed 4–10–87; 8:45 am]

BILLING CODE 3810-01-M

---

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Public Information Collection Requirement Submitted to OMB for Review.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

NEW

Heavy Hauler Truck Trailer Database Survey

The DoD needs detailed and accurate information on heavy hauler truck trailers located in the U.S. This information will be used by the DoD for contingency planning and execution of deployment and mobilization plans. Heavy hauler owners identified from publicly available information sources—will be surveyed in order to validate and supplement information on their heavy hauler trailer inventory.

Businesses or other for profit, small businesses or organizations

Responses: 1,750

Burden Hours: 1,750.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

**SUPPLEMENTAL INFORMATION:** A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

[FR Doc. 87–8137 Filed 4–10–87; 8:45 am]

BILLING CODE 3810-01-M

---

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Public Information Collection Requirement Submitted to OMB for Review.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information

collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

**Revision**

Motor Carrier Facilities Questionnaire, MT Form 45 (OMB No. 0702–0024)

This form is used to obtain information on motor carrier's operating authority and types and amount of equipment for prequalification and freight routing purposes. Only new freight motor carriers desiring to participate in Department of Defense freight movements are affected.

Businesses or other for profit, small businesses or organizations

Responses: 150

Burden Hours: 150.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

**SUPPLEMENTAL INFORMATION:** A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

[FR Doc. 87–8138 Filed 4–10–87; 8:45 am]

BILLING CODE [illegible]

## Privacy Act of 1974; New and Altered Record Systems

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of one new and one altered record system subject to the Privacy Act.

**SUMMARY:** The Army is publishing a notice for public comment on a new record system that will be added; one system that is being altered, to its existing inventory of systems of records subject to the Privacy Act of 1974.

**DATE:** This proposed action will be effective without further notice May 13, 1987, unless comments are received which would result in a contrary determination.

**ADDRESS:** Send any comments to Mr. Cliff Jones further identified below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cliff Jones, HQDA DAIM-FAR-RI, Room 1138, Hoffman Building I, Alexandria, VA 22331–0301. Telephone: (202) 325–6044, Autovon: 221–6044.

**SUPPLEMENTARY INFORMATION:** The Army's systems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published to date in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14668 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40478) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986.

One new and one altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 were submitted pursuant to paragraph 4b of Appendix I of OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985, to the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB) on March 19, 1987. The new record system is identified as A0319–01bDAEN and is required by the Army Corps of Engineers for their debt collection efforts under Debt Collection Act of 1982 (Pub. L. 97–365). The altered system, identified as A1306–01DAPE, was last published in the **Federal Register** on May 29, 1985 at 50 FR 22243 and is being revised because of a significant change in the categories of individuals covered by the system. It is being expanded to cover not only Army service members, but will now include family members of the service members, certain DoD civilian employees, and samples of the general U.S. population to determine why people do or do not consider military service as a career option.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

**A0319–01bDAEN**

**SYSTEM NAME:**

Corps of Engineers Debt Collection System.

**SYSTEM LOCATION:**

Finance and Accounting Offices at U.S. Army Corps of Engineers Installations worldwide.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Separated and retired military and civilian personnel and others indebted to the U.S. Army.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records include, but are not limited to:

1. Records of current and former military members and civilian employees' pay accounts showing entitlements, deductions, payments made, and any indebtedness resulting from deductions and payments exceeding entitlements.

2. Individual military pay records, substantiating documents such as military pay orders, pay adjustment authorizations, military master pay account printouts from the Joint Uniform Military Pay System (JUMPS), records of travel payments, financial record data folders, miscellaneous vouchers, personal financial records, credit reports, promissory notes, individual financial statements and related correspondence.

3. Applications for waiver of erroneous payments or for remission of indebtedness with supporting documents including, but not limited to: Statements of financial status (personal income and expenses); statements of commanders and/or finance and accounting officers; and correspondence with members and employees.

4. Claims of individuals requesting additional payments for services rendered with supporting documents including, but not limited to: Time and attendance reports; leave and earning statements; travel orders and/or vouchers; and correspondence with members and employees.

5. Delinquent accounts receivable including, but not limited to: Returned checks; default on lease agreements; collection records; and summaries of Army Criminal Investigation Command and/or Federal Bureau of Investigation reports.

6. Reports from probate courts regarding estates of deceased debtors.

7. Reports from bankruptcy courts regarding claims of the United States against debtors.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Debt Collection Act of 1982 (Pub. L. 97–365); 5 U.S.C. 552a(b)(12); 5 U.S.C. 5514(a); 10 U.S.C. 2774; 12 U.S.C. 1715; 15 U.S.C. 1681a(f); Federal Claims Collection Act of 1966 31 U.S.C. 952(d); 31 U.S.C. 3711; E.O. 9397.

**PURPOSE:**

To process, monitor, and post-audit accounts receivable. To administer the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982 and to answer inquiries pertaining thereto. To match application data with state information in order to verify eligibility for benefits.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Information may be disclosed to:

1. U.S. Department of Justice/U.S. Attorneys for legal action and/or final disposition of debt claims.

2. The Department of the Treasury/Internal Revenue Service for the purpose of obtaining locator status for delinquent accounts receivable, and/or to report write-off amounts as taxable income as pertains to amounts comprised and accounts barred from litigation due to age, and for the purpose of offset, either administrative or salary.

3. Private collection agencies for the purpose of credit information and for the purpose of obtaining credit reports or skip traces when the Army has exhausted its internal collection efforts.

4. Consumer reporting agencies pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(b)(12) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) when an individual is responsible for a debt to the U.S. Army, provided the debt has been validated, is overdue, and the debtor has been advised of the disclosure and his/her rights to dispute, appeal or review the claim; and/or whenever a financial status report is requested for use in the administration of the Federal Claims Collection Act. Claims of the United States may be compromised, terminated or suspended when warranted by information collected.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and bulk storage, card files, magnetic tapes, paper printouts and microfiche.

**RETRIEVABILITY:**

By SSN, name and substantiating document number.

**SAFEGUARDS:**

Security guards are employed at all Corps of Engineers Finance and Accounting Offices. Paper records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Computerized records are accessed by the custodian of the records system and by persons responsible for servicing the records in the performance of their official duties. Certifying Finance and Accounting Officers of debts have access to debt information to conform if the debt is valid and collection action is to be continued. Computer equipment and files are located in a separate secured area.

**RETENTION AND DISPOSAL:**

Delinquent accounts receivables are retained for six (6) years and three (3) months and then destroyed.

**SYSTEM MANAGER AND ADDRESS:**

The Finance and Accounting Officer at the Headquarters, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW., Washington, D.C. 20314–1000.

**NOTIFICATION PROCEDURES:**

Individual desiring to know whether this system of records contains information about them should contact the Finance and Accounting Officer at the appropriate U.S. Army Corps of Engineers installation, furnishing full name, SSN Number, and other information verifiable from the record itself.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in 'Notification Procedures' and furnish information required therein.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing determinations are contained in AR 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Information is received from the Department of Defense staff and field installations, other creditor Federal agencies, Social Security Administration, Treasury Department, Banks, Savings and Loan Associations, Employee Credit Unions and other financial organizations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A1306-01DAPE**

**SYSTEM NAME:**

Behavioral and Social Sciences Research Project Files

**SYSTEM LOCATION:**

Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333 and field offices located at Fort Lewis, WA; Boise, ID; Camp Zama, Japan; Fort Huachuca, AZ; London, England; Mannheim, Germany; Naval Training Center, Orlando, FL; Falls Church, VA; Fort Hood, TX; Fort Knox, KY; Fort Leavenworth, KS; Presidio of Monterey, CA; Fort Rucker, AL; and St Louis, MO.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

(1) Current and former officer, warrant officer, and enlisted military personnel, including Army Reservists and National Guard.

(2) Family members of the service members in category (1).

(3) Civilian employees of DoD.

(4) Samples of civilians from the general U.S. population who are surveyed to determine why people do or do not consider military service as a career or a short-term employment option.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name and SSN, questionnaire-type data relating to service member's and civilian employee's pre-service education, work experience, social environment and culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments; test results from Armed Services Vocational Aptitude Battery and Skill Qualification Tests. Also, individual's name and SSN, and questionnaire-type data relating to non-service member's education, work experience, motivation, knowledge of and attitude about the Army. When records show military service or marriage to a service member, the appropriate non-service records will be linked to the service record.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., sections 2358 and 4503.

**PURPOSE(S):**

To research human factors inherent in the recruitment, selection, classification, assignment, evaluation, and training of military and civilian personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these research records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

See the "blanket routine uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; punch card; magnetic tape.

**RETRIEVABILITY:**

By individual's name and/or SSN. For research purposes, the data are usually retrieved and analyzed with respect to relative times of entry into service, training performance, and demographic values. Scheduled data for follow-up data collections however, are retrieved by month of scheduled follow-up and by name.

**SAFEGUARDS:**

Access to records is restricted to authorized personnel having official need therefor. Automated data are further protected by controlled system procedures and code numbers governing access.

**RETENTION AND DISPOSAL:**

Information is retained until completion of appropriate study or report, after which it is destroyed by shredding or erasing.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, D.C. 20310.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know whether or not this system of records contains information about themselves should write to the system manager, providing their full name, SSN, current address, the subject area and the year of testing if known.

**RECORDS ACCESS PROCEDURES:**

For access to information about themselves in this system of records, individuals should follow information in Notification Procedure above.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual, his or her peers, or, in the case of ratings and evaluations, from supervisors.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 87–8140 Filed 4–10–87; 8:45 am]

BILLING CODE 3810-01-M

## Defense Logistics Agency

### Announcement of Direct Conversion to Contract Performance of Commercial Activities (CA) Function

**AGENCY:** Defense Logistics Agency (DLA).

**ACTION:** Notification of intent to effect direct conversion to contract performance of DLA CA function.

**SUMMARY:** The publication of decisions to directly convert commercial activities (CA) to contract performance is required by Supplement to OMB Circular No. A–76 (Revised) and DoD Instruction 4100.33, "Commercial Activities Program Procedures."

1. Based on a Simplified Cost Comparison conducted 13 February 1987, the Defense Logistics Agency will issue a solicitation to directy convert to contract performance the commercial reservations and ticket services of the DLA Administrative Support Center's (DASC) Travel Office. The DASC Travel Office furnishes support to Headquarters, DLA and DLA field activities located in Alexandria, VA.

For further information contact: Mr. Preston B. Speed, Chief, Administration Management Branch, DLA Administrative Support Center, Cameron Station, Alexandria, VA 22304–6130, (202) 274–6234.

2. Based on a Simplified Cost Comparison conducted 29 January 1987, the Defense Logistics Agency will issue a solicitation to directly convert to contract performance the commercial reservations and ticket services of the Defense Electronics Supply Center's Travel Office, Dayton, OH.

For further information contact: Mr. Richard Shepherd, Commercial Activities, Office of Policy and Plans, Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5000, (513) 296–5295.

Interested commercial concerns should refer to announcements in the Commerce Business Daily (CBD) to be made as part of the contract solicitation process.

**William J. Cassell,**

*Comptroller, Defense Logistics Agency.*

[FR Doc. 87–8123 Filed 4–10–87; 8:45 am]

BILLING CODE 3620-01-M

## Uniformed Services University of the Health Sciences (USUHS)

### Privacy Act of 1974: New Systems of Records

**AGENCY:** Uniformed Services University of the Health Sciences (USUHS), DOD.

**ACTION:** Notice for any public comment on new record systems subject to the Privacy Act.

**SUMMARY:** The USUHS is adding nine (9) new record systems to its existing inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 522a).

**DATE:** This proposed action will be effective without further notice May 13, 1987 unless comments are received which would result in a contrary determination.

**ADDRESS:** Send any comments to Ms. Norma Cook, Records Management Division, Washington Headquarters Services, Room 5C–315, The Pentagon, Washington, D.C. 20301–1155. Telephone: 202–697–2501.

**SUPPLEMENTARY INFORMATION:** The Uniformed Services University of the Health Sciences (USUHS) systems of records notices subject to the Privacy Act of 1974 have been published in the Federal Register at 50 FR 22960, May 29, 1985 (FR Doc. 85–10237).

The nine (9) record systems to be added to the existing USUHS inventory of records is deemed necessasry by the agency and is being proposed under this action.

A new system report, as required by 5 U.S.C. 522a(o) of Privacy Act of 1974, was submitted to the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs (OMB) on March 19, 1987, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

**WUSU08**

**SYSTEM NAME:**

USUHS Radiation Safety Training Records.

**SYSTEM LOCATION:**

Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records will be maintained on University personnel who are assigned duties involving work with radioactive material, or whose duties may require them to frequently enter work areas in which radioactive materials are used or stored.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information in the system includes name, department, name of principal investigator, authorization number, date of initial briefing, date of last training, and date dosimeter issued (if applicable).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2112; 10 CFR Part 20; NAVMED P–5055, U.S. Nuclear Regulatory Commission (NRC) Materials License 19–23344–01.

**PURPOSE(S):**

The Radiation Safety Officer and his/her staff maintain the computer data base system. It is used to record information concerning the individual's training in radiation safety. This information is also transcribed for inclusion in the individual's dosimetry records. The Radiation Safety Committee of the University may review such records as are relevant to their determinations of an individual's qualification and/or expertise in using radioactive materials.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records may be reviewed by U.S. Nuclear Regulatory Commission (NRC) inspectors as part of their on-going administration of the Materials License, and by the Radiation Safety Committee or the Radiation Safety Officer and his/her staff to review an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds.

See also the existing "blanket routine uses" set forth at the beginning of the Uniformed Services University of Health Sciences (USUHS) record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in the University's main computer.

**RETRIEVABILITY:**

Records are accessed by name, department or data fields.

**SAFEGUARDS:**

Records in the data base may be accessed only by EHS staff members who have been granted access to the University computer.

**RETENTION AND DISPOSAL:**

Records are kept permanently on file.

**SYSTEM MANAGER(S) AND ADDRESS:**

Dosimetry Manager, Department of Environmental Health and Occupational Safety, Uniformed Services University of Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Information on the procedures for gaining access to and contesting records will be furnished upon request by the System Manager.

**CONTESTING RECORD PROCEDURES:**

Individuals may contest any information maintained in the record system by submitting their request in writing to the System Manager. The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Individual, previous employers, training attendance records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU09**

**SYSTEM NAME:**

USUHS Grants Management Information System (Protocols/Grants).

**SYSTEM LOCATION:**

The primary system will be located at Computer Operations, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799. Decentralized segments will be maintained by the department chairpersons of Anatomy, Anesthesiology, Biochemistry, Dermatology, Military Medicine, Family Practice, Medical Psychology, Medicine, Microbiology Surgery, Neurology, Obstetrics/Gynecology, Pathology, Pediatrics, Pharmacology, Physiology, Preventive Medicine and Biometrics, Psychiatry, and Radiology, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Research proposals of grant requesters; in addition, research records will be maintained on military active duty, retired, their dependents, civilians and volunteers who have signed an appropriate consent form for a particular research project(s).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Grant proposals and protocols; statistical data, results of laboratory experiments, research subjects' medical history including pathological results and standard behavioral tests.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 92–426, Ch. 104, section 2113; 10 U.S.C. 2113.

**PURPOSE(S):**

Research faculty and staff use the research records as a data base for the analysis of experimental data. Research records contain the results of laboratory experiments, research subjects' medical histories, and statistical data including pathological and standard behavioral tests, and are used as submission to research proposals. Summary statistics on the research records are maintained by faculty/staff and updated when appropriate. Study and summary statistics are published without individual identifiers, but in some instances the selection of elements is such that individuals could be identified by reference. This data is given to collaborators and is sometime used for clinical evaluation of the patient.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See Uniformed Services University of the Health Science (USUHS) "Blanket Routine Uses" set forth at the beginning of the agency's listing of published record system notices.

**SAFEGUARDS:**

Computer hardware, disks and folders are stored in a controlled area, and are accessible only by password, which is changed at random intervals.

**RETENTION AND DISPOSAL:**

Records are retained until studies are complete or until no further information can be utilized from this material. However, all studies involving human volunteers will be maintained for five years. If the study involves a minor(s) the record will be kept until the individuals is age 18 plus five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Grants Management, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

NOTIFICATION PROCEDURE:

Inquiries regarding the records should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Information as to exact procedure for gaining access may be obtained from the System Manager. Address requests to Record Administrator, Uniformed Services University of the Health Sciences (USUHS/Adm) 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

RECORD SOURCE CATEGORIES:

Patients, normal subject volunteers, research collaborators and experimental results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

WUSU10

SYSTEM NAME:

USUHS Thyroid Bioassay Records.

SYSTEM LOCATION:

Department of Environmental Health and Occupational Safety, Uniformed Services University of Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on laboratory workers who use radioiodine compounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes name, SSAN, department, date of bioassay, results of the individual's thyroid bioassay counts, and the purpose for each assay.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2113; 10 CFR Part 19; 10 CFR Part 20; NAVMED P–5055, U.S. Nuclear Regulatory Commission (NRC) Materials License 19–23344–01.

PURPOSE(S):

The Radiation Safety Officer and his/her staff use the results in determining possible uptake of radioiodine compounds by the body resulting from overexposure to the compounds, and in detecting trends which mark the uptake and elimination by the body of such compounds. The results of each assay are also transcribed by Radiation Safety Personnel for inclusion on an addendum to DD Form 1141, "Record of Exposure to Ionizing Radiation." The Radiation Safety Committee of the University may review such records as are relevant to their determinations of an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be reviewed by U.S. Nuclear Regulatory Commission (NRC) inspectors as part of their on-going administration of the Materials License, and by the Radiation Safety Committee of the Radiation Safety Officer and his/her staff to review an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds.

See also the existing "blanket routine uses" set forth at the beginning of the Uniformed Services University of Health Sciences (USUHS) record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on floppy diskettes.

RETRIEVABILITY:

Records are accessed by Date of Assay, Name, SSN, or Department.

SAFEGUARDS:

Records are stored in a controlled area which is kept locked when not in use. Back-up copies of each diskette are stored in a locked file cabinet.

RETENTION AND DISPOSAL:

Record diskettes are kept permanently on file. Records may be forwarded to new employer with written permission of the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Dosimetry Manager, Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

NOTIFICATION PROCEDURE:

Inquires regarding the records should be directed to the System Manager.

RECORD ACCESS PROCEDURE:

Information on the procedures for gaining access to and contesting records will be furnished upon request by the Radiation Safety Officer or the System Manager.

CONTESTING RECORD PROCEDURES:

Individuals may contest any information maintained in the record system by submitting their request in writing to the System Manager. The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative No. 81 (32 CFR Part 286b).

RECORD SOURCE CATEGORIES:

Individual and bioassy results.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

WUSU11

SYSTEM NAME:

USUHS Radiation Dosimetry Records.

SYSTEM LOCATION:

Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records maintained on University personnel who are assigned duties in areas requiring the wearing of a radiation dosimeter.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes name, SSAN, department, dates of employment, results of dosimeter measurements for each measurement period, results of the individual's thyroid bioassays (if applicable), results of the individual's tritium bioassays (if applicable), records obtained from individual's previous work experience involving radioactive materials, and records of individual's training in radiation safety.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2112, 2113; 10 CFR Part 19; 10 CFR Part 20; NAVMED P–5055; U.S. Nuclear Regulatory Commission (NRC) Material License 19–23344–01.

PURPOSE(S):

The record system is used to record and file pertinent information, and used for determining possible exposure to radioactive materials in excess of

allowable limits. The Radiation Safety Committee of the University may review such records as are relevent to their determinations of an individual's qualifications and/or expertise in using radioactive materials.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Records may be reviewed by U.S. Nuclear Regulatory Commission (NRC) inspectors as part of their on-going administration of the Materials License, and by the Radiation Safety Committee or the Radiation Safety Officer and his/her staff to review an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds. Also see Uniformed Service University of the Health Sciences (USUHS) "Blanket Routine Uses" set forth at the head of this agency's published record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records are stored in file folders.

**RETRIEVABILITY:**

Records are accessed by name, SSAN, or department.

**SAFEGUARDS:**

Records are stored in filing cabinets which are kept locked when not in use.

**RETENTION AND DISPOSAL:**

Records are kept permanently on file. Upon termination of an individual's employment at the University, copies of the records are sent, with the employees written consent, to the gaining employer's Radiation Safety Officer.

**SYSTEM MANGER(S) AND ADDRESS:**

Dosimetry Manager, Department of Environmental Health and Occupational Safety Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquires regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Information on the procedures for gaining access to and contesting records will be furnished upon request from the System Manager.

**CONTESTING RECORD PROCEDURES:**

Individuals may contest any information maintained in the record system by submitting their request in writing to System Manager. The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administration Instruction No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Individual, previous employers, medical records, bioassay results.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU12**

**SYSTEM NAME:**

USUHS Vehicle Administration Records.

**SYSTEM LOCATION:**

Primary system—USUHS Computer Operations, Decentralized Segments—USUHS Parking Control Office.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All personnel assigned or visiting the University who park privately owned vehicles at the University, including personnel who participate in USUHS carpools.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name of individual, office symbol, office phone, office room number, home address, working hours, map coordination of home address and USUHS Form 5004, "Certificate of Compliance—Private Motor Vehicle Registration."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended; 10 U.S.C. 2112, 2113.

**PURPOSE(S):**

Used by USUHS Parking Control Office to monitor parking of eligible personnel at the University. The Computer Operations Center provides a printout to be used by the Parking Control Office of all potential carpool prospects.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See Uniformed Services University of Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published record system notices.

**POLICIES AND PROCEDUE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

Forms filed in hard copy, computer magnetic tapes, disks and paper printouts.

**RETRIEVABILITY:**

Information is accessed and retrieved by name, home address map grid, permit number, tag number. The original request, USUHS Form 5004 is filed alphabetically by name.

**SAFEGUARDS:**

USUHS Form 5004 is filed in the Parking Control Office, and access is only on a need-to-know basis. The door is locked during non-duty hours. Computer data base in Computer Operations is stored in a controlled area. The computer terminal can only be accessed by use of closely held passwords by the Parking Control Office.

**RETENTION AND DISPOSAL:**

Information is kept on assigned personnel and destroyed one year after they depart the University.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Support Services Division, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to Chief, Support Services Division, Uniformed Services University, Department of Defense, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

USUHS Form 5004, "Certificate of Compliance—Private Motor Vehicle Registration and Related Information Pertaining to Carpooling."

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU13**

**SYSTEM NAME:**

USUHS Civilian Employee Health Records.

SYSTEM LOCATION:

Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records maintained on University civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes name, SSAN, department, date of employment, physical examination results, medical test results, reports by physicians, nurses, and other medical personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2112, 2113; 21 CFR Part 1910, 10 CFR Part 19, 10 CFR Part 20, NAVMED P–5055.

PURPOSE(S):

To record and file pertinent information, and use the results in determining possible exposure to occupational hazards in excess of allowable limits. The Director, EHS, and the representatives may review such records as are necessary to correlate exposure data and physical examination results.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be reviewed by the Occupational Health Nurse and staff, the Director, EHS, and representative; and Occupational Safety and Health Administration (OSHA), to review an individual's possible exposure to occupational hazards in excess of allowable limits. See also Uniformed Services University of the Health Sciences (USUHS) Blanket Routine uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in medical record folders.

RETRIEVABILITY:

Records are accessed by name, SSAN, or department.

SAFEGUARDS:

Records in the system may be accessed only by EHS staff members. The file cabinets are kept locked when not in use.

RETENTION AND DISPOSAL:

Records are kept permanently on file. Upon termination of an individual's employment at the University, copies of the records are sent, with the employee's written consent, to the gaining employer, or given to the employees.

SYSTEM MANAGER(S) AND ADDRESS:

Occupational Health Nurse, Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

NOTIFICATION PROCEDURE:

Inquiries regarding the records should be directed to the System Manager.

RECORD ACCESS PROCEDURE:

Address request for access to the record to the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

RECORD SOURCE CATEGORIES:

Information contained in the file is furnished by the individual, previous employers, physicians and physical examination results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

WUSU14

SYSTEM NAME:

USUHS Occupational Physical Examination Program.

SYSTEM LOCATION:

Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on University personnel who are assigned duties in areas requiring preplacement and/or occupational physical examinations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes name, SSAN, department, date of employment date of baseline physical examination, frequency of examination, date examination due, special tests required, frequency of special tests, date of special tests, and date special tests due.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2112, 2113; 21 CFR Part 1910, 10 CFR Part 19, 10 CFR Part 20, NAVMED P–5055.

PURPOSE(S):

The Occupational Health Nurse and staff maintain the record system to record and file pertinent information and use the results in determining possible exposure to occupational hazards in excess of allowable limits. The Director, EHS, and representatives may review such records as are necessary to correlate exposure data and physical examination results.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be reviewed by Occupational Health Nurse and staff, the Director, EHS, and representative; and the Office of Occupational Safety and Health Administration (OSHA) for the purpose of determining exposure to occupational health hazards. See also Uniformed Services University of Health Sciences (USUHS) Blanket Routine Uses at the beginning of this agency's published record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in the University's main computer system.

RETRIEVABILITY:

Records are accessed by name, SSAN, department, or other data fields.

SAFEGUARDS:

Records in the data base may be accessed only by EHS staff members who have been granted access to the University computer.

RETENTION AND DISPOSAL:

Records are kept permanently on file. Upon termination of and individual's employment at the University, copies of the records are sent, with the employee's written consent, to the gaining employer.

SYSTEM MANAGER(S) AND ADDRESS:

Occupational Health Nurse, Department of Environmental Health and Occupational Safety, Uniformed Services University of Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURE:**

Information on the procedures for gaining access to and contesting records will be furnished upon request from the System Manager.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Individual, previous employers, medical records, physical examination results.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU15**

**SYSTEM NAME:**

USUHS Security Status Master List.

**SYSTEM LOCATION:**

Security Officer, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All applicants for employment with USUHS; all military personnel assigned, detailed or attached to USUHS; all persons hired or serving in an advisory capacity to USUHS who require access to classified information.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Record contains type of investigation, date completed, file number, agency which conducted investigation, investigation, security clearance data information, name, SSAN, finger prints, date and place of birth, organizational assignment, dates interim and final clearances issued, position sensitivity and related data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2112, 2113; 44 U.S.C. 2904, 3102, 5 U.S.C. 7531 through 7533; Executive Order 10450, "Security Requirements for Government Employees," as amended; Executive Order 12356, "National Security Information Material."

**PURPOSE(S):**

To maintain and provide security clearance data to DoD contractors on USUHS employees assigned to or visiting a contract facility or visiting or applying for employment with another Federal agency.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records from this system of records may be disclosed to other Federal agencies for the purpose of asserting level of security clearance and background investigation data. Also see the blanket routine uses at the beginning of this component's published system of records notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in file folders maintained by the security officer.

**RETRIEVABILITY:**

File folders are filed alphabetically, by last name of individual concerned for all USUHS personnel or by subject matter.

**SAFEGUARDS:**

Records are accessible only to those authorized personnel required to prepare, process, and type necessary documents; or to answer authorized inquiries for information contained therein. Records are stored in locked filing cabinets. After normal business hours the building is protected by the USUHS guard force.

**RETENTION AND DISPOSAL:**

Records are destroyed two years after an individual is separated from the agency.

**SYSTEM MANAGER(S) AND ADDRESS:**

Security Officer (USUHS/SSD), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**NOTIFICATION PROCEDURES:**

Information may be obtained from Records Administrator, Uniformed Services University of the Health Sciences (USUHS/ADM), 4301 Jones Bridge Road, Bethesda, MD 20814–4799, telephone: (202) 295–3004.

**RECORD ACCESS PROCEDURES:**

Request from individual should be addressed to Records Administrator, Uniformed Services University of the Health Sciences (USUHS/ADM), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

Written requests for information should contain full name of the individual, current address and telephone number and current business address.

For personal inspections of records, the individual should be able to provide acceptable identification, that is, driver's license or employing office's identification card.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for contesting contents and appealing initial determination by the individual concerned are contained in 32 CFR Part 286b, and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Information is furnished by the individual concerned; application for employment; or assignment, and reports of investigation by Federal investigative agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU16**

**SYSTEM NAME:**

USUHS Home Town News Release Background Data File.

**SYSTEM LOCATION:**

USUHS, Office of University and Public Affairs, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Army, Navy, Air Force, and U.S. Public Health Service active duty personnel who have entered or graduated from the University's medical school or graduate school programs, who have been awarded a medal or decoration, or who otherwise have participated in a newsworthy event.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Biographical information including, but not limited to name, current grade, SSAN, marital status, local address, name and address of parents, educational background and military history, and photographs.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2113.

**PURPOSE:**

Preparation of news releases for distribution to newspapers across the United States.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE(S) OF SUCH USES:**

Records from this system of records may be disclosed for any, of the blanket routine uses published at the beginning of this Component's published record system notices. Information from this

system of records may also be disclosed to the media as part of news releases.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in locked cabinets, and the office is locked during non-duty hours.

**RETRIEVABILITY:**

Records are accessed by name and SSAN.

**SAFEGUARDS:**

Records are accessed only by person(s) responsible for servicing the records system in performance of their official duties.

**RETENTION AND DISPOSAL:**

Information on students is kept from the beginning of freshman year until 90 days after graduation and then destroyed. The University and Public Affairs office keep no information on medal or decoration awardees, as the original home-town newspaper release form is sent to the services' news centers and no copies are retained.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Public Affairs, USUHS, Office of University and Public Affairs, 4301 Jones Bridge Road, Room A1045, Bethesda, MD 20814–4799, telephone (202) 295–3049.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to the System Manager, Office of University and Public Affairs, Uniformed Services University, 4301 Jones Bridge Road, Room: A1045, Bethesda, MD 20814–4799.

**CONTESTING RECORDS PROCEDURES:**

The rules for access to records and for contesting and appealing initial determination by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Information is obtained from the individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 87–8141 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF EDUCATION

### National Advisory and Coordinating Council on Bilingual Education; Meeting

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

**DATES:** May 4 and 5, 1987—9:15 a.m.—5:00 p.m. The meeting will be conducted at the Hotel Intercontinental, 333 West Harbor Drive, San Diego, California 92101.

**FOR FURTHER INFORMATION CONTACT:** Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporters' Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245–2600.

**SUPPLEMENTARY INFORMATION:** The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I—Call to Order
II—Roll Call
III—Approval of Minutes from the previous meeting
IV—Update on OBEMLA Activities and Proposed Legislation
V—Old Business
VI—New Business
VII—Site Visits

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporters' Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.—5:30 p.m.

Dated: April 8, 1987.

**Carol Pendas Whitten,**

*Director Office of Bilingual Education and Minority Affairs.*

[FR Doc. 87–8198 Filed 4–10–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Office of Conservation and Renewable Energy

**[Case Nos. CAC–002 and CAC–001]**

### Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Test Procedures for Central Air Conditioners, Including Heat Pumps, to the Trane Co. and Modification of a Decision and Order Granting Waiver From Central Air Conditioner and Heat Pump Test Procedures to Carrier Corp.

**AGENCY:** Conservation and Renewable Energy Office, DOE.

**ACTION:** Decision and order.

**SUMMARY:** Notice is given of the Decision and Order (Case No. CAC–002) granting The Trane Company a waiver for its variable-speed TTS/TWS model central air conditioners and heat pumps from existing DOE test procedures for central air conditioners and heat pumps. Notice is also given of the modification of the Decision and Order (Case No. CAC–001) as published in the **Federal Register** on October 3, 1986, for Carrier variable-speed (VSP) model central air conditioner and heat pumps. (51 FR 35403).

**FOR FURTHER INFORMATION CONTACT:**

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.279(g), notice is hereby given of the issuance of the Decision and Order and modified Decision and Order as set out below. In the Decision and Order, the Trane Company has been granted a waiver for its variable-speed central air conditioners and heat pumps, permitting the company to use an alternate test method. In the modified Decision and Order, Carrier Corporation has been granted an amendment to its previous waiver test procedure for its variable-speed central air conditioners and heat pumps, permitting the company to test with a capacity integration time determined in the same manner as in the Trane Decision and Order.

Issued in Washington, DC, March 26, 1987.

Donna R. Fitzpatrick,

*Assistant Secretary, Conservation and Renewable Energy.*

**Decision and Order of the Department of Energy Office of Conservation and Renewable Energy**

[Case No. CAC-002]

In the matter of: the Trane Company.

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations by adding paragraph 430.27 on September 26, 1980, creating the waiver process. (45 FR 64108). DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed product test procedures. November 26, 1986 (51 FR 42823). The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristices as to provide materially inadequate comparative data. The Carrier Corporation was granted a waiver to central air conditioner test procedures on October 3, 1986, and petitioned for modification of the waiver on November 11, 1986, and January 23, 1987. Carrier requested that the capacity integration time be a function of the indoor fan cycle time. The November request was denied by DOE. The January 23, 1987, request presented additional arguments substantiating previous data and information presented to DOE.

The Trane Company (Trane) filed a "Petition for Waiver" in accordance with paragraph 430.27 of 10 CFR Part 430. DOE published in the Federal Register Trane's petition and solicited comments, data, and information respecting the petition. October 3, 1986 (51 FR 35410). Comments were received from ICG KeepRite Corporation (KeepRite) and The Carrier Corporation (Carrier). The comments received by DOE were sent to the petitioner on November 10, 1986. The petitioner submitted to DOE a rebuttal statement to the comments on December 3, 1986. DOE consulted with the National Bureau of Standards and the Federal Trade Commission concerning the Trane petition.

**Assertations and Determinations**

Trane's petition seeks a waiver from the DOE test provisions that require testing at a single compressor speed. Trane requests allowance to use Appendix B of the Air Conditioning and Refrigeration Institute (ARI) Standard 210/240–84 with amendments. The amendments to ARI Standard 210/240–84 requested by Trane include revisions to cycling period and intermediate steady-state test point. The intermediate speed proposed by Trane matches system capacity to building load at 87°F. Also, Trane requests the allowance of test and calculation procedures which incorporate test data for system operation at minimum and maximum speeds.

All interested parties, including DOE, agree that the existing test and calculation methods of Appendix M to Subpart B of 10 CFR Part 430 are inappropriate for variable-speed units. The previous waiver for variable-speed units granted to the Carrier Corporation, was based on Appendix B of the ARI Standard 210/240–84. October 3, 1986 (51 FR 35403).

Trane identified its models in the TTS/TWS product lines as using variable speed motors to drive the compressor, indoor blower, and outdoor fan. The compressor is controlled over a wide range of speeds: the indoor blower and outdoor fan motors operate over a smaller range. Modulation of all three motors allows the system to meet specific load requirements. The system requires use of a microprocessor in conjunction with a special thermostat, in order to operate at variable speeds.

Of the comments received, Carrier Corporation presented arguments against the methods of determining the "on" time and "off" time used for the cyclic tests. Carrier feels that the "on" time is an operational characteristic of the controls not the capacity ratio of maximum to minimum speed. Carrier also commented that the "off" time be such that the ratio of the "on" time to the total cycle time equal 0.2, where 0.2 represents the 20% loading used in the cyclic tests throughout the test procedures (also expressed as cooling load factor) (CLF)=0.2. In its response, Trane acknowledged the confusion created by its initial description of the cycling characteristics of variable-speed products. Trane responded by replacing sections 1.2 and 1.3 of its proposed test procedure with a simplified procedure. The essence of the revision is that the compressor "on" time be six minutes or the minimum allowed by the controls, whichever is greater; and that the "off" time be four times the compressor "on" time. This would preserve the cooling load factor (CLF) of 0.20.

The ICG KeepRite (KeepRite) Corporation expressed two concerns, the first was the validity of using ARI 210/240–84 to determine the SEER for variable speed cooling units. The second was Trane's proposed method and the discrepancy of unit performance caused by manual versus automatic controls. KeepRite believed that the test would not properly match building load when operated manually or used with poor automatic controls.

KeepRite proposed that the test procedure should incorporate a means for measuring the difference between automatic and manual variable-speed cooling units. This would measure the "load matching ability" of the test unit. The procedure would require the introduction of a fixed heat load determined by paragraph 2.1 in Appendix B of ARI 210/240–84. The load would follow a linear interpolation based on the outdoor bin temperature and maximum unit capacity. The unit control is set to maintain indoor temperature at 80°F. The company recommends a minimum ½ hour run time with the duration established by the time necessary to achieve the 80°F average. The addition of several test points to the Case II operating region were also suggested.

Trane disagreed with the need to evaluate manual versus automatic controls, and stated that reputable HVAC manufacturers would provide controls capable to performing the necessary load matching.

Trane believes that additional tests would result in increased ratings; however, Trane contends that the burden of running these additional tests would outweigh the benefits.

The comments and Trane's rebuttal were forwarded to the National Bureau of Standards (NBS) for review and investigation. NBS agreed that Carrier's comments concerning testing cycle times were valid and found that the Trane response was an acceptable solution. The KeepRite comments concerning central air conditioner controls raised the question of how to best analyze variable-speed units. Since the manufacturers do not currently offer any models of variable-speed equipment in the marketplace, NBS was unable to perform any actual tests. However, based on available information, NBS believes that the procedure revised by Trane is reasonable and compatible with the existing single speed test procedure and the waiver issued to Carrier for its variable-speed units.

Concurrent with the Department's review of the comments on the Trane request for wavier, Carrier petitioned for Modification of the Decision and Order granted Carrier for its variable-speed model central air conditioners and heat pumps. Carrier requested that it be allowed to calculate the system capacity over the period the indoor fan is on as determined by the automatic controls which the manufacturer normally supplies with the unit. Based upon the Department's review of Carrier's request, the comments on the Trane waiver, ARI Standard 210/240–84, and the DOE central air conditioner test procedure, the Department determined that a capacity integration time based on the indoor fan cycle time for variable-speed units yielded comparable results with the existing test procedure. Therefore, the Decision and Order issued today for Trane and the Modification of the Carrier Decision and Order October 3, 1986 (51 FR 35403), stipulates that the cyclic test capacity integration time shall be a function of the indoor fan cycle times.

It is DOE's position that for the purpose of these waivers, the ARI Standard 210/240–84 with the modifications provided in the Decision and Order is the best test method for variable-speed equipment currently available. The data available and comments of manufacturers and testing laboratories on these waivers have not demonstrated any inconsistencies with the current test procedure.

Based on the information provided by the petitioner and the commenters, DOE has determined to grant Trane's request for the use of ARI Standard 210/240–84 as modified as the method for determining the seasonal energy efficiency of variable-speed central air conditioners and heat pumps (cooling mode).

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by The Trane Company (CAC–002) is hereby granted as set forth in paragraph (3) below, subject to the provisions of paragraphs (5) and (6).

(2) The Carrier Corporation Petition for Modification of Waiver (CAC–001) is hereby granted as set forth in paragraph (4), (5), and (6).

(3) Notwithstanding any contrary provisions of Appendix M of 10 CFR Part 430 Subpart B, The Trane Company shall be permitted to test its variable-speed TTS/TWS model air conditioners and heat pumps on the basis specified in 10 CFR Part 430, with the modifications set forth below:

(i) Test Procedure

Test procedures shall be as specified in section 5 of ARI Standard 210/240–84 and in section 8.0 of ANSI/ASHRAE Standard 116–1983, with the inclusion of the following conditions.

(a) *Cooling cycle tests* shall be conducted by cycling the compressor "on" for 6 minutes or the minimum "on" time allowed by the controls, whichever, is greater and 24 minutes "off" or four times the "on" time. The capacity and all electrical energy shall be measured for the compressor "on" time or the indoor fan "on" time, whichever is greater. The duration of the indoor fan "on" and "off" period is governed by the automatic controls which the manufacturer normally supplies with the unit. All off-cycle electrical energy shall be measured for the compressor "off" time. Off-cycle electrical energy does not include fan power. In lieu of conducting cyclic tests C and D, an assigned value of 0.25 shall be used for the degradation coefficient for cooling $C_D$.

(b) *Intermediate cooling steady-state tests* shall be conducted at indoor coil and outdoor coil air conditions selected for the intermediate steady-state test from Table B1 of ARI Standard 210/240–84. The tolerances for the dry-bulb and wet-bulb temperatures of the air entering the indoor and outdoor coils shall be within the test operating tolerance and test condition tolerance specified in Table III–A of ANSI/ASHRAE Standard 116–1983. The intermediate compressor speed during the cooling test shall be in the range from ⅓ to ½ between the minimum and maximum speed. Determination of the compressor speed shall be conducted by a method which has the ability to provide results with less than two percent error.

The air volumetric flow rate at fan speeds less than the maximum speed shall be determined using the fan laws for a fixed resistance system. The following equation shall be used to calculate the flow rate of air:

$$CFM_{(k=v)} = \frac{RPM_{(k=v)}}{RPM_{(k=2)}} CFM_{(k=2)}$$

where:

$CFM_{(k=v)}$=Air flow rate at lower speed

$CFM_{(k=v)}$= Air flow rate from Test A in Table 1

$RPM_{(k=v)}$=Fan RPM from Test A in Table 1

$RPM_{(k=v)}$=Fan RPM at lower speed

(ii) Seasonal Energy Efficiency Ratio, SEER

The SEER shall be determined by the method for two-speed or two compressor units, as specified in ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84, and in accordance with the following changes. For variable speed compressor units the seasonal energy efficiency ratio (SEER) is found from the following equations:

BILLING CODE 6320-01-M

$$SEER = \frac{\sum_{j=1}^{n} q(t_j)}{\sum_{j=1}^{n} E(t_j)}$$

The terms $q(t_j)$ and $E(t_j)$ as defined in ASHRAE 116, summed over temperature bins, are evaluated at each temperature bin according to the three possible casees listed below.

The building cooling load $BL(t_j)$ for the three cases is obtained from the following equation:

eq.(1)

$$BL(t_j) = \frac{t_j - 65}{95 - 65} \frac{[q_{ss}^{k=2}(95F)]}{\text{Size Factor}}$$

where $q_{ss}^{k=2}(95)$ = steady state capacity measured from Test "A" in Table 1.

Size Factor = 1.1 for 10% oversizing.

CASE I

Units operating at minimum compressor speed (k=1) for which the steady state cooling capacity $q_{ss}^{k=1}(t_j)$ is greater than or equal to the building cooling load $BL(t_j)$, evaluate the following.

eq.(2)

$$q_{ss}^{k=1}(t_j) = q_{ss}^{k=1}(67F) + \frac{q_{ss}^{k=1}(82F) - q_{ss}^{k=1}(67F)}{82 - 67}(t_j - 67)$$

where $q_{ss}^{k=1}(67F)$ = steady state capacity measured from the Low Ambient Cooling Steady State Test, Table 1.

$q_{ss}^{k=1}(82F)$ = steady state capacity measured from Test "B-1", Table 2.

$q_{ss}^{k=1}(t_j)$ = steady state capacity at the minimum compressor speed intended for normal operation in the cooling mode at temperature $t_j$.

eq.(3)

$$E_{ss}^{k=1}(t_j) = E_{ss}^{k=1}(67F) + \frac{E_{ss}^{k=1}(82F) - E_{ss}^{k=1}(67F)}{82 - 67}(t_j - 67)$$

where $E_{ss}^{k=1}(67F)$ = the electrical power input for the Low Ambient Cooling Steady State Test.

$E_{ss}^{k=1}(82F)$ = the electrical power input from Test "B-1"

$E_{ss}^{k=1}(t_j)$ = the electrical power input at the minimum compressor speed in the cooling mode at temperature $t_j$.

Cooling Building Load Factor $$X^{k=1} = \frac{BL(t_j)}{q_{ss}^{k=1}(t_j)}$$

Cooling Part Load Factor

$$PLF^{k=1} = 1 - C_D(1 - X^{k=1})$$

where $C_D$ is as defined in Chapter 9 of ASHRAE 116 with the Dry Coil Cooling Steady State test construed as Test C and the Cyclic Cooling Dry Coil test construed as Test D, both run at minimum compressor speed. (See Table 1)

$$q(t_j) = X^{k=1} q_{ss}^{k=1}(t_j) n_j$$

$$E(t_j) = \frac{X^{k=1} E_{ss}^{k=1}(t_j) n_j}{PLF^{k=1}}$$

where $n_j$ = is the number of cooling hours in the $j^{th}$ temperature bin given in ARI Standard 210/240, Appendix A.

CASE II

When the compressor speed varies between the maximum (k=2) and minimum (k=1) compressor speeds (such that k=v) to satisfy the building cooling load a temperature $t_j$, (NOTE: unit does not cycle on and off), evaluate the following equations.

$$q_{ss}^{k=v}(t_j) = BL(t_j)$$

where $q_{ss}^{k=v}(t_j)$ = steady state capacity delivered by the unit at any speed between minimum and maximum compressor speeds at temperature $t_j$.

when $t_j \geq 87°F$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(87F) + \frac{E_{ss}^{k=2}(t_2) - E_{ss}^{k=v}(87F)}{t_2 - 87}(t_j - 87)$$

where $t_2$ = temperature $t_j$ at which $q_{ss}^{k=2}(t_j) = BL(t_j)$ found by equating eq.(1) and eq.(4) and solving for $t_j$.

$E_{ss}^{k=2}(t_2)$ = the electrical power input at maximum compressor speed at temperature $t_2$ calculated from eq.(5).

$E_{ss}^{k=v}(t_j)$ = the electrical power input required by the unit at temperature $t_j$ and some variable compressor speed between the minimum and maximum compressor speeds.

$E_{ss}^{k=v}(87F)$ = the electrical power input at 87F, from either equation (6) or equations (7) and (8).

When the measured capacity at the intermediate test point (Table 1), $q_{ssI}^{k=vI}(87F)$, is within 1% of BL(87F), then

eq.(6)

$$E_{ss}^{k=v}(87F) = E_{ssI}^{k=vI}(87F)$$

When two intermediate points are measured, where one measured capacity, $q_{ss1}^{k=v1}$ (87F), is within +3% of BL(87F) and the other, $q_{ss2}^{k=v2}$ (87F), is within -3% of BL(87F), then $E_{ss}^{k=v}$ (87F) is evaluated using eq.(7) and (8):

eq.(7)

$$\text{WEIGHT} = \frac{q_{ss1}^{k=v1}(87F) - BL(87F)}{q_{ss1}^{k=v1}(87F) - q_{ss2}^{k=v2}(87F)}$$

eq.(8)

$$E_{ss}^{k=v}(87F) = E_{ss1}^{k=v1}(87F) - \text{WEIGHT}\,(E_{ss1}^{k=v1}(87F) - E_{ss2}^{k=v2}(87F))$$

When $t_j < 87°F$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(87F) + \frac{E_{ss}^{k=2}(t_2) - E_{ss}^{k=v}(87F)}{t_2 - 87F}(t_j - 87)$$

where $t_1$ = temperature $t_j$ at which $q_{ss}^{k=1}(t_j) = BL(t_j)$ found by equating eq.(1) and eq.(2) and solving for $t_j$.

$E_{ss}^{k=1}(t_1)$ = the electrical power input at minimum compressor speed at temperature $t_1$ calculated from eq.(3).

$$q(t_j) = q_{ss}^{k=v}(t_j)n_j$$

$$E(t_j) = E_{ss}^{k=v}(t_j)\,n_j$$

Test points which fall outside of the 3% variance are unacceptable and new test points run.

BEST COPY AVAILABLE

**CASE III**

When a unit operates continuously at maximum compressor speed (k=2) at an outdoor temperature $t_j$, evaluate the following equations:

eq. (4)

$$q_{ss}^{k=2}(t_j) = q_{ss}^{k=2}(82F) + \frac{q_{ss}^{k=2}(95F) - q_{ss}^{k=2}(82F)}{95 - 82}(t_j - 82)$$

where $q_{ss}^{k=2}(t_j)$ = steady state capacity at the maximum compressor speed at temperature $t_j$.

$q_{ss}^{k=2}(82F)$ = steady state capacity from Test "B-2", Table 1

eq. (5)

$$E_{ss}^{k=2}(t_j) = E_{ss}^{k=2}(82F) + \frac{E_{ss}^{k=2}(95F) - E_{ss}^{k=2}(82F)}{95 - 82}(t_j - 82)$$

where $E_{ss}^{k=2}(t_j)$ = the electrical power input at the maximum compressor speed at temperature $t_j$.

$E_{ss}^{k=2}(82F)$ = the electrical power input from Test "B-2", Table 1

$E_{ss}^{k=2}(95F)$ = the electrical power input from Test "A", Table 1

$$q(t_j) = q_{ss}^{k=2}(t_j)\, n_j$$

$$E(t_j) = E_{ss}^{k=2}(t_j)\, n_j$$

BILLING CODE 8320-01-C

TABLE I.—TEST CONDITIONS

| Test | Indoor coil | | Outdoor coil | |
|---|---|---|---|---|
| | Air entering | | Air entering | |
| | DB F | WB F | DB F | WB F |
| "A" Cooling Steady State At Maximum (k=2) Compressor Speed | [illegible] | 67 | 95 | [1] 75 |
| "B–2" Cooling Steady State At Maximum (k=2) Compressor Speed | [illegible] | 67 | 82 | [1] 65 |
| "B–1" Cooling Steady State At Minimum (k=1) Compressor Speed | [illegible] | 67 | 82 | [1] 65 |
| Low Ambient Cooling Steady State At Minimum (k=1) Compressor Speed | [illegible] | 67 | 67 | [1] 53.5 |
| Dry Coil Cooling Steady State At Minimum (k=1) Compressor Speed | 80 | [4] 57 | 67 | [1] 53.5 |
| Cyclic Cooling Dry Coil [3] At Minimum (k=1) Compressor Speed | [illegible] | [4] 57 | 67 | [1] 53.5 |
| Intermediate Cooling Steady State [2] At Variable (k=v) Compressor Speed | [illegible] | 67 | 87 | [1] 69 |

All tests are performed at the condenser speed and indoor blower speed intended for normal operation notes:
[1] Not maintained if no condensate rejected to outdoor coil.
[2] Compressor speed is selected to provide capacity as described in Case II calculations, Attachment I.
[3] Test conducted by cycling compressor as described in Attachment I, Sections 1.2 and 1.3.
[4] Wet bulb sufficiently low that no condensate forms on evaporator.

(4) The Decision and Order granted to Carrier Corporation on September 19, 1986, (51 FR 35403, October 3, 1986) (Case No. CAC–001) is modified by deleting the last three sentences of paragraph (2)(i)(A) and inserting the following:

The capacity and all electrical energy shall be measured for the compressor "on" time or the indoor fan "on" time, whichever is greater. The duration of the indoor fan "on" and "off" periods is governed by the automatic controls which the manufacturer normally supplies with the unit. All off-cycle electrical energy shall be measured for the compressor 48 minutes "off" time. Off-cycle electrical energy does not include fan power.

(5) The waivers shall remain in effect from the date of issuance of this Order until the Department of Energy prescribes final test procedures appropriate to variable-speed central air conditioners and heat pumps.

(6) These waivers are based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicants and commenters. These waivers may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

[FR Doc. 87–8096 Filed 4–10–87; 8:45 am]
BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket Nos. CP87–264–000]

## Algonquin Gas Transmission Company, et al.; Natural Gas Certificate Filings

Take notice that the followings filings have been made with the Commission:

### 1. Algonquin Gas Transmission Company

[Docket No. CP87–264–000]

April 8, 1987.

Take notice that on March 25, 1987, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston Massachusetts 02135, filed in Docket No. CP87–264–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to add a new delivery point to Connecticut Light and Power Company (CL&P), as well as construct and operate any appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin requests authorization to add a new delivery point in Southbury, Connecticut, for deliveries of natural gas to CL&P under Algonquin's existing Rate Schedule F–4 sales service. Algonquin states that it currently provides sales and transportation services to CL&P under various rate schedules contained in its Second Revised Volume No. 1, FERC Gas Tariff. It is stated that such service is provided at eleven existing meter and regulating stations at various locations in Connecticut for the account of CL&P. CL&P has informed Algonquin that it requires a new delivery point in the Southbury, Connecticut, area to provide service to International Business Machines which is establishing a large office complex adjacent to Algonquin's existing pipeline facilities. In addition, Algonquin explains that CL&P has requested Algonquin to transfer 890 MMBtu to natural gas per day of its Rate Schedule F–4 maximum daily quantity contemplated to be delivered to CL&P at the Vernon, Connecticut, delivery point, to the proposed new Southbury delivery point.

It is stated that Algonquin would construct the necessary meter and regulator station at an estimated cost of $183,000, which cost would be reimbursed by CL&P.

Comment date: April 29, 1986, in accordance with Standard Paragraph F at the end of this notice.

### 2. Southern Natural Gas Company

[Docket No. CP87–257–000]

April 7, 1987.

Take notice that on March 18, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–257–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing for three years the transportation of natural gas for Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to tansport gas on behalf of Amoco in accordance with the terms and conditions of two transportation agreements between Amoco and Southern, each dated December 5, 1986. It is indicated that one of the transportation agreements provides for the transportation of gas for Amoco between various delivery and redelivery points located exclusively on Southern's supply area pipeline facilities (Supply Area Agreement), and the other transportation agreement provides for the transportation of gas for Amoco through Southern's entire system to various redelivery points located in its market area (Market Area Agreement). Southern states that it would transport on an interruptible basis up to an aggregate quantity of 250,000 and 70,000

MMBtu of gas per day pursuant to the Supply Area and Market Agreements, respectively. Southern has not indicated the ultimate users of this gas nor the volume of gas to be delivered at the various redelivery points.

It is stated that the Supply Area and Market Area Agreements provide that Amoco would deliver or cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system specified in First Revised Exhibit A to the respective Agreements and Exhibit F to the Application. Pursuant to the Supply Area Agreement, Southern would redeliver to Amoco at: (1) The existing point of interconnection between Southern's pipeline system and Florida Gas Transmission Company's pipeline system in Washington Parish, Louisiana; (2) the existing point of interconnection between Southern's pipeline system and Amax Nickel, Inc., in Plaquemines Parish, Louisiana; and (3) the existing point of interconnection between the facilities of Southern and Acadian Gas Pipeline System at Southern's Meter Station No. 6014 in Iberville Parish, Louisiana, it is stated. Pursuant to the Market Area Agreement, Southern would redeliver to Amoco at (1) the Atlanta Area Delivery Point, as set forth in the Exhibit A to the Service Agreement between Atlanta Gas Light Company and Southern dated September 23, 1969, (Atlanta Area Redelivery Point); (2) Meter Station No. 2 of the Warner Robins Delivery Point, as set forth in the Exhibit A to the Service Agreement between the City of Warner Robins, Georgia, and Southern dated September 22, 1969, (Warner Robins Redelivery point); and (3) the Aiken Meter Station of the Aiken Delivery Point, as set forth in the Exhibit A to the Servcie Agreement between South Carolina Pipeline Corporation and Southern dated November 1, 1969 (Aiken Redelivery Point), it is stated. Southern proposes to redeliver an equivalent quantity of gas less 3.25 percent of such amount which would be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Amoco's pro-rate share of any gas delivered for Amoco's account which is lost or vented for any reason.

Southern states that the Supply Area Agreement provides that Amoco would pay Southern each month a transportation rate of 10.0 cents for each MMBtu of gas redelivered by Southern.

Pursuant to the Market Area Agreement, Amoco would pay Southern each month a transportation rate equal to seventy-five percent (75%) of Southern's fully allocated transportation rate in effect from time to time during the term of the Agreement, it is stated. The initial transportation rates for redelivery to the Atlanta Area, Warner Robins, and Aiken Redelivery Points are 32.7 cents when the volumes redelivered are within contract demand and 50.1 cents when the volumes redelivered are in excess of contract demand.

It is further stated that the transportation rate applicable for service to a pariticular redelivery point is subject to a credit provision which provides that in the event Southern provides transportation services for a shipper other then Amoco, including affiliates of Southern, for redelivery at any existing market area delivery point and: (i) The quantities actually transported for such shipper in any month equal or exceed the volumes transported for Amoco to such existing market area redelivery point under the Market Area Agreement for that month, and (ii) the transportation rate charge such shipper by Southern for such transportation service is less than the rate charged Amoco for such service under the Market Area Agreement, the Southern would credit Amoco for transportation services rendered in the succeeding month with an amount equal to the difference between the transportation rate charged Amoco for transportation services to the existing market area redelivery point during the previous month and the lowest transportation rate charged for the delivery of gas at such existing market area redelivery point during the previous month. In addition, Southern proposes to collect from Amoco the GRI surcharge of 1.52 cents per Mcf.

Southern also requests flexible authority to provide transportation service from additional delivery points and to additional redelivery points as such points may be required by Amoco.

Southern states that the proposed transportation servie is in accordance with the terms and provisions of a Settlement Agreement and Release entered into between Amoco and Southern. Southern states that the proposed transportation service would make more competitively-priced gas available to Southern's customers and provide them with another alternative in their efforts to diversify their natural gas supply sources.

Comment date: April 27, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 3. Southern Natural Gas Company

[Docket No. CP86-336-002]

April 8, 1987

Take notice that on March 23, 1987, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-336-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on an interruptible basis on behalf of MacMillan Bloedel Inc. (MacMillan) for a term expiring on October 31, 1988, all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Southern proposes to transport natural gas for MacMillan in accordance with the terms and conditions of a transportation agreement between MacMillan and Southern dated February 14, 1986, which Southern and MacMillan are currently amending to provide for the proposed extended term. Southern states that by Commission order issuing limited-term certificates on June 13, 1986, in Docket No. CP86-336-000 and by order issued September 11, 1986, in Docket Nos. CP86-336-001, the Commission authorized Southern to perform limited-term transportation service on behalf of MacMillan. Southern states that the existing certificate authorizes Southern to transport up to 16,000 MMBtu equivalent of natural gas per day for a term expiring June 13, 1987.

Southern states that it has received a request from MacMillian to continue the transportation service after the expiration of the existing certificate authorization. Southern explains that it has decided to continue to make interrruptible transportation services available on its pipeline system for a limited-term after October 31, 1987, the date to which it previously proposed to make transportation services available, and in accordance therewith, Southern filed a revision to its statement of policy in Docket Nos. CP86-277, *et al.*, on February 17, 1987. In that revision to its policy, Southern stated that it was willing to seek limited-term certificate authorization to transport gas for either a new shipper or an existing shipper through October 31, 1988. Accordingly, Southern agreed to file herein this petition for extension of the term as requested by the shipper

Southern requests that the limited-term certificate issued June 13, 1986, as extended September 11, 1986, in Docket Nos. CP86-336-000 and CP86-336-001, be further extended for a limited-term

ending October 31, 1988. Southern does not propose any other change in the authorized service.

Comment date: April 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

**4. Texas Eastern Transmission Corporation and Natural Gas Pipeline Company of America**

[Docket No. CP77–568–018]

April 8, 1987.

Take notice that on March 30, 1987, Texas Eastern Transmission Corporation (Texas Eastern) P.O. Box 2521, Houston, Texas 77252, and Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP77–568–018, a petition to amend the order issued November 29, 1977, in Docket No. CP77–568, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the addition of two exchange balancing points to an existing transportation and exchange agreement dated July 27, 1977, as amended, on file in Texas Eastern's FERC Rate Schedule X–85 and Natural's FERC Rate Schedule X–89, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Natural and Texas Eastern have agreed to amend their agreement for the purpose of adding two additional balancing points, for Texas Eastern's account, with Acadian Gas Pipeline System in Vermillion Parish and Point Coupee Parish, Louisiana.

Comment date: April 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**5. Southern Natural Gas Company**

[Docket No. CP86–569–002]

April 8, 1987.

Take Notice that on March 23, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–569–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on an interrruptible basis on behalf of Alabama Gas Corporation (ACIPCO) for a term expiring on October 31, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Alagasco, as agent for ACIPCO, in accordance with the terms and conditions of a transportation agreement between Alagasco and Southern dated June 12, 1986, which Southern and Alagasco are currently amending to provide for the proposed extended term. Southern states that Commission order issuing limited-term certificates on August 11, 1986, in Docket No. CP86–569–000 and by order issued September 11, 1986, in Docket No. CP86–569–001, the Commission authorized Southern to perform limited-term transportation service on behalf of Alagasco as agent for ACIPCO. Southern states that the existing certificate authorizes Southern to transport up to 6,000 MMBtu equivalent of natural gas per day for a term expiring August 11, 1987.

Southern states that it has received a request from Alagasco, acting as agent for ACIPCO, to continue the transportation service after the expiration of the existing certificate authorization. Southern explains that it has decided to continue to make interruptible transportation services available on its pipeline system for a limited-term after October 31, 1987, the date to which it previously proposed to make transportation services available, and in accordance therewith, Southern filed a revision to its statement of policy in Docket Nos. CP86–277, *et al.*, on February 17, 1987. In that revision to its policy, Southern stated that it was willing to seek limited-term certificate authorization to transport gas for either a new shipper or an existing shipper through October 31, 1988. Accordingly, Southern agreed to file herein this petition for extension of the term as requested by the shipper.

Southern requests that the limited-term certificate issue August 11, 1986, as extended September 11, 1986, in Docket Nos. CP86–569–000 and CP86–569–001, be further extended for a limited-term ending October 31, 1988. Southern does not propose any other change in the authorized service.

Comment date: April 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–8178 Filed 4–10–87; 8:45 am]

BILLING CODE 6717–01–M

---

[Project Nos. 5950–004 et al.]

**Lewis County Public Utility District No. 1 et al.; Surrender of Preliminary Permits**

April 8, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

**1. Lewis County Public District No. 1**

[Project No. 5950–004]

Take notice that Lewis County Public Utility District No. 1, permittee for the Johnson Creek Project No. 5950, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5950 was issued on July 9, 1984, and would have expired on June 30, 1987. The project would have been located on Johnson Creek in Lewis County, Washington.

The permittee filed the request on February 17, 1987.

**2. Minersville Associates**

[Project No. 9268–002]

Take notice that Minersville Associates, permittee for the proposed

Rocky Ford Hydro Project No. 9268, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 26, 1985, and would have expired on November 30, 1988. The project would have been located on the Beaver River in Beaver County, Utah. The Permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on March 11, 1987.

**3. Palisade Associates**

[Project No. 9239–001]

Take notice that Palisade Associates, Permittee for the proposed Palisade Pipeline Hydro Project No. 9239, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 5, 1985, and would have expired on November 30, 1988. The project would have been located on the Six Mile Creek in Sanpete County, Utah. The Permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on March 11, 1987.

**4. South Fork Irrigation District**

[Project No. 4059–004]

Take notice that South Fork Irrigation District, exemptee for the proposed West Valley Hydroelectric Project No. 4059, has requested that its exemption be terminated. The exemption was issued on August 11, 1983. The project would have been located on the South Fork Pit River and West Valley Reservoir, near Likely, in Modoc County, California. Construction of the project has not commenced.

The exemptee filed the request on February 17, 1987.

Standard Paragraphs:

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–8179 Filed 4–10–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87–3–48–000, 001]

## ANR Pipeline Co.; PGA Rate Change Filing

April 7, 1987.

Take notice that on March 31, 1987, ANR Pipeline Company ("ANR"), pursuant to section 15 of the General Terms and Conditions of its F.E.R.C. Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Ninth Revised Sheet No. 18
Fifth Revised Sheet No. 19
First Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 78A

Ninth Revised Sheet No. 18 reflects a 7.74¢ per dekatherm ("dth") increase in the gas cost component of the commodity rate of ANR's CD–1 and MC–1 Rate Schedules, a decrease of $0.054 in the monthly demand rate of CD–1 and MC–1 Rate Schedules and an increase in ANR's one-part rates applicable to Rate Schedules SGS–1 and LVS–1 of 6.88¢ and 7.48¢ respectively, per dth.

First Revised Sheet No. 76, First Revised Sheet No. 77, First Revised Sheet No. 78 and First Revised Sheet No. 78A reflect a change in the terms of ANR's Purchased Gas Cost Adjustment (PGA) tariff provisions. These revisions to Section 15 and Paragraph 15.1 of Original Volume No. 1, F.E.R.C. Gas Tariff modify ANR's PGA provisions to provide for an annual surcharge adjustment for deferred purchased gas costs to be effective May 1 of each year, in lieu of ANR's existing seminannual deferred purchased gas cost adjustment. ANR will continue to file its current Purchased Gas Cost Adjustment on a semiannual basis having an effective date of May 1 or November 1.

Fifth Revised Tariff Sheet No. 19 reflects that since there were zero MSAC's reported by ANR's customers, there is no PGA reduction.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87–8190 Filed 4–10–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST87–1283–000 et al.]

## Arkla Energy Resources et al.; Self-Implementing Transactions

April 8, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline of behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to § 284.233 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before April 24, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1283 | Arkla Energy Resources | Liberty Natural Gas Co | 02-02-87 | B | | |
| ST87-1284 | Arkla Energy Resources | J-W Operating Co | 02-02-87 | B | | |
| ST87-1285 | Arkla Energy Resources | Arkla Energy Resources, (LA Intra. Seg). | 02-02-87 | B | | |
| ST87-1286 | El Paso Natural Gas Co | Intersearch Gas Corp | 02-02-87 | B | | |
| ST87-1287 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-02-87 | B | | |
| ST87-1288 | Arkla Energy Resources | Shreveport Intrastate Gas Trans., Inc | 02-02-87 | B | | |
| ST87-1289 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1290 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1291 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-02-87 | B | | |
| ST87-1292 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1293 | ANR Pipeline Co | Northern Indiana Fuel & Light Co | 02-02-87 | B | | |
| ST87-1294 | ANR Pipeline Co | North Central Public Service Co | 02-02-87 | B | | |
| ST87-1295 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1296 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1297 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1298 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1299 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-02-87 | B | | |
| ST87-1300 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-02-87 | B | | |
| ST87-1301 | Arkla Energy Resources | Arkansas Lousiana Gas Co | 02-02-87 | B | | |
| ST87-1302 | Columbia Gulf Transmission Co | NGC Intrastate Pipeline Co | 02-02-87 | B | | |
| ST87-1303 | Columbia Gulf Transmission Co | Texas Eastern Transmission Corp | 02-02-87 | G | | |
| ST87-1304 | Natural Gas Pipeline Co. of America | Illinois Power Co | 02-02-87 | B | | |
| ST87-1305 | Tennessee Gas Pipeline Co | Gas Systems Network, Inc | 02-02-87 | B | | |
| ST87-1306 | Texas Gas Transmission Corp | Memphis Light, Gas and Water Division. | 02-02-87 | B | | |
| ST87-1307 | Texas Eastern Transmission Corp | Mountaineer Gas Co | 02-02-87 | B | | |
| ST87-1308 | Colorado Interstate Gas Co | Public Service Co. of Colorado | 02-03-87 | B | | |
| ST87-1309 | Texas Eastern Transmission Corp | Endevco Pipeline Co | 02-02-87 | B | | |
| ST87-1310 | Natural Gas Pipeline Co. of America | Pennsylvania Gas and Water Co | 02-02-87 | B | | |
| ST87-1311 | Natural Gas Pipeline Co. of America | Northern Illinois Gas Co | 02-02-87 | B | | |
| ST87-1312 | United Gas Pipe Line Co | ONG Transmission Co | 02-03-87 | B | | |
| ST87-1313 | United Gas Pipe Line Co | Humble Gas System, Inc | 02-03-87 | B | | |
| ST87-1314 | Texas Gas Transmission Corp | Terre Haute Gas Corp | 01-28-87 | B | | |
| ST87-1315 | Texas Gas Transmission Corp | City of Hamilton | 01-28-87 | B | | |
| ST87-1316 | Texas Gas Transmission Corp | Central Illinois Public Service Co | 01-28-87 | B | | |
| ST87-1317 | Texas Gas Transmission Corp | Memphis Light, Gas and Water Division. | 01-28-87 | B | | |
| ST87-1318 | Texas Gas Transmission Corp | City of Olive Branch | 01-28-87 | B | | |
| ST87-1319 | Transcontinental Gas Pipe Line Corp | Public Service Electric and Gas Co | 02-04-87 | B | | |
| ST87-1320 | Transok, Inc | Peoples Natural Gas Co | 02-05-87 | C | 07-05-87 | 26.25 |
| ST87-1321 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1322 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1323 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1324 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1325 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 02-05-87 | B | | |
| ST87-1326 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1327 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1328 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1329 | Texas Gas Transmission Corp | Indiana Gas Co | 02-05-87 | B | | |
| ST87-1330 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 02-05-87 | B | | |
| ST87-1331 | Texas Gas Transmission Corp | Central Hudson Gas & Elec. Corp., et al. | 02-05-87 | B | | |
| ST87-1332 | Texas Gas Transmission Corp | Indiana Gas Co | 02-05-87 | B | | |
| ST87-1333 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 02-05-87 | B | | |
| ST87-1334 | Texas Gas Transmission Corp | South Eastern Indiana Natural Gas Co | 02-05-87 | B | | |
| ST87-1335 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-05-87 | B | | |
| ST87-1336 | PGC Pipeline, Div. of LPC Energy Inc | El Paso Natural Gas Co | 02-05-87 | C | 07-05-87 | 25.20 |
| ST87-1337 | PGC Pipeline, Div. of LPC Energy Inc | Mississippi Valley Gas Co | 02-05-87 | D | | |
| ST87-1338 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1339 | ANR Pipeline Co | Northern Indiana Public Service Co | 02-05-87 | B | | |
| ST87-1340 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1341 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1342 | ANR Pipeline Co | Wisconsin Gas Co | 02-05-87 | B | | |
| ST87-1343 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1344 | ANR Pipeline Co | Columbia Gas of New York, Inc | 02-05-87 | B | | |
| ST87-1345 | Transcontinental Gas Pipe Line Corp | Illinois Power Co | 02-05-87 | B | | |
| ST87-1346 | Transcontinental Gas Pipe Line Corp | Columbia Gas Dist. of Ohio, et al | 02-05-87 | B | | |
| ST87-1347 | Transcontinental Gas Pipe Line Corp | Baltimore Gas and Electric Co | 02-05-87 | B | | |
| ST87-1348 | Northern Natural Gas Co | Great Plains Natural Gas Co | 02-05-87 | B | | |
| ST87-1349 | Northern Natural Gas Co | West Texas Gas, Inc | 02-05-87 | B | | |
| ST87-1350 | Northern Natural Gas Co | Central Illinois Gas Co | 02-05-87 | B | | |
| ST87-1351 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1352 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1353 | Valero Transmission Co | Texas Eastern Transmission Corp | 02-06-87 | C | | |
| ST87-1354 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1355 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-06-87 | B | | |
| ST87-1356 | ANR Pipeline Co | Eastex Gas Transmission | 02-06-87 | B | | |
| ST87-1357 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-06-87 | B | | |
| ST87-1358 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-06-87 | B | | |
| ST87-1359 | ANR Pipeline Co | Wisconsin Fuel and Light Co | 02-06-87 | B | | |
| ST87-1360 | ANR Pipeline Co | Llano, Inc | 02-06-87 | B | | |
| ST87-1361 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1362 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1363 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1364 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1365 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1366 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1367 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-06-87 | B | | |
| ST87-1368 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-06-87 | B | | |
| ST87-1369 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1370 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1371 | ANR Pipeline Co | Wisconsin Southern Gas Co., Inc | 02-06-87 | B | | |
| ST87-1372 | Transcontinental Gas Pipe Line Corp | Brooklyn Union Gas Co | 02-06-87 | B | | |
| ST87-1373 | MIGC, Inc | Northern Indiana Pub. Service Co., et al. | 02-06-87 | B | | |
| ST87-1374 | MIGC, Inc | Iowa-Illinois Gas & Electric Co | 02-06-87 | B | | |
| ST87-1375 | Texas Eastern Transmission Corp | Columbia Gas of Kentucky, Inc | 02-06-87 | B | | |
| ST87-1376 | Northern Natural Gas Co | UGI Corp | 02-06-87 | B | | |
| ST87-1377 | Northern Natural Gas Co | Enron Industrial Natural Gas Co | 02-06-87 | B | | |
| ST87-1378 | Northern Natural Gas Co | Channel Industries Gas Co | 02-06-87 | B | | |
| ST87-1379 | Northern Natural Gas Co | NGP Pipeline Co | 02-06-87 | B | | |
| ST87-1380 | Louisiana Resources Co | Northern Intrastate Pipeline Co | 02-06-87 | C | 07-06-87 | 26.43 |
| ST87-1381 | Sea Robin Pipeline Co | Piedmont Natural Gas Co., et al | 02-06-87 | B | | |
| ST87-1382 | United Gas Pipe Line Co | Madleon Transmission Co., Inc | 02-06-87 | B | | |
| ST87-1383 | United Gas Pipe Line Co | Texas Southern Pipeline, Inc | 02-06-87 | B | | |
| ST87-1384 | United Gas Pipe Line Co | Quivira Gas Co | 02-06-87 | B | | |
| ST87-1385 | United Gas Pipe Line Co | J-W Gathering Co | 02-06-87 | B | | |
| ST87-1386 | United Gas Pipe Line Co | South Alabama Utilities | 02-06-87 | B | | |
| ST87-1387 | Houston Pipe Line Co | Northern Natural Gas Co | 02-06-87 | C | | |
| ST87-1388 | Oasis Pipe Line Co | Minnegasco, Inc | 02-06-87 | C | | |
| ST87-1389 | Oasis Pipe Line Co | Columbia Gas of Pennsylvania, Inc | 02-06-87 | C | | |
| ST87-1390 | Oasis Pipe Line Co | Columbia Gas of Ohio, Inc | 02-06-87 | C | | |
| ST87-1391 | ONG Transmission Co | Williams Natural Gas Co | 02-06-87 | C | 07-06-87 | 10.00 |
| ST87-1392 | United Gas Pipe Line Co | Clajon Industrial Gas, Inc | 02-06-87 | B | | |
| ST87-1393 | Taft Pipeline Co | Northern Natural Gas Co | 02-06-87 | C | | |
| ST87-1394 | Tennessee Gas Pipeline Co | Rochester Gas & Electric Co., et al | 02-06-87 | B | | |
| ST87-1395 | Tennessee Gas Pipeline Co | Southern Connecticut Gas Co | 02-06-87 | B | | |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1396 | United Gas Pipe Line Co | Texas Southern Pipeline, Inc | 02-06-87 | B | | |
| ST87-1397 | United Gas Pipe Line Co | Niagara Mohawk Power Corp | 02-06-87 | B | | |
| ST87-1398 | Transok, Inc | Lone Star Gas Co | 02-09-87 | C | 07-09-87 | 21.75 |
| ST87-1399 | Texas Eastern Transmission Corp | Commonwealth Gas Co | 02-09-87 | B | | |
| ST87-1400 | Texas Eastern Transmission Corp | City of Richmond Dept. of Public Util | 02-09-87 | B | | |
| ST87-1401 | Texas Eastern Transmission Corp | Niagara Mohawk Power Corp | 02-09-87 | B | | |
| ST87-1402 | Texas Eastern Transmission Corp | Consumers Gas Co | 02-09-87 | B | | |
| ST87-1403 | Texas Eastern Transmission Corp | New York State Electric and Gas Co | 02-09-87 | B | | |
| ST87-1404 | Texas Eastern Transmission Corp | Hope Gas, Inc | 02-09-87 | B | | |
| ST87-1405 | Tennessee Gas Pipeline Co | Eastex Gas Transmission | 02-09-87 | B | | |
| ST87-1406 | Tennessee Gas Pipeline Co | Columbia Gas of Virginia, Inc | 02-09-87 | B | | |
| ST87-1407 | Tennessee Gas Pipeline Co | Coronado Transmission Co | 02-09-87 | B | | |
| ST87-1408 | Tennessee Gas Pipeline Co | National Fuel Gas Distribution Corp | 02-09-87 | B | | |
| ST87-1409 | Tennessee Gas Pipeline Co | Columbia Gas of Kentucky, Inc | 02-09-87 | B | | |
| ST87-1410 | Ohio River Pipeline Corp | Indiana Gas Co | 02-09-87 | B | | |
| ST87-1411 | Panhandle Eastern Pipe Line Co | Central Illinois Public Service Co | 02-09-87 | B | | |
| ST87-1412 | Northern Natural Gas Co | Peoples Natural Gas Co | 02-09-87 | B | | |
| ST87-1413 | Northern Natural Gas Co | St. Croix Valley Natural Gas Co | 02-09-87 | B | | |
| ST87-1414 | Tennessee Gas Pipeline Co | Columbia Gas of Ohio, Inc | 02-09-87 | B | | |
| ST87-1415 | Tennessee Gas Pipeline Co | Columbia Gas of New York, Inc | 02-09-87 | B | | |
| ST87-1416 | Tennessee Gas Pipeline Co | Louisiana Intrastate Gas Corp | 02-09-87 | B | | |
| ST87-1417 | Tennessee Gas Pipeline Co | Columbia Gas of Maryland, Inc | 02-09-87 | B | | |
| ST87-1418 | Tennessee Gas Pipeline Co | Columbia Gas of Pennsylvania, Inc | 02-09-87 | B | | |
| ST87-1419 | Natural Gas Pipeline Co. of America | Washington Gas Light Co | 02-09-87 | B | | |
| ST87-1420 | United Gas Pipe Line Co | Woodward Pipeline, Inc | 02-09-87 | B | | |
| ST87-1421 | Natural Gas Pipeline Co. of America | Memphis Light, Gas and Water Co | 02-09-87 | B | | |
| ST87-1422 | Natural Gas Pipeline Co. of America | Central Illinois Public Service Co | 02-09-87 | B | | |
| ST87-1423 | United Gas Pipe Line Co | Louisville Gas & Electric Co., et al | 02-09-87 | B | | |
| ST87-1424 | Columbia Gulf Transmission Co | Nashville Natural Gas Co | 02-09-87 | B | | |
| ST87-1425 | Enogex, Inc | Brandywine Industrial Gas, Inc | 02-09-87 | C | 07-09-87 | 28.50 |
| ST87-1426 | Texas Gas Transmission Corp | Michigan Consolidated Gas Co., et al | 02-10-87 | B | | |
| ST87-1427 | Texas Gas Transmission Corp | NGC Intrastate Pipeline Co | 02-10-87 | B | | |
| ST87-1428 | El Paso Natural Gas Co | Texline Gas Co | 02-10-87 | B | | |
| ST87-1429 | Trunkline Gas Co | Consumers Power Co | 02-11-87 | B | | |
| ST87-1430 | Sea Robin Pipeline Co | Texas Products Corp., Inc. (TPC) | 02-11-87 | B | 07-11-87 | 21.75/26.25 |
| ST87-1431 | Transok, Inc | Natural Gas Pipeline Co. of America | 02-11-87 | C | | |
| ST87-1432 | Tennessee Gas Pipeline Co. | Louisville Gas & Electric Co., et al | 02-11-87 | B | | |
| ST87-1433 | Natural Gas Pipeline Co. of America | Coastal States Gas Transmission Co | 02-12-87 | B | | |
| ST87-1434 | Natural Gas Pipeline Co. of America | Illinois Power Co | 02-12-87 | B | | |
| ST87-1435 | Northern Natural Gas Co | TAFT Pipeline Co | 02-12-87 | B | | |
| ST87-1436 | Tennessee Gas Pipeline Co | Nashville Gas, Div. Piedmont Nat. Gas Co. | 02-12-87 | B | | |
| ST87-1437 | Williams Natural Gas Co | Kansas Gas Supply Corp | 02-12-87 | B | | |
| ST87-1438 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-12-87 | B | | |
| ST87-1439 | ANR Pipeline Co | Wisconsin Public Service Co | 02-12-87 | B | | |
| ST87-1440 | ANR Pipeline Co | Wisconsin Public Service Co | 02-12-87 | B | | |
| ST87-1441 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1442 | ANR Pipeline Co | Wisconsin Public Service Co | 02-12-87 | B | | |
| ST87-1443 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1444 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1445 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1446 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1447 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1448 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1449 | ANR Pipeline Co | Columbia Gas of KY, Inc | 02-12-87 | B | | |
| ST87-1450 | ANR Pipeline Co | Wisconsin Public Service Co | 02-12-87 | B | | |
| ST87-1451 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1452 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1453 | ANR Pipeline Co | Wisconsin Public Service Corp | 02-12-87 | B | | |
| ST87-1454 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1455 | ANR Pipeline Co | Michigan Gas Utilities Co | 02-12-87 | B | | |
| ST87-1456 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1457 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1458 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1459 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1460 | Delhi Gas Pipeline Corp | Mississippi River Transmission Corp | 02-13-87 | C | | |
| ST87-1461 | Transcontinental Gas Pipe Line Corp | Washington Gas Light Co., et al | 02-13-87 | B | | |
| ST87-1462 | Transcontinental Gas Pipe Line Corp | TRI-County Natural Gas Co | 02-13-87 | B | | |
| ST87-1463 | Transcontinental Gas Pipe Line Corp | Pontchartrain Natural Gas System | 02-13-87 | B | | |
| ST87-1464 | Transcontinental Gas Pipe Line Corp | City of Winder | 02-13-87 | B | | |
| ST87-1465 | Transok, Inc | Panhandle Eastern Pipe Line Co | 02-13-87 | C | 07-13-87 | 26.25 |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1466 | United Gas Pipe Line Co | Endevco Pipeline Co | 02-13-87 | B | | |
| ST87-1467 | Northern Natural Gas Co | Delhi Gas Pipeline Corp | 02-13-87 | B | | |
| ST87-1468 | Nothern Natural Gas Co | Gas Gathering Systems, Inc | 02-13-87 | B | | |
| ST87-1469 | Tennessee Gas Pipeline Co | Channel Industries Gas Co | 02-17-87 | B | | |
| ST87-1470 | Tennessee Gas Pipeline Co | Creole Gas Pipeline Corp | 02-17-87 | B | | |
| ST87-1471 | Tennessee Gas Pipeline Co | Commonwealth Gas Services | 02-17-87 | B | | |
| ST87-1472 | Northern Natural Gas Co | Columbia Gas of Virginia, Inc | 02-17-87 | B | | |
| ST87-1473 | Northern Natural Gas Co | Columbia Gas of Kentucky, Inc | 02-17-87 | B | | |
| ST87-1474 | Northern Natural Gas Co | Columbia Gas of New York, Inc | 02-17-87 | B | | |
| ST87-1475 | Transwestern Pipeline Co | Valero Transmission Co | 02-17-87 | B | | |
| ST87-1476 | Transwestern Pipeline Co | West Texas Gas, Inc | 02-17-87 | B | | |
| ST87-1477 | Panhandle Gas Co | Minnegasco, Inc | 02-17-87 | B | | |
| ST87-1478 | Conolidated Gas Transmission Corp | National Fuel Gas Distribution Corp | 02-17-87 | B | | |
| ST87-1479 | Consolidated Gas Transmission Corp | Hanley and Bird | 02-17-87 | B | | |
| ST87-1480 | Consolidated Gas Transmission Corp | New York State Electric and Gas Co | 02-17-87 | B | | |
| ST87-1481 | Consolidated Gas Transmission Corp | National Fuel Gas Distribution Corp | 02-17-87 | B | | |
| ST87-1482 | Tennessee Gas Pipeline Co | Louisiana Intrastate Gas Corp | 02-17-87 | B | | |
| ST87-1483 | Producer's Gas Co | Natural Gas Pipeline Co. of America | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1484 | Producer's Gas Co | Pacific Gas and Electric Co | 02-17-87 | D | | |
| ST87-1485 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-17-87 | B | | |
| ST87-1486 | ANR Pipeline Co | Northern Indiana Public Service Co | 02-17-87 | B | | |
| ST87-1487 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-17-87 | B | | |
| ST87-1488 | Producer's Gas Co | Peopleservice Inc | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1489 | Producer's Gas Co | El Paso Natural Gas Co | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1490 | Producer's Gas Co | Natural Gas Pipeline Co. of America | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1491 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-17-87 | B | | |
| ST87-1492 | Panhandle Eastern Pipe Line Co | Kansas Pipeline Co | 02-17-87 | B | | |
| ST87-1493 | ANR Pipeline Co | Wisconsin Public Service Co | 02-17-87 | B | | |
| ST87-1494 | ANR Pipeline Co | Wisconsin Gas Co | 02-17-87 | B | | |
| ST87-1495 | ANR Pipeline Co | Consumers Power Co | 02-17-87 | B | | |
| ST87-1496 | Trunkline Gas Co | Consumers Power Co | 02-17-87 | B | | |
| ST87-1497 | Trunkline Gas Co | Bishop Pipeline Corp | 02-17-87 | B | | |
| ST87-1498 | Trunkline Gas Co | Consumers Power Co | 02-17-87 | B | | |
| ST87-1499 | Trunkline Gas Co | Citizens Gas Fuel Co | 02-17-87 | B | | |
| ST87-1500 | Trunkline Gas Co | Consumers Power Co | 02-17-87 | B | | |
| ST87-1501 | Trunkline Gas Co | Kansas Pipeline Co | 02-17-87 | B | | |
| ST87-1502 | Panhandle Eastern Pipe Line Co | Great River Gas Co | 02-17-87 | B | | |
| ST87-1503 | ANR Pipeline Co | Wisconsin Public Service Co | 02-17-87 | B | | |
| ST87-1504 | ANR Pipeline Co | Northern Indiana Public Service Co | 02-17-87 | B | | |
| ST87-1505 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-17-87 | B | | |
| ST87-1506 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-17-87 | B | | |
| ST87-1507 | ANR Pipeline Co | Wisconsin Public Service Co | 02-17-87 | B | | |
| ST87-1508 | Producer's Gas Co | Brandywine Industrial Gas, Inc | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1509 | ANR Pipeline Co | Columbia Gas of Ohio, Inc | 02-17-87 | B | | |
| ST87-1510 | ANR Pipeline Co | Wisconsin Gas Co | 02-17-87 | B | | |
| ST87-1511 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-17-87 | B | | |
| ST87-1512 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-17-87 | B | | |
| ST87-1513 | ANR Pipeline Co | Wisconsin Public Service Co | 02-17-87 | B | | |
| ST87-1514 | ANR Pipeline Co | Wisconsin Gas Co | 02-17-87 | B | | |
| ST87-1515 | United Gas Pipe Line Co | Louisiana State Gas Corp | 02-18-87 | B | | |
| ST87-1516 | Colorado Interstate Gas Co | Northern Indiana Pub. Service Co., et al | 02-18-87 | B | | |
| ST87-1517 | Delhi Gas Pipeline Corp | Natural Gas Pipeline Co. of America | 02-18-87 | C | | |
| ST87-1518 | Delhi Gas Pipeline Corp | Cincinnati Gas and Electric Co | 02-18-87 | C | 07-18-87 | 54.31 |
| ST87-1519 | Delhi Gas Pipeline Corp | Polaris Corp | 02-18-87 | C | | |
| ST87-1520 | Lawrenceburg Gas Transmission Corp | Lawrenceburg Gas Co | 02-18-87 | B | | |
| ST87-1521 | United Texas Transmission Co | Natural Gas Pipeline Co. of America | 02-18-87 | C | | |
| ST87-1522 | Texas Gas Transmission Corp | Lawrenceburg Gas Co | 02-19-87 | B | | |
| ST87-1523 | Tennessee Gas Pipeline Co | Corning Natural Gas Corp | 02-19-87 | B | | |
| ST87-1524 | Northern Natural Gas Co | Illinois Power Co | 02-20-87 | B | | |
| ST87-1525 | Acadian Gas Pipeline System | Spindletop Gas Distribution System | 02-24-87 | C | | |
| ST87-1526 | Acadian Gas Pipeline System | Columbia Gas of Ohio, et al | 02-24-87 | C | | |
| ST87-1527 | Acadian Gas Pipeline System | Florida Gas Transmission Co | 02-24-87 | C | | |
| ST87-1529 | Natural Gas Pipeline Co. of America | City of Pickneyville | 02-24-87 | B | | |
| ST87-1530 | Natural Gas Pipeline Co. of America | City of Perryville | 02-24-87 | B | | |
| ST87-1531 | Valero Transmission Co | Southern California Gas Co | 02-24-87 | C | | |
| ST87-1532 | Turnkline Gas Co | Consumers Power Co | 02-24-87 | B | | |
| ST87-1533 | Trunkline Gas Co | Baltimore Gas & Electric Co., et al | 02-24-87 | B | | |
| ST87-1534 | ONG Transmission Co | Phillips Gas Pipeline Co | 02-24-87 | C | 07-24-87 | 24.32 |
| ST87-1535 | Louisiana Intrastate Gas Corp | Columbia Gas Transmission Corp | 02-24-87 | C | 07-24-87 | 22.40 |
| ST87-1536 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1537 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1538 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-24-87 | B | | |
| ST87-1539 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1540 | ANR Pipeline Co | Wisconsin Public Service Co | 02-24-87 | B | | |
| ST87-1541 | ANR Pipeline Co | Fountaintown Gas Co | 02-24-87 | B | | |
| ST87-1542 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-24-87 | B | | |
| ST87-1543 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1544 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1545 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1546 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1547 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-24-87 | B | | |
| ST87-1548 | Texas Gas Transmission Corp | Louisville Gas & Electric Co | 02-24-87 | B | | |
| ST87-1549 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 02-24-87 | B | | |
| ST87-1550 | Texas Gas Transmission Corp | Indiana Gas Co | 02-24-87 | B | | |
| ST87-1551 | Texas Gas Transmission Corp | Central Illinois Public Service Co | 02-24-87 | B | | |
| ST87-1552 | Texas Gas Transmission Corp | Associated Intra. Pipeline Co | 02-24-87 | B | | |
| ST87-1553 | Texas Gas Transmission Corp | Louisville Gas and Electric Co | 02-24-87 | B | | |
| ST87-1554 | Tennessee Gas Pipeline Co | Nycotex Gas Transport | 02-24-87 | B | | |
| ST87-1555 | Tennessee Gas Pipeline Co | Equitable Gas Co | 02-24-87 | B | | |
| ST87-1556 | Tennessee Gas Pipeline Co | New York State Electric and Gas Co | 02-24-87 | B | | |
| ST87-1557 | Tennessee Gas Pipeline Co | Louisiana Gas System, Inc | 02-24-87 | B | | |
| ST87-1558 | Tennessee Gas Pipeline Co | Niagara Mohawk Power Corp | 02-24-87 | B | | |
| ST87-1559 | Tennessee Gas Pipeline Co | East Ohio Gas Co., et al | 02-24-87 | B | | |
| ST87-1560 | Tennessee Gas Pipeline Co | Piedmont Natural Gas Co | 02-24-87 | B | | |
| ST87-1561 | Tennessee Gas Pipeline Co | National Fuel Gas Distribution Corp | 02-24-87 | B | | |
| ST87-1562 | Houston Pipe Line Co | Natural Gas Pipeline Co. of America | 02-24-87 | C | | |
| ST87-1563 | Houston Pipe Line Co | Seagull Interstate Corp | 02-24-87 | C | | |
| ST87-1564 | Texas Eastern Transmission Corp | Tennessee River Interstate Gas Co | 02-24-87 | B | | |
| ST87-1565 | Texas Eastern Transmission Corp | Baltimore Gas and Electric Co | 02-24-87 | B | | |
| ST87-1566 | Texas Eastern Transmission Corp | Southern Gas Pipeline Co | 02-24-87 | B | | |
| ST87-1567 | Texas Eastern Transmission Corp | East Ohio Gas Co | 02-24-87 | B | | |
| ST87-1568 | Texas Eastern Transmission Corp | Terre Haute Gas Corp | 02-24-87 | B | | |
| ST87-1569 | Texas Eastern Transmission Corp | Columbia Gas of Pennsylvania, Inc | 02-24-87 | B | | |
| ST87-1570 | Texas Eastern Transmission Corp | Washington Gas Light Co | 02-24-87 | B | | |
| ST87-1571 | Texas Eastern Transmission Corp | Columbia Gas of Maryland, Inc | 02-24-87 | B | | |
| ST87-1572 | Texas Eastern Transmission Corp | Corpus Christi Industrial Pipeline Co | 02-24-87 | B | | |
| ST87-1573 | Texas Eastern Transmission Corp | South Jersey Gas Co | 02-24-87 | B | | |
| ST87-1574 | Texas Eastern Transmission Corp | Lawrenceburg Gas Co | 02-24-87 | B | | |
| ST87-1575 | Texas Eastern Transmission Corp | City of Grayville | 02-24-87 | B | | |
| ST87-1576 | Texas Eastern Transmission Corp | Union Light, Heat & Power Co | 02-24-87 | B | | |
| ST87-1577 | Texas Eastern Transmission Corp | Virginia Natural Gas | 02-24-87 | B | | |
| ST87-1578 | Texas Eastern Transmission Corp | Suffolk Gas Corp | 02-24-87 | B | | |
| ST87-1579 | Texas Eastern Transmission Corp | Terre Haute Gas Corp | 02-24-87 | B | | |
| ST87-1580 | Texas Eastern Transmission Corp | City of Richmond Dept of Public Util | 02-24-87 | B | | |
| ST87-1581 | Texas Eastern Transmission Corp | Hanley and Bird | 02-24-87 | B | | |
| ST87-1582 | Texas Eastern Transmission Corp | Red Bay Water Works and Gas Board | 02-24-87 | B | | |
| ST87-1583 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1584 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1585 | ANR Pipeline Co | Southeastern Michigan Gas Co | 02-24-87 | B | | |
| ST87-1586 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1587 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1588 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1589 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-24-87 | B | | |
| ST87-1590 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1591 | ANR Pipeline Co | Ohio Valley Gas Corp | 02-24-87 | B | | |
| ST87-1592 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-24-87 | B | | |
| ST87-1593 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1594 | ANR Pipeline Co | Columbia Gas of Ohio, Inc | 02-24-87 | B | | |
| ST87-1595 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1596 | ANR Pipeline Co | Columbia Gas of Maryland, Inc | 02-24-87 | B | | |
| ST87-1597 | ANR Pipeline Co | NGC Intrastate Pipeline Co | 02-24-87 | B | | |
| ST87-1598 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1599 | Seagull Energy Corp | Seagull Interstate Corp | 02-24-87 | C | 07-24-87 | 10.00 |
| ST87-1600 | Seagull Interstate Corp | Seagull Energy Corp | 02-24-87 | B | | |
| ST87-1601 | Louisiana Resources Co | | 02-24-87 | C | 07-24-87 | 26 43 |
| ST87-1602 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1603 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |
| ST87-1604 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1605 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1606 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |
| ST87-1607 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1608 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |
| ST87-1609 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |
| ST87-1610 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1611 | Natural Gas Pipeline Co. of America | Peoples Gas Light & Coke Co | 02-25-87 | B | | |
| ST87-1612 | Natural Gas Pipeline Co. of America | Peoples Gas Light & Coke Co | 02-25-87 | B | | |
| ST87-1613 | ARKLA Energy Resources | Arkansas Oklahoma Gas Corp | 02-25-87 | B | | |
| ST87-1614 | Intrastate Gathering Corp | Michigan Gas Utilities | 02-25-87 | C | | |
| ST87-1615 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1616 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1617 | Mountain Fuel Resources, Inc | Quivira Gas Co | 02-25-87 | B | | |
| ST87-1618 | Natural Gas Pipeline Co. of America | Northern Illinois Gas Co | 02-26-87 | B | | |
| ST87-1619 | Colorado Interstate Gas Co | Llano, Inc | 02-26-87 | B | | |
| ST87-1620 | Superior Offshore Pipeline Co | Northern Illinois Gas Co., et al | 02-26-87 | B | | |
| ST87-1621 | Colorado Interstate Gas Co | Northern Illinois Gas Co., et al | 02-26-87 | B | | |
| ST87-1622 | ARKLA Energy Resources | Midwest Natural Gas Co | 02-26-87 | B | | |
| ST87-1623 | Ringwood Gathering Co | Kansas Power and Light Co | 02-26-87 | B | | |
| ST87-1624 | Williams Natural Gas Co | Llano, Inc | 02-27-87 | B | | |
| ST87-1625 | Tennessee Gas Pipeline Co | City of Richmond | 02-27-87 | B | | |
| ST87-1626 | United Gas Pipe Line Co | Texas Southern Pipeline, Inc., et al | 02-27-87 | B | | |
| ST87-1627 | Williams Natural Gas Co | Kaisas Public Service Co., et al | 02-27-87 | B | | |
| ST87-1628 | Texas Eastern Transmission Corp | Town of Belmont | 02-27-87 | B | | |
| ST87-1629 | Texas Eastern Transmission Corp | Cincinnati Gas and Electric Co | 02-27-87 | B | | |
| ST87-1630 | Transwestern Pipeline Co | Gas Co. of NM (Div. Public Serv. Co. NM). | 02-27-87 | B | | |
| ST87-1631 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-25-87 | B | | |
| ST87-1632 | ANR Pipeline Co | Northern Indiana Fuel & Light Co | 02-27-87 | B | | |
| ST87-1633 | ANR Pipeline Co | Orbit Gas Co | 02-27-87 | B | | |
| ST87-1634 | ANR Pipeline Co | NGC Intrastate Pipeline Co | 02-27-87 | B | | |
| ST87-1635 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-27-87 | B | | |
| ST87-1636 | ANR Pipeline Co | Ohio Valley Gas Corp | 02-27-87 | B | | |
| ST87-1637 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-27-87 | B | | |
| ST87-1638 | ANR Pipeline Co | Llano, Inc | 02-27-87 | B | | |
| ST87-1639 | ANR Pipeline Co | Delhi Gas Pipeline Corp | 02-27-87 | B | | |
| ST87-1640 | ANR Pipeline Co | Consumers Power Co | 02-27-87 | B | | |
| ST87-1641 | ANR Pipeline Co | Mighigan Consolidated Gas Co | 02-27-87 | B | | |
| ST87-1642 | ANR Pipeline Co | Mighigan Consolidated Gas Co | 02-27-87 | B | | |
| ST87-1643 | ANR Pipeline Co | Michigan Gas Utilities | 02-27-87 | B | | |
| ST87-1644 | ANR Pipeline Co | NGC Intrastate Pipeline Co | 02-27-87 | B | | |
| ST87-1645 | ANR Pipeline Co | Coastal States Gas Transmission Co | 02-27-87 | B | | |
| ST87-1646 | ANR Pipeline Co | Washington Gas Light Co | 02-27-87 | B | | |
| ST87-1647 | ANR Pipeline Co | Iowa Public Service Co | 02-27-87 | B | | |
| ST87-1648 | ANR Pipeline Co | Northern Indiana Fuel & Light Co | 02-27-87 | B | | |
| ST87-1649 | Louisiana Intrastate Gas Corp | Transcontinental Gas Pipe Line Corp | 02-27-87 | C | 07-27-87 | 22.40 |
| ST87-1650 | ONG Transmission Co | Natural Gas Pipeline Co. of America | 02-27-87 | C | 07-27-87 | 10.00 |
| ST87-1651 | ONG Transmission Co | Natural Gas Pipeline Co. of America | 02-27-87 | C | 07-27-87 | 10.00 |
| ST87-1652 | Equitable Gas Co | Public Service Electric and Gas Co | 02-27-87 | B | | |
| ST87-0704 | Tennessee River Intrastate Gas Co[3] | Alabama-Tennessee Natural Gas Co | 02-06-87 | C | 07-06-87 | 1.92 |

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[3] A petition for rate approval. It is noticed at this time to give interested parties the appropriate comment period.

[FR Doc. 87-8182 Filed 4-10-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-2-22-003]

## Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 8, 1987.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on March 30, 1987, filed Substitute Thirteenth Revised Sheet No. 31, to its FERC Gas Tariff, Original Volume No. 1, to comply with the Commission's February 27, 1987, suspension order in this proceeding. The substitute tariff sheet reduces the sales commodity rates filed January 30th by 0.26¢/Dt to correct certain Section 104 producer pruchase prices in accordance with Ordering Paragraph (B)(5) of the suspension order.

Copies of the filing were served upon Consolidated's jurisdictional sales and storage customers, interested state commissions and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before April 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must filed a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8191 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket Nos. RP86-99-002 and TA87-3-4-000, 001]**

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

April 7, 1987.

Take notice that on April 2, 1987, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, containing changes in rates and other tariff provisions for effectiveness on the dates indicated:

*Revised Tariff Sheet and Proposed Effective Date*

First Revised Volume No. 1

Second Substitute Seventeenth Revised Sheet No. 7—December 1, 1986
Substitute Eighteenth Revised Sheet No. 7—January 1, 1987
Nineteenth Revised Sheet No. 7—April 1, 1987
Second Revised Sheet No. 12—December 1, 1986
First Revised Sheet No. 14—December 1, 1986
Second Substitute Original Sheet No. 116—December 1, 1986

Original Volume No. 2

Sixth Revised Sheet No. 17—December 1, 1986
Sixth Revised Sheet No. 27—December 1, 1986

According to Granite State, the filing combines two matters: (1) Rate and tariff revisions in compliance with the provisions of a Stipulation and Agreement settling a general rate filing in Docket No. RP86-99-000; and (2) an out-of-cycle purchased gas cost adjustment. Granite State further states that the Stipulation and Agreement in Docket No. RP86-99-000 was approved in a letter order issued March 30, 1987, establishing new Base Tariff rates and other tariff revisions, effective December 1, 1986. It is also stated that the revised rates on Nineteenth Revised Sheet No. 7, proposed for effectiveness on April 1, 1987, reflect, in addition to the settlement Base Tariff rates, the effect of a reduction in the cost of gas from Granite State's principal supplier, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) which was made effective April 1, 1987 under Tennessee's flexible purchased gas cost adjustment provisions.

Granite State further states that its proposed rates are applicable to wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. According to Granite State, the effect of the proposed rates in its filing is a decrease of approximately $5,229,467 annually in its rates for sales to Bay State and $1,088,840 annually for sales to Northern Utilities.

According to Granite State, copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8181 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. TA87-5-51-000, 001]**

## Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

April 7, 1987.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on March 30, 1987 tendered for filing the following tariff sheets to its FERC Gas Tariff, proposed to be effective May 1, 1987.

*First Revised Volume No. 1*

Seventh Revised Sheet No. 57(i)
Seventh Revised Sheet No. 57(ii)
Fourteenth Revised Sheet No. 57-A

Seventh Revised Sheet Nos. 57(i) and 57(ii) reflect a gas cost surcharge resulting from maintaining unrecovered purchased gas cost accounts for the period commencing September 1, 1986 and ending February 28, 1987.

These tariff sheets also contain a PGA adjustment reflecting the current gas costs at the time of this filing, applicable to gas purchases for resale gas and an allocation of the current cost of company use gas purchased by Great Lakes.

Fourteenth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing May 1, 1987 and ending October 31, 1987. No incremental costs are estimated for the period.

Also, in compliance with the Commission Order dated November 28, 1986 in Docket Nos. TA86-6-51-000,001 and TA87-1-51-000, 001, Great Lakes tendered for filing the following tariff sheets to its FERC Gas Tariff.

*First Revised Volume No. 1*

Fourteenth Revised Sheet No. 54-A
Original Sheet No. 54-A1

*Original Volume No. 2*

Fourth Revised Sheet No. 53-C
Fifth Revised Sheet No. 53-D
Third Revised Sheet No. 78-B
Fourth Revised Sheet No. 78-C
Original Sheet No. 78-C1

Fourth Revised Sheet No. 54-A and Original Sheet No. 54-A1 of First Revised No. 1 and Fourth Revised Sheet No. 53-C, Fifth Revised Sheet No. 53-D, Third Revised Sheet No. 78-B, Fourth Revised Sheet No. 78-C, and Original Sheet No. 78-C1 of Original Volume No. 2 reflect revisions to Great Lakes' FERC Gas Tariff in compliance with conditions set forth by the FERC in two of Great Lakes' prior surcharge filings. These revisions clarify and make certain modifications in the PGA provisions ordered by the Commission.

Finally, to correct a typographical error in Great Lakes tariff filing of February 16, 1987 in Docket No. CP86-12-000 there are tendered for filing Twelfth Revised Sheet No. 1, First Revised Volume No. 1 and Eighteenth Revised Sheet No. 1, Original Volume No. 2 reflecting corrected Table of Contents, which change the designation for Rate Schedule X-6 to Rate Schedule T-6.

Great Lakes requests an effective date of May 1, 1987 for the tariff sheets submitted herewith so as to be in conformity with the 30 day notice requirement and the semi-annual effective date as provided for in its tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests would be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8180 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. TA87-4-46-000, 001]**

## Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

April 7, 1987.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 31, 1987, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective May 1, 1987.

Thrity-Eighth Revised Sheet No. 27
Twenty-third Revised Sheet No. 27A

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 18, General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

The current purchase gas adjustment is an increase of 3.01¢ per deka-therm (dth). The deferred gas cost ajustment is a reduction of 3.01¢ per dth. These changes result in a total net jurisdiction purchase gas cost charge of 168.48¢ per dth, to become effective May 1, 1987.

Kentucky West further states that the Tariff sheet filed herewith does not reflect the Market Incentive Purchase Gas Cost Charge which the Commission rejected at its meeting on March 26, 1986, and is filed without prejudice to any further pleadings or tariff filings, which Kentucky West may make in light of that rejection.

Kentucky West states that this PGA filing has been prepared in full compliance with the Commission's order of October 31, 1986. Said order summarized the findings of an audit performed by the Cost Analysis and Field Review Branch of the Commission from August 19 through August 30, 1985 concerning Kentucky West's purchase gas adjustment filing in Docket Nos. TA85-1-46 and TA85-2-46.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8192 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RP86-170-003]**

## Mississippi River Transmission Corp.; Filing of Motion to Make Suspended Tariff Sheets Effective

April 7, 1987.

Take notice that on March 31, 1987, Mississippi River Transmission Corporation ("Mississippi") filed in the captioned docket a "Motion to Make Suspended Tariff Sheets Effective." The tariff sheets which Mississippi moves to make effective on April 1, 1987 are as follows:

*Second Revised Volume No. 1*

First Revised Sheet No. 1A
Twentieth Revised Sheet No. 4
Sixth Revised Sheet No. 42
Fourth Revised Sheet No. 43
Third Revised Sheet No. 44
Fourth Revised Sheet No. 49
Fifth Revised Sheet No. 50
Third Revised Sheet No. 51
Third Revised Sheet No. 56
Eighth Revised Sheet No. 74

*Original Volume No. 2*

Ninth Revised Sheet No. 86
First Revised Sheet No. 226
First Revised Sheet No. 240
First Revised Sheet No. 253

Mississippi states that pursuant to Commission order issued and as described in the Motion, revisions have been made to the rates and charges in the tariff sheets to reflect: (1) the cost of purchased gas and surcharge adjustments as contained in Mississippi's PGA effective March 1, 1987, filed with the Commission on January 30, 1987, as revised on March 10, 1987; (2) elimination of recovery over a five-year amortization period of approximately $9.7 million of nonrecoupable advance payments for gas, and (3) the appropriate federal income tax rate in effect on April 1, 1987.

Mississippi states that copies of the Motion, together with the revised tariff sheets and computations in support of the rate revisions, have been served on all jurisdictional customers, parties to this proceeding and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8183 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. TA87-2-28-003]**

## Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

April 7, 1987.

Take notice that on March 30, 1987 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Fifty-Eighth Revised Sheet No. 3-A
Substitute Thirty-Fifth Revised Sheet No. 3-B

The effective date of these revised tariff sheets is March 1, 1987.

Panhandle states that these revised tariff sheets reflect (1) a separate deferred surcharge adjustment credit and carrying cost surcharge credit based on the December 1986 overcollection in

Panhandle's Account No. 191, to be amortized over twelve-months beginning March 1, 1987, and (2) a separate deferred surcharge adjustment and carrying cost surcharge based on the November 30, 1986 deferred Account No. 191 balance, to be amortized over the instant six-month PGA period.

Panhandle further states that this filing is without prejudice to Panhandle's request for rehearing and any subsequent review of the conditions contained in the February 27, 1987 Order.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8193 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket Nos. CP87-263-000 and C171-714-000]**

## Panhandle Eastern Pipe Line Co. and Pan Eastern Exploration Co.; Petition for Declaratory Order

April 8, 1987.

On March 23, 1987, Panhandle Eastern Pipe Line Company (Panhandle) filed a petition for a declaratory order in Docket No. CP87-263-000. Panhandle's petition concerns Pan Eastern Exploration Company's (Pan Eastern) compliance with the terms of the Stipulation and Agreement (Agreement) and the Amended Stipulation and Agreement (Amended Agreement), approved by the Commission in Docket Nos. CP71-237-000 and C171-714-000 on December 22, 1976,[1] and on April 30, 1982, respectively,[2] the Final Status Report (Final Report) and the Special Supply Refund Adjustment Report (Special Report), both filed by Pan Eastern, and the interrelationship between the Agreement and the Amended Agreement and (1) Order No. 451 *et seq.*[3] and (2) Pan Eastern's application for limited term abandonment authority in Docket No. CI86-51-000 *et al.*

Panhandle states that the Agreement, and the Amended Agreement provided, in essence, that (1) Pan Eastern was authorized to sell its gas to Panhandle at the same rate an independent producer could, and Panhandle was authorized to recover from its customers the additional amount it paid to Pan Eastern; (2) Pan Eastern was obligated to invest a stipulated amount of money in lease acquisition, exploration, and development, including the difference between what Pan Eastern received for its gas and what Panhandle would have received had the gas remained subject to cost of service regulation; (3) Pan Eastern was obligated to commit the gas if found as a result of its efforts to Panhandle; and (4) Pan Eastern was obligated to sell to Panhandle certain vintages of gas it found as a result of its efforts, at a discount, until the amount of the accumulated discounts exceeded the difference between the revenues Pan Eastern received at the higher rate and the amount it would have received at cost-of-service rates. Under Article VIII of the Amended Agreement, anytime after December 31, 1986, when Pan Eastern had satisfied its investment obligation under the Amended Agreement, it could file a Final Report which would terminate the Amended Agreement. Pan Eastern filed the Final Report on February 2, 1987, and notice of the filing was issued on March 4, 1987. If the Commission accepts the Final Report, or if the Commission does not notify Pan Eastern of its failure to accept the report within four months from the filing of the Final Report, Pan Eastern is discharged from all its obligations under the Amended Agreement except its obligation to commit gas to Panhandle and to sell certain vintages of gas to Panhandle at a discount. Panhandle asserts that it does not dispute Pan Eastern's right to file the Final Report but notes that the Final Report is not based on actual data, but on certain estimates. Panhandle requests that Pan Eastern file actual data.

Under the Amended Agreement, Pan Eastern is obligated to sell certain vintages of its gas, called New Gas to Panhandle at a discount from the rates authorized for sales by independent producers (the Supply Refund Adjustment). Termination of the Amended Agreement does not terminate Pan Eastern's obligation to reduce the price of New Gas sold to Panhandle by the Supply Refund Adjustment until the cumulative discount equals the difference between the revenues Pan Eastern received and the revenues it would have received under cost-of-service rates. On February 2, 1987, Pan Eastern filed its Special Report in which it stated that it had satisfied the requirement in the Amended Agreement to sell New Gas at a discount. Notice of Pan Eastern's filing was issued on March 13, 1987.

Panhandle protests that Pan Eastern has not satisfied its discount obligation because it credited certain sums not authorized under the Amended Agreement. Panhandle requests that the Commission issue a declaratory order finding that Pan Eastern's suspension of the Supply Refund Adjustment violates the terms of the Amended Agreement. Panhandle also seeks a ruling on the effect of the Agreement and the Amended Agreement on the request of Pan Eastern for a certificate of limited term abandonment filed by Pan Eastern in Docket Nos. CI86-51-000 and CI87-340-000.

Finally, Panhandle notes that by letter dated March 18, 1987, Pan Eastern invoked the renegotiation procedures of Order No. 451. Panhandle states that the invocation of Order No. 451's procedures raises significant and novel questions for Panhandle and its customers with respect to gas covered by the Amended Agreement, including whether Pan Eastern's continuing obligation under the Amended Agreement to pay back the Supply Refund Adjustment and to commit its gas to Panhandle expires if Panhandle and Pan Eastern are unable to negotiate a new price.

Panhandle states that because the time available for conducting good faith negotiations under Order No. 451 is very short and because of Pan Eastern's pending application for limited-term abandonment authority, the Commission should issue a declaratory order resolving these questions expeditiously, at the same time resolving the related issues raised by Pan Eastern's Final and Special Reports. Panhandle requests the Commission to (1) shorten the response time to its petition, (2) delay acting on the Final Report until Pan Eastern has

[1] 56 FPC 3717.

[2] 19 FERC ¶ 62,235.

[3] Ceiling Prices: Old Gas Pricing Structure FERC Statutes & Regulations ¶ 30,701 (1986).

submitted the actual data for all of calendar year 1986, (3) issue expeditiously a declaratory order finding that Pan Eastern's suspension of the Supply Refund Adjustment violates the terms of the Amended Agreement, and (4) clarify the effect of Order No. 451 and any other abandonment by Pan Eastern of gas subject to the Agreement on the rights and obligations of Pan Eastern, Panhandle, and its customers under the Amended Agreement.

Any person desiring to be heard or to make any protests with reference to the petition should, on or April 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 214 or 211, respectively.[4] All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with Rule 214.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8184 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RP87-53-000]**

## Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 7, 1987.

Take notice that Southern Natural Gas Company (Southern) on March 31, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective May 1, 1987. The proposed tariff sheets reflect certain changes to the Purchased Gas Adjustment section of Southern's FERC Gas Tariff. The first such change is being made in accordance with Ordering Paragraph B(2) of the Commission's order dated March 31, 1987 in Docket Nos. TA87-2-7. The second change is being made in order to permit Southern to make interim adjustments to its projected cost of purchased gas between regular adjustment dates in order to track known and measurable changes in its cost of gas supply.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed won or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8194 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CP86-277-005 et al.]**

## Southern Natural Gas Co. and South Georgia Natural Gas Co.; Petition To Amend

April 6, 1987.

Take notice that on March 23, 1987, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, collectively referred to as Applicants, filed in Docket No. CP86-277-005, *et al.*, a petition to amend orders issued pursuant to section 7(c) of the Natural Gas Act by authorizing Applicants to transport natural gas on an interruptible basis on behalf of various shippers for a term ending October 31, 1988, all as more fully set forth in the appendices hereto and in the petition to amend which is on file with the Commission and open to public inspection.

Applicants state that by order issued between June 13, 1986, and February 20, 1987, the Commission authorized Applicants to perform limited-term transportation services on behalf of the shippers set forth in Appendices A and B to this notice. Appendix A is a listing of the certificates covering interruptible transportation service for which Southern singularly is requesting an extension of term. Appendix B is a listing of the certificates covering interruptible transportation services for which Southern and South Georgia jointly request an extension of term. It is stated that with two exceptions each of the certificates authorized Southern or South Georgia to transport gas for a term expiring one year from the date of the order that authorized the service. The limited-term certificates would begin expiring on June 1, 1987, with the most recently issued certificates to expire on February 20, 1988.

Applicants state that they have received numerous requests, from the customers for whom they provide transportation services, to continue the transportaion services after the expiration of the existing certificate authoization. Applicants have decided to continue to make interruptible transportation services available on their pipeline systems for a limited term after October 31, 1987, the date to which they previously proposed to make transportation services available, and, in accordance therewith, Southern filed a revision to its statement of policy in Docket No. CP86-277, *et al.*, on February 17, 1987. In that revision of policy, Southern stated that it was willing to seek limited-term certificate authorization to transport gas for either a new shipper or an existing shipper through October 31, 1988. Applicants state that customers receiving transportation services under 51 dockets, representing 71 separate transportation agreements, have indicated that they wish to be part of this filing.

Appliants request that each of the limited-term certificates set forth in Appendices A and B to this notice be extended for a limited term ending October 31, 1988. Applicants do not propose any other change in the authorized services.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 29, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in according with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). and the Regulations under the Natural GAs Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[4] 18 CFR 385.214 or 385.211 (1986).

## Appendix A

DOCKETS TO BE EXTENDED (SOUTHERN ONLY)

| Docket No | Transportation on behalf of | Volume | Certificate issued | Certificate expires |
|---|---|---|---|---|
| CP86-277 | Alabama Gas Corporation | 189,00 | 6-13-86, Extended 9-11-86 | 6-13-88 |
| CP86-308 | Alabama Gas Corporation as Agent for Various End-Users | 50,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-318 | South Carolina Pipeline Corporation | 80,000 | 6-13-86, Extended 9-11-86 | 6-13-88 |
| CP86-358 | Union Camp Corporation | 20,000 | 6-13-86 Extended 9-11-86 | 6-13-87 |
| CP86-359 | United States Steel Corporation | 65,630 | 6-13-86 Extended 9-11-86 | 6-13-87 |
| CP86-365 | Alabama Gas Corporation as Agent for Harbison-Walker Refractories, Division of Dresser Industries, Inc. | 1,350 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-392 | The Southeast Alabama Gas District | 37,000 | 6-13-86, Extended 9-11-86 Amended 2-10-87 | 6-13-87 |
| CP86-400 | Atlanta Gas Light Company As Agent for Engelhard Corporation | 20,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-409 | Southeast Alabama Gas District as Agent for Harbison-Walker Refractories, Division of Dresser Industries, Inc | 3,200 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-433 | Atlanta Gas Light Company as Agent for Georgia Kaolin Company | 9,000 | 9-29-86 | 6-29-87 |
| CP86-439 | Columbia Nitrogen Corporation and Npro, Inc | 76,000 | 7-16-86, Extended 9-11-86 | 7-16-87 |
| CP86-461 | Atlanta Gas Light Company as Agent for Packaging Corporation of America | 2,000 | 6-20-86, Extended 9-11-86 | 6-20-87 |
| CP86-500 | Atlanta Gas Light Company as Agent for Chemical Products Corporation | 1,700 | 7-18-86 Extended 9-11-86 | 7-18-87 |
| CP86-558 | Atlanta Gas Light Company as Agent for Calsilite Corporation | 2,500 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-559 | Atlanta Gas Light Company as Agent for Thomaston Mills, Inc | 3,500 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-560 | Atlanta Gas Light Company as Agent for Kemira Inc | 11,000 | 8-11-86 Extended 9-11-86 | 8-11-87 |
| CP86-561 | Kaichem International Corporation | 2,200 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-562 | Atlanta Gas Light Company as Agent for Armstrong World Industries, Inc | 11,250 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-563 | Atlanta Gas Light Company as Agent for Cherokee Brick and Tile, Inc | 3,000 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-564 | Atlanta Gas Light Company as Agent for Archer-Daniels-Midland Company | 4,500 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-565 | Atlanta Gas Light Company as Agent for Katalistiks, a Subsidiary of Union Carbide | 4,500 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-567 | Savannah Sugar Refinery a Division of Savannah Foods and Industries, Inc | 8,000 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-568 | Atlanta Gas Light Company as Agent for Owens-Illinois, Inc | 7,000 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-592 | Atlanta Gas Light Company as Agent for Genstar Gypsum Products | 4,500 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| CP86-594 | Atlanta Gas Light Company and City of Thomson, Georgia as Agents for Thiele Kaolin Company. | Atlanta—3,200, Thomson—2,700 | 8-28-86 Extended 9-11-86 | 8-28-87 |
| CP86-609 | United Cities Gas Company | 60,000 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| CP86-611 | Chattanooga Gas Company | 50,000 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| CP86-614 | Atlanta Gas Light Company as Agent for Florida Tile Division of Sikes Corporation | 1,400 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| | Atlanta Gas Light Company As Agent for Burlington Industries, Inc | 550 | | |
| | Alabama Gas Corporation as Agent for the Tape-Craft Corporation | 630 | | |
| CP86-644 | United Cities Gas Company | United Cities—2,000 | 12-29-86 | 12-29-87 |
| | Utilities Board of the City of Phenix City, Alabama | Phenix City—1,000 | | |
| | The Utilities Board of the City of Union Springs, Alabama | Union Springs—100 | | |
| | Southeast Alabama Gas District As Agents for Columbus Mills, Inc | Southeast Alabama—600 | | |
| CP86-654 | Atlanta Gas Light Company as Agent for Southwire Company | 4,000 | 11-26-86 | 11-26-87 |
| CP86-672 | Bunge Corporation-Soy-bean Processing Division | 1,425 | 2-20-87 | 2-20-88 |
| CP86-686 | Alabama Gas Corporation as Agent for Various End-Users | 90,000 | 12-22-86 | 12-22-87 |
| CP87-52 | Jim Walters Metals, a Division of the Georgia Marble Company, A Wholly Owned Subsidiary of Jim Walter Corporation. | 1,200 | 2-20-87 | 2-20-88 |
| | Masonite Corporation | 1,500 | | |
| CP87-62 | Southeast Gas Acquisition and Supply Association, Inc.: | | | |
| | As Agent for The Water Works and Gas Board of the Town of Ashville, Alabama | Ashville—3,000 | 2-20-87 | 2-20-88 |
| | The Gas Board of the City of Boaz, Alabama | Boaz—2,200 | | |
| | The Water Works and Gas Board of the City of Fultondale, Alabama | Fultondale— | | |
| | Utilities Board of the City of Trussville, Alabama | Trussville—15,000 | | |
| | Gulf States Paper Corporation | 9,000 | 2-20-87 | 2-20-88 |
| | Mt. Vernon Mills, Inc | 1,000 | | |
| CP87-64 | Marshall County Gas District | 30,000 | 1-21-87 | 1-21-88 |
| CP87-72 | City of Wrens, Georgia | 5,000 | 2-20-87 | 2-20-88 |
| CP87-73 | City of Thomson Natural Gas System | 4,500 | 2-20-87 | 2-20-88 |
| CP87-79 | Town of Calera, Alabama as Agent for Abex Corporation | 2,000 | 2-20-87 | 2-20-88 |
| CP87-80 | City of Sylvania, Georgia | 3,000 | 2-20-87 | 2-20-88 |
| | City of Statesboro, Georgia | 4,000 | | |
| CP87-96 | Atlanta Gas Light Company as Agent for Georgia Kaolin Company | 10,000 | 2-20-87 | 2-20-88 |
| CP87-97 | Cullman-Jefferson Counties Gas District | 10,000 | 2-20-87 | 2-20-88 |
| CP87-98 | Utilities Commission, City of Fort Valley, Georgia | 5,000 | 2-20-87 | 2-20-88 |

## Appendix B

DOCKETS TO BE EXTENDED (SOUTHERN AND SOUTH GEORGIA)

| Docket No | Transportation on behalf of | Volume | Certificate issued | Certificate expires |
|---|---|---|---|---|
| CP86-366 | Flondin Company | 5,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-382 | City of Andersonville as Agent Mullite Company of America | 3,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-401 | Engelhard Corporation | 6,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-595 | Water, Gas and Light Commission of Albany | 15,000 | 8-28-86, Extended 9-11-86 | 8-28-87 |

DOCKETS TO BE EXTENDED (SOUTHERN AND SOUTH GEORGIA)—Continued

| Docket No. | Transportation on behalf of | Volume | Certificate issued | Certificate expires |
|---|---|---|---|---|
| CP86-610 | Occidental Chemical Corporation | 16,300 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| CP87-99 | Procter & Gamble Paper Products Company | 10,000 | 2-20-87 | 2-20-88 |
| CP87-100 | City of Moultrie, Georgia, as Agent for Various End-Users | 2,200 | 2-20-87 | 2-20-88 |
| CP87-101 | City of Thomasville Water and Light Department | 3,000 | 2-20-87 | 2-20-88 |

[FR Doc. 87-8186 Filed 4-10-87; 8:45 am]
BILLING CODE 6717-01-M

---

**[Docket No. CI87-396-000]**

## Tejas Power Corp.; Application for Blanket Certificate of Public Convenience and Necessity and for Abandonment and Pre-Granted Abandonment Authorization

April 8, 1987.

Please take notice that on March 26, 1987, Tejas Power Corporation ("Tejas"), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717–717(z) ("NGA"), and § 2.77 and Parts 157 and 385 of the regulations of the Federal Energy Regulatory Commission ("Commission") filed an application for a blanket certificate of public convenience and necessity: (i) Authorizing, for the periods more fully specified therein, sales for resale of all Natural Gas Policy Act categories of gas (subject to the Commission's NGA jurisdiction) by Tejas and the producer/suppliers with whom Tejas contracts, and/or acts as agent, for the purchase of gas, and (ii) granting partial abandonment and pregranted abandonment of certain sales for resale as described more fully in Tejas' Application.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8185 Filed 4-10-87; 8:45 am]
BILLING CODE 6717-01-M

---

**[Docket No. RP87-7-007]**

## Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 7, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on April 1, 1987, tendered for filing certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The purpose of the instant filing is to adjust the rates filed on October 6, 1986: (1) To comply with Ordering Paragraph (F)(1) of the Commission's order of November 5, 1986 in this proceeding by eliminating the costs associated with facilities not in service as of February 28, 1987; (2) to reflect intervening tracking filings subsequent to the original filing in this docket; (3) to reflect elimination of costs associated with buyouts of take-or-pay obligations and buydowns of contract provisions, subject to reinstatement and other disposition; and (4) to comply with Ordering Paragraph (A)(1) of the Commission's Order of November 5, 1986 by reflecting the implementation of a modified fixed-variable rate design with D–1 and D–2 components. The proposed effective date of this rate change is April 1, 1987, the conclusion of the suspension period in this case.

Transco further states that in accordance with section 154.16 of the Commission's regulations, copies of this filing were mailed to all parties to this proceeding and to all persons upon whom the original filing herein were made.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8195 Filed 4-10-87; 8:45 am]
BILLING CODE 6717-01-M

---

**[Docket No. RP87-15-008]**

## Trunkline Gas Co.; Compliance Filing

April 7, 1987.

Take notice that Trunkline Gas Company (Trunkline) on March 31, 1987, tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2 , to be effective May 1, 1987.

These revised tariff sheets are being filed in compliance with the Commission's Order date November 28, 1986 in Docket No. RP87–15–000. the Commission's Order of November 28, 1986 accepted Trunkline's proposed revised tariff sheets as filed on October 31, 1986 subject to certain conditions. Trunkline states that the revised tariff sheets identified on Appendix Nos. (1) and (2) are in compliance with those conditions. Trunkline has also revised its rates included in these revised tariff sheets to reflect the current GRI Funding Unit Adjustment effective January 1, 1987 as approved in Docket No. TA87–1–30–000, 001 and the current cost of purchased gas to be effective March 1, 1987 as approved in Docket No. TF87–1–30–000.

Trunkline states that the filing of these revised tariff sheets which satisfy the requirements of the Commission's Order dated November 28, 1986 in this proceeding is without prejudice to Trunkline's position and its still unresolved Petition for Rehering and ultimate review with respect to the November 28, 1986 Order. Trunkline also reserves the right to supersede these tariff sheets in accordance with the

Natural Gas Act and the Commission's Regulations.

Copies of this filing are being served on Trunkline's jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Shreet, NE., Washington, DC., 20426, in accordance with § 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8189 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RP87-52-000]**

## United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

April 7, 1987.

Take notice that on March 31, 1987, United Gas Pipe Line Company (United) tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

United States that this filing provides for a level of rates and charges required to recover its increased operating costs. The proposed new rates, when compared to the currently effective rates at Docket No. RP85-209, will result in an annual jurisdictional revenue increase of approximately $32.7 million.

In addition, modified fixed-variable (MFV) principles of cost classification, allocation and rate design have been applied to all jurisdictional customers.

Also included are proposed tariff sheets to incorporate nomination provisions applicable to Monthly Entitlement Quantities and an Authorized Overrun Service (AOS) to provide best efforts sales above a customer's monthly entitlements or contract demand quantity. Tariff language is also proposed to be added to section 19 of the General Terms and Conditions of United's FERC Gas Tariff to provide For a credit to Account No. 191 for fuel costs recovered from transportation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8196 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. TA87-2-50-000, 001]**

## Valley Gas Transmission, Inc.; Change in Rates Pursuant to Purchased Gas Adjustment

April 7, 1987.

Take notice that on March 31, 1987, Valley Gas Transmission, Inc. ("Valley") tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff:

Thirty-Fifth Revised Sheet No. 2A to Original Volume No. 1
Eighth Revised Sheet No. 10 to Original Volume No. 2

Valley states that these tariff sheets, which are proposed to become effective on May 1, 1987 are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley further states that these proposed changes reflect adjustments to its current surcharge adjustment and current gas cost adjustment, and that its filing has been served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8187 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. TA87-1-52-002]**

## Western Gas Interstate Co.; Petition of Western Gas Interstate Company for Waiver of Regulations

April 8, 1987.

Take notice that on March 20, 1987, Western Gas Interstate Company (Western) filed a petition for waiver of the refund provisions of § 282.506 of the Federal Energy Regulatory Commission's (Commission) regulations. Western states that it is seeking authorization to pass refunds received by Western from Colorado Interstate Gas Company (CIG) through its Account No. 191, as filed on December 29, 1987 in this proceeding.

In compliance with the Commission order issued on January 29, 1987 in this proceeding, Western researched its Account No. 191 treatment of CIG's refunds and discovered that the CIG refunds were in fact attributable to service provided to non-exempt industrial boiler fuel facilities prior to January 1, 1980. Accordingly, the amounts received by Western from CIG should be refunded in a lump sum to Southern Union Gas Company. However, Western states that to comply with the lump sum refund requirements, it would be forced to recalculate its most recently filed PGA rates under Rate Schedule G-N and make a revised PGA filing with the Commission. Western submits that the administrative and expense burdens of recalculating rates and preparing a new filing would be disproportionately high with the benefit that its customer might receive from refunding on a lump sum basis. Also, as discussed more fully in its filing, Western submits that requiring a lump sum refund would have a destabilizing effect on its rates.

Western has served copies of this filing on the Gas Company of New Mexico, Southern Union Gas Company, New Mexico Public Service Commission, Corporation Commission of Oklahoma, and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214

and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-8188 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3184-8]

## California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of an Opportunity for Public Hearing.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has amended its exhaust emission standards and enforcement procedures for heavy-duty gasoline and diesel-powered engines and vehicles. California has requested EPA to grant a waiver of Federal preemption for these amendments pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing for May 13, 1987 to consider CARB's request and to hear comments from interested parties regarding CARB's amendments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by May 4, 1987. If no party informs EPA that it wishes to testify on these "heavy-duty" regulations, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

**DATES:** EPA will hold a public hearing on May 13, 1987 beginning at 9:00 a.m., if any party notifies EPA by May 4, 1987 that it wishes to present oral testimony regarding CARB's requests. Any party may submit written comments regarding CARB's requests by June 12, 1987.

**ADDRESSES:** EPA will hold the public hearing announced in this notice at: U.S. Environmental Protection Agency, Regional Office (Region IX), ——— Room, 215 Fremont Street, San Francisco, California. Parties wishing to present oral testimony at the public hearing should notify in writing: Charles N. Freed, Director, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Any party may also submit written comments regarding the waiver request to the same address to the attention of the Docket EN-86-18. Copies of material relevant to the waiver request (Docket EN-86-18) will be available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Alice M. Crowe, Attorney, Manufacturers Operations Division (EN-340-F) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2514.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Discussion

Section 209(a) of the Act, as amended, 42 U.S.C. 7543(a), provides in part: "No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part . . . [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent . . . to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the State determines that [its] . . . standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards . . . [unless] the Administrator finds that—(A) The determination of the State is arbitrary and capricious, (B), [California] does not need such . . . standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class vehicles without the necessity of receiving a further waiver of Federal preemption. If California acts to amend previously waived emission standards or accompanying enforcement procedures, the change may be considered to be within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with respect to section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver determinations.

By two letters both dated September 19, 1986, CARB submitted to EPA requests for waivers of Federal preemption for amendments to its emission standards and test procedures for heavy-duty gasoline and diesel-powered engines and vehicles. These amendments more closely align California's heavy-duty certification requirements with the corresponding Federal requirements. For 1987 and later model year heavy-duty gasoline-powered engines and vehicles the amendments:

1. Incorporate the Federal emission standards for hydrocarbon (HC), carbon monoxide (CO), and nitrogen oxide (NOx) but do not permit NOx averaging;
2. Incorporate the current Federal transient cycle test procedures;
3. Extend the useful-life period for emissions compliance, engine durability and recall to the Federal full-life distance of 110,000 miles;
4. Incorporate the Federal idle CO emissions limit and idle test procedures for heavy-duty gasoline-powered engines using exhaust aftertreatment;
5. Eliminate the use of the steady-state emission standards and test procedures at the conclusion of the 1986 model year, with a limited carryover provision;
6. Eliminate California's optional transient cycle test procedures adopted in 1981.

For 1988 and later model year diesel-powered engine and vehicles the amendments:

1. Incorporate the Federal emissions standards for particulate matter (PM) and NOx;
2. Incorporate in significant part the Federal transient cycle test procedures;
3. Establish a .10g/bhp-hr PM standard for urban buses for 1991–1993 model years;
4. Provide, as an option, averaging for PM for 1991–1995 model years, excluding urban buses;

5. Incorporate Federal smoke opacity and test procedures.

California states in its September 19, 1986 letters that it has determined that its standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards and that this determination is not arbitrary or capricious since these amended standards are basically identical to the Federal standards. Further, California states that it continues to need its standards to meet compelling and extraordinary conditions. Finally, California states that these amendments are consistent with section 202(a) of the Act since they are basically identical to the Federal standards.

California's request will be considered according to the requirements for a full waiver determination, and therefore an opportunity for a hearing is being provided to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether or not California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether or not California needs its standards to meet compelling and extraordinary conditions; and

(3) Whether or not California standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

## II. Procedures for Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file 10 copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the address listed above not later than May 13, 1987. In addition, the party should submit 25 copies, if feasible, of the proposed statement to the Presiding Officer at the time of the hearing.

Since a public hearing is designed to give interested persons an opportunity to participate in this proceeding, their are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants without special approval by the Presiding Officer. The Presiding Officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statements of any witness.

If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. I will base my determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and consider other pertinent information. This information will be available for public inspection at the EPA Central Docket Section.

Dated: April 2, 1987.

**Don R. Clay,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 87-8128 Filed 4-10-87; 8:45 am]

BILLING CODE 6560-50-M

---

[OPP-180730; FRL-3185-6]

## Receipt of Applications for Emergency Exemptions From Oregon To Use Dinoseb; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of receipt.

**SUMMARY:** EPA has received specific exemption requests of February 13 and March 23, 1987, from the Oregon Department of Agriculture (hereafter referred to as "Oregon") to use dinoseb (CAS 88-85-7) on dry peas, chickpeas, and lentils to control broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

**DATE:** Comments must be received on or before April 20, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180730 should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture for the state or Oregon, in letters dated February 13, and March 23, 1987, has requested the Administrator to issue specific exemptions for the use of dinoseb to control broadleaf weeds in on dry peas, chickpeas, and lentils in Morrow, Umatilla, and Union counties.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry,

BEST COPY AVAILABLE

pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicant's specific exemption requests are therefore subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for a registration of a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determined that reconsideration is warranted if among other things he finds that the Applicant has presented substantial new evidence which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then determine whether and under what terms and conditions dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

On April 3, 1987, the Administrator signed a Notice under Subpart D to reconsider the prior suspension decision concerning dinoseb products as that decision applies to dry peas, lentils, and chickpeas in the state of Oregon.

## II. Emergency Condition

Oregon states that there is no federally registered preemergent herbicide suitable for broadleaf weed control on lentils and made the following additional assertions. Metribuzin is registered for pre-emergency application for suppression of certain broadleaf weed; however, according to Oregon, a serious gap in weed control exists, since metribuzin does not control the entire broadleaf spectrum found in the lentil growing region of northeastern Oregon and certain weed species can escape control to compete with pea, lentil and chickpea seedlings. Difficult to control broadleaf weeds include tarweed, mayweed, pigweed and lambsquarter. Additionally, metribuzin is registered at low application rates in order to prevent crop injury and cannot be used on light soils, clay knobs, or shallow seeding conditions. Flucloralin (Basalin), MPCA, and trifluralin (Treflan) are registered alternatives for some uses. According to Oregon, Balalin does not control problem broadleaf weeds which occur in lentils and generally must be applied in combination with other herbicides for broadleaf weed control on peas. Trifluralin is primarily effective against grass species and requires incorporation. MCPA is only approved for use on peas and must be applied after peas are four to six inches tall, after problem broadleaf weeds have had an opportunity to germinate and compete with new seedlings.

According to Oregon, a particularly difficult to control weed species in peas is nightshade for which dinoseb has provided effective early season control in past years. There are no alternative means of control of broadleaf weeds on these crops during early season seedling germination. Since peas, chickpeas and lentils are direct-seeded crops, cultivation practices cannot provide effective weed control during germination and early seedling growth stages.

Oregon estimates a 25 to 30 percent yield loss in dry peas, a 35 to 40 percent yield loss in lentils and a 50 percent yield loss in chickpeas if dinoseb is not available to control broadleaf weeds.

Oregon indicates that resulting losses are estimated to be approximately $2.05 million per year to growers of dry peas, lentils and chickpeas. By crop, losses are estimated to be $1.92 million to dry peas growers, $7,920 to lentil growers, and $127,680 to chickpea growers.

## III. Proposed Use

Oregon has requested the use dinoseb on dry peas, lentils, and chickpeas from March 25 to June 15, 1987, in the counties of Morrow, Umatilla and Union. The proposed specific exemption programs involve a single, pre-emergency or early crop emergence application of dinoseb at 3 pounds active ingredient per acre in 20 to 30 gallons of water with ground equipment and 5 to 10 gallons of water with aerial equipment for broadleaf weed control. Registered dinoseb product containing three pounds of dinoseb amine per gallon as the active ingredient would be used. A total of 40,800 pounds active ingredient to treat 100 acres of lentils, 12,000 acres to peas and 1,500 acres of chickpeas has been requested. Other conditions of use include: (1) All applications would be made by licensed commerical applicators or certified private applicators using their own equipment; (2) closed mixing systems would be required and enclosed cabs for all application equipment; (3) applicators would be required to wear protective clothing while mixing, loading, applying dinoseb or repairing application equipment; women of child bearing age will be prohibited from performing these activities; (4) field flagging during aerial application would be prohibited; and (5) hand-held spray applications would be prohibited.

## IV. Notification and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption request from Orgeon will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes any emergency use of a pesticide if such pesticide was the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

An expedited comment period of 5 days is provided to facilitate decision making on the specific exemption requests in the event the Administrator were to lift the suspension of certain dinoseb registrations (40 CFR 164.24(c)).

Accordingly, interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above:

The Agency will review and consider all comments received during the comment period.

Dated: April 8, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87-8244 Filed 4-10-87; 8:45 am]

BILLING CODE 6560-50-M

---

# FEDERAL COMMUNICATIONS COMMISSION

## Public Information Collection Requirements Submitted for Review

April 6, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription

Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions, contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0243
Title: Section 74.551, Equipment Changes
Action: Extension
Respondents: Licensees of aural broadcast studio transmitter links (STL) or intercity relay stations
Frequency of Response: On occasion
Estimated Annual Burden: 20 Responses; 20 Hours
Needs and Uses: Section 74.551 requires that licensees of aural broadcast studio transmitter links (STL) or intercity relay stations notify the Commission in writing of minor equipment changes upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

OMB Number: 3060–0320
Title: Section 73.1400, Remote Control Authorization
Action: Extension
Respondents: Licensees of AM and FM broadcast stations
Frequency of Response: On occasion
Estimated Annual Burden: 115 Responses; 69 Hours
Needs and Uses: Section 73.1400 requires that licensees of AM and FM broadcast stations operating by remote control points at places other than the main studio or transmitter site locations to send a written notification containing the remote location to the FCC within 3 days after commencing remote control operation from such points. The data is used by FCC staff to maintain complete technical information regarding licensees and to assure that the remote control location will not cause interference to another station.

**William J. Tricarico,**

*Secretary, Federal Communications Commission.*

[FR Doc. 87–8172 Filed 4–10–87; 8:45 am]

BILLING CODE 6712–01–M

---

**[Report No. 1651]**

**Petitions for Reconsideration, Clarification and Stay of Actions in Rulemaking Proceeding**

April 3, 1987.

Petitions for reconsideration, clarification and stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C., or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed [April 28, 1987.] See § 1.4(b)(1) of the Commission's rules (37 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Sedona, Arizona) (MM Docket No. 86–102, RM–5124) Number of petitions received: 2
Subject: Amendment of the Amateur Radio Service Rules to Expand the Privileges Available to Novice Operators. (PR Docket No. 86–161, RM's 5022, 5023, 5024, 5025, 5038, 5251, 5281 & 5282) Number of petitions received: 4
Subject: Amendment of of the Amateur Radio Service Rules to Permit Emission F8E on Frequency Band 0.35 Meters and above (1240 MHz and above). (PR Docket No. 86–207, RM–5208) Number of petitions received: 1
Subject: Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985. (Gen Docket No. 86–285) Number of petitions received: 2.

**William J. Tricarico,**

*Secretary, Federal Communications Commission.*

[FR Doc. 87–8173 Filed 4–10–87; 8:45 am]

BILLING CODE 6712–01–M

---

**[CC Docket No. 87–78]**

**Applications for hearing; Christina Communications et al.**

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Order designating applications for hearing.

**SUMMARY:** This order designates non-wireline cellular radio applications in five markets for hearing pursuant to section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)). In San Juan, Puerto Rico, it is the application of Christina Communications and San Juan Cellular Settlement Partnership (File No. 30887–CL–P–091–A–84). In Little Rock, Arkansas, it is the application of Haines Partnership and Little Rock Cellular Settlement Partnership (File No. 34375–CL–P–092–A–84). In York, Pennsylvania, it is the application of Dupont Highway Partnership and York Cellular Settlement Partnership (File No. 33605–CL–P–099–A–84). In Jackson, Mississippi, it is the application of the Mounger Partnership No. 3 and Jackson Cellular Settlement Partnership (File No. 31435–CL–P–106–84). In Reading, Pennsylvania, it is the application of Wilton Partnership and Reading Cellular Settlement Partnership (File No. 34688–CL–P–118–A–84). The Commission finds that a hearing is necessary to determine whether the applicants are the real parties in interest behind their applications whether they or their settlement partnerships misrepresented material facts to the Commission regarding real party in interest and whether the applicants are financially qualified.

**DATES:** Within 20 days of the release date of this order, applicants must file a written notice of their intention to appear on the day of the hearing and to present evidence on the specified issues.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, DC. 20554.

**FOR FURTHER INFORMATION CONTACT:** Gerald Zuckerman (202) 653–5560.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Common Carrier Bureau's designation order, pursuant to delegated authority; adopted March 23, 1987, and released April 3, 1987.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC. 20037.

**Albert Halprin,**

*Chief, Common Carrier Bureau.*

[FR Doc. 87–8171 Filed 4–10–87; 8:45 am]

BILLING CODE 6712–01–M

[PRB-3]

## Privatization of Special Call Sign System for Amateur Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Public notice; Extension of comment/reply comment period.

**SUMMARY:** The American Radio Relay League, Inc. (ARRL) has requested that the time for filing comments in this proceeding regarding privatization of special call sign system for amateur stations be extended. ARRL has shown good cause why such extension of time would be in the public interest.

**DATES:** Comments and proposals must be filed by July 31, 1987 and replies by August 31, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:**

In the matter of privatization of special call sign system for amateur stations.

Order

Adopted: March 31, 1987.
Released: April 7, 1987.

By the Chief, Private Radio Bureau.

1. On February 3, 1987, the FCC issued a Public Notice in this proceeding concerning a special call sign system for amateur stations. Comments and proposals were due on or before April 23, 1987, with reply comments due on or before May 22, 1987. The American Radio Relay League, Inc. (ARRL) has requested that the time for filing comments and proposals be extended to and including July 31, 1987.

2. In support of its request, ARRL notes that an incomplete text of the Public Notice was published in the **Federal Register** on February 12, 1987 (52 FR 4530).[1] Further, ARRL states that it would not be able to obtain the approval of its Board of Directors before the deadline for any proposal it may submit to be a special call sign coordinator, since the Board will not meet until July.

3. ARRL further states that there should be a full understanding by the amateur community of all the ramifications of a call sign system administered by the private sector. We believe that the input of the ARRL will be useful and will further that goal.

4. In view of the foregoing, and pursuant to the authority contained in Section 0.331 of the FCC Rules, the request of the ARRL for extension of time is granted. Comments or proposals concerning PRB-3 must be filed on or before July 31, 1987. Reply comments are due on or before August 31, 1987.

Federal Communications Commission.

**Michael T. N. Fitch,**

*Chief, Private Radio Bureau.*

[FR Doc. 87-8169 Filed 4-10-87; 8:45 am]

BILLING CODE 6712-01-M

[1] The complete text of the Public Notice in PRB-3 will be published in a subsequent edition of the **Federal Register**.

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* Extension of 3067-0034.

*Title:* Application for Community Disaster Loan.

*Abstract:* The Community Disaster Loan Program aspect of the Disaster Relief Act of 1974, Public Law 93-288, offers loans to disaster affected local governments with the possibility that all or part of the loan could be cancelled. Basic Authorities are contained in section 414, PL 93-288 and Federal Regulations 44 CFR 205 subpart F.

*Type of Respondents:* State or local governments.

*Number of Respondents:* 5.

*Burden Hours:* 30.

*Frequency of Recordkeeping or Reporting:* On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: April 6, 1987.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 87-8119 Filed 4-10-87; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL RESERVE SYSTEM

### Peoples Ltd. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. section 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. section 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their veiws in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 6, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Peoples Ltd.*, Wyalusing, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank of Wyalusing, Wyalusing, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Buffalo Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of O'Bannon Banking Co., Buffalo, Missouri. Comments on this application must be received by May 3, 1987.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Morrill Co.*, Morrill, Nebraska; to become a bank holding company by acquiring 94 percent of the voting shares of First National Bank in Morrill, Morrill, Nebraska.

Board of Governors of the Federal Reserve System, April 7, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8144 Filed 4-10-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 87N-0056]**

### Development of Model Food Protection Unicode

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a project to update the existing model retail food codes and to combine them into a new model Food Protection Unicode. This project is being initiated in cooperation with several national organizations concerned with retail food protection. The Food Protection Unicode will bring together in one document the similar food protection and sanitation provisions now contained in separate model codes.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Arthur L. Banks, Center for Food Safety and Applied Nutrition (HFF-342), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0140.

**SUPPLEMENTARY INFORMATION:** For over 60 years there have been efforts to develop model food codes. In 1934, the Public Health Service (PHS) began developing an ordinance relating to sanitary control in food-service establishments. At that time, in cooperation with the Conference of State and Territorial Health Officials and the National Restaurant Code Authority, PHS drafted suggested minimum food-sanitation standards. At the request of many State and local health authorities, the proposed standards prepared by PHS became the basis for a model ordinance published in tentative form in 1935. It was expanded in 1938 and revised in 1943 and again in 1962, with the publication of the model "Food Service Sanitation Ordinance and Code, 1962 Recommendations of the Public Health Service."

In 1968, FDA assumed responsibility for the retail food protection program and for the development of model codes. FDA updated the "Food Service Sanitation Ordinance" in 1976. In 1978, FDA published an updated model code on "The Vending of Food and Beverages." Finally, in 1982, FDA and the Association of Food and Drug Officials (AFDO) jointly published a model "Retail Food Store Sanitation Code." This latter code culminated an 8-year cooperative effort by FDA and AFDO.

Thirty-seven States and 160 local jurisdictions have adopted the 1976 edition of the model food-service code. Many other State and local jurisdictions have adopted earlier editions. About half of the States and some local jurisdictions have adopted the provisions of the model food vending code. Twelve States and eight local jurisdictions are reported to have adopted the model retail food store code.

FDA's consultation with State program officials and its evaluations of the effectiveness of State programs have revealed significant problems with the codes that States have adopted in response to the model codes. Among the problems that the agency has found are:

1. Inconsistencies among these codes in sanitation requirements such as those involving customer self service of potentially hazardous foods, warewashing facilities, and the cooking of roast beef;

2. Inconsistencies among these codes in plan review provisions and grandfather clauses; these inconsistencies discourage reciprocity among jurisdictions in accepting plans, structures, and operations;

3. Duplicative administrative efforts at the State and local levels to hold hearings on, and publish, adopt, and update, three or more similar but separate codes to cover the retail food industry;

4. Use of a format that does not facilitate easy updating;

5. Inadequate inspection forms and scoring systems; and

6. A failure to reflect that many retail food establishments now perform one or more food processing or service functions within the same establishment.

As a result of these and related concerns, many food protection officials have recognized the need to update and unify model code requirements. In addition, the development of such a unified code, or "unicode," would offer an opportunity to:

1. Involve State and local regulatory officials and the industry in the code development process, thereby fostering commitment to the process and to the end product;

2. Work toward elimination of duplication and conflicts in the codes of States in which the food store and food-service responsibilities belong to separate agencies by encouraging these agencies to work together on joint adoption of the unicode and interpretations;

3. Develop new and improved code language and provisions that can be applied to existing codes irrespective of whether the unicode is adopted by a particular jurisdiction; and

4. Provide for participation by FDA, State, and local regulatory officials, as well as by industry, in any future revisions of the unicode.

In 1986, the Conference for Food Protection (Conference) endorsed "the development of a model Food Protection Unicode as a priority project." That endorsement led to the current initiative to provide a model food protection unicode.

Conference members envisioned that the unicode project would serve to update the provisions contained in the existing three model codes and would combine into a single document the food protection requirements for all establishments in the retail segment of the food industry. The retail segment includes those points in the food distribution chain where the consumer takes possession of the food, such as commercial and institutional food-service facilities—including temporary and mobile operations, food vending machine locations, and most types of retail food stores.

The goals of the unicode project can be accomplished by structuring the unicode to include a large core of basic requirements as well as those exceptions and special provisions needed to accommodate special operations or facilities. Such as structure will allow States to adopt the entire unicode or if appropriate, for example in States in which regulatory responsibilities for food service, food stores, and food vending operations are divided among two or more agencies, to adopt unicode provisions on an agency-by-agency basis.

Conference members agreed that the most viable strategy for developing a unicode and for ensuring that it will be effectively maintained is to have FDA assume a leadership role. They recommended, however, that FDA seek to maximize involvement of State and local regualtory officials, as well as industry and consumers. Conference members also recommended that FDA follow procedures that ensure that, when a controversial issue arises, no one cooperating party will be able to

veto the unicode or otherwise prevent it from serving as a consensus document. To accomplish this goal, the Conference members recommended that FDA convene a meeting that includes representatives from key national organizations to participate in a Unicode Development Task Froce with the goal of developing the model unicode that will serve as a guide for State and local officials. The key national organizations are: American Public Health Association; Association of Food and Drug Officials; Conference of State Health and Environmental Managers; Food Marketing Institute; International Association of Milk, Food and Environmental Sanitarians; Institute of Food Technologists; National Automatic Merchandising Association; National Conference of Local Environmental Health Administrators; National Environmental Health Association; National Restaurant Association; National Sanitation Foundation; National Society of Professional Sanitarians; and U.S. Department of Agriculture. The agency also intends to add a national consumer group shortly.

Conference members recognized, and FDA agrees, that although the joint involvement of regulatory, industry, and third party officials is important, their roles should be sufficiently different to avoid any possible conflict of interest. Such conflicts can be avoided if the industry and third party representatives have an advisory, rather than a concurring, status. Such an advisory status would allow industry and third party representatives to take an active role in developing scientific and technical information and to participate fully in the Task Force's deliberations but not to vote on any regulatory provisions of the unicode.

FDA and the Conference members held the first meeting of the Unicode Development Task Force on December 9, 1986, at the FDA office in Washington, DC. At the meeting, Task Force members agreed upon the scope and structure of the unicode, listed the concerns and controversial issues in order of priority, and agreed upon a mechanism to resolve those issues.

The Task Force identified the following controversial issues:

1. Time-temperature relationships;
2. Roast beef cooking requirements;
3. Facility plan review needs;
4. Three compartment sinks versus two compartment sinks and the use of chemicals with these sinks;
5. Open case thermometers in retail food stores;
6. Enforcement provisions;
7. Clarification of requirements for food additives such as sulfites;
8. Person-in-charge definitions, responsibilities, and requisite knowledge;
9. Selling of live products (shellfish, crabs) from mobile units such as pickup trucks; and
10. Clarification of requirements for retail ice manufacture, microwave cooking, storage of wiping cloths, and coffee creamers.

Although Task Force members except that most of these issues can be addressed in the draft unicode, they agreed that special work is necessary for the resolution of issues regarding manual warewashing (two versus three compartment sinks), the cooking of roast beef, and industry manager responsibility. To resolve these three issues, three committees consisting of Task Force members were formed to work with FDA.

Other organizations and individuals interested in the unicode project can participate by providing comments on draft documents when they become available. Copies of minutes of Task Force meetings will also be available from the agency contact. The minutes of the first meeting are presently available. FDA will publish a notice of availability of the draft model food protection unicode in the **Federal Register**. The notice will provide an opportunity for comment on the draft. By writing the agency contact, interested persons may request that they be placed on a mailing list to receive all unicode-related documents directly.

Dated: April 6, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-8117 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-01-M

## Monensin for Use in Quail; Availability of Data

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** the Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness and environmental data to be used in support of a new animal drug application (NADA) for use of monensin in Type C quail feed. The data, contained in Public Master File (PMF) 5014, were compiled under Interregional Research Project No. 4 (IR-4), a national agriculture program for obtaining clearances for use of agricultural products for minor or special uses.

**ADDRESS:** Submit NADA's to the Document Control Section (HFV-16), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:** The use of monensin in quail feed is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug it is subject to section 512 of the act (21 U.S.C 360b) requiring that its uses be the subject of an approved NADA. Rutgers University, IR-4 Project, Cook College, New Brunswick, NJ 08903, has provided data and information to demonstrate effectiveness, safety to the target animal, and tissue residue depletion, for use of monensin in the Type C quail feed for prevention of coccidiosis cause by *Eimeria dispersa* and *E. lettyae*. Rutgers also provided an environmental assessment of possible impacts at the site of use of the animal drug product. The data and information are contained in PMF 5014. Sponsors of NADA's or supplemental NADA's may reference without further authorization the PMF to support approval. An NADA or supplemental NADA should include, in addition to a reference to the PMF, drug labeling, and other information needed for approval, such as data concerning human food safety; manufacturing methods, facilities, and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Adriano R. Gabuten (address above).

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information in this PMF submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m. Monday through Friday.

Dated: April 3, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-8116 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0083]

## Sumitomo Chemical America, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-propenoic acid, 2-(1,1-dimethylethyl)-6-[3-(1,1-dimethylethyl)-2-hydroxy-5-methylbenzyl]-4-methyl phenylester as an antioxidant for polymers intended to contact food.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3897) has been filed by Sumitomo Chemical America, Inc., 385 Park Ave., New York, NY 10154, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2-propenoic acid, 2-(1,1-dimethylethyl)-6-[3-(1,1-dimethylethyl)-2-hydroxy-5-methylbenzyl]-4-methyl phenylester as an antioxidant for polymers intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 2, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-8118 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-01-M

---

## Public Health Service

## Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 52 FR 6221, March 2, 1987), is amended to reflect the division-level substructure within the Training and Laboratory Program Office.

*Section HC-B, Organization and Functions,* is hereby amended as follows:

After the heading and statement for the Training and Laboratory Program Office (HCH), insert the following:

*Office of the Director (HCH1).* (1) Directs and coordinates the activities of the Training and Laboratory Program Office (TLPO); (2) advises the Director, CDC, on matters relating to training and laboratory performance; (3) for TLPO, develops long-range plans, sets annual objectives and monitors progress toward their achievement, and evaluates results; (4) coordinates TLPO assistance to CDC programs, States, other nations, and other Federal agencies; (5) coordinates collaborative projects with academic institutions and other public health organizations, especially schools of public health and departments of preventive and community medicine; (6) coordinates and conducts activities that provide technical and scientific support to the Health Care Financing Administration (HCFA) in its regulation of clinical laboratories; (7) interacts with public, private, academic, and voluntary sectors of the health community; (8) maintains information management policies, procedures, and services in support of TLPO planning and operational needs; (9) provides administrative and support services to TLPO.

*Division of Assessment and Management Consultation (HCH2).* (1) Assesses the performance needs of health agencies; (2) monitors the quality of public health systems using ongoing data collection systems; (3) analyzes needs and disseminates results of needs assessments; (4) evaluates the scope and quality of training and laboratory activities; (5) develops and disseminates information on clinical laboratory practices; (6) serves as a focal point for implementing the interagency agreement with HCFA with respect to the evaluation, development, and revision of standards and guidelines; (7) assists health agencies in applying planning and management skills; (8) provides consultation in the planning and operation of public health laboratories; (9) evaluates the effectiveness of TLPO consultation and training efforts; (10) in carrying out the above functions, collaborates with other parts of TLPO and with other Centers, Institute, and Offices of CDC.

*Division of Training (HCH3).* (1) Serves as CDC's focus of training expertise; (2) identifies appropriate instructional strategies for meeting training needs; (3) evaluates effectiveness of training activities; (4) works in close collaboration with technical experts from both within and outside CDC to develop appropriate training solutions; (5) provides consultation and assistance in instructional design and development and delivery to other components of CDC and to health agencies; (6) conducts training and consultation as needed, including formal classroom, laboratory, and non-resident instruction; (7) develops and produces training methods and materials; (8) disseminates training materials and information on public health training opportunities; (9) supports training laboratories in the Atlantic area; (10) in carrying out the above functions, collaborates and coordinates with other components of TLPO and with other Centers, Institute, and Offices of CDC.

*Division of Technical Services (HCH4).* (1) Provides assistance in technical arts media selection, design, and production; (2) supports CDC programs through the provision of technical arts services, including photography, graphic arts, audiotapping, still picture archiving and distribution, photomicrography and photomacrography, television, and computer graphics; (3) operates central graphics services; (4) provides conference management services for CDC programs; (5) manages classrooms and conference facilities in the Atlanta area.

Dated: April 2, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

[FR Doc. 87-8175 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-18-M

---

## DEPARTMENT OF THE INTERIOR

## National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Saturday, April 25, 1987 from 9:30 a.m. until 12:00 noon, or until business is concluded. The meeting will convene in the Jefferson Room at the Cavalier Inn, 105 Emmet Street, Charlottesville, Virginia. It will be open to the public.

There will be discussion of activities of working groups as well as proposed activities in support of the National Critical Materials Council.

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. The committee is particularly interested in hearing any comments or suggestions for educational programs advancing public awareness of our dependence on minerals in our daily lives. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Executive Director (see below) of their intention to appear.

**FOR FURTHER INFORMATION CONTACT:** Gully Walter, Department of the Interior, Washington, DC, Room 6650, (202) 343–2136.

Dated: April 7, 1987.

**Gully Walter,**

*Executive Director.*

[FR Doc. 87–8114 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–10–M

## Bureau of Indian Affairs

### Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Yokayo Tribe of Indians, c/o Mrs. Dorene Mitchell, 1114 Helen Avenue, Ukiah, California 95482, has filed a petition for acknowledgement by the Secretary of the Interior that the gruop exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on March 9, 1987, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit and/or legal arguments in support of or in opposition to the group's petitions. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files.

The petition may be examined by appointment in the Branch of Acknowledgement and Research, Bureau of Indian Affairs, Department of the Interior, Mail Stop 32–SIB, 1951 Constitution Avenue NW., Washington, DC 20245, Phone: (202) 343–3568.

**Ross O. Swimmer,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 87–8127 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–02–M

## Bureau of Land Management

[CO–940–07–4121–14; C–44693]

### Colorado; Notice of Public Hearing and Request for Comments on the Environmental Assessment, Maximum Economic Recovery and Fair Market Value; Emergency Coal Lease Application C–44693

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** THE DEPARTMENT OF THE INTERIOR, Bureau of Land Management, Colorado State Office, Denver, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery and fair market value of Federal coal to be offered. An emergency by-pass application was filed by Western Fuels-Utah, Inc., to the Bureau of Land Management to offer for lease approximately 344 acres of Federal land in Rio Blanco County, Colorado.

**DATES:** The Public Hearing will be held at 7:00 p.m., May 20, 1987. Written comments should be received no later than May 25, 1987.

**ADDRESSES:** The Public Hearing will be held in the Rangely Town Hall, 209 E. Main, Rangely, Colorado. Written comments should be addressed to the Bureau of Land Management, White River Resource Area Office, Attention: Roger Wickstrom, P.O. Box 928, Meeker, Colorado 81641.

**FOR FURTHER INFORMATION CONTACT:** Roger Wickstrom, Project Leader, White River Resource Area Office, (303) 878–3601.

**SUPPLEMENTARY INFORMATION:** The Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, Colorado, hereby gives notice that a public hearing will be held on May 20, 1987, at 7:00 p.m. in the Rangely Town Hall, 209 E. Main, Rangely, Colorado. An emergency by-pass application was filed by Western Fuels-Utah, Inc., to the Bureau of Land Management to offer for lease the "D" coal seam in the lands hereinafter described. The purpose of the hearing is to obtain public comments on the Environmental Assessment and on the following items: (1) The method of mining to be employed to obtain Maximum Economic Recovery of the coal, (2) the impact that mining the coal in the proposed leasehold may have on the area, and (3) methods of determining the Fair Market Value of the coal to be offered. Written requests to testify orally at the May 20, 1987, public hearing should be received at the White River Resource Area Office prior to the close of business May 20, 1987. Those who indicate they wish to testify when they check in at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the Fair Market Value and Maximum Economic Recovery of the coal resource. Public comments will be utilized in establishing Fair Market Value for the coal resources in the described lands. Comments should address specific factors related to Fair Market Value including, but not limited to:

1. The quality and quantity of the coal resource;
2. The price that the mined coal would bring in the market place;
3. The cost of producing the coal;
4. The interest rate at which anticipated income streams would be discounted;
5. Depreciation and other accounting factors;
6. The mining method or methods which would achieve maximum economic recovery of the coal;
7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area; and
8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the Environmental Assessment, Maximum Economic Recovery and Fair Market Value should be sent to the White River Resource Area Office at the above address prior to close of business on May 25, 1987.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The coal resource to be offered is limited to coal recoverable by underground mining methods from the "D" seam in the following lands located adjacent the Deserado Mine near Rangely, Colorado:

T. 2 N., R. 101 W., 6th P.M.

Sec. 1, Lots 1, 2, 5, and 6, SW¼NE¼, W½SE¼NE¼, and N½SE¼;
T. 3 N., R. 101 W., 6th P.M.
Sec. 36, SW¼SE¼, W½SE¼SE¼.
The land described contains 344.31 acres.

The Draft Environmental Assessment and Maximum Economic Recovery report are available from the White River Resource Area Office upon request.

A copy of the draft Environmental Assessment, the Maximum Economic Recovery report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado.

Dated: April 2, 1987.

**Evelyn W. Axelson,**

*Chief, Mineral Leasing Section.*

[FR Doc. 87-8125 Filed 4-10-87; 8:45 am]

BILLING CODE 4310-08-M

---

**[NV-030-07-4212-14; N-42967]**

## Realty Action Competitive Sale of Pubic Lands in Churchill County, NV

The following public lands have been examined and found suitable for disposal through competitive sale under section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750; 43 U.S.C. 1713), at not less than fair market values:

**Parcel A**

*Mt. Diablo Meridian*

T. 19 N., R. 31 E.,
Sec. 6, Lot 3.
Containing 39.97 acres.

**Parcel B**

*Mt. Diablo Meridian*

T. 20 N., R. 31 E.,
Sec. 31, E½SW¼.
Containing 80 acres.

The lands are hereby segregated from appropriation under the public land laws including the mining laws but not from sale under the above cited statute. This segregative effect shall terminate upon issuance of a patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever occurs first.

Sale of these parcels is consistent with the Bureau's Planning System and with local governmnent plans. The lands are not needed for support of any resource programs and are not suitable for management by another federal agency.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. Geothermal steam and associated resources and sodium and potassium compounds, together with the right to prospect for, mine and remove the minerals.

Parcel A will be subject to the following:

1. An easement 50 feet in width along the northern boundary of Lot 3, section 6, T. 19 N., R. 31 E., M.D.M., NV in favor of Churchill County for continued use of the Kent Lake Deep Drain.

2. An easement 60 feet in width, being the south sixty feet of the north 110 feet of Lot 3, section 6, T. 19 N., R. 31 E., M.D.M., NV in favor of Churchill County, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

3. Those rights for buried telephone cable purposes which have been granted to Churchill County Telephone Company, its successors or assigns, by Right-of-way N-46287.

No bids will be accepted for less than the appraised fair market value of the property. The fair market value of each parcel will be printed in an information brochure which will be made available to the public prior to the sale date. Federal law requires that bidders be U.S. citizens, 18 years of age or older, or in the case of a corporation, be subject to the laws of any State or of the United States. Bids may be made by a principal or his qualified agent.

Sealed bids shall be considered only if received at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701, prior to 9:00 a.m., June 25, 1987. The written sealed bids will be opened and publicly declared at the sale, which will be held on June 25 at 10:00 a.m. Each bid shall be accompanied by a certified check, postal money order or cashier's check made payable to the Department of the Interior—BLM for not less than ten (10) percent of the amount of the bid and shall be enclosed in a sealed envelope marked in the lower left hand corner *BLM Land Sale*, N-42967. The parcel being bid on should also be specified. If two or more sealed bids containing valid bids of the same amount are received for either parcel, the determination of whom is to be considered the highest bidder shall be by oral bidding following opening of the sealed bids. If the parcels do not sell at the first offering, sealed bids will be accepted at the Carson City District Office during business hours (7:30 to 4:15) every Wednesday following the date of the sale until the parcels are sold or withdrawn from sale.

The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale. All other bids will either be returned or rejected. Conveyance of the mineral estate, except for geothermal steam and associated resources, and sodium and potassium compounds, will occur simultaneously with sale of the lands in accordance with section 209(b)(l)(1) of Pub. L. 94-579. Acceptance of a bid offer will constitute an application for conveyance of the available mineral estate and will require payment of a $50.00 non-refundable fee which must accompany the bid.

BLM may reject any and all offers or withdraw the lands from sale if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law. The lands will not be offered for sale for at least 60 days after the date of this notice. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office. Any adverse comments will be evaluated and this notice upheld, modified or vacated.

Dated this 30th day of March, 1987.

**James W. Elliott,**

*District Manager.*

[FR Doc. 87-8124 Filed 4-10-87; 8:45 am]

BILLING CODE 4310-HC-M

---

## National Park Service

### National Capital Memorial Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, April 23, 1987, at 1:30 p.m., in the Conference Room at the National Park Service, National Capital Regional Headquarters Building, 1100 Ohio Drive SW., Room 234, Washington, DC 20242.

The Commission was established by Pub. L. 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy

and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

William Penn Mott, Chairman, Director, National Park Service, Washington, DC
George M. White, Architect of the Capitol, Washington, DC
Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC
Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC
Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC
William Sullivan, Commissioner, Public Buildings Service, Washington, DC
Caspar W. Weinberger, Secretary, Department of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

I. Legislative Proposals—Comments to the Secretary of the Interior.
  a. H.J. Resolution 135—Providing for a time capsule to honor Dr. Martin Luther King, Jr.
II. Site Selection of Authorized Memorials.
  a. National Law Enforcement Officers Memorial—Pub. L. 98–534
  b. Korean War Veterans Memorial—Pub. L. 99–572
III. Discussion of Regulations Pursuant to Public Law 99–652
IV. General Business.

The meeting will be open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Mr. John G. Parsons, Associate Regional Director, Land Use Coordination, National Capital Region, at 202–426–7750. A transcript of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, Room 201, 1100 Ohio Drive SW., Washington, DC 20242.

Dated: April 7, 1987.

**Manus J. Fish, Jr.,**

*Regional Director, National Capital Region.*

[FR Doc. 87–8205 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–70–M

## Decker Canyon Development Concept Plan; Santa Monica Mountains National Recreation Area; CA; Availability of Draft Environmental Impact Statement

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act, the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed management and development of the Decker Canyon property in the Santa Monica Mountains National Recreation Area.

The DEIS addresses the proposal to develop a portion of the Decker Canyon property as an overnight, barrier free environment education center along with alternatives ranging from no action to exchanging part of the property for other high priority lands to development of day use facilities only.

**DATES:** Written comments on the DEIS will be accepted until June 8, 1987. Also, during the comment period, a public meeting will be held to solicit comments on both the DEIS and the proposal. The date and time will be announced by the Superintendent, Santa Monica Mountains National Recreation Area.

**ADDRESSES:** Comments on the DEIS and questions on the time and place of the public meeting should be directed to: Superintendent, Santa Monica National Recreation Area, 22900 Ventura Blvd., Suite 140, Woodland Hills, California 91364.

Copies of the DEIS are available for inspection at the park headquarters in Woodland Hills and in libraries located in the park vicinity. Copies also are available at the following address: Western Regional Office, National Park Service, Attn: Division of Planning, Grants and Environmental Quality, P.O. Box 36063, 450 Golden Gate Ave., Room 14033, San Francisco, California 94102.

Dated: March 18, 1987.

**W. Lowell White,**

*Acting Regional Director, Western Region.*

[FR Doc. 87–8044 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–70–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records sehedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATE:** Requests for copies must be received in writing on or before May 28, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are

updates of previously approved schedules. Such schedules also may include records that are designed for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

**Schedules Pending Approval**

1. Department of Agriculture, Forest Service, Minerals and Geology Staff (N1–95–87–7). Minerals materials permits.

2. Department of Commerce, International Trade Administration (N1–151–87–6). Subject file of the Export Supply Procedures and Publications Branch, Office of International Trade, 1942–49.

3. Department of Commerce, International Trade Administration, Reports and Records Branch, Office of Export Licensing (N1–151–87–7). Operational records relating to the inspection of export licenses and certificates.

4. Defense Logistics Agency, Office of Administration (N1–361–86–5). Non-litigation records relating to fraud and irregularities.

5. Environmental Protection Agency (NC1–412–85–20). Records relating to the regional offices enforcement programs for air and water pollution.

6. Environmental Protection Agency, Office of Radiation Programs (N1–412–86–1). Records relating to measurement and control of radiation exposure.

7. Federal Emergency Management Agency (N1–GRS–87–10) Case files on reservists and applicants maintained by all Federal agencies with National Defense Executive Reserve (NDER) units.

8. Department of Health and Human Services, Social Security Administration, Office of Central Operations (N1–47–87–2). Forms relating to representative payee status, reports, and custody.

9. Department of Health and Human Services, Social Security Administration, Office of Supplemental Security Income (N1–47–87–3). Sheltered workshop wage reports and pay stubs to verify SSI recipients income.

10. Department of Labor, Bureau of Labor Statistics, Office of Prices and Living Conditions (NC1–257–85–2). Comprehensive schedule for records relating to the International Price Indexes Program and the Producer Price Indexes.

11. National Archives and Records Administration, Office of the National Archives (N2–227–87–1). Records of the Office of the Secretary of Defense relating to the daily administrative activities of the defunct WWII Office of Scientific Research and Development.

12. Tennessee Valley Authority, Division of Management Systems (NC1–142–85–14). Comprehensive records schedule.

13. Department of the Treasury, Comptroller of the Currency (N1–101–87–1). Daily reports of the Organization Division giving the number of national banks in business, and the names of banks opened or closed, 1886–93 and 1899–1964, and the reports on the number of national banks in each state, territory and reserve city, 1903–1961.

14. Department of the Treasury, Comptroller of the Currency (N1–101–87–3). Certificates extending and re-extending corporate existence of national banks, 1882–1922.

15. Department of the Treasury, Financial Management Service (N1–425–87–1). Routine administrative files of the defunct Bureau of Accounts and the Division of Bookkeeping and Warrants.

Dated: April 6, 1987.

**Frank G. Burke,**

*Acting Archivist of the United States.*

[FR Doc. 87–8204 Filed 4–10–87; 8:45 am]

BILLING CODE 7515–01–M

## NATIONAL SCIENCE FOUNDATION

### Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines the National Science Foundation is posting this notice of information collection that will affect the public.

*Agency Clearance Officer:* Herman G. Fleming, (202) 357–9520.

*OMB Desk Officer:* Carlos Tellez, (202) 395–7340.

*Title:* Industrial Panel on Science and Technology.

*Affected Public:* Businesses or other for profit and small businesses or organizations.

*Number of Responses:* 2,500 responses; total of 1,300 burden hours.

*Abstract:* Information, especially of a qualitative nature, is needed to supplement and explain the data on science and technology (S&T) employment and funding which are obtained from other NSF sources. Special requests by OMB, OSTP and Congress can be answered by quickly contacting company research and development officials.

Dated: April 7, 1987.

**Herman G. Fleming,**

*NSF Reports Clearance Officer.*

[FR Doc. 87–8208 Filed 4–10–87; 8:45 am]

BILLING CODE 7555–01–M

### Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines the National Science Foundation is posting this notice of information collection that will affect the public.

*Agency Clearance Officer:* Herman G. Fleming, (202) 357–9520.

*OMB Desk Officer:* Carlos Tellez, (202) 395–7340.

*Title:* Survey of Industrial Research and Development, 1987, 1988, 1989.

*Affected Public:* Businesses or other for profit and small businesses or organizations.

*Number of Responses:* 12,000 responses; total of 32,000 burden hours.

*Abstract:* This survey ascertains the amount and direction of R&D expenditures by U.S. industry. Government agencies, corporations, research organizations, universities, etc., use the data to analyze and forecast technological growth, investigate productivity, determinants, formulate tax policy, and compare individual company R&D performance against industry averages. All manufacturing companies with 1,000 or more employees, samples of companies in selected nonmanufacturing industries, and a sample of smaller companies are included.

Dated: April 7, 1987.

**Herman G. Fleming,**

*NSF Reports Clearance Officer.*

[FR Doc. 87–8209 Filed 4–10–87; 8:45 am]

BILLING CODE 7555–01–M

### Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date and Time: April 30, 1987, 8:30 a.m.–5:00 p.m.; May 1, 1987, 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 540.

Type of Meeting: Open.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda: Thursday, April 30.

8:30 am–5:00 pm—Status of FY 87 and FY 88 Budget; Astronomy, Research Section Oversight Report; Long-Range Plans and FY 89 Priorities; Status of Selected Instrumentation Topics.

Friday, May 1.

9:00 am–5:00 pm—Future of National Optical Astronomy Observatories; Supernova 1987A; Continuation of Discussion of Topics from Previous Day.

April 8, 1987.

**M. Rebecca Winkler,**

*Committee Management Office.*

[FR Doc. 87–8210 Filed 4–10–87; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Committee for Atmospheric Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Date and Time: April 29, 30 and May 1, 1987—9:00 a.m.–5:00 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Eugene W. Bierly, Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, DC 20550, Telephone: 202/357–9874.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Perform oversight of program management, overall program balance, and other aspects of program performance.

Agenda: Committee Review of the Meteorology, Solar Terrestrial, and Upper Atmospheric Facilities Programs, including examination of proposal jackets, reviewer comments, and other privileged materials.

Reason for Closing: The meeting will consist of review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 8, 1987.

[FR Doc. 87–8211 Filed 4–10–87; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Committee for Chemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. –463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.

Date and Time: April 23–24, 1987; 9:00 am to 5:00 pm each day.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Edward F. Hayes, Director, Division of Chemistry, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7947.

Summary Minutes: May be obtained from Dr. Edward F. Hayes.

Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.

Agenda: Open-Discussion of the current status and future plans of the Chemistry Division's activities.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 8, 1987.

[FR Doc. 87–8212 Filed 4–10–87; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Committee for Computer and Computation Research; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and Time: April 29, 1987, 9:00 a.m. to 5:00 p.m.—April 30, 1987, 9:00 a.m. to 5:00 p.m.—May 1, 1987, 9:00 a.m. to 3:00 p.m.

Place: Room 543, National Science Foundation, 1800 G. Street, NW., Washington, DC 20550.

Type of Meeting: Part Open—April 29 Closed (9:00 a.m. to 5:00 p.m.); April 30 Open (9:00 a.m. to 5:00 p.m.); May 1 Open (9:00 a.m. to 3:00 p.m.)

Contact Person: Kent K. Curtis, Division Director, Division of Computer and Computation Research, Room 304, National Science Foundation, 1800 G. Street, NW., Washington, DC 20550. Telephone: (202) 357–9747. Anyone planning to attend this meeting should notify Mr. Curtis no later than April 27, 1987.

Purpose of Committee: To provide advice and recommendations concerning support of Computer Research.

Summary Minutes: May be obtained from the contact person at the above address.

Agenda:

**Wednesday, April 29, 1987, Room 543—9:00 a.m. to 5:00 p.m.—Closed**

Oversight Review of Theory, Software Systems, Software Engineering, Numeric and Symbolic Computation, Computer Systems Architecture, and CISE Instrumentation Programs.

**Thursday, April 30, 1987, Room 543—9:00 a.m. to 5:00 p.m.—Open**

Status of Committee Reports and other Committee Activities.

Reports of the Oversight Review Subcommittees.

**Friday, May 1, 1987, Room 543—9:00 a.m. to 3:00 p.m.—Open**

DARPA Programs and Plans.

FCCSET Report Update, Computer research.

FCCSET Report Update, Supercomputers.

Discussion of Research Priorities and Support.

Reason for Closing: The meeting will consist of a review of grants and declination jackets that contain the names of applicant institution and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the merit review documentation pertaining to the applications. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 8, 1987.

[FR Doc. 87–8213 Filed 4–10–87; 8:45 am]

BILLING CODE 7555–01–M

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24301; Filed No. SR–NSCC–87–04]**

## Self-Regulatory Organizations; National Securities Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 27, 1987, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission a proposed rule change expanding its guarantee of trades in the Continuous Net Settlement ("CNS") system[1] and

[1] The CNS system nets together each Member's daily transactions in each issue with any previous open positions to arrive at a net long or net short position for each Member each day.

revising Members' Clearing Fund requirements. The Commission is publishing this Notice to solicit comments on the proposal from interested persons.

**I. Description of the Proposal**

Under the proposed rule change, NSCC would guarantee settlement of Member trades in the CNS system on the day each trade is reported as compared, and would revise Members' Clearing Fund requirements to protect against the increased risk which this expanded guarantee entails. Currently, pursuant to NSCC's SCC Division Rule 18, NSCC interposes itself between the parties to trades subject to CNS accounting and guarantees settlement of those trades as of the fourth day after trade date ("T+4") when the positions are netted.[2] NSCC proposes to revise NSCC Rule 18 to adopt a policy of guaranteeing settlement of CNS trades as of midnight on the day trades are reported to Members as compared (usually T+1 or T+2).[3] If, however, one of the parties to a trade is a member of a clearing agency which interfaces with NSCC, NSCC will provide the increased guarantee only if that clearing agency also has adopted a similar guarantee.

In connection with this extended guarantee, NSCC proposes to modify the CNS portion of its Clearing Fund formula to collateralize more appropriately existing CNS system risks. Specifically, each Member would be required to contribute: (a) 2% of its projected total long CNS position; plus (b) the net of each day's difference between the contract price of pending compared CNS trades and the current market price for all guaranteed pending CNS trades which have not yet reached settlement; plus (c) ¼ of 1% of the net of all guaranteed pending CNS trades and open CNS positions.[4] Under the existing Clearing Fund formula, NSCC calculates a Clearing Member's Clearing Fund contribution monthly based on the Clearing Member's average daily settlement activity. The proposal also makes conforming revisions to the Alternative Clearing Fund Formula available for Municipal Securities Brokers' Brokers Sponsored Accounts.

Additionally, the proposed rule change makes certain conforming and technical changes to SCC Division Rules. In particular, the proposal adjusts the guidelines for computing Clearing Fund requirements for settling Members on surveillance to correspond to the changes in the basic Clearing Fund formula. The proposal also allows NSCC to collect an additional Clearing Fund deposit sooner than monthly if a Clearing Member's Clearing Fund requirement increases by 10% (or $10,000 for Clearing Members with a Clearing Fund requirement of less than $100,000) under the new formula.

**II. NSCC's Rationale for the Proposal**

NSCC believes that that proposed rule change is consistent with the purposes and requirements of section 17A of the Act. NSCC states that the earlier guarantee will provide for increased stability and certainty in the securities markets. Moreover, NSCC represents that the related reformulation of the CNS portion of the Clearing Fund will assess Members in a manner that adequately accounts for the added risk assumed by NSCC in connection with the expanded guarantee.

In addition, NSCC states that the new Clearing Fund assessment will be more closely related to the actual risk posed by each Member, but will have no material effect on the size of the total CNS Clearing Fund. NSCC accomplishes this under the new formula by focusing on the risk that: (i) A Member who has purchased securities will be unable to pay for those securities on delivery; (ii) the market price of the securities will move away from the contract price before settlement; and (iii) an insolvent Member will be unable to make its daily mark-to-the-market payment. Because the current Clearing Fund assessment formula focuses on daily settlement debits and credits, NSCC believes that the resulting contribution may not reflect the full nature and extent of these risks.

**III. Solicitation of Comments.**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 4, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 3, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8155 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24300; File No. SR-NSCC-87-5]**

## Proposed Rule Change by National Securities Clearing Corp., Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules and Fee Structure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 30, 1987, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The rule change eliminates NSCC's Order Out Service and related fees.

---

[2] A second accounting system, Balance Order processing, is used to net those transactions in securities which are not eligible for the CNS system. NSCC does not interpose itself on Balance Orders although Balance Orders (in the form of receive and deliver tickets distributed on T+4) are guaranteed by NSCC from the date of issuance. For securities included in the CNS system, NSCC continues to guarantee long and short open positions; for securities in the Balance Order System, the guarantee generally lasts only through settlement date. NSCC has indicated in a letter to its Members that it is reviewing that portion of the Clearing Fund formula and the guarantee provided for non-CNS activity and may propose additional changes in this area.

[3] On March 11, 1987, NSCC filed an amendment to the proposed "Statement of Policy in Relation to the Completion of Pending CNS Trades" contained in the filing, which clarifies that trades executed with respect to when-issued securities are not covered by the increased guarantee.

[4] In addition, the Member would be required to contribute 2½% of its average daily envelope settlement system debits and credits or 5% of its average daily envelope settlement system debits, whichever is greater, subject to a $10,000 minimum contribution. This portion of the rule would not be changed by the proposal.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC includes statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

NSCC has determined to eliminate its Order Out Service. NSCC's Order Out Service permits Members to receive physical securities without having to withdraw securities from their depository accounts after they are allocated securities from the Continuous Net Settlement ("CNS") allocation. This service, however, has experienced declining participation over the last three years. Since October, 1986, there has been no volume at all in the service; for the months prior to October, 1986, there was extremely limited volume. This decline was due to a number of factors, including an increase in the number of Canadian participants in depositories (the Order Out Service often was used to make deliveries to Canadians) and the existence of other methods by which to receive physical securities. Accordingly, NSCC has determined that it no longer is cost-effective to offer the service.

Insofar as the proposed rule change will eliminate a service which is not in use and thus is not cost-effective to maintain, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to NSCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

By notice dated February 17, 1987, NSCC solicited comments from its Members on the proposed elimination of the service. No comments were received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 4, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 3, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8156 Filed 4–10–87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34–24309; File No. SR–Phlx–86–49]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Rule Change

Pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] the Philadelphia Stock Exchange, Inc. ("Exchange"), on January 9, 1987 submitted to the Securities and Exchange Commission ("Commission") a proposal to amend its rules relating to off-floor trading by market makers.

The proposed rule change was published for comment in Securities Exchange Act Release No. 24114 (February 19, 1987), 52 FR 6280. No comments were received.

The purpose of the proposed rule change is to address the issue of off-floor trading by market makers. Specifically, the proposed rule change is intended to ensure that market makers effect trades on the floor of the exchange as much as possible.

New Floor Procedure Advices B–8(b) and C–3(b) are designed to ensure that a registered options trader who is on the floor has knowledge of the terms of a trade initiated on his behalf by a floor broker. In order for a registered options trader to open a position in a market maker account and be entitled to exempt credit for margin purposes, the order must be initiated on the floor. The proposed rules would establish a clear procedure to provide for compliance with the requirement that market maker trades qualifying for exempt credit for margin purposes be initiated on the floor. In addition, appropriate fine schedules are provided for failure to comply with these established procedures.

The Exchange also is proposing that Floor Procedure Advice B–3 be amended to require that each quarter a registered options trader trade in person the greater of 1,000 contracts or 50% of his or her contract volume. The rule previously required only that at least 1,000 contracts per quarter be traded in person. This rule will not require market makers to trade on the floor. However, it will require half of their trading activity to be effected in person by themselves or by registered options traders associated with the same market member organization, rather than by floor brokers. This rule will ensure that traders with market making obligations are present on the trading floor a sufficient amount of time to fulfill these obligations.

Finally, the Exchange proposes two new floor procedure advices intended to ensure the proper functioning of the Exchange's auction market. One advice requires that orders received on the floor be represented in the trading crowd, where they will receive

---

[1] 15 U.S.C. 78(b)(1) (1984).

[2] 17 CFR 240.19b–4 (1986).

maximum interaction with orders competing for the other side of the trade, before they may be represented away from the crowd, *i.e.*, to an upstairs firm. A complimentary floor procedure advice provides that bids and offers in the crowd must be general and not specific to any person in the crowd. The purpose, again, is maximum interaction among orders.

The proposed amendments are designed to ensure that registered options traders' transactions are effected to provide depth and liquidity to the trading floor. In addition, the amendments, by helping to ensure that options orders are represented to the entire trading crowd, will improve the quality of customer executions and the functioning of the Exchange's auction market.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [3] and the rules and regulations thereunder.

*It Is Therefore Ordered,* pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 7, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8199 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Rel. No. IC-15664; 812-6628]**

## Banco de Santander,S.A. de C.; Application of Foreign Bank To Issue Debt and Equity Securities

April 3, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

---

*Applicant:* Banco de Santander, S.A. de C.

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions.

*Summary of Application:* Applicant seeks an order permitting it to issue and sell in the United States its American Depositary Shares ("ADS"), representing its ordinary shares as evidenced by American Depositary Receipts, and medium- and long-term debt securities, and commercial paper, denominated either in U.S. dollars or foreign currency.

*Filing Date:* The application was filed on February 17, 1987, and amended on March 18 and April 3, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:**

Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Sergio J. Galvis, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney, (202) 272-3037, or Brion R. Thompson, Special Counsel, (202) 272-3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

*Applicant's Representatives:*

1. Applicant, organized in 1857, is a bank organized under the laws of Spain. Its principal business, like that of major United States banks, is the receipt of deposits and the making of loans. Applicant also engages in other banking and bank-related activities. As of December 31, 1986, Applicant was the sixth largest Spanish bank in terms of loans and discounts ($8 billion), and the fifth largest Spanish bank in terms of assets ($20.9 billion), on a consolidated basis. Total deposits amounted to $17.1 billion (86.4 percent of total liabilities), and capital funds amounted to $1,044 million for the year ended December 31, 1986. (Amounts stated herein in United States dollars have been converted from Spanish pesetas at the rate of exchange published by the Bank of Spain for December 31, 1986, of 132.295 pesetas to one United States dollar.)

2. Applicant is subject to a comprehensive scheme of regulation under Spanish banking law. The Bank of Spain exercises general supervision over all Spanish financial institutions in a manner similar to the central banks of most European countries and the United States. The Bank of Spain supervises the compliance of Spanish banks with the following compulsory ratios: cash ratio, short-term Treasury bonds ratio, investment ratio, and reserve-to-assets ratio. These compulsory ratios create, in effect, reserve requirements. In addition, Applicant is subject to periodic inspections by the Bank of Spain.

3. Applicant considers that it has a substantial presence in the United States through its 99 percent-owned subsidiary bank in Puerto Rico (Banco de Santander-Puerto Rico, or "BDS-PR"), its branch in New York and its agency in Miami. BDS-PR is the third largest bank in Puerto Rico, with assets of $1.3 billion as of December 31, 1986. BDS-PR is a full-fledged bank organized under Puerto Rican law and regulated under applicable Puerto Rican and United States banking laws and regulations. It is insured by the Federal Deposit Insurance Corporation (the "FDIC"), but is not a member of the Federal Reserve System. It abides by the same capital requirements and other regulations ensuring safety and soundness as are applicable to all FDIC-insured non-member banks.

4. Applicant's New York branch is engaged principally in receiving deposits and making loans, and had assets of $227.7 million as of December 31, 1986. Applicant's New York branch operates under a license from the Superintendent of Banks of the State of New York, and is subject to state supervision and regulation substantially eqivalent to those applicable to a domestic bank organized under the New York Banking Law. In addition, under section 7 of the International Banking Act of 1978 (the "IBA") the New York branch is subject to federal reporting and examination requirements similar to those imposed on domestic banks which are Federal Reserve System members.

5. Applicant's Miami agency is engaged principally in making loans and issuing letters of credit, and had assets of $42.1 million as of December 31, 1986. The Miami agency operates as a state agency subject to the supervision of the Banking Department of the State of Florida. In addition, Applicant wholly owns Banco de Santander International-Miami ("International"), which had total assets of $552.7 million as of December 31, 1986, and net income of approximately $3.3 million for fiscal

---

[3] 15 U.S.C. 78f (1984).

[4] 15 U.S.C. 78s(b)(2) (1984).

year 1986. International is chartered by the Federal Reserve Board as an "Edge Act" bank and, thus, may not engage in activities in the United States except as incidental to foreign business.

6. Applicant presently proposes to make an initial public offering in the United States of ADSs representing its ordinary shares with a market value of approximately $100 million. Applicant will file with the SEC a registration statement under the Securities Act of 1933 ("1933 Act") both for the ordinary shares represented by ADSs and for the ADSs. In connection with the proposed public offering of ADSs, Applicant will comply with the prospectus disclosure and delivery requirements of the 1933 Act and will be subject to the reporting requirements for foreign issuers under the Securities Exchange Act of 1934 ("1934 Act"). Although Applicant will offer the ADSs to the general public, it has been advised by its investment bankers that the market for the ADSs will be largely institutional.

7. In addition, Applicant may, from time to time, issue and sell in the United States commercial paper notes, medium- or long-term debt securities or additional equity either through private offerings or through registered public offerings. Any public offerings by the Applicant of its debt securities in the United States will be registered under the 1933 Act, will rank *pari passu* with other debt securities of the Applicant having the same degree of subordination, and will rank senior to the Applicant's shares. Applicant also will comply with the prospectus disclosure and delivery requirements of the 1933 Act. Applicant undertakes that any private placement of ADSs or medium- or long-term debt securities in the United States will meet the prevailing standards for an exemption from registration requirements under the 1933 Act. Aplicant further undertakes that it will not effect such private placement without obtaining an opinion of United States counsel that such placement will be exempt from the registration requirements of the 1933 Act.

8. Any commercial paper sold by Applicant in the United States in reliance upon the requested order will be prime quality commercial paper notes (the "Notes") in bearer form and in denominations of at least $100,000. Such Notes will rank *pari passu* among themselves, senior to Applicant's ordinary shares and equally with other unsecured obligations of Applicant. The Notes will be issued and sold through one or more United States commercial paper dealers who, as principals, will reoffer the Notes to investors who normally purchase commercial paper notes in the United States, without advertisement or offer for sale to the general public. Aplicant undertakes that each such dealer will provide each offeree of Notes with a disclosure memorandum as described below. Applicant may appoint a bank or other financial institution in the United States as its authorized agent to issue its Notes from time to time. Applicant undertakes not to issue or sell Notes without obtaining an opinion of its United States counsel that the Notes are entitled to the exemption from registration under seciton 3(a)(3) of the 1933 Act.

9. Applicant undertakes that any prospectus or private placement memornadum realting to an offering of equity securities, the Notes, or medium- or long-term debt securities will contain a description of Applicant's business and disclosure at least as comprehensive as that customarily provided with respect to foreign issuers making those types of offerings in the United States. It also will contain Applicant's most recently published financial statements audited by a firm of independent public accountants of recognized international standing. Any such prospectus or memorandum will disclose any material differences between the accounting principles applied in the preparation of such financial statements and United States generally accepted accounting principles applicable to United States banks and will be updated promptly to reflect material changes in the Applicant's financial condition. Applicant undertakes that in the event of an offering in the United States of medium- and long-term debt securities and commercial paper denominated in currency other than United States dollars, Applicant will set forth in the prospectus or memorandum relating to such offering (i) the rate of exchange between the currency in which the securities are denominated and United States dollars as a recent date, and (ii) appropriate disclosure of the risks to investor regarding the potential for exchange rate fluctuations.

10. Applicant also undertakes that all issues of medium- and long-term debt securities and Notes (not including deposits) in the United States shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that Applicant's United Staets counsel shall have certified that such rating has been received, provided, however, that no such rating need be obtained with respect to any such issue if, in the opinion of Applicant's United States counsel, an exemption from registration is available under section 4(2) of the 1933 Act.

11. Applicant further undertakes to submit expressly to the jurisdiction of the federal and New York State courts sitting in the City of New York for the purpose of any suit, action or proceeding arising out of the presently proposed or future offering of ADSs, medium- and long-term debt securities and Notes ("Securities"). Applicant also undertakes to appoint an agent in the City of New York to accept service of process in connection with any such offering of Securities. Such consent to jurisdiction and appointment of an agent for service of process will be irrevocable for so long as any of Applicant's Securities remain outstanding in the United States. Such submission to jurisdiction and appointment of agent for service of process will not affect the right of any holder of such Securities to bring suit in any court having jurisdiction over Applicant by virtue of the offer and sale of the Securities or otherwise. The agent for service of process will not be a trustee for the holders of Securities or have any responsibilities or duties to act for such holders.

12. Applicant has no present intention to curtail its banking operations in the United States or Spain so as to cease to be regulated as a bank in the United States or Spain. Aplicant will issue Securities in the United States only so long as it is supervised and examined by governmental authorities in Spain having the power of supervision over banks in that country and by state or federal authorities in the United States having power of supervision over banks in the United States. If, however, such operations are curtailed in the future with the result that Applicant no longer is regulated as a bank in the United States, Applicant agrees that it will continue to comply with the undertakings concerning its submission to jurisdiction and appointment of an agent for service of process until such time as there shall be no holders in the United States of Applicant's Securities.

13. The requested order is necessary and appropriate in the public interest because Applicant would be effectively precluded from offering its Securities publicly in the United States if required to register as an investment company under the 1940 Act. Such exemptive order will facilitate an offering of Applicant's Securities in the United States and, thus, will advance the IBA's policy objective of parity of treatment

between domestic and foreign banks in like circumstances. It also will facilitate domestic investment by U.S. investors in a major foreign issuer, subject to the protections afforded by the 1933 Act and the 1934 Act.

14. The requested order is consistent with the protection of investors because: (1) Applicant is subject to a comprehensive banking regulatory scheme both in Spain and in the United States; (2) such regulation affords investors protection very similar to that which provides the rationale for exemption of United States commercial banks from application of the 1940 Act; and (3) investors are protected by the benefits afforded by the 1933 Act, the 1934 Act, and Spanish and United States banking laws.

15. The requested order is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act since Applicant is a closely regulated banking entity with investments and objectives totally different from the investment companies at which the 1940 Act is directed and is an entity for which the substantive provisions of the 1940 Act are neither necessary nor suitable.

*Applicant's Condition:* If the requested order is granted, Applicant agrees to the following condition:

Applicant consents to any SEC order being expressly conditioned upon its compliance with the undertakings and representations summarized above and more fully set forth in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 87-8157 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

---

[Rel. No. IC-15663; 812-6512]

## Dean Witter CMO Inc.; Issuance of Mortgage-Backed Securities and the Sale of Equity Interest in Trusts

Dated: April 3, 1987.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of application for an exemption under the Investment Company Act of 1940 (the "1940 Act").

---

*Applicant:* Dean Witter CMO Inc.

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order conditionally exempting the Applicant and each trust to be established by the Applicant (each, a "Trust") from all provisions of the 1940 Act in connection with their proposed issuance of collateralized mortgage obligations (the "Bonds") and Applicant's sale of certificates representing beneficial interest in such Trusts.

*Filing Date:* The application was filed on October 22, 1986, and amendments thereto on February 5 and March 26, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 24, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Dean Witter CMO Inc., 2121 San Jacinto Street, Suite 960, Dallas, Texas 75201, Attention: John Cutler.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Hutchins, Staff Attorney at (202) 272-2799 or Brion R. Thompson, Special Counsel at (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300)).

*Applicant's Representations*

1. Applicant, a Delaware corporation, is a direct, wholly-owned, limited purpose finance subsidiary of Dean Witter Financial Services, Inc. ("Dean Witter"). Applicant was organized solely for the purpose of issuing the Bonds in one or more series (the "Series") and establishing Trusts, each of which will issue one or more Series of Bonds. Applicant will also sell certificates representing beneficial ownership interest in such Trusts ("Certificates"). Applicant does not intend to offer any of its shares of capital stock to an entity not affiliated with Dean Witter.

2. Applicant will not engage in any business or investment activity other than issuing and selling one or more Series of Bonds under an indenture (an "Indenture") between the Applicant and a bank, trust company or other fiduciary acting as bond trustee (a "Bond Trustee"). The Indentures will be qualified under the provisions of the Trust Indenture Act of 1939 (the "1939 Act").

3. Each Trust will be created pursuant to a trust agreement ("Trust Agreement") between Applicant and a bank, trust company or other fiduciary acting as owner trustee ("Owner Trustee"). Each Trust will not engage in any business or investment activity other than issuing and selling one Series of Bonds under an indenture (also, an "Indenture") between the Owner Trustee of such Trust and a Bond Trustee.

4. Each Series of Bonds will be collateralized by certificates (the "Mortgage Certificates") evidencing undivided interests in pools of mortgage loans (or participation interests in mortgage loans) that are (1) "fully-modified" pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"), (3) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates") and other collateral pledged to secure such Series of Bonds. As appropriate, the Applicant or a Trust, as the issuer of a Series of Bonds, is referred to herein as the "Issuer".

5. In the case of each Series of Bonds: (a) The Issuer will hold no substantial assets other than the Mortgage Certificates; (b) each Series of Bonds will be secured by Mortgage Certificates having a collateral value determined under the related Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of such Series of Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing each Series of Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on such Series of Bonds and to retire each class of Bonds of a Series by its stated maturity; (d) the Mortgage Certificates will be assigned to the related Bond Trustee and will be subject to the lien of the related Indenture; and (e) no Indenture will permit substitution of Mortgage Certificates pledged to secure a Series of Bonds.

6. Each Series of Bonds to be issued may contain one or more classes of

variable or floating interest Bonds which will have a fixed maximum rate of interest ("interest rate cap") that will be payable on the Bonds (or the minimum rate of interest, in the case of an inverse-floating rate Bond). Any Series of Bonds containing one or more classes of variable or floating interest rate Bonds will be structured with reference to the interest rate caps for that particular Series, to insure that the cash flow scheduled to be received by the related Bond Trustee from the Mortgage Certificates pledged to secure such Series of Bonds will be sufficient to make all payments of principal and interest on such Series of Bonds, even if the interest rate on any class of variable or floating interest rate Bonds in such Series climbed to the interest rate cap in the first interest period and remained constant throughout the life of such Series of Bonds. The collateral will be paid down as the mortgages underlying the Certificates are repaid, but will not be released from the lien of the related Indenture prior to the payment of such Series of Bonds.

7. In addition to the issuance and sale of the Bonds, Applicant intends to sell Certificates in each Trust to a limited number (initially, in no event more than twenty-five) of sophisticated institutional investors in transactions exempt from the registration requirements of the Securities Act of 1933, as amended ("1933 Act"). Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate ("Eligible Institutions"). Applicant submits that Eligible Institutions have such knowledge and experience in financial and business matters as to evaluate the risks and volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests in mortgage related securities, such as those represented by the Certificates. Each Eligible Institution will be required to represent that it is purchasing such Certificates for investment purposes. In addition, the Trust Agreement relating to each Trust will further prohibit the transfer of any Certificates if there would be more than one hundred owners of such Certificates at any time.

8. Neither the Certificateholders, the related Owner Trustee nor the related Bond Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. The related Indenture will provide that without the consent of each Bondholder to be affected, neither the Certificateholders, the related Owner Trustee nor the related Bond Trustee will be able to: (1) Change the stated maturity on the related Series of Bonds; (2) reduce the principal amount or the rate of interest on the related Series of Bonds; (3) change the priority of the repayment on any class of the related Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing the related Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the related Bondholders of the security afforded by the lien of the related Indenture.

9. The sale of the Certificates in each Trust will not alter the payment of cash flows under the related Indenture including the amounts to be deposited in the collection account or any reserve fund created pursuant to the related Indenture to support payments of principal and interest on the related Series of Bonds.

10. Each Trust Agreement will require that no holder of a controlling interest in any Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with the statistical rating agency rating the related Series of Bonds or the Owner Trustee.

11. The interest of the Bondholders will not be compromised or impaired by the sale of Certificates in each Trust, and there will not be a conflict of interest between the Bondholders and the Certificateholders for the following reasons: (a) The Mortgage Certificates which initially will be deposited into each Trust and pledged to secure the Series of Bonds issued by such Trust will not be speculative in nature because it will consist of GNMA Certificates, FNMA Certificates and/or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective entity; (b) each Series of Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Series of Bonds in one of the two highest rating categories, which by definition means that such nationally recognized statistical rating agency has determined that the capacity of the issuing Trust to repay principal and interest on such Series of Bonds is extremely strong; (c) the related Indenture under which each Series of Bonds will be issued subjects the collateral pledged to secure such Series of Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders;[1] and (d) the Certificateholder will be entitled to receive current distributions representing the residual payments on the collateral from the related Trust in accordance with the terms of the related Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Further, the Certificateholders will be liable for the expenses, taxes and other liabilities of such Trust (other than the principal and interest on the Bonds) to the extent provided in the related Trust Agreement and not previously paid from the Trust estate. The choice of the form of issuer for a Series of Bonds and the identity of the Certificateholders, however, will not alter in any way the payments made to the holders of such Series of Bonds, which are payments governed by an Indenture which will meet the requirements of the 1939 Act.

12. The election by any Trust to be treated as a real estate mortgage investment conduit (A "REMIC") under the Internal Revenue Code of 1986, will have no effect on the level of the expenses that would be incurred by any such Trust. The related Trust Agreement of any Trust that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Trust will be paid or provided for in a manner satisfactory to a nationally recognized statistical rating agency. The related Trust Agreement of any Trust that elects to be treated as a REMIC will provide for the payment of administrative fees and expenses by

[1] Each Indenture shall specifically provide that no amounts may be released from the lien of such Indenture to be remitted to the related Issuer (and any Certificateholder) until (i) the related Bond Trustee has made the scheduled payment of principal and interest on the related Series of Bonds, (ii) the related Bond Trustee has received all fees currently owed to it, (iii) the firm of independent accountants referred to in such Indenture has received all fees owed to it for services rendered under such Indenture, and (iv) to the extent required by any Indenture related to a Series of Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on such Series of Bonds. If the Issuer of a Series of Bonds is a Trust, once amounts have been released from the lien of such Indenture, the related Trust Agreement for the related Trust will provide that the related Owner Trustee under such related Trust Agreement will have a lien superior to that of the owners of the Certificates of such related Trust to the remaining cash flow to the extent of amounts owed to the related Owner Trustee.

one, or a combination of two or more, of the methods outlined in the application. Each Trust will ensure that the anticipated level of fees and expenses will be more than adequately provided for, regardless of the method which is selected by such Trust to provide for the payment of such fees and expenses.

13. The aggregate interest of the Certificateholder in the collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Series of Bonds.

14. Applicant states that the relief requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the reasons set forth in the application.

*Applicant's Conditions:* Applicant agrees that if the exemption is granted it will be expressly conditioned on the following:

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to an exemption from the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934. The Mortgage Certificates directly securing, each Series of Bonds will be limited to GNMA Certificates, FNMA Certificates, and/or FHLMC Certificates.

3. All Mortgage Certificates, funds, accounts and other collateral securing the Bonds ("Collateral") will be held by a Bond Trustee. The related Bond Trustee may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of an Issuer. Each Bond Trustee will have a first priority perfected secuity or lien interest in and to all Collateral securing a related Series of Bonds.

4. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

5. No less than annually, an independent public account will audit the books and records of each Issuer of a Series of Bonds; in addition, will report on whether the anticipated payments of principal and interest on the Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report will be provided to each related Bond Trustee.

6. In addition, the above representations regarding the Certificates, the floating and variable rate Bonds, and the expenses of any Trust which elects to be treated as a REMIC (and as more fully described in the application) will be express conditions to the requested exemption.

For the SEC, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis**

*Assistant Secretary.*

[FR. Doc. 87-8158 Filed 4-10-87; 8:45am]

BILLING CODE 8010-01-M

---

**[Rel. No. IC-15662; 812-6499]**

## Freedom Investment Trust II; Notice of Application

April 3, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

---

*Applicant:* Freedom Investment Trust II.

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1.

*Summary of Application:* Applicant seeks an order to permit its two existing series of shares and all future series of shares to assess a contingent deferred sales charge on certain redemptions of its shares.

*Filing Date:* The application was filed on October 14, 1986.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 27, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Three Center Plaza, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Heaney (202) 272-2847 or Special Counsel Karen L. Skidmore (202) 272-3023, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

*Applicants' Representations*

1. Applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts and it is registered as an open-end management investment company under the Act. Applicant is authorized to issue shares in series and currently two series of shares have been authorized, the Freedom Global Fund and the Freedom Global Income Plus Fund ("Funds").

2. Shares in each of the Funds are offered for sale to the public through broker-dealers pursuant to dealer agreements with the Funds' principal underwriter, Tucker, Anthony & R.L. Day, Inc. ("Tucker, Anthony"). Applicant currently assesses sales charges of up to 4% of the public offering price on purchases of shares of the Funds, except that the initial sales charge on shares of the Funds purchased in excess of $2,000,000 or more has been eliminated.

3. Applicant proposes to impose a contingent deferred sales load charge (the "CDSL") on certain redemptions of shares having an initial purchase price of $2,000,000 or more. The CDSL would only be imposed on redemptions occurring within one year of a purchase and will never exceed ½ of 1% of the lesser of (1) the net asset value of the shares redeemed, or (2) the total cost of such shares. Tucker, Anthony will receive the proceeds of any CDSL received as reimbursement for commissions which it has paid for sales of these shares.

4. No CDSL will be imposed when the investor redeems (1) amounts derived from increases in the value of his account above the total cost of shares being redeemed due to increases in the net asset value per share of a Fund, (2) shares acquired through reinvestment of dividend income and capital gains distributions, or (3) shares held for at least one year.

5. In determining whether a CDSL is payable and, if so, the percentage charge applicable, it is assumed that

shares held the longest are the first to be redeemed. Shares held prior to the imposition of the CDSL may be redeemed without imposition of such charge.

6. There is no CDSL on exchanges of shares between the Funds but a CDSL may be payable upon the redemption of shares of the Fund acquired as a result of the exchange. For purposes of calculating the CDSL, the initial purchase date will be deemed to be the date of purchase of the shares of the first Fund being exchanged rather than the date of the exchange.

7. The exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act since the proposed CDSL permits substantial shareholders to have the advantages of greater investment dollars working for them from the time of their purchase of shares of the Funds. Since shareholders purchasing more than $2,000,000 of Fund CDSL will pay no sales charge on purchases of their shares, it is fair to impose the CDSL on those investors who redeem their shares before the Funds have had an opportunity to realize the anticipated benefits of the investment proceeds of such shares (e.g. reduced brokerage, custodial costs and other expenses for all of the shareholders of the Funds. Thus, CDSL should deter early redemptions of shares which will lead to these benefits for all shareholders of the Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 87-8159 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

---

[Rel. No. IC-15668; 812-6232]

## Salomon Brothers Inc.; Issuance of Stripped Certificates Representing Interests in Bonds Held in the Custody of a Bank

Dated: April 7, 1987.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act")

---

*Applicant:* Salomon Brothers Inc.

*Relevant 1940 Act Section:* Exeption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant requests an exemption from all provisions of the 1940 Act so that it can issue "stripped" certificates representing interests in the principal or interest payments due on certain bonds held in the custody of a major commercial bank.

*Filing Date:* The application was filed on October 23, 1985, and amended on March 27, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 4, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Cleary, Gottlieb, Steen & Hamilton, 1752 N Street NW., Washington, DC 20036, Attention: Edward F. Greene, Esq.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Hutchins, Staff Attorney at (202) 272-2799 or Brion R. Thompson, Special Counsel at (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300)).

*Applicant's representations:*

1. Applicant is a Delaware corporation and an indirect wholly-owned subsidiary of Phibro-Salomon Inc. Applicant also is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Applicant proposes to offer for sale component parts of interest-bearing bonds (the "Bonds") issued or to be issued by an international financial institution (e.g., the World Bank, the Inter-American Development Bank or the Asian Development Bank), foreign sovereign governments, or corporations (the "Obligor"). Applicant anticipates that the Bonds will be intermediate term securities with maturities ranging from five to eight years.

3. Applicant or an affiliate thereof (as "Depositor") will purchase directly from the Obligor, or in the secondary market, some or all of the Bonds of a single series and deposit them with a bank (the "Custodian"). The Bonds will be held in the Custodian's name pursuant to a custody and agency agreement (the "Custody Agreement") meeting the requirements for unit investment trusts in section 26(a) of the 1940 Act.[1] Applicant proposes that the corporate trust department of a major commercial bank (with total assets of not less than $500,000,000) act as its Custodian, and states that it will pay the annual fee and certain expenses of the Custodian.

4. Upon deposit of the Bonds, the Custodian will deliver to Applicant certain deposit receipts (the "Certificates") representing interests in the serially maturing interest and principal payments on the Bonds. Thereafter, the Certificates will be offered only to institutional investors who are "accredited investors" for purposes of Regulation D under the Securities Act of 1933 ("1933 Act"), 17 CFR 230.501-506 (as now or hereafter in effect), and who have knowledge and experience in financial and business matters to be able to evaluate the risks associated with investing in instruments, such as the Certificates, that are not redeemable and represent interests in principal and interest payments on the underlying Bonds. The Certificates will not be offered to individuals. The minimum purchase price for Certificates will be $150,000. Since Certificates will be sold at a discount, such minimum purchase price will correspond to a face amount in excess of $150,000.

5. Applicant further expects to (but is not required to) maintain a secondary market for the Certificates. Each Certificate will be transferable and represent the right to receive the single payment of interest or principal to which such Certificate relates at the date of maturity of the Certificate, the payment being equal to the face amount of the Certificate.

6. The issue price of each Certificate will be equal to the present value of the face amount of such Certificate. Each series of Certificates will be offered pursuant to a private placement memorandum containing appropriate disclosure of all material aspects of the Certificates and relevant information concerning the Bonds and the Obligor,

---

[1] Section 26(a) requires among other things, the custodial arrangement to provide that the Custodian may not make any payment to the Depositor except for payments not exceeding what the Commission may prescribe as a reasonable amount for providing bookkeeping and other administrative services; the Custodian shall have possession of all the securities in which the assets of the trust are invested; and the Custodian shall not resign until the trust is liquidated or a successor Custodian has been designated.

the custodial arrangement and tax consequences. If the Certificates are issued in connection with a primary distribution of Bonds that is required to be registered under the 1933 Act, the private placement memorandum may be in the form of, or accompanied by, the Bond prospectus.

7. The Bonds may or may not be exempt from the registration provisions of the 1933 Act. In the case of Bonds that are so exempt (for example, obligations issued by certain international financial institutions of which the United States is a member), no trustee typically is appointed or indenture entered into with respect to the initial issuance of the Bonds. For exempt Bonds, however, there is typically a fiscal agency agreement pursuant to which a bank as agent for the Obligor of the Bonds agrees to disburse principal and interest to holders. Bonds that are registered will generally be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939 ("1939 Act").

8. Under the proposed arrangement, the Bonds will be held in name of the Custodian for the Benefit of the Certificateholders. The Obligor will pay all interest and principal payments due on the Bonds held in custody directly to the Custodian. The Custodian will disburse the payments to holders of the Certificates to which such payments relate upon their presentation and surrender. In addition, a holder owning Certificates evidencing beneficial ownership of the entire principal amount of a Bond and the remaining unpaid interest due thereon ("Whole Certificate") will be entitled to surrender such Whole Certificate to the Custodian and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of a Bond in an aggregate principal amount corresponding to the Whole Certificate so surrendered. The Custodian will, in effect, act as both the receiving and disbursing agent, and may appoint sub-paying agents.

9. The Custody Agreement will provide that Certificateholders, as owners of direct interest in the Bonds, will possess all of the rights and privileges of owners of the Bonds, except that the Custodian shall have the sole and exclusive right to hold the underlying Bonds on behalf of Certificateholders and to act on behalf of the Certificateholders in the event of a default should they so request (as described below). The Custodian will achnowledge in writing in the Custody Agreement that the Bonds are held for the accounts of Certificateholders and will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Custodian or any person claiming through it. All payments received by the Custodian will be immediately available upon receipt to holders of Certificates entitled to such payments, and the Custodian will not be authorized to exercise, with regard to any such payment received, any investment discretion whatsoever.

10. Applicant's compensation for its activities in connection with the proposed issuance of the Certificates will be an amount equal to the difference between the aggregate amount it receives from the sale of the Certificates and the cost of acquiring the underlying Bonds and the related transaction expenses (including the expenses and charges of the Custodian), and the profits realized, if any, as a result of trading Certificates in the secondary market. Applicant asserts that the purpose of the proposed arrangement is to provide a more flexible market for debt securities of the Obligor, thereby increasing liquidity and assisting financially sophisticated institutional investors in matching their portfolio requirements with such available investments.

11. The indentures governing the issuance of the Bonds will contain provisions permitting acceleration of interest and principal payments upon the occurrence of certain events. Acceleration provisions contained in Bond indentures generally provide that if the Obligor is in default for a given period on the payment of the principal or interest on any bonds or notes (including the Bonds) or of certain other obligations, then the holder of any of the Bonds may elect to accelerate the principal of the Bonds held by him, and the Obligor must pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured.

12. In the aggregate, the Certificateholders' rights in the event of a default on the underlying Bonds will be the same as direct holders of the Bonds, i.e., to elect to accelerate the principal of the Bonds, and thereby make the Obligor pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured. However, under the proposed arrangement, individual Certificateholders will have to notify the Custodian of such holders' election to accelerate and the Custodian will only notify the Obligor that the principal on all of the Bonds represented by a specific Certificate is accelerated if a stated percentage of holders so notify it. Moreover, in the event of such a default by the Obligor, a holder of a Whole Certificate representing ownership of all the principal and remaining unpaid interest due on a Bond will continue to have the above-mentioned right to surrender such Whole Certificate and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of such Bond in the appropriate aggregate principal amount. Such Whole Certificateholder will have the same rights with regard to the defaulted Bond as any other Bondholder.

13. If the Obligor fails to make any payment due on the Bonds, the holder of any Certificate not paid by virtue of such default may sue the Obligor directly, or, if not permitted to maintain such an action under applicable law, he may cause the Custodian to commence or join such an action against the Obligor to recover the amount due on such Certificate at the holder's expense. Also, in the event of a default on any Bonds which triggers acceleration (*e.g.*, non-payment which continues beyond the specified cure period), the holders of 25 percent in the aggregate of "amortized face amount" (as defined in the application) of Certificates then outstanding may direct the Custodian to take such action as such holders deem appropriate with regard to all of the Bonds of the defaulting Obligor then held by the Custodian.

14. In the case of an acceleration, the Custodian, as representative of the Certificateholders, will have the same rights as any other Bondholder to deliver notice to the Obligor (or to the Bond trustee, in a case of Bonds issued pursuant to an indenture qualified under the 1939 Act) stating that the Custodian elects to declare the principal of all of the Bonds then held by the Custodian to be immediately due and payable. At such time as the Bonds are accelerated, the interest of each holder of Certificates in the Bonds would be transformed into an undivided interest in all of the proceeds thereafter received on such Bonds, allocated in proportion to the relative amortized face amounts of the respective Certificates.

15. Without conceding the applicability of the 1940 Act to the proposed offering of the Certificates (absent an acceleration of the obligation to pay the principal and interest on the underlying Bonds upon a default), Applicant asserts that it would be approporiate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act to exempt the proposed

BEST COPY AVAILABLE

arrangement from all provisions of the 1940 Act. Applicant submits that, except in the event of an acceleration of principal and interest payments on the Bonds, the Certificates will represent a direct ownership interest in the principal or interest in the underlying Bonds. Applicant further submits that neither the structure nor the mode of operations of the proposed arrangement resembles a typical investment company, and offering of the Certificates to financially sophisticated institutional investors is not the type of transaction that needs to be regulated under the 1940 Act. Applicant contends that the Custodian will not be trading, dealing, or generally investing in securities and, thus, will not exercise any investment discretion, but will perform only administrative and mechanical functions.

16. Applicant asserts that the selection of the underlying securities will be made prior to the purchase of Certificates, and, thus, will be known by the purchaser at the time of purchase. Moreover, since the Certificates will be sold on the basis of the creidt of the Obligor on the underlying Bonds, Applicant asserts that the Certificateholders will look ultimately to the Obligor for their assurance of repayment, not to the Applicant, Depositor or Custodian. Applicant further asserts that even if an investment company is formed upon acceleration of interest and principal payments on the Bonds, such company would be engaged in activities associated with its liquidation and, thus, should be deemed exempt from all provisions of the 1940 Act under section 7(b) of the 1940 Act.

17. In addition, Applicant represents that each Certificate and the Custody Agreement will provide that the Certificateholder is the real party in interest and shall have the right upon default to proceed directly and individually against the Obligor (to the extent permitted by law) in the manner such holder deems appropriate. Because of the structure of the proposed arrangement and the nature of the direct interests represented by Certificates, Applicant asserts that the arrangement will present no risk of loss separate from or in addition to that presented by the underlying investment in the Bonds themselves. Applicant believes that the Custodian's obligation under the Custody Agreement to enforce the Certificateholders' rights will provide a sufficient safeguard against the potential problems associated with a pool of liquid assets that are the principal concern of the 1940 Act and, more generally, will provide adequate assurance that the Certificates will be paid in accordance with their terms.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-8200 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area # 2271]**

### Declaration of Disaster Loan Area; Massachusetts

Plymouth County and the adjacent Counties of Barnstable and Norfolk in the State of Massachusetts constitute a disaster area because of damage from coastal flooding which occurred on January 2, 1987. Applications for loans for physical damage may be filed until the close of business on June 2, 1987, and for economic injury until the close of business on January 4, 1988, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fairlawn, New Jersey 07410,

or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 7.500 |
| Businesses without credit available elsewhere | 4.000 |
| Businesses (EIDL) without credit available elsewhere | 4.000 |
| Other (non-profit organizations including charitable and religious organizations | 9.500 |

The number assigned to this disaster is 227106 for physical damage and for economic injury the number is 651500.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 3, 1987.

James Abdnor,

*Administrator.*

[FR Doc. 87-8133 Filed 4-10-87; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area # 2273]**

### Declaration of Disaster Loan Area; Massachusetts

The City of Lowell, Massachusetts, constitutes a disaster area because of damages from a fire which occurred on March 23, 1987, in the Lawrence Manufacturing Complex. Applications for loans for physical damage may be filed until the close of business on June 8, 1987, and for economic injury until the close of business on January 7, 1988, at the address listed below:

Disaster Area 1 office, Small Business Administration, 15-01 Broadway, Fairlawn, New Jersey 07410,

or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 7.500 |
| Businesses without credit available elsewhere | 4.000 |
| Businesses (EIDL) without credit available elsewhere | 4.000 |
| Other (non-profit organizations including charitable and religious organizations | 9.500 |

The number assigned to this disaster is 227305 for physical damage and for economic injury the number is 651600.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 7, 1987.

James Abdnor,

*Administrator.*

[FR Doc. 87-8134 Filed 4-10-87; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area # 2272]**

### Declaration of Disaster Loan Area; Mississippi

Warren County in the State of Mississippi constitutes a disaster area because of damage from severe storms, tornadoes, torrential rains and flooding which occurred on March 17 and 18, 1987. Applications for loans for physical damage may be filed until the close of business on June 8, 1987, and for economic injury until the close of business on January 7, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308,

or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 7.500 |
| Businesses without credit available elsewhere | 4.000 |

| | Percent |
|---|---|
| Businesses (EIDL) without credit available elsewhere | 4.000 |
| Other (non-profit organizations including charitable and religious organizations) | 9.500 |

The number assigned to this disaster is 227212 for physical damage and for economic injury the number is 651600.
(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 7, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87-8135 Filed 4-10-87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ending Apr. 3, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

**Docket No. 44764**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 31, 1987.
*Subject:* Cargo Rates from Morocco.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44765**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 31, 1987.
*Subject:* Composite Currency Revalidation.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44770 R-1—R-4**

*Parties:* Members of International Air Transport Association.
*Date Filed:* April 3, 1987.
*Subject:* Increase Cargo Rates UK to US.
*Proposed Effective Date:* May 1, 1987.

**Docket No. 44771 R-1—R-32**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 26, 1987.
*Subject:* Africa/Mid-East—TC3 Fares.
*Proposed Effective Date:* April 1, 1987.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87-8214 Filed 4-10-87; 8:45 am]

BILLING CODE [illegible]

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending April 3, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases, a final order without further proceedings.

**Docket No. 44766**

*Date Filed:* March 31, 1987.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 28, 1987.
*Description:* Application of Skagway Air Service, Inc., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests authority to engage in interstate and overseas scheduled air transportation of persons, property, and mail: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

**Docket No. 44772**

*Date Filed:* April 3, 1987.
*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* May 1, 1987.
*Description:* Application of Eastern Air Lines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity so as to authorize service as follows: Between the terminal point New York, N.Y./ Newark, N.J. and the coterminal points Rio de Janeiro and Sao Paulo, Brazil.

**Docket No. 44774**

*Date Filed:* April 3, 1987.
*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* May 1, 1987.
*Description:* Application of Tower Air, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessary (or amendment of its current certificate) authorizing it to engage in scheduled foreign air transportation of persons, property and mail on a permissive basis, between New York, N.Y., on the one hand, and Stockholm, Sweden, on the other hand.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87-8215 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

**[Summary Notice No. PE-87-5]**

### Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 4, 1987.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G,

FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 7, 1987.

**Leonard R. Smith,**

*Program Manager, Program Management Staff.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25179 | Israel Aircraft Industries | 14 CFR Parts 43, 65, and 145 | To allow petitioner and its Bedek Aviation Division to repair, overhaul, or modify U.S.-registered aircraft and components operating within the United States. |
| [illegible] | Hawkins and Powers Aviation, Inc. | 14 CFR 137.53(c)(2) | To allow petitioner to operate its DC–6 aircraft without the capability to jettison one-half of its load in 45 seconds as required. |
| 23875 | Beech Aircraft Corporation | 14 CFR 45.29(b)(2) | To allow petitioner to display N-numbers on the outboard surfaces of the engine nacelles on its Model 2000 and Model 115–67 aircraft. |
| 25176 | Regional Airline Association | 14 CFR 135.293, 135.297, and 135.351(c) | To allow members of the Regional Airline Association and any other commuter airline to permit the satisfactory completion of an approved course of training in an airplane Advanced Training Device to be substituted for the recurrent pilot competency/instrument proficiency check requirements of Part 135 on an alternating basis |
| 25161 | Mesa Airlines | 14 CFR 135.181(a)(2) | To allow petitioner to utilize drift down procedures in lieu of meeting the requirements of the regulations. |
| 24915 | Alaska Air Carriers Association | 14 CFR 121.119, 121.651, 135.213, and 135.225. | To allow Alaska Air Carriers Association member airlines relief to the extent that in Alaska weather observations provided by A-Paid observers shall be considered latest weather for the purpose of initiating IFR approaches and departures in performance with published procedures in order to provide essential service to Alaskan communities. |
| 25191 | Northwest Airlines, Inc. | 14 CFR 121.371(a) and 121.378 | To allow petitioner to contract with original equipment manufacturers and foreign repair stations that are certificated and appropriately rated under the French, West German, and United Kingdom civil aviation authorities for inspection, repair, and overhaul of selected aircraft parts to support its Boeing B–747 and B–757 aircraft. |
| 25168 | Evergreen International Airlines, Inc. | 14 CFR 121.583(a)(8) | To allow petitioner to transport employees and dependents on DC–8 cargo flights. |
| 11144 | American Airlines, Inc. | 14 CFR 121.99 and 121.351(a) | To allow petitioner to operate its airplanes between Wilmington, North Carolina, and St. Croix and St. Thomas, Virgin Islands, via Nassau, without maintaining two-way radio communications between each airplane and the dispatch office along the named routes. |
| 035CE | Beech Aircraft Corporation | SFAR 41C(5)(e)(k) | To allow the aisle width to be less than 15 inches at locations 25 inches or more from the floor on their 300 series airplanes equipped with the executive interior. |
| 25220 | Eagle International Ministries | 14 CFR 91.303 | Petitioner seeks a full and complete exemption to operate its Boeing 767 State 1 aircraft in the U.S. As an alternative to a complete exemption, petitioner seeks relief to allow fewer operations at a specified airport. |
| 014NM | Gulfstream Aerospace Corporation | 14 CFR § 25.813(e) | To permit installation of fixed bulkheads with doors that divide the passenger cabin into two sub-cabin areas for GULFSTREAM MODEL GIV AIRCRAFT operating under part 91 rules. |

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought disposition |
|---|---|---|---|
| [illegible] | Critical Care Services, Inc. | 14 CFR 135.213(a) and 135.225(a), (b), and (f). | To allow qualified pilots in command to use weather information based on their own observations for operations under both instrument flight rules and visual flight rules, the conduct of instrument approach procedures at airports without approved weather reporting facilities, and qualified pilots in command to take off from airports without having approved weather reporting facilities at those airports. *Denied, March 20, 1987* |
| 25074 | Aero Industries, Inc. | 14 CFR 135.267 | To allow petitioner to assign a flight crewmember and its flight crewmembers to accept duty during flight time without having had at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment. *Denied, March 11, 1987.* |
| 25038 | Skyworld Airlines, Inc. | 14 CFR 121.503(a) and (b) and 121.511(a) | To allow petitioner to schedule a pilot or flight engineer for more than 8 hours of flight time during any 24 consecutive hours without a rest period of 16 hours following the flight time. *Denied, March 24, 1987.* |
| 25180 | Ransome Airlines, Inc. | 14 CFR 121.411(a)(1), (a)(2), (a)(3), and (a)(6) and 121.413(b) and (c). | To allow petitioner to utilize certain highly-qualified pilot flight instructors from Aeroformation and Aerospatiale for the purpose of training petitioner's initial cadre of pilots in the Aerospatiale 42 type airplane in Toulouse, France, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. *Granted, March 9,1987.* |
| 24938 | Piedmont Airlines | 14 CFR 121.99 | To allow To allow petitioner to operate certain of its Fokker F–28 airplanes without maintaining continuous communications under normal operation conditions over the entire route between each airplane and the appropriate dispatch office. *Granted, March 20, 1987* |
| 20816 and 20187 | Zephyrhills Parachute Center | 14 CFR 91.15(a)(2), 91.47, and 105.43(a)(2). | To allow foreign nationals to participate in petitioner's skydiving events without complying with parachute equipment and packing requirements and the carriage of 40 parachutists in the DC–3/C47. *Granted, March 17, 1987.* |
| 23392 | Beaver Aviation Service, Inc. | 14 CFR 141.91(a) | To allow the conduct of training at a satellite base located more than 25 nautical miles from the main base of operation. *Granted, March 25, 1987.* |

DISPOSITIONS OF PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought disposition |
|---|---|---|---|
| 24165 | Department of the Air Force | 14 CFR 91.73(a) | To allow the petitioner to conduct certain night flight military training operations without lighted aircraft position lights. *Granted, February 18, 1987* |
| 030CE | Mooney Aircraft Corp. | 14 CFR 23.991(a)(1) | To allow installation of the Porsche PFM3200No3 engine in the M20L airplane, with two identical electric-driven fuel pumps for the fuel injection system rather than a fuel pump directly driven by the engine. *Granted, February 13, 1987* |
| 24187 | Florida Department of Law Enforcement | 14 CFR 91.79(c) 91.109(a) | To allow petitioner to be exempted from the FAR 91.79(c), and 91.109(a) to conduct law enforcement air support. *Granted, March 4, 1987* |

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

| Docket No | Petitioner | Regulations affected | Description of relief sought disposition |
|---|---|---|---|
| 22473 | Ransome Airlines, Inc. | 14 CFR 93.123, 93.125, 93.129 | FAA Exemption 3752B currently permits commuter operators at Washington National Airport to conduct two additional operations per hour above the limits specified in FAR 93.123, on stub ends of runways utilizing short takeoff and landing ("STOL") aircraft. Petitioner seeks amendment of Exemption 3752B to extend the expiration date of the exemption indefinitely and to increase the limit on operations under the exemption to six per hour. *Granted, February 1, 1987* |

[FR Doc. 87-8112 Filed 4-10-87; 8:45 am]
BILLING CODE 4910-13-M

## National Airspace Review Enhancement Program; Advisory Committee Meeting

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C App. 1) notice is hereby given of a meeting of the Federal Aviation Administration National Airspace Review Enhancement Program Advisory Committee (NAREAC). The agenda for this meeting is as follows:

Opening Remarks
NARE Program Overview/Direction
NAREAC Membership and Responsibilities
New Program Description
Status of Recommendations
Closing

**DATE:** May 28, 1987, convenes at 9:30 a.m.

**ADDRESS:** The meeting will be held at the Federal Aviation Administration, room 1010, 800 Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** National Airspace Review Program Management Staff, Federal Aviation Administration, 800 Independence Avenue, SW., ATO-20, Washington, DC 20591, (202) 267-3145. Attendance is open to the interested public, but limited to the space available. To ensure consideration, persons desiring to make statements at the meeting should submit them in writting to the Program Manager, National Airspace Review Program, ATO-20, 800 Independence Avenue, SW., Washington DC 20591, by May 15, 1987. Time permitting and subject to the approval of the chairman, these idividuals may make oral presentations of their previously submitted statements.

Issued in Washington, DC on April 3, 1987.

**Brooks C. Goldman,**

*Executive Director, NAREAC.*

[FR Doc. 87-8113 Filed 4-10-87; 8:45 am]
BILLING CODE 4910-13-M

## Federal Railroad Administration

### Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before May 28, 1987 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

**West Virginia Railroad Maintenance Authority, South Branch Valley Railroad (SBVR)**

(Waiver Petition Docket Numbers RSGM-87-3, LI-87-4, SA-87-1, PB-87-1)

The West Virginia Railroad Maintenance Authority is the operator of the South Branch Valley Railroad (SBVR). The Authority seeks a waiver for the SBVR TM95 Trackmobile. They plan to use the vehicle for switching purposes at Grace Cabin Road and in emergencies to Greenspring, West Virginia. The TM95, when used to move freight cars and provide a switching service, is defined as a locomotive and must comply with Federal Railroad Administration (FRA) safety standards 49 CFR Part 223—Safety Glazing Standards, Part 229—Locomotive Safety Standards; Part 231—Safety Appliance Standards and Part 232—Power Brakes Regulation. The SBVR indicates that the Trackmobile does not comply with all the requirements.

The safety glazing is automotive safety glass and not in compliance with Part 223. The vehicle is deficient in proper headlights Part 229, and the air brake system is not in compliance with Part 232. The safety appliances are not adequate to satisfy Part 231. The Authority realizes that the Trackmobile, because of its configuration and size, is not a conventional locomotive and it could not be equipped with all the FRA required equipment. Therefore, they are requesting relief in order to be allowed to use it.

**Union Pacific Railroad Company**

(Waiver Petition Docket Number SA-87-3)

The Union Pacific Railroad Company seeks a temporary waiver of compliance with certain provisions of Safety Appliance Standards (49 CFR Part 231) for two prototype six unit rotary coal gondolas, UP 48000 and 48001.

The cars are equipped with an automatic spring applied parking brake which operates in harmony with the power brakes in place of the conventional handbrake. Reduction of brake pipe pressure to 40 psi or below automatically allows a spring in the brake cylinder to apply the parking brake. A valve located on the B-end of the car allows manual operation of the spring brake.

The cars are not equipped with full side and end ladders at the BR and AL corners. A four tread side ladder is provided at the BR and BL corners for access to the handbrake and crosssover

platform. A three tread side ladder is provided at the AR and AL corners for personnel to ride on during car movement. Full ladders are not provided as operating personnel are not required to acces the top of car, interior of car or high handbrake.

The truck support castings infringe on the end sill area where the lower end handhold is to be located. It thus becomes necessary to relocate the end handholds twenty-eight (28) inches from side of car to facilitate truck and underframe inspection. An additional sixteen (16) inch handhold has been provided at each corner of A and B ends of car to facilitate uncoupling lever operation. The upper end handholds have been eliminated as no longer being required.

UP 48000 is currently undergoing testing at the Transportation Test Center, Pueblo, Colorado. Testing is expected to be completed by July 1987. UP 48001 is undergoing structural tests, expected to be completed by end of March, at which time car will be given road tests in loaded and unloaded conditions.

On completion of testing, subject cars will be placed in limited revenue service.

Issued in Washington, DC, on April 3, 1987.

J.W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 87-8120 Filed 4-10-87; 8:45 am]

BILLING CODE [illegible]

## National Highway Traffic Safety Administration

### Light Truck Fuel Economy Standards; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition for rulemaking submitted by Lands Motor Company, Inc., which requested relief from the light truck fuel economy standards for model years 1986 through 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4936).

**SUPPLEMENTARY INFORMATION:** Lands Motor Company submitted a petition for rulemaking, requesting relief from the light truck fuel economy standards for model years 1986 through 1988. That company requested establishment of a separate class for its Precedent model light truck, and a separate fuel economy standard for that class. As an alternative, Lands requested establishment of an exemption procedure for small volume light truck manufacturers.

NHTSA recently attempted to contact Lands for additional information concerning its petition. However, the telephone number listed by the petitioner is now out of service. Also, a letter sent to Lands by certified mail was returned undelivered.

Since NHTSA is unable to determine the current status of Lands or the extent to which the information provided in that company's petition remains valid, it will not proceed with further consideration of the petition. Accordingly, the petition is denied at this time. If Lands wishes consideration of its request to be reopened, it should submit a new petition with up-to-date information, including a current address.

Issued on April 7, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87-8174 Filed 4-10-87; 8:45 am]

BILLING CODE [illegible]

## Research and Special Programs Administration

### Office of Hazardous Materials Transportation; Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

**DATES:** Comment period closes May 11, 1987.

Address Comments To: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

| Application | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 9739-N | Unocal Corp., Los Angeles, CA | 49 CFR 173.245 | To authorize shipment of sodium tetrathiocarbonate, classed as a corrosive liquid, in a DOT Specification MC-306 cargo tank. (modes 1, 2) |
| 9740-N | National Aeronautics and Space Administration, Kennedy Space Center, FL. | 49 CFR 173.34(c) | To authorize periodic retesting, reinspection and marking of DOT specification 3A, 3AA and 3AAX cylinders every 10 years when shipping certain gases. (modes 1, 2) |
| 9741-N | Moura Batteries Co., Inc., Mount Vernon, NY | 49 CFR 173.260(a)(3) | Authorization to ship palletized electrical storage battery, wet classed as corrosive material, in a single year without a structure to withstand a superimposed weight. (modes 1, 2, 3) |
| 9742-N | M1 Engineering Ltd., West Yorkshire, England | 49 CFR 173.353, 178.245 | To manufacture, mark and sell non-DOT specification steel portable tanks for shipping methyl bromide, liquid classed as poison B (modes 1, 2, 3) |
| 9743-N | Allied-Signal Inc., Morristown, NJ | 49 CFR 173.420(a)(2) | To authorize shipment of uranium hexafluoride classed as radioactive material in cylinders not manufactured in accordance with ANSI N14.1—1982 standard. (modes 1, 2, 3) |
| 9744-N | Noury Chemicals, Chicago, IL | 49 CFR 173.157(a)(5) | To authorize shipment of benzoyl peroxide, wet with at least 30% water, classed as an organic peroxide, in a DOT Specification 12B65 fiberboard box containing a bag with 31.5 pounds of material (mode 1) |

NEW EXEMPTIONS—Continued

| Application | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 9745–N | Metal Box Enterprises, Inc., Vernona, NJ | 49 CFR 173.306, 175.3, 178.33–2(b) | To manufacture, mark and sell non-DOT specification metal container, comparable to DOT Specification 2P, for shipment of certain flammable and nonflammable compressed gases, and an insecticide, liquefied gas containing no poison A or material (modes 1, 2, 3, 4) |
| 9746–N | Air Products and Chemicals, Inc., Allentown, PA | 49 CFR 173.264(b)(1) | To authorize shipment of hydrogen fluoride, classed as a corrosive material in DOT Specification 3BN cylinders. (mode 1) |
| 9747–N | Aerosol Services Co., Inc., City of Industry, CA | 49 CFR 173.1200(a)(8)(ii), 173.301(h), 173.306(a)(3)(i), 175.3, 178.33–2(b), 178.33–9. | To authorize shipment of insecticide containing no poison A or B material, classed as nonflammable gas and flammable liquefied gas, in non-DOT specification containers similar to DOT Specification 2P. (modes 1, 3, 4) |
| 9748–N | Grief Bros. Corp., Springfield, NJ | 49 CFR 178.224 | To manufacture, marking and sell non-DOT specification fiber drums of not over 75-gallon capacity, similar to the DOT specification 21C except that the top head is of molded polyethylene, for shipment of hazardous solids authorized in a DOT Specification 21C fiber drum. (modes 1, 2) |
| 9749–N | Union Carbide Corp., Danbury, CT | 49 CFR 172.203(c), 172.324 | To authorize the shipment of a material containing a hazardous substance without listing the name of the hazardous substances on the shipping papers and on the package when transported by private or contract carriers. (mode 1) |
| 9750–N | IRECO, Inc., Salt Lake City, UT | 49 CFR 173.154(a)(18) | To authorize shipment of 86% ammonium nitrate solution, classed as an oxidizer, in DOT Specification MC–307 or MC–311 insulated cargo tanks. (mode 1) |
| 9751–N | C-I-L Inc., North York, Ont., Canada | 49 CFR 173.81(c), 175.3 | To authorize of detonating cord, high explosive, Class A, to be shipped as a Class C explosive, when offered in a specifically designed packaging configuration. (modes 1, 2, 3, 4) |
| 9752–N | Ethyl Corp., Baton Rouge, LA | 49 CFR 173.354(a)(7), 175.3 | To authorize shipment of motor fuel antiknock compound, Class B poison, contained in a metal can, surrounded by vermiculite, enclosed in a hermetically sealed metal can overpacked in a DOT Specification 2B fiberboard box. (modes 1, 3, 4) |
| 9753–N | Moog Inc., East Aurora, NY | 49 CFR 173.302(a)(4), 175.3 | To manufacture, mark and sell approximately six non-DOT specification pressure vessels for shipment of helium, classed as nonflammable gas. (modes 1, 2, 4) |
| 9754–N | Armin Thermodynamics Corp., Broken Arrow, OK | 49 CFR 173.247, 173.266, 178.19, Part 173, Subpart D, F, H. | To manufacture, mark and sell non-DOT specification polyethylene containers not to exceed 55 gallon capacity comparable to DOT Specification 34 except for larger opening for shipment of those commodities presently authorized in DOT Specification 34. (modes 1, 2, 3) |
| 9755–N | Explosive Technology, Inc., Fairfield, CA | 49 CFR 173.65(a)(4) | To authorize shipment of a High explosive, Class A, in a specially designed non-DOT specification wooden box not to exceed 700 pounds gross weight. (mode 1) |
| 9756–N | General Electric Co., Schenectady, NY | 49 CFR 173.245(a)(8) | To authorize use of a steel portable tank containing up to, but not exceed 10,000 pounds gross weight of a solid mixture of 50% sodium hydroxide and 50% potassium hydroxide, corrosive solid, n.o.s. classed as a corrosive material. (mode 1) |
| 9757–N | JP Services, Inc., Benicia, CA | 49 CFR 173.245b(a)(8) | To authorize use of a stainless steel closed bin containing in excess of 7,000 pounds gross weight of waste corrosive solid, n.o.s., classed as corrosive material. (mode 1) |
| 9758–N | Application Des Gaz, Paris, France | 49 CFR 173.304(d)(3)(ii), 178.33 | To authorize shipment of Butane, Classed as flammable gas, in non-DOT specification nonrefillable metal containers comparable to DOT Specification 2P except for diameter and volume. (modes 1, 2, 3) |

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 7, 1987.

**J. Suzanne Hedgepeth,**

*Chief, Office of Hazardous Materials Transportation.*

[FR Doc. 87–8216 Filed 4–10–87; 8:45 am]

BILLING CODE [illegible]

## Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for renewal or modification of exemptions or Application to Become a Party to an Exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing a public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comment period closes April 28, 1987.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC

| Application No. | Applicant | Renewal of Exemption |
|---|---|---|
| 2709-X | IRECO Inc., Salt Lake City, UT | 2709 |
| 4719-X | Allied-Signal Inc., Morristown, NJ | 4719 |
| 4884-X | Solkatronic Chemicals, Inc., Fairfield, NJ | 4884 |
| 5022-X | National Aeronautics and Space Administration, Washington, DC | 5022 |
| 5206-X | Mesabi Powder Co., Hibbing, MN | 5206 |
| 5206-X | Nelson Brothers, Inc., Parish, AL | 5206 |
| 5600-X | Solkatronic Chemicals, Inc., Fairfield, NJ | 5600 |
| 6232-X | McDonnell Douglas Corp., Saint Louis, MO | 6232 |
| 6759-X | IRECO Inc., Salt Lake City, UT | 6759 |
| 6824-X | Bio-Lab, Inc., Conyers, GA | 6824 |
| 6824-X | GPS Industries, City of Industry, CA | 6824 |
| 7489-X | Micor Company, Inc., Milwaukee, WI | 7489 |
| 7526-X | Schering Aktiengesellschaft, West Berlin, West Germany | 7526 |
| 7605-X | General Dynamics Corp., For Worth, TX | 7605 |
| 7607-X | The Foxboro Co., South Norwalk, CT | 7606 |
| 7628-X | Chemtech Industries, Inc., St. Louis, MO | 7628 |
| 7769-X | Brunswick Corp., Lincoln, NE | 7769 |
| 7835-X | Solkatronic Chemicals, Inc., Fairfield, NJ | 7835 |
| 7835-X | MG Industries, Valley Forge, PA | 7835 |
| 7886-X | W.M. Barr & Company, Inc., Memphis, TN | 7886 |
| 8096-X | Pressure-Pak Container Co., Inc., East Hampton, CT | 8096 |
| 8099-X | Union Carbide Agricultural Products Co., Inc., Danbury, CT | 8099 |
| 8131-X | National Aeronautics and Space Administration, Washington, DC | 8131 |
| 8151-X | Ropak West, Inc., La Mirade, CA | 8151 |
| 8152-X | Allied-Signal Inc., Morristown, NJ | 8152 |
| 8167-X | Monstat Corp., New York, NY | 8167 |
| 8178-X | National Aeronautics and Space Administration, Washington, DC | 8178 |
| 8184-X | Trojan Corp., Salt Lake City, UT | 8184 |
| 8209-X | Coastal Planes Airways, Inc., Warner Robins, GA | 8209 |
| 8238-X | ASARCO Inc., New York, NY | 8238 |
| 8249-X | LPS Industries Inc., Formerly Lawrence Packaging, Newark, NJ | 8249 |
| 8362-X | Altus Corp., San Jose, CA (See Footnote [1]) | 8362 |
| 8390-X | J.T. Baker Chemical Co., Phillipsburg, NJ | 8390 |
| 8487-X | Brunswick Corp., Lincoln, NE | 8487 |
| 8558-X | Trojan Corp., Salt Lake City, UT | 8558 |
| 8577-X | Micor Company, Inc., Milwaukee, WI | 8577 |
| 8678-X | Eurotainer, S.A., Paris, France | 8678 |
| 8691-X | Aluminum Company of America, Pittsburgh, PA | 8691 |
| 8692-X | Mitsubishi International Corp., New York, NY | 8692 |
| 8706-X | Petro-Steel Division of Prairie State Equipment, Sioux Falls, SD | 8706 |
| 8757-X | Y-Z Industries, Inc., Snyder, TX | 8757 |
| 8812-X | The Protectoseal Co., Bensenville, IL (See Footnote [2]) | 8812 |
| 8815-X | Nelson Brothers, Inc., Parrish, AL | 8815 |
| 8921-X | Hoover Group, Inc., Beatrice, NE (See Footnote [3]) | 8921 |
| 8938-X | Cryogenic Services, Inc., Canton, GA (See Footnote [4]) | 8938 |
| 8956-X | Clif Mock Company, Conroe, TX | 8956 |
| 8958-X | Track of the Wolf, Inc., Brooklyn Park, MN | 8958 |
| 8969-X | McDonnell Douglas Corp., Saint Louis, MO | 8969 |
| 8977-X | Eurotainer, S.A. Paris, France | 8977 |
| 8986-X | Cook Slurry Co., Salt Lake City, UT | 8986 |
| 8988-X | Vann Systems, Division of Halliburton Co., Houston, TX | 8988 |
| 8990-X | Pressure Pak, Inc., East Hampton, CT | 8990 |
| 8991-X | Lea-Ronal, Inc., Freeport, NY | 8991 |
| 8999-X | Scott Aviation Div. of Figgie International, Inc., Lancaster, NY | 8999 |
| 9014-X | Hunter Drums, Ltd., Bramalea Ontario, Canada | 9014 |
| 9023-X | Eurotainer, S.A., Paris, France | 9023 |
| 9036-X | Marison Co., South Elgin, IL | 9036 |
| 9052-X | Chemical Handling Equipment Co., Inc., Toldeo, OH | 9052 |
| 9063-X | Hoechst Aktiengesellschaft, Frankfurt, West Germany | 9063 |
| 9108-X | Trojan Corp., Salt Lake City, UT | 9108 |
| 9108-X | Atlas Powder Co., Dallas, TX | 9108 |
| 9129-X | Weldex Corp., Grafton, MA | 9129 |
| 9138-X | National Aeronautics and Space Administration, Washington, DC | 9138 |
| 9275-X | Hercules, Inc., Wilmington, DE | 9275 |
| 9275-X | McCormick & Co., Inc., Hunt Valley, MD | 9275 |
| 9281-X | GOEX, Inc., Clevurne, TX (See Footnote [5]) | 9281 |
| 9312-X | National Aeronautics and Space Administration, Washington, DC | 9312 |
| 9386-X | Pacific Scientific, HTL Division, Duarte, CA | 9386 |
| 9401-X | Arbel-Fauvet-Rail, Paris, France | 9401 |
| 9402-X | Arbel-Fauvet-Girel, St. Laurent-Balngy France | 9402 |
| 9402-X | ALGECO, Paris, France | 9402 |
| 9419-X | FIBA Leasing Co./Mass Oxygen Equipment Co., Inc., Westboro, MA | 9419 |
| 9426-X | Rheem Manufacturing Co., Linden, NJ | 9426 |
| 9431-X | U.S. Department of Defense, Falls, Church, VA | 9431 |
| 9433-X | Aldrich Chemical Co., Inc., Milwaukee, WI | 9433 |
| 9450-X | Marison Co., South Elgin, IL | 9450 |
| 9577-X | Altus Corp., San Jose, CA (See Footnote [6]) | 9577 |
| 9678-X | Rossborough Manufacturing Co., Avon Lake, OH (See Footnote [7]) | 9678 |
| 9681-X | Space Ordnance Systems, Canyon Country, CA (See Footnote [8]) | 9681 |

[1] To authorize rail as an additional mode of transportation.

[2] To authorize Naphtha, Turpentine, Butyl and Ethyl alcohol as additional commodities for shipment in 5 gallon containers similar to DOT Specification 5L.

[3] To authorize an alternative style overpack for polyethylene portable tank for shipment of certain corrosive or flammable liquids or hydrogen peroxide solutions.

[4] To authorize an additional cylinder design for shipment of certain refrigerated liquids.

[5] To authorize DOT Specification 12H-65, 23F-65 and 23H-65 fiberboard boxes as alternate packagings for ceratian Class C explosives.

[6] To increase pressure of small vessel in battery configuration from 5125 psi to 7000 psi.

[7] To authorize shipment of various mixtures: Magnesium granules 0 to 30%; Salt-coated magnesium granules 0 to 30%; Calcium carbide 40 to 90%; and Calcium oxide 5 to 20% classed as flammable solids.

[1] To authorize an alternate packaging for certain high explosive not to exceed five pounds of wetted explosive in polyethylene bags overpacked in a DOT-17C drum containing not more than five bags each.

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 6418-P | Brown & Bryant, Inc., Shafter, CA | 6418 |
| 6418-P | Farmer's Supply Co-operative, Inc., Ontario, OR | 6418 |
| 6530-P | FIBA Leasing Co./Mass Oxygen Equipment Co.,Inc., Westboro, MA | 6530 |
| 6765-P | Union Helium Co., Ltd., Minato-ku, Tokyo, Japan | 6765 |
| 7052-P | Hydril, Houston, TX | 7052 |
| 7052-P | ITT Corp., Fort Wayne, IN | 7052 |
| 7052-P | Southwest Electronic Inc., Stafford, TX | 7052 |
| 7052-P | Teledyne Systems Co., Northridge, CA | 7052 |
| 7052-P | Eastman Christensen, Salt Lake City, UT | 7052 |
| 7495-P | Vulcan Chemicals, Birmingham, AL | 7495 |
| 7546-P | National Aeronautics and Space Administration, Washington, DC | 7546 |
| 7607-P | Sverdrup Corp., St. Louis, MO | 7607 |
| 7616-P | Soo Line Railroad Co., Minneapolis, MN | 7616 |
| 8236-P | Ford Motor Co., Dearborn, MI | 8236 |
| 8554-P | ECONEXPRESS Inc., Wheaton, Il | 8554 |
| 8554-P | Thermex Energy Corp., Dallas, TX | 8554 |
| 8585-P | Dixie Poly-Drum Corp., Yemassee, SC | 8585 |
| 8955-P | Western Atlas International, Inc., Houston TX | 8955 |
| 8988-P | Western Atlas International, Inc., Houston TX | 8988 |
| 9120-P | Western Atlas International, Inc., Houston TX | 9120 |
| 9498-P | Rentokil Inc., Norcross, GA (See Footnote [1]) | 9498 |
| 9549-P | Pesco, Inc., Mills, WY | 9549 |
| 9652-P | Western Atlas International, Inc., Houston, TX | 9652 |

[1] Request party status and authorization to ship copper arsenate, solid, poison B, as additional commodity.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 7, 1987.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 87-8217 Filed 4-10-87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: April 7, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

#### U.S. Customs Service

*OMB Number:* 1515-0133
*Form Number:* None
*Type of Review:* Extension
*Title:* Application to Receive Free Materials in a Bonded Manufacturing Warehouse (19 CFR 19.14)
*Description:* The proprietor of a bonded manufacturing warehouse must make application to the district director to enter into that warehouse any domestic merchandise, except merchandise which is subject to Internal Revenue tax, which is to be used in connection with the manufacture of articles permitted to be manufactured.
*Respondents:* Businesses
*Estimated Burden:* 3,000 hours
Clearance Officer: B.J. Simpson, (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

#### Internal Revenue Service

*OMB Number:* 1545-0159
*Form Number:* 3250
*Type of Review:* Extension
*Title:* Creation of or Transfers to Certain Foreign Trusts
*Description:* Internal Revenue Code 6048 requires that U.S. persons who create or transfer property to a foreign trust must file information returns on the creation and transfer. IRS uses the information to determine if any of the U.S. persons who create or transfer property should pay the excise tax and if any income from the trust should be reported on U.S. income tax returns.
*Respondents:* Individuals, Businesses
*Estimated Burden:* 370 hours
*OMB Number:* 1545-0201
*Form Number:* 5308
*Type of Review:* Revision
*Title:* Request for Change in Plan/Trust Year
*Description:* Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.
*Respondents:* Businesses
*Estimated Burden:* 339 hours
*OMB Number:* 1545-0415
*Form Number:* W-4P/W-4PA
*Type of Review:* Revision
*Title:* Withholding Certificate for Pension or Annuity Payments
*Description:* This form is used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.
*Respondents:* Individuals
*Estimated Burden:* 3,537,319 hours
*OMB Number:* New
*Form Number:* 8633
*Type of Review:* New
*Title:* Preparer/Transmitter Application to File 1987 Individual Income Tax Returns Electronically
*Description:* Form 8633 will be filled-in by tax preparers and submitted to IRS as an application for filing individual income tax returns electronically.
*Respondents:* Businesses
*Estimated Burden:* 167 hours
Clearance Officer: Garrick Shear, (202) 566-6150, International Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 87-8150 Filed 4-10-87; 8:45 am]

BILLING CODE [illegible]

#### Fiscal Service

### St. Lawrence Seaway Toll Rebate Program

**SUBAGENCY:** Financial Management Service.

**ACTION:** Notice.

Subject: St. Lawrence Seaway Toll Rebate Program.

**SUMMARY:** The Harbor Maintenance Revenue Act of 1986, Pub L. 99–662, amends the Internal Revenue Code (IRC) by establishing the Harbor Maintenance Trust Fund under section 9505 of the IRC. Section 805 of the Act requires the Secretary of the Treasury to rebate to the person paying the toll, the United States portion of tolls collected and deposited into the trust fund by the St. Lawrence Seaway Development Corporation. The Corporation must certify who will receive rebates. Within 30 days of receipt of the Corporation's certification, the Secretary of the Tresaury will make appropriate payments.

**DATE:** This program is effective April 1, 1987, however, rebate of tolls requires passage of a Treasury Department supplemental appropriations bill.

**FOR FURTHER INFORMATION CONTACT:** Karl Foltz, Department of the Treasury, Financial Management Service, Madison Place & Pennsylvania Avenue NW., Treasury Annex #1, Washington DC 20226; 202/566–5613 (FTS) 566–5613.

Dated: April 16, 1987.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller.*

[FR Doc. 87–8105 Filed 4–10–87; 8:45 am]

BILLING CODE 4810-35-M

## VETERANS ADMINISTRATION

### Career Development Committee; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101 will be held in the Lahaina Room of the Hanalei Hotel, 2270 Hotel Circle North, San Diego, CA 92138, April 29, April 30 and May 1, 1987 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202–233–2317) prior to April 27, 1987.

The meeting will be closed from 9 a.m. to 5 p.m. on April 29, April 30, and May 1 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463 as amended, in accordance with subsection (c) (6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202–233–2317).

Dated: April 1, 1987.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 87–8176 Filed 4–10–87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ENERGY REGULATORY COMMISSION**

April 8, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

**TIME AND DATE:** 10:00 a.m., April 15, 1987.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20424.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 854th Meeting—April 15, 1987, Regular Meeting (10:00 a.m.)**

CAP–1.
Project No. UL87–5–001, Pardeeville Electric Company
CAP–2.
Omitted
CAP–3.
Project No. 10077–002, Iron Mountain Mines, Inc.
CAP–4.
Docket No. EL86–56–005 and Project No. 4885–017, South Fork Resoures, Inc.
CAP–5.
Docket No. EL86–56–002, 003, Project Nos. 4885–014 and 015, South Fork Resources, Inc.
CAP–6.
Project No. 4644–004, Stevens and Thompson Paper Company, Inc.
CAP–7.
Project No. 4860–004, Independence County, Arkansas
CAP–8.
Project Nos. 8235–002, 7791–002 and 8915–001, Hydroelectric Development, Inc.
CAP–9.
Project No. 9985–000, Rivers Electric Company, Inc.
CAP–10.
Project No. 2739–011, Utilities Commission and City of Vanceburg, Kentucky
CAP–11.
Docket No. EL83–15–000 and Project No. 459–000, Casino Pier, Inc. v. Union Electric Company
CAP–12.
Docket No. ER87–207–001, Green Mountain Power Corporation
Docket No. EL87–17–001, Connecticut Light & Power Company
CAP–13.
Docket No. ER87–180–002, Cincinnati Gas & Electric Company
CAP–14.
Docket No. EL86–27–003, Sacramento Municipal Utility District v. Pacific Gas and Electric Company
CAP–15.
Docket No. EL86–23–001, Northern California Power Agency
CAP–16.
Docket No. ER87–277–000, Public Service Company of New Hampshire
CAP–17.
Docket No. ER87–263–000, Cambridge Electric Light Company
CAP–18.
Docket Nos. ER87–107–001 and 002, Idaho Power Company and Utah Power & Light Company
Docket No. EL87–8–000, Pacific Power & Light Company
Docket No. ER86–570–002, Idaho Power Company
CAP–19.
Docket No. ER83–437–005, Commonwealth Edison Company
CAP–20.
Docket No. ER86–687–003, New England Power Company
CAP–21.
Omitted
CAP–22.
Docket Nos. EF85–2011–001, EF85–2011–006, EF85–2021–001, EF85–2021–006, EF86–2051–000 and EF86–2041–002, United Stated Department of Energy—Bonneville Power Administration
CAP–23.
Docket Nos. EF81–2011–005, 006, EF82–2011–005 and 006, United States Department of Energy—Bonneville Power Administration
CAP–24.
Docket Nos. ER81–177–004 and 005 (Phase I), Southern California Edison Company
CAP–25.
Docket Nos. ER82–769–006 and 007, Minnesota Power & Light Company
CAP–26.
Docket No. ER86–383–001, Florida Power & Light Company
CAP–27.
Docket No. ER86–622–001, Philadelphia Electric Company
CAP–28.
Docket No. QF86–343–001, Foster Wheeler Power Systems, Inc.

*Consent Miscellaneous Agenda*

CAM–1.
Docket No. RM82–6–002, Confirmation and Approval of the Rates of the Bonneville Power Administration
CAM–2.
Docket No. RM86–12–000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM–3.
Docket No. FA84–46–001, Iowa-Illinois Gas and Electric Company
CAM–4.
Docket No. FA84–29–001, Iowa Electric Light and Power Company
CAM–5.
Docket No. FA85–48–001, Bangor Hydro-Electric Company
CAM–6.
Docket No. FA85–34–002, Stingray Pipeline Company
CAM–7.
Docket No. RM79–76–243 (Colorado—39 Addition II), High-Cost Gas Produced from Tight Formations
CAM–8.
Docket No. GP87–5–000, Texas American Energy Corporation v. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAM–9.
Docket No. GP83–54–000 Oklahoma Corporation Commission, Union Texas Petroleum Corporation, Section 108 Determination, Crosswhite-Duncan No. 2 Well, FERC No. JD 83–38899
CAM–10.
Docket No. RO87–1–000, Texaco, Inc.
CAM–11.
Florida Public Service Commission

*Consent Gas Agenda*

CAG–1.
Docket No. TA87–2–22–002, Consolidated Gas Transmission Corporation
CAG–2.
Docket No. TA87–2–28–002, Panhandle Eastern Pipe Line Company
CAG–3.
Docket No. RP87–26–006, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG–4.
Docket No. RP87–34–001, Northwest Alaskan Pipeline Company
CAG–5.
Docket Nos. RP86–32–003, 004, 005, RP86–68–005, 006 and 007, Williams Natural Gas Company (formerly Northwest Central Pipeline Corporation)
CAG–6.
Docket Nos. RP82–58–011 throught 017, Panhandle Eastern Pipe Line Company
Docket Nos. RP82–105–001 through 004, Central Illinois Light Company
CAG–7.
Docket Nos. RP87–33–001 and 002, Williams Natural Gas Company (formerly Northwest Central Pipeline Corporation)
CAG–8.

Docket No. RP87–50–000, Algonquin Gas Transmission Company

CAG–9.
Docket Nos. TA87–1–59–000 and 001, Northern Natural Gas Company, Division of Enron Corporation

CAG–10.
Docket Nos. CP68–179–011 and 007, Florida Gas Transmission Company

CAG–11.
Docket No. RP87–6–000, El Paso Natural Gas Company

CAG–12.
Docket Nos. ST87–752–000, ST87–753–000, ST85–1116–001 and ST86–1915–001, Producer's Gas Company

CAG–13.
Docket No. ST82–424–000 and ST86–922–000, Sun Gas Transmission Company, Inc.

CAG–14.
Docket No. TA84–2–9–008 and TA85–1–9–005, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–15.
Docket No. CI86–138–001, Chevron U.S.A., Inc.
Docket No. CI86–295–001, Tenneco Oil Company

CAG–16.
Docket No. CI85–707–000, Pioneer Exploration Company

CAG–17.
Docket No. TC82–43–005, K N Energy, Inc.

CAG–18.
Docket No. CP85–511–002, Northern Natural Gas Company, Division of Enron Corporation

CAG–19.
Docket No. CP86–701–001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–20.
Docket No. CP84–654–022 and 023, Algonquin Gas Transmission Company

CAG–21.
Docket No. CP86–649–001, EL Paso Natural Gas Company

CAG–22.
Docket Nos. CP86–747–001, 002, CP86–285–001, CP86–406–001 and CP87–128–001, Transcontinental Gas Pipe Line Corporation

CAG–23.
Docket No. CP85–492–001, Transcontinental Gas Pipe Line Corporation and United Gas Pipe Line Company
Docket No. CP85–848–001, Natural Gas Pipe Line Company of America
Docket No. CP86–236–001 and CP–86–237–001, Transcontinental Gas Pipe Line Corporation

CAG–24.
Docket No. CP87–14–000, Natural Gas Pipeline Company of America

CAG–25.
Docket No. CP87–122–000, Williston Basin Interstate Pipeline Company

CAG–26.
Docket No. CP86–86–000, Northern States Power Company

CAG–27.
Docket No. CP86–735–000, CP87–10–000 and CP87–66–000, Pacific Gas Transmission Company

CAG–28.
Docket No. CP85–133–002, ANR Pipeline Company

CAG–29.
Docket No. CP86–481–000, Panhandle Eastern Pipe Line Company

**I. Licensed Project Matters**

P–1.
Project 4632–001, Clifton Power Corporation. Order on rehearing of order issuing license.

P–2.
Omitted

**II. Electric Rate Matters**

ER–1.
Docket No. EF84–2011–006, United States Department of Energy—Bonneville Power Administration. Opinion and order concerning Bonneville Power Administration's NF–83 section 7(k) rates.

ER–2.
Docket Nos. EL85–6–001 and 002, Public Utilities Commission of the State of California, *et al.*, v. United States Department of Energy—Bonneville Power Administration. Order on rehearing concerning Intertie Access Policy.

ER–3.
Docket No. QF86–512–001, Nelson Industrial Steam Company. Order on rehearing concerning an application for certification of a cogeneration facility.

ER–4.
Docket Nos. EF85–2011–007, 008, 009, EF85–2021–007, 008 and 009, United States Department of Energy—Bonneville Power Administration. Order on rehearing concerning BPA's NF–85 section 7(k) rates.

*Miscellaneous Agenda*

M–1.
Reserved

M–2.
Reserved

M–3.
Docket No. RM84–6–034, Refunds Resulting from Btu Measurement Adjustments. Order clarifying Order No. 399–C.

M–4.
Docket No. RM86–7–000, Compression Allowances and Protest Procedures Under NGPA Section 110. Final Rule.

M–5.
(A) Docket No. RI74–188–091, 092, 093, 094, 095, RI75–21–086, 087, 088, 089 and 090, Independent Oil & Gas Association of West Virginia. Order on settlements.
(B) Docket No. RM87–14–000, Delegation of Authority to the Director of the Office of Pipeline and Producer Regulation to Pass Upon Certain Uncontested Settlements. Final Rule delegating to Director of OPPR authority to approve routine settlements in the IOGA proceedings.

*Gas Agenda*

**I. Pipeline Rate Matters**

RP–1.
Docket No. RP84–53–000, Ozark Gas Transmission System. Order on initial decision concerning section 4 cost of service issues in rate case.

RP–2.
Docket Nos. RP85–150–000, 003, 007, RP85–200–000, 001, 002, 003, and 004, Natural Gas Pipeline Company of America. Order on settlement of section 4 rate case.

RP–3.
Docket Nos. TA85–3–29–013, 014, 015, 017, 018, 019, 021, 022, 023, 024, 026 and CP86–405–000, Transcontinental Gas Pipe Line Corporation. Order on rehearing concerning Order No. 436 filing.

RP–4.
(A) Docket Nos. CP86–582–000, 001, RP86–162–000 and 002, Natural Gas Pipeline Company of America. Order on settlement and rehearing request concerning Order No. 436 filing.
(B) Docket Nos. RP86–97–000 and 002, Natural Gas Pipeline Company of America. Order on settlement and rehearing request concerning Order No. 436 filing.

RP–5.
Docket Nos. RP86–161–000, 002, CP86–596–000 and 001, MIGC, Inc. Order on settlement concerning Order No. 436 filing.

RP–6.
Docket Nos. CP86–589–000 and RP86–104–000, Colorado Interstate Gas Company. Order on settlement concerning Order No. 436 filing.

RP–7.
Docket No. RP86–105–000, ANR Pipeline Company. Order on settlement concerning Order No. 436 filing.

**II. Producer Matters**

CI–1.
Reserved

**III. Pipeline Certificate Matters**

CP–1.
(A) Docket Nos. CP86–395–000 and 001, Northern Border Pipeline Company
(B) Docket No. CP86–250–000, Ozark Gas Transmission System
(C) Docket No. CP86–720–000, Trailblazer Pipeline Company
Application for Order No. 436 blanket certificates for transportation, and for waivers of § 284.7 (rate design).

CP–2.
Omitted

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–8258 Filed 4–9–87; 2:05 pm]

BILLING 6717–01–M

---

**PAROLE COMMISSION**

**DATE AND TIME:** April 21, 1987, 9:30 a.m.

**PLACE:** 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

**STATUS:** Closed pursuant to a vote to be taken at the beginning of the meeting.

**MATTERS TO BE CONSIDERED:** Appeals to the Commission of approximately 13 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all

cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release. In addition, the Commission will consider an application for a certificate of exemption under 29 U.S.C. 1111, and the Parole Commission's 1989 Budget request, including the personnel matters related to that request.

**CONTACT PERSON FOR MORE INFORMATION:** David J. Dorworth, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: April 8, 1987.

**Patrick J. Glynn,**

*General Counsel, United States Parole Commission*

[FR Doc. 87–8284 Filed 4–9–87; 1:39 pm]

BILLING CODE 4410–01–M

---

**PAROLE COMMISSION**

**PLACE:** 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

**DATE AND TIME:**

Wednesday, April 22, 1987—9:00 a.m. to 5:30 p.m.

Thursday, April 23, 1987—9:00 a.m. to 4:00 p.m.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of minutes of open business meeting of January 21 through January 22, 1987.

2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Management, and Administrative Section.

3. Proposal that Parole Commission take a more active role in supervising parolees (discussion only).

4. Discussion of Parole Supervision by Donald Chamlee, Chief, Division of Probation, Administrative Office of the U.S. Courts and Benjamin F. Baer, Chairman, U.S. Parole Commission.

5. Adoption of Final Rules: (1) Transportation of Unlawful Aliens Involving Detention and Demand for Payment; (2) Offense Severity for Contempt of Court under 18 U.S.C. 401; (3) Rescission Guidelines for New Criminal Conduct in the Community; (4) Dispositional Revocation Hearings.

6. Proposal that Commission amend 28 CFR 2.19(c) to permit in certain situations consideration of charges as to which a prisoner has been acquitted in a criminal prosecution.

7. Proposal that General Note 7 under 28 CFR 2.20, concerning crime sprees, be modified such that only state offenses related in time *and* nature, and occurring within a three month period, are included.

Consent Items: (subject to automatic adoption unless a Commissioner requests discussion by April 15, 1987).

1. Approval of *Rules and Procedures Manual* effective April 5, 1987.

2. Approval of Research Report 43: *Workload and Decision Trends: Statistics Highlights (Fiscal Years 1983–1986).*

**CONTACT PERSON FOR MORE INFORMATION:** James L. Beck, Director of Research, United States Parole Commission, (301) 492–5980.

Dated: April 8, 1987.

**Patrick J. Glynn,**

*General Counsel, United States Parole Commission.*

[FR Doc. 87–8285 Filed 4–9–87; 1:39 pm]

BILLING CODE 4410–01–M

---

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 13, 1987:

A closed meeting will be held on Tuesday, April 14, 1987, at 2:30 p.m. An open meeting will be held on Thursday, April 16, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 14, 1987, at 2:30 p.m., will be:

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Formal orders of investigation.

Opinion.

The subject matter of the open meeting scheduled for Thursday, April 16, 1987, at 10:00 a.m., will be:

1. Consideration of whether to issue a concept release concerning Management's Discussion and Analysis, Item 303 of Regulation S–K. The release would solicit comment on MD&A generally and on proposals from the accounting profession to change MD&A. For further information, please contact Brian J. Lane at (202) 272–2589 or Laurel Bond Mitchell at (202) 272–2130.

2. Consideration of whether to issue a release proposing an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate as an exempted security, solely for purposes of futures trading thereon, foreign government debt (a) issued by an country the sovereign debt of which is rated in one of the two highest rating categories of two nationally recognized rating agencies or (b) issued by the government of Australia, France or New Zealand. For further information, please contact David L. Underhill at (202) 272–2375.

3. Consideration of an interpretative release regarding the application of mark-up policy to zero-coupon securities. For further information, please contact Christine Sakach at (202) 272–2418.

4. Consideration of whether to adopt Securities Exchange Act Rules 15Cal–1 through 15Ccl–1 and revisions to Rule 15b2–2 and Form BD in order to implement the registration and notice requirements of the Securities Exchange Act of 1934 ("Act") as amended by the Government Securities Act of 1986. The Act requires government securities broker-dealers to register or file notice with the Commission of their government securities activities. The rules prescribe the form and information government securities broker-dealers must file with the Commission in order to register or file notice. For further information, please contact Lynne G. Masters at (202) 272–2848.

5. Consideration of a release proposing for comment inclusion of a consent to service of process in Form BD, the registration application form for broker-dealers. The proposed revision would add a consent to Commission service and notice of process to the form. For further information, please contact Henry E. Flowers at (202) 272–2848.

6. Consideration of a release proposing to adopt revisions to Form BDW, the form filed by a registered broker-dealer to withdraw from registration. The proposed revisions reflect a clarification of existing Form BDW questions. For further information, please contact Henry E. Flowers at (202) 272–2848.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bernard Black at (202) 272–2468.

**Jonathan G. Katz,**

*Secretary.*

April 8, 1987.

[FR Doc. 87–8309 Filed 4–9–87; 3:58 pm]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-041]

### Synthetic Methionine From Japan; Final Results of Antidumping Duty Administrative Review

*Correction*

In notice document 87-7312 beginning on page 10600 in the issue of Thursday, April 2, 1987, make the following corrections:

1. On page 10600, in the third column, in the subject heading, "Form" should read "From".

2. On page 10601, in the second column, following the paragraph *Comment 3*, two paragraphs of text were omitted. The omitted material reads as follows:

*Department's Position*:

Since we do not consider payments between related parties as commissions, we consider Mitsui (Japan)'s so-called "commissions" from Nippon Soda to be indirect selling expenses. We included these expenses, as well as Mitsui (Japan)'s other selling expenses, as an offset to U.S. commissions and as part of the ESP offset. Since neither Nippon Soda nor Mitsui identified what portion, if any, of Nippon Soda's SG&A was attributable to selling expenses, we disallowed this claim. We allowed the cost of freight from Nippon Soda to Mitsui (Japan)'s warehouse as an indirectly related selling expense. We allowed a monthly weighted-average of discounts actually given, but they did not qualify as quantity discounts pursuant to § 353.14 of the Commerce Regulations. Finally, we allowed a monthly weighted-average amount for Mitsui (Japan)'s claimed credit expenses, as differences in circumstances of sale.

*Comment 4*:

Monsanto alleges that, because Fuji Chemical "sold" to Mitsui (U.S.A.) at a price less than its acquisition cost from Mitsui (Japan), Fuji Chemical engaged in "middleman dumping" on at least one of the two involved transactions. Mitsui, on the other hand, claims the seeming "middleman dumping" was caused by a typographical error. In reality Fuji Chemical's acquisition cost was overstated in the original response, and its resale "price" to Mitsui (U.S.A.) included a markup to cover all its expenses.

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51665; FRL-3168-7]

### Certain Chemicals Premanufacture Notices

*Correction*

In notice document 87-5563, beginning on page 8962 in the issue of Friday, March 20, 1987, make the following corrections:

1. On the same page, in the same column, in the 13th line from the bottom of the page, "P 87-701" should have appeared on a separate line as a boldface heading above the next entry.

2. On the same page, in the third column, under **P 87-705**, in the 10th line, "<2,000" should read "<2,000" and in the 11th line, "<2,000" should read "<2,000".

BILLING CODE 1505-01-D

Federal Register

Monday
April 13, 1987

Part II

# Department of Transportation

**Urban Mass Transportation Administration**

**49 CFR Part 604**

**Charter Service; Final Rule and Request for Comments**

**DEPARTMENT OF TRANSPORTATION**

**Urban Mass Transportation Administration**

**49 CFR Part 604**

**[Docket No. 82-I]**

## Charter Service

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Final rule and request for comments.

**SUMMARY:** This final rule sets forth the Urban Mass Transportation Administration's (UMTA) revised regulations governing the charter service that UMTA's recipients may provide using UMTA funded equipment or facilities. With a few exceptions, UMTA recipients will now be prohibited from providing any charter service using UMTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the recipient desires to provide. UMTA is also requesting public comments on the portion of the rule that expands the rule's applicability to UMTA funded buses and vans.

**DATES:** This final rule is effective May 13, 1987, and comments are due on May 28, 1987.

**ADDRESS:** Comments must be submitted to UMTA Docket No. 82–I, 400 7th Street SW., Room 9228, Washington, DC 20590. All comments and suggestions are available for examination in room 9228 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. UMTA will acknowledge the receipt of comments if the commenter includes a self-addressed, stamped postcard with the comment.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Gold, Attorney-Advisor, Office of the Chief Counsel, Room 9228, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–1936.

**SUPPLEMENTARY INFORMATION:**

### I. Summary of the Rule

Under the revised final charter regulation, an UMTA recipient is prohibited from providing any charter service using UMTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the recipient proposes to provide. This prohibition applies not only to charter service provided with UMTA funded buses, but applies to any UMTA funded van. UMTA is seeking comments on this portion of the final rule.

The rule requires every applicant for UMTA assistance to include a charter agreement with the first grant application it submits to UMTA following the effective date of this rule. For the UMTA State administered programs, the State must send in the agreement and obtain and retain in its records a certification of compliance from the subrecipients. If a recipient does not anticipate submitting a grant application to UMTA during Federal fiscal year 1987, the recipient must send an agreement to UMTA within 60 days of the rule's effective date.

There are five exceptions to this general prohibition. First, a recipient may provide any and all charter service with UMTA funded equipment and facilities to the extent that there is no willing and able private charter operator.

Second, a recipient may enter into a contract with a private charter operator to supply equipment for or to actually provide a specific charter trip if the private charter operator does not have the capacity needed for the trip. Third, a recipient may enter into a contract with a private charter operator to supply equipment for or to actually provide a specific charter trip if the private charter operator is unable to provide equipment accessible to elderly and handicapped persons. Under the second and third exceptions the recipient would not provide the equipment or service directly to the customer, but to the private charter operator.

Fourth, recipients in non-urbanized areas may petition UMTA for an exception if the charter service that would be provided by willing and able private charter operators would result in a hardship on the customer. The rule limits the factors that would result in a hardship to two. The first is where willing and able private charter operators impose minimum durations pursuant to a State regulatory requirement. The second is where the willing and able private charter operators are located too far from the origin of charter service.

Fifth, UMTA provides an exception to permit recipients to petition UMTA to enable it to provide charter service directly to the customer when the private charter operators are not capable of providing charter service for special events.

Any charter service which a recipient provides under one of these five exceptions, however, must be incidental charter service.

The rule requires that any recipient desiring to provide charter service using UMTA funded equipment or facilities must publish a notice annually in a newspaper(s) of general circulation and provide a copy of the notice to specified parties describing the charter service it desires to provide. A private charter operator is invited to respond with evidence to prove that it is willing and able to provide some or all of the service which the recipient has stated that it desires to provide. To the extent that the recipient determines that there is at least one private charter operator willing and able to provide the service that the recipient desires to provide, the recipient is prohibited from providing that service using UMTA funded equipment and facilities.

The rule applies not just to recipients that receive assistance directly from UMTA, but also to all the entities that receive UMTA assistance through the recipients. Since one recipient often has several subrecipients, the rule provides an option for complying with the notice process. A recipient, including the State in the State administered programs, may conduct the process for itself and all subrecipients to determine whether there is at least one willing and able private charter operator, or it may delegate this responsibility for the subrecipients to the subrecipients.

If an interested party believes that the recipient has not complied with the rule, it may file a written complaint with the UMTA Chief Counsel. The Chief Counsel will conduct the investigation and issue a decision. The losing party may appeal the decision to the UMTA Administrator. The Chief Counsel's decision or the Administrator's decision on appeal is a final agency action subject to judicial review under the Administrative Procedure Act.

### II. Background on the Rulemaking

On April 1, 1976, UMTA published the previous final rule regulating the charter bus activities that an UMTA recipient could provide. (41 FR 14123, 49 CFR Part 604.) That rule implemented two statutory provisions in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*) (UMT Act). The first, section 12(c)(6), defines "mass transportation" to specifically *exclude* charter service, sightseeing service and school buses. The second, section 3(f), requires all applicants for UMTA assistance for the purchase or operation of buses to enter into an agreement with the Secretary of Transportation (delegated to the UMTA Administrator in 49 CFR 1.51) which governs a recipient's intercity charter bus operations. Section 3(f) requires that this agreement set forth equitable terms to ensure that private intercity charter bus

operators are not foreclosed from this business by recipients.

Recipients complained that the rule imposed too many administrative and paperwork burdens on them. Private charter bus operators complained that the rule did not provide sufficient protections for them and that UMTA recipients were forcing them out of business. UMTA, too, experienced problems with the rule including the inability to resolve complaints expeditiously. Consequently, UMTA proposed to revise the rule in an advance notice of proposed rulemaking (ANPRM) on January 19, 1981 (46 FR 5394). This ANPRM proposed a very detailed approach to revising the rule. After a thorough review of the comments received, UMTA determined that there were additional issues and questions that needed addressing before a notice of proposed rulemaking (NPRM) could be published. Thus, UMTA published a second ANPRM on October 12, 1982 (47 FR 44795).

The second ANPRM proposed four alternative approaches to the regulation and requested comments. Several collateral issues were discussed and UMTA requested comments on these also. UMTA reviewed the comments to the ANPRM and determined that none of the proposed approaches adequately addressed the problems with the rule. Thus, in the NPRM, UMTA proposed a new approach which is substantially identical to the final rule published today. (March 6, 1986, 51 FR 7892.)

UMTA provided a 60-day comment period on the NPRM which closed on May 5, 1986. Several commenters requested that UMTA extend the comment period for an additional period. They argued that many recipients in rural areas did not have access to the **Federal Register** and thus received the news of the proposed changes too late to respond. In addition, they argued that additional time was warranted due to the complexities of the issues and the extent of the proposed changes.

UMTA agreed with these commenters and reopened the comment period for an additional 30 days on May 20, 1986 (51 FR 18466). The comment period closed on June 19, 1986.

UMTA received 307 comments on the NPRM. The breakdown among commenter categories is as follows:

86 UMTA recipients
69 Private charter operators
28 Private citizens
24 Corporations and businesses
18 Other consumer organizations
16 Convention and tourism bureaus
15 State Departments of Transportation or other State agencies
13 Trade associations
11 State or local officials
11 Schools
6 Metropolitan Planning Organizations or other planning agencies
3 Members of Congress
3 Chambers of Commerce
2 Private school bus operators
2 Private charter operators receiving UMTA assistance

In general, recipients, State DOTs, Members of Congress, private citizens, convention and tourism bureaus, corporations, Chambers of Commerce, other consumers, and schools opposed the NPRM. They cited many reasons for this opposition including: not experiencing the problems UMTA described with the current regulation; taking away the consumer's choice of charter provider; belief that the current regulation provides sufficient protections for private operators; the negative impact that not having ready access to a large fleet of charter buses will have on local efforts to encourage convention and tourism; the loss of charter revenues will increase the need for subsidies that are also decreasing; the needs of the consumers were not considered; it is not consistent with UMTA's private sector policy which emphasizes competition; and a belief that UMTA should take enforcement actions against the violators of the rule and not penalize all recipients.

Private charter operators and the trade associations that represent them supported the NPRM. These commenters generally stated their support and their belief that the NPRM, if adopted as a final rule, would finally provide the protections that the UMT Act provides for them.

UMTA will address and respond to the specific comments received in the following Section-by-Section Analysis.

## III. Section-by-Section Analysis

This portion of the preamble discusses each section of the final rule and focuses on the significant comments on each issue. UMTA provides its response to these comments and discusses the reasons for making the decisions incorporated in the final rule.

*Section 604.1 Purpose.*

This section states that the purpose of this rule is to implement section 3(f) and 12(c)(6) of the UMT Act. This section is identical to the purpose section in the NPRM and no comments were received on it.

*Section 604.3 Applicability.*

In the NPRM, UMTA proposed that the new rule apply to all recipients of financial assistance under sections 3, 5, 9A, 9 or 18 of the UMT Act or under sections 103(e)(4) and 142 (a) and (c) of 23 USC, which permit the use of Federal-Aid Highway funds to purchase buses. UMTA specifically excluded recipients under section 16(b)(2) of the UMT Act consistent with UMTA's longstanding administration of this program.

Due to a typographical error in the **Federal Register** printing of the NPRM, § 604.3(a) stated that the NPRM would have applied to, "Section 3 (excluding sections 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act." (Emphasis added.) Several commenters noted this error and asked if the NPRM, therefore, excluded not only section 16(b)(2), but also sections 5, 9A, 9 and 18. As stated above, it was UMTA's intention to exclude only section 16(b)(2) and the final rule makes this clear.

As proposed, UMTA has made the final rule applicable to the section 18 program. This program provides financial assistance to rural and small urban areas with populations of less than 50,000 for capital, operating and administrative expenses. Twenty commenters addressed the issue of whether the rule should apply to this program. The comments were mainly from recipients, State DOTs, and the trade associations that represent the rural providers. All favored either not applying the rule or modifying it for section 18.

The commenters argued that there are few, if any, private operators in these areas to compete with the recipients. Since the private charter operators would have to come great distances to provide charter service, these commenters argued that the customer would have to pay higher prices for charter service provided by private operators due to excessive deadhead charges. In addition, the commenters stated that the paperwork burden would be so great that the cost to comply with the administrative portions of the rule will exceed the revenues generated from any resulting charter service.

UMTA is sympathetic to these comments and has modified the rule to account for some of the differences between the urban and rural recipients. The changes will be noted in the specific sections of the rule.

We are, however, unable to exclude the section 18 program totally from the rule. Section 18(f) of the UMT Act states, "Grants under this section shall be subject to such terms and conditions (which are appropriate to the special needs of public transportation in areas other than urbanized areas) as the Secretary shall prescribe." While this language appears to give UMTA the discretion to exclude the Section 18

program from the charter requirements in the UMT Act, the legislative history dictates the opposite conclusion.

The Conference Report for the Surface Transportation Assistance Act of 1978, which added the section 18 program to the UMT Act, states with reference to the provision quoted above from section 18(f), "However, the Secretary would not be authorized to waive or modify basic provisions of the Act, such as sections 3(f) and 3(g). . . ." H.R. Rep. No. 1797, 95th Cong., 2d Sess. 136 (1978). Consequently, UMTA believes that we have the authority to modify the charter regulatory requirements that apply to these recipients, but cannot exclude the entire program from the regulation.

Several commenters suggested that UMTA tailor the requirement of the rule to the size, based on population, of the recipient. In support of this position, these commenters made many of the same arguments that were noted above in support of treating the section 18 program differently.

The commenters suggested various ways of responding to these concerns. These included excluding all recipients which have less than a specified population, such as less than 200,000 or 50,000, or providing special requirements for these recipients. This approach would be consistent with the Department of Transportation's new regulation implementing Section 504 of the Rehabilitation Act of 1973, as amended, for UMTA recipients. 51 FR 18994, May 23, 1986. This rule provides different requirements, both administrative and substantive, for recipients in areas with populations of less than 50,000.

UMTA, however, rejects the suggestion that recipients in areas with small populations be excluded from the rule. Since UMTA is prohibited from excluding the Section 18 recipients from the rule, it would not be possible to exclude any category of recipients to which they would belong such as those with populations of less than 200,000 or even 50,000. Moreover, if the less than 200,000 population figure were used, UMTA would exclude 251 of the 366 urban areas listed in UMTA's 1983 Section 15 report. This represents almost 70% of the urban areas and far too large a percentage to exclude from this important rule.

Moreover, UMTA has not modified the requirements for recipients in areas with small populations because we believe that the requirements of this rule are not so burdensome as to unfairly affect these recipients. We have taken special pains to minimize the administrative and paperwork burdens imposed by the rule to ensure that all recipients will be capable of complying without hardship.

Another issue concerning applicability is whether the rule will include a revenue exception. UMTA did not propose to include a revenue exception in the NPRM. The previous rule did contain such an exception so that any recipient that did not earn more than $15,000 in annual charter revenues was excluded from the rule's cost and revenue requirements if the recipient provided intercity charter service. We stated in the preamble to the NPRM that we proposed to delete this exception since the UMT Act provides protections for private charter operators from all recipients, not just from those that earn in excess of a certain amount. In addition, we stated that while the revenue exception may provide some relief from the regulation's paperwork burdens the proposed burdens would be so much less that there would be no hardship on any recipient, regardless of revenues. UMTA, however, asked in the preamble whether the final rule should include a revenue exception.

Twelve commenters addressed this issue. Ten of these, mainly recipients and State DOTs, favored retaining a revenue exception. None, however, offered any arguments that rebut the conclusions that UMTA had come to and presented in the NPRM for not including the exception. Therefore, we have not included a revenue exception in the final rule.

One area of constant concern with any charter regulation is to clearly define the category or categories of equipment and facilities to which it applies. UMTA stated in the NPRM that we proposed to continue the position adopted in the previous rule that the rule only applies to charter service using UMTA funded equipment and facilities. If a recipient sets up a separate company that has only locally funded equipment, facilities and operates these with only local funds, or the recipient is able to maintain separate accounts for its charter operations that show that the charter service is truly a separate division which receives no benefits from the mass transportation division, then the charter rule would not apply.

Twelve commenters addressed this issue. Recipients expressed the fact that even though the rule would not apply to a wholly locally funded entity, it has little application since few, if any, recipients can set up a separate company. Commenters representing the private charter operators, however, argued that a recipient's entire operation must be subject to the rule if there are going to be any real protections for private operators.

UMTA has chosen to continue the proposed approach in the final rule. Applying the rule's restrictions only to charter service using UMTA funded equipment or facilities is the more straightforward interpretation of the UMT Act and limits the reach of Federal rules to only federally funded activities. Moreover, UMTA agrees with the recipients who commented that the exception probably has little effect since it is so difficult to set up a totally separate company for charter service. As a result, UMTA believes that this approach not only is more legally tenable, but that it poses no real threat to the well-being of private charter operators.

Another issue under the larger question of applicability is whether the rule will apply to any entity, public or private, that receives UMTA assistance through an UMTA recipient. Since one of the Administration's major policy objectives is to increase the participation of the private sector in the provision of transportation services that are funded with Federal assistance, this is a particularly timely issue.

In the UMTA program the accomplishment of this policy objective has meant an emphasis on those provisions in the UMT Act, including section 3(e), which call for the participation of the private sector to the maximum extent feasible. UMTA has issued several **Federal Register** notices to provide guidance on compliance with the provisions. One concern, however, is that private mass transportation providers may be reluctant to participate in UMTA's program if the charter regulations apply to them.

The previous charter rule applied to all recipients and operators for recipients. That is, a private operator that receives UMTA assistance through a recipient, whether under contract to provide specific service or by means of an allocation plan as in New Jersey, was subject to the regulation to the extent that the assisted equipment or facilities were used to provide charter service. UMTA proposed to continue this approach in the NPRM.

The reason that UMTA proposed the continuation of the approach is due to the language in section 3(f) of the UMT Act. It states that its restrictions apply to the recipient "or any operator of mass transportation" for the recipient. It is UMTA's opinion that this language provides little room for discretion and requires that all entities, public or private, that operate for a recipient must be covered by the rule to the extent that the entity provides charter service using UMTA funded equipment or facilities.

Very few commenters addressed this issue. Those that did, however, were mainly private operators and the trade associations that represent them. These commenters generally disfavored the approach and argued that to apply the regulation to subsidized private operators will remove any incentives to contract with an UMTA recipient, a result contrary to UMTA's private sector policies.

While UMTA is aware of the potential policy conflict, we are bound by the words of the UMT Act. Consequently, all operators for a recipient, whether public or private, under contract or receiving assistance through the recipient, are subject to the charter rule but only to the extent that the operator uses UMTA funded equipment or facilities to provide charter service. This is the same proviso that applies to recipients. Therefore, in shorthand, the rule treats all operators for a recipient as a recipient to the extent that they stand in a recipient's shoes.

As part of UMTA's private sector actions, we have recently stated our policy on the use of capital assistance to pay for the capital portion of private sector service contracts. UMTA encourages recipients to take advantage of this policy and provided information about it in the "Dear Grantee" letter of November 19, 1986. The letter also explains how various UMTA requirements will apply to the private operators whose capital costs are paid for with UMTA funds.

A private operator that receives UMTA assistance under the capital cost of contracting arrangements is subject to the charter regulations. Since the private operator receives UMTA assistance, even though it is through another entity, the private operator is treated as a recipient and falls under the definition of this term for this rule.

Under a capital cost of contracting arrangement, there are at least two common situations. First, the private operator could use its own vehicles to provide service under the contract. In this case, the charter rule, although applicable, would have no practical effect since UMTA will be paying for mass transportation which consumes 100 percent of the capital funds we provide to the private operator through the recipient and the provision of incidental non-mass transportation using UMTA funding is not possible.

Second, the private operator could use UMTA funded equipment or facilities leased to it by the recipient. In this case, the private operator would have the equipment or facilities available for incidental non-mass transportation service and the charter rules will apply if any charter service is provided with the leased equipment or facilities.

The final issue that concerns the applicability of the final rule is whether it will apply to all charter service or provide different requirements depending where the charter service is provided. The previous regulation distinguished between charter service that a recipient provided in its service area, intracity charter service, and charter service a recipient provided outside of its service area, intercity charter service. The regulation made this distinction based on the distinction that the UMT Act makes in section 3(f) which restricts only a recipient's intercity charter service. The NPRM proposed to eliminate this distinction and to treat all charter service provided by a recipient using UMTA funded equipment or facilities the same.

Seventeen commenters addressed this issue. Most were private charter operators and they supported the NPRM elimination of this distinction. The commenters felt that by treating all charter service the same, the protections for their businesses would be increased.

One recipient who addressed this issue favored the retention of the distinction, but added that no recipient should be providing charter service outside of its service area anyway.

Several recipients and trade associations addressed this issue in an indirect way. They challenged UMTA's legal authority to promulgate the rule. They argued that the only language in the UMT Act which provides protections for private charter operators is in section 3(f) and that this only speaks to private intercity charter operators. Thus, in their view, the proposed expansion of protections to intracity private charter operators is beyond UMTA's authority and the final rule must continue to distinguish between intercity and intracity charter service.

In the final rule, UMTA has decided to apply the restrictions to all charter service and not to provide different requirements for intercity and intracity service. Although UMTA will address the legal basis of this rule in more detail below, it is important to state here that it is our opinion that the melding of the two categories of charter service is permissible under the UMT Act. Since this approach provides greater protections for private charter operators, UMTA has decided to follow it in the final rule.

*Section 604.5 Definitions.*

Charter Service

The definition of "charter service" is as the heart of this regulation. The NPRM did not propose to change the definition from that in the previous regulation. This definition had several components which attempt to define charter service in a way that meaningfully distinguishes it from "mass transportation" and "sightseeing service." The main features were: 1) The service was by bus; 2) the service was to a defined group of people; 3) there was a single contract between the recipient and the riders, not individual contracts between the recipient and each rider; 4) the patrons had the exclusive use of the bus; 5) the charge for the bus was a set rate; and 6) the riders had the sole authority to set the destination.

Under section 12(c)(6) of the UMT Act, "mass transportation" is defined as service to the public, either general service or special service, on a regular and continuing basis. By contrast, "charter service" is usually thought of as a one-time provision of service and the user, not the recipient, has the control of the service. "Sightseeing service," consistent with our understanding of the Interstate Commerce Commission's definition of "special service," is when the recipient offers and arranges the service and contracts individually with each patron, not with the patrons as a group.

While these distinctions may appear to be neat and clean, there are many difficulties in determining in a given case which category the service fits into most appropriately. These problems are particularly apparent in the Section 18 program where service provided under a contract with a social service agency for a defined group of users is a common occurrence. Also, under all UMTA programs, recipients provide subscription service, parking lot shuttles and other services that while open to the public may be of limited utility due to destination, hours of service or need.

Many commenters addressed the problem of the definition of charter service. The majority of these commenters are recipients of Section 18 funds and State DOTs. Since these commenters explained that some of the services for which they now receive UMTA funding as mass transportation might fall within the NPRM's definition of charter service, they argued that there would be serious repercussions for their riders if the service were determined to be charter, not mass transportation, and thus not permissible under the NPRM.

Although UMTA is aware of the many problems that the proposed definition poses, we have decided to retain it with one change. This change expands the definition so that charter service provided by van is included. This

change will be discussed in detail below.

There are several reasons for our decision to keep the definition of "charter service" as proposed. First, the proposed definition is identical to that in the previous regulation. Thus, all parties are familiar with it and the problems that UMTA has experienced with it have been few during the over 10 years in which it has been in effect. Second, UMTA believes that the problems associated with distinguishing between "charter service" and "sightseeing service" are fairly clearly marked and do not require a revision to the definition to make the distinctions clearer. For example, if a customer comes to the recipient and contracts for the exclusive use of the vehicle, the service would probably be charter service. On the other hand, if the recipient offers individual contracts to anyone to ride to a destination that the recipients has selected, the service would probably be sightseeing service.

Although UMTA considered including restrictions on sightseeing service using UMTA funded equipment and facilities in this rule, we will issue a separate regulation on sightseeing service in the future. While the restrictions on sightseeing service will be based on section 12(c)(6) and could be similar to those imposed in this rule, the fact that this rule is also based on section 3(f), which address only charter service, would make including sightseeing service unnecessarily complicated.

The third reason that UMTA has not changed the proposed definition of "charter service" is that the problems associated with distinguishing charter service from mass transportation can, in UMTA's opinion, be better addressed by giving some additional guidance here as to the nature of mass transportation, not by altering the definition of "charter service." While the UMT Act defines mass transportation as provided to the public and operating on a regular and continuing basis, UMTA believes that it shares other salient characteristics which logically follow from this.

First, mass transportation is under the control of the recipient. Generally the recipient is responsible for setting the route, rate, and schedule, and deciding what equipment is used. Second, the service is designed to benefit the public at large and not some special organization such as a private club. Third, mass transportation is open to the public and is not closed door. Thus, anyone who wishes to ride on the service must be permitted to do so.

These three characteristics of mass transportation are not exhaustive, but merely illustrative. In any complaint situation, UMTA would review the service in question and determine to which category it most properly belongs.

UMTA acknowledges that there are two exceptions to this third characteristic. In 1968, Congress amended the definition of "mass transportation" to permit special service in addition to general service. Special service, according to the legislative history is service that may be provided closed door. The only examples that Congress provided, however, are service exclusively for elderly and handicapped persons and service provided for the workers who live in the intercity, but work in a factory in the suburbs. See, H.R. Rep. No. 1785, 90th Cong., 2d Sess., reprinted in 1968 *U.S. Code Cong. Ad. & News*, 2941. It is UMTA's position that any exclusive service must fit within one of these two exceptions to qualify as mass transportation in the future.

By way of example, UMTA provides descriptions of service that would be "charter service." First, regular and continuing exclusive service for college students living at an apartment complex, arranged by the owner of the complex, and over which the owner sets that fares and schedules would be charter service. This result would occur since the UMTA recipient is not controlling the service and it is exclusively for the college students. Second, shuttle service provided by a recipient to the attendees at a convention that operates on a regular and continuing basis, according to a preprinted schedule, but which is closed to anyone that is not attending the convention would also be charter service.

Third, assume a human services agency contracts with a recipient to provide weekly service to a shopping center for the agency's clients. If the service is open-door and the recipient can put any rider on the vehicle in addition to the agency's clients, the service would probably be mass transportation.

As stated above, UMTA has changed the definition of charter service to include charter service provided by vans. Only one commenter commented on the types of vehicles that the rule would apply to. The commenter asked if the NPRM would apply to charter trolley service provided by a recipient. UMTA has struggled with the lack of regulations to govern other than charter bus service for several years. Since UMTA's previous rule only regulated charter bus service, there was little assistance that UMTA could provide if the complaint concerned charter van or charter rail service.

While the statutory provisions in section 3(f) of the UMT Act apply only to buses, the service which section 12(c)(6) distinguishes from mass transportation is merely charter service, not charter bus service. The limitations on the use of UMTA funded equipment and facilities under section 12(c)(6) are to protect the equipment and facilities to assure that they are available for mass transportation. Thus, all vehicle modes could be included within these protections since they all provide mass transportation.

UMTA, however, has decided to only expand the scope of the rule to vans as well as buses. Since there are so few private rail or ferry boat operators, we believe that not including charter rail and charter ferry boat service within this rule will have little if any adverse effect on these operators.

In addition, we believe that this change will have at most a minimal impact on recipients. First, most urban recipients operate only buses and do not offer mass transportation by van. Thus, this change will not have any effect on them. Second, the rule, as discussed below, considers that a private charter bus operator is only willing and able to provide charter bus service, not charter van service even if the origin and destinations of the trip can be served by van. Thus, since the vast majority of private charter operators are bus only operators, there should not be a significant effect on those recipients that are able to provide charter service by van as well as bus.

Nonetheless, since this does represent a change from the NPRM, UMTA is seeking public comment on this aspect of the final rule. UMTA is providing a 45-day comment period. While 60 days is the normal practice, we believe that this issue is sufficiently narrow to be adequately addressed within a shorter period of time. UMTA will review the comments received and make a determination on further actions at that time. It is important to note that the expansion of the scope of the rule to vans will be effective 30 days after publication along with the rest of the rule and subject to change after the comment period closes.

Willing and Able

The definition of "willing and able" is another key definition in this regulation. As proposed in the NPRM and as included in this final rule, only if the recipient determines that there is at least one private charter operator willing and able to provide the charter service that the recipient proposes to provide is the recipient prohibited from providing the service.

The NPRM defined "willing and able" as, "having the physical capability to actually provide charter bus service and the legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter bus service in the area it proposes to provide such service."

In the preamble to the NPRM, UMTA stated that this definition focuses on the physical ability of the private charter operator to provide charter service and the possession of the legal authority to provide it. We stated specifically that the definition included no concept of capacity and that a private charter operator with the requisite legal authority and one bus is just as willing and able as a private operator that possesses the same legal authority but has 100 buses. In the preamble, UMTA asked for comments on this aspect of the definition and whether there should be other elements added to the definition.

Thirty-four commenters addressed this issue. The nine private charter operators that commented favored the proposal and stated that if any other elements were added to the definition it would provide the recipients with the ability to delay determinations of willing and able and, in the end, permit the finding of fewer willing and able private operators. These commenters complimented UMTA on the easy, straightforward proposed definition.

The remaining 25 commenters criticized the definition. These commenters were recipients, State DOTs, planning organizations, and trade associations. These commenters suggested various additional elements that would be needed in the definition. Chief among these is the need to add the notion of capacity. For many commenters capacity to provide the amount of service requested is synonymous with having the ability to provide the service. They argued that without a check on the private charter operator's capacity, the customer will not be fairly served and will end up with a variety of companies and equipment to serve its charter request. In addition, the commenters argued that it would not be fair for the regulation to permit a private charter operator with one bus to enter the market and prohibit the recipient from providing any charter service.

UMTA has decided not to include any notion of capacity in the final rule's definition of "willing and able." UMTA believes that the customer will not be harmed in any way by not taking into account the capacity of the private operators. If the private operators do not have the required capacity, it can be obtained from other private charter operators. While some commenters stated that private operators do not always work this closely and harmoniously, UMTA believes that they have a responsibility to work together for mutual support. It is, in effect, the private charter operators duty to work in concert and put aside differences if the protections under this rule are to be of any real benefit to them. As a last resort, the private operator may obtain the extra capacity from the recipient. Thus, the customer will be served. Moreover, a continued request for more capacity than it possesses should encourage the private operator to expand its fleet to serve the market.

Commenters also suggested that definition of "willing and able" should take into consideration the type of equipment that a private charter operator can provide. Many recipients and consumers stated that recipients provide a category of vehicle that is not available from private charter operators. These commenters stated that private charter operators offer only luxury coaches and private school bus operators offer only school buses. For these commenters, the provision of a transit coach is the desired bus and an operator which cannot provide it is not able.

UMTA is aware that the type of equipment requested can sometimes, at least at this time, only be provided by the recipient. This is particularly true in rural areas where, due to small populations, the customer's need is for a small charter vehicle such as a van. While UMTA recipients easily can provide this type of vehicle since UMTA funds mainly the acquisition of vans under our rural and small urban program, private charter operators in these same areas usually can offer only buses.

Therefore, UMTA has changed the definition of "willing and able" to account for these problems. Under the final rule, a private operator is only willing and able to the extent that it can provide the categories of revenue vehicles specified by the recipient. The final rule defines "categories of revenue vehicles" as vans and buses.

Accordingly, if the recipient desires to provide charter service with buses and vans, but the private charter operator only has the physical capability to provide buses, the private operator is willing and able to provide only the charter bus service that the recipient proposed to provide. The regulation will permit the recipient to provide charter service with its vans as long as it is incidental charter service. Since the final rule does not apply to rail service or ferry boats, the only restriction that the UMT Act imposes on charter rail service and ferry boat service provided with UMTA funded equipment or facilities is that it be incidental to the provision of mass transportation.

UMTA believes that this approach is necessary to ensure that the needs of the charter customer are met. Without this addition, customers could be forced to charter a type of vehicle that is not suited to their purposes. The result could be to force the customer to forgo the trip. UMTA does not intend to hinder transportation in this way and adding the type of vehicle to the definition of "willing and able" is one way to address the problem.

A third concept that commenters suggested adding to the definition of "willing and able" is duration of the charter trip. Commenters stated that under some State rules, private operators are often required to set the minimum time for charter bus service at 5 or more hours. Since many customers may only want a bus for 2 hours, the private charter operator in these States provides more service, and at a higher cost, than is desired. The commenters stated that recipients often fill this gap since they have either no minimum durations or lower minimum durations.

UMTA is aware of this problem, but it is our position that the final rule should not take this into consideration in the definition of "willing and able." The cause for minimum periods that may be longer than the customer's needs is, as described by the commenters, State or local rules. To the extent that this needs correction, therefore, UMTA believes that it should be addressed at the State or local level, not at the Federal level.

Except for specifying capacity and duration, the rule permits a recipient to describe its desired charter service with a great deal of specificity. Thus, a recipient may specify the days, times of day, and geographic area of its desired charter trips. For example, a recipient could state in its notice that it desires to provide charter bus service on weekends in its State.

A private charter operator could respond that it desires to provide all of the service. It could also respond that it only desires to provide weekend charter bus service within the recipient's urbanized area. Under the rule, this private charter operator is only "willing and able" to provide weekend charter bus trips inside the recipient's urbanized area and the recipient, absent any other private charter bus operators, is permitted to provide weekend charter bus trips outside of its urbanized area, but within its State.

UMTA believes that it is important to permit recipients to provide specific

BEST COPY AVAILABLE

information in their descriptions of proposed charter service. In this way, the rule attempts to ensure that the customer's needs will be met and that the customer will not be forced to purchase service that it does not want or to forgo the charter trip.

Finally, UMTA has amended the proposed definition to require that the private operator have the desire to provide charter service. The omission of this component in the NPRM definition was an oversight on UMTA's part. The result is that UMTA proposed a definition of "willing and able" that included only the idea of "able" and omitted any notion of "willing." The definition in the final rule now includes both.

It is important to note, however, that the desire expressed by the private operator is only to provide charter service in general terms and not necessarily to provide every charter request that the private operator receives. UMTA recognizes that it is possible where there is only one willing and able private operator that has precluded the recipient from providing any charter service that the private operator could refuse to provide requested charter service and leave the customer without transportation.

While UMTA recognizes in the abstract that this is a possibility, we do not believe that it is a real probability. Our position is based on our belief that private charter operators behave like any other entrepreneurs. That means that their goal is to maximize profits and stay in business. To achieve this goal, the private charter operators must satisfy customers and provide all the service they can. To refuse the provision of charter service is inconsistent with this philosophy and the attainment of this goal. If there are any disreputable private operators that refuse to provide charter service, UMTA believes that the market will take care of the situation.

Brokers

In the NPRM, UMTA's proposed definition of "willing and able" would have required the actual ability to provide charter service. The preamble to the NPRM noted that a broker, who has only an office and a telephone and arranges for another party to provide charter service, would not be willing and able since it would never itself provide the service. UMTA asked if brokers should be included within the definition since including them would be one way to achieve the goal of increasing opportunities for as much of the private sector as possible.

Fifteen commenters opposed including brokers. These commenters were evenly divided between recipients and private operators. The commenters noted that the UMT Act only protects private charter operators and that a broker, since it is not part of this class, is not entitled to protection under the regulation. They argued that including brokers would increase costs for the customer since a broker would add another layer of work and bureaucracy. They also argued that it could lead to fly-by-night operations.

Nine commenters favored including brokers. These commenters, both recipients and private operators, limited their willingness to include only those brokers that have the legal authority to actually operate charter service and brokers that contract only with "willing and able" private operators.

UMTA recognizes that to the extent that the rule is aimed at restricting charter service by recipients with UMTA funded equipment and facilities, the identity of the actual provider of service in the recipient's absence is not a concern. The only purpose of determining whether there is a willing and able private charter operator is to establish the recipient's ability to provide charter service, not to set up the recipient as a regulatory body that limits the members of the private charter industry. The customer under the rule is still free to contract with any private charter operator it wishes; the rule does not and cannot limit those choices.

Consequently, it would seem that including brokers in the definition of "willing and able" would maximize the customer's range of choices and further involve the private sector in the provision of transportation services. To exclude them could be viewed as favoring one segment of the private industry over another.

On the other hand, UMTA recognizes that a broker with no transportation equipment of its own is hardly able to provide service. Its service provision is always contingent on contracting with another entity to secure equipment. This could result in uncertainty for the customer since there would never be a guarantee that the broker could provide the equipment. This does not seem fair or in the best interest of the customer. Therefore, UMTA has decided not to include brokers within the definition of "willing and able."

Other Definitions

UMTA has added several other definitions to the final rule. First, we have added a definition of "incidental charter service." This will be discussed below in connection with § 604.9.

Second, we have added a definition of "Chief Counsel." This will be discussed below in connection with complaint procedures in § 604.15.

Third, in response to several commenters, we have clarified the role of the State, as direct grant recipient, in the Section 18 program and in some instances in the Section 9 program. UMTA refers to these programs in the final rule as "State administered programs" and has added a definition to the rule to reflect this.

*Section 604.7 Agreement.*

Section 604.7(a) of the final rule requires every applicant for UMTA funds to include a charter service agreement with the first grant application it submits to UMTA after the effective date of the rule. Section 604.7(b) provides the language that the applicant must use.

If UMTA approves the application, we will sign the agreement and return a copy of it to the applicant who has now, in terms of UMTA's program, become a recipient. Once UMTA and a recipient have entered into an agreement, the rule permits a recipient to incorporate the agreement by reference into subsequent grant applications. These requirements are the same as those proposed in the NPRM.

UMTA has added a new provision to this section for the final rule. This provision, § 604.7(f), applies only to a current recipient that does not anticipate submitting a grant application to UMTA during Federal fiscal year 1987. The rule requires these recipients to submit two copies of the charter agreement to the appropriate UMTA regional office within 60 days of the rule's effective date. Since these recipients do not anticipate becoming UMTA applicants for the foreseeable future, the NPRM did not provide a mechanism for them to enter into a charter agreement with UMTA. This new provision takes care of this problem. UMTA believes that a small number of entities will be affected by this provision since most UMTA recipients apply for new funds each year and are not one-time recipients. Therefore, we believe that this requirement will place a minimal paperwork burden.

There were two main comments on this section in the NPRM. First, commenters stated that requiring this agreement places too much of an administrative burden on the recipient. While UMTA recognizes that the requirement for an agreement does place paperwork burdens on applicants, the agreement is required by section 3(f) of the UMT Act and we must include it in the rule.

UMTA has attempted to minimize the burden by providing the language that must be used and to permit a recipient to incorporate it by reference in subsequent grant applications. Moreover, the paperwork requirements associated with this agreement procedure are considerably reduced from those in the previous regulation. Under the previous regulation a recipient had to issue notices, hold hearings and submit to UMTA detailed cost allocation plans before an agreement could be signed. UMTA estimated that the proposed agreement procedure would reduce the previous rule's burden by 75 percent. UMTA believes that this reduction justifies retaining the proposed approach and, therefore, we have not changed the requirements for an agreement from the NPRM.

The second area which commenters addressed concerns who must enter into an agreement under UMTA's State administered programs. As indicated above in the section of this preamble on "Definitions," the State administered programs are the Section 18 program for small urban and rural areas and, if the State has elected, the Section 9 program. Under these programs, the State applies for UMTA funds and passes the funds to subrecipients who in turn further pass the funds on to other public or private providers of mass transportation services.

The NPRM did not specify whether the State, as recipient, or the subrecipients must enter into a charter agreement with UMTA. Commenters, therefore, asked for clarification.

UMTA has decided that for the State administered programs that the State, as recipient, must enter into the charter agreement with UMTA. This approach is consistent with how UMTA structures other requirements for these programs. Section 604.7(a) makes this responsibility clear.

Since the subrecipient in the State administered programs will, in most cases, be the actual service provider, it is critical that these operators be familiar with the requirements of and their responsibilities under the rule. Thus, § 604.7(e) requires the State to obtain a certification of compliance from each subrecipient within 60 days of the rule's effective date. The rule provides the text for this certification. It is a one sentence statement certifying compliance with 49 CFR Part 604. The rule requires the State to retain the certification and to assure UMTA in each grant application submitted to UMTA after the effective date of this rule that the State has received a certification from each applicant.

This change will not increase paperwork burdens since the NPRM's paperwork burden which OMB has approved included an agreement for each subrecipient. Therefore, requiring a certification instead, will have no effect on the total burden.

*Section 604.9 Charter Service.*

This section of the final rule is nearly identical to the provisions in the NPRM on charter service. Subsection (a) sets forth the basic prohibition in the rule. According to this, before a recipient may provide any charter service using UMTA funded equipment or facilities, it must first determine if there are any willing and able private charter operators. To the extent that there is a private operator willing and able to provide the service that the recipient proposes to provide in its public notice, the recipient is foreclosed from providing that charter service using UMTA funded equipment or facilities. Again, if the recipient is able to set up a separate entity that provides charter service using only local funds or to keep its accounts for two divisions completely separate, this rule does not restrict that charter service.

While we have stated it before in this preamble, it bears repeating that the prohibition only applies to the extent that there is a private operator willing and able to provide the desired service. Therefore, if the recipient alone desires to provide charter service at specified times or places, it would be able to provide this charter service using UMTA funded equipment and facilities. To emphasize the point that such charter service is permissible, UMTA has added language to this effect in subsection (b). Although the text is nearly identical to that in the last sentence of subsection (a), UMTA believes that it is critical to make an affirmative expression of this position.

Section 604.9(b) also sets out the two exceptions which permit a recipient to provide charter service with UMTA funded equipment or facilities when there is a willing and able private charter operator. These are the same two exceptions that we proposed in the NPRM.

First, a recipient may provide charter service using UMTA funded equipment and facilities if the private operator under contract with the customer cannot provide enough capacity. The rule permits the recipient to provide the extra capacity to the private operator or to actually operate the service for the private operator. In either case, however, the recipient is under contract with the private charter operator and not in a direct contractual relationship with the customer.

The second exception is similar to the first. Here the recipient may enter into a contractual relationship with a private charter operator to provide equipment or to operate charter service for it if the private charter operator does not have equipment that is accessible to elderly or handicapped persons. Again, the contract would never be between the recipient and the customer, but always between the recipient and the private operator.

UMTA asked in the preamble to the NPRM whether the recipient should be able to contract directly with the customer in these two situations. Twenty-five commenters addressed this issue. Fifteen were recipients and the rest were private operators, State DOTs, and trade associations. Eighteen favored the ability to contract directly since it would result in lower costs for the customer and decrease paperwork. The majority of these commenters were recipients. Some of the commenters limited their approval by stating that the recipient would only be able to contract directly if the recipient alone had the total needed capacity or the accessible equipment.

The commenters that opposed direct contracting stated that if it were permitted, the regulation would provide the recipient with too much discretion since the recipient would be making threshold decisions as to the availability of equipment which are more properly made by private charter operators.

Several commenters raised the issue of the applicability of section 13(c) of the UMT Act in this context. This statutory provision requires the Secretary of the Department of Labor to determine, before an UMTA grant can be made, that fair and equitable arrangements are in place to protect the interests of employees affected by the grant. Commenters questioned whether the recipient, when it is under contract with a private charter operator, must operate within the terms of its labor contract and whether the private charter operator would be bound by the recipient's labor contract, work rules and 13(c) agreement.

UMTA does not believe that section 13(c) raises any problems in this area. First, section 13(c) does not prohibit contracting by a recipient to another entity for the use of UMTA funded equipment and services. If a given 13(c) agreement does contain such provisions, it is because the recipient and the labor unions have agreed to them. Second, the terms that would govern the contract between a recipient and a private operator would be agreed on by those two parties. If the recipient's 13(c)

agreement requires that certain provisions relating to the the use of the recipient's drivers for contracted service be included in such contracts, the private charter operator may have to accept such terms in order to secure the use of the equipment. These matters are the concern of the local parties and not UMTA.

After a thorough review of this issue, UMTA has decided not to revise the NPRM to permit direct contracting under either the second or third exception. While direct contracting may reduce paperwork for the private operator, it certainly would not affect the customer's paperwork burden since direct contracting could result in multiple contracts to secure the required capacity. Moreover, it is consistent with our policy that recipients should participate in charter service only to the extent that there is no willing and able private operator.

Under either of these two exceptions, it is important to note that the private charter operator is not required to attempt to secure the additional or accessible equipment from other private charter operators before contacting the recipient. Thus, the private charter operator may automatically contact and contract with the recipient when it is requested to provide capacity beyond its fleet size or accessible equipment.

This approach is different from the NPRM where we proposed to require that the private charter operator exhaust the other willing and able private charter operators of capacity or accessible equipment before it could contact and contract with the recipient for the equipment. This approach made sense in the NPRM where we proposed to require that the recipient create a roster of all willing and able private charter operators.

In the final rule, UMTA has, as will be discussed below, removed the requirement that the recipient review the evidence submitted by all potential willing and able private operators, in favor of permitting the recipient to cease this review once it has determined that there is one or more willing and able private charter operator for all the charter service it desires to provide. Thus, there will not be a roster for the private charter operator to use and contacting other private charter operators first would be a random search. UMTA admits that we cannot police these searches by private charter operators. Since they do not receive any UMTA assistance, we have no jurisdiction to regulate their activities.

For example, suppose XYZ, a private charter company, is requested to provide 15 buses for a charter trip. XYZ has only 8 buses available for this service. XYZ would be able to contract for some or all of the additional 7 buses from the UMTA recipient even if there were a private charter operator that could provide the extra equipment.

In these situations, the regulation does not require that the recipient contract with the private operator. The recipient may refuse to provide any equipment or services to the private charter operators. Many commenters to the NPRM were concerned that the rule would require the recipient to provide the extra or accessible vehicles to the private charter operator. This was not the intention of the NPRM or this final rule.

In the situations where either of these exceptions apply, there is no requirement that the recipient contract only with a willing and able private charter operator. The rule permits the recipient to fill the needs of all private operators, not just those that it has determined are willing and able.

In the preamble to the NPRM, UMTA asked whether there should be any other exceptions added in the final rule. A total of 60 commenters responded to this question. The majority of these commenters were consumers many of whom sent in form comments. The rest of the commenters were almost equally divided between recipients and private charter operators.

Nine commenters opposed any additional exceptions. The remaining 51 suggested a variety of exceptions. The majority supported an exception for intracity charter service and charter service of a limited duration.

UMTA has not included a separate exception for geographic location because the rule as proposed and as adopted in final form in essence provides an exception in the definition of "willing and able." As stated above, a recipient may describe its proposed charter service by many characteristics including geographic location. To the extent that there is no private charter operator willing and able to provide the described service, the recipient may provide it. Thus, the rule already provides for this.

As stated earlier, however, UMTA has not provided an exception for duration. Problems related to longer minima than needed or desired by customers are imposed by State and local rules and should be addressed at these levels, not in a Federal regulation.

Commenters suggested other exceptions including; 1) if the customer is a non-profit organization; 2) if the cost difference between the recipient and the private charter operator is of a certain magnitude; 3) if the recipient decides that the charter service it provides is superior to that provided by any private charter operator; and 4) if the event is of over-riding importance to the public.

UMTA believes that each of these suggestions has some merit. The second, third and fourth suggestions, however, place the recipient in a position of making a subjective decision which affects the private charter operator's ability to provide charter service. UMTA is opposed to creating such subjective tests and, to the extent possible, the exceptions should provide easy objective tests to let both the recipient and the private charter operators know when the recipient may provide charter service. Moreover, including subjective tests would result in many complaints filed with UMTA and increase the burdens on us. This would not be consistent with our goal of making the rule easier to enforce.

An exception for non-profit customers seems to be based on two assumptions. First, non-profit customers cannot pay as much as other customers. Second, recipients charge less for charter service than private charter operators. While UMTA does not offer an opinion on the veracity of the first assumption, we do not believe that the second holds up to scrutiny. UMTA does not believe that private charter operators will act to gouge the public by charging exorbitant rates. As stated repeatedly in this preamble, it is UMTA's opinion that private charter operators behave like any other business entity to maximize profits and to provide competitive service. Accordingly, UMTA believes that private charter operators will respond as sound businessmen which may at times require tailoring prices to meet the buyer's limitations. There appears, therefore, little reason to include any exceptions for the nonprofit customer.

UMTA has, however, decided to include an additional exception in this final rule for recipients in non-urbanized areas, i.e. areas with populations of less than 50,000 people. Generally, recipients in these areas receive funds under UMTA's Section 18 program. They may also in some circumstances receive funds under Section 3 or even Sections 5 or 9. Since UMTA intends this exception to apply to all recipients in non-urbanized areas regardless of the UMTA funding source, we state that it applies to recipients in non-urbanized areas, rather than to Section 18 recipients.

Under this provision, a recipient in a non-urbanized area may petition UMTA for an exception to the rule to permit it to provide charter service directly to customers even though there is at least one willing and able private charter

operator. To qualify for an exception, however, the recipient would have to show that the charter service provided by the willing and able private charter operator or operators would create a hardship for the customer.

The rule limits the factors that would result in a hardship to two. First, as mentioned above, some State regulatory bodies impose minimum durations on private charter operators that are longer than the customer desires. If the willing and able private charter operators are required to provide charter minimum durations which the recipient believes work a hardship on the customer, the recipient may seek an exception which would permit it to provide charter service, but only for trips of up to the State imposed minimum. If the minimum durations are the result of an industry practice, there would not be any basis for granting an exception.

Second, in non-urbanized areas it is possible that the willing and able private charter operators are located a considerable distance from the non-urbanized area and the origin of the charter service. This would affect the charter service since it would take longer for the equipment to be delivered to the origin of the service than it would take for the recipient to deliver it and could affect the price and other factors of the service. Since the recipient is usually located closer to the origin of the charter trip, there is less impact on the service due to distance. Therefore, if the recipient believes that the private charter operators' distance from the origin of charter service would result in a hardship on the customer, it may petition UMTA for an exception.

The process for seeking an exception under either of these hardships is the same. The recipient, after determining that there is at least one willing and able private charter operator, must provide an explanation to each willing and able charter operator why an exception should be granted by UMTA. The notice must inform the willing and able private charter operators that they have at least 30 days to provide written comments on the proposed exception request to the recipient.

After the comment period closes, the recipient, if it still desires to seek an exception, must send to the UMTA Chief Counsel a copy of the notice it sent to the willing and able private charter operators, a copy of all comments received, and any additional material it wishes in support of its request. The Chief Counsel will review the materials and issue a written decision. In the decision, the Chief Counsel may deny the request or grant it in whole or in part.

The rule states that any exception will only be in effect for at most 12 months from the date the Chief Counsel grants it. Thus, the exception may be in effect for less than an entire year. This will necessitate the recipient's repeating the exception request process once the approval lapses if the recipient still believes that an exception is warranted.

Since an exception could be in effect for up to 12 months, UMTA does not envision that recipients in non-urbanized areas will seek an exception on a trip-by-trip basis. While this is a possibility, the administrative process that we have provided in the rule will probably not be responsive to such requests. Rather, the exception will provide a recipient with the ability to provide charter service directly to customers with UMTA funded equipment for several months at a time.

UMTA has added this exception because we are concerned that in rural areas charter service will not be as readily available as in urbanized areas. This could adversely affect the customer and in extreme cases force it to forgo service since minimum durations which State regulations require a willing and able private charter operator to impose are too long or willing and able private charter operators are located too far to make the service viable.

UMTA has added another exception to the final rule. Under this provision, any recipient may petition the Administrator for an exception to provide charter service even if there are willing and able private charter operators but only for special events to the extent private charter operators are not capable of providing the charter service. The rule does not define "special events," but UMTA intends that it include only events of an extraordinary, special and singular nature such as the Pan American Games and the visits of foreign dignitaries.

The process that a recipient must follow to obtain an exception is set forth in § 604.9(d). The recipient must submit its petition for an exception to the Administrator at least 90 days before the event for which it desires to provide charter service. The petition must describe the event, explain how it is special and explain why private charter operators are not capable of providing the service. The Administrator shall review the materials submitted and deny or grant, in whole or in part, the request. The exception shall be valid only for the event and not apply to any other charter service.

The central issue in this exception is the determination of the extent to which private charter operators are capable of providing the charter service for the special event. UMTA has chosen not to define "capable" to provide for the maximum degree of flexibility. Nevertheless, it is UMTA's position that private charter operators would not be capable of providing charter service if, for example, their fleets, even when pooled together, would not equal or even approximate the level of service required by the event.

UMTA has added this exception to cover the potential situation where a city is hosting an event of national or international importance and private charter operators simply will not be capable of delivering the service needed.

In the final rule, however, UMTA has added a requirement that any charter service provided under any of the exceptions be incidental charter service. The previous regulation required that all charter bus service provided with UMTA funded equipment or facilities be incidental to the provision of mass transportation. The rule specified that any weekday charter service that was provided during peak periods, required the use of a bus for more than 6 hours in one day, or went 50 miles beyond the recipient's urban area was presumed to be not incidental. These presumptions were rebuttable.

The NPRM did not propose to impose any restrictions on the charter service provided with UMTA funded equipment or facilities if there were no willing and able private operators. UMTA did, however, state that we expected that the revenues for any charter service would cover the costs of the service. We asked in the preamble whether there should be some specific restrictions on such charter service.

Twenty-three commenters addressed this issue. The majority were recipients, but private charter operators, trade associations, and State DOTs also offered comments on this issue. Sixteen commenters favored the imposition of some restriction. The majority of these suggested including the previous incidental use presumptions as written or revising them to make them conclusive. Others suggested requiring that the service not interfere with the provision of mass transportation or that the revenues cover the costs.

Seven commenters stated that UMTA should not further restrict a recipient's charter service. These commenters argued that when there is no willing and able private charter operator, there is no reason to impose further restrictions on the recipient.

In the final rule, UMTA has included the requirement that any charter service which a recipient is permitted to provide

under any of the exceptions must be "incidental charter service." This requirement is found in § 604.9(g). We believe that this requirement is legally required in order to comply with the Comptroller General's Opinion of December 7, 1966 (B–160204). In this opinion, the Comptroller General stated that charter service by recipients with UMTA funded equipment and facilities is permissible but only if it is incidental to the provision of mass transportation.

There are many ways in which UMTA could define "incidental charter service." We have specifically declined to use the previous incidental use presumptions. These presumptions were ineffective and they had little if any real impact on a recipient's charter service. Due to the fact that they were rebuttable and because of the 46 per cent nation-wide spare ratio, which will be discussed in more detail below, a recipient was usually able to rebut them and they served as an ineffective protection for UMTA's equipment.

While UMTA could have made those presumptions conclusive, we feel that this would be too restrictive and could intrude in the provision of a customer's needed charter service. Therefore, UMTA has chosen to define "incidental charter service" as, charter service which does not: (1) interfere with or detract from the provision of the mass transportation service for which the equipment or facilities were funded under the Acts; or (2) shorten the mass transportation life of the equipment or facilities.

UMTA favors this broad definition in order to provide our recipients with as much flexibility as possible. The language is very close to that used by the Comptroller General in his 1966 opinion and, thus, reflects concepts and ideas that UMTA, recipients, and the private charter industry have been familiar with and worked with for 20 years.

In order to provide some guidance as to the specifics that this definition includes, UMTA offers the following examples of what characteristics the charter service should have to ensure that it is consistent with the definition. First, the revenues from each charter trip should equal or exceed the fully allocated costs of providing the service. Charter service provided at costs below the full recovery level is possible only because of the UMTA subsidy and has a negative, detracting effect on the mass transportation use of the equipment.

Second, the provision of the service should be consistent with UMTA's policies on useful life and spare ratios. UMTA's policy on useful life in UMTA Circular 9030.1, "Section 9 Formula Grant Application Instructions," states that a transit bus, for example, has a mass transit useful life of 12 years. UMTA will not permit a recipient to count charter service toward meeting this 12 year mark. As a result, UMTA will, absent extenuating circumstances, only permit a bus to be replaced after the bus is used in 12 mass transportation years, not just 12 calendar years. This same policy, with necessary adjustments based on the type of vehicle, applies to all vehicles that UMTA funds and are used in charter service.

This same Circular states that a recipient's spare ratio should not exceed 20 percent. While UMTA admits that the national average spare ratio is 46 percent, a recipient should not, consistent with the requirement of incidental charter service, use buses in excess of the 20 percent figure to provide charter service. To do so takes unfair advantage of a fleet size that is in excess of needs.

Third, a recipient should not provide any charter service during peak hours. Peak hours vary from recipient to recipient and may even vary from season to season within one recipient's system. In general, peak hours run from 6 a.m. to 9 a.m. and from 4 p.m. to 7 p.m., but may vary from recipient to recipient. Since UMTA funds revenue vehicles to meet peak hour needs, other uses of equipment during these times would interfere with the meeting of these needs. Thus, any charter service during these times would not be incidental.

It is important to note that these three characteristics are examples only and do not exhaust the explanation of charter practices which interfere or detract from the provision of mass transportation. In a complaint, UMTA would review the facts and make a case-by-case determination.

*Section 604.11 Procedures for Determining if There Are Any Private Willing and Able Charter Operators.*

In the NPRM, UMTA proposed that before a recipient could provide any charter service it would have to determine whether there were any private charter operators willing and able to provide the charter service it proposed to provide. The process that UMTA proposed would have included notice in a newspaper, actual notice to specified parties and a public hearing at which the potential willing and able private charter operators would have presented evidence to substantiate their claims to be willing and able.

The main comment that commenters offered concerning this procedure was that it would impose too large a paperwork burden on recipients. Twenty commenters, half of whom were recipients, made this argument and stated that the burden would be so great that it would cost more to comply than they would make from any resulting charter service. Thus, these commenters argued that there would be little, if any, incentive to go through the hearing process.

Other commenters stated that this approach would be contrary to this Administration's goal of reducing regulatory burdens. The commenters did not provide any data to explain the amount of the increased burden that they would experience under the NPRM.

In the preamble to the NPRM, UMTA argued that the proposal would not increase paperwork burdens on recipients. We calculated that the previous rule imposed approximately 4,000 burden hours per year on recipients as a whole. This burden was mainly consumed in the preparation of the cost allocation plan.

We calculated that the NPRM would only impose 1,190 hours the first year it would be effective and only 1,073 in subsequent years. These would have been the total burden on all recipients, not on each recipient. Thus, we proposed a rule that would decrease burden hours by approximately 75 per cent.

UMTA has not altered the requirements in this final rule to increase these figures. The final rule, therefore, will impose substantially reduced burdens on recipients from the previous rule and the comments of increased burdens appear to be without basis.

UMTA has decreased the administrative burden on recipients in the public participation process by eliminating the hearing requirement. The only purpose of the hearing was to provide the private charter operators with a forum at which they could present evidence that they are willing and able. Since the process UMTA proposed was not premised on any need for face-to-face contact between the recipient and the prospective willing and able private charter operators, a hearing does not appear to be necessary.

Therefore, in the final rule, UMTA requires only that a recipient publish a notice requesting private operators to submit written evidence to it to prove that they are willing and able. The process requires a recipient that desires to provide charter service using UMTA funded equipment or facilities after the effective date of the rule to publish a notice in a newspaper of general

circulation in the geographic area in which it desires to provide charter service. If the geographic area is large enough, the notice may have to be published in more than one newspaper in order to cover the entire area. The notice will describe the recipient's proposed charter service and request private operators to respond with evidence to prove that they are willing and able to provide the proposed charter service.

UMTA specifies when the notice must be published. First, if a recipient never desires to provide charter service, it would never have to publish a notice. Second, if a recipient does not want to provide any charter service immediately after the effective date of the final rule, it would not need to publish a notice until at least 60 days before it will provide charter service in the future. This will require some advance planning on the recipient's part and will not permit a recipient to provide charter service soon after it receives a request.

Third, if a recipient is providing charter service with UMTA funded equipment or facilities on the effective date of this rule and desires to continue to provide it, the recipient must publish its notice not more than 90 days after the effective date of the rule. During this period, the previous rule will remain in effect and govern any charter bus service (the previous rule does not regulate charter service provided by other modes of vehicles) that the recipient may provide.

The parties to which the notice must be sent and the content of the information that must be included in the notice are identical to what UMTA proposed in the NPRM. Thus, a recipient must send a copy of the notice to any private charter operator that requests a copy and to the two major trade associations to which private charter bus operators belong: the American Bus Association and the United Bus Owners of America. UMTA believes that actual notice to these two trade associations is important to ensure that there is as wide a distribution of the recipient's proposal as possible in order to get as large a response as possible.

The changes in the information that a recipient is required to include in the notice are few and result from eliminating a hearing. For example, the rule states that the recipient must inform the potential willing and able private charter operators that they must submit their evidence within at least 30 days of the date the notice appears. Recipients may provide private operators with more than 30 days, but there must be at least 30 days. Recipients may require that the evidence must be received in hand by the deadline or that it be postmarked by that date. The rule is silent as to this and leaves it to the recipient's discretion.

In the NPRM, UMTA proposed that a hearing be held once each year by recipients that desire to continue to provide charter service. This annual hearing would have to have been held during the month in which the recipient held its first hearing. We asked in the preamble whether a hearing should be held on a different basis.

Twenty-eight commenters addressed this issue. The commenters were almost equally divided between recipients, private operators, and State DOTs. Eight recipients opposed the holding of an annual hearing since it would be too burdensome. Thirteen commenters felt that an annual hearing would be appropriate. These commenters were mostly private operators. Two private operators suggested that the hearing be held twice each year. Two recipients suggested that a hearing be held every two years.

While UMTA has determined that a hearing is not needed, we have determined that an annual public participation process is appropriate. While requiring such a process more frequently would permit the recipient's determinations to account for new entrants into the private charter market, it would place an increased burden on the recipient. The utility of this is questionable since the rule restricts a recipient's charter service equally regardless of the number of willing and able private operators that occupy the universe of charter service that the recipient desires to provide. This, in fact, provides reasons to require a recipient to repeat the public participation process only every two or more years. Nonetheless, UMTA believes that once each year is the fairest approach for the recipient, by minimizing its paperwork burden, and for the private operators by giving them an opportunity annually to stake their claim in the local charter service arena.

One change that UMTA has made in this procedural section is to account explicitly for the way the process will work for the State administered programs and for any recipient that passes through UMTA assistance to other entities under any UMTA grant program. In Section 604.11(e), UMTA has given the recipient, including the State in State administered programs, the choice to decide how it will comply in the situations where subrecipients desire to provide charter service using UMTA funded equipment and facilities.

The recipient may elect to follow the procedure itself, or delegate it to some or all of the subrecipients. This permits the recipient to account for the varying administrative capabilities of the subrecipients and pass on the procedural requirements only to those subrecipients that are capable of complying.

For example, in the State administered programs, if the State does choose to conduct the process itself for all or some of the subrecipients, it can comply in various ways. The rule does not spell these out, but provides the State with the flexibility to tailor its procedures as it feels works best. Thus, the State could publish one newspaper notice to cover all of the subrecipients. This would require publishing the notice in several newspapers to ensure State-wide coverage. The information from all potential willing and able private charter operators would go to the State who would make the determinations to the extent to which the private operator is willing and able.

The State may also publish a notice for each subrecipient and tailor the publication to cover only the geographical area in which the particular subrecipient desires to provide charter service. The rule also permits the State to strike a middle ground and to publish regional notices to cover several subrecipients with one notice. UMTA believes that flexibility is the best policy to follow in this issue and permits the State to decide. There is nothing that requires the State to make its election once and to be bound by it forever. The State could follow a different scheme each year. The end result, however, is that notice must be given for each subrecipient, collectively or singly, that desires to provide charter service using UMTA funded equipment and facilities.

The rule provides this same degree of flexibility to recipients in any grant program that have subrecipients that desire to provide charter service with UMTA funded equipment or facilities. The decision who will conduct the public participation is up to the recipient. The only requirement imposed by this rule is that the process be completed before the charter service is provided.

*Section 604.13 Reviewing Evidence Submitted by Private Charter Operators.*

This section provides the procedures that a recipient must follow when it reviews evidence submitted by prospective willing and able private charter operators. The procedures in this final rule are nearly identical to those in

the NPRM. The changes will be discussed below.

As in the NPRM, the recipient must review the evidence submitted within 30 days of the deadline that the recipient has established for the private charter operators to submit their evidence to the recipient. UMTA believes it is necessary to place a time limit on recipients for this task to ensure that the decisions will be made in a timely manner. Similarly, as in the NPRM, the recipient must inform all the private operators that submitted evidence of the decisions that it has made within 60 days of the deadline.

In the NPRM, UMTA proposed not to provide recipients with any discretion in reviewing the evidence submitted by a private charter operator. This would have affected the recipient's action in two ways. First, the recipient would not have been able to conclude that a private charter operator that met the definition of willing and able was not willing and able. UMTA has decided not to alter this for the final rule. As a result, if a private charter operator satisfies the definitional requirements of desire, ability to obtain the vehicles, and legal authority, the private charter operator is automatically willing and able. UMTA believes that this approach is necessary in order to make the rule as objective as possible and to minimize subjective decisions.

Second, in the NPRM UMTA did not provide discretion since we did not propose to provide any mechanism for the recipient to challenge the evidence that a private operator presented. We asked in the preamble whether the recipient should be able to look behind the evidence in all cases or at least when the recipient has reason to believe that the documents have been falsified.

Twenty commenters addressed this issue. Half were private charter operators and the rest were recipients, State DOTs, and trade associations. Thirteen commenters, including all 10 private charter operators, favored the proposal of no discretion. Six commenters favored some degree of discretion to enable the recipient to look behind the evidence.

In the final rule, UMTA has added subsection (e) to permit a recipient to look behind the evidence, but only in the situation where the recipient has "reasonable cause to believe that some or all of the evidence has been falsified." UMTA believes that this is necessary to enable the recipient to make as valid a determination of the private operator's status as possible. While UMTA believes that recipients should not provide charter service to the extent that there are willing and able private charter operators, we have no intention of permitting an unscrupulous private operator from affecting the services that a recipient may provide to the ultimate detriment of the customer.

UMTA, however, has limited the recipient's discretion only to those situations when it has a "reasonable cause" to believe that the evidence is falsified. This language has been added to prevent the recipient from looking behind the evidence submitted by every private operator as a matter or course. Such tactics are not in the spirit of this regulation. To ensure that this provision is not abused, UMTA will entertain complaints from a private operator that the recipient does not have "reasonable cause" if the private charter operator believes that the recipient is unfairly scrutinizing the evidence it has submitted.

UMTA has also added a new subsection (f) to this section. This new provision permits a recipient to cease reviewing the evidence submitted by private charter operators once the recipient has determined that there is one or more private charter operators willing and able to provide all of the charter service that the recipient has stated in its notice that it desires to provide. At that point in a recipient's review process there is no reason to continue to determine if additional private charter operators are willing and able since the recipient already will be prevented from providing any charter service with UMTA funded equipment or facilities. Thus, further review would not serve any function under the regulation.

If a recipient does elect to suspend its review at this point, the information that it will provide under § 604.13(b) will not be specific to each private operator that has submitted evidence.

Rather, it could be a notice of the one private operator that is willing and able to provide all of the charter service that the recipient proposed to provide. Similarly, under § 604.13(d), a recipient would not have to find each private charter operator that meets the test "willing and able" since it would not be reviewing the evidence each submits. While this does not give the recipient any discretion, it recognizes that suspending the review of evidence makes some of the other provisions inoperative.

The rule, however, does permit a recipient to continue to review evidence at that point in its review process to determine whether each of the private charter operators that submitted evidence is willing and able. This was the approach that UMTA proposed in the NPRM. If a recipient were to follow this process, it would create a roster of all the willing and able private charter operators. Such a list could be beneficial since a customer could refer to this list when contacting potential providers of service.

Since UMTA believes that such rosters do provide valuable information, the final rule does not preclude a recipient from creating one. It is important to note, however, that this information is not necessary under the rule since the intention of the rule is not to create a list of willing and able private charter operators. Rather, the rule aims only at determining if there is a private charter operator willing and able to provide the charter service that the recipient desires to provide. If such an entity exists, the recipient is not able to provide the service. The fact that there may be 1 or 100 such private operators is irrelevant and to require a recipient to review evidence once it has determined that it cannot provide any charter service using UMTA funded equipment or facilities would impose an unnecessary burden on recipients. Therefore, UMTA has given recipients the discretion to cease its review of the evidence once it has been foreclosed from providing its proposed service.

UMTA has also added a new subsection (g) to this section to parallel the procedure in § 604.11(e) which permits a recipient, including the States in State administered programs, to follow the public participation process for all, some, or none or its subrecipients. A corresponding change has been added here to make the party that conducts the process under § 604.11 responsible for reviewing the evidence and making the determinations whether a private charter operator is willing and able.

*Section 604.15 Filing a Complaint.*

This section sets forth the procedures that a complainant must follow in filing a complaint with UMTA. In the NPRM, UMTA proposed a complaint procedure much like the process in the previous rule, but with a few changes. First, UMTA proposed that all complaints would be investigated by UMTA's Regional Offices with Headquarters review and concurrence. Second, UMTA proposed that the first step in complaint resolution would have been local conciliation by the parties without UMTA involvement. Third, the NPRM would have imposed strict deadlines on all parties in the complaint including UMTA. Under the NPRM, a complaint generally would have been resolved approximately 80 days after filing.

Eleven commenters commented on the proposed complaint process. The commenters were distributed almost evenly between recipients, private operators and State DOTs. Three commenters supported mandatory local resolution as the first step in the complaint process and other commenters supported reducing the overall 80-day timeframe to 60 days. In general, the comments were brief and requested that UMTA make the process simple.

Consistent with these comments, UMTA has made the complaint process simple and retained the proposed process with minor alterations. First, UMTA has decided that all complaints will be investigated by UMTA's Headquarters Office, not in the Regional Offices as proposed. This is merely an internal change within UMTA and will not affect the parties or decisions in any way. The main reason that UMTA has decided to make this change is to expedite the complaint process.

The final rule reflects this decision by stating that the person to whom all complaints must be sent is the UMTA Chief Counsel. The Chief Counsel will function in the same capacity as the Regional Administrator in the NPRM. Therefore, the Chief Counsel will receive complaints, review them to ensure that the actions complained of constitute a complaint, order the parties to attempt to resolve the complaint locally, send copies of the documents to the parties for response if local conciliation is unsuccessful, and prepare and sign the decision.

The second alteration that UMTA has made to the proposed process is to increase the timeframes. Under the NPRM, UMTA proposed that local conciliation last for 20 days, that the respondent have 20 days to respond to the complaint, that the complainant have 15 days to rebut the response and that UMTA prepare a draft decision within 15 days.

In the final rule these timeframes are uniformly set at 30 days. While this will make complaint resolution longer, UMTA believes that it may in fact expedite the process. With short deadlines, there is the great possibility that the parties would request extensions of time. The NPRM would have permitted UMTA to grant such extensions for administrative convenience. UMTA fears with short timeframes that there would be routine requests for extensions and that without them, the quality of the evidence submitted would not be enlightening. Therefore, in order to create a better and more realistic process, we have extended the process to 120 days. To provide for unanticipated problems, UMTA may extend deadlines for administrative convenience.

As under the NPRM, UMTA will reserve for itself the ability to request additional information from the parties. This ability is necessary since UMTA may discover that more information is needed before a decision can be made. UMTA, as part of this process, may schedule an informal hearing. The final rule also permits the complainant or respondent to request a hearing. The decision to hold such a hearing is, as under the NPRM, within UMTA's discretion.

*Section 604.17 Remedies.*

This section of the final rule sets forth the remedies, or penalties, that UMTA may impose on a recipient if we find that there has been a violation of the regulation. This section is identical to the proposed remedies in the NPRM and permits UMTA to: (a) order such remedies as are appropriate; and (b) to bar the recipient from the future receipt of UMTA capital assistance for facilities and equipment if there has been a continuing pattern of violations of the regulation.

In the NPRM, UMTA asked whether the final rule should specify the penalties for violations of the regulation. For example, we stated that a 10% reduction in UMTA funds could be imposed for each violation of the rule.

Twenty-three commenters responded to this question. These commenters included private operators, recipients and a variety of State DOTs and trade associations. Seven of the commenters, including several of the recipients, supported specifying penalties. An almost equal number of recipients favored not stating penalties in the rule to provide flexibility for UMTA.

Many commenters stated that if UMTA does specify penalties that they should not be too severe or UMTA would never impose them. Others did not understand what the penalties would be. Still others stated that there is too much variation now in the penalties that UMTA imposes, but these commenters did not support specifying penalties.

In this final rule, UMTA has decided not to specify any penalties. We agree with several of the commenters that this approach provides UMTA with the flexibility needed to fashion a remedy that fits the situation. While this may permit the possibility of arbitrary penalties and remedies, UMTA's close reliance on and following of precedents should prevent this.

UMTA did not propose to define "continuing pattern" in the NPRM, but asked in the preamble whether the final rule should define this term. The UMT Act does not require that UMTA bar a recipient when a continuing pattern of violations has been found. The decision to do so is discretionary. Eight commenters addressed this question. Five of these, mainly State DOTs and MPOs, supported including a definition. The other commenters opposed defining this term.

UMTA believes that there are several reasons to support defining "continuing pattern." These include consistency, objectivity, and providing recipients with a fair warning of the consequences that may result from non-compliance. On the other hand, defining "continuing pattern," like specifying penalties, takes away UMTA's discretion to impose the penalty that is deemed appropriate. UMTA believes that such discretion is a powerful tool in complaint resolution and relinquishing it for the sake of consistency is not appropriate.

*Section 604.19 Appeals.*

The NPRM proposed a specific appeals process. The losing party would have been able to appeal the Regional Office decision to the UMTA Administrator within 10 days of the date of the decision. The Administrator would have been able to entertain the appeal only if the Administrator determined that the appellant presented evidence that there were new matters of fact or points of law that were not available or not known during the investigation of the complaint. If the Administrator accepted the appeal, the Administrator would have provided the appellee with 10 days to respond and then issue the decision on the appeal.

UMTA has decided to revise this process slightly. The first change provides the appellant with 10 days to rebut the appellee's response to the appeal. UMTA believes that this change is necessary to provide due process to both parties and to make the appeals process consistent with the rest of the complaint process.

The second change alters the timetable for the Administrator to issue the decision on appeal. As proposed, the Administrator would have been required to issue the decision on appeal within 15 days of the appellee's response. In the final rule UMTA has changed this to 10 days from the receipt of the appellant's rebuttal and makes this language precatory, not mandatory. UMTA believes that while it is important to issue decisions expeditiously, rigid timeframes may result in poorly thought out decisions and exalting expediency over substance. UMTA intends to hold

firmly to this deadline and to strive in each case to meet the 10 day limit.

Third, we have made the timing of the appeals process identical with the rest of the complaint process. Thus, we have set the time limit for responses and rebuttals from the date the party receives the document, not from when UMTA sends the appeal or the response.

In the NPRM, UMTA asked whether the losing party should be able to appeal UMTA's decision without a need to show new matters of fact or law. Seventeen commenters addressed this issue. The commenters were fairly evenly divided between recipients, private operators, State DOTs, and trade associations. Eight commenters favored not providing such an intermediate appeal. These comments came from mainly private operators and recipients who stated that they feared that such an appeal possibility would slow down the complaint process. If such an appeal would expedite complaints, these commenters said that they would favor including it.

Six commenters favored including an intermediate appeal. Half of these commenters were private operators who argued that a two-step process would be fairer.

UMTA has decided not to provide an intermediate appeal in the final rule. While a second look at a decision may be of some benefit, UMTA believes that this sort of an appeal would merely increase the complaint workload since it would permit the reexamination of every decision just because the losing party does not like the result.

UMTA also asked in the preamble to the NPRM whether the final rule should include an advisory committee as part of the complaint process. The advisory committee, as envisioned in the preamble, would have included representatives of both recipients and private operators who would have reviewed the submissions of the parties and offered advice to the UMTA decisionmaker. UMTA stated that such a committee could be helpful if there were an intermediate appeals process as discussed above.

Sixteen commenters addressed this question. Of these, six were private operators, four were recipients, and three were trade associations. Ten commenters opposed such a committee and argued that it would: slow down the complaint process; be cumbersome; the representatives would not be objective; and it is UMTA's proper role to make all decisions.

Five commenters favored including such a committee. Three of these commenters were private operators who argued that this committee would be especially helpful if there were an intermediate appeals process.

UMTA has decided not to include an advisory committee in the final rule for a variety of reasons. We agree with those commenters who stated that it would be cumbersome, too subjective, and slow down the complaint process. Furthermore, this Administration is trying to eliminate advisory committees and to create one with such limited value would be contrary to this goal.

*Section 604.21 Judicial Review*

This section of the final rule provides that the Chief Counsel's decision or the Administrator's decision on appeal is a final agency action subject to judicial review under the Administrative Procedure Act. This section, on which no comments were received, remains unchanged from the NPRM.

**Legal Basis for the Rule**

In the preamble to the NPRM, UMTA provided an explanation of the legal basis for the proposed changes to the charter rule. We recognized that it is particularly important when changing an existing regulation to do so only when there is a legal basis to support the changes. UMTA has not altered the NPRM significantly and it is our opinion that the legal arguments made in the NPRM's preamble are sufficient to support this final rule.

The final rule is based on two provisions in the UMT Act, sections 3(f) and 12(c)(6). Section 12(c)(6) defines "mass transportation" to specifically *exclude* charter service. Thus, this provision provides an absolute prohibition on the provision of charter service with UMTA assistance.

The Comptroller General, however, has interpreted this provision to permit a recipient to provide charter service with UMTA funded equipment and facilities as long as the charter service is incidental to the provision of the mass transportation service for which the equipment or facilities were purchased. Thus, recipients are provided with a very narrow exception. The ability to provide such incidental charter service, however, is not an absolute right and is limited by UMTA's discretion. UMTA exercises this discretion in the way we define incidental use.

The other provision that the rule is based on is section 3(f). This was added 10 years after section 12(c)(6). This provision requires the Secretary of Transportation to enter into an agreement with each applicant to UMTA for the purchase or operation of buses. The agreement must provide fair and equitable provisions to protect private intercity charter bus operators from being foreclosed from providing this service by UMTA recipients.

In the previous rule, UMTA implemented these two statutory provisions in two distinct requirements. The rule implemented section 12(c)(6) with the incidental use presumptions. These stipulated that certain charter service, by the nature of its length or time or day, was not incidental to the provision of mass transportation. The rule permitted a recipient to rebut the presumptions in a complaint situation.

The rest of the rule implemented section 3(f). The rule set forth the procedures that a recipient had to follow if it desired to provide intercity charter service and specified the fair and equitable arrangements that the recipient had to agree to if it wanted to provide any intercity charter service. Basically, the recipient has to agree that the annual revenues from all charter service would cover its annual charter costs and that it would charge no predatory cost for any charter service.

This final rule does not separate the rule into two parts with one implementing section 12(c)(6) and the other implementing section 3(f). The two are merged into one. This one approach states that charter service will be incidental if an UMTA recipient is prohibited from the provision of any charter service to the extent that there is a willing and able private charter operator. This approach gives the private charter industry the right of first refusal in all charter service, including intercity charter bus service.

It must be noted that the NPRM would not have imposed any restrictions on the charter service a recipient would have been able to provide if one of the exceptions applied. As indicated above, UMTA does not believe that this lack of restriction is permitted under section 12(c)(6) and the Comptroller General's Opinion. Thus, the final rule must contain some restrictions for this service to ensure that it, too, is incidental. UMTA has added a definition of "incidental charter service" that applies to the extent that a recipient provides charter service under any of the exceptions.

It is also UMTA's belief that section 12(c)(6) provides UMTA with the discretion to impose restrictions in addition to those in section 3(f) if we determine that restrictions are necessary. As described throughout this preamble and particularly in the section summarizing the Regulatory Analysis, UMTA is keenly aware of many problems in the private charter industry that go beyond problems in just the private intercity charter bus industry.

We firmly believe that section 12(c)(6) enables us to address these problems and to correct them to the extent we are able.

Several commenters addressed the legal basis for the rule in their comments. The comments from recipients and the trade associations that represent them argued that the NPRM went beyond UMTA's statutory authority. The comments from private charter operators and their trade associations argued that the UMT Act does provide UMTA with the legal authority to impose the proposed requirements.

The commenters questioning UMTA's legal authority for the NPRM began by stating that the language in section 12(c)(6) and the Comptroller General's Opinion clearly establish the principle that incidental charter use is permitted and that section 12(c)(6) can not be used as a basis to preclude all charter service by a recipient using UMTA funded equipment and facilities.

UMTA does not disagree. There is nothing in this final rule which precludes the provision of incidental charter service with UMTA funded equipment and facilities. The rule simply makes a new and tighter interpretation of incidental service. If there is a willing and able private charter operator, the charter service by a recipient using UMTA funded equipment and facilities would not be incidental. To the extent that there are no willing and able private charter operators and to the extent that a recipient provides any charter service under one of the other three exceptions, the rule requires, in essence, that the service not detract from the provision of mass transportation. Thus, the rule provides a two tier implementation of the concept of "incidental" and permits all charter service with UMTA funded equipment and facilities that is incidental. The final rule, therefore, is consistent with the Comptroller General's interpretation of section 12(c)(6) and permits the provision of incidental charter service with UMTA funded equipment and facilities.

The commenters also stated that section 3(f) only applies to intercity charter bus service and not to all charter bus service. The commenters argued that the additional proposed restrictions on intracity charter bus service are not permissible under section 3(f).

UMTA agrees with this argument. Section 3(f) clearly applies only to provide protections to the intercity charter bus industry. UMTA cannot use this language to impose restrictions on recipients to protect private intracity charter bus operators or private charter operators of other than buses regardless of whether the service is intercity or intracity.

As stated above, these new protections are founded on the language in section 12(c)(6), not section 3(f). The language in section 12(c)(6) is broad enough to provide UMTA with the authority to address problems with recipient's charter service. UMTA has noted that many of these problems exist in the intracity charter bus industry and in the charter industry as a whole, not merely in the intercity charter industry. UMTA believes that many of these problems will be solved with the new concept of incidental charter service. Therefore, UMTA believes that there is a sufficient legal basis to support the increased protections for all private charter operators.

Several commenters also argued that the effect of the NPRM would be to preclude a recipient from providing any charter service. As a result, public transit authorities would have to decide whether they want to receive UMTA assistance or provide charter service. The commenters stated that this dilemma was the reason that the 1973 charter bus restriction was repealed in favor of the current language in section 3(f).

The earlier version of section 3(f) was enacted by Congress in 1973 as section 164(a) of the Federal-Aid Highway Act of 1973 (Pub. L. No. 93–87). This required a recipient of mass transit funds to enter into an agreement with the Secretary that it would not operate any charter bus service outside of the area within which it provided mass transportation service in competition with private operators except as provided in the agreement. A violation of the agreement resulted in a bar of future receipt of mass transit funds.

In 1974, Congress passed the Housing and Community Development Act of 1974 (Pub. L. No. 93–383) to revise section 164(a) by creating the current section 3(f). The Senate Report accompanying this legislation states,

> [i]t appears that its immediate consequence has been to force a prospective applicant for Federal assistance for the purchase of buses to choose between accepting the Federal assistance and continuing its existing charter service. Section 164(a) has halted grants of Federal funds for bus purchases under the UMTA program and virtually eliminated Federal-Aid Highway funds from consideration by State and local officials as a funding source for bus transit needs. S. Rep. No. 693, 93d Cong., 2d Sess. 92 (1974).

The Report states that this result is contrary to the growth of mass transportation. The commenters stated that the effect of the NPRM would be the same as that of the 1973 legislation and, therefore, the NPRM is not consistent with the law.

UMTA disagrees. The result of the 1973 law was, as the Senate Report states, to provide recipients with a choice: UMTA funding or charter service. This is not the result of the NPRM or this final rule. The final rule permits a recipient to provide charter service with the equipment and facilities that UMTA funds, but limits those opportunities to ensure that they are incidental to the provision of mass transportation. Thus, the final rule does not set up an "either/or" choice. If the final rule sets up a choice, it is the choice which any entity seeking Federal assistance must make: follow the Federal requirements or forgo the Federal assistance.

Therefore, UMTA concludes that this final rule does not run afoul of the problems that resulted from the 1973 charter legislation.

**Regulatory Analysis**

A copy of the final regulatory analysis that UMTA prepared for this final rule has been placed in the docket for public inspection. In the NPRM, UMTA summarized the key issues discussed in the Draft Regulatory Analysis. Many commenters addressed these issues. A summary of these comments and UMTA's responses follow. A more detailed discussion of these comments and responses may be found in the Final Regulatory Analysis.

First, in the NPRM, we stated that the health of the private intercity charter bus industry has been failing for many years. Between 1970 and 1984, this industry's profitability has decreased from 9.9 per cent to 1.7 per cent. During this same period, the private intercity charter industry's profits have decreased by more than 50 per cent to $39.9 million. UMTA's opinion is that the charter service provided by UMTA recipients is partly responsible for this decline and this rule is needed to help stop this trend.

Many commenters disagreed with our conclusion that the charter service provided by UMTA recipients has anything to do with the problems facing the private intercity charter industry. These commenters cited the general effects in deregulation and the desire by customers to travel by modes other than intercity bus as more realistic causes for these declines.

UMTA does not believe that these commenters are incorrect. There are many causes for the problems that the intercity charter industry has been experiencing. Nonetheless, it cannot be

denied that part of the cause is the charter service provided by UMTA recipients. This is the one cause over which UMTA has some influence and, thus, we have chosen to address the problem with the means available to us. While this rule will not reverse 20-year trends immediately, we believe that it will help to ameliorate an unacceptable situation.

Second, UMTA stated in the NPRM that our research shows, based on the data supplied by recipients themselves in response to UMTA's Section 15 reporting requirements, that in the aggregate, there is a $2.5 million loss experienced by UMTA recipients in the provision of charter service. The 1982 Section 15 Report shows that recipients earned $45 million in charter revenues at a cost of $47.5 million. Since most UMTA recipients operate mass transportation services at a loss, the reduction in charter service resulting from this rule should provide help to reduce overall deficits.

Many commenters disagreed with our presentation. They argued that some recipients on an individual basis, rather than on a nationwide basis, do earn profits from their charter services. Moreover, these commenters stated that the charter revenues are critical to their ability to provide mass transportation services. While UMTA stated that any losses suffered by such recipients could be made up by State and local sources, these commenters stated that extra revenues at these levels of government are non-existent and that service cutbacks will result.

UMTA does not doubt that some recipients earn profits from their charter services. Many of the commenters stated that these revenues equal 1, 2 or 3 percent of their total revenues. While UMTA cannot deny that these amounts of revenues may be important to these recipients, they do not appear to be so enormous that their loss will seriously affect these recipients.

Furthermore, it is still UMTA's position that mass transportation is a local concern. Thus, while a loss of charter revenues may have an adverse impact on the services that these recipients are able to provide, we believe that such losses are the responsibility of the State and local governments to correct.

UMTA has also found that what some recipients claim to be charter profits are not really profits. The previous regulation required that a recipient recover its fully allocated costs on an annual basis if it provided intercity charter service and earned more than $15,000 per year from its charter service. UMTA's research indicates that what many recipients considered to be revenues are amounts that exceeded their marginal costs. This is not a true profit in terms of the previous regulation.

Third, UMTA stated in the draft analysis that one way recipients could reduce their deficits is to contract out peak service. The accumulation of buses to meet the peak needs has led to large spare ratios that encourage recipients to provide charter service in off-peak and peak hours. UMTA estimates that savings of 20 to 60 per cent might result by contracting out peak requirements to private providers of mass transportation.

Many commenters questioned our figures on this. An UMTA study has shown that one recipient operates its own peak service, but also uses several private operators to provide peak service. The recipient put out several of its peak routes to bid and in every case, the private operators' bids for the service were lower. While UMTA does not believe that every route on every transit system can be operated more cost effectively by private operators, we believe that such results can be experienced on many and that the savings can be significant.

Fourth, the final rule shifts the burden in the previous rule from the private operators to the recipients. Under the previous rule, private operators had a very difficult time seeking to enforce their protections. Not only did private operators have a difficult time distinguishing when a UMTA funded bus was used for charter, but they had problems interpreting and understanding the cost allocation plans submitted by recipients.

Several commenters argued that this burden shift is not appropriate since it now assumes that a recipient is guilty until proven innocent. UMTA does not agree. The shift in the burden in complaints is important. The new rule creates easier tests to apply and attempts to make the answers to questions as objective as possible. This will make a private charter operator's burden easier in complaints. It will also make UMTA's job at enforcement easier and enable us to render decisions in a more timely fashion.

Fifth, UMTA noted that one of the problems in the private charter industry is that there were no protections for private intracity charter operators in the previous rule. Thus, UMTA proposed not to make any distinction in the NPRM between the charter service a recipient provides intracity or intercity. UMTA discussed commenters' responses to this issue in the section on the legal basis for the rule above and we refer the reader to that material for our response.

Sixth, many commenters stated that the NPRM was drafted without any regard to the needs of the charter customer. By restricting the charter ability of recipients, these commenters argued that they will have less choice in service provider, have to pay higher costs, receive poorer quality service, or have no service.

UMTA does not agree. The rule restricts the ability of UMTA recipients to provide charter service, but it takes special pains to provide exceptions to ensure that there will always be a source for charter service. In the final rule, we have provided additional elements to further address the customers' needs. Thus, the final rule distinguishes between categories of revenue vehicles and limits a willing and able private charter operator only to those categories that it can provide. This ensures that the customer will receive the type of vehicle it desires.

UMTA does not believe that this rule will result in the complete absence of charter service for anyone. The rule always permits the recipient to provide service if there are no willing and able private operators. Moreover, we are convinced that private charter operators will fill in markets that presently provide few charter choices, but for which there is a demand.

Finally, many commenters stated that this rule is not consistent with UMTA's private sector policies for mass transportation where we advocate competition. These commenters viewed the NPRM as severely limiting competition to the detriment of the consumer.

It is important to note that the provisions in the UMT Act that serve as the basis for UMTA's policies promoting competition in the private sector concern only mass transportation. The UMT Act's definition of "mass transportation" specifically excludes charter service. Since the UMT Act treats these two types of service as mutually exclusive, there is no reason that our implementing policies need to be parallel.

Moreover, the rule continues to permit a recipient to provide charter service free of the restrictions in this rule to the extent that it creates a separate company or keeps its charter accounts separate. This charter service would be completely open and competitive.

### Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (Pub. L. No. 96–354) I certified that the NPRM, if promulgated, would not

have a significant economic impact on a substantial number of small entities. UMTA considered Section 18 recipients as the small entities effected by the NPRM. This certification was based on the position that while the NPRM may affect a substantial number of these entities, the economic impact would not be significant. UMTA also argued that the positive benefit on small private charter operators would not be significant.

UMTA, however, did request comments on this certification. We stated that based on these comments and on in-house research a Regulatory Flexibility Analysis would be prepared if warranted.

Six commenters commented on the certification made in the NPRM. Five of the commenters disagreed with UMTA's assessment that the proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities. These commenters were recipients and State DOTs who argued that the loss of even a small amount of revenues would have a serious impact on their mass transportation operations. Since charter revenues are often used by these entities as the local share which must be provided to get UMTA funding, any decrease in charter revenues would, these commenters argued, have a direct and negative impact on their services.

While UMTA recognizes that revenue losses by these entities will affect their operations, we believe that the final rule minimizes these problems so that the certification made in the NPRM is still valid. In this final rule, as discussed above, we permit a recipient to describe its desired charter service by stating what type of vehicle it will provide. This includes vans which are the major vehicle that UMTA funds for small recipients and the charter vehicle of choice in rural areas. Since many private charter operators do not operate vans, this will permit small recipients to provide charter service with UMTA funded equipment and facilities.

In addition, UMTA has added an exception provision specifically for small recipients. This will permit small recipients to provide charter service directly to customers even when there is a willing and able private charter operator if the charter service provided by that private charter operator would result in a hardship on the customer.

By including these additional provisions to the final rule, UMTA is confident that this final rule will have even less of an adverse financial impact on small entities than the NPRM would have had and I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12291**

This final rule is not a "major" regulation as defined in Executive Order 12291.

**DOT Policies and Procedures on Improving Government Regulations**

This is a "significant" regulation as defined in "DOT's Policies and Procedures on Improving Governmental Regulations" because of substantial public interest and the effects that the rule will have on competition.

**Collection of Information Requirements**

The Office of Management and Budget (OMB) has approved, in connection with the NPRM for this rule, the information collection requirements that it contains. The information collection requirements are virtually the same in the final rule as they were in the NPRM. The OMB Paperwork Reduction Act number for these information collection requirements is 2132–0543. The current OMB clearance for these requirements expires on December 31, 1988.

**List of Subjects in 49 CFR Part 604**

Administrative practice and procedures, Buses, Mass transportation, Reporting and recordkeeping requirements.

In consideration of the foregoing, UMTA revises Part 604 of Title 49 Code of Federal Regulations to read as follows:

## PART 604—CHARTER SERVICE

### Subpart A—General

Sec.

604.1 Purpose.
604.3 Applicability.
604.5 Definitions.
604.7 Charter agreement.
604.9 Charter service.
604.11 Procedures for determining if there are any willing and able private charter operators.
604.13 Reviewing evidence submitted by private charter operators.

### Subpart B—Complaint Process

604.15 Filing a Complaint.
604.17 Remedies.
604.19 Appeals.
604.21 Judicial Review.

**Authority:** Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

### Subpart A—General

**§ 604.1 Purpose.**

The purpose of this Part is to implement section 3(f) and section 12(c)(6) of the UMT Act.

**§ 604.3 Applicability.**

This Part applies to all applicants and recipients of Federal financial assistance under:

(a) Sections 3 (excluding section 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act; or

(b) Sections 103(e)(4), 142(a), or 142(c) of Title 23 United States Code which permit the use of Federal-Aid Highway funds to purchase buses.

**§ 604.5 Definitions.**

(a) All definitions in the UMT Act (at 49 U.S.C. 1608) are applicable to this Part, except as may otherwise be provided in this section.

(b) "The Acts" means the UMT Act and those parts of Title 23 United States Code, 23 U.S.C. 103(e)(4), 142(a) and 142(c), that provide for assistance to public bodies for purchasing buses.

(c) "Administrator" means the Administrator of UMTA or his or her designee.

(d) "Categories of Revenue Vehicle" means bus or van.

(e) "Charter Service" means transportation using buses or vans, or facilities funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge (in accordance with the carrier's tariff) for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after having left the place of origin. This definition includes the incidental use of UMTA funded equipment for the exclusive transportation of school students, personnel, and equipment.

(f) "Chief Counsel" means the Chief Counsel of UMTA.

(g) "Days" means calendar days in Subpart A and Federal working days in Subpart B.

(h) "Designated Official" means the applicant's and recipient's employee authorized to file applications on behalf of the applicant or to enter into agreements on behalf of the recipient.

(i) "Incidental Charter Service" means charter service which does not: (1) interfere with or detract from the provision of the mass transportation service for which the equipment or facilities were funded under the Acts; or (2) does not shorten the mass

transportation life of the equipment or facilities.

(j) "Interested Party" means an individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient regarding charter service.

(k) "Non-urbanized area" means an area with a population of less than 50,000 people.

(l) "Recipient" means one that has received or is receiving Federal financial assistance under the Acts. The term includes subrecipients of a recipient, subrecipients in UMTA's State administered programs, public bodies that receive assistance that will be passed on to another public or quasi-public body, any operator for a recipient, whether publicly or privately owned, and may include lessees of federally assisted buses and other equipment. For any UMTA State administered program, the State is the recipient.

(m) "State Administered Program" means any UMTA grant program in which the State is the recipient of funds, passes the funds to subrecipients, and administers the program for UMTA.

(n) "UMT Act" means the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

(o) "UMTA" means the Urban Mass Transportation Administration.

(p) "Willing and able" means having the desire, having the physical capability of providing the categories of revenue vehicles requested, and possessing the legal authority, including the necessary safety certifications, licenses and other legal prerequisites, to provide charter service in the area in which it is proposed to be provided.

**§ 604.7 Charter agreement.**

(a) Every applicant for financial assistance under sections 3 (excluding section 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act, or under 23 U.S.C. 103(e)(4), 142(a) or 142(c), must include two copies of a charter bus agreement signed by the applicant's designated official with each grant application submitted to UMTA after May 13, 1987. For UMTA's State administered programs, the State is the applicant.

(b) The text of the agreement must be as follows:

I, (name), (title), agree that (name of applicant) and all recipients through (name of applicant) will provide charter service that uses equipment or facilities provided under the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*) or under 23 U.S.C. 103(e)(4), 142(a) or 142(c) (the Acts) only to the extent that there are no private charter service operators willing and able to provide the charter service that (name of applicant) and all recipients through (name of applicant) desire to provide unless one or more of the exceptions in 49 CFR 604.9 applies.

I further agree that (name of applicant) and all recipients through (name of applicant) will comply with the provisions in 49 CFR Part 604 before they provide any charter service using equipment or facilities provided under the Acts, that the requirements of 49 CFR Part 604 will apply to any such charter service that is provided, and that the definitions in 49 CFR Part 604 apply to this agreement.

*Applicant*

_____

Name

_____

Title

_____

Date

*Urban Mass Transportation Administration*

_____

Name

_____

Title

_____

Date

(c) If UMTA approves the grant application, the approving official shall sign the agreement when the grant application is approved. One copy of the signed agreement will be retained by UMTA and the other copy will be returned to the recipient, formerly the applicant.

(d) Once the applicant and UMTA enter into a charter agreement, the applicant may incorporate that agreement by reference into any subsequent grant application instead of submitting an agreement under 49 CFR 604.7(a).

(e) Each State in UMTA's State administered programs must:

(1) Obtain a certification of compliance with this Part from each of its current subrecipients within 60 days of May 13, 1987. The certification shall state: "(Name of subrecipient) certifies that it shall comply with 49 CFR Part 604 in the provision of any charter service provided with UMTA funded equipment or facilities.";

(2) Retain this certification as long as the subrecipient is a subrecipient; and

(3) Assure in each application submitted to UMTA after May 13, 1987, that all subrecipients have submitted the certification.

(f) If any recipient does not anticipate submitting a grant application to UMTA during Federal fiscal year 1987, the recipient must submit two copies of the agreement set forth in § 604.7(b) of this part within 60 days of May 13, 1987, to the appropriate UMTA regional office. UMTA will sign the agreement, retain one copy of the agreement and return the other to the recipient.

(Approved by the Office of Management and Budget under Control No. 2132-0543)

**§ 604.9 Charter service.**

(a) If a recipient desires to provide any charter service using UMTA equipment or facilities the recipient must first determine if there are any private charter operators willing and able to provide the charter service which the recipient desires to provide. To the extent that there is at least one such private operator, the recipient is prohibited from providing charter service with UMTA funded equipment or facilities unless one or more of the exceptions in § 604.9(b) applies.

(b) *Exceptions.* (1) A recipient may provide any and all charter service with UMTA funded equipment and facilities to the extent that there are no willing and able private charter operators.

(2) A recipient may enter into a contract with a private charter operator to provide charter equipment to or service for the private charter operator if:

(i) The private charter operator is requested to provide charter service that exceeds its capacity; or

(ii) The private charter operator is unable to provide equipment accessible to elderly and handicapped persons itself.

(3) A recipient in a non-urbanized area may petition UMTA for an exception to provide charter service directly to the customer if the charter service provided by the willing and able private charter operator or operators would create a hardship on the customer because:

(i) The willing and able private charter operator or operators impose minimum durations pursuant to State regulation and the desired trip length is shorter than the mandatory trip length; or

(ii) The willing and able private operator or operators are located too far from the origin of the charter service.

(4) Any recipient may petition the Administrator for an exception to provide charter service directly to the customer for special events to the extent that private charter operators are not capable of providing the service.

(c) The process for requesting and granting an exception under 49 CFR 604.9(b)(3):

(1) The recipient must provide the private charter operators that it has determined are willing and able in accordance with this Part with a written notice explaining why it is seeking an exception and state that they have at

least 30 days to submit written comments to the recipient on the request;

(2) The recipient must send a copy of the notice, all comments received, and any further information it desires in support of its request to the Chief Counsel.

(3) The Chief Counsel shall review the materials submitted and issue a written decision denying or granting in whole or in part the request. In making this decision, the Chief Counsel may seek such additional information as the Chief Counsel determines is needed.

(4) Any exception that the Chief Counsel grants under 49 CFR 604.9(b)(3) shall be effective for not longer than 12 months from the date that the Chief Counsel grants it.

(d) The process for requesting and granting and exception under 49 CFR 604.9(b)(4):

(1) The recipient must submit its petition for an exception to the Administrator at least 90 days prior to the day or days on which it desires to provide charter service.

(2) The petition must describe the event, explain how it is special, and explain the amount of charter service which private charter operators are not capable of providing.

(3) The Administrator will review the materials and issue a written decision denying or granting in whole or in part the request. In making this decision, the Administrator may seek such additional information as the Administrator determines is needed.

(4) Any exception granted by the Administrator under 49 CFR 604.9(b)(4) shall be effective solely for the event for which the recipient requests an exception.

(e) Any charter service that a recipient provides under any of the exceptions in this Part must be incidental charter service.

**§ 604.11 Procedures for determining if there are any willing and able private charter operators.**

(a) To determine if there is at least one private charter operator willing and able to provide the charter service that the recipient desires to provide, the recipient must complete a public participation process:

(1) At least 60 days before it desires to begin to provide charter service if it is not doing so on May 13, 1987; or

(2) Not more than 90 days after May 13, 1987 if the recipient is providing charter service on May 13, 1987 and desires to continue to provide charter service.

(b) The public participation process must at a minimum include:

(1) Placing a notice in a newspaper, or newspapers, of general circulation within the proposed geographic charter service area;

(2) Sending a copy of the notice to all private charter service operators in the proposed geographic charter service area and to any private charter service operator that requests notice;

(3) Sending a copy of the notice to the United Bus Owners of America, 1275 K Street, NW., Suite 800, Washington, D.C. 20005, and the American Bus Association, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

(c) The notice must:

(1) State the recipient's name;

(2) Describe the charter service that the recipient proposes to provide limited to the days, times of day, geographic area, and categories of revenue vehicle, but not the capacity or the duration of the charter service.

(3) Include a statement providing any private charter operator desiring to be considered willing and able with at least 30 days from the date of the notice to submit written evidence to prove that it is willing and able;

(4) State the address to which the evidence must be sent.

(5) Include a statement that the evidence necessary for the recipient to determine if a private charter operator is willing and able includes only the following:

(i) A statement that the private operator has the desire and the physical capability to actually provide the categories of revenue vehicle specified; and

(ii) A copy of the documents to show that the private charter operator has the requisite legal authority to provide the proposed charter service and that it meets all necessary safety certification, licensing and other legal requirements to provide the proposed charter service.

(6) Include a statement that the recipient shall review only that evidence submitted by the deadline, shall complete its review within 30 days of the deadline, and within 60 days of the deadline shall inform each private operator that submitted evidence what the results of the review are.

(7) Include a statement that the recipient shall not provide any charter service using equipment or facilities funded under the Acts to the extent that there is at least one willing and able private charter operator unless the recipient qualifies for one or more of the exceptions in 49 CFR Section 604.9(b).

(d) Any recipient that desires to continue to provide charter service using UMTA funded equipment or facilities shall follow the procedures in 49 CFR Section 604.11 (b) and (c) annually during the month in which it published its first newspaper notice to redetermine the extent to which there is at least one willing and able private charter operator.

(e) Any recipient, including the State in State administered programs, may elect to comply with this procedure for all of its subrecipients, or delegate this responsibility to the subrecipients, or delegate this responsibility to only some of its subrecipients.

(Approved by the Office of Management and Budget under Control No. 2132–0543)

**§ 604.13 Reviewing evidence submitted by private charter operators.**

(a) The recipient shall review the evidence submitted in response to the notice given under 49 CFR 604.11 within 30 days of the deadline for the submission of evidence.

(b) Within 60 days of the deadline for the submission of evidence, the recipient shall notify each private charter operator that submitted evidence of the recipient's decision.

(c) The recipient must review the evidence submitted to determine if the evidence proves that the private charter operator has:

(1) The desire and the physical capability to actually provide charter service using the categories of revenue vehicles; and

(2) The required legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter service.

(d) The recipient must determine that a private charter operator which meets the requirements in 49 CFR 604.13(c) is willing and able.

(e) A recipient may look behind the evidence submitted by a private charter operator only if the recipient has reasonable cause to believe that some or all of the evidence has been falsified.

(f) A recipient may, within its discretion, stop reviewing the evidence submitted by private charter operators when the recipient has determined that there is one or more private charter operators willing and able to provide all of the charter service that the recipient proposed to provide in its notice. A recipient may, however, review the evidence submitted by all private charter operators and create a roster of willing and able private charter operators.

(g) The entity that complies with the public participation process under 49 CFR 604.11(e) shall be responsible for complying with the requirements in 49 CFR Section 604.13.

(Approved by the Office of Management and Budget under Control No. 2132–0543)

## Subpart B—Complaint Process

### § 604.15 Filing a complaint.

(a) An interested party ("complainant") who believes that a recipient is in violation of the requirements of this Part may submit a written complaint to the UMTA Chief Counsel. The complainant shall also send a copy of the complaint to the recipient ("respondent").

(b) If the Chief Counsel determines that the complaint is not without obvious merit and that it states grounds on which relief may be granted, the Chief Counsel shall advise the complainant and respondent to attempt to conciliate the dispute. The period for informal conciliation shall last for up to 30 days from the date of receipt of the Chief Counsel's order unless an extension is mutually agreed upon by the parties.

(c) If the parties are unable to conciliate the dispute, either party may so notify the Chief Counsel in writing. The Chief Counsel shall send a copy of the complaint to the respondent and provide it with 30 days from the receipt of the notice to provide written evidence to show that no violation has occurred. The respondent shall provide a copy of this information to the complainant.

(d) After the Chief Counsel receives that respondent's evidence, the Chief Counsel shall inform the complainant that it has 30 days from the receipt of the notice to rebut the respondent's evidence. The complainant shall provide a copy of its rebuttal to the respondent.

(e) The Chief Counsel shall review the evidence submitted and prepare a written decision. The Chief Counsel shall attempt to transmit the written decision to the parties within 30 days of receiving all of the evidence.

(f) If the Chief Counsel determines that further investigation is necessary, including the submission of additional information or the holding of an informal evidentiary hearing, the Chief Counsel shall so inform the parties in writing.

(g) Either party may request an informal evidentiary hearing prior to the transmission of the Chief Counsel's decision. The Chief Counsel may grant or deny the request.

(h) If an informal evidentiary hearing is held, the date and location shall be arranged by the Chief Counsel in consultation with the parties. Any new evidence introduced by the parties at the informal evidentiary hearing shall be submitted to the Chief Counsel within 10 days after the hearing.

(i) The Chief Counsel may extend the deadlines imposed in this Part for administrative convenience by notifying all parties in writing of the extensions.

### § 604.17 Remedies.

(a) If the Chief Counsel determines that a violation of this Part has occurred, the Chief Counsel may order such remedies as the Chief counsel determines are appropriate.

(b) If the Chief Counsel determines that there has been a continuing pattern of violation of this part, the Chief Counsel may bar the respondent from the receipt of further financial assistance for mass transportation facilities and equipment.

### § 604.19 Appeals.

(a) The losing party may appeal the Chief Counsel's decision to the Administrator within 10 days of receipt of the decision. The losing party ("appellant") shall include in its appeal the basis for the appeal and evidence to support the position. The appellant shall send a copy of the appeal to the prevailing party ("appellee").

(b) The Administrator will only take action on an appeal if the appellant presents evidence that there are new matters of fact or points of law that were not available or not known during the investigation of the complaint.

(c) If the Administrator takes action on an appeal, the Administrator shall provide the appellee with 10 days from the receipt of the notice to respond to the evidence contained in the appeal.

(d) The Administrator shall send a copy of the appellee's response to the appellant and provide it with 10 days from the receipt of the notice to rebut the appellee's response.

(e) The Administrator shall endeavor to make a final determination on the appeal within 10 days of the receipt of the appellant's rebuttal.

### § 604.21 Judicial review.

The Chief Counsel's decision, or the Administrator's decision on appeal, shall be final and conclusive on all parties, but it is subject to judicial review pursuant to sections 701–706 of Title 5 of the United States Code.

Issued on April 7, 1987.

**Ralph L. Stanley,**

*Administrator, Urban Mass Transportation Administrator.*

[FR Doc. 87–8087 Filed 4–8–87; 10:41 am]

BILLING CODE 4910–57–M

Federal Register

Monday
April 13, 1987

Part III

# Department of the Interior

**Bureau of Reclamation**

**43 CFR Part 426**
**Acreage Limitation; Final Rulemaking**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Reclamation**

**43 CFR Part 426**

## Acreage Limitation Rules and Regulations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** These rules replace the existing rules for the administration of the Reclamation Reform Act of 1982 (RRA). The existing rules were revised primarily to add provisions for administering section 203(b) of the act. Section 203(b) mandates that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in excess of a landholding of 160 acres. The rules have also been revised to clarify and expand upon provisions in the existing rules.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Phillip T. Doe, Chief, Acreage Limitation Branch; Bureau of Reclamation; E&R Center, Code D–410; P.O. Box 25007; Denver, CO 80225, (303) 236–8065.

**SUPPLEMENTARY INFORMATION:**

### Background

The Reclamation Reform Act of 1982 (RRA), title II, Pub. L. 97–293 (96 Stat. 1263), was signed into law by President Reagan on October 12, 1982. The act is the culmination of an effort to modernize Reclamation law that began with the 95th Congress. The act makes a number of changes to prior Reclamation law but retains the basic principle of limiting the amount of land in ownership which may receive water deliveries from Reclamation projects. The act makes a major change to prior law by introducing the concept of full-cost pricing for some water deliveries.

### Purpose for Revising Rules

Final rules and regulations for implementing the Reclamation Reform Act were published in the **Federal Register** on December 6, 1983 (48 FR 54768). However, during that rulemaking process, the Department of the Interior (DOI) decided not to include provisions for implementing section 203(b) of the act. Section 203(b), commonly known as the "hammer clause," mandates that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in a landholding in excess of 160 acres. DOI's decision to publish rules without provisions for implementing section 203(b) was made in response to concerns regarding the constitutionality of that section. During the rulemaking process, segments of the public voiced strong objection to section 203(b), maintaining that this provision jeopardized water districts' financing abilities and abrogated existing contracts between water districts and the United States. However, since Congress has not repealed section 203(b), it is necessary for the DOI to promulgate rules and regulations implementing this provision of the law. Toward this end, proposed rules and regulations were published in the **Federal Register** on November 7, 1986. In addition to those changes made for the purpose of administering section 203(b), the proposed rules contained other changes reflecting recent policy initiatives and legal determinations. Comments about the proposed rules that were received during the public review period were taken into consideration as these final rules and regulations were prepared.

### Executive Order 12291

The DOI has determined that the proposed rules do not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required and has not been prepared.

### National Environmental Policy Act Compliance

An environmental assessment and FONSI (finding of no significant impact), which examine the environmental impacts of four alternative approaches for administering section 203(b) of the RRA, have been prepared and are available to the public. Copies of these documents may be obtained upon request from the Bureau offices located in Boise, Idaho; Sacramento, California; Boulder City, Nevada; Salt Lake City, Utah; Amarillo, Texas; Billings, Montana; Denver, Colorado; and Washington, D.C.

### Small Entity Flexibility Analysis

The proposed rules will not have a significant economic effect on a substantial number of small entities. If there are economic impacts to the water user resulting from these rules, they will almost certainly occur as a result of implementation of section 203(b). Section 203(b) applies only to landholders who remain subject to prior law and who lease land in excess of a landholding of 160 acres. Of the farms remaining subject to the provisions of prior Reclamation law, approximately 67 percent are small entities of 160 acres or less in size. Section 203(b) will not affect such landholdings.

### Paperwork Reduction Act

The information requirements contained in § 426.10 have either been approved by the Office of Management and Budget or are in the process of being submitted to that office for approval as required by 44 U.S.C. 3501 et seq.

### Effective Date

Under the requirements of the Administrative Procedure Act in 5 U.S.C. 553(d) these rules are effective 30 days from the date of publication. To fully effectuate the policy underlying section 553(d), however, a provision has been included in 43 CFR 426.2 providing that any election by a water district or landowner or lessee to come under the discretionary provisions of the Reclamation Reform Act made after April 12, 1987, but on or before the effective date of the rules, will relate back to April 12, 1987. This provision allows informed elections to be made that reflect consideration of the relevant provisions of the rules.

*Significant Comments and Changes.* The following narrative addresses each part and subpart of the proposed rules and regulations for which a significant comment was received or to which a significant change has been made.

Introduction: During the comment period from November 7, 1986, to February 5, 1987, we received 335 documents containing comments about the proposed revisions to the existing rules for implementating the RRA. This number includes the oral testimonies presented at the 15 hearings held throughout the West and Washington, DC, where a total of 171 speakers participated. The following list shows a summary of the number of speakers at each hearing and the number of pages contained in each transcript:

| Location | No. of speak- | No. of pages in tran- script |
|---|---|---|
| Albuquerque, New Mexico | [illegible] | 32 |
| Amarillo, Texas | [illegible] | 11 |
| Bend, Oregon | 1 | 18 |
| Billings, Montana | 7 | 30 |
| Boise, Idaho | 4 | 27 |
| Grand Junction, Colorado | 1 | 9 |
| North Platte, Nebraska | 7 | 33 |
| Phoenix, Arizona | 28 | 154 |
| Richland, Washington | 4 | 39 |
| Sacramento, California | 21 | 153 |
| Salt Lake City, Utah | 4 | 25 |
| Visalia, California | 41 | 230 |
| Washington, D.C. | 10 | 90 |
| Willows, California | 27 | 109 |
| Yuma, Arizona | 7 | 56 |
| Total | 171 | 1,016 |

**Note.**—In some instances additional documents were submitted in conjunction with the transcripts from the hearings. These additional documents were not counted separately nor were their pages added to the total number of pages in the transcripts.

Most of the documents were received from respondents residing in California. A numerical breakdown by the number of documents received from each geographical area is shown in the following list:

| Geographic area | No. of documents |
|---|---|
| National or Regional | 18 |
| Arizona | 41 |
| California | 211 |
| Colorado | 3 |
| Idaho | 8 |
| Kansas | 0 |
| Montana | 5 |
| Nebraska | 15 |
| Nevada | 0 |
| New Mexico | 13 |
| North Dakota | 1 |
| Oklahoma | 0 |
| Oregon | 3 |
| South Dakota | 1 |
| Texas | 0 |
| Utah | 4 |
| Washington | 8 |
| Wyoming | 1 |
| Other | 3 |
| Total | 335 |

Each document was classified into 1 of 13 interest groups. The following list shows how many documents were received from each of these groups:

| Segment of interest groups | No. of documents |
|---|---|
| U.S. Congress | 16 |
| Federal Departments and Agencies | 8 |
| States and State Agencies | 7 |
| City and County Governments | 4 |
| Water User Districts | 113 |
| Water Resources and Farm Organizations | 19 |
| Conservation and Environmental Organizations | 4 |
| Other Organizations (law firms, banks, etc.) | 30 |
| Farm Operators | 125 |
| Landowners Who Are Not Operators | 3 |
| Potential Farmer | 0 |
| Religious and/or Chantable Organizations | 1 |
| Other | 5 |
| Total | 335 |

Water districts submitted approximately one-third of all the documents. Another one-third of the documents (approximately) were received from farm operators. About two-thirds of the documents received from water districts came from California. Of the 125 documents from operators, 109 of them were from California, while 11 were from Arizona. Sixteen documents were submitted from United States Congressmen—topping this category were the seven documents from Congressmen representing the State of California.

Overall, the 335 documents contained approximately 1,398 specific comments about various provisions in the proposed rules. Of these, 1,339 reflected unfavorable comments regarding the proposed rules while 59 comments supported various provisions in the proposed rules.

The section of the proposed rules that addresses leasing and full-cost pricing received, by far, the most comments. A major portion of the remaining comments addressed provisions in the following three sections of the rules: information and reporting requirements (§ 426.10), ownership entitlement (§ 426.6), and definitions (§ 426.4). The following list shows a complete breakdown of the number of comments received regarding each section of the proposed rules and regulations.

| Specific provisions | | No. of comments |
|---|---|---|
| 426.1 | Objectives | 0 |
| 426.2 | Applicability | 0 |
| 426.3 | Authority | 0 |
| 426.4 | Definitions | 146 |
| 426.5 | Contracts | 54 |
| 426.6 | Ownership Entitlement | 158 |
| 426.7 | Leasing and Full-Cost Pricing | 517 |
| 426.8 | Operation and Maintenance Charges | 10 |
| 426.9 | Class 1 Equivalency | 8 |
| 426.10 | Certification and Reporting Requirements | 168 |
| 426.11 | Excess Land | 98 |
| 426.12 | Excess Land Appraisals | 12 |
| 426.13 | Exemptions | 12 |
| 426.14 | Residency | 0 |
| 426.15 | Religious and Charitable Organizations | 2 |
| 426.16 | Involuntary Acquisition of Land | 91 |
| 426.17 | Land Held by Governmental Agencies | 28 |
| 426.18 | Commingling | 50 |
| 426.19 | Water Conservation | 10 |
| 426.20 | Public Participation | 3 |
| 426.21 | Small Reclamation Projects | 3 |
| 426.22 | Decisions and Appeals | 1 |
| 426.23 | Scheme or Device | 27 |
| 426.24 | Severability | 0 |
| Total | | 1,398 |

Numerous documents contained comments regarding not only specific provisions within the proposed rules but also the rules in general. For example, seventy-four persons requested that due to the complexity of the rules, the comment period by extended 30 days. This was accommodated by extending the comment period from January 6, 1987, to February 5, 1987. Further, numerous comments were received objecting to any revisions outside of those revisions necessary to implement 203(b). Many participants from the National Water Resources Association contended that their input had been ignored over the past year. Numerous respondents stated that many of the provisions in the proposed rules were contrary to specific provisions in the RRA. The farmers' inability to afford any increased costs was also a commonly voiced complaint. Similar to the comments received concerning the 1983 rules, many districts objected to the increased workload and public relation difficulties created for them by the reporting requirements. Many persons and districts thought the implementation of section 203(b) should be delayed for another year so that farmers could arrange their operations to conform within the law. While most of the unfavorable comments objected to provisions in the proposed rules because they were too restrictive, some respondents stated that the rules still needed to be tightened to some extent. In contrast to these unfavorable comments, the Bureau of Reclamation also received commendations for (1) developing rules that accurately reflect the intent of Congress, (2) holding workshops to review the changes, and (3) employing field personnel who are very receptive to individual and district problems.

### 43 CFR 426.4 Definitions

*43 CFR 426.4(g) Excess Land.*

*Comment:* One person suggested that the definition be expanded to include both "owned and leased" land, not just owned land.

*Response:* Because of the need to maintain the distinction between owned land in excess of the ownership limitations established by Congress through various laws and leased land for which there is no legally established limit, this suggestion was not accommodated.

**Note.**—The definition of "formerly excess land" has been deleted.

*43 CFR 426.4(k) Individual.*

*Comment 1:* Three persons suggested that the provision relating to prior law ownership limitations be deleted.

*Response:* The definition has not been changed. Substantial legal research demonstrates that the definition reflects congressional intent.

*Comment 2:* Three persons stated that the term "and leasing" be added after the word "ownership" in the provision relating to prior law ownership limitations.

*Response:* Sufficient clarification of individual entitlements under prior law is provided in the "Leasing and full-cost pricing" section, section 426.7.

*43 CFR 426.4(m) Irrigable land.*

*Comment 1:* One person stated that, for consistency, the term "water supply" be changed to "irrigation water".

*Response:* This suggestion has been accommodated.

*Comment 2:* Four persons stated that language be added to exclude permanent roads and ponds from irrigable acreage. Two others suggested

that field roads, farm ditches, drains and tailwater ponds be excluded.

*Response:* The definition was changed to exclude permanent roads and ponds. The other items, however, are subject to change by the landowner and must be considered a part of the irrigable land.

*43 CFR 426.4(n) Irrigation land.*

*Comment:* Forty-five persons objected to the phrase "regardless of whether it is receiving irrigation water" in the proposed definition.

*Response:* The subject phrase has been deleted, and the definition has been further revised so that the term means all irrigable land receiving irrigation water and other land receiving irrigation water.

*43 CFR 426.4(q) Landholding.*

*Comment:* Thirty-nine persons stated that the deletion of the phrase "served with irrigation water pursuant to the contract with the Secretary" serverely changed the meaning of acreage limitation law in a manner similar to the proposed change to the definition of "landholding," section 426.4(n). Five persons objected to the deletion of the proviso which required no attribution of holdings of 4 percent or less in a limited recipient.

*Response:* In regard to the first comment, the subject phrase has been put back in the definition. The second comment has also been accommodated. That is, attribution will not be required with respect to a landholder's interest of 4 percent or less in a limited recipient.

*43 CFR 426.4(r) Lease.*

*Comment:* One person stated that the phrase "in some part" in the definition is inconsistent with the language in section 426.7(a).

*Response:* The phrase has been deleted from the definition.

*43 CFR 426.4(s) Legal entity.*

*Comment:* Twenty-five persons stated that partnerships and/or tenancies should not be considered legal entities. In those cases where business arrangements are made to pool resources, divide skills, etc. through a partnership, joint tenancy, or tenancy-in-common, each participant should have an entitlement of 960 acres.

*Response:* This suggestion could not be accommodated since the law does not give special treatment to partnerships, joint tenancies, and tenancies-in-common. In fact, only individuals and legal entities have status as qualified recipients under the law. Tenancies are not individuals, and if they are not legal entities, it could be argued that they have no entitlement under the law. It is inconceivable, however, that Congress did not intend entitlement status for a form of ownership which is very common on Reclamation projects. Moreover, it is extremely awkward to suggest that Congress intended to limit husband and wife ownership to 960 acres, many of which are joint tenancies, and yet allow all other forms of tenancies to achieve unlimited size provided that no tenant owns more than 960 acres in the tenancy. In these rules, partnerships, tenancies-in-common, and joint tenancies are treated as legal entities.

*43 CFR 426.4(t) Limited recipient.*

*Comment:* One person stated that language should be added to this definition to exclude nonresident aliens as eligible participants in multiownership arrangements.

*Response:* This comment was not accommodated because of the determination that nonresident aliens can receive irrigation water on land owned through legal entities [explained in 426.6(b)(3)1.

Note.—The terms "nonresident alien" and "nonresident alien entitlement" have been added to the definition section.

*43 CFR 426.4(x) Operator.*

*Comment:* Seventeen persons objected to the addition of this term to the rules, mainly because the RRA refers to only landowners and lessees, not operators.

*Response:* The term has been deleted.

*43 CFR 426.4(z) Prior law recipient.*

*Comment 1:* Two persons stated that this term be replaced with "individual subject to prior law" to ensure that husband and wife are treated as two individuals for leasing limitations.

*Response:* This comment was not accommodated because clarification that husband and wife under prior law will be treated as individuals has been made elsewhere in the rules.

*Comment 2:* Three persons stated that the phrase "and which are subject to the Federal Reclamation law in effect immediately prior to October 12, 1982," be added to the definition.

*Response:* This comment was not accommodated because prior law recipients are also subject to a major portion of the RRA.

*43 CFR 426.6(ee) Resident alien.*

*Comment:* One person stated that the IRS definition should be used.

*Response:* The definition has been changed to IRS definition.

Note.—Three comments were received stating that a definition of "nonexcess land" was needed. This was not accommodated because the definition of "excess land" provides sufficient clarification.

**43 CFR 426.5 Contracts**

*43 CFR 426.5(a)(1) Contracts in force on October 12, 1982.*

*Comment 1:* One person commented that the last sentence in this section is not necessary to implement section 203(b) of the RRA and should be deleted. The sentence in question states that parties not subject to the discretionary provisions are referred to as "prior law recipients."

*Response:* We have deleted the subject sentence from the full rules.

*43 CFR 426.5(a)(2) New contracts.*

*Comment 1:* Two persons objected to the fact that the City of Albuquerque has become subject to acreage limitation by virtue of its contract with the United States for storage of water in a Federal facility. They believe acreage limitation should not apply because the City pays an M&I (municipal and industrial) water rate and because the water supply can be used for agricultural purposes only on a short-term basis.

*Response:* These comments deal with a specific situation that does not have application to other water service or repayment contractors; therefore, we have not addressed the comments in the body of the rules. However, the Southwest Regional Office is in the process of working with the City of Albuquerque to resolve the problems that have resulted from the unique set of circumstances relating to the City's contract.

*Comment 2:* We received one comment objecting to the addition of the language in the third sentence of this paragraph, as well as in paragraph (a)(3) of this section, which provided that individual entity members become subject to the discretionary provisions when an entity becomes subject to such provisions by virtue of a contract action. The respondent maintained that this language is inconsistent with section 426.5(d), which provides that an irrevocable election by an entity does not bind the members of that entity.

*Response:* The Department has reviewed this issue and has determined that members of a legal entity do not automatically become qualified or limited recipients by virtue of a district action that causes the entity to become subject to the discretionary provisions. That is, they may stay under prior law if that is their desire. Members of a legal entity will only become qualified or limited recipients if they (1) make an irrevocable election or (2) also own land

directly, rather than through an entity, in a district that has become subject to the discretionary provisions. Therefore, we have accommodated the respondent's comment by deleting the proposed additional language and by adding language to paragraphs (a)(2) and (a)(3) setting forth the recent decision on this matter.

*43 CFR 426.5(a)(3) Amended contracts.*

*Comment 1:* Several respondents commented that the term "contract action" should be replaced throughout this paragraph with the term "contract amendment." These respondents maintained that, based on section 203(a) of the RRA, only contract amendments, not the broader contract actions, can be considered as additional or supplemental benefits requiring conformance to the discretionary provisions.

*Response:* The Department has reviewed this matter and agrees with the respondents' position. In the final rules, this paragraph has been modified to accommodate their suggestion.

*Comment 2:* Fifteen persons expressed concern about the language added to the proposed rules dealing with the criteria which must be met in order for water transfers not to be considered additional and supplemental benefits. They did not think these criteria should apply to districts whose existing contracts already contain water transfer provisions. They maintained that the new criteria would be cost prohibitive to districts, resulting in fewer, if any, transfers. Thereby, an effective method for conserving water would be eliminated. However, one respondent commented that, at the very least, a rate that covers full O&M costs should be charged when irrigation water is transferred.

*Response:* These comments, for the most part, have been accommodated. That is, the final rules provide that contract amendments that allow for the transfer of water on an annual basis will not be considered an additional or supplemental benefit requiring conformance to the discretionary provisions provided that certain conditions, as discussed in the following, are met: (1) As in the proposed rules, both districts must have a contract with the United States. (2) While the proposed rules have not been revised, as requested by one respondent, to require that a rate at least equal to the actual O&M costs must be charged for transferred water, the rate paid for such water must be the higher of the applicable water rate for each district and cannot put the United States in a position of incurring and increased operating losses or decreased capital repayment. (3) Lastly, the full O&M rate or full-cost rate must be paid by those recipients who would be subject to such costs if the water was not considered transferred water.

In those cases where existing contracts already contain water transfer provisions, the transfers will be administered pursuant to the conditions set forth in those contracts and in accordance with current water transfer policies and practices.

*Comment 3:* One person commented that the Bureau needs to go beyond the provisions set forth in the proposed rules and establish a formal procedure regarding water transfers.

*Response:* The Bureau, in fact, has initiated studies for the purpose of developing a formal Bureauwide policy on water transfers. However, until that policy is finalized, water transfers will be treated as set forth in the response to the preceding comment.

*Comment 4:* Three respondents questioned whether the water transfer criteria would apply to "bucket for bucket" exchanges.

*Response:* As a general rule, the water transfer provisions will not apply to such exchanges; however, the attending circumstances of each case will need to be examined before any final determination can be made. Therefore, this situation is not specifically addressed in these rules.

*Comment 5:* One respondent submitted a list of water transfer criteria applicable to the transfer of water from a district to a public agency and requested that these criteria be added to the rules.

*Response:* We have not accommodated this request in the final rules because the respondent's proposed language addresses a very specific situation with a unique set of circumstances. The language would not have application to water transfers in general.

*Comment 6:* We received one comment which stated that this section should be revised to allow the Bureau to review all contract articles when a contract is amended to provide additional benefits.

*Response:* Based on the language in section 203(d) of the RRA, we believe the Bureau may be precluded from changing certain provisions of contracts when they are amended, unless the contractor agrees to the changes. Therefore, this comment has not been accommodated in the rules. However, it has been longstanding Departmental policy to review all provisions of a contract when it is amended to provide new benefits and make changes as necessary. This policy still remains in effect.

*43 CFR 426.5(c) Master contract-subcontract arrangements.*

*Comment 1:* Six persons commented on this provision of the rules. In summary, they requested that this provision be expanded to provide that: (1) A subcontract may be amended to conform to the discretionary provisions only if the United States is a party to that subcontract, (2) acreage limitation and pricing provisions of Federal Reclamation law apply to only those districts and landholders that receive irrigation water made available under the master contract, and (3) this provision applies to both existing master-subcontract arrangements and to those that may be entered into in the future.

*Response:* The Department has determined that these requests are permissible under the RRA. Therefore, the requests have been incorporated into the final rules.

*43 CFR 426.5(d)(1) Individual election.*

*Comment 1:* One person asked the following question: If a corporation (under 25 members) makes an irrevocable election, can it receive irrigation water on 960 acres and can each member also irrigate 960 acres in his own name?

*Response:* If such a corporation makes an irrevocable election, it is entitled to receive irrigation water on a maximum of 960 acres of owned land. However, the corporation's election does not automatically increase the entitlements of its members; therefore, it may not always be able to realize its maximum entitlement. To illustrate, if a corporation that has made an election is held equally by three members who remain subject to prior law, the corporation may only irrigate 480 acres (160×3), even though its maximum entitlement is 960 acres. However, if each of the members also becomes subject to the discretionary provisions, through either an irrevocable election or a district contract action, each would also be entitled to receive irrigation water on a total of 960 acres. This means the corporation would be able to realize its 960-acre entitlement because each member, assuming equal interest, would be able to irrigate up to 320 acres in the corporation. Furthermore, each member would be able to irrigate another 640 acres (960−320) outside his interest in the corporation.

*Comment 2:* One person objected to the sentence in this paragraph that states all irrigation land in an elector's

BEST COPY AVAILABLE

holding become subject to the discretionary provisions. The respondent felt that only the land receiving irrigation water should become subject to the discretionary provisions.

*Response:* The language in this section of the rules has not been modified; nevertheless, this comment has been accommodated because the definition of "irrigation land," as set forth in section 426.4, has been revised to include only that land receiving irrigation water.

*Comment 3:* One respondent asked who should sign the irrevocable election form in those cases where an elector is a minor.

*Response:* We have not included a response to this question in the rules themselves; however, in such cases, the person(s) responsible for the child's legal matters must sign the election form, whether that be the child's parents, guardians, or a power-of-attorney.

*43 CFR 426.5(d)(2) Disposition of irrevocable election forms.*

*Comment 1:* We received two comments requesting that the rules clarify whether it is the Bureau's or the district's responsibility to keep the original irrevocable election and certification and reporting forms.

*Response:* This matter has been clarified in these final rules. That is, the Bureau retains the original irrevocable election form and the districts retain the original certification forms.

*Comment 2:* Six persons requested that landholders be required to file their irrevocable election forms concurrently with the Bureau and the districts.

*Response:* This request has been accommodated in these final rules.

*Comment 3:* Several persons requested the Bureau to notify districts in writing when an irrevocable election becomes effective.

*Response:* This request has not been accommodated in the rules because it has been Bureau policy during the last 4 years to consider an election binding (on a contingent basis pending approval) as of the date it is filed with the Bureau. However, the rules have been modified to provide that the Bureau shall prepare a letter advising the recipient of the approval or disapproval of the election.

*Comment 4:* One person questioned why an irrevocable election must be submitted to the Bureau for approval.

*Response:* Some individuals and entities cannot meet the requirements for being a qualified or limited recipient. Therefore, it is necessary for the Bureau to review elections. Furthermore, we do not believe it is unreasonable for the Bureau to review a document which permanently affects the water rates applicable to that landholder. Therefore, we have not modified the rules to accommodate this suggestion.

*43 CFR 426.5(d)(3) District reliance on election information.*

*Comment:* We received one comment requesting that the rules specify that districts are not required to investigate the information on an elector's certification and reporting forms in the same way that the rules specify they are not required to investigate information on the election form itself.

*Response:* The rules require only that the district inform the Bureau of known discrepancies [see section 426.10(h) in the final rules. It does not require that they investigate further. That shall remain the responsibility of the Bureau.

**43 CFR 426.6 Ownership Entitlement**

*43 CFR 426.6(a) In general.*

*Comment:* Throughout this section of the proposed rules, the words "receiving irrigation water" were replaced with the term "irrigation land." Three persons objected to this revision. They maintain that ownership entitlement should be calculated on the basis of land actually receiving water.

*Response:* This response has been accommodated by revising the definition of "irrigation land," as set forth in section 426.4(m) of these final rules, to include only that land receiving irrigation water.

*43 CFR 426.6(b)(1) Individual landowners.*

*Comment:* One respondent commented that the entitlement language is somewhat ambiguous and suggested that the rules clearly spell out that a qualified recipient is entitled to receive irrigation water on 960 acres of owned land plus any land under recordable contract.

*Response:* We agree with this comment and have reworded the sentence in question to clarify its meaning.

*43 CFR 426.6(b)(2) Husband and wife.*

*Comment:* Several people stated that the rules discriminate against married couples. In their opinion, a husband and wife should each have a 960-acre entitlement.

*Response:* The RRA specifically provides that a husband, wife, and their dependents are to be treated as one individual and that the entitlement for an individual, whether a married couple or a single person, is 960 acres. We have no authority to increase the limitations set by law.

*43 CFR 426.6(b)(3) Multiownership arrangements and 43 CFR 426.6(c) Limited recipient entitlement.*

*Comment 1:* Thirty-seven respondents objected to the provision in the proposed rules requiring members of legal entities to be U.S. citizens or U.S. residents in order for the entity to be eligible to receive irrigation water. One person commented further that nonresident aliens should be allowed to remain anonymous on the certification forms.

*Response:* The Department has reviewed this issue and it has been determined that the RRA requires qualified recipient entities to meet only one condition in order to be eligible to receive irrigation water—that is, such entities must be established under State or Federal law. Therefore, the U.S. citizenship or residency requirement for members of a legal entity has been eliminated from the final rules, except in the case of individual ownership. However, the forms requirements have not been revised to provide special exemptions for members of legal entities who are nonresident aliens. The forms requirements must apply to these individuals, in the same way they do to any other members of legal entities, in order to ensure compliance with their individual ownership limitations.

*Comment 2:* One respondent commented that the rules need to be written in such a way that legal entities cannot be used as a vehicle to set up a network of "paper farms" that are actually farmed as one unit even though they appear to be independent farms.

*Response:* The Department believes these rules consistent with the law, provide adequate protection from any potential abuse in the use of legal entities.

*43 CFR 426.6(b)(4) and 426.6(d)(6) Trusts.*

*Comment 3:* We received 76 comments regarding the trust criteria in the proposed rules. Several of the comments expressed support for the criteria, stating that such restrictions are necessary in order to ensure that trust arrangements are not a means of circumventing acreage limitation. However, most of the comments objected to one or more of the criteria.

*Response:* The Department has reviewed this issue and has determined that section 214 of the RRA does not mandate that trust agreements meet the criteria set forth in the proposed rules. Therefore, the final rules have been revised to provide that trust agreements must (1) be in writing, (2) be approved

by the Secretary, (3) identify the beneficiaries, and (4) describe the interests of the beneficiaries. In addition, the final rules provide, in the same way the 1983 rules did, that the interest of each beneficiary in trust land, in combination with other land owned by the beneficiary, may not exceed the ownership limitations set by Reclamation law.

*43 CFR 426.6(d) Prior law recipients.*

*Comment 1:* One person questioned whether a prior law recipient becomes eligible to receive irrigation water on 960 acres if he makes an irrevocable election.

*Response:* An individual under prior law can increase his ownership entitlement from 160 to 960 acres (1) by making an irrevocable election or (2) by owning or leasing lands as an individual in a district that has become subject to the discretionary provisions.

*Comment 2:* Two respondents thought the rules should apply the ownership limitations for prior law recipients strictly on a westwide basis. On the other hand, eight respondents thought there should be no westwide application for prior law recipients.

*Response:* As in the current and proposed rules, the approach on this issue in the final rules recognizes past practices, but also is consistent with Solicitor Krulitz's December 6, 1979, opinion which concluded that acreage limitation must be applied on a westwide basis. That is, if a landowner owned land prior to December 6, 1979, he is entitled to receive irrigation water on that land, provided he owns no more than 160 acres in each district. For any land acquired after December 6, 1979, the eligibility of the newly acquired land is based on the landowner's westwide ownership.

*43 CFR 426.6(d)(3) Tenants-in-common.*

*Comment:* One person thought the term "joint tenancies" should be added to this paragraph. This person also suggested that this paragraph be clarified to show that it is the individual who is subject to prior law, not the tenancy.

*Response:* This section applies to joint tenancies as well as tenancies-in-common. Therefore, we have accommodated the respondent's first comment by adding the term "joint tenancies" to the final rules. However, we have not changed this paragraph, as suggested in the respondent's second comment, to show that it is the individual, not the tenancy, that is subject to prior law. The purpose of this paragraph in fact, is to address entitlements for tenancies subject to prior law. Within such tenancies, it is possible for some of the individual tenants to be subject to prior law and some to be subject to the discretionary provisions. Regardless, neither can receive irrigation water on more than 160 acres through the tenancy so long as the tenancy remains subject to prior law. This respondent also applies to partnerships that remain subject to prior law.

*43 CFR 426.6(d)(4) Partnerships.*

*Comment 1:* One person commented that a partnership agreement should not be deemed to restrict severability in partnerships just because it contains the following provisions: (1) Right of first refusal and (2) a provision precluding a partner from transferring his interest to a third party if it results in any of the partnership's property being designated as nonexcess.

*Response:* These two provisions would not be considered conditions eliminating the separate interests of partners. However, the rules have not been revised to reflect these suggestions, since the present rules accommodate the suggestion without revision.

*Comment 2:* One person asked the following questions about the provisions in this paragraph of the rules: (1) What happens to the entitlement of individual partners when the partners do not have a separable interest? (2) Can a partnership in which each partner does not have a separable interest make an irrevocable election? (3) Why does this paragraph, which is about partners subject to prior law, include a sentence about partnerships subject to the discretionary provisions?

*Response:* Following is a response to these questions: (1) If each partner in a partnership subject to prior law does not have a separable interest, the partnership is entitled to irrigate a maximum of 160 acres. The number of acres attributable to a partner depends on the percentage of interest held by each partner. For example, if there are 4 partners and each holds a 25 percent interest in the partnership, 40 acres of the partnership's land would be attributed to that partnership's entitlement. If the partner remains subject to prior law, he may own and receive irrigation water on another 120 acres outside the partnership in order to complete his individual 160-acre entitlement. If the partner is subject to the discretionary provisions, he may receive water on another 920 acres outside the partnership. (2) A partnership in which the partners do not have separable interests is not precluded from making an irrevocable election. (3) The sentence that refers to the discretionary provisions has been included in this paragraph because it is possible, through an irrevocable election or contract action by a district in which a partner holds land directly, for some or all partners in a prior law partnership to be subject to the discretionary provisions.

*43 CFR 426.6(d)(6) Trusts.*

*Comment 1:* One person commented that, as the proposed rules are written, it implies that land held by a trustee is exempt from acreage limitation. The respondent suggested that the rules be reworded to state that land held by a trustee does not accrue to the personal entitlement of the trustee.

*Response:* We believe the respondent's suggestion has merit; however, we have not accommodated it in the final rules because the proposed wording, which is the same as that in the current rules, has not caused any problems or confusion in the past.

*Comment 2:* Eight persons questioned whether trust land will be attributed to the parent in those cases where the beneficiary is a dependent minor subject to prior law.

*Response:* Under prior law, each minor child is considered to be an individual, and therefore, has a 160-acre entitlement separate from that of his parents.

*43 CFR 426.6(g) Multidistrict ownerships.*

*Comment:* Three persons objected to this provision. They felt that a multidistrict landowner should not automatically become subject to the discretionary provisions by virtue of a district contract amendment if the landowner never received irrigation water in that district.

*Response:* Since the definition of "irrigation land" has been revised to include only that land receiving irrigation water [see § 426.4(m)], in effect, the respondents' comment has been accommodated. Furthermore, as discussed in the response to comment 2 under § 426.5(a)(2), individuals will not become qualified or limited recipients in districts that have become subject to the discretionary provisions, unless they own land as an individual rather than through a legal entity.

*CFR 426.6(h) Loss of eligibility.*

*Comment:* We received six comments stating that this paragraph should be revised to allow landowners to purchase themselves into excess and make the land eligible through redesignation, even

if the landowner chooses not to make an irrevocable election.

*Response:* The Department has reviewed this issue and determined that the respondents' comment can be accommodated. The rules have been changed accordingly.

**43 CFR 426.7 Leasing and Full-cost Pricing**

*43 CFR 426.7(a) What constitutes a lease.*

*Comment 1:* One hundred twenty-two individuals wanted the definition of "lease" to remain as it is in the current rules. Generally, they felt the proposed changes were too broad in scope and would inhibit legitimate farming practices. On the other hand, nine commenters supported the proposed changes and, in some cases, felt further restrictions were necessary.

*Response:* The wording in the proposed rules has been deleted. The definition from the current rules has been reinstated with changes for clarification.

*Comment 2:* Six persons felt that farmers would face an onerous burden if they had to have their farm management arrangements approved in advance. They felt the burden of proof should rest with the Bureau of Reclamation.

*Response:* This section has been revised to eliminate the requirement that all farm management arrangements be approved in advance by the Bureau. However, at the Secretary's request, landowners will be responsible for providing information concerning a farm management arrangement or a consulting arrangement.

*Comment 3:* One individual suggested a review process needed to be established for cases in which the Bureau alleges that a farm management agreement is a lease.

*Response:* The Bureau agrees. To insure a consistent evaluation of such arrangements the Bureau will issue policy guidelines in the near future for use by the Bureau's Regional Offices in evaluating farm management arrangements.

*43 CFR 426.7(a)(1) Legitimate custom farming operations.*

*Comment 1:* One hundred twenty-one persons declared that the language in the 1983 rules on farm management arrangements should be retained. They based their argument on the fact that the RRA only addresses ownership and leasing. In their opinion, the proposed language goes well beyond the intent of the law. On the other hand, six persons agreed with this provision and, in fact, provided suggestions for further strengthening it. They argued that Congress intended to limit the subsidy to all farm operations, not just ownerships and leases.

*Response:* This section has been revised to reflect the wording in the 1983 rules. However, the section has been clarified by adding language stating that management arrangements or consulting agreements will not be considered leases if: (1) the manger or consultant performs a management or consulting service for the landowner for a fee but does not assume the economic risk in the farming operation, and (2) the landowner retains the right to the use and possession of the land, is responsible for payment of the operating expenses, and is entitled to receive the profits from the farming operation.

*Comment 2:* Eleven persons found inconsistencies between the proposed provisions in this section and regulations they must follow for other Federal agencies. Some of these individuals felt that the other agencies' regulations made the proposed changes unnecessary.

*Response:* These comments have been accommodated by reinstating, with some modification, the language from the 1983 rules.

*Comment 3:* Two individuals felt that families should be granted exceptions to the full-cost pricing provisions, regardless of how such families are organized or how much land they farm.

*Response:* The RRA provides no special dispensation to families. In fact, under the discretionary provisions, the definition of "individual" specifically includes a farmer, spouse, and any dependents. The Department cannot provide any special treatment to family farmers who exceed the ownership or water subsidy limitations of the RRA.

*43 CFR 426.7(a)(2) Nonreclamation dependent activities.*

*Comment:* In this section, the sentence on subleasing is irrelevant and out of place.

*Response:* We agree with this comment. The subject sentence is now located in section 426.7(c).

*43 CFR 426.7(b)(1) Present leases.*

*Comment 1:* Several persons objected to the practice of keeping leases and farm operation agreements on file in district offices.

*Response:* Neither the existing nor the proposed rules require districts to keep such agreements on file. This section merely requires that lessors and lessees have written leases, and that they must be able to provide those leases at the Secretary's request. The language pertaining to farm operation agreements has been deleted; however, section 426.7(a)(1) provides that the Secretary may request information from the landowner concerning a farm management arrangement or consulting arrangement.

*43 CFR 426.7(b)(2) Written leases in existence prior to October 12, 1982.*

*Comment:* One person asked why Reclamation law contains provisions limiting the term of any lease.

*Response:* Section 227 of the RRA specifically limits the term of any lease, whether subject to prior law or the discretionary provisions. The purpose of this provision is apparently to prevent landholders from controlling land parcels for long periods of time—in other words, effectively becoming the owners of land through leasing. The underlying principle is that Reclamation project benefits should be distributed to as many potential landholders as possible. Tying up land for long periods through leasing is inconsistent with that principle.

*43 CFR 426.7(c) Full-cost acreage thresholds.*

*Comment 1:* Eleven respondents commented that, in section 426.7(c), non-full-cost acreage should be counted on an instantaneous rather than cumulative basis. In their opinion, cumulative counting would be an administrative nightmare and would prevent farmers from operating economically and efficiently.

*Response:* We believe that counting non-full-cost acreage cumulatively is the simpler administrative method. Instantaneous counting would permit farmers to change their non-full-cost acreage selections repeatedly during the water year, and would thus result in increased paperwork and more complicated billing for districts. Under the rules as written, once a landholder reaches his/her non-full-cost entitlement during any water year, any land leased later in that water year is automatically subject to full cost. This rule also prevents landholders from attempting to avoid full-cost payments on land leased in excess of entitlements through constant reselection of non-full-cost land.

*Comment 2:* Four respondents commented that, in section 426.7(c), the burden of proving that a farm operation agreement is not a lease should be with the Bureau, not the landholder.

*Response:* This suggestion has been adopted; the relevant sentences have been deleted.

*Comment 3:* One respondent suggested that the last sentence of

paragraph (c) be deleted because the manner in which districts collect revenues is either an internal matter or governed by State law.

*Response:* Sections 203(c) and 205(a) of th RRA are clear in that additonal charges incurred by landholders are to be collected from the responsible landholders. It is patently unfair to force all water users in a district to pay the increased charges incurred by a few large landholders. To do so would defeat the purpose of the Federal law (RRA) in eliminating the subsidy to landholdings above specified thresholds. Furthermore, a district which attempts to spread the increased costs incurred by a few landholders over the entire district may be exposing itself to a significant risk of lawsuit by the nonresponsible landholders.

*Comment 4:* Two respondents stated the Bureau should be responsible for determining what land should be subject to full cost and/or full operation and maintenance (O&M), and the Bureau should inform the district of these determinations.

*Response:* Under their contracts with the United States, districts are responsible for collecting appropriate water charges, complying with Federal regulations, and providing data as required by the United States. Landholders are responsible for selecting their full-cost and non-full-cost land on the appropriate certification or reporting forms. There should be no significant difficulty in determining what or how much land is subject to full cost or full O&M, using these regulations and the appropriate forms. Of course, the Bureau of Reclamation stands ready to assist if questions should arise concerning the application of these rules.

*Comment 5:* One respondent suggested that the rules should clearly establish the extent of the district's obligation to collect full-cost charges; i.e., is the district required to file suit, secure judgement, etc? Also, if the lessee fails to pay, does the district have recourse against the owner?

*Response:* These matters are worthy of consideration, but are more appropriately addressed through policy memoranda rather than in the rules. Some of these questions have already been answered by the Commissioner. For example, in a letter dated November 7, 1985, the Commissioner established that districts were responsible for collection of full-cost charges, and that the district does have recourse against the landowner if the lessee fails to pay full cost or full O&M charges.

*Comment 6:* One respondent suggested that landholders be required to select full-cost land out of their owned land before their leased land; this would make it easier for the district to refuse water, since a third party (the lessor) would not be involved.

*Response:* The certification and reporting forms provide for the concurrence of the nonresponsible party (be it the lessor or the lessee) whenever land is selected to pay full cost; there should consequently be little difficulty regarding the payment of full cost due to the involvement of a third party.

*Comment 7:* One respondent suggested that farmers should not be required to count owned land against their non-full-cost entitlements if they lease that land to another party.

*Response:* The RRA defines "landholding" as land "owned or operated under a lease" and further stipulates that land in a landholding exceeding certain thresholds can receive water only at full cost. The fact that one farmer may lease his/her owned land to another farmer does not remove the land from the first farmer's landholding.

*Comment 8:* One respondent proposed that the rules regarding selection of non-full-cost land should address the situation of crops, such as winter wheat, that are planted in one water year and continue to receive water in the next water year.

*Response:* Unique types of situations are more properly addressed on a case-by-case basis rather than through rulemaking.

*43 CFR 426.7(c)(1) Non-full-cost entitlement for qualified recipients.*

*Comment:* One respondent suggested that the rules spell out more clearly that non-full-cost acreage is counted on an annual cumulative basis.

*Response:* We have modified section 426.7(c) accordingly.

*43 CFR 426.7(c)(3) Non-full-cost entitlement for prior law recipients.*

*Comment 1:* Thirty-five persons believed that section 203(b) of the RRA violated their existing contracts, was unconstitutional and/or should be repealed. Some stated that if it was not changed, those with contracts executed prior to October 12, 1982, should be grandfathered in. On the other hand, three persons declared that section 203(b) should be implemented—Congress was aware of its impacts.

*Response:* The executive branch of Government does not have the latitude to ignore any provisions of an Act signed into law or to provide exemptions when the law clearly does not allow them. Only the legislative branch may repeal a law in part or in its entirety. Finally, the constitutionality of section 203(b) must be decided by the judicial branch. Until informed to the contrary by Congress or the courts, section 203(b) must be implemented.

*Comment 2:* Twelve persons stated that implementation of section 203(b) would cause hardships for certain farmers and force greater uses of other sources of water.

*Response:* The effects associated with the implementation of section 203(b) on each prior law individual will be dependent on a variety of factors. It is not feasible for the Bureau to craft regulations that will mitigate all negative effects, especially in light of the fact that Congress specifically included section 203(b) to encourage landholders to become subject to the discretionary provisions.

*Comment 3:* Seven individuals requested a delay in the implementation of section 203(b), since it was being implemented so close to the April 12, 1987, deadline.

*Response:* By law, section 203(b) cannot be implemented before or after April 12, 1987. When Congress enacted the RRA, it specifically gave landholders 4½ years to study their situations and make decisons on whether or not to convert to the discretionary provisions.

*Comment 4:* Thirty-two persons declared that the non-full-cost entitlement for husbands and wives should be 320 acres, not 160 acres. Some of the commenters based their opinion on view that the definition of "individual" in the RRA does not apply to prior law recipients.

*Response:* Upon legal review, it was determined that the definition of "individual" in the RRA does not apply to prior law recipients. The non-full-cost entitlement for husbands and wives will be 320 acres owned or leased.

*Comment 5:* Nineteen respondents stated that section 203(b) should be implemented on a district-by-district rather than westwide basis. In contrast, one person commented that the westwide interpretation was sound.

*Response:* Based on the Department's legal interpretation of section 203(b), all owned and leased land receiving irrigation water westwide will be counted against a prior law recipient's non-full cost entitlement.

*Comment 6:* Fourteen respondents suggested that the non-full-cost entitlement for partnerships should be 160 acres per partner.

*Response:* This suggestion has been accommodated. The non-full-cost entitlement is computed in the same manner as ownership entitlement is computed; that is, on an individual rather than entity basis. As a result, the

non-full-cost entitlement will be 160 acres for each member of a prior law entity (other than a corporation), with no limit for the noncorporate entity itself.

*Comment 7:* One person wanted a provision added to the rules to address the options irrevocable electors have if section 203(b) is declared unconstitutional.

*Response:* This issue will be addressed if the courts make that decision.

*43 CFR 426.7(d) Multidistrict landholding.*

*Comment:* Six respondents suggested that a multidistrict landholder should not become subject to the discretionary provisions when one of the districts in which he/she holds land amends its contract, provided the landholder never receives water in the amended district.

*Response:* Since the definition of "irrigation land" has been revised to include only that land receiving irrigation water, in effect, this suggestion has been adopted.

*43 CFR 426.7(e) Calculating full cost and 426.7(f) Interest rate calculations for full cost.*

*Comment 1:* One commenter suggested that an example be added pertaining to calculation of full cost in the Central Valley Project.

*Response:* This comment was adopted; a fourth example has been added.

*Comment 2:* Four respondents requested additional detail and explanation of how full-cost rates and interest rates are calculated.

*Response:* It would be impossible to cover in these rules all the details and possible situations that might arise in the calculations of full-cost rates. We have prepared a document, "Technical Instructions for Full-Cost Calculations" that interested parties may review by contacting the Bureau to obtain a copy.

**Note:** In the proposed rules, the "note" after section 426.7(f)(2) stated that prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the lower full-cost interest rate as set forth in section 426.7(f)(1). This statement is true except for those legal entities that are limited recipients that did not receive irrigation water prior to October 1, 1981. In such cases, the higher full-cost rate, as set forth in section 426.7(f)(2), will apply. In the final rules, the subject sentence has been revised to note this exception.

*43 CFR 426.7(g) Proportional charges for full-cost water.*

*Comment:* Eleven commenters expressed concern over this section. Some felt it was too specific and inflexible, while others suggested changes to accommodate the use of water meters.

*Response:* This section has been revised to address many of the expressed concerns. For example, measuring devices will not be allowed in determining direct assessments.

**43 CFR 426.8 Operation and Maintenance**

*43 CFR 426.8(a) Districts with new or amended contracts.*

*Comment 1:* Five people commented that when districts amend contracts, they should also pay an appropriate share of capital costs in addition to full O&M costs. One person also said that accumulated O&M deficits should also be collected.

*Response:* Section 208 of the RRA provides that charges shall be at least sufficient to recover operation and maintenance charges. The 1983 rules and these rules reflect an interpretatively conservative approach to the statute. Nevertheless, some accommodation has been made to this comment in that any positive differential above O&M costs existing at the time a district amends its contract solely to become subject to the discretionary provisions will be maintained in the future. However, no attempt was made in these rules to get across-the-board increases in water charges to recover capital investments or O&M deficits.

*Comment 2:* One person commented that O&M cost increases should be tied to the value of agricultural commodities as a whole.

*Response:* O&M water charges are to recover costs actually incurred. These costs are not linked to the value or price of agricultural commodities or any farm production inputs.

*Comment 3:* Two people commented that the rules should acknowledge that existing contracts take precedence where there are conflicts with these rules.

*Response:* These provisions apply to new or amended contracts. Therefore, there is no question of precedence.

**43 CFR 426.9 Class 1 Equivalency**

*43 CFR 426.9(a) In general.*

*Comment:* Five people commented that class 1 equivalency should be applied on something other than a district-by-district basis. Some maintained that equivalency should be applied on a statewide or westwide basis. One of the commenters requested that the same class 1 equivalency determinations be applied to adjoining districts that have similar circumstances.

*Response:* The law provides for class 1 equivalency on a district basis. As an administrative matter, where the agricultural setting with respect to land quality, climate, and other productive factors is similar, districts can be combined into one equivalency study. However, there is too much variation in conditions to apply equivalency on a statewide or westside basis.

*43 CFR 426.9(c) Scheduling.*

*Comment:* One respondent commented that the Bureau has not been completing class 1 equivalency determinations in a timely manner.

*Response:* It is not appropriate to address this comment within the rules themselves; however, the comment has been noted and steps will be taken to ensure that future determinations are completed within reasonable timeframes.

**43 CFR 426.10 Certification and Reporting Requirements**

*43 CFR 426.10 General.*

*Comment 1:* Several respondents commented that the certification and reporting requirements are too extensive, complex, and burdensome to landholders and districts.

*Response:* The following modifications to the proposed rules have been made to reduce the paperwork burden to individuals and districts: (1) In conformance with the precise language of the RRA, we have eliminated the term "operator" and made it clear throughout section 426.10 that only landowners and lessees must certify or report. (2) We have provided that limited recipient entities must identify only those part owners who (i) own more than 4 percent of the limited recipient and (ii) such ownership interest would constitute an attribution of ownership to such participant or shareholder of more than 40 acres. (3) We have made a concerted effort to revise all certification and reporting forms and procedures in such a way as to minimize the burden to landholders and districts.

*Comment 2:* Because district personnel are familiar with all district landholders, several commenters stated that the burden of certification and reporting should be entirely with the district, not with the landholders.

*Response:* This comment was not accommodated. The RRA clearly places the responsibility for providing information to demonstrate compliance with Reclamation law upon both districts and landholders. Furthermore,

it would be unreasonable, if not impossible, to require district awareness on all details of any individual's or entity's status with respect to Reclamation law, particularly leasing.

*Comment 3:* One respondent commented that some of the terms used throughout this section are too general. As examples, the respondent cited the terms "changes in some way" and "pertinent information."

*Response:* This suggestion was not accommodated, as the existing language reflects our intended meaning. The phrase "information pertinent to" issued to cover all the various data elements needed to demonstrate a landholder's compliance with Reclamation law. It would be inappropriate to attempt to list all these items in the rules; the list is simply too long. The phrase "change in some way" correctly reflects our intention that any change in the ownership or leasing of irrigation land be reported to the appropriate district on the appropriate form.

*Comment 4:* Several respondents stated that land not receiving irrigation water should not need to be reported.

*Response:* This suggestion was not accommodated. All irrigable land, whether or not it is receiving irrigation water, (and any other land receiving irrigation water) must be monitored by the Bureau from an ownership standpoint so we will know if it has been transferred into or out of excess status. The fact that any particular parcel of irrigable land is not receiving irrigation water at one point in time does not mean that the owner, or a subsequent owner, will not want to irrigate that parcel sometime in the future. In order to be able to determine the eligibility of such land, the Bureau must monitor irrigable land that is not receiving water through the certification and reporting system.

*43 CFR 426.10(a) Certification.*

*Comment:* It was suggested by one person that the word "irrigation" should be changed to "irrigable" in this paragraph.

*Response:* The term "irrigation land" has been replaced by the following phrase: "irrigable and irrigation land."

*43 CFR 426.10(b) Reporting.*

*Comment:* One respondent commented that the law does not require prior law recipients to report as a condition for the receipt of irrigation water.

*Response:* Section 206 of the RRA specifically requires that landowners and lessees subject to the discretionary provisions of the RRA must certify as a condition to their receipt of irrigation water. Section 228 of the RRA gives the Secretary the authority to require reporting from all landholders subject to acreage limitation law. Prior law landholders must comply with various provisions of acreage limitation law, just as landholders subject to the discretionary provisions must comply with somewhat different provisions of law. Thus, it is appropriate that prior law landholders be required to provide information pertinent to their compliance in a manner similar to landholders subject to the discretionary provisions.

*43 CFR 426.10(c) Certification and reporting form data requirements.*

*Comment 1:* One commenter inquired as to the reason all members of a qualified recipient entity must be identified.

*Response:* The RRA provides no exceptions to the certification requirement. However, as a matter of administrative practicality we have exempted landholders holding 40 acres or less westwide from this requirement, and provided that holders of small interests (4 percent or less) in limited recipient entities need not be identified. This means many thousands of small landholders and stockholders are exempt from the certification and reporting system. Therefore, since the maximum number of members in a qualified recipient entity is only 25, and only those who hold over a 4 percent interest must be identified, this is not an overly burdensome requirement.

*Comment 2:* One respondent commented that the rules should state that a person holding an interest of 4 percent or less in a limited recipient entity should not be required to declare that part of his/her landholding.

*Response:* This suggestion was not accommodated, although it correctly reflects the Bureau's policy on this matter. This provision is one of many details of certification and reporting that are not specifically covered in the rules, but are fully explained in the certification and reporting forms themselves.

*Comment 3:* One person suggested that all references to "individuals" in this paragraph should be changed to "natural persons."

*Response:* This comment has been accommodated in the final rules by deleting all references to "individuals."

*43 CFR 426.10(d) Schedule for completing certification and reporting forms.*

*Comment 1:* We received comments from 20 persons requesting that the rules be revised so that certification/reporting forms are not required on a yearly basis. They believed that the yearly requirement is unnecessary because landholders are already required to report landholding changes when they occur.

*Response:* Section 228 of the RRA specifically requires district reporting on an annual basis. A landholder that has no changes in his/her landholding during the year is required under these rules to simply sign a statement to that effect. This provides the district with assurance that no landholding change has occurred when it reports to the Bureau, and serves as an annual reminder to landholders of the continuing certification/reporting requirement in the event of a landholding change.

*Comment 2:* The requirement to report landholding changes within 15 days is unreasonable and unenforceable.

*Response:* The requirement to report landholding changes without delay is necessary for the proper enforcement of acreage limitation law. Any landholding change brings with it the possibility of the land becoming ineligible for irrigation water, becoming subject to full O&M assessments, or becoming subject to full cost. Therefore districts must be immediately aware of such landholding changes.

*43 CFR 426.10(e) Short form availability.*

*Comment 1:* One respondent commented that districts should be allowed to verify on behalf of individuals whose landholdings have not changed from the previous year.

*Response:* This suggestion was not accommodated; only the landholder can be held responsible for knowing whether a landholding change has occurred. Therefore, the responsibility for verifying that no landholding changes have occurred appropriately rests with the landholder.

*43 CFR 426.10(f) Exemptions.*

*Comment 1:* We received 18 comments requesting that the exemption threshold be increased.

*Response:* The RRA establishes no exemption threshold for certification requirements. As a matter of administrative practicality, we proposed an exemption threshold of 5 acres when the draft rules were published in May of 1983; however, based on comments received from the public, we raised that threshold to 40 acres in the 1983 rules. We believe that the 40 acres is a reasonable threshold. Raising the threshold to 160 acres, or even 320 acres as some commenters have suggested,

would make it too easy for the unscrupulous few to evade ownership limitations and full-cost pricing provisions by simply not submitting certification or reporting forms.

*43 CFR 426.10(g) District participation.*

*Comment 1:* One respondent requested that the rules spell out whether it is a district or Bureau responsibility to verify the compliance status of landholders to banks for financing purposes.

*Response:* Districts can and should provide banks with requested information on land eligibility and inform them as to whether land is subject to full O&M or full cost. However, we think this topic can more appropriately be addressed outside the rules.

*Comment 2:* Several commenters stated that districts cannot be held responsible for enforcing Reclamation law or the manner in which landholders complete their forms. They believe the Bureau is making the districts act as policemen, pitting the district offices against the landholders.

*Response:* Districts, under their contracts with the United States, are responsible for collecting appropriate water charges, withholding water deliveries to ineligible land, and providing the Bureau with necessary data and reports. Although each landholder is ultimately responsible for the information contained on his/her form, it is not unreasonable to require districts to report known discrepancies or landholder forms to the Bureau. The Bureau has the added responsibility for investigating such discrepancies.

*43 CFR 426.10(j) Failure to report.*

*Comment 1:* A number of commenters addressed the penalty provision in this paragraph. Most comments were negative, some were favorable, and many wanted clarification.

*Response:* The sentence discussing landholder penalties for taking irrigation water in the absence of the required forms has been deleted.

*43 CFR 426.10(l) Application of Privacy Act of 1974.*

*Comment 1:* Several commenters asked for clarification of specific requirements of the Privacy Act of 1974 upon districts.

*Response:* This section has not been modified. However, we plan to develop guidelines for the districts to clarify the requirements of the Privacy Act.

**43 CFR 426.11 Excess Land**

*43 CFR 426.11(a) In general.*

*Comment 1:* One person suggested that excess land should include leased land as well as owned land.

*Response:* This comment could not be accommodated because excess land, as defined in the rules, is land *owned* in excess of an entitlement. Leasing is irrevelant to the definition of excess land.

*Comment 2:* One person suggested that a section should be added that spells out districts' responsibilities to withhold irrigation water from ineligible land and related penalties for noncompliance.

*Response:* Generally speaking, contracts between the United States and districts contain articles outlining such responsibilities. In addition, policy guidelines have been developed setting forth procedures that will be used when violations occur. Therefore, this comment was not addressed in the rules.

*43 CFR 426.11(b) Designation of nonexcess land.*

*Comment 1:* One person commented that some landowners do not want any land designated as nonexcess. To cover these cases, the commenter suggested that a statement be added to the rules allowing such landholders to notify the district in writing that they will not designate any land. Upon receipt of such notice, all lands would be considered excess and ineligible until a designation is completed.

*Response:* The language in the rules is the same as that provided in many existing contracts. Therefore, we did not accommodate this comment in the rules.

*Comment 2:* Three persons objected to the provision that states designations will be made in accordance with the instructions on the certification/reporting forms. They felt this was an attempt by the Bureau to disregard contract commitments, and they stated that they intend to continue to designate land as set forth in their contracts, as those proceduress have been historically administered.

*Response:* We do not believe this provision conflicts with designation procedures set forth in existing contracts. Such contract articles normally spell out, in general terms, the designation process. The certification/reporting forms provide the mechanism whereby the terms of the designation article can be achieved. Therefore, this comment has not been accommodated.

*43 CFR 426.11(b)(3) Status of nonexcess land and redesignation.*

*Comment 1:* Seven persons commented that there is no basis in the law for not allowing a person to buy himself into excess and then redesignate.

*Response:* Paragraphs (b) and (c) in this section have been revised to accommodate this suggestion.

*Comment 2:* One respondent commented that the sentence which provides that redesignations will not be approved if they are "being used for the purpose of achieving, through repeated redesignation, an effective farm size in excess of that permitted by Reclamation law" may be constitutionally invalid in that no criteria is provided by which a redesignation request will be measured. The respondent also commented that all redesignation requests must now be approved at the Denver or Washington level, rather than at the field or regional offices. He could not understand the need for such high-level involvement in what otherwise should be a routine matter, for this would inevitably result in additional delay and expense for the landholders.

*Response:* To protect the Bureau against potential abuse of redesignations, we have left in the sentence concerning repeated redesignations. The rules outline redesignations that do not require Secretarial approval; however, all redesignations outside of these must be submitted for approval to ensure conformance to the requirements of the law. The rules do not specify at what level redesignations will be approved. The Secretary may delegate the responsibility for approving redesignations to whatever office level he finds appropriate.

*43 CFR 426.11(b)(4) Acquisition of excess land.*

*Comment 1:* One person suggested that this paragraph be modified so that it is clear that a person buying excess land or land burdened by a deed covenant may buy several parcels at different times up to his entitlement and may sell such parcels in one or more sales at different times up to his ownership entitlement.

*Response:* This section has been so revised.

*Comment 2:* One person interpreted this provision to mean that once nonexcess land has been sold (up to a person's entitlement) the landowner can no longer receive irrigation water from Bureau projects anywhere. He objected to the provision, stating that it is unfair,

beyond the intent of the law, and hard to administer.

*Response:* This provision limits the amount of benefits a farmer can receive through land purchases at an excess value and subsequent sale at nonexcess value. However, it does not disallow the continued service of project water to nonexcess land bought at full market value.

*43 CFR 426.11(c) Treatment of land ineligible under prior law.*

*Comment 1:* Fourteen persons commented that the forgiveness provision in 426.11(c) of the 1983 rules should not be deleted. They believe that if the rules go into effect before April 12, 1987, this provision would not be available to landowners.

*Response:* As stated in section 426.2(a), these rules become effective on April 13, 1987, and not before. Therefore, this comment has not been accommodated.

*Comment 2:* Twelve persons suggested that the April 12, 1987, deadline specified in section 426.11(c) of the 1983 rules be deleted and substituted with the following phrase: "expiration of the district's present water service contract.""

*Response:* There is no basis in Reclamation law for continuing the blanket forgiveness provisions contained in the 1983 rules. However, given changes that have been made to other provisions in the rules, opportunities exist for ineligible land to be made eligible through approved redesignation, except in the case of excess land purchased without price approval. In the latter case, the land can only become eligible if the sale is reformed or the land is sold to an eligible buyer at an approved price.

*43 CFR 426.11(c)(2)(i) Irrigation land acquired after the date of a district's first repayment or water service contract.*

*Comment 1:* Fourteen respondents suggested that the time limits for making land purchased into excess by prior law recipients were not needed. Some respondents stated that these limits could cause confusion with regards to certification and reporting requirements and that the irrigation season may not be defined in districts that irrigate year-round.

*Response:* The time limitations and references to "an irrigation season" have been deleted.

*Comment 2:* One person stated that this paragraph should be deleted in its entirety, since it was arbitrary and punitive to impose price restrictions on the resale of land purchased at full market value, especially if such land was acquired inadvertently.

*Response:* To permit such actions would be contrary to law. Further, through the annual certification and reporting process, it will be difficult for any landowner to acquire land into excess status inadvertently.

*Comment 3:* One individual referred to the provision that if land was acquired into excess before irrigation water was available, such land can be placed under recordable contract when the water supply becomes available. This individual questioned whether this provision would preclude a landowner from making an election to make his land eligible, rather than placing the land under recordable contract.

*Response:* This provision does not preclude a landowner from making the land eligible up to his entitlement, through an election. The sentence in question only refers to landowners who do not become subject to the discretionary provisions or to any land that remains in excess after the landowner becomes subject to the discretionary provisions.

*43 CFR 426.11(d) Irrigation land which becomes ineligible under the discretionary provisions.*

*Comment 1:* One individual suggested that landowners who purchase nonexcess land into excess status should be allowed to redesignate to make the newly purchased land nonexcess.

*Response:* This suggestion has been incorporated with the stipulation that the Secretary approve such redesignations.

*43 CFR 426.11(e) Recordable contracts.*

*Comment 1:* Two persons stated that the rules should explain if price approval is required when excess land in the Central Arizona Project is sold for nonirrigation purposes.

*Response:* The rules provide that excess land under recordable contract must be sold under the terms of that contract, regardless of the intended use. However, the appraisal will be on the basis of the assumed highest and best use. This land could have some purpose other than agriculture. Excess land not under recordable contract may be sold without price approval, but it remains ineligible for irrigation water unless the sale price is reformed and the new owner is an eligible owner.

*Comment 2:* One individual thought this section should specify that a lessee of 160 acres of land under recordable contract who owns no land should be able to receive irrigation water on that land at the contract rate.

*Response:* This statement is true, provided neither the owner nor the lessee is subject to the discretionary provisions. However, this statement has not been added to the rules because we believe the proposed language adequately covers this situation.

*43 CFR 426.11(f)(2) Water rights separated from land.*

*Comment:* One individual suggested that this provision should be deleted.

*Response:* This provision has been deleted.

*43 CFR 426.11(g) Recordable contracts in effect prior to October 12, 1982.*

*Comment 1:* One individual believed that the rules should be changed to reflect the fact that landowners are eligible to amend their recordable contracts if any district in which they own or lease land amends its contract.

*Response:* This provision has been included in the rules.

*Comment 2:* Four persons stated that we should delete the provision that prohibits post-October 12, 1982, recordable contracts from being amended to conform to the expanded ownership entitlements of the discretionary provisions.

*Response:* This provision has been deleted.

*43 CFR 426.11(h)(1) Deed covenant.*

*Comment:* One individual suggested new wording for the deed covenant recognizing the various exceptions as set forth in section 224e of the RRA should be added.

*Response:* This wording was incorporated in the deed covenant.

*43 CFR 426.11(h)(2) Operational loans for formerly excess land.*

*Comment:* Five persons wanted to know the Department's definition of an operational loan, while another individual wanted this provision deleted.

*Response:* This provision has been deleted. Therefore, a definition for an "operational loan" has not been established.

*43 CFR 426.11(i)(1), (2), (3) Extension of disposition periods for recordable contracts.*

*Comment 1:* One person suggested that subsections (1), (2), and (3) should be deleted since all moratoriums have been lifted.

*Response:* These subsections have been retained, but they have been modified to show the date the Secretary of the Interior resumed processing the sales of excess land.

*Comment 2:* One individual stated the date the processing of excess lands began should be placed in the rules and examples.

*Response:* Appropriate dates have been inserted.

*43 CFR 426.11(i)(4) Water rates for land under extended recordable contracts.*

*Comment:* Fourteen persons questioned the authority for requiring prior law recipients to pay at least the full O&M rate for land under extended recordable contract. They stated that section 205(c) of the RRA, which calls for full cost for all deliveries to land under extended recordable contract, does not apply to prior law recipients.

*Response:* Upon review, it was decided that prior law recipients should continue to receive irrigation water at the contract water rate for land under extended recordable contract. The rule has been altered to reflect this position.

*43 CFR 426.11(j)(2) Appraisals.*

*Comment:* One individual wanted the procedures for excess land appraisals spelled out in the rules.

*Response:* This recommendation has not been accommodated in the rules. These procedures are set forth in Bureau documents that are available to the public but are too technically detailed to include in the rules. 43 CFR 426.11(k) Land which becomes excess or ineligible because of westwide application or enforcement of other requirements of law.

*Comment:* One person stated that this section did not appear to be consistent with the ownership entitlements for legal entities established under State or Federal law found in section 426.6(b)(3).

*Response:* Changes have been made to both of these sections, thereby eliminating the inconsistencies.

**43 CFR 426.12 Excess Land Appraisals**

*43 CFR 426.12(a) In general.*

*Comment 1:* Fifteen persons commented that appraisals take too long. Some made suggestions on ways to speed up the process.

*Response:* It is Bureau policy to complete appraisals within 60 days. However, delays in receipt of necessary input from lending institutions and/or landholders, as well as the timely availability of qualified field appraisers, frequently remove the process from the Bureau's control. All suggestions for improvement are welcomed. The rules, as written, allow the Bureau to adopt suggestions to meet the needs and facilitate the process for individual cases. It should be noted that by allowing the removal of deed covenants through all transactions except direct sale it is unlikely in the future that appraisal of land under deed covenant will be a significant work item.

*Comment 2:* One person commented that the appraisal methods harmed his district and that they should not be required to use water trend data for appraisals because it would devalue the land to practically nothing. The Secretary should use this information as appropriate, not in all cases.

*Response:* The purpose of the appraisal procedure is to determine the fair market value of the land without benefit of the Federal project. Thus, if the preproject water supply was from groundwater, and the groundwater was being overtaxed, it is a necessary factor in determining the value of the land for agriculture. Clearly, the greater the groundwater overdraft over time, the lower the value of the land for agriculture.

**43 CFR 426.13 Exemptions**

*43 CFR 426.13(a)(2) Reclamation projects.*

*Comment 1:* One person, who represents a district that has completed repayment of its construction charge obligation, expressed the following concern: If the district's exemption status should ever be reversed in the future, (1) the district would not be able to take advantage of the 960-acre ownership entitlement because the April 12, 1987, deadline for becoming subject to the discretionary provisions would have expired; (2) nonresident aliens in the district would not be eligible to receive irrigation water; and (3) the district would be required to implement conservation measures that may be cost prohibitive to the district.

*Response:* In response to the first concern, a district's exemption status will not be reversed unless the district enters into a new contract to receive additional construction funds. Such a contract action would automatically subject the district to the discretionary provisions, even if the contract action took place after April 12, 1987. This means individual landowners would become qualified recipients and thereby entitled to the 960-acre ownership limitation. Secondly, the final rules have been revised so that nonresident aliens may receive irrigation water on 960 acres, provided the land is held through a legal entity(s) subject to the discretionary provisions. Lastly, all districts, including those that have paid out, are subject to the water conservation requirements in section 210 of the RRA if they continue to contract with the United States. Only the requirements for full-cost payment, reporting, and ownership limitations are eliminated with pay out. In almost all cases, the contract continues in effect with regard to all other provisions.

*Comment 2:* Two persons suggested that individuals should be able to prepay their construction charges, and by so doing, become exempt.

*Response:* Section 213 of the RRA clearly states that individual prepayment is permitted only if authorized in the district's contract. Furthermore, prepayment is expressly disallowed as a valid contract provision for contracts entered into after the date of the RRA.

*Comment 3:* One person commented that the rules should clearly state that the RRA no longer applies once a district has paid out.

*Response:* Section 213 of the RRA provides that, upon completion of its construction charge obligation, a district becomes exempt from the acreage limitation and full-cost pricing provisions of Reclamation law. This is not a blanket exception from the RRA, just the pricing and ownership provisions, and by logical extension, the reporting requirements. We believe the language in section 426.13(a)(2) clearly reflects the exemption and its limitations.

*Comment 4:* Do all of the nondiscretionary provisions apply to paid-out districts?

*Response:* As stated in the response to comment 1 in this section, the RRA exempts paid-out districts only from the acreage limitation and full-cost pricing provisions of Reclamation law. The rules further exempt paid-out districts from the certification and reporting requirements. These are the only provisions of Reclamation law from which such districts will be exempt.

*43 CFR 426.13(a)(3) Temporary supplies of water.*

*Comment 1:* Two persons commented that the rules should provide that water delivered under all temporary contracts not exceeding one year should be exempt from acreage limitation.

*Response:* Section 215 of the RRA specifies that the following two conditions must be met in order for land receiving water under a temporary contract to be considered exempt from the ownership limitations of Reclamation law: (1) the contract may not exceed 1 year and (2) the water supplies must not be storable for project purposes or must be infrequent and otherwise unmanaged flood flows of short duration. If *both* of these

conditions are not met, we have no authority for exempting land receiving temporary irrigation water supplies. Therefore, the rules have not been revised to accommodate this comment.

*43 CFR 426.13(a)(5) Rehabilitation and Betterment programs.*

*Comment 1:* Two persons requested that the last sentence in this section be reworded because it could be interpreted to mean that paid-out districts must become subject to the discretionary provisions if they receive a R&B loan.

*Resonse:* This was not the intended meaning of the last sentence. Rather, the sentence was intended to address those situations in which districts apply for an R&B loan for the purpose of rehabilitating facilities that are not part of a Reclamation project. However, the Department has decided that it is not appropriate to address this issue in the rules, so the last sentence has been deleted.

*Comment 2:* Three persons commented that the receipt of an R&B loan should not trigger the discretionary provisions in districts that have not completed payment of their construction cost obligation.

*Response:* After reviewing this matter, the Department has concluded that R&B loans provide operation and maintenance funds rather than construction funds. Therefore, an R&B loan contract is not a contract within the meaning of the RRA and, therefore, should not be considered an additional or supplemental benefit requiring a district to conform to the discretionary provisions. We have deleted this requirement from the rules.

*43 CFR 426.15 Religious and Charitable Organizations.*

*Comment:* One person commented that Congress did not intend to require all churches and charibable entities to operate in one specific manner in order to be eligible to receive water. Therefore, that person agreed with the proposed revision.

*Response:* The proposed revision which will allow religious and charitable organizations an option to lease land to others, within specified constraints, has been retained in the final rules and regulations.

**43 CFR 426.16 Involuntary Acquisition of Land**

*43 CFR 426.16 General.*

*Comment:* One commenter suggested that the rules should state that land acquired by a spouse through a divorce settlement should be considered an involuntary acquisition.

*Response:* This suggestion was not accommodated. A divorce settlement does not constitute an involuntary acquisition as defined in either section 216 or 224(e) of the RRA. The rights of a surviving spouse are covered in separate legislation, Pub. L. 86–684.

*43 CFR 426.16(a)(2) Land subject to deed covenant.*

*Comment 1:* One commenter suggested that land involuntary acquired into excess status should be required to pay water rates equal to what the previous owner had paid, and should not be subject to full-cost pricing through leasing.

*Response:* This suggestion was not adopted. Such a rule would permit lessees to exceed their non-full-cost entitlements if they were leasing land that the owner had involuntary acquired into excess status. There is no provision in law that would permit lessees to exceed their entitlements in such a manner.

*Comment 2:* Forty commenters suggested that parties who acquire land subject to a deed covenant by involuntary foreclosure, should not be required to abide by the terms of the deed covenant.

*Response:* This suggestion has been accommodated; §§ 426.11(h) and 426.16 have been modified accordingly. These sections now provide that the deed covenant can be removed when the land is acquired through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, devise, or gift.

*Comment 3:* One commenter suggested that when ineligible land is involuntarily acquired by a prior law landholder, such land can be declared nonexcess up to the landholder's entitlement when the landholder conforms to the discretionary provisions, without subjecting the land to a deed covenant.

*Response:* This suggestion has been accommodated. The deed covenant will be removed if disposal is accomplished through any involuntary process as described in the response to comment 2 above.

**43 CFR 426.17 Land Held by Governmental Agencies**

*43 CFR 426.17(a) Acreage limitation.*

*Comment:* One person stated that the Bureau of Reclamation is intent on applying excess land provisions to State lands, while section 1 of Pub. L. 91–310 provides that lands held by public agencies are not to be deemed excess.

*Response:* Section 1 of Pub. L. 91–310 applies only to lands held by public agencies which are farmed for a non-revenue-producing public function. Further, section 2 of Pub. L. 91–310 states that other irrigable lands held by these agencies must be placed under recordable contract to receive water from a Federal reclamation project. In addition, as stated in section 3 of Pub. L. 91–310, lessees of lands held by public agencies are held to the same acreage limitation provisions as private landowners.

*43 CFR 426.17(b) Sales.*

*Comment:* Two persons suggested adding clarification on how the rules would apply to excess land acquired by a public agency.

*Response:* Excess land provisions apply to public agencies as well as individuals and legal entities. No additional clarification was added to this section because sufficient guidance is provided in §§ 426.6, 426.11, 426.12 and 426.16. Additional language here would be repetitive.

*43 CFR 426.17(c) Leasing.*

*Comment:* Twenty persons suggested that restrictions on the leasing of land owned by States or political subdivisions should be relaxed. Strict adherence to the proposed rules could have severe economic impacts, particularly in the Central Arizona Project.

*Response:* The RRA removes the provision in Public Law 91–310, dated July 7, 1970, which requires land leased from State or political subdivisions to eventually be placed under recordable contract and sold if it is to continue to receive water. All other provisions of the 1970 act continue in effect. The 1970 act provides that States or political subdivisions may lease land in no greater size parcels than can be owned by an individual subject to Reclamation law. This provision has consistently been interpreted to mean that a State or political subdivision cannot lease land to an individual if that individual's landholding exceeds the acreage limitations imposed by Reclamation law. The rules and regulations continue to reflect this requirment of law.

**43 CFR 426.18 Commingling**

*43 CFR 426.18(a) Existing commingling provisions in contracts.*

*Comment 1:* Ten persons commented that the proviso in the last sentence of this section should be deleted. The

proposed rule stated that the commingling provision of contracts entered into prior to October 1, 1981, would apply to renewed contracts, ". . . *provided they are consistent with the provisions in paragraph (b) of this section.*" (emphasis added). The reasons cited for eliminating the proviso were that it essentially eliminated the district's ability to continue commingling as provided for in existing contracts and that it would overrule provisions in the Sacramento River Contract which were valid under the Tulare formula.

*Response:* The proviso was deleted. Under the final rules, commingling provisions in existing contracts will also apply to renewed contracts.

*Comment 2:* One person commented that this section should be expanded to provide that present commingling practices are validated even if the existing contract does not contain commingling provisions, provided the planning documentation supports the fact that commingling was intended.

*Response:* Section 225 of the RRA only validates the provisions of *contracts* entered into prior to October 1, 1981. A blanket rule legitimizing undefined past commingling practices, which may or may not be consistent with Reclamation law, under the vague support of "planning documentation" is going well beyond the legislation. However, these situations will be considered on a case-by-case basis.

*43 CFR 426.18(b) Establishment of commingling provision in contracts.*

*Comment 1:* Several comments were received to the effect that this section should be clarified as to who is subject to these rules and Reclamation law. One person said that the RRA applies to only those individuals and canal companies that subscribe to project water. Another said they apply only to landowners who are willing to comply with Reclamation law and who receive project water. Fifteen people said that when commingling results in water/energy conservation and meets district's operational criteria, it should be permitted without charge or interference by Government and that if a landowner receives project water unavoidably by pumping groundwater, such water will not be considered project water.

*Response:* This section has been substantially revised and clarified as follows: (1) If irrigation water and nonproject water are commingled in facilities constructed *without* Federal Reclamation funds, these regulations apply only to landholders receiving irrigation water. (2) If commingling occurs in facilities constructed *with* Federal Reclamation funds, these regulations apply to landholders receiving nonproject water, *unless* the district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal government, including interest, of storing and/or conveying the nonproject water. Also, several examples have been added to illustrate how Reclamation law and these rules apply in the more common commingling situations.

One of these examples states that irrigation of ineligible excess lands with groundwater that is augmented as an unavoidable result of supplying surface water to eligible lands, shall not be a violation of Reclamation law.

*Comment 2:* Many comments were received about the application of this section to the Central Arizona Project (CAP). The people said the CAP should be permitted to commingle project and nonproject water without imposing acreage limitation. Two people asked what is the legal justification for changing "federally financed facilities" to "federally subsidized facilities" and five people said the rules should state exactly how the higher rate for conveying nonproject water will be determined.

*Response:* Congress did not grant an exemption to CAP in the RRA; therefore, these rules and Reclamation law do apply. However, this section was revised as previously noted to permit the conveyance of nonproject water in a federally financed distribution system absent compliance with acreage limitation provisions of Reclamation law provided an incremental fee is paid to the United States. This incremental fee should reasonably reflect: "an appropriate share of the cost to the Federal Government, including interest, of storing and/or conveying the nonproject water. Such fee shall be established by the Secretary and shall be in addition to the district's obligation to pay for capital, operation, maintenance and replacement costs associated with the facilities required to provide the service".

*43 CRR 426.18(b)(3) [renumbered (2)] Acquisition by exchange.*

*Comment:* One person commented: "The proposals also appear to be contrary to the established principle that Reclamation law goes where the water goes, *not* where the benefits go. Merely because a party *benefits* from an exchange, this is not sufficient reason to impose Reclamation law. The issue is whether the party receives additional irrigation water (i.e., water furnished by the federal government pursuant to a contract.)" Two persons suggested changes to define or amplify what would be considered as a material benefit.

*Response:* This rule is to protect the holders of pre-existing private water rights from becoming subject to Reclamation law by virtue of having agreed to exchange those rights to reduce costs and provide water to others. In the case of exchanges, Reclamation law does not follow the physical body of water flowing from or through the federally financed facility, but rather it applies to those who benefited from the federal facility by receiving an additional irrigation water supply, which is in accord with the last sentence of the first comment above.

**43 CFR 426.19 Water Conservation**

*43 CFR 426.19(b) Development of a plan.*

*Comment 1:* Three persons stated that the rules needed to be more specific and detailed with regard to minimum acceptable criteria, time tables, examples, etc.

*Response:* The water conservation provisions of these rules are required by section 210 of the RRA. They are general by intent since it is the districts which will develop and carry out the water conservation programs. However, the rule does emphasize that the Secretary of the Interior will encourage district water conservation initiatives, recognizing that the responsibility for these efforts is primarily that of the districts, not that of the Federal Government. This is in accord with the intent expressed by Congress in the water conservation provision of the RRA.

*Comment 2:* Three persons objected to the requirement of water conservation plans for municipal and industrial users.

*Response:* The inclusion of the phrase ". . . or the Water Supply Act of 1958 . . ." clearly indicates Congressional intent to require M&I water conservation plans under the RRA in some instances. It should be noted that the definition of the term "district" restricts this requirement to those districts who contract for or are eligible to contract for irrigation water.

*Comment 3:* One person stated that a district that takes water only once every two years should be relieved of the requirement.

*Response:* There is nothing in the law which authorizes such relief.

*Comment 4:* One person stated that if paid-out entities fall under the requirements for water conservation plans, this should be mentioned.

*Response:* This comment has not been accommodated because the rule clearly

states that it applies to "Districts that have entered into repayment contracts or water service contracts . . .". Also refer to the response to comment 4 in section 426.13.

**43 CFR 426.20 Public Participation**

*43 CFR 426.20(a) In general.*

*Comment:* One person commented that the following should be added after the first sentence: "Notice of proposed irrigation or amendatory contract actions will also be provided to any party requesting such notice in writing concerning a specific project or projects." The same person further commented that the fifth sentence should be modified to read: "The Secretary or the district *shall* (emphasis added) invite the public to observe any contract proceedings."

*Response:* The provisions within the rules adequately cover the requirements of the law; therefore, no revisions have been made to this section.

**43 CFR 426.21 Small Reclamation Projects**

*Comment 1:* One person suggested that this section should be revised to reflect the new interest threshold established by the recent legislation amending the Small Reclamation Projects Act.

*Response:* In the final rules, we have accommodated this suggestion by adding the amending legislation, Title III of Pub. L. 99–546, to paragraph (a) of this section. That language was not incorporated into the proposed rules because the law was enacted while those rules were in the process of being published.

*Comment 2:* Two persons were opposed to the provision in the rules which provides that a district with an outstanding construction cost obligation must become subject to the discretionary provisions as a condition for receipt of an SRPA loan.

*Response:* The Department has reviewed this issue and determined that a contract written under the SRPA is not a contract within the meaning of the RRA and does not, therefore, constitute an additional or supplemental benefit requiring conformance to the discretionary provisions. In keeping with this decision, we have deleted this requirement from the rules.

**43 CFR 426.22 Decisions and Appeals**

*Comments:* One person commented that the new statement pertaining to prior legal opinions remaining in force should be deleted because it may lead to confusion as to what opinions may or may not be used.

*Response:* The paragraph in question was deleted as it is unnecessary.

**43 CFR 426.23 Scheme or Device**

*Comment 1:* Thirty-six people said this section should be deleted. Some examples of the reasons given are: This provision allows administrators to act in an arbitrary and capricious manner. Ultimate insult. No criteria or standards are specified. No documentation of any significant violations to warrant such a provision. Provision is a slap in the face. Secretary's only penalty power is to terminate water services.

*Comment 2:* Two people commented favorably on this section to the effect that: (a) It would not affect those operating within the law and yet help the Bureau to administer the law since every conceivable operation cannot be addressed in the rules and (b) the purpose of the section is clear; i.e., to eliminate schemes or devices that might be used by large farm operators to avoid the goal of limiting subsidies to 960-acre operations.

*Response:* This section was deleted. A general statement was added to 43 CFR 426.10(a) as follows:

Districts, legal entities, and individuals shall provide the Secretary, upon request, such records and information as the Secretary may deem reasonably necessary to implement Pub. L. 97–293 and Federal Reclamation law.

The penalties for knowingly and willfully submitting false or fraudulent statements under 18 U.S.C. 1001 are cited in section 426.10(k).

**Miscellaneous**

*Comment:* Fifty-five persons commented that the rules should be revised only insofar as necessary to implement section 203(b). Further, they objected that the Bureau did a major overhaul of the rules; i.e., they changed meanings, and increased the paperwork for the districts.

*Response:* In reviewing the draft rules, we have placed emphasis on those changes required to implement 203(b) and those necessary to clarify other provisions of the new law.

*Comment:* Numerous persons requested that the comment period be extended 30 days.

*Response:* This suggestion was accommodated. The comment period was extended to February 5, 1987.

*Comment:* Many persons contend that the tone throughout the rules is overly regulative and inconsistent with the longstanding relationship between the Bureau and the water users.

*Response:* The comment has been accommodated to the extent possible within the law. The Bureau recognizes that the RRA represents the most extensive change in the history of Reclamation and that the impacts are far-reaching in respect to the water user community.

**Environmental Assessment of Regulatory Alternatives for Acreage Limitation Pursuant to the Reclamation Reform Act of 1982 (Environmental Assessment)**

*Comment 1:* Fourteen persons pointed out that the Environmental Assessment only addressed the impacts of section 203(b). Instead all changes should be addressed.

*Response:* Of the revisions made to the 1983 rules and regulations, most were for the purpose of incorporating or expanding on existing policy decisions as they had been set forth in memoranda. However, there were major revisions proposed for some sections, of which a few have been adopted. The Environmental Assessment has been expanded to address these major revisions.

*Comment 2:* Eighteen persons commented on various aspects of the Environmental Assessment's scope. Some felt that a westwide analysis was too broad, since most of the effects of section 203(b) were centered in California. Some believed too much emphasis was placed on large entities. The inclusion of Alternative 4 was questioned, as was the inclusion of section 202 as a nondiscretionary provision.

*Response:* The major portion of the Environmental Assessment was dedicated to impacts associated with California. The Environmental Assessment states that the major impacts will be realized in California and analyzes those impacts. The Environmental Assessment states why the brunt of the impacts will be felt by large landholders, rather than small landholders. Alternative 4 was included as the strictest and most literal interpretation of section 203(b) and is used for comparison purposes. The inclusion of section 202 as a nondiscretionary provision is open to legal interpretation, but has no bearing on the analysis within the Environmental Assessment.

*Comment 3:* Five persons had specific comments on the validity of certain data, the depth of analysis within some sections of the Environmental Assessment, the relevance of including certain paragraphs, and the correctness of some of the analysis.

*Response:* During the indepth revision of the Environmental Assessment to address the concerns expressed in

Comment 1, the entire document, including the data and analysis, was reviewed. Changes were made where necessary to ensure accuracy and objectivity.

### Distribution Table

The following distribution table is provided to show where provisions from the current rules are located in the final rules.

| Dec. 6, 1983 rules | Final rules |
|---|---|
| 426.1 | 426.1 |
| 426.2 | 426.2 |
| 426.3 | 426.3 |
| 426.4(a) | 426.4(a) |
| 426.4(b) | 426.4(b) |
| 426.4(c) | 426.4(c) |
| 426.4(d) | 426.4(d) |
| 426.4(e) | 426.4(e) |
| 426.4(f) | 426.4(f) |
| 426.4(g) | 426.4(g) |
| 426.4(h) | 426.4(h) |
| 426.4(i) | 426.4(i) |
| 426.4(j) | 426.4(j) |
| 426.4(k) | 426.4(k) |
| 426.4(l) | 426.4(l) |
| 426.4(m) | 426.4(m) |
| 426.4(n) | 426.4(n) |
| 426.4(o) | 426.4(o) |
| 426.4(p) | 426.4(p) |
| New provision | 426.4(g) |
| 426.4(q) | 426.4(r) |
| 426.4(r) | 426.4(s) |
| 426.4(s) | 426.4(t) |
| New provision | 426.4(u) |
| New provision | 426.4(v) |
| New provision | 426.4(w) |
| New provision | 426.4(x) |
| 426.4(t) | 426.4(y) |
| New provision | 426.4(z) |
| 426.4(u) | 426.4(aa) |
| 426.4(v) | 426.4(bb) |
| 426.4(w) | 426.4(cc) |
| 426.4(x) | 426.4(dd) |
| 426.4(y) | 426.4(ee) |
| 426.4(z) | 426.4(ff) |
| 426.4(aa) | 426.4(gg) |
| 426.4(bb) | 426.4(hh) |
| 426.5(a) | 426.5(a) |
| 426.5(b) through (e)(2) | 426.5 (b) through (e)(2) |
| 426.5(e)(3) | Removed |
| 426.6 | 426.6 |
| 426.7(a) through (c)(2) | 426.7(a) through (c)(2) |
| New provision | 426.7(c)(3) |
| 426.7(d) and (e) | 426.7(c) |
| 426.7(f) | Removed |
| 426.7(g) | 426.7(d) |
| 426.7(h) | 426.7(e) |
| 426.7(i) | 426.7(f) |
| 426.7(j) | 426.7(g) |
| 426.7(k) | 426.7(h) |
| 426.8 | Reserved |
| 426.9 | Reserved |
| New provision | 426.10(a) |
| 426.10(a) | 426.10(b) |
| 426.10(b) | 426.10(c) |
| 426.10(c) | 426.10(d) |
| 426.10(d) | 426.10(e) |
| 426.10(e) | 426.10(f) |
| 426.10(f) | 426.10(g) |
| 426.10(g) | 426.10(h) |
| 426.10(h) | 426.10(i) |
| 426.10(i) | 426.10(j) |
| 426.10(j) | 426.10(k) |
| 426.10(k) | 426.10(l) |
| New provision | 426.10(m) |
| 426.11 (a) through (b)(3) | 426.11 (a) through (b)(3) |
| 426.11(b)(4) | 426.11 (c)(1) and (c)(2) |
| New provision | 426.11(b)(4) |
| 426.11(c) | Removed |

| Dec. 6, 1983 rules | Final rules |
|---|---|
| New provisions | 426.11 (c), (c)(1), and (c)(2) |
| 426.11(d) | 426.11(c) |
| New provisions | 426.11 (d), (d)(1), (d)(2), and (d)(3) |
| 426.11 (e) through (h) | 426.11 (e) through (h)(1) |
| New provision | 426.11(h)(2) |
| 426.11 (i) and (j) | 426.11(i) and (j) |
| 426.11(k) | 426.11(k)(1) |
| New provision | 426.11(k)(2) |
| 426.12 | 426.12 |
| 426.13 | 426.13 |
| 426.14 | 426.14 |
| 426.15 | 426.15 |
| 426.16(a) | 426.16(a) |
| New provision | 426.16(b) |
| 426.16(b) | 426.16(c) |
| 426.16(c) | 426.16(d) |
| New provision | 426.16(e) |
| 426.17 | 426.17 |
| 426.18 (a) and (b)(1) | 426.18 (a) and (b)(1) |
| 426.18(b)(2) | 426.16(b)(1) |
| 426.18(b)(3) | 426.18(b)(2) |
| 426.19 | 426.19 |
| 426.20 | 426.20 |
| 426.21 (a), (b), and (c) | 426.21 (a), (b), and (c) |
| New provision | 426.21(d) |
| New provision | 426.21(e) |
| 426.22 | Reserved |
| 426.23 | Reserved |

### List of Subjects in 43 CFR Part 426

Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, Title 43, Chapter I, of the Code of Federal Regulations is amended by revising Part 426 to read as set forth below.

Dated: April 9, 1987.

**C. Dale Duvall,**

*Commissioner, Bureau of Reclamation.*

Part 426 is revised to read as follows:

## PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

Sec.


426.1 Objectives.
426.2 Applicability.
426.3 Authority.
426.4 Definitions.
426.5 Contracts.
426.6 Ownership entitlement.
426.7 Leasing and full-cost pricing.
426.8 Operation and Maintenance (O&M) charges.
426.9 Class 1 equivalency.
426.10 Information requirements.
426.11 Excess land.
426.12 Excess land appraisals.
426.13 Exemptions.
426.14 Residency.
426.15 Religious and charitable organizations.
426.16 Involuntary acquisition of land.
426.17 Land held by governmental agencies.
426.18 Commingling.
426.19 Water conservation.
426.20 Public participation.
426.21 Small reclamation projects.
426.22 Decisions and appeals.
426.23 Severability.


**Authority:** Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97-293, title II, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388, (43 U.S.C. 371 et seq.).

### § 426.1 Objectives.

Reclamation law establishing terms and conditions pursuant to which project water may be supplied is designed:

(a) To provide viable farm opportunities on land receiving Reclamation project water.

(b) To distribute widely the benefits from the Reclamation program.

(c) To preclude the accrual of speculative gain in the disposition of excess land.

(d) To require reimbursement to the Federal Government of the full cost of providing irrigation water to landholdings which exceed established limits.

### § 426.2 Applicability.

(a) These regulations shall become effective on May 13, 1987. An election by a water district or a landowner or a lessee to come under the discretionary provisions of the Reclamation Reform Act made after April 12, 1987, but on or before the effective date of these final rules shall be considered if it were made on April 12, 1987.

(b) These regulations apply to all irrigation land subject to the acreage limitation and/or full-cost provisions of Reclamation law. (Included are excess lands, whether under recordable contract or not, and nonexcess land.)

(c) Sections 426.5 through 426.12 of these regulations apply variously to all districts subject to the acreage limitation and full-cost provisions of Reclamation law. The way in which they apply depends upon whether the district has (1) a contract which was in force on October 12, 1982, (2) a contract which was amended after October 12, 1982, or (3) a contract which was entered into after October 12, 1982.

Application of these sections will also vary depending upon whether an individual or entity subject to Reclamation law has made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

(d) The remainder of these rules, §§ 426.13 through 426.23, may not apply to all districts, but if they do apply, they apply equally.

(e) In many cases, hypothetical examples illustrating the application of a specific rule have been provided. This approach is in direct response to the public's expressed need. The examples provided should not be construed, however, as being exclusive interpretations of a rule. They are provided only as an interpretative tool.

**§ 426.3 Authority.**

These rules and regulations are written under the authority vested in the Secretary by the Congress in the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388 (43 U.S.C. 371, et seq.).

**§ 426.4 Definitions.**

As used in these rules:

(a) The term " arable land" means land which, when farmed in adequate size units for the prevailing climatic and economic setting and provided with essential on farm improvements, will generate sufficient income under irrigation to pay farm production expenses; provide a return to the farm operation, labor, management, and capital; and at least pay the operation, maintenance, and replacement costs of related project irrigation and drainage facilities.

(b) The term "contract" means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States including normal operation, maintenance, and replacement costs pursuant to Federal Reclamation law. All water service and repayment contracts are considered contracts even if the contract does not specifically identify that portion of the payment which is to be attributed to operation and maintenance and that which is to be attributed to construction.

(c) The term "contract rate" means the repayment or water service rate that is set forth in a contract that is to be paid by a district to the United States.

(d) The term "dependent" means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152 as it may from time to time be amended.

(e) The term "discretionary provisions of title II" or "discretionary provisions" refers to sections 203 through 208 of Pub. L. 97–293.

(f) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water. This definition includes entities which contract for construction or improvement of water storage and/or delivery facilities.

(g) The term "excess land" means irrigable land, other than exempt land, owned by any landowner in excess of the maximum ownership entitlement under the applicable provision of Reclamation law.

(h) The term "exempt land" means irrigation land in a district to which the acreage limitation and pricing provisions of Reclamation law do not apply.

(i) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. When used in these regulations, the term "full-cost rate" means the full-cost charge plus actual operation, maintenance, and replacement costs required under Federal Reclamation law.

(j) The term "individual" means any natural person, including his or her spouse, and including other dependents within the meaning of the Internal Revenue Code of 1954 (26 U.S.C. 152,) as it may from time to time be amended; provided that, with respect to the ownership limitations established by prior law, the term individual does not include his or her spouse or dependents.

(k) The term "irrevocable election" means the legal instrument which a landowner or lessee uses to make his or her owned and/or leased irrigation land subject to the discretionary provisions of title II. The election is binding on the elector and the irrigation land in his or her holding, but will not be binding on a subsequent landholder of that land.

(l) The term "irrigable land" means arable land under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided. For the purpose of determining the areas to which acreage limitations are applicable, it is that acreage possessing permanent irrigated crop production potential, after excluding areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the irrigable acreage.

(m) The term "irrigation land" means all irrigable land receiving irrigation water and other land receiving irrigation water.

(n) The term "irrigation water" means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary.

(o) The term "landholder" means a qualified or limited recipient or a prior law recipient who owns and/or leases land subject to the acreage limitation and pricing provisions of Federal Reclamation law.

(p) The term "landholding" means total acreage of one or more tracts of land situated in one or more districts owned and/or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding, the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that landholding.

(q) The term "lease" means a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee):

(1) The use and possession of land (including, in some cases, associated buildings, machinery, etc.);

(2) For a specified time;

(3) For agreed upon payments (cash or other considerations); and

(4) By which the lessee assumes the economic interest in the operation and management of the leased land.

(r) The term "legal entity" means any business or property ownership arrangement established under State or Federal law, including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

(s) The term "limited recipient" means any legal entity established under State or Federal law benefiting more than 25 natural persons. In these rules, the term "limited recipient" does not include legal entities which are prior law recipients.

(t) The term "nondiscretionary provisions of title II" or "nondiscretionary provisions" refers to sections 209 through 230 of Pub. L. 97–293. These provisions of the law are of general application and became effective immediately upon enactment. These provisions apply to all individuals and districts regardless of whether they are subject to the discretionary provisions of title II.

(u) The term "non-full-cost entitlement" means the maximum acreage a landholder may irrigate with less than full-cost irrigation water.

(v) The term "non-full-cost rate" means all water rates other than full-cost rates. Non-full-cost rates are paid for irrigation water made available to land in a landholder's non-full-cost entitlement.

(w) The term "nonresident alien" means any natural person who is neither a citizen nor a resident alien of the United States.

(x) The term "nonresident alien entitlement" refers to the amount of land on which a nonresident alien may receive irrigation water. Under the discretionary provisions, a nonresident alien may only receive irrigation water on an interest in land held through a legal entity as defined in § 426.4(r) and in no instance may a nonresident alien entitlement exceed that of an individual as defined in § 426.4(j).

(y) The term "prior law" means the Act of June 17, 1902, and acts supplementary thereto and amendatory thereto (32 Stat. 388) which were in effect prior to the enactment of the Reclamation Reform Act of 1982, Pub. L. 97–293 (96 Stat. 1263) as that law is amended or supplemented by the Reclamation Reform Act of 1982 (Pub. L. 97–293).

(z) The term "prior law recipient" means individuals or entities which have not become subject to the discretionary provisions.

(aa) The term "project" means any Reclamation or irrigation project, including incidental features thereof, authorized by Federal Reclamation law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.

(bb) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits 25 natural persons or less. In these rules, the term "qualified recipient" does not include individuals or legal entities which are prior law recipients.

(cc) The term "Reclamation fund" means a special fund established by the Congress under the Reclamation Act of June 17, 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues. The Congress makes appropriations from this fund for the investigation, construction, operation, and administration of Bureau of Reclamation projects. Collections from water users for reimbursable costs of these projects are returned to the fund unless Congress has specified otherwise for specific projects.

(dd) The term "recordable contract" means a written contract between the Secretary and a landowner capable of being recorded under State law, providing for the sale or disposition of land held by that landowner in excess of the ownership limitations of Federal Reclamation law.

(ee) The term "resident alien" means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may from time to time be amended.

(ff) The term "Secretary" means the Secretary of the Interior or his designee.

(gg) The term "title II" refers to sections 201 through 230 of Pub. L. 97–293, without differentiation between the discretionary and nondiscretionary provisions of that law.

(hh) The term "westwide" or "Reclamation wide" mean the 17 Western States in which Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

### § 426.5 Contracts

(a) *In general.* Title II of Pub. L. 97–293 will be applied to repayment and water service contracts (hereafter contracts) by the following rules:

(1) *Contracts in force on October 12, 1982.* Contracts in force on October 12, 1982, which have not been amended to conform to the discretionary provisions shall continue in effect, provided however, that full-cost rates for irrigation water may be applicable, as set forth in § 426.7(c)(3), to certain individuals and entities in these districts.

(2) *New contracts.* Contracts executed after October 12, 1982, shall be subject to all provisions of title II. Districts which have an existing contract(s) with the United States but enter into a new contract after October 12, 1982, shall be subject to all provisions of title II, except as provided in § 426.13(a)(3). The execution date of the new contract determines the date upon which the discretionary provisions apply to the contract. In these rules, individuals and entities subject to the provisions of new contracts are termed either "qualified recipients" or "limited recipients." *Note:* A district's action to execute a new contract as discussed in this paragraph makes the discretionary provisions binding on all individuals and legal entities with landholdings in that district but does not make the discretionary provisions binding on the members of the legal entity as to their landholding held outside the legal entity and outside of the district. Land held by a prior law member of a legal entity is counted toward the member's 160 acre entitlement.

(3) *Amended contracts.* (i) Contracts amended for conformance to the discretionary provisions. Contracts which are amended at the request of the district to conform with the discretionary provisions of title II need be amended only to the extent required for conformance with that title. A district shall be subject to the discretionary provisions from the date the district's request is submitted to the Secretary. The district's request to the Secretary must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, the action required by applicable State law to amend its contract. In these rules, individuals and entities subject to the provisions of these contracts are termed either "qualified recipients" or "limited recipients."

(ii) Contracts amended to provide additional or supplemental benefits. All contracts which are amended after October 12, 1982, to provide a district supplemental or additional benefits, shall be amended at the same time to conform to the discretionary provisions. The date that the contract amendment is executed by the Secretary will establish the date for determining the application of the discretionary provisions. All contract amendments will be construed as providing supplemental or additional benefits except those amendments which do not require the United States to expend significant funds, to commit to significant additional water supplies, or to substantially modify contract payments due the United States. More specifically, amendments to existing contracts providing for the following

shall not be considered to provide additional or supplemental benefits:

(A) The construction of those facilities for conveyance of irrigation water that were contracted for by the district on or before October 12, 1982;

(B) Minor drainage and construction work contracted for under a preexisting repayment or water service contract;

(C) O&M (operation and maintenance) amendments, including Rehabilitation and Betterment loans that are considered loans for maintenance under § 426.13(a)(5).

(D) The deferral of payments, provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.13(a)(3);

(F) The transfer of water on an annual basis from one district to another, provided that (1) both districts have contracts with the United States, (2) the rate paid by the district receiving the transferred water is the higher of the applicable water rate for either district, and provided further that the rate paid does not result in any increased operating losses to the United States above those which would have existed in the absence of the transfer and the rate paid does not result in any decrease in capital repayment to the United States below that which would have existed in the absence of the transfer, and (3) the recipients of the transferred water pay a rate for the water which is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water; and

(G) Other contract amendments which the Secretary determines do not provide additional or supplemental benefits.

In these rules, individuals and entities subject to the provisions of contracts amended for the purpose of conforming to the discretionary provisions or for the receipt of new and supplemental benefits are termed either "qualified recipients" or "limited recipients." *Note:* A district's action to amend its contract as discussed in paragraphs (a)(3) (i) and (ii) of this section makes the discretionary provisions binding on all individuals and legal entities with landholdings in that district but does not make the discretionary provisions binding on the members of the legal entity as to their landholding held outside the legal entity and outside of the district. Land held by a prior law member of a legal entity is counted toward the member's 160-acre entitlement.

(b) *Standard article for contract amendments.* New contracts executed after October 12, 1982, or contracts which are amended to conform to the discretionary provisions of title II shall contain the following provision:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

(c) *Master contract-subcontract arrangements.* Where a district is a party to a contract which permits the district to distribute the irrigation water made available to the district to other districts pursuant to subcontracts, the applicable acreage limitation and pricing provisions of Reclamation law shall apply exclusively to those districts and landholders who are entitled to receive such irrigation water. In cases in which the United States is a party to a subcontract which conforms to prior law, the subcontract may be amended to conform to the discretionary provisions without affecting the terms of the master contract or any other subcontracts arising from the master contract and without subjecting the master contractor or any other subcontractor to the discretionary provisions. In cases in which the United States is not a party to a subcontract which conforms to prior law, such subcontract may not be amended to conform to the discretionary provisions absent it being further amended to make the United States an additional party to that subcontract.

(1) The application of this rule may be illustrated by the following:

*Example (1).* Districts A, B, and C are members of a water conservancy district which entered into a master contract with the United States prior to October 12, 1982. The water conservancy district has allocated all the irrigation water made available to it under the master contract to Districts A and B, pursuant to pre-October 12, 1982, subcontracts with the conservancy district to which the United States is a party. However, the irrigation water is not made available to District C or any other districts or landholders within the water conservancy district. Consequently, Districts A and B are subject to the acreage limitation and pricing provisions of prior law. Districts A and B may amend their subcontracts to conform to the discretionary provisions without making it necessary for the conservancy district or the other subcontracting entity with the conservancy district to so amend their contract or the subcontract.

*Example (2).* District XYZ has a pre-October 12, 1982, contract with the United States for the delivery of irrigation water. The district also has allocated that irrigation water pursuant to subcontracts with six subcontracting entities. However, the United States is not a party to these subcontracts. A subcontractor may choose to come under the discretionary provisions only if it makes the United States a party to the subcontract. Such action will not require the prior law master contractor or the other subcontractors to so amend.

*Example (3).* District A, a master contracting agency, executes a water service contract with the United States after October 12, 1982. The irrigation water is to be delivered to only two of the eight member agencies within District A. Subcontracts are executed between District A, the United States, and each of the two member agencies to provide irrigation water service to the two member agenices. In this instance, the discretionary provisions become applicable to only the two member agencies which execute subcontracts with District A and the United States.

(d) *Individual elections to conform to the discretionary provisions*—(1) *Individual election.* Landowners or lessees who meet the requirements for becoming either a qualified or limited recipient, as set forth in § 426.4, may elect to become subject to the discretionary provisions even if the district has not taken action to become subject to the discretionary provisions. The individual election is effected by executing an irrevocable election in a form provided by the Secretary. The landholder exercising the election shall be considered a qualified or limited recipient, as appropriate, and all irrigation land in the recipient's landholding shall be subject to the discretionary provisions. The election shall be binding on the elector and the irrigation land in his or her holding but will not be binding on a subsequent landholder of that land. The irrevocable election by a legal entity is binding only upon that entity and not on the members of that entity. Similarly, an irrevocable election by a member of a legal entity binds only that member making the election and not the entity.

(2) *Disposition of irrevocable election forms.* The recipient's original irrevocable election form shall be filed with the Bureau of Reclamation and shall be accompanied by a completed certification form, the contents of which are discussed in § 426.10. Copies of the irrevocable election and certification form(s) must be filed concurrently with each district. The Bureau shall prepare a letter advising the recipient of the approval or disapproval of the election. If approved, the letter of approval, with a copy of the irrevocable election form and the original certification form(s), will be sent to each district in which the elector owns or leases land. Such forms shall be retained by the district(s). If disapproved, the landowner and the district will be advised by letter along with the reasons for disapproval.

(3) *District reliance on election information.* The district shall be entitled to rely on the information contained in the election form without being required to make an independent investigation of the information.

(e) *Time limits*—(1) *District amendments.* There are no time limits on when a district may request its contract be amended to conform to the discretionary provisions, provided, should a district not amend its contract to conform to the discretionary provisions by April 12, 1987, the full-cost rate must be paid by prior law recipients for irrigation water to land in excess of their non-full-cost entitlement, as set forth in § 426.7(c)(3).

(2) *Individual elections.* There are also no time limits on when an individual landowner or lessee may make an irrevocable election.

**§ 426.6 Ownership entitlement.**

(a) *In general.* Ownership entitlement is determined by whether the landowner is a "qualified recipient," a "limited recipient," or a "prior law recipient." All irrigation land shall be considered in the ownership computations except as stipulated in paragraphs (e) and (f) of this section.

(b) *Qualified recipient entitlement.* Except as provided in paragraph (b)(4) of this section and in §§ 426.9, 426.11, and 426.16, a qualified recipient is entitled to irrigate a maximum of 960 acres of owned land with irrigation water. This entitlement applies on a westwide basis. All individual ownership and multiownership arrangements are qualified recipients provided they meet the following conditions:

(1) *Individual landowners.* All individual landowners are qualified recipients if they are citizens of the United States or resident aliens thereof and have met the contract requirements for a qualified recipient as set forth in § 426.5. As such, they are entitled to receive irrigation water for use on a maximum of 960 acres of land owned westwide in addition to land owned that is subject to a recordable contract and land acquired in the past 5 years through an involuntary process of law as described in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X is a citizen of the United States and receives irrigation water on 160 acres owned in District A. District A amends its contract to conform to the discretionary provisions. Farmer X automatically becomes a qualified recipient by virtue of the district decision and is entitled to receive irrigation water on a maximum of 960 acres of irrigation land in his ownership.

*Example (2).* Farmer Y is a citizen of Germany, but has taken up permanent residency in the United States. Farmer Y owns 160 acres in District A and desires to purchase an additional 800 acres. District A has not amended its contract to conform to the discretionary provisions. Farmer Y, however, decides to execute an irrevocable election. After the election, Farmer Y becomes eligible to receive irrigation water on 960 acres of owned land. This eligibility as a qualified recipient remains in force so long as Farmer Y, as a resident alien, maintains permanent residency in the United States. If Farmer Y were to become a United States citizen, his eligibility as a qualified recipient would, of course, remain in force.

*Example (3).* Farmer Z is a citizen and resident of Switzerland. Farmer Z owns 160 acres of irrigation land in District A. District A amends its contract to conform to the discretionary provisions. Because Farmer Z, as an individual nonresident alien, cannot meet the requirements of either a qualified recipient or limited recipient and because he owned the irrigation land prior to the district's contract amendment, Farmer Z may, as set forth in § 426.11(k), place the land under recordable contract and receive irrigation water at the non-full-cost rate for 5 years. (If the land were not placed under recordable contract or had Farmer Z not acquired the irrigation land prior to the district's contract amendment, the 160 acres owned would be ineligible for service until such time as it was sold or otherwise transferred to an eligible recipient or Farmer Z qualifies as a resident alien in the United States.)

(2) *Husband and wife.* A husband and wife, and all dependents, are considered as one qualified recipient and are entitled to irrigate a maximum of 960 acres of land owned on a westwide basis with irrigation water, provided, either husband or wife is a citizen of the United States or a resident alien thereof and the contract requirements as set forth in § 426.5 have been met. A qualified recipient may also hold and receive irrigation water on land under recordable contract and land acquired in the last 5 years through an involuntary process of law as described in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1)* Farmer X and her husband are a qualified recipient by virtue of an irrevocable election. They own in joint tenancy 960 acres of land eligible for irrigation water. They are in compliance with the ownership entitlement applicable to a qualified recipient.

*Example (2).* Farmer Y and Farmer Z are a married couple, and each owns 480 acres of irrigation land under separate title in District A. District A has amended its contract to conform to the discretionary provisions. Even though the land is held in separate title, Farmer Y and Farmer Z have reached the limits of eligibility to receive irrigation water as a qualified recipient.

(3) *Multiownership arrangement.* All multiownership legal entities are considered to be qualified recipients, provided that: the ownership is a legal entity established under State or Federal law, the entity does not benefit more than 25 natural persons, and the entity has met the contract requirements for a qualified recipient as set forth in § 426.5. As qualified recipients, they are eligible to receive irrigation water on a maximum of 960 acres of land owned westwide in addition to land subject to recordable contract and land received in the past 5 years through an involuntary process of law as described in § 426.16. In a corporate ownership, irrigation land held by a subsidiary entity is counted against the ownership of its parent entity. The requirement of U.S. residency for aliens does not apply to individual interests in multiownership legal entities. However, a nonresident alien may not receive irrigation water for a cumulative westwide ownership in excess of 960 acres through corporate or any other legal entity ownership arrangement.

(i) The application of this rule may be illustrated by the following:

*Example (1).* XYZ Farms is a general partnership comprised of four individuals who are qualified recipients who own equal and separable interest in the 960-acre partnership. All other requirements as set forth in § 426.6(b)(3) have also been met. Therefore, XYZ Farms satisfies the requirements for a qualified recipient and may receive irrigation water for all 960 acres in its ownership. Moreover, the members of the partnership, as qualified recipients, may each receive irrigation water on a maximum of 720 acres in some ownership or ownerships other than XYZ Farms.

*Example (2).* Six brothers who are citizens and residents of Canada form a family corporation with each holding equal shares in the corporation. They are able to satisfy all other conditions set forth in paragraph (b)(3) of this section; therefore, the corporation is a qualified recipient and as such is entitled to receive irrigation water on 960 acres or less of owned land. In this example, each brother may receive irrigation water on up to an additional 800 acres owned in legal entities other than the family corporation. Nonresident aliens may receive irrigation water only on lands held by legal entities and may not receive irrigation water on land they own directly. Under the discretionary provisions, the brothers cannot meet the requirements of a qualified recipient under individual ownership, as set forth in paragraph (b)(1) of this section, since none are citizens of the United States or residents aliens thereof.

*Example (3).* Corporation A is a qualified recipient receiving irrigation water on a landholding of 960 acres. Farmer Brown is

also a qualified recipient who owns 25 percent of Corporation A and farms 800 acres of owned land using irrigation water. In this instance, Farmer Brown exceeds his individual ownership entitlement by 80 acres and must either divest an appropriate share of his ownership in Corporation A or designate 80 acres owned as ineligible.

*Example (4).* Corporation W and Corporation X, subsidiaries of Corporation Z, each own 480 acres in District A which has amended its contract to conform to the discretionary provisions. The landholdings of Corporation W and X are counted against the entitlement of the parent corporation, Corporation Z. Since Corporation Z is a qualified recipient, all of the 960 acres are eligible to receive irrigation water.

(4) *Trusts.* An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitations imposed by title II nor any other provisions of Federal Reclamation law; provided, the trust agreement: is in writing and is approved by the Secretary, identifies the beneficiaries, and describes the interests of the beneficiaries. However, the interest of each beneficiary (qualified or limited recipient) in trust land in combination with other land directly or indirectly owned by such beneficiary shall not exceed the ownership entitlement of title II unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition process provided in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Bank X is the trustee for five trusts, each of which has more than one beneficiary. The trusts contain 1,280, 960, 640, 800, and 400 acres, respectively. The land in the trusts is in districts which have amended their contracts to conform to the discretionary provisions of title II. Since the ownership and pricing limitations of title II do not apply to Bank X as trustee for the trusts, all 4,080 acres in the five trusts are eligible to receive irrigation water at the contract rate. However, if a beneficiary owned directly or indirectly other irrigation land which, when combined with his beneficial interest in the subject trust, caused him to exceed the 960-acre ownership limitation, that beneficiary would be required to designate the nonexcess land for which irrigation water could be supplied.

*Example (2).* Farmer X, a qualified recipient, establishes a testamentary trust by placing 640 acres of his land receiving irrigation water in a trust for his minor child upon his death. Farmer X designates his brother as trustee for the trust. The land is located in a district which has amended its contract to come under the discretionary provisions of title II. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer X dies, and the testamentary trust he has established is activated. The brother, as trustee, is entitled to receive irrigation water for the land in trust as well as the land he owns.

**Note.**—The land placed in the testamentary trust by Farmer X would be counted against his entitlement during his lifetime as long as the land remained in his ownership.

*Example (3).* Farmer X, a qualified recipient, owns 960 acres eligible to receive irrigation water. He decides to place 160 acres of this land in a living trust with his daughter as the life tenant. The 160 acres of trusted land shall be attributed to the daughter's entitlement if she is independent. If she is a dependent, the 160 acres of trusted land shall be attributed to Farmer X or to the person upon whom she is dependent.

(c) *Limited recipient entitlement.* Except as provided in §§ 426.9, 426.11, and 426.16, a limited recipient is entitled to irrigate 640 acres of owned land with irrigation water. This entitlement applies on a westwide basis. All legal entities established under State or Federal law benefiting more than 25 persons are limited recipients provided they have met the contract requirements for a limited recipient as set forth in § 426.5. In a corporate ownership, irrigation land held by a subsidiary entity is counted against the ownership of its parent entity. The requirement of U.S. residency does not apply to aliens who have an interest in a limited recipient. However, a nonresident alien may not receive irrigation water for a cumulative westwide ownership in excess of 960 acres through corporate or any other legal entity ownership arrangement.

(1) The application of this rule may be illustrated by the following:

*Example (1).* ABC Fertilizer Company is a corporation registered in Nebraska and owns 640 acres in District A. District A has amended its contract to conform to the discretionary provisions of title II. ABC Fertilizer Company benefits more than 25 persons and therefore automatically becomes a limited recipient, with all 640 acres of owned land in the corporation eligible to receive irrigation water.

*Example (2).* XYZ Land Company, a corporation benefiting more than 25 persons and registered in the State of California, owns 320 acres in District A. In the absence of district action, the company makes an irrevocable election to conform to the discretionary provisions of title II. Thereby XYZ Land Company becomes a limited recipient and is entitled to receive irrigation water on 640 acres or less owned westwide.

*Example (3).* CDE Development Company is a corporation with more than 25 shareholders which chose to incorporate in the Greater Antilles. CDE Development Company buys 320 acres in a district which has amended its contract to conform to the discretionary provisons of title II. However, until such time as CDE Development Company establishes itself as a legal entity under State or Federal law, none of its land is eligible for irrigation water. Had CDE Development Company been receiving irrigation water on 160 acres prior to the district's amendment, it could have continued to receive irrigation water for 5 years under the conditions set forth in § 426.11.

*Example (4).* Corporation X owns 640 acres in District A as does Corporation Y. Both are subsidiaries of Corporation Z. District A has amended its contract to conform to the discretionary provisions of title II. The landholdings of Corporation X and Y, since they are subsidiaries of Corporation Z, are counted against the entitlement of the parent corporation, Corporation Z. Corporation Z is a limited recipient; therefore, only 640 acres of the 1,280 acres are eligible to receive irrigation water.

*Example (5).* Farmer X, a qualified recipient, owns 960 acres of land receiving an irrigation water supply. Farmer X is also a shareholder in the XYZ Corporation, a limited recipient, which receives irrigation water for 640 acres it owns. Farmer X's interest in the land in the XYZ Corporation is not counted against his entitlement because he holds less than 4 percent of the stock in the limited recipient corporation, § 426.10(D). Thus, Farmer X is entitled to receive irrigation water for the 960 acres he owns, and the XYZ Corporation is entitled to receive irrigation water for the 640 acres it owns.

(d) *Prior law recipients*—(1) *Individuals.* Individuals are entitled to receive irrigation water on a maximum of 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual applies on a westwide basis to all land acquired after December 6, 1979.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X owns 160 acres of irrigation land in each of four districts. None of the districts in which Farmer X owns land has amended its contract to conform to the discretionary provisions, and Farmer X held title to the land prior to December 6, 1979. Thus, Farmer X remains eligible to receive irrigation water on the 640 acres owned in the four different districts.

**Note.**—If title to the irrigated land changes hands, the 160-acre westwide entitlement will automatically apply to the transferred land.

*Example (2).* Farmer Y owns 160 acres in each of two nonamending districts, and all of the acreage is eligible for irrigation water by virtue of the fact Farmer Y owned the land prior to December 6, 1979. On January 1, 1983, Farmer Y purchases another 160 acres of Farmer Z's nonexcess land which is located in a third nonamending district. The land newly purchased in this district becomes ineligible for service until such time as it is either sold to an eligible buyer at a price approved by the Secretary, the sale is canceled, the land is redesignated with approval by the Secretary, or Farmer Y becomes subject to the provisions as set forth in § 426.11(c)(2)(i).

(2) *Husband and wife.* A husband and wife, or surviving spouse until remarriage, are entitled to receive irrigation water on a maximum of 320 acres of land jointly owned in each district; provided, each spouse holds an equal interest and provided further that the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual (320 acres for husband and wife) applies on a westwide basis to all land acquired after December 6, 1979.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer X and his wife own 320 acres of irrigation land in District A and also 320 acres in District B. The couple purchased both parcels of land in 1976. Districts A and B remain subject to prior law, and Farmer X and his wife have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, Farmer X and his wife are entitled to receive irrigation water on all 320 acres in each district. The couple has reached the limit of their ownership entitlement for receiving irrigation water in these two districts.

(3) *Tenants-in-common and joint tenancies.* Each individual in a tenancy-in-common or a joint tenancy subject to prior law is entitled to receive irrigation water on a maximum of 160 acres owned through his or her interest in the tenancy. A prior law recipient may receive irrigation water, through this interest and any other ownership arrangements, on no more than 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual (320 acres for a married couple) applies on a westwide basis to all land acquired after December 6, 1979. An individual subject to the discretionary provisions, through his or her interest in a prior law tenancy and any other ownership arrangements, may receive irrigation water on no more than 960 acres westwide.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer X and Farmer Y have formed a tenancy-in-common in which each holds equal interest. The tenancy owns 320 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Both Farmers X and Y own irrigation land only through their interests in the tenancy; however, Farmer Y wishes to purchase additional land in the district so he makes an irrevocable election.

Since the tenancy remains subject to prior law, Farmers X and Y may each receive irrigation water on a maximum of 160 acres through their interests in the entity. Therefore, the tenancy's 320 acres remain eligible to receive irrigation water, but the tenancy and Farmer X have both reached the limits of their ownership entitlements under prior law. However, as a qualified recipient, Farmer Y may receive irrigation water on an additional 800 acres of land owned either as an individual or through other ownership arrangements.

(4) *Partnerships.* Each individual who is a partner in a partnership subject to prior law is entitled to receive irrigation water on a maximum of 160 acres owned through his or her interest in the partnership, provided each partner has a separable interest in the partnership and the right to alienate that interest. A prior law recipient may receive irrigation water, through this interest and any other ownership arrangements, on no more than 160 acres in each district, provided the land was acquired on or before December 6, 1979. A partner subject to the discretionary provisions, through his or her interest in the partnership and any other ownership arrangements, may receive irrigation water on no more than 960 acres westwide. A partnership in which each partner does not have a separable interest and the right to alienate that interest is entitled to receive irrigation water on a maximum of 160 acres of land owned by the partnership.

(i) The application of this rule may be illustrated by the following:

*Example.* XYZ Farms, a partnership composed of four individuals who hold equal and separable interests in the partnership, owns 960 acres of irrigation land located in District A. District A has not amended its contract to become subject to the discretionary provisions. XYZ Farms and two of the partners are subject to prior law; the other two partners have made irrevocable elections. Neither XYZ Farms nor any of the partners owns irrigation land outside the partnership. Based on these facts, each partner may own and receive irrigation water on a maximum of 160 acres through the partnership. Therefore, 640 of XYZ Farms' 960 acres are entitled to receive irrigation water. The two partners who have made irrevocable elections may each purchase and receive irrigation water on another 800 acres outside the partnership in order to complete their individual 960-acre ownership entitlement for qualified recipients.

(5) *Corporations.* All corporations are considered to be individual entities and as such are entitled to receive irrigation water on a maximum of 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement applies on a westwide basis for all land acquired after December 6, 1979. No shareholder in a corporation through his or her interest in the corporation and any other ownership arrangement shall receive irrigation water on land owned in excess of his or her individual entitlement under Reclamation law. Irrigation land held by a subsidiary entity is counted against the ownership entitlement of its parent entity.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Two brothers are the sole stockholders and hold equal shares in Corporation XYZ. The corporation owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions and neither the brothers nor the corporation has made an irrevocable election. Thus, the corporation has reached its ownership entitlement for receiving irrigation water under prior law. Based on their 50 percent interests in the corporation, 80 acres will be counted against each of the two brothers' individual entitlements. Each brother may also purchase and receive irrigation water on another 80 acres outside the corporation to complete his individual 160-acre ownership entitlement.

*Example (2).* Corporation ABC owns 320 acres in District A. Corporation ABC's two shareholders, Farmer X and Farmer Y, hold equal interests in the corporation. Both District A and Farmer X are subject to prior law; however, Farmer Y is a qualified recipient by virtue of having made an irrevocable election. As a corporation subject to prior law, only 160 of Corporation ABC's 320 acres are eligible to receive irrigation water. Eighty acres of the corporation's ownership is attributed to each shareholder. As a prior law recipient, Farmer X may receive irrigation water on another 80 acres of irrigation land through ownership arrangements outside the corporation in order to complete his individual 160-acre ownership entitlement. To complete his 960-acre ownership entitlement as a qualified recipient, Farmer Y may receive irrigation water on an additional 880 acres outside the corporation.

*Example (3).* Corporation P and Corporation S, which are established under Canadian law, each owns 160 acres of irrigation land in District A. Corporation S is a wholly owned subsidiary of Corporation P. District A has not amended its contract to become subject to the discretionary provisions. Since Corporation S is a subsidiary of Corporation P, its entitlement is counted against Corporation P. Therefore, only 160 acres of the 320 acres are eligible to receive irrigation water.

(6) *Trusts.* Land held by an individual or corporate trustee in a fiduciary capacity is not subject to the ownership limitations imposed by prior law. However, the interest of each beneficiary in the trust land in combination with other land he or she may own shall not exceed the ownership entitlement of prior law.

(e) *Exemptions from ownership limitation.* Irrigation land owned in districts which have been exempted, § 426.13(a) (1) and (2), will not be

counted against ownership entitlement. Neither will isolated tracts, § 426.13(a)(4), be counted against ownership entitlement.

(f) *How ownership entitlement is to be computed.* With the exception of land under recordable contract, § 426.11(e), all designated nonexcess land, § 426.11(b), and all acreage receiving irrigation water on other than a temporary or short-term basis, as defined in § 426.13(a)(3), from a Reclamation project in a district which is subject to acreage limitation shall be counted against the appropriate ownership entitlement; i.e., qualified recipient, limited recipient, etc.

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Farmer X, a qualified recipient, owns 1,400 acres in District A and has designated 960 acres as nonexcess and eligible to receive irrigation water. Even though Farmer X may not irrigate all 960 acres every year, all of the designated acreage is counted against his entitlement.

*Example (2).* Farmer Y, a qualified recipient, owns 640 acres receiving irrigation water in District A. Farmer Y also owns 320 acres which are not in a district, but Farmer Y has entered into a 10-year contract with the United States for irrigation water for that land. All 960 acres receiving irrigation water must be counted for purposes of determining ownership entitlement.

*Example (3).* Farmer Z, a prior law recipient, owns 180 acres in District A. This acreage was classified as to its arability during project planning and only 120 acres were deemed irrigable and eligible to receive irrigation water. Some years subsequent to this determination, Farmer X installed a center pivot irrigation system and now irrigates 160 acres with the same amount of water as he once used to irrigate 120 acres. For purposes of entitlement, all 160 acres must be counted.

(g) *Multidistrict ownerships.* Landowners may own irrigable and/or irrigation land in more than one district (multidistrict ownerships). If any one of the districts in which a landowner owns irrigation land becomes subject to the discretionary provisions, the multidistrict landowner automatically becomes subject to the discretionary provisions. Thus, the irrigation land owned by that recipient in all districts becomes subject to the acreage entitlement of a qualified or limited recipient, provided the landowner can meet the requirement for being such a recipient. However, as set forth in § 426.5, a contract action which causes a district to be subject to the discretionary provisions is binding on individuals and legal entities with landholdings within that district but is not binding on the members of legal entities as to their landholdings outside the legal entity if the individual owns no irrigation land within the district. If a landowner with multidistrict ownership makes an irrevocable election in one district, the irrigation land he, she, or it owns in all districts becomes subject to the discretionary provisions. As stated in section 426.5(d), an irrevocable election by a multidistrict landowner which is a legal entity shall be binding on the legal entity but not on the members of that entity. If all districts in which a prior law recipient holds irrigation land remain subject to prior law, the 160-acre ownership entitlement shall apply on a district-by-district basis, provided the land was acquired prior to December 6, 1979. If any of the owned land was acquired after December 6, 1979, its eligibility will be determined on a westwide basis.

(1) The application of this rule may be illustrated by the following:

*Example (1).* Landowner X is a U.S. citizen and owns 160 acres in each of Districts A, B, C, and D. All of this land is receiving irrigation water. District A amends its contract to conform to title II. Thereby, Landowner X automatically becomes a qualified recipient by virtue of the fact he is a U.S. citizen and is entitled to receive irrigation water on 960 acres owned westwide. Since, in this case, Landowner X's total present ownership is 640 acres, he would be entitled to receive irrigation water on another 320 acres owned.

*Example (2).* Landowner Y is a citizen of the United States and owns 160 acres in each of Districts A, B, C, D, E, and F. All of his land is receiving irrigation water. In the absence of district action, Landowner Y makes an irrevocable election in District A. By this action Landowner Y automatically becomes a qualified recipient and all owned land receiving water in Districts B, C, D, E, and F must be included in his ownership entitlement considerations. Since in this case the landowner already owns 960 acres of irrigation land, he has reached his maximum ownership entitlement.

(h) *Loss of eligibility.* An owner who is receiving irrigation water, and acquires additional irrigable land, shall lose eligibility on any newly purchased land that exceeds the owner's entitlement unless:

(1) If irrigation facilities are available to land which is purchased from nonexcess status in excess of an owner's entitlement, eligibility shall be reestablished if the land is (i) redesignated as nonexcess, § 426.11(b), or (ii) sold at a price approved by the Secretary to an eligible buyer, (iii) the sale is canceled, or (iv) if the landowner is a prior law recipient, such land can regain eligibility if the landowner becomes subject to the discretionary provisions and redesignates such land up to his entitlement as nonexcess, as set forth in § 426.11(c)(2)(i).

(2) In the case of land for which irrigation water is not available because facilities have not been constructed to provide such water, the landholder may, in addition to the options available in the preceding paragraph, place the land under recordable contract.

(i) The principles of this rule are illustrated by the following:

*Example.* Farmer X meets all of the criteria for a qualified recipient as set forth in § 426.6(b)(1) but remains under prior law. Farmer X irrigates 160 acres of owned land in District A as he is entitled to do. Subsequent to his determination of eligibility, Farmer X buys, in District B, a 160-acre farm which is also receiving irrigation water. All land purchased by Farmer X in District B thereby becomes ineligible for service until such time as Farmer X either redesignates the land as nonexcess, cancels the sale, sells the farm in District B at a price approved by the Secretary, or he makes the land eligible by electing to come under the discretionary provisions. If the 160 acres which Farmer X purchased had never received irrigation water and were in an area for which water distribution facilities had not been constructed, Farmer X could, as provided for in § 426.11(e), place the 160 acres under recordable contract when the facilities became available to serve the land.

### § 426.7 Leasing and full-cost pricing.

(a) *What constitutes a lease.* A lease is a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee):

(1) The use and possession of land (including, in some cases, associated buildings, machinery, etc.);

(2) For a specified time,

(3) For agreed upon payments (cash or other consideration); and

(4) The lessee assumes the economic risk in the operation and management of the leased land.

(1) *Exceptions.* (i) Management arrangements or consulting agreements in which (1) the manager or consultant performs a management or consulting service for the landowner for a fee but does not assume the economic risk in the farming operation, and (2) the landowner retains the right to the use and possession of the land, is responsible for payment of the operating expense, and is entitled to receive the profits from the farming operation, shall not be considered a lease. At the Secretary's request, the landowner shall be responsible for providing information concerning a farm management arrangement or a consulting arrangement.

(A) The application of this rule may be illustrated as follows:

*Example (1).* (a) Farmer W is a surviving spouse who has elected under the discretionary provisions and receives

BEST COPY AVAILABLE

irrigation water on 960 acres in District A. Her son, Farmer S, is subject to prior law and owns and receives water on 160 acres, also in District A. (b) In addition to farming his own 160 acres, Farmer S operates Farmer W's equipment in performance of all the physical farm work on his mother's 960 acres and receives compensation for such services, which does not consist of a share of the crop or is not based, in advance, on the degree of economic success or failure of the production or marketing of the crop. Farmer W retains at all times the economic risk associated with both crop production and marketing from her 960 acres. Such an arrangement between Farmer W and Farmer S constitutes a farm management arrangement and not a lease.

*Example (2).* Same facts as in example (1), part (a). In addition to farming his own 160 acres, Farmer S has use and possession of his mother's land and utilizes his farm equipment in the operation of his mother's farm in exchange for a fee. The fee received by Farmer S depends materially upon the degree of economic success or failure of the crop production or marketing of the crops grown on his mother's farm. This arrangement between Farmer W and Farmer S constitutes a lease and not a farm management arrangement or agreement.

(ii) Nonreclamation dependent activities. A contract arrangement for nonreclamation dependent activities which allow for limited use of the land shall also not be considered a lease. Examples of such activities are incidental grazing or use of crop residue from irrigated crops grown on the land.

(b) *The form and provisions of a lease*—(1) *Present leases.* All leases must be in writing and made available by the leaseholders to the Secretary for inspection at the Secretary's request. The term of the lease may not exceed 10 years, including any exercisable option, except in the case of a lease of land for the production of perennial crops having an average life of more than 10 years. In that case, the lease may be for a period of time equal to the average life of the perennial crop, as determined by the Secretary, provided the lease does not exceed 25 years.

(2) *Written leases in existence prior to October 12, 1982.* Land under written leases which were in existence prior to October 12, 1982, and which have a remaining term of longer than 10 years will become ineligible to receive irrigation water after October 12, 1992, unless the leased land is used for the production of perennial crops having an average life of more than 10 years. In that case, the leased land may be eligible for a period of time equal to the average life of the perennial crop, as determined by the Secretary, provided the lease does not exceed 25 years.

(c) *Full-cost acreage thresholds.* There is a limit on the amount of land for which a landholder may receive irrigation water at a non-full-cost rate. The maximum acreage a landholder may irrigate with less-than-full-cost irrigation water is called the landholder's non-full-cost entitlement. All owned or leased land receiving irrigation water counts against a landholder's non-full-cost entitlement, with the following exceptions: exempt land, except for isolated tracts, as provided in § 426.13(a)(4); and land acquired through involuntary processes, as provided in § 426.16. All land counted against a landholder's non-full-cost entitlement shall be counted on a cumulative basis during any one water year. A landholder in excess of the non-full-cost entitlement may select in each water year, from nonexempt eligible land in the holding, that land which will be subject to the full-cost rate. That selection may include owned land, leased land, land under recordable contract, or a combination of all three. However, land under recordable contract may not be selected as land subject to the full-cost rate if such land is already subject to full-cost pricing under an extended recordable contract as provided in § 426.11(i)(4). Once a landholder reaches the limits of his or her non-full-cost entitlement during a water year, the selection of non-full-cost land is binding for the remainder of that water year. Land subject to full-cost pricing due to the status of either the owner or the lessee can receive irrigation water only at full cost. Districts shall collect full-cost rates from those landholders to whom such costs are attributable rather than averaging the costs over the entire district. Land which is subleased (the lessee transfers his or her interest to a sublessee) will be attributed to the landholding of the sublessee.

(1) *Non-full-cost entitlement for qualified recipients.* The non-full-cost entitlement for qualified recipients is 960 acres, or the class 1 equivalent thereof, computed on a cumulative basis during any one water year. The full-cost rate must be paid for irrigation water delivered to all eligible land owned or leased in excess of a qualified recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); and (iii) land acquired through involuntary processes, as provided in § 426.16.

(i) The application of this rule may be illustrated as follows:

*Example (1).* Farmer X, a qualified recipient, receives irrigation water on 900 of the 960 acres of irrigable land in his ownership in District A. Farmer X leases and receives irrigation water on another 320 acres in District B. Since Farmer X receives water on 260 acres in excess of his non-full-cost entitlement, he must select 260 acres—whether owned land, leased land, or a combination of both, and pay the full-cost rate for water delivered to that land.

*Example (2).* Farmer Y, a qualified recipient, owns and receives irrigation water on 960 acres in District A. Farmer Y decides to lease all 960 acres to another qualified recipient, Farmer Z. Farmer Z, however, already farms 960 acres receiving irrigation water. Therefore, the full-cost rate would have to be paid for irrigation water delivered to 960 acres of Farmer Z's landholding.

*Example (3).* Landholder X, a qualified recipient, owns 500 acres of irrigation land in District A which he leases to another farmer. Landholder X also leases 960 acres of irrigation land from Landholder Y in District B. Thus, there are 500 acres in Landholder X's total landholding which receive irrigation water in excess of his 960-acre non-full-cost entitlement and for which a full-cost rate must be paid.

*Example (4).* Landholder Y, a qualified recipient, receives irrigation water on 960 acres owned in District A and 800 acres leased in District B. At the beginning of the water year, Landholder Y selects 360 owned acres plus 600 leased acres to receive irrigation water at the non-full-cost rate. He pays the full-cost rate for water delivered to the remaining 800 acres. In July, Landholder Y terminates the lease on the 600 acres of leased land which are part of his non-full-cost entitlement. However, since non-full-cost acreage is counted against one's entitlement on a cumulative basis during any one water year, Landholder Y has already reached the limits of his non-full-cost entitlement for this water year. Therefore, Landholder Y may not replace in that water year those 600 non-full-cost acres, even though they no longer receive irrigation water, with 600 acres from his full-cost land. Landholder Y must pay the full-cost rate for irrigation water delivered to any other land he irrigates during that water year.

*Example (5).* Landholder Z, a qualified recipient, owns and irrigates 1,120 acres, 160 of which are subject to a nonextended recordable contract. Landholder Z also irrigates 160 acres leased from another party. All of Landholder Z's landholding, a total of 1,280 acres, counts against his non-full-cost entitlement; therefore, he is in excess of his non-full-cost entitlement by 320 acres. However, the 160 acres under recordable contract are not subject to full-cost pricing, so Landholder Z need select only 160 acres from his total landholding for full-cost pricing.

(2) *Non-full-cost entitlement for limited recipients.* The non-full-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the class 1 equivalent thereof. The non-full-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero. The full-cost rate must be paid for irrigation water delivered to all eligible land owned or leased in excess of a limited

recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); and (iii) land acquired through involuntary processes, as provided in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1).* ABC Farms qualifies as a limited recipient but remains under prior law. It owns and was receiving irrigation water on 640 acres in District A prior to October 1, 1981. Of the total, 480 acres were and continue to be under a nonextended recordable contract. ABC Farms may continue to receive irrigation water at the non-full-cost rate on the 640 acres until the end of the recordable contract period. Upon electing, ABC Farms may amend the recordable contract to allow it to own and receive irrigation water on 640 acres owned. ABC Farms may receive irrigation water at the non-full-cost rate on 320 acres, but it must pay the full-cost rate on the additional 320 acres owned.

*Example (2).* XYZ Farms, a limited recipient, owns 640 acres of land eligible to receive irrigation water. The purchase of the land took place after October 1, 1981, and XYZ Farms was not receiving irrigation water on any other land on or before October 1, 1981. Therefore, in order for XYZ Farms to receive irrigation water for any eligible land, it must pay the full-cost rate for that water.

*Example (3).* FGH Fertilizer Company, a limited recipient, buys 160 acres of land receiving irrigation water in District A. The purchase of the land is made subsequent to October 1, 1981. However, the company was receiving irrigation water on 160 leased acres in District B prior to October 1, 1981. Therefore, the 160 acres recently purchased are eligible to receive irrigation water at the non-full-cost rate. If FGH Fertilizer Company buys or leases additional land, the company would have to select and pay the full-cost rate for any irrigation water delivered to land in excess of its 320-acre non-full-cost entitlement.

*Example (4).* The XYZ Corporation, a limited recipient, owns 640 acres of irrigation land in District A. Since the corporation was receiving irrigation water prior to October 1, 1981, it is entitled to irrigate 320 acres at the non-full-cost rate and 320 acres at the full-cost rate. If the corporation were to lease the owned land subject to full cost to another, the full-cost rate would still apply.

(3) *Non-full-cost entitlement for prior law recipients.* There is no full-cost pricing requirement until April 13, 1987, for prior law recipients, unless their land becomes subject to full-cost pricing through leasing to or from a party subject to the discretionary provisions. As of April 13, 1987, the full-cost rate must be paid for irrigation water delivered to all land leased in excess of a prior law recipient's maximum ownership entitlement as set forth in § 426.6(d); provided however, that for the purpose of computing the acreage subject to the full-cost rate, all owned and leased land receiving water westwide must be considered and further provided, that the full-cost rate will not apply to water delivered to land in excess of a prior law recipient's non-full-cost entitlement if the land is (i) subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt other than isolated tracts, as provided in § 426.13(a)(4); (iii) acquired through involuntary processes, as provided in § 426.16. A prior law recipient may select the land to be subject to full cost from any owned or leased land in his landholding, provided it is eligible and nonexempt.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X and his wife receive irrigation water on 320 owned acres of irrigation land and on 40 leased acres in District A. District A has not amended its contract to become subject to the discretionary provisions and Farmer X and his wife have not made an irrevocable election. Since Farmer X and his wife receive irrigation water on 40 acres in excess of their 320-acre non-full-cost entitlement, the couple must select 40 acres in their landholding and, beginning April 13, 1987, pay the full-cost-rate for water delivered to that land. If Farmer X and his wife make an irrevocable election or if District A amends its contract to become subject to the discretionary provisions, the couple would thereby become a qualified recipient with a non-full-cost entitlement of 960 acres. Since their landholding is within that entitlement, Farmer X and his wife would be able to receive irrigation water at the non-full-cost rate on all 360 acres.

*Example (2).* Farmer X and his wife lease 640 acres of irrigation land in District A and another 640 acres of irrigation land in District B. Districts A and B have not amended their contracts to become subject to the discretionary provisions and Farmer X and his wife have not made an irrevocable election. Since there are 960 acres of land in excess of the couple's 320-acre non-full-cost entitlement, Farmer X and his wife must select 960 acres in their landholding and, beginning April 13, 1987, pay the full-cost rate for water delivered to that land.

*Example (3).* Four brothers hold equal and separable interests in a partnership they formed. The partnership owns 160 acres of irrigation land in District A and also leases another 320 acres from Farmer Y in District B. The partnership and Districts A and B remain subject to prior law. Since the partnership's landholding is within its 640-acre non-full-cost entitlement (160 x 4), no full-cost charges will be assessed to water delivered to any land in the holding.

*Example (4).* Farmer X, a prior law recipient, owns 5,000 acres of irrigation land in District A, 4,840 of which are under recordable contract. He receives irrigation water also on another 320 acres which he leases in this same district. Beginning on April 13, 1987, Farmer X will be receiving irrigation water on 5,160 acres (5,320–160) in excess of his non-full-cost entitlement. However, his recordable contract land is not subject to full-cost pricing; therefore, Farmer X must select 320 acres (5,160–4,840) for full-cost pricing. Although his recordable contract land is not subject to full-cost pricing, Farmer X may, at his option, select part or all of the 320 full-cost acres from the land under recordable contract in lieu of his nonexcess or leased land.

(d) *Multidistrict landholding.* If a landholder has multidistrict landholdings, only one of those districts in which he receives irrigation water needs to amend its contract for the landholder to automatically become a qualified or limited recipient and the landholder's owned and/or leased land receiving irrigation water in all districts to become subject to the discretionary provisions. Furthermore, a qualified or limited recipient remains such a recipient even after he disposes of his ownership or leasehold interest in land within a district subject to the discretionary provisions. An amendment by a district is also binding on legal entities with landholdings within a district but is not binding on the members of the legal entity as to their landholdings outside the legal entity and outside the district. In no case, however, shall a prior law recipient become a qualified or limited recipient by virtue of leasing irrigation land from a lessor who has made an irrevocable election.

(e) *Calculating full cost*—(1) *What constitutes full cost.* As set forth in § 426.4, the term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. Operation, maintenance, and replacement charges required under Federal Reclamation law shall be collected in addition to the full-cost payment.

(i) *Amortization period.* The amortization period for calculating the full-cost rate shall be the remaining balance of the repayment period for the district as specified in its repayment contract. However, in those cases, such as in water service contracts, where payment by a district through its existing contract term will not fully discharge its obligation for repayment of

construction costs and where, in accordance with the project authorization the district must renew its water service contract, the district may extend the amortization period for the calculation of full costs by renegotiating its current water service contract at the time it amends its contract to conform to the discretionary provisions. The amortization period may extend up to the expiration date of the new contract, and the term of the new contract cannot exceed the payback period authorized by Congress. In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures. Such an amortization period may not exceed the payback period authorized by Congress.

(ii) *Allocable construction expenditures.* For determining full cost, the construction costs properly allocable to irrigation are those Federal project costs which have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as planning, design, land, rights-of-way, water-rights acquisitions, construction expenditures, interest during construction, and when appropriate, transfer costs associated with services provided from other projects.

(iii) *Facilities in service (irrigation).* Facilities in service are those facilities which are in operation and providing irrigation services.

(iv) *Operation and maintenance deficits funded.* O&M deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation which have been federally funded and which have not been paid by the irrigation contracting entity.

(v) *Payments.* In calculating the payments which have been received, all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Reclamation law, policy, and applicable contract provisions shall be considered. These may include: (A) direct repayment contract revenues, (B) net water service contract income, (C) contributions, (D) ad valorem taxes, and (E) other miscellaneous revenues and credits excluding power and M&I (municipal and industrial) revenues.

(vi) *Unpaid balance.* The unpaid balance is the irrigation allocated construction costs plus cumulative federally funded O&M deficits, less payments.

(2) *Calculating the full-cost rate.* The Secretary will calculate a district's full-cost rate using accepted accounting procedures. The definition of "full cost" contained in title II does not recover interest charges retroactively before October 12, 1982, but interest charges on the unpaid full cost do accrue from the date of the act. The full-cost rate for amended contracts will be determined as of the date of enactment. The full-cost rate for districts which enter into contracts after the date of enactment will be determined at the time the new contract is executed. For repayment contracts, the full-cost rate will fix equal annual payments over the amortization period. For water service contracts, the full-cost rate will fix equal payments per acre-foot of projected water deliveries over the amortization period. If there are additional construction expenditures or the cost allocated to irrigation changes, then a new full-cost rate will be determined. The Secretary will notify the respective districts of changes in the full-cost rate at the time he notifies the district of other payments due the United States.

(i) The application of this rule may be illustrated by the following:

*Example (1).* District A contains 90,000 irrigable acres. The construction costs allocated to irrigation for the project and to be repaid by District A amount to $240 milion. As of October 12, 1982, the district's accumulated repayments are $174 million, the unpaid obligation on District A's repayment contract is $66 million, and 11 years remain on its contract term. The established annual contract rate is $66.67 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interestrate is determined to be 7½ percent. Therefore, the equal annual payments for full cost would be $100.24. This payment is calculated using standard amortization tables and is equivalent to the annual payment necessary to retire a debt of $733.33 at a 7½ percent rate of interest over 11 years. This rate will apply regardless of when District A amends its contract.

*Example (2).* District B has a water service contract which establishes a rate of $6.50 an acre-foot for 90,000 acre-feet of water delivered to the district, a rate which is fixed over the remaining 10 years of the contract term. Currently, $1.00 of the $6.50 rate is used to pay annual O&M charges. The remainder is credited to the repayment of irrigation construction costs, although inflation over the next 10 years is expected to leave a $5.00 per acre-foot payment to irrigation, averaged over the remaining 10 years. The construction costs to be repaid from irrigation revenues and assignable to be repaid by the land in District B are $24 million, and the district has paid $15.5 million of those costs to date.

As of October 12, 1982, the accumulated payments credited to repayment on construction are $15.5 million. The unpaid balance for full cost is $8.5 million ($24 million less $15.5 million), and the applicable interest rate is determined to be 7½ percent. Amortizing the unpaid balance over the remaining contract term of 10 years results in an annual full-cost rate of $1,384,016, or $15.38 per acre-foot. Normal O&M charges would be collected annually in addition to this rate.

Upon expiration of the current contract, the district expects to enter into a subsequent water service contract in order to expand its water deliveries. If District B desires to amortize its unpaid balance for full cost over a longer period than 10 years, it can choose to renegotiate its existing contract before the current contract expires to bring it into conformance with current Bureau policy. When the district renegotiates its contract, the unpaid balance for full cost could be reamortized, at the district's option, for any period up to the term of the new water service contract, which cannot exceed the repayment period authorized by Congress. For example, suppose the new water service contract runs for 18 years and is executed immediately. If the district chooses to amortize full cost over the longest permissible repayment period (18 years), then the full-cost rate would be $10.88 per acre-foot. If the district chooses to amortize over 15 years, the full-cost rate would be $11.96 per acre-foot, assuming the unpaid costs remain the same.

*Example (3).* District C contains 90,000 irrigable acres, and the construction costs allocated to irrigation for the project and assignable to be repaid amount to $240 million. As of October 12, 1982, the accumulated repayments of the district are $174 million. The district's repayment obligation is $200 million. (The $40 million difference between construction costs allocated to irrigation and the repayment obligation is scheduled to be paid from other project revenues.) The unpaid obligation on District C's repayment contract is $26 million, and 11 years remain on its contract term. The annual rate established by the contract is $26.26 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interest rate is determined to be 7½ percent. Therefore, the equal annual payment for full cost would be $100.24 per acre.

*Example (4).* District D has a 40-year water service contract for 90,000 acre-feet of water per year. The District's current contract expires in 1997 and will be renewed for another 40-year term, resulting in an expiration date of 2036. Construction costs assigned to District D are $24 million, and such costs are to be repaid from irrigation water service revenues. As of October 12, 1982, the accumulated payments credited to construction costs are $15.5 million. The unpaid balance for full-cost is $8.5 million and the applicable interest rate is determined to be 7½ percent. Water service rates for this

project are designed to completely repay applicable expenditures by the end of the authorized repayment period, which occurs in 2030. Amortizing the unpaid balance over the remaining authorized repayment period of 48 years results in an annual full-cost charge of $857,945 or $7.31 per acre-foot. Normal O&M charges would be collected annually in addition to this rate. It should be noted that even though the contract renewal extends beyond 2030, the repayment period is limited to the authorized repayment period ending 2030, with full-cost rates calculated accordingly.

(f) *Interest rate calculations for full cost.* In determining full cost, the interest rates to be used will be determined by the Secretary of the Treasury as follows:

(1) *Qualified recipients and limited recipients receiving water on or before October 1, 1981.* (i) The interest rates for expenditures made on or before October 12, 1982, shall be the greater of 7½ percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year in which the expenditures were made by the United States.

(ii) The interest rate for expenditures made after October 12, 1982, shall be the arithmetic average of (A) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year in which the expenditures are made and (B) the weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(2) *Limited recipients not receiving irrigation water on or before October 1, 1981, and all recipients subject to prior law after April 12, 1987.* The interest rate shall be determined as of the fiscal year preceding the fiscal year in which expenditures are made except that the interest rate for expenditures made before October 12, 1982, shall be determined as of October 12, 1982. The interest rate shall be based on the arithmetic average of (i) the computed average interest payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance and (ii) the weighted average yield on all interest-bearing marketable issues sold by the Treasury.

**Note to Paragraph (f).**—Prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the full-cost interest rate specified in paragraph (f)(1) of this section, unless they are limited recipients that did not receive irrigation water on or before October 11, 1981.

(g) *Proportional charges for full-cost water.* Methods for assessment of full-cost water charges. In situations where water delivery charges are contractually or customarily levied on a per-acre basis, full-cost charges shall also be assessed on a per-acre basis. In situations where water delivery charges are contractually or customarily levied on a per acre-foot basis, one of the following methods must be used to assess full-cost charges:

(1) *Direct assessment.* In situations where measuring devices are in use to reasonably determine the amounts of irrigation water being delivered to full-cost and non-full-cost land to the satisfaction of the Secretary, assessments shall be based on the actual amounts of water used.

(2) *Proportional charges.* In situations where, in the opinion of the Secretary, measuring devices are not a reliable method for determining the amounts of water being delivered to full-cost and non-full-cost land, then water charges must be based on the assumption that equal amounts of water per acre are being delivered to both types of land during periods when both types of land are actually being irrigated.

(i) The application of rules pertaining to the assessment of full-cost charges may be illustrated by the following:

*Example (1).* Farmer A, a qualified recipient, owns 960 acres receiving irrigation water in Alpha Irrigation District. Farmer A also leases 100 acres receiving irrigation water in Alpha Irrigation District from another party. Alpha Irrigation District's repayment contract specifies an annual assessment of $5.00 per irrigable acre. Alpha Irrigation District's annual full-cost rate is calculated to be $15.00 per irrigable acre. Therefore, Farmer A's total water charge for that year is (960 acres × $5.00) plus (100 acres × $15.00), for a total of $6,300.

*Example (2).* Farmer B and his wife own 320 acres receiving irrigation water in Beta Irrigation District and lease another 320 acres receiving irrigation water in the same district. Farmer B, his wife, and Beta Irrigation District all remain subject to prior law. Beta Irrigation District's water service contract specifies a rate of $10.00 per acre-foot, and its full-cost rate is calculated to be $25.00 per acre-foot. Farmer B has a turnout and measuring device to the 320 acres he has selected to pay full cost, and a separate turnout and measuring device to the 320 acres receiving water at the contract rate. At the end of the water year, district records show that Farmer B received 1,000 acre-feet of water on his full-cost land, and 1,050 acre-feet of water on his non-full-cost land. These measurements are judged to be accurate and reliable; therefore, Farmer B's water charges for that year are (1,000 acre-feet × $25.00) plus (1,050 acre-feet × $10.00) for a total of $35,500. If accurate records showing the amounts of water delivered to Farmer B's full-cost and non-full-cost land had not been maintained, it would have been necessary to assume that equal amounts of water per acre had been delivered to both types of land. Without accurate water delivery records, Farmer B's water charges for that year would have been (1,025 acre-feet × $25.00) plus (1,025 acre-feet × $10.00) or $35,875.

*Example (3).* Farmer C, a qualified recipient, leases 1,000 acres in Gamma Irrigation District where the contract rate is $5.00 per acre-foot, and the full-cost rate is $15.00 per acre-foot. Farmer C applies irrigation water to 960 acres and irrigates the remaining 40 acres from a private well. In one particular year, Farmer C applied water to the land six times during the irrigation season; but in the final two applications, his well failed, so he chose to apply irrigation water to his entire landholding. Because there were no separate measuring devices for the 40 full-cost acres, it was necessarily assumed that equal amounts of water per acre were applied to the full-cost and non-full-cost land during the final two applications of water. Gamma Irrigation District's record showed that 600 acre-feet were delivered to Farmer D during each of the first four applications, and 625 acre-feet during each of the last two applications. Farmer C's water charges for that year were calculated as follows: The first four applications did not include any full-cost water; therefore, the appropriate charge was (4 × 600 acre-feet × $5.00) or $12,000. The final two applications were 96 percent contract rate and 4 percent full cost Thus, the appropriate charges were (2 × 625 acre-feet × .96 × $5.00) plus (2 × 625 × .04 × $15.00), or $8,750. Farmer D's total water charge for the year was $12,000 for the first four applications plus $8,750 for the last two applications, for a total of $18,750.

(h) *Disposition of revenues obtained through full-cost water pricing.* The interest and full-cost revenues, less the appropriate non-full-cost rate, shall be credited to the Reclamation fund unless otherwise provided by law. The portion of the full-cost rate, which would have been collected if the land has not been subject to full cost, shall be credited to the annual payments due under contractual obligation from the district.

**§ 426.8 Operation and Maintenance (O&M) charges.**

(a) *Districts with new or amended contracts.* A district which becomes subject to the discretionary provisions as set forth in § 426.5 (a)(2) and (a)(3), will be required to pay annually the actual O&M costs chargeable to the district. They are to be paid to the United States on a schedule that is acceptable to the Secretary. O&M costs shall include minor replacement costs for facilities funded during the year. Each year the Secretary shall estimate and advise the district of its O&M charges, and the price of irrigation water will be modified, if necessary, to reflect

any changes in O&M costs. The difference between the estimated and actual O&M costs, as determined at the end of the annual period, will be reflected through adjustment of the following year's O&M charges. One effect of this provision is that if a district's contract rate, less the O&M costs of delivering water, is positive at the time a district amends its contract solely for the purpose of becoming subject to the discretionary provisions, as set forth in 426.5(a)(3)(i), that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs, during the remaining term of the contract. Major replacement costs, such as those caused by disaster, obsolescence, or otherwise, will be capitalized under regular Bureau accounting practices.

(1) The principles of this rule may be illustrated by the following:

*Example (1).* A district amends its water service contract to conform to the discretionary provisions. Prior to its amendment, the water service contract obligated the district to pay a fixed rate of $3.50 per acre-foot for water for the remaining 10 years of its 30-year contract term. At the time of contract amendment, $3.00 of the contract rate are needed to pay current O&M costs. If the district's O&M costs increase by $0.50 per acre-foot from $3.00 to $3.50 per acre-foot in the year after the district's amendment, then the current $3.50 rate will be adjusted to $4.00 to reflect the $0.50 increase in O&M costs. If the district's O&M costs increase by $0.25 per acre-foot the following year, the district's rate would be $4.25 per acre-foot. Similar adjustments to O&M costs would continue throughout the remaining term of the district's contract. One effect of these adjustments is that, subsequent to amendment and continuing throughout the remaining contract term, the district's annual payments will be $0.50 per acre-foot higher than its actual O&M costs.

*Example (2).* A district amends its water service contract for the sole purpose of conforming to the discretionary provisions. Prior to its amendment, the district's contract obligated it to pay a rate of $3.00 per acre-foot of water for the remaining 10 years of its 30-year contract. At the time of the contract amendment, the district's actual O&M costs are $6.50 per acre-foot. Since the current contract rate of $3.00 does not cover these O&M costs, the district's rate will be increased to $6.50. If the district's O&M costs increase by $.50 per acre-foot the following year, the district's rate would then be adjusted to $7.00 per acre-foot.

*Example (3).* A district's repayment contract obligates it to pay $4.00 per acre for the remaining 5 years of its 40-year contract. It is also obligated under the terms of its contract to pay the full O&M costs due the United States on an annual basis in addition to its repayment obligation. If the district were to amend its contract to conform to the discretionary provisions, no change in its present repayment arrangement with the United States would be necessary since under the terms of its contract it is already paying its full O&M costs on an annual basis.

Note. Although the district's contract repayment rate would not change, it would be further obligated because of the amendment to conform to the discretionary provisions to collect full-cost payments from landholders whose holdings make them subject to such payments.

(b) *Landholders who make irrevocable elections.* Landholders who make an irrevocable election (thereby becoming limited or qualified recipients) must pay their portion of the full O&M costs annually for land in their landholding. The district(s) in which the recipient's landholding is situated shall be required to collect from the recipient his or her portion of the full O&M charges due and to forward such collections to the United States. If the district's contract rate, less the O&M costs of delivering water, is positive at the time of the election, that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs, during the remaining term of the contract.

(c) *Districts remaining under prior law.* Beginning April 13, 1987, districts remaining subject to prior law, in addition to collecting such revenues as defined in § 426.8(b), shall also collect and forward to the United States full-cost rates for water delivered to land subject to full cost as set forth in § 426.7(c).

**§ 426.9 Class 1 equivalency.**

(a) *In general.* Upon the request of any district having a contract which conforms to the discretionary provisions, or as provided in paragraph (g) of this section, the Bureau of Reclamation shall make a class 1 equivalency determination for that district. This determination will establish for the district the acreage of land with lower productive potential (classes 2, 3, and 4) that would be necessary to be equivalent in productive potential to the most suitable land in the local agricultural economic setting (class 1). Once these determinations have been made, individual landowners with classes 2, 3, and 4 land will have the right to an increased acreage entitlement equivalent in productive potential to 960 acres of class 1 land, in the case of a qualified recipient, or 640 acres of class 1 land, in the case of a limited recipient.

(b) *Data requirements and use.* Class 1 land and land in lower classes shall be identified on a district basis by the Bureau of Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors shall then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they shall be developed using standard procedures as set forth in Reclamation Instructions Series 110, Part 115, Land Resources Investigations; and Series 510, Land Classification Techniques and Standards. Economic data will be developed using procedures found in Reclamation Instructions Series 110, Part 116, Economic Investigations.

(1) *Definition of class 1 land.* Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting which: (i) most completely meets the various parameters and specifications established for irrigable land classes; (ii) has the relatively highest level of suitability for continuous, successful irrigation farming; and (iii) is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The objective is to establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of class 1 land. All land that has not been classified will be considered class 1 land for the purposes of determining acreage entitlement under these rules until such time as the land has actually been classified.

(2) *How land classes are determined.* The extent and location of class 1 land and land in lower land classes in a district have been, or will be, determined by the Bureau of Reclamation, taking into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors include, but are not limited to: the physical and chemical characteristics of the soil, topography, drainage status, costs of production, land development costs, water quality and adequacy, elevation, crop adaptability, and length of growing season and their effect on agricultural practices.

(3) *Level of detail.* Acceptable levels of detail for land classification studies to be utilized in making class 1 equivalency determinations for a given district shall be evaluated on the basis of the physical and agricultural economic characteristics of the area. In areas for which no current classification exists or the existing classification is unacceptable, the level of detail of the land classification to be made will never be greater than that required to make

class 1 equivalency determinations where the sole purpose of the classification is such a determination.

(4) *Economic studies.* The economic studies related to class 1 equivalency determinations will measure net farm income by land classes within the district. Net farm income shall be determined by the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land after all fixed and variable costs of production, including costs of irrigation service, are accounted for. Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of class 1 land.

(5) *Equivalency factors.* Equivalency factors shall be determined by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on class 1 land.

(i) The principles of this rule may be illustrated by the following:

*Example.* Farmer X has a total landholding of 1,300 acres in District A. That acreage includes 800 acres of class 1 land, 300 acres of class 2 land, and 200 acres of class 3 land. The equivalency factors for the district have been determined to be: Class 1=1.0, class 2=1.20, and class 3=1.50. Using these equivalency factors, the following landholding in terms of class 1 equivalency would apply:

Class 1—800 acres divided by 1.0=800 acres class 1 equivalent
Class 2—300 acres divided by 1.2=250 acres class 1 equivalent
Class 3—200 acres divided by 1.5=133 acres class 1 equivalent

Thus, Farmer X's total landholding of 1,300 acres is equal to 1,183 acres of class 1 land in terms of productive capacity. It will be necessary for him to declare the equivalent of 223 acres of class 1 land (1,183 acres minus 960 acres), as excess and ineligible to receive irrigation water while in his landholding. This can be accomplished in any of several ways. If Farmer X desires to maximize his actual acreage, he declares 223 acres of class 1 land as excess and designates 577 acres of class 1, 300 acres (250 acres class 1 equivalent) of class 2, and 200 acres (133 acres class 1 equivalent) of class 3 as nonexcess and eligible to receive irrigation water. This would result in a total of 1,077 actual acres which would equal 960 acres of class 1 land in production capacity. Or, he could maximize his holding of class 1 and 2 lands by designating as nonexcess 800 acres of class 1 land and 192 acres (192 divided by 1.2=160 acres class 1 equivalent) of class 2 land. This total landholding of 992 acres would, again, be equal in productive capacity to 960 acres of class 1 land. In the latter case, all 200 acres of Farmer X's class 3 land and 108 acres of his class 2 land would be considered excess and ineligible to receive irrigation water in his landholding.

(6) *Special considerations.* For equivalency purposes, all irrigable land will be classified as either class 1, class 2, or class 3; no other classifications are permissible. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(c) *Scheduling.* District requests for equivalency determinations will be scheduled by region, with the Regional Director of each of the six regions of the Bureau of Reclamation having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(d) *Land classification costs.* The Bureau of Reclamation has provided basic land classification data as part of the project development process since 1924. Where the Secretary determines that acceptable land classification data are not available for making requested class 1 equivalency determinations and where the provision of these data was the responsibility of the Bureau of Reclamation during the project development process, such data will be made available at Bureau of Reclamation expense. Districts in projects authorized for construction prior to 1924 must pay one-half the costs of new land classification studies required to make accurate equivalency determinations.

(e) *Economic study cost.* The cost of performing new or additional economic studies and computations inherent in the equivalency process shall be the responsibility of the requesting district.

(f) *Appeals.* When basic land classification data are available for a district, but the district does not agree with its accuracy or assets that the data have become outdated, the district may request, and the Bureau of Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (Pub. L. 76–260). The requesting district shall pay for one-half of the cost of performing such reclassifications and the full cost of all other studies inherent in the equivalency process.

(g) *Individual requests.* Individual requests for class 1 equivalency determinations will be accepted if the individual landowner, in the absence of district action, has made an irrevocable election to come under the discretionary provisions and if the district agrees to pay for the determination for the entire district. (The arrangement between the landowner and the district to pay the cost of the equivalency determination does not involve or concern the United States.) Requests for equivalency must be made by or through the district. Equivalency will be applied only to that land which is the subject of an individual election for which equivalency has been requested.

(1) The application of this rule may be illustrated by the following:

*Example (1).* A district with an existing contract decides not to amend its contract to come under the discretionary provisions. However, an individual landowner within the district may make an irrevocable election to come under these provisions. The landowner can request equivalency through the district, and the district may request the Secretary to make the equivalency determination for the entire district. The district would be required to pay the United States for the cost of making the equivalency determination. The payment of the costs between the landowner and the district would be a district matter. The application of equivalency would be available only to the landowner(s) who exercise an irrevocable election.

*Example (2).* A district decides to amend its contract to come under the discretionary provisions, but it elects not to request equivalency. Thus, individual landholders within the district are not entitled to equivalency until after the district makes the equivalency request and the Bureau of Reclamation has acted upon that request.

(h) *Excess land.* Until a final determination has been made by the Bureau of Reclamation on the district's request for equivalency, all land exceeding the basic ownership entitlement for qualified or limited recipients must be under recordable contract in order to be eligible for irrigation water. Once the determination has been made, the qualified recipient may withdraw land from the recordable contract in order to reach an acreage equivalent to 960 acres of class 1 land, and the limited recipient may withdraw land from the recordable contract in order to reach an acreage equivalent to 640 acres of class 1 land. The requirement that land under recordable contract be sold at a price approved by the Secretary does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess land as a result of an equivalency determination.

(1) *Protection during classification.* The Bureau of Reclamation will protect the excess landowner's property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district's request

for an equivalency determination was made at least 6 months prior to the maturity of the recordable contract and the district fulfills its obligations under § 426.9 of these rules.

(2) *Protection during appeal.* In cases of equivalency determination appeals, the Secretary will not undertake the sale of the reasonable increment of the excess land under material recordable contract which could be affected by a reclassification as long as the appeal is determined by the Secretary not to be an attempt to thwart the sale of excess land.

(i) *Full-cost charges.* Once the Bureau of Reclamation has acted upon the district's request and made a final equivalency determination, the full-cost water pricing structure would not come into effect until the total landholding westwide exceeds the qualified or limited recipient's non-full-cost entitlement with equivalency. During the time when the determinations were being made, however, the full-cost rate would be assessed on land receiving water in excess of the qualified or limited recipient's non-full-cost entitlement. If the qualified or limited recipient's basic entitlement is increased because of the equivalency determination, he or she shall be reimbursed any overcharges which were paid during the period between the time of the request for an equivalency determination and the Bureau of Reclamation's final determination.

(1) The principles of this paragraph may be illustrated by the following:

*Example (1).* Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested equivalency. The land leased is a mix of classes 1, 2, and 3 land. During the time the equivalency determination was being made, Landholder X would be required to pay the full-cost water rate on 140 acres (1,100 acres leased minus the basic 960-acre non-full-cost entitlement) if he elected to continue to receive irrigation water on that land. Once the equivalency determinations had been completed, Landowner X would be entitled to lease the equivalent of 960 acres of class 1 land at the non-full-cost rate (something greater than 960 acres), Landowner X would also be reimbursed for full-cost payments made for land which became non-excess as a result of the equivalency determination.

*Example (2).* Landholder Y is a limited recipient who owns 600 acres of irrigation land and leases another 160 acres in District A. District A has requested and received an equivalency determination. However, Landholder Y was not receiving project water on or before October 1, 1981. Thus, even with equivalency, he would be required to pay the full-cost water rate for all land served in his landholding. (If Landholder Y had been receiving project water on or before October 1, 1981, he would have been entitled to receive water on the equivalent of 320 acres of class 1 land at the non-full-cost rate. Deliveries on the remaining 440 acres or less, would be at the full-cost rate.)

(j) *Multidistrict landholdings.* A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as class 1 land for purposes of overall entitlement.

(1) The application of this rule may be illustrated by the following:

*Example (1).* Landholder X is a qualified recipient and owns 320 acres in each of three districts. One of those districts, District A, requests and receives an equivalency determination. From the equivalency determination, Landholder X is shown to own the equivalent of 240 acres of class 1 land in District A. Landholder X is therefore entitled to buy and receive irrigation water on an additional 80 acres of irrigation land in some other district or he could lease 80 acres in some other district and receive irrigation water for it at the non-full-cost rate. In District A itself, Landholder X could buy an addition 80 acres of class 1 land or something greater than 80 acres of class 2 or 3 land. If Landholder X preferred to lease in District A, he could lease 80 acres of class 1 land or something greater than 80 acres of class 2 or 3 land and receive irrigation water for that leased land at the non-full-cost rate.

*Example (2).* Landholder Y owns 1,200 acres in District A and 160 acres in District B. Landholder Y is a qualified recipient and has designated 800 acres in District A as nonexcess and put the 400 acres of excess land under recordable contract so that it can be irrigated while still in his ownership. Subsequent to this nonexcess land designation, District A requests and receives an equivalency determination. Landholder Y is then free to withdraw excess land from recordable contract to take advantage of the equivalency determination in District A. Landholder Y, when able to show good cause, may even redesignate the nonexcess land under recordable contract, § 426.11(b), if an appraisal of the excess land has not already been requested and performed. The maturity date as determined in the original contract, however, would not change.

(k) *Existing equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district request a reclassification.

**§ 426.10 Information requirements.**

(a) *In general.* District, legal entities, and individuals shall provide the Secretary upon request such records and information as the Secretary may deem reasonably necessary to implement Pub. L. 97-293 and Federal Reclamation law.

(b) *Certification.* Landowners and lessees within a district which has a contract that conforms to all provisions of title II shall furnish the district, in a form provided by the Bureau of Reclamation, a certificate declaring the irrigable and irrigation land that they own and lease and providing other information pertinent to their compliance with Reclamation law.

(1) *Irrevocable electors.* Landowners or lessees who, in the absence of a district amending its contract, have made an irrevocable election to be subject to title II must also certify through the nonamending district that they are in compliance.

(c) *Reporting.* Prior law landowners and lessees must report through the district the irrigable and irrigation land in their ownership and the extent and conditions of any leases. They must declare the irrigation land that they own and lease and provide other information pertinent to their compliance with Reclamation law. The reporting form will be provided to the district by the Bureau of Reclamation.

(d) *Certification and reporting form data requirements.* (1) Certification and reporting forms will require a full disclosure of irrigable and irrigation land owned and leased in all districts; the identification of the operator or operators of that land; the number of acres leased; the terms of any lease; and in the case of the certification forms, certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. The Secretary may require the parties to any lease to submit to him or her a complete copy of the leases.

(2) If requested by the Secretary, all members of a qualified recipient must be identified. Similarly, a limited recipient can be required to identify only those participants or shareholders who: (i) Own more than 4 percent of the limited recipient and (ii) such ownership interest would constitute an attribution of ownership to such participant or shareholder of more than 40 acres.

(e) *Schedule for completing certification and reporting forms.* Certification and reporting forms will be required annually as a condition for the receipt of irrigation water except as provided in paragraphs (f) and (g) of this section. If a landholder's ownership or leasing arrangements change in some way, the landholder shall notify the district office, either verbally or in writing, within 15 days of the change and submit new certification or reporting forms within 30 days of the change.

(f) *Short form availability.* If no change has occurred in a land ownership or leasing arrangement between annual certification and reporting dates, a short verification form will be available for completion to satisfy the certification or reporting requirement. This form will make it possible for the landowner or lessee to simply validate that the information contained on the last fully completed form is still accurate.

(g) *Exemptions.* Landowners and lessees whose total direct and indirect interest in a landholding on a westwide basis is 40 acres or less are exempt from the certification and reporting requirements.

(h) *District participation.* Each district shall be required to make the necessary blank certification and/or reporting forms available to district landholders and to keep the current certification and reporting forms on file and available for Bureau of Reclamation inspection. All superseded certificates and reports should be retained by the district for 3 years, and thereafter may be destroyed by the district, except that the last fully completed certification and reporting form (other than the verification form) must always be kept on file with the current verification form so that all the landowners' and lessees' land may be identified. Additionally, each district will be required to summarize the information contained on these documents and submit the summary to the Bureau of Reclamation annually. The summary form to be used by the district will be provided by the Bureau of Reclamation. The district shall notify the Bureau of Reclamation of any discrepancies in the certification and reporting forms.

(i) *Auditing.* The Secretary may conduct field audits, as necessary, to ensure compliance with Reclamation law and these regulations.

(j) *False statements.* The following statement will be included in all certification and reporting forms:

> Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

False statements by the landowner or lessee will result also in loss of eligibility. Eligibility could only be regained upon the approval of the Secretary.

(k) *Failure to report.* Failure to submit the required certification or reporting form to the district will result in loss of eligibility to receive irrigation water by the individual landowner or lessee. Eligibility will be regained once the certification or reporting form is submitted to the district.

(l) *OMB approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance Nos. 1006–0004, 1006–0005, 1006–0006. The information is being collected to comply with sections 206, 224(c), and 228 of Pub. L. 97–293. These sections require that, as a condition to the receipt of irrigation water, each landowner and lessee in a contracting entity which is subject to the acreage limitation provisions of Reclamation law, as amended and supplemented by Pub. L. 97–293, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Reclamation law. The information collected on each landholding will be summarized by the district and submitted to the Bureau in a form prescribed by the Secretary. Completion of these forms is required to obtain the benefit of irrigation water.

(m) *Application of Privacy Act of 1974.* The information submitted in accordance with the certification and reporting requirement is subject to the provisions of the Privacy Act of 1974. As a condition to the execution of a contract, the Secretary shall require the inclusion of a standard contract article providing that the district agrees to comply with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

### § 426.11 Excess land.

(a) *In general.* As set forth in § 426.4(g), "excess land" means irrigable land, other than exempt land, owned in excess of a landowner's ownership entitlement under Reclamation law. In determining excess land, all irrigable land in all districts held by any landowner shall be considered. Delivery of irrigation water to excess lands is allowed only if any one of the following conditions applies: (1) The excess land has been placed under recordable contract by the landowner, or (2) the land was involuntarily acquired into excess status through inheritance, foreclosure, or other similar involuntary process.

(b) *Designation of nonexcess land.* The owner of excess land shall designate that portion of his or her irrigable land that is to be considered nonexcess, in accordance with the instructions on the certification and reporting forms. If a landowner does not make a designation on these forms, designation shall be in accordance with provisions in the district's repayment or water service contract, provided designation procedures are specified in the contract and the entire landholding is in one district.

(1) *Designation procedures when not established by contract.* If designation provisions are not specified in the district contract, the landowner must designate that portion of the land in the ownership which is to constitute the nonexcess entitlement within 30 days of Secretarial notification to the district and that landowner. The designation will take into account all irrigable land owned by the landowner. If the landowner fails to make the nonexcess designation within 30 days, the district shall make the designation within 30 days thereafter. If the district does not make the required designation, the Secretary shall then make the designation.

(2) *Designation procedures if land is owned in more than one district.* If the land in the ownership is situated in more than one district, the landowner has 60 days from the date of notification to the district and the landowner to make the designation. The Secretary shall make the designation for the landowner if designation is not made within 60 days.

(3) *Status of nonexcess land and redesignation.* The nonexcess designation, whether made by the landowner, the district, or the Secretary, will be binding on the land and will be filed with the district and the Bureau of Reclamation. These regulations governing excess land will apply to the excess land resulting from that designation. A landowner may redesignate his or her nonexcess land from excess land in the ownership in accordance with the following procedures: Redesignations may be made without the approval of the Secretary in those cases where: (i) The excess land becomes eligible to receive irrigation water as a result of a landowner becoming subject to the discretionary provisions as set forth in paragraphs (c)(1) and (c)(2) of this section, (ii) recordable contracts are amended to conform to the expanded acreage limitations of the discretionary provisions as set forth in paragraph (g) of this section, or (iii) the excess land becomes eligible to receive irrigation water as a result of equivalency determinations, § 426.9.

All other situations involving redesignation of nonexcess land from excess land must be approved by the Secretary. A redesignation proposal will

not be approved if it is being used for the purpose of achieving, through repeated redesignation, an effective farm size in excess of that permitted by Reclamation Law. Furthermore, excess land in the ownership may not be designated as nonexcess once an owner sells some or all of the land in his or her current nonexcess designation. When a redesignation involves an exchange of nonexcess land for excess land, a landowner who is not eligible for equivalency must make an equal exchange of acreage through the redesignation. If the landowner is eligible for equivalency, the redesignation may be made on the basis of equivalent acres. The application of this rule may be illustrated by the following:

*Example (1).* Landowner X owns 1,200 acres of irrigable land in District A. He purchased this land before the district entered its first repayment contract with the United States after October 12, 1982. Landowner X, as a qualified recipient, designates 960 of his 1,200 acres as nonexcess. With the approval of the Secretary, Landowner X may designate the 240 acres, which are now excess, as nonexcess and eligible to receive irrigation water, provided he redesignates 240 acres of presently nonexcess land as excess.

*Example (2).* Landowner Y is a U.S. citizen and a qualified recipient by virtue of District A's contract amendment to conform to the discretionary provisions. Landowner Y purchased 1,400 acres of irrigable land in this district before the district entered a repayment contract to receive an irrigation water supply. After the district's amendment, Landowner X designates 960 acres of this land as nonexcess. Subsequent to this designation, the district requests and receives an equivalency determination. All 1,400 acres of Landowner Y's land is class 3 land, and in District A, 1 acre of class 1 land is equal to 1.4 acres of class 3 land. With equivalency, Landowner Y may irrigate 1,344 acres of class 3 land in District A. Thus, he may redesignate everything in his ownership as nonexcess except for 56 acres. In the future, if Landowner Y sells some of this 1,344 acres of nonexcess land, he may not designate any of the 56 excess acres as nonexcess.

(4) *Acquisition of excess land.* A landowner may purchase or otherwise acquire excess land and nonexcess land subject to a deed covenant as set forth in § 426.11(h) at a Secretarially approved price, to be held as nonexcess, up to his or her ownership entitlement and, upon expiration of the terms of the deed covenant, resell such land at fair market value only once. Once a landowner has reached this limit, any additional excess land or land subject to a deed covenant becomes ineligible to receive irrigation water until it is sold to an eligible buyer at a Secretarially approved price as set forth in § 426.12.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer Y, who owns irrigable land in excess of his ownership entitlement, sells 960 acres of his excess land to Farmer X, a qualified recipient, at a Secretarially approved price. Farmer X owns no other irrigable land and designates the 960 acres as nonexcess and eligible to recieve irrigation water in his ownership. After the 10-year period of the deed covenant expires, Farmer X sells the 960 acres at fair market value and purchases another 960 acres of irrigable land located in yet another district. Farmer X purchases the latter parcel at a Secretarially approved price because the land was excess in the seller's holding. However, since Farmer X has already reached his 960-acre limit for recapturing the fair market value of land purchased at a Secretarially approved price, the newly purchased land is not eligible to receive irrigation water while in his holding. In order to regain eligibility, the land must be sold to an eligible buyer at a Secretarially approved price. Farmer X may purchase and receive irrigation water on another 960 acres, provided it is bought from nonexcess status.

(c) *Treatment of land ineligible under prior law.* Irrigable land ineligible under prior law will be treated as follows:

(1) Irrigable land owned on the date of a district's first repayment or water service contract. Irrigable land owned on the date of the district's first water service or repayment contract and which becomes ineligible for service because it is in excess of the ownership limitations under prior law may be made eligible as follows: The landowner can become subject to the discretionary provisions through either an irrevocable election or a contract amendment by the district and may designate the excess land, up to his or her entitlement, as nonexcess. If the landowner does not become subject to the discretionary provisions, or if there is any excess land remaining after the landowner becomes subject to the discretionary provisions, the excess land can be made eligible by placing it under recordable contract, provided the period for executing recordable contracts under the district's contract has not expired. The excess land can also be sold to an eligible buyer at a Secretarially approved price, as set forth in § 426.12, or redesignated as nonexcess with the approval of the Secretary, as set forth in paragraph (b)(3) of this section.

(i) The principles of this rule may be illustrated by the following:

*Example (1).* Landowner Z is a resident alien and owns 480 acres of irrigable land in District A. Landowner Z has designated 160 acres as nonexcess, and it is receiving irrigation water. Following this designation, District A amends its contract to conform to the discretionary provisions. As a result of the district amendment, Landowner Z satisfies the requirements for a qualified recipient and may designate all 480 acres owned as nonexcess.

*Example (2).* Landowner Y and his wife own 1,200 acres of irrigable land in District B which is subject to prior law. They owned this land even before District B entered into a repayment contract with the United States. Landowner Y and his wife have designated 320 acres as nonexcess and eligible to receive irrigation water. The remaining 880 acres are excess and ineligible to receive irrigation water. This excess land cannot be placed under recordable contract because the 10-year grace period for executing recordable contracts, as provided in the district's contract, has expired.

Landowner Y makes an irrevocable election to conform to the discretionary provisions. By that election, Landowner Y becomes a qualified recipient, and is entitled to own and receive irrigation water on 960 acres. Landowner Y's remaining 240 acres can become eligible if he sells it to an eligible buyer at an approved price or redesignates it, with the approval of the Secretary, as nonexcess.

(2) Irrigable land acquired after the date of a district's first repayment or water service contract. Irrigable land acquired by a landowner after the date of a district's first repayment or water service contract and which is ineligible for service under prior law may become eligible as follows:

(i) Nonexcess land purchased into excess. Land which is ineligible because it was purchased from nonexcess status into excess status may become eligible to receive irrigation water if the landowner becomes subject to the discretionary provisions and redesignates the land, up to his entitlement, as nonexcess. If the landowner does not become subject to the discretionary provisions in accordance with these procedures, or if there is any excess land remaining after the landowner becomes subject to the discretionary provisions, the excess land can regain eligibility as follows: Irrigation land acquired from nonexcess status into excess status after irrigation water was available to the land can regain eligibility if either the sale is canceled or the land is sold to an eligible buyer in a sale or transfer at a price and on terms approved by the Secretary or if redesignation of the land is approved by the Secretary. In addition, if the land was acquired into excess before irrigation water was available to it, the land can be placed under recordable contract when the water supply becomes available.

(ii) Excess land acquired without price approval and other ineligible land. Land which is ineligible because it was acquired from excess status without Secretarial price approval or because the landowner did not comply with

some other requirements of law as determined by the Secretary can regain eligibility if it is sold to an eligible buyer at a price approved by the Secretary. Land purchased without Secretarial price approval can also regain eligibility if the sale price is reformed to conform to the excess land value.

(A) The principle of this rule may be illustrated by the following:

*Example (1).* Landowner Z is a resident alien and owns 160 acres of irrigation land in District A. District A is subject to prior law. Landowner Z purchases an additional 160 acres which had been designated nonexcess while in the landholding of the seller. Since Landowner Z has purchased himself into excess status, the newly purchased land becomes ineligible to receive irrigation water in his holding. However, 3 weeks later, Landowner Z makes an irrevocable election. Since he meets the requirements of a qualified recipient and since he has become subject to the discretionary provisions, Landowner Z may designate the newly purchased 160 acres as nonexcess. As a qualified recipient, he may also purchase and receive irrigation water on another 640 acres of eligible land.

*Example (2).* In 1986, Landowner X bought 160 acres of irrigable land from excess status in District A. Landowner X, however, failed to get sale price approval from the Secretary. This land is ineligible for service in his holding unless the seller is willing to reform the sale price to conform to the excess land value. If the price is not reformed, the 160 acres must be sold to an eligible buyer at a Secretarially approved price in order to be eligible for irrigation water.

*(d) Irrigable land which becomes ineligible under the discretionary provisions.* Irrigable land which becomes ineligible under the discretionary provisions shall be treated as follows:

(1) In a district which first becomes subject to Reclamation law because it enters a repayment or water service contract after October 12, 1982, irrigable land owned on the date of the district's contract and which is in excess of the ownership limitations under the discretionary provisions can be made eligible if it is: (i) Placed under recordable contract, provided the period for executing recordable contracts under the district's contract has not expired; (ii) sold to an eligible buyer in a sale or transfer at a price and on terms approved by the Secretary; or (iii) redesignated as nonexcess with the approval of the Secretary as set forth in paragraph (b)(3) of this section.

(2) In a district which first becomes subject to the ownership limitations of Reclamation law after October 12, 1982, if irrigable land for which irrigation water is available is acquired from nonexcess status into excess status after the date of the district's contract, it shall remain ineligible until the sale is canceled, or the land is sold to an eligible buyer at a price and on terms approved by the Secretary, or redesignated with approval by the Secretary. If irrigation water was not available to such land at the time of purchase, the land can be placed under recordable contract when the water becomes available. In such districts, if land is ineligible because it was purchased from excess status without price approval, eligibility can be regained if the sale price is reformed to conform to a Secretarially approved price or if the land is sold to an eligible buyer at a price approved by the Secretary.

(3) In a district which was once subject to prior law but which has become subject to the discretionary provisions, irrigable land which becomes ineligible after the discretionary provisions are applicable, can be made eligible in the same ways described in the preceding paragraph, § 426.11(d)(2).

(i) The principle of these rules may be illustrated by the following:

*Example.* In 1980, Landowner X, a U.S. citizen, buys 1,920 acres of land in District A. In addition to its own water supply, District A wishes to receive supplemental irrigation water. Therefore, it enters into a water service contract with the United States on May 14, 1984. Thereby, the landowners in the district become subject to the discretionary provisions. As a qualified recipient, Landowner X may receive irrigation water on any 960 acres which he designates as nonexcess. The remaining 960 acres are excess and ineligible for service until Landowner X places the land under recordable contract, sells it to an eligible buyer at a price approved by the Secretary, or receives Secretarial approval to redesignate the land as nonexcess.

If Landowner X had purchased the 1,920 acres from nonexcess status in 1985, rather than before the date of the district's contract, he still would have been able to designate 960 acres as nonexcess and eligible to receive irrigation water. However, the remaining 960 acres of excess land would not have been eligible until sold to an eligible buyer at a Secretarially approved price, the sale is canceled, or he receives Secretarial approval to redesignate the land as nonexcess. The excess acres could not have been placed under recordable contract unless irrigation water had not been available when the land was purchased.

(e) *Recordable contracts.* Excess land may become eligible to receive irrigation water if the owner enters into a recordable contract with the Secretary, provided such excess land is eligible to be placed under recordable contract. The excess owner must agree to dispose of the excess land, excluding mineral rights and easements, to an eligible owner under terms and conditions and at a sale price approved by the Secretary in accordance with § 426.12. The period allowed for the disposition of excess land under recordable contracts executed after October 12, 1982, may not exceed 5 years from the date the recordable contract is executed by the Secretary (except for the Central Arizona Project where the disposition period provided will be 10 years from the date water becomes available to the land). Water deliveries may begin on the date the Secretary receives a written request from the landowner to execute a recordable contract. The landowner has 20 working days from the date to execute the recordable contract unless the Secretary waives the 20-day limitation. Land placed under recordable contract may receive irrigation water at the rate specified in the contract of the district so long as it is in the landholding of a prior law recipient. In the case of qualified and limited recipients, the rate must cover at least the annual O&M costs. However, land under recordable contract which is leased to another may become subject to the full-cost provisions if the lessee's landholding exceeds the specified non-full-cost entitlement. Furthermore, if a landowner with land under recordable contract exceeds his or her non-full-cost entitlement, nothing precludes the landowner from selecting land under recordable contract as the land for which the full-cost rate must be paid, unless such land is already subject to full-cost pricing under an extended recordable contract as set forth in § 426.11(i)(4).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Landowner X is a qualified recipient and owns 1,400 acres of irrigable land in District A. The landowner places 440 acres under recordable contract so that he may receive irrigation water at the non-full-cost rate on all owned land in the district. Subsequently, Landowner X leases the 440 acres under recordable contract to Landowner Y who is a limited recipient that did not receive irrigation water prior to October 1, 1981. Therefore, the full-cost rate must be paid for irrigation water delivered to the 440 leased acres. Leasing the land to Landholder Y does not affect other terms of the recordable contract.

*Example (2).* Farmer X owns 1,280 acres of irrigable land in District A. District A, which is subject to prior law, has a fixed-rate water service contract which no longer covers actual O&M costs. Farmer X has designated 160 acres of his land as nonexcess and has placed the remaining 1,120 acres under recordable contract. This means that Farmer X is able to receive irrigation water at the contract rate on all his owned land. Subsequently, District A amends its contract

to become subject to the discretionary provisions. As provided in § 426.11(g), Farmer X withdraws 800 acres from under recordable contract and redesignates that land as part of his 960-acre entitlement as a qualified recipient. Since Farmer X is now a qualified recipient, the higher of the contract rate or full O&M costs must be paid for all land in his landholding, including the 320 acres remaining under recordable contract.

(f) *Restriction on placing excess land under recordable contract.* Except as provided in § 426.6(h), if a landowner acquires irrigation land for which irrigation water is available and by so doing places himself or herself in excess status, the landowner shall not be permitted to place the land so acquired under recordable contract. Such excess land can only regain eligible status as described in paragraphs (c)(2) and (d)(2) and (3) of this section.

(g) *Recordable contracts in effect prior to October 12, 1982.* Recordable contracts executed prior to October 12, 1982, will continue in effect. However, landowners with such existing recordable contracts may request that their contracts be amended to conform to the expanded ownership limitations contained in title II. The Secretary shall amend those contracts when requested by a landowner if: (1) Any district where the landholder holds land, enters into a new or amended contract which conforms to the discretionary provisions or (2) the excess landowner makes an individual election.

The disposition period for such amended recordable contracts shall not be extended as provided in paragraph (i) of this section. If a landowner becomes subject to the discretionary provisions and amends his or her nonexcess designation to include land that had been under recordable contract, such land shall not be subject to the 10-year deed covenant requiring Secretarial sale price approval as set forth in paragraph (h) of this section.

(h) *Price approval on excess land—(1) Deed covenant.* In order for land acquired from excess status after October 12, 1982, whether under recordable contract or not, to be eligible to receive irrigation water, the following covenant controlling the sale price of such land must be placed in the deed transferring the land to the purchase, except as provided in paragraphs (j) and (k) of this section.

This covenant is to satisfy the requirements in § 209(f)(2) of Pub. L. 97-293. This covenant expires on ———. Until the expiration date specified herein, sale price approval is required on this land. Sale by the landowner and his or her assigns of these lands for any value that exceeds the sum of the value of newly added improvements plus the value of the land as increased by the market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water, *provided however:*

(i) The terms of this covenant requiring price approval shall not apply to this land if it is acquired into excess status pursuant to a *bona fide* involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise, (hereinafter Involuntary Conveyance). Thereafter, this land may be sold to a landholder at its fair market value without regard to any other provision of the Reclamation Reform Act of 1982 approved October 12, 1982, (43 U.S.C. 390aa, et seq.), or to Section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. 423e);

(ii) If the status of this land changes from nonexcess into excess land after a mortgage or deed of trust in favor of a lender is recorded and this land is subsequently acquired by a *bona fide* Involuntary Conveyance by reason of a default under that loan, this land may thereupon or thereafter be sold to a landholder at its fair market value;

(iii) The terms of this covenant requiring price approval shall not apply to the sale price obtained at the time of the Involuntary Conveyances described in subparagraphs (i) and (ii), nor to any subsequent voluntary sales by a landholder of this land after the Involuntary Conveyances or any subsequent Involuntary Conveyance;

(iv) Upon the completion of an Involuntary Conveyance, the Secretary of the Interior shall reconvey or otherwise terminate this covenant of record.

Note.—The date to be included shall be 10 years from the date the land was first transferred from excess to nonexcess status.

(2) *Involuntarily acquired land.* Upon acquisition of land burdened by such a deed covenant through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, device, or gift, the deed covenant shall be removed by the Secretary at the request of the acquiring party, by a release of equitable servitude or other appropriate legal instrument.

(i) *Extension of disposition periods for recordable contracts.* Owners of excess land under recordable contract who were prevented from selling their excess land because of Secretarial moratorium or court order shall be allowed an additional period of time to sell their excess land under recordable contract in the manner described in subparagraphs 1, 2, and 3 of this paragraph.

(1) *Westlands Water District, California.* Beginning July 10, 1984, the Secretary again commenced processing the sales of excess land under recordable contract in the Westlands Water District, California. Such land will be allowed a period of time equal to the time remaining on that recordable contract on August 13, 1976, to sell land under recordable contract. The Secretary will notify the affected landowners as to applicable dates.

(i) The principles of this rule may be illustrated by the following:

*Example.* A landowner in the Westlands Water District entered into a recordable contract on October 13, 1972. The recordable contract provided for a 10-year disposition period which would end on October 13, 1982. On August 13, 1976 (the date of the court-ordered moratorium on processing sales of excess land in the Westlands District), there were 6 years and 2 months remaining in the disposition period. The court-ordered moratorium was lifted and the Secretary commenced processing sales of excess land in the Westlands Water District on July 10, 1984, the disposition period for the recordable contract will be extended for 6 years and 2 months from that date or to September 10, 1990. The contract will mature at that time and the Secretary's power-of-attorney to sell the land will vest.

(2) *All other districts.* A moratorium on processing sales of excess land was issued by the Secretry on June 27, 1977. This moratorium applied to all landowners with recordable contracts in all districts other than the Westlands Water District. The Commissioner of Reclamation delayed sales by other directives. Landowners affected by these actions were given an additional period of time to dispose of their land. The extension was calculated from the May 21, 1984, date that processing sales of excess land was resumed and was equal to the time remaining on the recordable contract when the moratorium was imposed. The resumption date was determined by the Secretary, and he notified all affected landowners.

(i) The principles of this rule may be illustrated by the following:

*Example.* A landowner in District A entered into a recordable contract on June 27, 1975. The recordable contract provided for a 10-year disposition period which would end June 27, 1985. The landowner was prevented from selling the land under recordable contract by the Secretarial moratorium of June 27, 1977. At that date, the recordable contract had a remaining disposition period of 8 years. The disposition period for the recordable contract will be extended 8 years from the date processing sales is resumed. The resumption date of May 21, 1984, was determined by the Secretary.

(3) *How extensions of recordable contracts are to be accomplished.* The

Secretary shall prepare and execute amendatory agreements to extend recordable contracts for the appropriate period of time. The amendatory agreement will establish the new maturity date for the recordable contract and will be recorded by the Secretary in the official records of the county in which the land covered by the recordable contract is located. A copy of the amendatory agreement will also be sent to the affected landowner by the Secretary.

(4) *Water rates for land under extended recordable contracts.* Land under recordable contract which is held by a water user not subject to the discretionary provisions may continue to receive irrigation water at the contract water rate for the extended term of the contract, except as provided in § 426.11(e). Land under recordable contract which is held by a qualified or limited recipient may continue to receive irrigation water deliveries at the non-full-cost rate for the original disposition period of the recordable contract. The water rate for land under recordable contract held by a qualified or limited recipient during an extended contract period shall be determined as follows: The non-full-cost rate shall apply until the date 18 months after the date the Secretary resumes the processing of excess land sales, or until the extended contract period expires, whichever occurs first, and after the date 18 months from the date the Secretary resumes the processing of excess lands sales, water deliveries shall be made at the full-cost rate for the duration of the extended contract period.

(i) The principles of this rule may be illustrated by the following:

*Example* (1). Landowner X entered into a recordable contract on June 27, 1972. The recordable contract provided for a 10-year disposition period which ended on June 27, 1982. However, Landowner X was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The district in which the land is located amended its contract to conform to the discretionary provisions on January 1, 1983. Since Landowner X had 5 years remaining on the original recordable contract when the moratorium was imposed, the contract will be extended for 5 years from the date the processing of the sale is resumed. The resumption date will be determined by the Secretary. Landowner X must pay the full-cost rate, however, for any irrigation water delivered to the land under recordable contract beginning 18 months from the date the moratorium is lifted.

*Example (2).* Landowner Y entered into a recordable contract with a 10-year disposition period on June 27, 1976. Landowner Y was prevented from selling the land by the Secretarial moratorium of June 27, 1977. At that time, 9 years remained in the disposition period of the recordable contract. The district in which the land is located amended its contract to conform with the discretionary provisions of title II on January 1, 1983. The Secretary resumes the processing of the excess land sale on May 21, 1984. The original disposition period of the recordable contract expires on June 27, 1986, which is more than 18 months after the Secretary resumed the processing of the excess land sale. Therefore, Landowner Y must pay the full-cost rate for water deliveries to that land beginning June 27, 1986, for the duration of the extended contract period. The extended contract period will expire on May 21, 1993, 9 years after the Secretary resumed the processing of the excess land sale.

(j) *Sale of excess land under recordable contract by the Secretary.* All recordable contracts shall provide that a power-of-attorney shall vest in the Secretary to sell the land under recordable contract if the landowner does not dispose of the excess land within the period specified. The land shall be deemed "disposed of" for this purpose if the landowner has complied with all requirements for the sale of excess land under these rules within the period specified whether the Secretary gives his final approval of the sale within that period or thereafter. The Secretary shall conduct such excess land sales, once the power-of-attorney has vested. The Secretary shall use the following procedures:

(1) *Surveys.* A qualified surveyor shall make a land survey when determined necessary by the Secretary. The cost of the survey initially will be paid by the United States and added to the sale price for the land. The cost shall be reimbursed to the United States from the proceeds of the sale.

(2) *Appraisals.* The Secretary shall appraise the excess land to determine the approvable sale price. The cost of the appraisal shall be paid by the United States. Such cost shall be added to the approved sale price and shall be reimbursed to the United States out of the proceeds of the sale.

(3) *Advertising.* The Secretary shall advertise the sale of the property in the newspapers within the county in which the land lies, in farm journals, in other similar publications, and by other public notices he determines advisable. The notices shall state (i) the minimum acceptable sale price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising), (ii) that the land will be sold by auction for cash or on terms acceptable to the landowner to the highest bidder whose bid equals or exceeds the minimum acceptable sale price, and (iii) the date for such sale (which shall not exceed 90 days from date of the advertisement).

The advertisement costs for the sale will be added to the sale price for the land and reimbursed to the United States from the sale proceeds.

(4) *Distribution of proceeds.* The proceeds from the sale of the land shall be paid first, to the landowner in the amount of appraised value; second, to costs due the United States for costs of the survey, appraisal, advertising, etc.; and third, to the United States any remaining proceeds, which will be credited to the Reclamation fund or other funds as prescribed by law.

(5) *Closing.* The sale of the excess land shall be closed by the Secretary when all sale arrangements have been completed. The Secretary shall execute a deed conveying the land to the purchaser. There shall be no requirement for a covenant in the deed, paragraph (h) of this section, restricting the resale of the land.

(6) *Water deliveries.* Excess land under matured recordable contracts will be eligible to continue to receive irrigation water at the current applicable rate until the land is sold by the Secretary.

(k) *Land which becomes excess because of westwide application or enforcement of other requirements of law*—(1) *Land previously subject to prior law.* Irrigable land and other land which was subject to prior law and which was nonexcess and receiving or eligible to receive irrigation water under that law may become either (i) excess because of the westwide application of acreage limitation for qualified or limited recipients or (ii) ineligible because of the restriction on delivery of water to nonresident aliens and entities not established under State or Federal law.

To remain eligible for water, such land, up to the amount which was nonexcess and eligible under prior law, must be placed under recordable contract as provided in paragraph (e) of this section. The recordable contract in such situations shall be modified to permit the landowner to sell the land to an eligible purchaser without price approval by the Secretary. The deed conveying the excess land shall not contain the standard covenant, as set forth in paragraph (h) of this section, requiring sale price approval by the Secretary for a period of 10 years following initial sale. The land shall be sold in accordance with the procedures established in paragraph (j) of this section if the Secretary's power-of-attorney to sell the land vests. In these

situations, the excess or ineligible land shall also become eligible to receive irrigation water if it is sold to an eligible buyer. Those acres which were held as nonexcess and eligible under prior law may be sold at fair market value.

(2) *Land not previously subject to prior law.* The provisions in paragraph (1) do not apply to land in districts which first entered a contract with the United States after October 12, 1982. In such districts, excess land can only gain eligibility as described in paragraphs (d)(1) and (d)(2) of this section. Land that becomes ineligible in these districts because it is owned by nonresident aliens or by an entity not established under State or Federal law can be placed under a recordable contract requiring Secretarial sale price approval, as set forth in paragraph (e) of this section, only if the land was acquired before the date of the district's contract. If the land was acquired after the date of the district's contract, it must be sold to an eligible buyer at an approved price in order to regain eligibility.

(l) This rule may be illustrated by the following:

*Example (1).* Landowner X and his wife are U.S. citizens and own 320 acres of irrigation land designated as nonexcess in each of Districts A, B, C, and D. In June of 1980, Landowner X purchased an additional 280 acres in District E. District A amends its contract to conform to title II. Landowner X and his wife automatically and without benefit of choice become a qualified recipent and as such are entitled to irrigate no more than 960 acres westwide with irrigation water. Their present ownership exceeds their 960-acre ownership entitlement by 600 acres. Since the 280 acres in District E were purchased after December 6, 1979, that land was ineligible to receive irrigation water even under prior law. Therefore, no part of that parcel can be placed under recordable contract and the land remains ineligible until sold to an eligible buyer at an approved price or the sale is cancelled, or the land is redesignated with Secretarial approval. The remaining 320 excess acres, however, had been eligible under prior law. Therefore, that land can continue to receive irrigation water if Landowner X either sells it to an eligible buyer or places the land under a 5-year recordable contract. In either case, Landowner X could sell the land at fair market value.

*Example (2).* Corporation X, which was established under the laws of Switzerland, is owned by two shareholders who are citizens and residents of Switzerland. The corporation owns 480 acres of irrigation land in District A and has designated 160 acres as nonexcess and eligible to receive irrigation water. District A amends its contract to conform to the discretionary provisions. Thereby, Corporation X becomes ineligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. However, since 160 acres of its land were eligible to receive irrigation water under prior law, this land will continue to be eligible if it is placed under a recordable contract or sold to an eligible buyer. The 160 acres, whether or not under recordable contract, may be sold at fair market value; however, the 320 acres which were excess under prior law remain ineligible until sold to an eligible buyer at an approved price.

*Example (3).* Corporation W, a foreign corporation owned by two shareholders who are citizens and residents of Norway, purchased 480 acres of irrigation land in District A. Subsequent to the purchase, District A entered its first contract with the United States, thereby becoming subject to the discretionary provisions. Corporation W, however, is not eligible to receive irrigation water as a qualified recipient because it was not established under State or Federal law. Since Corporation W's land had never been subject to prior law, it does not come under the purview of paragraph (k)(1) of this section. However, since the land was purchased before the date of the district's contract, the corporation can receive irrigation water by placing the land under a recordable contract requiring Secretarial sale price approval.

**§ 426.12 Excess land appraisals.**

(a) *In general.* The following regulations shall apply to all appraisals of excess land and land burdened by a deed covenant except when the land is subject to a recordable contract and/or a contract which was in force on October 12, 1982, and these regulations are inconsistent with the provisions of those contracts.

(1) All appraisals of excess land and land burdened by a deed covenant will be based on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Standard appraisal procedures including the income, comparable sales, and cost methods shall be used as applicable. Nonproject water supply factors as provided in paragraph (a)(3) of this section shall be considered as appropriate.

(2) Improvements shall be appraised on the basis of their contributory fair market value as of the date of appraisal, using standard appraisal procedures.

(3) The nonproject water supply factors of: (i) Ground-water pumping lift, (ii) surface water supply, (iii) water quality, and (iv) trends associated with paragraph (a)(3) (i), (ii), and (iii) of this section shall be considered by the appraiser where appropriate.
The Bureau of Reclamation, in conjunction with the district, if the district desires to participate, shall develop the nonproject water supply and trend information. Landowners of excess land or land burdened by a deed covenant and prospective buyers may submit information relevant to these determinations to the district or the Bureau of Reclamation. The Bureau of Reclamation may also conduct public meetings and forums and solicit input from other sources to obtain data that may be considered in developing the ground-water trend information. Data submitted may include historic geological data, changing crops and cropping patterns, and other factors associated with the nonproject water supply. If the Bureau of Reclamation and the district cannot reach agreement on the data within 60 days, the Secretary shall review and update the trend information as he deems necessary and make all final determinations considering the data provided by the Bureau of Reclamation and the district. These data will be provided to appraisers and shall be considered in the appraisal process. Each appraisal will clearly explain how the data were used in the valuation of the lands.

(4) The date of appraisal shall be the date of last inspection by the appraiser(s) unless there is an existing signed instrument such as an option, contract for sale, agreement for sale, etc., affecting the property, in which case the date of appraisal will be the date of such instrument.

(b) *When appraisals are to be made.* Appraisals of excess land or land burdened by a deed covenant shall be made upon request of the landowner(s) or when required by the Secretary. If a request for an appraisal is not received from the landowner(s) within 6 months of the maturity date of the recordable contract, the Secretary may initiate the appraisal.

(c) *Appraiser slection and appraisal cost.* Each appraisal of excess land or land burdened by a deed covenant shall be made by a qualified appraiser selected by the Secretary except as provided in paragraph (d) of this section. The cost of the first appraisal of any excess land shall be paid by the United States. When the excess land or land burdened by a deed covenant is sold, the cost of the first appraisal shall be added to the sale price and reimbursed to the United States by the excess land purchaser. Any costs associated with additional appraisals requested by the landower shall be paid by that landowner provided the value of the land established by a reappraisal does not exceed the value established in the first appraisal by more than 10 percent. However, if the difference in the appraisal values exceeds 10 percent, the United States will pay for the reappraisal.

(d) *Appeals.* The owner of excess land or land burdened by a deed covenant who requested the appraisal, may

request a second appraisal if such landowner disagrees with the first appraisal. The second appraisal shall be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. This appraisal shall be binding on both parties after review and approval as provided in paragraph (e) of this section. As such, it fixes the maximum vaue of the excess land.

(e) *Review process.* All appraisals of excess land or land burdened by a deed covenant shall be reviewed by the Bureau of Reclamation for technical accuracy and compliance with these rules and regulations, applicable portions of Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973, Reclamation Instructions, and any detailed instructions provided by the Secretary setting conditions applicable to an individual appraisal.

**§ 426.13 Exemptions.**

(a) *In general.* The following are exempt from acreage limitation, pricing, and other provisions of Federal Reclamation law as indicated:

(1) *Corps of Engineers project.* Land receiving an agricultural water supply from Corps of Engineers projects is exempt from title II and other provisions of Reclamation law unless it has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal Reclamation project or the Secretary has provided project works for the control or conveyance of an agricultural water supply from the Corps project to the subject land. This exemption does not relieve district agricultural water users from obligations, pursuant to contracts with the Secretary, to repay their share of construction, O&M, and contract administration costs of the Corps project allocated to conservation or irrigation storage. The Secretary shall determine the exemption status for land receiving an agricultural water supply from Corps of Engineers projects. He shall notify affected districts of the exemption status of that land. District repayment or water service contracts containing provisions imposing acreage limitation for those lands served from Corps projects which are exempt will be amended to delete those provisions at the request of the district.

(2) *Reclamation projects.* Land in districts shall be exempt from the ownership and full-cost pricing provisions of Reclamation law when the district has repaid all obligated construction costs for project facilities for that land in accordance with the terms of the district's contract with the United States. Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payment allowed in the district's contract shall qualify the district or individual for exemption. An individual landowner will be exempt upon repayment of construction charges allocated to that owner's land, if provided for in a contract with the United States. When a district has discharged its obligation to repay construction costs for project facilities, the Secretary shall notify the district that it is exempt from acreage limitation and the full-cost provisions of law; however, such an exemption shall not relieve a district or individual from paying, on an annual basis, the O&M costs chargeable to that district or individual. At the request of an owner of a landholding for which repayment has occurred, the Secretary shall provide a certificate to that owner acknowledging the landholding is free of the ownership and full-cost pricing limitations of Federal Reclamation law. The certification and reporting requirements for acreage limitation and full-cost pricing will no longer apply to districts or landholders for exempt land. The continuation of the exemption will be considered on a case-by-case basis if additional construction funds for the project are requested.

(3) *Temporary supplies of water.* Supplies of water made possible as a result of an unusually large water supply not otherwise storable for project purposes or infrequent and otherwise unmanaged floodflows of short duration can be made available to land without regard to the acreage limitation and full-cost provisions of Federal Reclamation law for a temporary period not to exceed 1 year. Such water supplies can be made available by the Secretary as temporary supplies to excess land. The Secretary shall announce the availability of such temporary supplies to districts. Districts desiring deliveries of such temporary water supplies to excess land shall request the Secretary to make such deliveries. Upon approval by the Secretary, the district shall be notified of the availability of the temporary supply and the conditions for its use. The temporary supply of water shall be delivered under contracts not to exceed 1 year in accordance with existing policies and priorities. Such deliveries must not have any adverse effect on other authorized project purposes. The Secretary shall determine the price, if any, a district is to be charged and other conditions that may apply to such temporary water deliveries.

(4) *Isolated tracts.* Isolated tracts which can be farmed economically only if included in a larger farming operation shall not be subject to the ownership limitations of Federal Reclamation law. However, the full-cost rate shall apply to water deliveries to isolated tracts that are in excess of the landowner's non-full-cost entitlement. Isolated tract determinations shall be made by the Secretary at the request of the landowner.

(5) *Rehabilitation and Betterment Programs.* R&B (Rehabilitation and Betterment) loans, pursuant to the R&B Act of October 7, 1949, as amended, are not considered loans for construction, but rather loans for maintenance, including replacements which cannot be financed currently; provided, that the project for which the loan is requested or made is a project authorized under Federal Reclamation law prior to the submittal of the request for an R&B loan to the Bureau of Reclamation by or for the district. Because funds advanced for R&B loans do not constitute construction charges, they are not to be considered in determining whether the obligation of a district for the repayment of the construction costs of project facilities used to make project water available for delivery to such land has been discharged by the district. A loan for an R&B program shall not be the basis for reinstating acreage limitation in a district which has completed payment of its construction obligation nor for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district.

**§ 426.14 Residency.**

Residency is not a requirement for the delivery of irrigation water from Reclamation project facilities. Existing recordable contracts and certificates containing provisions requiring the purchaser of excess land to be a resident or agree to become a resident within a specified time period shall be revised to delete this requirement.

**§ 426.15 Religious and charitable organizations.**

(a) *Ownership entitlement under the discretionary provisions.* Each parish, congregation, school, ward, or similar organization of a religious or charitable organization which is exempt from taxation under § 501 of the Internal Revenue Code of 1954, and owns or operates landholdings in Federal Reclamation projects, will be treated as a qualified recipient: Provided, (1) that

either the district in which the land is situated enters into a new or amended contract, or the religious or charitable organization or its subdivision owning or operating land in the district elects to come under the discretionary provisions; (2) that the agricultural produce and the proceeds of sales of such produce are used only for charitable purposes; (3) that the land is operated by the individual religious or charitable entity or organization (or subdivision); and (4) that no part of the net earnings of the religious or charitable entity or organization (or subdivision) shall accrue to the benefit of any private shareholder or individual.

If a religious or charitable organization subject to the discretionary provisions does not meet the last three criteria in this paragraph, the entire organization, including all of its subdivisions, will be treated as one limited recipient as set forth in § 426.6(c).

(b) *Ownership entitlement under prior law.* The provisions of the prior law will apply if neither the district nor the religious or charitable organization or its subdivision elects to conform to the discretionary provisions. Each parish, ward, congregation, or other subdivision of the organization shall be considered an individual under prior law, provided it meets the last three criteria set forth in paragraph (a) of this section. If the organization does not meet those three criteria, the entire organization, including all of its subdivisions, will be treated as one corporation subject to prior law as set forth in § 426.6(d)(5).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* A charitable organization which meets the requirements of title II has subdivisions in each of five different districts. Each of these districts amends its contract to conform to the discretionary provisions. Therefore, each subdivision is entitled to own and farm 960 acres of irrigation land.

*Example (2).* A religious organization which meets the requirements of title II has subdivisions in each of Districts A, B, C, and D. Each subdivision operates 800 acres of irrigation land. Districts A and B amend their respective contracts to conform to the discretionary provisions; therefore, the subdivisions in Districts A and B are entitled to own or operate 960 acres of irrigation land. Districts C and D do not amend their contracts to conform to the discretionary provisions and remain subject to the acreage restrictions contained in the prior law. The subdivisions in Districts C and D, however, make individual elections to conform to the discretionary provisions and are therefore entitled to own or operate 960 acres of irrigation land.

(c) *Affiliated farm management.* A religious or charitable organization or its subdivision which elects to conform to the discretionary provisions or owns or operates land in a district which enters into a new or amended contract may retain its status as a qualified recipient and still affiliate with a more central organization of the same faith in farm operation and management. Affiliated farm management shall be permitted regardless of whether the subdivision is the owner of record of the land being operated.

(1) The principles of this rule may be illustrated by the following:

*Example.* A religious organization holds title to 1,280 acres in District A and 1,280 acres in District B. The acreage in District A is operated jointly by two subdivisions and the acreage in District B is operated by three subdivisions in separate farms of 300, 300, and 680 acres. Farm operations are coordinated by the religious organization through managers at each farm. Each subdivision is a qualified recipient and entitled to operate 360 acres of irrigation land. The religious organization is entitled to own the acreage being operated by its affiliated subdivisions in each district.

(d) *Leasing.* The full-cost provisions dealing with leased land shall apply to religious or charitable organizations or their subdivisions.

(1) The principles of this rule may be illustrated by the following:

*Example.* A charitable organization has subdivisions in each of Districts A, B, C, and D. Each of these districts has amended its contract to conform to the discretionary provisions. Each subdivision in Districts A, B, and C owns and operates 800 acres of irrigation land. The subdivision in District D owns and operates 960 acres and leases another 160 acres, all of which are receiving irrigation water. The subdivision in District D is obligated to pay the full-cost rate for irrigation water delivered to the 160 acres in its landholding.

**§ 426.18 Involuntary acquisition of land.**

(a) *Nonexcess land.* Nonexcess land, irrespective of whether it is subject to a 10-year deed covenant requiring Secretarial sale price approval, and which becomes excess because it is acquired through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, devise, or gift is eligible to receive irrigation water in the new ownership for a period of 5 years. Such land may not be placed under recordable contract by the new owner. The new owner will be required during the 5-year period to pay a rate for the water which is equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing. Acquisition of land from nonexcess status in any of the manners noted in this paragraph will allow removal of the deed covenant (if present) as provided in § 426.11(h)(2); and the land may be sold at any time by the new owner without price approval and without the deed covenant required in § 426.11(h)(1). However, it will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until it has been sold to an eligible owner.

(1) The application of this rule can be illustrated by the following:

*Example (1).* Farmer X owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Farmer X inherits another 480 acres of irrigation land in District B through settlement of his uncle's estate. District B has amended its contract to become subject to the discretionary provisions. Even though Farmer X has reached the limits of his individual ownership entitlement under prior law, since the 480 inherited acres had been designated nonexcess and eligible in his uncle's ownership, the land continues to be eligible to receive irrigation water for a period of 5 years in Farmer X's ownership. However, since this land is located in a district subject to the discretionary provisions, the price of water delivered to this land must include at least full O&M costs and, if the land is leased to another landholder, the full-cost rate may apply, depending on whether the lessee has exceeded his non-full-cost entitlement. Farmer X also has the option of selling the 480 acres at any time at full market value. As explained in paragraph (e) of this section, Farmer X would not become subject to the discretionary provisions by virtue of the fact that he involuntarily acquired land from a landowner subject ot the discretionary provisions. However, Farmer X has the option of becoming subject to the discretionary provisions through an irrevocable election. If he chooses this option, he can then include the 480 acres as part of his 960-acre ownership entitlement as a qualified recipient.

*Example (2).* Farmer A, a qualified recipient who owns 500 acres of irrigation land, purchases 160 acres of excess land from Farmer B. Farmer A designates this 160 acres as nonexcess, eligible to receive irrigation water. The deed transferring the land contains the 10-year deed covenant requiring Secretarial sale price approval. Farmer A finances this purchase through Bank ABC. Subsequently, Bank ABC forecloses on Farmer A's 160 acres. The bank may receive irrigation water on this land for a period of 5 years at the same price which was paid by Farmer A, unless the land becomes subject to full-cost pricing through leasing. In addition, the bank may sell the land at fair market value without affecting the land's eligibility to receive irrigation water. The deed covenant shall be removed by the Secretary at the bank's request.

*Example (3).* Farmer X owns 160 acres of excess irrigation land in District A. He decides to sell this land to his neighbor.

Farmer Y, an eligible buyer. Farmer X provides Farmer Y with the financing necessary for the purchase. The deed transferring the land to Farmer Y contains the 10-year covenant requiring sale price approval. The 160 acres of land burdened by a deed covenant becomes eligible to receive irrigation water in Farmer Y's ownership. Subsequent to the purchase, Farmer Y fails to meet his financial obligation to Farmer X. Consequently, the land once again becomes part of Farmer X's ownership by foreclosure. Since this land was involuntarily acquired into excess status by Farmer X, he may receive water on the land at the contract rate for 5 years following the date of foreclosure, and may resell the land at fair market value without affecting the land's eligibility. At Farmer X's request, the Secretary shall remove the deed covenant in accordance with § 426.11(h)(2).

(b) *Ineligible land.* Irrigable land which is involuntarily acquired and which was ineligible in the holding of the former owner remains ineligible to receive irrigation water in the holding of the new owner, unless (i) the land becomes nonexcess in the new ownership, and (ii) the deed to the land contains the 10-year covenant requiring Secretarial price approval, commencing when the land becomes eligible to receive irrigation water. If either of these conditions is not met, the land remains ineligible until sold to an eligible buyer at an approved price and the 10-year covenant requiring Secretarial price approval must be placed in the deed transferring the land to the buyer.

(c) *Excess land under recordable contract.* Excess land which is under recordable contract and which is acquired by involuntary foreclosure or other involuntary process may continue to receive irrigation water under the terms of the recordable contract. However, the new owner must agree, to the extent the land continues to be excess in his landholding, to assume the recordable contract and execute an assumption agreement provided by the Secretary. Such excess land will be eligible to receive irrigation water for 5 years from the date it was acquired involuntarily or for the remainder of the recordable contract period, whichever is longer. The sale of such land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by the Secretary.

(1) The application of this rule can be illustrated by the following:

*Example.* Landowner X, a qualified recipient, owns 800 acres of irrigation land in District A. Landowner X inherits 640 acres of land in District B from his grandfather. The inherited land was placed under a 10-year recordable contract by his grandfather 7 years ago. Landowner X signs an agreement to assume his grandfather's recordable contract to the 480 acres that remain excess in his landholding; however, even though the original recordable contract term expires in 3 years, since the excess land was involuntarily acquired, it remains eligible to receive irrigation water for an additional 2 years in Landowner X's ownership. Within that 5-year period, however, Landowner X must sell the excess land at a Secretarially approved price.

(d) *Mortgaged land.* Mortgaged land which changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law or by bona fide conveyance in satisfaction of the mortgage, (1) is eligible to receive irrigation water in the new ownership for a period of 5 years or until transferred to an eligible landower, whichever occurs first, and (2) may be sold at its fair market value. During the 5-year period the water rate will be the same as it was for the former owner, unless the land becomes subject to full-cost pricing through leasing.

(e) *Other.* A party acquiring irrigation land involuntarily shall not become subject to the discretionary provisions by virtue of the fact that the former owner had been subject to the discretionary provisions. When irrigation land is involuntarily acquired through inheritance, the 5-year eligibility period for receiving irrigation water on the newly acquired land begins on the date of the devisor's death.

### § 426.17 Land held by governmental agencies.

(a) *Acreage limitation.* Irrigable and irrigation land held by States, political subdivisions or agencies thereof, and agencies of the Federal Government, which are farmed primarily for a nonrevenue producing function, as determined by the Secretary, shall not be subject to the acreage limitation and full-cost provisions of Federal Reclamation law.

(b) *Sales.* Irrigable and irrigation land held by States, political subdivisions or agencies thereof, and agencies of the Federal Government, may be sold without price approval. Once sold, such land will be eligible to receive irrigation water provided the purchaser meets the eligibility requirements to own land and receive irrigation water.

(c) *Leasing.* States, political subdivisions or agencies thereof, and agencies of the Federal Government may lease irrigation land they own or control to an eligible landholder, provided that the irrigation land leased from such entities plus any irrigation land owned by the landholder does not exceed the landholder's basic entitlement under Federal Reclamation law (960 acres for a qualified recipient, 640 acres for a limited recipient, or 160 acres for a prior law recipient, unless otherwise provided by law).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Farmer X is a qualified recipient in the State of Colorado and owns and irrigates 160 acres of land with irrigation water. The State of Colorado may lease Farmer X an additional 800 acres of State-owned land which will make up the balance of Farmers X's basic entitlement. Farmer X is still entitled, however, to lease additional acreage which may be irrigated at the full-cost rate provided that additional acreage is not owned by a government agency.

*Example (2).* In 1976, Farmer X purchased 100 acres of irrigation land in District A and 100 acres in District B. Districts A and B remain subject to prior law and Farmer X has not made an irrevocable election. Since Farmer X purchased the land prior to December 6, 1979, all 200 acres are eligible to receive irrigation water. In addition, Farmer X wants to lease 60 acres of irrigation land from the State of Colorado. If he does so, the leased land will be ineligible to receive irrigation water because Farmer X already owns in excess of the basic 160-acre entitlement for prior law recipients. However, if Farmer X becomes a qualified recipient through either a contract amendment by the district or an irrevocable election, he will be entitled to receive irrigation water on not only the 60 acres he wishes to lease from the State, but also on another 700 acres of irrigation land, whether in his ownership or leased from another party, including a governmental agency.

### § 426.18 Commingling.

(a) *Existing commingling provisions in contracts.* Provisions in contracts entered into prior to October 1, 1981, which define irrigation and agricultural water from other sources (nonproject water) or describe the delivery of irrigation water through nonproject facilities or nonproject water through project facilities, shall continue in effect. They shall apply to renewed contracts the district enters into with the United States as well.

(b) *Establishment of commingling provisions in contracts.*

(1) New, amended, or renewed contracts may provide that irrigation water may be commingled with nonproject water as provided in subparagraphs (i) and (ii) of this paragraph:

(i) Where the facilities utilized for commingling irrigation water and nonproject water are constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law and these regulations will be applicable only to the landholders who receive

irrigation water, *provided*, that the water requirements for eligible lands can be established and the quality of irrigation water to be utilized is less than or equal to the quantity necessary to irrigate eligible lands; or

(ii) Where the facilities utilized for commingling irrigation water and nonproject water are constructed with funds made available pursuant to Federal Reclamation law, nonproject water will be subject to Federal Reclamation law and these regulations *unless* the district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing and/or covering the nonproject water. Such fee shall be established by the Secretary and shall be in addition to the district's obligation to pay for capital, operation, maintenance, and replacement costs associated with the facilities required to provide the service. The provisions of Federal Reclamation law and these regulations will be applicable to all landholders who receive irrigation water and, in the case of a district which does not pay the incremental fee specified in this paragraph (b)(i)(ii), to all landholders who receive nonproject water delivered through Reclamation program funded facilities.

(iii) (A) The principles of this rule as they relate to irrigation water commingled in facilities constructed without funds made available pursuant to Federal Reclamation law may be illustrated by the following:

*Example (1).* District A has a distribution system constructed without funds made available pursuant to Federal Reclamation law and irrigates land therein with nonproject surface supplies and groundwater distributed to users within the district through its distribution system. The district enters into a contract with the United States for a supplemental irrigation water supply and intends to distribute that supplemental water through its distribution system. Only the landholders within the district who are eligible to receive a supply of irrigation water are subject to Reclamation law. The district is not restricted in its use of the nonproject surface water or groundwater, and will be in compliance with the provisions of its contract so long as there is sufficient eligible land to receive the irrigation water supply.

*Example (2).* District A has a contract with the Bureau for a supply of irrigation water. Within the boundary of the district there are several parcels of ineligible excess lands which are not supplied with irrigation water. Those lands are irrigated from the groundwater resources under them. If irrigation water furnished to the district pursuant to the contract reaches the underground strata of these ineligible lands as an unavoidable result of the furnishing of the irrigation water by the district to eligible lands, the continued irrigation of the ineligible excess lands with that groundwater shall not be deemed to be in violation of the Reclamation law.

Note.—Example 2 also is applicable to the issue of unavoidable groundwater recharge and can also serve as an example in § 426.13.

(B) The principles of this rule as they relate to commingling in one or more Federal Reclamation program funded facilities or jointly financed facilities may be illustrated by the following:

*Example (1).* A district has nonproject water available to deliver to lands considered not eligible (ineligible) for irrigation water under provisions of Federal Reclamation law and these regulations. To eliminate the need to build a duplicate private conveyance system to transport nonproject water, the district would like to transport such water through facilities constructed with finds made available pursuant to Federal Reclamation law without the nonproject water being subject to Federal Reclamation law and these regulations. If the district agrees, with prior approval of the Secretary, the nonproject water may be commingled in federally financed facilities and delivered to ineligible lands if the district pays the incremental fee, as determined by the Secretary, for the use of the federally financed facilities required to deliver the nonproject water. The fee will be in addition to the capital, operation, maintenance, and replacement costs the district is obligated to pay and will be based on a methodology designed to reasonably reflect an approprite share of the cost to the Federal Government, including interest, of providing the service.

*Example (2).* The State of Euphoria has a water supply it wishes to transport in the same direction and at the elevation as planned in the Federal Reclamation project. If the Bureau of Reclamation and the State each finance their share of the costs to construct and operate the project, the water supply of the State will not be subject to Federal Reclamation law and these regulations.

(2) Acquisition of irrigation water from federally financed facilities by exchange shall not subject the users of such water to Federal Reclamation law and these regulations if no material benefit results from the exchange to the recipient of water from the federally financed facilities.

(i) The principles of this rule may be illustrated by the following:

*Example.* District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility. District B is located immediately adjacent to the river but several miles from the Federal facility. District B contracts with the United States for a supply of irrigation water, but rather than construct several miles of conveyance facility, District B, with the approval of the United States, contracts with District A to allow District A's water rights water to flow down the river for use by District B and the irrigation water is in turn delivered to District A. District A is not subject to Federal Reclamation law and these regulations by virtue of this exchange, provided it does not materially benefit from that exchange. District B, however, is subject to Federal Reclamation law and these regulations since it is the beneficiary of the exchange; i.e. a water supply.

### § 426.19 Water conservation.

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and M&I (municipal and industrial) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal Reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water under the authority of the Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

### § 426.20 Public participation.

(a) *In general.* The Bureau of Reclamation will publish notice of proposed irrigation or amendatory irrigation contract actions in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the

public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

(1) Each public notice or news release shall include, as appropriate, (i) a brief description of the proposed contract terms and conditions being negotiated; (ii) date, time, and place of meeting or hearings; (iii) the address and telephone number of a Bureau employee to address inquiries and comments; and (iv) the period of time in which comments will be accepted.

(2) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(3) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(4) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act [80 Stat. 383], as amended.

(5) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(6) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(7) Copies of specified proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(8) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary. Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

**§ 426.21 Small reclamation projects.**

(a) Small Reclamation Project Acts (SRPA) loan contracts entered into after October 12, 1982, shall be subject to the provisions of the Act of August 6, 1956 (43 U.S.C. 422e), as amended by § 223 of Pub. L. 97–293 and as amended by Title III of Pub. L. 99–546.

(b) SRPA loan contracts which were entered into prior to October 12, 1982, shall continue to be subject to the provisions of those loan contracts, provided however that those contracts that are amended to conform to the Act of August 6, 1956, as amended by § 223 of Pub. L. 97–293, shall also be subject to the increased acreage provisions in § 223 of Pub. L. 97–293. It is provided further that no other provisions of the loan contract shall be altered, modified, or amended without the consent of the non-Federal party.

(c) No other section of these regulations shall be deemed applicable to SRPA loans.

(d) In districts which have a water service or repayment contract in addition to an SRPA contract, the SRPA loan is not to be considered in determining whether the district has discharged its construction cost obligation for the project facilities. Neither shall an SRPA loan be the basis for reinstating acreage limitation in a district which has completed payment of its construction cost obligation nor for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district.

(e) In a district which has both an SRPA loan contract and a contract as defined in § 426.5(b), [for example, a repayment contract, a water service contract, or a distribution system loan contract (Pub. L. 84–130)], the requirements applicable to such contracts are not superseded by the SRPA contract.

(1) The application of this rule can be illustrated by the following:

*Example.* District A has entered into both a repayment contract and an SRPA loan contract. In 1983, District A amended its SRPA loan contract pursuant to § 223 of title II in order to increase the interest threshold for its owners to 960 acres for a qualified recipient and 320 acres for a limited recipient. However, District A has not amended its repayment contract to become subject to the discretionary provisions, and is, therefore, still subject to the acreage limitations of prior law. Even though this SRPA contract permits an increased threshold for interest payments, until District A becomes subject to the discretionary provisions, it may not deliver irrigation water to land in excess of 160 acres (320 acres for a married couple), except in those cases where such land is under recordable contract, is owned by an individual who has made an irrevocable election, or commingling provisions in the district's contract allow nonprofit water to be delivered to excess land, see § 426.18.

**§426.22 Decisions and appeals.**

Unless otherwise provided by the Secretary, the Regional Director shall make any determination required under these rules and regulations. A party directly affected by such determination may appeal in writing to the Commissioner of the Bureau of Reclamation within 30 days of receipt of the Regional Director's determination. The time for appeal may be extended by the Secretary. The affected party shall have an additional 30 days thereafter within which to submit a supporting brief or memorandum to the Commissioner. The Regional Director's determination will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision.

Pertinent addresses are shown below:

Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Streets, NW, Washington DC 20240
Regional Director, Pacific Northwest Regional, Bureau of Reclamation, 550 West Fort Street, PO Box 043, Boise ID 83724
Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento CA 95825
Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, PO Box 427, Boulder City NV 89005
Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City UT 84147
Regional Director, Southwest Region, Bureau of Reclamation, 714 South Tyler, Amarillo TX 79101
Regional Director, Missouri Basin Region, Bureau of Reclamation, 316 North 26th Street, PO Box 2553, Billings MT 59103

**§426.23 Severability.**

If any provision of these rules or the applicability thereof to any person or circumstances is held invalid, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby.

[FR Doc. 87–8222 Filed 4–10–87; 8:45 am]
BILLING CODE 4310–09–M

# Reader Aids

Federal Register

Vol. 52, No. 70

Monday, April 13, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10
11807-11980.....13

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11809

**Administrative Orders:**
Presidential Determinations
No. 87-12 of
March 17, 1987.....11807

**5 CFR**

213.....11185
1201.....10875

**Proposed Rules:**
353.....11657

**7 CFR**

210.....11186
271.....11811
272.....11021, 11811
273.....11021, 11811
274.....11811
278.....11811
301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615
910.....10729, 11615
925.....11616
927.....11616
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1951.....11456

**Proposed Rules:**
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
945.....10893
994.....10984
1046.....11475
1955.....10577
1965.....10577

**8 CFR**

212.....11620
248.....11621

**Proposed Rules:**
245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024

**Proposed Rules:**
92.....10765
317.....10766, 11828
319.....10766, 11828
381.....11828

**10 CFR**

0.....11026

**Proposed Rules:**
2.....11475
50.....10771

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557

**Proposed Rules:**
325.....11476, 11660
337.....11492
612.....11080

**13 CFR**

311.....11626

**14 CFR**

21.....11627
23.....11627
39.....10558, 10735, 10736, 11630-11639
71.....10559, 11028, 11032-11034, 11815
73.....10559, 10560, 11033, 11034
95.....10737
1215.....10880

**Proposed Rules:**
39.....10581, 11081, 11663, 11664
71.....10582, 11082, 11828

BEST COPY AVAILABLE

**15 CFR**

370.....11640
371.....10741
376.....11640
399.....11457, 11640

**Proposed Rules:**

7.....11498
280.....11498
368.....10771

**17 CFR**

241.....11458
270.....11187

**Proposed Rules:**

210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**

16.....11035
271.....10741
381.....10366

**Proposed Rules:**

4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
177.....11216

**Proposed Rules:**

111.....10774

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217

**Proposed Rules:**

200.....10384
615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883
177.....11641
184.....10884
193.....10561, 10562
510.....10668, 11040, 11041
520.....10668, 11041
522.....10668, 11816
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642
561.....10562
573.....10887
1308.....11042

**Proposed Rules:**

1301.....11091

**22 CFR**

212.....11817

**23 CFR**

**Proposed Rules:**

650.....11092
655.....11502

**24 CFR**

201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644

**Proposed Rules:**

200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**

120.....11467

**Proposed Rules:**

40.....11503

**26 CFR**

1.....10368, 10741, 10742
5f.....10368
54.....10563
602.....10368, 10563, 10742

**Proposed Rules:**

1.....10774
54.....10583
602.....10583, 10774

**27 CFR**

**Proposed Rules:**

9.....11689

**28 CFR**

0.....11043
545.....10528

**Proposed Rules:**

549.....10531

**29 CFR**

33.....11600
2644.....10368

**Proposed Rules:**

1601.....11503
1625.....10584
1910.....10586

**30 CFR**

914.....10369, 10373
946.....11044

**Proposed Rules:**

700.....11829
723.....11287
724.....11287
733.....10898
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
935.....11692
937.....11287
939.....11287
941.....11287
942.....11287
947.....11287

**31 CFR**

103.....11436

**32 CFR**

154.....11219
701.....11051
706.....10374, 10748, 10749

**Proposed Rules:**

1662.....11830

**33 CFR**

60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646

**Proposed Rules:**

100.....10593, 10594, 10905, 10906, 11693
117.....11695

**34 CFR**

628.....11256

**Proposed Rules:**

206.....11448

**36 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**Proposed Rules:**

9.....10866

**37 CFR**

**Proposed Rules:**

307.....11096

**38 CFR**

1.....10888
17.....11259

**Proposed Rules:**

17.....10907

**39 CFR**

10.....10375
111.....10749

**40 CFR**

52.....10751, 11259, 11647
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261
261.....11819
266.....11819
271.....10568, 11263
721.....11822
761.....10688
799.....10377, 10752

**Proposed Rules:**

52.....10596, 11287, 11288, 11696
141.....10972
142.....10972
143.....10972
180.....11292, 11293
261.....11513
300.....11513

**41 CFR**

101-20.....11263
101-28.....11275
201-32.....10379

**42 CFR**

7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649

**Proposed Rules:**

405.....11517

**43 CFR**

426.....11938

**44 CFR**

64.....10753

**Proposed Rules:**

5.....10385
6.....10385
67.....11702

**45 CFR**

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870

**Proposed Rules:**

503.....11712

**46 CFR**

401.....11468

**Proposed Rules:**

154.....10598
382.....11518
502.....10912
586.....11832

**47 CFR**

1.....11652
2.....10568
22.....10571
73.....10381, 10382, 10568, 10757, 11471-11473, 11653, 11825
74.....10568, 11474
78.....10568

**Proposed Rules:**

1.....11519
21.....11519, 11838
73.....11519-11521, 11837, 11840-11842
74.....11519
90.....10389
94.....11519, 11838

**48 CFR**

7.....11074
215.....11276
217.....11076
252.....11076, 11276
542.....11825

**Proposed Rules:**

509.....10913

**49 CFR**

219.....10575
604.....11916

1003.....11277
1043.....11277
1084.....11277
1207.....10382
1249.....10382

**Proposed Rules:**
Ch. X.....11295
571.....10775
1312.....10913
1320.....11295

**50 CFR**

17.....10890, 11162, 11277
301.....10759
611.....10761
642.....10762
652.....10763
663.....11473
672.....10761
675.....10761

**Proposed Rules:**
640.....10780
642.....11713
651.....10781

## LIST OF PUBLIC LAWS

**Last List April 10, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 47/Pub. L. 100-21**

To designate "National Former POW Recognition Day." (Apr. 8, 1987; 101 Stat. 266; 1 page) Price: $1.00

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

| Title | Price | Revision Date |
|---|---|---|
| 1, 2 (2 Reserved) | $9.00 | Jan. 1, 1987 |
| 3 (1985 Compilation and Parts 100 and 101) | 14.00 | [1] Jan. 1, 1986 |
| 4 | 14.00 | Jan. 1, 1987 |
| **5 Parts:** | | |
| 1-1199 | 18.00 | Jan. 1, 1986 |
| 1200-End, 6 (6 Reserved) | 6.50 | Jan. 1, 1986 |
| **7 Parts:** | | |
| 0-45 | 24.00 | Jan. 1, 1986 |
| 46-51 | 16.00 | Jan. 1, 1987 |
| 52 | 18.00 | Jan. 1, 1986 |
| 53-209 | 18.00 | Jan. 1, 1987 |
| 210-299 | 21.00 | Jan. 1, 1986 |
| 300-399 | 10.00 | Jan. 1, 1987 |
| *400-699 | 15.00 | Jan. 1, 1987 |
| 700-899 | 17.00 | Jan. 1, 1986 |
| 900-999 | 20.00 | Jan. 1, 1986 |
| 1000-1059 | 15.00 | Jan. 1, 1987 |
| 1060-1119 | 13.00 | Jan. 1, 1987 |
| 1120-1199 | 8.50 | Jan. 1, 1986 |
| 1200-1499 | 13.00 | Jan. 1, 1986 |
| 1500-1899 | 9.50 | Jan. 1, 1987 |
| 1900-1944 | 23.00 | Jan. 1, 1986 |
| 1945-End | 23.00 | Jan. 1, 1986 |
| 8 | 9.50 | Jan. 1, 1987 |
| **9 Parts:** | | |
| 1-199 | 14.00 | Jan. 1, 1986 |
| 200-End | 14.00 | Jan. 1, 1986 |
| **10 Parts:** | | |
| *0-199 | 29.00 | Jan. 1, 1987 |
| 200-399 | 13.00 | Jan. 1, 1986 |
| 400-499 | 14.00 | Jan. 1, 1987 |
| 500-End | 23.00 | Jan. 1, 1986 |
| 11 | 7.00 | Jan. 1, 1986 |
| **12 Parts:** | | |
| 1-199 | 11.00 | Jan. 1, 1987 |
| 200-299 | 22.00 | Jan. 1, 1986 |
| 300-499 | 13.00 | Jan. 1, 1987 |
| 500-End | 26.00 | Jan. 1, 1986 |
| 13 | 19.00 | Jan. 1, 1987 |
| **14 Parts:** | | |
| 1-59 | 20.00 | Jan. 1, 1986 |
| 60-139 | 19.00 | Jan. 1, 1986 |
| 140-199 | 7.50 | Jan. 1, 1986 |
| 200-1199 | 14.00 | Jan. 1, 1986 |
| 1200-End | 11.00 | Jan. 1, 1987 |
| **15 Parts:** | | |
| 0-299 | 10.00 | Jan. 1, 1987 |
| 300-399 | 20.00 | Jan. 1, 1986 |
| 400-End | 14.00 | Jan. 1, 1987 |

| Title | Price | Revision Date |
|---|---|---|
| **16 Parts:** | | |
| 0-149 | 12.00 | Jan. 1, 1987 |
| 150-999 | 10.00 | Jan. 1, 1986 |
| 1000-End | 19.00 | Jan. 1, 1987 |
| **17 Parts:** | | |
| 1-239 | 26.00 | Apr. 1, 1986 |
| 240-End | 19.00 | Apr. 1, 1986 |
| **18 Parts:** | | |
| 1-149 | 15.00 | Apr. 1, 1986 |
| 150-399 | 25.00 | Apr. 1, 1986 |
| 400-End | 6.50 | Apr. 1, 1986 |
| 19 | 29.00 | Apr. 1, 1986 |
| **20 Parts:** | | |
| 1-399 | 10.00 | Apr. 1, 1986 |
| 400-499 | 22.00 | Apr. 1, 1986 |
| 500-End | 23.00 | Apr. 1, 1986 |
| **21 Parts:** | | |
| 1-99 | 12.00 | Apr. 1, 1986 |
| 100-169 | 14.00 | Apr. 1, 1986 |
| 170-199 | 16.00 | Apr. 1, 1986 |
| 200-299 | 6.00 | Apr. 1, 1986 |
| 300-499 | 25.00 | Apr. 1, 1986 |
| 500-599 | 21.00 | Apr. 1, 1986 |
| 600-799 | 7.50 | Apr. 1, 1986 |
| 800-1299 | 13.00 | Apr. 1, 1986 |
| 1300-End | 6.50 | Apr. 1, 1986 |
| 22 | 28.00 | Apr. 1, 1986 |
| 23 | 17.00 | Apr. 1, 1986 |
| **24 Parts:** | | |
| 0-199 | 15.00 | Apr. 1, 1986 |
| 200-499 | 24.00 | Apr. 1, 1986 |
| 500-699 | 8.50 | Apr. 1, 1986 |
| 700-1699 | 17.00 | Apr. 1, 1986 |
| 1700-End | 12.00 | Apr. 1, 1986 |
| 25 | 24.00 | Apr. 1, 1986 |
| **26 Parts:** | | |
| §§ 1.0-1.169 | 29.00 | Apr. 1, 1986 |
| §§ 1.170-1.300 | 16.00 | Apr. 1, 1986 |
| §§ 1.301-1.400 | 13.00 | Apr. 1, 1986 |
| §§ 1.401-1.500 | 20.00 | Apr. 1, 1986 |
| §§ 1.501-1.640 | 15.00 | Apr. 1, 1986 |
| §§ 1.641-1.850 | 16.00 | Apr. 1, 1986 |
| §§ 1.851-1.1200 | 29.00 | Apr. 1, 1986 |
| §§ 1.1201-End | 29.00 | Apr. 1, 1986 |
| 2-29 | 19.00 | Apr. 1, 1986 |
| 30-39 | 13.00 | Apr. 1, 1986 |
| 40-299 | 25.00 | Apr. 1, 1986 |
| 300-499 | 14.00 | Apr. 1, 1986 |
| 500-599 | 8.00 | [2] Apr. 1, 1980 |
| 600-End | 4.75 | Apr. 1, 1986 |
| **27 Parts:** | | |
| 1-199 | 20.00 | Apr. 1, 1986 |
| 200-End | 14.00 | Apr. 1, 1986 |
| 28 | 21.00 | July 1, 1986 |
| **29 Parts:** | | |
| 0-99 | 16.00 | July 1, 1986 |
| 100-499 | 7.00 | July 1, 1986 |
| 500-899 | 24.00 | July 1, 1986 |
| 900-1899 | 9.00 | July 1, 1986 |
| 1900-1910 | 27.00 | July 1, 1986 |
| 1911-1919 | 5.50 | [3] July 1, 1984 |
| 1920-End | 29.00 | July 1, 1986 |
| **30 Parts:** | | |
| 0-199 | 16.00 | [4] July 1, 1985 |
| 200-699 | 8.50 | July 1, 1986 |
| 700-End | 17.00 | July 1, 1986 |
| **31 Parts:** | | |
| 0-199 | 11.00 | July 1, 1986 |
| 200-End | 16.00 | July 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| **32 Parts:** | | |
| 1–39, Vol. I | 15.00 | [5] July 1, 1984 |
| 1–39, Vol. II | 19.00 | [5] July 1, 1984 |
| 1–39, Vol. III | 18.00 | [5] July 1, 1984 |
| 1–189 | 17.00 | July 1, 1986 |
| 190–399 | 23.00 | July 1, 1986 |
| 400–629 | 21.00 | July 1, 1986 |
| 630–699 | 13.00 | July 1, 1986 |
| 700–799 | 15.00 | July 1, 1986 |
| 800–End | 16.00 | July 1, 1986 |
| **33 Parts:** | | |
| 1–199 | 27.00 | July 1, 1986 |
| 200–End | 18.00 | July 1, 1986 |
| **34 Parts:** | | |
| 1–299 | 20.00 | July 1, 1986 |
| 300–399 | 11.00 | July 1, 1986 |
| 400–End | 25.00 | July 1, 1986 |
| **35** | 9.50 | July 1, 1986 |
| **36 Parts:** | | |
| 1–199 | 12.00 | July 1, 1986 |
| 200–End | 19.00 | July 1, 1986 |
| **37** | 12.00 | July 1, 1986 |
| **38 Parts:** | | |
| 0–17 | 21.00 | July 1, 1986 |
| 18–End | 15.00 | July 1, 1986 |
| **39** | 12.00 | July 1, 1986 |
| **40 Parts:** | | |
| 1–51 | 21.00 | July 1, 1986 |
| 52 | 27.00 | July 1, 1986 |
| 53–60 | 23.00 | July 1, 1986 |
| 61–80 | 10.00 | July 1, 1986 |
| 81–99 | 25.00 | July 1, 1986 |
| 100–149 | 23.00 | July 1, 1986 |
| 150–189 | 21.00 | July 1, 1986 |
| 190–399 | 27.00 | July 1, 1986 |
| 400–424 | 22.00 | July 1, 1986 |
| 425–699 | 24.00 | July 1, 1986 |
| 700–End | 24.00 | July 1, 1986 |
| **41 Chapters:** | | |
| 1, 1–1 to 1–10 | 13.00 | [6] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | 13.00 | [6] July 1, 1984 |
| 3–6 | 14.00 | [6] July 1, 1984 |
| 7 | 6.00 | [6] July 1, 1984 |
| 8 | 4.50 | [6] July 1, 1984 |
| 9 | 13.00 | [6] July 1, 1984 |
| 10–17 | 9.50 | [6] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | 13.00 | [6] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | 13.00 | [6] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | 13.00 | [6] July 1, 1984 |
| 19–100 | 13.00 | [6] July 1, 1984 |
| 1–100 | 9.50 | July 1, 1986 |
| 101 | 23.00 | July 1, 1986 |
| 102–200 | 12.00 | July 1, 1986 |
| 201–End | 7.50 | July 1, 1986 |
| **42 Parts:** | | |
| 1–60 | 15.00 | Oct. 1, 1986 |
| 61–399 | 10.00 | Oct. 1, 1986 |
| 400–429 | 20.00 | Oct. 1, 1986 |
| 430–End | 15.00 | Oct. 1, 1986 |
| **43 Parts:** | | |
| 1–999 | 14.00 | Oct. 1, 1986 |
| 1000–3999 | 24.00 | Oct. 1, 1986 |
| 4000–End | 11.00 | Oct. 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| **44** | 17.00 | Oct. 1, 1986 |
| **45 Parts:** | | |
| 1–199 | 13.00 | Oct. 1, 1986 |
| 200–499 | 9.00 | Oct. 1, 1986 |
| 500–1199 | 18.00 | Oct. 1, 1986 |
| 1200–End | 13.00 | Oct. 1, 1986 |
| **46 Parts:** | | |
| 1–40 | 13.00 | Oct. 1, 1986 |
| 41–69 | 13.00 | Oct. 1, 1986 |
| 70–89 | 7.00 | Oct. 1, 1986 |
| 90–139 | 11.00 | Oct. 1, 1986 |
| 140–155 | 8.50 | [7] Oct. 1, 1985 |
| 156–165 | 14.00 | Oct. 1, 1986 |
| 166–199 | 13.00 | Oct. 1, 1986 |
| 200–499 | 19.00 | Oct. 1, 1986 |
| 500–End | 9.50 | Oct. 1, 1986 |
| **47 Parts:** | | |
| 0–19 | 17.00 | Oct. 1, 1986 |
| 20–39 | 18.00 | Oct. 1, 1986 |
| 40–69 | 11.00 | Oct. 1, 1986 |
| 70–79 | 17.00 | Oct. 1, 1986 |
| 80–End | 20.00 | Oct. 1, 1986 |
| **48 Chapters:** | | |
| 1 (Parts 1–51) | 21.00 | Oct. 1, 1986 |
| 1 (Parts 52–99) | 16.00 | Oct. 1, 1986 |
| 2 | 15.00 | Oct. 1, 1985 |
| 3–6 | 17.00 | Oct. 1, 1986 |
| 7–14 | 23.00 | Oct. 1, 1986 |
| 15–End | 22.00 | Oct. 1, 1986 |
| **49 Parts:** | | |
| 1–99 | 10.00 | Oct. 1, 1986 |
| 100–177 | 24.00 | Oct. 1, 1986 |
| 178–199 | 19.00 | Oct. 1, 1986 |
| 200–399 | 17.00 | Oct. 1, 1986 |
| 400–999 | 21.00 | Oct. 1, 1986 |
| 1000–1199 | 17.00 | Oct. 1, 1986 |
| 1200–End | 17.00 | Oct. 1, 1986 |
| **50 Parts:** | | |
| 1–199 | 15.00 | Oct. 1, 1986 |
| 200–End | 25.00 | Oct. 1, 1986 |
| CFR Index and Findings Aids | 27.00 | Jan. 1, 1987 |
| Complete 1987 CFR set | 595.00 | 1987 |
| Microfiche CFR Edition: | | |
| Complete set (one-time mailing) | 155.00 | 1983 |
| Complete set (one-time mailing) | 125.00 | 1984 |
| Complete set (one-time mailing) | 115.00 | 1985 |
| Subscription (mailed as issued) | 185.00 | 1986 |
| Subscription (mailed as issued) | 185.00 | 1987 |
| Individual copies | 3.75 | 1987 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

L

2

S

O

P

3

37

11

L

2

S

O

P

8

37

11

# Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

### Herbert Hoover

1932–33 ..... $24.00

Proclamations & Executive Orders—March 4, 1929 to March 4, 1933
2 Volume set ..... $32.00

### Lyndon B. Johnson

1963–64
(Book I) ..... $21.00

1968–69
(Book I) ..... $20.00

1968–69
(Book I) ..... $19.00

### Gerald R. Ford

1975
(Book I) ..... $22.00

1975
(Book II) ..... $22.00

### Jimmy Carter

1977
(Book I) ..... $23.00

1977
(Book II) ..... $22.00

1978
(Book I) ..... $24.00

1979
(Book I) ..... $24.00

1979
(Book II) ..... $24.00

1980–81
(Book I) ..... $21.00

1980–81
(Book II) ..... $22.00

1980–81
(Book III) ..... $24.00

### Ronald Reagan

1981 ..... $25.00

1982
(Book II) ..... $25.00

1983
(Book I) ..... $31.00

1983
(Book II) ..... $32.00

1984
(Book I) ..... $36.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

OL
2

SS
1

P
4

87

MI

4-14-87
Vol. 52 No. 71

# Federal Register

Tuesday
April 14, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106
A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

ND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

L
2
S S
1
P
4
87
M I

4-14-87
Vol. 52 No. 71
Pages 11981-12128

# federal register

Tuesday
April 14, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 71

Tuesday, April 14, 1987

**African Development Foundation**
NOTICES
Meetings; Sunshine Act, 12111

**Agriculture Department**
*See* Farmers Home Administration; Food and Nutrition Service; Forest Service

**Alcohol, Drug Abuse, and Mental Health Administration**
NOTICES
Meetings; advisory committees:
May, 12077

**Army Department**
NOTICES
Meetings:
Science Board, 12045

**Commerce Department**
*See also* International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 12043

**Commission on Education of the Deaf**
NOTICES
Educational programs for the deaf; correction, 12113

**Commission on Merchant Marine and Defense**
NOTICES
Meetings, 12044

**Customs Service**
PROPOSED RULES
Merchandise, unclaimed and abandoned; selection of warehouses for storage, 12000

**Deaf, Commission on Education of the**
*See* Commission on Education of the Deaf

**Defense, Commission on Merchant Marine and**
*See* Commission on Merchant Marine and Defense

**Defense Department**
*See also* Army Department
NOTICES
Meetings:
Science Board task forces, 12045

**Delaware River Basin Commission**
NOTICES
Hearings, 12045

**Education of the Deaf Commission**
*See* Commission on Education of the Deaf

**Energy Department**
*See also* Federal Energy Regulatory Commission
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Decontamination research and development for removal of radioactively contaminated materials, etc., 12046
Meetings:
National Coal Council, 12047

**Environmental Protection Agency**
PROPOSED RULES
Water pollution control:
National pollutant discharge elimination system; State programs—
Utah, 12039
NOTICES
Meetings:
Science Advisory Board, 12052
(2 documents)
Water pollution; discharge of pollutants (NPDES):
Idaho, 12052

**Executive Office of the President**
*See* Presidential Documents

**Farmers Home Administration**
RULES
Program regulations:
Rural housing; section 502 loan policies, procedures, and authorizations, 11981

**Federal Aviation Administration**
RULES
Airworthiness directives:
Lockheed, 11985
McDonnell Douglas, 11986
McDonnell Douglas; correction, 11986
PROPOSED RULES
Airworthiness directives:
Fokker, 11997
Short Brothers PLC, 11998
Airworthiness standards:
Rotocraft structural fatigue and damage tolerance, 11997
Jet routes, 12000

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Arkansas Power & Light Co. et al., 12047
Bangor Hydro-Electric Co. et al., 12048
Small power production and cogeneration facilities; qualifying status:
Albany Cogeneration Associates et al., 12051

**Federal Home Loan Bank Board**
NOTICES
Federal home loan bank services; prices
Correction, 12061, 12113
(2 documents)

**Federal Labor Relations Authority**
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 11995

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 12063
Freight forwarder licenses:
Empire Sea-Air Co. et al., 12063
Investigations, hearings, petitions, etc.:
Trans-Atlantic Trades; enforcement initiative, 12063
Trans-Atlantic Trades; possible malpractices investigation, 12064

**Federal Railroad Administration**
NOTICES
Exemption petitions, etc.:
Southern Railway System; hearing, 12106

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 12111
*Applications, hearings, determinations, etc.:*
Karre, Gary D., et al., 12065
Union Planters Corp. et al., 12065

**Federal Retirement Thrift Investment Board**
NOTICES
Privacy Act; systems of records, 12065

**Federal Trade Commission**
NOTICES
Agency information collection activities under OMB review, 12077

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Cefadroxil tablets, 11988
Tylosin, 11988
PROPOSED RULES
Human drugs:
Benign prostatic hypertrophy drug products (OTC); tentative final monograph; correction, 12114
NOTICES
Animal drugs, feeds, and related products:
Tylosin; approval withdrawn, 12081
Meetings:
Advisory committees, panels, etc., 12078

**Food and Nutrition Service**
NOTICES
Food stamp program:
Electronic benefit transfer alternative issuance demonstration project, 12041

**Foreign Claims Settlement Commission**
PROPOSED RULES
Freedom of Information Act:
Uniform fee schedule and administrative guidelines Correction, 12040

**Forest Service**
NOTICES
National Forest System lands:
Recreation residence authorizations, 12042

**Health and Human Services Department**
*See* Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Resources and Services Administration; Social Security Administration

**Health Resources and Services Administration**
NOTICES
Grants and cooperative agreements:
Medicine or osteopathy schools; two-year programs, 12081

**Housing and Urban Development Department**
NOTICES
Agency information collection activities under OMB review, 12087
Environmental statements; availability, etc.:
Dallas, TX, 12088
Organization, functions, and authority delegations:
Regional offices, etc.; order of succession—
Richmond, 12088

**Interior Department**
*See* Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

**International Trade Administration**
NOTICES
Meetings:
Computer Systems Technical Advisory Committee, 12043 (2 documents)
Transportation and Related Equipment Technical Advisory Committee, 12043

**International Trade Commission**
NOTICES
Meetings; Sunshine Act, 12111

**Interstate Commerce Commission**
RULES
Motor carriers:
Cash-on-delivery (c.o.d.) shipments, 11991
NOTICES
Motor carriers:
Finance applications, 12093

**Justice Department**
*See* Foreign Claims Settlement Commission

**Labor Department**
*See also* Mine Safety and Health Administration; Occupational Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 12094

**Land Management Bureau**
NOTICES
Meetings:
Burley District Grazing Advisory Board, 12089
Realty actions; sales, leases, etc.:
California, 12089

**Merchant Marine and Defense, Commission on**
*See* Commission on Merchant Marine and Defense

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
Carbon Black Mining Co., 12096
Consol Pennsylvania Coal Co., 12096
Demotto Peerless Coal Co., Inc., 12096
Dominion Coal Corp., 12097

Krystal Coal Co., 12097, 12098
(2 documents)
M & F Coal Co., 12098
Red Rose Coal Co., Inc., 12099

**Minerals Management Service**
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Mineral development and production proposals, 12090
Meetings:
Pacific OCS Region information transfer, 12091
Outer Continental Shelf operations:
Maximum attainable rate; notice to lessees and operators; rescinded, 12091

**National Highway Traffic Safety Administration**
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Wayne Corp., 12107

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 11992
Gulf of Alaska groundfish, 11991
PROPOSED RULES
Marine mammals:
Shortnose sturgeon and Mediterranean monk seal; status reviews, 12040
NOTICES
Committees; establishment, renewals, terminations, etc.:
National Fish and Seafood Promotional Council, 12044
Permits:
Marine mammals, 12044

**National Park Service**
PROPOSED RULES
Resource protection, public use, and recreation:
Applicability of regulations to non-federal lands and waters under U.S. legislative jurisdiction, 12037
NOTICES
National Register of Historic Places:
Pending nominations—
Alaska, etc., 12091
Realty actions; sales, leases, etc.:
Washington, 12092

**National Science Foundation**
NOTICES
Meetings:
Biophysics Program Advisory Panel, 12099
Economics Advisory Panel, 12099
Population Biology and Physiological Ecology Advisory Panel, 12100
Psychobiology Advisory Panel, 12100
Systematic Anthropological Collections Advisory Panel, 12100

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Northeast Nuclear Energy Co., 12100
Meetings; Sunshine Act, 12111
*Applications, hearings, determinations, etc.:*
Baltimore Gas & Electric Co., 12101
Iowa Electric Light & Power Co. et al., 12102
Public Service Co. of Colorado, 12101

**Occupational Safety and Health Administration**
PROPOSED RULES
Construction health and safety standards:
Industry test and inspection records revision, 12116
Health and safety standards:
Telecommunications training records revision, 12120

**Patent and Trademark Office**
NOTICES
Electronic data dissemination policies and guidelines; withdrawn, 12044

**Postal Service**
NOTICES
Domestic mail classification and rate schedules:
Collect-on-delivery service, 12103
Meetings; Sunshine Act, 12111

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
Pan American Day and Pan American Week (Proc. 5629), 12126

**Public Health Service**
*See* Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Resources and Services Administration

**Securities and Exchange Commission**
NOTICES
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 12103
*Applications, hearings, determinations, etc.:*
Morgan Stanley Group Inc. et al., 12104

**Social Security Administration**
NOTICES
Organization, functions, and authority delegations, 12081
Privacy Act; systems of records, 12084

**State Department**
PROPOSED RULES
Visas, nonimmigrant documentation:
Barring classification and admission as business visitors to aliens performing building or construction work; interpretation, 12001
NOTICES
Meetings:
International Radio Consultative Committee, 12106

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Permanent program submission:
North Dakota, 12002

**Transportation Department**
*See* Federal Aviation Administration; Federal Railroad Administration; National Highway Traffic Safety Administration; Urban Mass Transportation Administration

**Treasury Department**
*See also* Customs Service
RULES
Privacy Act; implementation, 11989
PROPOSED RULES
Privacy Act; implementation, 12003

**Urban Mass Transportation Administration**
NOTICES
Grants; UMTA sections 3 and 9 obligations:
Port Authority of Allegheny County, PA, et al., 12107

**Separate Parts in This Issue**

**Part II**
Department of Labor, Occupational Safety and Health Administration, 12116

**Part III**
Department of Labor, Occupational Safety and Health Administration, 12120

**Part IV**
The President, 12126

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**

**Proclamations:**
5629.....12126

**5 CFR**

**Proposed Rules:**
2411.....11995

**7 CFR**
1922.....11981
1944.....11981
1951.....11981

**14 CFR**
39 (3 documents).....11985, 11986

**Proposed Rules:**
29.....11997
39 (2 documents).....11997, 11998
75.....12000

**19 CFR**

**Proposed Rules:**
127.....12000

**21 CFR**
510.....11988
520.....11988
558.....11988

**Proposed Rules:**
357.....12114

**22 CFR**

**Proposed Rules:**
41.....12001

**29 CFR**

**Proposed Rules:**
1910.....12116
1926.....12120

**30 CFR**

**Proposed Rules:**
934.....12002

**31 CFR**
1.....11989

**Proposed Rules:**
1.....12003

**36 CFR**

**Proposed Rules:**
1.....12037
2.....12037

**40 CFR**

**Proposed Rules:**
123.....12039

**45 CFR**

**Proposed Rules:**
503.....12040

**49 CFR**
1052.....11991

**50 CFR**
672.....11991
675.....11992

**Proposed Rules:**
222.....12040
227.....12040

# Rules and Regulations

Federal Register
Vol. 52, No. 71
Tuesday, April 14, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1922, 1944, and 1951

## Section 502 Rural Housing Loan Policies, Procedures and Authorizations

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its regulation regarding section 502 Rural Housing (RH) loans. This action is taken to implement cost containment measures for the effective administration of the program. The intended effect of this action is to reduce the cost of housing to the borrower, thereby enabling a greater number of very low income persons to obtain adequate, modest houses, and to reduce the overall cost of the program to the government.

**EFFECTIVE DATE:** May 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Nancy Monesson, Senior Loan Specialist, Single Family Housing, Processing Division, Farmers Home Administration, USDA, Room 5344, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382–1474.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor". It will not result in an annual effect on the economy of $100 million or more; or major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action requires no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be no increase in the reporting requirements of the public. The Agency has determined that this regulation maximizes net benefit to society at the lowest net cost.

### Background

A proposed rule published in the **Federal Register** (51 FR 26256) on July 22, 1986, invited the public to submit written comments for the Agency to consider with regard to the development of the final rule. One hundred and nineteen comments were received from interested persons representing Housing Development Corporations, Housing Authorities, builders, realtors, city and state officials and FmHA employees.

### Discussion of Comments

1. Five respondents requested change or elimination of the definition of "extended family." Three respondents objected to including a definition of the word "family." Other comments were that: "resale" should not be overemphasized; the definition of "extended family" should include other members of the household besides adults, and; avoid the word "family" in the definition.

The Agency has fully considered these comments and has expanded the definition of "extended family" by inserting the phrase "with the other members of the household" between the phrases "live together" and "for reasons". No other changes were made in the definition because the word "resale" was not part of the definition and the word "family" is not avoided because it is necessary for clarity.

2. Twenty-three respondents expressed concern regarding the proposed size of house lots both on scattered sites and in subdivisions.

The Agency has made changes as a result of those comments which will acknowledge the need for larger lots in subdivisions without central water and sewer facilities, will "grandfather" in lots in formerly approved subdivisions, will permit 1 acre or less as opposed to less than 1 acre on scattered sites, and will permit exceptions to be made by the District Director rather than the State Director.

3. Seventy-one respondents expressed opposition to the proposed limits on square footage, number of bedrooms and number of baths.

The Agency carefully considered all comments in the light of program objectives and has modified the proposed limitations. There was general opposition from many respondents to overall size reductions supported by reasons relating to the needs of a young growing family, problems in selling, problems in reselling, appearance, and the acceptability of various styles of homes.

Certain increases in size and amenities were well supported and resulted in a regulation change. With the primary objective of providing housing for low- and very low-income families, the overall size must be reduced in order to reduce cost and enable such applicants to be able to afford adequate housing.

A respondent suggested that the 2 columns for maximum sq. ft. shown in the proposed rule be combined into 1 column. This suggestion was adopted.

4. Twenty-eight respondents were concerned that the proposed method of calculating living area would eliminate split-foyer and Cape Cod designs.

The Agency has modified its regulation so that split-foyer and Cape Cod design homes can remain in the program to serve applicants needing all rooms designed as living area, fully finished.

5. Ten respondents opposed § 1944.16(d), "Building designs and materials," as written.

The Agency has rewritten this paragraph for clarification, and to permit dwelling designs and materials to exceed "fair quality" when costs are comparable or less.

6. Seventy-eight respondents opposed the elimination of garages.

The Agency has reconsidered its position regarding newly constructed garages and has modified the regulation to permit construction of garages of a stipulated size in areas where houses without garages are not acceptable to community standards.

7. Twenty respondents opposed restriction on fencing. All of the

comments regarding fencing came from one state where privacy fences are an integral part of single family dwellings.

The Agency has modified its regulation to permit backyard privacy fences on lots not exceeding 6,000 square feet where use of privacy fences is customary.

8. Twenty-one respondents opposed restricting applicants to a choice of carport or basement and tying that feature to the square footage of the dwelling.

The Agency has modified its regulation so that a choice of garage/carport or basement is no longer connected to the size of the dwelling, and a garage in addition to a basement is permitted when a garage can be incorporated into the basement area.

9. Seventeen respondents opposed the District Director's review of older houses and the required inspections and certifications of certain items.

The Agency has reconsidered its position in light of the comments, and removed the requirement of oversight by the District Director; however, it believes the requirement for inspections and certifications of adequacy of major items such as plumbing, electrical, etc., is necessary for the protection of both applicant and government. A change has been made to permit the cost of such inspections and certifications to be negotiated and set forth in the sales agreement.

10. Seventeen respondents opposed the proposed reduction in size of existing dwellings.

The Agency has modified its regulation in response to those comments, and is permitting loans for existing dwellings of 1300 square feet or less for households of 2 or more persons.

11. Ten respondents opposed limiting kitchen cabinets, etc. to Marshall and Swift "fair" quality.

The Agency has modified its regulation in response to those comments to permit the selection of items such as kitchen cabinets to exceed "fair" quality provided the cost is comparable or less.

12. Eight respondents opposed restrictions on financing sliding glass or atrium doors.

The Agency has modified its position regarding these types of doors permitting them in areas where they are customary for modest houses and when it has been determined by the State Director that these types of doors will not increase the cost of the house, and are otherwise practical for low income persons to maintain.

13. Seven respondents objected to restrictions regarding one or more of the following amenities: porches and decks, air conditioning systems, cathedral ceilings.

The Agency has modified the regulation regarding each of these items.

14. One respondent objected to the requirement that Form FmHA 431–3, "Financial Statement & Household Budget", be completed to determine eligibility.

The Agency believes this form is valuable in determining repayment ability for all those cases where a subsidy will be granted. Therefore, no change is made.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410.

For the reasons set forth in the Final Rule related notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, an in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, and Environmental Impact Statement is not required.

**List of Subjects in 7 CFR Part 1944**

Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile home, Mortgages, Rural housing, Subsidies.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

## PART 1922—APPRAISAL

1. The authority citation for Part 1922 continues to read as follows:

**Authority:** 42 U.S.C. 1480(i); 7 CFR 2.23; 2.70.

### Subpart C—Appraisal of Single Family Residential Property

**§ 1922.104 [Amended]**

2. Section 1922.104 is amended by changing the reference in paragraph (a)(12) from "§ 1944.16(a)(4)" to "§ 1944.16(g)(2)."

## PART 1944—HOUSING

3. The authority citation for Part 1944 continues to read as follows:

**Authority:** 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

4. Section 1944.2 is amended by revising paragraphs (f) and (j) to read as follows:

**§ 1944.2 Definitions.**

* * * * *

(f) *Extended family.* A double family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is: parents living with their adult children.

* * * * *

(j) *Household or family.* The applicant, co-applicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months (excluding foster children and live-in aides).

* * * * *

5. Section 1944.11 is amended by revising its title, revising paragraph (c), redesignating current paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

**§ 1944.11 Site requirements.**

* * * * *

(c) A nonfarm tract on which a loan is to be made may not be larger than a minimum adequate site, which is the smallest area sufficient for the dwelling, an adequate water and/or waste disposal system, other related facilities, and a yard. Minimum adequate sites are:

(1) Scattered sites of 1 acre of less.

(2) House sites of 1 acre or less within a subdivision environment without central water and sewer facilities.

(3) House lots will not exceed one-fourth acre within a subdivision environment having central water and sewer, except that some variation in individual lot size may be permitted to accommodate cul-de-sacs, cluster housing concepts, or other subdivision designs which maximize good land usage.

(d) Sites which exceed the size limits set forth in paragraph (c) of this section may be authorized by the District Director when:

(1) The County Supervisor determines that minimum adequate sites are not available in the area, that the value of the total site is comparable to the value

of a minimum adequate site in the area, and that the extra land does not qualify as a minimum adequate site.

(2) Zoning ordinances which require lots in excess of the limits set forth in paragraph (c) of this section were established because the additional land is needed to protect the water supply and/or provide an adequate waste disposal system, or the zoning complies with either an established State or National environmental plan or a State law, or

(3) The scattered site or subdivision was approved before the effective date of this amendment.

* * * * *

6. Section 1944.16 is revised to read as follows:

**§ 1944.16 Dwelling requirements.**

(a) *Modest house.* Applicants will be counseled that dwellings financed must provide decent, safe and sanitary housing, be modest in size, design, and cost, and not exceed the housing needs of the applicant. Housing needs will be determined by the County Supervisor, based on the number and composition of the household, along with consideration of special needs, such as facilities for the elderly, disabled, or handicapped.

(b) *Characteristics of new dwellings.* The construction or purchase of a new house shall not exceed what is typical for the current needs of low and moderate income persons in the area or the following, whichever is smaller:

| No. of occupants | Maximum No. of bedrooms | Maximum No. of baths | Maximum sq. ft.[1] |
|---|---|---|---|
| 1 | 2 | 1 | [illegible] |
| 2–3 | 3 | 1 | 1008 |
| 4–5 | 3 | 1½ | 1104 |
| [illegible] | 4 | 2 | 1248 |

[1] Additional bedroom(s) may be added (not to exceed 120 sq. ft. per bedroom) when justified by composition of current family members, special needs, or for large families for which a 4-bedroom, 1248 sq. ft. house is inadequate.

(c) *Living area.* Living area or gross floor area is the square footage measured from the outside walls of the dwelling. Living area will be determined as follows:

(1) *Ranch on slab, crawl space, or basement.* First floor excluding garage carport, without deduction for any of the contained space.

(2) *Split foyer, bi-level, raised ranch, etc.* All space, without deduction for any of the contained space within that area, except for a basement garage and that portion of the lower level designed and used for utility and storage. Split foyer, bi-level, or raised ranch designs may be used only when:

(i) Site configuration lends itself to that design (sloped site),

(ii) The storage, utility, in the lower level will be below ground,

(iii) All rooms, including those in the lower level designed as living area, will be needed by the applicant in accordance with paragraph (b) of this section, and will be finished at the time of loan closing.

(3) *Cape Cod.* All of the first floor, and all of the second floor area measured to the outside of the stud knee wall, excluding below-ground basements. All rooms designed for living will be needed by the applicant in accordance with paragraph (b) of this section, and finished at the time of loan closing.

(4) *Two-story townhouses—zero lot-line.* The area, center to center of party walls, and outside of all exterior walls of all floors, excluding below ground basements.

(d) *Dwelling designs and materials.* FmHA officials shall not require the use of any building designs and/or building materials which exceed the applicable development standards for new houses or new construction, or the fair quality for site-built and modular houses and average quality for manufactured houses as described in Marshall and Swift Residential Cost handbook, or other similar cost guide. However, such designs and/or materials may be permitted when the costs are comparable to or less than the cost of fair quality material.

(e) *Prohibited features.* The following design features will not be permitted when financing construction of a dwelling or purchase of a new dwelling:

(1) Garage or carport in addition to a basement. A garage may be incorporated into a basement where the site configuration lends itself for that design (i.e., sloped site);

(2) Garages or carports if not customary in the area;

(3) Garages or carports exceeding 320 square feet;

(4) Nonliving areas such as balconies, decks, and patios;

(5) Dwelling designs which are incompatible with existing site conditions; i.e., raised ranch or split foyer on flat sites, or basements in wet areas;

(6) Den/recreation room;

(7) Central air conditioning systems separate and apart from heat pumps unless authorized by the State Director. Authorization must be based on known operating costs which compare favorably to heat pumps;

(8) Fireplaces.

(f) *Prohibited amenities.* (1) Bay or bow windows;

(2) Components of the house, such as kitchen cabinets, bathroom fixtures, light fixtures, etc., which exceed "fair-quality" as described in Marshall and Swift Residential Cost Handbook or some other similar cost guide, unless the cost of the selected component is comparable to or less than one of "fair quality";

(3) Fences, except:

(i) When needed to provide protection from a potentially dangerous situation; or

(ii) When customary in the area on zero lot lines, townhouse properties, or on house lots of 6,000 sq. ft. or less, to afford privacy;

(4) Decorative iron work which is not needed as a safety measure;

(5) Dishwashers, garbage disposers, or other luxury kitchen appliances;

(6) Sliding glass or atrium doors unless:

(i) The State Director determines that these types of doors are customary in other modest homes in the area;

(ii) They will not increase the cost of the house;

(7) Vaulted ceilings unless they will not increase the cost of the house;

(8) Skylights and cathedral ceilings.

(g) *Permitted features.* (1) Special design features necessary to accommodate the needs of elderly, disabled, or handicapped persons may be included.

(2) Energy saving measures which exceed FmHA requirements and cost more than 1 percent of the market value of the property, and cost effective solar energy systems may be used only after approval by the State Architect/Engineer and authorization by the State Director. Complex systems, such as active solar space heating or cooling, geothermal, hydropower, wind and photovoltaic, that could be considered unconventional, must be submitted to the National Office for concurrence prior to authorization by the State Director.

(3) Solid fuel burning devices may be authorized only if the loan approval

official determines and documents that a dependable and economical fuel supply is available. All solid fuel burning devices must comply with Exhibit D, paragraph IV D 2 of Part 1924, Subpart A. To assure compliance and to remove uncertainties regarding safety and efficiency, solid fuel burning devices are authorized only after approval by a local fire official, State Architect/Engineer and subsequent authorization by the State Director.

(4) A dwelling for extended families as defined in § 1944.2(f) of this subpart may include bedroom area with an exterior entrance and an additional bathroom. This area should be designed in a manner that will not adversely affect the home's potential for resale.

(h) *Existing dwellings.* Applicants should be counseled regarding the type of housing necessary to meet their current needs. Consideration should be given to the purchase of an existing adequate but modest dwelling. In most cases, the cost of an existing dwelling, including necessary repair and renovation, is less than the cost of new construction; however, the cost advantage should not be offset by the cost of utilities and maintenance. Loans will not be made on an existing manufactured home unless it is already financed with a Section 502 rural housing loan, or is being sold from FmHA inventory. Existing dwellings must:

(1) Be structurally sound, functionally adequate, be in good repair or placed in good repair with loan funds, and meet the general requirements in Guide 2, Subpart A, Part 1924 of this chapter.

(2) Be consistent with program objectives to provide only housing that is modest in size, design, and cost.

(3) Meet the thermal standards required in Exhibit D, paragraph IV B, Subpart A, Part 1924 of this chapter.

(4) Be inspected and certified for adequacy of electrical, plumbing, heat, water, sewage disposal systems, and termite infestation. The responsibility for these inspections and certifications will be identified in the sales agreement, or in case of FmHA inventory, will be provided by FmHA.

(5) Contain no more than 1,300 sq. ft. of living area for households of 2 or more persons, measured in accordance with paragraph (c) of this section, or not more than 1,008 sq. ft. of living area for 1 member households, unless:

(i) A larger house is necessary to meet the needs of the family in accordance with paragraph (b) of this section; or,

(ii) The house is being transferred with assumption of a 502 loan, or a credit sale is being made, and the County Supervisor determines, in either case, that the house is typical of modest homes in the area. In all cases, every effort will be made to provide housing which does not exceed the needs of the applicant/borrower.

(i) *Design features/amenities in existing dwellings.* Existing dwellings with design features which add significantly to the value of the dwelling (such as those listed in paragraph (e) of this section) will not be financed unless the cost of the dwelling is no more than the cost of a new dwelling, and the dwelling with such a feature is determined by the County Supervisor to be modest. Amenities such as those outlined in paragraph (f) of this section may be included in existing dwellings unless the County Supervisor determines that a combination of those amenities causes the dwelling to be above modest.

(j) *Repairs.* Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. If the loan is not more than $7,500 and is scheduled for repayment in not more than 15 years from the date of the note, the dwelling may lack some equipment or features such as a complete bath, kitchen cabinets, closet, or completely finished interior in some rooms. Such dwellings must meet the housing needs of the applicant and provide decent, safe, and sanitary living conditions when the improvements financed with the loan are completed. Manufactured homes will not be repaired unless authorized in § 1944.40 of Exhibit F, paragraph IV (d) of this subpart.

(k) *Improvements.* Improvements financed with loan funds must be on land, which after loan closing, is part of a tract owned by the borrower in accordance with § 1944.15(a) of this subpart, or on an easement appurtenant to such a tract.

(l) *Manufactured homes.* Exhibit F of this subpart contains supplemental information concerning building requirements for manufactured homes.

7. Section 1944.26 is amended by revising the introductory text of paragraphs (a)(2) and (f)(2) to read as follows:

**§ 1944.26 Application processing.**

(a) *Application forms.* * * *

(2) Form FmHA 431–3, "Household Financial Statement and Budget," will be completed prior to loan approved for each low- or very low-income applicant for a Section 502 loan, transfer with assumption, or credit sale. The form will be used to determine repayment ability. When preparing Form FmHA 431–3, the following will be considered.

* * * * *

(f) *Determining eligibility.* * * *

(2) Repayment ability as outlined in § 1944.8(a)(2), will be evaluated on the circumstances surrounding the individual case including possible eligibility for interest credits as provided in § 1944.34 of this subpart. Form FmHA 431–3 will be completed by the applicant and the County Supervisor as set forth in paragraph (a)(2) of this section. Under no condition(s) will arbitrary guidelines or "rules of thumb" be used. If the applicant(s) can verify payment of a comparable or greater amount for housing costs (rent, utilities, and insurance, etc., as compared to real estate taxes, property insurance, utilities, maintenance, and scheduled FmHA payments for the previous 12 months), the applicant will be presumed to have repayment ability for the requested loan unless:

* * * * *

8. Section 1944.34 is amended by revising paragraph (h)(2) to read as follows:

**§ 1944.34 Interest credit.**

* * * * *

(h) * * *

(2) *Correction of Interest Credit Agreement.* When an error by an FmHA employee results in too little interest credit being granted, a corrected agreement will be prepared effective the date of the error, if the error results in the granting of $5 or more per month, or $60 or more per year less interest credit than the borrower was eligible to receive. In such cases, a Form FmHA 1944–6 showing the proper amount of interest credit which the borrower is entitled to receive, together with written authorization from the State Director to reapply any affected payments, will be submitted to the Finance Office to replace the incorrect agreement. The effective date of the corrected agreement will be the same as the agreement in error. The notation "Corrected in accordance with § 1944.34" will be entered on the face of the form. The Finance Office will cancel the incorrect Interest Credit Agreement as of its effective date. Payments made under the previous agreement will be reapplied at the adjusted interest rate of the new Interest Credit Agreement.

* * * * *

**Subpart J—Section 504 Rural Housing Loans and Grants**

**§ 1944.456 [Amended]**

9. Section 1944.456 is amended by changing the reference in the penultimate sentence of the introductory

text, from "§ 1944.16 (a) and (b)" to "§ 1944.16."

## PART 1951—SERVICING AND COLLECTIONS

10. The authority citation for Part 1951 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart M—Servicing Cases Where Unauthorized Loans or Other Financial Assistance Was Received—Single Family Housing

**§ 1951.604 [Amended]**

11. Section 1951.604 is amended by changing the reference in paragraph (a)(1)(iv)(B) from "§ 1944.16 (a) and (b) or" to "§ 1944.16 of."

Dated: March 4, 1987.

**Kathleen W. Lawrence,**

*Acting Under Secretary for Small Community and Rural Development.*

[FR Doc. 87-8316 Filed 4-13-87; 8:45 am]

BILLING CODE 3410-07-M

---

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 86-NM-221-AD; Amdt. 39-5605]**

### Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Lockheed-California Company Model L-1011-385 series airplanes by individual telegrams. This AD requires ultrasonic inspection of the wing rear spar web at intervals not to exceed 300 landings. This inspection is required to ensure timely detection of fatigue cracks. Failure to detect a fatigue crack before it grows to critical size can result in failure of the wing rear spar.

**DATES:** Effective May 1, 1987. This AD was effective earlier to all recipients of telegraphic AD T86-23-52, dated November 20, 1986, and telegraphic AD T86-23-52-R1, dated December 18, 1986.

**ADDRESSES:** The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

**SUPPLEMENTARY INFORMATION:** On November 20, 1986, the FAA issued telegraphic AD AD T86-23-52, applicable to L-1011-385 series airplanes, which requires visual inspections of the wing rear spar web. The AD was prompted by the failure of an L-1011 wing rear spar inboard of the main landing gear due to a fatigue crack. On December 18, 1986, the FAA issued amended telegraphic AD T86-23-52-R1 to require the use of an ultrasonic inspection procedure to ensure more timely detection of cracks. The ultrasonic inspections are to be accomplished in accordance with procedures described in Lockheed Service Bulletin 093-57-A181, Revision 3, dated December 11, 1986.

The AD, as published herein, has been revised to include only the requirement for ultrasonic inspections (which were provided by the amended telegraphic AD), since the requirements for visual inspections no longer apply.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

## PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Lockheed-California Company.**—Applies to Lockheed Model L-1011-385 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent wing rear spar failure due to fatigue cracking, accomplish the following:

A. Within 40 landings after the effective date of this AD, or prior to accumulation of 6,000 landings, whichever occurs later, unless already accomplished within the last 260 landings, and thereafter at intervals not to exceed 300 landings, inspect the wing rear spar in accordance with the ultrasonic inspection procedures specified in Section 2, Accomplishment Instructions of Lockheed Service Bulletin 093-57-A181, Revision 3, dated December 11, 1986, or later FAA-approved revision. Ultrasonic inspections accomplished in accordance with Lockheed Service Bulletin 093-57-A181, Revision 1, dated November 20, 1986, or Revision 2, dated November 26, 1986, prior to receipt of telegraphic AD T86-23-52 R1, satisfies the initial ultrasonic inspection requirements of this paragraph.

B. If a crack is found, repair before further flight in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway

South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 1, 1987, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T86-23-52-R1, issued December 18, 1986.

Issued in Seattle, Washington, on April 7, 1987.

Wayne J. Barlow,

*Director, Northwest Mountain Region.*

[FR Doc. 87-8223 Filed 4-13-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-NM-27-AD; Amdt. 39-5499]

## Airworthiness Directives; McDonnell Douglas Model DC-6, -6A, -6B, R6D, and C-118 (Military) Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, correction.

**SUMMARY:** This action corrects an error in Airworthiness Directive (AD) 80-12-02 R1, Amendment 39-5499 (51 FR 46602; December 24, 1986), applicable to McDonnell Douglas DC-6, -6A, -6B, R6D, and C-118 (Military) series airplanes, which currently requires inspection and repairs, if necessary, of wing lower fittings, stringers, and skin. The number of hours time-in-service of those airplanes which are affected by the requirements of the AD was not included in the applicability statement. This correction is necessary to identify properly the affected airplanes.

**DATES:** Effective April 21, 1987.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90308; telephone (213) 514-6819.

**SUPPLEMENTARY INFORMATION:** On December 17, 1986, the FAA issued AD 80-12-02 R1, Amendment 39-5499 (51 FR 46602; December 24, 1986), which revised AD 80-12-02 to define a more accurate X-ray technique and to add a larger visual inspection area. The original version of AD 80-12-02 applied only to airplanes with 30,000 hours or more time-in-service, and the revision to the AD was to have applied only to those airplanes as well. However, the revision, as published, was made applicable to *all* Model DC-6, -6A, -6B, -R6D, and C-118 (Military) airplanes by omission of the words "with 30,000 hours or more time-in-service" from the applicability statement. Therefore, action is taken herein to make this correction.

Since this amendment only corrects an omission, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the correction may be made effective in less than 30 days.

The FAA has determined that this document involves an action that only corrects an omission and does not impose any additional burden on any person. This action is, therefore, not major under Executive Order 12291 (46 FR 13193; February 19, 1981) and not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. For these reasons, I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Correction

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration corrects § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By correcting the applicability statement of AD 80-12-02 R1, Amendment 39-5499, (51 FR 46602; December 24, 1986), FR Document 86-28879, as follows:

McDonnell Douglas.—Applies to McDonnell Douglas Model DC-6, -6A, -6B, R6D, and C-118 (Military) series airplanes, certificated in any category, with 30,000 hours or more total time-in-service. Compliance required as indicated, unless previously accomplished.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This action corrects Amendment 39-5499 (51 FR 46602; December 24, 1986).

This correction becomes effective April 21, 1987.

Issued in Seattle, Washington, on April 7, 1987.

Wayne J. Barlow,

*Director, Northwest Mountain Region.*

[FR Doc. 87-8225 Filed 4-13-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-NM-198-AD; Amdt. 39-5505]

## Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 619

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9 series airplanes, which requires inspections for cracks and installation of stiffeners on 11 rubber ribs located aft of the rudder front spar. This AD is prompted by reports of cracks in the rib flanges and rudder skins. If this condition is not corrected, outer skin cracks may develop and progress to a point where the structural integrity of the rudder is affected.

**DATE:** Effective May 21, 1987.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South,

Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael N. Asahara, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires repetitive inspection for cracks on the rudder ribs on certain McDonnell Douglas DC–9–80 series airplanes, was published in the **Federal Register** on November 12, 1986 (51 FR 40985). The comment period for the proposal closed January 5, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment which was received.

The commenter questioned the need for the proposed rule. The commenter advised that operator inspections have yet to reveal any findings of rudder rib cracks, and requested that the FAA review its justification for the proposed rule. The FAA disagrees with the commenter, and considers the rule to be appropriate based on the various reported cases of cracked rudder ribs and the unsafe condition created by such cracks.

The commenter also suggested that the compliance time for the final rule be extended to 3,000 cycles (equivalent to "C checks" for most operators), and that repetitive inspections be extended to 6,000 cycles (equivalent to "D checks"). The FAA does not concur. The FAA has determined that the compliance time is appropriate, based on the fact that cracks in the rudder rib flanges have occurred on airplanes having logged as few as 5,000 flight hours. Safety considerations, as well as recommendations by the manufacturer, necessitate that the compliance time and repetitive inspection interval remain as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 619 airplanes of U.S. registry will be affected by this AD, that it will take approximately 85 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,104,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model DC–9–80 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

"**McDonnell Douglas.**—Applies to McDonnell Douglas Model DC–9–10, –20, –30, –40, and C–9 (Military) series airplanes, Fuselage Numbers 1 through 619, certificated in any category. Compliance required as indicated, unless previously accomplished."

To prevent outer skin cracks of the rudder and subsequent damage to adjacent structure, within 1,800 landings, or 9 months, after the effective date of this AD, whichever occurs earlier, accomplish the following, unless already accomplished within the last 1,200 landings:

A. Radiographically inspect rudder ribs for cracks, in accordance with McDonnell Douglas DC–9 Service Bulletin 55–23, Revision 4, dated September 8, 1986, hereinafter referred to as S/B 55–23, or later FAA-approved revisions, and accomplish the following:

1. If no cracks are found, accomplish repetitive inspections at intervals not to exceed 3,000 landings, until such time as the requirements of paragraph A.3., below, are accomplished.

2. If cracks are found, accomplish one of the following, as applicable:

a. For cracks in rudder ribs only:

(1) If one rib is found cracked and the total length of crack does not exceed one-half the length of the cracked rib, perform repetitive inspections for rudder skin crack(s) in accordance with S/B 55–23, at intervals not to exceed 150 landings, until such time as the requirements of paragraph A.3., below, are accomplished.

(a) If the rib crack exceeds one-half the length of the cracked rib, accomplish the requirements of paragraph A.2.b.(1), below.

(b) If skin crack(s) are found, accomplish the requirements of paragraph A.2.b., below.

(2) If two adjacent ribs are found cracked and the total length of cracks for each rib does not exceed 6.0 inches, perform repetitive inspections for rudder skin cracks in accordance with S/B 55–23, at intervals not to exceed 150 landings, until such time as the requirements of paragraph A.3., below, are accomplished.

(a) If the rib crack exceeds 6.0 inches, accomplish the requirements of paragraph A.2.b.(1), below.

(b) If a skin crack(s) is found, accomplish the requirements of paragraph A.2.b., below.

(3) If two alternate ribs are found cracked, and the total length of the cracks does not exceed 16.0 inches, perform repetitive inspections for rudder skin cracks in accordance with S/B 55–23, at intervals not to exceed 150 landings until such time as the requirements of paragraph A.3., below, are accomplished.

(a) If the rib cracks exceed 16.0 inches, accomplish the requirements of paragraph A.2.b.(1), below.

(b) If a skin crack is found, accomplish the requirements of paragraph A.2.b., below.

(4) If more than two ribs are found cracked, notwithstanding the crack lengths, accomplish the requirements of paragraph 2.b.(1), below.

b. For cracks found in the rudder skin, or rudder rib and skin, accomplish the following:

(1) Before further flight, accomplish repairs to cracked rib(s) in accordance with S/B 55–23, or later FAA-approved revisions.

(2) Upon completing repairs to cracked rib(s), accomplish skin repair in accordance with McDonnell Douglas DC–9 Structural Repair Manual, Section 55–03.

3. Installation of rib stiffeners in accordance with S/B 55–23, or replacement of all affected ribs with new production .040-inch thick 2024–T42 aluminum ribs, constitutes terminating action for the repetitive inspections required by this AD.

B. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes with rudder rib cracks only (within the limits of this AD) to a base in order to comply with the requirements of this AD. For airplanes with rudder skin cracks, the rudder must be repaired or replaced prior to next flight.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 21, 1987.

Issued in Seattle, Washington, on April 7, 1987.

Wayne J. Barlow,

*Director, Northwest Mountain Region.*

[FR Doc. 87-8224 Filed 4-13-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510 and 558

### Animal Drugs, Feeds, and Related Products; Tylosin

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Farmers Union Grain Terminal Association. The NADA provides for use of a Type A article containing 0.4 gram or 10 grams of tylosin per pound for making Type C swine feeds. FDA is also amending the regulations to remove the firm from the list of sponsors of approved NADA's. Elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

**EFFECTIVE DATE:** April 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of Farmers Union Grain Terminal Association's NADA 96-160. The NADA provides for use of a 0.4- or 10-gram-per-pound tylosin (as tylosin phosphate) Type A article for making Type C swine feeds. This document removes 21 CFR 558.625(b)(7) that reflects approval of the NADA. Additionally, since the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600(c) (1) and (2) is amended to remove the firm from the list of sponsors of approved NADA's.

List of Subjects

*21 Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

**Authority:** Sec. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Farmers Union Grain Terminal Association," and in paragraph (c)(2) by removing the entry for "017162."

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.625 [Amended]**

4. Section 558.625 *Tylosin* is amended by removing paragraph (b)(7) and reserving it for future use.

Dated: April 8, 1987.

Gerald B. Guest,

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-8231 Filed 4-13-87; 8:45 am]

BILLING CODE 4160-01-M

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs Not Subject To Certification; Cefadroxil Tablets

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bristol Laboratories providing for safe and effective use of a 1 gram cefadroxil tablet for treating certain genitourinary tract and skin and soft tissue infections of dogs.

**EFFECTIVE DATE:** April 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

**SUPPLEMENTARY INFORMATION:** Bristol Laboratories, Division of Bristol-Meyers Co., P.O. Box 4755, Syracuse, NY 13221-4755, filed supplemental NADA 119-688 providing for safe and effective oral use of a 1 gram tablets in addition to the currently approved 50-, 100-, and 200-milligram cefadroxil tablets in dogs for the treatment of certain genitourinary tract and skin and soft tissue infections caused by cefadroxil-susceptible organisms. The supplemental NADA is approved and 21 CFR 520.314(a) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.314 is amended by revising paragraph (a) to read as follows:

**§ 520.314 Cefadroxil tablets.**

(a) *Specifications.* 50-, 100-, and 200-milligram tablets for dogs and cats; 1 gram tablet for dogs.

* * * * *

Dated: April 7, 1987.

Richard A. Carnevale,

*Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.*

[FR Doc. 87-8233 Filed 4-13-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### 31 CFR Part 1

### Privacy Act; Disclosure of Records

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of final rulemaking; technical amendments.

**SUMMARY:** This document amends certain sections of the Department of the Treasury's regulations, Notice of Exempt Systems, relating to the Privacy Act of 1974. Since § 1.36 of the Department's regulation has not been updated since 1977, there are numerous corrections which are being made. These include: editorial changes; name changes to some exempt systems; deleting those systems that are obsolete and those that have been incorporated with other systems; and, updating names of offices and titles within the regulation to conform with reorganizations within the Department.

**EFFECTIVE DATE:** April 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Phyllis De Piazza, Departmental Disclosure Officer, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, Telephone: (202) 566-2789.

**SUPPLEMENTARY INFORMATION:** The Department of the Treasury has completed an extensive review of all its Privacy Act systems of records. The updated systems were published at 49 FR 48628, December 13, 1984 (Office of the Secretary); 50 FR 29816, July 22, 1985 (IRS); 50 FR 30048, July 23, 1985 (U.S. Customs Service); and 50 FR 30334, July 25, 1985 (Comptroller of the Currency; Bureau of Alcohol, Tobacco, and Firearms; U.S. Secret Service; Bureau of Engraving and Printing; Federal Law Enforcement Training Center; Financial Management Service; Bureau of Public Debt; U.S. Savings Bonds Division; U.S. Mint). As a result of this review and earlier reviews that had never resulted in publication of the systems of records listed in this regulation, Notice of Exempt Systems is being updated to reflect name changes, renumbering, deletions, consolidations, and reorganizations. These changes appear as amendments to § 1.36 and are described herein.

On May 21, 1982, the Secretary of the Treasury's Order 150-97 transferred the Director of Practice from Office of the Secretary to Internal Revenue Service. As a result, eleven systems of records under Director of Practice were transferred from the Departmental Offices to the Internal Revenue Service. Seven of those systems are exempt systems and have a new number prefix as set forth below:

OS.161 now 37.002—Applicant Appeal Files
OS.162 now 37.003—Closed files containing Derogatory Information about Individuals' Practice before Internal Revenue Service and files of attorneys and certified public accountants formerly enrolled to practice
OS.163 now 37.004—Derogatory information (no action)
OS.164 now 37.005—Present Suspensions and Disbarments Resulting from Administrative Proceeding
OS .166 now 37.007—Inventory
OS .168 now 37.009—Resigned Enrolled Agents (action pursuant to 31 CFR, Section 10. 55(b))
OS .170 now 37.011—Present Suspensions from Practice before the Internal Revenue Service

Two Departmental Offices systems of records under the heading Assistant Secretary (Enforcement, Operations, and Tariff Affairs), were transferred to the Department of Justice. The systems are: Treasury/OS 00.101—International Criminal Police Organization (INTERPOL) Criminal Investigative Records (46 FR 16473), and Treasury/OS 00.102—Treasury Enforcement Communications system (TECS) (46 FR 16473). The information in Treasury OS 00.101 is now maintained by the United States National Central Bureau (USNCB) of the Department of Justice and is entitled "Criminal Investigative Records System—Justice/DAG—007", published at 45 FR 13847. The information in Treasury/OS 00.102 is duplicative of Treasury/Customs 00.244—Treasury Enforcement Communications System (TECS) published at 50 FR 30112.

There have been 26 IRS systems of records deleted since this regulation was last updated. Some of these records are obsolete and some have been included in other systems of records. They include:

42.009—Strike Force
42.015—Open and Closed Narcotics Traffickers File
46.006—Information Gathering and Retrieval System
46.007—Information Indexing System
46.010—Joint Compliance Program
46.012—National Register
46.013—Project Files
46.014—Project Personnel
46.018—Strike Force Disclosure Authorization List
46.019—Tax Practitioner File
46.020—Tax Termination File
22.005—Audit Underreporter Case File
22.012—Collection Case File
22.014—Discriminant Function File (DIF)
22.040—Multiple Refund Files
22.057—Taxpayers Delinquent Investigation Notice File
26.002—Adjustment and Payment Tracer Files
26.003—Collateral Files
26.015—Records being Maintained at the Request of Congressional Committees
26.017—Seized Property Records
26.018—Tax Collection Waiver Form 900 Files
42.024—Coordinated Examinations of Large Cases Program
46.008—Information and Correspondence
48.002—Disclosure to Executive Departments and Congressional Committees
48.003—Testimony of IRS employees in non-tax matters
36.006—Personnel Investigation Records

The U.S. Customs Service has also deleted a number of exempt systems of records. These corrections have not previously been reflected in the Notice of Exempt Systems. There also was a name change of the "Currency and Monetary Instruments Reporting File (Treasury/Customs .067)" to the "Bank Secrecy Act Reports File (Treasury/Customs .067)". This had been erroneously reported as a proposed rule and should instead be a technical change (48 FR 35904, August 8, 1983). The systems deleted by the U.S. Customs Service were either obsolete or consolidated with other systems of records and are included herein:

00.016—Aircraft Ownership File
00.017—Aircraft Registers
00.034—Boarding Report
00.038—CARNET Information System
00.047—Claims Files (Region VIII)
00.048—Claims for Automobile Accidents
00.266—Collection File
00.062—Court Case Files (Region VIII)
00.063—Court Docket Records System
00.070—Customhouse Brokers, Records (Headquarters)
00.071—Customhouse Brokers Records

00.072—Customhouse Brokers Records (Headquarters)
00.073—Customs Fugitive Program
00.074—Customs Licensing and Identification Program (Proposed)
00.080—Disclosure of Information Request Files (Region VIII)
00.087—Equal Employment Opportunity Program
00.089—Equal Opportunity Discrimination Complaint Case File
00.094/00.267—Federal Tort Claims Act File (Two systems of same name)
00.097—Fines, Penalties, and Forfeitures (Supplemental Petitions)
00.101—Fines, Penalty and Forfeiture (FP & F) Record System
00.104—Florida Boat Registration File
00.117—Information and Investigative Reports from other Federal agencies
00.118—Information Received File (Patrol File)
00.119/00.120—Information Received File (Patrol Division—New Orleans, LA) (Two systems of same name.)
00.121—Information Received (MOIR) File (San Diego DD)
00.131—Justice Court Case File (Two systems of the same name.)
00.176—Patrol Information Data System
00.179—Patrol Officers Case File
00.183—Personal Search Negative
00.184—Personal Search (Negative Results)
00.185—Personal Search—Negative (District Director—Mobile, AL)
00.187—Personal Search File
00.188—Personal Search File
00.189—Personnel Action Records System
00.192—Personnel Case Files (Region VIII)
00.197—Private Aircraft/Vessel Inspection Reporting System
00.198—Private Yacht Inspection Reporting System
00.218—Seventy-two Hour Archives Search System
00.221—Suspect File
00.225—Telephone Analysts Program (TELAN)
00.229—Theft Information System (TIS)
00.237—Tort Claims Records System
00.245—Treasury Enforcement Communications System Card File (TECS)
00.254—Vessel Identification Report
00.255—Vessel Violation Profile System
00.257—Violators File

### Regulatory Impact Analysis

As required by Executive Order 12291, it has been determined that this rule is not a "major" rule and therefore does not require a Regulatory Impact Analysis.

### Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required for this final rule, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### Paperwork Reduction Act

Because no additional information collection requirements are imposed by this final rule, it is not subject to the Paperwork Reduction Act (44 U.S.C. 3502 *et seq.*).

### Notice and Comment

The Department of the Treasury has determined that a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) is not required because these regulatory amendments do not change the legal effect of the current regulations nor do they have any impact on those regulated. As previously mentioned, the amendments update name changes to some existing exempt systems, eliminate systems that have been previously deleted or incorporated with other exempt systems, and reflect reorganizations within the Department.

### List of Subjects in 31 CFR Part 1

Privacy.

Dated: April 9, 1987.

**John F.W. Rogers,**

*Assistant Secretary of the Treasury (Management).*

For the reasons set out in the Preamble, Part 1 of Subchapter A of Title 31, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, as amended, Subpart C also issued under 5 U.S.C. 552a.

### § 1.36 [Amended]

2. Section 1.36 is amended as follows: By removing the center headings reading "Director of Practice" and "Assistant Secretary (Enforcement, Operations, and Tariff Affairs)", and all text under those headings.

2a. By revising the systems of records listed in paragraph (a)(1), (b)(1), and (e)(1) under the center heading "Internal Revenue Service" to read as follows:

### The Internal Revenue Service

* * * * *

(a) * * *

(1) * * *

| Name of system | No. |
|---|---|
| Case Management and Time Reporting System, Criminal Investigation Division | 46.002 |
| Confidential Informants, Criminal Investigation Division | 46.003 |
| Electronic Surveillance Files, Criminal Investigation Division | 46.005 |
| Centralized Evaluation and Processing of Information Items (CEPIIs), Criminal Investigation Division | 46.009 |
| Relocated Witnesses, Criminal Investigation Division | 46.015 |
| Secret Service Details, Criminal Investigation Division | 46.016 |
| Treasury Enforcement Communications System (TECS) | 46.022 |
| Assault and Threat Investigation Files | 60.001 |
| Bribery Investigation Files | 60.002 |
| Disclosure Investigation Files | 60.004 |
| Chief Counsel Criminal Tax Case Files | 90.001 |

* * * * *

(b) * * *

(1) * * *

| Name of system | No. |
|---|---|
| Wage and Information Returns Processing (IRP) | 22.061 |
| Acquired Property Records | 26.001 |
| Form 2209, Courtesy Investigations | 26.006 |
| IRS and Treasury Employee Delinquency | 26.008 |
| Litigation Case Files | 26.011 |
| Offer in Compromise (OIC) Files | 26.012 |
| One-hundred Per Cent Penalty Cases | 26.013 |
| Returns Compliance Programs (RCP) | 26.016 |
| TDA (Taxpayer Delinquent Accounts) | 26.019 |
| TDI (Taxpayer Delinquency Investigations) Files | 26.020 |
| Transferee Files | 26.021 |
| Delinquency Prevention Programs | 26.022 |
| Applicant Appeal Files | 37.002 |
| Closed Files containing Derogatory Information about Individuals' practice before the IRS and Files of attorneys and certified public accountants formerly enrolled to Practice | 37.003 |
| Derogatory Information (No Action) | 37.004 |
| Present Suspensions and Disbarments Resulting from Administrative Proceeding | 37.005 |
| Inventory | 37.007 |
| Resigned Enrolled Agents (action pursuant to 31 CFR Section 10.55(b)) | 37.009 |
| Present Suspensions from Practice Before the Internal Revenue Service | 37.011 |
| Examination Administrative File | 42.001 |
| Audit Information Management System (AIMS) | 42.008 |
| Classification and Examination Selection Files | 42.016 |
| Compliance Programs and Projects Files | 42.021 |
| International Enforcement Program Files | 42.017 |
| Combined Case Control Files | 42.012 |
| Audit Underreporter Case Files | 42.029 |
| Discriminant Function File (DIF) | 42.030 |
| Appeals Case Files | 44.001 |
| Disclosure Records | 48.001 |
| Collateral and Information Requests System | 49.001 |
| Component Authority and Index Card Microfilm Retrieval System | 49.002 |
| Overseas Compliance Projects System | 49.007 |
| Conduct Investigation Files | 50.222 |
| Enrollee Charge Investigation Files | 50.006 |
| Miscellaneous Information File | 50.007 |
| Special Inquiry Investigation Files | 50.009 |
| Chief Counsel Disclosure Litigation Division Case Files | 90.001 |
| Chief Counsel General Legal Services Case Files | 90.004 |
| Chief Counsel General Litigation Case Files | 90.005 |
| Chief Counsel Tax Litigation Case Files | 90.009 |
| File Digest Room Files containing briefs, Legal opinions, Digests of Documents generated internally or by the Department of Justice relating to the Administration of the Revenue Laws | 90.010 |
| Legal Case Files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Litigation) and (Technical) | 90.013 |
| Reports and Information Retrieval Activity Computer and Microfilm Records | 90.016 |
| Correspondence File—Inquiries about Enforcement Activities | 91.002 |

* * * * *

(e) * * *

(1) * * *

| Name of system | No. |
|---|---|
| Recruiting, Examining and Placement Records | 36.004 |
| Security, Background, and Character Investigations Files | 50.004 |
| Chief Counsel General Administrative Systems | 90.003 |
| Employee Recruiting Files Maintained by the Operations Division | 90.011 |
| Management Files Maintained by Operations Division and the Deputy Chief Counsel other than the Office of Personnel Management's Official Personnel Files | 90.014 |

3. Under the center heading "United States Customs Service" by revising the listing in paragraph a.1 and b.1 to read as follows:

### United States Customs Service

* * * * *

a. * * *

1. * * *

00.285—Automated Index to Central Enforcement Files
00.270—Background—Record File of Non-Customs Employees
00.037—Cargo Security Record System
00.053—Confidential Source Identification File
00.067—Bank Secrecy Act Reports File
00.287—Customs Automated Licensing Information System (CALIS) [Proposed]
00.127—Internal Security Records System
00.129—Investigations Record System
00.244—Treasury Enforcement Communications System (TECS)

* * * * *

b. * * *
1. * * *
00.014—Advice Requests (Legal) (Pacific Region)
00.021—Arrest/Seizure/Search Report and Notice of Penalty File
00.022—Attorney Case File
00.285—Automated Index to Central Enforcement Files
00.270—Background—Record File of Non-Customs Employees
00.037—Cargo Security File
00.271—Cargo Security Record System
00.041—Cartmen or Lightermen
00.043—Case Files (Regional Counsel—South Central Region)
00.046—Claims Case File
00.053—Confidential Source Identification File
00.057—Container Station Operator Files
00.058—Cooperating Individual Files
00.061—Court Case File
00.067—Bank Secrecy Act Reports File
00.069—Customhouse Brokers File (Chief Counsel)
00.287—Customs Automated Licensing Information System (CALIS)
00.077—Disciplinary Action and Resulting Grievances or Appeal Case Files
00.078—Disclosure of Information File
00.098—Fines, Penalties, and Forfeitures Records
00.099—Fines, Penalties, and Forfeiture Files (Supplemental Petitions)
00.100—Fines, Penalties, and Forfeiture Records (Headquarters)
00.122—Information Received File
00.125—Intelligence Log
00.127—Internal Security Records System
00.129—Investigations Record System
00.133—Justice Department Case File
00.138—Litigation Issue Files
00.140—Lookout Notice
00.155—Narcotics Suspect File
00.159—Notification of Personnel Management Division when an employee is placed under investigation by the Office of Internal Affairs.
00.182—Penalty Case File
00.186—Personal Search
00.190—Personal Case File
00.197—Private Aircraft/Vessel Inspection Reporting System
00.206—Regulatory Audits of Customhouse Brokers
00.212—Search/Arrest/Seizure Report
00.214—Seizure File
00.224—Suspect Persons Index
00.232—Tort Claims Act File
00.244—Treasury Enforcement Communications System (TECS)
00.258—Violator's Case Files
00.260—Warehouse Proprietor Files

* * * * *

[FR Doc. 87-8242 Filed 4-13-87; 8:45 am]
BILLING CODE 4810-25-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1052

[Ex Parte No. MC-42]

### Motor Carriers; Handling of C.O.D. Shipments

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is revising 49 CFR 1052.3 to allow each motor common carrier of property to publish its own nondiscriminatory tariff provisions governing the collection and remittance of funds for cash-on-delivery (c.o.d.) shipments. The separate recordkeeping requirements for c.o.d. shipments (49 CFR 1052.4) are repealed. The previous recordkeeping requirements were burdensome, time-consuming and costly, and may have discouraged carriers from providing c.o.d. service.

**EFFECTIVE DATE:** May 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Barry (202) 275-7540 or Mark S. Shaffer (202) 275-7805.

**SUPPLEMENTARY INFORMATION:** Proposed rules in this proceeding were published at 46 FR 1927, March 30, 1981 and 51 FR 23562, June 30, 1986.

Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 in the DC Metropolitan area or (800) 424-5403, toll-free, outside the DC area.

### Energy and Environmental Considerations

This action will not affect significantly the quality of the human environment or the conservation of energy resources.

### Regulatory Flexibility Analysis

The Commission certifies that adoption of the amendments will not have a significant economic impact on a substantial number of small entities because the amendments do not mandate that any action be taken, but they allow more flexible and individualized procedures.

### List of Subjects in 49 CFR Part 1052

Motor carriers.

Decided: March 26, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley and Commissioner Simmons dissented with separate expressions.

Noreta R. McGee,
*Secretary.*

### PART 1052—[AMENDED]

Title 49 of the Code of Federal Regulations, Part 1052, is amended as follows:

1. The authority citation for 49 CFR Part 1052 is revised to read as follows:

**Authority:** 49 U.S.C. 10101, 10321, 10922, 10762, and 11101, and 5 U.S.C. 553.

2. The heading and text of § 1052.3 is revised to read as follows:

**§ 1052.3 Collection and remittance.**

Every common carrier of property subject to the Interstate Commerce Act, except as otherwise provided in § 1052.1, which provides any c.o.d. service must publish and maintain or cause to be published and maintained for its account a tariff or tariffs which set forth nondiscriminatory rules governing the collection and remittance of c.o.d. funds.

**§ 1052.4 [Removed]**

3. Section 1052.4 is removed.

[FR Doc. 87-8328 Filed 4-13-87; 8:45 am]
BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

[Docket No. 61220-7033]

### Fishery Conservation and Management; Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish target quota (TQ) allocated to hook-and-line gear in the Southeast Outside/East Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska will be achieved on April 9, 1987. The Secretary of Commerce is prohibiting retention of sablefish in this district by persons using hook-and-line

gear after 12:00 noon on April 9, 1987 through December 31, 1987.

**EFFECTIVE DATE:** From 12:00 noon April 9, 1987, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time, December 31, 1987.

**ADDRESS:** Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Paragraph 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska, which is further divided annually into target quotas (TQs) for each groundfish species. For 1987, TQs were established for each of the groundfish species and apportioned among the regulatory areas and districts.

Section 672.2 of the regulations defines the Southeast Outside/East Yakutat District of the Eastern Regulatory Area in the Gulf of Alaska (Emergency interim rule, 52 FR 9171, March 23, 1987). The TQ for sablefish is 4,200 mt TQ in the combined Southeast Outside/East Yakutat District (52 FR 785, January 9, 1987). Under Amendment 15, § 672.24(b)(3)(ii) of current regulations provides a quota for hook-and-line gear in the Southeast Outside/East Yakutat District equal to 95 percent of the TQ, or 3,990 mt. When the quota is taken, further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea.

Prior to the April 1 season starting date, NMFS conducted an area registration program to better estimate numbers of vessels participating in the sablefish hook-and-line fishery in each district throughout the gulf of Alaska. Based on results of the program, NMFS estimates that about 370 hook-and-line vessels are fishing sablefish in the combined Southeast Outside/East Yakutat Districts. This estimate is derived from the actual registered number of 342 increased by a factor of ten percent. Ten percent was used to account for vessels that are likely fishing but which are not registered and is based on a similar non-registration percentage that the Alaska Department of Fish and Game has experienced in past sablefish vessel registration programs. About 1,120 mt have been landed through April 5. On the basis of the average catch rates experienced by the fleet through this date, NMFS estimates that the balance of the quota, or 2,870 mt, will be harvested by noon on April 9, 1987. Therefore, the Southeast Outside/East Yakutat District is closed to sablefish fishing by hook-and-line vessels at 12:00 noon, local time, on April 9, 1987. Further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea. This notice will be effective upon filing for public inspection with the **Federal Register** and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game under § 672.22(b). Public comments on this notice may be submitted to the Regional Director at the address above for 15 days following its effective date.

### Classification

Overharvesting of sablefish, which would increase the risk of overfishing of this species, will result unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under §§ 672.22 and 672.24 and is in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: April 9, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.*

[FR Doc. 87–8249 Filed 4–9–87; 1:36 pm]

BILLING CODE 3510-22-M

---

## 50 CFR Part 675

[Docket No. 61095–7046]

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues a final rule that amends current regulations to provide authority (1) to prohibit domestic directed fishing for species for which the remaining total allowable catch (TAC) is necessary as bycatch in fisheries for other groundfish species during the remainder of the year, (2) to require domestic fishermen to treat groundfish species for which the TAC has been reached in the same manner as prohibited species, and (3) to limit domestic fishing for groundfish by any method that will prevent overfishing of that species for which the TAC has been reached. In addition, the final rule clarifies the definition of "fishing year." The intended effect of this action is to promote the full utilization of all groundfish species without causing biological harm to any one species and without inhibiting the development of domestic fisheries and is intended as a conservation and management measure to make optimum use of groundfish stocks.

**EFFECTIVE DATE:** April 13, 1987.

**ADDRESS:** Copies of documents supporting this rule may be requested from Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802.

**FOR FURTHER INFORMATION CONTACT:** Jay J.C. Ginter (Resource Management Specialist), 907–586–7230.

**SUPPLEMENTARY INFORMATION:**

### Background

The domestic and foreign groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) Area is managed under the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented January 1, 1982 (46 FR 63295, December 31, 1981). Implementing regulations affecting domestic fisheries in the BSAI area are at 50 CFR Part 675.

A description of the problem addressed by this action is given in the preamble to the emergency interim rule published in the **Federal Register** on October 22, 1986 (51 FR 37408). In summary, current § 675.20(a)(7) requires prohibition of fishing by U.S. vessels in the entire BSAI management area or applicable subarea when the combined catch of a species by foreign and U.S. vessels reaches the amount apportioned to the fishery for that species. That is, all fishing must cease when the total allowable catch (TAC) for a species is reached. This prohibition applies to any fishing that involves the taking of the species for which the TAC is fully harvested. Hence, in addition to preventing directed fishing for a species

for which the current TAC has been reached, this regulation also prohibits fishing for other species that may take incidental catches of the species for which the TAC has been reached.

The Council considered this problem with respect to sablefish during the March and June 1986 Council meetings. At its June meeting, the Council recommended that the Secretary immediately implement a combined interim emergency rule and permanent regulatory amendment to allow the Secretary to slow the rate of catch of any groundfish species by designating it for incidental or bycatch only when necessary to extend the harvest of that species until the end of the year. If the TAC of a groundfish species were reached, despite its status as bycatch only, prior to the end of the year, then the Council recommended that the Secretary prohibit further retention of this species in other groundfish fisheries. The overall intent of the Council's recommendation was to maintain fisheries for groundfish species for which the TAC has not been reached despite the bycatch of groundfish species for which the TAC has been (or soon will be) reached, providing that overfishing of the bycatch species would not occur.

This recommendation was implemented on an interim basis by the emergency rule of October 22, 1986 (51 FR 37408), and is made final by this action, by amending 50 CFR 675.20(a) to accommodate three conditions. First, directed fishing for a groundfish species can be prohibited during a fishing year when the Regional Director determines that the remaining amount of TAC of that species is necessary as bycatch in groundfish fisheries for other species during the remainder of the fishing year. This will allow incidental catches and retention of the species while fishing is directed to other groundfish species. It also will prevent wasting potentially large amounts of species whose quota has been reached, which would occur if they are treated as prohibited species without first slowing the catch by prohibiting directed fishing. Prohibiting directed fishing limits incidental catches of any one species to less than 20 percent of the total catch aboard a vessel any time by definition under § 675.2.

Second, if the TAC of a groundfish species is achieved before the end of a fishing year, then it must be treated in the same manner as a prohibited species. This means that catches of species for which the TAC has been reached must be avoided and cannot be retained. In addition to prohibiting further directed fishing, this provision creates an incentive for fishermen to avoid high incidental catches of prohibited species since all such catches must be immediately sorted and returned to the sea.

Finally, fishing for groundfish other than the species for which a TAC has been achieved may be limited if the Regional Director determines that such fishing may lead to overfishing of the species for which a TAC has been achieved. This provision would be invoked only if significant incidental catches of a fully harvested species cannot be avoided by directed fishing for other groundfish species.

**Public Comments**

No public comments were received. In response to one comment from NOAA legal staff, a minor wording change was made in new § 675.20(a)(10) to allow fishing to "resume" as well as "continue" under this rule.

**Classification**

The Assistant Administrator for Fisheries, NOAA, has determined that this regulatory amendment is necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Regional Director, NMFS, prepared an environmental assessment (EA) for this rule and concluded that no significant impact on the human environment would result from this rule. A regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) are combined with the EA as one document. Copies of the EA/RIR/IRFA may be requested from the Regional Director at the address listed above.

The Administrator of NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA prepared by the Regional Director.

The Regional Director prepared a final regulatory flexibility analysis (FRFA) which describes the potential effects of this rule on small entities. The analysis contained in the FRFA is largely the same as that contained in the EA/RIR/IRFA which was summarized in the preamble of the proposed rule announcement at 51 FR 37408 (October 22, 1986). A copy of the FRFA may be requested from the Regional Director at the address listed above.

This rule contains a collection of information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0016.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. The State agency failed to comment within the statutory time period.

Since this final rule allows the continued harvest of groundfish species even after the OYs for other species have been reached, thereby avoiding premature area closures, it relieves a restriction. Accordingly, it is being made effective immediately under section 553(d)(1) of the Administrative Procedures Act.

**List of Subjects in 50 CFR Part 675**

Fisheries.

Dated: April 8, 1987.

**William E. Evans,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

**PART 675—[AMENDED]**

For the reasons set forth in the preamble, 50 CFR Part 675 is amended as follows:

1. The authority citation for Part 675 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 675.2, a new definition is added in correct alphabetical order to read as follows:

**§ 675.2 Definitions.**

* * * * *

*Fishing year* means the period of time beginning at 0901 GMT (0001 Alaska Standard Time) on January 1 and ending at 0900 GMT on January 1 (2400 Alaska Standard Time on December 31).

* * * * *

3. In § 675.20, paragraph (a) is amended by revising paragraph (a)(7) and adding new paragraphs (a)(8) through (a)(10) to read as follows:

**§ 675.20 General limitations.**

(a) * * *

(7) When the Regional Director determines that the amount of the TAC of any target species or of the "other species" category remaining during the fishing year is necessary for bycatch in fisheries for other groundfish species during the remaining fishing year, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species or the "other

BEST COPY AVAILABLE

species" category for the remainder of the fishing year.

(8) When the Regional Director determines that the TAC of any target species or of the "other species" category has been achieved prior to the end of the fishing year, the Secretary will publish a notice in the **Federal Register** requiring that species or the "other species" category are to be treated in the same manner as prohibited species, as described in § 675.20(c) of this part, for the remainder of the fishing year.

(9) If the Regional Director determines that directed fishing for groundfish other than the species for which the TAC is achieved, as determined under paragraph (a)(8) of this section, may lead to overfishing of this species, the Secretary will, in the notice required by that paragraph, also limit such directed fishing for other groundfish by any method, including area closures, gear restrictions or prohibition of directed fishing, that will prevent overfishing of the species for which the TAC is achieved.

(10) When making the determinations specified under paragraphs (a) (7), (8), and (9) of this section, the Regional Director will consider allowing fishing to continue or resume with certain gear types or in certain areas and times based on findings of:

(i) The risk of biological harm to groundfish for which the TAC will be or has been achieved;

(ii) The risk of socioeconomic harm to authorized users of the groundfish for which the TAC will be or has been achieved; and

(iii) The negative effect of prohibitions or restrictions authorized under paragraphs (a) (7), (8), and (9) of this section on the socioeconomic well-being of other domestic fisheries.

* * * * *

[FR Doc. 87-8268 Filed 4-13-87; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 71
Tuesday, April 14, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL LABOR RELATIONS AUTHORITY

### 5 CFR Part 2411

### Freedom of Information Act Requests; Fees To Be Charged

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Proposed rules.

**SUMMARY:** The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel propose these rules to implement certain provisions of the Freedom of Information Reform Act of 1986, and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987).

**DATE:** Comments received on or before April 20, 1987, will be considered.

**ADDRESS:** Comments should be mailed to William E. Persina, Deputy Solicitor, Federal Labor Relations Authority, 500 C St., SW., Washington, DC 20424.

**FOR FURTHER INFORMATION CONTACT:** William E. Persina, Deputy Solicitor, Federal Labor Relations Authority, 202–382–0781.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Act), Pub. L. 99–570, amended the Freedom of Information Act, 5 U.S.C. 552 (FOIA), by supplying new provisions relating to the charging of fees. The Freedom of Information Reform Act among other things permits agencies to charge for certain direct costs of responding to FOIA requests; creates several categories of FOIA requesters; and establishes different requirements of agencies in charging fees based on the category of the requester. For example, certain types of requesters are entitled to the first 100 pages of documents and two hours of search time without charge. The Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10112 (March 27, 1987) (OMB Guidelines) implement the Freedom of Information Reform Act of 1986 and provide guidance to federal agencies in development of their own regulations implementing that Act, as required under the Act. The OMB Guidelines among other things provide definitions for the various categories of requesters established by the Act, and establish government-wide standards for agencies to follow in developing cost data for agency implementing regulations. The following proposed rules of the Authority, its General Counsel, and the Federal Service Impasses Panel Implement the Act and the OMB Guidelines.

## PART 5—[AMENDED]

For the reasons set forth in the preamble, it is proposed to amend 5 CFR Part 2411 as follows:

1. By revising § 2411.6(b)(3) and (4) to read as follows:

**§ 2411.6 Time limits for processing requests.**

* * * * *

(b)(3) If the request is expected to involve allowed charges in excess of $250.00, the response shall specify or estimate the fee involved and shall require prepayment of any charges in accordance with the provisions of paragraph (g) of § 2411.10 before the request is processed further.

(4) Whenever possible, the response relating to a request for records that involves a fee of less than $250.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority, the General Counsel or the Panel.

* * * * *

2. By revising § 2411.10 to read as follows:

**§ 2411.10 Fees.**

(a) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures which the Authority, the General Counsel or the Panel actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) The term "review" refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Authority, the General Counsel or the Panel will look first to the use to which a requester will put the document requested. Where the Authority, the General Counsel or the Panel has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Authority, the General Counsel or the Panel may seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education,

an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "freelance" journalists, they may be regarded as working for a news organization if they demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Authority, the General Counsel or the Panel may also look to the past publication record of a requester in making this determination.

(b) *Exceptions to fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the Authority, the General Counsel or the Panel will provide the first 100 pages of duplication and the first two hours of search time without charge. The word "pages" in this paragraph refers to paper copies of standard size, usually 8½ " by 11", or their equivalent in microfiche or computer disks. The term "search time" in this paragraph is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the Authority, the General Counsel or the Panel will begin assessing charges for computer search.

(2) The Authority, the General Counsel, or the Panel will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3) The Authority, the General Counsel or the Panel will provide documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) *Level of fees to be charged.* The level of fees to be charged by the Authority, the General Counsel or the Panel, in accordance with the schedule set forth in paragraph (d) of this section, depends on the category of the requester. The fee levels to be charged are as follows:

(1) A request for documents appearing to be for commercial use will be charged to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(2) A request for documents from an educational or non-commercial scientific institution will be charged for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) The Authority, the General Counsel or the Panel shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(4) The Authority, the General Counsel or the Panel shall charge requesters who do not fit into any of the categories above fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from record subjects for records about themselves filed in Authority, General Counsel, or Panel systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction.

All requesters must reasonably describe the records sought.

(d) The following fees shall be charged in accordance with paragraph (c) of this section:

(1) *Manual searches for records.* The salary rate (i.e., basic pay plus 16 percent) of the employee(s) making the search. Search time under this paragraph and paragraph (d)(2) of this section may be charged for even if the Authority, the General Counsel or the Panel fails to locate records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* $4.15 per quarter hour, which the Authority, the General Counsel and the Panel determined to be the actual direct cost of providing the service, including computer search time directly attributable to searching for records responsive to a FOIA request, runs, and operator salary apportionable to the search.

(3) *Review of records.* The salary rate (i.e., basic pay plus 16 per cent) of the employee(s) conducting the review. This charge applies only to requesters who are seeking documents for commercial use, and only to the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, and not at the administrative appeal level of an exemption already applied.

(4) *Duplication of records.* Twenty-five cents per page for paper copy reproduction of documents, which the Authority, the General Counsel and the Panel determined is the reasonable direct cost of making such copies, taking into account the average salary of the operator and the cost of the reproduction machinery. For copies of records prepared by computer, such as tapes or printouts, the Authority, the General Counsel or the Panel shall charge the actual cost, including operator time, of production of the tape or printout.

(5) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(e) *Aggregating requests.* When the Authority, the General Counsel or the Panel reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Authority, the General Counsel or the Panel will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged those requesters who fail to pay fees charged, beginning on the 30th day

following the billing date. Receipt of a fee by the Authority, the General Counsel or the Panel, whether processed or not, will stay the accrual of interest.

(g) *Advanced payments.* The Authority, the General Counsel or the Panel will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Authority, the General Counsel or the Panel estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then the Authority, the General Counsel or the Panel will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the Authority, the General Counsel or the Panel require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the Authority, the General Counsel or the Panel acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the Authority, the General Counsel or the Panel has received fee payments described above.

(h) Requests for copies of transcripts of hearings should be made to the official hearing reporter. However, a person may request a copy of a transcript of a hearing from the Authority, the Panel or the General Counsel, as appropriate. In such instances, the Authority, the General Counsel or the Panel, as appropriate, may, by agreement with the person making the request, make arrangements with commercial firms for required services to be charged directly to the requester.

(i) Payment of fees shall be made by check or money order payable to the U.S. Treasury.

Jerry L. Calhoun,
*Chairman.*

Henry B. Frazier III,
*Member.*

Jean McKee,
*Member.*

John C. Miller,
*General Counsel.*

Roy M. Brewer,
*Chairman, FSIP.*

[FR Doc. 87-8379 Filed 4-13-87; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 29

[Docket No. 23485; Notice No. 86-13]

### Rotorcraft Structural Fatigue and Damage Tolerance

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** This notice announces that the comment period for Notice of Proposed Rulemaking No. 86-13, Rotorcraft Structural Fatigue and Damage Tolerance (51 FR 33704), is being reopened to allow additional time for comment by the public.

**DATES:** The public comment period which closed on March 27, 1987, is reopened until May 4, 1987.

**ADDRESS:** Comments on the notice may be mailed to: Federal Aviation Administration, Attention: Rules Docket AGC-204, Docket No. 23485, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** R.T. Weaver, Regulations Program Management, ASW-111, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-5122.

**SUPPLEMENTARY INFORMATION:** Notice No. 86-13, Rotorcraft Structural Fatigue and Damage Tolerance, proposes to add damage tolerance requirements to the fatigue evaluation of rotorcraft structure. The original comment period was extended to April 3, 1987 (51 FR 45343). However, at a public meeting in Fort Worth, Texas, on March 5-6, 1987, several industry association groups requested additional time for submitting comments on this notice. The FAA has determined that the comment period should be reopened to provide for full public participation.

Issued in Fort Worth, Texas, on April 7, 1987.

Roger G. Knight,
*Acting Director, Southwest Region.*

[FR Doc. 87-8228 Filed 4-13-87; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 39

[Docket No. 87-NM-14-AD]

### Airworthiness Directives; Fokker B.V. Model F28 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD), applicable to certain Fokker Model F28 airplanes, that would require replacement of the horizontal stabilizer control units. This proposal is prompted by reports of fatigue failure of certain bolts within the horizontal stabilizer control unit. This condition, combined with a dual hydraulic failure, could result in uncontrolled movement of the horizontal stabilizer.

**DATES:** Comments must be received no later than June 6, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-14-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft, 2361 Jefferson Davis Highway, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–14–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**Discussion**

The Netherlands Civil Aviation Authority, Rijksluchtvaartdienst (RLD), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of a fatigue-related problem with the Fokker F28 aircraft horizontal stabilizer control unit bolts. Failure of the bolts, combined with a dual hydraulic failure, can result in an uncommanded movement of the horizontal stabilizer.

Fokker issued Service Bulletin F28/27–168, Revision 1, dated June 10, 1986, which describes replacement of the horizontal stabilizer control unit with a unit in which bolts of higher tensile strength and a higher torque range have been installed. The RLD issued an airworthiness directive, BLA No. 86–08, dated September 3, 1986, which requires compliance with the service bulletin.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the horizontal stabilizer control unit in accordance with Fokker Service Bulletin F28/27–168, Revision 1, dated June 30, 1986.

It is estimated that 35 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per plane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts are estimated to be $2,000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $77,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($2,200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**§ 39.13 [Amended]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F28 airplanes certificated in any category, serial numbers 11003 through 11195, 11991 and 11992. Compliance required as indicated. To prevent uncommanded movement of the horizontal stabilizer as a result of fatigue failure of certain bolts within the horizontal stabilizer control unit, accomplish the following within one year after the effective date of this AD, unless already accomplished:

A. Replace the horizontal stabilizer control unit in accordance with the Accomplishment Instructions in Fokker Service Bulletin No. F28/27–168, Revision 1, dated June 30, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft, 2361 Jefferson Davis Highway, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 7, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87–8226 Filed 4–13–87; 8:45 am]

BILLING CODE 4910–13–M

---

**14 CFR Part 39**

[Docket No. 87–NM–27–AD]

**Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that would require repetitive inspection of the spar webs of the horizontal stabilizer and repair if cracks are found. This proposal is prompted by results of extended fatigue testing by the manufacturer, which revealed cracks in the spar web of the horizontal stabilizers. This condition, if not corrected, could lead to loss of the structural integrity of the horizontal stabilizer.

**DATE:** Comments must be received no later than June 6, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–27–AD, 17900 Pacific Highway South, C–68966, Seattle,

Washington 98168. The applicable service information may be obtained from Short Brothers Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

## Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–27–AD, 17900 Pacific Highway South, C–68968, Seattle, Washington 98168.

## Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Short Brothers Model SD3–60 series airplanes. The manufacturer reported that cracks developed in the webs of the horizontal stabilizer during extended fatigue tests. Short Brothers issued Service Bulletin SD360–55–11, Revision 1, dated May 1986, which describes procedures for inspecting the horizontal stabilizer spar webs for cracks. The CAA has classified this service bulletins as mandatory. Short Brothers issued Service Bulletin SD360–55–12, dated April 1986, which describes procedures for repair and modification of the horizontal stabilizer spar webs.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection for cracks of the horizontal stabilizer spar webs, and modification if cracks are found, in accordance with the referenced service bulletins.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

## List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

## The Proposed Amendment

## PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Short Brothers PLC:** Applies to Model SD3–60 airplanes, serial numbers SH3601 through SD3691 and SH3694, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the structural integrity of the horizontal stabilizer accomplish the following:

A. Within the next 100 landings after the effective date of this AD, or prior to accumulating 8,000 landings, whichever occurs later, visually inspect the forward face of the rear spar web and the aft face of the front spar web for cracks between fuselage attach fitting at 12.5" left and right of the airplane center line, in accordance with Short Brothers Model SD3–60 Service Bulletin SD360–55–11, Revision 1, dated May 1986.

B. If cracks are found, modify prior to further flight by strengthening the horizontal stabilizer in accordance with Short Brothers Model SD3–60 Service Bulletin SD360–55–12, dated April 1986.

C. if cracks are not found, repeat the inspection specified in paragraph A., above, at intervals not to exceed 1,000 landings.

D. The repetitive inspections required by paragraph C., above, may be terminated following completion of the modification described in by Short Brothers Model Sd3–60 Service Bulletin SD360–55–12, dated April 1986.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Short Brothers Aircraft, 2011 Crystal Drive Suite 713, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 7, 1987.

**Wayne J. Barlow,**

*Director, Northwest Mountain Region.*

[FR Doc. 87–8227 Filed 4–13–87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 87-ACE-3]

## Proposed Alteration of Jet Routes; Iowa

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to realign Jet Routes J-10 and J-192 located in the vicinity of Iowa City, IA. These alterations would establish routes in areas where aircraft are normally vectored. This action would improve traffic flow in that area and reduce controller workload.

**DATES:** Comments must be received on or before May 28, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 87-ACE-3, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ACE-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of J-10 and J-192 by extending these routes to Iowa City, IA, VORTAC. These extensions will accommodate a heavy flow of traffic that is now using direct routes. This action would reduce controller workload by establishing routes in areas that aircraft are usually vectored. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

### The Proposed Amendment

## PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

### § 75.100 [Amended]

2. Section 75.100 is amended as follows:

*J-10 [Amended]*

By removing the words "to Des Moines, IA." and by substituting the words "Des Moines, IA; to Iowa City, IA."

*J-192 [Revised]*

From Goodland, KS, Pawnee City, NE; to Iowa City, IA.

Issued in Washington, DC, on March 7, 1987.

**Shelomo Wugalter,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87-8229 Filed 4-13-87; 8:45 am]

BILLING CODE 4910-13-M

---

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 127

## Selection of Warehouses for Storage of Unclaimed and Abandoned Merchandise

**AGENCY:** Customs Service, Treasury.

**ACTION:** Solicitation of Public Comment.

**SUMMARY:** This document solicits public comments concerning the selection of warehouses for the storage of unclaimed and abandoned (general order) merchandise. A study conducted by the Customs Service showed widespread lack of uniformity among Customs ports as to selection of storage locations for

general order merchandise. It is believed that uniform practices and procedures will improve management of the general order program, facilitate competition among general order warehouses, and improve service to the public. Because of the significance of this matter to importers, Customs brokers, carriers, and warehouse proprietors, comments are being invited for consideration before any changes in practices and procedures are made.

**DATE:** Comments must be received on or before June 15, 1987.

**ADDRESS:** Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** John Holl or Bradley Lund, Cargo Enforcement and Facilitation Branch, (202–566–8151).

**SUPPLEMENTARY INFORMATION:**

## Background

As provided in § 127.11, Customs Regulations (19 CFR 127.11), with certain stated exceptions, any entered or unentered merchandise which remains in Customs custody for 1 year from the date or importation without estimated duties and storage or other charges having been paid, shall be considered unclaimed and abandoned. Section 127.13, Customs Regulations (19 CFR 127.13), provides that unclaimed and abandoned merchandise shall be sent to a class 1 warehouse or to a suitable warehouse of class 3, 4, or 5 specially designated for the purpose by the district director. Storage and all other expenses shall be paid by the owner or consignee of the merchandise if it is claimed and entered into the customs territory of the United States. If the merchandise is sold, charges for storage and other expenses shall be paid from the proceeds of the sale to the extent that proceeds are available.

A survey conducted in August 1986 determined that there was a widespread lack of uniformity among Customs ports in the selection of the warehouse locations for general order merchandise. The study found that the number of warehouses selected to receive general order merchandise vary from one such warehouse at some ports to several at other ports. At some ports, no warehouse facilities have been selected to store the merchandise. Instead, Customs facilities or other suitable premises have been used.

The study also revealed that there is a lack of uniformity among the ports in how the warehouse are selected. In a few ports, the importer, customs borker, or carrier selects the warehouse. Customs does the selection at other ports. This often brings complaints from general order warehouse proprietors about perceived inequities in the distribution of shipments to individual warehouses. Further, while some ports have contractual agreements with general order warehouse proprietors, most receive such merchandise without the existence of any contractual agreement.

Customs desires to increase the uniformity of port practices in selecting the warehouse where general order merchandise is to be stored. It is believed that the implementation of uniform practices and procedures will improve management of the general order program, facilitate competition among general order warehouses, and improve service to the public.

To assist Customs in developing uniform practices and procedures, we would like to receive comments on methods of selecting warehouses for the storage of general order merchandise. Specifically, responses should address the following issues:

(1) How many warehouses should be designated at each port to accept general order merchandise? Should it be one, a few, or all public bonded warehouses which indicate a desire to accept such shipments?

(2) Who should designate the warehouse for storage of particular general order merchandise? Should it be Customs or some other party, such as the importer, customs brokers, or carriers?

(3) If Customs designates the warehouse, what method should be used to assure an equitable distribution of shipments among the warehouses?

(4) Should designated warehouses be required to enter into a uniform contractual agreement with Customs?

Any other relevant comments on the matter are also invited.

## Comments

Before taking any final action on developing uniform practices and procedures, consideration will be given to any written comments timely submitted to Customs. Comments and/or data submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

## Drafting Information

The principal author of this document was Bruce J. Friedman, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**William von Raab,**
*Commissioner of Customs.*

Approved: March 19, 1987.

**Francis A. Keating II,**
*Assistant Secretary of the Treasury.*

[FR Doc. 87–8378 Filed 4–13–87; 8:45 am]
BILLING CODE 9103–68–M

---

## DEPARTMENT OF STATE

## 22 CFR Part 41

[Doc. No. SD–205]

## Visas: Nonimmigrant Classes

**AGENCY:** Department of State.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would set forth, with the concurrence of the Immigration and Naturalization Service, the Department's interpretation of the temporary visitor for business nonimmigrant classification regulations adopted by the Service in its final rule of December 9, 1986, 51 FR 44266. The Department interprets the Service's regulations to bar certain nonimmigrant aliens from obtaining a B–1 temporary visitor for business classification under the provisions of section 101(a)(15)(B) of the Immigration and Nationality Act. This proposed rule would amend 22 CFR 41.25(b) in order to make the Department's visa issuing policies consistent with the Service's regulations. The rule would affect a small number of aliens who seek to enter the United States temporarily to perform building and construction work.

**DATES:** Written comments must be submitted in duplicate on or before May 14, 1987.

**ADDRESS:** Chief, Legislation and Regulations Division, Visa Office, Room 1338, Department of State, Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Rudolph Henderson, Legal Adviser's Office, Department of State, Washington, DC 20520, (202) 647–4415.

**SUPPLEMENTARY INFORMATION:** On December 9, 1986, the Immigration and Naturalization Service published a final rule barring classification and admission as temporary visitors for business of aliens seeking to enter the United States

to perform building or construction work. The background of this rule is explained in the Supplementary Information published with the final rule.

The Department has a responsibility to coordinate with the Immigration and Naturalization Service issues involving certain visa-issuance practices. In this instance the Department believes visa issuing procedures under § 41.25(b) require such coordination.

In the course of preparing comparable amendments to the Department's regulations concern was raised as to whether certain language in the preamble of the Service's final rule would suggest an exception of the denial of B–1 nonimmigrant status to building or construction workers entering the United States for the purpose of performing after-sale installation and service, or warranty work after installation, provided the building or construction worker met the conditions set forth in the Service's final rule. The Service, however, has confirmed that the December 9, 1986 amendment to 8 CFR 214.2(b) precludes B–1 nonimmigrant status to any alien seeking to enter the United States to perform building or construction work, whether on-site or in-plant, subject only to an exception for supervision and training as described in its final rule. The Service does not read the December 9 amendment to allow an additional exception for building or construction work incident to after-sale installation and service or other warranty work after installation.

Consular officers abroad are aware of and are prepared to conform with the revised rule. Accordingly, this proposed rule is intended to conform with the Service's revised regulations.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 22 CFR Part 41**

Visas, Temporary visitors, Nonimmigrants.

**PART 41—NONIMMIGRANT CLASSES—TEMPORARY VISITORS**

In view of the foregoing, § 41.25 in Part 41 would be amended as follows:

1. The authority citation for Part 41 continues to read:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847.

2. A new sentence would be inserted following the second sentence in § 41.25(b), as follows:

**§ 41.25 Temporary visitors for business or pleasure.**

* * * * *

(b) * * * For the purposes of this section building or construction work, whether on-site or in-plant, shall be deemed to constitute purely local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work (but not the actual performance of any such building or construction work) shall not be deemed to constitute purely local employment or labor for hire. * * *

* * * * *

Dated: March 24, 1987.

Joan M. Clark,

*Assistant Secretary for Consular Affairs.*

[FR Doc. 87–8246 Filed 4–13–87; 8:45 am]

BILLING CODE 4710–06–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 934

### Public Comment Period and Opportunity for Public Hearing on an Amendment to the North Dakota Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing procedures for a public comment peroid and for a public hearing on the adequacy of an amendment submitted by the State of North Dakota to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of modifications to North Dakota Administrative Code (NDAC) Article 69–05.2 on performance bonds and liability insurance, postmining land use, and signs and markers.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and information pertinent to the public hearing.

**DATES:** Written comments not received on or before 4:00 p.m. on May 14, 1987 will not necessarily be considered. A public hearing on the proposal will be held, if requested, on May 11, 1987, at the address listed below under "**ADDRESSES**". Any person interested in making an oral or written presentation at the hearing should contact Mr. Jerry R. Ennis at the OSMRE Casper Field Office by 4:00 p.m. on April 29, 1987. If no one has contacted Mr. Ennis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ennis, a public meeting, rather than the hearing, may be held and the results of the meeting included in the Administrative Record.

**ADDRESSES:** Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918.

The public hearing, if requested, will be held at the North Dakota Capitol Building, Bismarck, North Dakota 58505.

See "**SUPPLEMENTARY INFORMATION**" for address where copies of the North Dakota program amendment, the North Dakota program, and the administrative record on the North Dakota program are available. Each requester may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Casper Field Office listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

**SUPPLEMENTARY INFORMATION:** Copies of the North Dakota program amendment, the North Dakota program, and the administrative record on the North Dakota program are available for public review and copying at the OSMRE office and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 L Street NW., Room 5124, Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918.

North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, North Dakota 58505.

**Background**

Information concerning the general background on the permanent program, general background on the State program approval process, general

background on the North Dakota program submission, Secretary's findings, disposition of public comments, and Secretary's decision of conditional approval can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 934.11 and 934.15.

**Proposed Amendment**

On February 17, 1987, the State of North Dakota submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consists of revisions to the approved North Dakota regulations. The amended section of the regulations and brief description of the amended subject area is as follows: Section 69–05.2–12—performance bonds—liability insurance; section 69–05.2–13–04—performance standards—general requirements—signs and markers; and section 69–05.2–23—performance standards—postmining land use.

OSMRE is seeking comment on whether North Dakota's proposed revisions to its regulations are in accordance with SMCRA and no less effective than the requirements of the revised Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the proposed program modifications submitted by North Dakota for OSMRE's consideration is available for public review at the addresses listed under "SUPPLEMENTARY INFORMATION".

**Additional Determinations**

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 934**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 3, 1987.

**Raymond L. Lowrie,**

*Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–8237 Filed 4–13–87; 8:45 am]

BILLING CODE 4310-05-M

---

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### 31 CFR Part 1

### Privacy Act; Disclosure of Records

**AGENCY:** Department of the Treasury.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This document revises and updates Part 1—Disclosure of Records. This Part, including its appendices, is being published in its entirety with the exception of § 1.36 which includes only technical amendments such as name changes, omission of obsolete systems of records, editorial changes, and organizational updates. These amendments to § 1.36 are being published in this issue under a notice of final rulemaking.

**DATE:** Submit comments by April 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Phyllis De Piazza, Departmental Disclosure Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, Telephone: (202)566–2789.

**SUPPLEMENTARY INFORMATION:** This part includes provisions for processing FOIA requests involving records of submitters of business information. This is included in § 1.6, Business information. Fees for services, originally in § 1.6, has been renumbered § 1.7 and fee provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) have also been included in this section. Subpart B, previously entitled *Under other Provisions,* has been renamed *Other Disclosure Provisions* and renumbered. Subpart C, previously entitled *Records Pertaining to Individuals,* has been renamed *Privacy Act.* Section 1.23, has been revised to include subsection (d) which spells out the requirement that Treasury components perform periodic reviews of their compliance with the Privacy Act and be prepared to report to the Departmental Disclosure Branch upon request the results of these reviews. These include reviews of routine uses, exempt Privacy Act systems, ongoing matching programs, training practices, and system of records notices, all within the time frames stipulated.

This document includes numerous editorial changes, for example: portions have been rewritten for clarity; organizational updates have been made to include address changes, changes in names of offices, and titles as a result of reorganizations; procedures for processing requests have been more specifically spelled out; and § 1.33 which referenced the Privacy Protection Study Commission has been omitted. The subsequent §§ 1.34, 1.35, and 1.36 have not been renumbered.

The Department of the Treasury has determined that this revision is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 90–354) and does not contain additional reporting or requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

**List of Subjects in 31 CFR Part 1**

Freedom of Information Act, Privacy.

Dated: April 9, 1987.

**John F.W. Rogers,**

*Assistant Secretary of the Treasury (Management).*

Part 1 is amended by revising Subpart A, Subpart B, and §§ 1.20—1.35 and Appendices A—L of Subpart C to read as follows: (Part 1.36 is being amended in a separate document published elsewhere in this issue of the **Federal Register**.)

## PART 1—DISCLOSURE OF RECORDS

### Subpart A—Freedom of Information Act

Sec.

1.1 General.
1.2 Information made available.
1.3 Publication in the **Federal Register**.
1.4 Public inspection and copying.
1.5 Specific requests for other records.
1.6 Business information.
1.7 Fees for services.
Appendix A—Departmental Offices
Appendix B—Internal Revenue Service
Appendix C—United States Customs Service

Sec.
Appendix D—United States Secret Service
Appendix E—Bureau of Alcohol, Tobacco and Firearms
Appendix F—Bureau of Engraving and Printing
Appendix G—Financial Management Service
Appendix H—United States Mint
Appendix I—Bureau of the Public Debt
Appendix J—Office of the Comptroller of the Currency
Appendix K—United States Savings Bonds Division
Appendix L—Federal Law Enforcement Training Center
Appendix M—Office of the Assistant Secretary for Tax Policy

**Support B—Other Disclosure provisions**

1.8 Scope.
1.9 Records not to be otherwise withdrawn or disclosed.
1.10 Oral information.
1.11 Testimony or the production of records in a court or other proceeding.
1.12 Regulations not applicable to official request.

**Subpart C—Privacy Act**

1.20 Purpose and scope of regulations.
1.21 Definitions.
1.22 Requirements relating to systems of records.
1.23 Publication in the Federal Register—Notices of systems of records, general exemptions, specific exemptions, review of all systems.
1.24 Disclosure of records to person other than the individual to whom they pertain.
1.25 Accounting of disclosures.
1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.
1.27 Procedures for amendment of records pertaining to individuals—format, agency review and appeal from initial adverse agency determination.
1.28 Training, rules of conduct, penalties for non-compliance.
1.29 Records transferred to Federal Records Center or National Archives of the United States.
1.30 Application to system of records maintained by Government contractors.
1.31 Sale or rental of mailing lists.
1.32 Use and disclosure of social security numbers.
1.34 Guardianship.
1.35 Information forms.
1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.
Appendix A—Departmental Offices
Appendix B—Internal Revenue Service
Appendix C—United States Customs Service
Appendix D—United States Secret Service
Appendix E—Bureau of Alcohol, Tobacco and Firearms
Appendix F—Bureau of Engraving and Printing
Appendix G—Financial Management Service
Appendix H—United States Mint
Appendix I—Bureau of the Public Debt
Appendix J—Office of the Comptroller of the Currency
Appendix K—United States Savings Bonds Division
Appendix L—Federal Law Enforcement Training Center

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

## Subpart A—Freedom of Information Act

### § 1.1 General.

(a) *General.* This subpart contains the regulations of the Department of the Treasury implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this subpart, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with other subparts of this part. To the extent permitted by other laws, the Department will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosures would be in the public interest.

(b) As used in this subpart, the following terms shall have the following meanings:

(1) "Appeal" means the appeal by a requester of an adverse determination of the request, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(2) "Agency" has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(3) "Component" means each separate bureau or office of the Department of the Treasury.

(4) "Request" means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(5) "Requester" means any person who makes a request to a component.

(6) "Business information" means trade secrets or other commercial or financial information.

(7) "Business submitter" means any commercial entity which provides business information to the Department of the Treasury or its components and which has a proprietary interest in the information.

(c) Components of the Department of the Treasury shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component shall notify a requester whenever the component is unable to respond to or process the request or appeal within the time limits established by the FOIA. Components shall respond to and process requests and appeals in their approximate order of receipt, to the extent consistent with sound administrative practice.

(d) *Purpose and scope of regulations.* These regulations apply to all components of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the components or their officials, employees, or records. In order that interested parties may more readily find them, the components of the Department are hereby authorized to reprint these regulations in their entirety (less any appendices not applicable to the unit in question) in those titles of the Code of Federal Regulations which normally contain regulations applicable to each component. In connection with such republication, components may supplement and implement these regulations with materials applicable only to the component in question, provided such additional material is not inconsistent with this part. In the event of any actual or apparent inconsistency, these Departmental regulations should govern. Persons interested in the records of a particular component should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component. (See Appendices in this subpart for cross references.) The head of each component is hereby also authorized to substitute the officials designated and change the addresses specified in the appendix to this subpart applicable to the component. The components of the Department of the Treasury for the purposes of this part are:

(1) The Departmental Offices, which include the offices of:

(i) The Secretary of the Treasury, including immediate staff;

(ii) The Deputy Secretary of the Treasury, including immediate staff;

(iii) The Under Secretary of the Treasury for Finance, including immediate staff;

(iv) The Fiscal Assistant Secretary, including immediate staff;

(v) The Assistant Secretary of the Treasury for Economic Policy and all other offices reporting to such official, including immediate staff;

(vi) The General Counsel and also the Legal Division, except legal counsel to the components listed in paragraphs (ix) and (2) through (12) of this section;

(vii) The Assistant Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(viii) The Treasurer of the United States, including immediate staff;

(ix) The Assistant Secretary of the Treasury for Tax Policy, including immediate staff and all offices reporting to such official;

(x) The Assistant Secretary of the Treasury for Management, and all offices reporting to such official, including immediate staff;

(xi) The Assistant Secretary of the Treasury for Domestic Finance and all offices reporting to such official, including immediate staff;

(xii) The Assistant Secretary of the Treasury for Legislative Affairs, including immediate staff;

(xiii) The Assistant Secretary of the Treasury for Public Affairs and Public Liaison, including immediate staff;

(xiv) The Assistant Secretary of the Treasury for Enforcement and all offices reporting to such official, including immediate staff;

(xv) The Special Assistant to the Secretary (National Security), including immediate staff;

(xvi) The Inspector General and all offices reporting to such official, including immediate office.

(2) The Bureau of Alcohol, Tobacco and Firearms;

(3) The Office of the Comptroller of the Currency;

(4) The United States Customs Service;

(5) The Bureau of Engraving and Printing;

(6) The Federal Law Enforcement Training Center;

(7) The Financial Management Service;

(8) The Internal Revenue Service;

(9) The United States Mint;

(10) The Bureau of the Public Debt;

(11) The United States Savings Bonds Division;

(12) The United States Secret Service:

For purposes of this subpart, the office of legal counsel for the components listed in paragraphs (d) (2), (3), (4), (5), (7), (8), (9), (10), and (12) of this section are to be considered a part of their respective components. Any office, which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed above, shall be deemed a part of the Departmental Offices for the purpose of making requests for records under these regulations.

**§ 1.2 Information made available.**

(a) *General.* Section 552 of Title 5 of the United States Code provides for access to information and records developed or maintained by Federal agencies. Generally, this section divides agency information into three major categories and provides methods by which each category is to be made available to the public. The three major categories, for which the disclosure requirements of the components of the Department of the Treasury are set forth in this subpart, are as follows:

(1) Information required to be published in the **Federal Register** (see § 1.3 below);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 1.4 below); and

(3) Information required to be made available to any member of the public upon specific request (see § 1.5 below). The provisions of section 552 are intended to assure the right of the public to information.

(b) Subject only to the exemptions set forth in § 1.2(c), the public generally or any member of the public shall be afforded access to information or records in the possession of any component of the Department of the Treasury. Such access shall be governed by the regulations in this subpart A and any regulations of a component implementing or supplementing them.

(c) *Exemptions*—(1) *In general.* Under 5 U.S.C. 552(b), the disclosure requirements of section 552(a) do not apply to certain matters which are:

(i)(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order (See 31 CFR Part 2);

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute (other, than 5 U.S.C. 552(b)): Provided, that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings (see § 1.2(c)(2); (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of any individual.

(viii) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2)(i) Whenever a request is made which involves access to records described in § 1.2(c)(1)(vii)(A),and—

(A) The investigation or proceeding involves a possible violation of criminal law; and

(B) There is a reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(ii) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(iii) whenever a request is made which involves access to records

maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(3) The exemptions set forth in paragraph (c)(1) of this section apply to each of the three categories of information set forth in paragraph (a) of this section.

(4) *Segregable portions of records.* Any reasonable segregable portion of a record shall be provided to any person, after deletion of the portions which are exempt under 5 U.S.C. 552(b) (see paragraph (c)(1) of this section). The term "reasonably segregable portion" as used in this paragraph means any portion of the record which is not exempt from disclosure by 5 U.S.C. 552(b) and which after deletion of the exempt material still conveys meaningful and non-misleading information.

(5) *Application of exemptions.* Even though an exemption described in paragraph (c)(1) of this section may be fully applicable to a matter in a particular case, a component of the Department of the Treasury may, if not precluded by law, elect under the circumstances of that case not to apply the exemption. The fact that the exemption is not applied by a component in that particular case will have no precedential significance in other cases, but is merely an indication that, in the particular case involved, the component finds no compelling necessity for applying the exemption.

### § 1.3 Publication in the Federal Register.

(a) Requirement. Subject to the application of the exemptions described in § 1.2(c) and subject to the limitations provided in paragraph (b) of this section, each component of the Department of the Treasury is required, in conformance with 5 U.S.C. 552(a)(1), to separately state, publish and maintain current in the **Federal Register** for the guidance of the public the following information with respect to that component:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the component; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a) (1) through (4) of this section.

(b) *Limitations*—(1) *Incorporation by reference in the* **Federal Register.** Matter reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the **Federal Register** for purposes of paragraph (a) of this section when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter, the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Department of the Treasury, may not be incorporated in the **Federal Register** by reference. Matter may be incorporated by reference only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20.

(2) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a) of this section which is required to be published in the **Federal Register**, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to paragraph (b)(1) of this section. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.

### § 1.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemptions described in § 1.2(c), each component of the Department of the Treasury is required in conformance with 5 U.S.C. 552(a)(2), to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information with respect to the component:

(1) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the component but are not published in the **Federal Register**; and

(3) Its administrative staff manuals and instructions to staff that affect a member of the public.

(b) *Indexes.* Each component of the Department of the Treasury is hereby also required in conformance with 5 U.S.C. 552(a)(2), to maintain and make available for public inspection and copying current indexes identifying any matter described in paragraphs (a) (1) through (3) of this section which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. In addition, each component shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplement unless the head of each component (or a delegate) determines by order published in the **Federal Register** that the publication would be unnecessary and impractical; in which case the component shall nonetheless provide copies of the index on request at a cost not to exceed the direct cost of duplication.

(c) *Effect of failure to publish or make available.* No matter, described in paragraphs (a) (1) through (3) of this section, which is required by this paragraph to be made available for public inspection or published, may be relied upon, used, or cited as precedent by the component against a party, other than an agency, unless that party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this paragraph. This paragraph may be interpreted to apply only to matters which have precedential significance. It does not apply to matters which have been made available pursuant to § 1.3.

(d) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, a component of the Department of the Treasury may, in accordance with 5 U.S.C. 552(a)(2), delete identifying details contained in any matter described in paragraphs (a) (1) through (3) of this section before making such matter available for inspection or publishing it. However, in every case where identifying details are so deleted, the exemption justifying the deletion will be identified in an

attachment to the document from which the identifying details have been deleted.

(e) *Public reading rooms.* Each component of the Department of the Treasury shall make available for inspection and copying, in a reading room or otherwise, the matters described in paragraphs (a) (1) through (3) of this section which are required by such paragraph (a) to be made available for public inspection or published in the current indexes such matters. Facilities shall be provided whereby a person may inspect the material and obtain copies of that which is shelved. Fees shall not be charged for access to materials, but fees are to be charged in accordance with § 1.7 for copies of material provided to the person. (See the appendices to this subpart for the location of established reading rooms of components of the Department of the Treasury.)

**§ 1.5 Specific requests for other records.**

(a) *In general.* Except for records made available under §§ 1.3 and 1.4, above, but subject to the application of the exemptions described in § 1.2(c) above, each component of the Department of the Treasury shall promptly make the requested records available to any person in conformance with 5 U.S.C. 552(a)(3). The request must be for reasonably described records and conform in every respect with the rules and procedures of this subpart A, particularly this section, § 1.7 and the applicable appendix to this subpart. Any request or any appeal from the initial denial of a request that does not comply with the foregoing requirements and those set forth elsewhere in subpart A will not be considered subject to the time constraints of paragraphs (g), (h), and (i) of this section, unless and until the request is amended to comply. Components shall promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this subpart. When the request conforms with the requirements of this subpart, components shall make every reasonable effort to comply with the request within the time constraints. This subpart applies only to existing records in the possession or control of the component. There is no requirement that records be created or data processed in a format other than required for governmental purposes in order to comply with a request for records.

(b) *Requests for records not in control of component.* (1) When the record requested is in the possession or under the control of a component of the Department other than the office to whom the request is addressed, the request for the record shall immediately be transferred to the appropriate component and the requester notified to that effect. This referral shall not be considered a denial of access within the meaning of these regulations. The component of the Department to whom this referral is made shall treat this request as a new request addressed to it and the time limits for response set forth by paragraph (g)(1) of this section shall begin when the referral is received by the designated office or officer of the component. Where the request is for a record which is not in the possession or control of any component of the Department of the Treasury, the requester shall be so advised and the request shall be returned to the requester.

(2) When an unclassified record created by another agency or another Treasury component is in the possession of a component of the Department of the Treasury, and that record is requested under the FOIA, the responsible Treasury official shall refer the record to the agency or Treasury component originating the record for a direct response to the requester. The requester shall be informed of the referral.

(3) When a classified record originated by another agency or another component of the Department is in the possession of a component of the Department of the Treasury, and a FOIA request for that record is received, the request shall be referred to the originating Department, agency, or component of the Department for a direct response. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(4) When a FOIA request is received for a record created by a component of the Department that includes information originated by another component of the Department or another agency, the record shall be referred to the originating agency or component of the Department for review, coordination, and concurrence. The Department component shall not release or deny such records without prior consultation with the other component or agency.

(5) In certain instances and at the discretion of the Departmental Offices, requests having impact on two or more components of the Department shall be coordinated by the Departmental Offices.

(c) *Form of request.* In order to be subject to the provisions of this section, a request for records shall:

(1) Be made in writing and signed by the person making the request. A request for records shall also identify the category of the requester and state how the documents released will be used (See § 1.7(a)). There are four categories of requesters:

(i) *Commercial use request.* This refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Departmental components must determine the use to which a requester will put the documents requested. Moreover, where a component of the Department has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, components should seek additional clarification before assigning the request to a specific category.

(ii) *Educational institution.* This refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(iii) *Non-commercial scientific institution.* This refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (c)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media.* This refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as

working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but components may also look to the past publication record of a requester in making this determination.

(2) State that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552 or these regulations;

(3) Be addressed to the component that maintains the record. The request should be sent to the component at its proper address. Both the envelope and the request itself should be clearly marked "Freedom of Information Act Request," and addressed to the appropriate component. See the appendices to this subpart for the office or officer to which requests shall be addressed for each component. A requester in need of guidance in defining a request or determining the proper component to which a request should be sent may write to Disclosure Branch, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Requests for certain historical records must be directed to National Archives in accordance with its regulations;

(4) Reasonably describe the records in accordance with paragraph (d) of this section;

(5) Set forth the address where the person making the request wants to be notified about whether or not the request will be granted;

(6) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them; and

(7) State the firm agreement of the requester to pay the fees for duplication, search, and/or review as may ultimately be determined in accordance with § 1.7, or request that such fees be reduced or waived and state the justification for such request (see Sec. 1.7(d)).

The requester shall be promptly advised of the estimate of fees due and asked to agree to pay this amount, when:

(i) The initial request does not state a firm agreement to pay fees, but instead places an upper limit on the amount the requester agrees to pay, and this upper limit exceeds the limitations in § 1.7(a) and is likely to be lower than the fees ultimately estimated to be due; or

(ii) The requester asks for an estimate of the fees to be charged.

Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver in accordance with § 1.7(d) below and notify the requester of this decision. If the decision results in the requester being liable for all or part of the fees normally due, ask the requester to agree to pay the amount so determined. The requirements of this paragraph (c) will not be considered met until the requester has explicitly agreed to pay the fees applicable to the request for records, if any, or has made payment in advance of the fees estimated to be due, see § 1.7(f).

(d) *Reasonable description of records.* (1) The request for records must describe the records in reasonably sufficient detail to enable the Department of the Treasury employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the component. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the record. In addition, if the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. If a component determines that the request does not reasonably describe the records sought, the requester shall be given an opportunity to refine the request. Such opportunity may, where desirable, involve a conference with knowledgeable Department of the Treasury personnel. The reasonable description requirement shall not be used by officers or employees of the Department of the Treasury as a device for improperly withholding records from the public.

(2) The Department of the Treasury will make every reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in § 1.2(c). However, in any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of a component, the person making the request will be asked to be more specific and to narrow the request. In addition, the person making the request will also be asked to agree on an orderly procedure for producing the requested records in order to satisfy the request without adversely affecting agency operations.

(e) *Date of receipt of request.* A request for records shall be considered to have been received for purposes of this subpart on the later of the dates on which:

(1) The requirements of paragraph (c) of this section have been satisfied, and, where applicable,

(2) The requester has agreed in writing, to pay the fees for search and duplication determined due in accordance with § 1.7, or

(3) The fees have been waived in accordance with § 1.7(d), or

(4) Payment in advance has been received from the requester, when required in accordance with § 1.7(f).

Requests for records, including prepayment, shall be promptly stamped with the date of receipt by the office prescribed in the appropriate appendix. A final notification of waiver of fees will be stamped with the date of transmittal by the appropriate office. For purposes of this subpart, the date of receipt of the request is the latest of these stamped dates. As soon as the date of receipt has been established, the requester shall be so informed. At this time the requester will also be advised when to expect a response within the time limits specified in paragraph (g)(1) of this section, unless extended as provided in paragraph (i)(1) of this section.

(f) *Search for record requested.* When a request is received, Department of the Treasury employees will search to identify and locate the requested records. Where a request includes documents stored at the Federal Records Center, the Department will make reasonable efforts to comply with the time constraints of the Act; however, delays in processing these requests are common and will usually require additional time. Searches for records maintained in computerized form include services functionally analogous to searches for records which are maintained in a conventional form. A component of the Department of the Treasury is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record.

(g) *Initial determination*—(1) *In general.* The officers designated in the appendices to this part will make initial determinations either to grant or to deny in whole or in part requests for records. These determinations will be made within 10 days excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (e) of this section, unless the designated officer invokes an extension pursuant to paragraph (i)(1) of this section or the requester otherwise agrees to an extension of the 10-day time limitation. The requester will be notified immediately of this determination.

(2) *Granting of request.* If the request is granted, and if the person making the request wants a copy of the requested records, a copy of these records shall be

mailed to the requester by the component together with a statement of the fees for search and duplication, either at the time of the determination or shortly thereafter. In certain unusual circumstances, the Department may elect to coordinate the request involving two or more components; in such a case only one reply will be prepared. In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees involved in complying with the request. The records shall then promptly be made available for inspection at the time and place stated in a manner that will not interfere with their use by the Department of the Treasury and will not exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The procedure for inspection shall not unreasonably disrupt the operations of the component. The person making the request will not be allowed to remove the records from the room where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished upon payment of the established fees prescribed by § 1.7. Fees shall be charged for all search time and for copies made available for inspection.

(3) *Denial of request.* If it is determined that the request for records should be denied (whether in whole or in part or subject to conditions or exceptions), the person making the request will be so notified by mail. The letter of notification shall specify the city or other location where the requested records are situated (if known), contain a statement of the applicable exemptions relied on in not granting the request, set forth the name and title or position of the responsible official, advise the person making the request of the right to administrative appeal in accordance with paragraph (h) of this section, and specify the official or office to which such appeal shall be submitted. Fees shall be charged for all search time except when waived, even if the time spent searching does not yield any records, or if records are denied.

(4) *Inability to locate records within time limits.* Where the records requested cannot be located and evaluated within the initial 10-day period or any extension of that period as specified in paragraph (i)(1) of this section, the search for the records shall continue. The requester shall be notified of this delay and asked to agree to a voluntary extension of time in which to locate the records. Agreeing to this voluntary extension of time will not be considered a waiver of the requester's right to appeal any denial of access ultimately made or the right to appeal in the event of the Department's failure to comply with the time extension granted. The requester shall be advised that this notification may be considered a denial of access within the meaning of paragraph (g)(3) of this section, and be provided with the address to which an administrative appeal may be addressed.

(h) *Administrative appeal.* (1) When a request for access to records has been denied in whole or in part, the requester may appeal the denial at any time within 35 days of receipt of a notice denying the request or the date of the letter transmitting the last records released, whichever is later. The requester may also appeal when a component fails to respond to a request within the time limits set forth in the FOIA. The administrative appeal may be submitted to the official specified in the appropriate appendix to this subpart whose title and address should also have been included in the initial determination to deny access to the records. An appeal that is improperly addressed will be considered not to have been received by the Department until the office specified in the appropriate appendix receives the appeal. The appeal shall—

(i) Be made in writing and signed by the requester;

(ii) Be addressed to and mailed or hand delivered, within 35 days of the date of the initial determination, to the office or officer specified in the appropriate appendix to this subpart and also in the initial determination. (See the appendices to this subpart for the address to which appeals made by mail should be addressed.);

(iii) Reasonably describe, in accordance with paragraph (d) of this section, the records requested from the denial of access to which an appeal is being taken;

(iv) Set forth the address where the requester desires to be notified of the determination on appeal;

(v) Specify the date of the initial request and date of the letter denying the initial request; and

(vi) Petition such official to grant the request for records and state any supporting arguments.

(2) Appeals shall be promptly stamped with the date of their receipt by the office to which addressed. This stamped date will be considered to be the date of receipt for all purposes of this subpart. The receipt of the appeal shall be acknowledged by the responsible official and the requester advised of the date the appeal was received and the expected date of response. The determination to affirm the initial denial (in whole or in part) or to grant the request for records shall be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to paragraph (i)(1) of this section. If it is determined that the appeal from the initial denial is to be denied (in whole or in part)—

(i) The requester shall be notified in writing of the denial;

(ii) The reasons for the denial, including the FOIA exemptions relied upon;

(iii) The name and title or position of the official responsible for the denial on appeal;

(iv) A statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B).

If the denial of the request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(3) If a determination cannot be made within the 20-day period (or any extension pursuant to paragraph (i)(1) of this section) the requester shall be promptly notified in writing that the determination will be made as soon as practicable but that the requester is nonetheless entitled to commence an action in a district court as provided in paragraph (k) of this section. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of the 20 day appeal period. This voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(i) *Time extensions*—(1) *10-day extension.* In unusual circumstances, the time limitations specified in paragraphs (g) and (h) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for this extension and the date on which the determination is expected to be sent. Any extension or extensions of time shall not cumulatively total more

than 10 additional working days. (For example, if an extension pursuant to this subparagraph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the official who is to make the appellate determination. If no extension is sought for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellate review.) As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request, the following: (i) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the official to whom the request is made is located;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components within the Department of Treasury or within a component (other than the legal staff or the component concerned with public affairs) having substantial subject-matter interest. Consultations with personnel of the Department of Justice concerned with requests for records under 5 U.S.C. 552 do not constitute a basis for an extension under this subdivision.

(2) *Extension by judicial review.* If a component of the Department of the Treasury fails to comply with the time limitations specified in paragraph (g) or (h) of this section and the person making the request initiates a suit in accordance with paragraph (k) of this section, the court in which the suit was initiated may retain jurisdiction and allow the component additional time to review its records, provided that the component demonstrates the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

(j) *Failure to comply.* If a component of the Department of the Treasury fails to comply with the time specified in paragraph (g), (h), or (i) of this section, any person making a request for records shall be considered to have exhausted administrative remedies with respect to the request. Accordingly, the person making the request may initiate suit as set forth in paragraph (k) of this section.

(k) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (h) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (g) and (h) of this section, respectively, together with any extension pursuant to paragraph (i)(1) of this section or by agreement of the requester, the person making the request may commence an action in a United States district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4). Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Delivery of process shall be directed to the official specified in the appropriate appendix to this subpart as the official to receive such process.

(l) *Preservation of Records.* Each component shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(m) *Processing of requests that are not properly addressed.* A request that is not properly addressed as specified in the appropriate appendix to this subpart shall be forwarded to the Departmental Disclosure Office, who will forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be considered not to have been received for purposes of paragraph (e) of this section until the request has been received by the appropriate component. A component receiving an improperly addressed request forwarded by the FOIA/PA Section shall notify the requester of the date on which it received the request.

**§ 1.6 Business information.**

(a) *In general.* Business information provided to the Department of the Treasury by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to business submitters.* A component shall provide a business submitter with prompt written notice of a receipt of a request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) For business information submitted to the Department prior to (insert final rule date), the component shall provide a business submitter with notice of receipt of a request whenever:

(i) The information is less than ten years old;

(ii) The information is subject to prior express commitment of confidentiality given by the component to the business submitter, or

(iii) The component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(2) For business information submitted to the Department on or after (insert date of final rule), the component shall provide a business submitter with notice of receipt of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The component has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(3) Notice of a request for business information falling within paragraph (c)(1) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, a component shall afford a business submitter ten working days within which to provide the component with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the

case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

When notice is given to a submitter under this section, the requester will be advised that such notice has been given to the submitter. The requester will be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the component may review the business submitter's objection to disclosure.

(e) *Notice of intent to disclose.* A component shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a component decides to disclose business information over the objection of a business submitter, the component shall forward to the business submitter a written notice which shall include:

(1) Statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which is ten working days after the notice of the final decision to release the requested information has been mailed to the submitter. A copy of the disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Wherever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the component shall promptly notify the business submitter.

(h) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The component determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public.

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was acquired in the course of a lawful investigation of a possible violation of criminal law.

**§ 1.7 Fees for services.**

(a) *In general.* (1) This fee schedule is applicable uniformly to all components of the Department of the Treasury and supersedes fee schedules published by any component of the Department. Specific levels of fees are prescribed for each of the following categories of requesters. (Requesters are required to identify what category they belong to in their initial request in accordance with § 1.5 (c)).

(i) *Commercial use requesters.* These requesters are assessed charges which recover the full direct costs of searching, reviewing, and duplicating the records sought. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Department is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records. Requesters must reasonably describe the records sought.

(ii) *Educational and non-commercial scientific institution requesters.* Documents shall be provided to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters eligible for free search must reasonably describe the records sought.

(iii) *Requesters who are representatives of the news media.* Documents shall be provided to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. Requesters eligible for free search must reasonably describe the records sought.

(iv) *All other requesters.* Requesters who do not fit any of the categories described in this subsection shall be charged fees that will recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. The Department may recover the cost of searching for records even if there is ultimately no disclosure of records.

(2) *Definition of search, duplication, and review.* The search, duplication, and review services for which fees shall be charged in accordance with the category of requester are defined as follows:

(i) *Search.* The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(ii) *Duplication.* The term "duplication" refers to the process of making a copy of a document in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(iii) *Review.* The term "review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(3) *Aggregating requests.* When the Department or a component of the Department reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency shall aggregate any such requests and charge accordingly.

(4) *Publications available for sale through the Government Printing Office.* While certain publications which are available for sale through the Government Printing Office may be placed on the shelves of the reading rooms and similar public inspection facilities, such publications will not be available for sale there. Persons desiring to purchase such publications should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. However, copies of pages of such publications may be obtained at those facilities in accordance with the schedule of fees set forth in paragraph (g) of this section.

(b) *When fees are charged.* (1) No fee will be charged for monitoring a requester's inspection of records.

(2) Fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(i) Services were performed without charge;

(ii) The cost of collecting a fee would be equal to or greater than the fee itself; or,

(iii) The fees were waived or reduced in accordance with paragraphs (c) or (d) of this section.

(c) *Services performed without charge.* The heads of components or their delegates are authorized to determine, under the rulemaking procedures of 5 U.S.C. 553, which classes of records under their control may be provided to the public without charge, or at a reduced charge.

(d) *Waiver or reduction of fees.* (1) Fees may be waived or reduced on a case by case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) Normally no charge shall be made for providing records to Federal, state or foreign governments, international governmental organizations, or local governmental agencies or offices.

(3) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in paragraph (d)(1) of this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to such official within 35 days of the denial of the initial request for waiver or reduction and shall be decided promptly.

(4) Appeals from an adverse determination of the requester's category as described in § 1.5(c)(1) shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the component's own records. Appeals shall be addressed in writing to such official within 35 days of the component's determination of the requester's category and shall be decided promptly.

(e) *Avoidance of unexpected fees.* In order to protect the requester from unexpected fees, all requests for records shall state the agreement of the requester to pay the fees determined in accordance with paragraph (g) of this section and qualified by the limitations in paragraph (a) of this section or state the amount which the requester has set as an acceptable upper limit he or she is willing to pay to cover the costs of processing the request.

(1) When the fees for processing the request are estimated by the component of the Department of the Treasury to exceed the limit set by the requester, and that amount is less than $250, the requester shall be notified of the estimated costs. In addition, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees and still provide the requester with the documents sought.

(2) When the requester has failed to state a limit and the costs are estimated to exceed $250.00 and the relevant component has not then determined to waive or reduce the fees, a notice shall be sent to the requester. This notice shall:

(i) Inform the requester of the estimated costs;

(ii) Extend an offer to the requester to confer with personnel of the relevant component of the Department of the Treasury in an attempt to reformulate the request in a manner which will reduce the fees and still meet the needs of the requester.

(3) When the Department or a component of the Department acts under paragraphs (e)(1) or (2) of this section, the administrative time limits of 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial plus extensions of these time limits will begin only after fees have been paid or a request reformulated.

(f) *Form of payment.* (1) Payment shall be made by check or money order payable to the order of the Treasury of the United States or that relevant component of the Department of the Treasury.

(2) The Department of the Treasury reserves the right to request prepayment after a request is processed and before documents are released.

(3) When costs are estimated or determined to exceed $250, the Department shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees or require a requester to make an advance payment of the entire fee before continuing to process the request in the case of requesters with no history of payment.

(4) If a requester has previously failed to pay a fee in a timely fashion (*i.e.* within 30 days of the date of the billing), the requester shall be required to pay the full amount owed plus any applicable interest (31 U.S.C. 3717), and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new request or the pending request.

Whenever interest is charged, the Department shall begin assessing interest on the 31st day following the day on which billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717. In addition, the Department will take all steps authorized by the Debt Collection Act of 1982, including administrative offset pursuant to 31 CFR Part 4, disclosure to consumer agencies and use of collection agencies, to encourage repayment.

(g) *Amounts to be charged for specified services.* The fees for services performed by the relevant component of the Department of the Treasury shall be imposed and collected as set forth in this paragraph. Should services other than those described be requested and rendered, appropriate fees shall be established by the head of the relevant component of the Department, or a delegate, and such fees shall be imposed and collected, but subject to the constraints imposed by 5 U.S.C. 552(a)(4)(A).

(1) *Copying records.* All requesters, except commercial requesters, will receive the first 100 pages duplicated without charge. Absent a determination to waive fees, a component shall charge requesters as follows:

(i) $.15 per copy of each page, up to 8½x14", made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of reproduction.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Records may be released to a private contractor for copying and the requester will be charged the actual cost of duplication charged by the private contractor.

(2) *Search services.* Educational and non-commercial scientific requesters and members of the news media shall not be charged for any search time. Other requesters, who are not commercial requesters, shall not be charged for the first two hours of search time. Components shall charge for search services consistent with the following:

(i) *Searches other than for computerized records.* The Department shall charge for records at the salary rate(s) (*i.e.* basic pay plus 16 percent) of the employee(s) making the search. However, where a single class of personnel is used exclusively (*e.g.*, all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. This charge shall include transportation of

personnel and records necessary to the search at actual cost.

(ii) *Searches for computerized records.* Actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer printouts will be actual costs.

(3) *Review of records.* The Department shall charge commercial use requesters for review of records at the initial administrative level at the salary rate(s) (*i.e.* basic pay plus 16 percent) of the employee(s) making the review. However, when a single class of personnel is used exclusively (*e.g.*, all administrative/clerical, or all professional/executive), components may establish an average rate for the range of grades typically involved.

(4) *Inspection of documents.* Fees for all services provided will be charged whenever a component must make copies available to the requester for inspection.

(5) *Other services.* Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the Department. This includes, but is not limited to:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

**Appendix A—Departmental Offices**

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR 1.1(d)(1). It identifies the location of the public reading room at which the following documents are available for public inspection and copying: a description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process.

2. *Public reading room.* The public reading room for the Departmental Offices is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Departmental Offices will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of such official. Requests for records should be addressed to:

Freedom of Information Request, D.O., Chief, Disclosure Branch, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Requests may be delivered in person to the Main Treasury Building, Room 5030, 1500 Pennsylvania Avenue NW., Washington, DC.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Departmental Offices will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records requested, or the delegate of such officer. Appeals made by mail should be addressed to:

Freedom of Information Appeal, D.O., Chief, Disclosure Branch, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Appeals may be delivered personally to the Main Treasury Building, Room 5030, 1500 Pennsylvania Avenue NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such officer and shall be delivered to the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**Appendix B—Internal Revenue Service**

1. *In general.* This appendix applies to the Internal Revenue Service. It identifies the location of the public reading room at which the following documents of the Internal Revenue Service are available for public inspection and copying: a description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process. For additional rules issued with respect to the Internal Revenue Service, see 26 CFR 601.701 and 601.702.

2. *Public reading room.* The public reading room for the Internal Revenue Service is maintained at the following location:

Room 1569, 1111 Constitution Avenue, NW., Washington, DC.

Mailing address: Internal Revenue Service, P.O. Box 338, Ben Franklin Station, Washington, DC 20044.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Internal Revenue Service will be made by those officials specified in 26 CFR 601.702.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or the delegate of such officer. Appeals made by mail should be addressed to:

Freedom of Information Appeal, Commissioner of Internal Revenue Service, c/o Ben Franklin Station, P.O. Box 929, Washington, DC 20044.

Appeals may be delivered personally to the Director of the Disclosure Litigation Division, Office of the Chief Counsel, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Commissioner of Internal Revenue at the following address:

Commissioner, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Attention: CC:A: OS.

**Appendix C—United States Customs Service**

1. *In general.* This appendix applies to the United States Customs Service. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process. For additional rules issued specifically with respect to the United States Customs Service, see 19 CFR Part 103.

2. *Public reading rooms.* Public reading rooms for the United States Customs Service are maintained at the following locations:

*Headquarters*

BEST COPY AVAILABLE

United States Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

*Regions*

Northeast: 100 Summer Street, Boston, MA 02110.
New York: 6 World Trade Center, New York, NY 10048.
Southeast: 99 Southeast 5th Street, Miami, FL 33131.
South Central: 423 Canal Street, New Orleans, LA 70130.
Southwest: 5850 San Felipe Street, Houston, TX 77057.
Pacific: 300 North Los Angeles Street, Los Angeles, CA 90012.
North Central: 55 East Monroe Street, Chicago, IL 60603.

3. *Requests for records.* (a) *Headquarters*—Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records will be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. If the request relates to records maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner or Comptroller having responsibility for that office. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Chief, Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

(b) *Regional offices.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records will be made by the Regional Commissioner of Customs in whose region the records are maintained. Requests may be mailed or delivered personally to the respective Regional Commissioner at the following regional locations:

Northeast: 100 Summer Street, Boston, MA 02110.
New York: 6 World Trade Center, New York, NY 10048.
Southeast: 99 Southeast 5th Street, Miami, FL 33131.
South Central: 423 Canal Street, New Orleans, LA 70130.
Southwest: 5850 San Felipe Street, Houston, TX 77057.
Pacific: 300 North Los Angeles Street, Los Angeles, CA 90012.
North Central: 55 East Monroe Street, Chicago, IL 60603.

Any substantive denial of an initial request for information under 31 CFR 1.5(g) will be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. If the request relates to records maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner or Comptroller having responsibility for that office.

(c) All such requests should be conspicuously labeled on the face of the envelope, "Freedom of Information Act Request" or "FOIA Request".

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) will be made by the Commissioner of Customs, and all such appeals should be mailed or personally delivered to the United States Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

**Appendix D—United States Customs Service**

1. *In general.* This appendix applies to the United States Secret Service. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process. For additional rules issued specifically with respect to the United States Secret Service, see 31 CFR Parts 401 through 408.

2. *Public reading room.* The United States Secret Service will provide a room on an ad hoc basis when necessary. Contact the Disclosure Officer, Room 720, 1800 G Street NW., Washington, DC 20223 to make appointments.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the United States Secret Service will be made by the Freedom of Information and Privacy Acts Officer, United States Secret Service. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, FOI and Privacy Acts Officer, U.S. Secret Service, Room 720, 1800 G Street, NW., Washington, DC 20223.

4. Administrative appeal of initial determinations under 31 CFR 1.5(h) with respect to records of the United States Secret Service will be made by the Deputy Director, United States Secret Service. Appeals should be addressed to:

Freedom of Information Appeal, Deputy Director, United States Secret Service, Room 941, 1800 G Street, NW., Washington, DC 20223.

5. *Delivery of Process.* Service of process will be received by the United States Secret Service Legal Counsel at the following address:

Legal Counsel, United States Secret Service, 1800 G Street NW., Room 842, Washington, DC 20223.

**Appendix E—Bureau of Alcohol, Tobacco, and Firearms**

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco, and Firearms. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process. For additional rules issued specifically with respect to the Bureau of Alcohol, Tobacco, and Firearms, see 27 CFR Part 71.

2. *Public reading room.* No room has been set aside for this purpose. The Bureau of Alcohol, Tobacco and Firearms will make materials available for review on an ad hoc basis when necessary. Contact the Chief, Disclosure Branch, Bureau of Alcohol, Tobacco, and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Bureau of Alcohol, Tobacco, and Firearms will be made by the Chief, Disclosure Branch, Office of Assistant Director (Congressional and Media Affairs) or the delegate of such officer. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Chief, Disclosure Branch, Bureau of Alcohol, Tobacco, and Firearms, 1200 Pennsylvania Avenue, NW., Room 4406, Washington, DC 20226.

4. *Administrative appeal of initial determination to deny records.* Appellate determination under 31 CFR 1.5(h) with respect to records of the Bureau of Alcohol, Tobacco and Firearms will be made by the Director of the Bureau of Alcohol, Tobacco, and Firearms or the delegate of such officer.

Appeals may be mailed or delivered in person to:

Freedom of Information Appeal, Director, Bureau of Alcohol, Tobacco, and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

5. *Delivery of process.* Service of process will be received by the Director of the Bureau of Alcohol, Tobacco, and Firearms at the following location:

Director, Bureau of Alcohol, Tobacco, and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, Attention: Chief Counsel.

**Appendix F—Bureau of Engraving and Printing**

1. *In general.* This appendix applies to the Bureau of Engraving and Printing. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process.

2. *Public reading room.* No room has been set aside for this purpose. The Bureau of Engraving and Printing will make materials available for review on an ad hoc basis when necessary. Contact the Disclosure Officer, 14th and C Street, SW., Washington, DC 20228, to make an appointment.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Bureau of Engraving and Printing will be made by the Executive Assistant to the Director. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Disclosure Officer (Executive Assistant to the Director), Room 104–18M, Bureau of Engraving and Printing, Washington, DC 20228.

4. Administrative appeal of initial determination under 31 CFR 1.5(h) with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau of Engraving and Printing or the delegate of the Director. Appeals may be mailed or delivered in person to:

Freedom of Information Appeal, Director, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 118–M, Washington, DC 20228.

5. *Delivery of process.* Service of process will be received by the Chief Counsel or the delegate of such officer at the following location:

Chief Counsel, Bureau of Engraving and Printing, 14th and C Streets, SW, Room 109–M, Washington, DC 20228.

**Appendix G—Financial Management Service**

1. *In general.* This appendix applies to the Financial Management Service. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process. For additional rules issued specifically with respect to Financial Management Service, see 31 CFR Part 270.

2. *Public reading room.* The public reading room for the Financial Management Service is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) whether to grant requests for records will be made by the Disclosure Officer, Financial Management Service. Requests may be mailed or delivered in person to:

Freedom of Information Request, Disclosure Officer, Financial Management Service, Room 108, Treasury Department, Annex No. 1, Pennsylvania Avenue and Madison Place, NW, Washington, DC 20226.

4. Administrative appeal of initial determination to deny records. Appellate determinations under 31 CFR 1.5(h) will be made by the Commissioner, Financial Management Service. Appeals may be mailed to:

Freedom of Information Appeal (FOIA), Commissioner, Financial Management Service, Department of the Treasury, Annex No. 1, Washington, DC 20226.

Appeals may be delivered personally to the Office of the Commissioner, Financial Management Service, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place, NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Commissioner, Financial Management Service, and shall be delivered to:

Commissioner, Financial Management Service, Department of the Treasury, Room 618, Treasury Annex No.1, Pennsylvania Avenue and Madison Place, NW., Washington, DC 20226.

**Appendix H—United States Mint**

1. *In general.* This appendix applies to the United States Mint. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process. For additional rules issued specifically with respect to the United States Mint, see 31 CFR Part 92.

2. *Public reading room.* No room has been set aside for this purpose. The U.S. Mint will provide a room on an ad hoc basis when necessary. Contact the Disclosure Officer, Judiciary Square Building, 633 3rd Street, NW., Washington, DC 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the United States Mint will be made by the Assistant Director for Marketing, United States Mint. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Chief, Information Systems Division, United States Mint, Department of the Treasury, Judiciary Square Building, 633 3rd Street, NW., Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to:

Freedom of Information Appeal, Director of the Mint, Department of the Treasury, Judiciary Square Building, 633 3rd Street, NW., Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the Director of the Mint and shall be delivered to:

Director of the Mint, Judiciary Square Building, 633 3rd Street, NW., Washington, DC 20220.

**Appendix I—Bureau of the Public Debt**

1. *In general.* This appendix applies to the Bureau of the Public Debt. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and

where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process. For additional rules issued specifically with respect to the Bureau of the Public Debt, see 31 CFR Part 323.

2. *Public reading room.* The public reading room for the Bureau of the Public Debt is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records will be made by the Information Officer of the Bureau of the Public Debt. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Information Officer, Bureau of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 553, Washington, DC 20226.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Bureau of the Public Debt will be made by the Commissioner of the Public Debt. Appeals made by mail should be addressed to:

Freedom of Information Appeal, Commissioner, Bureau of the Public Debt, Department of the Treasury, Washington, DC 20226.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Bureau of the Public Debt, and shall be delivered to the following location:

Chief Counsel, Bureau of the Public Debt, Room 503, 999 E Street, NW., Washington, DC 20226.

**Appendix J—Office of the Comptroller of the Currency**

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process. For additional rules issued specifically with respect to the Office of the Comptroller of the Currency, see 12 CFR Part 4.

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available for review on an ad hoc basis when necessary. Contact the Freedom of Information Officer, Communications Division, Comptroller of the Currency, 3rd Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Freedom of Information Officer or the official so designated. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Freedom of Information Officer, Communications Division, 3rd Floor, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office of the Comptroller of the Currency will be made by the Chief Counsel or delegates of such person. Appeals made by mail should be addressed to:

Communications Division, 3rd Floor, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

Appeals may be delivered personally to the Communications Division, 3rd Floor, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Comptroller of the Currency and shall be delivered to such officer at the following location:

Office of the Chief Counsel, Comptroller of the Currency, 6th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

**Appendix K—United States Savings Bond Division**

1. *In general.* This appendix applies to the United States Savings Bond Division. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process.

2. *Public reading room.* The public reading room for the United States Savings Bond Division is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

3. *Requests for records.* (a) Initial determinations under 31 CFR 1.5(g) whether to grant requests for records relating to the substantive Savings Bond Program, such as records relating to ownership of and transactions in savings bonds, will be made by the Information Officer of the Bureau of Public Debt. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Information Officer, Bureau of the Public Debt, Room 300, Washington Building, 1435 G Street, NW., Washington, DC 20226.

(b) Initial determinations under 31 CFR 1.5(g) whether to grant requests for other records of the United States Savings Bond Division, such as personnel records or records relating to the internal management of the Division, will be made by the Director of Public Affairs, United States Savings Bond Division. Requests made by mail should be addressed to:

Freedom of Information Act Request, Director of Public Affairs, U.S. Savings Bond Division, Department of the Treasury, Washington, DC 20226.

Requests may be delivered in person to the Office of the Director, U.S. Savings Bond Division, Room 257, 1111 20th Street, NW., Washington, DC.

4. *Administrative appeal of determination to deny records.* (a) Appellate determinations under 31 CFR 1.5(h) with respect to records, access to which has been denied by the Information Officer of the Bureau of the Public Debt, will be made by the Commissioner, Bureau of the Public Debt. Appeals made by mail should be addressed to:

Freedom of Information Appeal, Commissioner, Bureau of the Public Debt, Department of the Treasury, Washington, DC 20226.

Appeals may be delivered in person to the Office of the Information Officer, Room 300, Washington Building, 1435 G Street, NW., Washington, DC.

(b) Appellate determinations under 31 CFR 1.5(h) with respect to records, access to which has been denied by the Director of Public Affairs, United States Savings Bond Division, will be made by the National Director, United States Savings Bond Division. Requests made by mail should be addressed to:

Freedom of Information Appeal, National Director, Department of the Treasury, Washington, DC 20226.

Requests may be delivered personally to the office of the Deputy National Director, Room 317, 1111 20th Street, NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Commissioner, Bureau of the Public Debt and shall be delivered to such officer at the following location:

Commissioner, Bureau of the Public Debt, Room 300, Washington Bldg., 1435 G Street, NW., Washington, DC 20226.

**Appendix L—Federal Law Enforcement Training Center**

1. *In general.* This appendix applied to the Federal Law Enforcement Training Center. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process.

2. *Public reading room.* The public reading room for the Federal Law Enforcement Training Center is maintained at the following location:

Library, Building 262, Federal Law Enforcement Training Center, Glynco, GA 31524.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records will be made by the Director, Federal Law Enforcement Training Center. Requests made by mail should be addressed to:

Freedom of Information Act Request, Freedom of Information Act Officer, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

Requests may be delivered personally to the Library, Federal Law Enforcement Training Center, Building 94, Glynco, GA.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the consolidated Federal Law Enforcement Training Center will be made by the Assistant Secretary (Enforcement). Appeals may be mailed or delivered in person to:

Freedom of Information Appeal, Assistant Secretary (Enforcement), Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 4312, Room 3448, Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury, or his delegate, and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Appendix M—Office of the Assistant Secretary for Tax Policy**

1. *In general.* This appendix applies to the Office of the Assistant Secretary for Tax Policy, including the Office of International Tax Counsel, the Office of Tax Analysis, the Office of the Tax Legislative Counsel, and generally the Office of Industrial Economics. It identifies the location of the public reading room at which the following documents are available for public inspection and copying: A description of the central and field offices; the established places where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; rules of procedure, descriptions of forms and where they may be obtained; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; administrative staff manuals and instructions to staff that affect a member of the public. In addition, the appendix identifies the officers designated to make the initial and appellate determinations to FOIA requests, the officers designated to receive service of process, and the addresses for delivery of requests, appeals and service of process.

2. *Public Reading Room.* The public reading room for the Office of the Assistant Secretary for Tax Policy is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office of the Assisant Secretary for Tax Policy will be made by the Freedom of Information Office, Office of Tax Legislative Counsel, or the Deputy Tax Legislative Counsel, Room 3064, Main Treasury Building, Washington, DC 20220.

Requests for records may be mailed or delivered in person to:

Freedom of Information Act Request, Freedom of Information Officer, Office of the Assistant Secretary (Tax Policy), Room 4028, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.* The Assistant Secretary (Tax Policy) will make the determination on appeals. Appeals from initial determinations to deny records may be mailed or delivered in person to:

Assistant Secretary for Tax Policy, Department of the Treasury, Main Treasury Building, Room 3112, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury, or his delegate, and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

## Subpart B—Other Disclosure Provisions

### § 1.8 Scope.

The regulations in this subpart concern access to information and records other than under 5 U.S.C. 552. This subpart is applicable only to the Departmental Offices as defined to § 1.1(a) of this part and the United States Savings Bonds Division and the United States Secret Service.

### § 1.9 Records not to be otherwise withdrawn or disclosed.

Except in accordance with this part, or as otherwise authorized, Treasury Department officers and employees are prohibited from making records or duplicates available to any person, not an officer or employee of the Department, and are prohibited from withdrawing any such records or duplicates from the files, possession or control of the Department.

### § 1.10 Oral information.

(a) Officers and employees of the Department may, in response to requests, provide orally information contained in records of the Department which are determined to be available to the public. If the obtaining of such information requires search of the records, a written request and the payment of the fee for record search set forth in § 1.6 will be required.

(b) Information with respect to activities of the Department not a matter of record shall not be disclosed if the information involves matters exempt from disclosure under 5 U.S.C. 552 or the regulations in this part, or if the disclosure of such information would give the person requesting the information advantages not accorded to other citizens;

### § 1.11 Testimony or the Production of records in a court or other proceeding.

(a) Treasury Department officers and employees are prohibited from testifying or otherwise furnishing information obtained as a result of their official capacities or in connection with the transaction of public business, in

compliance with a subpoena or other order or demand of any court or other authority without the prior approval of an officer authorized to determine the availability of records under these regulations.

(b) Treasury Department officers and employees are prohibited from furnishing any record in compliance with subpoenas duces tecum or other order or demand of any court or other authority, without the prior approval of an officer authorized to determine the availability of records under the regulations in this part.

(c) In court cases in which the United States or the Treasury Department is not a party, where the giving of testimony is desired, an affidavit by the litigant or the litigant's attorney, setting forth the information with respect to which the testimony of such officer or employee is desired, must be submitted before permission to testify will be granted. Permission to testify will, in all cases, be limited to the information set forth in the affidavit or to such portions thereof as may be deemed proper.

(d) Where approval to testify or to furnish records in compliance with a subpoena, order or demand is not given the person to whom it is directed shall, if possible, appear in court or before the other authority and respectfully state his inability to comply in full with the subpoena, order or demand, relying for his action upon this section.

**§ 1.12 Regulations not applicable to official request.**

The regulations in this part shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that granting a particular request would be in violation of law or inimical to the public interest. Cases of doubt should be referred for decision to the supervisory official designated in § 1.8.

## Subpart C—Privacy Act

**§ 1.20 Purpose and scope of regulations.**

The regulations in this subpart are issued to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). The regulations apply to all records which are contained in systems of records maintained by the Department of the Treasury and which are retrieved by an individual's name or personal identifier. They do not relate to those personnel records of Government employees, which are under the jurisdiction of the Office of Personnel Management to the extent such records are subject to regulations issued by such OPM. The regulations apply to all components of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the components or their officials, employees, or records. The regulations set forth the requirements applicable to Department of the Treasury employees maintaining, collecting, using or disseminating records pertaining to individuals. They also set forth the procedures by which individuals may request notification of whether the Department of the Treasury maintains or has disclosed a record pertaining to them or may seek access to such records maintained in any nonexempt system of records, request correction of such records, appeal any initial adverse determination of any request for amendment, or may seek an accounting of disclosures of such records. For the convenience of interested persons, the components of the Department of the Treasury may reprint these regulations in their entirety (less any appendices not applicable to the component in question) in those titles of the Code of Federal Regulations which normally contain regulations applicable to such components. In connection with such republication, and at other appropriate times, components may issue supplementary regulations applicable only to the component in question, which are consistent with these regulations. In the event of any actual or apparent inconsistency, these Departmental regulations shall govern. Persons interested in the records of a particular component should therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component (see Appendices to this subpart for cross references). The head of each component is hereby also authorized to substitute other appropriate officials for those designated and correct addresses specified in the appendix to this subpart applicable to the component. The components of the Department of the Treasury for the purposes of this subpart are:

(a) The Departmental Offices, which includes the offices of:

(1) The Secretary of the Treasury, including immediate staff;

(2) The Deputy Secretary of the Treasury, including immediate staff;

(3) The Under Secretary of the Treasury for Finance, including immediate staff;

(4) The Fiscal Assistant Secretary, including immediate staff;

(5) The Assistant Secretary of the Treasury for Economic Policy and all other offices reporting to such official, including immediate staff;

(6) The General Counsel and also the Legal Division, except legal counsel to the components listed in paragraphs (a)(9) and (b) through (l) of this section;

(7) The Assistant Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(8) The Treasurer of the United States, including immediate staff;

(9) The Assistant Secretary of the Treasury for Tax Policy, including immediate staff and all offices reporting to such official;

(10) The Assistant Secretary of the Treasury for Management, and all offices reporting to such official, including immediate staff;

(11) The Assistant Secretary of the Treasury for Domestic Finance and all offices reporting to such official, including immediate staff;

(12) The Assistant Secretary of the Treasury for Legislative Affairs, including immediate staff;

(13) The Assistant Secretary of the Treasury for Public Affairs and Public Liaison, including immediate staff;

(14) The Assistant Secretary of the Treasury for Enforcement and all offices reporting to such official, including immediate staff;

(15) The Special Assistant to the Secretary (National Security), including immediate staff;

(16) The Inspector General and all offices reporting to such official, including immediate office.

(b) The Bureau of Alcohol, Tobacco and Firearms;

(c) The Office of the Comptroller of the Currency;

(d) The United States Customs Service;

(e) The Bureau of Engraving and Printing;

(f) The Federal Law Enforcement Training Center;

(g) The Financial Management Service;

(h) The Internal Revenue Service;

(i) The United States Mint;

(j) The Bureau of the Public Debt;

(k) The United States Savings Bond Division;

(l) The United States Secret Service;

For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section are to be considered a part of such component. Any office, which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed above, shall be deemed a part of the

Departmental Offices for the purpose of these regulations.

**§ 1.21 Definitions.**

(a) The term "agency" means agency as defined in 5 U.S.C. 552(e);

(b) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) The term "maintain" includes maintain, collect, use, or disseminate;

(d) The term "record" means any item, collection, or grouping of information about an individual that is maintained by the Department of the Treasury or component of the Department. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(e) The term "system of records" means a group of any records under the control of the Department of the Treasury or any component from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(f) The term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) The term "routine use" means the disclosure of a record that is compatible with the purpose for which the record was collected;

(h) The term "component" means a bureau or office of the Department of the Treasury as set forth in § 1.20 and in the appendices to these regulations. (See 5 U.S.C. 552a(a).)

(i) The term "request for access" means a request made pursuant to 5 U.S.C. 552a(d)(1).

(j) The term "request for amendment" means a request made pursuant to 5 U.S.C. 552a(d)(2).

(k) The term "request for accounting" means a request made pursuant to 5 U.S.C. 552a(c)(3).

**§ 1.22 Requirements relating to systems of records.**

(a) *In general.* Subject to 5 U.S.C. 552a (j) and (k) and § 1.23(c), each component shall, in conformance with 5 U.S.C. 552a:

(1) Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by the statute or by Executive Order of the President (See 5 U.S.C. 552a(e)(1)).

(2) Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. (See 5 U.S.C. 552a(e)(2).)

(b) *Requests for information from individuals.* Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), each component of the Treasury shall inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual:

(1) The authority (whether granted by statute, or by Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a(e)(4)(D); and

(4) The effects on such individual, if any, of not providing all or any part of the requested information. (See 5 U.S.C. 552a(e)(3).)

(c) *Report on new systems.* Each component of the Treasury shall provide adequate advance notice to Congress and the Office of Management and Budget through the Disclosure Branch and Administration Section of the Office of the General Counsel of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers. (See 5 U.S.C. 552a(o).)

(d) *Accurate and secure maintenance of records.* Each component shall:

(1) Subject to 5 U.S.C. 552a(j) and § 1.23(c)(l), maintain all records which are used in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination (see 5 U.S.C. 552a(e)(5));

(2) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552 (see 31 CFR Part 1, Subpart A), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Department of the Treasury purposes (see 5 U.S.C. 552a(e)(6)) and

(3) Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. (See 5 U.S.C. 552a(e)(10)).

(i) System managers, with the approval of the head of their offices within a component, shall establish administrative and physical controls, consistent with Department regulations, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must insure that records other than those available to the general public under the Freedom of Information Act (5 U.S.C. 552), are protected from public view, that the area in which the records are stored is supervised during all business hours and physically secure during nonbusiness hours to prevent unauthorized personnel from obtaining access to the records. Automated systems shall comply with the security standards promulgated by the National Bureau of Standards.

(ii) System managers, with the approval of the head of their offices within a component, shall adopt access restrictions to insure that only those individuals within the agency who have a need to have access to the records for the performance of their duties have access to them. Procedures shall also be adopted to prevent accidental access to, or dissemination of, records.

(e) *Prohibition against maintenance of records concerning First Amendment rights.* No component shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment (e.g. speech), unless the maintenance of such record is:

(1) Expressly authorized by statute, or

(2) Expressly authorized by the individual about whom the record is maintained, or

(3) Pertinent to and within the scope of an authorized law enforcement activity. (See 5 U.S.C. 552a(e)(7).)

(f) *Notification of disclosure under compulsory legal process.* Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), when records concerning an individual are

subpoenaed by a Grand Jury, Court, or quasi-judicial agency, or disclosed in accordance with an ex parte court order pursuant to 26 U.S.C. 6103(i), the official served with the subpoena or court order shall make reasonable efforts to assure that notice of any disclosure is provided to the individual. Notice shall be provided within five working days of making the records available under compulsory legal process or, in the case of a Grand Jury subpoena or an ex parte order, within five days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: the date and authority to which the subpoena is, or was returnable, or the date of and court issuing the ex parte order, the name and number of the case or proceeding, and the nature of the information sought and provided. Notice of the issuance of a subpoena or an ex parte order is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) and this section, pursuant to 5 U.S.C. 552a(j) and § 1.23(c)(1), by a Notice of Exemption published in the **Federal Register**. (See 5 U.S.C. 552a(e)(8)).

(g) *Emergency Disclosure.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at the last known address within 5 days of the disclosure (excluding Saturdays, Sundays, and legal public holidays). Notification shall include the following information: the nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure. (See 5 U.S.C. 552a(b)(8)).

**§ 1.23 Publication in the Federal Register—Notices of systems of records, general exemptions, specific exemptions, review of all systems.**

(a) Notices of systems of records to be published in the **Federal Register.**

(1) The Department shall publish a notice of the existence and character of all systems of records every 3 years in the **Federal Register.** An annual notice of systems of records is required to be published by the Office of the Federal Register in the publication entitled "Privacy Act Issuances", as specified in 5 U.S.C.552a(f).

(2) Minor changes to systems of records shall be published annually. (See paragraph (d)(8) of this section)

(3) In addition, the Department shall publish in the **Federal Register** upon establishment or revision a notice of the existence and character of any new or revised systems of records. Unless otherwise instructed, each notice shall include:

(i) The name and location of the system;

(ii) The categories of individuals on whom records are maintained in the system;

(iii) The categories of records maintained in the system;

(iv) Each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(v) The policies and practices of the component regarding storage, retrievability, access controls, retention, and disposal of the records;

(vi) The title and business address of the Treasury official who is responsible for the system of records;

(vii) The procedures of the component whereby an individual can be notified if the system of records contain a record pertaining to the individual, including reasonable times, places, and identification requirements.

(viii) The procedures of the component whereby an individual can be notified on how to gain access to any record pertaining to such individual that may be contained in the system of records, and how to contest its content; and

(ix) The categories of sources of records in the system. (See 5 U.S.C. 552a(e)(4)).

(b) Notice of new or modified routine uses to be published in the **Federal Register.** At least 30 days prior to a new use or modification of a routine use, as published under paragraph (a)(3)(iv) of this section, each component shall publish in the **Federal Register** notice of such new or modified use of the information in the system and provide an opportunity for interested persons to submit written data, views, or arguments to the components. (See 5 U.S.C. 552a(e)(11).)

(c) Promulgation of rules exempting systems from certain requirements—(1) General exemptions. In accordance with existing procedures applicable to a Treasury component's issuance of regulations, the head of each such component may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e), to exempt any system of records within the component from any part of 5 U.S.C. 552a and these regulations except subsections (b) (§ 1.24, conditions of disclosure), (c)(1) (§ 1.25, keep accurate accounting of disclosures), (c)(2) (§ 1.25, retain accounting for five years or life of record), (e)(4) (A) through (F) (paragraph (a) of this section, publication of annual notice of systems of records), (e)(6) (§ 1.22(d), accuracy of records prior to dissemination), (e)(7) (§ 1.22(e), maintenance of records on First Amendment rights), (e)(9) (§ 1.28, establish rules of conduct), (e)(10) (§ 1.22(d)(3), establish safeguards for records), (e)(11) (paragraph (c) of this section, publish new intended use), and (i) (§ 1.28(c), criminal penalties) if the systems of records maintained by the component which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (i) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole, and probation status; (ii) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (iii) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. (See 5 U.S.C. 552a(j).).

(2) Specific exemptions. In accordance with existing procedures applicable to a Treasury component's issuance of regulations, the head of each such component may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b) (1), (2), and (3), (c), and (e), to exempt any system of records within the component from 5 U.S.C. 552a(c)(3) (§ 1.25(c)(2), accounting of certain disclosures available to the individual), (d) (§ 1.26(a), access to records), (e)(1) (§ 1.22(a)(1), maintenance of information to accomplish purposes authorized by statute or executive order only), (e)(4)(G) ((a)(7) of this section, publication of procedures for notification), (e)(4)(H) ((a)(8) of this section, publication of procedures for access and contest), (e)(4)(I) ((a)(9) of this section, publication of sources of records), and (f) (§ 1.26, promulgate rules for notification, access and contest), if the system of records is:

(i) Subject to the provisions of 5 U.S.C. 552(b)(1);

(ii) Investigatory material compiled for law enforcement purposes, other

than material within the scope of subsection (j)(2) of 5 U.S.C. 552a and paragraph (a)(1) of this section. If any individual is denied any right, privilege, or benefit that such individual would otherwise be entitled to by Federal law, or for which such individual would otherwise be eligible, as a result of the maintenance of this material, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(iii) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(iv) Required by statute to be maintained and used solely as statistical records;

(v) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(vi) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(vii) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(3) At the time that rules under this subsection are adopted, the head of the component shall include in the statement required under 5 U.S.C. 553(c) the reasons why the system of records is to be exempted from a provision of 5 U.S.C. 552a and this part. (See 5 U.S.C. 552a (j) and (k)).

(d) Review and Report to OMB. The Department shall ensure that the following reviews are conducted as often as specified below by each of the components who shall be prepared to report tc the Departmental Disclosure Branch upon request the results of such reviews and any corrective action taken to resolve problems uncovered. Each component shall:

(1) Review every two years a random sample of the component's contracts that provide for the maintenance of a system of records on behalf of the component to accomplish a function of the component, in order to ensure that the working of each contract makes the provisions of the Act apply. (5 U.S.C. 552a (m)(1))

(2) Review annually component's recordkeeping and disposal policies and practices in order to assure compliance with the Act.

(3) Review routine use disclosures every 3 years,that are associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency originally collected the information.

(4) Review every three years each system of records for which the component has issued exemption rules pursuant to Section (j) or (k) of the Privacy Art in order to determine whether the exemption is needed.

(5) Review annually each ongoing matching program in which the component has participated during the year, either as a source or as a matching agency in order to assure that the requirements of the Act, the OMB Matching Guidelines, and the OMB Model Control System and checklist have been met.

(6) Review component's training practices annually to ensure that all component personnel are familiar with the requirements of the Act, these regulations and Departmental directives.

(7) Review annually the actions of component personnel that have resulted either in the agency being found civilly liable under Section (g) of the Act, or an employee being found criminally liable under the provisions of Section (i) of the Act, in order to determine the extent of the problem and to prevent future recurrences.

(8) Review annually each system of records notice to ensure that it accurately describes the system. Where minor changes are needed, publish an amended notice in the **Federal Register**. Minor changes shall be consolidated in cne annual comprehensive publication. The term "minor change to a system of records" means a change that does not significantly change the system. More specifically, a minor change does not affect the character or purpose of the system and does not affect the ability of an individual to gain access to a record about the individual or to any information pertaining to such individual which is contained in the system; for example, changing the title of the system manager or the location of the system.

### § 1.24 Disclosure of records to person other than the individual to whom they pertain.

(a) Conditions of disclosure. No component of Treasury shall disclose any record which is contained in a system of records maintained by it by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, or the parent, if a minor, or legal guardian, if incompetent, of such individual, unless disclosure of the record would be:

(1) To those offices and employees of the Department of the Treasury who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552 (Subpart A of this part);

(3) For a routine use as defined in 5 U.S.C. 552a(a)(7) and § 1.21 (g) and as described under 5 U.S.C. 552a (e)(4)(D) and § 1.23(a)(4);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the U.S. Code;

(5) To a recipient who has provided the component with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or the designee of such official to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity.

(i) If the activity is authorized by law; and

(ii) If the head of the agency or instrumentality has made a written

request to the Department of the Treasury specifying the particular portion desired and the law enforcement activities for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.

(10) To the Comptroller General, or the authorized representatives of such official, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction. (See 5 U.S.C. 552a(b)).

**§ 1.25 Accounting of disclosures.**

(a) *Accounting of certain disclosures.* Each component, with respect to each system of records under its control, shall:

(1) Keep an accurate accounting of: (i) The date, nature, and purpose of each disclosure of a record to any person or to an agency made under 5 U.S.C. 552a(b) and § 1.24; and (ii) the name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (a)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made; and

(3) Inform any person or other agency about any correction or notation of dispute made by the constituent unit in accordance with 5 U.S.C. 552a(d) and § 1.28 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. (See 5 U.S.C. 552 (c).)

(b) *Accounting systems.* To permit the accounting required by paragraph (a) of this section, system managers, with the approval of the head of their offices within a component, shall establish or implement, a system of accounting for all disclosures of records, either orally or in writing, made outside the Department of the Treasury. Accounting records shall:

(1) Be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, what records concerning them have been disclosed and to whom:

(2) Provide, as a minimum, the identification of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature and purpose of the disclosure; and

(3) Be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Records Service for storage in records centers, in which event, the accounting pertaining to those records, unless maintained separately, shall be transferred with the records themselves.

(c) *Exemptions from accounting requirements.* No accounting is required for disclosure of records:

(1) To those officers and employees of the Department of the Treasury who have a need for the record in the performance of their duties; or

(2) If disclosure would be required under 5 U.S.C. 552 and Subpart A of this part.

(d) *Access to accounting by individual.* (1) Subject to paragraphs (c) and (d)(2) of this section, each component shall establish and set forth in the appendix to this subpart applicable to the component, procedures for making the accounting required under paragraph (a) of this section available to the individual to whom the record pertains and shall thereafter make such accounting available in accordance therewith at the request of the individual. The procedures may require the requester to provide reasonable identification.

(2) Access accountings of disclosure may be withheld from the individual named in the record only if the disclosures were (i) made under 5 U.S.C. 552a(b)(7) and § 1.24(a)(7), or (ii) under a system of records exempted from the requirements of 5 U.S.C. 552a(c)(3) in accordance with 5 U.S.C. 552a (j) or (k) and § 1.23(c). (See 5 U.S.C. 552a(c)).

**§ 1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.**

(a) *Procedures for notification and access.* Each component shall establish, in accordance with the requirements of 5 U.S.C. 553, and set forth in the appendix to this subpart applicable to such component procedures whereby an individual can be notified, in response to a request, if any system of records named by the individual contains a record pertaining to that individual. In addition, such procedures shall set forth the requirements for access to such records. As a minimum such procedures shall specify the times during, and the places at which access will be accorded, together with such identification as may be required of the individual before access. (See 5 U.S.C. 552a(f) (1), (2) and (3))

(b) *Access.* Each component in accordance with the procedures prescribed under paragraph (a) of this section, shall allow an individual to gain access to records or to any information pertaining to such individual which is contained in the system of records upon request. The individual shall be permitted to review the record and have a copy made of all or any portion of the record in a form that is comprehensible. The individual will also be permitted to be accompanied by any person of the individual's choosing to review the record, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence. (See 5 U.S.C. 552a(d)(1)).

(c) *Exceptions.* Neither the procedures prescribed under paragraph (a) of this section nor the requirements for access under paragraph (b) of this section shall be applicable to: (1) Systems of records exempted pursuant to 5 U.S.C. 552a (j) and (k) and § 1.23(c); (2) information compiled in reasonable anticipation of a civil action or proceeding (See 5 U.S.C. 552a(d)(5)); or (3) information pertaining to an individual which is contained in, and inseparable from, another individual's record.

(d) *Format of request.* (1) A record for notification of whether a record exists shall:

(i) Be made in writing and signed by the person making the request, who must be the individual about whom the record is maintained, or such individual's duly authorized representative (See § 1.34);

(ii) State that it is made pursuant to the Privacy Act, 5 U.S.C. 552a or these regulations, have marked "Privacy Act Request" on the request and on the envelope;

(iii) Give the name of the system or subsystem or caterogies of records to which access is sought, as specified in "Privacy Act Issuances" published by the Office of the Federal Register and referenced in the appendices to this subpart;

(iv) Describe the nature of the record(s) sought in sufficient detail to enable Department personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, the date of the record or the period in which the record was compiled.

(v) Provide such identification of the requester as may be specified in the

appropriate appendix to this subpart; and

(vi) Be addressed or delivered in person to the office or officer of the component indicated for the particular system or subsystem or categories of records the individual wishes access to, as specified in "Privacy Act Issuances" published by the Office of the Federal Register and referenced in the appendices to this subpart. Assistance in ascertaining the appropriate component or in preparing a request for notification may be obtained by a written request to this effect addressed as specified in Appendix A of this part, as the address for the Departmental Offices for "Request for notification and access to records and accountings of disclosures".

(2) A request for access to records shall, in addition to complying with paragraph (a)(1) (i) through (vi) of this section:

(i) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them;

(ii) If the requester desires to have a copy made, state the firm agreement of the requester to pay the fees for duplication ultimately determined in accordance with (31 CFR 1.6) Subpart A of this title, unless such fees are waived pursuant to that section by the system manager or other appropriate official as indicated in the appropriate appendix to these regulations; and

(iii) Comply with any other requirement set forth in the applicable appendix to this subpart or the "Notice of Records Systems" applicable to the system in question. Requesters are hereby advised that any request for access which does not comply with the foregoing requirements and those set forth elsewhere in this Subpart C, will not be deemed subject to the time constraints of this section, unless and until amended so as to comply. However, components shall advise the requester in what respect the request is deficient so that it may be processed. This section applies only to records which are contained in a system of records and which are in the possession or control of the component. (See 5 U.S.C. 552a (d) and (f)).

(e) *Requests for records not in control of component.* (1) Treasury employees shall make reasonable efforts to assist an oral requester to ascertain to which office or officer a written request should be sent. When the request is for a record which is not in the possession or control of any component of the Department of the Treasury, the requester shall be so advised.

(2) Where the record requested was created by a Department or agency other than the Department of the Treasury or a component of the Department and has been classified (e.g. National Defense or Intelligence Information) or otherwise restrictively endorsed (e.g. Office of Personnel Management records or FBI reports) by such other Department or agency, and a copy is in the possession of a component of the Department of the Treasury, that portion of the request shall be referred to the originating agency for determination as to all issues in accordance with the Privacy Act. In the case of a referral to another agency under this paragraph, the requester shall be notified that such portion of the request has been so referred and that the requester may expect to hear from that agency.

(3) When information sought from a system manager or other appropriate official in the Department of the Treasury includes information furnished by other federal agencies not classified or otherwise restrictively endorsed, the system manager or other appropriate official receiving the request shall consult with the appropriate agency prior to making a decision to disclose or not to disclose the record. The decision as to whether the record shall be disclosed shall be made, in the first instance by the system manager or other appropriate official maintaining the record. (See 5 U.S.C. 552a (d) and (f)).

(f) *Date of receipt of request.* A request for notification or access to records shall be considered to have been received for purposes of this subpart on the date on which the requirements of paragraph (d) of this section have been satisfied. Requests for notification or access to records and any separate agreement to pay shall be stamped or endorsed with the date of receipt by the receiving office. The latest of such stamped dates will be deemed to be the date of receipt of the request for the purposes of this subpart. (See 5 U.S.C. 552a (d) and (f)).

(g) *Notification of determination*—(1) *In general.* Notification of determinations as to notification of whether a record exists or as to whether to grant access to records requested will be made by the officers designated in the appendices to this subpart. The notification of the determination shall be mailed within 30 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section. If it is not possible to respond within 30 days, the designated officer shall inform the requester, stating the reason for the delay (e.g. volume of records requested, scattered location of the records, need to consult other agencies, or the difficulty of the legal issues involved) and when a response will be dispatched. (See 5 U.S.C. 552a (d) and (f)).

(2) *Granting of access.* When it has been determined that the request for access will be granted—(i) and a copy requested; such copy in a form comprehensible to the requester shall be furnished promptly, together with a statement of the applicable fees for duplication; and (ii) and the right to inspect has been requested, the requester shall be promptly notified in writing of the determination, and when and where the requested records may be inspected. An individual seeking to inspect such records may be accompanied by another person of such individual's choosing. The individual seeking access shall be required to sign the required form indicating that the Department of the Treasury is authorized to discuss the contents of the subject record in the accompanying person's presence. If, after making the inspection, the individual making the request desires a copy of all or a portion of the requested records, such copy in a form comprehensible to the individual shall be furnished upon payment of the applicable fees for duplication. Fees to be charged are as prescribed by 31 CFR Part 1, Subpart A, § 1.6. Fees shall not be charged where they would amount, in the aggregate, to less than $3.00. (See 5 U.S.C. 552a (d) and (f)).

(3) *Requirements for access to medical records.* When access is requested to medical records, including psychological records, the responsible official may determine that such release could have an adverse effect on the individual and that release will be made only to a physician authorized in writing to have access to such records by the individual making the request. Upon receipt of the authorization the physician will be permitted to review the records or to receive copies of the records by mail, upon proper verification of identity. (See 5 U.S.C. 552a (f)(3)).

(4) *Denial of request.* When it is determined that the request for notification of whether a record exists or access to records will be denied (whether in whole or part or subject to conditions or exceptions), the person making the request shall be so notified by mail in accordance with paragraph (g)(1) of this section. The letter of notification shall specify the city or other location where the requested records are situated (if known), contain a statement of the reasons for not

granting the request as made, set forth the name and title or position of the responsible official and advise the individual making the request of the right to file suit in accordance with 5 U.S.C. 552a(g)(1)(B).

(5) *Prohibition against the use of 5 U.S.C. 552(b) exemptions.* Exemptions from disclosure under 5 U.S.C. 552(b) (31 CFR Part 1, Subpart A, § 1.2(c)), may not be invoked for the purpose of withholding from an individual any record which is otherwise accessible to such individual under the Privacy Act, 5 U.S.C. 552a and this subpart. (See 5 U.S.C. 552a(q)).

(6) *Records exempt in whole or in part.* (i) When an individual requests notification as to whether a record exists or access to records concerning the individual which have been exempted from individual access pursuant to 5 U.S.C. 552a(j) or which have been compiled in reasonable anticipation of a civil action or proceeding in either a court or before an administrative tribunal and the assertion of the exemption is deemed necessary, the Department of the Treasury will neither confirm nor deny the existence of the record but shall advise the individual only that no record available to the individual pursuant to the Privacy Act of 1974 has been identified.

(ii) Requests from individuals for access to records which have been exempted from access pursuant to 5 U.S.C. 552a(k) shall be processed as follows:

(A) Requests for information classified pursuant to Executive Order 11652 require the responsible component of the Department to review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5 (B), (C), (D) and (E) of the Executive Order. Information which no longer warrants classification under these criteria shall be declassified and made available to the individual. If the information continues to warrant classification, the individual shall be advised that the information sought is classified, that it has been reviewed and continues to warrant classification, and that it has been exempted from access pursuant to 5 U.S.C. 552(b) (1) and 5 U.S.C. 552a(k)(1). Information which has been exempted pursuant to 5 U.S.C. 552a(j) and which is also classified shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (g)(6)(i) of this section.

(B) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (g)(6)(i) of this section unless the requester shows that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under federal law. In that event, the individual shall be advised of the existence of the information but such information as would identify a confidential source shall be extracted or summarized in a manner which protects the source to the maximum degree possible and the summary extract shall be provided to the requesting individual.

(C) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that it identifies the confidential source. Material identifying the confidential sources shall be extracted or summarized in a manner which protects the source to the maximum degree possible and the summary or extract shall be provided to the requesting individual.

(D) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process; but may be made available if no such compromise possibility exists. (See 5 U.S.C. 552a (d)(5), (j) and (k)).

**§ 1.27 Procedures for amendment of records pertaining to individuals—format, agency review and appeal from initial adverse agency determination.**

(a) *In general.* Subject to the application of exemptions promulgated by the head of each component, in accordance with § 1.23(c), and subject to § 1.27(f), each component of the Department of the Treasury, shall in conformance with 5 U.S.C. 552a(d)(2), permit an individual to request amendment of a record pertaining to such individual. Any request for amendment of records or any appeal that does not fully comply with the requirements of this section and any additional specific requirements imposed by the component in the applicable appendix to this subpart will not be deemed subject to the time constraints of paragraph (e) of this section, unless and until amended so as to comply. However, components shall advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended. (See 5 U.S.C. 552a (d) and (f)).

(b) *Form of request to amend records.* In order to be subject to the provisions of this section, a request to amend records shall:

(1) Be made in writing and signed by the person making the request, who must be the individual about whom the record is maintained, or the duly authorized representative of such individual;

(2) State that it is made pursuant to the Privacy Act, 5 U.S.C. 552a or these regulations, have marked "Privacy Act Amendment Request" on the request and on the envelope;

(3) Be addressed to the office or officer of the component specified for such purposes in "Privacy Act Issuances" published by the Office of the Federal Register and referenced in the appendices to this subpart for that purpose; and

(4) Reasonably describe the records which the individual desires to have amended, including, to the best of the requester's knowledge, dates of letters requesting access to such records previously and dates of letters in which notification concerning access was made, if any, and the individual's documentation justifying the correction. (See U.S.C. 552a (d) and (f))

(c) *Date of receipt of request.* A request for amendment of records pertaining to an individual shall be deemed to have been received for purposes of this subpart when the requirements of paragraph (b) of this section have been satisfied. The receiving office or officer shall stamp or otherwise endorse the date of receipt of the request. (See 5 U.S.C. 552a (d) and (f)).

(d) *Review of requests to amend records.* Officials responsible for review of requests to amend records pertaining to an individual, as specified in the appropriate appendix to this subpart, shall:

(1) Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(2) Promptly, either—(i) Make any correction of any portion which the individual believes and the official agrees is not accurate, relevant, timely, or complete; or

(ii) Inform the individual of the refusal to amend the record in accordance with the individual's request, the reason for the refusal, and the name and business address of the officer designated in the applicable appendix to this subpart, as the person who is to review such refusal. (See 5 U.S.C. 552a (d) and (f))

(e) *Administrative appeal*—(1) *In general.* Each component shall permit individuals to request a review of initial

decisions made under paragraph (d) of this section, when an individual disagrees with a refusal to amend this record. (See 5 U.S.C. 552a (d), (f), and (g)(1)).

(2) Form of request for administrative review of refusal to amend record. At any time within 35 days after the date of the notification of the initial decision described in paragraph (d)(2)(ii) of this section, the requester may submit an administrative appeal from such refusal to the official specified in the notification of the initial decision and the appropriate appendix to this subpart. The appeal shall:

(i) Be made in writing stating any arguments in support thereof and be signed by the person to whom the record pertains, or the duly authorized representative of such official;

(ii) Be addressed to and mailed or hand delivered within 35 days of the date of the initial decision, to the office or officer specified in the appropriate appendix to this subpart and in the notification. (See the appendices to this subpart for the address to which appeals made by mail should be addressed);

(iii) Have clearly marked on the appeal and on the envelope, "Privacy Act Amendment Appeal";

(iv) Reasonably describe the records requested to be amended; and

(v) Specify the date of the initial request, to amend records, and the date of the letter giving notification that the request was denied. (See 5 U.S.C. 552a (d) and (f)).

(3) *Date of receipt.* Appeals shall be promptly stamped with the date of their receipt by the office to which addressed and such stamped date will be deemed to be the date of receipt for all purposes of this subpart. The receipt of the appeal shall be acknowledged within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of the receipt (unless the determination on appeal is dispatched in 10 days, in which case, no acknowledgement is required) by the responsible official and the requester advised of the date of receipt established by the foregoing and when a response is due in accordance with this paragraph. (See 5 U.S.C. 552a (d) and (f)).

(4) *Review of administrative appeals from denial of requests to amend records.* Officials responsible for deciding administrative appeals from denials of requests to amend records pertaining to an individual, as specified in the appendices to this subpart shall: complete the review, and notify the requester of the final agency decision within 30 days (exclusive of Saturdays, Sundays and legal public holidays) after the date of receipt of such appeal, unless the time is extended by the head of the agency or the delegate of such official, for good cause shown. If such final agency decision is to refuse to amend the record, in whole or in part, the requester shall also be advised of the right—(i) to file a concise "Statement of Disagreement" setting forth the reasons for his disagreement with the decision which shall be filed within 35 days of the date of the notification of the final agency decision and (ii) to judicial review of the final agency decision under 5 U.S.C. 552a(g)(1)(A). (See 5 U.S.C. 552a (d), (f) and (g)(1)).

(5) *Notation on record and distribution of statements of disagreement.* The system manager is responsible, in any disclosure containing information about which an individual has filed a "Statement of Disagreement", occurring after the filing of the statement under paragraph (e)(4) of this section, for clearly noting any portion of the record which is disputed and providing copies of the statement and, if deemed appropriate, a concise statement of the component's reasons for not making the amendments requested to persons or other agencies to whom the disputed record has been disclosed. (See 5 U.S.C. 552a (d)(4)).

(f) *Records not subject to correction under the Privacy Act.* The following records are not subject to correction or amendment by individuals:

(1) Transcripts or written statements made under oath; and

(2) Transcripts of Grand Jury proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings; and

(3) Pre-sentence reports comprising the property of the courts but maintained in agency files; and

(4) Records pertaining to the determination, the collection and the payment of the federal taxes; and

(5) Records duly exempted from correction by notice published in the **Federal Register**; and

(6) Records compiled in reasonable anticipation of a civil action or proceeding.

**§ 1.28 Training, rules of conduct, penalties for non-compliance.**

(a) *Training.* Subject to policy guidance and regulations issued by the Deputy Secretary, who has Departmentwide responsibility therefor, each component shall institute a training program to instruct employees and employees of Government contractors covered by 5 U.S.C. 552a(m), who are involved in the design, development, operation or maintenance of any system of records, on a continuing basis with respect to the duties and responsibilities imposed on them and the rights conferred on individuals by the Privacy Act, the regulations in this subpart, including the appendices thereto, and any other related regulations. Such training shall provide suitable emphasis on the civil and criminal penalties imposed on the Department and the individual employees by the Privacy Act for non-compliance with specified requirements of the Act as implemented by the regulations in this subpart. (See 5 U.S.C. 552a(e)(9).)

(b) *Rules of conduct.* In addition, to the Standards of Conduct published in Part 0 of this title, particularly 31 CFR 0.735–44, the following are applicable to employees of the Department of the Treasury (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors), who are involved in the design, development, operation or maintenance of any system of records, or in maintaining any records, for or on behalf of the Department, including any component thereof.

(1) The head of each office of a component of the Department shall be responsible for assuring that employees subject to such official's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and the regulations in this subpart, and that such employees are made aware of their individual and collective responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unathorized disclosure either orally or in writing, and to insure that no information system concerning individuals, no matter how small or specialized is maintained without public notice.

(2) Employees of the Department of the Treasury involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record shall:

(i) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the Department;

(ii) Collect from individuals only that information which is necessary to Department functions or responsibilities, unless related to a system exempted under 5 U.S.C. 552a (j) or (k);

(iii) Collect information, wherever possible, directly from the individual to whom it relates, unless related to a system exempted under 5 U.S.C. 552a(j);

(iv) Inform individuals from whom information is collected about

themselves of the authority for collection, the purposes thereof, the use that will be made of the information, and the effects, both legal and practical, of not furnishing the information. (While this provision does not explicitly require it, where feasible, third party sources should be informed of the purposes for which information they are asked to provide will be used);

(v) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or membership in associations or organizations, unless (A) the individual has volunteered such information for the individual's own benefits; (B) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (C) the activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(vi) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(vii) Disseminate no information concerning individuals outside the Department except when authorized by 5 U.S.C. 552a or pursuant to a routine use published in the **Federal Register**;

(viii) Assure that an accounting is kept in the prescribed form, of all dissemination of personal information outside the Department, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 and Subpart A of this part;

(ix) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the Department; and

(x) Assure that the proper Department authorities are aware of any information in a system maintained by the Department which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(3) Heads of components within the Department or their delegates shall, at least annually, review the record systems subject to their supervision to insure compliance with the provisions of the Privacy Act of 1974 and the regulations in this subpart. (See 5 U.S.C. 552a (e)(9), (i) and (m).)

(c) *Criminal penalties.* (1) The Privacy Act imposes criminal penalties on the conduct of Government officers or employees as follows:

Any officer or employee of an agency (which term includes the Department of the Treasury):

(i) Who by virtue of the official's employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section (5 U.S.C. 552a) or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or

(ii) Who willfully maintains a system of records without meeting the notice requirements of paragraph (e)(4) of this section (5 U.S.C. 552a)—shall be guilty of a misdemeanor and fined not more than $5,000.

(2) The Act also imposes a collateral criminal penalty on the conduct of any person as follows:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(3) For the purposes of 5 U.S.C. 552a(i), the provisions of paragraph (c)(1) of this section are applicable to Government contractors and employees of such contractors who by contract operate by or on behalf of the Department of the Treasury a system of records to accomplish a Departmental function. Such contractor and employees are considered employees of the Department of the Treasury for the purposes of 5 U.S.C. 552a(i). (See 5 U.S.C. 552a (i) and (m).)

### § 1.29 Records transferred to Federal Records Center or National Archives of the United States

(a) *Records transferred to the Administrator of General Services for storage in the Federal Records Center.* Records pertaining to an identifiable individual which are transferred to the Federal Records Center in accordance with 44 U.S.C. 3103 shall, for the purposes of the Privacy Act, 5 U.S.C. 552a, be considered to be maintained by the component which deposited the record and shall be subject to the provisions of the Privacy Act and this subpart. The Administrator of General Services shall not disclose such records except to the Department of the Treasury or to others under rules consistent with the Privacy Act which may be established by the Department of the Treasury or a component. If such records are retrieved for the purpose of making a determination about an individual, they must be reviewed for accuracy, relevance, timeliness, and completeness.

(b) *Records transferred to the National Archives of the United States.* (1) Records transferred to National Archives prior to September 27, 1975. Records pertaining to an identifiable individual transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government shall be considered to be maintained by the National Archives, and

(i) Shall not be subject to 5 U.S.C. 552a,

(ii) Except, that a statement describing such records [modeled after 5 U.S.C. 552a(e)(4) (A) through (G)] shall be published in the **Federal Register**.

(2) *Records transferred to National Archives on or after September 27, 1975.* Records pertaining to an identifiable individual transferred to the National Archives as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after September 27, 1975, shall be considered to be maintained by the National Archives, and

(i) Shall not be subject to 5 U.S.C. 552a,

(ii) Except, that a statement describing such records in accordance with 5 U.S.C. 552a(e)(4) (A) through (G) shall be published in the **Federal Register** and rules of conduct and training in accordance with 5 U.S.C. 552(e)(9) are to established by the National Archives. (See 5 U.S.C. 552a(e)).

### § 1.30 Application to system of records maintained by Government contractors.

When a component contracts for the operation of a system of records, to accomplish a Departmental function, the provisions of the Privacy Act, 5 U.S.C. 552a, and this subpart shall be applicable to such system. The component shall have responsibility for insuring that the contractor complies with the contract requirements relating to privacy.

### § 1.31 Sale or rental of mailing list.

(a) *In general.* An individual's name and address shall not be sold or rented by a component unless such action is specifically authorized by law.

(b) Withholding of names and addresses. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public. (See 5 U.S.C. 552a(n)).

**§ 1.32 Use and disclosure of social security numbers.**

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law by a component because of such individual's refusal to disclose his social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section shall not apply with respect to:

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* Any component which requests an individual to disclose his or her social security account number shall inform that individual whether:

(1) Disclosure is mandatory or voluntary.

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it. (See section 7 of the Privacy Act of 1974 set forth at 5 U.S.C. 552a, note.)

**§ 1.34 Guardianship.**

The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing the identity of the minor or other person represented, establish parentage or guardianship by furnishing a copy of a birth certificate showing parentage or a court order establishing the guardianship and may thereafter, act on behalf of such individual. (See 5 U.S.C. 552a(h))

**§ 1.35 Information forms.**

(a) *Review of forms.* Except for forms developed and used by constituent units, the Deputy Assistant Secretary for Administration shall be responsible for reviewing all forms developed and used by the Department of the Treasury to collect information from and about individuals. The heads of components shall each be responsible for the review of forms used by such component to collect information from and about individuals.

(b) *Scope of review.* The responsible officers shall review each form for the purpose of eliminating any requirement for information that is not relevant and necessary to carry out an agency function and to accomplish the following objectives;

(1) To insure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to, and within the scope of, any authorized law enforcement activity;

(2) To insure that the form or a separate form that can be retained by the individual makes clear to the individual which information he is required by law to disclose and the authority for that requirement and which information is voluntary;

(3) To insure that the form or a separate form that can be retained by the individual states clearly the principal purpose or purposes for which the information is being collected, and summarizes concisely the routine uses that will be made of the information;

(4) To insure that the form or a separate form that can be retained by the individual clearly indicates to the individual the effect in terms of rights, benefits or privileges of not providing all or part of the requested information; and

(5) To insure that any form requesting disclosure of a Social Security Number, or a separate form that can be retained by the individual, clearly advises the individual of the statute or regulation requiring disclosure of the number or clearly advises the individual that disclosure is voluntary and that no consequence will follow from the refusal to disclose it, and the uses that will be made of the number whether disclosed mandatorily and voluntarily.

(c) *Revision of Forms.* Any form which does not meet the objectives specified in the Privacy Act and in this section, shall be revised to conform thereto. A separate statement may be used in instances when a form does not conform. This statement will accompany a form and shall include all the information necessary to accomplish the objectives specified in the Privacy Act and this section.

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.**

* * * * *

**Appendix A—Departmental Offices**

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR Part 1, Subpart C, § 1.20. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with whom "Statement of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Departmental Offices, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. This information is contained in the appropriate system notice in the "Privacy Act Issuances", published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records should be addressed to:

Privacy Act Request, DO, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Requests may be delivered personally to the Main Treasury Building, Room 5030, 1500 Pennsylvania Avenue NW., Washington, DC.

3. *Requests for amendments of records.* Initial determinations under 31 CFR 1.27 (a) through (d) with respect to requests to amend records for records maintained by the Departmental Offices will be made by the head of the organization or unit having immediate custody of the records or the delegate of such official. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Privacy Act Issuances" published by the Office of the Federal Register. Requests for information and specific guidance on where to send these requests should be addressed to:

Privacy Act Amendment Request, DO, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Departmental Offices, including extensions of time on appeal, will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records, or the delegate of such offical, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made by mail should be addressed as indicated in the letter of initial decision or to:

Privacy Act Amendment Request, DO Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Appeals may be delivered personally to the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC.

5. *Statements of Disagreement.* "Statements of Disagreement" as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such official and shall be delivered to the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required to be published by the Office of the Federal Register in the publication entitled "Privacy Act Issuances", as specified in 5 U.S.C. 552a(f). Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 and (8) below, and locations for access are indicated in the notice for the pertinent system.

8. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Departmental Offices on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single official document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

**Appendix B—Internal Revenue Service**

1. *Purpose.* The purpose of this section is to set forth the procedures that have been established by the Internal Revenue Service for individuals to exercise their rights under the Privacy Act of 1974 (88 Stat. 1896) with respect to systems of records maintained by the Internal Revenue Service, including the Office of the Chief Counsel. The procedures contained in this section are to be promulgated under the authority of 5 U.S.C. 552a(f). The procedures contained in this section relate to the following:

(a) The procedures whereby an individual can be notified in response to a request if a system of records named by the individual contains a record pertaining to such individual (5 U.S.C. 552a(f)(1)).

(b) The procedures governing reasonable times, places, and requirements for identifying an individual who requests a record of information pertaining to such individual before the Internal Revenue Service will make the record or information available to the individual (5 U.S.C. 552a(f)(2)).

(c) The procedures for the disclosure to an individual upon a request of a record of information pertaining to such individual, including special procedures for the disclosure to an individual of medical records, including psychological records. (5 U.S.C. 552a(f)(3)).

(d) The procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Internal Revenue Service of an initial adverse agency determination, and for whatever additional means may be necessary for individuals to be able to exercise fully their right under 5 U.S.C. 552a (5 U.S.C. 552a(f)(4)).

Any individual seeking to determine whether a system of records maintained by any office of the Internal Revenue Service contains a record or information pertaining to such individual, or seeking access to, or amendment of, such a record, must comply fully with the applicable procedure contained in paragraph (3) or (4) of this section before the Internal Revenue Service will act on the request. Neither the notification and access (or accounting of disclosures) procedures under paragraph (3) of this section nor the amendment procedures under paragraph (4) of this section are applicable to (i) systems of records exempted pursuant to 5 U.S.C. 552a (j) and (k), (ii) information compiled in reasonable anticipation of a civil action or proceeding (see 5 U.S.C. 552a(d)(5)), or (iii) information pertaining to an individual which is contained in, and inseparable from, another individual's record.

2. *Access to and amendment of tax records.* The provisions of the Privacy Act of 1974 may not be used by an individual to amend or correct any tax record. The determination of liability for taxes imposed by the Internal Revenue Service Code, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes are governed by the provisions of the Internal Revenue Service Code and by the procedural rules of the Internal Revenue Service. These provisions set forth the established procedures governing the determination of liability for tax, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes. In addition, these provisions set forth the procedures (including procedures for judicial review) for resolving disputes between taxpayers and the Internal Revenue Service involving the amount of tax owed, or the payment or collection of such tax. These procedures are the exclusive means available to an individual to contest the amount of any liability for tax or the payment or collection thereof. See, for example, 26 CFR 601.103 for summary of general tax procedures. Individuals are advised that Internal Revenue Service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act. Where, on the other hand, an individual desires information or records not in connection with an investigation, audit, or collection activity, the individual may follow these procedures.

3. *Procedures for access to records*—(a) *In general.* This paragraph sets forth the procedure whereby an individual can be notified in response to a request if a system of records named by the individual which is maintained by the Internal Revenue Service contains a record pertaining to such individual. In addition, this paragraph sets forth the procedure for the disclosure to an individual upon a request of a record or information pertaining to such individual, including the procedures for verifying the identity of the individual before the Internal Revenue Service will make a record available, and the procedure for requesting an accounting of disclosures of such records. An individual seeking to determine whether a particular system of records contains a record or records pertaining to such individual and seeking access to such records (or seeking an accounting of disclosures of such records) shall make a request for notification and access (or a request for an accounting of disclosures) in accordance with the rules provided in paragraph 3(b) of this section.

(b) *Form of request for notification and access or request for an accounting of disclosures.* (i) A request for notification and access (or request for an accounting of disclosures) shall be made in writing and shall be signed by the person making the request.

(ii) Such request shall be clearly marked, "Request for notification and access", or "Request for accounting of disclosures".

(iii) Such a request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the

individual's social security number. In the case of a record maintained in the name of two or more individuals (e.g., husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the particular system of records (as set forth in the Notice of Systems) for which the individual is seeking notification and access (or an accounting of disclosures), and the title and business address of the official designated in the access section for the particular system (as set forth in the Notice of Systems). In the case of two or more systems of records which are under the control of the same designated official at the same systems location, a single request may be made for such systems. In the case of two or more systems of records which are not in the control of the same designated official at the same systems location, a separate request must be made for each such system.

(vi) If an individual wishes to limit a request for notification and access to a particular record or records, the request should identify the particular record. In the absence of a statement to the contrary, a request for notification and access for a particular system of records shall be considered to be limited to records which are currently maintained by the designated official at the systems location specified in the request.

(vii) If such request is seeking notification and access to material maintained in a system of records which is exempt from disclosure and access under 5 U.S.C. 552a (k)(2), the individual making the request must establish that such individual has been denied a right, privilege, or benefit that such individual would otherwise be entitled to under Federal law as a result of the maintenance of such material.

(viii) Such request shall state whether the individual wishes to inspect the record in person, or desires to have a copy made and furnished without first inspecting it. If the individual desires to have a copy made, the request must include an agreement to pay the fee for duplication ultimately determined to be due. If the individual does not wish to inspect a record, but merely wishes to be notified whether a particular system of records contains a record pertaining to such individual, the request should so state.

(c) *Time and place for making a request.* A request for notification and access to records under the Privacy Act (or a request for accounting of disclosures) shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records for which the individual is seeking notification and access (or an accounting of disclosures). The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(d) *Sample request for notification and access to records.* The following are sample requests for notification and access to records which will satisfy the requirements of this paragraph:

Request for Notification and Access to Records by Mail

I, John Doe, of 100 Main Street, Boston, MA 02108 (soc. sec. num. 000–00–0000) request under the Privacy Act of 1974 that the following system of records be examined and that I be furnished with a copy of any record (or a specified record) contained therein pertaining to me. I agree that I will pay the fees ultimately determined to be due for duplication of such record. I have enclosed the necessary information.

System Name:

System Location:

Designated Official:

---

John Doe

Request for Notification and Access to Records in Person

I, John Doe, of 100 Main Street, Boston, MA 02108 (soc. sec. num. 000–00–0000) request under the provisions of the Privacy Act of 1974, that the following system of records be examined and that I be granted access in person to inspect any record (or a specified record) contained therein pertaining to me. I have enclosed the necessary identification.

System Name:

System Location:

Designated Official:

---

John Doe

(e) *Processing a request for notification and access to records or a request for an accounting of disclosures.* (i) If a request for notification and access (or request for an accounting of disclosures) omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised of the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for notification and access (or a request for an accounting of disclosures), to a particular system of records by the designated official for such system, a determination will be made as to whether the particular system of records is exempt from the notification and access provisions of the Privacy Act, and if such system is not exempt, whether it does or does not contain a record pertaining to the individual making the request. If a determination cannot be made within 30 days, the individual will be notified of the delay, the reasons therefor, and the approximate time required to make a determination. If it is determined by the designated official that the particular system of records is exempt from the notification and access provisions of the Privacy Act, the individual making the request will be notified of the provision of the Privacy Act under which the exemption is claimed. On the other hand, if it is determined by the designated official that the particular system of records is not exempt from the notification and access provisions of the Privacy Act and that such system contains a record pertaining to the individual making the request, the individual will be notified of the time and place where inspection may be made. If an individual has not requested that access be granted to inspect the record in person, but merely requests that a copy of the record be furnished, or if it is determined by the designated official that the granting of access to inspect a record in person is not feasible in a particular case, then the designated official will furnish a copy of the record with the notification, or if a copy cannot be furnished at such time, a statement indicating the approximate time such copy will be furnished. If the request is for an accounting of disclosures from a system of records which is not exempt from the accounting of disclosure provisions of the Privacy Act, the individual will be furnished with an accounting of such disclosures.

(f) *Granting of access.* Normally, an individual will be granted access to inspect a record in person within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of a request for notification and access by the designated official. If access cannot be granted within 30 days, the notification will state the reasons for the delay and the approximate time such access will be granted. An individual wishing to inspect a record may be accompanied by another person of his choosing. Both the individual seeking access and the individual accompanying him may be required to sign a form supplied by the IRS indicating that the Service is authorized to disclose or discuss the contents of the record in the presence of both individuals. See CFR 601.502 for requirements to be met by taxpayer's representatives in order to discuss the contents of any tax records.

(g) *Medical records.* When access is requested to medical records (including psychological records), the designated official may determine that release of such records will be made only to a physician designated by the individual to have access to such records.

(h) *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the IRS on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires,

may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

(i) *Fees.* The fee for costs required of the IRS in copying records pursuant to this paragraph is $0.15 per page. However, no fee will be charged if the aggregate costs required of the IRS in copying records is less than $3.00. If an individual who has requested access to inspect a record in person is denied such access by the designated official because it would not be feasible in a particular case, copies of such record will be furnished to the individual without payment of the fees otherwise required under this subparagraph. If the IRS estimates that the total fees for costs incurred in complying with a request for copies of records will amount to $50 or more, the individual making the request may be required to enter into a contract for the payment of the actual fees with respect to the request before the Service will furnish the copies requested. Payment of fees for copies of records should be made by check or money order payable to the Internal Revenue Service.

4. *Procedures for amendment of records*—(a) *In general.* This paragraph sets forth the procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to such individual, for making a determination on the request, for making an appeal within the IRS of an initial adverse determination, and for judicial review of a final determination.

(b) *Amendment of record.* Under 5 U.S.C. 552a(d)(2), an individual who has been granted access to a record pertaining to such individual may, after inspecting the record, request that the record be amended to make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete. An individual may seek to amend a record in accordance with the rules provided in paragraph (d)(3) of this section. See paragraph (b) of this section for prohibition against amendment of tax records.

(c) *Form of request for amendment of record.* (i) A request for amendment of a record shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked "Request for amendment of record."

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's social security number. In the case of a record maintained in the name of two or more individuals (e.g., husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the official designated in the access section for such system (as set forth in the Notice of Systems).

(vi) Such request shall specify the particular record in the system which the individual is seeking to amend.

(vii) Such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(d) *Time and place for making request.* A request to amend a record under the Privacy Act shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records. The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(e) *Processing a request for amendment of a record.* (i) Within 10 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, the individual will be sent a written acknowledgement that will state that the request has been received, that action is being taken taken thereon, and that the individual will be notified within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the requested amendments will or will not be made. If a request for amendment of a record omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised of the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, a determination will be made as to whether to grant the request in whole or part. The individual will then be notified in writing of the determination. If a determination cannot be made within 30 days, the individual will be notified in writing within such time of the reasons for the delay and the approximate time required to make a determination. If it is determined by the designated official that the request will be granted, the requested changes will be made in the record and the individual will be notified of the changes. In addition, to the extent an accounting was maintained, all prior recipients of such record will be notified of the changes. Upon request, an individual will be furnished with a copy of the record, as amended, subject to the payment of the appropriate fees. On the other hand, if it is determined by the designated official that the request, or any portion thereof, will not be granted, the individual will be notified in writing of the adverse determination. The notification of an adverse determination will set forth the reasons for refusal to amend the record. In addition, the notification will contain a statement informing the individual of such individual's right to request an independent review of the adverse determination by a reviewing officer in the national office of the IRS and the procedures for requesting such a review.

(f) *Administrative review of adverse determination.* Under 5 U.S.C. 552a(d)(3), an individual who disagrees with the refusal of the agency to amend a record may, within 35 days of being notified of the adverse determination, request an independent review of such refusal by a reviewing officer in the national office of the IRS. The reviewing officer for the IRS is the Commissioner of Internal Revenue, the Deputy Commissioner, or an Assistant Commissioner. In the case of an adverse determination relating to a system of records maintained by the Office of General Counsel for the IRS, the reviewing officer is the Chief Counsel or his delegate. An individual seeking a review of an adverse determination shall make a request for review in accordance with the rules provided in paragraph (d)(7) of this section.

(g) *Form of request for review.* (i) A request for review of an adverse determination shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked "Request for review of adverse determination".

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's social security number. In the case of a record maintained in the name of two or more individuals (e.g. husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the particular record which the individual is seeking to amend, the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the designated official for such system (as set forth in the Notice of Systems).

(vi) Such request shall include the date of the initial request for amendment of the record, and the date of the letter notifying the individual of the initial adverse determination with respect to such request.

(vii) such request shall clearly state the specific changes which the individual wishes

to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(h) *Time and place for making the request.* A request for review of an adverse determination under the Privacy Act shall be addressed to or delivered in person to the Director, Office of Disclosure, Attention: OP:EX:D Internal Revenue Service, 1111 Constitution Avenue, NW.; Washington, DC 20224. A request for review of an adverse determination will be promptly referred by the Director, Office of Disclosure to the appropriate reviewing officer for his review and final determination.

(i) *Processing a request for review of adverse determination.* Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for review of an adverse determination by the appropriate reviewing officer, the reviewing officer will review the initial adverse determination, make a final determination whether to grant the request to amend the record in whole or in part, and notify the individual in writing of the final determination. If a final determination cannot be made within 30 days, the Commissioner of Internal Revenue may extend such 30-day period. The individual will be notified in writing within the 30 day period of the cause for the delay and the approximate time required to make a final determination. If it is determined by the reviewing officer that the request to amend the record will be granted, the reviewing officer will cause the requested changes to be made and the individual will be so notified. Upon request, an individual will be furnished with a copy of the record as amended subject to the payment of appropriate fees. On the other hand, if it is determined by the reviewing officer that the request to amend the record, or any portion thereof, will not be granted, the individual will be notified in writing of the final adverse determination. The notification of a final adverse determination will set forth the reasons for the refusal of the reviewing officer to amend the record. The notification shall include a statement informing the individual of the right to submit a concise statement for insertion in the record setting forth the reasons for the disagreement with the refusal of the reviewing officer to amend the record. In addition, the notification will contain a statement informing the individual of the right to seek judicial review by a United States district court of a final adverse determination.

(j) *Statement of disagreement.* Under 5 U.S.C. 552a(d)(3), an individual who disagrees with a final adverse determination not to amend a record subject to amendment under the Privacy Act may submit a concise statement for insertion in the record setting forth the reasons for disagreement with the refusal of the reviewing officer to amend the record. A statement of disagreement should be addressed to or delivered in person to the Director, Office of Disclosure, Attention: OP:EX:D, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The Director, Office of Disclosure will forward the statement of disagreement to the appropriate designated official who will cause the statement to be inserted in the individual's record. Any such statement will be available to anyone to whom the record is subsequently disclosed and the prior recipients of the record will be provided with a copy of the statement of disagreement, to the extent an accounting of disclosures was maintained.

(k) *Judicial review.* If, after a review and final determination on a request to amend a record by the appropriate reviewing officer, the individual is notified that the request will not be granted, or if, after the expiration of 30 days (not including Saturdays, Sundays, and legal public holidays) from the receipt of such request by the Director, Disclosure Operations Division, action is not taken thereon in accordance with the requirements of paragraph (d)(9) of this section, an individual may commence an action within the time prescribed by law in a U.S. District Court pursuant to 5 U.S.C. 552a(g)(1). The statute authorizes an action only against the agency. With respect to records maintained by the IRS, the agency is the Internal Revenue Service, not an officer or employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Where provided in such Rules, delivery of process upon the IRS must be directed to the Commissioner of Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue, NW., Washington, DC 20224. The district court will determine the matter de novo.

5. *Records transferred to Federal Records Centers.* Records transferred to the Administrator of General Services for storage in a Federal Records Center are not used by the Internal Revenue Service in making any determination about any individual while stored at such location and therefore are not subject to the provisions of 5 U.S.C. 552a (e)(5) during such time.

**Appendix C—United States Customs Service**

1. *In general.* This appendix applies to the United States Customs Service. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* (a) For records which are maintained at the United States Customs Service Headquarters, initial requests for notification and access to records and accountings of disclosures under 31 CFR 1.26, should be mailed or personally delivered to the Director, Office of Regulations & Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. The official who has authority over the maintenance of the file will have the authority to grant or deny the request.

(b) For records maintained at Regional Offices, initial requests for notification and access to records and accountings of disclosures under 31 CFR 1.26, should be mailed or personally delivered to the Regional Commissioner of Customs in whose region the records are located. This official shall have the authority to grant the request or deny the request. The appropriate location of the regional offices is specified in Customs Appendix A in "Privacy Act Issuances" published annually by the Office of the Federal Register.

(c) Each request shall comply with the identification and other requirements set forth in 31 CFR 1.26, and in the appropriate system notice in the "Privacy Act Issuances" published annually by the Office of the Federal Register. Each request should be conspicuously labeled on the face of the envelope "Privacy Act Request".

3. *Request for amendment of records.* (a) For records which are maintained at Customs Service Headquarters, initial requests for amendment of records under 31 CFR 1.27 (a) through (d) should be mailed or personally delivered to the Director, Office of Regulations & Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. The official who has authority over the maintenance of the file will have the authority to grant or deny the request.

(b) For records not maintained at Customs Service Headquarters, initial requests for amendment of records under 31 CFR 1.27 (a) through (d) should be mailed or personally delivered to the Regional Commissioner of Customs in whose region the records are located. This official shall have the authority to grant or deny the request. A request directed to a Regional Commissioner should be mailed to or personally delivered at the appropriate location specified in Customs Appendix A in "Privacy Act Issuances" published annually by the Office of the Federal Register.

(c) Each request shall comply with the identification and other requirements set forth in 31 CFR 1.27, and in the appropriate system notice in "Privacy Act Issuances published by the Office of the Federal Register. Each request should be conspicuously labeled on the face of the envelope "Privacy Act Amendment Request".

4. *Administrative appeal of initial determination refusing to amend records.* Appellate determinations (including extensions of time on appeal under 31 CFR 1.27(e) with respect to all Customs Service records will be made by the Director, Office of Regulations & Rulings or the delegate of such official. All such appeals should be

mailed or personally delivered to the United States Customs Service, Office of Regulations & Rulings, 1301 Constitution Avenue NW., Washington, DC 20229. Each appeal should be conspicuously labeled on the face of the envelope "Privacy Act Amendment Appeal".

5. *Statements of Disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

7. *Annual notice of systems of records.* The annual notice of the United States Customs Service systems of records required to be published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f), is included in the publication entitled "Privacy Act Issuances".

8. *Verification of Identity.* Each request shall comply with the identification and other requirements set forth in 31 CFR 1.26 and in the appropriate system notice published by the Office of the Federal Register. Each request should be conspicuously labeled on the face of the envelope "Privacy Act Request".

**Appendix D—United States Secret Service**

1. *In general.* This appendix applies to the United States Secret Service. It sets forth specific notification and access procedures with respect to particular systems of records including identification requirements, and time and places where records may be reviewed; identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the United States Secret Service, will be made by the Freedom of Information and Privacy Act Officer, United States Secret Service. Requests for notification should be made by mail or delivered personally between the hours of 9:00 a.m. and 5:30 of any day excluding Saturdays, Sundays, and legal holidays to:

Privacy Act Request, Freedom of Information and Privacy Act Officer, United States Secret Service, Room 720, 1800 G Street NW., Washington, DC 20223.

a. *Identification requirements.* In addition to the requirements specified in 31 CFR 1.26, each request for notification, access or amendment of records made by mail shall contain the requesting individual's date and place of birth and a duly notarized statement signed by the requester asserting his or her identity and stipulating that the requesting individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretences is punishable by a fine of up to $5,000.

b. *Individuals making requests in person.* Individuals making requests in person will be required to exhibit acceptable identifying documents such as employee identification numbers, drivers licenses, medical cards or other documents sufficient to verify the identity of the requester.

c. *Physical inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the requested records may be inspected. The inspection of records will be conducted at the Secret Service field office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the Secret Service Field Office or other facility where the disclosure is made. A person of his or her own choosing may accompany the individual making the request provided the individual furnishes a written statement authorizing the disclosure of that individual's record in the accompanying person's presence. Any disclosure of a record will be made in the presence of a representative of the United States Secret Service.

3. *Requests for amendment of records.* Initial determination under 31 CFR Part 1, whether to grant requests to amend records will be made by the Freedom of Information and Privacy Act Officer. Requests should be mailed or delivered personally between the hours of 9:00 a.m. and 5:30 p.m. to:

Privacy Act Amendment Request, Freedom of Information and Privacy Acts Officer, United States Secret Service, Room 720, 1800 G Street NW., Washington, DC 20223.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27 including extensions of time on appeal, with respect to records of the United States Secret Service will be made by the Assistant Secretary of the Treasury for Enforcement. Appeals made by mail should be addressed to, or delivered personally to:

Privacy Act Amendment Appeal, Assistant Secretary of the Treasury for Enforcement, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

5. *Statements of Disagreement.* "Statements of Disagreements" under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the United States Secret Service Legal Counsel and shall be delivered to the following location:

Legal Counsel, United States Secret Service, Room 843, 1800 G Street NW., Washington, DC 20223.

7. Annual notice of systems of records. The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

**Appendix E—Bureau of Alcohol, Tobacco and Firearms**

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco and Firearms. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a (3), (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determination under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Alcohol, Tobacco, and Firearms, will be made by the Chief, Disclosure Branch, Office of the Assistant to the Director or the delegate of such officer. Requests may be mailed or delivered in person to:

Privacy Act Request, Chief, Disclosure Branch, Room 4406, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

3. *Requests for amendment of record.* Initial determinations under 31 CFR 1.27 (a) through (d) with respect to requests to amend records maintained by the Bureau of Alcohol, Tobacco and Firearms will be made by the Chief, Disclosure Branch, Office of the Assistant to the Director. Requests for amendment of records may be mailed or delivered in person to:

Privacy Act Request, Chief, Disclosure Branch, Room 4406, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

4. *Verification of Identity.* (a) In addition to the requirements specified in 31 CFR 1.26(d) of this appendix, each request for notification, access or amendment of records made by mail shall contain the requesting individual's date and place of birth and a statement signed by the requester asserting his or her identity and stipulating that the requester understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is a misdemeanor and punishable by a fine of up to $5,000 provided, that the Bureau of Alcohol, Tobacco and Firearms may require a signed notarized statement verifying the identity of the requester.

(b) Individuals making requests in person will be required to exhibit at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester.

(c) The parent or guardian of a minor or a person judicially determined to be incompetent, shall in addition to establishing the identity of the minor or other person he represents as required in (a) and (b), establish his own parentage or guardianship by furnishing a copy of a birth certificate showing parentage (or other satisfactory documentation) or a court order establishing the guardianship.

5. *Request for physical inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the records may be inspected. The inspection of records will be made at the Bureau of Alcohol, Tobacco and Firearms Field Office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the field office or other facility where the disclosure is made. A person of the requester's own choosing may accompany the requester provided the requester furnishes a written statement authorizing the disclosure of the requester's record in the accompanying person's presence. The record inspection will be made in the presence of a representative of the Bureau. Following the inspection of the record, the individual will acknowledge in writing the fact that he or she had an opportunity to inspect the requested record.

6. *Requests for copies of records without prior physical inspection.* Upon determining that an individual's request for copies of his or her records without prior physical inspection is to be granted, the requester shall be notified in writing of the determination, and the location and time for his or her receipt of the requested copies. The copies will be made available at the Bureau of Alcohol, Tobacco and Firearms field office or other facility located nearest to the residence of the individual making the request. Copies shall be received by the requester during the regular business hours of the field office or other facility where the disclosure is made. Transfer of the copies to the individual shall be conditioned upon payment of copying costs and his presentation of at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester. Following the receipt of the copies, the individual will acknowledge receipt in writing.

7. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Bureau of Alcohol, Tobacco and Firearms, including extensions of time on appeal, will be made by the Director or the delegate of such officer. Appeals should be addressed to, or delivered in person to:

Privacy Act Amendment Appeal, Director, Bureau of Alcohol, Tobacco and Firearms, Room 4406, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

8. *Statements of disagreement.* "Statements of Disagreement" as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification within 35 days of the date of such notification and should be limited to one page.

9. *Service of process.* Service of process will be received by the Director of the Bureau of A1cohol, Tobacco and Firearms or the delegate of such official and shall be delivered to the following location:

Director, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, Attention: Chief Counsel.

10. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for each pertinent system.

**Appendix F—Bureau of Engraving and Printing**

1. *In general.* This appendix applies to the Bureau of Engraving and Printing. It sets forth specific notification and access procedures with respect to particular systems of records including identification requirements, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Engraving and Printing, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. Requests for access to records contained within a particular system of records should be submitted to the address indicated for that system in the access section of the notices published by the Office of the Federal Register in "Privacy Act Issuances". Requests for information and specific guidance should be addressed to:

Privacy Act Request, Disclosure Officer (Executive Assistant to the Director), Room 104–18M, Bureau of Engraving and Printing, Washington, DC 20228.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in "Privacy Act Issuances" published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to:

Privacy Act Amendment Request, Disclosure Officer (Executive Assistant to the Director), Bureau of Engraving and Printing, Room 104–18M, Washington, DC 20228.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to:

Privacy Act Amendment Appeal, Disclosure Officer (Executive Assistant to the Director), Room 104–18M, Bureau of Engraving and Printing, Washington, DC 20228.

5. *Statements of Disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the Chief Counsel of the Bureau of Engraving and Printing and shall be delivered to the following location:

Chief Counsel, Bureau of Engraving and Printing, Room 109–M, 14th and C Streets, SW., Washington, DC 20228.

7. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, or seeking an accounting of disclosures, must satisfy one of

BEST COPY AVAILABLE

the following identification requirements before action will be taken by the Bureau of Engraving and Printing on any such request:

(i) An individual appearing in person may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph, but do bear both a name and signature (such as a credit card).

(ii) An individual may establish identity through the mail by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, the Executive Assistant or other designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

8. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

**Appendix G—Financial Management Service**

1. *In general.* This appendix applies to the Financial Management Service. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Financial Management Service, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to:

Privacy Act Request, Disclosure Officer, Financial Management Service, Room 108, Treasury Department Annex No. 1, Pennsylvania Avenue and Madison Place, NW., Washington, DC 20226.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in "Privacy Act Issuances" published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to:

Privacy Act Amendment Request, Disclosure Officer, Financial Management Service, Department of the Treasury, Treasury Annex No. 1, Washington, DC 20226.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Financial Management Service will be made by the Commissioner or the delegate of such official. Appeals made by mail should be addressed to, or delivered personally to:

Privacy Act Amendment Appeal, Commissioner, Financial Management Service (Privacy), Department of the Treasury, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place, NW., Washington, DC 20226.

5. *Statements of Disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the Commissioner, Financial Management Service or the delegate of such official and shall be delivered to the following location:

Commissioner, Financial Management Service (Privacy), Department of the Treasury, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place, NW., Washington, DC 20226.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirments, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

**Appendix H—United States Mint**

1. *In general.* This appendix applies to the United States Mint. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the United States Mint will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published annually by the Office of the Federal Register. Requests should be directed to the Superintendent or Officer in charge of the facility in which the records are located or to the Chief, Administrative Program Division. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to:

Privacy Act Request, Chief, Administrative Programs Division, United States Mint, Judiciary Square Building, 633 3rd Street, NW., Washington, DC 20220.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the Mint installation having immediate custody of the records or the delegated official. Requests should be mailed or delivered personally to:

Privacy Act Amendment Request, Freedom of Information and Privacy Acts Officer, United States Mint, Room 720, 1800 G Street, NW., Washington, DC 20223.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing

amendment of records under 31 CFR 1.27 including extensions of time on appeal, with respect to records of the United States Mint will be made by the Director of the Mint or the delegate of the Director. Appeals made by mail should be addressed to, or delivered personally to:

Privacy Act Amendment Appeal, United States Mint, Judiciary Square Building, 633 3rd Street, NW., Washington, DC 20220.

5. *Statements of Disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the Director of the Mint and shall be delivered to the following location:

Director of the Mint, Judiciary Square Building, 633 3rd Street, NW., Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

**Appendix I—Bureau of the Public Debt**

1. *In general.* This appendix applies to the Bureau of the Public Debt. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Public Debt, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to:

Privacy Act Request, Information Officer, Bureau of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 553, Washington, DC 20239.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in "Privacy Act Issuances" published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to:

Privacy Act Amendment Request, Information Officer, Bureau of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 553, Washington, DC 20239.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Bureau of the Public Debt will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to:

Privacy Act Amendment Appeal, Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 503, Washington, DC 20239.

5. *Statements of Disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the Chief Counsel of the Bureau of the Public Debt and shall be delivered to the following location:

Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 503, Washington, DC 2023.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Art Issuances". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

**Appendix J—Office of the Comptroller of the Currency**

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Office of the Comptroller of the Currency, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to:

Privacy Act Request, Communications Division, Comptroller of the Currency, 3rd Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed to:

Privacy Act Amendment Request, Communications Division, 3rd Floor, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Office of the Comptroller of the Currency will be made by the Comptroller of the Currency or Chief Counsel or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to:

Privacy Act Amendment Appeal, Communications Division, 3rd Floor, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

5. *Statements of Disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the Director, Communications Division at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the Office of the Chief Counsel of the Comptroller of the Currency or the delegate of such official and shall be delivered to the following location:

Office of Chief Counsel, Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirements, in addition to the requriements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

**Appendix K—U.S. Savings Bonds Division**

1. *In general.* This appendix applies to the U.S. Savings Bonds Division. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Financial Management Service, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances" published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to:

Privacy Act Request, U.S. Savings Bonds Division, Department of the Treasury, 1111 20th Street, NW, Washington, DC 20226.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in "Privacy Act Issuances" published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to:

Privacy Act Amendment Request, Privacy Act Contact, U.S. Savings Bonds Division, Department of the Treasury, 1111 20th Street, NW., Washington, DC 20226.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the U.S. Savings Bonds Division will be made by the National Director, U.S. Savings Bonds Division or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to:

Privacy Act Amendment Appeal, National Director, U.S. Savings Bonds Division, Department of the Treasury, 1111 20th Street, NW., Washington, DC 20226.

5. *Statements of Disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such official and shall be delivered to the following location:

General Counsel, Room 3000–MT, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

**Appendix L—Federal Law Enforcement Training Center**

1. *In general.* This appendix applies to the Federal Law Enforcement Training Center. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Federal Law Enforcement Training Center, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Art Issuances" published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to:

Privacy Act Request, Library Building 262, Federal Law Enforcement Training Center, Glynco, Georgia 31524.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in "Privacy Act Issuances" published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to:

Privacy Act Amendment Request, Federal Law Enforcement Training Center, Glynco, Georgia 31524.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Federal Law Enforcement Training Center will be made by the Assistant Secretary (Enforcement), Department of the Treasury or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to:

Privacy Act Amendment Appeal, FLETC, Assistant Secretary (Enforcement), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 4312, Washington, DC 20220.

5. *Statements of Disagreement.* "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the General Counsel of the Department of the Treasury or the

delegate of such official and shall be delivered to the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuances". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

[FR Doc. 87–8243 Filed 4–13–87; 8:45 am]
BILLING CODE 4810–25–M

## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Parts 1 and 2

## Applicability of Regulations to Non-Federal Lands and Waters Under U.S. Legislative Jurisdiction

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is making an administrative change clarifying provisions in its general regulations that pertain to the applicability of certain regulations to non-federal lands and waters under the legislative jurisdiction of the United States. The existing wording has resulted in confusion and has generated questions concerning the original intent of the NPS in promulgating these particular regulations in 1983. The revised text clarifies the applicability of these regulations and reflects the original intent of the NPS as expressed in the preamble of the earlier rulemaking.

**DATES:** Written comments will be accepted through May 14, 1987.

**ADDRESS:** Comments should be addressed to: Associate Director, Park Operations, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

**FOR FURTHER INFORMATION CONTACT:** Andy Ringgold, National Park Service, Branch of Ranger Activities, P.O. Box 37127, Washington, DC 20013–7127, Telephone: 202–343–1360.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 30, 1983 the NPS published a major revision of its general regulations (see 48 FR 30252) that eventually went into effect on April 30, 1984, codified in Title 36 of the Code of Federal Regulations (36 CFR). Section 1.2 of that rulemaking addresses the applicability and scope of NPS regulations, providing generally that NPS regulations apply to all persons entering, using, visiting or otherwise within the boundaries of lands or waters administered by the NPS. Furthermore, paragraph (b) of this section reads as follows:

(b) The regulations contained in Parts 1 through 7 of this chapter are not applicable on privately owned lands and waters (including Indian lands and waters owned individually or tribally) within the boundaries of a park area, except as may be provided by regulations related specifically to privately owned lands under the legislative jurisdiction of the United States.

The term "legislative jurisdication" is defined in 36 CFR 1.4 to mean "land and waters under the exclusive or concurrent jurisdiction of the United States", in other words, lands and waters over which the State has ceded police powers to the United States. However, the meaning of the phrase "privately owned lands", although addressed in the preamble of the 1983 rulemaking, is not defined. The same phrase is used in ten general regulations codified in 36 CFR Part 2 and has been the subject of periodic questions since these regulations were promulgated.

The following regulations in 36 CFR Part 2 apply on lands and waters within a park area that are under the legislative jurisidiction of the United States.

1. Section 2.2 Wildlife protection
2. Section 2.3 Fishing.
3. Section 2.4 Weapons, traps and nets.
4. Section 2.13 Fires.
5. Section 2.22(a)(2), (b) and (c) Property.
6. Section 2.30 Misappropriation of property and services.
7. Section 2.31 Trespassing, tampering and vandalism.
8. Section 2.32 Interfering with agency functions.
9. Section 2.34 Disorderly conduct.
10. Section 2.36 Gambling.

As indicated in the 1983 rulemaking, the NPS applied these sections to non-federal lands and waters that are located within park boundaries and that are under the legislative jurisdiction of the United States in order to allow the NPS to respond to complaints from landowners concerning incidents such as disorderly conduct, fighting, hunting or discharging weapons, playing loud music or other disturbances, abandoned property, trespassings, tampering with private property, and gambling. The NPS determined that those provisions were the minimum necessary to protect non-federal property rights and ensure public safety for non-federal property owners, and it continues to hold that position.

The purpose of this rulemaking is to revise the text of the eleven regulations in 36 CFR Parts 1 and 2 that contain the phrase "privately owned lands and waters" in order to reflect the original NPS intent as clearly expressed in the preamble of the 1983 rulemaking. In that discussion, the NPS indicated that the regulations that were made applicable on privately owned lands and waters under the legislative jurisdiction of the United States would apply on all lands and waters within a park area that were owned by private individuals, commercial entities or State agencies *and* over which the State had ceded either exclusive or concurrent jurisdiction to the NPS. The NPS has determined that the phrase "privately owned lands" does not clearly encompass the full range of non-federal landowners originally intended. Therefore, that phrase is being deleted from the regulations in question in favor of text that clarifies the fact that those regulations apply, regardless of land ownership, on lands and waters within a park area that are under the legislative jurisdiction of the United States.

### Publication Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS emphasizes, however, that the purpose of this rulemaking is to clarify and edit existing regulatory text, not to propose or open for public comment a change in the underlying regulatory provisions of the sections proposed for revision.

### Drafting Information

The primary author of this rulemaking is Andy Ringgold of the NPS Branch of Ranger Activities.

### Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### Compliance With Other Laws

The Department of the Interior has determined that this document constitutes an administrative change, not subject to the provisions of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking has no economic effect since it is a clarification only and neither removes substantive restrictions nor imposes new ones.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damge to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based in this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Department regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

**List of Subjects**

*36 CFR Part 1*

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

*36 CFR Part 2*

Environmental protection, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

## PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462/–6a(e), 462(k); D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 1.2, by revising paragraph (b) to read as follows:

**§ 1.2 Applicability and scope.**

* * * * *

(b) Except for regulations containing provisions that are specifically applicable, regardless of land ownership, to lands and waters within a park area that are under the legislative jurisdiction of the United States, the regulations contained in Parts 1 through 5 and Part 7 of this chapter do not apply on non-federally owned lands and waters (including Indian lands and waters owned individually or tribally) within the boundaries of a park area.

* * * * *

## PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

3. The authority citation for Part 2 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k).

4. In § 2.2, by revising paragraph (g) to read as follows:

**§ 2.2 Wildlife protection.**

* * * * *

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

5. In § 2.3, by revising paragraph (g) to read as follows:

**§ 2.3 Fishing.**

* * * * *

(g) The regulations contined in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

6. In § 2.4, by revising paragraph (g) to read as follows:

**§ 2.4 Weapons, traps and nets.**

* * * * *

(g) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

7. In § 2.13 by revising paragraph (d) to read as follows:

**§ 2.13 Fires.**

* * * * *

(d) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

8. In § 2.22 by revising paragraph (d) to read as follows:

**§ 2.22 Property.**

* * * * *

(d) The regulations contained in paragraphs (a)(2), (b) and (c) of this section apply, regardless of land ownership, on all lands and waters within a park area that under the legislative jurisdiction of the United States.

9. In § 2.30, by revising paragraph (b) to read as follows:

**§ 2.30 Misappropriation of property and services.**

* * * * *

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

10. In § 2.31, by revising paragraph (b) to read as follows:

**§ 2.31 Trespassing, tampering and vandalism.**

* * * * *

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

11. In § 2.32, by revising paragraph (b) to read as follows:

**§ 2.32 Interfering with agency functions.**

* * * * *

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

12. In § 2.34, by revising paragraph (b) to read as follows:

**§ 2.34 Disorderly conduct.**

* * * * *

(b) The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

13. In § 2.36, by revising paragraph (b) to read as follows:

**§ 2.36 Gambling.**

* * * * *

(b) This regulation applies, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.

Dated: April 3, 1987.

**Susan Recce,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–8306 Filed 4–13–87; 8:45 am]

BILLING CODE 4310–70–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 123**

**[OW-8-FRL-3185-8]**

## Water Pollution Control; Utah Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of application, public comment period, public hearing.

**SUMMARY:** The State of Utah has submitted an application to the United States Environmental Protection Agency (US EPA) to administer and enforce the National Pollution Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters within the State. According to the State's proposal, the NPDES program would be administered by Utah Department of Health under the direction of Calvin K. Sudweeks.

The application received from Utah is now complete and is now available for inspection and copying. Public comments are requested and a public hearing will be held.

**DATES:** Comment must be received on or before June 4, 1987. A public hearing has been scheduled for May 20, 1987 at 10 a.m. to Noon.

**ADDRESS:** Comments should be addressed to: Patrick J. Godsil, Chief, Compliance Branch (8WM-C), U.S. EPA, Region VIII, 999 18th Street, Denver Place, Suite 500, Denver, CO 80202-2405.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Godsil, (303) 293-1623, at the above address.

**SUPPLEMENTARY INFORMATION:** Section 402 of the Federal Clean Water Act (CWA) created the NPDES program under which the Administrator of the US EPA may issued permits for the discharge of pollutants into waters of the United States under conditions required by that Act. Section 402(b) provides for states to assume the NPDES program responsibilities upon approval by the EPA.

Utah's submission for NPDES program approval contains a letter from the Governor requesting NPDES program approval, a Program Description, an Independent Counsel's statement, copies of State statutes and regulations providing authority to carry out the program, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator, Region VIII, EPA and the State Director. The Regional Administrator is required to approve each such submittal unless it does not meet the requirements of section 402(b) of the Act and EPA regulations promulgated thereunder, which include, among other things, authority to impose civil and criminal penalties for permit violations and authority to insure that the public is given notice and opportunity for hearing on each proposed NPDES permit issuance.

At the close of the public comment period (including the public hearing) and within the ninety (90) day review period, the EPA Regional Administrator will decide to approve or disapprove Utah's NPDES program.

The decision to approve or disapprove Utah's NPDES program will be based on the requirements of section 402 of the CWA and 40 CFR Part 123. If Utah's NPDES program is approved, the Administrator will so notify the State. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of NPDES permits in Utah. The State's program will implement federal law and operate in lieu of the EPA administered program. However, EPA will retain the right, among other things, to object to NPDES permits proposed to be issued by Utah and to take enforcement actions for violations. If the Regional Administrator disapproves Utah's NPDES program, the Administrator will notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

The Utah submittal may be reviewed by the public from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, at the UBWPC, Cannon Health Building, third floor, 288N 1460W, Salt Lake City, Utah 84116, or at the EPA office in Denver at the address appearing earlier in this notice. Copies of the submittal may also be obtained at a cost of ten dollars ($10.00) by appearing in person at either of those offices, or by mail by sending a check for ten dollars ($10.00), payable to the Bureau of Water Pollution Control, to Ms. Wendy Olson, Utah Bureau of Water Pollution Control, P.O. Box 16990, Salt Lake City, Utah 84116-0690; telephone (801) 538-6146.

A public hearing to consider the State of Utah's request to administer the NPDES permit program has been scheduled for May 20, 1987, at 10:00 a.m. to Noon at the Cannon Health Building, Room 125, 288N 1460W, Salt Lake City, Utah 84116.

The Hearing Panel will include representatives of EPA, Region VIII and UBWPC.

The following are policies and procedures which shall be observed at the public hearing: (1) The Presiding Officer shall conduct the hearing in a manner that permits open and full discussion of any issues involved; (2) any person may submit written statements or documents for the record; (3) the Presiding Officer may, at his or her discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony, or is not relevant to the decision to approve or require revision of the submitted State program; (4) the Presiding Officer may limit oral testimony to five (5) minutes total per person; (5) members of the Hearing Panel may ask questions of witnesses and respond to questions and statements of witnesses; (6) the transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Administrator; and (7) the hearing record shall be left open until June 4, 1987, as described below, to permit any persons to submit any additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing.

Immediately following the public comment period, the Regional Administrator shall forward a copy of the complete hearing record to the Administrator.

Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for the use of the Hearing Panel and other interested persons. Statements should summarize any extensive written materials.

All comments or objections received by EPA, Regional VIII, by June 4, 1987, or presented at the public hearing, will be considered by EPA before taking final action on the Utah Request for State Program Approval.

Please bring the foregoing to the attention of persons whom you know will be interested in this matter. All written comments and questions on the hearing, or the NPDES program, should be addressed to Patrick J. Godsil at the above address.

### Review Under Regulatory Flexibility Act and Executive Order 12291

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of entities. The proposed approval of the Utah NPDES program does not alter the regulatory control over any industrial category. No new substantive requirements are

established by this action. Therefore, since this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not needed.

Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Dated: April 6, 1987.

**Alexandra B. Smith,**

*Acting Regional Administrator, Environmental Protection Agency, Region VIII.*

[FR Doc. 87-8278 Filed 4-13-87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

### 45 CFR Part 503

### The Freedom of Information Reform Act of 1986; Proposed Fee Schedule and Guidelines

**AGENCY:** Foreign Claims Settlement Commission of the United States.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Foreign Claims Settlement Commission of the United States published for public notice and comment a proposed new fee schedule and guidelines for the processing of requests for records under the Freedom of Information Act on pages 11712-11713 of the **Federal Register** on April 10, 1987. The last paragraph of the proposed rule, setting forth a revised provision, required by the Freedom of Information Reform Act of 1986, relating to waiver or reduction of fees, was omitted. That additional paragraph is published for public notice and comment below.

**DATE:** Comments must be received before April 21, 1987.

**ADDRESS:** Send comments to the Foreign Claims Settlement Commission of the United States, 1111 20th Street, NW., Room 400, Washington, DC 20579.

**FOR FURTHER INFORMATION CONTACT:** David E. Bradley 202-653-5883.

**SUPPLEMENTARY INFORMATION:**

**PART 503—[AMENDED]**

For the reason set out in the preamble, § 503.14 of Chapter V of Title 45 of the Code of Federal Regulations, the proposed revision of which was published for public notice and comment at 52 FR 11712 on April 10, 1987, is proposed to be further revised by adding at the end thereof the following paragraph.

**§ 503.14 Fees for services.**

* * * * *

(j) *Waiver or reduction of charges.* Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) It is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of such fees.

**Authority:** Sec. 1803, Pub. L. 99-570, 100 Stat. 3207 (5 U.S.C. 552); 52 FR 10012-10019.

**Judith H. Lock,**

*Administrative Officer.*

[FR Doc. 87-8485 Filed 4-10-87; 8:57 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 222 and 227

### Status Reviews of the Shortnose Sturgeon and the Mediterranean Monk Seal

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of status reviews.

**SUMMARY:** NMFS has completed a review of the status of the the shortnose sturgeon and the Mediterranean monk seal, as required by the Endangered Species Act of 1973 (ESA). Based on these reviews, NMFS may propose changes in the listing status of the shortnose sturgeon. The status reviews are available on request.

**ADDRESS:** Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Margaret C. Lorenz (Protected Species Division), (202) 673-5349, or Douglas Beach (NMFS Northeast Region, Management Division), (617) 281-3600 Ex. 254.

**SUPPLEMENTARY INFORMATION:** The ESA is administered jointly by the Fish and Wildlife Service (FWS), Department of the Interior, and NMFS, Department of Commerce. NMFS has jurisdiction over most marine species and makes determinations under section 4(a) of the ESA as to whether the species should be listed as endangered or threatened. FWS maintains and publishes the List of Endangered and Threatened Wildlife (List) in 50 CFR Part 17 for all species determined as endangered or threatened.

Section 4(c)(2) of the ESA requires that a review of species on the List be made every five years to determine whether any should be (1) removed from the List; (2) changed in status from endangered to threatened; or (3) changed in status from threatened to endangered.

NMFS believes there is sufficient information indicating that the shortnose sturgeon (*Acipenser brevirostrum* LeSueur 1818), which is listed as endangered throughout its range, is not currently in danger of extinction in the Connecticut, Delaware, Hudson, Kennebec and Saint John (Canada) river systems. Therefore, NMFS believes the following proposed changes are warranted. The shortnose sturgeon should be listed as threatened, rather than endangered, in the Delaware, Hudson, and Connecticut river systems and removed from the list in the Kennebec and Saint John river systems. Since there is not enough information concerning the past or present size in any other river system, NMFS believes it should continue to be listed as endangered throughout the remainder of its range.

NMFS is not recommending any changes for the Mediterranean monk seal (*Monachus monachus*) which is currently listed as endangered throughout its range. The abundance and distribution of this species continue to decline, and the available data indicates that the species is in danger of extinction throughout its range.

**List of Subjects**

*50 CFR Part 222*

Administrative practice and procedures, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Reporting and recordkeeping requirements.

*50 CFR Part 227*

Endangered and threatened wildlife, Exports, Fish, Fisheries, Imports.

Dated: April 7, 1987.

**Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87-8154 Filed 4-13-87; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 71
Tuesday, April 14, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Food Stamp Program; Electronic Benefit Transfer Alternative Issuance Demonstration Project

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Amended General Notice.

**SUMMARY:** The Department is hereby amending its General Notice for the Electronic Benefit Transfer (EBT) Alternative Issuance Demonstration Project in Reading, Pennsylvania to extend project operations for one year. During this extension period, the Pennsylvania State agency will administer the EBT system on the State's own hardware. The conversion from earlier pilot equipment is being combined with certain operational enhancements and is expected to produce cost efficiencies. Based on the results of this extension, the EBT service population may be expanded to include all Berks County Food Stamp Program (FSP) participants.

The continuing project is being conducted under the research, demonstration and evaluation authority of section 17 of the 1977 Food Stamp Act, as amended.

**EFFECTIVE DATE:** April 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Patricia Warner, Chief, Administration and Design Branch, Program Development Division; Family Nutrition Programs; Food and Nutrition Service, USDA; Alexandria, Virginia 22302, telephone (703) 756–3383.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

This Notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1, and has been classified "not major". The Notice will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Because this Notice will not have a major effect on the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### Regulatory Flexibility Act

This Notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96–354. S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities because it will be conducted in a limited area. The State and local welfare agencies will be affected to the extent that they are involved in administering this alternative system. Food retailers and banks will be affected to the extent that they agree to participate. Individuals participating in the Food Stamp Program and living within the Reading, Pennsylvania demonstration project area in Berks County, will be affected to the extent that they will continue using a new benefit issuance instrument and continue to be subject to the new issuance procedures. Individuals participating in the FSP and living in Berks County outside the existing demonstration project area who have been receiving their benefits in the form of food coupons, may be introduced to the new benefit issuance procedures if the decision is made to expand the project. At that time, additional food retailers may participate in this alternative system.

#### Paperwork Reduction Act

This Notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

#### Comments

This Notice provides for a further one year extension and a modest expansion of a current operating system without any significant changes to the demonstration's operating procedures. (The enhancements and the potential expansion beyond the Reading, Pennsylvania, pilot area throughout Berks County, are described later in this Notice.) Consequently, comments are not being requested and the provisions of this Notice will be effective upon publication.

#### Background

On July 8, 1983, the Department of Agriculture published a General Notice in the **Federal Register** (48 FR 31431) which, in accordance with 7 CFR 282.5, established the specific operational procedures and explained the basis and purpose for the Alternative Issuance Demonstration Projects, including the EBT demonstration. On August 21, 1984, the Department published an Amended General Notice in the **Federal Register** (48 FR 33152) which provided additional details on the operational procedures of the project.

#### The Original Demonstration Project

Implementation of the EBT system began in October 1984. Following the phase-in of participating recipients, the system became fully operational in February 1985. USDA contracted with Planning Research Corporation (PRC) of McLean, Virginia for the administration of EBT system operations through December 1985.

Reaction to the system by the different groups participating in the demonstration has been favorable. Recipients have had few problems using the system. Retailers and banks have expressed their pleasure regarding the time and effort saved by not having to process coupons. While there were some system problems during the test which raised concern by all parties, system improvements were implemented to

minimize the chance for problem recurrence and to satisfy the retailers and recipients. Further enhancements were not viewed as appropriate by the Department during this initial phase because of the limited time available.

Like most demonstrations, the Reading EBT test answers some questions while leaving others unresolved. Most importantly, it shows that the requisite technological and human factors can be put together to make an Electronic Benefit Transfer system operate effectively in the Food Stamp Program. A small-caseload test, however, cannot be expected to produce definitive answers.

The final evaluation report for the initial period of EBT operations is scheduled for publication in the Spring of 1987.

**The Extended Demonstration Project**

In consultation with the State of Pennsylvania, the Department decided to extend demonstration project operations. On December 30, 1985, the Department published an Amended General Notice in the **Federal Register** (50 FR 53170) to extend the project for 15 additional months. During this phase, the operating procedures remained as published in the August 1984 Amended General Notice except that the EBT Center was operational 24 hours per day instead of the 18 hours stated in the Notice. An evaluation of the EBT demonstration continued through the extension period. The purpose of the extended EBT demonstration project evaluation is to obtain data that will facilitate Departmental oversight, guide other State or Federal EBT initiatives, and provide recommendations to management of the EBT system. Included in the more specific objectives are data on administrative costs, system security, and impact on EBT users.

For the first three months of the extended demonstration, PRC continued to operate the EBT system under contract with the Pennsylvania State agency. Subsequent to this period, Pennsylvania assumed responsibility for operating the EBT system and moved the EBT equipment and EBT Center operations to their own offices in Harrisburg, Pennsylvania. During the second phase, all operations were coordinated by State personnel in Harrisburg. The State's operation of the EBT Demonstration Project is governed by an amendment to the State Plan of Operation. In this amendment the State agreed to maintain the EBT system performance at a level which met or exceeded the pre-existing acceptable levels of performance, with no degradation of system operations or performance, and to include a back-up system which provided continuous processing to minimize system down time and manual processing.

An evaluation of the EBT demonstration is continuing through the extension period. The purpose of the extended EBT demonstration project evaluation is to obtain data that will facilitate Departmental oversight, guide other State or Federal EBT initatives, and provide recommendations to management of the EBT system. Included in the more specific objectives are to obtain data on administrative costs, system security, and impact on EBT users.

**Current Action**

This extension will allow the extended EBT demonstration to continue to operate under demonstration project authority, providing that certain assurance made to this Department under the State's FSP Plan of Operations are met by the ongoing EBT system, and with the caveat that the Department may determine that continued operation is no longer in the interest of the government. Suspension or termination of the project by the Department will not be made without reasonable notice to the State, to insure no disruption of benefits to FSP participants due to a change in the form of benefit issuance. Such suspension or termination, if undertaken by the Department, would be performed in accordance with Attachment L of OMB Circular A–102 where applicable. Alternatively, it can be foreseen that the success of this demonstration may lead to the use of EBT systems under normal FSP operating authority.

System enhancements which will accompany the extension will for the most part be transparent to users. The changes will improve internal systems accountability and cost performance. One exception for clients is the additional ability to make a voice and data call for an account balance inquiry by touch tone phone. This Sperry Voice Information System can also be used by retailers for daily deposit inquiries, and internal systems reporting. The account information in the computer is translated to voice communication heard on the phone. In another change, retailers will be able to obtain balances for individual cash registers at various times during the day in addition to "end-of-day" deposit figures. The back-up system for continuous processing will result in less system down time and resulting inconveniences to clients and retailers.

If the Department allows expansion of the EBT service population, it would occur in two steps, beginning with the addition of approximately 500 households who are residents of a public housing project adjacent to the demonstration area. The second step will be broadening the base of retailer participation to include all of Berks County and approximately 1,500 additional FSP households. To receive the Department's authorization of an expansion, the State would submit an implementation plan to FNS. The plan would include the State's provisions to notify retailers of the impact of EBT on their operations and to invite retailer comments. The State would report on these comments to the Department. The plan would also include Notices to clients and training to familiarize new users with the EBT system operating procedures. The current hotline for information would be maintained to respond to client questions.

Performance standards for this extension are negotiated by the Department with the State to reflect expected improvements in performance. These standards are in the areas of: transaction time at check-out counters; processing time and timelines for batch jobs; system accessibility/reliability; maintaining accurate accounts; and system security and accuracy of executing system operations.

FNS liability shall be limited to liability under current FSP Statutes, Regulations and Procedures. The State is strictly liable for issuances of benefits through this project in excess of amounts authorized to be issued through the certification process, and as set forth in 7 CFR Part 276.

Dated: April 9, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87–8283 Filed 4–13–87; 8:45 am]

BILLING CODE 3410–30–M

---

**Forest Service**

**Recreation Residence Authorizations; Proposed Policy**

**AGENCY:** Forest Service, USDA.

**ACTION:** Extension of public comment period.

**SUMMARY:** On January 2, 1987, at 52 FR 206, the Forest Service published a proposal to revise policies and procedures for administering special-use permits that authorize provately-owned recreation residences on National Forest System lands. The public comment period was to expire on April 2. The leadership of the Homeowners Division of the National Forest Recreation

Association, the National Inholders Association, and others have requested an extension to ensure that recreation residence and cabin permittees have sufficient time to adequately review and comment on this matter. In response, the Forest Service is extending the public comment period until May, 2.

**DATE:** Public comments must be received on or before May 2, 1987.

**ADDRESS:** Send written comments to F. Dale Robertson, Chief (2720), Forest Service USDA, P.O. Box 96090, Washington, DC 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Ruben Williams, Lands Staff, Forest Service, (703) 235–2253.

Dated: April 7, 1987.

**F. Dale Roberston,**

*Chief.*

[FR Doc. 87–8247 Filed 4–13–87; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census.

Title: School Enrollment Report.

*Form number:* Agency—P–3, P–4; OMB—0607–0459.

*Type of request:* Revision of a currently approved collection.

*Burden:* 110 respondents; 55 reporting hours.

Needs and uses: This survey will collect enrollment information for preparation of state population estimates. Enrollment data are used in two of the three estimating methods employed by Census, making collection of the information critical to the program's success.

*Affected public:* State or local governments, non-profit institutions.

*Frequency:* Annually.

*Respondent's obligation:* Voluntary.

*OMB desk officer:* John Griffin, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffin, OMB Desk Officer, Room 3228 New Executive Officer Building, Washington, DC. 20503.

Dated: April 7, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–8308 Filed 4–13–87; 8:45 am]

BILLING CODE 3510–07–M

## International Trade Administration

### Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held May 1, 1987, 9:30 a.m., the Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217.

For further information contact Betty Ferrell at 202–377–2583.

Dated: April 9, 1987.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology & Policy Analysis.*

[FR Doc. 87–8298 Filed 4–13–87; 8:45 am]

BILLING CODE 3510–DT–M

### Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held April 30, 1987, 1:00 p.m., in the Herbert C. Hoover Building, Room 1414, 14th Street & Constitution Avenue, NW., Washington, DC. The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

*Agenda*

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Discussion of new and revised export licenses; G–CEU, G–CG, etc.
4. Status report on Automation process.
5. Requests for input from exporters on the use of licenses.
6. Review of draft of Export Licensing forms.
7. New Business.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Dated: April 9, 1987.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 87–8299 Filed 4–13–87; 8:45 am]

BILLING CODE 3510–DT–M

### Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held May 5, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

*Agenda:*

1. Opening remarks by the Chairman.

2. Election of Chairman.
3. Technical Advisory Committee Membership.
4. 1987 Plan.
5. Presentation of papers or comments by the public.
6. New Business.

*Executive Session:*

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5 (c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: April 9, 1987.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 87–8300 Filed 4–13–87; 8:45 am]

BILLING CODE 3510-07-M

## National Oceanic and Atmospheric Administration

### Marine Mammals; Issuance of Permit; National Zoological Park, Smithsonian Institution

On February 2, 1987, notice was published in the **Federal Register** (52 FR 5326) that an application had been filed by the National Zoological Park, Smithsonian Institution, for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for scientific research and to enhance the propagation and survival of the species.

Notice is hereby given that on April 3, 1987 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This permit is available for review in the following offices:

Assistant Administrator for Fisheries, 1825 Connecticut Avenue NW., Room 805, Washington, DC; 20235 and Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731–7415.

Dated: April 8, 1987.

**Dr. Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87–8248 Filed 4–13–87; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 70221-7021]

### National Fish and Seafood Promotional Council; Request for Nominations

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of reopening of request for Council nominations.

**SUMMARY:** The Fish and Seafood Promotion Act of 1986 creates a fifteen (15) member National Fish and Seafood Promotional Council. The National Council will develop annual plans and budgets for generic marketing and promotion of fisheries products, including consumer education, research, and other appropriate activities. Members of the Council are to be appointed by the Secretary of Commerce. NOAA issued a notice (52 FR 4926, February 18, 1987) for all interested parties to submit the names of nominees with biographical data. This notice reopens that request for nominations.

**EFFECTIVE DATE:** Nominations and biographical information should be submitted to the Director, Office of Industry Services, National Marine Fisheries Service, Washington, DC 20235, by April 28, 1987.

**FOR FURTHER INFORMATION CONTACT:** Phyllis S. Bentz, Office of Industry Services, National Marine Fisheries Service, Washington, DC 20235. Telephone: (202) 673–5497.

Dated: April 9, 1987.

**Carmen J. Blondin,**

*Acting Director, Office of Industry Services.*

[FR Doc. 87–8301 Filed 4–13–87; 8:45 am]

BILLING CODE 3510-22-M

## Patent and Trademark Office

### Electronic Data Dissemination Policies and Guidelines; Withdrawal of Notice

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Withdrawal of notice.

**SUMMARY:** The Patent and Trademark Office of the Department of Commerce hereby withdraws the notice entitled "Electronic Data Dissemination Policies and Guidelines," published at 52 FR 9526 on March 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bradford R. Huther by telephone at (703) 557–1572 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

The notice entitled "Electronic Data Dissemination Policies and Guidelines," published by the Patent and Trademark Office at 52 FR 9526 on March 25, 1987, is hereby withdrawn.

Dated: April 9, 1987.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 87–8260 Filed 4–13–87; 8:45 am]

BILLING CODE 3510-16-M

## COMMISSION ON MERCHANT MARINE AND DEFENSE

### Meeting

*Summary:* The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and

report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

*Dates and times:* Monday, May 18, 1987; Beginning 2:00 p.m.

*Place:* Center for Naval Analyses Auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

*Type of meeting:* Open.

*Contact person:* Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301–0268.

*Purpose of meeting:* To receive and consider statements on the perspective of shipyards and the shipyard industry on the problem of constructing, repairing, and maintaining adequate shipping to support the defense needs of the United States, and of sustaining a shipyard mobilization base sufficient to support defense needs. Individuals or organizations desiring to present oral testimony at the hearing must notify the Executive Director in writing by May 6, 1987, and must provide 40 copies of written testimony no later than May 14. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony and will be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Robert Nevel, Technical Director, at the Commission's office in writing or by telephone at (202) 756–0411.

*Supplementary information:* Other interested persons are invited to submit written statements about the shipyard industry and the shipping required to implement United States defense policy. Written statements should be received by the close of business on May 14, 1987. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

**Allan W. Cameron,**

*Executive Director, Commission on Merchant Marine and Defense.*

[FR Doc. 87–8288 Filed 4–13–87; 8:45 am]

BILLING CODE 3820–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Security Subgroup on Technological and Operational Surprise will meet in closed session on May 13–14 and June 23, 1987 at the Pentagon, Arlington, Virgina.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate the potential for technological and operational surprise in the U.S.-Soviet military competition.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

April 9, 1987.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87–8315 Filed 4–13–87; 8:45 am]

BILLING CODE 3810–01–M

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)

Dates of meeting: 7–8 May 1987

Times of meeting:

0900–1700 hours, 7 May 1987
0800–1700 hours, 8 May 1987

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings and discussions on several topics to include Battle Management/Command, Control, and Communications; National Test Bed, and Countermeasures. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87–8289 Filed 4–13–87; 8:45 am]

BILLING CODE 3710–08–M

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, April 22, 1987 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

*Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or section 3.8 of the Compact*

1. *Camden County Municipal Utilities Authority D–71–9 CP (Revision No. 3).* This application requests: (1) Revisions of the Comprehensive Plan by eliminating the proposed District II treatment plant and conveying all District II sewage to the District I plant for treatment; (2) an expansion of the District I plant service area to include Berlin Borough and Berlin Township, including portions that are in the Atlantic Basin. This represents a projected importation of approximately 1 million gallons per day (mgd) of sewage to the Delaware River Basin; and (3) a rerating of the existing Delaware No. 1 treatment facility from 38 mgd to 43 mgd, and to increase the ultimate planned capacity for the single plant from 75 to 80 mgd. The treatment plant is located in Camden City, Camden County, New Jersey and the effluent will continue to be discharged to the Delaware River in Water Quality Zone 3 at River Mile 97.93.

2. *North Wales Water Authority D–78–94 CP RENEWAL.* An application to renew the permitted withdrawal of ground water from existing Well No. 25 to supply water to the applicant's system. The 30-day withdrawal limit remains at 0.25 million gallons per day from Well No. 25. Well No. 25 is located 2,500 feet southeast of the intersection of Route 309 and Bethlehem Pike in Lower Gwynedd Township, Montgomery County, in the Ground Water Protected Area of Southeastern Pennsylvania.

3. *Borough of Dublin D–81–75 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 27,000 gallons per day (seven day average) from Well Nos. 1 and 2. Commission approval on December 12, 1984 was limited to two years. The application for renewal was received from the applicant on August 29, 1986 and supplemental information was received on December 16, 1986. The applicant requests that the total withdrawal from the two wells remain the same, but that the control pumping levels be modified. The project is located in Bucks County in the Ground Water Protected Area of Southeastern Pennsylvania.

4. *Herbert Barnes Well No. 1 and Pond D–86–66.* A ground water withdrawal project to augment surface water withdrawal from an existing pond. The water is to be used for golf course irrigation. During any 30-day period, the withdrawal from Well No. 1 shall not exceed 6.30 million gallons (mg) and the total water use from pond and well shall not exceed 27.9 mg. The well is located west-southwest of the intersection of Cold Springs Creamery Road and Durham Road (Route No. 413), in Buckingham Township, Bucks County, Pennsylvania. Future plans call for use of the well as a possible source of municipal water supply. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Mid-Atlantic Canners Association D–86–83.* An application for approval of a ground water withdrawal project to supply up to 5.1 mg/30 days of water to the applicant's bottling and canning facility from existing Well Nos. 1, 2, and 3, not previously approved by the Commission. The project is located in Hamburg Borough, Berks County, Pennsylvania.

6. *Pfizer Pigments Inc. D–87–11.* An application to modify a 0.95 mgd industrial waste treatment plant located off Hackett Avenue in the City of Easton, Northampton County, Pennsylvania. The facility treats wastewater from the applicant's pigment manufacturing process only. The applicant proposes to replace secondary settling ponds with dual media pressure filters. No increase of capacity is proposed. Treatment plant effluent will continue to be discharged to Bushkill Creek at River Mile 164.1–2.55 through the existing outfall.

*Revised Proposed Water Charging Contract for the Philadelphia Electric Company Limerick Generating Station.* Pursuant to the provisions of the Delaware River Basin Compact, DRBC Resolution No. 71–4 and section 5–3.2 of Resolution No. 74–6, a contract is proposed between the Delaware River Basin Commission (DRBC) and the Philadelphia Electric Company (PECO) to provide an annual minimum payment to the DRBC for the use of water withdrawn from the Schuylkill River and the East Branch of Perkiomen Creek for the consumptive and non-consumptive water use at the Limerick Generating Station in Pennsylvania. Based on comments received in connection with the original September 17, 1986 hearing on this contract, the proposal has been revised. This hearing continues that of September 17, 1986.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions and Dr. Richard Tortoriello concerning the proposed PECO contract. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

**Susan M. Weisman,**

*Secretary.*

April 7, 1987.

[FR Doc. 87–8302 Filed 4-13-87; 8:45 am]

BILLING CODE 6360-01-M

## DEPARTMENT OF ENERGY

### Wetlands Involvement Notification for Proposed Decontamination Research and Development Project Actions for Properties Located in Wayne, NJ

**AGENCY:** Department of Energy.

**ACTION:** Notice of Wetlands Involvement and Opportunity for Comment.

**SUMMARY:** The Department of Energy proposes to conduct decontamination research and development project actions involving removal and control of radioactively contaminated materials on properties in Wayne, New Jersey, as initially authorized by Congress in the House-Senate Conference Report accompanying the Energy and Water Development Appropriations Act of 1984. Wayne lies in the northeast corner of New Jersey in the western portion of Wayne Township in Passaic County, approximately 36 km (22 miles) northwest of New York City. The project actions would involve the removal of approximately 10,000 yd $^3$ of slightly radioactively contaminated materials from Sheffield Brook, and a small portion of the Pompton River at its confluence with Sheffield Brook. These project actions are necessary to remove soil and sediments that contain radioactive contamination that exceeds the present Department of Energy guidelines. The radioactively contaminated material would be placed in interim storage on the property formerly owned by the W. R. Grace Company, located at 868 Black Oak Ridge Road, Wayne, New Jersey.

The Department of Energy is considering the following actions:

1. Removal of the radioactively contaminated materials from Sheffield Brook west of Farmingdale Road and the Pompton River at its confluence with Sheffield Brook, and

2. Interim storage of the contaminated material on the former W. R. Grace property (not in a wetlands area).

In accordance with the Department of Energy regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR 1022), the Department of Energy is preparing a wetlands assessment. Further information is available from the Department of Energy at the address shown below. Public comment or suggestions regarding the proposed activities in this wetlands area are invited.

**DATE:** Any comments are due on or before April 29, 1987.

**ADDRESS:** Written comments should be addressed to: James W. Wagoner II, Division of Facility and Site Decommissioning Projects (NE–23), Office of Remedial Action and Waste Technology, U.S. Department of Energy, Washington, DC, 20545.

Issued in Washington, DC on March 19, 1987.

**A. David Rossin,**

*Assistant Secretary for Nuclear Energy.*

[FR Doc. 87–8253 Filed 4–13–87; 8:45 am]

BILLING CODE 6450-01-M

## Office of Fossil Energy; Coal Policy Committee of the National Coal Council

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and time: Tuesday, May 5, 1987; 2:00 p.m. to 6: p.m.

Place: The Westin Hotel, at Fountain Square, Cincinnati, Ohio 45202.

Contact: Georgia A. Benjamin, U.S. Department of Energy, Office of Fossil Energy (FE–23), Washington, DC 20545, Telephone: 301/353–4718.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the meeting: For the Committee to discuss reports to be prepared by the National Coal Council with respect to requests from the Secretary of Energy for advice, information, and recommendations.

Tentative Agenda:

—Call to Order by Gerald Blackmore, Chairman
—Adoption of Agenda
—Report and presentation of study results by work group chairmen and Executive Director; comments and discussion
—Discussion and decision on disposition of the reports
—Discussion of any other business properly brought before the Committee
—Public Comment—10 Minute Rule
—Adjournment

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Georgia A. Benjamin at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 7, 1987.

J. Robert Franklin,

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 87–8254 Filed 4–13–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket Nos. ER87–358–000 et al.]
Arkansas Power & Light Co. et al.

## Electric Rate and Corporate Regulation Filings

April 7, 1987.

Take notice that the following filings have been made with the Commission:

### 1. Arkansas Power & Light Company

[Docket No. ER87–358–000]

Take notice that on March 31, 1987, Arkansas Power and Light Company (APL) submitted for filing the Twelfth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between APL and Arkansas Electric Cooperative Corporation (AECC). The amendment provides for an increase in capacity at seven delivery points, the transfer of capacity at two delivery points and the modification of effective delivery dates for five points of delivery.

APL requests that the Commission waive any requirements with which APL has not already complied.

*Comment date:* April 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 2. Boston Edison Company

[Docket No. ER87–361–000]

Take notice that on April 1, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, March 5, 1987.

Edison states that it has served the filing on Braintree Electric Light Department and the Massachusetts Department of Public Utilities.

*Comment date:* April 21, 1987, in accordance with Standard Paragraph E at the end of this document.

### 3. The Cincinnati Gas & Electric Company

[Docket No. ER87–62–000]

Take notice that on March 30, 1987, The Cincinnati Gas & Electric Company (the Company) tendered for filing an amendment to the change in the Company's FERC Electric Tariff, first revised Volume No. 1, Rider F, Fuel Cost Adjustment, Docket No. ER87–62–000.

*Comment date:* April 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 4. MSU System Services, Inc.

[Docket No. ER87–55–000]

Take notice the MSU System Services, Inc. ("SSI"), formerly Middle South Services, Inc. ("MSS"), as agent for Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L") and New Orleans Public Service Inc. ("NOPSI"), on February 20, 1987 tendered for filing an Amendment to a Letter Agreement between SSI and Oklahoma Gas and Electric Company, revised to incorporate pricing provisions on energy purchased for resale which comply with Section 35.23 of the Commission's regulations.

SSI requests an effective date of January 1, 1987 for the Amendment and for the Letter Agreement previously filed in Docket No. ER87–55–000. SSI requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Regulations.

*Comment date:* April 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 5. Northern States Power Company, Wisconsin

[Docket No. ER87–359–000]

Take notice that on March 31, 1987, Northern States Power Company, Wisconsin filed tariff changes decreasing its rates for wholesale service by $405,000 on an annual basis. The Company requests waiver of the prior notice requirements and an effective date of April 1, 1987.

*Comment date:* April 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 6. SEMASS Partnership

[Docket No. ER87–357–000]

Take notice that on March 30, 1987, SEMASS Partnership (SEMASS), a qualifying small power production facility, tendered for filing as an initial rate schedule an executed Power Sale Agreement (Agreement) between SEMASS and Commonwealth Electric Company (CEC) for a unit sale of capacity and energy from a solid waste resource recovery and electric generating facility to be located at Rochester, Massachusetts (the "Facility"). SEMASS is subject to the Commission's ratemaking jurisdiction

because its power production capacity is in excess of 30 magawatts. SEMASS also requests waiver of the Commission's regulations requiring that rate schedules be submitted no more than 120 days before the rates are to become effective, the submission of cost-of-service data, accounting practices, adjustment and certification of accounts and reports, and other full filing requirements not applicable to qualifying facilities.

The proposed initial rate as set forth in the Agreement is established in four phases: a test power phase, a first-to-third year phase, a third-to-eighteenth year phase, and a post-eighteenth year phase. The negotiated rate in each phase is either a formula based on CEC's avoided costs of fuel and energy, a fixed rate, or the greater of the amounts under the fixed rate or formula.

Copies of the instant filing have been served upon CEC and the Massachusetts Department of Public Utilities.

*Comment date:* April 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Sycamore Cogeneration Company**

[Docket No. EL87-27-000]

Take notice that on March 31, 1987, Sycamore Cogeneration Company (Sycamore) tendered for filing its Petition For a Declaratory Order that certain interconnection equipment which Sycamore proposes to own and operate as a component of its Sycamore Cogeneration Facility is part of the qualifying facility certified on April 18, 1986 by the Commission in Docket No. QF83-51-000.

*Comment date:* April 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-8261 Filed 4-13-87; 8:45 am]
BILLING CODE 6717-01-M

---

[Docket Nos. ER87-334-000 et al.]

## Electric Rate and Corporate Regulation Filings; Bangor Hydro-Electric Company et al.

April 6, 1987.

Take notice that the following filings have been made with the Commission:

**1. Bangor Hydro-Electric Company**

[Docket No. ER87-334-000]

Take notice that the Bangor Hydro-Electric Company ("BHE") on March 26, 1987, tendered an amendment to its filing for an initial rate schedule, a Unit Exchange and Energy Banking Agreement ("Agreement") dated as of December 23, 1986 among BHE, Boston Edison Company ("BECO"), and Down East Peat, L.P. ("DEP"). For administering the Agreement, BHE would receive approximately $48,000 per year.

Under the Agreement, beginning on or after the commencement date of operation of the DEP Qualifying Facility located in Deblois, Maine, BHE will mitigate the risks to DEP or revenue interruptions in DEP's power sales contract with BECO, which interruptions or other cost penalties may otherwise result from transmission constraints on the north-south transmission path between DEP's qualifying small power production facility in Deblois, Maine and BECO. Copies of the filing have been served upon BECO and DEP.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**2. APS GROUP-PJM GROUP Interconnection Agreement**

[Docket No. ER87-338-000]

(West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, (Above referred to collectively as the APS Group)).

(Public Service Electric and Gas Company, Philadelphia Electric Company, Pennsylvania Power and Light Company, Baltimore Gas and Electric Company, Jersey Central Power and Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Company, Atlantic City Electric Company, Delmarva Power and Light Company, (Above referred to collectively as the PJM Group)).

Take notice that on March 24, 1987, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection filed, on behalf of the above listed parties to the APS-PJM Agreement, that Agreement consisting of the original agreement dated April 26, 1965, all supplemental agreements thereto, all schedules thereto currently in effect except Schedule 7.05, and Schedule 7.06 superseding Schedule 7.05 currently in effect.

The purpose of this filing is to supersede the current rate schedule designations for the individual parties of the PJM Group listed above with a single rate schedule designation for the PJM Group and to modify the Short Term Power Schedule as set forth in Schedule 7.06. The parties have requested an effective date of March 30, 1987 for the new rate schedule designation and Schedule 7.06.

The modification to the Short Term Power Schedule include the provision for daily as well as weekly reservation; ceiling charges and adders for power generated by either party provided the total cost of services supplied is not less than 110% of the total out-of-pocket cost of supplying the Short Term Energy; ceiling charges and adders for power transmitted by PJM for others, and reduction in charges when transmission system constraints, unforseen when the reservation was made, result in curtailment of Short Term Energy deliveries.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**3. The Connecticut Light and Power Company**

[Docket No. ER87-341-000]

Take notice that on March 25, 1987, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a sales agreement (Sales Agreement) with Respect to Montville and Middletown Units between CL&P and Massachusetts Municipal Wholesale Electric Company (MMWEC) dated as of July 1, 1986.

CL&P states that the rate schedule provides for a sale to MMWEC of capacity and energy from CL&P's Montville Units Nos. 5 and 6 and Middletown Units Nos. 2, 3, and 4 (the Units) during the period November 1, 1986 to October 31, 1992, together with related transmission service.

CL&P requests that the Commission permit the rate schedule filed to become effective as of November 1, 1986.

CL&P states that the capacity charge rate for the first twenty-four months for the proposed service is a negotiated rate, based on the market price for this capacity, and less than the cost-of-service rate. The capacity charge for the remainder of the term is determined on a cost-of-service basis at the time that the Sales Agreement was executed. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Sales Agreement was executed and is determined in accordance with section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/kW–Month) and (ii) the number of kilowatts of winter capability which MMWEC is entitled to receive during such month. This charge is reduced to give due recognition of the payment made by MMWEC to intervening systems providing transmission service over Pool Transmission Facilities for the delivery of the purchase provided under the Sales Agreement. The Energy Charge and the Station Service Energy Charge are based on MMWEC's portion of the applicable fuel expenses and no special cost-of-service studies were made to derive these charges.

CL&P states that the services to be provided under the Sales Agreement are similar to the services provided by CL&P pursuant to purchase agreements with UNITIL Power Corporation (FERC Rate Schedule No. CL&P 358), and with Boston Edison Company (FERC Rate Schedule No. CL&P 369.

CL&P states that a copy of this filing has been mailed to MMWEC, Ludlow, MA.

CL&P further states that the filing is in accordance with Part 35 of the Commission's. Regulations.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**4. Consumers Power Company**

[Docket No. ER87–343–000]

Take notice that Consumers Power Company (Consumers Power) on March 26, 1987 tendered for filing a Letter Agreement dates December 23, 1986 between Consumers Power and Commonwealth Edison Company (Commonwealth) which redetermines the fixed charge factor applicable to transactions under the "Agreement for Sale of Portion of Generating Capability of Ludington Pumped Storage Plant by Consumers Power Company to Commonwealth Edison Company," dated June 1, 1971 as amended through Amendment No. 3 date July 1, 1985 (Agreement), denoted Consumers Power Company Rate Schedule FPC (now FERC) No. 28. Consumers Power states that the fixed charge factor was redetermined pursuant to the terms of the Agreement and does not amend the Agreement.

Consumers Power States that the Letter Agreement reduces the fixed charge factor from 14.582% to 13.527% on and after January 1, 1987. Consumers Power states that the Tax Reform Act of 1986, effective January 1, 1987 reduces the effective corporate income tax rate from 46% to 40%; the effect of this was a reduction of 1.045% in the fixed charge factor.

Consumers Power states the fixed charge factor is subject to further redeterminations during the term of the agreement in accordance with section 4.2 thereof.

Consumers Power states that copies of the filing were served on Commonwealth, The Detroit Edison Company and on the Michigan Public Service Commission.

Consumers Power requests waiver of the notice requirements to permit an effective date of January 1, 1987 for the 13.537% fixed charge rate.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**5. Idaho Power Company**

[Docket No. ER87–346–000]

Take notice that on March 27, 1987, Idaho Power Company (Idaho Power) of Boise, Idaho, submitted for filing as an initial rate schedule, the following Agreements, which have been executed by Idaho Power and Utah Power & Light Company (Utah Power):

Agreement for Interconnection and Transmission Services, Dated March 19, 1982

Amendment No. 1 to the Agreement for Interconnection and Transmission Services, Idaho Power Company-Utah Power & Light Company, Dated August 17, 1982

The March 19, 1982 Agreement establishes an additional point of interconnection between Utah Power and Idaho Power at Idaho Power's Borah Substation in Idaho, provided for construction of certain transmission and switchyard facilities and defined ownership of facilities, and provides Utah Power certain wheeling rights.

The August 17, 1982 Amendment redefined ownership of certain interconnection facilities.

Idaho Power states that the filing includes an amendment to Exhibit A of the March 19, 1982 Agreement which removes the automatic rate of return adjustment provisions in compliance with current Commission policy.

Idaho Power requests that the requirements of prior notice be waived for an effective date of March 19, 1982.

Idaho Power states that it has served copies of its filing on Utah Power and on the public utilities commissions of the states of Idaho, Utah and Wyoming.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**6. Idaho Power Company**

[Docket No. ER87–347–000]

Take notice that on March 27, 1987, Idaho Power Company (Idaho Power) of Boise, Idaho, submitted for filing as an initial rate schedule, the following Agreements, which have been executed by Idaho Power and Sierra Pacific Power Company (Sierra Pacific):

Idaho Power Company, Sierra Pacific Power Company, Interconnection Agreement, Dated September 1, 1976

Idaho Power Company, Sierra Pacific Power Company Interconnection and Transmission Services Agreement, Dated May 29, 1981

The September 1, 1976 Agreement was to provide for an interconnecting transmission line between the Idaho Power and Sierra Pacific systems over which sales, exchanges and other transfer of power and energy and to provide for transmission capacity in Idaho Power's system for certain firm purchases of power and energy by Sierra Pacific from Utah Power & Light Company. However, the anticipated transmission line was never constructed, and the September 1, 1976 Agreement was cancelled and superseded by the Interconnection and Transmission Services Agreement dated May 29, 1981. No charges or services were made or provided under the September 1, 1976 Agreement.

The May 29, 1981 Agreement provides for an interconnecting transmission line between the Idaho Power and Sierra Pacific systems over which Idaho Power's share of the Valmy Project in northern Nevada may be transmitted and other transfers of power and energy may be made as the parties may hereafter agree, and to provide for transmission capacity in Idaho Power's

system for those purchases of power and energy by Sierra Pacific from Utah Power & Light Company referred to in the May 29, 1981 agreement.

Idaho Power states that the filing includes an amendment to Paragraph 5.5A.3 of the May 29, 1981 Agreement which removes the automatic rate of return adjustment provisions in compliance with current Commission policy.

Idaho Power requests that the requirements of prior notice be waived for an effective date of May 29, 1980, the date of commercial operation of the Interconnecting Line and of the date of the initial charges by Idaho Power under the May 29, 1981 Agreement.

Idaho Power states that it has served copies of its filing on Sierra Pacific and on the public utilities commissions of the states of Idaho, Nevada, California and Oregon.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Mississippi Power Company**

[Docket No. ER87-344-000]

Take notice the Mississippi Power Company ("MPC") on March 24, 1987, tendered for filing proposed changes as supplements to certain designated sheets of its FERC Electric Service Tariff Original Volume No. 1. No change in the level of rate in the existing tariff is involved. The supplements tendered for filing consist of changes in language made necessary because portions of the existing tariff specifically idenfity co-operative electric power associations as the parties to whom the tariff applies. The tendered supplements are for the purpose of making provisions of the existing tariff applicable to wholesale service to the City of Collins, Mississippi, the first municipality to be served at wholesale by MRC, and to delete, as to the City of Collins, certain tariff provisions relevant only to existing co-operative customers.

Copies of the filing were served upon MPC's jurisidictional customers and the Mississippi Public Service Commission.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**8. Portland General Electric Company**

[Docket No. ER87-340-000]

Take notice that on March 24, 1987, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which became effective with meter readings on and after July 31, 1986. This filing includes a revised Schedule 4 to Appendix 1, exhibit C of the Residental Purchase and Sale Agreement along with the authorization of implement this rate change from the Public Utility Commission of Oregon.

PGE states that the filing shows that the third quarter PCA adjustment to the current base ASC is 1.90 mills/kWh credit, which when added with the base ASC results in a net ASC rate effective for this period.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this document.

**9. Public Service Company of New Mexico**

[Docket No. ER87-360-000]

Take notice that on March 31, 1987, Public Service Company of New Mexico (PNM) tendered for filing new service schedules to the PNM-Plains Electric Generation and Transmission Cooperative, Inc. (Plains) Master Interconnection Agreement, amendments to existing service schedules to the PNM-Plains Master Interconnection Agreement, amendment to the existing PNM-Plains Electric Service Agreement, and an amendment to an existing PNM-Texas-New Mexico Power Company (TNP) Interconnection Agreement. These agreements were entered into as a result of Principles of Transmission Service between PNM and Plains dated December 20, 1984, as modified by Restated Principles of Transmission Service between PNM and Plains dated September 15, 1986.

The reasons for the changes submitted are to modify the terms and conditions under which PNM has been providing transmission seervices to Plains related to Unit 1 of Plains' Escalante Generating Station; to set forth new terms and conditions by which PNM provides Plains with electric service and ancillary transmission service under the PNM-Plains Agreement for Electric Service; to modify certain PNM–TNP arrangments for the provision of service to Plains at the Hidalog Switching Station; and to modify the terms and conditions under which Plains provides transmission service to PNM's Clayton Division.

Copies of the filing were served upon Plains, TNP and the New Mexico Public Service Commission.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**10. The Toledo Edison Company**

[Docket No. ER87-336-000]

Take notice that on March 23, 1987, The Toledo Edison Company ("Toledo Edison") tendered for filing a Resale Service Rate Agreement effective as of October 1, 1986 between Toledo Edison and Southeastern Michigan Rural Electric Cooperative ("Southeastern Michigan").

Toledo Edison states that Southeastern Michigan presently purchases firm power up to its FERC Electric Traiff, Original Volume No. 1. Under the Resale Service Rate Agreement, Toledo Edison will sell to Southeastern Michigan all of the power and energy needed by Southeastern Michigan to serve its requirements.

Toledo Edison states that the rate set forth in the Resale Service Rate Agreement is a negotiated rate between Toledo Edison and Southeastern Michigan. The charges under the Resale Service Rate Agreement reflect an increase in the monthly minimum bill from 200 KVA to 700 KVA in the first three years of the Agreement. Based on the twelve months ending September 1986, Toledo Edison would have received $22,471 less from Southeastern Michigan if service has been rendered under the FERC Electric Tariff. Toledo Edison also states that the Resale Service Rate Agreement will help Southeastern Michigan become competitive in its source of power.

Toledo Edison has requested waiver of certain provisions of the Commission's regulations in order to permit the Resale Service Rate Agreement to be made effective without suspension or modification on October 1, 1986.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**11. VEPCo-PJM Group Interconnection Agreement**

[Docket No. ER87-348-000]

(Virginia Electric and Power Company, (referred to as VEPCo)).
(Public Service Electric and Gas Company, Philadelphia Electric Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company, Atlantic City Electric Compamy, Delmarva Power & Light Company, (Above referred to collectively as the PJM Group)).

Take notice that on March 26, 1987,

the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection filed, on behalf of the above listed parties to the VEPCo-PJM Agreement, the Agreement consisting of the original agreement dated September 30, 1965, all supplemental agreements thereto, all schedules thereto currently in effect except Schedule 7.04, and Schedule 7.05 superseding Schedule 7.04 currently in effect.

The purpose of this filing is to supersede the current rate schedule designations for the individual parties of the PJM Group listed above with a single rate schedule designation for the PJM Group and to modify the Short Term Power Schedule as set forth in Schedule 7.05. The parties have requested an effective date of March 30, 1987 for the new rate schedule designation and Schedule 7.05.

The modifications to the Short Term Power Schedule include the provision for daily as well as weekly reservations; ceiling charges and adders for power generated by either party provided the total cost of services supplied in not less than 110% of the total out-of-pocket cost of supplying the Short Term Energy; ceiling charges and adders for power transmitted by VEPCo for others; new fixed rates for power transmitted system constraints, unforeseen when the reservation was made, result in curtailment of Short Term Energy deliveries.

*Comment date:* April 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8259 Filed 4-13-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. QF87-337-000 et al.]**

## Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Albany Cogeneration Associates et al.

*Comment date:* Thirty days from publication in the **Federal Register** in accordance with Standard Paragaph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

### 1. Albany Cogeneration Associates

[Docket No. QF87-337-000]

April 7, 1987.

On March 25, 1987, Albany Cogeneration Associates (Applicant), of One City Square, 330 Broadway, Albany, New York 12207, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Albany County, New York. The facility will consist of two identical power/heat recovery trains, each consisting of a combustion turbine generating unit, a duct burner for supplementary firing and a heat recovery-heat exchanger for heating process hot water. Thermal energy recovered from the facility will be used for space and process heating. The electric power production capacity will be 8.8 MW. The primary energy source will be natural gas. Installation of the facility is scheduled to begin on May 1, 1987.

### 2. Chowchilla Biomass Power Plant Associates Limited Partnership

[Docket No. QF87-336-000]

On March 25, 1987, Chowchilla Biomass Power Plant Associates Limited Partnership (Applicant), of California Agricultural Power Company, Inc., General Partner, 1581 Cummins Drive, Suite 141-A, Modesto, California 95352, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Chowchilla, California and will consist of a waterwall steam generator and a steam turbine generator. The net electric power production capacity of the facility will be 8.8 MW. The primary source of energy will be biomass in the form of corn stalks, cotton stalks, and orchard prunings.

### 3. Cogent Energy Company

[Docket No. QF86-523-001]

April 8, 1987

On March 25, 1987, Cogent Energy Company (Applicant), of Four Gateway Center, Pittsburgh, Pennsylvania 15222, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility was originally certified as a qualifying 196.4 MW cogeneration facility on July 3, 1986 (Docket No. QF86-523-000, 36 FERC ¶62,013 (1986)). The application for recertification requests that an extraction/condensing turbine generator be added to the facility and the qualifying net electric power production capacity for the facility be reduced from 196.4 MW to 190.2MW.

### 4. Southwest Texas State University

[Docket No. QF87-341-000]

April 8, 1987.

On March 27, 1987, Southwest Texas State University (Applicant), of Texas State University, P.O. Box 1002, SWTSU Station, San Marcos, Texas 78666 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in San Marcos, Texas and will consist of a reciprocating engine generator and a heat recovery steam generator. The net electric power production capacity of the facility will be 5,925 kW. The primary source of energy will be natural gas. Construction of the facility will begin in September 1987.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-8257 Filed 4-13-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3185-5]

### Science Advisory Board, Environmental Effects, Transport and Fate Committee, Municipal Waste Combustion Review Subcommittee, Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the Municipal Waste Combustion Review Subcommittee of the Science Advisory Board's Environmental Effects, Transport and Fate Committee will convene for a two day meeting. The meeting will begin at 9:00 a.m. on April 30, 1987 in the Mayflower Room of the Bellevue Hotel, 505 Geary Street, San Francisco, California, and will adjourn at approximately 5:00 p.m. on May 1.

The purpose of the meeting is to continue with a review of a series of scientific issues related to municipal waste incineration. Three documents are currently in preparation by the Subcommittee, each addressing different topics related to municipal waste combustion. These documents respectively focus on (1) a risk assessment methodology for municipal waste combustor emissions, (2) a summary of the state of technology and the scientific issues involved, and (3) a research plan for municipal waste combustion. The reviews are in various stages of completion, and various degrees of Subcommittee consensus have been attained. This meeting will achieve consensus, bring documents closer to completion, and thereby, will bring sharper focus to defining the scientific issues pertinent to municipal waste combustion.

The meeting is open to the public. Any member of the public wishing to attend, present information to the subcommittee, or obtain further information concerning the meeting should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, Environmental Effects, Transport and Fate Committee, Science Advisory Board (A-101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 382-2552 or FTS 8-382-2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the above address. Persons interested in making statements before the Committee must contact Ms. Kurtz at the above address no later than April 27, 1987 in order to be assured of space on the agenda.

Dated: April 7, 1987.

Terry F. Yosie,

*Director, Science Advisory Board.*

[FR Doc. 87-8279 Filed 4-13-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3185-9]

### Science Advisory Board, Environmental Health Committee, Halogenated Organics Subcommittee, Open Meeting

**Amended Notice: Correction in Location of the Meeting to Earlier Notice**

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Halogenated Organics Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on Monday, April 20, 1987, at the U.S. Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66103. The meeting will start at 9:00 a.m. and adjourn no later than 5:00 p.m. The information supersedes an earlier notice in the **Federal Register** of March 31 (52 FR 10262) announcing a different location.

The principal purpose of the meeting will be to review the scientific adequacy of the Final Draft Criteria Document for Ortho-Dichlorobenzene, Meta-Dichlorobenze, Para-Dichlorobenzene, February, 1987 prepared by the Criteria and Standards Division in the Office of Drinking Water, U.S. Environmental Protection Agency. To obtain copies of (or further information about) the draft document, write to Dr. Edward Ohanion, Criteria and Standards Division [WH-550D], U.S. EPA, 401 M Street, SW., Washington, DC 20460, or call (202) 382-7571.

The meeting will be open to the public. Any member of the public desiring to attend or to provide comments to the Subcommittee should contact either Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 Street, SW., Washington, DC 20460 or call (202) 382-4126 by c.o.b. April 16, 1987.

Dated: April 9, 1987.

Terry F. Yosie,

*Director, Science Advisory Board.*

[FR Doc. 87-8280 Filed 4-13-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-10-FRL-3185-7]

### General NPDES Permit for Concentrated Animal Feeding Operations in the State of Idaho

**AGENCY:** Environmental Protection Agency, Region 10.

**ACTION:** Notice of issuance of final general NPDES permits.

**SUMMARY:** On May 9, 1986 (51 FR 17236) EPA published notification of the proposed General NPDES Permit for concentrated animal feeding operations in Idaho. During the public comment period which ended September 30, 1986, EPA held four hearings and two workshops and received many letters of comment. All written comments and oral testimony received during the public comment period have been reviewed and considered in preparation of the final general permit.

**EFFECTIVE DATE:** This General NPDES Permit shall become effective May 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Karen Harder, U.S. Environmental Protection Agency, Region 10, Water Permits and Compliance Branch, WD-134, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1669 or FTS 399-1669.

**SUPPLEMENTARY INFORMATION:** On May 9, 1986, EPA published a notice in the **Federal Register** of the availability of this general permit. During the public comment period which ended September 30, 1986, EPA held four hearings and two workshops. Over 130 letters of comment were received and more than 50 people presented oral testimony at the hearings.

Public hearings were held July 14-17, 1986, in Moscow, Boise, Twin Falls, and Pocatello, where numerous individuals presented oral comments. Comments received from the public prompted reconsideration of several proposed permit requirements. As a result, some tentative changes to the permit were made and presented at workshops held September 17 and 18, 1986, in Twin Falls and Boise.

All written comments and oral testimony received the public comment period have been reviewed and considered in preparation of the final general permit. Several changes were made to the permit as a result of these

comments. The Agency's Response to Comments published below addresses all significant comments received and supplements the Fact Sheet which provides the basis for the general permit. The original Fact Sheet was published with the proposed general permit in the **Federal Register** (51 FR 17236, May 9, 1986) and is incorporated here by reference.

The final general permit is published below. The permit will become effective on May 14, 1987, and will have a term of five years.

**Response to Comments**

1. *Comments:* The permit improperly applies the guidelines (40 CFR Part 412) to smaller feedlots. Best professional judgment could have been used to support these standards for the smaller feedlots, but this was not the basis as is described in the Fact Sheet. The permit should therefore not cover such facilities.

*Response:* The Clean Water Act requires facilities that discharge pollutants to waters of the United States to have NPDES permits. Permit limits are based on nationally promulgated guidelines, treatment achievable using available technology, or specific water quality needs. Part IV.A.3.c. of the Fact Sheet explains this support for the permit:

> Effluent limitations and requirements for all confined animal feeding operations (CAFOs) covered by this general permit are identical. They are supported by the promulgated guidelines (40 CFR 412.13), best management practices (BMPs), the water quality assessment, and other requirements.

More specifically, requirements concerning the retention of runoff from the 25-year 24-hour rainfall event and process generated wastewater by operations confining 1,000 or more animal units are based on the promulgated guidelines (40 CFR Part 412). The requirement for fences on operations of all sizes is based on Idaho Code Section 18–4301 which prohibits the discharge of filth or other materials or obstruction to the free flow of water.

Retention of snowmelt runoff for these same operations is based on the water quality and environmental assessments conducted for this permit. These studies discuss water quality problems associated with discharges resulting from snowmelt runoff, such as excess nutrients, fecal coliform bacteria, floating, suspended, or submerged matter, and oxygen-demanding materials. The water quality assessment shows that fecal coliform levels in runoff waters from Idaho feeding operations have been observed as high as 500,000/100ml. This concentration exceeds both state and federal standards. Idaho Water Quality Standards (16 IDAPA 1–12250.01) sets limits of 500/100 ml as a maximum at any time, 200/100 ml in 10% of all samples taken in any month, and a geometric mean of 50/100 ml based on a minimum of five samples taken in any 30-day period. Federal standards include a log mean of 200/100 ml based on a minimum of five samples taken during a month and 400/100 ml in 10% of the samples taken in any 30-day period. EPA has, after careful analysis, determined that runoff from snowmelt can violate standards and must therefore be contained.

Operations confining 300 or more animal units are required to be covered by NPDES permits pursuant to 40 CFR 122.23, Appendix B. Since no guidelines have been promulgated for these operations, permit limitations are requirements must be based on water quality concerns or an analysis of the limits that can be achieved using the best available technology. The environmental assessment discusses both methods for establishing permit limitations.

Retention of runoff from the 25-year 24-hour rainfall event and process generated wastewater is being required for operations confining 300 or more animal units based on best professional judgment regarding the best available technology economically achievable. Requirements for these smaller operations concerning snowmelt runoff and the installation of fences are the same as those for operations confining greater than 1,000 animal units and are based on state and federal water quality standards.

The environmental assessment examined the costs involved with applying the promulgated guidelines for facilities confining greater than 1000, animal units to those confining fewer animals. Many different technologies were evaluated, including land application, dehydration, composting, oxidation ditches, runoff control systems, lagoons, and activated sludge systems. Costs and impacts to the operators were examined for each alternative. Runoff control systems and lagoons were found to be the least expensive to install and maintain.

The major cost associated with runoff and waste control is the construction of holding ponds. Holding ponds are commonly used by feeding operations nationwide. Low labor requirements, a reduction of fly problems, and long-term storage that allows field spreading at appropriate time are some of the advantages associated with this system. Additionally, grass infiltration areas, diversion structures, and management practices can be used to decrease or eliminate costs. A partial budget for evaluating the costs and returns of such a system was presented in the assessment and included capital outlays, fixed and variable costs, operating costs, and possible returns. The net costs incurred by this treatment system are considered to be affordable.

Many costs associated with treatment alternatives vary between operations due to site-specific factors. These factors include location of surface water, land slope, surface drainage patterns, climate, vegetation, soil types, and erosion potential. The assessment explains, however, that established operations on sites with poor physical characteristics can benefit from the use of management practices to reduce elevated treatment costs.

Frequency and method of manure removal can significantly affect total wasteload and costs associated with its treatment. Stockpiling of manure in areas protected from rainfall is another management practice that will additionally reduce total costs for the operator. Other practices that can be used for this purpose include installing diversion structures and planting vegetation strips to reduce total runoff, and solids separation prior to containment in a lagoon.

Economic returns from waste treatment have also been found to reduce costs to the operator, such as applying manure to the land for use as a fertilizer and soil conditioner. A comparison of annual costs and returns from alternative waste management systems was presented in the environmental assessment. Greater detail is provided and consideration is made for different herd sizes and management systems.

The draft general permit that was proposed May 9, 1986, included coverage for feeding operations confining fewer than 300 animal units if they were determined, from an on-site inspection, to be significant contributors of pollution. Numerous comments received during the public notice period objected to automatic coverage of these smallest operations under a permit perceived to be primarily designed for the larger operations. Many people felt the costs were disproportionate to be pollution caused by these facilities.

EPA agrees that automatic coverage of facilities confining fewer than 300 animal units under this general permit may be overly restrictive. As a result of these comments, EPA has changed the applicability section of the permit to exclude these smaller operations. EPA

BEST COPY AVAILABLE

has retained in this section, however, the opportunity for operators, who have been designated as significant contributors of pollutants, to be covered by the general permit if they so choose. In this way, individual permits containing different requirements may be written for small facilities or, at the discretion of the operator, authorization may be granted for discharging under the general permit.

2. *Comment:* Retention of runoff from three inches of snowmelt should not be required for all locations in Idaho. The amount of winter precipitation varies greatly throughout Idaho and this should be considered. Additionally, in south central Idaho, evaporation values are higher which reduce the amount of snowmelt running off the land. Surface retention of melted snow should also be considered.

*Response:* Retention of runoff from three inches of snowmelt was required in the draft general permit based on the amount of runoff expected from a winter's-worth of snowfall after evaporation and other factors were taken into account. Treatment for all winter runoff was required based on the practical restrictions of applying wastewaters to the land when the ground was frozen. Frost commonly extends one to two feet deep in the soil mantle during this time throughout the state. In addition, thawing does not usually occur until after at least six days of warming temperatures. This generally prevents land application of solids and wastewaters during the winter months. Additionally, antecedent soil moisture conditions may cause wastewaters pumped onto fields to immediately run off.

Many comments were received objecting to this requirement on the basis that it was inappropriate due to varying climatic patterns throughout the state. EPA has changed this requirement of the permit to allow permittees to either design treatment facilities to accommodate runoff from three inches of snowmelt, or calculate a different volume for containment. Guidance will be available from the state regarding these calculations. The calculations must be retained on-site and be made available to authorized officials upon request. Permittees will now be able to design treatment facilities specifically for their location or opt for the three inches which EPA has determined is necessary to protect water quality.

Snowmelt runoff refers to that amount of snow that actually melts and runs off the land. Infiltration, surface retention, and other site specific factors reduce the total amount of water that actually enters the receiving water. Permittees opting to calculate snowmelt runoff for their operations may consider these variable in addition to evaporation, retention time, and the value of the one-one-five year winter.

3. *Comment:* Reporting requirements and the number of copies that must be sent to the regulating agencies should be reduced. Also, the operating plan should be required only of those operations that have recurring discharges.

*Response:* EPA agrees that the reporting requirements of the proposed general permit can be reduced without a corresponding reduction in permit compliance. Several of these requirements have therefore been changed. The amount of information required to be submitted in the Notice of Intent has been reduced and both the annual compliance report and the operating plan have been eliminated. EPA has decided that monitoring and reporting each discharge as it occurs is sufficient.

EPA plans to work closely with permittees whose operations have recurring discharges. Reporting requirements may be increased for these facilities in addition to the use of different or additional management practices or other recommendations that will be made to the operator to improve compliance with the permit.

4. *Comment:* A more in-depth economic impact analysis should be done concerning the expense of complying with the proposed permit. Also, low-interest loans should be provided to permittees for the installation of the required waste treatment facilities.

*Response:* A cost analysis was performed prior to the promulgation of the regulation requiring runoff from the 25-year 24-hour rainfall event to be retained on-site. When this permit was proposed, another cost analysis was performed and included in the environmental assessment. The impact of compliance with the general permit was analyzed, including not only an evaluation of upgrading existing treatment facilities, but also a cost analysis of installing such facilities where none previously existed. EPA evaluated these studies and determines that excessive or unreasonable financial burdens would not result from compliance with this permit. While EPA is not authorized to provide loans to industry for wastewater treatment, such loans may be available from the Small Business Administration (1441 L St. NW., Washington, DC 20416).

5. *Comment:* Regulations should be placed only on new dairies being built today and in future years. It costs too much to rebuild existing facilities.

*Response:* Cost tests were performed for both existing and newly-built facilities in support of the promulgated guidelines. The results indicated that while many industries incur high costs when retrofitting a facility with a more advanced treatment technology, it is not that costly to install sedimentation pond systems at existing facilities. This general permit, therefore, treats old and new facilities alike.

6. *Comment:* Each facility should be visited prior to being authorized under this general permit to determine applicability.

*Response:* The general permit is designed to cover a large number of similar operations under one permit. This action saves time and money not only for the regulating agency, but for the permittee as well. If all applicants were to be visited prior to being authorized to discharge under this permit, more than 2,000 visits may have to be conducted. EPA will therefore primarily rely upon the information provided by individual operators in making applicability determinations.

7. *Comment:* Operations that do not discharge do not need a permit. If something should occur to cause a discharge unexpectedly, this should not constitute a violation. Such a facility should be exempt because of an excellent past record.

*Response:* Any facility that discharges without a permit is in violation of the Clean Water Act except if this discharge occurs only in the event of a 25-year 24-hour rainfall. If an unexpected discharge occurs without being the result of such a storm, a violation occurs. This same discharge may be allowable, however, if the facility is covered by and in compliance with the general permit.

8. *Comment:* The permit should apply to all operations big and small. A large number of smaller-sized operations in an area can contribute as much or more pollution to Idaho waterways as can a few larger-sized operations.

*Response:* Large numbers of small operations in Idaho do collectively contribute significant amounts of pollution to Idaho's waterways. This was one of the reasons discussed in the water quality assessment supporting inclusion of these operations under the general permit. The general permit will therefore automatically cover operations confining 300 or more animal units. The smaller facilities, if identified to be causing significant pollution problems, will be covered under either the general permit or individual permits. Together, these permits will protect water quality from discharges from variously-sized operations.

9. *Comment:* Small operations that have streams running through them are definite polluters. They should not require an on-site inspection prior to needing an NPDES permit.

*Response:* The regulations state that prior to requiring a facility to apply for a permit, EPA must conduct an on-site inspection for those facilities confining fewer than 300 animal units (40 CFR 122.23(c)). The location of the facility relative to nearby waterways will be considered when making the determination that the operation is a significant contributor of pollution and therefore needs a permit. Other considerations include the size of the operation and the amount of wastes discharged, the means of conveyance of animal wastes and wastewaters to surface waters, and the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge. In scheduling on-site inspections, facilities with streams running through them would be given a high priority.

10. *Comment:* The permit should state the size of animals that must be covered, and whether calves or cows are covered.

*Response:* Maturity and sometimes weight are specified in the applicability requirements in Part I.A.1. of the permit. Where these factors are not specified, all such animals are included regardless of size or weight. However, Part I.A.1.a. was further clarified as a result of this comment.

11. *Comment:* Some corrals are used only once or twice a year, some seasonally, some year around but for a few hours per day, others all day. This permit does not distinguish between these different situations for implementation of the requirements.

*Response:* The general permit covers all operations which discharge wastewaters and stable or confine and feed or maintain certain numbers of animals for a total of 45 days or more in any 12-month period. This applicability requirement is contained in Part I.A.1. of the permit. Thus, a twice yearly use might not be covered.

12. *Comment*: The permit should be phased in over a period of several years to ease financial stress on the permittee.

*Response:* On the effective date of the issued permit, all permittees must be in compliance with all stated limitations and requirements. The Water Quality Act of 1987, requires that all facilities for which guidelines have been promulgated must be in compliance with these regulations by no later than three years since the promulgation date. For facilities confining 1000 or more animal units, this date was in 1979. All of these larger facilities must therefore be in compliance with the general permit on its effective date. Facilities that confine fewer than 1000 animal units are required by the Act to be in compliance with the permit as early as possible but no later than March 31, 1989. However, since applicability of the permit limitations to these small facilities are partially based on water quality concerns, compliance is required by the effective date of the permit. This is based on the 1972 Federal Water Pollution Control Act which requires compliance with water quality standards by 1977. Administrative Orders may be issued to individual facilities, however, which would allow a reasonable period of time to be granted to obtain compliance with the permit. Time frames would vary between operations but would probably not exceed one year. When applying for coverage under the general permit, operators should indicate the amount of time necessary to come into compliance with the permit.

13. *Comment*: A cooperative voluntary approach to solving waste problems is perferable to regulation.

*Response:* The Clean Water Act requires that NPDES permits be issued to all facilities that discharge pollutants to waters of the United States. EPA will be working with individual permittees to attain compliance and expects that such compliance will be achieved primarily on a voluntary basis. The agency also expects a few permittees will attempt to obtain a competitive advantage by not installing the necessary pollution control facilities. In the interest of fairness to the entire industry, such permittees will be addressed with appropriate enforcement actions.

14. *Comment*: Additional education should be provided regarding the permit and the design and construction of control facilities.

*Response:* Workshops were held during the public comment period for the general permit which included discussion sessions between the attendees and agency personnel. Information was provided on permit limitations and requirements, the level of technology required to treat wastewaters properly, regulations, and financial implications.

The State of Idaho Department of Health and Welfare has developed guidelines for the design of treatment facilities. Technical training sessions were held in early March to present this information.

Employees at the EPA offices in Seattle and Bosie and various state agency offices throughout Idaho are available to answer technical questions as they arise. Other agencies that can provide information include the Soil Conservation Service and the University of Idaho Extension Service. EPA is committed to providing the necessary educational opportunities. If more formal education is requested by the industry trade association, EPA will make every effort to positively respond to such requests.

15. *Comment*: Individual NPDES permits are more appropriate than one general permit.

*Response:* A general permit may be written if the sources covered by it involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations or operating conditions, require the same or similar monitoring, and are determined to be more appropriately controlled under a general permit than under individual permits (40 CFR 122.28(a)(2)). EPA determined that these conditions were met in this situation. Additionally, burdens associated with applying for and obtaining permits will be lessened with this alternative process.

16. *Comment*: Part I.F.2. of the permit offers individual permits to operators. This seems to be inviting a lot of excess paperwork. There may be confusion regarding whether a general permit or an individual permit is required.

*Response:* EPA expects the majority of applicants to be covered by the general permit. The option must be made available, however, for operators to obtain individual permits if their facilities differ substantially from the types that were considered during the development of this general permit. EPA and state officials are available to clear up any confusion this provision may cause.

17. *Comment*: In Part III.G., discussion of laboratory controls for a retention structure seems inappropriate.

*Response:* This part of the permit has been changed.

18. *Comment*: Part III. of the permit, "Compliance Responsibilities," was taken from Oregon regulations. This is inappropriate.

*Response:* This part of the permit was based on national regulations (40 CFR 122.41) and policy guidance from EPA Headquarters (November 22, 1985).

19. *Comment:* "Land application" should be defined.

*Response:* This definition has been added to Part I.B. of the permit.

20. *Comment:* Some sections of the permit, such as those pertaining to toxics and bypassing, seem irrelevant and unnecessary.

*Response:* Provisions in the permit concerning toxics are appropriate to many animal feeding operations due to the use of dipping vats for pest and parasite control and other pesticide and herbicide uses. Discussion of toxics has, however, been consolidated, resulting in the deletion of Part IV.A. of the permit. Bypassing provisions are appropriate when facilities, for example, divert runoff away from sedimentation ponds for the purpose of cleaning or enlargement.

21. *Comment:* Part IV.E.1.c. refers to operations owned by a municipality, state, federal, or other public agency. Since there aren't any of these in Idaho, this section should be deleted.

*Response:* These types of animal feeding operations do exist in Idaho and may be covered by the general permit. Some examples include the state penitentiary and university facilities.

22. *Comment:* Operators should not be restricted to having a certain number of animals confined.

*Response:* The permit does not restrict the number of animals that may be confined in a facility. Numbers of animals are only mentioned in the permit to determine applicability of the permit.

23. *Comment:* Idaho should operate under the same regulations and definitions of feedlots that apply to other states that have general NPDES permits.

*Response:* Many of the conditions of this general permit are similar to those required in other states. However, the permit also protects regional interests. The requirement concerning containment of winter precipitation accumulations, for example, is not present in the Arizona general permit. EPA is required to consider local conditions and the findings of the environmental assessment as well as national consistency in the development of permits.

24. *Comment:* Flies, dust, and odor will be constant problems if the required treatment systems are installed.

*Response:* These types of problems often occur when treatment systems become overloaded. The addition of hydrated lime may be used to increase the pH or a mechanical aerator may be utilized to help eliminate odors. A properly designed and operated facility, however, should not require this treatment.

25. *Comment:* EPA has no right to require each and every dairy farmer to install a pollution treatment system. EPA should at least pay for the systems themselves if they believe it is necessary.

*Response:* Any industry or municipality that intends to operate and discharge wastewaters to waters of the United States is responsible for the quality of that effluent and any damage that may be caused by it. EPA, on the other hand, has the responsibility to regulate such facilities and require treatment as is needed to achieve compliance with permit limitations. The Clean Water Act does not authorize the expenditure of federal funds to construct pollution control facilities for private industrial operations.

26. *Comment:* Containment structures should not be required of operations located close to the water table. In addition, the sites for these feedlots and dairies were selected many years ago without consideration for meeting these kinds of requirements. It is now impractical to install such systems as are required by the permit.

*Response:* Since there is no particular treatment system required by the permit, the operator may use a variety of techniques to comply. Sedimentation ponds or above-ground containment facilities may be constructed, diversions may be built to separate out uncontaminated waters, and certain management practices may be implemented. Operators can usually reduce wastewaters discharged from their facilities and decrease the size required for their treatment systems using one or more of these methods. If the water table is close to the ground surface, an above-ground storage system or pond liners may be appropriate.

Groundwater contamination is not expected to be a concern with the construction and use of waste treatment systems. Manure naturally seals soils of sandy loam texture or finer which would prevent infiltration of wastewaters. In areas with coarser soils, a layer of finer soil can be applied to the bottom and sides of the pond to achieve the same effect.

27. *Comment:* EPA should require runoff to be calculated using the SCS formula and a curve number of 85. Acceptance of this formula will enable us to better understand the amount of runoff resulting from the 25-year 24-hour rainfall event that must be retained.

*Response:* EPA cannot require that a particular method for designing wastewater treatment facilities be used. The calculation and design of such a facility is the responsibility of the permittee. Values representing the 25-year 24-hour rainfall event throughout Idaho are available, however, from the National Weather Service and will also be available from EPA or state offices offering information on this permit.

28. *Comment:* EPA should approve plans for the design of control facilities prior to construction. This would protect the operator from spending a lot of money and later being told the system is inadequate.

*Response:* EPA does not have authority to approve engineering designs. An operator may, however, be able to obtain assurance from the state or a hired engineer regarding the adequacy of a treatment system. Additionally, guidelines currently being developed by the state will help operators to evaluate control facility design for themselves.

29. *Comment:* Discharges into water not considered navigable will sometimes reach navigable waters. This possibility should be covered in the permit.

*Response:* The permit was revised to clarify that discharges that reach waters either directly or indirectly through man-made flushing systems, require an NPDES permit.

30. *Comment:* Herbicides should be controlled by the permit.

*Response:* Use of herbicides is not directly addressed by this general permit. If, however, wastewater discharges are found to contain herbicides, provisions in the permit concerning toxic pollutants may become applicable.

31. *Comment:* Measuring the flow and volume of a discharge is difficult without the proper equipment and training. A flume or metering device would be needed along with a course of instruction.

*Response:* The general permit requires that an estimate of volume be reported whenever discharges occur from a facility. Complicated monitoring devices are not required.

32. *Comment:* After a heavy storm, the small amount of runoff from a feedlot is mixed in with a large amount of water running off thousands of acres. The pollutants are diluted and are of no consequence. A permit should not be necessary for this type of runoff.

*Response:* Numerous studies have been conducted and hundreds of complaints received at EPA and the state supporting the finding that feedlots are a significant source of pollution. The water quality assessment that was completed for this permit also addresses the impacts of runoff from these facilities. Defined as a point source of pollution by 40 CFR 122.23, concentrated animal feeding operations discharging pollutants to waterways must have NPDES permits.

33. *Comment:* Accidental discharges, such as those that occur when a pump breaks or when a line freezes, cannot be

prevented. The permit should allow for this.

*Response:* The permittee is expected to have backup or auxiliary systems ready in anticipation of equipment failure. This is considered to be proper operation and maintenance discussed in Part III.G. of the permit. If, however, the treatment facilities have been properly operated and maintained, certain accidental discharges may be considered upsets and are allowable subject to the requirements of Part III.I. of the permit.

34. *Comment:* Certain weather conditions will always cause runoff. The permit should not require zero discharge.

*Response:* The permit recognizes that zero discharge is not always possible and establishes the weather conditions under which a discharge is allowed. A certain volume of runoff must be retained on-site and other permit requirements and conditions must be met.

35. *Comment:* A setback distance (e.g. 50 ft) should be required from canals and streams to allow for a buffer zone of grasses and bushes.

*Response:* EPA determined from the water quality and environment assessments conducted for this permit that restricting access to waterways is necessary to protect water quality. EPA feels that a specific set-back distance could be incorporated voluntarily as a management practice in specific operations that are able to accommodate it. It is the operators responsibility to control discharges and to decide on the measures necessary to meet such permit requirements.

36. *Comment:* The permit should include limits concerning how close corrals and containment structures may be built to homes.

*Response:* Zoning requirements are administered by the city or county in which the facility is located. EPA is not able to regulate the location of treatment systems in this permit.

37. *Comment:* This permit should be no different from the individual NPDES permits issued to feedlot operators in 1974.

*Response:* Limitations differ between the two permits because in 1984, new regulations became effective which must now be incorporated into all new NPDES permits. Additional water quality considerations have also become of greater concern and are addressed in the environmental assessment.

38. *Comment:* The permit should require all operations to comply with Idaho's surface and groundwater provisions in the water quality standards, Wastewater Treatment Requirements, and other applicable regulations.

*Response:* The permit must require compliance with all state guidelines and regulations. Greater specificity is most appropriately provided by the state.

39. *Comment:* Part I.D. of the permit requires that operators of existing facilities must send EPA a Notice of Intent within 30 days of issuance of the general permit. Newly-built facilities must submit this information 60 days prior to the construction of their facility. The proposed permit should require 30 days for the new facilities to be consistent.

*Response:* This change has been made to the permit.

40. *Comment:* The operator should not be held responsible if someone is contracted to design and construct a control facility and it's not sufficient.

*Response:* The operator is responsible for all discharges of pollutants to waters of the United States. That responsibility properly extends to the hiring of a competent designer and contractor which should have some legal obligation to build an adequate facility. If the cause of such a discharge is inadequate design or construction, the operator is responsible for mitigative measures which may include reconstruction.

41. *Comment:* The discretion of inspectors looking at the smaller facilities is too broad. The regulations can be interpreted differently by each individual inspector.

*Response:* EPA or state officials visiting operations will all be inspecting facilities for compliance with conditions specified by the permit. Further review of inspection reports is conducted at the EPA Regional Office in Seattle before further action is considered. This review will insure consistency and fairness.

42. *Comment:* Borrowing the money to build wastewater treatment facilities is going to be difficult for most farmers.

*Response:* Much consideration and analysis has been given to the economic feasibility of compliance. While most operators are expected to be able to afford the changes needed to comply with the permit, some will probably still need to borrow funds.

43. *Comment:* The proposed requirements will have negligible property enhancement for collateral purposes. This may cause difficulties for operators borrowing funds from lending institutions.

*Response:* The demand for a property, and hence its market value, will increase when the wastewater treatment facilities are installed and the operation is in compliance with its permit. Otherwise, a new owner must allocate the resources for this purpose after the sale. When a property is sold, the NPDES permit is transferred to the new owner with the property.

44. *Comment:* Because of the financial stress this industry is currently experiencing, funds should not be spent for wastewater treatment facilities which will yield no return or profitability.

*Response:* Wastewater treatment facilities that will most commonly be constructed to comply with this permit are already in use by many variously sized operations in Idaho and nationally. Economic feasibility and profitability are therefore very possible under these requirements.

**Legal Requirements**

*A. State Certification*

Section 301(b)(1)(c) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable State Water Quality Standards. Section 401 requires that states certify federally issued permits to ensure they are in compliance with state law. On March 12, 1987, EPA received certification on this general permit from the State of Idaho Department of Health and Welfare.

*B. Executive Order 12291*

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

*C. Paperwork Reduction Act*

EPA has reviewed the requirements imposed on regulated facilities in this general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

*D. The Regulatory Flexibility Act*

After the review of the facts presented in the notice printed above, I hereby certify pursuant to the provisions of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: March 27, 1987.

**Robie G. Russell,**

*Regional Administrator, Region 10, U.S. Environmental Protection Agency.*

## FINAL GENERAL NPDES PERMIT

### I. Effluent Limitations, Reporting Requirements, and General Permit Conditions

*A. Applicability*

Concentrated animal feeding operations (CAFOs) in the state of Idaho covered by this permit include the following:

1. New and existing operations which either discharge pollutants into navigable waters through a manmade ditch, flushing system, or other similar manmade device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period, more than the numbers of animals specified in any of the following categories;

a. 300 slaughter/feeder cattle and/or dairy heifers,

b. 200 mature dairy cattle (whether milked or dry cows),

c. 750 swine, each weighing over 55 pounds,

d. 150 horses,

e. 3,000 sheep or lambs,

f. 16,500 turkeys,

g. 30,000 laying hens or broilers (if the facility has continuous overflow watering),

h. 9,000 laying hens or broilers (if the facility has a liquid manure handling system), or

i. 300 animal units (see definition, Part I.B.2.).

2. Following an on-site inspection performed by EPA or an authorized representative, the Director may determine that any operation confining fewer animals then the numbers specified in Part I.A.1.a.–1. above is a significant contributor of pollution to waters of the United States. This determination shall be based on the following factors:

a. The size of the CAFO and the amount of wastes reaching waters of the United States,

b. The locations of the CAFO relative to waters of the United States,

c. The means of conveyance of animal wastes and wastewaters into waters of the United States,

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of aninal wastes and wastewaters into waters of the United States, and

e. Other relevant factors.

Within 30 days of being notified of such a determination, the operator must either submit a Notice of Intent to be covered under this general NPDES permit or submit application forms for coverage under an individual NPDES permit. This choice is at the discretion of the operator.

*B. Definitions*

1. "Animal feeding operation" means lot or facility (other than aquatic animal production facility) where the following conditions are met:

a. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Twp or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

2. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

3. "Best Management Practices" (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States". BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

4. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

5. "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in Part 122, Appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23.

6. "Control facility" means any system used for the retention of all wastes on the premises until their ultimate diposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

7. "Feedlot" means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

8. "Land application" means the removal of waste solids from a control facility and incorporation into the soil mantle primarily for disposal purposes.

9. "Manmade" means constructed by man and used for the purpose of transporting wastes.

10. "Process generated wastewater" means water directly or indirectly used in the operation of a feedlot for any or all of the following: Spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other feedlot facilities; direct contact swimming, washing, or spray cooling of animals; and dust control.

11. "Process wastewater" means any process generated wastewater and any precipitation (rain or snow) which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

12. "Severe Property Damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

13. "Toxic Pollutants" mean any pollutant listed as toxic under section 307(a)(1) of the Act.

14. "Upset" means and exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

15. "25-year 24-hour rainfall event" means a rainfall event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

*C. Effluent Limitations*

1. There shall be no discharge of process wastewater pollutants from a CAFO to navigable waters, unless rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed, and operated to contain all process generated wastewaters and the contaminated runoff from a 25-year 24-hour rainfall event for the location of the point source.

2. Control facilities must be designed and constructed to additionally contain runoff from three inches of winter precipitation accumulations. The permittee may, as an option, calculate this runoff for a specific operation. Such calculations must incorporate evaporation and the length of the average winter season, and must be based on the one-in-five-year winter. Calculations may also include allowances for surface retention, infiltration, and other site specific factors. All information supporting a retention of less than three inches must be retained on site and made available upon request.

3. No flowing surface waters (e.g. rivers, streams, canals) shall come into direct contact with the animals confined on the CAFO. Fences may be used to restrict such access.

4. Waste handling, treatment, and management:

a. Shall not create a public health hazard:

b. Shall not result in groundwater contamination;

c. Shall conform with State guidelines and/or regulations.

5. Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering waters of the United States.

6. All wastes from dipping vats, pest and parasite control units, and other facilities untilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutant from such materials from entering the waters of the United States.

*D. Recommended Best Management Practices*

The following best management practices (BMPs) are recommended for the control abatement of pollutant discharges.

1. At all times, sufficient volume should be maintained within the control facility to accommodate manure, other solids, and wastewaters described in Part I.C.1. above.

2. Uncontaminated drainage or runoff should be segregated and excluded from wastewaters flowing to the control facility. Diversion ditches and roof drains are commonly contructed for this purpose.

3. Operators should provide routine maintenance of their control facilities in accordance with a schedule to ensure compliance with permit limitations and state water quality criteria. This schedule should be written and include a description of the pollution control equipment and structure used, operating schedules for dewatering the pollution control facilities and disposing of the accumulated solids, and a description of where the removed liquid and solid wastes are to be disposed prevent entry to any waters of the United States.

*E. Monitoring and Reporting Requirements*

Permittees are required to submit to the Director and the State the following:

1. Notice of Intent

a. Individuals who intend to obtain coverage under this general permit shall notify the Director of their intent within 30 days of the effective date of this general permit or at least 30 days prior to the commencement of construction of a new CAFO.

b. Owners (or operators when owners do not operate the facility) who fail to notify the Director of their intent to be covered and discharge pollutants to waters of the United States are in violation of this general permit.

c. The Notice of Intent shall include:

i. Previous NPDES permit number if applicable;

ii. Facility owner's name and address;

iii. Facility operator's name, address and telephone number;

iv. Facility name, address, and location;

v. Types of treatment currently used for processing wastes;

vi. Name of receiveing water(s) to which wastewaters are discharged from the facility;

vii. The type and number of animals in open confinement and/or housed under roof;

viii. The number of acres used for confined feeding;

ix. A sketch of the operation, including control facilities, diversion ditches, building structures, feeding areas, slope, direction of overland and surface water flow, and proximity to surface waters.

2. Discharge Notificatioin

a. If, for any reason, there is a discharge from the CAFO, the permittee shall monitor the discharge and provide the Director and the States with the following information, in writing within five days and orally within 24 hours, of becoming aware of such discharge.

i. A description and cause of the discharge, including an estimate of the discharge volume;

ii. The period of discharge, including exact dates and times, and, if not corrected, the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge; and

iii. If caused by a precipitation event, information from the nearest National Weather Service station concerning the size of the precipitation event.

b. Measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall notify EPA within 30 days of a change in facility ownership or operational control.

*F. General Permit Conditions.*

1. The Director may require any person authorized by this general permit to apply for and obtain an individual NPDES permit as provided in 40 CFR 122.28(b)(2)(i). The Director will notify the owner or operator in writing that a permit application is required.

2. Any owner or operator authorized by this general permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the publication by EPA of the general permit in the **Federal Register**.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this general permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

**II. Recording and Reporting Requirements**

A. *Written Notification.* Signed copies of the Notice of Intent and monitoring reports shall be submitted to the Director and the State at the following addresses:

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Attention: Water Permits and Compliance Branch M/S 521

Idaho Department of Health and Welfare Administrator, Division of Environment Statehouse, Boise, Idaho 83720

B. *Retention of Records.* The permittee shall retain copies of all records required by this permit for a period of at least three years from the date reported. This period may be extended by request of the Director at any time.

C. *Anticipated Noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. *Other Noncompliance Reporting.* The permittee shall report all instances of noncompliance. The reports shall contain the information listed in Part I.E.2.a.

E. *Penalties for Falsification of Reports.* The Act provides that any person who knowingly makes any false statement, representation, or certification in any reccord or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

F. *Availability of Reports.* Except for data determined to be confidential under 40 CFR Part 2, information submitted to EPA may be claimed as confidential by the submitter. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. As required by the act, however, Notices of Intent, permits, and effluent data shall not be considered confidential and any claims of confidentiality for this information will be denied.

**III. Compliance Responsibilities**

A. *Duty to Comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for loss of authorization to discharge under this general permit; or for denial of a permit application.

B. *Toxic Pollutants.* The permittee shall comply with effluent standards of prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

C. *Penalties for Violations of Permit Conditions.* The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 319, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the act, or any permit condition or limitation is subject to a fine of not less than $2,500, nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both.

D. *Continuation of the Expired General Permits.* An expired general permit continues in force and effect until a new general permit is issued. Only those facilities authorized to discharge under the expiring general permit are covered by the continued permit.

E. *Need to Halt or Reduce Activity not a Defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

F. *Duty to Mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

G. *Proper Operation and Maintenance.* The permittee shall at all time properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

H. *Bypass of Treatment Facilities.* 1 Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall submit prior notice, if possible at least ten days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.D.

2. Prohibition of bypass.

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass. Unless:

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass with occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The permittee submitted notices as required under paragraph H.1. of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part 2.a. of this section.

I. *Upset Conditions.*

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit limitations, if the requirements of paragraph 2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other revelant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Part II.D.; and

d. The permittee complied with any remedial measures required under Part III. F.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

J. *Inspection and Entry.* The permittee shall allow the Director, or an authorized representative of EPA or the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment),

practices, or operations regulated or required under this permit, and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

**IV. General Requirements**

A. *Planned Changes.* The permittee shall give notice to the Director, as soon a possible, of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged.

B. *Duty to Provide Information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

C. *Other Information.* When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he shall promptly submit such facts or information.

D. *Signatory Requirements.* All Notices of Intent, reports, or information submitted to the Director shall be signed and certified.

1. All Notices of Intent shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position or equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

3. Changes to authorization. If an authorization under paragraph IV.D.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.D.2 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. *Penalties for Falsification of Monitoring Systems.* The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Part II. E. of this permit.

F. *Oil and Hazardous Substance Liability.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

G. *Property Rights.* The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

H. *Severability.* The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

I. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require the operator to apply for and obtain an individual NPDES permit as stated in Part I.F.

J. *State Laws.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

[FR Doc. 87-8282 Filed 4-13-87; 8:45 am]

BILLING CODE [illegible]

## FEDERAL HOME LOAN BANK BOARD

**[No. 87-421]**

### Prices for Federal Home Loan Bank Services; Technical Correction

Dated: April 8, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice; technical correction.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") adopted on March 17, 1987, a Notice of Prices for Federal Home Loan Bank Services. This Notice was published on pp. 10137-10161 of the **Federal Register** of Monday, March 30, 1987. In this Notice the prices for services charged on the Federal Home Loan Banks to member institutions of District 3—The Federal Home Loan Bank of Pittsburgh were incorrectly reported. This technical amendment corrects that error. This correction is needed in order to avoid confusion among the member institutions as to the exact cost of services charged by the Federal Home Loan Banks to member

institutions of District 3—the Federal Home Loan Bank of Pittsburgh. Please note that an additional correction to this document is published elsewhere in the Corrections Section of this issue of the **Federal Register.**

Accordingly, the Board corrects the following errors: (1) On pp. 10138–10139 revise the entry for table District 3.—Federal Home Loan Bank of Pittsburgh (1986 NOW Services) to read as follows:

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH

[1986 NOW Services]

| Services | Fee |
|---|---|
| Inclearing: | |
| First 50,000 items/month (per item) | $0.0380 |
| 50,001–100,000 items/month (per item) | .0362 |
| 100,001–150,000 items/month (per item) | .0344 |
| 150,001–200,000 items/month (per item) | .0326 |
| Over 200,000 items/month (per item) | .0308 |
| Backroom: | |
| Truncated Checks (per item) | .039 |
| Non-truncated Checks (per item) | .049 |
| Over-the-Counter Checks (per item) | .15 |
| Return Call (per item) | .75 |
| Late Return Call (per item) | .66 |
| Items Over $2,500 Returned to FRB (per item) | 4.25 |
| Check Copies (per copy) | 3.00 |
| Check Retrieval (per item) | 1.50 |
| Statement & Report Postage | (1) |
| Statement Envelopes: | |
| Small Standardized (per envelope) | .05 |
| Small Customized (per envelope) | .07 |
| Large (per envelope) | .46 |
| MICR Sort Option (monthly fixed fee per customer of thrift) | 25.00 |
| (per item) | .03 |
| Mid-cycle statement rendering: | |
| Purged Statement (per item—minimum charge of $2.50) | .50 |
| Non-purged Statement (per statement) | 2.50 |
| Minimum Charge: (per month) | 200.00 |

[1] Actual cost.

*Notes:* Transportation of checks or reports between Federal Home Loan Bank's designated distribution points and the individual financial institution is at the expense of the financial institution.

(2) On pp. 10147–10149 revise the entry for table District 3.—Federal Home Loan Bank of Pittsburgh (1986 DDA Services) to read as follows:

DISTRICT 3.—FEDERAL HOME LOAN BANK, OF PITTSBURGH

[1986 DDA Services]

| Service | Fee |
|---|---|
| *Deposit, Processing Service:* | |
| Deposit Ticket Entry (per entry) | $.25 |
| Deposit Transfer Voucher (per entry) | 1.75 |
| Mail Deposit Ticket Entry (per entry) | 2.25 |
| Deposit Item Processing (per item) | .035 |
| Deposit Item Encoding (per item) | .03 |
| Deposit Item Return (per item) | 1.50 |
| Deposit Item Photocopy (per item) | 2.00 |
| Deposit Pickup (per pickup) | 6.75 |
| *Check and Money Order Clearing Service:* | |
| Clearing Item Processing (per item) | .11 |
| Clearing Item Reconciliation Copy Processing: | |
| By Manual Input (per item) | .06 |
| By Magnetic Tape Input (per item) | .03 |
| Clearing Item Fine Sorting for Return with Bank Statements (per item) | .06 |
| Stop Payment Orders (per entry) | 9.75 |
| Imprinting Checks and Money Orders | (1) |
| Standard Earnings Checks (per item) | .05 |
| *Wire Transfer of Funds:* | |
| Outgoing Wires: | |
| Receiving Bank On-line (Federal Reserve) (per transfer) | 6.00 |
| Receiving Bank Off-line (Federal Reserve) (per transfer) | 9.25 |
| Incoming Wire (per transfer) | 3.50 |
| ACH Debit/Credit (per item) | .05 |
| *Lockbox Service:* | |
| Lockbox Item Processing (per item) | .11 |
| Deposit Item Processing (per item) | .035 |
| Deposit Ticket Entry (per entry) | .25 |
| Transportation (per month) (per institution) | 20.00 |
| *Account Maintenance* (per acct./month) | 8.00 |
| *Account Overdraft Penalty* | (2) |
| *Collection Service:* | |
| Foreign Items: | |
| West (per item, plus drawee bank charges) | $10.00 |
| East (per item, plus drawee bank charges) | 5.00 |
| Bonds (East Only) (per bond) | 10.25 |
| Bond Coupons: | |
| West (per envelope) | 3.25 |
| East (per envelope) | 3.25 |
| *EASTERN COIN AND CURRENCY SERVICE:* | |
| *Requisition:* | |
| Currency (per strap) | .23 |

DISTRICT 3.—FEDERAL HOME LOAN BANK, OF PITTSBURGH—Continued

[1986 DDA Services]

| Service | Fee |
|---|---|
| Coin (per bag) | .70 |
| (per box) | 1.85 |
| *Deposit:* | |
| Currency/Food Coupons (per $1,000 or part thereof) | .25 |
| Coin (per bag | 1.00 |
| *Transportation:* | |
| Zone 1 (per stop) | 17.20 |
| Zone 2 (per stop) | 24.10 |
| *WESTERN COIN AND CURRENCY SERVICE:* | |
| Requistion: | |
| Currency (per $1,000 or part thereof) | .21 |
| Coin (per box) | 1.50 |
| *Deposit:* | |
| Currency (per $1,000 or part thereof) | .70 |
| Coin: | |
| Unsorted (per $1,000 or part thereof) | 7.50 |
| Sorted (per $1,000 or part thereof) | 1.25 |
| Food Coupons: | |
| Unsorted (per $1,000 or part thereof) | 3.00 |
| Sorted (per $1,000 or part thereof) | 1.75 |
| *Transportation:* | |
| Western Pennsylvania (per stop) | 10.85 |
| West Virginia: | |
| Zone 1 (per stop) | 27.80 |
| Zone 2 (per stop) | 33.20 |
| *SAFEKEEPING AND INVESTMENT SERVICE:* | |
| Trade Executed (per transaction) | $10.00 |
| Receipt of Security: | |
| Physical Form (per transaction) | 14.00 |
| DTC (per transaction) | 9.00 |
| Book Entry (per transaction) | 8.00 |
| Delivery of Security: | |
| Physical Form (per transaction) ) | 14.00 |
| DCT (per transaction) | 9.00 |
| Book Entry (per transaction) | 8.00 |
| Redemption at Maturity: | |
| Physicial Form (per transaction) | 14.00 |
| DTC (per transaction) | 9.00 |
| Book Entry (per transaction) | 8.00 |
| Income Collection: | |
| Physical Form (per collection, per issue) | 4.00 |
| DTC (per collection, per issue) | 4.00 |
| Book Entry (per collection, per issue) | 2.00 |
| Safekeeping Account Maintenance (per month) | 10.00 |
| Switch Account/Pledge: | |
| Physical Form (per transaction) | 12.00 |
| Book Entry (per transaction) | 6.00 |
| Retail-Repo Custodial Service (per month) | 30.00 |

DISTRICT 3.—FEDERAL HOME LOAN BANK, OF PITTSBURGH—Continued

[1986 DDA Services]

| Service | Fee |
|---|---|
| *SAFEKEEPING CHARGE FOR ADVANCE COLLATERAL:* | |
| Assignment of Collateral for Outstanding Advances, Advance Commitments, Letters of Credit, and Interest Rate Swaps | (3) |
| Physical Delivery of Collateral for Outstanding Advances, Advance Commitments, Letters of Credit, and Interest Rate Swaps | (4) |

[1] Direct cost pass-through from supplier.
[2] Greater of $75 or the interest on the amount of the overdraft calculated at a daily interest rate that is equal to the highest advance rate plus 3%.
[3] Greater of $2.00 per million or $10.00 per month.
[4] Greater of $4.00 per million or $10.00 per month.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–8238 Filed 4–13–87; 8:45 am]

BILLING CODE 6720–01–M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008054–025.
Title: South and East Africa/U.S. Conference.
Parties:
The Bank Line, Ltd.
Lykes Bros. Steampship Co., Inc.
South Africa Marine Corp. Ltd.

Synopsis: The proposed amendment would permit the parties to charter vessel space to and from one another.

Agreement No.: 224–010747–001.
Title: Long Beach Terminal Agreement.
Parties:
City of Long Beach
Sulexport Corporation (SC)

Synopsis: The proposed amendment would permit a reduction of SC's insurance coverage from twenty million dollars to six million dollars.

Agreement No.: 202–010776–018.
Title: Asia North America Eastbound Rate Agreement.
Parties:
American President Lines, Ltd.
Barber Blue Sea
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Lines
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would prohibit independent action on any matter pertaining to credit terms or the availability of credit with respect to cargoes destined to Canada.

Agreement No.: 224–011089.
Title: Galveston Terminal Agreement.
Parties:
The Board of Trustees of the Galveston Wharves (Port)
Union Equity Co-operative Exchange (Union Equity)

Synopsis: The proposed agreement would permit the Port to reimburse Union Equity for 75% of the dockage fees collected from vessels berthed at the premises leased by Union Equity. The agreement would have a sixty day term and the parties have requested a shortened review period.

Agreement No.: 224–011090
Title: Savannah Terminal Agreement
Parties:
Georgia Ports Authority
Cia. Chilena de Navegacion Interoceanica S.A. (CCNI)

Synopsis: Under the terms of the proposed agreement CCNI would receive certain rate and operational concessions in return for designating the Port of Savannah as its designated South Atlantic load center. The agreement would remain in effect for a period of five years.

Dated: April 9, 1987.

By Order of the Federal Maritime Commission

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–8307 Filed 4–13–87; 8:45 am]

BILLING CODE 6730–01–M

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Donald T. Maley dba Empire Sea-Air Company, 147–39 175th Street, Jamaica, NY 11434
Mirella Garcia, 9428 SW. 4th Lane, Miami, FL 33174
All Fast Express, Inc., 2120 Colorado Blvd., Suite 1, Los Angeles, CA 90041
Officers: Monson Chinn, President, Timothy Chang, Vice President, Joel Fisher, Vice President/Treasurer, Winston Lee, Vice President
Air & Ocean International Forwarding, Inc., 1245 17th Street, Hermosa Beach, CA 90254
Officers: Anthony Chien, President/Director, Joseph Chen, Chief Financial Officer/Director
International Transport Management, Inc., 80 Washington Street, Hoboken, NJ 07030
Officer: Silvia P. Schmid, President/Director
Allport Freight Inc., 182–30 150th Road, Jamaica, NY 11413
Officers: Derek Davis, President/Director, Joseph M. Carseni, Vice President/Director, Christopher Cargill, Treasurer/Director
Jong Gil, Kim dba Ace Freight System, 17060 11th Avenue North East, Seattle, WA 98155

Dated: April 8, 1987.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–8245 Filed 4–13–87; 8:45 am]

BILLING CODE 6730–01–M

### Malpractices in the Trans-Atlantic Trades

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of enforcement initiative.

**FOR FURTHER INFORMATION CONTACT:** Seymour Glanzer, Director, Bureau of Hearing Counsel, (202) 523–5783.

Notice is hereby given that the Commission on April 8, 1987, has initiated an enforcement initiative relating to Malpractices in the Trans-Atlantic Trades—Between U.S. Ports and Points and Ports and Points in the United Kingdom, Ireland, France, Federal Republic of Germany, Belgium, Holland, Denmark, Sweden, Norway and Finland. This initiative, as described herein, is designed to achieve compliance with the Shipping Acts administered by the Commission.

This action is in response to information obtained by the Commission in the regular course of business and data generated by the Commission's staff indicating that major rate malpractices, including rebating, may now be affecting the Trans-Atlantic Trades. The information and data identify some of the leading commodities which may be involved. Inbound those commodities appear to be chemicals originating in Germany; wines and spirits from the United Kingdom and France; and furniture from Denmark. Outbound, malpractices seem to taint the movements of agricultural commodities such as cotton, peanuts, tobacco and fruit, and some other commodities requiring refrigeration.

This initiative includes the granting of a particular type of "amnesty" to persons who voluntarily come forward and admit and provide details of violations of the Shipping Act of 1984 in the Trans-Atlantic Trades. In return, the Director, Bureau of Hearing Counsel, acting under authority of this enforcement plan and pursuant to existing delegated authority, is empowered, in his discretion, to remit any civil penalties under the shipping statutes administered by the Commission arising from those violations. The amnesty period will expire in ninety days, on July 8, 1987.

The amnesty portion of this program is reinforced by an Order, issued this day, instituting Fact Finding Investigation No. 16, a nonadjudicatory investigation to determine whether there is sufficient evidence to warrant ancillary informal or formal penalty proceedings.

Within a week, Bureau of Investigation personnel will be calling upon shippers and consignees and other persons to explain the amnesty program and to encourage cooperation.

If the amnesty concept does not succeed in voluntary cooperation, subpenas issued by the Fact Finding Officer named in the Fact Finding Investigation may be served, where appropriate. Thereafter, the Fact Finding Officer may take testimony under oath and compulsory process.

Shippers and carriers are subject to monetary penalties of up to $25,000 for *each* violation of the anti-rebating provisions of the 1984 Act. Additionally, the 1984 Act empowers the Commission to suspend the tariffs of carriers for violations of the Act's prohibitions against rebating and other rate malpractices.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–8250 Filed 4–13–87; 8:45 am]

BILLING CODE 6730–01–M

---

**[Fact Finding Investigation No. 16]**

## Possible Malpractices in the Trans-Atlantic Trades; Order

The Federal Maritime Commission has reason to believe that some persons participating in the United States foreign commerce between ports and points in the United States and those in Northern Europe, more specifically, the United Kingdom, Ireland, Holland, Denmark, Sweden, Finland, Norway, Belgium, France and The Federal Republic of Germany, ("Trans-Atlantic Trades") directly or indirectly, may have obtained, or attempted to obtain, transportation of property at less or different compensation than the rates and charges shown in applicable tariffs or service contracts. The various unfair devices or means which appear to have been used include rebates, concessions, absorptions and allowances other than those set forth in applicable tariffs, and other similar practices, in violation of the prohibitions of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(10)(a)(1). Such violations are subject to civil penalties not to exceed $5,000 for each violation, and not to exceed $25,000 for each violation willfully and knowingly committed, pursuant to section 13(a) of the Shipping Act of 1984, 46 U.S.C. app. 1712.

The Commission also has reason to believe that some carriers operating in the United States foreign commerce between ports and points in the Trans-Atlantic Trades, directly or indirectly, may have provided, or allowed other persons to obtain, transportation of property at less or different compensation than the rates and charges shown in applicable tariffs or service contracts. These actions also appear to have been accomplished by various unfair devices or means, such as rebates, concessions, absorptions and allowances other than those set forth in applicable tariffs or through other similar practices, in violation of the prohibitions of section 10(b) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b). Such violations are subject to civil penalties not to exceed $5,000 per violation, and not to exceed $25,000 for each violation willfully and knowingly committed, pursuant to section 13(a) of the Shipping Act of 1984, 46 U.S.C. app. 1712. Additionally, carriers who rebate or commit other rate malpractices in contravention of their tariffs or service contracts, may have their tariffs or their participation in conference tariffs suspended by the Commission pursuant to section 13(b)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1712.

In order that the Commission may properly exercise its regulatory duties to ensure protection of the public interest in the proper and effective administration and enforcement of the law, the Commission believes that it is essential to conduct a nonadjudicatory investigation to determine whether sufficient evidence exists to warrant informal compromise procedures or formal investigation and assessment proceedings for violations of the Shipping Act of 1984 with regard to the transportaton of property in the Trans-Atlantic Trades.

Therefore, it is ordered, that pursuant to sections 11 and 12 of the Shipping Act of 1984, 46 U.S.C. app. 1710 and 1711, and Subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, et seq., a nonadjudicatory investigation is hereby instituted into the practices of rebates, concessions, absorptions and allowances in excess of those set forth in applicable tariffs, and any other devices or means of obtaining, providing, or allowing other persons to obtain, transportation of property at less or different compensation than the rates and charges shown in applicable tariffs or service contracts, in the United States foreign commerce, between ports and points in the Trans-Atlantic Trades;

It is further ordered, that the Investigative Officer shall be Vern W. Hill of the Commission. Mr. Hill shall direct the investigation and shall be assisted by such staff members as he may designate or as may be assigned by the Commission's Managing Director;

The Investigative Officer shall have the full authority of the Commission to hold public or nonpublic sessions, to resort to all compulsory process authorized by law (including the issuance of subpenas ad testificandum and duces tecum), to administer oaths and to perform such other duties as may be necessary in accordance with the

laws of the United States and the regulations of the Commission;

It is further ordered, that said investigative officer shall issue to the Commission interim progress reports every four months and a final report of findings and recommendations no later than one year after publication of this Order in the **Federal Register**, all such reports to remain confidential unless and until the Commission rules otherwise; and

It is further ordered, that this proceeding will be discontinued upon issuance of the final report by the Investigative Officer;

It is further ordered, that Notice of this Order be published in the **Federal Register**.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-8251 Filed 4-13-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 29, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gary D. Karre,* Papillion, Nebraska; Larry Rozmiarek, Ralston, Nebraska; Norman H. Stevens, Omaha, Nebraska; Larry Taylor, Omaha, Nebraska; Hal Zimmerman, Omaha, Nebraska; Carolyn Smith, New York, New York; Ray Zagozda, Sr., Ralston, Nebraska, Ray Zagozda, Jr., Ralston, Nebraska; William E. Vacek, Hermosa Beach, California; Michael Dudzinski, Omaha, Nebraska; Mini Plaza, Omaha, Nebraska (controlled by Michael Dudzinski); Gerald B. and Frances J. Campbell, Omaha, Nebraska; Richard Fogelman, Papillion, Nebraska; Ted F. Melonis, Omaha, Nebraska; Edward E. and Joann Zbylut, Omaha, Nebraska; Clifford Pawol, Omaha, Nebraska; Paul Zagozda, Omaha, Nebraska; and Elizabeth Novak, Papillion, Nebraska; to acquire 100 percent of the voting shares of First Financial Savings Corporation, LaVista, Nebraska, and thereby indirectly acquire Brentwood Bank, LaVista, Nebraska.

2. *Donald L. Sturm,* Omaha, Nebraska; to acquire 61.1 percent of the voting shares of American Bank Corporation, Omaha, Nebraska, and thereby indirectly acquire American National Bank of Affton, Affton, Wyoming; American National Bank of Cheyenne, Cheyenne, Wyoming; and American National Bank of Evanston, Evanston, Wyoming.

Board of Governors of the Federal Reserve System, April 8, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8235 Filed 4-13-87; 8:45 am]

BILLING CODE 6210-01-M

### Union Planters Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 6, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Coproration,* Memphis, Tennessee; to acquire at least 90 percent of the voting shares of The First BancCrossville, Inc., Crossville, Tennessee, and thereby indirectly acquire The First National Bank of Crossville, Crossville, Tennessee.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Security National Bancshares of Sapulpa, Inc.,* Sapulpa, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Security National Bank of Sapulpa, Sapulpa, Oklahoma.

Board of Governors of the Federal Reserve System, April 8, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8236 Filed 4-13-87; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Privacy Act of 1974

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Notice; initial publication of notice of systems of records.

**SUMMARY:** This notice is being published pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, as amended, in order to describe new systems of records established by a Federal agency containing information on individuals.

**DATES:** Comments must be received on or before June 15, 1987. This notice is effective April 14, 1987.

**ADDRESS:** Written comments may be sent to: John J. O'Meara, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044; or delivered to the Board's office at Room 214, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John J. O'Meara, (202) 653-2537.

**SUPPLEMENTARY INFORMATION:** The Federal Retirement Thrift Investment Board was established by Pub. L. No. 99-335 (June 6, 1986), the Federal Employee's Retirement System Act of 1986, 1986 U.S. Code Cong. & Ad. News (100 Stat. 514) (to be codified principally at 5 U.S.C. 8401-8479), as amended by Pub. L. No. 99-509, the Omnibus Reconciliation Act of 1986, and Pub. L. No. 99-556, the Federal Employees'

Retirement System Technical Corrections Act of 1986. Its primary function is to invest the assets of the Thrift Savings Fund and manage the Thrift Savings Plan. The Board is an independent establishment located in Washington, DC., and it has no field offices. However, the Board does have a recordkeeping responsibility which is performed by contract and the contractor may be located outside of the Washington, DC area. The records maintained for the Board by its contractor are subject to its Privacy Act regulations and constitute a Board system of records. At this time, the record keeping contract is held by the National Finance Center, Department of Agriculture, New Orleans, Louisiana. The notice set forth herein relates to new systems of records which have been established by the Federal Retirement Thrift Investment Board in accordance with the requirements of its enabling legislation. The Board will issue a final notice of these systems of records after the comment period has expired.

Federal Retirement Thrift Investment Board.

**Francis X. Cavanaugh,**

*Executive Director.*

**Federal Retirement Thrift Investment Board Systems of Records**

*Table of Contents*

A. Thrift Savings Plan Participation and Account Records
FRTIB–1 Thrift Savings Plan Records
B. Federal Retirement Thrift Investment Board Administrative Records
FRTIB–2 Personnel Background Investigation Reports
FRTIB–3 General Personnel Records
FRTIB–4 EEO Discrimination Complaint File
FRTIB–5 Adverse Information and Action Records, Disciplinary Records
FRTIB–6 Payroll Records
FRTIB–7 Leave Records
FRTIB–8 Consultant and Staff Associate File
FRTIB–9 Board Members File
FRTIB–10 Biographical File on Board Employees
FRTIB–11 Employee Locator Card Files
FRTIB–12 Grievance Records
FRTIB–13 Recruiting and Placement Records
FRTIB–14 Financial Disclosure Reports and Outside Business Interest Records
FRTIB–15 Health Records.

**FRTIB–1**

**SYSTEM NAME:**

Thrift Savings Plan Records.

**SYSTEM LOCATION:**

These records are located at the National Finance Center, Department of Agriculture, Building 350, 13800 Old Gentilly Road, New Orleans, Louisiana.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Present and former Federal employees, and present and former Members of Congress, who have been or are participants in the Thrift Savings Plan, and their beneficiaries.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records contain the following kinds of information: Thrift Savings Plan Account records of employee contributions, employer contributions employee and Member social security number, date of birth and home address, account earnings and balance, records showing whether a participant's interest is vested, participant designated beneficiaries, locater information on former spouses and spousal waivers, records of garnishment action against accounts, employing agency, servicing payroll office, servicing personnel office of the participant, and the participant's investment status by Fund.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**PURPOSE:**

The purpose of this system of records is to record and document contributions and earnings of each plan participant and to communicate with participants in order to make certain that they receive their entitlement at the time of separation from government service.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose financial data to Federal, State, and local government tax enforcement agencies so that they may enforce applicable tax laws.

b. To disclose to annuity vendors so that these firms may provide retired employees with an annuity.

c. To disclose to financial institutions who are qualified pension plan sponsors for purposes of transfer to an individual retirement account or to transfer into another qualified pension plan.

d. To disclose to agency payroll and personnel offices information necessary to assure the effective operation of the Thrift Savings Plan.

e. To disclose to beneficiaries so that they may exercise their entitlement rights under the Act.

f. To disclose to current and former spouses so that they may exercise their entitlement rights under the Act.

g. To disclose to the Department of Labor and to private sector audit firms so that they may perform audits as provided for in the Act.

h. To disclose to the General Accounting Office to allow that agency to perform reviews requested by Congress.

i. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom a department or agency maintains retirement records, the fact that an individual is or is not on the retirement rolls, and, if so, the type of annuity (employee or survivor, but not disability retirement) being paid, or if not, whether a refund has been paid.

j. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of precedence of lump sum benefits, information in the individual's record which might properly be disclosed to the individual, and the name and relationship of any other person whose claim to benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

k. To disclose to the Department of the Treasury information necessary to issue checks.

l. To disclose information to any person who is responsible for the care of the individual to whom a record pertains and who is found by a court to be incompetent or under other legal disability, information necessary to assure payment of benefits to which the individual is entitled.

m. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an annuitant, survivor annuitant, or former employee, for the purpose of enforcing child support obligations against such individual.

n. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

o. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

p. To disclose information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

q. To disclose to the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

r. To disclose an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies in support of the function for which the records were collected and maintained.

s. To disclose to a Federal agency, in response to its request, the present address of a former employee and any other information the agency needs in order to contact the former employee concerning a possible threat to his or her health or safety.

t. To disclose information to the Department of Justice when

(1) The Board, or any component thereof; or
(2) Any employee of the Board, in his or her official capacity; or
(3) Any employee of the Board in his or her individual capacity, where performance of official duties is at issue; or
(4) The United States, where the Board determines that litigation is likely to affect the agency or any of its components,

Is a party to litigation or has an interest in such litigation, and the Board determines that use of such records is relevant and necessary to the litigation.

u. To disclose information in a proceeding before a court or adjudicative body before which the Board is authorized to appear, when

(1) The Board or any component thereof; or
(2) Any employee of the Board in his or her official capacity; or
(3) Any employee of the Board in his or her individual capacity, where performance of official duties is at issue; or
(4) The United States, where the Board determines that litigation is likely to affect the agency or any of its components,

Is a party to litigation or has an interest in such litigation, and the Board determines that use of such records is relevant and necessary to the litigation.

**POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained on magnetic media, microfiche and in folders.

**RETRIEVABILITY:**

These records are retrieved by name, Social Security Number, and date of birth of the individual to whom they pertain.

**SAFEGUARDS:**

Records are kept in metal file cabinets in a secure facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure. Automatic data processing software security mechanisms are used to prevent unauthorized access to the magnetic media.

**RETENTION AND DISPOSAL:**

All records are retained as long as the Board has a custodial responsibility for a particular asset and for three years thereafter. Disposal of manual records is by shredding or burning, magnetic media are erased.

**SYSTEM MANAGER(S) AND ADDRESS:**

Executive Director, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**RECORD ACCESS PROCEDURE:**

Current federal employees wishing to inquire if this system contains information about them should contact their servicing personnel office. Separated personnel with the same inquiry should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social Security Number.
d. Name and address of office in which currently or formerly employed in the Federal Service.

The individual requesting access must follow the Board's indentity verification procedure.

**NOTIFIED PROCEDURE:**

Current federal employees wishing request amendment of their records in this system should contact their servicing personnel office. Separated personnel with the same inquiry should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social Security Number.
d. Name and address of office in which currently or formerly employed in the Federal Service.

**CONTESTING RECORDS PROCEDURE:**

Current federal employees wishing to request amendment of their records in this system should contact their servicing personnel office. Separated personnel with the same inquiry should contact the system manager.

Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social Security Number.
d. Name and address of office in which currently or formerly employed in the Federal Service.

**RECORD SOURCE CATEGORIES:**

The information in this system is obtained from the following sources:

a. The individual to whom the information pertains.
b. Agency pay, leave, and allowance records.
c. Court orders.
d. Spouses and former spouses.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**FRTIB-2**

**SYSTEM NAME:**

Personnel Background Investigation Reports.

**SYSTEM LOCATION:**

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street NW., Washington, DC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former applicants for employment by the Board; employees considered for access to restricted areas; and/or contractors, employees of contractors, experts, and consultants to the Board.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records may contain investigative information regarding an individual's character, financial responsibility, conduct, behavior, arrests and convictions for any violations against the law; reports of interviews with former supervisors; co-workers, associates, and educators; reports about the qualifications of an individual for a specific position; reports of inquiries with law enforcement agencies; former employers; educational institutions attended; and other information developed from the above.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The contents of these records may be disclosed and used as follows:

a. To assist in determining the suitability for access to classified information.

b. To designated officers and employees of other agencies and departments of the Federal Government, and the District of Columbia Government, having an interest in the individual for employment purposes, in connection with performance of a service to the Federal Government, under a contract or other agreement, including a security clearance or access determination, and a need to evaluate qualifications, suitability, and loyalty to the United States Government.

c. To the intelligence agencies of the Department of Defense, National Security Agency, Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

d. To any source from which information is requested by the Board in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

e. In the event of an indication of any violation or potential violation of the law, either civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto; such referral shall include, and be deemed to authorize any and all appropriate and necessary uses of such records in a court of law and before an administrative board or hearing.

f. As a data source for management information for production of descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

**POLICIES AND PRACTICES OF STORING, RETRIEVING, RETAINING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Files are maintained in folders and index cards in steel file cabinets with manipulation proof combination lock.

**RETRIEVABILITY:**

Records are indexed by name in alphabetical order.

**SAFEGUARDS:**

Access to and use of these records are limited to those persons whose official duties require access and who have appropriate security clearance.

**RETENTION AND DISPOSAL:**

The indexing cards are retained indefinitely, while the reports of investigation are returned to the originating agency after separation of employment.

**SYSTEM MANAGER AND ADDRESS:**

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**NOTIFICATION PROCEDURE:**

An individual may inquire as to whether or not the system contains a record pertaining to him or to her by addressing a written request to the System Manager.

The request should include the full name and date and place of birth of the individual, and any available information regarding the type of record involved, and the category of individual under which the inquirer feels he or she fits.

**RECORD ACCESS PROCEDURE:**

In response to a written request by an individual to determine whether or not the system contains a record pertaining to him or to her, the Director will set forth the procedure for gaining access to the record. If the individual desires to contest the contents of a record, he or she may do so by writing to the System Manager.

**RECORD SOURCE CATEGORIES:**

Information contained in the system is obtained from the following:

1. Applications and other personnel and security forms furnished by the individual.

2. Investigative material furnished by other Federal agencies. Notices of personnel actions furnished by other Federal agencies.

3. Personal investigation or written inquiry from sources such as:

Employers
Schools
References
Neighbors
Associates
Police Departments
Courts
Credit Bureau
Medical Records
Probation Officials
Prison Officials

4. Newspapers, magazines, periodicals, and other publications.

5. Published hearings of Congressional Committees.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 552a (k)(2) and (k)(5) (the Privacy Act) and the Board's regulation relating thereto (5 CFR 1630.16), certain portions of this system of records may be exempt from certain provisions of the Act where: (1) Such portions represent investigatory material compiled for law enforcement purposes, or (2) such portions represent investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Board employment to the extent that disclosure of such portions would reveal the identity of a source who furnished information under a promise of confidentiality.

**FRTIB–3**

**SYSTEM NAME:**

General Personnel Records.

**SYSTEM LOCATION:**

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW., Washington, DC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system of records consists of a variety of documents relating to personnel actions of the Board and its determinations made about an individual during the course of his or her employment by the Board. These records may contain information about employees and former employees relating to employment, placement, personnel actions, performance considerations and evaluations; training and development activities and plans, background investigations; reference checks; salary history and other personnel matters. It also includes minority group and medical disability designators; records relating to benefits and designation of beneficiary; emergency contact, documentation

supporting personnel actions or decisions made about an individual; awards and other information relating to the status of the individual either while considered for employment or while employed by the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records is used:

a. To provide data for automated personnel records.

b. To provide information to a Federal agency, or any other employer or prospective employer, in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. To request information from a Federal, State or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain relevant information or other pertinent information to a Board decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a grant or other benefit.

d. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

e. To transfer information necessary to report a claim for benefits under the various benefit programs in operation at the Board.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tape, disc, punched cards, index cards and microfilm.

RETRIEVABILITY:

Records are indexed by any combination of name, date of birth, social security number, or identification number.

SAFEGUARDS:

Records are located in lockable metal file cabinets in secured rooms with access limited to those whose official duties require it.

RETENTION AND DISPOSAL:

The General Personnel Record is retained until five years after death or until an individual achieves age 75 where he or she does not separate employment by retirement.

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

NOTIFIED PROCEDURE:

Inquiries, including name, date of birth, and social security number should be addressed to the System Manager, address above.

RECORD ACCESS PROCEDURES:

Current and former Board employees who wish to gain access to or contest their records should contact the System Manager, address above. Former Board employees should direct such a request in writing, including their name, date of birth, and social security number.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from the information the individual supplied, except information provided by Board officials. Information is also obtained from the following sources for administration of the benefits portion of the system:

1. OPM Personnel Management Records System.

2. Personnel records of other Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(2) and (k)(5) (the Privacy Act) and the Board's regulation relating thereto (5 CFR 1630.16), certain portions of this system of records may be exempted from certain provisions of the Act where: (1) Such portions represent investigatory material compiled for law enforcement purposes; or (2) such portions represent investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Board employment to the extent that disclosure of such portions would reveal the identify of a source who furnished information under a promise of confidentiality.

FRTIB-4

SYSTEM NAME:

EEO Discrimination Complaint File.

SYSTEM LOCATION:

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Board employment and current and former Board employees who file a complaint of discrimination or appeal a determination made by an official of the Board relating to equal employment opportunities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to a complaint or a decision made by the Board affecting an individual under the Board's EEO regulations and procedures. The records consist of the initial complaint or appeal letters or notices to the individual, record of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, instructions to the Board and/or individual about action to be taken to comply with decisions, and related correspondence, opinions and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To adjudicate an appeal, complaint, or grievance.

b. To refer, where there is an indication of a violation or potential violation of law, whether civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

c. To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the lettering of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the

requesting agency's decision on that matter.

**POLICIES AND PRACTICES OF STORING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders, binders, and index cards.

**RETRIEVABILITY:**

These records are indexed by the names of the individuals on whom they are maintained.

**SAFEGUARDS:**

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

**RETENTION AND DISPOSAL:**

The records are maintained indefinitely.

**SYSTEM MANAGER AND ADDRESS:**

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**NOTIFICATION PROCEDURE:**

Individuals who have filed appeals or grievances are aware of that fact and have been provided a copy of the records. They may, however, contact the System Manager, address above. Individuals should provide their name, date of birth, and the approximate date of employment or application, and the kind of action taken by the Board when making inquiries about records.

**RECORD ACCESS PROCEDURES:**

Individuals who have appealed or filed a grievance about a decision or determination made by the Board or about conditions existing in the Board already have been provided a copy of the records. However, to gain access or contest the records in this system, individuals should contact the System Manager, address above. Individuals should provide their name, date of birth, approximate date of employment or application and the kind of action taken by the Board.

**RECORD SOURCE CATEGORIES:**

a. Individual to whom the record pertains

b. Board employees

c. Affidavits or statements from employee

d. Testimony of witnesses

e. Official documents relating to the appeal, grievance, or complaint.

f. Correspondence from specific organizations or persons.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to subsection 5 U.S.C. 552a (k)(2) (the Privacy Act) and the Board's regulation relating thereto (5 CFR 1630.16) certain portions of this system of records may be exempted from certain provisions of the Act where such portions represent investigatory material compiled for law enforcement purposes.

**FRTIB-5**

**SYSTEM NAME:**

Adverse Information and Action Records; Disciplinary Records.

**SYSTEM LOCATION:**

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street NW., Washington, DC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former Board employees, (including special employees) and annuitants who are involved in an adverse action; employees who suffer a withholding of a Progress Step Increase; and those employees who have creditors contracting the Board relative to credit problems.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system of records may contain information or documents relating to a determination made by the Board affecting an individual. The records consist of letters or notices to the individual, record of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, and related correspondence, opinions and recommendations. Letters from creditors are also contained in this system.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The information in the records may be used:

a. To adjudicate an appeal, complaint, or grievance.

b. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

b. To request information from a Federal, State or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain relevant information to a Board decision concerning the hiring or retention of a employee, the issuance of a security clearance, the letting of a contract, or the issuance of a grant or other benefit.

d. To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in fine folders, binders, and index cards.

**RETRIEVABILITY:**

These records are indexed by the names of the individuals on whom they are maintained.

**SAFEGUARDS:**

Access to and use of these records are limited to those persons whose offical duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

**RETENTION AND DISPOSAL:**

The records are maintained indefinitely after cessation of employment unless deemed unnecessary, and then destroyed.

**SYSTEM MANAGER AND ADDRESS:**

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**NOTIFICATION PROCEDURE:**

Individuals should provide name, date of birth, social security number, identification number (if known), approximate date of record, and type of situation with which concerned, to the System Manager, address above,

**RECORD ACCESS PROCEDURE:**

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager above. Former Board employees should direct

such a request in writing, including their name, date of birth and social security number.

**RECORD SOURCE CATEGORIES:**

Information provided by persons involved in there adverse action process including law enforcement personnel.

**SYTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**FRTIB–6**

**SYSTEM NAME:**

Payroll Records.

**SYSTEM LOCATION:**

General Services Administration, National Capital Region, copies held by the Board. (GSA holds records for the Board under contract.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Past and present employees and members of the Board.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Varied payroll records including payment vouchers, comprehensive listing of employees, requests for deductions, tax forms, W–2 forms, overtime requests, leave data, workmen's compensation data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Used in the preparation of Board payroll, as input to several management reports, and, from time to time, input to other contributing organizations for use in studies, analyses, and reports or support activities.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

On tape, punched cards, index cards, folders and document files.

**RETRIEVABILITY:**

Filed by name, social security number, and employee number.

**SAFEGUARDS:**

Access is restricted to authorized personnel only. Records are stored in cabinets and a safe. Access to computer records is restricted to authorized personnel.

**RETENTION AND DISPOSAL:**

Minimum of one year from date of annual audit; maximum of indefinite.

**SYSTEM MANAGER AND ADDRESS:**

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station P.O. Box 511, Washington, DC 20044.

**NOTIFICATION PROCEDURE:**

Current and former employees who wish to gain access or contest their records should contact System Manager, address above. Individuals should provide name, date of birth, social security number, identification number (if known).

**RECORD ACCESS PROCEDURES:**

Current and former employees who wish to gain access or contest their records should contact System Manager, address above. Individuals should provide name, date of birth, social security number, identification number (if known).

**RECORD SOURCE CATEGORIES:**

Internal personnel forms, Federal, state, and local tax forms, employee authorizations and directive forms, insurance forms, leave and overtime reports. Federal and state garnishment forms.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**FRTIB–7**

**SYSTEM NAME:**

Leave Records

**SYSTEM LOCATION:**

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW, Washington, DC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Present employees, former employees for a period of three years following their separation from the Board.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contains timekeeper records, leave cards, payroll notifications, supporting memorandum, periodic leave statements, and creditable service documentation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Used as a data source for management information and payment of leave, for production of statistics and analytical studies in support of the function for which records are collected and maintained or for related personnel management functions, and manpower studies. This information is provided to the General Services Administration which is under contract to provide personnel support to the Board and it will be disclosed to other Federal agencies in connection with official audit activities.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Punched card, tape, disk, index card, folder, and print out.

**RETRIEVABILITY:**

Filed by date, but may be filed by name or identifying number.

**SAFEGUARDS:**

Stored in locked metal file cabinets, other record stored in secured limited access computer facilities.

**RETENTION AND DISPOSAL:**

Specific information destroyed after three years. Summary data is a part of permanent official personnel file.

**SYSTEM MANAGER AND ADDRESS:**

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**NOTIFICATION PROCEDURE:**

Individual wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager above. Former Board employees should direct such a request in writing, including their name, date of birth, and social security number.

**RECORD ACCESS PROCEDURE:**

Individuals wishing to gain access or contest their records should contact the System Manager, address above. Former Board employees should direct such a request in writing, including their name, date of birth, and social security number.

**RECORD SOURCE CATEGORIES:**

Records, files and forms of the Board, information provided by the employee.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**FRTIB–8**

**SYSTEM NAME:**

Consultant and Staff Associate File.

SYSTEM LOCATION:

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW., Washington, DC 20044.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals retained by formal agreement, who: (1) Provide consulting services to the Board and (2) act as advisors to the Board, but do not maintain the independence of action necessary to meet the requirements for classification as an independent contractor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents, letters, memorandum of understanding relating to agreement, rates of pay, payment, records, vouchers, invoices, and selection; negotiation, implementation, scope and performance of work. Additional information may be found on reemployed annuitants in the Board's General Personnel Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses include, but are not restricted to, selection, monitoring, evaluation and control, audit and analysis, routine management activity, and statistical use without individual identification: Verification and confirmation; and referral when used as a basis for prospective employment by employers other than the Board; to provide information or disclose to a Federal agency, or any other employer or prospective employer, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesitng agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Folder, punched card, tape, disk and index card.

RETRIEVABILITY:

Filed by name and cross indexed by voucher number and date.

SAFEGUARDS:

Stored in secured area, access limited to Board staff on an official use basis.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

NOTIFICATION PROCEDURE:

Individuals who have filed appeals or grievances are aware of that fact and have been provided a copy of the records. They may, however, contact the System Manager, address above. Individuals should provide their name, date of birth, and the approximate date of employment or application, and the kind of action taken by the Board when making inquiries about records.

RECORD ACCESS PROCEDURE:

Individuals who have appealed or filed a grievance about a decision or determination made by the Board or about conditions existing in the Board already have been provided a copy of the records. However, to gain access or contest the records in this system, individuals should contact the System Manager, address above. Individuals should provide their name, date of birth, approximate date of employment or application, and the kind of action taken by the Board.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual to whom it applies or is derived from information supplied by the individual, except information provided by Board staff, and for reemployed annuitants where the inactive General Personnel File is activated.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsections (k)(2) and (k)(5) of the Privacy Act and the Board's regulation relating thereto (5 CFR 1630.16), certain portions of this systems of records may be exempted from certain provisions of the Act where: (1) Such portions represent investigatory material compiled for law enforcement purposes, or (2) such portions represent investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Board employment to the extent that disclosure of such portions would reveal the identity of a source who furnished information under a promise of confidentiality.

FRTIB-2

SYSTEM NAME:

Board Members File.

SYSTEM LOCATION:

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW., Washington, DC 20044.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present members of the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographies of past and present members of the Board, oaths of office, and miscellaneous correspondence relating to such Members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used for background information to determine qualifications for appointment, reappointments, for compiling information for new releases and other publications, and for recording correspondence concerning the members.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Locked in a metal file cabinet. Access limited to Board staff on a restricted basis.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

NOTIFICATION PROCEDURE:

Contact the System Manager, address above.

RECORD ACCESS PROCEDURES:

Contact the System Manager, address above.

RECORD SOURCE CATEGORIES:

Generated by individuals, incoming correspondence and staff response thereto.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

Pursuant to 5 U.S.C. 552a(k)(5) (the Privacy Act) and the Board's regulation

relating thereto (5 CFR 1630.16) certain portions of this system of records may be exempted from certain provisions of the Act where such portions represent investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Board employment to the extent that disclosure of such portions would reveal the identity of a source who furnished information under a promise of confidentiality.

FRTIB–10

SYSTEM NAME:

Biographical File on Board employees.

SYSTEM LOCATION:

Federal Retirement Thrift Investment Board, Room 204, 1717 H Street, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Board officers, and their staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to personnel actions and determinations made about an individual while employed by the Board. These records contain information about an individual relating to birth date; education; veteran status; tenure; handicap; past and present salaries; grades, and position titles; personnel actions, including but not limited to appointment, reassignment, demotion, detail, promotion, transfer, and separation; photograph, awards; and other information relating to the status of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To provide reports to Congress, agencies, and the public on characteristics of the work force.

b. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by combination of name or identification number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained idenfinitely.

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

NOTIFICATION PROCEDURE:

Inquiries, including name, date of birth, and social security numbers should be addressed to the System Manager, address above.

RECORD ACCESS PROCEDURE:

Current and former Board employees who wish to gain access and contest their records should direct such a request in writing, including their name, date of birth, and social security number to the System Manager, address above.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from either the individual to whom it applies, extracted from documents he or she supplied, or data provided by Board officials and employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

FRTIB–11

SYSTEM NAME:

Employee Locator Card Files.

SYSTEM LOCATION:

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone extension of individual Board employees. The system also contains the home address and telephone number of the employee, and the name, address, and telephone number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

PURPOSE(S):

Information is collected for this system for use in preparing telephone directories of the extensions of Board employees. The record also serves to identify an individual for Board officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. These records may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By the Board in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of the elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in secured areas and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an employee of the Board.

BEST COPY AVAILABLE

Expired records are destroyed by burning or shredding.

**SYSTEM MANAGER AND ADDRESS:**

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 2004.

**NOTIFICATION PROCEDURE:**

Board employees wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

**RECORD ACCESS PROCEDURES:**

Board employees wishing to request access to records about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

**CONTESTING RECORD PROCEDURES:**

Office employees may amend information in these records at any time by resubmitting the cards. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the Board's Administrative Officer. Individuals must furnish full name for their records to be located and identified.

**RECORD SOURCE CATEGORIES:**

Information is provided by the individual who is the subject of the record.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**FRTIB–12**

**SYSTEM NAME:**

Grievance Records.

**SYSTEM LOCATION:**

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW., Washington, DC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current or former Board employees who have filed grievance.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains records relating to grievances filed by Board employees. These case files contain all documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original decision, and related correspondence and exhibits. This system does not include files and records of any grievance filed under negotiated procedures with recognized labor organizations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**PURPOSE(S):**

These records are used to process grievances submitted by Board employees for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, issuance of a security clearance, conducting of a security or suitability investigation of an individual, the classifying of jobs, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

d. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Council, when requested in connection with appeals, special studies of the civil service and other merit systems, alleged or possible prohibited personnel practices, and such other functions as may be authorized by law.

e. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

f. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

g. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders.

**RETRIEVABILITY:**

These records are retrieved by the names of the individuals on whom they are maintained.

**SAFEGUARDS:**

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

**RETENTION AND DISPOSAL:**

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**NOTIFICATION PROCEDURE:**

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

**RECORDS ACCESS PROCEDURES:**

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the personnel or designated office where the action was processed. Individuals must

provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

**CONTESTING RECORD PROCEDURES:**

Review of requests from individual's seeking amendment of their records which have been the subject of a judicial or quasijudicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related corresondence from organizations or persons.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**FRTIB–13**

**SYSTEM NAME:**

Recruiting and Placement Records.

**SYSTEM LOCATION:**

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW., Washington, DC 20044.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons who have applied for employment with or are employed by the Board.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records may contain information relating to the education, training, employment history and earnings, appraisal of past performance, convictions for offenses against the law, results of tests, appraisal of potential, honors, awards of fellowships, military service, veteran status, school transcripts, work samples, birth date; social security number, shipping authorizations; travel vouchers, offer letters and correspondence, reference checks, and home address of persons who have applied for Board employment or are employed by the Board.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information in these records may be used:

a. To refer applicants for purposes of consideration for placement in positions for which an applicant has applied and is qualified. This includes various government organizations.

b. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or with enforcing or implementing the statue, or rule, regulation or order issued pursuant thereto.

c. To request information from a Federal, State or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain relevant information to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

d. To provide information or disclose to a Federal agency, or any other employer or prospective employer in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on magnetic tapes, lists, forms, and in folders.

**RETRIEVABILITY:**

Records are indexed by name, combination of birth date, social security account number, and applicable identification number.

**SAFEGUARDS:**

Access to and use of these records are limited to those persons whose official duties require such access.

**RETENTION AND DISPOSAL:**

a. Files of eligibles. Retained for a minimum of one year after date of determination that no suitable position exists currently.

b. Index cards. Destroyed when no longer needed.

**SYSTEM MANAGER AND ADDRESS:**

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**NOTIFICATION PROCEDURE:**

Individuals should provide name, date of birth, social security number, identification number (if known), approximate date of record, and type of position with which concerned to the System Manager, address above.

**RECORD ACCESS PROCEDURES:**

Individuals should provide name, date of birth, social security number, identification number (if known), approximate date of record, and type of position with which concerned to the System Manager, address above.

**RECORD SOURCE CATEGORIES:**

Information in this system of records either comes from the individual to whom it applies or is derived from information he or she supplies, except reports from medical personnel on physical qualifications; and statements supplied by references.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to subsections (k)(2) and (k)(5) of the Privacy Act and the Board's regulation relating thereto (5 CFR 1630.16), certain portions of this system of records may be exempted from certain provisions of the Act where: (1) Such portions represent investigatory material compiled for law enforcement purposes; or (2) such portions represent investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Board employment to the extent that disclosure of such portions would reveal the identity of a source who furnished information under a promise of confidentiality.

**FRTIB–14**

**SYSTEM NAME:**

Financial Disclosure Reports and Outside Business Interest Records.

**SYSTEM LOCATION:**

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street NW, Washington, DC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Board members, officials, and key Board employees who are required to file annual financial disclosure reports pursuant to Title II of the Ethics in Government Act, as amended, Pub. L. 95–521, 1978 and Pub. L. 96–19, 1979 or pursuant to Board Regulation, and outside business interest application forms, filed pursuant to Board regulations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records contain:

a. The annual financial disclosure reports filed on forms prescribed by the Office of Government Ethics, for those Board members and officials who are required by statute to file these reports;

b. Confidential annual financial disclosure reports filed annually by designated Board employees who are required by Board regulations to file these reports; and

c. Outside business interest application forms filed by employees pursuant to Board regulation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The information in these records may be used:

a. To provide information to the Office of Government Ethics.

b. To provide copies of those financial disclosure reports filed pursuant to the Ethics in Government Act to the public, upon request.

c. To refer, where there is an indication of a violation or potential violation of law, to the appropriate agency, whether federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders in locked steel file cabinets.

**RETRIEVABILITY:**

These records are indexed by the names of the individuals to whom they pertain.

**SAFEGUARDS:**

Access to and use of these records is restricted to those persons whose official duties require such access.

**RETENTION AND DISPOSAL:**

a. Financial disclosure reports filed pursuant to the Ethics in Govenment Act are retained for the statutorily required six-year period, after which they are destroyed, unless needed in an ongoing investigation.

b. Confidential financial disclosure reports filed pursuant to Board regulation are maintained indefinitely.

c. Outside Business Interest Applications are maintained indefinitely.

**NOTIFICATION PROCEDURE:**

a. Requests for access to financial disclosure reports filed pursuant to the Ethics in Government Act are to be submitted on the form provided by the Office of Government Ethics.

b. Individuals wishing to have access to their own confidential financial disclosure reports or outside business interest applications should contact the System Manager above.

**RECORD ACCESS PROCEDURE:**

Individuals wishing to gain access to or to correct information maintained about them in this system of records should contact the System Manager above. Former Board employees should direct such a request in writing, including their name, date of birth and social security number.

**RECORD SOURCE CATEGORIES:**

Individual to whom the record pertains.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**FRTIB–15**

**SYSTEM NAME:**

Health Records.

**SYSTEM LOCATION:**

Federal Retirement Thrift Investment Board, Room 214, 1717 H Street, NW, Washington, DC.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

a. Applicants for disability retirement.

b. Current and former Board employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

a. Information relating to an individual's medical qualifications to hold a position with the Board.

b. Medical information relating to an individual's capability (physical and mental) to satisfactorily perform the duties of the position he or she holds or held.

c. Information relating to an employee's participation in an occupational health services program.

d. Information relating to pre-employment or periodic medical examinations to assure that the incumbent is qualified (physically and mentally) to satisfactorily perform the duties of the position.

e. Information attesting to an annuitant's state of health as required for insurable interest survivor annuity elections.

f. Information relating to handicaps.

g. Information relating to employee participation in the Federal Civilian Employee Alcoholism and Drug Abuse Program.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 8474.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Information in these records is used to:

a. Support applications for disability retirement

b. Support insurable interest survivor annuity elections

c. Assist in medical counseling

2. Information used in these records may be provided to private contractors providing employee benefits and to officials of other Federal agencies responsible for Federal benefit programs administered by:

a. Office of Workmen Compensation Programs

b. Retired Military Pay Centers

c. Veterans Administration

d. Social Security Administration

e. Office of Personnel Management

3. Information in these records is used:

a. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether Federal, state, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the stature, rule, regulation or order issued pursuant thereto.

b. To request information from a Federal, state or local agency

maintaining civil, criminal or other relevant enforcement or other pertinent information, such as a license, if necessary to obtain relevant information to the Board's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the lettering of a contract or the issuance of a grant or other benefit.

c. To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract or issuance of a license, grant or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in folders.

RETRIEVABILITY:

Records are indexed by name, social security number, identification number, date of birth and/or claim number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Records are stored in lockable metal containers.

RETENTION AND DISPOSAL:

a. Medical certificates and other medical records of examination used to determined an employee's fitness for a job are retained 6 years after separation.

b. Miscellaneous medical records, correspondence dispensary records and similar papers are retained for 6 months after separation.

c. Applicant's medical records are retained for 6 years after separation.

d. Disability requirement medical files are retained for 6 years after separation.

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, D.C. 20044.

NOTIFICATION PROCEDURE:

Individuals requesting information about this system of records should provide their full name, date of birth, social security number, name of office or division in which currently or formerly employed, and annuity account number, if any has been assigned to the System Manager, address above.

RECORDS ACCESS PROCEDURES:

Board employees wishing to request access to records about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Office employees may amend information in these records at any time by resubmitting the cards. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the Board's Administrative Officer. Individuals must furnish full name for their records to be located and identified.

RECORD SOURCE CATEGORIES:

Information is provided by the individual who is the subject of the record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-8286 Filed 4-13-87; 8:45 am]

BILLING CODE 6820-88-M

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities Under OMB review; Funeral Industry

**AGENCY:** Federal Trade Commission.

**ACTION:** Application to OMB under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*) for review of a voluntary follow-up survey of consumers' experiences in arranging a funeral.

**SUMMARY:** The FTC is requesting OMB review under 5 CFR 1320.14 of the Funeral Rule Follow-up Survey. This will be a mail survey of consumers for the purpose of evaluating the impact of the Funeral Industry Practices Rule (16 CFR Part 453). The data from the survey will be compared to the Funeral Rule Baseline Study completed in 1982. The comparison of the baseline data and follow-up results will be used to help the Commission determine whether there is a continuing need for the funeral rule and if so, whether any changes in it are needed.

This one-time survey will entail an estimated 1,317 burden hours, including 917 hours of mail screening of a pre-existing consumer panel of 55,000 households to establish a demographically balanced group of 1,200 individuals who have recently arranged a funeral. A questionnaire (entailing 400 burden hours) will be used to obtain information from the group.

**DATE:** Comments on this request for OMB review must be submitted on or before May 14, 1987.

**ADDRESS:** Send comments to Mr. Don Arbuckle, Office of Information Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC. Copies of the application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Maronick, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (202) 326-2291.

Robert D. Paul,

*General Counsel.*

[FR Doc. 87-8282 Filed 4-13-87; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### National Advisory Council on Drug Abuse; Meeting

**AGENCY:** Alcohol, Drug Abuse, and Mental Health Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees and national advisory bodies in the month of May 1987. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Admiistrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: National Advisory Council on Drug Abuse

Date and Time: May 5-6: 9:00 a.m.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C Conference Room 8, Bethesda, MD 20892

Status of Meeting: OPEN—May 5: 9:00 a.m.-12:00 noon; May 6: 9:00 a.m.-5:00 p.m. CLOSED—Otherwise

Contact: Sheila Gardner, Room 10A-03, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-[illegible]

Purpose: The National Advisory Council on Drug Abuse advises and makes recommendations to the

Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Committee Name: National Advisory Mental Health Council

Date and Time: May 18–20: 9:00 a.m.

Place: May 18: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892 May 19–20: Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857

Status of Meeting: OPEN—May 18: 9:00–5:00 p.m.; CLOSED—Otherwise

Contact: Rachel Driver, Room 9–105, Parklawn Building, 5600 Fishers Lane Rockville, MD 20857, (301) 443–3367.

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee

Date and Time: May 27–29: 9:00 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road, NW. Washington, DC 20008

Status of Meeting: OPEN—May 27: 9:00–10:00 a.m.; CLOSED—Otherwise

Contact: Gloria Yockelson, Room 9C–14, Parklawn Building 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for suppoort of research and research training activities as they relate to mental health epidemiology, mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee

Date and Time: May 28–30: 10:00 a.m.

Place: Dupont Plaza, 1500 New Hampshire Avenue, NW. Washington, DC 20036

Status of Meeting: OPEN—May 28: 9:00–10:00 a.m.; CLOSED—Otherwise

Contact: Shirley Maltz, Room 9C–26, Parklawn Building, 5600 Fishers Lane Rockville, MD 20857, (301) 443–3944

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIDA: Ms. Camilla Holland, Committee Management Officer, Room 16–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1622; NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4333.

Dated: April 9, 1987.

**Estelle O. Brown,**

*Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 87–8290 Filed 4–13–87; 8:45 am]

BILLING CODE 4160-20-M

## Food and Drug Administration

## Advisory Committees; Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open pubic hearings before FDA's advisory committees.

*Meetings:* The following advisory committee meeting are announced:

### Orthopedic and Rehabilitation Devices Panel

*Date, time, and place.* May 7, 1:30 p.m. and May 8, 2 p.m., North Auditorium, Health and Human Services Bldg., 330 Independence Ave. SW. (enter at C St. entrance), Washington, DC.

*Type of meeting and contact person.* Open public hearing, May 7, 1:30 p.m to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; open public hearing, May 8, 2 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 4:30 p.m.; Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

*General function of the committee.* The committee reviews and evaluates available date on the safety and effectiveness of devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested person may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 30, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss a premarket approval application (PMA) for a prosthetic ligament device and the 4-year followup data for an approved electrical bone growth stimulator. The committee will also have a brief discussion regarding guidelines for evaluation of prosthetic ligament devices.

*Closed committee deliberations.* The committee may review and/or discuss trade secret and/or confidential commercial information relevant to PMA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(b)(4)).

### Blood Products Advisory Committee

*Date, time, and place.* May 7 and 8, 8:30 a.m., May 7, Lister Hill Auditorium, Bldg. 38A, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, May 8, Rm. 121. Bldg. 29, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, May 7, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed committee deliberations, 3:30 p.m. to 5:30 p.m., May 8, 8:30 a.m. to 1:30 p.m.;

Clay Sisk, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

*General function of the committee.* The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* The committee will have additional discussions on (1) blood and blood components drawn for autologous use but for which conversion of one or more components to homologous use may be contemplated, (2) specifications for in vitro diagnostic tests for antibody to hepatitis B core antigen, and (3) review of the intramural research programs of the Laboratory of Cell Biology, Division of Blood and Blood Products, Office of Biologics Research and Review, Center for Drugs and Biologics, Food and Drug Administration. The work of the individual scientists in the Laboratory will be presented.

*Closed committee discussion.* The committee will review part of the intramural research program in the Office of Biologics Research and Review. This session of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with this research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee may also review trade secret and/or confidential commercial information relevant to pending license applications and investigational new drugs (IND's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

**Ear, Nose, and Throat Devices Panel**

*Date, time, and place.* May 18, 8:30 a.m. and May 19, 8 a.m., Rm. 503–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, May 18, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 4:30 p.m.; closed committee deliberations, May 19, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 4 p.m.; David A. Segerson, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8185.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 4, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss a PMA for a cochlear implant for children.

*Closed committee deliberations.* The committee will discuss trade secret and/or confidential commerical information regarding the PMA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

**Circulatory System Devices Panel**

*Date, time, and place.* May 22, 8:30 a.m., Rm. 703–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 8, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss the labeling of pulse generator battery longevity and PMA's for prosthetic heart valves.

*Closed committee deliberations.* The committee may discuss trade secret and/or confidential commercial information regarding the heart valves listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

**Ophthalmic Devices Panel**

*Date, time, and place.* May 28 and 29, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, May 28, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open public hearing, May 29, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 11, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* On May 28 the committee will discuss general issues relating to approvals of PMA's for Nd:YAG lasers and intraocular lenses (IOL's), and may discuss specific PMA's for these devices. If discussion of all pertinent Nd:YAG laser or IOL issues is not completed, discussion will be continued the following day. On May 29 the committee will discuss PMA's for contact lenses and other devices and requirements for PMA approval.

*Closed committee deliberations.* The committee may discuss trade secret and/or confidential commercial information relevant to PMA's for IOL's, Nd:YAG lasers, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

**General and Plastic Surgery Devices Panel**

*Date, time, and place.* May 29, 9 a.m., Rm. 703–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 8, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss a PMA for a gelatin matrix implant, a PMA for a collagen-hydroxylapatite implant, a reclassification petition for gut sutures, and, if time allows, the proposed classification regulation of wound dressings.

*Closed committee deliberations.* The committee will discuss trade secret and/or confidential commerical information regarding a PMA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, respresentatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as it practical, in accordance with the agenda published in this **Federal Register** notice. Charges in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFW–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and

information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: April 8, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87–8234 Filed 4–13–87; 8:45 am]

BILLING CODE 4160–01–M

## Farmer's Union Grain Terminal Association; Withdrawal of Approval of NADA

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by the Farmer's Union Grain Terminal Association. The NADA provides for use of a Type A article containing 0.4- or 10-gram-per-pound tylosin for making Type C swine feeds. The firm requested the withdrawal of approval.

**EFFECTIVE DATE:** April 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3184.

**SUPPLEMENTARY INFORMATION:** Farmer's Union Grain Terminal Association, Feed Division, P.O. Box 1447, Sioux Falls, SD 57117, is the sponsor of NADA 96–160 originally approved May 2, 1974 (39 FR 15270). The NADA provides for use of a 0.4-gram-per-pound tylosin Type A article to make a Type C swine feed for use as in 21 CFR 558.625(f)(1)(vi)(*a*). Subsequently, the NADA was approved for use of a 10-gram-per-pound tylosin Type A article for the same purposes (45 FR 23686, April 8, 1980).

By letter dated January 20, 1987, the sponsor requested the withdrawal of approval because the product was not being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of application* (21 CFR 514.115), notice is given that approval of NADA 96–160 and all supplements thereto is hereby withdrawn, effective April 24, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the regulations that reflect this approval and is removing the firm from the list of sponsors of approved NADA's.

Dated: April 8, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–8232 Filed 4–13–87; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Application Announcement for Grants for Two-Year Programs of Schools of Medicine or Osteopathy

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1987 Grants for Two-Year Programs of Schools of Medicine or Osteopathy are now being accepted under the authority of section 788(a), of the Public Health Service Act, as amended by Pub. L. 99–129.

Section 788(a) authorizes the award of grants to maintain and improve schools which provide the first or last two years of education leading to the degree of doctor of medicine or osteopathy. Grants provided under this authority to schools that were in existence on September 30, 1985, may be used for construction and purchase of equipment.

To be eligible for a grant under this authority, the applicant must be a public or nonprofit, private school providing the first or least two years of education leading to the degree of doctor of medicine or osteopathy and be accredited or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

Application materials will be sent only upon request. Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D31), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6880.

The deadline for receipt of applications is May 29, 1987.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date, and received in time for submission to the independent review group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Approximately $500,000 is available in Fiscal Year 1987 for competing awards. Authorization for the current fiscal year is provided under a Continuing Resolution (Public Laws 99–500 and 591).

Should additional programmatic information be requested, please contact: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administraion, Parklawn Building, Room 4C–16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 433–6817.

The standard application form and specific instructions for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is not yet listed in the Catalog of Federal Domestic Assistance, therefore, no catalog number has been assigned. Applications submitted in response to this announcement that request construction assistance are subject to the intergovernmental review under provisions of Executive Order 12372, as suppliemented by 42 CFR Part 100, Intergovernmental Review of Federal Programs. Applications submitted for program support only are not subject to intergovernmental review under these provisions.

Dated: April 8, 1987.

**David N. Sundwall,**

*Assistant Surgeon General.*

[FR Doc. 87–8291 Filed 4–13–87; 8:45 am]

BILLING CODE 4160–15–M

## Social Security Administration

### Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Service (DHHS) covers the Social Security

Administration (SSA). Notice is given that Chapter SB as published in the **Federal Register** on January 4, 1983 and amended on August 15, 1983 is amended to establish the Division of Integration and Environmental Testing (DIET) and to realign other division-level functional responsibilities in the Office of System Operations (OSO). Chapter SU as published in the **Federal Register** on January 4, 1983 and amended on August 15, 1983; May 18, 1984; October 17, 1984; September 3, 1985 and November 8, 1985 is amended to reflect the abolishment of the Office of Systems Engineering in the Office of System Integration (OSI). These changes result from a major consolidation and realignment of systems functional responsibilities which is intended to improve organizational effectiveness.

The new material and changes are as follows:

Section SB.10 *The Office of System Operations*—(Organization):

D. The Office of Computer Processing Operations (SBP).

Add:

5. Division of Integration and Environmental Testing (SBP6).

Section SB.20 *The Office of System Operations*—(Functions):

D. The Office of Computer Processing Operations (SBP).

Add:

In Line 14, after ". . . information data.", add "The Office of Computer Processing Operations (OCPO) plans, directs and controls the integration, testing and, in conjunction with OSI, OSR and OIS, the production release of new or revised hardware and systems software. It develops policy and standards for integration testing, validation and acceptance of Automated Data Processing/Telecommunications systems software."

Delete:

1. The Division of Production Systems Operations (SBP1) in its entirety.

2. The Division of Computer Operations Production Control (SBP2) in its entirety.

3. The Division of Computer Operations Systems Software (SBP3) in its entirety.

4. The Division of Telecommunications Systems Operations (SBP5) in its entirety.

Add:

1. The Division of Production Systems Operations (SBP1):

a. Operates the centralized OSO computer facility, which includes computer systems hardware and associated peripheral equipment.

b. Directs the continuous operations of SSA's host telecommunications computers in support of SSA-designed networks.

c. Schedules day-to-day workflow for the ADP facility within plans and priorities established by OCPO's Division of Computer Operations Production Control.

d. Controls the flow of materials into ADP production jobs. Reviews production results for accuracy and completeness.

e. Analyzes equipment problems, isolates malfunctions and oversees correction actions by SSA or vendor personnel.

f. Schedules and assures preventive maintenance of all equipment under the operational control of OCPO.

g. Develops and maintains a centralized integrated control center for use in monitoring the operating systems utilization, network control facilities and environmental status.

2. The Division of Computer Operations Production Control (SBP2):

a. Manages the production workload of OSO and administers effective resource utilization.

b. Designs, develops, implements and operates production control ADP systems which supervise library controls, automates the scheduling and allocates the production workload.

c. Manages and directs automated magnetic media processes and directs the activity of the magnetic tape library function.

d. Participates in the design reviews of proposed application systems to assure operational support and control aspects are being considered. Analyzes applications systems to assure compliance with systems standards. Approves applications systems for production status and incorporates them into the production library.

e. Assembles input material for ADP production jobs and delivers them to the Division of Production Systems Operations.

f. Expedites processing of critical jobs, operations and corrections.

g. Provides liaison with the users on status of production jobs and/or associated problems as required.

h. Maintains the integrity, manages and performs required recovery of all operational data, data media, tape and direct access for systems.

i. Maintains and enhances a transaction system for the control of a high-volume tape library.

j. Analyzes performance of the ADP production processes and recommends and implements improvements. Destroys sensitive material in compliance with provisions of the Privacy Act and SSA procedures.

3. The Division of Computer Operations Systems Software (SBP3):

a. Directs the analysis, design, development, implementation and maintenance of computer operating systems and utility software in support of programmatic and management information workloads for SSA's central data processing center and field components.

b. Directs the design, development, testing and continuing support of specialized data communications control software used to support SSA's data communications systems.

c. Directs the design, development, implementation and maintenance of information systems software in support of the central data processing center's problem, change and configuration management systems.

d. Supports the utility software and user activities in the areas of computer graphics, small computers and nonimpact printers.

e. Supports the user liaison and systems development activities of other OSO components in the resolution of technical and operational problems.

4. The Division of Telecommunications System Operations (SBP5):

a. Directs the operations of SSA's telecommunications network facilities for the transmission of program and management data over SSA-established networks.

b. Manages traffic flow between the telecommunications complex and other SSA computers. Monitors telecommunciations operations, analyzes equipment problems and effects proper maintenance and repair.

c. Directs the implementation of new or revised operating policies and procedures. Recommends new procedures and appraises telecommunications operating instructions, centrally and in the field.

d. Establishes and enforces standards for controlling workflow and for assuring the integrity of data processed through the various data communications operations.

e. Acts as liaison with common carriers and network equipment vendors to maintain operational effectiveness of equipment.

f. Directs the operational performance evaluation of SSA's data communications systems.

g. Provides technical expertise and assistance on data communications procurements and other SSA systems modernization projects.

h. Directs the design, development and implementation of software to gather and report statistical information

on the functioning of telecommunications networks. Distributes the information to other SSA components to report on network performance and equipment utilization.

i. Designs and implements security software for SSA's telecommunications network and ensures that related procedures are followed by technical personnel.

j. Manages the installation, removal and relocation of local and remote telecommunications facilities, assuring compliance with governing Federal regulations.

k. Maintains an integrated control center, centrally and at the remote network nodes, to provide a point of contact of field offices reporting equipment or operational problems.

l. Conducts ongoing analyses of network configurations and workloads and initiates changes to the network topology to optimize cost/performance.

m. Develops standards and procedures for applications developers in interfacing to SSA's data communications network. Evaluates requested or proposed applications for impact on network resources.

n. Maintains and controls an inventory of all remote data communications equipment which assesses SSA's telecommunications networks, and the history and status of equipment outages for all SSA owned or leased data communications equipment.

o. Assigns, maintains and provides to data communications systems users, telecommunications site routing codes and terminal identifiers consistent with Governmentwide network addressing conventions.

p. Conducts investigations and anslysis of system problems affecting local and remote users of the data communications networks, and provides liaison with regional staffs in identifying and correcting chronic problems and trends.

Add:

5. The Division of Integration and Environmental Testing (SBP6):

a. Directs and controls all activities with the release of new or enhanced versions of host programmatic and telecommunications-related software. Enforces software acceptance and certifications standards. Directs the initial staging of program modules to be tested, including generation of executable code.

b. Develops and maintains extensive test data bases for use in the acceptance, integration and environmental testing processes. Develops and incorporates the use of software simulators and emulators in software acceptance testing.

c. Directs the integration testing of new or enhanced communications host software, remote network/terminal and microprocessor software and network communications software. Participates in the movement and/or migration of software systems and associated data files between complexes and processing components.

d. Directs environmental testing to ensure that new or enhanced software is compatible with changing hardware configurations. Directs the integration of new or enhanced SSA programmatic software. Administers the generation of finalized testing results for evaluation. Directs software performance evaluations, parallel testing, timing studies, inter/intrasystem relationship and testing trend analysis.

e. Responsible for administering ADP hardware integration and acceptance testing.

f. Provides the checks and balances on SSA's ADP systems and equipment procurements for complying with contractural performance requirements throughout the life cycle of the procurement.

E. The Office of System Support and Planning (SBL):

Add:

In Line 7, after ". . . OSO.", add "The Office develops an ADP Capacity Plan to perform capacity allocation, monitor its usage and determine future requirements, based upon future workload information."

In Line 11, after ". . . resources.", add "It participates in the development of policies and procedures for the acquisition of ADP Computer and Telecommunications equipment, software and services, in compliance with SSA, HHS, the Office of Management and Budget and the General Services Administration policies and regulations."

Delete:

1. The Division of Operational Capacity Performance Management (SBL1) in its entirety.

Add:

1. The Division of Operational Capacity Performance Management (SBL1):

a. Evaluates computer performance and monitors resource utilization to ensure that the ADP and telecommunications systems are utilized effectively and efficiently. Analyses systems capacity as it relates to utilization and service objectives and prepares recommendations for upper management. As directed, performs similar functions for other SSA components including the program service centers.

b. Ensures that sufficient ADP capacity is available to process present and future workloads, coordinating decisions on target systems for new/modified workloads and system configuration changes.

c. Monitors the OSO service delivery to ensure that systems performance objectives as defined in the User Service Agreements are being met. Provides recommendations to enhance delivered service as necessary, and ensure that data bases are efficiently implemented.

d. Provides advice and services to other OSO components in the use of computer performance evaluation tools and the interpretation of reports/data resulting from evaluation and utilization studies.

e. Uses operations research tools (e.g., simulation and mathematical models and statistical analyses) to investigate operational efficiency problems and develop relationships between transaction volumes, resource utilization and resulting service delivery.

f. Schedules, arranges, conducts and reports on structured systems' effectiveness reviews to compare OSO service commitments with delivered levels of performance and contributes towards planning and enhancement of existing systems.

g. Coordinates, assists in the development/maintenance, and monitors all Systems service level agreements. Represents OSO in the User Service Agreement negotiations.

h. Performs a wide range of user coordination and problem resolution functions. Gathers and disseminates timely information, related to operational problems, errors and changes that affect the users.

2. The Division of Standards and Control (SBL2):

Delete:

g. Performs ongoing analysis of equipment configurations and projects requirements based on technological enhancements, workload changes and growth.

h. Prepares comprehensive reports and technical justifications for management's use.

Add:

g. Formulates an OSO-wide Systems Plan and assigns responsibility among major OSO components for various parts of the Plan. Work with OSO components to evaluate their proposed systems objectives in terms of technical feasibility, availability of OSO resources and systems costs. Identifies the major OSO activities and resources needed to support these objectives.

h. Directs and coordinates the OSO activities associated with operational planning and ADP Systems Planning.

i. Coordinates and directs the development of the total OSO technical workpower, equipment and other special costs for the SSA budget process and justifies these on the basis of the Operational Systems Plan. Allocates resources and monitors projects for all OSO activities, directs the preparation of detailed plans on the project or operational activity level and authorizes the use of resources by OSO components in support of these plans.

j. Monitors progress and use of workpower and equipment resources by OSO components against their approved plans.

k. Assists OSO components in the use of standard methods for project management.

Delete:

3. The Division of Operational Resource Management (SBL3) in its entirety.

Add:

3. The Division of Operational Resource Management (SBL3):

a. Directs OSO's participation in the Information Technology Systems (ITS) procurement process.

b. Performs technical and cost reviews of all OSO/ITS procurements.

c. Provides support for ITS Technical Evaluation Committees.

d. Support contract administration for all OSO ITS contracts.

e. Provides technical support to Project Officers in the development, modification and administration of ITS contracts.

f. Directs the renewal process for existing lease and maintenance contracts for ITS and telecommunications equipment and services.

g. Manages the fiscal administration of all implemented ITS contracts, collecting, analyzing and reporting performance data to support required fiscal and other contractual proceedings.

h. Manages a centralized inventory of all SSA ITS and telecommunications equipment and manages the ITS excess equipment process.

i. Provides for the centralized certification and authorization for the lease and maintenance of SSA's ITS and telecommunications equipment.

j. Provides necessary staff support to the users within OSO for the development of procurement documents and documentation.

k. Develops and maintains the OSO macroprocurement plan which relates to planned major acquisitions of ITS equipment, software, system design and system support services. Coordinates the procurement plans and related budget items with appropriate Systems management and staffs.

l. Provides technical support to OSO and other SSA components during major procurement activities.

Section SU.10 *The Office of System Integration*—(Organization):

G. The Office of Programmatic Systems (SUF).

Delete:

7. The Division of SSI Systems (SUF7).

Add:

4. The Division of SSI Systems (SUF7).

Delete:

H. The Office of System Engineering (SUH) in its entirety.

Section SU.20 The Office of System Integration—(Functions):

G. The Office of Programmatic Systems (SUF).

Delete:

7. The Division of SSI Systems (SUF7) in its entirety.

Add:

4. The Division of SSI Systems (SUF7).

a. Provides the systems analysis, design, programming and testing necessary to develop and maintain current, new and redesigned systems in response to approved user system requirements for SSI claims and postentitlement transaction processing as well as a variety of supporting applications. These systems: edit incoming new records and transactions; maintain and revise the SSI master file to reflect changes; compute both Federal SSI benefit and State supplementary payments and produce payment information for the Treasury Department; account for disbursement of Federal and State funds; prepare recipient notices of claims decisions and changes in status and payment; identify and control overpayment activity; select and control cases requiring redetermination; exchange data with Government record systems to verify recipient income; generate data for State use in determining supplementation amounts and Medicaid eligibility; provide record query and response capability; control folder location and movement; produce statistical, management and actuarial data as needed and control exception processing and diary control mechanisms.

b. Translates user requirements, as approved by the Office of System Requirements (OSR), into detailed design, development and testing activities and activities and system documentation for current, new or redesigned systems.

c. Conducts liaison with other SSA components and Federal and State agencies to determine the feasibility, and to plan the development, of SSI claims, transaction and support systems.

d. Provides OSR, the Associate Commissioner for System Integration and other SSA offices, as appropriate, with a technical assessment of the effect of legislative, administrative and systems modernization proposals on existing SSI claims, transaction and support system applications.

Delete:

H. The Office of Systems Engineering (SUH) in its entirety.

Dated: April 2, 1987.

**Jaime L. Manzano,**

*Deputy Commissioner for Systems.*

[FR Doc. 87-8256 Filed 4-13-87; 8:45 am]

BILLING CODE 4190-11-M

## Privacy Act of 1974; Notification of New Routine Uses and Minor Revision

**AGENCY:** Social Security Administration (SSA), Department of Health and Human Services (HHA).

**ACTION:** New Routine Uses and Minor Revision.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to:

(1) Establish a new routine use of information maintained in the system of records entitled "Kentucky Birth Records System, HHS/SSA/DO(KY), 09-60-0220." This proposed routine use would permit SSA to disclose information to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) for the purposes of conducting record management studies.

(2) Revise a routine use already applicable to the majority of SSA's systems of records which currently provides for disclosure to the Department of Justice (DOJ) to defend SSA components and employees in litigation matters affecting the systems to include additional disclosures involving litigation.

We are proposing to make a minor technical revision to the **Federal Register** applicable to the Kentucky Birth Records System to make it accurate and complete. We invite public comments on these proposals.

**DATE:** These proposals will become effective as proposed without further notice on May 14, 1987, unless we receive comments on or before that date which would result in a contrary determination.

**ADDRESS:** Interested individuals may comment on this proposal by writing to Mr. Bernard A. Oehlers, Acting SSA

Privacy Officer, Social Security Administration, Room L1140 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Willie J. Polk, Social Insurance Specialist, Social Security Administration, Office of Regulations, Privacy Branch, Room L1140 West Low Rise Building, 6401 Security Boulevard, Baltimore Maryland 21235, telephone (Area Code 301) 594–5599.

**SUPPLEMENTARY INFORMATION:**

**I. Discussion of the Proposed Routine Uses**

*A. Disclosure to GSA and NARA for the Purpose of Conducting Records Management Studies*

We are proposing to revise the routine use section of the Kentucky Birth Records System by adding a new routine use which permits disclosure to GSA and NARA for the purpose of conducting records management studies. The Administrator, GSA and the Archivist, NARA, are charged by 44 U.S.C. 2904, as amended by the National Archives and Records Administration Act of 1984, with promulgating standards, procedures and guidelines with respect to records management and the conduct of records management studies.

Section 2906 of this law, also amended by the NARA Act of 1984, provides that GSA and NARA shall have access to Federal agencies' records and that agencies shall cooperate with GSA and NARA. To facilitate GSA and NARA records management studies which may involve the Kentucky Birth Records System, we are adding the routine use to comply with the Privacy Act. The routine use is as follows:

*Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.*

We publish this routine use in the **Federal Register** for other SSA systems of records on March 10, 1986 (see 51 FR 8243, March 10, 1986). The notice of the Kentucky Birth Records System below contains the above new routine use.

*B. Disclosure to DOJ, a Court or Other Tribunal, or Another Party Before Such Tribunal.*

The majority of SSA's notices of systems of records currently contain a routine use which permits disclosure of DOJ for the purpose of defending SSA components and employees (or other Federal agencies where litigation is likely to affect SSA components) in litigation matters involving the systems of records. We are expanding this routine use to permit disclosure, in addition to DOJ, to a court or other tribunal or another party before such tribunal and to permit disclosure to these parties when SSA or another party brings suit or in cases in which SSA has an interest in the ligitation. The revised routine use is as follows:

*Disclosure may be to DOJ, to a court or other tribunal, or another party before such tribunal, when:*

*(a) SSA, or any component thereof; or*

*(b) Any SSA employee in his/her official capacity; or*

*(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or*

*(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,*

*is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the tribunal, or the other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were disclosed.*

*Wage and other information which are subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.*

We will disclose information under this routine use only as necessary to defend SSA components or employees in litigation matters involving the systems of records which will contain the routine use or when SSA has an interest in litigation which might affect SSA operations.

Because of the number of systems of records to which the routine use will apply and the costs of republishing the individual notices of each one, we are republishing only the identification number and the name of each system and the volume, page number and date of the **Federal Register** issue in which a notice of the systems last was published in the **Federal Register**. The systems of records are as follows:

09–60–0001—Commissioner's Correspondence File, HHS/SSA/OC (51 FR 8243, March 10, 1986);
09–60–0002—Automated Document Control and Retrieval System, HHS/SSA/OGA (51 FR 8243, March 10, 1986);
09–60–0003—Attorney Fee File, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0004—Working File of the Appeals Council, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0005—Hearing Office File, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0006—Storage of Hearings Records: Tape Cassettes and Audiograph Discs, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0008—Administrative Law Judge's File, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0009—Hearings and Appeals Case Control System, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0012—Listing and Alphabetical Name File (Folder) of Vocational Experts, Medical Advisors and Medical Consultants, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0013—Records of Usage of Medical Advisors, Medical Consultants and Vocational Experts, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0014—Curriculum Vitae and Professional Qualifications of Medical Advisors, Medical Consultants and Resume of Vocational Experts, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0017—Personnel Research and Merit Promotion Test Records, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09–60–0031—Employee Production and Accuracy Records, HHS/SSA/OMBP (51 FR 8243, March 10, 1986);
09–60–0032—Employee Indebtedness System, HHS/SSA/OMBP (51 FR 8243, March 10, 1986);
09–60–0033—Report on Paid Consultants, HHS/SSA/OMBP (51 FR 8243, March 10, 1986);
09–60–0037—General Criminal Investigations Files, HHS/SSA/OMBP (51 FR 8243, March 10, 1986);
09–60–0038—Employee Building Pass Files, HHS/SSA/OMBP (51 FR 8243, March 10, 1986);
09–60–0040—Quality Review System, HHS/SSA/OA (51 FR 8243, March 10, 1986);
09–60–0042—Quality Review Case Files, HHS/SSA/OA (51 FR 8243, March 10, 1986);
09–60–0044—Disability Determination Service Processing File, HHS/SSA/OD (51 FR 8243, March 10, 1986);
09–60–0045—Black Lung Payment System, HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09–60–0046—Consultative Physicians File, HHS/SSA/OD (51 FR 8243, March 10, 1986);
09–60–0050—Completed Determination Record—Continuing Disability Determinations, HHS/SSA/OP (51 FR 8243, March 10, 1986);

09-60-0057—Quality Evaluation Data Records, HHS/SSA/OA (51 FR 8243, March 10, 1986);
09-60-0058—Master Files of Social Security Number Holders, HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09-60-0059—Earnings Recording and Self-Employment Income System, HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09-60-0063—Resource Accounting and Project Management System, HHS/SSA/OSPI (51 FR 8243, March 10, 1986);
09-60-0066—Claims Development Record, HHS/SSA/RO (51 FR 8243, March 10, 1986);
09-60-0075—Congressional Bills Tracking System, HHS/SSA/OLRP (51 FR 8243, March 10, 1986);
09-60-0077—Congressional Inquiry File, HHS/SSA/RO (51 FR 8243, March 10, 1986);
09-60-0078—Public Inquiry Correspondence File, HHS/SSA/RO (51 FR 8243, March 10, 1986);
09-60-0089—Claims Folders System, HHS/SSA/OP (51 FR 8243, March 10, 1986);
09-60-0090—Master Beneficiary Record, HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09-60-0094—Recovery Accounting for Overpayments, HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09-60-0095—Health Insurance Overpayment Ledger Cards, HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09-60-0103—Supplemental Security Income Record, HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09-60-0110—Supplemental Security Income File of Refunds, HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09-60-0111—Debit Voucher File (Supplemental Security Income), HHS/SSA/OSR (51 FR 8243, March 10, 1986);
09-60-0118—Non-Contributory Military Service Reimbursement System, HHS/SSA/OACT (51 FR 8243, March 10, 1986);
09-60-0119—Special Age 72 Benefit Trust Fund Transfer Project, HHS/SSA/OACT (51 FR 8243, March 10, 1986);
09-60-0184—Hearing Office Master Calendar, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09-60-0186—SSA Litigation Tracking System, HHS/SSA/LS (51 FR 8243, March 10, 1986);
09-60-0210—Record of Individuals Authorized Entry to Secured ADP Areas, HHS/SSA/OS (51 FR 8243, March 10, 1986);
09-60-0212—Supplemental Security Income Quality Initial Claims Review Process System, HHS/SSA/OA (51 FR 8243, March 10, 1986);
09-60-0213—Quality Review of Hearing/Appellate Process, HHS/SSA/OHA (51 FR 8243, March 10, 1986);
09-60-0214—Personal Identification Number File, HHS/SSA/OA (48 FR 37526, August 18, 1983);
09-60-0219—Representative Disqualification/Suspension Information System, HHS/SSA/ORSI (51 FR 8243, March 10, 1986).

**II. Compatibility of the Proposed Routine Use**

The Privacy Act (5 U.S.C. 552a(a)(7) and 552a(b)(3)) and our disclosure regulation (20 CFR Part 401) both permit us to disclose information under a routine use if the information will be used for a purpose which is compatible with the purpose for which we collected the information. Section 401.310 of the regulation permits us to disclose information under a routine use for administering our programs or for use in similar income-maintenance or health-maintenance programs of other agencies. Section 401.205 of the regulation requires us to disclose information when a law specifically requires it.

With regard to GSA and NARA, disclosure would assist SSA in its records management. Further 44 U.S.C. 2906, as amended by the NARA Act of 1984, requires us to disclose information to GSA and NARA for records management purposes.

Disclosure would be made to DOJ, a court or other tribunal, or another party before such tribunal, as necessary, in litigation matters involving SSA operations. We consider disclosure in this instance as an extension of program administration. Thus, both routine uses are appropriate and meet the criteria in the Privacy Act and the regulation.

**III. Effect of the Proposed Routine Uses on Individual Rights**

Information will be disclosed to GSA and NARA for the purpose of their reviewing SSA's records management practices as mandated by Federal law and the only for this purpose. Information will be disclosed to DOJ, a court or other tribunal, or another party before such tribunal in litigation, as necessary, to defend SSA components or employees or if the litigation would affect SSA operations. The disclosures will be made in complete compliance with the Privacy Act. Thus, we do not anticipate that they would have an unwarranted affect on the rights of individuals.

**IV. Minor Revision**

We initially published a notice of the Kentucky Birth Records System in the **Federal Register** on June 3, 1986 (51 FR 19899). In that publication, we inadvertently did not publish the "Authority for Maintenance of the System" section of the notice. That section of the notice should have identified section 205 of the Social Security Act as the authority for the system. We have revised the notice to reflect this information.

Dated: April 6, 1987.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

**09-60-0220**

**SYSTEM NAME:**

Kentucky Birth Records System, HHS/SSA/DO(Ky).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Social Security district and branch offices located in the State of Kentucky. Individuals should consult Kentucky telephone directories for address and telephone information.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the general public whose birth records have been registered in the State of Kentucky.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system consists of an index of Kentucky birth records. Included on the index are the individual's name, mother's maiden name, date and place of birth, certificate number and volume number of the index.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

*Section 205 of the Social Security Act.*

**PURPOSE:**

Information in the system will be used by Social Security Administration (SSA) offices in the State of Kentucky to provide evidentiary proof of age and other facts about individuals applying for various Social Security benefits, Supplemental Security Income payments and Social Security numbers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made as routine uses as indicated below:

1. To a Congressional office in response to an inquiry from that office made at the request of the subject of a record.

2. To the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when:

(a) The Department of Health and Human Services (HHS)/SSA, or any component thereof; or

(b) Any HHS/SSA employee in his/her official capacity; or

(c) Any HHS/SSA employee in his/her individual capacity where DOJ (or HHS/SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS/SSA determines that the litigation is likely to affect the operations of HHS/SSA or any of its components.

Is a party to litigation or has an interest in such litigation, and HHS/SSA determines that the use of such records by DOJ, the tribunal, or the other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, HHS/SSA determines that such disclosure is compatible with the purpose for which the records were collected.

*3. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.*

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records will be stored on microfilm.

**RETRIEVABILITY:**

Records will be retrieved by the individuals's name and other identifying information (e.g., mother's name and date of birth).

**SAFEGUARDS:**

Access to records in the system will be restricted to personnel who need them in the performance of their official duties. Also, the information will be maintained in the secured facilities and kept from access by unauthorized individuals (e.g., stored in locked filing cabinets) when not in use.

**RETENTION AND DISPOSAL:**

Records in the system will be updated biennially. Out-of-date microfilm records will be disposed of by the application of heat.

**SYSTEM MANAGER(S) AND ADDRESS:**

Managers of Social Security district/branch offices in the State of Kentucky. Individuals seeking office addresses and telephone numbers should consult Kentucky telephone directories.

**NOTIFICATION PROCEDURE:**

An individual wishing to find out if this system of records contains information about him/her may do so by contacting any Social Security office and furnishing his/her name, date and place of birth and mother's maiden name. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

**RECORD ACCESS PROCEDURE:**

Same as notification procedures above. Also, individuals requesting access to their records should reasonably describe the records they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures above. Also, individuals contesting the contents of records in the system should reasonably describe the records, specify the information they are contesting and state the corrective action sought with supporting justification showing how the records are untimely, incomplete, in inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

**RECORD SOURCE CATEGORIES:**

Records in the system will be obtained from the Kentucky Office of Vital Statistics.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 87-8255 Filed 4-13-87; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. N-87-1692]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John F. Morrall, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451, 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

**Notice of Submission of Proposed Information Collection to OMB**

Proposal: Request for Exceptions to Income Limits for Public and Indian Housing Programs, 24 CFR 913.105(B)
Office: Public and Indian Housing
Description of the need for the information and its proposed use: PHAs and IHAs may request approval from HUD for admission of families with incomes greater than fifty percent of the area median to units which were available for occupancy under contracts executed under the U.S. Housing Act of 1937 on or after October 1, 1981. HUD will maintain the five percent statutory cap and approve requests which comply with the regulation. Without a procedure to grant exceptions, it would be impossible to comply with the five percent statutory cap
Form Number: None
Respondent: State or Local Governments and Non-Profit Institutions
Frequency of Response: On Occasion
Estimated Burden Hours: 280

Status: Extension
Contact: Edward C. Whipple, HUB, (202) 426–0744; John F. Morrall, OMB, (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).
Proposal: Survey of New Mobile Home Placements
Office: Policy Development and Research
Description of the need for the information and its proposed use: The data, collected from dealers, is used to monitor trends in this type of low cost housing. The principal user, HUD, uses the statistics produced to formulate policy, draft legislation, and evaluate programs
Form Number: CMH–9A and CMH–9B
Respondent: Businesses or Other For-Profit and Small Business or Organizations
Frequency of Response: Monthly
Estimated Burden Hours: 4,000
Status: Extension
Contact: Connie Casey, HUD, (202) 755–5060; Dave Fondelier, Census, (301) 763–5731; John F. Morrall, OMB, (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: April 6, 1987.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

[FR Doc. 87–8269 Filed 4–13–87; 8:45 am]

BILLING CODE 4210–01–M

---

**[Docket No. I–87–144]**

## Intent To Issue a Finding of No Significant Impact on the West Dallas Plan, West Dallas Project, Dallas, TX

The Department of Housing and Urban Development (HUD) gives notice concerning proposed actions for the West Dallas Public Housing Project, Dallas, Texas, that it intends to issue a Finding of No Significant Impact (FONSI). The Dallas Housing Authority (DHA) of the City of Dallas has submitted a "West Dallas Plan" to the Forth Worth Regional Office for approval. The plan was prepared by the DHA as the result of a consent decree that it entered into in Walker, et al v. HUD, et al, Civil Action CA–3–85–121OR (N.D. Tex.). The consent decree requires the following DHA actions in connection with the West Dallas Project:

A. Modernization of 800–900 units;
B. With respect to the remaining dwelling units:
1. Demolition of 1,000 units that are currently vacant;
2. Relocation of the current occupants either outside the West Dallas project or to units modernized pursuant to the West Dallas Plan;
3. Demolition of additional units as units are vacated by occupant families and as replacement housing opportunities become available; and
4. Preparation of the land for redevelopment for uses other than assisted low income housing.

Due to the scope of the DHA actions, it was the original intent of the Fort Worth Regional Office to prepare an EIS prior to the approval of the West Dallas Plan. Notice of Intent to Prepare an EIS was published in the Federal Register on December 15, 1986. The Notice of Intent to Prepare an EIS that was previously published is hereby cancelled.

### Description

Three public housing projects were constructed in 1953 and 1954 on a site consisting of 514 acres of land in the sector of the City of Dallas known as West Dallas. The three projects were:

George Loving Place, Project Tex 9–11A, 1,500 units
Edgar Ward Place, Project Tex 9–11B, 1,500 units
Elmer Scott Place, Project Tex 9–11C, 500 units

The three projects for management and maintenance purposes have operated as individual low rent public housing projects. Collectively the three projects were known as the West Dallas Project. The projects consisted of 503 one and two story buildings. More recently the DHA has referred to the projects as "Lake West." The housing site is bounded on the south by Singleton Boulevard, Hampton Road on the east, Canada Drive on the north and Westmoreland Road on the west.

### Purpose of FONSI Notice

Pursuant to HUD's environmental regulations, 24 CFR Part 50, an Environmental Assessment (EA) was prepared by the staff of the Environmental Office of the Fort Worth Regional Office. It is the finding of the EA that there would be no significant impact upon the human environment. The environmental concerns that were identified can be mitigated. It is for this reason that it is no longer the Department's intent to prepare an EIS. Instead of an EIS, it is the intent of the Fort Worth Regional Office to issue a FONSI and notice is hereby given. Pursuant to 40 CFR 1501.4(e)(2) of the Council on Environmental Quality regulations, there will be a thirty (30) day comment period before HUD makes it final decision on the FONSI. Interested individuals, governmental agencies and private organizations are invited to comment on the FONSI within 30 days following the date of publication of this notice.

### Additional Information and Comments

The EA and its supporting documentation which serves as the basis for the FONSI is available for review at the HUD Fort Worth Regional Office during regular business hours. Written comments on the FONSI should be submitted to Sam Moseley, Regional Administrator, Fort Worth Regional Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, Texas, 76113.

Contacts concerning the review of the EA should be made with I. J. Ramsbottom, Regional Environmental Officer, at the same address or by telephone at 817/885–5482 or FTS 728–5482. (These are not toll-free commercial numbers.)

Dated: April 8, 1987.

**Dorothy Williams,**

*Deputy Director, Office of Environment and Energy.*

[FR Doc. 87–8270 Filed 4–13–87; 8:45 am]

BILLING CODE 4210–29–M

---

## Office of the Secretary

**[Docket No. D–87–835]**

## Organization, Functions, and Authority Delegations; Regional Offices, Richmond

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Order of Succession.

**SUMMARY:** The Office Manager is designating officials who may serve as Acting Office Manager during the absence, disability, or vacancy in the position of the Office Manager.

**EFFECTIVE DATE:** This designation is effective: March 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter M. Campanella, Regional Counsel, Office of Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106, phone 215–597–2655. (This is not a toll free number).

### Designation

Each of the officials appointed to the following positions is designated to

serve as Acting Office Manager during the absence, disability, or vacancy in the position of the Office Manager, with all the powers, functions, and duties redelegated or assigned to the Office Manager: Provided, that no official is authorized to serve as Acting Office Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

a. Deputy Manager.

b. Director, Community Planning and Development Division.

c. Director, Housing Development Division.

d. Director, Housing Management Division.

e. Director, Administration Division.

f. Director, Fair Housing & Equal Opportunity Division.

g. Chief Counsel.

This designation supersedes the designation effective November 7, 1985.

**Authority:** Delegation of Authority by the Secretary effective April 23, 1985 50 FR 18742 May 2, 1985.

Dated: March 5, 1987.

**G. William Thomas, Jr.,**

*Manager, Richmond Field Office.*

[FR Doc. 87-8271 Filed 4-13-87; 8:45 am]

BILLING CODE 4210-32-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-020-07-4322-14]

### Burley District Grazing Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting and agenda for Burley District Grazing Advisory Board.

**SUMMARY:** Notice is hereby given that the Burley District Grazing Advisory Board will meet on May 19, 1987.

The meeting will convene at 9:30 a.m. on May 19, 1987 in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) User project maintenance policy; (2) Management of the Samaria Allotment; (3) Discuss the use of 8100 funds for pre-project work; (4) Offering approved non-use (except for conservation reasons) for activation; (5) Take action on weed control fund request from last meeting; (6) Items of information: (a) Progress report on FY-87 Range Improvement Projects; (b) Review FY-86 allotment monitoring AIE's; (c) South Stone Allotment use in relation to Samaria and Curlew Allotment; (d) Discuss Indian Springs Allotment division of use; (e) Discuss requirement to use 8100 funds on areas with resource activity plans; (f) Discuss retirement of permits that have been in non-use for 10 years or more; (g) Review proposed revision of grazing regulations; (h) Discuss base property and lending institution foreclosures.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 10:00 a.m., or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by May 18, 1987 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

**DATE:** May 19, 1987.

**ADDRESS:** Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho, 83318.

**FOR FURTHER INFORMATION CONTACT:** John Davis, Burley District Manager, (208) 678-5514.

Dated: April 13, 1987.

**John S. Davis,**

*District Manager.*

[FR Doc. 87-8292 Filed 4-13-87; 8:45 am]

BILLING CODE 4310-GG-M

[(CA-940-07-4212-13); CA-16962]

### California; Exchange of Public and Private Lands in Mendocino, Sonoma, Trinity, and Lake Counties

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of issuance of land conveyance document.

**SUMMARY:** The purpose of this exchange was to acquire the non-Federal lands along Cache Creek, a highly significant habitat for bald eagles and tule elk, both sensitive and endangered species. The public interest was well serve through completion of this exchange.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, California State Office, (916) 978-4815.

The United States issued an exchange conveyance document to the Valley Health Care Corporation on December 27, 1985, under the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), for the following described lands:

**Humboldt Meridian, California**

T. 5 S., R. 2 E.,
- Sec. 26, SE¼NE¼;
- Sec. 27, SW¼SW¼;
- Sec. 28, Lots 2, 3, 4, and 5;
- Sec. 34, NW¼NW¼.

T. 4 N., R. 3 E.,
- Sec. 7, Lot 2.

T. 3 S., R. 6 E.,
- Sec. 33, NW¼NW¼.

**Mount Diablo Meridian, California**

T. 10 N., R. 10 W.,
- Sec. 32, SE¼NE¼, SW¼SE¼, and E½SE¼.

T. 16 N., R. 12 W.,
- Sec. 10, Lots 1 and 2;
- Sec. 11, SW¼NE¼.

T. 17 N., R. 12 W.,
- Sec. 14, NE¼SW¼;
- Sec. 15, SE¼SE¼.

T. 9 N., R. 13 W.,
- Sec. 9, NE¼NE¼.

T. 13 N., R. 13 W.,
- Sec. 2, Lot 1, S½NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
- Sec. 13, NE¼SW¼.

T. 14 N., R. 13 W.,
- Sec. 18, N½SE¼.

T. 16 N., R. 13 W.,
- Sec. 4, Lot 2.

T. 13 N., R. 14 W.,
- Sec. 28, E½NW¼.

T. 14 N., R. 14 W.,
- Sec. 3, Lot 3 and SE¼SW¼;
- Sec. 24, N½NE¼.

T. 15 N., R. 14 W.,
- Sec. 34, S½SW¼.

T. 17 N., R. 14 W.,
- Sec. 10, Lots 7 and 8;
- Sec. 11, Lot 7.

T. 19 N., R. 14 W.,
- Sec. 23, SE¼NW¼.

T. 21 N., R. 14 W.,
- Sec. 4, Lots 1 and 2, S½NE¼, SW¼NW¼, N½SW¼, and E½SE¼;
- Sec. 5, Lot 1 and SE¼NE¼;
- Sec. 6, Lots 2, 3, 4, 5, 6, and 7, SE¼NW¼, E½SW¼, and SW¼SE¼.

T. 22 N., R. 14 W.,
- Sec. 5, Lot 7 and NW¼SW¼;
- Sec. 6, Lots 4, 13, and 14, and NE¼SE¼;
- Sec. 17, SW¼NW¼;
- Sec. 27, S½SW¼;
- Sec. 28, S½SE¼;
- Sec. 33, NW¼NE¼;
- Sec. 34, N½NW¼ and SE¼NW¼.

T. 23 N., R. 14 W.,
- Sec. 30, Lot 3 and N½ Lot 5.

T. 13 N., R. 15 W.,
- Sec. 10, SW¼SE¼.

T. 21 N., R. 15 W.,
- Sec. 1, E½ Lot 2 in NE¼.

T. 22 N., R. 15 W.,
- Sec. 24, Lots 3 and 4.

T. 23 N., R. 15 W.,
- Sec. 3, SW¼SE¼;
- Sec. 10, Lots 1 and 2;
- Sec. 28, W½NE¼.

T. 24 N., R. 15 W.,
Sec. 9, SE¼NE¼;
Sec. 10, W½NW¼ and NW¼SW¼;
Sec. 30, SE¼SE¼.
T. 13 N., R. 16 W.,
Sec. 9, NE¼SW¼.
T. 14 N., R. 16 W.,
Sec. 10, NW¼NE¼;
Sec. 24, N½SW¼;
Sec. 31, NW¼SE¼.
T. 21 N., R. 16 W.,
Sec. 11, Lot 3.
T. 23 N., R. 16 W.,
Sec. 4, Lot 12 and SE¼SE¼;
Sec. 9, E½NW¼ and NE¼NE¼.
T. 23 N., R. 17 W.,
Sec. 12, NE¼NW¼.
T. 24 N., R. 18 W.,
Sec. 2, SW¼SW¼.
T. 24 N., R. 19 W.,
Sec. 2, Lots 3 and 4.

Containing 4,219.41 acres of public land in Mendocino, and Sonoma, Trinity counties.

In exchange for these lands, the United States acquired the following described lands from the Valley Health Care Corporation:

**Mount Diablo Meridian, California**

Tract One

T. 13 N., R. 6 W.,
Sec. 15, W½NW¼, SE¼NW¼, SW¼NE¼.

Tract Two

T. 13 N., 6 W.,
Sec. 15, S½SE¼NE¼, excepting therefrom that portion described as follows: Beginning at the southwest corner of the southeast quarter of the northeast quarter said Sec. 15, and running thence east 220 feet; thence north 990 feet; thence west 220 feet; thence south 990 feet to the point of beginning.

Tract Three

T. 13 N., R. 6 W.,
Sec. 14, NW¼;
Sec. 11, SE¼SW¼.

Tract Four

T. 13 N., R. 6 W.,
Sec. 12, SW¼SW¼; Sec. 11, SE¼NE¼, E½SE¼.

Tract Five

T. 13 N., 6 W.,
Sec. 12, SE¼NW¼, E½SW¼, SW¼SE¼.

Tract Six

T. 13 N., R. 6 W.,
Sec. 12, Lots 1, 2, SW¼NE¼, NW¼SE¼.

Tract Seven

T. 13 N., R. 6 W.,
Sec. 13, E½NW¼, SW¼NE¼, NW¼SE¼.

Tract Eight

T. 13 N., R. 6 W.,
Sec. 13, SW¼SE¼.

Tract Nine

T. 13 N., R. 6 W.,
Sec. 12, Lot 4;
Sec. 13, Lots 1, 2, 3 and 4.

Tract Ten

T. 13 N., R. 6 W.,
Sec. 11, SW¼SW¼.

Tract Eleven

T. 13 N., R. 6 W.,
Sec. 11, NE¼SW¼, NW¼ SE¼.

Tract Twelve

T. 13 N., R. 6 W.,
Sec. 13 NW¼ NE¼.

Tract Thirteen

T. 13 N., R. 6 W.,
Sec. 14, E½SW¼, NW¼SW¼;
Sec. 15, NE¼ SE¼.

Tract Fourteen

A right of way for road and utility purposes as conveyed by Lois J. Barrett, to Frank H. Topham by deed dated December 8, 1967, and recorded December 20, 1967 in Book 542 of Official Records of Lake County at Page 577.

Tract Fifteen

That certain easement for road purposes, 60 feet in width, s conveyed to Valley Health Care Corporation by deed recorded September 18, 1985, Document No. 014465, Lake County Records.

Tract Sixteen

An easement for road and incidental purposes approximately 30 feet in width over and across the NE¼, the E½ of the NW¼ and the SW¼ of the NW¼ of section 16, the N½ of the SW¼ and the W½ of the SE¼ of section 15, all in township 13 north, range 6 west, M.D.B. & M;

The grantee herein agrees to survey the centerline of said easement and prepare documents necessary for the recordation thereof. The recordation of said easement shall be accepted by the grantor and grantee herein as the true location and extent of the easement herein granted.

Containing 1,517.52 acres of non-Federal lands in Lake County.

The values of the public lands and non-Federal lands in this exchange were approximately equal. The equalization payment required of the United States in the amount of $361.50 was waived by the Valley Health Care Corporation.

Dated: April 6, 1987.

**Sharon N. Janis,**

*Chief, Branch of Adjudication & Records.*

[FR Doc. 87-8293 Filed 4-13-87; 8:45 am]

BILLING CODE 4310-40-M

## Minerals Management Service

### Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

**SUMMARY:** The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EAs) and Findings of No Significant Impact (FONSIs), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSIs were prepared by the Gulf of Mexico in the 3-month period preceding this Notice.

| Activity/operator | Location | Date |
|---|---|---|
| Amoco Production Co.; five exploratory wells; SEA No. N-2624. | High Island Area, East Addition, South Extension, Block A-399; Lease OCS-G 7373; 121 miles [illegible] of Galveston, TX. | Feb. 25, 1987. |
| Pennzoil Co.; platform removal operations; SEA No. ES/SR 87-001. | Vermilion Area, Block 226, Lease OCS-G 2078; 60 miles south of Vermilion Parish, LA. | Feb. 27, 1987. |
| Mobil Producing Texas and New Mexico Inc.; five exploratory wells; SEA No. S-1924. | High Island Area, East Addition, South Extension, Block A-374; Lease OCS-G 5108; 127 miles southwest of Freeport, TX. | Mar. 10, 1987. |
| Amoco Production Co.; four exploratory wells; SEA No. N-2636. | Destin Dome Area, Block 111; Lease OCS-G 8338, 63 miles southwest of Panama City, FL. | Mar. 25, 1987. |
| Exxon Co., U.S.A.; platform removal operations; SEA No. 87-002. | High Island Area, Block 176; Lease OCS-G 6164; 33 [illegible] of Galveston, TX. | Mar. 27, 1987. |

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

**FOR FURTHER INFORMATION CONTACT:** Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

**SUPPLEMENTARY INFORMATION:** The MMS prepares EAs and FONSIs for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects.

Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: April 6, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-8294 Filed 4-13-87; 8:45 am]

BILLING CODE 4310-MR-M

## Pacific OCS Region Information Transfer; Meeting

**AGENCY:** Minerals Management Service, Pacific OCS Region, Interior.

**ACTION:** Pacific OCS Region Information Transfer Meeting Notice and Agenda for Meeting.

The Pacific OCS Region will conduct its third Information Transfer Meeting May 4–6, 1987 at the Holiday Inn, Financial District, 750 Kearny Street, San Francisco, California 94108.

The Agenda for the meeting covers the following topics:

—Open Plenary Session
—Fish and Fisheries Information Needs and the Mediation Process
—Fish and Fisheries Studies
—Socioeconomics/Air Quality
—Sea Otters and Sea Otter Panel Discussion
—Oceanography/Geology
—Marine Ecology
—Oil Spills Panel Discussion.

The Information Transfer Meeting is open to the public. For further information, contact Mr. Neville Chow, (213) 894–7106: Pacific OCS Region, 1340 West Sixth Street, Room 265, Los Angeles, CA. 90017.

Dated: April 7, 1987.

**William E. Grant,**

*Director, Pacific OCS Region.*

[FR Doc. 87-8221 Filed 4-13-87; 8:45 am]

BILLING CODE 4310-MR-M

## Maximum Attainable Rate; Rescission of Notice to Lessees and Operators

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of recission.

**SUMMARY:** This Notice rescinds the requirement for operators of leases to submit the report entitled "Projected Maximum Attainable Rate (MAR) of Oil and Gas Production for Significant OCS Fields," to the Minerals Management Service (MMS). This rescission reflects a recent statutory amendment to the Outer Continental Shelf Lands Act Amendments (OCSLAA) of 1978. This amendment removed the need to collect information concerning the MAR.

**DATE:** This Notice is effective April 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary McDonald, Telephone (703) 648–7817 or (FTS) 959–7817.

**SUPPLEMENTARY INFORMATION:** In 1978, Congress promulgated the OCSLAA which included a section concerning the need for more extensive and reliable information on the availability of oil and natural gas in the OCS. One of the amendments directed the Secretary of the Interior (Secretary) to conduct a continuing investigation on this matter and specified that the investigation should include a determination of the MAR of crude oil and natural gas from significant fields.

To enable the Secretary to fulfill his obligations under the OCSLAA, MMS published in Interim Notice to Lessees and Operators (NTL) in the **Federal Register** on May 23, 1979 (44 FR 29988), directing operators of leases within identified significant fields to file information on MAR determinations for each such lease. A subsequent NTL was published in the **Federal Register** on October 18, 1985 (50 FR 4233), to supercede the Interim NTL and provide improved and clearer guidelines for use by lessees and operators in submitting proposed MAR's and supporting data. This subsequent NTL also directed that this information be submitted on a new report form designated Form MMS–2013.

This requirement for the Secretary to make MAR determinations for significant fields has now been rescinded by legislation enacted in July 1986. This legislation, referred to as the OCS Paperwork and Reporting Act, amended the OCSLA and the OCSLAA. The July 1986 amendment to the OCSLAA leaves in place the requirement for continuing investigation of oil and gas resources but removes the requirement for determination of the MAR and thus removes the need for lessees to submit Form MMS–2013.

In conformance with these amendments, MMS given notice that it rescinds the NTL in 50 FR 42233 dated October 18, 1985, concerning the requirement for operator of leases to report MAR determinations. Effective immediately, the submission of Form MMS–2013 is no longer required.

Dated: April 6, 1987.

**John B. Rigg,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 87-8295 Filed 4-13-87; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 4, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 29, 1987.

**Patrick Andrus,**

*Acting Chief of Registration, National Register.*

ALASKA

**Fairbanks North star Borough**

Ester, *Ester Camp Historic District,* Off A K 3

**Kenai Peninsula Borough**

Seward, *Seward Depot,* 501 Railway Ave.

**Wrangell-Petersburg Division**

Wrangell, *St. Philip's Episcopal Church,* 446 Church St.

COLORADO

**Boulder County**

Longmont, *Dickens Opera House,* 300 Main St.

DELAWARE

**New Castle County**

Wilmington vicinity, *Brecks Mill Area—Henry Clay Village Historic District (Boundary Increase),* Rising Sun La. and Kennett Pike

FLORIDA

**Dade County**

Miami, *South River Drive Historic District,* 428, 438 S.W. First St., 437 S.W. Second St., 104, 109, 118 S.W. South River Dr.

ILLINOIS

**Greene County**

Carrollton vicinity, *Rainey, Henry T., Farm,* RR 1, N side of IL 108

**Lake County**

Barrington Hills, *Grigsby Estate*, 125 Buckley Rd.

**Mason County**

Rockwell Mound

**Stark County**

Wyoming, *Chicago, Burlington & Quincy Railroad Depot*, Williams St.

**MARYLAND**

**Harford County**

Whiteford, *Slate Ridge School*, Old Pylesville Rd.

**NEW MEXICO**

**Torrance County**

Mountainair, Mountainair Municipal Auditorium, SW corner of Roosevelt Ave. and Beal St.

**OREGON**

**Clatsop County**

Astoria, *Fisher, Ferdinand, House*, 667 Twelfth St.

**Hood River County**

Mt. Hood, Mt. Hood School House, OR 35

**Multnomah County**

Portland, *Ballou & Wright Company Building*, 327 N.W. Tenth Ave.
Portland, *Honeyman, David T. and Nan Wood, House*, 1728 S.W. Prospect Dr.
Portland, *Kistner, Dr. Frank B., House*, 5400 S.W. Hewett Blvd.

**PENNSYLVANIA**

**Bucks County**

Bristol, *Bristol Historic District*, Roughly bounded by Pond, Cedar, E. Lincoln Sts., the Delaware River, and E. Mill St.
Bristol, *Harriman Historic District*, Roughly bounded by Trenton Ave., Cleveland and McKinley Sts., Farragut Ave., and West Circle
Doylestown, *Fordhook Farm*, 105 New Britain Rd.

**Chester County**

Coatesville, *Coatesville Historic District*, Roughly bounded by Chestnut St., Sixth Ave., Oak St., Fifth Ave., Harmony St., and First Ave.

**Fayette County**

Brownsville vicinity, *Laughlin, Hugh, House*, TR 422

**Indiana County**

Indiana vicinity, *Diehl, George, Homestead*, E of US 422 on Diehl Rd.

**Lancaster County**

Blue Ball vicinity, *Bangor Episcopal Church*, NW corner of Main St. and Water St.

**Northampton County**

Hellertown vicinity, *Ehrhart's Mill Historic District*, Old Mill Rd.

**Philadelphia County**

Philadelphia, *Jayne Estate Building*, 2—16 Vine St.

**Westmoreland County**

Westmoreland City vicinity, *Brush Creek Salems Church*, Se of Westmoreland City on Brush Creek Rd.

**SOUTH CAROLINA**

**CHEROKEE COUNTY**

Coopersville Ironworks Site (38CK2) and Susan Furnace Site (38CK67) (Early Ironworks of Northwestern South Carolina TR)
Cowpens Furnace site (38CK73) (Early Ironworks of Northwestern South Carolina TR)
Ellen Furnace site (38CK68) (Early Ironworks of Northwestern South Carolina TR)
King's Creek Furnace Site (38CK71) (Early Ironworks of Northwestern South Carolina TR)
Nesbitt's Furnace Site (38CK72) (Early Ironworks of Northwestern South Carolina TR)
Nesbitt's Limestone Quarry (38CK69) (Early Ironworks of Northwestern South Carolina TR)
Thicketty Mountain Ore Pits (38CK74) (Early Ironworks of Northwestern South Carolina TR)

**Chester County**

Chester, *Chester Historic District (Boundary Increase-Decrease)*, Roughly bounded by Gaston, Gregg, Mobly, Saluda, Gadsden, Reedy and Pinckney Sts.

**Greenville County**

Woodside, *Woodside Cotton Mill Village Historic District*, Woodside Ave. and E. Main St.

**York County**

Jackson's Furnace Site (38KY217) (Early Ironworks of Northwestern South Carolina TR)
Nanny's Mountain Iron Mines (38YK216) (Early Ironworks of Northwestern South Carolina TR)

**TEXAS Lampasas County**

Lampasas, *Phillips and Trosper Buildings*, 408 (Trosper) and 410 (Phillips) E. Third St.

**UTAH**

**Box Elder County**

Park Valley vicinity, *Central Pacific Railroad Grade Historic District*, 87 mi. segment between Umbria jct. 9 mi. E of NV border, around N end of Great Salt Lake to Golden Spike NHS

**Wasatch County**

Heber City, *Murdock, Joseph S., House*, 115 E. Three-hundred N.

**WYOMING**

**Big Horn County**

Bear Creek Ranch Medicine Wheel (48BH48)

**Fremont County**

Split Rock Prehistoric Site (48FR1484)
Lander, *Lander Downtown Historic District*, Main St. between Second and Fourth Sts.

[FR Doc. 87-8305 Filed 4-13-87; 8:45 am]
BILLING CODE 4310-70-M

## Realty Action; Sale of Land; Washington

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is to advise the public that the Regional Director, Pacific Northwest Region, of the National Park Service (NPS) has determined that lands within the Lake Chelan NRA as described below to be suitable for disposal by sale under the Act of July 15, 1968, The Land and Water Conservation Fund (L&WCF) Act of 1965 as amended (Pub. L. 90–401) [82 Stat 354, 16 U.S.C. 460 *l*–22(a)].

**Willamette Principal Meridian**

T. 33 N., R. 17 E.
Sec. 26: Portions of the NE¼, being more particularly described as follows:

*Parcel A*

That part of the Northeast quarter of Section 26, Township 33 North, Range 17 East, Willamette Meridian, Chelan County, Washington described as follows:

Commencing at a stone monument found at the northeast corner of said Section 26;

Thence west along the north line of said Section a distance of 1,235.00 feet to an iron rebar one inch in diameter set at the true point of beginning of the parcel herein described, witness a stone monument found lying west 1,406.97 feet marking the north quarter corner of said Section 26;

Thence east along the north line of said Section a distance of 305.00 feet to an iron rebar one inch in diameter set;

Thence S. 07°13'53" E. a distance of 432.40 feet to an iron rebar one inch in diameter set on the south line of the north 429 feet of said northeast quarter.

Thence west along said south line and parallel with the north line of said Section a distance of 315.00 feet, witness an iron rebar one inch in diameter set S. 88°25'13" E. a distance of 9.80 feet;

Thence N. 05°32'33" W. a distance of 336.29 feet to an iron rebar one inch in diameter set;

Thence N. 07°13'53" W. a distance of 95.00 feet to the true point of beginning.

The above described Parcel A contains 3.04 acres of land, more or less.

*Parcel B*

That part of the Northeast quarter of Section 26, Township 33 North, Range 17 East, Willamette Meridian, Chelan County, Washington described as follows:

Beginning at an iron rebar one inch in diameter set at the true point of beginning of Parcel A above;

Thence S. 07°13'53" E. a distance of 95.00 feet to an iron rebar one inch in diameter set;

Thence N. 67°32'16" W. a distance of 109.82 feet to a P.K. nail set in the center of the Stehekin Valley Road, as now travelled;

Thence north a distance of 52.28 feet to the north line of Section 26;

Thence east along said north line a distance of 89.53 feet to the point of beginning.

The above described Parcel B contains 0.16 acre of land, more or less.

Disposal of these lands is consistent with [1] the amended 1970 Master Plan for the Lake Chelan National Recreation Area to establish a 5-acre Special Use District for public school purposes and [2] the Finding of No Significant Impact (FONSI) as a result of the Environmental Assessment for this proposed designation.

The specified parcels of Federally owned real property will be disposed of using the following procedures:

1. Subsequent to this notice in the **Federal Register**, this Notice of Realty Action will be published once a week for five (5) consecutive weeks in a newspaper of general circulation in the vicinity of the property;

2. The property to be disposed of will be sold by competition at a price determined by a professional real estate appraisal to be no less than the fair market value (FMW) of $31,150.00;

3. The sale will be conducted as a competitive sale by sealed written bids to be opened and publicly declared at the sale;

4. The disposal will include the surface estate only, and the conveyance will be subject to valid existing rights and certain other rights to be reserved by the United States;

5. The NPS may reject any or all of the offer(s) or withdraw the property from disposal if the sale is not completed in compliance with the Act of July 15, 1968 or consistent with the applicable rules; terms and conditions for the conveyance;

6. If two (2) or more sealed written bids containing valid bids of the same amount are received, the declared successful bidder will be determined by a drawing between the highest qualified bidders immediately following opening of the sealed bids;

7. All rejected or unsucessful bids and purchase payments will be returned within 30 days of the sale date.

Terms and conditions applicable to the disposal are:

1. The sale will include conveyance of the freehold interest of the surface estate without warranty;

2. The conveyance document will contain specific reservations to the United States for all mineral interests and for ditches and canals;

3. The conveyance document will be issued subject to the condition that the property will be used only for school and public education purposes and related activities and uses;

4. The conveyance document may also contain such other provisions, including the right of reversion by the United States, and restrictions necessary to protect the natural, historic, cultural, or other values present in the general vicinity and to assure the subsequent use of the property will be in a manner consistent with the purpose for which Congress authorized the establishment of the Lake Chelan National Recreation Area.

*Bid information:* Bidding will only be by sealed bids at no less than the appraised fair market value of $31,150.00. Bids may be submitted by the principal or a duly qualified agent and may be delivered by mail, carrier or personally. All sealed bids must be received in the Pacific Northwest Regional Office, National Part Service, 83 South King Street, Suite 212, Seattle, Washington 98104, prior to 2:00 p.m., Monday, June 1987. All sealed written bids will be opened and publicly declared at the sale in the Regional Office, Suite 212, on Monday, June 15, 1987 at 2:00 p.m.

Bids must be accompanied by the payment of the written bid by certified check, post office money order, bank draft, or cashier's check made payable to the "United States of America" in the full amount of the bid. In addition, a separate nonrefundable payment of $100 to cover the costs of publication and bid processing must also be included with the bid and bid payment. The bid and payments must be enclosed in a sealed envelope upon which the bidder shall indicate: (a) "Bid or interest in land of the National Park System," and (b) the "sale date" the bids are scheduled to be opened.

Bids must be submitted in writing, clearly identify the bidder, state the full amount of the bid, refer to the sale notice as published, and be signed by the bidder or the bidder's designated agent. No particular form is needed for bids. Bids conditioned in any way not provided for by the sale notice will not be considered. If a bidder is represented by a designated agent, the agent must submit the appropriate documentation with acknowledgement to evidence the authority and capacity for the agent to perform on behalf of the bidder. Bidders, their agents or representatives, and any other interested persons may attend the sale and bid opening. No bid in an amount less than the fair market value, as determined by the Secretary of the Interior and herein defined, will be considered.

Additional information pertaining to this disposal including the amended Master Plan, Environmental Assessment, management decision document, real estate appraisal, and the detailed sale procedure are available at the North Cascades National Park Service Complex, 2105 Highway 20, Sedro Wooley, Washington 98284, [(206) 856–5700]. In addition to the above documents which are available only at the above address, the Government's appraisal for the sale property may be inspected at the following other NPS offices:

Pacific Northwest Regional Office, 83 South King Street, Suite 320, Seattle, Washington

Stehekin District Office, North Cascades NPS Complex, Stehekin, Washington

Dated: April 7, 1987.

**William J. Briggle,**

*Acting Regional Director.*

[FR Doc. 87–8304 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

[Decision-Notice—OP1-133]

### Motor Carriers; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special

BEST COPY AVAILABLE

rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

*Amendments to the request for authority will not be accepted after the date of this publication.* However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

*We find,* with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

MC–F–18260, filed March 13, 1987. GLI Holding Company (GLI Holding) (2400 InterFirst Plaza, 901 Main Street, Dallas, TX 75202) and GLI Bus Operations Holding Company (GLI Bus) (same as above)—Control—Bus Lease Contract Services, Inc. (BCS) (same as above), Eastern Greyhound Lines Co. (Eastern) (625 Eighth Avenue, New York, NY 10018), Central Greyhound Lines Co. (Central) (74 West Randolph, Chicago, IL 60601), Southern Greyhound Lines Co. (Southern) (81 International Boulevard, Atlanta, GA 30303), Western Greyhound Lines Co. (Western) (60 Seventh Street, San Francisco, CA 94103), Greyhound Travel Services, Inc. (GTS) (4900 University Avenue, #290 E, West Des Moines, IA 50215), Vermont Transit Co., Inc. (VTC) (135 St. Paul Street, Burlington, VT 05401), and Texas, New Mexico & Oklahoma Coaches, Inc. (TNM&O) (1313 13th Street, Lubbock, TX 79401). Representatives: Fritz R. Kahn and Mark J. Andrews, 1660 L Street, NW., Suite 1000, Washington, DC 20036, (202) 775–1000. Noncarrier individuals Fred G. Currey, Craig R. Lentzsch, and P. Anthony Lannie (the Management Group), through noncarrier GLI Holding and the latter's wholly owned subsidiary, GLI Bus, seek approval and authorization for their acquisition of control of motor passenger carriers BCS (MC–193190), Eastern (MC–19057), Central (MC–194798), Southern (MC–194551), Western (MC–194642), GTS (MC–195605), VTC (MC–45626), and TNM&O (MC–61120).

The Management Group controls GLI Holding through majority stock ownership and GLI Holding, in turn, owns all of the stock of GLI Bus. The Management Group also controls noncarrier BusLease, Inc. (BusLease). BusLease controls motor passenger carrier BCS, which operates under authority in No. MC–193190. However, the stock of BCS has been placed in an independent voting trust consistent with the regulations at 49 CFR Part 1013, pending disposition of this application. Eastern, Central, Southern, Western, and GTS are operated as a single integrated system, and are now wholly owned subsidiaries of noncarrier GLI Operating Company (GLI Operating). GLI Operating, in turn, is a wholly owned subsidiary of noncarrier Greyhound Lines, Inc. (Lines). Lines is a wholly owned subsidiary of The Greyhound Corporation (Greyhound). Greyhound owns a controlling stock interest in motor passenger carriers TNM&O and VTC.

In No. MC–F–17951, published in the December 8, 1986, issues of the *ICC* and **Federal Register**, the Commission approved the continuance in control by Greyhound (through Greyhound's subsidiaries, Lines and GLI Operating) of GTS, upon the latter's institution of operations as a motor carrier of passengers, in charter and special operations, between points in the United States (except Hawaii).

The Management Group's control of Eastern, Central, Southern, Western, and GTS would be achieved through the purchase by GLI Bus of GLI Operating's stock and the merger into GLI Operating of GLI Bus' wholly owned noncarrier subsidiary, GLI Merger Company. The Management Group's control of VTC and TNM&O would be accomplished should either they or their designee exercise a 1-year option to purchase Greyhound's controlling stock interest in these two carriers. Commission approval and authorization of the Management Group's control of VTC and TNM&O is conditioned on exercise of that option.

On consummation of the proposed transaction, Eastern, Central, Southern, Western, and GTS would be subsidiaries of GLI Operating and indirect subsidiaries of GLI Holding (through GLI Bus and GLI Operating). BCS would be an indirect subsidiary (through BusLease) of GLI Holding. Under 49 U.S.C. 11341, Commission approval and authorization is sought for the Management Group's exercise of control over the referenced carriers' respective interstate and intrastate operating rights

Decided: April 7, 1987

By the Commission, Motor Carrier Board, Members Hodge, Mets, and Barry.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–8241 Filed 4–13–87: 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

*Background:* The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

*List of recordkeeping/reporting requirements under review:* As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

*Comments and questions:* Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**Revision**

Bureau of Labor Statistics
Collective Bargaining Agreement Studies
1220–0001; BLS 2451, BLS 2452, BLS 2453
On negotiation of new labor contracts—usually every 2–3 years
State or local governments, businesses or other for-profit, and non-profit institutions
3,260 responses, including 790 telephone calls; 443 hours; 3 forms

The Bureau of Labor Statistics is required to maintain a file of collective bargaining agreements to aid public and private parties in settling labor disputes. Wage and benefit and related information from the agreements, from telephone contacts with bargainers, and from press accounts are the basis of the major collective bargaining statistical series, a major economic indicator.

**Extension**

Bureau of Labor Statistics
Current Population Survey (CPS)
CPS–1, CPS–260, CPS–262
Monthly
Individuals or households
Total annual responses: 684,000; total response hours: 79,180, 3 forms

The Current Population Survey is the primary source of estimates of employment, unemployment, and other characteristics of the civilian noninstitutional population and various subgroups of that population. Government policymakers and legislators use these results as important indicators of our Nation's economic situation and for planning and evaluating many Government programs.

Employment Standards Administration
Optional Use Payroll Form Under the Davis-Bacon Act
1215–0149; WH–347
Weekly
Individuals or households; State or local governments;
Businesses or other for-profit; Federal agencies or employees;
Small businesses or organizations
11,000,000 responses; 5,500,000 hours; 1 form

Report is used by contractors to certify payrolls in accordance with requirements of Copeland and Davis-Bacon Acts, attesting that proper wage rates and fringe benefits were paid; reviewed by contracting agencies to verify that rates are legal and that employees are properly classified (29 CFR 3.3, 5.5(a)(3)(ii)).

Mine Safety and Health Administration
Main Fan Maintenance Records
1219–0012
Weekly
Businesses and other for profit; small businesses or organizations
480 respondents; 408 hours

Regulation requires that records be kept of the maintenance performed on the main fans at underground metal and nonmetal mines.

Mine Safety and Health Administration
Mine Ventilation System Plan
1219–0016
Annually
Businesses and other for profit; small businesses or organizations
480 respondents; 11,520 hours

Requires operators of underground metal and nonmetal mines to prepare written ventilation system plans and annual updates thereof, and upon request submit the plans and updates to MSHA for review and comment.

Mine Safety and Health Administration
Petitions for Modification of Mandatory Safety Standards
1219–0065
On occasion
Businesses and other for profit; small businesses or organizations
250 respondents; 10,000 hours

Provides guidance for mine operators or representatives of miners for filing petitions for modification of mandatory safety standards.

Mine Safety and Health Administration
Permissible Equipment Testing
1219–0066
On occasion
Businesses and other for profit; small businesses or organizations
3,354 respondents; 201,598 hours

Contains procedures by which manufacturers of mining equipment and components, material, instruments, and explosives may apply for, and have their products approved as permissible for use in mines.

Mine Safety and Health Administration
Qualification and Certification Program
1219–0069; MSHA Forms 5000–4 and 5000–7
Semi-annually
Businesses and other for profit; small businesses or organizations
8,300 respondents; 1,366 hours

Provides provisions whereby persons may be temporarily qualified or certified to perform tests and examinations at coal mines which are related to miner safety and health and which require specialized expertise.

Employment Standards Administration
Records to be Kept by Employers Under the Fair Labor Standards Act of 1983, as Amended
1215–0017
Recordkeeping
Individuals or households; State or local governments; Farms; Businesses or other for profit; Federal agencies or employees; Non-profit institutions; small businesses or organizations
4,183,000 responses; 776,752 hours

The information is needed by the Wage-Hour Division to determine employer compliance with the labor standards provisions of FLSA applicable to employees covered by the Act.

Employment Standards Administration
Black Lung Program Provider Enrollment Form
1215–0137; CM–1168
On occasion
Businesses or other for-profit; small businesses or organizations
1035 responses; 121 hours; 1 form

The CM–1168 requests profile information on providers to afford both timely reimbursement for medical services provided to Black Lung claimants and a list of active providers for miner referral.

Employment Standards Administration
Application for Federal Certificate of Age
1215–0083; WH–14

On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
2,318 responses; 386 hours; 1 form

Section 3(1) of the Fair Labor Standards Act (FLSA) provides that an employer may protect against unwritting employment of oppressive child labor by obtaining a certificate of age certifying that a youth meets the FLSA minimum age requirements. Form WH–14 is an application for a Federal certificate age.

Signed at Washington, DC, this 9th day of April, 1987.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 87–8319 Filed 4–13–87; 8:45 am]

BILLING CODE 4510–27; 4510–43–M

---

## Mine Safety and Health Administration

**[Docket No. M–86–231–C]**

### Carbon Black Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Carbon Black Mining Company, Inc., Box 148, Canada, Kentucky 41519 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15–15524) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petitions concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of a cab or canopy on the mine's electric equipment would result in a diminution of safety to the miners affected because the cab or canopy would limit the equipment operator's visibility and could dislodge roof support.

3. For these reasons, petitioners requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 14, 1987. Copies of the petition are available for inspection at that address.

Dated: April 17, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8320 Filed 4–13–87; 8:45 am]

BILLING CODE 4510–43–M

---

**[Docket No. M–87–83–C]**

### Consol Pennsylvania Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1704 (escapeways) to its Bailey Mine (I.D. No. 36–07230) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person and which are to be designated as escapeways at least one of which is ventilated with intake air, shall be provided from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked.

2. As an alternate method, petitioner proposes to use two entries separate and distinct from the intake shaft bottom to the working face. One will be the track entry, alternate escapeway, and the other will be an isolated intake. In further support of this request, petitioner states that:

(a) The shafts used for escape facilities will be fully concrete lined and be maintained free of mine power cables, elevators, and/or hoists, thus minimizing sources of fire and/or smoke, but will be equipped with an emergency escape hoist;

(b) An alternate travelable route, not designated as an escapeway, will be maintained in a return entry to bypass the shaft and allow persons to enter a separate split of intake air. This route will be maintained passable. It will be stressed to all personnel that the route is not an escapeway and is to be used only if instructed or when both the track and intake escapeways are rendered impassable; and

(c) All personnel will be reinstructed as to the escapeway routes prior to implementing the plan.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 14, 1987. Copies of the petition are available for inspection at that address.

Dated: April 3, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8321 Filed 4–13–87; 8:45 am]

BILLING CODE 4510–43–M

---

**[Docket No. M–87–61–C]**

### Demotto Peerless Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Demotto Peerless Coal Co., Inc., 808 Gorman Avenue, Elkins, West Virginia 26241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 25 Mine (I.D. No. 46–05577) located in Randolph County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the

proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 14, 1987. Copies of the petition are available for inspection at that address.

Dated: April 6, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8322 Filed 4-13-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-71-C]

## Dominion Coal Corp. Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Young's Branch No. 15 Mine (I.D. No. 44-03404), its Dominion No. 1 Mine (I.D. No. 44-05254), its Dominion No. 2 Mine (I.D. No. 33-02239), its Dominion No. 3 Mine (I.D. No. 44-06146), its Oakwood Red Ash No. 3 Mine (I.D. No. 44-02122), its Winston Mine No. 9 (I.D. No. 44-03312), and its Winston Mine No. 10 (I.D. No. 44-03440), all located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. Petitioner requests a modification of the standard to allow for a 20 foot cut to be taken in the face. In further support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib, restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of +/- 5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 14, 1987. Copies of the petition are available for inspection at that address.

Dated: April 3, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8323 Filed 4-13-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-78-C]

## Krystal Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Krystal Coal Company, Route 2 Box 420, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-13615) located in Knox County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In future support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A space continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miner affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 14, 1987. Copies of the petition are available for inspection at that address.

Dated: April 6, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8324 Filed 4-14-87 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-77-C]

**Krystal Coal Co. No. 2; Petition for Modification of Application of Mandatory Safety Standard**

Krystal Coal Company No. 2, Route 2 Box 420, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Krystal Coal No. 2 Mine (I.D. No. 15-14295) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioners proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 14, 1987. Copies of the petition are available for inspection at that address.

Dated: April 6, 1987

**Patricia W. Silvey.**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8325 Filed 4-13-87; 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-82-C]

**M & F Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

M & F Coal Company, Rt. 5, Box 234, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-15574) located in Whitley County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified

person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 14, 1987. Copies of the petition are available for inspection at that address.

Dated: April 6, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8326 Filed 4-13-87: 8:45 am]

BILLING CODE 4510-43-M

---

[Docket No. M-87-75-C]

**Red Rose Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard**

Red Rose Coal Company, Inc., Rt. 5 Box 248, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 3 Mine (I.D. No. 46-04237) located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner purposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 14, 1987. Copies of the petition are available for inspection at that address.

Dated: April 6, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8327 Filed 4-13-87; 8:45 am]

BILLING CODE 4510-43-M

---

## NATIONAL SCIENCE FOUNDATION

**Advisory Panel for the Biophysics Program; Meeting**

In accordance with the Federal Advisory Committee, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program.

Date and Time: Thursday and Friday, April 23 and 24, 1987 from 8:00 AM to 6:00 PM.

Place: The St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact: Dr. Arthur Kowalsky, Director, Biophysics Program (202) 357-7777 or 7778.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

**Rebecca Winkler,**

*Committee Management Officer.*

April 2, 1987.

[FR Doc. 87-8263 Filed 4-13-87; 8:45 am]

BILLING CODE 7555-01-M

---

**Advisory Panel for Economics; Meeting**

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.

Date/Time: April 23-24-25, 1987, 8:30 a.m. to 5:00 p.m.

Place: The Inn at Foggy Bottom, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Daniel H. Newlon, Dr. Lynn A. Pollnow, Program Directors for Economics or James R. Slaugh, Assistant Program Director for Economics (202) 357-9675, Room 336, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Economics Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being

reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

April 2, 1987.

[FR Doc. 87-8264 Filed 4-13-87; 8:45 am]

BILLING CODE 7555-01-M

---

## Advisory Panel for Population Biology and Physiological Ecology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and Time: April 23 and 24, 1987—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. John L. Brooks, Acting Program Director, Population Biology and Physiological Ecology (202) 357-9728, Room 215, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

April 2, 1987.

[FR Doc. 87-8265 Filed 4-13-87; 8:45 am]

BILLING CODE 7555-01-M

---

## Advisory Panel for Psychobiology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Psychobiology.

Date and Time: April 22, 23, and 24, 1987: 8:30 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC. Meeting is to be held in the conference room 543.

Type of Meeting: Part open—Open Wednesday 4/22/87—9:00 a.m. to 11:00 a.m. Closed 4/23/87 8:30 a.m. to 5:00 p.m. Closed 4/24/87 8:30 a.m. to 5:00 p.m.

Contact person: Dr. Fred Stollnitz, Program Director for Psychobiology, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7949.

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in the Psychobiology Program.

Agenda: Open—General discussion of research trends and opportunities in psychobiology. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

April 2, 1987.

[FR Doc. 87-8266 Filed 4-13-87; 8:45 am]

BILLING CODE 7555-01-M

---

## Advisory Panel Systematic Anthropological Collections; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Anthropological Collection.

Date and Time: April 23 and 24, 1987: 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Room 523, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Nancy J. Parezo, Associate Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550; (202) 357-7804.

Purpose of Meeting: To provide advice and recommendations concerning support for systematic anthropological collections.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information, concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

April 2, 1987.

[FR Doc. 87-8267 Filed 4-13-87; 8:45 am]

BILLING CODE 7555-01-M

---

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-245]

## Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Northeast Nuclear Energy Company, et al. (the licensee), for the Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

### Environmental Assessment

*Identification of Proposed Action:* The exemption would grant relief in five cases where the fire protection features are not in conformance with the technical requirements of Appendix R to 10 CFR Part 50. Four of the cases relate to section III.G. of Appendix R to 10 CFR Part 50 that specifies options for separating/protecting redundant trains of safe shutdown related components and cables. The fifth case pertains to section III.J. of Appendix R which requires 8 hour battery-powered emergency lighting units in certain areas for safe shutdown and in access routes to these areas.

The exemption is responsive to the licensee's applications for exemption, dated November 21, 1985, August 22, 1986, January 7 and 14, 1987. Note that in the licensee's November 21, 1985 letter, six additional requests were made from the requirements of Appendix R. However, these exemption requests pertain to non-fire rated features of certain fire area boundaries. As such, they are encompassed by the guidance issued in Generic Letter 86-10. No exemption is, therefore, necessary for these conditions.

*Environmental Impacts of the Proposed Action:* The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as

defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

*Alternative Use of Resources:* This action involves no use of resources not previously considered in the Final Environmental Statements for the Millstone Nuclear Power Station, Unit No. 1.

*Agencies and Persons Consulted:* The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption previously listed, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 6th day of April 1987.

For The Nuclear Regulatory Commission

**Cecil O. Thomas,**

*Director, Integrated Safety Assessment, Project Directorate, Division of PWR Licensing–B.*

[FR Doc. 87–8219 Filed 4–13–87; 8:45 am]

BILLING CODE 7590–01–M

---

[Docket No. 50–267]

## Public Service Company of Colorado; (Fort St. Vrain Nuclear Generating Station); Confirmatory Order Modifying License

Public Service Company of Colorado (PAC or the licensee) is the holder of Facility Operating License No. DPR–34 which authorizes the operation of the Fort St. Vrain Nuclear Generating Station (the facility) at a steady-state power level not in excees of 842 megawatts thermal. The facility is a high temperature gas-cooled reactor (HTGR) located at licensee's site in Weld County, Colorado.

II.

By Commission Memorandum and Order dated November 26, 1985, Forth St. Vrain was granted an extension of the November 30, 1985 deadline for compliance with the rule for equipment qualification, 10 CFR 50.49. This extension was until May 31, 1986, with the provision that reactor power would be limited to 35 percent of full power. The plant has been shutdown since May 31, 1986, for modifications needed to comply with the equipment qualification rule. The plant has now met the requirements of the equipment qualification rule.

By letters dated August 11 and October 17, 1986 (P–86513 and P–86587), PSC reported to the staff that previous analyses of safe shutdown cooling for Fort St. Vrain were invalid. By a letter dated September 25, 1986, the staff requested PSC to provide their "best estimate" schedule for resolution of this problem and to propose suitable power level limits for the facility, should that be required for safe operation. At a meeting held with the licensee in Arlington, Texas on January 14, 1987, the staff and licensee agreed that the initial operation of the plant would be based on the liner cooling system with a power level limit of 35 percent of full power. Additionally, the licensee agreed to a "hold" at 10 percent of full power to allow the Region IV staff to evaluate the facility's operational performance.

III.

PSC requested NRC approval to restart the facility by letter dated January 30, 1987 (P–87038). In this submittal PSC committed to the 35 percent power limit until the NRC approves operation at higher power levels. Additionally, PSC committed not to exceed the 10 percent power level unitl NRC Region IV reviews and approves the facility's operational performance during ascension to the power level. The staff has reviewed the proposed power ascension plan and limits, and concludes that the licensee's commitments are acceptable.

In view of the foregoing, I have determined that modification of the Fort St. Vrain operating license is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV.

Accordingly, pursuant to sections 103, 161b, and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, It Is Hereby Ordered, Effective Immediately, That Facility Operating License No. DPR–34 Is Modified To Provide That:

The licensee shall not exceed 10 percent of full power until it receives written approval from the Regional Administrator of Region IV, and shall not operate the facility over 35 percent of full power until it receives written approval from the Office of Nuclear Reactor Regulation.

V.

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commisison, Washington, DC 20555. A copy should also be sent to the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. A Request for Hearing Shall Not Stay the Immediate Effectiveness of This Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether or not this Order should be sustained.

This Order is effective upon issuance.

Dated at Bethesda, Marlyland, this 6th day of April 1987.

For the Nuclear Regulatory Commission

**Frank J. Miraglia,**

*Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.*

[FR Doc. 87–8220 Filed 4–13–87; 8:45 am]

[redacted]

---

[Docket Nos. 50–317 and 50–318]

## Baltimore Gas and Electric Co; Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the February 18, 1987 request of the Baltimore Gas and Electric Company (the licensee) for withdrawal of Change No. 6 of the licensee's July 31, 1986 request for amendments to Facility Operating Licenses Nos. PDR–53 and DPR–69 for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

This change proposed to modify the Units 1 and 2 Technical Specification Limiting Condition for Operation 3.1.1.4 by raising the upper limit for moderator temperature coefficient above 70% Rated Thermal Power (RTP) from the current limit of less positive than + 0.2 E–4 delta k/k/°F to a proposed limit of less positive than + (1.16–.66P) E–4 delta k/k/°F where P is the Fraction of Rated Power.

The proposed increase in MTC to less than +.050 E–4 delta k/k/°F at 100% RTP would have necessitated the raising of the reactor coolant system pressure limit above 110% of design pressure for the safety analysis of the feed line break event concurrent with a loss of A.C. power.

The Commission issued a Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing" which was published in the **Federal Register** (51 FR 40866) on November 10, 1986. No requests for hearing were filed in connection with this Notice.

By letter dated February 18, 1987, the licensee withdrew its application for the proposed amendments.

For further details with respect to this action, see (1) The application for amendments dated July 31, 1986; (2) the licensee's supplemental submittals of August 20, October 22, October 27, and November 4, 1986 and February 3, 1987; (3) the Commission's request for additional information dated February 19, 1987; (4) the licensee's letter dated February 18, 1987 withdrawing the applications for amendments; and (5) the Commission's letter granting the withdrawal dated April 7, 1987. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 7th day of April 1987.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Director, PWR Project Directorate #8, Division of PWR Licensing-B.*

[FR Doc. 87–8313 Filed 4–13–87; 8:45 am]

BILLING CODE 7590-01-M

---

**[Docket No. 50–331]**

## Iowa Electric Light and Power Company, et al.; Duane Arnold Energy Center; Exemption

I

Iowa Electric Light and Power Company (IELP/the licensee) is the holder of Facility Operating License No. DPR–49 which authorizes operation of the Duane Arnold Energy Center (DAEC/the facility). This license provides, among other things, that the facility is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Linn County, Iowa.

II

By letters dated October 29 and December 7, 1984, as supplemented April 22 and July 12, 1985, IELP requested two exemptions from the requirements of Appendix J, 10 CFR Part 50. The first would exempt containment spray isolation valves from Appendix J, 10 CFR Part 50, section III.C.1 Type C testing and the second would exempt the flanges connecting the torus to the torus drain line piping from Appendix J, 10 CFR Part 50, section III.B Type B test requirements. The staff has determined that the second exemption is not needed because the flanges are outside Appendix J requirements.

Pursuant to Final Rule 10 CFR 50.12 (50 FR 50764), published on December 12, 1985, the special circumstance for granting the one remaining exemption has been identified as follows:

The containment spray subsystem consists of two 10" diameter lines to the spray headers in the drywell and two 4" diameter lines to the spray headers on top of the torus. Each line has two isolation valves outside containment that are normally closed. The inboard valves are required by Appendix J to be Type C tested. However, since the packing and body-to-bonnet seals are the only potential sources of leakage, the testing may be limited to these areas. To do this test according to Type C Appendix J requirements would require installation of an additional inboard valve inside containment and a test connection. Due to limited space in the drywell, such a modification would be difficult. The licensee, therefore, has proposed the following two-part alternative testing program:

(1) Perform soap bubble testing on the valve body-to-bonnet seals during Type A Integrated Leak Rate testing and initiate corrective action if leakage is detected and

(2) Pressurize between the inboard and outboard valves at the same frequency required for Type C tests to indicate the general condition of the valves.

The staff has determined that the alternate proposal will test the valves to an equivalent level as that required by the strict interpretation of Appendix J. Therefore, the strict application of the requirements is not necessary to achieve the underlying purpose of the regulation. Thus, the special circumstance presented in 10 CFR 50.12(a)(2)(ii) is applicable.

Accordingly, based on the above analysis, the staff concludes that, because the licensee's proposed alternate test method for the containment spray isolation valves Type C testing is equivalent to that required by Appendix J, the exemption from the requirements of section III.C.1 of Appendix J to 10 CFR Part 50 is justified and should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest; furthermore, in accordance with 10 CFR 50.12(a)(2)(ii), a special circumstance, as discussed above, is present. The Commission hereby grants an exemption, as described above, from section III.C.1 of Appendix J to the extent that the alternate Type C test method proposed by the licensee for the containment spray isolation valves is acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (52 FR 10833).

A copy of the Commission's concurrently issued Safety Evaluation related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 8th day of April 1987.

For the Nuclear Regulatory Commission.

**R. Wayne Houston,**

*Acting Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 87–8314 Filed 4–13–87; 8:45 am]

BILLING CODE 7590-01-M

## POSTAL SERVICE

### Implementation of Change in the Domestic Mail Classification Schedule Provision Regarding Guarantees Available with Collect-on-Delivery Service

**AGENCY:** Postal Service.

**ACTION:** Notice of implementation of a change in the Domestic Mail Classification Schedule provision regarding guarantees available to users of Collect-on-Delivery service.

**SUMMARY:** This gives notice that effective at 12:01 a.m., June 7, 1987, the Postal Service will amend section 6.021 of the Domestic Mail Classification Schedule to clarify the scope of the guarantees currently offered COD mailers. No change in the nature of these guarantees will result from this amendment.

**EFFECTIVE DATE:** June 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph F. Wackerman, (2020) 268–2996.

**SUPPLEMENTARY INFORMATION:** On February 12, 1986, the United States Postal Service filed with the Postal Rate Commission a Request for an advisory opinion on a proposed change in the procedures by which addressees pay Collect-On-Delivery (COD) charges. The Postal Service had proposed the change to curb the fraudulent exploitation of postal customers by a small number of individuals who takes advantage of the requirement that COD charges must be paid in cash (or, in some cases, by check made payable to the Postal Service) which is then converted into a Postal Service money order to be sent to the mailer. These individuals send supposed "prizes" or products to addressees through the COD system. After the addressee pays the COD charges, the package is found to be empty or to contain something worth much less than the amount of the charges. Under the Postal Service's proposal addressees will be able to pay for COD packages with a check made payable to the mailer, giving the addressee the opportunity to stop payment if defrauded.

Notice of the Postal Service's Request and its proposal was published by the Postal Rate Commission in the Federal Register on February 26, 1986 (51 FR 6842). The Commission considered the Postal Services's proposal in Docket No. N86–1 and, on February 6, 1987, transmitted an advisory opinion to the Postal Service. The Commission advised in favor of the proposal, finding that it is likely to be an effective remedy to the problem of fraudulent use of COD service, that the proposed change conforms to the policies of Title 39, U.S. Code, and that the interestes of both mailers and recipients had been properly balanced by the Postal Service in arriving at its proposal.

On July 9, 1986, the Postal Rate Commission issued Order No. 700 instituting a mail classification case paralleling Docket No. N86–1. (51 FR 25622). This proceeding arose out of the Commission's concern that the current language of Domestic Mail Classificaion Schedule (DMCS) section 6.021 might be construed as requiring the Postal Service to guarantee any check written by an address in payment of COD charges, rather than merely guaranteeing transmittal of the check. That section originally read:

6.021 C.O.D. service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee.

After receiving comments from the parties, the Commission initiated this separate classification proceeding, Docket No. MC86–3, to consider the need for changed DMCS language should the Postal Service's proposed change be implemented. On February 6, 1987 the Commission issued a Recommended Decision containing its recommended addition to DMCS section 6.021. The recommended language provides:

This provision insures only the receipt of the instrument issued to the mailer after payment of C.O.D. charges, and is not to be construed to make the Postal Service liable upon any such instrument other than a Postal Service money order.

On April 6, 1987, the Governors of the Postal Service, pursuant to 39 U.S.C. 3625(b), approved the Commission's Recommended Decision and ordered it into effect. By a separate resolution adopted the same day, the Board of Governors of the Postal Service, pursuant to 39 U.S.C. 3625(f), set the effective date of the change at 12:01 a.m. June 7, 1987. Board of Governors Resolution No. 87–2. Accordingly, the change in section 6.021 of the Domestic Mail Classification Schedule set forth above shall take effect at 12:01 a.m. on June 7, 1987.

**Fred Eggleston,**

*Assistant General Counsel Legislative Division.*

[FR Doc. 87–8296 Filed 4–14–87; 8:45 am]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24308; File No. SR–OCC–87–3]

### Self-Regulatory Organizations; Options Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on March 13, 1987, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal clarifies OCC's policy on treatment of clearing members' submissions of adjustments to positions. The Commission is publishing notice to solicit comment on the rule change.

The proposal amends OCC's Interpretations and Policies ("I&Ps") under Article VI of OCC's Bylaws pertaining to clearance of exchange transactions. The proposal states that, for certain purposes, adjustments to positions submitted by clearing members will be treated the same as regular Exchange transactions. Adjustments include position adjustments, transfers of accounts between clearing members and account transfers. The proposal makes explicit that adjustments will receive the same treatment as Exchange transactions for purposes of opening and closing positions in the clearing system.[1] The clearing system will operate to keep overall positions in balance for both exchange transactions and adjustments, *i.e.*, to ensure that there always will be a short for every long in the system in spite of open/close coding errors.

OCC's Bylaws are broad enough to contemplate similar treatment for transaction and adjustment instructions. OCC has treated them equally, however, and the proposal clarifies OCC's procedures in the I&Ps under the Article VI of the Bylaws.

This rule change has become effective, pursuant to section 19(b)(3) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors

[1] The proposal states that adjustments will be treated the same as Exchange transactions for these purposes and for other purposes of Article VI of the Bylaws except where the content otherwise requires.

or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after notice is published in the **Federal Register**. Please file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–87–3 and should be submitted by May 6, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Date: April 7, 1987.

**Joanthan G. Katz,**

*Secretary.*

[FR Doc. 87–8310 Filed 4–13–87; 8:45 am]

BILLING CODE 8010–01–M

---

[Rel. No. IC–15661; 812–6293]

## Morgan Stanley Group Inc. and Morgan Stanley Capital I Inc.; Issuance of Mortgage-Backed Securities and Sale of Equity Interests

April 3, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application to Amend an Existing Order under the Investment Company Act of 1940 (the "1940 Act")

---

*Applicants:* Morgan Stanley Group Inc. ("Morgan Stanley") and Morgan Stanley Capital I Inc. ("Subsidiary").

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicants seek to amend an existing order (Investment Company Release No. 15548, January 20, 1987) ("Existing Order") to permit the Subsidiary and certain trusts that it has formed or may form ("Trusts") to issue variable and floating rate collateralized mortgage obligations and to permit the Subsidiary to sell beneficial ownership interests in such Trusts.

*Filing Date:* The application was filed on January 31, 1986, and amendments thereto on October 21 and December 19, 1986. The Existing Order granting the application was issued on January 20, 1987. Thereafter, another amendment to the application was filed on March 2, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered the application will be granted. Any interested person may request a hearing on this application, or ask to be notifed if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on April 24, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve either Applicant with the request, personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Morgan Stanley Group Inc., 1251 Avenue of the Americas, New York, New York 10020, Morgan Stanley Capital I Inc., 1225 North Loop West, Suite 1050, Houston, Texas 77008.

**FOR FURTHER INFORMATION CONTACT:** Sherry Hutchins, Staff Attorney at (202) 272–2799 or Brion Thompson, Special Counsel at (202) 272–3016, Division of Investment Management, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 254–4300)).

*Applicant's Representations:*

1. The Subsidiary is a wholly-owned, limited purpose, financing subsidiary of Morgan Stanley. The Subsidiary, a Delaware corporation formed on January 28, 1985, was organized to facilitate the financing of mortgage loans through the issuance of one or more series of bonds collateralize primarily by Agency Certificates (as defined below) and it will not engage in any business or investment activities unrelated to such purpose.

2. The Existing Order permits the Subsidiary to issue and sell, and form separate trusts ("Trusts") to issue and sell, one or more series ("Series") of collateralized mortgage obligations ("Bonds") and invest in certain Agency Certificates [1] which will be used to collateralize such Bonds, subject to certain terms and conditions. Applicants propose to amend the Existing Order so that each Series of Bonds may contain one or more classes of variable or floating interest rate Bonds, each of which will have fixed maximum rate or rates of interest ("interest rate cap" or "interest rate caps") that will be payable on the Bonds.

3. Each Series of Bonds will be issued by the Subsidiary under an Indenture ("Indenture") between the Subsidiary and an independent trustee ("Indenture Trustee"). Each Trust has been or will be formed pursuant to a separate deposit trust agreement ("Agreement") between the Subsidairy, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Each Trust will issue one or more Series of Bonds under the terms of Indenture between the Owner Trustee and an Indenture Trustee, as supplemented by one or more series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. In the case of each Series of Bonds: (a) Each Trust will hold no substantial assets other than the Agency Certificates and cash; (b) the Bonds will be secured by Agency Certificates or cash having a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Agency Certificates securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Agency Certificates will be assigned by the Owner Trustee to the Indenture Trustee and will be subjct to the lien of the related Indenture.

5. Each Series of Bonds will be structured to ensure that the cash flow

---

[1] By definition, the "Agency Certificates" collateralizing the Bonds will consist of: (1) "Fully-modified" pass-through mortgage-backed certificates guaranteeed by the Government National Mortgage Association ("GNMA Certificates"). (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates") and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). In addition to the Agency Certificates directly securing the Bonds, a Series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture.

scheduled to be received by the Trustee from the Agency Certificates pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds. Any Series of Bonds containing one or more classes of variable or floating interest rate Bonds will be structured with reference to the interest rate cap or caps for that particular Series to ensure adequate cash flow, even if the interest rate on any class or variable or floating interest rate Bonds in such Series climbed to the interest rate cap in the first variable or floating interest rate period and remained at the applicable interest rate cap throughout the life of the Bonds.

6. In addition, the Existing Order, subject to certain terms and conditions, permits the Subsidiary to sell the beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional investors in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate ("Eligible Institutions"). Each Eligible Institution will be required to represent that it is purchasing such beneficial interests for investment purposes. In addition, the Agreement relating to each Trust will further prohibit the transfer of any certificates for such beneficial interests if there would be more than one hundred Eligible Institutions holding of such certificates at any time.

7. Neither the holders of the beneficial interests of any of the Trusts, the Owner Trustee nor the Indenture Trustee will be able to impair the security afforded by the Agency Certificates to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the holders of the beneficial interest of any of the Trusts, the Owner Trustee nor the Indenture Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest on any Bonds; (3) change the priority of payment on any class of any Series of Bonds; (4) impair or adversely affect the Agency Certificates securing a Series of Bonds: (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Agency Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

8. The sale of the beneficial interests in each Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture to support payments of principal and interest on the Bonds.

9. No holder of a controlling interest in a Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either the custodian or any nationally recognized statistical rating agency rating the Bonds. At the time of its purchase of an equity certificate, none of the owners of the beneficial interests in the Trust will be affiliated with the Indenture Trustee.

10. The interests of the Bondholders will not be compromised or impaired by the ability of the Subsidiary to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the holders of the beneficial interests for several reason: (a) The collateral which initially will be deposited into a Trust and will be pledged to secure the Bonds issued by such Trust will not be speculative in nature becaue it will consist solely of GNMA certificates, FNMA Certificates or FHLMC Certificates, which Agency Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; which by definition means that the capacity of the issuing Trust to repay principal and interest on the Bonds is very Strong; (c) the Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Indenture Trustee on behalf of the Bondholders;[2] and (d) the owners of the beneficial interests will be entitled to receive current distributions representing the residual payments on the collateral from each Trust in accordance with the terms of the applicable Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, unless the Trust elects to be treated as a "real estate mortgage investment conduit" ("REMIC") under the Internal Revenue Code of 1986, the beneficial interest owners will be liable for the expenses, taxes and other liabilities of the Trust (other than the principal and interests on the Bonds) to the extent not previously paid from the Trust estate. The choice of the form of issuer for the Bonds and the identity of the owners of the beneficial interests in such issuer, however, will not alter in any way the payments made to the holders of such Bonds, which are payments governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

11. Applicants do not anticipate that the Trust will incur any additional expenses if the Trust elects to be treated as a REMIC. Should the Trust make such election, the expenses of the Trust will be paid from the Trust estate as set forth in the Agreement.

12. The aggregate interests of the owners of the beneficial interests in the collateral and the expected returns earned by such owners will be far less than the aggregate payments made to Bondholders. Applicants do not intend to deposit in any Trust Agency Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds.

13. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the owners of the beneficial interests to alter the collateral initially deposited into a Trust, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any collateral substituted for collateral initially deposited into a Trust may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because; (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the beneficial interests, which market conditions are likely to affect all

[2] The Idenfure further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the issuing Trust (and any owner of beneficial interests thereof) until: (i) The Trustee has made the scheduled payment of principal and interest on the Bonds. (ii) the Trustee has received all fees currently owed to it. (iii) the firm of independent accountants has received all fees owed to it for services rendered under the Indenture (iv) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds and (v) any other persons have been paid the amounts due them as operating expenses of the Issuer. Once amounts have been released from the lien of the Indenture, the Owner Trustee under the Agreement is entitled to reasonable compensation out of such amounts.

mortgage certificates of simiilar payment terms and maturities in a similar fashion; (b) the interests of the holders of the beneficial interests are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience; and (c) to the extent that it may be possible for the owners of the beneficial interests to cause the substitution of collateral that has a different prepayment experience than the original collateral, this situation is no different for Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary. Further, due to the fact that there usually will be more than one owner of the Trust, it is not more likely that the owners will be able to agree on any desired substitution of collateral than if there were a single owner who could unilaterally decide on the timing and execution of the substitution.

14. The requested exemption is necessary and appropriate in the public interest because: (a) The Trusts and Subsidiary should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) the Trusts and Subsidiary may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Trusts' and Subsidiary's activities are intended to serve a recognized and critical public need; (d) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Indenture Trustee representing their interests under the Indenture; and (e) the beneficial interests in the Trusts will be held entirely by the Subsidiary or offered only to a limited number of sophisticated institutional investors through private placements.

*Applicants' Conditions:* Applicants agree that if an order is granted it will be expressly conditioned on the following:

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage-related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral underlying th Bonds will be limited to GNMA Certificates, FNMA Certificates, or FHLMC Certificates.

3. If new Agency Certificates are substituted, the substitute certificates will: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs (2), (4) and (6). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the Agency Certificates initially pledged as Mortgage Collateral. In not event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

4. All Agency Certificates, funds, accounts or other collateral securing a Series of Bonds ("Collateral") will be held by an Indenture Trustee, or on behalf of an Indenture Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicants. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicants. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of the Issuers and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

7. In addition, the above representations regarding the equity interests (and more fully described in the application) and variable or floating rate Bonds will be express conditions to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8311 Filed 4-13-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

[Public Notice CM-8/1064]

### Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on May 6, 1987 at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue, NW., Washington, DC. The meeting will begin at 9:00 a.m.

Study Group 7 deals with time-signal services by means of radiocommunications. The purpose of the meeting is to review preparations for the international meeting of Study Group 7 in the Spring of 1988.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520 (telephone (202) 647-2592).

Dated: April 1, 1987.

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 87-8297 Filed 4-13-87; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORATION

### Federal Railroad Administration

[BS-Ap-No. 2588]

### Southern Railway System; Public Hearing

The Southern Railway System has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the traffic control and automatic block signal systems between Edgewood, Georgia and Lee, Georgia. This proceeding is identified as FRA Block Signal Application No. 2588.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on May 28, 1987, in Room B-15-A of the Federal Building and Court House at 475 Mulberry Street in Macon, Georgia.

The hearing will be an informal one, and will be conducted in accordance

with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on April 7, 1987.

J. W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 87-8317 Filed 4-13-87; 8:45 am]

BILLING CODE 4910-06-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. IP86-07; Notice 2]

### Wayne Corp; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Wayne Corporation, of Richmond, Indiana, to be exempt from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.205, Motor Vehicle Safety Standard No. 205, *Glazing Materials*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on June 25, 1986, and an opportunity afforded for comment (51 FR 23179).

Standard No. 205 requires prime glazing manufacturers to certify each piece of glazing to which the standard applies by the following markings:

a. The symbol "DOT" and the manufacturer's code mark which is assigned by the National Highway Traffic Safety Administration,

b. The words "American National Standard" or the characters "AS" followed by a number which designates the item of glazing in accordance with Standard No. 205 and ANSI Z-26, and,

c. The manufacturer's glazing model number.

Size and legibility requirements are also specified in Standard No. 205 and ANSI Z-26. Location of the certification marking is not specified, and the manufacturer may provide additional information on the glazing, if desired.

The petitioner stated that between April 1, 1985, and March 14, 1986, approximately 2,324 Lifeguard model buses were equipped with driver side windows which were not marked in accordance with Standard No. 205.

The petitioner also stated that between July 1, 1985, and March 1, 1986, the driver side windows of approximately 223 Lifeguard model buses were not marked in accordance with section 6 of Standard No. 205. The driver side windows were marked in accordance with ANSI Z97-1 *(Safety Performance Specifications and Methods of Tests for Safety Glazing Material Used in Buildings)*. Markings in accordance with an architectural glazing code are not consistent with markings for automotive glazing, as specified by Standard No. 205.

A summary of the glazing affected in presented in the following table:

| No. of lifeguard model buses in noncompliance | Location | Marking actually used by Wayne Corporation | Federal standard required marking |
|---|---|---|---|
| 2,324 | Driver side windows. | Fas temp<br>Solid tempered<br>AS-3 M3<br>DOT 296 | <br><br>AS-2 M3<br>DOT 296 |
| 223 | Driver side windows. | Guardian<br>Charleton, MI<br>ANSI Z971 1984<br>SGCC 933/18 V<br>16CRF 120 11<br>CGSB 12-GP-1,<br>BS 6202<br>1981A. | <br><br><br>AS-2 M3<br>DOT 22 |

The Wayne Corporation reported that both the Fas Temp Glass and the Guardian Glass meet all other requirements of Standard No. 205 and ANSI Z26.1, Item 2.

Thus, although the windows were improperly marked, petitioner claims that the glazing in all other respects complies with the requirements AS-2 glazing which is permitted for these locations.

No comments were received on the petition.

The stated purposes of Standard No. 205 are to reduce injuries resulting from impact on glazing surfaces, to ensure a necessary degree of transparency for driver visibility, and to minimize the possibility of occupancy being thrown vehicle windows in collisions. The noncompliance reported by the petitioner have no effect upon the ability of the glazing to meet the purposes of the standard. Though improper labelling can have an impact upon State vehicle inspections, the petitioner has received no complaints of vehicle rejection.

Accordingly, the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: April 7, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87-8230 Filed 4-13-87; 8:45 am]

BILLING CODE 4910-59-M

### Urban Mass Transportation Administration

### UMTA Section 3 and 9 Grant Obligations

**AGENCY:** Urban Mass Transportation Administration (UMTA), DOT.

**ACTION:** Notice.

**SUMMARY:** Public Law 99-500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Fleischman, Chief, Resource Management Division, (202) 366-2053, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99-500, UMTA reports the following grant information:

SECTION 3 GRANTS

| Transit property | Grant number | Grant amount (dollars) | Date obligated |
|---|---|---|---|
| Port Authority of Allegheny County (Pittsburgh, PA) | PA-03-0095-14 | 3,550,702 | 3-4-87 |

SECTION 9 GRANTS

| Transit property | Grant number | Grant amount (dollars) | Date obligated |
|---|---|---|---|
| Greater Hartford Transit District (Hartford, CT) | CT-90-X087 | 1,249,000 | 3-20-87 |
| Greater Hartford Transit District (Hartford, CT) | CT-90-X058-02 | 302,000 | 3-20-87 |
| Greater Hartford Transit District (Hartford, CT) | CT-90-X079-01 | 56,000 | 3-20-87 |
| Merrimack Valley Regional Transit Authority (Lawrence/ Haverhill, MA). | MA-90-X064 | 943,581 | 3-20-87 |
| Connecticut Department of Transportation (Hartford, CT) | CT-90-X088 | 1,516,172 | 3-20-87 |
| Brockton Area Transit Authority (Brockton, MA) | MA-90-X067 | 1,463,485 | 3-20-87 |
| Massachusetts Bay Transportation Authority (Boston, MA) | MA-90-X060-02 | 12,260,020 | 3-20-87 |
| Greater Attleboro-Taunton Regional Transit Authority (Attleboro, MA). | MA-90-X066 | 1,009,000 | 3-20-87 |
| Merrimack Valley Regional Transit Authority (Lawrence/ Haverhill, MA). | MA-90-X049-03 | 5,631 | 3-20-87 |
| Lewiston-Auburn Transit Committee (Lewiston-Auburn, ME). | ME-90-X029 | 139,241 | 3-20-87 |
| Milford Transit District (Milford, CT) | CT-90-X091 | 61,047 | 3-20-87 |
| Greater Bridgeport Transit District (Bridgeport, CT) | CT-90-X090 | 410,000 | 3-20-87 |
| City of Stamford (Stamford, CT) | CT-90-X092 | 111,123 | 3-20-87 |
| Connecticut Department of Transportation (Conn Statewide, CT). | CT-90-X085 | 9,295,737 | 3-20-87 |
| Norwalk Transit District (Norwalk, CT) | CT-90-X076-01 | 7,300 | 3-20-87 |
| Greater New Haven Transit District (New Have, CT) | CT-90-X086 | 879,000 | 3-20-87 |
| New Jersey Transit Corporation (Newark, NJ) | NJ-90-X021-01 | 63,921,600 | 3-20-87 |
| Onondaga County Department of Economic Development (Syracuse, NY). | NY-90-X103 | 217,126 | 3-20-87 |
| Rochester-Genesee Regional Transportation Authority (Rochester, NY). | NY-90-X108 | 6,164,980 | 3-20-87 |
| Niagara Frontier Transportation Authority (Buffalo, NY) | NY-90-X104 | 9,282,569 | 3-20-87 |
| City of Long Beach (Long Beach, NY) | NY-90-X106 | 99,885 | 3-20-87 |
| Greater Glens Falls Transit System (Glens Falls, NY) | NY-90-X101-01 | 451,200 | 3-20-87 |
| Utica Transit Authority (Utica, New York) | NY-90-X105 | 720,636 | 3-20-87 |
| Washington Metropolitan Area Transit Authority (Washington, DC). | DC-90-X008 | 17,819,744 | 3-20-87 |
| State Railroad Administration, Maryland Dept. of Transportation (Baltimore, MD). | MD-90-X026 | 3,551,430 | 3-20-87 |
| Charlotte Transit System (Charlotte, NC) | NC-90-X057-01 | 288,000 | 3-20-87 |
| Winston-Salem Transit Authority (Winston-Salem, NC) | NC-90-X059 | 2,066,528 | 3-20-87 |
| Delaware River Port Authority (Camden, NJ) | NJ-90-X022 | 3,006,821 | 3-20-87 |
| Westmoreland County Transit Authority (Greensburg, PA) | PA-90-X116 | 733,445 | 3-20-87 |
| Cambria County Transit Authority (Johnstown, PA) | PA-90-X117 | 538,309 | 3-20-87 |
| Bristol Tennessee Transit (Bristol, TN) | TN-90-X048 | 97,060 | 3-20-87 |
| Tidewater Transportation District Commission (Norfolk, VA). | VA-90-X033-02 | 440,000 | 3-20-87 |
| Greater Roanoke Transit Company (Roanoke, VA) | VA-90-X019-01 | 1,236,800 | 3-20-87 |
| Kanawha Valley Regional Transportation Authority (Charleston, WV). | WV-90-X020 | 1,075,000 | 3-20-87 |
| Birmingham-Jefferson County Transit Authority (Birmingham, AL). | AL-90-X021 | 5,633,440 | 3-20-87 |
| Birmingham-Jefferson County Transit Authority (Birmingham, AL). | AL-90-X009-01 | 300,520 | 3-20-87 |
| City of Montgomery (Montgomery, AL) | AL-90-X020 | 1,798,709 | 3-20-87 |
| Broward County Board of County Commissioners (Ft. Lauderdale, FL). | FL-90-X084 | 8,151,570 | 3-20-87 |
| Metropolitan Dade County (Miami, FL) | FL-90-X085 | 20,469,217 | 3-20-87 |
| Sarasota County Transit Authority (Sarasota, FL) | FL-90-X086 | 733,650 | 3-20-87 |
| Pinellas Suncoast Transit Authority (Clearwater, FL) | FL-90-X080 | 28,108 | 3-20-87 |
| Hillsborough Area Regional Transit Authority (Tampa, FL) | FL-90-X083 | 4,770,471 | 3-20-87 |
| Palm Beach County Transit Authority (W. Palm Beach, FL) | FL-90-X087 | 2,510,196 | 3-20-87 |
| Metropolitan Atlanta Rapid Transit Authority (Atlanta, GA) | GA-90-X035 | 19,523,100 | 3-20-87 |
| Mississippi County Transit Authority (Gulfport, MS) | MS-90-X014 | 1,790,240 | 3-20-87 |
| Gulf Regional Planning Commission (Gulfport, MS) | MS-90-X013 | 80,000 | 3-20-87 |
| Bloomington Public Transportation Corporation (Bloomington, IN). | IN-90-X087 | 493,481 | 3-20-87 |

SECTION 9 GRANTS—Continued

| Transit property | Grant number | Grant amount (dollars) | Date obligated |
|---|---|---|---|
| South Bend Public Transportation Corporation (South Bend, IN). | IN-90-X090 | 1,367,229 | 3-20-87 |
| Metropolitan Evansville Transit System (Evansville, IN) | IN-90-X084 | 1,025,434 | 3-20-87 |
| Muncie Public Transportation Corporation (Muncie, IN) | IN-90-X065-01 | 224,124 | 3-20-87 |
| Indianapolis Public Transportation Corporation (Indianapolis, IN). | IN-90-X089 | 5,318,207 | 3-20-87 |
| The Window (Goshen, IN) | IN-90-X088 | 153,520 | 3-20-87 |
| City of Anderson (Anderson, IN) | IN-90-X082 | 532,100 | 3-20-87 |
| Ann Arbor Transportation Authority (Ann Arbor, MI) | MI-90-X069 | 2,108,632 | 3-20-87 |
| Mass Transportation Authority (Flint, MI) | MI-90-X076 | 2,202,400 | 3-20-87 |
| Battle Creek Transit (Battle Creek, MI) | MI-90-X078 | 386,389 | 3-20-87 |
| Jackson Transportation Authority (Jackson, MI) | Mi-90-X077 | 636,390 | 3-20-87 |
| Niles Dial-A-Ride (Niles, MI) | MI-90-X080 | 201,340 | 3-20-87 |
| Metropolitan Transit Commission (Minneapolis, MN) | MN-90-X026 | 20,174,097 | 3-20-87 |
| Duluth Transit Authority (Duluth, MN) | MN-90-X022 | 762,000 | 3-20-87 |
| Metropolitan Transit Commission (Minneapolis, MN) | MN-90-X020-01 | 9,113,724 | 3-20-87 |
| St. Cloud Metropolitan Transit Commission (St. Cloud, MN). | MN-90-X023 | 446,396 | 3-20-87 |
| Toledo Area Regional Transit Authority (Toledo, OH) | OH-90-X074 | 3,339,866 | 3-20-87 |
| Canton Regional Transit Authority (Canton, OH) | OH-90-X076 | 1,350,302 | 3-20-87 |
| Greater Cleveland Regional Transit Authority (Cleveland, OH). | OH-90-X073 | 4,538,301 | 3-20-87 |
| Greater Cleveland Regional Transportation Authority (Cleveland, OH). | OH-90-X073-01 | 1,230,019 | 4-1-87 |
| Greater Cleveland Regional Transit Authority (Cleveland, OH). | OH-90-X077 | 10,868,764 | 3-20-87 |
| Greater Cleveland Regional Transit Authority (Cleveland, OH). | OH-90-X078 | 8,491,589 | 3-20-87 |
| City of Chippewa Falls (Chippewa Falls, WI) | WI-90-X069 | 51,775 | 3-20-87 |
| Green Bay Transit (Green Bay, WI) | WI-90-X070 | 988,892 | 3-20-87 |
| Valley Transit (Appleton, WI) | WI-90-X067 | 1,319,882 | 3-20-87 |
| City of Superior (Superior, WI) | WI-90-X068 | 133,182 | 3-20-87 |
| Jefferson Parish (Jefferson Parish, LA) | LA-90-X064 | 1,727,260 | 3-20-87 |
| Capitol Transportation Corporation (Baton Rouge, LA) | LA-90-X057 | 1,853,588 | 3-20-87 |
| Capital Region Planning Commisison (Baton Rouge, LA) | LA-90-X063 | 40,000 | 3-20-87 |
| City of Las Cruces (Las Cruces, NM) | NM-90-X014 | 300,000 | 3-20-87 |
| Central Oklahoma Transportation & Parking Authority (Oklahoma City, OK). | OK-90-X017 | 640,000 | 3-20-87 |
| City of San Angelo (San Angelo, TX) | TX-90-X085 | 219,196 | 3-20-87 |
| City of Sherman (Sherman, TX) | TX-90-X086 | 3,461 | 3-20-87 |
| Texoma Regional Planning Commission (Sherman, TX) | TX-90-X090 | 33,066 | 3-20-87 |
| City of Sherman (Sherman, TX) | TX-90-X088 | 56,270 | 3-20-87 |
| Regional Transportation Authority (Corpuis Christi, TX) | TX-90-X082 | 758,838 | 3-20-87 |
| City of Denison (Denison, TX) | TX-90-X083 | 10,515 | 3-20-87 |
| City of Howe (Howe, TX) | TX-90-X089 | 12,140 | 3-20-87 |
| VIA Metropolitan Transit (San Antonio, TX) | TX-90-X062-01 | 7,601,676 | 3-20-87 |
| University of Iowa (Iowa City, IA) | IA-90-X068 | 12,000 | 3-20-87 |
| Metropolitan Transit Authority of Black Hawk County (Waterloo, IA). | IA-90-X069 | 156,640 | 3-20-87 |
| Des Moines Metropolitan Transit Authority (Des Moines, IA). | IA-90-X054-01 | 1,285,185 | 3-20-87 |
| City of Dubuque-Keyline (Dubuque, IA) | IA-90-X052-01 | 287,642 | 3-20-87 |
| Iowa City Transit (Iowa City, IA) | IA-90-X065 | 179,178 | 3-20-87 |
| Coralville Transit (Coralville, IA) | IA-90-X066 | 43,133 | 3-20-87 |
| University of Iowa (Iowa City, IA) | IA-90-X067 | 60,528 | 3-20-87 |
| Rock Island County Metropolitan Mass Transit District (Quad Cities, IL). | IL-90-X093 | 714,,134 | 3-20-87 |
| Wichita Metropolitan Transit Authority (Wichita, KS) | KS-90-X021 | 1,538,690 | 3-20-87 |
| Columbia Area Transit System (Columbia, MO) | MO-90-X037 | 273,919 | 3-20-87 |
| Bi-State Develoment Agency (St. Louis, MO) | MO-90-X038 | 11,271,011 | 3-20-87 |
| Columbia Area Transit System (Columbia, MO) | MO-90-X031-01 | 32,407 | 3-20-87 |
| Transit Authority of the City of Omaha (Omaha, NE) | NE-90-X013 | 3,850,521 | 3-20-87 |
| Lincoln Transportation System (Lincoln, NE) | NE-90-X014 | 971,722 | 3-20-87 |
| Regional Transportation District (Denver, CO) | CO-90-X020 | 470,088 | 3-20-87 |
| Regional Transportation District (Denver, CO) | CO-90-X026 | 7,161,766 | 3-20-87 |
| Regional Transportation District (Denver, CO) | CO-90-X028 | 4,848,240 | 3-20-87 |
| City of Greeley (Greeley, CO) | CO-90-X032 | 248,032 | 3-20-87 |
| City of Fort Collins (Fort Collins, CO) | CO-90-X031 | 412,747 | 3-20-87 |
| City of Colorado Springs (Colorado Springs, CO) | CO-90-X030 | 2,073,966 | 3-20-87 |
| Mesa County (Grand Junction, CO) | CO-90-X029 | 238,592 | 3-20-87 |

SECTION 9 GRANTS—Continued

| Transit property | Grant number | Grant amount (dollars) | Date obligated |
|---|---|---|---|
| City of Pueblo (Pueblo, CO) | CO-90-X027 | 408,070 | 3-20-87 |
| Regional Transportation District (Denver, CO) | CO-90-X018-01 | 1,435,023 | 3-20-87 |
| City of Pueblo (Pueblo, CO) | CO-90-X023-01 | 43,643 | 3-20-87 |
| City of Moorehead (Moorhead, MN) | MN-90-X025 | 485,787 | 3-20-87 |
| City of East Grand Forks (East Grand Forks, MN) | MN-90-X024 | 51,750 | 3-20-87 |
| City of Fargo (Fargo, ND) | ND-90-X012 | 489,145 | 3-20-87 |
| Utah Transit Authority (Salt Lake City, UT) | UT-90-X005-02 | 504,000 | 3-20-87 |
| Utah Transit Authority (Salt Lake City, UT) | UT-90-X008 | 6,256,240 | 3-20-87 |
| Golden Empire Transit District (Bakersfield, CA) | CA-90-X218 | 1,119,620 | 3-20-87 |
| City of Fresno (Fresno, CA) | CA-90-X217 | 2,873,198 | 3-20-87 |
| City of Phoenix Public Transit Department (Phoenix, AZ) | AZ-90-X015 | 400,000 | 3-20-87 |
| City of Phoenix Public Transit Department (Phoenix, AZ) | AZ-90-X016 | 8,696,842 | 3-20-87 |
| City of Tucson (Tucson, AZ) | AZ-90-X011 | 1,927,823 | 3-20-87 |
| City of Redondo Beach (Redondo Beach, CA) | CA-90-X227 | 560,000 | 3-20-87 |
| San Francisco Public Utilities Commission (San Francisco, CA). | CA-90-X223 | 36,662,300 | 3-20-87 |
| Riverside Transit Agency (Riverside, CA) | CA-90-X221 | 1,252,800 | 3-20-87 |
| Bay Area Rapid Transit District (San Francisco, CA) | CA-90-X038-04 | 11,904,000 | 3-20-87 |
| Southern California Rapid Transit District (Los Angeles, CA). | CA-90-X222 | 88,819,313 | 3-20-87 |
| Metropolitan Transit Development Board (San Diego, CA) | CA-90-X214 | 6,288,750 | 3-20-87 |
| Stockton Metropolitan Area Transit District (Stockton, CA) | CA-90-X228 | 2,902,680 | 3-20-87 |
| Monterey-Salinas Transit (Monterey, CA) | CA-90-X219 | 2,173,036 | 3-20-87 |
| Metropolitan Transit Development Board (San Diego, CA) | CA-90-X110-01 | 11,334,000 | 3-20-87 |
| City of San Juan Capistrano (San Juan Capistrano, CA) | CA-90-X209 | 1,800,000 | 3-20-87 |
| Vallejo Transit (Vallejo, CA) | CA-90-X236 | 693,242 | 3-20-87 |
| Orange County Transit District (Garden Grove, CA) | CA-90-X224 | 19,349,200 | 3-20-87 |
| City of Napa (Napa, CA) | CA-90-X237 | 810,150 | 3-20-87 |
| Riverside Transit Agency (Riverside, CA) | CA-90-X220 | 367,443 | 3-20-87 |
| Santa Rosa Transit (Santa Rosa, CA) | CA-90-X238 | 350,000 | 3-20-87 |
| Central Contra Costa Transit Authority (Concord, CA) | CA-90-X230 | 2,895,085 | 3-20-87 |
| Golden Gate Bridge, Highway, and Transportation District (San Francisco, CA). | CA-90-X239 | 10,938,349 | 3-20-87 |
| Bay Area Rapid Transit District (San Francisco, CA) | CA-90-X232 | 468,848 | 3-20-87 |
| California Department of Transportation (San Francisco, CA). | CA-90-X233 | 651,048 | 3-20-87 |
| Santa Clara County Transit District (San Jose, CA) | CA-90-X234 | 6,828,287 | 3-20-87 |
| San Mateo County Transit District (San Francisco, CA) | CA-90-X235 | 3,235,607 | 3-20-87 |
| Bay Area Rapid Transit District (Antioch, CA) | CA-90-X225 | 2,475,792 | 3-20-87 |
| City of Corona (Corona, CA) | CA-90-X229 | 113,000 | 3-20-87 |
| City of Simi Valley (Simi Valley, CA) | CA-90-X151 | 696,740 | 3-20-87 |
| City of Fairfield (Fairfield, CA) | CA-90-X241 | 828,860 | 3-20-87 |
| City of Simi Valley (Simi Valley, CA) | CA-90-X240 | 817,750 | 3-20-87 |
| City of Boise (Boise, ID) | ID-90-X013 | 23,600 | 3-20-87 |
| Rogue Valley Transportation District (Medford, OR) | OR-90-X022 | 380,741 | 3-20-87 |
| Snohomish County Transportation Authority (Everett, WA) | WA-90-X069 | 75,000 | 3-20-87 |
| Pierce County (Tacoma, WA) | WA-90-X025-03 | 194,400 | 3-20-87 |
| Ben Franklin Transit (Richland, WA) | WA-90-X066-01 | 1,610,200 | 3-20-87 |
| Clark County Public Transportation Benefit Area (Vancouver, WA). | WA-90-X068 | 967,887 | 3-20-87 |

Issued by: April 9, 1987.

**Ralph L. Stanley,**

*Administrator.*

[FR Doc. 87-8252 Filed 4-13-87; 8:45 am]

BILLING CODE 4910-57-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 71
Tuesday, April 14, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**AFRICAN DEVELOPMENT FOUNDATION**

**TIME:** 2:00 p.m.

**PLACE:** 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC 20036.

**DATE:** 08 May 1987.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Chairman's Report—Dr. William F. Pickard
2. Program Committee Report—Dr. Patsy B. Blackshear
3. President's Report—Mr. Leonard H. Robinson, Jr.
4. Other Business

**CONTACT PERSON FOR MORE INFORMATION:** Ms. Janis McCollim (673–3916).

**Leonard H. Robinson, Jr.,**
*President.*

[FR 87–8341 Filed 4–10–87; 11:55 am]
BILLING CODE 6116–01–M

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 11:00 a.m., Monday, April 20, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21th Streets NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Federal Reserve Bank employee salary structure adjustments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System and employees.
3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 10, 1987.

**William W. Wiles,**
*Secretary of the Board*

[FR Doc. 87–8442 Filed 4–10–87; 3:30 pm]
BILLING CODE 6210–01–M

**INTERNATIONAL TRADE COMMISSION**

**[USITC SE–87–15]**

**TIME AND DATE:** Tuesday, April 21, 1987 at 10:00 a.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, D.C. 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Method of making plastic film with profiles and opening means for bags; and bags with colorline trademark (Docket Number 1385).
5. Inv. 731–TA–335 (F) (Tubeless steel disc wheels from Brazil)—briefing and vote.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 523–0161.

**Kenneth R. Mason,**
*Secretary*

April 9, 1987.

[FR Doc. 87–8428 Filed 4–10–87; 3:02 pm]
BILLING CODE 7020–02–M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of April 13, 20, 27, and May 4, 1987.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of April 13**

*Wednesday, April 15*

10:00 a.m.
Briefing by Office of the Special Projects (Public Meeting)
2:00 p.m.
Briefing by DOE on the TMI–2 Core Examination Program (Public Meeting)

*Thursday, April 16*

11:00 a.m.
Periodic Meeting with the Advisory Panel for the Decontamination of TMI–2 (Public Meeting)
2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2, 5, 6, & 7)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Revision to NRC Policy Statement, "Guidelines for NRC Review of Agreement State Radiation Control Programs"

**Week of April 20—Tentative**

*Thursday, April 23*

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of April 27—Tentative**

*Thursday, April 30*

2:00 p.m.
Briefing on Advanced Boiling Water Reactor Review (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of May 4—Tentative**

*Wednesday, May 6*

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

*Thursday, May 7*

2:00 p.m.
Briefing on State of the Nuclear Industry (Public Meeting)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** Discussion of Pending Investigations scheduled for April 8, *cancelled.*

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** Robert McOsker (202) 634–1410.

**Robert B. McOsker,**
*Office of the Secretary.*

April 9, 1987.

[FR Doc. 87–8426 Filed 4–10–87; 2:30 pm]
BILLING CODE 7590–01–M

**POSTAL SERVICE BOARD OF GOVERNORS**

Vote To Close Meeting

At its meeting on April 6, 1987, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for May 4, 1987, in Washington, DC. The meeting will concern consideration of possible future mail rate increases.

The meeting is expected to be attended by the following persons: Governors Griesemer, McConnell, McKean, Nevin, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Coughlin, Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, (5 U.S.C. 552b(b)), because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board also determined that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5 and section 410(c)(4) of title 39, United States Code, and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

**David F. Harris,**

*Secretary.*

[FR Doc. 87-8425 Filed 4-10-87; 2:29 pm]

BILLING CODE 7710-12-M

# Corrections

Federal Register
Vol. 52, No. 71
Tuesday, April 14, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## COMMISSION ON EDUCATION OF THE DEAF

### Educational Programs; Inquiry

*Correction*

In notice document 87-7255 beginning on page 10722 in the issue of Thursday, April 2, 1987, make the following corrections:

1. On page 10722, in the first column, under **DATE**, in the second line, "response, should" should read "responses should".

2. On the same page, in the second column, in the first complete paragraph, in the first line, "questions are meant" should read "questions are not meant".

BILLING CODE 1505-01-D

## FEDERAL HOME LOAN BANK BOARD

### Prices for Federal Home Loan Bank Services

*Correction*

In notice document 87-6727 beginning on page 10137 in the issue of Monday, March 30, 1987 , make the following corrections:

1. On page 10156, at the bottom of the page, footnotes 1 and 2 should be removed and footnote 3 should be designated footnote 1.

2. On page 10157, in the second table, the heading for the left column should read "Other Fees at the Four Regional Processing Centers". "Regional Processing Centers:" should be removed from the first line under that heading.

3. On page 10160, following the "[Deposit Processing Fees]" table, three tables were omitted. They should read as follows:

Coin and currency services fees

| | |
|---|---|
| Preparation and Handling Fees: | |
| Delivery ($5.00 minimum): | |
| Coin (per roll) | $.10 |
| Currency (per strap) | .50 |
| Deposit ($5.00 minimum): | |
| Coin (per bag) | .75 |
| Currency (per strap) | .65 |
| Emergency Orders (additional per hour) | 75.00 |
| Security Charge (per $1000 delivered or deposited) | .18 |
| Delivery Charges (A one-way transfer charge plus $.50 per bag of coin and/or currency picked up or delivered): | |
| Dallas, El Paso, Houston or San Antonio Delivery | 15.00 |
| All other Dallas and Houston Processing Center Deliveries ($15.00 minimum) (per mile between Federal Reserve City and delivery point) | .12 |
| Little Rock Center Deliveries | (1) |
| New Orleans City Delivery (one-way) | 15.00 |
| All other New Orleans Center Deliveries (per round trip from New Orleans based on Louisiana tariffs) | 40.00–75.00 |
| Registered Mail | (2) |
| Delay of Armored Carrier (per fifteen (15) minute interval or fraction thereof) | 18.00 |

[1]Call FHLBank for price quote.
[2]Actual postage cost.

Automated clearing house (ACH) processing fees

| | |
|---|---|
| Set-Up Fees: | |
| ACH Standard Format | $50.00 |
| Non-Standard Format | 500.00 |
| Origination Fees: | |
| ACH Standard Format (per tape) | 15.00 |
| Non-Standard Format (per tape) | 30.00 |
| Transaction Fees ($50.00 minimum per month): | |
| Receiving Debits/Credits (per item) | .10 |
| Originating Debits/Credits (per item) | .10 |
| Manual Return Item Advice (per item) | 4.00 |
| Format Changes (per change) | 500.00 |

BEST COPY AVAILABLE

| Additional correspondent services | |
|---|---|
| Reserve Pass-Through Services | (1) |
| Settlement Services: | |
| NOW Processing Customers | (1) |
| All Others (per month) | $50.00 |

1No charge.

4. On the same page, in the second table for District 10, make the following corrections:

a. The heading to the table should read "[Deposit Processing]".

b. In the fourth column, "Topeka" was misspelled.

c. Under the "Processing fees" column, remove "Deposit Processing:".

For a Federal Home Loan Bank Board correction to this document, see the Notices Section of this issue.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 357

[Docket No. 82N-0168]

### Benign Prostatic Hypertrophy Drug Products For Over-the-Counter Human Use; Proposed Rulemaking

*Correction*

In proposed rule document 87-3570 beginning on page 5406 in the issue of Friday, February 20, 1987, make the following corrections:

1. On page 5406, in the third column, in the first paragraph, in the 12th line, "nonmonograph" should read "monograph". In the 14th line, "monograph" should read "nonmonograph".

2. On page 5407, in the second column, in the second complete paragraph, in the third line from the bottom, "to" should read "of".

BILLING CODE 1505-01-D

Federal Register

Tuesday
April 14, 1987

Part II

# Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Revision of Telecommunications Training Records; Proposed Rulemaking

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**[Docket No. S-020B]**

## Revision of Telecommunications Training Records

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) proposes to revise the recordkeeping requirement contained in the training portion of the Telecommunications Standard (29 CFR 1910.268(c)), in order to minimize the paperwork burdens imposed on employers and to clarify what information is required. This proposed rule would eliminate the rquirement that the employer prepare a written description of the training program. It would also revise the requirement that the employer maintain a record of employees trained, substituting a requirement that the employer prepare a certification record to demonstrate compliance with the training requirements. This certification record would be prepared at the time the training is completed and would include the identity of the employee trained, the signature of the employer or the person who conducted the training, and the date the training was completed. OSHA believes that this action will minimize the paperwork burden on employers, as intended by the Paperwork Reduction Act of 1980, without reducing the protection of employee safety and health.

**DATE:** Written comments, objections and requests for a hearing must be postmarked by June 15, 1987.

**ADDRESS:** All written submissions, in quadruplicate, should be sent to the Docket Office, Docket S-020B, Room N3670, U.S. Department of Labor Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8148.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) was enacted to minimize the Federal paperwork burden and maximize the efficiency and usefulness of Federal information gathering activities. That Act set goals for the phased reduction of Federal information gathering burdens. The Paperwork Reduction Act also required the Office of Management and Budget (OMB) to promulgate regulations which guide the Federal agencies in their compliance efforts. OMB has published implementing regulations at CFR Part 1320 and has issued supplemental directives.

In addition, section 8(d) of the Occupational Safety and Health Act (the OSH Act) states that "Any information obtained by the Secretary . . . under this Act shall be obtained with a minimum burden upon employers. . . ."

In an effort to meet these statutory goals, OSHA conducted a comprehensive review of the OSHA standards to identify all recordkeeping requirements. OSHA then analyzed each of the 38 requirements identified to determine which recordkeeping burdens could be reduced.

Each requirement was reviewed to determine:

—What kind of information was required;

—How this information would be used;

—Whether this information was collected by other authorities (e.g., pursuant to state and local law or regulation);

—Whether this record would provide information that a compliance officer would not otherwise ascertain at the time of inspection; and,

—Which requirements contributed directly to employee safety and health.

On the basis of this careful review and analysis, OSHA identified 22 provisions in the standards found in 29 CFR Parts 1910, 1915, and 1926 that, it believed, did not directly contribute to worker safety and health and, therefore, unnecessarily burdened employers with requirements that they prepare and maintain records of tests, inspections, and maintenance checks.

In particular, OSHA determined that the recordkeeping requirements in question were adopted because the Agency wanted the employer to provide evidence that the required tests and inspections had been performed. Having made that determination, OSHA compared the purposes for the recordkeeping requirements with their language and found that they required more information than OSHA needed. Therefore, OSHA determined that the proposed revisions were appropriate.

OSHA also identified a duplicative recordkeeping provision and another which dealt with concerns outside OSHA's jurisdiction as appropriate for deletion.

On January 3, 1986, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 312) to revise the 22 provisions in question and to revoke the other two provisions. The three construction industry recordkeeping requirements which were proposed for revision were removed from consideration for revision in the March 14, 1986 Notice of Public Hearing (51 FR 8844), because OSHA determined that it had not formally consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding them. These three provisions have subsequently been formally reviewed by ACCSH and have been proposed for revision in a separate rulemaking. A public hearing was held on April 15, 1986. The nineteen remaining provisions were revised by publication of a Final Rule in the September 29, 1986, **Federal Register** (51 FR 34552).

OSHA indicated in the Final Rule that it would continue its efforts to identify provisions where the recordkeeping burdens could be reduced without reducing worker protection (51 FR 34553). Consistent with this statement, OSHA has determined that the recordkeeping provisions of the telecommunications industry training standard (§ 1910.268(c)) require more information than is needed to demonstrate compliance with the training requirement. Based on this determination, OSHA proposes to revise paragraph (c) of the existing standard so that employers would no longer be required to maintain a written description of a training program, including a list of the subject courses and the types of personnel required to receive such instruction, or a record of the employees who have been trained.

OSHA believes that employers should not be required to develop a written description of the training program since the standard itself specifically describes the subjects in which the Agency requires that employees be trained. OSHA's intention in listing training subjects was to establish a minimum level of training which would protect employees. Employers may, of course, train their employees in additional subjects. In addition, OSHA has determined that employers should not be required to list the types of personnel to be trained because the stated purpose of existing paragraph (c) is to "insure that employees do not engage in the activities to which this section applies until such employees have received proper training. . . ." Therefore, the key

concern is whether a given employee will be performing work covered by § 1910.268, not whether that employee has a particular job title.

Finally, OSHA is proposing to revise the requirement that employers maintain a record of the employees who have received such training. The existing standard is not clear as to what constitutes a "record." The proposed standard would clarify what information would be required so that the employer could certify that the employee has received the required training. OSHA proposes to revise the recordkeeping requirement to require that the employer prepare a certification record which includes the identity of the person trained, the signature of the employer or of the person who conducted the training, and the date the training was completed. The certification record would be prepared when the training has been completed and would be maintained on file for review by the OSHA Compliance Officer at the time of an inspection.

If the employer keeps track of training with automated data processing, and several employees are trained on the same date, compliance could be achieved by having the person who conducted the training, or the employer, sign and date a printout which identifies the persons trained. The computer printout would, of course, have to be maintained and made available for review at the time of an OSHA inspection.

Employers can comply with this certification requirement in the manner which least disrupts their operations. They may find that they need only to sign an entry in the employee's personnel file which indicates the date the training was received. Some employers may find that they do not need to change their recordkeeping methods at all to comply with these proposed requirements. The employer may choose any method desired to demonstrate compliance with the training requirement as long as it provides the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed.

OSHA proposes to retain the original language of existing paragraph (c), except where changes are necessary to indicate clearly the revision of the recordkeeping requirement.

This certification record, which attests to compliance with regulatory requirements for training, qualifies as a certification which, under the terms of 5 CFR 1320.7(k)(1), is excluded from the definition of "information" for the purposes of the Paperwork Reduction Act. Therefore, OSHA has determined that the certification requirement, as proposed, is consistent with the purposes and provisions of the Paperwork Reduction Act.

It is estimated that, through this rulemaking action, OSH will reduce its paperwork burden by about 21,000 hours annually, and that employers in the telecommunications industry would save approximately $164,000 annually. In addition, employers would benefit because they would better understand what information must be provided.

OSHA has determined that the proposed revision will not reduce the protection of employee safety and health, since the requirement in § 1910.268(c) to train employees will not be changed. OSHA believes that a certification record would provide evidence of compliance with the pertinent training requirements equivalent to that provided by the specific records currently required.

## II. Summary and Explanation

The existing standard ( § 1910.268(c)) requires the employer to train employees in the precautions and safe practices required by the standard before they allow employees to engage in activities to which the standard applies. Existing paragraph (c) also lists three subjects in which employees shall be trained, if appropriate. In addition, the employer is required to develop a written description of the training program which includes a list of the subject courses and the types of personnel required to receive such instruction. This written program, together with a record of employees who have received such training, currently must be prepared and maintained on file.

The proposed standard would retain the requirement that employers in the telecommunications industry train their employees, while revising and clarifying what information would be required to verify compliance with the training requirement. Instead of preparing and maintaining a written description of the program and a record of the employees who have received the training, employers would be required only to prepare a certification record to indicate that employees had been trained as required by the standard. This certification record would contain the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed.

## III. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Assessment

OSHA has made a preliminary determination that this rule is not a "major rule" under Executive Order 12291 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Based on a preliminary review of the relevant information, OSHA concludes that a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 603, 605), will not be necessary. OSHA estimates that the telecommunications industry expends approximately $204,000 annually to comply with the recordkeeping requirement proposed for revision in this rule. OSHA also estimates that compliance costs with the proposed rule will be approximately $40,000 annually. Therefore, the compliance cost differential would be a $164,000 annual saving. As this total economic impact will generally be distributed over numerous telecommunications employers, OSHA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

## IV. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. These comments must be postmarked by June 15, 1987 and submitted in quadruplicate to the Docket Office, Dockets S–020B, Room N3670, U.S. Department of Labor, Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the Docket Office. All timely submissions received will be made a part of the record of this proceeding.

In addition, under section 6(b)(3) of the Act, interested persons may file objections to the proposal and request an informal hearing with respect thereto. The objections and hearing requests should be submitted to the address given above and should be filed in

accordance with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked on or before June 15, 1987.

3. The objections must state the grounds for objection to this provision;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

OSHA recognizes that there may be interested persons with knowledge of safety or experience in the training involved who would wish to endorse or support the proposed revision in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response.

### V. OMB Approval Under the Paperwork Reduction Act

The proposed revision would require that employers prepare a certification. Under the terms of 5 CFR 1320.7(k)(1), certifications are not subject to the Paperwork Reduction Act or its implementing regulations. Hence, OMB approval under the Paperwork Reduction Act is not required.

### VI. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States and territories are: Alaska, Arizona, California, Connecticut,[1] Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York,[1] North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

### List of Subjects in 29 CFR Part 1910

Telecommunications, Occupational safety and health, Safety, Training.

### Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

Accordingly, pursuant to sections 6(b), 8(c), 8(d) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, OSHA proposes to revise 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 7th day of April, 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart R of Part 1910 continues to read as follows:

**Authority:** Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.274, and 1910.275 also issued under 20 CFR Part 1911.

2. In § 1910.268, paragraph (c) would be revised to read as follows:

[1] Plan covers only State and local government employees.

**§ 1910.268 Telecommunications.**

* * * * *

(c) *Training.* Employers shall provide training in the various precautions and safe practices described in this section and shall insure that employees do not engage in the activities to which this section applies until such employees have received proper training in the various precautions and safe practices required by this section. However, where the employer can demonstrate that an employee is already trained in the precautions and safe practices required by this section prior to his employment, training need not be provided to that employee in accordance with this section. Where training is required, it shall consist of on-the-job training or classroom-type training or a combination of both. The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The certification record shall be made available upon request to the Assistant Secretary for Occupational Safety and Health. Such training shall, where appropriate, include the following subjects:

(1) Recognition and avoidance of dangers relating to encounters with harmful substances and animal, insect, or plant life;

(2) Procedures to be followed in emergency situations; and,

(3) First aid training, including instruction in artificial respiration.

* * * * *

[FR Doc. 87–8025 Filed 4–13–87; 8:45 am]
BILLING CODE 4510–26–M

federal register

Tuesday
April 14, 1987

Part III

# Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

**Revision of Construction Industry Test and Inspection Records; Proposed Rulemaking**

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1926**

**[Docket No. S-020A]**

**Revision of Construction Industry Test and Inspection Records**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) proposes to revise three construction industry recordkeeping requirements in order to minimize the paperwork burdens imposed on employers and to clarify what information is required. The proposed rule would eliminate certain requirements under which an employer must prepare and maintain written records and require, instead, that the employer prepare a certification record. This certification record would be prepared at the time the required work (inspection or test) is done and would include the date the inspection or test was made; the signature of the person who performed the work; and the identity of the equipment or machinery that was inspected or tested. OSHA believes that this action will minimize the paperwork burden on employers as intended by the Paperwork Reduction Act of 1980, without reducing the protection of employee safety and health.

**DATE:** Written comments, objections and requests for a hearing must be postmarked by June 15, 1987.

**ADDRESS:** All written submissions, in quadruplicate, should be sent to the Docket Office, Docket S-020A, Room N3670, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington DC, 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8148.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) was enacted to minimize the Federal paperwork burden and maximize the efficiency and usefulness of Federal information gathering activities. That Act set goals for the phased reduction of Federal information gathering burdens. The Paperwork Reduction Act also required the Office of Management and Budget (OMB) to promulgate regulations which would guide the Federal agencies in their compliance efforts. OMB has published implementing regulations at 5 CFR Part 1320 and has issued supplemental directives.

In addition, section 8(d) of the Occupational Safety and Health (the OSH Act) states that "Any information obtained by the Secretary . . . under this Act shall be obtained with a minimum burden upon employers. . . ."

In an effort to meet these statutory goals, OSHA conducted a comprehensive review of the OSHA standards to identify all recordkeeping requirements. OSHA then analyzed each of the 38 requirements identified to determine which recordkeeping burdens could be reduced.

Each requirement was reviewed to determine:

—What kind of information was required;
—How this information would be used;
—Whether this information was collected by other authorities (e.g., pursuant to state and local law or regulation);
—Whether this record would provide information that a compliance officer would not otherwise ascertain at the time of inspection; and
—Which requirements contributed directly to employee safety and health.

On the basis of this careful review and analysis, OSHA identified 22 provisions in the standards found in 29 CFR Parts 1910, 1915, and 1926 that, it believed, did not directly contribute to worker safety and health and, therefore, unnecessarily burdened employers with requirements that they prepare and maintain records of tests, inspections, and maintenance checks.

In particular, OSHA determined that the recordkeeping requirements in question were adopted because the Agency wanted the employer to provide evidence that the required tests and inspections had been performed. Having made that determination, OSHA compared the purposes for the recordkeeping requirements with their language and found that they required more information than OSHA needed. Therefore, OSHA determined that the proposed revisions were appropriate.

OSHA also identified a duplicative recordkeeping provision and another which dealt with concerns outside OSHA's jurisdiction as appropriate for deletion.

On January 3, 1986, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 312) to revise the 22 provisions in question and to revoke the other two provisions. The NPRM included three recordkeeping requirements currently found in the Construction Safety and Health Standards, 29 CFR Part 1926. The three recordkeeping requirements in question are found in § 1926.550(b)(2)—Cranes and derricks; § 1926.552(c)(15)—Material hoists, personnel hoists and elevators; and § 1926.903(e)—Underground transportation of explosives.

OSHA determined during the NPRM comment period that it had not formally consulted with the Advisory Committee on Construction Safety and Health (ACCSH) as required by 29 CFR 1912.3, regarding those three proposed revisions. The Agency, therefore, withdrew the three construction recordkeeping requirements from consideration for revision when it issued a Notice of Informal Public Hearing on March 14, 1986 (51 FR 8844). The remaining 19 provisions were revised by the publication of a Final Rule in the September 29, 1986, **Federal Register** (51 FR 34552).

On April 29, 1986, OSHA formally consulted with the ACCSH to obtain the Committee's recommendations on revising the three recordkeeping requirements which, as has been discussed above, were removed from consideration for revision in the March 14, 1986, hearing notice. The Committee was also asked to provide their recommendations on two recordkeeping provisions in § 1926.550(a)(6), concerning cranes and derricks, and § 1926.850(a), concerning preparatory operations for demolition.

The ACCSH approved four of the proposed revisions, but voted to retain § 1926.550(a)(6) as written because a majority believed that the information obtained from the annual inspection was needed for safe operation of cranes and derricks. The Advisory Committee recommended that OSHA change the four approved revisions to require that the signature, rather than the name, of the person preparing the certification be provided. Requiring the certifier's signature would make these proposed revisions consistent with the revisions recently finalized in the General Industry and Shipyards standards (51 FR 34552). In addition, ACCSH suggested that OSHA revise § 1926.552(c)(15) to require that employers certify that "all functions and safety devices" have been inspected and tested, in order to clarify the existing requirement. OSHA sees merit in these recommendations and has revised the proposed standard accordingly. The Agency has not adopted the Advisory Committee's suggestion regarding § 1926.550(b)(2), that employers be

required to certify compliance with all of the pertinent provisions of ANSI B30.5–1968 because such a requirement would be beyond the scope of this rulemaking. The transcript of the Advisory Committee meeting is Exhibit 2 in Docket S–020A.

OSHA has subsequently determined that the recordkeeping provision of § 1926.850(a), which requires written evidence of a demolition survey, is already satisified by a certification, so OSHA does not propose to revise that provision. Therefore, this proposed rulemaking includes only the three recordkeeping provisions of the construction industry standards which were proposed for revision in the **Federal Register** on January 3, 1986 (51 FR 312) and which were withdrawn from consideration pending formal consultation with the Advisory Committee.

As stated above, OSHA adopted the recordkeeping requirements in question to provide assurance that employers have performed the required tests and inspections. OSHA has determined, based on its 15 years of experience enforcing those requirements, that requiring an employer to maintain detailed test or inspection records does not add to compliance with the test and inspection requirements. Therefore, OSHA proposes to revise the pertinent requirements so that employers would be required to prepare a certification record, at the time the required work is done, which contains only three pieces of information—the date of the test or inspection; the signature of the person who performed the test or inspection; and the identity of the equipment or machinery tested or inspected. Employers would be required to maintain the contemporaneous certification record and make it available for review at the time of an OSHA inspection.

The contemporaneous certification record could be kept in any way which identifies each piece of equipment inspected or tested and which contains the signature of the person who performed the work and the date the work was performed. For example, a list of the pieces of equipment which were inspected would have to be signed and dated only once if the same person performed all of the inspections or tests on the same date. With such a list, the person performing the inspections or tests would not have to sign and date a separate record identifying each piece of equipment.

If employers keep track of their inspections or tests with automated data processing, and if, as above, the same person performed all of the inspections or tests on the same date, then compliance could be achieved by having that person sign and date a printout of equipment identifiers. The signed and dated computer printout would, of course, have to be maintained and made available for review at the time of an OSHA inspection.

Employers can comply with this certification requirement in the manner which least disrupts their operations. They may find that they need to place a tag on the equipment in question or they may find that the addition of an entry to a checklist or log they already maintain will suffice. Some employers may even find that they do not need to change their recordkeeping methods to comply with these proposed requirements. The certification record would be prepared and signed by the person who actually performs the test or inspection and would be completed at the time of the test or inspection.

OSHA proposes to retain the original language of the paragraphs proposed for revision except where changes are necessary to clearly indicate the proposed revision of the recordkeeping requirements.

OSHA notes that these certification records qualify as certifications which, under the terms of 5 CFR 1320.7(k)(1), are excluded from the definition of "information" for the purpose of the Paperwork Reduction Act. Therefore, OSHA has determined that the certification requirement, as proposed, is consistent with the purposes and provisions of the Paperwork Reduction Act.

OSHA estimates that the proposed revisions would reduce its imposed paperwork burden by approximately 670,000 hours and that employers would save approximately $1.8 million annually. In addition, employers would gain clear guidance as to what information must be included in their record of compliance.

OSHA has determined that the proposed revisions will not reduce the protection of employee safety and health since the testing and inspection requirements will remain in effect. OSHA believes that a certification record will provide evidence of compliance with the pertinent testing or inspection requirements which is equivalent to that provided by the detailed records currently required.

This certification record applies only to the provisions of the OSHA regulations specified in this proposal. OSHA continues to review its recordkeeping requirements in an effort to ensure that they provide the necessary protection for employees while imposing minimum burden on employers.

Interested parties have expressed concern to OSHA regarding the retention period for the certification records required under the proposed revisions. The recordkeeping requirements which are being considered for revision in this rulemaking do not state required retention periods. OSHA, in practice, currently requires that employers produce the most recent inspection or test record to verify their compliance with the test and inspection requirements. The Agency is specifically proposing in the NPRM that employers retain the most recent certification record as evidence of compliance with the pertinent work requirements, in order to clearly state OSHAs requirements for retention of certification records.

## II. Summary and Explanation

*1926.550(b)(2)—Crawler, locomotive and truck cranes.* The existing rule requires compliance with the provisions of ANSI B30.5–1968, Safety Code for Crawler, Locomotive and Truck Cranes. Section 5–2.1.5 of ANSI B30.5–1968 requires that written, dated, and signed inspection reports and records be prepared monthly on critical items such as brakes, crane hooks and ropes. The latest ANSI standard, B30.5–1982, *Mobile and Locomotive Cranes*, in Section 5–2.1.5 contains slightly different wording with regard to the recordkeeping requirements. It requires a dated record for periodic inspections of critical items. Neither edition of ANSI B30.5 states what information should be included in the record or report. Both editions are in Exhibit 3 of Docket S–020A.

The proposed rule retains the requirements for inspections while clarifying what information would be recorded. The certification record would contain the date the inspection was performed, the signature of the person who performed the inspection and the identity of the crane inspected.

*1926.552(c)(15)—Material hoists, personnel hoists and elevators.* The existing standard requires the employer to inspect and test all hoist functions and safety devices at least every three months following assembly and erection. A similar inspection and test is required following major alterations of an existing installation. The standard further requires that records shall be maintained. However, the existing standard does not state what information should be kept on the record.

The proposed standard eliminates unnecessary recordkeeping burdens, and clarifies what information is to be included in the certification record. The certification record would contain the date the work was performed, the signature of the person who inspected and tested and the identity of the hoist that was inspected and tested.

OSHA has determined that the proposed revision would not reduce the protection of employee safety and health because the existing testing and inspection requirements are retained. Therefore, any defect in hoist functions or safety devices would be detected and corrected.

*1926.903(e)—Underground transportation of explosives.* The existing standard requires that employers conduct a weekly check of the electrical system of trucks used to transport explosives underground to detect failures which may constitute electrical hazards. The standard further provides that a written record of the inspection must be kept, but does not state what information this written record must contain.

The proposed standard would require that the employer prepare a certification record which contains the date the inspection was performed, the signature of the person who checked the electrical system and the identity of the truck inspected. The proposed standard would clarify what information would be required. The proposal would retain the requirement that employers check the pertinent electrical system weekly, so there would be no reduction of worker protection.

## III. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Assessment

OSHA has made a preliminary determination that this rule is not a "major rule" under Executive Order 12291 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Based on a preliminary review of the relevant information, OSHA concludes that a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 603, 605), will not be necessary. OSHA estimates that the construction industry expends approximately $2.2 million annually in complying with the recordkeeping provisions which are proposed for revision in this rule. OSHA also estimates that compliance costs with the proposed rule will be approximately $430,000 annually. Therefore, the compliance cost differential would be a $1.8 million annual saving. As this total economic impact will generally be distributed over numerous construction firms, OSHA certifies that the proposed revisions would not have a significant economic impact on a substantial number of small entities.

## IV. Public Participation

Interested parties are invited to submit written data, views, and arguments with respect to this proposal. These comments must be postmarked by June 15, 1987 and submitted in quadruplicate to the Docket Office, Docket S–020A, Room N3670, U.S. Department of Labor, Washington, DC 20210. Written submissions must clearly identify the specific provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

In addition, under section 6(b)(3) of the Act, and section 107 of the Contract Work Hours and Safety Standards Act, interested persons may file objections to the proposal and request an informal hearing with respect thereto. The objections and hearing requests should be submitted to the address given above and should be filed in accordance with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked on or before June 15, 1987.
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

## V. OMB Approval Under the Paperwork Reduction Act

The proposed revisions would require that employers prepare certifications. Under the terms of 5 CFR 1320.7(k)(1), certifications are not subject to the Paperwork Reduction Act or its implementing regulations. Hence, OMB approval under the Paperwork Reduction Act is not required.

## VI. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States and territories are: Alaska, Arizona, California, Connecticut*, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York*, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

## List of Subjects in 29 CFR Part 1926

Certification, Occupational safety and health, Recordkeeping, Safety.

## Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 6(b), 8(c), 8(d) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 107 of the Construction Safety Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, OSHA proposes to revise 29 CFR Part 1926 as set forth below.

---

*Plan covers only State and local government employees.

Signed at Washington, DC, this 7th day of April, 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

## PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

### Subpart N—[Amended]

1. The authority citation for Subpart N of Part 1926 continues to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. In § 19026.550, paragraph (b)(2) would be revised to read as follows:

**§ 1926.550 Cranes and derricks.**

* * * * *

(b) * * *

(2) All crawler, truck, or locomotive cranes in use shall meet the applicable requirements for design, inspection, construction, testing, maintenance and operation as prescribed in the ANSI B30.5.–1968, Safety Code for Crawler, Locomotive and Truck Cranes. However, the written, dated, and signed inspection reports and records of the monthly inspection of critical items prescribed in Section 5–2.1.5 of the ANSI B30.5–1968 standard are not required. Instead, the employer shall prepare a certification record which includes the date the crane items were inspected; the signature of the person who inspected the crane items; and a serial number, or other identifier, of the crane inspected. The most recent certification record shall be maintained on file until a new one is prepared.

* * * * *

3. In § 1926.552, paragraph (c)(15) would be revised to read as follows:

**§ 1926.552 Material hoists, personnel hoists and elevators.**

* * * * *

(c) * * *

(15) Following assembly and erection of hoists, and before being put in service, an inspection and test of all functions and safety devices shall be made under the supervision of a competent person. A similar inspection and test is required following major alteration of an existing installation. All hoists shall be inspected and tested at not more than 3-month intervals. The employer shall prepare a certification record which includes the date the inspection and test of all functions and safety devices was performed; the signature of the person who performed the inspection and test; and a serial number, or other identifier, of the hoist that was inspected and tested. The most recent certification record shall be maintained on file.

* * * * *

### Subpart U—[Amended]

4. The authority citation for Subpart U of Part 1926 continues to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

5. In § 1926.903, paragraph (e) would be revised to read as follows:

**§ 1926.903 Underground transportation of explosives.**

* * * * *

(e) Trucks used for the transportation of explosives underground shall have the electrical system checked weekly to detect any failures which may constitute an electrical hazard. A certification record which includes the date of the inspection; the signature of the person who performed the inspection; and a serial number, or other identifier, of the truck inspected shall be prepared and the most recent certification record shall be maintained on file.

* * * * *

[FR Doc. 87–8024 Filed 4–13–87; 8:45 am]
BILLING CODE 4510–26–M

L
2
S S
1
P
4
87
M I

federal register

Tuesday
April 14, 1987

Part IV

# The President

## Proclamation 5629—Pan American Day and Pan American Week, 1987

Federal Register
Vol. 52, No. 71
Tuesday, April 14, 1987

# Presidential Documents

Title 3—

## The President

Proclamation 5629 of April 9, 1987

## Pan American Day and Pan American Week, 1987

By the President of the United States of America

A Proclamation

The nations of the Americas enjoy a rich cultural and historical diversity, yet are bound together by a common dedication to the principles of democracy; to respect the rights of the individual; and to the opportunity to enjoy creative, productive, and prosperous lives. Pan American Day each year has served to remind us of these mutual goals.

The Organization of American States is the forum in which our governments labor to make these ideals and aspirations a reality in our daily lives. For decades, the Inter-American System has been utilized across a broad range of common concerns: to maintain the peace throughout this Hemisphere; to encourage both political and economic freedom for every citizen; to promote development and provide opportunity for both men and women, of all races and all creeds; and to defend the human rights of all against repression and threats to their dignity.

The Organization has a truly remarkable record as a defender, and a beacon, for all peoples whose rights have been trampled upon and denied, especially for the peoples of this Hemisphere. It has now taken up the challenge against yet another menace—drug abuse and trafficking—that threatens the future of our children, the well-being of our peoples, and even the stability of our governments. The newly created Drug Abuse Control Commission offers a common meeting place where all of us can join forces to defeat this latest enemy to freedom and democracy.

On September 2 of this year, the nations of the Americas will celebrate the fortieth anniversary of the signing of the Inter-American Treaty of Reciprocal Assistance, in which they pledged to preserve their security. This Rio Treaty, born of the totalitarian threat to the region before and during World War II, has been strengthened ever since by resolute defense, against repeated attacks, of our common determination that this Hemisphere shall be a land of liberty.

This is a time when the vision of democracy and freedom in all our countries, to which we are committed in the Charter of our Organization, shines forth as never before. So Pan American Day of 1987 is an especially welcome occasion for the people of the United States of America to extend a warm and fraternal hand to our neighbors in the Americas. We renew our commitment to the spirit of hemispheric solidarity, to the purposes of the Inter-American System, and to the Organization of American States as the embodiment of our high aspirations for this Hemisphere.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Tuesday, April 14, 1987, as Pan American Day, and the week of April 12 through April 18, 1987, as Pan American Week. I urge the Governors of the fifty States, and the Governor of the Commonwealth of Puerto Rico, and officials of other areas under the flag of the United States of America to honor these observances with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-8523
Filed 4-13-87; 11:17 am]
Billing code 3195-01-M

L
2
S
1
P
4
87
M I

# Reader Aids

Federal Register

Vol. 52, No. 71

Tuesday, April 14, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10
11807-11980.....13
11981-12128.....14

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11809
5629.....12126

**Administrative Orders:**
Presidential Determinations.
No. 87-12 of
March 17, 1987.....11807

**5 CFR**

213.....11185
1201.....10875

**Proposed Rules:**
353.....11657
2411.....11995

**7 CFR**

210.....11186
271.....11811
272.....11021, 11811
273.....11021, 11811
274.....11811
278.....11811
301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615
910.....10729, 11615
925.....11616
927.....11616
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1922.....11981
1944.....11981
1951.....11456, 11981

**Proposed Rules:**
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
945.....10893
994.....10984
1046.....11475
1955.....10577
1965.....10577

**8 CFR**

212.....11620
248.....11621

**Proposed Rules:**
245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024

**Proposed Rules:**
92.....10765
317.....10766, 11828
319.....10766, 11828
381.....11828

**10 CFR**

0.....11026

**Proposed Rules:**
2.....11475
50.....10771

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557

**Proposed Rules:**
325.....11476, 11660
337.....11492
612.....11080

**13 CFR**

311.....11626

**14 CFR**

21.....11627
23.....11627
39.....10558, 10735, 10736, 11630-11639, 11985, 11986
71.....10559, 11028, 11032-11034, 11815
73.....10559, 10560, 11033, 11034
95.....10737
1215.....10880

**Proposed Rules:**
29.....11997

39..... 10581, 11081, 11663, 11664, 11997, 11998
71..... 10582, 11082, 11828
75..... 12000

**15 CFR**

370..... 11640
371..... 10741
376..... 11640
399..... 11457, 11640

**Proposed Rules:**

7..... 11498
280..... 11498
368..... 10771

**17 CFR**

241..... 11458
270..... 11187

**Proposed Rules:**

210..... 11665
239..... 11665
240..... 11083, 11089, 11665
279..... 11665

**18 CFR**

16..... 11035
271..... 10741
381..... 10366

**Proposed Rules:**

4..... 10898
11..... 10898
375..... 10898
1301..... 10772

**19 CFR**

24..... 10561, 10970
133..... 10668
146..... 10970
177..... 11216

**Proposed Rules:**

111..... 10774
127..... 12000

**20 CFR**

10..... 10486
200..... 11010
209..... 11010
210..... 11010
216..... 11010
217..... 11010
230..... 11010
234..... 11010
260..... 11010
266..... 11010
320..... 11010
322..... 11010
325..... 11010
330..... 11010
335..... 11010
341..... 11010
345..... 11010
655..... 11460
656..... 11217

**Proposed Rules:**

200..... 10384
615..... 10774

**21 CFR**

5..... 10881
81..... 10882
172..... 10882
175..... 10883
177..... 11641
184..... 10884
193..... 10561, 10562
510..... 10668, 11040, 11041, 11988
520..... 10668, 11041, 11988
522..... 10668, 11816
524..... 10668, 10886
529..... 10668
558..... 11040, 11041, 11642, 11988
561..... 10562
573..... 10887
1308..... 11042

**Proposed Rules:**

357..... 12114
1301..... 11091

**22 CFR**

212..... 11817

**Proposed Rules:**

41..... 12001

**23 CFR**

**Proposed Rules:**

650..... 11092
655..... 11502

**24 CFR**

201..... 11643
203..... 11643
234..... 11643
511..... 11466
3283..... 11644

**Proposed Rules:**

200..... 11686
511..... 11598
905..... 10668
968..... 10668

**25 CFR**

120..... 11467

**Proposed Rules:**

40..... 11503

**26 CFR**

1..... 10368, 10741, 10742
5f..... 10368
54..... 10563
602..... 10368, 10563, 10742

**Proposed Rules:**

1..... 10774
54..... 10583
602..... 10583, 10774

**27 CFR**

**Proposed Rules:**

9..... 11689

**28 CFR**

0..... 11043
545..... 10528

**Proposed Rules:**

549..... 10531

**29 CFR**

33..... 11600
2644..... 10368

**Proposed Rules:**

1601..... 11503
1625..... 10584
1910..... 10586, 12116
1926..... 12120

**30 CFR**

914..... 10369, 10373
946..... 11044

**Proposed Rules:**

700..... 11829
723..... 11287
724..... 11287
733..... 10898
845..... 11287
846..... 11287
910..... 11287
912..... 11287
921..... 11287
922..... 11287
933..... 11287
934..... 12002
935..... 11692
937..... 11287
939..... 11287
941..... 11287
942..... 11287
947..... 11287

**31 CFR**

1..... 11989
103..... 11436

**Proposed Rules:**

1..... 12003

**32 CFR**

154..... 11219
701..... 11051
706..... 10374, 10748, 10749

**Proposed Rules:**

1662..... 11830

**33 CFR**

60..... 11506
62..... 11506
66..... 11506
100..... 11506
110..... 11512, 11645
117..... 11646

**Proposed Rules:**

100..... 10593, 10594, 10905, 10906, 11693
117..... 11695

**34 CFR**

628..... 11256

**Proposed Rules:**

206..... 11448

**36 CFR**

1..... 10670
2..... 10670
4..... 10670
7..... 10670
34..... 10670
228..... 10564

**Proposed Rules:**

1..... 12037
2..... 12037
9..... 10866

**37 CFR**

**Proposed Rules:**

307..... 11096

**38 CFR**

1..... 10888
17..... 11259

**Proposed Rules:**

17..... 10907

**39 CFR**

10..... 10375
111..... 10749

**40 CFR**

52..... 10751, 11259, 11647
60..... 10852, 11420
110..... 10712
180..... 10375, 10376, 10565, 10567, 11260, 11261
261..... 11819
266..... 11819
271..... 10568, 11263
721..... 11822
761..... 10688
799..... 10377, 10752

**Proposed Rules:**

52..... 10596, 11287, 11288, 11696
123..... 12039
141..... 10972
142..... 10972
143..... 10972
180..... 11292, 11293
261..... 11513
300..... 11513

**41 CFR**

101-20..... 11263
101-28..... 11275
201-32..... 10379

**42 CFR**

7..... 11072
400..... 11647
482..... 11647
1001..... 11649
1003..... 11649

**Proposed Rules:**

405..... 11517

**43 CFR**

426..... 11938

**44 CFR**

64..... 10753

**Proposed Rules:**

5..... 10385
6..... 10385
67..... 11702

**45 CFR**

Ch. II..... 11073
Ch. III..... 11073
Ch. IV..... 11073
Ch. X..... 11073
2201..... 10870

**Proposed Rules:**

503..... 11712, 12040

**46 CFR**

401..... 11468

**Proposed Rules:**

154..... 10598
382..... 11518
502..... 10912
586..... 11832

**47 CFR**

1..... 11652
2..... 10568
22..... 10571
73..... 10381, 10382, 10568, 10757, 11471-11473, 11653, 11825
74..... 10568, 11474
78..... 10568

**Proposed Rules:**

1..... 11519
21..... 11519, 11838

73.....11519–11521, 11837, 11840–11842
74.....11519
90.....10389
94.....11519, 11838

**48 CFR**

7.....11074
215.....11276
217.....11076
252.....11076, 11276
542.....11825
**Proposed Rules:**
509.....10913

**49 CFR**

219.....10575
604.....11916
1003.....11277
1043.....11277
1052.....11991
1084.....11277
1207.....10382
1249.....10382
**Proposed Rules:**
Ch. X.....11295
571.....10775
1312.....10913
1320.....11295

**50 CFR**

17.....10890, 11162, 11277
301.....10759
611.....10761
642.....10762
652.....10763
663.....11473
672.....10761, 11991
675.....10761, 11992
**Proposed Rules:**
222.....12040
227.....12040
640.....10780
642.....11713
651.....10781

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List April 13, 1987**

## Order Now!

# The United States Government Manual 1986/87

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and subject/agency indexes.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

**$19.00 per copy**

---

**Publication Order Form**

Order processing code: ***6159**

☐ **YES,** please send me the following indicated publications:

☐ _____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1986/87 at $19.00 per copy. S/N 022-003-01132-3.

1. The total cost of my order is $_____ International customers please add an additional 25%. All prices include regular domestic postage and handling and are good through 1-31-87. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

**Please Type or Print**

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA, CHOICE or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

***Thank you for your order!***

_____
(Signature)

(Rev. 8-86)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325

O L
2
S S
1
P
4
87
M I

L
2
S S
2
P
5
87
M I

4–15–87
Vol. 52 No. 72

# federal register

Wednesday
April 15, 1987

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

O L
2

S S
2

P
5

87

M I

4-15-87
Vol. 52 No. 72
Pages 12129-12362

# Federal Register

Wednesday
April 15, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 72

Wednesday, April 15, 1987

**Agricultural Marketing Service**
RULES
Olives grown in California, 12134
PROPOSED RULES
Egg marketing order; correction, 12285
Melons grown in Texas, 12185
Milk marketing orders:
Tennessee Valley, 12186

**Agriculture Department**
*See also* Agricultural Marketing Service; Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities under OMB review, 12217
Meetings:
Agribusiness Promotion Council, 12217

**Air Force Department**
NOTICES
Agency information collection activities under OMB review, 12232
Procurement:
Contracts—
Conversion determinations, 12233

**Animal and Plant Health Inspection Service**
PROPOSED RULES
Livestock and poultry disease control:
Scrapie-exposed animals, 12189

**Army Department**
*See* Engineers Corps

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Commerce Department**
*See* Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Brazil; correction, 12228
Japan, 12229
Mexico, 12230
Textile consultation; review of trade:
Colombia, 12232

**Conservation and Renewable Energy Office**
PROPOSED RULES
Consumer products:
Dishwashers; test procedures, 12342

**Customs Service**
RULES
Conforming amendments; correction, 12149
Liquidated damages; petitioning time reduction, 12149

**Defense Department**
*See* Air Force Department; Engineers Corps; Navy Department

**Drug Enforcement Administration**
RULES
Schedules of controlled substances:
Nabilone; correction, 12285

**Economic Regulatory Administration**
NOTICES
Consent orders:
Wickett Refining Co., 12235
Natural gas exportation and importation:
Minnesota Methane, Inc., 12236
PeopleService, Inc., 12237

**Education Department**
PROPOSED RULES
Postsecondary education:
Jacob K. Javits fellows program, 12360
NOTICES
Grants; availability, etc.:
College assistance migrant program, 12234
Educational research; field-initiated studies program, 12235
High school equivalency program, 12235
Jacob K. Javits fellows program, 12362

**Employment and Training Administration**
NOTICES
Adjustment assistance:
Honeywell, Inc., 12271

**Energy Department**
*See* Conservation and Renewable Energy Office; Economic Regulatory Administration; Hearings and Appeals Office, Energy Department

**Engineers Corps**
NOTICES
Environmental statements; availability, etc.:
Calleguas Creek, Ventura County, CA, 12233

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
New Hampshire, 12164
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Aldrin and dieldrin; correction, 12166
DDT and TDE; correction, 12166
Insect pheromone (Stirrup-M), 12165
Metalaxyl, 12153
Pesticides; tolerances in animal feeds:
Metalaxyl, 12167
PROPOSED RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Metolachlor, 12198

Pesticides; tolerances in animal feeds:
Malathion, 12193
Toxic substances:
Significant new uses—
Ethanol, 2-amino-, compound with N-hydroxy-N-nitrosobenzenamine (1:); correction, 12285
NOTICES
Agency information collection activities under OMB review, 12247
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region IX, 12247
Hazardous waste:
Confidential information and data transfer to contractors, 12248
Pesticide, food, and feed additive petitions:
FMC Corp.; correction, 12249
Pesticide programs:
Confidential business information and data transfer to contractors, 12247, 12248
(2 documents)
Dinoseb—
Indemnification claims procedures submission and disposal requests, 12352
Water Quality Act of 1987; implementation:
Concept paper; availability, 12249

**Executive Office of the President**
*See* Presidential Documents; Trade Representative, Office of United States

**Farm Credit Administration**
RULES
Farm credit system:
Borrower rights, 12143
Farm Credit System Capital Corp.—
Charter and organization, 12135
NOTICES
Meetings; Sunshine Act, 12284

**Federal Aviation Administration**
PROPOSED RULES
VOR Federal airways and jet routes; correction, 12286

**Federal Communications Commission**
RULES
Radio stations; table of assignments:
American Samoa, 12181
Kentucky, 12181
Tennessee, 12180
Television stations; table of assignments:
Florida, 12180
Minnesota, 12181
PROPOSED RULES
Radio stations; table of assignments:
Arizona, 12214
California, 12214
Florida, 12214
New Mexico, 12215
Pennsylvania, 12216
Rhode Island, 12215
South Carolina, 12216
Texas; correction, 12285

**Federal Emergency Management Agency**
RULES
Flood insurance; communities eligible for sale:
Maine et al., 12178
NOTICES
Disaster and emergency areas:
Maine, 12250

**Federal Maritime Commission**
PROPOSED RULES
Administrative practice and procedure rules and Sunshine Act provisions; agency meetings, comment filing, 12212
Equal Access to Justice Act; implementation, 12208
NOTICES
Agreements filed, etc., 12250

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 12284
*Applications, hearings, determinations, etc.:*
BankAmerica Corp., 12250
Citicorp, 12252
Equimark Corp. et al., 12251
First Community Corp. et al., 12252
Illini Community Bancorp, Inc., 12252
Jefferson Banking Group Inc. et al., 12251
Wright, W.J., et al., 12251

**Federal Retirement Thrift Investment Board**
NOTICES
Meetings:
Employee Thrift Advisory Council, 12253

**Fish and Wildlife Service**
NOTICES
Marine mammal permit applications, 12262

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Tylosin, 12153
Drug labeling:
Aspartame as an inactive ingredient, 12152
NOTICES
Animal drugs, feeds, and related products:
Garver Feed & Supply Co., Inc.; Type C swine feed; approval withdrawn, 12255
Food for human consumption:
Identity standard deviation; market testing permits—
Spinach, canned, 12257
Grants and cooperative agreements:
Scientific conferences support, United States and Canada; applications process, 12257
Meetings:
Advisory committees, panels, etc., 12254, 12259
(2 documents)
Health professional organizations, 12255
Memorandums of understanding:
French Ministry of Agriculture; caseins, caseinates, and mixtures certification requirements, 12255

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
Illinois, 12217
Michigan—
General Motors Corp., 12218
New York, 12219

**General Services Administration**
RULES
Acquisition regulations:
Federal contractors annual report; Vietnam era and special disabled veterans employment, 12182
Property management:
Transportation documentation and audit—Voucher-schedule procedures, 12168

**Health and Human Services Department**
*See also* Food and Drug Administration
NOTICES
Federal financial participation in State assistance expenditures (AFDC, Medicaid, etc.), 12253

**Hearings and Appeals Office, Energy Department**
NOTICES
Applications for exception:
Cases filed, 12238–12240 (3 documents)
Decisions and orders, 12241, 12244 (2 documents)

**Housing and Urban Development Department**
RULES
Information by HUD employees; testimony, production and disclosure of material, 12159
NOTICES
Organization, functions, and authority delegations:
Attesting officers; list, 12259

**Indian Affairs Bureau**
NOTICES
Indian trust funds; consultation process to procure collection, accounting, advisory investment services, and custodial services, 12348

**Interior Department**
*See* Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
RULES
Income taxes:
Ministers, religious order members, and Christian Science practitioners; self-employment taxes, exemption applications, 12161
PROPOSED RULES
Income taxes:
Ministers, religious order members, and Christian Science practitioners; self-employment taxes, exemption applications; cross-reference, 12194

**International Trade Administration**
NOTICES
Antidumping:
Acetylsalicylic acid (aspirin) from Turkey, 12222
*Applications, hearings, determinations, etc.:*
Baptist Hospital Inc. et al., 12219
University of Tennessee et al., 12221

**International Trade Commission**
NOTICES
Agency information collection activities under OMB review, 12263
Import investigations:
Battery-powered smoke detectors, 12263, 12264 (2 documents)
Dental prophylaxis methods, equipment and components, 12264
Electronic wall stud finders, 12265
Insulated security chests, 12265
Mail extraction desks and components, 12266
Ventilated motorcycle helmets, 12267

**Interstate Commerce Commission**
NOTICES
Railroad operation, acquisition, construction, etc.:
Denver & Rio Grande Western Railroad Co. et al.; trackage rights and purchase applications by various railroads, 12267

**Justice Department**
*See also* Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Eagle Electric Manufacturing Co., Inc., 12270
Miller & Sons, Inc., 12270
Nu-Tronic Circuit Co., Inc., 12270
Revlon, Inc., 12271

**Labor Department**
*See* Employment and Training Administration; Occupational Safety and Health Administration

**Land Management Bureau**
RULES
Land resource management:
Special laws and rules; segregation and opening of public lands procedures, 12171
NOTICES
Closure of public lands:
Montana, 12259
Meetings:
Eugene District Advisory Council, 12260
Recreation management restrictions, etc.:
Forks of Butte Creek Recreation Area, CA, 12260
Resource management plans, etc.:
Monument Resource Area, ID, 12262
Survey plat filings:
California; correction, 12285
New Mexico, 12260 (2 documents)
Withdrawal and reservation of lands:
Colorado, 12261 (2 documents)

**Maritime Administration**
PROPOSED RULES
Subsidized vessels and operators:
Construction-differential subsidy repayment, 12199

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Museum Advisory Panel, 12271

**National Labor Relations Board**
NOTICES
Organization, functions, and authority delegations, 12271

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 12183

Gulf of Alaska groundfish; correction, 12183
NOTICES
Grants; availability, etc.:
Fishing industry research and development projects—
Marine Fisheries Initiative; Gulf of Mexico fishery resources, 12223
Permits:
Marine mammals, 12227, 12228
(2 documents)

**National Technical Information Service**
NOTICES
Patent licenses, exclusive:
G.D. Searle & Co., 12228
Roberts Laboratories, 12228

**Navy Department**
NOTICES
Environmental statements; availability, etc.:
Family housing supporting Naval Weapons Station, Earle, NJ, 12234
Meetings:
Naval Research Advisory Committee, 12234

**Nuclear Regulatory Commission**
PROPOSED RULES
Practice rules:
Adjudications; disclosure or nondisclosure of information; special procedures for resolving conflicts; withdrawn, 12192
NOTICES
Environmental statements; availability, etc.:
Philadelphia Electric Co. et al., 12274
University of New Mexico; correction, 12286
*Applications, hearings, determinations, etc.:*
Rockwell International Corp., 12273
University of New Mexico, 12273

**Occupational Safety and Health Administration**
PROPOSED RULES
Safety and health regulations for construction:
Excavations, 12288

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Pension Benefit Guaranty Corporation**
RULES
Multiemployer pension plans:
Valuation of plan benefits and plan assets following mass withdrawal
Interest rates, 12163

**Personnel Management Office**
RULES
Allowances and differentials:
Cost-of-living allowances and post differentials; non-foreign areas, 12131
Federal Employees Group Life Insurance:
Coverage continuation during military service, 12133
Retirement:
Federal Employees Retirement System—
General administration; interest computation, 12131
NOTICES
Agency information collection activities under OMB review, 12275

**Postal Rate Commission**
NOTICES
Complaints filed:
Coliseum, Nassau A., 12275

**Postal Service**
PROPOSED RULES
Conflict of interests; attendance at group functions, 12196

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
Arizona Diamond Jubilee Year (Proc. 5630), 12129

**Public Health Service**
*See* Food and Drug Administration

**Securities and Exchange Commission**
RULES
Information and requests; access to files and providing copies of formal orders of investigation, 12147
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 12276
Philadelphia Stock Exchange, Inc., 12278
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 12277
Philadelphia Stock Exchange, Inc., 12277

**Small Business Administration**
NOTICES
Disaster loan areas:
Maine, 12278
Texas, 12278
Meetings; regional advisory councils:
Idaho, 12279
North Carolina, 12279
Ohio, 12279
Utah, 12279

**State Department**
RULES
Foreign diplomatic and consular missions in United States, protection; guidelines, 12154
NOTICES
Meetings:
Shipping Coordinating Committee, 12279, 12280
(3 documents)

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Permanent program submission:
Pennsylvania, 12195

**Tennessee Valley Authority**
NOTICES
Agency information collection activities under OMB review, 12280, 12281
(3 documents)

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Trade Representative, Office of United States**
NOTICES
Generalized System of Preferences:
Harmonized system tariff nomenclature conversion, 12281

**Transportation Department**
*See* Federal Aviation Administration; Maritime Administration

**Treasury Department**
*See also* Customs Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 12283

---

**Separate Parts in This Issue**

**Part II**
Department of Labor, Occupational Safety and Health Administration, 12288

**Part III**
Department of Energy, Office of Conservation and Renewable Energy, 12342

**Part IV**
Department of the Interior, Bureau of Indian Affairs, 12348

**Part V**
Environmental Protection Agency, 12352

**Part VI**
Department of Education, 12360

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**
**Proclamations:**
5630.....12129

**5 CFR**
591.....12131
841.....12131
870.....12133

**7 CFR**
932.....12134
**Proposed Rules:**
979.....12185
994.....12285
1011.....12186

**9 CFR**
**Proposed Rules:**
54.....12189

**10 CFR**
**Proposed Rules:**
2.....12192
430.....12342

**12 CFR**
611.....12135
614.....12143

**14 CFR**
**Proposed Rules:**
71.....12286
75.....12286

**17 CFR**
200.....12147
203.....12147

**19 CFR**
148.....12149
172.....12149

**21 CFR**
201.....12152
510.....12153
558.....12153
561.....12153
1308.....12285
**Proposed Rules:**
561.....12193

**22 CFR**
2a.....12154

**24 CFR**
15.....12159

**26 CFR**
1.....12161
602.....12161
**Proposed Rules:**
1.....12194

**29 CFR**
2676.....12163
**Proposed Rules:**
1926.....12288

**30 CFR**
**Proposed Rules:**
938.....12195

**34 CFR**
**Proposed Rules:**
650.....12360

**39 CFR**
**Proposed Rules:**
447.....12196

**40 CFR**
52.....12164
180 (4 documents).....12165–12167
**Proposed Rules:**
180.....12198
721.....12285

**41 CFR**
101–41.....12168

**43 CFR**
2090.....12171

**44 CFR**
64.....12178

**46 CFR**
**Proposed Rules:**
276.....12199
502 (2 documents).....12208, 12212
503.....12212

**47 CFR**
73 (5 documents).....12180, 12181
**Proposed Rules:**
73 (8 documents).....12214–12216, 12285

**48 CFR**
522.....12182
552.....12182

**50 CFR**
672 (2 documents).....12183

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

# Presidential Documents

Title 3—

## The President

**Proclamation 5630 of April 10, 1987**

## Arizona Diamond Jubilee Year, 1987

**By the President of the United States of America**

**A Proclamation**

In 1912, the Territory of Arizona became the forty-eighth State to join the Union. The formation of the continental United States, "the lower forty-eight," was now complete. At the time, the long trail of American pioneering across the continent seemed complete as well. But in the three-quarters of a century since then, the people of Arizona have shown again and again that they have never lost the tenacity and pioneer spirit that gained them statehood. Our Nation is much the better thereby.

Arizona has always presented challenges and frontiers to those who would settle there—Indians, missionaries, colonists, and pioneers alike. Today's Arizonans pioneer in high technology, medical research, space programs, astronomy, and many more fields of endeavor, and Americans continue to find opportunity in this beautiful State.

That beauty, from the Grand Canyon in the north to the Saguaro National Monument in the south, will forever epitomize the scenic majesty of the American West. Because the pioneer spirit of the people of Arizona continues to epitomize the American spirit, it is most fitting that every American celebrate the 75th anniversary of Arizona statehood.

The Congress, by Public Law 100–10, has designated 1987 as "Arizona Diamond Jubilee Year" and authorized and requested the President to issue a proclamation in observance of the 75th anniversary of Arizona statehood.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1987 as Arizona Diamond Jubilee Year and call upon the people of the United States and the Federal, State, and local governments to commemorate the jubilee with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87–8605
Filed 4–13–87; 4:05 pm]
Billing code 3195–01–M

L
2
S S
2
P
5
87
M I

# Rules and Regulations

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

### Cost-of-Living Allowances and Post Differentials; Non-Foreign Areas

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule.

**SUMMARY:** The Office of Personnel Management (OPM) is modifying its cost-of-living allowance and post differential regulations to include the new Commonwealth of the Northern Mariana Islands as a non-foreign area and to authorize a 25 percent post differential for eligible Federal employees stationed there. This action is being taken to provide a pay differential for employees in the Northern Mariana Islands because they are no longer covered by the foreign area differential program administered by the Department of State.

**DATES:** Comments must be received on or before June 15, 1987. This interim rule is effective the first pay period beginning on or after December 21, 1986.

**ADDRESS:** Comments should be sent to the U.S. Office of Personnel Management, Allowances and Special Rates Division, Room 3353, 1900 E Street, NW, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Barry E. Shapiro, (202) 632–7471.

**SUPPLEMENTARY INFORMATION:** On November 3, 1986, the President of the United States issued a proclamation bringing into full force and effect the Covenant with the Commonwealth of the Northern Mariana Islands. This covenant had already been approved by the Congress of the United States on March 24, 1976 (Pub. L. 94–241). Prior to November 3, 1986, the Northern Mariana Islands were part of the Trust Territory of the Pacific. Allowances and differentials for Federal employees stationed there were administered by the Department of State under 5 U.S.C. Subchapter III (Overseas Differentials and Allowances). Because the new commonwealth is no longer a foreign area and because the Trust Territory of the Pacific no longer exists, we are modifying our regulations to include the new commonwealth as a nonforeign area covered under 5 U.S.C. Subchapter IV, Section 5941 (Allowances based on living costs and conditions of environment; employees stationed outside the continental United States or in Alaska). The differential is set at the 25 percent maximum to be consistent with that authorized for other small isolated Pacific islands.

**Waiver of Notice of Proposed Rulemaking and 30-day Delay in the Effective Date**

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. This rule is being published as an interim rule to coincide with the Department of State's decision to end coverage under its programs for Federal employees stationed in the commonwealth. The effective date of December 21, 1986, is based on State's decision to eliminate its programs in the location as of that date.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal employees and agencies.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**List of Subjects in 5 CFR Part 591**

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.
**Constance Horner,**
*Director.*

**PART 591—[AMENDED]**

Accordingly, OPM is amending 5 CFR Part 591 as follows:

1. The authority citation for Subpart B of Part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR 1943–1948 Comp., p. 792.

**§ 591.202 [Amended]**

2. Section 591.202 is amended to alphabetically add "Commonwealth of the Northern Mariana Islands" to the listing of areas covered.

3. Appendix B of Subpart B is amended to alphabetically add the entry set forth below:

| Geographic coverage | Percentage differential rate | Effective date |
|---|---|---|
| . . . . . | | |
| Commonwealth of the Northern Mariana Islands. | 25 | Dec. 21, 1986. |
| . . . . . | | |

[FR Doc. 87–8469 Filed 4–14–87; 8:45 am]
BILLING CODE 6325–01–M

### 5 CFR Part 841

### Federal Employees Retirement System—General Administration; Computation of Interest

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on these rules to implement provisions of the Federal Employees Retirement System (FERS) Act of 1986 that provide that interest be included in amounts paid as FERS basic benefits or in amounts collected by FERS. These rules describe the methodology for computing interest when interest must be paid or collected in connection with FERS basic benefits.

**DATES:** Interim rules effective May 15, 1987; comments must be received on or before June 15, 1987.

**ADDRESSES:** Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Siegelman, (202) 632–5560.

**SUPPLEMENTARY INFORMATION:** The FERS Act of 1986, Pub. L. 99–335, created a new retirement system for many

Federal employees. Employees who are covered by FERS will be covered by the basic retirement benefit, social security, and the thrift plan. OPM is responsible for administration of the basic retirement benefits. Social security benefits are administered by the Social Security Administration. The savings plan is administered by the Federal Retirement Thrift Investment Board.

These regulations provide the methodology for the computation of interest in the situations when the FERS law requires OPM to pay or charge interest. In most cases, FERS uses a variable interest rate based on the average rate of interest earned by the Fund in the preceding fiscal year. Section 841.603 provides that OPM will give notice of the applicable rate by publishing it in the **Federal Register**. The rates for previous years are—

| | |
|---|---|
| 1984 | 11 percent. |
| 1985 | 13 percent. |
| 1986 | 11.125 percent. |
| 1987 | 9 percent. |

Section 841.604 concerns interest that must be paid by employees or survivors on deposits to receive service credit. The methodology for computing this type of interest is contained in §§ 842.304 and 842.306 of this chapter. These sections are in the subpart on service credit.

Section 841.605 provides the methodology for computing interest that is included in the "unexpended balance," which is the same as the "lump-sum credit," as defined in section 8401(19) of title 5, United States Code. To the extent practical, this section uses the rule of averages (as it applies in similar cases under the Civil Service Retirement System (CSRS) by § 831.105(a) of this chapter).

FERS (unlike CSRS) provides that interest on the remaining contributions continues to accrue after retirement. Section 841.605(c) provides for computation and monthly accrual of interest (similar to the method used for CSRS survivor reduction deposits under § 841.105(h)).

Section 841.606 uses this same annual compounding and monthly accrual methodology to compute interest on survivor reduction deposits. However, the annual rate of interest in survivor reduction deposits is fixed by statute at 6 percent.

Under § 841.607, the methodology for computing overpayment interest is computed under § 845.205(b) of this chapter. That section is contained in the part on debt collection.

Under section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Delaying implementation of a methodology for interest computation during proposed rulemaking could adversely affect claimants with statutory entitlement to benefits. Such a delay would be contrary to the public interest.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees.

**List of Subjects in 5 CFR Part 841**

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
**James E. Colvard,**
*Deputy Director.*

Accordingly, OPM is amending 5 CFR Part 841 to add Subpart F to read as follows:

## PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

* * * * *

**Subpart F—Computation of Interest**

Sec.
841.601 Purpose.
841.602 Definitions.
841.603 Rate of interest.
841.604 Interest on service credit deposits.
841.605 Interest included in the unexpended balance.
841.606 Interest on survivor reduction deposits.
841.607 Interest on overpayment debts.

### Subpart F—Computation of Interest

**Authority:** 5 U.S.C. 8461.

**§ 841.601 Purpose.**

This subpart regulates the computation of interest under the Federal Employees Retirement System (FERS).

**§ 841.602 Definitions.**

"Contributions" or "deductions" means the amounts deducted from an employee's pay or deposited as the employee's share of the cost of FERS.

"Individual Retirement Record" means the record of individual retirement deductions required by § 841.504.

"Last year of service" means the calendar year in which deductions stop on the Individual Retirement Record under consideration.

"Unexpended balance" means the unrefunded amount consisting of—

(a) Retirement deductions made from the basic pay of an employee under Subpart E of Part 841 of this chapter;

(b) Amounts deposited by an employee for periods of service (including military service) for which—

(1) No retirement deductions were made; or

(2) Deductions were refunded to the employee; and

(c) Interest compounded annually on the deductions and deposits at a rate which, for any calendar year, will be equal to the overall average yield to the Civil Service Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during that fiscal year under section 8348(c), (d), and (e) of title 5, United States Code, as determined by the Secretary of the Treasury. Interest on deductions and deposits does not include interest—

(1) If the service covered by the deductions totals 1 year or less; or

(2) For a fractional part of a month in the total service.

"Year of the computation" means the calendar year when the unexpended balance is being computed.

**§ 841.603 Rate of interest.**

For calendar year 1985 and for each subsequent calendar year, OPM will publish a notice in the **Federal Register** to notify the public of the interest rate that will be in effect during that calendar year.

**§ 841.604 Interest on service credit deposits.**

(a) Interest on civilian service credit deposits is computed under § 842.304 of this chapter.

(b) Interest on military service credit deposits is computed under § 842.306 of this chapter.

**§ 841.605 Interest included in the unexpended balance.**

(a) Interest on each Individual Retirement Record is computed separately.

(b) For determining the amount of interest in the unexpended balance when none of the employee deductions have been returned (e.g., employee

refunds or at the time of retirement), the amount of interest in the unexpended balance equals the sum of the amounts of interest applicable to each calendar year's deductions. The amount of interest on each calendar year's deductions equals the sum of—

(1) For the calendar year in which the deductions were taken—

(i) Except during the last year of service, the amount of the employee's deductions for that calendar year times the rate of interest set under § 841.603 for that calendar year times the fraction whose numerator is the number of full months when deductions were withheld and whose denominator is 24;

(ii) During the last year of service, the amount of the employee's deductions for that year times the rate of interest set under § 841.603 for that year times the fraction—

(A) Whose numerator equals the sum of—

*(1)* One half times the number of months (fractional months rounded up) of that year during which the employee was employed;

*(2)* One for each full month of that year after the employee's service terminated; and

(B) Whose denominator is 12.

(2) For each calendar year after the year when the deductions were withheld but before the calendar year of the computation, the amount of the employee's deductions plus interest for prior years, times the rate of interest set under § 841.603 for that year; and

(3) For the year of the computation—

(i) If it is not the same calendar year that the deductions were withheld, the amount of the employee's deductions plus interest for prior years, times the rate of interest set under § 841.603 for that year times the fraction whose numerator is the number of full months that have been completed in the year of the computation and whose denominator is 12; or

(ii) If it is the same calendar year that the deductions were withheld, the amount of the employee's deductions for that year times the rate of interest set under § 841.603 for that year times the fraction—

(A) Whose numerator equals the sum of—

*(1)* One half times the number of months (fractional months rounded up) of that year during which the employee was employed;

*(2)* One for each full month of that year after the employee's service terminated; and

(B) Whose denominator is 12.

(c)(1) For adding interest to the unexpended balance after retirement, the unexpended balance including interest computed under paragraph (b) of this section is computed as of the time of retirement.

(2) Each month after retirement, the unexpended balance is reduced by the amount of annuity paid and interest is added to the remaining portion at the rate computed as follows:

(i) Add one to the interest rate under § 841.603 for the current year.

(ii) Raise the sum produced under paragraph (c)(2)(i) of this section to the $\frac{1}{12}$ power.

(iii) Subtract one from the result of paragraph (c)(2)(ii) of this section to produce the interest rate for the month.

(d)(1) Interest on payments of the unexpended balance will be paid for the month unless the payment has been authorized before the 5th workday before the end of the month (excluding the 31st day of 31-day months).

(2) For the purposes of paragraph (d)(1) of this section, payment is authorized when the person with authority to approve the claim approves payment.

**§ 841.606 Interest on survivor reduction deposits.**

Interest on deposits under Subpart F of Part 842 of this chapter is compounded annually and accrued monthly.

(a) The initial interest on each monthly difference between the reduced annuity rate and the annuity rate actually paid equals the amount of the monthly difference times the difference between—

(1) One and six tenths raised to the power whose numerator is the number of months between the date when the monthly difference in annuity rates occurred and the date when the initial interest is computed and whose denominator is 12; and

(2) One.

(b) The total initial interest due is the sum of all of the initial interest on each monthly difference computed in accordance with paragraph (a) of this section.

(c) Additional interest on any uncollected balance will be compounded annually and accrued monthly. The additional interest due each month equals the remaining balance due times the difference between—

(1) One and six tenths raised to the $\frac{1}{12}$ power; and

(2) One.

**§ 841.607 Interest on overpayment debts.**

Interest on overpayment debts is computed under § 845.205(b).

[FR Doc. 87-8470 Filed 4-14-87; 8:45 am]

BILLING CODE 6325-01-M

**5 CFR Part 870**

## Federal Employees' Group Life Insurance Program; Continuation of Coverage During Military Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comment.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations under the Federal Employees' Group Life Insurance (FEGLI) Program to reflect a statutory change included in the Federal Employees' Retirement System Act of 1986. This change will allow an employee who enters the military on active duty or active duty for training to continue FEGLI coverage for up to 12 months.

**DATES:** Interim regulations effective January 1, 1987. Comments must be received on or before May 15, 1987.

**ADDRESSES:** Written comments may be sent to Reginald M. Jones, Jr., Assistant Director of Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E. Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Barbara Myers, (202) 632-4634.

**SUPPLEMENTARY INFORMATION:** Pub. L. 99-335, enacted on June 6, 1986, and entitled the Federal Employees' Retirement System Act of 1986, amended the FEGLI law in several areas. One area requiring regulatory revision provides that the FEGLI coverage of an employee who enters the military on active duty or active duty for training may be continued for up to 12 months in the same way coverage is continued for employees in other types of nonpay status.

The FEGLI law has historically provided for termination of group insurance coverage during absences from civilian employment for active military duty, unless such absence was covered by military leave with pay, in order to avoid unreasonable duplication of benefits under similar Government programs for civilian and military personnel. However, as a result of the Federal Employees' Group Life Insurance Act of 1980 (Pub L. 96-427), civilian employees became eligible for improved regular group life insurance and the opportunity to individually

purchase significant amounts of optional insurance. Accordingly, requiring termination of FEGLI coverage when an employee accepts active military duty for a time period exceeding that covered by paid military leave could result in a substantial loss of insurance protection for dependents. Thus, the FEGLI law has been amended to allow employees who enter the military to maintain the same level of coverage that they had as civilian employees.

**Waiver of Notice of Proposed Rulemaking and 30-day Delay in Effective Date**

Under sections 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective retroactively. These regulations were effective January 1, 1987, because the provisions of Pub. L. 99–335 necessitating the changes became effective on that date.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

**List of Subjects in 5 CFR Part 870**

Administrative practice and procedure, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

Accordingly, OPM is amending 5 CFR Part 870 as follows:

## PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

**Authority:** 5 U.S.C. 8716.

**§ 870.501 [Amended]**

2. In §870.501, paragraph (d) is removed and paragraphs (e) and (f) are redesignated as paragraphs (d) and (e), respectively.

[FR Doc. 87–8468 Filed 4–14–87; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 932

### Olives Grown in California; Redistricting and Reapportionment of Producer Member Positions on the California Olive Committee

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule will redistrict and reapportion the eight producer member positions and alternates on the California Olive Committee (COC). The changes reflect the current acreage, production, and number of growers within the producer representation districts and are intended to provide equitable representation throughout the production area.

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400; Telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Currently, there are only seven handlers of California olives subject to regulation under the marketing order for olives grown in California. Handlers are considered small entities if gross annual revenues are less than $3,500,000. The majority of the handlers may be classified as small entities. In addition, there are approximately 1,500 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000. The majority of California olive producers may also be classified as small entities.

The Administrator of AMS has considered the impact of this regulatory action on small entities. The regulatory action in this instance is a final rule that will redistrict and reapportion the producer member positions and alternates on the California Olive Committee (COC) to foster more equitable producer representation that more accurately reflects the current olive acreage within the producer districts, the number of growers in the districts, and the tonnage produced in the districts. Furthermore, this final rule is primarily of an administrative nature and, as such, does not impose any additional costs on handlers or producers.

This rule is issued under the Marketing Agreement and Order No. 932 (7 CFR Part 932), both as amended, regulating the handling of olives grown in California. The agreement and order are effective under the Act. This action was recommended by the COC at its meeting of December 2, 1986. The COC works with the USDA in administering the marketing agreement and order program.

Notice of the proposed rulemaking was published in the **Federal Register** on March 2, 1987 (52 FR 6166). The comment period ended on March 12, 1987; no comments were received. The final rule is the same as the proposed rule.

The order provides for a committee consisting of 16 members (and alternates); eight members represent producers, and eight members represent handlers. The order further provides that the committee, with the approval of the Secretary, may redefine the districts into which the area has been divided (for purposes of producer representation) and may reapportion the membership to reflect insofar as practicable shifts in olive acreage within the districts and area, the numbers of growers in the districts, and the tonnage produced, if such changes are equitable as to producers.

The committee believes that redistricting and reapportioning the eight producer member positions and alternates will provide more equitable representation throughout the producing area. The committee based this recommendation on the current production, number of producers, and acreage as required under the marketing

order. For example, the committee noted that District 2 currently represents about 65 percent of the average production, number of producers, and acreage. The committee believes that the formation of a new producer district to represent Tulare County (currently part of District 2) will provide equitable representation throughut the production area because that county represents over 45 percent of the average production, number of producers, and acreage. District 3, representing less than 10 percent of the production, producers, and acreage, is disproportionately represented with two members.

In recognition of these shifts and to foster more equitable producer representation, the following representation and district changes will be established: In District 2, the number of producer members and alternates will be reduced from from four to one and Tulare County will be excluded from the district boundaries; in District 3, the number of producer members and alternates will be reduced from two to one with no change in the boundaries; and a new District 4 will be created comprised of Tulare County and represented by four producer members and alternates. No change will be made in representation (two members) or boundaries for District 1.

After consideration of all relevant information presented, including the proposal set forth in the notice, it is hereby found that this action will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) for the following reasons: (1) This action redistricts and reapportions the producer membership on the committee; (2) pursuant to § 932.29 of the order, the names of the nominees to fill the positions on the committee must be submitted to the Secretary prior to April 16; and (3) this action must be effective promptly for the committee to complete the nomination process and meet the deadline.

**List of Subjects in 7 CFR Part 932**

Marketing agreements and orders, Olives, California.

For the reasons set forth in the preamble, 7 CFR Part 932 is amended as follows:

1. The authority citation for 7 CFR Part 932 will continue to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 932.121 will be added to read as follows:

**§ 932.121 Producer districts.**

Pursuant to the authority in § 932.35(k), commencing with the term of office beginning June 1, 1987, "district" means any of the following geographical areas of the State of California:

(a) "District 1" shall include the counties of Glenn, Tehama, and Shasta.

(b) "District 2" shall include the counties of Mono, Mariposa, Merced, San Benito, Monterey, and all counties south thereof excluding Tulare County.

(c) "District 3" shall include all the counties of Alpine, Tuolumne, Stanislaus, Santa Clara, Santa Cruz, and all counties north thereof except those in District 1.

(d) "District 4" shall include the county of Tulare.

3. A new § 932.125 will be added to read as follows:

**§ 932.125 Producer representation on the committee.**

Pursuant to the authority in §§ 932.25 and 932.35(k), commencing with the term of office beginning June 1, 1987, representation shall be apportioned as follows:

(a) District 1 shall be represented by two producer members and alternates.

(b) District 2 shall be represented by one producer member and alternate.

(c) District 3 shall be represented by one producer member and alternate.

(d) District 4 shall be represented by four producer members and alternates.

Dated: April 10, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8450 Filed 4–14–87; 8:45 am]

BILLING CODE 3410–02–M

---

## FARM CREDIT ADMINISTRATION

## 12 CFR Part 611

## Farm Credit System Capital Corporation; Organization

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA) promulgated final regulations 12 CFR 611.1140–611.1142 (51 FR 8665, March 13, 1986) applicable to the Farm Credit System Capital Corporation (Capital Corporation or Corporation). The Capital Corporation, established under the Farm Credit Amendments Act of 1985 (1985 Amendments) was chartered by the FCA on February 24, 1986, pursuant to section 4.28A of the Farm Credit Act of 1971, as amended (Act). At the time of the publication of the final regulation, the FCA gave the public an opportunity to comment for 30 days, which period was extended until August 18, 1986 (51 FR 21331, June 12, 1986). At regular meetings, held on March 3 and April 7, 1987, the FCA Board carefully considered the public comments and adopted amendments to the regulations.

**EFFECTIVE DATE:** The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Peoples, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD Number 883–4444.

**SUPPLEMENTARY INFORMATION:** The FCA issued the regulations as final rules in order for the Capital Corporation to organize and exercise the powers conferred on the Corporation by Congress to address the financial difficulties experienced by Farm Credit System (System) institutions. Nevertheless, the FCA provided the public with the opportunity to comment and received comments from two Farm Credit districts, four agricultural cooperative borrowers, one Federal land bank association (FLBA), an organization of FLBA borrowers, the Capital Corporation, the Farm Credit Corporation of America (FCCA), one U.S. Congressman, and one U.S. Senator. The FCCA stated that its comments were made on behalf of all System institutions.

The comments, and staff's recommended revisions to the regulation in response to these comments, were considered at two meetings of the FCA Board. At its March 3, 1987 meeting, Board members considered staff's recommended revisions and identified four issues upon which they desired further discussion: the accounting procedures for the exchange of stock from the Predecessor Capital Corporation to the newly chartered Capital Corporation; the prohibition against the use of "joint employees"; the prohibition against receipt of both loss-sharing assistance and Corporation financial assistance; and the requirement for FCA "review and direction" on financial assistance. The Board revisited these issues at its April 7, 1987, meeting. At that time, the Board considered and adopted revisions to the regulation, as described below.

One commenter suggested that 12 CFR 611.1140 be amended to state expressly that the Capital Corporation may be

appointed receiver of any liquidating System institution. The FCA Board does not consider such amendment necessary. The FCA may appoint any individual or entity as a receiver or conservator of any liquidating System institution meeting the qualifications to exercise duties and responsibilities of a receiver or a conservator. If the Capital Corporation meets the qualifications at the time FCA declares a System institution insolvent and appoints a receiver, the Capital Corporation may be considered for appointment along with other qualified candidates. A specific statement in the regulations is unnecessary.

Several parties commented that the expansion of the Capital Corporation board in 12 CFR 611.1140(b) when public funds are made available is vague and should be limited to when the Capital Corporation actually receives Federal funds. The FCA Board agrees with this suggestion and has amended the regulation to state that the Corporation board will be expanded should the Secretary of the Treasury purchase any Capital Corporation obligation.

Three parties stated that the FCA-appointed directors to the Capital Corporation should not serve at the pleasure of the FCA Board Chairman but that they should only be removable for cause as are other Corporation directors. They stated that Congress intended the Corporation to be an independent part of the System and that making the FCA-appointed directors subject to removal at any time is an attempt to make the Corporation an extension of the FCA. The FCA Board disagrees with the comments. The two FCA-appointed directors on the Corporation board are intended to be representatives of the Federal Government to ensure that the Corporation carries out its very important public function. The important role of these directors is underlined by the fact that Congress increased the number of FCA-appointed directors from one to two during Senate floor action on the 1985 Amendments. The FCA cannot ensure that the directors properly serve as Federal Government representatives unless they serve at the pleasure of the FCA Board Chairman. In addition, given the fact that the System-elected directors constitute a quorum and majority of the Corporation board, the FCA cannot control or make the Corporation an extension of the FCA. Accordingly, the FCA Board declined the proposed change.

One commenter stated that in the event the FCA retains the provision on service of FCA appointed directors, then System-elected directors should serve at the pleasure of System institutions. The FCA Board has determined that the removal for cause provisions are adequate to ensure that the directors responsibly represent the respective contributing and recipient bank interests.

A Farm Credit district commented that the director appointed by the Secretary of Agriculture in the event of Treasury purchase of Corporation obligations should not serve at the pleasure of the Secretary but should be removable only for cause. The comment also stated that the regulation implied that the director could serve longer than 2 years. The FCA Board has determined that the director appointed by the Secretary should be treated similarly to the FCA-appointed directors. Congress provided for expansion of the Corporation board at the time of Treasury purchase of obligations in order to have greater Federal Government representation. The FCA Board believes that Federal Government representation can only be fully ensured by having the FCA- and Secretary-appointed directors serve at their pleasure. Therefore, the regulation remains unchanged on this issue. The FCA Board does agree, however, that the regulation should be revised to clarify that those board members appointed after Treasury Department purchase of Corporation obligations shall serve 2-year terms.

One commenter asserted that there is no statutory basis for the qualifications restricting persons serving with the FCA or any System institution within the past 5 years from also serving as FCA-appointed directors of the Capital Corporation. The commenter also stated that the prohibition on any FCA-appointed director's service as a director, officer, employee, or agent of any System institution for 2 years may be difficult to monitor or enforce. The FCA Board disagrees with both contentions. Congress intended that the FCA-appointed directors not be connected with the System and expressly prohibited "borrowers from, shareholders in, or employees or agents of any institution of the Farm Credit System" from being FCA-appointed directors in section 4.28C(a)(2)(A). Congress also directed the FCA Board in section 4.28C(a)(4) to issue regulations providing for fair and equitable representation of all public and private interests on the Corporation board. The FCA-appointed director qualifications ensure that those individuals serve the important public interest in having a sound agricultural credit system, are neither recently affiliated with the System nor the FCA, and have no intentions in doing so following service on the Corporation board.

One commenter stated that the pool of qualified candidates was unnecessarily restricted by prohibiting such affiliations 5 years before and 2 years after and suggested that the regulation be amended to 2 years before and 1 year after. The FCA Board rejected the suggestion as the FCA Board has not had difficulty in finding qualified board members based on the restrictions and deemed the restrictions otherwise appropriate.

One commenter stated that 12 CFR 611.1140(b)(2)(i) should be amended to make clear that only voting stockholders meet to conduct elections of directors rather than including preferred and nonvoting common stockholders. The FCA Board declined to adopt the suggestion. The regulation merely states that the Nominating Committee must meet prior to each election of directors at an annual or special meeting of the stockholders. Issues involving which stockholders may attend or must receive notice of the meeting are a matter for the articles of incorporation or the bylaws.

Another commenter stated that the rules governing the nomination process in 12 CFR 611.1140(b)(2)(ii) do not adequately guarantee representation of all types of System institutions and should specifically require nominations from each of the three bank systems. The FCA Board disagrees with the suggestion. Because there are five types of System lending institutions and many different service organizations and only three director positions available for election, the FCA could not ensure that all System institutional interests are represented on the Corporation board. The FCA Board believes that the categories required by the Act and incorporated in the regulation are adequate and additional restrictions may unfairly discriminate against some System institutions.

One commenter stated that the regulation should be amended to clarify that a district director is considered to represent all of the banks in a district for nomination purposes. This is incorrect. A district director is considered to be from the banking group that nominated and elected him or her. To adopt the commenter's suggestion would needlessly disenfranchise some districts where the district banks were not all recipients or contributors. This is consistent with the way the district directors refer to themselves as representing the institutions that elected them, notwithstanding the fact that they

assume a position as director of each of the three System banks.

The FCCA commented that there is no statutory basis to preclude the FCCA directors, officers, and employees from eligibility to serve on the Corporation board as provided in 12 CFR 611.1140(b)(2)(i). The FCCA further commented that even if individuals from the FCCA held all three positions that the FCCA would not have control of the Corporation. The FCA Board disagrees with these comments. The legislative history of the 1985 Amendments makes it clear that it was not intended that the Corporation become a central entity or holding company. The FCCA is a service corporation chartered by the FCA at the request of System banks to perform certain functions for those banks on a "centralized basis." Its centralization role and functions are not consistent with the intended role of the Corporation. The FCCA has been, and continues to be a source of controversy within the System. System banks chartered the FCCA to serve as a vehicle for bringing about consensus decisions and actions among its bank stockholders on issues having impact on virtually all System institutions and their stockholders, yet the FCCA does not in fact represent, nor is it supported by, all Farm Credit districts or institutions. Further, the FCCA is neither owned by, nor does it represent the interest of, PCAs or FLBAs. The FCA believes that it would not be consistent with the intended character and role of the Corporation to have that entity become entangled with controversial System agendas and issues through one or more common directorships with the FCCA. The FCA notes that the System has arranged for the FCCA and the Farm Credit Council, which is the national political lobbying arm of the System, to have a common board of directors. This is an example of how common directorships are used by the System to bring about common control of System institutions and to integrate their agendas. The FCA believes that such a result would be inappropriate in the case of the Corporation.

Another commenter stated that a new 12-month projection of net contributors and recipients as established in 12 CFR 611.1140(b)(2)(iii) should be made for each election of Corporation board directors. The FCA Board disagrees. One of the director positions is filled irrespective of whether a candidate may be from a net recipient or net contributor institution or district, thus making a new projection unnecessary. In other cases, the regulation provides that if the institution actually changes status before a new projection is made, that institution will be considered as changed.

One commenter stated that directors should not be allowed to succeed themselves but should be limited to one term. The FCA Board does not agree with the comment. Successive terms could provide continuity of leadership that may be particularly beneficial to a newly established organization such as the Capital Corporation. This is especially true with a limited duration corporation with as complex purposes to accomplish as the Capital Corporation. One comment correctly pointed out that Articles of Incorporation do not provide for removal of directors as provided in 12 CFR 611.1140(b)(2)(v) but permit the bylaws to have such provisions. The regulations at 12 CFR 611.1140(b)(2) (v) and (vi)(H) have been amended to state that the articles or bylaws may provide for removal of directors for cause.

The FCCA stated that the FCA does not have statutory authority to promulgate regulations requiring the automatic removal of directors in the instances set forth in 12 CFR 611.1140(b)(2)(vi) and that such removal is an improper matter for the Corporation bylaws. The FCA Board rejects these contentions. Section 4.28G(a) of the Act provides that the Capital Corporation has a number of corporate powers subject to the regulation of the FCA, including the power to prescribe bylaws by its board of directors. The FCA Board believes that the financial integrity of members of the Corporation board must be above reproach and, therefore, has promulgated regulations making the director positions vacant automatically if one of the enumerated events occurs.

One commenter stated that the elected director vacancy provision in 12 CFR 611.1140(b)(2)(vi)(B) unfairly removes directors that have been wrongly placed into involuntary bankruptcy and suggested that the regulation be amended to indicate that it is cause for removal if the proceeding is not dismissed within 90 days of filing. The FCA Board recognizes that directors may be subject to wrongful bankruptcy proceedings but considers 30 days ample time to have such frivolous suits dismissed. One comment stated that the causes for removal by the board of directors under paragraph (b)(2)(vi)(H) of section 611.1140 should also be specifically enumerated. The FCA Board does not consider it necessary or appropriate to state causes for removal as it would be difficult to anticipate all circumstances justifying removal and there is already a considerable body of law on removal of directors for cause.

The organization states that requiring directors to automatically vacate their positions where they have a loan with a non-System financial institution in nonaccrual or nonperforming loan status is impracticable because the Corporation is not likely to learn when a loan is in such status and such classifications require subjective judgments that may unfairly prejudice the director beyond his control. The Corporation reiterated these concerns. The organization suggests that the regulation be amended to cause the vacancy to occur when a director's loan is in default and the default is not cured within 30 days. In response to the comment, the FCA Board has amended the regulation to trigger the automatic vacancy provisions when a loan with a System institution is in nonaccrual status or a loan with a non-System institution is in default, which default is not cured within 30 days. Directors shall be under an obligation to inform the Corporation of any defaults on loans, and System institutions will be required to inform the Corporation whenever any Corporation director's loan has been placed in nonaccrual status.

The FCCA contended that a plurality interest in a corporation may not indicate control or a major influence over the affairs of the corporation and that it is inappropriate to impute the financial problems of a corporation to a shareholder. The FCCA recommended amending 12 CFR 611.1140(b)(2)(vi)(F), replacing the term "plurality" with the term "majority or controlling" interest. The FCA Board agrees that having a plurality of interest in a corporation in bankruptcy does not necessarily mean control of the corporation such that it warrants the automatic removal as a director. Therefore, the FCA Board has adopted the proposed amendment.

One agricultural cooperative trade organization stated that the grounds for automatic vacancy on the board of directors should apply equally to both elected and appointed directors. The FCA Board agrees with the comment because all Corporation directors' financial integrity should be above reproach whether they are System representatives, FCA appointees or appointees of the Secretary of Agriculture. The FCA Board amended the regulation to apply the automatic vacancy provisions to all Corporation directors (with the exception of the provision contained in the automatic vacancy provisions for removal of a director for cause by the vote of the other directors).

The FCCA commented that the 1985 Amendments do not authorize the FCA to set compensation for Corporation directors but only to set maximum levels of compensation. The FCCA further stated that the limitations in 12 CFR 611.1140(b)(5) on the compensation to directors who also serve as directors, officers, and employees of System institutions are unsound and should be eliminated or modified. The commenter suggested that the compensation of Corporation directors also serving as directors of another System institution should not be reduced by the amount received for service on other System boards. The commenter also suggested that the regulation provide for compensation of Corporation directors who are also System officers or employees and that such compensation be paid to their employers. The Corporation disagreed with this last suggestion. The Corporation also stated that Corporation directors should receive the same amount of compensation unless the director also serves as an officer or director of another System institution or service organization.

The FCA Board considers compensation of Corporation directors must be sufficient to attract qualified persons to serve and perform the very serious and complex work associated with providing financial assistance to needing System institutions and therefore deemed it necessary to set a maximum and minimum level of compensation as the same. However, Corporation directors who are officers and employees of System institutions serve, and are compensated by, their institutions on a full-time basis. Since those full-time responsibilities should naturally include representing their institution on the Corporation's board at the direction of their respective district boards, providing these individuals with additional compensation for their activities as Corporation directors was not deemed justified. This same rationale applies to Government employees who are appointed to the Corporation board by the Secretary of Agriculture. Additional compensation, up to $25,000, was deemed necessary in order to attract other qualified persons to serve on the board, in that their duties as board members are performed on a part-time basis, in addition to those of their regular occupations.

The FCCA commented that 12 CFR 611.1140(c) should provide for prompt FCA approval or disapproval of the Corporation board selection of a chief executive officer and suggested that the regulation should state that the chief executive officer should serve at the pleasure of the board. The FCA Board does not consider either of these amendments necessary. The FCA gave immediate consideration to the Corporation board proposed chief executive officer once an individual was finally selected. The 1985 Amendments clearly state that the Corporation's chief executive officer serves at the pleasure of the board and thus, repeating this in the regulation is unnecessary.

One trade organization and the FCCA commented that the regulation should expressly state that the initial capitalization of the Corporation will be done in consultation with the System. The FCA Board does not consider it necessary to repeat the language of section 4.28K of the Act in the regulations and therefore rejected this suggestion. The FCCA further commented that the FCA has no authority to require additional contributions as provided in 12 CFR 611.1141(a) in the event that the Corporation does not meet the capital levels set by the FCA. However, under section 4.3 of the Act, the FCA may establish the minimum level of capital for a System institution, including the Corporation, as the FCA, in its discretion, deems necessary or appropriate. 12 CFR 611.1141(a) merely recognizes this authority and provides that, if the FCA deems the Corporation's capital level too low, it may require additional capital, which will be obtained as with other capital in accordance with section 4.28G. The FCA has ample authority under section 4.3 and other provisions of the Act to enforce the minimum capital levels set. Accordingly, the FCA Board has rejected the suggested amendment.

Several institutions made comments regarding the various classes of stock that the Corporation is authorized to issue setting forth some of the terms and conditions of such stock. One Farm Credit district requested that the purposes of the various classes of stock be clarified. The FCCA stated that the different classes would place a substantial accounting burden on the Corporation and contended that the Corporation should be given flexibility to decide how the proceeds of preferred stock issued to System institutions should be used. 12 CFR 611.1141(b) provides the Corporation with flexibility to capitalize the Corporation in a manner that will optimize the effective use of capital and safeguard that the proceeds will be used for proper purposes. The FCA Board has determined that the System banks that are required to purchase capital stock in the Corporation are entitled to have the funds used for the limited purposes of the Corporation and to receive the benefits of earnings or recoveries that directly relate to their capital. The FCA Board does not believe that the accounting burden for such classes is significant. Finally, the FCA Board notes that the Corporation may, but is not required to, issue all classes of stock and may issue a different class if approved by the FCA.

One Farm Credit district stated that it did not understand the purpose of permitting the supervising bank to hold Class B nonvoting stock for associations as provided in 12 CFR 611.1141(b)(2). Allowing the supervising bank to hold Corporation stock on behalf of the associations reduces the stock accounting records that the Corporation must have. The requirement is not mandatory and gives the Corporation flexibility in establishing its stock registry. The FCA Board believes this flexibility should be maintained and has declined to alter the regulation.

The FCCA commented that because the 37-System banks own an identical amount of stock in the Predecessor Corporation, it may simplify accounting of the transfer of the assets to the Corporation by exchanging stock of the Predecessor Corporation on an equal par value with the Corporation and permitting any remaining value in the Predecessor Corporation in excess of par value to be treated as each bank's contribution to the capitalization of the Corporation. The FCA Board has revisited this issue and decided not to revise the regulation. Section 4.28H of the Act mandates the distribution of surplus funds of the Predecessor Capital Corporation among the System institutions that contributed funds to the Predecessor Corporation, to the extent that surplus funds remain after the extinguishing of its liabilities and the disposition of its contractual obligations. An exchange of stock at "equal par value," as suggested by the comments, would require that the surplus funds be transferred to the newly chartered Capital Corporation in some form of permanent stock, rather than surplus which would be readily available for distribution to the Predecessor Corporation's stockholders in the form of liquidating dividends. If the exchange of stock is made at "equal value," as currently required by the regulation, the remaining surplus is transferred to the newly chartered Corporation as allocated surplus (allocated to the Predecessor's stockholders). Accordingly, this surplus will be available for distribution if the surplus

remains after final liquidation of the Predecessor Corporation's assets and liabilities.

The FCCA commented that the regulations should provide that the Corporation may issue a variety of debt and security instruments to the Secretary of the Treasury in addition to Class E nonvoting preferred stock set forth in 12 CFR 611.1141(b)(5). Section 4.28G(a)(9) of the Act authorizes the Corporation to issue a variety of obligations to the Secretary of the Treasury and the FCA, including notes, bonds, debentures, capital notes, and voting and nonvoting securities. The FCA Board has determined it unnecessary to repeat this authority in the regulations but has regulated the issuance of securities by specifying the authority to issue Class E stock. This in no way limits the Corporation authority to issue notes, bonds, debentures, or capital notes.

The FCCA also commented that stock retirement issues are best left to the Corporation's board through the bylaws. The FCA Board disagrees. The 1985 Amendments make clear that the Corporation is to obtain funds for providing financial assistance through the use of transactions that require the Corporation to repay the capital funds through accumulated surpluses in accordance with FCA regulations. The FCA Board has determined that use of accumulated surplus for stock retirement must be closely related to the specific type of capital used to generate those surpluses. This gives the contributing institutions comfort that their funds will be used appropriately and returned to them as surplus funds are accumulated for their use.

The FCCA, the Corporation, and one agricultural cooperative trade organization challenged the FCA's authority to approve the Corporation's bylaws as provided in 12 CFR 611.1142(a). The FCA Board acknowledges the very important governmental and public purposes of the Corporation. These are evidenced by the detailed statutory scheme creating the Corporation, the existence of FCA-appointed representatives on the Corporation board, and the potential for direct Federal assistance to the Corporation. Greater governmental influence and control require that the operational rules of the Corporation be approved by the FCA as part of the chartering and establishment of the Corporation. Thus, the Corporation's bylaws and revisions thereto remain subject to FCA approval.

The FCCA and the Corporation commented that the statement regarding the potential sovereign immunity of the Corporation should not be attempted by regulation. The Corporation further suggested that the Corporation directors, officers, employees, and agents enjoy the same privileges and immunities as the FCA in suits arising from or related to the Corporation acting as receiver or conservator, and that the Corporation should be permitted to invoke the jurisdictional provisions of section 5.17(a)(17) of the Act. The FCA Board disagrees with both comments. 12 CFR 611.1142(b) does not attempt to confer or take away sovereign immunity of the Corporation. Such immunity can only be granted by an Act of Congress and not by regulation. The regulation merely sets forth the FCA's interpretation of the law that the Corporation is not an agency of the United States entitled to sovereign immunity and that the United States is not liable for claims against the Corporation just as the United States is not liable for claims against the System banks. Similarly, the FCA cannot by regulation give the Corporation any coverage under the jurisdictional provisions of section 5.17(a)(17) and 28 U.S.C. 2408 other than that, if any, which is already present in such provisions.

These commenters also objected to the regulatory requirement of 12 CFR 611.1142(b) that the Corporation obtain insurance to protect itself from such claims, stating the FCA had no authority to make such requirement. The FCA Board has determined that sections 4.28G(a) and 5.17(a)(14) of the Act provide the agency with ample authority to require the Corporation to obtain insurance to protect itself from claims and thus protect the assets of the Corporation. The FCCA commented that the requirement in the regulation that the Corporation board meeting be held at the principal offices of the Corporation unnecessarily restricted the Corporation from meeting at other locations and was an improper subject for regulation. On May 2, 1986, the FCA amended the Articles of Incorporation of the Corporation to enable the Corporation board to conduct meetings unrestricted by the regulation and also deleted the meeting requirement from 12 CFR 611.1142(c) (51 FR 16291).

The FCCA contends that the regulatory limits on affiliations between the directors, officers, employees, and agents of System institutions and System service organizations and those of the Corporation are too restrictive and should be deleted. A Farm Credit district stated that the Corporation should be able to contract with the System banks for accounting, legal, and funds management services. The FCCA commented that the restrictions on the ability of the Corporation to contract with other System institutions are too severe and will interfere with the Corporation's ability to operate efficiently. The organization suggested that the FCA amend the regulation to focus on the type of conflict considered impermissible and leave the Corporation free to choose those individuals or organizations that may be able to perform given tasks.

The FCA Board has determined that the restrictions on affiliation, employment, and contracting with System institutions and System directors, officers, employees, and agents are crucial to assure that Corporation policies and operations are independent, autonomous, and free from undue influence from the various System interest groups. The FCA is aware of the conflicts of interest which may arise in administering financial assistance packages. These concerns justify a prohibition against allowing any group or individual to implement the work of the Corporation that has a separate interest in seeing the work accomplished in a partisan manner for the benefit of one or more other System institutions. In order to ensure that all groups are treated fairly, the FCA Board has concluded that no one System group or individual should be in a position to influence the Corporation's activities unduly, particularly with respect to the specific areas enumerated. The FCA Board notes that the Corporation did not object to the restrictions. Therefore, the FCA Board has decided not to alter the previously imposed restrictions. With respect to persons employed by the Capital Corporation, the Board has revised the regulations to define the term "joint capacity" to clarify that individuals cannot be accountable to both the Corporation and a System institution or service organization.

The FCCA commented that the automatic approval of Corporation commercial borrowing on terms not otherwise available through loans from System institutions or through the issuance of Systemwide obligations is too restrictive and that the Corporation should be given greater flexibility to decide as a management matter the method of financing based on its own consideration of applicable factors. Alternatively, the commenter states that the regulation should provide a procedural mechanism for FCA approval of commercial borrowings not meeting the automatic appraisal provision. Congress expressly stated in section 4.28G(a)(12) that the FCA should approve the terms and conditions of the Corporation's commercial borrowings. The FCA Board has provided that such

approval is automatically granted in the regulation for borrowings on terms and conditions not otherwise available from System institutions or through issuance of Systemwide obligations. This grant of authority provides a great deal of flexibility. Commercial borrowings at more expensive rates, or on terms and conditions more restrictive than those available through System sources, are so extraordinary that they should be approved by the FCA on a case-by-case basis. The FCA Board does not consider additional approval procedures necessary.

An agricultural cooperative trade organization commented that the required FCA approval of the Corporation's debt policy in 12 CFR 611.1142(9) should be deleted, as the FCA has sufficient control of the Corporation through the board of directors. The FCA Board has determined that FCA approval of the Corporation's debt policy is necessary in view of the impact such policy may have on the ability of the Corporation to marshal System resources efficiently and thereby reduce its costs to the System and to the Federal Government.

The trade organization, the Corporation, a Congressman, the FCCA and a Senator commented that limiting eligibility for financial assistance to those System institutions that are or will become impaired within 90 days in 12 CFR 611.1142(i) is too restrictive and inconsistent with the intent of Congress, which contemplated a more liberal standard for assistance. The FCCA stated that under the regulation standards neither of the System's previously approved financial assistance packages to two of the Federal intermediate credit banks (FICBs), which were developed prior to the 1985 Amendments, would have been permissible. The Corporation contended that an institution's continued operation may be jeopardized well before its stock is impaired.

In drafting regulations relating to funding and providing financial assistance, the FCA Board has carefully considered the competing purposes of the Corporation. The Corporation must obtain funds from contributing institutions only when necessary and in a manner that least affects the contributing institutions and equitably spreads the financial burden. At the same time, it must provide assistance to institutions that have deteriorated to the point of need. The FCA Board reaffirms the determination that continued operations are jeopardized and continued agricultural credit service to creditworthy borrowers in the institution's territory is threatened when the institution's stock is impaired. At this point, section 4.28G(a)(15) requires that the institution be deemed eligible to receive financial assistance. The regulation further permits institutions to apply for assistance in the event that its stock will be impaired within 90 days. The FCA Board has concluded that any lesser standard would permit financial assistance to institutions not truly in need while taking funds from contributing institutions when not truly necessary.

An agricultural cooperative commented that 12 CFR 611.1142(i)(1)(i) should specifically enumerate the types of efforts that must be undertaken by an institution requesting financial assistance before it may apply for assistance. The FCCA states that 12 CFR 611.1142(i)(1) (ii) and (iii) imply that the Corporation cannot provide a requesting institution with financial assistance until other options have been exhausted and states that the regulation should be amended to make clear that these are not prerequisites. The purpose of these provisions is not to require that certain efforts or options must be undertaken before an institution is deemed eligible for assistance. Rather, it is to give the Corporation necessary information to evaluate the attempts made by the institution and district in order to control financial deterioration and to determine what terms and conditions may be appropriate as a part of the financial assistance package to the institution. The requesting institution must provide the information before an application is complete and the institution may be considered for financial assistance. However, there is no requirement that all other options must be attempted first.

The same commenter also stated that the regulation should detail the types of assistance a strong institution must provide to the financially impaired institution and the circumstances under which the healthy institution could refuse to assist a troubled institution. Healthy System institutions do not provide financial assistance to needing institutions directly. Under the Act and FCA regulations, the Corporation is created as the mechanism to provide financial assistance to needing System institutions. The Corporation shall require the healthy institutions to purchase stock as necessary through a formula established by section 4.28G(a)(15) of the Act and implemented by 12 CFR 611.1142(h) which considers the relative financial strength of the contributing institutions and equitably spreads the financial burden. The Corporation provides financial assistance to needing institutions under terms and conditions agreed upon by the Corporation with the institution. 12 CFR 611.1142(i)(4) states that the Corporation must require the recipient institution to make such modifications in operations as are necessary before receiving assistance. These requirements ensure that any operational practices that may have contributed to the financial deterioration are corrected. This approach helps to prevent financial assistance from maturing into additional losses and to protect the investment of the healthy institutions in the Corporation.

The commenter also questioned the role of the Farm Credit district board of directors when one district institution turns to another for assistance as implied by 12 CFR 611.1142(i)(3). Another agricultural cooperative and an agricultural cooperative trade organization contended that a needing institution should not look to other district institutions first but to institutions organized under the same title of the Act and suggested the regulation be amended to direct the Corporation to consider the financial condition of "sister" institutions. They stated that the district-first policy is not mandated by the 1985 Amendments but intended that institutions organized under the same title should be the primary source of financial assistance. Alternatively, they argued that the resources of the banks for cooperatives (BCs) should not be made part of a district-first policy because they are substantially different in membership, purpose, and market from the other district institutions. Another cooperative added that a bank from one system should not be held liable for the failures of a bank from another system merely because they are coincidentally located in the same district. Another cooperative stated that a district-first policy promoted an inefficient mobilization of resources and constituted an improper departure from section 4.4 of the Act establishing tiered liability. The FCCA supported the concept of a district-first policy.

The Farm Credit district board acts as the board of directors of each of the three district banks and is responsible for providing direction to the management of each bank. The board of directors would find itself in a conflicting position when healthy banks within its district provide financial assistance to a troubled bank in the same district. However, the Act provides the banks, including the BCs, with ample authority to share losses and

provide loan and other financial assistance to other banks, but the directors must carefully ensure that operational practices that may have contributed to the financial deterioration are corrected prior to committing the financial assistance. The BCs have the same joint and several liability on Systemwide obligations and the same financial interrelationships with the other System banks. The other banks are not merely geographically located together but are directed by the same board of directors and, in all cases but the Texas Farm Credit District, managed and operated by the same joint officers and employees.

It is appropriate that a bank or association needing financial assistance look to other institutions in its district. This approach was adopted by the System in developing previous financial assistance packages. The approach gives a Farm Credit district having financial problems within the district an opportunity to attempt district solutions prior to having the Corporation require changes in the bank as a condition of assistance. In addition, the district-first policy promotes efficiency and equity among contributing institutions. The banks within a district are more likely to know the operational problems that contributed to the financial deterioration. Finally, it is fairer to other contributing districts to require a financially able district to take care of its own problems before tapping the resources of others, particularly when the directors are responsible for directing the operations of both healthy and troubled banks. Other "sister" institutions have authority to provide assistance to each other, but the FCA Board does not agree that such assistance should be required prior to Corporation assistance. Finally, the FCA Board notes that the Corporation would only look to the other district institutions to aid the troubled institution first if the district as a whole had sufficient resources to correct the deficiency. In several cases, there may be healthy banks within a district but without the resources to assist the troubled institution. In those cases, the Corporation will consider the application for direct assistance without any intra-district bank aid.

A cooperative commented that there should be a forum for resolving disputes regarding the Corporation's rejection of a financial assistance request based on a district's having sufficient resources. The regulation clearly gives the Corporation the discretion to decide whether a Farm Credit district has sufficient resources to correct stock impairments.

The FCCA commented that the prohibition on an institution's receiving both loss-sharing assistance and Corporation assistance should be deleted pending further study. The FCA Board has reconsidered this issue in light of current conditions and determined that some institutions may need both types of financial assistance. The Board has revised the regulation to permit receipt of both loss-sharing assistance and Corporation assistance, as long as the total amount of assistance is no greater than the amount needed to cure stock impairment. The Corporation may grant financial assistance greater than that total amount only with the approval of the FCA. The Board reiterates that the limited resources of the Capital Corporation dictate its optimum use of those resources. Thus, the Board expects a limited number of requests for Board approval of Corporation assistance in amounts which, when added to loss-sharing assistance, will be greater than that necessary to cure stock impairment.

The FCCA questioned the reference in 12 CFR 611.1142(i)(3) to the "eligibility" requirements of paragraph (i)(1) of that section but not the criteria of paragraph (i)(2) of that section. The FCA Board has amended the regulation to clarify that the requirements of the former are "application" requirements and to insert the "eligibility" requirements of the latter into this paragraph.

A cooperative trade organization, the FCCA, the Corporation, and a cooperative stated that the regulatory statement in 12 CFR 611.1142(i) that any request for direct financial assistance be subject to the review and direction of the FCA should be deleted. They stated that the FCA should not grant prior approval to every financial assistance request and that the 1985 Amendments do not give the FCA such authority. The FCCA argues that this provision places the FCA in a position of directing the day-to-day operations of the Corporation. The FCA Board reviewed the comments and has revised the regulation to require that the Capital Corporation provide the FCA with periodic reports regarding financial assistance. This will enable the FCA to monitor the administration of financial assistance without requiring prior approval of assistance requests.

An organization of FLBA borrowers commented that regulatory guidelines should be established detailing how the Corporation shall restructure, refinance, reamortize, or compromise indebtedness as provided in section 4.28G(a) (11) and (20) of the Act. The FCA Board believes that the statutory provisions are clear and give the Corporation maximum flexibility and that further regulation at this time is unwarranted.

The FCCA stated that the Corporation should not attempt to acquire nonaccrual assets from healthy institutions because this will hasten the day the System must seek Federal financial assistance. The commenter contended that the sale of these loans would merely increase System costs and create another unnecessary level of loan administration without holding the originating loan officers and institutions accountable. Section 4.28G(a)(16) of the Act expressly provides that the Corporation may purchase nonaccrual assets from any System institution, making no distinction between healthy or troubled. Because the Act and FCA regulations require such assets be purchased at fair market value, the FCA Board fails to see how such purchases would necessarily increase System costs or hasten a request for direct Federal assistance. Furthermore, sale of an asset does not affect the issue of accountability of originating loan officers and institutions.

The FCCA stated that the regulatory definition of fair market value in 12 CFR 611.1142(l)(4) concentrates on certain factors, such as the knowledge that the assets conveyed will be converted to cash over some period of time, to the exclusion of other important factors which the FCCA did not mention. The FCCA suggests adopting the definition employed in the Federal income tax regulations. The FCA Board rejects the suggestion that the FCA adopt verbatim the tax definition because that definition does not provide enough assistance in valuing assets where, as here, no active market exists. The definition in the regulations is based on the tax definition and the generally accepted accounting principles relating to the absence of a market price suggesting that cash-flow estimates properly discounted for risk may aid in assigning value. The usual expenses associated with the administration of the asset during the carrying period are taken into account in estimating cash flows. The definition adopted recognizes that the Corporation and the institution will have to negotiate the purchase price for nonaccrual assets and that the price offered by the Corporation for the assets may not coincide with that amount carried on the selling institution's books. The FCA, through the process of examining both the Corporation and the selling institution, will review whether purchase prices are reasonable.

BEST COPY AVAILABLE

The FCCA also commented that the definition of nonaccrual loans in 12 CFR 611.1142 is too broadly defined to include nonperforming loans, which involve considerable subjective judgment in classification. They asserted that the subjective judgment involved in classifying nonperforming loans may lead to the Corporation's purchasing good assets. The FCA Board has reviewed this issue and has concluded that the definition of nonaccrual should be redefined to be the definition of nonaccrual provided in 12 CFR 621.2(a)(15).

**List of Subjects in 12 CFR Part 611**

Agriculture, Banks, Banking, Organization and functions (Government Agencies), Rural areas.

As stated in the preamble, Part 611, Subpart J of Title 12 of the Code of Federal Regulations is being amended as follows:

## PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

**Authority:** 12 U.S.C. 2031, 2091, 2182, 2183, 2216–2216K, 2243, 2244, 2250, 2254.

### Subpart J—Farm Credit System Capital Corporation

2. Section 611.1140 is amended by revising paragraphs (b) introductory text and (b)(1)(ii); by adding paragraph (b)(1)(iii); and by revising paragraphs (b)(2)(v), (b)(2)(vi)(B), (b)(2)(vi)(C), (b)(2)(vi)(F), (b)(2)(vi)(H), (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) to read as follows:

**§ 611.1140 Charter and Organization of the Farm Credit System Capital Corporation.**

* * * * *

(b) *Board of directors.* The board of directors of the Capital Corporation shall consist of five members, with three members to be elected by the System banks owning the voting stock in the Corporation and two members to be appointed by the Chairman of the Farm Credit Administration Board (FCA Board). The board shall be expanded by operation of law to include two additional members in the event the Secretary of the Treasury purchases any obligation of the Corporation, including stock, with the sixth board member to be appointed by the Secretary of Agriculture and the seventh member to be selected by the other six directors.

(1) * * *

(ii) *Terms.* Each appointed director shall serve a 2 calendar year term, except that the director first appointed by the Chairman shall serve a term ending December 31, 1986. Appointed directors shall serve until their successors are duly seated, shall be required to vacate their positions as provided in paragraphs (b)(2)(vi) (A) through (G) of this section, and may serve successive terms. Vacancies to terms shall be filled by appointment.

(iii) *Appointed director vacancies.* The office of any appointed director shall become vacant if any of the events in paragraphs (b)(2)(vi) (A) through (G) of this section occur to such director. All directors are required to inform the Corporation board of any loans covered by paragraph (b)(2)(vi)(F) of this section in default. System institutions having placed loans of directors in nonaccrual status must notify the Corporation board.

* * * * *

(2) * * *

(v) *Terms.* Each elected director shall serve for a term of 2 calendar years except that the initial term of the director elected to the position in paragraph (b)(2)(ii)(C) of this section shall end on December 31, 1986. Elected directors shall serve until their successors are duly seated, may be removed for cause as provided in the articles of incorporation or bylaws of the Corporation, shall be required to vacate their positions as provided in paragraphs (b)(2)(vi) (A) through (G) of this section, and may serve for successive terms. Vacancies shall be filled by election in accordance with this section.

(vi) * * *

(B) Is adjudged a debtor in an involuntary Federal bankruptcy proceeding or placed in receivership or conservatorship in a Federal or State proceeding and such proceeding is not dismissed within 30 days; or

(C) Seeks reorganization under the Federal bankruptcy laws for personal business interests or that of a corporation in which the director owns the majority or controlling interest; or

* * * * *

(F) Has a loan in his or her name, or in the name of a corporation in which the director owns a majority or controlling interest, or in the name of a partnership in which he or she is a general or limited partner, from a System institution which loan is placed by the institution in nonaccrual status, or from another financial institution, which loan is in default and such default is not cured within 30 days; or

* * * * *

(H) Resigns or is removed for cause by the remaining directors of the board in accordance with the articles of incorporation or the bylaws of the Corporation.

All vacancies shall be filled under the general nomination and election procedures set forth in this paragraph. All directors are required to inform the board of any loans covered by paragraph (b)(2)(vi)(F) of this section in default. System institutions having placed loans of directors in nonaccrual status must notify the Corporation board.

* * * * *

(4) *Expanded board membership.*—(i) *Appointment or selection.* In the event that the Secretary of the Treasury purchases any obligation of the Corporation, including stock, the board of directors of the Corporation shall be expanded to include two members as follows:

(A) One member shall be appointed by the Secretary of Agriculture; and

(B) One member shall be selected by the Corporation board of directors, including the appointee of the Secretary of Agriculture, which member shall not be a stockholder in, or a borrower from, or an employee or agent of any System institution, or a Government employee.

(ii) *Terms.* These directors shall serve 2-year terms as long as any obligations of the Corporation purchased by the Secretary of the Treasury remain outstanding but may be reappointed or reselected at the end of their respective terms. The director appointed under paragraph (b)(4)(i) (A) of this section shall serve at the pleasure of the Secretary of Agriculture but shall be required to vacate his position as provided in paragraphs (b)(2)(vi) (A) through (G) of this section. The director selected under paragraph (b)(4)(i)(B) of this section shall be removable for cause by the unanimous vote of the remaining directors and shall be required to vacate his position as provided in paragraphs (b)(2)(vi) (A) through (G) of this section.

(iii) *Vacancies.* The office of any director appointed or selected in accordance with paragraph (b)(4)(i) of this section shall become vacant if any of the events in paragraphs (b)(2)(vi) (A) through (G) of this section occur to such director. All directors are required to inform the Corporation board of any loans covered by paragraph (b)(2)(vi)(F) of this section in default. System institutions having placed loans of directors in nonaccrual status must notify the Corporation board.

* * * * * *

3. Section 611.1142 is amended by revising paragraphs (i) introductory text, (i)(3), and (l)(3) and by adding paragraph (l)(10) to read as follows:

**§ 611.1142 General corporate powers.**

* * * * *

(i) *Financial assistance.* As soon as practicable after the appointment of a chief executive officer, the Corporation shall establish procedures consistent with this section by which System institutions may apply to the Corporation for financial assistance, and shall make those procedures available to all System institutions. The Corporation may purchase nonaccrual loans and acquired property from System institutions in accordance with paragraph (j) of this section. The Corporation may also provide direct financial assistance to System institutions through stock or other equity purchases, loans, participations, cash contributions, the assumption of some portion of receiving institution's outstanding debt obligations, or any combination of the foregoing. The Corporation shall provide periodic reports to the FCA regarding applications received, the disposition of each application, the type and amount of assistance outstanding, and such other similar information as the FCA may request. The Corporation shall administer direct financial assistance to System institutions according to the standards and criteria set forth below:

* * * * *

(3) A determination of the type and amount of direct financial assistance for any System institution meeting the application requirements of paragraph (i)(1) of this section and the eligibility criteria of paragraph (i)(2) of this section shall be in the discretion of the Corporation taking into consideration the financial condition of the requesting institution, the credit needs of creditworthy borrowers served by the institution, the minimum capital requirements of the institution established under section 4.3 of the Act and 12 CFR Part 615, and the financial and economic condition of the individual Farm Credit district involved and the entire System generally. The Corporation shall structure the financial assistance package in the most cost effective manner giving the recipient institution the greatest benefit from the assistance and ensuring that the recipient institution will use the resources optimally. In no event shall the amount of direct financial assistance to any System institution, together with loss-sharing assistance to which it may be entitled under either district or Systemwide loss-sharing or capital preservation agreements, exceed that necessary to correct any impairment of voting stock or participation certificates of the institution held by its borrowers, unless approved by the FCA. The Corporation shall reject any request for financial assistance if it concludes that the Farm Credit district involved has adequate resources to correct any stock impairment of the requesting institution.

* * * * *

(l) * * *

(3) "Nonaccrual loan" means a loan defined in 12 CFR 621.2(a)(15).

* * * * *

(10) An individual serving in a "joint capacity" for the purposes of paragraph (c) of this section means an individual employed by both the Corporation and a System institution or System service organization, and accountable to each.

* * * * *

**William A. Sanders, Jr.,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87-8312 Filed 4-14-87; 8:45 am]

BILLING CODE 6705-01-M

---

## 12 CFR Part 614

## Loan Policies and Operations; Borrower Rights

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration Board (Board) adopts amendments to existing regulations governing the lending operations of Farm Credit System (System) institutions. The amendments relate to compliance by the Farm Credit System Capital Corporation (Capital Corporation) with the disclosure, forbearance, and credit review committee regulations, 12 CFR 614.4366–4367, 614.4440–4444 and 614.4513. On October 28, 1986 (51 FR 39486), the Farm Credit Administration (FCA) published final regulations relating to the disclosure of interest rates and related information; practices relating to applications for extensions of credit; forbearance policies; notice of equity retirement; access to stockholders list; and the disclosure of loan documents. The Board determined that these regulations would become effective 30 days after publication, November 28, 1986. Because certain aspects of the final regulations were substantially changed from the regulations as proposed, the Board determined that the public would have an additional 30 days, until December 30, 1986, in which to comment on those particular matters.

**EFFECTIVE DATE:** The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published.

**FOR FURTHER INFORMATION CONTACT:** Nancy E. Lynch, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On May 8, 1986 (51 FR 17035), the FCA published for comment proposed regulations implementing provisions of the Farm Credit Amendments Act of 1985 (1985 Amendments) (Pub. L. 99-205) relating to various matters, including stockholders' and borrowers' rights. On October 28, 1986, the FCA published final regulations on stockholders' and borrowers' rights. The Board determined that the regulations would be effective 30 days after publication. The Board also determined that since certain aspects of the final regulations involved considerable controversy or were substantially changed from the regulations as proposed, the public would have an additional 30 days in which to comment on such matters.

Specifically, the Board invited comments on the following four areas:

(1) Section 614.4366–4367—The requirements that each borrower be provided with the disclosure of the borrower's effective interest rate.

(2) Sections 614.4440–4444—The requirement that banks for cooperatives comply with the provisions of these sections.

(3) Sections 614.4440–4444 and 614.4513—The right of persons who seek forbearance and submit an application for the renewal, extension, deferral, etc., of the terms of an existing loan to seek review by a credit review committee of the denial of such application.

(4) Sections 614.4440–4444 and 614.4513—Whether, and under what circumstances, loans owned or participated in by the Capital Corporation should be subject to or excluded from the procedures provided in these regulations.

Comments were received from a representative of the 37 banks of the System, the Capital Corporation, banks from two System districts, and a number of non-System groups and organizations. The Board carefully analyzed and considered each comment relating to the subjects for which the Board invited comments and responds to such comments on the basis of a thorough consideration of the merits of the positions expressed. The Board has not considered those comments which addressed matters outside the four specified subject areas. However, those comments will be maintained and

considered, as appropriate, when changes to the regulations are contemplated.

**Section-by-Section Analysis and Response to Comments**

*Sections 614.4366–4367—Requirement that each borrower be provided with disclosure of the borrower's effective interest rate*

The non-System commenters strongly supported the effective interest rate disclosure provisions in the final regulations. The commenters believed the regulations are in accord with the statute and are consistent with congressional intent. The Attorneys General from Illinois, Iowa, Kansas, Minnesota, North Dakota, and Wisconsin (attorneys general) disagreed with the Board's rejection of their suggestion that the regulation require relevant information to be provided to borrowers at the time of the credit application. One commenter believed that notwithstanding the fact that all the terms and conditions may not be final, the information available would be of value to borrowers because it would be useful in negotiations with the lending institution. The attorneys general also disagreed that providing this information at the time of the credit application is "unnecessarily burdensome." Contrary to the Board's stated position, they believed that Congress intended for System institutions to have the responsibility to provide this information to borrowers early in the lending process. In addition, the attorneys general expressed concern over the Board's rejection of their suggestion that System institutions be required to disclose how the standard adjustment factors cause a change in the interest rate. The believed that mere identification of such factors is not meaningful.

The banks of one System district reiterated the comments of the Farm Credit Corporation of America (FCCA) to the proposed regulations, and claimed that the effective interest rate disclosure provisions are at variance with section 4.13 of the Farm Credit Act of 1971, as amended (Act), and with the intent of Congress. The commenter asserted that the regulations are ambiguous and do not necessarily provide borrowers with additional useful information.

The System banks' representative concurred with the FCCA's comments to the proposed regulations that section 4.13(a) of the Act was not intended to apply to outstanding loans to existing borrowers. It reiterated that there is no authority in either the 1985 Amendments or the legislative history supporting this approach. It believed that the lack of any such "retroactive disclosure" in the Truth in Lending Act and similar legislation suggests that had Congress intended retroactive disclosure it would have clearly stated so. The System banks' representative also expressed concern that because of the work involved, it was uncertain whether the System would be able to provide this information by February 28, 1987, as required by the regulations. It also argued that retroactive disclosures are neither timely nor meaningful as applied to a loan with a term of 1 year or less. It believed that there is little or no likelihood that a borrower will seek refinancing for such a loan. It recommended that the FCA exempt such loans from retroactive disclosure and claimed that such action would be consistent with the Act and would relieve a considerable burden on the System. In addition, it requested clarification of whether retroactive and prospective disclosure applies to noninvesting borrowers from System institutions.

The Capital Corporation believed it should be exempt from the interest rate disclosure requirements for a number of reasons. It argued that the Act distinguishes the Capital Corporation and its unique role from other System institutions and, that to the extent it does so, the Capital Corporation must be dealt with separately. The Capital Corporation acknowledged that section 4.14 of the Act does not authorize different treatment for it from that of other System institutions. It believed, however, that since the FCA has accorded different treatment in certain regulations to various System institutions based on their role, the same approach should be taken with the Capital Corporation. The Capital Corporation further asserted that the purpose of this disclosure requirement is not served by having it provide borrowers with such information. It contended that disclosure is intended to provide borrowers with accurate and complete information before they become legally obligated on a loan or, in the case of changes in interest rates, to afford borrowers the opportunity to obtain substitute financing. The Capital Corporation argued that since it does not originate loans and the only loans it services are nonaccrual, high-risk loans for which alternate financing is unlikely, such disclosure is unnecessary, unwarranted, and should not be required. The Capital Corporation and the System banks' representative questioned whether the FCA had incorporated a change in the final regulations with respect to loans with multiple borrowers. The preamble to the final regulations stated that the regulations had been changed to provide that disclosure to only one of the borrowers on such loans satisfies the regulations.

The Board again declines to amend the regulation to require the disclosure of information at the time of the credit application. The Board believes that requiring the institution to provide the information at the time of such application is not meaningful because the terms and conditions of the loan contract have not been finalized and may be subject to change. Disclosure is meaningful and timely as required by the Act, when the institution is in a position to make a complete and accurate disclosure, that is, when the terms and conditions of the loan contract have been finalized. However, as an editorial change, the Board has amended § 614.4367(a) to provide that disclosure must be made "prior to" the execution of the loan documents. This change is merely to clarify that the disclosure must occur before a borrower becomes legally obligated on a loan. It does not require that disclosure be given at any particular time so long as the disclosure is in advance of the execution of the loan documents. The Board continues to believe the regulations provide for the disclosure required by the Act. The Act does not obviate the need for borrowers to employ prudent business practices, including inquiries about relevant terms of the credit programs offered by System institutions about which borrowers have questions.

The Board also declines to require that System institutions explain how a change in the factors causes a change in the interest rate. The Act does not require this disclosure and the Board does not believe it would appreciably assist borrowers in evaluating the desirability of borrowing from a System institution. With respect to the question about noninvesting borrowers, the Board notes that the only disclosure which would not be required, by definition, is that of the effective interest rate.

The Board rejects the position of the Capital Corporation that it should not be required to provide the disclosures required under this subpart. Rather, the Board believes that providing the disclosures is the responsibility of the institution, including the Capital Corporation, taking the action that triggers disclosure or that is servicing the loan when the disclosure obligation arises. In the final regulations, the Board did not make the Capital Corporation

subject to the requirements of Subpart L because the Board had been informed that the Capital Corporation did not service loans. The Board was also informed that this responsibility remained with the originating institutions, which would provide the disclosures required under section 4.13 of the Act. However, in their comments, the Capital Corporation and the System banks' representative indicated that, for certain loans, the Capital Corporation is solely responsible for servicing decisions and the originating institution retains no residual authority. The Board notes that section 4.13 of the Act requires System institutions to provide certain interest rate disclosures to borrowers and section 4.28A(1) of the Act defines the Capital Corporation to be a System institution. Where the FCA has excluded a System institution from complying with a regulatory requirement, such as that identified by the Capital Corporation, it has been because the institution did not engage in the activity which the regulation governs. Whether the institution engages in unique functions is not the issue, rather it is whether the institution undertakes activities which place it within the scope of the regulation. The Capital Corporation contends that disclosures of changes in interest rates on its loans is unnecessary and not consistent with what it views as the purpose of the statute, i.e., to afford borrowers the opportunity to obtain substitute financing. However, section 4.13 of the Act does not provide for any exceptions based on a loan's status. Therefore, if only the Capital Corporation is in a position to provide these disclosures for the loans it services it must provide the disclosures required by §§ 614.4366 and 614.4367 if applicable. To clarify this point, a new paragraph has been added to § 614.4367.

The Board again rejects the System banks' position that the disclosure requirements of § 614.4367 for existing loans is inconsistent with the Act and its legislative history. The System banks' arguments are essentially no different from those submitted by the FCCA in its comments to the proposed regulations. The Board's position, as stated in the preamble to the final regulations, rebuts the FCCA's arguments. (See 51 FR 39486–39489 and 39490.) The Board notes that the comments of the non-System commenter were in favor of the final regulations and that most System institutions complied with the requirements in a timely fashion.

The Board acknowledges that an amendment to the regulation, to provide that in the case of a loan with multiple borrowers disclosure to any one of such borrowers satisfies the regulation, was inadvertently not made when the regulation was published. That amendment is incorporated in the regulations as a new paragraph in § 614.4367.

Minor editorial changes were also made to § 614.4366(e).

*Sections 614.4440–4444—Required compliance by bank for cooperatives with these sections*

Only one commenter, a bank for cooperatives, absolutely objected to requiring banks for cooperatives (BCs) to comply with this subpart. It claimed that the credit review committee provisions were intended to benefit farmers in their transactions with their lending institutions and not the BCs' corporate clientele. It asserted the regulations are outside the scope of the Act. The commenter did not cite any authority in either the Act or the legislative history to support its position. The Board concludes that absent an exception in section 4.14 of the Act for BCs, Congress intended the provision to apply to them. Accordingly, the Board believes a statutory amendment would be required to exempt BCs and no change is made to the regulations.

The System banks' representative generally opposed allowing a right of review by a credit review committee of an adverse forbearance decision of any System institutions, including BCs. This comment is discussed below.

*Sections 614.4440–4444 and 614.4513—The right of persons who request forbearance on an existing loan to seek review by the credit review committee of a denial of such request*

The System banks' representative noted a number of objections to this approach. It argued that requiring a credit review committee procedure for review of an adverse forbearance decision is outside statutory authority and inconsistent with legislative history. It asserted that the 1985 Amendments did not grant borrowers any new substantive rights to forbearance, but only required disclosure to borrowers of their right to seek forbearance. The System banks' representative believed that the inappropriateness of having a review of an adverse forbearance decision is clearly demonstrated in the case of BCs. It claimed that this type of review process does not exist for large commercial borrowers. In its opinion, having such a review procedure for BC loans, which frequently involved third party guarantors as well as collateral-sharing agreements in loan participations, could dramatically affect BC responsibilities to third parties under such agreements. It suggested that, at a minimum, the FCA should clarify that credit review committee procedures are not applicable for adverse forbearance decisions on loans subject to an existing agreement affecting the rights of non-System third parties. The System banks' representative also inquired about the degree of interaction between System forbearance procedures and other available means of protection from collection which a borrower might seek, such as a temporary restraining order enjoining foreclosure or bankruptcy. It theorized that, for example, where a borrower has availed himself or herself of any judicial protection and a court denies the borrower's forbearance request, such denial could not be reviewed subsequently by a credit review committee. In its opinion, since a judicial setting affords a borrower the opportunity to seek redress, convening a credit review committee is unnecessary.

The banks of one System district suggested that the right of review be waived where mandatory mediation is required by a State, such as in Iowa. In that instance, the banks believed that borrowers are not entitled to an appeal to the credit review committee. The Board does not believe there is statutory authority for such a waiver. In any case, the Board notes that it would seem appropriate for a borrower to exhaust all possibilities within the institution before resorting to, or being required to submit to, external resolution processes such as mediation, etc.

The Board rejects the contention of the System banks' representative that neither the Act nor the legislative history supports allowing a credit review committee to review a denial of forbearance. The System banks' representative cited no provision in the Act or the legislative history to support its interpretation. The Board agrees that the 1985 Amendments did not create a new substantive right or entitlement to forbearance. Rather, the Act and the legislative history indicate that Congress intended that the existing review procedure be modified to ensure that the borrower's application for forbearance receives a fair and objective review. As with other credit decisions, whether or not to forbear remains a business judgment to be made by the institution. The Board notes that allowing a credit review committee to review a denial of forbearance was supported by all the other commenters who addressed this issue.

The Board believes that the System banks' rationale for excluding BCs is unconvincing. Its claim that such a

review process is unheard of in the commercial context is irrelevant in light of the statutory requirements. As stated above, the Board believes a statutory amendment would be necessary to exempt BCs. Furthermore, the System banks' contention that review procedures could dramatically affect a BC's responsibilities to third parties is vague and undocumented. The credit review procedures do not provide any additional substantive rights to borrowers. Section 4.14 of the Act is merely a procedural safeguard to ensure that the institution applies its forbearance policy in an impartial and consistent fashion. If the borrower's forbearance request does not satisfy the institution's criteria, a review by the credit review committee should not change this result or affect the legal rights of any third parties involved. In addition, § 614.4513(f) specifically requires that institutions consider the effect of a forbearance decision on cosigners and guarantors.

In response to the System banks' query regarding the interaction of the credit review provisions and various legal protections against collection actions available to borrowers, the Board offers the following guidance. The determining factor is whether the court in the legal proceeding has the authority to adjust the debt of the borrower to the lending institution and has in fact done so. For example, in the bankruptcy context, the court must approve the financial plan of the debtor. Where an adjustment of a debt held by a System institution occurs, the actions of the bankruptcy court precludes the borrower from seeking additional forbearance remedies from the System institution. In contrast, where a court, whether in bankruptcy or otherwise, has not taken any action affecting the level or collectibility of the debt, and has permitted the System institution to commence or continue collection proceedings, the borrower's right to seek forebearance or a review of a denial of forbearance is unaffected.

The regulations have not been changed in response to the comments on these points.

*Sections 614.4440–4444 and 614.4513—Whether, and under what circumstances, loans owned or participated in by the Capital Corporation should be subject to or excluded from the procedures provided in these regulations*

The Capital Corporation believes that Congress intended for the originating institutions to comply with the borrowers' rights provisions, but not the Capital Corporation, because of its unique role. It referred to section 4.281(a) of the Act as prohibiting the Capital Corporation from acting other than in the interests of System institutions. The Capital Corporation also contended that because section 4.28G(a)(20) of the Act sets forth a specific procedure for processing forbearance requests, such procedure should supersede the general regulatory forbearance provisions. Furthermore, the Capital Corporation believes requiring it to comply with such provisions does not further the purpose of the Act because borrowers ordinarily will have exhausted the credit review process within the originating institution prior to the assets being transferred to the Capital Corporation.

Other commenters opposed excluding the Capital Corporation from these provisions. They asserted that the Act authorized the Capital Corporation to forbear on loans to System borrowers. One commenter stated that since the Capital Corporation is defined in the Act to be a System institution and the Act requires System institutions, without exception, to develop forbearance policies and to establish credit review committees, the Capital Corporation is required to comply with these provisions. In its opinion, if the Capital Corporation did not have to comply with these provisions, borrowers whose loans are sold to, or otherwise serviced by, the Capital Corporation would have lost the rights mandated by Congress. Accordingly, they believed the Capital Corporation should be subject to the regulations to the same extent as other System institutions.

While not specifically commenting on the propriety of applying these provisions to the Capital Corporation, the System banks' representative noted several problems with respect to extending credit review procedures for adverse forbearance decisions to the Capital Corporation. It believed that review by an association credit review committee of a credit decision made by the Capital Corporation on a loan transferred to the Capital Corporation is illogical because the association has no further responsibility for or authority over such loan. It suggested that the regulations should specify that the review of an adverse credit decision shall be by the credit review committee of the institution responsible for servicing the loan. It also advised that the FCA acknowledge that credit review committee procedures are inapplicable to loans transferred to the Capital Corporation prior to the effective date of the regulations. The System banks' representative noted that the borrowers on these loans have exhausted all forbearance-type remedies and such loans generally are in bankruptcy, foreclosure, or at least 90 days delinquent. It also recommended that a provision be added to the regulations to ensure that every borrower has an opportunity to apply for forbearance and to receive credit review committee review of such decision prior to commencement of any collection action or transfer of a loan to the Capital Corporation.

The Board rejects the contention of the Capital Corporation that it should not be required to develop a written policy on forbearance. Sections 4.13(b) and 4.14 of the Act provide, respectively, that each System institution shall develop a policy on forbearance, and establish a credit review committee. Neither section nor the legislative history provides an indication that Congress intended to allow the Capital Corporation an exemption from these provisions. In fact, section 4.28G(a)(20) of the Act specifically authorizes forbearance by the Capital Corporation. The Board agrees with the Capital Corporation that it was established to provide financial and technical assistance to System banks and associations. The Capital Corporation's activities are not incompatible, however, with a responsibility to comply with the forbearance provisions of the Act. The Capital Corporation is authorized to restructure loans, compromise indebtedness, and where determined necessary by the Capital Corporation, to liquidate loans. The regulation neither specifies the criteria the Capital Corporation must use to determine whether to forbear, nor does it require it to forbear. The forbearance regulation is intended to ensure that the Capital Corporation applies forbearance in a consistent and fair manner. The ultimate decision of whether to forbear is a business determination of the institution with the objective of maximizing the institution's recovery on the loan, taking into account the interests of stockholders, borrowers, and investors. (See 51 FR 39486, 39496.) The Board notes that other commenters supported requiring the Capital Corporation's compliance with the forbearance regulations.

In response to a comment by the System banks' representative regarding the interaction between the originating institution's credit review committee and the Capital Corporation for reviews of loans which have been transferred to the Capital Corporation, the Board further amends the regulations. The Board agrees with the System banks'

representative that until the time has elapsed for the borrower to request a review of an adverse forbearance decision, or until the originating institution's credit review committee has reached a decision, such institution should not transfer a loan to the Capital Corporation. In this manner, the borrower's right to a review of an adverse credit decision is preserved, and the possibility that an institution might transfer a loan to the Capital Corporation to avoid the institution's responsibility to provide a review of an adverse forbearance decision is eliminated. However, the regulation also provides that the institution may still take action to protect assets or collateral. The Capital Corporation remains responsible for resolving forbearance decisions arising under its forbearance policy for loans transferred to it.

**List of Subjects in 12 CFR Part 614**

Agriculture, Banks, banking, Credit, Government securities, Investments, Rural areas.

As stated in the preamble, Part 614 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as follows:

## PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 continues to read as follows:

**Authority:** 12 U.S.C. 2183, 2199, 2202, 2243, 2244, 2252(a)(10).

2. Section 614.4366 is amended by revising paragraph (e) to read as follows:

### Subpart K—Disclosure of Loan Information

**§ 614.4366 [Amended]**

* * * * *

(e) "Standard adjustments factors" means those financial elements, including but not limited to, an institution's cost of funds, operating expenses, provision for loan losses, changes in retained earnings, and capital sharing which are typically taken into consideration by an institution in adjusting the interest rate on loans.

3. Section 614.4367 is amended by revising paragraph (a) introductory text and by adding paragraphs (g) and (h) to read as follows:

**§ 614.4367 Required disclosures.**

(a) Each association shall furnish the following information in writing to a prospective borrower prior to the time the person executes the loan documents:

* * * * *

(g) The Farm Credit System Capital Corporation shall make the disclosures required by paragraphs (a) through (f) of this section, as applicable, for any loan which it services; provided, however, that if the disclosure required by paragraphs (b) and (f)(1) of this section were made by the originating institution such disclosure need not be made by the Capital Corporation.

(h) In the case of a loan involving more than one primary obligor, the requirements of paragraphs (a) through (f) of this section will be satisfied by providing the disclosures to any one of such parties.

### Subpart L—Notice of Action and Review

4. Section 614.4440 is amended by revising paragraph (c) to read as follows:

**§ 614.4440 Definitions.**

* * * * *

(c) "System institution" means:

(1) Banks for cooperatives;

(2) Federal land bank associations;

(3) Production credit associations; and

(4) The Farm Credit System Capital Corporation.

5. Section 614.4442 is amended by revising paragraph (b) to read as follows:

**§ 614.4442 Credit review committees.**

* * * * *

(b) The board of directors of each production credit association, each bank for cooperatives, and the Farm Credit System Capital Corporation shall establish one or more credit review committees. The membership of each committee shall include at least one member of the institution's board and a majority of each committee shall be composed of persons who were not involved in making the adverse credit decision under review. The duties of the members of the review committees may not be delegated to any other person, except that the duties of the board member on the committees may be delegated upon the unanimous vote of the board.

6. Section 614.4443 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 614.4443 Review process.**

* * * * *

(b) Until the time period for an applicant to request review of the decision has passed, or until the credit review committee has rendered its decision, whichever is later, an institution shall not commence any collection action or transfer such loan to the Farm Credit System Capital Corporation. This paragraph shall not prevent an institution from taking any action necessary to avoid the dissipation of assets, or the diversion or deterioration of collateral.

**William A. Sanders, Jr.,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87-8404 Filed 4-14-87; 8:45 am]

BILLING CODE 6705-01-M

---

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Parts 200 and 203**

**[Release No. 33-6710; 34-24311; 35-24365; 39-2083; IC-15669; IA-1066]**

### Amendment of Rules Concerning Access to Files and Providing Copies of Formal Orders of Investigation

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the "Commission") is amending its rules concerning access to files to provide the Director of the Division of Enforcement with authority to grant access to the Commission's regulatory files. Rule 7(a) of the Commission's Rules Relating to Investigations is also being amended to permit officials in the Regional Offices at the level of Assistant Regional Administrator or higher and officials in the Division of Enforcement at the level of Assistant Director or higher to approve the furnishing of copies of formal orders of investigation to persons testifying or producing documents in investigative proceedings.

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas B. Lawson, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 ((202) 272-2241).

**SUPPLEMENTARY INFORMATION:** Rule 30-4(a)(7) of the Commission's Rules on Organization; Conduct and Ethics; and Information and Requests currently provides the Director of the Division of Enforcement with authority to grant access to Commission enforcement files to specified entities, including domestic and foreign law enforcement authorities, and self-regulatory organizations. 17 CFR 200.30-4(a)(7). The Commission also receives requests from these entities for access to Commission regulatory files. The Commission is now

amending this rule to provide the Director of the Division of Enforcement with authority to grant access to both regulatory and enforcement files. When access is requested to materials in the Commission's regulatory files, the amended rule requires the concurrence of the head of the division or office responsible for those files before access may be granted.

Rule 7(a) of the Commission's Rules Relating to Investigations currently gives persons furnishing evidence in a formal Commission investigation a right to receive a copy of the Commission's formal order of investigation upon the approval of the Director, Associate Director or Assistant Director of the Division supervising the investigation. 17 CFR 203.7(a). If the investigation is being conducted by a Regional Office, such approval must come from the Regional Administrator. The requirement that approvals for copies of formal orders of investigation in Regional Office matters be granted by the Regional Administrator was burdensome and unnecessary. Accordingly, Rule 7(a) has been amended to extend the authority to provide copies of formal orders of investigation to officials in the Regional Offices at the level of Assistant Regional Administrator or higher and to officials in the Home Office at the level of Assistant Director or higher.

The Commission finds, in accordance with the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(A), that these amendments relate solely to agency organization, procedure, or practice, and that notice and public comment in accordance with the APA is not necessary.

**Statutory Authority**

The Commission is adopting these amendments pursuant to its authority under sections 19 and 20 of the Securities Act of 1933 (15 U.S.C. 77s and 77t); Sections 21 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78u and 78w); Sections 18 and 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r and 79t); Sections 319 and 321 of the Trust Indenture Act of 1939 (15 U.S.C. 77sss and 77uuu); Sections 38 and 42 of the Investment Company Act of 1940 (15 U.S.C. 80a–37 and 80a–41); Sections 209 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9 and 80b–11); and the Act of August 20, 1962, Pub. L. No. 87–592, 76 Stat. 344 (15 U.S.C. 78d–1 and 78d–2), as amended by the Securities Act Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 163 (June 4, 1975).

**Paperwork Reduction Act Applicability**

The amendments are not subject to the Act because it does not impose an information collection requirement.

**List of Subjects**

*17 CFR Part 200*

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

*17 CFR Part 203*

Administrative practice and procedure, Investigations, Securities.

**Text of Amendments**

*17 CFR is amended as follows:*

1. The authority citation for Part 200 continues to read as follows:

**Authority:** Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

2. Section 200.19b is revised to read as follows:

**§ 200.19b Director of the Division of Enforcement.**

The Director of the Division of Enforcement is responsible to the Commission for the supervision and conduct of all of the enforcement activities under each of the acts administered by the Commission and the investigations relating thereto. The Director is responsible also for recommending the institution of administrative and injunctive actions arising out of such investigations and enforcement activities and for the determination of whether the available evidence supports the allegations in the proposed complaint. In addition, the Director is responsible, in collaboration with the General Counsel, for the review of cases to be referred to the Department of Justice with a recommendation for criminal prosecution, and for granting or denying requests by domestic and foreign governmental authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act for access to materials in the Commission's enforcement files and, in collaboration with other involved Commission offices and divisions, regulatory files.

3. In § 200.30–4, paragraph (a)(7) is revised to read as follows:

**§ 200.30–4 Delegation of authority to Director of Division of Enforcement.**

* * * * *

(a) * * *

(7) To grant requests for access to, or copies of, materials in the Commission's enforcement and regulatory files upon written request submitted by domestic and foreign governmental authorities, self-regulatory organizations, receives, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act; *Provided* That, in matters in which the Commission has entered a formal order of investigation, requests for access to, or copies of, materials in the Commission's enforcement files shall be granted only with the concurrence of the General Counsel or his or her delegate; and *Provided Further* That requests for access to, or copies of, materials in the Commission's regulatory files shall be granted only with the concurrence of the head of the Commission division or office responsible for such files or his or her delegate.

* * * * *

**PART 203—[AMENDED]**

4. The authority citation for Part 203 continues to read as follows:

**Authority:** Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 as amended; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

5. In § 203.7, paragraph (a) is revised to read as follows:

**§ 203.7 Rights of witnesses.**

(a) Any person who is compelled or requested to furnish documentary evidence or testimony at a formal investigative proceeding shall, upon request, be shown the Commission's order of investigation. Copies of formal orders of investigation shall not be furnished, for their retention, to such persons requesting the same except with the express approval of officials in the Regional Offices at the level of Assistant Regional Administrator or higher, or officials in the Division or Divisions conducting or supervising the investigation at the level of Assistant Director or higher. Such approval shall not be given unless the person granting such approval, in his or her discretion, is satisfied that there exist reasons consistent both with the protection of privacy of persons involved in the

investigation and with the unimpeded conduct of the investigation.

* * * * *

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

April 8, 1987.

[FR Doc. 87-8383 Filed 4-14-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 148

[T.D. 86-118]

### Conforming Amendments to the Customs Regulations; Correction

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule; correction.

**SUMMARY:** In FR Doc. 86-13984, published as T.D. 86-118 on June 20, 1986 (51 FR 22513), numerous changes were made to sections of the Customs Regulations to conform to various executive, legislative, and administrative actions. Amendments concerning the personal exemptions available to returning residents were inaccurately revised, and some examples showing how to calculate duty owed were not revised in accord with the new exemption levels. This document corrects those inaccuracies.

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Samuel McLinn, Air Passenger Program Manager (566-5607).

**SUPPLEMENTARY INFORMATION:**

#### Background

T.D. 86-118, published in the **Federal Register** on June 20, 1986 (51 FR 22513), included conforming amendments to § 148.101, Customs Regulations (19 CFR 148.101), to account for the changes in personal exemptions allowed residents returning to the U.S. from American Samoa, Guam, the U.S. Virgin Islands, or elsewhere. However, the amendments did not include new figures to be used in the examples provided in that section nor was the change in the flat rate of duty on noncommercial importations, formerly 10% of $600 worth of articles imported for personal or household use, or as bona fide gifts, now 10% of $1000 worth of such articles, pursuant to item 869.00, Tarriff Schedules of the United States (19 U.S.C. 1202), included.

#### PART 148—[AMENDED]

To correct these omissions, § 148.101 is further amended in the following manner:

**§ 148.101 [Amended]**

1. In the introductory text to the section, the figure "$800" is removed from the three places it appears and "$1,000" is inserted in its place.

2. In "Example 1", the figure "$1,050" is removed and "$1,950" is inserted in its place, the figure "$300" is removed and "$400" is inserted in its place, and the table is amended to read as follows:

| | Fair retail value | Duty |
|---|---|---|
| (a) The $400 personal exemption | $400 | ..... |
| (b) Articles which have a free rate of duty | 100 | ..... |
| (c) The $1,000 flat rate of duty calculated at 10 percent | 1,000 | $100 |
| (d) Balance of articles subject to duty at rates other than the flat rate | [1] 450 | ([1]) |
| Total | [1] 1,950 | ([1]) |

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402 or 402(a), Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rates.

3. In "Example 2", the figure "$2,900" is removed and "$4,100" is inserted in its place, the figure "$600" is removed and "$800" is inserted in its place, and the table is revised to read as follows:

| | Fair retail value | Duty |
|---|---|---|
| (a) The $800 personal exemptions for residents returning from the Virgin Islands are grouped for a total of | $1,600 | ..... |
| (b) Articles which carry a free rate of duty | 100 | ..... |
| (c) The $1,000 flat rate of duty allowances calculated at 5 percent for persons arriving from the Virgin Islands are grouped for a total of | 2,000 | $100 |
| (d) Balance of articles subject to duty at rates other than flat rates of duty | [1] 400 | ([1]) |
| Total | [1] 4,100 | ([1]) |

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under sec. 402 or 402(a), Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rates.

Dated: April 8, 1987.

**B. James Fritz,**

*Director, Regulations Control and Disclosure Law Division.*

[FR Doc. 87-8378 Filed 4-14-87; 8:45 am]

BILLING CODE 4820-02-M

### 19 CFR Part 172

[T.D. 87-51]

### Customs Regulations Amendments Relating to Reduction of Petitioning Time in Liquidated Damages Cases

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to expedite the processing of cases in which liquidated damages have been assessed against a bond holder for violations of the Customs laws and regulations. The time in which the principal under the bond may petition Customs for relief from the payment of liquidated damages is being reduced from 60 days to 30 days from the date of mailing of the notice of the liquidated damages incurred. It also provides that the surety will receive notice to pay the liquidated damages, if the principal fails to either timely file a petition or to pay or make arrangements to pay the liquidated damages. The notice will be sent to the surety within 10 days after the expiration of the principal's 30-day petitioning period or as soon thereafter as possible. The surety will then have an additional 30 days from the date of such notification to petition Customs for relief from the claim for liquidated damages. This change will expedite the processing of such cases and conform the administrative petitioning time in these cases to that which currently applies to seizure and forfeiture cases.

**EFFECTIVE DATE:** May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Evelyn M. Suarez, Entry Procedures and Penalties Division, (202-566-5746).

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 172.2, Customs Regulations (19 CFR 172.2), provides procedures which are used when a petition for relief from a claim for liquidated damages for violation of the conditions of a bond is not filed or when either payment is not made to Customs or arrangements are not made to pay by any party who is liable for the payment of liquidated damages assessed for violation of any of the conditions of the bond. Currently,

§172.2 allows for a 60-day period from the mailing date of the notice of liquidated damages incurred before any collection action is taken by Customs. However, collection action may be temporarily withheld if it appears that the party liable for the payment of liquidated damages is absent from the U.S. at the time the notice is received or for more than 30 days during the 60-day petitioning period.

Current § 172.12, Customs Regulations (19 CFR 172.12), refers to the 60-day period for filing a petition for relief in liquidated damages cases and current § 172.33, Customs Regulations (19 CFR 172.33), provides for a similar 60-day period for filing supplemental petitions for relief, under certain specified conditions.

Similar 60-day filing periods formerly applied to petitions for relief filed in accordance with the provisions of Parts 162 and 171, Customs Regulations (19 CFR Parts 162, 171), concerning cases involving the seizure of merchandise subject to forfeiture or fines and penalties incurred for violations of the Customs laws and regulations. Pursuant to T.D. 85–195, published in the Federal Register on December 10, 1985 (50 FR 50287), this 60-day petitioning period was reduced to 30 days. This reduction was done to conform Parts 162 and 171 to changes made to the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*), with respect to the forfeiture and disposition of property seized by Customs. The petitioning period change was one of many changes to Parts 162 and 171, which resulted from certain provisions of the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473) and the Tariff and Trade Act of 1984 (Pub. L. 98–573). It was expected that these changes would reduce Customs costs relating to the storage and upkeep of seized property and expedite the processing of penalty and forfeiture cases resulting from the seizure of the property.

At the time the changes to Parts 162 and 171 were proposed, it was determined advisable not to include liquidated damages cases among those subject to the new 30-day petitioning period. Inasmuch as seized property is not being held by Customs in liquidated damages cases, it was believed that the same urgency did not attach to these cases. It was subsequently decided, however, that liquidated damages cases should nevertheless be subject to a 30-day petitioning period in order to expedite the disposition of these cases, thereby saving Customs needed time and resources. It was also decided that having the same petitioning period for seizure, forfeiture, and liquidated damages cases would be easier to administer since it would preclude any confusion as to when the 30-day or the 60-day petitioning period would apply.

Accordingly, by notice published in the Federal Register on April 25, 1986 (51 FR 15637), it was proposed to amend §§ 172.2(a), 172.12(b), and 172.33(a)(1) and (c)(2)(ii), Customs Regulations, to reduce the petitioning time in liquidated damages cases from 60 days to 30 days. It was also proposed to amend § 172.2(b), to reduce from "more than 30 days" to "more than 20 days," the time during the 30-day petitioning period that a party liable for the payment of liquidated damages must be absent from the U.S. in order for collection action on the case to be temporarily withheld by Customs.

It was also proposed to amend § 172.2 to provide for the referral of unsatisfied liquidated damages claims to the Department of Justice rather than the U.S. attorney. This direct referral to the Department of Justice would expedite the processing of these cases and is necessary inasmuch as cases involving unsatified liquidated damages claims are decided by the Court of International Trade rather than the local district courts before which the U.S. attorneys appear. In response to the notice, 48 comments were received. A discussion of these comments and our responses follows.

**Discussion of Comments**

*Comment*

Most of the commenters oppose reducing the petition filing time from 60 days to 30 days in liquidated damages cases. They state that requiring a petitioner to formulate and submit a petition in so limited a time period would place a tremendous burden on the petitioner, and that it would be unfair and a denial of due process. They also claim that this change may deprive petitioners of the right to effective counsel since there would be insufficient time to retain counsel and for counsel to prepare aand submit a petition.

They further claim that Customs delay in issuing liquidated damages claims makes research of pertient issues and coordination of the information gathered extremely difficult to accomplish within 30 days. Information or documents vital to a petitioner's case may be located in other countries and acquisition of this evidence may take considerable time. Consequently, the proposed reduction would result either in a flurry of requests for an extension of the petitioning period or the submission of less complete, less thoughtful petitions.

*Response*

Customs believes that in most liquidated damages cases, 30 days from the mailing date of the liquidated damages notice is a reasonable period of time for the principal to submit a petition. In most cases, the principal or importer has it its possession all the information necessary for the preparation of a petition and can be reasonably expected to submt a responsive petition within 30 days. However, Customs recognizes that in certain instances principals may require additional time to adequately respond to the liquidated damages notice. Therefore, the same criteria for granting extensions which are currently in use for penalty and forfeiture cases in § 171.15, Customs Regulations (19 CFR 171.15), will be used for liquidated damages cases.

*Comment*

The proposed change would be particularly detrimental to large corporations because the liquidated damages notice may take two or three weeks after its mailing date to be routed to the appropriate individual within the corporation. This delay would allow very little time to draft and file a petition.

*Response*

The internal handling of mail within a corporation is not a matter over which Customs has control. It is the responsibility of the corporation to see that the liquidated damages notice is routed to the appropriate individual for timely response.

*Comment*.

Conforming the petitioning period in liquidated damages cases to that in seizure ane penalty cases is inappropriate inasmuch as there is not the same concern in a liquidated damages case for urgent release and disposition of the merchandise since no merchandise is being held by Customs. The reduction of the petitioning period simply for "housekeeping" purposes at the expense of petitioners is unwarranted.

*Response*

Although no seized merchandise is being held by Customs in liquidated damages cases, there are other valid considerations that warrant the reduction of the petitioning period. One is the expedition of the disposition of these cases, saving Customs time and resources that could be spent elsewhere. Another consideration is the avoidance of confusion as to when a 30-day or a

60-day petitioning period would apply since the same 30-day period would apply in seizure, penalty, and liquidated damages cases.

*Comment*

Shortening the petitioning period in liquidated damages cases will not result in any faster disposition of the cases since most of the delays are attributable to Customs.

*Response*

We disagree. Shortening the petitioning period will allow Customs to receive and act on these cases more quickly.

*Comment*

The sureties claim that giving concurrent notice of the liquidated damages claim to them and the principal and then allowing only a 30-day petitioning period is a denial of due process since at the time the surety wrote the particular bond it assumed that there would be a 60-day period in which to petition for relief. They also claim that concurrent filing periods are unfair since a surety generally has none of the relevant information available to it at the time it receives the notice, and therefore must use much more time to seek out information from Customs, the importer and its broker. Also, Customs often does not furnish the surety with sufficient documentation to fully investigate and properly handle such claims.

The sureties also contend that since over 90 percent of the liquidated damages claims are resolved by Customs and the principal without any involvement on the part of the surety, requiring the surety to investigate and prepare petitions in all cases is simply wasteful of its resources. They believe that there should be a separate and consecutive petitioning period for sureties, to allow them to devote their attention only to those cases in which there has not been a resolution of the claim.

For the above reasons, some of the commenters contend that the 60-day petitioning period for the principal and surety should be retained. One commenter also suggests that the surety should be notified by Customs within 10 days after expiration of the period for filing a petition by the principal and that the surety should be given an additional 60 days from the date of this notification to file its petition.

*Response*

We agree that a large majority of liquidated damages cases are resolved by the bond principal without any need for involvement of the surety. We also agree that the surety generally does not have the information relating to the claim available to it at the time the notice of the claim is received.

For these reasons a separate petitioning period is warranted for the surety, to commence after it is notified of the expiration of the principal's 30-day petitioning period if no petition is filed, or the principal's failure to comply with Customs decision on the petition.

Accordingly, the proposal is being revised to include a separate, consecutive petitioning period for sureties. They will receive notification to pay the liquidated damages only if the bond principal has not complied with the notice of liquidated damages, within 10 days after either the expiration of the principal's 30-day petitioning period if no petition is filed or payment of the liquidated damages is not tendered, or if the principal fails to comply with Customs decision on the petition or as soon thereafter as possible. The surety will have an additional 30 days from the date of this notification to file a petition for relief.

*Comment*

Customs should instruct the principal to file a copy of its petition with the surety, in order to eliminate unnecessary communication between Customs and the surety and to allow the surety to make early decisions in certain cases. It is also suggested that Customs attach relevant documents, *e.g.*, bonds, entry papers and redelivery notices, to the notice of liquidated damages, to help speed up the response time of the sureties.

*Response*

It is not Customs responsibility to instruct the principal to supply any document to its surety. That is a matter for these parties to resolve between themselves. Also, Customs does not have the time nor the resources to furnish the surety with copies of bonds, entry papers, etc. These documents should be furnished by the bond principal with whom the surety has entered into a contractual relationship. Also, one of the reasons for the surety's separate 30-day petitioning period is to allow it sufficient time to collect such documentation.

After consideration of all the comments and further review of the matter, we have decided to adopt the proposed amendments with the modification noted.

Further, an additional change is being made to Part 172 in this document. The reference to the U.S. attorney in § 172.23 is being removed and a reference to the Department of Justice is being inserted, to conform that section to the identical change being made to § 172.2.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Drafting Information**

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 172**

Administrative practice and procedures, Liquidated damages.

**Amendments to the Regulations**

Part 172, Customs Regulations (19 CFR Part 172), is amended as set forth below.

## PART 172—LIQUIDATED DAMAGES

1. The authority citation for Part 172 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1623, 1624.

2. Section 172.2 is revised to read as follows:

**§ 172.2 Failure to petition for relief.**

(a) *Referral of claim to Department of Justice.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 30 days from the date of mailing of the notice of the liquidated damages incurred, as provided in § 172.1 (except for sureties who are provided a separate petitioning period under § 172.12(b)), or within such additional time as may have been granted, the district director shall promptly refer the claim to the Department of Justice.

(b) *Absence from the U.S.* If it appears that the parties liable for liquidated damages are absent from the U.S. or were absent for more than 20 days during the 30-day period referred to in paragraph (a) of this section, the district director may withhold such referral for a reasonable time unless other action is

expressly authorized by the Commissioner of Customs.

3. Section 172.12(b) is revised to read as follows:

**§ 172.12 Filing of petition for relief.**

* * * * *

(b) *When filed.*

(1) Except with respect to sureties, a petition for relief shall be filed within 30 days from the date of mailing of the notice of the liability for liquidated damages incurred unless an extension of such period has been granted by the district director.

(2) The surety will receive notice to pay the liquidated damages if the principal fails to either timely file a petition or to pay or make arrangements to pay the liquidated damages. The notice will be sent to the surety within 10 days after the expiration of the principals 30-day petitioning period or as soon thereafter as possible. The surety will then have an additional 30 days from the date of this notification to file its own petition for relief.

**§ 172.23 [Amended]**

4. Section 172.23 is amended by removing the words "U.S. attorney," and by inserting, in their place, the words "Department of Justice."

5. Section 172.33 is amended by revising paragraphs (a)(1) and (c)(2)(ii) to read as follows:

**§ 172.33 Supplemental petitions for relief.**

(a) *Time and place of filing.* If the interested parties are not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director by the interested parties. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision: or

* * * * *

(c) * * *

(2) A second supplemental petition will not be considered except in one of the following circumstances: * * *

(ii) If it is filed within 30 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

* * * * *

**William von Raab,**
*Commissioner of Customs.*

Approved:
**Francis A. Keating, II,**
*Assistant Secretary of the Treasury.*
March 24, 1987.
[FR Doc. 87-8377 Filed 4-14-87; 8:45 am]
BILLING CODE 4820-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 201

[Docket No. 82N-0395]

## Aspartame as an Inactive Ingredient in Human Drug Products; Labeling Requirements; Postponement of Effective Date

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; postponement of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a postponement of the effective date for a final rule concerning the labeling of aspartame as an inactive ingredient in human drug products. The new effective date (October 20, 1987) applies only to the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient declare the amount of phenylalanine in each dosage unit. April 20, 1987, remains the effective date for the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient bear a statement alerting phenylketonurics that the product contains phenylalanine. The agency is taking this action in response to two citizen petitions that requested a postponed effective date to reduce the economic burden caused by the labeling change required by the final rule published in the **Federal Register** of January 20, 1987 (52 FR 2108).

**DATES:** April 20, 1987, remains the effective date for the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient bear a statement alerting phenylketonurics that the product contains phenylalanine. October 20, 1987, is the new effective date for the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient declare the amount of phenylalanine in each dosage unit. Written comments by May 15, 1987.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Wilczek, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 20, 1987 (52 FR 2108), FDA issued a final rule (21 CFR 201.21) declaring that aspartame when used at a level no higher than reasonably required to perform its intended technical function is safe for use as an inactive ingredient in human drug products, provided that persons with phenylketonuria, who must restrict carefully their phenylalanine intake, are alerted (1) to the presence of phenylalanine in the drug product and (2) to the amount of the ingredient in each dosage unit. The effective date of this final rule was to be April 20, 1987.

The agency has received two citizen petitions (Docket Nos. 82N-0395/CP00002 and 82N-0395/CP00003) in which two manufacturers requested that the agency postpone the effective date of the final rule until October 20, 1987. The petitions are on file in the Dockets Management Branch. The petitions state that the effective date of April 20, 1987, imposes a heavy economic burden on the petitioners.

One petitioner markets three products that contain aspartame and contends that, in order to meet the April 20, 1987, effective date, approximately 1.5 million packages of finished goods will have to be scrapped, as well as supplies of cartons and bottle labels equivalent to an additional 6 million packages. The petitioner also contends that, due to the long lead time in changing artwork for 22 different printed components (labels and cartons), the products would have to be out of stock for varying periods of time. The petitioner points out that the three marketed products already carry a statement alerting phenylketonurics to the presence of phenylalanine and identify aspartame as an inactive ingredient.

The second petitioner markets one product that contains aspartame and contends that, in order to meet the April 20, 1987, effective date, approximately $250,000 worth of finished product and $6,000 in unusable cartons and labels will have to be destroyed. The petitioner also contends that the manufacturer's

product will be out of stock nationwide for a period of time after April 20, 1987, until revised packaging materials can be obtained. The petitioner points out that the product's current labels clearly advise phenylketonurics of the presence of phenylalanine.

The agency agrees that the April 20, 1987, effective date for the final rule could be economically burdensome on manufacturers who would be required to relabel their products. Further, the agency does not believe that the absence of the declaration of the amount of phenylalanine per dosage unit, for a limited period of time, on products that carry a warning and declare the presence of phenylalanine, would constitute a risk to phenylketonurics (see 52 FR 2110). For this reason, the agency has decided to delay until October 20, 1987, the requirement in 21 CFR 201.21 that the labeling of all human drug products containing aspartame as an inactive ingredient declare the amount of phenylalanine per dosage unit. The agency, however, strongly urges all manufacturers to bring their labels and labeling into full compliance with 21 CFR 201.21 as soon as possible.

The agency believes that marketing of products containing aspartame without the statement alerting phenylketonurics to the presence of phenylalanine is a potential health hazard. Therefore, April 20, 1987, remains as the effective date of the requirement in 21 CFR 201.21 that the labeling of all human drug products containing phenylalanine as an inactive ingredient bear a statement alerting phenylketonurics to the presence of phenylalanine in the drug product.

The Commissioner of Food and Drugs finds for good cause under 5 U.S.C. 553 (b) and (d)(1) and (3) and under 21 CFR 10.40(e)(1) that notice and comment in this rulemaking to delay the effective date would be impracticable and unnecessary. Because of the short period of time involved in this postponement, together with the imminence of the effective date and the significant economic burden that would be imposed on manufacturers if required to relabel drug products containing aspartame that bear labeling alerting phenylketonurics to the presence of phenylalanine in the products before the new effective date, the Commissioner finds that good cause exists to postpone until October 20, 1987, the effective date of the requirement of 21 CFR 201.21 that the labeling of all human drug products containing phenylalanine as an inactive ingredient declare the amount of phenylalanine per dosage unit.

The agency, nevertheless, is providing a 30-day comment period during which it will accept comments on the decision to postpone the effective date. Interested persons may, on or before May 15, 1987, submit to the Dockets Management Branch (above address) written comments regarding this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. If FDA decides on the basis of the comments received that any change is necessary, the agency will publish notification of this change in the **Federal Register.**

Dated: April 8, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-8368 Filed 4-14-87; 8:45 am]

BILLING CODE 4160-01-M

---

**21 CFR Parts 510 and 558**

## Animal Drugs, Feeds, and Related Products; Tylosin

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Garver Feed & Supply Co., Inc. The NADA provides for use of a Type A article containing 0.8 gram of tylosin per pound for making Type C swine feed. FDA is also amending the regulations to remove the firm from the list of sponsors of approved NADA's. In a notice published elsewhere in this issue of the **Federal Register,** FDA is withdrawing approval of the NADA.

**EFFECTIVE DATE:** April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register,** FDA is withdrawing approval of Garver Feed & Supply Co.'s NADA 119-145. The NADA provides for use of a 0.8-gram-per-pound tylosin (as tylosin phosphate) Type A article for making a Type C swine feed. This document removes 21 CFR 558.625(b)(70) that reflects approval of the NADA. Additionally, since the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600(c) (1) and (2) are amended to remove the firm from the list of sponsors of approved NADA's.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 558 are amended as follows:

### PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

**Authority:** Sec. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Garver Feed & Supply Co., Inc.," and in paragraph (c)(2) by removing the entry for "020966."

### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.625 [Amended]**

4. Section 558.625 *Tylosin* is amended by removing paragraph (b)(70) and reserving it for future use.

Dated: April 8, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-8362 Filed 4-14-87; 8:45 am]

BILLING CODE 4160-01-M

---

**ENVIRONMENTAL PROTECTION AGENCY**

**21 CFR Part 561**

**[FAP 6H5499/R883; FRL-3186-6]**

## Pesticide Tolerances for Metalaxyl; Certain Feed Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for the combined residues of the fungicide metalaxyl and its metabolites in or on certain feed commodities. This regulation, to establish maximum permissible levels for residues of metalaxyl in or on these commodities, was requested in a petition, by Ciba-Geigy Corp. Elsewhere in this issue of the **Federal Register**, tolerances for metalaxyl in or on various raw agricultural commodities are also being established.

**EFFECTIVE DATE:** Effective on April 15, 1987.

**ADDRESS:** Written objections, identified by the document control number [FAP 6H5499/R883], may be submitted to the: Hearing Clerk (A–110), Rm. 3708, Environmental Protection Agency, Rm. 708, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Lois A. Rossi, Acting Product Manager (21), Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of April 30, 1986 (51 FR 16106), which announced that Ciba-Geigy Corp., Agricultural Division, P.O. Box 11422, Greensboro, NC 27409, submitted food/feed additive petition 6H5499 to the Agency proposing to amend 21 CFR Parts 193 and 561 by establishing regulations permitting the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)*N*-(methoxyacetyl)alanine, methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine, methyl ester, each expressed as metalaxyl, in or on the commodity dry tomato pomace at 20.0 ppm.

Ciba-Geigy subsequently amended the petition (52 FR 8526, March 18, 1987) by adding sugar beet molasses at 1.0 ppm and revising the commodity description "dry tomato pomace" to read "tomato pomace (dry and wet) at 20.0 ppm". The Agency, however, inadvertently omitted in the amending notice the inclusion in the commodity description the term "wet" at 20.0 ppm and accordingly is corrected in this final rule to read

"tomato pomace (dry and wet).....20.0".

No comments were received in response to the notices of filing.

The toxicological data and other relevant information submitted in the petition are discussed in a related document establishing tolerances in or on various raw agricultural commodities which appears elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the feed additive regulation is sought and it is concluded that the fungicide may safely be used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) et seq.). Therefore, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this rule in the **Federal Register**, file written objections with Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the ground for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 606–612), the Administrator has determined that regulations establishing new feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1982 (46 FR 24945).

**List of Subjects in 21 CFR Part 561**

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 6, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore 21 CFR Part 561 is amended as follows.

**PART 561—[AMENDED]**

1. The authority citation for Part 561 continues to read as follows:

**Authority:** 21 U.S.C. 348.

2. Section 561.273(a) is amended by removing the entries for "tomato pomace, dry . . . 16.0" and "tomato pomace, wet . . . 5.0" and adding the following commodities to read as follows:

**§ 561.273 Metalaxyl.**

(a) * * *

| Parts per million |
|---|
| . . . . . |
| Sugar beet molasses ..... 1.0 |
| Tomato pomace (dry and wet) ..... 20.0 |
| . . . . . |

[FR Doc. 87–8275 Filed 4–14–87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF STATE

**22 CFR Part 2a**

**[108.860]**

**Guidelines on Protection of Foreign Missions**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Diplomatic Security Service publishes and disseminates these guidelines pertaining to the management and disbursement of congressionally appropriated funds destined to improve the security environment of Foreign Diplomatic and Consular Missions and the attendant Officials resident in the United States, and to assist state and local municipalities through the reimbursement of monies to jurisdictions whose law enforcement agencies provide "Extraordinary Protection" to the supra Missions and Officials. Fundamental guidelines are necessary to establish an equitable program that will: take into account the regional variances of police salaries; capabilities and experiences in the protective security aspects of law enforcement; consider the concentration of exile and ethnic communities that could politically impact on the security of certain foreign missions; provide security commensurate with the level of threat, and in keeping with the U.S. Government commitment to counter terrorism and fulfill its obligations under international law, treaties and conventions.

**EFFECTIVE DATE:** May 15, 1987.

**ADDRESS:** Protective Liaison Division, Diplomatic Security Service, U.S. Department of State, Washington, DC, 20520.

**FOR FURTHER INFORMATION CONTACT:** Johnny W. Guy, or Michael J. Tretola, Protective Liaison Division, (202) 673–3881.

**SUPPLEMENTARY INFORMATION:** The Foreign Relations Authorization Act of 1985 (Pub. L. 99–93) sets forth a program entitled "Extraordinary Protective Services for Foreign Missions," under Section 126. Historically the Federal Government has relied upon state and local law enforcement authorities to provide adequate protective security measures to Foreign Missions and Officials located in their respective jurisdictions. In recent years, terrorism, demonstrative activity, and reciprocity demands from foreign governments have increased at a rate exceeding the financial and manpower capabilities of local municipalities, who repeatedly sought federal financial assistance for services they deemed were a federal responsibility inasmuch as the requests were considered beyond normal police activity extended to all persons and property within their jurisdictions. These guidelines attempt to explain the program and the conditions under which reimbursement may be claimed and approved. Circumstances and procedures are specified in a step by step regulatory manner; sources of information and contacts within the Diplomatic Security Service are provided; and definitions of pertinent language are explained. This will insure that the program will be interpreted and applied identically in jurisdictions throughout the U.S. The Department of State has realized for several years that state and local governments have been in financial difficulty with respect to the numerous requests tendered in behalf of foreign mission protection. To this end, the Diplomatic Security Service has worked in close concert with our own legal advisors, several major city police departments, and numerous committees and members of Congress developing an equitable reimbursement program to alleviate much of the financial burdens shouldered by local municipalities.

The Protective Liaison Division did not receive any remarks or comments with respect to these rules published in 51 FR 28391 on August 7, 1986.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a substantial economic impact on a substantial number of small entities."

The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

**List of Subjects in 22 CFR Part 2a**

Foreign missions, Foreign officials, Security measures.

In consideration of the foregoing, the Diplomatic Security Service proposes that in Chapter I of title 22, Code of Federal Regulations Part 2a be added as follows.

Dated: March 25, 1987.

**Louis Schwartz,**

*Deputy Assistant Secretary for Diplomatic Security and Director, Diplomatic Security Service.*

## PART 2a—DEPARTMENT OF STATE GUIDELINES ON PROTECTION OF FOREIGN MISSIONS

Sec.

2a.1 Purpose.
2a.2 Definitions.
2a.3 Bureau of Diplomatic Security programs.
2a.4 Coordination with law enforcement and intelligence agencies.
2a.5 Diplomatic reciprocity.
2a.6 Location of foreign missions.
2a.7 Provision of protective services generally.
2a.8 Requests from State and local governments for protective assistance.
2a.9 Provision of protective services in cases of extraordinary protective need.
2a.10 Reimbursement for protective services provided by State and local authorities.
2a.11 Special rules for reimbursement.
2a.12 Extraordinary protective services in cases of urgency.
2a.13 Protective security contract services.
2a.14 Foreign Missions Act determination.
2a.15 Supplementary guidelines; State and local agreements.
2a.16 Effective date: retroactive application.
2a.17 Contact for information.

**Authority:** Title II of the State Department Basic Authorities Act of 1956, added by the Foreign Missions Act of 1982 (Pub. L. 97–241, 96 Stat. 273, 282), 22 U.S.C. 4301–4313; the Foreign Relations Authorization Act of 1985 (Pub. L. 99–93, 99 Stat. 417), 22 U.S.C. 4314; the Foreign Missions Amendments Act of 1983 (Pub. L. 98–164, 97 Stat. 1017, 1044), Title III, U.S.C. Sections 202 and 208, as amended (Pub. L. 97–416, 96 Stat. 2089); Executive Order No. 12478, effective October 1, 1984; and Sec. 4, 63 Stat. 111, as amended (22 U.S.C. 2658).

### § 2a.1 Purpose.

(a) The purpose of these guidelines is to establish a program administered by the Bureau of Diplomatic Security of the Department of State, under which the Department can review and promote coordination between federal, state and local security authorities in the protection of foreign missions in the United States, and can assist in the provision of protective services for such missions. State and local governments of the United States will continue to have the primary responsibility for law enforcement within their respective jurisdictions. This program does not establish any legal entitlement to assistance either for a foreign mission or for any State or local government or authority. The Bureau of Diplomatic Security will maximize available federal assistance through coordination of programs and through limited federal financial assistance by contract or reimbursement for certain protective services in cases of extraordinary protective need, to the extent funds are available therefore.

(b) This program will assist the United States to carry out its international obligations relating to the protection of foreign diplomatic and consular and international organization personnel and premises in the United States under the Vienna Convention on Diplomatic Relations (23 UST 3227, TIAS 7502), the Vienna Convention on Consulor Relations (21 UST 77, TIAS 6820), the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (28 UST 1975, TIAS 8532), the Convention to Prevent and Punish Acts of Terrorism (27 UST 3949, TIAS 8413), international agreements relating to organizations such as the United Nations Headquarters Agreement (61 Stat. 3416, TIAS 1899 (Pub. Law 80–357), and other applicable multilateral and bilateral agreements and provisions of international law.

(c) The program will include the following—

(1) Foreign Missions, generally—Extraordinary protective services may be provided directly through the Department of State, or by reimbursement for services to state and local governments or contract;

(2) Missions to International Organizations—Extraordinary protective services may be provided by reimbursement to State or local officials, to missions to certain international organizations, such as the United Nations, under title 3 of the U.S. Code, 202 and 208.

(d) The provisions of these guidelines may be applied to protective assistance under both paragraph (a) and (b) of this section unless otherwise stated therein or separate standards or criteria are required by applicable law. Supplementary guidelines may be issued

by the Department of State from time to time in order to implement these guidelines in particular jurisdictions. This part is authorized by the Foreign Missions Act of 1982 (Pub. L. 97–241, 96 Stat. 273, 282), the Foreign Missions Amendments Act of 1983 (Pub. L. 98–164), title 3, secs. 202 and 208 of the U.S. Code, and Executive Order No. 12478.

**§ 2a.2 Definitions.**

For purposes of these guidelines—

(a) "Assistant Secretary" means the Assistant Secretary of State for Diplomatic Security.

(b) "Deputy Assistant Secretary" means the Deputy Assistant Secretary of State for the Diplomatic Security Service; any authority granted the Deputy Assistant Secretary under these regulations may be exercised by the Assistant Secretary as appropriate.

(c) "Foreign mission" or "foreign diplomatic mission" means;

(1) Any mission in the United States involving diplomatic, consular, or other governmental activities of a foreign government or an organization representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States, or

(2) Any public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. 288–288f) or a public international organizational agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs; or

(3) An official mission to a public international organization, including any real property and personnel of such a mission or public international organization.

(d) "Protective service" means law enforcement and security measures employed to assure proper functioning of diplomatic activities and to prevent injury or harm to personnel or facilities of foreign missions.

(e) "Extraordinary protective need" means the existence of a threat of violence, or other circumstance, as determined by the Deputy Assistant Secretary which requires extraordinary security measures which significantly exceed those which law enforcement authorities can reasonably be expected to take.

(f) "Extraordinary protective services" means protective services provided or authorized in cases determined under these guidelines to constitute an extraordinary protective need.

(g) "Metropolitan area" means a city, county, or other political subdivision of a State, and those areas related thereto determined by the Deputy Assistant Secretary to constitute a single protective area for purposes of these regulations.

(h) "State" means a state of the United States, the District of Columbia, Puerto Rico, Guam and all territories under the jurisdiction of the United States.

(i) "United States Mission" means the official US government mission to a public international organization, such as the United States Mission to the United Nations ("USUN").

(j) Determinations with respect to the meaning and applicability of terms used in the Foreign Missions Act and under these regulations are committed to the discretion of the Secretary of State.

**§ 2a.3 Bureau of Diplomatic Security programs.**

(a) The Bureau of Diplomatic Security will be responsible, in coordination with United States Missions as appropriate, for implementing through its constituent field offices upon request and subject to availability of resources, foreign mission security programs including, but not limited to:

(1) Assessment of available federal, state and local protective resources for a particular jurisdiction, taking into account the number of foreign missions and circumstances specific to each jurisdiction;

(2) Assistance in planning and coordinating the provision of protective security; and

(3) Regulatory functions otherwise required by these guidelines.

(b) The Protective Liaison Division (DS/PT/PL) will be the office responsible for the overall coordination of this program. Information of a potential threat to a foreign diplomatic establishment or personnel will be received and evaluated for purposes of these guidelines from:

(1) U.S. intelligence or law enforcement agencies;

(2) State or local law enforcement agencies;

(3) Bureau of Diplomatic Security Field Office, Threat Analysis Division and Regional Security Offices;

(4) Department of State country desk offices and other appropriate regional offices, United States Missions, the Office for Counter-terrorism and Emergency Planning, the Office of Foreign Missions, and the Bureau of Intelligence and Research;

(5) Foreign diplomatic establishments;

(c) DS/PT/PL will evaluate this information in concert with the Threat Analysis Division and recommend to the Deputy Assistant Secretary the appropriate level of protective coverage required, to be reviewed daily or as required.

(d) Bureau of Diplomatic Security Field Offices, together with the appropriate United States Mission, will be responsible for the foreign diplomatic establishments in their area of jurisdiction. The Field Offices will institute necessary procedures and practices in regard to the protection of foreign missions and officials. Each Field Office will designate an agent as Security Coordinator who will be responsible for primary coordination with DS/PT/PL, the Consular community, local law enforcement and private security firms.

**§ 2a.4 Coordination with law enforcement and intelligence agencies.**

(a) In order to coordinate and allocate their respective agency resources, the Deputy Assistant Secretary shall consult regularly with federal law enforcement and intelligence agencies, including the Federal Bureau of Investigation and the United States Secret Service, concerning assistance programs under these guidelines. Nothing in these guidelines shall preclude or limit the authority of the United States Secret Service to provide protective services pursuant to 3 U.S.C. 202 or 18 U.S.C. 3056 at a level commensurate with protective requirements as determined by the Secret Service.

(b) The Deputy Assistant Secretary shall consult and coordinate with state and local law enforcement agencies with respect to such matters as planning for foreign mission protection, communications coordination, and federal assistance under this part.

**§ 2a.5 Diplomatic Reciprocity.**

(a) The Deputy Assistant Secretary shall coordinate any request by a foreign mission or by a state or local government for assistance under these guidelines for the provision of protective services with the Director of the Office of Foreign Missions of the Department of State. OFM shall review the treatment accorded United States missions abroad, and make recommendations with respect to the impact of any such services provided under these guidelines on reciprocity and national security interests of the United States.

(b) No act or omission by any governmental authority under these guidelines shall be construed either as limited or as establishing in any way the entitlement of any person, property,

premises, or mission to any privileges or immunities otherwise granted or denied under applicable law.

**§ 2a.6 Location of foreign missions.**

(a) The Deputy Assistant Secretary shall review with the Director of the Office of Foreign Missions all existing and proposed locations of foreign missions, including, but not limited to any notification under the Foreign Missions Act to the Director by a foreign mission of a proposed acquisition, modification or use of real property. In coordination with a United States mission to an international organization, as appropriate, and with local authorities in all cases, this review shall cover security factors related to such locations, such as the availability of local resources with respect to particular locations, and whether such location might preclude adequate protection, or could result in excessive requests for assistance in providing protective services under these guidelines.

(b) The Deputy Assistant Secretary shall in appropriate cases recommend to the Director of the Office of Foreign Missions that a proposed acquisition or existing use by a foreign mission be dispproved, or conditions be attached thereto under authority of the Foreign Missions Act (22 U.S.C. 4304 and 4305) to facilitate the rendering of appropriate protection.

**§ 2a.7 Provision of protective services generally.**

State and local governments of the United States have as a part of their normal law enforcement functions the responsiblity to provide security to persons or property within their jurisdictions, to include foreign missions. Federal assistance intended to supplement state and local protective services shall be in accordance with these guidelines or otherwise as authorized by law.

**§ 2a.8 Requests from State and local governments for protective assistance.**

(a) In cases where a State or local authority or foreign mission believes that an extraordinary protective need exists, it may request assistance from the Department of State in providing protective services. The Bureau of Diplomatic Security may request that protective services be provided. Requests shall be made to the Deputy Assistant Secretary (Diplomatic Security), Department of State, Washington, DC 20520 directly or through designated Bureau of Diplomatic Security Field Offices, or through a United States Mission if appropriate. A request under this paragraph, except as provided in § 2a.12 of these guidelines shall:

(1) Be preceded by consultation between State or local authorities and the appropriate Bureau of Diplomatic Security Field Office, as well as the United States Mission, as appropriate;

(2) If related to a scheduled event or visit, be submitted in advance of the anticipated extraordinary protective need;

(3) Contain sufficient detail to allow the Deputy Assistant Secretary to make an informed determination of extraordinary protective need, including: the location of the foreign mission(s) or activities, together with any secondary locations involved; a description of the circumstances believed to give rise to the extraordinary protective need, including, in the case of a diplomatic visit, the name and title of the visting foreign official or dignitary, the temporary domicile(s) of the visiting offical or dignitary, and anticipated schedule in the United States;

(4) If from a state or local agency, include a detailed estimate of the resources required to provide protective services commensurate with extraordinary protective need (including approximate number of personnel by grade or rank, service, equipment and facilities), and an estimate of the cost of such resources; and

(5) Be accompanied by a security review by the appropriate Bureau of Diplomatic Security Field Office or by the United States Mission to an international organization.

(b) In all cases involving requests for assistance in providing extraordinary protective services, except for as provided in § 2a.13, the Deputy Assistant Secretary, in consultation with the United States Mission where appropriate, shall determine whether, for purposes of these guidelines, assistance may be considered for protective services, and whether such assistance may include direct deployment of Bureau of Diplomatic Security personnel, contract security assistance or reimbursement to state and local authorities. An analysis of security factors shall take into account potential or actual violence or interruption of diplomatic activities including, but not limited to specific events or patterns or activity involving—

(1) Confrontations between nationalist or other groups,

(2) Threats or acts of violence by terrorist or other groups,

(3) A specific diplomatic or international occurrence,

(4) Demonstrations or efforts to impede the conduct of normal diplomatic activities,

(5) The impact of security efforts in the United States upon security measures and safety of missions and personnel of the U.S. Government abroad, or

(6) Other circumstances which prevent proper conduct of foreign mission activities.

Security analysis under these guidelines may be coordinated, within the Department of State, with the Director of the Office of Foreign Missions, the Director of the Office of Counter-terrorism and Emergency Planning, and the Director of Bureau of Intelligence and Research.

**§ 2a.9 Provision of protective services in cases of extraordinary protective need.**

In cases determined under these guidelines to constitute an extraordinary protective need:

(a) The Deputy Assistant Secretary shall determine whether security personnel of the Department of State may be deployed;

(b) If this is not feasible, the Deputy Assistant Secretary, through the Bureau of Diplomatic Security Field Offices, or a United States Mission, as appropriate has the delegated authority to request the assistance of other Federal law enforcement authorities in the provision of protective services;

(c) If Federal law enforcement authorities are unable to provide assistance as requested, the Deputy Assistant Secretary or the designated representative of a United States Mission, in cases involving the metropolitan area of that mission or facilities related to United Nations missions, are authorized:

(1) To request state and local law enforcement authorities to provide the necessary protective services, or

(2) To obtain such services by contract with protective security organizations, in accordance with procedures issued by and subject to the approval of the Deputy Assistant Secretary.

**§ 2a.10 Reimbursement for protective services provided by State or local authorities.**

(a) The Deputy Assistant Secretary, in accordance with procedures set forth in these guidelines may, to the extent funds are available therefor, authorize reimbursement for reasonable direct expenses specifically incurred for the provision of extraordinary protective services incurred by State or local authorities under this section.

(b) No payment or reimbursement shall be directed to be paid by the Deputy Assistant Secretary pursuant to this section unless the specific type or scope of protective service has been requested in accordance with these guidelines; services may be provided under an interim cost estimate subject to such conditions as may be required by the Deputy Assistant Secretary for post-performance cost determinations.

(c) No payment or reimbursement shall be directed to be paid by the Deputy Assistant Secretary for that portion of protective services which are routine and were or could otherwise have been made available under the protective service standard of the jurisdiction.

(d) Direct overhead and administrative costs associated with an extraordinary protective service may be reimbursable on the basis of pre-performance negotiated rates, or interim rates subject to audit and redetermination by the Deputy Assistant Secretary.

(e) The provider of service or government agency to whom reimbursement is provided shall retain all documents and reimbursement or payment, for inspection or audit by representatives of the Department of State or of the Comptroller General.

### § 2a.11 Special rules for reimbursement.

Limited funds are made available to the Department of State for partial reimbursement to state or local government under two statutory programs, each of which contains separate criteria:

(a) Foreign Missions, generally—Assistance for extraordinary protective services may be provided by reimbursement, subject to the following limitations set forth in the Foreign Relations Authorization Act of 1985 (Public Law 99–93) as amended:

Any agreement with a State or local authority for the provision of protective services under this section shall be for a period of not to exceed ninety days in any calendar year, but such agreements may be renewed after review by the Deputy Assistant Secretary.

Of the funds made available for obligation under this section in any fiscal year—

(1) not more than 20 percent may be obligated for protective services within any single State during that year except as otherwise provided by law; and

(2) not less than 15 percent, except as otherwise provided by law, shall be retained as a reserve for protective services provided directly by the Deputy Assistant Secretary or for expenditures in local jurisdictions not otherwise covered by an agreement for protective services under this section.

The limitations on funds available for obligation in this subsection shall not apply to unobligated funds during the final quarter of any fiscal year.

(b) Missions to International Organizations—Assistance. Extraordinary protective services related to certain international organizations, such as the United Nations, may be provided by reimbursement under title 3 of the U.S. Code, Sections 202, 208.

(c) Reimbursements thereunder are subject to the following limitations (Note: Funds available under paragraph (a) of this section may be used for missions qualifying under this subsection):

(1) The foreign missions to which the protective services are provided must be located in a metropolitan area (other than the District of Columbia) where there are located twenty or more such missions headed by full-time officers;

(2) The effected metropolitan area must request such reimbursement; and

(3) The extraordinary protective need must arise in association with a visit to or occur at a permanent mission to an international organization of which the United States is a member or an observer mission invited to participate in the work of such an organization.

### § 2a.12 Extraordinary protective services in cases of urgency.

In cases of urgency, notwithstanding the requirements of §§ 2a.8 through 2a.10 of these guidelines (but within applicable statutory limitations), Bureau of Diplomatic Security Field Offices and United States Missions, under guidelines issued by the Deputy Assistant Secretary with the concurrence of the Procurement Executive, including, as appropriate, limited field delegations of authority, may in cases of urgency approve the provision of extraordinary protective services in accordance with general cost guidelines, if any, applicable to the particular jurisdiction, or subject to post-performance cost agreement. Provision of extraordinary protective services under this section shall require a review of continuing need and shall not exceed thirty (30 ) days after initiation thereof.

### § 2a.13 Protective security contract services.

(a) In cases where the Deputy Assistant Secretary determines that extraordinary security services may not be appropriately implemented because of federal, state or local law enforcement resource limitations or other restrictions, necessary protective services may be obtained by contract with private security firms or providers of such services. In carrying out the purposes of this section, the Deputy Assistant Secretary is authorized to proceed to utilize the procurement authorities conferred upon the Secretary by section 208(d) of the Foreign Missions Act, in addition to such authority for obtaining contract services as may be available to the Department of State.

(b) The need for contract security services should be considered in cases where an extraordinary protective need arises in more than one jurisdiction, under circumstances where, for a particular mission the provision of protective services may be adversely affected because of state or local jurisdictional limitations.

(c) The Department Procurement Executive shall provide, for purposes of this section, a pre-qualification procedure, including appropriate pre-award security clearance requirements for firms or security provider interested in pre-qualification. Awards for services under this section may be limited to pre-qualification bidders for reasons of time of performance, or otherwise as authorized by section 208(d) of the Foreign Missions Act.

### § 2a.14 Foreign Missions Act determination.

Promulgation of these guidelines, and the issuance of supplementary guidelines under § 2a.15 and implementing instructions where required, are determined hereby to constitute regulations or instructions pursuant to section 208(b) of the Foreign Missions Act (22 USC 4308(b)), and persons acting in compliance therewith are entitled to assert that section in accordance with its term. This § 2a.14 shall be applicable, but shall not be limited to, authorized acts or omissions of law enforcement and security personnel in jurisdictions outside those in which they are otherwise authorized to perform official functions, subject to federal law enforcement standards applicable to such acts or omissions, or in the absence of such standards, to the standards otherwise applicable in the jurisdictions involved.

### § 2a.15 Supplementary guidelines; State and local agreements

(a) The Deputy Assistant Secretary may from time to time issue, or authorize the issuance by designated Bureau of Diplomatic Security Field Offices or United States Missions, supplementary guidelines implementing these guidelines and applicable to particular jurisdictions or to particular categories of protective security within such jurisdictions.

(b) The Deputy Assistant Secretary may enter into agreements with state and local authorities for the provision of protective services under these guidelines. Any such agreement shall be for a period of not to exceed ninety days in any calendar year, but may be renewed after review by the Deputy Assistant Secretary.

**§ 2a.16 Implementation date; retroactive application.**

These guidelines were implemented as of the date of issuance, (original draft September 26, 1985). The provisions of these guidelines with respect to reimbursement may be applied retroactively to protective services, subject to qualification under the terms herein and ratification by the Deputy Assistant Secretary for the Diplomatic Security Service, on and after October 1, 1984.

**§ 2a.17 Contact for information.**

Requests for protective security assistance or for reimbursement in cases determined to constitute an extraordinary need may be forwarded to the Bureau of Diplomatic Security, Protective Liaison Division (DS/PT/PL)—Room 2435, Department of State, Washington, D.C. 20520, or through Department of State Field Offices of the Bureau of Diplomatic Security or the appropriate United States Mission to an international organization.

(a) State Department, Bureau of Diplomatic Security, Protective Liaison Division (DS/PT/PL) (202)—673–3881.

(b) After regular business hours, all inquiries shall be made to the Coordination Center of the Bureau of Diplomatic Security, Department of State: The Coordination Center operates on a 24-hour basis (647–2412).

(c) Office of Foreign Missions (202) 647–3416.

(d) Bureau of Diplomatic Security Field Offices:

Boston, Mass 02203, John F. Kennedy Bldg., Government Center, Room 405C, (617) 223–2753

Chicago, Ill 60604, Dirksen Federal Bldg., 219 S. Dearborn Street, Suite 1378, (312) 353–6163

Dallas, Texas 75242, Federal Bldg. Room 7C–44, 110 Commerce Street, (214) 767–0702

Los Angeles, California 90012, Federal Bldg., 300 N. Los Angeles Street, Room 8120, (213) 688–3290

Miami, Florida 33130, Federal Bldg., 51 SW First Avenue, Room 1627, (305) 536–5781

New York, NY 10278, 26 Federal Plaza, Suite 3409, (212) 264–1292

Philadelphia, Pennsylvania 19106, Mall Bldg., 325 Chestnut Street, Room 512, (215) 597–7435

San Francisco, California 94102, Federal Bldg., 450 Golden Gate Avenue, Room 13347, (415) 556–5097

(e) U.S. Mission to the United Nations (USUN) Host Country Section (212) 415–4131. After regular business hours, all inquiries should be made to the Communications Section of the U.S. Mission to the United Nations. This Section operates on a 24-hour basis (212) 415–4444.

[FR Doc. 87–8350 Filed 4–14–87; 8:45 am]
BILLING CODE 4710–24–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Part 15

[Docket No. R–87–1330; FR–2273]

### Testimony, Production and Disclosure of Material or Information by HUD Employees

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Secretary is amending HUD's regulations governing the production and disclosure of material or information by HUD employees by adding a new subpart governing testimony by employees in response to subpoenas or other official demands, and by making several definitional, conforming and related changes to effectuate this addition. The Secretary is also amending the current regulations to eliminate the requirement that former employees who are served with subpoenas or other official demands obtain the Secretary's approval before responding thereto. The purpose of these amendments is to address explicitly the terms on which employees may produce information and to eliminate unnecessary regulation of former employees.

**EFFECTIVE DATE:** May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Lieberman, Deputy General Counsel (Operations), Room 10216, (202) 755–7250, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** 24 CFR Part 15 contains HUD's rules for the disclosure of information and production of any material in its possession or acquired by an employee or former employee as a part of the performance of the employee's official duties or because of his or her official status. The current rule prohibits such disclosure or production, "in response to a demand of a court or other authority," without the prior approval of the Secretary. 24 CFR 15.72 (1986). However, the current rule does not explicitly address the terms on which HUD employees may testify. This final rule fills that gap by describing the situations in which the Secretary will permit the testimony of HUD employees in judicial, quasi-judicial, and legislative proceedings concerning information acquired as part of the performance of their official duties or because of their official status. In addition, this rule prohibits, subject to waiver by the Secretary, any employee from being called, by any party other than the United States, as an expert or opinion witness as to matters related to the employee's duties or the functions of the Department, including the meaning of departmental documents. This rule also eliminates the requirement that former employees who are served with subpoenas or other official demands obtain the Secretary's approval before responding. The Government favors eliminating further regulation where it is not necessary, and since the conduct of former employees is already regulated by the Standards of Conduct regulations in 24 CFR Part O, and HUD has determined that there is no convincing reason to continue covering them in Part 15, deregulation is appropriate in this case.

Private parties have increasingly been requesting or subpoenaing HUD officials to provide written information or to testify in litigation in which they are involved. The current regulations do not provide sufficient guidance to HUD employees as to how they are to respond to such requests or demands. This rule is designed to clarify this situation and thereby avoid needless confusion and strain on HUD employees, as well as to clarify for private parties the terms on which HUD employees may be made available to testify. The restrictions on HUD employees' testimony provided for in this rule are necessary to conserve the time of employees for conducting official business, to minimize the possibility of involving the Department in controversial issues that are not related to its mission and to reduce the possibility that departmental policy will be misrepresented. The rule does not apply to any legal proceeding in which an employee would testify, while on leave status, as to opinions or facts that are in no way related to the duties the employee performs for, or to the functions of, the Department.

This rule provides for the Secretary's written waiver of any policy or procedure prescribed in the rule where necessary to prevent a miscarriage of

justice, to promote a significant interest of the Department, or for other good cause.

**Use of Final Rule**

The subject matter of this revision involves the agency's internal practices and procedures and is therefore exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553) and 24 CFR Part 10. Accordingly, this revision is being made by means of a final rule.

**Finding and Certifications**

This rule is not subject to environmental review under the Department's procedures set out in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Under 24 CFR 50.20(k), internal administrative procedures are categorically excluded from NEPA requirements.

This rule does not constitute a "major rule" as that term is defined in section (1)(b) of Executive Order 12291 on Federal Regulation, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since its effect is limited to details of agency procedure.

This rule was listed on the Department's Semi-Annual Agenda of Regulations published on October 27, 1986 (51 FR 38424) under Executive Order 12291 and the Regulatory Flexibility Act.

This rule does not affect any program included in the Catalogue of Federal Domestic Assistance Programs.

**List of Subjects in 24 CFR Part 15**

Classified information, Freedom of information, Testimony, Production and disclosure of material or information by HUD employees.

**PART 15—[AMENDED]**

Accordingly, the Department amends 24 CFR Part 15 as follows:

1. The authority citation for Part 15 is revised to read as follows:

**Authority:** 5 U.S.C. 301; Freedom of Information Act, 5 U.S.C. 552; and sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. The Part heading for 24 CFR Part 15 is revised to read as follows:

**PART 15—TESTIMONY, PRODUCTION AND DISCLOSURE OF MATERIAL OR INFORMATION BY HUD EMPLOYEES**

**§ 15-1 [Amended]**

3. Section 15.1 is amended by adding paragraphs (g), (h) and (i) to read as follows:

(g) "Legal proceeding" includes any proceeding before a court of law or other authority, i.e., administrative board or commission, hearing officer, arbitrator or other body conducting a quasi-judicial or legislative proceeding.

(h) "Legal proceeding in which the United States is a party" means any legal proceeding including as a named party the United States, the Department of Housing and Urban Development, or any other Federal executive or administrative agency or department, or any official thereof in his official capacity.

(i) "Legal proceeding among private litigants" means any legal proceeding in which the United States is not a party.

4. Section 15.2 is revised to read as follows:

**§ 15.2 Purpose and applicability.**

(a) This part contains the regulations of the Department implementing 5 U.S.C. 552 and prescribing the Department's policies and procedures with respect to testimony of its employees as witnesses in legal proceedings. It informs the public about where and how the Department's records and information may be obtained from its organizational units as defined in § 15.1(d), and about the Department's policy concerning allowing its employees to testify in legal proceedings.

(b) All subparts of Part 15, other than Subpart I, apply to all organizational units, except that their applicability to the Office of Inspector General is subject to the provisions of Parts 2002 and 2004 of this title, and their applicability to the Office of Interstate Land Sales Registration is subject to the provisions of § 1700.30 of this title. Subpart I applies to all organizational units other than the Office of Inspector General.

5. Section 15.72 is revised to read as follows:

**§ 15.72 Production or disclosure prohibited unless approved by the Secretary.**

(a) Any demand of a court or other authority or any request to an employee of the Department to produce any material contained in the files of the Department, or to disclose any information relating to material contained in the files of the Department, or to disclose any information or produce any material acquired as a part of the performance of the employee's official duties or because of the employee's official status for use in a legal proceeding, shall state with particularity the material sought to be obtained or the information sought to be disclosed.

(b) No employee of the Department shall comply with any such demand or request without the prior approval of the Secretary.

(c) In determining whether to grant approval for an employee of the Department to testify in a legal proceeding, the Secretary shall follow the standards set forth in Subpart I.

(d) Where the demand or request seeks only the production of documents, the Department's procedure for authentricating documents by a keeper of the records shall be the Department's method for response. That authentication shall be evidence that the documents are true copies of documents in the Department's files.

6. Section 15.73 is revised to read as follows:

**§ 15.73 Procedure in the event of a demand for production or disclosure.**

(a) Whenever a demand is made upon an employee of the Department for the production of material or the disclosure of information described in § 15.71, the employee shall immediately notify the Secretary and either the General Counsel or the appropriate Regional Counsel. The "appropriate Regional Counsel" shall mean the Regional Counsel for the Regional Office having delegated authority over the project or activity with respect to which the information is sought. If possible, the Secretary shall be notified before the employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before the instructions from the Secretary are received, the U.S. Attorney or such other attorney as may be designated for the purpose, will appear with the employee of the Department upon whom the demand has been made, and will furnish the court or other authority with a copy of the

regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the Secretary. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Secretary.

7. Section 15.74 is revised to read as follows:

**§ 15.74 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 15.73(b) pending receipt of instructions from the Secretary, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Secretary not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Toughy* v. *Ragen*, 340 U.S. 462).

**Subpart I [Redesignated as Subpart J]**

8. Subpart I of Part 15 is redesignated as Subpart J, § 15.81 is redesignated as § 15.91, and a new Subpart I is added, to read as follows:

**§ 15.81 [Redesignated as § 15.91]**

**Subpart I—[Added]**

**Subpart I—Testimony of Employees of the Department in Legal Proceedings**

Sec.
15.81 Purpose.
15.82 Testimony in proceedings in which the United States is a party.
15.83 Legal proceedings among private litigants; general rule.
15.84 Legal proceedings among private litigants; subpoenas.
15.85 Legal proceedings among private litigants; expert or opinion testimony.
15.86 Waiver.

**Subpart I—Testimony of Employees of the Department in Legal Proceedings**

**§ 15.81 Purpose.**

(a) This subpart prescribes the policies and procedures of the Department with respect to testimony of its employees as witnesses in legal proceedings with respect to material contained in the files of the Department or information learned as part of the performance of the their official duties or because of their official status.

(b) For purposes of this subpart, the term "employee of the Department" includes officers and employee of the United States appointed by, or subject to the supervision of, the Secretary, but does not include officers and employees covered by Part 2004 of this title.

**§15.82 Testimony in proceedings in which the United States is a party.**

(a) In any legal proceeding in which the United States is a party, an employee of the Department may not be called to testify as an expert or opinion witness by any party other than the United States, but may be called by such non-federal party to testify as to facts.

(b) Whenever, in any legal proceeding in which the United States is a party, the attorney in charge of presenting the case for the United States requests it, the Secretary shall arrange for an employee of the Department to testify as a witness for the United States.

**§15.83 Legal proceedings among private litigants; general rule.**

In any legal proceeding exclusively among private litigants, no employee of the Department may testify as an expert or opinion witness as to any matter related to his or her duties or the functions of the Department, including the meaning of Departmental documents.

**§ 15.84 Legal proceedings among private litigants; subpoenas.**

Whenever, in a legal proceeding exclusively among private litigants, an employee of the Department is served with a subpoena or is requested to testify, the procedures set forth in §§ 15.72–15.74 shall be applicable.

**§ 15.85 Legal proceedings among private litigants; expert or opinion testimony.**

If, while testifying in a legal proceeding exclusively among private litigants, an employee of the Department is asked for expert or opinion testimony, the employee shall decline to answer on the grounds that he or she is forbidden to do so by this part.

**§ 15.86 Waiver.**

The Secretary may grant, in writing, a waiver of any policy or procedure prescribed by this subpart, where waiver is necessary to prevent a miscarriage of justice, to promote a significant interest of the Department, or for other good cause.

Dated: April 1, 1987.

**Samuel R. Pierce, Jr.,**

*Secretary.*

[FR Doc. 87–8402 Filed 4–14–87; 8:45 am]

BILLING CODE 4310-32-M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[T.D. 8136]**

## Income Tax; Applications for Exemption From Self-Employment Taxes for Ministers, Certain Members of Religious Orders, and Christian Science Practitioners

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document provides temporary regulations relating to applications for exemption from self-employment taxes filed by ministers, members of a religious order who are not under a vow of poverty, and Christian Science practitioners. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules Section of this issue of the **Federal Register**. The temporary regulations reflect changes to the applicable tax law made by section 1704(a) of the Tax Reform Act of 1986 and provide guidance on the manner of applying for exemption from self-employment taxes under section 1402(e) of the Internal Revenue Code of 1986.

**EFFECTIVE DATE:** The regulations contained in this document are effective with respect to applications filed after December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T (LR–153–86)). Telephone, 202–566–3297 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 1402(e)(1)(A) of the Internal Revenue Code of 1986 provides that ministers, members of a religious order who are not under a vow of poverty, or Christian Science practitioners may file an application for exemption from self-employment taxes. This section requires any individual seeking the exemption to file an application together with a statement that either he or she is conscientiously opposed to, or because of religious principles he or she is opposed to, the acceptance (with respect to services performed as a minister, member, or practitioner) of any public

BEST COPY AVAILABLE

insurance that makes payments in the event of death, disability, old age or retirement, or makes payments toward the cost of, or provides services for, medical care.

Section 1704(a) of the Tax Reform Act of 1986 (100 Stat. 2085, 2779) amended section 1402(e)(1) of the Code to require an individual (other than a Christian Science practitioner) who applies for exemption from self-employment taxes to state in the application that he or she has informed the affiliate church or order that the applicant is opposed to receiving such insurance. In addition, section 1704(a) of the Act added a new paragraph (2) to section 1402(e) of the Code to require verification that all applications (including Christian Science practitioners) are aware of the grounds for which an exemption may be granted and that they seek the exemption on such grounds. No application for exemption will be approved without this verification. The amendments made by section 1704(a) of the Act are effective with respect to applications filed after December 31, 1986. Thus, neither the amendments made by the Act nor the temporary regulations apply to present exemptions or to applications for exemption that are filed before January 1, 1987.

The temporary regulations provide that applications filed after December 31, 1986, by a minister or a member of a religious order who is not under a vow of poverty must include a statement to the effect that the applicant has informed the ordaining, commissioning, or licensing body of the church or order that he or she is conscientiously opposed, or opposed on religious principles, to the acceptance of any public insurance that makes payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical care.

Applications for exemption under section 1402(e) shall be made on Form 4361. It is anticipated that Form 4361 will be revised to include the statement described above. However, if the form does not contain the statement, the applicant must file a separate statement along with Form 4361.

The temporary regulations also provide that any application for exemption under section 1402(e) filed after December 31, 1986, by ministers, members of a religious order not under a vow of poverty, or Christian Science practitioners may be approved by the Service only after verification that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption pursuant to section 1402(e) and that the individual seeks exemption on such grounds. The temporary regulations set forth the procedure to be followed for such verification.

**Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980.**

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

**Drafting Information**

The principal author of these temporary regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

**List of Subjects**

*26 CFR 1.1401–1—1.1403–1*

Income tax, Self-employment income.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations.**

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

## PART 1—INCOME TAX REGULATIONS

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 1.1402 (e)–5T also issued under 26 U.S.C. 1402(e) (1) and (2).

**Par. 2.** A new § 1.1402 (e)–5T is added immediately after § 1.1402 (e)–4A to read as follows:

**§ 1.1402(e)–5T Applications for exemption from self-employment taxes filed after December 31, 1986, by ministers, certain members of religious orders, and Christian Science practitioners.**

(a) *In general.* (1) Except as provided in paragraph (a)(2) of this section, this section applies to any individual who is a duly ordained, commissioned, or licensed minister of a church, member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order), or a Christian Science practitioner who files an application after December 31, 1986, for exemption from the tax on self-employment income (see section 1401 and 1.1401–1) with respect to services performed by him or her in his or her capacity as a minister, member, or practitioner pursuant to §§ 1.1402(e)–2A through 1.1402(e)–4A. This section does not apply to applications for exemption under section 1402(e) that are filed before January 1, 1987.

(2) *Application of this section to Christian Science practitioners.* Paragraph (b) of this section does not apply to Christian Science practitioners. Thus, Christian Science practitioners filing applications for exemption from self-employment taxes under section 1402(e) should follow the procedures set forth in §§ 1.1402(e)–2A through 1.1402(e)–4A, and are not required to include the statement described in paragraph (b)(1)(ii) of this section. However, see paragraph (c) of this section for verification procedures with respect to applications for exemption from self-employment taxes filed after December 31, 1986, by Christian Science practitioners.

(b) *Church or order must be informed.*—(1) *In general.* Any individual, other than a Christian Science practitioner, who files an application for exemption from the tax on self-employment income under section 1402(e) after Decembr 31, 1986:

(i) Shall file such application in accordance with the procedures set forth in §§ 1.1402(e)–2A through 1.1402(e)–4A, and

(ii) Shall include with such application a statement to the effect that the individual making application for exemption has informed the ordaining, commissioning, or licensing body of the church or order that he or she is opposed to the acceptance (for services performed as a minister or member of a religious order not under a vow of poverty) of any public insurance that makes payments in the event of death, disability, old age, or retirement, or that makes payments toward the cost of, or provides services for, medical care

(including the benefits of any insurance system established by the Social Security Act).

(2) *Statement to be filed with Form.* If the form provided by the Service for applying for exemption under 1402(e) does not contain the statement set forth in paragraph (b)(1)(ii) of this section, any individual required to include this statement with his or her application under this paragraph (b) shall file such statement with the individual's application at the time and place prescribed for filing such application under §§ 1.1402(e)–2A and 1.1402(e)–3A. The statement shall contain the information set forth in paragraph (b)(1)(ii) of this section and shall be signed by such individual under penalties of perjury.

(c) *Verification of Application*—(1) *In general.* The Service will approve an application for an exemption filed by an individual to whom this section applies only after verifying that the individual applying for the exemption is aware of the grounds on which the individual may receive an exemption under section 1402(e) (See § 1.1402(e)–2A) and that the individual seeks exemption on such grounds in accordance with the procedures set forth in paragraph (c)(2) of this section.

(2) *Verification procedure.* Upon receipt of an application for exemption from self-employment taxes under section 1402(e) and this section, the Service will mail to the applicant a statement that describes the grounds on which an individual may receive an exemption under section 1402(e). The individual filing the application shall certify that he or she has read the statement and that he or she seeks exemption from self-employment taxes on the grounds listed in the statement. The certification shall be made by signing a copy of the statement under penalties of perjury and mailing the signed copy to the Service Center from which the statement was issued not later than 90 days after the date on which the statement was mailed to the individual. If the signed copy of the statement is not mailed to the Service Center within 90 days of the date on which the statement was mailed to the individual, that individual's application for exemption will not be effective until the date that the signed copy of the statement is received at the Service Center.

## PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

**Par. 3.** The authority for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 4.** Section 602.101(c) is amended by inserting in the appropriate places in the table "1.1402(e)–5T . . . [1545–0168]."

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: April 3, 1987.

**O. Donaldson Chapoton,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 87–8446 Filed 4–14–87; 8:45 am]

BILLING CODE 4830–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 2676

### Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of May 1987.

**EFFECTIVE DATE:** May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

## PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 is revised to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

**§ 2676.15 Interest.**

(c) *Interest rates.*

| For valuation dates occurring in the month— | The values of $i$ are— | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_n$ |
| May 1987 | .0825 | .08 | .0775 | .075 | .0725 | .07 | 07 | .07 | .07 | .07 | 065 | .065 | .065 | .065 | .065 | .05875 |

Issued at Washington, DC, on this 6th day of April 1987.

**Kathleen P. Utgoff,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87-8369 Filed 4-14-87; 8:45 am]

BILLING CODE 7708-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[A-1-FRL-3175-7]**

### Approval and Promulgation of Implementation Plans; New Hampshire Sulfur-in-Fuel; James River Corp.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan revision submitted by the State of New Hampshire. This revision raises the sulfur-in-oil limit at the James River Corporation (Cascade Mill) in Gorham from 1.0% sulfur by weight to 2.2%. This source had previously been excluded from revisions to the statewide sulfur-in-fuel limitation. The intended effect of this revision is to federally approve the state's request that this source be subject to the state regulation that allows the burning of higher sulfur fuel.

**EFFECTIVE DATE:** May 15, 1987.

**ADDRESSES:** Copies of the submittal are available for public inspection at Room 2311, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, DC 20460; and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

**FOR FURTHER INFORMATION CONTACT:** Susan Kulstad, (617) 565-3226; FTS 835-3226.

**SUPPLEMENTARY INFORMATION:** On July 2, 1986, EPA published a Notice of Proposed Rulemaking for regulatory changes to the New Hampshire State Implementation Plan that would allow an increase in the sulfur-in-fuel content at the James River Corporation (Cascade Mill) from no more than 1.0% sulfur by weight to no more than 2.2% (51 FR 24163). This source was excluded from previously approved revisions to the sulfur-in-fuel limit for Coos County. The New Hampshire Air Resources Agency has now demonstrated that there will be no violations of National Ambient Air Quality Standards for sulfur dioxide when this source is burning the 2.2% sulfur oil. The rationale for EPA's action is explained in the Notice of Proposed Rulemaking and will not be restated here. No comments were received on EPA's proposed action. EPA has reviewed the New Hampshire submittal and finds it acceptable.

### Final Action

EPA is approving the revision of the sulfur-in-fuel limitation of no more than 2.2% sulfur by weight for the James River Corporation (Cascade Mill), submitted on February 11, 1985.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides.

Dated: March 20, 1987.

**Lee M. Thomas,**

*Administrator.*

### PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the code of Federal Regulations is amended as follows:

### Subpart EE—New Hampshire

1. Authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7642.

2. Section 52.1520, is amended by adding paragraph (c)(36) to read as follows:

**§ 52.1520 Identification of plan.**

* * * * *

(c) * * *

(36) Approval of a revision to allow the James River Corporation (Cascade Mill), Gorham, to burn oil having a 2.2% sulfur-by-weight limit in accordance with previously approved SIP regulation Chapter Air 400, Section Air 402.02, submitted on February 11, 1985. This source was excluded from revisions pertaining to New Hampshire regulation Chapter Air 400, Section Air 402.02 (identified at paragraph (c)(26) of this section), but New Hampshire has now submitted adequate technical support for approval.

3. The table in § 52.1525 is amended by adding the following citation to the end of the entry entitled "Sulfur content limit in fuels" to read as follows:

**§ 52.1525 EPA-approved New Hampshire state regulations.**

* * * * *

| Title/subject | State citation chapter | State adopted by State | Date approved by EPA | Federal Register citation | 52.1520 | Comments |
|---|---|---|---|---|---|---|
| Sulfur content limit in fuels | CH air 400 | | April 15, 1987. | 52 FR | (c)(36) | Approval of 2.2% sulfur-in-oil limit for James River Corp-Cascade. |

[FR Doc. 87-8032 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6F3434/R880; FRL-3186-4]

## Exemption From the Requirement of a Tolerance for the Insect Pheromone Containing the Active Ingredients 3,7,11-Trimethyl-1-6,10-Dodecatriene 1-OL and 3,7,11-Trimethyl-2,6,10-Dodecatriene-3-OL

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a tolerance for residues of the insect pheromone containing the active ingredients 3,7,11-trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol, (hereafter referred to in the preamble as "Stirrup-M"), in or on all raw agricultural commodities. This regulation, to eliminate the need to establish a maximum permissible level for residues of the pesticide, was requested by Fermone Chemicals, Inc. of Glendale, Arizona.

**EFFECTIVE DATE:** Effective on April 15, 1987.

**ADDRESS:** Written objections, identified by the document control number [PP 6F3434/R880], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Arturo E. Castillo, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

**SUPPLEMENTARY INFORMATION:** EPA issued a proposed rule, published in the **Federal Register** of March 18, 1987 (52 FR 8478) in response to pesticide petition 6F3434 submitted by Fermone Chemicals, Inc., P.O. Box 2316, Glendale, AZ 85311, which proposed establishing an exemption from the requirement of a tolerance for residues of the insect pheromone, Stirrup-M, containing the active ingredients 3,7,11-trimethyl-1-6,10-dodecatriene 1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol in or on all raw agricultural commodities.

There were no comments or request for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in detail in the proposed rule. Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance for Stirrup-M will protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 6, 1987.

**Susan H. Wayland,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

## PART 40—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.1086 is added to read as follows:

### § 180.378 3,7,11-Trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol; exemption from the requirement of a tolerance.

The insect pheromone containing the active ingredients 3,7,11-trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol is exempted from the requirement of a tolerance in or on all raw agricultural commodities.

[FR Doc. 87-8276 Filed 4-14-87; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 180

[OPP-300121B; FRL-3186-2]

## Revocation of Aldrin and Dieldrin Tolerances; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the final rule document revoking tolerances for aldrin and dieldrin, published in the **Federal Register** of December 24, 1986. This action is necessary to recommend action levels for certain commodities for which existing tolerances have been revoked.

**EFFECTIVE DATE:** The action levels for the added commodities are effective on December 24, 1986.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Patricia Critchlow, Registration Division (TS-767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule, FR Doc. 86-28745, published in the **Federal Register** of December 24, 1986 (51 FR 46662) which revoked tolerances for the pesticide chemicals aldrin and dieldrin.

In the preamble, revoked tolerances and recommended action levels for certain raw agricultural commodities were inadvertently omitted from Table 1, appearing at page 46664, and are hereby corrected by adding and alphabetically inserting the following commodities:

TABLE 1.—RECOMMENDED ACTION LEVELS

| Commodities | Tolerances (ppm) being revoked | | Recommended action levels (ppm) Aldrin/Dieldrin |
|---|---|---|---|
| | Aldrin | Dieldrin | |
| . . | . | . | . |
| Peppers | 0.1 | 0.1 | 0.05 |
| . . | . | . | . |
| Sweet potatoes | 0.1 | 0.1 | 0.05 |
| . . | . | . | . |

### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1987.

J.A. Moore,

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 87-8272 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300119B; FRL-3186-1]

## Revocation of DDT and TDE Tolerances; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; Correction.

**SUMMARY:** This document corrects the final rule document revoking tolerances for DDT and TDE, published in the **Federal Register** of December 24, 1986. This action is necessary to recommend action levels for commodities for which existing tolerances have been revoked.

**EFFECTIVE DATE:** The action levels for the added commodities are effective as of December 24, 1986.

**FOR FURTHER INFORMATION CONTACT:** By mail: Patricia Critchlow, Registration Division (TS-767), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule, FR Doc. 86-28744, published in the **Federal Register** of December 24, 1986 (51 FR 46658) which revoked tolerances for the pesticide chemical DDT [a mixture of 1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane and 1,1,1-trichloro-2-(*o*-chlorophenyl)2-(*p*-chlorophenyl)ethane] and its degradation products, TDE [or DDD (1,1-dichloro-2,2-bis(p-chlorophenyl)ethane)] and DDE [1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethylene].

In the preamble, recommended action levels for certain raw agricultural commodities were inadvertently omitted from Table 3, appearing at page 46661, and are hereby corrected by adding and alphabetically inserting the following commodities:

TABLE 3.—ACTION LEVELS TO REMAIN IN EFFECT

| [illegible] | Existing and recommended action levels (ppm) DDT/TDE/DDE |
|---|---|
| . . . . . | . |
| Oat grain (animal feed) | 0.5 |
| Oat grain (human food) | 0.5 |
| . . . . . | . |

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1987.

**J.A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 87-8273 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

---

**40 CFR Part 180**

**[PP 6F3387/R882; FRL-3186-5]**

## Pesticide Tolerances for Metalaxyl; Certain Raw Agricultural Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** This rule establishes tolerances for the combined residues of the fungicide metalaxyl and its metabolites in or on certain raw agricultural commodities. This regulation, to establish maximum permissible levels of residues of metalaxyl in or on the commodities, was requested in a petition by Ciba-Geigy Corp. Elsewhere in this issue of the **Federal Register**, a feed additive regulation for metalaxyl is also being established.

**EFFECTIVE DATE:** Effective on April 15, 1987.

**ADDRESS:** Written objections, identified by the document control number [PP 6F3387/R882], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Lois A. Rossi, Acting Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of April 30, 1986 (51 FR 16106), which announced that Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, submitted pesticide petition 6F3387 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy-methyl-6-methylphenyl)-*N*-(methoxyacetyl) alanine, methyl ester, each expressed as metalaxyl, in or on fruiting vegetables except cucurbits at 1.0 part per million (ppm) and sugar beets and sugar beet tops at 0.1 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The scientific data considered in support of these tolerances include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 milligram/kilogram body weight/day (mg/kg bwt/day) (250 ppm).

2. A teratology study in rats with a NOEL of 400 mg/kg bwt (highest dose tested). Metalaxyl was not teratogenic, even in the presence of maternal toxicity.

3. A teratology study in rabbits with a NOEL of 300 mg/kg bwt (highest dose tested). Metalaxyl was not teratogenic, even in the presence of maternal toxicity.

4. A *Salmonella* mutagenicity study that was negative for reverse mutations with and without mammalian microsome activation.

5. A mouse dominant lethal study that was negative for mutagenicity.

6. A 3-generation rat reproduction study with a NOEL of 62.5 mg/kg bwt/day (1,250 ppm).

7. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt (250 ppm).

8. A 2-year rat chronic feeding/oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 12.5 mg/kg bwt/day (250 ppm) based upon slight increases in liver weight to body weight ratios at 1,250 ppm.

9. A 2-year mouse oncogenic study with no compound-related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 6.3 mg/kg bwt/day) and a hundredfold safety factor, is calculated to be 0.060 mg/kg/day. The maximum

permitted intake (MPI) for a 60-kg human is calculated to be 3.8 mg/day. These tolerances and the currently established tolerances result in a theoretical maximum residue contribution (TMRC) of 0.0057 mg/day (1.5-kg diet) for a 60-kg human and utilize 9.6 percent of the ADI.

The nature of the residue is adequately understood and analytical methodology is available in the Pesticide Analytical Manual II (PAM II) for enforcement purposes. The PAM II method involves gas-liquid chromatography (GLC) with alkali flame ionization detection (AFID), and with mass spectrometry for samples that show interference in the GLC/AFID. A newer analytical method which involves capillary gas chromatography using a nitrogen/phosphorus detector operating in the nitrogen-specific mode will be included in PAM II.

Because of the long lead-time from establishing these tolerances to publication of the enforcement methodology in the PAM II, the newer analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from:

By mail: William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 557–2613).

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 6, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

**PART 40—[AMENDED]**

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346.

2. Section 180.408(a) is amended by removing the entries for "fruiting vegetables (except cucurbits) group [except tomatoes].....0.1" and "tomatoes..... 1.0" and adding, and alphabetically inserting, the following commodities, to read as follows:

**§ 180.408 Metalaxyl; tolerances for residues.**

(a) * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | |
| Fruiting vegetables (except cucurbits) group | 1.0 |
| * * * * * | |
| Sugar beets | 0.1 |
| Sugar beets, tops | 0.1 |
| * * * * * | |

[FR Doc. 87–8274 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 101–41**

**[FPMR Amendment G–80]**

## Transportation Documentation and Audit; Revision of Voucher-Schedule Procedures

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking amends the Federal Property Management Regulations (FPMR) by requiring that appropriate accounting information accompanies payment checks sent to carriers by the Department of the Treasury. Air carriers complain that Treasury checks used to pay for passenger transportation often lack sufficient information to reconcile payments. This problem is attributed to improper carrier preparation of vouchers, improper or inadequate preparation of voucher-schedules by the paying agencies, and inadequate payment procedures at the disbursing facilities. The revised procedures provide explicit instructions for handling voucher-schedules and minimize the payment accounting problems by ensuring that proper payment information accompanies payment checks to carriers.

This rulemaking also changes GSA correspondence symbols which resulted from a reorganization.

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** John W. Sandfort, Chief, Regulations, Procedures, and Review Branch, Office of Transportation Audits, (202) 786–3014 or FTS 786–3014.

**SUPPLEMENTARY INFORMATION:**

**Background**

A Notice of Proposed Rulemaking (NPRM) to revise transportation disbursement procedures was published in the **Federal Register** on April 25, 1985 (50 FR 16316).

Section 101–41.806–2 is revised to eliminate the disbursing office (D.O.) voucher number. Section 101–41.806–3 is revised to allow the disbursing office to retain the original voucher-schedules, forwarding copies of the voucher-schedules to the issuing office. This change is necessary to correspond with the requirements of the Treasury Fiscal Requirements Manual (TFRM) Transmittal Letter Number 422. Section 101–41.806–3 is further revised to eliminate the forwarding of a copy of the voucher-schedule to GSA. The revisions also update Standard Form (SF) 1166 citations to conform to the current TFRM.

The GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been

prepared. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act [5 U.S.C. 605(b)], GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and FIRMR 201–45.6.

Discussion of major comments. The following summarizes major comments, suggestions, and our determinations and actions taken. We received six comments to the NPRM: two Federal agencies, three carriers, and one carrier association. Both agencies suggested that clarifying amendments and editorial changes be made to the disbursing procedures. We have adopted those suggestions.

One carrier endorsed § 101–41.806–3 but requested that its agency number, which is provided on the tear-off slip, be incorporated in this section as a check identification requirement. This agency number, however, is not a GSA requirement and, therefore, cannot be adopted for inclusion in this final rule. However, § 101–41.806–3 requires that tear-off slips or enclosures bearing all information shown on the tear-off slips be forwarded to the carrier-payee with the payment check.

A carrier and the carrier association alleged that § 101–41.806–3 gives disbursing offices an alternative to forwarding detailed payment information to the carrier-payee and suggested there be no exception to remitting the tear-off slips. The main objective of this revision is to ensure that carriers receive all the information needed to identify payments, whether it be by tear-off slips, enclosures, or included on the check itself. We believe the current wording is sufficiently explicit to accomplish this objective.

The carrier suggested that § 101–41.802(b) be revised to require all agencies to adopt the disbursement procedures. This suggestion is not practical since all agencies do not use the Department of the Treasury's disbursing facilities. In fact, GSA is eliminating from this final rule that part of § 101–41.802(b) which permits other agencies to adopt these procedures after notification to GSA.

The carrier recommended that tear-off slips or media bearing all information shown on the tear-off slips be forwarded under separate cover to the carrier-payee immediately after a wire transfer of payment. In our opinion, these revised procedures clearly indicate that all information needed for check identification must be sent to the carrier-payee. GSA should be notified if, subsequent to the effective date of this final rule, these procedures are not followed.

The carrier further suggested that the interest amount be separately and distinctly identified for each carrier bill. We believe the current wording in § 101–41.803(c) sufficiently makes that distinction.

The carrier asked that it be highlighted that deductions from disbursement vouchers can only be made against foreign-flag carriers. GSA's position is that 31 U.S.C. 3726(b)(2) provides an "equivalent arrangement or exception" which encompasses domestic air transportation and, therefore, allows deductions to be made.

One carrier endorsed the proposal in its entirety.

**List of Subjects in 41 CFR Part 101–41**

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

## PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 continues to read:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by revising the following entries:

101–41.804 Preparation of SF 1166 OCR, Voucher and Schedule of Payments.
101–41.804–2 Listing of items on SF 1166 OCR.
101–41.806 Processing of SF 1166 OCR.

### Subpart 101–41.2—Passenger Transportation Services Furnished for the Account of the United States

3. Section 101–41.206 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 101–41.206 Special procedures for automatic payment of carrier charges for passenger transportation services.**

* * * * *

(b) Agencies using the disbursing facilities of the Department of the Treasury shall issue Standard Form 1166 OCR, Voucher and Schedule of Payments (voucher-schedule), to the Department of the Treasury for issuance of the check. The payee block of the voucher-schedule shall include the above-cited identifying information that is to appear on the payment check. The stub attached to the SF 1166 OCR is not used in this instance and shall be destroyed.

(c) The accounting activity shall send to the General Services Administration (FWAA/C), Washington, DC 20405:

(1) The original of the blanket GTR (SF 1169);

(2) A copy of the ticket listing; and

(3) The agent's coupon of each ticket paid on the listing for air service, or the auditor's coupon of each ticket paid on a listing for Amtrak service.

* * * * *

### Subpart 101–41.8—Transportation Disbursement Procedures

4. Section 101–41.802 is amended by revising paragraphs (a)(2) through (a)(6), by adding paragraph (a)(7), and by revising paragraph (b) to read as follows:

**§ 101–41.802 Standard forms for scheduling transportation vouchers for payment.**

(a) * * *

(2) SF 1166 OCR (Optical Character Recognition—Readable Format), Voucher and Schedule of Payments (Original) (white paper).

(3) SF 1166–A OCR, Voucher and Schedule of Payments (Memorandum) (yellow paper).

(4) SF 1166–EDP (Electronic Data Processing), Voucher and Schedule of Payments (Computer-generated).

(5) SF 1167 OCR, Voucher and Schedule of Payments (Continuation Sheet) (Original) (white paper).

(6) SF 1167–A OCR, Voucher and Schedule of Payments (Continuation Sheet) (Memorandum) (yellow paper).

(7) SF 1186, Transmittal for Transportation Schedules and Related Basic Documents.

(b) The procedures prescribed for preparation of SF 1166 OCR, Voucher and Schedule of Payments (voucher-schedule), are applicable to all Federal agencies using the disbursing facilities of the Department of the Treasury. The procedures prescribed for the use of SF

1166 OCR apply also to SF 1166–A OCR, SF 1167 OCR, and SF 1167–A OCR.

* * * * *

5. Section 101–41.803 is amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

**§ 101–41.803 Scheduling procedures.**

(a) Agency shall prepare a voucher-schedule (SF 1166 OCR) for all basic vouchers covering transportation services furnished for the account of the United States submitted by carriers in accordance with §§ 101–41.214 and 101–41.310 of this part. Transportation vouchers (SF 1113) shall be listed separately from all other types of payment vouchers. All information required for check issuance purposes must be included on the SF 1166 OCR. After certification by the authorized certifying officer, the voucher-schedule shall be transmitted to the appropriate disbursing office. The transportation vouchers shall be retained by the agency for later transmittal to GSA (FWAA/C) in accordance with § 101–41.807 of this subpart.

(b) The tear-off slips from the related basic SF 1113 must also be sent to the disbursing office for forwarding to the carrier-payees with the payment checks. However, agencies submitting payment data on magnetic tape to a Department of the Treasury disbursing facility may arrange with that facility for the preparation of enclosures (TFS Form 3039, Notice to Check Recipient), bearing all information shown on the tear-off slips, which must be sent to the carrier-payee with the payment checks instead of the tear-off slips.

(c) Paid amounts must be clearly identified against individual carrier bills. Each carrier bill number and related payment amount for transportation charges and payment amount for interest, if any, for that bill number must be included in each check issue entry if the agency certifies on SF 1166 OCR, or it must be included as magnetic tape payment data if the agency certifies on SF 1166–EDP.

6. Section 101–41.803–1 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 101–41.803–1 Classification of basic transportation vouchers for purposes of separate scheduling.**

(a) Basic transportation vouchers shall be sorted into three general classifications for separate listing on SF 1166 OCR:

* * * * *

7. Section 101–41.804 is recaptioned and §§ 101–41.804–1 and 101–41.804–2 are revised to read as follows:

**§ 101–41.804 Preparation of SF 1166 OCR, Voucher and Schedule of Payments.**

**§ 101–41.804–1 Assignment of schedule numbers.**

Each SF 1166 OCR covering transportation vouchers shall be assigned a schedule number prefixed by the letter "T" and taken from a series of numbers running consecutively for each fiscal year. The "T" numbers assigned to transportation voucher-schedules shall be taken from a series of numbers separate from the series assigned to voucher-schedules covering nontransportation charges.

**§ 101–41.804–2 Listing of items on SF 1166 OCR.**

Each basic voucher shall be listed on a voucher-schedule with all information required for check issuance purposes, and paid amounts must be clearly identified against individual carrier bills (see § 101–41.803 (a) and (c)). The maximum practical number of check issue entries, consistent with normal spacing requirements, shall be listed on each voucher-schedule page.

8. Sections 101–41.804–4 and 101–41.804–5 are revised to read as follows:

**§ 101–41.804–4 Name and address space.**

Generally, the disbursing office draws checks only from information recorded on the SF 1166 OCR. Thus, except as provided in § 101–41.805, the information shown in the name and address column shall be complete (including ZIP codes) but shall be restricted to the information to be shown on the face of the check. Long addresses shall be avoided unless necessary for postal identification. The format and State abbreviations developed by the U.S. Postal Service for addressing envelopes shall be used.

**§ 101–41.804–5 Amount column.**

The amount for which the check is to be drawn shall be imprinted in the amount column on the same line as the payee's name. The total of the amount column on the SF 1166 OCR must include all items listed on the continuation sheets and must agree with the aggregate of amounts classified by appropriation or fund in the appropriation summary block.

9. Section 101–41.805–1 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 101–41.805–1 No-check vouchers.**

* * * * *

(a) Vouchers requiring the processing of an accounting transaction for inclusion in the agency's SF 224, Statement of Transactions (Classified According to Appropriation, Fund, and Receipt Account, and Related Control Totals); SF 1220, Statement of Transactions According to Appropriations, Funds, and Receipt Accounts; or SF 1221, Statement of Transactions According to Appropriations, Funds, and Receipt Accounts (Foreign Service Account), or other approved reporting form, by transfer or without the issuance of a check shall be listed on SF 1166 OCR covering transportation vouchers for which checks are to be issued. Show the words "NO CHECK" in the amount column of SF 1166 OCR opposite the payee's name and address. The amount shall be shown on SF 1096, Schedule of Voucker Deductions, as provided in § 101–41.805–2.

(b) Vouchers which do not require the processing of an accounting transaction by the disbursing or accounting office for inclusion in the ageny's SF 224, SF 1220, SF 1221, or other approved reporting form, shall be scheduled separately. Such voucher-schedules shall be plainly marked "No-check vouchers." They shall not be submitted to disbursing officers for processing but shall be submitted to GSA (FWAA/C) for audit.

10. Section 101–41.805–2 is amended by revising the introductory text of paragraph (c) and paragraphs (c)(1) and (c)(2) to read as follows:

**§ 101–41.805–2 Deductions from disbursement vouchers.**

* * * * *

(c) When an amount is deducted from more than one basic voucher listed on an SF 1166 OCR, the agency shall take action as follows:

(1) Show the net amount payable to each payee in the amount column of the SF 1166 OCR;

(2) Record the total amount deducted as the last item in the address column of the SF 1166 OCR: "See attached SF 1096 No. —— $ ——";

* * * * *

11. Section 101–41.806 is recaptioned and §§ 101–41.806–1, 101–41.806–2, and 101–41.806–3 are revised to read as follows:

**§ 101–41.806 Processing of SF 1166 OCR.**

**§ 101–41.806–1 Makeup and initial distribution of forms.**

Agencies shall prepare an original SF 1166 OCR and at least two copies of the SF 1166–A OCR. The original and two copies shall be forwarded to the appropriate disbursing office for payment processing.

**§ 101–41.806–2 Information to be furnished by the disbursing office.**

The disbursing office (D.O.) shall clearly imprint within the PAID BY block the word "Paid"; the month, day, and year of payment; and the D.O. (station) symbol number. The disbursing office shall also list in the appropriate column opposite each payee's name the serial numbers of any checks issued in payment of the voucher.

**§ 101–41.806–3 Disposition of forms after payment.**

The disbursing office shall forward the payment check to the carrier-payee with pertinent tear-off slips (or Notice to Check Recipient, TFS Form 3039 bearing all information shown on the tear-off slips), return two copies of the voucher-schedule to the issuing agency, and retain the original voucher-schedule to support its statements of accountability. If neither a tear-off slip nor a Notice to Check Recipient is provided, the carrier's bill number and related payment amount for transportation charges, and payment amount for interest, if any, for that bill number must appear on the check. In distributing the accomplished voucher-schedule, the issuing agency shall use one copy to support its statement of transactions (SF 224, SF 1220, or SF 1221) and retain a copy in its files.

12. Section 101–41.807–1 is revised to read as follows:

**§ 101–41.807–1 Identification of basic transportation payment documents.**

Each basic transportation voucher (SF 1113) and its related voucher-schedule (SF 1166 OCR) shall be cross-referenced by voucher number (military agencies) or schedule number (civilian agencies) in the appropriate space to provide positive association of one with the other and the date of payment as shown in the PAID BY block of the voucher-schedule.

13. Section 101–41.807–2 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 101–41.807–2 Submission of transportation vouchers.**

* * * * *

(a) Each month, after the statement of transactions (SF 224, SF 1220, or SF 1221) has been accomplished, the basic transportation vouchers and supporting documents shall be securely bound with cord or tape and forwarded promptly to the General Services Administration (FWAA/C), Washington, DC 20405.

* * * * *

(d) The cover or container of each package shall include the following information.

From: Names and address of transmitting office. Period of account. Package number ——— of ———.

Disbursing office symbol number. Package number ——— of ———.

To: General Services Administration, (FWAA/C), Washington, DC 20405.

14. Section 101–41.808–1 is revised to read as follows:

**§ 101–41.808–1 New or discontinued agency stations.**

Agencies shall notify the General Services Administration (FWCA), Washington, DC 20405, whenever a new or existing agency station is authorized to prepare voucher-schedules for transportation services or when an agency station is no longer so authorized. This notice shall show the name and station location of the bureau or office and the date on which its authority to schedule payments for transportation services was granted or discontinued.

Dated: March 30, 1987.

**T.C. Golden,**

*Administrator of General Services.*

[FR Doc. 87–8351 Filed 4–14–87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 2090

[Circular No. 2593; AA–320–87–4220]

### Special Laws and Rules; Restatement of Procedures for the Segregation and Opening of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** This final rulemaking revises the regulations in subpart 2091 to place in one location the regulations that cover all forms of segregation of public lands, as well as the procedures under which those lands are opened to the operation of the public land laws and the mineral laws. This final rulemaking modernizes outdated provisions, making the subpart easier for the public to use in determining the status of public lands. The revision also makes it easier to improve the accuracy of the public land records.

**EFFECTIVE DATE:** May 15, 1987.

**ADDRESS:** Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sue Bosma, (202) 343–6486.

**SUPPLEMENTARY INFORMATION:** A proposed rulemaking revising the regulations in 43 CFR Subpart 2091 was published in the **Federal Register** on June 7, 1985 (50 FR 24124), with a 60-day comment period. During the comment period, comments were received from 25 sources, 3 from associations, 3 from businesses, 2 from State and local governments, 1 from an Indian tribe, 1 from a legal service group and 15 from Federal agencies. The comments generally supported the rulemaking, but made suggestions on specific sections of the proposed rulemaking. Those suggestions are discussed in this preamble. Only those sections that were the subject of comments are discussed.

A few of the comments wanted to be certain that the regulations and the opening orders would give everyone an equal opportunity for access to the public lands covered by an opening order. The proposed and final rulemaking are designed to summarize in one location the procedures that deal with the opening and closing of the public lands to provide the public with as much information as possible about those procedures and the steps required to gain access to public lands that have been opened by an opening order. This summarization does not change the provisions of the existing provisions in other parts of Title 43 relating to opening and closing.

One comment expressed the view that the existing notation rule used by the Bureau of Land Management needed to be revised. The changes contained in the proposed rulemaking, and continued by the final rulemaking, are designed to limit the use of the notation rule as the official procedure for disclosing the availability of the public lands for public use. The new procedures will, to the extent possible, eliminate the notation rule and provide greater public notice, through publication of opening and closing orders, of the status of the public lands. Publication of opening and closing orders should provide greater accessibility to information about the public lands for the public.

A couple of comments questioned whether the proposed rulemaking would require the publication of an opening order in every instance where the public lands are opened to entry under the public land laws. The proposed rulemaking, as well as the final rulemaking, was designed to require the publication of an opening order when the lands are opened to the public land laws, except in those instances where a statute provides for automatic opening upon the occurrence of an event, such as

the termination of an emergency withdrawal.

One comment pointed out that the proposed rulemaking did not address withdrawals made for reservoirs under the Act of October 2, 1888 (43 U.S.C. 662) and the Act of June 25, 1910 (43 U.S.C. 141), and suggested that the final rulemaking needed to specifically address these withdrawals. The final rulemaking does not specifically address these withdrawals. The statutory authority for these withdrawals was repealed by the Federal Land Policy and Management Act and any action on the existing withdrawals would be taken under procedures for withdrawal action under the Federal Land Policy and Management Act.

A couple of comments pointed out that the definition of the term "opening order" sets out the requirement for publication of that document in the **Federal Register** and questioned the need to repeat the instructions for publication in each of the sections that discusses opening orders. The final rulemaking continues to repeat the publication requirement in each of the sections where an opening order is mentioned. After careful review of this issue, it was determined that repeating the instructions would make clear the steps that were to be taken for publication of an opening order.

One comment suggested that the final rulemaking should provide for the posting of opening orders to assist in informing the public, especially those who do not have access to the **Federal Register**, of the opening of the public lands. The final rulemaking has not adopted this suggestion because existing Bureau of Land Management operating procedures require the posting of a copy of the **Federal Register** notice in the public room of each State office.

One comment raised questions about the intended effect of the proposed rulemaking. The proposed and final rulemakings are designed to summarize in one location the regulations that cover all forms of segregation and opening of the public lands. The requirements that must be followed in making a withdrawal are covered in those parts of Title 43 where the procedures for making a specific withdrawal are set out. This final rulemaking makes no changes in the withdrawal or classification requirements.

One comment questioned the removal by the proposed rulemaking of §§ 2091.5 and 2091.6–3 from the existing regulations and suggested that these sections should be reinstated by the final rulemaking. The final rulemaking has not adopted this suggestion and the sections have not been reinstated. These sections do not deal with the issue of segregation and opening of lands, but contain procedural instructions that are part of Bureau of Land Management's Manual system and will be followed in those instances when Indians are occupants of the public lands. This final rulemaking will have no effect on that existing procedure and the Bureau of Land Management will continue to follow the existing procedure that protects Indians who are occupants of the public lands. Finally, the final rulemaking will continue the procedure of segregating those public lands that are the subject of a properly filed application.

**Comments on Specific Sections**

Two comments pointed out that the authority section and authority citation provision did not contain a reference to the Alaska National Interest Lands Conservation Act. The final rulemaking corrects this oversight and includes a reference to that Act.

One comment suggested that the proposed rulemaking could be read to include lands of agencies other than the Bureau of Land Management. The proposed and final rulemakings deal with the opening and closing of those lands administered by the Secretary of the Interior through the Bureau of Land Management. Only those lands are covered by this final rulemaking even though the public land records of the Bureau show the status of the lands of other Federal agencies as required by statute. It should be noted that other agencies do not always keep the Bureau informed of changes in the status of lands under their jurisdiction, and this prevents the Bureau from maintaining current land records.

One comment was concerned that the proposed rulemaking did not continue segregation as a mechanism for protecting wildlife refuge lands from entry under the public land laws. These rulemakings are designed to deal only with lands under the jurisdiction of the Bureau of Land Management. Lands withdrawn or set aside for refuge purposes are protected under the regulations of the Fish and Wildlife Service.

The definition section of the proposed rulemaking was the subject of a number of comments. Several of the comments wanted new terms added to the section, while others requested that certain of the terms be amended. After careful review of the comments on this section, the final rulemaking adopts the language of the proposed rulemaking with an amendment in paragraph (b) that is a clarifying amendment.

A couple of comments raised questions about the availability of segregated lands for lease under the mineral leasing laws, with some reading the proposed rulemaking as closing all segregated lands to mineral leasing. Section 2091.0–7 makes this point clear in that it continues the policy of the Department of the Interior that lands are available for leasing under the mineral leasing laws, the Geothermal Steam Act and the material disposal laws unless the segregation provides otherwise. This final rulemaking continues unchanged the wording of the proposed rulemaking. This final rulemaking will continue the policy of the Secretary of the Interior of exercising his/her discretion under the mineral leasing laws, the Geothermal Steam Act and the material disposal laws unless the segregation specifies otherwise in order to provide special protection for the segregated lands.

The comments indicated some confusion about when lands are open to entry under the public land laws. One comment pointed out that there are situations where public lands are automatically opened without the issuance of an opening order and felt that the proposed rulemaking did not give proper recognition to this situation. The final rulemaking makes a change to § 2091.2–2(a)(2) of the proposed rulemaking to make it clear that lands are open as specified in the opening order. The proposed and final rulemakings contain provisions which allow automatic openings, as well as other actions that open lands.

A few comments on § 2091.1 of the proposed rulemaking raised the point that there are special statutory provisions concerning the filing of applications for lands in Alaska. In recognition of this situation, the final rulemaking has adopted language that clarifies this point.

One comment indicated that § 2091.1(b) of the proposed rulemaking was confusing and appeared to repeat the provisions of § 2091.0–7(a). The section has not been changed by the final rulemaking.

Several of the comments on § 2091.2 of the proposed rulemaking questioned the use of a notice of realty action as the method for classification of lands requiring classification actions. During its continuing efforts to update the provisions of Title 43 of the Code of Federal Regulations dealing with land disposals, the Bureau of Land Management is making the notice of realty action the vehicle for notification to the public that public lands are being made available for disposal. These changes, some of which are already in

place in Title 43, will standardize the use of the notice of realty action as the vehicle for land classification, a process that should clear up the confusion that was indicated in the comments on this issue.

One comment on § 2091.2–1 of the proposed rulemaking suggested that the final rulemaking provide that the filing of an application to exchange lands should segregate the public lands and pointed out that this amendment would follow the existing practice for exchanges of lands within the National Forest System. The final rulemaking has not adopted the suggestion. The exchange regulations, 43 CFR Group 2200, provide the authorized officer with latitude as to when the notice of realty action for an exchange should be issued in order to provide the greatest protection for the lands that are subject to the exchange. The Bureau of Land Management's experience shows that the finalization of an exchange normally takes longer than two years. However, the provisions of 43 CFR 2201.1(b) allow a 2-year period of segregation for exchanges and this final rulemaking cannot extend this period. Therefore, the 2-year period of segregation must be used at a point when it is most effective. If the segregation is imposed with the filing of the exchange proposal, the segregative effect would end before the exchange could be completed. This could result in entries on the lands that are the subject of the exchange that could jeopardize the exchange at a point where the parties had expended large amounts of time and money. For these reasons, the timing of the publication of the notice of realty action is left to field personnel who are responsible for completing the exchange.

Section 2091.2–2 of the proposed rulemaking was the subject of several comments, most of which raised points that they felt needed to be clarified. As a result of the concerns about clarity raised by the comments, the section was carefully reviewed to see if it could be clarified. The final rulemaking modifies the language of § 2091.2–2(a) of the proposed rulemaking to clarify an ambiguity about whether the lands are automatically opened when patented. Such action does terminate the segregative effect and the final rulemaking so states. The final rulemaking has adopted a suggested change to paragraph (a)(2) that makes it clear that the opening occurs on the date specified in the **Federal Register** notice, not upon publication in the **Federal Register**. Another suggested change that has been adopted by the final rulemaking is the inclusion of a reference to section 206 of the Federal Land Policy and Management Act. Finally, § 2091.2–2(c) of the proposed rulemaking has been amended by the final rulemaking to clarify that lands received by the United States as part of an exchange become open to "some or all of the public land laws," rather than open to all of the public land laws as stated in the proposed rulemaking.

Several comments were directed to § 2091.3 of the proposed rulemaking. One of the comments suggested that the final rulemaking should contain language covering land selections by the State of Alaska. This suggestion has not been adopted because the land selections of the State of Alaska are covered in § 2091.9 of the proposed and final rulemaking. These selections have been covered in a separate section because of the special nature of the land selection procedures for the State of Alaska, a procedure that did not fit with the provisions in the general sections.

A couple of the comments on § 2091.3–1(c) of the proposed rulemaking suggested the need to clarify the issue of when the segregation for an application to purchase Federally-owned mineral interests of the United States becomes effective. The final rulemaking has adopted a change which follows the provisions of 43 CFR Part 2720 and makes the segregation effective upon publication of the notice of the filing of an application to purchase Federally-owned mineral interests. This notice is to be published as soon as possible after the filing of the application in order to protect the lands from any unauthorized entry.

As suggested in a comment, the final rulemaking has adopted a change which adds the requirements of the Airport and Airway Improvement Act of 1982 to § 91.3–1(d) of the proposed rulemaking.

A couple of comments on § 2091.3–2 of the proposed rulemaking made the point that lands acquired through exchange should not be automatically opened to the public land laws. To clarify this point, the final rulemaking has adopted a change that specifies that the date on which lands acquired through exchange are open to the public land laws is the date of the publication of a notice of availability.

One comment questioned the inclusion of lands of the National Forest System in this proposed rulemaking which covers lands administered by the Secretary of the Interior through the Bureau of Land Management. These lands are included in both the proposed and final rulemaking because of the statutory authority given the Secretary of the Interior in connection with actions on National Forest exchanges.

One comment on § 2091.4 of the proposed rulemaking suggested that the phrase "leases, grants or contracts" be deleted. The final rulemaking has not adopted this suggestion, leaving the section as it appeared in the proposed rulemaking.

A comment on § 2091.4–1 of the proposed rulemaking expressed the view that there was a conflict between the language of the proposed rulemaking and § 2531.3 of the existing regulations. After a careful review of both sections, the final rulemaking retains § 2091.4–1 without change because there is no conflict between the two cited sections.

A comment on § 2091.4–3 of the proposed rulemaking wanted to know the effect of the segregation granted upon the signing of a Carey Act contract on the segregation that took effect upon filing of the application. The segregation created by the signing of a Carey Act contract is a new segregation that supersedes the prior segregation and is good for a period of 10 years, with the Secretary of the Interior having authority to extend that segregation for another 5 years. The final rulemaking makes no substantive change in this section of the proposed rulemaking.

The comments on §§ 2091.5, 2091.5–1 and 2091.5–2 of the proposed rulemaking pointed out several places where the proposed rulemaking was in error and needed clarification. The final rulemaking has adopted the suggestion that the word "withdrawals" be replaced with the word "segregations" because the latter word properly describes the action that occurs as a result of the filing of an application or proposal. Other comments on these sections of the proposed rulemaking make the point that the proposed rulemaking discusses "publication" without specifying where the publication is to be made. The final rulemaking adopts language requiring the publication to be in the **Federal Register.**

Nearly all of the comments on this section noted that the word "before" is used in error in § 2091.5–1(b) and that it should be replaced with the word "after." The final rulemaking has adopted this correction.

A couple of the comments on § 2091.5–2 of the proposed rulemaking indicated some confusion about segregations resulting from withdrawal applications filed prior to October 21, 1976. The final rulemaking makes no substantive changes in this section of the proposed rulemaking. The final rulemaking requires that any amended

withdrawal application filed prior to October 21, 1976, will subject the lands covered by the amended application to the requirements for a withdrawal application filed on or after October 21, 1976. One comment questioned what was meant by paragraph (b) of this section of the proposed rulemaking. That paragraph provides that lands affected by a subsequent amendment to a withdrawal application that had been filed prior to October 21, 1976, are subject to the same requirements as those for a withdrawal application filed on or after October 21, 1976. This means the segregation of all the lands covered by the amended application will terminate two years from the date of publication of the amendment. The final rulemaking makes no substantive change in this section.

Several comments were received on § 2091.5–3 of the proposed rulemaking. The comments raised the point that the language of the proposed rulemaking concerning the automatic termination of the emergency withdrawal was confusing and needed clarification. The final rulemaking has amended paragraph (b) to clarify that the segregative effect of an emergency withdrawal terminates unless it is continued by publication in the **Federal Register** of a notice of the filing of a withdrawal application or proposal covering all or part of the lands that were included in the emergency withdrawal.

Section 2091.5–4 of the proposed rulemaking was the subject of five comments. These comments raised questions about the procedures under which waterpower withdrawals can be terminated. After careful review of the proposed rulemaking and the comments, this section has been amended by the final rulemaking to clarify the procedures for opening lands covered by a waterpower withdrawal to the operation of the public land laws, including the mineral laws.

Section 2091.5–5 of the proposed rulemaking was the subject of six comments, with most of the comments raising questions about when lands covered by a Federal Power Act withdrawal that is vacated are opened. This section has been amended by the final rulemaking to clarify when such lands are opened, with the lands being opened when the vacated withdrawal is noted on the land records. The public is reminded that the Federal Power Act provides that lands covered by a Federal Power Act withdrawal are, at the time the withdrawal is vacated, subject for a period of 90 days to the right of the State where the lands are located to select a right-of-way for highway purposes. The final rulemaking also contains a reference to 43 CFR Part 3730 to give the interested public a better understanding of the effect of a Federal Power Act withdrawal.

Three comments were directed to § 2091.5–6 of the proposed rulemaking, with the comments expressing some confusion about the authority of the Secretary of the Interior in those instances where the Congress makes a withdrawal of the public lands and fails to specify the extent of the segregation. The final rulemaking has been amended to clarify the authority of the Secretary in such instances.

Only three comments were received on § 2091.6 of the proposed rulemaking. The comments were widely varied and raised questions about the effective date of a withdrawal and its termination. In order to assist the users of this section, the final rulemaking has added a reference to 43 CFR Part 2310—Withdrawals, General Procedure.

Section 2091.7–1 of the proposed rulemaking was the subject of eleven comments. A couple of the comments expressed the view that the section was too restrictive and should be simplified. After careful review, the title of the section has been changed by the final rulemaking to clarify that the section is applicable to all classification actions. The final rulemaking also replaces the word "cancellation" in § 2091.7–1(a)(2) with the word "classification," the word that was originally intended.

The comments on section 2091.7–2 of the proposed rulemaking raised questions about the provisions of this section. One comment pointed out that lands classified for disposal under the Recreation and Public Purposes Act and the Small Tract Act are segregated from the Mineral Leasing Act, which is inconsistent with the language of the proposed rulemaking. The final rulemaking has removed the reference to the mineral laws in the first sentence of the section. This change means that the classification notice will set out the extent of the segregative effect, including whether the lands are segregated from the mineral laws.

Sections 2091.9 through 2091.9–3 of the proposed rulemaking was the focus of three comments. One of the comments recommended that the final rulemaking repeat the provisions of 43 CFR Part 2650 that are applicable to opening and closing of the public lands. As stated earlier in this preamble, this part is a restatement of the provisions located in other parts of Title 43 of the Code of Federal Regulations on opening and closing of the public lands. Repeating these provisions is not required and the final rulemaking has not adopted the recommendation. The final rulemaking does make a correction in § 2091.9–3 by removing the phrase "Part 4220" and replacing it with the phase "Part 4200." While this final rulemaking cannot address the suggestion of one of the comments that the provisions of 43 CFR Part 2650 need to be updated, the Bureau of Land Management is reviewing Part 2650 to determine what, if any, changes are needed.

Editorial and grammatical corrections have been made as needed.

The principal author of this final rulemaking is Jim Powell, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The revision made by this final rulemaking is a restatement in one location of the existing procedures for segregating or opening the public lands to the various public land laws and the mineral laws. The final rulemaking makes no change in the procedures that exist in other parts of Title 43 of the Code of Federal Regulations, procedures that apply equally to all entities who desire to use the public lands.

Since this final rulemaking is a restatement of regulations that are located in other parts of Title 43 of the Code of Federal Regulations, there are no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

**List of Subjects 43 CFR Part 2090**

Airports, Alaska, Coal, Grazing lands, Indian lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1202), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 231, 321, 3233, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the

Act of February 18, 1891 (26 Stat. 794) and section 17 of the Act of June 25, 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 29, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1701 et seq.), Part 2090, Group 2000, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

James E. Cason,

*Acting Assistant Secretary of the Interior.*

March 25, 1987.

## PART 2090—[AMENDED]

1. An authority citation for Part 2090 is added to read:

**Authority:** R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1701 et seq.; 30 U.S.C. 189; 48 U.S.C. 462 note; 43 U.S.C. 279–283.

2. Part 2090 is amended by revising subpart 2091 to read:

## PART 2090—SPECIAL LAWS AND RULES

### Subpart 2091—Segregation and Opening of Lands

Sec.

2091.0–1 Purpose.
2091.0–3 Authority.
2091.0–5 Definitions.
2091.0–7 Principles.
2091.1 Action on applications and mining claims.
2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.
2091.2–1 Segregation.
2091.2–2 Opening.
2091.3 Segregation and Opening resulting from the filing of an application or offer.
2091.3–1 Segregation.
2091.3–2 Opening.
2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.
2091.4–1 Segregation and opening—Desert land entries and Indian allotments.
2091.4–2 Segregation and opening—airport leases and grants.
2091.4–3 Segregation and opening—Carey Act.
2091.5 Withdrawals.
2091.5–1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.
2091.5–2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.
2091.5–3 Segregative effect and opening—emergency withdrawals.
2091.5–4 Segregative effect and opening—water power withdrawals.
2091.5–5 Segregative effect and opening—Federal Power Act withdrawals.
2091.5–6 Congressional withdrawals and opening of lands.
2091.6 Opening of withdrawn lands—general.
2091.7 Segregation and opening of lands for a specific use.
2091.7–1 Segregative effect and opening—classification.
2091.7–2 Segregative effect and opening—Taylor Grazing Act.
2091.9 Segregation and opening resulting from laws specific to Alaska.
2091.9–1 Alaska Native selections.
2091.9–2 Selections by the State of Alaska.
2091.9–3 Lands in Alaska under grazing lease.

### Subpart 2091—Segregation and Opening of Lands

#### § 2091.0–1 Purpose.

The purpose of this subpart is to provide a general restatement of the regulatory provisions in Title 43 of the Code of Federal Regulations dealing with the segregation and opening of public lands administered by the Secretary of the Interior through the Bureau of Land Management and summarize the existing procedures covering opening and closing of lands as they relate to the filing of applications. The provisions of this subpart do not replace or supersede any provisions of Title 43 covering opening and closing of public lands.

#### § 2091.0–3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

#### § 2091.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) "Land" or "public lands" means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Mineral laws" means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) "Public lands records" means the Tract Books, Master Title Plats and Historical Indices maintained by the Bureau of Land Management, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may include, but is not limited to, withdrawals, restorations, reservations, openings, classifications applications, segregations, leases, permits and disposals.

(f) "Opening" means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if appropriate, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals, reservations, classifications, and management decisions. Depending on

the language in the opening order, an opening may restore the lands to the operation of all or some of the public land laws.

(g) "Opening order" means an order issued by the Secretary or the authorized officer and published in the **Federal Register** that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) "Public land laws" means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) "Revocation" means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the "Secretary".

### § 2091.07 Principles.

(a) Generally, segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to the operation of the discretionary mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing rights and is, in most cases, for a limited period which is specified in regulations or in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

### § 2091.1 Action on applications and mining claims.

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, except those that apply to selections made by the State of Alaska under section 906(e) of the Alaska National Interest Land Conservation Act and selections made by Alaska Native Corporations under section 3(e) of the Alaska Native Claims Settlement Act, when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision applicable to the lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classifications existing under appropriate law:

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action previously published in the **Federal Register** under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

### § 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

### § 2091.2-1 Segregation.

The publication of a Notice of Realty Action in the **Federal Register** segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869–4), for a period of 18 months (See Part 2740 and Subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See Part 2710); and

(c) The exchange provisions of section 206 of the Federal Land Policy and Management Act of 1976(43 U.S.C. 1716) for a period of 2 years (See Part 2200).

### § 2091.2-2 Opening.

(a) The segregative effect of a Notice of Realty Action automatically terminates either:

(1) At the end of the periods set out in § 2091.2–1 of this title (See Part 2740); or

(2) As of the date specified in an opening order published in the **Federal Register**; or

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) Lands conveyed under either the Recreation and Public Purposes Act or sections 203 and 206 of the Federal Land Policy and Management Act, upon opening, remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(c) Lands conveyed to the United States by exchange become public lands upon acceptance of title by the United States and become open to the operation of some or all of the public land laws, to the extent and on the date and time set forth in an opening order published in the **Federal Register**.

### § 2091.3 Segregation and opening resulting from the filing of an application or offer.

### § 2091.3-1 Segregation.

(a) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See Subparts 2621 and 2622)

(b) The filing of a notice of an offer for exchange of lands within the National Forest System segregates the lands for a period of 2 years from the date of such filing with the authorized office. (See § 2203.1(b))

(c) The filing of an application and publication of the notice of the filing of an application in the **Federal Register** for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the publication of the notice of filing of the application with the authorized officer. (See Part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211–213), or the filing of a request for an airport conveyance under the Airport and Airway Improvement Act of 1982

(49 U.S.C. 2215), segregates the lands as of the date of filing with the authorized officer. (See Part 2640 and Subpart 2911)

**§ 2091.3–2 Opening.**

(a) If the application or offer described in § 2091.3–1 of this title is not denied or otherwise terminated prior to the end of the 2-year segregative period, the segregative effect of the filing of the application or offer terminates either:

(1) Upon the issuance of a patent, other document of conveyance or lease to such lands; or

(2) Upon publication in the **Federal Register** of an opening order terminating the segregative effect and specifying the date and time of opening; or

(3) Automatically upon the expiration of the 2-year period commencing on the date the application or offer is filed; whichever occurs first.

(b) If the application or offer described in § 2091.3–1 of this title is denied or otherwise terminated prior to the end of the 2-year segregation period, the lands are opened by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Lands conveyed to the United States within the National Forest System under the authority of the Act of March 20, 1922, as amended (16 U.S.C. 485), or the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) are open to operation of all laws and regulations applicable to National Forest System lands on the date the lands are transferred to the National Forest System; and the public lands, as applicable, on the date of publication of a notice of availability.

**§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.**

**§ 2091.4–1 Segregation and opening—Desert land entries and Indian allotments.**

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See Parts 2520 and 2530).

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the **Federal Register** of an opening order which specifies the date and time of opening. (See Parts 2520 and 2530).

**§ 2091.4–2 Segregation and opening—airport leases and grants.**

(a) The issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands. (See Part 2640 and Subpart 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, but are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See Part 2640 and Subpart 2911).

**§ 2091.4–3 Segregation and opening—Carey Act.**

(a) For lands covered by a Carey Act grant, publication of a notice in the **Federal Register** that a contract has been signed segregates the lands described in the contract, as of the date of publication of a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See Part 2610).

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of Subpart 2613 of this title.

**§ 2091.5 Withdrawals.**

**§ 2091.5–1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.**

(a) Publication in the **Federal Register** of a notice of an application or proposal for withdrawal, as provided in Subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Segregations resulting from applications and proposals filed on or after October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication in the **Federal Register** of the notice of the filing of an application or proposal for withdrawal;

(2) Upon the publication in the **Federal Register** of a Public Land Order effecting the withdrawal in whole or in part;

(3) Upon the publication in the **Federal Register** of a notice denying the withdrawal application or proposal, in whole or in part, giving the date and time the lands shall be open; or

(4) Publication in the **Federal Register** of a notice of request for cancellation of a withdrawal application or proposal, in whole or in part, giving the date and time the lands are open.

**§ 2091.5–2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.**

(a)(1) Lands covered by a withdrawal application or withdrawal proposal filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the **Federal Register**, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5–1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5–1 of this title.

(b) Segregations resulting from applications filed under this section terminate in accordance with procedures in § 2091.5–1 of this title.

**§ 2091.5–3 Segregative effect and opening—emergency withdrawals.**

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, and cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration of the withdrawal unless segregation is effected by the publication in the **Federal Register** of a notice of a withdrawal application or proposal.

**§ 2091.5–4 Segregative effect and opening—water power withdrawals.**

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered withdrawn and are segregated from operation of the public land laws, but are not withdrawn and segregated from the operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws after a revocation or cancellation order issued by the Department of the Interior or after a determination to open the lands is made by the Federal Energy Regulatory Commission under section 24

of the Federal Power Act. (See Subpart 2320) Mining claims may be located on such lands under procedures in Subpart 3730 of this title. These lands are opened by publication in the **Federal Register** of an opening order specifying the extent, date and time of opening.

**§ 2091.5–5 Segregative effect and opening—Federal Power Act withdrawals.**

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate.

(2) The issuance of a permit or license for a project by the Federal Energy Regulatory Commission withdraws the lands from the operation of the mining laws. (See Part 3730).

(b) Lands withdrawn under section 24 of the Federal Power Act remain withdrawn until the withdrawal is vacated and the lands opened by proper authority.

(c) After a withdrawal has been vacated, the lands are opened to the operation of the public land laws by notation of the lands records to that effect.

**§ 2091.5–6 Congressional withdrawals and opening of lands.**

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the withdrawal. If the statute does not specify the date, duration and extent of segregation, the Secretary shall publish in the **Federal Register** a Public Land Order so specifying.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the **Federal Register** an opening order so specifying.

**§ 2091.6 Opening of withdrawn lands—general.**

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the **Federal Register** of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the **Federal Register** of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the **Federal Register** as a separate document. In each case, the opening order specifies the time, date and specific conditions under which the lands are opened. (See Subpart 2310.)

**§ 2091.7 Segregation and opening of lands classified for a specific use.**

**§ 2091.7–1 Segregative effect and opening classifications.**

(a)(1) Lands classified under the authority of the Recreation and the Public Purposes Act, as amended (43 U.S.C. 869–4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act, except as provided in the notice of realty action.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411–18) are segregated to the extent described in the notice of classification.

(b) The segregative effect of the classification described in § 2091.7–1 of this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications; (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2470 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2470 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date on these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classification shall be terminated by publication in the **Federal Register** of an opening order specifying the date and time of opening.

**§ 2091.7–2 Segregative effect and opening—Taylor Grazing Act.**

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice. The segregative effect for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the **Federal Register** of an opening order specifying the date and time of opening or upon issuance of a patent or other document of conveyance.

**§ 2091.9 Segregation and opening resulting from laws specific to Alaska.**

**§ 2091.9–1 Alaska Native selections.**

The segregation and opening of lands authorized for selection and selected by Alaska Natives under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), are covered by Part 2650 of this title.

**§ 2091.9–2 Selections by the State of Alaska.**

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by Subpart 2627 of this title.

**§ 2091.9–3 Lands in Alaska under grazing lease.**

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a–316o) are covered by Part 4200 of this title.

[FR Doc. 87–8342 Filed 4–14–87; 8:45 am]
BILLING CODE 4310–84–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**44 CFR Part 64**

**[Docket No. FEMA 6749]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The third date ("Susp.") listed in the forth column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant

Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest Room 416 Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new contruction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measure after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and indentified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

**§ 64.6 List of Eligible Communities.**

| State | Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard |
|---|---|---|---|---|---|
| **Region I** | | | | | |
| Maine | Hudson, town of, Penobscot County. | 230392 | June 24, 1977, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Apr. 17, 1987. |
| Vermont | Johnson, town of Lamoille County. | 500063 | May 13, 1975, Emergency; Feb. 1, 1979, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| **Region IV** | | | | | |
| Mississippi | Warren County, Unicorporated Areas. | 280198 | Dec. 26, 1973, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| South Carolina | Charleston County, Unicorporated Areas. | 455413 | June 30, 1970, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| Do | McClellanville, town of, Charleston County. | 450039 | Dec. 16, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| Do | Walterboro, city of, Colleton County. | 450058 | Apr. 2, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| **Region V** | | | | | |
| Indiana | La Fontaine, town of, Wabash County. | 180267 | June 4, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |

| State | Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|---|
| Ohio | Enon, village of, Clark County | 390795 | Sept. 12, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| Wisconsin | Dousman, village of, Waukesha County. | 550480 | June 30, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| **Minimal Conversions** | | | | | |
| **Region I** | | | | | |
| Maine | Frenchboro, town of, Hancock County. | 230594 | Apr. 25, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1986, Suspension. | Apr. 17, 1987. | Apr. 17, 1987 |
| Do | Troy, town of, Waldo County | 230269 | Mar. 15, 1976, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| **Region II** | | | | | |
| New York | Laurens, village of, Otsego County. | 361351 | Jan. 27, 1976, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |
| **Region III** | | | | | |
| West Virginia | Junior, town of, Barbour County | 540001 | Nov. 21, 1975, Emergency; Apr. 17, 1987, Regular; Apr. 17, 1987, Suspension. | Apr. 17, 1987. | Do |

Code for reading fifth column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

Issued: April 9, 1987.

[FR Doc. 87-8388 Filed 4-14-87; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 85-55; RM-4861]**

### Television Broadcasting Services; Bradenton, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document assigns UHF television Channel 66 to Bradenton, Florida, in response to a petition for reconsideration filed by Broadcast Technical Services, Inc. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 85-55, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.606 [Amended]**

2. In § 73.606(b), Table of Assignments, the entry for Bradenton, Florida, Channel 66, is added.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-8409 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 86-98; RM-5188, 5375]**

### Radio Broadcasting Services; Seymour and Pigeon Forge, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 242A to Seymour, Tennessee, as that community's first FM service at the request of William J. Miller. A site restriction of 3.4 kilometers (2.1 miles) northeast of Seymour is required. In addition, this action denies the mutually exclusive petition of J.A. Adams requesting the allotment of Channel 242A to Pigeon Forge, Tennessee. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 26, 1987; The window period for filing applications will open on May 27, 1987 and close on June 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-98, adopted February 27, 1987, and released April 7, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding the entry for Seymour, Tennessee, Channel 242A.

Bradley P. Holmes,

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8408 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-434; RM-5573]

## Radio Broadcasting Services; Pago Pago, American Samoa

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allocates Channel 221A to Pago Pago, American Samoa, as the community's first local FM service, at the request of Samoa Technologies, Inc. Channel 221A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 26, 1987; The window period for filing applications for open on May 27, 1987, and close on June 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-434, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Pago Pago, American Samoa, Channel 221A.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8406 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-248; RM-5244]

## Television Broadcasting Services; Walker, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document assigns UHF Television Channel 38 to Walker, Minnesota, in response to a petition filed by Hubbard Broadcasting, Inc. This assignment will provide a second commercial television service for Walker. Canadian concurrence has been obtained for the assignment of Channel 38 to the community. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-248, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Assignments is amended under Minnesota by adding Channel 38- to Walker.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8410 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-201; RM-5003, RM-5529]

## Radio Broadcasting Services; Falmouth, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes FM Channel 245A for FM Channel 237A at Falmouth, Kentucky and modifies the license of Station WIOK(FM) to specify the new channel at the request of IOK, Inc. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** March 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** D. David Weston, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's corrected Report and Order, MM Docket No. 86-201, adopted December 10, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of Allotments is revised under the State of Kentucky by adding Channel 245A and deleting Channel 237A at Falmouth.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8407 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

BEST COPY AVAILABLE

## GENERAL SERVICES ADMINISTRATION

**48 CFR Parts 522 and 552**

**[Acquisition Circular AC–87–2]**

### Annual Report From Federal Contractors

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** This Acquisition Circular temporarily amends Parts 522 and 552 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to implement the Department of Labor (DOL) regulations published in the March 4, 1987 **Federal Register** (52 FR 6674–6679). The DOL regulations require Federal Contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans. The intended effect is to provide guidance to GSA contracting activities pending a revision to the regulation.

**DATES:** *Effective Date:* April 3, 1987.

*Expiration Date:* October 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Joyner, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4764.

**SUPPLEMENTARY INFORMATION:** This rule was not published for public comment because it merely implements the Department of Labor regulations which have already ungone the public comment process. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The Secretary of Labor certified to the Chief Counsel for Advocacy, Small Business Administration, that the annual reporting requirement would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule implements the DOL requirement that contractors submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans. Therefore, no regulatory flexibility analysis has been prepared. The information collection requirement contained in this rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned OMB Control No. 1293–0005. Government Procurement.

## PARTS 522 and 552—[AMENDED]

1. The authority citation for 48 CFR Parts 522 and 552 continues to read as follows:

**Authority:** 40 U.S.C. 486(c).

2. 48 CFR Parts 522 and 552 are amended by the following Acquisition Circular:

April 1, 1987.

**General Services Administration Acquisition Regulation; Acquisition Circular (AC–87–2)**

To: All GSA contracting activities.

Subject: Annual Report from Federal Contractors.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) Chapter 5 (APD 2800.12) to prescribe an Employment Report on Special Disabled Veterans and Veterans of the Vietnam Era clause for inclusion in GSA contracts, and to make related changes.

2. *Background.* As required by the Veterans' Compensation, Education and Employment Amendment of 1982, the Department of Labor (DOL) prescribed on March 4, 1987 (52 FR 6674–6679, March 4, 1987), a requirement that Federal contractors submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans. This acquisition circular implements the DOL requirements.

3. *Effective Date.* All solicitations issued on or after April 3, 1987, shall include the clause prescribed at § 522.1308. In addition, amendments to solicitations and modifications to contracts issued on or after April 3, 1987, shall incorporate the clause prescribed at § 552.1308 in solicitations or contracts if the clause is not included in the original solicitation or contract.

4. *Expiration date.* This acquisition circular expires October 2, 1987, unless canceled earlier.

5. *Reference to regulation.* Sections 522.1308, 522.1370 and 552.222–87 of the General Services Administration Acquisition Regulation.

6. *Explanation of changes.* a. Section 522.1308 is added to read as follows:

**§ 522.1308 Contract clause.**

The contracting officer shall insert the clause at § 522.222–87, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts, including leases of real property, whenever the clause at FAR 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans, is included.

b. Section 522.1370 is added to read as follows:

**§ 522.1370 Annual reports from Federal contractors.**

The Veterans' Compensation, Education and Employment Amendments of 1982 established requirements for Federal contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special veterans. Department of Labor regulations implementing this requirement are prescribed at 41 CFR 61–250.

c. Section 552.222–87 is added to read as follows:

**§ 552.222–87 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.**

As prescribed in § 552.1308 insert the following clause:

**Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Mar. 1987).**

(a) The Contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS–100." Computer-generated forms are acceptable, provided that all required information and data are presented in the same format as the VETS–100 form.

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) above shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C.

2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012. Nothing in this paragraph (e) shall preclude an employee from informing a Contractor at a future time of his or her desire to benefit from this program. Nothing in this paragraph (e) shall relieve a Contractor from liability for discrimination under 38 U.S.C. 2012.

(f) The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause.)

7. *Forms.* The VETS–100 Form, Federal Contractor Veterans' Employment Report, is illustrated as an attachment to this circular. Contractors shall obtain the VETS–100 form prior to the filing date. Forms may be obtained from OASVET (VETS–100), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**Editorial note.** The attachment, which contains the VETS–100 Form, is not published in the **Federal Register** or the Code of Federal Regulations.

**Richard H. Hopf III,**

*Acting Associate Administrator for Acquisition Policy.*

[FR Doc. 87–8352 Filed 4–14–87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

**[Docket No. 61220–7033]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects two deletions that occurred in the regulatory text of the final rule implementing Amendment 15 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This rule was published March 13, 1987, 52 FR 7868.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, 907–586–7230.

In rule document 87–5358 beginning on page 7868 in the issue of March 13, 1987, make the following corrections:

**§ 672.24 [Corrected]**

1. On page 7876, in the third column, the last sentence in paragraph (2) should read "Except in the Western Area during 1987 and 1988, no person may use any gear other than hook and line or trawl gear in fishing for groundfish in the Gulf of Alaska".

2. On the same page, in the third column, after paragraph (2) and before paragraph (i), insert the heading "(3) *Sablefish bycatch amounts*".

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 9, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 87–8483 Filed 4–14–87; 8:45 am]

BILLING CODE [illegible]

### 50 CFR Part 672

**[Docket No. 61220–7033]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish target quotas (TQs) allocated to trawl gear in the Central Regulatory area of the Gulf of Alaska will be achieved before the end of the fishing year if directed fishing for sablefish with trawl gear is allowed to continue. In order to provide adequate bycatch amounts of sablefish for continued groundfish fishing by trawlers in the area, the Secretary of Commerce is prohibiting directed fishing for sablefish in the Central Regulatory area by persons using trawl gear from April 11, 1987, through the remainder of the 1987 fishing year.

**DATES:** Effective dates: From noon, April 11, Alaska Standard Time (AST), until midnight, AST, December 31, 1987.

Public comments on this notice may be submitted until April 27, 1987.

**ADDRESS:** Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

**FOR FURTHER INFORMATION CONTACT:** Janet E. Smoker (Resource Management Specialist, NMFS) 907–586–7230.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central and Eastern Regulatory Areas in the Gulf of Alaska. An emergency rule (52 FR 422, January 6, 1987) and Amendment 15 (52 FR 7868, March 13, 1987), effective April 8, 1987, establish an optimum yield range for the Gulf of Alaska of 116,000 to 800,000 metric tons (mt).

Under the procedure set forth in the emergency rule at § 672.20(f) and Amendment 15 at § 672.20(a), 1987 TQs were established for each of the groundfish species, which were then apportioned among the regulatory areas. One of the groundfish species is sablefish, for which the 1987 TQ in the Central Regulatory Area is 8,800 mt (52 FR 785, January 9, 1987).

Under Amendment 15, § 672.24(b)(2) restricts the trawl take of sablefish in the Central Regulatory area to 20 percent of the TQ, or 1,760 mt. Section 672.24(b)(3)(i) specifies that when the Regional Director determines that the share of the sablefish TQ assigned to any type of gear for any year and any area or district may be taken before the end of that year, the Secretary will prohibit directed fishing for sablefish by persons using that type of gear for the remainder of the year, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group.

For trawlers, the fishing season began on January 1, 1987. Several trawlers have targeted, or are targeting on, sablefish and others have reported bycatch amounts of sablefish. The estimated trawl catch through March 21 in the Central Regulatory area is 946 mt. Early in the year, most of the domestic trawl fleet was fishing for pollock and rock sole in the Bering Sea area. Those fisheries are experiencing their usual seasonal decline and as many as a dozen large factory trawlers may move into the Gulf of Alaska. The most recent week's catch of sablefish by five such trawlers in the Central Gulf exceeded 230 mt. If such catch rates continue, and particularly should a further influx of vessels with such high catch rates occur, the remainder of the sablefish trawl quota in the Central Regulatory area could be taken in a few weeks, or even in a few days. At the present rate of catch about 1,600 mt will have been harvested by April 11.

The total TQ tonnage of other target groundfish species (Pacific cod, flounders, and Pacific ocean perch) in the Central Regulatory area is 24,027 mt; in addition, at least 54,000 mt of the 84,000 mt combined Western and Central Regulatory areas pollock quota

is expected to be taken in the Central area. Only a small portion of these amounts (about 8,000 mt) has been taken to date and it is not known what amounts of these species trawlers will take during the remander of the year. Observer data indicates that sablefish bycatches can be as high as nine percent in fisheries for pollock, Pacific cod, or flounders. Thus, the sablefish amounts remaining in the Central Regulatory trawl quota are needed to provide bycatch for trawlers fishing in that area for other target species.

Under § 672.24(b)(3)(ii), if the share of the sablefish TQ assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year. In 1986, the Central Regulatory area was closed to further retention of sablefish by trawlers on April 26. Such closures prevent overfishing of the stocks, but also result in wastage due to the required discard of a valuable species, and in operational inefficiencies caused to the boat operator who must promptly sort sablefish and return them to the sea. This action will alleviate such problems by postponing the dates upon which the sablefish trawl quotas will be reached, therefore, shortening the time period during which sablefish must be discarded.

After the effective date of this notice, fishing that is intended, or can reasonably be expected, to result in the catching, taking, or harvesting of quantities of sablefish that amount to 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time will be prohibited.

**Classification**

Wastage of sablefish that must be treated as prohibited species will result unless this notice takes effect promptly. NOAA, therefore, finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under §§ 672.22 and 672.24 and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

Dated: April 10, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.*

[FR Doc. 87-8443 Filed 4-10-87; 4:47 pm]

[redacted] CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 979

### Melons Grown in South Texas; Proposed Amendment No. 6 to Handling Regulation; Change in Grade Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would require each lot of production area cantaloups to grade at least U.S. Commercial and tighten the existing tolerance for serious damage. Currently, at least half of the cantaloups in each lot must grade U.S. Commercial with allowances for serious damage. For honeydew melons, the current 50 percent U.S. Commercial grade requirement and relaxed serious damage tolerance would remain unchanged, but a minimum sugar content requirement would be added to the requirements. Current grade requirements for South Texas melons are too low to provide the quality necessary for optimum consumer satisfaction. Improving the quality of the melons will enhance consumer satisfaction, increase sales, and tend to increase grower returns. This proposal was recommended by the South Texas Melon Committee. The committee works with the Department in administering the order. The proposed changes, if adopted, would apply for the 1987 and subsequent seasons.

**DATES:** Comments must be received by April 27, 1987.

**ADDRESSES:** Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250–1400. Three copies of all written materials shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. Comments should reference the date and page number of this issue of the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400 (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 35 handlers of melons will be subject to regulation under the South Texas Melon Marketing Order during the course of the current season. In addition, there are about 72 producers of melons in South Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of producers and handlers may be classified as small entities.

The primary production area for South Texas melons is the Lower Rio Grande Valley. Cantaloup shipments in 1986 totaled 5.2 million cartons with harvested acreage of 19,277 acres. Honeydew shipments from the area totaled 2.9 million cartons from 7,424 acres. Nearly all the crop is marketed fresh.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this proposal on small entities. The regulatory action in this instance is a proposal to: (1) Require production area cantaloups to grade at least U.S. Commercial with 8 percent serious damage including not more than 5 percent for decay; and (2) require a minimum of 8 percent sugar (soluble solids) for honeydew melons in addition to the current grade requirements. The current grade requirements for cantaloups and honeydew melons require that not more than 50 percent of the melons in any lot fail to meet the requirements of U.S. Commercial grade except that no more than 20 percent shall be allowed for serious damage, including not more than 10 percent for melons affected by soft decay. Black surface discoloration is not considered as a grade defect in scoring melons under these requirements. In addition, the individual cartons within a particular lot must contain at least 25 percent U.S. Commercial or better quality. Thus, some of the cartons of a lot of size 18 melons could contain five melons of U.S. Commercial or better grade and 13 melons of lower quality as long as the entire lot met the requirement of not less than 50 percent U.S. Commercial or better grade.

According to the committee, the current minimum requirements have allowed some melons of undesirable quality to be marketed. Some members of the trade have voiced concerns about this practice. The committee also indicated this practice depresses prices for all melons from the area and negatively impacts industry returns.

The proposed quality requirement changes are expected to result in better quality melons in the marketplace and enhance the reputation of South Texas melons. This is expected to promote increased sales and shipments and to improve industry returns. Estimates of the quantity of melons that would be removed from the market range from one-half percent to a maximum of five percent.

Improvement in the quality of the melon pack is not expected to short the market. Preliminary indications to the South Texas Melon Committee are that plantings of both cantaloups and honeydew melons in the production area will be increased moderately compared with the 1986 season. Barring adverse

weather, this season's melon crop in the area should be larger than last year. In addition, competitive melon supplies from other sources, including imports, are expected to be at least equal to those in the 1986 season.

Although this proposal would increase the quality requirements for cantaloups and honeydew melons shipped from the production area, exemptions to these requirements would continue in effect. For example, any handler may handle, other than for resale, up to, but not to exceed 120 pounds net weight of melons per day without regard to the requirements of the handling regulation. In addition, the regulation permits shipments for charity, relief, canning, and freezing exempt from the grade, container, and inspection requirements of the handling regulation. Safeguard provisions of the handling regulation apply to such shipments.

The actual cost to handlers for complying with these proposed changes cannot be precisely determined, but it is expected to be minimal. On the other hand, the increased returns from better quality melons should more than offset the slight increase in the quantity of melons expected to be eliminated from the marketplace if this proposal is adopted following the Department's analysis of comments.

This proposal is being issued under the Marketing Agreement and Order No. 979 (7 CFR Part 979) regulating the handling of melons grown in South Texas. The agreement and order are effective under the Act. These actions were recommended unanimously by the South Texas Melon Committee. The committee works with the USDA administering the marketing agreement and order program.

On February 5 the committee met and unanimously recommended changing the quality requirements for South Texas melons. Recently there have been complaints voiced by industry members that the quality requirements are too low, and as a result many low quality melons are appearing in marketing channels. The committee contends that this is detrimental to the image of production area melons and puts downward pressure on the prices for all melons.

In order to provide consumers with melons of acceptable quality and to improve growers' returns the committee recommended requiring all cantaloups to meet a minimum grade of U.S. Commercial, with a tightened tolerance for serious damage of eight percent including not more than five percent decay. For honeydew melons, the committee recommended that the current grade requirements remain unchanged, except for the addition of a minimum of eight percent soluble solids (sugar) requirement as determined by an approved hand refractometer. An eight percent soluble solids requirement for honeydew melons is quite modest, and shippers should have no problem meeting that requirement. Since the grade standards for honeydew melons do not provide for a minimum sugar content, tightening the grade requirements would not necessarily result in a sweeter or more mature melon.

The current scoring provision with regard to black surface discoloration would continue under the proposal. In addition, the proposal would provide that individual packages may not contain more than double the specified lot tolerance.

Regulations for the South Texas melon marketing season begin May 1, and these proposed changes are important for a successful marketing season. The committee recommended the changes at an open meeting attended by both committee members and other interested persons. The industry has been advised of the provisions of this proposal by the committee, and the local media. Therefore, it is determined that 10 days is adequate for comments.

**List of Subjects in 7 CFR Part 979**

Marketing agreements and orders, Melons, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 979 be amended as follows:

## PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 979.304 is hereby proposed to be further amended by revising paragraph (a) to read as follows:

**§ 979.304 Handling regulation.**

* * * * * *

(a) *Grade requirements.* (1) Cantaloups shall be U.S. Commercial grade or better, except that not more than 8 percent serious damage including not more than 5 percent decay shall be permitted.

(2) At least 50 percent of the honeydew melons in any lot shall meet the requirements of U.S. Commercial grade except that not more than 20 percent serious damage shall be allowed including not more than 10 percent for melons affected by decay. In addition, the combined juice from the edible portion of a sample of honeydew melons selected at random shall contain not less than 8 percent soluble solids as determined by an approved hand refractometer. Individual cartons shall contain not less than 25 percent U.S. Commercial or better quality.

(3) Black surface discoloration shall not be considered as a grade defect with respect to such grade.

(4) Individual packages may contain not more than double the specified lot tolerance.

* * * * * *

Dated: April 10, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8596 Filed 4–14–87; 8:45 am]

BILLING CODE 3410-02-M

---

**7 CFR Part 1011**

**[Docket No. AO–251–A32]**

## Milk in the Tennessee Valley Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision recommends changes to the Tennessee Valley order that would allow a handler operating more than one distributing plant to combine the receipts and dispositions of those plants for the purpose of qualifying them as pool plants. The decision is based on the record of a public hearing held February 12, 1987, at Knoxville, Tennessee.

The changes are necessary to accommodate more efficient procedures for handling milk, to reflect current marketing conditions and to assure orderly marketing in the Tennessee Valley area. The proposed changes were submitted and supported by a cooperative association that represents a substantial majority of producers who supply the market. In addition, the changes were supported by a proprietary handler operating a pool supply plant under the order.

**DATE:** Comments are due on or before April 30, 1987.

**ADDRESS:** Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–7183.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small businesses. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have significant economic impact on a substantial number of small entities. Only one multi-plant handler operation is expected to elect unit pooling to effect more efficient processing of certain milk products. The amendment would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued January 29, 1987; published February 3, 1987 (52 FR 3251).

## Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Tennessee Valley marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 15th day after publication of this decision in the **Federal Register.** Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment set forth below is based on the record of a public hearing held a Knoxville, Tennessee, on February 12, 1987, pursuant to a notice of hearing issued January 29, 1987 (52 FR 3251).

The material issues on the record of hearing relate to pool plant qualification standards for distributing plants.

## Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

The provisions affecting the pool qualification of distributing plants under the Tennessee Valley Federal milk order should be changed. Currently, 60 percent of the amount of milk received at or diverted from each distributing plant during the months of August through November, January and February must be disposed of as Class I milk in order for the plant to be qualified as a pool plant. The applicable percentage requirement for the months of March through July and December is 40 percent. These provisions should be amended to allow a handler who operates two or more distributing plants to consider them as a unit for the purpose of meeting the order's total Class I disposition requirement. Each plant should continue to be required to distribute at least 10 percent of the total amount of milk received at or diverted from the plant as route disposition in the marketing area.

Dairymen, Inc. (DI), a cooperative association representing nearly three-quarters of the producers whose milk is pooled on the Tennessee Valley order, proposed that the order provide for unit pooling of distributing plants. Under DI's proposal, the receipts and disposition of the distributing plants requested by a multi-plant handler to be considered as a unit would be combined, and the plants would be treated as a single plant for the purpose of determining whether the unit meets the total route disposition requirement for a pool distributing plant.

According to proponent witness, DI operates three Flav-O-Rich distributing plants that traditionally have been pooled under the Tennessee Valley order. These plants are located at Bristol, Virginia; London, Kentucky; and Rossville, Georgia. The witness explained that Flav-O-Rich, Inc., recently consolidated its Class II processing at its Bristol, Virginia, plant so that Class II products processed at Bristol may be distributed from other Flav-O-Rich locations, including London and Rossville. The witness stated that while the consolidation was undertaken to increase efficiency in operations, the result of increasing Class II use as the Bristol plant has been a reduction in the percentage of receipts used in Class I. As a consequence, DI has experienced difficulty in assuring that the Bristol plant meets the 60 percent Class I disposition pooling requirement of the Tennessee Valley order.

In order to maintain the pool status of the Bristol plant, the DI representative stated, DI has found it necessary to make bulk Class I sales to pool plants from the Bristol distributing plant instead of from a pool balancing plant operated by the cooperative, also located at Bristol. Although such action does result in maintaining the Bristol distributing plant's pool status, the witness pointed out that monitoring the percentage of the plant's Class I sales in order to shift the necessary amount of bulk sales from the balancing plant to the distributing plant is costly and inefficient, as is the additional movement of milk that must be undertaken to carry out such actions.

The DI witness testified that continued pooling of the Bristol Flav-O-Rich distributing plant is necessary to maintain the pool status of DI's member producers who deliver milk to that plant. He also stated that DI's Bristol balancing plant meets the pool requirements of the Tennessee Valley order because 60 percent of all the DI producer milk pooled under the order is delivered to pool distributing plants each month. If the Bristol distributing plant does not maintain its status as a pool distributing plant, the witness said, it would be difficult and costly for Dairymen, Inc., to maintain the pool qualification of the Bristol balancing plant, which ships milk to the Bristol Flav-O-Rich plant. The witness also pointed out that a Kraft supply plant located at Greenville, Tennessee, qualifies as a pool plant by virtue of its shipments to the Flav-O-Rich distributing plant at Bristol. The witness stated that if the Bristol Flav-O-Rich plant were to lose its pool status, it would be almost impossible to maintain the pool status of the Greenville Kraft plant.

In addition to altering the pool status of the Bristol Flav-O-Rich plant, as well as two other pool plants, the DI representative testified that failure of the Bristol Flav-O-Rich plant to meet the 60-percent Class I disposition requirement of the Tennessee Valley order during fall months would result in that plant becoming a fully regulated pool distributing plant on the Ohio Valley Federal milk order, where the total route disposition requirement during the same period is only 40 percent. The witness stated that approximately 27 percent of the Bristol Flav-O-Rich plant's route disposition is distributed within the Ohio Valley marketing area, and that the Ohio Valley order requires only 15 percent of a distributing plant's route disposition to be distributed within the marketing area

in order for the plant to be qualified for pooling. The witness stated that differences in the Class I and producer blend prices between the two orders would create disruptive marketing conditions among the affected handlers and producers. Also, he noted that as the percentage of Class I use at the Bristol Flav-O-Rich plant fluctuates above and below 60 percent, regulation of the plant would shift between the two orders.

A witness for Kraft, Inc., testified in support of the proposed order amendment. He stated that adoption of the amendment would assure that the nonmember producers currently shipping milk to the Kraft pool plant at Greenville would continue to have their milk priced and pooled under the Tennessee Valley order. The Kraft witness also introduced data to illustrate he difference between the producer pay prices under the Tennessee Valley and Ohio Valley orders, and expressed concern that disruptive marketing conditions would result from such a difference in prices to producers.

The proposed change in the pool distributing plant definition should be adopted. The record clearly establishes a need for amending the order to maintain the pool status of the Bristol Flav-O-Rich distributing plant and the DI and Kraft producers whose milk is pooled on the basis of the plant's fluid disposition. It has been necessary to suspend the 60-percent route disposition requirement of the order for the months of November 1986 and January and February 1987 to assure that DI will not have to enage in inefficient and uneconomic hauling practices in order to continue the pool status of all of its producers historically associated with the Tennessee Valley pool. This action temporarily mitigates DI's pooling problem until August 1987, when the route disposition requirement for Tennessee Valley pool distributing plants once more increases from 40 percent to 60 percent of a plant's receipts and diversions. However, the record evidence shows that the pooling problem in question is not temporary. Rather, it is the result of long-term changes in the distribution of Class I and Class II products from and betwen DI's Flav-O-Rich plants.

As the DI representative testified, the pool status of the Bristol Flav-O-Rich plant can be maintained only by closely monitoring the percentage of its receipts distributed as Class I disposition, and moving bulk Class I sales to other plants from the Bristol distributing plant instead of from DI's balancing plant at Bristol. Such a practice, however, adds unnecessarily to the cooperative's cost of handling its milk supplies. If the Flav-O-Rich plant fails to maintain its pool status, unnecessary and uneconomic handling and hauling will have to be undertaken to continue the pool status of the producer milk that is currently pooled at DI's Bristol balancing plant and at the Kraft Greenville supply plant on the basis of the Bristol Flav-O-Rich plant's pool qualification.

A provision of the order allowing the distributing plants of a handler to be pooled as a unit will remove the need to move milk solely for the purpose of qualifying it for pooling. Order provisions should not impede the ability of a multi-plant handler to achieve operational efficiencies by specializing in the processing of fluid milk products in one plant and by-products in another. With unit pooling, as herein adopted, it will be possible for a multi-plant handler to confine certain specialized operations to one plant in order to achieve an economy of scale comparable to that which would be realized by maintaining his total operation in one plant.

Data in the record indicate that while the Flav-O-Rich plant at Bristol has in some months barely met the order's 60-percent pooling requirements, Class I dispositions as a percentage of total receipts for the three Tennessee Valley Flav-O-Rich plants, when considered as a unit, have been well in excess of the required 60 percent. In addition, the plant's disposition within the Tennessee Valley marketing area clearly associates it more strongly with that market than with any other marketing area. In any case, the order will continue to assure that any distributing plant that disposes of a greater volume of fluid milk products on routes inside another order marketing area than in the Tennessee Valley area will become a pool plant under the other order.

As under the present provisions of the order, adoption of the proposed amendment would not allow the pooling of any plant that does not distribute a significant amount of fluid milk, or any distributing plant that is not primarily associated with the Tennessee Valley marketing area. As indicated previously, to qualify for pooling as a unit, each distributing plant in the unit would still have to dispose of at least 10 percent of its receipts as route disposition in the marketing area. Such a requirement will ensure that each plant pooled in the unit has a significant commitment to supplying fluid milk products to the marketing area.

The witnesses' concerns about disorderly marketing conditions in the event the Bristol distributing plant fails to quality for pooling under the Tennessee Valley order and, as a result, becomes a pool plant under the Ohio Valley order are valid. Due to the fact that the Class I price differential at Bristol is significantly lower under the Ohio Valley order than under the Tennessee Valley order, a Bristol distributing plant pooled under the Ohio Valley order would have a distinct cost advantage in competing with handlers regulated under the Tennessee Valley order. In addition, prices to producers for milk delivered to the same location would differ significantly depending on the order under which the milk was pooled. For December 1986, for example, the Ohio Valley blend price at Bristol was $13.17, while the Tennessee Valley order price for producer milk delivered to Bristol was $13.77. A difference of sixty cents per hundredweight in producer pay prices at the same location certainly may cause disruptive marketing conditions. Further, it is possible that regulation of the Bristol Flav-O-Rich plant could shift between the two orders on a monthly basis. This would make it more difficult for affected parties to know how to plan their marketing arrangements.

In order to qualify for unit pooling, a handler would be required to notify the market administrator in writing prior to the first month in which plants are to be considered as a unit for pooling purposes. Unit pooling would be continued in each following month without further notification. However, if other plants of the handler are added to or dropped from the unit, the handler would need to notify the market administrator prior to the month in which such change is to be effective.

Adoption of the proposed amendment is in the best interests of orderly marketing, as well as economic and efficient handling, of milk in the marketing area. Unit pooling of distributing plants will allow DI more flexibility in pooling its members' milk and operating its distributing and balancing plants in the most efficient manner. Another means of alleviating DI's problem of maintaining the pool status of the Bristol Flav-O-Rich plant would be to lower the 60-percent pooling standard for distributing plants during fall months to 40 percent year-round. However, the percentage of producer milk used in Class I in the Tennessee Valley market averages over 60 percent. Therefore, adoption of unit pooling will allow all of the market's traditional milk supplies to continue to participate in marketwide pooling and pricing without relieving any handler of its obligation to

supply its share of fluid milk to the market.

A proposal by Kraft, Inc., to amend the order's "plant" definition to eliminate a reload point with stationary storage tanks from the definition was abandoned by Kraft at the hearing. Since no testimony was presented in support of or opposition to the proposal, it was not considered for adoption.

**Rulings on Proposed Findings and Conclusions**

A brief and proposed findings and conclusions were filed on behalf of proponent. The brief and proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach conclusions are denied for the reasons previously stated in this decision.

**General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Tennessee Valley order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handing of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

**Recommended Marketing Agreement and Order Amending the Order**

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Tennessee Valley marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

**List of Subjects in 7 CFR Part 1011**

Milk marketing orders, Milk, Dairy products.

**PART 1011—[AMENDED]**

1. The authority citation for 7 CFR part 1011 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1011.7, paragraph (a)(2) is revised to read as follows:

**§ 1011.7 Pool plant.**

* * * * *

(a) * * *

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1011.13, subject to the following conditions:

(i) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total Class I requirement percentages specified in paragraph (a)(2) of this section if each plant in the unit meets the in-area route disposition requirement specified in paragraph (a)(1) of this section, and if such handler requests that the plants be so considered before the first day of the month in which the plants are to be considered as a unit. If such a handler wishes to add or remove plants from consideration as a unit, such a request must be made before the first day of the month for which it is to be effective.

(ii) The applicable percentages in paragraph (a)(2) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to effect a similar adjustment pursuant to § 1011.13(e)(3). Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

Signed at Washington, DC, on April 10, 1987.

**William T. Manley,**

*Deputy Administrator Marketing Programs.*

[FR Doc. 87–8391 Filed 4–14–87; 8:45 am]

BILLING CODE 3410-02-M

---

**Animal and Plant Health Inspection Service**

**9 CFR Part 54**

**[Docket No. 86–057]**

**Animals Destroyed Because of Scrapie**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to amend the regulations in 9 CFR Part 54 to provide for the payment of Federal indemnities for the destruction of scrapie-exposed sheep and goats when destruction of exposed animals is more cost effective than maintaining the flock under surveillance. Our proposal should both reduce disease spread and control expenditures.

**DATE:** Written comments must be received on or before June 15, 1987.

**ADDRESS:** Written comments, concerning this proposed rule should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86–057. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. C. A. Gipson, Program Planning Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8321.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR Part 54 (referred to below as the regulations), authorize the payment of Federal indemnities for sheep and goats destroyed because of scrapie.

Scrapie is a fatal disease of sheep and goats, affecting the nervous system. Destruction of infected animals is necessary in order to prevent the spread of the disease since no treatment for scrapie exists. Confirmation of the disease is dependent upon microscopic examination of brain tissues because no diagnostic test exists for confirming scrapie in live animals.

Scrapie develops slowly. Animals may carry the disease agent for as long as 60 months before symptoms of the disease appear. When symptoms do appear, they allow a preliminary clinical diagnosis of scrapie. These symptoms include lack of luster in the wool and central nervous system disorders such as slight muscular tremors and itching.

**Affected and Bloodline Animals**

Current regulations only provide indemnity payments for:

1. Affected animals—animals for which a diagnosis of scrapie has been made by a Veterinary Services representative or State representative; and

2. Bloodline animals—the dam, or female parent, of an affected animal and the dam's first generation progeny, the maternal grand-dam of an affected animal, the first generation progeny of an affected animal, and all succeeding generations of female progeny from female progeny of an affected animal.

Scrapie normally spreads from dam to offspring, with an infected female exposing her offspring at birth and immediately after birth. There is far less chance of scrapie being transmitted by an infected male parent since, under customary flock management practices, a sire seldom, if ever, has contact with his offspring. While it is possible that scrapie can be transmitted by exposure from animal to animal, other than from parent to offspring, that risk is relatively minimal.

**Flock**

We propose to add the following definition of the term "flock" to § 54.1.

*Flock.* (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm or ranch); or (b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with each other.

Our proposed amendments to the regulations include frequent use of the term "flock." By providing readers of the regulations with a specific definition of what would otherwise be a vague term, we hope to avoid confusion as to which animals are part of an infected flock and are, therefore, to be considered to be scrapie-exposed animals under this proposal.

Geographic separation will not protect animals from disease transmission if they are intermingled, as scrapie may be spread by animal-to-animal contacts. We believe, therefore, that all sheep and goats should be considered part of the same flock if they are under common ownership or supervision on the same premises, or if they are on separate premises and have been interchanged or had contact with each other.

**Scrapie-Exposed Animals**

We propose to add the following definition of the term "scrapie-exposed animal" to § 54.1.

*Scrapie-exposed animals.* Animals, other than affected or bloodline animals, in a flock in which an affected animal has been diagnosed by a Veterinary Services representative or State representative. Animals in the flock are no longer considered exposed after they are destroyed or upon the flock's release from surveillance by State animal health authorities.

Rather than being destroyed, scrapie-exposed sheep and goats are usually maintained under surveillance as these animals present a minimal risk of disease spread. Surveillance is carried out under State authorities and usually lasts for a period of 42 months following the most recent exposure. Under proposed § 54.8(b), the Deputy Administrator would authorize payment of indemnities to the owners of scrapie-exposed animals when:

1. Destroying the entire flock is more cost effective than the combination of destroying affected and bloodline animals and maintaining scrapie-exposed animals under surveillance; and

2. Sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year.

**Cost-Benefit Analysis**

To determine whether it would be more "cost effective" to destroy scrapie-exposed animals or maintain them under surveillance, a cost-benefit analysis would be conducted. This analysis would measure the total cost of Federal and State indemnities to be paid if the entire flock were to be destroyed, versus:

1. *The cost of Federal and State indemnities if only affected and bloodline animals are destroyed.*

2. *The cost to Federal and/or State agencies for travel and the conducting of periodic inspections.* Flocks being maintained under surveillance are normally inspected every six months. However, inspections may be performed more frequently if flocks contain animals with suspicious histories or symptoms. Since scrapie control is carried out as a cooperative Federal-State program, inspections may be performed by either Federal or State veterinary officials.

3. *Disruptions in manpower and work schedules.* Excessive scrapie-related travel can understaff field offices and result in costly overtime and reduced effectiveness in carrying out other animal health activities.

4. *Administrative and paperwork costs, including projected owner recordkeeping and reporting expenditures.* An inventory is taken of all exposed sheep and goats after the initial discovery of an infected animal and during each subsequent inspection of the flock. State veterinary officials usually issue written permits before new sheep or goats can be added to flocks under surveillance. Owners are normally permitted to move or sell scrapie-exposed animals, but must comply with State recordkeeping and reporting requirements.

**Allocation of Insufficient funds**

There may be times funding is not sufficient to pay indemnities to all eligible owners seeking payment for scrapie-exposed animals. Under proposed footnote 1 to proposed § 54.8, the funds that are available, at such times, shall be paid first in those instances where the following indicates the greatest need for flock destruction:

1. *Whether any of the affected flocks contain animals for which bloodlines cannot be determined and the number of such animals in each flock.* Department veterinarians believe that such animals should be destroyed when possible, as the risk of spreading scrapie would be intensified if they actually were bloodline animals.

2. *The number of affected and bloodline animals found and destroyed in each affected flock—and the number of remaining scrapie-exposed animals displaying symptoms indicative of scrapie—versus the total number of animals in that flock.* By comparing numerical relationships between known infected, symptomatic, and apparently well animals, Department veterinarians should be able to estimate the extent of infection (including the probability of new discoveries of scrapie infected animals during the surveillance period) within each affected flock.

3. *Any previous history or scrapie in an affected flock.* If a flock has a previous history of scrapie, the possibility exists that one or more of the flock's scrapie-exposed animals may have a low-level infection that will not result in visible symptoms, but that could lead to subsequent scrapie outbreaks.

These three factors cannot be individually ranked. Their importance varies greatly according to their combination and level of intesity within a particular flock. Thus, we believe that the "greatest need for flock destruction" can only be determined through studies of the relationship and intensity of these factors within each affected flock, and then by comparing and ranking the results.

**Executive Order 12291 and Regulatory Flexibility Act**

This proposed rule is issued in conformance with Executive Order 12291 and has been determinied to be not a "major rule." Based on information compiled by the Department it has been determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of Unitd States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Over the past 5 years, scrapie indemnities totaled slightly over $2.4 million for an average annual expenditure of $482,528. This figure is expected to increase only slightly if authority is granted to pay indemnities in the two limited instances proposed in this documents. Moreover, the increase in indemnity costs would be accompanied by a greater reduction in the cost of maintaining affected flocks under surveillance. The primary effect of this proposal would be to further decrease the risk of spreading scrapie and to reduce excessive flock surveillance costs.

This proposal should not affect a substantial number of sheep and goat producers. The current program is controlling the disease, with the United States experiencing no more than 27 scrapie-affected flocks in any one of the past 5 years. This proposal should not have an adverse affect on the current program since it should eliminate the current primary threat of disease spread (i.e.—scrapie-exposed animals with undeterminable bloodlines).

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

**List of Subjects in 9 CFR Part 54**

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

## PART 54—ANIMALS DESTROYED BECAUSE OF SCRAPIE

Accordingly, it is proposed to amend 9 CFR Part 54 as follows:

1. The authority citation for Part 54 would be revised to read as follows and the authority citations following the sections in Part 54 are removed:

**Authority:** 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 54.1 would be amended by adding , in alphabetical order, the following:

**§ 54. 1 Definitions.**

* * * * *

*Flock.* (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm or ranch); or

(b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which anmals from the different premises have been interchanged or had contact with each other.

* * * * *

*Scrapie-exposed animals.* Animals, other than affected or bloodline animals in a flock in which an affected animal has been diagnosed by a Veterinary Services Representative or State representative. Animals in the flock are no longer considered exposed after they are destroyed or upon the flock's release from surveillance by State animal health authorities.

* * * * *

**§ 54.3 [Amended]**

3. Paragraph (a) of § 54.3 would be amended by changing "affected animals and bloodline animals for which indemnity is to be paid under this part" to read "animals for which indemnity is to be paid under § 54.8(a) and (b)".

**§ 54.7 [Amended]**

4. Paragraph (a) of § 54.7 would be amended by changing "affected animals and bloodline animals destroyed under" to read "animals persuant to § 54.8(a) and (b) of".

5. Paragraph (b) of § 54.7 would be amended by changing "Affected animals and bloodline animals" to read "Animals for which indemnity is sought pursuant to § 54.8(a) and (b) of this part".

**§ 54.8 [Amended]**

6. In § 54.8 paragraphs (b) and (c) would be redesignated (d) and (e), respectively.

7. In § 54.8, current paragraph (a) would be redesignatd (c) and would be amended by changing "affected anmals and bloodline animals" to read "affected animals, bloodline animals and scrapie-exposed animals for which the Deputy Administrator authorizes payment of indemnity pursuant to § 54.8(b) of ths part".

8. In § 54.8 new paragraphs (a) and (b) would be added to read as follows:

**§ 54.8 Payment to owners for animals destroyed.**

(a) The Deputy Administrator shall authorize the payment of a Federal indemnity to owners of affected animals and bloodline animals.

(b) The Deputy Administrator shall authorize the payment of a Federal indemnity ot any owner of scrapie-exposed animals when a cost-benefit analysis establishes that it is more cost effective to destroy the flock than to maintain it under surveillance: Provided, That sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year.[1] The cost-benefit analysis shall be based on:

---

[1] Should funding not be sufficient to pay indemnities to all eligible owners seeking payment for scrapie-exposed animals, then the funds that are available shall be paid first in those instances where the following indicates the greatest need for flock destruction:

1. Whether any of the affected flocks contain animals for which bloodlines cannot be determined and the number of such animals in each flock.

2. The estimated extent of infection in each affected flock as measured by the number of affected and bloodline animals found and destroyed—and the number of remaining scrapie-exposed animals displaying symptoms indicative of scrapie—versus the number total number of aminals in each affected flock.

3. Any previous history of scrapie in an affected flock.

(i) The applicable laws and regulations of the State in which the flock would be maintained; and

(ii) The total cost of Federal and State indemnities to be paid if an entire scrapie-exposed flock were to be destroyed versus projected costs for indemnities if only affected and bloodline animals are destroyed; travel and per diem for the conducting of periodic flock inspections by Federal and State inspectors; resulting disruptions of Federal and State manpower schedules; and administrative and paperwork costs, including projected owner recordkeeping and reporting expenditures.

* * * * *

Done in Washington, DC, this 9th day of April, 1987.

**B. G. Johnson,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 87–8392 Filed 4–14–87; 8:45 am]

BILLING CODE 3410–34–M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

### Adjudications; Special Procedures for Resolving Conflicts Concerning the Disclosure or Nondisclosure of Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission is withdrawing a proposed rule published in the **Federal Register** on May 22, 1985 (50 FR 21072). In this rule, the Commission proposed amending its rules of practice to provide special procedures for resolving conflicts concerning the disclosure or nondisclosure of information relating to an NRC investigation or inspection not yet concluded or which would reveal the identity of a confidential informant and deemed relevant and material to an adjudiction. The Commission has decided that in view of the few remaining licensing proceedings and the consequent limited number of occasions in which the proposed procedures might be use in those proceedings, an existing policy statement is an adequate means of resolving these conflicts an thus there is no need at this time to codify the proposed procedures.

**DATE:** This withdrawal is effective April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jane R. Mapes, Senior Attorney, Rulemaking and Fuel Cycle, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 492–8695.

**SUPPLEMENTARY INFORMATION:** In its Statement of Policy on Investigations, Inspections and Adjudicatory Proceedings published in the **Federal Register** on September 13, 1984 (49 FR 36032–36034) the Commission reemphasized the importance and need for full disclosure of information in an adjudication so that all issues in controversy in the adjudication may be fully resolved. At the same time, the Commission recognized the need in certain circumstances to limit disclosure to avoid compromising a NRC inspection or investigation or to protect a confidential informant. In its policy statement, the Commission identified a procedure under which the NRC staff would provide an adjudicatory board with an explanation of the basis for its concern about disclosure and would present the information to the board *in camera* without other parties present. Recognizing that this procedure would be a departure from normal Commission practice, the Commission directed the staff to initiate a rulemaking proceeding.

Accordingly, on May 22, 1985, a notice of proposed rulemaking was published in the **Federal Register** (50 FR 21072–21077) proposing amendments to the Commission's rules of practice (10 CFR Part 2) that would provide special *ex parte in camera* procedures for resolving conflicts concerning the disclosure or nondisclosure of information deemed relevant and material to an adjudication and relating to an NRC investigation or inspection not yet concluded or likely to reveal the identity of a confidential informant. On May 31, 1985 (50 FR 23138–23139) a correction notice was published. On July 26, 1985, the date for submitting comments on the proposed amendments was extended to August 23, 1985 (50 FR 30446–30447).

The Commission received nine letters of comment expressing the views of interested utilities, professional organizations, private counsel, intervenors and individual members of the public. No commenter was satisfied with the text of the rule as proposed. Most of the commenters recognized the Commission's need to withhold or otherwise protect information in order to protect a confidential source or to avoid compromising an ongoing investigation or inspection and the consequent necessity for *in camera* presentations. However, the commenters uniformly opposed using *ex parte* techniques to achieve that objective. The principal objections voiced by the commenters were that the proposed procedure are illegal, unnecessary, contrary to due process and unfair. One commenter state that if the Commission's rules of practice were amended as proposed, decisions reached in proceedings in which the proposed procedures were used would be subject to a greatly increased risk of judicial reversal. In addition, the proposed amendments were faulted as bad public policy. Several commenters suggested alternative methods, dependent principally upon the use of protective orders, to achieve the objectives sought by the Commission.

Since publication of the notice of proposed rulemaking in 1985, the Commission has made certain decisions respecting its board notification policy and procedures which are expected to reduce significantly the occasions on which the proposed procedures would actually be used. For, as the Commission made clear when it promulgated its Statement of Policy on Investigations, Inspections and Adjudicatory Proceedings, the Statement and any implementing procedures only take over "once a determination has been made, *under established board notification procedures,* that information should be disclosed to the boards and public but OI [the Office of Investigations] or staff believes that the information should be protected." (49 FR 36032 at 36033, September 13, 1984, emphasis supplied.)

The Commission's board notification policy and procedures have been in effect for many years and serve an important purpose—to keep the boards and the Commission advised of matters which may need to be considered in making licensing and other regulatory decisions, particularly matters which present serious safety or environmental issues. Recently, the Commission directed significant changes in the manner in which its board notification policy and procedures are implemented. These changes were first enunciated by the Commission in a Memorandum and Order issued January 30, 1986 in *Louisiana Power & Light Company* (Waterford Steam Electric Station, Unit 3) Docket No. 50–382–OL, CLI–86–1, 23 NRC 1, affirmed *sub. nom. Oystershell Alliance, et al. v. U.S. Nuclear Regulatory Commission, et al.,* No. 85–1182, U.S.C.A.D.C., September 9, 1986, *800* F.2d *1201.* Subsequently, at the express direction of the Commission, the changes in the manner in which the Commission's board notification policy is being implemented were formally incorporated in NRR Office Letter No.

19, Revision 3, issued May 29, 1986.[1] On June 3, 1986, the Executive Director for Operations directed other NRC staff offices to revise the implementation of their board notification policy and procedures consistent with Revision 3 of NRR Office Letter 19.

Under the Commission's board notification policy and procedures as now implemented, NRC offices and staff [2] are only required to notify the boards when they are apprised of allegations and new information not previously submitted to the boards which are relevant and material to the issues in controversy in the proceeding. If the information is not relevant and material, the staff has no obligation to inform the boards. Moreover, under current practice, the facts on which an allegation is based must be substantiated and the implications drawn from those facts must be shown to be valid before any notification is made.

The above-described changes in the implementation of the Commission's board notification policy are expected to have the effect of severely limiting the circumstances in which the proposed procedures would be applicable. These circumstances are further limited by the fact that the number of pending licensing adjudicatory proceedings is small and it is unlikely that large numbers of new proceedings will be initiated in the near future.

The Commission has reviewed its Statement of Policy on Investigations, Inspections, and Adjudicatory Proceedings in light of the above-described changes. On the basis of the guidance provided in the Policy Statement, the Commission has concluded that it could, using existing procedures, adequately protect information from disclosure in those very rare instances in which such protection might be needed. In view of the controversial nature of the proposed procedures and because it now appears that such procedures will seldom be used, the Commission has also concluded that codification of the proposed procedures in the Commission's rules of practice is not warranted.

Accordingly, for the foregoing reasons, the Commission hereby withdraws the notice of proposed rulemaking published on May 22, 1985 (50 FR 21072–21077), and terminates this rulemaking proceeding.

---

[1] This document is available for inspection at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

[2] As used in this preamble, the term "staff" is intended to refer to all NRC offices.

Dated at Washington, D.C., this 9th day of April, 1987.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

[FR Doc. 87–8427 Filed 4–14–87; 8:45 am]

BILLING CODE 7590–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### 21 CFR Part 561

[OPP–300162; FRL–3186–7]

### Pesticide Tolerances in Animal Feeds for Malathion

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes a feed additive regulation to permit residues of the insecticide malathion in or on the grain dust of barley, corn, oats, rice, rye, sorghum, and wheat resulting from postharvest application of the insecticide to these stored grains. This regulation to establish the maximum permissible level for residues of the insecticide was requested by the Pacific Northwest Grain and Feed Association, Inc.

**DATE:** Comments, identified by the document control number [OPP–300162], should be received by May 15, 1987.

**ADDRESS:** By mail, submit written comments to: Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: William H. Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

**SUPPLEMENTARY INFORMATION:** The Pacific Northwest Grain and Feed Association, Inc., 200 SW. Market St., Suite 1005, Portland, OR 97201 has requested that EPA, pursuant to section 409(d) of the Federal Food, Drug, and Cosmetic Act, propose a feed additive regulation to cover residues of the insecticide malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) occurring in or on the grain dust of the aforementioned grains resulting from postharvest application of the insecticide to these stored grains.

The Pacific Northwest Grain and Feed Association, Inc., requested this regulation in order to allow disposal of these grain dusts as commercial animal feed. This dust, which is the fine particulate matter formed during the handling and shipping of grain, is normally removed from the grain during transfer operations, such as when grain is being loaded onto a ship. Consequently, thousands of tons of this dust may be enerated at port facilities.

The Association supports this request by pointing out that current Federal and State authorities either prohibit or discourage the disposal of grain dust through other means such as in public waterways, public landfills, and through reintroduction of grain dust into grain shipments. For these reasons, the Association maintains that the most effective and economically viable means of disposing of the enormous volumes of grain dust has been to feed the material to livestock. The 135 parts per million (ppm) level was requested because several feed items have tolerances for residues of malathion at this level (40 CFR 180.111), and adding grain dust at this level would not affect the theoretical exposure of livestock to malathion.

The Administrator agrees with the Pacific Northwest Grain and Feed Association, Inc. Currently, there are established tolerances of 8.0 ppm for residues of malathion in or on the aforementioned grains as raw agricultural commodities resulting from postharvest application of the insecticide on these grains (40 CFR 180.111). Since pesticide residues tend to be found on the outer surfaces of the

grain, residues in the dust can be higher than those in or on the grain itself.

Although definitive residue data are lacking, the requested level of 135.0 ppm is considered appropriate based on available information, which includes the Food and Drug Administration's monitoring data. Since many other feed items carry tolerances for residues of malathion at 135.0 ppm, the theoretical exposure to animals is not affected. This regulation will cover only those residues of malathion presently occurring in grain dust from registered uses of malathion and no new or additional residues are involved. This feed additive regulation will not necessitate initiating or increasing existing tolerances on any items intended for human consumption.

The currently established tolerances for residues of malathion in meat, milk, poultry, and eggs are adequate to cover any secondary residues of malathion in meat, milk, poultry, and eggs resulting from the feeding of the treated grain dust to livestock.

The metabolism of malathion is adequately understood and adequate analytical methods for enforcing this tolerance have been published in the Pesticide Analytical Manual, Volume I and II. There are presently no actions pending against continued registration of this chemical.

This tolerance will be reassessed under the Malathion Registration Standard, as well as all established tolerances for malathion.

Based on the information considered, the Agency concludes that the regulation will protect the public health. Therefore, it is proposed that 21 CFR Part 561 be amended as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300162]. All written comments filed in response to this petition will be available in the Program Management and Support Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this regulation from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives or raising such food or feed additive levels, do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1987.

Edwin F. Tinsworth,

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 21 CFR Part 561 be amended as follows:

## PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.270 is amended by adding paragraph (c) to read as follows:

§ 561.270 Malathion.

* * * * * *

(c) Tolerances are established for residues of the insecticide malathion (O, O-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the following feed commodities as a result of the post-harvest application of this insecticide to barley, corn, oat, rice, rye, sorghum, and wheat grains.

| Feeds | Parts per million |
|---|---|
| Barley grain dust | 135 |
| Corn, grain dust | 135 |
| Oats, grain dust | 135 |
| Rice, grain dust | 135 |
| Rye, grain dust | 135 |
| Sorghum, grain dust | 135 |
| Wheat, grain dust | 135 |

[FR Doc. 87-8277 Filed 4-14-87; 8:45 am]

BILLING CODE 4560-50-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[LR-154-86]

### Income Tax; Applications for Exemption From Self-Employment Taxes for Ministers, Certain Members of Religious Orders, and Christian Science Practitioners

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary income tax regulations relating to applications for exemption from self-employment taxes filed by ministers, members of religious orders who are not under a vow of poverty, and Christian Science practitioners. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by June 15, 1987. The regulations are proposed to be effective with respect to applications filed after December 31, 1986.

**ADDRESS:** Send comments and requests for a public hearing to Commissioner of Internal Revenue, 111 Constitution Avenue NW., Attention: CC:LR:T (LR-154-86), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, (Attention: CC:LR:T (LR-154-86)). Telephone 202-566-3297 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend the Income Tax Regulations (26 CFR Part 1) under section 1402(e) of the Internal Revenue Code of 1986.

For the text of the temporary regulations, see T.D. published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the amendments to the regulations.

### Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that the proposed rule is not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

**Drafting Information**

The principal author of these proposed regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department Service and Treasury Department participated in developing these regulations both on matters of substance and style.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 87-8447 Filed 4-14-87; 8:45 am]

BILLING CODE 4830-01-M

---

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 938

### Pennsylvania Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Pennsylvania on April 16, 1985, as a modification to the Pennsylvania Permanent Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977. The amendment pertains to material damage to structures or facilities caused by subsidence. OSMRE previously invited public comment on this amendment provision on June 5, 1985 (50 FR 23715). Following that public comment period OSMRE determined that the State provision was less effective than the Federal standards in effect at that time. Thus, OSMRE imposed a requirement at 30 CFR 938.16(b) for Pennsylvania to amend its program within a specified time to be no less effective than the Federal rules. On February 17, 1987, OSMRE promulgated final subsidence control rules relating to the protection of surface structures and facilities. In light of the promulgation of these Federal regulations, OSMRE believes that the program provisions submitted by the State on April 16, 1985, and previously considered by OSMRE may not be consistent with the Federal provisions. Accordingly, OSMRE is reinviting comment on the amendment.

**DATES:** Written comments not received on or before 4:00 p.m. on May 15, 1987 will not necessarily be considered.

If requested a public hearing on the proposed modifications will be held on May 11, 1987, beginning at 9:00 a.m. at the location shown below under "ADDRESSES".

**ADDRESSES:** Written comments should be mailed or hand delivered to: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

If a public hearing is held its location will be: Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. 11 and 15, Camp Hill, Pennyslvania.

**FOR FURTHER INFORMATION CONTACT:** Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg Pennsylvania 17101. Telephone: (717) 782-4036.

**SUPPLEMENTARY INFORMATION:**

**I. Public Comment Procedures**

*Availability of Copies*

Copies of the Pennsylvania program, the proposed modification to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each person may receive, free of charge, one single copy of the proposed modification by contacting the Harrisburg Field Office.

Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg Pennsylvania 17101. Telephone: (717).

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 L Street NW., Washington, DC 20240

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Harrisburg, Pennsylvania, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

*Public Hearing*

Persons wishing to comment at a public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business May 5, 1987. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

*Public Meeting*

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE Office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTRACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

## II. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 20, 1982 **Federal Register** notice (47 FR 33050).

## III. Background on Program Amendment

On April 18, 1985, Pennsylvania submitted to OSMRE pursuant to 30 CFR 732.17 proposed amendments to 25 Pa. Code Chapter 89, Subchapter F (pertaining to subsidence control) (OSMRE Administrative Record PA 550). The amendment deleted the existing subchapter in its entirety and set forth a new subchapter.

OSMRE published a notice in the **Federal Register** on June 5, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 23715). The public comment period ended July 5, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director determined that the amendment was inconsistent with SMCRA and the Federal regulations as explained below.

The Pennsylvania rule submitted for OSMRE's approval on April 18, 1985, does not require the operator to correct any material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner. The Pennsylvania rule at section 89.143(b) limits the requirement to prevent damage to dwellings, cemeteries, municipal utilities, to those structures and facilities in place on April 27, 1966. At the time of OSMRE's review and approval of Pennsylvania's amendment, OSMRE determined that the State provision was less effective than 30 CFR 817.121(c)(2). The Federal rule (as revised on July 1, 1983, 48 FR 24638) was amended on February 21, 1985 (50 FR 7274–7278) to suspend the language limiting the operator's responsibility for damage to structures to the extent required by State law. Thus in the notice announcing the Director's findings and decision on the amendment submitted on April 18, 1985 (50 FR 45820, November 4, 1985), the Director imposed a requirement on Pennsylvania to amend its program to be consistent with the Federal regulations.

The requirement imposed by the Director which is listed at 30 CFR 938.16(b) specified the following:

"Within 12 months following promulgation of a revised Federal rule, Pennsylvania shall amend its program to be no less effective than 30 CFR 817.12(c)(2) to require an operator to correct any material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner."

On February 17, 1987, OSMRE promulgated final subsidence control rules relating to the protection of surface structures and facilities. These final rules were promulgated pursuant to the District Court's order in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C.). Under the final rule operator responsibility for material damage to structures or facilities resulting from subsidence will derive from applicable provisions of State law. In light of the Federal rule adopted February 17, 1987, OSMRE believes that the State provision at section 89.143(b) which was previously considered by OSMRE may now be consistent with the Federal requirements.

Accordingly OSMRE is reinviting comment on the adequacy of the State proposal. If OSMRE makes a determination that the State provision at 89.143(b) is consistent with the Federal regulations adopted February 17, 1987, it will approve the State amendment provision and eliminate the requirement at 30 CFR 938.16(b) for Pennsylvania to amend its program. Additional background on the Federal subsidence control rules relating to the protection of surface structures and facilities is contained in the February 17, 1987 **Federal Register** notice (52 FR 4860).

Written comments should be specific, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than that listed under **"ADDRESSES"** will not necessarily be considered and included in the Administrative Record for this rulemaking.

## Additional Determinations

### *1. Compliance With the National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

### *2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

### *3. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

### List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 8, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–8448 Filed 4–14–87; 8:45 am]

BILLING CODE 4310-05-M

---

## POSTAL SERVICE

## 39 CFR Part 447

## Code of Ethical Conduct for Postal Employees; Proposed Amendment To Allow Attendance at Group Functions

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Postal Service proposes to amend the Code of Ethical Conduct to permit postal employees under certain conditions to attend social functions at which food and refreshment are served, given by

persons whose business is affected by the Postal Service. Under the proposal, attendance at such functions would be permitted if a responsible official determines that it will assist employees in performing their duties.

**DATE:** Comments must be received on or before May 15, 1987.

**ADDRESS:** Written comments should be mailed or delivered to the General Counsel, Law Department, United States Postal Service, Washington, DC 20260–1113. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at Room 6147, 475 L'Enfant Plaza, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Charles D. Hawley (202) 268–2971.

**SUPPLEMENTARY INFORMATION:** The Code of Ethical Conduct for Postal Employees, 39 CFR Part 447, implements Executive Orders 11222 and 11590 by establishing standards of conduct for employees of the Postal Service. These standards, like their counterparts in effect at other Federal agencies, are designed to prevent conflict of interest which would undermine public confidence in the integrity of the Postal Service. In doing so the standards generally prohibit certain types of activity which, although not inherently improper, may be seen as tending to bias an employee in favor of persons who do business with the Postal Service. The acceptance of gifts is an example of this. In general a postal employee may not accept anything of value, including entertainment, from a person who does business with the Postal Service or has interests that may be substantially affectd by the performance of the employee's duties. A limited number of exceptions to this principle permit the acceptance of items or benefits not of great value under circumstances in which the risk of bias or abuse seems minimal.

The proposed amendment would add an additional exception to allow attendance at group social functions, and the acceptance of food or refreshment, otherwise not permitted because of the relationship of the host to the Postal Service, when attendance is desirable because it assists the employee in the performance of his or her duties. It is by no means unusual for a trade association, for example, to invite to a reception or a dinner persons in related segments of both the public and private sectors. Attendance by a postal employee may be useful in facilitating the informal exchange of views on common problems or, more simply, in gaining a better acquaintance with persons with whom an employee has official dealings.

The determination that attendance at a function will assist the employee in the performance of his or her duties must be made by a postal executive at the level of the general manager/postmaster of a field division or an office director at Headquarters or a comparable level. An executive at this level may make such a determination about himself or herself but must then notify the appropriate agency ethics official of that decision.

Provisions generally similar to this proposal may be found in the regulations of other agencies, see *e.g.*, The Securities and Exchange Commission's regulations, 17 CFR 200.735–3(b)(3)(i). Following the receipt of public comments but before adoption this proposed amendment must be submitted for approval to the Office of Government Ethics. 5 CFR 735.104.

In view of the above considerations, the Postal Service proposes to amend 39 CFR Part 447 as follows:

**List of Subjects in 39 CFR Part 447**

Postal Service, Conflict of interests, Government employees.

## PART 447—CODE OF ETHICAL CONDUCT FOR POSTAL EMPLOYEES

1. The authority citation for Part 447 is revised to read as set forth below, and any authority citations following the sections in Part 447 are removed.

**Authority:** 39 U.S.C. 401; 18 U.S.C. 207(j); E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp., p. 10, as amended by E.O. 11590, 36 FR 7831, 3 CFR 405 (1972); 5 CFR 735.104.

2. In § 447.24 the introductory text of paragraph (b) is revised and new paragraph (b)(7) is added as follows:

**§ 447.24 Conflicts of interests—gifts, entertainment, and favors.**

* * * * *

(b) The provisions of paragraph (a) are intended to prevent a conflict of interest or the appearance of such a conflict on the part of a Postal Service employee. The conduct described in the following paragraphs (b) (1) through (7) of this section is permitted because it is considered that it will not create a conflict of interest and that its prohibition would unduly and unnecessarily restrict Postal Service employees in legitimate activites and relationships. Upon this basis, nothwithstanding the provisions of paragraph (a) of this section an employee may:

* * * * *

(7) Accept appropriate food and refreshments offered free in the course of a group function at which attendance is desirable because it will assist the employee in performing his or her official duties. Office and regional directors, general managers/postmasters of field divisions and other executives at comparable or higher levels are authorized to determine for themselves and their subordinates the propriety of accepting such invitations. Persons making such determinations with respect to themselves shall notify their Associate Ethical Conduct Officer of each invitation which they accept; those persons who are Associate Ethical Conduct Officers shall notify the Ethical Conduct Officer of each invitation which they accept.

Example (1): A trade association of major mail users invites a number of managers to a reception and dinner honoring the retiring president of the association. A postal marketing manager who has received an invitation concludes that if she does not attend it may appear discourteous to the retiring president and that by attending she will have an opportunity to discuss mailing problems informally with several customers. She may properly determine that accepting the invitation will assist her in performing her duties. Because she is the Associate Ethical Conduct Officer for her Headquarters group, she should notify the General Counsel, who is the Ethical Conduct Officer, of her decision to accept.

Example (2): A contracting officer is negotiating a modification of a contract with a supplier. The supplier's representative invites the contracting officer to have dinner with him at the supplier's expense. The contracting officer's manager, the director of a procurement and material management service center, may authorize him to accept, because the dinner is not a group function, because—whether or not having dinner with his opposite number in the negotiations will assist the contracting officer in performing his duties relating to those negotiations—there is no reason why the contracting officer cannot pay for his own dinner, and because the dinner is too closely related in time and circumstances to a matter involving the interests of the supplier which may be affected by the performance of the contracting officer's duties.

Example (3): If it had been proper for the manager in Example (2) to authorize acceptance of an invitation by the contracting officer, the manager would not have needed to notify his Associate Ethical Conduct Officer, who is the Senior Assistant Postmaster General, Facilities and supply Group, because he was not accepting on his own behalf.

* * * * *

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87–8424 Filed 4–14–87; 8:45 am]

BILLING CODE 7710–12–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[PP 6E3378/P414; FRL-3185-2]**

## Pesticide Tolerance for Metolachlor

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposal rule.

**SUMMARY:** This document proposes that a tolerance be established for the combined residues of the herbicide metolachlor and its metabolites in or on the raw agricultural commodity tabasco peppers. The proposed regulation to establish a maximum permissible level for residues of metolachlor in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**DATE:** Comments, identified by the document control number [PP 6E3378/P414], should be received on or before April 30, 1987.

**ADDRESS:** By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3378 to EPA on behalf of Dr. Robert H. Rupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Louisiana and the U.S. Department of Agriculture.

This petitioner requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide) and its metabolities, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methyl-phenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or the raw agricultural commodity tabasco peppers at 0.5 part per million (ppm). The petitioner proposed that this use of metolachlor on tabasco peppers be limited to Louisiana based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

The data considered in support of the tolerance include:

1. A 90-day dog feeding study with a no-observed effect level (NOEL) of 500 ppm (12.5 milligrams (mg)/kilogram (kg)).

2. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg).

3. A rat teratology study with no teratogenicity and fetotoxicity at the highest dose tested of 360 mg/kg.

4. A rabbit teratology study with a maternal NOEL of 120 mg/kg and no teratogenicity and fetotoxicity at the highest dose tested of 360 mg/kg.

5. A 2-generation rat reproduction study with a reproductive NOEL of 300 ppm (15 mg/kg) and a lowest effect level (LEL) of 1,000 ppm (50 mg/kg).

6. A mouse dominant-lethal study negative for mutagenic effects.

7. An AMES mutagenicity assay negative for mutagenic effects and a 2-year mouse oncogenicity study with no observed oncogenic potential at 30, 1,000, and 3,000 ppm (428 mg/kg, highest dose tested).

8. A repeated 2-year mouse oncogenicity study with no observed oncogenic potential at the same dose levels as the original study.

9. A 2-year chronic feeding/oncogenicity study in the rat (IBT validated, core supplementary) at dietary doses of 0, 30, 300, and 3,000 ppm with a statistically significant increase in primary liver neoplasms if females at the high dose group (3,000 ppm).

10. A repeated 2-year chronic feeding/oncogenicity study in the rat conducted at the same dietary doses as the original study with a systemic NOEL of 30 ppm (1.5 mg/kg), a systemic LEL of 300 ppm (testicular atrophy), and a statistically significant increased incidence of neoplastic liver nodules and proliferative hepatic lessions in females in the high dose group (3,000 ppm).

The Agency has concluded that the available data constitute limited evidence for carcinogenicity of metolachlor. Metolachlor is, therefore, tentatively classified as a Category C carcinogen (limited evidence of carcinogenicity in animals) based on the following considerations:

1. The oncogenic responses observed in rats were confined to the high dose females at one site (liver).

2. The proliferative liver lesions observed in rats were primarily benign (neoplastic nodules in 6 of 60 animals) rather than hepatocellular carcinomas (1 of 60 animals). There was no apparent difference in the time-to-occurrence of the lesions (almost all liver tumors were observed at terminal sacrifice).

3. Metolachlor was not oncogenic to mice under the conditions of the 2-year mouse oncogenicity studies.

4. An Ames mutagenicity assay and a dominant lethal study were negative for mutagenic effects.

The Agency has evaluated oncogenic risk resulting from dietary exposure to residues of metolachlor based on the rat studies. Assuming 100 percent of the crops are treated, the "worst case" dietary risk is calculated to be $3 \times 10^{-6}$ for existing tolerances and $8 \times 10^{-9}$ for the proposed tolerance for tabasco peppers. The incremental increase in risk is extremely small (0.3 percent).

Tolerances have previously been established for residues of metolachlor ranging from 0.02 ppm in meat, milk, poultry, and eggs to 30.0 ppm in peanut forage and hay. Based on the rat chronic feeding study with a NOEL of 30 ppm (1.5 mg/kg/day) for nononcogenic effects and using a 100-fold safety factor, the acceptable daily intake (ADI) is 0.015 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.9 mg/day.

The theoretical maximal residue contribution (TMRC) for existing tolerances is 0.001256 mg/kg/day for the total U.S. population. The proposed use will contribute an additional 0.000004 mg/kg/day (a 0.3 percent increase).

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. Analytical enforcement methods are currently available in the Pesticide Analytical Manuals (PAM) Volumes I and II. There are presently no actions pending against the continued registration of this chemical.

Based on the data and information considered, and the fact that tabasco peppers are not considered an animal feel commodity, the Agency concludes that the proposed tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act [5 U.S.C. 553(d)(3)], the comment period is shortened to less than 30 days because of the necessity to expeditiously provide a means for weed control in tabasco pepper production.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3378/P414]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 State. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.368 is amended by removing the entry for "peppers, chili. . . . . 0.5" from the table in paragraph (a), by revising the introductory paragraphs to the list of commodities in paragraphs (a) and (b), and by adding paragraph (c) to read as follows:

**§ 180.368 Metolachlor; tolerances for residues.**

(a) Tolerances are established for the combined residues of the herbicide metolachlor (2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide)and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the following raw agricultural commodities:

* * * * *

(b) Tolerance are established for indirect or inadvertent residues of metolachlor in or on the following raw agricultural commodities when present wherein as a result of the application of metolachlor to growing crops listed in paragraph (a) of this section to read as follows:

* * * * *

(c) Tolerances with regional registration as defined in § 180.1(n), are established for the combined residues of the metolachlor and its metabolites in or on the following raw agricultural commodities:

| Commodities | Parts per million |
|---|---|
| Peppers, chili | 0.5 |
| Peppers, tabasco | 0.5 |

[FR Doc. 87–8161 Filed 4–14–87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

**Maritime Administration**

**46 CFR Part 276**

**[Docket NO. 110]**

**Construction-Differential Subsidy Repayment**

April 10, 1987.

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rule would allow four vessels that repaid their construction-differential subsidy (CDS) in exchange for the right to operate in the domestic trade to remain in that trade. Three of those vessels have been operating in the Alaska oil trade after repaying their CDS under a 1985 Department of Transportation rule. A recent court decision vacated that rule, but delayed the effective date of its order to July 16, 1987. The fourth vessel was approved to repay its CDS by an administrative decision in 1980 under conditions of an interim rule that was subsequently vacated by the court. However, the court allowed the vessel to remain in the domestic trade pending agency reconsideration of the rule. In response to those court decisions, this proposed rule would allow those four vessels to remain in the domestic trade in the furtherance of the purposes and policies of the Merchant Marine Act, 1936, as amended.

**DATES:** Comments must be received by May 15, 1987.

**ADDRESS:** Submit comments to James E. Saarl, Secretary, Maritime Administration, Room 7300, 400 Seventh Street SW., Washington, DC 20590. The Maritime Administration requests that commenters send six copies of their comments.

**FOR FURTHER INFORMATION CONTACT:** Lynne Adams-Whitaker, Chief, Division of Regulations, 400 Seventh Street SW., Washington, DC 20590, Tel (202) 366–5181.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Jones Act (46 U.S.C. 883) generally provides that all cargo transported in the domestic trade between points in the United States must be carried on vessels built in the United States, documented under United States law and owned by United States

citizens. While United States vessels in the domestic trade operate under the protection of the Jones Act (46 U.S.C. 883), vessels operating in the foreign trade do not have such protection. Thus, vessels operating in the foreign trade must compete with foreign-flag vessels that have lower operating and construction costs. To offset these higher U.S. construction costs, Congress passed Title V of the Merchant Marine Act, 1936, as amended ("the Act"), which authorized the payment of construction-differential subsidy (CDS) for the purpose of building ships in U.S. shipyards to be operated in foreign commerce. 46 App. U.S.C. 1151 *et seq*. The Secretary of Transportation, throught the Maritime Administration (MARAD), may pay as much as half the construction costs of vessels used in the U.S. foreign trade. 46 App. U.S.C. 1152. There is no corresponding subsidy program for vessels constructed by U.S. owners exclusively for use in the domestic trade. In 1970, Congress expanded the scope of the Act to include bulk (i.e., tanker or dry bulk) vessels. Merchant Marine Act of 1970, Pub. L. 91–469, 84 Stat. 1018.

In addition, Title VI of the Act authorized the payment of an operating-differential subsidy (ODS) for U.S.-flag vessels manned by U.S. citizens and operated in accordanced with U.S. safety standards. 46 App. U.S.C. 1171. By a policy decision, ODS was not paid to CDS-built bulk-vessels over 100,000 DWT. Because of the large economy of scale of these vessels, labor costs, which are the essential subsidized item under the ODS program, are relatively small in terms of the overall project cost.

CDS-built vessels are subject to certain restrictions. Under section 506 of the Act, vessels constructed with CDS "shall be operated exclusively in foreign trade or on a round-the-world voyage. . . ." 46 App. U.S.C. 1156. Section 506 of the Act allows CDS vessels to be operated in the domestic trade in the following limited circumstances: (1) On a round voyage from the west coast of the United States to European ports which includes Intercoastal U.S. ports; (2) on a round voyage from the Atlantic coast of the U.S. to the Orient which includes intercoastal ports of the U.S.; (3) on a foreign voyage including a stop in Hawaii or an island possession or territory of the U.S. In addition, CDS vessels may be operated in the domestic trade with the consent of the Secretary of Transportation for up to six months in any year under authority of section 506 with the requirement that the vessel owner repay the subsidy on a *pro rata* basis. All domestic trading restrictions for each CDS-built vessel lapse at the end of the vessel's statutory life. Section 9 of Pub. L. 86–318 (74 Stat. 216) sets a 20 year economic life for tankers.

The overall objectives of the 1970 amendments to the Act were to encourage U.S. shipbuilding, thus enhancing the U.S. merchant marine fleet, and to serve the needs of national commerce and defense. The specific goal of the 1970 amendments was to build 30 ships per year over ten years, with emphasis on building bulk carriers, including tankers, for operation in the foreign commerce.[1] Prior to the 1970 amendments, the direct subsidy programs of the Merchant Marine Act had been confined to liner vessels, which operated scheduled services in foreign commerce under the regulatory supervision of the Federal Maritime Commission. The Congress, in extending the reach of these programs to the unregulated bulk trades, specifically recognized the need to make these vessels "competitive" with foreign flag ships. *See* H. Rep. No. 1073, 91st Cong., 1st Sess., 38 (1969); Merchant Marine Act, 1936, 603(b), 46 U.S.C. 1173(b). There was however, no guarantee that even with these subsidies U.S.-flag vessels could compete in the U.S. foreign commerce.

Unfortunately, the governmental subsidy programs offered to U.S.-flag very large crude carriers ("VLCCs", i.e., tankers over 160,000 DWT) has not enabled them to be competitive in the foreign trade. In 1970, Congress did not foresee, and perhaps could not have foreseen, the drastic changes that would occur in the world oil market. The decline in export of crude oil from the Middle East, in addition to an oversupply of world tankers built since 1970, has been financially devastating for the world tanker market. Further, the gap between foreign construction costs and U.S. construction costs widened beyond the level Congress authorized under the CDS program. As a consequence, the two ultra large crude carriers and nine VLCCs constructed with CDS under the 1970 amendments were left with no significant competitive opportunities in the foreign commerce.

The domestic market, however, has not fared as poorly. With the opening in 1977 of the Trans-Alaska Pipeline System, the demand for U.S.-flag tanker tonnage has increased and that demand has not been completely met by the existing Jones Act (domestic) fleet. To alleviate the shortage of suitable Jones Act tanker vessels, MARAD has allowed CDS-built tankers to enter the trade for up to six month periods after repaying the subsidy *pro rata* under section 506 of the Act and in accordance with 46 CFR Part 250.[2] Since 1977, MARAD has approved 43 such applications for CDS-built tanker service in the Alaska oil trade (of those approvals, 37 were for VLCCs). However, because of the limited duration and availability of these temporary permissions and the depressed market conditions confronting tankers in the foreign trade, several CDS tanker owners (predominantly those owning VLCCs) applied for permission to enter the domestic market on a permanent basis in exchange for the total repayment of any unamortized CDS received plus interest.

Prior to 1978, requests for permanent repayment were handled *ad hoc*. No hearings were held on these requests and notice of the proposed determinations was not given to the public. However, after MARAD admitted the *VLCC Stuyvesant* (operated by Seatrain Lines) to the domestic trade, competitors in that trade brought suit challenging MARAD's action. The ultimate disposition of the suit was that, on writ of certiorari, the Supreme Court held that the Secretary's broad contracting powers and discretion to administer the Act encompass the authority to grant permanent release to vessels under CDS restriction. *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.*, 444 U.S. 572 (1980).

In 1978, MARAD issued a notice of proposed rulemaking (NPRM) that would have set guidelines for permanent CDS repayment. Charterers and owners of six CDS-built vessels applied for CDS repayment. On October 15, 1980, MARAD adopted and made immediately effective an interim rule to govern applications for CDS repayment. Under the interim rule, MARAD retained greater discretion than proposed in the (NPRM) to determine whether to grant or deny CDS repayment applications. Approvals would be granted only for vessels of at least 100,000 DWT and only in exceptional circumstances, after a

[1] In fact, only 34 petroleum tankers were built with CDS authorized by the 1970 amendments.

[2] 46 CFR Part 250 establishes procedures by which MARAD may temporarily waive (i.e., for no more than six months in any twelve month period) the domestic trade restrictions on CDS-built vessels over 100,000 deadweight tons (DWT) in the Alaska-Panama Canal trade. Applications for such waiver must be accompanied by information showing that suitable vessels (i.e., those over 100,000 DWT) of a competitor would not be available for the prospective voyage.

determination that no favorable opportunities existed for viable employment of the vessel in foreign trade during a protracted period. MARAD was to consider a number of factors in determining whether exceptional circumstances existed.

On November 13, 1980, through an adjudicative decision, MARAD approved the CDS repayment application for the *Bay Ridge*, another Seatrain vessel. MARAD deferred action on the other pending CDS repayment applications. On November 25, 1980, the independent U.S. Tanker Owners Committee filed a complaint in the U.S. District Court for review of the interim rule and the *Bay Ridge* decision, alleging substantive and procedural defects in connection with both actions. The District Court granted summary judgment for defendants on all counts. An appeal was taken.

The Court of Appeals considered the alleged substantive and procedural defects of the interim rule. The Court concluded that MARAD was not legally obligated to issue regulations limiting its discretion and that the interim rule itself did not constitute an abuse of MARAD's statutory discretion. Nevertheless, the Court vacated the interim rule on procedural grounds. It concluded that the rule lacked a general statement of basis and purpose, as required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), to explain MARAD's position on the various issues raised during the rulemaking proceeding. The Court also found that adjudication allowing the *Bay Ridge* repayment was procedurally and substantively flawed.

The Court of Appeals remanded the case to the District Court with Instructions to vacate the interim rule and to order new rulemaking procedures, and to vacate the approval of the *Bay Ridge* application, but to allow the *Bay Ridge* to continue in domestic operation pending reconsideration of the *Bay Ridge* adjudication. The Court left to MARAD's discretion whether the new *Bay Ridge* decision should await publication of a permanent rule regarding CDS repayment. The Court also left to MARAD's discretion whether to adopt a permanent rule similar to the interim rule so long as the justification for the rule adopted was "clearly and thoughtfully presented in a statement published contemporaneously with the rule". *Independent U.S. Tanker Owners Committee* v. *Lewis*, 690 F.2d 906, 920 (D.C. Cir. 1982) [hereinafter referred to as *ITOC* v. *Lewis*].

The Department of Transportation published a new NPRM on January 31, 1983, 48 FR 4408. That NPRM, which was issued by the Secretary, proposed to permit total CDS repayment for all U.S. tanker vessels. The notice reviewed the entire history of this issue since the MARAD first accepted total repayment on the *VLCC Stuyvesant* and reviewed the comments received on earlier MARAD rulemakings pertaining to total repayment in return for domestic trading privileges. It invited further comment on these issues and assessed the economic impact of allowing the owner/operators of these vessels to determine on their own whether to repay their CDS. The rulemaking concluded that the Government was not in a position to assess, on its own, which vessels should, and which should not, be allowed to meet the needs for additional capacity in the domestic trade. For example, it pointed out that only allowing operators in financial jeopardy to repay their CDS was not consistent with the objectives of the 1936 Act. 48 FR at 4412.

The Department concluded that the marketplace decisions of individual operators would best serve the needs of the fully deregulated domestic tanker trade, provided that those operators that repaid were placed on an equal competitive cost footing with the existing Jones Act fleet. *Id.* at 4409–4410. Accordingly, the proposed rule would require repayment of an additional amount consisting of compound interest on the unamortized subsidy from the date of its original receipt. The addition of this amount, which frequently could exceed the unamortized subsidy itself, would duplicate the financial condtions inherent in a private sector decision to commit any comparable new asset to the domestic trade, with an allowance only for its age, by allowing the amortization of the subsidy pursuant to its statutory useful life of 20 years. *See* 48 FR 4408–4414. Since the Government does not otherwise regulate entry of new capacity in the domestic trade, duplicating the conditions ordinarily governing such entry was deemed the most appropriate approach.[3]

Shortly after the close of the comment period on the NPRM, the Congress took action to prevent the Secretary from promulgating a final rule. The DOT FY 84 Appropriations Act (Pub. L. 96–78), August 15, 1983) prohibited the enforcement of any rule with respect to the repayment of CDS until 60 days following the promulgation of any such rule. Thereafter, the Commerce Department's FY 84 Appropriations Act (Pub. L. 98–166, November 28, 1983) imposed an additional restriction that prohibited DOT from enforcing any CDS repayment rule until after June 15, 1984. In August of 1984, the FY 85 Appropriations Act for Commerce, Justice and State, which provides appropriations for MARAD, imposed yet another restriction. That Act prohibited the Department from enforcing any CDS repayment rule until May 15, 1985 (Pub. L. 96–411, August 30 1984). Thereafter, Congress considered, but did not extend, these prohibitions.

On May 7, 1985, the Department published in the **Federal Register** a final rule which allowed any owner or operator of a tanker built with CDS to repay its subsidy (with interest) and consequently obtained a permanent removal of domestic trading restrictions. The amount of repayment included the unauthorized CDS on the vessels plus compounded interest on that amount. The Interest rate, to be used for computational purposes, was the rate at which the original Title XI obligation was made or the Title XI long-term bond rate at the vessel's delivery. The final rule included a one-year time limit after the rule's effective date during which total CDS repayment had to be made irreversibly.

That time limit was from June 6, 1985 to June 6, 1986. During that time, three VLCCs repaid the CDS: the Arco Independence (262,400 DWT), ARCO SPIRIT (262,400 DWT), and the Brooklyn (226,200 DWT). The total amount of CDS repaid by these ships was $105.8 million. Those ships are now operating in the domestic trade.

On January 16, 1987, the Court of Appeals for the District of Columbia held that the Secretary of Transportation violated section 553(c) of the Administration Procedure Act by adopting a final rule on CDS repayment which did not contain a statement of basis and purpose giving an adequate account of how the rule served the objectives of the Act and why alternatives were rejected in light of them. *Independent U.S. Tanker Owners Committee* v. *Dole*, Civil Action Nos. 85–01555, 85–01740, 85–01752 and 85–1771. (D.C. Cir. January 16, 1987) [hereinafter referred to as *ITOC* v. *Dole*]. The court found that the Secretary's failure to provide an adequate statement of basis and purpose was arbitrary and capricious. The court vacated the rule, but withheld issuance of its mandate until July 16, 1987 "to avoid further disruptions in the domestic market and to allow the Secretary to undertake

[3] Similarly, damaged foreign-built vessels may be acquired and reconstructed for use in the domestic trade under the Wrecked Vessels Act without prior government approval, provided a specific amount is expended in the reconstruction (i.e., three times their salvage value). 46 App. U.S.C. 14.

BEST COPY AVAILABLE

further proceedings to address the problems of the merchant marine trade." Slip op. at 16. The court ruled that, as of July 16, 1987, the present rule will be vacated and conditions will be returned to the *status quo ante*, before the CDS repayment rule took effect, subject to any "further action" that the agency may have taken in the interim.

By letter dated March 10, 1987, counsel for the *Bay Ridge* requested that a proceeding on the *Bay Ridge* should be conducted independently of proceedings with respect to the three vessels which repaid CDS pursuant to the repayment rule that has been vacated by the Court of Appeals. The court in *ITOC* v. *Lewis* specifically left to MARAD's discretion whether or not the *Bay Ridge* decision should await publication of a permanent rule governing repayment applications. MARAD has decided that it would be appropriate to consider the *Bay Ridge* in this rulemaking, since it affects the same domestic trade as the other three vessels at issue.

**The Proposed Rule**

This proposed rule would reaffirm the allowance of the repayment of CDS, with interest, and rescisison of the domestic trading restriction for tankers that applied to and were approved by MARAD between June 6, 1985 and June 6, 1986. The approved applications were for the *Arco Independence, Arco Spirit* and *Brooklyn*. Further, this proposed rule would reaffirm the allowance of the repayment of CDS, with interest, and rescission of the domestic trading restrictions for *the Bay Ridge*, which was approved to repay its CDS in November 1980. It would impose the same conditions on the *Bay Ridge* that were imposed in 1980.

This proposed rule would differ from the 1985 CDS repayment rule in that it does not provide a one-year window for applicants to seek MARAD approval of their CDS repayment. This proposed rule would impose the same terms and conditions on the three tankers that repaid during the one-year window as were required in the 1985 CDS repayment rule.

*Comments*

MARAD solicits comments on this proposed rule from all interested parties. In particular, MARAD seeks comments on the future of the Alaska North Slope (ANS) trade.

*The Purposes and Policies of the Merchant Marine Act*

The preamble to the Merchant Marine Act, 1936, as amended, states that the intent of the Act is "[t]o further the development and maintenance of an result and well-balanced American merchant marine, to promote the commerce of the United States, to aid in the national defense. . . ." The specific goals of the Merchant Marine Act, 1936, as amended, as set out in section 101 of the Act, are to foster the development and encourage the maintenance of an American merchant marine that is

(a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States, insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. 46 App. U.S.C. 1101.

MARAD believes that this proposed rule, which would allow the four CDS-built very large crude carriers ("the four VLCCs") to remain in the domestic trade, would benefit the domestic water-borne commerce by providing vessels that are the "most suitable" for the Alaska-Panama oil trade, which would result in a "well-balanced" American merchant marine. Although originally built to operate in the foreign trade, these VLCCs are not competitive in that trade. If not allowed to operate in the domestic trades, the four VLCCs would likely be unemployed and possibly scrapped.

The balance of this statement discusses how this proposed rule would fulfill the objectives of the Act. The suitability of these vessels for the Alaska-Panama trade is discussed in more detail in Section I. Section II discusses the effect of this proposed rulemaking on the U.S. tanker fleet operating in the foreign commerce. Section III analyzes the effect of this proposed rulemaking on the naval auxiliary. Section IV addresses the effects of this rulemaking on shipyards. Section V considers other objectives of the Act that support this rulemaking. Section VI addresses the alternatives considered by MARAD.

*I. The Alaska Oil Trade and the Need for Suitable Tankers*

The main purpose for allowing the four VLCCs to remain in the domestic trade is to foster the development of suitable vessels for that trade. "Suitability" is determined not only by the physical ability of a vessel to carry a certain product, but by market conditions. As will be shown below, market conditions in the oil trade have fluctuated drastically since the advent of the *CDS* program, affecting the distribution of oil in both foreign and domestic markets.

A. ANS Crude Oil Production

When the Trans-Alaska Pipeline opened in 1977, Alaska North Slope (ANS) crude oil loadings averaged 629,000 barrels per day (b/d). Average loadings have steadily increased since then. In 1982, average loadings reached 1.62 million b/d. Production for 1987 is expected to be 1.8 million b/d. The most rapid growth occurred between 1978 and 1980 when average loadings grew at an annual rate of 18.4 percent. Average loadings from 1980 to 1986 grew at an annual rate of 2.2 percent. (See Table 11–2 in Regulatory Impact Analysis).

B. The Distribution of ANS Crude Oil

While ANS crude oil production has grown steadily since 1977, the distribution of that oil has changed dramatically. ANS crude oil is shipped to the West Coast, to Panama, to the Gulf and East Coasts from Panama, and to the Virgin Islands around Cape Horn.[4] In the five months of 1977 when ANS oil production began, approximately 75 percent of the oil from Valdez, Alaska was shipped to the West Coast, 24 percent to Panama (to be shipped to the Gulf/East Coasts), and two percent to the Virgin Islands. Shipments to Panama increased to 30 percent of total loading in 1980, and peaked at 43 percent in 1982. During this period, the volume of oil going to the West Coast dropped from 63 percent to 50 percent. During 1986, 32 percent of the Alaska oil was shipped to Panama, and 62 percent to the West Coast.

The amount of future ANS shipments to Panama will likely decline, for several reasons. More ANS crude oil will likely be shipped to the West Coast during 1988 due to the imminent opening of the All-American pipeline from Southern California to the Texas Gulf, assuming the pipeline is completed in that time frame. This pepeline will have a capacity of 300,000 b/d and will ship surplus West Coast crude to the Gulf Coast for refining. While increases in West Coast crude production are anticipated, the surplus pipeline capacity would probably eliminate some need for vessels to carry the oil to Panama (to be shipped to the Gulf).

[4] All of the oil carried to the Virgin Islands currently is moved in foreign-flag vessels via Cape Horn.

Valdez loading may decline in the 1990's due to production reduction as well as the potential construction of a 105,000 b/d (rated capacity) refinery at Valdez by Alaskan Refining, Inc. Products from the refinery may be transported abroad on foreign-flag tankers, thus reducing the shipments of oil from Valdez for U.S.-flag tankers.

C. Tanker Demand in the ANS Crude Oil Trade

Tanker demand in the ANS trade depends on ANS oil production and the distribution of the oil. As production increases, so does the amount of tonnage needed to carry the oil. However, the increase in demand for tankers may not be proportional to oil production if there is also a change in the distribution of the oil. For example, tanker demand peaked in 1982 when approximately 182 billion-barrel miles of oil were shipped. This peak in demand was due not only to the increased production of oil, but also due to the peak in shipments to Panama (43 percent of total loadings). A drop in ANS crude oil shipments between 1982 and 1984 (from 7.2 million DWT to 5.9 million DWT) was attributable not to production, which remained fairly constant, but to a drop in oil shipments to Panama and corresponding rise in shipments to the West Coast.

The distribution of oil affects the demand for certain size tankers. Historically, VLCCs have carried the majority of oil from Alaska to Panama (see Table 111–2 in the Regulatory Impact Analysis). During 1986, about half the full-time equivalent tanker employment in the Alaska-Panama trade was for vessels from 200,000 DWT to 265,000 DWT; most of the other half was for VLCCs from 170,000 DWT to 190,000 DWT. A small percentage was carried by tankers from 110,000 DWT–137,000 DWT, while only 0.6 percent in 1986 was carried by vessels under 100,000 DWT. (Historically, the share carried by tankers under 100,000 DWT has been no more than 6 percent.) Even prior to the 1985 CDS repayment by four of the VLCCs, the Valdez-Panama trade was dominated by tankers over 100,000 DWT. Many of these were CDS built VLCCs operating under six month permissions in the domestic trade.

Several factors contribute to the suitability of the four VLCCs for this trade. VLCCs are more suitable for long-haul, high volume trades than smaller tankers, due to economies of scale. That is, tanker operating costs do not rise as fast as cargo volumes. Thus, VLCCs are more efficient and economical than smaller tankers for long-haul, high-volume trades. Studies of optimal ship size have shown that optimal ship size is determined by minimizing costs per ton at sea and in port. (In port, costs per ton increase with ship size; at sea, however, costs per ton decline with ship size). J.O. Jansson and D. Shneerson, "The Optimal Ship Size," *Journal of Transport Ecomomic and Policy*, 217, 223 (Sept. 1982). VLCCs are more suitable for the Panama leg of the ANS trade because of the length of the voyage (approximately 4,950 miles). The at-sea time is significantly longer than any other legs of U.S.-flag oil shipments in the U.S. Another factor contributing to the suitability of the VLCCs for the Panama leg is the deep-draft of the Panama port, which can accommodate those larger tankers. Because of these factors, VLCCs are able to carry oil in that trade more efficiently than small tankers under 100,000 DWT.

Conversely, smaller tankers are more suitable for the West Coast and upcoast (Gulf/East Coast) trade than the Panama trade. The Valdez-West Coast ANS trade has been served by vessels in all DWT ranges: 47 percent of the full-time equivalent tanker employment in that trade is carried by vessels under 100,000 DWT; 53 percent is carried by tankers over 100,000 DWT.

Once the oil reaches Panama, smaller tankers (i.e., under 150,000 DWT) are needed to carry the oil to the Gulf and East Coasts. (VLCCs are less suitable than smaller tankers for such short haul, low volume trades, because their capital and port charges, which are higher than those for smaller tankers, are spread over smaller cargo volumes.) Tankers under 55,000 DWT carry 22 percent of the Panama-Gulf/East Coast ANS oil. Tankers in the 55,000 DWT to 92,000 DWT range now carry about two-thirds of the ANS oil in this trade. Such tankers are more suitable for that trade than larger tankers because they often stop at many ports (which would not be economical for larger tankers to do), and most Gulf/East Coast ports are not deep-draft. Further, the at-sea time is much less because of the shorter distances involved.

The Regulatory Impact Analysis indicates certain trends in the distribution of oil by trade and by vessel tonnage. Since the permanent entrance of the three CDS-built VLCCs in the domestic trade (i.e., from 1985–1986), the percentage of full-time equivalent tanker employment for VLCCs over 200,000 DWT in the Alaska-Panama trade has risen considerably, and employment by vessels under that tonnage range has decreased correspondingly. It appears that the trend of these VLCCs carrying the majority of Valdez-Panama ANS trade will continue.[5]

Allowing the four VLCCs to remain in the domestic trade makes the domestic fleet better balanced than it would be without these vessels in the trade. It should be noted that, even with the four VLCCs in the domestic trade, shortages of tankers have led to one smaller CDS-built tanker, the *Beaver State*, entering the trade for a month under a section 506 waiver. (See Regulatory Impact Analysis). Further, only six percent of the domestic tankers (12 tankers) were in lay-up as of February 1987. This percentage is quite low, considering that February is a slow month for the upcoast oil trade and is a reasonable reserve to cover temporary losses from the active fleet due to casualties, safety inspections and repairs as well as seasonal increases in upcoast petroleum movements. As for the future, while ANS tanker loadings have increased from 629 thousand barrels per day in 1977 to 1,788 thousand barrels per day in 1988, loadings are expected to fall over the period 1988–95, due to a gradual decline in ANS production (Table II–2 of the Regulatory Impact Analysis) with uncertain consequences. Comments are invited specifically on the extent and the consequences of this decline in ANS production.

Finally, no data has been developed yet on the extent that the lower costs of tranporting ANS crude on VLCCs, including those that repaid their CDS, has increased shipments to Panama since those four vessels were admitted to the trade. To the extent that occurs, overall tanker demand in the trade would be increased, and the displacement caused by the entry of those vessels thereby reduced. Commenters are invited to submit such data.

D. Availability of Tankers in the Trade

When ANS crude oil loadings began in 1977, there were 215 privately-owned unsubsidized tankers (8.0 million DWT) in the U.S.-flag fleet (excluding special product tankers). Of those, only seven were over 100,000 DWT (totaling 848,000 DWT). An additional 15 tankers (2.3 million DWT) were on order for the domestic trade, of which 12 (2.0 million DWT) were over 100,000 DWT. Two tankers (totaling 259,900 DWT) were rebuilt under the Wrecked Vessel Act in 1981 and 1983 respectively. Five VLCCs repaid their CDS from 1977 to 1986

[5] It should be noted, however, that in some years, the full-time equivalent of three VLCCs operated in the ANS trade under six month waivers pursuant to 46 CFR Part 250.

(totaling 1.2 million DWT). One new EXXON tanker was delivered in November 1986 and the second in April 1987 (those two vessels total 418,000 DWT). Both are currently operating in the domestic trade. No other U.S. tankers are currently under construction.

With the opening of the Alaskan pipeline in 1977, there has been a recurring shortage of suitable tankers in the ANS oil trade. MARAD has tried to alleviate this shortage in several ways. First, MARAD issued a rule in 1977 allowing CDS tankers over 100,000 DWT to carry ANS crude oil in the domestic trade for six months in a twelve month period in exchange for a *pro rata* repayment of their CDS (46 CFR Part 250). Under that rule ("Part 250 rule") MARAD has approved temporary transfers of CDS-built VLCCs to the Alaska-Panama trade on 37 occasions. Such transfers peaked between 1980 and 1983 when there were approximately three CDS vessels (totaling 750,000 DWT) operating in the trade on a full-time basis.

Permissions for three CDS-built VLCCs—*Arco Independence, Maryland and Williamsburgh*—to operate temporarily in the Alaskan oil trade were terminated on January 12, 1984. Their approval had been conditioned on the acquisition of suitable employment (by January 1984 when they would become available) of four over 100,000 DWT Jones Act vessels—*Overseas Boston, Overseas Juneau, Ogden Columbia,* and *Prince William Sound.* When the latter two were not chartered, the conditional approvals were terminated in accordance with the order of October 7, 1983. No CDS-built VLCCs entered the ANS trade after that until the *Maryland* on November 15, 1984. Two additional VLCCs were granted waivers in January 1985 and January 1986. In addition, a CDS-built 90,000 DWT tanker (the *Beaver State*) made two voyages in the Valdez to West Coast trade under a section 506 waiver in March 1986.

From 1977 to the last approved transfer on November 1, 1985, eight CDS VLCCs operated under six month waivers at various times in the ANS trade. Of those eight, four are the subject of this rulemaking.

The other four CDS-built vessels are the *Maryland, Massachusetts,* and *New York* (each 264,100 DWT), and the *Williamsburgh* (225,100). None of those vessels has applied to enter the ANS trade under Part 250 since November 1985. (The *New York* applied in November 1985 and operated until July 1986). At present, those four are in lay-up.

While the Part 250 rule alleviated the shortage of tankers to a large extent, it did not totally solve the problem. To alleviate the shortage, MARAD began accepting total repayment of CDS in exchange for domestic trading privileges. Since 1977, five vessels have totally repaid their CDS. The first was the VLCC *Stuyvesant* (224,700 DWT), which was allowed to enter the domestic trade in August 1977.

The second was the *Bay Ridge* (225,000 DWT) which repaid its CDS in November 1980, after entering the trade for six months under a Part 250 temporary waiver in 1979. The other three VLCCs repaid their CDS pursuant to the most recent rule, and are still operating in the domestic trade. The four VLCCs in the trade that are the subject of this rulemaking total 976,000 DWT. They represent approximately 43 percent of the capacity operating in the Valdez-Panama trade.

Employment prospects for the four VLCCs in the ANS trade appear to be positive at least for the near future. It is with this near future in mind that these vessels repaid their CDS. Domestic trading restrictions for CDS-built vessels are lifted at the end of their statutory life (i.e., 20 years). The *Arco Independence* and *Arco Spirit* were built in 1977, the Brooklyn in 1973, and the *Bay Ridge* in 1979.[6] Since no new tankers are on order, and prospects for new buildings seem unlikely, these four VLCCs would be among the most suitable vessels for the Alaska-Panama trade. If the four VLCCs remain in the domestic trade, there would be an adequate supply of suitable tonnage to carry oil in that trade even if other older tankers are scrapped and if no new tankers are built.

If the four VLCCs were removed from the domestic trade, a shortage of the most suitable tonnage in the Alaska-Panama trade would occur, necessitating the entrance of smaller, less suitable tankers in that trade, and would also kikely result in those VLCCs being laid up, since they are unable to compete in the foreign trade (see Section II of this proposed rule).

In conclusion, as far as can reliably be foreseen, the continued employment in the Alaskan oil trade of the four VLCCs that repaid CDS would benefit the U.S. domestic waterborne commerce by providing vessels that are most suitable for the Alaska-Panama oil trade and by providing an employed well-balanced merchant marine. The following other benefits would flow: The Treasury would retain the CDS repaid amount ($142 million), the shipping public would receive transportation savings (estimated $664–674 million) and the State of Alaska would earn revenues from reduced tanker rates (estimated $186–189 million). It is not clear that there would be any negative impact on the domestic fleet by allowing such repayment. It is recognized that 12 tankers were in lay-up in February and with their lay-up, the seamen to operate them were unemployed. This is only six percent of the total U.S.-flag domestic tanker fleet and provides a needed reserve for peak demand.

E. Safety of the VLCCs.

Allowing the four VLCCs to remain in the domestic trade would also further the goal of section 101 of the Act to encourage the development of a fleet composed of the "safest" vessels. As is shown in the Environmental Assessment prepared for this proposed rule, these VLCCs are among the safest tankers, in terms of environmental risks. The change in oil spills risk for the ANS fleet is expected to continue to improve as more VLCCs and other large tankers replace, where permitted by navigation channel depths, smaller tankers. If the four VLCCs were not allowed to remain in the domestic trade, a tonnage shortfall could cause a greater oil spill risk if additional small vessels such as barges were to be employed to compensate for the shortfall.

*II. The Foreign Trade*

One of the goals of the Act is to encourage the development and maintenance of a merchant marine sufficient to carry "a substantial portion of the waterborne export and import foreign commerce of the United States . . ." 46 U.S.C. 1101(a). The Court of Appeals criticized the previous CDS repayment rule for its "dubious proposition that the fleet will remain able to carry 'a substantial portion' of foreign commerce . . ." *ITOC* V. *Dole,* slip op. at 11.

The Court noted in a footnote to its decision overturning the prior CDS rule:

> It may be, of course, that present conditions in the world shipping market make it impossible for the Secretary to find a way to meet all of the statutory objectives. If this is a problem, she should discuss it frankly and directly when she considers which measures to adopt in light of the objectives explicitly set out in the Act. *Id.* at 13–14, n. 4.

While this proposed rulemaking would provide a domestic tanker fleet that is (1) sufficient to carry the domestic waterborne commerce of the

[6] Even without the present rulemaking, these vessels would be allowed to enter the domestic trade at the end of their 20 year useful life. Thus, the effects of this rulemaking would expire in the mid to late 1990s.

United States and (2) composed of the "best equipped, safest, and most suitable types of vessels," MARAD acknowledges that it would have no effect on the U.S.-flag share of the water-borne export and import bulk foreign commerce of the United States.

The U.S.-flag foreign trade tanker fleet currently consists of 26 CDS-built tankers totaling three million deadweight tons, including six VLCCs and two ULCCs. (This excludes the four VLCCs that are the subject of this rulemaking and three CDS-built integrated tug-barges, but includes two CDS-built ore-bulk-oil carriers built with CDS.) This tonnage is insufficient to carry a substantial portion of the bulk foreign commerce. The six CDS-built VLCCs and two ULCCs (ultra large crude carriers) are currently laid up. Only one of the CDS-built tankers under 100,000 DWT is laid up. Seven of the tankers are employed in the foreign trade, while the remaining 12 tankers are employed under charter to the Military Sealift Command (6) or are employed in the preference trades (6) carrying Strategic Petroleum Reserve oil.

While the intent of MARAD's CDS and ODS programs was to provide a basis for a U.S.-flag fleet that is sufficient to carry a substantial portion of our bulk import and export trade, the assumptions of those programs were not met for VLCC tankers and most of these tankers built under the 1970 program are not competitive in the international market, as evidenced by the lay-ups. Moreover, even with the benefit of CDS, the capital costs of CDS-built VLCCs exceeds those of comparable foreign-built tankers. In addition, even the provision for full ODS could not offset the cost disadvantages of operating U.S.-flag tankers in the foreign trades, let alone address the capital cost disadvantages faced by these carriers.

The United States currently imports approximately 6.0 million barrels per day of crude oil and refined product, of which only three percent is carried on U.S.-flag tankers. Furthermore, a substantial portion of our crude oil imports—approximately 45 percent—are received from nearby sources including Canada, Mexico, Venezuela and the Caribbean region. The *CDS*-built VLCCs are unsuitable for these nearby import trades. (The CDS-built VLCCs are more suitable for long-haul voyages; see section 1 above). Approximately 32 percent of U.S. crude oil imports are received from the distant Arabian Gulf and North Sea regions for which VLCCs would be suitable. In contrast, ten years ago U.S. crude oil and refined product imports averaged 8.8 million barrels per day. Only 14 percent of our crude oil imports were received from nearby sources while over 40 percent of our oil imports were received from the Arabian Gulf and North Sea regions.

During the last year, there has been an increase in oil exports from the Arabian Gulf region and a corresponding rise in demand for VLCCs in the international trade. Despite this increase it is unlikely that the U.S.-flag share of U.S. oil imports would increase, due to an oversupply of tonnage in the world tanker fleet.

As of January 1987, the world fleet contained over 235 million deadweight tons, of which approximately 200 million deadweight tons (85 percent) were actively employed. The remaining 35 million deadweight tons (15 percent) were idle; however, 30 million deadweight tons were in the over 200,000 DWT size class. The amount of idle capacity in the over 200,000 DWT size class represents more than 26 percent of the available tonnage in that class. Therefore, given the relative higher operating costs for U.S.-flag tankers and the amount of idle tonnage over 200,000 DWT in the world fleet, it is very likely that the four VLCCs that are the subject of this rulemaking would be laid up if they are required to leave the domestic trade, with loss of jobs to Jones Act seamen, or possibly scrapped.

In fact, of the nine VLCCs and two ULCCs built with CDS under the 1970 program, none has had any significant employment in the foreign commercial trades, other than occasional shipments of oil to the Strategic Petroleum Reserve, which are reserved to U.S.-flag carriage. The *Bay Ridge,* which repaid its CDS in 1980, has been operating actively in the domestic trade since 1980. The other three VLCCs have been operating in the domestic trade regularly under six month waivers under Part 250 (a total of 17 times since 1978). Thus, the deployment of these four VLCCs to the domestic trade would have no impact on U.S.-flag tanker presence in foreign trades. Finally, should world market conditions even reach the point where U.S.-flag VLCCs could be employed in the U.S. foreign or foreign-to-foreign trades, VLCCs that have continued to be active in the domestic trade would be much more readily available to the foreign fleet than vessels that are laid up and wasting or scrapped.

*III. The Naval Auxiliary*

One of the objectives of the Act is to foster the development of a merchant marine fleet "capable of serving as a naval and military auxiliary in time of war or national emergency, . . . ." 46 U.S.C. 1101(b).

In its comments on the prior CDS rule, the Defense Department expressed concern over the security implications of losing militarily-useful (i.e., product) tankers as a result of CDS repayment. MARAD has considered the effect on the naval auxiliary of allowing the four VLCCs to remain in the domestic trade (see Regulatory Impact Analysis). Market conditions and statutory requirements have contributed to a reduction in the number of U.S.-flag product tankers, including a declining upcoast (U.S. Gulf/East Coast) petroleum trade (the principal market for U.S.-flag product tankers), the opening of the Trans-Panama Pipeline in 1982, and the anti-pollution standards of the Port and Tanker Safety Act (PTSA).

As a result of these factors, over a three year period for 1984 to 1986, 41 tankers, of the type considered highly military useful, were scrapped (see Regulatory impact Analysis, Appendix 1). All had exceeded their statutory life of 20 years (see Regulatory Impact Analysis, Appendix 1). The average age of these tankers was 34 years. Further, the 1978 Port and tanker Safety Act (PTSA) set certain anti-pollution requirements for tankers entering United States waters. By January 1, 1986, vessels between 20,000 and 40,000 DWT were required to have certain anti-pollution systems to prevent the discharge of oil-tainted water. To comply with the PTSA requirements, tanker owners had the option of retrofitting existing systems, reducing load lines (so as to carry less than 20,000 DWT), using port reception facilities to dispose of oily water, or scrapping ships. Due to the cost of retrofitting and resulting loss of cargo capacity, and the inherent limitations of reducing load lines or using port reception facilities to discharge oily water, many tanker owners scrapped their older, less efficient vessels. The PTSA served to speed up the natural process of scrapping that occurs when tankers exceed their useful life.

Of these 41 that were scrapped, 25 were scrapped in 1984, nine in 1985, and seven in 1986. The vast majority of those lacked some or all of the anti-pollution features required by the PTSA.

These figures indicate that the scrapping that has occurred in the past three years is not attributable to CDS repayment but rather to the age of the vessels, their inability to economically retrofit to satisfy PTSA requirements and poor market conditions. Since the

effective date of the PTSA (January 1, 1986), the number of product tankers scrapped has declined. MARAD believes that this decline will continue, since many older, more inefficient tankers have now been scrapped. In addition, since the enactment of the PTSA, a number of new product tankers have been built.

Further, any effect that the four VLCCs would have on the militarily-useful tankers would be indirect, unlike the above factors. VLCCs and these smaller tankers generally do not compete in the same trades. As discussed above, VLCCs have historically served the Alaskan-Panama trade, and smaller tankers serve the Panama Gulf/East Coast trades. While a mix of vessels serve the West Coast, the four VLCCs have not entered that trade. Thus, any effect the VLCCs may have on the smaller tankers would be through an indirect displacement. That is, the VLCCs, being more cost-effective, may "bump" other large tankers that could serve the Alaska-Panama trade. In turn, these large tankers could operate in the West Coast and Panama/Gulf trade, picking up oil that could have been carried by smaller tankers. A trend in this direction is indicated by Table 111–2 in the Regulatory Impact Analysis. However, such "bumping" effects are much more remote than the effects of the PTSA, the Trans-Panama Pipeline, and declining market conditions, over which MARAD has no control.

Moreover, the current goal of the Navy is to increase the number of tankers in the Ready Reserve Force from eight to twenty by the year FY 1992. Even if there were a direct corrollary to CDS repayment and the 12 tankers laid up in February 1987, the Navy has the opportunity to purchase those vessels for their military usefulness at such time as they became commercially unattractive.

Based solely upon these objectives of section 101 of the Act, the Secretary concludes that the CDS repayment rule proposed herein furthers those objectives. The four VLCCs would increase the most suitable U.S. domestic fleet with minimal Impact on the existing fleet, and they are not expected to have a significant impact on carriage of U.S. foreign commerce, U.S. shipyard construction, or the U.S. Naval auxiliary capacity. Their retention in the Jones Act fleet will also result in $142 to the U.S. Treasury for CDS repayment, transportation savings to the shipping public and increased revenues for the State of Alaska.

*IV. Shipyards*

One of the objectives of the Act is to encourage the development of a merchant marine fleet "supplemented by efficient facilities for shipbuilding and ship repair." While this proposed rulemaking would not actively promote this goal, it also would not have a significant adverse effect on U.S. shipbuilding. MARAD acknowledges that future shipbuilding prospects with or without this proposed rule do not look positive. Even without CDS repayment, the growth prospects for the domestic petroleum trades are not sufficient to require the construction of additional tanker capacity.

No orders for the construction of unsubsidized tankers over 100,000 DWT were placed between April 1976 and August 1984. On August 27, 1984, EXXON placed an order for construction of two 209,000 DWT tankers in the United States for employment in the ANS trade. Since then, no orders have been placed to build unsubsidized tankers over 100,000 DWT.

Two foreign-flag tankers over 100,000 DWT were rebuilt in the United States for the ANS crude oil trade in 1981 and 1983 under the Wrecked Vessel Act (46 U.S.C. 14). Under this Act, foreign-built vessels that are wrecked off the U.S. coast are eligible to enter the U.S. domestic trade provided the vessel is purchased by a U.S. citizen and rebuilt in the United States at a cost that is at least three times the appraised salvage value.

The first vessel, the Overseas Boston (123,700 DWT), was rebuilt in 1981 and the second vessel, the Ogden Columbia (136,000 DWT), was rebuilt in 1983. Due to the existing capacity in the domestic trade and the predicted growth patterns in the petroleum trade, allowing the four CDS-built VLCCs to remain in the domestic Jones Act fleet permanently will have little effect on the amount of domestic tanker construction.

*V. Other Objectives of the Act*

While section 101 of the Act establishes the general objectives of the Act, other parts of the Act give more specific guidance on interpretation and implementation of these goals. The Act explicitly and implicitly establishes other policy goals in furtherance of the maintenance and deveplopment of the U.S. merchant marine fleet. Among these goals, mentioned in the prior CDS final rule (50 FR 19170), are efficiency and competition. Each of these goals has been recognized by the courts as vaild policies for promoting the U.S. merchant marine fleet.

A. Efficiency

The goal of efficiency of the fleet is mentioned throughout the Act. Among the express goals of section 101 is that the merchant marine shall be composed of "suitable" vessels manned by "efficient" crews. Certainly, the idea of "suitable" vessels should encompass efficiency as a principal component.

The goal of efficiency is particularly important in the CDS program, which is designed to produce vessels of "high transport capability and productivity." Merchant Marine Act, 1936, as amended, section 501 (46 U.S.C. App. 1151). Other provisions in the Act are intended to promote fleet modernization. Under section 213, the Secretary is required to report to Congress annually on the scrapping of old vessels, and the relative cost of ship construction and reconditioning in U.S. shipyards. The capital construction reserve fund was established in section 511 to promote construction or acquisition of new vessels. The Secretary's authority to acquire obsolete vessels for an allowance of credit under section 510(b) is intended "to promote construction of new, safe, and efficient vessels to carry the domestic and foreign waterborne commerce of the United States. . . ."

While the Act appears to clearly promote the policy of efficiency, the Department of Transportation authorization statute further declares it to be an overriding purpose that national transportation policies and programs be "conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent there with. . . ." 49 U.S.C. 1101. Any ambiguity in the Merchant Marine Act regarding the goal of promotion of efficiency is resolved in favor of that goal through the purposes and policies established in the Department's statute.

In addition to these explicit statutory provisions promoting efficiency of the U.S. merchant marine fleet, several recent court decisions have affirmed that one objective of the Act is to encourage modernization and efficiency. For example, the Supreme Court's decision confirming the Secretary's statutory authority to grant permanent release to vessels under *CDS* restrictions found that a basic goal of the Act was to encourage the maintenance of an "effective merchant marine" with a "fleet [that] was to be modern and efficient." *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.*, 444 U.S. 572, 584 (1980). Further, the DC Circuit recently described the first goal of the Act as promoting "a well-equipped and efficient merchant fleet." *American Trading Transportation Co.* v. *United States*, 791 F.2d 942, 944 (D.C. Cir. 1986); *see also Sea-Land* v. *Dole*, 723 F.2d 975, 976 (D.C. Cir. 1983).

The above statutory provisions and judicial interpretations strongly support the goal of promoting efficiency and

modernization of the U.S. merchant marine fleet. These goals would be furthered by this proposed rulemaking, which will allow the four VLCCs, which are among the most efficient U.S. tankers in the fleet, to remain active in the domestic trade.

B. Competition

While the Act does not explicitly list competition as one of its goals, the promotion of competition in the foreign and domestic trades is implicit in the Act. The Act's ODS and CDS programs are intended to give the U.S. merchant marine fleet certain financial resources to compete with lower-cost foreign fleets while not guaranteeing any profit. In particular, Congress made this objective clear in enacting the Merchant Marine Act of 1970, which extended those programs to the unregulated bulk trades. *See* Merchant Marine Act, 1936, 603(b) 46 U.S.C. 1173(b); H. Rep. No. 1073, 91st Cong., 1st. Sess., 38 (1969). The Jones Act trade does not receive such financial assistance, but is insulated from foreign competition by the Act's bifurcation of the foreign and domestic trades. That is, the Act restricts competition in the Jones Act trade only to the extent necessary to protect unsubsidized U.S. operators from the benefits of the Act's financial assistance programs (such as ODS and CDS) which assist the U.S. foreign trade vessels in competing against low-cost foreign-flag competition. In the domestic trade, the Secretary has a duty "to minimize interference with the free market forces normally at work. . . ." *ITOC* v. *Lewis, supra*, 690 F.2d at 917.

In its seminal case on the relation between the foreign and domestic trades, the DC Circuit stated that "competition is not 'unfair' within the meaning of the Act when it does not involve diversion of money to unsubsidized domestic operations from subsidized foreign operations, to the disadvantage of an unsubsidized operator. Congress plainly did not intend to prevent that sort of competition." *Pacific Far East Line, Inc.* v. *Federal Maritime Board*, 275 F.2d 184, 186 (D.C. Cir. 1960). Other courts have likewise recognized the overriding public policy in favor of competition in the domestic trade and in national transportation policy. *See e.g., Matson Navigation Co.*, v. *Connor*, 258 F. Supp. 144, 158 (N.D.Cal. 1966), *aff'd per curiam*, 394 F.2d 514 (9th Cir. 1968); *Bowman Transportation, Inc.*, v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 198–99 (1974).

Finally, the Supreme Court made clear its preference for fair competition (as opposed to regulated entry under six month permissions) in its decision confirming the Secretary's authority to accept permanent repayment in *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.* 444 U.S. 572, 589–90 (1980):

> Section 506 . . . permit[s] a vessel that enjoys the benefits of CDS to operate outside the foreign market only in narrow circumstances, generally upon a highly discretionary administrative decision, and no more than six months a year. And we have no doubt that it would be flatly inconsistent with one congressional intent were the Secretary or this court to conclude that a temporary release not meeting these conditions was proper. But a permanent release upon full repayment is quite different. If irrevocably locates the vessel in the unsubsidized fleet and, thus, poses no danger of a supercompetitor skimming the cream from each market. It creates no long-term instability. And it confers no windfall. On the contrary, at least where repayment of the CDS includes some amount reflecting capital costs which would have been incurred had no subsidy been available, such a transaction merely permits a once subsidized vessel to enter the domestic trade on a footing equal to that of vessels already in that trade. It was not the purpose of the Act to prohibit such entry. . . .

Thus, to the extent that the capacity allowed to enter the domestic trade under CDS repayment would have been allowed to participate in the trade under six month permissions, allowing total CDS repayment therefore would necessarily be consistent with the "purpose of the Act" *Id.*

In fact, where the Secretary issued the *NPRM* on total CDS repayment in January 1983, the full time equivalent of three CDS built VLCCs had been operating in the trade under six month permissions. Thus, allowing total repayment for three VLCCs under that rulemaking is squarely within the Supreme Court's holding.

*VI. Alternatives*

MARAD has considered three alternatives in preparing this rulemaking. The first is to maintain the *status quo*, i.e., to allow the four VLCCs to remain in the domestic trade. The costs and benefits of this alternative have been discussed at length in this statement, and in the Regulatory Impact Analysis. Further costs, evaluated in the Regulatory Impact Analysis, include the recent Title XI defaults of three VLCCs that were previously in the domestic trade under six-month waivers, and partial defaults of two other CDS-built VLCCs (*Stuyvesant* and *Bay Ridge*). These costs were not necessarily attributable to CDS repayment and in any event are irreversibly expended at this time (i.e., returning the four VLCCs to the foreign trade would not recover this money). The total default cost to the government has been $137.5 million.

Another relevant consideration is the effect on the existing Jones Act (i.e., domestic) fleet. As of February 19, 1987, twelve Jones Act tankers were laid up (totaling approximately 650,000 DWT). On the other side of the ledger, if CDS repayment is not allowed for the four VLCCs, they are likely to be laid up (approximately 705,000 DWT).

MARAD believes that the suitability of the four VLCCs for the Alaska-Panama trade outweights any possible disadvantages. Of the twelve tankers that are laid up, three tankers (totaling 146,000 DWT) are over 20 years old. The remaining nine tankers include the one tanker (the *Prince William Sound*, 123,400 DWT) and eight smaller tankers that could serve in the *ANS* trade, although at a much higher cost per ton than VLCCs currently operating in that trade (see Regulatory Impact Analysis). For example, the cost of operating a 50,000 DWT tanker in the Valdez-Panama trade is approximately, $25.00 per ton, compared to $9.19 per ton for a 265,000 DWT VLCC operating in the same trade. Further, as noted above, larger tankers are more suitable than smaller tankers from an environmental standpoint because they make fewer voyages and port calls than smaller tankers to carry the same amount of oil, thus reducing the risk of collisions and oil spills (see Environmental Assessment).

A second alternative considered would be for MARAD to do nothing, i.e., to allow the rule to be vacated as of July 16, 1987, and for the three VLCCs to leave the domestic trade, and to consider the *Bay Ridge* separately. The costs of doing nothing would be a shortage of the most suitable tonnage for the Valdez-Panama trade and the likely lay-up of the three VLCCs that repaid CDS under the 1985 rule. Other costs of this alternative would be the loss to the government of CDS repayments of $105.8 million from those three VLCCs, the reduction of Alaska state revenues due to higher transportation costs in later years, and the loss of transportation savings to the shipping public.

The benefits of this alternative could be reduced government loan exposure risk on existing Jones Act tankers and the possibility of some of the laid up domestic tankers operating in the *ANS* trade. However, due to the age and small size of most of those tankers, they would be unsuitable for the Valdez-Panama trade. Further, only six percent of the domestic tanker fleet is laid up. A

six percent lay-up is a reasonable reserve for covering temporary losses from the active fleet due to casualties (three in 1986), surveys and repairs, as well as seasonal increases on the upcoast petroleum movements.

Under this second alternative, shipbuilding demand for new crude tankers would still be minimal, if any, due to the high cost of U.S. shipbuilding, the unlikely availability of future CDS funds due to budget constraints, and the predicted future decline in the volume of crude carried in the Alaska-Panama trade.

The third alternative considered would provide for other U.S.-flag tanker owners to repay CDS in return for unrestricted domestic trading privileges. Under this approach, those vessel owners with the best prospects for employment would likely choose to repay within the specified time period. Unrestricted repayment would reduce the need for federal issuance of temporary permission to enter the ANS trade. Fiscal benefits could also be the greatest under this alternative. However, it is unlikely that any more vessels would repay under this alternative, since only three repaid when the window was open for one year and two EXXON 209,000 DWT Jones Act tankers have recently delivered. This alternative would cause the most disruption to the Jones Act as there would be uncertainty in the market. Shipyard demand for new crude tankers would remain at a minimal or non-existent level.

**E.O. 12291, Statutory Requirements and DOT Procedure**

The Maritime Administrator has determined that this rule is major under the criteria of Executive Order 12291. Pursuant ot the Department of Transportation's Regulatory Policies and Procedures (February 26, 1979), this rule is also considered to be "significant" because it concerns a matter on which there is substantial public interest.

The Maritime Administrator certifies that it would have no significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) The companies owning and chartering the four VLCCs at issue, and companies owning or chartering tankers possibly affected by the rulemaking in the foreign and domestic trades, are either large oil companies or large independent shipping companies.

A draft Regulatory Impact Analysis has been prepared and is available for public review and copying in the Docket (R–110) in the Office of the Secretary, Maritime Administration (room 7300). It discusses the important economic aspects of this proposed rule.

An Environmental Assessment of the proposed rule has also been prepared, and may be inspected at the Office of the Secretary, Maritime Administration, room 7300. The Environmental Assessment concludes that the effect of the proposed rule would be that greater quantities of ANS oil would be transported in VLCCs than in smaller vessels, fewer total trips would be made by a smaller number of vessels, the risk of accidental oil spill would be reduced as the number of trips decreases. In addition, the tankers which have repaid CDS include a number of safety and environmental features required by statute. Overall, the risk to the environment would be reduced with the proposed rule as compared to without it. On the basis of the environmental assessment, the Maritime Administration has tentatively concluded that the proposed rule would not result in a significant environmental impact to the human environment.

**List of Subjects in 46 CFR Part 276**

Grant programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

**PART 276—[AMENDED]**

It is proposed to amend 46 CFR Part 276 as follows:

1. The authority citation for Part 276 continues to read as follows:

**Authority:** Secs. 204(b), 207, 506, and 714, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1117, 1156 and 1204) Pub. L. 86–518 (74 Stat. 216); Reorganization Plans No. 21 of 1980 (64 Stat. 1273) and No. 7 of 1981 (75 Stat. 840), as amended by Pub. L. 91–469 (84 Stat. 1036); and Dept. of Commerce Organization Order 10–8 (36 FR 19707, July 23, 1973), unless otherwise noted.

2. 46 CFR 276.3 is revised to read as follows:

**§ 276.3 Total Repayment**

(a) The Maritime Administration reaffirms the allowance of the irreversible total repayment of unamortized construction-differential subsidy (CDS), with interest, and rescission permanently of the domestic trading restrictions related to the grant of CDS for tankers of any deadweight tonnage for applications and approval between June 6, 1985 and June 5, 1986, in accordance with the terms and conditions of subsection (b). The approved applications were for the *Arco Independence*, *Arco Spirit* and *Brooklyn*.

(b) *Repayment terms.* The full repayment amount consists of the unamortized CDS, as determined by the Maritime Administration, with compounded interest on that amount. The interest rate is the same as the long-term interest rate the owner obtained, or would have obtained if long-term debt financing had been used, in financing the owner's portion of the tanker. Unless the Maritime Administrator determined that using interest rates other than long-term bond rates was justified, such rates are used. If more than one long-term bond was issued to finance the owner's portion of a specific tanker, or if one or more of such bonds has more than one rate (such as a serial bond) an average interest rate is computed weighted by the proportion of each bond par value to the total par value of all long-term bonds issued to finance the owner's tanker. The interest payable on the unamortized CDS is computed by continuous compounding of the interest until the day of repayment. For purposes of this paragraph, "long-term bond rates" are either actual Title XI bond rates on a specific owner's tanker or the Title XI long-term bond rate at the time the tanker's statutory life began.

(c) The Maritime Administration reaffirms the allowance of the irreversible total payment of unamortized construction-differential subsidy with interest and recission permanently of the domestic trading restrictions relating to the grant of CDS for the *Bay Ridge*, which repaid on November 1980.

Dated: April 10, 1987.

By Order of the Maritime Administrator.

**James E. Saari,**

*Secretary, Maritime Administration.*

[FR Doc. 87–8472 File 4–14–87; 8:45 am]

BILLING CODE 4910–61–M

---

## FEDERAL MARITIME COMMISSION

**46 CFR Part 502**

**[Docket No. 87–7]**

**Implementation of the Equal Access to Justice Act in Commission Proceedings**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes to adopt rules implementing the Equal Access to Justice Act, as revised, for its formal adjudicatory proceedings. These rules will provide for the award of attorney fees and other expenses to parties who

prevail over the Federal Government in certain administrative proceedings at the Commission and in certain court proceedings involving the Commission.

**DATE:** Comments due on or before May 15, 1987.

**ADDRESS:** Comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** The Equal Access to Justice Act ("the Act"), Pub. L. 96–481, 94 Stat. 2325, was reauthorized and amended by Pub. L. 99–80, 99 Stat. 183, on August 5, 1985.

On May 6, 1986, the Administrative Conference of the United States issued final revised model rules ("Model Rules") for Government agencies to follow in implementing the Act. 51 FR 16659 (May 6, 1986).

The Act and the Model Rules provide for the award of attorney fees and other expenses to parties who prevail over the Federal Government in certain administrative proceedings and in certain court proceedings.

The Federal Maritime Commission, on March 3, 1987, published final rules governing the award of attorney fees in certain reparation proceedings under section 11 of the Shipping Act of 1984 (46 U.S.C. app. 1710), to become effective on April 2, 1987. See Attorney's Fees in Reparation Proceedings, Docket No. 86–27, 52 FR 6330, (March 3, 1986). The Commission is now proposing a new Subpart V to its Rules of Practice and Procedure, Part 502 of Title 46 of the Code of Federal Regulations, to separately implement the Equal Access to Justice Act in its formal adjudicatory proceedings and to follow, where applicable, the Model Rules.

Because the Model Rules provide for an "Answer to application" (§ 315.302), within 30 days, and also a "Reply" to such answer (§ 315.303), the Commission, in adopting the scheme of the Model Rules, is amending § 502.74 of its Rules of Practice and Procedure (46 CFR Part 502) to provide an exception to the general prohibition of a "reply to a reply," and also to the requirement that replies are due within fifteen days of service.

Proposed new Subpart V (§§ 502.501–502.503) closely tracks the Model Rules, except as follows:

In the proposed rule, the abbreviation used for the Equal Access to Justice Act is "EAJA" throughout, to avoid confusion with another statute referred to in various Commission's regulations as "the Act."

Where applicable, "the Federal Maritime Commission" or "the Commission" is used instead of "the agency." The term "the agency" is retained in the proposed rules where it refers to another U.S. Government agency that may be a party to a Commission proceeding.

Due to the structure of the Commission's Rules of Practice and Procedure describing the various types of proceedings and the fact that certain types may not always fall within the definition of "adjudications" under 5 U.S.C. 554, we have retained the Model Rules' generic description of proceedings covered by the proposed rule in § 502.501(c)(1), but have not attempted to describe in detail the specific proceedings covered. We anticipate that the applicability to certain cases will be decided better on an ad hoc basis and, as § 502.501(c)(2) provides, the failure to identify by rule a type of proceeding as an adversary adjudication will not preclude the filing of an application for attorney's fees and, in the appropriate situation, the award of such fees.

Similarly, while § 502.501(f) limits attorney's fees to $75.00 an hour, with adjustments, as set forth in the Model Rules, a particular maximum cannot at this time be set for expert witnesses who can receive "the highest rate" at which the Commission pays expert witnesses at the time. Again, this rate will be determined by case-law precedent as it develops and with reference to the maximum hourly rate for attorney's fees. Also, we have not thought it necessary to include § 315.107 of the Model Rules which provides for petitions for rulemaking to increase the maximum hourly rate under special circumstances, such as an increase in the cost of living. Subpart D, "Rulemaking," of the Commisison's Rules of Practice and Procedure (§§ 502.51–502.55) already provides for rulemaking petitions.

The Model Rules, in prescribing procedures for considering an application for legal fees, use the terms "application" (Subpart C, §§ 315.301, et seq.), "Answer" (§ 315.302), and "Reply" (§ 315.303). To avoid confusion and to be consistent with terminology elsewhere in the Commission's Rules of Practice and Procedure, including the new rule on Attorney's Fees in Reparation Proceedings in § 502.254, the proposed rule substitutes the terms "Petition" (§ 502.503, et seq.), "Reply" (§ 502.503(b)), and "Response" (§ 502.503(c)), respectively.

The adjudicative officer, with authority to hold further proceedings and initially decide applications for fees under EAJA, will be an Administrative Law Judge of the Commission, as provided for in § 502.503(a)(2), and, while not specifically mentioned in the proposed rule, "agency counsel" will ordinarily be Hearing Counsel of the Commission, when "the agency" against which an award of legal fees is sought is the Federal Maritime Commission.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193 (February 27, 1981).

The Chaiman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule, if adopted, will not have a significant economic impact on a substantial number of small business entities.

**List of Subjects in 46 CFR Part 502**

Administrative practice and procedure.

**PART 502—[AMENDED]**

Therefore, for the foregoing reasons, Part 502 of Title 46 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 502 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 46 U.S.C. app. 817, 820, 821, 826, 841, 1114(b), 1705, 1707–1711, 1713–1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Paragraph (a) of § 502.74 is revised to read as follows:

**§ 502.74 Replies to pleadings, motions, applications, etc.**

(a)(1) Except as provided under Subpart V of this part, a reply to a reply is not permitted.

(2) Except as otherwise provided respecting answers (§ 502.64), shortened procedure (Subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), replies to petitions for attorneys fees under the Equal Access to Justice Act (§ 502.503(b)(1)), and the documents specified in paragraph (b) of this section, any party may file and serve a reply to any written motion, pleading, petition, application, etc., permitted under this part within fifteen (15) days after the date of service thereof, unless a shorter period is fixed under § 502.103.

* * * * *

3. Subpart V, containing § 502.991, is redesignated as "Subpart W."

4. A new Subpart V is added to read as follows:

**Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings**

Sec.
502.501 General provisions.
502.502 Information required from applicants.
502.503 Procedures for considering applications.

## Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings

### § 502.501 General provisions.

(a) *Purpose.* The Equal Access to Justice Act, 5 U.S.C. 504 ["EAJA"], provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings [called "adversary adjudications"] before the Federal Maritime Commission ["the Commission"]. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rule in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

(b) *When EAJA applies.* EAJA applies to any adversary adjudication:

(1) Pending or commenced before the Commission on or after August 5, 1985;

(2) Commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 502.502 of this subpart, has been filed with the Commission within 30 days after August 5, 1985; or

(3) Pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

(c) *Proceedings covered.* (1)(i) EAJA applies to adversary adjudications conducted by the Commission under this part. These are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of any agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding.

(ii) Any proceeding in which the Commission may prescribe a lawful present or future rate is not covered by the Act.

(iii) Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications."

(2) The Commission's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution is proceedings on the application.

(3) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(d) *Eligibility of applicant.* (1) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this section and § 502.502.

(2) The types of eligible applicant are:

(i) An individual with a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act [12 U.S.C. 1141j(a)] with not more than 500 employees; and

(v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(3) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date of proceeding was initiated.

(4) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "solo owner of an unincorporated business" if the issues of which the applicant prevails are related primarily to personal interests rather than to business interests.

(5) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(6) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(7) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

(e) *Standards for awards.* (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on agency counsel.

(2) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(f) *Allowable fees and expenses.* (1) Awards will be based on rates customarily charged by the persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(2) No award for the fee of an attorney or agent under this subpart may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if

the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(i) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

(g) *Awards against other agencies.* If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

**§ 502.502 Information required from applicants.**

(a) *Contents of petition.* (1) An application for an award of fees and expenses under EAJA shall be by petition under § 502.69 of this part, shall clearly indicate that the application is made under EAJA, and shall identify the applicant and the proceeding (including docket number) for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(2) The petition shall also include a statement that the applicant's net worth does not exceed $2 million [if an individual] or $7 million [for all other applicants, including their affiliates]. However, an applicant may omit this statement if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act [12 U.S.C. 1141j(a)].

(3) The petition shall state the amount of fees and expenses for which an award is sought.

(4) The petition may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(5) The petition shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) *Net worth exhibit.* (1) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its petition a detailed exhibit showing the net worth of the applicant and any affiliates [as defined in § 502.501(d)(6) of this subpart] when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(2) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act under §§ 503.31–503.43 of this chapter.

(c) *Documentation of fees and expenses.* The petition shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicate officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(d) *When a petition may be filed.* (1) A petition may be filed whenevr the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later then 30 days after the Commission's final disposition of the proceeding.

(2) For purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

(3) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that

adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlyng merits of the case have been finally determined pursuant to the appeal.

**§ 502.503 Procedures for considering petitions.**

(a) *Filing and service of documents.* (1) Any petition for an award or other pleading or document related to a petition shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 502.502(b)(2) (confidential financial information).

(2) The petition and all other pleadings or documents related to the petition will be referred to an Administrative Law Judge to initially decide the matter as adjudicative officer

(b) *Reply to petition.* (1) Within 30 days after service of a petition, counsel representing the agency against which an award is sought may file a reply to the petition. Unless counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file a reply within the 30-day period may be treated as a consent to the award requested.

(2) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing a reply for an additional 30 days, and further extension may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(3) The reply shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the reply is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Response to reply.* Within 15 days after service of a reply, the applicant may file a response. If the response is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the response either supporting affidavits or a request for further proceeding under paragraph (f) of this section.

(d) *Comments by other parties.* Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on a reply, within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

(e) *Settlement.* The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded in accordance with the rules of this subpart pertaining to settlement. If a prevailing party and agency counsel agree on a proposed settlement of an award before a petition is filed, the petition shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Decision.* The adjudicative officer shall serve an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reason for the allocation made.

(h) *Commission review.* Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with § 502.227 of this part. If neither the applicant nor agency counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) *Payment of award.* (1)(i) An applicant seeking payment of an award shall submit to the comptroller or other disbursing officer of the paying agency a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

(ii) The agency will pay the amount awarded to the applicant within 60 days.

(2) Where the Federal Maritime Commission is the paying agency, the application for payment of award shall be submitted to:

Office of Budget and Financial Management, Federal Maritime Commission, Washington, DC 20573.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-8380 Filed 4-14-87; 8:45 am]

BILLING CODE 6730-01-M

---

**46 CFR Parts 502 and 503**

**[Docket No. 87-8]**

## Filing of Comments Pertaining to Agency Meetings

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission is proposing amendments

to its Rules of Administrative Practice and Procedure and its Sunshine Act provisions, which would establish a cutoff date for filing of comments, information, etc. on matters scheduled for consideration at an agency meeting.

**DATE**: Comments due on or before May 5, 1987.

**ADDRESS**: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT**: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

**SUPPLEMENTARY INFORMATION**: Public announcement of agency meetings is made by the Secretary, Federal Maritime Commission, pursuant to § 503.82 of Title 46 CFR. The announcement, which normally is made no later than one week prior to the scheduled meeting date, includes certain information, as more particularly set forth in § 503.82(d), and includes the subject matter of the meeting. Often, such announcement prompts last minute filings by outside interested persons regarding items scheduled for Commission consideration. Usually, these filings address matters for which a specific filing deadline was not previously established, but on occasion have also occurred on matters which were subject to a since past deadline. These filings are sometimes made in an attempt to update information previously furnished. Other times they appear to be an attempt to get in the "last word." In some cases filings have been received by the Office of the Secretary as late as the morning of the scheduled Commission meeting.

The late filing of comments creates two difficulties. First, they may not allow the Commission sufficient time to properly review the additional information prior to its consideration of the item at the Commission meeting. Second, filings may also unfairly preclude any opportunity for response by another interested party where one may be warranted. The proposed rule would generally prohibit late filings and thereby provide for a more orderly and thorough consideration of information pertaining to a particular matter before the Commission.

For the above reasons, the Commission proposes to amend § 503.82 of Title 46 CFR by inserting a provision which would establish the date of the public announcement of the agency meeting as the cutoff date for receipt of comments on a particular item to be discussed at that meeting. Section 502.2 (Subpart A—General Information) would also be amended to provide an appropriate cross-reference to the amendment in § 503.82. The Commission is also taking this opportunity to clarify the language and structure of § 502.2. No substantive amendment, other than the provision subject to this proposed rulemaking, has been made to § 502.2.

It is also recognized that there may be instances where a late filed comment or information is crucial to a reasoned consideration of a particular agenda item. Therefore, the proposed rule provides that the Commission may, in its discretion accept, for exceptional circumstances shown, a filing submitted subsequent to the announcement of the scheduling of the agency meeting. The Commission intends, however, that the granting of such permission would be the clear exception and not the norm.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this Notice of Proposed Rulemaking because the proposed amendments to Parts 502 and 503 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

**List of Subjects in 46 CFR Parts 502, 503**

Administrative practice and procedure, Sunshine Act.

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716(a), Parts 502 and 503 of Title 46, Code of Federal Regulations, are proposed to be amended as follows:

**Part 502—[Amended]**

1. The authority citation for Part 502 continues to read as follows:

**Authority:** 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; secs. 18, 20, 22, 27 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817, 820, 821, 826, 841a); secs. 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1705, 1707–1711, 1713–716); sec. 204(b) of the Merchant Marine Act, 1936 (46 U.S.C. app. 1114(b)); and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Section 502.2 is amended by adding a new paragraph (d) and clarifying the language in this section. The section is revised to read as follows:

**§ 502.2 Filing of documents; hours; mailing address.**

(a) For purposes of filing of documents with the Commission, the hours of the Commission are from 8:30 a.m. to 5:00 p.m., Monday to Friday, inclusive.

(b) Except for exhibits filed pursuant to § 502.118(b)(4), all documents required to be filed in, and correspondence relating to proceedings governed by this part should be addressed to "Secretary, Federal Maritime Commission, Washington, DC 20573–0001."

(c) Documents relating to any matter pending before the Commissioners for decision or to any matter likely to come before the Commissioners for decision, whether or not relating to proceedings governed by this part, shall similarly be filed with the Secretary, Federal Maritime Commission. Such documents should not be filed with or separately submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary, to ensure that persons in decision-making and advisory positions receive in a uniform and impersonal manner identical copies of submissions, and to avoid the possibility of ex parte communications within the meaning of § 502.11(b). These considerations apply to informal and oral communications as well, such as requests for expedited consideration.

(d) No filings relating to matters scheduled for a Commission meeting will be accepted by the Secretary if submitted subsequent to public announcement of the particular meeting, except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances. (See section 503.82(e) of this chapter.) [Rule 2 1]

## PART 503—[AMENDED]

3. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

4. Section 503.82 is amended by adding a new paragraph (e) to read as follows:

**§ 503.82 Public announcement of agency meeting.**

* * * * *

(e) No comments or further information relating to a particular item scheduled for an agency meeting will be accepted by the Secretary for consideration subsequent to public announcement of such meeting; except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances.

* * * * *

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-8381 Filed 4-14-87; 8:45am]

BILLING CODE 6730-01-M

---

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 87-76, RM-5686]**

### Radio Broadcasting Services; Sedona and Flagstaff, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by American Aircasting Corp., licenses of Station KQST(FM) (Channel 261A), Sedona, AZ, seeking the substitution of Class C Channel 275 for Channel 261A and modification of its license accordingly. Also, at petitioner's request, we propose to substitute Channel 261C2 for 275C2 at Flagstaff, AZ to accommodate the requested upgrade of Station KQST(FM).

**DATES:** Comments must be filed on or before May 28, 1987, and reply comments on or before June 12, 1987.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John A. Borsari, Esq. and David A. La Furia, Esq., John A. Borsari and Associates, 900 17th St., NW, 9th Flr., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-76, adopted March 27, 1987, and released April 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8411 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

### 47 CFR Part 73

**[MM Docket No. 86-61; RM-4970]**

### Radio Broadcasting Services; Valley Springs, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of proposal.

**SUMMARY:** This document dismisses a petition filed by Eric R. Hilding to allot Channel 259A to Valley Springs, CA, as that community's first local FM service, for petitioner's failure to provide a technical showing, as requested, regarding an available site for the provision of city grade service. With this action, this proceeding is terminated.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MM Docket No. 86-61, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8412 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

### 47 CFR Part 73

**[MM Docket No. 87-77, RM-5213]**

### Radio Broadcasting Services; Baldwin, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Radio Representatives, Inc. requesting that Channel 227A be allocated to Baldwin, Florida, as a first local FM service.

**DATES:** Comments must be filed on or before June 1, 1987, and reply comments on or before June 16, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Norwood J. Patterson, Radio Engineering Company, P.O. Box 420, Santa Ynez, California (934601) (Engineering Consultant).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of

Proposed Rule Making, MM Docket No. 87–77, adopted February 23, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87–8413 Filed 4–14–87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 87–81, RM–5538, RM–5610, RM–5658]**

## Radio Broadcasting Services; Los Ranchos de Albuquerque, Los Alamos and Corrales, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on mutually exclusive petitions by Dorothy D. Davis to allocate Channel 294A to Los Ranchos de Albuquerque, NM, as the community's first local FM service and by Los Alamos FM Broadcasters to substitute Class C or C1 Channel 294 for Channel 296A at Los Alamos and to modify its permit for Station KBOM to specify the higher powered channel. The Commission also proposes to allocate Channel 236A to Corrales, New Mexico, in lieu of Channel 294A, as requested by LV Broadcasting Associates. In accordance with § 1.420(g) of the Rules, no additional expressions of interest in use of Channel 294 at Los Alamos will be accepted. Channel 294A can be allocated to Los Ranchos de Albuquerque, with a site restriction of 5.2 kilometers (3.2 miles) northeast to avoid a short-spacing to Station KLQS, Channel 296A, Armijo, New Mexico. Channel 294 can be allocated to Los Alamos, NM, with a site restriction of 25.2 kilometers (15.7 miles) north to protect KBOM's desired Lobato Mesa site. Channel 236A can be allocated to Corrales without a site restriction.

**DATES:** Comments must be filed on or before June 1, 1987, and reply comments on or before, June 16, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Ms. Dorothy D. Davis, 1217 Valencia Drive, NE, Albuquerque, NM 87110 (Petitioner for Los Ranchos de Albuquerque); David Tillotson, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036 (Counsel to petitioner for Los Alamos); and Ashton R. Hardy, James J. Popham, and Gregory H. Guillot, Hardy & Popham, 700 Camp Street, New Orleans, Louisiana 70130 (Counsel) to LV Broadcasting Associates).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–81, adopted March 13, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purcahsed from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–8414 Filed 4–14–87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 87–79, RM–5642]**

## Radio Broadcasting Services; Block Island, RI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Kolleen Dodge to allocate Channel 240A to Block Island, Rhode Island, as the community's second local FM service. Channel 240A can be allocated to Block Island in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.

**DATES:** Comments must be filed on or before June 1, 1987, and reply comments on or before June 16, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian Dodge, President, Harvest Broadcasting Services, Box 105FM, Hinsdale, NH 03451 (Consultant to petitionee).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–79, adopted Feb. 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8416 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 87-80, RM-5583]**

## Radio Broadcasting Services; Kingstree, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to substitute Channel 255C2 for Channel 252A at Kingstree, SC, at the request of Davidson Communications, Inc. At its request, the Commission proposes to modify its license for Station WWKT-FM to specify the higher powered channel. Channel 255C2 can be allocated with a site restriction of 5.4 kilometers (3.3 miles) southwest contingent upon Station WZFX, Channel 256 at Whiteville, NC, being licensed at its construction permit site with the specified Class C1 facilities. The petition of Ocean Communications to substitute Channel 252C2 for Channel 249A at Georgetown, SC, and modify its license for Station WGMB, which is contingent upon the outcome of this proceeding, will be the subject of a separate Notice of Proposed Rule Making.

**DATES:** Comments must be filed on or before June 1, 1987, and reply comments on or before June 16, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel on consultant, as follows: Davidson Communications, Inc., Radio Station WWKT-FM, P.O. Box 1125, Kingstree, SC 29556 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-80, adopted February 27, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8417 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-287, RM-5553]**

## Radio Broadcasting Services; Ulysses, PA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Donna M. Venetz to allocate Channel 268A to Ulysses, Pa., as the community's first local service. Petitioner is requested to furnish additional data showing that Ulysses is a "community" for allotment purposes. Channel 268A can be allocated to Ulysses in compliance with the Commission's minimum distance separation requirements, without the imposition of a site restriction. Canadian concurrence is required since Ulysses is located within the border area.

**DATES:** Comments must be filed on or before June 1, 1987, and reply comments on or before June 16, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donna M. Venetz, 512 O'Connor Place, Scranton, Pennsylvania 18505 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 86-287, adopted March 6, 1987, and released April 8, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to ths proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commisison.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8415 Filed 4-14-87; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

April 10, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of reponses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Animal and Plant Health Inspection Service

Orobanche ramosa Mail Survey
PPQ 112
Annually
Farms; 200 responses; 100 hours; not applicable under 3504(h)
Thomas Flanigan (301) 436–8295

Reinstatement

- Agricultural Stabilization and Conservation Service

Part 1421—General Regulations Governing Price Support for the 1978 and Subsequent Crops
CCC–156, 614, 638, 665, 666, 666-Honey, 678–2, 679, 681, 681–1, 685, 686, 687–1, 699, KC–350, UCC–1, UCC–3
On occasion
Farms; 699,801 responses; 174,950 hours; not applicable under 3504(h)
Lynda Flament (202) 447–4229

- Forest Service

Northeastern Ownership Study
On occasion
Individuals or households; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,033 reponses; 490 hours; not applicable under 3504(h)
Thomas W. Birch (215) 461–3037

Larry K. Roberson,
*Acting Departmental Clearance Officer.*

[FR Doc. 87–8451 Filed 4–14–87; 8:45 am]
BILLING CODE 3410–01–M

### Office of International Cooperation and Development; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet from 1:30 p.m. to 4:00 p.m. on Thursday, April 30, 1987 and from 8:30 a.m. to 3:30 p.m. on Friday, May 1, 1987. The meeting will commence in Room 104–A, Administration Building, U.S. Department of Agriculture for welcoming remarks and a plenary session to discuss issues of concern of the entire Council. The agenda for the opening plenary session includes: Briefing on last year's activities, guidelines on members' involvement in projects, restructuring the committees, and other Council business.

The meeting will resume at 8:30 a.m. on Friday, May 1, with individual sessions according to functional committees: "Transportation and Infrastructure" will meet in Room 5219 South Building; "Production, Processing, and Marketing" will meet in Room 1333 South Building; "Agribusiness Investment/Trade Project Facilitation" will meet in Room 3056 South Building; "Government Policies/Business Climate" will meet in Room 3109 South Building. The agenda for these sessions will include: (1) Review of last year's activities, where appropriate; (2) Presentations on topics pertaining to function of the committee; and (3) Development of recommendations for next year's activities. The Council will reconvene in a closing plenary session in Room 104–A Administration Building at 1:45 p.m. Co-chairmen Mr. M. D. McVay and Under Secretary Daniel G. Amstutz will preside. The committees will report their recommendations for the approval of the entire Council. The approved recommendations will be presented by the Co-Chairmen to Secretary Richard E. Lyng.

The meeting will be open to the public and is contingent upon the timely reestablishment of the Council.

Comments may be submitted to Dr. Joan S. Wallace, Administrator of the Office of International Cooperation and Development, up to noon on April 27, 1987. Further information may be obtained by calling Private Sector Relations Division, Office of International Cooperation and Development, (202) 653–7873.

Joan S. Wallace,
*Administrator, Office of International Cooperation and Development.*

[FR. Doc. 87–8449 Filed 4–14–87; 8:45 am]
BILLING CODE 3410–DC–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 353]

### Approval for Expansion of Foreign-Trade Zone No. 22, Kankakee County, IL, Adjacent to the Chicago Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the

Foreign-Trade Zones Board (the Board) adopts the following order:

*Whereas,* the Illinois International Port District, formerly the Chicago Regional Port District, Grantee of Foreign-Trade Zone No. 22, Chicago, has applied to the Board for authority to expand its general-purpose zone to include two sites in Manteno Township, Kankakee County, Illinois, adjacent to the Chicago Customs port of entry;

*Whereas,* the application was accepted for filing on May 15, 1986, and notice inviting public comment was given in the **Federal Register** on June 6, 1986 (Docket No. 17–86, 51 FR 20684);

*Whereas,* an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

*Whereas,* the expansion is necessary to improve and expand zone services in the Chicago area; and,

*Whereas,* the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and the approval of the application is in the public interest;

*Now, therefore,* the Board hereby orders:

That the Grantee is authorized to expand its zone plan in accordance with the application filed May 15, 1986. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 9th day of April 1987.

**Paul Freedenberg,**

*Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 87–8458 Filed 4–14–87; 8:45 am]

BILLING CODE 3510-DS-M

---

**[Order No. 354]**

## Resolution and Order Approving the Application of the City of Flint, for a Foreign-Trade Zone and Subzone in Michigan

Proceeding of the Foreign-Trade Zones Board, Washington, DC.

**RESOLUTION AND ORDER**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the City of Flint, Michigan, filed with the Foreign-Trade Zones Board (the Board) on May 15, 1985, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Flint, Michigan, and a special-purpose subzone for the General Motors Corporation's automobile manufacturing plant in Flint, within the Saginaw/Bay City/Flint Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Foreign-Trade Zones Board Washington, DC.**

*Grant to Establish, Operate, and Maintain a Foreign-Trade Zone and Subzone in Flint, MI*

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Flint, Michigan (the Grantee), has made application (filed May 15, 1985, Docket No. 11–85, 50 FR 21638) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Flint, Michigan, including a manufacturing operation for Cirtek Corporation, and a special-purpose subzone for the General Motors Corporation automobile manufacturing plant in Flint, within the Saginaw/Bay City/Flint Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and.

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 140 and Subzone No. 140A at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone and subzone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations other than the two mentioned in the application, and the Grantee shall notify the Board for approval prior to the commencement of any other manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, maintenance of said zone and subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army

District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 3rd day of April 1987, pursuant to order of the Board.

Foreign-Trade Zones Board.

**Malcolm Baldrige,**

*Chairman and Executive Officer.*

Attest:

**John J. De Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 87-8460 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[Order No. 355]

## Resolution and Order Approving the Application of the County of Monroe, for a Foreign-Trade Zone in New York

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

### Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the County of Monroe, New York, filed with the Foreign-Trade Zones Board (the Board) on January 4, 1984 (Docket 1–84) and amended on September 12, 1986 (Docket 30–86), requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Monroe County, New York, within the Rochester Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Foreign-Trade Zones Board, Washington, DC**

*Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in Monroe County, NY*

*Whereas,* by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

*Whereas,* the County of Monroe, New York (the Grantee), has made application (filed January 4, 1984, Docket No. 1–84, 49 FR 1261, and amended on September 12, 1986, Docket No. 30–86, 51 FR 34478) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Monroe County, New York, within the Rochester Customs port of entry;

*Whereas,* notice of said application has been given and published, and full opportunity has been afforded all intested parties to be heard; and,

*Whereas,* the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

*Now, therefore,* the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 141 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board of approval prior to the commencement of any manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable thereof.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

*In witness whereof,* the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 2nd day of April 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Malcolm Baldrige,**

*Chairman and Executive Officer.*

Attest:

**John J. De Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 87-8459 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DS-M

---

## International Trade Administration

## Applications for Duty-Free Entry of Scientific Instruments; Baptist Hospital Inc., et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00

P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86–081. Applicant: Baptist Hospital Inc., 2000 Church Street, Nashville, TN 37236. Instrument: Lithotripter. Manufacturer: Dornier Medical Systems Inc., West Germany. Intended Use: The instrument is intended to be used for treating kidney stone disease. Application Received by Commissioner of Customs: December 13, 1985.

Docket No.: 86–292.Applicant: Wuesthoff Memorial Hospital, 110 Longwood Avenue, Rockledge, FL 32955. Instrument: Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended Use: The instrument is intended to be used for studies of kidney stones, the kidney and surrounding muscle tissue, gall bladder stones, the gall bladder and surrounding tissue. Investigations will be conducted to expand knowledge of shockwave technology, particularly in its ability to reduce the morbidity and mortality that is experienced via open surgery to the urinary tract as well as the biliary tree. In addition, the instrument will be used to provide hands-on instruction in and application of the lithotripter. Application Received by Commissioner of Customs: July 24, 1986.

Docket No.: 86–297R. Applicant: Northwestern University, Department of Biochemistry, Molecular Biology and Cell Biology, 2153 Sheridan Road, Evanston, IL 60201. Instrument: Circular Dichroism Spectropolarimeter, Model J–600. Manufacturer: Jasco, Japan. Original notice of this resubmitted application was published in the **Federal Register**: August 21, 1986.

Docket No.: 87–039R. Applicant: Colorado State University, Fort Collins, CO 80523. Instrument: Stopped-Flow UV–VIS Spectrophotometer, Model SF–41S/SU–40A. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register**: December 11, 1986.

Docket No.: 87–136. Applicant: Rhode Island Hospital, 593 Eddy Street, Providence, RI 02902. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument is intended to be used for studies of basement membrane of capillaries in the renal glomerulus. Investigations will be conducted to assess the effect of a modulator of the immune system on the thickness, filtration characteristics and charge characteristics of the glomerular basement membrane in normal and in diseased (autoimmune) mice.

Application Received by Commissioner of Customs: March 20, 1987.

Docket No.: 87–137. Applicant: Wellesley College, Wellesley, MA 02181. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used for educational purposes in a number of courses which will provide hands-on experience for research students. In addition, the instrument will be used for the following research objectives:

(1) Continued studies of the results of chronic, continuous treatment of adult rats with the beta-adrenergic blocking agent propranolol.

(2) The morphological localization of enzymes in cyanobacterial cells,

(3) Further experimentation of isolated cyanobacterial plasmids,

(4) Fine structural analysis of the cell envelope of a mutant strain of cyanobacteria,

(5) Analysis on intact chloroplasts and chloroplast subfractions in an effort to identify significant protein-protein cross-linking reagents,

(6) Investigate the sequence of events involved in the early stages of nodule development usng specific *Rhizobium* mutants,

(7) Studies designed to develop methods for use in the vertebrate retina, to map potential interactions between two neurotransmitter systems at the ultrastructural level,

(8) Visualization of the heteroduplexes between cDNA coding for interluekin-1 (IL–1) beta and the corresponding genomic sequence to demonstrate the intron-exon organization determined by DNA sequencing,

(9) Determination of the cellular sites of IL-1 beta protein processing and transport by immunogold localization.

Application Received by Commissioner of Customs: March 20, 1987.

Docket No.: 87–138. Applicant: Medical College of Wisconsin, Department of Pathology, 8700 West Wisconsin Avenue, Milwaukee, WI 53226. Instrument: Electron Microscope, Model EM 10/CA. Manufacturer: Carl Zeiss Inc., West Germany. Intended Use: The instrument is intended to be used to conduct the following collaborative studies:

(1) Retrospective study of focal glomerulosclerosis and hyalinosis,

(2) Ultrastructural and immunocytochemical studies of pituitary tumors,

(3) Intrinsic nerves and regulation of small bowel motility and

(4) Studies of crystal deposition disease.

Application Received by Commissioner of Customs: March 25, 1987.

Docket No.: 87–139. Applicant: University of Illinois at Chicago, Department of Biological Sciences, Taylor & Halsted Streets, Chicago IL 60680. Instrument: Electron Microscope, Model JEM–1200 EX/SEG/DP. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used to examine a variety of cells and cell extracts which include epidermal cells of amphibians, unicellular algae and protozoa and cockroach neurons. The objectives pursued during the course of these investigations include:

(1) Following the pathways taken by proteins destined for different regions of the cell.

(2) Identifying similarities and differences in related mouse species at the DNA level.

(3) Relating the distribution of contractile-like proteins with specific cell compartments in protozoa.

(4) Resolving the tissue distribution and timing of keratin synthesis during amphibian skin development.

The instrument will be used primarily as a research and teaching instrument for graduate students, postdoctoral fellows, faculty and staff. Application Received by Commissioner of Customs: March 25, 1987.

Docket No.: 87–140. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Magnetic Field-sensor Coil Eye Movement Monitoring Instrument, Model 3000. Manufacturer: Skalar Instrumenten B.V., The Netherlands. Intended Use: The instrument will be used to study human eye movement in order to investigate (1) the visual, cognitive and motor factors that determine oculomotor patterns, and (2) the effect of oculomotor patterns on performance of visual tasks. Application Received by Commissioner of Customs: March 25, 1987.

Docket No.: 87–141. Applicant: Los Angeles County-Olive View Medical Center, 7533 Van Nuys Boulevard, Van Nuys, CA 91405. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument is intended to be used for studies of specimens obtained by fine needle aspiration or by surgery by colloidal gold linked antibody method to identify the virus within lymphoid tissue. Following identification of the virus within the tissue and its

localization, studies can be done to relate the virus with its various serologic concentrations so that clinical application of this knowledge can be applied. Another research purpose will include a program directed to develop procedures to make ultrastructural studies of aspirate rapidly and economically available. In addition, the instrument will be used in the educational program at the Medical Center. Application Received by Commissioner of Customs: March 25, 1987.

Docket No.: 87–143. Applicant: Indiana University Medical Center, Department of Pathology, 926, W. Michigan Street, Indianapolis, IN 46223. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used to study a variety of biological tissue samples. Experimental research concerning the following will be conducted:

(1) The effects of various drugs on the morphology of Pneumocystis carinii.

(2) Transendothelial migration of leukemic cells.

(3) Basal lamina ultrastructure in various disease states.

(4) The relationships between the microflora and epithelium of the intestines.

(5) The retrospective studies into the morphology of numerous diseases.

The instrument will also be used to teach residents how to use the electron microscope to obtain information pertaining to various preneoplastic and neoplastic disease entities. Application Received by Commissioner of Customs: March 26, 1987.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–8462 Filed 4–4–87; 8:45 am]

BILLING CODE 3510–DS–M

---

## Applications for Duty-Free Entry of Scientific Instruments; University of Tennessee et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 87–126. Applicant: University of Tennessee, Department of Chemistry, 575 Buehler Hall, Knoxville, TN 37996–1600. Instrument: Quadrupole Update for Mass Spectrometer, Manufacturer: VG Analytical Instruments Ltd., United Kingdom. Intended Use: The instrument is an accessory to an existing mass spectrometer which will be used to determine the structure of ions that have been analyzed as to exact mass by the mass spectrometer. The accessory will also be used for structural analysis of each component of complex mixtures in support of most of the research described in the application for the mass spectrometer. In addition, the accessory will be used for educational purposes in various chemistry courses. Application Received by Commissioner of Customs: March 12, 1987.

Docket No.: 87–128. Applicant: Northwestern University Medical School, Cell Biology and Anatomy Department, 303 E. Chicago Avenue, Chicago, IL 60611. Instrument: Electron Microscope, Model JEM–1200EX. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for the study of the ultrastructure of white blood cells, cells derived from blood vessels, tumor cells and kidney tissues. Most specimens studied will be of biological origin, some from experimental animals, some from normal humans and some from patients with pathological disorders. In addition, the instrument will be used on a one-to-one basis in the training of medical and graduate students and residents and fellows. Application Received By Commissioner of Customs: March 12, 1987.

Docket No.: 87–129. Applicant: Duke University, Eye Center, Box 3802–200, Durham, NC 27710. Instrument: Electron Microscope, Model JEM–1200EX. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used for the study of the ultrastructure of normal and diseased ocular tissue from experimental animals and patients with eye diseases. In addition, the instrument will be used on a one-to-one basis in the training of medical and graduate students and ophthalmology residents and fellows. Application Received by Commissioner of Customs: March 12, 1987.

Docket No.: 87–130. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: FTI Spectrophotometer, Model DA3.26. Manufacturer: Bomem Inc., Canada. Intended Use: The instrument is intended to be used for a wide range of studies of the optical properties of semiconductors including the following:

(1) Energy levels of shallow donor and acceptor impurities in silicon, germanium and a novel new class of materials commonly called diluted magnetic semiconductors,

(2) Linewidths of these levels,

(3) Excitons and internal transitions in DMS and GaAs-A1GaAs superlattices in the visible region and

(4) Ramam scattering.

Application Received by Commissioner of Customs: March 12, 1987.

Docket No.: 87–131. Applicant: Scripps Clinic and Research Foundation, 10666 N. Torrey Pines Road, La Jolla, CA 92037. Instrument: Electron Microscope, Model CM 12 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument is intended to be used for electron crystallographic studies of the following biological specimens: gap junctions, nicotinic acetylcholine receptor, nuclear pore complex and actin and myosin. These studies are important to the understanding of many fundamental aspects of cell and tissue function, e.g. cell-cell communication, transmission of nerve impulses, nucleocytoplasmic exchange, muscular contraction and cell locomotion. In addition, the instrument will be used to provide training in the use of electron microscope as a research instrument. Application Received by Commissioner of Customs: March 12, 1987.

Docket No.: 87–132. Applicant: North Carolina State University, Department of Textile Chemistry, Box 8302, Raleigh, NC 27695–8302. Instrument: Diameter Monitor, Model 460A/Z. Manufacturer: Zimmer Ohg, West Germany. Intended Use: Research involving the investigation of the production of high-strength fibers using polyethylene terephthalate and liquid crystal polyester along with high take up speeds and a new spinnerette design. Application Received by Commissioner of Customs: March 16, 1987.

Docket No.: 87–133. Applicant: U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Oscilloscope, Model #7250. Manufacturer: Intertecnique, France. Intended Use: Measurement of fast electron transfer reactions. Organic molecules are synthesized with two electron-accepting groups held a fixed distance apart by rigid molecular spacers. Electrons are attached to the molecules using pulse radiolysis. Rates

BEST COPY AVAILABLE

of electron transfer from one group to the other are measured as a function of distance between the reacting groups, energy differences and molecular structure. Experiments will be conducted to learn scientific principles underlying photosynthesis and possible man-made devices for capture and storage of solar energy. Application Received by Commissioner of Customs: March 19, 1987.

Docket No.: 87-135. Applicant: University of Arizona, Arizona Research Laboratory, Division of Neurobiology, 603 Gould-Simpson Science Building, Tucson, AZ 85721. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for studies of the ultrastructure of nerve cells, muscle cells, and intercellular contacts among such cells. Specimens will be from experimental animals, tissue cultures and other research sources. In addition, the instrument will be used to train graduate students and postdoctoral fellows in ultrastructural methodology. Application Received by Commissioner of Customs: March 19, 1987.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 87-8461 Filed 4-14-87; 8:45am]

BILLING CODE 3510-DS-M

---

[A-489-602]

## Acetylsalicylic Acid from Turkey: Preliminary Determination of Sales at Less Than Fair Value

**ACTION:** International Trade Administration, Import Administration, Department of Commerce.

**AGENCY:** Notice.

**SUMMARY:** We have preliminarily determined that acetylsalicylic acid (aspirin) from Turkey is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 23, 1987.

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION:** Contact John J. Kenkel (202-377-3530) or John R. Brinkmann (202-377-3965), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Preliminary Determination

We have preliminarily determined that aspirin from Turkey is being, or is likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice.

### Case History

On October 31, 1986, we received a petition in proper form filed by Monsanto Company, on behalf of the U.S. industry producing aspirin. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on November 20, 1986 (51 FR 43062, November 28, 1986), and notified the ITC of our action.

On December 15, 1986, the ITC determined that there is a reasonable indication that imports of aspirin from Turkey are materially injuring a U.S. industry (U.S. ITC Pub. No. 1926, December 1986).

On January 20, 1987, questionaires were presented to Atabay Kimya Sanayi ve Ticaret (Atabay) and Proses Kimya Sanayi ve Ticaret (Proses), exporters which account for at least 60 percent of the exports of the subject merchandise from Turkey to the United States.

On March 4, 1987, we received a questionaire response from Atabay. Proses did not respond. We found that Atabay's questionaire response was sufficient.

On March 13, 1987, petitioner alleged that the home market prices for aspirin were below the cost of production. We compared petitioner's data to Atabay's home market prices, net of transportation costs. We found that all sales were above the costs alleged by the petitioner. Therefore, we have determined that this cost allegation is insufficient.

We verified Atabay's response on March 27 through 31, 1987.

### Scope of Investigation

The product covered by this investigation is acetylsalicylic acid (aspirin), containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and its not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under item 410.72 of the *Tariff Schedules of the United States* (TSUS).

### Fair Value Comparisons

Because Atabay and Proses accounted for at least sixty percent of all exports of the subject merchandise from Turkey, we limited our investigation to them. To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. Since Proses did not respond, we made comparisons only on the sales of Atabay during the period of investigation, May 1 through October 31, 1986. For Proses we used the best information available which was the information contained in the petition.

### United States Price

As provided in section 772(b) of the Act, we based the United States price on purchase price because the merchandise was sold to unrelated purchasers prior to the date of importation in the United States. In this case the merchandise was sold to a trading company in Turkey. At the time of sale to the trading company, Atabay was aware that the merchandise was destined for shipment to the United States. Atabay sends two invoices to the trading company, the sum of which reflects the total price of the merchandise. Terms of sale to the trading company were C & F United States port.

From the total C & F price we made deductions for ocean freight, brokerage and handling and foreign inland freight.

### Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign

market value for aspirin on sales to unrelated customers in the home market. In accordance with section 773(a)(1)(B) of the Act, we determined that there were sufficient home market sales of such or similar merchandise to be used as a basis for determining foreign market value for aspirin.

We made deductions from the home market C & F prices for inland freight. The value added tax was not included in the price of the aspirin in either market, therefore, we did not adjust for it. We made adjustments to account for differences in the credit expenses for the merchandise in each market and for bank charges incurred on sales to the United States in accordance with section 353.15 of the Commerce Regulations. Since we could not tie U.S. sales to any specific loans, we used the average compound interest rate on short-term loans in Turkish lira in order to calculate a credit cost in each market.

Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York as the official exchange rates, but no certified rates were available for Turkey. Therefore, in place of the official certified rate, we used the rates published by the International Monetary Fund, as the best information available.

### Verification

As provided in section 776(a) of the Act, we verified all information provided by Atabay in making this determination using standard verification procedures, including examination of relevant information on selected sales.

### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of aspirin from Turkey that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.**

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, as shown in the table below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

| *Manufacturer/seller/exporter* | *Weighted-average margin percentage* |
|---|---|
| Atabay Kimya Sanayi ve Ticaret | 28.49 |
| Proses Kimya Sanayi ve Ticaret | 38.60 |
| All others | 33.55 |

### ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after the date of our preliminary affirmative determination or 45 days after we make our final affirmative determination.

### Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on May 7, 1987, at the U.S. Department of Commerce, Room 1851, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 30, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

April 9, 1987.

[FR Doc. 87–8457 Filed 4–14–87; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

[Docket No. 70113–7013]

## Financial Assistance for Research and Development Projects To Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of financial assistance.

**SUMMARY:** For fiscal year 1987, Marine Fisheries Initiative (MARFIN) funds are available to assist persons in carrying out research and development projects which optimize the use of a U.S. Gulf of Mexico fishery involving the U.S. fishing industry (recreational or commercial) including but not limited to harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

**DATE:** Applications must arrive in the NMFS Office given below by June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald R. Ekberg, Southeast Regional Office, 9450 Koger Blvd., National Marine Fisheries Service, St. Petersburg, Florida 33702; Telephone: 813–893–3720.

**SUPPLEMENTARY INFORMATION:**

### Classification

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Commerce Department guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB clearance No. 0648–0175) under the provisions of the Paperwork Reduction Act. This program is subject to the provisions of Executive Order 12372.

## I. Introduction

Section 304(e) of the Magnuson Act (16 U.S.C. 1854(e)) authorizes the Secretary to conduct research to enhance U.S. fisheries. The Departments of Commerce, Justice, and State, the Judiciary, and related Agencies Appropriation Act of 1987 (Pub. L. 99–591) makes funds available to the Secretary of Commerce for fiscal year 1987. This solicitation makes available approximately $2.0 million for financial assistance under the MARFIN program to enhance the use of fishery resources in the Gulf of Mexico. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

## II. Funding Priorities

Fisheries research and development proposals should be related to one or more of the priority areas listed below (in no rank order):

1. *Shrimp.* (1) Development of improved gear efficiency, on-board handling, grading, sorting and preservation methods, (2) regulatory impact analyses, (3) economic evaluation of alternative harvesting, handling, and processing systems, (4) production of domestic bait shrimp in controlled environments, and (5) synthesis of information from available literature relating shrimp production to environmental conditions.

2. *Menhaden.* (1) Economic enhancement of products, (2) larval survival, (3) prey predator relationships, and (4) regulatory impact analysis.

3. *Coastal Pelagics.* (1) Improved estimates of king and spanish mackerel year-class strengths and harvest levels, (2) identification of king and spanish mackerel management units, (3) forecast king and spanish mackerel trends in abundance, (4) regulatory impact analyses, (5) determination of recreational fishing participation, and (6) fishing strategies to harvest blue runners, little tunny, and related species.

4. *Reef Fish.* (1) Competition between commercial and recreational fishermen and methods to solve problems, (2) Florida gulf charter and party boat study of the structure and economics of the recreational paying passenger vessel fleet, (3) regulatory impact analysis, (4) identification of reef fish management units, and (5) improved estimates of reef fish year class strengths and harvest levels.

5. *Coastal Herrings.* (1) Handling and processing on-board as well as shoreside methods, (2) exploratory fishing and gear development, (3) economic analysis of harvesting, handling, and processing systems, (4) regulatory impact analysis, and (5) predator-prey relationships—particulary recreational and commercial impacts.

6. *Ocean Pelagics.* (1) Economic analysis of harvesting, handling, and processing systems, and (2) regulatory impact analysis.

7. *Marine Mollusks.* (1) Squid harvesting and on-board handling, and (2) squid product preparation.

8. *Crabs and Lobsters.* (1) Determine safe harvest potential, handling and processing techniques for deepwater crab, and (2) develop limited access system for stone crab fishery.

9. *Bottomfish.* (1) Assess impact impact of trawl selectivity modifications on bottomfish stocks, (2) determine yield potentials, stock estimates, and life history Gulf butterfish, and (3) assessment of international trade barriers.

10. *Marine Mammals and Endangered Species.* (1) Seasonal distribution and abundance of sea turtles in the Gulf of Mexico

11. *Estuarine Fish.* (1) Stock assessment and identification (occurrence of separate stocks) of red drum, (2) identification of safe levels of mullet exploitation and economic assessment of the mullet fishery including seasonality, location, and dependence on other species such as trout and drum, (3) improve estimates of year-class strengths and catch of red and black drum, (4) enhance knowledge of red drum life history including age and length and mortalities, (5) fishery independent assessment of red drum, (6) vessel support for fishery independent surveys of offshore stocks of red drum, (7) social and economic analysis in support of fisheries management, (8) regulatory impact analysis, and (9) determination of recreational fishing participation.

12. *General.* (1) Develop population models using both commercial and recreational efforts plus other significant factors, (2) conduct social and economic research applicable to all Gulf of Mexico fisheries, and (3) stock identification using state-of-the art techniques.

## III. How To Apply

### *A. Eligible Applicants*

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;

2. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Gulf of Mexico shrimp, groundfish, menhaden, etc.

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own not less than 75 percent of the interest in the entity or, in the case of non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the NMI, if: (i) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

Continued

*B. Amount an Duration of Funds*

Under this solicitation for fiscal year 1987 the NMFS will have an estimated $2.0 million available to fund fishery research and development projects. Although grants or cooperative agreements will generally be awarded for a period of 1 year, multi-year projects may be approved. Once approved multi-year projects would not compete for funding in subsequent years. For multi-year projects, funding beyond the first year will be contingent on the availability of new fiscal year program funds and the extent to which project objectives are met during the prior year. Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available. Funding for successful applications generally will be provided by July 14, 1987.

*C. Cost-Sharing Requirements*

Cost sharing is not required for the MARFIN project. However, cost sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision.

*D. Format*

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to enhancing the use of Gulf of Mexico fishery resources and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by line item with appropriate justification. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applications must be submitted in the following format:

---

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. The NMFS encourages women and minority individuals and groups to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

1. *Cover Sheet.* An applicant must use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Office, or Department of Commerce's Central Administrative Support Center (CASC); addresses are set forth at Section E., Application Submission.

2. *Project Sumamry.* Each project within the application must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing).

c. Project duration: (beginning and ending dates).

d. Name, address, and telephone number of applicant.

e. Principal Investigator(s).

f. Project objective.

g. Summary of work to be performed.

For continuing projects the applicant is to briefly describe progress to date in addition to work proposed with the additional funds.

h. *Total Federal funds requested.* (For multi-year projects, identify each year's requested funding amount plus total amount with percentage of project costs).

i. Project costs to be provided from non-Federal Government sources (for multi-year projects, identify each year's requested funding amount plus total amount with percentage of project costs).

j. Total project costs.

3. *Project Description.* Each project within the application must be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will not guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

a. *Identification of Problem(s).* For new projects describe how existing conditions prevent the full use of Gulf of Mexico fishery resources. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishery resources.

b. *Project Goals and Objectives.* State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. *Need for Government Financial Assistance.* Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant.* Describe the level of participation required in the project(s) by NOAA or other Government and non-Government entities.

e. *Federal, State, and Local Government Activities.* List any existing Federal, State, or Local government programs or activities, including State Coastal Zone Management Plans, Sea Grant, SEAMAP, 88–309, and Cooperative Statistics this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project Outline.* Describe the work to be performed during the project starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. For multi-year projects, major project tasks and milestones must be identified. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the applications for funding and will return it to the applicant.

g. *Project Management.* Describe how the project will be organized and managed. List all persons, directly employed by the applicant, who will be involved in the project, their qualifications, and their level of involvement in the project. If any tasks will be conducted through subcontracts, procurement standards contained as Attachment 0 to OMB Circular A–102 for state and local Governments and Indian Tribes and Attachment 0 to OMB Circular A–110 for institutions of higher education, hospitals, and other Nonprofit Organizations are to be followed. Attention of applicants is directed specifically to those requirement which must be approved by the Grants Officer.

h. *Monitoring of Project Performance.* Identify who will participate in monitoring the project.

i. *Project Impacts.* Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

j. *Evaluation of Project Impacts.* The applicant is required to provide an evaluation of project accomplishments. Describe the methodology or procedures to be followed to determine, as appropriate, technical or economic feasibility, to evaluate consumer acceptability, or to quantify the impact of the project in promoting increased landings, production, sales exports, product quality, safety, or other measurable factors.

k. *Project Costs.* Itemized costs for the following must be provided: (1) personnel salaries by position title, (2) total personnel benefits, (3) consultant and contract services, (4) travel, (5) space costs and rentals, and (6) other costs. A standard budget form is available from the offices listed in Section E. A separate budget must be submitted for each project within an application. For multi-year projects, funds will be provided as specified tasks are completed. Therefore, applicants submitting multi-year projects must identify costs in the initial submission for each year of the project. Ordinarily, funds will not be granted for the purchase of capital equipment. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget the applicant must describe briefly the basis for estimating the value of any matching funds derived from in kind contributions.

4. *Project Consolidation.* Applicants may submit two or more related projects under one proposal but must identify project costs including administrative costs, separately for each individual project.

5. *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries use may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

*E. Application Submission and Deadline*

1. *Deadline.* The NMFS will accept applications for funding under this program between April 15, 1987 and June 1, 1987. An application will be accepted if the application is received by the office listed below on or before June 1, 1987 (6 pm EST).

2. *Submission of Applications to the NMFS.* Applications are not to be bound in any manner. Any application not fully disclosing all information called for herein, will be returned to the applicant. Applicants must submit one signed original and two (2) copies of the complete application to the address set forth below: Regional Director, Attn: D. Ekberg, National Marine Fisheries Service, Duval Bldg., 9450. Koger Blvd., St. Petersburg, Florida 33702, Telephone No.: (813) 893–3142.

Questions of an administrative nature should be referred to: NOAA RAS/CC31, Attn: Jean West, Central Administration Support Center, Federal Bldg., Room 1758, 601 East 12th Street, Kansas City, Missouri 64106, Telephone No.: (816) 374–7267.

**Review Process and Criteria**

*A. Evaluation and Ranking of Proposed Projects*

For applications meeting the requirements of this solicitation, NMFS will evaluate the project(s) contained in the application in consultation with the MARFIN Board, representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, public and private research and development organizations, and other fisheries interests, as necessary. NMFS will make project descriptions available for review as follows:

1. Public review and comment.

Applications may be inspected at the National Marine Fisheries Service Regional Office in St. Petersburg, FL from June 1, 1987 to June 8, 1987.

2. Consultation with members of the MARFIN Board. Applications will be reviewd by the MARFIN Board, which is made up of members from NMPS, Sea Grant Advisory Program, commercial industry, recreational industry, Gulf Fishery Management Council, Gulf and South Atlantic Fisheries Development Foundation, Inc., Gulf States (FL, AL, MS, LA, TX), and the Gulf States Marine Fisheries Commission.

3. Consultation with members of the fishing industry. The NMFS shall, at its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

4. Consultation with Government agencies. Applications will be reviewd in consultation with the NMFS Southeast Research Center and Utilization Laboratories, CASC Grants Officer and, as appropriate, Department of Commerce and other federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Councill activities.

The NMFS will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will provide point scores on proposals based on the following evaluation criteria:

**IV. Evaluation Criteria**

a. Adequacy of research/development/demonstration for enhancing Gulf of Mexico marine fisheries resources possibilities of securing productive results (30 points).

b. Soundness of design/technical approach for enhancing the use of Gulf of Mexico marine fisheries resources (25 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

e. Justification and allocation of the budget in terms of the work to be performed (10 points).

After the technical evaluation, the MARFIN Board will rank the projects filed, considering the significance of the problem addressed in the project along with the technical evaluation and need for funding. This evaluation and ranking will enable NMFS to determine the appropriate level of funding for each project.

*B. Funding Awards*

After projects have been evaluated, the MARFIN Board will develop recommendations for project funding. They will submit the recommendations to the MARFIN Program Coordinator in the NMFS Southeast Regional Office for review who will determine the number of projects to be funded based on the recommendations provided, and the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant and NOAA/NMFS Program and grants management representatives. The Department of Commerce (DOC) will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by CASC Grants Officer. Projects may not be initiated until a notice of award document is received from the Grants Officer.

**V. Administrative Requirements**

*A. Obligations of the Applicant*

An Applicant must—

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all acitivities for which funds are awarded, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representative. NMFS may provide a proportionate share of funds as part of the financial award to pay for an audit.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within thirty days after the end of each calendar quarter to the individual specified as the program officer in the funding agreement. The content of these reports will include, at a minimum:

a. a summary of work conducted which includes a description of specific accomplishments and milestones achieved. NMFS will provide a summary format to standardize tracking of milestone achievements and budget plans;

b. the degree to which goals or objectives were achieved as originally projected;

c. where necessary, the reasons why goals or objectives are not being met; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefor.

6. If a project is funded, submit an original and 2 copies of a final report within 90 days after completion of each project. The report must describe the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments and be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to make productive use of project results should be identified.

7. If a project is funded by grant or cooperative agreement, comply with Office of Management and Budget (OMB) Circulars, and Department of Commerce, and NOAA policies. Circulars will be provided to all awardees.

8. Submit two copies of all publications or reports printed with grant funds to the Grants Officer. Any publication printed with Grant funds must identify NOAA as the funding source and must identify the grant award number.

*B. Obligations of the National Marine Fisheries Service*

The NMFS will—

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects;

2. Provide advice, through the NMFS Southeast Regional Office to inform applicants of NMFS fisheries development policies and goals.

3. Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

*C. CASC Grants Officer Responsibility*

The CASC Grants Officer is responsible for the administrative processing of NOAA federal assistance awards. Questions from the recipient of an administrative nature will be referred to the Grants Office. The official grant file will be maintained by the Grants Officer who will ensure that OMB, DOC, and NOAA policies are met.

*D. Legal Requirements*

The applicant will be required to satisfy the requirements of applicable local, State and Federal Laws.

This program is not included in the Catalogue of Federal Domestic Assistance.

**Authority:** 16 USC 1854.

Dated: April 10, 1987.

**James E. Douglas, Jr.**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service*

[FR Doc. 87-8337 Filed 4-14-87; 8:45 am]

[redacted]

---

**Marine Mammals; Application for Permit: National Marine Fisheries Service, Southwest Fisheries Center, (P77#27)**

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: National Marine Fisheries Service, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific Research.

3. Summary of Activity: 75 harbor seals (*Phoca vitulina*) will be captured, tagged, marked and released over a 3-year period.

4. Location of Activity: Coastal waters off San Miguel and Santa Rosa Islands.

5. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: April 8, 1987.

**Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation; National Marine Fisheries Service.*

[FR Doc. 87–8338 Filed 4–14–87; 8:45 am]

BILLING CODE [illegible]

## Marine Mammals; Application for Permit: Dr. Kenneth S. Norris, Dr. Randall S. Wells, Mr. Jan S. Ostman, and Dr. William T. Doyle (P20H)

Notice is hereby given that the Applications have applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicants:

Dr. Kenneth S. Norris, Dr. Randall S. Wells, Mr. Jan S. Ostman, and Dr. William T. Doyle.

University of California, Institute of Marine Sciences, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, California 95060.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Spinner dolphins (*Stenella longirostris*) unspecified number.

4. Type of Take: Potential harassment during a 3-year behavioral study involving observations from a surface vessel operating inside Kure Atoll. The taking of dead dolphins found floating or beached for examination, measurement and specimen materials.

5. Location of Activity: Hawaii, Kure Atoll.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicants and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

April 8, 1987.

**Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87–8339 Filed 4–14–87; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Intent to Grant Exclusive Patent License; G.D. Searle & Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to G.D. Searle & Company, having a place of business in Skokie, IL, an exclusive right in the United States to manufacture, use, and sell products embodied in the inventions entitled "Opioids—Total Synthesis," U.S. Patents 4,368,326, 4,410,700, 4,521,601, 4,556,712 and 4,613,668. The patent rights in these inventions have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.*

[FR Doc. 87–8400 Filed 4–14–87; 8:45 am]

BILLING CODE 3510-04-M

### Intent to Grant Exclusive Patent License; Roberts Laboratories

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories having a place of business in Eatontown, NJ, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "New Chemotherapeutic Analogs" U.S. Patent Application Serial Number 6–896,262. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.*

[FR Doc. 87–8399 Filed 4–14–87; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Federal Republic of Brazil, Effective April 1, 1987

Correction

April 10, 1987.

The second paragraph in the letter to the Commission of Customs published on March 26, 1987 (52 FR 9684), should be corrected to read as follows:

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Brazil, which have been exported to the United States during the period which began on April 1, 1986 and extends through March 31, 1987, shall, to the extent of any unfilled balances, be charged against the restraint limits established for that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8454 Filed 4–14–87; 8:45 am]

BILLING CODE 3510–DR–M

## Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Japan

April 10, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 15, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

### Background

The Bilateral Cotton, Wool and Man-Made Fiber Texile Agreement of February 6, 1987 between the Governments of the United States and Japan, establishes, among other things, a group limit for categories 330–354, 359, 431–448, 459, 630–654 and 659 (Group I), and within that, specific limits for Categories 331/631, 333, 334, 335, 337, 338, 339, 340, 341/641, 342/642, 347/348, 350, 410, 435, 442, 444, 448, 634, 644, 645/646, 648, 659–C (coveralls, etc.) and 659–I (infant sets).

Also, among other things, there is a group limit for Categories 300–320, 360–369, 400–429, 464–469, 600pt., 603–605, 610–627 and 665–670 (Group II), and within Group II a subgroup for Categories 310–320, and within the subgroup on Categories 310–320, specific limits on sheeting in categories 313/320pt., on poplin and broadcloth in categories 314/320pt., on printcloth in categories 315/320pt., on twills and sateens in categories 317/320pt., with a sublimit on sateens in category 317pt., and individual limits for Category 611 and Category 612pt. (lightweight polyester filament fabric). There is also a limit for categories 600–602, excluding 600pt. above, as a group. All of these limits are for goods produced or manufactured in Japan and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the foregoing categories in excess of the designated limits.

Overshipments of 1986 limits received through December 1986 are as follows: Category 314/320pt., 2,824,959 square yards; Category 337, 3,679 dozen; Category 442, 201 dozen; Category 444, 2,359 dozen; Category 611, 7,408,436 square yards. The category and group overshipments are being deducted from the appropriate limits for 1987. Additional adjustments will be made as the data become available.

Under the agreement flexibilities are available to various limits which, when applied, would raise those limits, thereby decreasing the overshipments to be charged by the same amounts. Upon receipt of a written request from the Government of Japan for flexibilities available under the agreement, the 1986 limits will be appropriately adjusted, which will decrease the 1986 overshipments to be charged by the same amount.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 29924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), June 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 10, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987 between the Governments of the United States and Japan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 15, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Japan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of the following restraint limits:[1]

| Category | 12-mo restraint limit |
|---|---|
| group I: 330–354, 359, 431–448, 459, 630–654, 659 | 132,926,540 square yards equivalent |
| 331/631 | 2,224,714 doz. pairs |
| 333 | 15,450 doz. |
| 334 | 26,007 doz. |
| 335 | 175,100 doz. |
| 337 | 84,746 doz. |
| 338 | 692,431 doz. |
| 339 | 1,326,000 doz. |
| 340 | 102,989 doz. |
| 343/641 | 510,000 doz. |
| 342/642 | 335,000 doz. |
| 347/348 | 1,545,000 doz. |
| 350 | 20,806 doz. |
| 435 | 26,823 doz. |
| 442 | 19,554 doz. |
| 444 | 15,331 doz. |
| 448 | 37,100 doz. |
| 634 | 98,828 doz. |
| 644 | 23,406 doz. |
| 645/646 | 183,164 doz. |
| 648 | 494, 142, pds. |
| 659 pt.[1] | 97,850 pds. |
| 659 pt.[2] | 635,510 pds |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

| Category | 12-mo restraint limit |
|---|---|
| Group II: | |
| 300–320, 360–369, 400–429, 464–469, 600pt.[3], 603–605, 610–627, and 665–670. | 499,000,130 sq yds equivalent. |
| Subgroup: | |
| 310–320 | 115,260,000 sq yds. |
| 313/320 pt.[4]. | 9,366,748,sq yds. |
| 314/320 pt.[5]. | 23,110,731 sq yds. |
| 315/320 pt.[6]. | 17,356,871 sq yds. |
| 317/320 pt.[7]. | 16,356,871 sq yds of which not more than 9,785,000 square yards shall be in Catebory 317pt.[8]. |
| 300/301 | 2,700,000 pds. |
| 410 | 10,605,000 sq yds equivalent. |
| 600 pt./ 604pt.[9]. | 3,674,306 sq yds. |
| 611 | 10,674, 306 sq yds. |
| 612 pt.[10] | 128,000,000 sq yds. |
| 612 pt.[11] | 55,550,000 sq yds. |
| 613 | 18,540,000 sq yds. |
| 614 pt.[12] | 8,585,000 sq yds. |
| 614 pt.[13] | 18,540,000 sq yds. |

[1] In Category 659, coveralls, overalls, etc. in TSUSA numbers 381.3325, 381.9605, 384.2205, 384.2530, 384.8606, 384.8607, and 384.9310.

[2] In Category 659, infant sets in TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384,8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, and 384.9365.

[3] In Category 600, only TSUSA number 310,5015.

[4] Category 313 and, in Category 320, sheeting in TSUS items 320.____, through 331.____, with statistical suffixes 38, 80, and 82.

[5] Category 314 and, in Category 320, poplin and broadcloth in TSUS items 320.____, through 331.____, with statistical suffixes 21, 22, 24, 26, 72, 74 and 76

[6] Category 315 and, in Category 320, printcloth in TSUS items 320.____, through 331.____, with statistical suffix 31

[7] Category 317 and, in Category 320, twills and sateens in TSUS ITEMS 320.____, through 331.____, with statistical suffixes 54, 92, 94 and 96

[8] In Category 317, sateens, in TSUS items 320.____, through 331.____, with statistical suffixes 50, 87 and 93

[9] In Category 600, TSUSA number 310.5015, and in category 604, TSUSA numbers 310.5049 and 310.6045. Imports in these TSUSA numbers shall be converted to square yards equivalent at the rate of 4.1 per pound.

[10] In Category 612, lightweight polyester filament fabrics in TSUSA numbers 338.5010, 338.5011, 338.5012, 338.5013, 339.5014, 338.5015, 338.5016, 338.5017, 338.5018, 338.5019, 338.5020 and 338.5021.

[11] In category 612, all TSUSA numbers other than those in footnote 10.

[12] In Category 614, wool blend fabrics in TSUSA numbers 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568 and 338.1572

[13] In category 614, spun filament combination fabrics in TSUSA numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, 338.5087, 338.5092, 338.5095 and 338.5098.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits set forth above are subject to further adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and Japan, which provides, in part, that: (1) Group limits, sublimits and specific limits may be increased by designated percentages for swing, carryover and carryforward; however, carryover shall not be available in the specific arrangement period in which the limit is established; (2) exports in excess of annual limits shall be charged to the limits for the subsequent year; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the bilateral agreement. Appropriate adjustments, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of The United States Annotated (1987).*

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 553.

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-8453 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DR-M

## Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

April 7, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 16, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

### Background

A CITA directive dated November 28, 1986 (51 FR 43960) establishes limits for cotton, wool and man-made fiber textiles and textile products in Categories 310–320, 360–369, 410–429, 464–469, 610–629, 665, 669, and 670, as a group, and individual Categories 300/301, 334, 335, 336/636, 337/637, 338/339, 340, 341/641, 347/348, 352/652, 359, 363, 433, 435, 443, 447, 604, 632, 633, 634, 635, 638/639, 640, 647/648, 649, 651, 659 and 666, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

During consultations held on March 13, 1987, between the Governments of the United States and the United Mexican States, agreement was reached to further amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, to cancel the previously established group limit and established new limits for Categories 310–320, 610–614, as a group, and individual Categories 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 360, 361, 362, 363, 369, 410, 411, 425, 429, 464, 465, 469, 610, 611, 612, 613, 614, 625, 626, 627, 665, 669 and 670. It was further agreed that the current designated consultation levels for Categories 300/301. 335. 342/642, 352/652, 433, 443, 447, 604, 632, 644, 649 and 666 would be amended. The designated consultation level for Category 338/339 is being amended and converted to a specific limit for the 1987 agreement year.

In addition, Catagories 331 and 631 and Categories 340 and 640 are being

merged to become Categories 331/631 and 340/640. Designated consultation levels are being established for the newly merged categories. The sublimits for trousers in Categories 347/348 and 647/648 are being adjusted to account for additional shift granted for the 1987 agreement year.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the foregoing categories, with the exception of Categories 331/631 and 644, in excess of the newly agreed restraint limits:

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), Novermber 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

April 7, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel,the directive issued to you on November 28, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on April 16, 1987, the directive of November 28, 1986 is amended to include the following new and adjusted limits for cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.[1]

| Category | New 12-mo. limits |
|---|---|
| 300/301 | 9,200,000 lbs |
| 310–320, 610–614, as a group. | 32,000,000 sq. yds. |
| 310 | 6,400,000 sq. yds. |
| 311 | 6,400,000 sq. yds. |
| 312 | 6,400,000 sq. yds. |
| 313 | 16,000,000 sq. yds. |
| 314 | 6,400,000 sq. yds. |
| 315 | 6,400,000 sq. yds. |
| 316 | 6,400,000 sq. yds. |
| 317 | 6,400,000 sq. yds. |
| 318 | 6,400,000 sq. yds. |
| 319 | 6,400,000 sq. yds. |
| 320 | 6,400,000 sq. yds. |
| 610 | 6,400,000 sq. yds. |
| 611 | 6,400,000 sq. yds. |
| 612 | 6,400,000 sq. yds. |
| 613 | 6,400,000 sq. yds. |
| 614 | 6,400,000 sq. yds. |
| 335 | 45,000 doz. |
| 338/339 | 550,000 doz. |
| 340/640 | 390,000 doz. |
| 342/642 | 190,000 doz. |
| 347/348 | 1,298,500 of which not more than 960,625 doz. shall be in Category 347 and not more than 960,625 doz. shall be in Category 348 |
| 352/652 | 1,400,000 doz. |
| 360 | 909,091 no's. |
| 361 | 161,290 no's. |
| 362 | 144,928 no's. |
| 363 | 5,500,000 no's. |
| 369pt.[1] | 400,000 lbs. |
| 369pt.[2] | 2,830,000 lbs. |
| 369pt.[3] | 300,000 lbs. |
| 369pt.[4] | 217,391 lbs. |
| 410 | 475,000 sq. yds. |
| 411 | 100,000 sq. yds. |
| 425 | 50,000 lbs. |
| 429 | 100,000 sq. yds. |
| 433 | 13,000 doz. |
| 443 | 7,000 doz. |
| 447 | 13,000 doz. |
| 464 | 76,923 lbs. |
| 465 | 1,000,000 sq. ft. |
| 469 | 50,000 lbs. |
| 604–A [5] | 1,250,000 lbs. |
| 604–O [6] | 1,600,000 lbs. |
| 625 | 128,205 lbs. |
| 626 | 1,000,000 sq. yds. |
| 627 | 2,180,000 lbs. |
| 632 | 500,000 doz. pairs |
| 647/648 | 1,590,000 doz. of which not more than 1,060,000 doz. shall be in Category 647 and not more than 1,060,000 doz. shall be in Category 648 |
| 649 | 1,450,000 doz. |
| 665 | 10,000,000 sq. ft. |
| 666 | 5,500,000 lbs. |
| 669–C [7] | 330,000 lbs. |
| 669–P [8] | 750,000 lbs. |
| 669–O [9] | 650,000 lbs. |
| 670 | 8,000,000 lbs. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[1] In Category 369, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] In Category 369, handbags and luggage in TSUSA numbers 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111.

[3] In Category 369, shoe uppers in TSUSA numbers 386.0410 and 386.5210.

[4] In Category 369, other—all TSUSA numbers except 355.0200, 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2440, 366.2860, 386.0410, 386.5210, 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111.

[5] In Category 604, only TSUSA numbers 310.5049 and 310.6042.

[6] In Category 604, all TSUSA numbers except 310.5049 and 310.6042.

[7] In Category 669, cordage in TSUSA numbers 348.0065, 348.0075, 348.0565 and 348.0575.

[8] In Category 669, man-made fiber bags in TSUSA number 385.5300.

[9] In Category 669, other—all TSUSA numbers except 348.0065, 348.0075, 348.0565, 348.0575 and 385.5300.

All import charges already made to the restraint limits previously established for the foregoing categories, with the exception of Categories 369 and 669, are to be retained. Charge the following amounts to the limits established in this directive for Categories 369 [1], 369 [2], 369 [3], 369 [4], 669–C [5], 669–P [6], and 669–O [7]. These charges are for the period January 1—January 31, 1987. Additional charges will be supplied as they become available.

| Category | Charges |
|---|---|
| 369 [1] | 0 lbs. |
| 369 [2] | 11,098 lbs. |
| 369 [3] | 74,780 lbs. |
| 369 [4] | 5,259 lbs. |
| 669–C [5] | 1,124 lbs. |
| 669–P [6] | 119,049 lbs. |
| 669–O [7] | 11,255 lbs. |

[1] Same as footnote [1] above.
[2] Same as footnote [2] above.
[3] Same as footnote [3] above.
[4] Same as footnote [4] above.
[5] Same as footnote [5] above.
[6] Same as footnote [6] above.
[7] Same as footnote [7] above.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-8456 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DR-M

## Requesting Public Comment on Bilateral Consultations With the Government of Colombia on Category 317pt.

April 10, 1987.

On March 31, 1987 the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with section 204 of the Agricultural Act of 1956, requested the Government of Colombia to enter into consultations concerning exports to the United States of cotton sateen fabric in Category 317pt. (only TSUSA items 320.—through 331.—with statistical suffixes 50, 87 and 93), produced or manufactured in Colombia.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Colombia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton sateen fabric in Category 317pt., produced or manufactured in Colombia and exported to the United States during the twelve-month period which began on March 31, 1987 and extends through March 30, 1988, at a level of 3,030,077 square yards.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the **Tariff Schedules of the United States Annotated** (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 317pt. or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Colombia, further notice will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Janey Heinzen, International Trade Specialist, Office of Textile and Apparels, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consulations have been requested call (202) 377-3740.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Columbia—MARKET STATEMENT**

*Category 317 Pt.—Cotton Sateen Fabric*

March 1987.

*Summary and Conclusions*

United States imports of cotton sateen fabric—Category 317pt.—from Colombia were 3,030 thousand square yards during 1986, a five fold increase from the 642 thousand square yards imported a year earlier. Colombia is the fourth largest supplier of these fabrics, accounting for 6 percent of the total imports.

The sharp and substantial increase of imports from Colombia which are being offered at duty paid landed values below U.S. producers' prices are severely disrupting the U.S. market for cotton sateen fabric.

*Production and Market Share*

U.S. production of cotton sateen fabric dropped from 58.1 million share yards in 1982 to 45.6 million in 1983, a 21 percent decline. Production in 1984 partially recovered from 1983, however, the improvement was short-lived. Production in 1985 declined 2 percent from its 1984 level. This decline continued into 1986. Although 1986 production data is not directly comparable to the 1985 data, indications are that the 1986 production level is below that of 1985 level.

The U.S. producers' share of the market for domestically produced and imported sateen fabric declined from 72 percent in 1982 to 53 percent in 1985. The U.S. producers' share was further reduced in 1986.

*Imports and Import Penetration*

U.S. imports of cotton sateen fabrics doubled between 1982 and 1984, increasing from 22.2 million square yards to 45.3 million square yards. Although sateen fabric imports declined to 42.0 million square yards in 1985, imports in 1986 reached a record level 53.1 million square yards.

The ratio of imports to domestic production more than doubled, increasing from 38 percent in 1982 to 89 percent in 1985. The ratio continued to increase in 1986.

*Import Values*

Approximately 96 percent of Colombia's cotton sateen fabric imports during 1986 entered under TSUSA 320.1993, cotton sateen fabric of 10 yarn counts. These fabrics entered at duty-paid landed values below the U.S. producers' prices for comparable fabrics.

[FR Doc. 87-8455 Filed 4-14-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

**Extension**

Individual Religious Education Enrollment and Attendance Record (SAC Form 532) (OMB No. 0701-0059)

Strategic Air Command (SAC) Form 532 is used to obtain information from

dependents of military personnel who wish to enroll in religious education classes on SAC bases. The information collected is used by chaplains, chapel management personnel, and religious education teachers to determine individual religious education preferences and to tailor their programs for those specific requirements.

Dependents of Air Force Members
Responses 7,590
Burden hours 1,518

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from CMSgt Kenneth J. Edwards, HQ SAC/HC, Offutt AFB NE 68113-5000, telephone (402) 294-2958.

Patricia H. Means,

*OSD Federal Register Liaison Officer Department of Defense.*

April 10, 1987.

[FR Doc. 87-8482 Filed 4-14-87; 8:45 am]

BILLING CODE 3810-01-M

## Air Force Activities for Conversion to Contract

**ACTION:** Notice.

The Air Force recently determined that the Base Information Transfer System and Publication Distribution Office, Sheppard AFB, TX will be examined for conversion to contract.

For further information contact Captain Ayotte, HQ ATC/XPMRC, telephone (512) 652-2384.

Norita C. Koritko,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-8398 Filed 4-14-87; 8:45 am]

BILLING CODE 3810-01-M

## Corps of Engineers, Department of the Army

## Intent To Prepare a Draft Environmental Impact Statement (DEIS) For a Proposed Flood Control Project on Calleguas Creek, Ventura County, California

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of Intent to Prepare Draft Environmental Impact Statement (DEIS).

**SUMMARY:**

1. *Study Alternatives.* The purpose of the proposed flood control measures is to alleviate flood damages to primarily agricultural land adjacent to the Calleguas Creek below U.S. Highway 101 and Pacific Missile Test Center at Pt. Mugu. A review of the alternative measures for flood control at the reconnaissance level yielded two alternatives that warranted further study at the feasibility level, the All Channel Plan and the Retarding Basin Plan. Each of these alternatives is being studied relative to a 25-, 50- and 100-year level of protection. The alternatives will each be designed to trap sediment such that there will be no net increase over existing sediment discharge conditions into Mugu Lagoon. The sediment trapping criteria will require widening and deepening of the channel at several locations. The alternatives are both being designed with an earthen bottom. Four bridges including the State Highway 1 bridge may require modification or replacement. Project features common to both alternatives include an inlet at Pleasant Valley Road or at the confluence of Calleguas Creek with Conego Creek, with a spur dike on the west bank (for the 50- and 100-year levels of protection).

*Alternative 1*—The All Channel Plan will be designed to contain all flows of magnitude equal or less than the design discharge from either Pleasant Valley Road or the confluence of the Calleguas and Conejo Creeks to Highway 1 (8 or 9 miles). The levees on either side of the creek from the inlet to California State Highway 1 would be reconstructed to form a trapezoidal invert with rock riprap revestment on both sides to prevent erosion of the side slopes. At the base of the levees, excavation would be made to construct a toe to anchor and protect the levees.

*Alternative 2*—The Retarding Basin Plan is designed to contain all flows of magnitude equal to or less than the design discharge from either Pleasant Valley Road or the confluence of Calleguas Creek and Conejo Creek to Highway 1. The eastern levee from the Lewis Road bridge crossing to the north side of Round Mountain would be a lowered levee to allow flows greater than the capacity of the existing channel downstream (approximately 25 year) to flow into the proposed retarding basin and to hold the water until the storm peak passes after which the basin would be drained. This alternative involves rebuilding the levees to form a trapezoidal invert with rock riprap revetment on both sides to prevent erosion of the side slopes. Levee reconstruction would begin at the inlet and continue to the southern extent of the proposed retarding basin. The levees downstream of the retarding basin would be stabilized where necessary with rock riprap on both sides. At the base of the levees, excavation would be made to construct a toe to anchor and protect the levees. Land within the retarding basin may be available for farming or other open space uses including mitigation.

2. *Scoping Process.* The Calleguas Creek Steering Committee was formed to aid the Corps in the development of alternative solutions to the flood problems along the lower Calleguas Creek. The Corps has initiated coordination with U.S. Fish and Wildlife Service, California Department of Fish and Game, Santa Monica National Park, Soil Conservation Service and National Marine Fisheries Service to resolve potential environmental problems. The area is considered one of high sensitivity in terms of cultural resources and Native Americans have demonstrated a significant concern regarding cultural resource remains in the study region. Coordination will be initiated with the appropriate Native American groups.

The Calleguas Creek study reach is in an environmentally sensitive area. Most of the agricultural land is designated as prime and/or unique farmlands by the U.S. Department of Agriculture, Soil Conservation Service. In addition, large areas of farmland are in State designated agricultural preserves. The study area is very sensitive with respect to biological resources. Calleguas Creek forms a continuous wetland corridor from upland chaparral areas in the Santa Monica Mountains passing through a mature willow corridor and terminating in Mugu Lagoon, the highest quality remaining wetland in southern California. The lagoon supports six Federally listed endangered species. Eight candidate animal species and 9 condidate plant species are located within the study area. A preliminary records and literature search revealed the presence of two archeological sites in the project area. Due to the floodplain nature of the study area, the potential for buried sites is high. The Corps will complete an intensive survey of the area in order to inventory all historic properties located within the Calleguas Creek study area.

3. *Scoping Meeting.* Two scoping meetings will be held. The first scoping meeting to be held at the Camarillo City Council Chambers, 601 Carmen Drive, Camarillo, California on Thursday, April 30, 1987 at 7:30 p.m. will present the study alternatives currently under consideration and invite comments from the public. The second scoping meeting will be an informational meeting to

present the National Economic Development Plan to the public and is scheduled for July 1987.

4. *Publication of the DEIS.* The Draft Environmental Impact Statement is scheduled to be available for Public Review in January 1988.

Address: Questions about the proposed action and the DEIS can be answered by, Mr. Rick Dreher (213) 894–4352 or (FTS) 798–4352, U.S. Army Corps of Engineers, 300 N. Los Angeles Street, P.O. Box 2711, Los Angeles, California, 90053–2325.

Date: April 8, 1987.

**D. Fred Butler,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 87–8445 Filed 4–14–87; 8:45 am]

BILLING CODE 3710–ICF–M

## Department of the Navy

### Intent to Prepare Draft Environmental Impact Statement for Navy Family Housing Supporting Weapons Station (NWS) Earle, NJ

Pursuant to Civil Action No. 87–908, United States District Court for the District of New Jersey, the U.S. Navy will prepare a Draft Environmental Impact Statement (EIS) as provided for by the National Environmental Policy Act (NEPA) of 1969 and Council on Environmental Quality Regulations (US CFR Part 1500) for the construction of Navy Family Housing supporting Naval Weapons Station (NWS), Earle, New Jersey.

Extensive public involvement has been occasioned over the past several months as concerned this action to include a well attended public meeting held by the Navy on 24 February 1987. Accordingly, it is believed the significant issues have been identified. However, to insure that appropriate scoping has been effected interested parties are to forward questions or comments regarding this action to the below address within 15 days from publication of this notice.

Commander, Naval Facilities Engineering Command 200 Stovall Street, Alexandria, VA 22332–2300; ATTN: Mr. Tom Peeling, Code 2023.

Dated April 9, 1987.

**Harold L. Stoller,**

*CDR, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87–8371 Filed 4–14–87; 8:45 am]

BILLING CODE 3810–AE–M

### Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Integrated Avionics for Advanced Aircraft and Aircraft Retrofit will meet on April 29 through May 1, 1987. The meeting will be held at the Grumman Corporation, 1000 Wilson Boulevard, Arlington, Virginia; Headquarters, Naval Air Systems Command, Jefferson Plaza 1, Washington, DC; The Pentagon, Washington, DC; and the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:00 A.M. and terminate at 4:30 P.M. on April 29 through May 1, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to define what is meant by integrated avionics, what new aircraft and avionics suites should be addressed, assess common service requirements, and determine if the magnitude of the problem necessitates the establishment of a separate joint program office. The agenda will include technical briefings and discussions addressing integrated avionics technologies of industry. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Navy Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 9, 1987

**Harold L. Stoller, Jr.,**

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87–8370 Filed 4–14–87; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.149]

### Inviting Applications for New Awards under the College Assistance Migrant Program for Fiscal Year 1987

*Purpose:* Provides grants to institutions of higher education for projects that address the educational needs of migrant and seasonal farmworker students at the postsecondary education level.

*Deadline for transmittal of applications:* May 29, 1987

*Deadline for intergovernmental review comments:* July 28, 1987

*Applications available:* April 16, 1987

*Available funds:* The Congress appropriated $1,200,000 in fiscal year 1987 for this program. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification.

*Estimated range of awards:* $150,000–$350,000

*Estimated average size of awards:* $250,000

*Estimated number of awards:* 5

*Project period:* 36 months

*Applicable regulations:*

(a) Regulations governing the College Assistance Migrant Program (34 CFR Part 206), as proposed to be modified by a notice of proposed rulemaking published on April 8, 1987 at 52 FR 11448. Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resumit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78 and 79).

*For applications or information contact:* Dr. John F. Staehle, Director, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, Washington, DC 20202. Telephone: (202) 732–4746.

*Program authority:* 20 U.S.C. 1070d–2.

Dated: April 9, 1987.

**Lawrence F. Davenport,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 87–8465 Filed 4–14–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.117]

**Inviting Applications for New Awards Under the Field-Initiated Studies Program for Fiscal Year 1987**

*Purpose:* To support field-initiated studies designed to provide more dependable knowledge about the processes of learning and education.

*Weighting for selection criteria:* The program regulations at 34 CFR 700.30(d) authorize the Secretary to distribute an additional 25 points among the criteria described in the regulations at § 700.31 to bring the total to a maximum of 100 points. The Secretary will distribute the reserved 25 points as follows: 15 additional points to the criterion at § 700.31(f) (Significance), bringing the total for this criterion to 30 points; and 10 additional points to the criterion at § 700.31(g) (Technical Soundness), bringing the total for this criterion to 25 points.

*Deadline for transmittal of applications:* May 29, 1987.

*Applications available:* April 29, 1987.

*Available funds:* $500,000.

*Estimated range of awards:* $30,000 to $70,000.

*Estimated average size of awards:* $50,000.

*Estimated number of awards:* 10.

*Project period:* 12 to 24 months.

*Applicable regulations:* (a) The Educational Research Grant Program Regulations 34 CFR Part 700, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

*For applications or information contact:* Ms. Delores Monroe, Office of Research, Office of Educational Research and Improvement, U.S. Department of Education, 555 new Jersey Avenue, NW., Mail Stop 1606, Washington, DC 20208.

Telephone Number (202) 357–6223.

*Program Authority:* 20 U.S.C. 1221e.

Dated: April 9, 1987.

**Chester E. Finn, Jr.,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 87–8466 Filed 4–14–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.141]

**Inviting Applications for New Awards Under the High School Equivalency Program for Fiscal Year 1987**

*Purpose:* Provides grants to institutions of higher education to assist migrant and seasonal farmworker students to obtain the equivalency of a secondary school diploma.

*Deadline for transmittal of applications:* May 29, 1987

*Deadline for intergovernmental review comments:* July 28, 1987

*Applications available:* April 16, 1987

*Available funds:* The Congress appropriated $6,300,000 in fiscal year 1987 for this program. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification.

*Estimated range of awards:* $150,000–$375,000

*Estimated average size of awards:* $325,000

*Estimated number of awards:* 21

*Project period:* 36 months

*Applicable regulations:*

(a) Regulations governing the High School Equivalency Program (34 CFR Part 206), as proposed to be modified by a notice of proposed rulemaking published on April 8, 1987 at 52 FR 11448. Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts, 74, 75, 77, 78 and 79).

*For applications of information contact:* Dr. John F. Staehle, Director, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, Washington, DC 20202. Telephone: (202) 732–4746.

*Program authority:* 20 U.S.C. 1070d–2.

Dated: April 9, 1987.

**Lawrence F. Davenport,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 87–8467 Filed 4–14–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

### Notice of Proposed Consent Order With Wickett Refining Company

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of proposed consent order and opportunity for public comment.

**SUMMARY:** The Economic Regulatory Administration (ERA) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Wickett Refining Company ("Wickett"). The Consent Order proposes to resolve matters relating to Wickett's compliance with the Federal petroleum price and allocation regulations for the period August 1, 1973, through January 27, 1981. To remedy any violations that may have occurred during the period, Wickett has agreed to make a payment of $850,000 within ten days of the effective date of this Consent Order.

ERA will petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V to distribute the funds received. In that proceeding, any person who claims to have suffered injury from Wickett's alleged violations would have the opportunity to submit a claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for a period of thirty (30) days following publication of this Notice.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the Federal Register, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

**FOR FURTHER INFORMATION CONTACT:** Harold Goldsmith, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4945.

**SUPPLEMENTARY INFORMATION:**

I. Introduction

II. Terms and Conditions of the Consent Order

### I. Introduction

Wickett is a general partnership owned by Adobe Resources Corporation and Tom Brown, Inc. During the period covered by the proposed Consent Order (August 1, 1973, through January 27, 1981), Wickett owned and operated a refinery for the refining of crude oil and marketed covered products. Therefore, Wickett was subject to the jurisdiction of the ERA to determine its compliance with the Federal petroleum price and allocation regulations.

ERA conducted an audit to determine Wickett's compliance with these regulations for the period August 1, 1973,

through January 27, 1981. In a Notice of Probable Violation (NOPV) issued to Wickett in 1979, ERA raised certain questions and issues concerning Wickett's compliance with the regulations governing the Entitlements Program (10 CFR § 211.67). As a result of discussions with the firm, analysis of additional information it submitted, and further investigation and consideration by ERA, ERA determined that Wickett had satisfactorily resolved most of ERA's concerns as outlined in the NOPV. However, with regard to certain processing agreements to which Wickett was a party for the period March through May 1976, the firm had, in ERA's opinion, violated the entitlements regulations and thereby had improperly benefited by approximately $700,000. Wickett has maintained that it correctly construed and applied these regulations. The parties desire, however, to resolve the issues raised without further resort to complex, lengthy and expensive compliance actions. ERA believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues, that the Consent Order is an appropriate conclusion of the audit of Wickett, and that it is in the public interest.

**II. Term and Conditions of the Consent Order**

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE against Wickett concerning its compliance with the Federal petroleum price and allocation regulations during the period August 1, 1973, through January 27, 1981.

Under terms of the proposed Consent Order, Wickett shall pay to DOE the sum of $850,000 within ten days of the effective date of the Consent Order. The refund amount will be deposited in a suitable account for distribution pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

*Submission of Written Comments*

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part. Interested parties are invited to submit written comments concerning this proposed Consent Order to: Wickett Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. All comments received by thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on April 2, 1987.

Marshall A. Staunton,

*Administrator, Economic Regulatory Administration.*

[FR Doc. 87–8329 Filed 4–14–87; 8:45 am]

BILLING CODE 6450-01-M

---

[ERA Docket No. 87–18–NG]

## Minnesota Methane, Inc.; Application To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 24, 1987, of an application from Minnesota Methane, Inc. (MnM), for blanket authorization to import, for its own account or the account of others, Canadian natural gas for resale to distribution companies, other purchasers, and end users in the United States. Authorization is requested to import up to 100 MMcf per day or a total of 182.5 Bcf over a five-year period. MnM, a Minnesota corporation, intends to use existing pipeline facilities or new facilities that may be constructed and placed in service for the transportation of the proposed imports. MnM states it would pursue contracts with sellers and purchasers for specific quantities of gas under market-responsive terms and conditions. It would not offer to enter into any contracts containing take-or-pay obligations.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Chuck Boehl, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6050

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

**SUPPLEMENTARY INFORMATION:** The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served as the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1999 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., May 15, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, incuding the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete

understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of MnM's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 3, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economnic Regulatory Administration.*

[FR Doc. 87–8330 Filed 4–14–87; 8:45 am]

BILLING CODE 6450–01–M

---

**[ERA Docket No. 87–17–NG]**

## PeopleService, Inc.; Application To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 24, 1987, of an application from PeopleService, Inc. (PSI), for blanket authorization to import Canadian natural gas for short-term and spot market sales to customers in various markets in the United States. Authorization is requested to import up to 100 Bcf per year for a two-year period beginning on the date of the first delivery. PSI, a Delaware corporation with its principal place of business in Council Bluffs, Iowa, is a wholly owned subsidiary of UtiliCorp United Inc., a Missouri corporation with its principal place of business in Kansas City, Missouri. PSI proposes to purchase natural gas from various Canadian suppliers on a short-term basis for resale to various local distribution companies and end users in the United States. PSI intends to use existing pipeline facilities for the transportation of the proposed imports. PSI will advise the ERA of the date of first delivery of the import and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

**SUPPLEMENTARY INFORMATION:** The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their response on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

### Public Comment Procedures

In responses to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., May 15, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PSI's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., April 3, 1987.

Robert L. Davies,

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-8331 Filed 4-14-87; 8:45 am]

BILLING CODE [illegible]

## Office of Hearings and Appeals

### Notice of Cases Filed; Week of February 27 Through March 6, 1987

During the Week of February 27 through March 6, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 6, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

### List of Cases Received by the Office of Hearings and Appeals

[Week of February 27 through March 6, 1987]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Jan. 30, 1987 | Wind Energy Development Corporation, Rio Piedras, Puerto Rico | KEG-0005 | Petition for Special Redress. If granted: Puerto Rico would be required to comply with the terms of the Commonwealth Oil Refining Company, Inc. (CORCO) Consent Order. |
| Feb. 13, 1987 | Belcher Oil Company, Inc., Murray, Kentucky | KER-0020 | Request for Modification/Rescission. If granted: The December 24, 1986 Decision and Order (Case No. KEE-0065) would be rescinded regarding the firm's request for an exception to the reporting requirements. |
| Mar. 2, 1987 | Pierson, Ball & Dowd, Washington, DC | KFA-0081 | Appeal of an Information Request Denial. If granted: The January 30, 1987 Freedom of Information Request Denial issued by the Office of Procurement Operations would be rescinded, and Pierson, Ball & Dowd would receive access to certain documents relevant to the evaluation of its proposal submitted under solicitation no. DE-RP01-87-FE[illegible]. |
| Mar. 2, 1987 | Ted True, Washington, DC | KRR-0018 | Request for Modification/Rescission. If granted: The February 10, 1987 Decision and Order (Case No. KRO-0270) would be rescinded regarding the denial of the Motion for Discovery filed by Ted True's Trustee in Bankruptcy. |
| Mar. 2, 1987 | Tooze, Marshall, Shenker, Holloway & Duden, Portland, Oregon | KFA-0083 | Appeal of an Information Request Denial. If granted: The January 29 and February 9, 1987 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Tooze, Marshall, Shenker, Holloway & Duden would receive access to contract drafts, letter drafts and memoranda relating to transmission Contract No. DE-MS-79-86EP91947. |
| Mar. 3, 1987 | General Electric Calma Company, Greenbelt, Maryland | KFA-0082 | Appeal of an Information Request Denial. If granted: The January 29, 1987 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and General Electric Calma Company would receive information relevant to Contract No. 85-3996 and its [illegible]. |
| Mar. 3, 1987 | Peter T. Torell, Maywood, New Jersey | KFA-0084 | Appeal of an Information Request Denial. If granted: The January 29, 1987 Freedom of Information Request Denial issued by the Office of Nuclear Energy would be rescinded, and Peter T. Torell would receive a copy of a letter and a draft settlement proposal from the Deputy Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy to Mr. William Rupp, an attorney for the Borough of [illegible]. |
| Mar. 6, 1987 | Keneco, Littlestown, Pennsylvania | KEE-0129 | Exception to the Reporting Requirements. If granted: Keneco would not be required to file Form EIA-782, "Reseller/Retailers' Monthly Petroleum Products Sales Report." |

### Refund Applications Received

[Week of February 27 to March 6, 1987]

| Date | Name of refund proceeding/name of refund applicant | Case No |
|---|---|---|
| Feb. 27, 1987 to Mar. 3, 1987 | Getty Refund Applications | RF[illegible] thru RF[illegible] |
| Feb. 27, 1987 | Les Williams Chevrolet | RF[illegible] |
| Feb. 27, 1987 | Les Williams Chevrolet | RF[illegible] |
| Mar. 2, 1987 | Tracy's Service | RF265-10691 |
| Mar. 2, 1987 | Grachott Bros. Service | RF265-10692 |
| Mar. 2, 1987 | Paul Peters Mobil | RF265-10693 |
| Mar. 2, 1987 | Judd's Mobil | RF265-10694 |
| Mar. 2, 1987 | L. J. Mobil | RF265-10695 |
| Mar. 2, 1987 | Bruce's Mobil | RF225-10696 |
| Mar. 2, 1987 | L & J Mobil | RF225-10701 |
| Mar. 2, 1987 | Bruce's Mobil | RF225-10702 |
| Mar. 2, 1987 | Christian Son, Inc | RF225-10703 |
| Mar. 2, 1987 | Christian Son, Inc | RF225-10704 |
| Mar. 2, 1987 | Christian Son, Inc | RF225-10705 |
| Mar. 2, 1987 | Christian Son, Inc | RF225-10706 |
| Feb. 20, 1987 | Nu Way Oil Company | RF292-1 |
| Mar. 2, 1987 | Wilhams & Dorius Oil Company | RF112-209 |
| Mar. 2, 1987 | Midwestern Butane Gas | RF140-51 |
| Mar. 2, 1987 | Johnston's LP Gas | RF140-52 |
| Mar. 2, 1987 | Home Gas, Inc. | RF140-53 |
| Mar. 2, 1987 | Aiding Corporation | RF138-32 |
| Mar. 2, 1987 | L.G. Abbott LP Gas | RF265-15 |
| Feb. 13, 1987 | Western Petroleum, Inc. | RF225-4[illegible] |
| Mar. 2, 1987 | Bryan Municipal Light & Water | RF272-382 |
| Mar. 2, 1987 | Oberlin Light & Water System | RF272-383 |
| Feb. 27, 1987 | Knutsen O.A.S. Shipping | RF272-3[illegible] |

**Refund Applications Received**—Continued

[Week of February 27 to March 6, 1987]

| Date | Name of refund proceeding/name of refund applicant | Case No |
|---|---|---|
| Feb 27, 1987 | Grand Haven Public Schools | RF272-386 |
| Mar 3, 1987 | Union Camp Corporation | RF272-387 |
| Mar 2, 1987 | Fairlawn Oil Service | RF284-7 |
| Mar 2, 1987 | Dangolo | RF272-384 |
| Mar 3, 1987 | Dorazio's Mobil Service Station | RF225-10698 |
| Mar 3, 1987 | Eastside Oil Company | RF250-2712 |
| Mar 3, 1987 | Eastside Oil Company | RF250-2713 |
| Mar 3, 1987 | H.C. Lewis Oil Company | RF250-2714 |
| Mar 3, 1987 | H.C. Lewis Oil Company | RF250-2715 |
| Jan 12, 1987 | Sommers Company | RF250-2716 |
| Dec 5, 1986 | Huffy Oil Company | RF250-2717 |
| Apr 16, 1982 | City of New York | RF272-380 |
| June 1, 1983 | Eastern Seaboard Petroleum | RF272-381 |
| Mar 4, 1987 | Flint Community Schools | RF272-388 |
| Mar 4, 1987 | Outboard Marine Corporation | RF272-389 |
| Mar 4, 1987 | A.J. Trucking, Inc | RF270-2476 |
| Mar. 5, 1987 | Newmans One Stop | RF40-3677 |
| Mar 5, 1987 | Old Elm Services, Inc | RF225-10699 |
| Mar 5, 1987 | Jesse's Mobil Service | RF225-10700 |
| Mar 6, 1987 | Southwestern Film Service | RF270-2477 |
| Mar 6, 1987 | Tower Lines, Inc | RF270-2478 |
| Mar. 6, 1987 | J. Marlin Ernst & Sons, Inc | RF270-2479 |
| Mar 5, 1987 | Anderson Clayton Foods | RF272-390 |
| Mar 5, 1987 | City of Columbus, Georgia | RF272-391 |

[FR Doc. 87-8332 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

## Notice of Cases Filed With the Office of Hearings and Appeals; Week of March 6 Through March 13, 1987

During the Week of March 6 through March 13, 1987, the appeals and applications for exceptions or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comment on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 6, 1987.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### List of Cases Received by the Office of Hearing and Appeals

[Week of March 6 through March 13, 1987]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Dec. 22, 1986 | Telum, Inc., Provo, Utah | KRD-0022 | Motion for Discovery. If granted: Discovery would be granted to Telum, Inc. in connection with the firm's statement of objections to the Proposed Remedial Order issued to it (Case No. BRO-1244) |
| Mar. 10, 1987 | E.E. Tullos, Groveton, Texas | KER-0021 | Request for Modification/Rescission. If granted: The December 23, 1986 Decision and Order (Case No KEE-0073) issued to E.E. Tullos would be modified regarding his application for exception from the reporting requirements of Form EIA-782B |
| Mar. 10, 1987 | Natural Resources Defense Council, Washington, DC | KFA-0085 | Appeal of an Information Request Denial. If granted: The March 2, 1987 Freedom of Information Request Denial issued by the Office of Classification and Technical Information would be rescinded, and Natural Resources Defense Council would receive access to a complete copy of the Table of Contents page for all issues of the Sandia Weapons Review from 1975 to the present. |
| Mar. 12, 1987 | Fleming Brothers Oil Company, South Haven, Michigan | KEE-0130 | Exception to the Reporting Requirements. If granted: Fleming Brothers Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report." |
| Mar. 13, 1987 | Jason M. Cook, Morgantown, West Virginia | KFA-0086 | Appeal of an Information Request Denial. If granted: The February 19, 1987, Freedom of Information Request Denial issued by the Morgantown Energy Technology Center (METC) would be rescinded and Jason M. Cook would receive access to lists of Federal Employees at METC who received performance awards for Fiscal Year 1986 |

### Refund Applications Received

[Week of March 6 to March 13, 1987]

| Date | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| Nov 10, 1986 | Duke's Marathon | RF250-2718 |
| Mar 6, 1987 to Mar 1987 | Getty Refund Applications | RF265-749 thru RF265-771 |
| Mar 9, 1987 | Alabama River Pulp Company | RF272-392 |
| Mar 9, 1987 | City of Oneonta | RF272-393 |
| Mar 9, 1987 | Armco Eastern Steel Division | RF272-394 |
| Mar 9, 1987 | The Bibb Company | RF272-395 |
| Mar 9, 1987 | University of Texas at Austin | RF272-396 |
| Mar 9, 1987 | Endicott Oil Service, Inc | RF40-3678 |
| Mar. 9, 1987 | Timble Oil Company, Inc | RF161-104 |
| Mar. 10, 1987 | Teague Oil Company | RF292-2 |
| Mar. 10, 1987 | Essex Group, Inc | RF139-165 |

**Refund Applications Received—Continued**

[Week of March 6 to March 13, 1987]

| Date | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| Mar. 11, 1987 | Kings Plaza Service Station | RF225-10707 |
| Mar. 11, 1987 | Hagen's Mobil Service | RF225-10708 |
| Mar. 11, 1987 | Stamon's Freeway Mobil | RF225-10709 |
| Mar. 11, 1987 | Woodruff Place Mobil | RF225-10710 |
| Mar. 11, 1987 | Mullin's Service Station | RF225-10711 |
| Mar. 11, 1987 | Charles L. Sueha LP Gas Company | RF208-16 |
| Mar. 11, 1987 | B & C LP Gas Company | RF208-17 |
| Mar. 11, 1987 | Ross Martinez | RF161-105 |
| Mar. 11, 1987 | Cauthen Oil Inc | RF239-19 |
| Mar. 11, 1987 | The Holmes Limestone Company | RF272-397 |
| Mar. 11, 1987 | City of Worchester | RF254-3 |

[FR Doc. 87-8333 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

## Notice of Cases Filed; Week of March 13 Through March 20, 1987

During the Week of March 13 through March 20, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 6, 1987.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

**List of Cases Received by the Office of Hearings and Appeals**

[Week of March 13 through March 20, 1987]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Feb. 19, 1987 | Mt. Airy Refining Company, Washington, DC | KRD-0320 | Motion for Discovery. If granted: Discovery would be granted to Mt. Airy Refining Company in connection with the Statement of Objections submitted in response to the July 25, 1986 Proposed Remedial Order issued to Mt. Airy Refining Company (Case No. KRO-0320). |
| Mar. 12, 1987 | J. D. Street & Company, Inc., Washington, DC | KRR-0022 | Request for Modification/Rescission. If granted: The pending Motion to Dismiss the Proposed Remedial Order issued to J.D. Street on August 3, 1982 (Case No. HRO-0064) would be granted. |
| Mar. 16, 1987 | E. H. Pechan & Associates, Inc., Springfield, Virginia | KFA-0087 | Appeal of An Information Request Denial. If granted: E.H. Pechan & Associates would receive access to materials produced by Decision Analysis Corporation, in response to a DOE contract award. |
| Mar. 16, 1987 | Mojane Petroleum Company, Inc., Borger, Texas | KEE-0131 | Exception to the Reporting Requirements. If granted: Mojane Petroleum Company, Inc. would not be required to file Form EIA-782B, "Reseller/Retailer's Monthly Petroleum Products Sales Report." |
| Mar. 17, 1987 | Inexco Oil Company, Washington, DC | KEF-0089 | Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a December 31, 1986 Consent Order which the DOE entered into with Inexco Oil Company. |
| Mar. 17, 1987 | McWhirter Distributing Co., Inc., San Francisco, California | KRD-0380 | Motion for Discovery. If granted: Discovery would be granted to McWhirter Distributing Company, Inc. in connection with the Statement of Objections submitted in response to the Proposed Remedial Order issued to the firm (Case No. KRO-0380). |
| Mar. 17, 1987 | R. W. Tyson Producing Company, Washington, DC | KEF-0090 | Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a December 29, 1986 Consent Order which the DOE entered into with R.W. Tyson Producing Co. |
| Mar. 17, 1987 | Triangle Oil Company, Easton, Maryland | KEE-0132 | Exception to the Reporting Requirements. If granted: Triangle Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report." |
| Mar. 18, 1987 | Iowa, Des Moines, Iowa | KEG-0006 | Request for Special Redress. If granted: The Office of Hearings and Appeals would review and approve the proposed expenditures for Stripper Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy. |
| Mar. 19, 1987 | Gay's Fuel Service Incorporated, Bellows Falls, Vermont | KEE-0133 | Exception to the Reporting Requirements. If granted: Gay's Fuel Service Incorporated would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report." |
| Mar. 19, 1987 | Government Accountability Project, Washington, DC | KFA-0088 | Appeal of an Information Request Denial. If granted: The March 10, 1987 Freedom of Information Request Denial would be rescinded, and the Government Accountability Project would receive access to the August 21, 1978 letter to K. Mattern (DOE) from A. Tuli, Argonne National Laboratory. |
| Mar. 20, 1987 | Inexco Oil Company, Washington, DC | KEF-0091 | Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a November 7, 1986 agreement entered into by the Department of Energy and Inexco Oil Company. |

**Refund Applications Received**

[Week of March 13 to March 20, 1987]

| Date | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| Dec. 4, 1986 | Chrysler Corporation | RF153-37 |
| Jan. 21, 1987 | Clark Equipment Company | |

**Refund Applications Received—Continued**

[Week of March 13 to March 20, 1987]

| Date | Name of refund proceeding/name of refund applicant | Case No |
|---|---|---|
| Jan. 21, 1987 | Wilkerson Diesel, Inc | RF153-38 |
| Jan. 21, 1987 | Clark Equipment Company | RF154-36 |
| Jan. 30, 1987 | Wilkerson Diesel, Inc | RF154-35 |
| Mar. 12, 1987 | National Helium/New Jersey | RQ3-361 |
| Mar. 13, 1987 | Radio Oil Company, Inc | RF284-9 |
| Mar. 13, 1987 | Temple Hill Mobil | RF225-10712 |
| Mar. 13, 1987 | Palmer's Mobil Service | RF225-10713 |
| Mar. 13, 1987 | Palmer's Mobil Service | RF225-10714 |
| Mar. 13, 1987 | A-1 Mobil | RF225-10715 |
| Mar. 13, 1987 | Black Jack Mobil | RF225-10716 |
| Mar. 13, 1987 | Black Jack Mobil | RF225-10717 |
| Mar. 13, 1987 | Jim Parker Mobil | RF225-10718 |
| Mar. 13, 1987 thru Mar. 20, 1987 | Getty Refund Applications | RF265-772 thru RF265-847 |
| Mar. 16, 1987 | Harrisburg Steam Works, Ltd | RF272-398 |
| Mar. 16, 1987 | Dan-D-Service | RF250-2719 |
| Mar. 16, 1987 | Home Petroleum Corporation | RF116-9 |
| Mar. 16, 1987 | Jim Smith Contracting Co., Inc | RF272-399 |
| Mar. 18, 1987 | B.J. McAdams, Inc. et al | RF40-3679 |
| Mar. 18, 1987 | B.J. McAdams, Inc. et al | RF40-3780 thru RF40-3784 |
| Mar. 18, 1987 | Value Oil Company | RF263-31 |
| Mar. 18, 1987 | Mid-South Sales, Inc | RF263-32 |
| Mar. 18, 1987 | Gary Public Transportation | RF272-400 |

[FR Doc. 87-8334 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

## Notice of Issuance of Decisions and Orders; Week of February 9 Through February 13, 1987

During the week of February 9 through February 13, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Remedial Orders

*T&M Petroleum Corporation, 2/11/87, HRO-0101*

T&M Petroleum Corporation and Ted R. Adkins (collectively "T&M"), and Old Antler Corporation (Antler), objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on November 15, 1982. In the PRO, the ERA alleged that T&M and Antler received illegal revenues totalling $1,904,046.16 as a result of selling crude oil at prices in excess of those permitted by 10 CFR 212.186 during the period September 1979 through November 1980. The DOE determined that, with respect to Antler, the allegations concerning violation of 10 CFR 212.186 should be dismissed without prejudice. With respect to the remaining respondents, the DOE concluded that the Proposed Remedial Order should be issued as a final Remedial Order, as modified by this Decision and Order. The important issues discussed in the Decision and Order include (i) whether T&M's sales to an alleged refiner constituted historical and traditional crude oil reseller services, (ii) whether T&M's sale of imported crude oil was exempt from DOE price regulations as a "first sale into U.S. commerce," and (iii) whether an affiliated corporation, Antler, should be held liable for the actions of T&M.

*Tommy Oil Company, 2/11/87, HRO-0120*

Tommy Oil Company (Tommy) objected to a Proposed Remedial Order which the Kansas City Regional Office of the ERA issued to the firm on October 29, 1982. In the proposed Remedial Order, the ERA found that Tommy violated the price regulations applicable to sales of motor gasoline at 10 CFR Part 212, Subpart F and antecedent regulations, by selling regular and premium gasoline to its retail customers at prices that exceeded the maximum lawful selling prices permitted under the regulations. After considering the firm's Statement of Objections, the DOE concluded that the PRO should be issued as a final Order. In reaching its conclusion, the DOE rejected the firm's contention that the ERA erred in calculating Tommy's banks of unrecouped product costs separately for each of the firm's nine retail outlets and for each grade of gasoline, rather than on a firm-wide single product basis.

### Requests for Exception

*Dodd's Wholesaler's, Inc., 2/12/87, KEE-0071*

Dodd's Wholesaler's, Inc. filed an Application for Exception on September 9, 1987. The firm sought relief from the reporting requirements of Form EIA-782B pursuant to 10 CFR 205.55(b)(2). In considering the request, the DOE found that the firm did not bear an unusual burden as result of the reporting requirements that would warrant approval of exception relief. Accordingly, exception relief was denied.

*Idaho Petroleum, Inc., 2/13/87, KEE-0072*

Idaho Petroleum, Inc. Filed an Application for Exception on September 15, 1986. The firm sought relief from the reporting requirements of Form EIA-782B pursuant to 10 CFR 205.55(b)(2). In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the reporting requirements that would warrant approval of exception relief. Accordingly, exception relief was denied.

### Motions for Discovery

*Ted True, Inc., Ted True, 2/10/87, KRD-0270*

The ERA issued a PRO to Ted True, Inc. and Ted True, alleging that they sold a substantial volume of the lower tier crude oil they purchased as upper tier or stripper crude oil. On August 13, 1985, the Respondents filed a Motion for Discovery in support of their objections to the PRO. On February 9, 1987, OHA denied that Motion. As an initial matter, OHA determined that the Respondents' Motion totally failed to meet the requirements for discovery set forth at 10 CFR 205.198. In addition, OHA found that Respondents' requests for information regarding the legal and factual basis of the PRO should be denied because the PRO clearly set forth the nature and basis of its allegations. Finally, OHA denied the Respondents' requests to determine whether any audit documents had been destroyed, because the Respondents were already in possession of all the documentation necessary to understand the PRO and because they had no showing of improper agency conduct.

*Tri-Service Drilling Company/Economic Regulatory Administration, 2/9/87, KRZ-0121, KRD-0120, KRD-0120*

Tri-Service Drilling Company filed a Motion to Dismiss and a Motion for Discovery in connection with an Amended Proposed Remedial Order (APRO) which was issued to the firm on September 3, 1985, by the Economic Regulatory Administration (ERA). The APRO alleges that Tri-Service violated the price regulations applicable to first sales of crude oil and, as result, obtained overcharges of $394,837.89, plus interest.

In its Motion to Dismiss the proceeding, Tri-Service claimed that (1) the ERA had failed to meet its burden of proving that the pricing violations actually occurred; (2) the firm had been subjected to undue burdens as a result of the proceeding; (3) the Texas statute of limitation required dismissal; and (4) the ERA's claim should be barred by the doctrine of laches. The OHA denied this Motion after concluding that the firm had failed to support any of its claims.

In its Motion for Discovery, the firm presented three interrogatories in which it

BEST COPY AVAILABLE

asked the ERA to identify and produce all documents relating to instances in which it allowed multiple leases to be treated as single properties under the "aggregation of rights to produce" provisions of Ruling 1977–1. The OHA determined that Tri-Service had not made a showing of discriminatory treatment by the ERA and had not presented any other evidence that demonstrated that such discovery would in any way advance the proceeding.

In the Decision, the OHA also considered a Motion for Discovery filed by the ERA. The Motion was denied with the exception of one interrogatory in which the ERA requested that Tri-Service produce any well or lease production date heretofore not submitted for the period 1972–1975. The OHA determined that this discovery request was meritorious because it addresses the issue of the accuracy of the ERA's crude oil production calculations; an issue disputed by Tri-Service.

**Refund Applications**

*Concoco Inc./Potlatch Corporation et al., 2/12/87, RF220–460 et al.*

The DOE issued a Decision and Order concerning eight Applications for Refund filed by purchasers of Conoco refined products. Each customer filed for a refund based upon the small claims procedures outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the claims, the DOE concluded that all eight customers should receive refunds based on the volumetric refund amount established in *Conoco*. The total amount of refunds granted was $30,579.

*Cranston Oil Service Company, Inc./Anthony & Mafalada Caliri, et al., 2/12/87, RF276–3 et al.*

The DOE issued a Decision and Order concerning four Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company, Inc., and its successor-in-interest Galego Oil Company. The Applications were evaluated in accordance with the procedures set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The amount of the refunds approved in this Decision is $297, representing $274 in principal and $23 in interest.

*Crystal Oil Company/Kent Oil & Trading, 2/11/87, RF233–44*

The DOE issued a Decision and Order granting an Application for Refund filed by Kent Oil & Trading, a reseller of Crystal Oil Co. refined petroleum products. Kent presented evidence that it purchased refined petroleum products from Crystal during the Crystal consent order period, and elected to limit its claim to the $5,000 small claims threshold for resellers established in *Crystal Oil Co.*, 13 DOE ¶85,381 (1986). The refund approved in this Decision totaled $8,884.

*Domenico Bus Service, Inc., Storer Coachways, Southern Coach, 2/13/87, RF270–1092, RF270–1095, RF270–1097*

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by three bus companies for refunds from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. Each bus company applied for refund based on its purchases of diesel fuel between August 19, 1973 and January 27, 1981. The DOE's Decision approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

*Gulf Oil Corporation/D. J. Adams et al., 2/12/87, RF40–3610*

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of D. J. Adams and eight other firms in the Gulf Oil Corporation refund proceeding. Each firm was a retailer of Gulf Oil Corporation refund proceeding. Each firm was a retailer of Gulf refined petroleum products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), each applicant demonstrated that it purchased a certain volume of Gulf covered products and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. Accordingly, refunds totaling $25,823 in principal and $6,137 in interest were approved for the nine claimants.

*Gulf Oil Corporation/International Drilling & Energy Corporation 2/11/87, RF40–3609*

The DOE issued a Decision and Order concerning the Applications for Refund filed by International Drilling & Energy Corporation (IDEC) in the Gulf Oil Corporation refund proceeding. IDEC was a retailer of Gulf products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), IDEC demonstrated that it purchased a total of 877,625 gallons of Gulf propane and butane and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. According, IDEC will receive $1,071 in principal and $255 in interest.

*Gulf Oil Corporation/Pomona Oil Company, 2/11/87, RF40–2665*

The DOE denied an Application for Refund filed in connection with the Gulf Oil Corporation special refund proceeding by Pomona Oil Company, a reseller of refined petroleum products. Pomona purchased Gulf products through Adamucci Oil Company. In a previous decision, the DOE had granted Adamucci a full volumetric refund based on its own purchases from Gulf. Since the Adamucci family held a controlling interest in Pomona, the DOE determined that a refund for Pomona would represent a second payment to a single interest. Accordingly, Pomona's Application for Refund was denied.

*Gulf Oil Corporation/Smitty's Gulf Service, et al., 2/9/87, RF40–2212*

The DOE granted refunds from the Gulf Oil Corporation deposit fund escrow account to 21 purchasers of Gulf refined petroleum products. The refund applicants are retailers who demonstrated that they would not have been required to reduce their selling prices to their customers by the amount of the refund claimed. The refunds to these firms totaled $25,974.

*Gulf Oil Corporation/Walker Oil Company, et al., /10/87, RF40–2070 et al.*

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of Walker Oil Company and four other firms in the Gulf Oil Corporation refund proceeding. Each firm was both a reseller and a consignee of Gulf products during the Gulf consent order period. Following the procedures outlines in *Gulf Oil Corp.*, 12 DOE ¶85,048 (1984), each applicant demonstrated that it purchased a certain volume of Gulf middle distillates and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. Each applicant also demonstrated that as a consignee it had lost potential sales of Gulf motor gasoline and therefore had been injured by Gulf's allegedly uncompetitive prices. Accordingly, refunds totaling $13,939 in principal and $3,198 in interest were approved for the five claimants.

*Hicks Oil and Hicks Gas Co., Inc./Mt. Pulaski Products, Inc., Lake Fork Grain Company, 2/12/87, RF237–10, RF237–11*

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Hicks Oil and Hicks Gas Company, Inc. special refund proceeding. Both applicants were end-users of propane purchased from Rocket Supply Company, a wholly-owned subsidiary of Hicks. In the Decision, the DOE granted the two applications under the standards specified in *Hicks Oil and Hicks Gas Co.*, 13 DOE ¶85,400 (1986). The refunds granted total $559, representing $412 in principal and $147 in interest.

*Marathon Petroleum Company/Amigene Mitchell, et al., 2/11/87, RF250–2111 et al.*

The DOE issued a Decision and Order concerning 52 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $41,522 in principal and $3,060 in interest.

*Marathon Petroleum Company/Coffey Marathon Service, 2/10/87, RF250–658 et al.*

The DOE issued a Decision and Order concerning seven Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $7,338 in principal and $540 in interest.

*Marathon Petroleum Company/Columbus Board of Education, et al., 2/9/87, RF250–2660 et al.*

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applications were evaluated in accordance

with the procedures set forth in *Marathon Petroleum Co., 14* DOE ¶ 85,289 (1986). The sum of the refunds approved in this Decision is $13,296, representing $12,382 in principal and $914 in interest.

*Marathon Petroleum Company/East Coast Oil Corporation, 2/9/87, RF250–1872, RF250–1873*

The DOE issued a Decision and Order concerning two Applications for Refund filed by East Coast Oil Corporation (East Coast), a reseller of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, East Coast elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that East Coast should receive a total refund of $26,447.01, representing $24,945.49, in principal and $1,501.52 in accrued interest.

*Marathon Petroleum Company/Remote Services, Inc., 2/12/87, RF250–1872, RF250–1874*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Remote Services, Inc. (Remote), a reseller of Marathon covered products. Although the firm's purchase of motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Remote elected to file its refund applications in accordance with procedures for filing claims of less than $50,000 under the 35 percent presumption method outlined in the Marathon decision. Ater examining the evidence and supporting data submitted by the firm, the DOE concluded that Remote should receive a total refund of $53,105.25, representing $49,999.99, in principal and $3,105.26 in accrued interest.

*Marathon Petroleum Company/Southwest Georgia Oil Company, 2/13/87, RF250–1875, RF250–1876*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Southwest Georgia Oil Company (Southwest), a reseller of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Southwest elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Southwest should receive a total refund of $13,995.26, representing $13,177.05 in principal and $818.21 in accrued interest.

*Mobil Oil Corporation/A. Gordon Tracy, et al., 2/9/87, RF225–7121 et al.*

The DOE issued a Decision granting 50 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $31,378, representing $25,854 in principal plus $5,524 in interest.

*Mobil Oil Corporation/Anderes Oil Company, et al., 2/10/87, RF225–8702 et al.*

The DOE issued a Decision granting 104 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $85,035, representing $70,052 in principal plus $14,983 in interest.

*Mobil Oil Corporation/Baldanza Bakery, Inc., et al., 2/10/87, RF225–3639 et al.*

The DOE granted 22 Applications for Refund from a fund obtained through a consent order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $1,772, representing $1,464 in principal plus $308 in interest.

*National Helium Corporation/Wisconsin, RQ3–214*
*Vickers Energy Corporation/Wisconsin, RQ1–216*
*Standard Oil Company, (Indiana)/ Wisconsin, RQ21–342*
*Standard Oil Company (Indiana)/Wisconsin, RQ21–354*
*Standard Oil Company (Indiana)/Wisconsin, 2/13/87, RQ251–355*

The State of Wisconsin filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders estasblishing procedures for the disbursement of funds obtained under consent orders with National Helium Corp., Vickers Energy Corp., and Standard Oil Co. (Indiana). Wisconsin proposed to use $130,000 to expand its oil furnace replacement program for low-income families. In a second program, the state proposed to spend $918,112 to improve energy conservation in rental properties. The state also proposes to set aside $14,000 from Amoco II for use by its federally-recognized Indian tribes. In addition, Wisconsin proposes to disburse an equal share of the $15,000 that it set aside from Amoco I to its 11 tribes in order to fund weatherization programs on the reservations. The OHA concluded that the plans were restitutionary to consumers of petroleum products who were injured by the alleged overcharges. Accordingly, the OHA approved the refund plans.

*Standard Oil Company (Indiana)/ Massachusetts, RQ251–343*
*Northeast Petroleum Industries/ Massachusetts, RQ25–344*
*National Helium Corporation/ Massachusetts, RQ–345*
*Perry Gas Processors, Inc./Massachusetts, RQ183–346*
*Coline Gasoline Corporation/Massachusetts, 2/9/87, RQ251–347*

The DOE issued a Decision concerning the second-stage refund plans filed by the Commonwealth of Massachusetts in the Standard Oil Co. (Indiana), Northeast Petroleum Industries, National Helium Corp., Perry Gas Processors, Inc., and Coline Gasoline Corp. refund proceedings. Massachusetts plans to use $200,000 for vehicle height sensors in Boston. These sensors will help prevent low-bridge collisions and thereby conserve gasoline as the result of fewer delays and reduced congestion. The Commonwealth plans to use $289,720 for various enhancements to its rideshare program. This program will decrease fuel consumption among commuters by encouraging carpooling and vanpooling. Accordingly, the DOE approved these two programs. The DOE did not approve Massachusetts' proposal to spend $125,000 for a fleet management program because it would benefit municipal and school district fleets as well as commercial fleets.

*Stinnes Interoil Inc./Northville Industries Corp., 2/11/87, RF125–10*

Northville Industries Corporation filed an Application for Refund seeking a portion of the escrow account fund remitted by Stinnes Interoil, Inc. Northville's claim was based on its purchases of Stinnes gasoline on the spot market. The decision and order stated that a reseller who only made spot purchases is presumed to have not injured from the purchases, and does not qualify for a refund. However, Northville was afforded an opportunity to rebut the no-injury presumption by demonstrating that the purchases were made for supplying needs, and that the firm sustained losses as a result of the purchases. Northville in this case failed to rebut the no-injury presumption. Accordingly, its refund request was denied.

*Union Texas Petroleum Corporation/ Chevron U.S.A., Inc., 2/10/87, RF140–18*

The DOE issued a Decision and Order concerning an Application for Refund filed by Chevron U.S.A., Inc. (Chevron) in connection with its purchases of Union Texas Petroleum Corporation (UTP) natural gas liquids (NGLs). The NGLs were used by Chevron as raw materials for blending in the manufacture of motor gasoline. In considering Chevron's application, the DOE applied the volumetric and small-claims presumptions applicable to resellers (including refiners) of UTP petroleum products who elect not to make a detailed showing of injury. Under those presumptions, the DOE determined that Chevron was entitled to receive a threshold refund of $5,000 plus a proportionate share of the interest accrued on the UTP consent order funds. The refund approved in the Decision and Order totalled $7,238.

*WE-MAC Manufacturing Company Superior's Brand Meats, 2/13/87, RF270–1112, RF270–1114*

The Department of Energy (DOE) issued a Decision and Order approving a

manufacturing company and a meat packing company for refunds from the Surface Transportation Escrow, established as the result of the Stripper Well Settlement Agreement. Each company operates a private fleet of trucks and based its claim on purchases of diesel fuel between August 19, 1973 and January 27, 1981. The DOE's Decision approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

*Dismissals*

The following submissions were dismissed:

| Company Name | Case No. |
|---|---|
| American Printers | RF225-6813 |
| Anderson Clayton Foods, Inc | RF270-578, RF270-774, RF270-1542, RF270-1543 |
| Asphaltic Concrete Corporation | RF225-6771 |
| B&B Service | RF225-10287 |
| Barge Transport Co., Inc | RF7-169 |
| Blue Bird Coach Lines, Inc | RF270-1184 |
| Bowden Oil Company | RF204-13 |
| Canton Railroad Company | RF270-1434 |
| Cargill Inc | RF270-1579 |
| Cargo Carriers | RF271-199 |
| Carncut Service Station | RF220-476 |
| Central Soya Co., Inc | RF272-311 |
| Choctaw, Inc | RF225-6840 |
| City of Greenville, South Carolina | RF225-6826 |
| Crabtree Oil Company | RF40-3613 |
| Dairymen, Inc | KFA-0073 |
| David R. Soler | RF270-2411 |
| Dobson, The Mover | RF225-6785 |
| Dover Corp., Elev. Div | RF225-6816 |
| Dyrotech Industries, Inc | RF225-6834 |
| Equitec Properties Company | RF270-1580 |
| Excel Corporation | RF225-6828 |
| Fashion, Inc | RF270-2377 |
| Flav-O-Rich | RF225-6814 |
| Freuhauf Division | RF225-6832 |
| General Electric | RF225-5815 |
| Gospel Teachers Publications, Inc | KFA-0075 |
| Government Accountability Project | RF220-477 |
| Harry's Conoco | RF220-478 |
| Harvey's Conoco | RF270-2043 |
| Hoagland's Transport Service, Inc | RF225-6799 |
| J. J. Wright Oldsmobile, Inc | RF40-3643 |
| John Cirillo | RF225-6830 |
| M.E.A. Inc | RF225-6836 |
| Nalley's Fine Foods | RF220-480 |
| Oregon Trail Garage | RF225-3611 |
| Perry Oil Company | RF220-479 |
| Pete's Conoco | RF40-3454 |
| Pete's Good Gulf | RF40-3625 |
| Philadelphia Newspapers | RF225-9451 |
| Ray Petroleum Company | RF270-1588, RF270-2111 |
| Robinson Freight Lines | RF225-6767 |
| Sagamore Spring Golf Club, Inc | RF270-2236 |
| Security Storage Co., Inc | RF270-2333 |
| Sellers Grain Co., Inc | RF270-2129 |
| Stamford Taxi, Inc | RF112-193, RF203-9 |
| Star Service & Petroleum Co., Inc | RF225-239 |
| Superiors Fibers, Inc | RF225-6766 |
| Taylor's Express, Inc | RF225-6819 |
| The Hodson Corporation | RF225-6829 |
| The Kroger Company | RF225-6833 |
| The Phoenix Electric Company | RF270-1006 |
| The Waggoners Trucking | RF220-475 |
| Trimble Oil Co., Inc | RF225-6855 |
| Turner Towing Co., Inc | RF225-6846 |
| Union Precision Manufacturing | |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: April 6, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 87-8335 Filed 4-14-87; 8:45 am]

BILLING CODE 6450-01-M

## Notice of Issuance of Decisions and Orders; Week of March 2 Through March 6, 1987

During the week of March 2 through March 6, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

*Appeals*

*Institute for Policy Studies, 3/3/87, KFA-0076*

The Institute for Policy Studies (IPS) filed an Appeal from a determination issued by the Director of the Program Support Division (Director) of the Office of Military Application for Defense Programs in response to a Request for Information which the IPS had submitted under the Freedom of Information Act. In its Appeal, the IPS challenged the adequacy of the DOE's search for responsive documents. In considering the Appeal, the DOE determined that responsive documents exist and that, therefore, the determination was inadequate. Accordingly, the case was remanded to the Director for a further search and determination.

*Stone & Webster, Engineering Corporation, 3/6/87, KFA-0074*

Stone & Webster Engineering Corporation (S&W) filed a Freedom of Information Act (FOIA) Appeal from a determination issued to the firm by the Assistant Manager for Administration (Manager) of the Richland Operations Office. In that determination, the Manager withheld documents relating to evaluations of contract proposals by a DOE Source Evaluation Board (SEB). The Manager withheld the documents on the ground that they were exempt from disclosure pursuant to Exemption 5 of the FOIA which applies to predecisional, deliberative intra- or inter-agency communications. He also found that portions of the documents were also exempt from disclosure pursuant to Exemption 4, which shields privileged or confidential commercial or financial information obtained from a person by an agency.

In considering S&W's Appeal, the DOE rejected the firm's assertion that it was entitled to a detailed Vaughn-type index of the withheld documents. However, the DOE found that the Manager's description of the documents was not sufficiently detailed to conform to the requirements of the DOE's FOIA regulations. The DOE performed a *de novo* review of the documents and provided its own detailed description. In addition, the DOE found that certain forms used in the SEB evaluations could be released. However, the DOE determined that the remainder of the documents are exempt from disclosure pursuant to Exemption 5, and that portions of the documents may also be exempt under Exemption 4. Accordingly, the Appeal was granted in part.

*Tri-City Herald, 3/5/87, KFA-0077*

Tri-City Herald filed an Appeal from a denial by the Assistant Manager for Administration of the Richland Operations Office (Manager) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE determined that pursuant to Exemption 4, the Manager properly withheld contract proposals prior to the award of the contracts.

*Remedial Orders*

*Doram Energy, Inc., Damson Oil Corporation, 3/2/87, HRO-0149*

Doram Energy, Inc. and Damson Oil Corporation objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firms on July 6, 1983. In the Proposal Remedial Order, the ERA found that Doran Energy and Damson Oil, its parent corporation, received illegal revenues totalling $282,141.69 as a result of reselling crude oil at prices in excess of those permitted by 10 CFR 212.186 during the period March through December 1980. After considering the firms' Statement of Objections, the DOE concluded that the Proposed Remedial Order should be issued as a final Order. An important issue discussed in the Decision and Order was the liability of a parent corporation for the regulatory violations committed by its subsidiary.

*Listo Petroleum, Inc., 3/4/87, KRO-0140*

Listo Petroleum, Inc. objected to a Proposed Remedial Order issued to it on September 26, 1985 by the Economic Regulatory Administration. In the PRO, the ERA alleged that during the period December 1979 through July 1980 (the audit period), Listo violated the layering regulation, 10 CFR 212.186, by charging prices for crude oil in excess of its purchase price while performing no service or other function traditionally associated with crude oil reselling. In considering Listo's Statement of Objections, the DOE rejected the firm's arguments that the layering regulation was procedurally and substantively invalid and that prior DOE interpretations of the regulation were erroneous. The DOE also determined that Listo did not perform any economically valuable functions in its crude oil resales which would justify a markup. Finally, the DOE rejected Listo's claim that the firm's overcharges should be reduced to exclude taxes it previously paid on the profits of its layered transactions. Accordingly, Listo was directed to remit $7,503,039.35 plus interest to the DOE as restitution for these violations. The DOE discussed the effect of Listo's

bankruptcy on the accrual of interest, and specified that the funds remitted by the firm will be distributed pursuant to Supart V and the DOE's Modified Statement of Restitutionary Policy.

*Sherer Oil Company, Inc., Ringer Tri-State Oil Company, Inc., 3/6/87, HRO–0128*

Sherer Oil Company, Inc. and Ringer Tri-State Oil Company, Inc. (collectively referred to as the firm) objected to a Proposed Remedial Order which the DOE's Economic Regulatory Administration issued to the firm on January 27, 1983. In the PRO, ERA found that during the period April 1, 1979 through September 30, 1979, the firm sold various grades of motor gasoline and prices in excess of the maximum lawful selling prices permitted pursuant to the reseller-retailer rule set forth at 10 CFR Part 212, Subpart F. In considering the firm's objections to the PRO, the DOE found that most were general objections to the DOE regulations and enforcement program, which had been rejected in a number of other cases. With respect to the firm's specific objections, the DOE found that, despite the firm's general objection to ERA's audit methodology, (i) the firm had failed to assert that the methodology disadvantaged the firm and (ii) the record indicated that there would be no basis for such an incorrect class of purchaser determination with respect to a group of customers purchasing premium gasoline. Accordingly, the PRO was modified to reflect the correct May 15, 1973 selling price for those customers. The DOE therefore concluded that the PRO, with that modification, as well as certain others, should be issued as a final Order.

**Requests for Exception**

*Taylor Oil Company, Inc., 3/5/87, KEE–0100*

Taylor Oil Company, Inc. filed an Application for Exception from the requirement that it prepare and file Form EIA–782B, "Resellers'-Retailers' Monthly Petroleum Product Sales Report." In considering the application, the DOE decided that the firm had not demonstrated that the firm's expenditure of two hours each month to complete the form imposed a serious hardship, gross inequity, or unfair distribution of burdens. Accordingly, the Application for Exception was denied.

*TOMCO Inc., 3/5/87, KEE–0099*

TOMCO Inc. filed an Application for Exception from the requirement that it prepare and file Form EIA–782B, "Resellers'-Retailers' Monthly Petroleum Product Sales Report." In considering the application, the DOE decided that the firm had not demonstrated that the burden that it experienced in completing the form was sufficient to constitute a serious hardship, gross inequity, or unfair distribution of burdens. Accordingly, the Application for Exception was denied.

*Waldo Oil Co., 3/6/87, KEE–0104*

Waldo Oil Company filed an Application for Exception from the requirement that it submit Form EIA–782B, entitled "Resellers'-Retailers' Monthly Petroleum Product Sales Report." Waldo asserted that data from a company of its small size cannot be useful to the EIA's statistics concerning oil distribution in Wisconsin. Waldo also argued that it is unfair that none of its competitors are required to file the Form. In considering the firm's request, the DOE found that neither Waldo's size, nor the possibility that none of its competitors file the Form, distinguishes Waldo from other survey respondents. Accordingly the DOE denied Waldo's request for relief.

**Refund Applications**

*Byrd Motor Line, Inc., Lyden, Inc., Dietz Motor Lines, Inc., 3/6/87 RF270–1093, RF270–1094, RF270–1096*

The DOE issued a Decision and Order approving two "for hire" trucking companies and a holding company which owns two additional "for hire" trucking companies for refunds from the Surface Transporters Escrow. Each of the companies was approved for a refund based on purchases of diesel fuel between August 19, 1973 and January 27, 1981. The DOE approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

*Gulf Oil Corp., Mangum Oil & Gas Co., Inc., 3/4/87, RF40–3657*

The DOE issued a Decision and Order correcting an interest calculation error that was discovered in *Gulf Oil Crop./Mangum Oil & Gas Co.*, 15 DOE ¶ 85,297 (1987). Accordingly, the DOE will remit an additional sum of $760 to Mangum.

*Gulf Oil Corp., Moore's Fuel Service, 3/4/87, RF40–3649*

The DOE issued a Decision and Order concerning an Amended Application for Refund submitted on behalf of Moore's Fuel Service, a retailer of Gulf middle distillates. Based upon newly acquired purchase documentation, Moore's requested that its refund be augmented by the difference between the amended claim and the refund previously granted to the firm in *Gulf Oil Corp./L.R. Haase Oil Co.*, 15 DOE ¶ 85,265 (1987). Moore's also reaffirmed that it would not have been required to reduce selling prices to its customers to pass through the amount of the refund claimed. The DOE reveiwed the amended filing and determined that Moore's should receive the additioinal amount it requested. The refund approved in this Decision is $10,421 in principal and $2,477 in interest.

*La Gloria Oil & Gas Co., Savings Oil Company et al., 3/6/87, RF263–13 et al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by seven resellers of products covered by a consent order that the agency entered into with La Gloria Oil & Gas Compay. Each of the applicants presented evidence that it purchased refined petroleum products from La Gloria during the consent order period, and claimed refunds at or below the $5,000 small claims threshold for resellers. According to the methodology set forth in *La Gloria Oil & Gas Co.*, 14 DOE ¶ 85,501 (1986), each applicant was found to be eligible for a refund from the La Gloria consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved in this Decision totaled $36,822.

*Marathon Petroleum Co., Boncosky & Co., et al., 3/3/87, RF250–2419 et al.*

The DOE issued a Decision and Order concerning ten Applications for Refund filed by six purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none attempted demonstration of injury. Accordingly, each applicant was granted a refund of $5,000 in principal under the small claims presumption of injury. The sum of the refund approved in this Decision is $30,000 in principal and $2,358 in interest.

*Marathon Petroleum Co., CSC Oil Co., Bowman Oil Co., Duke's Marathon, 3/4/87, RF250–2022, RF250–2023, RF250–2024, RF250–2025*

The DOE issued a Decision and Order concerning four Applications for Refund filed by three purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $3,896 in principal and $306 in interest.

*Marathon Petroleum Co., East Coast Oil Co., 3/2/87, RF250–1530, RF250–1531*

The DOE issued a Decision and Order concerning two Applications for Refund filed by East Coast Oil Company (East Coast), a reseller of Marathon motor gasoline and distillates. Although the firm's purchases of motor gasoline and distillates from Marathon during the consent order period exceeded the threshold refund level established in Marathon Petroleum Co., East Coast elected to file its refund application in accordance with procedures for filing small claims and based upon the presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that East Coast should receive a refund of $5,000 in principal and $322.68 in accrued interest for a total refund of $5,322.68.

*Marathon Petroleum Co./Hamilton Oil Co., 3/3/87, RF250–2347*

The DOE issued a Decision and Order concerning an Application for Refund filed by Hamilton Oil Company (Hamilton), a reseller of Marathon covered products. Although the firm's purchases of motor gasoline from Marathon during the consent period exceeded the threshold refund level established in Marathon Petroleum Co., Hamilton elected to file its refund application in accordance with procedures for filing small claims and based upon the presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Hamilton should receive a refund of $7,018.05 in principal and $453.39 in accrued interest for a total refund of $7,471.44.

*Mobil Oil Corp./Al's Mobil et al., 3/6/87, FR225–9975 et al.*

The DOE issued a Decision and Order granting 36 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $40,728 ($33,552 principal plus $7,176 interest).

*Mobil Oil Corp./New York Office of General Services, 3/3/87, RF225–3033*

The DOE granted an Application for Refund filed by the New York Office of General Services (OGS) from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. The OGS was an end-user that purchased directly from Mobil and therefore was eligible for a refund equivalent to its full allocable share based on the volumetric methology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refund granted was $27,083.22, representing $22,264.73 in principal plus $4,818.49 in interest.

*Oneok, Inc./Chevron U.S.A., Inc. 3/2/87, RF212–1*

The DOE issued a Decision and Order concerning an Application for Refund filed by Chevron, U.S.A., Inc., as successor to Gulf Oil Corporation, seeking a portion of the funds remitted by Oneok, Inc. pursuant to a consent order that Oneok entered into with the DOE. Chevron purchased 110,716,129 gallons of natural gas liquid products from Oneok during the consent order period. The DOE found that, for a portion of the NGLPs that Chevron purchased, Chevron was charged prices below the average market price levels. Considering the competitive advantage that Chevron enjoyed from purchases from Oneok, the DOE limited the refund to Chevron to an amount equal to the gallons that Chevron purchased at above market prices multiplied by the per gallon refund rate. The refund granted totals $145,866, representing $122,151 in principal and $23,715 in interest.

*Rainbow Disposal Company, Inc., Best Scavenger Service, Inc., 3/6/87, RF270–1101, RF270–1110*

The DOE issued a Decision and Order approving two trash removal companies for refunds from the Surface Transporters Escrow. The companies based their refund applications on the petroleum products used in their garbage trucks, including greases, hydraulic oil and motor fuels. In evaluating the grease and hydraulic oil claims, the DOE stated that it generally will follow a two-pronged test to determine if a product is eligible for a Surface Transporter refund. First, the DOE will consider whether substantial amounts of the product were refined from crude oil. Second, the DOE will determine whether the product was used in the company's vehicles for surface transportation. Applying this test, the DOE determined that the companies' claims for greases and hydraulic oil should be approved.

*Sid Richardson Carbon and Gasoline Co., and Richardson Products Co./Boyd's, Inc., 3/2/87, RF26–47*

The DOE issued a Decision and Order concerning an Application for Refund filed in connection with a consent order fund remitted to the DOE by the Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Sid Richardson). The application was filed by Boyds, Inc., a retailer of Sid Richardson propane. After obtaining satisfactory explanations for several apparent discrepancies between the applicant's schedule of purchases and volume information supplied by Sid Richardson upon which the applicant's schedule was ostensibly based, the DOE determined that Boyd's claim for 1977 exceeded the small claims threshold of 720,000 gallons of annual purchases established in *Sid Richardson Carbon and Gasoline Company*, 10 DOE ¶ 85,056 (1983). Because Boyd's elected to limit its claim for 1977 to the small claims threshold of 720,000 gallons, the firm was not required to demonstrate that it was injured by its purchases from Sid Richardson and was eligible for a refund based on adjusted total purchases of 3,675,789 gallons. The total refund approved in the Decision is $44,664 ($23,124 principal plus $21,540 interest).

*Sid Richardson Carbon and Gasoline Co., and Richardson Products Co./Geiger Enterprises 3/4/87, RF26–37*

The DOE issued a Decision and Order concerning an Application for Refund filed by Geiger Enterprises, Inc., a purchaser of propane covered by a consent order that the agency entered into with Sid Richardson Carbon & Gasoline Company and Richardson Products Company (Sid Richardson). The applicant requested a full refund on the basis of a schedule of banks of unrecovered increased product costs and a three-step competitive disadvantage showing of injury. The DOE found that the market prices used for comparison by the applicant were inappropriate, and DOE conducted its own competitive disadvantage analysis. Because the analysis did not indicate that the applicant was injured to the extent of 100 percent of its allocable share, Geiger Enterprises was granted a refund on the basis of the propane it purchased from Sid Richardson at above market prices. The refund granted to Geiger was $29,629, representing $15,254 in principal and $14,375 in interest.

*Sid Richardson Carbon and Gasoline Co., and Richardson Products Co./Stacyville LP Gas Co., 3/2/87, RF26–42*

The DOE issued a Decision and Order approving an Application for Refund filed by Stacyville LP Gas Company (Stacyville), a reseller-retailer of Sid Richardson Carbon and Gasoline Company and Richardson Products Company (Sid Richardson) natural gas liquid products, that purchased the product directly from Sid Richardson. According to the application, Stacyville maintained large positive banks of unrecouped increased product costs for periods throughout the consent order period, indicating that the firm was unable to pass through any of the alleged overcharges. Using a three-step competitive disadvantage methodology, the DOE determined that Stacyville should receive its allocable share of the consent order fund for a portion of its claimed volumes of Richardson purchases occurring during the consent order period when the firm had positive banks. Accordingly, DOE granted to the firm a refund totalling $55, 178 ($28,564 in principal plus $26,614 in interest).

**Dismissals**

The following submissions were dismissed:

*Company Name and Case No.*

Atlantic Richfield Co.—RF21–10340, RF40–2635, RF151–1
Caribou Four Corners, Inc.—RF21–10344, RF132–1
Chevron U.S.A. Inc.—RF151–2, RF21–10339, RF98–1, RF99–1, RF100–1, RF101–1, RF102–1, RF103–1, RF130–2
Cities Service Co.—RF21–12362, RF127–1, RF128–1, RF129–1
City of New York—RF6–9
Deaver Grain Co.—RF220–484
Driltol—RF225–6333
Gulf Oil Corp.—RF21–11041, RF136–2, RF137–1, RF138–1
Independent Refining Corp.—RF127–2, RF134–1, RF135–1
International Petroleum Refining and Supply—RF21–10346
Kern Oil & Refining Co.—RF130–1
Koppers Co. Inc.—RF225–6374
Marathon Petroleum Co.—RF21–11043
Martin Oil Marketing, Ltd.—RF278–1
Mid-West Forge Corp.—RF225–6364
Mobil Oil Corp.—HFD–0097, HFH–0097
Monsanto Co.—RF225–6420
Plateau, Inc.—RF21–10345, RF131–1
Walker Manufacturing Co.—RF225–6440
Wallace International Silversmiths—RF225–9921, RF225–9922, RF225–9923

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

April 6, 1987.

[FR Doc. 87–8336 Filed 4–14–87; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3186-9]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Patricia Minami, (202) 382–2712 (FTS 382–2712) or Jackie Rivers, (202) 382–2740 (FTS 382–2740).

**SUPPLEMENTARY INFORMATION:**

Office of Air and Radiation

*Title:* NSPS for Wool Fiberglass Insulation Manufacturing Industry (EPA ICR #1160). (This is a revision of a currently approved collection.)

*Abstract:* Wool fiberglass insulation manufacturers must notify EPA of construction; of each modification, startup, shutdown, and malfunction; and of the results of each performance test. They record and maintain (a) data from all tests and the continuous monitoring system, and (b) data on any startup, shutdown, and malfunction in the operation of the affected facility, its controls, and the monitoring systems. They must also report excess emissions of particulate matter semiannually. The States and/or EPA use the data to ensure compliance with the standards, to target inspections, and, when necessary, as evidence in court.

*Respondents:* Owners or operators of wool fiberglass insulation manufacturing facilities.

*Estimated annual burden:* 1,196 hours.

**Agency PRA Clearance Requests Completed by OMB**

EPC ICR #0155, Pesticide Applicator Certification and Training, was extended (OMB #2070–0029; expires 6/30/87).

EPC ICR #0232, Lead Additive Report for Refineries, Importers and Manufacturing Facilities or Sites, was extended (OMB #2060–0066; expires 6/30/87).

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Nicholas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: April 8, 1987.

**Daniel J. Fiorino,**

*Director, Information and Regulatory Systems Division.*

[FR Doc. 87–8418 Filed 4–14–87; 8:45 am]

BILLING CODE [illegible]

[FRL–3187–2 EPA Project Number SE 86–01]

### Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to U.S. Borax & Chemical Corporation

**AGENCY:** Environmental Protection Agency (EPA), Region 9.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on February 20, 1987 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 45 MW cogeneration facility to be located at the existing U.S. Borax Refinery in Boron, California. The permit is subject to certain conditions, including an allowable emission rate as follows:

| Pollutant | Emission Limit (lbs/hr, 3-hour average) | |
|---|---|---|
| | Gas-firing | Oil-firing |
| $NO_x$ (the more stringent of). | 40 (or 25 ppm a 15% $O_2$, dry). | 84 (or 42 ppm a 15% $O_2$, dry). |
| $SO_2$ | 0 | 102 |
| CO | 23 | [illegible] |
| PM | 12 | [illegible] |
| HC | 6 | 19 |

**FOR FURTHER INFORMATION:** Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

**SUPPLEMENTARY INFORMATION:** Best Available Control Technology (BACT) requirements include the use of steam or water injection and a Selective Catalytic Reduction (SCR) system on gas turbine for the control of $NO_x$ emissions.

**DATE:** The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 15, 1987.

Dated: April 2, 1987.

**David P. Howekamp,**

*Director, Air Management Division, Region 9.*

[FR Doc. 87–8419 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

[SW-FRL 3187–1]

### Transfer of Data to Contractors

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of transfer of data and request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) will transfer to its contractors, Research Triangle Institute (RTI) and Westat, Inc., information which has been, or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA) in the following surveys.

- National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- National Detailed Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities;
- Solid Waste (Municipal) Landfill Survey;
- Subtitle D Industrial Facilities Telephone Screening Survey; and
- Subtitle D Industrial Facilities Mail Survey.

These firms are assisting EPA in developing information bases for and conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements, and other analyses for regulatory development. Some of the information may have a claim of business confidentiality.

**DATE:** The transfer of the confidential data submitted to EPA will occur no sooner than April 22, 1987.

**ADDRESSES:** Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

**FOR FURTHER INFORMATION CONTACT:** Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH–563), U.S.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 382-4670.

**SUPPLEMENTARY INFORMATION:**

**Transfer of Data**

The U.S. Environmental Protection Agency is conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements and other analyses for regulatory development in support of the policies and programs established for solid and hazardous waste management under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), including subsequent amendments through 1984.

RTI, under EPA Contract No. 68-01-7350, and Westat, under EPA Contract No. 68-01-7359, will assist the Office of Solid Waste in developing information bases for and conducting regulatory impact analyses, regulatory flexibility analyses, environmental impact statements, and other analyses for regulatory development.

The information collected in the surveys was previously managed by ICF and its subcontractors: RTI; Westat; Development Planning and Research Associates (DPRA); Versar, Inc.; Pope-Reid Associates, Inc. (PRA); Industrial Economics, Inc. (IEC); Buc & Associates, Inc. (BAI); and Policy, Planning & Evaluation, Inc. (PP&E) under EPA Contract No. 68-01-7290. Some of the information being transferred may have been claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that RTI and Westat require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above noted contracts. EPA is issuing this notice to inform all submitters of CBI that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, RTI and Westat will return all such materials to EPA.

RTI and Westat have been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contract Requirements Manual.

Dated: March 6, 1987.

**J.W. McGraw,**

*Acting Assistant Administrator.*

[FR Doc. 87-8420 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

---

**[OPP-100037; FRL-3183-8]**

## KBN Engineering and Applied Science, Inc. and Environmental Science and Engineering, Inc.; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

KBN Engineering and Applied Science, Inc. (KBN) and its subcontractor, Environmental Science and Engineering, Inc. (ESE) have been awarded a contract to perform work for EPA's Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to KBN and ESE as authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2) respectively. This action will enable KBN and ESE to fulfill the obligations of the contract and serves to notify affected persons.

**DATE:** KBN and ESE will be given access to this information no sooner than April 20, 1987.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-02-4278, KBN and ESE will provide scientific reviews and evaluations to OPP, on the ecotoxicity data of pesticides in connection with Registration Standards, Registration Actions, Special Reviews, and Special Assignments. The contractor and subcontractor will review and evaluate chemical data submitted to OPP under FIFRA, which may include any and all of the types of studies identified in 40 CFR Part 158.

The Office of Pesticide Programs has determined that access by KBN and ESE to information on all pesticide chemicals is necessary to the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with KBN and ESE prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor and subcontractor sign an agreement to protect the information from unauthorized release. In addition, KBN and ESE are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and it's subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in OPP. All information supplied to KBN and ESE by EPA for use in connection with this contract will be returned to EPA when KBN and ESE have completed their work.

Dated: April 2, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 87-7837 Filed 4-14-87; 8:45 am]

BILLING CODE 6560-50-M

---

**[OPP-100036; FRL-3183-7]**

## Integrated Laboratory Systems; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

and the Federal Food, Drug, and Cosmetic Act (FFDCA).

Integrated Laboratory Systems (ILS) has been awarded a contract to perform work for EPA's Office of Pesticides and Toxic Substances, Office of Compliance Monitoring and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ILS as authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2) respectively. This action will enable ILS to fulfill the obligations of the contract and serves to notify affected persons.

**DATE:** ILS will be given access to this information no sooner than April 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** By mail:

William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2613).

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68–02–4276, ILS will conduct inspections of toxicity testing facilities to assure that the studies of interest to the Agency are conducted in compliance with the Good Laboratory Practice regulations of the EPA, and conduct audits of studies for the Agency in support of registration or marketing petitions under FIFRA. This contract involves no subcontractors.

The Office of Pesticide Programs has determined that access by ILS to information on all pesticide chemicals is necessary to the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with ILS prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, ILS is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Compliance Monitoring. All information supplied to ILS by EPA for use in connection with this contract will be returned to EPA when ILS has completed its work.

Dated: April 1, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 87–7836 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

---

[PF–471; FRL–3185–1]

## Pesticide Tolerance Petition; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; Correction.

**SUMMARY:** This document corrects FR Doc. No. 86–25579, published in the **Federal Register** of November 19, 1986, which announced the filing of pesticide petition (PP) 6F3454 by the FMC Corp., proposing tolerances for residues of the insecticide [2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclo-propanecarboxylate. This Document adds a raw agricultural commodity that was inadvertently omitted.

**FOR FURTHER INFORMATION CONTACT:** George LaRocca, Product Manager (PM) 15, Registration Division (TS–757C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2400.

**SUPPLEMENTARY INFORMATION:** FMC Corp. filed a pesticide petition (PP 6F3454) proposing tolerances for residues of the insecticide (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclo-propanecarboxylate. Included in the petition was a proposed tolerance for walnut meats at 0.05 parts per million, which was inadvertently omitted by EPA in developing the notice of filing. Accordingly, the following correction is made to FR Doc. 86–25579 appearing on page 41828 in the issue of November 19, 1986. In the second column, the entry for item 1. is revised to read as follows:

1. *PP 6F3454:* Peaches at 2.0 parts per million (ppm), pears and strawberries at 1.0 ppm, pecans and walnuts at 0.05 ppm.

**Authority:** 21 U.S.C. 346a.

Dated: April 3, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–8162 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

---

[FR–3186–8]

## Concept Paper For the Implementation of Title II and VI of the Water Quality Act of 1987; Availability

**SUMMARY:** The Water Quality Act of 1987, Pub. L. 100–4, which amended the Clean Water Act of 1972, became law on February 5, 1987. The existing Title II, which authorizes the Agency to award grants to municipalities for construction of wastewater treatment facilities, is amended in several respects. The 1987 Amendments create a new Title VI, authorizing the Agency to award grants for the capitalization of State Water Pollution Control Revolving Funds. The Concept Paper presents the Agency's interpretation of the 1987 Amendments, and its approach to implementation of the amended construction grants program and the new capitalization grant program.

Interested parties are encouraged to obtain the Concept Paper and to submit comments.

**DATES:** This Concept is available to the public from April 8, 1987 through the end of the comment period on May 20, 1987.

**ADDRESS:** Concept Paper requests and comments should be sent to: Geoffrey Cooper, Planning and Analysis Division, Office of Municipal Pollution Control (WH–546), US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CALL:** (202) 382–7256.

Dated: April 9, 1987.

**Michael J. Quigley,**

*Acting Assistant Administrator for Water.*

[FR Doc. 87–8423 Filed 4–14–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-788-DR]

### Major Disaster and Related Determinations; Maine

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Maine, (FEMA-788-DR), dated April 9, 1987, and related determinations.

**DATED:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616..

Notice: Notice is hereby given that, in a letter of April 9, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from severe storms and flooding beginning on or about March 30, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration. Notice is hereby give that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. John D. Swanson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster and are designated eligible as follows:

Androscoggin, Franklin, Kennebec, Oxford, Penobscot, Piscataquis, and Somerset Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Robert H. Morris,**

*Deputy Director.*

[FR Doc. 87-8389 Filed 4-14-87; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011091.

Title: Galveston Terminal Agreement.

Parties:

Board of Trustees of the Galveston Wharves (Port)

Lykes Bros. Steamship Co., Inc., (Lykes)

Synopsis: The proposed agreement would permit the Port to provide preferential berthing to Lykes and would establish levels of wharfage and incentive revenues to be paid. The agreement would have a five year term. The parties have requested a shortened review period.

Agreement No.: 224-011092.

Title: Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (Port)

ITO Corporation of Baltimore (ITO)

Synopsis: The proposed agreement would permit ITO to lease 85.1 acres at the Port's South Locust Point Marine Terminal for an initial period of five years with a renewal option for an additional five year term. The parties have requested a shortened review period.

Dated April 10, 1987.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-8437 Filed 4-14-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### BankAmerica Corp.; Proposal To Engage in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to engage in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the office of the Board of Governors not later than May 7, 1987.

**A. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to engage *de novo*, directly or indirectly through one or more of its subsidiaries in the issuance and sale throughout the United States and abroad of general purpose variably denominated payment instruments with maximum face values of $10,000. This activity has been approved by Board

Order as permissible for bank holding companies. 70 Federal Reserve Bulletin 364 (1984).

Board of Governors of the Federal Reserve System, April 9, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87-8373 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

## Equimark Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 1987.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Equimanagement, Inc., Pittsburgh, Pennsylvania, in appraising of real estate and tangible and intangible personal property, including securities, for its clients pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Financial Services, Inc.*, Arlington Heights, Illinois; to engage *de novo* through its subsidiary, Arlington Mortgage Company, Arlington Heights, Illinois, in making, acquiring and servicing loans or other extensions of credit for the company's account and for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by May 6, 1987.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *San Miguel Investment Company*, Norwood, Colorado; to engage *de novo* in lending as would be conducted by a consumer and commercial finance or mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by May 3, 1987.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Schreiner Bancshares, Inc.*, Kerrville, Texas; to engage *de novo* through its subsidiary, Schreiner Financial Corporation, Kerrville, Texas, in making, acquiring and/or servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Texas. Comments on this application must be received by April 29, 1987.

Board of Governors of the Federal Reserve System, April 9, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87-8372 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

## Jefferson Banking Group Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 7, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Jefferson Banking Group Inc.*, Watertown, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Jefferson National Bank, Lafargeville, New York.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Americana Bancorporation of Clara City, Inc.*, Edina, Minnesota; to merge with Americana Bancorporation of Alden, Inc., Edina, Minnesota, and thereby indirectly acquire Americana State Bank of Alden, Alden, Minnesota; Americana Bancorporation of Danube, Inc., Edina, Minnesota, and thereby indirectly acquire Americana State Bank of Danube, Danube, Minnesota; and Americana Bancorporation of Edina, Inc., Edina, Minnesota, and thereby indirectly acquire Americana State Bank of Edina, Edina, Minnesota.

In addition, Applicant has also applied to acquire 100 percent of the voting shares of Americana State Bank of Hayward, Hayward, Minnesota.

Board of Governors of the Federal Reserve System, April 9, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87-8375 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

## W.J. Wright et al., Change in Bank Control Notice, Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the officers of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 30, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *W.J. Wright and R.G. Harper* as Trustees for the Article Fifth Will of Sue D. Hauberg for the benefit of Catherine H. Sweeney; to acquire 10.56 percent of the voting shares of Financial Services Corporation of the Midwest, Rock Island, Illinois, and thereby indirectly acquire The Rock Island Bank, Rock Island, Illinois.

Board of Governors of the Federal Reserve System, April 9, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87-8374 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

## Citicorp; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the 225.21(a) of Regulation Y (12 CFR 25.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 1987.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, DC 20551:

1. *Citicorp*, New York, New York, indirectly through its subsidiary, Citicorp Savings, a Federal Savings and Loan Association, Oakland, California, to purchase certain assets and assume certain liabilities of 50 branch offices of Sears Savings Bank, Glendale, California, a state-chartered savings and loan association. This application may be inspected at the Federal Reserve Banks of New York and San Francisco.

Board of Governors of the Federal Reserve System, April 10, 1087.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87-8487 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

## First Community Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 7, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Community Corporation*, Woodstock, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community First Bank, Woodstock, Georgia, a *de nova* Bank.

2. *Three Rivers Bancshares, Inc.*, Milan, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Milan, Milan, Georgia.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Landmark Bancshares Corporation*, Clayton, Missouri; to merge with CCNB Bancshares Corporation, Ozark, Missouri, and thereby indirectly acquire Christian County National Bank, Ozark, Missouri.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Lockwood Banc Group, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lockwood National Bank of Houston, Houston, Texas.

Board of Governors of the Federal Reserve System, April 10, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87-8488 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

## Illini Community Bancorp, Inc.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini & Associates, Inc., Springfield, Illinois, in providing management consulting advice, auditing, accounting and tax services to nonaffiliated and nonbank depository organizations pursuant to § 225.25(b)(11) of the Board's Regulation Y.

2. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini Community Mortgage Co., Springfield, Illinois, in the origination of VA, FHA and conventional mortgage loans for resale to the secondary market appraisal services; servicing of loans originated and sold; warehouse financing of mortgage loans and other related services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 10, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-8486 Filed 4-14-87; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., April 29, 1987.

Place: Conference Room 5141-A, General Services Administration Building, 18th and F Streets, NW., Washington, DC 20405.

Status: Open.

Matters to be considered: Approval of minutes of January 23, 1987, meeting; Activity update by the Executive Director, Federal Retirement Thrift Investment Board; Distribution of booklets, election forms and other materials; Participation in the Thrift Savings Plan by employees in a non-pay status; Participation in the Common Stock Index Fund and the Fixed Income Fund by Civil Service Retirement System employees, Securities disclosure policy and the applicability of banking and securities sales laws and regulations to the Thrift Saving Plan; Consultation with the Council prior to issuance of proposed regulations; and other business.

Any interested person may attend, appear before, or file statements with the Council. For Further information contact John J. O'Meara on (202) 653-2573.

Dated: April 13, 1987.

**Francis X. CAvanaugh,**

*Executive Director.*

[FR Doc. 87-8619 Filed 4-14-87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Federal Financial Participation in State Assistance Expenditures; Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1987 Through September 30, 1988

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the "Federal percentages" and "Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Title XIX of the Social Security Act (the Act) exists in each jurisdiction, title IV-A in all jurisdictions except American Samoa and the Northern Mariana Islands, titles I, X, and XIV operate only in Guam and the Virgin Islands, while title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Section 1101(a)(8)(B) of the Act, as revised by section 9528 of Pub. L. 99-272, requires the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1101(a)(8) and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentage to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assistance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

**DATES:** The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1987 and ending September 30, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Emmett Dye, Office of Family Assistance, Family Support

Administration, Room B320–H, Trans Point Building, 2100 2nd Street SW., Washington, DC 20201, Telephone (202) 245–2040.

(Catalog of Federal Domestic Assistance Program Nos. 13.808—Assistance Payments—Maintenance Assistance (State Aid); 13.714—Medical Assistance Program)

Dated: April 9, 1987.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1987–SEPTEMBER 30, 1988 (FISCAL YEAR 1988)

| [illegible] | Federal percentages | Federal medical [illegible] percentages |
|---|---|---|
| Alabama | [illegible] | 73.29 |
| Alaska | 50.00 | [illegible] |
| American Samoa | 50.00 | [illegible] |
| Arizona | 57.91 | [illegible] |
| Arkansas | [illegible] | 74.21 |
| California | [illegible] | [illegible] |
| Colorado | [illegible] | [illegible] |
| Connecticut | 50.00 | 50.00 |
| Delaware | 50.00 | 51.90 |
| District of Columbia | [illegible] | [illegible] |
| Florida | [illegible] | [illegible] |
| Georgia | [illegible] | 63.84 |
| Guam | 50.00 | *50.00 |
| Hawaii | [illegible] | 53.71 |
| Idaho | [illegible] | 70.47 |
| Illinois | 50.00 | 50.00 |
| Indiana | [illegible] | 63.71 |
| Iowa | 58.61 | 62.75 |
| Kansas | 50.22 | 55.20 |
| Kentucky | 65.00 | 72.27 |
| Louisiana | 64.73 | [illegible] |
| Maine | 63.42 | [illegible] |
| Maryland | 50.00 | [illegible] |
| Massachusetts | 50.00 | [illegible] |
| Michigan | 51.64 | [illegible] |
| Minnesota | 50.00 | [illegible] |
| Mississippi | [illegible] | 79.65 |
| Missouri | 54.74 | 59.27 |
| Montana | 65.00 | [illegible] |
| Nebraska | 55.25 | 59.73 |
| Nevada | [illegible] | [illegible] |
| New Hampshire | [illegible] | [illegible] |
| New Jersey | [illegible] | [illegible] |
| New Mexico | [illegible] | 71.52 |
| New York | [illegible] | [illegible] |
| North Carolina | [illegible] | [illegible] |
| North Dakota | [illegible] | 64.87 |
| Northern Mariana Islands | [illegible] | *50.00 |
| Ohio | 54.55 | 59.10 |
| Oklahoma | 59.25 | [illegible] |
| Oregon | [illegible] | 62.11 |
| Pennsylvania | 52.61 | 57.35 |
| Puerto Rico | [illegible] | *50.00 |
| Rhode Island | [illegible] | [illegible] |
| South Carolina | [illegible] | 73.49 |
| South Dakota | [illegible] | 70.43 |
| Tennessee | [illegible] | 70.64 |
| Texas | 52.13 | 58.91 |
| Utah | [illegible] | 73.73 |
| Vermont | [illegible] | [illegible] |
| Virgin Islands | [illegible] | *50.00 |
| Virginia | [illegible] | 51.34 |
| Washington | 50.00 | 53.21 |
| West Virginia | [illegible] | 74.84 |
| Wisconsin | 54.42 | [illegible] |
| Wyoming | 53.28 | 57.96 |

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[FR. Doc. 87–8444 Filed 4–14–87; 8:45 am]

BILLING CODE 4150–04–M

## Food and Drug Administration

## Advisory Committees; Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

### Anesthetic and Life Support Drugs Advisory Committee

*Date, time, and place.* May 19, 8:30 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectivness of marketed and investigational prescription drugs for use in the field of anesthesiology and surgery.

*Agenda—Open public hearings.* Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

*Open committee discussion.* The committee will discuss: (1) Subcommittee report on 20 percent lidocaine; (2) intravenous dosage of versed (midazolam, Roche) for conscious sedation—a followup; and (3) general background on package inserts.

### Cardiovascular and Renal Drugs Advisory Committee

*Date, time, and place.* May 28 and 29, 9 a.m., Auditorium of the Uniformed Services University of the Health Sciences, 4301 Jones Bridge Rd., Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, May 28, 9 a.m., to 10 a.m., unless public participation does not last that long; open committee discussion, May 28, 10 a.m. to 3 p.m.; May 29, 9 a.m. to 5 p.m.; John C. Standaert, Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

*Agenda—Open public hearing.* Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

*Open committee discussion.* On May 28, the committee will discuss pinacidil, NDA 19–456, (pindac, Eli Lilly & Co.) for hypertension. On May 29, the committee will discuss biological product license applications for three intravenous products for use in the treatment of acute myocardial infarction: (1) Streptokinase (streptase, Behringwerke AG/Hoechst-Roussel); (2) streptokinase (kabikinase, KabiVitrum AB); and (3) tissue plasminogen activator (activase, Genentech).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative

proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the Committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFW–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: April 8, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–8353 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

## Health Professional Organizations' Participation; Open Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a forthcoming meeting of health professional organizations to be chaired by Frank E. Young, Commissioner of Food and Drugs. The agenda will include discussions on Action Plans I and II, an update on acquired immunodeficiency syndrome (AIDS), anabolic steroids, Women's Health Initiative, and the Physician Recruitment Program.

**DATE:** The meeting will be held on April 27, from 1 p.m. to 3 p.m.

**ADDRESS:** The meeting will be held in Conference Rm. 703A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Robert Veiga, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

Dated: April 8, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–8354 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

## Garver Feed & Supply Co., Inc.; Type C Swine Feed, Withdrawal of Approval of NADA

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Garver Feed & Supply Co, Inc. The NADA provides for use of a Type A article containing 0.8-gram-per-pound tylosin for making Type C swine feeds. The firm requested the withdrawal of approval.

**EFFECTIVE DATE:** April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3184.

**SUPPLEMENTARY INFORMATION:** Garver Feed & Supply Co., Inc., P.O. Box 7756, Madison, WI 53707, is sponsor of NADA 119–145. The NADA provides for use of a Type A article containing 0.8-gram-per-pound of tylosin (as tylosin phosphate) for making Type C swine feeds for use as in 21 CFR 558.625(f)(1)(vi)(*a*). The NADA was originally approved June 24, 1980 (45 FR 42262).

By letter dated November 18, 1986, the sponsor requested the withdrawal of approval because the product was not being manufactured and it no longer requires an NADA for manufacture.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with §514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 119–145 and all supplements thereto is hereby withdrawn, effective April 27, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the regulations that reflect this approval and is removing the firm from the list of sponsors of approved NADA's

Dated: April 8, 1987

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–8363 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–75–2024]

## Memorandum of Understanding Between the Ministry of Agriculture of the Republic of France and the Food and Drug Administration

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Ministry of Agriculture, France, and FDA, U.S. Department of Health and Human Services. This MOU describes the mutual goals of the Ministry of Agriculture of the Republic of France and FDA to establish certification requirements for the caseins, caseinates, and mixtures thereof exported from France to the United States and to minimize the need for extensive FDA audit sampling of these certified products.

**DATE:** This agreement became effective January 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

**SUPPLEMENTARY INFORMATION:** In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal**

Register, the agency is publishing this memorandum of understanding.

Dated: April 8, 1987.

John M. Taylor,

*Associated Commissioner For Regulatory Affairs.*

**Memorandum of Understanding Between the Food and Drug Administration, DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA, and the Ministry of Agriculture of the Republic of France, Covering Caseins, Caseinates, and Mixtures Thereof, Exported to the United States of America**

*I. Purpose*

The mutual goals of the Food and Drug Administration (FDA) and the Ministry of Agriculture of the Republic of France in entering into this agreement are to:

1. Establish certification requirements for the caseins, caseinates, and mixtures thereof exported from France to the United States to assure that contaminated caseins, caseinates, and mixtures thereof will not be imported into the United States.

2. Minimize the need for extensive FDA audit sampling of these certified products from France.

This agreement supersedes the Memorandum of Understanding between FDA and the Ministry of Agriculture of the Republic of France that became effective on October 15, 1974.

*II. Definitions*

For the purposes of this agreement, both parties agree to the following definitions:

*Lot:* A lot is a quantity of caseins, caseinates, or mixtures thereof packaged by one manufacturer during a definite period of time not exceeding 1 day. The manufacturing process, including milling and packaging, is performed by using a perfectly identified processing line. Caseins or caseinates intended for export to the United States are packaged, after milling, in identical containers identified by a unique code or mark traceable to the manufacturer.

*Salmonella-negative:* The absence of *Salmonella* in 30 samples, each of 25 grams, that have been taken from the same lot of product and tested individually, or composited, using procedures contained in the current edition of the "Bacteriological Analytical Manual."

*Phosphatase-negative:* The absence of phosphatase activity in 30 samples, each of 25 grams, that have been taken from the same lot of product and tested using the method contained in the current edition of the "Official Methods of Analysis."

*III. Substance of Agreement*

A. The Direction de la Qualité, Service Vétérinaire d'Hygiène Alimentaire, Ministry of Agriculture

The Direction de la Qualité, Service Vétérinaire d'Hygiène Alimentaire (SVHA) of the Ministry of Agriculture of the Republic of France, is the agency of the French government responsible for inspecting those caseins, caseinates, and mixtures thereof that are intended for export. Such inspection is necessary for consumer protection. To fulfill its responsibilities under this agreement, SVHA will direct its activities to ensure that caseins, caseinates, and mixtures thereof that are intended for export to the United States are fit for human consumption in that they comply with the requirements of the Food, Drug, and Cosmetic Act of the United States and of this agreement. SVHA will inspect and analyze samples of these caseins, caseinates, and mixtures thereof to ensure that they comply with these requirements.

To discharge its responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill its commitment under this agreement, SVHA will:

1. Inspect and analyze each lot of caseins, caseinates, and mixtures thereof produced in France for export to the United States to assure that it is *Salmonella*-negative and phosphatase-negative, based on the testing of 30 samples of 25-gram units taken from bags of caseins immediately before closing, as determined by the methods cited in Section V. "Analytical Methodology."

2. Issue an export certificate only for those lots that are *Salmonella*-negative and phosphatase-negative.

3. Require that all containers of lots of caseins, caseinates, and mixtures thereof that are to be exported to the United States be certified as complying with the provisions of this agreement, and identified by a lot number and marked "FOR HUMAN USE ONLY; NOT TO BE USED FOR ANIMAL FEED."

4. Require that all of the information that is required by the Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act of the United States is included on the packaging of individual products.

5. Include the following information on the export certificate for each lot of caseins, caseinates, and mixtures thereof exported to the United States:

a. Lot identification, including name and address of manufacturer;

b. Number and size of containers in the lot;

c. Analytical results for *Salmonella* and phosphatase activity;

d. Date of the certificate; and

e. Name and stamp or seal of authorizing official.

6. Provide the exporter of caseins, caseinates, and mixtures thereof with the validated export certificate. This certificate and the packing list, which indicates those lots that are physically present in each containerized cargo unit, are to be attached to the shipping manifest.

7. Furnish FDA with a copy of the current French regulations and the procedures used to ensure that the caseins, caseinates, and mixtures thereof are in compliance with those regulations and with the Food, Drug, and Cosmetic Act of the United States.

8. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls used to ensure that the caseins, caseinates, and mixtures thereof that are produced are fit for human consumption, as discussed in III. A. of this agreement.

9. Furnish FDA with a list of the names of those officials who will sign the certificates issued in accordance with this agreement.

B. The Food and Drug Administration

FDA is charged with the enforcement of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes of the United States. FDA directs its activities toward the protection of the public health in the United States by ensuring that foods are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure compliance with these statutes. FDA makes a concerted effort to ensure that foods entering the United States meet the same standards as domestic products. To discharge these responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill this agreement, FDA will:

1. Audit samples of caseins, caseinates, and mixtures thereof certified by SVHA under this agreement to ensure that the products exported from the Republic of France comply with the requirements of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes of the United States.

2. Share any information obtained through its audit sampling with SVHA, which includes:

a. Providing prompt notification of the detention of any casein products covered by this agreement.

b. Explaining the reasons for the detention of any lot of certified products.

c. Providing copies of the laboratory worksheets developed in determining the reasons for detention.

d. Providing information regarding the serotype of any detected *Salmonella,* when these results are available.

e. Supplying a reserve sample of any lots determined to be *Salmonella*-positive when available and requested by SVHA or the Embassy of France.

f. Providing notification of changes in applicable analytical procedures.

g. Providing information on modifications of the statutes and regulations that affect the certified products.

3. Share expertise and provide assistance to SVHA when necessary.

*IV. Sample Collection*

The same subsamples will be used to determine both the presence, if any, of *Salmonella* and the level of phosphatase activity.

Thirty samples of caseins, caseinates, or mixtures thereof, each sample consisting of approximately 25 grams, will be collected in accordance with the applicable portions of the current edition of the "Bacteriological Analytical Manual."

*V. Analytical Methodology*

Compliance with the established criteria for *Salmonella* and phosphatase will be determined according to the methods contained in the current editions of "Bacteriological Analytical Manual" for

*Salmonella* and "Official Methods of Analysis" for phosphatase.

These publications are available from: Association of Official Analytical Chemists, 1111 North 19th St., Department 55, Arlington, VA 22209.

*VI. Participating Parties*

A. The Direction de la Qualité, Service Vétérinaire d'Hygiène Alimentaire, Ministry of Agriculture, 175 rue du Chevaleret, 75646, Paris Cedex 13, France.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

*VII. Liaison Officers*

A. For SVHA: Agricultural Attaché, (Currently Mr. Ralph Ichter), Embassy of France, 4101 Reservoir Rd. NW., Washington, DC 20007–2173, Telephone: 202–944–6360; Telex 248320 FRCC UR.

B. For FDA: Director, Division of Regulatory Guidance (HFF–310), (Currently Howard N. Pippin), 200 C. St. SE., Washington, DC 20204, Telephone: 202–485–1186; Telex 197623 PHS PKLN.

*VIII. Administration Procedures*

The parties shall mutually agree on the ways and means of giving instructions and guidance for the practical implementation and application of this agreement.

*IX. Period of Agreement*

This agreement will become effective upon acceptance by both parties and will continue indefinitely. It may be revised by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

Approved and accepted for the Direction de la Qualité, Service Vétérinaire, D'Hygiène Alimentaire, Ministry of Agriculture of the Republic of France.

Approved and accepted for the Food and Drug Administration of the United States of America.

By: M. Gilbert Jolivet.
Title: Directeur de la Qualité.
Date: 10 Septembre 1986.
By: John M. Taylor.
Title: Associate Commissioner for Regulatory Affairs.
Date: January 15, 1987.

[FR Doc. 87–8366 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

---

[Docket No. 85P–0384]

## Canned Spinach Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to The Larsen Co. and Continental Can Co., Inc., to market test experimental packs of canned spinach containing added zinc chloride. This action will allow the permit holders to continue experimental market testing of the product while the agency takes action on a petition to amend the standard of identity for canned spinach.

**DATE:** The new expiration date of the permit will be either the effective date of the final rule for any proposal to amend the standard of identity for canned spinach which may result from the petition, or 30 days after termination of such rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202–485–0121.

**SUPPLEMENTARY INFORMATION:** A temporary permit was issued under the provisions of 21 CFR 130.17 to The Larsen Co., 520 North Broadway, P.O. Box 19027, Green Bay, WI 54307–9027, and Continental Can Co., Inc., 800 Connecticut Ave., P.O. Box 5410, Norwalk, CT 06856, to market test canned spinach containing added zinc chloride to retain the color of the test product (up to 75 parts per million of zinc in the finished food). The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to The Larsen Co. and Continental Can Co., Inc., was published in the **Federal Register** of September 13, 1985 (50 FR 37437).

The Larsen Co. and Continental Can Co., Inc., have requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the standard of identity for canned spinach proceeds. The permit holders also have requested that their existing temporary permit be amended to provide for market testing on an annual basis of 35,000 cases containing twenty-four 8-ounce (211 X 304) cans each, 230,000 cases containing twenty-four 12-ounce (307 X 306) cans each, 35,000 cases containing twenty-four 16-ounce (303 X 406) cans each, and 100,000 cases containing six No. 10 (603 X 700) cans each of the test product. The test product will be distributed in the continental United States.

The Continental Can Co., Inc., in accordance with 21 CFR 130.17(i), submitted a petition to amend 21 CFR 155.200 at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to The Larsen Co. and Continental Can Co., Inc., including the labeling requirements and the amounts of tests product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the extended market test must notify, in writing, the Deputy Director, Division of Food Chemistry and Technology (HFF–411), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned spinach which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: April 27, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–8365 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

---

[Docket No. 86N–0500]

## Support of Scientific Conferences; Availability of Grants; Applications Process

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the anticipated availability of funds for awarding a very limited number of grants to provide general support for domestic or international scientific conferences held in the United States and Canada. These conferences must relate directly to FDA's mission and funding priorities. FDA views this support of scientific conferences as an ongoing program and may award a limited number of grants each fiscal year which range from $2,000 to $15,000 in direct costs only per project.

**DATES:** Before submitting an application, prospective applicants should contact FDA to inquire about the agency's interest in the proposed conference. Applications will be received and

reviewed quarterly during each fiscal year as follows:

| Receipt dates | Review dates | Earliest beginning dates |
|---|---|---|
| October 15 | November 15 | December 15. |
| January 15 | February 15 | March 15. |
| April 15 | May 15 | June 15. |
| July 15 | August 15 | September 15. |

Applications received after the quarterly deadline date above will be held for the next review cycle or returned to the applicant, if time is not sufficient for FDA to conduct a review prior to the scheduled date of the proposed conference. All applications should be submitted to FDA as early as possible.

**ADDRESS:** Applications regarding the business management aspects of the program should be submitted to, and application kits are available from, Olia M. Hopkins, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park 3–20, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170. Applicants may contact the appropriate FDA Center Liaison Coordinator below to determine FDA's interest in the proposed scientific conference.

**FOR FURTHER INFORMATION CONTACT:**

Center for Devices and Radiological Health: William Beheler, Director, Program Planning and Evaluation (HFZ–30), 5600 Fishers Lane, Rockville, MD 20857, 301–443–2797.

Center for Drugs and Biologics: Hamilton Brown, Chief, Extramural Programs Branch (HFN–44), Office of Drugs,

or

Nickolas Pollok, Assistance Program Manager (HFN–44), Office of Biologics, Rm. 13B–35, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–6788.

Center for Food Safety and Applied Nutrition: Robert G. Coon, Chief, Extramural Science Advisory Staff (HFF–9), Rm. 6002, Federal Bldg. 8, 200 C St. SW., Washington, DC 20204.

Center for Veterinary Medicine: David Batson, Special Assistant to the Associate Director for Research (HFV–500), Rm. 8–89, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–6510.

Office of the Commissioner, Donald J. Sauer, Executive Officer (HFA–4), Rm. 14–82, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–3206,

or

Mary Ann Danello, Special Assistant to the Commissioner for Science (HF–5), Rm. 14–90, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–4650.

**SUPPLEMENTARY INFORMATION:** FDA will support scientific conference grants covered by this notice under Title XVII of the Public Health Service Act (42 U.S.C. 300u—300u–5) or the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602) (42 U.S.C. 263b–n). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 13.103. Applications submitted under this program are not subject to the requirements of E.O. 12372.

## I. Background and Policy

FDA recognizes the value of supporting scientific meetings and conferences designed to coordinate, exchange, and disseminate information, when their objectives are clearly within the scope of the agency's scientific programs. FDA's policy is to participate with other scientific organizations to support meetings, where parcticable, rather than to provide the sole support. In view of the diversity of interests of the various FDA centers and in order to provide maximum flexibility, FDA will not set rigid requirements about the type of scientific meetings and conferences to be supported. Before submitting applications, prospective applicants are urged to contact one of FDA's Center Liaison Coordinators listed above to determine if the proposed scientific conference is clearly consistent with the Center's interest, mission, and priorities.

Grant funds may be awarded to provide modest general support of domestic or international scientific conferences held in the United States or Canada. Funds may also be awarded to support part of the travel for individuals selected by the grantee to attend the meeting.

Grant funds may not be used to provide general support for international scientific conferences held outside the United States or Canada; however, grant funds may be awarded to provide limited support to certain aspects only of an international scientific conference held outside the Untied States or Canada (for example, a selected symposium, panel, or workshop, including the cost of planning and the cost of travel of U.S. participants in that particular segment of the scientific conference). Any Public Health Service foreign travel restrictions that are in effect at the time of the award must be followed, such as:

1. Limitations or restrictions on countries to which travel will be supported; or

2. Budgetary or other limitations on availability of funds for foreign travel.

## II. Mechanism of Support

### *A. Award Instrument*

Support will be in the form of a grant award. The policies governing the administration of research grants are applicable to grants in support of scientific conferences.

### *B. Eligibility*

These grants are available to any U.S. institution eligible to receive grants from PHS agencies, including scientific or professional societies. In the case of an international conference, the U.S. representative organization of an established international scientific or professional society is the eligible grantee. In exceptional cases, where there is no U.S. representative organization, grants to support a specific aspect of an international conference may be awarded directly to a foreign institution or international organization with the approval of the PHS agency head or his or her designee. An individual is not eligible to reveive a grant in support of a conference.

### *C. Length of Support*

The length of support will usually be 1 year.

### *D. Funding plan*

The number of grants funded will depend on the quality of the applications, whether they directly relate to FDA's mission and priorities, and the availability of the agency's funds.

## III. Review Procedures and Criteria

### *A. Review Method*

All applications responding to this announcement will be reviewed and evaluated for their scientific and technical merit by a single review committee composed of government personnel.

### *B. Review Criteria*

Applications must contain sufficient information to permit review. Those that are determined not to include sufficient information wil be returned to the applicant. Applications will be reviewed according to the following criteria:

1. The content/subject matter and how current and appropriate it is for FDA's mission.

2. The conference plan and how thorough, reasonable, and appropriate it is for the intended audience.

3. The experience, training, and competence of the principal investigator/director and support staff.

4. The adequacy of the facilities.

5. The reasonableness of the proposed budget given the total conference plan, program, speakers, travel, and facilities.

**IV. Submission Requirements**

The original and six copies of the completed application should be delivered to State Contracts and Assistance Agreement Branch (address above).

**Note.**—Do not mail the application to the National Institutes of Health.

Label the outside of the mailing envelope and item 2 of the application face page "Request for Conference Grant."

**V. Format for Application**

Submit applications on Form 398, "Public Health Service Grant Application," and include the following:

1. Title; which has the term scientific "conference," "symposium," "workshop," or other similar description to assist in the identification of the request;
2. Location of conference;
3. Expected registration;
4. Dates of conference (inclusive);
5. Conference format and projected agenda, including list of principal areas or topics to be addressed;
6. Physical facilities required for the conduct of the meeting (e.g., sumultaneous translation facilities);
7. Justification of the conference, including the problems it intends to clarify and any developments it may stimulate;
8. Brief biographical sketches of individuals responsible for planning the conference;
9. Information about all related conferences held on this subject during the last 3 yars (if known); and
10. Details of proposed per diem/subsistence rates and transportation costs.

**VI. Reporting Requirements**

A financial status report and a progress report will be required within 90 days after the end of the budget/project period.

The collection of information requested in PHS Form 398 and its instructions have been submitted by PHS to the Office of Management and Budget (OMB), were approved, and were assigned OMB control number 0925–0001.

Dated: March 2, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–8364 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

**Advisory Committee Meeting; Cancellation**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is cancelling the meeting of the Fertility and Maternal Health Drugs Advisory Committee scheduled for April 16 and 17, 1987. The meeting was announced by notice in the **Federal Register** of March 25, 1987 (52 FR 9542).

**FOR FURTHER INFORMATION CONTACT:** Philip A. Corfman, Center for Drugs and Biologics (HFN–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

Dated: April 8, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–8367 Filed 4–14–87; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. D–87–836; FR–2341]**

**Designating Attesting Officers**

**AGENCY:** Department of Housing and Urban Development, Office of the Secretary.

**ACTION:** Delegation of authority to cause department seal to be affixed and to authenticate copies of documents.

**SUMMARY:** This delegation of authority revises and updates the designation of attesting officers to authenticate documents.

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** David D. White, Assistant General Counsel for Administrative Law, Room 10254, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410 (202) 755–7137 (This is not a toll-free number).

**Section A—Authority Delegated**

Each of the following employees of the Department of Housing and Urban Development is designated as Attesting Officer and is authorized to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department:

1. Assistant Secretary for Housing—Federal Housing Commissioner
2. Assistant Secretary for Legislation and Congressional Relations
3. Assistant Secretary for Administration
4. Assistant Secretary for Public and Indian Housing
5. Assistant Secretary for Policy Development and Research
6. Assistant Secretary for Community Planning and Development
7. Assistant Secretary for Fair Housing and Equal Opportunity
8. President, Government National Mortgage Association
9. Inspector General
10. General Counsel
11. Associate General Counsel for Litigation
12. Manager, Solar Energy and Energy Conservation Bank
13. Each Regional Administrator
14. Each Field Office Manager
15. The Secretary to each position listed above
16. Assistant General Counsel for Regulations and the Rules Docket Clerk
17. In each Field Office, each Legal Clerk and Legal Technician
18. Director, Mortgage Insurance Accounting and Servicing, Office of Finance and Accounting

**Section B—Authority to Redelegate**

The authority delegated in Section A may be redelegated to any employee of the Department.

**Section C—Supersedure**

This delegation revokes and supersedes the delegation of authority published at 50 FR 41419 (October 10, 1985).

**Authority:** Sec. 7(d) and (g), Department of HUD Act, 42 U.S.C. 3535(d) and (g).

Dated: April 9, 1987.

**Samuel R. Pierce, Jr.,**

*Secretary.*

[FR Doc. 87–8403 Filed 4–14–87; 8:45 am]

BILLING CODE 4210–32–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–070–07–4333–12]**

**Closure of Lands to the Discharge of Firearms; Montana**

**AGENCY:** Butte District, Bureau of Land Management, Interior.

**ACTION:** Closure of lands to firearms discharge.

**SUMMARY:** Public Notice is hereby given that under the provisions of Part 8360 of

43 CFR, and in the interest of public safety, the following described lands, under the jurisdiction of the Bureau of Land Management, are hereby closed effective May 1, 1987, to the discharge of all firearms. The lands are located in:

T. 12 N., R. 14 W.,
Section 3, Granite County, Montana
T. 13 N., R. 14 W.,
Section 34 and 35, Missoula County, Montana.

The closure includes all public lands within the boundary descibed as follows:

Beginning on the Garnet Range Road at the intersection with the Old Coloma Road in Section 34; east along the Garnet Range Road about one mile to a point due north of the intersection of the jumpover road with the Summit Cabin Road; then due south about 2/3 mile to the intersection of the jumpover road and the Summit Cabin Road; then south along the Summit Cabin Road 1/8 mile to the junction with the Anderson Peak Jeep Trail; then due west about 3/5 mile to a logging road designated as ski trail M; then northwest along logging roads about 1/3 mile to the intersection of the Chicken Run Road and the Old Coloma Road; then north about 2/3 mile along the Old Coloma Road to the junction with the Garnet Range Road.

The above described public lands total 170 acres more or less. The lands are located in Granite and Missoula counties, Montana, and are commonly referred to as the Garnet Historic District.

The above described lands receive intensive recreation use, and the continued discharge of firearms constitutes a hazard to the public health and safety.

**DATES:** Effective date: May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Darrell Sall, Area Manager, Garnet Resource Area, 3255 Fort Missoula Road, Missoula, Montana 59806.

April 7, 1987.

**James A. Moorhouse,**

*District Manager.*

[FR Doc. 87-8343 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-DN-M

---

[OR-090-07-6310-01-GP7-157]

## Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on May 8, 1987, at 9:00 a.m., Pacific Standard Time, in room 227 of the Federal Building at 211 E. 7th St., Eugene, Oregon.

The agenda will include (1) a discussion of the Bureau's proposed reorganization plan; (2) land exchanges with private firms; and (3) summary of other current issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:45 a.m. and 11:00 a.m., or file written statements for the Council's consideration. Anyone wanting to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl Street, Eugene, Oregon 97401, by May 6. Depending on the number of persons wanting to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: April 6, 1987.

**Melvin D. Clausen,**

*District Manager.*

[FR Doc. 87-8344 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-33-M

---

## Filing of Plat of Survey; New Mexico

April 6, 1987.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on April 2, 1987.

A survey representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, a portion of the subdivision of section 2, the 1873 adjusted record meanders of the left bank of the Canadian River and the survey of the meanders of the present left bank of the Canadian River in section 2, Township 5 North, Range 1 East, Indian Meridian, Oklahoma, under Group 44 OK.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

**Gary S. Speight,**

*Chief Branch of Cadastral Survey.*

[FR Doc. 87-8346 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-FB-M

---

## Filing of Plat of Survey; New Mexico

April 6, 1987.

The plats of survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico effective at 10:00 a.m. on April 2, 1987.

A survey representing the dependent resurvey of a portion of the north boundary of the Tome Grant, a portion of the east boundary, a portion of the north boundary, a portion of the subdivisional line, certain small holding claim boundaries in sections 1, 10, 11, and 12 and the survey of certain lot boundaries in sections 1 and 11, Township 6 North, Range 2 East, New Mexico Principal Meridian, New Mexico.

A survey representing the dependent resurvey of a portion of the Lo de Padilla Grant, a portion of the east boundary, portions of certain small holding claims and the survey of certain lot boundaries in section 25, Township 7 North, Range 2 East, New Mexico Principal Meridian, New Mexico.

A survey representing the dependent resurvey of a portion of the west boundary, a portion of the subdivision of section 30, portions of certain lots and small holding claims and the survey of certain lot boundaries in section 30, Township 7 North, Range 3 East, New Mexico Principal Meridian, New Mexico, under Group 829 NM.

The surveys were requested by the District Manager, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

**Gary S. Speight,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 87-8347 Filed 4-14-87; 8:45 am]

BILLING CODE 4310-FB-M

---

[CA-050-07-4333-11]

## Special Area Designation

Public lands within the Forks of Butte Creek Recreation Area in Butte County, California, which are not legally claimed under the mining laws, are designated as a special area within which Special Recreation Permits are required for recreational panning, sluicing and dredging (commonly called recreational mining). This designation is made under the authority of 43 CFR 8372.1-1,2.

The public lands affected by this designation are specifically described as Butte Creek, as it traverses portions of:

Mt. Diablo Base and Meridian

T. 24 N., R. 3 E.,
Section 22, Lots 1, 3, 5;
Section 26, Lots 2, 3, 4;
Section 27, Lots 2, 3, 4, 7;
Section 34, Lots 10, 15.
T. 23 N., R. 3 E.,

Section 3, Lot 3.

Totalling approximately 385 acres.

Any person who engages in recreational panning, sluicing or dredging without proper authorization or in violation of permit terms or stipulations may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, under the authority of 43 CFR 8372.0–7.

The public lands affected by this order will be posted at points of public access to recreational panning, sluicing and dredging areas. Maps showing the area affected by this order are available from the Redding Area Office, 355 Hemsted Drive, Redding, CA 06002.

Effective date of action is June 1, 1987.

**SUPPLEMENTARY INFORMATION:** The Forks of Butte Creek Recreation Area was placed under protective withdrawal (S 4528) under Public Land Order 5329 on January 18, 1973, to segregate the area from all forms of appropriation, including the mining laws. While the mineral rights to much of this area continue to be held under mining claims which pre-date this withdrawal several segments of Butte Creek are not encumbered with mining claims. These areas have become extremely popular for recreational collection via panning, sluicing and dredging. Overcrowding and overuse of the stream has resulted in conflicts between competing mineral collectors, fishermen and swimmers, as well as degradation of water quality and fishery habitat.

By requiring recreational panners, sluicers and dredgers to obtain and operate under the terms and stipulations of a Special Recreation Permit, the actions, numbers and distribution of such recreational users can be controlled to prevent unnecessary environmental degradation, eliminate user conflicts, and provide for higher quality recreational experience opportunities.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Bainbridge, Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, CA 96002 (916) 246–5325.

Dated: April 2, 1987.

**Robert J. Bainbridge,**

*Redding Area Manager.*

[FR Doc. 87–8345 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–40–M

---

[CO–940–07–4220–11; C–28311]

## Colorado; Proposed Continuation of Withdrawal

March 31, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for the Twin Sisters Administrative Site, be modified and the withdrawal be continued for 20 years insofar as it affects approximately 20 acres of National Forest System Land. The land will remain closed to surface entry and mining, but not to mineral leasing.

**DATE:** Comments should be received within 90 days of publication date.

**ADDRESS:** Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Executive Order 2024, dated August 17, 1914, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

**Sixth Principal Meridian**

*Roosevelt National Forest*

T. 4 N., R. 73 W.,

Sec. 24, that portion of S½S½SW¼ within the Roosevelt National Forest.

The area described aggregates approximately 20 acres in Larimer County.

The purpose of this withdrawal is for the administration and protection of the Twin Sisters Lookout Administrative Site. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

**Evelyn W. Axelson,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87–8349 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–JB–M

---

[CO–940–07–4220–11; C–013229]

## Colorado; Proposed Continuation of Withdrawal

April 6, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture, proposes that the order which withdraw lands for an indefinite period of time for the Buford Ranger Station, be modified and the withdrawal be continued for 20 years insofar as it affects 10 acres of public land. The land will remain closed to surface entry and mining, but not to mineral leasing.

**DATE:** Comments should be received within 90 days of publication date.

**ADDRESS:** Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 1348, dated October 16, 1956, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

**Sixth Principal Meridian**

T. 1 S., R. 91 W.,

Sec. 4, SW¼NE¼SE¼SW¼, SE¼NW¼SE¼SW¼, NE¼SW¼SE¼SW¼, and NW¼SE¼SE¼SW¼.

The area described aggregates 10 acres in Rio Blanco County.

The purpose of this withdrawl is for the administration and protection of the Buford Ranger Station. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action

BEST COPY AVAILABLE

may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

**Evelyn W. Axelson,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87–8348 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–JB–M

---

[ID–050–07–4920–10–7887]

## Amendment of the Monument Resource Management Plan; Realty Action; Direct Sale of Public Land in Jerome County, ID, to the North Side Canal Company

**AGENCY:** Bureau of Land Management, Idaho.

**ACTION:** Combined notice of action (NOA)—Amendment of the monument resource management plan (RMP) and notice of realty action (NORA)—direct sale of public land in Jerome County, Idaho, to the North Side Canal Company.

**DATE:** April 8, 1987.

**ADDRESS:** BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

**SUMMARY:** Notice is given that the Bureau of Land Management (BLM) is amending the Monument RMP to allow for disposal of certain public lands in Jerome County. The planning amendment will become effective upon Idaho State Director signature following completion of the required 30 day comment period for the NOA unless protests to the Planning Amendment are received. The direct sale to the North Side Canal Company will be held no less than 60 days from the date of Federal Register publication of this Notice at 1:00 p.m. on the next working day unless protests to the Direct Sale are received.

**SUPPLEMENTARY INFORMATION:** The following described land was examined and through the public supported land use planning process determined to be suitable for disposal by sale pursuant to section 203(a)(3) of the Federal Land Policy and Management Act of 1976 at no less than fair market value as determined by an appraisal to be completed prior to the end of the comment periods:

T. 9 S., R. 19 E., B.M.
Sec. 24: SE¼NE¼.
(40.00 acres more or less)

When patented, the land will be subject to the following reservations:

Ditches and canals, oil and gas to U.S.
BL–039651 Reservoir Right-of-Way
BL–040698 Ditch Rider Station
I–23054 Electrical Powerline Right-of-Way 24 feet wide
I–010060 Road Right-of-Way 50 feet wide
I–23659 Road Right-of-Way 50 feet wide

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of their grants. Administrative responsibility previously held by the United States will be assumed by the patentee.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws as provided by 43 CFR 2711.1–2(d).

*Sale Procedures:* The sale parcel will be sold by direct bid procedure as follows: A certified check for the entire appraised amount must be submitted in person or by mail prior to the time of sale on the date specified by the Authorized Officer.

The check will constitute an application to purchase that portion of the mineral estate of no known value. An additional $50.00 non-returnable mineral conveyance processing fee in the form of a certified check is required.

The total appraised parcel amount and mineral conveyance fee must be submitted on separate certified checks made payable to: Department of the Interior—BLM.

Detailed information concerning the sale may be obtained by contacting Joseph Aitken at (208) 886–2206.

*Planning Protest:* Any party that participated in the Plan Amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the State Director within 30 days of this Notice. In the absence of any planning protests or objections regarding the sale, this Notice of Action and Planning Amendment shall become effective.

*Sale Comments:* For a period of 45 days from the date of publication of this Notice in the **Federal Register** interested parties may submit comments regarding the land sale to the District Manager, Bureau of Land Management, P.O. Box 2–B, Shoshone, Idaho 83352. Objections to the sale will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any protests or objections regarding the sale, this realty action will become the final determination of the Department of Interior.

**Jon H. Idso,**

*District Manager.*

[FR Doc. 87–8397 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–GG–M

---

## Fish and Wildlife Service

### Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Part 17 and 18).

*Applicant*

Name: Fish & Wildlife Service, Assistant Regional Director, Fish & Wildlife Enchancement, Portland, Oregon; File No. PRT–717318.

*Type of Permit:* Scientific Research

*Name of Animals:* Southern Sea Otter, (*Enhydra lutris nereis*)

*Summary of Activity to be Authorized:* The applicant proposes to take these animals to conduct research aiding the management efforts authorized by an Act to Improve Fish and Wildlife Management, P.L. 99–625. Research would require applicant to capture tag, hold and translocate up to 70 otters during the first year (1987) and no more than 70 during subsequent years (1988–1992), not to exceed a total of 250 animals from the wild population, estimated to be approximately 1500–1600. Only nonpregnant, independent animals over 15 lbs. will be taken. Most captures will occur in August, September and October. In addition to attachment of Monel and temple tags, captured otters would undergo premolar tooth extraction and blood sampling. Drugs used would include halothane and fentanyl with a narcan atagonist. Animals that have lost tags will be recaptured to replace them. Transport would be accomplished using commercially available pet transport cages.

*Source of Marine Mammals for Research:* Captures will occur from Santa Cruz to Pismo Beach, California. Translocated animals may also include stranded, orphaned, or captive-bred

otters. Release site will be San Nicholas Island, off the coast of California.

*Period of Activity:* August 15, 1987 through August 14, 1992, subject to renewal.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: April 10, 1987.

**R.K. Robinson,**

*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 87-8441 Filed 4-14-87; 8:45 am]

BILLING CODE [illegible]

## INTERNATIONAL TRADE COMMISSION

### Agency Forms Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

*Purpose of Information Collection:* The proposed information collection is for use by the Commission in connection with investigation No. 332-233, U.S. Global Competitiveness: Optical Fibers, Technology and Equipment, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332). The proposed information request was originally submitted to OMB on December 1, 1986, but withdrawn by the Commission on February 24, 1987, for revision and improvement of the design of the proposed questionnaires submitted in connection with the request. This notice represents a resubmission of the above information collection request.

*Summary of proposals:*

(1) Number of forms submitted: two
(2) Title of forms: U.S. Global Competitiveness: Optical Fibers, Technology and Equipment: Questionnaries for U.S. Producers, Importers and Purchasers of Optical Fiber, Optical Fiber Cable and/or Optical Fiber Put Up In Other Multiple Fiber Forms
(3) Type of Request: resubmission
(4) Frequency of use: nonrecurring
(5) Description of respondents: firms which produce, import, or purchase optical fibers, optical fiber cable, and optical fiber put up in other multiple fiber forms
(6) Estimated number of respondents: 200
(7) Estimated total number of hours to complete the forms: 4,000
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

*Additional Information or Comment:* Copies of the proposed form and supporting documents may be obtained from Christopher Johnson (USITC tel. no. 202-724-1730) or Linda Linkins (tel. no. 202-724-1745). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and incuding specific suggested revisions or launguage changes.

*Submission of Comments:* Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register.** If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Issued: April 10, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87-8429 Filed 4-14-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-259]

### Certain Battery-Powered Smoke Detectors; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Gateway Scientific Inc. ("Gateway").

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 8, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

*Written Comments:* Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why

confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Dated: April 8, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–8430 Filed 4–14–87; 8:45 am]

BILLING CODE 7020-02-M

---

**[Investigation No. 337–TA–259]**

## Certain Battery-Powered Smoke Detectors; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Pyrotector, Inc. ("Pyrotector").

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 8, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: April 8, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–8431 Filed 4–14–87; 8:45 am]

BILLING CODE 7020-02-M

---

**[Investigation No. 337–TA–265]**

## Certain Dental Prophylaxis Methods, Equipment and Components Thereof; Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 5, 1987, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Dentsply International Inc., 570 W. College Avenue, P.O. Box 872, York, Pennsylvania 17405 and Dentsply Research and Development Corp., Lakeview and Clarke Avenues, P.O. Box 359, Milford, Delaware 19963. The complaint alleges unfair methods of competition and unfair acts in the importation of certain dental prophylaxis methods, equipment and components thereof into the United States, and in their sale, by reason of alleged direct, contributory and induced infringement of (1) at least claims 1–3 of U.S. Letters Patent 3,882,638; (2) at least claim 4 of U.S. Letters Patent 3,972,123; and (3) at least claims 1–6, 12–14, 16, 20, 21 and 23 of U.S. Letters Patent 4,412,402. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**FOR FURTHER INFORMATION CONTACT:** Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1273.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 6, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain dental prophylaxis methods, equipment and components thereof into the United States, or in their sale, by reason of alleged direct, contributory and induced infringement of (1) claims 1–3 of U.S. Letters Patent 3,882,638; (2) claim 4 of U.S. Letters Patent 3,972,123; or (3) claims 1–6, 12–14, 16, 20, 21 and 23 of U.S. Letters Patent 4,412,402, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Dentsply International Inc., 570 W. College Avenue, P.O. Box 872, York, Pennsylvania 17405

Dentsply Research and Development Corp., Lakeview and Clarke Avenues, P.O. Box 359, Milford, Delaware 19963

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sanofi, Inc., 159 Dwight Place, Fairfield, New Jersey 07006

Saofi, S.A., Z.I. du Phare, 33700 Merignac, France

Electro Medical Systems, S.A., G.H. Piquet 17, CH–1347 Le Sentier, Switzerland

Dabi-Atlante, S.A. Ind Medico Odontologigas, Au Presidente Coste lo Banco 2525, C6C 55,979.736/000 1–45, CEP 14100, Rib Preto, SP Brazil

Deldent, Ltd., Petach Tikva, Israel

EMDA Fabrik Elektro-Medizinischer, Hanaher Land Strasse 139–145, 6000 Frankfurt Am Main, Federal Republic of Germany

S–T Products, 502 Delso Street, P.O. Box D, Flint, Michigan 48507
Kromadent Co., Inc., 5565 West Flagler, Miami, Florida 33126
Peerless International, Inc., 228 Tosca Drive, P.O. Box 430, Staughton, Massachusetts 02072
Benco Dental Supply Company, 11 Bear Creek Boulevard, Wilkes-Barre, Pennsylvania 18773
Healthco International, Inc., 25 Stuart Street, Boston, Massachusetts 02116
Kavo American Corporation, 2401 West Hassell Road, Hoffman Estates, Illinois 60195
University Dental Supply Co., Inc., 50 West 23rd Street, New York, New York 10010
Henry Schein, Inc., 5 Harbor Park Drive, Port Washington, New York 11050

(c) Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential business information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.
Issued: April 8, 1987.

Kenneth R. Mason,
*Secretary.*

[FR Doc. 87–8432 Filed 4–14–87; 8:45 am]
BILLING CODE 7020–02–M

---

[Investigation No. 337–TA–257]

## Certain Electronic Wall Stud Finders; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Meyer Electronics, Ltd. ("Meyer") and Philips Home Products, Inc. ("PHP").

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 8, 1987.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.
Issued, April 8, 1987.

Kenneth R. Mason,
*Secretary.*

[FR Doc. 87–8433 Filed 4–14–87; 8:45 am]
BILLING CODE 7020–2–M

---

[Investigation No. 337–TA–244]

## Certain Insulated Security Chests; Commission Decision To Review and Remand an Initial Determination Terminating Respondents; Designation of Investigation as More Complicated

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Review of an initial determination (ID) terminating respondents EP Industrial Co., Ltd. (EP); Fedco, Inc., (Fedco); Builder's Emporium, Inc. (Builder's Emporium); and Handyman; remand of investigation to the presiding administrative law judge (ALJ); more complicated designation.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review and remand an ID (Order No. 13) terminating respondents EP, Fedco, Builder's Emporium, and Handyman as respondents in the above-captioned investigation. The Commission has also determined to designate the investigation "more complicated" and to extend the deadline for completion of the investigation until June 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0148.

**SUPPLEMENTARY INFORMATION:** On March 13, 1987, the ALJ issued an ID terminating the investigating on the basis of Motions Nos. 244–14 and 244–15, terminating EP on the basis of a proposed consent order appended to complaint's Motion No. 244–15, and terminating the three remaining

respondents on the basis of complainant's Motion No. 244–14. The Commission investigative attorney (IA) opposed the motion to terminate EP on the basis of the consent order, asserting that certain provisions were extraterritorial in scope and thus exceeded the Commission's jurisdiction and that the class of persons covered by the proposed consent order was excessively broad. The IA filed a petition for review of the ID. An opposition to the petition for review was filed by Brush. No Government agency or public comments regarding the ID were received.

The Commission has determined to review and reverse the ID, to remand the investigation to the ALJ for further proceedings consistent with the Commission's Action and Order and Memorandum Opinion, to designate the investigation "more complicated," and to extend the deadline for completing the investigation until June 9, 1987.

The basis for the Commission's actions are set forth in the Commission's Action and Order and accompanying Memorandum Opinion. The Commission has determined to declare the investigation "more complicated" on the basis of "other significant factors" within the meaning of rule § 210.59, 19 CFR 210.59, viz., the inability of the parties to settle their differences in a manner consistent with the Commission's rules despite their evident desire to settle this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules § 210.53–.59 (19 CFR 210.53–.59).

Copies of the ID, the Commission's Action and Order, Memorandum Opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–1626.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: April 10, 1987.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–8434 Filed 4–14–87; 8:45 am]

BILLING CODE 7020-02-M

**Investigation No. 337–TA–264**

## Certain Mail Extraction Desks and Components Thereof; Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 3, 1987, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Opex Corporation, 42 Olney Avenue, Cherry Hill, New Jersey 08003. The complaint alleges unfair methods of competition and unfair acts in the importation of certain mail extraction desks and components thereof into the United States, and in their sale, by reason of alleged direct, contributory and induced infringement of claims 1, 2, 5–7, 10–12, and 14 of U.S. Letters Patent Re. 32,328. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and a permanent cease and desist order.

**FOR FURTHER INFORMATION CONTACT:** T. Spence Chubb, Esq., or Deborah S. Strauss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–2823 and 201–523–1233, respectively.

**Authority:** The authority for institution of this investigation is contained in section 377 of the Tariff Act of 1930 and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 1, 1987, *ordered that:*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain mail extraction desks and components thereof into the United States, or in their sale by reason of alleged infringement of claims 1, 2, 5–7, 10–12, or 14 of U.S. Letters Patent Re. 32,328, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Opex Corporation, 42 Olney Avenue, Cherry Hill, New Jersey 08003.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Stielow GmbH & Company KG, Kosliner WEF 5.D–2000 Norderstedt, Federal Republic of Germany

Almega Systems Inc., 5 Cedarwood Court, Setauket, New York 11733

Automated Equipment Services, 14 Noxon Road, Poughkeepsie, New York 12603.

(c) T. Spence Chubb, Esq., and Deborah S. Strauss, Esq., Office of Unfair Import Investigations, United States International Trade Commission, 701 E Street NW., Room 126, Washington, DC 20436, shall be the Commission investigative attorneys, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information

on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: April 6, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–8435 Filed 4–14–87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. 337–TA–250]

## Certain Ventilated Motorcycle Helmets; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Shoei Kako Co, Ltd. and Shoei Safety Helmets Corp. (Shoei).

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 7, 1987

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: April 7, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–8436 Filed 4–14–87; 8:45 am]

BILLING CODE 7020-02-M

---

## INTERSTATE COMMERCE COMMISSION

[Decisions No. 13–21; Finance Docket No. 30800 Subs-No. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24]

## Trackage Rights and Purchase Applications of Various Railroads

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Applications accepted for consideration.

**SUMMARY:** The Commission is accepting for consideration applications of various railroads for trackage rights over certain lines of other railroads and for purchase of certain railroad assets. The specific application information is set forth in the supplementary information section of this notice.

**DATES:** Written comments must be filed with the Interstate Commerce Commission by May 15, 1987. Opposition evidence must be filed by June 15, 1987. Oral hearings in this consolidated proceeding will begin on August 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Alan Greenbaum (202) 275–7322.

**ADDRESSES:** An original and 20 copies of all documents referring to Finance Docket No. 30800 (Sub-Nos. 8 and 9) should be filed with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

One copy of all documents should be sent to:

(1) Rail Section Interstate Commerce Commission Washington, DC 20423

(2) All active parties of record by first-class mail within 10 days of the service date of the Commission's revised service list to be issued shortly.

In addition written comments shall be concurrently served by first-class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on the representatives listed with the specific applications in the supplementary information to this notice.

**SUPPLEMENTARY INFORMATION:** By statute and regulation, responsive applications were due to be filed March 17, 1987. 49 U.S.C. 11345(b)(2); and 49 CFR 1180.4(d)(4). We granted responsive applicants an extension of time to complete their applications by April 7, 1987 (Decision No. 11, served March 19, 1987). Supporting traffic studies, operating plans, *pro forma* financial statements, density charts, labor impact data, competitive analysis, and environmental and energy exhibits were to be filed by the date. Due to time constraints, these materials were not considered in the Commission's decision accepting this application.

The application and exhibits are available for public inspection in the Public Docket Room at the Office of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained from applicants' representatives upon request. Interested persons should request copies of exhibits due April 7 from applicants' representatives, so their comments may reflect the later filed information.

The application is consolidated for disposition with the applications in Finance Docket No. 3080, *et al.* Those applications are the subject of oral hearings conducted by Chief Administrative Law Judge Cross commencing August 3, 1987. By statute, the evidentiary phase of these proceedings must end by December 17, 1988. Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first instance by the entire Commission. 49 U.S.C. 11345.

*Participation in the Proceeding.* Interested persons may participate formally by submitting written comments regarding the application. Comments should indicate the exact proceeding designation. Comments shall include the following: the person's position in support of or in protest to the proposed transaction, and the specific reasons why approval would or would not be in the public interest. *See* 49 CFR 1180.4(d)(1). Interested persons who do not intend to participate formally in the proceeding but who desire to comment may file statements, subject to the filing and service requirements specified above. Persons must state specifically whether they intend to participate

actively in the proceedings and in oral hearings on the application or whether they wish only to be advised of all decisions issued by the Commission in this proceeding. Failure to state an intention to participate as an active party will result in the person being placed in the latter category. In addition, opposition evidence must be filed by June 15, 1987.

Additional information is contained in the Commission's decision. Copies of the decision are available for purchase from T. S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 or toll-free (800) 424–5403.

**Applications accepted for consideration**

*Decision No. 13—Finance Docket 30800 (Sub-No. 6)—Denver and Rio Grande Western Railroad Company—Trackage Rights—Over Missouri-Kansas-Texas Railroad Company and Oklahoma, Kansas and Texas Railroad Company*

The Commission is accepting for consideration the application of the Denver and Rio Grande Western Railroad Company (DRGW) for trackage rights over certain lines of the Missouri-Kansas-Texas Railroad Company (MKT) and its wholly owned subsidiary Oklahoma, Kansas and Texas Railroad Company (OKT), subject to conditions. This application is filed as a proposed condition to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, Union Pacific Railroad and Missouri Pacific Railroad to acquire control over the MKT.

(1) Applicant's representatives:

Samuel R. Freeman, Vice President and General Counsel, The Denver and Rio Grande Western Railroad Company, P.O. Box 5482, Denver, CO 80217.

E. Barrett Prettyman, Jr., 815 Connecticut Avenue, NW., Washington, DC 20006–4072.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

*Decision No. 14—Finance Docket No. 30800 (Sub-No. 7)—Georgetown Railroad Company—Trackage Righs and Asset Purchase*

The Commission is accepting for consideration the application of Georgetown Railroad Company (GRR) (1) for trackage rights over certain lines of the Union Pacific Railroad Company (UPRR) and Missouri-Pacific Railroad Company (MPRR) and Missouri-Kansas-Texas Railroad Company (MKT) and (2) to purchase a certain MKT line segment. This application is filed as a proposed condition to possible approval of the primary applications filed by Union Pacific Corporation and its wholly-owned subsidiaries, UPRR and MPRR to acquire control over MKT.

(1) Applicant's representative: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

*Decision No. 15—Finance Docket No. 30800 (Sub-No. 8)—Burlington Northern Railroad Company—Trackage Rights—Over Oklahoma, Kansas and Texas Railroad Company Between Salina, KS and Bowie, TX, and Finance Docket No. 30800 (Sub-No. 9)—Burlington Northern Railroad Company—Trackage Rights—Over Missouri Pacific Railroad Company Between Fort Worth and Laredo, TX*

The Commission is accepting for consideration the applications of the Burlington Northern Railroad Company (BN) for trackage rights over certain lines of the Oklahoma, Kansas and Texas Railroad Company (OKT) and the Missouri Pacific Railroad Company (MPRR). These conditions are filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly-owned subsidiaries. Union Pacific Railroad Company (UPRR) and MPRR to acquire control over MKT.

(1) Applicant's representative: William R. Power, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

*Decision No. 16—Finance Docket No. 30800 (Sub-No. 10)—Austin & Northwestern Railroad Company—Trackage Rights—Over Union Pacific Railroad Company Between McNeil, Temple and Milano, TX, and Finance Docket No. 30800 (Sub-No. 11)—Austin & Northwestern Railroad Company—Trackage Rights—Over Missouri-Kansas-Texas Railroad Company Between Elgin and Houston, TX*

The Commission is accepting for consideration the applications of the Austin & Northwestern Railroad Company (AUNW) for trackage rights over certain lines of the Union Pacific Railroad Company (UPRR) and Missouri-Kansas-Texas Railroad Company (MKT). These applications are filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, UPRR and Missouri Pacific Railroad Company to acquire control over MKT.

(1) Applicant's representatives: Kimberly A. Madigan, John Docherty, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

*Decision No. 17—Finance Docket No. 30800 (Sub-No. 12)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Union Pacific Railroad Company Between Omaha, NE, and Topeka, KS, and Finance Docket No. 30800 (Sub-No. 13)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company Between Eton Junction, MO and Rock Creek Junction, MO, and Finance Docket No. 30800 (Sub-No. 14)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company and Missouri-Kansas-Texas*

*Railroad Company, and Finance Docket No. 30800 (Sub-No. 15)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Missouri Pacific Railroad Company Between Ft. Worth and Dallas, TX, and Finance Docket No. 30800 (Sub-No. 16)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Galveston, Houston and Henderson Railroad Between Houston and Galveston, TX, and Finance Docket No. 30800 (Sub-No. 17)—The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights—Over Missouri-Kansas-Texas Railroad Company Between Wichita, KS and Enid, OK, and Finance Docket No. 30800 (Sub-No. 18)—The Atchison, Topeka and Santa Fe Railway Company—Securities Purchase—Texas City Terminal Railway Company*

The Commission is accepting for consideration the applications of the Atchison, Topeka and Santa Fe Railway Company (ATSF) for trackage rights over certain lines of Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR), Galveston Houston and Henderson Railroad, and Missouri-Kansas-Texas Railroad Company (MKT) and the right to purchase certain securities. Those applications are filed as proposed conditions to possible approval of the application of Union Pacific Corporation and its wholly owned subsidiaries, UPRR and MPRR, to acquire control over MKT.

(1) Applicant's representatives:

Gus Svolos, Milton E. Nelson, Jr., 80 E. Jackson Blvd., Chicago, IL 60604.

R. Eden Martin, G. Paul Moates, 1722 Eye Street, NW., Washington, DC 20006.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missour-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

*Decision No. 18—Finance Docket No. 30800 (Sub-No. 20)—The Texas Mexican Railway Company—Trackage Rights Over Union Pacific Railroad Company Between Laredo and San Antonio, TX*

The Commission is accepting for consideration the application of Texas Mexican Railway Company (TM) for trackage rights over Union Pacific Railroad Company (UPRR) between Laredo and San Antonio, TX. This application is filed as a proposed condition to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, Union Pacific Railroad Company and Missouri Pacific Railroad Company (MPRR) to acquire control over the Missouri-Kansas-Texas Railroad Company (MKT).

(1) Applicant's representatives:

Mr. A.R. Ramos, Chairman of the Board, The Texas Mexican Railway, 1200 Washington Street, Laredo, TX 78040, and, Charles H. White, Jr., 1730 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missour-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

*Decision No. 19—Finance Docket No. 30800 (Sub-No. 21)—Iowa Southern Railroad Company—Trackage Rights and Asset Purchase*

The Commission is conditionally accepting for consideration the application of the Iowa Southern Railroad Company for trackage rights over certain lines of the Missouri-Kansas-Texas Railroad Company (MKT) and for purchase of certain railroad assets. The application is filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, Union Pacific Railroad Company and Missouri Pacific Railroad Company to acquire control over MKT.

(1) Applicant's representative: Alan P. Sherbrooke, 10th Floor, 1011 Western Avenue, Seattle, WA 98104.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missour-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

*Decision No. 20—Finance Docket No. 30800 (Sub-No. 22)—The Kansas City Southern Railway Company—Trackage Rights Over Missouri Pacific Railroad Company and Missouri-Kansas-Texas Railroad Company*

The Commission is accepting for consideration the application of the Kansas City Southern Railway Company (KCS) for trackage rights over Missouri Pacific Railroad Company (MPRR or MP), Missouri-Kansas-Texas Railroad Company (MKT), and several other lines. This application is filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly owned subsidiaries, Union Pacific Railroad Company (UPRR) and MP to acquire control over MKT.

(1) Applicant's representatives:

Robert E. Zimmerman, Robert K. Dreiling, 114 West 11th Street, Kansas City, MO 64105.

Joseph Auerbach, Morris Raker, Louis A. Rodrigues, Sullivan & Worcester, One Post Office Square, Boston, MA 02109, and David M. Schwartz, Robert L. Calhoun, Sullivan & Worcester, 1025 Connecticut Avenue, NW, Washington, DC 20036.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York, NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

*Decision No. 21—Finance Docket No. 30800 (Sub-No. 23)—St. Louis Southwestern Railway Company—Trackage Rights Between Denison and Council Bluffs; Topeka and Omaha; and Chicago, Gorham, East St. Louis, and Finance Docket No. 30800 (Sub-No. 24)—Southern Pacific Transportation Company—Trackage Rights Between Dallas and Fort Worth: Hearne and Kerr; Smithville and LCRA; and Over Texas City Terminal Railroad*

The Commission is accepting for consideration the applications of St. Louis Southwestern Railway Company (SSW) and its parent company, Southern Pacific Transportation Company (SP), for trackage rights over Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR or MP), and Missouri-Kansas-Texas Railroad Company (MKT), and over other railroads within terminal areas. These applicants are filed as proposed conditions to possible approval of the primary applications filed by Union Pacific Corporation and its wholly-owned subsidiaries, UPRR and MPRR to acquire control over MKT.

(1) Applicants' representative: John MacDonald Smith, 813 Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

(2) Representatives of primary applicants:

William J. McDonald, Union Pacific Corporation, 345 Park Avenue, New York NY 10154.

James V. Dolan, Union Pacific Railroad, Missouri Pacific Railroad, 1416 Dodge Street, Omaha, NE 68179.

Arthur M. Albin, Missouri-Kansas-Texas Railroad, 701 Commerce Street, Dallas, TX 75202.

Dated: April 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-8553 Filed 4-14-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Eagle Electric Manufacturing Co. Inc., Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Department Policy, 28 CFR 50.7, 38 FR. 19029, notice is hereby given that a consent decree in *United States v. Eagle Electric Manufacturing Co., Inc.*, Civil Action No. CV-85-4476, was lodged with the United States District Court for the Eastern District of New York on April 2, 1986. The consent decree establishes a compliance program for the Long Island City, New York plant owned and operated by Eagle Electric Manufacturing Co., Inc., to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $82,500.00.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Eagle Electric Manufacturing Co., Inc.*, D.J. Ref. No. 90-5-1-1-2474.

The consent decree may be examined at the office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction charge) payable to the Treasury of the United States.

F. Henry Habicht, II,

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-8358 Filed 4-14-87; 8:45 am]

BILLING CODE 4410-01-M

### Miller & Sons, Inc.; Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Miller & Sons, Inc.*, Civil Action No. 85-5737, was lodged with the United States District Court for the District of New Jersey on March 31, 1987. The consent decree establishes a compliance program for the Belleville, New Jersey plant owned and operated by Miller & Sons, Inc., to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $62,000.00.

Written comments relating to the Consent Decree will be received by the Department of Justice for a period of thirty (30) days from the date of publication of this notice. Prior to the entry of the Consent Decree by the Court, the Department of Justice will consider, and file with the Court, any written comments received. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Miller & Sons, Inc.*, D.J. Ref. No. 90-5-1-1-2469.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-8359 Filed 4-14-87; 8:45 am]

BILLING CODE 4410-01-M

### Nu-Tronic Circuit Co., Inc.; Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 17029, notice is hereby given that a consent decree in *United States* v. *Nu-Tronic Circuit Company, Inc.*, Civil Action No. 85-5738, was lodged with the United States District Court for the District of New Jersey on March 31, 1987. The consent decree establishes a compliance program for the Paterson, New Jersey plant owned and operated by Nu-Tronic Circuit Company, Inc., to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $68,000.00.

Written comments relating to the Consent Decree will be received by the Department of Justice for a period of thirty (30) days from the date of publication of this notice. Prior to the entry of the Consent Decree by the Court, the Department of Justice will consider, and file with the Court, any written comments received. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Nu-Tronic Curcuit Company, Inc.*, D.J. Ref. No. 90-5-1-1-2475.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of

the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction charge) payable to the Treaurer of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-8360 Filed 4-14-87; 8:45 am]

BILLING CODE 4410-01-M

## Revlon, Inc., Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Revlon, Inc.*, Civil Action No. 85-5735 (JWB), was lodged with the United States District Court for the District of New Jersey on March 7, 1987. The consent decree establishes a compliance program for the Irvington, New Jersey plant owned and operated by Revlon, Inc., to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $105,000.00.

Written comments relating to the Consent Decree will be received by the Department of Justice for a period of thirty (30) days from the date of publication of this notice. Prior to the entry of the Consent Decree by the Court, the Department of Justice will consider, and file with the Court, any written comments received. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Revlon, Inc.*, D.J. Ref. No. 90-5-1-1-2478.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

**F. Henry Habicht, II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-8361 Filed 4-14-87; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-19,378]

### Honeywell Inc., Fort Washington, PA; Public Hearing

A public hearing is scheduled for 6:00 pm on May 11, 1987 in the Ambler Room at the Holiday Inn, 432 Pennsylvania Avenue, Fort Washington, Pennsylvania. The public hearing is for petitioners or any other persons showing a substantial interest in the proceedings to furnish additional testimony and evidence of a relevant and material nature bearing upon the investigation regarding petition TA-W-19,378 filed on behalf of workers and former workers at Honeywell, Incorporated, Fort Washington, Pennsylvania.

Such individuals who desire to furnish additional testimony as evidence should inform the Director, Office of Trade Adjustment Assistance, Department of Labor, of their intention to appear not later than Thursday, April 30, 1987. Mr. Marvin M. Fooks, Director, OTAA, can be reached in Washington, DC, at (202) 376-2646. The Director's Office is in Room 6434, 601 D Street NW., Washington, DC, 20213.

Signed at Washington, DC, this 10th day of April, 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-8559 Filed 4-13-87; 3:07 pm]

BILLING CODE 4510-30-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge Section) to the National Council on the Arts will be held on April 28-29, 1987, from 9:00 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

April 8, 1987.

[FR Doc. 87-8401 Filed 4-14-87; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL LABOR RELATIONS BOARD

### Revision of Statement of Organization and Functions

**AGENCY:** National Labor Relations Board.

**ACTION:** Notice of proposed reorganization of Regional Offices.

**SUMMARY:** The National Labor Relations Board is considering revision of the territorial areas covered by some of its Regional Offices. In order to ensure that all interested persons can comment on the reorganization, the Board is publishing the reorganization in proposed form and invites comments that will be reviewed as part of the final consideration.

**DATE:** Comments by May 15, 1987.

**ADDRESS:** Send or deliver written comments to: Rosemary M. Collyer, General Counsel, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

**FOR FURTHER INFORMATION CONTACT:** B. Allan Benson, Deputy to the Assistant General Counsel, 1717 Pennsylvania Avenue, NW., Room 1010, Washington, DC 20570, Telephone: (202) 254-6334.

**SUPPLEMENTARY INFORMATION:** The National Labor Relations Board has recently completed an examination of its field offices to determine whether existing Regional boundaries permit those offices to process cases as

efficiently and economically as possible. This examination was occasioned by the Agency's need to conserve its resources, to avoid any unnecessary expenditures, and to process its cases as efficiently and promptly as it had in the past. As a result of this examination, the National Labor Relations Board has concluded that the boundaries of certain Regional Offices should be adjusted. In some cases, these adjustments are necessary so that geographic areas can be served by the closest Regional Office, thereby reducing travel, overnight lodging expenses, and staff time spent in transit. In others, in addition to conserving resources, an adjustment appears warranted to ensure that sufficient work is allocated to each field office. Finally, the examination revealed a need to downscale one office and to eliminate another where there is insufficient case intake to warrant the present structure.

The last regional and subregional office boundaries were published at 44 FR 34215–34220, June 14, 1979. Accordingly, the NLRB proposes to amend its regional office boundaries as follows:

*Region 4, Philadelphia*—Three Pennsylvania counties (Adams, Cumberland, and York) will be realigned from Region 4 to Region 5, Baltimore.

*Region 5, Baltimore*—Thirty-four southwestern Virginia counties (Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchannan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe) and the city of Bristol in Sullivan County, Tennessee, will be realigned from Region 5 to Region 11, Winston-Salem.

Four Pennsylvania counties (Adams, Cumberland, Franklin, and York) will be realigned to Region 5 from Regions 4 and 6.

*Region 6, Pittsburgh*—One Pennsylvania county (Franklin) will be realigned from Region 6 to Region 5.

Eight West Virginia counties (Braxton, Calhoun, Gilmer, Pleasants, Ritchie, Tyler, Wirt, and Wood) will be realigned to Region 6 from Region 9, Cincinnati.

*Region 7, Detroit*—Four Michigan counties (Chippewa, Luce, Mackinac, and Schoolcraft) will be realigned to Region 7 from Region 30, Milwaukee.

*Region 8, Cleveland*—Four Ohio counties (Monroe, Morgan, Noble, and Washington) will be realigned to Region 8 from Region 9, Cincinnati.

Five Ohio counties (Champaign, Darke, Mercer, Miami, and Shelby) will be realigned from Region 8 to Region 9.

*Region 9, Cincinnati*—Five Ohio counties (Champaign, Darke, Mercer, Miami, and Shelby) will be realigned to Region 9 from Region 8, Cleveland.

Four Ohio counties (Monroe, Morgan, Noble, and Washington) will be realigned from Region 9 to Region 8.

Forty southwestern Kentucky counties (Adair, Allen, Ballad, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster) will be realigned from Region 9 to Region 26, Memphis.

Eight West Virginia counties (Braxton, Calhoun, Gilmer, Pleasants, Ritchie, Tyler, Wirt, and Wood) will be realigned from Region 9 to Region 6, Pittsburgh.

Four West Virginia counties (Greenbriar, Mercer, Monroe, and Summers) will be realigned from Region 9 to Region 11, Winston-Salem.

*Region 10, Atlanta*—Twenty-one southern Georgia counties (Appling, Atkinson, Bacon, Brantly, Brooks, Camden, Charlton, Clinch, Coffee, Decatur, Echols, Glynn, Grady, Jeff Davis, Lanier, Lowndes, Pierce, Seminole, Thomas, Ware, and Wayne) will be realigned from Region 10 to Region 12.

Fourteen central Tennessee counties (Bledsoe, Clay, Cumberland, Fentress, Grundy, Jackson, Marion, Overton, Pickett, Putnam, Sequatchie, Van Buren, Warren, and White) will be realigned from Region 10 to Region 26, Memphis.

*Region 11, Winston-Salem*—Thirty-four southwestern Virginia counties (Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlottee, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe) will be realigned to Region 11 from Region 5, Baltimore.

The city of Bristol in Sullivan county Tennessee will be realigned to Region 11 from Region 5.

Four West Virginia counties (Greenbriar, Mercer, Monroe, and Summers) will be realigned to Region 11 from Region 9, Cincinnatti.

*Region 12, Tampa*—Twenty-one southern Georgia counties (Appling, Atkinson, Bacon, Brantly, Brooks, Camden, Charlton, Clinch, Coffee, Decatur, Echols, Glynn, Grady, Jeff Davis, Lanier, Lowndes, Pierce, Seminole, Thomas, Ware, and Wayne) will be realigned to Region 12 from Region 10, Atlanta.

*Region 16, Fort Worth*—One Arkansas county (Miller) will be realigned to Region 16 from Region 26, Memphis.

All of southern Texas that is currently under the jurisdiction of Region 23 will be realigned to Region 16. The Houston office and San Antonio office will operate as resident offices under Region 16. Thus, Region 16 and the Houston and San Antonio Resident Offices would service the entire State of Texas except for the counties of El Paso, Culberson, and Hudspeth, which will continue to be serviced by Region 28.

All of Oklahoma will be realigned from Region 16 to Region 17, Kansas City. The Tulsa Resident Office will continue to process cases arising in the State of Oklahoma but under the jurisdiction of Region 17.

*Region 17, Kansas City*—All of Oklahoma will be realigned to Region 17 from Region 16. The Tulsa Resident Office will continue to process cases arising in the State of Oklahoma but under the jurisdiction of Region 17.

Three Iowa counties (Fremont, Mills, and Pottawattamie) will be realigned to Region 17 from Region 18, Minneapolis.

Eleven western Nebraska counties (Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux) will be realigned from Region 17 to Region 27, Denver.

*Region 18, Minneapolis*—Three Iowa counties (Fremont, Mills, and Pottawattamie) will be realigned from Region 18 to Region 17.

*Region 19, Seattle*—Thirty-two eastern Montana counties (Big Horn, Blaine, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux, and Yellowstone) will be realigned from region 19 to Region 27, Denver.

Twenty-eight southern Idaho counties (Ada, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassis, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, and Washington) will be realigned from Region 19 to Region 27.

*Region 21, Los Angeles*—The boundary in Los Angeles City and Los Angeles County for Region 21 will be redefined as "that portion of Los Angeles County lying east of Harbor Freeway, south and east of Pasadena Freeway and Arroyo Parkway, and south of Foothill Freeway and Baseline Road (State Route 30)."

*Region 23, Houston*—Houston and San Antonio offices will both service southern Texas as resident offices under the jurisdiction of Region 16, Fort Worth. Thus, Region 16 and the Houston and San Antonio Resident Offices would service the entire State of Texas except for the counties of El Paso, Culberson, and Hudspeth, which will continue to be serviced by Region 28.

*Region 26, Memphis*—Forty southwestern Kentucky counties (Adair, Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster) will be realigned to Region 26 from Region 9.

Fourteen central Tennessee counties (Bledsoe, Clay, Cumberland, Fentress, Grundy, Jackson, Marion, Overton, Pickett, Putnam, Sequatchie, Van Buren, Warren, and White) will be realigned to Region 26 from Region 10.

One Arkansas county (Miller) will be realigned from Region 26 to Region 16, Fort Worth.

*Region 27, Denver*—Eleven western Nebraska counties (Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux) will be realigned to Region 27 from Region 17, Kansas City.

Twenty-eight southern Idaho counties (Ada, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Teton, Twin Falls, and Washington) will be realigned to Region 27 from Region 19, Seattle.

Thirty-two eastern Montana counties (Big Horn, Blaine, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Gold Valley, Hill, Judith Basin, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux, and Yellowstone) will be realigned to Region 27 from Region 19, Seattle.

*Region 28, Phoenix*—Three Nevada counties (Clark, Lincoln, and Nye) will be realigned to Region 28 from Region 31, Los Angeles. These counties will continue to be serviced by the Las Vegas Resident Office but under the jurisdiction of Region 28.

The El Paso Resident Office will be closed, and cases that would have been processed by that office in the Texas counties of El Paso, Culberson, and Hudspeth will be processed by Region 28 out of the Phoenix Regional Office and the Albuquerque Resident Office.

*Region 30, Milwaukee*—Four Michigan counties (Chippewa, Luce, Mackinac, and Schoolcraft) will be realigned from Region 30 to Region 7, Detroit.

*Region 31, Los Angeles*— Three Nevada counties (Clark, Lincoln, and Nye) will be realigned from Region 31 to Region 28. These counties will continue to be serviced by the Las Vegas Resident Office but under the jurisidiction of Region 28.

The boundary in Los Angeles City and Los Angeles County for Region 31 will be redefined as: "that portion of Los Angeles County lying west of Harbor Freeway, north and west of Pasadena Freeway and Arroyo Parkway, and north of Foothill Freeway and Baseline Road (State Route 30)."

As part of our examination of changes in our Regional Office boundaries of structure, the Agency would be pleased to consider any comments you may have with regard to this matter.

Dated, Washington, DC, 13 April 1987.

By direction of the Board.

National Labor Relations Board.

**John C. Truesdale,**

*Executive Secretary.*

[FR Doc. 87-8557 Filed 4-14-87; 8:45 am]

BILLING CODE 7545-01-M

## NUCLEAR REGULATORY COMMISSION

### The Rockwell International L-85 Nuclear Examination Reactor, (Rockwell International Corporation); Order Terminating Facility Operating License

**[Docket No. 50-375]**

By application dated March 10, 1980, as supplemented, Rockwell International Corporation (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of the research reactor and to terminate Facility Operating License No. R-118. A Notice of "Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts and Terminating Facility License", was published in the **Federal Register** on April 30, 1980, at 45 FR 30759. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The reactor was shut down July 29, 1982 and all fuel has been removed from the core and shipped to a DOE facility for processing. The reactor facility has been completely dismantled and all requirements, particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Therefore, pursuant to the application filed by Rockwell International Corporation, located at the Santa Susana Field Laboratories, Ventura County, California, Facility Operating License No. R-118 is terminated as of the date of this Order.

For further details with respect to this action see: (1) The application for termination of facility operating license, dated March 10, 1980, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts and Terminating Facility Operating License published in the **Federal Register** on April 30, 1980 (45 FR 30759). Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland this 8th day of April 1987.

For the Nuclear Regulatory Commission.

**Frank J. Miraglia,**

*Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.*

[FR Doc. 87-8474 Filed 4-14-87; 8:45 am]

BILLING CODE 7590-01-M

---

**[Docket No. 50-252]**

### Renewal of Facility Operating License; the University of New Mexico

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Facility Operating License No. R-102 for the University of New Mexico (the licensee), which renews the license for operation of the training and research reactor

located on the campus in Albuquerque, New Mexico. The facility is a non-power reactor that has been operating at power levels not in excess of 5 watts (thermal). The renewed Operating License No. R–102 will expire twenty years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on August 22, 1986 at 51 FR 30145. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG–1224) for the renewal of Facility Operating License No. R–102 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment, dated March 24, 1987, for the renewal of Facility Operating License No. R–102 and has concluded that this action will not have a significant effect on the quality of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on April 3, 1987.

For further details with respect to this action, see: (1) The application for amendment dated June 2, 1986, as supplemented; (2) the Notice of Finding of No Significant Environmental Impact; (3) Amendment No. 3 to Operating License R–102; (4) the Commission's related Safety Evaluation Report (NUREG–1224); and (5) the Environmental Assessment, dated March 24, 1987. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Copies of NUREG–1224 may be purchased by calling (202) 275–2060 or (202) 275–2171 or write the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7982.

Dated at Bethesda, Maryland, this 24th day of March, 1987.

For the Nuclear Regulatory Commission.

**Herbert N. Berkow,**

*Director, Standardization & Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.*

[FR Doc. 87–8475 Filed 4–14–87; 8:45 am]

BILLING CODE 7590–01–M

---

**[Dockets Nos. 50–272, 50–277, 59–278, 50–311, and 50–354]**

## Philadelphia Electric Co., Public Service Electric and Gas Co., Delmarva Power and Light Co., and Atlantic City Electric Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the corporate reorganization of Atlantic City Electric Company (ACEC), one of the co-owners and co-licensees for the Peach Bottom Atomic Power Station, Units 2 and 3, the Salem Nuclear Generating Station, Units 1 and 2, and the Hope Creek Generating Station Unit 1.

### Environmental Assessment

*Identification of Proposed Action*

By letters dated December 18, 1986, ACEC advised the Commission that ACEC's Board of Directors authorized the formation under the laws of the State of New Jersey of a holding company, Atlantic Energy, Inc., to hold all of the voting stock of ACEC. ACEC would become a generating subsidiary of the holding company and would remain as the co-holder of the licenses for Peach Bottom, Salem and Hope Creek. In each of the relevant licenses, ACEC is authorized to possess but not to operate the facility; in each case facility operation is carried out by another NRC licensee. Pursuant to the proposed reoganization, Atlantic Energy, Inc., would become the sole holder of ACEC's common stock and the current holders of ACEC's common stock would become holders of shares of the common stock of Atlantic Energy, Inc., on a share-for-share-basis.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to have the control of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission. Notice of the proposed action was published in the **Federal Register** on March 5, 1987 (52 FR 6895).

*The Need for the Proposed Action*

ACEC stated that the purpose of the restructuring is to permit diversification on a limited basis into non-utility activities. The goal of such diversification is to enhance the financial strength and operating results of the entire system. ACEC contemplates that the holding company's diversification may initially be into energy-related activities such as cogeneration and other alternate energy forms. ACEC also indicated that the new structure will insulate its utility ratepayers from the risks associated with ventures of non-utility subsidiaries of the holding company and will enable utility managers to focus on utility operations.

*Environmental Impact of the Proposed Action*

ACEC is authorized to own but not to operate Peach Bottom Units 2 and 3, Salem Units 1 and 2, and Hope Creek Unit 1. The corporate reorganization of ACEC will not affect the management or operation of the facilities and will not reduce the funds available for the operators of these facilities to carry out activities required by the Operating Licenses (e.g., the environmental protection programs). On this basis, the Commission concludes that there are no significant radiological or nonradiological impacts associated with the proposed action.

*Alternative Use of Resources*

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Peach Bottom Atomic Power Station, Units 2 and 3, the Salem Nuclear Generating Station, Units 1 and 2, and the Hope Creek Generating Station, Unit 1.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request in consultation with the New Jersey Board of Public Utilities (who approved the corporate reorganization on January 5, 1987) and the Federal Energy Regulatory Commission.

### Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a

significant effect on the quality of the human environment.

Dated at Bethesda, Maryland this 9th day of April 1987.

Daniel R. Muller,

*Director, BWR Project Directorate #2, Division of BWR Licensing.*

[FR Doc. 87-8473 Filed 4-14-87; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Extension of Standard Forms 2824 and 2824A Through E

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S.C. chapter 35), this notice announces a proposed and unchanged extension of six forms that collect information from the public. The information collection was submitted to OMB for clearance. Standard Form 2824 contains a package of five forms necessary to support an application for disability retirement. They are: SF 2824A, Applicant's Statement of Disability; SF 2824B, Supervisor's Statement; SF 2824C, Physician's Statement; SF 2824D Agency Certification of Reassignment and Accommodation Efforts; and SF 2824E, Disability Retirement Application Checklist. The standard forms must be completed by former Federal employees who apply for disability retirement within 1 year of the date of separation from the service as provided by section 8337, title 5, United States Code. Annually, around 10,000 disability retirement applicants will take 10,000 burden hours to complete these forms. For copies of this proposed extension, call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

**DATE:** Comments on this proposal should be received within 20 working days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, Room 6410, 1900 E Street, NW., Washington, DC 20415.

and

Richard Eisenger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3202, New Executive Office Building, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

James E. Colvard,

*Deputy Director.*

[FR Doc. 87-8471 Filed 4-14-87; 8:45 am]

BILLING CODE 6325-01-M

## POSTAL RATE COMMISSION

**[Docket No. C87-3; Order No. 752]**

### Nassau A. Coliseum; Notice and Order on Filing of Complaint

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Issued April 9, 1987.

On March 23, 1987, Nassau A. Coliseum, an inmate of the New York state correctional system, filed a complaint with the Commission under 39 U.S.C. 3662. Based upon the exhibits accompanying his complaint, Mr. Coliseum apparently contends that the correctional facility where he resides holds back, holds aside, or fails to forward his mail, and that his mail is handled by inmates who are not trustworthy. Authorities at those institutions deny that delivery of his mail is interfered with, and that any problems are caused by inmates handling mail. The complaint alleges that the Postal Service has wrongly delegated some of its mail delivery functions to the prision authorities, and that the manner in which those authorities carry out these functions is inconsistent with national postal policies articulated in title 39 of the United States Code.

The substance of Mr. Coliseum's complaint appears to be that

> . . . mail delivered to and from [inmates] . . . is subject to Postal Service Manual sections 154.62 and 155.61 or similar regulations or practices that abandon postal service authority beyond the main entrance of personal delivery, pick-up and forwarding of mail (see exhibits).
>
> 5. Institutions' handling of mail beyond the authority of the Postal Service is subject to innumerable practices, limitations, regulations and discretions not infused with the policies of Title 39 U.S.C. and almost certain to have a deterrent and abridging effect on the flow and receipt of mail therein.

Complaint at 1-2. PSM section 154.62 covers mail addressed to persons at hotels, schools, etc. The Complaint's citing of PSM section 155.61, however, appears to be inadvertent. No such section appears in the current Postal Service Manual. On the other hand, PSM section 154.61 (now DMM section 153.61) states that

> [m]ail addressed to patients or inmates at institutions is delivered to the institution authorities, who in turn will deliver the mail to the addressee under the institution's rules and regulations. If the addressee is no longer at that address, the mail shall be redirected to his current address. If the forwarding address is unknown, the mail shall be returned to the post office.

In alleging that his complaint falls within section 3662, we presume that complainant meant to cite PSM § 154.61 rather than PSM section 155.61. By citing the generalized Postal Service practice prescribed in PSM section 154.61, he has alleged an aspect of service that is "substantially nationwide", as Rule 82 of our rules requires. As an inmate of an institution covered by § 154.61, complainant would, under Rule 82, have a sufficient interest in the application of PSM 154.6 to validly invoke section 3662.

The complaint cites a long list of provisions in Title 39 that it contends are violated by the Postal Service's practice of allowing institutions to take responsibility for internal mail distribution. Those that relate to the issue of improper delegation of mail delivery functions include the allegation that the Postal Service.

—Has not provided for the collection, forwarding, returning, etc. of mail within institutions, as it is obliged to do under sections 404(a)(1) and 5001

—Has failed to establish post routes and post roads within institutions, as sections 5003(5), and 5203(a) give it exclusive authority to do

—Has not determined the need for postal facilities within institutions, as it is obliged to do under section 404(a)(3)

—Does not investigate postal offenses within institutions, as it is obliged to do under section 404(a)(7)

—Countenances violations of the Private Express Statutes within institutions, contrary to section 601(a)

—Permits states to search and detain mail, in derogation of its own exclusive authority to do so under 39 U.S.C. 404 and 603; and under Art. I, section 8, cl. 7; and Art. VI, cl. 2 of the United States Constitution.

The complaint contends that numerous provisions of Title 39 are violated by the manner in which institutions distribute mail internally. The complaint alleges that the manner in which mail is distributed

—Denies basic postal services to institutionalized persons, contrary to section 101(a)

—Provides less than maximally effective services to small communities, contrary to section 101(b)
—Provides less than maximal expedition for important letter mail to institutionalized persons, contrary to section 101(e)
—Provides less than adequate service to institutionalized persons, contrary to section 403(a)
—Fails to maintain an efficient delivery system for institutionalized persons, contrary to section 403(b)(1)
—Fails to provide types of mail service that meet the specific needs of institutionalized persons, contrary to section 403(b)(2)
—Fails to provide postal facilities that will give inmates ready access to essential postal services, contrary to section 403(b)(3)
—Discriminates unduly against institutionalized users of the mails, contrary to section 403(c)
—Allows inmates or employees of institutions to distribute mail, in violation of the contracting requirements of sections 505 and 5204, *et seq.*

The complaint alleges that present service within institutions is not approved by the Regional Postmaster General, nor by institutional users. It contends further, that there is no clear remedy in federal court, under section 409, 28 U.S.C. 1339, or other sections, for violations of inmates' rights to receive postal service.

For relief, the complaint asks that the Commission use its section 3623(c) authority to recommend establishing categories of service for institutionalized mail users that take into account the importance of mail to such users, the drawbacks of having inmates handle mail, the need for sealed letters, and other factors. It suggests that these service categories could be provided by locating Postal Service substations and distribution facilities inside institutions.

Under the Commission's rules of practice (39 CFR 3001.84) the Postal Service has 30 days to file an answer to a complaint, unless that time is extended for some reason, such as use of the informal dispute resolution procedure of 39 CFR 3001.85. In this instance, it appears at this time that informal dispute resolution procedures prior to an answer would not be efficient, since there is a reasonable likelihood that the entire question of how mail is distributed within institutions is beyond the Postal Service's authority to determine. If this is what the Postal Service contends, however, its answer must demonstrate it, not merely assume it to be true, since the complaint, on its face, satisfies the jurisdictional requirements of section 3662. A conclusory citation of DMM section 153.61 that does not discuss the basis for that regulation will not be sufficient.

The issue of whether formal hearings on this complaint are warranted cannot be determined until the Postal Service provides the showing described above. Although the issue of whether formal hearings will be needed is undecided, we are appointing Stephen A. Gold, Director of the Office of the Consumer Advocate, to represent the public in this proceeding.

*It is ordered:*

(1) The Postal Service is directed to answer the complaint of Nassau A. Coliseum within thirty days of its filing.

(2) Stephen A. Gold, Director, of the Office of Consumer Advocate, is appointed to represent the interests of the general public in this proceeding.

By the Commission.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 87-8340 Filed 4-14-87; 8:45 am]

BILLING CODE 7715-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-24310; File No. SR-CBOE-87-05]**

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc; Notice of Filing and Order Granting Accelerated Approved to Proposed Rule Change

On March 4, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the operation of the retail automatic execution system ("RAES") pilot in the Standard & Poor's 500 index option contract ("SPX") to November 20, 1987.

RAES has been utilized for the execution of certain SPX orders since September 5, 1986, pursuant to Commission approval of a six-month pilot program.[3] Although utilization of RAES in SPX has been relatively limited, the Exchange believes that it is appropriate to continue the pilot program for an additional six months. The Exchange has requested this extension so that it may gather additional information before deciding whether to modify or extend the program.

The CBOE indicates in its rule filing that although the pilot has operated efficiently to date, RAES in SPX has been used relatively infrequently during the pilot period. Because of the CBOE's limited experience with RAES in SPX to date, the Exchange is requesting that the pilot be extended for an additional six months, to enable the Exchange to collect additional information on RAES's operation. The Commission believes that the requested extension of the pilot is appropriate and desirable in view of the CBOE's limited experience with the operation of RAES in SPX to date. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 [4] and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that pilot previously was pulished for comment and no adverse comments have been received regarding its operation. In addition, the Commission believes that it is desirable for the pilot to continue on an uninterrupted basis to avoid investor and broker-dealer confusion.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] That the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: April 7, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8387 Filed 4-14-87; 8:45 am]

BILLING CODE 8010-01-M

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19-4 (1985).

[3] *See* Securities Exchange Act Release No. 23590 (September 4, 1986), 51 FR 32709 (September 15, 1986). RAES automatically executes certain-sized public customer market and marketable limit orders entered into the System against participating CBOE market makers at the best bid or offer quoted on the CBOE floor at the time of the order's entry into RAES.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.**

April 9, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securites Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Landmark Bancshares Corporation, Common Stock, No Par Value (File No. 7–9873)
Uslico Corporation, Common Stock, $1.00 Par Value (File No. 7–9874)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 30, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–8384 Filed 4–14–87; 8:45 am]

BILLING CODE 8010–01–M

---

[Release No. 34–24304; File No. PHLX 87–8]

**Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Amendment of PHLX Rules 1001 and 1002 Position and Exercise Limit Exemption Procedures**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1987 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc., ("PHLX"), pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend PHLX Rules 1001, Commentary .03 and 1002, Commentary .02 as follows: (Brackets indicate deletions; italics indicate additions.)

*Position Limits*

Rule 1001, Commentary .03 The Exchange will not approve any opening purchase or writing transaction or the carrying of any position[s] [which] *that* would exceed the limits established by this Rule except in highly unusual circumstances. [Requests for such approval should be directed to the Office of the Chief Examiner of the Exchange and must be accompanied by a detailed statement of the facts justifying an exception to such position limits.] *An exemption will be granted to a member or member organization only under the following circumstances:*

(i) *The exemption request must be submitted in writing to a floor official and set forth the facts justifying the exemption;*

(ii) *If the exemption is sought by a registered options trader, the registered options trader must hold an assignment in the option;*

(iii) *The applicant's position must be near the current position limit (generally within 10% of the current limit); and*

(iv) The character of trading in the option has been such as to support an exemption request; *the applicant's participation in the market in the period prior to the exemption request has been significant in terms of daily volume.*

[04] The Exchange may establish higher position limits for specialists. [transactions than those applicable with respect to other accounts.] Whenever a specialist reasonably anticipates that he may exceed [such] *the current* position limits in the performance of this function of assisting in the maintenance of a fair and orderly market, he must [consult with] *seek and exemption in writing* [and obtain the prior approval of the Committee on Options] in accordance with this commentary.

*A position limit exemption requires the approval of two floor officials. The exemption is effective at the time a decision is communicated; retroactive exemptions will not be granted. The size and duration of an exemption will be determined on a case-by-case basis. An exemption usually will be granted only until the nearest expiration.*

*Exercise Limits*

Rule 1002, Commentary .02 The Exchange will not approve exercises exceeding the limits established pursuant to this Rule except in highly unusual circumstances. [Requests for such approval should be directed to the Office of the Chief Examiner of the Exchange and must be accompanied by a detailed statement of the facts justifying an exception to such exercise limits.] *An exemption request must be in writing and set forth the facts justifying the exemption. An exemption requires the approval of two floor officials.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

The purpose of this rule change is to modify the Exchange's procedures regarding the position and exercise limit exemption process. Position and exercise limit exemptions, which are sparingly granted, require concurrence of two option floor officials. These decisions are normally made in consultation with PHLX staff. The proposed rule change adopts factors to be considered in reviewing requests of position and exercise limit exemptions: the size and character of prior trading in the option by the applicant and the size of the applicant's current positions in relation to the position limit. Additionally, another factor to be given consideration in evaluating position limit exemption requests includes the willingness of other market participants to make size markets. The process has adequate safeguards, since floor officials may rely upon the Exchange's sophisticated audit trail system to ascertain the positions of a party seeking such an exemption while responding to the immediate attention

for handling large orders in the market place.

The Exchange's rules currently do not contain specific factors to be evaluated by floor officials in considering position and exercise limit requests. Hence, the proposal should provide increased guidance to floor officials, assure consistency in granting exemption requests, and facilitate greater responsiveness to market needs in acting upon exemption requests.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 in that it will facilitate transactions in securities and protect investors and the public interest.

*B. Self-Regulatory Organizations Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 6, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 6, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8386 Filed 4-14-87; 8:45 am]

BILLING CODE 8010-01-M

---

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.**

April 9, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Federal Paper Board Company, Inc., Common Stock, $5.00 Par Value (File No. 7-9875)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 29, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Johathan G. Katz,**

*Secretary.*

[FR Doc. 87-8385 Filed 4-14-87; 8:45 am]

BILLING CODE 8010-01-M

---

**Small Business Administration**

**[Declaration of Disaster Loan Area #2274]**

**Maine; Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on April 9, 1987, I find that the Counties of Androscoggin, Franklin, Kennebec, Oxford, Penobscot, Piscataquis, and Somerset in the State of Maine constitute a disaster loan area because of severe storms and flooding beginning on or about March 30, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on June 8, 1987, and for economic injury until the close of business on January 11, 1988, at: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere—8.000%

Homeowners without credit available elsewhere—4.000%

Businesses with credit available elsewhere—7.500%

Businesses without credit available elsewhere—4.000%

Businesses (EIDL) without credit available elsewhere—4.000%

Other (non-profit organizations including charitable and religious organizations)—9.500%

The number assigned to this disaster is 227406 for physical damage and for economic injury the number is 652000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 9, 1987.

**Bernard Kulik,**

*Deputy Associate Administrator for Disaster Assistance.*

[FR Doc. 87-8480 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

**[Declaration of Disaster Loan Area #6514; Amdt. #1]**

**Texas; Declaration of Disaster Loan Area**

The above-numbered Declaration (52 FR 10284) is hereby amended to include the Counties of Refugio, Victoria and Aransas in the State of Texas because of the closure of the oyster grounds in San Antonio Bay on December 20, 1986, due to flooding of the Guadalupe and San Antonio Rivers which began on or about December 16, 1986. All other information remains the same; i.e., the termination date for filing applications

for economic injury assistance is the close of business on December 28, 1987.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 9, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87-8481 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

**Region IV Advisory Council Meeting; Public Meeting**

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Charlotte, North Carolina, will hold a District Advisory Council meeting at 9:00 a.m. on Friday, May 8, 1987, at the offices of Clark Tribble Harris & Li Architects PA, 324 North College Street, Charlotte, North Carolina 28202, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, Packard Place, 222 South Church Street, Suite 300, Charlotte, NC. 28202, telephone number (704) 371-6551.

April 9, 1987.

**Jean M. Nowak,**

*Director Office of Advisory Councils.*

[FR Doc. 87-8478 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

**Region V Advisory Council Meeting; Public Meeting**

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Columbus, Ohio, will hold a public meeting at 9:30 a.m., on Wednesday, April 22, 1987, at the Envoy Inn, 35 West Spring Street, Columbus, Ohio 43215, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Frank D. Ray, District Director, U.S. Small Business Administration, 85 Marconi Boulevard, Fifth Floor, Columbus, Ohio 43215—(614) 469-7310.

April 9, 1987.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 87-8477 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

**Region VIII Advisory Council Meeting; Public Meeting**

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Salt Lake City, will hold a public meeting at 9:30 a.m. on Wednesday, May 6, 1987, at the Little America Hotel, 500 South Main, Tuscon Room Convention Center, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call R. Kent Moon, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah (801) 524-5804.

April 9, 1987.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 87-8479 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

**Region X Advisory Council Meeting; Public Meeting**

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m., on Tuesday, April 28, 1987, at the Owhylee Plaza "Ambassador Room," 1109 Main Street, Boise, Idaho, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph G. Kaeppner, District Director, U.S. Small Business Administration, 1020 Main Street, Suite 290, Boise, Idaho (208) 334-9641.

April 9, 1987.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 87-8477 Filed 4-14-87; 8:45 am]

BILLING CODE 8025-01-M

---

## DEPARTMENT OF STATE

[CM-8/1066]

**Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Bulk Chemicals; Meeting**

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on May 5, 1987 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street, SW. Washington, DC.

The purpose of this meeting will be a general review of all agenda items for the seventeenth session of the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals scheduled for May 18-22, 1987.

The agenda for this meeting includes the following items:

—Interpretations of MARPOL 73/78, Annex II
—Evaluation of chemicals shipped in bulk
—Venting requirements for chemical tankers
—Guidelines for the carriage of bulk chemicals on offshore support vessels

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mr. Frits Wybenga, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW. Washington, DC 20593-0001, telephone (202) 267-1217.

Dated: April 6, 1987.

**Michael E. McNaull,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 87-8394 Filed 4-14-87; 8:45 am]

BILLING CODE 4710-07-M

---

[CM-8/1065]

**Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Stability, Load Lines, and Safety of Fishing Vessels; Meeting**

The Working Group on Stability, Load Lines and Safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on May 5, 1987 in Room 6319 at 10:00 AM at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to discuss the national effort to prepare U.S. positions for Session 32 of the Subcommittee on Safety of Life at Sea Working Group on Stability, Load Lines, and Safety of Fishing Vessels scheduled for September 7-11, 1987. Items of principal interest on the agenda for this session are:

—Subdivision of Dry Cargo Ships
—Intact Stability
—Stability for Ocean Barges
—Review of Stability for Mobile Drilling Units
—Future Revision of the Load Line Convention

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. W. A. Cleary, Jr., U.S. Coast Guard Headquarters (G–MTH–3), 2100 Second Street, SW., Washington, DC 20593, Tel: (202)267–2988.

Dated: April 6, 1987.

**Michael E. McNaull,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 87–8395 Filed 4–14–87; 8:45 am]

BILLING CODE 4710–07–M

---

**[CM–8/1067]**

## Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting on 4 May 1987 at 0930 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of the meeting is to consider the U.S. position for the 2nd Session of the International Maritime Organization (IMO)/ United Nations Conference on Trade and Development (UNCTAD) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages and Related Subjects.

The JIGE was established by IMO and UNCTAD pursuant to the recommendation contained in Resolution 6 of the 11th Session of the UNCTAD Working Group on International Shipping Legislation. As endorsed by the Council of IMO and the UNCTAD Trade and Development Board, the proposal called for meeting alternately in Geneva and London during scheduled meeting times of the IMO Legal Committee and the UNCTAD Working Group on International Shipping Legislation.

The JIGE is tasked with conducting a broad examination of the subject of maritime liens and mortgages, with consideration to be given to:

1. The revision of the various maritime liens and mortgages Conventions;
2. The preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures, such as arrest; and
3. The feasibility of an international registry of maritime liens and mortgages.

IMO and UNCTAD have identified the following major objectives as deserving of priority consideration in any investigations regarding possible international action on maritime liens and mortgages:

1. To encourage ship financing by affording appropriate protection to persons providing finance;
2. To afford protection in respect of settled claims;
3. To encourage the provision of services to ships;
4. To protect the ship against multiple actions; and
5. To minimize the potential encumbrances to ship operation.

The JIGE help its 1st Session in Geneva on 1–12 December 1986. The principal outcome of the meeting was the adoption of joint procedural rules; the substantive work undertaken was an exploratory discussion of the major issues and objectives noted above. This discussion revealed strong interest in studying the present international framework and considering substantial revisions that would both promote uniformity and favor the mortgagee. As a preliminary matter, a number of participants questioned the nature and extent of the perceived need to improve the availability of vessel financing.

The 2nd Session of the JIGE is scheduled for 11–15 May 1987 in London. The provisional agenda for the session includes the organization of work and further consideration of maritime liens and mortgages in accordance with the JIGE mandate.

In preparation for the 2nd Session, the IMO and UNCTAD Secretariats are conducting a national survey as the basis for a document identifying the various maritime liens found in the domestic legislation of member states. The U.S. response to this survey will be discussed at the open meeting on 4 May 1987.

Members of the public are invited to attend the meeting, up to the seating capacity of the room.

For further informaiton pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting, contact either Captain Frederick F. Burgess, Jr. or Lieutenant Commander Fred M. Rosa, Jr., U.S. Guard (G–LMI), Washington, DC., 20593, telephone (202) 267–1527.

Dated: April 3, 1987.

**Richard C. Scissors,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 87–8396 Filed 4–14–87; 8:45 am]

BILLING CODE 4710–07–M

---

## TENNESSEE VALLEY AUTHORITY

## Paperwork Reduction Act of 1980, as Amended by Pub. L. 99–591, Information Collection Under Review by the Office of Management and Budget (OMB)

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information Collection Under Review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2524.

Type of Request: Regular submission.

Title of Information Collection: 1987 Residential Energy Conservation Attitude Survey.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1,500.

Estimated Total Annual Burden Hours: 750.

Need For and Use of Information: TVA needs qualitative and quantitative consumer data on the awareness of, attitudes towards, and intentions to participate in its residential conservation programs. TVA will use this data to predict the penetration of these programs which prediction will affect TVA's operational plans and electrical capacity expansion schedule when used as input into the electrical load forecast.

**John W. Thompson,**

*Manager of Corporate Services, Senior Agency Official.*

[FR Doc. 87–8355 Filed 4–14–87; 8:45 am]

BILLING CODE [illegible]

**Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591, Information Collection Under Review by the Office of Management and Budget (OMB)**

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information Collection Under Review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Regular submission.

Title of Information Collection: Pre-survey sheet for Radiant Barrier Demonstration.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 60.

Estimated Total Annual Burden Hours: 6.

Need For and Use of Information: TVA is installing a radiant barrier material in the attics of 60 homes to determine installation costs and kwh savings. These questions will determine if homes meet certain criteria (age, type construction, heating/cooling specifications, etc.) to qualify for this demonstration. Respondents will be typical homeowners in the TVA service area.

**John W. Thompson,**

*Manager of Corporate Services, Senior Agency Official.*

[FR Doc. 87-8356 Filed 4-14-87; 8:45 am]

BILLING CODE 8120-01-M

**Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591, Information Collection Under Review by the Office of Management and Budget (OMB)**

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information Collection Under Review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99591.

Requests for information, including copies of the information collection proposed and supporting documentaion, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Regular submission.

Title of Information Collection: Group Camp Users Needs Assessment Survey.

Frequency of Use: On occasion.

Type of Affected Public: State or local governments, non-profit institutions, small businesses or organizations.

Small Business or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 300.

Estimated Total Annual Burden Hours: 150.

Need For and Use of Information: This survey will be mailed to all recent users of Brandon Spring Group Camp and the Youth Station in the Land Between the Lakes National Recreation Area. The results of the survey will assist TVA in attaining higher levels of user satisfaction and facility utilization, and to more effectively allocate resources.

**John W. Thompson,**

*Manager of Corporate Services, Senior Agency Official.*

[FR Doc. 87-8357 Filed 4-14-87; 8:45 am]

BILLING CODE 8120-01-M

## OFFICE OF UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP): Invitation for Public Comment Concerning the Proposed Conversion of the GSP Program to the Harmonized System Tariff Nomenclature

#### Summary

This notice follows-up on the notices of December 8, 1986 (51 FR 44163) and March 6, 1987 (52 FR 7057) concerning the proposed conversion of the GSP program to the Harmonized System tariff nomenclature (HS). The purpose of this notice is to invite public comments on the proposed conversion to the HS of the results of the 1986 Annual Review of the GSP program. This notice also invites public comment on one individual HS subheading where an "A" was inadvertently omitted from the "Rates of Duty Special Column" in the publication of October 1986 entitled "Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System, Revised, Showing Administrative Changes Approved by the Trade Policy Staff Committee" (i.e., the draft HS tariff schedule).

#### The Conversion to the Harmonized System Tariff nomenclature TSUS Articles Added to the List of GSP Eligible Items

As was announced on April 2 by United States Trade Representative Ambassador Clayton Yeutter, the President has designated nine new articles to the list of GSP eligible items in the TSUS. The nine articles are listed in a April 2 press release which is available from the GSP Information Center at the Office of the United States Trade Representative. This notice invites public comment on a proposal to convert to the HS the nine product additions to the list of GSP eligible TSUS items. The proposed conversion of these items to the HS is listed in Annex 1. As was indicated in the December 8 and March 6 notice, the TSUS and HS are very different. For instance, products in a GSP-eligible TSUS item may be classified in several different HS subheadings. Not withstanding these differences, the overall goal of converting the GSP program is that the conversion should be as "trade neutral" as possible. In other words, within the limits of sound nomenclature principles, products that are GSP-eligible should remain GSP-eligible and products that are not GSP-eligible should remain ineligible.

BEST COPY AVAILABLE

Prior to preparing comments on the proposals to convert the new GSP product additions, the notice of December 8 should be consulted, particularly the "Comments" section of the notice. In two cases, HS nomenclature changes (or "break-outs") are proposed in an attempt to maintain the "neutrality" of the conversion process to the extent possible. These proposed break-outs are indicated in Annex 1. Comments concerning the HS subheading proposals should be very specific, include the HS subheading number(s) and related TSUS number(s) of interest and focus on instances of where product coverage in the context of the TSUS is apparently being increased or decreased by the proposed conversion of these nine TSUS items to the HS.

**Conversion to the Harmonized System Tariff Nomenclature Decisions to Graduate Certain Beneficiary Developing Countries on Certain TSUS Articles**

As indicated in the April 2 press release referrred to above, the President "graduated," or removed from GSP eligibility, certain beneficiary developing countries on certain TSUS articles. These graduation actions resulted from the President's decisions to act on petition requests submitted by interested parties in the 1986 Annual Review or as a result of denying a beneficiary developing country "redesignation," or reinstatement to GSP eligibility on a given article. A beneficiary country becomes eligible for redesignation when they fall below the statutory "competitive need limits" in a calendar year following a calendar year in which they exceeded the competitive need limits and thus were excluded from receiving GSP duty-free treatment. The competitive need limits are statutory limitations on the amount of GSP duty-free benefits any one beneficiary country can receive on any given GSP eligible product in a calendar year. For example, if a beneficiary country exceeded competitive need limits in 1985 on a product they would automatically have been excluded from GSP eligibility on July 1, 1986. However, if at the conclusion of calendar year 1986 the same beneficiary country had fallen below the competitive need limits in the same product in which they were previously excluded, they would become eligible for redesignation to GSP eligibility on that product. The President's decision to redesignate or deny redesignation in this example would become effective July 1, 1987 after announcement of the decision on or about April 1, 1987.

Prior to preparing comments on the conversion to the HS the President's decisions to graduate beneficiary countries on certain products, the December 8 notice should be consulted. In this regard, as is noted above, the TSUS and HS are very different. As a result, comments concerning the conversion of graduation decisions should be very specific and include the HS subheading number(s), the TSUS number(s) and the country or countries involved. As was also indicated in the December 8 notice, in preparing their final recommendations to the President on the disposition of GSP-eligible articles and beneficiary countries in the new HS, the TPSC will take into account those comments received during the public comment period and advice from the U.S. International Trade Commission.

**Changes With Respect to the TPSC Approved October 1986 Publication Concerning the Conversion of the TSUS to the Harmonized System Tariff Nomenclature**

The draft HS tariff schedule listed one HS subheading, in addition to the four that were listed in the March 6 notice, where an "A" was inadvertently omitted from the "Rates of Duty Special Column." The "A" in this document in the "Rates of Duty Special Column" indicates that an item is proposed as GSP eligible. The HS subheading which should have been listed as being proposed for GSP eligibility as indicated by an "A" in the "Rates of Duty Special Column" is: 6908.10.50

As indicated above, those parties preparing comments regarding this HS subheading should consult the December 8 notice.

**Submission of Written Comments**

All written comments submitted pursuant to this notice should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, Room 517, 600 17th Street, NW., Washington, DC 20506. Written comments will be accepted if submitted in twenty copies in English. If the comments contain business confidential information, twenty copies of a non-confidential version of the coments along with twelve copies of the confidential version must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page "public version" or "non-confidential."

**Deadline for Receipt of Written Comments**

All written comments with respect to the matters covered by ths notice must be received no later than close of business Wednesday, May 13, 1987, by the GSP Subcommittee at the address listed above. Rebuttal comments concerning the matters covered by this notice must be received no later than Wednesday, June 3, 1987. Comments should identify the party or parties commenting, provide a detailed description of the product or products of concern (including the proposed HS subheading and the current TSUS category), the party's interest in the product, and detailed information on the impact of the change of particular concern.

Written comments submitted in connection with this notice will be subject to public inspection by appointment only with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. The GSP Information Center is located in the Office of the United States Trade Representative at the address listed above. The GSP Information Center can be contacted at (202) 395–6971.

**Donald M. Phillips,**

*Chairman, Trade Policy Staff Committee.*

**Annex 1**

HS Subheadings proposed as GSP eligible as a result of the President's decisions announced on April 2, 1987, including proposed "Break-Outs":

2401.10.80
2401.20.40
6911.10.39
6912.00.44
9107.00.40

Break-Outs:

| | | | | | |
|---|---|---|---|---|---|
| (1) | | | | | |
| Fumaric Acid: | | | | | |
| 2917.19.15 | Derived in whole or in part from aromatic hydrocarbons. | kg | 20% Free (E) | | 15.4¢/kg +87% |
| 2917.19.17 | Other | kg | 4.2% Free (A, E, EI) | | 25% |

| | | | | | |
|---|---|---|---|---|---|
| (2) | | | | | |
| 2805.22 | Strontium and Barium: | | | | |
| 2805.22.10 | Strontium | kg | 3.7% Free (A, E) | | 25% |
| 2805.22.20 | Barium | kg | 3.7% Free (E) | | 25% |

[FR Doc. 87-8393 Filed 4-14-87; 8:45 am]
BILLING CODE 3190-01-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: April 9, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**United States Mint**

*OMB Number:* New
*Form Number:* None
*Type of Review:* New
*Title:* Coin Survey
*Description:* The United States Mint intends to conduct a one-time random survey of the public. The survey examines coin demand forecasts which form the basis for short-term budget planning and long-term strategic planning. Among the factors included in the forecast model are the rate of coins lost annually and the stock remaining in circulation.
*Respondent:* Individuals
*Estimated Burden:* 4,175 hours
Clearance Officer: Myles Schulberg United States Mint 633-3rd Street, NW. Room 639 Washington, DC 20220
OMB Review: Milo Sunderhauf (202) 395-6880 Office of Management and Budget Room 3208, New Executive Office Building Washington, DC 20503

**U.S. Customs Service**

*OMB Number:* 1515-0061
*Form Number:* CF-1304
*Type of Review:* Extension
*Title:* Crew's Effects Declaration
*Description:* Customs Form 1304 is completed by the master of the arriving carrier to recover and list the crew's effects that are accompanying them on the trip but which are defined as merchandise under U.S. statutes and therefore must be manifested.
*Respondents:* Businesses
*Estimated Burden:* 20,983 hours

*OMB Number:* 1515-0002
*Form Number:* CF-7507
*Type of Review:* Extension
*Title:* General Declaration (Outward/Inward)
*Description:* The Customs Form 7505 allows the agent or pilot to make entry or exit of the aircraft as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.
*Respondents:* Businesses
*Estimated Burden:* 124,950 hours
Clearance Officer: B.J. Simpson (202) 566-7529 U.S. Customs Service Room 6426 1301 Constitution Avenue, NW. Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880 Office of Management and Budget Room 3208, New Executive Officer Building Washington, DC 20503

**Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0467
*Form Number:* ATF F 5000.24
*Type of Review:* Revision
*Title:* Excise Tax Return
*Description:* ATF F 5000.24 is completed by persons who are liable for excise taxes on distilled spirits, beer, wine, cigars, cigaretts, cigarett papers and tubes, chewing tobacco and/or snuff. The return is prescribed by law for the collection of these taxes. AFT uses the form to identify the taxpayer, the premises and period covered by the tax return, the taxpayer's liability and the adjustments affecting the amount paid.
*Respondents:* Businesses
*Estimated Burden:* 25,309 hours
Clearance Officer: Robert Masarsky (202) 566-7077 Bureau of Alcohol, Tobacco and Firearms Room 7011 1200 Pennsylvania Avenue, NW. Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880 Office of Management and Budget Room 3208, New Executive Office Building Washington, DC 20503

**Dale A. Morgan,**
*Departmental Reports Management Officer.*

[FR Doc. 87-8439 Filed 4-14-87; 8:45am]
BILLING CODE 4810-25-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FARM CREDIT ADMINISTRATION**

Farm Credit Administration Board; Special Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 17, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

**FOR FURTHER INFORMATION CONTACT:** William A. Sanders, Jr., Secretary of the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703–883–4010).

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

1. Final Regulations:
   Part 624—Temporary Regulations—Technical Amendments— Regulatory Accounting Principles
2. Proposed Amendments to Regulations:
   Part 611—Temporary Regulations—Capital Corporation Assessment
3. Policy Directives:
   FCA Approval of the Compensation of Farm Credit System Bank Chief Executive Officers
   FCA Approval of Exceptions to PCA Direct Loan Limitation
4. Administrative Matters:
   Schedule of Farm Credit Administration Board Meetings

Dated: April 10, 1987.

**William A. Sanders, Jr.,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87–8518 Filed 4–13–87; 10:35 am]

BILLING CODE 6705–01–M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** April 10, 1987 (52 FR 11796).

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, April 15, 1987.

**CHANGES IN THE MEETING:** Deletion of the following open item from agenda:

Proposals regarding fees for examination of Edge Act corporations, inspections of bank holding companies, and processing applications for banks and bank holding companies. (Proposed earlier for public comment; Docket No. R–0584)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 10, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87–8512 Filed 4–13–87; 10:12 am]

BILLING CODE 6210–01–M

# Corrections

Federal Register
Vol. 52, No. 72
Wednesday, April 15, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 994

[Docket No. EMO-1]

### Egg Marketing Order; Establishment of Programs Relating to Research, Consumer Education, and Advertising

*Correction*

In proposed rule document 87-7566 beginning on page 10984 in the issue of Monday, April 6, 1987, make the following corrections:

1. On page 10986, in the first column, in the last paragraph, in the second line, "of" should read "to".

2. On page 10988, in the third column, in the third line, "assessment" should read "assessments".

3. On page 10991, in the second column, in the last paragraph, in the third line, " 'handling' " should read " 'handle' ".

4. On page 10994, in the second column, in the second paragraph, in the fifth line, "at least 5 years," should read "at least every 5 years,".

5. On page 10997, in the second column, in the first complete paragraph, in the 15th line, "that a matter" should read "that as a matter".

6. On page 10998, in the second column, in the first complete paragraph, in the third line from the bottom, "procedure" should read "procedures".

**PART 994—[CORRECTED]**

7. On page 11001, in the third column, in the table of contents, "994.85 Counterparts." should read "*994.85 Counterparts.", "994.86 Additional parties." should read *994.86 Additional parties.", and "994.87 Order with marketing agreement." should read "*994.87 Order with marketing agreement.".

**§ 994.85 [Corrected]**

8. On page 11007, in the second column, in the first line, the section heading for § 994.85 should read "*§ 994.85 Counterparts."

**§ 994.86 [Corrected]**

9. On the same page, in the same column, in the ninth line, the section heading for § 994.86 should read "*§ 994.86 Additional parties."

**§ 994.87 [Corrected]**

10. On the same page, in the third column, in the first line, the section heading for § 994.87 should read "*§ 994.87 Order with marketing agreement."; and in the text of § 994.87, in the seventh line, "spend" should read "spent".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[OPTS-50558; FRL-3174-4]

### Ethanol, 2-Amino-, Compound With N-Hydroxy-N-Nitrosobenzenamine (1:1); Proposed Determination of Significant New Uses

*Correction*

In proposed rule document 87-6459 beginning on page 9508 in the issue of Wednesday, March 25, 1987, make the following correction:

On page 9511, in the third column, under **XII. Rulemaking Record**, in the first paragraph, in the third line, "OTS" should read "OPTS".

BILLING CODE 1505-01-D

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 87-20, RM-5544]

### Radio Broadcasting Services; Caldwell, TX

*Correction*

In proposed rule document 87-4139 appearing on page 6026 in the issue of Friday, February 27, 1987, make the following correction:

On page 6026, in the first column, the Docket Number should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-940-07-4520-12, Group 920]

### Plat of Survey

*Correction*

In notice document 87-6412 beginning on page 9548 in the issue of Wednesday, March 25, 1987, make the following corrections:

1. On page 9548, in the third column, the "Group Number" should read as set forth above.

2. On the same page, in the same column, under **Humboldt Meridian, Trinity County**, the first line should read: "T. 6 N., R. 6 E.".

BILLING CODE 1505-01-D

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1308

### Schedules of Controlled Substances; Placement of Nabilone Into Schedule II

*Correction*

In rule document 87-7533 beginning on page 11042 in the issue of Tuesday, April 7, 1987, make the following corrections:

1. On page 11042, in the second column, under the **SUPPLEMENTARY INFORMATION**, in the fourth line from the bottom, after "Statement" add "of".

2. On the same page, in the third column, in the second paragraph, in the fourth line, "Scheduling" should read "Schedule".

**§ 1308.12 [Corrected]**

3. On page 11043, in the third column, in § 1308.12(f)(2), in the first line, "Nabiline" should read "Nabilone".

4. On the same page, in the same column, in § 1308.12(f)(2), in the second line, "(+)-*trans*-" should read "(±)*trans*-".

BILLING CODE 1505-01-D

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-252]

### Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-102; the University of New Mexico

*Correction*

In notice document 87-7428 appearing on page 10834 in the issue of Friday, April 3, 1987, make the following correction:

On page 10834, in the second column, in the first line, "1986" should read "1966".

BILLING CODE 1505-01-D

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWP-18]

### Proposed Alteration of VOR Federal Airway and Jet Routes; Nevada

*Correction*

In proposed rule document 87-5996 beginning on page 8920 in the issue of Friday, March 20, 1987, make the following correction:

On page 8920, in the third column, under **The Proposals**, in the first paragraph, in the ninth line, "40°07'35"N., long." should read "40°07'30"N., long.".

BILLING CODE 1505-01-D

Federal Register

Wednesday
April 15, 1987

Part II

# Department of Labor

**Occupational Safety and Health Administration**

**29 CFR Part 1926**

**Occupational Safety and Health Standards; Excavations; Proposed Rule**

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–204]

## Occupational Safety and Health Standards; Excavations

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** With this notice, the Occupational Safety and Health Administration (OSHA) proposes to revise a portion of the construction industry safety standards addressing excavations. The proposed revisions are intended to correct problems related to the use of existing standards.

The existing standards regulate the use of support systems, sloping and benching systems and other systems of protection as means of protection against excavation cave-ins. In addition, the standards regulate the means of access to and egress from excavations, and employee exposure to vehicular traffic, falling loads, hazardous atmospheres, water accumulation, and unstable structures in and adjacent to excavations.

The proposed revisions would use performance criteria where possible, rather than specification requirements. The proposed revisions would also consolidate and simplify many of the existing provisions; add and clarify definitions; reformat the standard to eliminate duplicate provisions and ambiguous language; provide a consistent method of soil classification; and give employers added flexibility in providing protection for employees.

This is another step in OSHA's plan to review its safety standards and to revise them as necessary to provide safer working conditions without unduly burdensome requirements. This proposal is being issued after appropriate consultation with the Advisory Committee on Construction Safety and Health (ACCSH).

**DATES:** Comments on this proposed rulemaking must be postmarked by June 15, 1987. Hearing requests must be postmarked by June 15, 1987.

**ADDRESS:** Comments and requests for hearings are to be sent to the Docket Officer, Docket No. S–204, U.S. Department of Labor, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8151.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. History*

Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 et seq.) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (Pub. L. 91–54; August 9, 1969), significantly strengthened employee protection by providing for occupational safety and health standards for employees of the building trades and construction industry in Federal and Federally-financed or Federally-assisted construction projects.

Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 FR 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (the Act) (84 Stat. 1580; 29 U.S.C. 650 et seq.) was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established Federal Standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards in 29 CFR Part 1518 as established Federal Standards in accordance with section 6(a) of the Act (36 FR 10466, May 29, 1971). Part 1518 was redesignated as Part 1926 later in 1971 (36 FR 25232, December 30, 1971). The standards in Subpart P of Part 1926, titled § 1926.650—General Protection Requirements; § 1926.651—Specific Excavation Requirements; § 1926.652—Specific Trenching Requirements; and § 1926.653—Definitions Applicable to this Subpart, were adopted as OSHA standards as part of this process.

The need for review and revision of § 1926.650 through § 1926.653 has been recognized by OSHA since the earliest days of the Agency's existence. Consequently, after a Notice of Proposed Rulemaking (36 FR 19063, September 28, 1971) and after a review by the Advisory Committee on Construction Safety and Health (ACCSH), several amendments of a technical nature were made to Subpart P (37 FR 3512, February 17, 1972). Subsequent to the adoption of those amendments, OSHA found it necessary to further amend the standard. After a Notice of Proposed Rulemaking (37 FR 15317, July 29, 1972) § 1926.652 was amended to require ladders as a means of access and egress in trenches greater than four feet (1.2 m) in depth—instead of three feet (.9 m) in depth (37 FR 24345, November 16, 1972).

In 1976, OSHA, in response to continued complaints concerning the adequacy of the standards in Subpart P, engaged the National Bureau of Standards (NBS) to study the compatibility of the technical provisions in the regulations with actual construction practice. In addition, NBS was to examine the state of the knowledge in geotechnical and structural engineering; to review the field experience accumulated since the promulgation of the standards; and to recommend potential modifications that could improve the effectiveness of the standards.

Findings and preliminary recommendations of the NBS studies were presented and discussed at a Federally-sponsored workshop in September 1978. Six reports were then completed as a result of the NBS work, and these were published in 1979 and 1980. Copies of these reports are part of the public record (Exs. 1 through 6).

As a result of the development of these recommended changes, private industry proposed and sponsored a series of five workshops (herein after referred to as the "workshops" or the "industry-sponsored workshops") in the spring and summer of 1981 to discuss and comment on ways to implement the NBS recommendations. An unpublished text was used at these workshops (Ex. 7). Final recommendations for technical changes to the standards incorporating the comments from the industry-sponsored workshops were prepared by NBS in May 1983 (Ex. 26).

Excavation-related accidents resulting in injuries and fatalities have continued to occur at construction sites despite the development and promulgation of the OSHA Construction Standards in 1971 and 1972. However, based upon examination of available data, this trend appears to be, at least in part, the result of non-compliance with existing OSHA standards, rather than a failure of the standards to address the hazards involved in excavation work. Based on a careful review of compliance problems and public comments received since 1972, OSHA believes that the present standard needs updating. The proposed

standard is intended to eliminate certain ambiguities, redundancies, and unnecessary provisions, and would change certain specific requirements into general requirements. In addition, the proposed standard addresses specific problem areas and provides requirements which are more feasible and practical than the existing requirements. The proposal is written in performance-oriented language where possible.

A draft of the proposed changes to the standard was reviewed by ACCSH in October 1982. Transcripts of this meeting are part of the public record (Ex. 8). The Committee's comments and recommendations, and those of other interested parties, have been carefully analyzed as part of the present proposed rulemaking. Many of the changes in the standard being proposed reflect the recommendations and suggestions of these participants. Relevant ACCSH comments are discussed below in Section III—"Summary and Explanation of the Proposed Standard." Committee discussions that were inconclusive have been considered, but are not discussed in this preamble. Several suggestions for changes to the draft standard were made by members of the ACCSH. OSHA seeks more discussion on these suggestions and is, therefore, raising the individual points as issues in this preamble.

*B. Problems With the Existing Standards and Proposed Solutions*

OSHA's efforts to revise its excavation and trenching standards were initiated primarily because the Agency has experienced difficulty in enforcing the existing standards. Several of these problems are discussed in detail below.

"Specific Excavation/Specific Trenching Requirements"

The first major problem with the existing standards is that because § 1926.651 and § 1926.652 are two separate sections, one entitled "Specific Excavation Requirements" and the other "Specific Trenching Requirements," the standards are not clear as to which of these requirements must be followed in trenches. It was intended that many of the excavation standards would also apply to trenches since a trench is a type of excavation.

The Occupational Safety and Health Review Commission (OSHRC) and one United States Court of Appeals, have sanctioned the application of the excavation standards in § 1926.651 to trenches (*Dobson Brothers Construction Company*, 3 BNA OSHC 2035 (R.C. 1976); and *D. Federico Company, Inc.*, v. *OSHRC and Usery*, 558 F. 2d 614 (1st Cir 1977) 5 BNA OSHC 1528, respectively). However, another Court of Appeals has held to the contrary that excavation standards cannot be applied to trenches (*Lloyd C. Lockrem, Inc.* v. *OSHRC*, 609 F. 2d 940 (9th Cir. 1979) 8 BNA OSHC 1316).

This proposal resolves the uncertainty left by these decisions and the language ambiguity of the existing standards by setting forth one set of requirements which are applicable to all excavations, including trenches. Where there are requirements intended to be applicable only to trenches—such as the requirement that ladders or equivalent means of egress be provided every 25 feet horizontally—the proposed standard makes it clear that the requirement applies only to those excavations which are also trenches (see proposed § 1926.651(c)(2)).

Excavations (Non-Trench)

A second major problem with the existing standards involves the requirements for protecting employees in nontrench excavations from the hazards of a cave-in. Existing § 1926.651(c) currently requires: "The walls and faces of all excavations in which employees are exposed to danger from moving ground shall be guarded by a shoring system, sloping of the ground, or some other equivalent means." The term "danger from moving ground" is not defined in the standard and, thus, the standard does not specify when an employer must take any precautions to protect employees from a cave-in. Furthermore, the standard does not specify what degree of precaution an employer must take even when employees are exposed to a "danger from moving ground." Requirements in this regard are, however, contained in § 1926.651 (e), (f), (g), and (h).

This issue was resolved somewhat when the OSHRC, in agreement with the Secretary of Labor, interpreted the standard to require shoring or sloping in accordance with *Table P–1* of Subpart P, whenever employees are exposed to unstable soil in excavation sides (*M.J. Lee Construction Company*, 7 BNA OSHC 1140 (R.C. 1979); *Terra Motus Company, Inc.*, 5 BNA OSHC 1696 (R.C. 1977); *D. Federico Company, Inc.*, 3 BNA OSHC 1970 (R.C. 1976) affirmed on the grounds, 558 F. 2d 614 (1st Cir 1977) 5 BNA OSHC 1528). However, the problem was revived by two OSHRC decisions which are inconsistent with the cases mentioned above. In the first case, *Seaward Construction Company, Inc.*, 5 BNA OSHC 1422 (R.C. 1977), the OSHRC interpreted § 1926.651(c) to require sloping and shoring only if OSHA establishes that the ground to which employees are exposed is actually moving. In the second case, *Pipe-Rite Utilities Ltd., Inc.*, 10 BNA OSHC 1289 (R.C. 1982), the OSHRC, relying on *Seaward*, vacated a citation and did not address the other cases interpreting paragraph 1926.651(c).

These decisions reestablished the uncertainty as to when and to what degree an employer must slope, shore or otherwise protect employees in a non-trench excavation. OSHA has long maintained that employees exposed to potential cave-ins must be protected by shoring or sloping long before the excavation face is in imminent danger of collapsing.

Another problem with the standards for non-trench excavations is that the required degree of protection is not always easily determined. With regard to sloping, the existing § 1926.651(g) provides that "All slopes shall be excavated to at least the angle of repose except for areas where solid rock allows for line drilling or presplitting." To find the angle of repose an employer must consult *Table P–1* which appears at the end of § 1926.652, "Specific Trenching Requirements." *Table P–1* is titled "Approximate Angle of Repose for Sloping of Sides of Excavations." The difficulty with *Table P–1* is that it describes the approximate angle of repose for various soil types in terms that are not the same as terms commonly used in the industry to classify soils. In addition, the terms are not defined in the standard. Thus, it is sometimes very difficult to derive the appropriate degree of sloping from this Table.

OSHA recognizes a problem with the term "angle of repose." The term is used in the standard in a manner which is inconsistent with its meaning in the civil engineering profession. In the American Society for Testing and Materials (ASTM) Standard D653–87, "Standard Definitions of Terms and Symbols Relating to Soil and Rock Mechanics," the term "angle of repose" is defined as follows: "The angle between the horizontal and maximum slope that a soil assumes through natural processes. For dry granular soils the effect of height is negligible; for cohesive soils the effect of height is so great that the angle of repose is meaningless." Thus, to talk in terms of a single "angle of repose" is technically inaccurate. The "angle of repose" for cohesive soil depends on the depth of the excavation, whereas the "angle of repose" for granular soil depends largely on densification and changes in environmental conditions of exposure, such as the drying process.

The proposal has sought to rectify these problems by setting forth requirements for the sloping of excavations that are clear and consistent with the terms used both in the civil engineering profession and in the construction industry. This is accomplished in proposed § 1926.652(b) which provides three options for sloping. These three options are: (1) Sloping to a specified angle from the horizontal in accordance with the most conservative assumptions as to soil conditions; (2) sloping in accordance with appendices A and B to Subpart P which allow steeper slopes after the employer has determined that the excavation is located in a soil which is suitable for a steeper slope; or (3) sloping in accordance with the directions of a qualified person *or* a qualified engineer.

In the proposal, OSHA permits a "qualified person" or a "qualified engineer" to design protective systems and structural ramp, to prepare tabulated data, and to determine if excavations below the footing of a foundation or retaining wall can be accomplished safely. The existing standard permits supporting systems to be designed by a "qualified person" (§ 1926.651 (f) and (k)). Additionally, existing § 1926.651(x) permits the "qualified person" to design ramps. Requirements for sloping (§ 1926.651(e) and § 1926.652(b)) and for excavations below footings or adjacent to structures (§ 1926.651 (n), (o)) imply that these are the responsibility of the "qualified person." Input received during the preparation of this proposal seems to indicate a "qualified person" as defined in § 1926.32(l) of the existing construction safety standards may have significant expertise in many phases of excavation work, but may well be unable to demonstrate any expertise specifically relating to the design of cave-in protective systems.

Modifying the standard to permit only a "qualified engineer" to undertake design responsibilities is one suggested remedy which the Agency is considering. However, considering the potentially adverse impact on small firms which do not normally employ engineers, OSHA is proposing to allow either a "qualified person" or a "qualified engineer" to perform design responsibilities provided that the design is in accordance with accepted engineering practice. The Agency is concerned about the qualifications necessary to design protective systems, and solicits public input on this issue.

Need for Clarification of Trench Requirements

OSHA has learned from its enforcement experience with § 1926.652 "Specific Trenching Requirements" that much can be done to clarify the meaning and intent of these standards. The key provisions of the current specific trenching standards are § 1926.652(b) (for trenches in soft or unstable soil) and § 1926.652(c) (for trenches in hard or compact soil).

The main difficulty with §§ 1926.652(b) and 1926.652(c) is that the terms "soft or unstable" and "hard or compact" do not, in some instances, provide sufficient guidance to employers as to the requirements applicable to a trench. The OSHRC has held that any trench requiring a slope less steep than 63 degrees from the horizontal under *Table P–1* must be considered to be in soft or unstable soil within the meaning of § 1926.652(b).

Since § 1926.652(c) requires a slope of not steeper than ½ to 1 for hard or compact soil, it is evident that these materials listed in Table P–1 as having a less steep angle of repose must be considered soft or unstable, and are therefore regulated by § 1926.652(o). (*Connecticut Natural Gas Corporation*, 6 BNA OSHC 1796, (R.C. 1978)).

Although the OSHRC ruling harmonizes the existing regulations, it is preferable for employers to know which requirements they are subject to before determining the extent to which they must slope, rather than determining the slope first and then determining the regulation with which they must comply. In some instances, this is not a difficult problem under the current standard. For example, for many granular soils, an employer is not going to have a problem determining that a slope of ½ to 1 (approximately 63 degrees from the horizontal) is inadequate, and that § 1926.652(b) applies to the trenches excavated in such soil. Indeed, the OSHRC has ruled that there is a rebuttable presumption that predominately sandy soils, unless cemented, are soft or unstable within the meaning of 1926.652(b). (*Duane Meyer d/b/a D.T. Construction Company*, 7 BNA OSHC 1560 ((R.C. 1979)). However, there are situations under the existing standard in which it is not easily determined which sloping angle applies. For example, if a trench is excavated in previously disturbed cohesive soil, the existing standard gives little guidance as to which standard applies or what constitutes an adequate slope under *Table P–1*. And, since the sloping requirements of § 1926.652 are contained in *Table P–1*, the shortcomings of that Table (previously discussed above under non-trench excavations) are also a problem with the existing standards regulating trenches. In addition to the technical misuse of the term "angle of repose," the Table classifies soils in a manner that is difficult to relate to the soil descriptions used in § 1926.652 (b) and (c), and the terms used are not the same as terms generally used in the construction industry.

The proposed standard rectifies these problems in two ways. First, it provides employers with a soil classification scheme in appendix A which describes the variables an employer can encounter; and secondly, it sets forth sloping and shoring requirements in accordance with the types of soil, as determined with respect to the soil classification system. As discussed above, the employer also has the option of sloping in accordance with the directions of a qualified person or a qualified engineer, or simply sloping under the conservative assumptions. In OSHA's opinion, the soil classification system in appendix A will make it much easier for employers to determine whether their slopes comply with OSHA's requirements.

Section 1926.652(c) has caused compliance problems in one other important respect. The standard requires sloping of at least ½ to 1 (horizontal to vertical) but requires only that sloping begin five feet (1.52 m) from the bottom of the trench. This standard has been interpreted as permitting a trench dug in hard or compact soil to be vertical for the first five feet (1.52 m) from the bottom, and sloped not more than 63 degrees from the horizontal beginning at the five foot (1.52 m) level (*Horowitz Brothers, Inc.*, 3 BNA OSHC 1131 ((R.C. 1975)).

OSHA believes that this interpretation is inadequate because it is dangerous to allow employees to work in a trench excavated in soils in which the sides are vertical for the bottom five foot (1.52 m) portion and then sloped starting at the five foot level. This is particularly true in a relatively deep trench in which the weight of cohesive soils adversely affects the stability of the trench side. OSHA has always interpreted and enforced this provision to require shoring or a trench shield in the unsloped, vertical sided portion of the trench.

To address this problem, this proposed standard clarifies that trenches and excavations be sloped or benched from the bottom, instead of from the five foot (1.52 m) level, unless a qualified person or qualified engineer designs an alternate configuration in

accordance with accepted engineering practices. Acceptable configurations for sloped excavations are illustrated in *Figure B–1* of appendix B.

OSHA believes that sound engineering principles dictate that the five foot deep vertical-sided portion should be shored. The National Bureau of Standards (Ex. 3) depicts a similar situation in figure A–2, but recommends a three foot maximum vertical-sided portion and a slope of not more than 1 H: 1 V (45°). Additionally, figure A–7 depicts another similar situation where the depth of the vertical-sided portion is approximately four feet deep, *shored*, and the slope is 1 H: 1 V (45°). OSHA solicits comment on the appropriateness, and costs and benefits of the above discussed configurations with special emphasis on the OSHA interpretation.

Existing § 1926.652(g)(1) provides that shoring be installed in accordance with *Table P–2*, "Trench Shoring-Minimum Requirements." This has been changed in the proposal to afford employers greater flexibility in designing shoring systems. In the proposal, employers can choose between several optional approaches for designing shoring. They can: (1) Conform to the specific requirements contained in Appendices A and C; (2) rely on other tabulated data prepared by a qualified person or a qualified engineer, including manufacturer's tabulated data or state regulations promulgated under an approved State plan and determined by OSHA to be "as effective as Federal regulations;" or (3) use a support system designed by a qualified person or a qualified engineer.

The proposal would assure that shoring that departs from the specific requirements of the appendices is designed by a person qualified to make the judgment that the shoring is adequate based on accepted engineering practices.

Trench Boxes and Shields

The requirements for trench boxes and shields are currently contained in § 1926.652(k). The requirements are not totally clear as to their intent with regard to the design of shields. For example, the standard requires that such devices "shall be designed, constructed, and maintained in a manner which will provide protection equal to or greater than the sheeting or shoring required for the trench." In addition, the standard defines a trench shield as "A *shoring system* (emphasis added) composed of steel plates and bracing. . . . which support the walls of a trench. . . . ." Shields may be constructed out of steel, but need not be, and they may provide support to the side of a trench. However, shields are more often used in a manner where they do not support the side but rather act as a barrier in the event a cave-in occurs. Because of the restrictive nature of the existing definition, and since the design of sheeting and shoring is tied to the requirements for timber shoring and sheeting set forth in *Table P–2* "Trench Shoring—Minimum Requirements," some observers have perceived a lack of flexibility on the part of OSHA regarding the design of trench shields.

Another problem with the existing requirements for trench shields is the lack of coverage addressing hazardous situations that arise out of the use of shields. Shields are used somewhat differently than shoring, and so situations arise when using shields that do not arise when using shoring. For example, shields are moved into position by sliding them along the trench bottom or by lowering them into position. Employees who are within the confines of a shield during its repositioning are subject to being injured if the shield suddenly shifts in an unintended way—a hazard not generally arising out of the use of timber shoring.

The requirements for trench boxes and shields in current § 1926.652(k) would be changed to allow employers more flexibility in the design of trench shields. The proposal would also clarify the way in which an employer must assure that shields provide equivalent protection to sloping or shoring required by the standard. It would allow an employer to use a trench box or shield designed under the direction of a qualified person or a qualified engineer, or from tabulated data prepared by a qualified person or a qualified engineer. Qualified individuals involved in the design of shield systems will use accepted engineering practices and their expertise and capabilities to assure that the systems can resist the loads imposed on shields.

For manufactured rather than job-made trench boxes or shields, the proposal would require that employers comply with all manufacturer's instructions which might affect the safety of employees. Because of the manufacturer's concerns with product liability, these instructional materials are intended to establish a method or methods which the manufacturer has determined will provide for safe installation and use of a product. The user is thereby on notice of the precautions set forth in these materials, and is responsible for implementing them. Additionally, requirements would be added that address the hazardous situations that arise during the course of using a shield, but are not now addressed in the existing standard. In OSHA's opinion, these requirements will assure that shield systems will adequately protect employees.

## II. The Nature of Excavation Hazards and Accidents

Excavation Hazards

The primary hazard to which employees may be exposed during excavation work is that of a cave-in of the excavation. A cave-in occurs when the soil forming the side of the excavation can no longer resist the forces being applied to it. This situation results from either a reduction in the frictional and cohesive capacities of the soil to resist forces, or from exceeding the overall capacity of the soil to resist forces. Changing environmental conditions, such as freezing and thawing, or the addition or removal of water from the pores of the soil, can reduce the ability of the soil to resist forces. Dynamic loads from vibrations caused by nearby traffic or from construction operations, such as pile driving, can also reduce the ability of a soil to resist forces.

The addition of surcharge loads from spoil piles, or the placement of heavy equipment or material near the edge of an excavation, creates forces that can exceed the ability of the soil to resist. Likewise, the load imposed on the soil from adjacent structures can cause soil to cave in if the excavation is too near the structure.

There are several different methods of protecting employees from cave-ins. Protection can be provided by sloping or benching the sides of the excavation; by supporting the sides; or by placing a shield between the side of the excavation and the work area.

Sloping and benching provide protection by eliminating the cave-in hazard. Soil is removed so that a cave-in will not occur. Determining the proper slope or bench configuration for a particular situation can be a highly complex engineering problem. An insufficient slope for the conditions of exposure creates a hazard to employees.

Support systems are provided to add another factor of resistance to the forces that could cause a cave-in. However, the installation of a support system introduces material handling procedures, installation procedures, and removal procedures that can be hazardous in themselves unless accomplished in a safe manner. The possibility of a cave-in also continues to exist during the installation and removal of support systems.

As with sloping, determining what constitutes an adequate support system can also be a complex problem. The hazard of the support system being inadequate to resist the forces applied to it exists if the system has not been carefully designed. The system must have the capacity to resist all the forces that are anticipated or could reasonably be expected to be applied to it. Additionally, improperly installed support members, or the use of inadequate or damaged materials in a support system, could result in a system capacity less than that intended.

Shield systems, unlike support systems, do not eliminate the possibility of a cave-in or add to the factors resisting a cave-in. Shield systems do not prevent cave-ins, but instead provide a shelter to employees in the event that a cave-in occurs. Because a shield is a structure, it must be properly engineered to resist static and impact loads imposed during a cave-in in order to protect the employees within the area shielded. Lateral movement of shields is another hazard that must be considered when shield systems are utilized.

Shield systems most often protect only a very small portion of the area where a cave-in could occur. Employees are therefore exposed to a cave-in hazard if they stray from the protected area. This could occur during entry and exit procedures, or during periods of work activity, unless other precautions are taken.

In addition to cave-in hazards, and secondary hazards related to providing protection against cave-ins, there are several other hazards from which employees must be protected during excavation-related work.

Excavations frequently are made adjacent to existing structures. Excavation activity can create a situation where such structures are destabilized and collapse, thus endangering employees in and around the excavation.

Frequently, underground utilities are encountered and, if damaged, can expose employees to fire and explosion, rapid flooding, electrocution or the release of toxic substances.

Excavations are often made in or near streets, thus exposing employees to vehicular traffic due to both construction and non-construction activity.

Excavation operations include the loading and unloading of earth, fill and other construction material which creates the hazard of falling loads during these operations.

Exposure to hazardous atmospheres is another hazard that can be encountered during excavation work. Hazardous atmospheres can result from many sources related to both construction and non-construction activity. For example, some construction activities, such as welding, produce toxic fumes. Hazardous materials that have been carelessly dumped, or materials that leak from storage tanks underground, can create hazardous atmospheric conditions if the ground is excavated. Excavations near landfill areas can also possibly develop concentrations of hazardous substances from the decomposition of material within the fill.

Hazards related to methods of access and egress are common on excavation sites. Both construction equipment and employees enter and exit excavations. Earth and structural ramps can collapse if not properly designed and constructed to resist the loads imposed. Trips and falls can also occur where runways are not adequately constructed.

## Accidents and Injuries

Studies show that excavation work is one of the most hazardous types of work done in the construction industry (Ex. 9 and Ex. 10). Accidents in excavation work occur more frequently than do accidents in construction in general. The primary type of accident of concern in excavation-related work is a cave-in. The actual number of cave-in accidents is not large when compared to the estimated total number of accidents occurring in all of construction. However, those that do occur tend to be of a very serious nature. Cave-in accidents are much more likely to be fatal to the employees involved than other excavation-related accidents.

The true extent of excavation-related injuries and deaths cannot be readily determined from available accident data such as those maintained by the Bureau of Labor Statistics (BLS). This is because a large number of cave-in accidents are classified under a general "accident-type" heading that does not specifically identify whether the accident involved a cave-in. For example, cave-in accidents are most likely to be recorded under the "accident-type" category of "caught in, under, or between." This category encompasses many accidents that are not excavation-related, such as those in which an employee becomes caught in the moving parts of machinery. There is no apparent way to separate out those accidents that are cave-ins.

Nevertheless, estimates of the number of injuries and fatalities occurring in excavations have been made. In a 1975 study, based primarily on a previous study of newspaper articles and other data made available from OSHA files, it was estimated that more than 100 persons were killed in excavation cave-ins each year (Ex. 11). In contrast, based on a recent report prepared by NIOSH and from OSHA's inspection data, it was estimated that at least 73 persons were killed each year in cave-in accidents and at least 97 persons were killed as a result of all excavation-related accidents (Exs. 24, 30, 31, and 32). Using the same data, OSHA has estimated a fatality rate due to excavation-related work injuries of .318 per 1,000 full-time workers and .427 per 1,000 full-time workers for SIC 1623. These rates are at least similar to, if not higher than the fatality rate of .290 per 1,000 full time workers due to all types of work injuries occurring in construction in general. The fatality rate for *trenching* work was estimated to be as high as 112 percent greater than the rate for construction in general.

Estimates of non-fatal injuries have also been made. California has reported that the ratio of non-fatal, lost-time injuries to fatalities for all types of accidents in sewer, pipeline, and trenching work was 50 to 1. That is, one fatality occurred for every 50 non-fatal, lost time injuries. In contrast, the ratio for all contract construction was 174 to 1 (Ex. 9).

In another report specifically related to cave-ins, California reported that the ratio of lost-time injuries to fatalities due only to cave-in accidents was 17 to 1. In contrast the lost-time work injuries to fatalities for all types of accidents in all industries was 250 to 1 (Ex. 10).

As a measure of the seriousness of cave-in accidents, Thompson and Tannenbaum stated that ratios of injuries to fatalities due to cave-ins as high as 10 to 1 and 14 to 1 have been reported (Ex. 11).

OSHA, using most recent data, has estimated that at least 6,790 non-fatal lost-time injuries related to excavation and trenching work occur annually. This estimate is based on the assumption that the ratio of non-fatal lost time injuries to fatalities is 70 to 1 for all types of accidents, including, but not limited to cave-ins in the construction industry (Exs. 24, 30, 31, and 32).

The following examples of recorded accidents will serve to illustrate the types of excavation-related accidents that injure and kill employees working in construction. The list reflects selected examples that are indicative of the types of accidents that have continued to occur. The list is not intended to address all types of excavation-related accidents that occur.

- *California, 1976.* The collapse of a trench took the life of a geologist. The trench was three feet wide, 13 feet deep, and had vertical walls that were not

shored. The geologist was warned that the ground was unstable, but ignored the warnings. Once inside the trench, he was quoted as saying, "This sure looks bad in here. It looks like it's going to cave in." Ten seconds later a cave-in occurred and completely covered him (Ex. 14, p. 15).

• *Indiana, September 1980.* An employee was fatally injured in a sewer trench when the sides of the trench collapsed. There was no shoring to support the sides of the trench and the sides were not sloped (Ex. 22).

• *Texas, March 1981.* Two employees were laying a utility pipe in a trench six feet deep. The sides of the trench caved in, killing one worker and seriously injuring the other (Ex. 19).

• *Utah, April 1981.* A worker was killed when a trench in which he was laying water pipe gave way. The victim was standing in a trench about five feet deep and three feet wide dug in sandy soil. The side of the trench caved in, crushing the man against the other side of the trench. Although his head remained above the soil, he died almost instantly from massive internal injuries to the windpipe, lungs and liver (Ex. 16).

• *California, 1968.* In one accident, a trench 13 feet deep was thought to be stable because it had sides of rock. During the digging, an old trench filled with backfill was encountered. A laborer who entered the trench to see how close the backhoe was digging to a sewer main was knocked down and buried when the backfill from the old trench caved in. Although his head remained above the piled earth, the worker died of suffocation and multiple internal injuries (Ex. 9, p. 5).

• *California, 1968.* A laborer was helping to install shoring in a trench about 10 feet deep, when the material caved in under the existing shoring, covering his feet and lower legs. Before he could be rescued, the whole side of the trench caved in, covering him completely. The accident was caused by the unstable bank material falling in below the bottom of the shoring system that extended to about two and one-half feet from the bottom of the trench. When this happened, the pressure on the hydraulic-type shores was released, causing them to collapse (Ex. 9, p. 3).

• *California, 1968.* A pipeline trench, 600 feet long and 15 feet deep, was dug in sandy soil. About 550 feet of pipe had already been laid, the shoring removed, and the trench backfilled. A worker was assigned to compact the backfill in the remaining 50 feet and to remove the shoring. He then removed a lower jack and threw it from the trench. When he tried to remove the upper shore, there was so much earth pressure on it he required help to force it free. When the shoring jack released, the earth wall collapsed, burying the employee in the trench (Ex. 9, p. 4).

• *Georgia, May 1965.* Two workmen were killed and six others injured when a building under construction collapsed. A backhoe being used to excavate a sewer line inside the building dug adjacent to a column and some five to 15 feet below it. The undermined column slid into the excavation, thus triggering the collapse. Workmen are reported to have noticed flaking of the soil prior to the collapse (Ex. 17, p. 29).

• *California, 1968.* A lateral trench was dug at right angles to a main trench that was eight feet deep. Digging in the lateral trench undermined supports of a six-inch water main, causing the pipe to sag and then break. The trench quickly filled with earth and water. Fellow workers could not pull a laborer who had been installing shoring in the lateral trench loose from the mud which came up to his knees. He was drowned as water filled the trench. It had been assumed that the water line was no closer to the trench than five feet because of the location of a fire hydrant above ground at that distance (Ex. 9, p. 4).

• *Missouri, November 1980.* Employees of a water company struck and ruptured a gas line while digging a trench. Five employees of the gas company were injured when an explosion occurred, followed by fire, during an attempt to repair the leak (Ex. 21).

• *Pennsylvania, July 1981.* An employee was caught in a trench cave-in, but was not killed. During the rescue, the employee suffered deep gashes on his back when rescuers attempted to free him with a backhoe. The employee later died from complications resulting from these injuries (Ex. 23).

• *Arkansas, December 1980.* One worker was killed and three others were seriously injured in a sewer trench cave-in. The three injured jumped into the trench to try to save the first man after a cave-in, but were themselves caught in a second cave-in (Ex. 20).

• *Nebraska, April 1968.* Three workers were killed in a cave-in of an unshored and unsloped trench. The workers had excavated a deep trench alongside a previously undermined bridge abutment to make repairs to the abutment. They were buried to their waists in a cave-in. Before they could be dug out, another cave-in buried them completely (Ex. 18, p. 31).

All such accidents are, of course, complex events and multiple issues must be addressed in order to protect against the human, equipment and environmental factors which can result in injury or death. Among these issues are: Knowledge of the hazards and where protection is required; the types of systems appropriate for use in particular situations; the proper construction, installation and removal of safety systems; proper supervision; proper work procedures; and proper inspection. Each of these topics is covered in the proposed revisions to Subpart P.

OSHA has determined that the available accident and injury data clearly establish a significant risk to employees working in and around excavations. A high rate of injuries has continued to occur in excavations throughout the 14 years since Subpart P was first adopted by OSHA. OSHA believes that this proposed revision of Subpart P will help reduce the current accident toll associated with excavation work.

## III. Summary and Explanation of the Proposed Standard

This Notice of Proposed Rulemaking is intended to solicit data, views and arguments on the proposed revision of Subpart P. Comments and recommendations on the proposed revisions together with discussion, explanations, and supporting evidence are particularly solicited.

The reader should recognize that the standard proposed in this notice represents OSHA's current position with regard to the format and content of Subpart P. OSHA intends to evaluate the comments, recommendations, suggestions and evidence received in response to this notice. Based on the record of this rulemaking, the Agency will make modifications and changes in the final rule, where appropriate.

In order to facilitate the desired public comment, this notice not only includes the text and explanation of the proposal, but also identifies several issues to which OSHA directs the reader's attention for special consideration. OSHA wants to focus attention on these issues in order to encourage the submission of additional valuable information from interested persons.

### Issues

1. It has been suggested to OSHA (Ex. 8, pp. 108–207) that the revision of Subpart P should include data on "standard practices" for protecting employees against cave-ins. This data would be in the form of tables and charts that could be understood and used by the journeyman worker. Employers would be required to "select" a system of protection from tables and

charts in Subpart P or, as an alternative, have a qualified engineer design the protective system. It has been suggested that OSHA include as "standard practice," generic tables and charts for metal hydraulic shoring, timber shoring, trench shields, protection for footing excavations such as bell-bottom pier holes, and sloping and benching systems.

A. What is the feasibility of this approach?

B. Do such tables and charts now exist?

C. How could such tables and charts be developed for use with manufactured systems without containing proprietary information?

D. With what method of soil classification should all such systems be correlated?

E. What limitations would apply to the use of generic tables and charts?

F. How could such tables and charts incorporate the flexibility needed to insure that technical advances in cave-in protection could be implemented rapidly?

G. In addition to any generic tables and charts that could be created, what supporting data would have to be included to explain their use and limitations?

2. In § 1926.652 of the proposal, OSHA would require, under certain circumstances, that protective systems (which are defined to include shoring, shields, sloping, underpinning, etc.) be designed by a "qualified person" or a "qualified engineer." The definition of "qualified engineer" that OSHA is proposing is new (See proposed § 1926.650(b)(13)). The definition of "qualified person" is provided in current § 1926.32(l).

OSHA has been asked to consider limiting design responsibilities to a "qualified engineer;" thus eliminating the "qualified person" as used in the existing standard. This would set up a more stringent level of expertise for design responsibilities, but would exclude individuals who are fully capable of performing the required duties at the higher level of expertise, if they do not possess an engineering degree.

A great deal of debate on this issue has not provided a conclusive answer. (This is further discussed in this preamble in § 1926.650 title: *Scope, Application and Definitions Applicable to This Subpart.*) Since this issue has not been resolved satisfactorily, OSHA is proposing that design and tabulated data be prepared by either a "qualified person" or a "qualified engineer," in order to alert the public to the Agency's concerns.

In order to consider this issue further, OSHA requests comments on the following questions:

A. Should OSHA limit all design responsibility to a "qualified engineer"? Please provide detailed cost data, and rationale for the response.

B. What evidence is available to support that requiring a "qualified engineer" will decrease the risk of injuries and fatalities in excavation work?

C. Should OSHA limit design responsibilities to a "qualified engineer" in unusual situation (for example, excavations under the foundation of buildings)? Please provide a detailed response.

D. If OSHA does limit design responsibility to a "qualified engineer," is the proposed definition of "qualified engineer" adequate for the purpose of this proposal?

E. If the proposed definition is not acceptable, what is a more acceptable definition of "qualified engineer" for purposes of this proposal?

F. What are the reasons why OSHA should or should not require a "qualified engineer" to be a "registered professional engineer"?

G. Should OSHA recognize "experience", or other factors such as training, as a factor for determining the qualifications of an individual to design protective systems?

H. What objective criteria are available to enable the employer to evaluate experience or other factors as a qualification?

I. Should such criteria be incorporated into the standard? If so, how?

J. Information collected indicates that few small excavation firms employ or hire a "qualified engineer". If OSHA does limit design responsibility to a qualified engineer what would be the likely impact on small business? What would be the costs of such a requirement? Would the costs fall disportionately on small business?

3. In proposed § 1926.652, the requirements for designing protective systems are set forth. Several approaches, described as options, are given. Employers can, but need not, choose to follow appendix B for sloping and benching or appendix C for timber shoring in trenches. If employers choose to follow either of these appendices, then appendix A must also be followed.

Appendix A describes a method of classifying soil conditions. Some form of manual and visual testing is required in order properly to classify a soil in accordance with the system described in the appendix. This requirement is stated in paragraph (c)(2) of appendix A.

There are several visual and manual tests that are described in appendix A. However, these tests are only *recommended;* it is not required that any of these particular tests be conducted. It has been suggested to OSHA that specific tests, such as the penetrometer or vane shear tests for cohesive soils, or laboratory tests for granular soils, should be made *mandatory.*

As an alternative to using appendix A, OSHA could allow employers to use any visual and manual test to classify soil, but could establish a preference for particular tests in the following manner. OSHA could state that in the event that there is a disagreement between the employer and OSHA as to the proper classification of the soil, a classification predicated on either a laboratory test, penetrometer, or shear vane test would be considered more accurate than a classification that is not based on these tests. Further, in the context of litigation, any classification which is predicated on a laboratory test, penetrometer, or shear vane test would be given a presumption of reliability over any classification not based on one of the aforementioned tests. However, this presumption of reliability could be rebutted by the party relying on other methods of classification.

A. Is there a need to mandate specific tests? Please provide a detailed response.

B. What is the feasibility of mandating a specific test or of the suggested alternative?

C. What limitations, if any, are there to the use of any particular tests under given soil conditions?

D. Should additional testing requirements be made mandatory? If so, which ones?

E. If certain tests were made mandatory, how frequently would they have to be conducted?

4. In the proposed standard, appendix B sets forth provisions for sloping and benching. Use of this appendix is optional, but when it *is* used, the specified maximum allowable slopes are mandatory. In the proposed appendix B, the maximum allowable slopes specified vary, primarily with soil type and time of exposure. Time of exposure is expressed as short-term and long-term, with the division point at 72 hours. Flatter slopes are required in long-term excavations. (A discussion of the effects of the passage of time on the stability of excavation sides can be found in Ex. 5, pp. 20–30.)

It has been suggested that the concept of time, expressed as short-term and long-term, should not be used in the proposed standard, and that only one

set of maximum allowable slopes should apply, regardless of the length of time an excavation is open (Ex. 8, pp. 304–308).

(Note.—This issue is discussed in greater detail below in this Preamble in the Summary and Explanation of appendix B).

A. Should the standard recognize the effects of the passage of time on the stability of excavation sides?

B. If 72 hours is not an adequate dividing point between short-term and long-term, what length of time should constitute the short-term?

5. It has been suggested that when shields are used as protection against cave-ins, employers should be required to have the *design specifications* for the shields available at the worksite, and that shields also should be certified that they can in fact withstand the specified maximum loads (Ex. 8, pp. 295–302, and pp. 186–208).

A. What effects would such a requirement have on manufacturers of shields and users of shields?

B. What is the current industry practice regarding the availability of design specifications and certification of shields?

6. It has been suggested that when a support system is used as protection against a cave-in, employers should be required to have the design specifications, including a plan or drawing and a statement as to the system's limitations, available at the worksite (Ex. 8, pp. 392–398).

A. What effects would such a requirement have on employers?

B. What is the current industry practice regarding the preparation and availability of drawings indicating the layout of support systems in excavations including trenches?

7. It has been recommended by the Advisory Committee for Construction Safety and Health (ACCSH) to include a new fall protection requirement in the revision of Subpart P. This provision would require that some form of warning such as a warning line, cones, signals, or barricades be used along the edges of excavations that are five feet or more in depth to warn employees who work adjacent to excavations, but who are not directly involved with the excavation activity, that a fall hazard exists (Ex. 8, pp. 256–272, 278–288, 408–420). OSHA solicits comments on the need for such a provision.

8. OSHA is proposing that certain inspections be required (See proposed paragraph 1926.651(k)). It was recommended that OSHA also require that a written log or record be kept at the jobsite of these inspections (Ex. 8, pp. 390–391, 402–404). The purpose of the written log would be to help ensure that the required inspections are made. Public comment is requested on whether such a record should be required, what the format and content of the record should be, and what costs would be incurred as a result of such a requirement. If such a record is advisible, why would a certification not be sufficient?

9. It was suggested that OSHA include a new provision in the proposed standard that would require that a "top-man" be present to observe the work being conducted within the excavation, and to watch constantly for signs of danger when employees are in an excavation. This requirement would apply whenever a shield or any other protective device or system is used to protect employees against cave-ins.

A. To what extent would such a requirement help to increase safety in excavation work?

B. What other job duties, if any, could be assigned to the "top-man" without impairing the duty to watch for signs of danger?

C. What should be the responsibilities of the "top man" in the event that a dangerous situation is identified?

D. What costs would be incurred as a result of adding such a requirement?

10. Section 1926.652 of this proposal allows three options for providing employee protection by sloping, and four options for the use of shoring. OSHA is considering allowing a fourth option to address sloping. This option would permit the use of tabulated data and would have similar requirements to Option Three which addresses shoring. The intent would be to allow the use of tabulated data based on a recognized soil classification system and prepared by a qualified person or a qualified engineer, in designing sloping and/or benching systems in a larger geographic area (for example a county or a portion of a county), as opposed to the proposed sloping Option Three which is site specific. OSHA solicits comments, opinions and data related to the feasibility of adding a fourth option to those addressing sloping. Additionally, OSHA needs to know if this type of data is currently available, and what restrictions should be applied if this type of option were to be allowed.

11. Section 1926.652(g)(1)(iv) of this proposed revision prohibits employees from being inside shields when the shields are being installed, removed or relocated. OSHA has been asked to permit employees to remain inside shields during repositioning (moving the shield along a trench as work progresses), if employees use proper precautions. OSHA solicits comments and opinions on the feasibility of this request and additionally requests input as to what work practices, precautions, etc., should be required if this practice is permitted.

12. The proposed appendix A to Subpart P of Part 1926 provides a consistent soil classification system for use with the standard. Under this system, hardpan and caliche soils are considered "Type A" soils. OSHA has been asked to consider moving hardpan and caliche soils to the stable rock classification, thereby relaxing the protective measures required in these types of soils. OSHA solicits comments, information and opinion on the feasibility and potential cost and benefits, of this request. Please supply supporting data. For the purpose of this issue, "caliche" means a hard soil layer cemented by calcium carbonate found in arid and semiarid regions; and "hardpan" means a hard, unbroken subsoil, or bedrock.

13. Section 1926.651(g)(2)(ii) of this proposal addresses bell bottom pier holes. OSHA has received oral comments indicating that this subject warrants additional coverage under a separate section in Subpart P due to the hazards associated with this type of excavation. OSHA solicits comments and opinion on the need for a separate section addressing bell bottom pier holes and additionally requests input as to what this section should address.

14. OSHA has been asked to permit the use of established regional practices for the construction of protective systems. The Agency feels this added flexibility could be beneficial, but that some criteria need to be established in order to insure that these practices indeed are effective. Some criteria that the Agency is considering are: Approval by local authorities (regional, state, municipal); and, a proven safety record of at least five years of successful application without any failures.

OSHA solicits comments and opinion on the use of established regional practices, and on criteria that should be used to determine if these practices are effective.

15. Under the current standard, a qualified person can determine the angle of repose for sloping, out the standard requires that this determination and the design of the slope be based on evaluation of specific factors (1926.651(e)), and refers the person designing the slope to *Table P–1* (1926.652 (a) and (b)).

Proposed § 1926.652(b)(3) differs from the current standard, in that if the employer chooses to use a qualified person or qualified engineer, the standard does not provide any

"minimum requirements" for slope design, or require evaluation of specific factors. Instead, OSHA requires that the designs be prepared by a qualified person or a qualified engineer, be in accordance with accepted engineering practice, and include an indication of the magnitude and configuration determined to be safe for the project.

A similar situation exists concerning proposed § 1926.652(c)(4) related to design of shoring systems.

In view of the greater flexibility provided the employer under this approach, OSHA solicits comments and opinions on the appropriateness of allowing this degree of employer discretion and requests input on how implementing these options would effect the degree of employee safety provided.

In addition, in order to ensure the adequacy of designs prepared by either a qualified person or a qualified engineer, and to provide a degree of consistency in these designs, OSHA requests input on the appropriateness of requiring that *specific* information be included on the design. The following factors are being considered: Types of soil test performed and results; intended or expected load conditions, environmental considerations; and design limitations. OSHA is open to the suggestion of other factors which could be included in the design.

Proposed Changes and Revisions to Subpart P

OSHA will evaluate, on the basis of all the evidence submitted to the public record, the likely effectiveness of the proposed revised and new provisions and will include in the final rule only those revised and new requirements for which a significant reduction in the risk of incurring injuries or fatalities would be supported by the final record.

The following discussion explains the significant substantive changes to Subpart P being proposed by OSHA. In the discussion, a paragraph citation preceded by the letter "E" refers to a paragraph in the existing standard (Part 1926). All other citations are to the proposal.

*Section 1926.650—Scope, Application and Definitions Applicable to this Subpart.*

*Overview.* Section 1926.650 contains two paragraphs. The first is a new statement describing the scope and application of the proposed revision of Subpart P. The second contains the definitions applicable to this subpart. This second paragraph replaces existing § 1926.653. Several of the proposed definitions are new, while others are revisions of existing definitions. Some existing definitions have been dropped, and therefore do not appear in this proposal. Specific changes are discussed below.

*Discussion.* Section 1926.650(a) states that this subpart applies to all open excavations made in earth surfaces and that excavations are defined to include trenches. OSHA is proposing this scope and application paragraph to help clarify where the standard will apply. Under the existing format, with separate sections for excavations and for trenches, questions of applicability have often been raised. The new format should eliminate these questions. The new application statement is intended to alert the user to the fact that whenever the word "excavation" is used in the proposed standard, it applies to all excavations, including those falling within the definition of a trench. However, it should be noted that OSHA jurisdiction does not apply to excavations, which fall under the statutory authority of other Federal agencies to prescribe or enforce occupational safety or health regulations, if that authority is being exercised.

While most of the proposed requirements in the proposal apply to all excavations, some (for example, § 1926.651(c)(2)) apply only to excavations which also meet the definition for trenches. Where a provision is intended to apply only to trenches, the intention is clearly stated in the standard.

Proposed § 1926.650(b) lists and defines all major words used in the proposed standard. Many of the definitions are the same as those in the existing standard, although some have been reworded for uniformity or greater clarity. The following words have been added to or changed from the existing definitions:

(b)(1) "Accepted engineering practices." This definition was revised to convey a more accurate concept of the intent of the definition. This is evidenced by the use of the phrase "standards of practice" instead of the term "standards," which has a particular meaning in relation to OSHA regulations. The term "registered architect" was dropped at the suggestion of the ACCSH and also as suggested in the workshops (Ex. 26). It was felt the term was inapplicable to the subject matter.

The definition of "accepted engineering practices" has been in use since the standard was first promulgated in 1971. It has been suggested, however, that the definition could be further improved if the words "or other duly-licensed or recognized authority" were dropped from the definition. The definition would then read as follows:

"Accepted engineering practices" means those requirements or practices which are compatible with the standards of practice required by a registered professional engineer."

It is felt that the portion of the definition that would be dropped is unclear, and that such language defines "accepted engineering practice" as something broader and less demanding than the standards required by engineers.

It has also been suggested to OSHA that "accepted engineering practices" should be defined as being limited to and not just "compatible with," the standards of practice required of a registered professional engineer, because it can be more readily determined whether or not a particular practice conforms to that level of standard required by a registered professional engineer.

Another suggested change is to add language that defines "accepted engineering practices" as those practices that are described in published literature, such as textbooks that are used or referenced in a university engineering curriculum.

OSHA is undecided about these issues, and has determined that additional information addressed to these issues is desirable. Therefore, OSHA requests that specific comments directed toward these issues be submitted during the comment period.

(b)(2) "Bell-bottom pier hole." The definition for this term replaces the definition for a similar term, "belled excavation," found in paragraph E § 1926.653(d). Although defined, the term "belled excavation" is not used elsewhere in the current standards. Instead, the term "bell-bottom pier hole" is used, in paragraph E § 1926.652(f).

The wording of the new definition revises the current wording. The new definition defines a "bell-bottom pier hole" as "a type of shaft or footing excavation" whereas the current definition of "belled-excavation" is defined as "a part of a shaft or footing excavation."

These changes are being made to make the standards more clear and consistent.

(b)(3) "Benching" (Benching System). This definition has been added to the standard. Benching is one method of protecting employees against cave-ins that is specifically mentioned in the proposed standard. The existing standard makes no mention of benching as a method of protection.

(b)(4) "Cave-in." This definition is new. This term replaces the terms "moving ground" and "hazardous ground movement," neither of which is defined in the existing standard. This deficiency has led to confusion as to what is meant by these terms. OSHA believes the new term more accurately and consistently conveys the intended concept of the hazard, while reflecting current industry terminology.

There is no specific quantity of earth material that constitutes a cave-in. The definition therefore does not address a specific quantity of material. Instead, it describes the mechanisms of the hazard and its results.

(b)(5) "Competent person." This definition is identical to the definition in § 1926.32(f) of Subpart C of the current Construction Safety and Health Standards. The term is used throughout existing Subpart P but is not defined within the Subpart, nor is any explicit reference made to the existing definition in Subpart C. Therefore, this definition would be added to Subpart P to help those regulated by the standard. A "competent person" is required in this Subpart wherever an assessment must be made of the working conditions with respect to safety. For example, the standard requires that a "competent person" monitor conditions that have been determined to be safe but could deteriorate quickly into hazardous conditions.

(b)(6) "Crossbraces." This definition replaces the existing definition "Braces (trench)" and remains essentially unchanged. The term "stringers" would be dropped from the current definition and replaced with the term "wales." The existing standard defines "wales" and "stringers" identically as "the horizontal members of a shoring system whose sides bear against the uprights or earth." OSHA believes use of the term "wales," which is more consistent with industry terminology, would improve the definition of "crossbraces." (See discussion for proposed paragraph (b)(28) of this section for more detail regarding the term "stringers.")

(b)(7) "Excavation." This definition has been modified only slightly from the existing definition in order to clarify and to convey more properly (along with the definition of "trench") the intended meaning. The word "cut" has been added to describe a type of excavation in accordance with accepted industry terminology. The word "trench" is added to remove any doubt that excavations, for purposes of this standard, include trenches.

The definition currently in E § 1926.653(f) contains a second sentence dealing with trenches and depth-to-width relationships. The concept of this sentence now appears in the definition of "trench" in revised form.

(b)(8) "Faces" or "Sides." This definition has not been changed. However, use of the term "walls" has been dropped from the standard. OSHA believes the interchangeable use of two terms, "faces" and "sides," instead of three separate terms, will help simplify the standard.

(b)(9) "Failure." This is a new definition. This definition is intended to apply to protective systems and to the members and connections of protective systems, where applicable. Use of the concept of "failure" introduces a measure for the performance of protective systems, their members and their connections. Such a measure is not present in the existing standard. This concept should help clarify the intent of the standard and the duty of employers to provide adequate protective systems.

(b)(10) "Hazardous atmosphere." This definition is new. It is taken with some modification from the definition of "Hazardous substance" in E § 1926.1926.32(k). The word "toxic" was added at the suggestion of the ACCSH.

There are several references to hazardous atmospheric conditions throughout the existing standard, i.e., E § 1926.650(g), E § 1926.651(v), and E § 1926.652(f). These provisions are grouped together under the single heading of *Hazardous atmospheres* in this proposal. The definition is provided to clarify further the intent of the proposed standard.

(b)(11) "Kickout." This definition is changed by substituting the new term "crossbrace" for the current term "brace," and by dropping reference to the term "shore." The first change is made for purposes of consistency in the use of terms. The second change is made in order to clarify the definition. The term "shore," as used in the current definition of "kickout," is not defined. However, in accordance with accepted industry terminology, a "shore" is considered to be a vertical member, such as a post, or as defined in the current standard, an "upright." It is not OSHA's intention however, to define "kickout" as failure of any vertical member. Therefore, use of the term "shore" is dropped in the proposed revisions of "kickout."

(b)(12) "Protective system." This definition is new. References are made throughout the proposal to "protective systems." The approach taken in the proposed standard is to classify under the concept of "protective system" all systems and methods of protecting employees from cave-ins, material that may roll or fall from an excavation face or into an excavation, and the collapse of adjacent structures.

(b)(13) "Qualified engineer." This definition is new. The term is used in the proposed standard as an option to a qualified person where *design* of protective systems and structures, such as ramps, is required.

As discussed in the *Issues* section of this preamble, there is extensive debate on the merits of requiring only a "qualified engineer" to perform design functions. OSHA is requesting additional information in order to resolve this controversy. The following discussion is provided as background on this issue.

The current definition of "qualified" in § 1926.32(1) provides: "Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project."

The existing definition has been criticized as inadequate by the Advisory Committee on Construction Safety and Health (ACCSH) (Ex. 8, pp. 112–186), in that it is too broad in its scope and is not specific enough. For example, it has been suggested that under the existing definition, an individual who lacks an understanding of the principles upon which designs of complex structures are based, could nevertheless be considered "qualified" on the basis of experience in excavation work alone. It has also been suggested that to allow a "qualified person," as currently defined in § 1926.32(1), to determine the degree of sloping would *allow* any person with any amount of experience in trenching to decide to slope as little as possible even if it entails risk of a cave-in.

OSHA's enforcement experience with the use of "qualified" person where there has been an accident or injury indicates that trenching experience has often been used as a rationale to misapply the current standard, and to provide protective systems which are inadequate either by accepted engineering standards or by *Tables P–1* and *P–2;* or to provide no protection at all. Considering the number of trench cave-ins each year, OSHA questions the considerations that were used to make some assessments, and solicits comment on the need to require specific criteria that must be met and documented by qualified persons or qualified engineers under proposed § 1926.652 (b)(3) and (c)(4).

OSHA is not entirely convinced that requiring a "qualified engineer" for all

design responsibilities, as was suggested, is the appropriate solution. Many individuals without an engineering degree are capable of designing an adequate protective system, while persons with engineering degrees may lack relevant experience in design of protective systems for excavations. Additionally, OSHA needs to consider the availability of engineers to fill the anticipated need generated by such a requirement; the willingness of the available engineers to assume the liability for the design; and, the impact of the compliance costs, especially to small business.

As discussed above, the Advisory Committee on Construction Safety and Health (ACCSH) considered the adequacy of the existing definition (Ex. 8) and suggested the following, more specific definition for this Subpart:

" 'Qualified person' means a registered professional engineer in a civil, structural, or soil mechanics discipline with specific education in excavation shoring techniques, or an individual with five year's experience in excavation shoring techniques."

This definition, however, would allow an individual with five years of experience in excavation work to prepare designs regardless of whether the individual had demonstrated ability in design of protective systems. OSHA does not believe there is a justification upon which to base any requirement for a specific amount of experience, be it five years or any other specific period. Further, the ACCSH definition refers only to experience or education in shoring techniques. Thus, the issues of which individuals should be allowed to make determinations on *sloping*, and what would constitute adequate experience in *sloping*, are left unanswered by the ACCSH definition.

OSHA believes, however, that experience is a significant factor that can contribute to the overall qualifications that an individual possesses to design complex systems. In OSHA's opinion, a definition is needed which emphasizes that a thorough understanding of engineering principles as practiced in excavations is necessary, and which also identifies that relevant experience is an important factor in determining if an individual is "qualified."

Further, in OSHA's opinion, a person need not be a "registered professional engineer" in order to be "qualified" for purposes of this Standard, as is suggested in the ACCSH definition. This is true because an individual may be fully able to design adequate protective systems but may not have attained recognition as a "registered professional engineer." To attain this recognition, an individual must pass a written examination. Such examinations are administered by each state. Certain qualifications are required before an individual will be allowed to take the test. Typically these include a combination of education from an approved institution and specific engineering related work experience. In some instances, individuals without the required education can substitute greater amounts of experience and become eligible for the examinations. Because of these requirements, there can be individuals qualified to design protective systems who are not eligible to obtain registration.

Another reason OSHA does not believe registration should be required is because registration is usually not specific with regard to a specific engineering discipline. An individual could become a registered professional engineer but be unable to design a cave-in protective system because of a lack of education and experience in the essential knowledges necessary for this work.

OSHA has developed a proposed definition of "qualified engineer." This definition is used in this proposal in conjunction with "qualified person." OSHA seeks comment on the proposed definition of "qualified engineer," and the current definition of "qualified person" and solicits suggestions on how to improve these definitions.

While OSHA believes that the continued use of a "qualified person" will provide significant protections to reduce the incidence of injuries and fatalities in excavation work, commentors are urged to provide data, in as much detail as possible, addressing the comparative effectiveness of a "qualified engineer" requirement. In making its final determination, OSHA will rely on the information and data received.

(b)(15) "Qualified person." This definition is identical to that in § 1926.32(e) and is included here for convenience.

(b)(16) "Sheeting." This definition is new. The definition is one of several that define the various members of a support system. It is intended to add consistency and clarity to the standard.

This definition contains some wording from the current definition of "sheet pile" (E § 1926.653(i)). The definition for "sheet pile" has been dropped since the term is not used in the proposed standard. "Sheeting" is a broader term. It includes all special types of sheeting, including sheet piles, where the purpose is to retain earth in position.

(b)(17) "Shield." This definition is new and it replaces the existing definition of "Trench shield" found in E § 1926.653(p).

The concept of a shield, as used in the proposed standard, is different from the concept of a shield concept defined in the existing standard. The new definition does not place any limits on the material from which a shield may be constructed.

The major difference in definition, however, is the manner in which shields are defined to provide protection. Unlike the current standard, the proposed standard does not refer to shields as devices which provide protection to employees by supporting the sides of an excavation and thereby preventing cave-ins. Shields generally do not prevent cave-ins, but, rather, protect employees from cave-ins that do occur. They provide a limited but safe sheltered space for employees to work within.

Shields are one of several types of protective systems that may be used to guard employees from cave-ins and other hazards. Some shields are designed to be expandable. Once in place they can be altered such that their faces are pressed against and actually begin to support the sides of the excavation. In this configuration, depending on the degree of support provided, such a device may also be considered to be a support system.

(b)(18) "Shoring" (Shoring system). This definition is new. The term "Shoring" is frequently used in the existing standard. Its use is maintained in the proposed standard. The definition is provided to clarify what is meant by the term since it is undefined in the present standard.

(b)(20) "Sloping" (Sloping system). This definition is new. As with "shoring," this term is used frequently in both the existing standard and the proposal to refer to a method of protecting employees against cave-ins. The definition is provided to lend consistency to the proposed standard and to clarify what is meant by "sloping."

An existing definition of "slope" found in E § 1926.653(1) is not used in the proposal because the concept defined in this definition is not applicable in the proposed standard. The existing definition states that "slope" means "the angle with the horizontal at which a particular earth material will stand indefinitely without movement."

The new definition of "sloping" is a broader concept referring to a "system" or "method" of protecting employees by preventing cave-ins. The slope or

multiple slopes used in a sloping system will vary with the soil types involved and the conditions of exposure, i.e., loads and environmental conditions. However, the slopes used need not be those that will prevent any movement of the slope indefinitely. The requirement is that employees be protected from a cave-in of the slope and from loose material that may fall or roll from the slope while there is employee exposure to the possibility of such hazards.

(b)(21) "Stable rock." This is a new definition. There is no definition for rock or rock conditions in the existing standard. Reference is made to rock in the existing standard in the footnotes to *Table P–2*, "Trench Shoring—Minimum Requirements." The footnotes state that "Shoring is not required in solid rock, hard shale, or hard slag."

It is recognized in the industry that excavations in rock normally do not present a cave-in hazard because of the inherent stability of rock, and the ability of rock to carry loads. However, rock varies to a great extent in its ability to remain intact while exposed, just as soils do. There are conditions that are found in some rock formations, such as fractures and seams of less stable material, that present a serious hazard. When such conditions are encountered in rock, it cannot be considered stable.

The proposed definition for "stable rock" has been developed from the definition that was proposed by the National Bureau of Standards (NBS) at the workshops. Originally, NBS used the term "unfractured rock," instead of "stable rock." However, many comments were made that it is impossible to excavate any rock without fracturing it in some way. The Construction Advisory Committee suggested that the definition be changed to "stable rock" (Ex. 8, p. 356). This recommendation was incorporated into the NBS definition.

Rock conditions that are unstable, i.e., cannot be excavated with vertical sides and remain intact while exposed, can be made equivalent to stable rock if a proper system is used to support the excavation side. A note to this effect is placed at the end of definition of "stable rock" to alert the user to this possibility.

(b)(22) "Structural Ramp." This definition has been added to differentiate between ramps made from soil or rock and ramps built from materials such as wood or steel.

(b)(23) "Support system." This is a new definition. There is no definition of support system in the existing standard. However, examples of supporting systems are given in E § 1926.651(f), such as "supporting systems; i.e., piling, cribbing, shoring, etc., . . . ." The concept of a support system as used in the proposed standard remains the same as in the existing standard. The definition is included to provide a more clearly defined concept.

As previously discussed, within the structure of the proposed standard the concept of "protective system" is used. A "support system" is one type of protective system. It is further noted that a "shoring system" is a type of support system. Support systems are more broadly defined than shoring systems to include structures that support adjacent structures or underground facilities, whereas shoring systems are defined as systems that support the sides of an excavation.

(b)(24) "Tabulated data." This definition is new. It is included to clarify OSHA's intent that tables and charts contained in State regulations of State plan states are acceptable for use under the option provided by proposed § 1926.652(c)(3).

(b)(25) "Trench (Trench Excavation)." This definition remains basically unchanged from the existing definition in E §1926.653(n). The changes that have been made are for the purpose of clarifying the definition. For example, the words "trench excavation" have been added to indicate more clearly that trenches are considered to be excavations.

A Note has been added to the end of the definition of the word "trench." The substance of this Note comes from the second part of the existing definition of "excavation" found in E § 1926.653(f) and deals with depth-to-width relationships in trenches. The wording has been revised to indicate more clearly how a portion of a large excavation can become a trench, for purposes of the proposed standard, as a result of creating a relatively narrow space between the side of an excavation and a structure that has been constructed in the excavation.

The proposal is structured such that most of the provisions apply to all types of excavations. However, some of the provisions of Subpart P apply only to excavations that are trenches. For example, § 1926.651(c)(2) sets forth requirements for means of access and egress in trenches, and § 1926.652(c)(1) sets forth the option of using Appendices A and C for determining the configuration of timber shoring in trenches. Those provisions in the proposal that apply only to trenches are clearly indicated by use of the word "trench" within the provision.

(b)(28) "Uprights." This definition revises the existing definition in E § 1926.653(r). The definition is changed so as to be more consistent with definitions of other shoring system members that are in the proposed standard, and to expand on the concept of the term.

The term "uprights," as used in the proposed standard refers only to upright members used in trench shoring systems. Such uprights are usually spaced some distance apart when in position. Normally uprights are referred to as "sheeting" when they are positioned such that they are very closely spaced, in contact with adjacent uprights, or interconnected. The proposed definition of "uprights" is intended to clarify the application of the proposal in each of these positions.

(b)(29) "Wales." Paragraph E § 1926.653(s) of the current standard refers the reader to paragraph E § 1926.653(m) for the definition of "Wales." Paragraph E § 1926.653(m) states that "stringers" (wales) are "the horizontal members of a shoring system whose sides bear against the uprights or earth." However, the term "stringers" is also referred to in paragraph E § 1926.650(d) as the supports for plank steps, which is inconsistent with its definition.

OSHA is proposing to address this problem by dropping use of the word "stringers." In the proposal, only the term "wales" is defined and used to refer to the horizontal members of a shoring system. The term "stringers" does not appear in the proposal and need not be defined.

For reasons to be discussed below, the following terms which are contained in the current standard are not used, and therefore need not be defined in the proposal: E § 1926.653(b) "Angle of repose"; E § 1926.653(c) "Bank"; E § 1926.653(n) "Hard, Compact soil"; .E § 1926.653(j) "Sheet pile"; E § 1926.653(l) "Slope"; E § 1926.653(m) "Stringers"; E § 1926. 653(o) "Trench jack"; E § 1926.653(q) "Unstable soil"; and E § 1926.653(t) "Walls."

The term "angle of repose," as defined in the existing standard, is not consistent with its use in the civil engineering field. The existing definition in E § 1926.653(b) defines "angle of repose" as "the greatest angle above the horizontal plane at which a material will lie without sliding." The specific standards in E § 1926.651(e), E § 1926.651(g) and E § 1926.651(h) speak of determining the "angle of repose," excavating to the "angle of repose," and flattening the "angle of repose," all of which suggest that a single "angle of repose" can be determined for any particular soil. However, in the American Society for Testing and Materials (ASTM) Standard D 653–67,

"Standard Definitions of Terms and Symbols Relating to Soil and Rock Mechanics," "angle of repose" is defined as follows:

"Angle between the horizontal and maximum slope that a soil assumes through natural processes. For dry granular soils the effect of height is negligible; for cohesive soils the effect of height of slope is so great that the "angle of repose" is meaningless."

What this essentially means is that there is no one "angle of repose" for a given type of soil, for in practice, most soils encountered have some degree of cohesion. In addition, while the "angle of repose" for granular soils is unaffected by the height of the cut, it does change in response to densification, and in changes in environmental conditions or exposure.

The concept of "angle of repose," as used in the current standard, differs from that accepted by the civil engineering community and has led to confusion as to the meaning and intent of the standard. To eliminate this confusion, OSHA believes that use of the term "angle of repose" should not be continued. Therefore, it is not used in the proposed standard.

The term "bank" is defined in paragraph E § 1926.653(c) as "a mass of soil rising above a digging level." This definition is not entirely clear in its meaning because the use of the term "digging level." The OSHRC has interpreted the term "digging level" to mean "the level at which digging is commenced" (2 BNA OSHC 1130). Under this interpretation, the sides of trenches would not be considered "banks" because the sides of trenches would be below "the digging level" rather than above it. However, the wording of paragraph E § 1926.652(a) suggests that sides of trenches be included in the meaning of the term "bank." For example, paragraph E § 1926.652 states:

*"Banks more than five feet high* shall be shored, laid back to a stable slope, or some other equivalent means of protection shall be provided where employees may be exposed to moving ground or cave-ins." (Emphasis added). The OSHRC interpretation does not conflict with the above wording. However, the paragraph goes on to state: "*Trenches less than five feet in depth shall also* be effectively protected. . . ." (Emphasis added). Thus, the wording of paragraph E § 1926.652(a) seems to equate "banks" with sides of trenches, in contradiction to the OSHRC interpretation. In addition, it is stated in paragraph E § 1926.652(a): "Refer to Table P–1 as a guide in sloping of banks." *Table P–1* is titled "Approximate Angle of Repose for Sloping of Sides of Excavations." Thus, "banks" and "sides" are again seemingly equated, in contradiction to the OSHRC interpretation.

OSHA is proposing to eliminate the use of the term "bank" to eliminate the problems discussed above.

The terms "hard, compact soil" and "unstable soil" in the current standard describe particular soil conditions. These terms are not used in the proposal. In the reformatting of the proposed standard, all references to particular soil conditions have been deleted from the standard itself, and appear instead in the appendices. Furthermore, all soil conditions are defined in the appendices in a completely new soil classification system which does not use the terms "hard, compact soil" or "unstable soil."

The reasons for eliminating the definitions for "sheet pile," "slope," and "walls" have been discussed above in the discussions of paragraphs (b)(15), (b)(19) and (b)(8) respectively.

The term "trench jack" is not used in the proposal and need not be defined.

*Section 1926.651—General Requirements.*

*Overview.* Proposed § 1926.651 contains requirements for the protection of employees against several different types of hazards of excavation-related work. The section is arranged with eleven major paragraphs, most of which are revisions of the current requirements in sections E § 1926.650, E § 1926.651, and E § 1926.652. Changes have been made to clarify ambiguous language and eliminate redundant requirements. Some paragraphs have been reformatted to improve ease of understanding. Other revisions have been made to clarify OSHA's intentions as to the scope and application of current provisions of the excavation standard. New requirements have been added to protect employees against known hazards where gaps in coverage currently exist.

*Discussion.* Paragraph (a), "surface encumbrances," requires that surface encumbrances that are located so as to create a hazard to employees be made safe or removed. The hazard presented by surface encumbrances, including trees and boulders, primarily arises if excavation operations undermine or otherwise cause such encumbrances to become unstable and fall or collapse onto employees. Surface encumbrances can also impede smooth traffic flow on excavation sites. The wording of this requirement is changed only in a minor way from the existing requirement in E § 1926.651(b).

The requirement applies to all employees involved in construction activities at the worksite. The existing paragraph includes the wording "involved in excavation work or in the vicinity thereof at any time during operations." OSHA proposes to drop this additional wording as it is redundant.

The requirement that surface encumbrances be removed or made safe "before excavating is begun" does not appear in the proposal. In many instances, it is not feasible to remove all surface encumbrances from a site before excavating is begun simply because the site is too large. The proposal would require such removal whenever surface encumbrances are encountered.

Paragraph (b), "Underground installations," specifies the requirements for dealing with existing utility and other underground installations that may be encountered during excavation operations. These requirements are based on those in existing paragraph E § 1926.651(a). This existing paragraph has been reformatted. Four separate subparagraphs are proposed to improve clarity.

Underground installations include all types of utility lines either in service or abandoned. They also include foundations and underground storage tanks of all kinds.

Employees may be exposed to serious hazards as a result of damage to underground installations. Flooding, shock, asphyxiation, electrocution, fire and explosion, and collapse of undermined installations are some of the hazards that result when underground installations are damaged. These hazards can be eliminated if the locations of underground installations are properly identified prior to excavation, and if such installations are properly supported or protected when excavation takes place near them.

Paragraph (b)(1) specifies that the "estimated location" of underground installations "that maybe encountered during excavation work shall be determined prior to opening an excavation." This requirement differs from the existing requirement which requires only that an effort be made to determine whether such installations will be encountered and, if so, where such underground installations are located.

At the suggestion of the Advisory Committee (Ex. 8, p. 358), the proposed requirement is more stringent than the existing rule. OSHA believes that the proposed revision is needed to prevent many of the accidents involving damage to underground installations and to

protect employees from such accidents. The proposed language will insure that the effort to locate existing installations is carried to the point where, at the very minimum, an estimated location is determined.

It is recognized that the existence of underground installations is not always readily apparent. However, in many locations there are features which would indicate the presence of underground installations. An example of this would be in a housing subdivision where there are no utility poles. It could reasonably be assumed that certain utilities are underground in this situation. The proposal also recognizes those situations in which underground installations are not known to exist beforehand, but can be determined through the exercise of reasonable diligence prior to excavating.

Paragraph (b)(2) requires that utility companies be contacted and advised of proposed work before the start of actual excavation. Frequently utility companies can help verify the locations of the underground facilities. This requirement is unchanged from the existing standard.

Paragraph (b)(3) requires that as the excavation approaches the estimated location of an underground installation, the exact location be determined. This requirement is unchanged from the existing standard. There are several ways to locate the exact location of underground installations. These include careful probing and hand digging. In the February 1972 amendments (37 FR 3512), the original language, which stated ". . . the exact location shall be determined by careful probing or hand digging . . ." was changed to allow other, equally effective means of locating such installations. OSHA is proposing to expand the provision to provide examples of methods of locating these installations.

Paragraph (b)(4) requires that underground installations be removed, protected or supported as necessary when uncovered to safeguard employees. This proposed provision is intended to prevent injuries suffered by employees which result from damage to exposed installations, contact with energized lines, the collapse of unsupported installations and other similar exposures. The existing requirement requires only that installations be properly supported. This is insufficient to protect employees adequately. Removal or protection of exposed installations are other means to protect employees that at times can be more appropriate.

Paragraph (c) sets forth the requirements for access to and egress from excavations. These requirements are found throughout the existing standard in E § 1926.650 (b), (c), and (d), E § 1926.651(x) and E § 1926.652(h). The requirements have been grouped into a more logical order but have not been changed to any great extent. These requirements address hazards resulting from inadequate design and construction of ramps and runways and from inadequate placement of exits in trenches.

Paragraph (c)(1) specifies five general requirements for the design and construction of ramps and runways.

Paragraph (c)(1)(i) requires that structural ramps be "designed by a qualified person, a qualified engineer or a person under the direction of a qualified engineer, in accordance with accepted engineering practices." This differs from the existing requirement in E § 1926.651(x) which requires ramps to be "designed *and constructed* by *qualified persons* in accordance with accepted engineering practices." (Emphasis added.) The requirement for design by "qualified persons" was also changed so that the language used would be consistent with other language and requirements in the proposal.

The actual *construction* of ramps is usually not spoken of in terms of engineering practices. Therefore, OSHA is proposing to revise the existing language to maintain this distinction. The proposed language would require that structural ramps be "constructed in accordance with their design" instead of in accordance with accepted engineering practice.

This paragraph addresses the hazard of structural ramps collapsing under heavy vehicle or personnel load conditions because of underdesigned members or connections. In some large excavations, ramps of steel or wood are provided for vehicle access and egress. More frequently, however, earthen ramps are used. These earthen ramps are created out of material that is left in place as the excavation is made. Such earthen ramps are not considered structural ramps. For this reason, the word "structural" is added to clarify when design of particular ramps by a qualified individual is necessary. OSHA requests comment and data on whether structural ramps used by a limited number of employee (5 or less) should be required to be designed by a qualified individual or alternatively, should structural ramps be a certain height before a qualified individual is required?

Paragraphs (c)(1)(ii) through (c)(1)(v) address the hazards of trips, slips and falls. These requirements are the same as the requirements in existing paragraphs E § 1926.650(b), E § 1926.650(c) and E § 1926.650(d). The words "raised walkways," "walkways" and "sidewalks" have been dropped in the proposal since these terms are embodied in the concept of runways.

Paragraph (c)(2) requires that a safe means of egress be located in trenches four feet (1.2 m) in depth so as to require no more than 25 feet (7.6 m) of lateral travel for employees. This requirement is the same as in existing paragraph E § 1926.652(h). Ladders, stairs, or ramps are considered adequate to meet this requirement. As defined in proposed definition § 1926.650(b)(14), ramps may be constructed in the earth, and therefore this means of exit is added to the list of examples of acceptable methods of egress.

Paragraph (d), "Exposure to vehicular traffic," requires that employees exposed to vehicular traffic be provided with and wear warning vests made of reflectorized or high-visibility material.

Employees, particularly those involved in trenching work, frequently work where vehicular traffic flow is maintained in close proximity to the excavation operations. Employees may be assigned to direct traffic flow onto or off of construction sites or adjacent to construction sites. These employees are exposed to the hazard of being struck by such vehicles. This hazard is increased during dark or near-dark periods of the day. The provisions of this paragraph are intended to reduce this hazard.

This requirement differs from the existing requirement in paragraph E § 1926.650(f). The words "be instructed to" have been deleted. The proposed requirement is for employees to "wear" such vests, whereas the current standard states: "Employees . . . shall be instructed to wear. . . ." This change is necessary to clarify the intent of the standard.

Paragraph (e), "Exposure to falling loads," requires that no employee be permitted under loads handled by lifting or digging equipment. In addition, it requires that employees stand away from vehicles that are being loaded or unloaded to avoid being struck by any spillage. These requirements are basically unchanged from the existing requirements in E § 1926.650(h). The words "power shovels, derricks, or hoists" were changed to "lifting or digging equipment" in the first sentence. This change was made to make the requirements apply more generally to all kinds of lifting or digging machines rather than be limited to those listed, as is implied in the existing standard. In this way, backhoes and other such equipment are clearly intended to be included in these requirements.

BEST COPY AVAILABLE

In the second sentence, the words "or unloaded" were added. OSHA believes that the hazard to employees from loads falling during unloading is just as great as during loading. Therefore, this requirement was added to ensure the safety of employees during these operations.

A note within paragraph (e) indicates that operators of vehicles may remain in cabs that provide adequate protection from falling loads during loading and unloading operations. This is consistent with safe industry practice and current OSHA standards in E § 1926.601—"Motor Vehicles."

Paragraph (f), "Warning system for mobile equipment," addresses the hazard of equipment being driven over the edge of an excavation. The requirement states that where the operator does not have a clear and direct view of an excavation, and he or she is required to operate equipment adjacent to or approaching that excavation, then a warning system such as barricades, hand or mechanical signals, or stop logs shall be utilized. The warning system is intended only to warn the operator as to the location of the edge of the excavation. It can, but need not, be designed to prevent a vehicle from being driven over the edge of an excavation.

This requirement replaces the requirement in existing paragraph E § 1926.651(s). That paragraph requires: "When mobile equipment is utilized or allowed adjacent to excavations, substantial stop logs or barricades shall be installed."

The language of the current standard is unclear as to its intended meaning because of use of the word "substantial." Use of this word makes it difficult to determine if the intent of the rule is to prevent mobile equipment from going overboard into an excavation or if the intent is to remind an operator not to proceed any further toward the edge of an excavation.

Due to the nature of some of the heavy mobile equipment that is operated on construction sites, it is often impractical to construct barricades substantial enough to prevent equipment from going overboard into an excavation. On trenching sites, where lengths of an excavation are often open for great distances, or for very short periods of time, requiring barriers of such magnitude would place an unreasonable burden on the employer. Use of such systems can also impede efficient out safe methods of backfilling.

It is OSHA's opinion that there are equally effective and far less costly alternatives available to protect workers in and around excavations from the danger of mobile equipment. Therefore, the proposed requirement would both clarify when warning systems are needed and identify the types of warning systems that are acceptable to protect vehicle operators and workers in excavations. OSHA believes that signals from observers can be used effectively for purposes of protecting employees against the hazard in question. Signals are currently specified in other existing standards as an acceptable means of guiding mobile equipment when this equipment is backing up. In § 1926.601(b)(4), it is stated:

(4) No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:

(i) The vehicle has a reverse signal alarm audible above the surrounding noise level; or

(ii) The vehicle is backed up only when an observer signals that it is safe to do so.

The language of the proposal recognizes that methods of signaling can be considered effective and clarifies the intent of the existing mobile equipment requirements.

An additional revision is being proposed regarding paragraph E § 1926.651(s). The words "if possible the grade should be away from the excavation" currently appear at the end of the existing paragraph. Although the language is advisory it does provide an example of a safe practice to follow in addition to the required practices. OSHA is, therefore, proposing that this advisory language be maintained.

Paragraph (g), "Hazardous atmospheres," contains requirements for preventing employee exposure to hazardous atmospheres through the use of testing and controls. It also sets forth requirements for the use of emergency rescue equipment where hazardous atmospheric conditions exist or could develop during work in an excavation.

The existing standard contains provisions in paragraphs E § 1926.650(g), E § 1926.651(v) and E § 1926.652(f) for protecting employees against hazardous atmospheric conditions. Generally, the existing language is not specific regarding testing requirements, and it may not be clear as to how the requirements set forth in Subpart P interface with requirements set forth in Subparts D and E, "Occupational Health and Environmental Controls" and "Personal Protective and Life-saving Equipment," respectively. Therefore, language has been added to clarify these areas, as noted below.

Paragraph (g)(1) addresses atmospheric testing and controls. Language has been added to clarify that the requirements in paragraphs (g)(1)(i) through (g)(1)(iv) are in addition to the requirements set forth in Subparts D and E.

Paragraph (g)(1)(i) requires testing for oxygen deficiency or gaseous conditions in excavations greater than four feet (1.2 m) in depth where these conditions exist or could reasonably be expected to exist. Further, it is required that the testing be done before employees enter the excavation. If no employees enter such an excavation, testing need not be done. This differs from the existing language which requires that: "In locations where oxygen deficiency or gaseous conditions are possible, air in the excavation shall be tested."

The definition of "confined" or "enclosed space" in existing paragraph E § 1926.21(b)(6)(ii) includes ". . . open top spaces more than four feet in depth such as pits, tubs, vaults, and vessels." The four foot (1.2 m) depth requirement in the proposed rule was added to clarify where testing is required for excavations, and to be consistent with this existing definition.

The existing language requiring that tests be performed "where oxygen deficiency or gaseous conditions are possible" was changed to a requirement that OSHA believes is more reasonable, but still provides worker protection. Taken literally, the conditions listed in the existing language are possible in any given excavation if the proper circumstances are present. However, in some circumstances these hazardous atmospheric conditions are more likely to be expected to exist or occur than in other circumstances. For example, work involving the extension or maintenance of sewer utility or gas utility systems, work near refineries or near areas where petroleum distillates are handled or stored, and work near landfills or hazardous waste dumps are situations where hazardous atmospheric conditions could occur (Ex. 8, pp. 224–226, 369–370). Atmospheres in excavations in such situations must be tested.

However, it is OSHA's opinion that it is not reasonable to require that all excavations be tested routinely since it is unlikely that oxygen deficiency or gaseous conditions will occur in the vast majority of situations. Where the conditions are such that these hazards could not reasonably be expected to occur, OSHA believes that routine testing should not be required. Accordingly, the requirement is written to reflect what OSHA believes to be a more reasonable approach to testing.

The examples cited above of areas that are more likely to be hazardous are not intended to be a comprehensive list.

There are many unique circumstances that could result in the formation of a hazardous atmosphere in excavation-related work. An excavation that is free of hazardous atmospheric conditions on any particular day may not be safe the following day. To ensure that employees are continually protected against the development of hazardous atmospheres in excavations, OSHA is proposing to require that daily inspections (not necessarily involving air testing) for evidence of potentially hazardous atmospheric conditions be conducted by a competent person. This requirement is in proposed § 1926.651(k)(1). It is intended that such inspections be conducted to identify areas or situations where hazardous atmospheric conditions exist, or could reasonably be expected to exist, during the course of work. Where such areas or situations are identified, the requirements of paragraph (g) apply.

Proposed paragraph (g)(1)(ii) is being added to clarify when protection against exposure to oxygen deficiency is required, and to identify the precautions that are acceptable to prevent such exposures. Oxygen deficiency is not specifically defined in the existing excavation standard. However, the existing requirements for air quality for supplied air in E § 1910.134(d)(1), which has been identified as applicable to the construction industry, states that "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G–7.1–1966." This specification denotes a concentration of 19.5 percent oxygen as the lower limit for synthesized air. Additionally, in existing standard E § 1910.94, a concentration of oxygen of 19.5 percent is a lower limit that is specified. Therefore, the 19.5 percent limit for oxygen is specifically identified in the proposed standard in order to be consistent with the existing requirements and to clarify when testing and protection are required.

The existing standard requires that employees subjected to oxygen deficiency be protected with approved respiratory protection as set forth in Subpart D. However, the use of increased ventilation can be as effective or more effective in dealing with oxygen deficient atmospheres. Therefore, this type of protection is also identified as acceptable in the proposal.

Paragraph (g)(1)(iii) addresses the hazards posed by the accumulation of flammable gases. The proposed standard requires that adequate precautions be taken to prevent employee exposure to atmospheres containing a concentration of flammable gas in excess of 20 percent of its lower flammable limit (LFL). This differs from the existing requirement which states in E § 1926.651(v): "When flammable gases are present, adequate ventilation shall be provided or sources of ignition shall be eliminated."

As stated, the existing provision requires that ventilation be provided when a flammable gas exists in any concentration or, as an alternative, that sources of ignition be eliminated. OSHA believes that this requirement is too restrictive at low concentrations of flammable gas in the atmosphere, but not nearly restrictive enough where high concentrations exist. By indicating a limit to the allowable concentration of a flammable gas, the proposal notifies employers of the level of performance required to protect employees.

Paragraph (g)(1)(iv) is a new requirement that is added to clarify further the intention of the existing requirements for testing. Testing is not an effective method of preventing exposure to hazardous atmospheres if it is used only to detect hazardous conditions initially and then not used again. Therefore, the proposal requires the employer to conduct additional testing to ensure that atmospheres remain safe whenever controls are used that are intended to reduce the levels of atmospheric contaminants to acceptable levels.

Paragraph (g)(2)(i) requires that emergency rescue equipment be readily available wherever hazardous atmospheric conditions exist or may reasonably be expected to develop during work in an excavation. This requirement is different from the existing requirement in E § 1926.651(v) only to the extent that the requirement for the equipment to be "attended" is deleted in the proposal. The manner in which the word "attended" is used in the current standard implies that personnel be with and responsible for the equipment even when not in use. This is not the intent of the standard, and this word is being dropped.

Paragraph (g)(2)(ii) requires that employees entering bell-bottom pier holes, and similar pier hole footing excavations that are not belled at the bottom, wear a harness with a lifeline, and that the lifeline be individually attended. These requirements are based on those in existing paragraph E § 1926.652(f).

The existing requirements in E § 1926.652(f) apply only to bell-bottom pier holes. These holes are a special type of footing excavation into which employees descend to inspect the hole configuration. However, employees are also at times required to descend, to conduct similar inspections, into similar footing excavations that are not belled at the bottom. These employees must be protected against the same hazards that can exist in bell-footings. Therefore the language of the proposal is changed to reflect this need.

The purpose of this requirement is to allow rapid rescue of an employee in the limited space of these special types of excavations without exposing other employees to the associated hazards. Because of the configuration and unusual depths of this type of excavation, an oxygen deficient or other hazardous atmosphere could occur very quickly, requiring rapid removal of any exposed employee.

The intent of the requirement that lifelines "shall be individually manned that while the lifeline is actually in use, personnel be assigned to oversee the individual to whom the lifeline is attached.

The current standard provides that lifelines "sgall be individually manned and be separate from any line used to *remove* materials excavated from the bell footing" (emphasis added). The proposal would revise this language to require that lifelines "shall be separate from any line used to *handle* materials . . . ." (emphasis added). This clarification is to indicate that the lifeline must be separate from any line used to *remove or supply* any materials from or to the footing excavation.

Paragraph (h), "Protection against water accumulation," contains four provisions that address the accumulation in and the control and removal of water from excavations. Water is present, or very likely to be present, during the course of work in many excavations. Water accumulation can result from surface water entering the excavation, from ground water, from rain or melting snow, or from leaking or damaged utilities such as water or sewer lines. Water creates muddy or slippery surfaces that expose employees to slips and falls. Rapid accumulation, such as from a damaged water supply line, has even resulted in drownings (Ex. 9). The action of water against the sides of excavations can cause undermining and cave-ins. Accumulated water will saturate the sides of excavations and weaken them to the point where cave-ins are very likely to occur even in very shallow excavations. Further, where protective systems are in place, accumulated water can adversely affect the capacity of the systems.

The existing requirement in E § 1926.651(p) states: "Water shall not be allowed to accumulate in an excavation." Taken literally, accumulated water in any amount, in any part of an excavation, violates the existing standard. However, OSHA does not believe this to be the intent of the standard. At times, such as during sudden rain storms, for example, or when snow melts, it is impossible to keep some amount of water from accumulating. Additionally, in excavations which employees do not enter, but where there is accumulated water, there is no exposure to a hazard. Further, there are certain excavations, such as long trenches, where water accumulated in isolated sections would not pose a hazard because employees would not enter those sections.

OSHA is proposing to revise the existing requirement to recognize that not all water accumulated in excavations poses a hazard. In addition, it is OSHA's opinion that it is not always necessary to remove all water from an excavation in which employees are expected to work. Paragrapn (h)(1), as proposed, allows employees to work in excavations in which there is accumulated water, or in which water is accumulating, but only under the circumstances where such conditions have been anticipated and adequate precautions have been taken to protect employees against the hazards posed by water accumulation. The precautions could range from providing dewatering equipment to special cave-in protection.

Work can be conducted safely in excavations when there is accumulated water. For example, the record contains information on a pipeline contractor who installed several miles of pipe in a trench where the water table was only three to four feet below the surface of the ground (Ex. 25). The work required the use of divers to place sections of pipe at depths of up to 18 feet. Employees were protected from cave-ins of the sides of the trench by the use of shields.

Depending on the amount of water and the particular hazard in question, the precautions necessary to protect employees adequately will vary. Employers are alerted to this by the Note following paragraph (h)(1). The Note identifies several examples of the types of protection that might be necessary to provide an adequate level of protection. These include the use of special support or shield systems, dewatering to control the level of water, and the use of a safety harness and lifeline.

Paragraph (h)(2) addresses the use of water removal equipment as a means to control the accumulation of water. These proposed rules require that such equipment be monitored by a competent person to ensure proper operation.

Water removal or control is generally undertaken to provide a dry work area. The process can also be used to contribute to improved stability of excavation sides, and it is done in emergencies when sudden inflows of water occur. When the equipment that is used to remove or control the flow of water into excavations malfunctions, hazards that were eliminated when the equipment was working can become significant.

The requirements in paragraphs (h)(2) are new. The existing standard does not directly address water removal operations but, as discussed above, it requires that water not be allowed to accumulate in excavations. The type of water removal equipment needed in any given circumstance will vary depending on the volume of water that must be removed or controlled. In a very large excavation, for example, failure of water removal equipment may affect only a portion of the area within the excavation. Therefore, the precautions to be taken will, of course, also vary in the event failure of the equipment occurs. Such precautions could involve removal of all employees to a safe area if they are all exposed. Where the problem is more isolated, only the employees in the area that are exposed to the added danger would have to be removed.

Paragraph (h)(3) requires that suitable means be used to prevent surface water from entering an excavation and to provide adequate drainage of the area adjacent to the excavation. This requirement is unchanged from the existing requirement in E § 1926.651(p) except for minor word revisions.

Paragraph (i), "Stability of adjacent structures," contains three paragraphs that address the hazard of unstable structures adjacent to excavations. The collapse of unstable structures endangers employees in excavations and in the area around excavations. Structures can become unstable when excavation takes place close enough to the structures so as to reduce the ability of the soil to support them.

Paragraph (i)(1) requires that support systems be provided for the protection of employees and to ensure the stability of structures that are endangered by excavation operations. This requirement is unchanged from the existing standard in E § 1926.651(o). The words "support systems" are used to be consistent with the remainder of the proposed standard. The three examples of support systems generally used for this purpose—shoring, bracing and underpinning—are unchanged from the current standard.

Paragraph (i)(2) prohibits excavating below the level of the base or footing of any foundation or retaining wall. However, there are four exceptions to this prohibition. The first two exceptions are unchanged from the existing requirements in E § 1926.651(n). These are: Paragraph (i)(2)(i), which reads "a support system such as underpinning is provided to ensure the safety of employees and the stability of the structure," and paragraph (i)(2)(ii) which reads "the excavation is in stable rock." Minor revisions to the language have been made for consistency with the language used in the proposal.

The third and fourth exceptions are new and have been added to clarify the intent of the standard. This clarification is necessary because the existing standard can be interpreted to apply only to excavation at and immediately below foundations or retaining walls. However, the loads imposed on the soil at the excavation site from adjacent structures are not limited to the immediate area of the structure, but also extend some distance from the structure. This distance varies with the depth of the excavation. Generally, this distance can be estimated as being equal to the depth of the excavation. Thus, a critical plane is formed sloping up from the bottom of the excavation toward the structure at an angle of 45 degrees (one horizontal to one vertical or 1H:1V). If the footing or foundation remains completely below this plane, then the conventional assumption is that it probably will not be affected by excavation operations. The possibility remains, however, that the stability of the structure could be affected in some way. Calculating the effect that excavation activity has on the soil supporting a structure is a highly complex procedure involving expertise in soil mechanics, structural analysis, judgment, and experience. While the discussion above is in terms of generalities, each circumstance must be evaluated on the specifics of the situation.

Therefore, to address this situation, and to recognize that special skills are needed to evaluate such situations, the third exception to the general prohibition against excavation adjacent to buildings and structures is added in the proposal in paragraph (i)(2)(iii). This exception would permit excavation whenever "a qualified person, a qualified engineer, or a person under the direction of a qualified engineer determines that the structure is sufficiently removed from the

excavations so as to be unaffected by the excavation activity."

The fourth exception to the prohibition against excavating adjacent to structures recognizes that some excavation activity will not present a hazard to employees. It states in paragraph (i)(2)(iv) that such excavation is permitted whenever "a qualified person, a qualified engineer, or a person under the direction of a qualified engineer determines that such work will not pose a hazard to employees." Where it is determined that no hazard to employees will occur, such excavation activity can proceed below the base of the foundation. Such a situation could occur if a building were on a continuous concrete footing, such as a grade beam, and excavation was undertaken in a very limited area below the footing. Where the footing could safely span the excavation, no instability in the structure would occur. Again, each circumstance must be evaluated on the specifics of the situation.

Paragraph (i)(3) prohibits excavation under sidewalks and pavements unless employees are protected from the collapse of such structures. This applies not only to employees in the excavation but to employees who may be required to use the undermined structure. This requirement revises the existing language of E § 1926.650(a) which requires that sidewalks be shored to carry a minimum live load of 125 pounds per square foot.

The existing requirement does not protect employees adequately because it does not cover all pavements, but only "sidewalks." Loads on pavements during construction operations frequently can exceed the minimum load specified. Therefore, the proposal would cover pavements as well as sidewalks. In addition, the live load specification has been changed to a more performance-oriented requirement to be consistent with the overall approach taken in this proposed standard. OSHA believes that the performance language will provide the employer greater flexibility in determining the most effective means of protecting employees.

Paragraph (j), "Protection of employees in excavations," contains requirements for the protection of employees from the hazards of cave-ins, loose rock or soil that could fall or roll from an excavation face, and from material that could fall or roll into an excavation. These requirements are contained in three separate paragraphs.

Paragraph (j)(1) requires that employees in excavations be protected from cave-ins in excavations by the installation or use of an adequate protective system which meets the requirements of proposed § 1926.652 "Requirements for protective systems." This requirement is written in performance-oriented language, which is consistent with the approach of the overall proposed standard. This paragraph consolidates and replaces several existing requirements and paragraphs. The existing paragraphs affected include E § 1926.651(c), E § 1926.652(m), E § 1926.651(q), E § 1926.652(a), E § 1926.652(b), E § 1926.652(c), E § 1926.652(e), E § 1926.652(f), and E § 1926.652(k).

The existing standard is arranged in a format consisting of § 1926.651, "Specific Excavation Requirements" and § 1926.652, "Specific Trenching Requirements." Each of these sections contains provisions designed to protect employees against cave-ins. The substantive requirements for "excavations" often overlap those for "trenches." Thus, an excavation employer is not always sure which of the current standards apply to a particular situation.

Some of the current requirements indicate when cave-in protection is required and provide some flexibility as to how it is to be provided. For example, E § 1926.651(c) states: "The walls and faces of all excavations in which employees are exposed to danger from moving ground shall be guarded by a shoring system, sloping of the ground, or some other equivalent means."

On the other hand, some provisions set forth specific means of compliance. For example, E § 1926.652(f) states: "Employees entering bell-bottom pier holes shall be protected by the installation of removeable-type casing of sufficient strength to resist shifting of the surrounding earth."

Some of the current requirements specify the earth conditions in which cave-in protection is required. For example, E § 1926.652(b) states: "Sides of trenches in unstable or soft material, 5 feet or more in depth, shall be shored, sheeted, braced, sloped, or otherwise supported by means of sufficient strength to protect the employees working within them. (See Tables P–1, P–2 . . .:)"

In *Table P–1*, terms such as "compacted angular gravels," "compacted sharp sand," and "average soils" are used to describe the earth conditions. In *Table P–2*, terms such as "hard, compact," "likely to crack," and "soft, sandy, or filled" are used to describe the earth conditions.

Other requirements specify when special or additional precautions are necessary. For example, E § 1926.651(m) states: "Special precautions shall be taken in sloping or shoring the sides of excavations adjacent to a previously backfilled excavation or a fill, particularly when the separation is less than the depth of the excavation. Particular attention also shall be paid to joints and seams of material comprising a face and the slope of such seams and joints."

The existing requirements do not appear in any specific order. In addition, it is not always clear which provisions apply to a given situation. However, the one common feature of all the existing requirements is that cave-in protection is required. Therefore, based on this central requirement, OSHA is proposing to revise its existing standards to allow any of several types of protective systems to be used, provided that the system will provide protection against cave-ins. OSHA intends this revision to be more performance-oriented than the current standard, while providing greater clarity and guidance as to what steps the employer must take to protect employees from cave-ins.

OSHA believes that there is a potential for a cave-in in virtually all excavations. However, experience has shown that the probability of a cave-in depends upon the combined effects of many factors (Ex. 5). These factors include the depth of the excavation, the type of soil involved, the ability of the soil to resist stress, the stress imposed on the soil from the weight of the soil itself and from static and dynamic surcharge loads, and from changes in the ability of the soil to resist stress due to exposure to environmental conditions over a period of time. In recognition of the low probability of a cave-in occurring in certain circumstances, the proposal, as does the current standard, sets forth two exceptions to the requirement to provide cave-in protection.

Paragraph (j)(1)(i) states that excavations in stable rock are exempt from cave-in protection requirements. This exception is consistent with the existing standard which states in Note (1) to *Table P–2* that "shoring is not required in solid rock, hard shale, or hard slag." The term "stable rock" is used in the proposed standard instead of the above terms and is defined in § 1926.650(b)(20) of the proposal.

The second exception, which is stated in paragraph (j)(1)(ii), allows the suspension of the requirement to provide cave-in protection in excavations less than five feet (1.5 m) in depth, *but only if a competent person first examines the ground* and finds no indication that a cave-in should be expected (emphasis added).

The exception in paragraph (j)(1)(ii) continues the existing exception applying to excavations less than five feet in depth. In addition, it clarifies that cave-in protection is not required only after a competent person first examines the ground and finds no evidence that a cave-in is expected.

The existing standard in paragraph E § 1926.652(a) states: "Trenches less than five feet in depth *shall also be effectively protected when examination of the ground* indicated hazardous ground movement is expected" (emphasis added). On its face this requirement does not clearly require that an examination first be conducted. However, paragraph E § 1926.651(i) states: "Daily inspections of excavations shall be made by a competent person. If evidence of possible cave-ins or slides is apparent. . . ." This paragraph clearly establishes that such inspections must be conducted by a competent person. The proposal clarifies that inspections must first be conducted before an employer can use the exception of not providing cave-in protection in excavations less than five feet in depth. There would be a presumption that excavations less than five feet deep need to be protected unless there is a determination by a competent person that such protection is not needed.

Paragraph (j)(2) addresses a hazard similar to cave-ins, although not of the same magnitude. Loose rock or soil could fall or roll from an excavation face and, in sufficient volumes endanger an employee even when an adequate cave-in protective system is in place. For example, when a shield is used in conjunction with sloping, the possibility exists for material to loosen and slide down and over the top of the shield, thus endangering employees.

The existing standard, E § 1926.651(j), addresses this hazard. It states: "Sides, slopes, and faces of all excavations shall meet accepted engineering requirements by scaling, benching, barricading, rock bolting, wire meshing, or other equally effective means." The proposed standard does not change the requirement other than to revise the language for improved clarity. References to rock bolting and benching are removed. Rock-bolting and benching are considered types of primary support system intended to prevent cave-ins. They are not generally used to prevent material from falling into an excavation after the primary cave-in protective system is in place.

Proposed paragraph (j)(3) requires that employees be protected from excavated or other materials or equipment that could fall or roll into excavations. This protection can be accomplished by keeping all material and equipment at least two feet (.61 m) from the edge of excavations or by the use of sufficient retaining devices. The proposed requirement does not change the existing two foot (.61 m) setback requirement in E § 1926.651(i). It is, however, written in more concise language.

The intent of this requirement is to protect employees against excess material falling into excavations. Obviously, materials such as excavated soil and stored construction supplies also place a superimposed load on the edge of the excavation. Such loads can be the cause of cave-ins and must be considered when determining what protection is necessary under other provisions of the standards.

The application of the existing two-foot setback requirement to trenching has been questioned in the past because the requirement appears in existing § 1926.651 "Specific Excavation Requirements," and not in § 1926.652 "Specific Trenching Requirements." However, the requirements in paragraph (j) of § 1926.651 have always applied to all excavations, including trenches. The format changes in the proposal, as well as other changes, have been made to clarify this question of application.

Paragraph E § 1926.651(i)(1) states that ". . . material shall be effectively stored and retained. . . ." Similarly, in E. § 1926651(i)(2), it is stated that ". . . the employer may use effective barriers or other effective retaining devices. . . ." Interested persons have expressed concern as to what these provisions require and have indicated that they should be clarified in the proposed revision.

As stated above, the intent of these requirements is to prevent material or equipment from falling or rolling into excavations. The level of protection necessary to prevent this from occurring will vary in most instances. Simply placing material two feet (.61 m) from the edge of the excavation could be sufficient in one instance, while use of a barrier could be the most effective method in another situation. However, use of a barrier in addition to the distance requirement could be necessary in yet another instance in order to "keep" materials from entering the excavation. The capacity of any barrier or retaining device must be independently determined so as to meet the needs of the particular situation and to comply with the standard.

The proposed language of § 1926.651(j)(3) is written in performance-oriented language and requires "the use of retaining devices that are sufficient to prevent material or equipment from falling or rolling into excavations." The duty to provide protection is clearly stated, but the employer is allowed some discretion in determining the necessary capacity of the retaining devices by use of the word "sufficient." Clearly a device is "sufficient" (and "effective") if it can be shown to be able to resist any forces that may reasonably be expected to be applied to it.

The language of the existing requirement in paragraph E.651(i) is different from the language that was originally promulgated. As originally promulgated in 1971, the requirement was stated as follows: "Excavated or other material shall not be stored nearer than four feet from the edge of any excavation and shall be stored and retained as to prevent its falling back into the excavation" (36 FR 7389, April 17, 1971). Upon the recommendation of the Advisory Committee for Construction Safety and Health (ACCSH), it was proposed to change this provision to require that "In excavations which employees may enter, which are more than five feet in depth, excavated or other materials shall be stored and retained four feet or more from the edge of the excavation. In excavations which are five feet or less in depth, all materials shall be stored and retained at least two feet from the edge of the excavation" (36 FR 19088, September 28, 1971).

This amendment was proposed "in order to allow more flexibility in storing and retaining excavated materials adjacent to an excavation, while at the same time insuring the safety of those employees working in the excavation site" (37 FR 3513, February 17, 1972). The comments in response to the proposal indicated that the proposed change was too rigid to allow employers digging shallow trenches (less than five feet in depth) and having narrow rights-of-way to meet the requirement. Alternative methods of storing and retaining such material were suggested which would provide equivalent employee protection.

The ACCSH considered the comments submitted in response to the proposal, and the suggestions made by the OSHA staff, and as a result recommended that the language proposed be changed "to permit all appropriate alternative methods which will protect employees working in excavations from the hazards of falling materials" (37 FR 3515, February 17, 1972). The ACCSH recommendations were adopted and the proposed language was revised to become what are now the existing requirements in paragraph E § 1926.651(i).

OSHA has received comments concerning the existing two foot (.61 m) requirement. It has been suggested that this requirement be changed to one foot (30.5 cm) for excavations five feet (1.52 m) or less in depth. No data to support this suggestion has been submitted to OSHA other than the comment that such a requirement is practical and adequate.

OSHA is not proposing to make that suggested change at this time. However, OSHA requests that specific comments regarding this issue be submitted during the comment period.

Paragraph (k), "Inspections," requires that daily inspections of excavations, the adjacent areas, and protective systems be made for evidence of any hazardous condition. It also requires that the inspections be made by a competent person. If hazardous conditions are identified, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to insure their safety. These requirements consolidate existing requirements in E § 1926.650(i), E § 1926.651(d), and E § 1926.651(o).

The existing requirement in E § 1926.650(i) states: "If evidence of possible cave-ins or slides is apparent, all work in the excavation shall cease until the necessary precautions have been taken to safeguard employees." This is the only requirement that specifically identifies what is necessary if a hazardous condition is identified, and it only applies to evidence of cave-ins or slides. It is OSHA's opinion that during the course of work in excavations other hazardous conditions can develop, and that the object of daily inspections must be to identify these conditions as well as to take precautions to protect employees. Therefore, the proposed requirement is written with this intent.

The existing provision also requires that "all work in the excavation shall cease . . . ." OSHA recognizes that in many instances a hazardous condition may be limited to only a small area of the excavation. For example, inspection might reveal a weakness in the support system which increases the possibility of a cave-in in a small area of a very large excavation. In such a situation, OSHA does not believe it is necessary to require that "all work" throughout the entire excavation cease until this isolated problem is repaired. Therefore, OSHA is proposing to change the requirement to require that "exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety." The obligation is on the employer to determine which areas are hazardous, and which employees are exposed to those areas.

*Section 1926.652—Requirements for protective systems.*

*Overview.* Section 1962.652 contains requirements pertaining to protective systems. These include a combination of performance-oriented requirements and more specification-oriented requirements.

The requirements are arranged so that the duty or performance-oriented requirements are stated in the beginning of the section.

The seven major paragraphs address: (a) Capacity of protective systems; (b) design of sloping and benching systems; (c) design of support systems, shield systems, and other protective systems; (d) materials and equipment; (e) installation and removal of support systems; (f) sloping and benching systems; and (g) shield systems.

The last three paragraphs primarily address work practices that are required, whereas the first four paragraphs address the adequacy of the system designs and materials.

Some of the requirements and language of this section are new. However, the major portion are revisions or consolidations of existing provisions.

Paragraph (a), "Capacity of protective systems," is new language that has no counterpart in the current standard.

Paragraphs (b) and (c) contain design requirements for protective systems that are presented as options that employers can choose among. The format and contents of these paragraphs are significantly different from the current standard.

Paragraph (d), "Materials and equipment," consolidates existing requirements in paragraphs E § 1926.651(1) and E § 1926.652(d). In addition, new requirements are added pertaining to the use of manufactured materials and equipment, and provisions applying to damaged material or equipment.

Paragraph (e), "Installation and removal of support systems," combines existing, revised and new requirements. The existing requirements affected are E § 1926.652(d), E § 1926.652(f), E § 1926.652(i), E § 1926.652(j) and E § 1926.651(f). New requirements are included prohibiting application of excessive loads, and allowing limited excavation below the bottom of support systems.

Paragraph (f), "Sloping and benching," contains a requirement addressing work on slopes. This is a new requirement.

Paragraph (g), "Shield systems," contains requirements that address the use of shields in excavations. These requirements are new.

*Discussion.* Paragraph (a) is a twofold requirement. First, it requires that protective systems be designed in accordance with the requirements of paragraphs (b) and (c) of § 1926.652. Second, it requires that protective systems have the capacity to resist, without failure, all loads that are intended or could reasonably be expected to be applied to or transmitted to the system.

The existing standard does not contain a requirement directly addressing the capacity of protective systems. Such a requirement, however, is consistent with the approach taken in this proposal which utilizes performance-oriented language where possible. As discussed earlier, proposed § 1926.651(j)(i) sets forth those situations in which cave-in protection is required, and identifies the hazards from which employees are to be protected. Therefore, the employer must first select a protective system for these conditions and hazards. Once a protective system has been selected, proposed § 1926.652(a) sets forth performance criteria that must be met by that system. It provides that "protective systems shall have the capacity to resist, without failure, all loads that are intended or could reasonably be expected to be applied or transmitted to the system." The paragraphs immediately following § 1926.652(a) address different methods and approaches that can be used to provide the required level of protection.

Section 1926.652(b) contains requirements for the design of sloping and benching systems. This paragraph provides three sets of alternatives that are available to employers who decide to use sloping and benching as a means of cave-in protection. Design of other types of cave-in protection is addressed in § 1926.652(c).

The alternative requirements are arranged in order of increasing degree of performance required, based upon the degree to which the employer performs soil classification and analysis.

In the first option, § 1926.652(b)(1), employers who do not want to make any effort to classify the soil are required to cut excavation sides to angles that are not greater than either of two specified angles, depending on the length of time the excavation will be open. In § 1926.652(b)(1)(i), the requirement is to slope at an angle not greater than one and one-half horizontal to one vertical (34 degrees measured from the horizontal) for excavations that will be open for 72 hours or less. In § 1926.652(b)(1)(ii), the requirement is to

slope at an angle not greater than two horizontal to one vertical (27 degrees measured from the horizontal) for excavations that are to be open longer than 72 hours.

In OSHA's opinion, the slopes required by this paragraph are safe for virtually all soils. Since, under this option, the employer is not required to make any attempt to differentiate between more stable and less stable soil types, the slopes required are conservative to ensure that employees will be protected adequately in those instances where poor soil conditions are encountered.

The required slope angles specified are identical to the slope angles that are required for the worst soil condition determined under Option (2) below. As will be explained below, the employer is required, under the second option, to differentiate between more stable and less stable soil types. Steeper slopes are allowed in soils determined to be more stable. By requiring slopes, in Option (1), that are the same as the worst case under Option (2), a necessary level of consistency in the requirements is maintained. If steeper slopes were allowed under Option (1), the situation could arise where an employer would be required to slope an excavation to a greater degree after making an effort to determine the soil type than would be required if no soil classification had been made at all. Sloping is set at a worst case angle in Option (1) to assure that protection is provided even where the employer makes no determination of soil type or stability.

In § 1926.652(o)(1)(iii), the requirements state that the configurations of slopes excavated under Option (1) must conform to the configurations illustrated in *Figure B–1* of Appendix B to Subpart P. This is to assure that slopes permitted under Option (1) are at least as protective as those set forth under the second design option in § 1926.652(b)(2).

In the second design option, § 1926.652(b)(2), designs must be in accordance with the conditions and requirements set forth in Appendices A and B to Subpart P. In brief, Appendix A is a method of classifying soil and rock conditions taking into account soil, environmental, and load conditions. Appendix A divides all soils into four classifications: Stable Rock, Type A, Type B and Type C. (See discussion for Appendix A below.) Appendix B contains requirements specifying the maximum allowable slopes for each of the four classifications. In stable rock, vertical sides are allowed. For Types A, B, and C the maximum allowable slopes vary, with steeper slopes allowed for Type A. The allowable slopes vary depending on whether the exposure is long-term or short-term. For purposes of the proposal, long-term is considered to be greater than 72 hours, while short-term is 72 hours or less. (NBS recommended 72 hours as the dividing line between long and short-term (Ex. 26.)) Slopes are required to be less steep in the long-term than in the short-term. This is because in the long-term excavation sides are much more likely to be exposed to excessive loads or to factors which cause a reduction in the ability of the excavation side to remain stable, or both—significantly increasing the likelihood of a cave-in. The range of slopes allowed varies from one-half horizontal to one vertical (1/2H:1V) for Type A, short term, to 2H:1V for Type C, long term. Appendix B also contains illustrations of five types of sloping and benching systems that are acceptable. (See discussion for Appendix B below.)

In general this proposal is expected to result in a net cost reduction, however some provision may result in cost increases. One such example could be the use of proposed *Table B–1* for sloping versus current *Table P–1*. Please provide specific examples where cost increases or decrease could occur. In your response please indicate the number of jobs in which these potential cost increases or decreases would occur.

*The requirements of Appendices A and B are mandatory when design Option (2) is chosen.* In the third option, § 1926.652(b)(3), three requirements are set forth. The first, § 1926.652(b)(3)(i), requires that sloping and benching systems be designed in accordance with accepted engineering practice by a qualified person or a qualified engineer. However, a person under the direction of a qualified engineer is also allowed to design sloping and benching systems under this option, because in this relationship, the qualified engineer would still be *responsible* for the design. The term "qualified engineer" is defined in proposed § 1926.650(b)(13).

A second requirement under this option, in § 1926.652 (b)(3)(ii), is that designs be in written form and include, as a minimum, the following information: (a) An indication of the magnitude of the slopes that were determined to be safe for the particular project; (b) an indication of the configurations that were determined to be safe for the particular project; and (c) the identity of the qualified individual responsible for the design.

The third requirement, set forth in § 1926.652(b)(2)(iii), is that at least one copy of the design be maintained at the jobsite while the slope is being constructed. After that, the design need not be kept on the jobsite, but a copy must be made readily available to the Secretary upon request.

In OSHA's opinion, these requirements are necessary for use in enforcing the standard, and also to increase the likelihood that adequate designs will be prepared. Under this option, the employer is allowed a wide range of discretion to determine the degree of the hazard and to determine the necessary level of protection against the hazard. It provides no specific restrictions as to maximum allowed slopes or configurations that an engineer could design. Therefore, under this option, slopes steeper than those allowed under the first two options could conceivably be used. Configurations different from those allowed under the first two options could also be used.

Option (3) is the most performance-oriented of the options provided and relies heavily on the competence and expertise of the person selected by the employer to design the system.

In order to ensure the adequacy of designs prepared under Option 3, OSHA is considering requiring that these designs provide additional information such as: What soil tests were performed and the results of those tests; what are the intended or expected load conditions; what consideration was given to environmental conditions; and, what are the limitations of the design. The Agency solicits opinion and recommendations on this subject.

Because of the wide discretion allowed, OSHA believes that stricter requirements are needed to verify that design requirements have been met. Therefore, OSHA is proposing that designs be in written form, and that they be made readily available to the Secretary upon request.

In OSHA's opinion, requiring that designs be in written form will not impose a significant burden upon employers. When an employer utilizes an individual to design a sloping and benching system, the results of the design effort must be communicated to the employer, and to those responsible for implementing the design, in some manner. Customarily this is not done orally, but by the preparation of a written plan. In OSHA's opinion, these requirements reflect current industry practice.

OSHA is revising the portions of Subpart P relating to sloping for several reasons. The existing standard allows only one approach to be used to determine the degree of slope required to protect employees against cave-ins. This approach requires that excavations

be sloped to the "angle of repose." As noted earlier, this term, as currently defined, does not conform to its use in civil engineering and has resulted in considerable confusion in the field. In addition, the existing approach is not consistent with OSHA's desire to place greater emphasis on the use of performance-oriented standards. More flexibility is possible by allowing the employer the choice to use any of several acceptable approaches to provide the required level of safety for employees.

OSHA is also revising the standard so as to provide greater clarity as to what is required of the employer. Interviews with contractors have indicated that some provisions in the existing standard relating to sloping are difficult to understand (Ex. 3).

This difficulty is due apparently to the limitations of the present format in which specific requirements relating to sloping appear in various places in the standard but in no apparent order. It also results from the fact that the soil types currently specified in *Table P–1* (compacted sharp sand, average soil, etc.) are not defined. The use and application of the terms "hard, compact soil" and "unstable or soft material" in the current standard have been the source of considerable confusion and have resulted in considerable litigation. In addition, there are other related format problems that have been discussed previously in this Preamble.

It was stated earlier that the existing Subpart P is divided into two sections containing specific requirements. § 1926.651 is titled "Specific Excavation Requirements" and § 1926.652 is titled "Specific Trenching Requirements." In § 1926.651 there are several references to sloping. These references appear in paragraphs E § 1926.651(c), E § 1926.651(d), E § 1926.651(g), E § 1926.651(h), E § 1926.651(j), and E § 1926.651(m). These requirements specify can be used as a method of protection against that sloping cave-ins and require that when sloping is used that "all slopes be excavated to at least the angle of repose. . . ." In addition, it is required that adjustments be made to the angle of repose, i.e., flattening, when certain conditions are present. These requirements are not presented in a concise, logical order and there is no guidance given to the employer in § 1926.651 indicating either what the "angle of repose" is or to what degree it must be adjusted for the specific conditions mentioned. Although *Table P–1* does give an indication of certain "angles of repose," this Table is located in § 1926.652 and no direct reference to the Table is made in § 1926.651. Further, as discussed earlier, there are technical problems with the use of the term "angle of repose." (See *§ 1926.650—"Scope, Application, and Definitions Applicable to this Subpart."* The discussion of the term "angle of repose" follows the discussion of proposed definition (b)(27) "Uprights."]

In current § 1926.652, reference to sloping appears in paragraphs E § 1926.652(b), E § 1926.652(c), and E § 1926.652(k). These requirements, in general, are intended to give more specific guidance to employers as to the degree of sloping required. *Table P–1* is referenced in both paragraph E § 1926.652(a) and paragraph E § 1926.652(b), but the language of the existing standard is apparently not sufficiently clear for some employers regarding the use of *Table P–1*. For example, in paragraph E § 1926.652(a), it is stated "Refer to *Table P–1* as a *guide* in sloping of banks." (Emphasis added.) Some employers have contended that the table is, therefore, not mandatory. However, paragraph E § 1926.652(b) is phrased in a manner more consistent with its intended mandatory nature.

Other difficulties have arisen relating to specific terms used in the current standard. For example, 45 degrees is indicated in *Table P–1* as the appropriate angle for sloping "average soil." "Average soil" is not defined in the existing standard, nor are the other terms used in *Table P–1*. Further, only two terms used in the standard itself to describe soils are presently defined. These terms are "hard compact soil" and "unstable soil." Neither term appears in *Table P–1*, and even paragraphs E § 1926.652(b) and E § 1926.652(c) use somewhat different terms "unstable *or* soft" and "hard *or* compact." (Emphasis added).

OSHA has concluded that these difficulties can be eliminated, and at the same time a more effective standard for sloping can be created. OSHA believes that the best way to address these difficulties is to revise significantly the language and format of the current standard.

OSHA is, therefore, proposing a format that allows employers to choose from among the three design alternatives described earlier—alternatives that allow the employer some flexibility to determine the degree to which excavation sides must be sloped to protect employees against cave-ins.

The calculation of the degree to which excavation sides must be sloped to protect employees against cave-ins can be a difficult task. This is true because there are many factors that must be taken into account which affect the stability of sloped excavation sides. These factors include: The soil type and its ability to resist stress; changes in the ability of the soil to resist stress due to the effects of exposure to environmental conditions such as freezing, thawing, or rain; loads imposed due to the particular configuration of the excavation; and loads imposed due to the presence of water or the variation of the water content of the soil. Other factors include: Loads imposed by the presence of structures, equipment, overlying material or stored equipment or material; and loads imposed due to dynamic forces such as vibration from equipment, blasting, traffic, or other sources.

Employers have to contend with soil as it is found in place. However, soil conditions cannot be depended upon to remain constant on any particular construction site. As a material used in construction, soil is unreliable because there is no control over its structural quality; its properties vary from place to place and change with the passage of time due to environmental exposure. There are an infinite number of combinations of conditions and factors that can affect its stability. Because soil is so variable, a great degree of caution must be exercised when relying on its strength to provide a sloping system with a desired level of protection.

There are practices that are accepted by the engineering community that can be followed to determine safe slopes for most situations. These practices involve analyzing soil samples to determine properties of the soil; evaluating intended or expected load conditions and sequences; and considering the possible effects of environmental exposure. Soil analysis can be accomplished in the field, using simple field testing techniques. Soil analyses can also be done more extensively and accurately in the laboratory. Slope stability analysis is often used to predict the behavior of a slope. Full scale models have also been used to predict expected behavior.

In OSHA's opinion, however, it is not feasible or necessary to require a rigid soil exploration and analysis program, or a slope stability analysis, for every trench or other excavation that is made. To avoid such specifications in the standard, OSHA is proposing two options in which the required slope angles are specified. In the opinion of the Agency, these two approaches will serve the needs of the industry and provide safe working conditions for employees. OSHA also recognizes that

the first two options could be unnecessarily restrictive in some situations. Thus, OSHA is proposing the third design alternative to allow the employer to determine the degree of protection required for any particular circumstance. Under this option, the employer is allowed to assess the soil conditions, the load conditions, and the effects of environmental conditions and to then determine the slope required to protect employees. There are certain restrictions imposed on employers who use this optional approach—primarily that the employer must rely on a "qualified person," a "qualified engineer" or a person under the direction of a "qualified engineer" to determine the safe slope.

It was suggested that OSHA require only a "qualified engineer" for the third option because of the complexity of designs involving soil analyses, interpretation of soil test results, and determination of slope stability. This suggestion was based on the opinion that a person with education and training in these areas is needed to assess properly the factors and conditions that affect the stability of the protective system. OSHA realizes that in order to become "qualified" some amount of experience is required. A person can gain experience by working under the direction of a person who is already a qualified engineer. It will be acceptable for designs to be prepared by a person who works under the direction of a qualified engineer. In this relationship, the qualified engineer would still be responsible for the soundness of the design. Therefore, OSHA is proposing that designs be done by a "qualified person," a "qualified engineer" or by a person under the direction of a "qualified engineer."

Additionally, experience in trench or excavation work alone, without appropriate understanding of engineering methods and principles, is not sufficient to be considered "qualified" to do analysis and design work. NBS has stated that "the number of accidents involving older, and presumably more experienced, personnel tends to refute the argument that experience alone is an adequate factor in judging trench wall stability" (Ex. 5, p. 5).

Different methods of analysis and design are used depending on the type of system that is being designed. Under the existing definition in § 1926.32(1), some critics contend that any person with some experience in trench excavation could conceivably be considered "qualified." OSHA has noted on the basis of its enforcement experience in inspecting excavations and excavation cave-ins, as well as on the NBS study, that experience alone in excavating trenches does not necessarily qualify an individual sufficiently to determine whether a particular soil will stand at a particular slope. Others argue that possession of an engineering degree *alone* doesn't necessarily qualify an individual to make these decisions, or guarantee that the designs prepared by these engineers will provide sufficient protection for employees.

It has been suggested that in order to be "qualified" a person should be a "registered" or "licensed" engineer (Ex. 8, pp. 107–208). In OSHA's opinion, a person need not be in possession of a license in order to be "qualified," nor does OSHA believe that possession of a license "guarantees" a person's qualifications to design cave-in protective systems. Many people who hold licenses to practice engineering have studied engineering principles and methods that are unrelated to the analysis and design of cave-in protection. A license may be evidence that an engineer has the background and capabilities to perform the analysis and design work required by the proposal, but only if it indicates specific knowledge and expertise in soil mechanics. It does not always indicate such specific expertise.

OSHA is proposing the new definition of "qualified engineer" which may be used to deal with the need for expertise in the design and installation of protective systems, and requests that specific attention be given to the proposed definition during the comment period.

In developing the overall approach related to the design of sloping and benching systems, and to protective systems in general, OSHA has considered other formats and alternatives. For example, a draft proposed standard was submitted to the ACCSH for review and comment on October 13 and 14, 1982. Transcripts of this meeting are part of the record of this proposed rulemaking (Ex. 8). In that draft, OSHA was considering a format that required that "all protective systems shall be designed by a 'qualified person' in accordance with accepted engineering practice to resist without failure all loads intended to be applied or transmitted to such systems." However, an appendix contained material that could be used to design sloping and benching systems in all excavations, or timber shoring in trenches. This approach was more in line with the one in the existing standard. The draft noted that protection systems designed in accordance with the appendix would meet the design requirements of the draft standard. This essentially gave employers two design options.

The ACCSH recommended a format whereby the employer would have the two design options more clearly identified. The employer would either have to follow the "standard practices" allowed in the appendix or, in the alternative, be required to have designs prepared by a "qualified person." However, the ACCSH recommended that the "qualified person" should be defined as a registered professional engineer, with expertise in civil engineering, soil mechanics or structural engineering; or a person with at least five year's experience in excavation work. Further, the ACCSH recommended that where this alternate approach to the design of protective systems was taken, the employer should be required to have on the project site plans and specifications for the designs (Ex. 8). The concern was that designs of protective systems should be undertaken only by persons with particular qualifications, such as licensed professionals, who could prove their qualifications by means of a license, or by someone who had extensive experience doing such work even though such a person did not have a formal education, i.e., an engineering degree. The basis for the suggestion to require plans and specifications on the project site was to make the requirements more enforceable, and to help ensure that the proper attention was given to the designs.

OSHA then gave consideration to a concept wherein two design options were clearly identified. The first option was to follow the requirements of the appendix; the second was to have a "qualified person" design the protective systems. However, in this concept, OSHA's intention was to define the "qualified person" using the existing definition in § 1926.32(1). This definition has been in use since the construction standards were first promulgated in 1971. However, as noted above, some commenters believe that the current definition does not incorporate a requirement that the "qualified person" have the specific expertise that is necessary for the proper design of protective systems. In recognition of the concern expressed by interested parties that adequate designs be prepared, OSHA considered other requirements that were to be linked to the design requirements. The first such requirement would provide that designs be based on

the results on specific analyses. Required analyses of the soil were considered, as well as analyses of possible load conditions. Second, OSHA would have required that designs be certified by the person responsible for the design. The certification would have been a statement to the effect that the design was done by a qualified person and was based on the results of the required analyses.

This approach was criticized as being unenforceable because under the existing definition of "qualified person," any employee with a minimum of experience in excavation work might be deemed to be "qualified." Critics contend that this could result in almost anyone being authorized simply on the basis of several years of experience in digging trenches to prepare the designs and certify the designs and to be in compliance with the standard. It was felt that the result would be inadequate designs and, thus, inadequate protection against cave-ins. This approach seemed to give total discretion to employers to determine the extent of the hazard, and to determine the required means to abate the hazard without providing OSHA with an adequate means to enforce the problems while maintaining flexibility and performance orientation, OSHA then developed the proposed approach which is used in the present proposal.

This approach continues to permit a "qualified person," as defined in 1926.32(l), to have design responsibility, but introduces the concept of a "qualified engineer" as an alternative. In order to ensure the adequacy of the designs prepared by either a "qualified person" or a "qualified engineer" and to provide a degree of consistency in these designs, OSHA is considering requiring that additional data be provided on all these designs. This is discussed earlier in this preamble where several types of data are specifically mentioned (soil tests and results, expected load conditions, environmental considerations and design limitations). The Agency solicits comment on the type of data essential to making these determinations and the appropriateness of requiring them to be included as part of the design.

This approach also highlights OSHA's concern related to ensuring safe working conditions without being overly restrictive by prohibiting design of protective systems by persons that have the knowledge, expertise and capabilities to do so, but lack an engineering degree.

OSHA has concluded that a standard utilizing the alternatives allowed in the present proposal would be more effective than the approach found in the existing standard. This is because of the added flexibility employers would have to determine the most feasible option for their particular circumstances. It is also because the proposal would help to remove most of the difficulties of interpretation and application experienced with the existing standard. The organization of the proposed standard is improved over the existing standard. Terms and phrases are more clearly defined and used. Thus, the misunderstandings that frequently occur using the existing standard would be reduced.

OSHA hopes that the proposed approach, as well as the specific options allowed, and the specific angles and configurations allowed, will be carefully considered during the comment period.

Paragraph (c) of § 1926.652 contains requirements that apply to the design of support systems, shield systems, and protective systems other than sloping and benching systems. The requirements in this paragraph are set forth in a format similar to those set forth in paragraph (b)—Design of Sloping and Benching Systems. Paragraph (c) is subdivided into four paragraphs. Each of the four paragraphs is an option employers can elect to follow to meet the requirement to provide cave-in protection.

The first option, in paragraph (c)(1), applies to the design of timber shoring in trenches. When employers elect to use this option, the requirements state that: "Designs for timber shoring in trenches shall be determined in accordance with the conditions and requirements set forth in Appendices A and C to this Subpart."

Basically, as noted earlier, Appendix A sets forth a method of classifying soil conditions into four types: Stable Rock, Type A, Type B, and Type C. Stable Rock, however, is exempt from the requirement to provide cave-in protection. (See proposed § 1926.651(j)(1)(i).)

Appendix C contains data to be used to select timber shoring for use in trenches that are up to 20 feet (6.1 m) in depth. Soil conditions must first be classified as Type A, Type B, or Type C, in accordance with Appendix A. Appendix C contains three tables, one for each of the soil types, from which various configurations of shoring can be selected. Appendices A and C are discussed later in this Preamble in greater detail.

The second option, paragraph (c)(2), allows the use of designs based on or drawn from manufacturer's tabulated data. The manufactured systems generally addressed by the paragraph include metal hydraulic shoring and shields. In the past, manufacturers have developed tabulated data that indicated the conditions for which their various products could be used.

The requirements of § 1926.652(c)(2)(i) state that designs "that are drawn from manufacturer's tabulated data shall be in accordance with all specifications, recommendations, limitations, and warnings issued or made by the manufacturer." In § 1926.652(c)(2)(ii), it is required that "deviation from the specifications, recommendations, and limitations issued or made by the manufacturer shall only be allowed when the manufacturer issues specific written approval." A third requirement, in § 1926.652(c)(2)(iii), states that manufacturer's specifications, recommendations, limitations, and warnings, and the approval required in § 1926.652(c)(2)(ii), be in written form at the jobsite during construction of the protective system. After that the data may be stored off the jobsite, but a copy shall be made readily available to the Secretary upon request.

A trend in the construction industry has been to use and rely more and more on products that are manufactured systems of protection. The design of particular products such as trench shields can be highly complex. A single manufacturer is likely to have available a range of products, each intended for use in different circumstances. The employer is concerned with using a product that is intended for use in a particular situation.

It is, therefore, incumbent on the employer to ascertain all that the manufacturer specifies or recommends regarding the use of a particular product, and then use the product accordingly.

An employer, then, is allowed a degree of discretion as far as choosing a particular product for use. In OSHA's opinion, the likelihood that manufactured products will be used in the manner intended will be enhanced if the specifications and recommendations that the employer uses to select such products, including the limitations set by the manufacturer on their use, is required to be at the jobsite while the system is being constructed and made readily available to the Agency upon request. Therefore, OSHA is proposing such requirements.

In the third option, paragraph (c)(3), it is specified that designs can be selected from other tabulated data, such as tables and charts, that have been prepared by or under the direction of a qualified person or a qualified engineer. The use of State regulations, promulgated under an OSHA approved

State plan and determined to be "as effective as" Federal regulations, is acceptable to meet the requirements of this provision. Additionally, this paragraph is intended to allow employers to develop and use general designs that can be used repetitively and that meet the needs of their particular circumstances. OSHA recognizes that the design of protective systems can be a highly complex engineering procedure that involves elements of soil mechanics and structure engineering. In reality, each case is unique. Therefore, repetitive use of a general design must be done with caution. Designs for general applications have limits that must not be exceeded or the safety of employees will be endangered. Tabulated data, therefore, can only be used safely when the necessary information is provided that explains the limitations of the data and demonstrates that the system is safe under prevailing soil, load, and environmental conditions.

OSHA is proposing, therefore, new requirements that are intended to increase the likelihood that tabulated data will be used properly. These new requirements are set forth in four paragraphs within paragraph (c)(3).

In paragraph (c)(3)(i), it states that designs "shall be selected from and be in accordance with tabulated data, such as tables and charts."

In paragraph (c)(3)(ii), it is explicitly stated that the tabulated data shall be prepared by a qualified person, a qualified engineer or a person under the direction of a qualified engineer.

In paragraph (c)(3)(iii), it is required that the data be in written form. It is also required that at a minimum, certain information be included with the data. Basically, the information required includes instructions for the use of the data, the limits of application of the data, identification of pertinent parameters that affect the selection of a protective system drawn from the data, and identification of the qualified individual responsible for the preparation of the data. In paragraph (c)(3)(iv) it is required that at least one copy be maintained at the jobsite while the protective system is being constructed and that it be made readily available to the Secretary upon request.

In OSHA's opinion these requirements for documentation are needed to provide a balance to the wide discretion that is allowed employers in providing a system of protection, and in order to assure that employees are adequately protected.

In the fourth design option, paragraph (c)(4), the requirements are stated in three paragraphs within paragraph (c)(4). In paragraph (c)(4)(i), the requirements state that protective systems shall be designed in accordance with accepted engineering practice by a qualified person, a qualified engineer, or by a person under the direction of a qualified engineer. This option gives employers the flexibility to design protective systems for unique applications. There are no specific restrictions or limitations regarding the application of designs allowed under this option. The employer, through the qualified individual, is thus given wide latitude to judge the degree of the hazard present and to determine the degree of protection required.

OSHA recognizes, because such wide latitude would exist under this provision, that the possibility of abuse of the discretion allowed would also exist. OSHA is, therefore, proposing additional requirements that are intended to increase the likelihood that the protective systems designed under this option will be adequate to protect employees. The first of these additional requirements is stated in paragraph (c)(4)(ii). It states: "Designs shall be in written form," and must, at a minimum, include "a plan indicating the sizes, types, and configurations of the materials to be used in the protective system," and "the identity of the qualified individual responsible for the design." The other additional requirement is stated in paragraph (c)(4)(iii). That paragraph states that "At least one copy of the design shall be maintained at the jobsite during the construction of the system, and the design shall be made readily available to the Secretary upon request."

These requirements are similar to those proposed by OSHA in § 1926.652(b)(3) for sloping and benching. The discussion of those requirements is equally applicable for the requirements proposed under the subject paragraph, especially the discussion on requiring more data related to selection factors used to determine the design.

Strong support has been voiced by the ACCSH for requiring designs by specially qualified personnel (EX. 8). As discussed under § 1926.652(b) above, there is concern that the existing definition of "qualified" in § 1926.32(1) is not adequate because it implies that, on the basis of experience alone, a person could be considered qualified. Because design of protective systems can be a difficult engineering problem, it requires special expertise, and it is crucial that adequate designs be used. Interviews with contractors indicate that the primary reason for the failure of protective systems is a lack of an adequate design of systems (Ex. 3).

OSHA would like to receive comments specifically addressing these proposed requirements. OSHA again requests that these proposals be carefully considered and that comments and views be submitted during the comment period.

There are many paragraphs distributed throughout the existing standard that set forth requirements pertaining to the *use* of shoring and other protective systems. Existing paragraphs (c), (m), (o), and (q) of § 1926.651, and paragraphs (b), (c), (e), and (f) of § 1926.652 state when use of a protective system is required. Other existing paragraphs contain requirements pertaining to the *design* of such systems. These include paragraphs (e), (f), and (k) of § 1926.651; and paragraphs (d), (g), and (k) of § 1926.652. These existing requirements have been revised and reorganized in the proposal in order to make the standard easier to follow and understand.

Some of the shoring requirements in the current standards have been criticized as being either too inflexible or too difficult to understand. For example, *Table P–2*, "Trench Shoring—Minimum Requirements," has been criticized by contractors as too inflexible (Ex. 3). *Table P–2* specifies sizes of timber shoring members but generally only specifies one configuration of members for any particular case. Each case is defined by three parameters: Soil condition, trench depth, and width of trench. OSHA notes that interpreting the Table as not allowing any deviation from the specified configurations is an inaccurate and overly restrictive reading of *Table P–2*. The Table only indicates certain configurations that will provide the required minimum protection. Other configurations that provide equivalent or greater protection are acceptable.

Another problem with *Table P–2* is that selection of a configuration is based on soil classifications and soil conditions that are not currently defined in the standard. The terms are not used in a manner that is consistent with the way other similar terms relating to soil conditions are used in the standard. Thus, it is difficult at present to use *Table P–2* to select the proper protection.

Another criticism that has resulted from a misunderstanding of the current standard is that the standard is ambiguous with regard to allowing the use of protective systems other than timber shoring. However, as a clarification, it should be noted that

several such protective systems are mentioned in the existing standard. These include shoring, sloping, use of shields, support systems, bracing, and sheet piling. In a footnote to *Table P–2,* trench jacks and steel sheet piling are specifically indicated as being acceptable substitutes for wood members. However, the lack of mention of other systems, particularly metal hydraulic shoring, has led to the mistaken impression among some interested persons that such systems are not allowed by the standard. OSHA emphasizes that this is not the case, either with the current standard or in the proposal.

In developing this proposal, OSHA has attempted to clarify the application of these and other provisions of the standard, and has made every effort to remove ambiguities and sources of confusion that have arisen in the current standards. Overall, the proposed requirements are intended to provide a greater degree of flexibility by providing the employer with alternative approaches that yield the same end result. The employer is free to choose the approach that is most feasible for any particular circumstance. Wide latitude is granted, but it is balanced and checked by requirements that are intended to make the standard enforceable.

OSHA is interested in the views of those affected by these proposed requirements and therefore again requests that comments be submitted that are directed specifically to the requirements proposed here.

Paragraph (d), "Materials and equipment," addresses the hazard to employees resulting from the use of damaged or defective items in protective systems. The material and equipment is relied upon to have a certain degree of structural capability. The loss of this capability due to defects or damage can result in the failure of a protective system.

Paragraph (d)(1) requires that materials and equipment used for protective systems shall be free from damage or defects that might impair their proper function.

Paragraph (d)(2) addresses manufactured equipment. It requires that such material be used and maintained in a manner consistent with the manufacturer's recommendations and in a safe manner so as to protect employees from hazards.

Paragraph (d)(3) requires that where equipment is damaged while in service, it be examined by a competent person for its suitability for continued use. When it is unsuitable, the material or equipment must be removed from service.

The existing requirements in E § 1926.651(1) and E § 1926.652(d) address the condition of materials used for support structures and systems. These requirements have been consolidated into proposed paragraph (d)(1), which covers all elements of protective systems, and which extends to other types of protective systems such as shields.

The existing standard does not refer specifically to manufactured items. Equipment such as shields and metal hydraulic shoring are used extensively in the industry today. However, to assure their safe use, these items must be used in strict accordance with the manufacturer's recommendations and instructions. In addition, the existing standard does not clearly address the problem of material becoming damaged while in use. Often material and equipment used in temporary protective systems are designed with only a slight factor of safety. If the equipment is damaged, there may be no factor of safety and employees are in immediate danger. Proposed paragraphs (d)(2) and (d)(3) address the need for employees to be protected in these circumstances.

Paragraph (e), "Installation and removal of support systems," contains requirements for the protection of employees during installation and removal of support systems.

Installation and removal of support systems are particularly hazardous periods in excavation work which can involve significant material-handling activity. Additionally, partially completed support systems will not react to loads in the same manner as the completed structures. Individual members can become overloaded and fail, leading to a general failure of other portions of the support system. Therefore, employees can be exposed to cave-ins, the collapse of adjacent structures, or collapse of the support system if the employees are not properly protected during installation and removal.

Paragraph (e)(1) contains six requirements that address these hazards. Four of these requirements are based on existing requirements found in three existing paragraphs, E § 1926.651(f), E § 1926.652(j), and E § 1926.652(1). The existing provisions have been grouped into a more logical, easier-to-follow format under only one paragraph heading. The requirements in E § 1926.652 that apply currently to specific trenching situations only would be extended to cover all excavations because the hazard addressed by those requirements exists whenever support systems are being installed or removed.

The other two proposed requirements are new. These specifically require protection for employees from cave-ins, the collapse of structures, or from being struck by members of the support system. The proposal requires, in addition, that individual members of support systems not be subjected to loads exceeding the design loads of those members.

Paragraph (e)(2)(i) contains a new provision that allows excavation to a level not greater than two feet (.61 m) below the bottom of the members of a support system of a trench. It applies *only* to trenches. This provision is one of the provisions recommended to OSHA by NBS based upon their studies (Ex. 6). It helps to clarify what was meant by the phrase "installed so as to be effective to the bottom of the excavation" found in E § 1926.652(d) of the current trenching standards. The proposed provision recognizes that trench support systems in some instances need not always be installed to the bottom of the excavation. If designed to resist the forces calculated for the full depth of the excavation, the system can be fully effective, even if it does not extend to the bottom.

Paragraph (e)(2)(ii) requires that installation of support systems be closely coordinated with the excavation of trenches. This is a revision of E § 1926.652(i). The Construction Advisory Committee suggested that this requirement be dropped (Ex. 8, p. 400) because it seemed to apply to all trenches even where there would be no employee exposure to cave-in hazards, i.e., where no employees enter the trenches. However, this paragraph is intended to apply only where employees are exposed to cave-in hazards. All OSHA standards apply only where there is potential exposure of employees to hazards, and therefore it is not considered necessary to state this for every requirement.

Coordination of installation of the support system with the excavation of the trench will reduce the possibility that a cave-in will occur. The longer a trench is open, the more likely it is to cave-in. Essentially, where employees will be expected to enter a trench, it is a safe work practice to install the support system as soon as possible after excavation. OSHA believes that this proposed requirement is necessary to assure employee safety in trenches.

Paragraph (f), "Sloping and benching systems," contains a new requirement prohibiting employees from working on the faces of excavations at levels above

other employees; except when adequate protection against falling material is provided. Obviously, employees can dislodge loose material and cause it to fall to lower levels. This dislodging activity, in fact, may be their work assignment. Employees at lower levels can be struck by falling material. With adequate protection from a barricade, net, shield or other protective device, this situation need not be hazardous.

Paragraph (g), "Shield systems," contains new provisions. These requirements are arranged in two paragraphs.

Paragraph (g)(1) contains four general requirements which basically address work practices not spelled out in the existing standard.

Shields, by their nature, provide protection only in the area within the structure. The remainder of the excavation is generally left unsupported and unshielded. Employees entering or exiting shields through these unprotected areas would be exposed to cave-in hazards. Therefore, the proposal would prohibit employees from passing through such areas to reach the shield.

Generally, shields are designed to be moveable. Employees would be exposed to unexpected shifting of the shield during installation, removal, or relocation. Therefore, when shields are being moved, employees are prohibited from being within the shield. (See Issue 11 above.)

Shields do not normally prevent cave-ins, but do protect employees in the event of a cave-in. The possibility exists that the magnitude of the forces imposed on a shield during a cave-in could shift the shield laterally if it is not restrained against such movement. If the employees are in the shield, this lateral movement could be hazardous. The proposal requires that shields be installed in a manner to restrict lateral movement in the event of the application of sudden lateral loads such as during a cave-in. One method of accomplishing this in trenches is to excavate the trench so that it is only as wide as is necessary to install the shield.

Shields are protective devices that must be specially designed and constructed. Because of the highly variable nature of soil conditions and loading caused by soil movement, shields have strict limitations on their use. These limitations are established by the manufacturer for manufactured shields, but in some situations shield systems are constructed on-site. It is more difficult to ascertain the limits of such shields. The design of shields is addressed in § 1926.652(c) of the proposal. However, in practice, load conditions could occur which a particular shield might not have been designed to support. For example, crossbraces might not have been designed to support vertical loads in addition to compressive loads. To deal with this protential hazard, the proposal would prohibit employers from subjecting shields to loads other than those considered in their design.

Paragraph (g)(2) applies only to trenches. It allows excavation in certain circumstances of earth material to a level not greater than two feet (.61 m) below the bottom of shields. The reasoning behind this is identical to that discussed in paragraph (e)(2)(i) above.

*Relocated and Deleted Paragraphs.* The fall protection requirements in existing paragraph E § 1926.651 (t) and (w) are not included in the proposed revision of Subpart P. These provisions, which require fall protection at remotely located excavations and on walkways or bridges crossing over excavations, respectively, would be relocated in Subpart M—Fall Protection, and would be redesignated as § 1926.500 (h) and (i). This action is consistent with OSHA's intention to locate all provisions relating to fall protection in construction together under one Subpart.

OSHA currently published a proposed revision of its fall protection standards in Subpart M. (See **Federal Register**, November 25, 1986). When this proposal is published as a final rule the excavation fall protection provisions incorporated will be placed in a new Subpart M.

OSHA is proposing to delete the following existing paragraphs: E § 1926.650(e), which requires personal protective equipment as set forth in Subpart E; E § 1926.651(r), which requires that blasting be performed in accordance with Subpart U; and E § 1926.651(y), which requires that ladders be in accordance with the requirements of Subpart L. These references are redundant in that they require nothing different or in addition to the requirements set forth in the respective subparts. In addition, they might mislead an employer into assuming that other subparts not referenced do not apply to excavations. The requirements of Subparts E, U, and L remain applicable to employees working in and around excavations as do the other subparts of Part 1926.

OSHA is proposing that paragraph E § 1926.652(g) also be deleted. This paragraph presently states: "Minimum requirements for trench timbering shall be in accordance with Table P–2." It also requires that compressive stresses in timber braces and diagonal shores not be in excess of certain allowable values as computed using the given formula. The requirements of this paragraph are not consistent with the approach taken in the proposal, which does allow the employer to select trench timbering from tables, but does not make the tables minimum requirements for all trench shoring.

In addition, OSHA believes that the equation set out in E § 1926.652(g)(2) is not appropriate for continuation in the standard. This equation is intended to be used for determining the maximum allowable compressive stress in braces and diagonal shores in a wood shoring system. OSHA has determined that the equation should not be carried forward because it is outdated. The use of the specified equation, in a slightly different form, was originally contained in the USA Standard A10.2—1944, "Safety Code for Building Construction." Since that time, new equations for determining allowable compressive loads have been developed. These newer equations are described in the "Timber Construction Manual" published by the American Institute of Timber Construction. The second edition was published in 1974. The more modern equations take into account the shape of the member, i.e., square or round, and the kind of wood used to produce the member. Allowable stresses, i.e., the maximum stresses to which a member should be subjected, vary depending upon the species of wood being considered. The equation given in E § 1926.652(g)(2) does not account for either of these factors.

However, even with the improved equations, OSHA does not believe that the newer equations should be specified in the revised standard. First, in OSHA's opinion, these equations are not necessary. As pointed out above, the particular equation specified is used only to determine the maximum allowable stress to which a certain structural member should be subjected. Today, such information generally is available in tabulated form for most species and grades of wood. Therefore, it is not necessary to use an equation in the standard and calculate maximum allowable stresses. Furthermore, knowing the maximum allowable stress alone is of little value. The *actual* stress to which a member is subjected or expected to be subjected must also be known and a comparison made between the actual and allowed stresses. If the actual stress exceeds the maximum allowable, then the particular member could not be used. Computing the actual stress, however, can be a highly complex engineering problem.

Another reason why use of equations is not required in the proposal is that

they address only one type of load situation. For example, the current equation is only intended to be used to calculate the maximum allowable compressive stress for wood members acting as columns under axial compressive loads. However, members are often subject to eccentric loads or lateral loads that create bending stresses in them. These other actual stresses, alone or in combination with axial compressive forces, may be critical. Therefore, the maximum allowable and actual stresses for various load conditions need to be considered in addition to the one load condition currently specified in the standard.

A final reason why specification of the given equation should be discontinued is that it applies only to wood members. Much less wood is used today than in 1944 when use of the equation was recommended. Other materials, primarily steel and aluminum, are used more frequently today and different equations are used to calculate allowable stresses in members of these materials.

OSHA is proposing, therefore, no longer to require the use of such specific equations. In OSHA's opinion, the alternatives set forth in the proposal for design of protective systems will provide added flexibility for the employer while increasing the degree of safety afforded the employees.

OSHA is also proposing other deletions. Two tables which are part of the present standard would be deleted by the proposal and would be replaced by material to be contained in the Appendices to the standard. The contents of these Appendices are discussed in detail below. *Table P–1*, "Approximate Angle of Repose for Sloping of Sides of Excavations," would, in effect, be replaced by Appendices A and B, which provide a detailed soil classification scheme and sloping requirements for the employer who selects the second option for designing sloping system protection.

Similarly, *Table P–2*, "Trench Shoring-Minimum Requirements," would be replaced with material in Appendices A and C.

### Appendix A—Soil Classification

Appendix A details a method of classifying earth deposits, taking into account various environmental conditions, site-specific conditions, and soil-specific conditions. The results of the categorization of soils in accordance with this method would then be used subsequently to determine the level of protection against cave-ins that is required to protect employees.

It is not required in every instance that employers use this Appendix as the basis of classifying earth conditions. Use of this Appendix is an option that employers may choose. The option to use this Appendix is stated twice in the standard. First, it is stated in § 1926.652(b)(2) as one option that may be used to determine the requirements for sloping and benching. The option is stated a second time in § 1926.652(c)(1) as one option that can be used to determine the requirements for timber shoring. It should be noted again that the employer is required to select one of the options set forth in § 1926.652(b) if using a sloping system, or in § 1926.652(c) if using shoring, shields, or another system. When an employer chooses an option where this Appendix is to be used, *the employer must then adhere faithfully to the requirements and provisions of the Appendix.* The Appendix then becomes mandatory.

Appendix A is arranged into four major paragraphs. These are: (a) Scope and Application; (b) Definitions; (c) Requirements; and (d) Recommended Visual and Manual Tests.

The first paragraph states the scope of the Appendix and when it is applicable. Terms used throughout the Appendix are defined in the second paragraph. The requirements for making soil classifications are set forth in the third paragraph and basically state that the classifications, as defined in the previous paragraph, shall be determined based on the results of visual and manual analyses. Recommended visual and manual analyses are described in the fourth paragraph.

OSHA recognizes that all or none of the particular analyses described in the fourth paragraph may apply at any one time, and that other tests could be developed or used which would meet the intent of the standard. Therefore, these analyses are recommended, but not mandatory.

This soil classification system, as with all soil classification systems, is not intended for universal application. OSHA does not intend that the system be used to replace analysis and testing for engineering design. OSHA does not require sampling and testing for engineering design in the current standard, and does not believe it is warranted to require these procedures in the proposal. The decision to conduct a more sophisticated soil sampling and testing program, as with the current standard, would be left to the employer's discretion in the proposal. When an engineering analysis is desired, OSHA recommends that other presently accepted methods of soil sampling and testing be used. Such methods as those adopted by the American Society for Testing and Materials (ASTM) are accepted methods.

This soil classification system is being proposed in an effort to address a deficiency in the existing standard. The existing standard does not rely on a consistent method of classifying soils, but relies on terms that cannot be easily quantified, such as "hard and compact" and "soft and unstable." Further, there is an inconsistency in the terminology currently found in Subpart P. For example, one set of terms is used in *Table P–1* which indicates recommended slopes in certain materials, primarily granular. A different set of terms to describe soils is used as the basis of the divisions of *Table P–2* which specifies mininum requirements for timber shoring in trenches.

The soil classification system that is being proposed is intended to eliminate this deficiency. It is intended to provide construction personnel and OSHA Compliance Officers with a common language that can be used to assess the requirements and adequacy of sloping and shoring systems used to prevent cave-ins.

The proposed soil classification system was developed by the National Bureau of Standards (NBS). The background of the system is explained in more detail in Exhibit 5. OSHA has incorporated this classification system in the proposal based on the recommendations of NBS, after consultation with the ACCSH, and after a review by interested parties at the five industry-sponsored workshops. In addition, OSHA has used several American Society for Testing and Materials (ASTM) Standards, as well as other sources, to obtain information that, in OSHA's opinion, was needed to supplement and clarify the NBS recommendations. The ASTM Standards include:

(1) Designation: D653–67 (Reapproved 1973)—"Standard Definitions of Terms and Symbols Relating to SOIL AND ROCK MECHANICS," (Ex. 27).

(2) Designation: D2487–69—"Standard Method for CLASSIFICATION OF SOILS FOR ENGINEERING PURPOSES," (Ex. 28).

(3) Designation: D2488–69—Standard Recommended Practice for DESCRIPTION OF SOILS (VISUAL—MANUAL PROCEDURE)," (Ex. 29).

OSHA has used these sources to clarify and provide additional information in paragraph (b) of the Appendix, "Definitions," and in paragraph (d), "Recommended Visual and Manual Tests."

One example of the use of supplemental information involves the development of the definition of "cemented soil." NBS makes reference to cemented soil in its recommended definition of Type A soil, but provides no discussion as to what constitutes cemented soil other than to suggest that soils referred to as "hardpan" or "till" are examples of cemented soil.

Cemented soils are most commonly composed of granular, or course-grained particles. Carbonate salts—calcium carbonate being the most common—are the primary chemical agents that provide the cementation of the particles of soil. The action of the cementing agents adds to the strength of the soil by binding the particles together so that the soil can resist a greater degree of stress.

The quantity of the cementing agent in a soil sample can be estimated by subjecting a soil sample to a solution of dilute hydrochloric acid and visually noting the intensity of the reaction. Unfortunately, this test does not give a good indication of the strength of the cemented soil. However, a satisfactory estimate of the relative strength of a cemented soil can be made by conducting a dry strength test. This is a test that is conducted by crushing dry soil samples between the fingers. The dry strength test is used primarily for estimating the strength of fine-grained soils, i.e., clays, which have cohesive qualities. Conducting this test on cemented coarse-grained soils, however, can give good estimates of relative strength that are equivalent to the strength estimates of fine-grained soils.

In ASTM D2488 (Ex. 29), in a description of the dry strength test, it is noted that: "The presence of high-strength water soluble cementing materials, such as calcium carbonates, may cause exceptionally high dry strength. . . ." In the dry strength test, "high" strengths are indicated if "the sample cannot be crushed to powder by finger pressure, even though the sample may be broken." "Very high" strength is indicated "if the sample cannot be broken between the thumb and a hard surface." In another reference (*Handbook of Soil Mechanics*, Volume 1, p. 98, by Arpad Kezdi) under a discussion of the dry strength test, it is stated: "If the sample resists crushing by finger pressure altogether, the soil is an inorganic clay of high plasticity, or a coarse-grained soil aggregate cemented by some high-strength binder (e.g., calcium carbonate or iron oxide)."

Based on the discussions of cemented soils in this literature, OSHA has supplemented the NBS recommendations by developing a definition of "cemented soil" with the intent of clarifying the NBS recommendations. The definition of "cemented soil" is intended to include those soils that exhibit strengths at least equivalent to the strengths required for Type A cohesive soil. The result of this will be that some soils containing a slight amount of a cementing agent will not be considered as cemented soil, as such soil will not exhibit sufficient strength.

The soil classification system being proposed has not been used in practice. However, in OSHA's opinion, use of this system will be a major improvement over the terminology and practices used in the existing standard. Because this system has not been used in practice, OSHA believes that careful consideration and comment on this system by those affected by this standard should be undertaken. Therefore, OSHA requests that particular attention be given to the proposed soil classification system and to the issue of soil classification in general.

**Appendix B—Sloping and Benching**

This Appendix sets forth the requirements for sloping and benching when those methods are used for protecting employees against cave-ins.

Employers are not required in every instance to use this Appendix. Therefore, in this respect, it is not mandatory.

This Appendix is provided as one option that employers can use to meet the requirement to provide cave-in protection for employees. The option to use this Appendix is stated in § 1926.652(b)(2). It is the second option employers may choose to follow to determine the requirements for sloping and benching protective systems. When this option is chosen by the employer, *the provisions of this Appendix become mandatory.*

The slopes required vary, and are dependent upon the type of soil in which the excavation is made. To use this Appendix, soils must first be classified in accordance with the provisions of Appendix A to this Subpart—"Soil Classification."

Paragraph (a) of the Appendix is a scope and application statement.

Paragraph (b) sets forth applicable definitions. Two particularly important concepts are defined. These are "maximum allowable slope" and a concept based on a time of exposure. This time concept is expressed using the words "short-term" and "long-term."

In this Appendix, slopes are expressed as maximum allowable slopes. The maximum allowable slope is the steepest incline from the horizontal that will be acceptable under the most favorable site conditions for a particular type of soil. These slopes vary with the soil type in which the excavation is made, and the length of time that the excavation is open. In addition, the depth of the excavation is specifically taken into account in one instance. In Type A soils, the maximum allowable slope for the short-term can only be used in excavations up to 12 feet (3.6 m) in depth.

"Short-term exposure" means a period of time less than or equal to 72 hours. "Long-term exposure" is greater than 72 hours. The three-day or 72 hour dividing line is from an NBS recommendation based on the discussions at the industry-sponsored workshops (Ex. 26). OSHA solicits comments on whether this time frame is appropriate for distinguishing between long-term and short-term exposure.

The allowable slopes given for long-term exposure in this Appendix (in proposed *Table B–1*), coupled with the allowable configurations (given in proposed *Figures B–1.1 through B–1.5*), should provide a greater level of protection to employees than is now required by the existing standard. The existing standard does not require that the "time of exposure" be taken into account when determining required slopes.

The allowable slopes given for short-term exposure, coupled with the allowable configurations (given in the proposed *Figures B–1.1 through B–1.5*), should provide a level of protection that is equivalent to the level of protection that is required by the existing standard.

There is no scientific basis for the suggested length of time used to delineate short-term exposure. Various lengths of time from two hours to 10 days have been suggested and discussed. Some professionals in construction have suggested that the required slope not be related to time of exposure at all (Ex. 8, pp. 304–308).

OSHA believes this issue merits further discussion. Therefore, OSHA requests that careful consideration be given to the issue of "time" as it relates to the determination of maximum allowable slopes. OSHA requests that specific comment directed to this issue be submitted during the comment period for this proposal. (See also the *Issues* section of this Preamble for information related to this issue.)

Paragraph (c) of this Appendix states the requirements for sloping and benching. Primarily, it is required that soil types be determined in accordance with Appendix A; that the maximum allowable slopes be in accordance with

*Table B–1* of this Appendix B; and that the configurations of the sloping and benching systems be in accordance with the illustrations in *Figures B–1.1 thru B–1.5.* Other requirements state when slopes less than the maximum allowable slope must be used.

This Appendix is intended to replace *Table P–1* found in the existing standard. The difficulties associated with the use of *Table P–1,* such as a lack of definitions of terms, are a major reason for replacing the table. Another reason for replacing the table is to provide a new set of provisions that are correlated with the soil classification system described in Appendix A. The reasons for providing a new soil classification system have been addressed earlier in this Preamble.

This new system is broader than the current standard in that more parameters must be considered when determining allowable slopes, and in that various allowable configurations of sloping and benching are illustrated. The system is based primarily on the recommendations made to OSHA by NBS (Ex. 6).

OSHA believes that this Appendix will provide employers with a realistic and flexible approach to sloping and benching. In OSHA's opinion, the maximum allowable slopes will provide a safe work area for employees in excavations when the soils are properly classified and the slopes properly made.

**Appendix C—Timber Shoring for Trenches**

Appendix C contains information that can be used to provide timber shoring in trenches. Timber shoring is one of several methods that can be used to provide protection for employees against cave-in hazards.

Employers are not required in every instance to use the Appendix. Therefore, in this respect, it is not mandatory. This Appendix is provided as one option that employers can use to provide cave-in protection. The option to use this Appendix is stated in § 1926.652(c)(1). When this option is chosen by the employer, *the Appendix becomes mandatory.*

The Appendix is structured as follows:

Paragraph (a) discusses the scope of the Appendix and its interrelationship with the requirements for protective systems in § 1926.652(b) or § 1926.652(c).

Paragraph (b) notes that the provisions of Appendix A to Subpart P must be followed for the purposes of soil classification. The configurations of timber shoring that can be selected using this Appendix are directly tied to the soil classifications described in Appendix A.

Paragraph (c) describes what information is contained within the Appendix.

Paragraph (d) indicates the basis and the limitations of the data in the Appendix.

Paragraph (e) is a description of how to use the tables.

Paragraph (f) contains examples to illustrate use of the tables.

Paragraph (g) contains notes that apply when using the tables.

Paragraph (g) is followed by three tables of data. There is one table for each of the three soil types. Stable rock is exempt from shoring requirements.

This Appendix is intended to replace *Table P–2,* "Trench Shoring—Minimum Requirements," which is found in existing Subpart P. This approach is being proposed primarily to address the problems detailed earlier in this Preamble concerning soil classification. This new approach provides a system that is correlated with the new proposed soil classification system detailed in Appendix A. This Appendix, however, also provides a greater degree of flexibility than the current standard in that the tables can be used to select a greater number of configurations than is currently possible with *Table P–2.*

The tables in this Appendix have primarily been developed based on recommendations and data provided to OSHA from NBS (Ex. 6). Data in the tables not specifically recommended by NBS (Ex. 6). Data in the tables not specifically recommended by NBS are provided based on traditional practice. NBS could find no evidence that traditional timber practice, if properly executed, is unsafe [Ex. 6, p. 65]

**IV. References (Exhibits)**


1. Salomone, Lawrence A. and Yokel, Felix Y., *Proceedings, Federal Workshop on Excavation Safety, September 19 and 20, 1978,* National Bureau of Standards, Report No. NBSIR 79–1935, Washington, DC, December 1979.

2. Salomone, Lawrence A. and Yokel, Felix Y., *An Analysis of the Responses from an Associated General Contractors of America (AGC) Survey of Trenching and Shoring Practices,* National Bureau of Standards, Report No. NBSIR 79–1936, Washington, DC, July 1979.

3. Hinze, Jimmie and Carino, Nicholas J., *A Study of Work Practices Employed to Protect Workers in Trenches, National Bureau of Standards, Report No. NBSIR 80–1988, Washington, DC, March 1980.*

4. Knab, Lawrence, Yokel, Felix Y., et al., *A Study of Lumber Used for Bracing Trenches in the United States, National Bureau of Standards, Report No. BSS–122, Washington, DC, March 1980.*

5. Yokel, Felix Y., Tucker, Richard L., and Resse, Lymon C., *Soil Classification for Construction Practice in Shallow Trenching,* National Bureau of Standards, Report No. BSS–121, Washington, DC, March 1980.

6. Yokel, Felix Y., *Recommended Technical Provisions for Construction Practice in Shoring and Sloping of Trenches and Excavations,* National Bureau of Standards, Report No. BSS–127, Washington, DC, June 1980.

7. Yokel, Felix Y., *Working Draft of Suggested Revision in Subpart P of the Safety and Health Regulations for Construction Based on Building Science Series Report BSS–127,* National Bureau of Standards, Washington, DC, February 20, 1981, Unpublished.

8. Advisory Committee on Construction Safety and Health, *Transcripts of Meeting Held on October 13 and 14, 1982.*

9. "Work Injuries in Sewer, Pipeline, and Other Trench Construction." *Work Injuries in California, Quarterly,* State of California, Department of Industrial Relations, Division of Labor Statistics and Research, IAQ–28, San Francisco, California (1968), pp. 2–9.

10. "Work Fatalities Resulting From Cave-In of Ditch, Trench, or Excavations." *Work Injuries in California, Quarterly,* State of California, Department of Industrial Relations, Division of Labor Statistics and Research, IAQ–35. San Francisco, (June 1974), pp. 2–6.

11. *Excavations, Trenching and Shoring: The Responsibility for Design and Safety.* Thompson and Tanenbaum. Texas A & M University, Project No. RF 3177, College Station, Texas, September 1975.

12. U.S. Department of Labor, Occupational Safety and Health Administration, *Impacts of Occupational Safety (and Health) Inspections: A Retrospective Look at OSHA's Special Emphasis Program (SEP) on Trenching and Excavation,* Study by Arthur D. Little, Inc., July 1979, Unpublished.

13. *California Work Injuries and Illnesses, 1975,* State of California, Department of Industrial Relations, Division of Labor Statistics and Research, San Francisco: 1977.

14. *California Work Injuries and Illnesses, 1976,* State of California Department of Industrial Relations, Division of Labor Statistics and Research, San Francisco: 1978.

15. *California Work Injuries and Illnesses, 1977,* State of California, Department of Industrial Relations, Division of Labor Statistics and Research, San Francisco: 1980.

16. "Man Killed When Trench Collapses," The Ephraim, Utah, *Enterprise,* April 9, 1981.

17. "Precast Girder Collapse Kills Two," *Engineering News Record,* Vol. 174, May 13, 1965.

18. "Excavation Cave-In Buries Three," *Engineering News Record,* Vol. 180, May 2, 1968.

19. "OSHA First Report of Serious Accident," March 6, 1981, Unpublished.

20. "OSHA First Report of Serious Accident," December 16, 1980, Unpublished.

21. "OSHA First Report of Serious Accident," November 21, 1980, Unpublished.

22. "OSHA First Report of Serious Accident," October 8,

1980, Unpublished.

23. "Infection Caused Worker's Death, Autopsy Shows," *The Ephrata Review*, August 6, 1981.

24. U.S. Department of Health and Human Services, Public Health Service Centers for Disease Control, NIOSH, "*Request for Assistance in Preventing Deaths and Injuries from Excavation Cave-ins.*" July, 1985.

25. "Pipelaying on Land is an Underwater Job," *Construction Methods and Equipment*. Aug., 1974.

26. Yokel, Felix Y. and Stanevich, Ronald L., *Development of Draft Construction Safety Standards For Excavations—Volumes I and II*, National Bureau of Standards and National Institute for Occupational Safety and Health, NBS Report No. NBS1R 83–2693 and DHHS (NIOSH) Publication No. 83103, May 1983.

27. The American Society for Testing and Materials, Designation: D653–69 (Reapproved 1973)—"Standard Definitions of Terms and Symbols relating to SOIL AND ROCK MECHANICS."

28. The American Society for Testing and Materials, Designation: D2487–69—"Standard Methods for CLASSIFICATION OF SOILS FOR ENGINEERING PURPOSES."

29. The American Society for Testing and Materials, Designation: D2488–69—"Standard Recommended for DESCRIPTION OF SOILS (VISUAL—MANUAL PROCEDURE)."

30. U.S. Department of Labor. Occupational Safety and Health Administration. Office of Management Data Systems. Management Information Systems Data for OSHA Fatality Reports and Associated Inspections for 1977–1981.

31. U.S. Department of Labor. Occupational Safety and Health Administration. Office of Data Analysis. "*Selected Occupational Reports of OSHA Fatality/Catastrophe Investigations.*" Washington, DC, July 1985. 157 pp.

32. "Case Studies Excavating, Trenching and Shoring" done for U.S. Department of Labor, OSHA, Contract #41 USC 252C3, August 9, 1983, Washington, DC.

## V. Preliminary Regulatory Impact, Regulatory Flexibility and Environmental Impact Assessments

*Introduction*

The Occupational Safety and Health Administration (OSHA) has prepared this Preliminary Impact Assessment (PRIA) in compliance with Executive Order 12291 and the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C. 60 et seq.]). In this assessment, OSHA has estimated the economic impact of the proposed amendments to the trenching and excavation standard (29 CFR Part 1926 Subpart P).

*Regulatory History*

Congress passed the Construction Safety Act of 1969 (Pub. L. 91–54), thereby amending the Contract Work Hours Standards Act (40 U.S.C. 333), by adding section 107. This section provides for occupational safety and health standards for construction employees working on federal, federally-financed, or federally-assisted projects. In 1971, pursuant to section 107, the Secretary of Labor issued safety and health regulations for construction in 29 CFR Part 1518. The Occupational Safety and Health (OSH) Act (29 U.S.C. 650 et seq.), which was passed by Congress on December 29, 1970, and became effective 4 months later, ordered the Secretary of Labor to adopt established federal standards that were issued under other statutes. In accordance with section 6(a) of the OSH Act, in May 1971, the Secretary adopted the construction standards that had been issued under the Construction Safety Act in 29 CFR Part 1518. Later in 1971, these standards were redesignated as Part 1926. As part of this process, the regulations covering trenching and excavation (Subpart P, 1926.650–1926.653) were adopted as OSHA standards.

*Need for Revision*

The need to revise Subpart P has been recognized since it was first incorporated as an OSHA standard. Consequently, after the Advisory Committee on Construction Safety and Health (ACCSH) reviewed the standard and following the issuance of a Notice of Proposed Rulemaking (NPRM, 36 FR 19083, September 28, 1971), several amendments were made to the standard in 1972 (37 FR 3512, February 17, 1972). After another NPRM in 1972 (37 FR 15317, July 29, 1972), the standard was further amended (37 FR 24345, November 16, 1972).

Complaints and controversy, however, continued to surround the standard. As a result, in 1976, OSHA commissioned the National Bureau of Standards (NBS) to study the standard's compatibility with actual construction practices and to recommend modifications that could improve the standard's effectiveness. The results of the NBS study were published in several reports during 1979 and 1980.

These studies, other OSHA and state data, and private sources of information clearly revealed the need to modify the standard. Surveys of firms involved in trenching and excavation indicated the widespread confusion regarding what the standard required and allowed. Many contractors were critical of the standard, claiming that it was confusing, sometimes inadequate, and often irrelevant. The tables on sloping and shoring procedures were often described as confusing and inadequate in a number of ways. Contractors were also unsure as to whether new safety techniques, such as freezing the ground rather than shoring, were allowed, and they generally believed that the standard was too rigid and was insufficiently performance oriented. Because of these problems, OSHA is proposing revisions to the current standard in order to clarify existing language and to facilitate compliance. OSHA has determined that the proposed revisions are technologically and economically feasible. OSHA has also investigated the environmental impacts of the proposed amendments and has determined that they would not be significant.

In sum, the proposed revisions would correct and clarify some of the inconsistency and inflexibility of the language in the current standard. In addition, the proposal will have no adverse effects on worker safety, relative to the current standard. OSHA assesses the cost reduction of the proposed changes at $11.4 million to $42.4 million per year. The reduced costs to industry should translate into some savings for consumers. These cost savings will arise principally from allowing firms the flexibility to select less costly methods of providing a safe workplace and therefore are consistent with the Administration's program to reduce unnecessary burdens on industry. The cumulative impact of several recent proposed revisions to 29 CFR Part 1926 are presented in Table 1. Finally, as the net effect of the Subpart P proposal is less than $100 million, this regulatory action does not constitute a "major rule."

*Industry Profile*

Background

Trenching and excavation projects can vary in complexity. For example, a trench may be only a few feet deep and may be dug in less than 1 hour by one person using a backhoe; a small excavation may be simply a hole scooped out by a bulldozer. The construction of a 2-foot-deep trench may be a simple project, and one that is not covered by the standard, but the construction of a 30-foot-deep trench that will not cave-in requires a knowledge of engineering, geology, and soil mechanics, or considerable field experience.

TABLE 1.—COSTS OR COST SAVINGS OF PROPOSED SAFETY REGULATIONS BY 2-DIGIT SIC CONSTRUCTION CODES [1]

[Millions of dollars]

| Standard | Total construction | | SIC 15 | | SIC 16 | | SIC 17 | |
|---|---|---|---|---|---|---|---|---|
| | Incremental costs [2] | Total costs [3] | Incremental costs | Total costs | Incremental costs | Total costs | Incremental costs | Total costs |
| Subpart L | (7.6) | 7.6 | (4.0) | 5.0 | (0.3) | (1.0) | (3.3) | 3.6 |
| Subpart M | (27.5) | (65.8) | (17.2) | 34.5 | (4.2) | 3.5 | (14.5) | 27.8 |
| Subpart X | 8.4 | 12.5 | 4.1 | 6.1 | 0.9 | 1.3 | 3.4 | 5.1 |
| Subpart K | (30.6) | 48.0 | (2.8) | 4.3 | (1.8) | 2.9 | (26.0) | 40.8 |
| Subpart N | 2.2 | 5.8 | 0.2 | 0.6 | 1.5 | 3.9 | 0.5 | 1.3 |
| Subpart Q | 17.5 | 28.7 | (1.2) | 4.2 | (0.7) | 2.3 | 19.4 | 22.2 |
| Subpart S | 2.7 | 3.4 | ..... | ..... | 2.7 | 3.4 | ..... | ..... |
| Subpart P | (11.4–42.4) | ..... | (1.6–5.9) | ..... | (2.4–26.7) | ..... | (2.6–9.8) | ..... |
| Total [4] | (61.8) | 171.8 | (24.6) | 54.7 | (18.9) | 16.3 | (26.7) | 100.8 |

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

[1] Standard Industrial Classification (SIC) Codes 15: Building Construction—General Contractors and Operative Builders; SIC 16: Construction Other Than Building Construction—General Contractors; SIC 17: Construction—Special Trade Contractors (may include subcontractors working for contractors in the other two SIC categories).

[2] Costs of moving from full compliance with the existing standards to full compliance with the proposed standards.

[3] Costs of moving from current industry practice to full compliance with the proposed standards.

[4] Averages of the Subpart P savings were used to derive the total costs.

The major occupational hazards that occur in trenching and excavation work result from cave-ins, from exposure to underground utilities, and from material or equipment that may fall into the trench or the excavation. To protect against cave-ins, for example, proper precautions include bracing, sloping, benching, using shields, or freezing. Knowing when and how to use these techniques requires an understanding of the relationships among such factors as depth and width of the trench, soil type, hydraulic pressure, and other specific conditions present at the worksite. Recent advances in technology have also reduced the amount of time during which workers are physically exposed to the hazards of trenching. For example, new equipment includes trenching machines that dig and lay cable and remote-controlled equipment that compacts the soil in the trench.

Trenching is performed primarily by utility contractors who construct gas, sewer, water, and utility lines. Much of this work is performed as a result of competitive bids from state and local governments or local utilities. Surveys indicate that 70 percent of utility contractors receive about 90 percent of their business through competitive bidding. Minimizing costs, including safety-related costs, is therefore important to these contractors. Excavation work is performed for many kinds of construction, including buildings, bridges, towers, swimming pools, and port facilities.

A number of important economic and technical characteristics separate trenching from excavation work and make trenching the more hazardous activity. For example, large excavations tend to be adjacent to buildings that would collapse if the excavation were not shored. The possibility that damage suits would be initiated as a result of the collapse of these buildings provides strong incentives to shore these excavations. Thus, excavation safety is largely a byproduct of investments undertaken for other purposes. Even where other structures are not adjacent, excavations may be deep enough so that the risk of collapse of an unbraced wall, along with the concomitant economic expense of reexcavating, would give sufficient incentive to contractors to brace the walls. In contrast, such incentives are greatly diminished for trenching work. Trenches are less likely to be in close proximity to other structures, structures adjacent to trenches are less likely to collapse, and the cost of redigging a caved-in trench is far lower than reexcavating the foundation of a large building. For these reasons, an externality problem is more likely to exist for trenching than for excavation.

Industries and Economic Activity

Trenching and excavation occur chiefly in the following 13 four-digit Standard Industrial Classifications (SIC):

SIC 1521 General Contractors—Single Family Houses.
SIC 1522 General Contractors—Residential Buildings Other than Single Family Houses.
SIC 1541 General Contractors—Industrial Buildings and Warehouses.
SIC 1542 General Contractors—Non-Residential Buildings Other than Industrial Buildings and Warehouses.
SIC 1611 Highway and Street Construction Contractors.
SIC 1622 Bridge, Tunnel, and Elevated Highway Construction.
SIC 1623 Water, Sewer, Pipeline, Communication and Power Line Construction Contractors.
SIC 1629 Heavy Construction Contractors, Not Elsewhere Classified (NEC).
SIC 1711 Plumbing, Heating (Except Electrical) and Air Conditioning.
SIC 1771 Concrete Work.
SIC 1781 Water Well Drilling.
SIC 1794 Excavation and Foundation Work.
SIC 1799 Specialty Trade Contractors, NEC.

No published data exist that allow the estimation of either the total value of trenching and excavation work or the number of establishments and workers involved. Bureau of the Census data [1], however, do exist on the amount of contracted excavation work by four-digit SIC code. The data demonstrate that most of such work occurs in SIC 1794 and that most contract work in SIC 1794 is excavation work. Excavation work performed under another contract (e.g., as part of a high rise apartment) would be included in another category. Thus, although it is reasonable to assume that most contract work performed in SIC 1794 is for excavations, it cannot be assumed that most excavation work occurs in SIC 1794. Moreover, the Bureau of the Census publishes no data that specifically identify trenching as a

category of business. For these reasons, OSHA has estimated trenching and excavation activity in the followlng manner.

The Associated General Contractors of America (AGC) [2] conducted a survey of trenching contractors whose work closely corresponded to that in SIC 1623. The results of this survey were used to estimate the percentage of revenues in trenching and excavation for SIC 1623. The 96 responding firms indicated that 38 percent of their revenues were from trenching. Another survey also conducted by AGC [3] on the practices of contractors engaged in trenching and excavation found that of the 22 firms responding, an average of 36.5 percent of their revenues were derived from either trenching or excavation. The majority of these firms would probably be classified in SIC 1623, as most of their trenching work was for the construction of sewer and water lines. Based on these surveys, it seems reasonable to assume that no more than 15 percent of the revenues in SIC 1623 are derived from trenching and excavation. It becomes more difficult, however, to make a similar estimate for all other affected SIC codes. The trenching and excavation revenues for the other SICs in the construction industry are derived at a more aggregate level. For example, most of the trenching and excavation activity classified within SIC 15 involves the excavation of foundations for houses, offices, and warehouses. Foundation work for these types of structures ranges from 2 percent of the total costs for single-family houses to 12 percent for industrial buildings [4]. Because the foundation phase also includes all of the concrete costs not related to excavation, it is assumed that roughly 5 percent of the activity in SIC 15 would be affected by Subpart P. For SIC 16, the major affected activity, other than that in SIC 1623, would be highway, bridge, and other heavy construction. To estimate the trenching and excavation activities for this SIC code, a number of bids for these types of jobs were examined [5]. The excavation component of these bids was in the range of 1–5 percent of the total project costs. Based on this information, 5 percent has been used as a conservative estimate of the percent of revenues in SIC 16 that are affected by Subpart P. In SIC 17, the two main classifications affected are SIC 1711 (plumbing, heating and air conditioning) and SIC 1794 (excavation and foundation work). A best estimate of 1 percent of revenues was used for SIC 1711 based on average plumbing estimates from a construction estimation manual [6], where trenching and backfilling represented .7 percent of the total time required for the job . For SIC 1794, it was assumed that 45 percent of revenues are affected by Subpart P. This was based on the assumption that although SIC 1794 almost exclusively represents firms doing excavations and foundation work, the actual excavation activity affected by Subpart P is one phase, and once the walls are supported, laying the foundation, stripping, etc. become the other major cost factors of the job. This results in a total industry revenue estimate of § 12.42 billion for trenching and excavation work (see Table 2).

*The Proposed Revisions to the Standard*

Introduction

This section discusses the proposed revisions to OSHA's current trenching and excavation standard. The proposed revisions are intended to clarify the requirements of the standard and how these requirements may be satisfied as well as to eliminate discrepancies between requirements and current practices where there is no evidence that current practices pose a hazard to workers.

TABLE 2.—ESTIMATES OF TRENCHING AND EXCAVATION REVENUES BY INDUSTRY, 1982

| Industry | Net revenues (In billions of dollars) | Proportion Subpart P related | Trenching and excavation revenues (In billions of dollars) |
|---|---|---|---|
| SIC 15 (except 1531).... | 48.5 | .05 | 2.43 |
| SIC 16 (except 1623).... | 44.2 | .05 | 2.21 |
| SIC 1623.. | 10.5 | .40 | 4.20 |
| SIC 1711.. | 28.8 | .01 | .29 |
| SIC 1794.. | 7.3 | .45 | 3.29 |
| | | | 12.42 |

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

The following paragraphs describe only those changes that appear to have significant economic impacts.

Changes in Format

The current standard consists of four main sections: General Protection Requirements, Specific Excavation Requirements, Specific Trenching Requirements, and Definitions. The General Protection Requirements also apply to each section of the standard. The use and application of these provisions, however, are not clearly identified in the current standard and some users did not understand their intent [2, Appendix D]. Consequently, the presentation and format of the standard have been revised in order to clarify the language and requirements of Subpart P. The proposed amended standard includes a section on Scope, Application and Definitions, followed by General Requirements, and then the Specific Requirements for Protective Systems. The existing standard contains two tables on sloping and shoring, whereas the revised standard contains three nonmandatory appendices that provide a soil classification system, describe tests for determining soil type, and provide designs for sloping, benching, and timber shoring. OSHA expects that this reorganization will clarify the standard and the applicability of the various provisions and appendices.

Changes in Provisions

Numerous changes have been made to specific provisions of the standard. In the following discussion, the changes are presented in broad groupings according to their expected effects, and important examples of these groupings are then examined.

Specific Changes

The first group of changes are called *specific* changes because, individually, they affect specific requirements of the standard. A number of these specific changes are designed to bring the requirements of the standard into conformity with current industry practices when doing so would not compromise safe work practices. Some of the specific changes are simply definitional in nature. For example, the existing standard defines "belled excavations," and the proposed standard defines and refers to "belled-bottom pier holes." Because belled excavations are actually called belled-bottom pier holes, the change simply brings the terminology of the standard into conformity with current usage.

The specific changes, however, involve more than just a change in wording; many change the actual requirements of the standard. For example, one such change alters the definition of a trench shield and states that it must protect employees from the hazards of cave-ins, but need not: protect against the occurrence of cave-ins. In addition, the existing definition specifies that shields must be composed of steel plates and braces, but the

proposed standard would allow homemade shields to be made of wood or other materials.

Many of the specific changes that OSHA is proposing are likely to lower costs but not increase worker risk. One is the change in the existing requirement that work must discontinue in trenches or excavations where water has accumulated. The proposed revision would allow work to continue under those circumstances where the proper precautions have been taken to protect employees. Another example of a cost-savings results from the modification of the provision for the use of emergency rescue equipment where adverse atmospheric conditions exist. The existing standard requires such equipment where hazardous atmospheres "may exist," and requires the equipment to be physically "attended" by a worker. The proposed standard would modify this requirement to apply only where such conditions "exist or may reasonably be expected to develop," and would remove the requirement for an attendant.

General Changes

The *general* changes affect several provisions of the standard. Perhaps the most important general changes are those specifying alternative acceptable ways for contractors to comply with the existing requirements for protective systems. Although most of the existing standard's provisions allow the use of alternative means of protection, the availability of these options or alternatives was not generally appreciated. For example, in one survey [2] of utility contractors, a number of respondents said that they complied with Tables P–1 and P–2 of the existing standard in order to prevent citations, indicating that they were unaware that alternatives were acceptable. In addition, there is some confusion about the minimum standards contractors must meet in order to be in compliance. The proposed revisions to the requirements for protective systems would also clarify such requirements.

Contractors who choose to use a support system, such as shoring, must follow one of four basic options: (1) They may use OSHA's Appendices A and C for soil classification and timber shoring, (2) they can use supports, shields, or other systems prepared in accordance with manufacturers', or other, tabulated data, (3) they can use other tabulated data such as that found in some state plans, or tabulated data prepared by or under the guidance of a qualified person, and (4) they can have the system designed by a qualified person or a qualified engineer, or under the direction of a qualified engineer.

These requirements represent a substantial change to the existing standard. The existing standard does not clearly specify the function of Table P–1 on sloping and Table P–2 on timber shoring or who may design sloping or support systems. For example, Table P–1 is required as "a guide" for trenches, which appears to imply that it is nonmandatory. Elsewhere, the standard states that trench banks are required to be "laid back to a stable slope," while excavations, which are defined to include trenches, are to be dug to the "angle of repose." These requirements are exceedingly vague. The existing Table P–2 on timber shoring is described as containing "minimum requirements," but it is unclear whether such requirements are to be interpreted as minimum performance requirements or whether contractors must follow the exact specifications of the table. Similarly, although the standard defines a trench as a form of excavation, the section on "Specific Excavation Requirements" contains the statement that support systems must be designed by a qualified person according to accepted engineering practices. However, it is unclear if these requirements would allow a qualified person to design a different timber shoring system than that contained in Table P–2.

Changes in Tables

The final type of amendment that distinguishes the proposed standard from the existing standard is intended to clarify and broaden the applicability of the material contained in Tables P–1 and P–2 of the current standard. The set of tables in the existing standard not only are confusing (as noted above), but also lead to inflexibility in application. For example, they contain no information about benching, or the combined use of sloping and benching practices. Table P–1 on sloping contains the note that "clays, silts, loams or nonhomogeneous soils require shoring or bracing," thus apparently implying that sloping is inappropriate in such situations. In addition, although Table P–1 notes the importance of both soil type and environmental conditions in determining proper sloping, it contains no method for determining either soil type or environmental conditions. Finally, Table P–2 on timber shoring for trenches contains only one set of specifications for a given soil type and depth. The specifications in Table P–2 could be cost-effective only inadvertently because the relative prices of types and grades of lumber can vary sharply both over time and by geographic region.

In contrast, the proposed appendices are designed to eliminate these problems. For example, the proposed standard's Appendix A on soil and environmental classification is intended for field use. As proposed, Appendix B on sloping clearly applies to all excavations including trenches, and sloping is allowed for clays, silts, and other soils. In the current standard these applications were not clearly identified. Benching and the combined use of sloping and benching are also discussed in this appendix. Appendix C on timber shoring is also more flexible than the requirements shown in Table P–2 of the current standard. This appendix contains as many as four sets of timber shoring procedures for a given soil classification and trench depth. Finally, in the revised standard, the use of these appendices would be nonmandatory.

OSHA believes that, overall, these changes would significantly increase the ease with which firms may comply with the regulation by increasing the flexibility, clarity, and usefulness of the standard.

*Worker Risk*

The element of risk involved in construction work was recognized by Congress in the Construction Safety Act (Pub. L. 91–54, 1969). This Act mandated the promulgation of safety and health standards for construction employees at federal or federally-financed/assisted projects. These regulations, based on existing standards, were published as 29 CFR Part 1518. When the OSH Act was enacted by Congress in 1970 it authorized the Secretary of Labor to adopt established federal standards. Hence, the then existing Construction Safety Act standards, including Subpart P, were incorporated into the new OSHA standards. Thus, the industry itself, as evidenced by the development of consensus standards, as well as Congress and the Secretary of Labor, have all determined that the construction industry, in general, and trenching and excavation work, in particular, present an undue risk to the workers involved.

The hazardous nature of construction work, especially that related to trenching and excavating (particularly trenching), has been documented. The fatality rate in SIC 1623, which is dominated by trenching, was estimated by OSHA at 42.7 deaths per 100,000 workers per year for 1977–1981, whereas for construction work generally, it was estimated at 29.0 deaths per 100,000 employees per year. Similarly, trenching

BEST COPY AVAILABLE

and excavation fatalities were estimated at 97 deaths per year, and injury rates were comparably high [7, 8, 9]. The incidence rate for injury among construction workers, including those doing trenching and excavation work, is about two times the all industry average (i.e., 14.8 injuries per 100 workers in construction compared with 7.6 injuries per 100 workers in all industries [10]). Since the injury rate for trenching and excavation is not readily available, OSHA solicits additional information on injuries and fatalities for use in the final analysis.

Moreover, data from OSHA's Fatality/Catastrophe Abstracts indicate that 74.8 percent of all fatalities in trenching and excavating came from cave-ins. It is generally accepted by the construction industry, by labor, and by insurance companies that shoring, shielding, and sloping to a sufficient angle eliminate or substantially diminish the risk of cave-in or fatality from cave-ins. The main provision of Subpart P that relates to trenching is the requirement of providing protection against death or injuries resulting from cave-ins by using methods that are now in use in the industry and that were prompted by the original consensus standards.

The proposed amendment to Subpart P has been compared to the current Subpart P to determine whether it would be less effective in reducing risk than the unamended, current Subpart P. Based on a review of the OSHA Fatality/Catastrophe Abstracts for 1974–1981, including 283 accidents and 223 fatalities in trenching and excavation, there is no evidence that the proposed amended standard would have been any less effective than the existing standard [11]. Rather, the primary purpose and effect of the proposed revisions are to clarify requirements and to add flexibility so that firms can tailor their protective measures to their particular situations. OSHA would appreciate receiving information on any differences in employee protection as a result of the proposal or any other methods of reducing the risk of trenching fatalities including the number of injuries and fatalities that would be avoided under these alternatives.

*Incremental Costs*

Methodology

The current Subpart P is an OSHA regulation by order of an Act of Congress. Any economic analysis attempting to discuss whether an Act of Congress is reasonable, feasible, or cost effective would be legally superfluous. Operating on the basis of the legal reasonableness, feasibility, and/or cost-effectiveness of current Subpart P, this economic analysis focuses only on the incremental effects of the amendments to Subpart P. The changes proposed to the current Subpart P represent numerous clarifications and amendments that in most cases increase the flexibility of and reduce the regulatory burden on private enterprise; the proposed amendments are expected to reduce the cost of regulation without impairing worker protection. OSHA estimates the economic effects of the proposed amendments to Subpart P, to be on the order of a $11.4 million to $42.4 million savings to the industry.

The discrete costs of providing the safety requirements under the existing or proposed standards are virtually impossible to isolate for a number of reasons. The costs of meeting individual requirements can be estimated, and from these, the costs related to Subpart P can be derived for a particular trenching or excavation job. The extension of this methodology beyond any given job, however, stretches the assumptions to implausible lengths in its application to the entire universe of trenching and excavation activities. This is primarily due to the broad diversity of these types of construction jobs and to the unknown number of miles of trench of various depths that are dug each year. In many other OSHA construction regulations, it has been reasonable to develop some model construction jobs, estimate OSHA costs, weigh these jobs in some manner, and then extrapolate to the entire country. In this case, even to consider the most major variations in trench depth and width, soil type, weather conditions, site locations, and protective systems necessitates the development of a complicated model based on tenuous assumptions at each level. This, in fact, was attempted by a firm under contract to OSHA. Because of the complexity of these technical issues, the contracted effort failed to produce reliable cost estimates.

On average, the proposal is expected to result in a net reduction in costs, however particular provisions may result in cost increases for some firms. Therefore, OSHA requests data on the cost of different alternatives for use in the final analysis.

Given the paucity of published data on the safety costs related to trenching and excavation, it was decided to rely upon the judgement of people in the business of digging trenches who would be in the best position to know the costs imposed by an OSHA regulation. They clearly have no incentive to underestimate such costs. This basic question was posed to the Associated General Contractors (AGC), which in turn queried a sample of its members (about two dozen contractors). No one was able to estimate precisely either the costs of particular Subpart P requirements or even to relate them as a percentage of all revenues. Similarly, a number of representatives of firms were contacted directly by OSHA and asked if they could estimate what percent of their costs of trenching or excavating stemmed directly from OSHA requirements, or conversely, how their costs would be affected were this particular regulation to disappear tomorrow. Once again, no one could provide precise estimates, owing in part to the variety of jobs and circumstances. Only after further probing did industry representatives indicate that only under the most extreme circumstances would Subpart P requirements account for even 5 percent of their total job costs.

In a further attempt to isolate these costs, all of the major publishers of construction industry cost indexes, as found in Engineering News Record [12], were contacted in an attempt to determine if either Subpart P or safety costs generally were calculated separately in the compilation of their costs. Of the 15 firms contacted, all stated that the labor and materials costs were considered individually, but that all safety costs were absorbed within overhead costs and could not be separately identified. In addition, bids on major construction projects that had been published over several years in Engineering News Record [5] were examined to determine whether safety costs were a line item in the specifications or itemized costs. None were found. If safety were a major cost factor, it would be expected that it would be an individual cost component in the bids. Based upon the above information, then, it can be assumed that all safety costs cannot exceed that portion of the costs represented by overhead. The costs associated with Subpart P are only one factor contributing to the total safety costs of a trenching or excavation job. In addition, items such as offsite wages, fringe benefits, financing costs, inventory, other administrative expenses, and profit are included in overhead costs.

The most recent Bureau of Labor Statistics (BLS) studies [13] of the distribution of construction contract costs for various types of construction projects found that for sewer line construction, overhead and profit accounted for 23.8 percent of the total contract costs. Before-tax profit alone

accounts for over 10 percent of the total; all other overhead items account for the remaining 13 plus percent. From this remainder it is assumed that no more than 5 percent of the total project cost can be attributed to all safety items, only a portion of which is a direct result of complying with Subpart P requirements. This, of course, may vary for individual jobs but should be fairly accurate for the industry as a whole. An additional study on the costs of constructing power plants [14] tends to support this estimate. The study found that for both nuclear and coal-fired plants the combined costs for both safety and environmental protection accounted for 8 percent of the total costs of construction. Given that in this industry environmental requirements tend to be significant, the cost for safety factors must be a relatively small part of the total project and certainly less than 5 percent ot the total.

An estimate of the amount of construction revenues affected by Subpart P and the incremental impact of the proposed amendments were made by the Office of Regulatory Analysis. The estimate of $12.42 billion of annual trenching and excavating revenues derived earlier was used as the basis of this cost assessment. It has been assumed that the 5 percent of the total construction job costs, as discussed earlier, can be used as an *upper bound* of the current costs imposed by the existing standard. Thus, the current cost of the existing standard is estimated at $621 million annually. Based on discussions with contractors and their representatives, OSHA estimates that the proposed amendments will save between 2 percent and 7 percent of the current cost of Subpart P. Thus, the savings arising from the proposed amendments range between $12.42 million and $43.47 million to the economy as a whole.

Recordkeeping Costs

It is necessary to estimate separately the cost of additional paperwork required by the proposed admendments. Contractors who choose to rely on engineering designs, tabulated data, or manufacturers' specifications for sloping, support, or other systems would be required to keep copies of the designs or specifications for as long as the job is in progress and to make them available to OSHA inspectors on request. OSHA assumes that all engineer-designed projects would already have the specifications and drawings necessary to comply with this requirement, and therefore, the proposed standard would generate no additional costs. Tabulated data from other sources, including manufacturers' specifications, might not be routinely kept on file; thus, the proposed standard could generate additional costs in these cases.

OSHA assumes that all affected contractors would comply with this requirement by making copies of the tabulated data or manufacturers' specifications that are used on projects and by putting these copies in binders that would be taken routinely to jobsites along with other necessary equipment. The costs of the standard would then be the costs of copying the relevant specifications and filing them in a binder. OSHA assumes that this would be a one-time effort for each affected jobsite and that it would require half an hour of clerical time at $7.64 * per hour, plus an additional $.75 to cover the cost of paper, copying, and other miscellaneous supplies.

OSHA has estimated the number of jobsites that would be affected by this recordkeeping requirement, based on building permit data [15]. There were 482,315 permits issued in 1984, excluding residential garages. There were 1,021,911 permits for residential buildings issued in 1984. Assuming 10 buildings per development, or with similar excavation designs at a site, this would result in 102,191 sites with excavation activity.

It was assumed that public construction would add an additional 10 percent to private sector projects that require some trenching and excavation work. This results in an estimate of 642,956 potentially affected projects each year. Under the proposed new rules only contractors who opt for trenching and excavation systems based on tabulated data (that is, standardized or existing plans or designs and not plans uniquely developed for a particular project) will be affected by new recordkeeping requirements. Based on estimates of the expected frequency of use of tabulated data, it was assumed that approximately 35 percent of the affected projects, or 225,035 jobsites, would be affected. Thus, the annual incremental recordkeeping costs would be $1,028,410 [225,035×(($7.64×½)+$.75)].

Total Costs

Based on the assumptions described in the previous sections of this chapter, OSHA estimates that the proposed standard would reduce annual trenching and excavation costs attributable to Subpart P by between $12.42 million and $43.47 million. Recordkeeping costs associated with all trenching and excavation activities would increase $1.03 million; thus, the total savings under the proposal would be between $11.4 million and $42.4 million for the economy as a whole.

OSHA believes that the proposed revisions will be less costly than the existing standard and that this conclusion accurately reflects the true relative costs of the current and revised standards. OSHA solicits additional cost and impact data for use in the analysis of a final standard.

*Other Economic Effects*

Environmental Impacts

The proposed revisions to Subpart P have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 et seq.), the Regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed standard would have no significant environmental impact.

Although safety standards rarely influence air, water, or soil quality, plant or animal life, or the use of land or other aspects of the environment, it is appropriate to examine whether the proposed revisions to the OSHA standard on trenching and excavation (29 CFR Part 1926, Subpart P) will alter the environment external to the workplace. Both trenching and excavation can have significant effects upon local environments. For example, erosion, runoff, and similar actions can result in environmental degradation. These potential impacts can be more or less severe depending upon how and where the trench or excavation is dug, how long it is left open, the disposition of the earth that is removed, etc. OSHA has determined, however, that the proposed revisions to Subpart P consist primarily of clarifications in work practices and procedures and are unlikely to have significant impacts on any of these activities; therefore, these revisions will have no significant environmental effects.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 95–353, 94 Stat. 1164 [5 U.S.C. 60 et seq.]), OSHA has assessed the impact of the proposed revisions and concludes that they would not adversely affect a significant number of small entities.

* Derived from the 1979 construction industry file clerk mean annual earnings reported in the 1980 Census [16] and adjusted to 1985 by using the employment cost index for white collar clerical workers [17] plus 30 percent for fringe benefits.

As is generally known, the burden of most regulation, especially the legal and paperwork burdens, can fall disproportionately on small enterprises. This occurs primarily because larger firms often have the legal and clerical support in place to handle the burdens imposed by government regulation.

Similarly, it may be true that the larger trenching and excavating firms are less affected by the requirements of Subpart P than their smaller rivals because the very size of the larger firms may have prompted the adoption of companywide construction practices that meet or exceed the minimum requirements in Subpart P.

It is therefore apparent that the amendments to Subpart P, which serve principally to reduce the cost of compliance by increasing the flexibility of the regulations and clarifying their intent, will also benefit smaller firms. Thus, clarifying Subpart P and explicitly stating the flexibility and choice available to firms will proportionately reduce compliance costs to small firms. OSHA solicits information on any disproportional impacts that small firms may experience as a result of the alternatives allowed under the proposal.

Simply put, the amendments to Subpart P will benefit large and small firms, and smaller firms will likely reap the larger proportional gains. Some portion of these savings will pass through to consumers or to state and local governments that often are the buyers in the trenching and excavation market. As the total, economy-wide savings from the proposed amendments are estimated to be from $11.4 million to $42.4 million, the overall effect on prices, output, and employment in the U.S. economy will be quite small, but favorable.

For these reasons, OSHA concludes that the proposed standard is unlikely to have an adverse impact on a significant number of small trenching and excavation companies. OSHA welcomes any additional information, data, or opinions regarding the effects of these revisions on small entities.

**References**


1. U.S. Department of Commerce. Bureau of the Census. 1982 Census of Construction Industries, U.S. Summary. Washington, DC: Government Printing Office, December 1984.

2. Hinze, Jimmie and Carino, Nicholas. A Study of Work Practices Employed to Protect Workers in Trenches. Publication No. NBSIR 80–1988, National Bureau of Standards. Washington, DC: U.S. Department of Commerce, March 1980.

3. Salomone, Lawrence, and Yokel, Felix. An Analysis of the Responses from an Associated General Contractors of America (AGC) Survey of Trenching and Shoring Practices. Publication No. NBSIR 79–1936. Washington, DC: U.S. Department of Commerce, July 1979.

4. Cassimatis, P.J. Economics of the Construction Industry. New York: National Industrial Conference Board, Inc., 1969.

5. Eng News Record: 40, March 8, 1984; 35, May 3, 1984; 40, August 16, 1984; 40, September 6, 1984; 55, November 8, 1984; 39, January 3, 1985; 14, January 10, 1985; 111, January 24, 1985; 40, January 31, 1985; 50, March 7, 1985; 51, March 14, 1985; 44, March 28, 1985; 45, April 4, 1985; 47, April 25, 1985; 39, May 2, 1985; 37, May 9, 1985; 87, May 31, 1985; 57, June 27, 1985; 73–74, July 4, 1985.

6. Pulver, Harvey E. Construction Estimates and Costs. 4th ed. New York, 1969.

7. U.S. Department of Labor. Occupational Safety and Health Administration. Office of Management Data Systems. Management Information Systems Data for OSHA fatality reports and associated inspections for 1977–1981.

8. Abramo, Vincent J. "Case Studies Excavating Trenching and Shoring." Performed for U.S. Department of Labor, Occupational Safety and Health Administration, under contract No. 41USC252C3. Washington, DC, August 9, 1983. (Unpublished).

9. U.S. Department of Health and Human Services. Public Health Service. Centers for Disease Control. National Institute for Occupational Safety and Health. Request for Assistance in Preventing Deaths and Injuries from Excavation Cave-ins. Cincinnati, Ohio: NIOSH, July 1985.

10. U.S. Department of Labor. Bureau of Labor Statistics. Occupational Injuries and Illnesses in the United States by Industry, 1983, Bulletin 2236. Washington, DC: Government Printing Office, 1985. Table 1. P. 2.

11. U.S. Department of Labor. Occupational Safety and Health Administration. Office of Data Analysis. "Selected Occupational Fatalities Related to Trenching and Excavation as Found in Reports of OSHA Fatality/Catastrophe Investigations." Washington, DC, July 1985. 157 Pp.

12. Building costs remain moderate. Eng News Record 214(12):92–95, March 21, 1985; and Cost indexes point to rising materials. Eng News Record 202(12):86–87, March 22, 1979.

13. U.S. Department of Labor. Labor Management Services Administration. Office of Construction Industry Services. Annual Construction Industry Report. Washington, DC: Government Printing Office, April 1980. P. 106.

14. Lange, Julian E., and Mills, Daniel Quinn, eds. The Construction Industry-Balance Wheel of the Economy. Lexington, Massachusetts: Lexington Books, 1979. pp. 186–187.

15. U.S. Department of Commerce. International Trade Administration Construction Review. Washington, DC: Government Printing Office, November–December 1985. Pp. 31; 39.

16. U.S. Department of Commerce. Bureau of the Census. 1980 Census of Population. Washington, DC: Government Printing Office, May 1984. Table 2. Pp. 182; 185.

17. Employment Cost Index. Monthly Labor Rev 108(8):92, August 1985; and 402(12):December 1979.


## VI. Recordkeeping

The proposed standard contains "collection of information" (recordkeeping) requirements pertaining to design of protective systems (§ 1926.652(b) and § 1926.652(c)). In accordance with 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public), OSHA has submitted the proposed recordkeeping requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments regarding the proposed recordkeeping requirements may be directed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, Washington, DC 20503.

## List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Excavations, Occupational safety and health, Protective equipment, Safety.

## VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal and all issues involved therein. The comments must be postmarked on or before June 15, 1987, and submitted in quadruplicate to the Docket Officer, Docket No. S–204, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3670, Washington, DC 20210. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657), section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal public hearing. The objections and hearing request should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked on or before June 15, 1987, and

submitted to the Docket Office at the aforementioned address;

3. The objections must specify with particularity the provisions(s) of the proposed rule to which objection is taken, and must state the grounds therefore;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

If objection and request for a hearing are timely filed, a hearing will be scheduled pursuant to section 6(b)(3) of the Occupational Safety and Health Act of 1970.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

## VIII. State Plan Standards

The 25 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule or show OSHA why there is no need for action, e.g. because an existing standard covering this area is already "at least as effective" as the revised federal standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

## IX. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend Part 1926 of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, DC, this 7th day of April 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

## PART 1926—[AMENDED]

Part 1926 of 29 CFR would be amended as follows:

1. The authority citation for Subpart M of Part 1926, continues to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. By revising the authority citation for Subpart P of Part 1926, to read as follows:

**Authority:** Sec. 107, Contract Worker Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

### §§ 1926.500 and 1926.501 [Amended]

3. By redesignating paragraphs (t) and (w) of § 1926.651 as paragraphs (h) and (i) of § 1926.500, respectively.

4. By revising Subpart P to read as follows:

### Subpart P—Excavations

Sec.
1926.650 Scope, application, and definitions applicable to this subpart.
1926.651 General requirements.
1926.652 Requirements for protective systems.
Appendix A
Appendix B
Appendix C

### Subpart P—Excavations

#### § 1926.650 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This Subpart applies to all open excavations made in the earth's surface. Excavations are defined to include trenches.

(b) *Definitions applicable to this subpart.* (1) "Accepted engineering practices" means those requirements or practices which are compatible with standards of practice required by a registered professional engineer, or other duly licensed or recognized authority.

(2) "Bell-bottom pier hole" means a type of shaft or footing excavation, a portion of which is made larger than the cross section above to form a belled shape.

(3) "Benching" (Benching system) means a method of protecting employees against cave-ins by excavating the sides of an excavation to form one or a series of horizontal levels or steps, usually with vertical or near-vertical surfaces between levels.

(4) "Cave-in" means the separation of a mass of soil or rock material from the side of an excavation and its sudden movement into the excavation, either by falling or sliding, in sufficient quantity so that it could entrap, bury, or otherwise injure and immobilize a person.

(5) "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. (**Note:** the competent person can act as the employer's designee for the purpose of choosing a protective system from the options provided in § 1926.652 (b) and (c) of this section; but cannot take on original design responsibility allowed by § 1926.652 (b)(3), (c)(3) or (c)(4), unless otherwise qualified.)

(6) "Cross braces" means the horizontal members of a shoring system installed perpendicular to the sides of the excavation, the ends of which bear against either uprights or wales.

(7) "Excavation" means any man-made cut, cavity, trench, or depression in an earth surface, formed by earth removal and producing unsupported earth conditions (sides, faces).

(8) "Faces" or "Sides" means the vertical or inclined earth surfaces formed as a result of excavation work.

(9) "Failure" means the breakage, displacement, or permanent deformation of a structural member or connection so as to affect its supportive capabilities.

(10) "Hazardous atmosphere" means an atmosphere which by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, oxygen deficient, toxic, or otherwise harmful, may cause death, illness, or injury.

(11) "Kickout" means the accidental release or failure of a cross brace.

(12) "Protective system" means any method of protecting employees against cave-ins, from material that could fall or roll from an excavation face or into an excavation, or from the collapse of adjacent structures. Protective systems include support systems, sloping and benching systems, shield systems, and other systems that provide the necessary protection.

(13) "Qualified engineer" means a person who has attained (through

engineering education and experience) a special knowledge of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design; and who, therefore, is qualified to practice engineering, i.e., apply the principles and methods of engineering analysis and design to solve specific problems.

(14) "Qualified person" means one who, by possession of a recognized degree, certificate, or professional standing or who by extensive knowledge, training, and experience has successfully demonstrated his ability to solve or resolve problems related to the subject matter, or the project.

(15) "Ramp" means an inclined walking or working surface used to gain access to one point from another, and that is constructed from earth or from structural materials such as steel or wood.

(16) "Sheeting" means the members of a shoring system such as dimensional lumber uprights, plywood or other materials that are driven or placed in contact with the earth, usually in a vertical position, for the purpose of retaining the earth in position and in turn being supported by other members of the shoring system.

(17) "Shield" (Shield system) means a structure that normally will not prevent a cave-in, but is able to withstand the forces imposed on it by a cave-in and thereby protect employees within the structure. Shields can be permanent structures or can be designed to be portable and moved along as work progresses. Additionally, shields can be either premanufactured or job built. Shields used in trenches are usually referred to as "trench boxes" or "trench shields."

(18) "Shoring" (Shoring system) means a structure such as a mechanical or timber shoring system that supports the sides of an excavation and which is designed to prevent cave-ins.

(19) "Sides." See "Faces."

(20) "Sloping" (Sloping system) means a method of protecting employees against cave-ins by excavating to form sides of an excavation that are inclined away from the excavation so as to prevent cave-ins. The angle of incline required to prevent a cave-in varies with differences in such factors as the soil type, environmental conditions of exposure, and application of surcharge loads.

(21) "Stable rock" means rock that can be excavated with vertical sides and will remain intact while exposed. (Note: Unstable rock is considered equivalent to stable rock when the rock material on the side or sides of the excavation is secured against caving-in or movement by rock bolts or another system that has been designed by a qualified engineer or a qualified person).

(22) "Structural Ramp" means a ramp built of material other than soil or rock.

(23) "Support system" means a structure such as underpinning, bracing, or shoring, which provides support to an adjacent structure, underground installation, or the sides of an excavation.

(24) "Tabulated data" means tables and charts prepared in accordance with accepted engineering practice by a qualified person, a qualified engineer or a person under the direction of a qualified engineer, and used to design and construct a protective system. Manufacturers' tables, or charts, or State regulations promulgated under an approved State plan and determined by OSHA to be "as effective as" Federal regulations, are other examples of acceptable tabulated data.

(25) "Trench" (Trench excavation) means a narrow excavation (in relation to its length) made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet (4.6 m). (Note: If forms or other structures are installed or constructed in an excavation so as to reduce the dimension measured from the forms or structure to the side of the excavation to 15 feet (4.6 m) or less (measured at the bottom of the excavation), the excavation is also considered to be a trench.)

(26) "Trench box." See "Shield."

(27) "Trench shield." See "Shield."

(28) "Uprights" means the vertical members of a trench shoring system placed in contact with the earth and usually positioned so that individual members do not contact each other. (Note: Uprights placed so that individual members are closely spaced, in contact with or interconnected to each other, are often called "sheeting.")

(29) "Wales" means horizontal members of a shoring system placed parallel to the excavation face whose sides bear against the vertical members of the shoring system or earth.

**§ 1926.651 General requirements.**

(a) *Surface encumbrances.* Trees, boulders, and other surface encumbrances that are located so as to create a hazard to employees shall be made safe or removed.

(b) *Underground installations.* (1) The estimated location of utility installations, such as sewer, telephone, fuel, electric, or water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be determined prior to opening an excavation.

(2) Utility companies shall be contacted and advised of proposed work prior to the start of actual excavation.

(3) When excavation operations approach the estimated location of underground installations, the exact location of the installations shall be determined by acceptable means, such as probing with hand-held tools.

(4) While the excavation is open, underground installations shall be removed, protected, or supported as necessary to safeguard employees.

(c) *Access and egress.* (1) *Structural ramps.* (i) Structural ramps that are used by employees or equipment as a means of access to or egress from excavations shall be designed by a qualified person, a qualified engineer or a person under the direction of a qualified engineer, in accordance with accepted engineering practices, and constructed in accordance with their design.

(ii) Ramps and runways constructed of two or more planks shall have the planks securely connected together to prevent displacement.

(iii) Planks used for ramps and runways shall be of uniform thickness.

(iv) Cleats used to connect runway planks together shall be attached to the bottom of the runway or be beveled to prevent tripping.

(v) Ramps used in lieu of steps shall be provided with beveled cleats on the top surface to prevent slipping.

(2) *Means of egress from trench excavations.* A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are four feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees. (Note: A negotiable slope may be used as a means of egress unless climatic conditions (rain, snow, ice) create a hazard to the user.)

(d) *Exposure to vehicular traffic.* Employees exposed to vehicular traffic shall be provided with, and shall wear, warning vests or other suitable garments marked with or made of reflectorized or high-visibility material.

(e) *Exposure to falling loads.* No employee shall be permitted underneath loads handled by lifting or digging equipment. Employees shall be required to stand away from any vehicle being loaded or unloaded to avoid being struck by any spillage or falling material. (Note: Operators may remain in the cabs of vehicles being loaded or unloaded when the vehicles are equipped to provide adequate protection for the operator during loading and unloading operations.)

(f) *Warning system for mobile equipment.* When mobile equipment is operated adjacent to an excavation, or when such equipment is required to approach the edge of an excavation, and the operator does not have a clear and direct view of the edge of the excavation, a warning system shall be utilied such as barricades, hand or mechanical signals, or stop logs. (**Note:** If possible, the grade should be away from the excavation.)

(g) *Hazardous atmospheres.* (1) *Testing and controls.* In addition to the requirements set forth in Subparts D and E of this Part to prevent exposure to harmful levels of atmospheric contaminants and to assure acceptable atmospheric conditions, the following requirements shall apply:

(i) The atmosphere in the excavation shall be tested before employees enter excavations greater than four feet (1.22 m) in depth where oxygen deficiency (atmospheres containing less than 19.5 percent oxygen) or a hazardous atmosphere exists or could reasonably be expected to exist, such as in excavations in landfill areas or excavations in areas where hazardous substances are stored nearby.

(ii) Adequate precautions shall be taken, such as providing proper respiratory protection or ventilation in accordance with Subparts D and E of this Part respectively, to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen.

(iii) Adequate precautions, shall be taken such as providing ventilation to prevent employee exposure to an atmosphere containing a concentration of a flammable gas in excess of 20 percent of the lower flammable limit of the gas.

(iv) When controls are used that are intended to reduce the level of atmospheric contaminants to acceptable levels, testing shall be conducted as often as necessary to ensure that the atmosphere remains safe.

(2) *Emergency rescue equipment.* (i) Emergency rescue equipment, such as breathing apparatus, a safety harness and line, or a basket stretcher, shall be readily available where hazardous atmospheric conditions exist or may reasonably be expected to develop during work in an excavation.

(ii) Employees entering bell-bottom pier holes, or other substantially similar footing excavations, shall wear a harness with a life-line securely attached to it. The lifeline shall be separate from any line used to handle materials, and shall be individually attended at all times while the employee wearing the lifeline is in the excavation.

(h) *Protection against water accumulation.* (1) Employees shall not work in excavations in which there is accumulated water, or in excavations in which water is accumulating, unless these conditions have been anticipated and adequate precautions have been taken to protect employees against the hazards posed by water accumulation. (**Note:** The precautions necessary to protect employees adequately vary with each situation, but could include special support or shield systems to protect against cave-ins, water removal to control the level of accumulating water, and use of a safety harness and lifeline.)

(2) If water is controlled or prevented from accumulating by the use of water removal equipment, the water removal equipment and operations shall be monitored by a competent person to ensure proper operation.

(3) If excavation work interrupts the natural drainage of surface water (such as streams), diversion ditches, dikes, or other suitable means shall be used to prevent surface water from entering the excavation and to provide adequate drainage of the area adjacent to the excavation. (**Note:** Excavations subject to runoff from neavy rains will require an inspection by a competent person and compliance with (h)(1) and (h)(2) above.)

(i) *Stability of adjacent structures.* (1) Where the stability of adjoining buildings, walls, or other structures is endangered by excavation operations, support systems such as shoring, bracing, or underpinning shall be provided to ensure the stability of such structures for the protection of employees.

(2) Excavation below the level of the base or footing of any foundation or retaining wall shall not be permitted except when:

(i) A support system, such as underpinning is provided to ensure the safety of employees and the stability of the structure; or

(ii) The excavation is in stable rock; or

(iii) A qualified person, a qualified engineer or a person under the direction of a qualified engineer determines, based on accepted engineering practice, that the structure is sufficiently removed from the excavation so as to be unaffected by the excavation activity; or

(iv) A qualified person, a qualified engineer, or a person under the direction of a qualified engineer, determines, based on accepted engineering practice, that such work will not pose a hazard to employees.

(3) Sidewalks and pavements shall not be undermined unless a support system is provided or another method of protection to protect employees from the possible collapse of such structures.

(j) *Protection of employees in excavations.* (1) Employees snall be protected from cave-ins in excavations by the installation or use of an adequate protective system which meets the requirements of § 1926.652. However, the installation or use of a protective system is not required when:

(i) Excavations are made in stable rock; or

(ii) Excavations are less than five feet (1.52 m) in depth and examination of the ground by a competent person provides no indication that a cave-in should be expected.

(2) In addition to the protection against cave-ins required in paragraph (j)(1), adequate protection shall be provided to protect employees against loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.

(3) Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least two feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent material or equipment from falling or rolling into excavations, or by a combination of both if necessary.

(k) *Inspections.* (1) Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

(2) Where the competent person finds evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

**§ 1926.652 Requirements for protective systems.**

(a) *Capacity of protective systems.* Protective systems shall be designed in accordance with the requirements of paragraphs (b) and (c) of this section and shall have the capacity to resist without failure all loads that are intended or could reasonably be expected to be applied or transmitted to the system.

(b) *Design of sloping and benching systems.* The slopes and configurations of sloping and benching systems shall be selected and constructed by the employer or his designee and shall be in accordance with the requirements of paragraph (b)(1); or, in the alternative, paragraph (b)(2); or, in the alternative, paragraph (b)(3) as follows:

(1) *Option (1)—Allowable configuration and slopes.* (i) Excavations that are open 72 hours or less shall be sloped at an angle not greater than one and one-half horizontal to one vertical (34 degrees measured from the horizontal).

(ii) Excavations that are open longer than 72 hours shall be sloped at an angle not greater than two horizontal to one vertical (27 degrees measured from the horizontal).

(iii) Slopes specified in paragraph (b)(1) (i) and (ii) of this section, shall be excavated to form configurations that are in accordance with *Figures B–1 through B–1.5* of Appendix B to this Subpart.

(2) *Option (2)—Determination of slopes and configurations using Appendices A and B.* Maximum allowable slopes, and allowable configurations for sloping and benching systems, shall be determined in accordance with the conditions and requirements set forth in Appendices A and B to this Subpart.

(3) *Option (3)—Design by a qualified person or a qualified engineer.* (i) Sloping and benching systems not utilizing Option 1 or Option 2 above shall be designed in accordance with accepted engineering practice by a qualified person, a qualified engineer, or a person under the direction of a qualified engineer.

(ii) Designs shall be in written form and shall include at least the following:

(A) An indication of the magnitude of the slopes that were determined to be safe for the particular project; and

(B) An indication of the configurations that were detemined to be safe for the particular project; and

(C) The identity of the person responsible for the design.

(iii) At least one copy of the design shall be maintained at the jobsite while the slope is being constructed. After that time the design need not be on the jobsite, but, as long as the excavation is open a copy shall be made readily available to the Secretary upon request. (Note: Readily available means provided during an inspection.)

(c) *Design of support systems, shield systems, and other protective systems.* Designs of support systems, shield systems, and other protective systems shall be selected and constructed by the employer or his designee and shall be in accordance with the requirements of paragraph (c)(1); or, in the alternative, paragraph (c)(2); or, in the alternative, paragraph (c)(3); or, in the alternative, paragraph (c)(4) as follows:

(1) *Option (1)—Designs using Appendices A and C.* Designs for timber shoring in trenches shall be determined in accordance with the conditions and requirements set forth in Appendices A and C to this Subpart.

(2) *Option (2)—Designs Using Manufacturer's Tabulated Data.* (i) Designs of support systems, shield systems, or other protective systems that are drawn from manufacturer's tabulated data shall be in accordance with all specifications, recommendations, and limitations issued or made by the manufacturer.

(ii) Deviation from the specifications, recommendations, and limitations issued or made by the manufacturer shall only be allowed when the manufacturer issues specific written approval.

(iii) Manufacturers' specifications, recommendations, and limitations; and manufacturer's approval to deviate from the specifications, recommendations, and limitations shall be in written form at the jobsite, during construction of the protective system. After that time this data may be stored off the jobsite, but a copy shall be made readily available to the Secretary upon request as long as the excavation is open. (Note: Readily available means provided during an inspection.)

(3) *Option (3)—Designs using other tabulated data.* (i) Designs of support systems, shield systems, or other protective systems shall be selected from and be in accordance with tabulated data, such as tables and charts.

(ii) The tabulated data shall have been prepared in accordance with accepted engineering practice by a qualified person, a qualified engineer, or a person under the direction of a qualified engineer, for the purpose of using the tabulated data to design and construct protective systems.

(iii) The tabulated data shall be in written form and include at least all of following:

(A) Identification of the parameters that affect the selection of a protective system drawn from such data;

(B) Identification of the limits of use of the data;

(C) Explanatory information as may be necessary to aid the user in making a correct selection of a protective system from the data;

(D) The identity of the person who prepared or directed the preparation of the data (unless using Nationally recognized tabulated data or tabulated data promulgated under an approved State plan).

(iv) At least one copy of the tabulated data shall be maintained at the jobsite, during construction of the protective system. After that time the data may be stored off the jobsite, but a copy of the data shall be made readily available to the Secretary upon request. (Note: Readily available means provided during an inspection.)

(4) *Option (4)—Design by a qualified person or a qualified engineer.* (i) Support systems, shield systems, and other protective systems not utilizing Option 1 , Option 2, or Option 3, above shall be designed in accordance with accepted engineering practice by a qualified person, a qualified engineer or a person under the direction of a qualified engineer.

(ii) Designs shall be in written form and shall include at least the following:

(A) A plan indicating the sizes, types, and configurations of the materials to be used in the protective system, and

(B) The identity of the person responsible for the design.

(iii) At least one copy of the design shall be maintained at the jobsite during construction of the protective system. After that time, the design may be stored off the jobsite, but a copy of the design shall be made readily available to the Secretary upon request. (Note: Readily available means provided during an inspection.)

(d) *Materials and equipment.* (1) Materials and equipment used for protective systems shall be free from damage or defects that might impair their proper function.

(2) Manufactured materials and equipment used for protective systems shall be used and maintained in a manner that is consistent with the recommendations of the manufacturer, and in a manner that will prevent employee exposure to hazards.

(3) When material or equipment that is used for protective systems is damaged, a competent person shall examine the material or equipment and evaluate its suitability for continued use. If the competent person determines that

the material or equipment is unable to support the intended loads or is otherwise unsuitable for safe use, then such material or equipment shall be removed from service.

(e) *Installation and removal of support systems.* (1) *General.* (i) Members of support systems shall be securely connected together to prevent sliding, falling, kickouts, or other failure.

(ii) Support systems shall be installed and removed in a manner that protects employees from cave-ins, structural collapses, or from being struck by members of the support system.

(iii) Individual members of support systems shall not be subjected to loads exceeding those which those members were designed to withstand.

(iv) When temporary removal of individual members is necessary, additional precautions shall be taken to ensure the safety of employees, such as installing other structural members to carry the loads imposed on the support system.

(v) When removal of the support system is done on a member-by-member basis, removal shall begin at, and progress from, the bottom of the excavation. Members shall be released slowly so as to note any indication of possible failure of the remaining members of the structure or possible cave-in of the sides of the excavation.

(vi) Backfilling shall progress together with the removal of support systems from excavations.

(2) *Additional requirements for support systems for trench excavations.* (i) Excavation of material to a level not greater than two feet (.61 m) below the bottom of the members of a support system shall be permitted, but only if the system is designed to resist the forces calculated for the full depth of the trench, and there are no indications while the trench is open of a possible cave-in below the bottom of the support system.

(ii) Installation of support system shall be closely coordinated with the excavation of trenches.

(f) *Sloping and benching systems.* Employees shall not be permitted to work on the faces of sloped or benched excavations at levels above other employees except when employees at the lower levels are adequately protected from the hazard of falling, rolling, or sliding material or equipment.

(g) *Shield systems.* (1) *General.* (i) Shield systems shall not be subjected to loads exceeding those which the system was designed to withstand.

(ii) Shields shall be installed in a manner to restrict lateral or other hazardous movement of the shield in the event of the application of sudden lateral loads.

(iii) Employees shall be protected from the hazard of cave-ins when entering or exiting the areas protected by shields.

(iv) Employees shall not be allowed in shields when shields are being installed, removed, or relocated.

(2) *Additional requirement for shield systems used in trench excavations.* Excavations of earth material to a level not greater than two feet (.61 m) below the bottom of a shield shall be permitted, but only if the shield is designed to resist the forces calculated for the full depth of the trench and there are no indications while the trench is open of a possible cave-in below the bottom of the shield.

**Appendix A to Subpart P of Part 1926**

*Soil Classification*

(a) *Scope and application.* (1) *Scope.* This Appendix describes a method of classifying soil and rock deposits based on site and environmental conditions, and on the structure and composition of the earth deposits. The Appendix contains definitions, sets forth requirements, and describes recommended visual and manual tests for use in classifying soils.

(2) *Application.* This Appendix applies when a sloping or benching system is designed in accordance with the requirements set forth in § 1926.652(b) as a method of protection for employees against cave-ins.

This Appendix also applies when timber shoring for trenches is designed as a method of protection against cave-ins in accordance with Appendix C to Subpart P of Part 1926. This Appendix also applies if other protective systems are designed and selected for use from data prepared in accordance with the requirements set forth in § 1926.652 (c)(2), and the use of the data is predicated on the use of the soil classification system set forth in this Appendix.

(b) *Definitions.* (1) "Cemented soil" means a soil in which the particles are held together by a chemical agent, such as calcium carbonate, such that a hand-size sample cannot be crushed into powder or individual soil particles by finger pressure.

(2) "Cohesive soil" means clay (fine grained soil), or soil with a high clay content, which has cohesive strength. Cohesive soil does not crumble, can be excavated with vertical sideslopes, and is plastic when moist. Cohesive soil is hard to break up when dry, and exhibits significant cohesion when submerged. Cohesive soils include clayey silt, sandy clay, silty clay, clay, and organic clay.

(3) "Dry soil" means soil that does not exhibit visible signs of moisture content.

(4) "Fissured" means a soil material that has a tendency to break along definite planes of fracture with little resistance, or a material that exhibits open cracks, such as tension cracks, in an exposed surface.

(5) "Granular soil" means gravel, sand, or silt, (coarse grained soil) with little or no clay content. Granular soil has no cohesive strength. Some moist granular soils exhibit apparent cohesion and temporarily stand on a vertical slope, but normally cannot be excavated with vertical sideslopes. Granular soil cannot be molded when moist and crumbles easily when dry.

(6) "Layered system" means two or more distinctly different soil or rock types arranged in layers. Micaceous seams in rock are considered layered.

(7) "Moist soil" means a condition in which a soil looks and feels damp. Moist cohesive soil can easily be shaped into a ball and rolled into small diameter threads before crumbling. Moist granular soil that contains some cohesive material will exhibit signs of cohesion between particles.

(8) "Plastic" means a property of a soil which allows the soil to be deformed or molded without cracking, crumbling, or appreciable volume change.

(9) "Saturated soil" means submerged soil that is below the ground water table, and very wet soil such as soil that forms the sides of an excavation from which water can be seen seeping; soil that forms the sides of an excavation that has been flooded to more than one-half its depth and has not been drained for at least one day; and soil in which water is retained by a shoring system.

(10) "Soil classification system" means a method of categorizing soil and rock deposits in a hierarchy of Stable Rock, Type A, Type B, and Type C, in decreasing order of stability. The categories are determined based on an analysis of the properties and performance characteristics of the deposits and the environmental conditions of exposure.

(11) "Stable rock" means rock that can be excavated with vertical sides and remain intact while exposed.

(12) "Type A" means cohesive soil with an unconfined compressive strength of 1.5 tons per square foot (tsf) (144 kPa) or greater, or cemented granular soil such as hardpan, till, or caliche, except that no soil is Type A if:

(i) The soil is fissured; or

(ii) The soil is subject to vibration from heavy traffic, pile driving, or similar effects; or

(iii) The soil has been previously disturbed; or

(iv) The soil is part of a sloped, layered system where the layers dip into the excavation on a slope of four horizontal to one vertical (4H:IV) or greater; or

(v) The material is subject to other factors that would require it to be classified as a less stable material.

(13) "Type B" means:

(i) Cohesive soil with an unconfined compressive strength greater than 0.5 tsf (48 kPa) but less than 1.5 tsf (144 kPa); or

(ii) Granular soil that can stand on a slope of three horizontal to one vertical (3H:IV) or greater without slumping; or

(iii) Soil that meets the unconfined compressive strength or cementation requirements for Type A, but is fissured, subject to vibration, or has previously been disturbed; and

(iv) Dry rock that is not stable; and

(v) Material that is part of a sloped, layered system where the layers dip into the

excavation on a slope less steep than four horizontal to one vertical (4H:IV), but only if the material would otherwise be classified as Type B.

(14) "Type C" means:

(i) Cohesive soil with an unconfined compressive strength of 0.5 tsf (48 kPa) or less; and

(ii) Granular soil that cannot stand on a slope of three horizontal to one vertical (3H:IV) without slumping; and

(iii) Saturated or submerged soil; and

(iv) Submerged rock that is not stable; and

(v) Soil in a sloped, layered system where the layers dip into the excavation on a slope of four horizontal to one vertical (4H:IV) or greater.

(15) "Unconfined compressive strength" means the load per unit area at which a soil will fail in compression. It can be determined by laboratory testing, estimated in the field using a pocket penetrometer, by thumb penetration tests, and other methods.

(16) "Wet soil" means soil that contains significantly more moisture than moist soil, but in such a range of values that cohesive material will slump or begin to flow when vibrated. Granular material that would exhibit cohesive properties when moist will lose those cohesive properties when wet.

(c) *Requirements.* (1) *Classification of soil and rock deposits.* Each soil and rock deposit shall be classified by a competent person as Stable Rock, Type A, Type B, or Type C in accordance with the definitions set forth in paragraph (b) of this Appendix.

(2) *Basis of classification.* The classification of the deposits shall be made based on the results of at least one visual and at least one manual analyses. Such analyses shall be conducted by a competent person.

(3) *Visual and manual analyses.* The visual and manual analyses, such as those recommended in paragraph (d) of this Appendix, shall be designed and conducted to provide sufficient quantitative and qualitative information as may be necessary to identify properly the properties, factors, and conditions affecting the classification of the deposits.

(4) *Layered systems.* In a layered system, the system shall be classified in accordance with its weakest layer. However, each layer may be classified individually where a more stable layer lies under a less stable layer.

(5) *Reclassification.* If after classifying a deposit, the properties, factors, or conditions affecting its classification change in any way, the changes shall be evaluated by a competent person. The deposit shall be reclassified as necessary to reflect the changed circumstances.

(d) *Recommended visual and manual test.* (1) *Visual tests.* Visual analysis is conducted to determine qualitative information regarding the excavation site in general, the soil adjacent to the excavation, the soil forming the sides of the opened excavation, and the soil taken as samples from excavated material.

(i) Observe samples of soil that are excavated and soil in the sides of the excavation. Estimate the range of particle sizes and the relative amounts of the particle sizes. Soil that is primarily composed of fine-grained clay material is cohesive material. Soil composed primarily of coarse-grained sand or gravel is granular material.

(ii) Observe soil as it is excavated. Soil that remains in clumps when excavated is cohesive. Soil that breaks up easily and does not stay in clumps is granular.

(iii) Observe the side of the opened excavation and the surface area adjacent to the excavation. Crack-like openings such as tension cracks indicate fissured material. If chunks of soil spall off a vertical side, the soil should be considered fissured.

(iv) Observe the area adjacent to the excavation and the excavation itself for evidence of existing utility and other underground structures, and to identify previously disturbed soil.

(v) Observe the opened side of the excavation to identify layered systems. Examine layered systems to identify if the layers slope toward the excavation. Estimate the degree of slope of the layers.

(vi) Observe the area adjacent to the excavation and the sides of the opened excavation for evidence of surface water, water seeping from the sides of the excavation, or the location of the level of the water table.

(vii) Observe the ability of the opened excavation to stand on a slope of three horizontal to one vertical or greater. Observe the ability of the opened excavation to stand with a vertical face. A soil may be Type A if it can stand with a vertical face for two hours or longer and there are no other disqualifying factors present.

(viii) Observe the area adjacent to the excavation and the area within the excavation for sources of vibration that may affect the stability of the excavation face.

(2) *Manual test.* Manual analysis of soil samples is conducted to determine quantitative as well as qualitative properties of soil and to provide more information in order to classify soil properly where doubt remains from visual analysis.

(i) *Plasticity.* Mold a moist or wet sample of soil into a ball and attempt to roll it into threads as thin as ⅛ inch in diameter. Cohesive material can be successfully rolled into threads without crumbling. For example, if at least a two inch (50 mm) length of ⅛ inch thread can be held on one end without tearing, the soil is cohesive.

(ii) *Dry strength.* If the soil is dry and crumbles on its own or with moderate pressure into individual grains or fine powder, it is granular (sand or silt). If the soil is dry and falls into clumps which break up into smaller clumps, but the smaller clumps can only be broken up with difficulty, it is a fissured clay. If the dry soil breaks into clumps which do not break up into smaller clumps, and which can only be broken with difficulty, and there is no visual indication the soil is fissured, the soil may be considered unfissured.

(iii) *Thumb penetration.* The thumb penetration test can be used to estimate the unconfined compressive strength of cohesive soils. (This test is based on the thumb penetration test described in American Society for Testing and Materials (ASTM) Standard designation D2488—"Standard Recommended Practice for Description of Soils (Visual—Manual Procedure.") Type A soils with an unconfined compressive strength of 1.5 tsf can be readily indented by the thumb, however, they can be penetrated by the thumb only with very great effort. Type C soils with an unconfined compressive strength of 0.5 tsf can be easily penetrated several inches by the thumb, and can be molded by light finger pressure. This test should be conducted on an undisturbed soil sample, such as the excavation face or a large clump of spoil, as soon as practicable after excavation to keep to a minimum the effects of exposure to drying influences. [NOTE: If the excavation is later exposed to wetting influences (rain, flooding), the classification of the soil must be changed accordingly.]

(iv) *Other strength tests.* Estimates of unconfined compressive strength of soils can also be obtained by use of a pocket penetrometer or by using a hand-operated shearvane.

(v) *Drying test.* The basic purpose of the drying test is to differentiate between cohesive material with fissures, unfissured cohesive material, and granular material. The procedure for the drying test involves drying a sample of soil that is approximately one inch thick (2.54 cm) and six inches (15.24 cm) in diameter until it is thoroughly dry:

(A) If the sample develops cracks as it dries, significant fissures are indicated.

(B) Samples that dry without cracking are to be broken by hand. If considerable force is necessary to break a sample, the soil has significant cohesive material content. The soil can be classified as a unfissured cohesive material and the unconfined compressive strength should be determined.

(C) If a sample breaks easily by hand, it is either a fissured cohesive material or a granular material. To distinguish between the two, pulverize the dried clumps of the sample by hand or by stepping on them. If the clumps do not pulverize easily, the material is cohesive with fissures. If they pulverize easily into very small fragments, the material is granular.

**Appendix B to Subpart P of Part 1926**

*Sloping and Benching*

(a) *Scope and application.* This Appendix contains specifications for sloping and benching when used as methods of protecting employees working in excavations from cave-ins. The requirements of this Appendix apply when the design of sloping and benching protective systems is to be performed in accordance with the requirements set forth in § 1926.652(b)(2).

(b) *Definitions.* (1) "Actual slope" means the slope to which an excavation face is excavated.

(2) "Distress" means that the soil is in a condition where a cave-in is imminent or is likely to occur. Distress is evidenced by such phenomena as the development of fissures in the face of or adjacent to an open excavation; the subsidence of the edge of an excavation; the slumping of material from the face or the bulging or heaving of material from the bottom of an excavation; and ravelling, i.e., small amounts of material such as pebbles or little clumps of material suddenly separating

from the face of an excavation and trickling or rolling down into the excavation.

(3) "Long term exposure" means a period of time that an excavation is open longer than 72 hours.

(4) "Maximum allowable slope" means the steepest incline of an excavation face that is acceptable for the most favorable site conditions as protection against cave-ins, and is expressed as the ratio of horizontal distance to vertical rise (H:V).

(5) "Short term exposure" means a period of time less than or equal to 72 hours that an excavation is open.

(c) *Requirements.* (1) *Soil classification.* Soil and rock deposits shall be classified in accordance with Appendix A to Subpart P of Part 1926.

(2) *Maximum allowable slope.* The maximum allowable slope for a soil or rock deposit shall be determined from *Table B–1* of this Appendix.

(3) *Actual slope.* (i) The actual slope shall not be steeper than the maximum allowable slope.

(ii) The actual slope shall be less steep than the maximum allowable slope when there are signs of distress. The slope shall be cut back to an actual slope which is at least ½ horizontal to one vertical (½H:iV) less steep than the maximum allowable slope.

(iii) When surcharge loads from adjacent structures, stored material or equipment, operating equipment, or traffic are present, a competent person shall determine the degree to which the actual slope must be reduced below the maximum allowable slope, and shall assure that such reduction is achieved.

(4) *Configurations.* Configurations of sloping and benching systems shall be in accordance with *Figure B–1.*

TABLE B–1.—MAXIMUM ALLOWABLE SLOPES

| Soil or rock type | Maximum allowable slopes (H:V) [1] | |
|---|---|---|
| | Short-term [2] | Long-term |
| Stable Rock: | Vertical (90°) | Vertical (90°) |
| Type A [See footnote (2)]. | 1/2:1 (63°) | 3/4:1 (53°) |
| Type B | 3/4:1 (53°) | 1:1 (45°) |
| Type C | 1–1/2:1 (34°) | 2:1 (27°) |

[1] Numbers shown in parentheses next to maximum allowable slopes are angles expressed in degrees from the horizontal. Angles have been rounded off.

[2] A short-term maximum allowable slope of 1/2 H:IV is allowed in excavations that are 12 feet (3.67 m) or less in depth. Short-term maximum allowable slopes for excavations greater than 12 feet (3.67 m) in depth shall be 3/4 H:IV (53°).

BILLING CODE 4510–26–M

FIGURE B - 1

ALLOWABLE SLOPING AND BENCHING CONFIGURATIONS

FIGURE B - 1.1

SIMPLE SLOPE

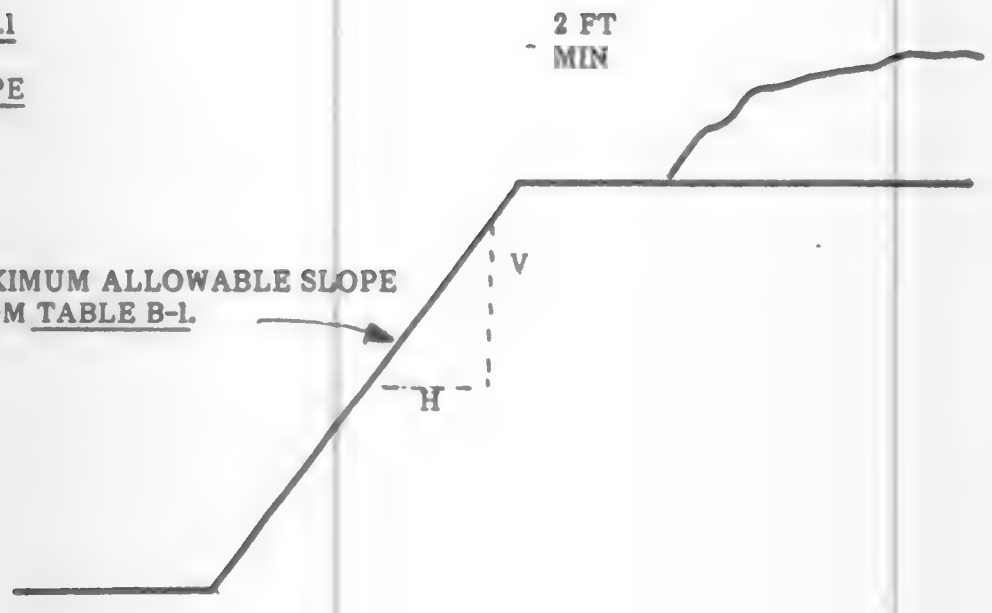


FIGURE B - 1.2

SLOPE AND BENCH

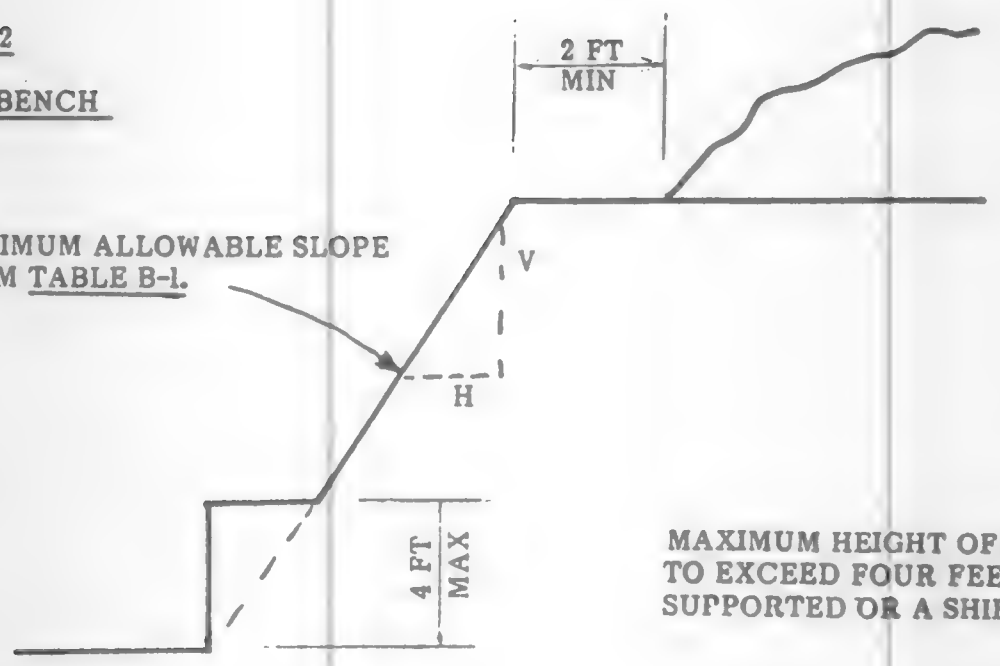

FIGURE B - 1.3

MULTIPLE BENCHES

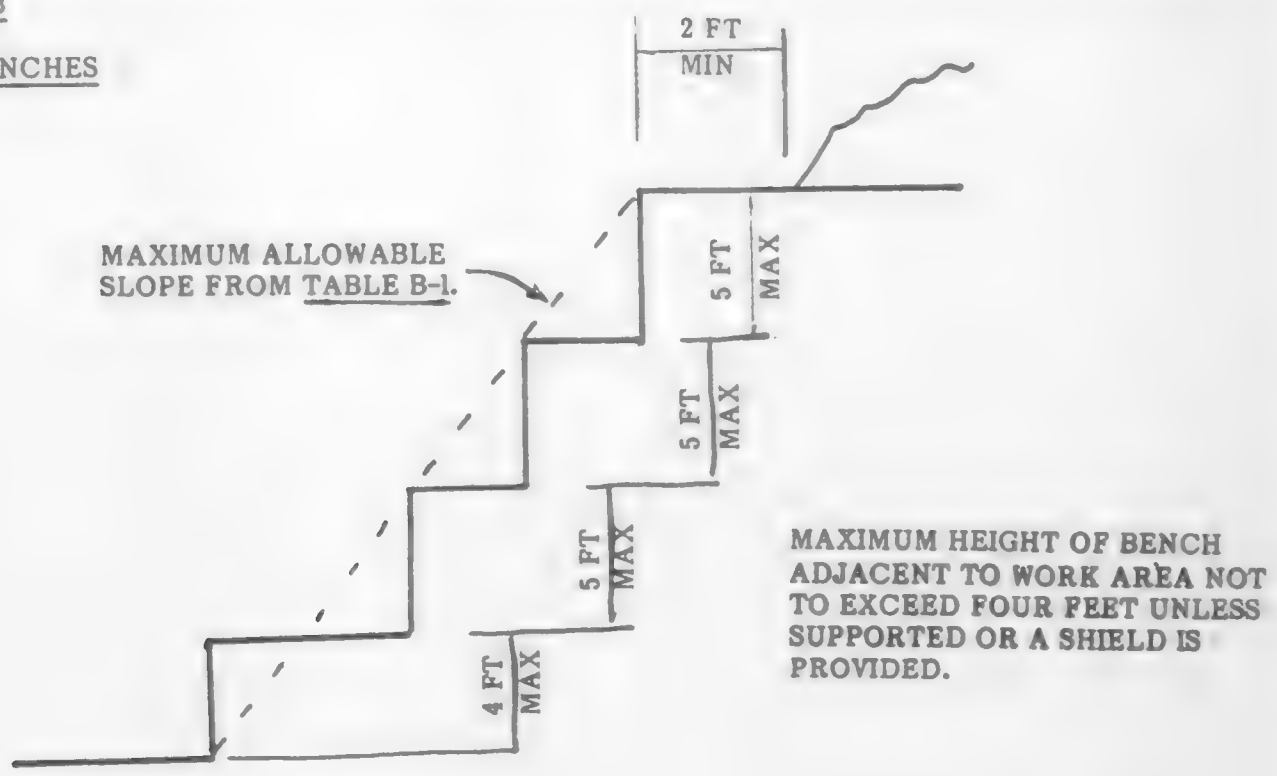


FIGURE B - 1.4

COMPOUND PROTECTION

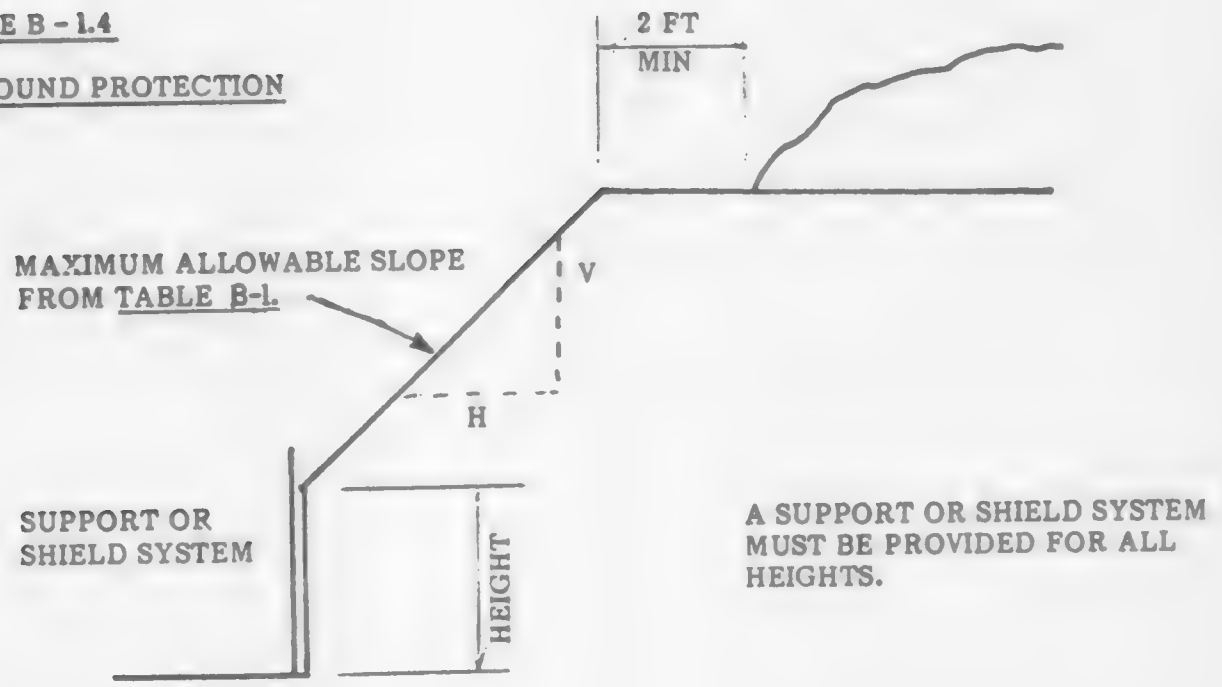

FIGURE B-1.5

COMPOUND SLOPE IN LAYERED SYSTEM

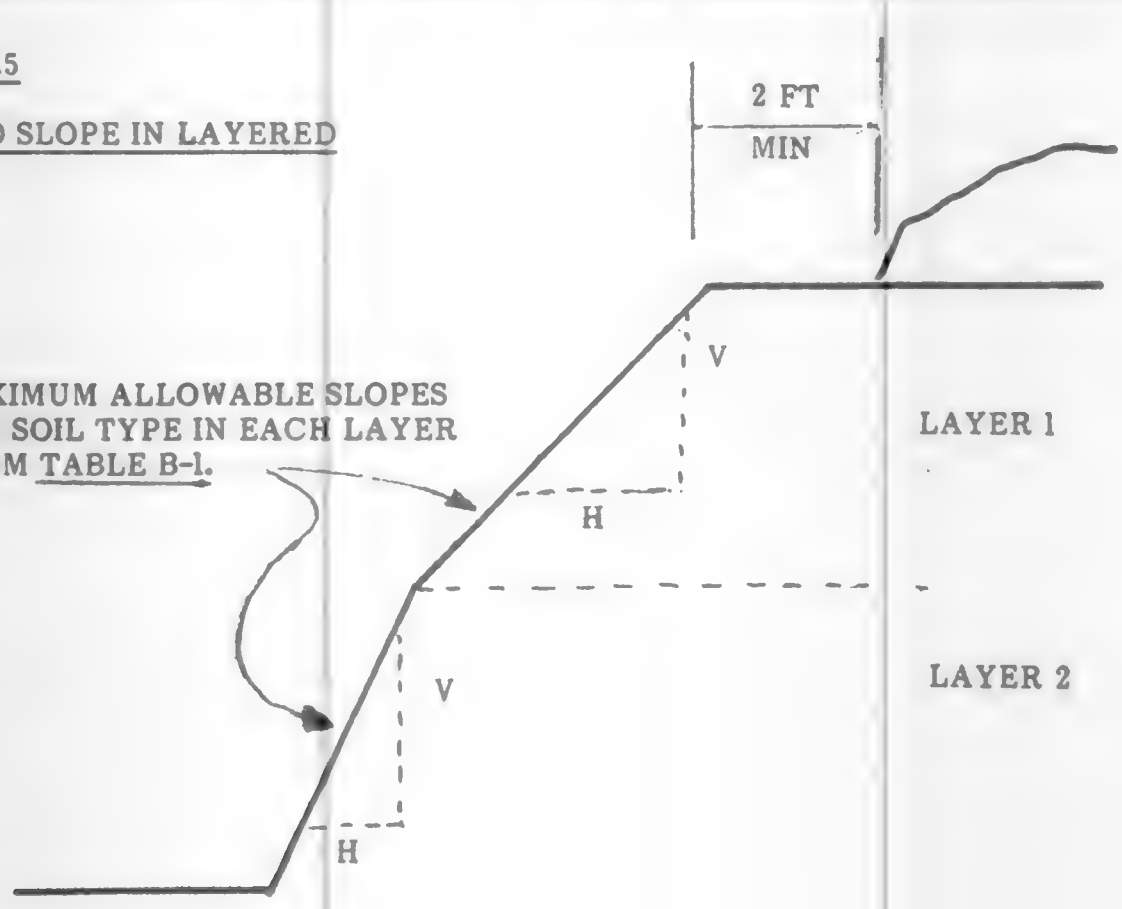


NOTE: Compound slopes may be used only where the material in the lower layer can stand on a steeper slope than the material in the upper layer.

BILLING CODE 4510-26-C

**Appendix C to Subpart P of Part 1926**

*Timber Shoring for Trenches*

(a) *Scope.* This Appendix contains information that can be used when timber shoring is provided as a method of protection against cave-ins in trenches that do not exceed 20 feet (6.1 m) in depth. This Appendix must be used when design of timber shoring protective systems is to be performed in accordance with § 1926.652(c)(1). Other timber shoring configurations; other systems of support such as hydraulic and pneumatic systems; and other protective systems such as sloping, benching, shield, and freezing systems must be designed in accordance with the requirements set forth in § 1926.652(b) and § 1926.652(c).

(b) *Soil Classification.* In order to use the data presented in this Appendix, the soil type or types in which the excavation is made must first be determined using the soil classification method set forth in Appendix A of Subpart B of Part 1926.

(c) *Presentation of Information.* Information is presented in several forms as follows:

(1) Information is presented in tabular form in *Tables C–1.1, C–1.2, and C–1.3* following paragraph (g) of this Appendix. Each table presents the minimum sizes of timber members to use in a shoring system, and each table contains data only for the particular soil type in which the excavation or portion of the excavation is made. The data is arranged to allow the user the flexibility to select from among several acceptable configurations of members based on varying the horizontal spacing of the crossbraces. (**Note:** Stable rock is exempt from shoring requirements and therefore no data is presented for this condition.)

(2) Information concerning the basis of the tabular data and the limitations of the data is presented in paragraph (d) of this Appendix.

(3) Information explaining the use of the tabular data is presented in paragraph (e) of this Appendix.

(4) Information illustrating the use of the tabular data is presented in paragraph (f) of this Appendix.

(5) Miscellaneous notations regarding *Tables C–1.1 through C–1.3* are presented in paragraph (g) of this Appendix.

(d) *Basis and limitations of the data.* (1) *Dimensions of timber members.* (i) The sizes of the timber members listed are taken from the National Bureau of Standards (NBS) report, "Recommended Technical Provisions for Construction Practice is Shoring and Sloping of Trenches and Excavation." In addition, where NBS did not recommend specific sizes of members, member sizes are based on an analysis of the sizes required for use by existing codes and on empirical practice.

(ii) The required dimensions of the members listed in the tables refer to actual dimensions and not nominal dimensions of the timber. (**Note:** Employees wanting to use nominal size shoring have this choice under § 1926.652(c)(3), and are referred to Corp of Engineers or Bureau of Reclamation data.)

(2) *Limitation of application.* (1) It is not intended that the timber shoring specification apply to every situation that may be experienced in the field. These data were developed to apply to the situations that are most commonly experienced in current trenching practice. Shoring systems for use in situations that are not covered by the data in this Appendix must be designed as specified in § 1926.652(c).

(ii) When any of the following conditions are present, the members specified in the Tables are not considered adequate. Either an alternate timber shoring system must be designed or another type of protective system designed in accordance with § 1926.652.

(A) When loads imposed by structures or by stored material adjacent to the trench weigh in excess of the load imposed by a two-foot soil surcharge. (**Note:** The term "adjacent" as used here means the area within a horizontal distance from the edge of the trench equal to the depth of the trench.)

(B) When vertical loads imposed on crossbraces exeed a 240-pound gravity load distributed on a one-foot section of the center of the crossbrace.

(C) When surcharge loads are present from equipment weighing in excess of 20,000 pounds.

(D) When only the lower portion of a trench is shored and the remaining portion of the trench is sloped or benched unless: The sloped portion is sloped at an angle less steep than three horizontal to one vertical; or the members are selected from the tables for use at a depth which is determined from the top of the overall trench, and not from the toe of the sloped portion.

(e) *Use of Tables C–1.1, C–1.2 and C–1.3.* The members of the shoring system that are to be selected using this information are the crossbraces, the uprights, and the wales, where wales are required. Minimum sizes of members are specified for use in different types of soil. There are three tables of information, one for each soil type. The soil type must first be determined in accordance with the soil classification system described in Appendix A to Subpart P of Part 1926. Using the appropriate table, the selection of the size and spacing of the members is then made. The selection is based on the depth and width of the trench where the members are to be installed and, in most instances, the selection is also based on the horizontal spacing of the crossbraces. In instances where a choice of horizontal spacing of crossbracing is available, the horizontal spacing of the crossbraces must be chosen by the user before the size of any member can be determined. When the soil type, the width and depth of the trench, and the horizontal spacing of the crossbraces are known, the size and vertical spacing of the crossbraces, the size and vertical spacing of the wales, and the size and horizontal spacing of the uprights can be read from the appropriate table.

(f) *Examples to Illustrate the Use of the Tables:* (1) *Example 1.*

A trench dug in Type A soil is 13 feet deep and five feet wide.

From *Table C–1.1,* four acceptable arrangements of timber can be used.

*Arrangement #1.*

Space 4 × 4 crossbraces at six feet horizontally and four feet vertically.

Wales are not required.

Space 3 × 8 uprights at six feet horizontally. This arrangement is commonly called "skip shoring."

*Arrangement #2.*

Space 4 × 6 crossbraces at eight feet horizontally and four feet vertically.

Space 8 × 8 wales at four feet vertically.

Space 2 × 6 uprights at four feet horizontally.

*Arrangement #3*

Space 6×6 crossbraces at 10 feet horizontally and four feet vertically.

Space 8×10 wales at four feet vertically.

Space 2×6 uprights at five feet horizontally.

*Arrangement #4*

Space 6×6 crossbraces at 12 feet horizontally and four feet vertically.

Space 10×10 wales at four feet vertically.

Space 3×8 uprights at six feet horizontally.

(2) *Example 2.*

A trench dug in Type B soil is 13 feet deep and five feet wide. From *Table C–1.2* three acceptable arrangements of member are listed.

*Arrangement #1*

Space 6×6 crossbraces at six feet horizontally and five feet vertically.

Space 8×8 wales at five feet vertically.

Space 2×6 uprights at two feet horizontally.

*Arrangement #2*

Space 6×8 crossbraces at eight feet horizontally and five feet vertically.

Space 10×10 wales at five feet vertically.

Space 2×6 uprights at two feet horizontally.

*Arrangement #3*

Space 8×8 crossbraces at 10 feet horizontally and five feet vertically.

Space 10×12 wales at five feet vertically.

Space 2×6 uprights at two feet horizontally.

(3) *Example 3.*

A trench dug in Type C soil is 13 feet deep and five feet wide.

From *Table C–1.3* two acceptable arrangements of members can be used.

*Arrangement #1*

Space 8×8 crossbraces at six feet horizontally and five feet vertically.

Space 10×12 wales at five feet vertically.

Position 2×6 uprights as closely together as possible.

If water must be retained use special tongue and groove uprights to form tight sheeting.

*Arrangement #2*

Space 8×10 crossbraces at eight feet horizontally and five feet vertically.

Space 12×12 wales at five feet vertically.

Position 2×6 uprights in a close sheeting configuration unless water pressure must be resisted. Tight sheeting must be used where water must be retained.

(4) *Example 4.*

A trench dug in Type C soil is 20 feet deep and 11 feet wide. The size and spacing of members for the section of trench that is over 15 feet in depth is determined using *Table* C–1.3. Only one arrangement of members is provided.

Space 8×10 crossbraces at six feet horizontally and five feet vertically.

Space 12×12 wales at five feet vertically.

Use 3×6 tight sheeting.

(g) *Notes for Tables C–1.1, C–1.2, and* C–1.3.

1. Member sizes at spacings other than indicated are to be determined as specified in 1926.652(b), "Design of Protective Systems."

2. When conditions are saturated or submerged use Tight Sheeting. *Tight Sheeting* refers to the use of specially-edged timber planks at least three inches thick, steel sheet piling, or similar construction that when driven or placed in position provide a tight wall to resist the lateral pressure of water. *Close Sheeting* refers to the placement of planks side-by-side allowing as little space as possible between them.

3. All spacing indicated is measured center to center.

4. Wales to be installed with greater dimension horizontal.

5. If the vertical distance from the center of the lowest crossbrace to the bottom of the trench exceeds two and one-half feet, uprights shall be firmly embedded or a mudsill shall be used. Where uprights are embedded, the vertical distance from the center of the lowest crossbrace to the bottom of the trench shall not exceed 36 inches. When mudsills are used, the vertical distance shall not exceed 42 inches. (**Note:** Mudsills are wales that are installed at the toe of the trench side.)

6. Trench jacks may be used in lieu of or in combination with timber crossbraces.

7. Placement of crossbraces. When the vertical spacing of crossbraces is four feet, place the top crossbrace no more than two feet below the top of the trench. When the vertical spacing of crossbraces is five feet, place the top crossbrace no more than 2.5 feet below the top of the trench.

BILLING CODE 4510–26–M

# TABLE C-1.1
# TRENCH SHORING - MINIMUM TIMBER REQUIREMENTS FOR SOIL TYPE A (SEE NOTES)

ALL TIMBER SIZES ARE ACTUAL, NOT NOMINAL

| DEPTH OF TRENCH (FEET) | SIZE AND SPACING OF MEMBERS | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | CROSS BRACES | | | | | | WALES | | UPRIGHTS | | | | |
| | HORIZONTAL SPACING (FEET) | WIDTH OF TRENCH (FEET) | | | | VERTICAL SPACING (FEET) | SIZE (INCHES) | VERTICAL SPACING (FEET) | MAXIMUM ALLOWABLE HORIZONTAL SPACING (FEET) | | | | |
| | | UP TO 4 | UP TO 6 | UP TO 9 | UP TO 12 | UP TO 15 | | | CLOSE | 4 | 5 | 6 | 8 |
| OVER 5 UP TO 10 | UP TO 6 | 4x4 | 4x4 | 4x6 | 6x6 | 6x6 | 4 | NOT REQUIRED | — | | | | 2x6 | |
| | UP TO 8 | 4x4 | 4x4 | 4x6 | 6x6 | 6x6 | 4 | NOT REQUIRED | — | | | | | 2x8 |
| | UP TO 10 | 4x6 | 4x6 | 6x6 | 6x6 | 6x6 | 4 | 8x8 | 4 | | | 2x6 | | |
| | UP TO 12 | 4x6 | 4x6 | 6x6 | 6x6 | 6x6 | 4 | 8x8 | 4 | | | | 2x6 | |
| OVER 10 UP TO 15 | UP TO 6 | 4x4 | 4x4 | 4x6 | 6x6 | 6x6 | 4 | NOT REQUIRED | — | | | | 3x8 | |
| | UP TO 8 | 4x6 | 4x6 | 6x6 | 6x6 | 6x6 | 4 | 8x8 | 4 | | 2x6 | | | |
| | UP TO 10 | 6x6 | 6x6 | 6x6 | 6x8 | 6x8 | 4 | 8x10 | 4 | | | 2x6 | | |
| | UP TO 12 | 6x6 | 6x6 | 6x6 | 6x8 | 6x8 | 4 | 10x10 | 4 | | | | 3x8 | |
| OVER 15 UP TO 20 | UP TO 6 | 6x6 | 6x6 | 6x6 | 6x8 | 6x8 | 4 | 6x8 | 4 | 3x6 | | | | |
| | UP TO 8 | 6x6 | 6x6 | 6x6 | 6x8 | 6x8 | 4 | 8x8 | 4 | 3x6 | | | | |
| | UP TO 10 | 8x8 | 8x8 | 8x8 | 8x8 | 8x10 | 4 | 8x10 | 4 | 3x6 | | | | |
| | UP TO 12 | 8x8 | 8x8 | 8x8 | 8x8 | 8x10 | 4 | 10x10 | 4 | 3x6 | | | | |
| OVER 20 | SEE NOTE 1. | | | | | | | | | | | | | |

## TABLE C-1.2

## TRENCH SHORING - MINIMUM TIMBER REQUIREMENTS FOR SOIL TYPE B (SEE NOTES)

ALL TIMBER SIZES ARE ACTUAL, NOT NOMINAL

| DEPTH OF TRENCH (FEET) | SIZE AND SPACING OF MEMBERS | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | CROSS BRACES | | | | | | | WALES | | UPRIGHTS | | | | |
| | HORIZONTAL SPACING (FEET) | WIDTH OF TRENCH (FEET) | | | | | VERTICAL SPACING (FEET) | SIZE (INCHES) | VERTICAL SPACING (FEET) | MAXIMUM ALLOWABLE HORIZONTAL SPACING (FEET) | | | | |
| | | UP TO 4 | UP TO 6 | UP TO 9 | UP TO 12 | UP TO 15 | | | | CLOSE | 2 | 3 | | |
| OVER 5 UP TO 10 | UP TO 6 | 4x6 | 4x6 | 6x6 | 6x6 | 6x6 | 5 | 6x8 | 5 | | | 2x6 | | |
| | UP TO 8 | 6x6 | 6x6 | 6x6 | 6x8 | 6x8 | 5 | 8x10 | 5 | | | 2x6 | | |
| | UP TO 10 | 6x6 | 6x6 | 6x6 | 6x8 | 6x8 | 5 | 10x10 | 5 | | | 2x6 | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| OVER 10 UP TO 15 | UP TO 6 | 6x6 | 6x6 | 6x6 | 6x8 | 6x8 | 5 | 8x 8 | 5 | | 2x6 | | | |
| | UP TO 8 | 6x8 | 6x8 | 6x8 | 8x8 | 8x8 | 5 | 10x10 | 5 | | 2x6 | | | |
| | UP TO 10 | 8x8 | 8x8 | 8x8 | 8x8 | 8x10 | 5 | 10x12 | 5 | | 2x6 | | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| OVER 15 UP TO 20 | UP TO 6 | 6x8 | 6x8 | 6x8 | 8x8 | 8x 8 | 5 | 8x10 | 5 | 3x6 | | | | |
| | UP TO 8 | 8x8 | 8x8 | 8x8 | 8x8 | 8x10 | 5 | 10x12 | 5 | 3x6 | | | | |
| | UP TO 10 | 8x10 | 8x10 | 8x10 | 8x10 | 10x10 | 5 | 12x12 | 5 | 3x6 | | | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| OVER 20 | SEE NOTE 1. | | | | | | | | | | | | | |

[FR Doc. 87-8019 Filed 4-14-87; 8:45 am]
BILLING CODE 4510-26-C

## TABLE C-1.3
## TRENCH SHORING - MINIMUM TIMBER REQUIREMENTS FOR SOIL TYPE C (SEE NOTES)
## ALL TIMBER SIZES ARE ACTUAL, NOT NOMINAL

| DEPTH OF TRENCH (FEET) | SIZE AND SPACING OF MEMBERS | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | CROSS BRACES | | | | | | | WALES | | UPRIGHTS | | | | | |
| | HORIZONTAL SPACING (FEET) | WIDTH OF TRENCH (FEET) | | | | | VERTICAL SPACING (FEET) | SIZE (INCHES) | VERTICAL SPACING (FEET) | MAXIMUM ALLOWABLE HORIZONTAL SPACING (FEET) (SEE NOTE 2.) | | | | |
| | | UP TO 4 | UP TO 6 | UP TO 9 | UP TO 12 | UP TO 15 | | | | CLOSE | | | | |
| OVER 5 UP TO 10 | UP TO 6 | 6x8 | 6x8 | 6x8 | 8x8 | 8x8 | 5 | 8x10 | 5 | 2x6 | | | | |
| | UP TO 8 | 8x8 | 8x8 | 8x8 | 8x8 | 8x10 | 5 | 10x12 | 5 | 2x6 | | | | |
| | UP TO 10 | 8x10 | 8x10 | 8x10 | 8x10 | 10x10 | 5 | 12x12 | 5 | 2x6 | | | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| OVER 10 UP TO 15 | UP TO 6 | 8x8 | 8x8 | 8x8 | 8x8 | 8x10 | 5 | 10x12 | 5 | 2x6 | | | | |
| | UP TO 8 | 8x10 | 8x10 | 8x10 | 8x10 | 10x10 | 5 | 12x12 | 5 | 2x6 | | | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| OVER 15 UP TO 20 | UP TO 6 | 8x10 | 8x10 | 8x10 | 8x10 | 10x10 | 5 | 12x12 | 5 | 3x6 | | | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| | SEE NOTE 1. | | | | | | | | | | | | | |
| OVER 20 | SEE NOTE 1 | | | | | | | | | | | | | |

L
2
S
2
P
5
87
M I

Wednesday
April 15, 1987

Part III

# Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Test Procedures for Dishwashers; Notice of Proposed Rulemaking and Public Hearing

BEST COPY AVAILABLE

**DEPARTMENT OF ENERGY**

**Office of Conservation and Renewable Energy**

**10 CFR Part 430**

**[Docket No. CE–RM–82–130]**

## Energy Conservation Program for Consumer Products; Test Procedures for Dishwashers

**AGENCY:** Office of Conservation and Renewable Energy, DOE.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** The Department of Energy hereby proposes to amend its test procedures for dishwashers in order to establish procedures to accurately determine the estimated annual operating cost and the energy factor for dishwashers that operate with 50 °F inlet water and that utilize an electrical supply voltage of 240 volts. DOE is interested in receiving comment on the appropriateness of revising test procedures for all types of dishwashers with respect to the assigned value for inlet water temperature. These test procedures are a part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

The purpose of this notice of proposed rulemaking is to provide interested persons an opportunity to comment on the proposed rule and to invite interested persons to participate in the rulemaking process.

**DATES:** Written comments on the proposed rule must be received by June 15, 1987.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on May 28. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., May 26, 1987.

Seven copies of the statement of each speaker for this hearing should be submitted at the hearing.

The length of each presentation is limited to 20 minutes.

**ADDRESSES:** Written comments, statements and requests are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Dishwasher Test Procedures, Docket No. CE–RM–82–130, Room 6B–025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9320.

The hearing will begin at 9:30 a.m., on May 28, and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC.

Copies of the transcript of the public hearing and public comments received may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section "III. Public Comment Procedures" of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. McCabe, U.S. Department of Energy, Conservation and Renewable Energy, Mail Station CE–132, Room GF–217, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Room 6B–128, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B–025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9320

**SUPPLEMENTARY INFORMATION:**

### I. Background

Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub L. 94–163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619),[1] created the Energy Conservation Program for Consumer Products Other Than Automobiles. Among other program elements, sections 323 of the Act requires that standard methods of testing be prescribed for covered products, including dishwashers. Test procedures appear at 10 CFR Part 430, Subpart B.

Test procedures for dishwashers were prescribed on August 3, 1977 (42 FR 39964, August 8, 1977). DOE amended the energy conservation program for consumer products by notice issued September 18, 1980 (45 FR 64108, September 26, 1980), so that the Assistant Secretary for Conservation and Solar Energy (now called Conservation and Renewable Energy) can temporarily waive test procedure requirements for a particular product. Waivers can be granted when design characteristics for the particular product either prevent testing of the product according to prescribed test procedures, or lead to results so unrepresentative of the product's true energy consumption characteristics as to provide materially inaccurate comparative data to consumers. On November 14, 1986, DOE issued a rule amending the test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver to manufacturers. In addition the rule made minor revisions to the petition for waiver procedures (51 FR 42823, November 26, 1986). Section 10 CFR 430.27(m) states:

> Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.

The dishwasher test procedures prescribed in 1977 were based on dishwashers using 140°F inlet water and operating with an electrical supply voltage of 115 volts. DOE amended the test procedures on Feburary 23, 1983, in order to accurately determine the estimated annual operating cost and energy factor for dishwashers that operate with 120°F inlet water (48 FR 9202, March 3, 1983).

ANDI–CO Appliances, Inc. (ANDI–CO) is an agent for a foreign appliance manufacturer that produces dishwashers. These dishwashers, in the normal mode, use cold water (50°F) only and heat it to a designated program-selected temperature and use an electrical supply voltage of 240 volts. ANDI–CO requested DOE to exclude these dishwashers from the prescribed test procedures. On August 12, 1984, ANDI–CO filed a Petition for Waiver of DOE's dishwasher test procedures for two models, Favorit Models 263 and 265. ANDI–CO claimed that these dishwashers incorporate features which are not addressed in the existing test procedures, and consequently, cannot be adequately tested under existing DOE test procedures for dishwashers. DOE granted a waiver and established an alternate test procedure for these models on May 8, 1985 (50 FR 21488, May 24, 1985).

Today's notice proposes to amend the DOE test procedures in order to establish procedures to accurately

[1] Part B of Title III of EPCA as amended by NECPA, 42 U.S.C. 6291–6309, is referred to in this notice as the "Act."

determine the estimated annual operating cost and energy factor for dishwashers that operate with 50°F inlet water and utilize an electrical supply voltage of 240 volts.

## II. Discussion

In its petition, ANDI-CO stated that DOE's test procedure requirements for measurement of energy consumption yields an inaccurate estimate of the annual operating cost of dishwashers designed to operate with cold inlet water. In consideration of the ANDI-CO petition, DOE, by Decision and Order prescribed, on May 8, 1985 (50 FR 21488, May 24, 1985), excluded the Favorit Models 263 and 265 dishwashers from the prescribed test procedures and established an alternative test procedure for these models. This waiver remains in effect until DOE prescribes final test procedures suitable to dishwashers that operate with cold inlet water and utilize an electrical supply voltage of 240 volts. Also, in accordance with 10 CFR 430.27 (h), DOE must publish in the **Federal Register** a notice of proposed rulemaking appropriate to such dishwashers. Today's proposed test procedures for dishwashers satisfies this requirement and reflects the alternate test procedure established in the May 8, 1985, Decision and Order.

### *a. Water Temperatures*

The dishwasher test procedure requirements for measurement of energy consumption are based upon an inlet water temperature to the dishwasher from the water heater of either 140°F or 120°F and a nominal water heater temperature rise of 90°F or 70°F, respectively. Based upon these inlet water temperatures and nominal water heater temperature rises, the inlet water temperature to the water heater assigned in prior test procedures for dishwashers has been 50°F., (i.e., 140 less 90, or 120 less 70). In order to be consistent across product types for all dishwashers, the cold inlet water temperature assigned in the ANDI-CO waiver was 50°F.

DOE is proposing that the water supply temperature for dishwashers using cold inlet water (50°F) be maintained between 48°F and 52°F and the water be heated to above 120°F in at least one wash phase of the normal cycle.

DOE and NBS have examined the matter of average inlet water temperature to water heaters. Specifically, in a report entitled "A Review of Energy Use Factors for Selected Household Applicances," NBSIR 85–3220, August 1985, NBS expanded the basis of a national average water inlet temperature by conducting a population-weighted analysis. Using a U.S. Geological Survey map, a single representative water heater inlet temperature was estimated for each State. Each State's temperature was then weighted by that State's estimated number of water heaters in order to compute a national average. On this basis, NBS recommended an average inlet temperature of 58°F for water heaters. The proposed inlet water temperature for dishwashers using cold inlet water (50°F) differs from that being proposed in a recent amendment of the water heater test procedures, where 58°F is proposed as the national average inlet water temperature for all types of water heaters, with 58°F±2°F used for laboratory tests. *See* 51 FR 7972 (March 13, 1987).

Similar to dishwashers using 120°F inlet water, DOE is proposing that dishwashers using cold inlet water (50°F) be tested with a test load of eight place settings plus six serving pieces as specified in the Association of Home Appliance Manufacturers Standard DW–1. DOE is proposing that the annual operating cost for dishwashers that use cold inlet water (50°F) be based on machine energy and that water heater energy not be included, as with dishwashers using 140°F or 120°F inlet water, because the dishwasher does not use inlet water that has been heated by the house water heater.

DOE is interested in receiving comment on the appropriateness of revising these test procedures for all types of dishwashers with respect to the assigned value for inlet water temperature.

### *b. Electrical Supply*

ANDI-CO also stated that the DOE test procedures do not provide for testing units designed to operate with an electrical supply voltage of 240 volts. The test procedure only provides for testing dishwashers designed to operate with an electrical supply voltage of 115 volts.

DOE is proposing that electrical supply to dishwashers using cold inlet water (50°F) be maintained within two percent of 240 volts and within one percent of the nameplate frequency as specified by the manufacturer. It is DOE's understanding that dishwashers operating with cold inlet water (50°F) are the only dishwashers likely to utilize an electrical supply voltage of 240 volts. DOE is interested in comments on this point. DOE is also interested in receiving comment on the need for extending these new procedures to include dishwashers which may use other than electric energy as the means for heating cold inlet water.

## III. Public Comment Procedures

### *a. Participation in Rulemaking*

DOE has established a comment period of 60 days following publication of this Notice, for persons to submit written comments on this proposal. All written comments and transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of these documents by writing to the DOE Freedom of Information Reading Room at the address specified at the beginning of this Notice. Such persons are advised to contact the DOE Freedom of Information Room in advance of such requests to determine if there will be any charges associated with satisfying their request. Also, persons interested in obtaining a copy of the transcript of the public hearing have the option of purchasing it directly from the transcribing reporter for the public hearing. The identity of the transcribing reporter for the public hearing may be determined by contacting the person in DOE's Conservation and Renewable Energy Office of Hearings and Dockets whose address and telephone number appear at the beginning of this notice.

### *b. Written Comment Procedures*

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed amendment set forth in this Notice to the address indicated at the beginning of the notice.

Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Dishwasher Test Procedures (Docket No. CE –RM–82–130)." Seven (7) copies are requested to be submitted. All comments received by the date specified at the beginning of this Notice and all other relevant information will be considered by DOE before final action is taken on the proposed regulation. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, and six (6) copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

*c. Public Hearing*

1. Procedures for Submitting Requests to Speak. The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed rule, to make a written request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice and must be received by the time specified at the beginning of this notice. Requests may be hand delivered to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays. Requests should be labeled "Dishwasher Test Procedures (Docket No. CE –RM–82–130)" both on the document and on the envelope. The person making the request should briefly describe the interest concerned and give a telephone number where he or she may be contacted.

DOE will notify speakers of the time they have been scheduled to speak at the hearing. Each person to be heard is requested to submit seven (7) copies of his or her statement at the hearing.

In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance of the hearing by so indicating in the letter requesting to make an oral presentation. Each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person who wishes to ask a question at the hearing may submit the question in writing to the presiding officer to be asked of any person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Any further procedural rules regarding proper conduct of the hearing will be announced by the persiding officer.

## IV. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment.

Since test procedures under the energy conservation program for consumer products will be used only to standardize the measurement of energy usage, and will not affect the quality of distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore has determined that prescribing test procedures under the energy conservation program for consumer products clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environment Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

## V. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules". The Executive Order defines "major rule" as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would make only minor changes in the test procedures for dishwashers to allow for more accurate determinations of estimated annual operating cost and energy factor. Therefore, DOE has determined that this proposed rule does not come within the definition of "major rule".

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96–345 (5 U.S.C. 601–612), requires that an agency prepare an initial regulatory flexibility analysis to be published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule affects manufacturers of dishwashers. As previously discussed, the proposed changes would not have significant economic impacts, but rather would simply improve the test procedures. Therefore, DOE certifies that the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, energy conservation, household appliances.

Issued in Washington, DC, March 26, 1987.

**Donna R. Fitzpatrick,**

*Assistant Secretary, Conservation and Renewable Energy.*

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

**Authority:** Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, (42 U.S.C. 6291–6309).

1. Section 430.22 is amended by adding paragraphs (c) (1)(iii) and (2)(iii) as follows:

**§ 430.22 Test procedures for measures of energy consumption.**

* * * * *

(c) * * *

(1) * * *

(iii) When cold water (50°F) is used, the product of the following three factors:

(A) The representative average use cycle of 322 cycles per year times,

(B) The product of the per-cycle machine electrical energy consumption for the normal cycle in kilowatt-hours per cycle, determined according to 4.3 of Appendix C to this subpart; and

(C) The representative average unit cost in dollars per kilowatt-hours as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) * * *

(iii) When cold water (50°F) is used, the product of the following three factors:

(A) The representative average use cycle of 322 cycles per year,

(B) One-half the sum of

(*1*) The total per-cycle energy consumption for the normal cycle as defined in 1.3 of Appendix C to this subpart plus

(*2*) The truncated normal cycle as defined in 1.5 of Appendix C to this subpart, each in kilowatt-hours and determined according to 4.4 of Appendix C to this subpart, and

(C) the representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

* * * * *

2. Subpart B of Part 430 is amended by revising paragraphs 1.6 and 2.7 and adding paragraphs 2.2.1, 2.2.2, 2.3.3, 2.6.2, 3.2.3, and 4.3.3 to Appendix C as follows:

**Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers**

* * * * *

1.6 "Water Heating Dishwasher" means a dishwasher which is designed for heating cold inlet water (nominal 50°F) or a dishwasher for which the manufacturer recommends operation with a nominal inlet water temperature of 120°F, and may operate at either of these inlet water temperatures by providing internal water heating in at least one wash phase of the normal cycle.

* * * * *

2.2.1 Dishwashers that operate with an electrical supply of 115 volts. Maintain the electrical supply to the dishwasher within two percent of 115 volts and within one percent of the nameplate frequency as specified by the manufacturer.

2.2.2 Dishwashers that operate with an electrical supply of 240 volts. Maintain the electrical supply to the dishwasher within two percent of 240 volts and within one percent of its nameplate frequency as specified by the manufacturer.

* * * * *

2.3.3 Dishwashers to be tested at a nominal 50°F inlet water temperature. Maintain the water supply temperature between 48°F and 52°F.

* * * * *

2.6.2 Dishwashers to be tested at a nominal inlet water temperature of 50°F or 120°F. The dishwasher shall be tested on normal cycle and the truncated normal cycle with a test load of eight place settings plus six serving pieces as specified in section 6.1.1 of AHAM Standard DW–1. If the capacity of the dishwasher, as stated by the manufacturer is less than eight place settings then the test load shall be that capacity.

2.7 Testing requirements. Provisions in this Appendix pertaining to dishwashers which operate with a nominal inlet temperature of 50°F or 120°F shall apply only to water heating dishwashers.

* * * * *

3.2.3 Dishwashers that operate with a nominal inlet water temperature of 50°F. Measure the machine electrical energy consumption, M, specified as the number of kilowatt-hours of electrical energy consumed during the entire test cycle using a water supply temperature as set forth in 2.3.3 of this Appendix. Use a kilowatt-hour meter having a resolution no larger than 0.001 kilowatt-hour and a maximum error no greater than one percent.

* * * * *

4.3.3 Dishwashers that operate with a nominal inlet water temperature of 50°F. Use the measured value recorded at 3.2.3 as the per-cycle machine electrical consumption, M, expressed in kilowatt-hours per-cycle.

* * * * *

[FR Doc. 87–8390 Filed 4–14–87; 8:45 am]

BILLING CODE 6450-01-M

OL
2

S S
2

P
5

87

M I

federal register

Wednesday
April 15, 1987

Part IV

# Department of the Interior

**Bureau of Indian Affairs**

**Indian Trust Funds; Consultation Process To Procure Collection, Accounting, Advisory Investment Services and Custodial Services; Notice**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Trust Funds; Consultation Process To Procure Collection, Accounting, Advisory Investment Services and Custodial Services

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposal to procure collection, accounting, advisory investment services and custodial services for funds held in trust for Indian individuals, Indian tribes and others and to follow a prescribed consultation process with tribes in this regard.

**SUMMARY:** The Bureau of Indian Affairs, to strengthen its internal management and administration of trust funds, proposes to procure collection, accounting, investment services, and investment custodial services, and will follow a prescribed consultation process with Indian tribes to address their concerns and suggestions.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Interior has broad responsibilities in managing trust funds, including collections, accounting, investments, and disbursements. The Bureau of Indian Affairs carries out these functions except for collection of royalties from Indian oil and gas production which are administered by the Minerals Management Service. Collections are deposited through the banking system into Department of Treasury accounts specified for such trust funds. Treasury is responsible for maintaining all trust fund cash accounts and for all disbursements of such funds upon request by the Bureau of Indian Affairs. The Bureau of Indian Affairs is responsible for investment of the funds in securities authorized by law. The Bureau of Indian Affairs maintains accounts to reflect tribal, individual Indian and other trust interests in funds invested and funds held in Treasury.

#### Background

The Bureau of Indian Affairs has obtained an independent evaluation of the trust fund operation and has considered numerous audits and reports concerning operational deficiencies in the management and administration of Indian trust funds. In response to a request for information published by the Bureau, a wide range of materials has been received on relevant private sector capabilities. It has been determined that the need for improvements in the management and administration of Indian trust funds requires immediate action, that the assistance required is readily available from the private sector, and that there is no likelihood that the government could effectively duplicate, in the time required, the needed assistance already available in the private sector.

#### Proposed Procurement Process

The proposed procurement is intended to streamline the collection process; permit faster concentration of funds for investment; assure accurate and current trust accounting and reporting; strengthen internal cash and investment management controls; improve the level of service to Indian beneficiaries, and strengthen the government's ability to comply with its fiduciary responsibility to Indian beneficiaries. The services to be procured will not restrict or negatively affect any existing tribal or individual Indian interest in the Trust funds. Rather, the services to be procured will be designed to enhance the services rendered to Indian beneficiaries by a modernized collection process, better accountability and current reporting, and improved investment management operations.

The procurement process generally consists of the following steps: developing the request for proposal (RFP); publishing a synopsis of the RFP in the Commerce Business Daily; issuing RFPs as requested, to parties who have an interest in contracting; receiving proposals from prospective contractors; evaluating the proposals from prospective contractors; selecting the successful contractor; negotiating the contract and awarding the contract.

The procurement process will include consultation with Indian tribes by the Bureau of Indian Affairs. However, it should be noted that "consultation is not the same as obeying those who are consulted," *The Hoopa Valley Tribe vs. Joe Christie, et al.*, No. 86–2861 DC# C 86–5557 MHP, United States Court of Appeals for the Ninth Circuit, and that the Bureau retains decision authority as the responsible fiduciary party.

#### Consultation Process

This consultation process is specific to this activity only; that is, the procurement of services to strengthen the Bureau's internal management and administration of Indian trust funds. The consultation process is to provide the opportunity for Indian tribes to be informed, share in relevant information, and, if they so choose, raise and receive responses to concerns and/or suggestions.

The consultation process to be followed by the Bureau of Indian Affairs includes the following principal actions:

(a) A copy of this **Federal Register** Notice with an accompanying letter of explanation from the Assistant Secretary—Indian Affairs will be sent to each tribe.

(b) A draft RFP and other relevant information will be provided through the applicable Bureau Agency Superintendent to each tribe.

(c) Within 30 days from receipt by the tribes of the information package, each Agency Superintendent will conduct a consultation meeting with the respective tribes which their Agency serves. At this meeting the Bureau will present the draft RFP and relevant information, address issues and concerns, and accept written suggestions, recommended alternatives, or other relevant comments. The Superintendent will document the attendance and results of the consultation by written minutes of the meeting as well as those written suggestions, recommendations and concerns presented by the tribes which were not fully addressed in the consultation to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs will provide a written response to the applicable tribes on all issues not fully addressed in the consultation meeting within 30 days of the date the issues are received by the Bureau of Indian Affairs.

(d) All written suggestions, recommendations, and comments received relating to the draft RFP will be considered and changes made as deemed appropriate at the discretion of the Assistant Secretary in preparation of the final RFP.

(e) The final RFP will be provided to each Agency Superintendent. Upon receipt the Agency Superintendent shall advise the tribe of its availability and a copy will be provided to each tribe which requests it.

(f) Pursuant to law, the proposals received from prospective contractors and the evaluation of said proposals will be held in confidence by the Bureau of Indian Affairs. The Assistant Secretary—Indian Affairs will appoint a tribal representative to serve as a consultant to the Evaluation Committee that will be established to review and judge the proposals from prospective contractors.

(g) After appropriate negotiations, a contract reflecting the requirements of the RFP will be awarded. The Assistant Secretary—Indian Affairs will advise each tribe by letter of the contract award and that the contract document is available for review in the Office of the agency Superintendent. The Bureau, through the Superintendent, will also be available for any further discussions on

contract content or implementation as may be requested by the tribes.

**FOR FURTHER INFORMATION CONTACT:** For information and to comment on the consultation process, contact Ms. Betty Wilkinson, Chief, Division of Accounting Management, Bureau of Indian Affairs, at 18th and C Streets, NW., Room 4071—Main Interior Building, Washington, DC 20240; telephone number (202) 343–2578.

**Ross O. Swimmer,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 87–8438 Filed 4–14–87; 8:45 am]

BILLING CODE 4310–02–M

L
2
S
2
P
5
87
M I

federal register

Wednesday
April 15, 1987

Part V

# Environmental Protection Agency

**Dinoseb Pesticide Products; Procedures for Submission of Claims for Indemnification and Requests for Disposal; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-150003; FRL-3187-4]

### Dinoseb Pesticide Products, Procedures for Submission of Claims for Indemnification and Requests for Disposal

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of procedures for requesting indemnification and disposal for pesticide products containing dinoseb.

**SUMMARY:** This Notice announces that EPA is accepting claims for indemnification and requests for disposal concerning dinoseb-containing pesticides under sections 15 and 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136m and q), for products which are now suspended and canceled. This Notice provides information to persons who may be entitled to Federal disposal of excess pesticide stocks and indemnification for losses suffered as a result of regulatory actions taken by EPA with respect to these products. It sets out who may be entitled to indemnification and how claims for Federal disposal and indemnification should be prepared and submitted to EPA. Finally, it requests all current holders of dinoseb stocks whether eligible now for indemnification or not, to provide EPA with information concerning the extent and location of those stocks.

**DATE:** All claims filed as a result of this Notice must be postmarked or received by July 14, 1987, in order to be considered.

**ADDRESS:** All claims filed as a result of this Notice should be mailed to: Special Review Branch (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Michael McDavit, Special Review Branch (TS-767C). Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1787).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 6 of FIFRA authorizes the Administrator to take certain actions to prohibit production, sale, and use of pesticide products that pose a significant risk to human health or the environment. If a pesticide poses a risk that outweighs the benefits of continued use, the pesticide's registration may be canceled and/or suspended.

The Administrator may cancel a pesticide registration if it is found that the pesticide's use generally causes unreasonable adverse effects on the environment. A Notice of Intent to Cancel a product's registration becomes effective within 30 days after the date the registrant receives notice or the date of its publication in the **Federal Register** (whichever is later), unless by that date an adversely affected person requests a hearing. If action is necessary to prevent an imminent hazard to human health or the environment the Administrator may suspend a pesticide registration immediately, and at the same time issue a Notice of Intent to Cancel the registration. A suspension order may immediately halt all use, sale, and distribution of the pesticide in both intrastate and interstate commerce.

Based on information on the adverse human health and environmental risks posed by all dinoseb-containing pesticide products, the Administrator recently utilized this authority. On October 7, 1986, the Administrator issued an emergency suspension of all registrations of pesticides containing the active ingredient dinoseb, as published in the **Federal Register** of October 14, 1986 (51 FR 36634). From the date of October 7, 1986, all persons were prohibited from using, selling, or distributing any pesticide products containing dinoseb.

On October 7, 1986, the Administrator also issued a Notice of Intent to Cancel and deny registrations of all dinoseb-containing pesticide products. In accordance with section 6 of FIFRA, the cancellations were to become effective 30 days after publication of the Notice unless the registrant or other adversely affected person requested a hearing to contest the cancellation of specific registrations. Upon the expiration of the 30-day period, many dinoseb registrations were cancelled by operation of law. However, in those instances where registrants requested hearings, registrations remained in effect (although still suspended) pending the outcome of the administrative hearing.

The Agency is now establishing procedures for filing requests for indemnification and/or disposal with regard to dinoseb products suspended and canceled under section 6 of FIFRA. At this time, the Agency does not have funds allocated to make indemnification payments or to provide Federal disposal; however, the Agency is vigorously pursuing resolution of these issues. Information submitted to the Agency in response to this notice will provide the basis for the Agency's total estimate of the funding required for indemnification and disposal.

Even if a holder of a dinoseb product possesses a product whose registration is not canceled, and therefore not yet eligible for indemnification and disposal, it is incumbent upon such holders to inform the Agency of certain information now. If the registration is eventually canceled, the Agency would be already aware of the quantity and location of all dinoseb stocks. Such key information provided voluntarily at this time would help expedite the processing of all potential disposal and indemnification claims. Failure to report this information will compromise the Agency's ability to secure the appropriate funding for disposal and indemnification.

## II. Requirements for Indemnification and Disposal

Section 15 of FIFRA requires EPA to make indemnity payments to any person who suffers economic loss by reason of suspension and cancellation of a pesticide registration and who satisfies other statutory requirements. The statute provides that indemnification is payable if all of the following conditions are met:

1. The Administrator suspended the registration to prevent an imminent hazard.
2. The registration was canceled.
3. The person owned some quantity of the pesticide immediately before the suspension.
4. The person suffered losses by reason of the suspension or cancellation.

Under section 15(b), the amount of indemnity payment is to be determined on the basis of the cost of the pesticide owned by the person immediately before the suspension, but may not exceed the pesticide's fair market value at that time.

Section 19(a) of FIFRA requires the Administrator to accept at convenient locations for safe disposal those pesticides the registrations of which have been suspended and canceled as specified in section 6(c), if requested by the owner of the pesticide.

### *A. Who Is Eligible for Indemnification and Disposal?*

The right of indemnification extends to "any person" who meets the requirements of section 15 of FIFRA. Section 15 of FIFRA requires the claimant to show that the registrations

of his/her products have been suspended and canceled, and that the claimant has suffered economic loss as a result of either the suspension or the cancellation. Unless a claimant can establish each of these elements, the claimant will not satisfy the statutory criteria.

Because the right of indemnification extends to "any person" who owned suspended and canceled dinoseb pesticide products and who may have suffered economic loss, indemnity payments may be made not only to registrants and producers, wholesale, and retail sellers, but also to individual users who owned the products at the time of suspension.

Similarly, disposal under section 19 of FIFRA may be requested by any owner of excess pesticide stocks, so long as the pesticide registration was suspended and canceled.

The Agency has received a number of petitions under Subpart D of 40 CFR Part 164 to modify the final suspension order to permit use of dinoseb on certain crops. On March 30, 1987, the Administrator issued a Decision and Final Order Modifying Final Suspension of Pesticide Products which Contain Dinoseb. This order and the FIFRA Section 18 emergency exemptions which implement it allow limited use of dinoseb. Holders of suspended and cancelled dinoseb products affected by the March 30 Order (or any additional orders that may be issued in response to the pending Subpart D petitions) should respond to this notice within the 90-day period in the same manner as other holders of dinoseb products, even though the amount of indemnification payable, or the amount of dinoseb for which disposal may be required, may ultimately change as a result of use permitted by such an order.

Holders of the following three categories of products should respond to this notice:

1. *Federally registered dinoseb products, including products with Special Local Need registrations (under section 24(c) of FIFRA), that were suspended and canceled.* On October 7, 1986, the Administrator issued an emergency suspension of all registrations of dinoseb-containing pesticides. The Order immediately stopped all use, sale, and distribution of dinoseb products. On October 7, 1986, the Administrator also issued a Notice of Intent to Cancel all registrations of these products.

Many dinoseb product registrations have been canceled; thus registrants, manufacturers, distributors, retailers, and users of these canceled dinoseb products qualify for indemnification and disposal. Their claims are not affected by the date on which the registration was canceled, provided that the cancellation occurred after the October 7, 1986, Emergency Suspension Order.

Furthermore, users of dinoseb who purchased dinoseb products for their own use may be eligible for indemnification and disposal of any stocks that were in their possession on October 7, 1986.

2. *Dinoseb products with intrastate registrations.* At the time of the October 7, 1986, Emergency Suspension Order, certain products containing dinoseb were being marketed under State pesticide registrations in accordance with EPA regulations in 40 CFR 162.17. On October 7, 1986, EPA issued a concurrent Notice of Intent to Deny application for Federal registration.

Such actions essentially revoked all intrastate registrations of dinoseb. A U.S. Claims Court decision in *Gro-Green Products* v. *United States* (1983) held that in similar circumstances an intrastate registrant of a silvex pesticide product was entitled to indemnification. Accordingly, persons with dinoseb products that had intrastate registrations may also be eligible for indemnification and disposal.

3. *Federally registered dinoseb products that were suspended but not canceled because they were referenced in at least one cancellation hearing request.* Certain pesticide products containing dinoseb have been referenced in one or more requests for a cancellation hearing. The regulatory status of these product registrations remains undecided. As long as the plaintiff(s) defending such product registrations do not withdraw their request during the cancellation hearing, the final regulatory status of these products will remain unknown until the conclusion of the cancellation hearing.

Consequently, these dinoseb products are not eligible for indemnification and disposal at this time. These products are listed separately in Unit III of this Notice. Appropriate amendments may be made to this Notice announcing any changes in eligibility as needed.

Only dinoseb products in categories 1 and 2 may be eligible for indemnification and disposal at this time. Indemnification claims for dinoseb products that fall within either of these two categories must be filed with EPA under the procedures outlined in this Unit of the Notice, no later than July 14, 1987.

Indemnification claims for dinoseb products that fall in category 3 should not be filed at this time. However, holders of category 3 products should notify EPA at this time, using the same idemnification and claim form utilized for category 1 and 2 products, of only the quantity and location of their stocks so that EPA can initiate efforts to arrange for the ultimate indemnification and disposal of these products should their registrations be canceled. See Unit III for instructions.

EPA needs to know what quantity of dinoseb products exist in order to be able to seek funds to cover the costs of indemnification payments and disposal and to make contractual arrangements for disposal. EPA will base its planning and its funding requests for these activities, on the responses to this Notice that it receives by July 14, 1987. EPA plans to deny all claims for indemnification and requests for disposal with respect to any quantities of category 1 or 2 products that have not been reported to EPA by that date. As for category 3 products that may in the future become eligible for indemnification or disposal, EPA plans to seek funds only for those quantities of category 3 products that are identified in responses to this Notice that it receives by July 14, 1987.

Category 3 products should be either returned to the place of purchase or stored safely under the procedures described in Unit V of this Notice. If any of the category 3 products are finally canceled during or at the conclusion of the cancellation hearing, then this Notice may be amended to reflect the eligibility of these products for indemnification and disposal.

*B. Who May File Claims for Indemnification and Disposal?*

Any person who owned some quantity of a Category 1 or 2 dinoseb pesticide product immediately before the registrations were suspended, or who subsequently received an assignment of the original owner's claim or a power of attorney from the original owner to file the claim, may claim indemnification for the product. The claimant or owner of the product may be a registrant, manufacturer, distributor, retailer, or user.

Claims may be filed by persons representing, in some legal capacity, the product owners at the time of suspension or cancellation. Some registrants and suppliers have recalled products from their customers who owned the product at the time of suspension or cancellation. EPA is interested in consolidating as many claims as possible and encourages submission of consolidated claims.

A "power of attorney" is a document which appoints someone other than the actual product owner (the registrant, for

example) as an agent of the product owner. In this instance, such a document merely gives an agent the authority to submit an indemnification claim and receive payment on the owner's behalf. The claim remains that of the pesticide owner.

If the pesticide owner assigns his/her claim to another person, the document of assignment transfers his/her right of indemnification to the other person. The pesticide owner thereafter has no legal interest in the claim. Although the Federal Anti-Assignment of Claims Act would ordinarily bar an assignment of a claim that occurred before the claim was allowed, the Government plans to waive this prohibition against "early" assignments with regard to otherwise valid claims for indemnification under section 15.

However, the Agency intends to waive this prohibition only with respect to an assignee who was either the registrant of the pesticide product in question or a seller of the registered product. The intent of the Government in this regard is to facilitate the recall of dinoseb products by suppliers.

EPA requires information on the current ownership and location of the product, as well as the ownership at the time of suspension or cancellation. For purposes of determining who owned the product at the time of suspension or cancellation, the operative date is October 7, 1986.

The following list gives the registration number and product names of Federally registered dinoseb products (including section 24(c) registrations) and intrastate products, that are currently eligible for indemnification and disposal:

| Company Name/ Registration No. | R. Product Name |
|---|---|
| Union Carbide: 000264-363. | EZ Flo Vega-Kill. |
| FMC Corporation: | |
| 000279-1841 | Niagara Sinox-W Code 8. |
| 000279-1854 | Sinox G 100. |
| 000279-1855 | Niagara Sinox General. |
| 000279-1859 | Niagara Sinox PE Code 10. |
| 000279-2836 | Niagara Sinox Plus Code 31218. |
| 000279-3898 | Sinox Plus. |
| 000279-4037 | Sinox General. |
| SLN CA-780199 | Sinox 0.5 E.C. |
| SLN OK-780053 | Niagara Sinox Plus Code 31218. |
| SLN WA-77043 | Niagara Sinox Plus Code 31218. |
| SLN WA-790079 | Sinox General Contact Weed Killer. |
| Stauffer: 000476-1971 | Dinitro P.E. Weed Killer. |
| Pacific Supply: 000483-142 | Dinitro P.E. |
| Van Waters and Rogers: [illegible]. | Guardsman Premerge Dinitro. |
| Woods. 000682-5596 | Crop King Dy-All. |
| Security Lawn: 000769-365. | Premerge Dinitro Weed Killer. |
| Southern Agric Ins.: 000829-197. | Dinitro General Weed Killer. |
| Valley Chemical: 001063-3299. | [illegible] |
| The Cropmate Company: 001145-95. | Amoco Premerge Dinitro. |
| Puregro: | |
| 001202-205 | Puregro. |
| 001202-244 | Puregro Preharvest Desiccant. |
| SLN CA-780043 | Puregro Contact Weed Killer. |
| SLN ID-84001 | Puregro Preharvest Desiccant. |
| Staples CW Incorporated: 001345-4. | Premerge Dinitro. |
| Universal Cooperative: | |
| 001386-478 | Unico Dinitro PE Weed Killer. |
| 001386-582 | Unico Dinitro T. |
| Blue Spruce: | |
| 001439-175 | Chemox PEG. |
| 001439-190 | Chemox PE-R Pre-merge Type. |
| 001439-231 | Chemox PE- Pre-merge Type. |
| 001439-235 | Chemox 289. |
| Arizona Agro: | |
| 001526-480 | GWK. |
| 001526-494 | [illegible] |
| Griffin: 001812-118 | Premerge Dinitro Weed Killer. |
| Steven Industries: 002459-219. | Master Brand Premerge. |
| Wilbur Ellis: | |
| 002935-353 | Red Top Weed Killer. |
| 002935-6592 | Red Top Weed Killer. |
| 002935-6593 | Red Top Weed Killer. |
| 002935-6594 | Red Top Weed Killer. |
| 002935-6636 | Red Top Dinitro Weed Killer. |
| 002935-6661 | Red Top Dinitro Weed Killer. |
| SLN CA-760004 | Red Top Dinitro Weed Killer. |
| SLN ID-770024 | Red Top Contact Weed Killer. |
| SLN ID-820004 | Red Top Contact Weed Killer. |
| SLN MT-810021 | Red Top Contact Weed Killer. |
| SLN OR-760012 | Red Top Contact Weed Killer. |
| SLN OR-780048 | Red Top Contact Weed Killer. |
| SLN OR-810044 | Red Top Contact Weed Killer. |
| SLN WA-760013 | Red Top Contact Weed Killer. |
| SLN WA-770043 | Red Top Contact Weed Killer. |
| SLN WA-800068 | Red Top Contact Weed Killer. |
| SLN WA-830025 | Red Top Contact Weed Killer. |
| Superior: 003122-7195 | Superior Yellow Top. |
| Laroche Incorporated: [illegible] | USS Premerge Dinitro. |
| Schell: 003468-10 | Schell Contact Weed Killer. |
| DH Industries: 003797-4 | Right-A-Way Weed Killer Semi-Concentrate. |
| White House: 003951-112 | Eagle River DNBP Technical. |
| Micro Chem. Company: 004841-50. | Premerge Dinitro Weed Killer. |
| Royster Company: 004904-334. | Chem-Pest Dinitro Weed Killer. |
| Helena: | |
| 005905-217 | Helena Hel-Fire. |
| 005905-7584 | Spark. |
| 005905-7585 | Spark. |
| 005905-7586 | Spark. |
| 005905-7587 | Spark. |
| 005905-7588 | Spark. |
| 005905-7593 | Spark. |
| 005905-7599 | Spark. |
| 005905-7600 | Spark. |
| 005905-7601 | Spark. |
| 005905-7602 | Spark. |
| 005905-6887 | Spark. |
| 005905-7888 | Spark. |
| 005905-7889 | Spark. |
| 005905-7890 | Spark. |
| 005905-7891 | Spark. |
| 005905-7892 | Spark. |
| 005905-7893 | Spark. |
| 005905-7894 | Surge Growth Stimulant. |
| 005905-7895 | Spark. |
| SLN SC-820002 | Helena Hel-Fire. |
| Ansul: | |
| 006308-3010 | Ancrack Herbicide. |
| 006308-3011 | Ancrack Herbicide. |
| 006308-3012 | Ancrack Herbicide. |
| 006308-3013 | Ancrack Herbicide. |
| 006308-3014 | Ancrack Herbicide. |
| Soil Service: 006973-3597 | Super Contact Weed Killer. |
| J.R. Simplot: | |
| 007001-77 | Best Contact Weed Killer. |
| 007001-327 | Oxy Dinitro. |
| 007001-4378 | Contact Weed Killer. |
| 007001-7746 | Contact Weed Killer. |
| SLN CA-760034 | Best Contact Weed Killer. |
| SLN CA-780137 | Best Contact Weed Killer. |
| SLN OR-810072 | Best Contact Weed Killer. |
| SLN OR-790023 | Best Contact Weed Killer. |
| SLN WA-7909038 | Best Contact Weed Killer. |
| Retzloff: 007472-7- | DNBP—3s Herbicide. |
| Agway: 008590-26 | Agway Toss-Film Premerge. |
| Cleveland [illegible] Chemical: [illegible] | Premerge Dinitro Weed Killer. |
| Wilson Lee and Company: 009220-1. | Dinitro (DNBP) Weed Killer. |
| Trans Chemic: 009618-13 | TCI—DNBP. |
| Riverside/Terra: | |
| 009779-1 | Dinitrol. |
| 009779-186 | Brand Premerge. |
| Landia Chemical Company: 009859-5637. | Scathe Peanut Herbicide. |
| Gowan: | |
| 010163-28 | Prokil General WS Pre-merge. |
| 010163-6122 | Prokil General Weed Killer. |
| Rockwood: 010226-3751 | Rockwood Brand Desiccant. |
| Feed Service: | |
| 010914-9304 | R-15 Deseccan. |
| 010914-9305 | R-15 Deseccan. |
| Britz Fertilizer: 010951-9810. | Britz Contact Weed Killer. |
| Russell Chemical: 011159-7329. | Dynitox 300. |
| Bakersfield AG: | |
| 011369-8775 | Bac Dinitro Weed Killer. |
| 011369-8793 | Bac Contact Weed Killer |
| SLN CA-780171 | Bac Weed Killer. |
| Brown & Bryant: 011373-6981. | Beebee Weed Killer-D. |
| Western Farm Service: | |
| 011656-1 | Contact Weed Killer. |
| 011656-5767 | Contact Weed Killer. |
| SLN CA-780094 | Contact NCS. |
| SLN CA-780122 | Western Farm Service Contact Weed Killer. |
| SLN CA-780137 | Western Farm Service Contact Weed Killer. |
| Simplot J.R.: | |
| 011682-11 | Sim-Chem Dinitro Weed Killer |
| 011682-12 | Sim-Chem Vine Killer. |
| Apollo Enterprises: 013166-13. | Dinitro 3. |
| Platte Chemical: | |
| 034704-176 | Clean Crop Dinitro—GS 3 Weed Killer. |
| 034704-244 | Clean Crop Dinitro 3-B Herbicide. |
| 034704-245 | Clean Crop Dinitro 5-B Herbicide. |
| 034704-246 | Clean Crop Crop Technical [illegible] |
| 034704-253 | Clean Crop Contact Weed Killer. |
| 034704-3860 | Clean Crop Top-Kill. |
| Hi-Plains: 035965-3007 | Spirt 44 D. |
| Brea AG Service: 036998-4464. | Brea Contact Weed Killer. |
| AFC Company: 037177-8221. | AFC Contact Weed Killer. |
| AG-Chem: 037790-8343 | [illegible] |
| Cornell University; 038655-10431. | NYS—Dewey—(DNBP) Premerge. |
| Vertac Chemical: | |
| 039511-6817 | Selective Weed Killer. |
| 039511-6818 | Selective Weed Killer. |
| 039511-6819 | Selective Weed Killer. |
| 039511-6820 | Selective Weed Killer. |
| 039511-6821 | Selective Weed Killer. |
| 039511-6822 | Selective Weed Killer. |
| 039511-6823 | Premerge. |
| 039511-6824 | Premerge. |
| 039511-6825 | Premerge. |
| 039511-6826 | Premerge. |
| 039511-6827 | Premerge. |
| 039511-6828 | Premerge. |
| 039511-6829 | Premerge. |
| 039511-6830 | Premerge. |
| 039511-6831 | Premerge. |
| 039511-6832 | Premerge. |
| 039511-6833 | Premerge. |
| 039511-6834 | Premerge. |
| 039511-6835 | Premerge. |
| 039511-6836 | Premerge. |
| 039511-6837 | Premerge. |
| 039511-6838 | Premerge. |
| 039511-6839 | Premerge. |
| 039511-6849 | General Weed Killer. |
| 039511-6850 | General Weed Killer. |
| 039511-6851 | General Weed Killer. |
| 039511-6853 | General Weed Killer. |
| SLN AL-820004 | Premerge 3 Dinitro Amine Herbicide. |

| Company Name/ Registration No. | R. Product Name |
|---|---|
| SLN AR-820026 | Premerge 3 Dinitro Amine Herbicide. |
| SLN CA-810014 | Premerge 3 Dinitro Amine Herbicide |
| SLN CA-820107 | Premerge 3 Dinitro Amine Herbicide. |
| SLN IL-820019 | Dow General Weed Killer. |
| SLN IL-820020 | Premerge 3 Dinitro Amine Herbicide. |
| SLN IN-820005 | Premerge 3 Dinitro Amine Herbicide. |
| SLN ME-820001 | Dow General Weed Killer. |
| SLN MO-820007 | Premerge 3 Dinitro Amine Herbicide. |
| SLN NC-820004 | Premerge 3 Dinitro Amine Herbicide. |
| SLN NC-820017 | Premerge 3 Dinitro Amine Herbicide. |
| SLN OR-820022 | Dinitro Weed Killer 5. |
| SLN OR-820023 | Dinitro Weed Killer 5. |
| SLN OR-820024 | Dow General Weed Killer. |
| SLN OR-820025 | Dow General Weed Killer. |
| SLN PA-820012 | Dow General Weed Killer. |
| SLN VA-820007 | Premerge 3 Dinitro Amine Herbicide |
| SLN VA-820026 | Premerge 3 Dinitro Amine Herbicide |
| SLN WA-810075 | Dinitro Weed Killer 5. |
| SLN WA-820006 | Dow General Weed Killer. |
| SLN WA-820007 | Dow General Weed Killer. |
| SLN WA-820008 | Dinitro Weed Killer 5. |
| SLN WA-820009 | Dinitro Weed Killer 5. |
| Santa Paula. | |
| 043906-7330 | Russell Chemical Contact WK |
| SLN CA-760016 | Santa Paula Chemical Contact. |
| Kaw Valley: | |
| 044215-87 | Miller Dinitro Weed Killer. |
| 044215-88 | Chemox General Weed Killer. |
| 044215-89 | Tide Weed Pre-merge Type. |
| 044215-90 | Baird's N-D Herbicide. |
| 044215-125 | AGSCO Skin-Set A Herbicide for Potato Vine Killing. |
| SLN CA-790013 | Tide Weed-Aside Pre-Emerge Type. |
| Ida Incorporated: | |
| 045115-28 | Dinitro 2.5. |
| 045115-47 | Dinitro 3 Dinitro Weed Killer. |
| 045115-52 | IDA Inc. Dinitro 5. |
| BFC Chemicals: 045639-118. | Tunco Enide Dinitro E.C. |
| Micro-Flo: | |
| 051036-54 | Fasco Dinitro Weed Killer. |
| 051036-68 | Premerge Dinitro Weed Killer. |
| Crystal Chemical Company: | |
| SLN CA-770536 | Dinitro General Herbicide. |
| SLN CA-780036 | Dinitro General Herbicide. |
| SLN CA-780085 | Dinitro HCS. |
| SLN CA-780200 | Dinitro General Herbicide. |
| Thompson-Hayward Chemical Company: SLN CA-780177. | Contact Weed Killer. |
| Toxo Spray Dust, Inc.: SLN CA-780206 | Toxo Contact Weed Killer. |
| Mid America Chemical Company, Inc.: | |
| SLN CA-790227 | Dinitro Contact Weed Killer. |
| SLN CA-790228 | Fyrbell Dinitro Weed Killer. |
| Unroyal Chemical Company, Inc.: | |
| SLN AL-810028 | Uniroyal Dinoseb 3. |
| SLN AR-800018 | Uniroyal Dinoseb 3. |
| SLN AR-840004 | Uniroyal Dinoseb 3. |
| SLN ID-830010 | Uniroyal Dinoseb 3. |
| SLN ID-830013 | Uniroyal Dinoseb 3. |
| SLN ID-830031 | Uniroyal Dinoseb 3. |
| SLN ID-830032 | Uniroyal Dinoseb 3. |
| SLN ID-830032 | Uniroyal Dinoseb 3. |
| SLN ID-840003 | Uniroyal Dinoseb 3. |
| SLN LA-800034 | Uniroyal Dinoseb 3. |
| SLN MS-800045 | Uniroyal Dinoseb 3. |
| SLN MO-810021 | Uniroyal Dinoseb 3. |
| SLN OR-830002 | Uniroyal Dinoseb 3. |
| SLN OR-830028 | Uniroyal Dinoseb 3. |
| SLN OR-830029 | Uniroyal Dinoseb 3. |
| SLN OR-830031 | Uniroyal Dinoseb 3. |
| SLN OR-840003 | Uniroyal Dinoseb 3. |
| SLN OR-840004 | Uniroyal Dinoseb 3. |
| SLN TN-810014 | Uniroyal Dinoseb 3. |
| SLN WA-790068 | Uniroyal Dinoseb 5. |
| SLN WA-810102 | Uniroyal Dinoseb 3. |
| SLN WA-820042 | Uniroyal Dinoseb 3. |
| SLN WA-820068 | Uniroyal Dinoseb 3. |
| SLN WA-830014 | Uniroyal Dinoseb 3 |
| SLN WA-830015 | Uniroyal Dinoseb 3. |
| SLN WA-840021 | Uniroyal Dinoseb 3. |
| SLN WA-840045 | Uniroyal Dinoseb 3 |
| SLN WA-840046 | Uniroyal Dinoseb 3. |
| Drexel Chemical Company: | |
| SLN AR-830013 | Ancrack Herbicide. |
| SLN DE-830001 | Ancrack Herbicide. |
| SLN ID-830012 | Drexel Dynamyte 3. |
| SLN LA-840004 | Ancrack Herbicide. |
| SLN NV-860008 | Dynamyte 5 |
| SLN OK-830016 | Ancrack Herbicide. |
| SLN TN-840001 | Ancrack Herbicide. |
| SLN WA-830016 | Drexel Dynamyte 3. |
| SLN WA-840062 | Dynamyte 5 Dinitro Weed Killer. |
| Dow Chemical U.S.A.: | |
| SLN AZ-770033 | Dow Selective Weed Killer. |
| SLN AZ-800032 | Dow Selective Weed Killer. |
| SLN AR-800013 | Premerge 3 Dinitro Amine Herbicide. |
| SLN CA-760132 | Dow General Weed Killer. |
| SLN CA-780137 | Dow General Weed Killer. |
| SLN CA-780160 | Premerge 3 Dinitro Amine Herbicide. |
| SLN CA-790043 | Dow General Weed Killer |
| SLN FL-790016 | Premerge 3 Dinitro Amine Herbicide. |
| SLN IN-770002 | Premerge 3 Dinitro Amine Herbicide. |
| SLN ME-780004 | Dow General Weed Killer. |
| SLN MD-790014 | Premerge 3 Dinitro Amine Herbicide. |
| SLN NY-780026 | Dow General Weed Killer. |
| SLN PA-790017 | Dow General Weed Killer. |
| SLN WA-790071 | Dow General Weed Killer. |
| Baird and McGuire, Inc.: SLN NV-810005. | Baird's Contact Weed Killer. |

The person filing the claim should find the product(s) for which he/she is claiming indemnification and disposal assistance on the list, and complete the claim form (including the product registration number) as described in Unit II.C. below.

*C. What Information Must Be Submitted?*

1. *Claim form and supporting documentation.* EPA has prepared a form for filing claims and an instruction sheet to accompany it. This form can be obtained from EPA Regional offices listed in this notice.

It is the responsibility of the person submitting an indemnity claim to submit the required documentation to support the claim. The instructions accompanying the claim form indicate what type of supporting documentation would be accepted for each element of the claim. For example, all individuals filing claims must submit evidence of the cost to the claimant in either producing or acquiring the product. The cost is limited to the direct cost of the product and does not include such incidental items as transport or storage costs. For registrants/manufacturers holding inventories of a product that could not be sold, production records showing cost of production will be acceptable. Distributors, wholesalers, retailers, and users should submit purchase invoices, purchase receipts, or notarized affidavits. The product's location must be identified.

If disposal or reprocessing has already occurred, evidence of legal disposal is also required. Such evidence must include invoices or waste manisfests from facilities permitted to handle hazardous wastes. In such a case, indemnity payments may be granted for the cost of the product but not for the cost of disposal or reprocessing.

The form also provides a way to request disposal of a product, whether or not indeminification is requested. All information requested on the form regarding quantity, unit number and size, and other facts pertinent to disposing of excess product must be submitted in order for the product to be eligible for Federal disposal.

If a holder of a dinoseb product has resold any existing stocks (for example, for use for a non-pesticidal purpose, for use in another country, or other purposes), the holder should call the contact person listed in this Notice under "FOR FURTHER INFORMATION CONTACT" for additional instructions prior to submitting a claim. This is necessary because the indemnification claim must reflect any proceeds received from the resale of existing stocks.

Any person submitting a claim as a legal representative of another person must submit evidence which establishes his/her authority to file the claim and receive payment in satisfaction of the claim on behalf of the owner of the prodcut. A person submitting a claim as an assignee must submit evidence of assignment of the claim.

2. *Business records verification.* Manufacturers, registrants, distributors, and any other claimants that normally maintain business records are permitted to consolidate the supporting information required to accompany the claim form and to verify the contents of the claim by submitting an auditor's report or a schedule supported by an independent certified accountant's statement verifying the validity of the schedule. Each element of the claim, such as cost per unit of product or quantity of product owned at the time of suspension, must be reviewed and verified by the independent auditor if verification for the complete contents of the claim is being provided through the report or statement. If the independent review is being conducted for only one element of the claim, such as a manufacturer's cost of production per unit of product, supporting documentation must be submitted for all other elements of the claim. EPA retains the right to request submission of the information that formed the basis for the

audits or reports in order to verify the validity of the information submitted.

3. *Composite claim lists.* Registrants or suppliers who have recalled a product from their customers and who are assignees or representatives of those customers may submit composite lists for separate elements of the claim form identifying the product, product owner, quantities and units of pesticides, and other pertinent information indicated on the claim form. Documentation of the assignment, power of attorney, or other legal authorization from each original owner of the product listed in such composite list must be submitted. The legal documentation should identify the parties and product involved. If the pesticide is still owned by anyone other than the person completing the claim form, proof of each element of the claim must be submitted on behalf of the owner. For example, if a registrant has recalled material and is filing the claim by power of attorney for the owner, the registrant must submit verification of ownership at the time of suspension, the quantity of product returned to the registrant by the owner, and the cost of the product to the owner. If, on the other hand, the registrant is filing the claim under an assignment, the registrant should provide the information and verification required by the claims form, including the cost of repurchase of the product.

4. *Confidential business information.* As a general matter, businesses may assert claims of business confidentiality covering part or all of the information submitted through the claim form, in the manner described in 40 CFR 2.203(b). Any such assertions of confidentiality of business information must be supported by documentation of the reasons why disclosure of the information is likely to cause substantial harm to the competitive position of the business. The information covered by the assertion will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2. If no such assertion and supporting documentation accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the business. See 40 CFR 2.203(a)(2).

EPA has determined that it will not afford confidential treatment to certain information requested on the claim form because it must be disclosed to potential contractors in order to arrange for disposal of the dinoseb pesticides. Confidentiality claims should not be applied to the following: the type and quantity of pesticide product, the unit size of containers, and the product's location. If the Agency receives any confidentiality claims for this information, the claim for indemnification and disposal will not be considered and will be returned to the claimant.

5. *EPA investigations.* The Agency plans to conduct random investigations of claims submitted for the purpose of establishing their veracity. In verifying claims, the Agency may seek to enter premises to examine any dinoseb pesticide products being stored pending disposal to assure that they are being stored in conformance with the guidelines set forth herein, to examine records relevant to the claim, or to conduct whatever other examinations are necessary to audit the claim.

6. *Signing claim required.* The claimant or authorized representative must sign the claim form. Signature of the form constitutes agreement to the following:

a. That all statements made and information provided in the claim are true and correct to the best of the claimant's knowledge, and that the amount of the claim is an accurate statement of the cost of the product.

b. That the claimant had no knowledge of facts which in themselves, showed that the dinoseb pesticide did not meet Federal registration requirements.

c. That acceptance of any payment by EPA constitutes full satisfaction and final settlement of the claim.

d. That by submission of the claim, the claimant grants permission to authorized agents of the U.S. Government to enter premises where records or products are retained to conduct whatever inspections, audits, or examinations are necessary to verify the contents of the claim.

e. That by submission of the claim, the claimant waives any claim for confidential treatment of certain types of information.

f. That the claimant has received no other payment for the cost of the pesticides for which indemnification is claimed and that should claimant receive such other payment, claimant agrees to promptly reimburse EPA in such amount up to and including the full amount of the indemnification payment made under this program.

g. That ownership of and responsibility for pesticide products for which indemnification payments are made under this program remains with the claimants and/or holders of the material unless and until EPA accepts the material for disposal under section 19 of FIFRA.

h. That neither payment of indemnification under section 15 of FIFRA nor acceptance of pesticides for disposal under section 19 of FIFRA in any way constitutes a finding or warranty by the United States with respect to the proper or safe storage, packaging, handling, transport, or disposal of such products by the owners or holders of the products or by agents, employees, or other persons acting in their behalf.

i. If the claim is filed by an assignee, that the United States may assert against the assignee any defenses, or right of setoff or counterclaim, applicable against the person who assigned the claim.

### *D. Where Can a Claim Form Be Obtained?*

Copies of the claim form can be obtained from EPA Regional Offices. The addresses, telephone numbers, and the States located within each EPA Region are as follows:

*Regional Office Contact Person for Dinoseb Indemnification and Disposal Information/Claim Forms:*

1. Gerald M. Levy, EPA—Region I, John F. Kennedy Building, Rm. 2203, Boston, MA 02203, (617–565–3744). (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)

3. Ernest Regna, EPA—Region II, Woodbridge Avenue, Edison, NJ 08837, (201–321–6740). (New Jersey, New York, Puerto Rico, and Virgin Islands.)

3. Carole Dougherty, EPA—Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215–597–9870). (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia).

4. H. Kirk Lucius, EPA—Region IV, 345 Courtland St., NE., Atlanta, GA 30365, (404–347–3621). (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.)

5. Phyllis Reed, EPA—Region V, 230 Dearborn St., Chicago, IL 60604, (312–886–6006). (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.)

6. Norman E. Dyer, EPA—Region VI, 1201 Elm St., Dallas, TX 75270, (214–767–2734). (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.)

7. Leo Alderman, EPA—Region VII, 324 East 11th St., Kansas City, MO 64106, (816–374–3036). (Iowa, Kansas, Missouri, and Nebraska.)

8. Dallas Miller, EPA—Region VIII, One Denver Place, 999 18th St., Suite 1300, Denver, CO 80202–2413, (303–293–1747). (Colorado, Montana, North

Dakota, South Dakota, Utah, and Wyoming.)

9. Laurie Perrot, EPA—Region IX, 215 Fremont St., San Francisco, CA 94105, (415–974–8071). (Arizona, California, Hawaii, Nevada, American Samoa, and Guam.)

10. Lyn Frandsen, EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, (206–442–4768). (Alaska, Idaho, Oregon, and Washington.)

*E. Where and When Must the Claim be Filed?*

All claims for indemnification for any Category 1 or 2 dinoseb product whose registration is listed in this Notice as having been suspended and canceled must be submitted to the address listed at the beginning of this Notice, and must be received within 90 days from publication of this Notice in the **Federal Register**. All claims received after that date will be denied.

EPA is imposing this time limitation on filing of claims because the information provided through the claim forms will enable the Agency to estimate the funds required for disposal and indemnification of the dinoseb products. Until the Agency is able to estimate with some certainty the total cost required for each activity, it cannot pursue obtaining the necessary funds for indemnification or disposal.

If a claim is filed within the prescribed time period, but the Agency requests supporting documentation not included with the original claim, an appropriate period will be allowed for submission of the additional information required for consideration of the claim. If the requested information is not submitted within the grace period provided, and a response is not received indicating why the information cannot be submitted within that period, the claim will be denied.

A claim may be amended at any time before final action by EPA. All amendments must be submitted in writing and signed by the claimant or his/her authorized agent or legal representative.

*F. How Will Claims be Processed?*

Upon receipt of a claim, EPA will assign it a claim number and all correspondence regarding the claim will reference that number. All claimants will be notified of receipt of the claim and, if necessary, of any additional information or verification required for consideration of the claim. If a claimant is unable to provide the documentation required for consideration of his/her claim within the prescribed time period, the claim will be disallowed and will be returned to him/her. EPA plans to conduct random audits of claims submitted, and may reject claims if investigators are not permitted to enter the claimant's premises or are otherwise impeded in conducting an audit.

EPA's determinations regarding eligibility of claims and amount of indemnity payable shall be administratively final.

**III. Information to be Submitted by Registrants and List of Products Not Eligible for Indemnification and Disposal at This Time**

The following list gives the Registration Number and product names of Federally registered dinoseb products that fall in category 3 as described in Unit II.A. of this Notice. These products are not eligible for indemnification and disposal at this time because such products have not been canceled.

| Company name Registration No. | Product name |
|---|---|
| Unroyal Chemical Company, Inc.: | |
| [illegible]-75 | Dyanap. |
| [illegible]-100 | Dyanap (H.W.). |
| 000400-138 | Unroyal Dinoseb-1. |
| 000400-139 | Unroyal Dinoseb-3. |
| 000400-140 | Unroyal Dinoseb-5. |
| 000400-147 | Ethyl DNBP. |
| 000400-152 | DNBP. |
| 000400-158 | Unroyal Dinoseb-3.3. |
| 000400-174 | Dinitro Weed Killer #5. |
| 000400-180 | TH Dinitro Technical |
| [illegible]-231 | DE Pester Dinitro Weed Killer. |
| 000400-302 | Klean Krop |
| 000400-327 | Salvage Dinitro Weed Killer. |
| S.N.P.E.: | |
| 035134-1 | Dinoseb. |
| A.H. Marks and Company, Ltd.: | |
| 015440-1 | Technical DNBP. |

Cedar Chemical Corporation:

| New No./Old No. | Product Name |
|---|---|
| 056077-3/039511-4 | Dinoseb Technical. |
| 056077-4/039511-10 | Dinitro Weed Killer |
| 056077-5/039511-11 | Dinitro Weed Killer 5. |
| 056077-11/039511-85 | [illegible] Weed Killer. |
| 056077-12/039511-86 | General Weed Killer. |
| 056077-13/039511-87 | Premerge 3. |
| 056077-14/039511-88 | Premerge. |
| 056077-15/039511-89 | Dinitro 3 Weed Killer. |
| 056077-16/039511-90 | Premerge Plus. |
| 056077-17/039511-91 | Dinitro General. |
| 056077-21/039511-112 | Technical DNBP. |
| 056077-23/039511-114 | [illegible] Weed Killer (Technical). |
| 056077-24/039511-115 | DN-289. |
| 056077-25/039511-116 | Dinoseb. |
| Drexel ChemicalCompany: | |
| 019713-23/006308-73 | [illegible]. |
| 019713-28/006308-79 | Dynamyte 300. |
| 019713-29/006308-80 | Dynamyte 5. |
| 019713-33/006308-89 | Dynamyte T. |
| 019713-78/inapplicable | Dynamyte 2.5. |
| 019713-82/inapplicable | Dynamyte 3. |
| 019713-110/inapplicable | DNBP Technical. |
| 019713-203/001022-442 | Premerge Dinitro Weed [illegible]. |

As noted in Unit II.A. of this Notice, EPA plans to seek funds for indemnification and disposal in an amount sufficient to cover only those stocks of dinoseb products identified by responses to this Notice received within 90 days from publication in the **Federal Register**.

Registrants, manufacturers, distributors, retailers, and users of dinoseb products listed in this Unit who may in the future wish to claim indemnification or request disposal should, therefore, complete specific parts of the form described earlier in this Notice (regarding quantity and location of existing stocks). Copies of the form can be obtained from EPA Regional Offices listed in Unit II.D. of this Notice.

**IV Interim Storage and Disposal of Pesticide Stocks**

Section 19(a) of FIFRA requires the Administrator to accept at convenient locations for safe disposal those pesticides the registrations of which have been suspended and canceled as specified in section 6(c) of FIFRA. However, before the owner of a pesticide request acceptance by the Administrator for disposal, he/she must make every reasonable effort to return the material to the manufacturer, distributor, or other agents capable of relabeling, recovering, recycling, or reprocessing the material. See 40 CFR 165.4.

EPA encourages registrants suppliers to take back suspended or canceled dinoseb products from their customers. Most registrants have already called much of the existing stock. One registrant has also informed EPA that his company markets dinoseb for a non-pesticidal use (as an antioxidant). EPA encourages all registrants and manufacturers that are capable of recalling or reprocessing their dinoseb pesticide products to do so. If the product is processed, the amount of indemnity entitled to that person may be affected.

In most cases, once a pesticide is suspended or canceled and can no longer be used as a pesticide, it must either be recycled for some other use or disposed of in accordance with the Resource Conservation and Recovery Act (RCRA) or other applicable State and Federal regulations. To the extent that registrants, sellers, or individuals are currently holding unused dinoseb pesticide stocks, certain storage practices must be followed. In particular, if the unused dinoseb pesticide stock is being accumulated for recycling, the registrant, seller, or individual holding the product should store the material in accordance with

recommended rocedures for storage described in 40 CFR 165.10. In short, these procedures for storage recommend that the material be stored on pallets or similar raised platforms in a dry, well-ventilated, and separate room, building, or covered area with a concrete floor, where fire protection is provided. Movement or handling should be kept to an absolute minimum. Details of these recommended procedures will be provided with the claim form as supplemental instructions.

Containers should be stored with the label plainly visible. If any of the containers are not in good condition, the contents should be placed in a suitable container and properly relabeled. All containers should be checked carefully to ensure that the lids and bungs are tight and the integrity is satisfactory. Containers should be checked regularly for corrosion and leaks. If such is found, the container should be transferred to a sound, suitable, larger container and be properly labeled.

The dinoseb storage area must be maintained to mitigate the threat or the potential threat of release. In the event of a release, the released product becomes a waste (unless it is cleaned up and restored for recycling) which is subject to regulation under Subtitle C of RCRA. In particular, the person storing the dinoseb product that has been spilled must either clean up the spill and properly store, treat, or dispose of it in accordance with the appropriate hazardous waste rules or obtain a hazardous waste disposal permit from EPA (or the State if the State is authorized to carry out the hazardous waste program) if the spill or release has not been cleaned up. Dry, absorbent materials such as absorptive clay, sand, sawdust, vermiculite, oil-dry, kitty litter, dry rags, or paper should be kept on hand for use as appropriate for the emergency cleanup of spills or leaks. Materials that are used for this purpose and become contaminated with dinoseb are themselves hazardous wastes and must be managed as such. If the holder of the product takes no action after a spill or release, EPA will take appropriate action, including any enforcement action. In addition, the holder of the product is also subject to liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The Agency may perform inspection of materials in storage to determine if the above conditions have been met. Further technical advice may be obtained from the EPA Regional Office contacts listed in this Notice or from Judy Heckman or Steven Johnson at EPA Headquarters (703–557–7695).

As indicated above, disposal of certain unused pesticide products may be subject to regulation as hazardous wastes under RCRA. However, before materials can be hazardous wastes under RCRA, they must first be solid wastes. Remaining stocks of canceled pesticide products are considered solid wastes subject to RCRA if they have been "discarded" or are intended for discard. In this context, "discarded" means abandoned. See 40 CFR 261.2[a](2)(i) and 261.33, 50 FR 637, January 24, 1985.

Accordingly, if a person is accumulating unused dinoseb product for disposal, he/she must comply with the requirements under Subtitle C of RCRA as specified in 40 CFR Parts 124, 261 through 266, and 270. (Details of the storage requirements are provided with the claim form.) Under the existing hazardous waste rules, unused dinoseb product is regulated when discarded in commercial grade, technical grade, or off-specification form or if dinoseb is the sole active ingredient in the formulation. Discarded formulations containing dinoseb as one of a number of active ingredients are not presently considered to be hazardous wastes unless they exhibit a characteristic of hazardous waste. A formulation is considered hazardous if it has one or more of the following characteristics: it is easily combustible; it dissolves metals or other materials, or burns the skin; or it is unstable or undergoes rapid or violent chemical reaction with water or other materials. Persons accumulating or possessing dinoseb in less than the quantities specified in these regulations (1 kilogram or about 2 pounds per month) may be excluded from RCRA regulation. For persons interested in disposing of their excess stocks of dinoseb pesticides, the Agency has identified a number of professional waste disposal firms. A list of these firms is available from EPA Regional Offices, for which addresses are listed in Unit II.E. It should also be noted that the Agency is in the process of obtaining contractor services to dispose of dinoseb products, and will announce the disposal operations as soon as possible.

Under the hazardous waste rules, empty containers (as defined in 40 CFR 261.7) with dinoseb residues are exempt from regulation. Specifically, containers that once contained dinoseb are considered to be empty if they are triple-rinsed with an appropriate solvent (or cleaned by a method of equivalent effectiveness) or the container's inner liner has been removed (40 CFR 261.7(b)(3)). However, the rinsate that is generated from this operation is considered a hazardous waste under RCRA and must be managed in accordance with the appropriate management standards unless the person conducting the operation is a farmer. Specifically, a farmer disposing of such rinsate from a dinoseb container that was used on his/her own farm is not subject to regulation under RCRA for those wastes provided he/she triple rinses each emptied dinoseb container and disposes of the dinoseb residues on his/her own farm in a manner consistent with the disposal instructions on the product label.

(7 U.S.C. 136m and q)

Dated: April 8, 1987.

Victor J. Kimm,

*Acting Assistant Administrator, Office of Pesticides and Toxic Substances.*

[FR Doc. 87–8421 Filed 4–14–87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
April 15, 1987

Part VI

# Department of Education

34 CFR Part 650

Jacob K. Javits Fellows Program; Proposed Rule and Invitation for Applications for Fiscal Year 1987; Notice

## DEPARTMENT OF EDUCATION

### 34 CFR Part 650

### Jacob K. Javits Fellows Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations for the Jacob K. Javits Fellows Program (formerly the National Graduate Fellows Program). These regulations are needed to implement the provisions of the Higher Education Amendments of 1986.

**DATES:** Comments must be received on or before May 15, 1987. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to: Allen P. Cissell, Director of the Jacob K. Javits Fellows Program, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Mail Stop 3327, ROB–3) 400 Maryland Avenue, SW., Washington, DC 20202, telephone (202) 732–4415.

A copy of any comments that concerns information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Allen P. Cissell, Director of the Jacob K. Javits Fellows Program, telephone (202) 732–4415.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Jacob K. Javits Fellows Program is authorized under Title IX, Part C, of the Higher Education Act of 1965, as amended. The statute provides for fellowships to be awarded to students to study at the doctoral level in selected fields of the humanities, arts and social sciences.

Many of the responsibilities under this program regarding procedures and criteria for selection of fellows and general policies for the program are vested in the Fellowship Board. The Fellowship Board, composed of individual representatives of both public and private institutions of higher education and formerly a Presidentially-appointed Fellowship Board, is now appointed by the Secretary of Education. The regulations do not establish rules on matters for which the Fellowship Board has responsibility.

#### Explanation of Changes

Several changes that were made in the program by the Higher Education Amendments of 1986 (Pub. L. 99–498):

- The 1986 legislation has changed the name of the National Graduate Fellows Program to the Jacob K. Javits Fellows Program.
- The 1986 legislation requires the Secretary to pay $6,000 to each institution for each individual awarded a fellowship and enrolled at such institution.
- The Secretary has determined that the financial need on which the stipend levels are based will be calculated under the provisions of Part F, Title IV of the Higher Education Act, with exceptions as noted for fellows selected in 1986.
- The 1986 legislation requires that stipends shall provide a level of support comparable to that provided by federally funded graduate fellowships in the science and engineering fields. The Secretary has determined that the stipends as calculated under § 650.42 of these proposed regulations are comparable to those provided by federally-funded graduate fellowships in science and engineering.

#### Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This program awards fellowships to students for study at the doctoral level in selected fields. Individuals are not considered to be small entities under the Regulatory Flexibility Act.

#### Paperwork Reduction Act of 1980

The information collection requirements contained in §§ 650.35 and 650.44 of these regulations will be sent to the Office of Management and Budget (OMB) for review, as required by section 3504(h) of the Paperwork Reduction Act of 1980, and will become effective after they have been approved by OMB.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention Joseph F. Lackey, Jr.

#### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the office of the Jacob K. Javits Fellowship Program, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Mail Stop 3327, ROB–3), 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

#### Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### List of Subjects in 34 CFR Part 650

Colleges and universities, Education, Grant program-education, Fellowships, Reporting and recordkeeping.

Dated: April 9, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Part 650 of Title 34 of the Code of Federal Regulations as follows:

## PART 650—JACOB K. JAVITS FELLOWS PROGRAM

1. The authority citation for Part 650 is revised to read as follows:

**Authority:** 20 U.S.C. 1134h–1134k, unless otherwise noted.

2. All references to "National Graduate Fellows Program" throughout Part 650 are revised to read "Jacob K. Javits Fellows Program".

3. In § 650.1, the current text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

**§ 650.1 What is the Jacob K. Javits Fellows Program?**

* * * * *

(b) Students awarded fellowships under this program are called Jacob K. Javits Fellows.

4. Section 650.2 is amended by revising paragraph (b)(4) to read as follows:

**§ 650.2 Who is eligible to apply for a fellowship under this program?**

* * * * *

(b) * * *

(4) Is a permanent resident of the Trust Territory of the Pacific Islands; and

* * * * *

5. In § 650.4, the definition of "Fellowship Board" is amended by revising the word "President" to read "Secretary", the reference to "1956" in the definition of "Act" is revised to read "1965", and the definition of "Fellow" is revised to read as follows:

**§ 650.4 What definitions apply to the Jacob K. Javits Fellows Program?**

* * * * *

"Fellow" means a recipient of a Jacob K. Javits fellowship under this part.

* * * * *

6. Section 650.5 is amended by revising paragraph (b) to read as follows:

**§ 650.5 What does a fellowship award include?**

* * * * *

(b) An annual allowance paid to the institution in which the fellow is enrolled of $6000.

**§ 650.33 [Amended]**

7. In § 650.33, paragraphs (a)(3) and (b) are removed; the designation "(a)" is removed from the introductory text; paragraph (a)(1) is amended by adding "and" at the end of the paragraph; paragraph (a)(2) is amended by removing "; and" and adding a period in its place, and paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a) and (b) respectively.

8. Section 650.42 is revised to read as follows:

**§ 650.42 How are stipends to be administered?**

(a) Except as provided in paragraph (c) of this section, an institution shall calculate the amount of a fellow's financial need annually in the same manner as that in which the institution calculates its students' financial need under Part F of Title IV of the Act. For this purpose the institution shall not treat—

(1) Any instructional costs covered by the institutional allowance under § 650.41, as costs of attendance; or

(2) Income derived from a fellow's teaching and research assistantship, that is a required part of the fellow's academic program, as income.

(b) The institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded in fiscal year 1986, the institution shall, in fiscal year 1987 and in each subsequent fiscal year for the duration of the fellowship, calculate the amount of a fellow's financial need under the procedure in paragraph (a) of this section, except that—

(1) Subject to the provisions of paragraphs (c)(2) and (3) of this section, a fellow qualifies as an independent student for an award year if the fellow—

(i) Does not, during any of the relevant years described in paragraph (c)(2) of this section, live for more than six weeks in the home of his or her parent(s) for whom income must be reported;

(ii) Is not, for any of the relevant years described in paragraph (c)(2) of this section, claimed as a dependent for Federal income tax purposes by those parent(s); and

(iii) Does not, during any of the relevant years described in paragraph (c)(2) of this section, receive financial assistance of more than $750 from those parent(s).

(2) Except as provided in paragraph (c)(3) of this section, to qualify as an independent student for any award year—

(i) An unmarried fellow must satisfy the criteria in paragraph (c)(1) of this section for the first calendar year of an award year and the preceding calendar year; and

(ii) A married fellow must satisfy the criteria in paragraph (c)(1) of this section for the first calendar year of the award year.

(3) The Secretary considers any fellow to be an independent student if, before the end of the award year—

(i) The fellow's parents die; or

(ii) The fellow is declared a ward of the court.

(4) As used in this paragraph—

(i) "Award year" means the period of time from July 1 through June 30 of the following year.

(ii) "Parent" means a fellow's natural or adoptive mother or father. A parent also includes a fellow's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the fellow.

(iii) "Parent(s) for whom income must be reported" means a parent for whom income must be reported under the Pell Grant Program regulations, 34 CFR 690.33, as in effect on July 1, 1986. For this purpose, the references in § 690.33 to the date of the fellow's application are considered references to the date the fellow applies for a determination of need under Part F of Title IV of the Act.

(d) If a fellow is enrolled for less than a full academic year, the institution shall pay the fellow a pro rata share of the stipend.

(Authority: 20 U.S.C. 1134j)

[FR Doc. 87-8463 Filed 4-14-87; 8:45 am]

BILLING CODE 4000-01-M

BEST COPY AVAILABLE

## DEPARTMENT OF EDUCATION

### Invitation for Applications for New Awards Under the Jacob K. Javits Fellows Program for Fiscal Year 1987 (CFDA No. 84.170)

*Purpose:* Provide grants to eligible postsecondary students for graduate fellowships in the arts, humanities, and social sciences.

*Deadline for transmittal of applications:* June 1, 1987.

*Applications available:* April 24, 1987.

*Available funds:* Approximately $500,000 to $700,000 may be available for new fellowships in FY 1987 after funds for continuing fellowships have been allocated.

*Estimated range of awards:* Awards will range from zero to $10,000, depending on the fellow's financial need. Additionally, an institution attended by a fellow will receive a $6,000 cost of instruction payment, in lieu of tuition.

*Estimated average size of awards:* $15,000, including the cost of instruction payment.

*Estimated number of awards:* 40.

*Project period:* 12 months (with possibility of continuation).

*Priorities:* The Fellowship board has determined that eligible applicants for this competition will be limited to first-time graduate students only.

*Applicable regulations:* Regulations governing the Jacob K. Javits Fellows Program as proposed to be codified in 34 CFR Part 650. (Applications are being accepted based on the Notice of Proposed Rulemaking which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

*For applications or information contact:* Allen P. Cissell, Director, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Mail Stop 3327, Washington, DC 20202, Telephone: (202) 732–4415.

**Program authority:** 20 U.S.C. 1134h–k.

Dated: April 9, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 87–8464 Filed 4–14–87; 8:45 am]

BILLING CODE 4000-01-M

# Reader Aids

Federal Register

Vol. 52, No. 72

Wednesday, April 15, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10
11807-11980.....13
11981-12128.....14
12129-12362.....15

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11609
5629.....12126
5630.....12129

**Administrative Orders:**
Presidential Determinations:
No. 87-12 of March 17, 1987.....11807

**5 CFR**

213.....11185
591.....12131
841.....12131
870.....12133
1201.....10875

**Proposed Rules:**
353.....11657
2411.....11995

**7 CFR**

210.....11186
271.....11811
272.....11021, 11811
273.....11021, 11811
274.....11811
278.....11811
301.....10357
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615
910.....10729, 11615
925.....11616
927.....11616
932.....12134
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1922.....11981
1944.....11981
1951.....11456, 11981

**Proposed Rules:**
400.....10764
416.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
945.....10893
979.....12185
994.....10984, 12185
1011.....12186
1046.....11475
1955.....10577
1965.....10577

**9 CFR**

212.....11620
248.....11621

**Proposed Rules:**
245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024

**Proposed Rules:**
54.....12189
92.....10765
317.....10766, 11828
319.....10766, 11828
381.....11828

**10 CFR**

0.....11026

**Proposed Rules:**
2.....11475, 12192
50.....10771
430.....12342

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
611.....12135
614.....12143

**Proposed Rules:**
325.....11476, 11660
337.....11492
612.....11080

**13 CFR**

311.....11626

**14 CFR**

21.....11627

23.....11627
39.....10558, 10735, 10736, 11630–11639, 11985, 11986
71.....10559, 11028, 11032–11034, 11815
73.....10559, 10560, 11033, 11034
95.....10737
1215.....10880

**Proposed Rules:**
29.....11997
39.....10581, 11081, 11663, 11664, 11997, 11998
71.....10582, 11082, 11828, 12286
75.....12000, 12286

**15 CFR**
370.....11640
371.....10741
376.....11640
399.....11457, 11640

**Proposed Rules:**
7.....11498
280.....11498
368.....10771

**17 CFR**
200.....12147
203.....12147
241.....11458
270.....11187

**Proposed Rules:**
210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**
16.....11035
271.....10741
381.....10366

**Proposed Rules:**
4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**
24.....10561, 10970
133.....10668
146.....10970
148.....12149
172.....12149
177.....11216

**Proposed Rules:**
111.....10774
127.....12000

**20 CFR**
10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217

**Proposed Rules:**
200.....10384
615.....10774

**21 CFR**
5.....10881
81.....10882
172.....10882
175.....10883
177.....11641
184.....10884
193.....10561, 10562
201.....12152
510.....10668, 11040, 11041, 11988, 12153
520.....10668, 11041, 11988
522.....10668, 11816
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642, 11988, 12153
561.....10562, 12153
573.....10887
1308.....11042, 12285

**Proposed Rules:**
357.....12114
561.....12193
1301.....11091

**22 CFR**
2a.....12154
212.....11817

**Proposed Rules:**
41.....12001

**23 CFR**

**Proposed Rules:**
650.....11092
655.....11502

**24 CFR**
15.....12159
201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644

**Proposed Rules:**
200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**
120.....11467

**Proposed Rules:**
40.....11503

**26 CFR**
1.....10368, 10741, 10742, 12161
5f.....10368
54.....10563
602.....10368, 10563, 10742, 12161

**Proposed Rules:**
1.....10774, 12194
54.....10583
602.....10583, 10774

**27 CFR**

**Proposed Rules:**
9.....11689

**28 CFR**
0.....11043
545.....10528

**Proposed Rules:**
549.....10531

**29 CFR**
33.....11600
2644.....10368
2676.....12163

**Proposed Rules:**
1601.....11503
1625.....10584
1910.....10586, 12116
1926.....12120, 12288

**30 CFR**
914.....10369, 10373
946.....11044

**Proposed Rules:**
700.....11829
723.....11287
724.....11287
733.....10898
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
934.....12002
935.....11692
937.....11287
938.....12195
939.....11287
941.....11287
942.....11287
947.....11287

**31 CFR**
1.....11989
103.....11436

**Proposed Rules:**
1.....12003

**32 CFR**
154.....11219
701.....11051
706.....10374, 10748, 10749

**Proposed Rules:**
1662.....11830

**33 CFR**
60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646

**Proposed Rules:**
100.....10593, 10594, 10905, 10906, 11693
117.....11695

**34 CFR**
628.....11256

**Proposed Rules:**
206.....11448
650.....12360

**36 CFR**
1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**Proposed Rules:**
1.....12037
2.....12037
9.....10866

**37 CFR**

**Proposed Rules:**
307.....11096

**38 CFR**
1.....10888
17.....11259

**Proposed Rules:**
17.....10907

**39 CFR**
10.....10375
111.....10749

**Proposed Rules:**
447.....12196

**40 CFR**
52.....10751, 11259, 11647, 12164
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261, 12165–12167
261.....11819
266.....11819
271.....10568, 11263
721.....11822
761.....10688
799.....10377, 10752

**Proposed Rules:**
52.....10596, 11287, 11288, 11696
123.....12039
141.....10972
142.....10972
143.....10972
180.....11292, 11293, 12198
261.....11513
300.....11513
721.....12285

**41 CFR**
101–20.....11263
101–28.....11275
101–41.....12168
201–32.....10379

**42 CFR**
7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649

**Proposed Rules:**
405.....11517

**43 CFR**
426.....11938
2090.....12171

**44 CFR**
64.....10753, 12178

**Proposed Rules:**
5.....10385
6.....10385
67.....11702

**45 CFR**

Ch. II..... 11073
Ch. III..... 11073
Ch. IV..... 11073
Ch. X..... 11073
2201..... 10870

**Proposed Rules:**

503..... 11712, 12040

**46 CFR**

401..... 11468

**Proposed Rules:**

154..... 10598
276..... 12199
382..... 11518
502..... 10912, 12208, 12212
503..... 12212
586..... 11832

**47 CFR**

1..... 11652
2..... 10568
22..... 10571
73..... 10381, 10382, 10568, 10757, 11471–11473, 11653, 11825, 12180, 12181
74..... 10568, 11474
78..... 10568

**Proposed Rules:**

1..... 11519
21..... 11519, 11838
73..... 11519–11521, 11837, 11840–11842, 12214–12216, 12285
74..... 11519
90..... 10389
94..... 11519, 11838

**48 CFR**

7..... 11074
215..... 11276
217..... 11076
252..... 11076, 11276
522..... 12182
542..... 11825
552..... 12182

**Proposed Rules:**

509..... 10913

**49 CFR**

219..... 10575
604..... 11916
1003..... 11277
1043..... 11277
1052..... 11991
1084..... 11277
1207..... 10382
1249..... 10382

**Proposed Rules:**

Ch. X..... 11295
571..... 10775
1312..... 10913
1320..... 11295

**50 CFR**

17..... 10890, 11162, 11277
301..... 10759
611..... 10761
642..... 10762
652..... 10763
663..... 11473
672..... 10761, 11991, 12183
675..... 10761, 11992

**Proposed Rules:**

222..... 12040
227..... 12040
640..... 10780
642..... 11713
651..... 10781

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List April 13, 1987**

L
2
S
2
P
5
87
M I

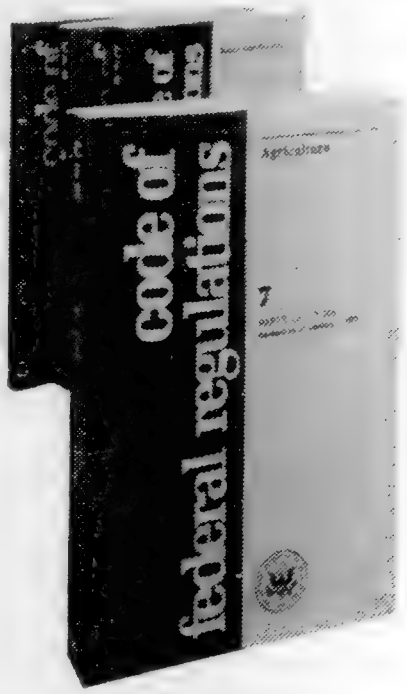


*Just Released*

# Code of Federal Regulations

**Revised as of January 1, 1987**

| Quantity | Volume | Price | Amount |
|---|---|---|---|
| | Title 7—Agriculture | | |
| _____ | Parts 210–299 (Stock No. 869–001–00010–4) | $22.00 | $_____ |
| _____ | Parts 400–699 (Stock No. 869–001–00012–1) | 15.00 | _____ |
| _____ | Title 9—Animals and Animal Products (Parts 1–199) (Stock No. 869–001–00023–6) | 18.00 | _____ |
| _____ | Title 10—Energy (Parts 0–199) (Stock No. 869–001–00025–2) | 29.00 | _____ |

**Total Order $_____**

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

*Please do not detach*

## Order Form

**Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

**Charge to my Deposit Account No.**

☐☐☐☐☐☐–☐

Order No._____

VISA

MasterCard

**Credit Card Orders Only**

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

**PLEASE PRINT OR TYPE**

**For Office Use Only.**

| | Quantity | Charges |
|---|---|---|
| Enclosed | | |
| To be mailed | | |
| Subscriptions | | |
| Postage | | |
| Foreign handling | | |
| MMOB | | |
| OPNR | | |
| UPNS | | |
| Discount | | |
| Refund | | |

L
2
S
2
P
5
87
M I

O L
2
S S
3
P
6
87
M I

4-16-87
Vol. 52 No. 73

# federal register

Thursday
April 16, 1987

United States
Government
Printing Offic
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 204

OFFICIAL BUSINES
Penalty for private u

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

O L
2
S S
3
P
6
87
M I

4-16-87
Vol. 52 No. 73
Pages 12363-12510

# Federal Register

Thursday
April 16, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 73

Thursday, April 16, 1987

**Agriculture Department**
*See* Animal and Plant Health Inspection Service; Food and Nutrition Service; Food Safety and Inspection Service; Soil Conservation Service

**Air Force Department**
RULES
Acquisition regulations, 12414
NOTICES
Meetings:
Scientific Advisory Board, 12450
(2 documents)

**Animal and Plant Health Inspection Service**
RULES
Plant-related quarantine, domestic:
Pink bollworm, 12363

**Army Department**
*See* Engineers Corps

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Civil Rights Commission**
NOTICES
Meetings; State advisory committees:
Alabama, 12443
Illinois, 12443
Minnesota, 12443
Nebraska, 12444
Ohio, 12444

**Coast Guard**
RULES
Ports and waterways safety:
Los Angeles/Long Beach, CA; safety zone, 12380
PROPOSED RULES
Drawbridge operations:
Florida, 12431
Offshore service vessels, self-elevating (liftboats), 12439
NOTICES
Meetings:
National Boating Safety Advisory Council, 12488

**Commerce Department**
*See* International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office

**Commission on Merchant Marine and Defense**
NOTICES
Meetings, 12447

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
China, 12447
China; correction, 12448
Mexico, 12448
Peru, 12449
Textile consultation; review of trade:
Bangladesh, 12449

**Defense, Commission on Merchant Marine and**
*See* Commission on Merchant Marine and Defense

**Defense Department**
*See also* Air Force Department; Engineers Corps
RULES
Acquisition regulations:
Conflict of interests, 12383
Information release to cooperative agreement holders, 12386
Machine tools, acquisition from foreign sources; restrictions, 12389
Patents, data, and copyrights, 12390
Undefinitized contract actions, 12387
PROPOSED RULES
Acquisition regulations:
Foreign acquisition; balance of payments program; evaluation factors, 12440
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 12452
Meetings:
Electron Devices Advisory Group, 12450

**Education Department**
RULES
Postsecondary education:
Law school clinical experience program, 12508
NOTICES
Grants; availability, etc.:
Emergency immigrant education program, 12452
Law school clinical experience program, 12510
Refugee children transition program, 12453

**Energy Department**
*See also* Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Hanford Site near Richland, WA, 12453

**Engineers Corps**
NOTICES
Environmental statements; availability, etc.:
Fort Toulouse National Historic Landmark and Taskigi Indian Mound, AL, 12450
Richmond Harbor, CA, 12451

**Environmental Protection Agency**
NOTICES
Privacy Act; systems of records, 12458

**Executive Office of the President**
*See* Management and Budget Office

**Federal Aviation Administration**
NOTICES
Exemption petitions; summary and disposition, 12488

**Federal Communications Commission**
RULES
Organization, functions, and authority delegations:
Missing children, use of official mail in location and recovery, 12382

**Federal Deposit Insurance Corporation**
NOTICES
Meetings; Sunshine Act, 12490

**Federal Energy Regulatory Commission**
NOTICES
*Applications, hearings, determinations, etc.:*
Texas Gas Transmission Corp., 12456

**Federal Home Loan Bank Board**
PROPOSED RULES
Federal home loan bank system:
Indemnification of directors, officers, and employees of Federal home loan banks, 12425
NOTICES
Conservator appointments:
Future Savings & Loan Association, 12460
Receiver appointments:
Central Savings & Loan Association, 12460 (2 documents)
First Southern Savings Association of Jackson County, 12460
Future Savings & Loan Association, 12460
Summit Savings & Loan Association, 12460

**Federal Maritime Commission**
NOTICES
Meetings; Sunshine Act, 12490

**Federal Trade Commission**
RULES
Prohibited trade practices:
McCoy Industries, Inc., et al., 12379
Reliance Wood Preserving, Inc., et al., 12379
PROPOSED RULES
Prohibited trade practices:
Encyclopaedia Britannica, Inc., 12430

**Fish and Wildlife Service**
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc.:
Yukon Delta National Wildlife Refuge, AK, 12473

**Food and Drug Administration**
RULES
Food additives:
Adhesive coatings and components—
Synthetic primary linear aliphatic alcohols, 12380
PROPOSED RULES
Human drugs:
Investigational new drugs; treatment use and sale, 12431
NOTICES
Human drugs:
International drug scheduling—
Propylhexedrine; correction, 12491
Pyrovalerone; correction, 12491
Regulatory review period determinations—
Exirel, 12460
Laser variance approvals, etc.:
Laser Images, Inc., et al., 12461
Medical devices; premarket approval:
Acutscan Model 100 MRI System, 12462
Charter Labs Hydrogen Peroxide Disinfection System, 12463
Models 505 and 509 Pulse Generator with Models 1000 and 1006 Programmer, 12464

**Food and Nutrition Service**
PROPOSED RULES
Child nutrition program:
School breakfast program—
Nutritional improvements and offer versus serve, 12419
NOTICES
Meetings:
Child Nutrition National Advisory Council, 12442

**Food Safety and Inspection Service**
PROPOSED RULES
Meat and poultry inspection:
Electrical stimulating equipment; safety and sanitation requirements, 12422

**General Services Administration**
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 12452

**Health and Human Services Department**
*See* Food and Drug Administration; National Institutes of Health

**Housing and Urban Development Department**
NOTICES
Agency information collection activities under OMB review, 12466
Organization, functions, and authority delegations:
Regional offices, etc.; order of succession—
Cleveland, 12467

**Interior Department**
*See also* Fish and Wildlife Service; Land Management Bureau
NOTICES
Privacy Act; systems of records, 12468
Watches and watch movements; allocation of quotas:
Guam, 12444

**International Trade Administration**
NOTICES
Export trade certificates of review, 12444
Watches and watch movements; allocation of quotas:
Guam, 12444

**Interstate Commerce Commission**
RULES
Reports:
Railroads; waybill sample; data release procedures, 12415
NOTICES
Rail carriers:
Cost of capital; limited revenue adequacy proceeding, 12475
Waybill data; release for use, 12475
Railroad services abandonment:
Missouri-Kansas-Texas Railroad Co., 12474

**Labor Department**
*See* Labor Statistics Bureau; Mine Safety and Health Administration

**Labor Statistics Bureau**
NOTICES
Meetings:
Labor Research Advisory Council Committees, 12475

**Land Management Bureau**
NOTICES
Management framework plans, etc.:
Utah, 12471
Meetings:
Winnemucca District Advisory Council, 12472
Motor vehicles; off-road vehicle designations:
New Mexico, 12470
Oil and gas leases:
Wyoming, 12468
(2 documents)
Realty actions; sales, leases, etc.:
Arizona, 12468, 12469
(2 documents)
California, 12469, 12470
(3 documents)
Idaho, 12473
Withdrawal and reservation of lands:
Nevada, 12472

**Management and Budget Office**
NOTICES
Budget rescissions and deferrals
Cumulative reports, 12494

**Merchant Marine and Defense, Commission on**
*See* Commission on Merchant Marine and Defense

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
Meadows Coal Co. No. 4, 12476

**National Aeronautics and Space Administration**
RULES
Grant and cooperative agreement handbook, 12377
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 12452
Meetings:
Space Systems and Technology Advisory Committee, 12476

**National Credit Union Administration**
RULES
Federal credit unions:
Insurance; requirements and voluntary termination, 12365
Merger procedures and voluntary termination or conversion of insured status, 12370
PROPOSED RULES
Federal credit unions:
Community development revolving loan program, 12427

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Arts and Artifacts Indemnity Panel, 12477
Arts National Council, 12477
Music Advisory Panel, 12477

**National Institutes of Health**
NOTICES
Meetings:
National Cancer Institute, 12465
(2 documents)
National Institute of Child Health and Human Development, 12465
National Institute of Diabetes and Digestive and Kidney Diseases, 12466
National Institute of Environmental Health Sciences, 12466

**National Oceanic and Atmospheric Administration**
NOTICES
Whaling Commission, International:
Bowhead whales; strike quota, 12445

**National Science Foundation**
NOTICES
Meetings:
Decision, Risk, and Management Science Program Advisory Panel, 12479
Eukaryotic Genetics Program Advisory Panel, 12479
Law and Social Science Advisory Panel, 12479
Linguistics Advisory Panel, 12478
Molecular and Cellular Neurobiology Program Advisory Panel, 12478
Physics Advisory Committee, 12478
Political Science Advisory Panel, 12478
Regulatory Biology Advisory Panel, 12479

**Nuclear Regulatory Commission**
RULES
Plants and materials, physical protection:
Safety related equipment; designation and protection of vital locations, etc.; miscellaneous amendments; correction, 12364
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 12481
*Applications, hearings, determinations, etc.:*
Commonwealth Edison Co., 12479

**Office of Management and Budget**
*See* Management and Budget Office

**Patent and Trademark Office**
NOTICES
Mask works; interim protection for nationals, domiciliaries, and sovereign authorities:
Switzerland, 12445

**Postal Service**
PROPOSED RULES
Domestic Mail Manual:
COD service; acceptance of personal checks for COD payment, 12432
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 12434

**Public Health Service**
*See* Food and Drug Administration; National Institutes of Health

**Securities and Exchange Commission**
NOTICES
Agency information collection activities under OMB review, 12483

Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 12484
National Association of Securities Dealers, Inc., 12482
Pacific Clearing Corp., 12486
Pacific Securities Depository Trust Co., 12486
*Applications, hearings, determinations, etc.:*
California Tax-Free Money Fund, 12483
Public utility holding company filings, 12481

**Soil Conservation Service**
NOTICES
Environmental statements; availability, etc.:
Bolton, NY, 12442
Mineral County Schools, WV, 12443
Wolf River Watershed, KS, 12442

**Tennessee Valley Authority**
NOTICES
Agency information collection activities under OMB review, 12487

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Coast Guard; Federal Aviation Administration

**United States Information Agency**
NOTICES
Meetings:
Public Diplomacy, U.S. Advisory Commission, 12489

**Veterans Administration**
RULES
Loan guaranty:
Interest rates, 12381
NOTICES
Meetings:
Commission to Assess Veterans' Education Policy, 12489

---

**Separate Parts in This Issue**

**Part II**
Office of Management and Budget, 12494

**Part III**
Department of Education, 12508

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
301.....12363
**Proposed Rules:**
220.....12419

**9 CFR**
**Proposed Rules:**
307.....12422
308.....12422

**10 CFR**
73.....12364

**12 CFR**
701.....12365
708.....12370
741.....12365
**Proposed Rules:**
522.....12425
705.....12427

**14 CFR**
1260.....12378

**16 CFR**
13 (2 documents).....12379
**Proposed Rules:**
13.....12430

**21 CFR**
175.....12380
**Proposed Rules:**
312.....12431

**33 CFR**
165.....12380
**Proposed Rules:**
117.....12431

**34 CFR**
639.....12508

**38 CFR**
36.....12381

**39 CFR**
**Proposed Rules:**
111.....12432
265.....12434

**46 CFR**
**Proposed Rules:**
Chapter I.....12439

**47 CFR**
0.....12382

**48 CFR**
203.....12383
205.....12386
216.....12387
217.....12387
225.....12389
227.....12390
243.....12387
245.....12389
252 (4 documents).....12383, 12386, 12389, 12390
5315.....12414
**Proposed Rules:**
225.....12440

**49 CFR**
1244.....12415

OL
2
S S
3
P
6
87
M I

# Rules and Regulations

Federal Register
Vol. 52, No. 73
Thursday, April 16, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 87-010]

### 7 CFR Part 301

### Pink Bollworm Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the pink bollworm quarantine and regulations by adding Lincoln County, Arkansas, as a suppressive area to the list of pink bollworm regulated areas. This action is necessary to impose certain restrictions on the interstate movement of regulated articles in order to prevent the artificial movement of the pink bollworm into noninfested areas.

**DATES:** Interim rule effective April 16, 1987. We will consider your comments if we receive them on or before June 15, 1987.

**ADDRESSES:** Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, 6505 Belcrest Road, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-010. Written comments received may be inspected at Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Shannon, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

**SUPPLEMENTARY INFORMATION:**

### Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the most destructive and widespread insect pests of cotton in the world. This insect spread to the United States from Mexico in 1917 and now occurs throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm quarantine and regulations (contained in 7 CFR 301.52 *et seq.*, and referred to below as the regulations) quarantine the States of Arizona, Arkansas, California, Louisiana, Mississippi, Nevada, New Mexico, Oklahoma, and Texas because of the pink bollworm. The regulations restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the artificial spread of the pink bollworm. We are amending § 301.52-2a of the regulations by adding Lincoln County, Arkansas, as a suppressive area to the list of pink bollworm regulated areas.

Regulated areas for pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both in order to prevent the artificial movement of the pink bollworm into noninfested areas. However, the eradication of pink bollworm is undertaken as an objective only in places that are designated as suppressive areas.

Prior to the effective date of this document, Lincoln County in Arkansas contained no areas regulated because of pink bollworm. We are designating all of Lincoln County as a suppressive area. Surveys conducted by inspectors of the United States Department of Agriculture and a State agency of Arkansas establish that pink bollworm has spread to areas in Lincoln County. In order to prevent the spread of pink bollworm and to facilitate its ultimate eradication, we are amending the regulated areas in § 301.52-2a of the regulations by designating all of Lincoln County in Arkansas, as a suppressive area.

### Emergency Action

William F. Helms, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for a public comment. Because of the possibility that the pink bollworm could spread artificially to noninfested areas of the United States, immediate action is required to control the spread of this pest.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register.**

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an estimated annual effect on the economy of less than $10,000; will not cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from Lincoln County in Arkansas. Based on information compiled by the Department, we have determined that, although there are hundreds of small entities that move these articles interstate from nonregulated areas in the United States, only about five small entities move them interstate from Lincoln County, Arkansas. Further, the overall economic impact from this action is estimated to be less than $10,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Pink bollworm, Plant pests, Plants (Agriculture), Quarantine, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.52–2a is amended by revising the list of regulated areas in the State of Arkansas to read as follows:

**§ 301.52–2a Regulated areas; suppressive and generally infested areas.**

* * * * *

Arkansas

(1) *Generally infested area.* None.

(2) *Suppressive area.*

*Chicot County.* That portion of the county lying north of U.S. Highway 82.

*Desha County.* The entire county.

*Drew County.* That portion of the county lying east of State Highway 293 and State Highway 4.

*Jefferson County.* That portion of the county lying east of U.S. Highway 79.

*Lincoln County.* The entire county.

*Monroe County.* That portion of the county lying east of White River and south of U.S. Highway 79 and U.S. Highway 49.

*Phillips County.* That portion of the county lying south of U.S. Highway 49.

* * * * *

Done in Washington, DC, this 10th day of April, 1987.

**D. Husnik,**

*Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.*

[FR Doc. 87–8452 Filed 4–15–87; 8:45 am]

BILLING CODE 3410-34-M

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 73**

**Miscellaneous Amendments Concerning Physical Protection of Nuclear Power Plants; Correction**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document amends a final rule, published by the Nuclear Regulatory Commission (NRC) in August 1986, which revised 10 CFR Part 73 to provide a more safety-conscious safeguards system while maintaining current levels of protection. This action is necessary to correct the inadvertent deletion of the requirement to consider the central alarm station at nuclear power reactors a vital area, and to inform affected licensees and the public of the inadvertent deletion.

**EFFECTIVE DATE:** April 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4773.

**SUPPLEMENTARY INFORMATION:** Prior to the publication of the Miscellaneous Amendments as a final rule on August 4, 1986 (51 FR 27817), Nuclear power reactor licensees were required to consider their central alarm stations as vital areas under § 73.55(e)(1). When the Miscellaneous Amendments were first proposed on August 1, 1984 (49 FR 30735), they introduced the new concept of "vital islands." Under that proposed rule, the central alarm station, along with four other areas, was designated as an independent vital island which, in essence, maintained the requirement that the central alarm station be considered vital. Public comment on the proposed rule indicated some confusion over use of the terms "vital islands" and "independent vital islands." Due to these comments and the evolving nature of vital area/island policy at that point in time, the determination was made by the staff to delete these new concepts from the amendments when published as a final rule. In doing so, however, the original requirement to consider the central alarm station a vital area inadvertently was not inserted back into the regulation. The purpose of this notice is to clarify that central alarm station remain a vital area notwithstanding the error in the prior publication. This revision will have no impact on power reactor licensees because previous security plan commitments to protect the central alarm station as vital have been maintained throughout this period.

Because all central alarm stations at nuclear power reactors have been, and continue to be protected as vital areas and because the omission being corrected was inadvertent, notice of proposed rulemaking and public comment thereon is unnecessary for this administrative amendment. Also, for these and additional reasons the NRC finds that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedure Act (5 U.S.C. 553(d)). The omission must be corrected immediately to avoid the potential for confusion over the legal requirement for maintaining the vital status of central alarm stations. Therefore, the rule is effective on publication in the **Federal Register**.

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule contains no information collection or requirements and therefore is not subject to the requriements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

**Regulatory Analysis**

No regulatory analysis has been prepared for this final rule because there are anticipated to be no cost or resource impacts to the NRC or affected licensees.

**Backfit Analysis**

No backfit analysis has been prepared for this final rule because of its administrative nature and recodification of prior commitments.

**List of Subjects in 10 CFR Part 73**

Hazardous materials-transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 73.

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 73.55, paragraph (e)(1) is revised to read as follows:

**§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.**

* * * * *

(e) *Detection aids.* (1) All alarms required pursuant to this part must annunciate in a continuously manned central alarm station located within the protected area and in at least one other continuously manned station not necessarily onsite, so that a single act cannot remove the capability of calling for assistance or otherwise responding to an alarm. The onsite central alarm station must be considered a vital area and its walls, doors, ceiling, floor, and any windows in the walls and in the doors must be bullet-resisting. The onsite central alarm station must be located within a building in such a manner that the interior of the central alarm station is not visible from the perimeter of the protected area. This station must not contain any operational activities that would interfere with the execution of the alarm response function. Onsite secondary power supply systems for alarm annunciator equipment and non-portable communications equipment as required in paragraph (f) of this section must be located within vital areas.

* * * * *

Dated at Bethesda, Maryland this 8th day of April, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

*Executive Director for Operations.*

[FR Doc. 87-8607 Filed 4-15-87; 8:45 am]

BILLING CODE 7590-01-M

---

## NATIONAL CREDIT UNION ADMINISTRATION

**12 CFR Parts 701 and 741**

**Organization and Operations of Federal Credit Unions; and Requirements for Insurance and Voluntary Termination of Insurance**

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board has adopted final rules concerning business loans made by federally-insured credit unions and concerning preferential treatment and prohibited fees on business and other loans. These final rules are based on a proposed rule issued by the NCUA Board on June 19, 1986 (*see* 51 FR 23234, June 26, 1986), and a revised proposed rule issued by the NCUA Board on December 17, 1986 (*see* 51 FR 46869, December 29, 1986). These final rules incorporate many of the recommended changes and amendments submitted by commenters on the prior proposals. Major revisions involve the definition of member business loans (§ 701.21(h)(1)(i)), written business loan policies (§ 701.21(h)(2)), prohibited fees and preferential loan treatment (§ 701.21(c)(8) and (d)(5)), and minimum loan policy requirements for federally-insured credit unions (§ 741.3).

**EFFECTIVE DATE:** July 1, 1987.

**ADDRESS:** National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** J. Leonard Skiles, Regional Director, Region V (Austin), 611 East 6th Street, Suite 407, Austin, TX 78701; or D. Michael Riley, Director, Office of Examination and Insurance, or Steven R. Bisker, Assistant General Counsel, 1776 G St., NW., Washington, DC 20456, or telephone: (512) 482-5131 (Mr. Skiles); (202) 357-1065 (Mr. Riley); or (202) 357-1030 (Mr. Bisker).

**SUPPLEMENTARY INFORMATION:**

### Background and General Comments

Approximately 350 comment letters were submitted on the June 1986 proposal and approximately 85 letters were submitted on the December proposal. A majority of the commenters on the second proposal either expressed support for the rules, or expressed appreciation of NCUA's responsiveness and recommended additional changes. Some of the commenters, although recognizing the present need for a rule, urged the NCUA Board to commit to review the rule in one to two years. NCUA has already begun to collect data on business loans in conjunction with the Semiannual Report (Form 5300) and will review the data over a period of three years or less. This process will help the NCUA Board determine the effectiveness of and the continued need for this final rule.

While the process of public debate and comment on this rule has been relatively long, with numerous discussions, lectures, and articles addressing the subject, there continues to be some misunderstanding about the objectives of the provisions concerning member business loans. The Board wants to stress that it is *not* its intent to prohibit commercial lending. Rather, the objective of the rule is to help establish a framework to ensure that business loans are made in a way that will reduce the risk inherent in such loans and provide for adequate financial backup (reserves) in the event that losses are incurred. The Board's goal is to provide the basis for a system of business lending that is consistent with safe and sound practices and that will help to reduce losses to federally-insured credit unions and the National Credit Union Share Insurance Fund ("NCUSIF"). This is the principal reason for bringing *all* federally-insured credit unions within the scope of the rule.

Some commenters have questioned NCUA's authority to extend the rule to federally-insured state credit unions. They argue that the Board's general rulemaking authority in section 209(a)(11) of the FCU Act (12 U.S.C. 1789(a)(11)) does not empower NCUA to promulgate a rule such as this. The Board does not agree. The objective of these rules is to ensure that lending practices are conducted in a safe and sound manner. Unsafe business lending practices by federally-insured state credit unions directly affect the risk of loss to the NCUSIF and in fact have resulted in many millions of dollars of losses in the last several years. Similarly, instances of preferential and substandard lending to insiders have resulted in very severe losses. Thus the application of these rules to federally-insured state credit unions is not a matter of unconstitutional overreaching, but instead is simply a matter of meeting certain minimum standards as a condition of Federal insurance. In this connection, section 201(b)(9) of the Act (12 U.S.C. 1781(b)(9)) provides that insured credit unions agree "to comply with the requirements of [Title II of the FCU Act] and of the regulations prescribed by the Board pursuant thereto." The record reflects that NCUA has used this authority only when necessary to establish minimum safety and soundness standards as a condition of Federal insurance.

Further, the Board, in this instance, has provided exemptions for federally-insured state credit unions in states that adopt rules "substantially equivalent" to NCUA's rules. (*See* discussions under "Applicability of Rules to Federally-Insured State Credit Unions," below.)

The most frequently received comments and the changes that have been made in the final rule are detailed below.

*Prohibited Fees (Section 701.21(c)(8))*

This is one of two sections of the rules that apply to *all* loans to members by Federal and federally-insured state credit unions. This Section of the proposal would have prohibited all officials and employees, and their immediate family members, from receiving loan-related commission and fee income. "Immediate family member" was very broadly defined. Many commenters expressed concern about the breadth of this prohibition. In response to the comments, the final rule narrows the prohibition to directors, committee members, loan officers, and senior management employees (defined essentially to include the CEO and his or her top assistants), and narrows the definition of "immediate family member" to the spouse and other relatives living in the same household.

The conflicts of interest sought to be eliminated by this Section of the rule exist principally where the person involved is in a position of authority in the credit union so as to influence or make decisions that can affect their pecuniary interest. Non-senior employees, therefore, need not be included in the prohibition.

The definition of "immediate family member" was amended because many commenters expressed concern that relatives of directors, committee members, and employees, previously included in the definition, were unwarrantedly precluded from doing business (providing services in connection with underwriting, insuring, servicing, or collecting loans or lines of credit) with the credit union. The Board agrees that the prohibition may have been unnecessarily broad and, therefore, has limited the definition. It is expected, however, that any such dealings will be at arm's length and in the best interest of the credit union.

*Nonpreferential Treatment (Section 701.21(d)(5))*

This is the second provision of the lending rules that applies to both member business and nonbusiness loans. This section prohibits preferential loans to directors and committee members and to their immediate family members and business associates. As in the case of the provisions on prohibited fees, the definition of immediate family member is limited to the spouse and other family members living in the same household. This change has also been made in § 701.21(h)(1)(iv) (prohibiting certain business loans to senior management employees, discussed below), and it is noted that the Board will, in the near future, review other provisions in NCUA's Rules and Regulations where the term appears and will consider consistent revisions to those Sections as well (*see* e.g., § 701.27(c)(3) concerning "credit union service organizations," § 701.36(b)(6) concerning fixed-assets, § 703.2(l) concerning investment activities, and § 721.2(c) concerning insurance and group purchasing).

*Definition of Member Business Loan (Section 701.21(h)(1)(i))*

A recommendation contained in several comment letters was that the exception from the definition of member business loans in paragraph (A), for loans fully secured by a lien on a 1 to 4 family dwelling, *not* be limited to the member's primary or secondary residence. The proposed rule was limited because it was not the Board's intention to except out from the definition real estate investment loans fully secured by such property. The commenters believed that the proposed rule was overly restrictive. The Board has reconsidered its position and has amended the rule to expand the exception to include a loan or loans fully secured by (1) the member's primary residence, or (2) the member's secondary residence, or (3) one other 1 to 4 family dwelling owned by the member. The change will permit a member to have a total of three fully secured loans (primary residence, secondary residence and one other) that would not otherwise be subject to § 701.21(h). This change should accommodate those instances where a member purchases a new primary residence and does not sell his prior residence but, instead, rents it to a family member or other person. In many cases, the motivation to maintain the old residence is not investment oriented but rather to provide a home for a family member.

Some commenters asked whether loans fully secured by condominium or cooperative apartments or townhouses were included in the exception. The Board interprets 1 to 4 family dwelling as including these kinds of residential properties.

The Board also received several comments asking that paragraph (B), the exception for loans fully secured by shares in the credit union, be broadened to include deposits in other financial institutions such as banks, savings and loan associations, and other credit unions. The Board's initial reason for limiting the exclusion to shares in the credit union was its concern that credit unions would fail to take the steps necessary to properly obtain a fully secured interest in deposits held at other financial institutions. The Board has amended the rule to include deposits in other financial institutions but cautions credit unions that, for the exception to apply, they must have completed all necessary agreements, filings, notifications, etc., required under state law to fully secure (perfect) their interest in such deposits.

A number of commenters urged the Board to raise the $25,000 trigger amount specified in paragraph (C) (loans less than $25,000 are *not* subject to § 701.21(h)) to $50,000. The Board has not increased the trigger amount because it would remove many loans from coverage under § 701.21(h) that, for safety and soundness reasons, need to be underwritten, monitored, and serviced in conformance with this rule. It is apparent from some of the comments that there is still confusion as to the effect of the $25,000 trigger amount. Simply stated, paragraph (C) excludes all loans under $25,000 that, but for the amount of the loan, would otherwise be subject to the member business loan rule § 701.21(h)). It is *not* a ceiling on the dollar amount that can be extended for a business loan. Further, the fact that a loan is excluded from coverage under § 701.21(h) does not mean that the loan is not subject to other applicable provisions of § 701.21 or other applicable sections of the NCUA Rules and Regulations and the FCU Act.

The Board received a comment letter from the Small Business Administration ("SBA") concerning the exclusion in paragraph (D) for loans fully insured or guaranteed by an agency of the Federal government. The SBA stressed that the requirements in § 701.21(h) are consistent with the types of requirements followed by lenders participating in SBA's business loan guaranty program. Any credit union that is not conforming to these standards will likely not be approved by SBA. Therefore, while paragraph (D) provides credit unions with an exclusion for mandatory coverage under the rule, the provisions in the rule would generally need to be followed to satisfy SBA requirements.

Lastly, the Board notes that in each instance in the rule where the term "fully secured" appears, it means interests obtained by a credit union in the specific collateral sufficient to give the credit union an unimpaired right, free from the right of subsequent creditors, lienholders, receivers, trustees in bankruptcy, etc., to foreclose (take) the collateral in the event of default by the borrower.

*Written Loan Policies (Section 701.21(h)(2)(i))*

Paragraph (H) in § 701.21(h)(2)(i) of the proposed rule generated many comments. This provision required that financial statements and other documentation, including tax returns be updated on an annual or more frequent basis. Several of the commenters stated that because of the size of certain loans and the types of small businesses involved, the cost to the borrower to provide the required updated reports and documentation would be prohibitive. The same concern was expressed by the commenters as to the requirements in paragraph (G) which call for, among other things, balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data. Commenters also argued that these analyses were unnecessary where the income flow relied upon to repay the loan is not from the business.

In response to these concerns, the Board has combined parts of paragraphs (G) and (H) to form a new paragraph (H). The new paragraph states that a credit union's written loan policy shall provide for the analysis and updating of documentation specified in the paragraph *unless* the credit union's board of directors finds that it is not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies. These reasons must be based on sound business lending practices and be clear as to the basis for excepting out a particular type of business loan. NCUA examiners will be instructed to carefully review the credit union's board of directors findings in this regard. Lastly, the new paragraph requires "periodic" updating instead of yearly or more frequent updating. The larger and the more complex the loan, the more documentation is required and the more frequently it must be updated.

Paragraph (L), which had required the periodic disclosure to members of the number and aggregate dollar amount of business loans made to officials, and employees, has been amended to require only the periodic disclosure of the number and aggregate dollar amount of member business loans. Commenters stressed that the privacy of credit union officials and employees could be infringed by such disclosures. The Board believes that there are sufficient safeguards in the final rule to protect against insider dealing and conflicts of interest. The Board has determined that these additional disclosures are not necessary and has amended the final rule.

*Loans to One Borrower (Section 701.21(h)(2)(ii))*

Several commenters ought to have the 20% (of reserves) loan-to-one-borrower limit increased and to have the rule specify the criteria to be evaluated by the Board in considering whether to approve a credit union's request to raise the limit. Additionally, some commenters sought an exception from inclusion in the 20% limit of that portion of a member business loan that is fully secured by a 1 to 4 family dwelling that is the member's primary residence, secondary residence, or one other such dwelling owned by the member.

The Board continues to believe that the 20% limitation is necessary for safety and soundness reasons and is comparable to limits established by other Federal financial institution regulators. The 20% limit remains unchanged in the final rule. However, the exclusion for portions of loans fully secured by the member's 1 to 4 family dwelling has been added to the rule.

The final rule contains a list of what the Board will require, at a minimum, in evaluating a request to raise the limit. The rule states that credit unions seeking an exception must present the Board with: the higher limit sought; an explanation of the need to raise the limit; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. As an example, in explaining the need to raise the limit, an agricultural type credit union might note that almost all of the loans it normally makes would fall within the coverage of the rule and that they are usually quite large (e.g., for the purchase of tractors, combines, etc.). The credit union would need to support this with actual statistics and provide the Board with the other items noted n the rule.

*Allowance for Loan Losses (Section 701.21(h)(2)(iii))*

Some commenters continued to voice objection to the classifying of loans that are not delinquent, if the analysis and documentation of the loan is inadequate. Also, the commenters expressed their uncertainty as to who makes the initial determination on the classification of loans.

Although a loan may be current, there is no assurance that payments will continue, especially if the business falls upon hard times. Only through proper analysis and documentation can the loan be properly evaluated. Without that, the potential for loss increases. It is for this and other reasons that the Board has not amended this provision. The Board does want to stress that, although the criteria for classifying member business loans is somewhat different from that for other credit union loans, the procedure by which loans are classified was not intended to be changed by this rule. Credit unions will continue to make the initial determination and the examiner will review the classification.

*Prohibition on Loans to Senior Management Employees (Section 701.21(h)(3))*

This Section of the rule generated the most comments. Many of the commenters urged the Board to exclude loans to family members of salaried management from the prohibition. As previously discussed, the Board has amended the definition of "immediate family member" (*see* § 701.21(h)(1)(iv)). Therefore, the prohibition would now apply only to the individual's spouse or other family member living in the same household.

It should be recognized that the prohibition is *not* an absolute ban on loans to nonvolunteer senior management employees. These individuals are still eligible for consumer loans, including mortgage, automobile, credit cards, etc. Further, they may receive loans for business purposes that are less than $25,000.

A few FISCU commenters noted that, pursuant to state law, otherwise uncompensated directors are authorized to receive a small stipend for attending each board meeting, in addition to their reimbursement for expenses. These stipends, although small, would cause those directors to lose their status as volunteers for purposes of the prohibition. Therefore, if a director desires to obtain a business loan from his/her credit union he/she should forego the stipend.

*Reporting of Nonconforming Member Business Loans (Section 701.21(h)(4)(ii))*

The proposed rule required that credit unions report to the NCUA Regional Director, on or before the effective date of the rule, all business loans that do not satisfy any of the requirements of the rule. To alleviate unnecessary confusion and work, the final rule requires the reporting of only those loans that are in excess of the loan-to-one-borrower limit contained in § 701.21(h)(2)(ii).

*Applicability of Rule to Federally-Insured State Credit Unions (Section 741.3)*

Several commenters recommended that this Section be amended to provide some flexibility to allow a state regulatory authority that has, for

example, certain provisions in its state code which depart from those in the FCU Act, to adopt *substantially* equivalent regulations as determined by the NCUA Board. The Board agrees that such an amendment is warranted and has amended the final rule.

Depending on the circumstances, an exemption may be granted for one or more of the sections of NCUA's lending regulations that will now apply to federally-insured state credit unions (§ 701.21(c)(8) concerning prohibited fees, § 701.21(d)(5) concerning nonpreferential treatment, and § 701.21(h) concerning member business loans).

In determining whether a state's regulations are "substantially equivalent," and whether to exempt the state's credit unions from § 701.21(c)(8), (d)(5), or (h), the NCUA Board will review the regulations to determine whether they minimize risk and accomplish the overall objectives of the otherwise applicable NCUA Rules and Regulations. In the case of the member business loan rule, the Board will be particularly concerned with the provisions in the state's rules that address the scope of the rule, diversification (i.e., loan-to-one-borrower limits), written loans policies, and loans to senior management. Further, states that are exempted will need to provide for a system in which any required reviews and approvals, (e.g., approval to an individual credit union to exceed the 20% loan-to-one-borrower limit) although ultimately approved by the state, are decided only after consultation and coordination with NCUA. This would be the same type of procedure as contained in Section 741.3 for nonexempt states, where NCUA coordinates with the state supervisor.

*Standard Bylaw Amendment—Loans to Nonnatural Persons (Article XII, Section 1)*

In conjunction with the promulgation of these final rules, the NCUA Board has also approved a standard bylaw amendment for Federal credit unions concerning loans to nonnatural person members. Pursuant to Article XII, Section 1 of the FCU Bylaws, loans to a member other than a natural person cannot be in excess of its shareholdings in the credit union. The standard bylaw amendment, if adopted by an FCU, would permit the loan to exceed shares if the loan is made jointly to one or more natural person members and a business organization in which they have a majority ownership interest, or, if the nonnatural person is an association, the loan is made jointly to a majority of the members of the association and to the association in its own right.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions (primarily those under 1 million dollars in assets). According to information available to the NCUA, business loans are not made by a significant number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The Board submitted the information collection requirements of the first proposed business lending rule and received conditional approval from the Office of Management and Budget (OMB). (*See* (51 FR 23234, June 26, 1986.) The information collection requirements of this final rule have been modified from the June proposed rule. The written loan policy requirement is now found at § 701.21(h)(2)(i). Certain collections that were required in all situations under the proposed rule are now only required when appropriate. One additional requirement has been addded. Section 701.21(h)(4)(ii) requires that a one-time notification to the appropriate NCUA Regional Director be made.

Since the collection requirements have been modified, they will be resubmitted to OMB for approval with publication of this final rule. OMB action on the requirements will be published in the **Federal Register** when it is received by NCUA.

Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB desk officer at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATT: Robert Neil.

**List of Subjects in 12 CFR Parts 701 and 741**

Credit unions, Member business loans.

By the National Credit Union Administration Board on April 9, 1987.

**Becky Baker,**

*Acting Secretary of the Board.*

**PART 701—[AMENDED]**

Accordingly, NCUA amends its regulations as follows:

1. The authority citation for Part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a) and 1789(a)(11).

2. Section 701.21(a) is revised to read:

**§ 701.21 Loans to members and lines of credit to members.**

(a) *Statement of scope and purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, § 701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while § 701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with Title VIII of Pub. L. 97–320, and certain provisions apply to loans made by federally-insured state-chartered credit unions as specified in § 741.3. Finally, it is noted that § 701.21 does not apply to loans by Federal credit unions to other credit unions (although certain statutory limitations in section 107 of the Act apply), nor to loans to credit union organizations (which are governed by section 107(5)(D) of the Act and § 701.27 of this Part).

* * * * *

3. Section 701.21(c)(5) is revised to read:

* * * * *

(c) * * *

(5) *Ten percent limit.* No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired shares and surplus. In the case of member business loans as defined in § 701.21(h)(1)(i), additional limitations apply as set forth in § 701.21(h)(2)(ii).

* * * * *

4. Section 701.21(c)(8) is revised to read:

* * * * *

(c) * * *

(8) *Prohibited fees.* A Federal

credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this Section. For purposes of this Section, "senior management employees" means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller), and "immediate family member" means a spouse or other family member living in the same household.

* * * * *

5. Section 701.21(d)(5) is revised to read:

* * * * *

(d) * * *

(5) *Nonpreferential treatment.* The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by—

(i) An official,

(ii) An immediate family member of an official, or

(iii) Any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official, shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. "Immediate family member" means a spouse or other family member living in the same household.

6. A new § 701.21(h) is added to read:

* * * * *

(h) *Member Business Loans*—(1) *Definitions.* (i) "Member business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, or agricultural purpose, except that the following shall not be considered member business loans for the purposes of this section:

(A) A loan or loans fully secured by a lien on a 1 to 4 family dwelling that is:

(*1*) The member's primary residence; or

(*2*) The member's secondary residence; or

(*3*) One other such dwelling owned by the member.

(B) A loan that is fully secured by shares in the credit union or deposits in other financial institutions.

(C) A loan, the proceeds of which are used for a commercial, corporate, business, or agricultural purpose, made to a borrower or an associated member (as defined in paragraph (h)(1)(iii) of this section), which, when added to other such loans to the borrower or associated member, is less than $25,000.

(D) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency or the Federal government or of a state or any of its political subdivisions.

(ii) "Reserves" means all reserves, including the Allowance for Loan Losses account, and undivided earnings or surplus.

(iii) "Associated Member" means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor.

(iv) "Immediate Family Member" means a spouse or other family member living in the same household.

(2) *Requirements.* A Federal credit union may make member business loans only in accordance with the applicable provisions of § 701.21 (a) through (g) and the following additional requirements:

(i) *Written loan policies.* The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

(A) Types of business loans that will be made.

(B) The credit union's trade area for business loans.

(C) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans.

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan.

(E) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to § 701.21(h)(2)(ii).

(F) Qualifications and experience of personnel involved in making and administering business loans.

(G) Analysis of the ability of the borrower to repay the loan.

(H) The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns.

(I) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated.

(J) Appropriate interest rates and maturities of business loans.

(K) Loan monitoring, servicing and follow-up procedures, including collection procedures.

(L) Provision of periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans.

(M) Identification, by position, of those senior management employees prohibited by paragraph (h)(3) of this section from receiving member business loans.

(ii) *Loans to one borrower.* Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves. If any portion of a member business loan is fully secured by a 1 to 4 family dwelling that is the member's primary residence, secondary residence, or one other such dwelling owned by the member, or by shares in the credit union, or deposits in another financial institution, or insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 20% limit. Credit unions seeking an exception from the 20% limit must present the Board with, at a minimum: the higher limit sought; an explanation of the need to raise the limit; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy.

(iii) *Allowance for loan losses.* (A) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(B) Loans classified shall be reserved as follows:

(1) Loss loans at 100% of outstanding amount;

(2) Doubtful loans at 50% of outstanding amount; and

(3) Substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

(3) *Prohibitions*—(i) *Senior management employees.* A Federal credit union may not make member business loans to the following non-volunteer, senior management employees, or to any associated member or immediate family member of such employees:

(A) Any member of the Board of Directors who is compensated as such.

(B) The credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager).

(c) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager).

(D) The chief financial officer (Comptroller).

(ii) *"Equity kickers."* A Federal credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit to the business or commercial endeavor for which the loan is made.

(4) *Effective date.* (i) Section 701.21(h) is effective July 1, 1987. On and after that date, a Federal credit union may make member business loans only after adopting and implementing written loan policies as required by § 701.21(h)(2)(i). All member business loans made on or after that date must be in full compliance with § 701.21(h).

(ii) On or before July 1, 1987, a Federal credit union must notify the NCUA Regional Director, in writing, of any outstanding member business loans made prior to that date that do not satisfy the requirements of § 701.21(h)(2)(ii).

**Appendix to § 701.21(h)—Classifications**

*Substandard.* Loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

*Doubtful.* A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.

*Loss.* Loans classified loss are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

## PART 741—[AMENDED]

7. The authority citation for Part 741 is revised to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), and 1781 through 1790.

8. Sections 741.3 through 741.9 are redesignated as §§ 741.4 through 741.10 respectively.

9. A new § 741.3 is added to read:

**§ 741.3 Minimum loan policy requirements.**

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in § 701.21(h) concerning member business loans, § 701.21(c)(8) concerning prohibited fees, and § 701.21(d)(5) concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority.

[FR Doc. 87-8529 Filed 4-15-87; 8:45 am]
BILLING CODE 7535-01-M

---

**12 CFR Part 708**

## Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The Federal Credit Union Act empowers the NCUA Board to prescribe rules regarding mergers of federally-insured credit unions and changes in insured status, and requires written approval of the Board prior to the termination of Federal insurance or conversion of Federal insurance to non-Federal insurance. These revised rules address the treatment of the one percent NCUSIF deposit in mergers and shortening of the time permitted between the approval of a merger by NCUA and its presentation for a membership vote by the merging credit union. These rules also add new provisions regarding the termination or conversion of Federal insurance and set forth the forms to be used in obtaining membership approval of those actions. These rules do not affect the normal day-to-day operations of credit unions.

**EFFECTIVE DATE:** May 18, 1987.

**ADDRESS:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** James J. Engel, Deputy General Counsel, at the above address, or telephone: (202) 357-1030.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 20, 1986, (See 51 FR 43377, December 2, 1986) the NCUA Board issued proposed amendments to Part 708 of its Rules and Regulations. Part 708 currently deals only with mergers involving at least one federally-insured credit union. Due to the fact that mergers can also involve the termination or conversion of Federal insurance, the November proposal added new provisions addressing those areas. As issued, the proposed rule was organized into three distinct subparts: Subpart A contained merger procedures; Subpart B set forth the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to insurance provided by private or cooperative insurers; and Subpart C contained the forms to be used for terminating or converting Federal insurance, with or without a merger. This same format is followed in the final rule.

A total of nine public comment letters were received on the proposal. Comment letters were received from: one national credit union trade association; one credit union league; two Federal credit unions; 3 share (deposit) insurance corporations; one share insurance corporation trade association; and one state credit union supervisor trade association. The particular comments are addressed below.

**Public Comment**

In summary, one commenter supported the regulation as written, four commenters objected to the use of terms such as "federally-insured," "nonfederal insurance" and "Federal insurance"; two commenters felt the regulation discouraged termination or conversion of insurance; and two commenters had recommendations for minor changes. No commenters questioned the authority of the Board to regulate the matters addressed in the rule.

Regarding the objections to the use of terms such as "Federal insurance" and "federally-insured," similar objections were presented in a petition to amend Part 740 after the Board adopted a final amendment to that part in October, 1986. Two of the amendments at that time were inclusion of the term "federally" in the official sign and in the official advertising statement. The Board informed the petitioners in that matter that it did not find the use of "federally-insured" to be inaccurate or misleading and the Board continues to believe that the use of such terms are appropriate.

As stated in the legislative history of Title II of the Federal Credit Union Act (FCU Act):

> The primary purpose of the legislation [creating the National Credit Union Share Insurance Fund] is to provide a Federal system of share insurance for savings in credit unions and the regulatory authority necessary to operate such a share insurance system. Senate Rep. 91–1128, at 1, 91st Cong. 2d Sess., Aug. 19, 1970.

In discussing the need for the legislation, the Senate Report noted that "Federal credit unions are unique in that they are the only federally chartered thrift institutions that do not provide *Federal insurance protection* similar to that available to the depositors of most commercial banks and savings and loan associations." (Id., at 2, emphasis added.) The Report also specifically refers to "a program of Federal share insurance." (Id.) The fact of the matter is that NCUA is a Federal agency that administers a Federal share insurance program through the National Credit Union Share Insurance Fund. The references in the legislative history clearly indicate Congress knew it was creating Federal share insurance.

As to the comments that Congress could have used "Federal insurance" or "Federally-insured" in the FCU Act but chose not to, as an indication that "Federal insurance" was not intended, the Board believes the answer is clear from the statute itself. There was no need to use such terms. For insurance purposes, the FCU Act recognizes only two types of credit unions, those that are insured under the FCU Act—"insured credit union"—and those that are not—"noninsured credit union." *See*, 12 U.S.C. 1752(7). A "noninsured credit union" is any credit union that is not insured by the NCUA Board through the NCUSIF. This would include credit unions that have no share insurance and those that are insured by an entity other than NCUA. Once a credit union converts from insurance under the FCU Act to another form of insurance, it becomes a "noninsured credit union" for purposes of the FCU Act. For purposes of Part 708 then, the Board could simply refer to any credit union not insured by it as a "noninsured credit union." Two of the commenters suggested that the Board do just that. The Board chose not to, however, and instead broke down "noninsured" credit union into "nonfederally-insured"—insured by a state-chartered insurance or guaranty corporation—and "uninsured"—having no share insurance at all. Use of "noninsured" when referring to nonfederally-insured credit unions, although accurate under the FCU Act, would, in the Board's view, be a disservice to those state-chartered insurers. None of the four commenters, however, which were state-chartered insurers themselves or represented those insurers, challenged the Board's authority to issue the rule or suggested alternatives to "nonfederally-insured" in their comments on the terminology used in the proposal. Rather, they recommended deleting terms such as "Federal," "federally," and "nonfederally." The Board is of the opinion that the terminology used in the proposal is appropriate and therefore has made no change in the final rule.

One commenter stated that it appears NCUA is trying to make it impossible to either change or drop NCUA insurance. The commenter requested relief from the 20 percent voter return requirement set forth in § 708.203(c) of the proposed rule. This 20 percent member participation rule is mandated by section 206(d)(2) of the FCU Act, 12 U.S.C. 1786(d)(2). That section of the FCU Act requires that at least 20 percent of the membership must participate in voting on the issue of converting insurance and a majority of those voting must approve. (Termination of insurance has a more stringent requirement: the affirmative vote of a majority of all members, 12 U.S.C. 1786(a)(1). *See* § 708.201(c) of this rule.) Since 20 percent participation is required by the statute, the Board is unable to make any change.

Another commenter felt that the forms in Subpart C would discourage termination or conversion of Federal insurance. The commenter requested that the forms be exemplary material and that credit unions be given greater flexibility in structuring notifications to their members. Although the forms are required, flexibility is provided in § 708.303. The proposed rule provided that modifications or additions would be permitted subject to approval of the appropriate Regional Director. The final rule has been changed by adding the state authority as a party to the approval of notice modifications in the case of state credit unions. In addition, any communications regarding insurance coverage mailed with the notices and ballot will require approval of the Regional Director and the state authority where appropriate.

The Board is of the opinion that part of its responsibilities in administering the Federal share insurance program is assuring that members have a clear understanding of any change to their credit union's share insurance coverage. In this regard, notification to members is extremely important. The Board does not find the use of specific forms to be burdensome and does not believe the forms in and of themselves will discourage termination or conversion of insured status. To the contrary, the use of the forms in Subpart C should simplify the process. The final rule, therefore, will require use of the language contained in the forms in Subpart C. As indicated, modifications can be made with the approval of the Regional Director and, where appropriate, the state authority.

Two commenters included specific suggestions for changes to the proposed rule, most of which relate to Subpart A—mergers. First, it was suggested that provisions that require submissions to the Agency be clarified as to whether the particular item should be submitted to the Regional Director or to the NCUA Board. For example, the current regulation requires submission of an insurance application to the Board (§ 708.3(c)) and submission of a merger plan to the Regional Director (§ 708.5(a)), while the proposal simply refers to NCUA (§§ 708.102(b) and 708.104(a)). NCUA was used in the proposal because these are areas subject to the Board's delegations of authority. The Board agrees with the commenter that clarification is appropriate and therefore the final rule has been revised to provide that all notices and submissions are to be sent to the appropriate Regional Director. If the Regional Director is not authorized to act on the submission, it will be forwarded to the NCUA Board. In most cases, the Board would seek Regional Director comments on an application or

plan and this would be accomplished by making the original submission to the Regional Office.

A second comment related to the refund of the NCUSIF deposit and/or insurance premium. *See* § 708.102(c) of the proposed rule. The commenter suggests that the FCU Act requires that any refund must not be returned prior to the expiration of the one-year period of continued insurance coverage and that this applies to a credit union that is nonfederally insured as well as those that are uninsured. Section 202(c)(1)(B)(i), 12 U.S.C. 1782(c)(1)(B)(i), requires a deposit refund in the event of insurance termination or conversion, and section 202(c)(1)(B)(ii), 12 U.S.C. 1782(c)(1)(B)(ii), provides that in no event shall the deposit be returned later than one year after the final date on which any shares are insured by the Board. Thus, the Board may withhold the refund for two years after termination of insurance, since limited insurance coverage extends for one year after termination; and for one year after conversion of insurance. Normally, the refund will be made as soon as possible after the NCUA's insurance liability expires, i.e., one year after termination and immediately after the date of conversion. The proposed regulation, § 708.102(c), merely states that in the case of a merger, if the continuing credit union is not insured by NCUA, i.e., it is uninsured or nonfederally insured, it will be entitled to a refund. If it is uninsured, the refund will not be made during the one-year limited coverage period. The Board does not believe that any change needs to be made to § 708.102. Section 202 of the FCU Act provides the basis for any extended withholding if that is determined to be necessary.

It was also suggested that the regulation stipulate that NCUA will examine credit unions during the one-year extended insurance coverage period after termination of insurance. The commenter believes that mandatory examination is necessary for the protection of the NCUSIF. The Board does not believe that its authority to examine such credit unions, which is found in section 206(d)(1) of the FCU Act, needs to be set forth in this regulation. The Board will exercise its discretion to conduct such examinations on a case-by-case basis.

Another suggestion was that a subsection (11) be added to § 708.103(a), preparation of a merger plan, to indicate the necessity of the adoption of Federal Bylaws where the continuing credit union is a Federal credit union. A new subsection is not necessary, however, since the continuing credit union's bylaws would remain in effect after a merger; no adoption of bylaws is necessary.

Both the current regulation, § 708.6(a), and the proposed, § 708.105(b), provide that if NCUA determines that a merging Federal credit union is in danger of insolvency and the merger would reduce the risk or avoid a loss to the NCUSIF, NCUA may permit the merger without membership approval. The proposal differs from the current regulation in that it requires the continuing credit union to be federally insured. The rationale for permitting the waiver of a membership vote in this situation is the benefit to the NCUSIF in the reduction of its risk or loss without the delay of obtaining membership approval. There is no change in NCUA's insurance liability to the members, they continue to have credit union service, and, if dissatisfied with the merger, they are free to withdraw their shares. The alternative would be liquidation of the merging Federal credit union. One commenter suggested that NCUA retain the right to waive the membership vote in the event of insolvency even if the actual risk to the NCUSIF is not reduced. In the Board's view, however, if there is no reduction of risk or avoidance of loss to the NCUSIF, there is no basis for speeding up the process and avoiding the delay that obtaining the membership vote would entail. In all likelihood, there would be no basis for permitting the merger at all since it would merely shift existing risk and loss to an otherwise stable institution. The Board, therefore, has made no change to § 708.105(b).

There were two comments submitted on § 708.201, termination of insurance. The first was in regard to subsection (b) which provides that a "Federal credit union may terminate Federal insurance only by merging into, or converting its charter to, an uninsured state credit union." The commenter felt that Federal insurance would also terminate if a Federal credit union merged with, or converted to, a nonfederally-insured state-chartered credit union. For purposes of this regulation, however, a merger with, or conversion to, a nonfederally-insured credit union would be treated as a conversion of insurance under § 708.203(b), not a termination of insurance. Termination, as that term is defined in § 708.1(g), means that the credit union will be uninsured, i.e., there is no share insurance of any kind. Therefore, no change is needed in § 708.201(b).

The second comment related to § 708.201(c). The commenter felt the provisions would only apply to federally-insured state credit unions and that provision was unclear. That is not the case though. Subsection (c) applies to termination by both state and Federal credit unions as provided in subsections (a) and (b) of § 708.201. In both situations, termination, whether as a single act or when coupled with a merger or change in charter— Federal credit unions can only terminate Federal insurance through a merger or change in charter—must be approved by a majority of all of the credit union's members under subsection (c). For this reason, no change has been made to § 708.201(c).

**Change in Final Rule**

Several changes have been made in the final rule. The first change is reflected by the addition of two provisions: § 708.201(d) and 708.203(d). These provisions set forth the statutory requirement contained in § 205(b) of the FCU Act that prior written approval of the Board is necessary in order to terminate Federal insurance (§ 708.201(d)) or convert to nonfederal insurance (§ 708.203(d)).

Section (§ 205(b)(1) of the FCU Act, 12 U.S.C 1785(b)(1), provides, in pertinent part, that:

> Except with the prior written approval of the Board, no insured credit union shall—(A) merge or consolidate with any *noninsured credit union* . . .; or
>
> * * * * * *
>
> (D) Convert into a *noninsured credit union* . . . *(Emphasis added.)*

For purposes of the Federal Credit Union Act, the term "noninsured credit union" means any credit union that is not insured by the NCUA Board. 12 U.S.C. 1752(7). To avoid any uncertainty as to the Board's interpretation, §§ 708.201(d) and 708.203(d) have been added to the final rule, and the authority citation has been revised to include 12 U.S.C. 1785. The two new provisions also provide that the NCUA Board would approve or disapprove the termination or conversion within 90 days after being notified by the credit union.

Sections 708.202(c) and 708.204(c), regarding the sending of the final notice of termination or conversion to the members, have been revised to clarify that the action must first be approved "by the membership and the Board." The final rule also contains a revision in § 708.203(c). A sentence has been added to clarify that a credit union can give the Board notice of conversion of insurance either at the time it is soliciting membership approval or after

membership approval of the conversion is obtained. A similar change was not made to § 708.201(c) regarding termination because the FCU Act requires membership approval prior to notice to the Board.

Another change, previously noted, is contained in § 708.303, "Modification to Notice." In the final rule, the appropriate state authority, in addition to the NCUA Regional Director, must approve any changes to the notices or ballots set forth in Subpart C when a state-chartered credit union is terminating or converting Federal insurance. Communications regarding insurance coverage mailed with the notices and ballot are also subject to approval. This would not preclude a credit union from mailing a notice or ballot with the members' statement of the credit union's newsletter. If the statement or newsletter, however, addresses share insurance coverage or the termination or conversion thereof, approval would be necessary.

In addition to the clarifying amendment regarding submissions to the Agency, as previously discussed, a minor change has been made to the definition of "nonfederally-insured" in § 708.1(e). The phrase "private or cooperative" has been added to the description of insurance fund or guarantee. There have also been several modifications to the notices and ballots contained in Subpart C of the final rule. The notices of proposed action have been revised to conform with the requirements of Subpart B by adding a sentence wherein a credit union would set forth the date on which the membership vote is to be taken and a space for directions regarding a membership meeting or the use of mail ballots. The ballots have been changed to include a statement regarding the deadline for returning the ballot to the credit union—the date for the membership vote— and by adding a space for the member to insert the date the ballot is signed.

The remaining provisions of the final rule are the same as the proposed rule. It is organized in three distinct subparts. Subpart A prescribes the merger procedures to be used where at least one federally-insured credit union is involved. It is derived from the current Part 708.

Subpart B sets forth the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to insurance provided by a guarantee corporation or insurance fund organized under state law. Subpart C sets forth the forms to be used for terminating or converting Federal insurance, with or without a merger. Both Subparts B and C are new, but their provisions are derived from § 208 of the Act.

If there is a merger between federally-insured credit unions, Subpart A alone applies. However, if a merger will result in the termination or conversion of Federal insurance, then certain portions of both Subparts B and C, as cross-referenced in Subpart A, come into play depending upon the particular facts of the situation. Subpart B is also cross-referenced to the forms in Subpart C. If a particular situation involves termination or conversion of Federal insurance without a merger, Subparts B and C apply and Subpart A does not. This approach should make application of the rule easier for credit unions.

In the case of a termination of insurance, the board of directors first approves the action. A Notice of Proposal to Terminate Federal Insurance is sent to the membership. The ballot may be included with the notice or provided at a later date. The membership vote is taken, and if approved by a majority of members, notice is sent to the Regional Director within one year of the membership vote and at least 90 days prior to the intended termination date. The Board will either approve or disapprove the termination within 90 days setting forth the termination date, normally the intended date set by the credit union. The Board may agree with the credit union to advance the termination date after the notice has been given to the Board since the notice period is for the Board's benefit. If approved, the credit union then sends the Notice of Termination to its members. If a merger is involved, Subpart A comes into play and there is an additional step: a merger plan would have to be submitted to the Regional Director. If approved, the credit union would then follow the above steps, submitting the merger and termination proposal to the membership. The voting requirements for termination, rather than a merger, are then applicable.

In a conversion of insurance, the first step is also board of directors' approval. A Notice of Conversion is then sent to the membership and the ballot may be included at that time. Unlike a termination action, the credit union need not wait for membership approval but may, if it so desires, notify the Board at the same time it contacts its members or during the solicitation process. The Board would still act in 90 days. If the members are given the full 30 days' notice, the conversion could then be completed within 60 days of membership approval. As in the case of termination, the Board and the credit union can agree to advance the conversion date. If approved by the Board and the members, the credit union would then send the Notice of Conversion. Also as in the case of termination, if a merger is involved, a merger plan has to be submitted to the Regional Director, and the voting requirements for conversion are controlling.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions (primarily those under $1 million in assets). Further, this final rule does not affect the daily operations of credit unions. Accordingly, the Board has determined that a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

The final rule includes several new notification requirements. There are six case situations that call for notices. Each situation has three separate notice requirements: notice of proposed action; ballot for membership vote; and notice of final action. The six case situations are: (1) Termination of insurance; (2) merger and termination of insurance; (3) conversion of charter and termination of insurance; (4) conversion of insurance; (5) merger and conversion of insurance; and (6) conversion of charter and conversion of insurance. The particular facts of a given case will determine which situation applies to a credit union and the credit union will only have to utilize the appropriate three notices.

The notice requirements for mergers were previously approved by OMB (Control number 3133–0024). The information collection contained in Subpart B has been approved for use through 12/31/89 (OMB No. 3133–0107).

**List of Subjects in 12 CFR Part 708**

Credit unions, Mergers of Federally-insured credit unions, Voluntary termination or conversion of insured status.

By the National Credit Union Administration Board on April 9, 1987.

**Becky Baker,**

*Acting Secretary of the Board.*

Accordingly, NCUA amends its regulations as follows:

Part 708 is revised to read as follows:

## PART 708—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

Sec.
708.0 Scope.
708.1 Definitions.

**Subpart A—Mergers**

708.101 Mergers generally.
708.102 Special provisions for Federal insurance.
708.103 Preparation of merger plan.
708.104 Submission of merger proposal to NCUA.
708.105 Approval of merger proposal by NCUA.
708.106 Approval of the merger proposal by members.
708.107 Certificate of vote on merger proposal.
708.108 Completion of merger.

**Subpart B—Voluntary Termination or Conversion of Insured Status**

708.201 Termination of insurance.
708.202 Notice to members of termination of insurance.
708.203 Conversion of insurance.
708.204 Notice to members of conversion of insurance.

**Subpart C—Forms**

708.301 Termination of insurance.
708.302 Conversion of insurance.
708.303 Modifications to notice.

**Authority:** 12 U.S.C. 1766, 12 U.S.C. 1785, 12 U.S.C. 1786, 12 U.S.C. 1789.

### § 708.0 Scope.

(a) Subpart A of this Part prescribes the procedures for merging one or more credit unions with a continuing credit union where at least one of the credit unions is federally insured.

(b) Subpart B of this Part prescribes the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to nonfederal insurance, including termination or conversion resulting from a merger.

(c) Subpart C of this Part sets forth the forms to be used for terminating Federal insurance or converting from Federal insurance to nonfederal insurance.

(d) Nothing in this Part shall operate as a restriction or otherwise impair the authority of NCUA to approve a merger pursuant to section 205(h) of the Act.

(e) This Part does not address procedures or requirements that may be applicable under state law for a state credit union.

### § 708.1 Definitions.

(a) "Continuing credit union" means the credit union which will continue in operation after the merger.

(b) "Merging credit union" means the credit union which will cease to exist as an operating credit union at the time of the merger.

(c) "State credit union" means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, "state authority" means the appropriate state or territorial regulatory or supervisory authority for any such credit union.

(d) "Federally-insured" means insured by the Board through the National Credit Union Share Insurance Fund (NCUSIF).

(e) "Nonfederally-insured" means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state law.

(f) "Uninsured" means there is no share or deposit insurance available on the credit union accounts.

(g) The terms "terminate," "termination" and "terminating," when used in reference to insurance, refer to the act of canceling Federal insurance and mean that the credit union will become uninsured.

(h) The term "convert," "conversion" and "converting," when used in reference to insurance, refer to the act of canceling Federal insurance and simultaneously obtaining share or deposit insurance from another insurance carrier. They mean that after cancellation of Federal insurance the credit union will be nonfederally insured.

## Subpart A—Mergers

### § 708.101 Mergers generally.

(a) In any case where a merger will result in the termination of Federal insurance or conversion to nonfederal insurance, the merging credit union must comply with the provisions of Subpart B in addition to this Subpart A.

(b) No federally-insured credit union shall merge with any other credit union without the prior written approval of the Board.

(c) Where the continuing credit union is a Federal credit union, there must be compliance with the chartering policies of the Board.

(d) Where the continuing or merging credit union is a state credit union, the merger must be permitted by state law or authorized by the state authority.

### § 708.102 Special provisions for Federal insurance.

(a) Where the continuing credit union is federally insured, an NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on the additional share accounts insured as a result of the merger of a nonfederally-insured or uninsured credit union with a federally-insured credit union.

(b) Where the continuing credit union is nonfederally insured or uninsured but desires to be federally insured as of the date of the merger, an application shall be submitted to the appropriate Regional Director when the merging credit union requests approval of the merger proposal. An NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on any additional share accounts insured as a result of the merger.

(c) Where the continuing credit union is nonfederally insured or uninsured and does not make application for insurance, but the merging credit union is federally insured, the continuing credit union is entitled to a refund of the merging credit union's NCUSIF deposit and to a refund of the unused portion of the NCUSIF share insurance premium (if any). If the continuing credit union is uninsured, the refund will be made only after expiration of the one-year period of continued insurance coverage noted in paragraph (e) of this section.

(d) Where the continuing credit union in nonfederally insured, NCUSIF insurance of the member accounts of a merging federally-insured credit union ceases as of the effective date of the merger. (Refer to Subpart B, §§ 708.203 and 708.204 and Subpart C, § 708.302(b).)

(e) Where the continuing credit union is uninsured, NCUSIF insurance of the member accounts of the merging federally-insured credit union will continue for a period of one year, subject to the restrictions in section 206(d)(1) of the Act as noted in the Notice of Termination set forth in § 708.301(b)(3). (Refer to Subpart B, §§ 708.201 and 708.202, and Subpart C, § 708.301(b).)

### § 708.103 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, a plan for the proposed merger shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Provisions with respect to notification and payment of creditors;

(8) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;

(9) Provisions for determining that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a Federal credit union); and

(10) Proposed charter amendments (where the continuing credit union is a Federal credit union). These amendments, if any, will usually pertain to the name of the credit union and the definition of its field of membership.

**§ 708.104 Submission of merger proposal to NCUA.**

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the following information will be submitted to the Regional Director:

(1) The merger plan, as described in this Part;

(2) Resolutions of the boards of directors;

(3) Proposed Merger Agreement;

(4) Proposed Notice of Special Meeting of the Members (for merging Federal credit unions);

(5) Copy of the form of Ballot to be sent to the members (for merging Federal credit unions);

(6) Evidence that the state's supervisory authority is in agreement with the merger proposal (for states which require such agreement prior to NCUA approval); and

(7) Application and Agreement for Insurance of Member Accounts (for continuing state credit unions desiring to become federally insured).

**§ 708.105 Approval of merger proposal by NCUA.**

(a) In any case where the continuing credit union is federally insured, and the merging credit union is nonfederally insured or uninsured, a determination shall be made by NCUA as to the potential risk to the National Credit Union Share Insurance Fund (NCUSIF).

(b) If NCUA finds that the merger proposal complies with the provisions of this Part and does not present an undue risk to the NCUSIF, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger. In the event NCUA determines that the merging credit union, if it is a Federal credit union, is in danger of insolvency, and that the proposed merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund, NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging Federal credit union, notwithstanding the provisions of § 708.106; *Provided* that the continuing credit union is federally insured.

(c) Any proposed charter amendments for a continuing Federal credit union will be approved contingent upon the completion of the merger.

**§ 708.106 Approval of the merger proposal by members.**

(a) When the merging credit union is a Federal credit union, the members shall:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of such approval, or by mail ballot, received no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting at which the merger proposal is to be submitted, in accordance with the provisions of Article V, Meetings of Members, Federal Credit Union Bylaws. The notice shall:

(i) Specify the purpose of the meeting and the time and place;

(ii) Include a summary of the merger plan, which shall contain, but not necessarily be limited to, current financial reports for each credit union, a combined financial report for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts (refer to Subpart B, §§ 708.202 and 708.204);

(iii) State reasons for the proposed merger;

(iv) Provide name and location (to include branches) of the continuing credit union;

(v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be received no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(vi) Be accompanied by a Ballot for Merger Proposal.

(b) The proposal to merge a Federal credit union into a federally-insured credit union must be approved by an affirmative vote of a majority of the members of the merging credit union who vote on the proposal. If the continuing credit union is uninsured, the voting requirements of § 708.201(c) apply; if it is nonfederally insured, the voting requirements of § 708.203(c) apply.

**§ 708.107 Certificate of vote on merger proposal.**

The board of directors of the merging Federal credit union shall certify the results of the membership vote to the Regional Director within 10 days after the vote is taken.

**§ 708.108 Completion of merger.**

(a) Upon approval of the merger proposal by NCUA and by the state supervisory authority (where the continuing or merging credit union is a state credit union) and by the members of each credit union where required, action may be taken to complete the merger.

(b) Upon completion of the merger, the board of directors of the continuing credit union shall certify the completion of the merger to the Regional Director within 30 days after the effective date of the merger.

(c) Upon NCUA's receipt of certification that the merger has been completed, then the charter of the merging Federal credit union (if applicable) and the insurance certificate of any merging federally-insured credit union will be canceled.

## Subpart B—Voluntary Termination or Conversion of Insured Status.

**§ 708.201 Termination of insurance.**

(a) A state credit union may terminate Federal insurance, if permitted by state law, either on its own or by merging into an uninsured credit union.

(b) A Federal credit union may terminate Federal insurance only by merging into, or converting its charter to, an uninsured state credit union.

(c) Termination of insurance must be approved by the affirmative vote of a majority of the credit union's members. The credit union must notify the Board, through the Regional Director, in writing at least 90 days prior to termination and the membership vote must have been obtained within one year prior to giving the Board notice.

(d) No federally-insured credit union shall terminate Federal insurance without the prior written approval of the Board. The Board will approve or disapprove the termination in writing within 90 days after being notified by the credit union.

**§ 708.202 Notice to members of termination of insurance.**

(a) When a federally-insured credit union proposes to terminate Federal insurance, including termination due to a merger or conversion of charter, it

BEST COPY AVAILABLE

shall provide its members with written notice of the proposal to terminate and of the date set for the membership vote. The Notice of Proposal shall be as set forth in either § 708.301 (a)(1) or (b)(1), or as provided in § 708.301(c), as the circumstances warrant.

(b) The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 nor less than 7 days prior to the date of the vote. The membership shall be given the opportunity to vote by mail ballot. The ballot to be used shall be as set forth in either § 708.301 (a)(2) or (b)(2), as the circumstances warrant. The notice of the proposal and the ballot may be provided to members at the same time.

(c) If the proposition for termination of insurance is approved by the membership and the Board, prompt and reasonable notice of termination shall be given to all members in the form set forth in either § 708.301(a)(3) or (b)(3), as the circumstances warrant.

**§ 708.203 Conversion of insurance.**

(a) A federally-insured state credit union may convert to nonfederal insurance, if permitted by state law, either on its own or by merging into a nonfederally-insured credit union.

(b) A Federal credit union may convert to nonfederal insurance only by merging into, or converting its charter to, a nonfederally-insured state credit union.

(c) Conversion of Federal to nonfederal insurance must be approved by an affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The credit union must notify the Board, through the Regional Director, in writing at least 90 days prior to conversion. Notice to the Board may be given when membership approval is solicited or after membership approval is obtained.

(d) No federally-insured credit union shall convert to nonfederal insurance without the prior written approval of the Board. The Board will approve or disapprove the conversion in writing within 90 days after being notified by the credit union.

**§ 708.204 Notice to members of conversion of insurance.**

(a) When a federally-insured credit union proposes to convert to nonfederal insurance, including conversion due to a merger or conversion of charter, it shall provide its members with written notice of the proposal to convert and of the date set for the membership vote. Notice of the proposal shall be as set forth in either § 708.302(a)(1) or (b)(1), or as provided in § 708.302(c), as the circumstances warrant.

(b) The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 nor less than 7 days prior to the date for the vote. The membership shall be given the opportunity to vote by mail ballot. The ballot to be used for the membership vote shall be as set forth in either § 708.302(a)(2) or (b)(2), as the circumstances warrant. The notice of the proposal and the ballot may be provided to the members at the same time.

(c) If the proposition for conversion of insurance is approved by the membership and the Board, prompt and reasonable notice shall be given to all members in the form set forth in either § 708.302(a)(3) or (b)(3), as the circumstances warrant.

## Subpart C—Forms

**§ 708.301 Termination of insurance.**

(a) A federally-insured state credit union shall use the following language for purposes of terminating Federal insurance:

(1) *Notice of Proposal to Terminate Federal Insurance*

(Date)

The Board of Directors of _____ Credit Union has approved a proposition to terminate Federal share (deposit) insurance, ($100,000, provided by the National Credit Union Administration (NCUA), an agency of the Federal Government). Termination of Federal insurance may only take place upon approval by a majority of our members. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If approved, any deposits made by you after the date of termination, either new deposits or additions to existing accounts, will not be insured by the NCUA.

Accounts in the Credit Union on the day of termination, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the day of termination, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

(2) The ballot for obtaining membership approval to terminate Federal insurance shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if termination of Federal insurance is approved, any new deposits or additions to existing accounts made by me will not be insured by the National Credit Union Administration, an agency of the Federal Government. I also understand that my accounts in the Credit Union on the date of termination of insurance, up to a maximum of $100,000, will continue to be insured for one (1) year after the date of termination, but that any withdrawals after the date of termination will reduce the insurance coverage by the amount of the withdrawal.

Signed _____

Member's Name

Date _____

(3) *Notice of Termination*

(Date)

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Unions Act will terminate as of the close of business on the _____ day of _____.

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration.

3. Accounts in the Credit Union on the _____ day of _____, up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the _____ day of _____; Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)

(Address)

(b) A federally-insured credit union that is merging with an uninsured credit union shall use the following language for purposes of terminating Federal insurance:

(1) *Notice of Proposal to Merge and Terminate Federal Insurance*

The Board of Directors of (merging) Credit Union has approved a proposition to merge the Credit Union into the (continuing) Credit Union. The merger must be approved by a majority of the members of (merging) Credit Union. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the merger, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, (NCUA), an agency of the Federal Government) will be affected as follows:

Any deposits made by you after the effective date of the merger, either new deposits or additions to existing accounts, will not be insured by the NCUA. Accounts in the (merging) Credit Union on the date of the merger, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the date of the merger, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

(2) The language for the ballot set forth in (a)(2) above, modified by substituting "the merger and termination" in lieu of "termination" each time it appears on the ballot, shall be used for obtaining membership approval to merge and terminate Federal insurance.

(3) *Notice of Merger and Termination of Federal Insurance*

1. The merger of the (merging) Credit Union into the (continuing) Credit Union has been approved, effective (date).

2. The status of the (merging) Credit Union as an insured credit union under the provisions of the Federal Credit Union Act will terminate as of the close of business on the ____ day of _____ (day preceding merger date).

3. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration.

4. Accounts in the Credit Union on the _____ day of _____, (day preceding merger date), up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after close of business on the _____ day of _____ (day preceding merger date); Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____ (day preceding merger date), will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)
(Address)

---

(c) A Federal credit union that is converting its charter to that of an insured state credit union shall use the language contained in paragraph (a) of this Section, but shall modify the language in (a)(1) to indicate that it is converting its charter and terminating Federal insurance.

**§ 708.302 Conversion of insurance.**

(a) A federally-insured state credit union shall use the following language for purposes of converting from Federal insurance to nonfederal insurance:

(1) *Notice of Proposal to Convert to Nonfederally-Insured Status*

The Board of Directors of _____ Credit Union has approved a proposition to convert from Federal share (deposit) insurance to nonfederal insurance. The conversion must be approved by a majority of the members who vote on the proposal and at least 20% of the entire membership must participate in the vote. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the conversion, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate on the effective date of the conversion. Shares (deposit) in the _____ Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(2) The ballot to obtain membership approval of the conversion shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that, if the conversion of insurance is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the conversion and my shares will be insured up to $_____ by _____, a corporation chartered by the State of _____.

Signed _____
Member's Name

Date _____

(3) Notice of Conversion

(Date)_____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act will cease as of the close of business on the _____day of _____, _____.

2. As of that date, your deposits will no longer be insured by the National Credit Union Share Insurance Fund.

3. Accounts in the credit union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(Name of Credit Union)
(Address)

---

(b) A federally-insured credit union that is merging with a nonfederally-insured credit union shall use the following language for purposes of converting from Federal to nonfederal insurance:

(1) *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status*

"The Board of Directors of (merging) Credit Union has approved a proposition to merge the Credit Union into (continuing) Credit Union. The merger must be approved by a majority of the members of (merging) Credit Union who vote on the proposal and at least 20% of the entire membership must participate in the vote. The membership vote will be taken on (date) (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the merger, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate on the effective date of the merger. Shares (deposit) in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(2) The ballot to obtain membership approval shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if the merger of the (merging) Credit Union into the (continuing) Credit Union is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the merger and my shares in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

Signed _____
Member's Name

Date _____

(3) Notice of Merger and Conversion of Insured Status

(Date)_____

1. The merger of the (merging) Credit Union into the (continuing) Credit Union has been approved, effective (date).

2. As of that date, your shares (deposit) are no longer insured by the National Credit Union Administration.

3. Accounts in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(Name of Credit Union)
(Address)

---

(c) A Federal credit union that is converting its charter to that of a nonfederally-insured credit union shall use the language contained in paragraph (a) of this section, but shall modify the language in (a)(1) to indicate that it is converting its charter and converting from Federal insurance.

**§ 708.303 Modifications to notice.**

(a) Any modifications or additions to the notices or ballot concerning insurance coverage, and any additional communications concerning insurance coverage included with the notices or ballot, may be made with the approval of the Regional Director and, in the case of a state credit union, the appropriate state authority.

(b) Federally-insured state credit unions may include additional language in the notice and ballot regarding state requirements for mergers, where appropriate.

[FR Doc. 87–8530 Filed 4–15–87; 8:45 am]
BILLING CODE 7535–01–M

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**14 CFR Part 1260**

**[NASA Grant and Cooperative Agreement Handbook Instruction 84-3]**

## Miscellaneous Changes to the NASA Grant and Cooperative Agreement Handbook

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This document amends the NASA Grant Cooperative Agreement Handbook to reflect miscellaneous changes which implement higher level directives or deal solely with NASA internal administrative matters.

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-453-2119.

**SUPPLEMENTARY INFORMATION:**

### Background

This document implements the recent addition to OMB Circular A-110 regarding interest bearing accounts and reiterates NASA's longstanding implementation of that Circular's financial reporting requirements by repeating them in this Handbook in addition to their continued inclusion in instructions provided by NASA's financial management offices. The chief additional internal NASA administrative provisions prohibit unauthorized use of contractual procedures on grants and using grants for consulting arrangements in violation of the NASA FAR Supplement.

### Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of E.O. 12291. This instruction contains internal NASA implementation of higher regulatory directives. NASA's implementation is not expected to affect grantees in any significant way beyond that impact flowing from the higher level directives themselves. Consequently, Pub. L. 96-577 does not require publication of this Instruction for public comment. Because public comment is not required, the Regulatory Flexibility Act does not apply to this Instruction. Moreover, this Instruction does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980.

**List of Subjects in 14 CFR Part 1260**

Grants.

S.J. Evans,

*Assistant Administrator for Procurement.*

## PART 1260—[AMENDED]

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

**Authority:** Pub. L. 97-858, 31 U.S.C 6301 *et seq.*

### Subpart 1—General

2. Section 1260.104 is amended by revising paragraph (b) to read as follows:

**§ 1260.104 Amendments.**

* * * * * *

(b) *Procurement Information Circulars.* Non-regulatory changes to the Handbook which require immediate dissemination may be made by a Procurement Information Circular, issued by Headquarters, Procurement Policy Division, Code HP.

3. Section 1260.105 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1260.105 Dissemination and effective date of the part.**

(a) The NASA Grant and Cooperative Agreement Handbook and Instructions will be distributed by Code HP directly to NASA Headquarters offices and to installation distribution points. These NASA elements must inform the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP) of the numbers of copies required. Requests for additional copies should be sent directly to Code HP by Headquarters offices or through installations' distribution points.

(b) Heads of installations will ensure that copies of the NASA Grant and Cooperative Agreement Handbook are distributed to all interested activities and individuals within their installation.

* * * * * *

4. Section 1260.109 is added to read as follows:

**§ 1260.109 Prohibitions.**

(a) The negotiation, award, administration and renewal of grants are purposefully intended to be as simple as possible. Therefore, this Handbook is silent in various areas where long-established pre- and post-award contractual procedures exist. As such, policies, procedures, representations, certifications, forms or requirements (regardless of modifications) applicable to contracts shall not be used for grants or cooperative agreements unless otherwise authorized by this Handbook or by a deviation thereto.

(b) Installation regulations, handbooks or similar guidance documents shall not unnecessarily repeat, paraphrase, extract, condense, be inconsistent with or otherwise restate the material contained in this Handbook.

(c) Pursuant to NFS 18-37.204-70(c), grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements.

### Subpart 4—Research Grant and Cooperative Agreement Provisions

5. In § 1260.406, paragraph (a) and the center heading preceding paragraph (a) are revised to read as follows:

**§ 1260.406 Financial management.**

**Financial Management (April 1987)**

(a) *Payment.* Advance payments by the Letter-of-Credit-Treasury Financial Communications System or Direct Treasury Check method will be made in accordance with procedural instructions furnished to the grantee by the Financial Management Office of the NASA installation which issued the grant. The grantee shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the four months following the quarter being reported.

* * * * * *

6. Section 1260.420 is revised by adding paragraph (c) to read as follows:

**§ 1260.420 Special conditions.**

* * * * * *

(c) The following provision shall be appended to all grants and cooperative agreements as a special condition, pending its inclusion in NASA Form 1463A, NASA Provisions for Research Grants and Contracts:

**Interest Bearing Accounts (April 1987)**

Advances of Federal funds shall be maintained in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted to NASA promptly, but at least quarterly, as instructed by the Financial Management Office of the NASA installation which issued the grant. Interest amounts up to $100 per year may be retained by the recipient for administrative expense.

### Subpart 5—Administration of Research Grants and Cooperative Agreements

§ 1260.514 [Amended]

7. The first sentence of § 1260.514(d) is amended by removing the words "for Grants" and adding, in their place, the words "during close-out".

### Subpart 6—Reports

8. Subpart 6 is amended by revising § 1260.602 to read as follows:

**§ 1260.602 Committee on Academic Science and Engineering (CASE) reports.**

NASA Form 1356, "Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University Projects" is either submitted with funded procurement requests or in the case of certain non-funded actions, initiated by the procuring office. All required NASA Forms 1356 will be completed, checked, and promptly forwarded to the Procurement Management Division, NASA Headquarters (Code HM), in accordance with the instructions on the form and NFS Subpart 18–4.676.

§ 1260.603 [Amended]

9. The first sentence of § 1260.603 is amended by removing the word "quarterly" and adding, in its place, the words "within 15 working days following the end of each Federal Fiscal quarter".

[FR Doc. 87–8513 Filed 4–15–87; 8:45 am]

BILLING CODE 7510–1–M

---

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Docket C–3211]

### McCoy Industries, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Greensboro, NC-based retailer of flame-retardant, pressure-treated wood from misrepresenting the flame-retardant value of its products and requires respondents to notify purchasers that some of the wood may not meet established safety standards.

**DATE:** Complaint and Order issued April 2, 1987.[1]

**FOR FURTHER INFORMATION CONTACT:** Charles Peterson, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St. NW., Room 1000, Atlanta, GA 30367. (404) 347–4836.

**SUPPLEMENTARY INFORMATION:** On Friday, January. 16, 1987, there was published in the **Federal Register**, 52 FR 1926, a proposed consent agreement with analysis In the Matter of McCoy Industries, Inc., and Reliance Treated Wood, Inc., corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.10 Advertising falsely or misleadingly; S 13.170 Qualities or properties of product or service; 13.170–40 Fire-extinguishing or fire-resistant; S 13.190 Results; S 13.195 Safety; 13.195–60 Product; S 13.205 Scientific or other relevant facts; S 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: S 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records; 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: S 13.1710 Qualities or properties; S 13.1730 Results; S 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: S 13.1885 Qualities or properties; S 13.1890 Safety.

**List of Subjects in 16 CFR Part 13**

Pressure-treated wood, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

*Secretary.*

[FR Doc. 87–8520 Filed 4–15–87; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

---

### 16 CFR Part 13

[Docket. C–3210]

### Reliance Wood Preserving, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Federalsburg, MD manufacturer of flame-retardant, pressure-treated wood from misrepresenting the flame-retardant value of its products and requires respondents to notify purchasers that some of the wood may not meet established safety standards.

**DATE:** Complaint and Order issued April 2, 1987.[1]

**FOR FURTHER INFORMATION CONTACT:** Charles Peterson, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367. (404) 347–4836.

**SUPPLEMENTARY INFORMATION:** On Friday, January 16, 1987, there was published in the **Federal Register**, 52 FR 1926, a proposed consent agreement with analysis In the Matter of Reliance Wood Preserving, Inc., a corporation, and Daniel Roy Dorman, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.10 Advertising falsely or misleadingly; S 13.170 Qualities or properties of product or service; S 13.170–40 Fire-extinguishing or fire-resistant; S 13.190 Results; S 13.195 Safety; 13.195–60 Product; S 13.205 Scientific or other relevant facts; S 13.210 Scientific tests. Subpart—Corrective Actions and/or

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Requirements: S 13.533 Corrective actions and/or requirements; S 13.533–20 Disclosures; S 13.533–45 Maintain records; S 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: S 13.1710 Qualities or properties; S 13.1730 Results; S 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: S 13.1885 Qualities or properties; S 13.1890 Safety.

**List of Subjects in 16 CFR Part 13**

Pressure-treated wood, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

**Emily H. Rock,**

*Secretary.*

[FR Doc. 87–8521 Filed 4–15–87; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 175

**[Docket No. 86F–0385]**

### Indirect Food Additives; Adhesives and Components of Coatings

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of synthetic primary linear aliphatic alcohols as components of food-packaging adhesive formulations. This action responds to a petition filed by Petrolite Corp.

**DATES:** Effective April 16, 1987 objections by May 18, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of October 2, 1986 (51 FR 35288), FDA announced that a petition (FAP 6B3954) had been filed by Petrolite Corp., P.O. Box 21538, Tulsa, OK 74121, proposing that § 175.105 *Adhesives* (21 CFR 175.105) of the food additive regulations be amended to provide for the safe use of synthetic primary linear aliphatic alcohols as components of food-packaging adhesive formulations.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before May 18, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 173**

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied, Nutrition, Part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 175.105(c)(5) by alphabetically inserting a new item in the list of substances to read as follows:

**§ 175.105 Adhesives.**

* * * * *

(c) * * *

(5) * * *

| [redacted] | Limitations |
|---|---|
| * * * * * | |
| Synthetic primary linear aliphatic alcohols whose weight average molecular weight is greater than 400 (CAS Reg. No. 71750–71–5). | |
| * * * * * | |

Dated: April 8, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–8505 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP Los Angeles/Long Beach Regulation 87–04]**

### Safety Zone Regulations; Ports of Los Angeles/Long Beach, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone of a 100 yard

radius around the tug MARTHA and the barge KSC–700 while underway in San Pedro Bay and in the Los Angeles/Long Beach Precautionary Area.

The zone is needed to protect the tug MARTHA and barge KSC–700 from vessel traffic hazards associated with maneuvering through the ports of Los Angeles/Long Beach.

No vessel may enter, remain in, or transit the Safety Zone without the permission of the Captain of the Port.

**EFFECTIVE DATES:** This regulation becomes effective at sunrise, 30 March 1987. It terminates at sunset, 10 April 1987.

**FOR FURTHER INFORMATION CONTACT:** LTJG M. E. Cutts at (213) 590–2300.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessels involved.

**Drafting Information**

The drafters of this regulation are LTJG M. E. Cutts, project officer for the Captain of the Port, and LCDR J. R. McFAUL, project attorney, Eleventh Coast Guard District Legal Office.

**Discussion of Regulation**

The event requiring this regulation will occur between 30 March 1987 and 10 April 1987. This safety zone is necessary to ensure the safety of the tug MARTHA and the barge KSC–700 while underway in San Pedro Bay and the Los Angeles/Long Beach Precautionary Area. These vessels will not be free to maneuver to avoid normal vessel traffic in the area.

**List of Subjects in 33 CFR Part 165**

Harbors marine safety, Navigation (water),

Security measures, Vessels, Waterways.

**Regulation**

**PART 165—[AMENDED]**

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T1155 is added to read as follows:

**§ 165.T1155 Safety Zone: Port of Los Angeles/Long Beach, CA.**

(a) *Location.* The following area is a safety zone: A 100 yard radius around the tug MARTHA and the barge KSC–700 while underway in San Pedro Bay and the Los Angeles/Long Beach Precautionary Area.

(b) *Effective Date.* This regulation becomes effective at sunrise, 30 March 1987. It terminates at sunset, 10 April 1987.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no vessel may enter, remain in, or transit the Safety Zone without the permission of the Captain of the Port.

Dated: March 30, 1987.

**R.A. Janecek,**

*Captain, U.S. Coast Guard, Captain Of The Port, Los Angeles/Long Beach.*

[FR Doc. 87–8570 Filed 4–15–87; 8:45 am]

BILLING CODE 4910-14-M

## VETERANS ADMINISTRATION

**38 CFR Part 36**

## Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

**EFFECTIVE DATE:** April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202–233–3042).

**SUPPLEMENTARY INFORMATION:** The Administrator is required by section 1819(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

**Regulatory Flexibility Act/Executive Order 12291**

For the reasons discussed in the May 7, 1981 Federal Register (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of Title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

**List of Subjects in 38 CFR Part 36**

Condominiums, Handicapped, Housing, Loan programs—Housing and community development, Manufactured homes, Veterans.

Approved: April 10, 1987.

Thomas K. Turnage,

*Administrator.*

## PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

**§ 36.4212 Interest rates and late charges.**

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date. (38 U.S.C. 1819(f))

(1) Effective April 13, 1987, 12 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective April 13, 1987, 11½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective April 13, 1987, 11½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

**§ 36.4311 Interest rates.**

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9½ per centum per annum, effective April 13, 1987, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 9½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9¾ per centum per annum, effective April 13, 1987, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 9¾ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective April 13, 1987, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

**§ 36.4503 Amount and amortization.**

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 9½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 87-8511 Filed 4-15-87; 8:45 am]

BILLING CODE 8320-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 0**

**[86-569]**

**Use of Official Mail in Location and Recovery of Missing Children; Order**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action is statutorily required by all federal agencies to assist in the location and recovery of missing children. The prescribed regulations implement the "Missing Children Location Act." The FCC is adopting regulations which were provided by the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

The Managing Director will compile and submit to OJJDP by June 30, 1987, a consolidated report on the FCC's experience with these procedures.

**DATES:** Effective date: February 18, 1987; the Commission implemented these procedures for the period of February 18, 1987 through March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Vallimarescu, Office of General Counsel, Federal Communications Commission, Washington, DC 20554 (202) 632–6990.

**SUPPLEMENTARY INFORMATION:**

Order

In the matter of the use of Penalty mail to aid in the location and recovery of missing children.

Adopted: December 23, 1986.
Released: February 18, 1987.

By the Commission.

1. On August 9, 1985, Congress passed the "Missing Children Location Act" (the "Act")[1] which, *inter alia*, authorizes federal agencies to prescribe regulations under which each agency penalty's mail could be used to assist in the location and recovery of missing children. Pursuant to the Act, the Office of Juvenile Justice and Delinquency Prevention ("'OJJDP") prescribed general guidelines for implementation of S. 1195.[2] These guidelines set forth the form and manner in which information relating to missing children may be included in agency penalty mail.

2. The Commission, in its regulations, delegates to the managing Director the duty to ensure that the objectives of the Act and OJJDP's regulations are carried out. The regulations require the Managing Director to ensure that the Commission's penalty mail contains missing children information in compliance with the Act and OJJDP's regulations. To that end, the Managing Director will obtain camera-ready photographic and biographical information on missing children from the National Center for Missing and Exploited Children and disseminate such information via penalty mail envelopes addressed to the members of the public.

3. In accordance with the Act, the Managing Director will compile and submit to OJJDP by June 30, 1987, a consolidated report on his experience in implementing 39 U.S.C. 3220(a)(2), the OJJDP Guidelines, and the Commission's regulations. This report will consolidate information covering the period February 18, 1987 through March 31, 1987 and shall detail: (i) The FCC's experience in implementation, including problems encountered, successful and or innovative methods adopted to use missing children photographs and information on or in penalty mail, the estimated number of pieces of penalty mail containing such information, and the percentage of total agency penalty mail, domestic mail, and domestic penalty mail directed to members of the public which that number represents; (ii) the estimated total cost to implement the program, with supporting details; (iii) recommendations for changes in the program which would make it more effective.

4. We find for good cause that prior notice and comment procedures are unnecessary to implement the rule amendments in the attached Appendix because they are required by statute and OJJDP Guidelines and generally involve rules of agency organization, practice or procedure. *See* 5 U.S.C. 553(b)(3) (A), (B). Delay in the promulgation of these regulations would be counter to the congressional intent to expedite the location and recovery of missing children.

5. Accordingly, *It Is Ordered*, That, pursuant to Section 1.427(b) of the Commission's Rules, the rule amendments are effective February 18, 1987.

6. *It Is Further Ordered That*, these regulations shall cease to be effective two and one-half years after the enactment of Pub. L. 99–87.

For further information concerning this proceeding contact John Vallimarescu, Office of General Counsel (202) 632–6990.

The officials responsible for this action are the following Commissioners: Mark S. Fowler, Chairman, James H. Quello, Mimi Weyforth Dawson, Dennis R. Patrick, Patricia Diaz Dennis.

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*

## PART 0—[AMENDED]

Part 0 of Title 47 of the CFR is amended as follows:

1. Authority citation for Part 0 continues to read:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise note.

2. Section 0.231 is amended by adding a new paragraph (k).

**§ 0.231 Authority delegated.**

* * * * *

(k) Pursuant to 39 U.S.C. 3220 and the guidelines prescribed pursuant thereto by the Office of Juvenile Justice and Delinquency Prevention, 50 FR 46622, the Managing Director shall take appropriate measures to ensure that approximately 35% of the penalty mail posted by the Commission contains print pictures and biographies relating to missing children. It is anticipated that the cost will be approximately $75 for the first year of implementation. The contact person for matters relating to the implementation of this section is the Chief, Printing and Mail Branch Office of Managing Director, 1919 M St., NW., Washington, DC 20554, (202) 632–7546.

The following shall be added to the authorities for § 0.231:

**§ 0.231 [Amended]**

39 U.S.C. 3220; Notice of Preliminary Guidelines issued by the Department of Justice, 50 FR 46622, November 8, 1985.

[FR Doc. 87–8405 Filed 4–15–87; 8:45 am]
BILLING CODE 6712–01–M

[1] Pub. L. 99–87, section 1, 99 Stat. 290 (1985), (as codified at 39 U.S.C. 3220).

[2] Notice of Preliminary Guidelines, 50 FR 46622 November 8, 1985).

---

## DEPARTMENT OF DEFENSE

**48 CFR Parts 203 and 252**

**Defense Federal Acquisition Regulation Supplement (DFARS); Implementation of Section 931 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500); Conflicts of Interest in Defense Procurement**

**AGENCY:** Department of Defense (DOD).

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council invites public comment concerning an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement certain provisions of section 931 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500), entitled "Conflict-of-Interest in Defense Procurement." The rule implements a statutory prohibition that a major defense contractor (i.e., one awarded contracts aggregating $10 million or more during the previous government fiscal year) may not offer or provide compensation either directly or indirectly to certain former DoD officials, who within two years prior to their separation from DoD, had certain procurement responsibilities with respect to that contractor. The rule also adopts a contract clause whereby major defense contractors must report annually concerning compensation provided to certain former DoD employees and are made subject to a liquidated damages assessment in the event compensation is knowingly provided to certain former DoD officials in violation of law.

**DATES:** *Effective Date:* April 16, 1987 (Effective on all contracts awarded on or after April 16, 1987).

Comment date: Comments must be received on or before June 16, 1987. Please cite DAR Case 85–220 in all correspondence on this subject.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L)(M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7267.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Section 931 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500), enacted on October 18, 1986 and codified at 10 U.S.C. 2397b and 2397c, requires that DoD contracts over $100,000 awarded on or after 180 days after date of enactment (i.e., April 16, 1987) contain a contract clause whereby major defense contractors (i.e., those awarded contracts aggregating $10 million or more during the previous Government fiscal year) agree to: (1) not provide compensation to a former DoD official if acceptance would violate 10 U.S.C. 2397b(a)(1); (2) pay to the United States as liquidated damages the greater of $100,000 or three times the compensation paid in violation of 10 U.S.C. 2397b(a)(1); and, (3) file a report listing certain former DoD employees who left DoD service within the past two years and to whom compensation was paid by the contractor, together with identification and descriptive information concerning the person's former DoD duties and work performed on behalf of the contractor. For purposes of the reporting requirement, the rule defines former DoD employees as those who (1) served in a civilian position for which the rate of pay is equal to or greater than the rate of pay for Grade GS–13 Step 1 of the General Schedule or (2) served in the Armed Forces in a pay grade of 04 or higher. An administrative penalty against the contractor of up to $10,000 is specified for knowing failure to file the required report, after opportunity for hearing on the record pursuant to DoD regulation. The statute also prescribes civil fines of up to $250,000 and $500,000 against the person and contractor, respectively, for knowing violation of its compensation prohibitions, in civil actions brought before a U.S. District Court. Because of the detail contained in the statute with respect to prohibitions on compensation and covered positions, it is suggested that the reader consult 10 U.S.C. 2397b and 2397c, specifically.

As stated above, the statute and the interim rule prohibit contractors who were awarded DoD contracts aggregating $10 million or more in a preceding Government fiscal year from offering or providing compensation in the subsequent Government fiscal year to covered former DoD officials. However, the reader should note that the reporting requirement uses a somewhat different baseline. With respect to reporting, the rule requires that a contractor awarded DoD contracts (aggregating $10 million or more in the Government fiscal year ending before the calendar year in which award is made of a contract containing the prescribed clause) render the specified report for the calendar year in which award is made. A report is required for each succeeding calendar year, ending with the calendar year in which final payment is made under the contract, if the contractor has DoD contract awards aggregating $10 million or more in the Government fiscal year ending before each such succeeding calendar year. For example, assume that XYZ Corporation is awarded a contract on November 1, 1987 containing the prescribed clause. During FY 86 (ending September 30, 1986), XYZ was awarded DoD contracts aggregating $12 million and during FY 87 (ending September 30, 1987) was awarded DoD contracts totaling $9 million. XYZ is required to file the specified report for CY 87 as its awards in FY 86 (i.e., the fiscal year ending before the calendar year in which award was made) exceeded $10 million. Conversely, XYZ will not have to file a report for CY 88 (i.e., the succeeding calendar year) because its awards in FY 87 (i.e., the fiscal year ending before the succeeding calendar year) were less than $10 million. Assuming further that final payment is made under XYZ's contract on June 1, 1990, XYZ's last potential reporting period under the contract is CY 90.

A substantial portion of this interim rule was prepared simultaneously with revisions to DoD Directive 5500.7, Standards of Conduct, which will be published in the **Federal Register** in the near future. Specifically, definitions contained in this rule are based upon a present draft version of that revised directive. In order to facilitate the public comment process, the DAR Council will ensure that comments received concerning this Notice of Proposed Rulemaking are provided for consideration in drafting revisions to the Directive. However, in view of the statutory implementation date of April 16, 1987 regarding insertion of the prescribed clause in DoD contracts, it has been determined necessary to proceed with this rule prior to publication of the Directive and in advance of receipt of public comments. In accordance with Pub. L. 98–577, comments received will be considered before a final rule is adopted.

## B. Regulatory Flexibility Act

The interim rule prescribes requirements for major defense contractors having aggregate contract awards exceeding $10 million during the previous Government fiscal year. Accordingly, few, if any, small entities will be affected and the Department therefore certifies that the rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* Comments are invited.

Comments from small entities concerning existing coverage within DFARS Part 203 will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

## C. Paperwork Reduction Act

The interim rule contains information collection requirements within the meaning of 44 U.S.C. 3501, et seq. and an emergency Paperwork Reduction Act clearance for an increase of 100,000 hours of burden has been requested from OMB. However, consistent with the intent of the Act in reducing paperwork burdens, the rule permits contractors to utilize DD Form 1787, Report of DoD and Defense Related Employment, filed with DoD by certain affected former DoD employees, for the purpose of meeting their reporting requirement under the prescribed clause. A regular Paperwork Reduction Act Clearance request, with full justification for the burden estimate, will be submitted to OMB in the near future. Comments concerning that information collection requirement will be solicited by OMB through a subsequent **Federal Register** notice. Comments are invited.

## D. Determination to Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary in order to implement section 931 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500).

**List of Subjects in 48 CFR Parts 203 and 252**

Government procurement.

**Owen L. Green,**

*Acting Executive Secretary, Defense Acquisition, Regulatory Council.*

Therefore, 48 CFR Parts 203 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 203 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.170 and sections 203.170–1 through 203.170–5 are added to read as follows:

### 203.170 Statutory compensation prohibitions and reporting requirements relating to certain former Department of Defense (DoD) employees.

#### 203.170–1 Definitions.

"Armed Forces", as used in this section, means the uniformed military services but excluding the U.S. Coast Guard.

"Compensation", as used in this section, means any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment and which has a fair market value in excess of $250. Compensation shall be deemed indirectly received if it is paid to an entity other than the individual, in exchange for services performed by the individual.

"Defense contractor", as used in this section, means an entity that contracts directly with the DoD to supply the DoD with goods or services (including affiliates and subsidiaries which clearly engage in the performance of defense contracts). "Defense contractor" does not include a state or local government.

"Defense Agency Ethics Official (DAEO)", as used in this section, means a DoD officer or employee who has been appointed to administer the provisions of the Ethics in Government Act.

"Former DoD Employee", as used in this section, means a person who served in the DoD in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for Grade GS–13 Step 1 of the General Schedule, or served in the Armed Forces in a pay grade of 04 or higher.

"Former DoD official", as used in this section, means:

(a) individuals who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for Grade GS–13 Step 1 of the General Schedule, or who served in the Armed Forces in a pay grade of 0–4 or higher, who:

(1) Spent the majority of their working days during the last two years of DoD service performing a procurement function relating to a DoD contract, at a site or plant that was owned or operated by a contractor, and which was the principal location of their performance of that procurement function; or

(2) Performed, on a majority of their working days during the last two years of DoD service, a procurement function relating to a major defense system and, in the performance of such function, participated on any occasion personally and substantially in a manner involving decision-making responsibilities with respect to a contract for that system through contact with the contractor;

(b) Individuals who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for a Senior Executive Service position or other executive position at the same or higher level, and individuals who served in the Armed Forces in the pay grade of 07 or higher, if such individuals during the last two years of DoD service:

(1) Acted as a primary representative of the United States in the negotiation with a defense contractor of a defense contract in an amount in excess of $10,000,000 (the actual contractual action taken by the individual must have been in an amount in excess of $10,000,000), or

(2) Acted as a primary representative of the United States in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10,000,000. An unresolved claim shall be, for the purposes of this section, valued by the greater of the amount of the claim or the amount of the settlement.

"Major defense contractor", as used in this section, means any business entity which, during the Government fiscal year preceding the Government fiscal year in which compensation was first provided to a former DoD employee, was awarded defense contracts in a total amount equal to or greater than $10,000,000.

"Major defense system", as used in this section, means a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major defense system if:

(a) The DoD is responsible for the system and the total expenditures for research, development, test and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars); or, (b) the system is designated a major system by the head of the agency responsible for the system.

"Negotiation", as used in this section, means exchange of views between representatives of the Government and a contractor regarding respective liabilities and responsibilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

"Primary Government representative", as used in this section, means if more than one Government representative is involved in any particular transaction, the official supervising the Government's effort in the matter. To act as a "representative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

"Procurement related function (or procurement function)", as used in this section, means any function relating to: (a) the negotiation, award, administration or approval of a contract; (b) the selection of a contractor; (c) the approval of a change in a contract; (d) the performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or (e) the management of a procurement program.

#### 203.170–2 Policy.

10 U.S.C. 2397b and 2397c prohibit former DoD officials who performed procurement related functions in connection with a major defense contractor, from accepting compensation from that same contractor for a period of two years after such officials have left service with DoD. The statute also bars major defense contractors from offering or providing compensation to these former DoD officials for a period of two years after the officials have left service with DoD. Related implementation of the statute for the DoD may be found in DoD Directive 5500.7, Standards of Conduct.

#### 203.170–3 Reporting requirements.

Major defense contractors are required to report, as delineated in paragraph (c) of the clause at 252.203–7002, on employment of certain former DoD employees. The reports are to be

submitted to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, Attn: OAGC/LC, Pentagon, Washington, DC 20301–1600 not later than 1 April following the calendar year period covered by the report.

**203.170–4 Penalties.**

(a) Major defense contractors are subject to the following penalties for knowing failures to comply with the statute or with the contractual prohibition or the reporting requirement specified in the statute:

(1) Civil fines up to $500,000 for failure to comply with the statute;

(2) Liquidated damages in the amount of either $100,000, or three times the amount of compensation paid by the contractor to the former DoD official, whichever is greater, for failure to comply with the contract prohibition; and/or,

(3) An administrative penalty not to exceed $10,000 for failure to report as required by the statute and as implemented in paragraph (c) of the clause at 252.203–7002.

(b) Liquidated damages will be assessed in accordance with agency procedures in coordination with the appropriate DAEO.

**203.170–5 Contract clause.**

Contracting officers shall include the clause at 252.203–7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DoD Employees, in all contracts expected to exceed $100,000.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.203–7002 is added to read as follows:

**252.203–7002 Statutory compensation prohibitions and reporting requirements relating to certain former Department of Defense (DoD) employees.**

As prescribed in 203.170–5, insert the following clause:

**Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DOD Employees (Apr. 1987)**

(a) *Definitions.* Terms used in this clause are defined at section 203.170–1 of the Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 2).

(b) *Prohibition on compensation.*

(1) 10 U.S.C. 2397b and 2397c prohibit a major defense contractor from offering or providing any compensation valued in excess of $250 to a former Department of Defense (DoD) official who, while employed by DoD, performed procurement related functions in connection with that same defense contractor. This prohibition runs for the two-year period beginning on the date of such person's separation from service in DoD.

(2) The Contractor, if a major defense contractor, agrees not to provide, for such two-year period, any compensation to such a former DoD official.

(3) DoD employees may request from their Defense Agency Ethics Official (DAEO) a written opinion on the applicability of 10 U.S.C. 2397b prior to the acceptance of compensation. If the opinion rendered by the DAEO states that the law is inapplicable, and that the individual may accept compensation from the contractor, there shall be a conclusive presumption that the offering and the acceptance of such compensation is not a violation of the statute.

(c) *Report concerning former DoD employees.* (1) The Contractor shall submit a separate written report, as described in (c)(2) below, for each calendar year covered by this contract (commencing with the calendar year of award and extending through the end of the calendar year in which final payment is made) if the calendar year commenced after the end of a Government fiscal year in which the Contractor was awarded one or more DoD contracts aggregating $10,000,000 or more. Each report shall be submitted to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, Attn: OAGC/LC, Pentagon, Washington, DC 20301–1600 listing those persons in its employ, or whom it has otherwise compensated, if those persons:

(i) Were former DoD employees who left DoD service within the two years immediately preceding the calender year for which the report is being made; and,

(ii) Served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for Grade GS–13 Step 1 of the General Schedule or served in the Armed Forces in a pay grade of 04 or higher.

(2) The report shall contain the following elements:

(i) Each individual's name and an identification of the agency in which each individual was employed or served on active duty during the last two years of the individual's service with DoD;

(ii) Each individual's job title(s) during the person's last two years of service with DoD and a list of major defense systems on which each individual performed any work;

(iii) A complete description of any work that each individual is performing, or did perform, on behalf of the Contractor during the calendar year covered by the report, and,

(iv) An identification of each major defense system on which each individual has performed any work on behalf of the Contractor.

(3) Each report required under (c)(1) above shall be submitted not later than April 1 following the end of the calendar year for which the report is being made.

(4) A DD Form 1787 properly certified by the individual to whom it relates may be submitted to satisfy the reporting requirement as to any single individual.

(5) The Contractor need not submit duplicate reports to the Government. Submission of a report meeting the requirements of this clause, under another, concurrent contract with DoD will satisfy the reporting requirement of this contract as to any single calendar year.

(d) *Penalties for failure to comply.*—(1) *Civil fines for failure to comply with 10 U.S.C. 2397b.* A contractor who knowingly offers or provides any compensation to a former DoD official in violation of the statute, and who knew or should have known that the acceptance of such compensation would be in violation of such statute, shall be subject to a civil fine, not to exceed $500,000.

(2) *Liquidated damages for failure to comply with 10 U.S.C. 2397c.*

(i) For each knowing violation of the statutory prohibition on providing compensation, the Contractor agrees to pay to the United States Government as liquidated damages the greater of either $100,000 or three times the amount of compensation paid by the Contractor to the former DoD official in violation of the statutory prohibition.

(ii) Liability for liquidated damages under this clause survives final payment under this contract and may be recouped against payments due under other contracts with the Contractor.

The rights and remedies under this clause are in addition to and do not limit any rights afforded to the Government under this contract or as otherwise provided by law.

(iii) Liquidated damages will be computed based upon the number of actual violations by the Contractor, and not on the number of contracts in which this clause appears.

(3) *Penalties for failure to report.* If the Contractor knowingly fails to file a report in accordance with (c) above the Contractor shall be subject to an administrative penalty not to exceed $10,000. The final determination of the penalty to be charged to the Contractor shall be made by the Secretary of Defense or designee after the Contractor is afforded an opportunity for an agency hearing on the record in accordance with agency hearing procedures. The Secretary's determination shall form a part of the record and shall be subject to judicial review under Chapter 7 of Title 5, United States Code.

(End of clause)

[FR Doc. 87–8560 Filed 4–15–87; 8:45 am]

BILLING CODE 3810–01–M

---

**48 CFR Parts 205 and 252**

## Department of Defense Federal Acquisition Regulation Supplement; Release of Information

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council has approved revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new section 205.470 and clause 252.205–7000 which require defense contractors awarded a contract

in excess of $500,000 to provide entities holding Cooperative Agreements with the Defense Logistics Agency, upon their request, a list of appropriate employees, their business address, telephone number, and area of responsibility, who have responsibility for awarding subcontracts under defense contracts. This interim rule is required to implement Section 957 of the 1987 DoD Appropriations Act, Pub. L. 99–500.

**DATES:** Effective Date: 1 January 1987, Comment Date: Comments must be received on or before (June 15, 1987). Please cite DAR Case 86–171 in all correspondence on this subject.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD (A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Defense Logistics Agency enters into Cooperative Agreements with state and local governments and private, non-profit organizations to support funding of technical assistance centers for the purpose of furnishing procurement technical assistance to business entities. Pub. L. 99–500 requires defense contractors to provide Cooperative Agreements Holders with information on points of contact for subcontract opportunities.

### B. Regulatory Flexibility Act

This interim change to amend Subpart 205.4 and to add a new clause at 252.205–7000 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because small businesses will be furnished with points of contact who will provide small business with information needed to obtain additional subcontracts. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the individual listed below. Comments are invited. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

### C. Paperwork Reduction Act

The rule contains information collection requirements which require OMB approval under 44 U.S.C. 3501 et seq. An expedited clearance approval for burden hours has been submitted to OMB.

### D. Determination to Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary in order to implement Section 957 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500).

### List of Subjects in 48 CFR Parts 205 and [redacted]

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition, Regulatory Council.*

Therefore, 48 CFR Parts 205 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 205 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 205—PUBLICIZING CONTRACT ACTIONS

### Subpart 205.4—Release of Information

2. Section 205.470 is added to read as follows:

**205.470 Contractor information to be provided to Cooperative Agreements Holders.**

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into Cooperative Agreements with state or local governments or private, non-profit organizations to furnish procurement technical assistance to business entities.

(b) As required by 10 U.S.C. 2416 any contractor receiving a Defense contract for more than $500,000 must agree, upon request, to provide Cooperative Agreement Holders described in (a) above, with a list of those appropriate employees responsible for entering into subcontracts under prime Defense contracts. The list shall include the business address, telephone number, and area of responsibility of each such employee. A defense contractor need not provide the listing to a particular Cooperative Agreement holder more frequently than once a year.

(c) The contracting officer shall insert the clause at 252.205–7000, Release of Information to Cooperative Agreement Holders, in solicitations and contracts when the contract amount is expected to exceed $500,000.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.205–7000 is added to read as follows:

**252.205–7000 Release of Information to Cooperative Agreement Holders**

As prescribed in 205.470, insert the following clause.

**Release of Information to Cooperative Agreement Holders (April 1987)**

(a) Definition. As used in this clause, the term "Cooperative Agreement Holder", means a state or local government or private, non-profit organization which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The contractor shall provide Cooperative Agreement Holders upon request with a list of those appropriate employees responsible for entering into subcontracts under a Defense contract. The list shall include the business address, telephone number, and area of responsibility of each such employee. A contractor need not provide the listing to a particular Cooperative Agreement Holder more frequently than once a year.

(End of clause)

[FR Doc. 87–8563 Filed 4–15–87–8:45 am]
BILLING CODE 3810–01–M

---

**48 CFR Parts 216, 217, and 243**

**Department of Defense Federal Acquisition Regulation Supplement; Undefinitized Contract Actions (UCAs)**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule and request for comment.

**SUMMARY:** The Defense Acquisition Regulatory Council has approved an interim rule which revises the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new Subpart 217.75, Undefinitized Contract Actions (UCAs).

**EFFECTIVE DATE:** April 16, 1987. (Effective on all undefinitized contract actions (UCAs) except for Foreign Military Sales; purchases of less than $25,000; special access programs; and congressionally-mandated long-lead procurement contracts; and all solicitations issued and contracts awarded on or after April 16, 1987 contemplating the use of UCAs.) Comments should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before June 15, 1987, to be considered in the formulation of the final rule.

Please cite DAR Case 86–160 in all correspondence related to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD (P)/DARS, c/o OASD (A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 908 of the 1987 Department of Defense Authorization Act, Pub. L. 99–500 included certain limitations on the use of Undefinitized Contract Actions by Defense Activities. The revisions being made represent implementation of these statutory requirements.

**B. Regulatory Flexibility Act Information**

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 6701 et seq., because the interim rule is considered to be, in general, formal implementation of procedures already being practiced within DoD, and does not require additional recordkeeping. Moreover, the rule implements statutory requirements which do not provide exemptions for undefinitized contract actions with small business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments concerning the affected DFARS subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

**C. Paperwork Reduction Act Information**

The proposed rule does not contain information collection requirements which require approval of OMB under 44 U.S.C. 3501 et seq.

**D. Determination to Issue an Interim Regulation**

A determination has been made under the authority of the Secretary of Defense to issue the regulation as an interim regulation. This action is necessary in order to comply with the statutory effective date of April 16, 1986, as cited in Pub. L. 99–500.

**List of Subjects in 48 CFR Parts 216, 217, and 243**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Part 216, 217, and 243 are amended as follows:

1. The authority citation for 48 CFR Parts 216, 217, and 243 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 216—TYPES OF CONTRACTS

2. Section 216.603–3 is added to read as follows:

**216.603–3 Limitations.**

Additional limitations on the use of letter contracts by DoD activities can be found in Subpart 217.75.

3. Section 216.703 is amended by adding at the end of paragraph (c) a sentence to read as follows:

**216.703 Basic ordering agreements.**

* * * * * *

(c) * * * Additional limitations on undefinitized orders under basic ordering agreements can be found in Subpart 217.75.

* * * * *

## PART 217—SPECIAL CONTRACTING METHODS

4. Section 217.202 is added to read as follows:

**217.202 Use of options.**

(S–70) See Subpart 217.75 for limitations on the use of undefinitized contract actions.

5. Section 217.7402 is amended by adding paragraph (c) to read as follows:

**217.7402 Acquisition requirements.**

* * * * * *

(c) Additional limitations on the use of undefinitized contract actions can be found in Subpart 217.75.

6. A new Subpart 217.75, consisting of sections 217.7500 through 217.7504, is added to read as follows:

**Subpart 217.75—Undefinitized Contract Actions**

Sec.

217.7500 Scope.
217.7501 Definitions.
217.7502 Applicability.
217.7503 Policy.
217.7504 Contract clauses.

**217.7500 Scope.**

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326, Undefinitized Contractual Actions Restrictions.

**217.7501 Definitions.**

"Contract action", as used in this subpart, means an action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

"Definitization", as used in this subpart, means an agreement on or determination of contract terms, specifications, and price, thus converting the undefinitized contract action to a definitive contract.

"Qualifying proposal", as used in this subpart, means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

"Undefinitized contract action", as used in this subpart, means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action.

**217.7502 Applicability.**

This subpart applies to all undefinitized contract actions (UCAs) (e.g., letter contracts, unpriced orders under basic ordering agreements or provisioned items) with the exception of UCAs for Foreign Military Sales; purchases of less than $25,000; special access programs; and congressionally-mandated long-lead procurement contracts. In the case of UCAs included in the foregoing exceptions, as well as changes under the Changes clause, the policy set forth in this subpart shall be followed to the maximum extent practical.

**217.7503 Policy.**

(a) *General.* It is the policy of the Department of Defense that the use undefinitized contract instruments should be limited to the maximum extent practicable. UCAs may only be used when:

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interests demand that the contractor be given a

binding commitment so that contract performance can begin immediately. UCAs shall be as complete and definite as feasible under the particular circumstances.

(b) *Limitations.*—(1) *Authorization.* The contracting officer shall not enter into a UCA without prior authorization from the head of the agency or a designee. The request for authorization shall contain a statement of the impact on the requirements of the agency that would result if a delay is incurred for purposes of determining contract terms, specifications, and price before performance is begun under the contract action.

(2) *Price ceiling.* UCAs shall include a maximum not-to-exceed price that the Government can be charged under the contract action and in excess of which the Government will not negotiate in definitizing the action.

(3) *Definitization schedule.* UCAs shall contain definitization schedules which provide for definitization of the contract action by the earlier of—

(i) The end of the 180-day period beginning on the date of issuance of the action (this period may be extended, as required, but may not exceed the 180-day period beginning on the date the contractor submits a qualifying proposal); or

(ii) The date on which the amount of funds obligated or expended under the contract action is equal to more than 50 percent of the maximum not-to-exceed price.

(4) *Limitation on obligations and expenditures.* No more than 50 percent of the maximum not-to-exceed price for the UCA shall be obligated or expended until the contract terms, specifications, and price are definitized. However, if a contractor submits a qualifying proposal to definitize the UCA before 50 percent of the maximum not-to-exceed price is expended by the Government, no more than 75 percent of the maximum, not-to-exceed price may be obligated or expended until the contract terms, specifications, and price are definitized.

(5) *Exception for initial spares.* The limitations set forth in subparagraphs (b)(3) and (b)(4) above do not apply to UCAs for the purchase of initial spares.

(6) *Inclusion of non-urgent requirements.* Requirements for spare parts and support equipment that are not needed on an urgent basis shall not be included in a UCA for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being consistent with good business practices and in the best interests of the United States.

(7) *Modification of undefinitized contract actions.* The scope of work specified under a UCA under which performance has begun may not be modified unless the head of the agency approves such modification as being consistent with good business practices and in the best interests of the United States.

(8) *Allowable profit.* The head of an agency or a designee shall ensure that the profit allowed on a UCA, for which the final price is negotiated after a substantial portion of the performance required is completed, reflects:

(i) Any reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(ii) The reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

**217.7504 Contract clauses.**

(a) The clause at FAR 52.216–24, Limitation of Government Liability, shall be included in all undefinitized contract actions, solicitations associated therewith, and basic ordering agreements contemplating the use of undefinitized orders.

(b) A clause substantially the same as the clause at FAR 52.216–25, Contract Definitization, shall be included in all solicitations and contracts when a UCA is contemplated. The term "letter contract" shall be replaced, as necessary, with the term that describes the particular undefinitized action (e.g., "order"). Alternate I to FAR 52.216–25 may only be used for letter contracts.

## PART 243—CONTRACT MODIFICATIONS

7. Section 243.102 is added to read as follows:

**243.102 Policy.**

(b) See 217.7503 for specific limitations on DoD undefinitized contract actions.

8. Section 243.201 is amended by redesignating the existing paragraph (a) as paragraph (S–70) and by adding a new paragraph (S–71) to read as follows:

**243.201 General.**

* * * * *

(S–71) Additional guidance on undefinitized contract actions can be found in Subpart 217.75.

[FR Doc. 87–8564 Filed 4–15–87; 8:45 am]

BILLING CODE 3810–01–M

**48 CFR Parts 225, 245, and 252**

## Department of Defense, Federal Acquisition Regulation Supplement; Foreign Acquisition Restriction on Acquisition of Machine Tools from Foreign Sources

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory Council has approved revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) by revising sections 225.7000 and 225.7001, by inserting a new section 225.7008 to Subpart 225.70, entitled Apropriation Act Restrictions, by adding Section 245.106, and by adding a new clause at 252.245–7000, Acquisition of Foreign Machine Tools. These revisions implement restrictions in the Department of Defense Acquisition Improvement Act of 1987 (Pub. L. 99–500), Section 9118, which prohibits the acquisition of machine tools for Government-owned facilities not manufactured in the United States or Canada.

**EFFECTIVE DATE:** October 18, 1986 (effective on contracts entered into on or after October 18, 1986).

**ADDRESS:** Comments should be submitted in writing on or before June 15, 1987, to Office of International Acquisition, OASD(A&L)(P)(IA), Room 2A328, The Pentagon, Washington, DC 20301–8000. Please cite DAR Case 86–178 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Jamushian, telephone (202) 697–9351.

**SUPLEMENTARY INFORMATION:**

### A. Background

Section 9118 of the Department of Defense Acquisition Improvement Act of 1987 (Pub. L. 99–500) prohibits the use of FY 87 funds for the acquisition of certain machine tools not manufactured in the United States or Canada for any Government-owned facility or property under the control of the Department of Defense. This prohibition was effective date of enactment of the Public Law which was October 17, 1986.

### B. Regulatory Flexibility Act

The interim rule does not appear to have a significant economic impact on a substantial number of small entities. The rule affects only those contractors who either manufacture or acquire machine tools for use in a Government-owned facility or property under control of the

DoD. While definitive information is unavailable as to the number of small business manufacturers of machine tools, it is believed there are few, if any. With regard to contractors who purchase machine tools for use in a Government-owned facility or property under control of the DoD, the rule would impact only those small business contractors who rely on foreign suppliers. Again, definitive information is unavailable; however, it is believed this number is minimal. For the above reasons, an initial regulatory flexibility analysis has not been prepared. Comments from small businesses and other interested parties are invited. Comments concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Regulatory Flexibility Act. Such comments must be submitted separately and cite FAR Case 87–610 in correspondence.

**C. Paperwork Reduction Act Information**

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary in order to implement Section 9118 of the Department of Defense Acquisition Improvement Act of 1987 (Pub. L. 99–500).

**List of Subjects in 48 CFR Parts 225, 245, and 252**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

**Adoption of Amendments**

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 225, 245, and 252 is amended as set forth below:

1. The authority for 48 CFR Parts 225, 245, and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 225—FOREIGN ACQUISITION

**225.7000 [Amended]**

2. Section 225.7000 is amended by removing in the penultimate sentence after the parenthetical phrase "(see 225.7005)," the word "and", and adding at the end of the same sentence the words "and the restriction on acquisition of machine tools for Government-owned facilities not manufactured in the United States or Canada (see 225.7008)."

3. Section 225.7001 is amended by adding between the definition "Hand or Measuring Tools" and the definition "Possessions" the definition "Machine tools" to read as follows:

**225.7001 Definitions.**

* * * * *

"Machine tools" means those tools listed in Federal Supply Classes of metalworking machinery in categories numbered 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, and 3461.

* * * * *

4. Section 225.7008 is added to read as follows:

**225.7008 Restriction on Acquisition of Machine Tools.**

(a) Pub. L. 99–591 provides that no FY 87 funds appropriated for the Department of Defense may be used to procure the classes of machine tools set forth in 225.7001 for use in any Government-owned facility or property under control of the Department of Defense which machine tools were not manufactured in the United States or Canada.

(b) When adequate domestic supplies of the classifications of machine tools set forth in 225.7001 are not available to meet the needs of the Department of Defense on a timely basis, the procurement restrictions may be waived by the Head of the Component responsible for the procurement on a case-by-case basis. Requests for waivers will contain a full explanation of the facts supporting the waiver and will be submitted in accordance with Departmental procedures.

(c) A machine tool shall be considered to have been manufactured in the United States or Canada if the cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free entry certificate may be issued).

(d) This restriction does not apply to contracts executed on or before 18 October 1986.

(e) For purchases made by contractors on behalf of DoD, see 245.106(S–70).

## PART 245—GOVERNMENT PROPERTY

4. Subpart 245.1, consisting of section 245.106, is added to read as follows:

**Subpart 245.1—General**

**§ 245.106 Government Property Clauses.**

(S–70) The clause at 252.245–7000, Acquisition of Foreign Machine Tools, shall be included in all solicitations and contracts that obligate FY 87 funds and that contain FAR clause 52.245–2, Government Property (Fixed-Price Contracts), or FAR clause 52.245–5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts). (See also 225.7008.)

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.245–7000 is added to read as follows:

**252.245–7000 Acquisition of foreign machine tools.**

As prescribed in 245.106(S–70), insert the following clause:

**Acquisition of Foreign Machine Tools (Apr 1987)**

(a) Machine tools listed in paragraph (b) of this clause acquired by the Contractor, title to which will vest with the Government, shall be manufactured in the United States or Canada.

(b) The requirement for acquisition of machine tools manufactured in the United States or Canada applies to those listed in Federal Supply Classes of metalworking machinery numbered 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460 and 3461.

(c) A machine tool shall be considered to have been manufactured in the United States or Canada if the cost of its components manufactured in the United States or Canada exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free entry certificate may be issued).

(d) Acquisition of machine tools as described in paragraph (b) above, manufactured in a country other than the United States or Canada, if required to meet the delivery schedule or other requirements of this contract, shall be approved in advance by the Government.

(End of clause)

[FR Doc. 87–8561 Filed 4–15–87; 8:45 am]
BILLING CODE 3810–01–M

---

**48 CFR Parts 227 and 252**

**Department of Defense Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights**

**AGENCY:** Department of Defense (DOD).

**ACTION:** Final rule.

**SUMMARY:** The DAR Council has approved the attached revision to Subpart 227.4 and Part 252 of the Defense Federal Acquisition Regulation Supplement to implement section 953 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500).

**EFFECTIVE DATE:** May 18, 1987. (This is effective as a final regulation for all solicitations and resultant contracts, issued on or after May 18, 1987).

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 953, Pub. L. 99–500 necessitated that the Department of Defense substantially revise DFARS Subpart 227.4. A proposed rule was published in the **Federal Register** on January 16, 1987 (52 FR 2082). The present action implements the statutory requirement to publish a proposed final regulation 30 days prior to the effective date of this coverage.

Public comments received in response to the notice of the proposed rule were reviewed and evaluated, and as a result of those comments certain changes were made to the proposed rule. In general, the coverage has been revised to more clearly reflect DoD policy that the Government will only acquire data rights essential to meet its minimum needs. Specifically, changes were made in the following areas:

- The definitions of "developed" and of "private expense" were further clarified,
- Guidance was added to allow contracting officers flexibility to take only Government Purpose License Rights (GPLR) when the funding contribution of large business contractors did not exceed 50 percent,
- The procedures for validation of technical data have been clarified,
- Other less significant changes were also made for purposes of clarification.

Several commentors recommended that the coverage be further revised to address non-disclosure agreements and commercialization in greater depth. The DAR Council generally agreed with those observations, however, because such additional coverage has not been subjected to the public comment process, the DAR Council decided to establish two new cases to fully examine the issues raised. The two cases established for this purpose are entitled, "Non-Disclosure Agreements", DAR Case 87–37, and "Commercialization of Data", DAR Case 87–38. Proposed coverage will be published in forthcoming Notices of Proposed Rulemaking.

### B. Regulatory Flexibility Act

A final Regulatory Flexibility Analysis has been prepared and is available upon request by contacting Mr. Owen Green, OASD(A&L)DASD(P)/DARS, DAR Council, c/o Room 3C841, The Pentagon, Washington, DC 20301.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

### List of Subjects in 48 CFR Parts 227 and [illegible]

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Parts 227 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and DoD FAR Supplement 201.301.

## PART 227—PATENTS, DATA, AND COPYRIGHTS

2. Subpart 227.4 is revised to read as follows.

### Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

Sec.

227.470 Scope.
227.471 Definitions.
227.472 Acquisition policy for technical data and rights in technical data.
227.472–1 Deferred ordering and deferred delivery.
227.472–2 Establishing minimum requirements.
227.472–3 Early identification.
227.472–4 Statutory prohibitions.
227.472–5 Standard rights in technical data.
227.472–6 Obtaining greater rights in technical data.
227.472–7 Waiving unlimited rights in technical data.
227.472–8 Subcontracts.
227.473 General procedures.
227.473–1 Early identification of Government rights.
227.473–2 Obtaining greater rights in technical data.
227.473–3 Certifications.
227.473–4 Marking and identification requirements.
227.473–5 Validation of restrictive markings on technical data.
227.473–6 Remedies for noncomplying technical data.
227.473–7 Non-disclosure agreements.
227.474 Additional methods of obtaining greater rights.
227.474–1 Direct licenses.
227.474–2 Expiration of restrictive rights legends.
227.475 Other procedures.
227.475–1 Data requirements.
227.475–2 Deferred ordering and deferred delivery.
227.475–3 Technical data—withholding of payment.
227.475–4 Warranties of technical data.
227.475–5 Delivery of technical data to foreign governments.
227.475–6 Contracts with foreign sources to be performed outside the United States.
227.475–7 Technical data reflecting engineering changes.
227.475–8 Publication for sale.
227.476 Contracts for acquisition of special works.
227.477 Contracts for acquisition of existing works.
227.478 Architect-engineer and construction contracts.
227.478–1 General.
227.478–2 Acquisition and use of plans, specifications, and drawings.
227.478–3 Contracts for construction supplies and research and development work.
227.478–4 Mixed contracts.
227.478–5 Approval of restricted designs.
227.479 Contracts awarded under Small Business Innovation Research Program (SBIR Program).
227.480 Copyrights.
227.481 Acquisition of rights in computer software.
227.481–1 Policy.
227.481–2 Procedures.
227.482 Solicitation provisions and contract clauses.

### Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

#### 227.470 Scope.

(a) Sections 227.470 through 227.482 set forth the Department of Defense policies, procedures, and implementing instructions relating to requirements for the acquisition of technical data and computer software as well as rights in technical data, other data, computer software, and copyrights. These sections ensure that the DoD shall obtain only such minimum technical data and data rights as are essential to meet Government needs (see 227.472–2).

(b) Specific information concerning requirements for the acquisition of computer software is found in DoD Directive 5000.19–L, Volume II, "Acquisition Management Systems and Data Requirements Control List".

(c) These sections do not encompass rights in computer software acquired under GSA authorized ADP Schedule Pricelist contracts. Such rights are

governed by the terms of the GSA contracts.

**227.471 Definitions.**

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or method of the recording.

"Detailed manufacturing or process data", as used in this subpart, means technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes.

"Developed", as used in this subpart, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

"Form, fit, or function data", as used in this subpart, means technical data pertaining to items, components, or processes for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements (e.g., specification control drawings, catalog sheets, envelope drawings, qualification requirements, etc.).

"Government purposes license rights", as used in this subpart, means rights to use, duplicate, or disclose technical data (or in the SBIR Program only computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government license rights include purposes of competitive procurement but do not grant to the Government the right to have or permit others to use technical data (or the SBIR Program only computer software) for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed in whole or in part outside the Government; used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except when:

(a) Release, disclosure, or use is necessary for emergency repair or overhaul; provided that such release, disclosure, or use thereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure, and that the party asserting limited rights be notified by the contracting officer of such release, disclosure, or use; or

(b) Release or disclosure of to a foreign government, that is in the interest of the United States and is required for evaluational or informational purpose under the conditions of (a) above, except that such release or disclosure may not include detailed manufacturing or process data.

"Private expense", as used in this subpart, means that the cost of development has not been paid in whole or in part by the Government and that such development was not required as an element of performance under a Government contract or subcontract; provided, however, independent research and development and bid and proposal costs are deemed to be at private expense.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)–(d) above that are listed or described in a contract or described in a license or agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). Such term does not include computer software or data incidental to contract administration, such as financial and/or management information.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part,

in any manner and for any purpose whatsoever, and to have or permit others to do so.

"Unpublished", as used in this subpart, means that technical data or computer software has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of other than unlimited rights technical data or computer software to or for the Government under a contract does not, in itself, constitute release to the public.

**227.472 Acquisition policy for technical data and rights in technical data.**

**227.472-1 General.**

The acquisition of technical data and the rights to use such data requires a balancing of competitive interests.

(a) *The Government's interests.* The Government has extensive needs for many kinds of technical data and the rights to use such data. Its needs may well exceed those of private commercial customers. For defense purposes, millions of separate equipment and supply items, ranging from standard to unique types, must be acquired, operated, and maintained, often at points remote from the source of supply. Functions requiring varied kinds of technical data include training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging, and logistics operations. Technical data resulting from research and development and production contracts must be obtained, organized and disseminated to many different users. Finally, the Government must make technical data widely available in the form of contract specifications in the interest of increasing competition, lowering costs, and providing for mobilization by developing and locating alternate sources of supply and manufacture.

(b) *The contractor's interest.* Commercial and non-profit organizations have property rights and a valid economic interest in technical data pertaining to items, components, or processes which they have developed. Such technical data is often closely held in the commercial sector because its disclosure to competitors could jeopardize the competitive advantage it was developed to provide. Public disclosure of such technical data can cause serious economic hardship to the originating company and would not be in the interest of the United States in encouraging innovation as well as encouraging contractors to develop at private expense items, components, or processes for use by the Government.

(c) *The balancing of interests.* (1) There is no necessary correlation between the Government's need for technical data and a contractor's economic interest therein. However, in balancing the Government's requirements for technical data against a contractor's interest in protecting its technical data, there may be a considerable identity of interest. This is particularly true in the case of innovative contractors who can best be encouraged to develop at private expense items of military usefulness where their rights in such items are scrupulously protected.

(2) It is equally important that the Government foster successful contractual relationships and encourage a ready flow of data essential to Government needs by confining its acquisitions of technical data to cases of actual need. Certainly the Government must not be barred from bargaining and contracting to obtain the technical data that it needs, even though that technical data may not be disclosed in commercial practice. Moreover, when the Government pays for research and development work which produces new knowledge, products, or processes, it has an obligation to foster technological progress through wide dissemination of the new and useful information derived from such work and where practicable to provide competitive opportunities for supplying the new products and utilizing the new processses.

(3) At the same time, acquiring, maintaining, storing, retrieving, protecting and distributing technical data in the vast quantities generated by modern technology is costly and burdensome for the Government. For this reason alone, it is necessary to control closely the extent and nature of technical data acquisition. Such control is also necessary to ensure Government respect for its contractors' economic interest in technical data relating to their privately developed items.

**227.472-2 Establishing minimum Government needs.**

It is the policy of the Department of Defense to obtain only such minimum technical data and data rights as are essential to meet Government needs. Consideration shall be given to such factors as: whether or not the item, component, or process will be competitively acquired; whether repair and overhaul work will be contracted out or serviced in-house; whether the repair or replacement parts will be commercial items, or acquired by form, fit or function data, performance specifications, or by detailed engineering drawings. Once the Government's technical data needs are properly established, the appropriate technical data rights to meet those needs can be identified. Whether the Government already has or will need to acquire the necessary rights in the technical data or will need to consider alternate procurement procedures, will depend on either the category of the data or whether the items, component, or process was developed exclusively with Government funds, exclusively at private expense, or in part with Government funds and in part at private expense (see 227.472-5). In deciding how to acquire such data and data rights, or how to otherwise achieve the Government's purposes, it is the policy of the Department of Defense to use procedures that are the least intrusive on the contractor's economic interests as is practicable. (See Subpart 217.72 for additional guidance.)

**227.472-3 Early identification.**

In order to determine what minimum technical data and data rights to obtain in each acquisition, it is necessary for the Government to identify its various uses of and needs for technical data as early as is practicable in the acquisition of any item, component, or process. Such identification should be made before contract award or, for major weapons systems, prior to entering Full Scale Development. It is also important that contractors be required to provide early identification of any technical data that they intend to deliver with any restrictions on its use.

**227.472-4 Statutory prohibitions.**

In accordance with 10 U.S.C. 2320(a)(2)(F), a contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract, to sell or otherwise relinquish to the United States any rights in technical data beyond those to which the Government is entitled under 10 U.S.C. 2320(a)(2) (C) and (D). It is permissible, however, to consider in the evaluation of offers such factors as the impact on life cycle costs of limitations on the Government's ability to use or disclose the technical data. Further, nothing prohibits the Government from mutually agreeing with the contractor or a subcontractor to provide the Government with greater rights than it would normally be entitled to, for a fair and reasonable price. This price may be expressed in terms of a lump sum fee,

royalty fees, or other consideration depending upon the terms and conditions negotiated (e.g. a licensing agreement.)

**9227.472–5 Standard rights in technical data.**

The three categories of standard rights in Technical Data are Limited Rights, Government Purpose License Rights and Unlimited Rights. The standard rights to which the Government is entitled are determined as follows:

(a) If the Government has funded or will fund the entire development of the item, component, or process, then the Government is entitled to and will normally obtain unlimited rights in the technical data.

(b) If the Government has funded or will fund a part of the development of the item, component, or process, then the Government is entitled to unlimited rights in the technical data. However, the Government should not acquire more data rights than it needs. Therefore, unless the contracting officer determines, during the identification of needs process, that unlimited rights are required, the Government will obtain Government Purpose License Rights if the contractor has or will contribute more than 50 percent of the development cost of the item, component, or process, or if the contractor is a small business firm or nonprofit organization that agrees to commercialize the technology. (Note: The requirement to commercialize the technology, as delineated in this paragraph and in 227.472–7, exists because in agreeing to less than unlimited rights, the Government establishes a proprietary interest for the contractor and assumes an administrative burden to safeguard this interest. Further, by encouraging commercialization, the Government intends to promote wider application of such technologies.) The Government will normally obtain unlimited rights in all other cases. However, if the contractor is a large business whose share of development cost has not exceeded or will not exceed 50 percent, the contracting officer should give consideration to obtaining less than unlimited rights as provided in 227.472–7.

(c) If the item, component, or process is developed by a contractor or subcontractor exclusively at private expense, the Government is entitled to limited rights. Such data must be unpublished and identified as limited rights data. However, if the Government determines that it needs rights in technical data greater than limited rights, the contracting officer may negotiate, pursuant to 227.472–6, with a contractor or subcontractor to acquire additional rights necessary to meet the Government's needs, provided that the additional rights are necessary to enhance competition by developing alternative sources of supply and manufacture. As an alternative, the contracting officer may consider alternate proposals from the contractor or subcontractor to enhance competition.

(d) Notwithstanding (a), (b), and (c) above, the Government is entitled to unlimited rights in the technical data in the following categories:

(1) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(2) Form, fit or function data pertaining to end-items, components, or processes, prepared or required to be delivered under any Government contract or subcontract;

(3) Manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under a Government contract or subcontract necessary for installation, operation, maintenance, or training purposes; and

(4) Technical data which is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

**227.472–6 Policy for obtaining greater rights in technical data.**

If the Government determines that it needs rights in technical data greater than limited rights, the contracting officer may negotiate with a contractor or subcontractor to acquire the additional rights necessary to meet the Government's needs, provided that the additional rights are necessary to develop alternative sources of supply and manufacture (see 227.473–2). As an alternative to acquiring additional rights, the contracting officer may consider other proposals from the contractor or subcontractor as to how to achieve the same objectives (e.g. see 227.474).

**227.472–7 Waiving unlimited rights in technical data.**

In those cases under 227.472–5 where the Government would normally obtain unlimited rights, the Government may agree to waive these unlimited rights, provided that, in accordance with 10 U.S.C. 2320(a)(2)(G)(ii), the United States receives, as a minimum, a royalty-free license to use, release, or disclose the data for purposes of the United States, including purposes of competitive procurement (i.e., Government Purpose License Rights). In considering whether to waive unlimited rights, the contracting officer should consider substantial contributions by the contractor to the development of the item, component or process even though such contributions do not exceed 50 percent. Also, the contracting officer should consider, where appropriate, such factors as unique contractor qualifications or expertise contributing to the configuration management or development of the item, component or process. However, such lesser rights may only be obtained under this paragraph after a determination by the contracting officer that the Government does not need unlimited rights and if the contractor agrees to commercialize the technology.

**227.472–8 Subcontracts.**

It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor, who would have the right pursuant to 227.472–5 to furnish technical data with limited rights, may furnish such limited rights data directly to the Government rather than through the prime contractor.

**227.473 General procedures.**

**227.473–1 Early identification of Government rights.**

(a) *Prenotification of limitations on Government rights.* In order for the Government to make informed judgments concerning the competitive reprocurement potential of items, components, processed, or computer software developed at private expense that an offeror intends to deliver under a resultant contract, offerors shall identify to the maximum practicable extent in their responses to solicitations such privately developed items, components, processes, or computer software and the technical data which they:

(1) Intend to deliver with limited or restricted rights;

(2) Intend to deliver with Government Purpose License Rights; or

(3) Have not yet determined if such rights should apply.

If delivery of technical data under a resultant contract is expected, the provision at 252.227–7035, Prenotification of Rights in Technical Data, shall be included in the solicitation. If an offeror asserts other

than unlimited rights to any technical data in its proposal responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the contracting officer, evidence supporting any such assertion. The contracting officer may enter into an agreement with the contractor that the Government is entitled to Government Purpose License Rights or limited rights (See paragraph b(1)(i) and b(2)(ii) of the clause at 252.227–7013). The contracting officer should not request supporting evidence unless the Government intends to enter into an agreement.

(b) *Notification of limitations on Government rights.* Because continuing information is needed under a contract about a contractor's intention to use in the performance of the contract any items, components, processes, or computer software for which technical data or computer software would be subject to other than unlimited rights, the contractor will be required to advise the contracting officer of this fact promptly prior to committing to the use of the privately developed item, component, or process. If possible, the schedule should indicate the specific areas to which limited or restricted rights are of concern, and the notice requirements should only address those areas.

(1) Under the clause at 252.227–7013, the contractor is not required to advise the contracting officer as to items, components, processes, or computer software for which notice was previously given in the same contract pursuant to the prenotification procedure, or with respect to standard commercial items that are manufactured by more than one source of supply. Also, the contractor need not obtain contracting officer approval to use any item, component, process, or computer software in the performance of the contract. If Government control on the contractor's use of privately developed items, components, processes, or computer software is desired, special provisions must be included in the contract.

(2) Subsequent to contractor notification, if the contracting officer agrees that certain technical data would be subject to other than unlimited rights, the contracting officer may then decide to negotiate for a licensing arrangement, the purchase of additional rights, or to adopt another suitable alternative. Such alternatives may include modifying the specifications so as not to require (but see 227.472–4) use of the privately developed items, components, processes, or computer software.

**227.473–2 Procedures for obtaining greater rights in technical data.**

(a) In accordance with 227.472–6, the Government may obtain greater rights or options for such rights in any technical data pertaining to items, components, or processes developed exclusively at private expense for which the Government would otherwise only be entitled to limited rights. These greater rights may be obtained by negotiation of a lump sum fee, royalty, or other consideration, and where appropriate, should also include access to such technical assistance as may be necessary to qualify additional sources. These negotiations may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. However, refusal to negotiate by a contractor or subcontractor shall not constitute the basis for disqualification for award of a contract or subcontract (See 227.472–4). Such greater rights shall be stated in the contract schedule as a separate item with a specific price and shall not be obtained under this paragraph unless it is determined after a finding upon a documented record that—

(1) There is a need or requirement for disclosure of such technical data outside the Government for purposes such as for reprocurement or evaluation of the item, component, or process to which the technical data pertains; and

(2) If the specific rights obtained are for reprocurement, then the anticipated net savings in competitive reprocurements from additional sources will likely exceed the acquisition cost of the technical data and rights therein.

(b) In contracts for major systems or major subsystems, it may be in the best interest of the Government to acquire repair parts of components directly from a subcontractor, rather than obtaining greater rights in technical data. In such cases, the clause at 252.227–7017, Rights in Technical Data—Major System and Subsystem Contracts, may be used. Also, the Government's right to purchase such items directly from subcontractors shall be without the payment of any fee or royalty by the Government or subcontractor for the use of the prime contractor's technical data.

**227.473–3 Certifications.**

(a) The provision at 252.227–7028, Requirement for Technical Data Certification, shall be included in a solicitation that may result in a negotiated contract when information is needed to establish whether an offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical date included in the offer (see 215.406 and FAR 15.406–5(a)). This solicitation provision requires the offeror to submit with the offer a certification as to whether the same or substantially the same technical data that is included in the offer has been delivered or is obligated to be delivered to the Government under any contract or subcontract. If so, the offeror will be required to identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(b) If technical data is required to be delivered under a contract, the clause at 252.227–7036, Certification of Technical Data Conformity, shall be included in solicitations and any resultant contract. The clause requires the contractor to certify in writing that, to the best of its knowledge and belief, technical data delivered under the contract is complete, accurate, and complies with all requirements of the contract. The clause states that technical data deliverable under the contract may be reviewed by the Government both before and after Government acceptance. The clause also contains some illustrative examples of such reviews.

**227.473–4 Marking and identification requirements.**

(a) Technical data delivered to the Government pursuant to any contract requirement shall be marked in accordance with 252.227–7029 with the number of the prime contract, and the name of the contractor and any subcontractor who generated the technical data. Each piece of technical data submitted with other than unlimited rights shall also be marked with—

(1) The authorized restrictive legend; and

(2) An indication (for example, by circling underscoring, or a note) of that portion of the piece of technical data to which the legend is applicable. The Government shall include such identifying markings on all reproductions thereof.

(b) The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause at 252.227–7013. Copyright notices as specified in Title 17 United States Code, Sections 401 and 402, are not considered "restrictive markings". When the clause

BEST COPY AVAILABLE

at 252.227–7013, "Rights in Technical Data and Computer Software", is required, the clause at 252.227–7018, "Restrictive Markings on Technical Data", shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed by the Contract Administration Office. In addition to the rights afforded to the Government by the clause at 252.227–7018, "Restrictive Markings on Technical Data", the following actions are available to ensure proper marking of technical data:

(1) Failure to establish, maintain and follow such marking procedures may be deemed to render technical data nonconforming and subject to FAR Section 46.102 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.

(2) When a pre-award survey is requested by the purchasing office, the review shall include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause.

(3) The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to FAR Part 42.

(c) *Unmarked or improperly marked technical data.* Pursuant to the Validation Procedures of 227.473–5 and the clause at 252.227–7037, "Validation of Restrictive markings on Technical Data", the Government has the right to require the contractor or subcontractor to furnish sufficient evidence to justify the propriety of any restrictive markings used by the contract or subcontract. Technical data received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, within six months after delivery of such data, the contractor may request permission to place restrictive markings on such data at its own expense and the Government may so permit if the contractor—

(1) Demonstrates that the omission of the restrictive marking was inadvertent;

(2) Justifies that the use of the markings is authorized; and

(3) Relieves the Government of any liability with respect to the use or disclosure of such technical data.

(d) If technical data is received with restrictive markings which the Government believes are not justified, the Government will nevertheless honor the restrictive legend until the issue is resolved in accordance with the Validation procedures.

(e) If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with non-conforming markings, the technical data shall be used according to the proper restriction, and the contractor shall be required by written notice to correct any such markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and will thereafter use the technical data accordingly.

**227.473–5 Validation of restrictive markings on technical data.**

(a) *Policy and Procedures.*—(1) *General.* 10 U.S.C. 2321 sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on the use, duplication, or disclosure by the Government and others of technical data delivered under contracts or subcontracts for supplies or services. 10 U.S.C. 2320 provides authority for the Department of Defense to establish remedies when data delivered or made available under a contract is found to not satisfy the requirements of the contract (e.g., contains unjustified or non-conforming restrictive legends). The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the contractor or subcontractor. Such review should be accomplished, if possible, before acceptance of the technical data. During the period within three years of final payment on a contract or within three years of delivery of the technical data to the Government, whichever is later, the contracting officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (i) is publicly available; (ii) has been furnished to the United States without restriction; or (iii) has been otherwise made available without restriction. Whenever the contracting officer finds it appropriate to question the validity of restrictive markings on data provided by contractors or subcontractors, the contracting officer shall follow the procedures set forth below. Only the contracting officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the contracting officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(2) *Prechallenge request for information.* (i) Prior to making a written determination to challenge, and to assure that the formal challenge process is not unduly or prematurely invoked, the contracting officer should request the contractor or subcontractor to furnish information explaining the basis for any restriction asserted by the contractor or subcontractor on the right of the United States or others to use technical data developed, delivered, or to be delivered, under a contract. In this regard, if the information provided is incomplete, the contracting officer may request the contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or available to, the contractor or subcontractor to justify the validity of the restrictive marking (e.g., a statement of facts accompanied by supporting documentation). Such requests from the contracting officer should be in writing and should state a reasonable time for submission of the required data.

(ii) The contracting officer should also request information and advice from the cognizant Government activity having interest in, or control of, the data regarding the validity of the markings. If the contracting officer receives advice that the validity of restrictive markings on technical data is questionable, the contracting officer shall request that the individual or office raising the question provide written rationale for the assertion.

(iii) If the contracting officer, after reviewing the information provided pursuant to paragraphs (a)(2) (i) and (ii) above, or any other available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make impracticable subsequent competitive acquisition of the item, component, or process to which the technical data relates, the contracting officer shall proceed in accordance with paragraph (a)(3) of this section. If, when requesting information under paragraph (a)(2)(i) above, the contractor or subcontractor fails to respond to the contracting officer's written request within a reasonable period, the contracting officer shall proceed in accordance with paragraph (a)(3) of this section.

(3) *Challenge.* (i) If the contracting officer determines that a challenge to the restrictive marking is warranted, the contracting officer shall promptly send a written challenge notice to the

contractor or subcontractor. The contracting officer's determination to challenge shall be in writing and shall be made within the three-year period cited in paragraph (a)(1) above. The challenge to the restrictive legend shall be issued by the contracting officer in a written notice, to the contractor asserting the marking, that shall:

(A) State the specific grounds for challenging the asserted restrictions;

(B) Require a response within 60 days justifying and providing appropriate evidence as to the current validity of the asserted restriction;

(C) State that a DoD contracting officer's final decision, issued pursuant to paragraph (f) of the clause at 252.227–7037, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor) to which such notice is being provided;

(D) State that a response will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in FAR 33.207, regardless of dollar amount; and

(E) State that failure to respond to the challenge notice may result in the issuance of a final determination pursuant to paragraph (e) of the clause at 252.227–7037.

(ii) The contracting officer shall extend the time for response as appropriate if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(iii) Any written response from the contractor or subcontractor shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and must be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(iv) If a contractor or subcontractor has received challenges to the same restrictive markings from more than one contracting officer, the contractor or subcontractor is to notify each contracting officer of the existence of more than one challenge. This notice shall also indicate which unanswered challenge was received first in time by the Contractor or subcontractor. The contracting officer who initiated the first in time unanswered challenge is the contracting officer who will take the lead in establishing a schedule for the resolution of the challenge to the restrictive markings. This contracting officer shall coordinate with all the other contracting officers, formulate a schedule for responding to each of the challenge notices, and distribute such schedule to all interested parties (all appropriate contracting officers and contractors and subcontractors). The schedule shall provide to the contractor or subcontractor a reasonable opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(4) *Final decision.*—(i) *Final decision when contractor or subcontractor responds.* If the contractor or subcontractor fails to respond to the challenge notice, the contracting officer will then issue a final decision, under the Disputes clause at FAR 52.233–1, that the restrictive markings are not valid and that the Government will either strike or ignore the invalid restrictive markings. This final decision shall be issued as soon as possible after the expiration of the time period of (a)(3)(i) or (ii) above. Following the issuance of the final decision, the contracting officer will comply with the procedures in paragraph (a)(4)(ii)(B) (*2*) through (*5*) below.

(ii) *Final decision when contractor or subcontractor responds.* (A) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the contracting officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive markings. This final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontract of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(B)(*1*) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the validity of the restrictive marking is not justified, the contracting officer shall issue a final decision to the contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice. Such a final decision shall advise the contractor or subcontractor of the rights of appeal under the Contract Disputes Act.

(*2*) The Government will continue to be bound by the restrictive marking for a period of 90 days from the issuance of the contracting officer's final decision under (a)(4)(ii)(B)(*1*) of this section. The contractor or subcontractor, if it intends to file suit in the United States Claims Court, must provide a notice of intent to file suit to the contracting officer within 90 days from the issuance of the contracting officer's final decision under (a)(4)(ii)(B)(*1*) of this section. If the contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the contracting officer within the 90-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor or subcontractor to take the required action constitutes agreement with such Government action.

(*3*) The Government will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the contracting officer within 90 days from the issuance of the final decision under (a)(4)(ii)(B)(*1*) of this section. The Government will no longer be bound and may strike or ignore the restrictive markings if the contractor or subcontractor fails to file its suit within one year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the agency may, following notice to the contractor or subcontractor, authorize release or disclosure of the technical data. In appropriate circumstances, use of a non-disclosure agreement may be considered. Such agency determination may be made at any time after the issuance of the final decision and will not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(*4*) The Government will be bound by the restrictive marking where an appeal

or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the agency may, following notice to the contractor or subcontractor, authorize release or disclosure of the technical data. In appropriate circumstances, use of a non-disclosure agreement may be considered. Such agency determination may be made at any time after issuance of the final decision and will not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(5) *Appeal or suit.* (i) If the contractor or subcontractor appeals or files suit and if upon final disposition the contracting officer's decision is sustained, the restrictive markings on the technical data shall be cancelled, corrected, or ignored. If, upon final disposition, it is found that the restrictive marking was not substantially justified, the contracting officer shall determine the cost to the Government of reviewing the restrictive marking and the fees and other expenses incurred by the Government in challenging the marking. The contractor is then liable to the Government for payment of these costs unless the contracting officer determines that special circumstances would make such payment unjust.

(ii) If the contractor or subcontractor appeals or files suit and if, upon final disposition, the contracting officer's decision is not sustained, the Government shall continue to be bound by the restrictive markings. Additionally, if the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the contractor or subcontractor for payment of fees or other expenses incurred by the contractor or subcontractor in defending the validity of the marking.

(6) *Privity of contract.* These procedures for reviewing the validity of restrictive markings on technical data do not create or imply a privity of contract between the Government and subcontractors.

**227.473–6 Remedies for noncomplying technical data.**

(a) The Government may suffer injury when data required to be delivered or made available under a contract is incomplete, inadequate, or fails to satisfy established requirements. The contracting officer shall consider all available remedies to the Government including, but not limited to, reduction of progress payments, withholding, termination, and decrease in contract price or fee. The contracting officer shall consult with counsel, as appropriate, to foster selection of a suitable remedy.

**227.473–7 Non-disclosure agreements.**

Technical data obtained with rights other than unlimited shall not be released outside the Government unless the recipient of the data agrees to sign the non-disclosure and/or non-use agreement consistent with the conditions of the restrictive rights. Normally, non-disclosure agreements should be provided by the contractor or subcontractor asserting the restrictive rights. However, such agreements must not be used to impose unreasonable constraints on the ability of other contractors to gain access to the technical data in order to compete for Government contracts. Moreover, it should be clearly stated in the agreement that the Government shall incur no liability for unauthorized use or disclosure by any third party of any such data.

**227.474 Additional methods of obtaining greater rights.**

**227.474–1 Direct licenses.**

Direct licensing is another approach to enhance competition in privately developed items, components, or processes. In this approach, an acquisition strategy is use that calls for a contractor to transfer data and technology directly to another source. While this approach has the advantage of allowing the contractor to maintain direct control over the use of its limited rights data, it may not be useful when the Government needs to maintain direct control over the data to support the competitive procurement. Such direct licensing arrangements are most useful in special situations such as in leader company contracting in accordance with FAR Subpart 17.4. For this reason, direct licenses are generally not appropriate for the acquisition of items, components, or processes having an estimated total acquisition cost of less than $50 million of RDT&E funds or $200 million of production funds.

**227.474–2 Expiration of restrictive rights legends.**

(a) As an alternative to obtaining greater rights in limited rights technical data, the Government may negotiate a time limitation during which limited rights are applicable to such data. Time limits shall be negotiated on a case-by-case basis and shall balance the contractor's economic interest in the data with the Government's need for competition and an enhanced defense industrial base. The negotiation objective will not exceed seven years. At the expiration point, the Government will normally obtain Government purpose license rights.

(b) If it is agreed to establish a time period for the expiration of limited rights legends, the clause at 252.227–7013, "Rights in Technical Data and Computer Software", and its Alternate I, shall be included in solicitations and any resultant contract. The time period, the expiration date of the limited rights, and the rights to be obtained by the Government shall be specified in the contract. Each piece of data furnished under the contract with limited rights shall be marked with the special legend and expiration date set forth in Alternate I to the basic clause at 252.227–7013, "Rights in Technical Data and Computer Software".

(c) If it is agreed that only a portion of the limited rights data delivered under a contract will be acquired with a time period for the expiration of the special legends, the contract shall specifically identify that portion of the data, and Alternate I to the basic clause at 252.227–7013, "Rights in Technical Data and Computer Software", may be appropriately modified to limit its application only to that portion.

**227.475 Other procedures.**

**227.475–1 Data requirements.**

(a) The clause at 252.227–7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract, of which the aggregate amount involved does not exceed $25,000 and in any blanket purchase agreement and purchase order utilizing the DD Form 1155 (however, the DD Form 1423 shall be used with orders issued under a basic ordering agreement);

(2) Any contract awarded to a contractor outside the United States, except those under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are

the only deliverable item(s) under the contract;

(4) Any service type contract, when the contracting officer determines that the use of the DD Form 1423 (Contract Data Requirements List) is impractical for use with respect to records prepared by a contractor in performing operation and maintenance under the contract;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Materials Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause at FAR 52.223–3, Hazardous Material Identification and Material Safety Data, and when such clause is included in the contract.

(b) The clause at 252.227–7031, Data Requirements, states that the contractor is required to deliver only the data items listed on the DD Form 1423 and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract.

(c) Other than the data items falling within the exceptions set forth in paragraph (a) above, and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract, the requirement for delivery of any data items under the contract can be established only by listing the data items on the DD Form 1423 (see Section 253.270). The clause at 252.227–7031, Data Requirements, shall be inserted in all contracts in which the DD Form 1423 is used. The DD Form 1423 need not be used to list data or software requirements in any of the contracts falling within the exceptions set forth in paragraph (a) above.

**227.475–2 Deferred delivery and deferred ordering.**

(a) *General.* (1) Technical data and computer software is expensive to prepare in the required form and to maintain and update. Every effort, therefore, should be made to avoid placing a requirement upon a contractor to prepare and deliver technical data or software unless the need is positively determined. By delaying the delivery of technical data or software until needed for a specific purpose, storage requirements within DoD of technical data and computer software items are reduced, the handling of technical data and software superseded by updated versions is greatly decreased, and the purchase of technical data or software which may become obsolete by pending hardware changes is minimized.

(2) Economy in the purchase of technical data and software and the probability of greater currency may be achieved by deferring the delivery, and in some cases deferring the ordering, of technical data or software until an operational need is determined, or until stability of design or production is reached during contract performance. The application of the deferred delivery and deferred ordering principles, as explained further, should be made only after a careful evaluation on a case-by-case basis of the anticipated operational uses of technical data or computer software and any other relevant considerations. When it is expected that technical data or computer software may be required, but the precise need at time of contracting has not been determined, deferred ordering will be used to avoid the cost of preparation but allow the ordering of the technical data or software at some point downstream in contract performance should the need arise. When the need but not the time of delivery can be determined, deferred delivery will be used. When deferred delivery is used, it is expected that the contractor will price the technical data and software at the time of contracting and incur the cost of preparation prior to the call for delivery. Therefore, it is important that deferred ordering rather than deferred delivery be used where the need for technical data or software is doubtful. Whether the technique of deferred delivery or deferred ordering is used, the receipt of technical data or software by the Government should be scheduled to be in phase with a specific and planned use of the technical data or software.

(b) Deferred delivery refers to the practice of timing the delivery of technical data or computer software specified in a contract to a firm, operational need. This technique should be used only when a technical data or software requirement can be determined at the time of contracting and therefore is specified on the DD Form 1423, but the time or place of delivery is not firm. The dates for the delivery of data and software should be scheduled to coincide with the needs of the Government. The contractor, however, must be notified sufficiently in advance of a delivery data to enable the contractor to provide the technical data or software in specified form on time. Thus, in any contract the Government may defer the delivery of all or any portion of the technical data or computer software specified in the contract until actual need can be economically determined. The Government may require the contractor to deliver any such data or software, or portions thereof, at any time during the performance of the contract or within two years from either acceptance of all items (other than data and software) under the contract or termination of the contract, whichever is later. However, the contractor's obligation to deliver technical data pertaining to any item obtained from a subcontractor shall cease two years after the date on which it accepts the item. The Government's rights in deferred delivery data and software are as prescribed in the contract under which the data or software is to be delivered. When the delivery of technical data or computer software is to be deferred, the clause at 252.227–7026, "Deferred Delivery of Technical Data or Computer Software", shall be included in the contract.

(c) Deferred ordering refers to delaying the ordering of technical data or computer software generated in the performance of the contract until such time as a need can be established and the requirements can be specifically identified for delivery under the contract. In many instances it is difficult to determine during solicitation and negotiation stages exactly what data or software is needed. The information available at these stages may suggest the need for some data or software but further information may be needed to identify the specific data or software items. In such situations, and also when it is desired to delay the ordering of technical data or computer software until such time as the production design becomes firm, the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, is appropriate. The requirement for technical data or computer software under these circumstances is not listed on the DD Form 1423 until the specific need is determined. Whenever the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, is used, the clause at 252.227–7013, Rights in Technical Data and Computer Software, shall also be included. When data or software items are ordered, the delivery dates shall be negotiated and the contractor shall be compensated for converting the data or software into the prescribed form, for reproduction and delivery to the Government. Compensation to the

contractor shall not include the cost of generating such data or software since it was generated in the performance of work for which the Government has already agreed to pay the contractor.

**227.475–3 Technical data—withholding of payment.**

(a) Timely delivery of technical data is particularly important to the operation and maintenance of equipment as well as competitive procurement of follow-on quantities of contract items and of items broken out from an assembly or equipment. The clause at 252.227–7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data. The clause permits a withholding not exceeding 10 percent of the total contract price or amount, but the contracting officer may specify a lesser amount in the contract if circumstances warrant. A case-by-case determination as to the amount to be withheld shall be made by the contracting officer after considering the estimated value of the technical data to the Government. No amount shall be withheld when the failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) Withholding action under paragraph (b) of the clause should be taken only when the contractor has failed to make timely deliveries of acceptable technical data on other contracts or if the contracting officer has information which would cause the contracting officer to anticipate late delivery of technical data or delivery of deficient technical data. The amount of withholding should be based on the estimated value of the technical data to the Government.

**227.475–4 Warranties of technical data.**

The factors contained in Subpart 246.7, Warranties, shall be considered in deciding whether to provide for warranties of technical data delivered under contracts calling for technical data. The basic technical data warranty clause is set forth at 252.246–7001, Warranty of Data. There are two alternates to the basic clause. The basic clause and the appropriate alternate should be selected in accordance with section 246.708.

**227.475–5 Delivery of technical data to foreign governments.**

As provided in the definition of limited rights in section 227.471, limited rights include the right of the Government to deliver the technical data to foreign governments as the national interest of the United States may require, subject to the same limitations which the Government accepts for itself. When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice thereof to the contractor or subcontractor asserting the rights in the technical data.

**227.475–6 Contracts with foreign sources to be performed outside the United States.**

Normally, the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), is used in solicitations and contracts with foreign sources, except that the clause shall not be used in contracts for special works (see section 227.476), contracts for existing works (see section 227.477), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). This clause should be inserted when the Government is to acquire unlimited rights in all technical data, including reports, drawings and blueprints, and all computer software, specified to be delivered to the Government. The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be inserted when the same rights are to be obtained as would be obtained if contracting with United States firms. Notwithstanding paragraphs 227.403–3(a) and 227.481–2(a), the clause may be modified to meet the requirements necessary for and peculiar to the foreign acquisition; *Provided,* it agrees with the policies and principles of sections 227.403–2 and 227.481.

**227.475–7 Technical data reflecting engineering changes.**

A DD Form 1423 shall be included in contracts which shall require delivery of suitable revisions to technical data provided under that or a predecessor contract which are needed to portray and take into account engineering changes ordered under that contract that affect form, fit, and function of items specified in the contract. A delivery schedule shall be indicated in the contract for the revisions. Such revisions need not be provided for, however, if the contracting officer determines that there is no requirement justifying their purchase.

**227.475–8 Publication for sale.**

The paragraph of Alternate II may be added to the clause at 52.227–7013, Rights in Technical Data and Computer Software, for use in contacts for research when the contracting officer determines, in consultation with counsel, as appropriate, that public dissemination of a work, or certain designated parts of a work, specified to be delivered under the contract is in the best interest of the Government and would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government. This paragraph shall not be used otherwise.

**227.476 Contracts for acquisition of special works.**

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts for special works, including technical data and computer software, where ownership and control by the Government is desired, for example, in contracts—(1) primarily for the production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (2) for histories of the respective Departments for services or units thereof; (3) for works pertaining to recruiting, morale, training, or career guidance; (4) for surveys of Government establishments; (5) for works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and (6) primarily for production of technical reports, studies, or similar documents.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

**227.477 Contracts for acquisition of existing works.**

(a) *Off-the-shelf acquisition of books and similar items.* Notwithstanding the instructions of any other paragraphs in this part, no contract clause contained in this part need be included in contracts for the separate, sole acquisition of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for acquisition (such as the off-the-shelf acquisitions of existing products) unless the right to reproduce such technical data is an objective of the contract.

(b) *Acquisition of existing audiovisual works.* (1) The clause at 252.227–7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may set forth limitations consistent with the purposes for which the material covered by the contract is being acquired.

Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. Paragraph (c) of the clause should be modified to make the indemnity coextensive with the rights acquired under paragraph (b) of the clause as limited by the contract.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227–7020, Rights in Data-Special Works, appropriately modified, shall be used.

**227.478 Architect-engineer and construction contracts.**

**227.478–1 General.**

This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

**227.478–2 Acquisition and use of plans, specifications, and drawings.**

(a) *Architectural designs and data clauses for architect-engineer or construction contracts.*—(1) *Plans and Specifications and As-Built Drawings.* (i) Except as provided in (a)(1)(ii) below, insert the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. In those cases only where the contracting officer determines for the foregoing reasons that it is desirable to maintain exclusive control over the design and data, the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, shall be used in solicitation and contracts. If the contract is for architect-engineer services, the clause at 252.227–7022 shall be deleted and the clause at 252.227–7023 substituted therefor. If the contract is for construction involving architect-engineer services, only the clause at 252.227–7023 shall be included.

(2) *Shop drawings for construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited right to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 252.227–7033, Rights in Shop Drawings.

**227.478–3 Contracts for construction supplies and research and development work.**

The solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitation and contracts for the acquisition of other than construction or architect-engineer services are applicable when the acquisition is limited to either (a) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both. The right of the Government and others to use, duplicate, or disclose such technical data, other data, or computer software will be determined by the terminology of the applicable clauses in the contracts or the terminology of agreements recited-in or made part of the contracts.

**227.478–4 Mixed contracts.**

When solicitations and resulting contracts call for (a) supplies or materials, (b) experimental, developmental or research work, or (c) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitations and contracts for the acquisition of other than construction or architect-engineer services shall be included in such solicitations and resultant contracts in addition to the appropriate solicitation provisions and contract clauses prescribed for use in solicitations and contracts for construction or architect-engineer services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to the experimental, developmental, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

**227.478–5 Approval of restricted designs.**

(a) Specifications for construction should allow for maximum latitude in the use of various types of commercially available products, materials, equipment, or processes which will meet objective Government requirements. However, Government requirements may necessitate, or the architect-engineer may contemplate the use of structures, products, materials, equipment, or processes which are available only from a sole source. In such event, the architect-engineer should report to the contracting officer the items known to be sole source, and the reasons therefor, and advise the contracting officer of the extent to which such items are considered necessary to meet the Government's requirements. This will make possible timely planning and arrangements for the use of sole source items, or where appropriate, consideration of alternate items.

(b) This procedure is not intended to restrict the use of patented or copyrighted items, but is meant to give the Government an opportunity to consider whether the specifications being drawn by the architect-engineer, in regard to any one item, are unnecessarily restricted, according to objective Government requirements to a single sole item. The procedure is primarily for use in instances where the proposed design is expected to be conventional or standard and where the design may be used in subsequent acquisitions. For this purpose, the clause at 252.227–7024, Notice and Approval of Restricted Designs, may be inserted in architect-engineer contracts.

**227.479 Contracts awarded under Small Business Innovation Research Program (SBIR Program).**

(a) Public Law 97–219, "Small Business Innovation Development Act of 1982", requires certain agencies to establish a Small Business Innovation Research Program (SBIR Program). The public law also includes terminology providing for "retention of rights in data generated in the performance of the contract by the small business concern". The Small Business Administration (SBA) issued Policy Directive No. 65–01 on 19 November 1982 to provide policy direction for the conduct of the Small Business Innovation Research Programs within the federal agencies. The Policy directive was issued pursuant to the authority contained in the public law.

(b) In the policy directive, the SBA in essence recommended that, except for

program evaluation, agencies should protect technical data and computer software generated under an SBIR Program contract (funding agreement) for a period of two years from the completion of the contract under which the technical data and computer software were generated, unless the agencies obtained permission to disclose such data and software from the contractor. The SBA also recommended, that, effective at the conclusion of the two-year period, the Government shall have a royalty-free license in the technical data and computer software for Government use. This license has been amended pursuant to Public Law 99–500 and Public Law 99–591 to specifically include the right to use the technical data for competitive procurement. The SBA further recommended that the contractor, with prior written permission of the contracting officer, be afforded ownership of copyright in technical data and computer software generated under an SBIR Program contract and that the contractor be allowed to publish (subject to national security considerations, if any) such data and software. The policy directive considered it appropriate that the Government should receive a royalty-free license under any copyright and that each publication should contain an appropriate acknowledgement and disclaimer statement.

(c) The clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), incorporates the coverage recommended by the SBA policy directive and shall be included in all contracts awarded under the SBIR Program in which technical data or computer software is required to be prepared, originated, developed, generated, or delivered. The clause differs from the clause at 252.227–7013, Rights in Technical Data and Computer Software, in that it provides for the two-year period of limited rights after which the Government receives a Government purpose license in certain technical data and computer software that would otherwise be subject to unlimited rights. While use of the clause is limited to contracts awarded under the SBIR Program, contracting officers may use the basic concept when negotiating for greater rights in limited rights technical data.

**227.480 Copyrights.**

(a) In general, the copyright law gives an owner of copyright the exclusive rights to—

(1) Reproduce the copyrighted work in copies or phonorecords;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) In view of the exclusive rights in subparagraphs (a) (1)–(5) above, any technical data, other data, or computer software that is protected under the copyright law is not in the public domain, even though it may have been published, because acts inconsistent with these rights may not be exercised without a license from the copyright owner.

(c) Department or Defense policy affords the contractor ownership of copyright in any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work" in which case ownership and control of the work is retained by the Government and the contractor is precluded by the terms of the contract from asserting any rights or claim to copyright in the work. Department of Defense policy also requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work or authorship (other than a "special work") first prepared, produced, originated, developed, or generated and, in addition, requires that the contractor grant to the Government and authorize the Government to grant to others the same license in any work of authorship acquired by the Government under the contract (not first prepared) in which the copyright is owned by the contractor.

(d) Under the clause at 252.227–7013, Rights in Technical Data and Computer Software, the contractor grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owner by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. Under the clause at 252.227–7020, Rights in Data—Special Works, any work first produced in the performance of the contract becomes the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. Under this clause, the contractor similary grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) Under both of the clauses at 252.227–7013 and 252.227–7020, unless written approval of the contracting officer is obtained, the contractor also agrees not to include in any work prepared, produced, originated, developed, genrated, or acquired under the contract, any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

**227.481 Acquisition of rights in computer software.**

**227.481–1 Policy**

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in Section 227.471.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement or copyright. However, see Section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in Section 227.471, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restriction in paragraph (c)(1)(ii) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

**227.481–2 Procedures.**

(a) *Deviations.* All requests for deviations from this Section 227.481 shall be submitted to the DAR Council in accordance with the procedures in FAR Section 1.404.

(b) *General.* (1) Except as provided at 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(5) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.* (1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in section 227.481–1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

**Restricted Rights Legend**

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.473–4(c).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings, (notice, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may

be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptable for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or improperly marked computer software.* (1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

**227.482 Solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the basic data clause at 252.227–7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(i) When existing works are to be acquired in accordance with section 227.477;

(ii) When special works are to be acquired in accordance with section 227.476;

(iii) When the work will be performed by foreign sources outside the United States, its territories, possessions, or Puerto Rico, which case the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign) applies;

(iv) When performance will be limited solely to architect-engineer services or construction, in which case either the clause at 252.227–7022, Architect-Engineer Work—Unlimited Rights, or the clause at 252.227–7023, Architect-Engineer Work—Sole Property Rights, applies; and

(v) When the contract is awarded under the DoD Small Business Innovation Research Program (SBIR Program), in which case the clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), applies.

(2) The contracting officer shall use the clause with its Alternate I in accordance with the policy at 227.474–4.

(3) The contracting office shall use the clause with its Alternate II under the circumstances specified at 227.475–8.

(b) The contracting officer, in order to prevent any misinterpretation of the scope of the clause at 252.227–7013, Rights in Technical Data and Computer Software, in the contract, may insert the clause at 252.227–7016, Contract Schedule Items Requiring Experimental, Developmental, or Research Work, in solicitations and contracts when the solicitations and contracts, in whole or in part, call for experimental, developmental, or research work as an element of performance.

(c) The contracting officer may insert the clause at 252.227–7017, Rights in Technical Data—Major System and Subsystem Contracts, in solicitations and contracts for major systems or major subsystems under the circumstances specified at 227.473–2(b).

(d) The contracting officer shall insert the clause at 252.227–7018, Restrictive Markings on Technical Data, in all solicitations and contracts in accordance with 227.473–4(b).

(e) The contracting officer shall insert the provision at 252.227–7019, Identification of Restricted Rights Computer Software, in solicitations and contracts in accordance with 227.481.

(f) The contracting officer shall insert the clause at 252.227–7020, Rights in Data—Special Works, in solicitations and contracts as required by 227.476.

(g) The contracting officer shall insert the clause at 252.227–7021, Rights in Data—Existing Works, in solicitations and contracts as required by 227.477.

(h) The contracting officer shall insert the clause at 252.227–7022, Government Rights (Unlimited) in solicitations and contracts in accordance with 227.478–2(a)(1)(i).

(i) The contracting officer shall insert the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts in accordance with 227.478–2(a)(1)(ii).

(j) The contracting officer shall insert the clause at 252.227–7024, Notice and Approval of Restricted Designs, in solicitations and contracts in accordance with 227.478–5.

(k) The contracting officer shall insert the clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), in solicitations and contracts in accordance with 227.479.

(l) The contracting officer shall insert the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.475–2(b).

(m) The contracting officer shall insert the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.475–2(c).

(n) The contracting officer shall insert the provisions at 252.227–7028, Requirement for Technical Data Certification, in solicitations in accordance with 227.473–3.

(o) The contracting officer shall insert the clause at 252.227–7029, Identification of Technical Data, in all solicitations and contracts in accordance with 227.473–4.

(p) The contracting officer shall insert the clause at 252.227–7030, Technical Data—Withholding of Payment, in solicitations and contracts in accordance with 227.475–3.

(q) The contracting officer shall insert the clause at 252.227–7031, Data Requirements, in solicitations and contracts, in accordance with 227.475–1.

(r) The contracting officer shall insert the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), in solicitations and contracts in accordance with 227.475–6.

(s) The contracting officer shall insert the clause at 252.227–7033, Rights in Shop Drawings, in solicitation and contracts in accordance with 227.478–2(a)(2).

(t) The contracting officer may insert the provision at 252.227–7035, Prenotification of Rights in Technical Data, in solicitations in accordance with 227.473–1.

(u) The contracting officer shall insert the clause at 252.227–7036, Certification of Technical Data Conformity, in all contracts in accordance with 227.473–3.

(v) The contracting officer shall insert the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in solicitations and contracts which require the delivery of technical data.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.227–7013 and 252.227–7016 through 252.227–7034 are revised, sections 252.227–7014 and 252.227–7015 are removed and reserved, and sections 252.227–7035 through 252.227–7037 are added to read as follows:

### 252.227–7013 Rights in technical data and computer software.

As prescribed as 227.482(a)(1), insert the following clause:

**Rights in Technical Data and Computer Software (May 1987)**

(a) *Definitions.*

The terms used in this clause are defined in 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Rights in Technical Data.*

(1) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights in accordance with 227.473–1(a) and 227.473–1(b)(2) and

(ii) unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(3)(i), (ii), (iii) or (iv), below.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are indentified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. ————————.
Contractor: ————————.

——— ——— ——— ———
——— ——— ——— ———

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS 227.471. This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(2) *Government Purpose License Rights.* The Government shall have Government purpose license rights in:

(i) unpublished technical data pertaining to items, components, or processes for which the Government has funded, or will fund, a part of the development cost, unless the contracting officer has determined that the Government requires unlimited rights, and:

(A) the contractor has contributed or will contribute more than fifty percent (50%) of the development cost of the item, component, or process; or

(B) the contractor is a small business firm or nonprofit organization that agrees to commercialize the technology; and

(ii) unpublished technical data listed or described in an agreement incorporated into the Schedule of the contract, which the parties have agreed will be furnished with Government purpose license rights in accordance with DFARS 227.472–6, 227.472–7, 227.473–1(a) and 227.473–1(b)(2).

Government purpose license rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights Legend

Contract No. ————————.
Contractor: ————————.

——— ——— ——— ———
——— ——— ——— ———

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in DFARS 227.471. This legend, together with the indications of the portions of this data which are subject to such limitations, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations and shall be honored only as long as the data continues to meet the definition of Government purpose license rights.

(3) *Unlimited Rights.* Unless other rights have been agreed to in writing in accordance with DFARS 227.472–7, the Government shall have unlimited rights in:

(i) technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(ii) form, fit, or function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iii) manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under this contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes.

(iv) technical data, which is otherwise publicly available, or has been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(v) technical data pertaining to an item, component, or process for which the Government has funded or will fund the entire development cost.

(vi) technical data pertaining to an item, component, or process, for which the Government has funded or will fund a part of the development costs, and the Contractor has not contributed or will not contribute more than fifty percent (50%) of the development cost;

(vii) technical data pertaining to an item, component, or process for which the Government has funded, or will fund, a part of the development cost, and the contractor is a small business firm or nonprofit organization that does not agree to commercialize the technology;

(viii) technical data pertaining to an item, component, or process, for which the Government has funded, or will fund, a part of the development cost and, notwithstanding (b)(3)(vi) and (vii) above, the Contracting Officer has determined, in accordance with DFARS 227.472–5(b), that the Government requires unlimited rights; and

(ix) technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this or any other Government contract or subcontract.

(c) *Rights in Computer Software.*

(1) *Restricted Rights.*

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *Provided,* however, notwithstanding any contrary provision in any such license or

agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No.____ with____ (Name of Contractor)____.

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Governments rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013.

---

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(2) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished computer software; and

(v) computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(d) *Technical Data and Computer Software Previously Provided Without Restriction.* Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyright.*

(1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in DFARS 227.471. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227–7013 (date).

(f) *Removal of Unjustified and Non-conforming Markings.*

(1) *Unjustified Technical Data Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227–7037.

(2) *Non-conforming Technical Data Markings.* Correction of non-conforming markings is not subject to such clause. The Government may, at the Contractor's expense, correct any non-conforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the non-conforming markings within 60 days.

(3) *Unjustified and Non-conforming Computer Software Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that it is the policy of the Government not to pay, or to allow to be paid, any charges for data or computer

software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This policy applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. However, it does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Technical Data and Computer Software from Subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(j) *Notice of Limitations on Government Rights.*

(1) Unless the Schedule provides otherwise, and subject to (j)(2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component, or process for which technical data would contain any restrictions on the Government's right to use, disclose, or have others use such data.

(2) Such notification is not required with respect to:

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components, or processes for which such notice was given pursuant to prenotification of rights in technical data in connection with this contract.

(3) Unless the schedule provides otherwise, Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component, or process in the performance of the contract.

(End of clause)

*Alternate I (May 1987)*

As prescribed at 227.474–4, add the following paragraph to the basic clause:

( )(i) Notwithstanding any other provision of this contract, the Government shall have (specify additional Government rights here, i.e., reprocurement) rights in restrictive rights technical data furnished under this contract, effective on the day immediately following the date specified in the contract for the expiration of the restrictive rights legends. Such expiration date shall be marked on each piece of data subject to expiring restrictions furnished under the contract.

(ii) Technical data subject to the expiration of restrictive rights shall be marked with the limited rights legend set forth in paragraph (b)(2)(i) above with the title of the legend modified to read:

Restrictive Rights Legend (Subject to Expiration)

Contract No. _____
Contractor: _____

The following statement shall also be added to the legend:

Restrictive rights shall become (*specify additional Government rights here, i.e., reprocurement*) rights on (*insert expiration date*).

The modified legend shall be included on any reproduction of the restrictive rights data, in whole or in part.

*Alternate II (May 1987)*

As prescribed at 227.475–8, add the following paragraph to the basic clause:

( ) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

**252.227-7014 [Reserved]**

**252.227-7015 [Reserved]**

**252.227-7016 Contract schedule items requiring experimental, developmental, or research work.**

As prescribed at 227.412(d), insert the following clause:

**Contract Schedule Items Requiring Experimental, Developmental, or Research Work (Mar 1975)**

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this contract, it is understood and agreed that items (list applicable schedule line items or sub-line items or data exhibit numbers) require the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause)

**252.227-7017 Rights in technical data—major system and subsystem contracts.**

As prescribed at 227.482(c), insert the following clause:

**Rights in Technical Data—Major System and Subsystem Contracts (Nov 1971)**

The Contractor agrees that it will neither incorporate any provision in its subcontracts nor enter into any agreement, written or oral, either directly or indirectly, with subcontractors which has or may have the effect of prohibiting subcontractor sales directly to the Government of any supplies, like those manufactured or services like those furnished by such subcontractor under this contract or any follow-on production contract, or under any contract for parts or components of supplies furnished under this or any follow-on production contract. The Contractor further agrees that all data, including data in which the Government may not have unlimited rights, furnished or otherwise made available by the Contractor for use by subcontractors in furnishing such supplies or services, will be furnished to such subcontractors without payment to the Contractor of any fee, royalty or other charge by the subcontractor or the Government for use by such subcontractors in furnishing such supplies or services for sale directly to the Government. For the purpose of this paragraph, the term "fee, royalty or other charge" shall not include within its meaning fees, royalties of charges for reasonable returns on use of patents.
(End of clause)

**252.227-7018 Restrictive markings on technical data.**

As prescribed at 227.473–4(b), insert the following clause:

**Restrictive Markings on Technical Data (May 1987)**

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures the Contractor shall maintain (1) records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized, as well as (2) such records as are sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this

contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer should give written notification of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, the corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

**252.227-7019 Identification of restricted rights computer software.**

As prescribed at 227.482(e), insert the following provision:

**Identification of Restricted Rights Computer Software (Apr 1977)**

The Offeror's attention is called to the requirement in the "Rights in Technical Data and Computer Software" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the Offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which it desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of provision)

**252.227-7020 Rights in data—special works.**

As prescribed at 227.482(f), insert the following clause:

**Rights in Data—Special Works (Mar 1979)**

(a) The term "works" as used herein includes literary, musical, and dramatic works; patomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code, and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such work delivered under this contract the following notice:

c *(Year date of delivery)* United States Government as represented by the Secretary of *(department)*. All rights reserved.

In the case of a phonorecord, the c will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the peformance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

**252.227-7021 Rights in data—existing works.**

As prescribed at 227.482(g), insert the following clause:

**Rights in Data—Existing Works (Mar 1979)**

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in some works.

(End of clause)

**252.227-7022 Government rights (unlimited).**

As prescribed at 227.482(h), insert the following clause:

**Government Rights (Unlimited) (Mar 1979)**

(a) The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

**252.227-7023 Drawings and other data to become property of government.**

As prescribed at 227.482(i) insert the following clause:

**Drawings and Other Data to Become Property of Government (Mar 1979)**

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of

the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

**252.227-7024 Notice and approval of restricted designs.**

As prescribed at 227.482(1), insert the following clause:

**Notice and Approval of Restricted Designs (Apr 1984)**

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contacting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

**252.227-7025 Rights in technical data and computer software (SBIR program).**

As prescribed at 227.479, insert the following clause:

**Rights in technical data and computer software (SBIR program) (May 1987)**

(a) *Definitions.*

The terms used in this clause are defined in 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Rights in Technical Data.*

(1) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights in accordance with 227.473–1(a) and 227.473–1(b)(2) and

(ii) unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(2)(i), (ii), or (iii), below. Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by circling, underscoring, or note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. _____.

Contractor: _____.

_____ _____ _____ _____
_____ _____ _____ _____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS 227.471. This legend, together with the indications of the portions of this data, shall be included on any reproduction hereof which includes any part of the portions subject to limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(2) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in:

(i) technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(ii) form, fit, or function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iii) manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under this contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes; and

(iv) any other technical data prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to limited or unlimited rights pursuant to subparagraph (b)(1) or (b)(3) herein;

Government Purpose License Rights must be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights (SBIR Program)

Contract No. _____

Contractor: _____

For a period of two (2) years after delivery and acceptance of the last deliverable item under this contract, this technical data shall be subject to the restrictions contained in the definition of "Limited Rights" in Section 227.471 of the DoD FAR Supplement. After the two-year period, the data shall be subject to the restrictions contained in the definition of "Government Purpose License Rights" in Section 227.471 of the DoD FAR Supplement. The Government assumes liability for unauthorized use or disclosure by others. This legend, together with the indications of the portions of the data which are subject to such limitations, shall be included on any reproduction hereof which contains any portions subject to such limitations and shall be honored only as long as the data continues to meet the definition on Government purpose license rights.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data required to be prepared or delivered under this contract or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government with unlimited rights; and

(ii) technical data or computer software that is publicly available or has been released or disclosed by the Contractor without restriction on further use or disclosure.

(c) *Rights in Computer Software.*

(1) *Restricted Rights.*

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed with will be furnished with restricted rights, *Provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____with_____(Name of Contractor)_____.

and the related computer software documentation includes a prominent statement of the restriction applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights on such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013.

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the Software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make avaialble the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation, only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(2) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after expiration of the two-year period, shall have Government purpose license rights in:

(i) computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract; and

(iii) any other computer software prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to restricted or unlimited rights pursuant to subparagraph (c)(1) or (c)(3) herein.

Government purpose license rights shall be effective provided that each unit of software is marked with an abbreviated license rights legend reciting that the use, duplication, or disclosure of the software is subject to the same restrictions included in the same contract (identified by number) with the same contractor (identified by name). The Government assumes no liability for unauthorized use, duplication, or disclosures by others.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) computer software required to be prepared to deliver under this or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) computer software that is publicly available or has been or is normally released or disclosed by the Contractor without restriction on further use or disclosure; and

(iii) computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

(d) *Technical Data and Computer Software Previously Provided Without Restriction.* Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyright.*

(1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in DFARS 227.471. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7025 (date).

(f) *Removal of Unjustified and Non-conforming Markings.*

(1) *Unjustified Technical Data Markings.* Notwithstanding any provision of the contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227-7037.

(2) *Non-conforming Technical Data Markings.* Correction of non-conforming markings is not subject to DFARS 252.227-7037. The Government may, at the Contractor's expense, correct any non-conforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the non-conforming markings within 60 days.

(3) *Unjustified and Non-conforming Computer Software Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation of Charges for Data and Computer Software.* The Contractor recognizes that is is the policy of the Government not to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This policy applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. However, it does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Data and Computer Software from Subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a

subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software which is required for the Government.

(2) Technical data requird to be delivered by a subcontractor shall normally be delivered to the next high-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(j) *Notice of Limitations on Government Rights.*

(1) Unless the Schedule provides otherwise, and subject to (j)(2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component, or process for which technical data would contain any restrictions on the Government's right to use, disclose, or have others use such data.

(2) Such notification is not required with respect to

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components, or processes for which such notice was given pursuant to prenotification of rights in technical data in connection with this contract.

(3) Unless the schedule provides otherwise, Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component, or process in the performance of the contract.

(End of clause)

**252.227-7026 Deferred delivery of technical data of computer software.**

As prescribed at 227.482(l), insert the following clause:

**Deferred Delivery of Technical Data or Computer Software (Nov 1974)**

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after eigher acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, the delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

**252.227-7027 Deferred ordering of technical data or computer software.**

As prescribed at 227.482(m), insert the following clause;

**Deferred Ordering of Technical Data or Computer Software (Nov 1974)**

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical date or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

**252.227-7028 Requirement for technical data certification.**

As prescribed at 227.482(n), insert the following provision:

**Requirement for Technical Data Certification (Apr 1974)**

The Offeror shall submit with its offer a certification as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer; if so, the Offeror shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

**252.227-7029 Identification of technical data.**

As prescribed at 227.482(o), insert the following clause:

**Identification of Technical Data (Mar 1975)**

Technical Data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

**252.227-7030 Technical data—withholding of payment.**

As prescribed at 227.482(p), insert the following clause:

**Technical Data—Withholding of Payment (Jul 1976)**

(a) If "Technical Data" as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software"), or any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may withhold from further payment such sum as the Contracting Officer considers appropriate, not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

**252.227-7031 Data requirements.**

As prescribed at 227.482(q), insert the following clause:

**Data Requirements (Apr 1972)**

(a) Data means recorded information, regardless of form or characteristics.

(b) The Contractor is required to deliver only the data items listed on DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 52.2 made a part of the contract.

(End of clause)

**252.227-7032 Rights in technical data and computer software (foreign).**

As prescribed at 227.482(r), insert the following clause:

**Rights in Technical Data and Computer Software (Foreign) (Jun 1975)**

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery

to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

**252.227-7033 Rights in shop drawings.**

As prescribed at 227.482(s), insert the following clause:

**Rights in Shop Drawings (Apr 1966)**

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

**252.227-7034 Patents-subcontracts.**

As prescribed at 227.304-4, insert the following clause:

**Patents-Subcontracts (Apr 1984)**

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form) suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

**252.227-7035 Prenotification of rights in technical data.**

As prescribed at 227.482(t), insert the following provision:

**Prenotification of Rights in Technical Data (May 1987)**

(a) *Prenotification of Limitations on Government Rights.*

In order for the Government to make informed judgments concerning the competitive reprocurement potential of items, components, processes, or computer software developed at private expense that an Offeror intends to deliver under a resultant contract, Offerors shall identify to the maximum practicable extent in their response to this solicitation such privately developed items, components, processes, or computer software and the technical data which they:

(1) intend to deliver with limited rights;

(2) intend to deliver with Government Purpose License Rights; or

(3) have not yet determined if such rights should apply.

This requirement does not apply to standard commercial items which are manufactured by more than one source of supply. If an Offeror asserts other than unlimited rights to any technical data in its proposal responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the Contracting Officer, evidence to support any such assertion.

(End of provision)

**252.227-7036 Certification of technical data conformity.**

As prescribed at 227.482(u), insert the following clause:

**Certification of Technical Data Conformity (May 1987)**

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, _____, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Certifying Official _____

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

**252.227-7037 Validation of restrictive markings on technical data.**

As prescribed in 227.482(v) insert the following clause:

**Validation of Restrictive Markings on Technical Data (May 1987)**

(a) *Definition.* The terms used in this clause are defined in 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) *Prechallenge Request for Information.*

(1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) above, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates. (Note: The Contracting Officer may also challenge the validity of the restricted markings if such technical data is publicly available, has been furnished to the Government without restriction, or has been otherwise made available without restriction.) When challenging the validity of restrictive markings, the Contracting Officer will follow the procedures described in paragraph (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may formally challenge the validity of the marking as described in paragraph (d) below.

(d) *Challenge.*

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) state the specific grounds for challenging the asserted restriction;

(ii) require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(iii) state that a DoD Contracting Officer's final decision, issued pursuant to paragraph (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided.

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) below.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties (all appropriate Contracting Officers and Contractors and subcontractors). The schedule shall afford the Contractor or subcontractor an equitable opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(e) *Final Decision When Contractor or Subcontractor Fails to Respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1, pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2)(ii) through (iv) below.

(f) *Final Decision When Contractor or Subcontractor Responds.*

(1) If the Contracting Officer determines that the Contactor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final Disposition of Appeal or Suit.*

(1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Duration of Right to Challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (1) is publicly

available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) *Privity of Contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of clause)

[FR Doc. 87-8562 Filed 4-15-87; 8:45 am]

BILLING CODE 3810-01-M

---

## Department of the Air Force

## 48 CFR Part 5315

## Department of the Air Force Federal Acquisition Regulation Supplement; Contracting by Negotiation

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** FAR Subpart 15.8, Price Negotiation, is being supplemented by the Air Force to set forth the Air Force policy on the use and control of Formula Pricing Agreements (FPAs).

**EFFECTIVE DATE:** April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Capt. Jeff Parsons, SAF/AQCP, Room 4C251, Pentagon, Washington, DC 20330-1000, (202) 697-6522.

**SUPPLEMENTARY INFORMATION:**

### A. Background

In a recent spare parts pricing review, the GAO identified instances where buyers were using the existence of Formula Pricing Agreements (FPAs) as justification for accepting proposed prices without performing adequate price analysis. A review of this finding by members of the Air Staff determined that inadequate control and guidance on the use of FPAs contributed to this problem.

FPAs are a very effective tool for pricing large volumes of spare parts when used properly. Normally, they are written agreements between the Government and a contractor and set forth a methodology and the specific rates and factors to follow when pricing items covered by the FPA. However, their use cannot be taken for granted because they do not in all cases, guarantee fair and reasonable prices for each individual item.

In order to maintain FPAs as an effective pricing tool, the Air Force has determined that the proper controls for their use need to be clarified in the AF FAR Supplement.

### B. Public Comments

On October 22, 1986, a notice of the proposed rule was published in the **Federal Register** (51 FR 37451) requesting interested parties to submit comments to be considered in the formulation of the final rule. As a result of the notice, 3 comments were received and considered.

### C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, this rule does not have a significant economic impact on a substantial number of small entities because FPAs shall be negotiated only with contractors (1) having a significant volume of Government business, (2) who are under Government in-plant contract administration, and (3) who have a resident DCAA auditor.

### D. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et. seq.*

### List of Subjects in 48 CFR Part 5315

Government procurement.

Therefore, Title 48 of the Code of Federal Regulations is amended by adding Part 5315 to read as follows:

## PART 5315—CONTRACTING BY NEGOTIATION

### Subpart 5315.8—Price Negotiation

Sec.

5315.890 Formula pricing agreements (FPA).
5315.890-1 Description.
5315.890-2 Policy.
5315.890-3 Responsibilities.
5315.890-4 FPAs negotiated by other DOD agencies.

Authority: 5 U.S.C. 301 and FAR 1.301.

### Subpart 5315.8—Price Negotiation

#### 5315.890 Formula pricing agreements (FPA).

#### 5315.890-1 Description.

Formula pricing agreements (FPAs), sometimes referred to as spare parts pricing agreements, set forth a pricing methodology and the specific rates and factors to be used when pricing items covered by the FPA. An FPA differs from a Forward Pricing Rate Agreement (FPRA) in that an FPA addresses a pricing methodology limited to a specific group of items and its use by different buying activities is optional; whereas FPRAs are generally limited to agreements on individual rates or factors (including Cost Estimating Relationships (CERs)), apply to many items, and are required to be used by all buying activities. Any pricing agreement made with a contractor shall be considered to be an FPA if it contains the following features:

(a) The agreement governs the pricing methodology of more than one future contract action and identifies the category(s) of purchases to be covered (for example, F-100 replenishment spares).

(b) The pricing agreement is expressed in terms which specify the direct cost inputs and the rates and/or factors to be applied to identified bases plus profit or fee.

#### 5315.890-2 Policy.

FPAs should be established as necessary to ease negotiation of large numbers of contract actions and reduce administrative costs and lead time. However, FPAs shall only be negotiated with contractors having a significant volume of Government business and application normally shall be limited to acquisitions under $100,000. FPAs anticipating individual acquisitions over $100,000, shall be approved by the HCA and shall specifically establish the maximum dollar amount for an acquisition priced using the FPA. Proposals received above $100,000 must be submitted with an SF 1411 and a certificate of current cost or pricing data. All FPAs shall—

(a) Be in writing and signed by a contracting officer;

(b) Only be negotiated with contractors who are under Government in-plant contract administration cognizance and have a resident DCAA auditor. (This requirement may be waived with HCA approval);

(c) Not cover cost elements, such as those portions of direct labor and material costs which require discrete estimating and analysis;

(d) Identify all rates/factors that are a part of the FPA; however, the FPA may reference a FPRA(s) as long as the agreement prescribes the effect and treatment of changes in the FPRA;

(e) Provide specific terms and conditions covering expiration date, application, and data requirements (e.g. actual cost data) for systematic

monitoring to assure the continuing validity of the agreement;

(f) Provide for cancellation at the option of either party;

(g) Require the contractor to submit to the contracting officer, and to the cognizant contract auditor, any significant change in cost or pricing data, estimating system, or accounting system and its impact on the FPA;

(h) Require the contractor to identify the FPA and the date of the latest certification of cost or pricing data supporting the FPA in each specific pricing proposal where the formula is used. The contractor shall also be required to identify those items that were not priced with the formula if they are commingled in a proposal that contains items priced with the formula;

(i) Provide that the FPA shall not be used if the contractor's purchasing, estimating, or accounting system are disapproved by the Government;

(j) Provide that the contracting officer, or designated representative, may perform detailed cost or price analysis on random samples of proposed items and/or those items that have units which are significantly higher than previous buys;

(k) Be supported by certified cost or pricing data in accordance with FAR 15.804, including the submission of a signed certificate of current cost or pricing data at the time agreement is reached on the FPA (and on an annual basis thereafter), and shall provide that contractual documents for items priced using the FPA, shall include the clause at FAR 52.215–22, "Price Reduction for Defective Cost or Pricing Data;"

(l) Provide that the price of individual contract actions priced under the FPA shall be adjusted if—

(1) It is found that the cost or pricing data supporting the FPA was not accurate, current, or complete;

(2) The contractor fails to comply with 5315.890–2(g); or

(3) The price was developed through incorrect application of the FPA;

(m) Provide that individual contract actions priced using the FPA shall contain a clause incorporating the FPA by reference; and

(n) Be based on a pricing methodology that ensures that unit prices are in proportion to the item's base cost (see FAR 15.812).

**5315.890–3 Responsibilities.**

(a) Major commands shall—

(1) Establish appropriate approval level for FPAs;

(2) Maintain a list of FPAs which identifies the company and group of items to be purchased;

(3) Conduct periodic reviews of FPAs and contract actions priced using FPAs; and

(4) Establish agreements with other DOD agency contract administration offices to provide field pricing support, negotiation support, and administrative support of Air Force negotiated FPAs.

(b) Air Force contract administration offices shall—

(1) Comply with the requirements of 5315.890–3(c) for those FPAs negotiated by the administrative contracting officer (ACO) for their own use;

(2) Make any FPA negotiated by the ACO available to any other buying activity for their use;

(3) Provide field pricing support to contracting officers in the evaluation of FPAs;

(4) Participate in the negotiation of FPAs;

(5) Notify the contracting officer, who negotiated the FPA, when conditions arise that may affect the FPA's validity; for example, changes to an FPRA, disapproval of a contractor's purchasing system, and so forth. When appropriate, recommend the FPA be cancelled and renegotiated;

(6) Periodically validate the contractor's compliance with the FPA; and

(7) Monitor rates and factors incorporated into each FPA.

(c) Contracting officers shall—

(1) Be responsible for the negotiation of the FPA and ensure that it complies with the requirements contained in 5315.890–2 (this responsibility may be delegated to the ACO);

(2) Obtain field pricing support, including contract audit and technical reviews, in the evaluation of FPAs;

(3) Prepare a price negotiation memorandum covering the pricing factors used in the FPA;

(4) Request CAO participation in negotiations;

(5) Semi-annually, through the ACO, request the DCAA resident auditor to determine if the contractor is complying with the FPA procedures;

(6) Annually, review the FPA to determine its validity by evaluating recorded cost data, and renegotiate the FPA if appropriate;

(7) Determine the effect of changed conditions that may affect an FPA's validity, cancel FPAs when appropriate, and notify all interested parties upon cancellation of the FPA;

(8) Not use an FPA that has been cancelled;

(9) At a minimum, conduct the following evaluation of each proposal generated under an FPA;

(i) Determine the applicability of the FPA to the items proposed.

(ii) Determine the reasonableness of direct cost inputs to the formula.

(iii) Determine the reasonableness of any non-covered cost proposed, such as nonrecurring costs.

(iv) Compare prices generated by the FPA to prior prices, government estimates, PR estimates, to ensure reasonableness. The existence of an FPA does not relieve the contracting officer from the responsibility of assuring that a price is fair and reasonable;

(10) Conduct detailed cost analysis on random samples of proposed items and/or those items that have unit prices which are significantly higher than previous buys;

(11) Ensure that individual contract actions priced using the FPA comply with the terms of the FPA; and

(12) Comply with 5315.905–1(b)(7)(C) when pricing an undefinitized contractual action using an FPA.

5315.890–4 FPAs negotiated by other DOD agencies. FPAs negotiated by other agencies shall not be used by any Air Force activity unless they comply with the requirements in 5315.890–2.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–8492 Filed 4–15–87; 8:45 am]

BILLING CODE 3910–01–M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1244**

**[Ex Parte No. 385 (Sub–No. 2)]**

## Procedures on Release of Data From the ICC Waybill Sample

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** These final rules set forth procedures concerning the type of data and information that may be obtained from the "ICC Waybill Sample." (49 CFR Part 1244). They establish specific guidelines for the release of waybill data according to five classes of users, and formalize notice and protest procedures for the possible release of waybill data to other users to protect against inappropriate release of confidential data. These rules, with some refinements, essentially adopt the policy of the Office of Transportation Analysis for handling waybill requests. (48 FR 40328, September 6, 1983). They also expand the content of the Commission's Public Use File. In addition, they include procedures for filing complaints for confidentiality

BEST COPY AVAILABLE

violations, aggregating shipper waybill data, and filing waybill data requests.

**EFFECTIVE DATE:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:**

James A. Nash, Tel: (202) 275–6864
or
Elaine K. Kaiser, (202) 275–7003

**SUPPLEMENTARY INFORMATION:** On January 8, 1986 we proposed rules concerning the release of waybill data from the ICC Waybill Sample. 51 FR 767. Comments on the proposed rules were due on February 24, 1986. On February 27, 1986, we granted an extension of time to file comments pursuant to a request by the Association of American Railroads (AAR).

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

This action will not significantly affect either the quality of the human environment or energy conservation. This action will not have a significant economic impact on a substantial number of small entities nor increase the compliance burden on regulated carriers or members of the public who have an interest in these proceedings.

**List of Subjects in 49 CFR Part 1244**

Railroads and reporting and recordkeeping requirements.

(49 U.S.C. 10303, 10321, 10709, 11144, 11145 and 5 U.S.C. 552 and 553)

Decided: March 31, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

## PART 1244—[AMENDED]

Title 49, Part 1244 will be amended to read as follows:

1. The authority citation for Part 1244 is revised to read as follows:

**Authority:** 49 U.S.C. 10303, 10321, 10709, 11144, 11145; 5 U.S.C. 522 and 553.

2. Section 1244.8 is added to read as follows:

### § 1244.8 Procedures for the release of waybill data.

(a) *General.* The procedures for the release of waybill data identify five classes of users of the ICC Waybill Sample, define the waybill information or data that each class of users may obtain, and set forth the applicable requirements for the data's release. They also formalize notice and protest procedures for the possible release of waybill data to other users to protect against the inappropriate release of confidential data. The Director of the Office of Transportation Analysis shall be responsible for releasing waybill data in accordance with these procedures.

(b) *Class of user, available data, and applicable release requirements.*—(1) *Railroads.* Each requesting railroad may obtain any waybill record from the ICC Waybill Sample covering traffic that originated, terminated, or was bridged by that railroad. The railroad shall not have access to waybill data pertaining to traffic in which it did not participate. Also, it must meet all ICC and legal requirements concerning release of shipper information in accordance with 49 U.S.C. 11910(a).

(2) *Federal agencies.* Each requesting Federal agency (including quasi-governmental agencies) may obtain any waybill record from the ICC Waybill Sample subject to the following requirements:

(i) The Federal agency shall make the information contained in the ICC Waybill Sample available only to its employees or those contractors working on the particular project or study requiring the waybill data.

(ii) The Federal agency will ensure that railroads and shippers are afforded the same privilege and protection against disclosure of the waybill data as the Commission provides.

(iii) The Federal agency will not release any data to the public unless the data elements are aggregated to contain at least three shippers and to prevent identification of an individual railroad.

(iv) The Federal agency will refer any requests for waybill data and accompanying documentation to the ICC for processing and will so inform the requesting party of such referral to the Commission.

(v) The Federal agency must sign an agreement annually with the Commission agreeing to these restrictions.

(3) *States.* Each requesting State may obtain any waybill record pertaining to traffic that was originated, terminated, interchanged in, or that passed through its State subject to the same requirements imposed on federal agencies under paragraphs (b)(2)(i) through (v) of this section.

(4) *Transportation practitioners, consulting firms, and law firms—specific proceedings.* Transportation practitioners, consulting firms and law firms may use data from the ICC Waybill Sample in preparing verified statements to be submitted in formal proceedings before the ICC and/or State Commissions (Commission) subject to the following requirements:

(i) The ICC Waybill Sample is the only single source of the data or obtaining the data from other sources is burdensome or costly, and the data is relevant to issues pendng before the Commission.

(ii) The requestor submits to the ICC a written waybill request that complies with § 1244.8(e).

(iii) All waybill data must be returned to the ICC, and the firm must not keep any copies.

(iv) A transportation practitioner, consulting firm, or law firm must submit any evidence drawn from the ICC Waybill Sample to the Commission only unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad. Nonaggregated evidence submitted to the Commission will be made part of the public record only if the Commission finds that it does not reveal competitively sensitive data. However, evidence found to be sensitive may be provided to counsel or other independent representatives for other parties subject to the usual and customary protective order issued by the Commission or appropriate authorized official.

(v) For each Commission proceeding, a firm must sign a confidentiality agreement with the ICC agreeing to the above restrictions before any data will be released. This agreement will permit use of the released data for a period of one year from the date the agreement is signed by the user. If the data is required for an additional period of time because a proceeding is still pending before the Commission, the firm must sign a new confidentiality agreement covering the data needed for each additional year the proceeding is opened.

(5) *Public use.* Nonconfidential waybill data may be obtained from the "Public Use Waybill File". Reports produced from the Public Use Waybill File may be used, published, or released. The Public Use Waybill File contains the following nonconfidential items:

(i) Waybill Date (Month, Day, Year).
(ii) Accounting Period (Month, Year).
(iii) Number of Carloads.
(iv) Car Ownership (Rail or Private).
(v) AAR Car Type.
(vi) AAR Mechanical Designation.
(vii) ICC Car Type.
(viii) TOFC/COFC Plan.
(ix) Number of TOFC/COFC Units.
(x) TOFC/COFC Unit Ownership.
(xi) TOFC/COFC Unit Type (Trailer or Container).

(xii) Hazardous/Bulk Material in Box Car Flag.
(xiii) Commodity Code—Excluding STCC 49/50 (All 5 digit STCC Codes, except STCC 19).
(xiv) Billed Weight in Tons.
(xv) Actual Weight in Tons.
(xvi) Linehaul Freight Revenue.
(xvii) Transit Revenue.
(xviii) Miscellaneous Revenue.
(xix) Interstate/Intrastate Code.
(xx) Type of Move (Import/Export/Minibridge).
(xxi) All Rail/Intermodal Code.
(xxii) Type Move Via Water.
(xxiii) Outbound Transit Code.
(xxiv) Substituted Truck for Rail Service.
(xxv) Rebill Code.
(xxvi) Estimate of Miles.
(xxvii) Stratum Identification.
(xxviii) Replicate Number.
(xxix) Population Count/Strata Count (expansion factor).
(xxx) Theoretical Expansion Factor.
(xxxi) Number of Interchanges.
(xxxii) Origin BEA (omitted if STCC and BEA pair reveals competitively sensitive shipper data).
(xxxiii) Origin ICC Rate Territory.
(xxxiv) States of Interchanges (first through ninth).
(xxxv) Termination BEA (omitted if STCC and BEA pair reveals competitively sensitive shipper data).
(xxxvi) Termination ICC Rate Territory.
(xxxvii) Waybill Reporting Period Length.
(xxxviii) AAR Provided UMBLER Data.
(xl) Bad Routing Code.
(xli) Miscellaneous Factored Expanded Data (e.g., carloads).

(c) *Other Users.* (1) Users other than those described in paragraphs (b)(1) through (b)(5) of this section may file written requests in accordance with paragraph (e) of this section for permission to use data from the ICC Waybill Sample.

(2) All written requests filed by such users are subject to the notice and protest procedures described in paragraph (d) of this section.

(d) *Notice and protest procedures for waybill requests by other users.* Railroads and shippers will be notified and afforded the opportunity to protest waybill requests filed by users other than those described in paragraphs (b)(1) through (b)(5) of this section in accordance with the following procedures:

(1) *Notice of request for confidential waybill data.* Affected railroads and shippers will receive notice by **Federal Register** Publication. If railroad specific or shipper specific data are requested, those parties will be given written notice of the request.

(2) *Form of notice.* The notice shall identify the parties requesting the data; describe the type of waybill data requested; and state the purpose for which the data is requested. The notice shall include a statement that parties seeking information concerning the filing of objections should refer to Ex Parte No. 385 (Sub-No. 2), 49 CFR 1224.8, or contact the Interstate Commerce Commission's Office of Transportation Analysis.

(3) *Objections to release.* (i) Objections to release of the confidential waybill data must be filed by the railroad and/or shipper no later than 14 calendar days from publication of the notice in the **Federal Register**.

(ii) An original and 3 copies of each objection shall be filed with the Director, Office of Transportation Analysis, Interstate Commerce Commission, Washington, DC 20423.

(iii) The objection shall identify the parties seeking the confidential waybill data, reiterate the purpose for which the data is sought, and state all grounds for objection to full or partial disclosure of the requested data.

(4) *Commission determination.* (i) The Director of the Office of Transportation Analysis will consider all objections in determining whether to release the requested waybill data. Each railroad or shipper who filed objections will be sent written notice of the Director's decision not less than 14 calendar days prior to the disclosure date.

(ii) The Commission reserves the right to deny the release of waybill data although no objections may be filed.

(iii) Appeals must be filed with the Chairman within 10 days of the date of the Director's decision. Responses to appeals must be filed within 10 days thereafter (49 CFR 1011.7(b)(1)). The filing of an appeal will automatically stay the effect of the Director's decision.

(e) *Content of waybill requests.* (1) All requestors under paragraphs (b)(4) and (c) of this section shall include the following information:

(i) A complete and detailed explanation of the purpose for which the requested data are needed.

(ii) A description of the specific waybill data or fields actually required (including pertinent geographic areas).

(iii) A detailed justification as to why the specified waybill data are needed.

(2) An original and 2 copies of the waybill request shall be filed with the Director, Office of Transportation Analysis, Interstate Commerce Commission, Washington, DC 20423.

(f) Aggregation of confidential shipper data.

(1) Any shipper data obtained from the Waybill Sample shall not be publicly released unless the data are aggregated to include at least three shippers.

(2) To aggregate the waybill data to the level of three shippers, the three-FSAC Rule shall be used. Under this rule, there must be at least three different freight stations as identified by the Freight Station Accounting Code (FSAC) on one railroad or there must be at least two more FSAC's than there are railroads present in the waybill data being aggregated.

(3) The three-FSAC Rule shall apply to every number and calculation publicly released.

(4) The Director of OTA will consider requests to apply an alternative aggregation method provided the requestor establishes that a particular project necessitates an alternative approach and that approach effectively protects the identity of individual shippers.

(g) *Complaint procedures.* (1) Complaints for alleged breaches of confidentiality or misuse of confidential waybill data must include the following:

(i) Identification of all known parties involved in the alleged violation.

(ii) The approximate date(s) of the alleged violations.

(iii) A full and detailed description of the alleged violation.

(iv) A description of any resulting harm to the complainant.

(2) Prior to filing a complaint, a complainant, upon written request, may obtain a copy of the incoming waybill request and the applicable confidentiality agreement. This request must identify the party involved, give the approximate date the data was released, briefly describe the alleged violation, and substantiate the need for this information for purposes of filing a complaint.

(3) An original and three (3) copies of the complaint shall be filed with the Director, Office of Transportation Analysis, Interstate Commerce Commission, Washington, DC 20423. A copy of the complaint shall also be served on the alleged violator(s).

(4) An answer must be filed within 20 days after service of the complaint.

(5) All parties will be notified in writing of the Director's decision. If the Director determines that a violation has occurred, the offending parties will be denied access to the waybill sample for a period of time commensurate with the nature of the violation.

(6) Appeals to the Director's determination shall be filed in accordance with paragraph (d)(4)(iii) of this section.

(h) *Munitions shipments.* All waybill requests for munition data at the 3-digit Standard Transportation Commodity Code (STCC) level or greater will be forwarded by the ICC to the Department of Defense's Military Traffic Management Command (MTMC). The ICC will not release this type of information without MTMC's consent.

**Attachment—Data Elements Contained in Master Waybill File**

**Note:** The following attachment will not be published in the Code of Federal Regulations.

The Master Waybill File contains the following items:

Serial Number
Waybill Number
Waybill Date
Accounting Month & Year (Machine Readable Input (MRI) only)
Number of Cars on Original Waybill Document
Car Initial & Number
Origin Railroad & Station Number (FSAC)
Termination Railroad & Station Number (FSAC)
Transit Flag
Interstate/Intrastate Flag
All Rail/Intermodal Flag
Import/Export Flag
Rebill Flag
Commodity Code Including STCC49 (Hazardous Materials Code)
Waybill Weight (Hundred-Weight)
Freight Revenue on Original Document
TOFC Plan—First Field
TOFC Plan—Second Field
Number of Trailers/Containers
Trailer/Container Initial & Number
Actual Weight
Transit Charges
Miscellaneous Charges
Sample Strata
Subsample Replicate Number
Railroad Waybill ID (MRI Only)
Reporting Railroad
Origin Standard Point Location Code
Origin Rate Area
Origin Rate Territory
Termination Standard Point Location Code
Termination Rate Area
Termination Rate Territory
Short Line Miles (9999 if Unknown)
Car Type
Tons—Computed from Original Weight
Expansion Factor
Local or Route Code
Junction Frequency
First to Ninth Junction Stations
First to Eight Junction Railroads
STCC Commodity Code Without STCC49 (Hazardous Material Codes)
Princeton Rail Network Model Junction Points
Cars—Factored by Strata
Net Tons—Factored by Strata
Total Revenue—Factored by Strata
Trailer Count—Factored by Strata
Route Segment Distances (Up to ten segments)
Total Distance (99999 if Unknown)
Factored Revenue for Each Segment (Up to ten segments)
Error Codes (Flags Placed by Waybill Edit Programs)
First Route Segment Distance
Second Route Segment Distance
Third Route Segment Distance
Fourth Route Segment Distance
Fifth Route Segment Distance
Sixth Route Segment Distance
Seventh Route Segment Distance
Eighth Route Segment Distance
Ninth Route Segment Distance
Tenth Route Segment Distance
Factored Revenue, Segment 1
Factored Revenue, Segment 2
Factored Revenue, Segment 3
Factored Revenue, Segment 4
Factored Revenue, Segment 5
Factored Revenue, Segment 6
Factored Revenue, Segment 7
Factored Revenue, Segment 8
Factored Revenue, Segment 9
Factored Revenue, Segment 10
AAR Provided UMLER Data

The ICC may add, delete, or revise items from this list as necessary.

[FR Doc. 87-8554 Filed 4-15-87; 8:45 am]
BILLING CODE 7035-01-M

# Proposed Rules

Federal Register
Vol. 52, No. 73
Thursday, April 16, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 220

## School Breakfast Program; Nutritional Improvements and Offer Versus Serve

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise the breakfast meal pattern for the School Breakfast Program to implement several provisions of the School Lunch and Child Nutrition Amendments of 1986. This rule proposes to require that cereal fortified to at least 25 percent of the United States Recommended Dietary Allowance for iron per 1 ounce or ¾ cup be offered daily in the School Breakfast Program. This rule also proposes to allow schools, at the discretion of the local School Food Authority, to permit students participating in the School Breakfast Program to refuse *one food item* of a four food item breakfast that they do not intend to eat. To retain the nutritional integrity of the breakfast, this rule proposes to limit the offer versus serve option to those schools offering an extra bread/bread alternate food item. This rule is expected to improve the nutritional quality of breakfasts offered under the program while maintaining local flexibility in meal service.

**DATE:** Comments must be received or postmarked no later than June 15, 1987.

**ADDRESS:** Comments should be sent to: Cynthia Ford, Chief, Technical Assistance Branch, Nutrition and Technical Services, Food and Nutrition Service, United States Department of Agriculture, Alexandria, Virginia 22302.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ford at the above address, or phone (703) 756–3556.

**SUPPLEMENTARY INFORMATION:**

### Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The School Breakfast Program is listed in the Catalog of Federal Domestic Assistance under No. 10.553 and is subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983).

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520) are included in this proposed rule. The School Breakfast Program requirements have been approved by OMB (OMB No. 0584–0012).

### Background

Schools participating in the School Breakfast Program are required to serve breakfasts which meet specified nutritional standards in order to be eligible to receive Federal reimbursement. Section 220.8 of program regulations requires that each breakfast served to pre-school and school age children include, at a minimum, food items representing each of three food components (milk, fruit/vegetable, and bread/bread alternate) in specified quantities.

More specifically, each breakfast served to school age children is required to contain at least the following food items in the quantities indicated:

(1) One-half pint of fluid milk served as a beverage or on cereal or used in part for each purpose; and

(2) One-half cup of fruit or vegetable or both, or full strength fruit or vegetable juice; and

(3) One slice of whole-grain or enriched bread, or an equivalent serving of cornbread, biscuits, rolls, muffins, etc. made of whole-grain or enriched meal or flour, or ¾ cup (volume) or 1 ounce (weight), whichever is less, of whole grain cereal or enriched or fortified cereal or an equivalent quantity of any combination of these foods.

Program regulations also require that, to the extent practicable, breakfasts for children over 1 year of age contain meat or meat alternates such as a one ounce serving of meat, poultry, or fish; or one ounce of cheese; or one egg; or two tablespoons of peanut butter; or an equivalent quantity of any combination of any of these foods. Also, since May 7, 1986 (51 FR 16807) nuts and seeds and their butters have been allowed as meat alternates.

In 1979, the Department began a national evaluation of the School Lunch, School Breakfast, and Special Milk Programs in order to determine whether the nutritional objectives of the programs were being satisfied. The "National Evaluation of School Nutrition Programs" compared National School Lunch Program participants who participated in the School Breakfast Program to others who did not participate in the School Breakfast Program and concluded the following:

(1) The breakfast served in the School Breakfast Program is superior to home breakfasts for milk related nutrients (protein, calcium, magnesium and phosphorus).

(2) The school breakfast provides significantly less iron, vitamin A, vitamin $B_6$, niacin and thiamin than home breakfasts.

(3) Over 24 hours, the intake of problem nutrients by School Breakfast Program participants differs from students having home breakfast only by having significantly higher calcium intakes.

### Congressional Concerns

*Nutrition*

The findings of this study sparked congressional concern regarding the nutritional quality of the breakfasts

served under the School Breakfast and Child Care Food Programs. In the recently enacted School Lunch and Child Nutrition Amendments of 1986, as included in Pub. L. 99–500 and Pub. L. 99–591, Congress directed the Department to review and revise the nutritional requirements for breakfasts served under the School Breakfast and Child Care Food Programs to improve their nutritional quality.

Section 330 of Pub. L. 99–500 and Pub. L. 99–591 requires improvements in the nutritional quality of the meals, ". . . taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local food authorities." To this end, in the same legislation, Congress increased by 3 cents the payment for each reimbursable breakfast served under each program. Notice of the 3 cent increase in per breakfast reimbursement was published in the **Federal Register** on January 20, 1987 (52 FR 2122).

*Offer Versus Serve*

Section 331 of Pub. L. 99–500 and Pub. L. 99–591 amended section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) to extend the offer versus serve option to the School Breakfast Program. New paragraph (e)(2) states: "At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full or reduced price charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast."

**Considerations in the Improvement of Nutritional Quality**

By the time of enactment of the School Lunch and Child Nutrition Amendments of 1986, the Department had already undertaken a review of the nutritional quality of school breakfasts. A reanalysis of data from the National Evaluation of School Nutrition Programs provided more direct information by studying all foods eaten in the morning before classes start. Also, the analysis methods used to separate School Breakfast Program effects from other variables were improved. The results of this study, "The Dietary Impacts of the School Breakfast Program" confirmed the earlier findings of significantly higher calcium intake and lower iron intake at breakfast for School Breakfast participants. It was also found that over 24 hours intake of certain nutrients, including iron, vitamin $B_6$ and magnesium, was low for both breakfast program participants and non-participating schoolchildren. School Breakfast Program participation was also associated with reduced cholesterol intake, but there was no significant difference in the proportions of protein, fat and carbohydrate due to program participation.

Based on a review of these findings, the Department concluded that, most Importantly, the iron content of program breakfasts needs to be increased. An additional 4.6 milligrams of iron per week is needed to raise the iron content of program breakfasts to the level of home breakfasts. Although there are many sources from which children receive this additional iron at home, the major source is from eating fortified cereal in large amounts and more frequently than is served at school.

Iron can also be found in meat and in some meat alternates. At this time, a meat or a meat alternate continues to be recommended for the breakfast program. Including a requirement for a meat or a meat alternate could improve the iron provided by the breakfast, depending on the items served.

Whole-grain and enriched grain products (breads or bread alternates such as pancakes, cereals, etc.) provide another source of iron. However, whole-grain and enriched breads and cereals in most cases provide less than 1 milligram of iron per serving.

Therefore, the Department is concentraing on fortified cereal as the most accessible and affordable source of iron for the breakfast meal. Cereals that are fortified (primarily cereals eaten cold), generally are fortified to a level of at least 25 percent of the United States Recommended Dietary Allowance (U.S. RDA) per ounce for major nutrients, including iron. Twenty-five percent of the U.S. RDA for iron is 4.5 milligrams. School Breakfast Program participants now average about two servings of cereal (all types) per week. In other words, one additional serving of iron fortified cereal per week would provide almost exactly the amount of iron sought. Further, fortified cereals also provide substantial amounts of Vitamin $B_6$, Vitamin A, and magnesium which are the other nutrients for which the school breakfast was found to be low.

Some cereals are highly fortified, up to 45 percent or even 100 percent of the U.S. RDA per ounce for major nutrients. These highly fortified cereals are allowed, but the Department believes that, if consumed frequently, cereal fortified to at least 25 percent of the U.S. RDA for iron is sufficient to provide the level of iron needed to improve the breakfast meal pattern. Consequently, the Department proposes that each school day, cereal fortified to at least 25 percent of the U.S. RDA for iron per 1 ounce of ¾ cup be *offered* to students as a breakfast item. Other choices of breakfast items may also be offered at local discretion.

The Department considered requiring that fortified cereal be served as the bread/bread alternate daily; however, such a change was considered restrictive and deviates from any previous meal pattern requirement by requiring the service of one particular food item rather than a general food component. While it is generally agreed that daily consumption of fortified cereals would improve the nutrient content of the breakfast, it is believed that to serve only cereal is contrary to good nutrition education. It is also contrary to current menu planning guidance which recommends serving a variety of foods. Further, such an approach might also have a negative effect upon program participation.

Consideration was also given to requiring that *only* fortified cereal be served at the bread/bread alternate 2 or 3 days a week. In other words, schools would have "cereal-only days" on which students would automatically be served cereal. However, the Department was concerned that the program might still tend to become a "cereal-only program." Since it could be easier for local districts to plan cereal 5 days a week to regulate food production schedules, it was felt that incentives to offer choices and innovative breakfast programs might diminish.

**Considerations in the Implementation of Offer Versus Serve**

Given congressional concerns regarding improvements in the nutritional quality of the breakfast program, the Department is proposing implementation of the offer versus serve option within parameters designed to support efforts to improve the nutritional contribution of the meal.

If the Department were to allow the offer versus serve option with the currently required three food item breakfast, the nutritional quality of the breakfasts would be seriously jeopardized. A child could elect to decline one of the three food times, thereby, reducing the breakfast to as little as one slice of toast and ½ pint of milk. This would contravene the intent of Congress. Clearly Congress did not provide an additional 3 cents per

breakfast reimbursement for a meal which is lower nutrients and which costs less to produce than the current breakfast pattern.

For these reasons, the Department is proposing to limit the offer versus serve option to those schools which offer a minimum of four food items, i.e. three food items from the required three food component breakfast plus an extra bread/bread alternate food item. Whole-grain, fortified and enriched grain products are low cost sources of iron. Compared to the milk, fruit/vegetable, and optional meat/meat alternate components, a second offering of whole wheat toast or fortified cereal is relatively inexpensive. This approach would most effectively address both the nutritional as well as cost concerns. Further, it should not contribute significantly to plate waste. The school breakfast studies conducted by the Department indicated that older boys who eat dry cereal at home eat twice as much as they currently receive at school; younger children eat 1½ times as much at home. Cooked cereal is eaten in even larger quantities at home than in school; almost all age groups eat at least twice as much at home. The bread or toast ratio is not as great, but even those items are eaten in greater quantities at home by all age groups.

**Summary of School Breakfast Program Proposals**

Based on the reasons stated above, the Department is proposing to revise the School Breakfast Program meal pattern requirements to require that cereal fortified to at least 25 percent of the U.S. RDA for iron per 1 ounce or ¾ cup by *offered* daily. This approach is believed to be consistent with the objective of increasing iron without overly increasing costs. Further, this approach is expected to provide participating students with an additional choice of food items from which they may select their breakfast meal since many schools will frequently offer another breakfast choice. Commenters will note that the minimum serving sizes remain unchanged for all age/grade groups.

This rule also proposes to allow school food authorities to authorize the offer versus serve option in only those schools offering two food items from the bread/bread alternate component. One of the offered bread/bread alternate food items must be iron-fortified cereal. The second bread/bread alternate may also be cereal or may be any of the other bread/bread alternate food items. Students participating in the program in such schools may be allowed to refuse not more than one item from any food component of the breakfast that the student does not intend to consume. Acceptance of all four food items or refusal of one offered food item is not to affect the price of the lunch.

Several technical amendments are also proposed in this rule. A breakfast meal pattern table replaces paragraphs (a)(1), (b)(1) and (b)(3) of § 220.8. The table updates existing requirements to include the proposed provisions and is expected to clarify the meal pattern requirements. In addition, the regulatory language, including the newly added table, is revised to include the provisions of the recently issued final rule which allows nuts and seeds and nut or seed butters to be used as meat alternates (51 FR 16807) in the National School Lunch Program. While the provisions of that rule were administratively extended to cover the breakfast program, no regulatory changes were made in Part 220 at that time since the service of meat/meat alternates in the breakfast program is a recommendation, not a requirement.

**Child Care Food Program**

The Department will address the Child Care Food Program separately.

**List of Subjects in 7 CFR Part 220**

Food assistance programs, School Breakfast Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agriculture commodities.

Accordingly, 7 CFR Part 220 is proposed to be amended as follows:

## PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

**Authority:** Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.8:

a. Paragraph (a) is revised.

b. Paragraphs (b)(1) and (b)(3) are removed.

c. Introductory paragraph (b)(2) and paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) are redesignated as introductory paragraph (b) and paragraphs (b)(1), (b)(2), and (b)(3) respectively.

The revisions specified above read as follows:

**§ 220.8 Requirements for breakfast.**

(a) *Minimum required breakfast quantities.* Except as otherwise provided in this section, and in any appendix to this part, schools shall ensure that each breakfast eligible for Federal cash reimbursement is served with the objective of providing the per breakfast minimums for the age and grade levels specified in the following table:

SCHOOL BREAKFAST MEAL PATTERN

| Food components/items | Preschool | | Grades K-12 |
|---|---|---|---|
| | Ages 1 and 2 | Ages 3 to 6 | |
| **Required Minimum Servings** | | | |
| Milk (fluid milk as a beverage, on cereal, or both) | ½ cup | ¾ cup | ½ pint. |
| Fruit/vegetable. | | | |
| Fruit or vegetable or both or full-strength fruit juice or vegetable | ¼ cup | ½ cup | ½ cup. |
| Bread/bread alternate (one of the following or an equivalent combination—except that each day a serving of iron-fortified cereal must be offered) | | | |
| Iron-fortified cereal (25% of the U.S. RDA for iron per 1 ounce or ¾ cup) | ¼ cup volume or ⅛ oz weight. | ⅛ cup volume or ⅛ oz weight. | ¾ cup volume or 1 oz weight. |
| Cereal (whole-grain or enriched or fortified) | ¼ cup volume or ½ oz weight. | ½ cup volume or ½ oz weight. | ¾ cup volume or 1 oz weight. |
| Bread (whole-grain or enriched) | ½ slice | ½ slice | 1 slice |
| Biscuit, roll, muffin, cornbread, etc (whole-grain or enriched meal or flour) | ½ serving | ½ serving | 1 serving. |
| **Servings To Increase Nutritional Value Required as Often as Practicable** | | | |
| Meat/meat alternate (one of the following or a combination) | | | |
| Meat, poultry, or fish | 1 oz | 1 oz | 1 oz. |
| Cheese | 1 oz | 1 oz | 1 oz |
| Egg | 1 | 1 | 1 |
| Peanut butter or other nut or seed butters | 2 tbsp | 2 tbsp | 2 tbsp |
| Nuts and/or seeds | 1 oz | 1 oz | 1 oz. |

(1) *Iron fortified cereal requirement.* To improve the iron content of breakfasts offered under the program for participating children over 1 year of age, on a daily basis schools shall offer iron-fortified cereal i.e., cereal fortified to at least 25 percent of the United States Recommended Dietary Allowance (U.S. RDA) for iron per 1 ounce or 3/4 cup.

(2) *Meat/meat alternate recommendation.* To improve the nutrition of the participating children over 1 year of age, breakfast shall also include, as often as practicable, meat or meat alternate such as a one ounce serving (edible portion as served) of meat, poultry, or fish; or one onuce of cheese; or one egg; or two tablespoons of peanut butter or other nut or seed butters; or one ounce of nuts and/or seeds as defined in program guidance; or an equivalent quantity of any combination of any of these foods. To avoid choking, nuts or seeds served to children under 5 years of age should be ground or finely chopped and incorporated into foods.

(3) *Offer versus serve.* At the option of the school food authority, each school offering students two food items from the bread/bread alternate component may allow participating students to refuse not more than one food item, from any component, that the student does not intend to consume. At least one of the offered bread/bread alternative items shall be the iron-fortified cereal specified under paragraph (a) (1) of this section. No school food authority may claim reimbursement for breakfasts served which contain less than three food items. A student's decision to accept all four food items decline one of the four food items shall not affect the charge for the breakfast.

* * * * *

Dated: April 10, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-8514 Filed 4-15-87; 8:45 am]

BILLING CODE 3410-30-M

---

**Food Safety and Inspection Service**

**9 CFR Parts 307 and 308**

**[Docket No. 82-008P]**

## Safety and Sanitation Requirements for Electrical Stimulating Equipment

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This is a proposed rule that would amend the Federal meat inspection regulations to specify safety and sanitation requirements for electrical stimulating (EST) equipment. Federally inspected establishments may use EST equipment to accelerate rigor mortis in slaughtered meat animals (cattle, sheep, swine, goats, horses, mules or other equines). The safety requirements would protect inspection personnel working near that equipment from the hazard of potentially lethal electric shock or other injury. The sanitation requirements would prevent adulteration of the carcasses.

**DATE:** Comments must be received on or before June 12, 1987.

**ADDRESS:** Written comments to: Policy Office, Attn: Annie Johnson, Room 3803, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Bartie T. Woods, Jr., Director, Facilities, Equipment and Sanitation Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5627.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

This proposed rule conforms to Executive Order 12291 and is designated a "non-major" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have a significant effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposal would make existing guidelines on the safe use and appropriate sanitation of EST equipment mandatory. Any resulting costs would be voluntarily assumed by individual processing plants which determine that the use of EST equipment is economically feasible.

### Effect on Small Entities

The Administrator has made an initial determination that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601 *et seq.*). If adopted this proposal would serve to codify current provisions for the safe and sanitary use of all EST equipment.

There are currently approximately 2000 low voltage units in operation which may have to be modified under the proposed regulation. Consultation with the Occupational Safety and Health Administration (OSHA), National Electrical Code (NEC) members and the National Aeronautics and Space Administration (NASA) has produced a Department position on EST equipment. The Department believes that even though the more recent EST equipment operates at a lower voltage, it represents a reduced but still unacceptable hazard unless the equipment's use is regulated. This is consistent with both the NEC and NASA position. Therefore, this proposal applies to all EST equipment.

To meet the proposed safety requirements, stimulator manufacturers have estimated a one-time cost of not more than $5000. The estimated costs would include any necessary equipment modifications, and purchase and installation of the safety devices and signals. Costs could be less than $5000, as they would vary for each establishment, and would depend on the type of equipment and safety features currently in place. FSIS believes that barriers, warning devices and signals for EST equipment not already in voluntary compliance with FSIS guidelines are necessary to provide Federal inspectors adequate safety. Although FSIS has no record of any injuries to Federal inspectors since EST equipment was first approved in 1979, the Agency believes that the potential hazards to inspectors justify preventative regulatory action. FSIS is interested, however, in any suggestions that commenters may have on alternative approaches that may promote inspector safety less expensively or more effectively.

### Comments

Interested persons are invited to submit written comments concerning this proposal. Send comments in duplicate to the Policy Office and refer to the docket number that appears in the heading of this document. The public may inspect all comments in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

### Background

The Department reviews the equipment used in official establishments to ensure its use will not render meat and meat food products adulterated within the meaning of the Federal Meat Inspections Act (FMIA) (21 U.S.C. 601(m)). The equipment must not pose a safety hazard to Department

employees and must be constructed of acceptable materials.

Electrical stimulating equipment consists of two separate pieces—the control system and the applicator. The EST control system contains the circuitry to generate pulsed DC or AC voltge for stimulation. The applicator delivers the voltage to the carcass. The voltage can be applied by inserting a probe that penetrates the carcass or is inserted in the rectum, placing a clamp in the nose, a carcass rub-bar, a conveyor with energized surfaces traveling with the carcass or any other method approved by the Administrator.

EST equipment is used to apply a pulsating direct or alternating electrical current to the livestock carcass. This pulsating current hastens certain chemical reactions in the muscle tissues producing a stiffening of the muscles known as rigor mortis. Without electrical stimulation, rigor mortis may not occur for eight hours or more after death. With electrical stimulation, the time may be as short as one hour.

If meat is chilled or frozen before the onset of rigor mortis, a toughening of the muscle tissue known as "cold shortening" may occur. "Cold shortening" may not be important if the meat is to be ground, but it would be economically important if the meat were to be used as steaks, chops or roasts where taste and palatability is important.

The proven effect of the use of EST equipment is acceleration of rigor mortis, but research is continuing on other possible effects. Some researchers[1] claim that EST releases natural proteolytic enzymes which chemically tenderize the meat. Other researchers claim that electrical stimulation mechanically tenderizes meat by breaking muscle bonds. Additional claims have been made that electrical stimulation reduces shrinkage, accelerates the visibility of marbling, prevents a type of discoloration known as "heat ring," improves the color of the meat, and increases the chill rate.

*Food Additive Status Concerning the Use of EST Equipment*

Prior to drafting this proposal, the Department consulted with the Food and Drug Administration (FDA) because of that Agency's authority under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) to determine the safety of food additives. FDA was asked if food additive clearance would be required because of the chemical changes that result in carcasses when electrical stimulation occurs.

The Director of the then Bureau of Foods, FDA, (now the Center for Food Safety and Applied Nutrition FDA), concluded that the available data did not suggest that meat from electrically stimulated carcasses had ". . . a chemical composition significantly different than meat traditionally consumed." The Director also stated, "It would be difficult to design definitive experiments that would show a chemical composition outside the range normally encountered with meat of the same type. Results of any studies that would be developed would likely be inconclusive. . . ." In response to assertions that use of the process represents a generally recognized as safe (GRAS) situation, the Director stated, "Based on the facts before us, we do not contest such a judgment." The Department concurs in this determination.

*Approved EST Equipment Now in Use; Potential Hazard*

The Department has approved 15 EST systems made by six manufacturers for use in official establishments. There are two general types of systems: (1) Manually operated for use in small plants; and (2) automatic for stimulating more than one carcass at a time up to approximately 350 per hour. Both types of systems apply pulses of direct or alternating current to the carcasses through electrodes. Stimulation of each carcass may last from 10 seconds to 3 minutes. The proposed rule is consistent with existing guidelines used by the Department to review this equipment and its safe operation.[2]

To date, the approved voltage varies from 10 to 600. The high voltage electrical stimulators operate at a voltage between 500 and 600 which presents potentially lethal electrical shock hazards. This concern resulted in the development of later models that operated below 50 volts. Approval by FSIS of the use of below 50 volts EST equipment in establishments was based in part on earlier discussions with electrical safety personnel in the Occupational Safety and Health Administration and the interpretation of provisions in the National Electrical Code. The NEC is the nationally accepted minimum electrical construction standard.

At the time of initial approval of high voltage EST equipment, the use of below 50 volts EST equipment did not appear to pose a significant threat to human safety and would not require shock hazard protection. However, Underwriters Laboratory, a recognized national standards organization, has cited research stating that 0.5 percent of the population would be unable release from contact with an electrode emitting 10.5 volts alternating current. As the electrical voltage increases, a progressively larger segment of the population becomes unable to release from this contact. The wet conditions prevalent in the slaughterhouse environment increase the likelihood and seriousness of electrical shock. After discussions with NEC specialists, it has been determined that exposure to any voltage may be unsafe. In addition, the National Aeronautics and Space Administration (NASA) conducted extensive testing of the effect of voltage in sensing bodily functions of astronauts in space, and NASA determined that exposure to very low voltage levels can be hazardous to humans. Therefore, exposure to any unprotected stimulating voltage cannot be permitted. This proposal provides safety requirements needed to eliminate or minimize the possibility of electrical shock to Federal inspectors.

*Sanitary Considerations in the Installations and Use of EST Equipment*

EST may be conducted at any of three stages during the slaughtering operation: (1) Before hide removal (after or during bleeding, but before any other cuts have been made in the hide, except foot removal); (2) after hide removal and before evisceration; or (3) after removal of both the hide and viscera.

When electrical stimulation is used before hide removal, the electrodes should be designed so that the hide is not penetrated. Hide penetration will force surface contamination from the hide into tissue. If hide penetration occurs, the penetrated tissue must be trimmed during the dressing operation. Expulsion of feces, ingesta, and/or urine before hide removal will not cause contamination because the hide protects the edible parts of the carcass.

If EST equipment is used or applied to a carcass after the hide is removed, the electrodes must be disinfected after each use to prevent the transfer of contaminants to the next carcass.

EST voltage causes strong muscle contractions in the carcass. For those carcasses that have not been eviscerated, contraction of the abdominal muscles may force the

[1] Articles are available for viewing at the Policy Office, Room 3803, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] Written guidelines are available from the Facilities, Equipment and Sanitation Division, Meat and Poultry Inspection Technical Services, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5627.

expulsion of feces from the rectum and/or urine from the bladder and/or contents from the stomach which will contaminate edible tissue. There are several alternatives to prevent contamination: (1) Leave the sphincter muscles intact so they will contract during stimulation and provide a natural barrier; (2) cut the rectum and the urethra free from surrounding tissue and securely tie them off to prevent leakage; (3) partially open the mid-line and/or saw the brisket to reduce pressure on the visceral organs; or (4) use any other pressure-relieving or discharge-restricting alternatives that are acceptable to the Administrator. Alternatives should be presented in writing, through the inspector-in-charge, to the Program for approval.

Some early EST equipment was used on partially skinned carcasses. This proved to be insanitary. Dirt from the flopping hide contaminates the exposed surfaces of the carcass when the carcass is stimulated and muscle contractions occur. Consequently, EST equipment may not be used on partially skinned carcasses.

*Safety Consideration in the Installation and Use of EST Equipment*

Under the FMIA (21 U.S.C. 621 *et seq.*) and its regulations, the Administrator must provide a safe workplace for Federal inspectors. To avoid conflicting or inconsistent regulatory requirements, the Department consulted with officials of OSHA to develop appropriate safety procedures. The Director of Federal Compliance and State Programs, OSHA, concurred in the safety procedures set forth in this proposal. A directive reflecting these procedures was issued by OSHA and forwarded to all national, regional, and area OSHA offices. However, this proposed rule would not preclude any rulemaking that OSHA may find necessary.

The proposed safety provisions are designed to and would protect Department inspectors who are exposed to EST equipment from potentially lethal electrical shock and from being struck by a carcass while it is undergoing the violent contractions caused by the electrical current. These safety provisions are basic electrical safety provisions adapted to the slaughterhouse environment.

**Compliance with the National Electrical Code**

The circuit grounding and electrical source provisions were developed with the assistance and concurrence of some manufacturers of EST equipment and are consistent with the National Electrical Code. These provisions are designed to and would minimize the possibility of electric shock to personnel.

**Stimulating Area**

Use of electrical stimulating equipment must occur in an area that will prevent persons from contacting an energized surface. This area may be enclosed by either physical, sound or light barriers. If the area is surrounded by physical barriers, the barriers must be either electrically grounded or they must be made of materials that do not conduct electricity. The interior of the stimulating area must be visible from the start switch so that the operator can be assured that there is nothing or no one present that should not be there before the equipment is started. An enclosure formed completely or partially by sound or light barriers must automatically shut off EST equipment when the sensor signals are interrupted or broken.

**Warning Devices and Signals**

At each opening to the stimulating area through which a person would normally enter, the following warning devices must be installed. These warning devices or signals are designed to attract attention and to alert persons to an electrical hazard or dangerous situation.

1. Flashing Red Light—Installation and use of a red light that flashes a distinct warning during the equipment operating cycle.

2. Warning Signs—Warning signs reading "Danger Electrical Hazard" for posting with use of low voltage equipment and "Danger High Voltage" for posting with use of high voltage equipment. The Occupational Safety and Health Administration requires that warning signs follow American National Standards Institute (ANSI) standard Z53.1-Color Code which prescribe the wording, color and size of lettering needed to attract attention to the sign's message. These signs must be posted conspicuously at eye level, between 4½–5½ feet high, to have the maximum warning effect.

3. Emergency Stop Button—By their nature, emergency stop buttons are noticeable and can be easily operated in case of equipment malfunction or sudden hazard.

4. Original Warning Horn—A warning horn may be installed in or near the stimulating area. Installation and use of a warning horn is optional, but, if used, the signal must be loud enough to be distinctly heard above all background noises. The horn signal must sound for at least one second before each manual stimulation or before the carcass chain is started in an automatic system to provide an adequate warning.

**Provisions for Manually Operated Equipment**

When EST equipment is not in use, stimulating probes or clamps must be disinfected and stored in a sanitary insulated container. Storage of the probes or clamps in an insulated container will prevent any accidental contact with the stimulating surface and will keep the probes or clamps sanitary.

To minimize the possibility of electric shock to personnel, the length and location of electric wires attached to a clamp or probe must reduce the likelihood of contact between the probe or clamp and an electrical ground and must not extend outside the enclosure.

**The Proposal**

The Department is proposing to revise Parts 307 and 308 of the Federal meat inspections regulations (9 CFR Parts 307 and 308) by adding two new §§ 307.7 and 308.16, to the current regulations. These new sections address the safety and sanitation requirements for electrical stimulating equipment.

**List of Subjects**

*9 CFR Part 307*

Equipment and official establishments.

*9 CFR Part 308*

Equipment and sanitation.

Accordingly, Parts 307 and 308 of the Federal meat inspection regulations would be amended by adding two new §§ 307.7 and 308.16.

**PART 307—[AMENDED]**

1. The authority citation for Part 307 continues to read as follows:

**Authority:** 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695.

2. Part 307 would be amended by adding a new § 307.7 to read as follows:

**§ 307.7 Safety requirements for electrical stimulating (EST) equipment.**

(a) *General.* Electrical stimulating (EST) equipment is equipment that provides electric shock treatment to carcasses for the purposes of accelerating rigor mortis. Electrical stimulating equipment consists of two separate pieces—the control system and the applicator. The EST control system contains the circuitry to generate pulsed DC or AC voltage for stimulation and is separate from the equipment used to apply the voltage to the carcass. The

voltage is applied by inserting a probe that penetrates the carcass or is inserted in the rectum, placing a clamp in the nose, a carcass rub-bar, a conveyor with energized surfaces traveling with the carcass, or any other method approved by the Administrator. The Administrator shall approve the use of any EST equipment before it is installed in an official establishment as set forth under § 308.5 of this chapter.

(b) *Safety Requirements*—(1) *Circuits, grounding.* Either a bonded grounding conductor shall lead from each section of the carcass rail within the stimulating enclosure to the service ground, or the secondary voltage (stimulating circuit) shall be insulated from the service ground. If the stimulating section of the carcass rail and carcass drive mechanisms are insulated from the service ground then the stimulating rail or the return path shall be electrically bonded to the transformer secondary to isolate the stimulation voltage.

(2) *Enclosure.* Electrical stimulation shall occur in an area that will prevent persons from contacting an energized surface. If the area is surrounded by physical barriers, the enclosure shall be either electrically grounded or it shall be made of materials that do not conduct electricity. The interior of the stimulating area shall be visible from the start switch so the operator can be assured that there is no person, equipment or material present that should not be there prior to starting the stimulation sequence. If light or sound beam sensors form the enclosure, the stimulating equipment shall be automatically shut off when the sensor signals are broken.

(3) *Mandatory Warning Divices and Signals.* The following warning devices or signals shall be installed at each opening to the stimulating area through which a person would normally enter:

(i) A red light that flashes distinctly during the operating cycle of the stimulating equipment.

(ii) An ANSI Z53.1-Color Code conventional sign reading (a) "Danger Electrical Hazard" for stimulating voltage below 50 or (b) "Danger High Voltage" for stimulating voltage above 50.

(iii) An emergency stop button.

(4) *Optional Warning Device—Horn.* If a warning horn is installed, the signal shall be distinctly audible above background noises in the vicinity, and it shall sound for at least 1 second before each manual stimulation or before the carcass chain is started in an automatic system.

(c) *Operation—(1) Training.* Only persons who have received safety instruction by the equipment manufacturer or designee may operate electrical stimulating equipment.

(2) *Cleaning amd Maintenance.* To prevent an electrical shock to personnel, the electricity supplied to the stimulating surfaces shall be locked-off when cleaning, mechanical inspection, maintenance and testing are performed.

(3) *Water.* To prevent an electrical shock, personnel shall not spray streams of water on energized carcasses or on energized stimulating surfaces.

(d) Special provisions for manually operated equipment.

(1) After use, stimulating probes or clamps shall be disinfected and stored in a sanitary, insulated container.

(2) The length and location of electric wires attached to a clamp or probe shall reduce the likelihood of contact between the probe or clamp and an electrical ground and shall not extend outside the enclosure.

## PART 308—[AMENDED]

3. The authority citation for Part 308 continues to read as follows:

**Authority:** 34 Stat. 1260, 79 Stat. 903 as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

4. Part 308 would be amended by adding a new § 308.16 to read as follows:

**§ 308.16 Sanitation requirements for electrical stimulating equipment.**

(a) *Hide-on stimulation.* Automatic and manually operated equipment may be used to apply electrical stimulation to the hide-on surface of slaughtered carcasses provided no opening cuts other than the stick wound or foot removal have been made in the carcass. If the hide is penetrated by electrodes, the penetrated tissue shall be trimmed. Disinfection of electrodes between each carcass stimulation is not necessary.

(b) *Hide-off stimulation.* (1) Automatic or manually operated equipment may be used to apply electrical stimulation to carcasses after complete hide removal. Partially skinned carcasses shall not be stimulated.

(2) The carcass contact surfaces of the equipment shall be disinfected before stimulation of each carcass.

(3) In the event that carcass contact surfacers cannot be cleaned and disinfected between carcass stimulations, those surfaces shall be immediately removed from exposed carcass contact and cleaned and disinfected before carcass contact is resumed.

(c) *Preventing product contamination.* Carcass contamination of edible tissue by stomach contents, feces and/or urine is unacceptable. To prevent such occurrences, any of the following optional procedures may be used before stimulation to eliminate this contamination:

(1) Leave the sphincter muscles intact;

(2) Cut the rectum and the urethra free from surrounding tissue and securely tie each off;

(3) Partially open the mid-line and/or saw the brisket to reduce pressure on the visceral organs; or

(4) Any other pressure-relieving or discharge-restricting alternative acceptable to the Administrator. Alternatives should be presented in writing, through the inspector-in-charge, to the Program for approval.

(d) *Cleaning.* All equipment must be thoroughly cleaned at least daily.

Done at Washington, DC on: April 13, 1987.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 87-8599 Filed 4-15-87; 8:45 am]

BILLING CODE 3410-DM-M

## FEDERAL HOME LOAN BANK BOARD

## 12 CFR PART 522

**[No. 87-386]**

## Indemnification of Directors, Officers and Employees of Federal Home Loan Banks

Dated: April 1, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Proposed rule and solicitation of comment.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is proposing to amend its regulations governing the indemnification of directors, officers, and employees of the Federal Home Loan Banks ("FHLBanks" or "Banks"). This amendment would clarify that expenses incurred by FHLBank directors, officers, and employees in connection with litigation are to be reimbursed as they are incurred, but that, by majority vote of it broad of directors, a FHLBank could require repayment of expenses that it finds to have been beyond the scope of the Board's indemnification regulation.

**DATE:** Comments must be received on or before June 15, 1987.

**ADDRESS:** Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Karen Knopp O'Konski, (202) 377–7240, Deputy Director, Division of Regulations and Legislation, Office of General Counsel, at the above address.

**SUPPLEMENTARY INFORMATION:** The Board's regulations governing the FHLBank System contain a provision requiring each FHLBank to indemnify any current and former director, officer, or employee for expenses that person incurs as a result of litigation brought or threatened against him or her because of his or her position in the FHLBank. 12 CFR 522.72(b). The indemnification is unconditional if the director, officer, or employee wins a final favorable judgment on the merits of the suit. 12 CFR 522.72(c)(1). Certain conditions apply in cases where the suit concludes with settlement, final judgment against the director, officer, or employee, or final judgment in that person's favor other than on the merits. 12 CFR 522.72(c)(2). In such cases, indemnification depends on a finding by a majority of the FHLBank's directors that the person "was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interest of the Bank or its members." *Id.* Moreover, notice of the board of directors' intent to indemnify in such cases must be served on the Board, which then may object to the indemnification *Id.* When indemnification is proper, it includes any amount that the director, officer, or employee must pay as a result of a judgment in the action and "reasonable costs and expenses, including reasonable attorney's fees. . . ." 12 CFR 522.72(b).

The indemnification rule also contains a provision governing payment of expenses. In pertinent part, this section permits a majority of the Bank's directors to authorize payment of reasonable costs and expenses, including reasonable attorney's fees, if the majority "concludes that any person *may ultimately become entitled to indemnification*" under the rule. 12 CFR 522.72(e) (emphasis supplied). In the Board's view, the italicized language is properly interpreted to mean that, in an appropriate case, the Bank may reimburse a director, officer, or employee for expenses in advance of the conclusion of the litigation, that is, as those expenses are incurred. *See* 46 FR 63833 (Dec. 30, 1981) (payment of litigation expenses of Federal Home Loan Bank officers, directors, and employees). It has, however, come to the Board's attention that the language of paragraph (e) admits the possibility that a majority of a Bank's directors could withhold reimbursement during the progress of the litigation even where the majority had concluded that the person seeking indemnification was likely to fall within the scope of the rule.

This possibility has caused concern within the FHLBank System because of its potential adverse consequences for directors, officers, or employees who could be required to deplete their own resources even though they might finally obtain an indemnification payment at the conclusion of the case. The Board recognizes that the cost of litigation can be exorbitant, particularly when the suit continues for months or years. Moreover, the Board believes that the possibility of a large personal financial loss may prompt directors, officers, and employees to leave the FHLBank System, and may discourage talented and qualified persons from seeking to join it. Therefore, the Board is proposing to amend its indemnification rule to clarify that, in an appropriate case, the FHLBank pay litigation expenses as they are incurred. The rule's current language defining what is an appropriate case would remain unchanged; an appropriate case is one in which "a majority of the directors of a Bank concludes that . . . any person ultimately may become entitled to indemnification" under the rule. 12 CFR 522.72(e). However, to protect directors against the possibility that a disinterested majority of directors may in a particular case be unable to so conclude as to utimate indemnification, today's proposal would add a new sentence to the regulation requiring that in any case involving a director such expenses be paid as they are incurred. Finally, today's proposal would permit the Bank to require a director, officer, or employee to repay expenses that the Bank has reimbursed if a majority of its directors subsequently determines that the expenses fall beyond the scope of the indemnification rule. The Board solicits comment on all aspects of this proposal and invites suggestion of any alternative or variation which might better achieve the purposes of the proposal as described above.

The Board believes that this proposed rule does not come within the scope of the Administrative Procedure Act's notice and comment provisions because it applies only to FGHLBank personnel and affects only FGHLBank's internal operations. *See* 5 U.S.C. 553(a), (b)(3)(A). Nonetheless, the Board finds that the public interest would best be served by providing an opportunity for public comment on the action it is contemplating. The Board is allowing 60 days for comment on the proposal.

**Initial Regulatory Flexibility Analysis**

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the rule applies.* This rule applies only to directors, officers, and employees of the FGHLBanks, none of which falls within the definition of a "small financial institution" given by the Small Business Administration.

3. *Impact of the rule on small entities.* See item 2, above.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the proposed rule.* As mentioned above, the Board invites comment on such alternatives.

**List of Subjects in 12 CFR Part 522**

Conflict of interests, Federal home loan banks.

Accordingly, the Board hereby proposes to amend Part 522, Subchapter B, Chapter V, Title 12, Code of Federal Regulations as set forth below.

**SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM**

**PART 522—ORGANIZATION OF THE BANKS**

1. The authority citation for Part 522 continues to read as follows:

**Authority:** Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 3101 *et seq.*) Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted ion* 12 U.S.C.A. 1437 App. (West Supp. 1986).

**§ 522.72 [Amended]**

2. Amend § 522.72 by removing from the first sentence of paragraph (e) the word "may" after the phrase "the directors" and inserting, in lieu thereof, the word "shall"; by removing the period at the end of the first sentence of paragraph (e) and inserting therein the clause ", as they are incurred,"; and by

adding the following two sentence immediately before the last sentence of paragraph (e): "A bank shall in any case pay such expenses incurred by a director or former director of the Bank as they are incurred. The Bank may require repayment of expenses reimbursed pursuant to this paragraph if a majority of its directors determines that the expenses are not within the indemnification authorized by § 522.72."

By the Federal Home Loan Bank Board.

Jeff Sconyers

*Secretary.*

[FR Doc. 87–8581 Filed 4–15–87; 8:45 am]

BILLING CODE 6720–01–M

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 705

### Community Development Revolving Loan Program for Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation establishes a revised program under which loans from the Community Development Credit Union Revolving Loan Fund will be made to participating credit unions. The proposed regulation sets forth, among other things, the scope and purpose of the program, application procedures, types of activities participating credit unions will perform, and how loans will be made and collected under the program.

**DATE:** Comments must be received on or before June 17, 1987.

**ADDRESS:** Send comments to Becky Baker, Acting Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Hattie Ulan, Staff Attorney, NCUA, Office of General Counsel, at above address, or telephone: (202) 357–1030; or Harry Blaisdell, Special Assistant to Board Member, NCUA, at above address, or telephone: (202) 357–1100.

**SUPPLEMENTARY INFORMATION:**

#### Background

In 1979, Congress appropriated $6,000,000 to the Community Development Credit Union Revolving Loan Fund. In 1980, the NCUA issued a regulation in conjunction with the Community Services Administration implementing the revolving fund program. (See 45 FR 15171, March 10, 1980.) The regulation was codified in 12 CFR 705. In 1981, Congress passed the Omnibus Budget Reconciliation Act and transferred the authority for implementation of the Community Development Credit Union Revolving Loan Fund from the Community Services Administration to the Secretary of Health and Human Services. In 1983, the Department of Health and Human Services issued a new regulation implementing the program. (See 48 FR 53560, November 28, 1983.) The regulation was codified at 45 CFR Part 1076 and applied to loans made after November 23, 1983. In November of 1986, Congress transferred the Community Development Credit Union Revolving Loan Fund and the authority to administer the Fund to the NCUA. Hence, this proposed regulation is being promulgated.

The purpose of the Program is to make reduced rate loans to both federally- and state-charted credit unions serving low income communities so that those credit unions may provide needed financial services and help to stimulate the economy in the communities served. Credit Unions need not be federally insured to participate in the Program. The Program is neither a start-up program nor a remedial program for problem credit unions. Rather, it is for established, financially sound credit unions that wish to increase member services in their communities.

Currently, Part 705 of the NCUA Regulations is entitled "Community Development Credit Union Program." Credit unions participating in the program have been referred to as community development credit unions or CDCU's. This name has caused some confusion due to the fact that many credit unions that have not participated in the program are members of a trade association called the National Federation of CDCU's. All references to CDCU's have been eliminated in the proposed regulation. The proposed regulation is entitled "Community Development Revolving Loan Program for Credit Unions" (Program). Credit unions taking part in the Program are referred to in the proposed regulation as "participating credit unions." This change should clarify any confusion caused in the past.

#### Analysis of the Proposed Rule

Most of the proposed regulation is self-explanatory. However, this section of the supplementary information will provide a summary of each section of the regulation. Comments are welcome and requested on any aspect of the proposed regulation.

*Section 705.0—Applicability*

This proposed regulation, when finalized, will only apply to loans made after its effective date. Loans made under current Part 705 of NCUA's Rules and Regulations (only two loans outstanding) and those loans made under 45 CFR Part 1076 of the Department of Health and Human Services will continue to be subject to those regulations.

*Section 705.1—Scope*

This section states that the Community Development Revolving Loan Program for Credit Unions is now under the sole administration of the NCUA. It also sets forth the major provisions of the regulation.

*Section 705.2—Purpose of the Program*

The purpose of the Program is to make loans to participating credit unions to enable them to provide basic financial and related services and to stimulate economic activities in the communities they serve.

*Section 705.3—Definitions*

Two definitions are set forth. First, a "participating credit union" is defined. In order to participate in the Program, a credit union must, among other things, be a community credit union, and must serve predominantly low income members as defined in the NCUA regulations (excluding student credit unions) for FCU's. (See section 700.1(h) and (i) of NCUA Rules and Regulations, 12 CFR 700.1(h) and (i).) State-chartered credit unions must obtain a similar designation from their state supervisor. If a similar designation is unavailable from the state supervisor, NCUA will make such determination during the application process (see section 705.5). The second term defined is "loans." According to the definition, NCUA will make a determination as to whether the participating credit union will record the loan as a note payable or as a nonmember deposit. Under the HHS regulation in effect for most of the outstanding monies in the Program, a loan is defined as a loan or nonmember deposit (see 45 CFR 1076.60–3(b). Federal credit unions (FCU's) interested in participating in the Program should be aware that they may only borrow up to 50 percent of their paid-in unimpaired capital and surplus, from all sources. (See section 107(9) of the FCU Act, 12 U.S.C. 1757(9).) If the loan is recorded as a note payable, this limitation will apply. State-chartered credit unions should consult the state act under which they operate to determine if a similar restriction applies. Comment is

specifically requested on whether Program funds received by participating credit unions should be recorded as a note payable, a nonmember deposit or either one at NCUA's option.

*Section 705.4—Program Activities*

This section sets forth various activities that a participating credit union shall and may provide to its members. A participating credit union must provide basic member share account and loan services. Additional activities that a participating credit union may provide are also listed in this section.

*Section 705.5—Application for Participation*

This section sets forth the application procedures for those credit unions wishing to participate in the Program. Section 705.5(b)(3) requires that applicant credit unions be designated as both low income and community credit unions. Such designations are made by the NCUA for FCU's. If the designations are unavailable from the state supervisor for state-chartered credit unions, the determination will be made by NCUA using the same standards applied to FCU's. All applicant credit unions must maintain their community and low income designations even if changes in their field of membership are made.

*Section 705.6—Community Development Committee*

This section sets forth the requirement that credit unions participating in the Program have a Community Development Committee. The committee serves as a liaison with the community and determines the types of services needed in the community that the credit union may be able to provide. The Community Development Committee shall report annually to the credit union membership, either at the credit union's annual meeting or in a written report distributed to all members. Credit unions may also wish to post the committee's report in the credit union.

*Section 705.7—Loans to Participating Credit Unions*

Loans to participating credit unions will be made up to $200,000. Loan funds must be matched dollar for dollar by the participating credit union. Matching has historically been an important aspect of the Program. The matching requirement will enable participating credit unions to strengthen their capital base and provide increased services to their membership. If the matching requirement is not met dollar for dollar, but at least twenty-five percent of the match is made, the loan will be reduced to the amount of the match. If less then twenty-five percent of the match is met, NCUA may require immediate and full repayment of the loan.

The term of a loan shall not exceed five years. Interest and principal payments will be made semiannually. The interest rate on loans made to participating credit unions will be adjusted semiannually and will be at a rate of four points below the average of the ninety-day Treasury bill with a two percent floor. There is no maximum cap on the interest rate. NCUA requests comment on whether the monies received as interest payments on loans should be used to provide technical assistance to participating credit unions and what types of technical assistance participating credit unions might desire. This section also addresses default. Of course, all loan terms will be set forth in the loan agreement entered into between the participating credit union and the NCUA.

*Section 705.8—State Chartered Credit Unions*

This section states that state-chartered credit unions must have the approval of their state supervisor in order to participate in the Program. State-chartered credit unions must meet all other requirements set forth in this regulation. Although language does not appear in the proposed regulation, comment is requested on whether nonfederally-insured state-chartered participating credit unions should be subject to NCUA examination to ensure compliance with this regulation.

*Section 705.9—Application Period*

Comment is requested on how long the application period for Program participation should remain open. After an initial set of loans is made and a substantial repayment is made back to the revolving fund, a new application period will open. Notification of new application periods will be published in the **Federal Register**.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposed rule will affect only a small number of credit unions and will not impose an additional burden on them. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The proposed regulation does contain two collection of information requirements. Proposed section 705.5 contains the application procedures for a credit union wishing to participate in the Program. Section 705.6(a)(2) contains the requirement that participating credit unions develop a community needs plan.

These collection requirements will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Robert Neal.

**List of Subjects in 12 CFR Part 705**

Credit unions, Community development revolving loan program.

By the National Credit Union Administration Board, this 9th day of April, 1987.

**Becky Baker,**

*Acting Secretary of the Board.*

Accordingly, NCUA proposes to revise Part 705 of its regulations as follows:

**PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS**

Sec.

705.0 Applicability.
705.1 Scope.
705.2 Purpose of the program.
705.3 Definitions.
705.4 Program activities.
705.5 Application for participation.
705.6 Community Development Committee.
705.7 Loans to participating credit unions.
705.8 State-chartered credit unions.
705.9 Application period.

**Authority:** Public Law 97–35, 95 Stat. 498; Pub. L. 99–609 (H.R. 5554).

**§ 705.0 Applicability.**

Monies from the Community Development Revolving Loan Fund for Credit Unions obligated after [effective date of final rule] are governed by this regulation.

**§ 705.1 Scope.**

(a) This Part implements the Community Development Revolving Loan Program for Credit Unions (Program) under the sole administration of the National Credit Union Administration.

(b) This Part establishes the following:

(1) Definitions;

(2) The application process for participation in the program;

(3) Requirements for program participation;

(4) How loan funds are to be made available and their repayment.

**§ 705.2 Purpose of the program.**

The Community Development Revolving Loan Program for Credit Unions is intended to support the efforts of participating credit unions through loans to those credit unions in:

(a) Providing basic financial and related services to residents in their communities; and

(b) Stimulating economic activities in the communities they service which will result in increased income, ownership and employment opportunities for low income residents, and other community growth efforts.

**§ 705.3 Definitions.**

(a) *Participating credit union.* For purposes of this Part, a state- or federally-chartered community credit union that is specifically involved in stimulation of economic development activities and community revitalization efforts aimed at benefitting the community it serves; that meets the defninitions of predominantly low income as found in § 700.1(h) and (i) of the NCUA Regulations, excluding § 700.1(h)(4); or applicable state standards; and has submitted an application and has been selected for participation in the Program in accordance with this Part.

(b) *Loans.* For purposes of this Part, a loan made by NCUA from the Community Development Revolving Loan Fund for Credit Unions to a participating credit union up to the amount of $200,000. At the discretion of NCUA, such loans will be recorded by the participating credit union as a note payable or as a nonmember deposit.

**§ 705.4 Progam activities.**

In order to meet the objectives of the Program, a credit union applicant must provide a variety of financial and related services designed to meet the particular needs of the low income community served. These activities shall include basic member share account and member loan services. In addition, these activities may include, but are not limited to, the following:

(a) Member services, including:

(1) Financial counseling;

(2) Consumer education programs;

(3) Home owner counseling;

(4) Check cashing;

(5) Money orders;

(6) Bill paying services; and

(7) Direct deposit of recurring payments.

(b) Increased membership and capitalization activities, including:

(1) Membership drives;

(2) Systematic savings plans;

(3) Encouraging community organizations to open and increase share accounts.

**§ 705.5 Application for participation.**

(a) Application to participate in the Program shall be submitted to:

National Credit Union Administration, Community Development Revolving Loan Program For Credit Unions, 1776 G Street, NW., Washington, DC 20456.

(b) The application shall contain the following information:

(1) Information demonstrating a sound financial position and the credit union's ability to manage its day-to-day business affairs. Credit unions shall submit the following for the most recent month-end and each of the twelve months perceding that month-end:

(i) Balance sheet;

(ii) Income and expense statement;

(iii) Delinquent loan list.

(2) Evidence that the credit union has a need for increased funds in order to improve financial services to its members.

(3) The following information concerning the credit union's field of membership:

(i) Current field of membership as set forth in the credit union's charter establishing it as a community-based credit union;

(ii) Changes, if any, to be made to the field of membership for participation in the Program, including:

(A) Evidence of approval of change by credit union board of directors;

(B) Evidence of submission and approval of change by either NCUA Regional Director or State Supervisor;

(iii) Current designation as a low-income credit union.

(4) Specifics of how the credit union proposes to serve the needs of its members and the community with Program funds. The applicant credit union will also construct and submit a plan for its growth and development. The plan will set forth financial growth, credit union development, capitalization, and the means for achieving these objectives.

(5) How the credit union proposes to cooperate with existing community development programs of state and Federal agencies, including the Department of Housing and Urban Development, the Department of Health and Human Services as well as others.

(c) NCUA will notify applicant credit unions as to whether they have qualified for a loan under this Part.

**§ 705.6 Community Development Committee.**

(a) Each participating credit union, in addition to its other committees, shall have a Community Development Committee. The responsibilities of the Community Development Committee fall into two interrelated categories: coordination (liaison) and identification of community needs.

(1) *Coordination.* The Community Development Committee must establish and maintain liaison with government agencies and others having developmental projects in the community. This liaison will help ensure a united effort at redeveloping the community with a minimum of duplication. The Community Development Committee shall see to it that the community is kept informed of the participating credit union's activities.

(2) *Community Needs Plan.* Within 60 days after a credit union has been selected for participation in the Program, the Community Development Committee will prepare and present to the participating credit union's board of directors, a Community Needs Plan. This Plan will set forth the coordination contacts established and the details of these initiatives. The plan will also contain, in priority sequence, a list of community needs which the credit union may or may not be able to fulfill. The participating credit union's board of directors will make the decision as to what services the credit union can provide. The Committee's responsibility is to advise the board on needs and to provide sufficient cost estimates and "how to" recommendations to enable the board to reach the best decisions.

(b) The Community Development Committee shall be appointed by the board from among the members of the credit union, one of whom must be a board member of the participating credit union. The Board shall determine the number of members on the committee which shall not be fewer than three nor more than five. Regular terms of the committee shall be for one or two years as the board shall determine; *Provided,* however, that all terms shall be for the same number of years and until the appointment and qualification of successors. No members of the Community Development Committee shall be compensated as such.

(c) In addition to the Community Development Committee working with the credit union board of directors, they will report to the credit union members once a year either at the annual meeting or in a written report sent to all members.

**§ 705.7 Loans to participating credit unions.**

(a) *Amount of loans.* A credit union selected for participation in the Program will be eligible to receive up to $200,000 in the form of a loan from the Community Development Revolving Loan Fund for Credit Unions. The amount of the loan will be based on the creditworthiness of the participating credit union, financial need, and a demonstrated capability of a participating credit union to provide financial and related services to its members as set forth in its application.

(b) *Matching requirements.* Participating credit unions will be encouraged to develop, as rapidly as possible, a permanent capital source of member shares.

(1) Loan monies made available must be matched by the participating credit union by increasing its member and nonmember share deposits in an amount at least equal to the loan amount. Participating credit unions must meet this matching requirement within one year of the approval of the loan application and must maintain the increase in the total amount of member share deposits for the duration of the loan.

(2) Drawdown of the loan to a participating credit union may be made in a maximum of two payments only. Upon approval of its loan application, and before it meets its matching requirement, a participating credit union may receive 50% of the loan committed. The remainder of the funds committed will be available to the participating credit union only after it has documented that it has met the match requirement for the total amount of the loan committed.

(3) Failure of a participating credit union to generate the required match within one year of the approval of the loan will result in the reduction of the loan proportionate to the amount of match actually generated. Payment of any additional funds initially approved will be limited as appropriate to reflect the revised amount of loan approved, and any funds already advanced to the participating credit union in excess of the revised amount of loan approved must be returned immediately to NCUA. Failure to return such funds to NCUA upon demand shall result in the default of the entire loan.

(4) Failure by a participating credit union to produce at least 25% of its proposed match may result in the requirement by NCUA that immediate and full repayment of the loan may be made.

(c) *Terms and repayment.* (1) Assistance made available in this program is in the form of a loan and must be repaid to NCUA. All loans will be scheduled for repayment within the shortest time compatible with sound business practices and with the objectives of the program, but in no case will the term exceed five years. The policy of the NCUA is to revolve these funds to qualifying credit unions as often as practical, in order to gain maximum economic impact on as many credit unions that are qualified to participate in the Program as possible.

(2) Semiannual interest payments (beginning six months after the initial distribution of a loan) and semiannual principal payments (beginning one year after the initial distribution of a loan) will be required.

(3) Participating credit unions will be billed semiannually by NCUA for their principal and interest payments due.

(d) *Interest rates.* Loans made under this rule shall bear interest at an adjustable rate based on a semiannual average of the 90-day Treasury bill rate less four percentage points with a two percent floor. The interest rate will be adjusted semiannually. If the 90-day Treasury bill becomes unavailable, NCUA will substitute an alternative index for it.

(e) *Default, collections and adjustments.* The terms of each loan agreement shall provide for the immediate acceleration of the unpaid balance for breach or default in the performance by the participating credit union of the terms or conditions of the loan. This will include misrepresentations, default in making interest/principal payments, failure to report, insolvency, failure to maintain adequate match for the duration of the loan period, etc. The unpaid balance will also be accelerated and immediately due if any part of the loan funds are improperly used, or if uninvested loan proceeds remain unused for an unreasonable or unjustified period of time.

**§ 705.8 State-chartered credit unions.**

State-chartered credit union applicants approved for participation by NCUA must obtain written concurrence from their respective state regulatory authority.

**§ 705.9 Application period.**

Applications for participating in the program will be accepted through ——. As additional funds become available, new applications will be accepted. Notices of availability of funds will be published in the Federal Register.

[FR Doc. 87–8531 Filed 4–15–87; 8:45 am]

BILLING CODE 7535-01-M

---

## FEDERAL TRADE COMMISSION

**16 CFR Part 13**

**[Docket No. 8908]**

### Encyclopaedia Britannica, Inc.; Prohibited Trade Practices

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of 30 day period for public comment on petition by Encyclopaedia Britannica, Inc. to reopen and modify the order in Docket No. 8908.

**SUMMARY:** Encyclopaedia Britannica, Inc., the respondent in Docket No. 8908, filed a petition on April 2, 1987, requesting that the Commission reopen the proceedings and set aside the order or, in the alternative, modify the order to expire on June 30, 1988, and provide interim relief by modifying several provisions of the order.

**DATE:** The deadline for filing comments in this matter is May 8, 1987.

**ADDRESS:** Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

**FOR FURTHER INFORMATION CONTACT:** Craig Tregillus, Jock Chung, staff attorneys, or Justin Dingfelder, Assistant Director, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2970, 326–2984, and 326–3017.

**SUPPLEMENTARY INFORMATION:** The petitioner, Encyclopaedia Britannica, Inc., sells encyclopedias and related products and services direct to the consumer by means of in-home, over-the-counter, direct mail and telephone sales solicitations. The order modification request is based on claimed changes in conditions of fact and law. The petition was placed on the public record on April 8, 1987.

**List of Subjects in 16 CFR Part 13**

Encyclopedia sales, Trade practices.

Emily H. Rock,

*Secretary.*

[FR Doc. 87–8522 Filed 4–15–87; 8:45 am]

BILLING CODE 6750-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 312**

**[Docket No. 82N-0394]**

## Investigational New Drug, Antibiotic, and Biological Drug Product Regulations; Treatment Use and Sale; Extension of Comment Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Reproposed rule; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the comment period on a reproposal of procedures that would make investigational new drugs available to desperately ill patients before general marketing begins. These procedures are intended to facilitate the availability of promising new drugs to patients as early in the drug development process as possible and would apply to patients with immediately life-threatening or other serious diseases for which no satisfactory alternative therapies exist. The new procedures would also allow sale of drugs, when no satisfactory alternative therapy is available, when the drugs are provided for treatment use to large numbers of patients prior to general marketing. This document responds to requests for an extension of the comment period.

**DATE:** Written comments by May 5, 1987.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Steven H. Unger, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 19, 1987 (52 FR 8840), FDA published reproposed procedures to facilitate the availability of promising new drugs to desperately ill patients, with immediately life-threatening or other serious diseases, as early in the drug development process as possible. The new procedures would also allow the sale of drugs, when no satisfactory alternative therapy is available, when the drugs are provided for treatment use to large numbers of patients prior to general marketing.

Believing that the compelling public health advantages to be gained from issuing a final rule as quickly as possible constitute good cause under 21 CFR 10.40(b)(2) for providing less than the normal 60-day comment period, FDA originally provided 30 days for public comment on the reproposed procedures, and announced plans to issue a final rule by May 18, 1987.

FDA has now received requests to extend this comment period from a wide range of interested persons and groups, and in an abundance of caution and with the desire to have all groups have the opportunity for full and adequately prepared participation, is granting a 15-day extension of the comment period until May 5, 1987. However, FDA continues to be convinced of the public health advantages to be gained from issuing a final rule as quickly as possible and, accordingly, still intends to issue a final rule by May 18, 1987.

Interested persons may, on or before May 5, 1987, submit to the Dockets Management Branch (address above) written comments regarding the reproposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 14, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87-8670 Filed 4-14-87; 1:46 pm]

BILLING CODE 4160-01-M

---

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD7 87-05]**

## Drawbridge Operation Regulations; New Pass, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the Florida Department of Transportation the Coast Guard is considering a change to the regulations governing the New Pass bridge on State Road 789 at Sarasota, Florida, by permitting the number of openings to be limited on Saturdays, Sundays, and federal holidays. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of highway traffic and still provide for the reasonable needs of navigation.

**DATE:** Comments must be received on or before June 1, 1987.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Zonia C. Reyes, (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

### Drafting Information

The drafters of this notice are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

### Discussion of Proposed Regulations

A new drawbridge across New Pass, at Sarasota, Florida, was opened to highway traffic in October, 1986. The bridge currently opens on signal for the passage of vessels. The Coast Guard has received many complaints about vehicular delays caused by frequent opening of the drawspan. The Florida Department of Transportation (FDOT) has requested that the draw open on signal; except that from 7 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays, the draw need not open except on the hour, twenty minutes past the hour and forty minutes past the hour. In addition to the FDOT request, the Coast Guard has received a variety of other proposals to limit the number of openings. Drawbridge operation records show that the draw averages less than one opening per hour on weekdays, but may average up to 5 openings an hour on weekends. Weekend traffic problems

appear to be greatest between 10:00 a.m. and 6:00 p.m. The proposed rule should reduce or eliminate highway traffic congestion caused by "back-to-back" opening by allowing sufficient time for accumulated vehicular traffic to disperse between openings.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority**: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Part 117 is proposed to be amended by adding a new § 117.311 to read as follows:

**§ 117.311 New Pass.**

The draw of the State Road 789 bridge, mile 0.0, at Sarasota shall open on signal; except that from 10 a.m. to 6 p.m., on Saturdays, Sundays, and federal holidays, the draw need not open except on the hour, twenty minutes past the hour and forty minutes past the hour. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at anytime.

Dated: March 27, 1987.

**M. J. O'Brien,**

*Captain, U.S. Coast Guard Commander, Seventh Coast Guard District Acting.*

[FR Doc. 87–8571 Filed 4–15–87; 8:45 am]

BILLING CODE 4910-14-M

## POSTAL SERVICE

**39 CFR Part 111**

**Change to COD Service Allowing Acceptance of Personal Checks For COD Payment**

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** On February 6, 1987, the Postal Rate Commission issued an Advisory Opinion in response to the Postal Service's Request in which it supported a change in COD service proposed by the Postal Service. The change will allow recipients of Collect On Delivery Service (COD) packages to pay the charges with personal checks made out to the COD mailer as a means of reducing fraudulent use of COD service. The existing regulation requires payment to be made either by check made payable to the Postal Service, or by cash. A postal money order is then issued and remitted to the mailer. Under the new procedures, when an addressee pays the COD charges by check, that check will be promptly transmitted to the mailer. Mailers will continue to receive a money order when the addressee pays in cash.

Implementation of this change was approved by the Board of Governors of the Postal Service at their meeting on April 6, 1987. This proposed rule concerns adjustments in Postal Service regulations needed to implement the change.

**DATE:** Comments must be received on or before May 18, 1987.

**ADDRESS:** Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza, West SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, In Room 8430 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edmund J. Wronski, (202) 268–5320.

**SUPPLEMENTARY INFORMATION:**

Fradulent use of COD mail has become a serious problem. In 1985, based only on the number of open Inspection Service cases involving COD fraud, approximately 600,000 COD parcels were directly connected to some deceptive scheme.

The proposed rules published below primarily deal with the internal procedures the Postal Service uses to account for delivered COD articles. In essence, when a COD package is tendered for delivery, the delivering employee will accept either cash, or a personal check made payable to the mailer. If payment is made in cash, the Postal Service will issue a money order and send it to the mailer (this part of COD regulations remains unchanged). If payment is made by personal check, the Postal Service will send the personal check to the mailer. Checks made payable to U.S. Postal Service will no longer be accepted.

If a mailer files a claim for a lost COD article, the postmaster at the office of address will search his records for a record of delivery. If a record is found, the claim form will be annotated with the date of delivery, the check number, and the date if it was sent to the mailer. The claim will then be forwarded to the St. Louis Postal Data Center for adjudication. In cases where post office records show that the addressee's personal check was sent to the mailer, the claim will be denied. Indemnity will be paid only presentation of additional evidence that the check was not cashed.

**Note.**—The section of the F–1, *Post Office Accounting Procedures* mentioned in section 914.54a. below has been reprinted as an appendix for reference purposes only.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c) regarding proposed rulemaking by 39 U.S.C. 410(a)], the Postal Service invites public comment on the following proposed amendment of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1

**List of Subjects in 39 CFR Part 111**

Postal Service.

## PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 1—DOMESTIC MAIL SERVICES

2. Change § 149.343b(1)(b), as follows:

PART 149—INDEMNITY CLAIMS

* * * * *

149. Insured and COD Claims.

* * * * *

(b) *Record is Found.* If there is a record of delivery, date stamp, write the date of delivery, to whom delivered, indicate any unusual delivery conditions, whether payment was made by check, the check number, and the date the check was mailed. Where

appropriate, furnish the money order number(s). If none were issued, so indicate. Attach a copy of Form 3818 if applicable.

* * * * *

PART 9—SPECIAL SERVICES

3. Change section 914, as follows:

PART 914—COLLECT ON DELIVERY MAIL

914.1 Description.

.11 *Purpose.* Customers may mail an article for which they have not been paid and have the price and the cost of the postage collected from the addressee when the article is delivered. This is collect-on-delivery or COD service. The addressee has the option of remitting the amount due sender either by cash or by personal check made payable to the mailer. The Postal Service will forward the check to the mailer if payment is made by check. If the addressee pays by cash, a postal money order will be sent to the mailer. The fees for COD service include insurance against loss, rifling, or damage to the article, or failure to receive a postal money order if payment has been made by cash, or the addressee's check if payment is made by check. Return receipt and restricted delivery services are available upon payment of the prescribed fees (see 932 and 933).

* * * * *

.18 *Delays in Remittance.* Mailers are encouraged to report instances in which there has been undue delay in receiving money orders or addressee's checks in payment for COD articles. The mailer should normally receive payment within 45 days of the day of mailing (75 days for parcels sent by surface ocean transportation). Delays in excess of these periods should be reported to the local postal inspector-in-charge giving the date of mailing, parcel number, address of delivery, whether payment was by check or money order, date payment was received, and the number and date of the payment. Payment not received within these periods may be considered a loss for purposes of filing a claim in accordance with 149.

* * * * *

.33 *Nursery Stock Shipments.* Firms mailing nursery stock may print special COD tags bearing instructions as to disposition of shipments that are not immediately delivered. These tags must contain a remittance coupon that will be returned with the money order, or addressee's check.

(The remainder of 914.33 is unchanged)

.33b(2) Return this coupon with money order, or addressee's check.

(The remainder of 914.33b(2) is unchanged)

914.4 Mailing.

.41 *Preparation for Mailing.*

* * * * *

.413 The sender must securely affix a COD tag to each COD article. The tag must show article number, names and addresses of sender and addressee, amount due sender, and amount of money order fee necessary to make remittance. Delivery employees will not collect the money order fee if the addressee pays by check made payable to the mailer.

(The remainder of 914.413 is unchanged)

* * * * *

.53 *Delivery.*

.531 *At Offices With Carrier Delivery.*

Deliver COD mail as follows:

* * * * *

j. The addressee must have the amount of the COD charges as the carrier is not furnished change. The carrier will also accept the addressee's check, made payable to the mailer, for the amount of the COD charges. When the addressee pays by check, the carrier does not collect a money order fee.

* * * * *

.533 *On Highway Contract Routes Affording Delivery Service.*

Highway contract route carriers will deliver COD mail if required by the contract. Customers should present either the exact amount of money needed to pay the COD charges and the money order fee or a check made payable to the mailer for the amount due sender. No money order fee will be collected if the addressee presents a check.

* * * * *

.54 *Collection of Charges.*

Collect charges as follows:

a. Collect at time of delivery the charges entered on the tags. The addressee has the option of paying the charges either by cash (in which case a money order fee will be collected), or by check made payable to the mailer (no money order fee is collected). Do not accept checks made payable to the U.S. Postal Service. Delivery employees must accept personal checks and see identification as required in accordance with the provisions of section 311.3 of Handbook F–1, Post Office Accounting Procedures.

(The remainder of 914.54 is unchanged)

.62 *Payment By Money Order.*

* * * * *

.622 *Remitting to Sender.*

Mail personal checks in a penalty envelope and money orders in an EM03 penalty envelope on the day of issue or not later than the following workday. Use prepaid (or business reply) envelopes, when furnished by mailer. Enclose any extra COD tag coupons to be returned.

* * * * *

4. Delete 914.624, add new .63 and .64 as follows, and renumber .63 through .67 as .65 through .68.

.63 *Payment by check.*

.631 The addressee's check must be made payable to the mailer. Checks must be processed daily as provided in 914.621. Prepare as follows:

a. Examine check for completeness.

b. Enter COD number in memo portion of check if addressee has not already done so.

c. Correct the address printed on the check, if necessary.

d. Annotate the back of the COD form to show that payment was made by check. Enter the check number and date the check was mailed.

.632 *Remitting to sender.*

Return check to mailer in accordance with 914.622. File COD tag in accordance with 914.621f.

.633 *Missing or illegible name of sender.* Obtain the name and address of the sender from the addressee and request the postmaster at the office of mailing to review the sender's mailing receipt in order to verify that the package was mailed by him. If the sender cannot be verified, and the addressee desires to pay cash, deliver the article in accordance with 914.623. Otherwise, handle the article in accordance with 159.5c.

.64 *Returned Money Orders and Checks.*

Try to obtain the correct address for money orders and checks returned as unclaimed. If the payee cannot be located, handle as follows:

a. Forward the money order and a statement of the facts to the Money Order Division, Postal Data Center, P.O. Box 14795, St. Louis, MO 63182–9400.

b. Send money orders returned to postmasters endorsed "Refused, Out of Business, or Fictitious," to the same address.

c. Annotate the back of the COD tag to show when a check has been returned and forward the returned check to the mailer.

d. If money orders or checks are returned to postmasters "Fraudulent," make every effort to return the check to the addressee, or the amount of the money order to the purchaser. If this cannot be accomplished, forward money orders to the Money Order Division and

attach checks to the COD tag and file the tag. In each instance, note the disposition of the money order or check on the COD tag and file the tag.

* * * * *

5. Move the text in existing 914.66 to the end of renumbered 914.66 as follows:

.66 *Loose or Tape-on Tags.*

* * * * *

d. When tape-on tags, Form 3816a–S have been used on the parcels, fasten the loose ends down before forwarding or returning the parcels.

* * * * *

6. Add new 914.69 as follows:

.69 *Claims and Inquiries Regarding Nonreceipt of Checks or Money Orders.*

a. Inquiries or claims involving the nonreceipt of addressee's checks or money orders must be submitted on Form 3812 in accordance with the provisions of DMM 149.2 and 149.3.

b. The postmaster at the office of address will indicate whether or not post office records show delivery including the date of delivery, to whom delivered, whether payment was made by either check or money order, and the money order number (see 149.343b(1)(b)).

c. Postmasters will not participate in any disputes regarding the addressee's check.

* * * * *

7. Change 914.7, as follows:

914.7 Special Instructions

.71 *Office With 950 or More Revenue Units.*

* * * * *

.712 *Recording Section.*

* * * * *

b. Clear carriers as follows:

(1) At the end of each trip, or daily, give the carrier a receipt, in duplicate, on the right side of Form 3821. Show number of receipted tags, total amount collected (including the amounts to be remitted by check, by money order, and the money order fees), and number of returned packages.

* * * * *

.715 *Remitting Units.*

* * * * *

e. At office operating under system B:

* * * * *

8. Add the following section (e) to .715e(2):

(e) Process COD tags with checks made payable to the mailer in accordance with 914.63.

(3) The station or branch superintendent, or designee, will receive the receipted original Form 3822 from the COD clerk and compare the amounts thereon with the totals on Forms 3821. These must agree. This individual will also receive the COD tags from the money order clerk with customers' receipts attached. Verify separately, all COD tags annotated to show payment by check.

(The remainder of 914.715 is unchanged)

* * * * *

9. Make the following changes to 914.71 through 914.73, as follows:

.716 *Main Office Window Unit.*

a. Issue the money orders and mail addressee's checks to the mailer, if paid by check (see 914.62).

b. Staple the customer's receipt to the COD tag if appropriate, or annotate the back of the COD tag as required in 914.631d.

* * * * *

g. Check one day's COD business each month to make sure money orders are being properly prepared and promptly issued, and that COD tags are properly annotated when paid by check.

(The remainder of 914.716 is unchanged)

* * * * *

.72 *Offices Having From 190 Through 949 Revenue Units.*

.721 *Assignment of Clerks.*

Assign different clerks to the following work if possible:

* * * * *

c. *Money order clerk.* To issue money orders in payment of COD charges and to mail addressee's checks to the mailer, if paid by check.

* * * * *

.725 *Check of COD Business.*

* * * * *

b. *Method.* Perform the examination as follows:

* * * * *

(3) Check the COD tag file to verify that packages shown on Form 3814–C have been delivered. Where applicable, compare dates of money orders with dates of delivery as shown on the COD tags and Form 3814–C.

* * * * *

(5) Select at random several delivering employees' receipts and, if paid by money order, compare dates of delivery with recorded dates of COD money orders.

* * * * *

.735 *Delivery From Rural Station.*

* * * * *

c. Process the money order and checks in accordance with 914.62 and 914.63.

* * * * *

e. When appropriate, attach customer's receipt portions of money orders to delivery office portions of COD tags and send them to the main post office.

f. The main post office will complete Form 3850 to show delivery and file COD tags. Customers receipt portions of money orders will be attached to the tags if this method of payment was chosen.

An appropriate amendment to 39 CFR 111.3 will be published if these changes are adopted.

**Fred Eggleston,**

*Associate General Counsel, Legislative Division.*

Appendix

F–1, *Post Office Accounting Procedures*

CHAPTER 3—HANDLING POSTAL FUNDS AND PROTECTING FUNDS AND ACCOUNTABLE PAPER

* * * * *

331.3 *Personal Checks.*

* * * * *

.31 The customer's name and complete address must be printed on the check. The customer's telephone number must be recorded on the check.

.32 When a customer is known by name to a postal employee on duty in the unit, the employee making the identification should note "Cutomer Known" on the back of the check and then sign it.

.33 If the customer is unknown, two current forms of identification from the following list must be recorded on the check:

a. Driver's license;

b. Military identification card;

c. Passport;

d. Credit Card; or

e. Other credentials showing the signature and having serial number or other indicia that can be traced to the bearer. Social Security cards are not acceptable identification.

.34 Compare the signature on the check with the signature on the identification. If signatures do not match, do not accept the check.

.35 Record on the back of the check the particular postal transaction involved, such as COD number, permit number, or postage meter serial number.

[FR Doc. 87–8552 Filed 4–15–87; 8:45 am]

BILLING CODE 7710-12-M

---

**39 CFR Part 265**

## Release of Information; Implementation of Freedom of Information Reform Act

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes to amend its Freedom of Information Act regulations to incorporate the recent changes made by the Freedom of Information Reform Act of 1986 relating to requests for law enforcement records and to the fees that may be charged in connection with FOIA requests for

records. The proposed rules follow the guidelines recently issued by the Office of Management and Budget.

**DATE:** Comments concerning the proposed fee provisions should be received on or before April 20, 1987, so that the Postal Service can meet its statutory requirement to publish revised FOIA fee regulations in final form no later than April 25, 1987. Comments submitted after April 20, but no later than May 15, 1987, will also be considered and incorporated by further amendment if warranted. Comments on the law enforcement provisions must be received by May 15, 1987.

**ADDRESS:** Written comments should be addressed to USPS Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5010. Copies of all written comments will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m. in Room 8121 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Martha J. Smith, Program Manager, Records Office (202) 268–2931.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act, Pub. L. 99–570 (Reform Act), which was signed into law on October 27, 1986, requires each agency to promulgate, by April 25, 1987, new FOIA fee regulations to implement the changes made by the Reform Act. The fee provisions must conform to guidelines promulgated by the Office of Management and Budget (OMB). OMB published its final Uniform Freedom of Information Act Fee Schedule and Guidelines on March 27, 1987 (52 FR 10012). The fee schedule included in this proposal conforms in all substantial respects to OMB's final guidelines. The Postal Service's existing fee regulations that are unaffected by the recent legislation are retained without substantive change, and are included in this notice for the sake of readability.

The Reform Act also expanded the FOIA exemption for law enforcement records. These provisions were effective immediately upon enactment. This proposal incorporates the new statutory language verbatim into the Postal Service's regulations concerning access under the FOIA to law enforcement records.

**List of Subjects in 39 CFR Part 265**

Release of information, Postal Service.

For the reasons set out in this notice, the Postal Service proposes to amend Part 265 of 39 CFR as follows:

## PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

**Authority:** 39 U.S.C. 401; 5 U.S.C. 552.

2. Paragraph (c) of § 265.6 is revised to read as follows:

**§ 265.6 Availability of records.**

* * * * *

(c) *Records of information compiled for law enforcement purposes.* (1) Investigatory files compiled for law enforcement purposes, whether or not considered closed, are exempt by statute from mandatory disclosure except to the extent otherwise available by law to a party other than the Postal Service, 39 U.S.C. 410(c)(6). As a matter of policy, however, the Postal Service will normally make records or information compiled for law enforcement purposes available upon request unless the production of these records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority (such as the Postal Inspection Service) in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Whenever a request is made which involves access to records described in § 265.6(c)(1)(i) and (i) the investigation or proceeding involves a possible violation of criminal law; and (ii) there is reason to believe that (A) the subject of the investigation or proceeding is not aware of its pendency, and (B) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Postal Service may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(3) Whenever informant records maintained by a criminal law enforcement agency (such as the Postal Inspection Service) under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the records may be treated as not subject to the requirements of the Freedom of Information Act unless the informant's status as an informant has been officially confirmed.

(4) Authority to disclose records or information compiled for law enforcement purposes to persons outside the Postal Service must be obtained from the Chief Postal Inspector, U.S. Postal Service, Washington, DC 20260–2100, or his designee.

3. Paragraph (d)(1) of § 265.6 is amended by striking out "(d)(3) and (e)(8) of § 265.8" in the second sentence and inserting in lieu thereof "(e)(3) and (g)(5) of § 265.8"; and by striking out "(e)(8) of § 265.8" in the final sentence and inserting in lieu thereof "(g)(5) of § 265.8".

4. Paragraph (d)(2) of § 265.6 is amended by striking out "(e)(8) of § 265.8" in the last sentence and inserting in lieu thereof "(g)(5) of § 265.8."

5. Paragraph (d)(3) of § 265.6 is amended by striking out "(d)(2) of § 265.8" at the end of the first sentence and inserting in lieu thereof "(b) of § 265.8."

6. Paragraph (a)(1) of § 265.7 is amended by striking out "(3)(2) § 265.8" in the next to last sentence, and inserting in lieu thereof "(f)(2) of § 265.8"; and by striking out "$10" in the last sentence and inserting in lieu thereof "$25".

7. Paragraph (a)(4) of § 265.7 is revised to read as follows:

**§ 265.7 Procedure for inspection and copying records.**

(a) * * *

(4) *Request for waiver of fees.* The requester may ask that fees or the advance payment of fees be waived in whole or in part. A fee waiver request shall indicate how the information will be used; to whom it will be provided; whether the requester intends to use the information for resale at a fee above actual cost; any personal or commercial benefit that the requester expects as a result of disclosure; and information as to the intended user's identity.

BEST COPY AVAILABLE

qualifications, expertise in the subject area, and ability and intention to disseminate the information to the public. (See § 265.8(g)(3).)

* * * * *

8. Paragraph (c)(2) of § 265.7 is revised to read as follows:

* * * * *

(2) Any fees authorized or required to be paid in advance by § 265.8(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.8(g).

* * * * *

9. Section 265.8 is revised to read as follows:

**§ 265.8 Schedule of Fees**

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit the furnishing of records to members of the public while recovering the full allowable direct costs incurred by the Postal Service. The Postal Service will use the most efficient and least costly methods available to it when complying with requests for records.

(b) *Standard rates.*—(1) *Record retrieval.* Searches may be done manually or by computer using existing programming.

(i) *Manual search.* The fee for each quarter hour spent by clerical personnel in searching for records is $4.40. When a search cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour in searching for records is $5.35.

(ii) *Computer search.* The fee for retrieving data by computer is the actual direct cost of the retrieval, including computer search time, runs, and operator salary, as calculated in accordance with the Information Services Price List in effect at the time that the retrieval services are performed. The list is subject to periodic revision. A copy of the list is included within the public index. (See Appendix A for the list in effect on January 1, 1987.)

(2) *Duplication.* (i) Except where otherwise specifically provided in postal regulations, the fee for duplicating any record or publication is $.15 per page.

(ii) The Postal Service may at its discretion make coin-operated copy machines available at any location or otherwise give the requester the opportunity to make copies of Postal Service records at his own expense. Unless authorized by the Records Officer, however, no off-site copying shall be permitted of records which, if lost, could not be replaced without inconvenience to the Postal Service.

(iii) The Postal Service will normally furnish only one copy of any record. If duplicate copies are furnished at the request of the requester, the per-page fee shall be charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to paragraph (c) or (g). At his discretion, when it is reasonably necessary because of a lack of adequate copying facilities or other circumstances, the custodian may make the requested record available to the requester for inspection under reasonable conditions and need not furnish a copy thereof.

(3) *Review.* The fee for each quarter hour spent by clerical personnel in reviewing records located in response to a commerical use request is $4.40. When review cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour is $5.35. Only requesters who are seeking documents for commerical use may be charged for review. "Review" is defined in paragraph (h)(4) of this section; "commerical use" is defined in paragraph (h)(5) of this section.

(4) *Micrographics.* Paragraphs (b) (1), (2) and (3) of this section also apply to information stored within micrographic systems.

(c) *Four categories of fees to be charged.* For the purpose of assessing fees under this section, a requester shall be classified into one of four categories: commerical use requesters; educational and noncommerical scientific institutions; representatives of the news media; and all other requesters. Requesters in each category must reasonably describe the records sought. Fees shall be charged requesters in each category in accordance with the following.

(1) *Commerical use requesters.* Fees shall be charged to recover the full direct costs of search, review and duplication in accordance with the rates prescribed in paragraphs (b)(1) through (3) of this section, subject only to the general waiver set out in paragraph (g)(1) of this section. The term "commerical use request" is defined in paragraph (h)(5).

(2) *Educational and noncommerical scientific institutions.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commerical use, but are sought in furtherance of scholarly or scientific research. These institutions are defined in paragraphs (h)(6) and (h)(7) of this section, respectively.

(3) *Representatives of the news media.* Fees shall be charged only for duplication in accorance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must meet the criteria in paragraphs (h)(8) of this section, and the request must not be made for a commerical use.

(4) *All other requesters.* Fees shall be charged for search and duplication in accordance with paragraphs (b) (1) and (2) of this section, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. (See also paragraphs (g)(1) and (g)(2) of this section.)

(d) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly. The custodian shall not aggregate multiple requests when the requests pertain to unrelated subject matter. Requests made by more than one requester may be aggregated only when the custodian has a concrete basis on which to conclude that the requesters are acting in concert specifically to avoid payment of fees.

(e) *Other costs.*—(1) *Publications.* Publications and other printed materials may, to the extent that they are available in sufficient quantity, be made available at the established price, if any, or at cost to the Postal Service. Fees established for printed materials pursuant to laws, other than the Freedom of Information Act, that specifically provide for the setting of fees for particular types of records are not subject to waiver or reduction under this section.

(2) *Other charges.* When a response to a request requires services or materials other than the common ones listed in paragraph (b) of this section, the direct cost of such services or materials to the Postal Service may be charged, but only if the requester has been notified of the nature and estimated amount of such cost before it is incurred.

(3) *Change of address orders.* Although change of address information is not required by the Freedom of Information Act to be made available to the public, the fee for obtaining this information in accordance with paragraph (d)(1) of § 265.6 is included in this section as a matter of convenience. The fee for searching for a change of address order is $1.00. This fee is charged regardless of whether a permanent change of address is found in file. (See paragraph (g)(5) of this section.)

(f) *Advance notice and payment of fees.*—(1) *Liability and payment.* The requester is responsible, subject to limitations on liability provided by this section, for the payment of all fees for services resulting from his request, even if responsive records are not located or are determined to be exempt from disclosure. Checks in payment of fees should be made payable to "U.S. Postal Service."

(2) *Advance notice.* To protect members of the public from unwittingly incurring liability for unexpectedly large fees, the custodian shall nofity the requster if the estimated cost is expected to exceed $25. When search fees are expected to exceed $25, but it cannot be determined in advance whether any records will be located or made available, the custodian shall notify the requester of the estimated amount and of the responsibility to pay search fees even though records are not located or are determined to be exempt from disclosure. The notification shall be transmitted as soon as possible after physical receipt of the request, giving the best estimate then available. It shall include a brief explanatory statement of the nature and extent of the services upon which the estimate is based and shall offer the requester an opportunity to confer with the custodian or his representative in an attempt to reformulate the request so as to meet his needs at lower cost. The time period for responding to the request shall not run during the interval between the date such notification is transmitted and the date of receipt of the requester's agreement to bear the cost. No notification is required if the request specifically states that whatever cost is involved is acceptable or is acceptable up to a specified amount that covers estimated cost or if payment of all fees in excess of $25 has been waived.

(3) *Advance payment.* Advance payment of fees shall not be required, except:

(i) When it is estimated that the fees chargeable under this section are likely to exceed $250. If the requester has a history of prompt payment of FOIA fees, the custodian shall notify the requester of the likely cost and obtain satisfactory assurance of full payment before commencing work on the request. If the requester has no history of payment, the custodian may require an advance payment of an amount up to the full estimated charge before commencing work on the request.

(ii) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), the requester shall be required to pay the full amount owed, and to make an advance payment of the full amount of the estimated fee before processing will begin on a new or pending request.

(iii) When advance payment is required under paragraph (f)(3) (i) or (ii) of this section, the time periods for responding to the initial request or to an appeal shall not run during the interval between the date that notice of the requirement is transmitted and the date that the required payment or assurance of payment is received.

(g) *Restrictions on Assessing Fees.*—(1) *General waiver.* Fees shall not be charged to any requester if they would amount, the aggregate, for a request or a series of related requests, to $10 or less. When the fees for the first 100 pages or the first two hours of search time are excludable under paragraph (c) of this section, additional costs will not be assessed unless they exceed $10. This general waiver does not apply to the fee for providing change of address information.

(2) *Certain fees not charged.*—(i) *All requests except those for commercial use.* Fees shall not be charged for the first 100 pages of duplication and the first two hours of search time except when the request is for a commercial use as defined in paragraph (h)(5) of this section. When search is done by computer, the fees to be excluded for the first two hours of search time shall be determined on the basis of the standard rates set out in the Information Services Price List then in effect. (See Appendix A.) Assessment of search fees will begin at the point when the cost of the search (including the cost of equipment use and operator's time) reaches the equivalent dollar amount of the operator's basic rate for two hours plus a factor to cover benefits.

(ii) *Requests of educational and noncommercial scientific institutions, and representatives of the news media.* Fees shall not be charged for time spent searching for records in response to requests submitted by educational and noncommercial scientific institutions or representatives of the news media.

(3) *Public interest waiver.* The custodian shall waive a fee, in whole or in part, and any requirement for advance payment of such a fee, when he determines that furnishing the records is deemed to be in the public interest because it (a) is likely to contribute significantly to public understanding of the operations or activities of the federal government, and (b) is not primarily in the commercial interest of the requester. This waiver may be granted notwithstanding the applicability of other fee reductions prescribed by this section for requesters in certain categories. In determining whether disclosure is in the public interest for the purposes of this waiver, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Postal Service;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(4) *Waiver by officer.* Any officer of the Postal Service, as defined in § 221.8, his designee, or the USPS Records Officer may waive in whole or in part any fee required by this part or the requirement for advance payment of any fee.

(5) *Waiver of fee for changes of address.* The fee prescribed by paragraph (e)(3) of this section is waived when change of address information is provided:

(i) To a Federal, State or local government agency upon prior written certification that the information is required for the performance of its duties.

(ii) To persons requesting the information for the purpose of serving legal process in accordance with paragraph (d)(6)(ii) of § 265.6.

(iii) In compliance with a subpoena or other court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service in accordance with paragraph (d)(6)(iv) of § 265.6

(v) To postage meter manufacturers when they are attempting to locate a missing meter.

This waiver does not apply to fees for services performed in accordance with section 122.5 of the Domestic Mail Manual.

(h) *Definitions.* As used in this section, the term:

(1) "Direct costs" include expenditures actually incurred in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in directs costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. A line-by-line search will be conducted only when necessary to determine whether the document contains responsive information and will not be employed in those instances in which duplication of the entire document would be the less expensive and quicker method of complying with a request. "Search" does not include review of material to determine whether the material is exempt from disclosure (see paragraph (h)(4) of this section.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) "Review" refers to the process of examining documents located located in response to a request that is for a commercial use (see paragraph (h)(5) of this section to determine whether any portion of any document located is exempt from mandatory disclosure. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. Charges may be assessed only for the initial review, i.e., the first time the applicability of a specific exemption is analyzed. Costs for a subsequent review are properly assessable only when a record or portion of a record withheld solely on the basis of an exemption later determined not to apply must be reviewed again to determine the applicability of other exemption not previously considered.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Postal Service will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the custodian shall seek additional clarification from the requester before assigning the request to this category.

(6) "Educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is defined in paragraph (h)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Requests by news organizations for information that will be used for the furtherance of the organization's commercial interests, rather than for the dissemination of news to the public, shall be considered commercial use requests. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A "freelance" journalist will be regarded as a representative of the news media if he can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. This may be demonstrated either by a publication contract with the news organization or by the past publication record of the requester.

* * * * *

10. Appendix A to Part 265 is revised to read as follows:

**APPENDIX A—INFORMATION SERVICES PRICE LIST IN EFECT JANUARY 1, 1987**

Whenever an individual requests information which must be retrieved by computer, standard charges will be incurred based upon resources required to furnish this information. Estimates are provided to the requester in advance and are based on the following standard price list.

| Description of services | Price | Unit |
|---|---|---|
| A. System utilization services: | | |
| Central Processor Unit (CPU). | | Hour. |
| 3085Q NISDC | $5,643.84 | |
| 3084QX St. Louis | 5,978.73 | |
| 3084QX Wilkes-Barre | 5,978.73 | |
| 3090-200 St. Louis | 6,208.84 | |
| 4381-2 NISDC & Wilkes-Barre | 554.73 | |
| 5870 Minneapolis | 4,725.46 | |
| 5880 San Mateo | 4,951.46 | |
| 5880 New York | 5,670.55 | |
| 5890 Minneapolis | 8,978.38 | |
| Disk Usage (Selector) Channel. | 203.53 | Hour. |
| Multiplexor (Byte) Channel | 153.41 | Hour. |
| Tape Usage (Block MPX) Channel. | 5.44 | Hour. |
| Volume Mounts | 1.47 | Mount. |
| Minimum Job Charge | 1.00 | Job. |
| 3800 Printing | 2.57 | 1000 lines. |
| B. System occupancy charges: | | |
| Tape Occupancy | 3.33 | Hour. |
| Teleprocessing Occupancy | 10.46 | Hour. |
| C. System spooling charges: | | |
| Cards Read, Local | .74 | 1000 Cards. |
| Cards Read, Remote | .74 | 1000 Cards. |
| Lines Printed, Local | 2.57 | 1000 Lines. |
| Lines Printed, Remote | .26 | 1000 Lines. |
| Cards Punched, Local | 5.73 | 1000 Cards. |
| Cards Punched, Remote | .58 | 1000 Cards. |
| D. Penpheral charges: | | |
| Keypunching | 5.60 | 100 Cards. |
| Key-to-Tape | 32.18 | Hour. |
| Microfilm Processing, Offline. | 21.68 | Frame. |
| Microfiche Processing | .01 | Frame. |
| Microfiche Duplicating | .08 | Sheet. |
| Programmer Support | 31.45 | Hour. |
| Programmer Support, Overtime. | 47.18 | Hour. |
| Systems Analysis Support | 33.91 | Hour. |
| Systems Analysis Support, Overtime. | 55.35 | Hour. |
| Inspection Service Processing. | 2,960.00 | Per A/P. |
| Customer Support Technician. | 16.00 | Hour. |
| Computer Support Specialist. | 16.90 | Hour. |
| Telecommunications Hardware Technician. | 19.80 | Hour. |
| Computer Systems Specialist. | 19.50 | Hour. |
| Telecommunications Hardware Specialist. | 23.50 | Hour. |
| Nucleus Processing | 9.14 | 1000 Trans. |

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87-8440 Filed 4-15-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Ch. I

[CGD 86-074]

## Regulations for Self-elevating Offshore Service Vessels (Liftboats)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Advanced Notice of Proposed rulemaking.

**SUMMARY:** The Coast Guard is soliciting early public input and comment concerning a proposal to establish safety standards for self-elevating offshore service vessels, commonly known as liftboats. The high rate of casualties experienced by these vessels emphasizes the need for specific regulations addressing the hazards inherent to their operations. The primary areas of regulation tentatively being considered relate to vessel design, equipment, and operating standards for both new and existing vessels. The Coast Guard anticipates that the development and enforcement of standards specifically addressing the unique hull forms and operating characteristics associated with liftboats should significantly improve their safety record.

**DATES:** Comments must be received on or before July 15, 1987.

**ADDRESSES:** Comments should be mailed to Commandant (G-CMC/21)(CGD 86-074), U.S. Coast Guard, Washington, DC, 20593-0001. Comments on this notice will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays at the Office of the Marine Safety Council (G-CMC/21), Room 2110, Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Commander G. Randy Speight, Office of Marine Safety, Security and Environmental Protection (G-MVI-4), (202) 267-2307.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this advance notice of proposed rulemaking (ANPRM) by submitting written views, data, or other input. Comments should include the names and addresses of the persons making them, identify the ANPRM (CGD 86-074) and the portion of the notice to which the comment applies. All comments received before the comment period expires will be considered in determining the course of action to be taken. Receipt of comments will be acknowledged if a stamped self-addressed post card is enclosed.

On February 14, 1983, the Coast Guard published an ANPRM concerning new construction of Offshore Supply Vessels (OSVs) (48 FR 6636). The information in that ANPRM presents the Coast Guard's overall approach with respect to developing comprehensive standards for conventional offshore supply vessels as contrasted with liftboats and other non-conventional OSVs. On March 7, 1985 the Coast Guard published an ANPRM (CGD 84-098) for revising the Regulations that apply to Outer Continental Shelf Activities (50 FR 9290). Some of the comments received in that rulemaking addressed liftboats and will be considered along with the comments received in response to this notice.

### Drafting Information

The principal persons involved in drafting this notice are Commander G. Randy Speight, Office of Marine Safety, Security and Environmental Protection (G-MVI-4), and William R. Register, Office of Chief Counsel.

### Background

An offshore supply vessel (OSV) is defined in 46 U.S.C. 2101(19) as a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, or equipment *in support of* exploration, exploitation, or production of offshore mineral or energy resources and is not a small passenger vessel. These vessels are regulated under the authority contained in 46 U.S.C. 3306 which also requires that in prescribing OSV regulations their characteristics, methods of operation, and the nature of their service must be taken into account.

Conventional offshore supply vessels have been regulated principally under applicable provisions of 46 CFR Subchapter I since the enactment of Pub. L. 96-378 in October 1980. However, many non-conventional offshore supply vessels, including liftboats, are not inspected under these regulations. Heretofore, these non-conventional offshore supply vessels have been regulated primarily under the provisions of 46 CFR Subchapter C, which contains safety regulations for uninspected vessels.

The Coast Guard estimates that there are nearly 500 of these non-conventional offshore supply vessels in service that meet the 46 U.S.C. 2101(19) definition of OSVs. These vessels are used primarily as temporary platforms from which a small crew can perform well and platform maintenance projects. These vessels have become more and more sophisticated in recent years. Approximately 250 of these are self-elevating, self-propelled service vessels, i.e., liftboats, of less than 300 gross tons that operate primarily in the Gulf of Mexico.

A review of casualties involving liftboats, indicates that for the three year period beginning in 1982, 5.6% of the liftboat fleet of approximately 250 vessels have been involved in sinking or capsizing casualties. The major causes of the casualties have been operator error, inadequate stability, or leg failures. The casualty rate for liftboats is 11 times greater than that for the conventional OSV fleet. Additionally, the National Transportation Safety Board, in their recommendations M-84-004, M-85-112 through 115, and M-86-119, resulting from their investigation into three liftboat casualties, recommended that the Coast Guard establish regulations addressing these vessels, particularly in the area of stability, operating conditions, and operator qualifications. As a result of these findings, it has become clear that the regulations for Uninspected Vessels contained in 46 CFR Subchapter C are inadequate in regulating liftboat operation.

### Proposal

The Coast Guard intends to pursue development of regulations for non-conventional OSVs in two distinct phases. The first phase will address liftboats. These vessels will be addressed first because of their particularly high casualty rate. The second phase will consist of regulation development for those vessels having traditional hull forms and which meet the 46 U.S.C. 2101(19) definition of offshore supply vessel but which heretofore have not been regulated under 46 CFR Subchapter I. This notice solicits comments only on the phase of regulation development addressing liftboats. Regulation development under the second phase will be considered at a future time.

The primary areas of regulation being considered relate to vessel design, equipment, and operating standards. It is envisioned that any new standards developed would incorporate existing requirements wherever possible, particularly those that have and are being applied to conventional OSVs. However, because of the unique design and operating characteristics exhibited by these liftboats, many of the current requirements applied in inspecting and certificating conventional OSVs are inadequate to ensure the safe operation of these vessels.

In order to resolve the problems that currently plague liftboats, the Coast Guard is considering addressing the following safety concerns:

1. Development of specific stability and structural criteria which account for variations in the area of operation.
2. The need for vessel operating manuals addressing various operating modes under differing environmental and loading conditions.
3. Upgrading of lifesaving equipment requirements.
4. Upgrading of fire protection requirements.
5. Development of standards for transport of hazardous chemicals on board these vessels.
6. Development of minimum standards of qualification for vessel operators of these vessels.
7. Development of workplace safety standards for industrial workers that work on these vessels.

In this notice, the Coast Guard is specifically requesting input and comments relating to the topics listed above. Additionally, comments are requested regarding development of separate standards for existing liftboats, as contrasted with new construction, together with information identifying probable difficulties that existing vessels may encounter in meeting standards in the above categories.

### Economic and Other Impact

This rulemaking action is classified as non-major under Executive Order 12291 and as significant rulemaking under DOT policies and procedures (44 FR 11034; February 26, 1979). This rulemaking represents a significant change in policy with respect to liftboats since, as mentioned above, these vessels have been previously regulated primarily under Title 46 CFR Subchapter C.

Although this rulemaking is expected to establish minimun requirements for existing vessels, the primary thrust will be directed toward vessels constructed after the effective date of the final rules. Additionally, some costs are anticipated to be offset, in substantial part, by the estimated savings in amounts paid in liability claims and insurance premiums because of a reduction in the frequency and severity of the casualties to which these vessels have, historically, been victim. Accordingly, these rules are not expected to impose substantial costs on the liftboat industry. Likewise, no significant energy or environmental impacts are anticipated as a result of this rulemaking; nor are major impacts on state or local government agencies or small entities expected.

Economic impact and other impacts which are expected include:

a. An immediate requirement for a complement of officers and crew that hold appropriate marine licenses and/or documents. The licenses and qualifications would be the same or similar to those required for conventional OSVs and may, in addition, include a requirement for specialized knowledge of the stability and operating characteristics unique to these vessels.

b. Development of adequate stability and operating criteria that will allow for safe operation of these vessels in all modes. This could require the owner to modify the vessel's design and perform stability tests.

c. Development or incorporation of appropriate leg strength and design criteria. This could include certification of design at the expense of the owner.

d. Additional operating expenses due to periodic inspection and routine drydocking requirements.

e. Possible reduction of insurance premiums because of Coast Guard certification.

f. Limitation of the route of existing vessels that do not meet the stability requirements for unrestricted routes.

The Coast Guard plans to prepare a regulatory evaluation at the NPRM stage addressing the above economic and other concerns. Public input and comment relating to anticipated costs, benefits, and impacts of the rulemaking would be helpful and are specifically requested.

### Paperwork Requirements

This rulemaking would require owners of lifeboats to submit a completed "Application for Inspection of U.S. Vessel" (CG–3752) to an Officer in Charge, Marine Inspection. This existing form would be required for the initial inspection and for each subsequent inspection. Estimated time to complete this form is three minutes.

Owners of these vessels would also be required to maintain the "Certificate of Inspection" and "Stability Letter" issued by the Coast Guard aboard the inspected vessel.

Plan or drawing submissions might also be required as a result of this rulemaking. Further, preparation of operating manuals, submittal of those manuals to the Coast Guard, and maintenance of those manuals on the vessel might be required.

### Environmental Considerations

As a part of this rulemaking, the Coast Guard is considering the environmental impact the regulations might have. An environmental assessment will be prepared and placed on file in the rulemaking docket before publishing an NPRM.

### Available Materials

In commenting on this advance notice of proposed rulemaking, commenters may wish to consider the various materials relating to the Coast Guard's casualty review and the NTSB recommendations referenced above. These materials are available for public inspection and copying at the address listed above (under **ADDRESSES**) for submitting comments.

Dated: April 13, 1987.

**P.A. Yost,**

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 87–8572 Filed 4–15–87; 8:45 am]

BILLING CODE 4910–14–M

---

## DEPARTMENT OF DEFENSE

## 48 CFR Part 225

## Department of Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory Council is considering changes to DFARS 225.105(S–75) to clarify that the 50% evaluation factor of the Balance of Payments Program shall not apply to any offer submitted in response to a solicitation for a civil works project, funded by civil works appropriations.

**DATE:** Comments on the proposed revisions should be submitted in writing to the Acting Executive Secretary, DAR Council, at the address shown below, on or before June 15, 1987, to be considered in the formulation of the final rule. Please cite DAR Case 86–144 in all correspondence related to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Owen Green, Acting Executive Secretary, ODASD(P)/DARS, c/o OASD(A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:**
Mr. Owen Green, Acting Executive Secretary, DAR Council, telephone (202) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

As currently written, DFARS 225.105(S–75) seems to draw a distinction between offers received from qualifying countries and those received from nonqualifying countries, i.e., in the latter case contracting officers have read the DFARS to require application of the 50% evaluation factor under the Balance of Payments Program. This proposed revision clarifies the coverage and removes the implied distinction.

**B. Regulatory Flexibility Act Information**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because, although the proposed rule will apply to small businesses, it affects only direct purchases made by the Department of Defense and not materiel incidental to civil works construction contracts. Overall, the proposed rule will have very little effect on small businesses since, as a rule, they are not prospective offerors for the types of construction equipment separately acquired in these procurements. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

**C. Paperwork Reduction Act Information**

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Part 225**

Government procurement.

**Owen L. Green, III,**

*Acting Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, it is proposed that 48 CFR Part 225 be amended as follows:

**PART 225—FOREIGN ACQUISITION**

1. The authority citation for 48 CFR Part 225 continued to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 225.105 is amended by revising paragraphs (S–71) and (S–75) to read as follows:

**§ 25.105 Evaluating offers.**

* * * * *

(S–71) Except as provided in this paragraph (S–71) and in accordance with (S–73), (S–74), and (S–75) below, offers shall be evaluated so as to give preference to domestic offers as follows:

* * * * *

(S–75) For equipment or supplies for civil works projects, funded by civil works appropriations, offers shall not be subject to the 50% evaluation factor of the Balance of Payments Program, but shall be subject to the 6% and 12% evaluation factors of the By American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of this subpart.

[FR Doc. 87–8567 Filed 4–15–87; 8:45 am]
BILLING CODE 3810–01–M

# Notices

Federal Register
Vol. 52, No. 73
Thursday, April 16, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### National Advisory Council on Child Nutrition; Meeting

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the National Advisory Council on Child Nutrition, established by section 15 of the National School Lunch Act to make a continuing study of the Child Nutrition Programs of the U.S. Department of Agriculture, has scheduled a meeting for June 2–4, 1987.

**DATE:** The meeting will take place from 9:00 a.m. to 5:00 p.m. on Tuesday and Wednesday, June 2 and 3 and Thursday, June 4 from 9:00 a.m. to noon.

**ADDRESS:** The meeting will be held at the Days Inn of Crystal City, 2000 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lou Pastura, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3620.

**SUPPLEMENTARY INFORMATION:** The meeting will be devoted primarily to a discussion of the Department's response to the Council's recommendations contained in the 1986 biennial report to the President and the Congress as well as current program issues. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Mr. George A. Braley, Executive Secretary, National Advisory Council on Child Nutrition, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: April 9, 1987.

**S. Anna Kondratas,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 87–8515 Filed 4–15–87; 8:45 am]

BILLING CODE 3410-30-M

### Soil Conservation Service

### Bolton Critical Area Treatment RC&D Measure, Warren County, NY

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bolton Critical Area Treatment RC&D Measure, Warren County, New York.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion along a roadbank in the Town of Bolton which results from seepage, unstable slopes, and lack of protective vegetative cover. The amount of sediment entering Huddle Brook and Lake George will be reduced through the installation of project measures. The planned works of improvement include the installation of a drainage system to intercept seepage, the installation of a rock revetment along the lower portion of the slope, and the reshaping and seeding of the eroding bank.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.)

Dated: March 19, 1987.

**Paul A. Dodd,**

*State Conservationist.*

[FR Doc. 87–8491 Filed 4–15–87; 8:45 am]

BILLING CODE 3410-16-M

### Soil Conservation Service

### Availability of a Record of Decision; Wolf River Watershed, KS

**AGENCY:** Soil Conservation Service.

**ACTION:** Notice of availability of a record of decision.

**SUMMARY:** James N. Habiger, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001 through 1008, in the State of Kansas, is hereby providing notification that a record of decision to proceed with the installation of the Wolf River Watershed is available. Single copies of this record of decision may be obtained from James N. Habiger at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** James N. Habiger, State Conservationist, Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401. Telephone 913–823–4578.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires

intergovernmental consultation with State and local officials)

Dated: April 16, 1987.

James N. Habiger,

*State Conservationist.*

[FR Doc. 87-8538 Filed 4-15-87; 8:45 am]

BILLING CODE 3410-16-M

## Mineral County Schools Critical Area Treatment RC&D Measure Plan, West Virginia

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mineral County Schools Critical Area Treatment RC&D Measure, Mineral County, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505 telephone 304-291-4151.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environment impact statement are not needed for this project.

### Mineral County Schools Critical Area Treatment Measure, West Virginia Notice of a Finding of No Significant Impact

The measure consists of critical area treatment at the Frankfort High School. The 6 acre site has a severe erosion and sedimentation problem. The site will be reshaped to control the surface water. Surface and subsurface drains will be installed to remove the excess water from the playground, and will be revegetated as an intensive use area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Rollin N. Swank,

*State Conservationist*

April 9, 1987.

[FR Doc. 87-8613 Filed 4-15-87; 8:45 am]

BILLING CODE 3410-16-M

## COMMISSION ON CIVIL RIGHTS

### Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:30 p.m., on May 15, 1987, at the Holiday Inn Airport, 5000 North 10th Street, Birmingham Alabama. The purpose of the meeting is to develop program plans and to obtain information on the status of civil rights in the State.

Persons desiring additonal information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

Susan Prado,

*Acting Staff Director.*

[FR Doc. 87-8539 Filed 4-15-87; 8:45 am]

BILLING CODE [illegible]

### Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:00 p.m., on May 4, 1987, at 55 West Monroe Street, Suite 2400, Chicago, Illinois. The purpose of the meeting is to develop program plans and to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh J. Schwartzberg, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

Susan Prado,

*Acting Staff Director.*

[FR Doc. 87-8540 Filed 4-15-87; 8:45 am]

BILLING CODE [illegible]

### Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on May 27, 1987, at the Holiday Inn, 1313 Nocollet Mall, Minneapolis, Minnesota. The purpose of the meeting is to develop program plans and to obtain information on the status of civil-rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge L. Bartelle, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

Susan Prado,

*Acting Staff Director.*

[FR Doc. 87-8541 Filed 4-15-87; 8:45 am]

BILLING CODE [illegible]

### Nebraska Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on May 11, 1987, at the University of Nebraska, College of Law, Lincoln, Nebraska. The purpose of the meeting is to develop program plans and to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard F. Duncan, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

**Susan Prado,**

*Acting Staff Director.*

[FR Doc. 87–8542 Filed 4–15–87; 8:45 am]

BILLING CODE 6335-01-M

### Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on May 28, 1987, at the U.S. Courthouse, Room 22, 85 Marconi Boulevard, Columbus, Ohio. The purpose of the meeting is to develop program plans and to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald G. Prock, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

**Susan Prado,**

*Acting Staff Director.*

[FR Doc. 87–8543 Filed 4–15–87; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[Docket No. 61090–6237]**

### Allocation of Duty-Exemption for Calendar Year 1987 for the Watch Producer Located in Guam

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

**ACTION:** Allocation of duty-exemption for calendar year 1987 for the watch producer in Guam.

**SUMMARY:** This action allocates the 1987 duty-exemption for the watch producer located in Guam pursuant to Pub. L. 97–446.

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 377–1660.

**SUPPLEMENTARY INFORMATION:** Pursuant to Pub. L. 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the insular possessions and the Northern Mariana Islands. The Departments established for 1987 a total quantity of watches and watch movements which could be entered free of duty from the insular possessions and the Northern Mariana Islands of 6,000,000 units, 4,000,000 of which could be allocated to Virgin Islands producers, 1,000,000 to Guam producer, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (52 FR 3794).

The criteria of the calculation of the 1987 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations (15 CFR Part 303) as amended on February 6, 1987 (52 FR 3794). The allocation of duty-exemption for 1987 among watch producers located in the Virgin Islands was published on March 12, 1987 (52 FR 7647).

The Departments have verified the data submitted on application form ITA–334P by the producer in Guam and inspected the current operation of the producer in accordance with Sec. 303.5 of the regulations.

Publication of the Guam data would disclose competitively sensitive information since there is only one producer in Guam.

The duty-exemption allocation for calendar year 1987 for Guam is as follows:

Name of Firm, Timewise Ltd.; Annual Allocation, 500,000.

**Joseph A. Spetrini,**

*Deputy to the Deputy Assistant Secretary for Import Administration.*

**Richard T. Montoya,**

*Assistant to Secretary for Territorial and International Affairs.*

[FR Doc. 87–8580 Filed 4–15–87; 8:45 am]

BILLING CODE 3510-DS-M

BILLING CODE 4310-93-M

### International Trade Administration

### Export Trade Certificates of Review

**AGENCY:** International Trade Administration Commerce.

**ACTION:** Notice of Revocation of Export Trade Certificates of Review Nos. 84–00003 and 84–00013.

**SUMMARY:** The Department of Commerce had issued export trade certificates of review to Am-Tech Export Trading Company, Inc. (Am-Tech) and Equinomics, Inc. (Equinomics). Because the certificate holders have failed to file annual reports as required by law, the Department is revoking both certificates. This notice summarizes the notification letters sent to Am-Tech and Equinomics.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131 This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR Part 325 (1986). Pursuant to this authority, certificates of review were issued on May 7, 1984 and June 24, 1984 to Am-Tech (application #84–00003) and Equinomics (application #84–00013), respectively.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. Section 308 of the Act, 15 U.S.C. 4018; § 235.14(a) of the Regulations, 15 CFR 325.14(a). The

annual report is due within 45 days after the anniversary date of the issuance of the certificate of review. Section 325.14(b) of the Regulations, 15 CFR 325.14(b). Failure to submit a complete annual report may be the basis for revocation. Sections 325.10(a)(3) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) & 325.14(c).

On April 24, 1986, the Department of Commerce sent to Am-Tech a letter containing annual report questions with a reminder that its annual report was due on June 21, 1986. Additional reminders were sent on July 8, July 21, and August 8, 1986. Similar letters were sent on June 13, September 2, September 15, and October 2, 1986 to Equinomics, whose annual report was due on August 9, 1986. The Department received no response from Am-Tech or Equinomics to any of these letters.

On December 4, 1986, and in accordance with § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department sent letters to notify Am-Tech and Equinomics that the Department was formally initiating the process to revoke their certificates for their failure to file a annual report. In addition, a summary of these letters allowing Am-Tech and Equinomics thirty days to respond was published in the **Federal Register** on December 12, 1986 at 51 FR 44824. Pursuant to § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Am-Tech and Equinomics to respond to be an admission of the statements contained in their respective notification letters.

The Department has determined to revoke the certificates issued to Am-Tech and Equinomics for their failure to file an annual report. The Department has sent letters, dated April 9, 1987, to notify Am-Tech and Equinomics of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by such this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register**. Sections 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) & 325.11.

Dated: April 10, 1987.

**George Muller,**

*Acting Director Office of Export Trading Company Affairs.*

[FR Doc. 87-8579 Filed 4-15-87; 8:45 am]

BILLING CODE [illegible]

## National Oceanic and Atmospheric Administration

[Docket No. 70471-7071]

## Information Relating to Bowhead Whales

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of documents and request for public comment.

**SUMMARY:** Information is published by NOAA that is used in the development of the U.S. position to be presented before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. By this notice NOAA is advising the public of the availability of and soliciting public comment on the Administrator's initial discretionary views on (1) the current population level and annual net recruitment rate of the bowhead whale, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, and (3) the level of take of bowhead whales that is consistent with the provisions of the IWC aboriginal/subsistence whaling management scheme. Also available upon request is the list of documents reviewed and used in formulating these initial views.

**DATE:** Written comments on the Administrator's initial views must be submitted by May 18, 1987.

**ADDRESS:** The Administrator's initial views and the list of documents reviewed and used in formulating these initial views are available from Becky Rootes, Office of International Fisheries, National Marine Fisheries Service, Room 919, Universal South Building, 1825 Connecticut Avenue NW., Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Becky Rootes, (202) 673-5281.

(16 U.S.C. 1361-1407, 1531-1543, 916)

Dated: April 10, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries.*

[FR Doc. 87-8586 Filed 4-15-87; 8:45 am]

BILLING CODE [illegible]

## Patent and Trademark Office

## Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Switzerland

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Issuance of interim order.

**SUMMARY:** The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organizations Order 10-14, the authority under section 914 of Title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On January 27, 1987, the Swiss Federal Intellectual Property Office submitted a petition on behalf of the Swiss Confederation for the issuance of a interim order. Comments on the petition were requested on or before February 28, 1987, and a hearing was set for March 5, 1987. Requests to testify were received from the Semiconductor Industry Association (SIA) and the Swiss Confederation.

At the March 5, 1987, hearing, after receiving assurance that the protection afforded under Swiss law would be generally similar to that under the SCPA, the SIA supported the issuance of an interim order. SIA urged that, in view of their areas of concern, any order issued should be from one year, should the Commissioner's authority to issue such orders be extended beyond November 8, 1987. The Federation of Swedish Industries urged that the order should issue for one year or for the remaining term of the Commissioner's authority. The Commissioner has determined that Switzerland has demonstrated good faith efforts and reasonable progress toward providing protection for mask works of U.S. nationals and domiciliaries, and has determined that an order should issue until November 8, 1987.

**DATES:** The effective date of this order shall be January 27, 1987, the date of receipt of the petition.

**TERMINATION DATE:** This order shall terminate on November 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC., 20231.

**SUPPLEMENTARY INFORMATION:** Chapter 9 of Title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

"A series of related images, however, fixed or encoded

(A) Having or representing the perdetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product."

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C. 902. Either (i), the owner of the mask works must be a national, domiciliarly, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; (ii) the mask work must be first commercially exploited in the United States; or (iii) the mask work must come within the scope of a Presidential proclamation. Section 902(a)(2) provides that where:

A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commerically exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commerically exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extent the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and soverign authorities of foreign nations if the Secretary finds:

"(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A); or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorizes of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commerical exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works."

At the March 5, 1987, hearing, Switzerland was represented by Dr. Roland Grossenbacher, Assistant Director of the Swiss Federal Intellectual Property Office, Mr. Max Hohl representing the Swiss Federation of Commerce and Industry, and Dr. Rudolf Ramsauer, of the Swiss Embassy in Washington. Dr. Ramsauer introduced the witnesses and explained that Dr. Grossenbacher spoke for the Swiss Administration as a whole. Dr. Grossenbacher explained Swiss legislative developments concerning copyright and unfair competition law as they related to the protection of semiconductor chips in the short term, in the medium term and in the long term. He explained that, at present, the 1943 law against unfair competition and the copyright law would provide some measure of protection for semiconductor chip products.

In the medium term, he explained that Switzerland has passed a new unfair competition law which should enter into effect on April 13, 1987. It seems reasonably certain that semiconductor chips will enjoy protection under that law. Products protected under that law will be subject to provisions regarding their reproduction that are roughly equivalent to the SCPA's provisions on reverse engineering. Protection under the Act will be of indefinite term. That is, a product will be protected against copying until the production costs of the product have been amortized.

Dr. Grossenbacher explained further that, in the long term, the Swiss parliament is considering a new copyright law, and that it has directed the Swiss Government to study the protection of technical products. In this context, Switzerland is considering the appropriateness of adopting special provisions for chip protection, possibly as a separate chapter in the copyright law. In this work the Swiss are considering carefully the U.S. SCPA, the directive for the protection of integrated circuits in the European Community, and the activity concerning the development of a new treaty for the protection of integrated circuit layouts in the World Intellectual Property Organization.

Mr. Hohl explained that Swiss industry strongly supports high levels of intellectual property protection, and that it is especially interested in an appropriate legal regime for the protection of chips. Swiss industry is cooperating closely with the Government study commission and supports speedy provision of specific protection for semiconductor chips in Switzerland. Mr. Hohl asserted that semiconductor chip products were not subject to misappropriation in Switzerland.

The SIA was represented by its counsel Daryl Hatano, who expressed SIA's appreciation for the Swiss presentation. He agreed that there was no evidence of misappropriation of U.S. mask works in Switzerland. If certain questions could be clarified the SIA would support an interim order for Switzerland. The first is that the Swiss Government is working toward legislation that will provide protection on substantially the same basis as the SCPA. This means legislation that includes the following elements:

(1) Protection of subject matter that includes semiconductor mask works;

(2) Originality, rather than novelty, as the criterion for protection;

(3) A minimum term of protection of at least 10 years;

(4) An innocent infringement provision similar to that in the SCPA; and,

(5) Provisions allowing reverse engineering as in the SCPA.

Mr. Hatano also expressed concern over the indefinite term of protection under the new law on unfair competition and the provisions of that law which would permit copying if an appropriate expenditure were involved.

Dr. Grossenbacher explained that when legislation to protect chips was established, the term of protection in that legislation would govern, and that the 10-year term of protection was receiving serious consideration. He further explained that Switzerland would not legislative chip protection "in another way than to grant protection on substantially the same basis as the EEC and the U.S. Act." Given these assurances, Mr. Hatano concluded that the SIA would support an interim order for Switzerland.

The record supports the conclusion that the Swiss Confederation is making good faith efforts and reasonable progress toward establishing a system for the protection of mask works in Switzerland on substantially the same basis as under the SCPA. There is no evidence of misappropriation of U.S. mask works in Switzerland, and the support that Switzerland has shown for a new chip protection treaty is strong evidence of Swiss efforts to assist the development of international comity in this important area of intellectual

property law. Accordingly, I have concluded that an interim order should issue for nationals, domiciliaries and sovereign authorities of the Swiss Confederation. This order shall endure until November 8, 1987, and the effective date shall be January 25, 1987, the date of receipt of the petition.

**Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Switzerland**

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on March 5, 1987, I find that: Switzerland is and has, since January 25, 1987, been making good faith efforts toward enacting legislation that will be in compliance with 17 U.S.C. 902(a)(2); Swiss nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation of unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Switzerland are entitled to protection under Chapter 9 of 17 U.S.C. subject to compliance with all formalities specified therein. The effective date of this order shall be January 25, 1987, and this order shall terminate on November 8, 1987.

Dated: April 9, 1987.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 87–8525 Filed 4–15–87; 8:45 am]

BILLING CODE 3510–16–M

## COMMISSION ON MERCHANT MARINE AND DEFENSE

### Closed Meeting

**SUMMARY:** The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, April 27, 1987, Beginning 9:00 a.m. and ending 12:30 p.m.; Tuesday, April 28, 1987, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22301–0268.

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301–0268, telephone number (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and deliberate facts and opinions obtained from briefings and public hearings.

**SUPPLEMENTARY INFORMATION:** The executive meetings of the Commission will be closed to the public pursuant to Title 5 U.S. Code, sections 552b(c)(1) and 552b(c)(4), in the interests of national security and to prctect proprietary information provided to the Commission in confidence. A public meeting and hearing on seagoing labor, announced previously, will be held at 2:00 p.m. on Monday, April 27, 1987, in the Center for Naval Analyses Auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

**Allan W. Cameron,**

*Executive Director, Commission on Merchant Marine and Defense.*

[FR Doc. 87–8614 Filed 4–15–87; 8:45 am]

BILLING CODE 3820–01–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on Apirl 13, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C., (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

On December 30, 1985 a notice was published in the **Federal Register** (50 FR 53182) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Category 647, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

In addition, on December 30, 1986 a notice was published in the **Federal Register** (51 FR 47041) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 339 and 347/348, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, CITA is adjusting the limits for Categories 647, 339 and 347/348 for swing. The reduction in limits to account for swing applied to Categories 647, 339 and 347/348 will follow in a subsequent directive.

Charges amounting to 42,236 dozen for merchandise in Category 647 exported in 1986 and charged to the current restraint limit will be deducted, charging the same amount to the 1986 restraint limit.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established restraint limits for Categories 647, 339 and 347/348 and to deduct charges as designated.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the

bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 13, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury,*
*Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 24, 1985 and December 23, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the 12-month periods which began, in the case of Category 647, on January 1, 1986; and, in the case of Categories 339 and 347/348, on January 1, 1987.

Effective on April 13, 1987, the directives of December 24, 1985 and December 23, 1986 are further amended to include adjustments to the previously established restraint limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended [1]

| Category | Adjusted 12-Month Restraint Limit [1] (Jan. 1, 1986–Dec. 31, 1986) |
|---|---|
| 647 | 886,958 dozen |

| Category | Adjusted 12-Month Restraint Limit [2] (Jan. 1, 1987–Dec. 31, 1987) |
|---|---|
| 339 | 1,029,419 dozen |
| 347/348 | 2,009,116 dozen |

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.
[2] The limit has not been adjusted to account for any imports exported after December 31, 1986.

Also effective on April 13, 1987, you are directed to deduct charges for goods exported in 1986, amounting to 42,236 dozen, from the import restraint limit established for Category 647 for the period which began on January 1, 1987 and extends through December 31, 1987. This same amount is to be charged to the 1986 import restraint limit for Category 647.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8504 Filed 4–15–87; 8:45 am]

BILLING CODE 3510–DR–M

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limit in that agreement year; (2) the specific limits for certain categories may be increased for carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

## Establishment of Staged Entry for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China; Correction

April 13, 1987.

In the **Federal Register** notice and the letter to the Commissioner of Customs published on March 25, 1987 (52 FR 9528), the effective date should be changed to April 2, 1987.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8570 Filed 4–15–87; 8:45 am]

BILLING CODE 3510–DR–M

## Directive on Deducting Charges of Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

April 13, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 16, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

### Background

During consultations held on March 13, 1987 between the Governments of the United States and the United Mexican States, the United States Goverment agreed to deduct the 1986 overshipments from the 1987 restraint limit established for Categories 310–320, 360–369, 410–429, 464–469, 610–629, 665, 669 and 670, as a group, which were reflected in 1987 import charges in Categories 313, 315, 317, 318, 319, 320, 360, 362, 363, 369, 410, 464, 465, 612, 625, 626, 627, 665, 669 and 670.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct charges as indicated.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

Apirl 13, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, I request that, effective on April 16, 1987, you deduct charges in the following categories made to the limit established for the period January 1, 1987 through December 31, 1987 for cotton, wool and man-made fiber textile products in Categories 310–320, 360–369, 410–429, 464–469, 610–627, 665, 667–670, as a group. These charges are for goods exported during 1986.

| *Category* | *Amount to be deducted* |
|---|---|
| 313 | 965,386 square yards. |
| 315 | 343,152 square yards. |
| 317 | 600,315 square yards. |
| 318 | 232 square yards. |
| 319 | 49,329 square yards. |
| 320 | 8,497 square yards. |
| 360 | 15 numbers. |
| 362 | 38 numbers. |
| 363 | 264,312 numbers. |
| 369 | 161,041 pounds. |
| 410 | 4,406 square yards. |
| 464 | 146 pounds. |
| 465 | 413 square feet. |
| 612 | 50,957 square yards. |
| 625 | 2,860 pounds. |
| 626 | 4,161 square yards. |
| 627 | 4,918 pounds. |
| 665 | 76 square feet. |
| 669 | 72,736 pounds. |
| 670 | 80,850 pounds. |

This letter will be published in the Federal Register.

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements*

[FR Doc. 87-8575 Filed 4-15-87; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Peru

April 13, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 1, 1987. For further information contact William Dawson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985 between the Governments of the United States and Peru established limits for cotton and wool textile products in Categories 300, 301, 313, 315, 317, 319, 320, 338/339 and 410; Categories 330-359 (cotton apparel group), and Categories 400-469 (wool group), produced or manufactured in Peru and exported during the twelve-month period beginning on May 11, 1987 and extending through April 30, 1988. The directive to the Commissioner of Customs which follows this notice establishes the new limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreements, but are designed to assist only in the implementation of certain of its provisions.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 13, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Peru and exported during the twelve-month period beginning on May 1, 1987 and extending through April 30, 1988, in excess of the following restraint limits:

| *Category* | *Twelve-month restraint limit* |
|---|---|
| 330-359 | 10,000,000 square yards equivalent. |
| 400-469 | 4,000,000 square yards equivalent. |
| 300 | 3,000,000 pounds. |
| 301 | 2,250,000 pounds. |
| 313 | 20,035,750 square yards. |
| 315 | 4,410,155 square yards. |
| 317 | 18,375,845 square yards of which not more than 5,512,693 square yards shall be in Category 317pt.[1] |
| 319 | 24,500,860 square yards. |
| 320 | 17,763,123 square yards of which not more than 4,900,172 square yards shall be in Category 320pt.[2] |
| 410 | 1,500,000 square yards. |
| 338/339 | 481,500 dozen of which not more than 321,000 dozen shall be in Category 338/339pt.[3] |

[1] In Category 317, only TSUSA items 320.—through 331.—with statistical suffixes 50, 87 and 93.

[2] In Category, 320, only TSUSA numbers 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[3] In Category 338/339, all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2808, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Peru, which have been exported in the United States on and after May 1, 1986 and extending through April 30, 1987, shall, to the extent of any unfilled balances, be charged to the levels established for that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of January 3, 1985 between the Governments of the United States and Peru which provide, in part, that: (1) specific limits may be exceeded by designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be increased for carryover and carryforward not to exceed 11 percent, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-8576 Filed 4-15-87; 8:45 am]

BILLING CODE 3510-DR-M

## Rescission of Call on Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

### Background

On June 18, 1986, a notice was published in the **Federal Register** (51 FR 22108) announcing that the Government of the United States had requested the Government of Bangladesh to enter into consultations concerning exports to the United States of certain cotton and man-

made fiber playsuits in Category 337/637, produced or manufactured in Bangladesh.

The purpose of this notice is to announce that, pursuant to an agreement, effected by exchange of letters dated March 27, 1987, between the Governments of the United States and Bangladesh, the United States Government has agreed to withdraw the request for consultations on this category. Should it become necessary to discuss this category with the Government of Bangladesh at a later date, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 14, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-8577 Filed 4-15-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Tuesday, 12 May 1987.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 13, 1987.

[FR Doc. 87-8617 Filed 4-15-87; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Air Force

### USAF Scientific Advisory Board; Strategic Cross-Matrix Panel; Meeting

April 16, 1987.

The USAF Scientific Advisory Board Strategic Cross-Matrix panel will meet at the Pentagon, Washington, DC, Room 5D982, on May 20th, 1987, from 8:00 a.m. to 5:00 p.m..

The purpose of the meeting is to survey the issues associated with the development of the rail-garrison ICBM.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-8545 Filed 4-15-87; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Technology and Air Base Performance Ad Hoc Committee; Meeting

April 7, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Technology and Air Base Performance will meet at the Rand Corporation, 1700 Main St. Santa Monica, CA on May 5 and May 6, 1987

The purpose of the meeting is to receive briefings on and to discuss studies on air base operability, survivability, and basing posture conducted by the Rand Corp.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-8544 Filed 4-15-87; 8:45 am]

BILLING CODE 3910-01-M

## Corps of Engineers, Department of the Army

### Intent To Prepare an Environmental Impact Statement Associated With Bank Stabilization Measures in Order To Preserve and Protect The Fort Toulouse National Historic Landmark and Taskigi Indian Mound, Alabama River, in Elmore County, AL

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:**

**1. Proposed Action**

Perform bank stabilization measures to preserve and protect the Fort Toulouse National Historic Landmark and Taskigi Indian Mound. The protection measure authorized by the Water Resources Development Act of 1986 (Pub. L. 99-662) consists of constructing a curved 4,500-foot long channel cutoff inside of the existing river bend and fill a portion of the severed bendway adjacent to the cultural resources with the excavated material. Slope protection will involve the placement of stone filter and riprap on the outside of the constructed curved channel for approximate 3,600 feet.

**2. Alternatives**

The following alternatives will be evaluated:

*a. No Action*

This alternative will result in no

anticipated change in existing conditions.

b. Construct a straight channel extending approximately 6,900 feet in length which would eliminate all flow past Ft. Toulouse. In addition, the severed bendway would require complete filling for approximate 2,000 feet fronting the active slide zone.

c. Stabilize the active slide zone by the placement of quarry run stone on the foot of the sliding bank. Dredging would be required to compensate for the area occupied by the stone. Further slope protection would include the placement of stone on the outside of the existing slope upstream for approximate 1,200 feet.

**3. Scoping Process**

a. The scoping process, as outlined by the Council on Environmental Quality in the November 29, 1978 **Federal Register**, National Environmental Policy Act of 1969—Regulations, will be utilized to involve Federal, State, local agencies and other interested persons. Identification of significant issues to be addressed in the Environmental Impact Statement will be determined through the scoping process. The views and concerns of agencies and individuals will be obtained through personal telephone and mailing communications, as well as scoping meetings.

b. The Fish and Wildlife Service of the Department of Interior will be invited to be a cooperating agency because of the importance of wildlife habitat near the proposed site. Further coordinating efforts will be made with Alabama State Historical Preservation Officer and the National Park Service of the Department of the Interior due to the sensitivity of culture resource involved. Coordination required by other laws and regulations will also be conducted.

**4. EIS Preparation**

Estimated date of availability to the public May 1988.

**ADDRESS:** Questions about the proposed action and Environment Impact Statement can be answered by: Mr. Brian Peck, PD–EI, U.S. Army Engineer District, Mobile, Post Office Box 2288, Mobile, Alabama 36628, Telephone: (205) 690–2750, FTS 537–2750.

Dated: March 24, 1987.

**C. Hilton Dunn, Jr.,**

*Colonel, CE Commanding.*

[FR Doc. 87–8493 Filed 4–15–87; 8:45 am]

BILLING CODE 3710–92–M

## San Francisco District; Intent To Prepare a Draft Supplemental Environmental Impact Statement; Richmond Harbor Deep-Draft Navigation Improvements Contra Costa County, CA

**1. Summary**

The proposed action is the modification of approximately four miles of the Richmond Inner Harbor Channel in Contra Costa County. Richmond Harbor is located approximately 14 miles northeast of the Golden Gate Bridge. It is comprised of an Outer and Inner Harbor.

Richmond Outer Harbor is about four miles long and includes the 600′ wide southampton Shoal Channel beginning at a point midway between Angel Island and the Richmond Long Wharf, and the Long Wharf Maneuvering Area. The Southampton Shoal Channel and the Long Wharf Maneuvering Area were authorized and constructed to a depth of −45′ MLLW under the John F. Baldwin Ship Channel Project.

The Richmond Inner Harbor is about four miles long and extends from the south end of the Maneuvering area to the head of the Santa Fe Channel. The Inner Harbor Channel width varies. It is 600′ wide in the entrance channel; between 500′ and 600′ wide in the Potrero Reach which is the stretch of channel between Pt. Richmond and Pt. Potrero; 1105′ wide (720′ at −35′ MLLW and 430′ at −30′ MLLW) at the Pt. Potrero turn, and 850′ in the Inner Harbor Channel. The Santa Fe Channel is 200′ wide. The existing Inner Harbor depth is −35 feet MLLW. A 10,000-foot breakwater extends in a westerly direction from the north end of Brooks Island and protects the shore and channel between Point Potrero and Point Richmond.

The Richmond Channel is no longer adequate to efficiently and cost-effectively accommodate modern deep-draft vessels. The Corps of Engineers and the Port of Richmond are planning to construct a turning basin north of the Potrero turn at the Old Ford Channel, to deepen the channel, and to dispose of dredged material at an ocean disposal site located outside the Golden Gate. Environmental impacts of the proposed construction were assessed in 1981, and reported in the *Final Environmental Impact Statement, Deep-Draft Navigation Improvements of Richmond Harbor Channels.* The FEIS was filed with the Environmental Protection Agency on March 14, 1982. Changes in the project requiring preparation of a Supplemental EIS included:

*a. Disposal of Dredged Material*

The FEIS anticipated that 7.2 million cubic yards of sediment would be disposed at the in-Bay site situated adjacent to Alcatraz Island (SF–11); however, the Alcatraz site has been accumulating sediment more rapidly than it can be dispersed and disposal of dredged material at an ocean disposal site is now under consideration. The former 100-fathom ocean disposal site has not been available since its inclusion in 1981 in the Gulf of the Farallones National Marine Sanctuary. The Corps, in conjunction with the Environmental Protection Agency, is in the process of identifying and selecting new ocean disposal site. Final designation of EPA is scheduled for February 1988; however, under section 103 of the Marine Protection Research an Sanctuaries Act the Corps may select and use a site for a specific project. The determination of the appropriate disposal alternative will be described in the Supplemental EIS.

*b. Phased Construction*

In the FY 85 Appropriation Act, Congress authorized the Richmond Harbor project for a FY 86 start; however, the Port of Richmond, as local sponsor, has requested phased construction of the project in order to ameliorate their cost-sharing obligations. The Inner Harbor project extends from the south end of the Long Wharf Maneuvering Area to the entrance of the Santa Fe Channel. The Santa Fe Channel and Lauritzen Canal are not included in the project.

(1) *Phase I Construction*

The existing Inner Harbor Channel would be deepened from −35 feet MLLW to −38 feet MLLW. A turning basin 1200 feet in diameter would be constructed south of the Old Ford Channel. 1.4 million cubic yards of fine-grained sediment and 2600 cys. of rock would be removed from the channel; 82,000 cubic yards of fine-grained sediment from the berthing areas. Phase I construction is anticipated to begin in October 1988.

(2) *Phase II Construction*

It is anticipated that the channel would be further deepened to −41 feet MLLW; the turning basin enlarged to 1425 feet in diameter. The need for widening the channel is being investigated and, if necessary, would be constructed during Phase II. Approximately 3.9 million cubic yards of sediment and 3690 cys. of rock would be removed from the channel and turning basin. Construction of Phase II would be

deferred until requested by the local sponsor and is unlikely to occur within the next five years; therefore, the Supplemental EIS will address the Phase I construction impacts only.

*c. Annual Maintenance*

Annual dredging requirements for Phase I of the project would be increased by 77,000 cubic yards. Previously the annual increase for the entire project was estimated at 237,000 cubic yards.

*d. Rock Escavation*

In Phase I, approximately 2600 cubic yards of fractured sandstone rock at two areas adjacent to the Potrero Sharp turn would be removed and deposited at the site of the former Kaiser Shipyard No. 3. The shipyard is also known as Richmond Shipyard No. 3 and has been determined eligible for listing in the *National Register of Historic Places.* In Phase II 3690 cubic yards of rock would be removed. The disposal location of rock removed during Phase II has not been determined.

**2. Alternatives**

Several alternative plans (including "No Action") were evaluated in the Final Feasibility Report and Environmental Statement for the Richmond Harbor navigation improvements. The environmental impacts of the channel deepening are the same as those for the original project. Changes in conditions at the Alcatraz disposal site have resulted in the need to reconsider disposal site alternatives including use of an ocean disposal site.

**3. Scoping**

Federal, State and local agencies, and interested private organizations and individuals are invited to submit written comments on the proposed action within 30 days of the date of this notice to Rod Chisholm, Chief, Environmental Branch, San Francisco District Corps of Engineers, 211 Main Street, San Francisco, California 94105 (ATTN: Patricia Duff, SPNPE-R).

**4. Important Issues**

a. The following environmental issues have been identified and addressed in the Final Environmental Impact Statement:

(1) Water Quality
(2) Benthos
(3) Energy
(4) Navigation Safety
(5) Commercial Shipping
(6) Hydrography

b. Impacts identified as being relevant to the project modifications which will be addressed in the SEIS include:

(1) Water Quality—at the dredge site and disposal site
(2) Chemical Impacts
(3) Transport of Sediments
(4) Impacts on Marine Life
(5) Impacts on Cultural Resources

5. The Draft SEIS is scheduled for agency review on August 19, 1987; the final SEIS is scheduled for completion March 25, 1988.

6. Questions about the proposed Action and SEIS can be directed to Partricia Duff at (415) 974–0441 or FTS 454–0441.

Dated: April 2, 1987.

**Andrew M. Perkins, Jr.,**

*Lieutenant Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 87–8546 Filed 4–15–87; 8:45 am]

BILLING CODE 3710-FS-M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction act of 1980 (44 U.S.C Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Transportation Requirements.

**ADDRESS:** Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

**SUPPLEMENTARY INFORMATION:**

a. *Purpose:* FAR Part 47 and related clauses contain policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies and acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. (Examples Attached)

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *65,000;* responses per respondent, *5;* total annual responses, *325,000;* hours per response, *.23;* and total burden hours, *74,750.*

Obtaining copies of Proposals: Requesters may obtain copies from the General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0061, Transportation Requirements.

Dated: March 31, 1987.

**Margaret A. Willis,**

*FAR Secretariat.*

[FR Doc. 87–8547 Filed 4–15–87; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF EDUCATION

### Notice Inviting Applications for New Awards Under the Emergency Immigrant Education Program for Fiscal Year 1987 (CFDA No.: 84.162)

*Purpose:* This program provides financial assistance to SEAs for educational services and costs for eligible immigrant children enrolled in elementary and secondary public and nonprofit private schools.

*Deadline for Transmittal of Applications:* May 22, 1987.

*Applications Available:* Application packages may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 421, Reporters Building), Washington, D.C. 20202. The Office of Bilingual Education and Minority Languages Affairs will mail application forms and program information packages to all SEAs.

*Available Funds:* $30,000,000.00.

*Project Period:* 12 Months.

*Programmatic Information:* A State educational agency (SEA) may apply for a grant if it meets the eligibility requirements contained in 34 CFR 581.2 This program provides financial assistance to SEAs for educational services and costs for eligible immigrant children enrolled in elementary and secondary public and nonprofit private schools. To be eligible for a grant, an SEA must submit a count of immigrant children, referred to in 34 CFR 581.11(b)(1) and (2), eligible for assistance under the Emergency Immigrant Education

Program. The count must be conducted on April 13 or a date thereafter which is no later than May 1, 1987.

*Applicable Regulations:*

(a) The regulations governing the Emergency Immigrant Education Program in 34 CFR Part 581, and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 76, 77, 78, and 79.

*For Applications or Information:* For further information contact Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245–2609.

*Program Authority:* 20 U.S.C. 4101–4108.

(Catalog of Federal Domestic Assistance Number 84.162, Emergency Immigrant Education Program)

Dated: April 13, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–8611 Filed 4–15–87; 8:45 am]

BILLING CODE 4000–1–M

---

**Notice Inviting Applications for New Awards Under the Transition Program for Refugee Children for Fiscal Year 1987 (CFDA No.: 84.164)**

*Purpose:* Provides grants to SEAs to assist LEAs to provide supplemental educational services to meet the special needs of eligible refugee children.

*Deadline for Transmittal of Application:* May 22, 1987.

*Applications Available:* Application packages may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 421, Reporters Building), Washington, D.C. 20202. The Office of Bilingual Education and Minority Language Affairs will mail application forms and program information packages to all SEAs.

*Funds Available:* $15,886,000.00.

*Project Period:* 12 months.

*Programmatic Information:* A State educational agency (SEA) may apply for a grant if it meets the eligibility requirements contained in 34 CFR 538.2. To be eligible for a grant, an SEA must submit a count of refugee children eligible for assistance under the Transition Program for Refugee Children conducted on April 13, 1987 or a date thereafter which is no later than May 1, 1987.

A grant is made to an SEA based on the number of eigible children enrolled in public and nonprofit private schools in the State, using the weighting factors announced in this notice. Using the same formula, the SEA awards subgrants to local educational agencies (LEAs) in its State that propose to serve eligible chidren within their jurisdictions. As provided in 34 CFR 538.20, the SEA makes subgrants to LEAs within 60 days after the State receives the grant award funds. If a LEA does not apply to serve its eligible children, the SEA provides services directly to those children or arranges for provision of services to those children through subgrants, contracts, and cooperative agreements with other public and private nonprofit organizations, agencies and institutions.

Awards under this program are to provide educational services to eligible children during the 1987–1988 school year.

*Weighting factors:* Section 538.31 of the program regulations authorizes the Secretary to announce the weighting factors to be used in distributing funds under this program. For the award of fiscal year 1987 funds, the Secretary uses the following formula for distributing funds:

| Recency of arrival in the United States (in years) | Weighting factors by school level | |
|---|---|---|
| | Elementary grade levels | Secondary grade levels |
| Less than 1 year | 10 | 10 |
| 1 to 2 years | 3 | [illegible] |
| 2 to 3 years | 0 | [illegible] |
| 3 to 4 years | 0 | [illegible] |
| More than 4 years | 0 | 0 |

*Applicable Regulations:*

(a) The regulations governing the Transition Program for Refugee Children in 34 CFR Part 538, (b) Regulations governing the Refugee Resettlement Program in 45 CFR Part 400, and to the extent provided in 34 CFR 538.3(a)(2), (c) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 76, 77, and 78.

*For Applications or Information Contact:* Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245–2609.

*Program Authority:* 20 U.S.C. 4101–4108.

(Catalog of Federal Domestic Assistance Number 84.146, Transition Program for Refugee Children)

Dated: April 13, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–8612 Filed 4–15–87; 8:45 am]

BILLING CODE 4000–01–M

---

## DEPARTMENT OF ENERGY

### Intent To Prepare an Environmental Impact Statement on the Safety Enhancement Program for the N Reactor Located at the Hanford Site Near Richland, WA

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The DOE announces its intent to prepare an EIS in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, on the proposed Safety Enhancement Program (SEP) (Ref.: DOE/RL 87–05, N Reactor Safety Enhancement Program Summary Description, April 1987) for the N Reactor at the Hanford Site near Richland, Washington. While the DOE believes the continued operation of the N Reactor for the reproduction of defense materials does not present an unacceptable level of risk of a serious reactor accident for workers and the public, the purpose of the SEP is to assure that improvements are accomplished which will achieve even greater margins of safety.

The purpose of this NOI is to present pertinent background information on the proposed scope and content of the EIS and to solicit comments and suggestions for consideration in its preparation. Federal, State and local agencies, interested organizations and individuals desiring to submit comments or suggestions for consideration in the preparation of this EIS are invited to do so. Upon conmpletion of the Draft EIS (DEIS), its availability will be announced in the **Federal Register**, at which time comments from the public will again be solicited. Comments received during the DEIS public review period will be used in preparing the Final EIS.

**ADDRESS:** Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meetings may be submitted to: Mr. Tom Bauman, Office of Communications, U.S. Department of Energy, P.O. Box 550, Richland, Washington 99352.

**DATES:** To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions on the proposed scope of the EIS are invited from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS are

requested within seven days after the last public scoping meeting. Written comments received after this time will be considered to the degree practicable. Written comments should be submitted to Mr. Tom Bauman at the address above.

Public Scoping Meetings: Public scoping meetings are scheduled as follows:

1. Date: *May 11, 1987*
   Place: Richland Federal Building Auditorium, 825 Jadwin, Richland, Washington
   Time: 2:00 p.m.–5:00 p.m. and 7:00 p.m.–10:00 p.m.
2. Date: *May 12, 1987*
   Place: City Council Chambers, W. 808 Spokane Falls Blvd., Spokane, Washington
   Time: 2:00 p.m.—5:00 p.m. and 7:00 p.m.—10:00 p.m.
3. Date: *May 14, 1987*
   Place: Bonneville Power Administration Building Auditorium, 1002 NE. Holladay, Portland, Oregon
   Time: 2:00 p.m.—5:00 p.m. and 7:00 p.m.—10:00 p.m.

Additional information concerning the place and time of day of these scoping meetings may also be announced through local news media and will be available by calling Office of Communications, DOE-Richland telephne number (509) 376–7501.

**FOR FURTHER INFORMATION CONTACT:** For general information on the EIS process, contact: Carol M. Borgstrom, Acting Director (202) 586–9328, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Background Information: The DOE's Hanford Site is a 570 square mile, controlled access area that is dedicated to a variety of nuclear-related activities which include defense materials production, nuclear generated electrical power of commercial use, radioactive waste management, and nuclear and environmental research.

N-Reactor is a graphite-moderated, light-water-cooled, horizontal pressure tube nuclear reactor. The reactor core comprises an 1800-ton graphite cuboid, 33 ft. by 33 ft. at the face and 39 ft. long. A total of 1003 horizontal zircaloy-2 pressure tubes, designed for 1825 lb/in$^2$ (psi) of system pressure, penetrate the graphite moderator. The reactor coolant flows through the pressure tubes and transfers heat from approximately 366 metric tons of zircaloy-clad, low-enrichment, metallic uranium tube-in-tube fuel elements to the secondary coolant in the steam generators.

The N-Reactor has operated since 1963 for production of special nuclear materials and since 1966 for production of special nuclear materials and by-product steam (dual purpose operation). The N-Reactor was designed to operate at 4000 megawatts thermal (MWt) with provisions for conversion to electric power generation. During normal production of special nuclear materials and by-product steam, the excess steam is delivered to the Washington Public Power Supply System to produce electricity. While most of the steam produced is available to generate electricity, some is reserved to power the reactor coolant system pump drive turbines and the in-plant turbine generator. Backup cooling systems and standby power sources are provided to ensure adequate safety and continuity of operation of the reactor.

The Office of the Assistant Secretary for Environment, Safety and Health accelerated the planned Technical Safety Appraisal, conducted a special safety review of the confinement system and graphite fire protection, and a Design Review of the reactor's design safety basis following the April 26, 1986 accident at the Chernobyl Nuclear Power Plant in the Soviet Union. In addition, six outside expert consultants were commissioned by the Secretary of Energy to conduct a further review of the reactor in light of the Chernobyl accident. Reviews were also conducted by the General Accounting Office and a review group established by former Governor Atiyeh of Oregon. The individual consultant reports and DOE reviews found that the reactivity excursion accident which occurred at Chernobyl is not possible at the N-Reactor due to inherent design differences between the two reactors. It was concluded by DOE that the probability of a serious accident is sufficiently low and that the continued operation of the N-Reactor does not present an unacceptable level of risk to workers or the public. However, at the conclusion of the N-Reactor safety reviews, it was decided to place the reactor in an extended stand down condition at the next scheduled outage so that certain of the planned safety improvements could be accelerated. This stand down has been scheduled for a six month period (and began in January 1987) during which a number of high priority tasks are being accomplished. The safety reviews that have been conducted on the N-Reactor since the Chernobyl accident have resulted in recommendations addressing the reduction of accident probability and the mitigation of potential accident consequences. Work is underway to install additional capabilities to reduce the probability of accidents and mitigate their consequences. The collection of activities that address all of these recommendations constitutes the N-Reactor Safety Enhancement Program (SEP). This program, the accelerated portion of which is presently being implemented, is designed to assure that necessary improvements are accomplished which will achieve even greater margins of safety.

**Proposed Action:**

The proposed action is to implement the SEP for the N-Reactor. Activities within the SEP can be divided into three major categories as follows:

*Category 1.* Plant improvements intended to achieve further reductions in the risks associated with potentially serious accidents. These include work to:

A. Install hydrogen monitoring instrumentation and install equipment to extend the capabilities of the reactor confinement system to mitigate the consequences of hydrogen evolution in confinement following a reactor accident.

B. Reduce the discharge of primary system coolant to the soil column in the event of an accident.

C. Install an alternate/supplemental Emergency Core Cooling System (ECCS) and improve reliability of the ECCS and Graphite Shield Cooling System (GSCS) in seismic and fire events.

D. Improve reactor control room habitability.

E. Provide improved remote reactor shutdown capability.

F. Upgrade or provide Emergency Control Center, Technical Support Center, and Operational Support Center.

G. Improve plant annunciation and emergency warning systems.

*Category 2.* Additional technical studies and evaluations. Descriptions of these technical studies and evaluations are provided in the SEP. The major studies include the following:

A. Conduct enhanced reactor core surveillance activities including pressure tube and graphite evaluation.

B. Complete a Level III Probabilistic Risk Assessment (PRA).

C. Improve confinement system testing.

D. Re-analyze hypothetical accidents.

E. Extend the analyses of hydrogen evolution during accidents.

F. Re-evaluate chemical forms and quantities of iodine releases as a result of an accident.

G. Develop equipment qualification techniques.

*Category 3.* Improvement of safety management systems including training. Descriptions of such safety management system improvements are listed in the Safety Enhancement Program.

While all portions of the SEP contribute in some sense to safety, the technical studies and evaluations and the improvement of management systems including training (Categories 2 and 3) and normal routine maintenance are not amenable to quantitative analysis. Accordingly, the EIS will contain qualitative analyses of these items. The DOE believes that these activities make a valuable contribution to continued safe operation of the N Reactor and invites public comments on the items described in these areas. During preparation of the EIS, DOE intends to continue to proceed with certain safety improvements which would not have an adverse environmental impact nor limit the choice of reasonable alternatives being considered, as provided for in the regulations of the Council on Environmental Quality (40 CFR 1506.1(a)).

**Alternatives to the Proposed Action:**

The proposed action is implementation of the SEP. Alternatives include:

1. *Design Alternatives of the Proposed Action:* Different designs and/or systems have been considered to achieve the desired safety enhancements for the plant modifications. Options under consideration for the modifications listed in Category 1 above include the following:

A. Hydrogen monitoring instrumentation and equipment to extend the capabilities of the reactor confinement system to mitigate the consequence of hydrogen evolution following a reactor accident.

(1) Monitoring:

(a) In-confinement monitoring or sample withdrawal system.

(b) Use of electrochemical or thermal conductivity sensors.

(2) Mitigation:

(a) Post-accident inerting of confinement.

(b) Dilution by mixing with air into confinement.

(c) Localized burning within confinement.

(d) Recombination (thermal, flame, or catalytic).

(e) Maintain confinement in inerted condition during reactor operation.

B. Reduce the discharge of primary system coolant to the soil column in event of an accident.

(a) Full or partial physical/chemical treatment of effluent.

(b) Eliminate possibility of discharge to the old 1301–N crib.

(c) Use lower levels of Reactor Zone I for temporary storage of effluent.

(d) Provide a lined and covered emergency water retention basin.

C. Install an alternative/supplemental Emergency Core Cooling System (ECCS).

(a) Alternative (long-term) cooling, either once-through or recirculation, using either various Hanford water sources or a modified emergency water tank with pumps for circulation.

(b) Supplemental (short-term) supply from various sources to either the GSCS, the ECCS, or both.

(c) Provide improved separation of safety-related diesel-driven pumps.

(d) Upgrade GSCS to a safety-grade system (i.e., seismic, fire protection, etc.).

D. Improve reactor control room habitability.

(a) Modify control room to allow minimum of seven-day isolation period following a major plant accident.

E. Provide remote reactor shutdown capability.

(a) Make procedural modifications for use under emergency conditions.

(b) Provide a remote emergency shutdown panel.

F. Upgrade Emergency Control Center, Technical Support Center and Operational Support Center.

(1) Emergency Control Center:

(a) Various existing Hanford-site facilities.

(b) Construction of a new facility.

(c) Rattlesnake Mountain facility.

(2) Technical Support Center:

(a) Construction of a new facility.

(b) Utilize existing space in rear of Building 105–N Control Room.

(3) Operational Support Center:

(a) Utilize Building 105–N lunchroom.

(b) Utilize existing outage center.

G. Improve plant annunication and emergency warning systems.

(a) Issue radios to all personnnel within the protected area.)

(b) Extend currrent annunciation and warning systems.

(c) Utilize existing outage center.

2. No Action: The no-action alternative is the continued operation of the N Reactor with routine maintenance but without carrying out the Safety Enhancement program.

**Identification of Environmental Issues**

The following issues will be analyzed for the proposed action and alternatives during the preparation of the EIS. This list is intended neither to be all-inclusive nor a predetermination of the impacts:

- Effects on the general population and workers from radioactive and nonradioactive releases with and without the implementation of the SEP.
- Effect on air and water quality and other environmental consequences with and without implementation of the SEP.
- Applicable regulations and guidelines.
- Socioeconomic impacts to the surrounding communities.
- Mitigation measures.
- Cumulative effects.
- Irretrievable and irrreversible commitment of resources.

**Comments and Scoping**

All interested parties are invited to submit written comments or suggestions concerning the scope of the issues that should be addressed in the Draft EIS. They may also attend public scoping meetings at which oral comments and suggestions will be received.

DOE will establish procedures governing the conduct of the public scoping meetings. The meetings will not be conducted as evidentiary hearings, and those who choose to make statements may not be cross-examined by other speakers. To provide DOE with as much pertinent information as possible and as many views as can be reasonably obtained, and to provide interested persons with equitable opportunities to express their views, the following procedures will be used:

Those individuals desiring to make oral comments should mail their requests to Mr. Tom Bauman at the address listed above. DOE reserves the right to arrange the times and schedules of presentations to be heard and to establish procedures governing the conduct of the meeting. By May 4, 1987, interested individuals and organizations should notify DOE in writing of their desire to speak. Before the meetings DOE will, in turn, notify prospective speakers before the meeting of the times and schedules for presentations. Requests should include a telephone number for such notification. Those persons wishing to speak on behalf of an organization should identify their affiliation in their request. Also persons who have not submitted a request to speak in advance may register to speak at the scoping meeting and will be called on to present their comments if time permits. To assure that all persons wishing to make presentations can be heard, a 5 minute limit for each individual has been established.

2. If subsequent to the meetings, any person or organization desires to provide further information for the record it must be submitted to Mr. Tom

BEST COPY AVAILABLE

Bauman at the address listed above within one week after the last scoping meeting. Comments received after that date will be considered to the degree practicable.

3. A transcript of the meeting will be taken, retained by DOE, and made available for public review at the locations given below.

Those not desiring to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mr. Tom Bauman at the address listed above. When the Draft EIS is complete, its availability will be announced in the **Federal Register** and in local news media, and comments will again be solicited.

**Related NEPA Documentation**

NEPA documents have been or are being prepared for other activities at Hanford that are related to but not within the scope of the proposed SEP. These EIS's are:

1. U.S. Department of Energy, Draft Environmental Impact Statement, Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes, DOE/EIS–0113, Vol. 1, 2, and 3, March 1986. U.S. Department of Energy, Washington, DC.

2. U.S. Department of Energy, 1982 Final Environmental Impact Statement—Operation of PUREX and Uranium Oxide Plant Facilities, DOE/EIS–0089, 1982. U.S. Department of Energy, Washington, DC.

3. U.S. Energy Research and Development Administration, 1975 Final Environmental Statement, Waste Management Operations, Hanford Reservation, Richland, Washington, Vol. 1 and 2, ERDA–1538. U.S. Energy and Research Development Administration, Washington, DC.

**Other Documentation**

Copies of the Safety Enhancement Program (Ref.:DOE/ RL 87–05, N Reactor Safety Enhancement Program Summary Description, April 1987) and other DOE documents referenced in this notice that are planned to be used in preparing this EIS and other related background information are available for inspection at the following locations:

1. U.S. Department of Energy, Forrestal Building, Freedom of Information Reading Room IE–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

2. Richland Public Library, Swift and Northgate Richland, WA 99352, (509) 943–9117.

3. Spokane Public Library, Comstock Building Library, W. 906 Main Avenue, Spokane, WA 99201, (509) 838–4226.

4. Timberland Regional Library, 415 Airindustrial Way SW., Olympia, WA 98501. (206) 943–5001

5. Multnomah County Library, 801 SW. 10th Avenue, Portland, OR 97205, (503) 233–7201

6. U.S. Department of Energy, Public Reading Room, P.O. Box 900, Federal Building, Room 157, Richland, WA 99352, (509) 376–8583.

7. Walla Walla Public Library, 238 E. Alder, Walla Walla, WA 99362, (509) 527–4550.

8. Seattle Public Library, 1000 4th Avenue, Seattle WA 98104, (206) 625–2665.

Signed in Washington, DC, this 10th day of April, 1987, for the United States Department of Energy.

**Mary L. Walker,**

*Assistant Secretary Environment, Safety and Health.*

[FR Doc. 87–8620 Filed 4–15–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket No. CP87–283–000]

## Texas Gas Transmission Corp.; Application

April 13, 1987.

Take notice that on April 2, 1987, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87–283–000, an application [1] pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas on an interruptible basis for certain customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas states that this application is filed to comply with the Commission's order in Docket No. CP86–531–000 and to cure the deficiencies identified therein.[2] On April 10, 1987, Texas Gas filed a supplement to the referenced docket incorporating by reference the information filed in Docket No. CP86–531–000.

Texas Gas states that the following information is included in its application: (1) A list of customers, the contract demand for each customer and whether each customer is a local distribution customer (LDC), an LDC acting on behalf of an end-user(s), a broker acting on behalf of one or several LDCs, or some other category of shipper (list attached); (2) copies of pro forma "T" and "TSC" rate transportation agreements which contain the basic terms and conditions under which service would be rendered; (3) specific points of receipt and delivery for each customer and data submitted by each customer which reflects for *each* point of receipt listed in the transportation agreement:

(a) The seller of the supply located at that point; [3] (b) a statement that the customer has entered into a gas purchase agreement for that particular source of gas; (c) all third party transporters associated with the delivery of the gas to Texas Gas; and (c) an estimate of volumes to be delivered to Texas Gas at such point; and (3) for those customers who are acting on behalf of LDCs, information containing the names of those LDCs and an estimate of the daily volume to be delivered to each LDC.

Texas Gas states that it will charge each customer the appropriate rate for service under either Texas Gas' "T" rate schedule or "TSC" rate schedule as found on Third Revised Sheet Nos. 11 and 12, respectively, of Volume No. 1 of Texas Gas' FERC Gas Tariff. Texas Gas states that it would also collect the applicable GRI funding unit where appropriate.

Texas Gas states that no new facilities are necessary to effectuate the transportation service. Further, Texas Gas states that the term of the subject transportation service is proposed to commence on the date of initial deliveries after certification pursuant to this docket and would continue until 30

[1] This application was originally assigned Docket No. CP86–531–001 and was filed as a petition to amend an application. However, it is considered to be an original application since there is no pending application to amend. This notice will supercede the notice issued on April 9, 1987, in Docket No. CP86–531–001.

[2] Docket No. CP86–531–000, Order Denying Certificate, issued March 16, 1987 (38 FERC ¶ 61,281).

[3] Hadson Gas Systems, Inc. (Hadson), and Citizens Energy Corporation and Citizens Gas Supply Corporation (Citizens) filed on April 2, 1987, in Docket No. CP86–531–001, requests pursuant to Section 388.110 of the Regulations that certain information relating to sellers of gas to Hadson and Citizens either not be required in order to evaluate Texas Gas' petition to amend or that the Commission maintain confidential treatment of such information. Hadson and Citizens contend that the identity of producer/sellers behind each receipt point is competitively sensitive and must be treated by the Commission as confidential and non-public information.

days after Texas Gas accepts a blanket certificate issued pursuant to its Docket No. CP86–521–000 (Texas Gas' 436 application).

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

| Contract No. | Name | Daily contract [illegible] | Rate schedule and delivery zone | Category |
|---|---|---|---|---|
| 1253.01 | EnTrade | 150,000 | T–4, T–SL | Broker/LDCs |
| 1256.01 | Louisville/Frito Lay | [illegible]00 | TSC–4 | LDC/End–User |
| 1255.01 | Western/Pinkerton | 1,500 | TSC–3 | LDC/End–User |
| 1257.01 | Western/Ragu | 1,400 | TSC–3 | LDC/End–User |
| 1258.01 | Sigeco/GE | 10,[illegible]00 | TSC–3 | LDC/End–User |
| 1259.01 | Western/GAF | 3,100 | TSC–2 | LDC/End–User |
| 1260.01 | Western/Sikes | 1,500 | TSC–4 | LDC/End–User |
| 1261.01 | Memphis/St. Francis | 1,000 | TSC–1 | LDC/End–User |
| 1263.01 | Western/Kendall | 750 | TSC–3 | LDC/End–User |
| 1267.01 | Jackson/Florida Steel | 3,000 | TSC–1 | LDC/End–User |
| 1265.01 | Western/Willamette | 6,400 | TSC–3 | LDC/End–User |
| 1264.01 | Louisville/Heaven Hill | 1,000 | TSC–4 | LDC/End–User |
| 1268.01 | Western/Commonwealth Aluminum | 13,[illegible]00 | TSC–3 | LDC/End–User |
| 1274.01 | Sigeco/Farm Bureau | 1,[illegible]00 | TSC–3 | LDC/End–User |
| 1269.01 | Western/Pennwalt | 3,900 | TSC–2 | LDC/End–User |
| 1270.01 | Central Illinois/Marathon | 20,[illegible]00 | TSC–3 | LDC/End–User |
| 1275.01 | Memphis/Taylor Forge | [illegible]50 | TSC–1 | LDC/End–User |
| 1272.01 | Western/Alcan Aluminum | 3,[illegible]00 | TSC–3 | LDC/End–User |
| 1276.01 | Western/Borg Warner | 600 | TSC–3 | LDC/End–User |
| 1277.01 | Baltimore Gas & Electric/System Supply | [illegible],000 | T–4 | LDC |
| 1155.01 | Dayton Power & Light/System Supply | 75,000 | T–4 | LDC |
| 1278.01 | Indiana Gas/General Motors | 4,800 | TSC–3 | LDC/End–User |
| 1266.01 | Memphis/Cargill | [illegible],650 | TSC–1 | LDC/End–User |
| 1281.01 | Western/Grace | 1,700 | TSC–3 | LDC/End–User |
| 1279.01 | Western/Kentucky-Tennessee Clay | [illegible]00 | TSC–2 | LDC/End–User |
| 1283.01 | Louisville/Cargill | 1,800 | TSC–4 | LDC/End–User |
| 1280.01 | Louisville/Edible Oil | 1,600 | TSC–4 | LDC/End–User |
| 1289.01 | Niagara Mohawk/System Supply | 200,000 | T–4 | LDC |
| 1290.01 | City of Hamilton/Beckett Paper | 2,200 | TSC–4 | LDC/End–User |
| 1294.01 | Louisville/United Catalysts | 3,485 | TSC–4 | LDC/End–User |
| 1295.01 | TXG Marketing | 50,[illegible]00 | T–4 | Broker/LDCs |
| 1288.01 | Boonville/System Supply/End-Users | 5,[illegible]00 | TSC–3 | LDC and LDC/End–User |
| 1479.01 | Boonville/System Supply/End-Users | 5,000 | T–3 | LDC and LDC/End–User |
| 1296.01 | Western/Ohio Valley Aluminum | 2,500 | TSC–4 | LDC/End–User |
| 1292.01 | Western/Filtration Sciences | 1,450 | TSC–3 | LDC/End–User |
| 1282.01 | Citizens Energy | 180,000 | T–4, T–SL | Broker/LDCs |
| 1286.01 | Miss. Valley/Alumax Extrusions | [illegible]00 | TSC–1 | LDC/End–User |
| 1297.01 | Western/System Supply—Zone 2 | 45,364 | TSC–2 | LDC |
| 1299.01 | Western/System Supply—Zone 3 | 90,923 | TSC–3 | LDC |
| 1271.01 | Sigeco/Alcoa | 25,000 | TSC–3 | LDC/End–User |
| 1303.01 | Ohio River/Colgate* | 5,000 | TSC–4 | Interstate Pipeline/End–User |
| 1304.01 | Indiana Gas/System Supply | 105,522 | TSC–3 | LDC |
| 1305.01 | Memphis/System Supply | 150,000 | TSC–1 | LDC |
| 1301.01 | Henderson/System Supply | 17,751 | TSC–3 | LDC |
| 1302.01 | Louisville/System Supply | 231,753 | TSC–4 | LDC |
| 1310.01 | Sigeco/System Supply | 75,000 | TSC–3 | LDC |
| 1311.01 | Western/Eaton | 1,140 | TSC–3 | LDC/End–User |
| 1314.01 | New York State Electric & Gas/System Supply | 37,000 | T–4 | LDC |
| 1316.01 | Indiana Gas/Eli Lilly | 13,000 | TSC–3 | LDC/End–User |
| 1291.01 | Louisville/Reynolds Metals | 1,100 | TSC–4 | LDC/End–User |
| 1317.01 | Memphis/Fruehauf | 550 | TSC–1 | LDC/End–User |
| 1321.01 | EnTrade | 150,000 | T–4 | Broker/LDCs |
| 1324.01 | United Cities/System/Supply/End-Users | 12,721 | TSC–2 | LDC and LDC/End–User |
| 1306.01 | Chandler Natural Gas/System Supply | 1,883 | TSC–3 | LDC |
| 1480.01 | Chandler Natural Gas/System Supply | 1,883 | T–3 | LDC |

| Contract No. | Name | Daily contract [illegible] | Rate schedule and delivery zone | Category |
|---|---|---|---|---|
| 1319.01 | Terre Haute/System Supply | 24,000 | TSC-3 | LDC |
| 1326.01 | Indiana Gas/Cummins | 3,400 | TSC-3 | LDC/End-User |
| 1327.01 | Citizens Energy | 180,000 | T-4 | Broker LDCs |
| 1328.01 | Central Illinois Public/Service/Briggs | 2,000 | TSC-3 | LDC/End-User |
| 1325.01 | Mississippi Valley/System Supply | 18,000 | TSC-1 | LDC |
| 1309.01 | Western/Air Products | 2,350 | TSC-2 | LDC/End-User |
| 1169.01 | Indiana Gas/A. E. Staley | 8,000 | TSC-3 | LDC/End-User |
| 1331.01 | Jackson Utilities/System Supply | 12,000 | TSC-1 | LDC |
| 1337.01 | Indiana Gas/Borg Warner | 8,000 | TSC-3 | LDC/End-User |
| 1338.01 | Indiana Gas/Chrysler | 9,800 | TSC-3 | LDC/End-User |
| 1335.01 | Indiana Gas/RCA | 1,000 | TSC-3 | LDC/End-User |
| 1343.01 | Ohio River/Gohmann Asphalt* | 1,100 | TSC-4 | Interstate Pipeline/ End-User |
| 1161.02 | Ohio River/Occidental Chem.* | 1,500 | TSC-4 | Interstate Pipeline/ End-User |
| 1336.01 | Western/Barmet | 1,500 | TSC-3 | LDC/End-User |
| 1344.01 | Hoosier Gas/System Supply | 29,586 | TSC-3 | LDC |
| 1284.01 | Memphis/Kroger | 250 | TSC-1 | LDC/End-User |
| 1307.01 | West Ohio Gas/System Supply | 12,500 | T-4 | LDC |
| 1347.01 | Terre Haute/Eli Lilly | 7,400 | TSC-3 | LDC/End-User |
| 1349.01 | Indiana Gas/Bausback | 650 | TSC-3 | LDC/End-User |
| 1350.01 | Indiana Gas/Electro Sound | 650 | TSC-3 | LDC/End-User |
| 1363.01 | Ohio Valley Gas Corp.—Zone 3/System Supply | 8,309 | TSC-3 | LDC |
| 1362.01 | Ohio Valley Gas Corp.—Zone 4/System Supply | 15,286 | TSC-4 | LDC |
| 1364.01 | Dome Gas Company/System Supply | 4,609 | TSC-3 | LDC |
| 1526.01 | Dome Gas Company/System Supply | 4,609 | T-3 | LDC |
| 1361.01 | Terre Haute/Alcan | 6,368 | TSC-3 | LDC/End-User |
| 1366.01 | Western/North Star Steel | 2,565 | TSC-2 | LDC/End-User |
| 1370.01 | ANR Gathering | 60,000 | T-SL | Broker/LDCs |
| 1354.01 | Western/Korger | 200 | TSC-3 | LDC/End-User |
| 1375.01 | Memphis/Celotex | 375 | TSC-1 | LDC/End-User |
| 1374.01 | Memphis/Cleo Wraps | 700 | TSC-1 | LDC/End-User |
| 1373.01 | Memphis/Lehman Roberts | 900 | TSC-1 | LDC/End-User |
| 1243.01 | Memphis/Memphis State University | 1,500 | TSC-1 | LDC/End-User |
| 1346.01 | Ohio River Pipeline/System Supply* | 54,407 | TSC-4 | Interstate Pipeline |
| 1333.01 | Mountaineer Gas/System Supply | 40,000 | T-4 | LDC |
| 1300.01 | Western/System Supply—Zone 4 | 13,402 | TSC-4 | LDC |
| 1345.01 | Bridgeline | 150,000 | T-SL | LDC |
| 1367.01 | Ohio Valley Gas, Inc./System Supply | 4,399 | TSC-3 | LDC |
| 1525.01 | Ohio Valley Gas, Ind./System Supply | 4,399 | T-3 | LDC |
| 1341.01 | Corning Natural Gas Corp. | 3,156 | T-4 | LDC |
| 1329.01 | Quivira Gas Company | 5,000 | T-1, T-SL | Intrastate Pipeline |
| 1313.01 | Hadson Gas System | 50,000 | T-SL | Broker/LDCs |

* These transportation arrangements involving an interstate pipeline are presently being accomplished under Section 311 of the NGPA, by means of an agency arrangement with an LDC, Indiana Gas

[FR Doc. 87-8550 Filed 4-15-87; 8:45 am]
BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3187-7]

### Privacy Act of 1974, System of Records

**AGENCY:** Environmental Protection Agency.

**ACTION:** Privacy Act of 1974, proposed new system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the U.S. Environmental Protection Agency is proposing to formally establish and maintain a system of records. This system is the "Official U.S. Government Identification Card Record." EPA will use the records to prepare identification cards for Agency and contract employees to identify those who need access to EPA buildings and offices.

**EFFECTIVE DATE:** The Environmental Protection Agency is requesting a waiver from the Office of Management and Budget of its sixty-day advance review period. If the Office of Management and Budget grants the waiver, this system shall become operational thirty days after publication unless comments are received which would result in a contrary determination.

**FOR FURTHER INFORMATION CONTACT:** Luther E. Mellen, Chief, Security and Property Management Branch, Facilities Management and Services Division (PM-215), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-2110.

Dated: March 20, 1987.

**C. Morgan Kinghorn,**

*Acting Assistant Administrator for Administration and Resources Management.*

**EPA-FMSD-19**

**SYSTEM NAME:**

Official U.S. Government Identification Card Record—EPA-FMSD-19.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

1. Facilities Management and Services Division, Security and Property Management Branch, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

2. Field activities listed in Appendix.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

EPA employees and EPA contract employees who require access to EPA buildings and offices.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. EPA Form 5110-1, EPA Identification Card Acknowledgement, which contains the following information: Name, EPA identification card number, height, weight, color of eyes/hair, date of birth, social security number, position title, grade, EPA office

location, signature, date of issuance, and a photograph of the person issued the identification card.

2. EPA Form 1480–39, Official U.S. Government Identification, which contains the following information: Name, social security number, location, date of birth, height, weight, color of eyes/hair, signature, card number, date of issuance and photograph of person issued the identification card.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

40 U.S.C. 486(c), Federal Property and Administrative Services Act of 1949 (authority for establishing housekeeping records); Executive Order 9397 (authority to collect social security numbers for identification purposes).

**PURPOSES:**

EPA will use the records to issue official U.S. Government Identification cards to EPA employees and EPA contract employees requiring access to EPA buildings and offices. The records will also be used to maintain a record of all holders of identification cards, for renewal and recovery of expired cards, and to identify lost or stolen cards. At Headquarters the records may be used to identify employees whose names have not been entered in the EPA locator system.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of information may be made:

1. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

2. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

3. To a Federal agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

4. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

5. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

6. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

7. To EPA contractors who have been engaged to assist EPA in the performance of activities directly related to this system of records and who need to have access to the records in order to perform under the contract. Contractors are required to maintain the records in accordance with the requirements of the Privacy Act.

8. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders in file cabinets.

**RETRIEVABILITY:**

Records are retrieved by name of individual on whom they are maintained.

**SAFEGUARDS:**

Only authorized EPA employees with an official need-to-know are allowed access to the system. The files are stored in cabinets secured with locking bars and padlocks. The cabinets are located in a locked room in a building with controlled access.

**RETENTION AND DISPOSAL:**

Records are destroyed three months after termination of employment or severance of association with EPA. See EPA Records Control Schedule, Appendix B, Part 3, Item 25.

**SYSTEM MANAGER(S) AND ADDRESS:**

Headquarters: Chief, Security and Property Management Branch (PM–215), 401 M Street SW., Washington, D.C. 20460.

Other locations: General Services Manager at address listed in the Appendix.

**NOTIFICATION PROCEDURES:**

Inquiries should be addressed to the System Manager at the location where the records are maintained (with notarized signature if request is made by mail or with suitable identification if request is made in person). Any additional information or requirement will be provided by the System Manager.

**RECORD ACCESS PROCEDURES:**

Same as Notification Procedures. Individuals should reasonably specify the record contents being sought, and provide any other names officially used during period of employment.

**CONTESTING RECORD PROCEDURES:**

Same as Notification Procedures. The record and the specific information being contested should be identified. The corrective action sought and supporting justification for the correction should be provided by the individual.

**RECORD SOURCE CATEGORIES:**

The individual on whom the record is maintained and EPA personnel records.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

APPENDIX:

In addition to Headquarters, the General Services Manager at the following EPA field activities have identification card records:

EPA Region I, Federal Center, Boston, MA [illegible]
EPA Region II, 26 Federal Plaza, New York, NY 10278
EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107
EPA Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365
EPA Region V, 230 S. Dearborn Street, Chicago, IL 60604
EPA Region VI, 1201 Elm Street, Dallas, TX 75270
EPA Region VII, 726 Minn. Avenue, Kansas City, KS 66101
EPA Region VIII, 999 18th Street, Suite 1300, Denver, CO 80202
EPA Region IX, 215 Fremont Street, San Francisco, CA 94105
EPA Region X, 1200 6th Avenue, Seattle, WA [illegible]
Environmental Research Laboratory, P.O. Box 1198, Ada, OK 74820
Motor Vehicle Emission Laboratory, 2565 Plymouth, Ann Arbor, MI 48105
Environmental Research Laboratory, Athens, GA 30613
Office of Administration, 26 W. St. Clair St., Cincinnati, OH 45268
Environmental Research Laboratory, 6201 Congdon Blvd., Duluth, MN 55804
Environmental Research Laboratory, P.O. Box 15027, Las Vegas, NV 89114
Environmental Research Laboratory, South Ferry Rd., Narragansett, RI 02882
National Enforcement Investigations Center, Bldg. 53, Box 25227 Denver, CO 80225
Office of Administration, Research Triangle Park, NC 27711

[FR Doc. 87-8606 Filed 4-15-87; 8:45 am]
BILLING CODE [illegible]

## FEDERAL HOME LOAN BANK BOARD

### Central Savings and Loan Association; San Diego, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Central Savings and Loan Association, San Diego, California on April 10, 1987.

Dated: April 13, 1987.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-8583 Filed 4-15-87; 8:45 am]

BILLING CODE 6720-01-M

### Central Savings and Loan Association; San Diego, CA; Appointment of Receiver

Notice is hereby given that the Superior Court for the County of San Diego has confirmed the appointment by the Commissioner, Department of Savings and Loan for the State of California ("Commissioner") of a receiver for Central Savings and Loan Association, San Diego, California ("Association"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. section 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Commissioner of the appointment as receiver for the Association, for the purpose of liquidation, effective April 10, 1987.

Dated: April 13, 1987.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-8584 Filed 4-15-87; 8:45 am]

BILLING CODE 6720-01-M

### First Southern Savings Association of Jackson County; Pascagoula, MS; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contain in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for the purpose of liquidation for First Southern Savings Association of Jackson County, Pascagoula, Mississippi on March 20, 1987.

Dated: April 13, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-8585 Filed 4-15-87; 8:45 am]

BILLING CODE 6720-01-M

### Future Savings and Loan Association; Albany, OR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Future Savings and Loan Association, Albany, Oregon on April 10, 1987.

Dated: April 13, 1987.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-8586 Filed 4-15-87; 8:45 am]

BILLING CODE 6720-01-M

### Future Savings and Loan Association; Albany, OR; Appointment of Conservator

Notice is hereby given that the Circuit Court of the State of Oregon for the County of Linn has confirmed the appointment by the Supervisor, Savings and Loan, Credit Union and Consumer Finance Section, Financial Institutions Division for the State of Oregon ("Oregon") of a conservator for Future Savings and Loan Association, Albany, Oregon ("Future") and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. section 1729(c)(1)) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Supervisor of the appointment as conservator for Future, for the purpose of liquidation, effective April 10, 1987.

Dated: April 13, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-8582 Filed 4-15-87; 8:45 am]

BILLING CODE 6720-01-M

### Summit Savings and Loan Association; Park City, UT; Replacement of Conservator With Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. § 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board on April 10, 1987 duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator for Summit Savings and Loan Association, Park City, Utah ("Association") by the FSLIC as sole receiver for the Association.

Dated: April 13, 1987.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-8587 Filed 4-15-87; 8:45 am]

BILLING CODE 6720-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87E-0059]

### Determination of Regulatory Review Period for Purposes of Patent Extension; Exirel

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Exirel and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Exirel (Pirbuterol Acetate), which is indicated for the prevention and reversal of bronchospasm in patients with reversible bronchospasm including asthma and may be used with or without concurrent theophylline and/or steroid therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Exirel (U.S. Patent No. 3,786,160) from Pfizer, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 3, 1987, FDA advised the Patent and Trademark Office that the human drug product has undergone a regulatory review period and that the active ingredient, Pirbuterol Acetate, represented the first permitted commercial marketing or use of that active ingredient. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Exirel is 2,835 days. Of this time, 1,485 days occurred during the testing phase of the regulatory review period, while 1,350 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* March 29, 1979. The applicant claims that the notice of claimed investigational exemption (IND) for the drug became effective on July 30, 1978. However, FDA records indicate that the IND was placed on clinical hold and therefore the actual effective date for the IND is March 29, 1979.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* April 21, 1983. FDA has verified the applicant's claim that the new drug application for Exirel (NDA 19–009) was initially submitted on April 21, 1983.

3. *The date the application was approved:* December 30, 1986. FDA has verified the applicant's claim that NDA 19–009 was approved on December 30, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 15, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 13, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review perid. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 8, 1987.

Stuart L. Nightingale,

*Associate Commissioner for Health Affairs.*

[FR Doc. 87–8507 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

---

[Docket No. 78P–0173 et al.]

## Approved Variances for Laser Light Shows; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 12 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

**DATES:** The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

**ADDRESS:** The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Sally Friedman, Center for Devices and Radiological Health (HFZ–84), 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

**SUPPLEMENTARY INFORMATION:** Under § 1010.4 (21 CFR 1010.4) of the

regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 12 organizations listed in the table below a variance from the requirements of § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design and by warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

| Docket No. | Organization granted the variance | Demonstration laser product | Effective date / termination date |
|---|---|---|---|
| 78P-0173 (Amendment). | Laser Images, Incorporated, 6907 Hayvenhurst Avenue, Van Nuys, CA 91406. | LASERIUM (krypton) and Concert System (CS) Series of Class III and IV laser projectors manufactured by Laser Images, Incorporated and for laser light shows assembled and produced by Laser Images Incorporated incorporating these projectors or the Foursight Visual Systems Incorporated Model 4 projectors. | Dec. 4, 1986—Aug. 22. [illegible]. |
| 79P-0257 (Renewal) | Knotts Berry Farm, 8039 Beach Boulevard, Post Office Box 5002, Buena Park, CA 90620. | Laser light show in Studio "K" and in the "Good Time Theater" within Knotts Berry Farm. | Jan. 8, 1987—Oct. 6. [illegible]. |
| [illegible] (Amendment). | Lasertainment, 551 NE. 49th Avenue, Columbia Heights, [illegible] | Lasertainment laser light show using the Laser Fantasy Class IIIb Rainbow Model Series Ar/HeNe and HeNe laser projection systems. | Dec. 10, 1986—Oct. 16, 1988. |
| [illegible] | California Technical Associates, 3856 California Street, Suite 4, San Francisco, CA 94118. | California Technical Associates laser light shows incorporating the firm's laser projection system with an Ion Laser Technology Series ILT 5000 argon or krypton laser. | Jan. 8, 1987—Jan. 8, [illegible]. |
| 86V-0379 | Laservisions Productions, 25 Midland Avenue, Budd Lake, [illegible] | Laservisions Productions laser light show incorporating the Coherent Innovations' Rainbow Class IV helium-neon/argon laser projection system. | Nov. 24, 1986—Nov 24, 1988. |
| 86V-0381 | La Jolla Centre Partners, Ltd., 4350 Executive Drive, Suite 100, San Diego, CA 92121. | La Jolla Centre Partners, Ltd, laser light show for the First California Bank incorporating a Laser Media LMS laser projector containing a Class IV krypton ion laser. | Dec. 30, 1986—Dec. 30, 1988. |
| 86V-0407 | Numbers Nightclub, 300 Westheimer, Houston, TX 77006 | Numbers Nightclub laser light show incorporating the Laser Media LMS laser projector system with Class IV argon and Class III krypton ion lasers. | Jan. 8, 1987—Jan. 8, [illegible] |
| 86V-0434 | GTE Marketing Center, 5500 Tennyson, Plano, TX 75024 | GTE Marketing Center Media Show using the LaserMedia LMS Series Class IV Argon projection system. | Jan. 8, 1987—Jan. 8, [illegible] |
| 86V-0461 | TRW, Incorporated, TRW Federal Systems Group, 2751 Prosperity Avenue (FVA6/2270), Fairfax, VA 22031. | Laser video displays assembled and produced by TRW, Incorporated in their facility's conference room and, occasionally, at customer facilities in marketing demonstrations. These displays will incorporate a certified Class IV Visutux Laser Projector Model Series 1000. | Dec. 17, 1986—Dec 17, 1988. |
| 86V-0480 | Market Tavern, Incorporated, dba Hammerjacks, 1101 South Howard Street, Baltimore, MD 21230. | Market Tavern, Incorporated, dba Hammerjacks, laser light shows incorporating the Laser Media LMS projector with argon or helium-neon lasers. | Dec. 30, 1986—Dec 30, 1988. |
| 86V-0487 | Phase II, dba Etcetera, 8796 North Central Expressway, Dallas, TX 75231. | Etcetera laser light show using the Laser Media Class IV LMS laser projection system with argon, krypton, or helium-neon lasers. | Dec. 30, 1986—Dec [illegible]. |
| 86V-0504 | BCD South N.Y. Corporation, dba Chez Paree, 235 South New York Avenue, Atlantic City, NJ 08401. | Chez Paree laser light show incorporating a Laservision Model H174 Class IV argon laser projector. | Dec. 30, 1986—Dec 30, 1988. |

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: April 9, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–8506 Filed 4–15–87; 8:45am]

[illegible] CODE 4160-01-M

[Docket No. 87M–0066]

## Palomex Instrumentarium Corp.; Premarket Approval of Acutscan® Model 100 MRI System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Palomex Instrumentarium Corp., Washington, DC, for premarket approval, under the Medicial Device Amendments of 1976, of the Acutscan ® Model 100 MRI System. After reviewing the recommendation of the Radiologic Devices Panel, FDA's Center for Devices and Radiologic Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 18, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Phillips, Centers for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georiga Ave., Silver Spring, MD 20910, 301–427–7514.

**SUPPLEMENTARY INFORMATION:** On July 10, 1986, Palomex Instrumentarium Corp., c/o Hyman & Phelps & McNamara, 1120 G St, NW., Washington, DC, 20005, submitted to CDRH an application for premarket approval of the Acutscan ® Model 100 MRI System. The device is a nuclear magnitic resonance imaging (MRI) device with multi-slice operation and a resistive magnet operating at 0.02 tesla. The Acutscan ® Model 100 MRI System is indicated for use as a diagnostic imaging system that within its limitations for resolution and slice

thickness produces cross-sectional transaxial, coronal, and segittal images that display anatomic structure of the head or body. MR images correspond to the spatial distribution of protons (hydrogen nuclei) that exhibit nuclear magnitic resonance. The consequent MR properties of head or body tissues and fluids are: hydrogen density, spin-lattice relation time (TI), spin-spin relaxation time (T2), and flow velocity. When interpreted by a trained physician, these images yield infomation that can be useful in the determination of a diagnosis. All other uses of the Acutscan ® Model 100 MRI System remain investigational.

On November 24, 1986, the Radiologic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 20, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summmary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–430), address above.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or idependent advisory committee) and shall submit with the petition supporting data and infomation showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 18, 1987 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and infomation, identified with the name of the device and the docket number found in brackets in the hearing of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–8506 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

---

**[Docket No. 87M–0104]**

## Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Hydrogen Peroxide Disinfection System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Charter Labs Hydrogen Peroxide Disinfection System. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 18, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On June 16, 1986, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the Charter Labs Hydrogen Peroxide Disinfection System consisting of the Charter Labs Hydrogen Peroxide Solution, Charter Labs Saline for Sensitive Eyes, Charter Labs Disinfection Cup, and Charter Labs Rinse Cup. The system is indicated for disinfecting, rinsing, and soaking for the chemical (not heat) disinfection of daily and extended wear soft (hydrophilic) contact lenses.

On October 21, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 12, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the Charter Labs Hydrogen Peroxide Disinfection System states that the system is indicated for disinfecting, rinsing, and soaking for the chemical (not heat) disinfection of daily and extended wear soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer or PMA holder of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request

either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 18, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1987

John C. Villforth,

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–8510 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

---

[Docket No. 87M–0085]

## Cardiac Control Systems, Inc.; Premarket Approval of Models 505 and 509 Pulse Generator With Models 1000 and 1006 Programmer

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Cardiac Control Systems, Inc., Palm Coast, FL, for premarket approval, under the Medical Device Amendments of 1976, of the Maestro® Series 500 Models 505 and 509 Pulse Generator with Models 1000 and 1006 Programmer. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 18, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Dahms, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7594.

**SUPPLEMENTARY INFORMATION:** On November 20, 1986, Cardiac Control Systems, Inc., Palm Coast, FL, 32037, submitted to CDRH an application for premarket approval of the Maestro® Series 500 Models 505 and 509 Pulse Generator with Models 1000 and 1006 Programmer. The device is indicated for dualchamber and atrial or ventricular applications. Indications for ventricular pacing include but are not limited to: Sick sinus syndrome, first-degree A–V block, second-degree Mobitz Types I and II block, third-degree A–V block, Adams-Stokes syndrome, third-degree A–V block with congestive heart failure, trifascicular bundle branch block, and right bundle branch block with axis deviation. Indications for atrial pacing include, but are not limited to sick sinus syndrome, sino-atrial (S–A) block, sinus arrest, and bradycardiatachycardia syndrome. Indications for dual-chamber pacing include but are not limited to: Various degrees of A–V block, bradycardia-related cardiac output insufficiency or congestive heart failure, and pacemaker syndrome (ventricular demand pacing intolerance). Certain modes of pacing may be contraindicated in the presence of various arrhythmias and conduction characteristics. For example, the atrial-tracking ventricular pacing modes may be contraindicated in patients suffering from atrial fibrillation or atrial flutter with or without A–V block or from persistent rapid atrial tachycardias.

On January 16, 1987, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ–450), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 18, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal

Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–8509 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

---

## National Institutes of Health

### National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control, and its Subcommittees.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Office, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892–3100 (301/496–5708) will provide summaries of the meetings and rosters of members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20892–4200 (301/427–8630).

Name of Committee: Prevention Subcommittee
Date of Meeting: May 6, 1987, 4 p.m.—adjournment
Place of Meeting: Building 31, Conference Room 2, 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Discuss current and future programs of the Prevention Program.
Name of Committee: Budget and Evaluation Subcommittee
Date of Meeting: May 6, 1987, 7:30 p.m.—adjournment
Place of Meeting: Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Review of budgetary and fiscal items.
Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control
Date of Meeting: May 7–8, 1987, 8:30 a.m.—adjournment
Place of Meeting: Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Review progress of programs within the Division and review of concepts being considered for fundir g.

Dated: April 9, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–8532 Filed 4–15–87; 8:45 am]

BILLING CODE 4140–01–M

---

### National Cancer Institute; Meeting of Cancer Biology-Immunology Contract Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health, May 15, 1987, Bethesda Holiday Inn, Maryland Room, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on May 15 from 9 a.m. to 9:30 a.m to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 15 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contract Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496–7153) will furnish substantive program information.

Dated: April 6, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–8533 Filed 9–15–87; 8:45 am]

BILLING CODE 4140–01–M

---

### National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, June 1–2, 1987, in Building 31, Conference Room 6, Natioal Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on June 1 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on June 1 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Pregnancy and Perinatology Branch, Center for Research for Mothers and Children. The meeting will be open on June 2 immediately following the review of applications if any policy issues are raised which need further discussions. The Subcommittee meeting will be open on June 1 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in secs. 552b(c)(4) and 442b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 2 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: April 6, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–8534 Filed 4–15–87; 8:45 am]

BILLING CODE 4140–21–M

**National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees**

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on May 27 and 28, 1987, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public May 27 from 8:30 a.m. to 12 noon and again on May 28 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the following subcommittees will be closed to the public on May 27 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive and Nutrition; Kidney, Urology and Hematology. The full Council meeting will be closed on May 28 from 8:30 a.m. to approximately 12 noon for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: April 6, 1987.

**Betty J. Beveridge,**

*NIH, Committee Management Officer.*

[FR Doc. 87–8535 Filed 4–15–87; 8:45 am]

BILLING CODE 4140–01–M

**National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, June 1–2, 1987, in Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 1 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public June 1, from approximately 1 p.m. to adjournment on June 2, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclusure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Associate Director for Extramural Program, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmenal Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: April 6, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–8536 Filed 4–15–87; 8:45 am]

BILLING CODE 4140–01–M

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. N–87–1693]

**Submission of Proposed Information Collections to OMB**

**AGENCY:** Office of Administration, HUD.

**ACTION:** Nptice.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is solicting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–8050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

**Submission of Proposed Information Collection to OMB**

Proposal: Analysis of Proposed Main Construction Contracts.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This form is a comparison of actual bid costs on a conventionally developed public housing project to the approved pre-bid estimates. It is prepared by a PHA and submitted to HUD to gain approval for award of construction contract.

Form Number: HUD–52396.

Respondents: State of Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Estimated Burden Hours: 248.

Status: Extension.

Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880.

(Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Dated: April 9, 1987.

**Submission of Proposed Information Collection to OMB**

Proposal: Change and Proceed Order, Formats, and Changes Order Register, 24 CFR 841.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The Change Order is needed to formalize a change in construction of a housing project. It directs a contractor to add, delete, or substitute certain construction elements and establishes a cost for the work and a timeframe for completion. The change is prepared by the project architect, reviewed and concurred on by the PHA, accepted by the contractor and submitted to HUD for approval

Form Number: None.

Respondents: State of Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Estimated Burden Hours: 5,081.

Status: Extension.

Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880.

(Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Dated: April 9, 1987.

**Submission of Proposed Information Collection to OMB**

Proposal: Agreement Between Owner and Architect, 24 CFR 841.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: An agreement is used by a PHA to obtain the professional services of an architect or engineer to prepare necessary documents for the construction or rehabilitation of a housing development and to administer the Construction Contract on behalf of the PHA. HUD approves the contracts.

Form Number: HUD–51915.

Respondents: State of Local Governments and Non-Profit Institutions.

Frequency of Response: On Occasion.

Estimated Burden Hours: 359.

Status: Extension.

Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880.

(Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Dated: April 9, 1987.

**Submission of Proposed Information Collection to OMB**

Proposal: Certificate of Need for Health Facility and Assurance of Enforcement of State Standards.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Certificate of Need is used to comply with Section 232 and Section 242 of the National Housing Act for nursing homes, intermediate care facilities, and hospitals; which require the States to certify as to need and compliance with minimum standards for licensure and methods of operations governing it.

Form Number: HUD–2576–HF.

Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of Response: On Occasion.

Estimated Burden Hours: 40.

Status: Reinstatement.

Contact: C. Edward Lewis, HUD, (202) 755–6223; John Allison, OMB, (202) 395–6880.

(Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Dated: April 9, 1987.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

[FR Doc. 87–8621 Filed 4–15–87; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–87–837]

**Office of the Regional Administration—Regional Housing Commissioner, Region V (Chicago); Designation of Order of Succession—Cleveland Office**

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Order of Succession—Cleveland Office.

**SUMMARY:** The Regional Administrator—Regional Housing Commissioner is designating officials who may serve at the Acting Manager during the absence, disability or vacancy in the position of the Manager of the Cleveland Office.

**EFFECTIVE DATE:** The designation is effective April 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lewis Nixon, Regional Counsel, Chicago Regional Office, Department of Housing and Urban Development, 300 South Wacker Drive, Chicago, Ill. 60606–6765; Telephone: 312–353–4681 (This is not a toll-free number).

**Designation:** Each of the officials holding the following listed positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all officials where titles precede his or hers in this designation are unavailable to act by reason of absence, disability or vacancy in the position.

1. Deputy Manager
2. Director, Housing Development
3. Director, Housing Management
4. Chief, Loan Management Branch
5. Chief, Property Disposition Branch
6. Chief Attorney
7. Chief, Architectural, Engineering and Cost Branch

This designation supersedes the designation published at Docket No. D–84–760, **Federal Register** Vol. 49, No. 95, dated Tuesday, May 15, 1984.

**Authority:** Delegation of Authority by the Secretary effective October 1, 1970, 36 FR 3389, February 23, 1971.

**Gertrude W. Jordan,**

*Regional Administrator—Regional Housing Commissioner Region No. 5.*

[FR Doc. 87–8622 Filed 4–15–87; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

**Privacy Act of 1974—Deletion of Notice of System of Records**

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting a notice describing a system of records maintained by the Bureau of Mines. The notice, entitled "Emergency Minerals Administration of the National Defense Executive Reserve Files—Interior, Mines–10," was previously published in the **Federal Register** at 51 FR 26064 on July 18, 1986, and is deleted from the Department's inventory of Privacy Act systems of records notices.

The records formerly described in the deleted notice are now covered by a governmentwide Privacy Act system of records notice (FEAMA/GOVT–1) published in the **Federal Register** at 52 FR 3344 on February 3, 1987, by the Federal Emergency Management Agency.

This change shall be effective on April 16, 1987. Additional information regarding this action may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Main Interior Building, Room 7357, U.S. Department of the Interior, Washington, DC 202450.

Dated: April 8, 1987.

**Oscar W. Mueller, Jr.,**

*Director, Office of Information Resources Management.*

[FR Doc. 87–8494 Filed 4–15–87; 8:45 am]

BILLING CODE 4310–31–M

---

Bureau of Land Management

**[WY–920–07–4111–15; W–98889]**

**Proposed Reinstatement of Terminated Oil and Gas Lease; Big Horn County, WY**

April 10, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–98889 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–98889 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87–8498 Filed 4–15–87; 8:45 am]

BILLING CODE 4310–22–M

---

**[WY–920–07–4111–15; W–72196]**

**Proposed Reinstatement of Terminated Oil and Gas Lease; Fremont County, WY**

April 10, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–72196 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–72196 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**

*Chief, Leasing Section.*

[FR Doc. 87–8497 Filed 4–15–87; 8:45 am]

BILLING CODE 4310–22–M

---

**[AZ–020–07–4212–12; A 20346–D]**

**Realty Action: Exchange of Public Lands In Apache County, AZ**

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all of public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

**Gila and Salt River Meridian, Arizona**

*Apache County*

T. 11 N., R. 25 E.,
Sec. 12.
T. 11 N., R. 26 E.,
Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 25.
T. 11 N. R. 27 E.,
Secs. 4, 24, 26, 27, 29, 30, 33, 34, 35.
T. 12 N. R. 27 E.,
Sec. 28.
T. 14 N., R. 27 E.,
Sec. 34.
T. 11 N. R. 28 E.,
Secs. 17, 18, 19, 20, 26, 27, 28, 29, 33, 34.
T. 12 N. R. 28 E.,
Secs. 10, 12, 14, 30.
T. 10 N., R. 29 E.,
Sec. 118.
T. 12., R. 29 R.,
Secs. 4, 12, 18, 20, 21, 27, 28, 32.
T. 12 N., R. 30 E.,
Secs. 1, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 17, 18, 21, 23, 26, 28, 29, 34, 35.
T. 13 N., R. 30 E.,
Secs. 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 30, 34.
T. 12 N., R. 31 E.,
Secs. 3, 10, 15, 21, 22, 27, 28, 33, 34.
T. 13 N., R. 31 E.,
Secs. 4, 6, 8, 10, 19, 21, 27, 28, 29, 30, 33, 34.
T. 14 N., R. 31 E.,
Secs. 18, 20, 22, 28, 30, 34.

Containing 48,459.51 acres, more or less.

Copies of complete legal description may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2202.1(b), publication of this notice will segregate the public lands described in this notice from appropriation under the public and land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of two

years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 9, 1987.

**Herman L Kast,**

*Acting District Manager.*

[FR Doc. 87-8499 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-32-M

---

**[AZ-020-07-4212-12; A 20346-E]**

## Realty Action; Exchange of Public Lands in Pinal County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all of public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

**Gila and Salt River Meridian, Arizona**

*Pinal County*

T. 4 S., R. 10 E.,
Sec. 33.
T. 5 S., R. 10 E.,
Secs. 3, 4, 6, 8, 9, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 26.
T. 5 S., R. 11 E.,
Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35.

Containing 25,944.32 acres, more or less.

Copies of complete legal discriptions may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands described in this notice from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Vally Road, Phoenix, Arizona 85027.

Dated: April 9, 1987.

**Herman L. Kast,**

*Acting District Manager.*

[FR Doc. 87-8500 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-32-M

---

**[CA-940-07-5410-10]**

## Realty Action; Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action—conveyance of the reserved mineral interest.

**SUMMARY:** The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

| Serial No. | Legal description | Acres | County | Mineral Ownership |
|---|---|---|---|---|
| CA 19978 | T. 5 S., R. 4 W., MD Mer. Sec. 34, NE¼NE¼ portion of. | [redacted] | Riverside | [redacted] |

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

Upon publication of this notice of realty action in the **Federal Register** as provided in 43 CFR 2720.1-(b), the mineral interests owned by the United States in the private land conveyed by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interest, upon final rejection of the application or two years from the date of filing of the application, whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Joan Mangold, Bureau of Land Management, California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

Dated: April 9, 1987.

**Nancy J. Alex,**

*Chief, Lands Section, Branch of Adjudication & Records.*

[FR Doc. 87-8501 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-40-M

---

**[CA-010-07-4212-13-2410; CA-018-PX7-024]**

## Realty Action; Exchange of Public Lands in Nevada County, CA

**AGENCY:** Bureau of Land Management (BLM) Interior.

**ACTION:** Notice of realty action; proposed exchange of public land and private land.

**SUMMARY:** The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

**Mount Diablo Meridian, CA**

T. 17 N., R. 9 E.,
Section 20: SW¼SE¼, S½SW¼
Section 29: Lots 3, 4, 5, 6, and 7, NW¼NE¼, N½NW¼, SE¼NW¼, S½NE¼

Comprising 487.99 acres, more or less

**SUPPLEMENTAL INFORMATION:** In exchange for these lands, the United States would acquire approximately 600 acres from Bohmia Incorporated. The offered non-Federal lands are in the vicinity of the North Fork of the American River which Congress designated as a wild and Scenic River in 1978.

This notice, as provided in 43 CFR 2201.1 (b), shall segregate the public lands proposed for exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing

laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. This action is necessary while eliminating conflicting encumberances on the public lands during exchange processing. Once negotiations are completed, a second notice will be published specifying the federal and private lands to be exchanged.

**ADDRESS:** Information concerning this exchange proposal is available from the Folsom Resource Area Office, 63 Natoma Street, Folsom, CA 95630; (916) 985–4474. For a period of forty-five (45) days interested parties may submit comments to the Area Manager at the above listed address.

D.K. Swickard,

*Area Manager.*

[FR Doc. 87–8503 Filed 4–15–87; 8:45 am]

BILLING CODE 4310–40–M

---

**[CA–010–07–4212–14–2410; CA 20092]**

## Realty Action; (Public Sale); Folsom Resource Area; Bakersfield District, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Sale of public land in Folsom Resource Area, Placer County, Bakersfield District, California.

---

**SUMMARY:** The following described parcel of land has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed land sale is consistent with section 203 of the Federal Land Policy and Management Act of October 21, 1976, (90 Stat. 2705; 43 U.S.C. 1713). The parcel will be offered for sale June 26, 1987, at no less than the appraised fair market value using modified competitive bidding; whereby, bidding will be restricted to those landowners that currently adjoin the parcel. This parcel is not affected by the National Wildlife Federation suit (*N.W.F. v. Burford et al.*).

**Township 12 North, Range 8 East, MDM**

*Placer County, CA*

Section 18, Lot 14 (Placer Co. Assessor's Parcel 40–03–58)
Containing 7.34 acres more or less
Fair Market Value—$5,000.00

The land is an isolated remnant of public land that lies in a rural residential area near the old mining community of Ophir. It is a narrow strip of land lying mostly in an overflow drainage of Nevada Irrigation District. It has been determined to have no potential for rural residential use due to shape and location which was a significant factor in restricting the sale to the adjourning landowners.

Sale terms and conditions are as follows:

1. There will be reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States (43 U.S.C. 945).

2. All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalists must be authorized to hold property. Proof of meeting these requirements shall accompany bids.

3. The mining claim controlled by Joe and Peggy Leonard, which is presently encumbering the property, must be voluntarily relinquished to the Folsom Office, BLM, prior to the designated date of sale.

The bidding will be by sealed bid. sealed bids will be open at 9:00 a.m. on June 26, 1987, at the Folsom Resource Area Office, BLM, 63 Natoma Street, Folsom, California 95630. Sealed bids shall be considered only if received at the above address prior to 9:00 a.m. on June 26, 1987. Each sealed bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior—BLM for not less than 10 percent of the bid. The sealed bid envelopes must be marked on the front lower left corner "Folsom Resource Area, June 26, 1987, Land Sale." After opening all sealed bids, if two or more envelopes containing valid bids of the same amount are received, determination of the highest bid will be by oral bidding immediately following the opening of the sealed bids. The successful bidder shall submit the remainder of the full purchase price within 180 days of the sale date. Failure to submit the balance of the full bid within the 180 days shall result in cancellation of the sale and the deposit shall be forfeited. The next high bid will then be honored.

It has been determined that the lands are without known mineral values and a successful bid will constitute an application for conveyance of the mineral estate. As such, the successful high bidder will be required to deposit immediately at the sale a $50.00 nonreturnable filing fee for conveyance of the mineral estate.

Publication of this notice in the **Federal Register** segregates the land from appropriation under the public land laws, including the mining laws. The segretation effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

**FOR MORE INFORMATION CONTACT:** Dean K. Swickard, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630; (916) 985–4474. For a period of 45 days from the date of publication of this notice in the **Federal Register**, parties may submit comments to the District Manager, Bakersfield, California 93301, (805) 861–4191. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become a final determination of the Department of the Interior.

D.K. Swickard,

*Area Manager.*

[FR Doc. 87–8502 Filed 4–15–87; 8:45 am]

BILLING CODE 4310–40–M

---

**[NM–010–4351 10, NM 010–GP7–0118, Designation Order NM–010–87–01]**

## New Mexico; Off-Road Vehicle Designation Decision for Rio Puerco Resource Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

---

**SUMMARY:** The Rio Puerco Resource Area, Albuquerque District, Bureau of Land Management, has completed decisions to designate 1,006,476 acres of public land in Bernalillo, Cibola, Torrance, Valencia, Sandoval, McKinley, and Santa Fe Counties, in New Mexico, as open, limited, or closed to off-road vehicle use. Designations are a result of land use planning decisions made in the 1986 Rio Puerco Resource Management Plan.

**DATE:** The subject designations are published as final today.

**FOR FUATHER INFORMATION CONTACT:**

Herrick E. Hands, Area Manager, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, NM 87107, (505) 761–4596; and 761–4504

L. Paul Applegate, District Manager, Albuquerque District Office, 435 Montano NE, Albuquerque, NM 87107, (505) 761–4504

**SUPPLEMENTARY INFORMATION:** The authority for this decision is derived from Executive Orders 11644 and 11989, and the regulations contained in 43 CFR Part 8340, Under 43 CFR, an appeal may be filed within 30 days with the Interior Board of Land Appeals. Specific area designations are as follows:

**A. Open Designations**

Areas which are designated open to motorized vehicle travel comprise approximately 260,455 acres of public land. Much of the open public lands are scattered tracts intermingled with private and State lands. Permission from Landowners will have to be received by vehicle users to gain access to many of the open public lands.

**B. Limited Designations**

Areas which are designated limited comprise approximately 735,684 acres of public land. Limited designation was determined appropriate to protect the resources of the public land, promote the safety of all users of the public lands, and to minimize conflicts among various users of the public land. The following identifies the type of limitation on motorized vehicle travel, a brief rationale, the specific area(s) where the limitation applies, and the affected acreage.

1. Motorized vehicle travel limited to designated roads and trails to protect highly erosive soils in critical to severe condition watersheds from surface disturbance associated with cross-country motorized vehicle travel.

a. Upper Rio Puerco—382,835 acres.
b. Santa Ana Mesa—12,946 acres.
c. Tent Rocks—8,603 acres.
d. Ball Ranch—22,731 acres.
e. 114 area—22,440 acres.
f. El Malpais—273,500 acres.
g. Petaca Pinta—12,629 acres.

2. Intensive recreation use areas are designated to provide opportunities for quality off-road vehicle (ORV) experiences.

a. San Ysidro Trials Area—The trials area (4,080 acres) located just west of San Ysidro, New Mexico is available for trails motorcycle riding, both as a "play-area" and for competitive events. All other motirized vehicle travel in the area is limited to designated roads and trails.

b. Competitive Dune Buggy Event Area—The event area (2,880 acres) is located in the western portion of the 114 area. The area is designated for competitive dune-buggy events using existing routes. All other motorized vehicle travel in the area is limited to designated roads and trails.

c. Recreation Off-Road Vehicle (ORV) Recreation Trail system. The 124 mile trail system is located in the Upper Rio Puerco. The trail system includes a variety of route conditions from primitive to graded and is designed to accommodate both day-use and overnight through a variety of terrain. It will accommodate both play and exploration demands for a variety of ORV recreation types.

3. "Limited to authorized users only" designations apply to five road segments in two Special Management Areas. The following identifies the Special Management Area where the designation applies, miles of road affected, and provides a brief rationale.

a. Ignacio Chavez Special Management Area—Three road segments totalling about eight miles are limited to use by holders of existing permits or leases. The designation allows for intensive management of 23,587 acres as a primitive recreation use area. All other motorized vehicle travel on the three road segments is prohibited.

b. Ojito Special Management Area/ Area of Critical Environmental Concern (ACEC)—Two road segments totalling about 4 miles in the Las Milpas Gas Storage Area of the ACEC are limited to use by holders of existing permits or leases. Other motorized vehicle use on the two road segments is prohibited. The gas storage area (6,840 acres) is managed as a geologic hazard to protect human life, safety and property. The designation promotes the proper management and safe use of the geologic hazard area.

**C. Closed Designation**

Areas and routes which are designated closed comprise approximately 10,337 acres, and include 8 road segments totalling about 16 miles. The following identifies the type of closure, where the closure applies, a brief rationale, and the affected areas (acres or miles).

*1. Closed Areas*

a. Azabache Station Special Management Area—motorized vehicle travel is prohibited on the 80 acre area to protect the Azabache Stage Station ruins for approved scientific study.

b. Guadalupe Ruin and Community Special Management Area—Motorized vehicle travel is prohibited on the 40-acre ruin area to protect the Chacoan outlier for approved scientific study and public visitation.

c. Cabezon Peak Special Management Area/Area of Critical Environmental Concern—Motorized vehicle travel is prohibited on the 4,765 acre area to protect rare plant communities, socio-cultural values, and to allow for intensive management of the area for semi-primitive non-motorized recreation use.

d. Ojito Special Management Area/ Area of Critical Environmental Concern (ACEC)—Motorized vehicle travel is prohibited on the Querencia Watershed Study ara and on the majority of the Las Milpas Gas Storage Area of the ACEC. The closure protects the integrity of the 640 acre watershed study area to ensure that reliable data is collected from the site. The closure of 3,683 acres of the Las Milpas Gas Storage Area provides for the protection of human life, safety, and property.

e. Bluewater Canyon Special Management Area/Area of Critical Environmental Concern—Motorized vehicle travel is prohibited on the 89-acre area to allow protection and enhancement of the natural values of the canyon, especially riparian habitat for wildlife, visual values, and primitive recreation opportunities.

*2. Closed Roads and Trails*

a. Ignacio Chavez Special Management Area—Motorized vehicle travel is prohibited on two road segments totalling about four miles. The closure allows for intensive management of 3,696 acres for semi-primitive non-motorized recreation use.

b. Ojito Special Management Area/ Area of Critical Environmental Concern—Motorized vehicle use is prohibited on two road segments totalling six miles. The closure allows for intensive management of about 8,200 acres for semi-primitive non-motorized recreation use.

c. Road closures outside Special Managment Areas are described as follows: (1) BLM Route 20–3–20 totalling about two and a half miles is closed to motorized vehicle travel. The road is nonessential and parallels the main road system in the area.

(2) Portions of BLM Routes 21–4–27.1, 21–4–10 and 21–4–16 totalling about three and a half miles are closed to motorized vehicle travel, except that which is needed to perform monitoring studies in the Pelon Watershed Special Management Area. The closed road segments provide the only access into study sites in the watershed area. For all other motorized vehicle travel the road segments are nonessential and parallel the main road system in the area.

Dated: April 7, 1987.

**L. Paul Applegate.**

*District Manager.*

[FR Doc. 87–8496 Filed 4–15–87; 8:45 am]

BILLING CODE 4310-FB-M

---

[UT–040–07–4113–08]

## Utah: Plan Amendment for Pinyon Plan; Proposed Geothermal Leasing Stipulations, Beaver and Iron Counties

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Plan Amendment Decision Notice; Geothermal Leasing Stipulations.

**SUMMARY:** The Cedar City District of the Bureau of Land Management has finalized the environmental assessment/plan amendment to change the geothermal leasing stipulations in the Pinyon Planning Unit. See notice of intent in August 14, 1986 **Federal Register**, page 29164.

The Pinyon Planning Unit is located in western Beaver and Iron Counties of southern Utah. The Pinyon Planning Unit is the westernmost planning unit of the Beaver River Resource Area in the Cedar City District. There are 1,390,800 acres of BLM administered federal land in the planning unit. Only 1,460 acres of this area are now under lease. There is a potential for 93,750 acres to be leased under simultaneous leasing procedures.

Upon their renewal or initial granting, seasonal stipulations will be placed upon geothermal leases for the protection of 3,919 acres of raptor and sage grouse habitat. A no surface occupancy stipulation for the protection of 2,347 acres of Utah prairie dog habitat and three historical recreation sites will be placed upon geothermal leases in the planning unit. Unneeded seasonal stipulations on 15,360 acres will be dropped.

**DATE:** A 30 day protest period will begin on April 16, 1987. Unless a protest is received, these lease stipulations will become final immediately following the protest period. Protests must be in writing and must be sent to the Director of the Bureau of Land Management.

**FOR FURTHER INFORMATION CONTACT:** Pete Wilkins, District Planning Coordinator in the Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720, (801) 586–2401.

Dated: April 7, 1987.

**Morgan S. Jensen,**

*District Manager.*

[FR Doc. 87–8495 Filed 4–15–87; 8:45 am]

BILLING CODE 4310-DQ-M

---

**[NV–943–07–4220–11; Nev–043897]**

## Proposed Modification and Continuation of Withdrawal; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Forest Service proposes that the withdrawal of 274 acres covering portions of nine administrative and recreation sites in the Toiyabe National Forest be modified to establish a 25-year term and that certain legal descriptions be modified to conform to current maps, cadastral protraction diagrams, or surveys. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** Comments should be received by July 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520, (702) 784–5481.

**SUPPLEMENTARY INFORMATION:** The U.S. Forest Service proposes that a portion of the withdrawal made by Public Land Order 1718 of August 15, 1958, be modified to establish a 25-year term and that certain legal descriptions be modified to conform to current maps, cadastral protraction diagrams, or surveys. This action is taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714). The lands are described as follows:

**Indian Valley Administrative Site**

T. 10 N., R. 40 E., (Unsurveyed) sec. 4 described as follows:
Begin at SE Corner of sec. 32, T. 11 N., R. 40 E., MDM Thence S 43°30′ E 81.18 chains to true point of beginning Thence N 21° E 3 chains; Thence S 69° E 10 chains; Thence S 21° W 5 chains; Thence N 57° W 10.41 chains to point of beginning.

**Peavine Forest Camp**

(conformed to current maps and protraction diagram)
T. 9 N., R. 42 E., (Unsurveyed)
Sec. 30, W½NW¼NE¼.

**San Juan Administrative Site**

(conformed to current maps and protraction diagram)
T. 15 N., R. 42 E., (Unsurveyed)
Sec. 32, S½NE¼NE¼SE¼, SE¼NW¼NE¼SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼.

**Kingston Administrative Site**

T. 16 N., R. 43 E.,
Sec. 17, W½E½NW¼NE¼, W½NW¼NE¼.

**Kingston Forest Camp**

T. 16 N., R. 43 E.,
Sec. 28, SE¼NE¼NE¼, NE¼SE¼NE¼, excepting the areas included in Mineral Survey Nos. 1811 and 3422.

**Big Creek Forest Camp**

(conformed to current maps and survey)
T. 17 N., R. 43 E.,
Sec. 10, S½SW¼SW¼.

**Meadow Canyon Administrative Site**

(conformed to current maps and protraction diagram)
T. 10 N., R. 45 E., (Unsurveyed)
Sec. 21, S½S½NW¼, N½N½SW¼.

**Pine Creek Forest Camp**

T. 11 N., R. 45 E., (Unsurveyed)
Sec. 13, SE¼NE¼.

**Hunts Canyon Administrative Site**

(conformed to current maps and survey)
T. 7 N., R. 46 E.,
Sec. 23, NE¼NE¼SW¼, E½SE¼NE¼SW¼, SW¼NE¼NW¼SE¼, S½NW¼NW¼SE¼, SW¼NW¼SE¼, W½SE¼NW¼SE¼.

The areas described aggregate 274 acres in Nye County.

The purpose of the withdrawal is to provide the minimum essential acreage required to protect these administrative sites and developed recreation sites within the Toiyabe National Forest. Many of these sites have meadow areas which are scarce in such a desert environment and are therefore extremely sensitive to disturbance.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

**Robert G. Steele,**

*Deputy State Director, Operations.*

[FR Doc. 87–8549 Filed 4–15–87; 8:45 am]

BILLING CODE 4310-HC-M

---

**[NV–020–4132–02]**

## Winnemucca District Advisory Council Meeting and Tour

**AGENCY:** Bureau of Land Management.

**ACTION:** Winnemucca District Advisory Council Meeting and Tour.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92–463 that a meeting, including a field tour, of the Winnemucca District Advisory Council will be held on May 26 and 27, 1987. The tour will be conducted in Humboldt County, Winnemucca District,

commencing at the Winnemucca District Office at 705 East Fourth Street, Winnemucca, Nevada 89445 at 10:00 a.m. on May 26 and ending at the same place at 5:00 p.m. that afternoon. The meeting will be held at the Winnemucca District Office from 8:00 a.m. to 11:30 a.m. on May 27. The primary purpose of the meeting and tour is to review, discuss, and make recommendations on mining operations and associated resources.

The agenda for the meeting on May 27 will include:

(1) Review and approval of the minutes of the previous meeting—Advisory Council.

(2) Update—Winnemucca District Manager.

(3) Discussion and recommendations on managing the cumulative effects of mining operations in coordination with other resources and resource users.

The meeting and tour is open to the public. Interested persons may make oral statements to the Council at 10:00 a.m. on May 27 or file a written statement for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by May 13, 1987. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meetings will be maintained in the Winnemucca District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: April 8, 1987.

**Frank C. Shields,**

*District Manager.*

[FR Doc. 87-8548 Filed 4-15-87; 8:45 am]

BILLING CODE [illegible]

---

[ID-020-07-4212-14]

## Notice of Realty Action; Sale of Public Land in Blaine, County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, sale of public land in Blaine County, Idaho.

**SUMMARY:** The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal:

| Parcel No. | Legal description | Appraised fair market value | Sale type |
|---|---|---|---|
| I-23354 | T.7S., R26E., B.M. Section 31: NE¼SW¼ (40 acres). | $1,600 | [illegible] |

The land will be offered for sale using modified competitive bidding procedures. The adjoining landowners, Roy T. Honsinger, Bertha Kuhlmann, and Split Butte Ranch, Inc., will be given preference rights as designated bidders in accordance with 43 CFR 2711.3–2. This preference right gives those designated bidders, who submit a valid bid, the opportunity to match the highest bid. When patented, the lands will be subject to the following reservations:

Ditches and Canals, Oil and Gas, and Geothermal rights will be reserved to the United States Government.

Continued use of the land by valid right-of-way holders is proper, subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

### Sale Procedures

The parcel will be sold by modified competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of sale in the Burley District Office located at Route 3, Box 1, 200 South Oakley Highway, Burley, ID 83318. The bid must be sealed in an envelope with the envelope specifying the serial number and the sale date in the lower left hand corner (i.e., "Sealed Bid—Public Land Sale I–23354—June 24, 1987"). In the case where two or more designated bidders exercise their preference right, the designated bidders shall be given the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the preference right bidders will be allowed to continue bidding to determine the high bid. Bids must be submitted for at least fair market value and will constitute an application to purchase that portion of the mineral estate of no known value. A thirty percent (30%) deposit must accompany each bid as well as an additional $50.00 non-returnable mineral conveyance processing fee. The filing fee and deposit must be paid by certified check, money order, bank draft or cashiers check. Bids will be rejected if accompanied by a personal check.

**DATE AND ADDRESS:** The sale offering will be held on Wednesday, June 24, 1987, at 1:00 pm at the Burley District Office, 200 South Oakley Highway, Burley, ID 83318. Should no valid bids be received, the parcel will be offered every Wednesday through November 25, 1987, on which date this sale offering will be suspended.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the conditions of the sale can be obtained by contacting Sharon LaBrecque, Snake River Realty Specialist, at (208) 678–5514.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, ID 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: April 10, 1987.

**Terrance M. Costello,**

*Snake River Area Manager.*

[FR Doc. 87-8615 Filed 4-15-87; 8:45 am]

BILLING CODE [illegible]

---

## Fish and Wildlife Service

## Yukon Delta National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement, Wilderness Review, and Wild River Plan (CCP/EIS/WR/WRP), Alaska

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service has prepared for public review a draft CCP/EIS/WR/WRP for the Yukon Delta National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes four strategies for long-term

management of the refuge which encompasses more than 26 million acres (19.2 million acres in federal ownership). The plan reviews the suitability of federal lands not previously designated as wilderness—about 17.3 million acres—for possible designation and inclusion in the National Wilderness Preservation System.

**DATES:** Comments on the draft document must be submitted on or before June 30, 1987, to receive consideration in the preparation of the final CCP/EIS/WR/WRP. Public meetings will be held in a number of communities within or near the refuge during the Spring of 1987; dates, times, and places for the village meetings will be advertised through various means, including the news media and communication with the village councils. A public hearing will be held in Anchorage, Alaska, at the Fairview Community Center, 1121 E. 10th Ave., on Thursday, May 28, 1987, beginning at 7:00 p.m.

**ADDRESS:** Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199 (Attn: William Knauer).

**FOR FURTHER INFORMATION CONTACT:** William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199; telephone (907) 786–3399.

A summary of the draft CCP/EIS has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete draft CCP/EIS/WR/WRP will be sent to federal and state agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. Copies of both documents are available upon request from Mr. Knauer.

Written and oral testimony will be accepted at the public hearing and will be transcribed for the official record. Written and oral comments also will be accepted at the public meetings. All comments and testimony, both oral and written, received prior to the June 30th date, will be considered in the preparation of the final CCP/EIS.

Copies of the draft CCP/EIS are also available for review at the Office of the Regional Director, address as listed previously, as well as at the office of the Yukon Delta National Wildlife Refuge, Bethel, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, U.S. Department of the Interior Bldg., 18th and C Streets, NW., Washington, DC 20240
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 N.E. Multnomah Street, Suite 1692, Portland, OR 97232.
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

**SUPPLEMENTARY INFORMATION:** The draft CCP/EIS for the Yukon Delta National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, U.S. Department of the Interior to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) of ANILCA. This requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all undesignated wilderness lands in refuges in Alaska as to their suitability for preservation as wilderness and report Department recommendations to the President by 1987.

Issues addressed by the plan focus on fish and wildlife management, including the declining populations of four species of arctic-nesting geese on the refuge, reindeer grazing on the refuge, and the introduction of muskox to the mainland of the refuge; designation of additional wilderness on the refuge; whether oil and gas exploration and development should occur on the refuge; management of recreational use on the refuge; the sensitive interrelationships between the people native to the area and the resources they use; and problems with extensive inholdings and development and use of lands adjacent to the refuge.

The plan also describes the general wilderness suitability of approximately 17.3 million acres of refuge lands which are not in the National Wilderness Preservation System. Each management alternative, except the current situation (Alternative A), has a different wilderness proposal (ranging from 10 to 77 percent of the refuge). The Service's preferred alternative, Alternative B, proposes that 10 percent of the refuge be designated as part of the National Wilderness Preservation System.

Other government agencies and the general public contributed to the development of this draft CCP/EIS. The Notice of Intent to prepare the draft CCP/EIS was published in the November 15, 1984, **Federal Register**. Between December 1984 and May 1985, representatives of the Service visited 34 communities in the Yukon-Kuskokwim area, holding meetings or interviewing residents to learn of local issues and concerns. A public meeting was also held in Anchorage during this period. A second series of meetings to discuss management alternatives was held in May and June of 1986, with workshops in Anchorage and twelve communities on the refuge.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the final CCP/EIS.

Dated: April 10, 1987.

**John P. Rogers,**

*Acting Regional Director.*

[FR Doc. 87–8489 Filed 4–15–87; 8:45 am]

BILLING CODE 4310-55-M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–102 (Sub-No. 24X)]**

### Missouri-Kansas-Texas Railroad Co.; Abandonment; in Tulsa County, OK; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 6.6-mile line of railroad between milepost Z–271.68 and milepost Z–278.34 at Tulsa, in Tulsa County, OK.[1]

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the

[1] Discontinuance of operations between milepost Z–271.68 and milepost Z–278.20 has previously been approved in Docket No. AB–102 (Sub-No. 11X), *Missouri-Kansas-Texas Railroad Company—Abandonment and Discontinuance of Operations Exemption—In Tulsa County, OK* (not printed), served March 18, 1985.

complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective [30 days from service of this decision] (unless stayed pending reconsideration). Petitions to stay must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael E. Roper, 701 Commerce Street, Dallas, TX 75202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 7, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary*.

[FR Doc. 87-8519 Filed 4-15-87; 8:45 am]

BILLING CODE 7035-01-M

---

[Ex Parte No. 466]

## Railroad Cost of Capital, 1986

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of time to file statements in notice of institution of 1986 railroad cost of capital proceeding.

**SUMMARY:** The Federal Register of March 16, 1987 (52 FR 8119) established the due date for the initial statements by the railroads to be April 30, 1987. The due dates of statements of other interested parties was established to be May 15, 1987, and the due date for railroad rebuttal statements was established to be June 1, 1987. The Association of American Railroads has requested that the due date for the initial railroad submission be extended to May 15, 1987. They also have requested that the due dates for the statements of other interested parties and the railroad rebuttal statement be extended to June 15, 1987, and June 30, 1987, respectively. The petition shall be granted. Additional time is necessary to obtain and prepare data for the initial statement.

**DATES:** Initial statements by the railroads are due May 15, 1987. Statements by other interested parties are due by June 15, 1987, and railroad rebuttal statements are due June 30, 1987.

**ADDRESS:** Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr., (202) 275-7489.

**DATED:** April 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley was absent and did not participate.

Noreta R. McGee,

*Secretary*.

[FR Doc. 87-8555 Filed 4-15-87; 8:45 am]

BILLING CODE 7035-01-M

---

## Release of Waybill Data for Use To Evaluate TOFC/COFC Traffic in the United States

The Commission has received a request from Temple, Barker & Sloane, Inc. for permission to use certain data from the Commission's 1985 Waybill Sample to evaluate TOFC/COFC traffic, both trailers and containers, based on major container port BEAs and 2-digit SPLC areas for the rest of the United States. Temple, Barker & Sloane, Inc. is requesting the finer level of geographic detail than that shown in the Public Use File to: (1) Better evaluate the differences between domestic and international traffic and (2) distinguish major traffic lanes that may be masked by aggregating at the State level.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 C.F.R. Part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (49 Federal Register 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-[illegible]

Noreta R. McGee,

*Secretary*.

[FR Doc. 87-8556 Filed 4-15-87; 8:45 am]

BILLING CODE 7035-01-M

---

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Labor Research Advisory Council Committees; Meeting and Agenda

The regular Spring meetings of committees of the Labor Research Advisory Council will be held on April 28, 29, and 30. The meetings will be held in Room S-2217 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

**Tuesday, April 28, Room S-2217**

*9:30 a.m.—Committee on Wages and Industrial Relations*

1. Review of work in progress
2. Status Report on White-collar Pay and Benefit Survey
3. A look at "Contracting-out" in manufacturing industries
4. New developments in the Employee Benefit Survey data
5. New ECI series and the introduction of Benefit of Cost Indexes

BEST COPY AVAILABLE

6. Other business

*1:30 p.m.—Committee on Employment Structure and Analysis*

1. Review of the Current Population Survey
2. Issues in employment and structure
   a. Status of the CPS earnings data
   b. Review of annual report on employment related economic status
3. Mass layoff reporting
4. Contingent workforce issues
5. BLS survey of day care in industry
6. Other business

**Wednesday, April 29, Room S–2217**

*9:30 a.m.—Committee on Productivity, Technology, and Economic Growth and Committee on Foreign Labor and Trade*

1. Recent trends in U.S. productivity
2. Additional research accounting for economic growth
3. New industry multifactor productivity measures
4. IPS–3 status report
5. Description of international training program work
6. Economic Growth status report

**Thursday, April 30, Room S–2217**

*9:30 a.m.—Committee on Prices and Living Conditions*

1. Status Reports
   a. Consumer price index
   b. Producer price index
   c. Export and import price indexes
   d. Service sector initiative
2. Other business

*1:30 p.m.—Committee on Occupational Safety and Health Statistics*

1. Recordkeeping
2. National Academy of Sciences panel
3. Congressional hearing
4. Annual survey of fatalities
5. Supplementary data system
6. Work injury reports
7. Health studies

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523–1327.

Signed at Washington, DC this 9th day of April 1987.

**Janet L. Norwood,**

*Commissioner of Labor Statistics.*

[FR Doc. 87–8516 Filed 4–15–87; 8:45 am]

BILLING CODE [illegible]

## Mine Safety and Health Administration

[Docket No. M–87–70–C]

### Meadows Coal Co. No. 4; Petition for Modification of Application of Mandatory Safety Standard

Meadows Coal Company No. 4, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 1 Mine (I.D. No. 44–05160) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole of boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehold, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In further support o this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of ± 5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (May 18, 1987). Copies of the petition are available for inspection at that address.

Dated: April 9, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[DR Doc. 87–8517 Filed 4–15–87; 8:45 am]

BILLING CODE [illegible]

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87–35)]

### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Reliability, Diagnositics and Quality Assurance Ad Hoc Task Team.

**DATE AND TIME:** May 6, 1987, 9 a.m. to 5 p.m.; May 7, 1987, 9 a.m. to 5 p.m.

**ADDRESS:** Langley Research Center, Building 1218, Room 209, Hampton, VA 23665.

**FURTHER INFORMATION CONTACT:** Mr. John Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2834.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space systems research and technology activities in the Office of Aeronautics and Space Technology (OAST). The ad hoc team on Reliability, Diagnostics and Quality Assurance, chaired by Mr. Adrain P. O'Neal, is comprised of eight members.

The purpose of the team is to ensure that the technology program has the necessary design base to support development of the predictive techniques, design tools, and test methods required for future spaceflight missions. The meeting will be open to the public up to the seating capacity of the room (approximately 12 persons including the task team members and other participants).

Type of Meeting: Open.

Agenda

*May 6, 1987*

9 a.m.—Drafting of Final Report.
5 p.m.—Adjourn.

*May 7, 1987*

9 a.m.—Continuation of Drafting of Final Report.
5 p.m.—Adjourn.

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

April 9, 1987.

[FR Doc. 87–8537 Filed 4–15–87; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Solo Recitalists Fellowships Section) to the National Council on the Arts will be held on April 29–30, 1987, from 9:00 a.m.–6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 30, 1987, from 1:30 p.m.–3:00 p.m. for a discussion of policy issues.

The remaining sessions of this meeting on April 29, 1987, from 9:00 a.m.–6:00 p.m. and on April 30, 1987, from 9:00 a.m.–12:30 p.m. and 3:15–6:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

April 9, 1987.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 87–8504 Filed 4–15–87; 8:45 am]

BILLING CODE 7537–01–M

### Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel; Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 714, from 9:00 a.m. to 5:30 p.m. on May 7, 1987.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July, 1987.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Stephen J. McCleary, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/786–0322.

**Stephen J. McCleary,**

*Advisory Committee, Management Officer.*

[FR Doc. 87–8551 Filed 4–15–87; 8:45 am]

BILLING CODE 7536–01–M

### National Endowment for the Arts; National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on May 1, 1987, from 9:00 a.m.–5:00 p.m.; on May 2, 1987, from 8:30 a.m.–5:30 p.m., and on May 3, 1987, from 8:00 a.m.–2:00 p.m. in the Lafayette Ballroom of the Westin Hotel Utah, Main and South Temple, Salt Lake City, Utah 84111.

A portion of this meeting will be open to the public on Friday, May 1, from 9:00 a.m.–5:00 p.m. and on Saturday, May 2, from 8:30 a.m.–5:30 p.m. The topics for discussion will include Program Review/Guidelines for Dance Program, State Programs, Literature Program, Folk Arts Program and Music Recording/Training/Services and Centers; Endowment Individual Fellowships; Artists Rights; the Arts Education Study; State Programs Reassessment and FY 1989 Budget Planning and Priorities.

The remaining sessions of this meeting on Sunday, May 3, from 8:00 a.m.–2:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contract the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

April 13, 1987.

[FR Doc. 87–8585 Filed 4–15–87; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Physics; Open Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and Time: May 4, 1987; 9:00 a.m. to 6:00 p.m., May 5, 1987; 8:30 a.m. to 5:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Harvey B. Willard, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20050, (202) 357–7985.

Minutes: May be obtained from Mrs. Denise S. Henry, Secretary, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550, (202) 357–7985.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physics.

Agenda: *May 4, 1987:* 9:00 a.m.–6:00 p.m., Room 540.

Oversight review of NSF support for Theoretical Physics, including presentations by NSF staff and the report of the Subcommittee for Review of the NSF Theoretical Physics Program. Long range planning.

*May 5, 1987:* 8:30 a.m.–5:00 p.m., Room 540.

Discussion of FY 1987 and FY 1988 budgets. Continuation of discussions of previous day.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87–8593 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Linguistics; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics.

Date & Time: April 29, 30 and May 1, 1987; 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Rm 540–B Washington, DC 20550.

Type of Meeting: Part Open—Open 5/1—9:00 a.m. to 12:00 noon, Closed 4/29—9:00 a.m. to 5:00 p.m., Closed 4/30—9:00 a.m. to 5:00 p.m., Closed 5/1—12:00 noon to 5:00 p.m.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, Room 320, National Science Foundation, Washington, DC 20550; (202) 357–7696.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: Open—General discussion of the current status and future plans of the Linguistics Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Manager Officer.*

[FR Doc. 87–8591 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Molecular and Cellular Neurobiology Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Molecular and Cellular Neurobiology Program.

Date & Time: May 4, 5, and 6 1987: 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC. Meeting is to be held in the conference room 1242.

Type of Meeting: Part Open—Open Tuesday 5/05/87—1:30 p.m. to 3:00 p.m., Closed 5/04/87 9:00 a.m., to 5:00 p.m., Closed 5/06/87 9:00 a.m. to 5:00 p.m.

Contact Person: Dr. Stephen J. Morris, Program Director for Molecular and Cellular Neurobiology Program, Room 320, National Science Foundation, Washington, DC 20550; Telephone (202) 357–7471.

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Molecular and Cellular Neurobiology Program.

Agenda: Open—General discussion of research trends and opportunities in Molecular and Cellular Neurobiology.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87–8592 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Political Science; Closed Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date/Time: April 30, 1987, 9:00 a.m. to 5:30 p.m., May 1, 1987, 9:00 a.m. to 4:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Frank P. Scioli, and Dr. Lee P. Sigelman, Program Directors for Political Science; Telephone (202) 357–9406.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory: To provide advice and recommendation concerning support for research in the Political Science Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87–8594 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Regulatory Biology; Closed Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Regulatory Biology.

Date and Time: May 6, 7, and 8, 1987, 8:30 a.m. to 5:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Stephen Bishop, Program Director, Regulatory Biology Program, Room 321, National Science Foundation, Washington, DC 20550. Telephone 202/357–7975.

Purpose of Advisory Panel: To provide advice and recommendation concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87–8595 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Decision, Risk, and Management Science Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Decision, Risk, and Management Science Program.

Date and Time: April 30—May 1, 1987, 8:30 a.m. to 5:00 p.m.

Place: New Orleans Marriott In the French Quarters, New Orleans.

Type of Meeing: Closed.

Contact Person: Dr. Arie Y. Lewin (202) 357–7569 or Dr. Vincent T. Covello (202) 357–7417, Program Directors for Decision, Risk, and Management Science, Room 336, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Decision, Risk, and Management Science Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 13, 1987

[FR Doc. 87–8588 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Eukaryotic Genetics Program; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Eukaryotic Genetics.

Date and Time: Thursday, Friday, and Saturday May 7, 8, and 9, 1987 from 8:30 a.m. to 5:00 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type Meeting: Closed.

Contact Person: DeLill Nasser, Program Director, Eukaryotic Genetics, Room 321L, Telephone: (202) 357–0112.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**Rebecca Winkler,**

*Committee Management Officer.*

April 13, 1987.

[FR Doc. 87–8589 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Law and Social Science; Closed Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Science.

Date and Time: May 1–2, 1987: 8:30 a.m. to 5:00 p.m., Closed.

Place: Room 643, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Science, National Science Foundation, Washington, DC 20550, Room 312, Telephone (202) 357–7326.

Purpose of Panel: To provide advice and recommendations concerning research in Law and Social Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 13, 1987.

[FR Doc. 87–8590 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–454 and 50–455 Licenses No. NPF–37 and NPF–66, EA 86–87]**

### Commonwealth Edison Co., Byron Nuclear Station, Units 1 and 2; Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company is the holder of Operating Licenses No. NPF–37 and NPF–66 issued by the Nuclear Regulatory Commission on October 3, 1984 and January, 30, 1987. The licenses authorize the licensee to operate the Byron Plant, Units 1 and 2, in accordance with the conditions specified therein.

II

A December 3, 1984, decision by the Department of Labor (DOL) Area Director found that Transco Products, Inc., had discriminated against an employee engaged in protected activities. That decision was upheld by a DOL Administrative Law Judge (ALJ) on March 5, 1985, and the case was settled prior to a decision by the Secretary. The NRC's review of this decision indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated June 25, 1986. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated July 29, 1986.

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is Hereby Orderd That:

The licensee pay a civil penalty in the amount of Twenty Five Thousand Dollars ($25,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as such and shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector, Byron.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisons of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated: at Bethesda, Maryland, this 2d day of April 1987.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

*Acting Director, Office of Inspection and Enforcement.*

Appendix—Evaluations and Conclusions

On June 25, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for a violation of 10 CFR 50.7 requirements. Commonwealth Edison Company responded to the Notice on July 29, 1986. In its response, the licensee did not take issue with the facts of the case, but stated that it believes that total mitigation of the proposed civil penalty is warranted because of its extensive corrective actions and its prior, good enforcement history. The licensee also requested NRC to reconsider classification of the violation to Severity Level IV. Provided below are (1) restatement of the violation; (2) a summary of the licensee's response in support of this request; (3) the NRC's evaluation of the licensee's response, and (4) the NRC's conclusion.

*Restatement of Violation*

10 CFR 50.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The activities protected include but are not limited to providing the NRC information about possible violations of NRC requirements and requests to the NRC to take action against an employer for enforcement of NRC requirements.

Contrary to the above, Jeffrey Johnson, an employee of Transco Products, Inc., a subcontractor of Commonwealth Edison Company and a quality control inspector at the Byron Nuclear Power Station, was discharged on November 2, 1984, by Transco for engaging in protected activities which involved reporting to the NRC on October 16, 1984, the employer's inadequate inspection procedures and installation of non-radiation-proof seals.

This is a Severity Level III violation (Supplement VII). Civil Penalty—$25,000.

*Summary of Licensee's Response*

The licensee does not dispute the facts or findings of this event, but disagrees with the NRC's conclusion that the event is properly classified as a Severity Level III violation. The licensee also requests that the NRC further review the positive and extensive corrective actions taken by the licensee.

The licensee states that as soon as it learned of the incident, it began formulating and implementing the corrective actions which address the general area of worker protection to prevent a recurrence of similar events. In the area of past performances, the licensee believes that its performance over the past twelve years shows the effectiveness of Edison's commitment to worker protection as demonstrated by the extremely low number of Department of Labor (DOL) complaints at the LaSalle County, Byron, and Braidwood Stations. The licensee believes that 100% mitigation of the base civil penalty is appropriate for the corrective actions taken and for past performance.

In support of the licensee's arguments concerning reduction of the severity level and civil penalty, the licensee has provided two earlier NRC enforcement cases for consideration. In EA 84–93, the NRC reevaluated a Severity Level II violation at Catawba Nuclear Station and reduced the violation to Severity Level III based on the isolated nature of the incident and the licensee's generally good management of the quality assurance and control program. In EA 85–117, a civil penalty was not proposed for a violation at Vogtle Electric Generating Plant due to the licensee's corrective actions and good enforcement history. The licensee believes that the NRC should consider both of these cases in determining the appropriate sanction for this violation.

*NRC Evaluation of Licensee's Response*

In responding to the licensee's argument that the violation should be reclassified in light of EA 84–93, the violation in that case initially was properly classified as a Severity Level II violation because the incident involved "action by plant management above first-line supervision." That severity level classification was reduced, however, because of the particular facts in that incident and because the incident was a relatively isolated event and the licensee's management of the quality assurance and control program was generally good. (June 30, 1986 Order Imposing Civil Monetary Penalty, Appendix at 6.) The NRC believes that the violation in EA 86–87 was properly classified as a Severity Level III violation.

Regarding the staff's mitigation of the civil penalty in EA 85–117, the corrective action taken was both very extensive and initiated immediately. A prompt thorough investigation was made, and

the cause of the problem was removed by replacement of the manager charged with the intimidation. EA 85–117 concerned remarks by a manager which were perceived by Quality Control (QC) personnel as intimidating regarding their freedom to perform their quality assurance functions. Investigation and subsequent inspections did not disclose that QC inspections were compromised. (November 15, 1985 Notice of Violation at 1.) The QC inspectors continued to perform their job and adverse action was not taken against them.

In the instant case, adverse action was in fact taken against an employee who came forward and reported a safety concern to the NRC. While the NRC will not tolerate either type of behavior, it finds especially serious those situations where actual discrimination, and not just the threat of discrimination, occurs in retaliation for an employee engaging in a protected activity.

The facts of this event show that action was taken against an employee by first-line supervision in violation of Section 210 of the Energy Reorganization Act (ERA). This action is properly categorized as a Severity Level III violation in accordance with 10 CFR Part 2, Appendix C, Supplement VII.C.3. Any incident of discrimination is considered to be serious and not appropriate for reduction below Severity Level III.

The NRC acknowledges that the licensee took corrective actions that were extensive in nature. The NRC also acknowledges the licensee's good enforcement history in this area as well as the apparent isolated nature of the event. For these reasons, partial mitigation of the base civil penalty was considered appropriate. Use of the same factors to also reduce the severity level classification is not considered appropriate, as the significance of the violation determines the severity level, and previous good performance and subsequent corrective actions are factors that determine escalation/mitigation of the civil penalty.

Total mitigation of the civil penalty was not considered appropriate for several reasons. The NRC enforcement policy allows up to 50% reduction of the base civil penalty for unusually prompt and extensive corrective actions. While the licensee's actions were extensive, the NRC does not believe that the actions were prompt in response to the discriminatory act by one of its contractors. The initial complaint to DOL was filed on November 16, 1984. In December 1984 and March 1985, DOL officials found in favor of the complainant. A review of corrective actions taken by Commonwealth Edison shows that these actions were only initiated in response to the NRC enforcement conference in April 1986. In its repsonse, the licensee makes no mention of any corrective actions in response to this event prior to April 1986.

Although the NRC recognizes the licensee's good enforcement history in this area, full mitigation is not considered appropriate. As a result of the enforcement conference and the subsequent corrective actions taken by the licensee, the NRC believes that contractors had not been fully aware of their obligations in this area. Further, even though an event of this kind had occurred, approximately one and one-half years elapsed before the licensee had a mechanism in place to respond adequately and inform workers that such acts would not be tolerated. The absence of a program to inform contractors/employees of their responsibilities in this area as well as the failure of the licensee to respond promptly to prevent potential intimidation of others resulting from this case indicates that the licensee's performance was not adequate to warrant full mitigation of the proposed civil penalty.

*NRC Conclusion*

The NRC staff believes that the violation did occur as stated. The NRC has reviewed Commonwealth Edison Company's response to the proposed imposition of civil penalty and believes that the event was properly classified as a Severity Level III violation. The staff continues to believe that while partial mitigation of the base civil penalty is appropriate, the licensee's actions are not deserving of further mitigation. Consequently, the proposed Civil Penalty in the amount of $25,000 should be imposed.

[FR Doc. 87–8608 Filed 4–15–87; 8:45 am]

BILLING CODE 7590–01–M

---

## Advisory Committee on Reactor Safeguards, Subcommittee on AC/DC Power Systems Reliability; Meeting

The ACRS Subcommittee on AC/DC Power Systems Reliability will hold a meeting on May 6, 1987, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, May 6, 1987—8:30 A.M. until the conclusion of business.*

The Subcommittee will review the proposed Station Blackout rule (SECY–85–163).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary veiws regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date April 10, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87–8618 Filed 4–15–87; 8:45 am]

BILLING CODE 7590–01–M

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–24368]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Rails County Electric Cooperative and Laclede Electric Cooperative

April 9, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 4, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Ralls County Electric Cooperative (31–823)**

Ralls County Electric Cooperative ("Cooperative"), Highway 61 and 19, P.O. Box 157, New London, Missouri 63459, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 3,700 retail customers. Its operations are confined to Ralls, Pike, Monroe, Marion, and Audrain counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 26, RALLS. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Northeast Missouri Electric Power Cooperative, Palmyra, Missouri. It owns 100% of the stock of Ralls Electric Service Co. ("Service Co."), a Missouri corporation, which is an "electric utility company" under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations of less than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities with populations exceeding 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service Co. facilities and members of Cooperative which are in the annexed areas. Service will generate no power. Cooperative will be the sole power supplier of Service, which will make all of its sales to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a "holding company". Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of Cooperative. This board in turn elects the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

**Laclede Electric Cooperative (70–7381)**

Laclede Electric Cooperative ("Cooperative"), 1000 E. Seminole, Drawer M, Lebanon, Missouri 65536, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 18,000 retail customers. Its operations are confined to Camden, Dallas, Laclede, Pulaski, Webster, and Wright counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 43, LACLEDE. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Sho-Me Power Corporation, Marshfield, Missouri. It owns 100% of the stock of Laclede Electric Service Co. ("Service"), a Missouri corporation which is an "electric utility company" under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations of less than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities with populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a "holding company." Cooperative is owned by the several thousand members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8528 Filed 4–15–87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34–24313; File No. SR–NASD–87–4]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Amending the NASD's Initial and Maintenance Margin Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change amends section 6 of Appendix A to Article III, section 30 of the NASD Rules of Fair Practice to exempt from the initial and maintenance margin requirements of Appendix A, special cash accounts of persons having net tangible assets of sixteen million dollars or more.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change was considered by the NASD Capital and Margin Committee in response to a request for exemption submitted by a member firm. The New York Stock Exchange rules and interpretations provide an exemption from the Exchange's margin requirements for those categories of customer accounts currently exempted under section 6 of Appendix A but, in addition, exempt the category of customer accounts covered by the proposed rule change. The NASD determined that no reason existed for maintaining a non-uniform policy that places NASD members at a competitive disadvantage vis-a-vis Exchange members. For this reason the NASD has adopted the proposed rule change.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Securities Exchange Act of 1934 ("Act"), which applies to registered securities associations and requires that rules of the Association be designed to protect the investing public and the public interest and that they not be designed to permit unfair discrimination between customers and between brokers or dealers. The NASD also believes that the rule change is consistent with section 15A(b)(9) of the Act which provides that the rules of an association not impose an unnecessary burden on competition. The NASD believes that the proposed rule change will eliminate a competitive disadvantage without reducing the protections provided to the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The NASD did not solicit or receive comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self/regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–4 and should be submitted by May 7, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 9, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8527 Filed 4–15–87; 8:45 am]

BILLING CODE 8010–01–M

[Rule 15c3–3; File No. 270–87]

**Agency Forms Under Review of Office of Management and Budget**

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

**Extension**

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15c3–3 (17 CFR 240.15c3–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires brokers or dealers to prepare computations with respect to the amount of customer funds they must deposit in Reserve Bank Accounts. One thousand respondents incur a cumulative total of 110,000 burden hours to comply with the rule.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

April 9, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8600 Filed 4–15–87; 8:45 am]

BILLING CODE 8010–01–M

---

[Release No. IC–15677; 811–3674]

**California Tax-Free Money Fund; Investment Company Deregistration**

April 10, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* California Tax-Free Money Fund.

*Relevant 1940 Act Section:* Order requesting deregistration under Section 8(f) and Rule 8f–1.

*Summary of Application:* Applicant seeks an order declaring that Applicant has ceased to be an investment company.

*Filing date:* The application was filed on December 30, 1986, and amended on February 13, 1987. A letter was filed as an exhibit to the application on March 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person

may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 5, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington DC 20549. California Tax-Free Money Fund, One World Trade Center, Suite 8407, New York, New York 10048.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Hutchins, Staff Attorney at (202) 272–2799 or Brion R. Thompson, Special Counsel at (202) 272–3016, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300)).

**Applicant's Representatives**

1. Applicant was organized as a Massachusetts business trust on February 23, 1983. On March 1, 1983, Applicant registered as an open-end, diversified management investment company under the 1940 Act and the initial public offering of its shares commenced on September 24, 1984.

2. Applicant's Board of Trustees adopted a Plan of Liquidation and Termination ("Plan") on October 1, 1986 and Applicant's shareholders adopted the Plan on December 22, 1986. Pursuant to the Plan, all remaining cash after payment of expenses were distributed to all except one of Applicant's shareholders at their net asset value of $1.00 per share during the period from December 22, 1986, to March 27, 1987. No securities of the Applicant have been issued or sold since September 30, 1986.

3. Applicant's sole remaining shareholder owns .390 shares at 1.00 per share. This final distribution remains upaid solely by reason of the inability of Applicant, after sending letters to the last known address and after further diligent effort, to ascertain the whereabouts of such remaining shareholder.

4. Applicant has not retained any assets other than for the purpose of paying expenses and there are no investment securities retained by Applicant. Applicant has not, within the past 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

5. Applicant has outstanding debt and estimated expenses which amount to approximately $66,000. These expenses include expenses (such as legal and accounting fees and transfer agent fees) incurred in connection with the liquidation, which expenses have been assumed by Dr. Lance M. Brofman.

6. Applicant is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant has not other outstanding liabilities, is not a party to any litigation or administrative proceeding and is currently a trust in good standing under Massachusetts state law. Applicant intends to file all documents and instruments necessary to effect a termination under Massachusetts state law.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8604 Filed 4–15–87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34–24320; File No. SR–DTC–87–4]**

## Self-Regulatory Organizations; The Depository Trust Co.; Requesting Same-Day Funds Settlement (SDFS) Service; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1987, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Depository Trust Company ("DTC") is filing herewith the following: (1) DTC's Same-Day Funds Settlement (SDFS) Service Plan for certain types of securities that settle in same-day funds as set forth in a Memorandum to Participants dated March 20, 1987; (2) proposed revisions to DTC's Rules necessary to provide for the SDFS service; (3) Operating Procedures; and (4) proposed new fees relating to SDFS transactions.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) The purpose of the proposed rule change is to make the depository's services available for certain types of securities that settle in same-day funds. The SDFS service is offered by DTC as an extension of present depository services. The operating procedures followied by Participants, Pledgees, Depository Facilities and Institutional Delivery (ID) system users for basic depository services in eligible securities that settle in next-day funds apply as well to SDFS securities with, in some cases, slight modification.

DTC has requested that the Commission approve a pilot operation of the new system to begin on or about June 1, 1987.

Settlement in the subject service occurs through Fedwire. As a prerequisite to participation in DTC's SDFS service, each Participant has to make formal arrangements with a bank participant and DTC for that bank to settle with DTC on its behalf. This "Settling Bank" can be located in any Federal Reserve district but must have on-line access to DTC and to Fedwire. In order to increase the likelihood of timely settlement and reduce the amount of money Settling Banks send to DTC over Fedwire, DTC provides "net-net" settlement under which Settling Banks settle one net-net amount with DTC comprising all end-of-day net debits and credits in the accounts of Participants for which the Settling Bank settles, including its own accounts. DTC provides each Settling Bank with an on-

line report of the net debit or credit for each Participant it represents and the arithmetic sum of these figures—a single net-net debit or credit—throughout the processing day. The Settling Bank is responsible for collecting final net debits from, and paying final net credits to, the Participants it represents.

The SDFS service plan provides for collateralization of settlement risks. In order for DTC to act on a SDFS transaction in a Participant's account—e.g., a delivery versus payment—the Participant has to have in its account collateral with value sufficient to cover any net debit in its settlement account immediately after that transaction. Such collateral consists of (a) the Participant's mandatory deposits to the "SDFS Fund" (cash and securities required from all SDFS Participants), (b) the Participant's voluntary deposits to the SDFS Fund, (c) SDFS securities in the Participant's account at the beginning of the processing day which are classified as collateral by the Participant, (d) net additions to the Participant's account during the processing day of SDFS securities which are the subject of deliveries versus payment from other Participants and reflected on DTC's books as incomplete transactions, (e) net additions to the Participant's account during the processing day from unvalued transactions in SDFS securities (e.g., deposits) that are not classified as customer securities by the Participant, and (f) net additions of customer SDFS securities (e.g. margin securities) classified as collateral by the Participant during the processing day.

In the event a Settling Bank fails or refuses to settle a Participant's net debit, DTC is in a position to borrow same-day funds to complete settlement by pledging the collateral in the Participant's account to banks with which DTC has established lines of credit. The next day, DTC will normally obtain funds to repay such loans from the Participant that failed to settle. In the rare case of insolvency, DTC will obtain funds to repay the loans by (a) reselling the securities subject of incomplete deliveries to the insolvent party to the deliverers and debiting their settlement accounts, or (b) selling out the securities collateral in the insolvent Participant's account.

In order to protect against potential settlement risk caused by an extraordinarily high net debit, each Participant's net debit is limited throughout the processing day to a net debit cap that is the lesser of four amounts: (1) An amount ten times the Participant's mandatory and voluntary deposits to the SDFS Fund, (2) an amount 75% of DTC's line of credit with proposed lenders, (3) an amount, if any, determined by the Participant's Settling Bank or (4) an amount, if any, determined by DTC.

As one of the features of the SDFS Service Plan, each SDFS Participant has the ability to limit and consider securities deliveries and payment orders above a certain dollar level directed to its account by all other Participants before they are posted to its account. Intended to be used prudently, this control reduces the need for the Participant to reclaim (return) erroneous transactions to the originators after they are posted to its account. This in turn reduces the incidence and financial impact of reclamations attempted by the Participant.

The Proposed revisions to DTC's Rules would, to a very limited extent, affect the rights and obligations of DTC Participants that elect not to participate in the SDFS System. For example, the proposed revisions would clarify the circumstances and timing of DTC's return to retired Participants of their deposits to DTC's Participants Fund and would permit DTC to pass through to a Participant which has failed to settle any interest charges which DTC has incurred as a result of such failure to settle.

The proposed rule change is consistent with the requirements of the Securities and Exchange Act of 1934, as amended (the "Act") in that it promotes the prompt and accurate clearance and settlement of transactions in securities that settle in same-day funds. The proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control. The proposed SDFS system is a tightly controlled system requiring receivers of attempted securities deliveries to have collateral in their accounts adequate to support settlement debits that would result from the deliveries. It permits the depository to accomplish daily settlement when a Participant with a net debit fails to settle for any reason.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The depository released memoranda to Participants on this subject in July 1984, December 1984, October 1985 and September 1986. Participant comments indicate a wide consensus that DTC should offer an SDFS service. The features of the proposal which is the subject of this filing have evolved over time to reflect the comments received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 1, 1987. For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 10, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-8601 Filed 4-15-87; 8:45 am]

BILLING CODE 8010-01

---

[Release No. 34-24316; File No. SR-PSDTC-87-04]

## Self-Regulatory Organizations; Proposed Rule Change; Pacific Securities Depository Trust Co. Regarding Communications Services Liabilities and Rights

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1987, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PSDTC is proposing to amend its Rules by adding a new section to PSDTC Rule 4. The proposed new section will codify the rights of PSDTC and its participants and define liability responsibilities in the use of PSDTC's communications services. The current PSDTC Rule 4 has been edited by designating section numbers, altering the sequence and making certain terms consistent with their designation in PSDTC Rule 1.

Attached as Exhibit A to PSDTC's filing is a copy of the text of PSDTC Rule 4, as amended.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, PSDTC and its clearing corporation affiliate, the Pacific Clearing Corporation, offer communications services to their participants and members. PSDTC's communications services permit its members to communicate directly with PSDTC's data center. At present, there is no comprehensive agreement drawn up between PSDTC and its participants who wish to avail of PSDTC's communications services. The proposed rule change will codify the respective rights and liability responsibilities of PSDTC and its participants in the use of the communications services.

The current PSDTC Rule 4 is not designated by section numbers nor is the sequence of paragraphs in consistent order. The proposed rule change intends to establish consistency and order to PSDTC's Rule 4.

The proposed rule change is intended to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and thus is consistent with the provisions of section 17A(b)(3)(F) fo the Act.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PSDTC perceives no burden on competition by reason of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-87-04 and should be submitted by May 7, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 9, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-8603 Filed 4-15-87; 8:45 am]

BILLING CODE 8010-01-M

---

[Release No. 34-24318; File No. SR-PCC-87-04]

## Self-Regulatory Organizations; Proposed Rule Change; Pacific Clearing Corp.; Regarding Communications Services Liabilities and Rights

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1987, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCC is proposing to amend its Rules by adding a new section 2 to PCC Rule XX. The proposed new section will

codify the rights of PCC and its members and defines liability responsibilities in the use of PCC's communications services. The current PCC Rule XX (new Section 1) has been edited to make certain terms consistent with their designation in PCC Rule 1, Section 2.

Attached as Exhibit A to PCC's filing is a copy of the text of PCC Rule XX, as amended.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Currently, PCC and its securities depository affiliate, the Pacific Securities Depository Trust Company, offer communications services to their members and participants. FCC's communications services permit its members to communicate directly with PCC's data center. At present, there is no comprehensive agreement drawn-up between PCC and its members who wish to avail of PCC's communications services. The proposed rule change will codify the respective rights and liability responsibilities of PCC and its members in the use of the communications services.

The editing of the text of the current PCC Rule XX changes certain terms to make them consistent with their designation in PCC Rule 1, section 2.

The proposed rule change is intended to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and thus is consistent with the provisions of section 17A(b)(3)(F) of the Act.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PCC perceives no burden on competition by reason of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR-PCC-87-04 and should be submitted by May 7, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 9, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8602 Filed 4-15-87; 8:45 am]

BILLING CODE 8010-01

## TENNESSEE VALLEY AUTHORITY

**Information Collection Under Review by the Office of Management and Budget (OMB)**

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information Collection Under Review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Regular submission.

Title of Information Collection: Section 26a Permit Application.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, State or local governments, farms, businesses, or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1,820.

Estimated Total Annual Burden Hours: 5,460

Need For and Use of Information: Section 26a of the Tennessee Valley Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and determine if the project can be

approved. Rules on the application for review and approval of such plans are published in 18 CFR Part 1304.

**John W. Thompson,**

*Manager of Corporate Services, Senior Agency Official.*

[FR Doc. 87-8616 Filed 4-15-87; 8:45 am]

BILLING CODE 8120-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD-87-026]**

### National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, May 12 and 13, 1987, at the Marc Plaza Hotel, 509 West Wisconsin Avenue, Milwaukee, Wisconsin, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction of new Council Members.
2. Review of action taken at the 38th meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. Discussion and vote on need to change capacity plate regulations.
7. Report on 1986 boating statistics.
8. Discussion on policy for inspection and certification of imported boats.
9. Report on National Boating Education Seminar.
10. Report of the Subcommittee on Alcohol in Fuel.
11. Progress report on the plastic newspaper protector bag program.
12. Report on public education by the brewing industry.
13. Status report on public boating education courses.
14. Update on the Personal Flotation Device (PFD) pamphlet project.
15. Report on Coast Guard grants for boating safety.
16. Discussion on possible revision of Hull Identification Number format.
17. Remarks by Chief, Office of Boating, Public, and Consumer Affairs.
18. Reply to members' items.
19. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain M.B. Stenger, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC, 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

**W.P. Hewel,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Boating Public, and Consumer Affairs.*

April 13, 1987.

[FR Doc. 87-8573 Filed 4-15-87; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

**[Summary Notice No. PE-87-6]**

### Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued; Challenge Air Transport Inc.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 1, 1987.

**ADDRESS:** Send any comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 13, 1987.

**Leonard R. Smith,**

*Manager, Program Management Staff.*

PETITIONS FOR EXEMPTION

| Docket No | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25151 | Challenge Air Transport, Inc. | 14 CFR 121.153(c)(2) | To allow petitioner to operate one leased Short Brothers and Harland Limited, Short SC-5 Belfast aircraft for 2 years even though the aircraft does not have a U.S. type design certificate. NOTE: This petition was previously published on March 24 (52 FR 9377) with the comment period closing on April 13. At the request of the petitioner, the comment period is being reopened for an additional 45 days. |

[FR Doc. 87-8569 Filed 4-15-87; 8:45 am]

BILLING CODE 4910-13-M

## UNITED STATES INFORMATION AGENCY

### United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held April 22, 1987, in Room 600, 301 4th Street, SW., Washington, DC from 10:30 a.m. to 11:15 a.m.

The Commission will meet with USIA's Comptroller and Congressional Liaison Officer to discuss USIA's budget.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: April 13, 1987.

**Charles N. Canestro,**

*Management Analyst, Federal Register Liaison.*

[FR Doc. 87–8528 Filed 4–15–87; 8:45 am]

BILLING CODE 8230–01–M

## VETERANS ADMINISTRATION

### Commission To Assess Veterans' Education Policy; Meeting

The Veterans Administration gives notice that a meeting of the Commission To Assess Veterans' Education Policy, established by Pub. L. 99–576, will be held in Room 418 of the Russell Senate Office Building, Delaware and Constitution Avenues, Washington, DC 20510, April 29, 1987, at 9 a.m. This is the first meeting of the Commission and is expected to be primarily an organizational one. It will be open to the public up to the seating capacity of the hearing room. However, since an open discussion of personnel qualifications for selection of staff would constitute a clearly unwarranted invasion of personal privacy, a portion of the meeting will be closed to the public, in accordance with section (c)(6), 5 U.S.C. 552b as permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended. Interested persons may attend, appear before, or file statements with the Commission. Statements, if in written form, may be filed before or within 10 days after the meeting. Those wishing further information may contact Ms. Vivian L. Drake, (phone (202) 233–5154).

Dated: April 6, 1987.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 87–8490 Filed 4–15–87; 8:45 am]

BILLING CODE 8320–01–17

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 73
Thursday, April 16, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 522b), notice is hereby given that at 1:18 p.m. on Tuesday, April 7, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type of transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) The Southwestern Bank, National Association, Houston, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 9, 1987; (b) The First National Bank of Braman, Braman, Oklahoma, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 9, 1987; (c) Commonwealth Bank, Glendale, Colorado, which was expected to be closed by the State Bank Commissioner for the State of Colorado on Thursday, April 9, 1987; (d) Deer Lodge Bank and Trust Company, Deer Lodge, Montana, which was expected to be closed by the Commissioner of Financial Insitutions for the State of Montana on Thursday, April 9, 1987; and (e) Bank of Iron County, Parowan, Utah, which was expected to be closed by the Commissioner of Financial Institutions for the State of Utah on Friday, April 10, 1987;

(B)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the transfer of insured deposits in The Citizens State Bank, Brownstown, Indiana, which was expected to be closed by the Director of the Department of Financial Institutions for the State of Indiana on Friday, April 10, 1987; or (2) in the event no acceptable bid for a deposit transfer transaction is submitted make funds available for the payment of the insured deposits of the closed bank; and

(C) Consider matters relating to the possible failure of an insured bank.

At the same meeting, the Board of Directors also ratified the Division of Bank Supervision's approval of the application of Zions First National Bank, Salt Lake City, Utah, for consent to merge, under its charter and title, with Foothill Financial, Salt Lake City, Utah, a noninsured thrift and loan association.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 13, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

FR Doc. 87-8712 Filed 4-14-87; 3:58 p.m.]

BILLING CODE 6714-01-M

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10:00 a.m., April 22, 1987.

**PLACE:** Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Rules Pertaining to Agreements Under the Shipping Act, 1916—Proposed Update.
2. Petition for Rulemaking—46 CFR Part 510, Licensing of Ocean Freight Forwarders—Filed by the National Customs Brokers & Forwarders Association of America, Inc.
3. Docket No. 86-6—Service Contracts—Consideration of Comments on Proposed Rules.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-8697 Filed 4-14-87; 2:43 pm]

BILLING CODE 6730-01-M

# Corrections

Federal Register

Vol. 52, No. 73

Thursday, April 16, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87N-0016]

### International Drug Scheduling; Convention on Psychotropic Substances; Propylhexedrine

*Correction*

In notice document 87-6004 beginning on page 8970 in the issue of Friday, March 20, 1987, make the following corrections:

1. On page 8970, in the third column, under **United Nations-Nations Unies**, in the first paragraph, in the 11th line, "propylhexe-drine" should read "propylhexedrine".

2. On the same page, in the same column, in the third paragraph, in the fifth line, "Expect" should read "Expert" and "of" should read "on"; and in the ninth line, "of" should read "on".

3. On the same page, in the same column, in the fourth paragraph, in the sixth line, "paragraph" should read "paragraphs".

4. On page 8971, in the first column, in the first paragraph, in the first line, "is" should read "in".

5. On the same page, in the same column, under **ANNEX I**, in the first paragraph, in the third line, "of" should read "on"; and in the last line, "of" should read "on".

6. On the same page, in the same column, under **ANNEX II**, in paragraph number 2., in the first line, "is" should read "in".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87N-0015]

### International Drug Scheduling; Convention on Psychotropic Substances; Pyrovalerone

*Correction*

In notice document 87-6006 beginning on page 8971 in the issue of Friday, March 20, 1987, make the following corrections:

1. On page 8972, in the second column, in the second complete paragraph, after the second line, add: "pursuant to article 2, paragraph 2, of the Convention for consideration".

2. On the same page, in the same column, in paragraph number 5., in the first line, "taken" should read "taking".

3. On the same page, in the same column, in paragraph number 6., in the last line, "in" should read "it".

4. On the same page, in the third column, under **ANNEX II**, in the first paragraph, in the first line, "support" was misspelled.

5. On the same page, in the same column, under **ANNEX II**, in paragraph number 4., in the first line, "date" should read "data".

6. On page 8973, in the first column, under **ANNEX III**, in the first line, "Center" should read "Centre".

BILLING CODE 1505-01-D

L
2
S
3
P
6
87
M I

federal register

Thursday
April 16, 1987

Part II

# Office of Management and Budget

## Cumulative Report on Budget Rescissions and Deferrals; Notice

## OFFICE OF MANAGEMENT AND BUDGET

### Cumulative Report on Rescissions and Deferrals

April 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of April 1, 1987, of 57 deferrals contained in the five special messages of FY 1987. These messages were transmitted to the Congress on September 26, and December 15, 1986, and January 5 and 28, and March 4, 1987.

### Rescissions (Table A and Attachment A)

As of April 1, 1987, there were no rescission proposals pending before the Congress.

### Deferrals (Table B and Attachment B)

As of April 1, 1987, $8,921.5 million in 1987 budget authority was being deferred from obligation and $3.5 million in 1987 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1987.

### Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 51, FR p. 35967, Tuesday, October 7, 1986
Vol. 51, FR p. 47356, Wednesday, December 31, 1986
Vol. 52, FR p. 964, Friday, January 9, 1987
Vol. 52, FR p. 3552, Wednesday, February 4, 1987
Vol. 52, FR p. 8046, Friday, March 13, 1987

James C. Miller III,
*Director.*

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

| | Amount (In millions of dollars) |
|---|---|
| Rescissions proposed by the President | $5,835.8 |
| Accepted by the Congress | 0 |
| Rejected by the Congress | 5,835.8 |
| Pending before the Congress | 0 |

**********

TABLE B

STATUS OF 1987 DEFERRALS

| | Amount (In millions of dollars) |
|---|---|
| Deferrals proposed by the President | 11,457.6 |
| Routine Executive releases through March 1, 1987 (OMB/Agency releases of $4,504.8 million and cumulative adjustments of $0.7 million) | -4,504.0 |
| Overturned by the Congress | -28.6 |
| Currently before the Congress | 6,925.0 a/ |

a/ This amount includes $3.6 million in outlays for a Department of the Treasury deferral (D87-21).

Attachments

BEST COPY AVAILABLE

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | | | | | | | | |
| Agricultural Research Service | | | | | | | | |
| Buildings and facilities | R87-1 | 28,000 | | 1-5-87 | | 28,000 | 3-16-87 | |
| | R87-1A | | | 1-28-87 | | | | |
| Agricultural Stabilization and Conservation Service | | | | | | | | |
| Rural clean water program | R87-2 | 6,000 | | 1-5-87 | | 6,000 | 3-16-87 | |
| Agricultural conservation program | R87-3 | 164,356 | | 1-5-87 | | 164,356 | 3-16-87 | |
| Water bank program | R87-4 | 8,166 | | 1-5-87 | | 8,166 | 3-16-87 | |
| Emergency conservation program | R87-5 | 10,000 | | 1-5-87 | | 10,000 | 3-16-87 | |
| Farmers Home Administration | | | | | | | | |
| Rural water and waste disposal grants | R87-6 | 79,500 | | 1-5-87 | | 79,500 | 3-16-87 | |
| Rural community fire protection grants | R87-7 | 2,300 | | 1-5-87 | | 2,300 | 3-16-87 | |
| Rural housing for domestic farm labor | R87-8 | 7,400 | | 1-5-87 | | 7,400 | 3-16-87 | |
| Mutual and self-help housing | R87-9 | 8,000 | | 1-5-87 | | 8,000 | 3-16-87 | |
| Very low income housing repair grants | R87-10 | 9,400 | | 1-5-87 | | 9,400 | 3-16-87 | |
| Compensation for construction defects | R87-11 | 500 | | 1-5-87 | | 500 | 3-16-87 | |
| Rural housing preservation grants | R87-12 | 14,400 | | 1-5-87 | | 14,400 | 3-16-87 | |
| Soil Conservation Service | | | | | | | | |
| Watershed and flood prevention operations | R87-13 | 96,000 | | 1-5-87 | | 96,000 | 3-16-87 | |
| Great Plains conservation program | R87-14 | 8,000 | | 1-5-87 | | 8,000 | 3-16-87 | |
| Resource conservation and development | R87-15 | 5,000 | | 1-5-87 | | 5,000 | 3-16-87 | |
| Forest Service | | | | | | | | |
| Land acquisition | R87-16 | 49,030 | | 1-5-87 | | 49,030 | 3-16-87 | |
| DEPARTMENT OF COMMERCE | | | | | | | | |
| Economic Development Administration | | | | | | | | |
| Economic development assistance programs | R87-17 | 169,718 | | 1-5-87 | | | | |
| | R87-17A | -50 | | 1-28-87 | | 169,668 | 3-16-87 | |
| International Trade Administration | | | | | | | | |
| Operations and administration | R87-18 | 11,400 | | 1-5-87 | | 11,400 | 3-16-87 | |
| National Oceanic and Atmospheric Administration | | | | | | | | |
| Operations, research, and facilities | R87-19 | 58,857 | | 1-5-87 | | 58,857 | 3-16-87 | |
| National Telecommunications and Information Administration | | | | | | | | |
| Public telecommunications facilities, planning and construction | R87-20 | 19,300 | | 1-5-87 | | 19,300 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF DEFENSE - MILITARY | | | | | | | | |
| Procurement | | | | | | | | |
| Procurement of weapons and tracked combat vehicles, Army | R87-21 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| Other procurement, Navy | R87-22 | 116,000 | | 1-5-87 | | 116,000 | 3-16-87 | |
| Military Construction | | | | | | | | |
| Military construction, Air Force | R87-23 | 2,750 | | 1-5-87 | | 2,750 | 3-16-87 | |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | |
| Corps of Engineers - Civil | | | | | | | | |
| Construction, general | R87-24 | 7,715 | | 1-5-87 | | 7,715 | 3-16-87 | |
| DEPARTMENT OF EDUCATION | | | | | | | | |
| Office of Elementary and Secondary Education | | | | | | | | |
| Compensatory education for the disadvantaged | R87-25 | 7,500 | | 1-5-87 | | 7,500 | 3-16-87 | |
| Impact aid | R87-26 | 17,500 | | 1-5-87 | | 17,500 | 3-16-87 | |
| Special programs | R87-27 | 54,980 | | 1-5-87 | | 54,980 | 3-16-87 | |
| Office of Bilingual Education and Minority Languages Affairs | | | | | | | | |
| Bilingual education | R87-28 | 45,886 | | 1-5-87 | | 45,886 | 3-16-87 | |
| Office of Special Education and Rehabilitative Services | | | | | | | | |
| Education for the handicapped | R87-29 | 288,659 | | 1-5-87 | | 288,659 | 3-16-87 | |
| Rehabilitation services and handicapped research | R87-30 | 127,455 | | 1-5-87 | | 127,455 | 3-16-87 | |
| Office of Vocational and Adult Education | | | | | | | | |
| Vocational and adult education | R87-31 | 432,319 | | 1-5-87 | | 432,319 | 3-16-87 | |
| Office of Postsecondary Education | | | | | | | | |
| Student financial assistance | R87-32 | 1,269,000 | | 1-5-87 | | 1,269,000 | 3-16-87 | |
| Higher education | R87-33 | 203,050 | | 1-5-87 | | 203,050 | 3-16-87 | |
| | R87-33A | | | 1-28-87 | | | | |
| Office of Educational Research and Improvement | | | | | | | | |
| Libraries | R87-34 | 34,500 | | 1-5-87 | | 34,500 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF ENERGY | | | | | | | | |
| Energy Programs | | | | | | | | |
| Energy supply, research and development activities | R87-35 | 81,800 | | 1-5-87 | | 81,800 | 3-16-87 | |
| Fossil energy research and development | R87-36 | 44,464 | | 1-5-87 | | 44,464 | 3-16-87 | |
| Energy conservation | R87-37 | 87,433 | | 1-5-87 | | | | |
| | R87-37A | -3500 | | 1-28-87 | | 83,933 | 3-16-87 | |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | |
| Food and Drug Administration | | | | | | | | |
| Buildings and facilities | R87-38 | 500 | | 1-5-87 | | 500 | 3-16-87 | |
| Health Resources and Services Administration | | | | | | | | |
| Health resources and services | R87-39 | 161,210 | | 1-5-87 | | 161,210 | 3-16-87 | |
| | R87-39A | | | 1-28-87 | | | | |
| Indian health facilities | R87-40 | 57,100 | | 1-5-87 | | 57,100 | 3-16-87 | |
| | R87-40A | | | 1-28-87 | | | | |
| National Institutes of Health | | | | | | | | |
| National Library of Medicine | R87-41 | 5,405 | | 1-5-87 | | 5,405 | 3-16-87 | |
| Office of the Assistant Secretary of Health | | | | | | | | |
| Public health service management | R87-42 | 5,000 | | 1-5-87 | | 5,000 | 3-16-87 | |
| Departmental Management | | | | | | | | |
| Policy research | R87-43 | 2,200 | | 1-5-87 | | 2,200 | 3-16-87 | |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | | | | | | | | |
| Housing Programs | | | | | | | | |
| Annual contributions for assisted housing | R87-44 | 473,313 | | 1-5-87 | | 473,313 | 3-16-87 | |
| Housing counseling assistance | R87-45 | 3,500 | | 1-5-87 | | 3,500 | 3-16-87 | |
| Community Planning and Development | | | | | | | | |
| Community development grants | R87-46 | 375,200 | | 1-5-87 | | 375,200 | 3-16-87 | |
| Urban development action grants | R87-47 | 237,500 | | 1-5-87 | | 237,500 | 3-16-87 | |
| Management and Administration | | | | | | | | |
| Salaries and expenses | R87-48 | 19,042 | | 1-5-87 | | 19,042 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE INTERIOR | | | | | | | | |
| Bureau of Land Management | | | | | | | | |
| Management of lands and resources | R87-49 | 6,500 | | 1-5-87 | | 6,500 | 3-16-87 | |
| Construction and access | R87-50 | 1,600 | | 1-5-87 | | 1,600 | 3-16-87 | |
| Land acquisition | R87-51 | 2,700 | | 1-5-87 | | 2,700 | 3-16-87 | |
| Bureau of Mines | | | | | | | | |
| Mines and minerals | R87-52 | 16,594 | | 1-5-87 | | 16,594 | 3-16-87 | |
| United States Fish and Wildlife Service | | | | | | | | |
| Resource management | R87-53 | 20,500 | | 1-5-87 | | 20,500 | 3-16-87 | |
| | R87-53A | | | 1-28-87 | | | | |
| Construction | R87-54 | 23,200 | | 1-5-87 | | 23,200 | 3-16-87 | |
| Land acquisition | R87-55 | 26,762 | | 1-5-87 | | 26,762 | 3-16-87 | |
| National Park Service | | | | | | | | |
| Operation of the national park system | R87-56 | 7,950 | | 1-5-87 | | 7,950 | 3-16-87 | |
| Construction | R87-57 | 58,981 | | 1-5-87 | | 58,981 | 3-16-87 | |
| Land acquisition | R87-58 | 97,638 | | 1-5-87 | | 97,638 | 3-16-87 | |
| Historic preservation fund | R87-59 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| Bureau of Indian Affairs | | | | | | | | |
| Construction | R87-60 | 22,811 | | 1-5-87 | | 22,811 | 3-16-87 | |
| Territorial and International Affairs | | | | | | | | |
| Administration of territories | R87-61 | 2,500 | | 1-5-87 | | 2,500 | 3-16-87 | |
| DEPARTMENT OF JUSTICE | | | | | | | | |
| Immigration and Naturalization Service | | | | | | | | |
| Salaries and expenses | R87-62 | 24,598 | | 1-5-87 | | 24,598 | 3-16-87 | |
| DEPARTMENT OF LABOR | | | | | | | | |
| Employment and Training Administration | | | | | | | | |
| Training and employment services | R87-63 | 332,000 | | 1-5-87 | | 332,000 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE TREASURY | | | | | | | | |
| Federal Law Enforcement Training Center<br>Salaries and expenses | R87-64 | 8,450 | | 1-5-87 | | 8,450 | 3-16-87 | |
| Bureau of Alcohol, Tobacco, and Firearms<br>Salaries and expenses | R87-65 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| United States Customs Service<br>Salaries and expenses | R87-66 | 38,945 | | 1-5-87 | | 38,945 | 3-16-87 | |
| ENVIRONMENTAL PROTECTION AGENCY | | | | | | | | |
| Abatement, control, and compliance | R87-67 | 47,500 | | 1-5-87 | | 47,500 | 3-16-87 | |
| Buildings and facilities | R87-68 | 2,500 | | 1-5-87 | | 2,500 | 3-16-87 | |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION | | | | | | | | |
| Research and development | R87-69 | 25,796 | | 1-5-87 | | 25,796 | 3-16-87 | |
| VETERANS ADMINISTRATION | | | | | | | | |
| Medical care | R87-70 | 75,000 | | 1-5-87 | | | | |
| OTHER INDEPENDENT AGENCIES | | | | | | | | |
| Appalachian Regional Commission<br>Appalachian regional development programs | R87-71 | 31,059 | | 1-5-87 | | 31,059 | 3-16-87 | |
| National Endowment for the Humanities<br>National capital arts and cultural affairs | R87-72 | 4,000 | | 1-5-87 | | 4,000 | 3-16-87 | |
| Selective Service System<br>Salaries and expenses | R87-73 | 409 | | 1-5-87 | | 409 | 3-17-87 | |
| Total, rescissions | | 5,835,751 | 0 | | | 5,760,751 | | |

NOTE. - The $75 million proposed for rescission in Rescission Proposal No. R87-70 was never withheld from obligation. Therefore, there was no need to release the funds on March 16.

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| FUNDS APPROPRIATED TO THE PRESIDENT | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Foreign military sales credit | D87-22 | 4,040,441 | | 12-15-86 | 1,855,000 | | | | 2,185,441 |
| Economic support fund | D87-1 | 95,000 | | 9-26-86 | | | | | |
| | D87-1A | | 2,351,470 | 12-15-86 | 1,179,690 | | | | 1,266,780 |
| Military assistance | D87-23 | 847,000 | | 12-15-86 | 381,750 | | | | 465,250 |
| International military education and training | D87-24 | 2,000 | | 12-15-86 | 2,000 | | | | 0 |
| Agency for International Development | | | | | | | | | |
| Functional development assistance | D87-32 | 2,278 | | 1-28-87 | | | | | 2,278 |
| International disaster assistance | D87-25 | 57,000 | | 12-15-86 | 38,837 | | | | 18,163 |
| Special Assistance for Central America | | | | | | | | | |
| Assistance for the Nicaraguan Democratic Resistance | D87-26 | 60,000 | | 12-15-86 | 60,000 | | | | |
| Promotion of stability and security in Central America | D87-27 | 1,000 | | 12-15-86 | | | | | 1,000 |
| DEPARTMENT OF AGRICULTURE | | | | | | | | | |
| Commodity Credit Corporation | | | | | | | | | |
| Temporary emergency food assistance | D87-33 | 28,559 | | 1-28-87 | | 28,559 | P.L. 100-6 | | 0 |
| Rural Electrification Administration | | | | | | | | | |
| Reimbursement to the Rural electrification and telephone and revolving fund for interest subsidies and losses | D87-34 | 20,000 | | 1-28-87 | | | | | 20,000 |
| Forest Service | | | | | | | | | |
| State and private forestry | D87-35 | 797 | | 1-28-87 | | | | | 797 |
| Land acquisition | D87-36 | 27,070 | | 1-28-87 | | | | | 27,070 |
| Expenses, brush disposal | D87-2 | 111,202 | | 9-26-86 | | | | | |
| | D87-2A | | 1,534 | 3-4-87 | | | | | 112,736 |
| Timber roads, purchaser election | D87-37 | 11,900 | | 1-28-87 | | | | | 11,900 |
| Timber salvage sales | D87-3 | 29,731 | | 9-26-86 | 6,113 | | | | 23,618 |
| Cooperative work | D87-4 | 526,938 | | 9-26-86 | | | | | |
| | D87-4A | | 8,336 | 3-4-87 | | | | | 535,275 |
| Gifts, donations, and bequests for forest and rangeland research | D87-5 | 200 | | 9-26-86 | 25 | | | | 175 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF DEFENSE - MILITARY | | | | | | | | | |
| Military Construction | | | | | | | | | |
| Military construction, Defense | D87-6 | 2,350 | | 9-26-86 | | | | | |
| | D87-6A | | 1,316,152 | 12-15-86 | 779,649 | | | | 538,853 |
| Family Housing | | | | | | | | | |
| Family housing, Defense | D87-7 | 76,943 | | 9-26-86 | | | | | |
| | D87-7A | | 190,022 | 12-15-86 | 103,901 | | | | 163,064 |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | | |
| Soldiers' and Airmen's Home | | | | | | | | | |
| Capital outlays | D87-38 | 1,132 | | 1-28-87 | | | | | 1,132 |
| Wildlife Conservation, Military Reservations | | | | | | | | | |
| Wildlife conservation | D87-8 | 1,065 | | 9-26-86 | | | | | |
| | D87-8A | | 25 | 1-5-87 | | | | | |
| | D87-8B | | 46 | 3-4-87 | 40 | | | | 1,096 |
| DEPARTMENT OF ENERGY | | | | | | | | | |
| Power Marketing Administration | | | | | | | | | |
| Alaska Power Administration, Operation and maintenance | D87-9 | 165 | | 9-26-86 | | | | | 165 |
| Southwestern Power Administration, | | | | | | | | | |
| Operation and maintenance | D87-10 | 7,554 | | 9-26-86 | | | | | |
| | D87-10A | | 6,106 | 1-5-87 | | | | | 13,660 |
| Western Area Power Administration, Construction, rehabilitation, operation and maintenance | D87-29 | 4,485 | | 1-5-87 | | | | | 4,485 |
| Departmental Administration | | | | | | | | | |
| Departmental administration | D87-30 | 24,182 | | 1-5-87 | | | | | 24,182 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br><br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | | |
| Health Resources and Services Administration | | | | | | | | | |
| Indian catastrophic health emergency fund.. | D87-28 | 10,000 | | 12-15-86 | | | | | 10,000 |
| Centers for Disease Control | | | | | | | | | |
| Disease control, research, and training.... | D87-39 | 2,428 | | 1-28-87 | | | | | 2,428 |
| Alcohol, Drug Abuse, and Mental Health Administration | | | | | | | | | |
| Alcohol, drug abuse, and mental health... | D87-40 | 10,000 | | 1-28-87 | | | | | 10,000 |
| Office of Assistant Secretary for Health | | | | | | | | | |
| Scientific activities overseas (special foreign currency program)..... | D87-11 | 2,900 | | 9-26-86 | | | | | 2,900 |
| Social Security Administration | | | | | | | | | |
| Limitation on administrative expenses (construction)..... | D87-12 | 7,073 | | 9-26-86 | | | | | |
| | D87-12A | | 89 | 1-28-87 | | | | | 7,163 |
| Limitation on administrative expenses (information technology systems)..... | D87-57 | 134,437 | | 3-4-87 | | | | | 134,437 |
| DEPARTMENT OF THE INTERIOR | | | | | | | | | |
| Bureau of Land Management | | | | | | | | | |
| Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d)..... | D87-31 | [redacted] | | 1-5-87 | | | | | [redacted] |
| DEPARTMENT OF JUSTICE | | | | | | | | | |
| Office of Justice Programs | | | | | | | | | |
| Crime victims fund..... | D87-13 | 70,000 | | 9-26-86 | | | | | 70,000 |
| DEPARTMENT OF LABOR | | | | | | | | | |
| Employment Standards Administration | | | | | | | | | |
| Salaries and expenses..... | D87-41 | 9,659 | | 1-28-87 | | | | | 9,659 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF STATE | | | | | | | | | |
| Bureau for Refugee Programs | | | | | | | | | |
| United States emergency refugee and migration assistance fund, executive..... | D87-14 | 6,100 | | 9-26-86 | | | | | |
| | D87-14A | | 14,000 | 1-5-87 | | | | | 20,100 |
| Other | | | | | | | | | |
| Assistance for implementation of a Contadora agreement..... | D87-15 | 2,000 | | 9-26-86 | 2,000 | | | | |
| DEPARTMENT OF TRANSPORTATION | | | | | | | | | |
| Federal Railroad Administration | | | | | | | | | |
| Rail service assistance..... | D87-42 | 462 | | 1-28-87 | | | | | 462 |
| Railroad safety..... | D87-43 | 1,101 | | 1-28-87 | 1,101 | | | | |
| Conrail labor protection..... | D87-44 | 646 | | 1-28-87 | | | | | 646 |
| Northeast corridor improvement program..... | D87-45 | 16,962 | | 1-28-87 | | | | | 16,962 |
| Conrail commuter transition assistance..... | D87-46 | 10,000 | | 1-28-87 | | | | | 10,000 |
| Urban Mass Transportation Administration | | | | | | | | | |
| Research, training and human resources..... | D87-47 | 4,336 | | 1-28-87 | | | | | 4,336 |
| Interstate transfer grants - transit..... | D87-48 | 51,800 | | 1-28-87 | | | | | 51,800 |
| Federal Aviation Administration | | | | | | | | | |
| Operation and maintenance, Metropolitan Washington Airports..... | D87-49 | 12,214 | | 1-28-87 | | | | | 12,214 |
| Facilities and equipment (Airport and airway trust fund)..... | D87-16 | 803,877 | | 9-26-86 | | | | | |
| | D87-16A | | 295,611 | 12-15-86 | 9,996 | | | | 1,079,492 |
| Coast Guard | | | | | | | | | |
| Research, development, test, and evaluation..... | D87-50 | 5,000 | | 1-28-87 | | | | | 5,000 |
| Offshore oil pollution compensation fund... | D87-51 | 2,154 | | 1-28-87 | | | | | 2,154 |
| Deepwater port liability fund..... | D87-52 | 5,176 | | 1-28-87 | | | | | 5,176 |
| Office of the Secretary | | | | | | | | | |
| Payments to air carriers..... | D87-53 | 10,748 | | 1-28-87 | | | | | 10,748 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| s of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE TREASURY | | | | | | | | | |
| Office of Revenue Sharing | | | | | | | | | |
| Local government fiscal assistance trust fund | D87-17 | 74,149 | | 9-26-86 | 71,144 | | | | 3,005 |
| Local government fiscal assistance trust fund | D87-21 | 5,981 | | 9-26-86 | 3,105 | | | 723 | 3,599 |
| ENVIRONMENTAL PROTECTION AGENCY | | | | | | | | | |
| Research and development | D87-54 | 11,000 | | 1-28-87 | | | | | 11,000 |
| Abatement, control, and compliance | D87-55 | 11,400 | | 1-28-87 | | | | | 11,400 |
| OTHER INDEPENDENT AGENCIES | | | | | | | | | |
| Commission on the Ukraine Famine<br>Salaries and expenses | D87-18 | 100 | | 9-26-86 | | | | | 100 |
| Office of the Federal Inspector for the Alaska Natural Gas Transportation System,<br>Salaries and expenses | D87-19 | 411 | | 9-26-86 | 411 | | | | |
| Pennsylvania Avenue Development Corporation<br>Land acquisition and development fund | D87-20 | 11,873 | | 9-26-86 | | | | | 11,873 |
| United States Railway Association<br>Administrative expenses | D87-56 | 1,155 | | 1-28-87 | | | | | 1,155 |
| TOTAL, DEFERRALS | | 7,274,185 | 4,183,392 | | 4,504,762 | 28,559 | | 723 | 6,924,979 |

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

[FR Doc. 87-8558 Filed 4-15-87; 8:45 am]
BILLING CODE 3110-01-C

federal register

Thursday
April 16, 1987

Part III

# Department of Education

34 CFR Part 639

Law School Clinical Experience Program; Final Rule and Notice

## DEPARTMENT OF EDUCATION

### 34 CFR Part 639

### Law School Clinical Experience Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations; amendments.

**SUMMARY:** The Secretary amends the regulations governing the Law School Clinical Experience Program. These amendments are needed to implement the change in the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986, requiring that the Secretary give preference to those applications proposing projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the U.S. Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles H. Miller, Senior Education Program Specialist, Law School Clinical Experience Program, Division of Higher Education Incentive Programs, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, Room 3022 ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732–4395.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Law School Clinical Experience Program provides assistance to accredited law schools to establish or expand their programs of clinical experience for students in the practice of law. Clinical programs are designed to instill professional responsibility and to improve learning among law students, through actual or simulated legal services to clients.

The Secretary amends the regulations for the Law School Clinical Experience Program to implement the amendment to the program statute requiring that the Secretary give preference to applications proposing projects that provide legal experience in the preparation and trial of actual cases. (See section 961(a) of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498)). Under previous regulations, unless other applications were of outstanding quality and scored in the top 10 percent of all applications for which funds were available, applications proposing this type of project, as well as applications proposing activities that provide service to persons who have difficulty in gaining access to legal representation, received funding preference first.

Under these regulations as amended, applications proposing these types of projects will continue to receive a funding preference, but the preferences will be implemented as priorities under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105. The priorities will be announced annually by the Secretary in an application notice published in the Federal Register.

#### Waiver of Proposed Rulemaking

Under section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act (5 U.S.C. 553) it is the practice of the Department of Education to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. Because these regulations merely incorporate changes made by statute, however, public comment could have no effect. Therefore, publication of this document as a proposed rule for public comment has been determined to be unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

#### Executive Order 12291

These regulations have been reviewed under Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of higher education. This amendment is beneficial to the accredited law schools affected and gives guidance to applicants by defining the types of projects the Secretary intends to give funding preference to, in the administration of the Law School Clinical Experience Program. It does not affect a substantial number of institutions since it applies only to the preference in the award of funds.

#### Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

#### Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### List of Subjects in 34 CFR Part 639

Accredited law schools, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.097—Law School Clinical Experience Program)

Dated: April 10, 1987.

**William J. Bennett,**

*Secretary of Education.*

## PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

The Secretary amends Part 639 of Title 34 of the Code of Federal Regulations as follows:

1. The authority citation for Part 639 is revised to read as follows:

**Authority:** 20 U.S.C. 1134s–1134t, unless otherwise noted.

**§§ 639.1, 639.2, 639.3, 639.4, 639.10, 639.11, 639.30, 639.31 and 639.40 [Amended]**

2. In the list below, for the citation of authority following each section indicated in the left column, remove the current citation and add in its place the citation indicated in the right column:

| Section | Add |
|---|---|
| 639.1 | 20 U.S.C. 1134a. |
| 639.2 | 20 U.S.C. 1134s(d). |
| 639.3 | 20 U.S.C. 1134a. |
| 639.4 | 20 U.S.C. 1134s(a). |
| 639.10 | 20 U.S.C. 1134s(a). |
| 639.11 | 20 U.S.C. 1134s(a). |
| 639.30 | 20 U.S.C. 1134s(a) and 1134t(b). |
| 639.31 | 20 U.S.C. 1134s(a). |
| 639.40 | 20 U.S.C. 1134s(a)–(c). |

3. A new § 639.11 is added to Subpart B to read as follows:

**§ 639.11 How does the Secretary establish priorities?**

(a) The Secretary gives priority to applications proposing projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

(b) In addition to the priority in paragraph (a) of this section, the Secretary may give priority to applications that propose activities to provide service to persons who have

difficulty in gaining access to legal representation.

(Authority: 20 U.S.C. 1134s(a))

Note: EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

4. In § 639.30, paragraph (a) is removed; paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively; in paragraph (b)(1), as redesignated, "20 U.S.C. 1134o(b)" is removed; and the introductory text of paragraph (a), as redesignated, is revised to read as follows:

**§ 639.30 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application on the basis of the criteria in § 639.31.

* * * * *

[FR Doc. 87-8609 Filed 4-15-87; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

### Invitation; Applications for New Awards Under the Law School Clinical Experience Program

*Purpose:* Provides grants to accredited law schools to establish or expand programs of clinical experience for students in the practice of law.

*Deadlines for Transmittal of Applications:* June 1, 1987.

*Applications Available:* April 20, 1987.

*Available Funds:* The Congress appropriated $1,500,000 for this program for fiscal year 1987. The program legislation permits the Secretary to pay up to 90 percent of the cost of projects at law schools. (20 U.S.C. 1134s(a)). The program regulations at 34 CFR 639.40(a)(2) permit the Secretary to establish annually a lower maximum Federal share. The maximum Federal share will be set at 50 percent for fiscal year 1987.

*Priorities:* (a) The Secretary has chosen the following absolute priorities in accordance with 34 CFR 75.105(b)(ii) and § 639.11 (a) and (b):

1. Applications proposing projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

2. Applications proposing activities to provide service to persons who have difficulty in gaining access to legal representation.

Only applications which meet both of these absolute priorities will be considered for funding under this competition.

*Estimated Range of Awards:* $15,000 to $50,000.

*Estimated Average Size of Awards:* $37,500.

*Estimated Number of Awards:* 40.

*Project Period:* 12 months.

*Applicable Regulations:* (a) The Law School Clinical Experience Program Regulations, 34 CFR Part 639, and when effective, the amendment to the regulations published in this issue of the **Federal Register**, and (b) the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75 and 77.

*For Applications or Information Contact:* Dr. Charles H. Miller on (202) 732–4395 or Barbara J. Harvey on (202) 732–4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202.

**Program Authority:** 20 U.S.C. 1134s–1134t.

Dated: April 10, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–8610 Filed 4–15–87; 8:45 am]

BILLING CODE 4000–01–M

# Reader Aids

Federal Register

Vol. 52, No. 73

Thursday, April 16, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10
11807-11980.....13
11981-12128.....14
12129-12362.....15
12363-12510.....16

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11809
5629.....12126
5630.....12129

**Administrative Orders:**

Presidential Determinations:
No. 87-12 of March 17, 1987.....11807

**5 CFR**

213.....11185
591.....12131
841.....12131
870.....12133
1201.....10875

**Proposed Rules:**
353.....11657
2411.....11995

**7 CFR**

210.....11186
271.....11811
272.....11021, 11811
273.....11021, 11811
274.....11811
276.....11811
301.....10357, 12363
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615
910.....10729, 11615
925.....11616
927.....11616
932.....12134
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1922.....11981
1944.....11981
1951.....11456, 11981

**Proposed Rules:**
220.....12419
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
945.....10893
979.....12185
994.....10984, 12185
1011.....12186
1046.....11475
1955.....10577
1965.....10577

**8 CFR**

212.....11620
248.....11621

**Proposed Rules:**
245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024

**Proposed Rules:**
54.....12189
92.....10765
307.....12422
308.....12422
317.....10766, 11828
319.....10766, 11828
381.....11828

**10 CFR**

0.....11026
73.....12364

**Proposed Rules:**
2.....11475, 12192
50.....10771
430.....12342

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
611.....12135
614.....12143
701.....12365
708.....12370
741.....12365

**Proposed Rules:**
325.....11476, 11660
337.....11492

522.....12425
612.....11080
705.....12427

**13 CFR**

311.....11626

**14 CFR**

21.....11627
23.....11627
39.....10558, 10735, 10736, 11630–11639, 11985, 11986
71.....10559, 11028, 11032–11034, 11815
73.....10559, 10560, 11033, 11034
95.....10737
1215.....10880
1260.....12378

**Proposed Rules:**

29.....11997
39.....10581, 11081, 11663, 11664, 11997, 11998
71.....10582, 11082, 11828, 12286
75.....12000, 12286

**15 CFR**

370.....11640
371.....10741
376.....11640
399.....11457, 11640

**Proposed Rules:**

7.....11498
280.....11498
368.....10771

**16 CFR**

13.....12379

**Proposed Rules:**

13.....12430

**17 CFR**

200.....12147
203.....12147
241.....11458
270.....11187

**Proposed Rules:**

210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**

16.....11035
271.....10741
381.....10366

**Proposed Rules:**

4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
148.....12149
172.....12149
177.....11216

**Proposed Rules:**

111.....10774
127.....12000

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217

**Proposed Rules:**

200.....10384
615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883, 12380
177.....11641
184.....10884
193.....10561, 10562
201.....12152
510.....10668, 11040, 11041, 11988, 12153
520.....10668, 11041, 11988
522.....10668, 11816
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642, 11988, 12153
561.....10562, 12153
573.....10887
1308.....11042, 12285

**Proposed Rules:**

312.....12431
357.....12114
561.....12193
1301.....11091

**22 CFR**

2a.....12154
212.....11817

**Proposed Rules:**

41.....12001

**23 CFR**

**Proposed Rules:**

650.....11092
655.....11502

**24 CFR**

15.....12159
201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644

**Proposed Rules:**

200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**

120.....11467

**Proposed Rules:**

40.....11503

**26 CFR**

1.....10368, 10741, 10742, 12161
5f.....10368
54.....10563
602.....10368, 10563, 10742, 12161

**Proposed Rules:**

1.....10774, 12194
54.....10583
602.....10583, 10774

**27 CFR**

**Proposed Rules:**

9.....11689

**28 CFR**

0.....11043
545.....10528

**Proposed Rules:**

549.....10531

**29 CFR**

33.....11600
2644.....10368
2676.....12163

**Proposed Rules:**

1601.....11503
1625.....10584
1910.....10586, 12116
1926.....12120, 12288

**30 CFR**

914.....10369, 10373
946.....11044

**Proposed Rules:**

700.....11829
723.....11287
724.....11287
733.....10898
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
934.....12002
935.....11692
937.....11287
938.....12195
939.....11287
941.....11287
942.....11287
947.....11287

**31 CFR**

1.....11989
103.....11436

**Proposed Rules:**

1.....12003

**32 CFR**

154.....11219
701.....11051
706.....10374, 10748, 10749

**Proposed Rules:**

1662.....11830

**33 CFR**

60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646
165.....12380

**Proposed Rules:**

100.....10593, 10594, 10905, 10906, 11693
117.....11695, 12431

**34 CFR**

628.....11256
639.....12508

**Proposed Rules:**

206.....11448
650.....12360

**35 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**Proposed Rules:**

1.....12037
2.....12037
9.....10866

**37 CFR**

**Proposed Rules:**

307.....11096

**38 CFR**

1.....10888
17.....11259
36.....12381

**Proposed Rules:**

17.....10907

**39 CFR**

10.....10375
111.....10749

**Proposed Rules:**

111.....12432
265.....12434
447.....12196

**40 CFR**

52.....10751, 11259, 11647, 12164
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261, 12165–12167
261.....11819
266.....11819
271.....10568, 11263
721.....11822
761.....10688
799.....10377, 10752

**Proposed Rules:**

52.....10596, 11287, 11288, 11696
123.....12039
141.....10972
142.....10972
143.....10972
180.....11292, 11293, 12198
261.....11513
300.....11513
721.....12285

**41 CFR**

101-20.....11263
101-28.....11275
101-41.....12168

201–32.....10379

**42 CFR**

7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649

**Proposed Rules:**

405.....11517

**43 CFR**

426.....11938
2090.....12171

**44 CFR**

64.....10753, 12178

**Proposed Rules:**

5.....10385
6.....10385
67.....11702

**45 CFR**

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870

**Proposed Rules:**

503.....11712, 12040

**46 CFR**

401.....11468

**Proposed Rules:**

Chapter I.....12439
154.....10598
276.....12199
382.....11518
502.....10912, 12208, 12212
503.....12212
586.....11832

**47 CFR**

0.....12382
1.....11652
2.....10568
22.....10571
73.....10381, 10382, 10568, 10757, 11471–11473, 11653, 11825, 12180, 12181
74.....10568, 11474
78.....10568

**Proposed Rules:**

1.....11519
21.....11519, 11838
73.....11519–11521, 11837, 11840–11842, 12214–12216, 12285
74.....11519
90.....10389
94.....11519, 11838

**48 CFR**

7.....11074
203.....12383
205.....12386
215.....11276
216.....12387
217.....11076, 12387
225.....12389
227.....12390
243.....12387
245.....12389
252.....11076, 11276, 12383, 12386, 12389, 12390
522.....12182
542.....11825
552.....12182
5315.....12414

**Proposed Rules:**

225.....12440
509.....10913

**49 CFR**

219.....10575
604.....11916
1003.....11277
1043.....11277
1052.....11991
1084.....11277
1207.....10382
1244.....12415
1249.....10382

**Proposed Rules:**

Ch. X.....11295
571.....10775
1312.....10913
1320.....11295

**50 CFR**

17.....10890, 11162, 11277
301.....10759
611.....10761
642.....10762
652.....10763
663.....11473
672.....10761, 11991, 12183
675.....10761, 11992

**Proposed Rules:**

222.....12040
227.....12040
640.....10780
642.....11713
651.....10781

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List April 13, 1987**

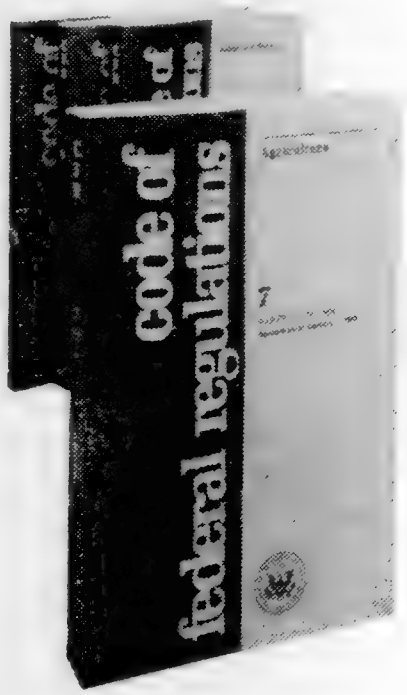


*Just Released*

# Code of Federal Regulations

**Revised as of December 31, 1986**

| Quantity | Volume | Price | Amount |
|---|---|---|---|
| | Title 48—Federal Acquisition Regulations System | | |
| _____ | Chapter 2 (Stock No. 822-007-00163-1) | $27.00 | $_____ |
| | | **Total Order** | $_____ |

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

*Please do not detach*

## Order Form

**Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

**Charge to my Deposit Account No.**

☐☐☐☐☐☐☐–☐

Order No._____

VISA

MasterCard

**Credit Card Orders Only**

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

**PLEASE PRINT OR TYPE**

**For Office Use Only.**

| | Quantity | Charges |
|---|---|---|
| Enclosed | | |
| To be mailed | | |
| Subscriptions | | |
| Postage | | |
| Foreign handling | | |
| MMOB | | |
| OPNR | | |
| UPNS | | |
| Discount | | |
| Refund | | |

OL
2
SS
4
P
7
87
MI

4-17-87
Vol. 52 No. 74

# Federal Register

Friday
April 17, 1987

United States
Government
Printing Offic
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 204

OFFICIAL BUSINES
Penalty for private u

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S Government Printing Office
(ISSN 0097-6326)

L
2
S
4
P
7
37
M I

4-17-87
Vol. 52 No. 74
Pages 12511-12896

# federal register

Friday
April 17, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 74

Friday, April 17, 1987

**Agricultural Marketing Service**
RULES
Lemons grown in California and Arizona, 12511
Oranges (navel) grown in Arizona and California, 12511
Pears, plums, and peaches grown in California, 12512
Potatoes (Irish) grown in Colorado, 12513
Raisins produced from grapes grown in California, 12515
PROPOSED RULES
Lemons grown in California and Arizona, 12536
Milk marketing orders:
Southern Michigan, 12537
Southwest Plains, 12538
Oranges (Valencia) grown in Arizona and California, 12535

**Agriculture Department**
*See* Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food and Nutrition Service; Food Safety and Inspection Service

**Animal and Plant Health Inspection Service**
NOTICES
Committees; establishment, renewals, terminations, etc.:
National Animal Damage Control Advisory Committee, 12576

**Army Department**
*See also* Engineers Corps
NOTICES
Meetings:
Science Board, 12580
(2 documents)

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Blind and Other Severely Handicapped, Committee for Purchase From**
*See* Committee for Purchase From the Blind and Other Severely Handicapped

**Bonneville Power Administration**
NOTICES
Transmission and wholesale power rates:
Proposed revision, 12582

**Centers for Disease Control**
NOTICES
Fatal accident circumstances and epidemiology; NIOSH meeting, 12604

**Commerce Department**
*See* International Trade Administration; National Oceanic and Atmospheric Administration

**Committee for Purchase From the Blind and Other Severely Handicapped**
NOTICES
Procurement list, 1987:
Additions and deletions, 12579

**Conservation and Renewable Energy Office**
NOTICES
Grants; availability, etc.:
Research and development cooperative ventures, 12590

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 12638
(2 documents)

**Defense Department**
*See also* Army Department; Engineers Corps
NOTICES
Meetings:
Science Board task forces, 12580

**Drug Enforcement Administration**
NOTICES
*Applications, hearings, determinations, etc.:*
Romers, William D., D.D.S., 12621

**Economic Regulatory Administration**
NOTICES
Natural gas exportation and importation:
Spot Market Corp., 12582
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
Prime Energy Limited Partnership, 12583

**Education Department**
NOTICES
Meetings:
Continuing Education National Advisory Council, 12581

**Employment and Training Administration**
NOTICES
Adjustment assistance:
American Motors Corp. et al., 12622
Carrier Corp., 12625
Dover Elevator Systems, Inc., 12625
Enduro Stainless, Inc., 12626
Perrella Gloves, Inc., 12626
Zenith Electronics Corp., 12626

**Employment Standards Administration**
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 12627

**Energy Department**
*See* Bonneville Power Administration; Conservation and Renewable Energy Office; Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission

**Energy Information Administration**
NOTICES
Reporting and recordkeeping requirements, 12584

**Engineers Corps**
NOTICES
Meetings:
Coastal Engineering Research Board, 12581

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 12522
North Carolina, 12523
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Sodium salt of fomesafen, 12525
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Emission control system performance warranty, etc.—
Maryland; alternative quality control procedures, 12561
New York; alternative quality control procedures, 12563
Hazardous waste:
Treatment, storage, and disposal facilities—
Minimum technology requirements, 12566
Underground storage tanks—
Financial responsibility requirements, 12780
State program approval, 12853
Technical requirements, 12662
Water pollution control:
National primary drinking water regulations—
Volatile synthetic organic chemicals; para-dichlorobenzene, 12876
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 12593
Weekly receipts, 12592
Pesticides; emergency exemption applications:
Benomyl, 12593
Dinoseb, 12594
Oxyfluorfen, 12596
Superfund program:
Hazardous substances priority list (toxicological profiles), 12866
Toxicological profiles development; guidelines, 12870
Toxic and hazardous substances control:
Premanufacture exemption approvals, 12597
Premanufacture notices receipts, 12598
Water pollution control; sole source aquifer designations:
Virginia, 12600

**Equal Employment Opportunity Commission**
NOTICES
Meetings; Sunshine Act, 12638

**Farmers Home Administration**
PROPOSED RULES
Loan and grant programs:
Community facility loans, 12539

**Federal Aviation Administration**
RULES
Airworthiness directives:
Bell Helicopter Textron, Inc., 12517
Messerschmitt-Bolkow-Blohm GmbH, 12518
Rolls-Royce plc, 12519
Standard instrument approach procedures, 12519
PROPOSED RULES
Airworthiness directives:
Garrett, 12545
Teledyne Continental Motors, 12544
NOTICES
Meetings:
Aeronautics Radio Technical Commission, 12637

**Federal Communications Commission**
NOTICES
Meetings; Sunshine Act, 12638

**Federal Election Commission**
NOTICES
Meetings; Sunshine Act, 12639

**Federal Emergency Management Agency**
NOTICES
Agency information collection activities under OMB review, 12602
Disaster and emergency areas:
Maine, 12602

**Federal Energy Regulatory Commission**
NOTICES
Hydroelectric applications, 12586
*Applications, hearings, determinations, etc.:*
San Diego Gas & Electric Co., 12590
(2 documents)

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 12639, 12640
(4 documents)
*Applications, hearings, determinations, etc.:*
Fidelcor, Inc., 12602
Hamptons Bancshares, Inc., et al., 12603
Scroggie, LaCinda Johnson, 12603
Sharon Bancshares, Inc., et al., 12603

**Federal Trade Commission**
PROPOSED RULES
Prohibited trade practices:
Volkswagen of America, Inc., et al., 12546

**Fish and Wildlife Service**
NOTICES
Endangered and threatened species permit applications, 12618

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Ronnel, 12521
Human drugs:
Bronchodilator drug products (OTC): final monograph; correction, 12521
PROPOSED RULES
Food for human consumption:
Cheeses, mozzarella; identity standards, 12556
NOTICES
Animal drugs, feeds, and related products:
Dow Chemical U.S.A.; ronnel Type A articles; approval withdrawn, 12604
Biological products:
Haemophilus influenza type B disease epidemiology; workshop, 12604
Human drugs:
Exclusivity petitions—
Dipyridamole, 12605

Medical devices:
Condoms; defect action levels, labeling; compliance policy guide, 12605
Intraocular lenses; adjunct studies report availability, 12606

**Food and Nutrition Service**
PROPOSED RULES
Child nutrition programs:
Women, infants, and children; special supplemental food program; funding formula, 12527

**Food Safety and Inspection Service**
RULES
Meat and poultry inspection:
Trichinae in pork products; methods for destruction; correction, 12517

**Health and Human Services Department**
*See also* Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; Social Security Administration
NOTICES
Superfund program:
Hazardous substances priority list (toxicological profiles), 12650
Toxicological profiles development; guidelines, 12870

**Health Resources and Services Administration**
NOTICES
Grants and cooperative agreements:
Family medicine—
Faculty development, 12607

**Housing and Urban Development Department**
NOTICES
Grants; availability, etc.:
Rental rehabilitation program; formula allocations, etc., 12608

**Indian Affairs Bureau**
NOTICES
Liquor and tobacco sale or distribution ordinance:
Turtle Mountain Band of Chippewa, ND, 12617

**Interior Department**
*See also* Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; National Park Service
PROPOSED RULES
Superfund and Clean Water Act:
Natural resource damage assessments, 12886

**International Broadcasting Board**
NOTICES
Meetings; Sunshine Act, 12638

**International Trade Administration**
NOTICES
Export privileges, actions affecting:
Bollinger GmbH et al., 12576
Export trade certificates of review, 12578

**Interstate Commerce Commission**
NOTICES
Railroad operation, acquisition, construction, etc.:
Duval Transportation of the Carolinas, Inc., 12619
Haley, John E., et al., 12619

**Justice Department**
*See also* Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
B.F. Goodrich Co., 12619
Darshan's Gas, Inc., et al., 12620
Geppert Bros. et al., 12620
New Holland Borough et al., 12620
Utility Trailer Manufacturing Co., 12621

**Labor Department**
*See* Employment and Training Administration; Employment Standards Administration; Occupational Safety and Health Administration

**Land Management Bureau**
NOTICES
Meetings:
Salt Lake District Grazing Advisory Board, 12617
Realty actions; sales, leases, etc.:
Nevada, 12617, 12618
(2 documents)
Recreation management restrictions, etc.:
Medford District, OR; correction, 12641
Withdrawal and reservation of lands:
New Mexico; correction, 12641

**Legal Services Corporation**
NOTICES
Reports; availability, etc.:
Migrant farmworkers: number and distribution, 12632

**National Foundation on the Arts and the Humanities**
NOTICES
Agency information collection activities under OMB review, 12632

**National Institute for Occupational Safety and Health**
*See* Centers for Disease Control

**National Labor Relations Board**
NOTICES
Meetings; Sunshine Act, 12640

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Western Pacific pelagic; correction, 12641
PROPOSED RULES
Fishery conservation and management:
Atlantic surf clam and ocean quahog, 12575
NOTICES
Coastal zone management programs and estuarine santuaries:
National energy security study, 12578

**National Park Service**
NOTICES
Concession contract negotiations:
International Leisure Hosts, Ltd., 12619

**Nuclear Regulatory Commission**
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 12633
Reports; availability, etc.:
Nuclear power plant safety anaiysis report review, 12633
(2 documents)

**Occupational Safety and Health Administration**
PROPOSED RULES
Health and safety standards, etc.:
Manual lifting, 12559
NOTICES
State plans; standards approval, etc.:
Oregon, 12628
Washington, 12628
Variance applications, etc.:
Tomaro Contractors, Inc., 12629

**Postal Service**
PROPOSED RULES
Domestic Mail Manual:
Combined presort and ZIP + 4 presort first-class mail, 12559

**Public Health Service**
*See* Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration

**Securities and Exchange Commission**
NOTICES
*Applications, hearings, determinations, etc.:*
FSA Capital, Inc., 12634
Mrs. Fields, Inc., 12634

**Selective Service System**
RULES
Registrant processing
Correction, 12641

**Social Security Administration**
NOTICES
Meetings:
Disability Advisory Council, 12607

**Tennessee Valley Authority**
NOTICES
Meetings; Sunshine Act, 12640

**Transportation Department**
*See* Federal Aviation Administration

**Treasury Department**
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements; Bank Secrecy Act; implementation
Correction, 12641
NOTICES
Committees; establishment, renewals, terminations, etc.:
Exempt Organizations Advisory Group, 12637

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 12662

**Part III**
Environmental Protection Agency; Department of Health and Human Services, 12866

**Part IV**
Environmental Protection Agency, 12876

**Part V**
Department of the Interior, 12886

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
907.....12511
910.....12511
917.....12512
948.....12513
989.....12515

**Proposed Rules:**
246.....12527
908.....12535
910.....12536
1040.....12537
1106.....12538
1942.....12539

**9 CFR**
318.....12517

**14 CFR**
39 (3 documents).....12517–12519
97.....12519

**Proposed Rules:**
39 (2 documents).....12544, 12545

**16 CFR**

**Proposed Rules:**
13.....12546

**21 CFR**
341.....12521
558.....12521

**Proposed Rules:**
133.....12556

**[illegible] CFR**

**Proposed Rules:**
1910.....12559
1915.....12559
1917.....12559
1918.....12559
1919.....12559
1926.....12559
1928.....12559

**31 CFR**
103.....12641

**32 CFR**
1630.....12641

**[illegible]9 CFR**

**Proposed Rules:**
111.....12559

**40 CFR**
52 (2 documents).....12522, 12523
180.....12525

**Proposed Rules:**
85 (2 documents).....12561, 12563
141.....12876
264.....12566
265.....12566
280 (2 documents).....12662, 12786
281.....12853

**43 CFR**

**Proposed Rules:**
11.....12886

**50 CFR**
685.....12641

**Proposed Rules:**
652.....12575

# Rules and Regulations

Federal Register
Vol. 52, No. 74
Friday, April 17, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 907

[Navel Orange Reg. 656]

### Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 656 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period April 17, 1987, through April 23, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

**DATE:** Regulation 656 (§ 907.956) is effective for the period April 17, 1987, through April 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Martin, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee met publicly on April 14, 1987, in Lindsay, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 1 vote a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

### List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

### PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.956 Navel Orange Regulation 656 is added to read as follows:

**§ 907.956 Navel Orange Regulation 656.**

The quantities of navel oranges grown in California and Arizona which may be handled during the period April 17, 1987, through April 23, 1987, are established as follows:

(a) District 1: 1,750,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: April 15, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8818 Filed 4–16–87; 8:45 am]

BILLING CODE 3410–02–M

### 7 CFR Part 910

[Lemon Reg. 557]

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 557 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 315,000 cartons during the period April 19–25, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 557 (§ 910.857) is effective for the period April 19–25, 1987.

**FOR FURTHER INFORMATION CONTACT:** Raymond C. Martin, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has

been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on April 14, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended unanimously a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is very slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of Subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.857 is added to read as follows:

**§ 910.857 Lemon Regulation 557.**

The quantity of lemons grown in California and Arizona which may be handled during the period April 19 through April 25, 1987, is established at 315,000 cartons.

Dated: April 15, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8819 Filed 4–16–87; 8:45 am]

BILLING CODE 3410–02–M

---

**7 CFR Part 917**

## Fresh Pears, Plums, and Peaches Grown in California; Pear Commodity Committee Representation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule will reallocate the membership on the Pear Commodity Committee and re-group certain districts, for purposes of representation, within the production area. The changes reflect the relative quantity of pears shipped from the respective representation areas. This action was unanimously recommended by the Pear Commodity Committee established under this order.

**EFFECTIVE DATE:** This final rule becomes effective April 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400 (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 43 pear handlers under the marketing order for fresh pears, plums, and peaches grown in California will be subject to regulation during the course of the current season. In addition, there are about 430 pear producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of producers and handlers may be classified as small entities.

This action is administrative in nature in that it will redefine the representation areas and reallocate the membership on the Pear Commodity Committee accordingly. It will more accurately reflect representation on the committee according to the provisions of the order and regulations. It does not impose any additional costs on growers or handlers of pears.

Notice of this action was published in the March 2, 1987, **Federal Register** (52 FR 6165) affording interested persons until March 12, 1987, to file written comments. None were received.

This final rule is issued under Marketing Order No. 917 regulating the handling of pears, plums, and peaches grown in California. The action is based upon the recommendation and information submitted by the Pear Commodity Committee and upon other available information.

Under the order and regulations, the production area is divided into five areas for purposes of representation on the 14-member Pear Commodity Committee. One public member is included in the total number of members. These areas are specified in paragraphs (a) through (e) of § 917.121.

The number of members from each area and the grouping of the districts within each area are based, insofar as practicable, upon the proportionate quantity of pears shipped from the respective areas during the preceding three fiscal years. Section 917.35(g) of the order authorizes the Pear Commodity Committee, with the approval of the Secretary, to redefine the representation in any area. Any such changes are to be based, so far as practicable, upon the proportionate quantity of fruit shipped from the respective representation area during the three preceding fiscal periods. In addition, so far as practicable, a member position should be assigned to any representation area from which 5 percent of shipments originated during the appropriate period.

The final rule will reduce the number of representation areas to four by combining area "a" (the North Sacramento Valley District and Central Sacramento Valley District) with area "e" (the Placer-Colfax District, the El Dorado District and the representation area covering the balance of the State). Membership from the combined area will be reduced from two members to one member. The final rule will also increase from two to three the number of members representing area "d" (the Mendocino District and the North Bay District).

The reason for this action is more accurate alignment of the districts within the areas of representation in accordance with the proportionate quantity of pears shipped. During the immediately preceding three years (1984–86), pear shipments totaled 12,089 cars. During that period, area "d", with two members, accounted for 3,026 cars or 25 percent of the total. Areas "a" and "e" combined, with their two members, accounted for 740 cars or 6.1 percent of the total shipments. Area "b", with three members, accounted for 2921 cars or 24.2 percent of the total. Area "c", with 6 members, accounted for 5402 cars or 44.7 percent of the total. For this reason, it is appropriate to realign the districts as hereinafter set forth.

Section 917.121 was amended and published in the **Federal Register** on October 8, 1985 (50 FR 40961). That amendment deleted paragraph (f). However, paragraph (f) was inadvertently published in the Code of Federal Regulations, revised as of January 1, 1986. Therefore, this action will also delete paragraph (f) from § 917.121.

It is hereby found and determined that the amendment, as hereinafter set forth, will tend to effectuate the declared policy of the Act. It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Pear Commodity Committee's regular term of office ended February 28, 1987, and it is necessary that the new committee be selected promptly in accordance with this action.

**List of Subjects in 7 CFR Part 917**

Marketing agreements and orders, Pears, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

## PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.121 is revised to read as follows:

**§ 917.121 Changes in nomination of Pear Commodity Committee members.**

Nominations for membership on the Pear Commodity Committee shall be made by the growers of pears in the respective representation areas as follows:

(a) North Sacramento Valley District, Central Sacramento Valley District, Placer-Colfax District, El Dorado District, and all of the production area not included in paragraphs (b) through (d) of this section, one nominee.

(b) Sacramento River District, Stockton District, Stanislaus District, Contra Costa District, Santa Clara District and Solano District, three nominees.

(c) Lake District, six nominees.

(d) Mendocino District and North Bay District, three nominees.

Dated: April 13, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8669 Filed 4–16–87; 8:45 am]

BILLING CODE 3410–02–M

---

**7 CFR Part 948**

## Irish Potatoes Grown in Colorado, Areas II and III; Amendment of the Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule will: (1) Restructure the handler representation on the Area II Colorado Potato Administrative Committee; (2) change the fiscal year for Area II that begins July 1 and ends June 30 to begin September 1 and to end August 31; (3) change the term of office for Area III Colorado Potato Administrative Committee members that begins June 1 and ends May 31 to begin May 1 and to end April 30; and (4) reapportion the producer members of the Area III Colorado Potato Administrative Committee. The changes are intended to provide more equitable producer and handler representation on the committees in recognition of changes that have occurred in the relative importance of certain producers and handlers, and to improve program operations. The action was recommended unanimously by the respective committees.

**EFFECTIVE DATE:** April 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250–1400; telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of Area II Colorado potatoes and 19 handlers of Area III Colorado potatoes subject to regulation under the marketing order for Irish potatoes grown in Colorado. In addition, there are approximately 290 Area II producers and 112 Area III producers in the respective production area. Small agricultural producers have been defined by the Small Business

Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000. Handlers are considered small entities if gross annual revenues are less than $3,500,000. The majority of Area II and Area III Colorado potato producers and handlers can be classified as small entities.

The Administrator of AMS has considered the impact of this regulatory action on small entities. The regulatory action in this instance is a final rule that will: (1) Restructure the handler representation on the Area II Colorado Potato Administrative Committee; (2) change the fiscal year for Area II that begins July 1 and ends June 30 to begin September 1 and to end August 31; (3) change the term of office for Area III Colorado Potato Administrative Committee members that begins June 1 and ends May 31 to begin May 1 and to end May 30; and (4) reapportion the producer members of the Area III Colorado Potato Administrative Committee. These changes are primarily of an administrative nature and, as such, do not impose any additional costs on handlers or producers.

This action is being issued under the marketing agreement and Order No. 948 (7 CFR 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The agreement and order are effective under the Act. These actions were recommended unanimously by the Area II and Area III Colorado Potato Administrative Committees. The committees work with the USDA in administering the marketing agreement and order program.

Notice of the proposed rulemaking was published in the **Federal Register** on March 2, 1987 (52 FR 6168). The comment period ended on March 12, 1987; no comments were received. The final rule is the same as the proposed rule.

The handler representation change on the Area II committee is needed to provide bulk handlers adequate representation on the committee. Currently, the handler representation specified in § 948.50 is allocated between handlers representing all producers' cooperative marketing associations (currently allocated two members and alternate members), and handlers representing handlers other than producers' cooperative marketing associations (currently allocated three members and alternate members). Specific representation for bulk handlers is not provided.

The Area II committee recommended providing specific representation for this handler group because it has increased in importance on the basis of shipments in recent years relative to the other handlers in that area and because the interests of bulk handlers are different enough from other handlers to warrant specific representation. According to the committee, bulk handlers sell to different markets, market different packs, and share different problems than the other handlers in the industry. During the 1985–86 season, bulk handlers handled about 25 percent of shipments from Area II, producers' cooperative marketing associations handled about 15 percent of the shipments, and about 60 percent of the shipments were made by handlers other than producers' cooperative associations and bulk handlers.

In recognition of the relative importance of the bulk handler group in Area II and other special interests, the Area II committee recommended pursuant to § 948.53 that one handler member represent bulk handlers, one handler member represent all producers' cooperative marketing associations, and three handlers represent handlers other than cooperative marketing associations, and bulk handlers. The effect of the recommendation and this action is to take one handler position away from the cooperative marketing associations and give it to bulk handlers. This is equitable on the basis of the relative importance of each group in terms of shipments.

Pursuant to § 948.103, since 1970, the Area II fiscal period has been July 1 through June 30 (7 CFR 948.103; 35 FR 13281; August 20, 1970). Since that time, however, improved storage has extended the marketing season well into the summer months (through August 31). The committee believes that a September 1–August 31 fiscal period which conforms to the actual shipping season would improve program administration and financial operations. The fiscal period change was recommended on this basis. In recognition of this action, the 1986–87 fiscal period will be extended two months to August 31, 1987.

The term of office specified in § 948.104 for the Area III Colorado Potato Administrative Committee members currently begins June 1 and ends May 31. The members serve two-year terms, and a portion of the membership is selected each year. The annual committee meetings have historically been held in June, and the June 1-May 31 two-year term of office enabled new committee members to participate fully at such meetings. However, the committee has recently determined that holding the annual meeting in May would help avoid conflicts with producer planting schedules and give the industry more time to plan its operations in light of the committee's recommendations for the new season.

In connection with the committee's desire to hold earlier organizational meetings but still allow the new members selected each year to participate at those meetings, the committee recommended that the term of office of its members begin May 1 rather than June 1. Under the final rule, the term of office of current committee members now scheduled to end on the last day of May in 1987 or 1988 will automatically expire on the last day of April of those years. The date for submitting nominees will be adjusted pursuant to § 948.56 by one month to give the Secretary sufficient time to complete the selection process before the term of office begins.

Currently, five producers and four handlers comprise the Area III administrative committee. Pursuant to § 948.50(c), the five producers are selected so three producers are from Weld County, one producer is from Morgan County, and one producer is from the remaining counties of Area III. In recent years, the number of growers and the amount of production has decreased significantly outside of Morgan and Weld Counties. There are about 112 producers in Area III, and only four of those are outside of Morgan and Weld Counties. Moreover, close to 70 percent of the producers from that area are located in Weld County and they normally produce about 60 percent of the tonnage. Hence, to foster more equitable producer representation on the Area III Potato Administrative Committee, the committee recommended continuing the three member representation for Weld County and allocating the remaining two members to producers from the remaining counties of Area III, rather than spliting them between Morgan County and the remaining counties comprising Area III.

The final rule will formally establish the current apportionment recognized by the Area III potato industry for more than 15 years. Since 1970, the four handler members on the Area III administrative committee have been apportioned and allocated equally between Weld County and all of the remaining counties in Area III. However, this apportionment was never formally acted upon by the Department pursuant to § 948.53. According to the committee, this apportionment is still equitable based on the quantity of potatoes shipped by handlers located in Weld County and handlers located in the

remaining counties in Area III. Approximately 60 percent of the potatoes shipped from Area III over the last few seasons under the marketing agreement and order program have been made by handlers from Weld County.

After consideration of all relevent information presented, including the proposal set forth in the notice, it is hereby found that this action will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), for the following reasons: (1) Among other things, this action restructures the handler membership on the Area II Colorado Potato Administrative Committee; (2) the committee selection and qualification process should be completed by June 1, 1987, the beginning of the new term of office; (3) moreover, a revision of the Area II Colorado Administrative Committee's 1986–87 fiscal period budget is needed to cover the additional expenses anticipated because of the extension of the 1986–87 fiscal period by two months from June 30 to August 31; (4) the Area II committee plans to meet in late April to discuss and recommend to the Department any needed budget revisions; (5) hence, this action must be effective promptly for the selection and budget activities to be completed as scheduled; and (6) no useful purpose would be served by postponing the effective date of this action.

**List of Subjects in 7 CFR Part 948**

Marketing agreements and orders, Potatoes, Colorado.

**PART 948—[AMENDED]**

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

1. The authority citation for 7 CFR Part 948 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.150 will be added to read as follows:

**§ 948.150 Reestablishment of committee membership.**

Pursuant to § 948.53, membership on each area committee shall be reestablished as follows:

(a) Area No. 2 (San Luis Valley): Seven producers and five handlers selected as follows:

Three (3) producers from Rio Grande County;
One (1) producer from Saguache County;
One (1) producer from Conejos County;
One (1) producer from Alamosa County;
One (1) handler representing all producers' cooperative marketing associations in Area No. 2;
One (1) handler representing bulk handlers in Area No. 2;
Three (3) handlers representing handlers in Area No. 2 other than producers' cooperative marketing associations and bulk handlers.

(b) Area No. 3: Five producers and four handlers selected as follows:

Three (3) producers from Weld County;
Two (2) producers from all other counties in Area No. 3;
Two (2) handlers from Weld County;
Two (2) handlers from all other counties in Area No. 3.

3. The provisions of § 948.103 will be revised to read as follows:

**§ 948.103 Fiscal period.**

Pursuant to § 948.10, the fiscal periods for each area shall be as follows:

(a) Area No. 1 and Area No. 3 shall begin July 1 and end June 30, of the following year, both dates inclusive;

(b) Area No. 2 shall begin September 1 and end August 31, of the following year, both dates inclusive. The 1986–87 fiscal period which began July 1, 1986, will be extended two months to August 31, 1987.

4. The provisions of § 948.104 will be revised to read as follows:

**§ 948.104 Term of office.**

(a) Pursuant to § 948.55, the two-year term of office for area committee members and alternates shall be as follows:

(1) Area No. 1 and Area No. 2 shall begin June 1 and end May 31 of the second year following;

(2) Area No. 3 shall begin May 1 and end April 30 of the second year following.

(b) The one-year term of office of Colorado Potato Committee members shall begin as of June 1 of each year.

Dated: April 10, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8657 Filed 4–16–87; 8:45 am]

BILLING CODE 3410-02-M

---

**7 CFR Part 989**

## Raisins Produced From Grapes Grown in California; Amendment to the Substandard Dockage System for Certain Varietal Types of Raisins

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the substandard dockage system for Muscat, Sultana, and Zante Currant raisins. Currently, handlers may acquire as standard raisins any lot of these raisin varieties containing more than 12 percent, by weight, of substandard raisins subject to a weight dockage system. This action will limit the percentage of substandard raisins that can be received by handlers to 17 percent, but will not alter the dockage factor. Raisin lots containing in excess of 17 percent substandard raisins will be off-grade and will have to be reconditioned before they can be acquired as standard raisins by handlers. This change will be effective beginning in the 1987–88 crop year.

**EFFECTIVE DATE:** August 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentionally small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 23 handlers of raisins under the marketing order will be subject to regulation during the course of the current season. There are about 300 producers of Muscat, Sultana, and Zante Currant raisins in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms, which would include handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of California raisin producers and handlers

may be characterized as small producers and handlers. The estimated crop value of production for the past three years for Muscat, Sultana, and Zante Currant raisins was $8,111,402.

The regulation will apply to all handlers of Muscat, Sultana, and Zante Currant raisins. Handlers have experienced difficulties processing lots of raisins which have excessive amounts of substandard raisins. This regulation will enable handlers to market raisins with higher quality levels at lower processing costs.

Producers are paid according to the creditable fruit weight of raisins delivered. If producers deliver lots of raisins which contain excessive amounts of substandard raisins, the delivery weight of such lots will be docked, thereby decreasing their payment for that lot. If the lot exceeds the 17 percent limit and is off-grade as provided in this final rule, the producer will incur the reconditioning costs necessary to bring the lot within acceptable requirements. This change will not be effective until August 1, 1987, the beginning of the 1987–88 crop year, in order to give producers adequate time to adjust their cultural practices, to help minimize the production of excessive amounts of substandard raisins, and to improve the quality of these varietal types of raisins delivered for processing.

Additional production costs based on the implementation of improved cultural practices may be incurred by producers. However, it is expected that these costs will be offset or significantly reduced by the beneifts of reduced processing and reconditioning costs. This action will contribute to a more efficient processing operation and a better quality product.

The reporting and recordkeeping requirements under the raisin marketing order are not changed by this rule. Reporting and recordkeeping functions are already used in connection with existing quality requirements, and this action does not increase such requirements. Thus, no additional costs concerning recordkeeping are expected.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

A proposed rule on this amendment was published in the **Federal Register** on January 16, 1987 (52 FR 1919) inviting written comments through February 17, 1987. No comments were received.

The substandard dockage system permits handlers to acquire as standard raisins any lot of Muscat, Sultana, and Zante Currant raisins even though the lot has been determined to be off-grade because they contain an excess amount of substandard raisins. Currently, no upward limit is prescribed on the quantity of substandard raisins in lots which can be acquired under the system. Lots of raisins containing more than 12 percent, by weight, of substandard raisins are subject to a dockage factor. This factor reduces the weight of the lot by an amount approximating the weight of the substandard raisins needed to be removed in order for the balance of the lot to meet grade standards. This dockage factor will remain unchanged by this amendment.

The Raisin Administrative Committee has recommended that the percentage of substandard raisins allowed to be acquired by handlers be limited to 17 percent. Producers delivering these types of raisins containing between 12.1 percent and 17 percent substandard raisins would be docked a 0.1 percent weight deduction for each 0.1 percent of substandard raisins in excess of 12.1 percent—up to the 17 percent maximum. Raisin lots that exceed 17 percent substandard will be off-grade and require reconditioning before they can be acquired as standard raisins by handlers. The Committee unanimously recommended this action.

This final rule is issued under Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

After consideration of all relevant matter presented (the information and recommendation submitted by the Committee, and other available information), it is further found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 989**

Marketing agreements and orders, Grapes, Raisins, California.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Paragraphs (a) and (c) and the note following (c) of § 989.212 will be revised to read as follows:

**Subpart—Supplementary Regulations**

**§ 989.212 Substandard dockage.**

(a) Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Oleate and Related Seedless and Monukka raisins containing from 5.1 through 10.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 percent through 17 percent, by weight, of substandard raisins under a dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the applicable net weight or creditable weight (weight determined by applying the applicable weight adjustment factor for moisture), of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

(b) * * *

(c) *Substandard dockage table applicable to Muscat (including other raisins with seeds), Sultana and Zante Currant raisins.*

| Percentage substandard | Dockage factor |
|---|---|
| 12.0 or less | (1) |
| 12.1 | .999 |
| 12.2 | .998 |
| 12.3 | .997 |
| 12.4 | .996 |
| 12.5 | .995 |

[1] No dockage.

Note.—Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment. Deliveries in excess of 17 percent would be off-grade; therefore, the dockage factor does not apply.

Dated: April 10, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8598 Filed 4–16–87; 8:45 am]

BILLING CODE 3410-02-M

## Food Safety and Inspection Service

### 9 CFR Part 318

[Docket No. 80-054C-1]

### Additional Methods for Destruction of Trichinae in Pork Products; Correction

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule with request for comments; correction.

**SUMMARY:** This document corrects a final rule on trichina destruction by revising three figures contained in Table 6.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

**SUPPLEMENTARY INFORMATION:** On February 7, 1985, the Food Safety and Inspection Service (FSIS) published a final rule with request for comments in the **Federal Register** (50 FR 5226) which permits additional treatment methods for trichina destruction in pork products. Table 6, Smoking and Drying Schedule (9 CFR 318.10(c)(3)) gives the minimum number of days required for drying smoked hams and pork shoulders after smoking. Three of those numbers, however, were listed incorrectly.

Accordingly, FSIS amends Table 6 of 9 CFR 318.10(c)(3) as follows:

Under 80 °F. in column 1:

1. Line 3, under 60 °F. in column 7, change "50" to "58".

2. Line 7, under 70 °F. in column 5, change "39" to "29", and

3. Line 10, under 45 °F. in column 10, change "69" to "60".

Done at Washington, DC, on April 14, 1987.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 87-8654 Filed 4-16-87; 8:45 am]

BILLING CODE 3410-DM-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 85-ASW-25; Amdt. 39-5541]

### Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214B and 214ST Series Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc. (BHTI), Model 214B/B1 and 214ST series helicopters by individual priority letters. The AD requires repetitive visual and magnetic particle inspections of the main rotor drag brace assembly for corrosion and cracks.

The AD is needed to prevent failure of the main rotor drag brace, which could result in loss of control of the helicopter.

**EFFECTIVE DATES:** April 20, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter No. 85-18-06 issued September 11, 1985, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 1987.

Compliance: As indicated in the body of the AD.

**ADDRESSES:** The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

Copies of applicable service bulletins are contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

**FOR FURTHER INFORMATION CONTACT:** Henry A. Armstrong, Helicopter Certification Branch, Aircraft Certification Division, ASW-170, FAA, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, (817) 624-5172.

**SUPPLEMENTARY INFORMATION:** On September 11, 1985, priority letter AD No. 85-18-06 was issued and made effective immediately as to all known U.S. owners and operators of certain BHTI Model 214B/B1 and 214ST series helicopters. This AD is necessary to prevent failure of the main rotor drag brace. The AD requires repetitive visual and magnetic particle inspections of the main rotor drag brace assembly for corrosion and cracks. Undetected cracks could propagate, resulting in failure of the drag brace and loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters issued September 11, 1985, to all known U.S. owners and operators of certain BHTI Model 214B1 and 214ST series helicopters. These conditions still exist and this AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

### Adoption of the Amendment

### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. By adding the following new AD:

**Bell Helicopter Textron, Inc.:** Applies to all Bell Helicopter Model 214B/B1 and 214ST series helicopters certificated in all categories.

Compliance is required within the next 10 hours' time in service, unless previously accomplished, and thereafter at 250 hour intervals.

To prevent failure of the main rotor drag brace accomplish the following:

(a) Inspect main rotor drag brace assembly, Part Number (P/N) 214-010-113-001 or 003, in accordance with Bell Helicopter Textron, Inc. (BHTI), Alert Service Bulletin 214-85-28, dated September 3, 1985, or 214ST-85-29, dated September 3, 1985, as applicable.

(b) If cracks are found, or if corrosion is found which cannot be removed within the

limits of the rework criteria in the Alert Service Bulletins, replace with serviceable parts.

(c) An alternative means of compliance or adjustment of the compliance time, which provides an equivalent level of safety, must be approved by the Manager, Helicopter Certification Branch, Aircraft Certification Division, FAA, Southwest Region.

This procedure shall be done in accordance with BHTI Alert Service Bulletin 214–85–28, dated September 3, 1985, or BHTI Alert Service Bulletin 214ST–85–29, dated September 3, 1985, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

Copies may be inspected at the Office of Regional Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective April 20, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 85–18–06, issued September 11, 1985, which contained this amendment.

Issued in Fort Worth, Texas, on January 23, 1987.

Don P. Watson,

*Acting Director, Southwest Region.*

[FR Doc. 87–8625 Filed 4–16–87; 8:45 am]

BILLING CODE 4910–13–M

---

**14 CFR Part 39**

**[Docket No. 86–ASW–11, Amdt. 39–5542]**

## Airworthiness Directives; Messerschmitt-Bolkow-Blohm Gmbh (MBB), Model BK–117A–3 Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment amends an existing airworthiness directive (AD) which requires immediate replacement and frequent inspections of several tail rotor blades that may be installed on MBB BK–117A–3 helicopters. This amendment is needed to exclude additional tail rotor blades from further inspection or replacement.

**DATES:** Effective date: May 16, 1987.

The incorporation by reference of certain publications in the regulations in approved by the Director of the Federal Register as of Compliance: As prescribed in the body of the AD.

**ADDRESSES:** A copy of the service bulletins is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106. The applicable service information may be obtained from MBB Helicopter Corp., P.O. Box 2349, West Chester, Pennsylvania 19380.

**FOR FURTHER INFORMATION CONTACT:** J.H. Major, Rotorcraft Standards Staff, ASW–110, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624–5117.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Amendment 39–5294 (51 FR 17614), AD 86–09–03 for MBB BK–117A–3 helicopters was published in the **Federal Register** on November 4, 1986 (51 FR 40032). AD 86–09–03, currently requires for certain MBB BK–117A–3 helicopters immediate replacement of certain tail rotor blades and frequent (preflight) inspections of the other blades for bond separation until rebonding of the affected blades, Serial Numbers (S/N) 63 through 115, is accomplished. After issuing Amendment 39–5294, MBB issued Service Bulletin No. SB–MBB–BK–117–30–1, Revision 1, dated June 12, 1986, to change the serial numbers of affected tail rotor blades to S/N's 63 through 82. The proposal was issued to change the applicability accordingly and to add a new paragraph (f) to clarify in the AD that rebonded blades are no longer subject to the AD inspections.

Interested persons have been afforded an opportunity to participate in the making of the amendment. One comment was received from MBB Helicopter Corporation about the proposed paragraph (f). It noted that affected tail rotor blades which have satisfactorily passed an inspection or have been rebonded as prescribed in Service Bulletin SB–MBB–BK–117–30–1, Revision 1, may be returned to service. The FAA agrees, and the change to proposed paragraph (f) is included with minor editorial changes. The AD presently includes an incorporation by reference statement which is revised to include the previous maintenance manual cited in paragraphs (b) and (c) and to include SB–MBB–BK–117–30–1, Revision 1, referenced in new paragraph (f).

The FAA has determined that this regulation only involves about six aircraft with an estimated cost of compliance of $100 per aircraft or a total of $600. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By amending Amendment 39–5294 (51 FR 17614), AD 86–09–03, as follows:

(a) Revise the applicability statement by removing "115" and inserting "82."

(b) Add a new paragraph (f) to read as follows:

(f) A tail rotor blade with leading edge that was inspected and/or rebonded per MBB Service Bulletin No. SB–MBB–BK117–30–1, Revision 1, dated June 12, 1986, and determined serviceable is no longer subject to this AD.

(c) Remove the incorporation by reference statement at the end of the AD and add a new statement to read as follows:

The procedures shall be done in accordance with Section 34–2, paragraphs 2a, b, and c of the MBB BK–117 maintenance manual, undated, and MBB SB–MBB–BK–117–30–1, Revision 1, dated June 12, 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1). Copies may be obtained from MBB Helicopter Corporation, P.O. Box 2349, West Chester, Pennsylvania 19280. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment amends Amendment 39–5294 (51 FR 17614), AD 86–09–03.

Issued in Fort Worth, Texas, on March 3, 1987.

Don P. Watson,

*Acting Director, Southwest Region.*

[FR Doc. 87-8624 Filed 4-16-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 39**

**[Docket Number 85-ANE-17; Amt. 39-5608]**

## Airworthiness Directives; Rolls-Royce plc (R-R) (Formerly Rolls-Royce Limited) RB211-22B, -535C, and -524 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment amends an existing airworthiness directive (AD) to require removal from service of additional stage 1 and 2 high pressure compressor (HPC) disk assemblies installed on certain R-R RB211 series turbofan engines. The amendment is needed to prevent fracture of the stage 1 HPC disk due to material property deviations incurred during the manufacturing process which could result in uncontained engine failure.

**DATES:** Effective—May 29, 1987. Compliance Schedule—As prescribed in the body of the AD.

**ADDRESSES:** The applicable alert service bulletin (ASB) may be obtained from Rolls-Royce plc, Technical Publication Department, P.O. Box 31, Derby DE2 8BJ, England.

A copy of the ASB is contained in Rules Docket Number 85-ANE-17, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

**SUPPLEMENTARY INFORMATION:** On June 20, 1986, AD 86-15-01, Amendment 39-5346, was issued requiring removal from service of stage 1 and 2 HPC disk assemblies, identified by serial number in Appendix 3 of R-R ASB RB.211-72-A7774, Revision 1, dated March 21, 1986. Issuance of AD 86-15-01 was prompted by an uncontained stage 1 disk failure precipitated by manufacturing process deviations which contributed to a reduction of the low cycle fatigue life of the disk.

A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) by amending Amendment 39-5346 (51 FR 25192), AD 86-15-01, to require the removal of additional stage 1 and 2 HPC disk assemblies identified by serial number in Appendix 4 of R-R ASB RB.211-72-A7774, Revision 1, dated March 21, 1986, was published in the Federal Register on August 21, 1986 (51 FR 29946). This proposal was prompted when the FAA determined that additional stage 1 and 2 HPC disk assemblies could be subject to material property deviations induced during the manufacturing process.

Since this condition is likely to exist or develop on other engines of the same type design, this amendment amends Amendment 39-5346 (51 FR 25192), AD 86-15-01, to require removal of additional stage 1 and 2 HPC disk assemblies listed in Appendix 4 of R-R ASB RB.211-72-A7774, Revision 1, dated March 21, 1986, at the next 04 module rework but not later than May 31, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Several commenters called to state that AD 86-13-09 could not be identified. The FAA has subsequently found that the AD number assigned in the notice of proposed rulemaking was incorrect and the correct AD number is AD 86-15-01. The correct number has been incorporated in this AD. Another commenter suggested that since, in Revision 1 of R-R ASB RB.211-72-A7774, 72 disk assemblies were deleted from Appendix 3, this alleviation from the requirements of the original issues of both the ASB and AD 86-15-01 should be included in this amendment. The FAA had incorporated the requirements of R-R ASB RB.211-72-A7774, Revision 1, dated March 21, 1986, in AD 86-15-01. Therefore, the correct total number of disk assemblies listed in Appendix 3 of the ASB required to be removed had been incorporated in the published AD 86-15-01. No other comments were received.

### Conclusion

The FAA has determined that this regulation involves 133 R-R RB211 turbofan engines at an approximate total cost of 3.9 million dollars. It has also been determined that less than 11 small entities will be affected by this regulation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

### List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

### Adoption of the Amendment

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By amending § 39.13, Amendment 39-5346 (51 FR 25192), Airworthiness Directive (AD) 86-15-01, as follows:

(a) By lettering the paragraph immediately prior to the "NOTE" as paragraph "(a)".

(b) By adding the following new paragraph:

(b) Remove from service stage 1 and 2 HPC disk assemblies identified by serial number in Appendix 4 of Rolls-Royce ASB RB.211-72-A7774, Revision 1, dated March 21, 1986, or FAA approved equivalent, at the next 04 module rework but not later than May 31, 1988.

This amendment amends Amendment 39-5346 (51 FR 25192), AD 86-15-01.

Issued in Burlington, Massachusetts, on April 8, 1987.

Jack A. Sain,

*Acting Director, New England Region.*

[FR Doc. 87-8626 Filed 4-16-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 97**

**[Docket No. 25225; Amdt. No. 1344]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adoping these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on April 3, 1987.

**John S. Kern,**

*Director of Flight Standards.*

**Adoption of the Amendment**

## PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

2. By amending: Section 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNVA SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*. . . Effective June 4, 1987*

Troy, AL—Troy Muni, NDB RWY 7, Amdt. 7
Delta Junction/Fort Greely, AK—Allen AAF, VOR RWY 18, Amdt. 7, Eff 4 JUN 87
Delta Junction/Fort Greely, AK—Allen AAF, VOR/DME or TACAN RWY 18, Amdt. 2, Eff 4 JUN 87
Delta Junction/Fort Greely, AK—Allen AAF, NDB–A, Amdt. 3, Eff 4 JUN 87
Fort Huachuca (Sierra Vista), AZ—Libby AAF/Sierra Vista Muni, LOC RWY 26, Orig, Eff 4 JUN 87
Oakland, CA—Metropolitan Oakland Intl, NDB RWY 27R, Amdt. 4
Santa Rosa, CA—Sonoma County, VOR/DME RWY 14, Orig.

Destin, FL—Destin-Ft. Walton Beach, VOR-A, Amdt. 5
Lakeland, FL—Lakeland Muni, ILS RWY 5, Amdt. 3
Baxley, GA—Baxley Muni, RNAV RWY 7, Amdt. 2
Galesburg, IL—Galesburg Muni, VOR RWY 2, Amdt. 5
Galesburg, IL—Galesburg Muni, VOR RWY 20, Amdt. 5
Galesburg, IL—Galesburg Muni, ILS RWY 2, Amdt. 8
St. Jacob, IL—Shafer Metro East, VOR-A Amdt. 2
Port Sulphur, LA—Port Sulphur Seaplane Base, VOR/DME-A Amdt. 4
Port Sulphur, LA—Port Sulphur Seaplane Base, VOR/DME-B Amdt. 3
Houghton Lake, MI—Roscommon County, VOR RWY 9, Amdt. 2
Houghton Lake, MI—Roscommon County, VOR RWY 27, Amdt. 1
Baudette, MN—Baudette Intl, VOR RWY 30, Amdt. 7
Baudette, MN—Baudette Intl, VOR/DME RWY 12, Amdt. 2
Cambridge, MN—Cambridge Muni, NDB RWY 34, Amdt. 4
Eveleth, MN—Eveleth-Virginia Muni, VOR RWY 27, Amdt. 9
Hibbing, MN—Chisholm-Hibbing, ILS RWY 31, Amdt. 10
Minneapolis, MN—Anoka County-Blaine Arpt (Janes Field), RNAV RWY 17, Amdt. 1
Red Wing, MN—Red Wind Muni, NDB RWY 9, Amdt. 1
Rochester, MN—Rochester Muni, ILS RWY 13, Amdt. 4
Staples, MN—Staples Muni, NDB RWY 14, Amdt. 3
Columbus, MS, Columbus-Lowndes County, VOR-A, Amdt. 12
West Point, MS—McCharen Field, VOR-A, Amdt. 3
West Point, MS—McCharen Field, VOR/DME-B, Amdt. 3
West Point, MS—McCharen Field, RNAV RWY 36, Amdt. 3
Cuba, MO—Cuba Muni, NDB RWY 18, Amdt. 2
Cuba, MO—Cuba Muni, NDB RWY 36, Amdt. 2
Winnemucca, NV—Winnemucca Muni, NDB-A, Amdt. 1
Teterboro, NY—Teterboro, NDB RWY 6, Amdt. 17
Islip, NY—Long Island Mac Arthur, ILS RWY 24, Amdt. 1
New York, NY—La Guardia, VOR-B, Amdt. 2
Norwich, NY—Lt. Warren Easton, VOR/DME-A, Amdt. 2
Norwich, NY—Lt. Warren Easton, RNAV RWY 19, Orig.
Walnut Cove, NC—Meadow Brook Field, VOR/DME RWY 34, Orig.
Akron, OH—Akron-Canton Regional, RADAR-1, Amdt. 19
Gallipolis, OH—Gallia-Meigs Regional, NDB-A, Amdt. 1
Clinton, OK—Clinton-Sherman, ILS RWY 17R, Amdt. 6
West Chester, PA—Brandywine, VOR-A, Amdt. 1
West Chester, PA—Brandywine, RNAV RWY 27, Amdt. 1
Smyrna, TN—Smyrna, VOR/DME RWY 14, Amdt. 5
Smyrna, TN—Smyrna, VOR/DME RWY 32, Amdt. 11
Smyrna, TN—Smyrna, NDB RWY 32, Amdt. 7
Smyrna, TN—Smyrna, ILS RWY 32, Amdt. 4
Borger, TX—Hutchinson County, NDB RWY 35, Orig.
Dalhart, TX—Dalhart Muni, VOR/DME or TACAN RWY 35, Orig.
Killeen, TX—Killeen Muni, ILS RWY 1, Amdt. 1
Wausau, WI—Wausau Muni, VOR-A. Amdt. 17
Wausau, WI—Wausau Muni, VOR/DME RWY 12, Amdt. 3
Evanston, WY—Evanston-Uinta County Burns Field, VOR/DME RWY 23, Orig.
Greybull, WY—South Big Horn County, NDB RWY 33, Orig.

. . . *Effective May 7, 1987*

Sandusky, OH—Griffing Sandusky, VOR RWY 27, Amdt. 5

[FR Doc. 87-8110 Filed 4-16-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 341

[Docket No. 76N-052B]

### Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Bronchodilator Drug Products; Correction

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting the docket number of a document that published in the **Federal Register** of March 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 87-5380, appearing on page 7830 in the issue of Friday, March 13, 1987, in the second column, the document number set forth in the heading of the document, "[Docket No. 75N-052B]," is corrected to read "[Docket No. 76N-052B]".

Dated: April 13, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-8635 Filed 4-16-87; 8:45 am]

BILLING CODE 4160-01-M

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Ronnel

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's) held by Dow Chemical U.S.A. The NADA's provide for use of ronnel Type A articles for making Type C cattle feeds. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

**EFFECTIVE DATE:** April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Dow Chemical U.S.A.'s NADA's 11-076, 41-377, and 48-956. The NADA's provide for use of dry and liquid ronnel Type A articles for making Type C cattle feeds. This document removes 21 CFR 558.525(a)(1) and 558-526 that reflect approval of the NADA's.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.525 [Amended]**

2. Section 558.525 *Ronnel* is amended by removing paragraph (a)(1) and reserving it for future use.

**§ 558.526 [Removed]**

3. Section 558.526 *Ronnel liquid Type B feed* is removed.

Dated: April 13, 1987.
Gerald B. Guest,
*Director, Center for Veterinary Medicine.*
[FR Doc. 87-8634 Filed 4-16-87; 8:45 am]
BILLING CODE 4160-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-9-FRL-3162-5]

### Approval and Promulgation of Implementation Plans, California; Amador County and Four Other Districts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final rulemaking.

**SUMMARY:** This notice gives final approval to rule revisions for Amador County and four other California Air Districts. The other districts are Northern Sonoma County, Ventura County and Yuba County Air Pollution Control Districts (APCD's) and the South Coast Air Quality Management District (AQMD). These revisions were submitted by the California Air Resources Board (ARB) for inclusion in the California State Implementation Plan (SIP) on October 16 and November 12, 1985. The revisions make minor changes in existing rules. EPA has reviewed these rules and determined that they are consistent with the requirements of the Clean Air Act and EPA policy. EPA is also correcting a minor error from a previous notice.

**DATES:** This action is effective June 16, 1987. This action will be effective 60 days from the date of this **Federal Register**, unless EPA receives notice within 30 days of publication that adverse or critical comments will be submitted.

**ADDRESSES:** Copies of the submittals and of EPA's Evaluation Report for each rule are available for review at EPA, Region 9. The address is listed under the next heading. All of the rules are also available at the EPA addresses in Washington and at the Air Resources Board address listed below. Rules of specific districts are available at the districts which adopted them. The addresses are given below.

EPA Library, Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460
California Air Resources Board, General Projects Section, Technical Support Division, 1131 "S" Street, Sacramento, CA 95812
Amador County Air Pollution Control District, 108 Court Street, Jackson, CA 95642
Northern Sonoma County, Air Pollution Control District, 118 North Street, Healdsburg, CA 95448
South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731
Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009
Yuba County Air Pollution Control District, 938 14th Street, Marysville, CA 95901

**FOR FURTHER INFORMATION CONTACT:** Mark C. Brucker, State Implementation Plan Section, A-2-3, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105 (415) 974-8068 FTS: 454-8068.

**SUPPLEMENTARY INFORMATION:**

#### Background

The specific rules submitted by California for incorporation into the SIP are listed below.

*November 12, 1985*

*Northern Sonoma County Air Pollution Control District*

Rule 130.s4—Definitions—Stacking

*South Coast Air Quality Management District*

Rule 221—Plans

*October 16, 1985*

*Amador County Air Pollution Control District*

Rule 301—Prohibition from Burning
Rule 302—Exceptions to Rule 301
Rule 303—Agricultural Burning
Rule 304—Range Improvement Burning
Rule 305—Forest Management Burning
Rule 306—Land Development Clearing
Rule 307—Ditch and Road Maintenance
Rule 308—Hazard Reduction
Rule 309—Fire Suppression and Training
Rule 310—Residential Maintenance
Rule 311—Recreational Activity
Rule 312—Required Permit
Rule 313—No Burn Day
Rule 314—Burning Management
Rule 315—Minimum Drying Times
Rule 316—Burning Management
Rule 317—Mechanized Burners
Rule 318—Enforcement Responsibility
Rule 319—Penalty
Rule 501—Permit Required
Rule 502—Exemptions to Rule 501
Rule 503—Applications
Rule 504—Action on Applications
Rule 505—Conditional Approval
Rule 506—Denial of Application
Rule 507—Responsibility
Rule 508—Posting of Permit to Operate
Rule 509—Authority to Inspect
Rule 510—Separation of Emissions
Rule 511—Combination of Emissions
Rule 512—Circumvention
Rule 513—Source Recordkeeping
Rule 514—Public Records and Trade Secrets
Rule 517—Transfer
Rule 518—Revocation of a Permit to Operate
Rule 519—Appeals
Rule 520—Reinstatement
Rule 521—Annual Renewal

*Northern Sonoma County APCD*

Rule 100—Title
Rule 120—Administration
Rule 130—Definitions (d1, s5)
Rule 200—Permit Requirements
Rule 500—Enforcement
Rule 520—Civil Penalties
Rule 600—Authorization
Rule 610—Petition Procedure

*Ventura County Air Pollution Control District*

Rule 15—Permit Issuance
Rule 54—Sulfur Compounds
Rule 61—Oil Water Separators
Rule 64—Sulfur in Fuels
Rule 67—Vacuum Producing Devices
Rule 69—Asphalt Air Blowing
Rule 70—Gasoline Storage and Transfer
Rule 74.3—Paper, Fabric, and Film Coating
Rule 74.4—Cutback Asphalt
Rule 74.5—Dry Cleaning
Rule 74.6—Degreasing
Rule 74.8—Vacuum Producing Systems, Wastewater Separators and Process Turnarounds
Rule 80—Permits
Rule 84—(deleted) Non-Complying Heaters
Rule 103—Stack Monitoring

*Yuba County Air Pollution Control District*

Rule 1.1—Definitions
Rule 2.0—Open Fires
Rule 2.1—Exception to Rule 2.0
Rule 2.3—Burning on "No Burn" Days
Rule 2.5—Permit Regulations
Rule 2.6—Burning Hours
Rule 2.7—Agricultural Burning
Rule 2.9—Prohibited Burning
Rule 2.11—Fire Prevention
Rule 2.16—Cost of Putting Out a Fire

There are a wide variety of rules covered by this notice. They include open burning rules, permit rules, and administrative rules. The types of changes include removal of dates that have passed and are no longer relevant, name changes, clarifications of language, and reorganization of rules.

**Evaluation**

All these rules have been evaluated and found to be consistent with the Clean Air Act, EPA policy and 40 CFR Part 51. EPA's detailed evaluation of the rules can be inspected at EPA's Region 9 office in San Francisco.

**EPA Action**

This notice approves the rule revisions listed above in the Supplementary Information section and incorporates them into the California SIP. It also corrects a mistaken incorporation of Rule 210 into the SIP for the North Coast Air Basin districts of California.

EPA is taking final action on the submittals listed in this notice without a prior proposal and an opportunity for public comment. This is being done because the amendments are not controversial and no adverse comments are anticipated. This action will be effective 60 days from the date of this **Federal Register**, unless EPA receives notice within 30 days of publication that adverse or critical comments will be submitted. If a notice of critical comments or comments themselves are received, this action will be modified before the effective date. That will be done by publishing two notices. One notice will withdraw the final action for the rules that are being commented on. The second notice will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Rule 210 was incorporated into the SIP for the North Coast districts on July 31, 1985 (50 FR 30941). EPA incorporated it in the erroneous belief that it had been officially submitted. Such was not the case. Rule 210 addresses Environmental Assessments, which EPA does not act on. The districts affected are the North Coast Unified AQMD, the Mendocino County APCD, and the Northern Sonoma County APCD.

**Regulatory Process**

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

**List of Subjects in 40 CFR Part 52**

Intergovernmental relations, Air Pollution Control Agency, Incorporation by reference, Ozone, Particulate matter, Hydrocarbons, Sulfur dioxide, Nitrogen dioxide, Carbon monoxide.

Dated: October 6, 1986.

**Lee M. Thomas,**

*Administrator.*

**PART 52—[AMENDED]**

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**Subpart F—California**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by revising paragraphs (c)(124)(vi)(B), (vii)(B), (viii)(B), (ix)(B), and (x)(B) so that they read as follows and by adding paragraphs (c) (164) and (165) to read as follows:

3. Section 52.220 paragraph (c)(6) Rule 84 for the Ventura County APCD submitted to EPA on June 30, 1972 and approved in the **Federal Register** on September 22, 1972 is removed.

**§ 52.220. Identification of plan.**

* * * * *

(c) * * *

(124) * * *

(vi) Del Norte County APCD.

* * * * *

(B) New or amended rule 230, adopted December 14, 1981.

(vii) Humboldt County APCD.

* * * * *

(B) New or amended rule 230, adopted December 8, 1981.

(viii) Mendocino County APCD.

* * * * *

(B) New or amended rules 130 (introductory text, b1, m1, p5, and s2), and 230, adopted January 5, 1982.

(ix) Northern Sonoma County APCD.

* * * * *

(B) New or amended rules 130 (introductory text, b1, n1, p5, and s2), 220(c), 230, and 260, adopted February 23, 1982 and rule 200, adopted June 15, 1982.

(x) Trinity County APCD.

* * * * *

(B) New or amended rule 230, adopted December 7, 1981.

* * * * *

(164) Revised regulations for the following APCD's were submitted on October 16, 1985 by the Governor's designee.

(i) Incorporation by Reference.

(A) Amador County APCD.

(*1*) New or amended rules 301–319 and 501, adopted 6/16/81; and rules 502–514 and 517–521, adopted 1/8/80.

(B) Northern Sonoma County APCD.

(*1*) Amended rules 100, 120, 130 (d1 and s5), 500, 520, 600, and 610, adopted 2/22/84, and amended rule 200(a), adopted 7/19/83.

(C) Ventura County APCD.

(*1*) Amended rules 15, 54, 61, 64, 67, 69, 70, 74.3, 74.4, 74.5, 74.6, 74.8, 80, and 103, revised 7/5/83.

(*2*) Previously approved and now removed (without replacement), Rule 84.

(D) Yuba County APCD.

(*1*) Amended rules 1.1, 2.0, 2.1, 2.3, 2.5, 2.6, 2.7, 2.9, 2.11, and 2.16, adopted 3/5/85.

(165) Revised regulations for the following APCD's were submitted by the Governor's designee on November 12, 1985.

(i) Incorporation by Reference.

(A) Northern Sonoma County APCD.

(*1*) Amended rule 130 s4, adopted 7/9/85.

(B) South Coast Air Quality Management District.

(*1*) Amended rule 221, adopted 1/4/85.

[FR Doc. 87–4273 Filed 4–16–87; 8:45 am]

BILLING CODE 6560–50–M

---

**40 CFR Part 52**

**[A–4–FRL–3188–2]**

## Approval and Promulgation of State Plans, North Carolina; Minor Revisions to State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On February 25, 1986, the North Carolina Division of Environmental Management submitted regulatory amendments for incorporation into their federally approved state implementation plan (SIP).

Regulation 2D.0501, concerning compliance with emission control standards, is being changed to correct errors, delete unnecessary phrases, and add clarity. Regulations 2D.0508, 0509, 0514, and 0916 are being changed to add words that had been left out and to delete extra words and phrases. Regulation 2D.0535 (Malfunctions, Startup and Shutdown) is being changed so that startup and shutdown emissions

BEST COPY AVAILABLE

can never be excused as malfunctions. The excess emissions that occur during startup and shutdown will only be regulated by section .0535(g), specifically intended for those conditions. Regulation 2D.0535(g) was disapproved by EPA on September 9, 1986 (51 FR 32073). All excess emissions, including those during startup and shutdown, are considered violations. Until .0535(g) if federally approved there will be no other procedure except enforcement to deal with excess emissions during startup and shutdown.

**DATE:** This action will be effective on June 16, 1987, unless notice is received with 30 days that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the material submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, U.S. EPA, 401 M Street, SW., Washington, DC 20460
United States Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365
Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Peddicord, Air Programs Branch, U.S. EPA Region IV, at the above address and telephone number FTS 257–2864 or commercial (404) 347–2864. Comments should be addressed to Mr. Peddicord.

**SUPPLEMENTARY INFORMATION:** On February 25, 1986, the State of North Carolina submitted ten (10) minor revisions to their state implementation plan. The revisions were adopted by the Environmental Management Commission on February 13, 1986, after a public hearing held on November 15, 1985.

The regulations amended were: 15 NCAC 2D.0501, .0508, .0509, .0514, .0524, .0533, .0535, .0916, .0917, and 2H.0603. EPA approves: 2D.0501, .0508, .0509, .0514, .0535, and .0916, in order to make them federally enforceable.

Regulation 2D.0533 (Stack Height) 2D.0917 (Auto & Light Duty Truck Manufacturing) and 2H.0603 (Permits) are being processed in separate notice. Regulation 2D.0524 is a new source performance standard and is also being processed separately.

The amendments approved in the present notice are now described.

*2D.0501 Compliance with Emission Control Standards.* The amendments clarify this regulation by removing unnecessary phrases. Upon this clarification the testing and sampling methods described in the regulation are more easily understood.

*2D.0508 Control of Particulates from Pulp and Paper Mills.* The amendments to this regulation simply add words and phrases that had been inadvertently omitted.

*2D.0509 Particulates from Mica or Feldspar Processing Plants.* The changes to this regulation consist of adding words and units that were left out originally. This was done for clarity.

*2D.0514 Control of Particulates from Ferrous Jobbing Foundries.* The change makes it clear that any foundry existing before January 1, 1972 shall fall under this regulation.

*2D.0535 Malfunction, Startup, and Shutdown.* The State's intent is to have the emission-excesses that occur during startup and shutdown regulated only by the par of the regulation intended to do that (.0535(g)). To accomplish this they stated that those excesses do not fall under the malfunction section (.0535(c)).

*2D.0916 Determination:* VOC emissions from Bulk Gasoline Terminals. The change in this regulation clarifies a reference made to the Code of Federal Regulations.

### Final Action

Since the amendments to regulations 2D.0501, .0508, .0509, .0514, .0535, and .0916 are consistent with EPA policy and requirements, they are hereby approved. EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 16, 1987, unless notice is received within 30 days of its publication that someone wishes to submit adverse or critical comments. If such notice is received, this action will be withdrawn and two (2) subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such notice is received, the public is advised that this action will be effective June 16, 1987.

Under 5 U.S.C. 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations, Incorporation by reference.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 13, 1987.

**Lee M. Thomas,**

*Administrator.*

## PART 52—[AMENDED]

Part 52 of Chapter 1, Title 40, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

### Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(52) to read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) * * *

(52) Minor revisions to Title 15 of the North Carolina Administrative Code (15 NCAC) were submitted to EPA on February 25, 1986.

(i) Incorporation by reference.

(A) Letter of February 25, 1986 from the State of North Carolina to EPA, and Amendments in the following regulations which were adopted by the North Carolina Environmental Management Commission on February 13, 1986:

2D.0501 Compliance with Emission Control Standards
2D.0508 Control of Particulates from Pulp and Paper Mills
2D.0509 Particulates from Mica and Feldspar Processing Plants
2D.0514 Control of Particulates from Ferrous Jobbing Foundries
2D.0535 Malfunctions, Startup and Shutdown
2D.0916 Determination: VOC Emissions from Bulk Gasoline Terminals

(ii) Other material—None.

[FR Doc. 87–8673 Filed 4–16–87; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 180

[PP 4F2997/R885; FRL-3189-1]

## Pesticide Tolerance for Sodium Salt of Fomesafen

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the herbicide sodium salt of fomesafen in or on soybeans. This regulation to establish the maximum permissible level for residues of sodium salt of fomesafen in or on soybeans was requested by ICI Americas, Inc.

**EFFECTIVE DATE:** Effective on April 17, 1987.

**ADDRESS:** Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**
By mail:
Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of July 18, 1984 (49 FR 29134), which announced that ICI Americas, Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897, had submitted a pesticide petition (4F2997) to EPA proposing that 40 CFR Part 180 be amended by establishing tolerances for the herbicide sodium salt of fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfoynl)-2-nitrobenzamide, in or on the commodity soybeans at 0.05 part per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include plant and animal metabolism studies; a rat oral lethal dose ($LD_{50}$) with an $LD_{50}$ of 1,250 milligrams/kilogram (mg/kg) of body weight; a 90-day rat feeding study with a no-observed-effect level (NOEL) of 0.25 mg/kg/day (5 ppm); two rat teratology studies with a developmental NOEL of 7.5 mg/kg/day with no terata up to and including 200 mg/kg/day (highest dose); a rabbit teratology study with a maternal NOEL of 10 mg/kg/day with no developmental toxicity up to and including 40 mg/kg/day (highest dose); a two-generation rat reproduction study with a NOEL of 12.5 mg/kg/day (1,000 ppm); a 6-month dog feeding study with a NOEL of 1.0 mg/kg/day; a 2-year mouse oncogenicity study with a statistically significant increased incidence of liver adenomas in males at 1, 100, and 1,000 ppm and in females at 100 and 1,000 ppm, and a statistically significant increased incidence of liver carcinomas and combined liver carcinomas and adenomas in both sexes at 1,000 ppm, the highest dose tested; a 2-year rat chronic feeding/oncogenicity study with a systemic NOEL of 0.25 mg/kg/day (5 ppm) and no observed oncogenic potential under conditions of the study up to and including 50 mg/kg/day (1,000 ppm), the highest dose tested; rat bone marrow cytogenetic studies, positive; a rat DNA Covalent Binding study suggesting no binding capacity; Ames tests in several strains with and without activation, negative; mammalian cell transformation test in baby hamster kidney fibroblasts, negative; and a mouse dominant lethal assay, negative.

The Agency carried out a weight of the evidence review of all relevant data and concluded that fomesafen is a Category C oncogen (possible human carcinogen with limited evidence of carcinogenicity in animals in the absence of human data). The Agency has evaluated dietary exposure to fomesafen residues for the commodity proposed, using extreme worst-case assumptions. Assuming that 100 percent of the soybean crop will have residues at the tolerance level (0.05 ppm), using a multistage model the upper limit on dietary oncogenic risk is calculated to be 2.2 incidences in one million ($2.2\times10^{-7}$). Actual risk will be less, since not all of the soybean crop; will be treated, and those crop treated and sold will have residues less than 0.05 ppm.

Based on the NOEL of 0.25 mg/kg/day in the rat oncogenicity study and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.0025 mg/kg/day with a maximum permissible intake of 0.15 mg/day for a 60-kg person. These tolerances have a theoretical maximum residue contribution of 0.0000115 mg/day in a 1.5-kg diet and would utilize 0.46 percent of the ADI.

There are no regulatory actions pending against the registration of sodium salt of fomesafen. The metabolism of sodium salt of fomesafen in plants and animals is adequately understood for purposes of the tolerances set forth below. However, additional clarification is needed for a subset of the rat metabolism study in which multiple dosing was used. An analytical method, electron detection gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the "Pesticide Analytical Manual Volume II," the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 223, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

There is no expectation of secondary residues in meat, milk, poultry, and eggs.

Based on the information cited above, the Agency has determined that establishing the tolerances for residues of the pesticide in or on the listed commodity will protect the public health. Therefore, tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Section 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 10, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. New § 180.433 is added, to read as follows:

**§ 180.433 Sodium salt of fomesafen; tolerance for residues.**

Tolerances are established for the residues of sodium salt of fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide, in or on soybeans at 0.05 part per million.

[FR Doc. 87-8675 Filed 4-16-87; 8:45 am]

BILLING CODE 6560-50-M

# Proposed Rules

Federal Register
Vol. 52, No. 74
Friday, April 17, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 246

### Special Supplemental Food Program for Women, Infants and Children; Funding Formula

**AGENCY:** Food and Nutrition Service. USDA.
**ACTION:** Proposed rule.

**SUMMARY:** The Department proposes to amend the WIC Program Regulations by adding language describing in greater detail the formula through which the Department shall allocate program funds to State agencies. This proposed amendment would also entail a change in the formula itself. Because it is not possible to serve all eligible persons, a formula is needed that would place greater emphasis on the efficient use of funds, and on the targeting of available resources to serve persons most in need. In accordance with this amendment, which embodies the necessary formula, the Department would henceforth allocate funds to State agencies based not only on each State agency's current operating level and extent of potential eligibles to be served, but also on its success in reaching persons at greatest nutritional risk. Use of this formula would commence with the Fiscal Year 1988 funds allocation. The Department expects that the use of this formula would encourage State agencies to serve the maximum number of high risk persons within the limits of available funding.

**DATE:** Comments on the proposed rule must be received on or before June 1, 1987.

**ADDRESS:** Comments may be mailed to Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756–3746.

**SUPPLEMENTARY INFORMATION:**

### Classification

This proposed rule has been reviewed under Executive Order 12297, and has been determined to be *not major*. The Department does not anticipate that this rule would have an impact on the economy of $100 million or more. This rule would not result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Nor would this rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published June 24, 1983 (48 FR 29114)).

### Background

*Statutory Requirements*

The Department's authority to prescribe a WIC funds allocation formula is found in section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786). Section 17(i) requires the Department to ". . . divide among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary." Section 17(g) authorizes the Secretary to use one-half of 1 percent of the funds appropriated each fiscal year for the WIC Program, not to exceed $3 million, ". . . for the purpose of evaluating program performance, evaluating health benefits, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians and rural populations." Public Laws 99–500 and 591, enacted October 17, 1986, amended the CNA. This legislation expanded the use of evaluation funds to include the preparation of the participation report required under subsection (d)(4), and the provision of technical assistance to improve State agency administrative systems. Section 17(h)(1) of the CNA then requires the Secretary to "make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency administrative costs." In summary, the authorizing legislation permits the Department to deduct "evaluation funds" from the total funding available, and requires that the balance be allocated to State agencies in a ratio of 80 percent for food and 20 percent for administration and program services costs.

The legislation amending the CNA placed an additional requirement upon the allocation of funds to State agencies for Fiscal Year 1987 and thereafter. A new paragraph 17(g)(2) was inserted, directing the Department to allocate funds to State agencies in a manner that makes a prescribed amount of funds available first for service to eligible migrant populations. The prescribed level of such migrant funding is nine-tenths of 1 percent of the sums appropriated for each fiscal year.

*Current Funding Formula*

The formula currently in use emerged from extensive consultations between the Department and the State agencies, held during the latter portion of Fiscal Year 1983. The State agencies generally agreed that the most equitable type of funds allocation at that time would be one based on each State's relative number of potential WIC eligibles but that existing program operations should not be disrupted in order to achieve that objective. For example, a State agency that had already extended program benefits to a relatively large number of its potential eligibles should not be required to reduce its funding level to make funds available for program

expansion in States which had not. These considerations led to the formulation of two basic funding principles: stability funding and directed program growth. These principles form the basis for the two part formula currently in use.

1. Stability Funding

In allocating funds to State agencies, first priority is given to maintaining each State agency's existing operating level to the extent that funds are available. Accordingly, every State agency receives an amount of funds for food costs based on the amount it received the prior year adjusted for anticipated inflation. This amount is reduced for any State agency that failed to use at least 95 percent of its prior year food funding (stability and growth combined), as an inducement for State agencies to use all funds allocated to them (without overspending). The reduction is calculated by subtracting the State agency's actual, prior-year food cost from 95 percent of the food funds it received for the prior fiscal year. Funding for administration and program services costs is calculated as a percentage of the State agency's food funding level. Every State agency must be funded at the full stability level before any funds are allocated through the growth formula.

2. Growth Funding

Once the stability funding requirements have been satisfied, any funds remaining available are allocated through the growth formula. This formula was designed to move the WIC Program toward the long-term objective of enabling each State agency to serve the same proportion of its potentially eligible women, infants and children. Accordingly, the growth formula is based on each State's relative number of persons below 185 percent of the Poverty Income Guidelines, its infant mortality and its low-weight births. The Department uses the formula to determine what each State agency's proportionate share of the funds available for allocation would be if all such funds were allocated solely on the basis of these factors; this figure is known as the State agency's "growth share." A State agency qualifies for growth funding to the extent that (1) its growth share exceeds what is provided under the stability formula; and (2) funds are available for growth funding. As with the stability formula, each State agency receives an amount of food funds generated by the formula, plus a related amount of administrative funding.

*Concerns About the Existing Formula*

The Department first used the allocation formula described above to determine each State agency's Fiscal Year 1984 funding level, and has retained it in substantially the same form since that time. While the use of this formula has generally promoted the dual objectives of program stability and controlled program growth, it has not discriminated between those State agencies that have used their funds efficiently and effectively and those that have not. All States have received stability grant increases based solely on an economic indicator (inflation). In addition, growth States received grant increases based on demographic data only. In neither case has consideration been given to how efficiently and effectively each State agency utilized the grant it received. There is one dimension of State efficiency and effectiveness that the Department considers most reflective of a State agency's management of its grant. This is the targeting of benefits to the highest risk eligibles.

**Efforts To Revise the Existing Formula**

*Alternative Formula Proposed by the Department*

It is the Department's intent to initiate a revised formula that responds to the concerns discussed above. On September 9, 1986, the Department published a proposed rule encompassing an alternative formula for allocating funds to State agencies. Under this proposed formula, the stability funding concept would have been retained but redefined to exclude the annual adjustment for anticipated inflation. Each State agency would have received its prior year food grant for stability food funding unadjusted for inflation. Residual funds (that is, funds remaining available for allocation after every State agency had been funded at its full stability level) would have been allocated among all State agencies on the basis of their relative success in identifying and serving the highest risk persons within their eligible populations. For this purpose, "highest risk" would have been defined as women, infants and children enrolled in Priorities I, II and III. Additional features of the proposed formula included:

- Retention of the 95 percent performance standard.
- Crediting each State agency's prior year operating level with 50 percent of the food funds it had voluntarily made available for recovery, for purposes of calculating the State agency's stability food funding level. This feature had been conceived as an incentive for State agencies to return unneeded funds for reallocation.
- Adjustment of each State agency's enrollment in Priorities I through III by its "participation rate." This adjustment had been designed to factor each State agency's relative success in enhancing the efficiency of food funds usage by only considering enrollees that received food or a food instrument.
- Capping each State agency's combined stability and residual food funding level. The State agency's food grant would have been precluded from exceeding the amount needed to serve 100 percent of the State agency's reported income-eligible population. This funding cap would have prevented the allocation of more funds to a State agency than could realistically be used.

This food funding formula had been designed to reward those State agencies that had successfully targeted Program benefits to persons in the three highest priority groups. It was intended for implementation in Fiscal Year 1987.

*Comments and Consultations*

Comments on the proposed rule were accepted until November 9, 1986. Altogether, 647 comments were received.

Many commentors took exception to the Department's announced intent to initiate the revised funding formula during Fiscal Year 1987. They contended that State agencies had already planned and budgeted on the basis of grants they could expect to receive under the existing formula; changing in mid-year would disrupt program operations.

During the comment period, the enactment of Pub. L. 99–500 and Pub. L. 99–591 limited the Department's discretion with regard to implementation. This legislation attached the following proviso to the Fiscal Year 1987 WIC appropriation: ". . . that none of the funds provided herein shall be used to issue interim or final regulations before May 1, 1987, to modify the formula used during Fiscal Year 1986 to divide funds among State agencies under section 17(i) of [the CNA] to carry out [the Program], or to implement such regulations before October 1, 1987." In the conference report on this legislation, the Congress further directed the Department to issue a final funding regulation "as soon after May 1 as possible, and in no case later than July 1, 1987, with an implementation schedule to coincide with the beginning of the fiscal year." The conference report expressed the Congressional expectation that "this timetable will allow States to plan for and properly implement any new

formula." H.R. Rep. 1005, 99th Cong., 2nd Sess. 403 (1986). Pursuant to this legislative directive, the Department intends to commence allocating funds to State agencies under a revised formula at the beginning of Fiscal Year 1988.

The aforementioned conference report also expressed congressional intent regarding the manner in which the Department should proceed in developing a revised formula. The conferees directed the Department "... to issue a new proposed regulation for the allocation of WIC funds to the State agencies, superceding the proposed regulation issued on September 9, 1986. The new regulation should be promulgated after arriving at a consensus with the State WIC directors and other interested parties." Id. In response to this statement, the Department consulted with the WIC community over and above the solicitation and analysis of public comments intrinsic to the Federal rulemaking process.

Consultations between the Department and the National Association of WIC Directors (NAWD) were initiated. The NAWD identified a set of principles which they felt any funding formula developed should be expected to satisfy. These principles, as well as concerns expressed by other commentors, will be discussed later in this preamble in connection with the particular formulaic and programmatic issues to which they relate. Having identified these principles, the NAWD addressed the mechanics of a formula that they believed met these principles and formalized that suggested formula as a comment to the September 9 proposed rule. The majority of formal comments subsequently received by the Department substantially endorsed the NAWD's recommended formula and principles.

The Department has reviewed the NAWD proposed formula and has determined that, with some exceptions, the formula put forth by the NAWD addresses the Department's major policy objectives while accommodating many of the objections raised by commentors to the Department's initial proposal. One major principle underlying the NAWD's recommendations was that the funding formula should provide for both growth and targeting. Further, the NAWD advocated that when growth funds exist, greatest growth opportunity should be provided to high need, highly targeted State and Indian agencies, but that some growth opportunity should also be provided to either high need or high targeted State and Indian agencies.

Funding Formula Reproposed

After considering all comments, the Department has concluded that an alternative formula to that proposed in the September 9 rule would accomplish the objective of targeting funds to State agencies with the best targeting performance. The formula the Department now proposes is described below; detailed explanations of its constituent parts are presented in the discussion of formulaic issues later in this preamble. Under this proposed formula, WIC food funds would be allocated to State agencies as follows:

1. *Stability Funding.* To the extent that funds are available, each State agency would receive stability food funds equal to its prior year grant level increased by an inflation factor. This factor would be determined on the basis of each State agency's service to persons imputed to be in Priorities I through III. This is referred to as the "targeted inflation" element. The 95 percent performance standard and the 50 percent voluntary recovery credit would be retained as presented in the September 9 proposed rule.

To effect compliance with Pub. L. 99–500 and 99–591, a migrant funding procedure has been built into the stability component. This procedure has been designed to provide the statutorily required level of funding for Program services to migrants while taking into consideration the levels of service to this population that State agencies have already achieved. Whenever expenditures for migrants are expected to fall below the statutorily prescribed level (nine-tenths of 1 percent of the sums appropriated for the applicable fiscal year), the Department will raise the shortfall amount through the proportional reduction in all State agencies' stability food grants and redistribute this amount among State agencies that had reported service to migrants in the preceding fiscal year. This procedure is one operation in the establishment of State agencies' initial grant levels and should not be confused with recoveries and reallocations.

2. *Residual Funding.*

• Targeting Component.

Fifty (50) percent of any residual food funds would be allocated on the basis of each State agency's service to pregnant women, breastfeeding women and infants imputed to be in Priority I. Each State agency's imputed Priority I participation level would be divided by the corresponding national aggregate figure. The resulting percentage would be applied to the total amount of funds available for allocation in this component.

• Growth Component.

Fifty (50) percent of any residual funds would be allocated through the existing growth formula. However, the Department would adjust the growth shares for Alaska, Guam, Hawaii and any Indian State agencies located within their borders by the same factors used to adjust payments to these States under the Thrifty Food Plan Index, before determining whether these State agencies' growth shares exceeded the amounts provided them under the stability and targeting components.

Thus, each State agency would receive for food costs each fiscal year the sum of the amounts generated under the stability, targeting and growth components except that each State agency would be limited to a 15 percent increase over its prior year's food grant. The 15 percent cap is intended to limit the increase a State agency receives to an amount that realistically can be utilized. Every State agency would receive stability funds and every State agency serving Priority I persons would receive targeting funds; however, only those State agencies qualifying as growth States through the operation of the existing growth formula would receive growth funds. If the sum of the stability, targeting and growth amounts for any Indian State agency is less than the amount necessary to meet the anticipated rate of inflation, the sum would be increased to reflect the anticipated inflation level.

For commentors who are interested in reviewing the full formula database and mathematical operations, an information package is available. Copies of the document will be forwarded to all State agencies administering the WIC Program and to all FNS regional offices. Copies will also be made available to other interested parties upon their request. Requests should be submitted in writing to the addressee identified at the opening of this preamble.

The provisions of this proposed rule do not address planned changes to the formula to be used to allocate funds for administrative and program services costs. Commentors responding to the September 9, 1986, proposed rule were invited to offer recommendations for such a revision, but few did so. The proposed regulatory language set forth in this document states the formula currently used for determining State agencies' administrative and program services grants.

**Programmatic and Formulaic Issues**

During the evolution of the formula the Department now proposes, the NAWD, other commentors, the

Department and other interested parties identified a number of programmatic and formulaic issues. These issues may be broadly classified into two generic categories: Issues involving the general conception of the formula, and issues involving one or more of the formula's constituent parts.

*General Conception of the Formula*

1. Formula Objectives

The formula currently in use was designed to promote the dual policy objectives of stability and growth. The September 9 proposed rule would have substituted targeting for growth. The formula now proposed reflects three policy objectives: Stability, targeting and growth.

a. *Stability.* All commentors who addressed the matter of inflation objected to redefining stability funding in a way that totally excluded allowances for inflation. They maintained that a "stability" food grant without inflation would not provide stability because rising costs would make food grants worth less in real terms. Comments on this matter generally asserted that every State agency should be guaranteed a funding level equal to its prior year grant plus inflation. To achieve this, some commentors recommended the "targeted inflation" method while others stated that the mechanics of the inflation adjustment must depend on the nature of the rest of the formula. The Department has adopted the targeted inflation approach, but has provided an exception for Indian State agencies. This exception will be discussed in detail later in this preamble.

New definitions of stability and residual funds have been inserted in the "Definitions" section of the regulations.

b. *Targeting.* Some commentors questioned the appropriateness of targeting as a policy objective to be pursued through funding decisions. In their view, the priority system has been established as a management tool and has no application to a funding formula. It was also asserted that the existing distribution of Program enrollment among priority groups demonstrates that targeting has already been achieved. Since over 75 percent of the national WIC caseload already consists of persons in Priorities I through III, expecting to achieve a higher level of enrollment in these priority groups may be unrealistic. The Department notes, however, that approximately 48 percent of the persons enrolled in the top three priority groups are Priority III children while only 15 percent are Priority I pregnant women. Consequently, the Department believes most State agencies can achieve further targeting.

In addition, a number of commentors asserted that the method of allocating residual funds presented in the September 9 proposed rule could not achieve its stated objective of promoting targeting. These commentors maintained that State agencies with large programs would receive residual funds on the basis of large numbers of high risk persons, regardless of whether these numbers represented effective targeting. Residual funds would be allocated primarily to "stability" States, where they would end up supporting low priority persons, while States with unserved high risk populations would be penalized. Thus, these commentors contended, the proposed formula would have both frustrated targeting and perpetuated current inequities. While the Department recognizes that the proposed formula has altered the current distribution of funds among State agencies, the Department believes that well targeted State agencies would have received more funds relative to other States under the formula.

With respect to the appropriate approach to targeting, many commentors expressed concern about how targeting should be defined. The NAWD and other commentors agreed with the Department's position that targeting means service to the highest risk women, infants and children, but recommended that the targeting concept refer only to Priority I pregnant women and infants. Some commentors favored defining targeting as service to persons in Priorities I and II. The definition set forth in the September 9 proposed rule had been adopted, however, because many interested parties considered any definition narrower than Priorities I through III inappropriate. The Department received much input from interested parties to the effect that such a definition would "symbolically disenfranchise" children from the Program. Some commentors considered even the proposed definition too restrictive. They expressed concern that allocating funds on the basis of enrollment in the top three priority groups signalled a trend toward downplaying the eligibility of persons qualifying for Priorities IV through VII. These commentors stressed the need to preserve the Program's preventive function; they perceived the proposed formula as a step toward making WIC a purely therapeutic program which might generate some short-term savings at the price of long-term health care costs.

The Department agrees that expanding the definition of targeting beyond the top three priority groups would undermine the targeting concept's credibility. On the other hand, the limited availability of residual funds, only half of which would be allocated through the targeting component, requires the Department to recognize different degrees of need for Program services within the overall targeting definition.

These two viewpoints are reconciled in the formula now proposed by applying different definitions of targeting to different parts of the formula. In the formula's stability component, the targeted inflation allocation is based on service to Priorities I through III. This encompasses a majority of participants, and is therefore compatible with the stability concept of maintaining each State agency's existing operating level. Every State agency must receive its full stability funding level before any funds are allocated through the two residual components, so funds are first directed to the stability component.

If funds remain after stability funding is allocated, the targeting component of the residual funding allocation assigns funds on the basis of service to each State agency's imputed number of Priority I persons only. This definition of targeting is broader than the one used in the formula recommended by the NAWD, in that it also includes breastfeeding women. The Department recognizes that excluding this participant category was inconsistent with a policy of encouraging postpartum women to breastfeed. This expanded definition is intended to address this concern.

c. *Growth.* The formula set forth in the September 9 proposed rule would have allocated all residual funds on the basis of targeting. This represented changing concerns about Program operations. The existing growth concept had originally been formulated as a long-term mechanism to correct past inequities in the distribution of funds to State agencies. The Department had considered the proposed targeting component equitable because every State agency would have had the opportunity to compete for residual funds; the operation of the growth formula excludes nearly half the geographic State agencies and virtually all Indian State agencies from receiving funds beyond their stability levels.

Nevertheless, the majority of commentors objected to this feature of the Department's proposal. Many maintained that the heretofore "growth" State agencies could only effect targeting initiatives if funded to grow. Further, the NAWD stated that any WIC

funding formula should consider both targeting *and* growth, advocating that the latter be defined as the existing growth formula. Support for the preservation of a "growth" factor in the formula was prevalent among comments received. Accordingly, the formula now proposed provides growth the same importance as targeting.

2. Data Base for Formula

a. *Growth Portion.* The data used in the growth formula has recently been criticized as outdated. The growth formula is based on the number of persons in each State who are *income eligible* for the WIC Program. The income-eligible population (i.e., the number of women, infants and children below 185 percent of the Poverty Income Guidelines) is derived from 1980 Census data (which reflects 1979 incomes). While more recent data on family incomes has been collected for some States, the 1980 Census data remains the only valid national, uniform dataset drawn from the universe of all States. Therefore, all funds allocations in which the income-eligible population is a factor will continue to use the 1980 Census data. However, the Department will continue to review alternatives for better data on State agency potential eligible populations, and commentors are invited to recommend alternative national data sources.

In addition, since the income-eligible population that is used in the growth component of the formula represents the universe of women, infants, and children meeting the income criterion, the Department is seeking comments as to whether or not an adjustment should be made to recognize the existence of the Commodity Supplemental Food Program (CSFP), since both programs serve the same target population. For example, in States where both programs are operational, an adjustment could be made to recognize the income eligible population served through the CSFP in the State.

b. *Data on Priority Level of Participants Served.* Since targeting has been defined as service to persons in specific priority groups, the proposed formula's targeting component depends on the availability of data for measuring the extent to which State agencies have achieved this objective. The Department currently collects two classes of data pertaining to persons on the Program: those enrolled and those who participate. Participation has been defined as the number of persons who receive food or food instruments during the reporting period; enrollment refers to the number of persons authorized to participate. Participation data is currently collected only by women-infants-children, while enrollment is reported by both category and priority.

The September 9 proposed rule called for the use of enrollment data to measure targeting success. The Department considered this proposal appropriate because enrollment is the only dataset currently structured according to the nutritional risk priority system. Nevertheless, many commentors objected to its use. Their principal objections included assertions that:

- The data depend on the use of nutritional risk criteria that vary from State to State.
- The data reflect State agencies' nonuniform policies for reporting breastfed infants.
- The data do not fairly represent some State agencies' caseloads.
- The data lack accuracy and timeliness.

Each of these objections is discussed in turn below.

(1) *Varying nutritional risk criteria.* Numerous commentors pointed out that certifying officials assign persons to priority groups according to criteria that vary from State to State. Because a woman qualifying for Priority I in State A may qualify only for Priority IV in State B, Priority I enrollment/participation data for the two States may not be validly compared or aggregated. Many commentors maintained that the flexibility to set their own nutritional risk criteria had been a key ingredient in State agencies' ability to integrate the WIC Program into their respective States' health care networks, and did not want to see this situation changed.

While nutritional risk criteria themselves lie outside the scope of this proposal, devising a method to achieve comparability of priority data would make funding decisions based on targeting more equitable. To this end, the Department is proposing the following method:

- Use of participation data rather than enrollment data in the formula's targeting elements.
- Conversion of the participation data as collected into priority data by applying percentages derived from enrollment data. For example, if 68 percent of all women *enrolled* are in Priority I, that percentage would be applied to the total number of women each State agency reported *participating* in order to impute the number of Priority I women *participating* in that State agency's program.

The implementation of these proposals would minimize the effects of nonstandardized risk criteria on data used in the formula.

(2) *Nonuniform policies on reporting breastfed infants.* Some State agencies recognize breastfed infants as enrolled in the Program. Since food instruments are not issued to such infants, they do not technically meet the regulatory definition of "participation." The existence of a class of persons that are enrolled but do not participate poses problems for both the Department and the State agencies.

Commentors pointed out that many breastfeeding women participate as part of breastfeeding dyads. Program regulations provide that both members of such a dyad may be certified in the highest priority group for which either the woman or her infant qualifies. This provision clearly encourages the targeting of program benefits to breastfeeding dyads. However, no targeted funding formula can reward State agencies commensurate with their success in this area unless both enrollment and participation data reflect the breastfed infants as well as their mothers.

In addition to the problems State agencies may encounter in receiving credit for targeting to breastfed infants, these infants pose a problem for the Department parallel to that posed by nonstandardized nutritional risk criteria. Data reported by State agencies that enroll breastfed infants is not truly comparable to that reported by State agencies that do not. Aggregating such dissimilar data for use in a funding formula may inadvertently penalize some State agencies. Thus, the nonrecognition of these infants as served by the Program is counterproductive to targeting, as well as to the Department's policy of promoting breastfeeding.

For all these reasons, the Department proposes revising the regulatory definitions of "participants" and "participation" to include breastfed infants. These revised definitions would become effective upon publication of the final rule, in order to allow State agencies that do not currently report breastfed infants time to develop procedures for doing so.

(3) *Nonrepresentative data.* It was alleged that priority data collected only in October and March did not fairly present the level and composition of every State agency's caseload. The most frequently cited example was the migrants, who arrive in Florida after October and leave before March but whom the Florida WIC Program must serve in the interim. The Department's proposal to measure targeting by

participation rather than by enrollment responds to such concerns. Since participation data is available for every month, it is not affected by seasonal fluctuations in caseload level.

(4) *Inaccurate and Untimely Data.* State officials and other interested parties have expressed concern that both enrollment and participation data may not be sufficiently accurate or timely to use in a funding formula. The Department recognizes that the data reported by each State agency will reflect its respective policies, procedures and ADP system capabilities, and that the national priority data base will initially reflect a range of data quality. In response to concerns about data quality, the Department has convened a Federal task force to reevaluate the reporting of participation and enrollment data. It is expected that the task force will provide recommendations leading to improvement in overall data quality over time.

c. *State supported Participation.* In recent years, several States have appropriated funds to expand their WIC Program caseloads beyond the levels supportable solely from their Federal WIC Program grants. The NAWD expressed the need for a policy to protect such State agencies from being inadvertently penalized because of their internal initiatives. This proposed rule contains a provision responsive to the NAWD's concern. This provision allows State agencies with State-supported participation to request the Department to use, for purposes of funding formula input, data reflecting participation supported by the aggregate of Federal and State funding. By allowing State agencies this option, the Department would avoid the risk of penalizing any State agency for targeting benefits with State as well as Federal funds.

*Concerns About Constituent Parts of the Formula*

1. 95 Percent Performance Standard

While the formula proposed on September 9 retained the 95 percent performance standard, few commentors addressed it. Nevertheless, feedback received by the Department since the inception of this standard has suggested that it may be a disincentive for State agencies to aggressively pursue cost-saving initiatives. Adherents of this position point out that a State agency that successfully held down its food costs would be penalized if its success led to expenditure of less than 95 percent of its food grant. This penalty would then be transmitted to the State agency's administrative grant, which would be subjected to a concomitant reduction.

The Department remains convinced that the 95 percent standard is a valuable incentive for State agencies not to take funds which cannot be utilized. However, the Department also recognizes the urgency of preventing State agencies from being penalized by good faith efforts to promote the Department's policies. The recent change in the law (Pub. L. 99–500 and 99–591) which allows each State agency to carryover up to 1 percent of its current year's allocation into the next fiscal year without affecting the amount of funds allocated to the State agency for the next fiscal year, should provide some relief to any State agency that initiates efforts to seek efficiencies in its food delivery system without adversely affecting its grant for the next fiscal year.

2. Voluntary Recoveries

The formula proposed on September 9 contained a provision regarding the voluntary return of funds to the Department. Few commentors addressed this provision. The provision had been designed to encourage State agencies to return unneeded funds. The Department considers such an incentive essential to effective funds management, and this provision is retained in the rule now proposed.

3. Special Provisions for Indian State Agencies

The September 9 formula contained a provision for testing grant levels generated by the formula against the cost of serving 100 percent of the State agency's income-eligible population. The Department had conceived this provision as a control to prevent State agencies from being penalized under the 95 percent standard for failing to use funds they could not have reasonably been expected to use. Few commentors addressed this provision, but those who did opposed it. Objections were founded on the data proposed for use to implement the provision and on the perception that only Indian State agencies would be affected. This provision is no longer proposed.

The Department is proposing an adjustment in recognition of the special situations faced by Indian State agencies. Subject to the availability of funding, the food grant awarded to each Indian State agency would be the greater of the grant determined under the "targeted inflation" formula, or the previous year's food grant fully adjusted by the anticipated rate of inflation. In this way, Indian State agencies would always be guaranteed an increase at least equal to anticipated inflation.

4. Outlying Areas

The NAWD also recommended that there be an adjustment for the unique food market conditions faced by the nation's outlying territories and by Indian State agencies located in remote areas. The Department has adopted this recommendation. The growth component of the proposed formula contains a provision whereby the growth shares for Alaska, the Virgin Islands, Guam, Hawaii and any Indian State agencies within their borders would be adjusted upward before being compared with these State agencies' stability food levels. This procedure would recognize the higher food costs associated with these areas.

The adjustment factor for each State agency would be a multiplier derived from the differential between the Thrifty Food Plan (TFP) amount used in that State and the TFP amount used for the 48 continguous States and the District of Columbia. The multipliers would thus be obtained through the following formula:

$$\frac{\text{Alaska TFP}}{\text{48 States/DC TFP}} = \text{Alaska multiplier}$$

Four different TFP amounts are used by Food Stamp Program operators in different parts of Alaska. Of these four, the "Urban Alaska" TFP would be used in computing the Alaska State Agency's multiplier because most of the local agencies under its jurisdication are located in urban areas. The TFP selected for Maniilaq is designated "Rural Alaska II" in the Food Stamp Program Regulations; it is currently used in the portion of Alaska that includes the locality served by the Maniilaq WIC Program.

Each outlying State agency's multiplier would be applied to its respective growth share. This would give the State agency a larger growth share relative to its actual stability/targeting funds than would otherwise have been the case, hence a greater likelihood of qualifying for growth funding.

No TFP adjustment has been included for Puerto Rico. Evidence does not suggest that the food market conditions found in Puerto Rico are comparable to those found in the other outlying territories and States. Indeed, for the last year that a TFP amount for Puerto Rico was published (1981), the Puerto Rico TFP was lower than that for the 48 contiguous States and the District of

Columbia. Given the age of that data, the Department does not consider it appropriate to apply it, and proposes to exclude Puerto Rico from this adjustment. We are interested in comments on this issue.

5. Availability of Funds.

Public Laws 99–500 and 99–591 inserted of the following provisions into section 17(i) of the CNA:

- "Not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; or
- "Not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year."

Thus, the new law permits a State agency to either carry funds forward for expenditure in the fiscal year following the one for which the Department had allocated the funds, *or* to "backspend" funds for costs incurred in the preceding fiscal year. The "carry-forward" provision applies to both food and administrative funds, while the "backspending" provision applies to food funds only. A State agency may elect either provision, but not both, with respect to a single fiscal year. The new law also prohibits the Department from considering funds carried forward from the preceding fiscal year when allocating funds to any State agency for the current fiscal year. Since these provisions are nondiscretionary, they became effective on the date designated in the law (October 1, 1986). Accordingly, they are being published as final rules in a separate **Federal Register** publication.

While these nondiscretionary provisions do not address the funding formula itself, they do affect the conditions under which the Department may apply it. Paragraph 246.16(b), as revised by the aforementioned final rule, would contain a generic statement of the "carry-forward" and "backspending" provisions, and would specify that funds carried forward will be presumed to have been the first funds expended in the subsequent fiscal year. Paragraph 246.16(f) (formerly 246.16(d) as amended by the final rule) would exempt funds carried forward into the subsequent fiscal year from recovery and reallocation by FNS, provided the State agency had properly notified FNS of its intent to exercise the "carry-forward" option.

**List of Subjects in 7 CFR Part 246**

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

**PART 246—[AMENDED]**

Accordingly, it is proposed to amend 7 CFR Part 246 as follows:

1. The authority citation for Part 246 reads as follows:

**Authority:** Sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599; sec. 815, Pub. L. 97–35, 95 Stat. 521.

2. In § 246.2, new definitions of "residual funds" and "stability funds" are added in alphabetical order, and the existing definitions of "participants" and "participation" are revised, as follows:

**§ 246.2 Definitions.**

* * * * *

"Participants" means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods or food instruments under the Program, and the breastfed infants of participant breastfeeding women.

"Participation" means the sum of the number of persons who have received supplemental foods or food instruments during the reporting period and the number of infants breastfed by participant breastfeeding women during the reporting period.

* * * * *

"Residual funds" means funds remaining available for allocation to State agencies after every State agency has received the amount allocable to it as stability funds in accordance with §§ 246.16(c)(2)(i) and 246.16(c)(3)(i).

* * * * *

"Stability funds" means funds allocated to any State agency for the purpose of maintaining its preceding year Program operating level, in accordance with §§ 246.16(c)(2)(i) and 246.16(c)(3)(i).

* * * * *

3. In § 246.16, paragraphs (c), (d) and (e) are redesignated as paragraphs (e), (f) and (g), respectively; new paragraphs (c) and (d) are added; and paragraphs (b) introductory text, (b)(2) introductory text, newly designated (f) and newly designated (g) are revised, as follows:

**§ 246.16 Distribution of funds.**

* * * * *

(b) *Distribution of funds to State agencies.* Funds made available to the Department for the Program in any fiscal year will be distributed as follows:

* * * * *

(2) All funds not made available to the Secretary in accordance with paragraph (b)(1) of this section shall be distributed to State agencies in accordance with the funding formula set forth in paragraph (c) of this section to the extent that funds are available. This formula shall allocate funds to all State agencies for food costs and for administrative and program services costs incurred during the fiscal year in which the funds had been made available to the Department: *Provided, however,* that any State agency may exercise either of the following options with respect to funds allocated to it for any fiscal year, commencing with the fiscal year ending September 30, 1987:

* * * * *

(c) *Allocation formula*— (1) *Use of participation data in the formula.* Wherever the formulas set forth in paragraph (c)(2) of this section require the use of participation data, FNS shall use participation data reported by State agencies according to § 246.25(b) of this Part; *Provided, however,* that prior to using such participation data in any such formula FNS shall adjust such data as necessary to impute the number of persons in each participant category that are in each nutritional risk priority group; *Provided, further,* that FNS shall use data reflecting Participation supported by the aggregate of Federal and State funds for any State agency whose State has budgeted funds from State sources for the Program, if such State agency requests FNS to do so in accordance with a deadline prescribed by FNS.

(2) *Allocation for food costs.* Eighty (80) percent of the funds available for allocation to State agencies each fiscal year shall be allocated for food costs according to the following procedure:

(i) *Allocation of stability funds.* Each State agency shall receive for food costs a base amount of stability funds equal to the sum of all funds allocated to such State agency for all food costs during the preceding fiscal year minus fifty (50) percent of any food funds voluntarily returned by such State agency prior to July 16 of the preceding fiscal year. Funds expended by any State agency for food costs incurred in the preceding fiscal year in accordance with paragraph (b)(2)(i) of this section, shall not be included in this base amount. This base amount shall be adjusted by the cumulative effect of the following operations:

(A) *Inflation adjustment.* The base amount shall be increased by an inflation factor. The inflation factor shall be obtained by dividing the State agency's imputed participation in Priorities I, II and III by its total participation and multiplying the resulting quotient by the anticipated rate of inflation as determined by FNS. *Provided, however,* that the sum of the stability funds and residual funds allocated to any Indian State agency for food costs shall not be less than such State agency's base amount increased by the anticipated rate of inflation.

(B) *Migrant set-aside.* Each State agency's base amount, as adjusted for inflation, shall be further adjusted in order to make funds available for services to eligible members of migrant populations. The national aggregate amount of funds made available for this purpose shall not be less than nine-tenths of one percent of the sums appropriated for the applicable fiscal year. To the extent that this amount exceeds the amount required to maintain each State agency's existing level of service to migrants, as determined by FNS, funds shall be deducted on a proportional basis from every State agency's base amount as adjusted for inflation. The funds made available thereby shall be added to the amounts awarded to those State agencies that had served migrant populations in the immediately preceding fiscal year. The basis for determining each such State agency's share of these funds shall be its proportionate share of the anticipated cost, as determined by FNS, of supplemental foods to be provided to eligible migrants in the applicable fiscal year.

(C) *95 percent performance standard.* The amount allocated to any State agency for food costs in any fiscal year shall be reduced if such State agency's food costs for the preceding fiscal year did not equal or exceed 95 percent of the amount such State agency had been authorized to expend for such costs. Such reduction shall equal the difference between the State agency's preceding year food costs and 95 percent of the amount the State agency had been authorized to expend for such costs. A corresponding amount of administrative and program services funds shall also be recovered from the State agency. Temporary waivers of this 95 percent performance standard may be granted at the discretion of FNS.

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for food costs after the allocation of stability food funds required by paragraph (c)(2)(i) of this section has been completed shall be allocated as follows; *provided, however,* that the aggregate amount of stability and residual funds allocated to any State agency for food costs in any fiscal year shall not exceed the aggregate amount of stability and residual funds allocated to such State agency for food costs in the preceding fiscal year by more than 15 percent:

(A) Fifty (50) percent of such food funds shall be allocated on the basis of the State agency's imputed participation in Priority I. Of the funds available for allocation on this basis, the percent allocated to each State agency shall be the percent such State agency's imputed Priority I participation is of the national aggregate imputed Priority I participation.

(B) Fifty (50) percent of such food funds shall be allocated on the basis of the extent to which the total amount of funds each State agency receives through the allocations required by paragraphs (c)(2)(i) and (c)(2)(ii)(A) of this section falls short of the amount such State agency would receive for food costs if all funds available for food were allocated solely on the basis of each State agency's proportionate share of the national aggregate population of persons potentially eligible to participate in the Program. Each State agency's population of potentially eligible persons shall be determined through poverty and health indicators selected by FNS. For purposes of this allocation, the respective amounts of food funds that would be allocable to Alaska, the Virgin Islands, Hawaii, Guam, and any Indian State, agencies located within the borders of these States, on the basis of their respective shares of the potentially eligible population, shall be adjusted on the basis of appropriate Thrifty Food Program amounts used in the Food Stamp Program. The adjusting factor for each such State agency shall be the quotient obtained by dividing the Thrifty Food Plan amount used in the applicable State by the Thrifty Food Plan amount used in the 48 contiguous States and the District of Columbia, *Provided, however,* that:

(*1*) The "Urban Alaska" Thrifty Food Plan amount shall be used to determine the adjusting factor for the Alaska State Agency; and

(*2*) The adjusting factor for any Indian State agency located within the State of Alaska shall be determined from whichever "Rural Alaska" Thrifty Food Plan amount is used in the locality served by such Indian State agency.

(*3*) *Allocation for administrative and program services costs.* Twenty (20) percent of the funds available for allocation to State agencies each fiscal year shall be allocated for administrative and program services costs according to the following procedure:

(i) *Allocation of stability funds.* Each State agency shall receive an amount of funds equal to the product obtained by applying, to the amount allocated to the State agency as stability food funds under paragraph (c)(2)(i) of this section, the lesser of (A) twenty-one (21) percent; or (B) the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. Funds voluntarily returned by any State agency prior to July 16 of the preceding fiscal year for reallocation under paragraph (g) of this section shall not be considered in the calculation of the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. FNS will allocate additional stability funds for administrative and program services costs based on the individual needs of each State agency; *provided, however,* that the aggregate amount of stability funds allocated to all State agencies for administrative and program services costs shall not exceed twenty-five (25) percent of the aggregate amount of stability funds allocated for food costs under paragraph (c)(2)(i) of this section.

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for administrative and program services costs after the stability allocation required by paragraph (c)(3)(i) of this section has been completed shall be allocated as residual funds. The amount of such funds allocated to each State agency shall be determined by applying, to each of the amounts of funds allocated to the State agency as residual food funds under paragraphs (c)(2)(ii)(A) and (c)(2)(ii)(B) of this section, the lesser of (A) twenty-one (21) percent; or (B) the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. Funds voluntarily returned by any State agency prior to July 16 of the preceding fiscal year for reallocation under paragraph (g) of this section shall not be considered in the calculation of the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. FNS will allocate additional residual funds for administrative and program services costs based on the individual needs of each State agency; *Provided, however,* that the aggregate

amount of residual funds allocated to all State agencies for administrative and program services costs shall not exceed twenty-five (25) percent of the aggregate amount of residual funds allocated for food costs under paragraph (c)(2)(ii) of this section.

(4) *Adjustment for new State agencies.* Whenever a State agency that had not previously administered the Program enters into an agreement with the Department to do so during a fiscal year, FNS shall make any adjustments to the requirements of this section that are deemed necessary to establish an appropriate initial funding level for such State agency.

(d) *Method of payment to State agencies.* Each State agency's funds will be provided by means of a Letter of Credit unless another funding method is specified by FNS. State agencies shall use funds to cover those allowable and documented Program costs, as defined in 246.14, which are incurred by the State agency and participating local agencies within their jurisdictions.

* * * * *

(f) *Recovery of funds.* (1) Funds may be recovered from a State agency at any time FNS determines, based on State agency reports of expenditures and operations, that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditures under the Program.

(2) FNS shall recover from any State agency that failed to meet the 95 percent performance standard set forth in paragraph (c)(2)(i)(C) of this section the amount of funds by which such State agency's stability food and administrative and program services funds have been reduced pursuant to that paragraph.

(3) If any State agency notifies FNS of its intent to carry forward a specific amount of funds for expenditure in the subsequent fiscal year, in accordance with paragraph (b)(2)(ii) of this section, such funds shall not be subject to recovery by FNS; *Provided, however,* that such notification must conform to a deadline prescribed by FNS.

(g) *Reallocation of Funds.* Any funds recovered under Paragraph (f) of this section will be reallocated by FNS through application of appropriate formulas set forth in paragraph (c) of this section.

Dated: April 14, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-8695 Filed 4-14-87; 3:44 pm]

BILLING CODE 3410-30-M

**Agricultural Marketing Service**

**7 CFR Part 908**

**[Valencia Orange Regulation 381]**

## Valencia Oranges Grown in Arizona and Designated Part of California; Minimum Size Limitation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites written comments on a proposal to establish a minimum size requirement of 2.32 inches in diameter for fresh domestic shipments of California-Arizona Valencia oranges during the 1986–87 season. The proposed action recognizes the anticipated size composition of the 1986–87 California-Arizona Valencia orange crop and current and prospective market conditions.

**DATE:** Comments due April 27, 1987.

**ADDRESS:** Interested persons are invited to submit written comments concerning this notice. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular working hours.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447-5697.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act", and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Valencia oranges regulated under Marketing Order No. 908 are grown in Arizona and designated parts of California. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the southeastern desert area of California. In recent seasons, District 1 has accounted for around 40 percent of total production, District 2 over 50 percent, and District 3 around 7 percent. The Valencia Orange Administrative Committee's (VOAC) crop estimate of 59,000 cars is expected to be allocated among the districts in relative amounts close to these approximated percentages.

The three basic outlets for California-Arizona Valencias are domestic fresh, export, and processing markets. The domestic fresh market is fairly static and is the preferred market for Valencia oranges, receiving around 23,000 cars per year unless unusual conditions such as poor quality and/or abnormal crop sizes exist. Quantities utilized in the export market have ranged from 9,208 cars to over 13,000 cars in the past five years. Exports ranged from 9,208 cars to over 13,000 cars in the past five years. Exports vary depending on factors such as the foreign monetary exchange rate, quality, orange sizes, and trade practices. The processing market is basically a residual outlet. Valencia oranges not sold fresh are either disposed of or utilized for products, such as orange juice. Estimated crop utilization for the 1986–87 season is 22,000 cars (37 percent) for domestic fresh markets, 12,000 cars (20 percent) export, with the remaining 25,000 (42 percent) going to processed and other outlets. Such estimates are based on the anticipated supply of Valencia oranges available for market during the 1986–87 season, and the demand in such outlets for Valencia oranges.

There are an estimated 115 handlers and 3,500 growers of California-Arizona Valencia oranges. The Small Business Administration (SBA) has defined small agricultural growers as those growers having annual gross revenues for the past three years of $100,000 or less, and small handlers as those with gross revenues of $3.5 million or less. Aggregate industry data indicate grower revenue has averaged about $45,000 over the past three years, and handler revenue has averaged about $1.7 million. The majority of growers and handlers of

California-Arizona Valencia oranges may be classified as small entities.

The proposed minimum size regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated parts of California. The order is effective under the Act (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the VOAC and upon other available information.

The VOAC met publicly on March 10, 1987, and recommended the establishment of a minimum size regulation for the 1986–87 season. The proposal is consistent with the marketing policy for 1986–87. The proposed action would proscribe the domestic shipment of small sized California-Arizona Valencia oranges during the 1986–87 season.

Valencia oranges are classified into categories which indicate the number of oranges packed in a standard carton of 37.5 pounds. For instance, a size category designating very large size oranges would be 56's and very small sizes, 180's or 210's. The proposed regulation would prohibit the shipment of size 180's and smaller. It is difficult to ascertain the exact amount of oranges that this would preclude from shipment to the domestic fresh market because oranges tend to get larger as the season progresses, if left on the tree. Another factor complicating the exact estimation of the quantity of small sized Valencia oranges is that the 1986–87 production is expected to be high, and there is generally a larger proportion of small fruit in larger crops.

The VOAC reports that growth tests indicate that the Valencia oranges have not been sizing as rapidly as normal, thus making it more difficult to predict actual outturn. The sizes precluded from shipment (180's and smaller) are estimated to represent approximately 18 to 30 percent of the crop. Although the percentage of Valencia oranges estimated to be precluded for use in domestic fresh markets because of this proposed regulation appears to be high, the percentage of the crop expected to go to outlets other than domestic fresh is expected to total 63 percent. A good portion of such percentage traditionally includes small sized oranges. Thus, ample markets exist for the small sized oranges.

Implementation of this regulation would require the handling of the larger sized oranges, improving grower returns and aiding in strengthening the price patterns of the larger sizes. Prices for smaller sized oranges are usually discounted which may tend to reduce the overall price structure for all Valencia oranges. However, prices tend to peak on sizes 72's and 88's, with markedly lower prices on smaller sizes; with prices for size 163's usually less than one-half the level of the more preferred sizes. This regulation applies only to domestic shipments including Canada. Smaller sized Valencia oranges may be processed, exported and otherwise shipped in accordance with § 908.67. As not all of the crop will be utilized in domestic fresh markets, the result of the regulation would be to move toward an economic utilization which is expected to result in higher overall grower revenue.

Consequently, when weighing costs and benefits derived from the use of size regulations, it seems highly probable that the benefits of this rule would far outweigh the costs.

Based on the above, the Administrator of the Agricultural Marketing Service has determined that the issuance of this size regulation would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 10-day comment period is considered adequate because a final rule, if issued, should be issued as soon as possible since shipments of 1986–87 crop Valencia oranges have already begun and are expected to continue through October 1987.

**List of Subjects in 7 CFR Part 908**

Marketing agreements and orders, California, Arizona, Oranges, Valencia.

For the reasons set forth in the preamble, 7 CFR Part 908 is proposed to be amended as follows:

## PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

### Subpart—Rules and Regulations

1. The authority citation for 7 CFR Part 908 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.681 is added to read as follows:

**Note.**—The following section will not be published in the Code of Federal Regulations.

**§ 908.681 Valencia Orange Regulation 381.**

During the period (effective date to be established) through October 31, 1987, no handler shall handle any Valencia oranges which are of a size smaller than 2.32 inches in diameter, such diameter to be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the oranges in any container may measure smaller than 2.32 inches in diameter.

Dated: April 13, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 87–8653 Filed 4–16–87; 8:45 am]

BILLING CODE 3410-02-M

---

**7 CFR Part 910**

## Lemons Grown in California and Arizona Amendment of Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend rules and regulations established under the marketing order covering California-Arizona lemons to increase, from 250 to 350 cartons per week, the amount of organic lemons handlers may ship without regard to volume and size regulations under the order. The proposed amendment recognizes additional opportunity to market organic lemons to organic or health food wholesalers and retailers.

**DATE:** Comments due April 27, 1987.

**ADDRESS:** Interested persons are invited to submit written comments concerning this notice. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular working hours.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 85 handlers of California-Arizona lemons under the marketing order for lemons grown in California and Arizona will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. However, this rule would not have a significant effect on the vast majority of handlers subject to regulation because there are only 2 handlers who currently ship organic lemons.

The Small Business Administration has defined small agricultural producers as those producers having gross revenues for the past three years of $100,000 or less, and small handlers as those with gross revenues of $3.5 million or less. The majority of growers and handlers of California-Arizona lemons may be classified as small entities. There are an estimated 2000–2500 lemon growers in the production area.

This proposed action has been recommended by the Lemon Administrative Committee, the committee responsible for local administration of the marketing order, and has been implemented in previous seasons, but at a lower level of exempted shipments. This proposed action would have a beneficial economic impact on small entities because this action would relieve restrictions on handlers and provide them with increased marketing flexibilities. In addition, there are no additional reporting or recordkeeping requirements associated with this proposed rule.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed rule is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information.

Section 910.80 of the order authorizes the committee, with the approval of the Secretary, to establish minimum quantities and types of shipments which shall be free from regulation under this order. Section 910.180(d)(3) of the rules and regulations prescribes procedures governing the exemption from volume and size regulations for organic lemons handled in minimum quantities. This proposed amendment would increase to 350 cartons the amount of organic lemons handlers may ship each week to organic or health food wholesalers and retailers. Currently, handlers can ship up to 250 cartons of such lemons weekly (51 FR 39854; November 3, 1986). Handlers have indicated that organic fruit markets have absorbed this level of shipments and that additional marketing opportunity exists for organic lemons. This proposed action is designed to facilitate the marketing of organic lemons and would provide increased flexibility in the scheduling of organic lemon shipments by those handlers currently utilizing this exemption.

Interested persons are invited to submit their views and comments on this proposal. A 10-day comment period is considered adequate because a final rule, if issued, should be issued as soon as possible to allow handlers of organic lemons to fully utilize available marketing opportunities.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, Lemons, California, Arizona.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 910 be amended as follows:

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### Subpart—Lemon Administrative Committee Rules and Regulations

2. Section 910.180 is amended by revising the first sentence in paragraph (d)(3) to read as follows:

**§ 910.180 Lemons not subject to regulation.**

* * * * *

(d) * * *

(3) Any person may be granted an exemption of up to 350 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers and retailers. * * *

* * * * * *

Dated: April 10, 1987.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–8652 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

---

7 CFR Part 1040

## Milk in the Southern Michigan Marketing Area; Proposed Suspension of Rules

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rules.

**SUMMARY:** This notice invites written comments on a proposal to suspend for the months of April through August 1987 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The association claims that the action is needed to avoid inefficient handling of milk and to ensure that dairy farmers historically associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

**DATE:** Comments are due no later than April 24, 1987.

**ADDRESS:** Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4829.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b) the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced

under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Michigan marketing area is being considered for April through August 1987:

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include April 1987 in the suspension period if this is found necessary.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposed suspension would make inoperative for the months of April through August 1987 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants either through its supply plants or directly from farms, in order to qualify its supply plants as pool plants.

Michigan Milk Producers Association (MMPA), which represents a substantial number of the producers supplying the market, requested the suspension.

The association stated that without the suspension their organization would be unable to pool approximately 50 million pounds of member milk during the period of May through July 1987. They noted that this analysis is based upon a projection that only about 46 percent of their members' production, which is pooled as part of a supply plant unit, would be needed to satisfy the requirements of the distributing plants that they supply. For March 1987, at MMPA's request, the Department suspended the pooling provision that required a supply plant operator to ship at least 30 percent of its receipts of Grade A milk to distributing plants. At that time, they indicated that their fluid milk sales had declined dramatically in February and no improvement was expected in March. MMPA found it was necessary to divert milk supplies routinely associated with the fluid market to manufacturing plants in order to accommodate milk shipments from a proprietary handler supply plant unit.

MMPA noted that a hearing was recently held on proposals, including one by MMPA, to amend the Southern Michigan order. They stated that their proposal, if adopted, would make it easier for their organization to pool the milk of their members and alleviate the need to suspend these provisions in the future. Without the suspension for this period, the association said that it would be required to make some inefficient milk movements in order for the milk of dairy farmers associated with the market to share in the fluid milk sales of the market.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the period of April through August 1987.

**List of Subjects in 7 CFR Part 1040**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1040 continues to read as follows:

**Authority:** (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Signed at Washington, DC, on April 10, 1987.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 87–8655 Filed 4–16–87; 8:45 am]

BILLING CODE 3410–02–M

---

**7 CFR Part 1106**

## Milk in the Southwest Plains Marketing Area; Proposed Suspension of a Certain Provision

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of a rule.

**SUMMARY:** This notice invites written comments on a proposal to suspend a portion of the "producer" definition of the Southwest Plains order for the months of April–July 1987. The provision proposed to be suspended prevents dairy farmers from being producers under the order during spring and summer months if they have not sufficiently supplied the market during the previous fall months when fluid milk needs are seasonally greater. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a substantial number of producers who supply the Southwest Plains market. Mid-Am contends that the action is necessary to permit the efficient use of advantageously located supplies of milk to supply the fluid milk needs of the market.

**DATE:** Comments are due on or before April 24, 1987.

**ADDRESS:** Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers by promoting hauling efficiencies and would tend to ensure that dairy farmers who supply fluid milk needs would have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provision of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of April–July 1987:

In § 1106.12, paragraph (b)(5) in its entirety.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include April in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a substantial number of producers who supply the Southwest Plains market, requested that the application of a portion of the producer definition be suspended for 1987. The provision proposed to be suspended prevents dairy farmers from being producers under the order during spring and summer months if they have not sufficiently supplied the market during previous fall months when fluid milk needs are seasonally greater. Specifically, the order provides that during the months of February–July a dairy farmer cannot be a producer under the Southwest Plains order unless during each of the immediately preceding months of September–November more than two-thirds of the producer's milk was pooled and priced under the order.

Mid-Am states that the proposed suspension is warranted because of changes in marketing conditions. Mid-Am contends that this provision is forcing economic hardships on it and other market suppliers of milk for Class I purposes and is no longer appropriate.

Mid-Am states that the closing of a distributing plant in Springfield, Missouri in the fall of 1986 has resulted in an increase in the Class I sales by a Southwest Plains distributing plant located at Fayetteville, Arkansas. Mid-Am also indicates that there are dairy farmers located in the vicinity of the plant that could supply the increased fluid milk needs. However, Mid-Am indicates that such dairy farmers have been delivering milk to plants regulated under the Central Arkansas and Texas orders, and, therefore, do not have the required prior association to be considered as producers under the Southwest Plains order. As a result, Mid-Am states that in February over 500,000 pounds of milk that was shipped to supply the increased fluid milk needs of the Fayetteville distributing plant was not eligible for pool status under the Southwest Plains or other Federal orders. Consequently, Mid-Am contends that the suspension is necessary to permit the efficient use of advantageously located supplies of milk to supply the increased fluid milk needs. Absent a suspension, Mid-Am states that uneconomical movements of more distant supplies of milk would have to be made to meet fluid milk needs.

Mid-Am asked that the provision be suspended for 1987 beginning with the month of March. However, it would not be possible to complete the required procedures concerning notice and a comment period in sufficient time to include March in the suspension period. In addition, since the provision is applicable through July, comments are invited on a proposal to suspend such provision for April–July 1987.

**List of Subjects in 7 CFR Part 1106**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: April 10, 1987.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 87–8656 Filed 4–16–87; 8:45 am]

BILLING CODE 3410-02-M

---

**Farmers Home Administration**

**7 CFR Part 1942**

**Community Facility Loans**

**AGENCY:** Farmers Home Administration USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration proposes to amend its community facility loan regulations. This action is in response to FmHA staff requests for clarification of the regulations for loans for community facilities and community domestic water and waste disposal systems. It will also bring the regulations into compliance with certain provisions of the Food Security Act of 1985 and the Single Audit Act of 1984. The intended effect is to provide more comprehensive guidance to applicants and FmHA staff regarding FmHA financial assistance for water and waste disposal systems and essential community facilities.

**DATES:** Comments must be received by May 18, 1987.

**ADDRESSES:** Submit written comments in duplicate to the Chief, Directives Management Branch, Farmers Home Administration, USDA, South Agriculture Building, Room 6348, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Stansbery, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, 14th and Independence Avenue SW., Room 6308, Washington, DC 20250, Telephone 202–382–1490.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements executive order 12291, and has been determined to be "non-major." The proposed action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Intergovernmental Review**

These programs are listed in the Catalog of Federal Domestic Assistance under numbers 10.423, Community Facilities Loans, and 10.418, Water and Waste Disposal Systems for Rural Communities, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V; 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

**Environmental Impact**

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

**Background**

This package is an accumulation of numerous regulation changes suggested by various staff members over a period of several months along with changes needed to comply with the Single Audit

Act of 1984, OMB Circular A–128, and the Food Security Act of 1985. FmHA believes the proposed changes will clarify the regulations and help FmHA to serve the public more efficiently while protecting the Government's interest.

The primary changes proposed include the following:

1. A requirement is added that notices of adverse action on preapplications or applications will include a statement regarding the Federal Equal Credit Opportunity Act.

2. The requirements for preparing letters of conditions are clarified. Scheduling of payments, compliance with section 504 of the Rehabilitation Act, and reserve requirements are added to the list of items to be covered in letters of conditions.

3. A provision is added to clarify the authority of the FmHA District Office to request information from applicants as needed to determine eligibility.

4. Under certain conditions application dockets must be reviewed in the National Office. The list of items that must be included in the docket for National Office review is amended to clarify the type of financial information required.

5. A provision is added under which funds obligated for a particular applicant may be transferred to another applicant if the new applicant meets eligibility requirements, the two applicants have a close and genuine relationship and the need for a scope of the project does not change.

6. A requirement for National Office review of negotiated procurement contracts over $100,000 is removed.

7. A provision is added to allow noncompetitive negotiation for procurement actions not exceeding $50,000.

8. Regulations prohibit choosing boundaries for the service area of an FmHA financed utility-type facility to exclude certain people. The list of people who may not be excluded is expanded to included the handicapped.

9. The eligibility criteria for the poverty line interest rate is amended to remove the reference to enforcement and recognize standards of agencies with jurisdiction to establish standards.

10. The time limit for deferring collection of principal is clarified to be 36 months following the date the first interest installment is due.

11. Security requirements are amended to provide that a lien may be taken on an applicant's interest in a water sales contract.

12. A provision is added to clarify that if there are conflicts between this subpart and State or local laws this subpart will control. A requirement that borrowers procurement regulations comply with State and local laws is removed.

13. The regulations regarding supervised bank accounts are amended to clarify that supervised bank accounts may, under certain circumstances, be used for funds advanced by other lenders or agencies.

14. The regulations regarding review and acceptance of partial payment estimates are amended to provide for partial payment estimates prepared by the contractor rather than the project architect/engineer.

15. A provision is added that borrowers planning to sell water to other bulk users must have written contracts for such service.

16. A provision is added that management agreements or leases must not contain agreement for transfer of ownership.

17. The section on priorities is revised to adjust the criteria for awarding priority points based on income to correspond to the thresholds for different interest rates.

18. A paragraph is removed which has caused confusion regarding requirements for loan repayment schedules. In all cases payments to FmHA should approximate amortized installments.

19. A provision is added that FmHA will fully consider any recommendations of the owner concerning technical design and choice of materials.

20. The paragraphs on audits of borrower operations are revised to comply with the Single Audit Act of 1984, Pub. L. 98–502, and OMB Circular A–128, "Audits of State and Local Governments." The Single Audit establishments audit requirements for State and local governments that receive Federal assistance and defines Federal responsibilities for implementing and monitoring those requirements. Section 7505 of the Act required OMB to issue implementing guidelines, which were issued as OMB Circular A–128. Further, the Circular directed Federal agencies to publish regulations implemented it.

FmHA expects to include additional changes to 7 CFR Part 1942–A in the final rule. These additional proposed changes are not included for publication in the proposed rule because they are items of internal management not directly impacting the public.

List of Subjects in CFR Part 1942

Community development, Community Facilities, Loan programs-Housing and community development, Loan security, Rural areas, Waste treatment and disposal-Domestic, Water supply-Domestic.

Accordingly, FmHA proposes to amend Subpart A of Part 1942, Chapter IVIII, Title 7, Code of Federal Regulations, as follows:

## PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows: Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Community Facility Loans

2. Section 1942.2 is amended by adding a new paragraph (a)(1)(v) and revising paragraph (d) to read as follows:

**§ 1942.2 Processing applications.**

(a) * * *

(1) * * *

(v) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advice applicants on what documents are necessary. Applicants should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.

* * * * * *

(d) *Review of decision.* if at any time prior to loan approval it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant under Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administraters compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC [illegible]

* * * * * *

3. Section 1942.5 is amended by revising paragraph (a)(1)(i), (b)(1)(ii)(F) and (b)(1)(ii)(G), removing paragraph

(d)(4), redesignating paragraphs (d)(5) through (d)(7) as paragraph (d)(4) through (d)(6) respectively, and adding a new paragraph (d)(7) to read as follows:

**§ 1942.5 Application review and approval.**

(a) * * *

(1) * * *

(1) Requirements listed in letters of conditions will include the following unless inappropriate due to the particular type of funding or entity involved: maximum amount of loan and/or grant which may be considered, scheduling of payments, term of loan and any deferment of principal which may be allowed, reserve requirements, compliance with section 504 of the Rehabilitation Act of 1973, number of users (member) and verification required, contributions, rates charges, interim financing, disbursement of funds, security requirements, graduation requirements, organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required (including requirements of OMB Circulars A–128 and A–110), adoption of Form FmHA 1942–47, "Loan Resolution (Public Bodies), for public bodies of Form FmHA 1942–9, "Loan Resolution (Security Agreement)." for other than public bodies, closing instructions, and other requirements.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(F) Form FmHA 442–3, "Balance Sheet", or a financial or audit that includes a balance sheet.

(G) For other essential community facility loan applicants whose proposals do not meet the assured income or tax based security requirements of § 1942.17(g)(2)(iii) and (g)(3)(iii) of this subpart, financial information for the last five years of operation will be submitted if available. The type of financial information to be submitted should be determined based on what is available and the following order of preference:

(*1*) Complete audits;

(*2*) Unaudited financial statements including balance sheets and statements of income and expenses;

(*3*). Lists of income and expenses.

* * * * *

(d) * * *

(*7*) If a transfer of obligation of funds is necessary, complete Form FmHA 450–10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and process via the FmHA Field Office terminal system. An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(i) The substituted applicant is eligible to receive the assistance approved for the original applicant; and

(ii) The substituted applicant bears a close and genuine relationship to the original applicant (such as two organizations that are controlled by the same individuals); and

(iii) The need for the scope of the project and the purpose(s) for which FmHA funds will be used remain substantially unchanged.

* * * * *

4. Section 1942.9 is amended by revising the introductory text of paragraph (b) to read as follows:

**§ 1942.9 Planning, bidding, contracting, and constructing.**

(a) * * *

(B) *Contract approval.* The State Director or designee is responsible for approving all construction contracts using legal advice and guidance of OGC as necessary. The use of a contracting method under § 1942.18(1) of this subpart exceeding $100,000 must be concurred in by the National Office. Procurement under § 1942.18(l) of this subpart will not be considered when an FmHA grant is involved. When an applicant requested such concurrence, the State Director will submit the following to the National Office:

* * * * *

5. Section 1942.17 is amended by revising paragraphs (b)(3), (c)(2)(iii)(C), (e)(2) and (f)(2)(i), removing paragraph (f)(7)(i), redesignating paragraphs (f)(7)(ii) and (f)(7)(iii) as paragraphs (f)(7)(i) and (f)(7)(ii), respectively, revising the introductory text of the new paragraph (f)(7)(i) and paragraphs (g)(2)(i)(C), (g)(3)(i)(B), and the introductory text of paragraphs (j)(3) and (k)(1), redesignating paragraphs (k)(2) through (k)(8) as paragraphs (k)(3) through (k)(9), respectively, adding a new paragraph (k)(2), and revising paragraphs (p)(3)(i), (p)(4), (q)(3), (q)(4), and (q)(5) to read as follows:

**§ 1942.17 Community Facilities.**

* * * * *

(b) * * *

(3) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice. Management agreements should provide for at least those items listed in Guide 24 of this subpart. Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(C) *Income priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated. The median income of the population to be served by the proposed facility is:

(*1*) Less than the proverty line for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902 (2)), or less than 80 percent of the statewide nonmetropolitan median household income.—25 points.

(*2*) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income—20 points.

* * * * *

(e) * * *

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin.

* * * * *

(f) * * *

(2) * * *

(i) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bonafide standard exists, what that standard is, and that the proposed improvements are needed and required to meet the standard; and

* * * * *

(7) * * *

(i) Principal payments may be deferred in whole or in part for a period not to exceed 36 months following the date the first interest installment is due.

If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office. Deferments of principal will not be used to:

* * * * *

(g) * * *
(2) * * *
(i) * * *

(C) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interest, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds; and/or

* * * * *

(3) * * *
(i) * * *

(B) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the loan approval official determines that the interest of FmHA otherwise is secured adequately, the lien requirement may be omitted as to such land rights.

* * * * *

(j) * * *

(3) *Insurance and bonding.* Needed insurance coverage and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever occurs first. Ordinarily, FmHA should be listed as mortgagee on the property insurance when FmHA has a lien on the property. Insurance policies are not required to be filed in the case file. However, the borrower must continue to maintain insurance in adequate amounts to protect the Government's interest for the life of the loan. After the first year of operation an annual listing of insurance in audits, management reports, or other statements signed by appropriate borrower officicals, will be considered as sufficient evidence of insurance maintenance. A copy of the fidelity bond(s) should be filed in the borrower's case file. Insurance requirements will not normally be over and above those proposed by the borrower provided coverage is found to be adequate, and in accordance with the following:

* * * * *

(k) * * *

(1) *Compliance with special laws and regulations.* Except as provided in paragraph (k)(2) of this section applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

* * * * *

(2) *Compliance exceptions.* If there are conflicts between this subpart and state or local laws or regulatory commission regulations, the provisions of this subpart will control.

* * * * *

(p) * * *
(3) * * *

(i) *Supervised bank account.* FmHA loan funds and any funds furnished by the applicant/borrower to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings may be deposited in a supervised bank account if determined necessary as provided in Subpart A of Part 1902 of this chapter. When FmHA has a Memorandum of Understanding with another agency that provides for the use of supervised bank accounts, or when FmHA is the primary source of funds for a project and has determined that the use of a supervised bank account is necessary, project funds from other sources may also deposited in the supervised bank account. FmHA shall not be accountable to the source of the other funds nor shall FmHA undertake responsibility to administer the funding program of the other entity. Supervised bank accounts should not be used for funds advanced by an interim lender.

* * * * *

(4) *Development inspections.* The District Director or will be responsible for monitoring the construction of all projects being financed, wholly or in part, with FmHA funds. Technical assistance will be provided by the State Director's staff. Project monitoring will include construction inspections and a review of each project inspection report, each change order and each partial payment estimate and other invoices such as payment for engineering/architectural and legal fees and other materials determined necessary to effectively monitor each project. These activities will not be performed on behalf of the applicant/borrower, but are solely for the benefit of FmHA and in no way are intended to relieve the applicant/borrower of corresponding obligations to conduct similar monitoring and inspection activities. Project monitoring will include periodic inspections to review partial payment estimates prior to their approval and to review project development in accordance with plans and specifications. Each inspection will be recorded using Form FmHA 424–12, "Inspection Report." The original Form FmHA 424–12 will be filed in the project case folder and a copy furnished to the State Director. The State Director will review inspection reports and will determine that the project is being effectively monitored. The District Director is authorized to review and accept partial payment estimates prepared by the contractor and approved by the borrower, provided the consulting engineer or architect, if one is being utilized for the project, has approved the estimate and certified that all material purchased or work performed is in accordance with the plans and specifications, or if a consulting engineer or architect is not being utilized, the District Director has determined that the funds requested are for authorized purposes. If there is any indication that construction is not being completed in accordance with the plans and specifications or that any other problems exist, the District Director should notify the State Director immediately and withhold all payments on the contract.

* * * * *

(q) * * *

(3) *Substitute for management reports.* When FmHA loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State Director may authorize an annual audit to substitute for other management reports if the audit is received within 90 days following the period covered by the audit.

(4) *Audits—(i) Audits based upon Federal financial assistance received in a year.* The following requirements shall apply to audits of the years in which funds are delivered to the borrower. For years in which the amount of total funds received does not require an OMB Circular A–128 audit, see paragraph (q)(4)(ii) of this section.

(A) *Local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and Office of Management and Budget (OMB) Circular A–128, with copies of the audits being forwarded by the borrower to the FmHA District Director and the appropriate Federal cognizant agency. The Circular is attached as

Appendix A (available in any FmHA Office).

(1) *Definitions.* (*i*) "Cognizant agency" means the Federal agency assigned by OMB to carry out the responsibilities described in OMB Circular A–128. Within the Department of Agriculture (USDA), OIG is designated as the cognizant agency and they may delegate cognizant agency responsibilities to FmHA if FmHA has provided the major portion of funding.

(*ii*) Other definitions are contained in Exhibit A (available in any FmHA Office).

(2) *Audit requirements.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(*i*) Local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit for that year in accordance with OMB Circular A–128.

(*ii*) Local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal financial assistance shall have an audit made for that year in accordance with OMB Circular A–128 or in accordance with FmHA audit requirements. This is an option of the local government or Indian tribe. If the election is made to have an audit performed in accordance with FmHA requirements, the audit shall be in accordance with paragraph (q)(4)(i)(B) of this section.

(*iii*) Local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from both OMB Circular A–128 audits and FmHA audit requirements. However, audits performed shall be governed by the requirements prescribed by State or local law or regulation. Also, refer to paragraph (q)(4)(ii) of this section.

(*iv*) Public hospitals and public colleges and universities may be excluded from these audit requirements. However, in this case audits shall be made in accordance with paragraph (q)(4)(i)(B) of this section.

(3) *Cognizant agency responsibilities.* Smaller governments not assigned a cognizant agency should contact the Federal Agency that provided the most funds. When USDA is designated as the cognizant agency by OMB, or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be responsible for audit related matters. FmHA and the borrower shall coordinate all proposed audit plans with the appropriate USDA OIG. A list of appropriate OIG contact persons is attached to FmHA Instruction 1942–A as Exhibit B (available in any FmHA Office).

(B) *Nonprofit organizations and others.* These organizations are to be audited in accordance with FmHA requirements and OMB Circular A–110, "Uniform Requirements For Grants to Universities, Hospitals, and Other Nonprofit Organizations." Audits are also to be made in accordance with "Standards for Audits of Government Organizations, Programs, Activities and Functions" issued by the Comptroller General of the United States in 1981 (GAO Standards), and any subsequent revisions. These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audits of paragraph (q)(4)(i)(A) of this section.

(*1*) Audits shall be supplied to the FmHA District Director as soon as possible but in no case later than ninety (90) days following the period covered by the audit.

(*2*) Audit requirements are as follows:

(*i*) Organizations which receive $25,000 or more a year in Federal financial assistance shall have an organization wide audit for that year. Also, refer to paragraph (q)(4)(ii) of this section.

(*ii*) Organizations which receive less than $25,000 a year in Federal financial assistance shall be exempt from audits for that year, except for the audits based upon annual gross income which may apply in paragraph (q)(4)(ii) of this section.

(ii) *Audits based upon annual gross income.* The following annual gross income audit requirements shall apply to all borrowers (local government, Indian tribes, and nonprofit organizations) for all years except the ones in which there is an audit requirement based upon the amount of Federal assistance receive as required by paragraphs (q)(4)(i)(A)(*2*) and (q)(4)(i)(B)(*2*) of this section.

Audits shall be on an annual basis unless otherwise prohibited and shall be supplied to FmHA as soon as possible but in no case later than 90 days following the period covered by the audit.

(A) *Gross annual income of $100,000 or more.* (*1*) Local governments and Indian tribes shall have audits made in accordance with State or local law or regulation or regulatory agency requirements.

(*2*) All other organizations shall have audits in accordance OMB Circular A–110 and paragraph (q)(4)(i)(B)(*2*)(*i*) of this section.

(B) *Gross annual income of less than $100,000.* For borrowers that have a gross annual income of less than $100,000, the requirements for audits shall be at the discretion of the State Director. However, when audits are required, they shall be in accordance with paragraph (q)(4)(ii)(A) of this section.

(5) *Borrowers exempt from audits.* All borrowers who are exempt from audits, will, within 60 days following the end of each fiscal year, furnish the FmHA with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms FmHA 442–2 and 442–3 may be used. For borrowers using Form FmHA 442–2, the dual purpose of fourth quarter management reports, when required, and annual statements of income will be met with this one submission.

* * * * *

6. Section 1942.18 is amended by revising paragraphs (g), (j) introductory text (j)(2), and (k)(4) to read as follows:

**§ 1942.18 Community Facilities–Planning, Bidding, Contracting, Constructing.**

* * * * *

(g) *Sewage treatment and bulk water sales contracts.* Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to FmHA concurrence. Paragraph (f) of this section should be used as a guide to prepare such contracts.

* * * * *

(j) *Owner's procurement regulations.* Owner's procurement regulations must comply with the following standards:

(1) * * *

(2) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealing bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the owner and is consultant will consider all materials normally suitable for the project commensurate with

BEST COPY AVAILABLE

sound engineering practices and project requirements. For a water or waste disposal facility, FmHA shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such a facility. If FmHA determies that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, FmHA shall provide such applicant or borrower with a comprehensive justification for such a determination.

* * * * *

(k) * * *

(4) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) The item is available only from a single source; or

(ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(iii) After solicitation of a number of sources, competition is determined inadequate; or

(iv) No acceptable bids have been received after formal advertising; or

(v) The procurement of architectural/engineering and other professional services; or

(vi) The aggregate amount does not exceed $50,000.

* * * * *

7. Section 1942.19 is amended by revising paragraph (h)(2) to read as follows:

**§ 1942.19 Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants.**

* * * * *

(h) * * *

(2) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA will be registered in the name of "United States of America, Farmers Home Administration," and will remain so registered at all time while the bonds are held or insured by the United States. The address of FmHA for registration purposes will be that of the appropriate FmHA State Office.

Dated: February 17, 1987.

**Vance L. Clark,**

*Administrator, Farmers Home Administration.*

[FR Doc. 87-8706 Filed 4-16-87; 8:45 am]

BILLING CODE 3410-07-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 87-ANE-7]**

### Airworthiness Directives; Teledyne Continental Motors (TCM) IO-520 and TSIO-520 Series Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD) that would require ultrasonic inspection of airmelt and vacuum arc remelt steel alloy crankshafts and marking of the propeller mounting flange to indicate the heat codes and type of steel whenever the crankshaft is removed from the engine case or replaced on certain TCM 520 series engines. The proposed AD is needed to prevent the installation of crankshafts with subsurface fatigue cracks which could result in crankshaft failure with resultant loss of engine power.

**DATE:** Comments must be received on or before June 22, 1987.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to: Docket No. 87-ANE-7, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 87-ANE-7".

Comments may be inspected at Room 311 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin (M87-5] may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601.

A copy of the service bulletin is contained in the Rules Docket, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Jerry C. Robinette, Aerospace Engineer, Propulsion Branch, ACE-140A, Federal Aviation Administration, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-3810.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 87-ANE-7". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that subsurface fatigue cracks may be present in crankshafts used in TCM IO-520 and TSIO-520 series engines. There have been approximately 108 service difficulty reports between 1980 and 1986 concerning crankshaft failures. It has not been possible to assign a specific failure mode to these reports. They occur randomly and are not directly linked to specific forgings, heat codes, material processing or design. Ultrasonic inspection techniques have been developed by the manufacturer to test for subsurface defects on both new and used crankshafts. The ultrasonic inspection, if performed correctly, could preclude the installation of crankshafts with subsurface defects. Since these defects could exist or develop on other engines of the same type design, the

proposed AD would require ultrasonic inspection of the airmelt and vacuum arc remelt steel alloy crankshafts whenever the crankshafts are removed from the engine case or replaced on TCM IO-520 and TSIO-520 series engines.

**Conclusion**

The FAA has determined that this proposed regulation involves 35,000 engines and the approximate cost per engine per inspection would be $150. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket.

A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

**List of Subjects in 14 CFR Part 39**

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

The Proposed Amendment

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

**§ 39.13 [Amended]**

2. By adding to § 39.13 the following new Airworthiness Directive (AD):

**Teledyne Continental Motors:** Applies to Teledyne Continental Motors (TCM) IO-520 and TSIO-520 series engines.

Compliance is required as indicated unless already accomplished.

To prevent the installation of crankshafts with existing subsurface fatigue cracks, at the next, and every subsequent, crankshaft removal from the engine case or installation of a replacement crankshaft:

(a) Prior to installation in the engine, conduct an ultrasonic inspection in accordance with TCM Service Bulletin M87-5, dated February 16, 1987, and Crankshaft Ultrasonic Inspection Procedure, Form X30554, dated February 1981.

(b) If any cracks are found, replace crankshaft with serviceable crankshaft in accordance with TCM Service Bulletin M87-5, dated February 16, 1987.

(c) If no cracks are found, mark the propeller mounting flange in accordance with TCM Service Bulletin M87-5, dated February 16, 1987.

Note.—Accomplishment of the ultrasonic inspection does not set aside any requirements for magnaflux or other inspections specified in TCM overhaul manuals.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's service information identified and described in this document.

Issued in Burlington, Massachusetts on April 8, 1987.

Jack A. Sain,

*Acting Director, New England Region.*

[FR Doc. 87-8627 Filed 4-16-87; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 39**

**[Docket No. 82-ANE-10]**

**Airworthiness Directives; Garrett Turbine Engine Company, Model TSE331-3 and TPE331-1, -2, -3, -5 and -6 Series Turboshaft and Turboprop Engines.**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD) that would require periodic replacement/rework of the third stage turbine stator assembly on certain TSE/TPE331 series engines. The proposed AD is needed to prevent thermal fatigue failure of the sheet metal inner seal support which has resulted in uncontained third stage turbine wheel failures.

**DATES:** Comments must be received on or before June 17, 1987.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attn: Rules Docket No. 82-ANE-10, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 82-ANE-10".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable Service Bulletin (SB) No. TPE/TSE331-72-0384, Revision 2, dated March 20, 1987, may be obtained from Garrett Airline Service Division, Technical Publications, Department 65-70, P.O. Box 29003, Phoenix, Arizona 85072; telephone (602) 225-2969/-2973.

A copy of the SB No. TPE/TSE331-72-0384, Revision 2, dated March 20, 1987, is contained in Rules Docket No. 82-ANE-10, at the Federal Aviation Administration, New England Region, Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Roy A. McKimmon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 82-ANE-10". The postcard will be date/time stamped and returned to the commenter.

After issuing AD 84-01-04, Amendment 39-4792 in which paragraph (g) requires a one time replacement of the Part Number (P/N) 868379-1 third stage turbine stators with P/N 868379-3 stators on certain TSE/TPE331 series engines, the FAA and manufacturer have determined, based on service experience, that the manufacturer's recommended replacement interval of 6000 hours for the sheet metal inner seal support is inadequate. Three inner seal support failures, which resulted in uncontained third stage turbine wheel failures, occurred between 5000 and 6200 hours time-in-service. Although the failures initiated from low cycle fatigue, the material characteristics of the seal support were affected by time at high temperature. For this reason, the stators are life limited by hours rather than cycles. Since this condition is likely to exist or develop on other TSE/TPE331 series engines of the same type design, the proposed AD would require a periodic replacement/rework interval of the inner seal support on certain TSE/TPE331 series engines. If this proposal is adopted, the requirements set forth in paragraph (g) of AD 84-01-04, Amendment 39-4792, will be superseded.

**Conclusion**

The FAA has determined that this proposed regulation involves 1028 engines and the approximate cost would be $4,715 per engine. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

**List of Subjects in 14 CFR Part 39**

Engines, Air Transportation, Aircraft, Aviation Safety, Incorporation by reference.

**The Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding to § 39.13 the following new airworthiness directive (AD):

**Garrett Turbine Engine Company** (GTEC, formerly AiResearch Manufacturing Company Arizona). Applies to GTEC engine models TSE331-3 and TPE331-1, -2,-3,-5 and -6 series engines with P/N 868379-1, or -3 third stage turbine stator assemblies.

Compliance is required as indicated, unless already accomplished.

To prevent uncontained third stage turbine wheel failures, accomplish the following:

Replace P/N 868379-1 with a P/N 868379-3 third stage turbine stator assembly (if applicable); and rework P/N 868379-3 third stage stator assembly, per the schedule below, and thereafter at intervals not to exceed 4500 hours in service, all in accordance with the accomplishment instructions of Garrett Service Bulletin No. TPE/TSE331-72-0384, Revision 2, dated March 20, 1987, or FAA approved equivalent. Rework of the third stage stator support must include installation of a new sheet metal inner seal support.

| Third stage stator time since new or rework | Replacement and/or rework |
|---|---|
| Less than 4000 Hours | Prior to accumulating 4500 hours in in service service. |
| 4000 to 5000 hours | Within 500 hours in service after the effective date of this AD, or prior to accumulating 5200 hours in service, whichever occurs first. |
| Greater than 5000 hours | Within 200 hours in service after the in service effective date of this AD. |
| Time unknown | Within 200 hours in service after the effective date of this AD. |

This AD supersedes the requirements of AD 84-01-04, paragraph (g), pertaining to P/N 868379-1 third stage stators.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Los Angeles Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 4344 Donald Douglas Drive, Long Beach, California 90808;

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Los Angeles Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's service bulletin identified and described in this document.

Issued in Burlington, Massachusetts on April 3, 1987.

**Clyde DeHart, Jr.,**

*Acting Director, New England Region.*

[FR Doc. 87-8698 Filed 4-16-87; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

**16 CFR Part 13**

**[Docket No. 9154]**

## Volkswagen of America, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Troy, Mich., automobile company to offer impartial third-party arbitration programs to owners of certain Volkswagens and Audis with faulty valve seals and other oil consumption-related problems or with any internal engine component problems.

**DATE:** Comments will be received until June 16, 1987.

**ADDRESS:** Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** FTC/H-238A, Robert M. Doyle, Washington, DC 20580. (202) 326-3114.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

**List of Subjects in 16 CFR Part 13**

Arbitration, Automobiles, Trade practices.

**Agreement Containing Consent Order to Cease and Desist**

In the Matter of Volkswagen of America, Inc., a corporation, and Volkswagen AG, a corporation, Respondents.

The Agreement herein, by and between Volkswagen of America, Inc., a corporation ("VWoA"), hereinafter sometimes referred to as respondent, by its duly authorized officer, and its attorneys, and Volkswagen AG, a corporation ("VWAG"), by its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Volkswagen of America, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 888 West Big Beaver Road, in the City of Troy, State of Michigan.

Volkswagen AG is a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany with its office and principal place of business located at 3180 Wolfsburg, Federal Republic of Germany.

2. Respondent Volkswagen of America and Volkswagen AG have each been served with a copy of the Complaint issued by the Federal Trade Commission charging them with violation of section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a) (1980), and have each filed an answer to said complaint denying said charges.

3. This Agreement is for settlement purposes only and does not constitute an admission by respondent VWoA or by VWAG that the law has been violated as alleged in the said copy of the Complaint issued by the Commission.

4. Respondent Volkswagen of America, Inc. admits the jurisdictional facts set forth in the Commission's Complaint in this proceeding, except as set forth in Paragraph 3 of said Complaint.

5. Respondent Volkswagen of America, Inc. waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

6. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent VWoA: (1) Issue its decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to Order to respondent's address as stated in this Agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint and Answer may be used in construing the terms of the Order not defined therein, and no agreement, understanding, representation, or interpretation not contained in the order or the Agreement may be used to vary or contradict the terms of the Order.

8. Respondent Volkswagen of America has read the Complaint and the Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

9. Volkswagen AG is a party to this agreement only for purposes of the dismissal of the complaint filed against it in Docket 9154.

**Order**

Definitions

For the purposes of this Order, the following definitions shall apply:

A. "VWoA"—Volkswagen of America, Inc., and its successors and assigns, and their officers, representatives, agents, and employees.

B. "Covered Vehicle"—A 1974–1979 model year gasoline powered Volkswagen or Audi vehicle equipped with a water-cooled engine, that was:

(1) Distributed for sale in the United States by VWoA,

(2) Warranted in writing by VWoA, or

(3) Certified by the manufacturer to the National Highway Traffic Safety Administration and Environmental Protection Agency as meeting Federal safety and emissions standards.

C. "Specified Claims"—Claims made at any time prior to the expiration date of this Order by present or former owners or lessees (unless the lessor bore the cost of the claim) of covered vehicles concerning excessive oil consumption or engine damage due to lack of lubrication in covered vehicles other than claims for personal injury, damage to property other than the vehicle itself, or consequential damages such as lost value, profits, wages, or business opportunities. Specified claims do not include claims for which the owner or lessee has executed a release in consideration of settlement of an individual lawsuit. Specified claims also do not include claims that are covered by a binding final judgment on the merits in an individual lawsuit.

D. "Dealer"—Any person, partnership, firm or corporation which, pursuant to a Volkswagen or Audi Dealer Agreement with VWoA or any of its independent distributors, purchases or receives on consignment from VWoA or its independent distributors vehicles for resale or lease to the public, including persons, partnerships, firms, or corporations owned or operated by VWoA or its independent distributors.

E. "Internal engine components"—All gasoline and diesel engine parts, components, and subassemblies included within the complete short block and cylinder head assemblies, including short blocks and cylinder heads, camshafts, valve train components, timing gears, flywheels, pistons, piston rings, crankshafts, connecting rods, and bearings, oil pumps, and associated fasteners, seals and gaskets.

F. "Product Service Publication" ("PSPs")—"Product Circulars," "Service Circulars," "Technical Bulletins," and other documents substantially the same in content and purpose issued from time to time by VWoA to dealers, to regional offices or to independent distributors, or individual articles, notices, entries or the like in such documents, which describe, or recommend or discuss:

(1) Diagnostic, repair, or maintenance procedures; or

(2) Additional parts or upgrades or different replacement parts; or

(3) Non-repair information regarding the use and care of vehicles.

If a publication contains more than one subject which is considered a PSP, then each such subject shall be considered to be an individual PSP.

PSPs do not include publicly available repair manuals, parts catalogs, price lists or supplements thereto.

G. "Product Condition"—The condition of a vehicle that gives rise to any repair, maintenance, use and care or diagnostic procedures or the use of additional, upgraded or different parts, that is or would be described in PSPs.

H. "PSP Index"—A document, clear and comprehensible to prospective purchasers and vehicle owners, which contains entries for all PSPs published during the term of this Order by VWoA.

(1) Each index shall contain an introductory section, which shall include the following information clearly and conspicuously stated:

(a) An explanation of the PSP Index and the "PSP Highlights" section;

(b) How to obtain PSPs from VWoA and how to review PSPs at VWoA's dealers;

(c) How to locate the "PSP Highlights" section; and

(d) The PSP prepared and issued pursuant to Paragraph G(1) of Section V.

(2) For each entry in the PSP Index, the following information will be clearly and conspicuously stated:

(a) The particular model(s), model year(s), and Vehicle Identification Numbers (if the PSP does not apply to the entire model year) to which the entry applies or potentially applies;

(b) The subject of the PSP;

(c) The major component or system of components to which the PSP relates;

(d) The identifying number of the PSP to which the entry relates; and

(e) Whether there is an entry in the "PSP Highlights" Section of the PSP index for the PSP;

(3) The PSP Index shall contain a separate section, readily accessible, entitled "PSP Highlights."

I. "PSP Highlights"—Information related to a particular PSP, that includes all of the following items as applicable:

(1) A description of the product condition;

(2) A description of the principal symptoms of the product condition;

(3) The steps or possible steps that can be taken to minimize or avoid the product condition;

(4) A statement that additional, upgraded or different parts are called for to address the product condition;

(5) A statement that the diagnostic, repair or maintenance procedure discussed in the PSP has to be repeated;

(6) A statement of the immediate and long-range performance consequences of the product condition; and, if avoidance of repair costs is a reason for undertaking the procedure, a statement of the estimated repair costs, if known, or, if not known, a characterization of such costs of not performing the procedures in a timely manner;

(7) The following statement: "The estimated cost of repairing this condition is [less than $150][approximately $150–$250][approximately $250–$400] [approximately $400–$800] [more than $800]." The cost range included shall be based on the cost calculated according to the formula set forth in Definition J(2);

(8) A description of the underlying PSP(s) sufficient to permit an interested person to identify and order the PSP(s) from VWoA or review it at a dealer; and

(9) To the extent not apparent from the foregoing, a disclosure of the primary intended benefit(s) of this information.

J. "Costs"—

(1) "Reference cost" in Paragraph D of Section I means one hundred sixty-five dollars ($165), adjusted in the month when this order is served and annually thereafter, by a ratio, the numerator of which is the most recently published quarterly "Implicit Price Deflator" for the Gross National Product (IPD), and the denominator of which is the IPD for the second quarter of 1985, adjustments to be rounded to the nearest dollar. IPDs used in these annual adjustments shall have been computed using the same base year.

(2) "Cost(s)" other than "reference cost" in Paragraph D of Section I shall be calculated by adding the suggested retail price for parts which are or may be required and the applicable national average dealer warranty labor rate charges multiplied by the time required to effectuate the repair, replacement, diagnosis or maintenance as determined by the applicable Suggested Repair Times Manual or other labor time guide used by VWoA in the calculation of warranty reimbursement rates.

K. "Background Statements"—The documents attached hereto as Attachments A, and A100, B, and B100.

L. "Claimant"—Any person, partnership, corporation, or other entity, other than

(a) A dealer, or

(b) Any other entity which is engaged in the business of repairing, servicing, selling, leasing or trading motor vehicles or motor vehicle engines, or

(c) A commercial enterprise which operates a fleet of more than fifteen vehicles.

M. "United States"—The fifty states, the District of Columbia, and all commonwealths, territories, and possessions.

N. "Independent distributor"—Worldwide Volkswagen, Inc., Riviera Motors, Inc., Volkswagen Mid-America, Inc., and any other person, partnership, firm or corporation that distributes VWoA's vehicles to dealers on a regular basis.

O. "Engine damage due to lack of lubrication"—Claims of damage to internal engine components caused by insufficient lubrication.

P. "MQ Service Action Program"—The recall and reimbursement campaign initiated by VWoA beginning in February 1982 which included offers to replace valve stem seals and to reimburse prior valve stem seal replacement up to $125 in 1977 through 1979 Volkswagen Rabbit and Scirocco vehicles equipped with gasoline engines.

Q. "Arbitration agreement"—The form that sets out issues to be arbitrated concerning claims relating to internal engine components as described in Rule 4 of Attachment C.

I

It Is Ordered that respondent Volkswagen of America, Inc., its successors and assigns, and their officers, representatives, agents, and employees, acting directly or through any subsidiary, division, or other device in connection with the advertising, offering for sale, sale, or distribution of any vehicle in or affecting commerce in the United States, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to continue VWoA's program of issuing PSPs in a manner comparable to the program as it existed in the years 1980 through the date of service of this Order, with such program to continue to take into account current criteria used for issuing PSPs, such as the frequency with which the product condition has occurred and is expected to occur, the repair costs to the consumer, and the significance to the consumer of the product condition; and failing to utilize information sources such as internal corporate testing and engineering programs, marketing and other surveys purchased or used by VWoA, information from the manufacturer(s) of affected vehicles or vehicle parts, and reports from customers, dealers, and independent distributors.

B. Within 30 days after the date of service of this Order, failing to prepare and issue PSP Indexes for the 1985 model year and thereafter failing to prepare and issue PSP Indexes for PSPs issued in each model year after the 1985 model year.

C. Failing to prepare and issue an entry in the PSP Index for each PSP issued, to include each such entry in an updated PSP Index, and to update cumulatively each quarter all PSP Index entries for all PSPs issued by VWoA, with each such updated PSP index to be forwarded to dealers and be available from VWoA within four months after issuance to dealers of any PSP that was not included in a prior index.

D. Failing to prepare and include an entry in the "PSP Highlights" section of the PSP Index, and reference it appropriately in the PSP Index, whenever:

(1) The PSP describes repair, maintenance, or diagnostic procedures not specifically covered in previously applicable repair manuals, either (i) where the cost of such procedures to a customer is reasonably expected to exceed the reference cost, or (ii) where the procedures are intended and designed to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost; or

(2) The PSP describes revisions to repair, maintenance, or diagnostic procedures in an existing repair manual where the revisions are intended and designed either (i) to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost, or (ii) to reduce such costs by an amount reasonably expected to exceed the reference cost; or

(3) The PSP describes modified (including additional, different, or upgraded) parts recommendations, where the modification is intended and designed (i) to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost, or (ii) to reduce such costs by an amount reasonably expected to exceed the reference cost; or

(4) The PSP describes (i) information revising or updating information contained in owner's manuals or maintenance schedules or (ii) non-repair information regarding the use and care of vehicles by vehicle owners or operators.

E. Beginning with the next model year commencing after the date of service of this Order, failing to disclose for each model year, in a clear and conspicuous manner, in each vehicle owner's manual or warranty booklet (where it shall be itemized in the Table of Contents and Index) for each of its vehicle lines,

(1) The following statement in the exact language set forth below:

**Updated Service Information You Can Obtain**

Volkswagen of America monitors product performance in the field and regularly sends to dealers the latest service information about [VW] [Audi] vehicles. Now, you too can get these bulletins.

Bulletins cover a wide variety of subjects: the proper use and care of your car; costly repairs; inexpensive repairs or adjustments which, if done early may avoid costly future repairs. Some bulletins describe repairs about new or unexpected conditions. Others describe improved repair procedures or parts improvements. All of this information can also help a qualified mechanic better service your vehicle.

Most bulletins apply to conditions affecting a small number of vehicles. Your dealer or a qualified mechanic may have to determine if a specific bulletin applies to your vehicle.

You can order any or all of these bulletins direct from Volkswagen of America or look at them at a [VW] [Audi] dealer. You can purchase a subscription to the bulletins which apply to a particular model and receive them as they are issued, or you can order an index which lists and identifies these bulletins and summarizes the most important ones. You also can order individual bulletins. However, the index is necessary to identify them.

(2) The above statement shall in addition provide at least the following information in clear and comprehensible language:

(a) Concerning indexes—

(i) Indexes list each PSP, provide ordering information for individual PSPs, and are cumulatively updated quarterly.

(ii) Indexes contain plain-language highlights and summaries of PSPs describing costly repairs and designed to help prevent major repairs or containing owner use and care information.

(iii) If there is a charge for PSP indexes, it shall be credited against any charge for PSPs ordered.

(iv) When consumers order any index, they will receive the latest applicable index for the model year of the car unless they request an index for a different model year.

(b) Concerning PSPs—

(i) The charge for individual PSPs, if any, and how to order them.

(c) Concerning subscriptions—

(i) The charge for subscriptions and how to order them.

(ii) That subscribers are entitled to all PSPs published for a model and model year.

(3) The following statement in the exact language set forth below, which shall be made in conjunction with the statement described above, but which shall not precede disclosure of the information described in Paragraphs E (2)(a) (i) and (ii) of Section I:

**Caution**

These bulletins are intended for qualified mechanics. They are not meant for the *casual* do-it-yourselfer. Qualified mechanics have the equipment, tools, safety instructions, and know-how to do a job properly and safely. Improperly performed repairs or maintenance can adversely affect the safety of your vehicle, possibly leading to accident or injury. They may also impair the economy, durability or reliability of your vehicle and may void the warranty on your car. If you are not sure that you can perform a job properly and safely, you should not risk trying to do so.

F. Beginning with the next model year commencing after the date of service of this Order,

(1) Failing to include for each model year, in each vehicle owner's manual, warranty booklet, or similar literature provided with the vehicle at the time of delivery to the original retail customer a postage-paid ordering coupon to obtain a properly identified PSP index (including PSP Highlights), a PSP, or subscription; or

(2) Failing to maintain a toll-free telephone system, which number shall be clearly and conspicuously disclosed in close proximity to the information set out in Paragraph E of Section I, to enable members of the public to order PSP indexes (including PSP Highlights, PSPs, or a subscription to PSPs).

G. Failing to furnish each dealer with:

(1) Each PSP Index (including PSP Highlights) on paper or through such other medium as approved by designated representatives of the Federal Trade Commission, related to the vehicles represented by that dealership; and

(2) Each PSP; and

(3) An adequate supply of postage-paid ordering coupons for PSPs, PSP subscriptions and PSP indexes.

H. Beginning with the date of service of this Order, and once in each 6-month period thereafter, failing to recommend and urge, in writing, that each dealer shall:

(1) Provide information on how to order PSPs to anyone who requests such information;

(2) Provide members of the public with ready access to the PSPs and PSP Indexes (including PSP Highlights) furnished to such dealers, including any equipment needed to enable members of the public to read PSPs at dealerships; and

(3) Update PSP Indexes (including PSP Highlights) immediately upon receipt.

I. Beginning with the next model year after the date of service of this Order, failing to include the following statement, in the exact language set out below, clearly and conspicuously on the face of the label required by the "Automobile Information Disclosure Act," 15 U.S.C. 1231 et seq., (1980)(as amended) on each vehicle distributed by VWoA in the United States:

UPDATED SERVICE INFORMATION—NOW YOU CAN GET USEFUL BULLETINS AND EASY-TO-READ SUMMARIES TO SERVICE YOUR CAR BETTER AND HELP AVOID COSTLY REPAIRS. THESE ARE THE SAME BULLETINS WE SEND YOUR DEALER. SEE YOUR DEALER'S INDEX OF PRODUCT CIRCULARS FOR DETAILS.

J. Beginning with the next model year after the date of service of this Order, failing to include the following statement, in the exact language set out below, clearly and conspicuously, in each principal point of sale catalog distributed by Volkswagen of America for each of its vehicle lines:

*A Word About Updated Service Information*

[Volkswagen] [Audi] regularly sends its dealers useful service information about our products. [Volkswagen] [Audi] monitors product performance in the field. We then prepare bulletins for servicing our products better and helping to avoid costly repairs. Now you can get these bulletins, too. To get ordering information, see a local [VW] [Audi] dealer.

K. Failing to include detailed information regarding the third-party arbitration program described in Sections III and IV, and the PSP program described in this section, in all ongoing and future training programs and in materials disseminated to dealers on subjects related to customer relations, beginning not later than one hundred eighty (180) days after service of this Order and continuing for the duration of this Order.

II

It Is Further Ordered, that:

A. Beginning with the date of service of this Order, upon written request by any person, VWoA shall mail or cause to be mailed, by first class mail, the following:

(1) Information describing PSPs, PSP Indexes, and PSP subscriptions, as well as how to obtain PSPs, PSP Indexes and PSP subscriptions;

(2) The most current PSP Index, *provided that,* the "PSP Highlights" in the PSP Index may be limited to the particular vehicle make, model and model year identified in the request;

(3) Any specifically identified PSPs;

(4) Subscriptions to all PSPs.

B. Subject to the limitations of this section, VWoA may, at its option, impose a reasonable charge for PSPs, PSP Indexes and PSP subscriptions. Any charge for a PSP Index must be credited toward the initial purchase of PSPs themselves. The maximum charges shall be as follows:

(1) For PSP Indexes ordered:

(a) Model years prior to 1988, no charge;

(b) Through 1990, a charge not to exceed two dollars ($2.00) for any PSP Index;

(c) For years 1991 and thereafter, a charge not to exceed three dollars ($3.00) for any PSP Index.

(2) For individual PSPs, a charge not to exceed four dollars ($4.00) for the first PSP requested in each order and two dollars ($2.00) for each additional PSP requested in that order;

(3) For PSP subscriptions, a charge not to exceed the lower of the reasonable cost or the charge (if any) to dealers.

C. VWoA may offer subscriptions of any duration, *provided that,* VWoA offers the option of a subscription with a one-year duration.

III

It Is Further Ordered that:

A. VWoA shall make available in the United States to claimants an arbitration program, which shall be administered through an independent and impartial third party, to resolve expeditiously and fairly (1) each specified claim regardless of time in service, mileage, or whether the claimant still owns or leases the vehicle; and (2) each claim made or renewed after the date of service of this order by owners and lessees (unless the lessor bore the cost of the claim) of any Volkswagen or Audi vehicle distributed by VWoA, warranted in writing by VWoA, or certified by the manufacturer to the responsible federal agencies as meeting applicable federal safety and emission standards involving the claimed failure, malfunction, repair or replacement of internal engine components while the claimant owns or leases the vehicle, regardless of time in service or mileage.

*provided, however,* that VWoA need not make the arbitration program described above available to claimants:

(1) For claims involving repairs required to place in operating condition an engine which was not operable when the vehicle was purchased or leased by an owner or lessee, other than the original retail purchaser or original lessee; or

(2) For claims involving internal engine components:

(a) Whose claims were the subject of a claim by a prior owner or lessee which was settled or resulted in an arbitration award which the prior owner or lessee accepted, or

(b) If the claimant sells the vehicle prior to sixty days after the claimant notified the independent and impartial third party administrator of the claim, unless the claimant does the following:

(i) Notifies VWoA in writing at least ten days before the vehicle is disposed of; and

(ii) Gives VWoA an opportunity to inspect the vehicle at a mutually convenient time and place.

B. The decision of the arbitrator shall be binding on VWoA, but non-binding on the claimant, unless the claimant elects to accept an arbitration award.

C. (1) With respect to specified claims, such third-party arbitration program shall be conducted in accordance with the Modified Rules for Arbitration published by the Council of Better Business Bureaus as specially modified and set forth in Attachment D, and

(2) With respect to claims relating to internal engine components, such third-party arbitration program shall be conducted in accordance with the Modified Rules for Arbitration published by the Council of Better Business Bureaus as specially modified and set forth in Attachment C,

*provided, however,* the Rules for Arbitration may be modified only with the written approval of designated representatives of the Federal Trade Commission.

D. For two years after the date of service of this order, such third-party arbitration program shall be conducted at no charge to the claimant by VWoA or the independent and impartial third-party administrator. Thereafter, no charges shall be imposed on claimants by VWoA or the independent and impartial third-party administrator that exceeds charges specified in the Modified Rules for Arbitration published by the Council of Better Business Bureaus.

E. No settlement of or judgment on the merits in a class action lawsuit shall affect a claimant's right to request

arbitration of a specified claim or claim relating to internal engine components under this Order, *provided that*, a specified claim or claim relating to internal engine components is not eligible for arbitration if:

(1) The claimant received actual notice of the pendency or settlement of the class action; and

(2) The notice of pendency and, if applicable, settlement of such class action was approved by designated representatives of the Federal Trade Commission prior to submission of the notice to the court by VWoA, as fully, accurately, clearly and conspicuously disclosing the availability of the arbitration program described in Sections III and IV; and

(3) The claimant did not request exclusion from the class action or settlement, or the claimant received payment pursuant to the class action settlement or judgment on the merits; *provided, however,* that arbitration shall continue to be available during the pendency of the class action proceeding until settlement or judgment is entered on the merits, regardless of whether the claimant requested exclusion from the proceeding.

F. Such third-party arbitration program shall be fully operational pursuant to the terms of this order no later than forty-five (45) days after the date of service of this Order, and thereafter expanded as demands on the program may require to resolve consumer complaints expeditiously.

G. VWoA shall, by first class mail, mail or cause to be mailed Attachment G in response to any claimant with a claim relating to internal engine components, within thirty days after receipt of such claim, unless the claimant's request for repair or reimbursement or other compensation is fully met.

H. Notwithstanding any other provision of this Order, the mediation and arbitration program described in Sections III and IV shall be available to members of the armed forces stationed at military installations located outside the United States and their dependents, *provided, however,* that only arbitration by mail must be available as long as such claimants are located outside the United States.

IV

It is further ordered that:

A. Prior to sixty (60) days after the date of service of this Order, VWoA shall contact, by first-class mail, each attorney general's office (or such other office as may be appropriate) of the fifty states, the District of Columbia, commonwealths, territories and possessions, and shall:

(1) Provide each such office with a copy of this Order.

(2) Describe in such mailing VWoA's third-party arbitration program.

(3) Describe in such mailing the PSPs and PSP Indexes and explain how consumers can obtain them.

(4) Inform each such office that VWoA will, if the appropriate office wishes, within fifteen days after receipt from such office or sixty days after the date of service of this order, whichever is later, notify by first-class mail each person who has complained to that office about a specified claim, and that VWoA will provide that person in the same mailing envelope with:

(a) Information about the availability of VWoA's third-party arbitration program; and

(b) One or more of the appropriate Background Statements as required to be distributed pursuant to Paragraph B of Section IV in connection with any specified claim.

(5) Request that each such office provide VWoA with (a) a copy of each complaint that may include a specified claim; or, at the option of that office, (b) the owner's name and address, and the nature of the specified claim.

(6) Inform each such office that VWoA will also send, by first-class mail, a notice to any person who has complained to any other state or local law enforcement or consumer affairs office about a specified claim, and urge such office to encourage state and local law enforcement or consumer affairs offices to forward to VWoA either copies of such complaints, or, at the option of the forwarding office, a list of the names, and addresses of persons with specified claims and the amount and nature of each such claim, if known.

B. For purposes of Paragraph B of Section IV only:

—A "claim" has been made if, for any oral or written request for reimbursement or repair, a document was created or received by VWoA or any of its independent distributors, including, but not limited to, warranty records, consumer letters, dealer reports, or records of telephone complaints;

—"Open or unsatisfactorily resolved" claims are any claims for which the claimant did not receive all payments or free repairs claimed or requested.

VWoA shall send by first class mail Attachments A (or A100, if the vehicle was an Audi 100), B (or B100 if the vehicle was an Audi 100), E(2) and F, and a postage-paid return envelope, or, if VWoA wishes to make an initial settlement offer, Attachments A (or A100 if the vehicle was an Audi 100), B (or B100 if the vehicle was an Audi 100), E(1) and F, and a postage-paid return envelope to the following:

(1) Every claimant who, prior to the [date of service of this Order], had made a specified claim to VWoA that is open or unsatisfactorily resolved or who, prior to the [date of service of this Order] notified VWoA's independent distributors of such claim(s);

(2) Every claimant who has received reimbursement of $125 under VWoA's MQ service action program, and who submitted repair orders or other documentation showing that one or more of the following repairs occurred at a total expense of more than $125.00 which has not been fully reimbursed as of the date of service of this Order:

(a) Cylinder head replacement;

(b) Any repair involving cylinder head removal and valve repair;

(c) Replacement of the engine short block;

(d) Replacement of any one or more of the following:

(i) Crankshaft;

(ii) Connecting rod(s);

(iii) Main bearing(s);

(iv) Connecting rod bearing(s);

(v) Pistons;

(vi) Piston rings.

(3) Every claimant with a specified claim whose name had been supplied to VWoA by the offices referred to in Paragraph A of Section IV, the Federal Trade Commission, or any other consumer affairs office or any third party, and whose specified claim remains open or unsatisfactorily resolved prior to the date of service of this Order.

(4) Every claimant with a specified claim which is open or unsatisfactorily resolved whose name will have been supplied to VWoA after the date of service of this Order by the offices referred to in Paragraph A of Section IV, the Federal Trade Commission, or any other consumer affairs office or any third party; and

(5) Every claimant with a specified claim which is open or unsatisfactorily resolved who, orally or in writing, contacts VWoA, any office of the independent and impartial third party administrator, or VWoA's independent distributors after [the date the Commission accepts this Order for comment].

*Provided, however,* that for any mailing made pursuant to this section which is returned to the sender as being undeliverable, VWoA shall make a reasonable attempt to obtain the claimant's current address, and shall

send the mailing by first class mail to the claimant's current address; *provided, further,* Attachments A and B or Attachments A100 and B100, as applicable), shall be fastened or otherwise physically attached with Attachment B (or Attachment B100) on top of Attachment A (or Attachment A100).

C. The following deadlines shall apply:

(1) For initially mailing the materials specified in Paragraph B of Section IV:

(a) With respect to claimants included in Paragraphs (B) (1), (2) and (3) of Section IV, all materials shall be mailed according to the following schedule:

(i) Not less than 25% of the total number shall be mailed within 15 days of the date of service of this order;

(ii) Not less than 50% of the total number shall be mailed within 45 days of the date of service of this order;

(iii) Not less than 75% of the total number shall be mailed within 75 days of the date of service of this Order; and

(iv) 100% of the total number shall be mailed within 90 days of the date of service of this Order.

(b) With respect to claimants included in Paragraphs (B) (4) and (5) of Section IV, whose claims are not included in Paragraphs (B) (1), (2) or (3) of Section IV, all materials shall be mailed within fifteen days after receipt by VWoA, the independent and impartial third party administrator, or VWoA's independent distributors of the name and address of the claimant, or sixty days after the date of service of this order, whichever is later.

(2) For the handling of specified claims:

(a) (i) Claimants who accept settlement offers shall be sent the applicable monetary amount within forty-five (45) days after the settlement offer acceptance is received by VWoA;

(ii) Claimants who accept arbitration awards shall be sent the applicable monetary amount within forty-five (45) days after the arbitration award acceptance is received by the independent and impartial third party administrator.

(b) (i) Any applicable repair shall be performed within thirty (30) days after the settlement offer acceptance is received by VWoA;

(ii) Any applicable repair shall be performed within thirty (30) days after the arbitration award acceptance is received by the independent and impartial third party administrator, except as otherwise ordered by the arbitrator for good cause shown.

(c) Claimants who request to participate in the independent and impartial third party arbitration program by returning the "RESPONSE TO VOLKSWAGEN MEDIATION AND ARBITRATION PROGRAM" form included with Attachment E (1) or (2), shall have an arbitration hearing completed within 60 days after the "RESPONSE TO VOLKSWAGEN MEDIATION AND ARBITRATION PROGRAM" form included in Attachment E (1) or (2) is received by VWoA, regardless of whether the claimant requests mediation services. *Provided,* however, that delays attributable solely to the claimant shall not be included in the calculation of deadlines. The burden of proving that the delay is attributable solely to the claimant shall be on VWoA;

(3) For claims involving internal engine components that do not involve specified claims:

(a) An arbitration hearing shall be completed within sixty (60) days after the claimant provides the independent and impartial third party administrator with the model, model year, and Vehicle Identification Number of the vehicle and a statement describing the nature of the complaint, regardless of whether the claimant requests mediation services. *Provided, however,* that delays attributable solely to the claimant shall not be included in the calculation of deadlines. The burden of proving that the delay is attributable solely to the claimant shall be on VWoA;

(b) (i) (1) Claimants who accept settlement offers shall be sent the applicable monetary amount within forty-five (45) days after the settlement offer acceptance is received by VWoA;

(2) Claimants who accept arbitration awards shall be sent the applicable monetary amount within forty-five (45) days after the arbitration award acceptance is received by the independent and impartial third party administrator;

(ii) (1) Any applicable repair shall be performed within thirty (30) days after the settlement offer acceptance is received by VWoA;

(2) Any applicable repair shall be performed within thirty (30) days after the arbitration award acceptance is received by the independent and impartial third party administrator, except as otherwise ordered by the arbitrator for good cause shown.

D. Claimants with specified claims may not be required to fill out any other form to request an arbitration hearing once they have checked Choice 2 or 3 on the form included with Attachment E(1) or Choice 1 or 2 on the form included with Attachment E(2).

E. VWoA may not request a claimant who accepts an offer to settle a specified claim to execute a statement releasing VWoA from further liability if the statement purports to release VWoA from liability that, at the time the claim was settled, would not have been subject to arbitration as described in Sections III and IV.

F. Within thirty (30) days of service of this Order, VWoA shall provide to its independent distributors and appropriate employees of VWoA, including employees who have responsibility for receiving and responding to consumer complaints, written instructions stating that all consumers who make a specified claim in any oral or written communication received after the date of service of this Order must be sent, by first-class mail, a letter providing the documents specified in Paragraph B of Section IV, above, within fifteen days, or sixty days after the date of service of this order, whichever is later.

G. VWoA may make an immediate binding settlement of a specified claim prior to the initiation of mediation or arbitration, *provided that,* prior to the settlement, the claimant received all of the materials required to be sent to the claimant pursuant to Paragraph B of Section IV (either Attachments E(1) or E(2) (Cover letter) and Attachments A (or A100, as applicable), B (or B100, as applicable) (Background Statements), and F (BBB specified claim brochure)).

H. All envelopes sent pursuant to Paragraph B of Section IV shall bear no marking, other than the name and address of VWoA and the addressee, and the words "IMPORTANT REIMBURSEMENT INFORMATION" disclosed conspicuously on the front.

I. VWoA shall offer to each claimant at the outset of each arbitration hearing all of the materials required to be sent to the claimant pursuant to Paragraph B of Section IV (either Attachments E(1) or E(2) (Cover letter) and Attachments A(or A100, as applicable), B(or B100, as applicable) (Background Statements), and F (BBB specified claim brochure)).

J. VWoA shall obtain, maintain, and retain for a period of three (3) years from the date of resolution of each claim, records sufficient to show to the satisfaction of designated representatives of the Federal Trade Commission:

(1) For each specified claim:

(a) The following dates as applicable:

(i) The date VWoA received the claimant's name and address, if the specified claim was received by VWoA pursuant to Paragraphs B (4) and B (5) of Section IV;

(ii) The date the materials described in Paragraph B of Section IV were mailed;

(iii) The date each written response was received by VWoA from the addressee of Attachment E(1) or E(2);

(iv) The date an arbitration hearing was scheduled;

(v) The date the arbitration hearing was completed;

(vi) The date the arbitrator's decision was received by the independent and impartial third-party administrator;

(vii) The date(s) VWoA made each offer to settle the claim;

(viii) The date the claimant accepted or rejected each settlement offer;

(ix) The date the claimant accepted or declined the arbitrator's award;

(x) The date a check was sent to satisfy an arbitration award or settlement agreement;

(xi) The date scheduled for any repair offered as a result of an arbitration award or settlement agreement;

(xii) The date any repair offered as a result of an arbitration award or settlement agreement was actually performed.

(b) The following documents and information, as applicable:

(i) The vehicle model;

(ii) The vehicle model year;

(iii) The vehicle identification number;

(iv) A brief description of the alleged problem, including whether the claimant included information suggesting that excessive oil consumption or engine damage due to lack of lubrication might be involved;

(v) The resolution(s) sought by the claimant: repair, cash reimbursement or vehicle repurchase;

(vi) The amount, if any, of cash reimbursement sought;

(vii) The terms of each offer, if any, made by VWoA to settle the claim;

(viii) The response of the claimant to each settlement offer;

(ix) A copy of each arbitrator's decision including the amount of any cash reimbursement;

(x) Whether the claimant accepted the arbitrator's award;

(xi) The name and address of each claimant who owned or leased a covered vehicle, and requested to participate in the mediation and arbitration program set forth in Sections III and IV, and was refused the opportunity to participate in the mediation and arbitration program.

(xii) The reason(s) each claimant described in Paragraph J(1)(a)(xi) of Section IV was determined not to have a specified claim.

(xiii) The reason(s) known to VWoA or the independent and impartial third party administrator for the failure to resolve a claim other than by settlement or an arbitration decision;

(xiv) If the claim is settled, whether a third-party mediator actively participated in settlement discussions.

(xv) A copy of the "RESPONSE TO VOLKSWAGEN MEDIATION AND ARBITRATION PROGRAM" form completed by the claimant;

(c) The name and address of each claimant who contacts orally VWoA, the independent and impartial third-party administrator, or VWoA's independent distributors and states facts that suggest that the claimant may have a specified claim.

(2) For each mediation or arbitration of a claim involving an internal engine component:

(a) The following dates, as applicable:

(i) The date VWoA mailed Attachment G, described in Paragraph G of Section III;

(ii) The date the claimant first contacted the independent and impartial third-party administrator;

(iii) The date the independent and impartial third-party administrator received from the claimant the model, model year, Vehicle Identification Number of the vehicle and a statement describing the nature of the claim;

(iv) The date VWoA was notified by the independent and impartial third-party administrator that a claim involving internal engine components had been lodged;

(v) The date the arbitration agreement was sent to the claimant;

(vi) The date the arbitration agreement was received from the claimant by the independent and impartial third-party administrator;

(vii) The date the initial arbitration hearing was scheduled;

(viii) The date the initial arbitration hearing was completed;

(ix) The date the arbitration decision was mailed to the claimant;

(x) The date the claimant accepted or rejected each settlement offer from VWoA;

(xi) The date the claimant accepted or rejected an arbitration award.

(b) The following information:

(i) The vehicle model;

(ii) The vehicle model year;

(iii) The vehicle identification number;

(iv) A brief description of the problem alleged;

(v) The resolution(s) sought by the claimant: repair, cash reimbursement or vehicle repurchase;

(vi) The amount, if any, of cash reimbursement sought;

(vii) The terms of each offer, if any, by VWoA to settle the claim before the claimant contacted the independent and impartial third-party administrator;

(viii) The terms of each offer, if any, by VWoA to settle the claim after the claimant contacted the independent and impartial third-party administrator;

(ix) The response of the claimant to each settlement offer;

(x) A copy of each arbitrator's decision including the amount of any cash reimbursement;

(xi) Whether the claimant accepted or rejected the arbitrator's award;

(xii) The reason(s) for the failure to resolve a claim other than by settlement or an arbitration decision;

(xiii) If the claim is settled, whether a third-party mediator actively participated in settlement discussions.

(xiv) A copy of the arbitration agreement.

(xv) The name and address of each claimant, who requested the opportunity to participate in the third-party mediation and arbitration program set forth in Sections III and IV, and was refused the opportunity to participate in said mediation and arbitration program.

(xvi) The reasons each claimant specified in Paragraph J (2)(b)(xv) was determined not to be eligible to participate in the mediation and arbitration program set forth in Sections III and IV.

(3) Computer disks, tapes or other computer-readable media created or maintained by VWoA, on behalf of VWoA, or by the independent and impartial third party administrator that contain any information specified in Paragraphs J(1) and J(2) of Section IV, and necessary relevant programming and other explanatory data sufficient to enable the Federal Trade Commission to read and analyze the data contained on such media.

V

It is further ordered that:

A. At least two times, at least one month apart, within 120 days after the date of service of this order, VWoA shall place and cause to be disseminated the advertisement attached as Attachment H(1) in national magazines as full-page advertisements. At least two times, at least one month apart, within 120 days after the date of service of this order, VWoA shall place and cause to be disseminated the advertisement attached as Attachment H(2) in national magazines as full-page advertisements. Each time Attachment H(1) is placed and each time Attachment H(2) is placed, the magazines must have a combined total non-duplicated readership ("net reach") of at least seventy-five million adults as measured by an outside organization generally recognized as competent and

experienced in this field and used by VWoA or its advertising agencies for other advertising research. The demographic characteristics for the combined total readership of the magazines selected for such advertisements must be generally representative of the demographic characteristics of the population of owners and potential purchasers of Volkswagen vehicles (for Attachment H(1)) and Audi vehicles (for Attachment H(2)).

B. Beginning with the next model year commencing after the date of service of this Order, VWoA shall annually include in any edition of each proprietary magazine sent by VWoA to a primary target audience of VWoA's vehicle owners:

(1) The statements set forth in Paragraph J of Section I set forth clearly and conspicuously; and

(2) a full page reproduction of Attachment H(1) for Volkswagen owners, or Attachment H(2) for Audi owners, as applicable.

C. Within thirty days after the date of service of this Order, VWoA shall furnish to each of its dealers three display posters, with the form and content of Attachment I(1) (for Volkswagen dealers) or I(2) (for Audi dealers), each at least 24" x 36". Thereafter, VWoA shall furnish additional copies of these posters upon request by any dealer.

D. Beginning with the date of service of this Order, and once in each 6-month period thereafter, VWoA shall recommend and urge, in writing, that each dealer shall:

(1) Place the display poster, described in Paragraph C of Section V, in conspicuous and accessible locations within:

(a) Service waiting areas; and

(b) Parts departments; and

(c) Service payment areas.

E. (1) Within five (5) days after the date of service of this Order, VWoA shall establish and maintain a toll-free telephone system which will elicit information to enable current and former owners and current and former lessees to enter the independent and impartial third-party arbitration programs set forth in Sections III and IV. The toll-free telephone system shall have sufficient capacity to enable each call made by owners and lessees to be answered reasonably promptly. Each caller shall be requested to furnish the following information, which shall be documented:

(a) Name, address and telephone number of the caller;

(b) Model and model year of the vehicle;

(c) Nature of the claim, including sufficient information to ascertain whether a specified claim is alleged, and, if so, whether the specified claim includes an allegation of engine damage from lack of lubrication.

(d) The date of the call.

(2) Each caller to the toll-free number described in Paragraph E(1) of Section V shall also (a) be informed that, if the caller states facts suggesting that a specified claim may be involved, that VWoA will mail a letter describing the third-party arbitration program to the caller; or b) if the caller states no facts suggesting that the claim may be a specified claim, the caller shall be informed of the toll-free telephone number (or "call collect" number, as applicable), of the local office of the independent and impartial third-party administrator.

F. Beginning with the next model year commencing after the date of service of this Order, VWoA shall include the following information, in a clear and conspicuous manner, in each vehicle owner's manual or warranty booklet (where it shall be itemized in the Table of Contents and Index):

(1) A description of the mediation and arbitration program for internal engine components required by Sections III and IV;

(2) An explanation of how the owner or lessee can enter the mediation and arbitration program;

(3) A description of applicable time deadlines as set forth in Paragraph C (3) of Section IV;

(4) The toll-free telephone number described in Paragraph E of Section V.

(5) A statement that there is no charge to the consumer for participating in the program, if such is the case, or a statement of any charges to the consumer for participating in the program; and

(6) A statement that the arbitration award is binding on VWoA, but is not binding on the consumer, unless the consumer elects to accept the arbitration award.

G. (1) Within 30 days after the date of service of this Order, VWoA shall prepare and issue a PSP which includes the following information:

(a) A description of the mediation and arbitration program for internal engine components required by Sections III and IV;

(b) An explanation of how the owner or lessee can enter the mediation and arbitration program;

(c) A description of applicable time deadlines as set forth in Paragraph C(3) of Section IV;

(d) The toll-free telephone number described in Paragraph E of Section V;

(e) A statement that there is no charge to the consumer for participating in the program, if such is the case, or a statement of any charges to the consumer for participating in the program; and

(f) A statement that the arbitration award is binding on VWoA, but is not binding on the consumer, unless the consumer elects to accept the arbitration award.

(2) The PSP referred to in Paragraph G(1) of Section V shall, during the term of this order, be included with each PSP index ordered.

VI

It is further ordered that Sections I, II, III, IV, and V of this Order shall expire eight years after the date of service hereof; *provided,* that if at any time during which said sections remain in effect, the Commission issues a final trade regulation rule imposing obligations on the automobile industry comparable to those imposed under any such section(s), such section(s) shall terminate upon the effective date of such rule, and, in such event, VWoA shall advise the Commission of its intention to rely upon any such rule as having terminated and superseded such section(s) of this Order thirty (30) days in advance of reliance thereon: *provided further,* that if at any time during which such section(s) remain in effect the Commission issues a final guide under Sections 1.5 and 1.6 of the Commission's Rules of Practice imposing obligations on the automobile industry comparable to those imposed under any such section(s), then the Commission shall, upon VWoA motion or upon the Commission's own motion, reopen this proceeding within one hundred twenty (120) days of such motion, and, within a reasonable time thereafter, vacate any such section(s) of this Order, unless the Commission finds that such action is not required by changed conditions of law or fact or is not in the public interest; and *provided further,* that nothing herein shall preclude VWoA at any time from moving the Commission to alter, modify, or set aside this Order under the Commission's Rules of Practice.

VII

It is further Ordered that:

A. VWoA shall, within one hundred twenty (120) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

B. VWoA shall, within one hundred twenty (120) days after the implementation of the PSP program

described in Sections I and II of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which VWoA has complied with Sections I and II of Order.

C. VWoA shall, upon request of designated representatives of the Federal Trade Commission, but no more frequently than every one-hundred eighty days, while Sections III and IV of this Order are in effect, file with the Commission a report compiling and summarizing data describing settlements, mediations, and arbitrations and accompanying deadlines undertaken pursuant to Sections III and IV which have occurred since the previous such report had been completed. Such report shall include accurate summaries of the data required to be kept pursuant to Paragraph J of Section IV. VWoA shall also transmit to the Commission upon request the computer media and explanatory and programming information required by Paragraph J(3) of Section IV.

D. VWoA shall retain and transmit to the Commission upon reasonable request:

(1) A copy of each PSP Index required by Section I, and a copy of each PSP;

(2) A copy of each poster furnished to dealers pursuant to Paragraph C of Section V.

E. VWoA shall, on a bi-annual basis beginning 6 months after the date of service of this Order, monitor and document, based on the personal observations of VWoA or independent distributor employees, each dealer's compliance with the items set forth in Paragraph H of Section I above and Paragraph D of Section V above, *provided, however,* that VWoA shall not be required to monitor and document the compliance with Paragraph H of Section I and Paragraph D of Section V by a dealer if no employee of VWoA or an independent distributor has visited that dealer within the previous six-month-period to review the dealer's sales, service, or customer relations activities.

F. VWoA shall retain records relative to the manner and form of its continuing compliance with Sections I, II, III, IV, V and VI for a period of three (3) years, and shall make said records available for inspection upon reasonable notice by the Federal Trade Commission. If copies of any such records are requested, VWoA may, at its option, either make such records available for copying purposes or provide copies at either (1) rates the Commission charges for copies of records released pursuant to the Freedom of Information Act, or (2) VWoA's costs, whichever is lower.

G. Upon request by the Federal Trade Commission, VWoA shall obtain and make available to the Federal Trade Commission in the English language within forty-five days after the request any records relevant to Paragraph A of Section I in the possession of the manufacturer of any vehicles, engines, or transmissions which VWoA imports or distributes; *provided, however,* that submission of such records shall neither constitute nor be deemed an admission by any entity from which they are obtained of *in personam* jurisdiction of the Commission over such entity; *provided further,* that nothing in this section shall be construed to affect the Commission's access to any records, documents, or other information pursuant to compulsory process or other means.

H. VWoA shall take all necessary legal and equitable action to enforce promptly and in good faith its contractual or other rights to obtain records requested by the Federal Trade Commission pursuant to Paragraph G of Section VII.

I. During the time that Sections I, II, III, IV and V remain in effect, VWoA shall notify the Commission prior to any change in VWoA's corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VIII

It is further ordered that the provisions of this Order shall be limited in their application to the United States.

IX

It is further ordered that the complaint against Volkswagen AG, a corporation, is hereby dismissed.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Volkswagen of America.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed consent order settles a complaint, issued by the Commission in April 1981, that charged Volkswagen of America and its parent firm, Volkswagen AG, with failing to disclose material product information about various oil-related engine problems to prospective purchasers and owners of 1974–79 Volkswagen and Audi vehicles equipped with water-cooled gasoline engines. The complaint charged that Volkswagen knew or should have known of the conditions that led to the oil-related problems, but failed to disclose them. According to the complaint, the failure to disclose these conditions led to substantial consumer injury and was deceptive and unfair within the meaning of Section 5 of the Federal Trade Commission Act.

The proposed order contains two principal requirements. Volkswagen of America will be required to institute a system of broader and more effective disclosure of product information for its vehicles sold since the beginning in the 1984 model year. Volkswagen of America will also be required to offer arbitration to consumers through an impartial and independent third-party for the oil-related problems in 1974–79 vehicles described in the complaint and for internal engine components for any Volkswagen of Audi vehicle distributed by Volkswagen of America.

The principal requirements are based on similar provisions contained in a previous order the Commission accepted against General Motors Corp. in 1983. *General Motors,* D. 9145. There are substantial differences, however, between this order and the *GM* order to account for differences in the facts of the two cases, different corporate structures, and the experience the Commission has had in enforcing the *General Motors* order.

The product information disclosure program requires that Volkswagen of America make available to the public bulletins that it routinely sends to its dealers. In addition, VWoA must prepare and make available indexes of the bulletins and easy-to-understand summaries of the more significant bulletins. Consumers will learn about existence of the program through a statement placed on the federally mandated retail price and gasoline mileage window sticker placed on each new car, a statement in each owner's manual, and references to the program in brochures and other promotional materials.

The product information program will assist prospective purchasers of new cars in making informed judgments about Volkswagen of America's vehicles. The indexes, bulletins, and summaries will also be useful to owners

of vehicles who want to understand better any problems they are having with their vehicles and who want to use and maintain their cars according to the latest, most accurate recommendations.

The second principal requirement of the order is an arbitration program for resolving complaints concerning engines in Volkswagen of America's vehicles. The program must be administered by an independent and impartial third-party. Volkswagen presently contemplates that the Council of Better Business Bureaus, Inc. will be the administrator of the program.

There are two parts of the program. Owners and lessees of 1974–79 VWs and Audis with water-cooled gasoline engines will be eligible to arbitrate their claims for repairs caused by excessive oil consumption and engine damage due to lack of lubrication. Consumers will be eligible regardless of whether they still own the car. Volkswagen will be required to notify consumers by first-class mail who have previously complained to the FTC, to Volkswagen or to other third-parties. In addition, there are two "Background Statements" which consumers will receive to assist in pressing their claims. The Background Statements describe in detail the oil-related problems and present opposing views of the FTC and Volkswagen on controverted issues. The Background Statements should prove useful in focusing the issues in arbitrations and in enabling consumers to make effective arguments to arbitrators. The Background Statements will also enable consumers to evaluate the strengths of their cases in deciding whether to accept settlement offers that Volkswagen may make to resolve claims prior to arbitrations.

The other part of the arbitration program permits owners and lessees of any make or model of Volkswagen or Audi vehicles to arbitrate claims involving internal engine components. Claims under this portion of the program will be handled in much the same way as the oil-related claims discussed above. However, there will not be any Background Statements and the consumer must still own or lease the vehicle at the time the claim is made to the third-party administrator.

For both parts of the arbitration program, the arbitration hearing must be completed within 60 days after the consumer enters the program. The arbitration award is binding on the consumer and Volkswagen only if the consumer decides to accept it. Moreover, the arbitration program is available even if warranty coverage has already expired.

In addition to the direct mail notices required to be sent to consumers for oil-related complaints, Volkswagen of America will be required to place advertisements in national magazines promoting the availability of arbitration, and specifically highlighting the availability of arbitration for certain past claims. VWoA will also be required to distribute posters to its dealers promoting the availability of arbitration. Owner's manuals for VWoA's vehicles must also state that arbitration is available to remedy past and future internal engine component complaints.

The arbitration program required by the order should be an effective mechanism for resolving complaints that are covered by the order. The order has been drafted so that the arbitration hearings will be completed expeditiously, simply and fairly. The arbitration program will be free of charge to the consumer for the first two years of the program. After that a charge may be imposed if the BBB's rules for arbitration are modified. The arbitration program will also save time and expense because consumers will not need a lawyer.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,
*Secretary.*

**Concurring Statement of Chairman Daniel Oliver in Volkswagen of America, Inc., Docket No. 9154**

The consent order negotiated by the staff contains a number of injunctive relief provisions, and provides consumer redress in the form of a Commission-supervised arbitration process administered by the Better Business Bureau. Although I believe these provisions satisfy the Commission's concerns in this matter, the negotiated order is not one I would have chosen. However, I am reluctant to suggest order revisions, as they might throw this matter back into the costly litigation which has already consumed many years of Commission resources. Accordingly, I vote in favor of the staff's negotiated consent order.

I would have preferred an order without the prospective redress provisions provided in the order's arbitration mechanism. The negotiated mechanism resolves not only consumer disputes regarding the defects cited in the complaint, but also other internal engine component problems. Although this mechanism is similar to the relief obtained from another automobile manufacturer in a related matter (see *General Motors* consent order, D–9145), I do not favor its general application, for two reasons.

First, the arbitration mechanism is needlessly regulatory. If Volkswagen wants to negotiate consumer complaints through a Better Business Bureau arbitration scheme, it should certainly be free to do so. However, active government supervision of such a scheme forces government to maintain an active presence in the operation of a domestic auto seller for the next 8 years.

Second, to the extent the negotiated order provides prospective redress, it will provide relief primarily to consumers who were not injured by the violations alleged in the complaint. In future consent orders where consumer redress is warranted, I would find it preferable for staff to negotiate for redress that confers benefits on the injured parties.

Issued: March 31, 1987.

[FR Doc. 87–8631 Filed 4–16–87; 8:45 am]
BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 133

[Docket No. 86P–0436]

### Mozzarella Cheeses; Proposal To Amend Standards of Identity

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the standards of identity for mozzarella cheese, low-moisture mozzarella cheese, and, by cross-reference, part-skim mozzarella cheese and low-moisture part-skim mozzarella cheese to provide for the optional use of water buffalo milk. The agency is also proposing to amend the standards to update the format and language and to provide for functional group designations of safe and suitable optional ingredients. This action responds to a petition filed by De Choix Specialty Foods Co. and would promote honesty and fair dealing in the interest of consumers.

**DATE:** Comments by June 16, 1987. The agency proposes that any final rule that may issue based upon this proposal shall become effective 60 days after date of publication of the final rule in the Federal Register.

**ADDRESS:** Written comments, data, or other information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0110.

**SUPPLEMENTARY INFORMATION:**

## I. Water Buffalo Milk

De Choix Specialty Foods Co., 58–25 52nd Ave., Woodside, NY 11377, has submitted a petition to amend the standard of identity for mozzarella cheese (21 CFR 133.155) and, by cross-reference, the standard of identity for part-skim mozzarella cheese (21 CFR 133.157) to provide for the optional use of water buffalo milk in the manufacture of the cheeses. In the interests of consistency, the agency is including the standard for low-moisture mozzarella cheese (21 CFR 133.156) and, by cross-reference, the standard for low-moisture part-skim mozzarella cheese (21 CFR 133.158) in this action.

The petitioner, an importer of mozzarella cheese made with water buffalo milk, noted that the guidelines used by the U.S. Customs Service for the importation of cheeses into this country list mozzarella cheese made from 100 percent water buffalo milk. The U.S. standards of identity currently provide only for the use of dairy ingredients from cow's milk in the manufacture of mozzarella cheeses.

The agency recognizes that traditional Italian mozzarella cheese was made from water buffalo milk and later from combinations of water buffalo milk and cow's milk or cow's milk alone. When standards of identity were established for mozzarella cheeses (July 22, 1961; 26 FR 6599), the standards provided only for the use of cow's milk.

FDA believes that the petitioner has submitted adequate justification for the proposed amendment of the standards for mozzarella cheeses and that such an amendment would promote honesty and fair dealing in the interest of consumers. Therefore, FDA proposes to amend the standards for mozzarella cheese and scamorza cheese (§ 133.155) and low-moisture mozzarella cheese and scamorza cheese (§ 133.156) and, by cross-reference, the standards for part-skim mozzarella cheese and scamorza cheese (§ 133.157) and low-moisture part-skim mozzarella cheese and scamorza cheese (§ 133.158) to provide for the optional use of water buffalo milk. In addition, the agency is proposing to amend these standards to provide for appropriate labeling, in paragraph (d) of §§ 133.155 and 133.156, when water buffalo milk is used and to update the format of these paragraphs to be consistent with revised standards of identity for other cheeses.

## II. Format and Language Changes

The agency is taking this opportunity to propose amendments of §§ 133.155 and 133.156 to make them consistent with the format and language changes made in the nine natural cheese standards revised in consideration of the Codex Alimentarius Recommended International Standards (see 48 FR 2736; January 21, 1983). FDA is specifically proposing to adopt functional group designations for safe and suitable optional ingredients, where appropriate, and to provide for optional forms of milk, nonfat milk, and cream.

FDA believes that adopting the functional group designations will benefit consumers because manufacturers will be permitted to select less expensive or more readily available ingredients that are equally appropriate for a functional purpose. The safety and suitability of ingredients chosen from a functional group are governed by the definition of "safe and suitable" in 21 CFR 130.3(d) in conjunction with appropriate food additive regulations established under 21 CFR Parts 170, 171, and 172. The agency also believes that the use of safe and suitable functional categories will minimize any future need to amend the standards to provide for additional specific ingredients, and the cost benefits resulting from this action will be passed on to the consumer. Regarding provisions for the use of various forms of milk, nonfat milk, and cream, the agency has concluded that, from a technological standpoint, alternative forms of milk, nonfat milk, and cream, i.e., concentrated, dried, reconstituted forms, can be used to produce the same cheese as that produced from fluid cow's milk. For consistency, the agency is also providing for alternative forms of water buffalo milk. The agency believes that this action is consistent with the provisions in the existing standards which permit alternative manufacturing procedures as long as they do not adversely affect the physical and chemical properties of the cheese.

## III. Related Pending Actions

In the **Federal Register** of July 19, 1984 (49 FR 29242), FDA published a proposal to amend the regulations for label designation of ingredients (21 CFR 101.4(b)(22)) to permit enzymes of animal, plant, or microbial origin used in cheese and cheese products to be declared as "enzymes." Should this proposed change in the labeling regulations become effective before the proposed amendments set out below become effective, the labeling provisions in the proposed amendments will be changed to reference the new 21 CFR 101.4(b)(22).

## IV. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354: 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. The proposal provides for the use of water buffalo milk in the manufacture of mozzarella cheese, low-moisture mozzarella cheese, part-skim mozzarella cheese, and low-moisture part-skim mozzarella cheese. In addition, the proposal provides for amendments which update the format and language and provide for the use of functional groups of optional ingredients in the standards for mozzarella cheese and low-moisture mozzarella cheese, and, by cross-reference, the standards for part-skim mozzarella cheese and low-moisture part-skim mozzarella cheese. The agency believes that this proposal provides increased flexibility to manufacturers of mozzarella cheeses and will not impose an additional burden on the industry. Therefore, FDA certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

## V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VI. Comments

Interested persons may, on or before June 16, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## List of Subjects in 21 CFR Part 133

Cheese, Food standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 133 be amended as follows:

## PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:

**Authority:** Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. By revising § 133.155 to read as follows:

### § 133.155 Mozzarella cheese and scamorza cheese.

(a) *Description.* (1) Mozzarella cheese, scamorza cheese is the food prepared from dairy ingredients and other ingredients specified in this section by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. It may be molded into various shapes. The minimum milkfat content is 45 percent by weight of the solids, and the moisture content is more than 52 percent but not more than 60 percent by weight as determined by the methods described in § 133.5. The dairy ingredients are pasteurized.

(2) The phenol equivalent value of 0.25 gram of mozzarella cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is warmed to approximately 88 °F (31.1 °C) and subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut, and it may be stirred to facilitate separation of whey from the curd. The whey is drained, and the curd may be washed with cold water and the water drained off. The curd may be collected in bundles for further drainage and for ripening. The curd may be iced, it may be held under refrigeration, and it may be permitted to warm to room temperature and ripen further. The curd may be cut. It is immersed in hot water or heated with steam and is kneaded and stretched until smooth and free of lumps. It is then cut and molded. The molded curd is firmed by immersion in cold water and drained. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, or the corresponding products of water buffalo origin.

(2) *Clotting enzymes.* Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Vinegar.

(ii) Coloring to mask any natural yellow color in the curd.

(iii) Salt.

(iv) Antimycotics, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the cheese during the kneading and stretching process and/or applied to the surface of the cheese.

(c) *Nomenclature.* The name of the food is "mozzarella cheese" or, alternatively, "scamorza cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", "milkfat from water buffalo milk and nonfat water buffalo milk" or "nonfat water buffalo milk and milkfat from water buffalo milk", as appropriate.

3. By revising § 133.156 to read as follows:

### § 133.156 Low-moisture mozzarella and scamorza cheese.

(a) *Description.* (1) Low-moisture mozzarella cheese, low-moisture scamorza cheese is the food prepared from dairy ingredients and other ingredients specified in this section by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. It may be molded into various shapes. The minimum milkfat content is 45 percent by weight of the solids and the moisture content is more than 45 percent but not more than 52 percent by weight as determined by the methods described in § 133.5. The dairy ingredients are pasteurized.

(2) The phenol equivalent value of 0.25 gram of low-moisture mozzarella cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut, stirred, and allowed to stand. It may be reheated and again stirred. The whey is drained and the curd may be cut and piled to promote further separation of whey. It may be washed with cold water and the water drained off. The curd may be collected in bundles for further drainage and for ripening. The curd may be iced, it may be held under refrigeration, and it may be permitted to warm to room temperature and ripen further. The curd may be cut. It is immersed in hot water or heated with steam and is kneaded and stretched until smooth and free of lumps. It is then cut and molded. In molding, the curd is kept sufficiently warm to cause proper sealing of the surface. The molded curd is firmed by immersion in cold water and drained. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) *Dairy ingredients.* Milk, nonfat milk, or cream, as defined in § 133.3, or the corresponding products of water buffalo origin.

(2) *Clotting enzymes.* Rennet and/or clotting enzymes of animal, plant, or microbial origin.

(3) *Other optional ingredients.* (i) Vinegar.

(ii) Coloring to mask any natural yellow color in the curd.

(iii) Salt.

(iv) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(v) Antimycotics, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the cheese during the kneading and stretching process and/or applied to the surface of the cheese.

(c) *Nomenclature.* The name of the food is "low-moisture mozzarella cheese" or, alternatively, "low-moisture scamorza cheese".

(d) *Label declaration.* The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable

sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", "milkfat from water buffalo milk and nonfat water buffalo milk" or "nonfat water buffalo milk and milkfat from water buffalo milk", as appropriate.

Dated: April 8, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-8636 Filed 4-16-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1910, 1915, 1917, 1918, 1919, 1926, and 1928

### Health and Safety Standards; Manual Lifting

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Reopening of written comment period and expansion of scope of request for comments and information.

**SUMMARY:** This notice reopens the comment period concerning OSHA's request for comments and information on Manual Lifting (51 FR 35241, October 2, 1986), and expands the request to include all categories of workplaces covered by OSHA standards.

**DATE:** Written comments should be submitted on or before June 30, 1987.

**ADDRESS:** Comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. S-750, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-7894.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8148.

**SUPPLEMENTARY INFORMATION:** OSHA published a Request for Comments and Information on manual lifting in general industry (29 CFR Part 1910) on October 2, 1986 (51 FR 35241). Interested persons were given until January 30, 1987, to submit written data, views and information with respect to the issues raised in the notice.

To assure the fullest participation of interested parties, OSHA has decided to reopen the period in which written comments may be submitted on the Request for Comments and Information, and to extend it until June 30, 1987.

OSHA is also expanding the scope of interest of the Request beyond 29 CFR Part 1910, to include all categories of workplaces covered by other OSHA standards, specifically, 29 CFR Parts 1915, 1917, 1918, 1919, 1926, and 1928.

Written comments on the issues raised in the October 2, 1986 request for comments and information should be submitted by June 30, 1987, in quadruplicate to the Docket Officer at the address given above. Commenters are requested to provide written submissions that clearly identify the issues and areas which are addressed and the position taken with respect to each issue and area, together with supporting data, where available.

**Authority:** This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)).

Signed at Washington, DC, this 13th day of April, 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

[FR Doc. 87-8566 Filed 4-16-87; 8:45 am]

BILLING CODE 4510-26-M

## POSTAL SERVICE

### 39 CFR Part 111

### Combined Presort and ZIP + 4 Presort First-Class Mail

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This rulemaking proposes to reimpose, effective six months from today, the requirement that at least 85 percent of the pieces in a combined Presort and ZIP + 4 Presort First-Class mailing must bear a ZIP + 4 code. This action will terminate the exemption from the minimum ZIP + 4 coding requirement which has been in effect since the ZIP + 4 conversion transition period was initiated in April, 1985.

**DATES:** Comments must be received on or before May 22, 1987. Proposed effective date: October 18, 1987.

**ADDRESS:** Written comments should be directed to William T. Alvis, Attorney, Classification Division, Office of Postal Rates and Mailing Rules, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, DC 20260-1141. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Office of Postal Rates and Mailing Rules, Room 6446, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William T. Alvis, (202) 268-2981.

**SUPPLEMENTARY INFORMATION:** When the Postal Service published the final implementing rule governing ZIP + 4 First-Class Mail on January 31, 1984 (49 FR 3852-3855), it permitted mailers to combine ZIP + 4 Presort First-Class Mail (bearing a ZIP + 4 code) and regular Presort First-Class Mail (bearing a 5-digit ZIP Code). As part of that rule, the Postal Service added to its regulations a new Domestic Mail Manual (DMM) section 365 authorizing these combined Presort mailings under a number of conditions, including a requirement that at least 85 percent of the pieces in a combined mailing must bear a ZIP + 4 code.

Experience with the ZIP + 4 program during 1984 indicated that mailers were having more difficulties than foreseen in converting their mailing lists to ZIP + 4 code usage. Based on this experience and at the request of many mailers, on February 1, 1985, the Postal Service published a proposed amendment of DMM section 365 addressing combined Presort and ZIP + 4 Presort First-Class mailings. 50 FR 4709-4711. The Postal Service proposed to assist Presort mailers in the conversion of their mailing lists to ZIP + 4 usage by eliminating, for at least a one-year period, the requirement that a minimum percentage of the pieces in a combined Presort and ZIP + 4 Presort mailing include ZIP + 4 codes in their addresses. Many mailers had found it difficult to achieve an 85-percent ZIP + 4 addressing level through conventional computer matching techniques, and these mailers would have been denied the benefits of ZIP + 4 discounts if they undertook the time-consuming efforts to improve addressing quality and to add ZIP + 4 codes to address list entries unmatched by computer. Larger, multi-list mailers and presort service bureaus had found the 85-percent requirement particularly onerous, as they were unable to achieve a sufficient number of simultaneous, high-quality list conversions among their customers or

constituent originators to achieve an overall 85-percent match rate.

That proposed rule was adopted, effective April 7, 1985 (50 FR 13569–13573), and amended DMM section 365 to provide for a ZIP + 4 conversion transition period to last until at least April 6, 1986. The transition period was designed to permit Presort mailers, including those using presort service bureaus, to maintain their current level of presortation and Presort discounts while converting to ZIP + 4 usage by allowing those mailers to receive ZIP + 4 discounts on any qualified ZIP + 4 portion of a combined mailing, so long as the mailing contained at least 500 pieces addressed with complete ZIP + 4 codes.

In the Spring of 1986 the Postal Service determined, based on the requests of both Presort mailers and presort service bureaus, to extend the conversion transition period beyond April 6, 1986 to provide further assistance to mailers engaged in the ZIP + 4 conversion process. On June 16, 1986, the Postal Service adopted an amendment to DMM section 365 extending the exception to the minimum ZIP + 4 coding requirement until at least January 1, 1987. 51 FR 21750–21759.

The Postal Service has recently reviewed the status of the ZIP + 4 and automation programs and has determined that it is appropriate to close out the conversion transition period and reimpose a requirement that all combined Presort mailings contain a high percentage of ZIP + 4 coded pieces. The original objective for establishing the conversion transition period, to give Presort mailers a reasonable opportunity to convert to ZIP + 4 usage and bring their mailing lists up to a high ZIP + 4 match rate, has been met. Moreover, continued growth in the automated processing of Presort First-Class Mail would increase the cost of handling the non-ZIP + 4 portions of combined Presort mailings if commingling were not restricted.

The ZIP + 4 conversion transition period, with its exemption from meeting a minimum ZIP + 4 coding requirement, has been in effect for nearly two years. Presort mailers have had abundant notice of the beneficial aspects of the conversion program and have had ample opportunity to take advantage of it. Thus, termination at this time would be fully warranted. However, mailers that have recently made a conversion decision will generally require substantial additional time to reach a high percentage of ZIP + 4 coding. Time is needed for file preparation, software development, and contracting for conversion-related services, in addition to the time required for actual matching operations. Then the mailer may also need to made improvements in addressing hygiene and ascertain further ZIP + 4 codes. The Postal Service wants to provide these mailers with a reasonable period of time to complete the conversion process, without the threat of imminent loss of discounts. Thus, this proposed rule gives six months notice of the termination of the conversion transition period to accommodate those mailers who have made conversion commitments but have not completed the conversion process.

Termination of the conversion transition period is also justified for postal operations reasons. As ZIP + 4 mail volume continues to grow, the Postal Service will incur an increasing amount of additional mail handling costs from the rehandling of five-digit pieces in combined Presort mailings. This increase in costs occurs because automated processing of mail that is presorted to five-digit destinations but which does not bear ZIP + 4 codes is of no benefit to the Postal Service. When such five-digit coded mail is included as part of a combined Presort mailing that is processed on automated equipment, it incurs the cost of two unproductive processing steps. In order to contain these costs, the Postal Service has always believed that the percentage of ZIP + 4 pieces in qualifying ZIP + 4 mailings must be at as high a level as reasonably possible while still accommodating the needs and desires of Presort mailers. Therefore, the Postal Service has previously given notice that it would, at the end of the ZIP + 4 conversion transition period, establish a minimum ZIP + 4 addressing level that balances the Postal Service's interest in reducing these unproductive costs with the requirement that the difficulties of list conversion to ZIP + 4 coding not present unwarranted obstacles to mailer participation in the program. In order to hold the unproductive processing costs caused by five-digit coded pieces being included as part of a ZIP + 4 mailing to a reasonable minimum, the Postal Service stated it would base the permanent minimum requirement on mailers' experience with well-maintained lists, using state-of-the-art software. *See* 50 FR 4709, 4711 (February 1, 1985); 50 FR 13569, 13571 (April 5, 1985).

The Postal Service has already performed that analysis and set a minimum ZIP + 4 coding percentage for mailers using the optional procedures for three-digit sortation of ZIP + 4 Presort Mail set forth in DMM section 366. *See* 51 FR 3079, 3080–3081 (January 23, 1986); 51 FR 21750, 21755 (June 16, 1986). In that effort the Postal Service examined its manual list conversion experience, surveyed Presort customers about their experience in adding ZIP + 4 codes to address lists, and studied the current state of the ZIP + 4 conversion software market. Based on that, the Postal Service established an 85 percent ZIP + 4 coding minimum for mailers using the optional three-digit sortation procedures.

The Postal Service's experience has been that this 85 percent ZIP + 4 coding requirement is the appropriate minimum level. Thus, the Postal Service intends to establish, at the end of the conversion transition period, the same 85 percent ZIP + 4 addressing minimum for all combined Presort and ZIP + 4 Presort mailings.

The Postal Service is aware that mailers encounter difficulties in achieving high levels of ZIP + 4 coding, and that mail preparation firms face special difficulties by virtue of their role as consolidators of mail. This is why we have provided for a lengthy conversion transition period to aid in dealing with these difficulties. However, because the costs associated with handling the non-ZIP + 4 portions of combined mailings will continue to increase as volumes grow and because optimum automation processing occurs at high ZIP + 4 coding levels, a high but realistically achievable permanent addressing minimum must now be required. Mailers that are in the process of converting are urged to utilize the remaining six months of the transition period for intensified efforts to achieve higher quality addressing and higher levels of ZIP + 4 code utilization in order to continue to qualify for full Presort and ZIP + 4 discounts.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for Part 111 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 365—COMBINED PRESORT MAILINGS

2. In 365, delete current 365.2, renumber 365.3 through 365.5 as 365.2 through 364.4 respectively, then renumber 365.22–365.26 as 365.23–365.27, and add a new 365.22 to read as follows:

365—Combined Presort Mailings

* * * * *

365.2 Requirements for Combined Presort Mailings

* * * * *

.22 At least 85 percent of the pieces in a combined mailing must bear the correct Zip + 4 code.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

**Fred Eggleston,**

*Assistant General Counsel Legislative Division.*

[FR Doc. 87-8717 Filed 4-16-87; 8:45 am]

BILLING CODE 7715-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 85

[FRL-3141-3]

### Motor Vehicle Emissions Control System Performance Warranty Short Tests—Alternative Quality Control Procedures; State of Maryland

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking; Preliminary determination of equivalency.

**SUMMARY:** This notice proposes the approval of certain quality control procedures used by the State of Maryland in its emissions inspection/maintenance (I/M) program as equivalent to procedures outlined in § 85.2217 of the Emission Control System Performance Warranty Short Tests regulations (40 CFR Part 85, Subpart W). A finding of equivalency of Maryland's alternative procedures would legitimize the quality control procedures for Performance Warranty purposes, allowing owners of failed vehicles in the Maryland program to claim the intended warranty coverage.

**DATE:** Written comments must be submitted by May 18, 1987.

**ADDRESS:** Copies of material relevant to this action are contained in, and written comments should be submitted to, Public Docket No. A–84–30, U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery One, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Gay MacGregor, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668–4487.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

Section 207(b) of the Clean Air Act, 42 U.S.C. 7541(b), requires EPA to establish test procedures for use in determining compliance of in-use motor vehicles with vehicle emissions standards, provided the procedures are available, are consistent with good engineering practices, and are reasonably capable of being correlated with the emissions certification test (or Federal Test Procedure FTP)). EPA is also required to issue regulations requiring manufacturers to warrant the in-use performance of their vehicles' emission control systems ("performance warranty") at such time as the facilities and equipment needed to perform the necessary in-use tests described above have become available.

On May 22, 1980, EPA made the necessary findings and established three "short test" procedures (45 FR 34802). These short tests may be used by States as part of their vehicle inspection and maintenance (I/M) programs. On the same date, EPA also published emissions performance warranty regulations (45 FR 34829) 40 CFR Part 85, Subpart W. The performance warranty regulations cover 1981 and newer model year light-duty vehicles and light-duty trucks whose owners may be subject to any sanction as a result of failing to meet emission standards as determined by an approved short test. The warranty covers vehicles throughout their statutory useful life, if the vehicles were maintained in accordance with the manufacturer's instructions, but only covers primary emission controls after a vehicle passes two years or 24,000 miles. In § 85.2217, the warranty regulations identify specific quality control procedures which must be followed for warranty short tests to be valid for determining potential warranty liability.

EPA recognized in promulgating the original quality control guidelines of the regulations that they reflected the level of accuracy of I/M programs at the time. One June 12, 1984 (49 FR 24320), EPA published amendments to the warranty regulations. In these amendments, provision was made for any State I/M authority to petition the Agency for approval of alternative quality control procedures. Section 85.2208(b) provides that a State may request to use alternative quality control procedures that are equivalent to those required by § 85.2217, but the State must provide data and technical support to EPA to substantiate its claim of equivalency. Section 85.2208(b) further requires that, following a preliminary determination that the alternative procedures are equivalent, EPA will publish a notice in the **Federal Register** announcing the request and explaining EPA's preliminary determination of equivalence.

Section 85–2208(b) also provides that a 30-day comment period will be allowed for interested parties to review EPA's preliminary determination. If the comments received do not establish a basis for EPA to conclude that the preliminary determination was in error, a final **Federal Register** notice will be published establishing the alternative procedures as valid for the purpose of section 207(b) of the Clean Air Act. Vehicles failing I/M tests conducted in accordance with the alternative procedures would then be eligible for the performance warranty remedy (provided other warranty conditions are met).

#### B. Maryland's Request

On June 24, 1984, the State of Maryland notified EPA of its intention to petition for an equivalency determination on alternative quality control measures used in the State's I/M program. Submitted as part of the notification was a request for EPA comment on Maryland's proposed methodology for demonstrating equivalency. EPA provided written comments on July 12, 1984. On August 6, 1985, the State of Maryland petitioned EPA for an equivalency determination under the alternative quality control subsection of Subpart W (40 CFR 85.2208). Maryland later submitted a revised petition dated September 23, 1985. The revised petition and a subsequent performance audit of the Maryland Vehicle Emission Inspection Program (VEIP) conducted by EPA staff on November 61–21, 1985, serve as the basis for this preliminary determination.

Maryland's quality control procedures differ from those contained in Subpart W (40 CFR 85.2217) in two ways. First, § 85.2217 requires calibration gas checks at least weekly using low-range gas. Maryland uses high-range gas to perform calibration checks on an hourly basis. The Maryland VEIP conducts bi-

weekly multipoint gas calibration checks which include the use of low-range gas. The bi-weekly checks are conducted alternately by the Maryland Department of Health and Mental Hygiene (DHMH) and the VEIP contractor, Systems Control Inc. If DHMH finds the analyzers are out of calibration they are shut down until a service call can be made. The DHMH uses a tolerance of ±3 percent. The program contractor uses a tolerance level of ±1.5 percent and calibrates any analyzer that fails at the time of the check.

Second, § 85.2217 requires weekly leak checks using a comparison of probe and port gas readings. The Maryland VEIP conducts daily leak checks using a vacuum decay method internal to the analyzer.

Maryland petitioned EPA to find its alternative quality control procedures equivalent based on the following assertions: (1) Comparison of quality assurance results in the Maryland VEIP, using bi-weekly low-scale gas checks, with a similar program (discussed below) using the weekly low-scale gas checks shows the Maryland results to be at least as good as those obtained in the similar program; (b) data from field audits of the program analyzers show that 95 percent of the analyzers are within ±5 percent of the true calibration gas value; and (c) laboratory tests using Maryland analyzers show that internal vacuum decay leak check procedures are effective in detecting leaks in the analyzer sampling system of 3 percent of the calibration gas concentration.

In its September 23, 1985 petition the State or Maryland provided evidence to substantiate all three assertions. Comparison of 887 low-scale gas audits conducted in the VEIP with data provided by the Washington State Department of Ecology on 2,752 audits conducted in the Seattle inspection/maintenance program showed the Maryland results to be as good as the Seattle results. The Seattle program follows the letter of § 85.2217, performing weekly low scale checks and probe port leak checks. The analyzers used in Washington are similar to those used in Maryland. Seattle's analyzers also automatically conduct hourly calibration checks and readjustment to onboard gas values, as Maryland analyzers do; however, the onboard gas is low scale in the Seattle program.

The data submitted by Maryland represented 100 percent of all gas audits conducted in the field by the Department of Health and Mental Hygiene between March 1984 and February 1985 and by the program's contractor between March 1984 and April 1985. Through the field audit data, Maryland was able to demonstrate that the analyzers used in the Maryland program hold calibration within a 5 percent error tolerance more than 95 percent of the time. In its July 12, 1984 comments on Maryland's proposed methodology, EPA indicated that if 95 percent of the analyzers checked with low scale gas were shown to be within 5 percent of true gas value, EPA woud consider that a more than adequate demonstration of equivalency of quality control procedures.

Maryland also conducted laboratory tests of its leak check procedures by introducing leaks in the sampling syatem by means of a micro-flow valve on six analyzers. These tests showed that the vacuum leak check procedure internal to the model analyzer used in the Maryland program, the Sun CEA 3022M, is capable of detecting leaks of 3 percent and less. In fact, the results demonstrated that leaks as small as 1 percent could be detected.

*4C. EPA's Evaluation*

In promulgating and warranty regulations, EPA had to address two competing objectives:

1. To provide warranty protection to consumers in all I/M programs; and
2. To protect automobile manufacturers from unfair warranty claims.

These two objectives made it necessary for EPA to adopt very specific test procedures and emissions limits for the warranty regulations, as well as specific analyzer specifications and quality control procedures. At the time that the original emission performance warranty regulations were promulgated, most I/M programs used manually-operated, garage-type emissions analyzers of diverse make and model, with calibration and maintenance being primarily the responsibility of the operator. Consequently, § 85.2217 governing quality control procedures was developed with this constraint in mind.

The VEIP uses advanced state-of-the-art computerized emissions analyzers, that are programmed for automatic testing, automatic data collection, and automatic quality control. In addition to these features, the Maryland analyzers are connected directly to a mainframe computer which allows the program's contractor to monitor the results of the hourly high scale gas calibrations. If the analyzer drifts out of calibration it automatically locks out. If it appears that a machine is drifting toward the limit of allowable drift (20 ppm or 0.1 percent CO) a technician checks the analyzer. Because of the technological capabilities of the Maryland analyzers and the continuous monitoring of individual analyzers via the computer system, Maryland chose to adopt a less frequent regime of low scale gas calibration checks and to use the vaccum-based leak check procedure internal to the Sun model CEA 3022M instead of the probe/port comparisons required by the warranty regulations.

An important consideration in establishing the quality control procedures in § 85.2217 was to protect the automobile manufacturers from improper warranty claims by minimizing the number of instances where a vehicle improperly failed the I/M test. In this sense, analyzer quality control procedures are important in assuring that analyzers do not yield erroneously high emissions readings, thus causing vehicles to improperly fail the test.

It was this consideration which EPA felt was the most sensitive concern to be evaluated in the review of the Maryland's alternative quality control procedures. EPA's review of the field audit data collected in the VEIP indicates that bi-weekly calibration checks using low-range calibration gases showed that 1.6 percent of the analyzers had positive carbon monoxide (CO) errors and 2.5 percent had positive hydrocarbon (HC) errors of + 5 percent of true value.

Although high-emitting vehicles which receive erroneously low emission readings (and whose owners are therefore not subject to any sanction by the State) do not cause vehicle manufacturers any warranty expense, EPA is sensitive to such occurrences. The quality control requirements of the warranty short test regulations serve as a benchmark for all I/M programs. The purpose of any I/M program is to improve air quality through repair of high-emitting vehicles. This purpose is defeated if a large number of vehicles escape repair because of quality control procedures which result in negative errors. If too many vehicles escape repair, a test method and its associated quality control procedures cannot be considered to meet the statutory requirement of being in accordance with good engineering practices. The data submitted by Maryland on bi-weekly low scale gas calibration checks showed 3.2 percent of the analyzers had negative CO errors and 0.6 percent had negative HC errors.

EPA believes that Maryland's laboratory tests demonstrate the adequacy of its vacuum leak check procedures to detect leaks of less than 3 percent. Therefore, EPA believes that

Maryland's vacuum-based leak check procedure satisfies the statutory criterion of being in accordance with good engineering practices and is equivalent to the leak check procedure specified in § 85.2217.

Moreover, in the EPA audit of the Maryland Program, none of the analyzers checked was out of calibration when tested with low-scale gas. In addition, review of the computer records of gas audits conducted monthly by the State DHMH show only one analyzer out of calibration between February 1985 and November 1985. In light of these low error rates and performance data, EPA feels that 1981 and newer vehicles being failed in Maryland's I/M program are not being failed improperly due to the quality control procedures and should be eligible for warranty protection.

### D. EPA's Preliminary Determination

The quality control procedures in § 85.2217 of the warranty short test regulations have been determined by the Administrator to meet the statutory criteria of being readily available, in accordance with good engineering practices, and resulting in the short tests being reasonably capable of being correlated with the FTP (*see* 45 FR 34802). In the case of Maryland's alternative quality control procedures, since they are currently being used, it is clear that these procedures meet the first criterion of being readily available.

Maryland's alternative quality control procedures differ from 207(b) procedures in two ways. The gas calibration check is done bi-weekly using high-scale rather than low-scale calibration gases, and the leak check procedure is vacuum based. Compensating for these differences is the fact that all of the analyzers used in the Maryland program are the same model, the Sun CEA 3022M, and are linked by direct line to a central processing unit enabling detailed monitoring of individual analyzer performance. In addition, Maryland's quality control program includes periodic hourly high scale gas calibration checks and daily leak checks. Despite the use of high scale gas, this is a more stringent schedule than the regulations require. Data submitted by DHMH and performance data collected by EPA in its program audit substantiate that the automated features of the Sun CEA 3022M, combined with Maryland's computer monitoring of reports on analyzer performance, result in a high degree of overall system reliability and accuracy. Therefore, it is EPA's determination that these procedures are in accordance with good engineering practices and do not reduce the ability of the short test to be correlated with the FTP.

Based on the evaluation discussed above, this notice announces EPA's preliminary determination that the alternative quality control procedures being used in the Maryland I/M program are equivalent to those required in § 85.2217.

### E. Request for Comment

EPA is soliciting comment on its preliminary determination that Maryland's alternative quality control procedures are equivalent to those required by § 85.2217. All comments should be received within 30 days of the publication of this notice, by May 18, 1987.

After the close of the comment period, EPA will evaluate all comments received. If these comments do not establish a basis for EPA to conclude that the preliminary determination is in error, a final **Federal Register** notice will be published granting the State of Maryland permission to use the alternative procedures in its I/M program thus providing continued performance warranty coverage.

### F. Administrative

This notice has been exempted from review by the Office of Management and Budget under Executive Order 12291. In addition, since this notice does not meet any of the criteria for classifications as a "major rule" under Executive Order 12291, no regulatory impact analysis is required.

Pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., I certify that this notice will not have a significant impact on a substantial number of small entities. The only entities potentially adversely affected by this notice would be motor vehicle manufacturers whose performance warranty liability in Maryland might be affected. However, these manufacturers are not small entities. Thus, no regulatory flexibility analysis is required.

### List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

**Authority:** Section 207, 301(a), Clean Air Act as amended (42 U.S.C. 7541 and 7601(a)).

Dated: April 10, 1987.

**Lee M. Thomas,**

*Administrator.*

[FR Doc. 87-8678 Filed 4-16-87; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 85**

**[FRL-3141-2]**

## Motor Vehicle Emission Control System Performance Warranty Short Tests—Alternative Quality Control Procedures; State of New York

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking; Preliminary determination of equivalency.

**SUMMARY:** This notice proposes the approval of certain quality control procedures used by the State of New York in its emissions inspection/maintenance program as equivalent to procedures outlined in § 85.2217 of the Emission Control System Performance Warranty Short Tests regulations (40 CFR Part 85, subpart W). A finding of equivalency of New York's alternative procedures would legitimize the quality control procedures for Performance Warranty purposes, allowing owners of failed vehicles in the New York program to claim the intended warranty coverage. EPA is providing a 30-day comment period on this preliminary determination.

**DATE:** Written comments must be submitted by Mary 18, 1987.

**ADDRESS:** Copies of material relevant to this action are contained in, and written comments should be submitted to, Public Docket No. A-84-30, U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery One, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Gay MacGregor, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668-4487.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 207(b) of the Clean Air Act, 42 U.S.C. 7541(b), requires EPA to establish test procedures for use in determining compliance of in-use motor vehicles with vehicle emissions standards, provided the procedures are available, are consistent with good engineering practices, and are reasonably capable of being correlated with the emissions certification test (or Federal Test Procedure (FTP)). EPA is also required

BEST COPY AVAILABLE

to issue regulations requiring manufacturers to warrant the in-use performance of their vehicles' emission control systems ("performance warranty") at such time as the facilities and equipment needed to perform the necessary in-use tests described above have become available.

On May 22, 1980, EPA made the necessary findings and established three "short test" procedures (45 FR 34802). These short tests may be used by States as part of their vehicle inspection and maintenance (I/M) programs. On the same date, EPA also published emission performance warranty regulations (45 FR 34829) 40 CFR Part 85, Subpart W. The performance warranty regulations cover 1981 and newer model year light-duty vehicles and light-duty trucks whose owners may be subject to any sanction as a result of failing to meet emissions standards as determined by an approved short test. The warranty covers vehicles throughout their statutory useful life, if the vehicles were maintained in accordance with the manufacturer's instructions, but only covers primary emission controls after a vehicle passes two years or 24,000 miles. In § 85.2217, the warranty regulations identify specific quality control procedures which must be followed for warranty short tests to be valid for determining potential warranty liability.

EPA recognized in promulgating the original quality control guidelines of the regulations that they reflected the level of accuracy of I/M programs at the time. On June 12, 1984 (49 FR 24320), EPA published amendments to the warranty regulations. In these amendments, provision was made for any State I/M authority to petition the Agency for approval of alternative quality control procedures. Section 85.2208(b) provides that a State may request to use alternative quality control procedures that are equivalent to those required by § 85.2217, but that the State must provide data and technical support to EPA to substantiate its claim of equivalency. Section 85.2208(b) further requires that, following a preliminary determination that the alternative procedures are equivalent, EPA will publish a notice in the **Federal Register** announcing the request and explaining EPA's preliminary determination of equivalence. In addition, a 30-day comment period must be allowed for interested parties to review EPA's preliminary determination. If the comments received do not establish a basis for EPA to conclude that the preliminary determination was in error, a final **Federal Register** notice will be published establishing the alternative procedures as valid for the purposes of section 207(b) of the Clean Air Act. Vehicles failing I/M tests conducted in accordance with the alternative procedures would then be eligible for warranty remedy (provided other warranty conditions are met).

### B. New York State's Request

On March 3, 1982, the New York State Department of Environmental Conservation (NYSDEC) submitted a request for approval of alternative quality control procedures used in its I/M program. As explained in the NYSDEC submittal, New York's quality control procedures differ in several ways from the procedures required in § 85.2217, but the State maintains that its procedures are at least as effective as those required by the regulations. First, New York performs monthly calibration gas checks, while § 85.2217 requires gas checks at least weekly. Second, New York uses calibration gases with high-range concentrations while the regulations require low-range concentration gases. At the time of the request, New York used a monthly vacuum-based leak check procedure rather than the weekly probe/port leak check required by the regulations. It also gas checked analyzers only through the port and not through the sampling probe. In 1985, subsequent to the original request, New York modified its procedures to include probe/port comparison leak checks and analyzer calibration gas checks through the sampling probe.

New York petitioned EPA to find its alternative quality control procedures to be equivalent to § 85.2217 based on the assertion that its analyzers have computerized quality control features, unlike the analyzers generally available at the time the warranty regulations were developed. All I/M tests in New York are performed with a single model analyzer, the Hamilton Test Systems (HTS) CVIS Model 9000. this type of analyzer performs automatic zero and span checks before each test and automatically records test results on cassette tapes. All licensed I/M inspection stations in New York must maintain a service contract with Hamilton test Systems-New York (HTS–NY) for prepaid monthly and prompt on-call maintenance of the analyzers. Finally, the analyzers in New York will not accept as valid any test in which the measured carbon monoxide plus carbon dioxide concentration contest is less than 6 percent, which has the effect of preventing testing if there are very severe exhaust system or analyzer leaks.

On August 12, 1982, EPA responded by letter to NYSDEC regarding the March 3, 1982 submittal. EPA's response pointed out that NYSDEC had provided sufficient data to substantiate that the use of high-range calibration gases adquately ensures low-scale accuracy in the Hamilton CVIS Model 9000 analyzers. However, EPA's response also pointed out that more data were needed to substantiate the use of the monthly calibration frequency and vacuum leak check procedures in New York.

On March 4, 1983, NYSDEC submitted a proposed sampling and test protocol for an audit of the New York I/M program in order to collect the additional data needed to substantiate its request. NYSDEC conducted its field performance audit during August and September of 1983.

On October 18, 1983, representatives of NYSDEC, EPA, New York State Department of Motor Vehicles and Hamilton Test Systems-New York met to discuss the preliminary results of NYSDEC's audit and other information relevant to New York's request. At this meeting, NYSDEC officials explained that the preliminary results of the audit were favorable regarding the monthly calibration frequency issue, but NYSDEC recognized the need to give more attention to leak detection in its program.

The HTS–NY officials outlined the procedures followed by their personnel during monthly service visits when routine calibration checks and preventive maintenance activities are undertaken. HTS–NY officials also reviewed the results of special studies that had been performed by HTS–NY at the request of NYSDEC. In one study, HTS–NY collected data to verify that using high-range calibration gases in New York analyzers adequately ensures low-range and mid-range analyzer accuracy. Other data verified that a high percentage of HTS–NY analyzers maintain calibration between monthly visits.

On February 3, 1984, NYSDEC submitted the additional data requested by EPA. This submittal included the final results of the field audits supported by information from HTS–NY, statistical analyses performed by NYSDEC, and information of NYSDEC's review of problems with leak detection. As a result of several questions raised by EPA, additional clarifying information was submitted by NYSDEC on April 9, 1984, regarding calibration errors that could result from the use of high-range calibration gases under New York's procedures. On April 10, 1985, the State

of New York notified EPA of its intent to modify its procedures to include probe/port comparison leak checks; this would help reduce the problem of potential errors in obtaining accurate readings at the low end of the analyzer scale. On May 24, 1985, the State of New York provided EPA's Region 2 office with copies of Hamilton Test Systems Service Information Circulars advising analyzer servicing personnel of the changed procedures. The revised procedures went into effect June 3, 1985.

Copies of New York's submittals, EPA correspondence, and other relevant documents, including a Society of Automotive Engineers technical paper evaluating analyzer measurement error using data from the N.Y. I/M program, are available for public inspection and copying in Public Docket A–84–30, Central Docket Section, West Tower Lobby, Gallery One, 401 M Street, SW., Washington DC 20460.

### C. EPA's Evaluation

In promulgating the warranty regulations, EPA had to address two competing objectives:

1. To provide warranty protection to consumers in all I/M programs; and
2. To protect automobile manufacturers from unfair warranty claims.

These two objectives made it necessary for EPA to adopt very specific test procedures and emissions limits for the warranty regulations as well as specific analyzer specifications and quality control procedures. At the time that the original emission performance warranty regulations were promulgated, the basic state-of-the-art for a decentralized I/M program, like New York's, was the use of manually-operated, garage-type emissions analyzers of diverse make and model, with calibration and maintenance being primarily the responsibility of the operator. Consequently, § 85.2217 governing quality control procedures was developed with this constraint in mind.

Starting in 1981 with the New York I/M program, a new state-of-the-art began to emerge in decentralized I/M programs. This advance was the computerized emissions analyzer. By that time, microprocessor technology had advanced to the extent that garage-type analyzers could be programmed for automatic testing, automatic data collection and, to some extent, automatic quality control. In addition to these features, the New York analyzer also employed the most up-to-date emissions measurement technology by incorporating the performance specifications of the BAR–80 specifications (i.e., analyzer specifications adopted by the California Bureau of Automotive Repair in 1979). Because of the New York analyzer's advanced technological capabilities, NYSDEC decided to adopt less stringent quality control procedures than those traditionally needed in decentralized I/M programs. These differences created the inconsistencies discussed above between the New York I/M program and the warranty regulations and caused NYSDEC to request approval of alternative quality control procedures.

Computerized emissions analyzer technology has continued to advance to the extent where now virtually all quality control checks, including weekly gas calibrations and leak checks, can be automatically performed by current computerized analyzers. These advances have allowed other States using the most advanced computerized analyzers to avoid inconsistencies with respect to § 85.2217 of the warranty regulations.

An important consideration in establishing the quality control procedures in § 85.2217 was to protect the automobile manufacturers from improper warranty claims by minimizing the number of instances where a vehicle improperly failed the I/M test. In this sense, analyzer quality control procedures are important in assuring that analyzers do not yield erroneously high emissions readings, thus causing vehicles to improperly fail the test.

It was this consideration which EPA felt was the most sensitive concern to be evaluated in the review of the New York situation. EPA's review of the field audit data collected by NYSDEC indicates that monthly calibration and the use of high-range calibration gases results in relatively few analyzers with positive errors on the low-range of the analyzer scale. In the field audit, NYSDEC found that 2.5 percent of the 201 analyzers tested exceeded a 0.1 percent carbon monoxide (CO) positive error and 2.5 percent of the analyzers exceeded a 25 ppm hydrocarbon (HC) (as hexane) positive error when tested with a calibration gas with concentrations of 1.6 percent CO and 320 ppm HC (propane). In light of these low positive error rates, EPA feels that 1981 and newer vehicles being failed in New York's I/M program are not being failed improperly and should be eligible for warranty protection.

Although high-emitting vehicles which receive erroneously low emission readings (negative errors), and whose owners are therefore not subject to any sanction by the State, do not cause vehicle manufacturers any warranty expense, EPA is concerned with such occurrences. The quality control requirements of the warranty short test regulations serve as a benchmark for all I/M programs. The purpose of any I/M program is to improve air quality through repair of high-emitting vehicles. This purpose is defeated if a large number of vehicles escape repair because of quality control procedures which result in negative errors. Indeed, if too many vehicles escape repair, a test method and its associated quality control procedures cannot be considered to meet the statutory requirement of being in accordance with good engineering practices.

In New York, negative errors were produced by combinations of performing calibration gas checks only through the span port, and performing monthly vacuum-based leak checks rather than the probe/port comparison leak checks required by the regulations. New York acknowledged a tendency toward negative errors. EPA therefore considered it necessary to review the original supporting data provided by New York to determine whether negative errors were serious enough in frequency and degree to cause the New York procedures to fail to satisfy the statutory requirements, or to fail to be equivalent to the quality control procedures required in § 85.2217. In the field audit, New York found that 9.5 percent of the analyzers tested exceeded a 0.15 percent CO negative error and 7 percent of the analyzers exceeded a 20 ppm HC (as hexane) negative error, when tested with a calibration gas with concentrations of 1.6 percent CO and 320 ppm HC (propane). These values do not include the data from four grossly leaking analyzers which produced invalid test results ($CO + CO_2$ content less than 6 percent). The tolerances used to analyze negative errors (0.15 percent CO and 20 ppm HC) are somewhat different than the tolerances used to analyze positive errors (0.10 percent CO and 25 ppm HC). Tolerances were chosen based on a consideration of errors resulting from analyzer accuracy, gas-naming accuracy, leaks and residual hydrocarbons in the analyzer sampling system (hydrocarbon hang-up). The different tolerances for negative versus positive errors were due to the different magnitudes of negative bias errors (leaks) and positive bias errors (hydrocarbon hang-up). An analysis of more severe negative errors shows that 4.0 percent of the analyzers exceeded a 0.25 percent CO negative error and 3.5 percent exceeded a 30 ppm HC (as hexane) negative error.

EPA initially believed that, due to excessive negative error rates, New

York's monthly vacuum-based leak check procedure did not satisfy the statutory criterion of being in accordance with good engineering practices and was not equivalent to the quality control procedures specified in § 85.2217. However, New York agreed that these error rates were undesirable and has changed its procedures to include weekly probe/port comparison leak checks, effective June 3, 1985. This change is consistent with the procedure specified in § 85.2217(d).

**D. EPA's Preliminary Determination**

The quality control procedures in § 85.2217 of the warranty short test regulations have been determined by the Administrator to meet the statutory criteria of being readily available, in accordance with good engineering practices, and resulting in the short tests being reasonably capable of being correlated with the FTP (see 45 FR 34802). In the case of New York's alternative quality control procedures, since they are currently being used, it is clear that these procedures meet the first criterion of being readily available. After revisions to New York's quality control procedures to include probe/port comparison leak checks and analyzer calibration gas checks through the sampling probe, New York's alternative quality control procedures differ from § 85.2217 procedures in two ways. The gas calibration check is done monthly, not weekly, and the State uses high-scale rather than low-scale calibration gases. Compensating for these differences is the fact that all of the analyzers used in the New York program are the same model, the Hamilton CVIS Model 900. The Model 9000 is a BAR–80 analyzer which does not allow the operator to readjust the analyzer between monthly calibration checks. It also compensates for internal electronic drift in zero and span points. The Model 9000 also includes a feature which prevents testing if it is not properly warmed up or if the CO + $CO_2$ content of the sample flow is less than 6 percent.

In addition, New York's quality control program includes periodic State audits, and monthly calibration gas checks and preventive maintenance checks by HTS–NY personnel. The data and supporting documents submitted by NYSDEC substantiate that the automated features of the Model 9000, combined with New York's revised quality control program (which includes probe/port comparison leak checks), result in a high degree of overall system realiability and accuracy. Therefore, it is EPA's preliminary determination that these procedures meet the criterion of being in accordance with good engineering practices.

Based on the evaluation discussed above, this notice announces EPA's preliminary determination that the alternative quality control procedures being used in the New York I/M program with the CVIS Model 9000 are equivalent to those required in § 85.2217. If significant modifications to the CVIS Model 9000 are made or if New York chooses to purchase new analyzers, the State must apply for a new determination of equivalency.

**E. Request for Comment**

EPA is soliciting comment on its preliminary determination that New York's alternative quality control procedures are equivalent to those required by § 85.2217. All comments will be received within 30 days of the publication of this notice, by May 18, 1987.

After the close of the comment period, (insert date), EPA will evaluate all comments received. If these comments do not establish a basis for EPA to conclude that the preliminary determination is in error, a final **Federal Register** notice will be published granting New York State permission to use the alternative procedures in its I/M program, thus providing continued performance warranty coverage.

**F. Administrative**

This notice has been exempted from review by the Office of Management and Budget under Executive Order 12291. In addition, this notice does not meet any of the criteria for classification as a "major rule," as defined by section 1(a) of Executive Order 12291. Thus, no regulatory impact analysis is required and none has been prepared.

Purauant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., I hereby certify that this notice will not have a significant adverse impact on a substantial number of small entities. The only entities potentially affected by a final determination of equivalency are automobile manufacturers whose performance warranty liability may be affected. However, these manufacturers are not small entities. Thus, no regulatory flexibility analysis is required and non has been prepared.

**List of Subjects in 40 CFR Part 85**

Imports, Labeling, Motor vehicle pollution, Reporting and record keeping requirements, Research Warranties.

**Authority:** Section 207, 301(a), Clean Air Act as amended (42 U.S.C. 7541 and 7601(a)).

Dated: April 10, 1987.

**Lee M. Thomas,**

*Administrator.*

[FR Doc. 87–8677 Filed 4–16–87; 8:45 am]

BILLING CODE 6560-50-M

---

**40 CFR Parts 264 and 265**

**[FRL–3188–1]**

## Hazardous Waste Management System; Minimum Technology Requirements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of information and request for comments

**SUMMARY:** On March 28, 1986, EPA proposed regulations implementing the minimum technology requirements specified in the Hazardous and Solid Waste Amendments of 1984 (HSWA). The proposal included provisions to implement the statutory requirement for double liners and leachate collection systems. Subsequent to the proposal, the Agency gathered data characterizing and comparing the performance of compacted soil and composite bottom liners. EPA announces today the availability of such data. EPA is also making available today two draft guidance documents that contain detailed technical guidance for the design, construction, and operation of single and double liner and leachate collection systems. EPA is requesting comments on this new data and the guidance documents.

**DATE:** Comments must be submitted on or before June 1, 1987

**ADDRESS:** Comments should be addressed to the Docket Clerk at the following address: EPA RCRA Docket (S–212) (WH–562), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference code F–87–DLRN–FFFFF. The Docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials and should call Mia Zmud at (202) 475–9327 for appointments. The public may copy at no cost a maximum of 50 pages of material for any one regulatory docket. Additional copies are $0.20 per page.

A limited number of copies of the following documents are available for public distribution through Kenneth Skahn, in the Office of Solid Waste, U.S. Environmental Protection Agency at the

address and telephone number listed below:

*Draft Minimum Technology Guidance on Single Liner Systems for Landfills, Surface Impoundments, and Waste Piles—Design, Construction, and Operation* (EPA/530–SW–85–013);

*Draft Minimum Technology Guidance on Double Liner Systems for Landfills and Surface Impoundments—Design, Construction, and Operation* (EPA/530–SW–85–014); and

*Background Document on Bottom liner Performance in Double-Lined Landfills and Surface Impoundments* (EPA/530–SW–87–013).

In addition, copies of the background document are available for review in the Office of Solid Waste (OSW) docket room.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA Hotline, at (800) 424–9346 (toll free) or (202) 382–3000. For technical information, contact Kenneth Skahn, Office of Solid Waste (WH–565E) , U..S, Environmental Protection Agency, 401 M Sreeet, SW, Washington, DC 20460, (202) 382–4654.

**SUPPLEMENTARY INFORMATION:**

## Background

The Hazardous and Solid Waste Amendments (HSWA) of 1984, require that certain landfills and surface impoundments must have two or more liners and a leachate collection system. Specifically, section 3004(o)(1)(A) of RCRA, as amended by HSWA, requires new landfills or surface impoundments, each new landfill or surface impoundment unit at existing facilities, and each lateral expansion or replacement of a landfill or surface impoundment unit at existing facilities (for which a permit is received after November 8, 1984) to have at least two liners and a leachate collection system above (for landfills) and between such liners (i.e., double-liner minimum technology requirements). Section 3015(b) of RCRA extends the double-liner and leachate collection system requirements of 3004(o)(1)(A) to new units, replacement units and lateral expansion of existing units at interim status landfills and surface impoundments that are within the waste management area identified in the permit application with respect to wastes received beginning May 8, 1985. Therefore, certain landfills or surface impoundments must meet the double-liner minimum technological requirements of section 3004(o)(1)(A), unless they qualify for an exemption under sections 3004(o), 3005(j). Under section 3004(o)(5)(A), EPA is required to issue regulations or technical guidance by November 8, 1986, implementing the requirements of section 3004(o)(1)(A).

In addition, section 3015(a) of RCRA requires new units, replacements and lateral expansions of interim status waste piles to comply with the single liner and leachate collection and removal system requirements with respect to waste received beginning May 8, 1985. The requirements for waste pile units in 40 CFR 264.251(a) and 265.254 and the draft technical guidance for single liners cited above, provide standards and guidelines for design, construction, and operation of these single-lined units.

Until EPA issues new regulations or guidance on liners and leachate collection systems in accordance with section 3004(o)(5), double liner systems may be designed, constructed, and installed according to the interim statutory provisions of RCRA, section 3004(o)(5)(B), that were codified on July 15, 1985 (50 FR 28702), in 40 CFR 264.221(c), 264.301(c), 265.221(a), and 265.301(a). These interim standards require that the top and bottom liners be designed, operated, and constructed of materials to prevent hazardous constituent migration during the active life and postclosure care period for the unit. In the preamble to the July 15, 1985, regulation (50 FR 28702), the Agency states that the top liner standard can be met by a flexible membrane liner (FML). According to RCRA section 3004(o)(5)(B), the bottom liner must be constructed of at least three feet of recompacted soil or other natural materials with a permeability of no more than $1 \times 10^{-7}$ cm/sec.

In addition to double liner and leachate collection system requirements, the minimum technological requirements under section 3004(o)(4) of RCRA, as amended by HSWA, call for the utilization of an approved leak detection system (LDS) for new landfills, surface impoundments, waste piles, underground tanks, and land treatment units. This LDS must be able to detect leakage of hazardous constituents at the earliest practicable time. Section 3004(o)(4)(A) requires EPA to promulgate standards for the LDS no later than May 8, 1987.

On March 28, 1986, EPA proposed amendments to the interim statutory provisions for double liners under the authority of section 3004(o)(5)(A). This proposal set forth alternative performance standards for double liner systems (51 FR 10707–10711).

Under the first alternative, the proposal requires a liner system to include both top and bottom liners designed, operated, and constructed of materials to prevent hazardous constituent migration during the active life and post-closure care period (40 CFR Part 264.221(c)). To meet this standard, the top liner must be an FML (51 FR 10709). The proposal provides that the bottom liner performance standard may be met by a liner constructed of at least a 3 foot layer of compacted soil or other natural materials with a maximum hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec (40 CFR 264.221(c)).

Under the second alternative proposed on March 28, 1986, the liner system must include a top liner meeting the same performance standard that is described for the first alternative. The bottom liner must consist of two components that are intended to function as one liner. The upper component of the composite liner must be designed, operated, and constructed of materials to prevent hazardous constituent migration into this component during the active life and post-closure care period. In the preamble to the proposal, we state that the top liner must be an FML (51 FR 10709). The lower component must be designed, operated, and constructed of materials to minimize hazardous constituent migration through the upper component if a breach in the upper component occurs before the end of the post-closure care period. The lower component must be constructed of compacted soil material with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec. In the preamble, we note that the composite liner should consist of a FML and a compacted soil component at least 3 feet (90 cm) thick (51 FR 10710).

Based on date available at the time of the proposal, EPA believed that both these systems could meet the overall double liner system goal of preventing hazardous constituent migration out of the unit during the active life and post-closure care period for the facility. However, in the preamble EPA expressed some concern about the long-term performance of the compacted soil bottom liner (51 FR 10709), noting that if leachate migrates through a breach in the top FML liner, the leachate may be trapped in the compacted low permeability soil liner rather than be collected and removed in the leachate collection system between the liners.

EPA will soon be proposing regulations for an approved leak detection system (LDS) at newly constructed units to meet the statutory provisions in section 3004(o)(4)(A). EPA's current position is that the leachate collection and removal system (LCRS) proposed on March 28, 1986

(with some technical modifications) will serve as the LDS for newly constructed landfill and surface impoundment units. On March 28, 1986, the Agency proposed to require the LCRS between the liners to be designed, constructed, maintained, and operated to detect, collect and remove liquids that leak through any area of the top liner during the active life and post-closure care period (40 CFR Part 264.221(c)). EPA plans to propose LDS regulations in the near future. These regulations will modify the proposed LCRS by proposing additional specific design standards requiring a minimum bottom slope, a minimum drainage layer hydraulic conductivity and transmissivity, and a sump of appropriate size to collect and remove liquids efficiently. Additionally, under the imminent LDS proposal the leachate detection, collection, and removal system (LDCRS) between the liners must meet specified performance standards for leak detection. It must be able to detect a specified leakage within a certain time period and to collect and remove the liquids rapidly to minimize the hydraulic head on the bottom liner. In the course of developing these proposed regulations we have collected new data. As discussed more fully below, this data indicates that compacted soil bottom liners will not detect and collect leaks as efficiently as composite bottom liners.

EPA continues to believe that liners are best used to facilitate the collection and removal of leachate. This view of liners is consistent with one of the fundamental elements of the liquids management strategy—to maximize the collection and removal of leachate from landfills, surface impoundments, and waste piles. The overall objective of EPA's liquids management strategy is for hazardous waste management units to be designed both to minimize the amount of leachate generated and to maximize the amount of leachate collected and removed from the unit. As landfills and surface impoundments cannot currently be designed, constructed, or operated to completely prevent leachate generation, emphasis must be placed on maximizing the collection and removal of the leachate from the unit. Therefore, the extent to which the proposed botton liner systems enhance or detract from the leachate detection, collection, and removal capabilities of the LDCRS was studied by EPA.

*New Data*

The Agency is reviewing data that are currently available from modeling efforts, actual performance and technical engineering analyses that compare the performance of these two bottom liners with respect to the following parameters:

- Leachate collection efficiency;
- Leak detection capability; and
- Leakage, both into and out of, the bottom liner.

EPA believes that any one of these factors will significantly influence the performance of the bottom liner and, therefore, may influence EPA's final decision concerning the composition of the bottom liner.

Today, EPA is making this information available for public comment. The data are presented and discussed in detail in a background document for this notice and will be considered along with other relevant information provided by the public in the development of the final double liner rule. The background document is entitled, "Background Document on Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments."

**1. Background**

Compacted soil liners have long been used as barriers and foundations in traditional civil engineering structures, such as dams, canals, and highways. They, therefore, have a long record of strength and durability that allows them to be used in these ways. However, as porous and disaggregated materials, soils are not impervious. In the case of double-lined waste management units, gravitational and capillary forces present in an unsaturated, low permeability soil liner will allow some leakage through the top liner to be absorbed into the bottom liner before it can be detected, collected, and removed by the LDCRS between the liners. Once trapped in the liner, the hazardous waste leachate will most likely migrate through the liner and into the environment.

Filed compacted, low permeability soils are subject to nonuniform hydraulic properties across and through the linter, even with extensive compactive and mixing effort and moisture monitoring. Accordingly, a compacted soil liner may contain defects that increase the local effective hydraulic conductivity and, hence, detrimentally affect the liner's performance.

In a compacted soil liner the thickness will affect the time that liquids will break through the bottom of the liner and enter the surrounding environment, but it will not affect leachate collection and removal efficiency, leak detection sensitivity, and total leakage out of the unit. These parameters are mainly controlled by the effective hydraulic conductivity of the liner system. Therefore, while thicker liners may be able to satisfy the "prevent migration" clause through the post-closure care period, they will not perform as effectively as a more impervious liner system, such as a FML, with respect to the three factors cited above.

The use of a flexible membrane as a liner significantly improves the leachate collection efficiency and leak detection sensitivity of the system. FML's consist of interlocking synthetic polymers and thus are significantly more watertight than granular materials, such as soils. There is still an element of vapor diffusion, or permeation, that allows liquid to migrate though a perfectly intact FML. Nevertheless, the amount of fluid migration through the liner is extremely small and is estimated to be comparable to that produced by a porous materials with a hydraulic conductivity in the range of $1 \times 10^{-12}$ cm/sec. This factor alone implies a far greater performance capability of FML's with respect to leachate collection efficiency, as well as leak detection sensitivity.

However, even with good construction quality assurance, a FML may contain defects that increase the local effective hydraulic conductivity and, hence, have a detrimental affect on the liner's performance. Even under a good construction quality assurance program, FML's may have up to 1 or 2 small holes per acre of liner, based on engineering analysis of the current technology.

On the other hand, a composite liner consisting of a FML upper component and compacted low permeability soil lower component has several advantages and combines the strengths and capabilities of both materials to maximize leachate detection, collection, and removal from the unit. The FML upper component greatly improves leachate collection and removal efficiency and leak detection sensitivity of the LDCRS. In addition, the soil component minimizes the migration of liquids that leak through holes in the FML and provide some attenuation of leakage. As discussed more specifically below, EPA's analysis shows that the composite bottom liner system would provide better leak detection sensitivity and leachate collection and removal efficiency than a compacted low permeability soil. It would also significantly reduce the amount of leakage into the bottom liner and out of the unit over time as a result of increased leachate collection and removal efficiency. Therefore, a well constructed, installed, and operated composite liner is expected to minimize

hazardous constituent migration out of the unit by maximizing leachate collection and removal.

**2. Engineering Analysis of Performance Data**

In order to analyze the performance capabilities of the two bottom liner systems, the Agency reviewed available performance data for compacted soil and flexible membrane liners from actual landfills and surface impoundments. (Actual performance data on composite bottom lines does not exist at this time.) The review of such data indicates that as a general matter, compacted soil liners do not have uniform hydraulic properties across and through the liner. FMLs, on the other hand, possess uniform hydraulic properties. The range of actual performance data for compacted soil and flexible membrane liners was used in the Agency's modeling analysis to provide an understanding of the leak detection sensitivity and leachate collection efficiency of the bottom liners. (See section 3 below.) The background document more fully addresses the performance capabilities of the two bottom liner systems.

In addition, EPA recently conducted a review of applications submitted for RCRA hazardous waste facility permits since November 8, 1984, to determine the type bottom liner selected for installation at new landfills and surface impoundments. Of some 183 units for which permit applications were submitted as of February 1987, only seven units were to be constructed with compacted low permeability soil bottom liners. The vast majority of owners or operators selected the composite bottom liner rather than a compacted low-permeability soil liner. Many owners or operators have also indicated that they plan to use a composite liner for the top liner as well.

**3. Analytical Data**

Because only limited field data exist, analytical and numerical modeling approaches have been developed and used by EPA to evaluate the performance capabilities of the two bottom liners at a typical landfill or surface impoundment unit.

Three modeling approaches were used to evaluate leachate collection efficiency, leak detection sensitivity, and leakage into and out of the bottom liner:

- steady-state, saturated, 1-dimensional flow;
- transient, unsaturated, 1-dimensional flow; and
- transient, unsaturated, 2-dimensional flow.

These approaches reflect three different levels of analysis for evaluating the performance of the bottom liner. The results from each analysis were compared and in some cases aggregated in order to determine the representative values for leachate collection efficiency, leak detection sensitivity and migration into and out of the bottom liner. A detailed discussion of each modeling effort is presented in the background document. Figures presented in this notice are derived from the modeling efforts described in the background document. Today's notice does not contain a complete discussion of the applications of each approach to each performance parameter. such discussion is, however, set forth in the background document.

The detection sensitivity is the smallest leakage rate through the top FML that can be detected in the LDCRS sump. For the compacted low permeability soil liner at $1 \times 10^{-7}$ cm/sec, the smallest leakage rate detected is about 80–100 gallons per acre per day (gpad) with a uniformly leaking FML top liner, based on the 1-dimensional saturated flow calculations (Figure 1). The actual capability of a compacted soil liner is site-specific and will depend on many factors (e.g., location of the leak, effective hydraulic conductivity of the liner, and the design of the LDCRS between the liners). However, as a general matter a bottom liner of compacted soil with a hydraulic conductivity value of $1 \times 10^{-6}$ cm/sec will perform significantly worse. For a composite liner, the LDCRS can detect leakage rates several orders of magnitude smaller than 80 gpad, i.e., 1 gpad. Even with a few holes in the FML component, the composite liner still performs much better than compacted soil liners with respect to leak detection senstitivity.

BILLING CODE 6560-50-M

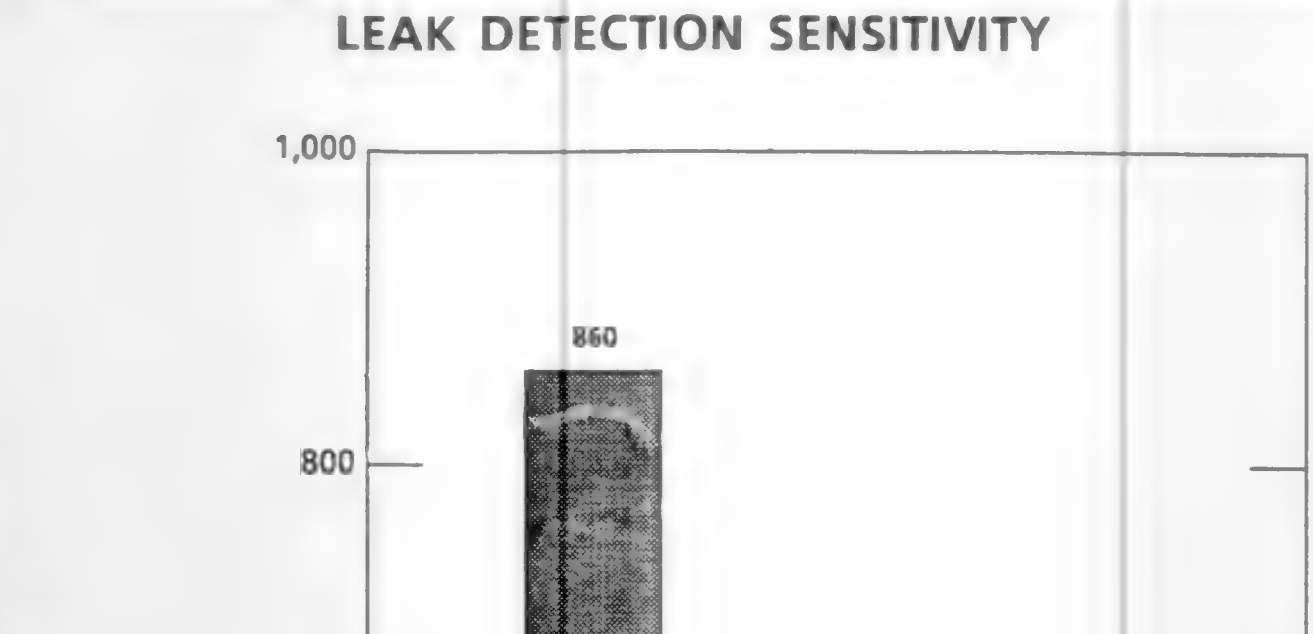


Figure 1. Comparison of leak detection sensitivity for compacted soil and composite bottom liners.

BILLING CODE 6560-50-C

The leachate collection efficiency is the maximum possible leakage that can be collected in the LDCRS sump divided by the total leakage entering the LDCRS through the liner. Figure 2 illustrates the relative collection efficiencies of the composite and compacted low permeability soil liner systems assuming uniform top liner leakage and steady-state, 1-dimensional flow. Both systems have greater than 90 percent collection efficiency at very large leakage rates (greater than 1000 gpad); at smaller leakage rates that EPA believes are more representative of current technology and operating practices at landfills and surface impoundments (e.g., 10–100 gpad), the compacted low permeability soil liners have near zero percent efficiencies while the composite liner has near 100% efficiency. Figure 2 also demonstrates the siginficant reduction in collection efficiency with an increase in hydraulic conductivity for the compacted low permeability soil liner. Increasing the number of defects (holes) the FML component of the composite liner reduces the collection efficiency only slightly. Calculated cumulative leachate collection efficiencies over 10 years at a constant leakage rate of 100 gpad (e.g., rates that can be expected to be observed in surface impoundment failures given the large volume and depth of liquid present) indicate that (1) composite liners achieve a much greater leakage collection efficiency than compacted soil bottom liners, and (2) for compacted soil bottom liners an increase in hydraulic conductivity of the soils (to 1 x $10^{-6}$ cm/sec) produces a significant decrease in collection efficiency.

BILLING CODE 6560-50-M

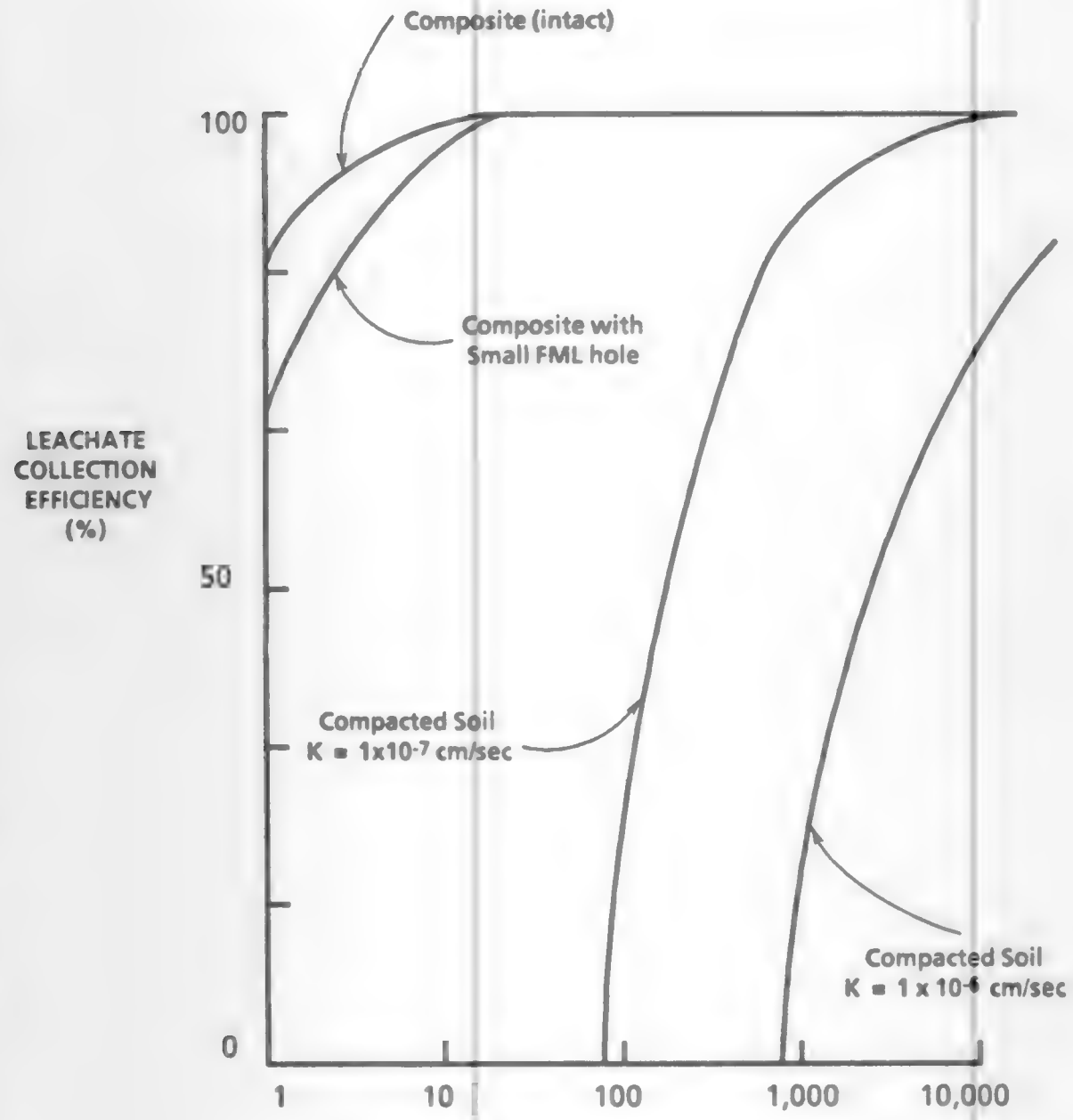


Figure 2. Comparison of leachate collection efficiencies for compacted soil and composite bottom liners.

BILLING CODE [illegible]

Leakage out of the unit refers to leakage that passes into and through the bottom liner. As illustrated in Figure 3, composite liners have a much lower potential to allow leachate to migrate into the bottom liner. On a cumulative basis over 10 years, leakage into the bottom liner is higher for compacted soils with a hydraulic conductivity of $1 \times 10^{-7}$ cm/sec, as opposed to composite liners as shown in Figure 3.

Calculated results from the computer simulations indicate that the composite bottom liner performs conistently better than compacted low permeability soils with respect to maximizing leachate detection, collection, and removal and minimizing migration out of the unit. Based on these data, the difference in performance is significant. The other important trend noted in evaluating the data is that compacted low permeability soil lines with effective hydraulic conductivities greater than $1 \times 10^{-7}$ cm/sec perform significantly worse.

BILLING CODE 6560-50-M

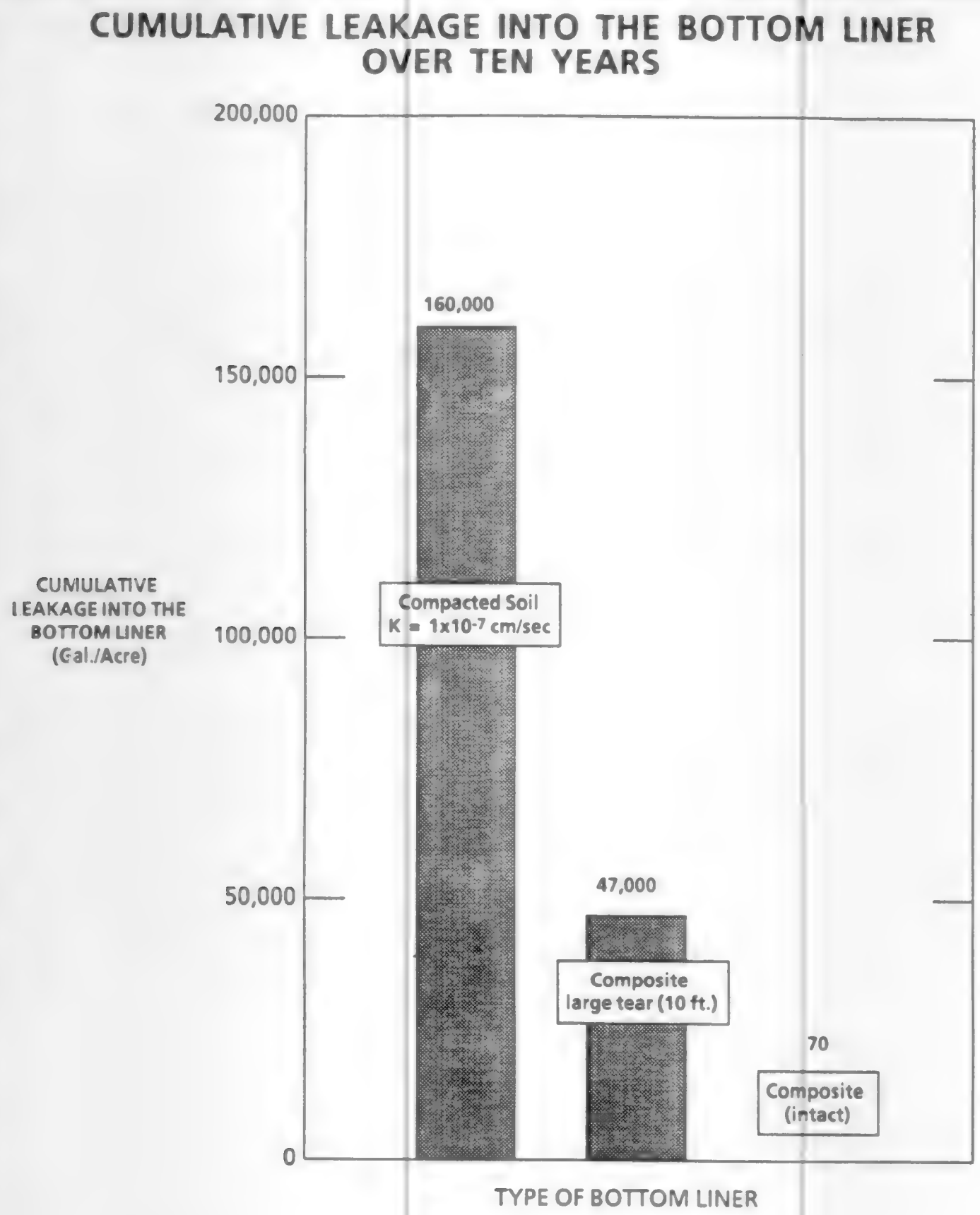


Figure 3. Cumulative leakage into the bottom liner over 10 years for a side wall top liner leak at 50 gal./acre/day.

BILLING CODE 6560-50-C

**4. Conclusions Based on New Data**

The information collected and included in the background document argues strongly that the composite bottom liner with the FML upper component and compacted low-permeability soil lower component will significantly enhance the leachate collection and removal efficiency and the leakage detection capability of the LDCRS. The composite liner best meets the goals of preventing migration out of the unit and detecting the leak at the earlist practicable time. It is also more effective in meeting the goal of the liquids management strategy for maximizing leachate collection and removal.

*Minimum Technology Guidance*

The draft technical guidance documents noticed today are second drafts resulting from comments submitted on the first drafts that were sent to state agencies, environmental groups, trade associations and the regulated community. These second drafts are significantly different from the original drafts as a result of the comments received. EPA solicits comments from the general public on these revised drafts of technical guidance for single and double-liner systems.

The draft double liner guidance, EPA/530–SW–85–014, applies to new units and lateral expansions and replacements of existing units at hazardous waste landfills and surface impoundments. The two double liner syserms discussed are those proposed in the March 28, 1986, preamble to the (51 FR 10707–10711) double liner and leachate colleciton system rule. The draft technical guidance document discusses each liner system with respect to design, construction, installation, and operations.

The draft single liner guidance, EPA/530–SW–85–013, is intended to provide guidance on design in accordance with section 3015(a) of RCRA for interim status waste piles and for certain surface impoundments and landfills (40 CFR Part 264.221 and 264.301, respectively). The new requirements for interim status waste piles apply to new units, and replacements and lateral expansions of existing units. Other applicable hazardous waste management units include new landfills and surface impoundments and lateral expansions or replacements of existing landfills and surface impoundments that have been permitted before November 8, 1984. In addition, the existing single liner standards of 40 CFR 264.221(a) for surface impoundments, and 40 CFR 264.301(a) for landfills, are still applicable to portions of existing units that are not covered by waste at the time of permit issuance. Therefore, the draft single liner guidance is intended to provide guidance for land disposal facility owners or operators and EPA and State regulatory personnel on designs that the Agency believes meet the single liner performance standards of 40 CFR 264.221(a), 264.251(a), and 264.301(a). This document identifies design, construction, and operation specifications that can be used by owners or operators in order to comply wth the requirements of those sections of the EPA rules.

Dated: April 13, 1987.

J.W. McGraw,

*Acting Assistant Administrator for Solid.*

[FR Doc. 87–8678 Filed 4–16–87; 8:45 am]

BILLING CODE 6560-50-M

---

## DEPARTMENT OF COMMERCE

**50 CFR Part 652**

**National Oceanic and Atmospheric Administration**

**Atlantic Surf Clam and Ocean Quahog Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of a fishery management plan amendment and request for comments.

**SUMMARY:** NOAA issues this notice that the Mid-Atlantic Fishery Management Council has submitted Amendment 7 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the amendment and associated documents.

**DATE:** Comments will be accepted until June 11, 1987.

**ADDRESS:** Send comments to Richard Schaefer, Acting Regional Director, Northeast Regional Office, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Mark "Comments on Atlantic surf clam and ocean quahog plan" on the envelope.

Copies of the amendment and its associated documents are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

**FOR FURTHER INFORMATION CONTACT:** Bruce Nichols (plan coordinator), 617–281–3600, ext. 232.

**SUPPLEMENTARY INFORMATION:** The FMP and this amendment were prepared under the Magnuson Fishery Conservation and Management Act.

This amendment proposes measures to (1) change the quarterly quota allocation for the Georges Bank area from 10%—40%—40%—10% to 25% for each quarter, (2) remove for all areas the 5,000 bushel threshold for transfer of unharvested quota from one quarter to the next, (3) add the provision that any unharvested quota in the Nantucket Shoals and Georges Bank areas be distributed proportionally among the remaining quarters of the year, (4) remove the 10% limit on carryover of unharvested quota from one year to the next, (5) require annual renewal of vessel permits, and (6) change the regulations to enhance prosecution and enforcement.

Proposed regulations for this amendment will be published within 15 days.

(16 U.S.C. 1891 *et seq.*)

Dated: April 14, 1987.

Richard B. Roe,

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–8721 Filed 4–14–87; 5:05 pm]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 74
Friday, April 17, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 87-401]

### National Animal Damage Control Advisory Committee; Criteria for Membership Selection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This document specifies the final criteria that has been adopted by the Secretary of Agriculture in selecting organizations for membership on the National Animal Damage Control Advisory Committee (NADCAC). The NADCAC is being formed to provide advice to the Secretary of Agriculture on policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program, of the Animal and Plant Health Inspection Service.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Fichtner, Acting Deputy Administrator for Animal Damage Control, APHIS, USDA, Room No. 1624 South Building, 14th and Independence Avenue, SW., Washington, DC 20250, Area Code (202) 447-2054.

**SUPPLEMENTARY INFORMATION:** On November 6, 1986, the Animal and Plant Health Inspection Service published a notice in the **Federal Register** (51 FR 40345) which set forth eight criteria that the Secretary of Agriculture proposed to use in selecting organizations for membership on the NADCAC. The NADCAC is being formed to provide advice to the Secretary of Agriculture on policies, program issues, and research needed to conduct the ADC program of USDA. The NADCAC is also intended to serve as a public forum which will enable those affected to have a voice in the ADC program's policies.

The November 6 notice invited the submission of written comments on the proposed criteria for 31 days until December 8, 1986. Based on the comments received, the Secretary will use the same eight criteria as the final criteria in selecting organizations for the NADCAC:

1. National in scope.
2. Non-Federal (except for congressionally directed).
3. Experience in cooperative working relationships.
4. Tradition of national public interest and service.
5. Record of achievement in national public interest goals.
6. Subject matter knowledge and experience.
7. Represents clients fairly and comprehensively.
8. Continuing interest in ADC.

This notice is given in compliance with the Federal Advisory Committee Act (Public Law 92-468).

Done in Washington, DC, this 13th day of April, 1987.

**Bert W. Hawkins,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 87-8658 Filed 4-16-87; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[Case No. OEE-3-86]

### Order Renewing Temporary Denial of Export Privileges; Bollinger GmbH et al.

In the matter of: Bollinger GmbH, Roseggergasse 34, 1160 Vienna, Austria; Leopold Hrobsky, Donaufelderstrasse 38, Stg. 4, Apt. 4, 1210 Vienna, Austria; Dietmar Ulrichshofer, with addresses at Kirchenstrasse 1, 3061 Ollersbach, Austria and c/o Bollinger GmbH, Roseggergasse 34, 1160 Vienna, Austria and Vrablicz and Company, Steinergasse 11, 1170 Vienna, Austria, Respondents.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368-399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. Sections 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Dietmar Ulrichshofer; Bollinger GmbH, which is owned by Dietmar Ulrichshofer; Leopold Hrobsky; and, Vrablicz and Company (hereinafter collectively referred to as respondents). Ulrichshofer, who is subject to an outstanding indictment in the U.S. District Court for the Central District of California for conspiracy to violate U.S. export controls and is a fugitive from U.S. justice, resides in Ollersbach, Austria; all of the other respondents reside in Vienna, Austria.[1] The initial order was issued on August 12, 1986 (51 FR 29509, August 18, 1986) and renewed on October 11, 1986 (51 FR 37210, October 20, 1986), December 10, 1986 (51 FR 44655, December 11, 1986) and February 8, 1987 (52 FR 4632, February 13, 1987).

In its renewal request dated March 20, 1987, the Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have conspired and acted in concert to violate the Act and the Regulations. The Department has reason to believe that the purpose of the conspiracy is to obtain U.S.-origin goods from third countries for ultimate destination in proscribed countries, without obtaining the required authorization from the Department for such shipments. The Department has reason to believe that respondents have participated in the unauthorized reexport of U.S.-origin commodities, including computer equipment and peripherals, from Austria to proscribed destinations, without authorization from the Department. Indeed, the Department previously provided a statement by the U.S. Customs Attaché in Austria that his aspect of the investigation has revealed that respondent Vrablicz, on August 5, 1986, reexported such commodities to Czechoslovakia, which commodities were "owned" by respondent Bollinger. The Department further has shown that a statement given by the Customs Attaché indicates that respondents

[1] Werner Bruchhausen, a co-defendant named in the indictment along with Ulrichshofer was just convicted in February 20, 1987, in the U.S. District Court, Los Angeles, California in connection with some of the export control violation activities underlying the Ulrichshofer indictment.

currently have in their possession and control in Vienna, Austria, additional U.S.-origin equipment which requires authorization from the Department to permit its reexport from Austria. The Department has shown that there is a presumption of denial for any request seeking authorization to reexport this U.S.-origin equipment to proscribed destinations and states that, in any event, no such authorization has been requested. Nevertheless, the Department has reason to believe that respondents may attempt to reexport these U.S.-origin goods to proscribed destinations.

The Department states that the investigation gives it reason to believe that the violations under investigation were deliberate and covert. The Department has shown that respondents Ulrichshofer and Hrobsky directed sales of commodities covered by the investigation to the Soviet Bloc. The Department has also shown that Ulrichshofer is involved with other parties in reexporting U.S.-origin commodities from Austria to proscribed destinations without authorization from the Department. Further, since the respondents currently have possession and control of U.S.-origin goods subject to the Act and the Regulations, the Department states that violations are likely to occur again. The Department submits that renewal of the temporary denial order naming respondents is necessary for the purpose of giving notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Respondents Vrablicz submitted to the Deputy Assistant Secretary a letter dated March 24, 1987 contesting the Department's request for renewal of the order. This letter was received in a timely manner and copies were provided to the Department. In response to the Department's allegation that Vrablicz has continued to refuse to provide information relevant to this case, Vrablicz contends it has already proven its willingness to cooperate with U.S. authorities. As evidence of this asserted cooperation, Vrablicz provides the Deputy Assistant Secretary with a record of the requests made of the firm by the Customs Attaché in Vienna during a February 24, 1987 meeting and the response to those requests dated 13 March 1987. These two documents were not provided in English or with an English translation as is required by the Act (§ 388.7(e)). Therefore, these documents are not helpful to support the company's contention that is has been cooperative. But assuming *arguendo* that Vrablicz had provided some cooperation, that alone would not necessarily be sufficient to show that a temporary denial order is no longer needed. If the Department should become sufficiently satisfied with Vrablicz's (or any other respondent's) level of cooperation and with its explanation of its past involvement with the violations that are under investigation, this order could be modified upon request by the Department.

Based on the showing by the Department, and given that no other respondent filed opposition to the request for renewal, I find that renewal of the order temporarily denying export privileges to respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby *Ordered*.

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective April 9, 1987, and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served upon each respondent and published in the **Federal Register.**

Dated: April 9, 1987.

**Theodore W. Wu,**

*Deputy Assistant Secretary for Export Enforcement.*

[FR Doc. 87-8630 Filed 4-16-87; 8:45 am]

BILLING CODE 3510-25-M

---

**[Application #87-00001]**

## Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review.

---

**SUMMARY:** The Department of Commerce has issued an export trade certificate of review to American Film Marketing Association. This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

*Export Trade*

Licensing and sales, and the facilitation of licensing and sales, of distribution rights to independently-produced, English-language motion pictures, television programs, and video recordings, and ancillary rights to them (video cassette rights, broadcast or satellite television rights, cable television rights, music rights, etc.). All of these rights are referred to in this notice as "Distribution Rights".

*Exports Markets*

The Export Markets include all parts of the world except the United States (the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

With respect to the licensing and sale of Distribution Rights in the Export Markets, AFMA and its Members may engage in activities related to:

1. Promulgating voluntary model sales contract forms among the AFMA Members;
2. Providing services to AFMA Members and others in arbitration of disputes arising over the terms of licensing or sales;
3. Exchange of information among AFMA Members regarding all aspects of foreign market conditions and customers;
4. Development and recommendation among AFMA Members of voluntary model business practices, including methods of reducing foreign trade barriers, improving intellectual propety protection, and expanding markets;
5. Collection and dissemination among AFMA Members of foreign market research information;
6. Negotiation and agreement with representatives of foreign governments and organizations toward reducing trade barriers, expanding markets, and improving intellectual property protection; and
7. Certification of AFMA Members as to such matters as involvement in transactions, evidence of ownership, and true signatures.

*Members (within the meaning of § 325.2(1) of the Regulations)*

ABC Distribution Company; Arista Films, Inc.; Atlantic International; Australian Films International, Inc.; Alexander Beck Ents., Inc.; Cannon Int'l Inc.; Carolco International, N.V.; Cinetelfilms, Inc.; Concorde/New Horizons; Cori Films International; Crown Int'l Pictures Inc.; De Laurentiis Entertainment Group; Earl Owensby Studios; Embassy Films, Inc.; Empire International; Euramco Int'l., Inc.; Film Ventures Int'l., Inc.; Filmaccord Inc.; Filmation Associates; Films Around the World, Inc.; F/M Entertainment International, Inc.; Fries Distribution Co., Globe Export Corp.; Goldfarb Distributors, Inc.; Granat Releasing Corp.; Hemdale Film Corp.; Inter-Ocean Film Sales, Ltd.; Interaccess Film Dist.; Intercontinental Releasing Corp.; International Film Representatives; International Video Ent.; Inter Planetary Pictures; ITC Entertainment, Inc.; J.E.R. Pictures, Inc.; Jad Film Int'l. Inc.; K.R.G. Film Sales; Kodiak Films, Inc.; Lorimar-Telepicutures Corporation; Manley Productions; Manson International; Media Home Entertainment; MGM/UA Distribution Co.; Miracle Films, Inc.; Nelson Entertainment, Inc.; New Line Int'l. Releasing; New World Pictures Inc.; Noble Productions; OKCO/Trilogy Licensing Corp.; Omega Entertainment; Orion Pictures Int'l.; Overseas Filmgroup Inc.; P.C. Films Corp.; Peregrine Film Dist., Inc.; Reel Movies International; RKO Programmes International; The Samuel Goldwyn Company; Shapiro Entertainment Corp.; Showtime/The Movie Channel; Silverstein Int'l. Corp.; Simcom Int'l., Inc.; Skouras Pictures, Inc.; Trans World Entertainment; Transcontinental Pic. Ind.; Troma, Inc.; UAA Films, Inc.; Universal City Studios, Inc.; The Vista Organization Partnership.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: April 10, 1987.

**George Muller,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-8716 Filed 4-16-87; 8:45 am]

BILLING CODE 3510-DR-M

---

## National Oceanic and Atmospheric Administration

### Intent To Update a Special Study of State Coastal Zone Management Programs.

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

**ACTION:** Notice of intent to undertake a special study of state coastal zone management programs in response to the Presidential Directive on national energy security.

**SUMMARY:** On June 6, 1986, the President announced a new effort to preserve the nation's energy resources. As part of the directive, he instructed the Secretary of Commerce to ". . . begin a review of State coastal zone management programs to advance the 'national interest' in energy security." Included in the Directive was the specific charge to seek to streamline permitting processes.

The state coastal zoo management programs are most directly involved in energy development through their permitting processes. This includes direct permitting of activities (e.g. construction permits on land) as well as broader approval actions such as the Federal consistency provisions under § 307 of the Coastal Zone Management Act (CZMA). Permit simplification is a basic objective of the CZMA as expressed in §303(2)(F) which declares that each program must provide for the "the coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources". Since the first coastal program was approved in 1976, the participating states have engaged in a number of efforts to comply with this objective. In response to the Presidential Directive and pursuant to the authority of the CZMA, the Office of Ocean and Coastal Resource Management (OCRM) is undertaking a study which will identify successful permit simplification efforts and use these as a basis for specific recommendations to the coastal zone management programs. The study will include three tasks.

*Task 1:* Current status of state permitting systems.

This task will develop a description of the overall permitting structure of each participating coastal zone management program and will document any efforts undertaken by the state to simplify and shorten its permitting process. The types of streamlining methods that OCRM will review will include, but not be limited to: joint permitting, general permitting, single or consolidated permitting, multi-agency consultation, designation of specific time frames for agency actions, and delegation of decisions to lower governmental levels. Vehicles for accomplishing these permitting improvements may include gubernatorial executive orders, state laws, regulations, interagency memoranda of understanding, inter-agency directives and informal agreements. OCRM will use the results of this task as the basis for recommendations for improvements developed in task 3.

*Task 2:* In-depth analysis of selected states.

This task will undertake a more detailed analysis of the permitting systems of three to six states. OCRM will base its selection of the states to be reviewed on the scope and perceived effectiveness of the states' permit simplification efforts as well as their potential applicability to other coastal programs. In addition to its analysis of the selected states, OCRM may also examine in detail specific permitting techniques from other states which appear particularly effective from the permit simplification viewpoint. Some of the questions that OCRM will address in the analysis are: what was the state's permit issuance process prior to the establishment of the permit simplification technique; how did the state choose the permit simplification technique; what were the state's experiences in implementing the technique; did the state attempt to implement any techniques which failed and were abandoned; how does the technique work; what improvements could the state make to improve efficiency; what are the reactions of state and local officials, business interests, and the public to the technique; and, have evaluators measure the success of the technique in terms of reduction in permit processing time, reduction in the number of permits denied or issued with conditions, reduction in the number of permit appeals, or reduction in the number of complaints regarding the permit process?

This analysis will identify the key elements in the successful adoption of each permit streamlining technique. It will also identify the types of permitting structures where the technique could be successfully applied.

*Task 3:* Development of recommendations.

The coastal program profiles developed in task 1 and the simplification technique analysis in task 2 will be the basis for specific recommendations by OCRM to the states on ways to improve their permit processing. The primary focus of the recommendations will be those states and permitting processes which OCRM has previously identified in evaluations under § 312 of the CZMA or other ongoing reviews as needing improvement. OCRM will provide technical assistance to the states on the implementation of these recommendations. OCRM anticipates completing this study in early 1988.

**FOR FURTHER INFORMATION CONTACT:** Marcella R. Jansen, Policy Analyst, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC. 20235 (telephone: 202/673–5100).

Federal Domestic Assistance Catalogue 11.419 Coastal Zone Management Program Administration.

Dated: April 13, 1987.

**Peter L. Tweedt,**

*Director.*

[FR Doc 87–8696 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to Procurement List 1987 commodities to be produced by and service to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** May 19, 1987.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** C.W. Fletcher, (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On August 29, 1986, November 21, 1986, December 29, 1986 and January 20, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (51 FR 30899, 42129, 46908 and 52 FR 2143) of proposed additions to Procurement List 1987, November 3, 1986 (51 FR 39945). A comment was received with respect to the proposed addition of Water Bag, Nylon Duck, NSN 8465–01–185–5511 as the result of the Committee staff having notified the current contractor of the proposed addition. The contractor was requested to include its annual sales to all sources if it elected to submit comments. That firm responded and indicated that the loss of the water bag contract would have a significant negative impact on the firm in that the contract represented 15% of all revenue projected for the coming vear in its

industrial sewing department. It stated further that it had acquired additional machinery specifically built to meet the requirements of its contract and has hired and trained additional labor specifically for the contract.

Since the firm did not state its total annual sales, but related the loss to sales of its industrial sewing department only, a second certified letter was sent to it indicating that the comments related to its current contract which would not be affected by the proposed action. The firm was advised that if the Committee did not receive additional information which related to possible impact as the result of the proposed action, it would be assumed that the impact on the firm would not be severe. The firm did not submit further comments.

Based on the information available, the impact on the current contractor for the water bag is not considered to be serious.

**Additions**

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities and service listed.

c. The action will result in authorizing small entities to produce the commodities and service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1987:

**Commodities**

*Boxspring*

7210–00–NIB–0005 Twin, "38 x 80"
7210–00–NIB–0006 Full, "53 x 80"

(Requirements for nonappropriated Fund Activities of the Armed Forces only)

*Mattress (Innerspring)*

7210–00–NIB–0003 Twin, "38 x 80"
7210–00–NIB–0004 Full, "53 x 80"

(Requirements for nonappropriated Fund Activities of the Armed Forces only)

*Enamel, Lacquer*

8010–00–598–5936
8010–00–846–5117
8010–00–852–9033
8010–00–852–9034
8010–00–988–1458
8010–00–764–8434
8010–00–848–9272
8010–00–878–5761
8010–00–910–8154
8010–00–167–1139
8010–00–348–7715
8010–00–616–9143
8010–00–616–9144
8010–00–782–9356
8010–00–181–7371
8010–00–936–8366
8010–00–936–8367
8010–00–936–8370

*Enamel, Primer Coating*

8010–00–297–0593
8010–00–899–8825

*Water Bag, Nylon Duck*

8465–01–185–5511

*Service*

Commissary Shelf Stocking
Commissary Branch Store
Mayport, Florida

*Parts Sorting*

McClellan Air Force Base, California

C.W. Fletcher,
*Executive Director.*

[FR Doc. 87–8793 Filed 4–16–87; 8:45 am]
BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Image Recognition Systems; Meeting

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Image Recognition Systems will meet in closed session on June 16 and July 23, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on Scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study the current status and probable near- to medium-term development of computer-based image recognition systems with emphasis on the potential for further development in "smart weapons," especially those for attacking ground vehicles.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force Meetings, concern matters listed in 5 U.S.C. § 552(c)(1) (1982), and that accordingly these meetings will be closed to the public.

**Patricia H. Means,**
*OSD Federal Register Liaison Officer, Department of Defense.*

April 13, 1987.

[FR Doc 87–8701 Filed 4–16–87; 8:45 am]
BILLING CODE 3810-01-M

## Department of the Army

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–436), announcement is made of the following committee meeting:

Name of Committee: Army Science Board (ASB)
Date of Meeting: 4 May 1987
Time of Meeting: 0900–1600 hours
Place: Pentagon, Washington, DC

Agenda: The Army Science Board Steering Committee will meet to discuss the status of the various Ad Hoc Subgroups and Laboratory Effectivess Reviews, review the Army Science Board Standing Operating Procedures and its governing Army Regulations 15–8, and discuss future plans of the existing five Functional Subgroups. This meetings is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–7046.

**Sandra F. Gearhart,**
*Administrative Assistant, Army Science Board.*

[FR Doc. 87–8692 Filed 4–16–87; 8:45 am]
BILLING CODE 3710-08-M

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 6–7 May 1987

Times of Meeting: 0830–1600 hours, 6 May 1987. 0830–1530 hours, 7 May 1987.

Place: U.S. Army Communications and Electronics Command (CECOM).

Research, Development and Engineering Center, Fort Monmouth, New Jersey

Agenda: The ASB Panel will visit the CECOM RD&E Center for the purpose of gathering data for the conduct of the effectiveness review of that facility. The meeting will consist of briefings by the RD&E Center staff, interviews with the Project Managers and interviews with a cross section of the RD&E Center staff. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subseciton 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

**Sandra F. Gearhart,**

*Administrative Assistant, Army Science Board.*

[FR Doc. 87–8708 Filed 4–16–87; 8:45 am]

BILLING CODE 3710–08–M

## Corps of Engineers, Department of the Army

### Coastal Engineering Research Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: May 19–21, 1987.

Place: Corpus Christi Marriott, Corpus Christi, Texas.

Time: 8:30 a.m. to 4:45 p.m. on May 19; 8:00 a.m. to 4:30 p.m. on May 20; 8:00 a.m. to 11:30 a.m. on May 21.

Proposed Agenda: The May 19 session will consist of a review of previous CERB business, an update of FY 87 Coastal Engineering R&D Program, the status of recommendations to the Chief of Engineers, presentations and discussions on Private Sector Initiative, Dredging Program, Coastal Geology and Geotechnology R&D Needs in the Corps, an overview of Galveston District projects, Southwestern Division Research Needs, Preliminary Results of SUPERDUCK Surf Zone Experiments, Cresent City Delosse Monitoring Project, Mouth of the Colorado, Corpus Christi Inner Harbor Shoaling Study, and a tour briefing.

A field trip to Corpus Christi North Beach, Mouth of the Colorado, Corpus Christi Inner Harbor, and King Ranch Shrimp Mariculture Site is planned for May 20, with a discussion of the field trip scheduled following the return to the hotel.

The session on May 21 will consist of presentations and discussions on Biperiodic Waves in Shallow Water and North Central Division Research Needs, recommendations by members of the Board, and selection of date and place for the next CERB meeting.

This meeting is open to the public; participation by the public is scheduled for 9:15 a.m. on May 21. The public may attend the tour on May 20, but must provide their own transportation.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Dwayne G. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180–0631.

**Dwayne G. Lee,**

*Colonel, Corps of Engineers, Executive Secretary.*

[FR Doc. 87–8633 Filed 4–16–87; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### National Advisory Council on Continuing Education; Meeting

**AGENCY:** National Advisory Council on Continuing Education, Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** April 29–May 1, 1987.

**ADDRESS:** Conference Room D, Ramada Renaissance, 1143 New Hampshire Ave., NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Mary F. Buestrin, National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC. 20036, Telephone: (202) 634–6077.

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Continuing Education is established under Section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of the Higher Education Act with regard to continuing education; and

(c) Activities that will lead to changes in the legislative provisions of federal laws affecting continuing education and training programs.

The meetings of the Council are open to the public. However, meetings are held in a small conference room to minimize costs and those interested in attending are asked to call the Council's office beforehand so accommodation can be made to provide extra seating for them.

The Executive Committee will meet from 6:30 p.m. to 9:00 p.m. on April 29, and the full Council will meet from 8:00 am to 5:00 p.m. on April 30 and from 8:00 a.m. to 12:00 p.m. on May 1, 1987.

The proposed agenda includes:

Changes in Charter
Pending Changes in Committee Management Regulations
Pending Changes in Federal Advisory Committee Act
Expanded NACCE mandate as of 1986 Reauthorization
Provisions in the Higher Education Technical Amendments
Personnel Matters
Budget—Expenditures made and planned
Report on Ongoing Research

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC 20036.

Signed at Washington, DC, on April 1, 1987.

**Mary W. Hansen,**

*Special Assistant.*

[FR Doc. 87–8382 Filed 4–16–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

[BPA File Nos: WP–87 and TR–87]

### Public Comment Forum and Close of Written Comment Period in Bonneville Power Administration 1987 Wholesale Power Rate Adjustment and Transmission Rate Adjustment Proceedings

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice. *BPA File Nos.:* WP–87 and TR–87. BPA requests that all documents regarding wholesale power rates contain the file number designation WP–87. Those comments pertaining to transmission rates should be designated TR–87.

**SUMMARY:** On December 30, 1986, BPA published notices of "Proposed Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment," 51 FR 47108, and "Proposed Transmission Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment," 51 FR 47144. In these notices, BPA scheduled a series of public field hearings regarding BPA's wholesale power and transmission rates proposals. BPA also announced that a second series of field hearings would be considered. The first series of field hearings was held February 3 through February 12, 1987. At this time, BPA announces a second public comment forum, in Portland Oregon, on April 30, 1987.

BPA also announces that the deadline for submitting written comments on the wholesale power and transmission rates proposals is 5 p.m. PDT on Friday, May 15, 1987.

**DATES:** The public comment forum is scheduled for Thursday, April 30, 1987, at 7:00 p.m., in the Klamath Room, Red Lion Inn-Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon. The comment period for written comments submitted in BPA File Nos. WP–87 and TR–87 will close at 5 p.m. PDT, on Friday, May 15, 1987. Commenters should allow sufficient time for mail delivery to ensure this deadline is met.

**ADDRESS:** Written comments not submitted at the rate adjustment hearings or at the public comment forum should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Kathleen S. Johnson, Public Involvement Office, at the address listed above, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6228, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Rm. 376, Boise, Idaho 83724, 208–334–9137.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Comment Forum

The Administrator, in consultation with the BPA Area Managers, has determined that the first series of field hearings provided sufficient opportunity for public comment in the regional areas of Spokane, Tacoma, Everett, and Richland, Washington; Burley, Idaho; Jackson, Wyoming; and Eugene, Oregon. The Administrator has determined that a public comment forum in the Portland, Oregon metropolitan area will provide a large number of persons an additional opportunity to speak. This public comment forum is scheduled after the formal hearings in the rate case to provide the public an opportunity to comment on the evidence presented in the formal proceedings.

The public comment forum is scheduled for Thursday, April 30, 1987, in the Klamath Room, Red Lion Inn-Columbia River, 1401 N. Hayden Island Drive, Portland, Oregon. Registration will be at 7 p.m., and the comment forum will begin at 7:30 p.m. BPA area staff will preside. The comments submitted at the comment forum will be made a part of the Official Record. This opportunity is in addition to the opportunities to submit written comments throughout the rate proceeding.

#### II. Close of Written Comment Period

BPA has to date received well over 7,000 written comments from participants. In order to permit the Administrator an opportunity to consider these written comments, the Administrator has decided to close the comment period for written comments on Friday, May 15, 1987. This date will permit the Administrator to include in his Draft Record of Decision the written comments received from the participants. Comments must be received by 5 p.m. PDT on Friday, May 15, 1987, in order to be included in the Official Record for the Administrator's consideration.

Issued in Portland, Oregon, this 8th day of April 1987.

**Steven G. Hickok,**

*Acting Administrator.*

[FR Doc. 87–8773 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

## Economic Regulatory Administration

[ERA Docket No. 87–15–NG]

### Spot Market Corp.; Application To Import Natural Gas From Canada

**AGENCY:** Department of Energy, Economic Regulatory Administration.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 18, 1987, of an application filed by Spot Market Corporation (SMC) for blanket authority to import up to 100 Bcf of natural gas annually for a two-year period beginning on the date initial deliveries commence. The gas would be supplied by producers in the Canadian Provinces of Alberta and British Columbia and sold on a short-term basis in the domestic spot market to customers that are expected to include gas distributors, pipelines, electric utilities and industrial or agricultural users. SMC would act as a broker and/or agent on behalf of U.S. purchasers and Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. SMC proposes to advise the ERA of the date of first delivery of the import and submit quarterly reports describing the particular transactions. Deliveries of this gas will take place at existing points of interconnection between U.S. and Canadian pipeline systems all across Canada.

SMC is currently authorized to import for spot market sales up to 50 Bcf of Canadian natural gas per year over a two-year term beginning on the date of the first delivery. At this time, no gas has been received under that authorization. If the present application is approved the two authorizations together would permit SMC to import a total volume of 300 Bcf.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:**

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., (202) 586–6667

**SUPPLEMENTARY INFORMATION:** The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. parties opposing the arrangement bear the burden of overcoming this assertion.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., May 18, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of SMC's application is available for inspection and copying in the Natural Gas Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 3, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–8719 Filed 4–16–87; 8:45 am]

BILLING CODE 6450–01–M

**[Docket No. ERA C&E–87–44; OFP Case No. 66025–4364–20–24]**

## Acceptance of Petition for Exemption and Availability of Certification by Prime Energy Limited Partnership

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of acceptance.

**SUMMARY:** On March 20, 1987, Prime Energy Limited Partnership (Prime or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) Requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for its proposed 65 MW combined cycle cogeneration plant located at the Marcal Paper Mills Plant in Elmwood Park, New Jersey. Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on a lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503, Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m, Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption

BEST COPY AVAILABLE

from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

**DATES:** Written comments are due on or before June 1, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room Gas–093, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

Docket No. ERA C&E–87–44 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947.

**SUPPPLEMENTARY INFORMATION:** The proposed facility will be a combined cycle gas turbine cogeneration plant. The 65 megawatt cogeneration plant will utilize one Brown Boveri Corporation Type 8 gas turbine in conjunction with a waste heat recovery steam generator and a steam turbine. Electricity generated will be used at the Marcel Paper Mills plant and sold to Jersey Central Power and Light. Steam generated will be used in the Marcel Paper Mills plant.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

To qualify, the petitioner, pursuant to 10 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternate sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 et seq.; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, EPA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on April 13, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–8718 Filed 4–16–87; 8:45 am]

BILLING CODE 6450–01–M

---

## Energy Information Administration

### Changes To Energy Information Reporting and Record-Keeping Requirements

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of changes to the inventory of energy information reporting and record-keeping requirements.

**SUMMARY:** The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no longer included in these notices.

During the second quarter of fiscal year 1987 (January 1, 1987, through March 31, 1987), changes were made to the October 1, 1987 inventory of DOE information collections, which was published in the **Federal Register**, 51 FR 37958 (October 27, 1986). Changes made during the first quarter were published in the **Federal Register**, 52 FR 4519 (February 12, 1987). The second quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

**FOR FURTHER INFORMATION CONTACT:** Etta Harris, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–22, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 576–8800.

**Statutory Authority**

Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, April 13, 1987.

**Yvonne M. Bishop,**

*Director, Statistical Standards Energy Information Administration.*

## New DOE Energy Information Collections Approved by OMB

| DOE No. | Title | OMB control No | Expiration date | CFR Citation |
|---|---|---|---|---|
| Conservation and Renewable Energy: | | | | |
| CE–63A/B | Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module Manufacturers Survey | 19050172 | 12/31/89 | |

## DOE Energy Information Collections Extended

| DOE No. | Title | [illegible] control No | Expiration [illegible] | CFR Citation |
|---|---|---|---|---|
| Economic Regulatory Administration: | | | | |
| ERA–424D | Tertiary Project Annual Prepaid Expenses Report Form | [illegible] | 06/30/87 | 10 CFR Parts 212 78. |
| ERA–746R* | Imports and Exports of Natural Gas | 19030081 | 01/31/90 | 10 CFR Parts 205, [illegible] |
| Energy Information Administration: | | | | |
| EIA–14 | Refiners' Monthly Cost Report | 19050125 | 06/30/87 | |
| EIA–141 | National Survey of Fuel Purchases for Vehicles-Purchase Log and Supplementary Questionnaire | [illegible] | 05/31/87 | |
| EIA–182 | Domestic Crude Oil First Purchase Report | 19050143 | 06/30/87 | |
| EIA–429 | National Survey of Fuel Purchases For Vehicles-Background Questionnaire | 19050086 | 05/31/87 | |
| EIA–457A | Residential Energy Consumption Survey-Housing Unit Record Sheet | [illegible] | 05/31/87 | |
| EIA–457B | Residential Energy Consumption Survey-Household Questionnaire | [illegible] | 05/31/87 | |
| EIA–457C | Residential Energy Consumption Survey-Rental Agents | [illegible] | 05/31/87 | |
| EIA–457D | Residential Energy Consumption Survey-Quarterly Survey of Fuel Oil Households | [illegible] | 05/31/87 | |
| EIA–457E | Residential Energy Consumption Survey-Electric Utilities | [illegible] | 05/31/87 | |
| EIA–457F | Residential Energy Consumption Survey-Natural Gas Suppliers | 19050092 | 05/31/87 | |
| EIA–457G | Residential Energy Consumption Survey-Fuel Oil Supplier Form | [illegible] | 05/31/87 | |
| EIA–457H | Residential Energy Consumption Survey-Liquified Petroleum Gas Suppliers | 19050092 | 05/31/87 | |
| EIA–782A | Monthly Petroleum Product Sales Report | 19050141 | 06/30/87 | |
| EIA–782B | Reseller/Retailer's Monthly Petroleum Product Sales Report | [illegible] | 06/30/87 | |
| EIA–782C | Monthly Report of Petroleum Products Sold into States for Consumption | 19050140 | 06/30/87 | |
| EIA–821 | Annual Fuel Oil and Kerosene Sales Report | 19050018 | 07/31/87 | |
| EIA–856 | Monthly Foreign Crude Oil Acquisition Report | 19050156 | 06/30/87 | |
| Federal Energy Regulatory Commission: | | | | |
| FERC–549* | Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions | 19020086 | [illegible] | 18 CFR Part 284 Subparts A/D/E/F/H; 284.7–.11, 284.102, 284.106, 284.122, 284.125, etc. |
| FERC–581 | Management and Procurement Reporting and Recordkeeping Requirements | 19020130 | 02/28/90 | |
| FERC–587* | Indexes of Essential Power Site Withdrawals | 19020143 | 06/30/87 | 18 CFR Part 25. |

* Does not utilize a structured form.

## Reinstated DOE Energy Information Collections

| DOE No. | [illegible] | [illegible] control No. | Expiration [illegible] | CFR citation |
|---|---|---|---|---|
| Energy Information Administration: | | | | |
| NONE | None | | | |

## DOE Energy Information Collections Discontinued or Allowed to Expire

| DOE No. | [illegible] | [illegible] control No | Expiration date | CFR citation |
|---|---|---|---|---|
| Energy Information [illegible] | | | | |
| EIA–101 | Monthly Electric Bill Data | 19050129 | 03/31/87 | |
| [illegible] and Energy Emergencies: | | | | |
| IE–411 | Coordinated Regional Bulk Power Supply Program Report | 19010286 | 03/31/87 | |

## Changes in Continuing DOE Energy Information Collections

| DOE No. as previously listed | Changes |
|---|---|
| Federal Energy Regulatory Commission: | |
| FERC–500* and FERC–505* | Notice of Proposed Rulemaking revision to filing requirements as mandated by the Electric Consumers Protection Act of 1986. |

* Does not utilize a structured form.

[FR Doc. 87–8720 Filed 4–16–87; 8:45 am]

BILLING CODE 6450–01–M

**Federal Energy Regulatory Commission**

**[Project Nos. 10186-000 et al.]**

**Hydroelectric Power Applications (Sauk River Hydro et al.); Applications Filed With the Commission**

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.
b. Project No.: 10186-000.
c. Date Filed: November 24, 1986.
d. Applicant: Sauk River Hydro.
e. Name of Project: Sloan Creek Project.
f. Location: In Snoqualmie—Mt. Baker National Forest, on Sloan Creek, Snohomish County, Washington. Township 29N and Range 12E.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98052, (206) 885–3986.
i. Comment Date: May 14, 1987.
j. Description of Project: The proposed project would consist of: (1) Two diversion structures with inlet elevations of 3,200 feet msl; (2) a bifurcated penstock 16,500 feet long and 24 inches in diameter leading to; (3) a powerplant at elevation 2,400 feet msl containing a single turbine/generator unit with a capacity of 3,620 kW operating at 800 feet of hydraulic head; and (4) a 16-mile-long, 115–kV transmission line. The applicant estimates that the average annual generation would be 19.04 GWh. The approximate cost of the studies under the permit would be $40,000.
k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. Type of Application: Preliminary Permit.
b. Project No.: 10189-000.
c. Date Filed: November 24, 1986.
d. Applicant: Skykomish River Hydro.
e. Name of Project: Burn Creek Project.
f. Location: In Snoqualmie—Mt. Baker National Forest, on Burn Creek, King County, Washington. Township 25N and Range 12E.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Lawrence J. McMurtrey, 12122–196th NE., Redmond, WA 98052 (206) 885–3986.
i. Comment Date: May 14, 1987.
j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 3,200 feet msl; (2) a penstock 6,200 feet long and 24 inches in diameter leading to; (3) a powerplant at elevation 1,640 feet msl containing a single turbine/generator unit with a capacity of 3,440 kW operating at 1,560 feet of hydraulic head; and (4) a 3-mile-long, 115–kV transmission line. The applicant estimates that the average annual generation would be 15.34 GWh. The approximate cost of the studies under the permit would be $40,000.
k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. Type of Application: Preliminary Permit.
b. Project No.: 10211-000.
c. Date Filed: December 30, 1986.
d. Applicant: Skykomish River Hydro.
e. Name of Project: Eagle Creek Project.
f. Location: In Snoqualmie-Mt. Baker National Forest, on Eagle Creek, King County, Washington. Township 26 N and Range 11E.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Lawrence J. McMurtrey, 12122–196th NE., Redmond, WA 98052 (206) 885–3986.
i. Comment Date: May 15, 1987
j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,600 feet msl; (2) a penstock 10,000 feet long and 24 inches in diameter leading to; (3) a powerhouse at elevation 1,400 feet msl containing a single turbine/generator unit with a capacity of 1,980 kW operating at 1,200 feet of hydraulic head; and (4) a 2-mile-long, 115-kV transmission line. The applicant estimates the average annual production to be 8.67 GWh. The approximate cost of the studies under the permit would be $40,000.
k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.
l. This notice also consists of the follow standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Type of Application: Preliminary Permit.
b. Project No.: 10213-000.
c. Date Filed: December 30, 1986.
d. Applicant: Skykomish River Hydro.
e. Name of Project: Boulder Creek Project.
f. Location: In Snoqualmie-Mt. Baker National Forest, on Boulder Creek, Snohomish County, Washington. Township 27N and Range 12E.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Lawrence J. McMurtrey, 12122–196th NE., Redmond, WA 98052 (206) 885–3986.
i. Comment Date: May 14, 1987.
j. Description of Project: The proposed project would consist of: (1) Four diversion structures with inlet elevations of 2,800 feet msl; (2) four penstocks with a combined length of 9,000 feet and 18 inches in diameter leading to; (3) a power-plant at elevation 1,800 feet msl containing a single turbine/generator unit with a capacity of 1,362 kW operating at 1,000 feet of hydraulic head; and (4) a 9-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 5.96 GWh. The approximate cost of the studies under the permit would be $40,000.
k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. Type of Application: Preliminary Permit.
b. Project No.: 10214-000.
c. Date Filed: December 30, 1986.
d. Applicant: Skykomish River Hydro.
e. Name of Project: Evergreen Creek Project.
f. Location: In Snoqualmie-Mt. Baker National Forest, on Evergreen Creek, Snohomish County, Washington. Township 27N and Range 12E.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Lawrence J. McMurtrey, 12122–196th NE., Redmond, WA 98052 (206) 885–3986.
i. Comment Date: May 14, 1987.
j. Description of Project: The proposed project would consist of: (1) Two diversion structures with inlet elevations of 3,000 feet msl; (2) a bifurcated penstock 10,000 feet long and 30 inches in diameter leading to; (3) a powerplant at elevation 2,200 feet msl containing a single turbine/generator unit with a capacity of 1,701 kW operating at 800 feet of hydraulic head; and (4) a 10-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 7.45 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No.: 10269–000.

c. Date Filed: January 28, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Jackman Creek.

f. Location: On Jackman Creek within the Snoqualmie-Mt. Baker National Forest in T35N, R9E, near Concrete in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, 12122—196th Avenue, NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 14, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete intake structure buried in the stream at elevation 1,500 feet; (2) a 15,000-foot-long, 120-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 9,958 kW; and (4) a 2-mile-long transmission line. Applicant estimates the average annual energy production to be 48.09 GWh and the estimated cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

7a. Type of Application: Preliminary Permit.

b. Project No.: 10270–000.

c. Date Filed: January 28, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Hatchery Creek.

f. Location: On Hatchery Creek within the Snoqualmie-Mt. Baker National Forest in T35N, R8E, near Concrete in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, 12122—196th Avenue, NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 14, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete intake structure buried in the stream at elevation 2,000-feet; (2) a 6,000-foot-long, 18-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 2070 kW; and (4) a 2-mile-long transmission line. Applicant estimates the average annual energy production to be 9.05 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 10273–000.

c. Date Filed: January 28, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Shannon Creek

f. Location: On Shannon Creek within the Snoqualmie-Mt. Baker National Forest in T38N, R9E, near Concrete in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, 12122—196th Avenue, NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 14, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete intake structure buried in the stream at elevation 1,600-feet; (2) a 6,000-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 2,430 kW; and (4) a 10-mile-long transmission line. Applicant estimates the average annual energy production to be 10.64 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10307–000.

c. Date Filed: January 30, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Quartz Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Quartz Creek, Skagit County, Washington. Township 35N and Range 7E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122–196th NE., Redmond, WA 98052 (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 1,200 feet msl; (2) a penstock 7,000 feet long and 18 inches in diameter leading to; (3) a powerplant at elevation 300 feet msl containing a single turbine/generator unit with a capacity of 1,207 kW operating at 900 feet of hydraulic head; and (4) a 2-mile-long, 115–kV transmission line. The applicant estimates the average annual energy production to be 5.28 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10317–000.

c. Date Filed: February 3, 1987.

d. Applicant: Nooksack River Hydro.

e. Name of Project: Clearwater Creek.

f. Location: On Clearwater Creek in T38N, R6E, near Van Sandt in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr Lawrence J. McMurtrey, 12122–196th Avenue, NE., Redmond, WA 98052 (206) 885–3986.

i. Comment Date: May 14, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete intake structure buried in the stream at elevation 2,500 feet; (2) a 27,000-foot-long, 84-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 5,768 kW; and (4) a 5-mile-long transmission line. Applicant estimates the average annual energy production to be 25.27 GWh and the estimated cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

11 a. Type of Application: Minor License.

b. Project No.: 6451–003.

c. Date Filed: June 30, 1986.

d. Applicant: Thornton N. Snider.

e. Name of Project: San Antonio Creek Hydroelectric Project.

f. Location: On San Antonio Creek, near town of Sheep Ranch, in Calaveras County, California (In sections 2, 3, 9 and 10 T4N, R14E, MDB&M).

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thornton N. Snider, P.O. Box 670, Turlock, CA 95380.

i. Comment Date: June 5, 1987.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 97-foot-long diversion dam at elevation 2,650 feet m.s.l.; (2) a 24-inch-diameter, 5,500-foot-long penstock; (3) a powerhouse containing one generating unit with a rated capacity of 400 kW operating under a head of 398 feet; (4) a 12-kV, 1-mile-long transmission line; and (5) a 12-kV, 1-mile-long existing transmission line owned by Pacific Gas and Electric Company (PG&E) to be reconductored. The estimated 1.24 GWh energy generated by the proposed project would be sold to PG&E. No recreational facilites are proposed by the applicant. The project cost is estimated to be $690,000.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12 a. Type of Application: License (Minor).

b. Project No.: 9214–001.

c. Date Filed: March 24, 1986.

d. Applicant: Provo Hydro Associates.

e. Name of Project: Murdock Dam Hydro Project.

f. Location: On Provo River in Utah County, Utah: Section 6, T6S, R3E: SLB&M.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael J. Graham, P.O. Box N, Manti, UT 84642.

i. Comment Date: June 3, 1987.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Murdock Dam and Reservoir and would consist of: (1) A 60-inch-diameter, 6-foot-long penstock; (2) a powerhouse with an installed capacity of 200 kW under a head of 23 feet; (3) a tailrace returning flow to the Provo River; (4) an underground 12.5-kV transmission line, about 100 feet long; and (5) appurtenant facilites. The applicant estimates that the average annual energy output would be 1,178,373 kWh.

k. Purpose of Project: Project energy would be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10197–000.

c. Date Filed: November 24, 1986.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Skykomish Tributaries.

f. Location: On Skykomish Tributaries within the Snoqualmie-Mt. Baker National Forest in Section T27N, R10E, near Index in Snohomish County, Washington

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, 12122—198th Avenue, NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: June 3, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete intake structure buried in the stream at elevation 2,600-feet; (2) a 20,349-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 4,408 kW; and (4) a 3-mile-long transmission line. Applicant estimate the average annual energy production to be 23 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14. a. Type of Application: Preliminary Permit.

b. Project No.: 10272–000.

c. Date Filed: January 28, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Thunder Creek.

f. Location: On Thunder Creek within the Snoqualmie-Mt. Baker National Forest in Section T36N, R9E, near Concrete in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, 12122—198th Avenue, NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: June 4, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) Three 36-inch-wide concrete intake structure buried in the stream at elevation 2,000-feet; (2) a 10,000-foot-long, 72-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 2,494 kW; and (4) a 3-mile-long transmission line. Applicant estimates the average annual energy production to be 10.9 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 10160–000.

c. Date Filed: November 4, 1986.

d. Applicant: Public Utility District No. 1, Mason County, Washington. Public Utility District No. 3, Mason County, Washington.

e. Name of Project: Hamma Hamma.

f. Location: On the Hamma Hamma River, tributary of Hood Canal, in Mason County, Washington near the town of Eldon. T24N., R.3W., sec. 16 and sec. 21.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: John Robertson, Manager, Public Utility District No. 1, of Mason County, Washington, North 21971 Highway 101, Shelton, WA 98584 (206) 877–5249.

Ed Blakemore, Manager, Public Utility District No. 3 of Mason County, Washington, 303 West Cota, Shelton, WA 98584 (206) 426–8255.

Mr. Benjamin H. Settle, Heuston Settle and Whitehouse, P.O. Box 1400, Angle Building, Shelton, WA 98584.

Mr. Albert Liou, Project Manager, Hosey and Associates Engineering Company, Northup West Office Park, Suite 190, 2820 Northup Way, Bellevue, WA 98004.

i. Comment Date: June 12, 1987.

j. Description of Project: The propose project would consist of: (1) A 22-foot-high, 205-foot-long diversion dam at elevation 376 feet, with an ogee type spillway located in the center of the dam, above Hamma Hamma Falls, creating; (2) a 5-acre impoundment with a storage capacity of 20 acre-feet; (3) a 22-foot by 20-foot intake structure with trashracks, an emergency closure gate, a sluice gate, fish screens, and bypass system, located on the right abutement of the dam; (4) a 5,000-foot-long tunnel, to include a vertical shaft, with a diameter varying from 10 feet to 12 feet; (5) a powerhouse containing two generating units with a total installed capacity of 17 MW, producing an average annual energy output of 69,200,000 kWh; (6) a 15-foot-wide, 1.5-mile-long access road from the existing logging road to the powerhouse; and (7) a 1,900-foot-long, 115-kV transmission line tying into an existing Bonneville Power Authority System. No new access road will be needed to conduct the studies. The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $20,000.

k. Purpose of Project: Project power produced by the project will be used to meet the Applicant's load growth, or to offset power purchases now being made by the applicants to supply their customers.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

**Standard Paragraphs**

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251/(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One

copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 13, 1987.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8641 Filed 4-16-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. ER87-363-000]**

**San Diego Gas & Electric Co.; Filing**

April 9, 1987.

Take notice that on April 3, 1987, San Diego Gas & Electric Company (SDG&E) tendered for filing rate schedule changes to factor the Firm Transmission Service Agreement, Rate Schedule FERC No. 60 (Agreement) between San Diego Gas & Electric Company and Southern California Edison Company (Edison).

Under the terms of the Agreement, SDG&E will make available to Edison firm transmission service between points near the U.S.-Mexico border and San Onofre.

The Agreement provides that whenever the California Public Utilities Commission finds a new overall rate of return for SDG&E's retail service to be reasonable and authorizes rates based on such new rate of return to become effective, rates shall be redetermined and assigned an effective date on and after the effective date of such new rate of return. Waiver of the Commission's prior notice requirements is requested for an effective date of January 1, 1987 for changes relating to SDG&E's rate of return. The Agreement also provides that if either party believes that for reasons other than a change in rate of return there has been a significant change in SDG&E's revenue requirements, notice may be given that the rates be redetermined. Waiver of the Commission's prior notice requirements is requested for an effective date of April 1, 1987 for changes relating to SDG&E's revenue requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison. Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8642 Filed 4-16-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. ER87-364-000]**

**San Diego Gas & Electric Co., Filing**

April 9, 1987.

Take notice that on April 3, 1987, San Diego Gas & Electric Company (SDG&E) tendered for filing rate schedule changes to the following Agreements between SDG&E and Southern California Edison Company (Edison).

1. Short-Term Transmission Service Agreement, Rate Schedule FERC No. 58.

2. Interruptible Transmission Service Agreement, Rate Schedule FERC No. 59.

Under the terms of the Agreement, SDG&E will make available to Edison firm transmission service between points near the U.S.-Mexico border and San Onofre.

The Agreements provided that if either party believes that for reasons other than a change in rate of return there has been a significant change in SDG&E's revenue requirements, notice may be given that the rates be redetermined. Waiver of the Commission's prior notice requirements is requested for an effective date of February 1, 1986 for changes relating to SDG&E's revenue requirements.

The Agreements also provide that whenever the California Public Utilities Commission finds a new overall rate of return for SDG&E's retail service to be reasonable and authorizes rates based on such new rate of return to become effective, rates shall be redetermined and assigned an effective date on and after the effective date of such new rate of return. Waiver of the Commission's prior notice requirements is requested for an effective date of January 1, 1987 for changes relating to SDG&E's rate of return.

Finally, the Agreements provide that scheduling and dispatching fees shall be redetermined by SDG&E once each year based on SDG&E's annual budget for load dispatching and production section function expenses for that year. Waiver of the Commission's prior notice requirements is requested for an effective date of January 1, 1987 for changes relating to SDG&E's scheduling and dispatching fees.

Copies of this filing were served upon the Public Utilities Commission of the State of Califonia and Edison. Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8643 Filed 4-16-87; 8:45 am]

BILLING CODE 6717-01-M

---

## Office of Conservation and Renewable Energy

**Research and Development Cooperative Ventures; Inquiry and Request for Public Comment**

**AGENCY:** Department of Energy, Office of Conservation and Renewable Energy.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Department of Energy (DOE), Office of Conservation and Renewable Energy, is exploring possible interest in the formation of cooperative ventures, consisting of two or more private sector organizations for the purpose of undertaking pre-commercial, applied research and development in conservation and renewable energy technologies. This notice describes the qualifications of such cooperative ventures and requests public comment on the potential for such ventures and issues related to these ventures. Public comment could take the form of detailed suggestions for cooperative R&D ventures in specific technology areas.

**DATE:** Written responses should be submitted no later than May 18, 1987.

**ADDRESSES:** For submission of public comments: Mrs Ana M. Larkin, Special Assistant to the Assistant Secretary, Conservation and Renewable Energy, CE-1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Kenneth Friedman, Special Assistant to the Deputy Assistant Secretary for Conservation, CE–10, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9285

or

Mr. Kenneth G. Moore, Acting Director, Research and Technology, Integration Staff, CE–30.1, Office of the Deputy Assistant Secretary for Renewable Energy, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9275.

**SUPPLEMENTARY INFORMATION:**

## Introduction

The United States Department of Energy (DOE), Office of Conservation and Renewable Energy (CE), is announcing its interest in promoting establishment of energy research and development (R&D) cooperative ventures to complement current CE contract and operating mechanisms and to promote public-private collaboration in applied research and development. DOE/CE will analyze the information submitted in response to this notice in determining whether and how to proceed. It should be emphasized that DOE is not soliciting proposals with this announcement and will not fund any activities proposed at this time. DOE will not reimburse any expenses incurred in responding to this announcement.

## Discussion

The Department will not place tight constraints on the types of cooperative opportunities to be considered, and intends to be flexible in dealing with such questions as intellectual property rights to the extent allowed by law. The form or organizational structure through which industry could cooperate with the Federal government also remains open and flexible. This approach should allow industry to join in a form of business organization that will serve to achieve its R&D goals and objectives. However, DOE will conduct technical and business evaluations to determine whether and to what extent to participate in any venture. Commenters are invited to make suggestions regarding subjects on which DOE flexibility would be desirable. If existing authorities would have to be modified to accommodate a suggestion (e.g., 42 U.S.C. 5906(b), DOE is prepared to consider both the appropriateness and potential costs and benefits of seeking such a modification.

If proposals are ultimately invited, it has been determined that they must contemplate the participation of a minimum of two private sector entities, consistent with the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.). Further, DOE does not plan to participate in excess of 49% of project cost and thus expects more than 100% leveraging of Federal funds. The DOE contribution should not displace support that would otherwise be forthcoming from private funding. If the venture proves financially successful, the Federal government plans to share in royalties or other profits from it in proportion to the Federal contribution.

DOE anticipates that energy R&D cooperative ventures may be able to qualify for limited protection from antitrust lawsuits by complying with the procedures of the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.). Under that Act, a "joint research and development venture" is protected from treble damage suits and its joint activities cannot be deemed illegal per se if the venture meets the qualifications set forth in the Act and files an appropriate notice with the U.S. Department of Justice and the Federal Trade Commission. The protection provided by the Act is not absolute because activities violative of the rule of reason are still actionable.

The Department is interested in soliciting comments and discussion of other elements critical to the establishment of cooperative ventures relating to operations and financing such as:

- Management structure
- R&D decision-making structure
- Organization financing and
- Management of intellectual property

The following are a number of questions which we would like interested parties to address.

1. What should be the role of the federal government and federally supported laboratories and research centers?

2. How would you propose to cost-share in a cooperative arrangement? What minimum Federal investment would be required?

The following is a detailed description of some areas CE will consider as cooperative R&D areas:

## Representative Technology Opportunities

DOE/CE remains open in considering the opportunities and appropriateness of cooperative R&D ventures in many technology areas. This section provides selected *examples* of applied R&D areas where there is already considerable industry involvement in the DOE/CE programs, and which might be appropriately pursued through cooperative R&D ventures. This list is not intended to be exclusive and CE would be interested in exploring opportunities in other areas:

### *a. Industrial Process Efficiency*

#### The Paper Industry

Both from an energy efficiency and from a competitiveness perspective many areas in industrial energy use might warrant attention. One example is in the paper industry which consumes 2.2 quads annually. Kraft Black Liquor Gasification which could replace existing Tomlinson furnaces which consume an estimated 0.8 quads of energy annually and improve energy efficiency by 15%. This could be done through gasification of Kraft Black Liquor and use of the product gases as fuel for combined cycle gas turbine cogeneration to produce electricity and process steam. This technology can potentially improve the efficiency and safety of combusting black liquor, reducing capital and operating costs, increasing electrical power output, and providing an economical system for incremental Kraft capacity additions.

#### *Steel Industry Technology*

The steel industry presently consumes 1.8 quads of energy annually, which could be reduced by up to 30%. Current government efforts support a range of applied steel research. A wide range of steel industry technology needs have been identified by industry and government researchers including:

- The reduction of domestic raw materials to liquid steel
- The production of near-net shape solids from liquid steel
- The development of universal grades of steel
- The application of automatic processing technology

Opportunities remain for energy productivity improvements which would also result in significant economic efficiency gains.

### *b. Buildings and Insulation Materials*

#### Roof Conservation Technology

An estimated 0.7 quad of energy is wasted each year because of poor design and construction and some $10 billion is spent annually on new roofs

and reroofing construction. Because the average life of a roof is between eight and 10 years, there is an opportunity for relatively repaid introduction of new energy-efficient materials and designs with particular emphasis on the commercial sector.

A facility is now being constructed at Oak Ridge National Laboratory which can act as the basis for a Roof Research Center. The center is being developed as a DOE-User facility which will be available to private manufacturers and designers for conducting research. The Center would develop an improved scientific and technical basis for the design and development of improved energy efficient roof systems. Cost-shared R&D involving the operation and use of the center is a possible subject for an energy R&D cooperative venture.

Glazing Materials

Present passive solar designs can contribute approximately 35% of the energy needs of a building, principally in the area of space heating. Advanced glazing materials could increase this contribution to 50 to 70 percent by offering both improved insulation value and a great contribution to natural lighting (daylighting) which reduces the electrical demands of a building.

A number of approaches have been taken including: fabrication of new types of glass and glass coatings, novel window construction techniques, development of thin films to improve spectral sensitivity, heat-trapping, and re-direction of the incident light for better daylighting and development of "switchable" glazing that allow the light and heat transmission properties of windows to be controlled. Producers of glass and other window materials are possible participants in cooperative R&D to conduct research necessary to build upon current progress in these areas.

Ceramics Technology Advanced Manufacturing Development and Engineering

Recent studies have concluded that the U.S.'s lead in high-performance ceramics is being threatened because of the strong challenge from foreign competitors. This challenge is in part due to industry/government/university programs to commercilize ceramic materials. Several possible needs have been identified, including creation of a center for interdisciplinary work on the processing of advanced ceramics which could: conduct generic manufacturing engineering development on the processing of advanced ceramic materials and develop and demonstrate advanced techniques for integrating highly automated manufacturing technology with ceramic processing.

Solid State Power Conditioning

Power conditioning in photovoltaics (PV) is the process for converting dc electricity to reliable, efficient, and economic ac power. The current generation of technology operates at efficiencies of about 90%, lasts ten years, and cost $.40/Wp. For photovoltaic systems to produce cost competitive electricity, efficiencies must be improved 10% and costs must be reduced to a range of $.12–$.30/Wp depending on size, through improved configurations and designs that improve manufacturability and performance. Large-scale power conditioning devices can also be used extensively in electric power systems, thus providing a substantial conventional energy contribution in addition to furthering the goal of producing competitive PV power. They can also be used at small-scale in the control of many electrical loads to protect interruptable power supplies and control speed drives for efficient electric motor operation.

Geothermal Technology Development

State-of-the-art geothermal exploration technology is not yet adequate to define locations and characterizations of hydrothermal reservoirs associated with young volcanic areas. In addition 80 percent of geothermal reservoirs are not hot enough for electric power production using conventional high temperature generators. Increases in the efficiency of binary cycle energy conversion systems would move these reservoirs toward economic feasibility. Industry groups working with government researchers have identified substantial potential payoffs associated with research aimed at improved reservoir assessment technology; the development of inline instruments to measure important fluid properties continuously during plant operations; and the development of advanced binary power cycles which use non-aqueous working fluids to produce electric power from lower temperature geothermal resources.

Issued in Washington, DC, on April 1, 1987.

**Donna R. Fitzpatrick,**

*Assistant Secretary, Conservation and Renewable Energy.*

[FR Doc. 87–8651 Filed 4–16–87; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3188-4]

### Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements. Filed April 6, 1987 through April 10, 1987 pursuant to 40 CFR 1506.9.

EIS No. 870121, Draft, AFS, MT, Flathead National Forest, Individual Lodgepole Pine Trees Protection from Mountain Pine Beetle Attack, Tally Lake and Abbott Bay Recreation Sites, Flathead County, Due: June 1, 1987, Contact: Dave Cawrse (406) 862–2508

EIS No. 870122, Final, FHW, CA, Pacific Coast Highway/CA–1 Widening, CA–5$ to Golden West Street, Orange County, Due: May 18, 1987, Contact: Glenn Clinton (916) 551–1310

EIS No. 870123, Final, FHW, CO, US 50 Improvement, East of Cimarron to Windy Point, Montrose and Gunnison Counties, Due: May 18, 1987, Contact: Dennis Scovill (303) 236–3382

EIS No. 870124, Draft, AFS, MT, Helena National Forest, Noxious Weed Control Program, Due: June 1, 1987, Contact: W. John Padden (406) 449–5201

EIS No. 870125, FSuppl, AFS, IN, Hoosier National Forest, Land and Resource Management Plan, Off-Road Vehicle Use Area, Due: May 18, 1987, Contact: Harold Godlevske (812) 275–5987

EIS No. 870126, Final, USAF, MA, Westover Air Force Base, Air Force Reserve Mission Change C–130 to C–5A, Aircraft and Civil Aviation Operation Expansion through 1995, Hampden and Hampshire Counties, Due: May 18, 1987, Contact: Grady Maraman (912) 926–5596

EIS No. 870127, Draft USAF, PRO, SEV, Ground Wave Emergency Network (GWEN) Deployment and Land Acquisition, Final Operational Capability, Due: June 1, 1987, Contact: Chris Perkins (617) 377–4578

EIS No. 870128, Draft, COE, NJ, NY, Passaic River Basin Flood Control Plan, Due: June 1, 1987, Contact: Robert Callegari (212) 264–3570

**Amended Notices**

EIS No. 870078, Draft, SCS, WY, Big Sandy River Unit, Irrigation Improvements, Colorado River Salinity Control Program, Contact: Frank Dickson (307) 261–5201, Published FR 3–13–87—Incorrect phone number

EIS No. 870118, Final FHW, CO, CO-7/ Forest Highway 28 Reconstruction, Meeker Park to US 36 In Estes Park, Boulder and Larimer Counties, Due: May 1987, Published FR4-17-87—Review period reestablished

EIS No. 870107, Final, NPS, NY, PA, Upper Delaware Scenic and Recreational River Management Plan, Due: May 11, 1987, Published FR 4-03-87—Review period reestablished

Dated: April 17, 1987.

Richard E. Sanderson,

*Director, Office of Federal Activities.*

[FR Doc. 87-8702 Filed 4-16-87; 8:45 am]

BILLING CODE [illegible]

---

[ER-FRL-3188-5]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 30, 1987 through April 3, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

### Draft EISs

*ERP No. DS-BLM-K03012-TX,* Rating LO, All American Crude Oil Pipeline Project, Construction and Operation, Texas Extension, Sect. 404 and 10 Permits, TX. Summary: EPA has no objections to the BLM's preferred alternative of the Northern Route. EPA finds this route to be the best choice from both an operational and environmental standpoint since it will significantly minimize potential adverse impacts. EPA considers the applicant's route to be inadvisable.

*ERP No. DS-FHW-E40146-NC,* Rating LO, US 74/Independence Blvd. Corridor Improvements, Mecklenburg Co. to Uptown Charlotte, Additional Alternatives, NC. Summary: EPA had no major objections subject to the implementation of the proposed mitigation. EPA suggested that the supplemental final EIS include a stronger commitment to fund and construct noise barriers.

*ERP No. D-FHW-F40289-MN,* Rating EC2, US TH-169/Cross Range Expressway Improvement, US TH-2 in Grand Rapids to MN TH-65 in Pengilly, 404 Permit, MN. Summary: EPA is concerned about loss of wetlands and the potential for stormwater retention areas to contaminate aquifers. EPA recommended that the final EIS contain specific wetland mitigation plans and more information regarding the project area's hydrogeology.

*ERP No. DB-FHW-K40016-CA,* Rating LO, CA-710/Long Beach Freeway (Formerly CA-7) Construction, I-10/San Bernardino Freeway to I-210/Foothill Freeway, Meridian Variation Alternative, CA. Summary: EPA has no objections, but recommended that high-occupancy vehicle bypasses and ramp metering be evaluated and that the work plans on potential hazardous waste sites be included in the final EIS.

### Final EISs

*ERP No. F-AFS-E82053-00,* Southern Region, Southern Pine Beetle Suppression Program on Federal and Non-Federal Lands, Wilderness Area, AL, AR, FL, NC, SC, WV, OK, TN, TX, and GA. Summary: EPA's draft EIS comments have been adequately addressed. However, further consideration should be given to long-term silviculture strategies as an alternative to shortterm intervention. EPA has also asked that appropriate NEPA documentation should be provided for site specific actions.

*ERP No. F-BLM-K61058-CA,* Central California Study Area, Wilderness Recommendations, Caliente, Folsom, and Hollister Resource Areas, Wilderness Designation Suitability or Non-suitability, CA Summary: EPA expressed concerns that the water quality analysis in the final EIS was inadequate, and did not address the issues EPA had raised in 1982 on the draft EIS. EPA requested that the Record of Decision fully describe what monitoring plans and mitigation measures BLM will implement to protect water quality.

*ERP No. FS-FHW-D40119-VA* Springfield Bypass and Extension, I-66 to the Braddock Rd./VA-620 Intersection, Construction, Updated Alternative Information, VA. Summary: EPA has no objections to the development and implementation of the project, as proposed. EPA's previous concerns have been addressed.

### Amended Notices

The following reviews should have appeared in the FR Notice published on March 27, 1987 and April 3, 1987, respectively.

*ERP No. D-AFS-L65106-WA,* Rating EC2, Olympic Nat'l Forest, Land and Resource Mgmt. Plan, WA. Summary: EPA believes that the process for managing forest activities is not clear enough to assure that adverse environmental effects, particularly to water quality and fisheries, will be prevented.

*ERP No. FS-COE-C32009-00,* Newark Bay and Kill Van Kull Navigation Channel Improvments, Additional Information, Aquatic Population, Sediment Quality, Hydraulic Impacts and Disposal Alternatives Update, NJ and NY. Summary EPA disagrees with the COE intention, as stated in the supplemental final EIS, that project material is suitable fr unrestricted ocean disposal. However, EPA will not object to the project based on the condition that the COE cap project material with suitable clean material.

Dated: April 14, 1987.

Richard E. Sanderson,

*Director, Office of Federal Activities.*

[FR Doc. 87-8703 Filed 4-16-87; 8:45 am]

BILLING CODE [illegible]

---

[OPP-180731; FRL-3189-3]

## Receipt of Application for an Emergency Exemption From California To Use Benomyl; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the California Department of Food and Agriculture (hereafter referred to as "Applicant") to use the fungicide benomyl to control *Septoria petroseliri* on 3,500 acres of parsley (fresh market and processed). EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant the exemption.

**DATE:** Comments should be received on or before April 27, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180731" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as

"Confidential Business Information." Information so marked will not be disclosed except in accordance wth procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Jim Tompkins, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington DC 20460

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit use of the fungicide benomyl (CAS 17804–35–2) to control late blight on parsley.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Late blight of parsley is caused by the fungus, *Septoria petroselini*. The fungus penetrates the cell directly causing small chlorotic spots to form on the leaves. As the tissue in these spots dies, pycnidia of the fungi become very evident as small black bodies visible to the naked eye. These infections can render the parsley unmarketable for processing or the fresh market. Environmental conditions determine whether the disease will become epidemic. Dry spring weather in 1984, 1985, and 1986 kept losses to late blight to a minimum. Heavy rain in March and April of 1983, caused some growers to lose 20% of their crop. The Applicant has requested an emergency exemption for the use of benomyl to provide parsley growers, a means of controlling late blight in the event that environmental conditions are favorable for its development.

The Applicant is proposing to make a single application of benomyl by ground or air application equipment at a rate of 0.5 pound active ingredient (1 pounds product) per acre during the growing season. A 21-day preharvest interval will be observed.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk pose by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)). A Decision Document (Final Resolution of Rebuttable Presumption Against Registration) for benomyl was issued October 20, 1982 (47 FR 46747). The risks considered in that document, which could be similar to the risks posed by this proposed use, were oncogenicity; teratogenicity; mutagenicity; and spermatotoxic risks. The Agency determined that the benefits associated with the use of benomyl products exceeded the risks when a dusk mask was used by applicators during mixing and loading of benomyl for aerial application.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above. The Agency will review and consider all comments received during the comment period in determinig whether to issue this emergency exemption request.

Dated: April 7, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–8679 Filed 4–16–87; 8:45 am]

BILLING CODE 6560–50–M

---

[OPP–180733; FRL–3189–4]

## Receipt of Applications for Emergency Exemptions From Washington and Oregon To Use Dinoseb; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of receipt.

**SUMMARY:** EPA has received specific exemption requests from the Washington and Oregon Departments of Agriculture (hereafter referred to as "Washington," "Oregon," or collectively as "Applicants") to use dinoseb (CAS 88–85–7). Washington proposes to use dinoseb on cucumbers and snap beans to control broadleaf weeds and on raspberries to control excess vegetation. Oregon proposes to use dinoseb on green peas, snap beans, caneberries, squash, pumpkins, and cucumbers to control broadleaf weeds and/or for chemical pruning. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

On April 1, 1987, the Administrator declined to hold a hearing under Subpart D with respect to the use of dinoseb on green peas and snap beans resulting in the denial of these requests.

**DATE:** Comments must be received on or before May 4, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP–180733" should be submitted by mail to:

Information Service Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Donald R. Stubbs, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–7700).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture for the state of Oregon, by letter received February 17, 1987, has requested the Administrator to issue specific exemptions for the use of dinoseb on green peas, snap beans, pumpkins, and cucumbers to control broadleaf weeds and for basal burning of caneberry cane. Oregon has also requested use of dinoseb on dry peas, chickpeas and lentils; these requests will be discussed in a separate notice. The Department of Agriculture for the State of Washington, by letters received March 17, 1987, has requested the Administrator to issue specific exemptions for the use of dinoseb on cucumbers and snap beans to control broadleaf weeds and on raspberries to control excess vegetation.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry, pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicants' specific exemption requests are, therefore, subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for a registration of a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determine that reconsideration is warranted if, among other things, he finds that the Applicant has presented substantial new evidence which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then determine whether and under what terms and conditions dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

The Administrator on April 1, 1987, denied petitions for reconsideration of his prior suspension order (October 7, 1986) concerning the use of dinoseb on green peas and snap beans and declined to hold a hearing under Subpart D of 40 CFR Part 164. In accordance with Subpart D, 40 CFR Part 164.131(b) the specific exemption applications for use of dinoseb on green peas and snap beans are denied.

## II. Emergency Condition

### *A. Oregon's Requests*

Oregon states that there are a number of broadleaf herbicides registered for use in green peas, snap beans, squash, pumpkins and cucumbers. Oregon has found these pesticides to be unsatisfactory for a number of reasons: Injury has occurred to crops, especially in early season plantings when there are cool, wet conditions; herbicides which require incorporation are difficult to apply and incorporate in western Oregon due to high soil water content in the spring; reduced yields occur due to environmental plus herbicidal effects; most alternatives provide poor control of black nightshade (*Solanium nigrum*) and hairy nightshade (*Solanium sarachoides*). Nightshade is difficult to remove from the field by cultivation and hoeing.

According to Oregon, shifts to alternative crops or different cultural practices are impractical, extremely costly and would have profound economic and social effect upon area growers, processors and economies. New mechanical weed control equipment is prohibitively expensive. Hand weeding is not practical because labor is scarce and expensive; timing is critical.

The loss of dinoseb according to Oregon, is a serious concern for the Oregon caneberry industry because of the important role in the production of caneberries.

(1) Mechanical harvest, which accounts for well over half of the harvested fruit, requires the removal of growth at the plant base (caneburning) for proper operation of the harvester catch plates which "catch" the falling fruit. Dinoseb is used routinely and exclusively for cleaning plant bases before harvest.

(2) The trellis system required for supporting caneberries makes mechnaical weed control difficult. If field conditions (e.g., fall rains) prevent growers from applying fall herbicides, major in-row weed problems result by spring. Knock-down with a contact herbicide such as dinoseb is used to control winter weeds unaffected by spring-applied pre-emergence materials.

(3) The alternate-year management system increasingly common in blackberries requires the removal of basal vegetation in the fruiting acreage (normally half). Basal growth is sprayed with dinoseb to prevent competition between fruiting canes and vegetative growth. The economies of this method are achieved by allowing growers to manage the phases (vegetative and fruiting) of the biennial cropping cycle separately.

(4) Red raspberry yield has been increased through the use of dinoseb to retard early season vegetative growth, diverting nutrition to fruit buds. Studies indicated yield increases of 1.2 tons per acre and 1.9 tons per acre with one and two dinitro cane burnings, respectively. Similar yield increases have been reported in blackberries. The inability to basal-burn canes will reduce economic returns by as much as $2,859 per acre.

(5) Virtually all red raspberries and two-thirds of the blackberries in Oregon are chemically pruned at least once annually with dinoseb. The loss of dinoseb could result in a loss of over $13.5 million for Oregon caneberry growers (estimated on 3,500 acres of red raspberries and 4,500 acres of blackberries at an average price of 70 cents per pound reduced by 1.2 tons per acre).

According to Oregon, hand pruning is not a realistic alternative. Crews are not generally available in April and May. Removal of new vegetative canes would cost approximately $100 per acre. The further costs of removing shoots up to 1.5 feet long at the bases of fruiting canes (custom pruning) cannot be accurately estimated.

Oregon claims that there are no acceptable alternatives that are adequately efficacious and economical for weed control in green peas, snap

beans, squash, pumpkins and cucumbers or for basal burning of caneberries.

Oregon indicates that resulting losses are estimated to be approximately $3.5 million per year to growers of green peas, $25 million per year to growers of squash, pumpkins, and cucumbers; $13 million per year to growers of caneberries; and $4.5 million a year to growers of snap beans.

*B. Washington's Requests*

Washington states there are several herbicides registered for use on broadleaf weeds in cucumbers: chloramben (Amiben), naptalam (Alanap), and DCPA (Dacthal). Bensulide (Prefar) and trifluralin (Treflan) are registered grass herbicides. According to Washington, experience has shown that chloramben and naptalam will perform somewhat acceptably if adequate moisture is present; however, adequate moisture is uncommon in non-irrigated western Washington fields in May and June. This may be overcome to some extent by mechanical incorporation one to two inches deep; however, the incorporation is likely to damage the cucumbers, which are planted to fairly shallow depths. In addition, several broadleaf weed species are naptalam-resistant. DCPA is registered; however, its performance is not adequate or consistent in western Washington in any field crop.

Washington states the following herbicides are registered for use in snap beans, several of which are for grass control: EPTC (Eptam), trifluralin (Treflan), chlorpropham (IPC), dalapon, fluchloralin (Basalin), and pendimethalin (Prowl). Metolachlor (Dual) is primarily useful in controlling grasses with little residual control of broadleaves, possesses potential for crop damage, and is dependent on moisture level for performance, making it undersirable on non-irrigated fields. Bentazon (Basagran) does not perform acceptably in colder temperatures of Washington spring. DCPA (Dacthal) has been shown to be inconsistent and generally inadequate in performance. Chloramben (Amiben) performance is dependent on moisture, making it unsuitable for non-irrigated fields. Glyphosate (Roundup) and paraquat are contact herbicides with no residual activity.

Washington indicates that the Washington and Oregon raspberry growing areas are contiguous, and their request is intended to be a companion to the Oregon request. Washington states there are no alternative pesticides registered for use to control primo canes and foliage on raspberries. Paraquat is registered for use in caneberries, but only in the dormant crop.

Washington indicates that without the use of dinoseb cucumber growers could lose 0 to 80 percent of their yield depending on growing conditions; snap bean growers could lose 35 percent of their yield; and that red raspberry growers could lose 45 percent of their yield (valued at $7.4 million).

III. Proposed Use

Oregon requested emergency exemptions for use of dinoseb on green peas, caneberries, squash, pumpkins, and cucumbers between March 1 to June 15, 1987. Washington requested emergency exemptions for use of dinoseb between April 5 and June 15, 1987: for raspberries (April 5 to May 20), snap beans (May 1 to June 15), and cucumbers (May 15 to June 15).

Oregon's proposed specific exemption programs involve use of any formulation of dinoseb or its salts registered prior to the October 1986 suspension for the crops listed. Use would be in accordance with the formerly labeled rates and use directions. A total of 157,100 pounds active ingredient to treat 22,000 acres of snap beans, 8,100 acres of caneberries, and 3,800 acres of cucurbits has been requested. Other conditions of use include: (1) All applications would be performed by certified applicators who have been specifically trained regarding the toxicity of dinoseb and appropriate application methods for dinoseb products; (2) all persons involved in mixing or applying dinoseb would be required to wear hazardous chemical protective clothing, including mask, hood, face protection, and chemical-resistant gloves; (3) closed mixing systems would be required; (4) applications would be made statewide using ground equipment with an enclosed tractor cab or hazardous chemical protective clothing; (5) aerial application would be allowed east of the crest of the Cascade Mountains only (field flagman for aerial application are prohibited); and (6) hand-held spray applications would be prohibited.

Washington's proposed specific exemption programs involve ground application of dinoseb or its salts. A single pre-emergence use at 3 pounds active ingredient per acre in cucumbers for broadleaf weed control; a pre-emergence or early post emergent use at 1.5 pounds active ingredient per acre in snap beans for broadleaf weed control; and two applications at 2.5 pounds active ingredient on raspberries for control of excessive vegetation. Washington is requesting the use of any formulation of dinoseb or its salts registered prior to October 1986 for use on snap beans, cucumbers and/or raspberries. A total of 21,600 pounds active ingredient to treat 3,300 acres of raspberries west of the crest of the Cascade Mountains; 9,000 acres of snap beans in Walla Walla, Skagit and Whatcom counties; and 1,600 acres of cucumbers in Whatcom, Skagit, Pierce and Clark counties has been requested. Other conditions of use include: (1) All applications would be by certified applicators only; (2) product would remain enclosed during mixing; (3) all persons would have to wear long-sleeved shirts, long pants, and chemical-resistant gloves when loading or applying dinoseb and when repairing dinoseb-contaminated equipment; and (4) use of hand-held sprayers would be prohibited.

IV. Notification and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption requested from Washington and Oregon will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application that proposes any emergency use of a pesticide if such pesticide was the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

Interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period.

Dated: April 10, 1987.

**Edwin F. Tinsworth,**

*Director, Regulation Division, Office of Pesticide Programs.*

[FR Doc. 87-8680 Filed 4-16-87; 8:45 am]

BILLING CODE [illegible]

---

[OPP-180732; FRL-3188-9]

## Receipt of Application for Specific Exemption To Use Oxyfluorfen; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as "Applicant") for use of the herbicide oxyfluorfen (goal) to control broadleaf weeds in horseradish in Wisconsin. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

**DATE:** Comments must be received on or before May 4, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP–180732" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Stanley J. Austin, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–4360)

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the herbicide oxyfluorfen, available as Goal 1.6E, EPA Reg. No. 707–174, to control broadleaf weeds in horseradish. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Wisconsin has requested authorization to apply 2.5 pints of Goal 1.6E herbicide (0.5 pounds active ingredient) per acre as a ground spray application on 575 acres of horseradish. Goal 1.6E is a selective herbicide recommended for preemegence control of certain broadleaf weeds. Goal 1.6E will be applied in a minimum of 40 gallons of water per acre.

According to the Applicant, weed control in horseradish fields in Wisconsin is mainly limited to mechanical means. Utilizing mechanical weed control, but without an effective chemical control, the Applicant estimates a 45 to 50% yield loss on eighty acres of horseradish and a 70% yield loss on another 45 acres of horseradish. Total losses in monetary amounts were not given.

Oxyflubrfen was referred to Special Review in January 1980 because pesticide products containing oxyflubrfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3Fl mice. The Special Review process was completed on June 23, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)).

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Wisconsin Department of Agriculture, Trade and Consumer Protection.

Dated: April 7, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–8681 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

---

**[OPTS–59239A; FRL–3187–3]**

## Certain Chemicals; Approval of Test Marketing Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of three applications for test marketing exemptions (TMEs) under section 5 (h)(6) of the Toxic Substances Control Act (TSCA), TME–87–8, 87–9, and 87–10. The test marketing conditions are descibed below.

**EFFECTIVE DATE:** March 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** John G. Davidson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–613, 401 M St. SW., Washington, DC 20460, (202 382–3373).

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–87–8, 87–9, and 87–10. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, uses, and the number of customers must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME 87–8, 87–9, and 87–10. A bill of lading accompanying each shipment must state that the use of each substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantities of the TME substances produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

4. The applicant and its customer must maintain the following information on disposal of T–87–10: Dates waste materials are disposed of, location of disposal site, volume of any disposal material, and the estimated volume of any liquid waste containing the TME substances.

**T–87–8**

*Date of Receipt:* February 9, 1987.

*Notice of Receipt:* February 27, 1987 (52 FR 6071).

*Applicant:* Confidential.

*Chemical:* (G) An alkylate of a reaction product of a polyamine and an organic acid.

*Use:* Gasoline additive.

*Production Volume:* Confidential.

*Number of Customers:* 1.

*Worker Exposure:* Imported. During processing at one site, 2–3 workers will be exposed dermally up to 8 hours/day. Dermal exposure is negligible if protective gloves are worn. Use: no significant exposures.

*Test Marketing Period:* Twelve Months.

*Commencing On: (March 24, 1987).*

*Risk Assessment:* EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

*Public Comments:* None.

**T–87–9**

*Date of Receipt:* February 9, 1987.

*Notice of Receipt:* February 27, 1987 (52 FR 6071).

*Applicant:* Confidential.

*Chemical:* (G) A condensation product of an organic acid and an alkylamine.

*Use:* Gasoline additive.

*Production Volume:* Confidential.

*Number of Customers:* 1.

*Worker Exposure:* Imported. During processing at one site, 2–3 workers will be exposed dermally up to 8 hours/day. Dermal exposure is negligble if protective gloves are worn. Use: no significant exposures.

*Test Marketing Period:* Twelve Months.

*Commencing On: (March 24, 1987)*

*Risk Assessment:* EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

*Public Comments:* None.

**T–87–10**

*Date of Receipt:* February 9, 1987.

*Notice of Receipt:* February 27, 1987 (52 FR 6071).

*Applicant:* Confidential.

*Chemical:* (G) A reaction product of an anhydride and an alkylamine.

*Use:* Gasoline additive.

*Production Volume:* Confidential.

*Number of Customers:* 1.

*Worker Exposure:* Imported; during processing at one site, 2–3 workers will be exposed dermally up to 8 hours/day. Dermal exposure is negligble if protective gloves are worn. Use: no significant exposures.

*Test Marketing Period:* Twelve months.

*Commencing On: (March 24, 1987)*

*Risk Assessment:* EPA identified no significant health concerns. EPA identified potential adverse environmental effects associated with exposure to the TME substance. However, EPA has determined that, under the conditions outlined above, and the restrictions outlined below, there will be no significant releases of the test market substances to the environment. Therefore, the test marketing activities will not present any unreasonable risk to the environment.

*Additional Restrictions:* The applicant and its one customer shall dispose of all wastes containing the TME substance T–87–10 by incineration in compliance with all applicable federal, state, and local laws and regulations.

*Public comments:* None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of any exemptions should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 24, 1987.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 87–8422 Filed 4–16–87; 8:45 am]

BILLING CODE 6560-50-M

---

**[OPTS–51670; FRL–3186–3]**

## Certain Chemicals Premanufacture

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-five such PMNs and provides a summary of each.

**DATE:** Close of Review Period:

P 87–886, 87–887, 87–888, 87–889, 87–890, 87–891, 87–892 and 87–893, June 24, 1987

P 87–894, 87–895, 87–896 and 87–897, June 27, 1987

P 87–898, 87–899, 87–900, 87–901, 87–902, 87–903, 87–904, 87–905, 87–906, 87–907, 87–908, 87–909, 87–910, 87–911, 87–912 and 87–913, June 28, 1987

P 87–914, 87–915, 87–916 and 87–917, June 29, 1987

P 87–918, 87–919 and 87–920, July 1, 1987

Written comments by:

P 87–886, 87–887, 87–888, 87–889, 87–890, 87–891, 87–892 and 87–893, May 25, 1987

P 87–894, 87–895, 87–896 and 87–897, May 28, 1987

P 87–898, 87–899, 87–900, 87–901, 87–902, 87–903, 87–904, 87–905, 87–906, 87–907, 87–908, 87–909, 87–910, 87–911, 87–912 and 87–913, May 29, 1987

P 87–914, 87–915, 87–916, 87–917, 87–918, 87–919 and 87–920, May 30, 1987

**ADDRESS:** Written comments, identified by the document control number "[OPTS–51670]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection

Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**P 87-886**

*Manufacturer.* Hercules Incorporated.
*Chemical.* (G) Aromatic polyester polyol.
*Use/Production.* (G) Destructive use-chemical intermediate for polymer manufacture. Prod. range: Confidential.

**87-887**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyamino amide.
*Use/Production.* (G) Additive in specialty formulation with open use. Prod. range: 500 to 1,950 kg/yr.

**P 87-888**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylated polyester.
*Use/Production.* (G) Open use industrial coating. Prod. range: 500,000 to 1,200,000 kg/yr.

P 87-889

*Manufacturer.* Rohm and Haas Company.
*Chemical.* (G) Modified polyacrylate polymer.
*Use/Production.* (G) Polymeric dispersant. Prod. range: Confidential.

**P 87-890**

*Manufacturer.* Rohm and Haas Company.
*Chemical.* (G) Modified polyacrylate polymer.
*Use/Production.* (G) Polymeric dispersant. Prod. range: Confidential.

**P 87-891**

*Manufacturer.* Rohm and Haas Company.
*Chemical.* (G) Modified polyacrylate polymer.
*Use/Production.* (G) Polymeric dispersant. Prod. range: Confidential.

**P 87-892**

*Importer.* Orient Chemical Corporation.
*Chemical.* (G) Dihydroxynaphthalene derivative.
*Use/Import.* (S) Sublimation transfer ink for printer. Import range: 1,200 to 6,000 kg/yr.

P 87-893

*Importer.* Orient Chemical Corporation.
*Chemical.* (G) Anthraquinone derivative.
*Use/Import.* (S) Sublimation transfer ink for printer. Import range: 1,200 to 6,000 kg/yr.

P 87-894

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) Amino-hydroxy-naphthalenedisulfonic acid,[[(substituted)]azo-[[(substituted)-[(3,5-dichloro-s-triazinylamino]phenyl]azo]-, sodium salt.
*Use/Import.* (S) Reactive dye for textiles. Import range: 40,000 kg/yr.

**P 87-895**

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) Disubstituted-naphthalene disulfonic acid, [ [ [3-chloro-5-[[(sulfooxyethylsulfonyl)phenyl]amino]-s-triazinylamino]substituted phenyl]azo]-, sodium salt.
*Use/Import.* (S) Reactive dye for textiles. Import range: 40,000 kg/yr.

**P 87-896**

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) Substituted naphthalenesulfonic acid. [[3-chloro-5-[(sulfooxyethyl)phenylamino]-s-triazinylamino]substituted naphthylazo]-, sodium salt.
*Use/Import.* (S) Reactive for textiles. Import range: 40,000 kg/yr.

**P 87-897**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic resin solution.
*Use/Production.* (G) Highly dispersive use. Prod. range: Confidential.

**P 87-898**

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) Amino-hydroxy-naphthalenedisulfonic acid, [[substituted]azo]-[[[3-chloro-[[(sulfooxyethylsulfonyl]phenyl]amino]-s-triazinylamino]sulfophenyl]-, sodium salt.
*Use/Production.* (S) Reactive dye for textiles. Prod. range: 40,000 kg/yr.

**P 87-899**

*Importer.* Biddle Sawyer Corporation.
*Chemical.* (G) Benzenesulfonic acid, [[substituted-alkyl-oxo-heteromonocycle]azo]-[[[(sulfooxy) ethyl]sulfonyl]phenylamino]-[[chlorotriazinyl]amino]-, sodium salt.
*Use/Import.* (G) Reactive dye for textiles. Import range: 40,000 kg/yr.

**P 87-900**

*Manufacturer.* Confidential.
*Chemical.* (G) Multifunctional alkyl cycloalkyl carbodiimide.
*Use/Production.* (S) Crosslinker for water-borne carboxylated coatings formulations. Prod. range: Confidential.
*Toxicity Data.* Acute oral: 8.0 ml/kg; Irritation: Skin-Moderate, Eye—Minor; Ames test, Non-mutagenic.

**P 87-901**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyether modified multifunctional alkyl cycloalkyl carbodiimide.
*Use/Production.* (S) Component of crosslinking agent for water-borne carboxylated coating formulations. Prod. range. Confidential.
*Toxicity Data.* Acute oral, 8.0 ml/kg; Irritation, Skin—Moderate, Eye—Minor; Ames test, Non-mutagenic.

**P 87-902**

*Manufacturer.* Confidential.
*Chemical.* (G) Hydroxyalkyl alkylcarbamate.
*Use/Production.* (G) Component in coating formulations. Prod. range, Confidential.
*Toxicity Data.* Acute oral, 16 ml/kg; Irritation, Skin—Minor, Eye—Minor; Ames test, Non-mutagenic.

**P 87-903**

*Manufacturer.* Confidential.
*Chemical.* (G) Alkylcarbamic acid hydroxyalkyl ester.
*Use/Production.* (S) Component in coating formulations. Prod. range, Confidential.
*Toxicity Data.* Acute oral, 13.3 ml/kg; Irritation, Skin—Non-irritant, Eye—Moderate to severe; Ames test, Non-mutagenic.

**P 87-904**

*Importer.* Confidential.
*Chemical.* (S) 2-Hydroxy-3-(3,4-dimethyl-9-oxo-9H-thioxanthen-2-yloxy)-N,N,N-trimethylpropan-aminium chloride.
*Use/Production.* (S) Photoinitiator for the photocuring of water based U.V. and near visible spectrum curing compositons. Prod. range, Confidential.
*Toxicity Data.* Acute oral, >2 g/kg; Acute dermal, >2 g/kg; Ames test, Non-mutagenic.

**P 87-905**

*Manufacturer.* Confidential.
*Chemical.* (G) Diester of alkoxylated diol.
*Use/Production.* (G) Antioxidant. Prod. range, Confidential.

**P 87-906**

*Manufacturer.* Occidental Chemical Corporation.
*Chemical.* (G) Urethane polymer.
*Use/Production.* (S) Industrial, commercial and consumer rheology modifier for latex paint production, and

modifier for latex adhesive production. Prod. range, Confidential.

P 87–907

*Manufacturer.* Occidental Chemical Corporation.

*Chemical.* (G) Polyether aromatic urethane.

*Use/Production.* (G) Polyurethane intermediate. Prod. range, Confidential.

P 87–908

*Manufacturer.* Occidental Chemical Corporation.

*Chemical.* (S) Propoxylated glycerol; chloroacetic acid, and sodium thiosulfate.

*Use/Production.* (G) Textile finishing agent. Prod. range, Confidential.

P 87–909

*Importer.* de LAIRE.

*Chemical.* (S) 2-Cyclopentene-1-acetic acid ethyl ester.

*Use/Import.* (S) A raw material of fragrance compound. Import range, Confidential.

P 87–910

*Importer.* de LAIRE.

*Chemical.* (S) 2-Cyclopentene-1-acetic acid, alpha allyl ethyl ester.

*Use/Import.* (S) A raw material of fragrance compound. Import range, 160 kg/yr.

P 87–911

*Importer.* de LAIRE.

*Chemical.* (S) 2-Cyclopentene-1-acetic acid; 1-methylheptyl ester.

*Use/Import.* (S) A raw material of fragrance compound. Import range, 60 kg/yr.

P 87–912

*Manufacturer.* Gould-Randco.

*Chemical.* (G) Dialkoxy titanium dialkanolamine chelate.

*Use/Production.* (S) Catalyst for manufacture of esters. Prod. range, 25,000 to 50,000 kg/yr.

P 87–913

*Manufacturer.* Gould-Randco.

*Chemical.* (G) Titanium (dialkanolamine) oxide.

*Use/Production.* (S) Catalyst for manufacture of esters. Prod. range, 25,000 to 50,000 kg/yr.

P 87–914

*Manufacturer.* Confidential.

*Chemical.* (G) Modified epoxy resin.

*Use/Production.* (S) Site-limited and industrial component of metal coating formulation. Prod. range, 50,000 to 100,000 kg/yr. Non-mutagenic.

P 87–915

*Manufacturer.* Confidential.

*Chemical.* (G) Carbonochloridothioic acid, aryl ester.

*Use/Production.* (G) Destructive use intermediate. Prod. range, Confidential.

*Toxicity Data.* Acute oral, 3,433 mg/kg; Acute dermal, >2,000 mg/kg; Irritation, Skin—Moderate, Eye-Moderate.

P 87–916

*Importer.* Confidential.

*Chemical.* (G) Isocyanate capped epoxy resin.

*Use/Import.* (G) Resin for paints and sealants. Import range, Confidential.

P 87–917

*Manufacturer.* Confidential.

*Chemical.* (G) Vinyl acrylic copolymer.

*Use/Production.* (G) Coatings additive in an open non-dispersive use. Prod. range, Confidential.

P 87–918

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester urethane of neopentyl glycol.

*Use/Production.* (G) Industrial coating with an open use. Prod. range, 27,500 to 110,000 kg/yr.

P 87–919

*Manufacturer.* Confidential.

*Chemical.* (G) Styrenated acrylate polymer with methyl methacrylate.

*Use/Production.* (G) Paint vehicle resin. Prod. range, 975,000 to 1,000,000 kg/yr.

P 87–920

*Manufacturer.* Ruetgers-Nease Chemical Company, Inc.

*Chemical.* (G) Organic salt of sulfonic acid.

*Use/Production.* (S) Industrial additive in cement; cleaning agent. Prod. range, Confidential.

Dated: April 7, 1987.

**Denise Devoe,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87–8281 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

---

[OW–3–FRL–3188–8]

## Ground Water System of a Limestone Aquifer (of the Valley and Ridge Province) of the Appalachian Valley Region in the Boyce-Millwood Area, Clarke County, VA

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Administrator of the U.S. Environmental Protection Agency has determined that the ground water system of the Stonehenge and Conococheague Limestone formation of the Appalachian Valley Region, which underlies part of Clarke County, Virginia in and around the towns of Boyce and Millwood (denominated the "Prospect Hill Spring Aquifer"), is the sole source or principal source of drinking water for that part of Clarke County, and that such aquifer, if contaminated, would create a significant hazard to public health. This determination is in response to a petition submitted by the Clarke County Board of Supervisors requesting that the Administrator of EPA make a determination pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), as amended, that the Prospect Hill Spring Aquifer is a sole or principal source of drinking water for the area. As a result of this action, Federal financially assisted projects in the designated area will be subject to EPA review pursuant to section 1424(e) to ensure that these projects are designed and constructed so that they do not contaminate this aquifer so as to create a significant hazard to public health

**EFFECTIVE DATE:** This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern standard time on May 1, 1987. This determination shall become effective on June 1, 1987.

**ADDRESS:** The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region III, Drinking Water/Ground Water Protection Branch, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

**FOR FURTHER INFORMATION CONTACT:** Jon Capacasa, Chief, Drinking Water/Ground Water Protection Branch, Environmental Protection Agency, Region III at the above address or at (215) 597–8227.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300H–3(e), the Administrator of the Environmental Protection Agency has determied that the ground water system of the Stonehenge and Conococheague Limestone formations is the sole or principal source of drinking water for the areas in and around the towns of Boyce and Millwood. This aquifer supplies drinking water to public water systems and individual (single family) wells. Pursuant to section 1424(e), Federal financially assisted projects, constructed on the

denominated "Prospect Hill Spring Aquifer" or within its streamflow source zone, will be subject to EPA review.

I. Background—Section 1424(e) of the Safe Drinking Water Act provides:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area which, if contaminated, would create a significant hazard to public health, he shall publish notice that determination in the Federal Register. After the publication of such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer

On June 27, 1985, the Board of Supervisors of Clarke County, Virginia, petitioned the Administrtor of EPA, pursuant to section 1424(e) of the Safe Drinking Water Act, to designate portions of the Stonehenge and Conococheague Limestone formations in Clarke County, Virginia, denominated "Prospect Hill Spring Aquifer", as the sole or principal source of drinking water for an area, which, if contaminated, would create a significant hazard to public health. A notice of receipt of this petition, together with a request for comments, was published in the Federal Register on October 31, 1985 (50 FR 45484).

The single public comment received recommended the designation. Because there were no requests for a public hearing and the one public comment received was favorable, a public hearing was deemed unnecessary. Upon review of the petition, EPA has determined that the streamflow source zone of the designated aquifer is a portion of the drainage basin of Page Brook.

II. Description of the Designated Portions of the Stonehenge and Conococheague Limestone Formations and their Stream Flow Source Zones.

The Stonehenge formation of lower Ordovician age is approximately 700 to 800 ft. thick and consists predominantly of thin to medium bedded, light to dark gray pure limestone. The older Conococheague formation of Upper Cambrian Age, consists of gray to dark gray limestone with interbeds of dolomite and sandstone. The Conococheague is approximately 2300 ft. thick. The area over which Federal financially assisted projects will be reviewed includes both the designated portions of the Stonehenge and Conococheague formations, encompassing the "Prospect Hill Spring Aquifer" and their streamflow source zone. This designated area consists of the following: The area directly overlying the Stonehenge and Conococheague formations in and around the towns of Boyce and Millwood and their streamflow source zone. The streamflow source zone includes the drainage basin of Page Brook from its headwaters to a point on Page Brook 3000 feet north of its confluence with Roseville Run. The majority of this drainage basin consists of the Rockdale Run limestone and dolomite formation, with portions of the Oranda, Edinburgh, Martinsburg and Lincolnshire limestone and dolomite formations comprising the remainder.

The surface area of the "Prospect Hill Spring Aquifer" is about one square mile, and the area of the streamflow source zone is approximately twelve (12) square miles. An enlarged map of the area and all the information utilized in this determination, which includes the petition, written comments, and various technical publications, are available to the public and may be inspected during normal business hours at the office of the Environmental Protection Agency, Region III, 841 Chestnut Bldg., Philadelphia, Pennsylvania 19107.

One the basis of the information which is available to this Agency, the Administrator has made the following findings, which are the basis for the determination noted above:

1. The portion of the "Prospect Hill Spring Aquifer" and its streamflow source zone underlying the designated area is the principal drinking water source for this area. The Clarke County Sanitation Authority derives above 35,000 gallons per day (gpd) from the Prospect Hill Spring to serve about 575 people.The water is chlorinated. The remaining residents in the designated area, approximately 125 people, have private wells, which supply, collectively, about 8,000 gpd.

2. There is no existing alternative drinking water source which provides 50 percent or more of the drinking water to the designated area. This is because this area is rural in nature and the nearest existing alternative supply, the Shenandoah River, is at such a distance that its use would be technically and economically impractical.

3. The designated portion of the "Prospect Hill Spring Aquifer" is susceptible to contamination, through the recharge or stream flow source zone, from abandoned wells, septic tanks and agricultural activity in which fertilizers, herbicides, and pesticides are applied directly to the soil surface. In 1981 the local Health Department discovered the presence of high nitrate levels in two municipal water source wells in the Town of Berryville. Other tests revealed the presence of several types of herbicides in one well and two or three types of phenols which may originate from pesticides in both wells. These wells are recharged by the same streamflow source zone as that of the "Prospect Hill Spring" acquifer. Since the ground water contamination can be difficult or impossible to reverse, and because this aquifer system is heavily relied upon for drinking water purposes by the general population, contamination of the acquifer would pose a significant hazard to public health.

4. Water enters the "Prospect Hill Spring Acquifer" through local precipitation and the streamflow source zone. Ground water levels are controlled by precipitation patterns. The water table follows the surface topography of the area. Ground water flow is a major component of stream flow in the area.

**Project Review**

On September 29, 1977 EPA proposed regulations for implementing section 1424(e) of the Safe drinking Water Act. (42 FR 51620). The proposed regulations contain procedures for review of Federal financially assisted projects which could contaminate "sole or principal source" acquifers through the recharge zone so as to create a significant hazard to public health. they are being used as interim guidance until final regulations are promulgated.

EPA Region III is already working with the Federal agencies which may in the future sponsor projects in the area of concern in order to develop interagency procedures whereby EPA will be notified of proposed commitments for projects which could contaminate the designated aquifer. EPA will evaluate such projects, and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate.

Although the project review process cannot be delegated, the Regional Administrator in Region III will rely to the maximum extent possible upon any existing or future State and local control mechanisms in protecting the ground water quality of the aquifer underlying the designated area. Included in the review of any Federal financially assisted project will be coordination with the State and local agencies. Their comments will be given full consideration and the Federal review process will function so as to

complement and support State and local mechanisms.

**Economic and Regulatory Impact**

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this certification the term "small entity" shall have the same meaning given in the RFA, 5 U.S.C. 601(6). This action is only applicable to the area covered by the petition, and affects only requests for Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. While the number of small entities which submit such requests cannot be predicted, EPA has stated that it "will not be concerned with reviewing, on an individual basis, small isolated commitments of financial assistance", 42 FR 51621 (September 29, 1977). Thus the number of projects reviewed in this area should be very small; protection of the aquifer will normally require review of larger, potentially contaminating or overpumping projects such as housing projects, highways or sewage treatment plants which would not ordinarily be small entities under the RFA. *See,* 42 FR 51621, 51622.

For those small entities which are subject to review, the impact of today's action will not be significant. As noted in the **Federal Register** preamble cited above, most projects subject to this review will be preceded by a ground water impact assessment under other Federal laws, such as the National Environmental Policy Act (NEPA). Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving a grant of assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any small entity in order to pay for the redesign of a project to assure protection of the aquifer.

Pursuant to Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, nor will it cause any major increases in competition, employment, investment, or productivity, in domestic or export markets. Today's action only affects the "Prospect Hill Spring" aquifer and the surrounding area. It provides an additional review of ground water protection measures, including any instituted by local authorities, for only those projects which request Federal financial assistance in this area. This rule was submitted to the Office of Management and Budget in accordance with the requirements of Executive Order 12291.

Dated: April 7, 1987.

**James M. Seif,**

*Regional Administer.*

[FR Doc. 87-8682 Filed 4-16-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0026.

Title: Application for Loan Cancellation.

Abstract: The form was developed for use by local governments in conjunction with the Community Disaster Loan Program (section 414, Pub. L. 93-288). The form was utilized to request cancellation of a Community Disaster Loan in accordance with the provisions of the law and regulation pertaining to Community Disaster Loans.

Type of respondents: State or local governments.

Number of Respondents: 5.

Burden Hours: 30.

Frequency of Recordkeeping or Reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street NW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3225 NEOB, Washington, DC 20503 within two weeks of this notice.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 87-8650 Filed 4-16-87; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-788-DR]

### Amendment to Notice of a Major-Disaster Declaration; Maine

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Maine (FEMA-788-DR), dated April 9, 1987 and related determinations.

**DATED:** April 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Maine, dated April 9, 1987, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1987:

York County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718-02.)

**Dave McLoughlin,**

*Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 87-8649 Filed 4-16-87; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL RESERVE SYSTEM

### Fidelcor, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 11, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to acquire Lazere Financial Corporation, New York, New York, and thereby engage in servicing loans or other extensions of credit for the account of others pursuant to § 225.25(b)(1) and providing to others data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8645 Filed 4-16-87; 8:45 am]

BILLING CODE 6210-01-M

---

## Hamptons Bancshares, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hamptons Bancshares, Inc.*, East Hampton, New York; to engage *de novo* through its subsidiary, Hamptons Appraisal Corp., Riverhead, New York, in performing appraisals of real estate, including residential, land, condominium, and commercial real estate pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Bank Financial Corp.*, Conyers, Georgia; to engage *de novo* through its subsidiary, First Financial Realty Services Corp., Conyers, Georgia, in the origination and servicing of first mortgage real estate loans for the secondary market, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Georgia.

Board of Governors of the Federal Reserve System, April 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8647 Filed 4-16-87; 8:45 am]

BILLING CODE 6210-01-M

## LaCinda Johnson Scroggie; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve ban indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *LaCinda Johnson Scroggie*, Santa Ynez, California; to retain 15.9 percent of the voting shares of Community Bank of Santa Ynez Valley, Solvang, California.

Board of Governors of the Federal Reserve System, April 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8644 Filed 4-16-87; 8:45 am]

BILLING CODE 6210-01-M

---

## Sharon, Bancshares, Inc., et al.; Formations of, Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquired a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing

BEST COPY AVAILABLE

must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 8, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Sharon Bancshares, Inc.*, Sharon, Tennessee; to acquire at least 98 percent of the voting shares on City State Bank, Martin, Tennessee.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Coteau Hills Company*, Gackle, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Gackle, Gackle, North Dakota.

Board of Governors of the Federal Reserve System, April 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-8646 Filed 4-16-87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Fatal Accident Circumstances and Epidemiology (FACE) Symposium; Open Meeting

The following symposium will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

**Fatal Accident Circumstances and Epidemiology (FACE)**

Date: May 26–28, 1987.

Time: 4 p.m.–6 p.m., May 26, 1987; 8 a.m.–5 p.m., May 27, 1987; 8 a.m.–12 noon, May 28, 1987.

Place: Room C–120, National Mine Health and Safety Academy, Airport Road, Beckley, West Virginia 25802–1166.

Purpose: The prupose of this symposium is to review and discuss the results obtained in the FACE program to date and to elicit input concerning future direction and expansion of the program.

Additional information may be obtained from: Jan C. Manwaring, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505; Telephones: FTS: 923–4811; Commercial: 304/291–4811.

Dated: April 13, 1987.

**Robert L. Foster,**

*Assistant Director, Office of Program Support Centers for Disease Control.*

[FR Doc. 87–8628 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

## Food and Drug Administration

### Dow Chemical U.S.A.; Withdrawal of Approval of NADA's

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Dow Chemical U.S.A. The NADA's provide for use of ronnel Type A articles for making Type C cattle feeds. The firm requested withdrawal of approval.

**EFFECTIVE DATE:** April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3184.

**SUPPLEMENTARY INFORMATION:** Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640, is the sponsor of NADA 11–076: Trolene FR Insecticidal Premix, NADA 41–377: Trolene 18 Insecticidal Salt Premix, and NADA 48–956: Trolene 20 L Insecticidal Liquid Premix. The NADA's provide for use of these ronnel Type A articles for making Type C cattle feeds for use as in 21 CFR 558.525 and 558.526.

By letter of December 3, 1986, the sponsor requested the withdrawal of approvals because the products were not being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 11–076, 41–377, and 48–956 and all supplements thereto are hereby withdrawn, effective April 27, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 558.525(a)(1) and 558.526 that reflect these approvals.

Dated: April 13, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–8637 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

[Docket No. 87N–0132]

### Workshop on Epidemiology of Haemophilus Influenza Type B Disease; Public Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public workshop to discuss the epidemiology of Haemophilus Influenza Type B disease.

**DATE:** The workshop will be held on Monday, April 20, 1987, from 8 a.m. to 5 p.m.

**ADDRESS:** The workshop will be held at the National Institutes of Health, Conference Rm. 6, Bldg. 31C, 9000 Rockville Pike, Bethesda, MD.

**FOR FURTHER INFORMATION CONTACT:** Carl Frasch, Center for Drugs and Biologics (HFN–858), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–1920,

or

Joel Kuritsky, Center for Drugs and Biologics (HFN–733), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6410.

**SUPPLEMENTARY INFORMATION:** On April 20, 1987, FDA will sponsor a workshop on the epidemiology of Haemophilus Influenza Type B disease since the introduction of Haemophilus B Polysaccharide Vaccine in April 1985. There are currently three licensed manufacturers of this vaccine. FDA will use the information provided during this workshop to develop plans for further scientific and regulatory activities. Persons planning to attend should be aware that space is limited and should contact either Carl Frasch or Joel Kuritsky (addresses above) to obtain additional information.

Dated: April 14, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–8734 Filed 4–6–87; 10:38 am]

BILLING CODE [illegible]

[Docket No. 87P-0118]

## Petition Requesting Rescission of 3 Years' Exclusivity for Persantine Brand of Dipyridamole

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the filing of a petition requesting that the agency rescind its decision to grant 3 years' marketing exclusivity for Persantine brand of dipyridamole for its use "as an adjunct to coumarin anticoagulants in the prevention of postoperative thromboembolic complications of cardiac valve replacement." FDA is giving notice of the filing of this petition to all interested persons because, should FDA decide to grant the petition, this decision would affect the date when approval for maketing generic versions of dipyridamole labeled for the above indication may be made effective.

**DATE:** Comments by May 18, 1987.

**ADDRESS:** Requests for a copy of the petition and written comments regarding the petition to Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

**SUPPLEMENTARY INFORMATION:** On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984. The new legislation amends the Federal Food, Drug, and Cosmetic Act authorizing the agency to accept abbreviated new drug applications (ANDA's) for many previously approved new drug products. The new legislation also provides for periods of "exclusive" marketing for, among other things, certain changes in new drug products approved in a supplement to an application under section 505(b) of the act. Approval of an ANDA or new drug application described in section 505(b)(2) of the act, submitted for such a change, may not be made effective until the period of "exclusive" marketing ends.

The new drug products that have been granted "exclusivity" under one of the several exclusivity provisions of this new legislation are set forth in the publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" (the list) and its monthly supplements. In addition, the period of exclusivity is shown in the list. Persantine's 3-year exclusivity appears in the seventh edition of the list.

Interested persons may disagree with the agency's findings. Accordingly, FDA has established a policy that, whenever an interested person submits a citizen petition requesting a change in the exclusivity status of an approved product, the agency will publish a notice in the **Federal Register** of the availability of the petition. This publication is constructive notice to all interested persons that they may be affected by the petition and gives them an opportunity to submit their comments on the petition to the agency. Persons potentially affected include holders of approved ANDA's or approved new drug applications described in section 505(b)(2) of the act, the effective dates of which might be changed by a decision to grant the petition, persons who have such applications pending or who contemplate submitting such applications, and persons whose right to submit such applications may be affected.

Although the agency has made a determination that Persantine is entitled to 3 years' exclusivity under section 505(c)(3)(D)(iv) and (j)(4)(D)(iv) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(c)(3)(D)(iv) and (j)(4)(D)(iv)), FDA is announcing, in accord with the policy above, a filing of a petition (87P-0118) submitted on behalf of the National Association of Pharmaceutical Manufacturers, et al., requesting that this exclusivity be rescinded. Petitioners state that an award of exclusivity under section 505(j)(4)(D)(iv) of the act is unlawful. Petitioners state that for the reasons given in their petition the pertinent statutory provisions, section 505(c)(3)(D)(iv) and (j)(4)(D)(iv) of the act, were not intended to provide market exclusivity to products being reviewed under the agency's Drug Effecacy Study program but rather only to products already approved for safety and effectiveness.

FDA is reviewing the merits of this petition and, by this notice, is giving anyone who may be affected by this petition an opportunity to submit comments.

Interested persons may, on or before May 4, 1987, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Dockets Management Branch.

Dated: April 13, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-8639 Filed 4-16-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 87D-0110 and 87D-0111]

## Medical Devices; Compliance Policy Guide Regarding Defect Action Levels for Condoms—Guideline on Labeling of Condoms; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of two documents: a compliance policy guide (CPG) entitled "Condoms: Defects—Criteria for Direct Reference Seizure to General Counsel April 10, 1987, and a guideline on the labeling of condoms. The two documents were prepared by FDA's Center for Devices and Radiological Health (CDRH). FDA is taking these actions under the Federal Food, Drug, and Cosmetic Act (the act).

**DATE:** Written comments submitted by (June 16, 1987, will be considered by FDA in determining whether immediate revisions of the CPG or guideline are warranted; however, comments may be submitted on the two documents at any time for FDA's consideration.

**ADDRESS:** Written requests for a single copy of the CPG or the guideline to the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit any written comments on the GPG (referencing Docket No. 87D-0110) or the guideline (referencing Docket No. 87D-0111) to the same address. The CPG and the guideline and any comments received on them may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

**FOR FURTHER INFORMATION CONTACT:** Frank J. Pipari, Center for Devices and Radiological Health (HFZ-323), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8162.

**SUPPLEMENTARY INFORMATION:** FDA, primarily through CDRH, regulates medical devices in commercial distribution under the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295) to the act. One provision of the amendments, section 513 of the act (21 U.S.C. 360c), establishes three categories (classes) of devices, depending upon the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I (general controls), class II (performance standards), and class III (premarket approval). Following procedures in the statute, FDA has classified the condom as a class II device. See 21 CFR 884.5300. The device is made of latex or natural membranes.

In view of the increasing use of condoms as a protection against acquired immunodeficiency snydrome (AIDS) and other sexually transmitted diseases, CDRH has revised its strategy for the regulation of condoms. CDRH's strategy consists of (1) strengthening its inspection of manufacturers and repackagers of condoms to ensure conformance with FDA's current good manufacturing practice (CGMP) regulations at 21 CFR Part 820, (2) strengthening its sampling/inspection of condoms in commercial distribution to reduce to the extent possible the number of condoms with leakage defects, and (3) providing guidance on labeling of condoms intended for use in desease prevention to enable manufacturers, importers, and repackagers to provide consumers adequate directions for use. See 21 CFR 801.4 and 801.5.

To implement the first element of its strategy, FDA is currently inspecting all manufacturers, importers, and repackagers of condoms to (1) ensure compliance with the CGMP regulations, and (2) obtain information on the current levels of defects of condoms and the labeling now used for condoms.

Secondly, to strengthen FDA's sampling/inspection of condoms in commercial distribution and condoms at manufacturers, importers, and repackagers, CDRH has developed and is making available a revised CPG to establish a defect action level for leakage defects found in a lot of condoms. The CPG being made available replaces CPG 7174.21 "Prophylactics—Adulteration; Defects October 1, 1980".

**CPG 7174.21 Condoms: Defects—Criteria for Direct Reference Seizure to General Counsel, April 16, 1987**

FDA is revising and making available its CPG to bring FDA's defect action level for leakage defects of condoms more in line with the rejection criteria in the voluntary standard used by domestic manufacturers of latex condoms. The manufacturers are using the American Society for Testing Materials' (ASTM) Standard Specification for Rubber Contraceptives (Condoms)—Designation: D3492–83 for quality control of leakage defects in condoms (Ref. 1). According to this voluntary standard, the acceptable quality level for leakage is 0.4 percent; i.e., not to exceed 4 leaking condoms per 1,000 condoms examined. For example, FDA will reject a lot of condoms if 5 or more condoms are found with leakage defects per 1,000 condoms examined.

The CPG states that FDA will follow a statistically based sampling/inspection plan. FDA's sampling/inspection plan was taken from MIL–STD–105D (the military standard for "Sampling Procedures and Tables for Inspection by Attributes") based on an acceptable quality level of 0.4 percent. A lot of condoms found to meet or exceed the rejection criteria for leakage defects (i.e., 5 or more leaking condoms per 1,000) would be subject to a recommendation for direct reference seizure action to FDA's Office of General Counsel.

**Guideline on Labeling of Condoms**

To implement the third element in FDA's strategy for regulating condoms, CDRH has developed and is issuing guidance on labeling of these devices. The guidance on labeling consists of a letter that FDA is sending to all manufacturers, importers, and repackagers of condoms. The letter will assist these firms to prepare labeling that provides adequate directions for use of condoms intended for prevention of sexually transmitted diseases.

Accordingly, under Docket No. 87D–0111, FDA is making available its letter of guidance on the labeling of condoms dated April 7, 1987. FDA considers its letter to be a guideline, and is making it available under § 10.90(b) of its administrative practices and procedures regulations.

Guidelines establish principles of practices of general applicability that are not legal requirements but are acceptable to FDA for a subject matter which falls within the laws administered by the agency. A person may rely upon a guideline with assurance that it is acceptable to FDA, or may follow different procedures or standards. When different procedures or standards are chosen, a person may, but is not required to, discuss the matter in advance with FDA to prevent the expenditure of money and effort on activity that may later be determined to be unacceptable.

A guideline represents the formal position of FDA on a matter and, except as provided below, obligates the agency to follow it until it is amended or revoked. In unusual situations involving an immediate and significant danger to health, FDA may take appropriate civil enforcement action contrary to a guideline before amending or revoking the guideline. This action may be taken only with the approval of the Commissioner, who may not delegate that function.

**Reference**

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Standard Specification for Rubber Contraceptives (Condoms); American Society for Testing Materials (ASTM); Designation D3492–83.

Accordingly, FDA is making available a revised CPG and a guideline on labeling.

Interested persons may at any time submit to the Dockets Management Branch (address above) written comments on the CPG or the guideline; however, comments submitted by June 16, 1987, will be considered by FDA in determining whether immediate revisions of the CPG or guideline are warranted. Identify comments on the CPG with Docket No. 87D–0110. Identify comments on the guideline with Docket No. 87D–0111. Two copies of any comments are to be submitted (except that individuals may submit single copies). Comments may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 10, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–8638 Filed 4–16–87; 8:45 am]

BILLING CODE 4160-01-M

---

**[Docket No. 87N–0062]**

## Report on Adjunct Studies of Intraocular Lenses; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a report on adjunct studies of intraocular lenses (IOL's).

**ADDRESS:** Written requests for single copies of this report to Halyna Breslawec, address below. A copy of this report and any comment received on it may be seen at the Dockets Management Branch, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

**FOR FURTHER INFORMATION CONTACT:** Halyna P. Breslawec, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8162.

**SUPPLEMENTARY INFORMATION:** FDA is making available a report on its current policies and procedures regarding adjunct studies of IOL's.

An adjunct study of an IOL is a clinical investigation in which an unlimited number of IOL's may be implanted under conditions requiring minimal adverse reaction data collection. FDA permitted adjunct studies of IOL's in response to section 520(l)(3)(D)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.) to ensure that IOL's would be "reasonably available" to qualified experts while the safety and effectiveness of these devices were being investigated.

Although FDA's adjunct provisions have permitted widespread and immediate availability of new IOL's, such provisions have provided little benefit from a safety monitoring or data collection perspective. The availability of large numbers of IOL's through adjunct studies has provided firms a disincentive to collect, analyze, and submit data to FDA in support of premarket approval applications.

Because many IOL's have not received premarket approval, FDA justification no longer exists for permitting adjunct studies of IOL's. FDA has developed a plan that is designed to improve control of IOL investigations and to gradually discontinue adjunct studies of IOLs. We recognize that the medical community and industry have become accustomed to relatively unencumbered use of investigational IOLs. However, the plan in this report approaches the changes in the policy with some caution to ensure that the availability of IOLs is not severely restricted, that innovation in IOL technology is not stifled, and that the impact of these changes on ophthalmic care and the industry is as minimal as possible. To accomplish these goals, the plan for discontinuing adjunct investigations is designed to be phased in over a period of approximately 3 years.

Dated: April 13, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–8640 Filed 4–16–87; 8:45 am]

BILLING CODE 4160–01–M

---

## Health Resources and Services Administration

### Final Funding Preferences for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration announces the final funding preferences which will govern the distribution of grant awards in Fiscal Year 1987 for Grants for Faculty Development in Family Medicine.

Section 786(a) of the Public Health Service Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathy or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

As specified in the regulations for this program, 42 CFR 57.1605(b)(2)(iii), a funding preference will be accorded approved applications for projects which emphasize increasing the number of new faculty who will be teaching on a full-time basis in family medicine. In addition, funding preferences were proposed in the **Federal Register** of January 5, 1987. (52 FR 363) for applicants who provide directly or through affiliate medical schools, incentives for minority persons to enter academic medicine; and, for applicants whose projects are designed to develop faculty competence for teaching geriatric content and/or develop educational materials for teaching geriatric content to family medicine students, residents and practitioners. Interested parties were given 30 days to comment on the proposal. One comment was received during the 30-day comment period.

The respondent opposed the proposed preference on the basis that this preference strays from the original intent of the grant program of increasing the number of faculty who will be teaching on a full-time basis in family medicine.

The Department recognizes the stated intent of the program. Nevertheless, it views the proposed funding preferences as being consistent with the program's purpose of increasing the number of faculty teaching in family medicine. The Department considers emphasis on the field of geriatrics and the encouragement of minority persons to enter academic medicine as matters of national concern. Therefore, in addition to the funding preference specified in 42 CFR 57.1605(b)(2)(iii), the proposed funding preferences have been retained as follows:

Additional funding preferences will be given to applicants who provide directly or through affiliate medical schools, incentives for minority persons to enter academic medicine; and for applicants whose project are designed to develop faculty competence for teaching geriatric content and/or develop educational materials for teaching geriatric content to family medicine students, residents and practitioners.

This program is not subject to the provisions of Executive Order 12371, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: April 14, 1987.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 87–8690 Filed 4–16–87; 8:45 am]

BILLING CODE 4160–15–M

---

## Social Security Administration

**[A35/5.16]**

### Disability Advisory Council; Meetings

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of meetings.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces the schedule and proposed agenda of forthcoming field hearings of the Disability Advisory Council (the Council). The Council is scheduling field hearings at which public officials, representatives of civic and public interest organizations, and concerned citizens may speak. This notice announces the third and fourth field hearings of the Council. No other field hearings are planned. In addition, this notice changes the location of the Council meeting scheduled May 21 and 22, 1987 that was published in the **Federal Register** on December 24, 1986, at 51 FR 46724.

**DATE:** See **SUPPLEMENTARY INFORMATION.**

**ADDRESS:** See **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Douglas Badger, Executive Director, Disability Advisory Countil, P.O. Box 17064, Baltimore, Maryland 21203, (301) 594–8177.

**SUPPLEMENTARY INFORMATION:** A. Field hearings scheduled as follows:

**Place, Date, and Agenda**

Place: J. Erik Jonsson Central Library, Central Auditorium (Plaza), 1515 Young Street, Dallas, TX 75201
Date: May 4, 1987, 9:00 a.m. to 5:00 p.m.
Agenda: Discussion of Social Security Disability Insurance and Supplemental Security Income program changes that should be considered or tested to increase incentives or remove disincentives for beneficiaries to return to work.
Place: New Federal Office Building, Main Floor Auditorium, 10 Causeway Street, Boston, MA 02222
Date: June 2, 1987, 9:00 a.m. to 5:00 p.m.
Agenda: Discussion of Social Security Disability Insurance and Supplemental Security Income program changes that should be considered or tested to increase incentives or remove disincentives for beneficiaries to return to work.

B. Change to Council meeting location as follows:

**Place, Date, and Agenda**

Place: Social Security Administration (Enter, and obtain parking permit if needed, at the Security Boulevard main entrance), Room GD7, West High Rise, 6401 Security Boulevard, Baltimore, MD 21235
Date: May 21, 1987, 10:00 a.m. to 5:00 p.m.; May 22, 1987, 9:00 a.m. to 4:00 p.m.
Agenda: Work Incentives and Disincentives.

The Council is established and governed by the provisions of section 12102 of Pub. L. 99–272.

The Secretary has appointed the members of the Council in accordance with the provision of the statute. The Council is chaired by Dr. John E. Affeldt.

The purposes of the Council are to study and make recommendations on the medical and vocational aspects of disability under the Social Security and Supplemental Security Income (SSI) programs. The Council may engage technical assistance in order to carry out its purposes. Studies must include: (1) The effectiveness of vocational rehabilitation programs for Social Security and SSI beneficiaries; (2) the question of using specialists to complete medical and vocational evaluations at the State agency disability decisionmaking level, including the question of requiring medical specialists to complete the medical portion of each case review and any assessment of residual functional capacity in other than mental impairment cases; (3) alternative approaches to work evaluation, the feasibility of providing work evaluation stipends, and screening criteria for work evaluation referrals; and (4) possible criteria for assessing the probabilty that an applicant or recipient of benefits based on disability will benefit from rehabilitation services.

**Field Hearings**

All field hearings are open to the public to the extent that space is available. Transcripts of the field hearings are available to the public on an at-cost-of duplication basis. The transcripts can be ordered from the Executive Director of the Council. The transcripts and all written submissions will become part of the record of these proceedings.

The Council will conduct these field hearings as an informal forum. After an opening statement by the chairperson, the public comment portion of the hearing will begin. The Council will accept requests to speak from public officials, representtives of civic and public interests organizations, and concerned citizens. As many speakers will be scheduled at each meeting site as time permits. Because the meeting hours will be limited, individuals are encouraged to speak about the issues on which they feel most strongly and to submit further written comments on other issues. Persons unable to speak at the meetings may submit written comments. In order to assure that everyone wishing to speak will be given the opportunity, the chairperson may limit the time allotted to each speaker.

Any public official, representative of an organization, or individual desiring to participate at a field hearing should write or telephone the Executive Director of the Council for the specific meeting information and provide the following: (1) Name; (2) business address; (3) telephone number during normal working hours; (4) capacity in which presentation will be made, i.e., public official, organization presentation, or citizen; and (5) time desired. Late requests and requests to speak received on the day of the meeting will be honored as time permits.

Dated: April 13, 1987.

**W. Douglas Badger,**

*Executive Director, Disability Advisory Council.*

[FR Doc. 87–8648 Filed 4–16–87; 8:45 am]
BILLING CODE 4190–11–M

## DEPARTMENT OF HOUSING URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–87–1686; FR–2344]

### Formula Allocations for the Rental Rehabilitation Program for FY 1987 and Deadlines for Submission of Program Descriptions

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces the allocations of Rental Rehabilitation Program funds for cities with populations of 50,000 or more, urban counties, consortia of units of general local government, and States for Fiscal Year 1987. It also sets the dates by which Program Descriptions must be submitted to HUD for these potential grantees to be considered for actual grants based upon these allocations.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolesar, Director, Rehabilitation Management Division, Room 7162, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC, Telephone (202) 755–5970. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Formula Allocations**

The Rental Rehabilitation Program is authorized by section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o), hereafter referred to as section 17. The Program's interim regulations are published at 24 CFR Part 511. Section 511.30 contains the formula for allocating Rental Rehabilitation Program funds. Cities having a population of 50,000 or more, urban counties, consortia of units of general local government having a combined population of 50,000 or more, and States are eligible to receive formula allocations. The amount of rental rehabilitation grant funds available for allocation in Fiscal Year 1987 is $200 million.

Appendix A to this notice contains the formula allocations for cities, urban counties and consortia that receive an allocation of $50,000 or more. Appendix B to this notice contains the allocations for States.

The eligibility of cities with populations of 50,00 or more and urban counties for formula allocations is determiend by whether they were so classified for purposes of the

Community Development Block Grant Entitlement Program (24 CFR Part 570) for Federal Fiscal Year 1986. All allocation amounts have been rounded to the nearest thousand. The formula factors for allocating the Fiscal Year 1987 funds are the same as those used in Fiscal Years 1984, 1985 and 1986. By separate publication, HUD is suspending the application of § 511.32, which would have otherwise mandated the further adjustment of potential grantees' formula allocations for Fiscal Year 1987, based upon certain performance adjustment factors contained in § 511.32. The reasons for the suspension are explained in the separate publication.

Concerning the 1984 legislative amendment that the Secretary assure that an equitable share of funds be used to provide units for families with children, particularly large families requiring three or more bedroom units, the Department has determined for Fiscal Year 1987 that the three or more bedroom priority can be satisfied if at least 15 percent of the Rental Rehabilitation Program grant amounts expended nationwide are expended for rehabilitation of units of three or more bedrooms. The existing requirement in § 511.10(k) that grantees use at least 70 percent of their grant funds to provide two or more bedroom units, unless otherwise approved by HUD under the criteria in that section, remains in effect.

The Department reserves the right prospectively to establish a mandatory standard for each grantee for achievement of three-bedroom and larger units should the data (which will be continually available) indicate any substantial prospect that the Secretary will not achieve the mandated minimum within any two-year period.

**Deadline for Submitting Program Description**

Section 511.20(a) of the Program regulations states that cities, urban counties and consortia eligible to receive a grant based on a formula alloction must submit a Program Description to the appropriate HUD Field Office within 45 days of written notification of their Rental Rehabilitation fund allocation, and that States have 75 days from the date of written notification of their allocations to submit their Program Descriptions. HUD deems the date of written notification to all grantees eligible for a formula allocation to be the date of this notice.

Thus, all cities, urban counties and consortia receiving a formula allocation must deliver their Program Descriptions to the appropriate HUD Field Office or have them postmarked no later than June 1, 1987 to be considered for a grant.

If a State elects to administer the Rental Rehabilitation Program in Fiscal Year 1987, it must notify HUD in writing of its intent to participate in the program by May 18, 1987 and must deliver its Program Description or have it postmarked by June 30, 1987 to be considered for a grant.

If a State chooses not to participate in the Rental Rehabilitation Program, eligible units of general local government located in the State that wish to participate in the HUD-Administered State Program must submit a Program Description to the responsible HUD Field Office within 45 days of the date stated in a written notification from HUD to such potential grantees of fund availability under the program for the fiscal year. These notifications will be directly issued by HUD Field Offices when it is known which States, if any, are not participating in Fiscal Year 1987.

**Section 8 Housing Vouchers in Support of the Rental Rehabilitation Program**

When Field Offices approve Program Descriptions for grantees, or as soon as possible thereafter, they should also reserve the appropriate amount of section 8 funds in support of the locality's or State's Rental Rehabilitation Program. If they have not already been received, the section 8 funds will be assigned to Field Offices soon. Up to on Section 8 Housing Voucher will eventually be provided for each $7,500 of Fiscal Year 1987 rehabilitation grant funds allocated to a grantee, although no more than 10,000 vouchers will be made available in 1987 under the current appropriation.

If the are city/urban county formula grantees that had Rental Rehabilitation Program grant funds deobligated or additional funds reallocated under § 511.33(c) late in Fiscal Year 1986 or earlier this fiscal year, adjustments should be made in the Section 8 funds allocated in support of local Rental Rehabilitation Programs for this fiscal year. Further instructions will be sent to Field Offices concerning the allocation of vouchers and adjustments that should be made for reallocations of rental rehabilitation grant funds, but Field Offices need to be aware that these adjustments are to be made.

**Other Matters**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

The Catalog of Federal Domestic Assistance program number is 14.230, Rental Housing Rehabilitation.

The collection of information requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control No. 2506–0078.

**Authority:** Section 17, United States Housing Act of 1937, 42 U.S.C. 1437o; section 7(d). Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 7, 1987.

**Jack R. Stokvis,**

*General Deputy Assistant Secretary for Community Planning and Development.*

BILLING CODE 4210-29-M

RENTAL REHABILITATION PROGRAM
FORMULA ALLOCATIONS
FOR
CITIES, URBAN COUNTIES AND CONSORTIA
FISCAL YEAR 1987

Appendix A

| STATE<br>LOCALITY | TYPE OF LOCALITY* | $ IN THOUSANDS |
|---|---|---|
| ALABAMA | | |
| [illegible] | 51 | 492 |
| DOTHAN | 51 | 93 |
| HUNTSVILLE | 51 | 115 |
| MOBILE | 51 | 225 |
| MONTGOMERY | 51 | 207 |
| TUSCALOOSA | 51 | 126 |
| JEFFERSON COUNTY | [illegible] | 174 |
| ALASKA | | |
| ANCHORAGE | 51 | 130 |
| ARIZONA | | |
| GLENDALE | 52 | 72 |
| MESA | 51 | 105 |
| PHOENIX | 51 | 719 |
| SCOTTSDALE | 51 | 54 |
| TEMPE | 51 | 104 |
| TUCSON | 51 | 416 |
| MARICOPA COUNTY | [illegible] | 133 |
| PIMA COUNTY | [illegible] | [illegible] |
| ARKANSAS | | |
| FORT SMITH | 51 | [illegible] |
| LITTLE ROCK | 51 | 178 |
| NORTH LITTLE ROCK | 51 | 59 |
| PINE BLUFF | 51 | 72 |
| CALIFORNIA | | |
| ALAMEDA | 52 | [illegible] |
| ALHAMBRA | 52 | 94 |
| ANAHEIM | 51 | 229 |
| BAKERSFIELD | 51 | 193 |
| BELLFLOWER | 52 | 71 |
| BERKELEY | 51 | 284 |
| BURBANK | 51 | 104 |
| CHULA VISTA | 52 | 78 |
| COMPTON | 52 | 100 |
| CONCORD | 52 | 71 |
| COSTA MESA | 52 | 107 |
| DALY | 52 | 61 |
| DOWNEY | 52 | 74 |
| EL CAJON | 52 | 103 |
| EL MONTE | 52 | 123 |
| ESCONDIDO CITY | 51 | 7[illegible] |
| FREMONT | 52 | 7[illegible] |
| FRESNO | 51 | 300 |
| FULLERTON | 52 | 102 |
| GARDEN GROVE | 52 | [illegible] |
| GLENDALE | 52 | 22[illegible] |
| HAWTHORNE | 52 | 80 |
| HAYWARD | 52 | [illegible] |
| HUNTINGTON BEACH | 52 | 14[illegible] |
| INGLEWOOD | 52 | 16[illegible] |
| LA MESA CITY | 52 | [illegible]2 |
| LONG BEACH | 51 | 67[illegible] |
| LOS ANGELES | 51 | 572[illegible] |
| LYNWOOD | 52 | [illegible]1 |
| MODESTO | 51 | 101 |
| MONTEBELLO | 52 | [illegible] |
| MONTEREY PARK | 52 | 51 |
| MOUNTAIN VIEW | 52 | 7[illegible] |
| NATIONAL CITY | 52 | 73 |
| NEWPORT BEACH | 52 | 7[illegible] |
| NORWALK | 52 | [illegible] |
| OAKLAND | 51 | 72[illegible] |
| OCEANSIDE | 52 | [illegible] |
| ONTARIO | 52 | 72 |
| ORANGE | 52 | 7[illegible] |
| OXNARD | 51 | 10[illegible] |
| PALO ALTO | 51 | 55 |
| PASADENA | 51 | 201 |
| POMONA | 51 | 10[illegible] |
| REDONDO BEACH | 52 | 7[illegible] |
| REDWOOD CITY | 52 | [illegible] |
| RICHMOND | 52 | [illegible] |

| STATE<br>LOCALITY | TYPE OF LOCALITY* | $ IN THOUSANDS |
|---|---|---|
| CALIFORNIA | | |
| RIVERSIDE | 51 | 172 |
| SACRAMENTO | 51 | 390 |
| SALINAS | 51 | 93 |
| SAN BERNADINO | 51 | 151 |
| SAN DIEGO | 51 | 1185 |
| SAN FRANCISCO | 51 | 1690 |
| SAN JOSE | 51 | 501 |
| SAN MATEO | [illegible] | [illegible] |
| SANTA ANA | 51 | 240 |
| SANTA BARBARA | 51 | 144 |
| SANTA CLARA | [illegible] | 84 |
| SANTA MONICA | [illegible] | 197 |
| SANTA ROSA | 51 | 91 |
| SOUTH GATE | [illegible] | [illegible] |
| STOCKTON | 51 | 223 |
| SUNNYVALE | [illegible] | 87 |
| TORRANCE | [illegible] | 107 |
| VALLEJO | 51 | 70 |
| VENTURA | 51 | [illegible] |
| WHITTIER | [illegible] | [illegible] |
| ALAMEDA COUNTY | 66 | 158 |
| CONTRA COSTA | [illegible] | 213 |
| FRESNO COUNTY | [illegible] | 225 |
| KERN COUNTY | [illegible] | 240 |
| LOS ANGELES COUNTY | [illegible] | 2021 |
| MARIN COUNTY | [illegible] | 201 |
| ORANGE COUNTY | [illegible] | [illegible] |
| RIVERSIDE COUNTY | 66 | 335 |
| SACRAMENTO COUNTY | 66 | 398 |
| SAN BERNARDINO COUNTY | [illegible] | 445 |
| SAN DIEGO COUNTY | [illegible] | 406 |
| SAN JOAQUIN COUNTY | [illegible] | 151 |
| SAN MATEO COUNTY | 66 | 224 |
| SANTA CLARA COUNTY | [illegible] | 204 |
| SONOMA COUNTY | [illegible] | 183 |
| VENTURA COUNTY | [illegible] | 137 |
| COLORADO | | |
| AURORA | 52 | 95 |
| BOULDER | [illegible] | 126 |
| COLORADO SPRINGS | 51 | 219 |
| DENVER | 51 | [illegible] |
| FORT COLLINS | 51 | [illegible] |
| GREELEY | 51 | [illegible] |
| LAKEWOOD | 52 | [illegible] |
| PUEBLO | 51 | 116 |
| ADAMS COUNTY | [illegible] | 100 |
| CONNECTICUT | | |
| BRIDGEPORT | 51 | 340 |
| DANBURY | 51 | [illegible] |
| HARTFORD | 51 | 404 |
| MERIDEN | 51 | 57 |
| NEW BRITAIN | 51 | 118 |
| NEW HAVEN | 51 | 356 |
| NORWALK | 51 | 77 |
| STAMFORD | 51 | 109 |
| WATERBURY | 51 | 183 |
| WEST HAVEN | [illegible] | 57 |
| DELAWARE | | |
| WILMINGTON | 51 | 137 |
| NEW CASTLE COUNTY | [illegible] | 187 |
| DISTRICT OF COLUMBIA | | |
| WASHINGTON | 51 | 1231 |
| FLORIDA | | |
| CLEARWATER | 51 | [illegible] |
| DAYTONA BEACH | 51 | 112 |
| FT LAUDERDALE | 51 | 210 |
| GAINESVILLE | 51 | 145 |
| HIALEAH | 51 | 182 |
| HOLLYWOOD | 51 | 109 |

| STATE<br>LOCALITY | TYPE OF LOCALITY* | $ IN THOUSANDS |
|---|---|---|
| FLORIDA | | |
| JACKSONVILLE | 51 | 577 |
| LAKELAND | 51 | 62 |
| MIAMI | 51 | [illegible] |
| MIAMI BEACH | 51 | 440 |
| [illegible] | 51 | [illegible] |
| PENSACOLA | 51 | 76 |
| POMPANO BEACH | 51 | [illegible] |
| ST PETERSBURG | 51 | 301 |
| SARASOTA | 51 | [illegible] |
| TALLAHASSEE | 51 | 172 |
| TAMPA | 51 | 357 |
| WEST PALM BEACH | 51 | 110 |
| BREVARD COUNTY | [illegible] | [illegible] |
| BROWARD COUNTY | [illegible] | 367 |
| DADE COUNTY | [illegible] | [illegible] |
| HILLSBOROUGH COUNTY | [illegible] | 232 |
| ORANGE COUNTY | [illegible] | 249 |
| PALM BEACH COUNTY | [illegible] | 254 |
| PASCO COUNTY | 66 | [illegible] |
| PINELLAS COUNTY | 66 | 180 |
| POLK COUNTY | [illegible] | 155 |
| SEMINOLE COUNTY | [illegible] | 103 |
| VOLUSIA COUNTY | [illegible] | 130 |
| GEORGIA | | |
| ALBANY | 51 | 127 |
| ATLANTA | 51 | [illegible] |
| COLUMBUS | 51 | 220 |
| [illegible] | 51 | 197 |
| SAVANNAH | 51 | 242 |
| COBB COUNTY | [illegible] | 127 |
| DE KALB COUNTY | [illegible] | [illegible] |
| FULTON COUNTY | [illegible] | 171 |
| GWINNETT COUNTY | [illegible] | [illegible] |
| HAWAII | | |
| [illegible] | 51 | 751 |
| IDAHO | | |
| [illegible] | 51 | [illegible] |
| ILLINOIS | | |
| AURORA | 51 | [illegible] |
| [illegible] | 51 | 103 |
| CHICAGO | 51 | 7124 |
| CICERO | 52 | [illegible] |
| DECATUR | 51 | 103 |
| EAST ST LOUIS | 51 | 137 |
| ELGIN | 51 | 54 |
| EVANSTON | 51 | [illegible] |
| JOLIET | 51 | [illegible] |
| OAK PARK | 52 | [illegible] |
| PEORIA | 51 | 147 |
| [illegible] | 51 | 143 |
| SPRINGFIELD | 51 | 122 |
| WAUKEGAN | 51 | [illegible] |
| COOK COUNTY | [illegible] | 666 |
| DU PAGE COUNTY | [illegible] | [illegible] |
| LAKE COUNTY | [illegible] | 122 |
| MADISON COUNTY | [illegible] | [illegible] |
| ST CLAIR COUNTY | [illegible] | [illegible] |
| WILL COUNTY | [illegible] | [illegible] |
| INDIANA | | |
| [illegible] | 51 | 67 |
| BLOOMINGTON | 51 | 104 |
| EVANSVILLE | 51 | 163 |
| FORT WAYNE | 51 | 178 |
| [illegible] | 51 | 192 |
| [illegible] | 51 | 91 |
| INDIANAPOLIS | 51 | 752 |
| [illegible] | 51 | 117 |
| SOUTH BEND | 51 | [illegible] |
| TERRE HAUTE | 51 | 78 |
| LAKE COUNTY | [illegible] | 75 |
| IOWA | | |
| CEDAR RAPIDS | 51 | [illegible] |
| COUNCIL BLUFFS | 51 | 52 |
| DAVENPORT | 51 | 118 |
| DES MOINES | 51 | 222 |
| [illegible] | 51 | 63 |

| STATE<br>LOCALITY | TYPE OF LOCALITY* | $ IN THOUSANDS |
|---|---|---|
| IOWA | | |
| IOWA CITY | 51 | 93 |
| SIOUX CITY | 51 | 90 |
| WATERLOO | 51 | 75 |
| KANSAS | | |
| KANSAS CITY | 51 | 169 |
| LAWRENCE | 51 | 104 |
| TOPEKA | 51 | 118 |
| WICHITA | 51 | 281 |
| JOHNSON COUNTY | [illegible] | 73 |
| KENTUCKY | | |
| LEXINGTON-FAYETTE | 51 | 271 |
| LOUISVILLE | 51 | 527 |
| OWENSBORO | 51 | [illegible] |
| JEFFERSON COUNTY | [illegible] | 154 |
| LOUISIANA | | |
| ALEXANDRIA | 51 | 81 |
| BATON ROUGE | 51 | 338 |
| [illegible] | 51 | 52 |
| LAFAYETTE | 51 | 85 |
| LAKE CHARLES | 51 | 72 |
| [illegible] | 51 | 92 |
| NEW ORLEANS | 51 | 1398 |
| SHREVEPORT | 51 | 233 |
| JEFFERSON PARISH | [illegible] | 270 |
| [illegible] | | |
| PORTLAND | 51 | 165 |
| MARYLAND | | |
| BALTIMORE | 51 | 1723 |
| ANNE ARUNDEL COUNTY | [illegible] | 125 |
| BALTIMORE COUNTY | [illegible] | 351 |
| MONTGOMERY COUNTY | [illegible] | 306 |
| PRINCE GEORGES COUNTY | [illegible] | 433 |
| MASSACHUSETTS | | |
| BOSTON | 51 | 1594 |
| [illegible] | 51 | 155 |
| BROOKLINE | 52 | 102 |
| [illegible] | 51 | 241 |
| CHICOPEE | [illegible] | 59 |
| FALL RIVER | 51 | 202 |
| FRAMINGHAM | 51 | 62 |
| LAWRENCE | 51 | 163 |
| LOWELL | 51 | 171 |
| LYNN | 51 | 168 |
| MALDEN | 52 | 82 |
| MEDFORD | 52 | 62 |
| NEW BEDFORD | 51 | 221 |
| NEWTON | 52 | 51 |
| PITTSFIELD | 51 | 71 |
| QUINCY | 52 | 105 |
| SOMERVILLE | 52 | 178 |
| SPRINGFIELD | 51 | 301 |
| WALTHAM | 51 | 77 |
| WORCESTER | 51 | [illegible] |
| MICHIGAN | | |
| ANN ARBOR | 51 | 177 |
| BATTLE CREEK | 51 | 79 |
| DETROIT | 51 | 2448 |
| FLINT | 51 | [illegible] |
| GRAND RAPIDS | 51 | 247 |
| KALAMAZOO | 51 | 154 |
| LANSING | 51 | 174 |
| PONTIAC | 51 | 103 |
| SAGINAW | 51 | 123 |
| GENESEE COUNTY | [illegible] | 118 |
| KENT COUNTY | 66 | [illegible] |
| MACOMB COUNTY | 66 | 82 |
| OAKLAND COUNTY | [illegible] | 187 |
| WAYNE COUNTY | [illegible] | 224 |
| MINNESOTA | | |
| DULUTH | 51 | 144 |
| MINNEAPOLIS | 51 | 708 |
| ROCHESTER | 51 | 52 |

| STATE LOCALITY | TYPE OF LOCALITY* | $ IN THOUSANDS |
|---|---|---|
| MINNESOTA | | |
| ST PAUL | 51 | 343 |
| ANOKA COUNTY | 66 | 56 |
| DAKOTA COUNTY | 66 | 78 |
| HENNEPIN COUNTY | 66 | 215 |
| RAMSEY COUNTY | 66 | 75 |
| MISSISSIPPI | | |
| JACKSON | 51 | 234 |
| MISSOURI | | |
| COLUMBIA | 51 | 99 |
| INDEPENDENCE | 52 | 65 |
| KANSAS CITY | 51 | 610 |
| ST JOSEPH | 51 | 94 |
| ST LOUIS | 51 | 1061 |
| SPRINGFIELD | 51 | 167 |
| ST LOUIS COUNTY | [illegible] | 362 |
| MONTANA | | |
| BILLINGS | 51 | 81 |
| GREAT FALLS | 51 | 65 |
| NEBRASKA | | |
| LINCOLN | 51 | 162 |
| [illegible] | 51 | 381 |
| NEVADA | | |
| LAS VEGAS | 51 | 193 |
| [illegible] | 51 | 147 |
| CLARK COUNTY | 66 | 262 |
| NEW HAMPSHIRE | | |
| MANCHESTER | 51 | 161 |
| NASHUA | 51 | 76 |
| NEW JERSEY | | |
| BAYONNE | 52 | 104 |
| CAMDEN | 51 | 193 |
| CLIFTON | 52 | 83 |
| EAST ORANGE | 52 | 186 |
| ELIZABETH | 51 | 218 |
| IRVINGTON | 52 | 135 |
| JERSEY CITY | 51 | 609 |
| NEWARK | 51 | 1087 |
| PASSAIC | 52 | 173 |
| PATERSON | 51 | 381 |
| TRENTON | 51 | 199 |
| UNION CITY | 52 | 175 |
| BERGEN COUNTY | 66 | 543 |
| BURLINGTON COUNTY | 66 | 144 |
| CAMDEN COUNTY | 66 | 159 |
| ESSEX COUNTY | 66 | 261 |
| GLOUCESTER COUNTY | 66 | 119 |
| HUDSON COUNTY | 66 | 464 |
| MIDDLESEX COUNTY | 66 | 139 |
| MONMOUTH COUNTY | 66 | 241 |
| MORRIS COUNTY | 66 | 127 |
| OCEAN COUNTY | 66 | 114 |
| SOMERSET COUNTY | 66 | 89 |
| UNION COUNTY | 66 | 220 |
| NEW MEXICO | | |
| ALBUQUERQUE | 51 | 340 |
| LAS CRUCES | 51 | 54 |
| SANTA FE | 51 | [illegible] |
| NEW YORK | | |
| ALBANY | 51 | 261 |
| AMHERST TOWN | 52 | 52 |
| BABYLON TOWN | 52 | 96 |
| BINGHAMTON | 51 | 131 |
| BUFFALO | 51 | 1003 |
| HUNTINGTON TOWN | 52 | 59 |
| ISLIP TOWN | 52 | 131 |
| MOUNT VERNON | 52 | 158 |
| NEW ROCHELLE | 52 | 103 |
| NEW YORK | 51 | 20917 |
| NIAGARA FALLS | 51 | 123 |
| ROCHESTER | 51 | 540 |

| STATE LOCALITY | TYPE OF LOCALITY* | $ IN THOUSANDS |
|---|---|---|
| NEW YORK | | |
| SCHENECTADY | 51 | 146 |
| SYRACUSE | 51 | 409 |
| TROY | 51 | 126 |
| UNION TOWN | 52 | 65 |
| UTICA | 51 | 171 |
| YONKERS | 52 | 321 |
| DUTCHESS COUNTY | 66 | [illegible] |
| ERIE COUNTY | 66 | 129 |
| MONROE COUNTY | 66 | 135 |
| NASSAU COUNTY | [illegible] | [illegible] |
| ONONDAGA COUNTY | 66 | 93 |
| ORANGE COUNTY | [illegible] | 141 |
| ROCKLAND COUNTY | [illegible] | 141 |
| SUFFOLK COUNTY | [illegible] | 240 |
| WESTCHESTER COUNTY | [illegible] | [illegible] |
| NORTH CAROLINA | | |
| ASHEVILLE | 51 | 79 |
| CHARLOTTE | 51 | [illegible] |
| [illegible] | 51 | 184 |
| FAYETTEVILLE | 51 | 87 |
| GREENSBORO | 51 | 164 |
| HIGH POINT | 51 | [illegible] |
| RALEIGH | 51 | 181 |
| WINSTON SALEM | 51 | [illegible] |
| NORTH DAKOTA | | |
| FARGO | 51 | 81 |
| OHIO | | |
| AKRON | 51 | 323 |
| CANTON | 51 | 132 |
| CINCINNATI | 51 | 966 |
| CLEVELAND | 51 | 1365 |
| CLEVELAND HEIGHTS | [illegible] | 60 |
| COLUMBUS | 51 | 918 |
| DAYTON | 51 | 383 |
| HAMILTON CITY | 51 | 91 |
| [illegible] | 52 | 79 |
| LORAIN | 51 | [illegible] |
| MANSFIELD | 51 | 73 |
| SPRINGFIELD | 51 | 131 |
| TOLEDO | 51 | 481 |
| [illegible] | 51 | [illegible] |
| YOUNGSTOWN | 51 | 183 |
| CUYAHOGA COUNTY | [illegible] | 306 |
| FRANKLIN COUNTY | [illegible] | 125 |
| HAMILTON COUNTY | [illegible] | 213 |
| LAKE COUNTY | [illegible] | 78 |
| MONTGOMERY COUNTY | [illegible] | 148 |
| STARK COUNTY | [illegible] | 68 |
| SUMMIT COUNTY | [illegible] | 75 |
| OKLAHOMA | | |
| LAWTON | 51 | [illegible] |
| NORMAN | 51 | [illegible] |
| OKLAHOMA CITY | 51 | 431 |
| TULSA | 51 | 361 |
| OREGON | | |
| EUGENE | 51 | 181 |
| PORTLAND | 51 | [illegible] |
| SALEM | 51 | 113 |
| CLACKAMAS COUNTY | [illegible] | 114 |
| MULTNOMAH COUNTY | [illegible] | 162 |
| WASHINGTON COUNTY | [illegible] | 164 |
| PENNSYLVANIA | | |
| ALLENTOWN | 51 | 154 |
| ALTOONA | 51 | 72 |
| BETHLEHEM | 51 | 75 |
| ERIE | 51 | [illegible] |
| HARRISBURG | 51 | 111 |
| LANCASTER | 51 | [illegible] |
| PHILADELPHIA | 51 | 3140 |
| PITTSBURGH | 51 | 927 |
| READING | 51 | 164 |
| SCRANTON | 51 | 142 |
| UPPER DARBY | 52 | 71 |
| ALLEGHENY COUNTY | 66 | 655 |
| BEAVER COUNTY | 66 | 139 |
| BERKS COUNTY | 66 | 97 |

| STATE<br>LOCALITY | TYPE OF LOCALITY* | $ IN THOUSANDS |
|---|---|---|
| PENNSYLVANIA | | |
| BUCKS COUNTY | [illegible] | 165 |
| CHESTER COUNTY | [illegible] | 170 |
| DELAWARE COUNTY | [illegible] | 213 |
| LANCASTER COUNTY | [illegible] | 159 |
| LUZERNE COUNTY | [illegible] | 168 |
| MONTGOMERY COUNTY | [illegible] | 233 |
| WASHINGTON COUNTY | [illegible] | 176 |
| WESTMORELAND COUNTY | [illegible] | 172 |
| YORK COUNTY | [illegible] | 118 |
| RHODE ISLAND | | |
| CRANSTON | [illegible] | [illegible] |
| PAWTUCKET | 51 | 135 |
| PROVIDENCE | 51 | 462 |
| WARWICK | 52 | 53 |
| SOUTH CAROLINA | | |
| CHARLESTON | 51 | 154 |
| COLUMBIA | 51 | 149 |
| GREENVILLE | 51 | 100 |
| NORTH CHARLESTON | [illegible] | 79 |
| GREENVILLE COUNTY | [illegible] | 149 |
| SOUTH DAKOTA | | |
| SIOUX FALLS | 51 | [illegible] |
| TENNESSEE | | |
| CHATTANOOGA | 51 | 242 |
| CLARKSVILLE | 51 | 51 |
| JACKSON | 51 | 65 |
| KNOXVILLE | [illegible] | [illegible] |
| MEMPHIS | 51 | [illegible] |
| NASHVILLE-DAVIDSON | 51 | 494 |
| CONSORT UN CTY-KGPT-BRTL | [illegible] | 112 |
| TEXAS | | |
| ABILENE | 51 | 83 |
| AMARILLO | 51 | 113 |
| ARLINGTON | 51 | 125 |
| AUSTIN | [illegible] | 553 |
| BAYTOWN CITY | 51 | 51 |
| BEAUMONT | [illegible] | 128 |
| BROWNSVILLE | 51 | [illegible] |
| BRYAN | 51 | 57 |
| CORPUS CHRISTI | 51 | 230 |
| DALLAS | 51 | 1141 |
| EL PASO | 51 | 498 |
| FORT WORTH | 51 | 389 |
| GALVESTON | 51 | [illegible] |
| GARLAND | 52 | [illegible] |
| HOUSTON | 51 | 1834 |
| IRVING | 51 | [illegible] |
| KILLEEN | 51 | [illegible] |
| LAREDO | 51 | 117 |
| LONGVIEW | 51 | 57 |
| LUBBOCK | 51 | 183 |
| MC ALLEN | 51 | 67 |
| ODESSA | 51 | 74 |
| PASADENA | 52 | [illegible] |
| PORT ARTHUR | 51 | [illegible] |
| SAN ANGELO | 51 | 70 |
| SAN ANTONIO | 51 | [illegible] |
| TYLER | 51 | 79 |
| WACO | 51 | 153 |
| WICHITA FALLS | 51 | [illegible] |
| BEXAR COUNTY | [illegible] | 77 |
| HARRIS COUNTY | 66 | 219 |
| TARRANT COUNTY | 66 | 119 |
| UTAH | | |
| OGDEN | 51 | [illegible] |
| PROVO | 51 | 105 |
| SALT LAKE CITY | 51 | 297 |
| SALT LAKE COUNTY | 66 | 128 |
| VERMONT | | |
| VIRGINIA | | |
| ALEXANDRIA | 52 | 132 |
| CHESAPEAKE | 52 | 78 |
| HAMPTON | 51 | 103 |
| VIRGINIA | | |
| LYNCHBURG | 51 | 75 |
| NEWPORT NEWS | 51 | 169 |
| NORFOLK | 51 | 435 |
| PORTSMOUTH | 51 | 139 |
| [illegible] | 51 | 418 |
| [illegible] | 51 | 143 |
| VIRGINIA BEACH | 51 | 165 |
| ARLINGTON COUNTY | [illegible] | 192 |
| FAIRFAX COUNTY | [illegible] | 265 |
| WASHINGTON | | |
| BELLEVUE | 52 | 52 |
| EVERETT | 51 | 81 |
| SEATTLE | 51 | 851 |
| SPOKANE | 51 | 301 |
| TACOMA | 51 | 245 |
| CLARK COUNTY | [illegible] | 140 |
| KING COUNTY | [illegible] | 328 |
| PIERCE COUNTY | [illegible] | 214 |
| SNOHOMISH COUNTY | [illegible] | 130 |
| WEST VIRGINIA | | |
| CHARLESTON | 51 | [illegible] |
| HUNTINGTON | 51 | 110 |
| WISCONSIN | | |
| EAU CLAIRE | 51 | 74 |
| GREEN BAY | 51 | 97 |
| KENOSHA | 51 | 62 |
| MADISON | 51 | 302 |
| MILWAUKEE | 51 | 1024 |
| [illegible] | 51 | 57 |
| RACINE | 51 | [illegible] |
| MILWAUKEE COUNTY | [illegible] | [illegible] |
| WYOMING | | |
| PUERTO RICO | | |
| AGUADILLA | 51 | 74 |
| ARECIBO | 51 | [illegible] |
| BAYAMAON MUNICIPIO | 52 | 136 |
| CAGUAS MUNICIPIO | 51 | 108 |
| CAROLINA MUNICIPIO | 52 | 129 |
| GUAYNABO MUNICIPIO | 52 | [illegible] |
| MAYAGUEZ MUNICIPIO | 51 | 169 |
| PONCE MUNICIPIO | 51 | 225 |
| SAN JUAN MUNICIPIO | 51 | [illegible] |

*51 = Central City
52 = Suburban City
66 = Urban County
67 = Consortium

APPENDIX B

## RENTAL REHAB ALLOCATION STATE SUMMARY REPORT

FISCAL YEAR 1987 (• DOLLARS IN THOUSANDS)

| | METRO CITY # | METRO CITY AMOUNT• | URBAN COUNTY # | URBAN COUNTY AMOUNT• | CITY/COUNTY AMOUNT• | STATE AMOUNT• | CITY/COUNTY/STATE TOTAL AMOUNT• |
|---|---|---|---|---|---|---|---|
| ALABAMA | 6 | 1,218 | 1 | 174 | 1,392 | 1,196 | 2,588 |
| ALASKA | 1 | 130 | | | 130 | 81 | 211 |
| ARIZONA | 6 | 1,470 | 2 | 219 | 1,689 | 316 | 2,005 |
| ARKANSAS | 4 | 389 | | | 389 | 950 | 1,339 |
| CALIFORNIA | 67 | 17,455 | 16 | 5,937 | 23,392 | 3,087 | 26,479 |
| COLORADO | 8 | 1,627 | 1 | 100 | 1,727 | 603 | 2,330 |
| CONNECTICUT | 10 | 1,759 | | | 1,759 | 963 | 2,722 |
| DELAWARE | 1 | 137 | 1 | 187 | 324 | 55 | 379 |
| DISTRICT OF COLUMBIA | 1 | 1,231 | | | 1,231 | | 1,231 |
| FLORIDA | 18 | 4,169 | 11 | 2,679 | 6,848 | 1,565 | 8,413 |
| GEORGIA | 5 | 1,649 | 4 | 653 | 2,302 | 1,761 | 4,063 |
| HAWAII | 1 | 751 | | | 751 | 107 | 858 |
| IDAHO | 1 | 96 | | | 291 | 387 | 483 |
| ILLINOIS | 14 | 8,393 | 6 | 1,394 | 9,787 | 1,877 | 11,664 |
| INDIANA | 10 | 1,850 | 1 | 75 | 1,925 | 1,355 | 3,280 |
| IOWA | 8 | 801 | | | 801 | 822 | 1,623 |
| KANSAS | 4 | 672 | 1 | 73 | 745 | 733 | 1,478 |
| KENTUCKY | 3 | 856 | 1 | 154 | 1,010 | 1,080 | 2,090 |
| LOUISIANA | 8 | 2,351 | 1 | 270 | 2,621 | 945 | 3,566 |
| MAINE | 1 | 165 | | | 165 | 670 | 835 |
| MARYLAND | 1 | 1,723 | 4 | 1,215 | 2,938 | 498 | 3,436 |
| MASSACHUSETTS | 20 | 4,355 | | | 4,355 | 2,270 | 6,625 |
| MICHIGAN | 9 | 3,711 | 1 | 669 | 4,380 | 2,113 | 6,493 |
| MINNESOTA | 4 | 1,247 | 1 | 424 | 1,671 | 901 | 2,572 |
| MISSISSIPPI | 1 | 234 | | | 234 | 1,120 | 1,354 |

## RENTAL REHAB ALLOCATION
## STATE SUMMARY REPORT

(* DOLLARS IN THOUSANDS)

| | METRO CITY # | METRO CITY AMOUNT* | URBAN COUNTY # | URBAN COUNTY AMOUNT* | CITY/COUNTY AMOUNT* | STATE AMOUNT* | CITY/COUNTY/STATE TOTAL AMOUNT* |
|---|---|---|---|---|---|---|---|
| MISSOURI | 6 | 2,096 | 1 | 362 | 2,458 | 1,015 | 3,473 |
| MONTANA | [illegible] | 146 | | | 146 | 362 | 508 |
| NEBRASKA | [illegible] | 543 | | | 543 | 356 | 899 |
| NEVADA | [illegible] | 339 | 1 | 262 | 601 | 110 | 711 |
| NEW HAMPSHIRE | [illegible] | 237 | | | 237 | 384 | 621 |
| NEW JERSEY | 12 | 3,520 | 12 | 2,620 | 6,140 | 1,311 | 7,451 |
| NEW MEXICO | 3 | 449 | | | 449 | 405 | 854 |
| NEW YORK | 18 | 24,812 | [illegible] | 1,843 | 26,655 | 2,426 | 29,081 |
| NORTH CAROLINA | [illegible] | 1,314 | | | 1,314 | 1,813 | 3,127 |
| NORTH DAKOTA | 1 | 81 | | | 81 | 224 | 305 |
| OHIO | 15 | 5,316 | 7 | 1,011 | 6,327 | 2,389 | 8,716 |
| OKLAHOMA | 4 | 958 | | | 958 | 1,026 | 1,984 |
| OREGON | 3 | 990 | 3 | 440 | 1,430 | 773 | 2,203 |
| PENNSYLVANIA | 11 | 5,153 | 12 | 2,465 | 7,618 | 2,497 | 10,115 |
| RHODE ISLAND | 4 | 708 | | | 708 | 492 | 1,200 |
| SOUTH CAROLINA | 4 | 482 | 1 | 149 | 631 | 1,124 | 1,755 |
| SOUTH DAKOTA | 1 | [illegible] | | | [illegible] | 279 | 362 |
| TENNESSEE | [illegible] | 2,007 | 1 | 112 | 2,119 | 894 | 3,013 |
| TEXAS | 29 | 7,532 | 3 | 415 | 7,947 | 2,878 | 10,825 |
| UTAH | 3 | 487 | 1 | 128 | 615 | 271 | [illegible] |
| VERMONT | | | | | | 305 | 305 |
| VIRGINIA | 10 | 1,855 | 2 | 457 | 2,312 | 1,081 | 3,393 |
| WASHINGTON | 5 | 1,530 | [illegible] | 812 | 2,342 | 1,017 | 3,359 |
| WEST VIRGINIA | 2 | 193 | | | 193 | [illegible] | 851 |
| WISCONSIN | 7 | 1,702 | 1 | 98 | 1,800 | 1,199 | 2,999 |

| | METRO CITY # | METRO CITY AMOUNT* | URBAN COUNTY # | URBAN COUNTY AMOUNT* | CITY/COUNTY AMOUNT* | STATE AMOUNT* | CITY/COUNTY/STATE TOTAL AMOUNT* |
|---|---|---|---|---|---|---|---|
| WYOMING | | | | | | 231 | 231 |
| PUERTO RICO | 9 | 1,868 | | | 1,868 | 788 | 2,656 |
| VIRGIN ISLANDS | | | | | | | |
| US TOTALS | 381 | 122,840 | 117 | 25,397 | 148,237 | 51,763 | 200,000 |

[FR Doc. 87-8689 Filed 4-16-87; 8:45 am]
BILLING CODE 4210-29-C

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Turtle Mountain Band of Chippewa Indians, North Dakota; Ordinance Amending Law Relating to Liquor Licensing

April 8, 1987.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 3294–07–86, amending the Turtle Mountain Tribal Liquor Ordinance was duly adopted by the Turtle Mountain Tribal Council on July 22, 1986. The ordinance provides for a limitation on the number of liquor licenses allowed to be issued in the area of Indian country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians, North Dakota and amends Ordinance No. 19 (74), which was published in the **Federal Register** on May 9, 1974, 39 FR 16491. The Ordinance reads as follows:

**Ross O. Swimmer,**

*Assistant Secretary—Indian Affairs.*

**Resolution Number 3294–07–86 of the Duly Elected and Certified Governing Body of the Turtle Mountain Band of Chippewa Indians**

*Whereas,* the Turtle Mountain Band of Chippewa Indians, hereinafter referred to as the Tribe, is an unincorporated Band of Indians acting under a revised Constitution and By-laws approved by the Secretary of the Interior on June 16, 1959, and amendments thereto approved April 26, 1962, and April 3, 1975; and

*Whereas,* the Tribe presently has a limit on the number of liquor licenses they are allowed to issue; and

*Whereas,* the Tribe wishes to amend that portion of the Code; now

*Therefore be it resolved* that section 19.0111 of the Turtle Mountain Tribal Code be amended as follows: The maximum number of each classification of licenses for on/off sales which may be issued shall be limited to ten (10) for all liquor establishments under tribal jurisdiction, with a minimum of two (2) per district.

**Certification**

I, the undersigned Tribal Secretary of the Turtle Mountain Band of Chippewa Indians, do hereby certify that the Tribal Council is composed of nine (9) members of whom five (5) constituting a quorum were present at a meeting duly called, convened, and held on the 22nd day of July 1986, that the foregoing resolution was adopted by an affirmative vote of four (4) in favor; with the Vice-Chairman not voting.

Jolean Peltier,

*Tribal Secretary.*

Concurred:

Ray G. Parisien,

*Vice-Chairman.*

[FR Doc. 87–8683 Filed 4–16–87; 8:45 am]

BILLING CODE 4310–02–M

### Bureau of Land Management

[UT–020–07–4322–02]

### Salt Lake District; Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92–463 that the Salt Lake District Grazing Advisory Board will be meeting and touring public lands on May 27 and 28, 1987.

The Board will meet at 9:00 a.m. at the Salt Lake District, Bureau of Land Management office, at 2370 South 2300 West, Salt Lake City, Utah. The board will then depart for a tour of public lands in Box Elder County. The night of May 27, 1987, a business meeting will be held at 7:00 p.m. at the Rosebud BLM field camp.

The purpose of the tour and meeting will be to: (1) Review implementation efforts of the Box Elder RMP, (2) review range improvement projects, and (3) inspect important riparian management areas in Box Elder County.

The business meeting is open to the public and interested persons may make oral statements between 7:00 and 7:30 p.m., or file a written statement for the Board's consideration. Persons wishing to make statements to the Board are requested to contact Glade Anderson at (801) 524–5348 prior to May 22, so that adequate time can be included on the agenda.

**FOR FURTHER INFORMATION CONTACT:** Glade Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524–5348.

**Deane Zeller,**

*Salt Lake District Manager.*

[FR Doc. 87–8629 Filed 4–16–87; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–930–07–4212–14; N–46176]

### Realty Action; Noncompetitive Sale; Elko County, NV

The following land has been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

**Mount Diablo Meridian**

T. 38 N., R. 69 E.,
Sec. 22, SW¼SE¼SW¼SW¼.

The above-described land comprising 2.5 acres, is being offered as a direct sale to Mr. and Mrs. Lawrence Olson. A direct sale is being conducted to resolve inadvertent unauthorized use and occupancy of the public lands resulting from a private survey error. A direct sale is necessary to protect the Olson's investment in the improvements on the subject lands.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The proposal has been reviewed by the Elko County Planning Commission.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1980, 26 Stat. 391; 43 U.S.C. 945.

2. All oil and gas mineral deposits. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Elko District Office.

And will be subject to:

1. An easement 30 feet in width along the north, south, east and west boundaries in favor of Elko County for road and public utilities purposes to insure continued ingress and egress to adjacent lands.

Conveyance of the available mineral estates having no known mineral values will occur simultaneously with the sale of the land in accordance with section 209(b)(1)(1), Pub. L. 94–579. The subject lands have no known mineral values, with the exception of oil and gas, therefore at the time the parcel is offered for sale a $50 filing fee must be submitted for conveyance of the mineral estate.

Publication of this Notice in the **Federal Register** will segregate these public lands from all forms of appropriation under the public land laws and the mining laws. The

segregative effect will end upon issuance of a patent or 270 days from the date of this Notice's publication in the **Federal Register**, whichever occurs first.

Detailed information concerning the sale is available for review at the Elko District Office, Bureau of Land Management. For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 3900 East Idaho, Elko, Nevada 89801. Any adverse comments will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale any sooner than 60 days after the date of this notice.

Dated: April 9, 1987.

**Rodney Harris,**

*District Manager.*

[FR Doc. 87-8707 Filed 4-16-87; 8:45 am]

BILLING CODE 4310-HC-M

---

[NV-930-07-4212-11; N-43030]

**Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV**

The following described public land, located approximately 9 miles northwest of the City of Las Vegas, in Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 17, N½NE¼NE¼.

This parcel of land contains approximately 5.00 acres.

The Animal Rescue Foundation intends to use the land for a non-profit animal adoption center. The lease and/or patent, when issued, will be subject to the provisions of Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/the City of Las Vegas.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: April 9, 1987.

**Ben F. Collins,**

*District Manager, Las Vegas, NV.*

[FR Doc. 87-8709 Filed 4-16-87; 8:45 am]

BILLING CODE 4310-HC-M

---

## Fish and Wildlife Service

### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-690379

Applicant: Jimmie C. Rosenbruch, Santa Clara, UT.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the survival of the species.

PRT-716535

Applicant: Raymond Nichols, Columbia, CA.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by Theo Erasmus, Geluk, Kroonstad, Orange Free State Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the survival of the species.

PRT-716524

Applicant: Susan R. Walker, Ft Lauderdale, FL.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by B. J. DeKlerk, Bedford, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the survival of the species.

PRT-717031

Applicant: Rare Feline Breeding Center, Center Hill, FL.

The applicant requests a permit to export one male clouded leopard (*Neofelis nebulosa*) captive born at the applicant's facility Center Hill, Florida to Parco Faunistico La Tobiera, Novara, Italy for the purpose of propagation and exhibition.

PRT-717206

Applicant: Yerkes Regional Primate, Research Center.

The applicant requests a permit to export 5 ml serum samples from three gorillas (*Gorilla gorilla*) and three orangutans (*Pongo pygamaeus*). These samples will be sent to Privatdozent, Arzt fur Laboratoriumsmedizin, Berliner Promende 17, Saar- Center, West Germany.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or

data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 13, 1987.

**R.K. Robinson,**

*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 87-8693 Filed 4-16-87; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; to U.S.C. 20), public notice is hereby given that ninety (90) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with International Leisure Hosts, Ltd. authorizing it to continue to provide lodging, food, retail merchandising, and gasoline facilities and services for the public at John D. Rockefeller Memorial Parkway, Wyoming for a period of up to twenty (20) years from January 1, 1988, through December 31, 2007.

This proposed contract requires a construction and improvement program. The construction and improvement program required was previously addressed in the Environmental Review of Assessment of Alternatives, approved November 6, 1979, that was prepared in conjunction with the Development Concept Plan for John D. Rockefeller, Jr. Memorial Parkway.

The foregoing-concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore, pursuant to the policies of the Act October 9, 1965, as cited above, is administratvely granted preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5

The Secretary will consider and evaluate all proposals received as a result of this notice. any proposal, including that the existing concessioner, must be postmarked or hand delivered on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, P.O. Box 25287, Denver, Colorado, 80225, for information as to the requirements of the proposed contract.

Dated: February 3, 1987.

**Lorraine Mintzmyer,**

*Regional Director, Rocky Mountain Region.*

[FR Doc. 87-8700 Filed 4-16-87; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31011]**

### Duval Transportation of the Carolinas, Inc.; Acquisition and Operation of a Rail Line

Duval Transportation of the Carolinas, Inc., a noncarrier, has filed a notice of exemption to acquire and operate CSX Transportation, Inc's lines between: (1) Mullins, SC (milepost AL 326) and Whiteville, NC (milepost AC 289.0), a distance of 37 miles in Marion and Horry Counties, SC and Columbus County, NC; and (2) Chadbourn , NC (milepost ACH 297.2) and Conway, SC (milepost ACH 336.1), a distance of 38.9 miles in Columbus County, NC and Horry County, SC. Any comments must be filed with the Commission and served on: Charles A. Hostetler, Attorney at Law, Hostetler & McNeill, 109 Campus Avenue, Raeford, NC 28376, (919) 875-2142.

The notice is filed under 49 CFR 1150.31.[1] If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 6, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-8757 Filed 4-16-87; 8:45 am]

BILLING CODE 7035-01-M

**[Finance Docket No. 30939]**

### Acquisition of Cedar Valley Railroad Co. by John E. Haley; Exemption

**AGENCY:** The Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the acquisition of control of Cedar Valley Railroad Company by John E. Haley who already controls the Chicago, Central & Pacific Railroad Company, subject to employee protective conditions.

**DATES:** This exemption will be effective on May 18, 1987. Petitions to stay must be filed by April 27, 1987, and petitions for reconsideration must be filed by May 7, 1987.

**ADDRESSES:**

Send pleadings referring to Finance Docket No. 30939 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Deborah A. Phillips, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area).

Decided: April 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-8756 Filed 4-16-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Consent Decree Pursuant to Clean Air Act; B.F. Goodrich Co.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on April 7, 1987, a proposed consent decree in *United States* v. *The B.F. Goodrich Co.*, Civil Action No. 83-1337, was lodged with the United States District Court for the Middle District of Louisiana. The proposed consent decree concerns the discharge of vinyl chloride to the atmosphere in excess of applicable emissions standards from a polyvinyl chloride plant in Plaquemine, Louisiana. The proposed consent decree requires the defendant to pay a civil penalty of $395,000 and install equipment to ensure compliance with the Clean Air Act and vinyl chloride regulations.

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, RLEA's request is rejected. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *The B.F. Goodrich Co.*, D.J. Ref. No. 90–5–2–1–631.

The proposed consent decree may be examined at the Office of the United States Attorney, Middle District of Louisiana, Federal Building, 352 Florida Street, Baton Rouge, Louisiana, 70801, and at the Region VI Office of the Environmental Protection Agency, 1201 Elm Street, Dallas Texas, 75270. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–8684 Filed 4–16–87; 8:45 am]

BILLING CODE 4410–01–M

---

## Lodging of Consent Decree Purusuant to the Clean Air Act; Darshan's Gas, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Darshan's Gas, Inc., et al.*, Civil Action No. 86–C–252 was lodged with the United States District Court for the Eastern District of Wisconsin. The Consent Decree resolves certain claims of the United States against the defendants under the Clean Air Act, 42 U.S.C. 7401, *et seq.*

The proposed consent decree requires defendants to pay a civil penalty of $7,500 and to implement a fuel sampling and analysis program at each retail service station outlet owned, leased, operated, controlled or supervised by defendants and at each retail service station to which defendants deliver gasoline. As part of this program, defendants are required to collect samples from all unleaded and premium unleaded fuel pumps at such stations and to analyze the lead content of such samples.

The proposed consent decree also requires defendants to conduct an inspection of each retail service station outlet owned, leased, operated, controlled or supervised by defendants to determine whether such outlets are in compliance with federal requirements pertaining to the size of nozzle spouts on unleaded fuel pumps, labeling of unleaded fuel pumps, and the posting of warning signs indicating that federal law prohibits the introduction of leaded gasoline into motor vehicles labeled "unleaded gasoline only."

The Department of Justice will receive comments relating to the proposed consent decree for a thirty (30) day period from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Darshan's Gas, Inc., et al.*, with the applicable D.J. reference No. 90–5–2–1–908 (E.D. Wisconsin).

The proposed consent decree may be examined at the office of the United States Attorney, for the Eastern District of Wisconsin, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree and attachments may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–8743 Filed 4–16–87; 8:45 am]

BILLING CODE 4410–01–M

---

## Lodging of Stipulation for Dismissal Pursuant to Clean Air Act; Geppert Bros. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 8, 1987 a proposed Stipulation for Dismissal in *United States* v. *Geppert Bros., et al.*, Civil Action No. 85–1338, was lodged with the United States District Court for the Eastern District of Pennsylvania. The civil enforcement action concerned violations by the defendant of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos. The violations include failure to give prior written notice to EPA of the demolition, failure to adequately wet friable asbestos, failure to ensure that asbestos materials remained wet during demolition, and discharge of visible emissions during the collection and disposal of asbestos. The proposed Stipulation for Dismissal imposes a civil penalty totaling seven thousands five hundred ($7,500) dollars.

The Departmental of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Geppert Bros., et al.*, D. J. Ref. # 90–5–2–1–774A.

The proposed Stipulation may be examined at the Office of the United States Attorney, 601 Market Street, Philadelphia, PA 19107 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Rm. 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Stipulation may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

*Assistant Attorney General Land and Natural Resources Division.*

[FR Doc. 87–8685 Filed 4–16–87; 8:45 am]

BILLING CODE 4410–01–M

---

## Lodging of Consent Decree Pursuant to Clean Water Act; New Holland Borough et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on March 27, 1987 a proposed Consent Decree in *United States* v. *New Holland Borough, et al.* was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed Consent Decree concerns violations by the defendant for failure to meet limitations in its NPDES permit and for failure to monitor ammonia and phosphorus discharges. The proposed decree imposes a civil penalty of $30,000 and requires the defendant to provide an expedited schedule to renovate and

reconstruct the New Holland Borough Authority's Waste Water Treatment facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *New Holland Borough, et al.* D.J. Ref. 90-5-1-1-2638.

The proposed Consent Decree may be examined at the office of the United States Attorney, 601 Market Street, Philadelphia, Pennsylvania 19107, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Rm. 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose $2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc 87-8687 Filed 4-16-87; 8:45 am]

BILLING CODE 4410-01-M

---

### Lodging of Consent Decree Pursuant to Clean Air Act; Utility Trailer Manufacturing Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 24, 1987 a proposed Consent Decree in *United States* v. *Utility Trailer Manufacturing Co.*, CV 86-4284 AWI (Kx) was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the prevention of the release of volatile organic compounds in violation of the Clean Air Act and the limits set forth in Local Rule 1107 of the South Coast Air Quality Management Division. Rule 1107 is part of the California State Implementation Plan that has been approved by the United States Environmental Protection Agency. The proposed Consent Decree requires Utility Trailer to maintain compliance with Rule 1107 and to pay a civil penalty of $20,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washjington, DC 20530, and should refer to *Utility Trailer Manufacturing Co.* D.J. Ref. 90-5-2-1-964.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 N. Spring Street, Los Angeles, California 90012, and at the Region 9 Office of Environmental Protection Agency, 215 Fremont Street, San Francisco, California 90415. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.30 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc 87-8688 Filed 4-16-87; 8:45 am]

BILLING CODE 4410-01-M

---

## Drug Enforcement Administration

### William D. Romers, D.D.S., Revocation of Registration

On January 30, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William D. Romers, D.D.S., 208 Mayer Building, 129 W. Park Street, Box 568, Butte, Montana 59703, proposing to revoke his DEA Certificate of Registration AR1233030 as a practitioner in Schedules II, III, IV, and V. The statutory predicate for the Order to Show Cause was that Dr. Romers relinquished his license to practice dentistry in the State of Montana on June 1, 1981, and has not been authorized to practice dentistry or handle controlled substances in Montana since that time.

The Order to Show Cause was sent to Dr. Romers registered mail, return receipt requested. DEA received the receipt which indicated that the Order to Show Cause was received on February 5, 1987, at Dr. Romers' registered address. More than thirty days have elapsed since the Order to Show Cause was received, and the Drug Enforcement Administration has received no response. Pursuant to 21 CFR 1301.54(a) and (d), Dr. Romers is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The administrator finds that on June 1, 1981, Dr. Romers relinquished his license to practice dentistry to the Board of Dentists, Department of Professional and Occupational Licensing, State of Montana. Dr. Romers' License was relinquished pursuant to a stipulation entered into with the Board of Dentists following the issuance of a Notice of Suspension or Revocation by the Board. Dr. Romers remains unlicensed, and therefore unauthorized to handle controlled substances in the State of Montana.

The Administrator has consistently held that when a DEA registrant is not authorized to handle controlled substances in the State in which he practices, DEA is without lawful authority to maintain his registration. See: *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983); and *Thomas E. Woodson, D.O.*, Docket No. 81-4, 47 FR 1353 (1982). Since Dr. Romers is not authorized to handle controlled substances in Montana, the Administrator cannot allow him to remain registered in that State.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration AR1233030 previously issued to William D. Romers, D.D.S. be, and it hereby is revoked effective May 18, 1987. Any outstanding applications for renewal of such registration are hereby denied.

Dated: April 13, 1987.

**John C. Lawn,**

*Administrator*

[FR Doc. 87-8694 Filed 4-16-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

**Employment and Training Administration**

**Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; American Motors Corp. et al.**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 23–March 27, 1987 and March 30–April 3, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–18,979; American Motors Corp., Milwaukee, WI*

*TA–W–18,977; Copperweld Bimetallics Products Corp., Copperweld Fine-Wire Div., Oswego, NY*

*TA–W–18,980; Pine Bluff Industries, Pine Bluff, AR*

*TA–W–18,982; Pioneer Fixture Corp., Paterson, NJ*

*TA–W–17,563; KMA Garment, Clay City, IL*

*TA–W–17,734; David I. Greenberg, Pleasantville, NJ*

*TA–W–18,325; Oregan Metallurgical Corp., Albany, OR*

*TA–W–18,990; Westinghouse Electric Corp., Small Motor Div., Bellefontaine, OH*

*TA–W–19,029; Haris Pine Mills, Inc., Pendleton, OR*

*TA–W–19,024; Olin Corp., Peru, IN*

*TA–W–19,109; Garlin, Inc., Lynchburg, VA*

*TA–W–19,086; Codet Manufacturing Co., Vancouver, WA*

*TA–W–19,127; Livingston Manufacturing, Inc., Livingston, AL*

*TA–W–19,014; Milprint, Inc., Film Dept., Milwaukee, WI*

*TA–W–19,030; Optimized Gas Systems, Inc., Tulsa, OK*

*TA–W–19,034; Cotton Petroleum Corp., Tulsa, OK*

*TA–W–19,066; AT&T Information Systems Service Center, Kent, WA*

*TA–W–19,092; Xtek, Inc., Cincinnati, OH*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA–W–19,122; Pacer Industries, Inc., Washington, MO*

The investigation revealed that criterion (1) has not been met. Employment did not decline significantly during the relevant period.

*TA–W–19,217; Stauffer Oil and Gas, Inc., Denver, CO*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–18,678; Bass Enterprises Production Co., Fort Worth, TX*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–19,172; El Paso Hydrocarbons Co., Odessa, TX*

Production declines at the subject firm resulted from a transfer of production to other domestic facilities.

*TA–W–19,104; Lakeview Manufacturing Co., Lakeview, OH*

U.S. imports of linked ribbons declined absolutely and relative to domestic shipments in 1985 and 1986 compared to the preceding year.

*TA–W–19,304; Kaiser Coal Corp., Sunnyside, UT*

U.S. imports of metallurgical coal are negligible.

*TA–W–19,341; Geosource, Inc., Houston, TX*

U.S. imports of geophysical instruments declined absolutely and relative to domestic shipments in 1985 compared to 1984 and in the first nine months of 1986 when compared to the same period in 1985.

*TA–W–19,312; Parker Drilling Co., Tulsa, OK*

The workers' firm does not product an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,171; Consolidation Coal Co., Loveridge Mine, Fairview, WV*

U.S. imports of coal are negligible.

*TA–W–18,967; Pennzoil Products Co., Charleston, WV*

U.S. imports of gasoline and lubricants declined absolutely and relative to domestic shipment in the first nine months of 1986 compared to the same period of 1985.

*TA–W–19,968; Pennzoil Exploration and Production Co., Parkersburg, WV*

U.S. imports of gasoline and lubricants declined absolutely and relative to domestic shipments in the first nine months of 1986 compared to the same period of 1985.

*TA–W–19,213; Milwaukee Valve Co., Milwaukee, WI*

Sales of valves increased in 1986 compared with 1985.

*TA–W–18,992; E.K. Birdwell Cleaning Aids, Inc., Keene, TX*

Sales of cleaning supplies increased in 1986 compared to 1985.

*TA–W–19,336; B & B Logging, Laredo, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,337; B.J. Titan, Roosevelt, UT*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,348; Nordrill, Inc., Beaumont, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,349; Pengo Industries, Inc., Pengo Wireline Div., Odessa, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,350; Quail Well Service, Inc., Abilene, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,351; R–J Drilling, Sebree, Kentucky*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,155; Central Ohio Retail Grocers Association, Columbus, OH*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,579; W–K–M Div. of Joy Manufacturing Co., Houston, TX*

Aggregate U.S. imports of oilfield equipment are negligible.

*TA–W–17,739; Levi Strauss & Co., Tyler, TX*

Separations at the subject firm were due to a domestic transfer of operations.

*TA–W–19,196; LTV Steel Co., Mahoning Cold Finished Bar Plant, Youngstown, OH*

Aggregate U.S. imports of carbon and alloy steel bars did not increase as required for certification.

*TA–W–19,332; A.C. Lawrence Leather Co., Inc., Danvers, MA*

The investigation revealed that criterion (1) has not been met. Employment at the Danvers, MA headquarters office of A.C. Lawrence Co., Inc. did not decline significantly in 1986 compared with 1985.

*TA–W–19,181; LTV Steel Corp., Russelton Prep Plant, Russelton, PA*

U.S. imports of coal are negligible.

*TA–W–19,181A; LTV Steel Corp., Newfield Mine, Verona, PA*

U.S. imports of coal are negligible.

*TA–W–19,074; Shrewsbury Coal Co., Shrewsbury, WV*

U.S. imports of coal are negligible.

*TA–W–19,074A; Donaldson Mine Co., Cedar Grove, WV*

U.S. imports of coal are negligible.

*TA–W–19,075; The New River Co., Skelton Mine, Raleigh County, WV*

U.S. imports of coal are negligible.

*TA–W–19,342; Halliburton Co., Halliburton Service Mfg Center, Oilfield Service Div., Duncan, OK*

U.S. imports of oilfield machinery are negligible.

*TA–W–19,354; Tall City Building Materials Center, Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,225; Ohmeda, Madison, WI*

Separations at the subject firm were due to a domestic transfer of operations.

*TA–W–19,178; Marshall Steel Co., McCook, IL*

Separations at the subject firm were due to a domestic transfer of operations.

*TA–W–19,239; L.B. Foster Company, Struthers, OH*

U.S. imports of track spikes declined absolutely and relative to domestic shipments in 1985 compared with 1984 and remained constant in 1986 compared with 1985.

*TA–W–19,377; Hercules Offshore Drilling Co., Houston, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,381; J.D. Cain Co., Denver, CO*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,382; J.Q. Russell Electric, Inc., Skellytown, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,413; Updike Brothers, Inc., Sidney, MT*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,417; Walthall Consultants Corp., Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,153; Spun Steel, Inc., Canton, OH*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,081; Ocean Drilling & Exploration Co., New Orleans, LA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,069; Leckie Smokesless Coal Co., Rupert, WV*

U.S. imports of coal are negligible.

*TA–W–19,041; Neumann Engineering & Manufacturing Co., Madison Heights, MI*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–19,180; Polyshase Instrument Co., Fort Washington, PA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–19,058; Kitt Energy Corp., Kitt Mine #1, Philippi, WV*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,231; Essex Industrial Chemicals, Inc., Paulsboro, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,230; Boise Cascade Corp., Rumford, ME*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,160; Kingdom Sheet Metal Co., Salt Lake City, UT*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

**Affirmative Determinations**

*TA–W–18,805; Witco Corp., Richardson Battery Part Div., Indianapolis, IN*

A certification was issued covering all workers of the firm separated on or after September 1, 1986.

*TA–W–18,946; B & B Manufacturing Co., Inc., Trenton, NJ*

A certification was issued covering all workers of the firm separated on or after March 28, 1986.

*TA–W–18,872; Stelmar Manufacturing Co., Wilkes Barre, PA*

A certification was issued covering all workers of the firm separated on or after December 8, 1985 and before June 8, 1986.

*TA–W–19,142; Tampo Manufacturing, Inc., San Antonio, TX*

A certification was issued covering all workers of the firm separated on or after March 3, 1986.

*TA–W–19,083; Convergence Corp., (Now Elco, Inc.), El Paso, TX*

A certification was issued covering all workers of the firm separated on or after January 19, 1986.

*TA–W–19,057; Atlas Foundry & Machine Co., Tacoma, WA*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

*TA–W–19,346; Kenner Products, Cincinnati, OH*

A certification was issued covering all workers of the firm separated on or after February 24, 1986.

BEST COPY AVAILABLE

*TA–W–19,006; Harnischfeger Corp. Milwaukee Manufacturing, West Milwaukee, WI and Oak Creek, WI*

A certification was issued covering all workers of the firm separated on or after January 8, 1986.

*TA–W–19,173; Hagger Apparel Co., Duncan Manufacturing, Duncan, OK*

A certification was issued covering all workers of the firm separated on or after February 5, 1986.

*TA–W–19,091; Sprague Electric Co., Visalia, CA*

A certification was issued covering all workers of the firm separated on or after January 19, 1986 and before February 28, 1987.

*TA–W–18,985; LTV Steel Co., Los Angeles Sales Office, Orange, CA*

A certification was issued covering all workers of the firm separated on or after January 6, 1986.

*TA–W–17,674; Beaumont Mill Div. of Spartan Industries, Spartanburg, SC*

A certification was issued covering all workers of the firm separated on or after July 7, 1985.

*TA–W–19,033; Marc Dress, Hazleton, PA*

A certification was issued covering all workers of the firm separated on or after January 14, 1986.

*TA–W–19,076; Bridon-American Corp., Wilkes-Barre, PA*

A certification was issued covering all workers of the firm separated on or after January 23, 1986.

*TA–W–19,022; Paulsen Wire Rope Corp., Sunbury, PA*

A certification was issued covering all workers of the firm separated on or after January 12, 1986.

*TA–W–18,936; Farrah Manufacturing Co., El Paso, TX*

A certification was issued covering all workers of the firm separated on or after December 11, 1985.

*TA–W–18,858; Harvey Industries, Inc., Athens, TX*

A certification was issued covering all workers of the firm separated on or after September 1, 1986.

*TA–W–19,090; General Electric Co., Power Electronic Semiconductor Div., Syracuse, NY*

A certification was issued covering all workers of the firm separated on or after January 14, 1986.

*TA–W–18,989; Utica Duxbak, Inc., Utica, NY*

A certification was issued covering all workers of the firm separated on or after January 8, 1986.

*TA–W–19,017; Fuel Resources Development Co., Denver, CO*

A certification was issued covering all workers of the firm separated on or after January 6, 1986.

*TA–W–19,017A; Fuel Resources Development Co., Havre, MT*

A certification was issued covering all workers of the firm separated on or after January 6, 1986.

*TA–W–19,017B; Fuel Resources Development Co., Grand Junction, CO*

A certification was issued covering all workers of the firm separated on or after January 6, 1986.

*TA–W–19,017C; Fuel Resources Development Co., Rangely, CO*

A certification was issued covering all workers of the firm separated on or after January 6, 1986.

*TA–W–19,020; Lone Star Industries, New Orleans, LA*

A certification was issued covering all workers of the firm separated on or after January 13, 1986 and before March 27, 1987.

*TA–W–19,011; Teledyne Wisconsin Motor, West Allis, WI*

A certification was issued covering all workers of the firm separated on or after January 9, 1986.

*TA–W–19,252; Emhart Corp., Hartford Div., Emhart Glass Machinery Group, Obetz, OH*

A certification was issued covering all workers of the firm separated on or after February 12, 1986.

*TA–W–19,025; Regal Ware, Inc., Kewaskum, WI*

A certification was issued covering all workers of the firm separated on or after January 12, 1986.

*TA–W–19,244; Harloc Products Corp., West Haven, CT*

A certification was issued covering all workers of the firm separated on or after February 19, 1986.

*TA–W–19,253; Forest Hills Apparel, A.K.A. La-Reine, Inc., Forest City, PA*

A certification was issued covering all workers of the firm separated on or after February 13, 1986.

*TA–W–19,077; Terex Corp., Hudson, OH*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

*TA–W–19,043; Genesco, Inc., Headquarters, Nashville, TN*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,044; Genesco, J&M Plant, Nashville, TN*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,045; Genesco, Inc., Danville Plant Plant, Danville, KY*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,046; Genesco Inc., Fulton Plant, Fulton, MS*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,047; Genesco, Inc.,Iuka Plant, Iuka, MS*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,048; Genesco, Inc., Waynesboro Plant, Waynesboro, TN*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,049; Genesco, Inc., Hohenwald Plant, Honenwald, TN*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,050; Genesco, Inc., Fayetteville Terminal, Fayetteville, TN*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,051; Genesco, Inc., 63rd Avenue Warehouse, Nashville, TN*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,052; Genesco, Inc., Volunteer Leather Co., Milan, TN*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

*TA–W–19,053; Genesco, Inc., Whitehall Leather Company, Whitehall, MI*

A certification was issued covering all workers of the firm separated on or after February 2, 1987.

I hereby certify that the aforementioned determinations were issued during the period March 23, 1987–March 27, 1987 and March 30, 1987–April 3, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 6, 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-8668 Filed 4-16-87; 8:45 am]

BILLING CODE [illegible]

---

**[TA-W-18,199]**

### Carrier Corp., Syracuse, NY; Negative Determination Regarding Application for Reconsideration

By an application dated March 17, 1987, counsel for the Sheet Metal Workers' Union, Local 527 requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Carrier Corporation Syracuse, New York. The denial notice was signed on February 10, 1987 and was published in the **Federal Register** on March 2, 1987 (52 FR 6238).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel claims that the production transfer of the room air conditioner to Brazil in 1985, in which workers at Syracuse were certified eligible to apply for adjustment assistance through January 30, 1986, (TA-W-16,363) eliminated the opportunity in 1986 for more senior laid off employees in other areas at Syracuse to bump or transfer into that unit of the plant.

Workers at the Syracuse plant produced commercial air conditioners during the period applicable to the subject petition. The production of room air conditioners at the Syracuse plant was transferred to Brazil in 1985. Workers employed on room air conditioners were certified eligible to apply for adjustment assistance under petition TA-W-16,363 from January 1, 1985 until January 31, 1986.

Lost opportunities for workers to bump from a non adversely affected product to employment on an adversely affected product would not form a basis for certification. To qualify for adjustment assistance, workers must be separated from employment on the import impacted products because of a lack of work.

Findings in the investigation show that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met for workers producing commercial air conditioners. U.S. imports of unitary air conditioners were insignificant relative to domestic shipments in 1985. A survey of Carrier's customers of commercial air conditioners revealed that the respondents did not purchase imports in 1984, 1985 or in the first nine months of 1986.

The respondents to the survey represented a substantial portion of the sales decline of commercial air conditioners at Syracuse in the first nine months of 1986 compared to the same period in 1985. The Syracuse plant experienced an increase in sales in 1985 compared to 1984.

#### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 8th day of April, 1987.

**Barbara Ann Farmer,**

*Acting Director, Office of Program Management, UIS.*

[FR Doc. 87-8664 Filed 4-16-87; 8:45 am]

BILLING CODE [illegible]

---

**[TA-W-18,259]**

### Dover Elevator Systems, Inc., Cincinnati, OH; Negative Determination Regarding Application for Reconsideration

By an application dated February 25, 1987, the International Brotherhood of Electrical Workers (IBEW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers and former workers at Dover Elevator Systems, Inc., Cincinnati, Ohio. The denial notice was signed on February 9, 1987 and published in the **Federal Register** on March 2, 1987 (52 FR 6238).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that imports of components parts (motors and generators) by the company and competitors have adversely affected employment and production at the Cincinnati plant of Dover Elevator Systems.

The Cincinnati plant is the only company plant producing exclusively for the traction elevator market. The Cincinnati plant produces the motors and generators for traction elevators which are integrated into the production of elevators. According to company officials a small amount of motors were purchased from foreign sources in 1986 but most of these were hydraulic and not the type produced at Cincinnati. These imported purchases of motors represented an insignificant portion of the sales of the Cincinnati plant.

Further, under the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Elevator motors and generators are not like or directly competitive with finished elevators. This issue was addressed in *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, motors and generators which are incorporated in the finished article cannot be considered like or directly competitive with elevators.

A Departmental survey for the major share of unsuccessful bids by Dover Elevator Systems for geared elevators revealed that the overwhelming majority of the subject contracts were awarded to domestic firms and involved domestic production. One of Dover's large customers indicated that their imported purchased components were very small. Another customer reported that geared elevators are only produced domestically and any imported parts would be very small.

Industry sources indicate that the overall domestic market for traction elevators decreased by nearly a third in 1986 due mainly to (1) excess high rise office capacity in large cities, (2) new tax laws which went into effect in 1987 which virtually eliminate tax write offs for business losses and (3) the depressed

economy in the Southwest because of the oil slump.

U.S. imports of elevators and moving stairways were a negligible portion of domestic shipments in 1985.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of April 1987.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-8665 Filed 4-16-87; 8:45 am]

BILLING CODE 4510-30-M

---

**[TA-W-18,341]**

## Enduro Stainless, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Enduro Stainless, Inc., TA-W-18,341 Massillon, OH, TA-W-18,341A Philadelphia, PA, TA-W-18,341B Narbeth, PA, TA-W-18,341C Harmony, PA, TA-W-18,341D Bensalem, PA, TA-W-18,341E Wynnewood, PA, TA-W-18,341F Pittsburgh, PA, TA-W-18,341G Merion, PA, TA-W-18,341H Wyndmoor, PA, TA-W-18,341I Atlanta, GA, TA-W-18,341J Brimingham, AL, TA-W-18,341K Freehold, NJ, TA-W-18,341L Charlotte, NC, TA-W-18,341M Glen Ellyn, IL, TA-W-18,341N Elk Grove Village, IL, TA-W-18,341O Laguna Hills, CA.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 21, 1987 applicable to all workers of Enduro Stainless, Inc., Massillon, Ohio. The certification notice was published in the **Federal Register** on February 19, 1987 (52 FR 5213).

Based on new information furnished to the Department the certification notice is amended to include all workers in sales, customer service and other support services for Enduro Stainless, Inc., in Pennsylvania, Georgia, Alabama, New Jersey, North Carolina, Illinois and California. Since the plant closed in January, 1986 and all workers at the plant and in the field have been laid off a termination date of April 15, 1987 is hereby set.

The intent of the certification is to cover all workers of Enduro Stainless, Inc., in Ohio, Pennsylvania, Georgia, Alabama, New Jersey, North Carolina, Illinois and California. The amended notice applicable to TA-W-18,341 is hereby issued as follows:

All workers of Enduro Stainless, Incorporated, Massillon, Ohio, and all support workers (sales, customer service and management) in Philadelphia, Pennsylvania; Narbeth, Pennsylvania; Harmony, Pennsylvania; Bensalem, Pennsylvania; Wynnewood, Pennsylvania; Pittsburgh, Pennsylvania; Merion, Pennsylvania; Wyndmoor, Pennsylvania; Atlanta, Georgia; Birmingham, Alabama; Freehold, New Jersey; Charlotte, North Carolina; Glen Ellyn, Illinois, ELk Grove Village, Illinois and Laguna Hills, California who became totally or partially separated from employment on or after September 25, 1985 and before April 15, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

For purposes of administering the 210 day period to file a bona fide, timely application for training in order to qualify for additional weeks of TRA and to qualify for other reemployment services related to the certification date, the date of issue of this amended certification shall apply to the workers added herein.

Signed at Washington, DC, this 8th day of April 1987.

**Carolyn M. Golding,**

*Director, Unemployment Insurance Services.*

[FR Doc. 87-8667 Filed 4-16-87; 8:45 am]

BILLING CODE 4510-30-M

---

**[TA-W-19,446]**

## Perrella Gloves, Inc. Gloversville, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 30, 1987 in response to a worker petition which was filed by the Glove Cities Area Joint Board of the Amalgamated Clothing and Textile Workers Union on behalf of workers at Perrella Gloves, Inc., Gloversville, New York.

An active certification covering the petitioning group of workers remains in effect (TA-W 16,267). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of April 1987.

**Marvis M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-8663 Filed 4-16-87; 8:45 am]

BILLING CODE 4510-30-M

---

**[TA-W-18,581]**

## Zenith Electronics Corp., Kostner Avenue Plant, Auto-Dashboard Display Department, Video Display Department, Chicago, IL; Negative Determination Regarding Application for Reconsideration

By an application dated February 5, 1987, the United Electrical Workers of America Independent requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for former workers in the Auto-Dashboard Display Department and the Video Display Department of Zenith Electronics Corporation's Kostner Avenue plant in Chicago, Illinois. The denial notice was signed on December 19, 1986 and published in the **Federal Register** on January 9, 1987 (52 FR 878).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the transfer of subassembly work on the video display units to foreign plants caused Zenith Electronics to transfer its rework of the video display units overseas. With respect to the auto dashboard workers, the union claims that the Kostner Avenue plant produced auto dashboard units in 1986 and thus any worker separations are within the one-year time period necessary to be considered eligible to apply for adjustment assistance.

Findings in the investigation show that all rework on the video display units was competed when Zenith fulfilled current orders under its contract with the U.S. Government. Company officials stated that no video display

rework was ever taken from plant #2 and shipped overseas.

Video display subassemblies are not final products but are integrated into the production of video display units. The claim that had the subassemblies not been transferred to foreign plants in 1985 then the rework on the video display units would have remained at the Kostner Avenue plant would not form a basis for certification. The courts have addressed the issue of component parts in *United Shoe Workers of America, AFL–CIO* v. *Bedell*, 506 F2d 174, D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, subassemblies for video display units which are incorporated into the finished article cannot be considered like or directly competitive with video display units.

The products considered in the Department's earlier investigation (TA–W–16,046), which led to a certification for workers at the Kostner Avenue plant—subassemblies for computers and cable decoder boxes are different than the products considered under petition TW–W–18,581.

With respect to the auto dashboards, company officials stated that all production of these units was transferred to Taiwan in early September, 1985. However, some of the units produced in Taiwan did not undergo a certain test; consequently, these units were recalled for this test. The affiants, in addition to their regular duties in the video display department, also monitored this test in 1986 on the recalled auto dashboards. These units had already been produced and shipped to domestic customers or were being readied to be shipped when Zenith found that some units required the test. This is not considered production but is incidental to their work in the Video Display Department.

## Conclusion

After review of the application and investigative findings, I conclude that there had been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of April 1987.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87–8666 Filed 4–16–87; 8:45 am]

BILLING CODE 4510–30–M

## Employment Standards Administration; Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

### Correction

On April 3, 1987 notice of modified general wage determination decisions was published in the **Federal Register**. A certain decision being modified was omitted. That decision and its volume and page number are listed below.

*Volume I*

Alabama:.....
AL87–8 (January 2, 1987)..... p. 16.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut:
CT87–1 (January 2, 1987)..... p. 70, pp. 72–73.

New Jersey:
NJ87–2 (January 2, 1987)..... p. 616.
NJ87–3 (January 2, 1987)..... pp. 636–638 p. 643.
NJ87–4 (January 2, 1987)..... pp. 660–663.

New York:
NY87–2 (January 2, 1987)..... pp. 686–689 p. 692.
Tennessee:
TN87–1 (January 2, 1987)..... pp. 1078–1079.

*Volume II*

Arkansas:
AR87–3 (January 2, 1987)..... p. 10.
Iowa:
IA87–5 (January 2, 1987)..... p. 43.
Indiana:
IN87–4 (January 2, 1987)..... pp. 280–281.
Illinois:
IL87–16 (January 2, 1987)..... p. 206.
Michigan:
MI87–2 (January 2, 1987)..... pp. 426–438 pp. 438a–438b.
MI87–4 (January 2, 1987)..... p. 452 pp. 454–455.
MI87–5 (January 2, 1987)..... pp. 460–472.
MI87–7 (January 2, 1987)..... pp. 477–494b.
MI87–12 (January 2, 1987)..... pp. 504–509.
MI87–17 (January 2, 1987)..... p. 520.
Oklahoma:
OK87–13 (January 2, 1987) .. p. 893.
OK87–14 (January 2, 1987) .. p. 903.

*Volume III*

Oregon:
OR87–1 (January 2, 1987)..... pp. 282–285.
Listing by Location (index)..... p. xxxix.

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of April 1987.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 87–8484 Filed 4–16–87; 8:45 am]

BILLING CODE 4510–27–M

## Occupational Safety and Health Administration

### Oregon State Standards; Approval

#### 1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes the State has submitted by letter dated December 29, 1986, from William J. Brown, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, an amendment to State rules comparable to 29 CFR 1910.1047, Ethylene Oxide (amended), as published in the **Federal Register** (51 FR 25053) on July 10, 1986. The wording in Appendices A through D of the Federal standard has been amended to reference the non-mandatory status of these appendices.

On August 27, 1986, the Notice of Proposed Amendment of Rules was mailed to those persons on the State's mailing list established pursuant to OAR 436–01–000. The notice was published in the State Administrative Rules Bulletin on November 1, 1986. These actions failed to elicit requests for public hearings. The State's rules, contained in OAR 437, Division 156, Ethylene Oxide Appendices A through D, were adopted and became effective on December 4, 1986.

#### 2. Decision

Having reviewed the State submission in comparison with the amendment to the Federal standard, it has been determined that the State standard amendment is identical to the Federal standard amendment, and accordingly is approved.

#### 3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210.

#### 4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective April 17, 1987.

(Section 18, Pub. L. 91–596, 84 Stat. 1608, (29 U.S.C. 667))

Signed at Seattle, Washington, this 17th day of February 1987.

**James W. Lake,**

*Regional Administrator.*

[FR Doc. 87–8661 Filed 4–16–87; 8:45 am]

BILLING CODE 4510–26–M

### Washington State Standards; Approval

#### 1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety

and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated September 26, 1986, from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to the Federal standard amendment to 29 CFR 1910.1000, Table Z–1 (Cotton Dust), as published in the **Federal Register** (50 FR 51173) on December 13, 1985. The Federal amendment deleted the footnote attached to the entry "cotton dust (raw)" and added a new footnote "e." The State standards amendment, which is identical to the Federal amendment, is contained in WAC 296–62–07515. It was adopted on July 25, 1986, and became effective on August 25, 1986, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04 and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 86–28.

**2. Decision**

The above State standard amendment has been reviewed and compared with the relevant Federal standard amendment. OSHA has determined that the State standard amendment is identical to the Federal standard amendment, and accordingly is approved.

**3. Location of Supplement for Inspection and copying**

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210.

**Public Participation**

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective April 17, 1987.

(Section 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington, this 1st day of December, 1986.

**James W. Lake,**

*Regional Administrator.*

[FR Doc. 87–8662 Filed 4–16–87; 8:45 am]

BILLING CODE 4510–26–M

---

[V–87–2]

## Tomaro Contractors, Inc.; Application for Permanent Variance and Denial of Interim Order

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of application for permanent variance and denial of interim order.

**SUMMARY:** This notice announces:

(1) The application of Tomaro Contractors, Inc., for a permanent variance and an interim order from the Decompression Tables, Appendix A to Subpart S of Part 1926, §§ 1926.800 through 1926.804, which concern compressed air. The applicant has requested that it be authorized to substitute a decompression table using oxygen, introduced via pressure demand respirators, as the gaseous medium in lieu of compressed air; and

(2) The denial of interim order.

**DATE:** The last date for interested persons to submit comments is June 16, 1987. The last date for affected employers and employees to request a hearing is June 16, 1987.

**ADDRESS:** Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3651, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:**

James J. Concannon, Director, Office of Variance Determination, at the above address, Telephone: (202) 523–7193.

or the following Regional and Area Office:

U.S. Department of Labor—OSHA, 32nd Floor, Rm. 3244, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Department of Labor—OHSA, Henry S. Reuss Building, 310 West Wisconsin Avenue, Suite 1180, Milwaukee, Wisconsin 53203

**Notice of Application**

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that Tomaro Contractors, Inc., Post Office Box 155, Cudahy, Wisconsin 53110, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 S. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a permanent variance and an interim order from the Decompression Tables, Appendix A to Subpart S of Part 1926 (§§ 1926.800–1926.804).

The address of the place of employment that will be affected by the application is as follows: County Line Road, immediately west of 109th Street, Milwaukee, Wisconsin in a tunnel which will be 2,600 feet in length when completed.

The purpose of Appendix A to Subpart S is to allow employees who have been working under pressurized conditions to be brought back to ambient surface pressure in a safe manner.

The applicant certifies that employees who would be affected by the variance

have been notified of the application by giving a copy of it to their authorized employee representatives and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the applications, Tomaro Contractors contends that it proposed conditions, practices, means and methods will provide employment at least as safe and healthful as would prevail if it compiled with the Decompression Tables, Appendix A to Subpart S (§§ 1926.800 through 1926.804). Under Subpart S, where decompression is required, the compressed air tables in Appendix A must be used.

The applicant estimates that the anticipated air pressure in the tunnel, which is being driven under compressed air, may reach levels in excess of 16 pounds per square inch gauge (psig). It therefore states that it intends to use oxygen decompression in order to provide a safer decompression for the workmen as well as to shorten the length of the decompression time (when compared with compressed air). The oxygen is to be introduced to each employee by means of a pressure-demand respirator and is not intended to be present in the environment of the decompression lock.

Tomaro Contractors states that oxygen decompression tables labeled Autodec III (Oxygen) as found in "Safe Decompression Schedules for Caisson Workers," Final Report, Research Grant No. 5R 01 OH 00947–03, produced for the National Institute for Occupational Safety and Health, dated December 1, 1983, will be used if the variance is granted.

These tables, according to the applicant, have been tested at 2 pound increments from 14 pounds through 46 pounds and none of the test subjects developed decompression sickness using the schedules which call for an eight-hour working day divided between working time and decompression time. Additionally, according to Tomaro Contractors, none of the subjects testing these tables developed bone lesions as determined by skeletal X-ray and bone scans.

From the above data, the applicant infers that the Autodec III (Oxygen) tables are safer than the existing OSHA tables which causes a 33 percent incidence of a specific form of bone lesions, dysbaric osteonecrosis, when used at pressures in excess of 36 pounds. This incidence, according to Tomaro Contractors, is documented in a report published in the Journal of Occupational Medicine in October 1982 entitled, "Aseptic Necrosis in Compressed Air Tunnel Workers Using Current OSHA Decompression Schedules."

Further, the applicant contends that its medical consultant has documented that application of the OSHA tables produced decompression sickness on 42.5 percent of the working days on a previous job in Milwaukee, when pressures ranged between 19 and 31 psig.

Tomaro Contractors further contends that applying the OSHA tables resulted in one reported case of bends on its present job at the low pressure of 16 pounds and that at the time of this application workmen informed the applicant that some of them had been experiencing "air pains" in the legs using the 14 psi OSHA tables at 13 pounds pressure.

In summary, the applicant contends that it has demonstrated that the practices and conditions it proposes to use will provide place of employment which is as safe and healthful as that provided under the Decompression Tables, Appendix A to Subpart S, the provision from which the variance is sought. The applicant submits the following proposed supplementary rules for inclusion in a variance order authorizing the use of oxygen during decompression of compressed air tunnel workers.

**Proposed Supplementary Rules for the Use of Oxygen During Decompression of Compressed Air Tunnel Workers**

*I. Physical Plant and Equipment*

A. Tight fitting, double-seal oro-nasal masks equipped with a discharge hose to exhaust exhaled oxygen from the decompression lock shall be provided. This type of mask and its associated valves and piping are collectively termed an "overboard dump system". When a work-shift consists of ten men or less, at least two extra masks shall be placed in the decompression lock. If more than ten men are decompressing at a time, four extra masks shall be placed in the lock. These masks need not be connected when not in use. All masks shall be equipped with a demand regulator on the inlet side and a vacuum regulator on the discharge side. The vacuum regulator shall be capable of handling pressure differentials from the interior of the lock to the outside of up to 26 psig. A second vacuum reducer may be interposed in the discharge manifold as it leaves the chamber to accomplish this if necessary.

B. Oxygen shall be supplied to a manifold in the decompression lock into which the masks can be plugged using quick disconnect fittings. This manifold shall be oxygen cleaned at the time of installation and shall be of copper with silver soldered couplings.

C. An oxygen regulator installed inside the lock of sufficient size to supply oxygen to the number of men decompressing shall regulate the admission of oxygen to the manifold at a pressure of 50 lbs. greater than chamber pressure.

D. The oxygen supply can be from high pressure oxygen cylinders connected to a manifold with a reducer valve fitted to the high pressure manifold discharge set at 150 lbs. The oxygen cylinders and manifold may be situated in the tunnel in a protected area or topside. In any case, the lock tender must be quickly able to visually verify the cylinder pressures. Alternatively, a cryogenic or liquid oxygen source of adequate size may be used having a vaporization pressure set at 150 psig.

E. The available oxygen supply at the beginning of any decompression shall be equal to 150 percent of the anticipated requirement. Minimum requirements can be calculated on the basis that each H cylinder contains 220 cu. ft. of usable oxygen at the starting pressure of 2,250 psi. It is anticipated that the average man will consume approximately 0.5 cu. ft. per minute at atmospheric pressure. Decompression, however, will be carried out at greater than normal atmospheric pressure so the final result will have to be multiplied by the number of atmospheres absolute or fractions thereof which the crew experiences during decompression.

Pounds Per Square Inch Guage (PSIG) Expressed In Atmospheres Absolute

4 lbs.–1.27 atmospheres
8 lbs.–1.54 atmospheres
12 lbs.–1.82 atmospheres
16 lbs.–2.09 atmospheres
20 lbs.–2.36 atmospheres.

An example of the calculation for the minimum oxygen requirement is given below:

Assume that a tunnel crew of six men is decompressing on the oxygen table from six hours exposure at 24 psig. The decompression requires a five minute stop on air at 12 psig, a thirty minute stop on oxygen at 8 psig, then five minutes of air at 4 psig followed by sixty minutes of oxygen at 4 psig. No oxygen is required at 12 psig, but thirty minutes and sixty minutes of oxygen are required at 8 and 4 psig respectively. As seen from the table, 8 psig is equal to 1.54 atmospheres and 4 psig is equal to 1.27 atmosphere.

Calculations are made as follows:

| | | | |
|---|---|---|---|
| 6 | men×0.5 ft³/min.×30 min.×1.54 atmospheres absolute. | 138.6 ft³ | |
| 6 | men×0.5 ft³/min.×60 min.×1.27 atmospheres absolute. | 228.6 ft³ | |
| | Total | 367.2 ft³ | |
| 367.2 ft³×150% | | 550.8 ft³ | |

Note.—550.6 ft³−220 ft³ usable $O_2$ per cylinder=2.5 cylinders.

Therefore one must start decompression with a minimum of 3 full oxygen cylinders available.

F. The discharge line which carries the exhaust oxygen, which has been breathed, is carried topside and discharged to the atmosphere. It shall be carried high enough so that cigarette butts, etc. cannot be inadvertently dropped into it, and topped with a U fitting or rain shield.

G. An oxygen meter shall be installed with its sensing element in a pipe discharging air from the decompression lock. This shall be a pipe separate from the oxygen overboard dump discharge. The oxygen meter shall be equipped wih a visible and audible alarm set to go off when the oxygen level in the air discharge pipe measured at atmospheric pressure external to the lock reaches 23 percent.

H. All lights in the decompression lock shall have the bulbs enclosed by pressure proof glass shields and wiring shall be carried in conduit.

I. A fire hose or hoses shall be installed which can reach any part of the decompression lock. Hoses shall be rot proof, be equipped with a fog nozzle and be connected to a wet standpipe. A ¼ turn ball vale shall activate the hose(s). Water pressure shall be at least 50 psi greater than any anticipated pressure in the lock.

*II. Operating Procedures When Using Oxygen Decompression*

A. Before the crew enters the lock, the lock tender will pressurize the lock with compressed air and calibrate the oxygen meter attached to the exhaust line externally to 21 percent ensuring there is flow through the exhaust lines at the time of calibration.

B. A responsible foreman shall be present in the lock at all times when oxygen is breathed during decompression.

C. There will be absolutely no smoking material taken into the compressed air tunnel at any time and there will be absolutely no smoking at any time during decompression in the lock.

D. Signs will be conspicuously posted at both ends of the decompression lock strictly forbidding any smoking, carrying or producing any fire or open flame.

E. When oxygen masks are applied, they shall be applied simultaneously by all workers and the lock tender shall not start recording oxygen decompression time until all of the workers have started to breath oxygen.

F. The demand regulators on the masks shall be adjusted so as not to produce a free flow of oxygen at any time. The foreman shall verify this.

G. When the oxygen masks are removed, the foreman shall verify that no masks are free flowing after they have been removed. He shall instruct the men to carefully monitor this also.

H. Should an oxygen mask fail for any reason, one of the spare masks is to be substituted. The time required for the substitution of the mask on any given worker shall be added to the total oxygen time for that stop.

I. The lock tender shall continuously ventilate the lock so as to maintain the oxygen content of the discharge *air* below 23 percent. If the high oxygen alarm goes off indicating a percentage greater than 23 percent, he shall immediately increase the ventilation rate to bring the oxygen content of the air below 23 percent. He shall also immediately notify the foreman so that he may search for an oxygen leak from either a mask or piping.

J. Men who are breathing oxygen are to remain at rest and are not to do exercise of any kind. They shall be suitably dressed to avoid chilling.

K. The foreman shall carry a portable hand held oxygen meter in the lock and shall calibrate it properly at lock pressure *before oxygen beathing is commenced.* Alternatively, the lock tender may calibrate it to 21 percent outside the lock at normal atmospheric pressure and then place the meter in the lock before pressurizing it. The oxygen level in the air in the pressurized lock will read higher than normal even when no additional oxygen is present.

The table below indicates the calibration settings for the portable oxygen meter in normal compressed air at various pressures.

| PSIG | [illegible] setting at pressure (percent) | [illegible] permissible when $O_2$ in use (percent) | Atmospheres absolute |
|---|---|---|---|
| 20 | [illegible] | 54.3 | 2.36 |
| 18 | [illegible] | 51.1 | [illegible] |
| 16 | 43.9 | 48.1 | [illegible] |
| 14 | 41.0 | 44.9 | 1.95 |
| 12 | 38.2 | 41.9 | [illegible] |
| 10 | 35.3 | [illegible] | 1.68 |
| 8 | 32.3 | 35.4 | 1.54 |
| 6 | [illegible] | [illegible] | 1.41 |
| 4 | 26.7 | 29.2 | 1.27 |

The oxygen level will read higher in the lock under pressure because the oxygen molecules are packed closer together. The oxygen meter probe in the exhaust line outside the chamber will read normally as the air has already been decompressed to normal pressure before it contacts the probe.

While in the lock, the foreman should check his portable meter occasionally at various sites among the decompressing crew to detect any leaks in the oxygen breathing equipment early. This table is to be posted prominently in the decompression lock for the foreman's use.

L. In the very remote possibilty that anyone should experience an oxygen reaction (seizure) the foreman should immediately remove the man's oxygen mask and assure that he has an airway by turning his head back and pulling up on his chin. When the seizure is over, he may be turned on his side, but again maintaining the airway. The physician shall be notified immediately.

M. Decompression, following an oxygen reaction or if any worker for any reason cannot breathe oxygen, shall be in strict accordance with instructions from the retained physician. If the physician cannot be located, decompression from the point where oxygen breathing was interrupted shall be continued on the air decompression table repeating the stop where the oxygen reaction occurred.

N. The lock tender shall carefully record all oxygen breathing periods as well as the total length of the decompression stop and shall notify the foreman when oxygen masks are to be donned and doffed.

O. At the conclusion of decompression, all used oxygen masks are to be removed from the regulators, and washed in a suitable antiseptic solution which is not injurious to rubber.

P. Full beards or beards which interfere in any way with a tight seal of the oxygen mask shall not be permitted. Mustaches are permitted.

Q. Vaseline and other greases may not be used to insure a seal of the mask over breads.

R. The foreman shall instruct all of the workmen regarding the hazards of fire when oxygen breathing procedures are disregarded.

S. The lock tender shall insure that clear, dry masks are available to each shift before they start decompression and that the extra masks are available in the lock.

T. The lock tender at the conclusion of each shift shall check the pressure of the oxygen cylinders and ascertain that

enough oxgyen is ready for decompression of the next shift.

U. If for any reason oxygen breathing during decompression cannot be carried out according to the exact schedule, the retained physician shall be notified immediately.

V. The lock tender shall insure that the decompression lock is maintained conspicuously clean with no unnecessary combustibles present in the lock.

W. Before each shift decompresses, the lock tender shall check the fire hose valves to verify that fire-fighting water is available in the lock.

X. In the event of fire, the lock tender shall immediately shut off the oxygen. If the fire is serious and not immediately controlled, the lock tender shall decompress the lock to the surface at once so that the crew can escape. When the lock is on the surface, the crew shall be immediately transferred to the medical lock on the surface, and the medical lock taken to 60 feet (26.7 psi). The surface interval shall not exceed 5 minutes if humanly possible to accomplish this. The physician is to be notified as soon as the men are evacuated.

Y. Whenever oxygen is to be used for decompression of workmen in the compressed air environment, a physician shall be retained who will have direct control of the training of the workmen in proper use of oxygen for decompression and who shall inspect the decompression lock used for oxygen decompression on at least a weekly basis or more often as required. The physician shall also be responsible for seeing that required logs are kept. He shall be immediately available in case of emergency or his designate shall be available. The physician must be experienced with the administration of oxygen to human subjects at pressures greater than ambient.

Z. No employee shall undergo oxygen decompression until he/she has been fully instructed in the proper procedure for using oxygen breathing equipment, has a complete understanding of the mechanism of oxygen enhanced nitrogen elimination and understands the importance of following the prescribed decompression schedule.

### Denial of Interim Order

Tomaro Contractors, Inc. also requested, as the time of their variance application, an interim order to enable them to use the Autodec III (Oxygen) decompression tables until a decision is reached on their request for permanent variance.

The Assistant Secretary has decided to deny the request for an interim order. Oxygen is not normally permitted in a tunnel environment and presents a greater potential hazard from fire and explosion than does compressed air. Further investigation and evaluation of the present conditions at the place of employment and the proposed procedures by an onsite visit, to be scheduled as soon as convenient for both parties, are necessary. OSHA will proceed very cautiously in authorizing any practice (even on an interim basis) that is alleged to be as safe and healthful as practices justified by any OSHA rulemaking.

Therefore, pursuant to the authority in section 6(d) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.11(c) and in Secretary of Labor's Order No. 9–83 (48 FR 35736), the applicant is denied an interim order to operate in accordance with its request until a decision is rendered on the application for variance.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the issues raised in the application no later than June 16, 1987. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application no later than June 16, 1987, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

Signed at Washington, DC, this 14th day of April, 1987.

**John A. Pendergrass,**

*Assistant Secretary.*

[FR Doc. 87–8660 Filed 4–16–87; 8:45 am]

BILLING CODE 4510-26-M

## LEGAL SERVICES CORPORATION

### Migrant Farmworkers—Number and Distribution; Availability of Report

**AGENCY:** Legal Services Corporation.

**ACTION:** Notices of availability.

**SUMMARY:** Legal Services Corporation (LSC) is making available a report entitled, "Migrant Farmworkers: Number and Distribution," for public comment as a matter of discretion. Comments will be considered by LSC in reviewing the report and should be submitted to LSC by May 11, 1987.

**ADDRESS:** Requests for copies of the report and submissions of comments should be directed to: Daryl Borgquist, Manager, Division of Public Affairs, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1843.

**FOR FURTHER INFORMATION CONTACT:** Daryl Borgquist, Manager, Division of Public Affairs, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1843.

**Timothy H. Baker,**

*Secretary.*

[FR Doc. 87–8715 Filed 4–16–87; 8:45 am]

BILLING CODE 6820-35-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted on or before August 1, 1987.

**ADDRESSES:** Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0233 and Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202) 395–7316.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ingrid Foreman, National Endowment for the Humanities, Administration Service Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total

number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

*Title:* NEH—Division of Education Programs—Guidelines and Application Instructions
*Form Number:* 3136–0059
*Frequency of Collection:* Collection occurs once yearly, according to individual program application deadline.
*Respondents:* Individuals or households Non-profit institutions
*Use:* The Guidelines and application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds and request additional information regarding grants recently received by applicants.
*Estimated Number of Respondents:* 275
*Estimated Hours for Respondents to Provide Information:* 1100

**Susan Metts,**

*Assistant Chairman for Administration.*

[FR Doc. 87–8699 Filed 4–16–87; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Joint Subcommittees on Metal Components/Auxiliary Systems; Meeting

The ACRS Subcommittees on Metal Components/Auxiliary Systems will hold a joint meeting on May 5, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meetings will be open to public attendance.

The agenda for subject meeting shall be as follows: *Tuesday, May 5, 1987—8:30 A.M. until the conclusion of business.*

The Subcommittees will explore further the questions in Congressman P. Sharp's letter on implications for the safety of nuclear power plants of the recent Surry accidents.

Oral statemetns may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 14, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87–8705 Filed 4–16–87; 8:45 am]

BILLING CODE 7590-01-M

[NUREG–0800]

### Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability for Comment; Proposed New Section 6.5.5 and Regulatory Analysis and Supporting Technical Reports

The U.S. Nuclear Regulatory Commission (NRC) has published proposed new Section 6.5.5., "Suppression Pools as Fission Product Cleanup Systems," of NUREG–800, "Standard Reveiw Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The proposed new SRP Section 6.5.5 consists of revision O, its supporting Regulatory Analysis, and the supporting Technical Report "Effectiveness of BWR Pressure Suppression Pools in Retaining Fission Products." The new section would permit pressure suppression pools to be considered as mitigative engineered safety features capable of retaining some fraction of fission products that might be directed into them following potential reactor accidents. Its review procedures would provide means of obtaining estimates of the fractions of fission products that should be assumed to be retained by the pools. These procedures would become necessary following a proposed future revision of Regulatory Guide 1.3, which currently denies retention capability to suppression pools.

The revision would be required for future plants, but would be optional for present licensees and is part of a proposed series of SRP and Regulatory Guide changes intended to implement the Commission's Severe Accident Policy and to introduce the result of recent severe accident regulatory research into staff practices. Comments are being solicited from interested organizations, groups and individuals. The staff will evaluate the comments received, and address them, as appropriate, in the final documents.

Copies of the "For Comment" documents will be available after April 6, 1987. Copies will be sent directly to utilities, utility industry groups, associations, environmental and public interest groups. Other copies will be available for review at the NRC Public Document Room, 1717 H Street NW., Washington, DC, and the Commission's Local Public Document Rooms located in the vicinity of nuclear power plants. Addresses of these Local Public Document Rooms can be obtained from the Chief, Public Document Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–3273.

Comments should be sent to the Secretary of the Commission U.S. Nuclear Reglatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by June 5, 1987.

Dated at Bethesda, Maryland, this 10th day of April.

For the Nuclear Regulatory Commission.

**Harold R. Denton,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 87–8714 Filed 4–16–87; 8:45 am]

BILLING CODE 7590-01-M

[NUREG–0800]

### Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance (and Availability for Comment) of Proposed Revision 2 to SRP Section 6.5.2 and Regulatory Analysis and Supporting Technical Documents

The U.S. Nuclear Regulatory Commission (NRC) has published proposed revision 2 to Section 6.5.2, "Containment Spray as a Fission

Product Cleanup System," of NUREG–800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The proposed revision to SRP Section 6.5.2 consists of revision 2, its supporting Regulatory (value/impact) Analysis, and two supporting technical documents, "Containment Sprays," and Technical Report, "Fission product Removal Effectiveness of Chemical Additives in PWR Containment Sprays."

This revision would delete the requirement for immediate initiation of caustic additives to the spray and would reduce the minimum pH to be achieved from 8.5 to 7.

This revision would be required for future plants, but would be optional for present licensees and is part of a proposed series of SRP and Regulatory Guide changes intended to implement the Commission's Severe Accident Policy and to introduce the result of recent severe accident regulatory research into staff practices. Comments are being solicited from interested organizations, groups and individuals. The staff will evaluate the comments received, and address them, as appropriate, in the final documents.

Copies of the "For Comment" documents will be available after April 6, 1987. Copies will be sent directly to utilities, utility industry groups, associations, environmental and public interest groups. Other copies will be available for review at the NRC Public Document Room, 1717 H Street, NW., Washington, DC, and the Commission's Local Public Document Rooms located in the vicinity of nuclear power plants. Addresses of these Local Public Document Rooms can be obtained from the Chief, Public Document Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–3273.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by June 5, 1987.

Dated at Bethesda, Maryland, this 10th day of April.

For the Nuclear Regulatory Commission.

**Harold R. Denton,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 87–8713 Filed 4–16–87; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 81–745]**

### Application and Opportunity for Hearing: Mrs. Fields, Inc.

April 10, 1987.

Notice is hereby given that Mrs. Fields, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the registration requirements under section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than May 4, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–8710 Filed 4–16–87; 8:45 am]

BILLING CODE 8010-01-M

**[Rel. No. IC–15679; 812–6638]**

### FSA Capital, Inc.; Application

April 13, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an amended order under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* FSA Capital, Inc. ("Applicant").

*Relevant 1940 Act Sections:* Exemption is requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order amending an existing order conditionally exempting it from all provisions of the 1940 Act (File Number 812–6442, Investment Company Act Release No. 15291, September 8, 1986) (the "Order") to permit the issuance of one or more classes of adjustable interest rate bonds secured by certain mortgage related collateral, the election by Applicant that one or more series of its bonds secured by certain mortgage related collateral be treated as a real estate mortgage investment conduit (a "REMIC") and the sale of the residual interest in such series.

*Filing Date:* The application for an amended order was filed on February 23, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 300 Delaware Avenue, Suite 1703, Wilmington, Delaware 19899.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Pickholz, Staff Attorney, (202) 272–3046, or H.R. Hallock, Jr., Special Counsel, (202) 272–3030 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

*Applicant's Representations:* 1. Applicant, a Delaware corporation, is a wholly-owned limited purpose subsidiary of Franklin Financial Services, Inc., a Kansas corporation, which itself is a wholly-owned subsidiary of Franklin Savings Association, a Kansas-chartered stock savings and loan association. Pursuant

to its certificate of incorporation, the Applicant is restricted to a limited range of activities relating to the acquisition, ownership, holding and pledging of Mortgage Certificates,[1] the issuance and sale of Bonds collateralized by Mortgage Certificates and other activities incidental thereto. The Applicant will have no significant assets other than those pledged as collateral for the Bonds.

2. Applicant may issue one or more series ("Series") of bonds ("Bonds") secured by Mortgage Certificates. Each Series of Bonds will consist of one or more classes of Bonds, including compound interest Bonds, non-compound interest Bonds, adjustable interest rate Bonds, or any combination thereof.

3. Initially, all of the residual interests in the Bonds of any Series will be held by the Applicant. Applicant anticipates that it may sell such residual interests at the time of the issuance of the Bonds, or at some later date.

4. Without the consent of each Bondholder to be affected, neither the Applicant, the Trustee nor any holders of the residual interests in the Bonds of any Series will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal amount or the rate of interest on any Bonds; (c) change the provisions relating to the application of distributions on the Mortgage Certificates to the payment of principal of Bonds; (d) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (e) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

5. The sale of the residual interests in the Bonds of any Series will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture, to support payments of principal and interest on the Bonds.

6. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell its residual interests in the Bonds of any Series, and there will not be a conflict of interest between the Bondholders and the holders of the residual interests in the Bonds of any Series for several reasons: (a) The collateral which initially will be deposited with the Trustee and will be pledged to secure the Bonds will not be speculative in nature because it will consist solely of GNMA Certificates, FNMA Certificates or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories, which by definition means that the capacity of the Applicant to repay principal and interest on the Bonds is extremely strong; (c) the Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders;[2] and (d) the owners of the residual interests in the Bonds of any Series will be entitled to receive current distributions representing the residual payments on the collateral securing such Series from the Applicant, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of bonds. Furthermore, if the Applicant does not elect that the Bonds of a Series be treated as a REMIC under the Internal Revenue Code of 1986, the owners of the residual interests in the Series of Bonds will be liable for the expenses, taxes and other liabilities incurred with respect to such Series of Bonds (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The identity of the owners of the residual interests in the Bonds of any Series, however, will not alter in any way the payments made to the Bondholders, which payments are governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

7. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the owners of the residual interests in the Bonds of any Series to alter the collateral initially deposited with the Trustee, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any collateral substituted for collateral initially deposited with the Trustee may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the residual interests in the Bonds of any Series, which market conditions are likely to affect all Mortgage Certificates of similar payment terms and maturities in a similar fashion; and (b) the interests of the owners of the residual interests in the Bonds of any Series are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience. Further, in the event the Applicant sells its residual interests in the Bonds of any Series there usually will be more than one owner of the residual interests, and, therefore, in that event, it appears less likely that the owners of the residual interests will be able to agree on any desired substitution of collateral than if there were a single owner who could unilaterally decide on the time and execution of the substitution.

8. The election by the Applicant that a Series of Bonds be treated as a REMIC will have no effect on the level of expenses that would be incurred in connection with the issuance of such Bonds. If the Applicant elects that a Series of Bonds be treated as a REMIC, the Applicant will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds by one of the following methods or a combination of one or more of such methods: (a) A third party, whose credit is acceptable to the agency or agencies rating the Bonds, the Trustee, and the Applicant, will guaranty the payment of such fees and expenses; (b) one or more reserve funds will be established to provide for the payment of such fees and expenses, which maximum fees typically shall be projected, assuming current inflation factor scenarios required by the independent agency or agencies rating the Bonds, at the time of the issuance of the Bonds and the establishing of such reserve funds. The procedure used to calculate the anticipated level of fees

[1] Specifically as used herein, "Mortgage Certificates" refers to Mortgage Pass-Through Certificates fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA Certificates"), Guaranteed Mortgage Pass-Through Securities issued and guaranteed by the Federal National Mortgage Association ("FNMA Certificates") and Mortgage Participation Certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates").

[2] The Indenture further will specifically provide that no amounts may be released from the lien of the Indenture to be remitted to the Applicant (or any owner of the residual interests in the Bonds of any Series) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds.

and expenses is reasonable and has been used successfully in the past, in that it has provided available funds sufficient to pay such fees and expenses and to insure that funds will be sufficient to cover future fees and expenses. In addition, under the Indenture, the Trustee will look solely to such reserve funds for the payment of the Trustee's fees and expenses; (c) the Bonds will be secured by collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein. In no event will Applicant deposit with the Trustee, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds; and (d) the owners of the residual interests in the Bonds of any Series will be personally liable for the fees and expenses incurred in connection with the issuance of the Bonds not otherwise payable from one of the sources described above.

9. The requested amendment of the order is necessary and appropriate in the public interest because: (a) The Applicant is not the type of entity to which the provisions of the 1940 Act were intended to be applied; (b) the Applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Applicant's activities are intended to serve a recognized and critical public need; (d) granting the requested amendment of the order will not be inconsistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Trustee representing their interests under the Indenture; and (e) the residual interests in the Bonds of any Series will be owned entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

*Applicant's Conditions*

The Applicant agrees that if the requested amendment of the order is granted it will be expressly conditioned on the following conditions:

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. However, the collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates and FHLMC Certificates.

3. If new mortgage collateral is substituted, the substitute collateral will: (a) Be of equal or better quality than the collateral replaced; (b) have similar payment terms and cash flow as the collateral replaced; (c) be insured or guaranteed to the same extent as the collateral replaced; and (d) meet the conditions set forth in paragraphs (2) and (4). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event will any new mortgage be substituted for any substitute mortgage collateral.

4. All mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Collateral") will be held by the Trustee, or on behalf of the Trustee by an independent custodian. Neither the Trustee nor the custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of the Applicant and, in addition, will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

7. The Applicant will insure that the anticipated level of administrative fees and expenses will be more than adequately provided for regardless of which or all of the methods, summarized in the representations listed above (which methods may be used in combination), are selected to provide for the payment of such fees and expenses.

8. Each class of adjustable interest rate Bonds will have a set maximum interest rate (an interest rate cap).

9. At the time of the deposit of the Collateral with the Trustee, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Certificates pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of adjustable interest rate Bonds. Such Collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to payment of the Bonds.

In addition, the following representations regarding the residual interests (and more fully described in the application) will be express conditions to the requested order.

10. In the event the Applicant sells its residual interests in the Bonds of any Series, such sale will be to a limited number, in no event more than one hundred, of sophisticated institutional investors in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate ("Eligible Institutions"). Each Eligible Institution will be required to represent that it is purchasing such residual interests for investment purposes and will be prohibited from transferring such residual interests if there would be more than one hundred owners of such residual interests as a result of such transfer.

11. No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with the custodian acting on behalf of the Trustee, or the rating agency rating the Bonds. None of the owners of the residual interests in the Bonds of any Series will be affiliated with the Trustee.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-8711 Filed 4-16-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Radio Technical Commission for Aeronautics (RTCA); Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Commitee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on May 11–13, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Minutes of the Thirteenth Meeting; (3) Review of Task Assignments from the Last Meeting; (4) Review of the Second Draft of the Committee's Final Report; (5) Other Business; (6) Task Assignments; and (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 8, 1987.

**Wendie F. Chapman,**

*Designated Officer.*

[FR Doc. 87–8623 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF THE TREASURY

### Eatablishment of Exempt Organizations Advisory Group in Accordance With the Provision of the Federal Advisory Committee Act, Public Law 92–463, the Department of the Treasury Announces the Establishment of an Exempt Organizations Advisory Group

The objectives of the Group are to advise the Commissioner of Internal Revenue on current problems and issues affecting the administration of Internal Revenue Code provisions relating to organizations exempt from federal income tax and described in section 501(c) of the Code.

The Group's duties are to consider and discuss a wide-range of issues relating to exempt organizations, primarily in areas of its choice but also in areas in which the Internal Revenue Service has specifically requested consideration. Reports and recommendations are solely advisory and are made directly to the Commissioner. The Commissioner initially has sole reponsibility for any Internal Revenue Service action to be taken with respect to these recommendations.

It is has been determined that the establishment of the Exempt Organizations Group is in the public interest.

**Jill E. Kent,**

*Deputy Assistant Secretary for Departmental Finance and Management.*

[FR Doc. 87–8831 Filed 4–16–87; 8:45 am]

BILLING CODE [illegible]

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 74
Friday, April 17, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**BOARD FOR INTERNATIONAL BROADCASTING**

**TIME AND DATE:** 9:00 a.m. May 18 and 19, 1987.

**PLACE:** RFE/RL, Inc., C.D. Jackson Rms. I and II, Oettingenstrasse 67, Am Englischen Garten, 8000 Munich 22, Federal Republic of Germany.

**STATUS:** Closed, pursuant to 5 U.S.C. 552 (b)(c)(1) 22 CFR 1302.4(c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

**MATTERS TO BE CONSIDERED:** Matters concerning the broad foreign policy objectives of the United States Government.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Bruce D. Porter, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

**Bruce D. Porter,**
*Executive Director.*
[FR Doc. 87-8723 Filed 4-15-87; 9:29 am]
BILLING CODE 6155-01-M

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, April 22, 1987.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:** *Child Drownings: Status*

The staff will brief the Commission on the status of the Child Drowning Project and the activities of the National Swimming Pool Safety Committee.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800

**Sheldon D. Butts,**
*Deputy Secretary.*
April 14, 1978.

[FR Doc. 87-8799 Filed 4-15-87; 3:07 p.m.]
BILLING CODE 6355-01-M

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, April 23, 1987.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** Closed to the Public.

**MATTERS TO BE CONSIDERED:**

*Compliance Status Report*

The staff will brief the Commission on various compliance matters.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATON, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATON:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

**Sheldon D. Butts,**
*Deputy Secretary.*
April 14, 1987.

[FR Doc. 87-8800 Filed 4-15-87; 3:07 pm]
BILLING CODE 6355-01-M

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 52 FR 11796, Friday, April 10, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Monday, April 20, 1987.

**CHANGE IN THE MEETING:** The meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Date: April 15, 1987.

**Cynthia C. Matthews,**
*Executive Officer.*

This Notice Issued April 15, 1987.

[FR Doc. 87-8804 Filed 4-15-87; 3:26 pm]
BILLING CODE 6750-06-M

**FEDERAL COMMUNICATIONS COMMISSION**

April 9, 1987.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 16, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

*Agenda, Item No., and Subject*

General—1—Title: Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821–824/866–869 MHz Bands by the Public Safety Services. Summary: In this proceeding, the Commission considers a Notice of Proposed Rule Making setting forth proposed policies and requirements for a National Plan to address use of the 821–824/866–869 MHz bands by the public safety services.

Mass Media—1—Title: Amendment of §§ 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations. Summary: The Commission will consider whether to adopt changes to the Main Studio and Program Origination rules.

Mass Media—2—Title: Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services. Summary: The Commission will consider whether to adopt new rules and reporting procedures regarding equal employment opportunities in the broadcast industry (MM Docket No. 85-350).

Mass Media—3—Title: Complaints Against Pacifica Foundation, Inc., Licensee of Station KPFK-FM, Los Angeles, CA, Regarding Allegedly Obscene or Indecent Broadcasts. Subject: The Commission will consider what, if any, action should be taken as a result of complaints received by the Commission alleging that KPFK-FM aired programming in violation of 18 United States Code section 1464.

Mass Media—4—Title: Complaints Against Infinity Broadcasting Corporation of Pennsylvania, Licensee of Station WYSP-FM, Philadelphia, PA, Regarding Allegedly Obscene or Indecent Broadcasts. Subject: The Commission will consider what, if any, action should be taken as a result of complaints received by the Commission alleging that KPFK-FM aired programming in violation of 18 United States Code section 1464.

Mass Media—5—Title: Control Exercised by The Regents of the University of California (Licensee) over Radio Station KCSB-FM, Santa Barbara, CA. Summary: The Commission will consider what action, if any, should be taken as a result of complaints received alleging that KCSB-FM aired programming in violation of 18 U.S.C. section 1464.

General—2—Title: Application for Review in the Hollywood, California Amateur Proceeding (PR Docket Nos. 82-302 and 81-303). Subject: The Commission will consider whether to review the Decision of the Review Board, FCC 83R-6, involving

the use of indecent language on the amateur service.

General—3—Title: *Memorandum Opinion, Declaratory Ruling and Order* in General Docket No. 83–989. Summary: The Commission will consider a Petition for Declaratory Ruling filed by Multipoint Distribution Systems, Inc. asking for clarification on the issue of whether MDS licensees are required under 47 CFR 21.903(b)(1), or any other Commission regulation or policy or the Communications Act, to allow their facilities to be used to transmit obscene or otherwise unlawful material.

Common Carrier—4—Title: Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials, GEN Docket No. 83–989. Summary: The Commission will consider proposals submitted in response to *Third Notice of Proposed Rulemaking*, 51 FR 26915 (July 28, 1986) for modification of § 64.201 of the Rules concerning restrictions of access by minors to obscene or indecent communications provided by telephone.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–8752 Filed 4–15–87; 10:55 am]

BILLING CODE 6712–01–M

---

**FEDERAL ELECTION COMMISSON**

Cancellation of Public Hearing

**DATE AND TIME:** Wednesday, April 22, 1987, 10:00 a.m.

The Public Hearing on the Proposed Delegate Regulations has been cancelled.

* * * * *

**DATE AND TIME:** Wednesday, April 22, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**DATE AND TIME:** Thursday, April 23, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility for Candidates to Receive Presidential Matching Funds.
Final Audit Report—Reagan-Bush '84 General Election Committee; Reagan-Bush '84 Compliance Fund.
Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing.
Draft Advisory Opinion 1986–42 (Reconsideration)—Vigo G. Nielsen, Jr. on behalf of Dart & Kraft, Inc.
Draft Advisory Opinion 1987–6—Timothy L. Dickinson on behalf of American International Group, Inc.
Notice of Availability on Petition for Rulemaking filed by the National Right to Work Committee (NRWC).
Updated Status of Regulations Projects.
Routine Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 87–8782 Filed 4–15–87; 2:46 pm]

BILLING CODE 6715–01–M

---

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 52 FR 11796, April 15, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Approximately 11:00 a.m., Wednesday, April 15, 1987, following a recess at the conclusion of the open meeting.

**CHANGES IN THE MEETING:** One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

1. Request by the General Accounting Office for Board comment on a draft report regarding supervision of country risk and international lending.
2. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.

(These items were announced originally for a closed meeting on April 13, 1987.)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 15, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–8808 Filed 4–15–87; 3:37 pm]

BILLING CODE 6210–01–M

---

**FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:**

52 FR 11796, April 10, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, April 15, 1987.

**CHANGES IN THE MEETING:** Deletion of the following open item(s) from the agenda:

Publication for comment of proposed revisions to the Board's Regulation F (Securities of State Member Banks).

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 15, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–8759 Filed 4–15–87; 11:38 am]

BILLING CODE 6210–01–M

---

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, April 22, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

*Summary Agenda*

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed revision of reports of financial condition by primary dealers in government securities (FR 2002 and FR 2003).
2. Proposal to extend, without revision, the Mortgage Loan Disclosure Statement (FR HMDA–1).

*Discussion Agenda*

3. Proposed revisions to the Board's Rules Regarding Availability of Information.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal System, Washington, DC 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 15, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-8760 Filed 4-15-87; 11:36 am]

BILLING CODE 6210-01-M

---

**FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS**

**TIEM AND DATE:** Approximately 10:30 a.m., Wednesday, April 22, 1987, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Rerserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 15, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-8761 Filed 4-15-87; 11:36 am]

BILLING CODE 6210-01-M

---

**NATIONAL LABOR RELATIONS BOARD**

**TIME AND DATE:** 10:00 a.m., Wednesday 15 April 1987.

**PLACE:** Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel Rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

**MATTERS TO BE CONSIDERED:** Presidential Rank Awards.

**CONTACT PERSON FOR FURTHER INFORMATION:** John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, 15 April 1987.

By direction of the Board.

John C. Truesdale,

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 87-8776 Filed 4-15-87; 1:00 pm]

BILLING CODE 7545-01-M

---

**TENNESSEE VALLEY AUTHORITY**

Meeting No. 1384

**TIME AND DATE:** 2 p.m. (EDT), Tuesday, April 21, 1987.

**PLACE:** Chattanooga Office Complex, Missionary Ridge Place, Auditorium, 1101 Market Street, Chattanooga, Tennessee.

**STATUS:** Open.

Agenda

Approval of minutes of meeting held on April 1, 1987.

*Discussion Item*

1. Progress Report on Chattanooga Area Urban League Word Processing Training Center.

*Action Items*

A—Budget and Financing

A1. Modification of Fiscal Year 1987 Capital Budget Financed from Power Proceedings and Borrowings: (1) Addtional Funding—Modify SCRAM Discharge Volume at Browns Ferry Nuclear Plant; (2) Additional Funding—Increase Control Bay Heating and Vent Air-Conditioning System at Browns Ferry Nuclear Plant; (3) Additional Funding—Incore Thermocouple Upgrade Unit 1 at Watts Bar Nuclear Plant; (4) Decreased Funding—Upgrade Ion Chromatographs at Browns Ferry Nuclear Plant; and (5) Deferred Funding—Low-Level Radwaste Facility at Watts Bar Nuclear Plant.

B—Purchase Awards

B1. Invitation AA-08376A—Renovation of Old Post Office, Chattanooga, Tennessee, for Use of Office Space.

C—Power Items

C1. Agreement with Nashville and Eastern Railroad Authority for Continuation of Rail Service to TVA's Wilson 550-kV Substation in Wilson County, Tennessee.

D—Personnel Items

D1. Revised Pay Plan and Salary Schedule for Certain Management and Specialist Schedule Employees.

D2. Personal Services Contract with Sargent & Lundy, Engineers, Chicago, Illinois, for Engineering, Design, Drafting and Related Engineering, Construction, and Operations Support Services, Requested by Office of Nuclear Power.

D3. Supplement No. 1 to Personal Services Contract No. TV-71448A with Enercon Services, Inc., for Engineering Services Related to Nuclear Plant Licensing Activities, Requested by Office of Nuclear Power.

D4. Supplement No. 4 to Personal Services Contract No. TV-69766A with Associated Project Analysts, Los Gatos, California, for Assistance in the Development of Documentation for Nuclear Performance Plans for Sequoyah, Watts Bar, and Browns Ferry Nuclear Plants, Requested by Office of Nuclear Power.

D5. Supplement No. 4 to Personal Services Contract No. TV-65378A with Impell Corporation, Atlanta, Georgia, Providing for the Performance of General Engineering, Design, and Architectural Services, Requested by Office of Nuclear Power.

D6. Supplement No. 7 to Personal Services Contract No. TV-65379A with Gilbert/Commonwealth, Inc., Reading, Pennsylvania, Providing for the Performance of General Engineering, Design, and Architectural Services, Requested by Office of Nuclear Power.

D7. Personal Services Contracts for Engineering Services at Watts Bar Nuclear Plant, Requested by Office of Nuclear Power.

E—Real Property Transactions

E1. Sale of Permanent Easement to Edward L. Bass, Jr., for Landscaping, Open Space, and Driveway Purposes, Affecting a .33-Acre Portion of TVA's Fee-owned Ridgedale-Oglethorpe 161-kV Transmission Line Property Located in Walker County, Georgia—Tract No. XORG-1E.

E2. Modification of Deed to State of Tennessee Affecting Approximately 6.3 Acres of Cherokee Reservoir Land in Grainger County, Tennessee, To Allow for Expansion of State Route 32—Tract No. XTCK-19.

F—Unclassified

F1. Supplement No. 3 to Interagency Agreement (TV-67169A) with U.S. Department of Energy Providing for TVA Assistance in Project Management of Environmental Policy Studies Being Conducted at the Oak Ridge National Laboratory for DOE and the Environmental Protection Agency.

**CONTACT PERSON FOR MORE INFORMATION:** Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee Information is also available at TVA s Washington Office (202) 245-0101.

Dated: April 14, 1987.

W.F. Willis,

*General Manager.*

[FR Doc. 87-8722 Filed 4-15-87; 9:00 am]

BILLING CODE 8120-01-M

# Corrections

Federal Register
Vol. 52, No. 74
Friday, April 17, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 685

[Docket No. 60964-7028]

### Foreign Fishing; Pelagic Fisheries of the Western Pacific Region

*Correction*

In rule document 87-4119 beginning on page 5983 in the issue of Friday, February 27, 1987, make the following corrections:

**§ 685.6 [Corrected]**

On page 5988, in the third column:

1. In § 685.6(d)(1), in the first line, the Morse code should read "(.– .–)".

2. In § 685.6(d)(2), in the first and second lines, the Morse code should read "(.–. –.– –.–. –.–)".

3. In § 685.6(d)(3), in the first line, the Morse code should read "(... –.– ...–)".

4. In § 685.6(d)(4), in the first line, the Morse code should read "(.–..).

BILLING CODE 1505–01–D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-940-07-4220-11; NM 0301943]

### Proposed Continuation of Withdrawal, New Mexico

*Correction*

In notice document 87-6968 beginning on page 10268 in the issue of Tuesday, March 31, 1987, make the following corrections:

1. On page 10268, in the third column, the fourth line from the bottom should read "Sec. 34, S½NW¼SE¼."

2. On page 10269, in the first column, the fourth line should read "Sec. 34, W½NW¼NW¼."

BILLING CODE 1505–01–D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-118-07-4212-17; GP7-147]

### Public Lands, Establishment of Camping Stay Limit for Campgrounds and Undeveloped Public Lands, Medford District, OR

*Correction*

In notice document 87-6967 appearing on page 10268 in the issue of Tuesday, March 31, 1987, the subject heading is corrected to read as set forth above.

BILLING CODE 1505–01–D

## SELECTIVE SERVICE SYSTEM

### 32 CFR Part 1630

### Registrant Processing

*Correction*

In rule document 87-6126 beginning on page 8889, in the issue of Friday, March 20, 1987, make the following correction:

**§ 1630.16 [Corrected]**

On page 8891, in the first column, in § 1630.16(b) in the 14th line "with" should read "without".

BILLING CODE 1505–01–D

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### 31 CFR Part 103

### Amendments to Implementing Regulations Under the Bank Secrecy Act

*Correction*

In rule document 87-7797 beginning on page 11436 in the issue of Wednesday, April 8, 1987, make the following corrections:

1. On page 11436, in the third column, in the third complete paragraph, in the seventh line, "undertaken" should read "undertakes".

2. On page 11437, in the second column, in paragraph 5, in the second line, "transition" should read "transaction".

**§ 103.11 [Corrected]**

3. On page 11441, in the second column, in § 103.11(c), in the third line, insert "who" before "holds".

4. On the same page, in the third column, in § 103.11(j)(4), in the third line, insert "an" before "enterprise".

**§ 103.24 [Corrected]**

5. On page 11443, in the second column, the section number in the heading for § 103.24 was incorrect.

**§ 103.26 [Corrected]**

6. On page 11443, in the second column, in § 103.26(a)(1), in the fourth line, "responsible" should read "reportable", and in the same column, in § 103.26(b)(1), in the third line, "departure" was mispelled.

**§ 103.27 [Corrected]**

7. On page 11444, in § 103.27, in the first column, in the 18th line, "care" should read "card".

8. On the same page, in the second column, in amendatory instruction 12, in the second line, insert "of" after "(2)".

**§ 103.47 [Corrected]**

9. On page 11446, in the second column, in § 103.47(e), in the first line, "of violation" should read "violation of".

BILLING CODE 1505–01–D

Friday
April 17, 1987

Part II

# Environmental Protection Agency

**40 CFR Parts 280 and 281**
**Underground Storage Tanks; Proposed Rules**

BEST COPY AVAILABLE

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 280**

**[FRL-3154-6]**

## Underground Storage Tanks; Technical Requirements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today proposes regulations for underground storage tanks containing petroleum or substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended (except hazardous wastes regulated under Subtitle C of the Resource Conservation and Recovery Act).

Under Subtitle I, Section 9003 of the Resource Conservation and Recovery Act, as amended (RCRA), EPA must establish requirements for leak detection, leak prevention, financial responsibility and corrective action for all underground storage tanks containing regulated substances. Today's proposal sets forth, and solicits comment on, proposed requirements that would satisfy the mandates of Section 9003.

**DATES:** Comments must be received on or before June 16, 1987. Public hearings will be held on this rulemaking in conjunction with public hearings on the proposed UST State Program Approval Requirements, published elsewhere in today's **Federal Register**. Public hearings will be held from 9:30 A.M. to 5:00 P.M., unless concluded earlier, and will be carried over to a second day if necessary to allow commenters to speak who have requested to testify. These hearings are scheduled as follows:

1. May 28, 1987, 9:30 A.M. to 5:00 P.M., Washington, DC.
2. June 1, 1987, 9:30 A.M. to 5:00 P.M., Dallas, Texas.
3. June 4, 1987, 9:30 A.M. to 5:00 P.M., San Francisco, California.

Requests to present oral testimony must be submitted in writing and received at least one week prior to the scheduled hearing date.

**ADDRESSES:** Send comments to Docket Clerk, Office of Underground Storage Tanks (WH-562A), Docket No. UST 2-1, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Requests to testify at a hearing may be mailed to: Gerri Wyer, Hearings Coordinator, Office of Underground Storage Tanks (WH-562A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

Hearings will be held at the following locations:

1. Washington, DC—The Westin Hotel, 2401 M Street NW., Washington, DC 20037
2. Dallas—The Registry Hotel, 15201 Dallas Parkway, Dallas, Texas 75248
3. San Francisco—The Miyako Hotel, 1625 Post Street, San Francisco, California 94015.

**FOR FURTHER INFORMATION CONTACT:** RCRA/SUPERFUND Hotline, 1-(800) 424-9346; or in Washington, DC, 2-(202) 382-3000.

**SUPPLEMENTARY INFORMATION:** The contents of today's Preamble are listed in the following outline:

I. Authority
II. Background
  A. The Law: Subtitle I of RCRA
  B. Description of the Underground Storage Tanks (UST Systems) to be Regulated
    1. Number of Tanks and Facilities
    2. Types of Tanks
    3. Age of Tanks
  C. General Status of Existing Industry, State and Local Practices
III. The Scope and Nature of the Problem
  A. Current Estimates of Leaking UST Systems
    1. EPA Studies
    2. Some Local Government Experiences
    3. Industry Estimates
    4. The Nature and Extent of the Problem
  B. Major Causes of Releases
    1. Corrosion
    2. Installation Failure
    3. Piping Failure
    4. Spills/Overfills
  C. Technical Options Available to Address Causes of Releases
    1. Corrosion Protection
    2. Design and Construction Standards
    3. Spill and Overfill Equipment and Practices
    4. Inspections
    5. Operation and Maintenance
    6. Release Detection Requirements
IV. Important Influences on Today's Proposal
  A. Recommended Industry Practices and National Consensus Codes
  B. Current Status and Future Role of State and Local UST System Programs
  C. Major Trends in the Industry
  D. Small Business Impacts
V. Today's Proposal
  A. Summary of Today's Proposal
  B. Considerations Underlying EPA's Proposed Approach
  C. Options Considered for New and Existing UST Systems
    1. New Petroleum UST Systems
    2. Existing Petroleum UST Systems
    3. New and Existing Hazardous Substance UST Systems
  D. Options Considered for Corrective Actions
    1. Petroleum UST Systems
    2. Hazardous Substances UST Systems
  E. Two-Tiered Regulatory Scheme for Petroleum Tanks; Basis for Determining Class
VI. Analysis of Today's Proposed Rule
  A. Program Scope
    1. Applicability
    2. Exclusion for Tanks Regulated Under Subtitle C
    3. Deferral of Regulation
    4. Definitions
  B. Design, Installation, and Notification Requirements
    1. Performance Standards for New UST Systems
    2. Implementation Schedules for Upgrading of Existing UST Systems
    3. Notification Requirements
  C. General Operating Requirements
    1. Spill and Overfill Controls
    2. Operation and Maintenance of Corrosion Protection
    3. Compatibility
    4. Repairs
    5. Recordkeeping
  D. Release Detection
    1. General Strategy
    2. General Requirements for All UST Systems
    3. Requirements for New UST Systems
    4. Secondary Containment for New Hazardous Substance UST Systems
    5. Additional Requirements for Piping at New UST Systems
    6. Requirements for Existing UST Systems
    7. Release Detection Recordkeeping
  E. Release Reporting and Investigation
  F. Corrective Action Requirements for Petroleum UST Systems
    1. Stage I: Immediate Corrective Action Steps
    2. Stage II: Longer-Term Corrective Action
    3. Responsibilities of Implementing Agencies
    4. Enforcement
  G. Corrective Action Requirements for Hazardous Substance UST Systems
    1. Stage I: Immediate Corrective Action Steps
    2. Stage II: Longer-Term Corrective Action
    3. Responsibilities of Implementing Agencies
    4. Enforcement
  H. Out-Of-Service UST Systems and Closure
VII. Relationship to Other Aspects of the UST System Program
  A. Interim Prohibition
  B. Notification
  C. Leaking Underground Storage Tank Trust Fund
  D. Exempted Tank Studies
VIII. Relationship to Other Agency Programs
  A. CERCLA
  B. Hazardous Waste Tank Program
  C. Used Oil Regulations
  D. Stage II Vapor Recovery Program
  E. SPCC
  F. DOE High-Level Radioactive Waste Program
IX. Economic and Regulatory Impacts
  A. Regulatory Impact Analysis

B. Regulatory Flexibility Act
C. Paperwork Reduction Act
X. Review of Supporting Documents and Request for Public Comment
XI. Schedule of Public Hearings
XII. List of Subjects in 40 CFR Part 280

## I. Authority

These regulations are issued under the authority of Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(g), 6991(h)).

## II. BACKGROUND

### A. The Law: Subtitle I of RCRA

The Hazardous and Solid Waste Amendments of 1984, Public Law 98–616, were signed by the President on November 8, 1984. These Amendments extend and strengthen the provisions of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA) of 1976. One major portion of this new legislation, Subtitle I, provides for the development and implementation of a comprehensive regulatory program for "underground storage tanks."

Subtitle I defines "underground storage tank" as "any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground." Throughout this Preamble and proposed rule the use of the term "underground storage tanks," "USTs," and "UST systems" are meant to include both the underground storage tank vessel and the underground piping connected to it. The use of the word "tank" pertains to only the storage tank vessel itself. "Regulated substances" are defined as either petroleum or substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) (except hazardous wastes regulated under Subtitle C of RCRA).

Subtitle I excludes the following from the definition of underground storage tanks:

- Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- Tanks used for storing heating oil for consumptive use on the premises where stored;
- Septic tanks;
- Pipeline facilities (including gathering lines) regulated under (a) the Natural Gas Pipeline Safety Act of 1968; (b) the Hazardous Liquid Pipeline Act of 1979; or (c) which are interstate pipeline facilities regulated under state laws comparable to the provisions of the laws referred to in (a) and (b) above;
- Surface impoundments, pits, ponds, or lagoons;
- Storm water or wastewater collection systems;
- Flow-through process tanks;
- Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
- Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

Subtitle I contains several major provisions for the regulation of UST systems. Section 9002 requires UST system owners to notify states of the existence of their UST systems. These notification requirements were addressed in a Final Rule published by EPA (50 FR 46602, November 8, 1985). Section 9002, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), also requires that states use the notifications they receive to compile tank inventories. Also, under federal grant agreements states are providing EPA with aggregated data from these notifications.

Under Section 9003 of Subtitle I, EPA must promulgate regulations applicable to all owners and operators of UST systems to protect human health and the environment. This section requires that EPA issue design, construction, installation, and compatibility standards for new tanks as well as requirements applicable to all tank owners and operators concerning leak detection, recordkeeping, reporting, closure, corrective action, and financial responsibility.

Section 9003(h) was recently added by the Superfund Amendments and Reauthorization Act of 1986 (SARA). This provision gives EPA (and states under cooperative agreements with EPA) authority to clean up releases from UST systems or to require their owners and operators to do so. It also establishes a trust fund to finance some of these activities.

Section 9004 permits EPA to authorize states to implement their own UST programs in lieu of the federal program if their requirements are "no less stringent" than EPA's and provide for adequate enforcement.

Other provisions of Subtitle I pertain to definitions (Section 9001); entry, inspection, and information-gathering (Section 9005); enforcement (Section 9006); federal facilities (Section 9007); state authorities (Section 9008); and studies and reports to Congress required of EPA (Section 9009).

This Preamble and proposed rule pertain to the requirements mandated by Sections 9003(a) and (c)–(e). Proposed financial responsibility requirements under Section 9003(a) and (d) and state program approval requirements under Section 9004 are proposed in other parts of today's **Federal Register.**

Section 9003(c) requires that EPA establish minimum requirements for all UST systems: to maintain a leak detection system or comparable system designed to identify releases to protect human health and the environment; to maintain records of any such release detection system; to report releases and corrective action taken; to take corrective action in response to a release; and to close tanks to prevent future releases. Under Section 9003(e), EPA must also establish performance standards for new UST systems. At a minimum, these standards must include design, construction, installation, release detection, and compatibility standards.

Until UST system regulations for new tanks are promulgated, Section 9003(g) establishes an "Interim Prohibition" that allows installation of UST systems after May 8, 1985 only if the UST system 1) will prevent releases due to corrosion or structural failure for the operational life of the UST, 2) is cathodically protected against corrosion, constructed of noncorrodible material, or otherwise designed to prevent releases, and 3) is compatible with the substance to be stored. The law allows an exemption from the requirement of corrosion protection if an UST system is located at a site that has a soil resistivity measured at 12,000 ohms/cm or greater. These requirements will be replaced when final new tank standards under Section 9003(e) become effective. An interpretive rule concerning the Interim Prohibition was published on June 4, 1986 (51 FR 20418).

This Preamble will describe in detail the full range of requirements mandated by Sections 9003(a), (c)(1)–(5), and (e). A description of the UST system universe to be regulated by these requirements follows.

**B. Description of the Underground Storage Tanks (UST Systems) To Be Regulated**

*1. Number of Tanks and Facilities*

Today's proposed regulation will apply to an estimated 1.4 million UST systems owned or operated at over 500,000 facilities. EPA estimates that over 95 percent of the estimated 1.4 million UST systems are used to store petroleum. Among these petroleum UST systems, there is a fairly even split between the retail motor fuel sales industry (676,000 tanks) and a number of other industries primarily storing petroleum products for their own use (651,000 tanks). EPA estimates that about 4 percent of the total number of UST systems affected by this proposal contain hazardous substances (54,000 tanks).

The following table displays the number of tanks and facilities appearing in various industry sectors.

TABLE 1

| Industry sector | Number of UST systems | Number of facilities |
|---|---|---|
| RETAIL MOTOR FUELS | (676,000) | (193,000) |
| Refiners | 184,000 | 47,000 |
| Jobbers | 161,000 | 46,000 |
| Convenience Stores | 92,000 | 15,000 |
| Independent Chains | 18,000 | 5,000 |
| Open Dealers | 281,000 | 80,000 |
| PETROLEUM STORAGE | (651,000) | (296,000) |
| Agriculture | 86,000 | 54,000 |
| Mining | 14,000 | 6,000 |
| Construction | 42,000 | 21,000 |
| Manufacturing | 75,000 | 30,000 |
| Transportation | 58,000 | 25,000 |
| Communications & Utilities | 39,000 | 19,000 |
| Wholesale & Retail Trade | 136,000 | 65,000 |
| Services | 54,000 | 26,000 |
| Government (Military) | 49,000 | 5,000 |
| (Non-Military) | 98,000 | 46,000 |
| CHEMICAL STORAGE | (54,000) | (21,000) |
| Manufacturing | 27,000 | 8,000 |
| Wholesale & Retail Trade | 14,000 | 8,000 |
| Services | 3,000 | 1,500 |
| Other Private Sectors | 6,000 | 3,000 |
| Federal Government | 2,000 | 500 |
| State & Local Government | 2,000 | 2,000 |
| Totals | [1] 1,381,000 | [1] 512,000 |

[1] These estimates do not include potentially millions of unusual or small UST systems discussed in Section VI.A. of this Preamble. For example, there are approximately 750,000 hydraulic lift fluid USTs.

*2. Types of UST Systems*

UST systems generally consist of the following:

- Steel UST systems not protected from corrosion ("bare steel tanks");
- Steel UST systems protected with a noncorrodible coating;
- Steel UST systems with cathodic protection;
- Steel UST systems with a noncorrodible coating and cathodic protection;
- UST systems made totally of noncorrodible materials; and
- UST systems, made of noncorrodible materials or protected steel, using secondary containment systems.

Steel UST systems can be protected against corrosion by applying a coating of noncorrodible material, such as fiberglass-reinforced plastic or coal tar epoxy, or by using cathodic protection (described below in Section III.C.1.). Tanks constructed of noncorrodible materials are usually made of fiberglass-reinforced plastic (FRP). Secondary containment systems are designed to restrict leaks temporarily to a containment area where they can be rapidly detected by leak detection monitors. There are three main types of secondary containment: double-walled tanks, pit lining systems, and vaults.

Of the estimated 1.4 million existing UST systems, approximately 80 percent are believed to be constructed of unprotected steel. As a result of the Interim Prohibition and installation trends in the petroleum industry, however, the number of bare steel UST systems being installed today has significantly declined. For example, the Steel Tank Institute recently reported a dramatic rise in the production and sale of coated and cathodically-protected steel tanks in the United States. They indicate that the cumulative number of STIP[3] tanks installed nationwide since the late 1960s was doubled in one year (1986) from approximately 35,000 to over 70,000 tanks. STI members further estimate that in 1987 approximately 90 percent of the steel tanks they produce will be coated and cathodically protected. (Some manufacturers are now refusing to sell bare steel tanks.) Preliminary data from several state UST programs (for example, Florida, New York, California, Kansas and North Carolina) corroborate this trend away from bare steel tanks. New tanks are reported most commonly to be made out of coated and cathodically-protected steel, and fiberglass reinforced plastic (FRP), and FRP-clad steel.

*3. Age of Tanks*

Most existing UST systems have already been in the ground for more than ten years. A recent EPA study, *Underground Motor Fuel Storage Tanks: A National Survey*, found that approximately one third of the existing motor fuel storage tanks are over 20 years old or of unknown age. The survey reported a mean tank age of 12 years for large facilities and 14 years for smaller facilities.

**C. General Status of Existing Industry, State, and Local Practices**

A number of states and localities have adopted requirements applicable to UST systems. These requirements are diverse and vary widely in stringency. Because leaking petroleum UST systems have led to fires and explosions, early state and local UST regulations have focused on fire code authorities, primarily emphasizing concerns with immediate public safety. National consensus codes, such as the National Fire Prevention Association's NFPA 30 and 329, have been adopted by many state and local governments.

At least fourteen states have recently addressed the ground-water contamination and cleanup problems posed by leaking UST systems through comprehensive regulatory programs that attempt to control important aspects of proper UST system management. Several states, like California, New York and Florida, have established specific UST system regulations that include standards for new UST system design, construction and installation; closure, retrofitting, or repair of existing UST systems; release detection; and corrective action requirements.

Numerous non-regulatory initiatives in UST system management include existing recommended industry practices and state-of-the-art professional guidances. For example, the American Petroleum Institute, the Steel Tank Institute, Underwriters Laboratories, the National Association of Corrosion Engineers, and the American Society for Testing and Materials continue to provide benchmark standards for design and materials. Steel and fiberglass tank manufacturers also supply specifications for tank installation and maintenance.

It appears that the Interim Prohibition of Section 9003(g) reinforces current industry and regulatory trends. As previously mentioned, estimates provided to EPA from several representatives of tank manufacturers

and state agencies indicate a sharply increasing trend towards corrosion-protected underground tank systems. The American Petroleum Institute conducted a survey of its membership and reported in December 1984 that 83 percent of the major and semi-major oil companies (which include a total of approximately 175,000 UST systems) have formal plans for scheduling tank replacements and upgrading. Most of these companies are installing single-walled FRP tanks.

Despite these positive trends, however, many other sectors of the retail motor fuel sales industry (e.g., many independent retail marketers) currently appear to have no clear plans to upgrade or replace their aging, corrosion-prone UST systems. The non-retail petroleum and hazardous substance tank sectors also appear to display a wide variety of responses to upgrading and replacement of tank systems. Also, most existing UST systems do not yet have release detection. However, this situation is seen to be rapidly changing in the several state or local communities that have recently enacted UST regulatory programs. All these programs have or are phasing in some type of release detection.

## III. THE SCOPE AND NATURE OF THE PROBLEM

### A. Current Estimates of Leaking UST Systems

*1. EPA Studies*

A display of the nature and national scope of the UST problem can be found in three EPA studies. First, in May 1986, EPA published *Underground Motor Fuel Storage Tanks: A National Survey*. In addition to providing data on tank types and ages (briefly referred to earlier in this Preamble), this survey documents the results of a methodical program of tank tightness testing. Using a statistical sample, the study estimates that 35 percent of non-farm UST systems storing motor fuel would prove non-tight under the conditions of a tank tightness test. However, the survey report acknowledges several caveats regarding the interpretation of this data. For example, failing a tank tightness test does not necessarily indicate the tank or piping is leaking under non-test conditions. Under normal operating conditions vent pipes and bung hole fittings on the top of the tank do not come in contact with the substance stored in the tank and, therefore, cannot leak (however, they can leak whenever the tank is overfilled). In contrast, faulty piping that conveys the substance stored in the tank by the use of pressure pumps can potentially result in significant releases into the environment under normal operating conditions. The survey revealed, however, that most of the existing piping systems tested do not convey motor fuel using pressure pumping methods, but instead use suction methods. EPA believes suction methods are significantly less likely to result in large releases. (See Section VI.D.5. of today's Preamble for further discussion of pressure versus suction piping.)

This national survey underscores the difficulty in discovering the extent and cause of the UST "problem." Statistical analysis of the data collected could not identify any single explanatory variable—such as type of tank or type of material stored—that strongly correlated with the fact that an UST failed a tank tightness test, with one exception: UST systems 20 years old or older failed the test more often. For example, the survey results could not distinguish the extent of the non-tightness attributed to loose fittings on top of the tank or faulty vent pipes and other piping and equipment.

A second study, *Summary of State Reports on Releases from Underground Storage Tanks*, was published in August 1986. This study was based on information compiled by all 50 states concerning 12,444 reported UST release incidents that occurred between 1970 and 1984. Although it was not a statistically-based survey, this study represents the most comprehensive information pertaining to leaking UST systems currently available.

The study found a continuously increasing number of release incidents reported over time. In 1980, about 1,000 release incidents were reported. By 1985, the number of releases reported annually had jumped to well over 2,500. This sharp increase may partly be the result of improvements in state reporting systems. Most leaks were detected only after observation of obvious impacts on nearby private water wells, surface waters, basements, utility lines or soils. Leak detection usually resulted when someone saw or smelled the release—only about 10 percent of these state-reported release incidents were discovered by inventory controls or mechanical leak detection. Nearly all of the leaks involved petroleum, and most of those occurred at service stations. Corrosion and improper installation were identified most often as the cause of the leak. Leaking tanks were much more often identified to be the cause of reported releases than faulty piping. However, the volumes of the releases from piping were often estimated by state inspectors to be as large as or greater than those from leaking tanks. Piping leaks generally were also found to occur sooner in the life of the UST system than tank leaks. As with the earlier national survey, no single identifiable variable—such as tank system age or type—strongly correlated in the state release incidents survey with the fact that an UST was reported as leaking. Although only 17 percent of the state release incident reports specified impacts, those that did reported 40 incidents threatening contamination of municipal potable ground-water supplies and 749 incidents contaminating private ground-water wells (or a total of 8 percent of all reported incidents).

EPA recently sponsored another study focusing on experiences in 20 localities (either counties or cities): *Executive Summary of County/City Release Incidents* (Draft, 1986). Of the 908 local release incidents identified in this study, only about 10 percent had been identified in the previous state study. This study provides evidence that many release incidents do not appear in the state reporting systems. As a result, the state release incidents study referred to above may be describing only a fraction of release incidents nationwide. The local incident study confirms a trend also documented by the state study: more release incidents are being reported each year. For example, there were over 60 percent more release incident reports registered locally in 1985 than in the previous year.

As with the earlier studies, the local release incidents survey revealed that no single variable (such as tank type or age) correlated strongly with the leaking UST systems. However, because most existing UST systems are made of bare steel, corrosion was identified as the chief cause of releases from existing UST systems. Of the tank systems reported to have releases, the distribution of their ages and types was comparable to the earlier studies. Unlike previous studies, however, the local incident survey provided more detailed information on the impact of releases to the environment. About 80 percent of the reported release incidents resulted in soil contamination of 0.5 acres or less. About half the release incidents reporting ground-water contamination impacted 0.5 acres or less of the aquifer to a depth of less than 20 feet. Also, this study identified a strong relationship between the year leak detection requirements became effective in these local jurisdictions and an increase in the number of leaks they reported.

*2. Some Local Government Experiences*

Data collected locally also provide an indication of the number of UST systems that are currently leaking. New York's Suffolk County instituted tank testing requirements in 1980. The data from approximately 6,200 tightness tests required by the county's Health Department from 1980–1986 reveal that 26 percent of the tank systems failed under the conditions of the test. When these failed systems were partially unearthed and investigated, the condition of non-tightness was discovered (by more than a 10 to 1 margin) to be primarily caused by loose fittings on top of the tank or faulty piping in need of repair or replacement. Interviews conducted in 1985 with county health officials and a major local tank installer disclosed to EPA staff that the cumulative failure figures could have been much higher than reported, because many leaking tanks were voluntarily taken out of the ground after 1980 but before they could be tested under the county's program requirements. Tank testing programs in Austin, Texas, and in San Diego, California, (in which thousands of tank systems have been tested) corroborate the finding that most UST systems failing a tightness test do not appear to have leaks in the tanks, but rather loose fittings on top of the tanks and faulty piping in need of tightening or replacement.

A review of ground-water monitoring systems applied to tanks in Florida's Dade County was cited to EPA by county officials as revealing the presence of free-floating petroleum on the ground-water at approximately 10 percent of the sites where monitoring wells were installed on the top of the ground-water table. After further investigation at many of these sites, it was determined that these releases often resulted from an accumulation of spills and overfills that took place in the past.

*3. Industry Estimates*

The findings from some industry-sponsored studies have tended to suggest that there are very few leaking UST systems. The American Petroleum Institute conducted a survey of its membership over a three-year period ending in 1980 and had only 2,000 release incidents voluntarily identified nationally (*American Petroleum Institute Tank and Piping Leak Survey*, API Committee on Safety and Fire Protection, Washington D.C., 1981). The survey notes that data submittal was voluntary and that the number of leaks were underreported. The survey did not document the effect of releases on the environment. The survey indicated corrosion as the leading cause of leaks—over 60 percent of reported incidents.

A more recent study resulted from a merger of two companies that required the tightness testing of over 3,500 UST systems (letter to Mr. Ron Brand, Director, Office of Underground Storage Tanks, from Chevron, dated June 2, 1986). The report on this company-sponsored testing program notes that the facilities involved represented a typical cross-section of a major oil company's service stations. Using current testing procedures, all tanks were given a tank tightness test and less than 10 percent failed the test. Of that group, after further investigation, less than 2 percent were reported to have actually leaked, but instead were primarily discovered to have loose fittings on top of the tank. Looked at from a facility-wide standpoint, however, this study suggests a wider impact on the environment than do the data from tightness testing of the specific tank systems. At 90 facilities, one observation well (not necessarily in the excavation area) disclosed the presence of released petroleum products pooled on top of the ground-water table. Although 56 of these facilities had passed the tank tightness test, observation wells disclosed the presence of leaked fuel on top of the ground-water. Thus, this study's conservative figures show that releases from approximately 9 percent of these service stations (that is, 90 out of approximately 1,000 facilities) have had an adverse impact on adjacent ground-water. It is possible that many of these impacts may be the result of an accumulation of spills and overfills or earlier releases from subsequently repaired UST systems, and *not* from a currently leaking tank system.

*4. The Nature and Extent of the Problem*

In summary, the nation may be facing a pervasive threat to its ground-water from leaking UST systems. If even only 10 percent of the nation's gasoline service stations have leaked or are leaking (as one company-sponsored testing program of a typical cross-section of retail motor fuel outlets indicated), then releases to ground-water could exist at approximately 17,500 retail gasoline sites nationally. Many of these releases could be damaging ground-water resources and presenting threats to human health and safety. As stated earlier, retail motor fuel outlets account for only half of the UST systems addressed by today's proposals. Therefore, the actual level of existing impacts to ground-water could be significantly greater than noted above.

Despite these study findings, major uncertainties still remain. For example, fewer cases of potable well contamination have been reported and documented than should be expected with the number of releases that appear to be occurring. EPA is uncertain whether biodegradation, attenuation, the characteristics of petroleum products or other factors combine with slow ground-water movement to eliminate the problem before potable ground-waters are affected; or perhaps some other factor accounts for the proportion of contaminated wells being reported, On the other hand, it may be only a matter of time before more impacts from these numerous suspected leaks become known.

More information on these and related issues regarding the exact magnitude of the problem, or potential problem, associated with underground tanks will become available over the next several years; particularly as the release detection requirements in several lead state UST programs are implemented more fully. The findings to date, however, are sufficient to demonstrate that leaking underground tanks may be a common occurrence throughout the nation. Significant impacts have occurred; in most cases the release is detected inadvertently, by sight or smell; and a variety of available control approaches that can be used to reduce the risk of damage to public health and the environment are not yet being implemented on a widespread basis. The following sections briefly describe the major causes of UST system releases; technical options for addressing releases; and current industry, state, and local attempts to resolve the problem.

**B. Major Causes of Releases**

There are four major causes of release incidents: corrosion; faulty installation; piping failure; and spills and overfills. These four causes are described in the following sections.

*1. Corrosion*

Corrosion is reported to be the major cause of leaks from bare steel UST systems. The EPA surveys described above found that 60 to 70 percent of leaks from existing steel underground storage tank systems are reported as caused by corrosion. Because a very large number of existing UST systems are constructed of steel that is unprotected from corrosion, corrosion is presently believed to be the cause of the largest number of releases in general.

Like the more publicly seen and understood phenomenon known as "rust," corrosion is a general description of what happens when hard, manufactured metal breaks down in the underground environment into its natural form as a soft ore. The multiple ways in which corrosion works underground make it a particular threat to bare steel UST systems. The speed and severity of corrosion depend on a number of factors, including soil conditions, ground water location, and tank or piping characteristics. Corrosion can occur over an entire surface or be localized at a few spots (point corrosion). When localized, unprotected metal can corrode very quickly.

Corrosion attacks unprotected steel UST systems mainly through galvanic corrosion. In this case, the bare steel tank system and its underground surroundings act like a battery. For example, part of an unprotected tank can become negatively charged and another part positively charged (or the bare steel tank and its connected piping can become differently charged, particularly if the piping is galvanized). Once a connection is made between these differently charged parts of the system, a full electric circuit is completed. Many factors can account for the slight differences in the charged parts, including even minute differences within the metal on the surface of the same bare tank or between the bare metal of a pipe's thread (or joint) and the pipe itself. Various soil conditions provide the connecting link to complete the electric circuit.

Once the electric circuit begins, the negatively charged part of the tank or piping—where the current exits—starts to deteriorate (sometimes very rapidly). As electric current passes through this part, the metal begins to turn into ore. Eventually holes are formed by this galvanic corrosion and the tank or piping leaks.

A variation of this problem occurs when the UST system is in the path of underground electric currents. For example, if a subway system or other power system operates near an unprotected UST system, stray current from that system can pass through the UST system. When stray electric current passes through an unprotected steel UST system, corrosion—like the galvanic corrosion described above—occurs in the area where the current leaves the tank or piping.

The rate at which this localized corrosion occurs is directly related to the intensity of the stray current. The larger the current, the faster the corrosion rate. Stray currents are often many times stronger than the currents in galvanic corrosion. Thus, stray current corrosion may occur over a wide surface area of a tank or pipe and at some distance from the power source.

Corrosion can be caused by many conditions and these conditions are almost always present when bare steel is placed underground. In addition, corrosion is generally a gradual process. Thus, the longer unprotected steel tanks or piping are in the ground, the more likely they will be subjected to the many conditions that promote corrosion.

*2. Installation Failure*

Another significant but less frequently reported cause of leaking UST systems is failure resulting from improper installation. EPA's local release incident study found about 25 percent of the release incident reports cited improper installation (often reported as "structural failure") as the cause of the release (*Executive Summary of County/City Release Incidents*, Draft 1986). Improper installation is a term that encompasses a variety of problems. According to industry reports and consensus codes, installation mistakes that can cause tanks or piping to leak include:

- Inadequate pit and trench design;
- Improper handling of a tank at a site;
- Improper tank bedding and placement;
- Poor or unsuitable backfill material and/or compaction procedure;
- Improper tank or piping depth;
- Inadequate anchoring in high ground-water table conditions; and
- Improper installation of attachments, particularly the fittings on the piping.

The term "structural failure" was often used to describe a wide range of causes of tank releases. For example, the most common "structural failure" reported by state agencies resulted from vehicles colliding with gasoline pumps. Other reported causes of structural failure provided in EPA's State Release Incident Survey also point to accidents, or poor installation practices, rather than integral deficiencies in the tank or piping structure (such as improper anchoring of tanks or the rupture of tanks and piping caused by excessive external load due to vehicular traffic, backhoes, shovels, or snow plows).

*3. Piping Failure*

According to EPA's State Release Incident Survey, over 20 percent of reported releases from UST systems resulted from failure of underground piping. The same study identified piping as the location of over 50 percent of reported structural failure incidents. Also, piping failures accounted for more of the largest release incidents than either tanks or surface spills. Although this was not a statistically-based survey, the number and proportion of the incidents resulting from piping failures was an important finding. These figures underscore the necessity that today's proposed regulations for release prevention and release detection apply to the tank system's piping, as well as to the tanks themselves.

As noted in the sections above, piping is subject to the same harmful effects of corrosion and installation/structural failure that affect tank failures. As a result of its thinner walls, numerous connecting parts, and more vulnerable location nearer the ground surface, piping may be more susceptible to corrosion and installation/structural failure than tanks. More than half the piping structural failures were reported to occur in the supply line between the tank and the pump; however, a significant number of the documented failures involve the fill pipe, loose pipe fittings, and the vent pipe.

As was discussed previously, several locally-required tightness testing programs have resulted in the recent testing and evaluation of several thousands of existing tank systems nationwide. Further investigations of the non-tight systems have consistently implicated the faulty condition of the piping, vent lines, and fittings on top of the tank much more often than the tanks themselves. Although the phenomena of UST system failures are not yet completely understood and documented by EPA, evidence to date from the field appears to indicate that piping failures may be a more common occurrence than tank failures (particularly if a loose bung hole cover on top of the tank is not considered a "tank failure"). Although the results of the State Release Incidents Study do not indicate such a preponderance of piping-related releases, the in-the-field tightness testing results do not necessarily contradict those study findings. Many of the incidents reported by the states were identified because of the impacts of these releases in the surrounding environment. A significant amount of faulty piping is apparently not having noticeable (and reportable) impacts. This is a plausible result given the still predominant use of suction pumping methods at existing tank systems nationwide.

*4. Spills/Overfills*

According to the *Summary of State Reports on Releases from Underground Storage Tanks*, about 15 percent of the

release incidents studied resulted from surface spills—usually spills caused by human error. These spills occurred during transfer operations as the stored product moved from delivery truck to storage tank.

Although these spills are usually small, frequent spills can accumulate to sizable volumes over a period of time. Even repeated small spills eventually contaminate the soil and can affect groundwater. Repeated spills may increase the corrosive nature of soil and thus accelerate the corrosion of unprotected steel tanks and piping. Further, spilled material is not detected by in-tank leak detectors and can interfere with the capability of external monitors to detect leaks from the UST system.

There are two major types of spills. *First,* product transfer spills occur when the couplings on the ends of the discharge hose are improperly disconnected and release the stored product onto the ground. Transfer spills normally occur near the tank fill pipe area and release liquid into the manhole around the fill pipe. Eventually, these releases can contaminate the groundwater, because the soil around the manhole is usually very porous to allow for water drainage. *Second,* spills occur when the storage tank is overfilled during delivery operations. When the tank liquid level exceeds the tank capacity, stored product escapes onto the ground around the fill pipe's openings or out of the vent pipes.

### C. Technical Options Available to Address Causes of Releases

Generally, the technical options available for preventing releases from UST systems fall into the following categories: (1) design, construction and installation requirements; (2) corrosion controls; and (3) operation and maintenance requirements (e.g., spill and overfill controls). Options for detecting releases when they occur may include inspections or requirements for a release detection system. EPA has considered the advantages and disadvantages of each of the available technical options and the degree of assurance they provide individually and jointly for protection of human health and the environment. The following paragraphs describe these technical options in greater detail.

#### *1. Corrosion Protection*

One way to protect steel tank system components from corrosion is to disrupt the UST "battery" (as described earlier) by reversing its electric circuit. Galvanic corrosion results when an electric current leaves the tank. If the flow of current is reversed, tank corrosion can be stopped. This kind of protection is called "cathodic." Cathodic protection systems reverse current flow by using either sacrificial anodes or impressed current. "Sacrificial anodes" can be attached to the UST system. Sacrificial anodes are pieces of metal more electrically active than the steel UST system. Since these anodes are more active, the electric current will exit from them rather than the tank. Thus, the "cathode" of the tank remains protected and free of corrosion while the attached "anode" is sacrificed. An "impressed current" protection system introduces an electric current into the ground through a series of anodes *not* attached to the UST system. Because the electric current flowing from these anodes to the tank system is greater than the corrosive current flowing away from the tank, the UST system is protected from galvanic corrosion. Regardless of which cathodic protection system is selected, the system requires monitoring because soil and tank conditions can change over time and alter cathodic protection needs.

Steel UST systems can also be protected from corrosion by applying coatings of a noncorrodible material, by isolating the tank electrically, and by adding soluble corrosion inhibitors to the regulated substance being stored. (Of course, tanks can also be constructed totally of noncorrodible materials.) Corrosion is a complex process that is influenced by many variables, many of which are site-specific. This complexity, particularly with respect to retrofitting corrosion protection on existing tanks, makes it difficult for owners and operators to select the optimum corrosion protection system without outside expert assistance. For new tank systems, this selection process is much easier. Protection systems are available that are premanufactured as part of the tank at the factory, but even these systems must be properly isolated from attached piping, which itself must be separately protected. Even when the optimum system has been selected, it must be properly installed and maintained or the effectiveness of the system is degraded. Over 100,000 tanks with premanufactured protection systems have been installed nationwide. The manufacturers of these tanks now provide 30 year warrantees and report no failures to date due to corrosion that have resulted in releases.

When properly designed, installed, and maintained, several corrosion control methods, or combinations of methods, will provide significant protection against corrosion. The Agency recognizes no system as foolproof, however, and believes human error or negligence will over time eventually result in some corrosion-induced releases, even from some protected systems. While they are not expected to be sufficient to prevent all corrosion-induced failures, the Agency has concluded that available corrosion protection measures can significantly reduce corrosion from current levels.

#### *2. Design and Construction Standards*

According to EPA's State Release Incidents Survey, a number of UST releases have been attributed to structural failure, especially releases from FRP tanks. There is no hard evidence, however, that these structural failures are the result of deficiencies in design and fabrication standards or workmanship at the factory. Rather, the evidence suggests that poor installation practices account for most of these releases. For example, a tank that is adequately designed is dependent upon proper backfill for structural integrity.

Most new tanks and piping have been designed to the standards set forth in national consensus codes. Even the vast majority of existing UST system components are believed to have been professionally designed and tested to withstand normal stresses and load with an extra margin of safety. Thus, besides corrosion-induced failures, most structural failure in the tank or piping itself is the result of improper installation practices.

Although information on proper UST system installation practices is provided in many local consensus codes, such guidance is often inadequate because details are frequently vague. More detailed national codes and industry-recommended practices covering underground tank system installation are found in the Petroleum Equipment Institute's "Recommended Practice 100–06" (1986); the National Fire Protection Association's "Flammable and Combustible Liquids Code 30" (1984); and the American Petroleum Institute's Publication 1615, "Installation of Underground Petroleum Storage Systems" (1979). These documents were developed for petroleum storage, but installation procedures for tanks used in other liquid storage situations are very similar. Tank manufacturers have also developed detailed, explicit installation recommendations. If these recommendations were followed carefully, many installation problems that may lead to eventual tank failures could be prevented. Even while using these more detailed codes, however, installations are subject to human error and abuse. Thus, installation-caused

releases can be significantly reduced by adherence to proper practices, but EPA does not believe that they can be eliminated entirely.

As noted previously, structural failures are reported to commonly occur in underground piping and ancillary equipment. Many such failures are suspected to be caused by corrosion that eventually results in these weakened systems succumbing to the typical mechanical and thermal stresses that occur during daily operations. Some piping releases are also due to sloppy installation practices, such as incomplete tightening of fittings or improperly installed seals. Thus, even if piping and ancillary equipment are corrosion protected, EPA believes that some releases will still occur due to human error or negligence in adherence to proper installation procedures.

*3. Spill and Overfill Equipment and Practices*

Many releases have been traced to spills and overfills that occur during day-to-day operations. These releases usually result from human error. Overfills appear to represent a significant portion of operation and maintenance releases, yet they pose different problems from those associated with leaks from UST systems. For example, when an overfill occurs, the volume released is limited and cleanup can usually take place quickly.

Because these spills are more limited and immediately obvious than releases from UST systems, engineered safeguards, such as overfill alarms, shutdown pumps, or catchment basins around the fill pipe can be installed to help prevent many spills and overfills. Recommended industry practices, such as NFPA 30, also provide procedures that can be followed during the tank filling process to avoid spills and overfills. Further discussion of spill and overfill management controls and equipment appears below in Section VI.C.1.

*4. Inspections*

Physical inspections can be conducted of the UST system site and equipment in order to detect existing releases and/or to identify problems that could lead to releases if not repaired. Early responses to releases or threatened releases can reduce risks to human health and the environment.

Inspections in conjunction with tank tightness tests, soap tests, air pressure tests and spark tests (for protective coatings) can be most usefully conducted at the time of UST installation to assure the integrity of the new system. Since most UST systems are buried completely underground, inspections of the installation are not very useful after installation is completed.

The inside of the tank can be inspected if the tank has a manway entrance and the tank is carefully cleaned out before internal inspection begins. Periodic internal inspections are a widespread practice in Europe, but they are rare in this country because most of our tanks do not have manways. Available internal inspection equipment includes penetrant dyes, vacuum boxes (for seam testing), ultrasonic instruments and radiographic equipment. Some of this equipment, however, does not provide a clear indication of the current status of an UST system's integrity or condition, particularly on the outside of the tank. None of these methods can be applied to underground piping because it is generally covered and inaccessible to inspection.

*5. Operation and Maintenance*

The exercise of good housekeeping practices and the proper operation and maintenance of equipment can further curtail releases from UST systems. Periodic maintenance of serviceable equipment such as pumps, accessible valves and dispenser units can forestall their breaking down and perhaps leaking due to normal wear and tear. Unfortunately, with UST systems, there do not appear to be many opportunities to service buried components nor is there a clear understanding of how much maintenance is warranted to prevent releases (e.g., the time period for replacing gaskets on pumps).

*6. Release Detection Requirements*

There are a number of release detection methods that can be applied to UST systems, particularly those storing petroleum. Numerous devices are marketed today and many more are under development. Traditionally, the principal method of leak detection used at UST systems has been manual product inventory control, sometimes supplemented with a tank tightness test to verify suspected releases. Manual inventory reconciliation, however, has been a controversial method of release detection, principally because of human error or negligence in properly measuring, recording and reconciling the measurements with records of receipts and dispersals. A recent EPA study revealed that only about 20 percent of the surveyed retail service stations kept adequate inventory records (*Underground Motor Fuel Storage Tanks: A National Survey*, May 1986).

As UST system owners and operators have become more environmentally aware, as the cost of cleanup from releases has become known, and as various state and local jurisdictions have passed legislation requiring more reliable forms of release detection, the types of devices that are available for release detection have proliferated. In addition to tank tightness testing and inventory controls, there are several other broad categories of release monitoring techniques specifically addressed by today's proposal:

- Soil gas monitoring in the excavation area;
- Monitoring for liquids on the water table;
- Interception barrier well monitoring;
- Automatic in-tank monitoring; and
- Interstitial monitoring of secondary containment systems.

The limitations associated with each of these techniques (which are discussed in more detail later in this Preamble) stem from the capability of each of the three major components found in any release detection method: (1) Sensors; (2) network design; and (3) data analysis. The major problem EPA has encountered in assessing the reliability and effectiveness of these systems has been a lack of data. EPA has embarked on a research program to gather some performance data, but expects that it will take a considerable period of time to collect such information. There presently is also very little information and experience concerning the installation and operation of these different methods.

There are other methods besides those mentioned above, however, which may merit consideration for inclusion in the regulations. A good example is that of line leak detectors. Methods for detecting releases from pipes conveying products under pressure are purported to be very sensitive in detecting release conditions. Therefore, EPA does not believe that the above general methods list is exhaustive. All of these above methods are discussed in more detail in today's Preamble and more specific public comment and information is solicited (see also Section VI.D.).

## IV. IMPORTANT INFLUENCES ON TODAY'S PROPOSAL

To reach the environmental goals mandated by Subtitle I, EPA has considered the influence of each of the following four areas on the development of today's proposal. In each case, the Agency has sought to build upon existing trends in UST system management and regulatory practices in order to ensure more rapid and efficient

implementation of a consistent, nationwide regulatory program affecting a large universe of over 1.4 million UST systems at over 500,000 facilities.

Experience to date shows that many different institutions are already or are soon expected to become involved in the UST regulatory program, including municipal and volunteer fire departments, local health departments, weights and measures inspectors, and both water and hazardous waste regulatory personnel. As the future franchiser of these various state (and local) agencies, EPA believes it must enable these franchisees to establish a basic program and continually work at helping them improve performance over time. Thus, an important consideration in developing today's proposed regulations was to identify approaches that are, to the extent possible, implementable in the field by someone else besides highly trained EPA employees.

The following important influences were considered in developing today's proposal. They provide some indication of how likely today's proposal, or any other basic regulatory approach, will be quickly and voluntarily implemented by this large and diverse regulated community. To promote this nationwide UST franchise, EPA must develop regulations that are readily implementable in the hands of the state and local franchisees, or human health and the environment will not be adequately protected. Accordingly, these influences were important considerations in the evaluation of the several regulatory options discussed in Section V of this preamble.

### A. Recommended Industry Practices and National Consensus Codes

Trade associations, institutes and other private organizations have developed technical codes and standards of practice to standardize the design, fabrication, and operations of a variety of tank management alternatives. Historically, the management of UST systems has been addressed and guided by these nonbinding industry standards or practices. Even where state or local UST system regulations are in effect, these industry standards and/or codes are often incorporated into law by reference.

EPA has carefully considered this body of knowledge and expertise in the private sector which has developed and administered these codes and recommended practices. A partial listing of some of the standards and codes that EPA identified in developing today's proposal is provided in Table 2. An important influence on today's proposal is the recognition of this available experience and expertise in underground tanks.

TABLE 2.—MAJOR CODES, STANDARDS, AND RECOMMENDED PRACTICES FOR UNDERGROUND STORAGE TANKS

| Corrosion protection | [illegible] | Tank manufacturing | [illegible] | Tank cleaning | Internal lining | Abandonment or [illegible] underground tanks | Venting and air emissions |
|---|---|---|---|---|---|---|---|
| NFPA-329 | NFPA-329 | API-12F | API-1615 | [illegible] | API-1631 | API-1604 | [illegible] |
| NFPA-30 | | API-12D | PEI-RP-100-86 | [illegible] | | API-2202 | NFPA-[illegible] |
| NACE RP-01-9 | | API-650 | | | | | |
| API-1621 | | API-620 | | NFPA-30 | NFPA-30 | NPFA-30 | |
| API-1623 | NACE RP-01-69 | UL-58 | UL-58 | [illegible] | NFPA-49 | | |
| [illegible] | | ANSI-31.3 | | NFPA-327 | NFPA-321 | | |
| [illegible] | NACE RP-03-72 | UL1316 | | | | UFC | |
| NACE-RP-02-85 | | ASME-STDS VESSEL CODES | | | NACE-STDS FOR SURFACE PREPARATION | | |
| | | UL-1316 | | | | | |
| | | UL-1746 | | | | | |
| NFPA-30 | NFPA-70 | API-2510 | API-620 | [illegible] | | | |
| NFPA-49 | NFPA-77 | NFPA-30 | API-510 | NFPA-30 | | | |
| | NFPA-78 | NFPA-49 | | NFPA-49 | | | |
| | | NFPA-58 | | NFPA-329 | | | |
| | | NFPA-510 | | | | | |
| | | NFPA-59A | | | | | |
| | | ASME-STDS | | | | | |
| | | ANSI-STDS | | | | | |

Key: NACE—National Association of Corrosion Engineers; API—American Petroleum Institute; NFPA—National Fire Prevention Association; ASTM—American Society of Testing and Materials; UL—Underwriters Laboratories; PEI—Petroleum Equipment Institute; ANSI—American National Standards, Inc., ASME—American Society of Mechanical Engineers; UFC—Uniform Fire Code.

While the existing codes and standards of practice form an important body of technical information, to date they have not been universally applied. For example, most existing UST systems do not have release prevention or detection controls. In some cases, EPA questions the ability of commercially available equipment to meet industry-recommended requirements, such as the ability of release detection devices to reliably detect a leak rate of 0.05 gallons per hour. In other cases there is inconsistency among the existing codes and standards of practice. Also, many of these existing practices were developed without consideration of the increased concerns with environmental protection that prompted today's proposal. Finally, some emerging technologies are not yet covered by existing codes. Therefore, today's proposal is intended to build upon this existing body of knowledge and to go beyond it when necessary to fill in gaps or provide consistency.

### B. Current Status and Future Role of State and Local UST System Programs

Many states currently have some UST legislation in place. Most of these existing programs are based on national fire code guidelines. However, at least 14 of them have recently developed very comprehensive approaches that address all aspects of UST system management. A number of county and city governments have also recently passed similar comprehensive UST system requirements. In today's proposal, EPA has attempted to construct requirements that will complement and encourage the initiatives taken by state and local governments to manage their own UST programs.

Because the existing regulatory framework is primarily the result of independent efforts at the state and local level, a variety of approaches have been taken. In some cases the approaches reflect regional factors; for example, ground-water monitoring requirements in Florida were influenced by the prevalence of a shallow depth to ground water. In other cases the

differences in approach, scope, and coverage may simply be due to local practices or preferences.

EPA has evaluated these many different state and local approaches towards regulating underground tanks, and today's proposal builds upon this existing state and local regulatory framework. In supporting these existing regulatory programs, EPA hopes to achieve the goals of Subtitle I more quickly and efficiently than would be the case if it were to propose regulations greatly different from requirements that are widely accepted and already being implemented.

### C. Major Trends in the Industry

Voluntary changes are occurring in underground tank system management in the retail motor fuel sector. EPA estimates that by 1997, about three fourths of the 700,000 tanks in the retail motor fuel sector will be replaced, upgraded (to the requirements of the Interim Prohibition), or removed from service. This change could occur even in the absence of finalizing today's proposed federal UST system requirements, based on well-documented past trends in the retail motor fuel sector, including a new tank installation rate of about 25,000 per year and a 4.2 percent rate of motor fuel tank system closures per year ("Regulatory Impact Analysis for Proposed Underground Storage Tank Regulation," dated 1987).

This trend to voluntarily upgrade and replace underground tank systems may actually accelerate as major oil companies and other tank owners respond to several factors: the aging of the existing tank systems (more than 50 percent will be over 14 years old by 1990); increasing public awareness of the vulnerability of the nation's ground-water resources; increasing publicity of some underground storage tank release incidents that involve large dollar damage claims and cleanup costs; and the rising cost and scarcity of environmental liability insurance.

In addition, a growing number of state, county, and city governments are requiring some form of leak detection for UST systems. This is probably the result of many of the factors cited above.

Today's approach has been developed to take advantage of and encourage these ongoing, beneficial changes in underground tank system management. It will assure that all segments of industry and geographic areas will participate in these changes, and that needed improvements in UST system management are established nationwide. The Agency intends to foster these trends in voluntary compliance as an efficient route to implementation of the requirements of Subtitle I.

### D. The Number of Small Businesses Owning or Operating UST Systems

A large proportion of operating USTs are owned by small businesses (businesses with $500,000 or less in total assets). For example, 72 percent of all retail motor fuel outlets are owned by small businesses. The small businesses in this sector most likely to be subject to adverse impacts as a result of UST regulations are the open dealers (firms that own a single retail motor fuel outlet). A typical open dealer (the statistical median) has $90,000 in net worth, $210,000 in assets, and $14,000 per year in after-tax profits. Although the typical open dealer is currently a healthy and profitable business, this class also includes many firms owning old, marginal outlets that would be forced to close if faced with significant new expenditures.

In addition to open dealers, any marginal small businesses in the retail motor fuel sector could easily be forced to close as a result of incurring any major regulatory expenditure, including those associated with tank replacement or corrective action. Because of their small size, even profitable small businesses will have difficulty financing major regulatory costs; especially if they face the costly corrective action of cleaning up ground water.

As an important influence in the development of today's proposal, EPA has attempted to minimize regulatory impact on small businesses without compromising the statutory requirements to protect human health and the environment. For example, as will be discussed in Sections V and VI of this Preamble, the corrective action requirements have been specifically developed in a way that protects human health and the environment while maintaining maximum flexibility for owners and operators, including small businesses.

EPA has also conducted a Preliminary Regulatory Flexibility Analysis, as specified by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). This Regulatory Flexibility Analysis is summarized in Section IX.B. of this Preamble and is specifically concerned with potential impacts on small businesses. An important conclusion from this analysis is that significant impacts on small businesses are inevitable, even in the absence of federal UST regulations. Many existing tank systems are old and are either leaking or will soon leak. They will need to be upgraded or replaced. Major capital expenditures, such as the replacement of a tank system, are beyond the reach of many small businesses. These changes may be hastened by future regulations, but many appear to be inevitable no matter which regulatory approach is developed by EPA. Today's proposal attempts, to the extent possible, to provide important flexibility to small businesses in upgrading their USTs to detect and prevent future releases and this flexibility was an important concern recognized in the development of today's proposal.

## V. TODAY'S PROPOSAL

This section provides a summary of EPA's proposed rule. It also sets forth the various alternative strategies considered by EPA, the advantages and disadvantages of those alternatives, and EPA's reasons for selecting the proposed alternative. Comments and relevant information are solicited on all the options EPA has considered and, based on a consideration of these comments and information, the Agency may reconsider the option selected in development of the final rule.

### A. Summary of Today's Proposal

EPA is today proposing regulations for underground storage tanks storing either petroleum or hazardous substances other than hazardous wastes regulated under Subtitle C of RCRA. These regulatory measures would establish requirements for both new and existing UST systems to control the major causes of releases from these tank systems, and include corrosion controls, proper installation requirements, and spill and overfill prevention measures. The proposed requirements of Part 280 would fulfill the mandates of RCRA Sections 9003 (a), (c) and (e). The major elements of today's proposal are noted below.

- All new UST systems must be designed and constructed to retain their structural integrity for their operating life (that is, in accordance with existing national consensus codes of practice), including the use of corrosion protection of metal components. Cathodic protection must be monitored and maintained to ensure that UST systems remain free of corrosion.

- Proper installation standards must be followed in placing a new UST system into service. The UST's owner and operator must certify that proper installation procedures were followed and identify how the installation was accomplished (for example, installation by a licensed or certified installer).

• Owners and operators of both new and existing UST systems must immediately follow proper tank filling practices to prevent releases due to spills and overfills. In addition, owners and operators of all new UST systems, and existing UST systems equipped with external release detection, must use devices that prevent spills and overfills.

• Tanks can be repaired, but only once, if they are in sound enough condition to be repaired. Recommended industry practices must be followed to conduct repairs, and in addition several tests must be conducted to ensure quality repairs.

• Industry-recommended practices with regard to tank system closure must be followed and, accordingly, the UST system must be removed from the ground or left in place after removing all regulated substances, filling with an inert substance, and closing it off to all future outside access. In addition to these recommended industry practices, all owners and operators must perform an assessment at the time of tank closure to ensure that a release has not occurred at the site. If a release has occurred, then corrective action must be taken.

• Release detection must be instituted at all UST systems. For petroleum UST systems several methods will be allowed, although requirements concerning their use must be adhered to by tank owners and operators. Petroleum UST systems are not required to have secondary containment with interstitial monitoring. Secondary containment and interstitial monitoring will be required at all new or upgraded UST systems storing hazardous substances, unless a variance is granted. Implementing agencies may provide these variances if the owner or operator can demonstrate that a release detection method can be applied reliably.

• Phase-in of release detection at existing UST systems must occur over a 3- to 5-year period. Bare steel UST systems unprotected from corrosion are required to phase in release detection within the shorter time period.

• Requirements for reporting releases are established. Indications of a potential release would have to be reported to the implementing agency, including positive results from release detection methods that have been immediately investigated by owners and operators. After reporting releases, release investigation and confirmation must take place and, where necessary, corrective action must begin.

• All existing UST systems must be upgraded or replaced to the new tank standards within 10 years, or within 3 to 5 years if a release detection method is not available that can be relied upon to detect releases from the UST system. Upgrading of petroleum UST systems would include retrofitting of corrosion protection and spill and overfill controls at all tanks; upgrading of hazardous substance UST systems would also include secondary containment and interstitial monitoring (unless a variance is granted by the implementing agency based on a demonstration and approval of the capability of the hazardous substance UST system's release detection method).

• Finally, today's proposal requires owners and operators of leaking UST systems to follow measures for corrective action. Immediate corrective action measures include mitigation of safety and fire hazards; removal of saturated soils and floating free product; and an assessment of the extent of further corrective action needed. A corrective action plan would be required for long-term cleanups addressing ground-water contamination. Cleanup levels would be established on a site-by-site basis as approved by the implementing agency that would oversee the cleanup by the owner and operator.

EPA believes that the above requirements adequately protect human health and the environment. Individual states and UST owners and operators should recognize, however, that the most cost-effective approach to protection at a single tank site or in a geographic area may involve features that exceed the minimum requirements that apply nationally. For example, if a shallow drinking water source supplying nearby wells underlies a tank site, the cost of a potential cleanup may greatly exceed the national average. At a few such sites, ground-water cleanup has become a long-term program, costing millions of dollars because of the great difficulty of restoring high quality aquifers. In these cases, a preventive approach—such as the installation of secondary containment for new or replacement tanks—may be advisable, even though today's regulations do not propose making this a national requirement. EPA therefore encourages states and individual owners and operators to evaluate local conditions carefully and to select tank systems and associated equipment in accordance with local conditions and needs, rather than merely to achieve compliance with federal requirements.

### B. Considerations Underlying EPA's Proposed Approach

In developing today's proposal, EPA took several important considerations into account. As several studies briefly discussed in Section III indicate, many existing UST systems lack corrosion protection, release detection, and overfill and spill controls. Thus, they are the most likely ones to leak over time, and they present the greatest immediate threat to human health and the environment. A significant number of these existing UST systems are already leaking or are likely to leak in the near future. These studies also show that many of these releases are likely to reach ground water and some will pose threats to our drinking water resources, health, and safety. While there are many technical alternatives available for improving this situation, the relative long-term performance of many of these alternatives is uncertain.

In reviewing regulatory choices, EPA concluded that certain management practices are essential to a successful regulatory program. The Agency concluded that any regulatory approach must provide for the improvement of future tanks and piping by requiring standards for the proper design, construction, and installation of new tank systems, as well as corrosion protection for all steel tank systems.

The Agency also concluded that the above measures alone would not completely eliminate all releases from new tanks. Because of the problems that may still occur, particularly with improperly installed new tank systems, the Agency concluded that release detection and corrective action will be needed in any regulatory approach to new tank systems. Because it is difficult to retrofit existing tank systems with measures for the prevention of future releases, the Agency concluded that any regulatory approach should also provide for the identification of currently leaking UST systems, detection of future releases, and the phased-in replacement or upgrading of existing leak-prone UST systems.

As new and improved tank systems replace old UST systems, EPA expects that releases will decrease significantly. EPA also expects a greater proportion of releases that do occur will result from human error in installation or operation rather than corrosion. This change in emphasis—from mechanical to human error—influenced the Agency's decision-making because regulatory requirements and programs can be developed to ensure human mistakes are minimized to the greatest extent possible.

The above basic considerations, goals, and assumptions were important to the Agency's choice of today's proposed regulatory approach. Their contribution in the Agency's decision-making is more

specifically illustrated in the discussions of the regulatory options that follow.

### C. Options Considered for New and Existing UST Systems

In developing today's proposal, EPA evaluated several regulatory options for a general approach towards regulating new and existing UST systems. The following subsections describe these options. Further consideration will be given to these options based on public comments and any additional data received prior to final rulemaking.

#### *1. New Petroleum UST Systems*

EPA considered three regulatory options for new petroleum tanks: (1) protected single-walled tanks with release detection; (2) secondary containment with interstitial monitoring; and (3) a class approach based upon the degree of risk posed by proximity to valuable ground-water resources.

##### Option 1: Protected Single-Walled Tanks With Release Detection

Under the first option, EPA would require new tanks to be constructed of a single wall, protected from corrosion, and equipped with a method of release detection. (Of course, owners or operators of new UST systems could voluntarily exceed these requirements, for example by use of secondary containment and interstitial monitoring.)

Under this option, EPA must make additional decisions concerning allowable methods of release detection and the frequency with which those methods would be used. For example, EPA would have to decide whether to require any one or a combination of release detection methods, such as tank tightness testing, inventory controls, ground-water monitoring in the saturated zone, liquid monitoring on the water table, vapor monitoring in the unsaturated zone, or automated monitoring within the tank. EPA would also have to determine the frequency with which these methods must be applied. This frequency could range from continuous monitoring to an infrequent "check" of the tank system. These decisions concerning release detection are discussed in Section VI.D. The following discussion focuses on EPA's choice between single-walled tanks and secondary containment systems for petroleum UST systems.

There are several major advantages in allowing the use of protected single-walled tanks. This option should prevent most of the releases that commonly occur today. It provides the regulated community flexibility to choose among the widest range of protective release prevention and detection options to comply with the regulations. It costs less initially than the other options. And, because this option builds on existing industry practices and is consistent with most state programs now under development, it is most likely (of all the options) to gain voluntary compliance from the regulated community. This approach also has the additional advantage of leaving more options open to the states in defining classes of UST systems or locations.

One significant disadvantage of this option is that the performance of release detection methods is relatively uncertain and detection is not guaranteed at every site that may have a release. Thus, under this option, there is risk that some releases will occur that cause significant damage to groundwater resources before being detected through smell, taste, or other means. Another disadvantage is that long-term costs may be greater than for the secondary containment option due to the use of unproven release detection methods, and to increases in corrective action, operational, and insurance costs. Finally, in contrast to secondary containment (which is designed to capture releases before they have such adverse impacts on the environment) under this approach more drinking water aquifers may be affected, even when releases are ultimately detected and corrective action is taken.

However, EPA believes that there will be few releases from a protected single-walled tank system with release detection which will occur, go undetected, and cause significant damage before corrective action is taken. EPA anticipates that many of the releases occurring today will be prevented by corrosion protection measures. For example, the Canadian Province of Ontario's UST Program has caused 72 percent of their UST universe to be made of noncorrodible materials or provided with corrosion protection since 1974 and government officials report there has not yet been one release discovered from all these protected tanks. Officials from Denmark report similar successes with corrosion protection technology, which has been in use there since 1974. Thus, EPA believes releases will occur much less frequently with new tanks that conform to today's proposed regulatory standards for design, construction, installation, and corrosion protection. Because of human error, especially with respect to installation and operation of underground piping systems, EPA anticipates that releases will continue to occur at some new tank systems. However, release detection methods will be capable, in most instances, of detecting these releases and the number of releases that go undetected should be very small.

As discussed in Section VI, the Agency believes that certain release detection methods are very promising (although not yet completely understood) in their capacity to detect petroleum releases. For example, the Agency believes that various methods used in the excavation zone can be relied upon if certain conditions pertaining to the network of monitors, the backfill, and the hydrogeology are satisfied. The Agency believes that the more frequently these methods are applied, the more reliable they will be in detecting releases. Thus, a continuous monitor or a method that is sampled frequently is more likely to detect releases when they are still small and more easily corrected.

Based upon the above conclusions, the Agency has decided to propose release detection methods sampled on a frequent to continuous basis as capable of detecting the majority of leaks that occur from new petroleum tank systems. Therefore, EPA believes that protected single-walled tanks with these leak detection systems will protect human health and the environment. The Agency solicits any information that may indicate less frequent monitoring may be sufficient if new UST systems are protected from corrosion and carefully installed.

##### Option 2: Secondary Containment With Interstitial Monitoring

The second option considered by EPA was to require all new UST systems to have secondary containment with release detection in the interstitial space between the tank system and the secondary containment. Under this option, the owner and operator could obtain a variance from the secondary containment requirement upon demonstration to the implementing agency that the tank system has a release detection system that works as effectively as secondary containment with interstitial monitoring.

The major advantage of this option is the added degree of protection it affords. Secondary containment provides two complete barriers to prevent releases, and a simpler, more certain system for detecting releases between the barriers. Requiring all new UST systems to use secondary containment and interstitial monitoring, which is widely believed to be the most accurate monitoring available, would guarantee that fewer releases would go undetected. This is potentially important because cleanup

to drinking water standards can be very difficult and expensive to achieve. Another possible advantage of this option is the long-term savings from reduced costs for corrective action, insurance, leak detection, operation and maintenance. EPA estimates that the added initial costs may be fully offset by these savings and that fewer acres of ground water and soil will be damaged, if this option is chosen. In addition, this option avoids problems that could arise if owners or operators are unable to pay for corrective action, because this is the only option that requires containment of all releases. Finally, this option provides the advantages of being simple, easy to understand, and easy to administer and enforce. Frequent to continuous interstitial monitoring provides enforcers with a mechanism for checking releases instantly. Further, EPA has found no corrective action technology capable of bringing water quality back to national standards, which makes avoidance of releases even more important.

There are several disadvantages, however, to requiring secondary containment as a general rule. First, its initial costs are higher than those for the other options. Although secondary containment may save costs in the long run by reducing the need for corrective action, the higher initial costs would have more adverse impacts on small businesses than any of the other options. (See Regulatory Impact Analysis, Section IX.) Also, the incremental benefit it provides over the single-walled tank system may not be substantial, because relatively few releases are anticipated from new, single-walled, protected tank systems and leak detection systems are expected to be relatively effective with the single-walled tanks. In addition, the secondary containment option conflicts with most emerging state and local programs and significantly curtails state flexibility to allow other approaches. Thus, requiring secondary containment may discourage states from adopting an UST program or may delay state program approvals. Accordingly, EPA could be placed in the difficult position of directly administering a very large regulatory program. Reliance on an overburdened federal program could result in slower compliance with regulatory requirements for new UST systems and a corresponding delay in addressing leaking UST systems. The delay in achieving compliance with these requirements may be exacerbated by a reluctant regulated community discouraged from replacing existing tanks because of the higher cost of secondary containment. Also, because this approach is contrary to the ongoing voluntary selection within industry of single-walled protected tank systems, it would be less selfimplementing. Finally, requiring secondary containment would eliminate the use of protected single-walled technology, which EPA considers to be a relatively effective alternative now widely available and used.

The Agency solicits comment and information concerning the need for, and feasibility of, requiring secondary containment with interstitial monitoring at all new UST systems.

Option 3: The Class Approach

The third option was to require secondary containment at a class of locations where tanks pose a particularly high risk and to allow protected single-walled tanks with release detection at all other locations. Under this option, EPA would need to establish criteria for the high risk settings, usually involving ground water, where "extra" protection would be required. Several alternative criteria are possible: "Class I" ground-water areas, as defined in EPA's Ground-Water Protection Strategy; "wellhead protection areas" designated under the new program established by the Safe Drinking Water Act Amendments of 1986; or areas established by the states, if they satisfy certain minimum criteria established by EPA. Alternatives for determining the class of high risk locations and an approach for achieving implementation by state programs are discussed in more detail in Section V.E. below.

The major advantage of a class approach is that it allows EPA to tailor more closely its requirements to the risk presented at a particular location, thereby minimizing overprotective regulation. It would allow EPA to take a more preventive approach (secondary containment) at locations where a release would present the greatest threat. This approach would permit the Agency to provide this extra protection to sensitive areas without overregulating tanks located in less sensitive areas. EPA estimates that this option is potentially the lowest cost of the three options because the requirements that are more costly in the initial stages of the operational life of a new UST system are tailored to apply only in the more sensitive or vulnerable settings. In addition, the class approach would encourage state efforts to identify and provide greater protection to their most important ground-water resources, activities that EPA supports with funding under the Clean Water Act for development of state ground-water protection strategies. Funding for state designation of wellhead protection areas under the Safe Drinking Water Act will begin in Fiscal Year 1988.

The class approach, however, has several drawbacks. First, it adds a layer of complexity to the regulations. Unless there were a simple means for determining which requirements applied to a particular UST system location, it would be more difficult for the regulated community to know how to comply without significant guidance and support from the implementing agency. The absence of such technical assistance could complicate enforcement for the implementing agency. Further, while many states have either already identified or plan to identify areas where their ground water is especially important (many are also expected to designate wellhead protection areas under the new program), only a few have at this point used such classifications for establishing different regulatory requirements for underground storage tanks. States seeking program approval that have established more protective requirements for some tank locations (based on state classes or criteria) would have to demonstrate that these requirements are applied at least as stringently to all tank systems in locations meeting EPA's criteria, and modify their programs if needed. Other states would need to set up mechanisms for identifying where the more protective requirements apply. These added steps in state program development and in EPA approval of state programs would delay or make program implementation less certain.

While the class approach was considered very attractive, it was not the Agency's selected option in today's proposal due largely to concerns about difficulty of implementation. Because of the substantial interest that has been expressed in this approach, however, the Agency is especially interested in receiving comments about the feasibility of the class option, and is soliciting comments, in particular, on a specific approach for implementing the class option that is discussed in detail in Section V.E. below.

Conclusion

Because of the large number of facilities subject to these regulations, the success of the UST program depends on a high level of voluntary compliance and an effective program implementation at a state or local level of government. For these reasons, the Agency was influenced by a desire to create a program that would protect human

health and the environment as a direct result of the program's being (1) implemented and enforced by state and local governments, and (2) readily accepted and understood by the regulated community as building on acceptable current practices. Upon considering the options for new petroleum UST systems, the Agency has concluded that the requirement of Corrosion-protected, single-walled tanks and piping with release detection would be protective of human health and the environment, would be compatible with many of the more aggressive state and local programs that have been developed or that are under development, and would be more likely to gain voluntary compliance from larger businesses already moving in that direction and from smaller businesses concerned about initial costs.

The Agency is concerned, however, about the lack of data concerning the effectiveness of various release detection methods. EPA is also particularly interested in receiving comments and information relevant to the above consideration of options for new petroleum UST system standards, including the performance of different types of protected UST systems. Based on comments or information provided during the public comment period, the Agency may, for example, decide to promulgate secondary containment requirements, or the class option, for all new UST systems.

*2. Existing Petroleum UST Systems*

EPA is today proposing that all existing petroleum UST systems be upgraded to new UST requirements or replaced in 10 years, and that they institute a release detection method phased in within 3 or 5 years depending on the type of UST system. This proposed approach results from consideration of several regulatory options that address four important issues associated with existing petroleum UST systems:

(1) Mandatory upgrading or replacement of substandard UST systems;

(2) Methods of release detection;

(3) Frequency of release detection; and

(4) Phase-in of release detection.

These issues are briefly discussed below.

Issue #1: Mandatory Upgrading or Replacement of Substandard UST Systems

As described earlier in this Preamble, existing UST systems are believed to present the greatest and most immediate threat to human health and the environment. EPA has concluded that future releases can be avoided if existing substandard UST systems are upgraded or replaced before they leak. For example, existing steel UST systems that are unprotected from corrosion can be retrofitted with impressed current protection systems that can substantially curtail or stop the effects of corrosion. Or, an existing tank can be retrofitted with an interior coating that provides an extra layer of protection between the regulated substance stored and the environment. (These technical options are discussed in more detail in Section VI.B. and C.)

Four regulatory options for addressing the issue of mandatory upgrading/replacement of existing unprotected petroleum UST systems were considered during development of today's proposal:

- Rapid upgrading/replacement;
- Gradual upgrading/replacement;
- No upgrading/replacement; and
- A class approach.

These options are discussed in more detail below.

*Option 1: Rapid Upgrading or Replacement.* This option would require all unprotected substandard UST systems to be upgraded to the new tank standards or replaced rapidly (e.g., within 3 to 5 years). Requiring such changes prior to three years is probably not feasible given the large universe of UST systems subject to today's proposal. For example, none of the most aggressive state or local UST programs have attempted to implement a program as ambitious as that.

In theory, the primary advantage of a rapid replacement option is avoidance of most future releases by requiring the upgrading/replacement of many existing UST systems before they leak. Thus, this approach lowers the risks to human health and the environment by preventing many future releases. Similarly, it could also result in lower and more certain total costs to the regulated community by avoiding the adverse impacts of cleanup costs.

Given the large number of existing unprotected UST systems, the major problem with this approach is that it probably cannot be successfully implemented. For example, all 1.4 million UST systems cannot realistically be retrofitted with release detection methods and cathodic protection within a few years. It is doubtful that enough equipment and qualified installation personnel would become available to perform such an enormous task in a short time. None of the existing state or local UST programs has undertaken this approach. Also, because it requires the most initial costs from the regulated community and provides a short amount of time for accomplishing these changes, this option would have the greatest immediate impact on small businesses.

*Option 2: Gradual Upgrading or Replacement.* This option would require existing substandard UST systems to be upgraded or replaced more gradually than Option 1 (6 to 12 years). EPA believes that this approach can be implemented for the large number of existing UST systems. An implementable regulatory program helps to ensure that safeguarding of the environment actually takes place. The regulatory impact analysis undertaken in support of today's proposal indicates significant improvements can result during this gradual upgrading replacement period (see Section IX). The primary advantage of this approach, therefore, is that it provides a great deal of environmental benefit in a manner that can realistically be accomplished by the regulated community. Also, this more gradual approach provides more flexibility to state and local UST programs and enables them to establish their own priorities for mandating improvements. Finally, a more gradual phase-in enables small businesses to plan ahead and prepare for making the necessary improvements.

The major disadvantage to this approach is that the additional time allowed for improvements to take place also provides additional time for more releases to occur and more product to be released. However, this problem should be reduced by the much wider use of release detection and the fact that, under today's proposal, release detection requirements are phased-in over a shorter time period for the most risk-prone tank systems. This option correspondingly requires more reliance on corrective action to protect human health and the environment.

*Option 3: No Upgrading/Replacement.* As noted earlier in Section IV, ongoing trends in industry management practices lead the Agency to believe that many existing UST systems will be voluntarily upgraded or replaced over the next several years. In theory, these trends alone could be relied upon to upgrade and replace all existing UST systems. However, it seems unlikely that a purely voluntary program could guarantee nationwide consistency within a few years for the substantially large and heterogeneous universe of 1.4 million UST systems. Also, the same people who cannot afford voluntary upgrading or replacement will not be able to afford the costs of corrective action should their UST systems leak. Therefore, to protect human health and the

environment, the Agency rejected a totally voluntary strategy for upgrading or replacing existing UST systems.

*Option 4: Class Approach.* Upgrading or replacement of existing UST systems based on a class approach would require rapid improvement of existing UST systems located in more vulnerable areas and allow a more gradual approach towards improvement in all other areas. As with the class approach for new tank requirements, the major advantage of this approach is that it allows EPA to tailor more closely its requirements to the risks theoretically presented at particular locations. The establishment of easily understandable and readily implementable classes that would be adopted by state and local UST programs, however, is difficult to accomplish. (See Section V.E. for further discussion of the possible basis for a class approach in which the Agency is specifically soliciting public comment today.)

*Conclusion.* EPA has concluded that many existing substandard UST systems are likely to leak in the future if steps are not taken to upgrade or replace them. The Agency believes that upgrading or replacing this existing universe of predominantly bare steel UST systems will reduce the number of releases that threaten the environment. Because of the large number of UST systems, the Agency has also concluded that it is simply not practicable to mandate that this change take place over a period as short as 3 to 5 years. The more gradual approach being proposed today will protect the environment by allowing the regulated community to plan for and carry out this change efficiently. It will also enable the development and sorting out of the most reliable methods of release detection from among the many that are being offered commercially. It also enables state or local programs to establish priorities for implementing improvements to existing UST systems, which should also lead to more effective protection of the environment.

Issue #2: Methods of Release Detection

As discussed earlier in this Preamble, EPA has concluded that a fundamental goal of any regulatory approach must include the establishment of a reliable means of detecting releases at UST systems, including existing UST systems. The Agency is today proposing to allow existing petroleum UST systems to use the same release detection methods that EPA would allow for new petroleum UST systems. (These release detection methods are discussed in detail in Section VI.) For example, as with new UST systems, the Agency believes that various methods used in the excavation zone can be relied upon at existing UST systems if certain conditions pertaining to the level of background contamination, the network of monitoring wells, type of backfills, and site characteristics are satisfied.

Particularly for petroleum, the Agency presently believes that release detection can be used for the first time at most existing tanks in a way that will significantly reduce the number of releases that go undetected. EPA has identified over 250 devices that are available commercially or being developed to detect releases in UST systems. An important consideration in developing today's proposal was to allow this burgeoning field of release detection technology to continue to develop. However, EPA has very little performance data or field experience concerning most of these methods. Therefore, another important objective was to ensure that only sound and reliable release detection methods are applied. Today's proposed approach to determining what methods of release detection are adequately protective has been guided by these two important considerations.

Issue #3: Frequency of Release Detection

As briefly discussed in the options for new tanks, EPA believes that the more frequently the various methods of release detection are applied, the more likely they are to detect releases. Thus, a continuous monitor or a frequently sampled method is more likely to detect releases when they are still small and more easily corrected than less frequent monitoring. Therefore, the Agency is proposing that release detection methods be used that are sampled frequently to continuously. The Agency has considered the risks posed by less frequent approaches and has concluded that they may not be adequate to protect human health and the environment, particularly with older, less protected existing tank systems.

Infrequent monitoring (for example, every 1 to 3 years) may not be repeated often enough to determine or establish whether a particular result is accurate. In addition, the amount of release that could occur between such infrequent monitoring episodes could be substantial, pose risks to human health and the environment, and require significant and costly cleanups. Given these concerns and the current status of existing tank systems (EPA believes most of them are leak-prone), the Agency has concluded that frequent to continuous monitoring should be required. However, considering the estimated number of existing tanks covered by these regulations (1.4 million), all UST systems cannot realistically be retrofitted within a few years with methods that apply frequent to continuous monitoring. In fact, because these methods have not been applied to date on a widespread basis, the Agency is concerned that not enough equipment and qualified installation personnel would become available over the next several years to perform such a retrofitting task reliably on such a mass scale basis. Also given the unproven nature of much of this equipment, the Agency is concerned that requiring UST owner and operators to use only frequent to continuous monitoring methods could force the selection and installation of unsound methods.

In response to these important practical considerations, the Agency has concluded that it should also allow the use of relatively infrequent tank tightness testing, in conjunction with manual product inventory control techniques on an interim basis, before existing UST systems are required to gradually upgrade or replace to the new UST standards (including frequent to continuous monitoring). Tank tightness testing and inventory controls are the two most widespread and available release detection methods and they have been traditionally used within large segments of the regulated community. However, inventory control must be practiced daily to be used for release detection purposes. On the other hand, because of the high costs and difficulties associated with doing a precision tightness test, this method of detection can only be required on a relatively infrequent basis. Thus, today's approach allows the use of relatively infrequent (every 3 to 5 years) precision tightness testing only if this testing is combined with daily inventory controls and monthly reconciliation practices. This "infrequent" release detection method is allowed at existing UST systems *only* during the 10-year period of gradual upgrading and replacement.

Tank tightness testing and inventory controls both have distinct advantages for existing UST systems, because they do not require retrofitting and operation of permanent equipment by the UST owner and operator. These advantages contrast with the difficulty that numerous small businesses in this regulated community would face if they all had to retrofit and operate (for the first time) frequent to continuous monitoring. Thus, today's proposed approach of infrequent tightness testing and frequent inventory controls allows

them more flexibility during the 10-year interim period as they decide whether to upgrade or replace their UST systems to the new tank standards or to close their systems.

As discussed in more detail in Section VI, however, the Agency is concerned with the reliability of manual inventory controls and believes that tank testing cannot realistically be used for a majority of existing UST systems more frequently than once every 3 to 5 years. Thus, EPA believes that, even with the combined use of these methods, releases from existing UST systems can go undetected. Therefore, EPA is proposing to prohibit the use of *infrequent* tank testing combined with inventory controls as a method of release detection for new or upgraded UST systems. Frequent tank testing with inventory controls will be allowed. Thus, infrequent tank testing and frequent inventory reconciliation is proposed only as an interim measure that responds to the practical problems of program implementation resulting from the attempt to establish release detection at a very large number of existing UST systems within a short timeframe. The Agency is interested in receiving data and comments on this issue, particularly whether retrofitting more frequent release detection systems over a 3–5 year time period would be feasible or appropriate.

Issue #4: Phase-In of Release Detection

Today, EPA is proposing to phase in release detection at existing petroleum UST systems over a 3- to 5-year period. EPA has chosen an approach that would require tanks with the greatest propensity to leak to have release detection in place sooner than others. For example, steel UST systems that are not protected from corrosion would have to be provided with release detection within 3 years, whereas protected UST systems already in the ground would have up to 5 years to add release detection. Because of the large number of existing UST systems to be regulated, the Agency has concluded that the implementation of release detection requirements should be phased in. As a practical matter, the various methods allowed by the proposed rule are not yet widely practiced or readily available on a mass scale basis. The Agency considered three different regulatory options regarding the phase-in of release detection: (1) rapid phase-in (over 1 to 2 years); (2) gradual phase-in (over 3 to 5 years); and (3) a class approach (combination of options 1 and 2 based on location).

A more detailed discussion of some of the methods available for implementing these approaches to the phase-in of release detection is provided in Section VI of this Preamble. Although the Agency recognized the benefits that could result from requiring release detection for existing tanks very quickly, as a practical matter, EPA has concluded that implementation of these requirements will take at least 3 to 5 years. Evaluation of several of the most active state or local UST programs indicates that this timeframe is the minimum necessary. Several industry upgrading programs also are phasing in release detection over a number of years.

Tank owners and operators are required by today's proposed regulation to comply with the release detection requirement within 3 years for tanks without corrosion protection and within 5 years for corrosion protected or noncorrible tanks. Tanks that cannot meet the release detection requirement will be required to close within the same 3 or 5 year period.

As stated previously, EPA has concluded that implementation of release detection will take at least 3 to 5 years to phase in. However, EPA has also concluded that certain types or classes of tanks may pose a more substantial threat to public health and the environment than others, and in some situations, that threat might be imminent. As a result, EPA may require in the final regulations certain types or classes of tanks to comply with release detection requirements prior to the end of either the 3- or 5-year phase in periods proposed today. EPA intends to study this issue further to identify those tanks for which it may require compliance on an accelerated basis. The factors EPA plans to consider in identifying these groups will at a minimum include: tank age; vulnerability of hydrogeology; distance to drinking water wells; and distance to vital ecological systems. EPA solicits comments on the appropriateness of these factors and what additional factors it should consider. EPA also strongly encourages states to set priorities for implementing all of the technical requirements of today's proposed regulation.

EPA rejected requiring the use of inventory controls at all UST systems during the phase-in period because of the difficulty of getting the regulated community to implement such a requirement successfully. Most owners and operators do not conduct inventory controls and various studies have led EPA to suspect that many are not monitoring inventory controls carefully enough for leak detection purposes. Thus, in the absence of a massive training and technical assistance program by EPA, use of this method is proposed to be phased in with the periodic use of tank tightness testing.

EPA also considered using a class approach to phasing in release detection requirements. Under this approach, EPA would phase in release detection at locations deserving extra protection first. This approach, however, encountered the same constraints identified for its use with the other regulatory components discussed earlier. (See Section V.E. for a further discussion of the class approach.)

*3. New and Existing Hazardous Substance UST Systems*

EPA is proposing secondary containment for all new and upgraded existing hazardous substance UST systems, unless the UST owner and operator can demonstrate by means of a variance that a reliable method of release detection can be applied to a particular protected single-walled tank. Such a variance would be based upon consideration of the tank's contents, the site characteristics in the immediate vicinity of the UST system, and the type of release detection method and design chosen. The Agency considered the same regulatory options for new and existing hazardous substance UST systems that it did for petroleum UST systems. The factors that caused the Agency to select a different approach for hazardous substance UST systems are discussed below.

EPA considered several important differences between petroleum UST systems and hazardous substance UST systems. In general, the Agency has much less information and analysis on all aspects of hazardous substance UST systems than it has on petroleum UST systems. First, and most importantly, the Agency has little information demonstrating that release detection methods are available for detecting releases from new or existing hazardous substance UST systems. Also, very few established industry practices or state and local UST programs appear to explicitly apply to these UST systems. Potential impacts on small businesses are much less of a factor because few small businesses have hazardous substance UST systems, and when they do they typically have only one UST system.

The Agency acknowledges that some hazardous substances are very similar to petroleum and that release detection methods for those substances could

perform equally well in detecting releases. For this reason, the Agency has included a variance provision in the rule. There are many hazardous substances, however, for which these methods would not be reliable. For example, excavation zone liquid monitors cannot be used with hazardous substances that have a specific gravity greater than water because of the likelihood that releases of these substances would not be intercepted by monitoring devices located on the ground-water table. Similarly, vapor monitors would not be effective in detecting substances that are not volatile enough to create detectable gas vapors in the excavation area surrounding the UST system.

As mentioned earlier in the discussion of regulatory options for petroleum UST systems, EPA anticipates that many future releases can be avoided by corrosion protection measures applied to new UST systems and upgraded existing UST systems. However, EPA anticipates that some releases will continue to occur at new protected UST systems or upgraded existing UST systems because of faulty installation, inadequate design and maintenance of corrosion protection, or other unexpected events. Given the current lack of information concerning the availability of reliable release detection methods for hazardous substances, EPA is concerned that these releases could go undetected unless secondary containment equipped with interstitial monitoring is used. However, to provide flexibility, the Agency is proposing the following variance to secondary containment: the long-term use of release detection with corrosion protected single-walled UST systems can be allowed with hazardous substance UST systems if it is demonstrated that the release detection system will be adequately protective of human health and the environment. The demonstration must prove to the implementing agency that the detection method selected complies with the performance standards and the requirements provided in the regulations for the particular hazardous substance stored in that UST system and at that site. The Agency requests comment on whether variances should be granted to more than one owner and operator who petition jointly and have similar tank/substance/release detection characteristics. EPA solicits comment on whether UST system owners and operators would find such a provision useful and whether public notice of such variances would be appropriate.

In the short term, while existing hazardous substance UST systems are being upgraded to the new tank standards (using either secondary containment or protected single-walled UST systems under the variance procedure), EPA has decided to propose the use of other methods of release detection—including tightness testing combined with inventory controls—provided the limitations in the regulations concerning the use of these methods are met. As stated earlier, EPA expects that many hazardous substances have properties that are very similar to petroleum and therefore may be able to make reliable use of the same release detection methods currently available or being developed for petroleum UST systems. EPA believes that this interim allowance of a variety of release detection methods is necessary due to the large universe of tanks that must ultimately be retrofitted or replaced with secondary containment. If reliable release detection or tightness testing is not available or cannot be developed, the owner or operator must—within 3 years if the UST system is bare steel or within 5 years if the UST is protected from corrosion or made out of noncorrodible materials—retrofit or replace with secondary containment and interstitial monitoring to ensure releases are reliably detected and human health and the environment protected.

The Agency also considered the advantages and disadvantages of other regulatory issues considered in developing the proposed regulation of existing petroleum UST systems. The Agency concluded that the regulatory options and approaches being proposed today for existing petroleum UST systems are also appropriate for existing hazardous substance UST systems: (1) gradual mandatory upgrading or replacement of unprotected UST systems; (2) frequent to continuous monitoring, with the interim allowance of inventory controls and tank testing where feasible; and (3) phase-in of release detection over a 3- to 5-year period depending on tank type.

EPA believes the use of the same basic underlying approach to technical tank standards for both petroleum and hazardous substance UST systems will minimize confusion within the regulated community and with the state and local UST programs. It also provides significant flexibility, as discussed earlier, and should therefore foster voluntary compliance and more rapid implementation that should greatly improve protection of human health and the environment.

### D. Options Considered for Corrective Action

Today's proposal provides for separate corrective action processes for UST systems that contain petroleum and those that contain hazardous substances. These requirements apply to regulated UST systems (as defined by this rule) and UST systems for which tank technical standards have been deferred by the Agency to a subsequent rulemaking.

The Agency recognizes that this decision to propose separate corrective action requirements for petroleum and hazardous substance UST systems differs from its approach to technical tank standards for which many of the standards are common for both petroleum and hazardous substance USTs. The Agency believes, however, that such a separation is desirable for UST corrective action as a means of avoiding confusion over which procedures must be followed at a particular site. The Agency solicits comments on this approach, however, and any specific proposals for an alternative approach. Specifically, the Agency requests comment on whether the requirements should be integrated into one subpart.

An important goal of the Agency's UST program is to safeguard public and private drinking water supplies as necessary to protect human health. In addition, the Agency believes strongly in the value of protecting the environment through its UST programs, and in addressing the safety concerns (e.g., fire and explosion) that can be associated with regulated substances stored in underground tanks. The corrective action processes and requirements for petroleum and hazardous substance UST systems have been crafted to fulfill these objectives.

As discussed in the following sections, the Agency selected a site-specific approach to the setting of cleanup target levels for corrective action of UST releases. In considering this and the other options for UST corrective action, the Agency started from the following assumptions:

- *Protection of human health and the environment is aided through state and local participation in this program.* A corrective action program that is sufficiently flexible to accommodate many existing (and future) state and local approaches to UST corrective action is critical. This will allow for program and cleanup oversight to occur at the level best suited to the size and diversity of the regulated community.

and the diversity of UST environments nationwide.

• *The corrective action program must accommodate expected changes in the nature of the UST release problem.* In the first five years of the federal program, the Agency expects that the UST corrective action program will be confronted with a growing number of identified release sites. Many of these will be discovered with sizeable releases over a long period of time. As the tank standards are implemented and enforced, however, the later years of the program should see fewer releases and these releases should be detected earlier. The UST corrective action requirements should function well in both stages of the program's lifetime.

• *The corrective action process should be constructed to get quickly to the task of cleaning up a release, although the cleanup itself may take time.* If corrective action measures can be taken quickly that can prevent a release from reaching ground water, or to remove a continuing source of contamination, such action may ultimately reduce the scope of the problem (and possibly even the final remedial cost).

*1. UST Systems Containing Petroleum*

Today's proposal divides regulatory requirements for petroleum UST corrective action into two stages. The first stage consists of the immediate abatement actions all owners and operators must take in response to a release from a petroleum UST system. The second stage concerns requirements that specify longer-term corrective action measures owners and operators must undertake if the implementing agency determines, on the basis of submitted data, that additional corrective action is required to protect human health and the environment. Review and evaluation of owners' and operators' reports, corrective action plans, and establishment of cleanup requirements are left to the implementing agencies.

In choosing its corrective action approach, EPA was most influenced by the need to develop a program that can be implemented at a state or local level at a very large number of sites with a diversity of environments. The Agency considered using the National Contingency Plan (NCP) (40 CFR 300) process or the process established by current RCRA hazardous waste tank regulations (40 CFR 264.196) to structure the petroleum UST corrective action process. The Agency concluded, however, that implementation of the procedures required by the NCP and RCRA tank regulations would not be appropriate for the very large number and diversity of petroleum UST sites. In addition, the lack of explicit provisions in the NCP and RCRA process for free product removal, a common practice for petroleum UST cleanups, convinced the Agency that a slightly modified process is needed for responding to petroleum UST releases. While the proposed petroleum UST corrective action process differs from those of the NCP and RCRA, the basic structure is the same for all three: control the release source, determine the extent of contamination, determine the extent of remediation required, and take the necessary cleanup actions.

Stage I: Investigation of Releases and Immediate Corrective Action

The first stage of the corrective action process concerns immediate steps to abate imminent safety and health hazards whenever a release from a petroleum UST is indicated or suspected. To comply with these requirements, the petroleum UST owners and operators must: (1) immediately notify the appropriate agency of the possible release; (2) stop the release; (3) address safety hazards from fire or explosion; (4) remove visibly contaminated soil from the immediate area; and (5) investigate to determine the existence and extent of floating free product.

If this investigation detects a free product plume, the owners and operators must submit a report to the implementing agency, unless the implementing agency determines that a report is not required. In all cases, the owner or operator shall initiate the removal of the free product to the maximum extent practicable. This requirement to remove free product to the maximum extent practicable in all cases reflects the following conclusions: (a) free product is a safety hazard if left uncontrolled, (b) free product is a continuing source of potential dissolved ground-water contamination, (c) free product removal is a relatively inexpensive corrective action measure, and (d) free product removal is a common practice today in nearly all UST release cases studied by the Agency.

The owners and operators must also investigate and characterize any plume of dissolved contamination in the ground water and the extent of any remaining soil contamination. The results of this investigation must be reported to the appropriate implementing agency. The implementing agency will use this information as the basis for determining, through a site-specific assessment, if the owners and operators will be required to carry out additional steps of the UST corrective action process.

In the course of the development of an approach to petroleum UST corrective action, the Agency requested and received extensive input from participants in state UST programs. Based on this input, the Agency chose an approach that reflects steps consistently taken by states upon the discovery of a petroleum release regardless of differences in standards and regulations. There was consensus within and outside the Agency on the need for these requirements. Nevertheless, public comment is sought on the following issues:

• Is the definition of free product provided in this proposal adequately precise in the context of the first stage of the proposed corrective action requirements, and, if not, what definition would be more appropriate?

• Should the scope of the corrective action measures required in Stage I (to be implemented for all petroleum releases) be expanded or reduced, and, if so, why?

• Should the requirement to undertake an investigation of the extent of contamination explicitly include ground-water sampling and analysis, and, if so, under what conditions?

• Should the steps required for the investigation of contamination be more explicitly detailed in the regulation (which currently only indicate that such an investigation is required)?

Stage II: Longer-Term Corrective Action Options

The second stage of the proposed corrective action process addresses longer-term corrective actions.[1] If the owners' and operators' investigation of a petroleum UST release indicates that there is dissolved contamination in ground water and remaining subsurface soil contamination, longer-term corrective actions may be required. EPA considered three regulatory options for establishing longer-term cleanup requirements in the corrective action process: (1) national cleanup standards with a variance provision; (2) site-specific standards to match the risk presented; and (3) a predetermined class approach. All three options are currently

[1] The reference to "longer-term corrective actions" considers additional response measures that either take more time to implement and complete than most of the first stage actions (e.g., ground-water removal and treatment), or are more permanent in their duration whether or not they take a long time to implement (e.g., providing alternative drinking water supplies).

in use in some form by various states in their UST programs.

EPA proposes to use the second option, under which a site-specific risk analysis is the basis for setting cleanup requirements for longer-term corrective action. The Agency has selected this option based upon a comparison of the merits of all three options and an evaluation of state program experience. The Agency, however, solicits comments with supporting data (where available) on all three options. The three options are described below.

*Option 1—National Cleanup Standards with a Variance Provision.* The first option is to base cleanup levels for all sites upon uniform national cleanup standards. Under this approach, owners and operators would be required to clean up soil and ground water contaminated by an UST release until specified health-based standards are met, unless a variance is granted.

Cleanup standards would be national health-based standards. They could include all constituents for which EPA has previously developed health-based standards under other regulatory programs (e.g., Maximum Concentration Limits established under the Safe Drinking Water Act) and others for which there is sufficient data available to develop standards. Alternatively, the use of standards for petroleum releases could be limited to a few indicator chemicals such as benzene, toluene, and xylene. Where health-based standards are unavailable, background concentrations could be used to establish cleanup levels.

A variance procedure would provide a method to adjust national cleanup standards to match site-specific risk and thereby minimize unnecessary cleanup. This procedure could employ the model used in states like Florida where variances can be granted under the following two conditions.

The first type of variance is based on the technical feasibility of achieving the cleanup standards. This variance is granted if UST corrective action measures begin with a cleanup level based on health-based standards, but the cleanup reaches a point at which progress toward the health-based standards is no longer being made. Owners and operators who can demonstrate this condition would be allowed to discontinue remedial measures provided: (1) they can show that the remaining contamination does not pose a substantial present or potential hazard to human health and the environment, and (2) they institute monitoring procedures to ensure that the conditions remain stable or improve.[2] If conditions deteriorate, cleanup measures would be resumed.

A second type of variance is risk-based. It would be granted if the owners and operators can show that there is no exposure pathway or that site-specific conditions, such as existing and potential ground water and/or surface water use, are such that the UST release does not pose a substantial present or potential hazard to human health and the environment. If these conditions are met, cleanup to the specific health-based standards would not be required. (The Agency would provide guidance on the variance procedures to be used.)

The principal advantage of a nationwide numeric standard approach is that it provides some certainty about minimum cleanup levels. Without any site-specific analysis, such minimum cleanup levels may result, however, in excessive cleanup at some sites. For example, requiring cleanup to strict health-based standards may be excessive at a site where ambient conditions already preclude potable use of ground water.

To minimize the extent to which excessive cleanups are conducted under this option, a variance provision is included so that an opportunity to consider site-specific factors is provided. Several state programs take this general approach to corrective action for UST releases. The experience of these programs has been that the variance provisions allowing for exceptions to the standards the states have established for their programs are used very frequently. These variance provisions are used extensively for two reasons. First, environmental conditions at UST release sites vary considerably, and in some instances residual contamination poses little or no hazard to health or the environment. Second, available technologies employed to remove groundwater contamination resulting from UST releases are unable to achieve healthbased standards. To adjust clean up to the levels that available technologies can attain, states have had to grant numerous variances based on the remaining threat to health and the environment presented by site-specific conditions. On the basis of such experience, the Agency has concluded, therefore, that an approach to longer-term UST corrective action based on a national standard with a variance provision is unlikely to be successful in avoiding the necessity for site-specific assessments at many UST release sites. Implementation problems arise as the large number of variance reviews lead to delays in effective general implementation.

The consistency of cleanup that might at first appear to result from a national cleanup standards approach is also reduced by the states' ability to impose standards more stringent than federal requirements. The health-based requirements that several states currently employ vary considerably, and, therefore, some variation from any proposed national standard is expected. In addition, the Agency is concerned that these differences may delay authorization of state programs. Given the large number of petroleum UST systems, the diversity of their settings and the states' knowledge and experience gained through their UST programs, state participation through authorized state programs is crucial.

The Agency is also concerned that the long process of establishing defensible national health-based cleanup standards under Option 1 could delay initiation of cleanup actions under the program. The Agency could use background concentrations as the basis for establishing cleanup levels. The use of background concentrations is also problematic, however, because the site-specific data needed to establish background levels is rarely available for UST release sites. In addition, many UST sites are located in developed areas where background levels are already elevated and may not be suitable cleanup levels sufficient to protect human health and the environment. Thus, determining appropriate background levels also may be time consuming (for example, background levels used in the regulation of hazardous waste land disposal facilities under Subpart F of the RCRA regulations are based on a year of ground-water monitoring data). However, as discussed below for Option 2, it may be possible to start longer-term cleanups (e.g., treatment of ground water with dissolved contamination) at some sites before a cleanup levels is established. This is an approach that some states have chosen to implement at selected UST release sites.

In EPA's view, therefore, the theoretical advantage of Option 1 in ensuring consistent cleanups will in practice not be achieved and, in any case, is outweighed by potential delays associated with the development and implementation of standards, applicable

[2] In those instances where remedial measures implemented initially fail to achieve a health-based standard and remaining contamination still presents a substantial present or potential hazard, the implementing agency likely would reevaluate the choice of remedial measures and require implementation of an alternative that would meet the standard or satisfy the conditions for a variance.

to the large UST regulated community, and the potential for conflict with existing state programs.

*Option 2—Site-Specific Standards Based on Risk.* The second approach considered by the Agency uses exposure and risk assessment techniques to determine the risk to human health and the environment at each site of an UST release. Under this option, the degree of cleanup sought for contaminated ground water and soil would reflect the site-specific risk presented.

The risk assessment would be based directly on analysis of site-specific conditions and problems posed by the release. Factors to be considered include the quantity of material released; the mobility, persistence and toxicity of the material; the exposure pathways (e.g., drinking water wells); the extent of contamination and its relationship to present and potential ground-water well locations and uses; levels of background contamination; and any relevant standards.

Technology-based decisions would also be possible under Option 2 if: (1) the cleanup level used as the basis for initiating UST corrective action measures is found to be unattainable with current technology; and (2) it is shown that the remaining contamination does not pose a substantial present or potential hazard to human health and the environment; and (3) monitoring procedures are instituted to ensure that the conditions remain stable or improve. Unlike Option 1, there would be no variance because site-specific decisions are made for all sites.

EPA has chosen Option 2 as the preferred approach to setting cleanup levels for longer-term corrective action for petroleum UST systems releases. Option 2 fulfills the statutory requirements to protect human health and the environment, and it would accommodate the variety of approaches taken in existing state corrective action programs. The risk assessment approach can accommodate the wide range of situations likely in UST releases and does not preclude states from employing a variety of approaches for their state UST programs. In addition, by allowing implementing agencies to seek out site-specific cleanup solutions, the use of Option 2 is expected to minimize the overall regulatory impact on small business owners, as well as reducing costs of compliance for all owners and operators.

The principal concern raised about the use of the risk assessment approach is the potential for delay in starting a cleanup until the initial risk assessment is completed. In this corrective action program, however, the Agency has structured the risk assessment option in a manner that should avoid delay. Owners and operators must initiate immediate abatement actions in response to *all* releases. Removal of the source of the release, any free product, and any apparent contaminated soil in the excavation zone is required at all sites before the risk assessment process begins.

Secondly, implementing agencies have the discretion to structure the risk assessment process, and would be provided (in guidance documents accompanying this rule) with risk assessment and site investigation methods, so that the time required to carry out an assessment should not be excessive. They also may require owners and operators to begin cleanup actions during the time the risk assessment is being conducted.

The Agency intends to provide owners and operators and implementing agencies with a variety of tools in the following technical areas:

- Decision-making in the site investigation and corrective action process;
- Risk assessment procedures for petroleum releases;
- Toxicity values for gasoline and gasoline vapor, including information on exposure;
- Facilitating corrective action decision-making in the field;
- The effectiveness and cost of control technologies;
- The treatment of petroleum-contaminated soil, including present regulations, guidelines, and state-of-the-art technologies, and possible future technologies.

The guidance document on risk assessment procedures would be the key element of a streamlined process designed to complete a risk assessment for petroleum releases within a shortened time frame. Though still under development, these procedures are based upon those found in the Superfund Public Health Evaluation Manual but modified for USTs. For example, they will have been adapted to consider only benzene, toluene, and xylene as indicator chemicals for an unleaded gasoline release. In addition, the modified procedures would restrict consideration of risk to exposures through ground water. The manual would provide the necessary data for the toxicity assessment (i.e., toxicity values are already provided).

In EPA's opinion, the site-specific risk assessment process can be streamlined so that it does not delay corrective actions for petroleum UST releases. Accordingly, EPA believes that the site-specific approach to establishing UST corrective action requirements for petroleum releases is preferred because it will accommodate a variety of state approaches to UST regulation and can be tailored to the diverse circumstances surrounding UST releases.

EPA's selection of a risk-based approach does not mean an inability to accommodate some of the features of a class approach where clean up levels are tied to predetermined classes of environments. For example, the Agency would allow UST corrective action programs to recognize well head protection zones established under the Safe Drinking Water Act if the States elect to establish such zones to protect public drinking water wells. An implementing agency should recognize the existence of these zones and should adjust its risk-based clean up level to match the degree of protection established for these zones.

Besides the predetermined class approach utilizing the well head protection zone, the implementing agency should take into account the exposure to the public in finalizing the clean up levels. If a drinking water supply, either public or private, is affected by a release from a regulated UST system, an owner or operator must expect that a health-based standard will be used as a target for clean up of that release, e.g., for gasoline the Agency is considering the proposed maximum contaminant level for benzene of 5 ppb in drinking water as the appropriate surrogate clean up level. Similarly, if the exposure or risk assessment is used to establish a site-specific clean up level, an owner or operator must expect an implementing agency to choose levels that fall within the excess cancer risk range of $10^{-4}$ to $10^{-7}$ with a departure point of $10^{-6}$. This may mean that the maximum contaminant levels are used as a starting point (and possibly as an end point) for an evaluation of the appropriate clean up level for a drinking water supply. Finally, an owner or operator must expect that environmental concerns (e.g., impact on wetlands, surface waters, etc.) will be considered particularly when present drinking water supplies are not affected.

*Option 3—A Predetermined Classes Approach.* The third option considered combines the national health-based standard and the site-specific standard approaches. It is based on the use of predetermined classifications of different UST environments, for example, using a classification system based on the use and value of ground water. Alternative approaches for establishing classes are discussed in more detail in V.E. below.

BEST COPY AVAILABLE

In a ground-water classification system, fragile environments, such as recharge areas for public and private drinking water supply wells, could be classified as "Class A" environments and afforded a high-level of protection by requiring cleanup to specific health-based standards. Similarly, the Agency could incorporate a "Class C" category for areas that require little or no cleanup of releases, such as areas defined as Class III in the EPA ground-water protection strategy. As such, all features of Option 1, described previously, except the risk-based variance, would apply to a release in a Class A environment. An UST release to any environment not classified as Class A or Class C would require corrective action measures sufficient to protect human health and the environment as determined by a site-specific risk assessment. This risk assessment would take the same form as that described in Option 2. An UST release in a Class C environment would receive little or no cleanup beyond Stage I.

In the Agency's view, UST corrective action based on predetermined classes is less workable than a site-specific standard approach. The initial disadvantage is the time required for the implementing agency to develop an appropriate and workable classification system, given the number and diversity of sites and environmental conditions that must be considered. The implementing agency also would have to expend additional time to classify various locations. Although the implementing agency could classify all UST environments in advance or could require owners or operators to begin cleanup actions during the classification process in a manner similar to that described for reducing delay during the risk assessment in Option 2, the necessity to apply classification criteria to the site would interject a step that is not normally required under the site-specific option.

EPA's selection of a risk-based approach does not mean an inability to accommodate some features of a class approach where clean-up levels are tied to predetermined classes of environments. For example, the Agency will allow UST corrective action programs to recognize wellhead protection zones established under the Safe Drinking Water Act, if states elect to establish such zones to protect public drinking water wells. An implementing agency should recognize the existence of these zones and adjust its risk-based clean-up level approach to match the degree of protection established for these zones.

Another disadvantage of Option 3 is that, even after narrowly drawn classes are developed, Class A requirements may not be achievable in some environments with existing technology. The variance procedures described in Option 1 could be employed to modify class-based cleanup requirements if the standards are not attainable. If the variance procedure employed is based on an assessment of the risk to health and environment presented by site-specific conditions, however, it will be the equivalent of the approach suggested in Option 2. Once again, if the variance procedure must be used in a large number of cases, this approach can be expected to result in only nominal reductions in the number of site-specific cleanup decisions.

*2. UST Systems Containing Hazardous Substances*

Today's proposed corrective action requirements for UST systems containing hazardous substances are similar to those for UST systems containing petroleum with one significant exception. The removal of free product is not part of the Stage I requirements that apply to all releases. As with UST systems containing petroleum, the hazardous substance corrective action requirements are divided into two stages. The first stage consists of the initial abatement actions that all owners and operators must take in response to a release from a hazardous substance UST. The second stage concerns requirements that specify longer-term corrective action measures that owners and operators must undertake if the implementing agency determines that additional corrective action is required. Review and evaluation of owners' and operators' reports and corrective action plans, and establishment of cleanup requirements is left to the implementing agencies.

In choosing its corrective action approach for hazardous substance UST systems, EPA was influenced by: (1) The need to implement a program at a state or local level at a large number of sites with a diversity of environments; (2) the need to develop a program that reflects the greater complexity and diversity of regulated substances in hazardous substance tanks compared to petroleum tanks; and (3) the need to construct a program that is similar to that for petroleum UST systems, but moves more quickly to those steps where owners or operators collect, array, and assess (along with the implementing agency) the information needed to determine the nature, extent, and hazard of the hazardous substance release. An earlier assessment of the release is considered crucial given the relatively greater hazard and technical complexity of a hazardous substance release. It is expected that such assessments will require a greater investment of time and resources to complete than an assessment of a petroleum release.

The requirements being proposed today to establish corrective action requirements for USTs containing hazardous substances are similar to RCRA hazardous waste tank regulations. They are very similar to the petroleum corrective action regulations with one significant exception: The removal of floating free product is not required at every site under Stage 1. Whereas most petroleum products and some chemical products float on the ground water, many other hazardous substances will sink or will be dissolved readily in the ground water. Free product removal plans for hazardous substance releases must, therefore, consider so-called "sinkers" as well as "floaters." Nearly every other aspect of the corrective action process devised for petroleum tank releases would still apply.

As with the petroleum tank corrective action there is a Stage I versus Stage II distinction in the proposed hazardous substance corrective action program. There are several differences in these two programs, however. Under the hazardous substance requirements for example, containment of any visible release applies solely to an above-ground release. A similar Stage I requirement for a petroleum UST release response applies to both above-ground releases and releases to the excavation zone, that is, subsurface soil excavation is required at this point in the process. In contrast, response to a below ground release under the hazardous substance requirements takes place as part of Stage II. Thus, the dividing line between Stage I and Stage II occurs earlier in the hazardous substance release response than in the proposed petroleum release response process. The hazardous substance corrective action requirements resemble the Subtitle C hazardous waste tank requirements that also restrict initial response requirements for removal of visible contamination and require a corrective action for the cleanup of any remaining contamination. As noted, the Agency believes that moving quickly to consider a Stage II response is appropriate for a release from an UST containing hazardous substances as well and, therefore, has followed the RCRA hazardous waste tank approach. Choosing this approach:

- Provides for a response process that recognizes the relatively greater hazards to human health and the environment posed by hazardous substances in comparison to most petroleum substances; and
- Provides for a response process that is consistent for hazardous wastes and hazardous substances released from underground storage tanks.

Stage I: Investigation of Releases and Immediate Corrective Action

The first stage of the hazardous substance corrective action process concerns immediate steps to abate imminent safety and health hazards whenever a release from a hazardous substance UST is indicated or suspected. To comply with these requirements, the UST owner or operator must: 1) immediately notify the appropriate agency of the possible release; 2) stop the release and remove any remaining hazardous substances as necessary to prevent further release and to allow inspection and repair of the tank system; 3) contain any aboveground release and remove visibly contaminated soil from an aboveground release; and 4) investigate to determine the extent of soil and ground-water contamination.

The owner or operator must also investigate and characterize any free product or any plume of dissolved contamination in the ground water and the extent of any soil contamination. The results of this investigation must be reported to the appropriate implementing agency. The implementing agency will use this information as the basis for determining if the owner or operator will be required to carry out additional steps of the corrective action process for USTs containing hazardous substances.

In the course of the development of a corrective action approach for USTs containing hazardous substances, the Agency requested and received extensive input from participants in state UST programs. Based on this input, the Agency chose an approach to release investigation and immediate corrective action measures that reflects steps consistently taken upon the discovery of a hazardous substance release. There was consensus within and outside the Agency on the need for these requirements. Nevertheless, public comment is sought on the following issues:

- Is the definition of free product provided in Section 280.11 of the rule adequately precise and, if not, what definition would be more appropriate, and why?
- Should the scope of the corrective action measures required in response to *all* hazardous substance releases from USTs be expanded or reduced, and, if so, why?
- Should the requirement to undertake an investigation of the extent of contamination explicitly include ground-water sampling and analysis, and, if so, under what conditions?

Stage II: Longer-Term Corrective Action Options

The second stage of the proposed corrective action process for hazardous substance UST systems addresses free product removal and longer-term corrective action. If the investigations conducted under Stage I detect free product, the owner or operator may be required to submit and implement an appropriate plan to remove the free product to the maximum extent practicable. Free product removal is included as a second stage activity for hazardous substance releases from USTs due to the greater technical complexity of investigating the extent of free product, and in removing free product to the maximum extent practicable. If an owner's or operator's investigation of a hazardous substance release from an UST indicates that there is dissolved contamination in ground water or subsurface soil contamination, longer-term corrective actions may be required as determined by the implementing agency and specified in a compliance order. EPA considered three regulatory options for establishing longer-term cleanup requirements in the corrective action process for hazardous substance UST systems: (1) National cleanup standards with a variance provision; (2) site-specific standards based on risk; and (3) a predetermined class approach. All three options are currently in use in some form by various states in their UST programs. For a detailed discussion of these options, readers should refer to the section on "Longer-Term Corrective Action Options" for USTs containing petroleum.

As in the case of corrective action measures for USTs containing petroleum, EPA proposes to use the second option, which uses site-specific standards, as the basis for setting cleanup requirements for longer-term corrective action. The Agency has selected this option based upon a comparison of the merits of all three options and an evaluation of state program experience. The rationale for selection of this approach is the same as described in Section VI.F.2. of this preamble for USTs containing petroleum. The Agency, however, solicits comments with supporting data on all three options.

*3. Public Participation in Corrective Action*

RCRA section 7004 provides for public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under RCRA. Although the statute does not specifically require public participation in individual site clean-up decisions, it is EPA's policy to involve the public in decisions of environmental impact. Because the Agency believes that public participation in the formulation of UST corrective action remedies is both useful to selection of the most appropriate actions and consistent with the expectations of the public, EPA is proposing to include public participation requirements in the regulations for petroleum and hazardous substance underground storage tanks. EPA also expects the owner or operator to comply with existing state requirements for public participation. While some specific proposals for public participation applicable to UST corrective action are included in this rulemaking, EPA solicits comments addressing whether existing state administrative procedure requirements would provide adequate opportunities for public involvement in authorized state UST corrective action programs.

The corrective action process for both petroleum and hazardous substance tanks includes initial abatement requirements that are in the nature of emergency response. Because the Agency believes that the nature of the response greatly limits the opportunity for public involvement in this stage, the proposed public participation requirements address the development and implementation of the longer-term corrective action plan (See Sections 280.75 and 280.84).

Specifically, we are proposing to require notice to the public with an opportunity to comment on all Stage II corrective action plans proposed by the UST owners and operators. This provides both an opportunity for meaningful involvement by the public as well as additional perspectives on the problem and proposed solutions for the implementing agency. Beyond this, we are proposing that whenever a decision is made to terminate a corrective action cleanup prior to completion of the entire approved plan (unable to meet specific standards set in the plan) the implementing agency must allow the public an opportunity to comment on the proposed plan revision.

**E. Two-Tiered Regulatory Scheme for Petroleum Tanks; Basis for Determining Class**

From the outset, it was recognized that leaks from petroleum UST systems located in certain settings—such as where the ground water is an important source of drinking water—presented a greater potential for both human exposure and costly damages than those located where there is more limited or no current use of the ground water. As mentioned in the discussion of options, there was considerable interest in establishing a regulatory scheme that would require more protective requirements for UST systems posing a high risk to human health, such as those located near ground water used for drinking water, than would be required for the general tank universe.

Under this scheme, the general petroleum UST universe would be subject to the requirements presented in today's rule: corrosion-protected, single-walled systems with frequent to continuous monitoring for new tanks; phasing in of release detection systems for existing tanks in 3 to 5 years (with periodic tank tightness testing and inventory controls allowed as one form of release detection during a 10-year interim period); and upgrading of existing tanks to the new tank standards, or replacement with conforming tanks, within 10 years. For the higher risk locations, however, the new tank standards would require all tank systems to be secondarily contained and provided with interstitial release detection between the tank system and the secondary containment barrier. In addition, existing UST systems would be subject to more rapid upgrading to these new tank standards. The requirements for new and upgraded petroleum tanks in the higher risk class would be comparable to the performance standards being proposed today for new and upgraded hazardous substance UST systems, which provide flexibility in the choice of secondary barriers and interstitial monitoring techniques that can be used. (In the following discussion, the requirements that would apply to petroleum UST systems in the higher risk settings will be referred to as "secondary containment and associated requirements.")

To implement such a two-tiered regulatory program, the Agency would need to determine the criteria for locations that would be subject to the more protective requirements. While the class option is not proposed in today's rule, the Agency seeks comment on the general desirability and feasibility of a class approach as well as specific comments on the approach discussed below regarding criteria for identifying the higher risk class and implementation by the states.

The Agency explored many possible ways to define high risk tank settings based on hydrogeologic factors (e.g., depth to ground water, soil properties, and other site-specific conditions) and/or ground-water use in the area (e.g., distance to wells). The principal objective was to develop a class approach that would allow easy determination of which requirements applied to a particular tank location. In addition, the Agency wanted to develop an approach that would be compatible with EPA's Ground-Water Protection Strategy as well as with existing state ground-water classification efforts and anticipated state designation of wellhead protection areas under the new Safe Drinking Water Act Amendments. Because of the clear need for a state role in the class approach, the Agency also needed to consider how appropriate state implementation could be assured. The Agency also considered the American Petroleum Institute's "Recommended Practice for Underground Petroleum Product Storage Systems at Marketing and Distribution Facilities" (#1635, Second Edition, December 1984), which in part recommends secondary containment or equivalent protection for new installations where ground water below the facility is within the cone of influence of municipal water supply wells.

With such considerations as background, the Agency is seeking comment on an approach for implementing a two-tiered regulatory scheme which, while not proposed in today's rule, is still under active consideration. The Agency is attracted to the class concept because it could provide significant additional protection at low incremental cost to valuable ground-water resources that are most vulnerable to damage. For example, the closer tanks are to ground-water wells, the more likely a release will contaminate the well, necessitating well replacement. Based on public comments received and additional information and evaluation developed over the next few months, this approach could be included in the final rule. To foster public consideration and comments on this issue, the basic approach is briefly summarized below, followed by a more detailed discussion of key aspects of the approach.

*Summary of the Basic Approach*

EPA would establish *minimum* criteria for locations that are subject to the secondary containment and associated requirements based principally on use of the ground water, possibly taking hydrogeologic considerations into account. Each state seeking approval to operate in lieu of the federal program would be required to submit a plan to EPA demonstrating that the secondary containment and associated requirements will apply to all of the locations in the state meeting EPA's criteria. States might be given the choice of three alternative methods for delineating the areas where the more protective requirements would apply: (1) areas meeting EPA's criteria for Class I ground water as defined in EPA's Ground-Water Protection Strategy (1984); (2) wellhead protection areas designated by the state under an EPA-approved program as provided for in the 1986 amendments to the Safe Drinking Water Act; or (3) a state-developed classification scheme as long as it resulted in the more protective requirements being applied at least to the locations meeting EPA's criteria for Class I. (Instead of using Class I criteria as minimum criteria for defining higher risk locations, EPA might choose other criteria, such as a minimum distance around public supply wells, to define these locations.) In states that fail to submit and receive authorization of their UST systems under Section 9004, all UST systems located within a specified distance of all public water supply wells (or wells serving a substantial population as defined in EPA's Ground-Water Protection Strategy) would be required to meet the secondary containment and associated requirements.

*The Criteria for High Risk Locations*

To provide flexibility to the states and build on continuing efforts to identify ground water needing special protection, the above approach offers alternative ways that states may identify the areas where the secondary containment and associated requirements would apply:

1. States could choose to use EPA's criteria for *Class I ground water,* defined in EPA's Ground-Water Protection Strategy as "ground water that is highly vulnerable to contamination and either an irreplaceable source of drinking water to a substantial population or ecologically vital." Guidelines for classifying ground water under EPA's Strategy, published for public comment in December 1986, further refine this definition and provide a methodology for determining the class of ground

water near a specific source of potential releases to ground water.

Since the Guidelines methodology is designed for site-by-site classification and is based on collection and analysis of information pertinent to a specific source, EPA could develop a simplified method for determining Class I ground water on an area-wide basis. Rather than develop the extensive data needed to show high vulnerability and irreplaceability, states could choose to designate all tank locations within two miles of ground water supplying a substantial population (e.g., more than 2,500 people served by a public water supply). This simplification, the Agency believes, would make it easier for states selecting this alternative method to identify the areas meeting the criteria.

Generally, choosing this alternative would result in the smallest number of areas being designated for the secondary containment and associated requirements. Based on information in EPA's Federal Reporting Data System (FRDS), approximately 15 percent of the public water systems using ground water as a principal source of supply serve a population of over 2,500; however, these systems serve more than 80 percent of the population whose public water systems use ground water. Designated areas where the secondary containment and associated requirements would apply would, based on preliminary estimates, encompass less than 5 percent of the nation's land area.

2. The second alternative states could choose would be to apply the more protective requirements in *wellhead protection areas* designated by the states under an EPA-approved plan as provided for in the 1986 Safe Drinking Water Act (SDWA) amendments. Under this new program, states will be submitting state programs to EPA for designating and developing programs to protect wellhead areas around public water supply wells. Under the SDWA, EPA will publish guidelines for delineating wellhead areas and for state grant approval in June 1987. States are expected to submit grant applications for program development in 1988.

States choosing this alternative would be taking advantage of the new wellhead protection program as a means for providing extra protection from leaking tanks to all public water supply wells. According to FRDS, there are approximately 47,700 public water supply systems using ground water, excluding non-community (e.g., non-residential) and seasonal use (e.g., campground) systems. Preliminary estimates indicate that approximately 10 percent of the land area in the nation would be encompassed by this alternative.

3. States with their own *state ground-water classification systems* could choose to apply the secondary containment and associated requirements in the areas they have identified as needing special protection. A number of states have already developed such classification systems, and nearly all states are developing ground-water protection strategies which include an effort to identify their most important ground-water resources.

For states choosing this alternative, EPA would review the state's plan for using the classification system as a means for implementing the more protective tank program requirements, and approve those state plans which would result in the secondary containment and associated requirements being applied to at least those locations meeting EPA's criteria for Class I (or whatever minimum criteria EPA might choose for defining the more protective class). Since EPA's Class I is a very small and tightly drawn class, it is expected that most states with existing systems for identifying important ground-water resources should meet this requirement.

*Private Wells.* During the development of the two-tiered regulatory approach described above, the Agency also considered whether secondary containment and associated requirements should also apply to UST systems located near private drinking water wells. These wells are of concern because they number about 13 million and because over 90 percent of all wells contaminated in release incidents are private water supply wells. The Agency believes that fewer than 20 percent of all tanks are close to private or public drinking water wells.

The Agency does not contemplate including them in the high risk class discussed above, however, for several reasons. Private wells are not regulated under Federal statute, and States vary in the degree to which they regulate private wells. The exact location of private wells is often difficult for the UST owner and the implementing agency to determine which set of requirements applied to a particular UST location.

If the Agency did include tanks near private wells in the high risk class, the distance from the tank to these wells may or may not be the same as for public water supply wells, which typically draw larger volumes of water. EPA believes, based on available historical data concerning petroleum releases from UST systems, that in excess of 80 percent of contamination incidents could have been avoided if the distance were 500 feet and that over 90 percent of incidents could have been avoided if a 1,000-foot distance were chosen.

The Agency believes that the risks presented by UST systems in these settings may be adequately addressed by the basic requirements and may not warrant the additional costs to the individual UST owner and to the administering agency that would result from extending the secondary containment and associated requirements to UST systems near private wells. The Agency does, however, seek comment on whether UST systems near private wells should be subject to these requirements if the Agency proceeds with a two-tiered regulatory approach, and, if so, what size of protected area adjacent to private wells would be appropriate. The Agency also seeks comment on how implementation might be achieved given the practical problems described above, as well as on whether the decision to place additional requirements on UST systems located near private wells should be left to the States.

*Required Use of Distance to Well Criteria in States Without Approved Plans*

Because states vary in the degree to which they have delineated or plan to delineate areas where the ground water needs special protection, EPA's two-tiered approach could include the requirement that the secondary containment and associated requirements would apply in higher risk settings in those states without an approved program under Section 9004. In states that fail to gain program approval, the secondary containment and associated requirements might be required to take effect at any tank system located within a specified distance to a public water supply well or a well supplying a substantial population (Class I). EPA believes that such an automatic federal requirement is essential: (1) To assure that higher risk settings in all states receive a higher degree of protection; and (2) to encourage states to develop and implement their own plans to protect their public water supply wells.

The Agency recognizes that any specified distance selected may under- or over-protect in varying hydrogeologic settings. Therefore, the Agency is seeking comment on what the specified distance to the well should be. The Agency has identified several possible alternatives for the distance to wells that could be specified. The Agency is

also seeking comment on whether such a requirement should apply to all public supply wells or just those supplying a "substantial population" as that term is used in EPA's ground-water protection strategy for Class I ground-water.

One alternative distance to wells might be to specify a 2-mile radius around public water supply wells. The 2-mile distance is based on an analysis of contaminant plume lengths, distances to surface water, and pumping well capture zones. This statistical analysis was performed for the development of EPA's Ground-Water Classification Guidelines to determine how large an area would need protection from a potential source of ground-water contamination. The 2-mile distance was shown to be protective in more than 90 percent of the situations analyzed. Another possible distance is 1,600 feet from a public water supply well. This distance is based on an analysis of 156 known petroleum UST ground-water contamination incidents. Seven of these incidents threatened municipal well systems with releases from leaking petroleum underground storage tanks. According to this analysis, none of the releases travelled a distance greater than 1,600 feet before being discovered. The 2-mile distance has the advantage of being based on analysis of a broad spectrum of releases in a wide variety of hydrogeologic settings. The 1,600-foot distance is based on known plume lengths only, but has the advantage of representing distances that petroleum products actually travelled before discovery as a result of an UST system release.

The Agency is seeking comment on the appropriateness of these (and other suggested) distances in identifying where the secondary containment and associated requirements will be imposed in states prior to receiving approval of their plans. The Agency also seeks comment on whether and how to establish different automatic distances to wells for varying sizes (e.g., pumping rate, population served) of public water supply wells.

*State Implementation Plans*

A central ingredient of this two-tiered class approach is the state's development, submission, and EPA approval of a plan for implementing the secondary containment and associated requirements in higher risk settings. EPA would review the plans as part of the state program approval process for the UST program.

Tank owners in states failing to receive approval of a state plan to protect higher risk settings would be subject to the federal secondary containment and associated requirements if they are located within the specified distance to wells established by the EPA regulations.

EPA is also seeking comment on the state plan submission and approval process as a critical element of the overall approach.

## VI. ANALYSIS OF TODAY'S PROPOSED RULE

### A. Program Scope

*1. Applicability*

As described previously, today's proposed rulemaking generally applies to all owners and operators of "underground storage tanks" (UST systems) containing "regulated substances." Exclusions from this rulemaking and UST systems for which regulation is deferred are discussed in the following sections. UST systems are defined as any one or combination of tanks (including any attached underground piping) used to contain an accumulation of regulated substances. To be considered "underground," the tank must have at least 10 percent of its volume beneath the surface of the ground, including pipes attached to the tank. Section 9001 of Subtitle I, however, expressly excludes the following:

- Farm and residential tanks having a capacity of no more than 1,100 gallons used for storing motor fuel for non-commercial purposes;
- Tanks storing heating oil for consumptive use on the premises where stored;
- Septic tanks;
- Pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979. Also excluded are intrastate pipeline facilities regulated under state laws comparable to the provisions of these two Acts;
- Surface impoundments, pits, ponds, and lagoons;
- Storm water or wastewater collection systems;
- Flow-through process tanks;
- Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
- Storage tanks situated on or above the floor of underground areas (such as basements, shafts, or tunnels).

"Regulated Substance" is defined in Section 9001 of Subtitle I as: (1) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) as a hazardous substance, except substances regulated as hazardous wastes under Subtitle C of the Solid Waste Disposal Act; and (2) petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).[3]

Section 9001 of Subtitle I sets forth definitions for other key terms used in RCRA. These include "release," "non-operational storage tank," "owner," "operator," and "person." The Agency previously codified these definitions along with the definition of "regulated substance" (50 FR 28702). They are presented again in today's proposal so that the public does not have to refer to previous Federal Register notices.

Today, the Agency is proposing one regulatory exclusion which is described in Section 2 below. In addition, the Agency is also proposing to defer regulation for certain categories of UST systems because the Agency has insufficient data upon which to fashion appropriate regulations. Deferral of regulation of these tanks is described in Section 3 below. The Agency is also proposing regulatory definitions intended to clarify the terms of the statute. These definitions clarify the universe subject to Subtitle I jurisdiction as well as the statutory exclusions listed above. These definitions are described in Section 4 below.[4] The following

---

[3] The list of CERCLA hazardous substances is codified at 40 CFR Part 302. This list contains both commercial chemicals and discarded commercial chemical products. The Subtitle I program only covers those hazardous substances that are not hazardous wastes (except for petroleum wastes). This list was amended in a final rule published on September 29, 1986 (51 FR 34534).

The Agency proposes to apply requirements for hazardous substance UST systems to tanks containing a mixture of petroleum and hazardous substances in which hazardous substances comprise the principal components of the mixture. The Agency is interested in commenters' views on the feasibility (especially for a testing method) of using a concentration threshold to determine when such a mixture would be regarded as principally petroleum or principally hazardous substance, and, therefore, subject to the respective requirements. The Agency recognizes that several petroleum products (e.g., gasoline) are themselves comprised of hazardous substance constituents (e.g., benzene, toluene, xylene), but regards these as petroleum to the extent these substances are present in levels normally found in raw or refined petroleum fractions. The Agency requests comments on the frequency of, problems with, and suggested approach to requirements for UST systems containing both a petroleum product and a regulated hazardous substance. The Agency believes that the largest group of such tanks contain waste oil to which hazardous substances have been added (e.g., solvents).

[4] A number of the definitions that the Agency is proposing today have already been presented in a guidance document issued by EPA on April 7, 1986 to assist the regulated community in complying with the Subtitle I notification requirements.

sections describe EPA's reasons for selecting the proposed deferrals, exclusions and definitions and asks for public comment.

*2. Exclusion for Tanks Regulated Under Subtitle C*

Underground storage tanks that contain a mixture of hazardous wastes (regulated under Subtitle C) and hazardous substances (regulated under Subtitle I) are subject to overlapping jurisdiction of Subtitles C and I. EPA is proposing today to exempt these tanks from Subtitle I regulation. The Agency believes that this is consistent with congressional intent not to have overlapping requirements evidenced by the Subtitle C exclusion within the definition of "regulated substance." Because of the coverage of these tanks by Subtitle C, the exemption of these tanks will not present a risk to human health and the environment.

*3. Deferral of Regulation*

Today, the Agency is deferring the proposal of certain requirements for the following categories of UST systems: wastewater treatment tanks, sumps, UST systems containing used oil, underground bulk storage tanks, UST systems containing radioactive waste, UST systems containing electrical equipment (e.g., vaulted transformers and buried power cable conduits), and hydraulic lift tanks. For these tanks, EPA is deferring the proposal of the technical standards set forth today in Subparts A, B, C, D, E, H, and I. EPA is proposing, however, that these tanks be subject to the interim prohibition for new tank systems (today proposed to be redesignated Section 280.11) and corrective action requirements as set forth in Subparts F and G.

a. Wastewater Treatment Tanks

Under the definition of "storm water or wastewater collection systems" that is proposed by the Agency today, wastewater tanks in which treatment is designated to occur would not be exempt from regulation under Subtitle I. Wastewater treatment tanks have been exempted from Subtitle C regulation (45 FR 76074). Elementary neutralization tanks are also temporarily exempted from Subtitle C regulation. The Clean Water Act regulates discharges from tanks containing hazardous wastes or hazardous substances into surface waters but does not regulate the tanks themselves. This means that hundreds of thousands of in-ground tanks that hold wastewater at treatment facilities, including publicly owned treatment works, are now subject to UST jurisdiction.

Also subject to UST jurisdiction are thousands of oil/water separators, which exist at nearly every oil refinery in the United States and many other industrial facilities. These devices are primarily used to separate oil from wastewater and can be considered treatment tanks.

The Agency has considered regulating these tanks under today's proposal. EPA believes, however, that the proposed standards may not be appropriate for these tanks. Thus, EPA is proposing to defer regulation of wastewater treatment tanks and similar apparatuses such as oil water separators until special standards for these tanks can be developed. The Agency requests public comment on the appropriateness of applying the requirements being proposed today to these waste water treatment tanks.

b. Sumps

Under the definition of "tank" that the Agency is proposing today, in-ground sumps would be considered UST systems. According to an industry survey of sumps, there is an estimated 500,000 sumps in the oil and gas industry alone. Typically constructed of cement, these range in size from 55 gallons to 2,100 gallons. (Less than 20 percent of the sumps fall in the 1,260–2,100 gallon range and these are associated with oil and gas wells; thus; they are excluded under the definition of liquid traps. The remainder of sumps range from 55 to 1,260 gallons.)

Sumps in the oil and gas industry are primarily installed and maintained for pollution abatement purposes. Their contents are pumped out and returned to production facilities. As a general practice, wells and production battery sites are inspected daily by production company employees.

Sumps have been linked to a number of ground-water contamination cases. The state of California, relying on studies of ground-water contamination incidents in the Santa Clara Valley, has concluded that sumps should be regulated under that state's UST program. Sumps that contain hazardous wastes are regulated under Subtitle C. Under Subtitle C, sumps are defined as "any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment or disposal facilities." Certain sumps, however, have been excluded from the secondary containment requirements for hazardous waste tanks, namely sumps that serve as part of a secondary containment system to collect or contain releases of hazardous wastes.

EPA is considering regulating sumps containing regulated substances and requiring owners of these devices to meet the Subtitle I technical standards. EPA is uncertain at this time, however, whether the requirements proposed today are appropriate for these devices. Thus, the Agency has decided to defer proposing technical requirements for these devices at this time. The proposed corrective action requirements, however, would apply to these tanks. The Agency solicits comment on whether special standards should apply to sumps containing regulated substances. EPA also solicits information on (1) the number, location, and substances stored in sumps; (2) how they are protected to prevent releases to the environment from occurring; (3) their leak history; and (4) whether the requirements being proposed today would be appropriately applied to sumps. In the absence of comments and information gathered before final regulations indicating that the proposed requirements are not appropriate for sumps, EPA may determine that the requirements proposed today are appropriate for sumps and would then make the final regulations applicable to them.

c. Underground Bulk Storage Tank

The regulations that the Agency is proposing today were developed to address the majority of tanks in the UST universe. Most of the technical regulations apply to relatively small UST systems of less than 20,000 gallon capacity. Tanks of very large capacities, however, are in use and within the jurisdiction of Subtitle I. The large capacity tanks are sometimes referred to as underground bulk storage tanks (UBSTs). UBSTs are generally located at defense facilities and contain primarily petroleum products, such as jet fuels, motor gasolines, aviation gasolines, and fuel oils. However, such tanks are occasionally used to contain other substances. For example, according to California's inventory of UST systems, two tanks were listed as containing butyl acetate with a combined capacity of 200,000 gallons. The inventory also lists 29 tanks containing potassium hydroxide with a total capacity of 1,032,485 gallons for an average capacity of 35,600 gallons. The majority of UBSTs can be grouped into three categories: 20,000 to 50,000 gallon tanks made of steel or fiberglass that are shaped like smaller UST systems (horizontal cylinders); 50,000 to 1,000,000 gallon bulk tanks made of steel or concrete, usually shaped like vertical cylinders; and 2,100,000 to 3,300,000 gallon bulk tanks

made of concrete and shaped like vertical cylinders. The 20,000 to 50,000 gallon horizontal UBSTs are often located on airport flight lines or refueling stations for ground vehicles. The larger vertical UBSTs are used for storage at terminals, other major distribution and supply centers, and for high volume industrial purposes. In addition, the larger vertical UBSTs are fabricated at the storage facility.

While there are no exact inventories of these tanks, it has been estimated that approximately 30,000 tanks with a capacity greater than 20,000 gallons are located at defense facilities of all the services. Approximately 10 to 15 percent of these tanks are expected to have capacities exceeding 2 million gallons.

EPA does not have a complete understanding of the design, construction, fabrication and installation processes associated with these tanks. The Agency is concerned that today's proposed requirements for design and construction, installation and leak detection, in particular, may not be appropriate for these tanks. Comment is sought regarding appropriate practices for design and construction, installation, leak detection and other regulatory concerns regarding these tanks. For example, tightness testing is believed to be an unreliable technology for UBSTs. The "noise," or level of interferences, increases with increasing product volume, so that it becomes progressively more difficult to detect a particular threshold leak rate (e.g., 0.10 gallons per hour). In addition, the concrete-type tanks cannot be overfilled for testing because of the lid design. Also, little is known about the application of external leak detection methods to UBSTs. In theory, these methods should work for these tanks; however, due to the difficulty of establishing appropriate monitoring points, effectiveness of external leak detection devices may be questionable. Inventory control is subject to many of the same interferences that affect tightness testing and may not be a feasible release detection technique in UBSTs as well.

Because of all the above concerns about the applicability or appropriateness of today's proposed standard for UBSTs, EPA is evaluating whether only secondary containment may provide the necessary protection for human health and the environment. However, the Agency does not have sufficient information on the effectiveness or costs associated with secondary containment of UBSTs. Comment is sought on the appropriateness of this approach as well as alternate release detection approaches that would be effective.

Given the factors presented above, EPA is proposing today to defer applicability of today's proposed technical standards to UBSTs. (The proposed corrective action requirements of Subparts G and H, however, would apply to these tanks). For the purpose of this deferral, UBSTs are defined as tanks that are approximately 20,000 gallons or larger (they encompass steel, FRP, and concrete tanks) that are field-fabricated, vertical cylinders, because of their size. The Agency is considering the use of secondary containment for all such tank systems and may require it for UBSTs instead of the standards for USTs proposed today. EPA solicits information on (1) the number, location, and substances stored in such tanks; (2) how they are protected to prevent releases to the environment from occurring; (3) the leak history; and (4) applicability and appropriateness of each of the proposed technical regulations for these tanks. Again, if EPA determines that either the requirements being proposed today or secondary containment are appropriate for these tanks, it will make the final rule applicable to them. Comment is requested on this issue.

d. UST Systems Containing Radioactive Waste and Other Radioactive Materials

UST systems that contain high-level radioactive waste or other radioactive materials, e.g., low-level radioactive cooling waters, that are not regulated under Subtitle C are regulated under Subtitle I because their contents are considered CERCLA hazardous substances. The Department of Energy (DOE), which manages high-level radioactive waste, has established a program for the management of its tanks which includes detailed design, operation, maintenance, detection, monitoring, and recordkeeping procedures as well as corrective actions that must be taken in the event of a release. These tanks typically have a capacity of 1,000,000 gallons and contain a variety of high-level radioactive liquids and precipitates. The newer tanks are constructed of double-walled steel and are encased in 18 to 22 inches of concrete.

All UST systems containing high-level radioactive waste are owned by the DOE. The UST systems are located at facilities at Savannah River, South Carolina, Idaho, and Hanford (Richland), Washington. The facility at Hanford, Washington, is being reviewed under the National Environmental Policy Act for the "Disposal of Hanford Defense High Level, Transuranic and Tank Wastes" (DOE–EIS–0113).

Due to the unique nature of the materials stored in tanks, the special operations required in handling them, and the size of the storage tanks, several of the proposed standards are not applicable to these tanks. The EPA has considered developing a separate set of standards that apply to these tanks only. This may be unnecessary for tanks containing high-level radioactive waste in view of the fact that the DOE already has a program in place that adequately addresses, and sometimes exceeds, the proposed requirements for the average UST system. Thus, EPA is deferring the proposal of technical requirements for tanks containing radioactive materials, including high-level radioactive waste, pending receipt of public comment on the issue of whether tanks should meet the proposed standards or separate standards. (The proposed corrective action requirements of Subparts F and G, however, would apply to these tanks.)

e. UST Systems Containing Electrical Equipment

Under the proposed definition of "tank," large numbers of utility units could qualify as tanks. Buried power cable conduits are an example of such units. In urban areas, high tension power cables are encased in piping that acts as a conduit. The piping is typically constructed of stainless steel and covered with a semastic coating to prevent corrosion. It contains dielectric fluid which is used to keep the electrical cables cool. The pressurized piping system includes one or more reservoirs which are generally located above ground through which the dielectric fluid continuously circulates and is pumped back through the system. Also located in urban areas are transformers for large trunk lines. These transformers are located underground and contain dielectric fluid.

EPA believes that attempts to include these structures in the UST program would be impractical from an administrative point of view. Thus, EPA is proposing to defer application of technical requirements to these units until it can assess the necessity of their regulation. (Today's proposed corrective action requirements in Subparts F and G, however, would apply to these tanks.) The Agency requests comment on whether and to what extent such units should be regulated in the UST program. In addition, to determine the scope of the universe of these units as well as the magnitude of environmental impacts from release incidents EPA

solicits the following information: (1) the number, location, and substances stored in such units; (2) how they are protected to prevent releases to the environment from occurring; (3) the leak history; and (4) applicability and appropriateness of each of the proposed technical regulations for these tanks.

f. Hydraulic Lift Tanks

Under the definition of tank that the Agency is proposing today, reservoirs of fluid used in hydraulic lifts at service stations and similar devices such as lubricating oil reservoirs of elevators would be subject to Subtitle I regulation.

Businesses that are involved in automotive service and repair often use in-ground hydraulic lifts to raise and lower automobiles in order to facilitate service and repair work. These lifts are designed to utilize a compressed air/hydraulic fluid system and hold between 27 and 75 gallons of hydraulic oil, with the average being 42 gallons. It has been estimated that there are between 350,000 and 750,000 underground hydraulic lift tanks in this country. Added to this are hundreds of thousands of lubricating oil reservoirs of elevators that are found in almost every multi-story building in the country.

EPA is proposing today to defer the application of its proposed technical standards to such tanks. (Today's proposed corrective actions requirements under Subparts F and G, however, would apply to these tanks.) The Agency requests comments on whether such units should be regulated, and, if regulated, to what extent. To include these tanks in the UST program could overwhelm the regulatory capacity of EPA and the states and lead to a less successful program in terms of protection of human health and the environment. Based on preliminary data that the Agency has collected concerning hydraulic lift tanks, EPA believes that these tanks pose a minimal risk to the environment. If these tanks leak, the machinery stops working. Leak detection and abatement therefore occurs automatically. Furthermore, most of the UST requirements being proposed today would not be applicable to hydraulic lift tanks. These tanks are pressurized and can only be monitored indirectly, i.e., using vadose zone or ground-water monitoring wells. Thus, monitoring of these tanks would require that wells be drilled through the floors of potentially hundreds of thousands of auto repair shops, multi-story buildings with hydraulic lift operated elevators, and factories that use hydraulically powered equipment. EPA believes that regulation of such tanks represents a cost to the regulatory agencies and the regulated community that bears no relationship to the environmental protection to be gained.

g. UST Systems Containing Used Oil

Because any tank containing petroleum (even if mixed with other substances) is subject to Subtitle I, underground storage tanks that contain used oil are subject to both the jurisdiction of Subtitle C (Section 3014) and Subtitle I.

The Agency is assessing whether the regulations that are proposed today would be appropriate for used oil UST systems. Pending the determination of whether different rules than those being proposed today under Subtitle I are necessary, EPA proposes to defer the application of the proposed technical standards to used oil UST systems. One reason for deferral of used oil under Subtitle I is that EPA has not considered the impact of the proposed regulation on the recycling of used oil in accordance with RCRA Section 3014. However, even if Section 3014 considerations are applicable to Subtitle I regulation, it is unclear what impacts on recycling of used oil the UST regulation would have. Subtitle I would apply to all used oil tanks, whether or not the used oil were stored for eventual recycling or disposal and whether or not the used oil was mixed for other hazardous substances (not a hazardous waste). In addition, there does not appear to be any evidence that Subtitle I regulation would create the "stigma" disincentive to recycling allegedly created by Subtitle C regulation of used oil as a "hazardous waste." Based upon public comment, however, EPA may determine that the technical standards being proposed today are appropriate for used oil tanks, in which case, EPA may apply today's proposed technical standards to used oil in the final rule.

The Agency is soliciting comments on the appropriate regulation of used oil tanks. The Agency requests comments on the following issues:

- Are the petroleum underground storage requirements proposed today appropriate for recycled used oil and/or used oil bound for disposal?
- Do the minor constituents found in used oil (water, metals, etc.) alter the appropriateness of the requirements?
- Is it appropriate to have different standards for relatively smaller tanks, such as those used by used oil generators and burners, than for larger tanks typically used by used oil processors?

*4. Definitions*

a. Definitions of Terms Used in the Statute

*(1) Underground Storage Tanks.* *Underground storage tank* is defined in the statute as any one or combination of tanks (including *underground pipes connected thereto*) that is used to contain an accumulation of *regulated substances*. To be considered "underground," the tank must have at least 10 percent of its volume, including the volume of pipes attached to the tank, below ground.

Today's proposal sets forth the following definitions for terms used in the statutory definition of underground storage tank:

(a) *Tank* is a stationary device designed to contain an accumulation of regulated substances and is constructed of non-earthen materials (e.g., concrete, steel, plastic) providing structural support.

The basis of this definition is the definition of tank under Subtitle C of RCRA (40 CFR 260.10). One advantage of borrowing this definition is that it is one with which many members of the regulated community will be familiar. A potential disadvantage of this definition is that it is so broad that literally hundreds of thousands of devices not traditionally regarded as underground storage tanks—but which contain regulated substances for operational or treatment purposes—would be considered tanks. Thus, under the proposed definition, treatment units (such as oil/water separators, traps and interceptors) and equipment and machinery that contain petroleum or other regulated substances for operational purposes (such as vaulted electric transformers and hydraulic lifts) would be subject to regulation. Similarly, underground sumps and drip collection devices could be considered tanks.

EPA has also considered revising the definition of tank to incorporate the concept of storage into the definition to distinguish those tanks which are used to store regulated substances from those tanks which use, treat, or capture regulated substances. The Agency rejected this alternative, however, because it did not have sufficient data on which to base an appropriate definition of "storage" for Subtitle I purposes.

Subsequent to the issuance of the April guidance, a number of people have contacted EPA and have asserted that EPA should revise the definition of "tank" to clarify that devices such as those mentioned above would not be

subject to regulation under Subtitle I. They argued that attempts on the part of EPA to include these structures in the UST program will not only create chaos in the regulated community but will also damage the Agency's ability to administer the UST program.

Many of the people who contacted EPA owned tanks that could be categorized in one or more of the following ways: (1) tanks with a small capacity; (2) tanks that hold small concentrations of a regulated substance; and (3) tanks that store a regulated substance for a short period of time.

Except to the extent the statute applies only where there is an "accumulation of regulated substances," the statutory definition of "underground storage tank" and its exclusions do not provide an exemption for such tanks. Thus, any underground storage tank that contains regulated substances for any period of time, even small amounts, is within the jurisdiction of Subtitle I. However, although there is no legislative history providing a basis for defining "accumulation of regulated substances," as a jurisidictional matter, EPA believes that the statutory language of Section 9001(a) and Section 9003(b) which allows EPA to distinguish on the basis of the size of the tank provides flexibility for EPA to exclude by regulation tanks that accumulate small amounts of regulated substances.

Given the potentially overwhelming UST universe that results from the statutory definitions, EPA must balance several factors to provide maximum protection of human health and the environment. On the one hand, EPA is responsible under Subtitle I to establish a program that minimizes the adverse impact of mismanagement of small quantities of regulated substances stored in UST systems. Even small quantities of some regulated substances may pose serious dangers to human health and the environment. On the other hand, the Agency must focus its limited resources on the most serious potential hazards associated with leaking underground storage tanks.

Various states and localities have different minimum tank size exemptions in their regulations. Several states and localities have selected 1,100 gallons as a minimum tank size. This is apparently patterned after the size exemption in the UST legislation that pertains to "farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes." Other states/localities, such as Louisiana, Florida, Wisconsin, and Suffolk County in New York, have minimum tank sizes below which a tank is exempt, but these tank size cutoffs vary from 60 to 1,100 gallons.

The Agency has also considered creating a *de minimus* regulatory exclusion for certain categories of tanks, namely (1) small tanks (e.g., less than 110 gallons or less than 500 gallons); (2) tanks that contain a small concentration of regulated substances (e.g., less than 0.1 percent); and (3) tanks that contain regulated substances for a short period of time (e.g., less than 24 hours or less than 48 hours). On the basis of preliminary data indicating that inclusion of smaller tanks (e.g., less than 110 gallons) could jeopardize the effectiveness of its Subtitle I program, the EPA plans, to exclude de minimus quantity tanks in the future. However, today, the EPA is not proposing a regulatory exclusion due to lack of specific information.

EPA solicits comment on the proposed definition of tank. The Agency also solicits comment on the potential categories of regulatory exclusions discussed above as well as data to support such regulatory exclusions. Specifically, the Agency requests data on the following: (1) Amount of substance and residence time the Agency should consider for a regulatory exclusion; (2) supporting data on the level of risk that such tanks pose; (3) the approximate number of such tanks; (4) the types of tanks; (5) whether the requirements being proposed today would be appropriately applied to such tanks; (6) whether such tanks should be exempted on a conditional basis, and what conditions should be met.

(b) *Underground pipes connected thereto* means all underground piping, including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping which joins UST systems should be allocated equally among them.

The definition of connected piping addresses two issues: where the connected piping begins, and how the connected piping should be allocated among tanks. To be consistent with the RCRA Subtitle C tank rules, the starting point of the "connected piping" is the point at which the regulated substance is introduced into the system.

Today's proposed definition has been clarified since issuance of the April guidance to expressly indicate that only *underground* piping is included in the definition of an UST.

(c) *Regulated Substance.* (1) Petroleum, including crude oil or any fraction thereof, means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels. The definition of this term was adopted from EPA's interpretation of the term "petroleum" under CERCLA which defines petroleum under Section 101(14) in a manner substantially the same as Subtitle I. Use of this interpretation eliminates any potential inconsistency with CERCLA.

(2) Hazardous substance is any substance defined in Section 101(14) of CERCLA other than any substance regulated as a hazardous waste under Subtitle C of the Solid Waste Disposal Act (RCRA).

(d) A tank is 10 percent or more *beneath the surface of the ground* if its volume (including the volume of its connected underground piping) is 10 percent or more beneath ground surface or otherwise covered with material so that physical inspection is precluded.

This definition reflects the intent of the UST regulations to govern tanks which could leak directly into the ground undetected. Thus, the following types of tanks are included in the UST jurisdiction: tanks that are underground, inground open-top tanks, and tanks that are covered with ground material (for example, to comply with local fire codes).

The April guidance also included tanks which are "10 percent or more below grade" even if not covered by ground material. A tank whose volume is less than 10 percent beneath the surface of the ground and that is below grade but not covered with ground material, such as a tank in a ditch or natural depression, is not included in today's proposal because it is not substantially different from an above ground tank.

The definition of underground storage tank excludes nine types of tanks that would otherwise be subject to UST regulation.

*(2) Farm or Residential Motor Fuel Tank Exclusion.*

The first group of tanks excluded by the statute is "*farm* or *residential tanks* of 1,100 gallons or less capacity used for storing *motor fuel* for *non-commercial purposes*." The proposal sets forth the following definitions for the key terms of this exemption.

(a) A *farm* tank is a tank located on a tract of land devoted to the production of crops, or raising animals, including fish, and associated residences and improvements. To be exempt from UST jurisdiction, a farm tank must be located on the farm property. "Farm" includes

fish hatcheries, rangeland and nurseries with growing operations.

"Farm" does not include laboratories where animals are raised, land used to grow timber and pesticide aviation operations. Moreover, this definition does not include retail stores or garden centers where the produce of nursery farms is marketed and where plants and related items are purchased.

In developing this definition, EPA has reviewed definitions currently used by other offices within EPA, the Internal Revenue Service, the Department of Agriculture, and the Bureau of the Census. The Agency also reviewed definitions currently used by a number of states. This review has indicated that there is no standard treatment of the term "farm".

EPA considered adopting the definition of farm that is used by the State of California. California defines farms as "a place of agriculture which has annual sales of agricultural products of $1,000 or more." The Agency rejected this definition because of the difficulty of its application. It would require that the economics of each potential "farm" be evaluated before determining whether its small motor fuel tanks fall within the jurisdiction of Subtitle I.

The basic rationale for EPA's interpretation of "farm" is that, because Congress did not indicate, either in the statute or the legislative history what it intended by "farm", the Agency has chosen to interpret farm in the ordinary, every day sense of the word.

(b) *Residential tank* is a tank that is located on property used primarily for dwelling purposes. Thus, under the proposed definitions, a private school storing motor fuel on site for school buses would not be excluded from UST jurisdiction because the primary use of the property is not residential.

It is important to note that Congress has mandated EPA, under Section 9009 of Subtitle I, to study small farm and residential motor fuel tanks (less than 1100 gallons). In November 1987, EPA will present the results of this study to Congress along with the Agency's recommendations on whether such tanks should be regulated.

(c) *Motor fuel* is a petroleum-based fuel used in the operation of an engine that propels a vehicle for transportation of people or cargo. Therefore, motor fuel refers to motor gasoline and diesel fuel used in a vehicle for transportation purposes.

Limitations inherent in this definition raise several issues with respect to which EPA solicits comment. First, this definition includes only gasoline and diesel fuel, not other types of fuel such as gasohol. Second, "motor fuel" is limited to substances stored in the tanks used to power motor vehicles. Another option would be to exclude tanks containing gasoline and diesel fuel even if their contents are not used to run motor vehicles. Under this approach, tanks storing gasoline at emergency generators would be exempt.

(d) *Noncommercial purposes* means not for resale. The exclusion is limited to motor fuel that is not for resale and that is stored on farmland or residential property. Tanks at gas stations located on "residential" or "farm" property as defined above are not excluded because the motor fuel is stored for resale.

*(3) Heating Oil Tanks Exclusion.* The second group of tanks excluded from UST jurisdiction by statute is tanks used for storing "*heating oil* for *consumptive use on the premises where stored.*" Today's proposal sets forth the following definitions for key terms of this exclusion:

(a) *Heating oil* refers to a type of fuel oil that is one of the eight technical grades of heating oil. These grades are: No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, No. 6, and residual. Heating oil also refers to fuel oil substitutes such as kerosene and diesel when used for heating purposes.

With respect to fuel oil, the lower the grade numbers, the thinner the oil, and the more easily it evaporates. A high number indicates a relatively thick, heavy oil. No. 1 and No. 2 fuel oils are usually used as domestic heating oil and for moderate capacity commercial-industrial burner units. The other grades of fuel oil are used extensively in industrial plants in the production of electric power, space heating, and other purposes. The No. 5, No. 6, and residual fuels are very viscous liquids which typically must be pre-heated prior to burning.

The Agency has considered narrowing this exclusion to include only petroleum products that are one of the eight technical grades of fuel oil. Under this alternative, tanks containing kerosene or diesel used as a substitute for fuel oil would be regulated under Subtitle I although they are almost identical in their chemical makeup to fuel oil nos. 1 and 2. EPA solicits comment on this issue.

(b) *Consumptive use* means burned on the premises. This exclusion would apply to both residential and commercial heating oil tanks whether they are used for space heating or for producing steam to run generators. The heating oil exclusion does not apply to the storage of heating oil for resale, marketing, or distribution. However, "consumptive use" is not intended to be limited to space heating purposes only.

(c) *On the premises where stored* means tanks located on the same property where the stored heating oil is used. Tanks should be excluded as long as the oil is stored anywhere on the same property. "On the premises" is not limited to the building where the heating oil is stored. Thus, centralized heating units using heating oil that serve more than one building on the same property would be excluded.

*(4) Septic Tank Exclusion.* The third exclusion covers any *"septic tank."* A *septic tank* is defined in today's proposal as a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacles is distributed for disposal through the soil. Settled solids and scum are pumped out periodically and hauled to a treatment facility for disposal.

This definition of septic tank is based on common engineering usage. The legislative history of the septic tank exclusion indicates that Congress intended this exclusion to apply to all septic tanks, not just residential tanks. In addition, "septic tank" has been interpreted to include other tanks closely related to the septic tank within a septic system, such as a distribution box, dosing tank, and grease trap, which typically are part of a subsurface disposal system.

*(5) Pipeline Facilities Exclusion.* The fourth exclusion covers "any *pipeline facility (including gathering lines)* regulated under (1) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.). (2) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or (3) which is an intrastate pipeline facility regulated under state laws comparable to the provisions of laws referred to above."

Today's proposal defines *pipeline facilities (including gathering lines)* to include new and existing pipe rights-of-way and any equipment, facility, or building used in the transportation of gas (or hazardous liquids, which include petroleum and any other liquid designated by the Secretary of Transportation) or the treatment of gas or designated hazardous liquids during the course of transportation.

The definition of pipeline facilities was adopted from the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. "Pipeline facility" may also include any such facility as defined and regulated under state laws comparable to these two federal statutes. This definition includes sumps, drip tanks,

skimmer pits, lubrication oil collection devices, and any other containers that are directly connected to regulated oil or gas pipelines or gas plants, which qualify as equipment used in the transportation of gas or hazardous liquid or the treatment of gas or hazardous liquids during the course of transportation.

Although many petroleum pipeline facilities are regulated under the Hazardous Liquid Pipeline Safety Act of 1979, and thus excluded from Subtitle I jurisdiction, tanks associated with gathering lines in rural areas are statutorily exempt from Department of Transportation regulations. However, tanks associated with rural pipelines are exempted as "gathering lines" under the liquid trap exclusion discussed below.

*(6) Surface Impoundments, Pits, Ponds and Lagoons Exclusion.* The fifth exclusion covers any "*surface impoundment*, pit, pond or lagoon." Today's proposal defines a *surface impoundment* as a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of regulated substances and that is not an injection well. This definition was taken from Subtitle C regulations for hazardous waste management established under RCRA (40 CFR 260.10). Because the statute uses the somewhat specialized Subtitle C terms "surface impoundment, pit, pond, and lagoon" to define this exclusion, it is likely that Congress also intended to borrow the meaning of surface impoundment from Subtitle C. Examples of structures thus excluded from UST jurisdiction are holding, storage, settling, and aeration pits, ponds, and lagoons.

*(7) Storm Water or Wastewater Collection Systems Exclusion.* The sixth exclusion covers a "storm water or wastewater collection system." Today's proposal defines a *"storm water or wastewater collection system"* as piping, pumps, conduits and any other equipment necessary to collect and transport the flow of surface water runoff resulting from precipitation, or domestic, commercial, and industrial wastewater to and from detention areas or any areas where treatment is designated to occur. The collection of stormwater or wastewater must be directed towards conveyance, and does not include storage or treatment of stormwater or wastewater except where incidental to conveyance.

Tanks that are associated with storm water and wastewater collection systems are exempted under this exclusion if the tanks are not designated for detention or treatment. Tanks where incidental treatment or detention occur are exempt. EPA has included the phrase "incidental treatment or detention" to alleviate potential confusion over whether some of the appurtenances associated with these collection systems could be considered tanks.

Several commenters stated that the phrase "incidental to conveyance" in the April guidance definition was unclear and confusing. The Agency has considered eliminating the phrase "incidental to conveyance" but decided to retain it since it is the intent to exempt from regulation those parts of the collection system where incidental treatment or detention occurs and which are also "incidental to conveyance." The Agency solicits public comment on this issue and specifically requests examples of all parts of the collection system that would be exempted. This list could be included in the final rule to provide clarification. To date, the Agency defines devices that are part of the collection system such as weirs, manholes, catch basins, ejector stations, wet wells, and dry wells as examples of structures where treatment or detention is incidental to conveyance. Included in this category are accommodations made in certain collection systems to temporarily detain peak flows until capacity is available for the treatment facility.

One commenter on the April guidance suggested that collection system be defined as the "complete path of the water flow from its first entry into a drain or trench until it is discharged." EPA believes this definition is too broad and includes structures and equipment that are not typically included in an engineering definition of "collection system."

Treatment incidental to conveyance means there is not retention time for the purpose of treatment *and* the tank/pipes subsequently empty into a collection system. Acid neutralization tanks and oil/water separators are considered forms of treatment not incidental to conveyance if the liquid is retained for treatment. Therefore, they are not excluded.

*(8) Flow Through Process Tank Exclusion.* The seventh exclusion covers any *"flow-through process tank."* Today's proposal defines a *flow-through process tank* as a tank that forms an integral part of an industrial or commercial process through which there is a steady or uninterrupted flow of materials during the operation of the process. The term "flow-through process tank" does not include tanks used to store regulated substances prior to their introduction into the industrial or commercial process, or to store regulated substances as intermediates, byproducts or finished products of the process.

Today's proposed definition differs from the April guidance in that it no longer limits the exclusion to manufacturing process tanks but extends the exclusion to any tank that forms an integral part of an industrial or commercial process.

The proposed definition reflects concerns from several commenters that a process designed to be steady will have some interruptions and pauses due to periodic maintenance or emergency shutdowns. Thus, our proposed definition of "flow-through" clarifies that flow must be "steady" only during the operation of the process. However, if a flow-through tank regularly stores regulated substances during periods of interruption, it is a storage and not a flow-through process tank.

In developing this definition, consideration was given to changing the term "uninterrupted" to "recurring." Some commenters on the April guidance were concerned that the term "uninterrupted" was too restrictive because some processes will have starting and stopping points, such as a batch process; therefore, some of the tanks in the process would be excluded and others would be regulated. EPA rejected including the term "recurring" in today's definition because it is unclear as to what the effect would be and it could be interpreted to eliminate jurisdiction over any UST systems with periodic input and outflow, including UST systems located at gasoline filling stations. The Agency solicits public comment on this issue.

Because EPA does not have sufficient information on the scope of the exemption if revised by the suggested wording changes, the Agency requests factual information, particularly process diagrams, indicating what tanks should be excluded as "flow-through" process tanks given the nature of the specific process and function of the tank. EPA may further refine this definition, based on public comment on specific processes, and is considering including a final definition examples of specific tanks which are "flow-through process tanks."

An issue raised by this definition concerns the meaning of "integral part of the process." EPA interprets this phase to mean that the process could not be operated without the flow-through process tank. Several commenters on the April guidance have asserted that some tanks store

intermediates that are integral to a process and should be included in the definition of a flow-through process tank. Such tanks, it has been argued, are a necessary aspect of a process in order for that process to be conducted safely and to allow for an adequate supply of raw materials to be used for batch operated processes. EPA believes that, because these tanks are intermediate storage tanks, they are not exempt. The Agency solicits further comments on this and on whether "integral part" would include governmentally-required wastewater treatment flow-through tanks that are a necessary part of an industrial or commercial operation.

*(9) Liquid Traps or Gathering Lines Related to Oil or Gas Production and Gathering Operations.* The eighth exclusion covers *"liquid trap* or associated *gathering lines* directly related to oil or gas production and gathering operations." In today's proposal the oil and gas production *liquid trap* exclusion refers to sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas process plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

Although liquid traps are often used in activities other than oil and gas production, the only type of liquid trap excluded from UST jurisdiction under the statute is a liquid trap used for the purpose of separating unused oil and gas liquids from water at oil and gas production facilities. Liquid traps used in conjunction with landfill methane gas production facilities are within this exclusion and would not be subject to UST jurisdiction. Liquid traps such as grease and oil traps at gas stations, however, are not within this exclusion.

Today's proposal defines *gathering lines* as any pipeline, or associated equipment used in the transportation of oil or gas during oil or gas production or gathering operations.

*(10) Underground Areas Exclusion.* The ninth exclusion covers "storage tanks situated in an *underground area* (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor." In today's proposal, this exclusion applies to "underground rooms" where tanks are located on or above the floor surface. The purpose of this exclusion is to remove from UST jurisdiction tanks that are technically underground but that are, in a practical sense, no different from above ground tanks. They are situated so that, to the same extent as tanks above ground, physical inspection for leakage is possible. Thus, the requirements to be able to physically inspect the tank for leakage is consistent with the purpose of this exclusion.

Tanks located in a below grade structural vault, cellar, basement, mine or other underground room would be subject to the proposed UST exclusion if the tank sits on or above the surface of the floor and there is sufficient space to enable physical inspection of the tank, but not necessarily the tank bottom.

An issue presented by this definition is that such tanks would *not* be subject to corrosive forces because their components are not placed in direct contact with the surrounding soil. Therefore, they would be less likely to have a release. This would mean that the ability to "physically inspect the tank" may be irrelevant. The Agency has considered revising this definition to include only "underground tanks situated in a room that is part of a larger structure or building." EPA requests comments on this issue.

EPA expects that many new storage tank systems will be placed in underground containment vaults or to aboveground locations as a result of today's rules, once they are finalized. This could result in an increase in volatile emissions to the air because the product stored will be subject to higher temperature conditions that promotes emissions through vent pipes. EPA solicits comments on the need in the future for control measures to reduce the impacts of such developments.

b. Definition of Terms Used in the Regulations

In addition to proposing terms that clarify the statutory definitions contained in Subtitle I, the Agency is proposing to add in 40 CFR Part 280 the following definitions of terms used in today's proposal.

*(1) Aboveground Release.* Aboveground release means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and releases associated with overfills and transfer operations as the petroleum moves to or from an underground storage tank system.

*(2) Ancillary Equipment.* "Ancillary equipment" means any device including, but not limited to, such devices as fittings, flanges, valves, and pumps, that are used to distribute, meter, or control the flow of petroleum or hazardous substances to and from an underground storage tank.

*(3) Below Ground Release.* Below ground release means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the below ground portions of an underground storage tank system and releases associated with overfills and transfer operations as the petroleum moves to or from an underground storage tank.

*(4) Cathodic Protection.* Cathodic protection is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. A tank can be cathodically protected through the application of either galvanic anodes or impressed current.

*(5) Compatible.* Two or more substances are compatible if they are able to maintain their respective physical and chemical properties upon contact with one another for extended periods of time and under varied environmental conditions (e.g., temperature).

*(6) Corrosion Expert.* Corrosion expert means a person who, by reason of his/her knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

*(7) Electrical Equipment.* Electrical equipment means underground equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

*(8) Excavation Area.* Excavation area is defined as the volume containing the tank system and backfill material as bounded by the ground surface and walls and floor of the pit and trenches into which the tank system is placed at the time of installation.

*(9) Existing Tank System.* "Existing tank system" means a tank system used to contain an accumulation of regulated substance or for which installation has commenced on or prior to the effective date of this regulation. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals, or

permits necessary to begin physical construction of the site or installation of the tank system, and if either (1) a continuous onsite physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

*(10) Free Product.* Free product refers to regulated substance in the non-aqueous phase (e.g., liquid not dissolved in water) that is beneath the surface of the ground.

*(11) Hazardous Substance Tank System.* Hazardous substance tank system means an underground storage tank system that contains an accumulation of hazardous substance or a mixture of petroleum and hazardous substances in which hazardous substances comprise greater than 50 percent of the weight or volume of the mixture.

*(12) Hydraulic Lift Tanks.* Hydraulic lift tank means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air and hydraulic fluid to operate lifts, elevators, and other similar devices.

*(13) Implementing Agency.* Implementing agency means EPA, or in the case of a state with a program approved under Section 9004, the designated state or local agency responsible for carrying out an approved underground storage tank program.

*(14) Interstitial Monitoring.* Interstitial monitoring is a leak detection method which entails surveillance of the space between an UST system walls and the secondary containment system for a change in steady state conditions. In a double-walled tank, this change may be indicated by a loss of vacuum, a drop in pressure, a drop in the fluid level in a visible reservoir, or the detection of the regulated substance in the interstitial space. In a secondary containment system consisting of a liner (natural or synthetic), bentonite-sealed soils, or a vault, the surveillance consists of frequent to continuous sampling from a monitoring well between the UST and the liner to detect the presence of substance in the well(s).

*(15) Inventory Controls.* Inventory controls are techniques used to identify a release of regulated substances that are based on tank liquid level measurements and reconciliation of those measurements with product delivery and withdrawal records.

*(16) Liquid Trap.* "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

*(17) New Tank System.* "New Tank System" means a tank system that will be used to contain an accumulation of regulated substance and for which installation has commenced after the effective date of this regulation. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin physical construction of the site or installation of the tank, and if either (1) a continuous onsite physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

*(18) Operational Life.* Operational life refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Section 280.80.

*(19) Overfill Release.* An overfill release refers to a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

*(20) Petroleum Tank System.* Petroleum tank system means an underground storage tank system that contains an accumulation of petroleum or a mixture of petroleum and hazardous substances in which petroleum comprises greater than 50% of the weight or volume of the mixture.

*(21) Positive Sampling, Test, or Monitoring Results.* Positive sampling, test, or monitoring results refer to the results of sampling, testing, or monitoring using a method described in Subpart D that indicate that a release from an UST system has occurred.

*(22) Release Detection.* Release detection means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial area between the UST system and a secondary barrier around it.

*(23) Secondary Containment.* Secondary containment refers to a system installed around an UST that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious liners (both natural and synthetic), double walls, vaults, or impervious soil treatments such as bentonite-sealed soils.

*(24) Sump.* Sump means any pit or reservoir that meets the definition of tank, including troughs or trenches connected to it, that serves to temporarily collect regulated substances.

*(25) Tightness Testing.* Tightness testing means a procedure for testing the ability of a tank system to prevent inadvertent release of any stored substance into the environment (or, in the case of an UST system, intrusion of ground water into a tank system).

*(26) Underground Release.* Underground release means any below ground release.

*(27) Unsaturated Zone.* The unsaturated zone refers to the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation (i.e., the water table).

*(28) "UST System" or "Tank System".* "UST System" or "Tank System" means an underground storage tank, connected underground piping, other ancillary equipment, and containment system, if any.

*(29) Wastewater Treatment Tank.* Wastewater treatment tank means a tank that is part of a wastewater treatment facility regulated under either Section 402 or 307(b) of the Clean Water Act, and which receives and treats or stores an influent wastewater which contains regulated substances.

**B. Design, Installation, and Notification Requirements**

The following sections describe general requirements applicable to all new UST systems storing petroleum or hazardous substances. These requirements also apply to existing UST systems which must be upgraded to meet new UST standards according to the schedule described in Section 2 below.

*1. Performance Standards for New UST Systems*

a. Design and Construction (Section 280.20 (a) and (b))

*Overview.* Proper tank system design and construction must not only ensure structural integrity of the tank system at the time of installation, but also throughout the period of its intended use. Proper design and construction encompasses not only the design and fabrication of the tanks and piping themselves, but also ancillary design features, systems, or equipment that enhance or protect the structural integrity of the tank system.

There is concern that, in the absence of adherence to proper standards, tank systems might be inadequately designed or built with inferior materials, thereby resulting in structural failures. Lack of adherence to fabrication standards might also lead to failures from burst seams and couplings, cracked walls, or poor welds. There are very few reported incidents of releases resulting from design or construction failures, and the Agency attributes this low failure rate to widespread voluntary adherence to existing codes and practices. Today's proposal will ensure that these voluntary practices are followed nationwide.

Corrosion is the major cause of releases from the existing UST population. Steel tank systems unprotected from corrosion presently are in widespread use and corrode easily in many soil conditions. EPA's Local Release Incidents Study reported that corrosion of bare steel tank systems was by far the major cause of releases from existing UST systems, roughly 60 percent. Corrosion cells are created across different areas of the tank system, especially vertically as soil moisture and other characteristics vary with depth, and between dissimilar metals. Similar metals that have been in the ground for different periods of time also can establish a corrosion cell. Because of these recognized problems, corrosion protection must be addressed as part of the design and construction of the tank system.

Today's proposal (Section 280.20) requires that new UST systems be designed and constructed in a manner that will prevent releases due to structural failure and corrosion for as long as they are used to store regulated substances. Improper installation is the other major cause of releases from both unprotected and protected tank systems (including FRP) and is intimately connected to ensuring that the structural design of the tank system maintains its integrity. The Agency's proposed approach toward proper installation is addressed in the next section of the Preamble (Section VI.B.1.b.).

*Current Practices.* Today's proposal is the result of a careful evaluation of the current design and construction requirements embodied in the Interim Prohibition. The Agency specifically questioned whether to make the requirement more stringent. The sections that follow describe various existing practices and regulatory programs aimed at ensuring structural integrity of tank systems through proper design and construction.

*(1) National Consensus Codes of Practice.* Several professional and scientific organizations have established standards and codes that relate to design and construction of underground tank systems, piping, and ancillary equipment. These include the National Fire Protection Association (NFPA), the Steel Tank Institute (STI), Underwriters Laboratories (UL), National Standards Institute (NSI), the National Association of Corrosion Engineers (NACE), the American Society of Testing and Materials (ASTM), the Western Fire Chiefs Association (WFCA), the Occupational Safety and Health Association (OSHA), the Petroleum Equipment Institute (PEI), the American Petroleum Institute (API). Some additional codes developed by similar organizations in Canada have been adopted by some of the northern states, including standards published by Underwriters Laboratories of Canada (ULC).

Collectively, these organizations have published more than twenty guides, codes and standards relating to the design and construction of tanks, pipes and UST-related systems. Generally, these publications are written by committees of knowledgeable and experienced professionals and are subjected to independent peer review. These guides, codes, and standards are widely recognized as unbiased and independent. Because they represent consensus positions, these publications have become standards which are closely followed in many segments of the industry. Frequently, these codes are adopted by state and local governments in their UST regulations and ordinances.

Some of the most important existing codes follow:

- ASTM D4021–86 provides detailed specifications for fabricating and testing FRP tanks;
- UL 58 describes in detail the standards for fabrication and assembly of steel tanks and the required tests for leakage;
- UL 1316 provides requirements for the construction, performance, manufacture, testing, and installation of FRP tanks;
- "Specification for sti-P3 systems of External Corrosion Protection of Underground Steel Storage Tanks," 1987 addresses the design and fabrication of coated and cathodically protected steel underground storage tanks;
- ULC–S603–M1981 addresses assembly of tank systems comprehensively, design standards, and testing guidelines for horizontal cylindrical steel tanks;
- ULC–S603–M1982 provides guidance on construction requirements, external corrosion protection, installation and maintenance;
- ASTM—"Steel Piping, Tubing and Fittings" details more than 130 standards on the design and fabrication of steel pipe;
- NFPA 30 addresses tank systems comprehensively from a fire explosion perspective. It references the above codes and sets performance standards.

*(2) State and Local Regulations.* An EPA review of state UST programs identified 14 states that already have UST regulations. Many more regulate UST systems through existing fire codes. Some have promulgated design specifications covering materials, welding, fabrication, and assembly; however, these states are in the minority. Most states adhere to programs that are based on one or more consensus codes. They have accepted strict adherence to these codes as an assurance of the tank system's integrity for its operational life. For example, the Florida UST program requires design, construction, and installation to be in accordance with NFPA 30, Chapters 2–1 and 2–3; API 1615, Chapters 3(3) and 3(4); and UL 58 or UL 1316.

*(3) Underground Tanks Storing Hazardous Waste.* The Hazardous Waste Tank Regulations promulgated on July 14, 1986, established the following performance standard: owners and operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner and operator must obtain a written assessment—reviewed and certified by an independent, qualified, registered professional engineer—attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. In addition, a corrosion expert must determine the

factors affecting the design and operation of a cathodic protection system. All these components are submitted by the owner and operator in a permit application to EPA or the authorized state.

*(4) Interim Prohibition.* Subtitle I, Section 9003 (g) of RCRA prohibits installation of an underground storage tank system for the purpose of storing regulated substances unless the tank: (1) will prevent releases due to corrosion or structural failure for the operational life of the tank system, (2) is corrosion protected in one of several ways, and (3) is compatible with the substance stored. The prohibition allows for variance from corrosion protection if soil resistivity is greater than 12,000 ohm-centimeters.

*Today's Proposal.* (1) *Design and Construction Requirements.* EPA has reviewed data on tank system failures to determine if the design and construction requirements of the Interim Prohibition are adequate. We have concluded that more stringent design and construction requirements are needed, especially with regard to corrosion protection.

Two general approaches to design and construction standards were considered by EPA: detailed design standards or general performance standards. Detailed design standards would specify the proper design and construction of tank systems. Such design standards could be included in the regulation explicitly or the standard could reference existing codes and standards. EPA has reservations about this approach for several reasons.

First, the design and construction of tank systems will change over time and continued advances in tank system material and fabrication technologies are expected. If EPA promulgated detailed design standards, it would have to continually revise and update them to reflect these changes in technology. Second, to keep up with these changes, EPA would have to closely monitor advances in tank design and construction technology to enable updating the design standards. EPA does not believe that it needs to duplicate the existing infrastructure of industry consensus codemaking. Third, detailed design standards that were under continued development would result in conflicts with the many state UST programs, as well as complicate the approval process for state programs.

The use of design standards might be justified if there were no industry consensus with respect to tank design. While a specific design standard provides clear guidance to the regulated community on the design and construction of tank systems, EPA has determined that the standards developed by industry consensus are already providing adequate protection of human health and the environment.

The general performance standard approach that EPA is proposing today for tank and piping design and construction in Section 280.20 (a) and (b) is intended to build upon the Interim Prohibition by requiring that the tank and piping be designed and constructed in accordance with consensus codes and accepted practices. The industry consensus codes are, in fact, being followed for many of the new installations now.

Today's proposed rule requires that each tank be properly designed, constructed and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. Nationally recognized is defined to mean a group or organization that is composed of a national membership that is representative of its members' views concerning tank design and construction or corrosion protection.

Generally, to have achieved nationally recognized status the association will have been in existence for a reasonable period of time, and will have been active in promulgating standards that are in widespread use, and will have been active in research and in the scientific and regulatory debate of issues relating to its areas of interest. The Steel Tank Institute is an example of a nationally recognized association because it has been cooperating with other industries, organizations and government bodies in the development of reliable tank standards since 1916.

Table 2 of this preamble lists a number of codes that have been tested through widespread and lengthy use. In this manner, the codes have become established as surrogate regulations. The Agency considers all the organizations listed in this table as meeting the definition of nationally recognized associations or independent testing laboratories. The Agency invites comment on the methods that should be used to recognize additional codes that meet the intent of the requirement of today's proposed rule that each tank be properly designed, constructed and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory.

A number of these codes and standards are listed in today's proposal as guidance in meeting this general performance standard. These codes are referenced in notes and the use of these particular codes is not part of today's proposed requirements. The owners and operators may rely on any other applicable codes and standards. The codes are referenced only to provide examples of codes that meet this general performance standard.

*(2) Tank Requirements (Section 280.20(a)).* Today's proposal is more stringent than the requirement for corrosion protection in the Interim Prohibition because it requires all new steel tanks to be protected from corrosion by either using both corrosion-resistant coatings and cathodic protection or by being made of composite construction. The Interim Prohibition allows either coatings or cathodic protection.

Today's proposal allows three tank fabrication techniques: fiberglass-reinforced plastic; coated and cathodically protected steel; and steel and fiberglass-reinforced plastic composite. The Agency believes that these three types of tanks will perform adequately if they are designed and constructed in accordance with nationally recognized association or independent testing laboratory codes of practice. In addition, other tank design, construction or corrosion protection techniques are allowed in today's proposal if the implementing agency determines the technique is no less protective of human health and the environment. The Agency has included this provision to allow the development and use of new technologies and to allow design variations for specific site conditions.

These codes of practice are recommended for guidance in the design and construction of fiberglass-reinforced plastic (FRP) tanks in proposed Section 280.20(a)(1). Other codes may also be applicable, but the Agency believes that tanks built in accordance with the American Society of Testing and Materials, Underwriters Laboratories, or Underwriters Laboratories of Canada standards will minimize releases during their intended period of use.

The second type of tank (proposed in Section 280.20(a)(2)(i)) is the coated and cathodically protected steel tank. This type of tank is in wide use and is reported to have very high reliability.

Coatings isolate the external surfaces of the tank system from the environment and reduce the electric current demand on the cathodic protection system required to obtain the desired protection levels throughout the life expectancy of the tank system. EPA has received suggestions that the typically used coatings will inevitably be damaged and "holidays," or separations of the coating from the tank, will occur. Without a

cathodic protection system, all of the galvanic forces will be focused on the holiday, causing rapid corrosion and subsequent release. (The Agency does believe that a coating could be made sufficiently impermeable and durable to prevent the formation of holidays. This type of coating is referred to as a cladding and is discussed in the composite tanks section.) It is also argued that the cathodic protection system on a bare steel tank will be overworked. Particular concern has been raised about the premature consumption of sacrificial anodes. If not checked frequently enough, the tank may quickly become unprotected. Other analyses have suggested a drawback of the combined coated and cathodically protected system. Some data suggest that the cathodic protection system can cause delamination, a large scale separation of the coating from the tank, exposing the tank to the environment. This could lead to serious corrosion problems.

The Agency has reviewed these arguments and is persuaded that coatings will enhance the operation of the cathodic protection system by reducing its electric current demand, and, conversely, the cathodic protection system will protect the coated UST from corrosion-caused releases at holidays. Consequently, today's proposal requires both systems for new UST systems. In addition, the cathodic protection must be inspected and maintained in accordance with the Operation and Maintenance requirements of Section 280.31. The Agency requests comments on the merits of this approach.

There are a number of industry consensus codes that provided detailed performance requirements for coated and cathodically protected steel tanks. The Steel Tank Institute's "Specification for sti–P3 system of External Corrosion Protection of Underground Steel Storage Tanks" is by far the most widely used design standard for coated and cathodically protected tanks. The specification covers joint design, coating selection, and sacrificial anode design and construction. Another code under development is the UL Standard 1746, "Corrosion Protection System for Underground Storage Tanks." The UL code will allow considerable flexibility in the design of the tank. However, the design must meet strict performance requirements related to the structural integrity of the tank coating and sacrificial anodes. This code is just now being issued for comment, but some of the current tank designs (for example, the STIP3 specifications) are expected to pass the UL 1746 performance requirements. The comment period and time required to obtain UL certification adds a degree of uncertainty to the use of this code for coated and cathodically protected tanks. This issue is discussed further in the following section on composite tanks.

Underwriters Laboratories of Canada also publishes consensus codes for the design and construction of coated and cathodically protected steel tanks. These codes are reported to be in use in areas bordering Canada and include CAN4–603–M85M, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"; CAN4–403.1–M85, "Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids"; and CAN4–S631–M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems." The Agency believes that tanks designed and constructed in accordance with these three codes, will perform adequately throughout their period of intended use and will not fail due to corrosion.

The Agency believes that pre-engineered, factory-installed coatings combined with sacrificial anodes for cathodic protection provides very reliable and longlasting cathodic protection for most situations. However, some tank configurations and site conditions may require the use of field-installed cathodic protection. Because the selection of field-installed cathodic protection is complex, today's proposal requires in Section 280.20(a)(2)(ii) that field-installed cathodic protection systems for tanks be designed by an independent corrosion expert. Among the variables which can affect corrosion are electrolyte activity, acidity, moisture levels, soil resistivity, temperature, bacterial action, and the presence of oxidizing agents. Because of the complexity of these influences, either operating singly or together, UST system owners and operators do not have the necessary expertise to select the most effective materials of construction and corrosion protection systems. Proper attention to these problem areas can practically eliminate the likelihood of releases caused by corrosion. EPA has concluded that an independent corrosion expert can best assess the corrosion protection measures that are most suited for the site-specific cathodic protection system. The Agency requests comments on the merits of this approach.

The third type of tank allowed in today's proposal (in § 280.20(a)(3)) is the composite tank. In this type of tank, a noncorrodible cladding covers a steel tank and prevents corrosion of the steel. It is essential that the cladding completely isolate the steel structure from the environment because, as described above, accelerated corrosion can occur at holidays or voids in the cladding. Therefore, the cladding must withstand rough handling during installation and must remain intact throughout the life of the tank. The composite tanks that are currently marketed are clad with FRP. However, it has been reported to the Agency that other cladding materials are currently being tested.

The Agency has reviewed the performance requirements and manufacturing techniques for composite tanks and has concluded that it is feasible to construct tanks with claddings that are sufficiently continuous, impermeable and durable to protect the steel structure of the tank from corrosion. Underwriters Laboratories is developing detailed performance standard for the design and construction of composite tanks and today's proposal recommends UL Standard Number 1746, "Corrosion Protection for Underground Storage Tanks," for guidance in meeting the requirements. The UL standard includes many of the performance requirements from both FRP and coated steel tank standards.

These tank types are presently allowed under the Interim Prohibition and according to the manufacturers, some of these tanks have been in use for as long as 20 years without a documented case of failure. However, because of a lack of any test data on the field performance of a large number of these types of tanks, the Agency is still concerned about the long-term impermeability of the cladding. Should the cladding lose some of its characteristics of impermeability, holidays could develop. Some manufacturers argue that corrosion would passivate in small holidays and cause the corrosion to cease. However, according to information available to the Agency, one user of composite tanks has retrofitted its composite tanks with cathodic protection. The tank manufacturer contends that this retrofit was precautionary and that there was no overt sign of corrosion.

Although UL is still developing UL 1746, three major composite tank manufacturers have received approval from UL to manufacture composite tanks. The UL 1746 standard is reported to be ready for public comment. This process will require a 60- to 90-day comment period and a short period after the comment period closes before final

publication. After final publication, a test period of about 6 months plus an additional month will be required before the tank manufacturers are certified. This adds a degree of uncertainty to the final UL approval of the use of these tanks.

Because of these uncertainties and because of the potential for corrosion at breaches in the cladding, the required level of performance must be greater for composite tanks than for coated tanks. The cladding on composite tanks must be more resistant to damage than coating on coated steel tanks. It must be highly impermeable to moisture to prevent corrosion-induced delamination of the cladding. In addition, the cladding must provide a greater degree of electrical isolation than a coating to provide certainty that the cladding alone will protect the steel from corrosion. The Agency invites comments and documented performance data regarding these issues. If no acceptable data exist regarding these concerns, then the Agency may require periodic tests conducted over the operating life of these tanks to identify any holidays. This subject is discussed further in the operation and maintenance section.

The Agency expects that other tank design, fabrication and corrosion protection techniques will be developed. In addition, certain environmental settings may have a very low potential for corrosion. Therefore, today's proposal includes a provision in Section 280.20(a)(4) for using alternative design and corrosion protection methods if the implementing agency determines that the method is no less protective of human health and the environment.

The owner and operator may use alternative designs and construction methods if the implementing agency finds, as a result of a demonstration or other means, that the alternative design or method is no less protective of human health and the environment. In deciding on whether an affirmative finding shall be issued, the implementing agency may consider:

- The nature and quality of the product;
- The proposed alternate design and operation; and
- All other factors that would influence the quality and mobility of the constituents and the potential for them to migrate to ground water or surface water.

If an affirmative finding is issued, the implementing agency will require the owner and operator to construct and operate the system in a manner consistent with the demonstration.

This approval process has been included to encourage innovation. In the process of preparing this proposed rule, the Agency has seen reference to several potential alternative systems such as nylon tanks, jacketed tanks, lined steel tanks and lined concrete tanks. In addition, some sites may not require the degree of corrosion protection required under today's proposal. If such systems are as protective of human health and the environment, the Agency desires to provide a mechanism for allowing approval of such alternatives. This provision will apply to both new and upgraded tank systems.

EPA intends that the implementing agencies have the responsibility of developing the approval process for alternative design and construction techniques. However, the Agency expects that requests for approval of alternative designs will be made by owners, operators, installers, and manufacturers. For example, an owner and operator may request an exemption from the corrosion protection requirements based on the low corrosion potential of the site. In another case, a tank manufacturer may request approval for the use of an alternative tank design at any site based on the corrosion resistance of the tank. The Agency anticipates that, in both cases, the implementing agency would review performance data prepared by a corrosion expert and product demonstration information submitted by the party requesting approval. In addition, EPA recognizes that the implementing agency could also review data and opinions from independent experts in the field of concern.

Today's proposal drops the 12,000 ohm-cm exclusion of the Interim Prohibition. This exemption has been criticized as an inadequate measure of the propensity to corrode. Soil resistivity values are average resistivities of the soil between the surface of the ground and the depth being measured, and variability is common. Large variations result in soil composition changes which are responsible for the promotion of corrosion activity. A concentrated corrosive attack can occur even in areas of generally high resistance and low variability. It is reportedly not uncommon to find premature pipe leaks and tank failures in soil of more than 30,000 ohm-cm due to soil resistivity variations.

Soil corrosivity is actually a function of many variables in addition to resistivity, including soil conductivity, pH, moisture content, chloride and sulfide ion concentration. The use of the single resistivity variable is inadequate to measure the propensity to corrode and proposes today to drop the 12,000 ohm-cm exclusion. Further, because of the complexities involved in attempting to accurately measure the propensity to corrode, the Agency is not proposing any alternative exclusions. This increases the stringency of the rule by requiring all tank systems to have corrosion protection systems.

*(3) Piping Requirements (Section 280.20(b)).* The design and construction of underground piping is addressed in today's proposal. Although the requirements for piping are similar to those for tanks, the Agency feels that design and construction requirements for piping should be addressed specifically in the regulation to identify them clearly.

There are numerous industry consensus codes that are specific to the design and construction of UST piping systems. These include codes written by the Underwriters Laboratories, Underwriters Laboratories of Canada, National Fire Protection Association, and American Petroleum Institute. In addition, American Society for Testing and Materials has published more than 130 standards on the design and fabrication of steel pipe. The Agency believes that they provide adequate guidance for ensuring compliance with the requirement.

The standards that are recommended for guidance in the design and construction of FRP pipe (in § 280.20(b)(1)) include standards for flexible connectors. The ends of each line as well as changes in direction should be fitted with flexible connectors or swing joints to allow movement of the tank and pipe system. These flexible connectors can be used with steel or FRP piping, but swing joints built of threaded connectors cannot be used for FRP pipes. Swing joints are also discussed in the following section on installation requirements.

Steel piping is required to be coated and cathodically protected in § 280.20(b)(2). The cathodic protection system must be designed by an independent corrosion expert because the Agency believes that the layout of piping systems has a major impact on the type and degree of cathodic protection needed. There are many possible piping layouts, depending on the site plan, making even a pre-engineered sacrificial anode system essentially field-installed. Therefore, the requirements for cathodic protection of steel piping are the same as those for field-installed cathodic protection for tanks.

Only FRP and cathodically protected steel pipe are identified specifically in the regulation. The Agency does not

know enough about other types of pipes to allow them specifically. However, as in the tank corrosion protection section, there is an allowance for alternative methods. The Agency expects that other design, construction and corrosion protection techniques may be developed in the future or already in use (e.g., cooper tubing). In addition, certain environmental settings may have a very low potential for corrosion. Therefore, today's proposal in Section 280.20(b)(3) includes a provision allowing for using alternative design and construction methods if the implementing agency determines that the method will prevent releases in a manner that is no less protective of human health and the environment than the two other methods described above.

*Other Issues Requiring Public Comment.* The Agency has identified three other aspects of design and construction that could have an impact on the structural integrity of UST systems. The advantages and disadvantages of these other aspects are not clearly established, and the Agency therefore is seeking public comment and information on whether there is a need to address them in regulation. The following is a brief discussion of those issues.

*(1) Manways.* All pipes and gauge hatches in an underground tank can be installed through a manway in the top of the tank. The principal use of a manway is to gain access to the interior of a tank for inspection and repair. In addition, all of the connections can be made to the manhead that covers the manway, protecting the integrity of the tank which is only violated by the installation of the manway itself. The mandated use of manways as the sole entry point for all pipes and gauge hatches in all UST systems is apparently a widespread practice in Europe. However, the common U.S. practice is to have several openings on the top of the tank for piping and gauge hatches. When all of the connections are made to several different openings in the shell of the tank, there is a much greater chance that one or more of the connections will be installed improperly. Multiple connections are believed to increase the probability of a release developing after the tank has been put into operation. A third benefit in the use of manways is that the manhole liner can function as an overfill catchment basin.

The manway also has disadvantages. If the manway is to also function as the route providing access to the appurtenances attached to the tank then all the pipes must be fitted with flanges, unions, or other couplings that can be disconnected without having to cut the pipes. These types of couplings offer an added place for releases to occur and thereby reduce the reliability of the tank system as a whole. However, even though these devices can fail, the coupling failures in a manway are easier to repair than failures in pipes that are connected in multiple places directly to inaccessible places on top of the shell of the tank. Manway couplings are accessible without excavation and are designed for easy replacement of the seals or the whole coupling.

The Agency recognizes there may be significant additional benefits from using manways. Comment and information is requested about the relative risks of the manway and traditional systems and, if EPA requires manways in the final rule, whether it will lead to a significant reduction in the number or volume of releases.

(2) Pumps. Two basic methods exist for removing the liquid stored in underground storage tanks: pressure methods and vacuum methods.

Pressure methods pressurize the entire tank or lines with either the liquid itself or a gas, such as air or nitrogen. This method is inexpensive but has some disadvantages: it can be unreliable and it can pose environmental problems if leaks occur. If a leak occurs in a pressurized system, when activated, it will pump the stored substance into the environment.

Vacuum methods draw the liquid out of the storage tank by subjecting the pipe to a suction. In this system, a pump is installed above grade level and the suction line is extended down into the tank near its bottom. The advantage of this system is that the line from the tank to the surface uses less than atmospheric pressure so that if there is a leak in the pipe, only air will enter the pipe—no liquid would escape into the environment. From an environmental standpoint this is the most desirable system. Several European programs have mandated suction pumps as intrinsically protective of the environment.

Pumping problems may arise with the suction method if leaks develop in the suction line. The operation of the pump can be quite erratic and if the tank systems run unattended for an extended period of time the pump can be severely damaged before the condition is discovered. Such behavior is indicative of a leak and alerts the tank owner that repair is necessary.

The Agency seeks comments on the advantages and disadvantages of suction versus pressurized piping systems; their prevalence in use today; and whether pressure pumps present such a risk to human health and the environment that they should be subject to more stringent controls (e.g., line leak detectors or secondary containment) or even prohibited from new tank systems; and whether suction pumps present less of a risk and should be subject to less stringent controls (e.g., reduced leak detection requirements). The Agency is specifically interested in receiving information concerning experiences with the sizes and impacts of releases from these two different types of systems. (See Section VI.D.5. for further discussion of line leak detection methods and solicitation of comments and information on this subject.)

*(3) Internal Corrosion Protection.* Until the last few years, little attention has been paid to internal corrosion protection in the United States. Internal corrosion results from the reaction of water and oxygen in the stored product with the inside of the steel structure.

External corrosion has been the major type of corrosion-induced failure in unprotected steel tanks. However, as the incidence of external corrosion is reduced by coating and cathodically protecting steel tank exteriors, internal corrosion could become a major source of failure.

The Steel Tank Institute has identified two areas that are susceptible to internal corrosion and has developed recommended practices that protect them. The first area subject to internal corrosion is under the fill openings where filling the tank and taking dip stick readings can lead to accelerated corrosion. STI recommends that this area can be protected by welding wear plates to the bottom of the tank. Another area subject to internal corrosion is the unwelded plate overlaps. Water can become trapped in these crevices resulting in accelerated localized corrosion. These overlaps can often be eliminated by design changes, or they can be seal welded. A third solution to corrosion in plate overlaps is to cathodically protect the seam with sacrificial anodes. Another method to protect against internal protection, not included in the Steel Tank Institute's recommended practice, is to coat or line the tank interior with a noncorrodible material. Various countries in Europe mandate some of these practices to prevent internal corrosion.

EPA requests comments on industry experience with internal corrosion protection in terms of design, installation, efficacy and problems found. Information on the need for internal corrosion protection is also requested, including whether it should

be required for all new steel tank systems.

b. Installation (Section 280.20(c))

*Overview.* Proper installation is crucial to ensure the structural integrity of a new tank system. Installation includes excavation, tank system siting, burial depth, tank system assembly, backfilling of the tank system, and surface grading.

The data reviewed by EPA indicates that improper installation is a significant cause of steel and FRP UST system failures, particularly piping failures. Installation problems result from careless installation practices that do not follow recognized codes and procedures. For example, mishandling of the tank during installation can cause structural failure of FRP tanks or damage to steel tank coatings and cathodic protection. Improper anchoring, backfilling, inadequate cover, and insufficient tightening of loose fittings can also lead to system failures (including the piping).

EPA believes that if owners and operators would follow correct procedures for all tank system installations, then the number of releases would be significantly reduced.

*Current Practices.* Several professional and scientific organizations have established standards for the installation of underground tank systems. These organizations include the National Fire Protection Association (NFPA), the Steel Tank Institute, Underwriters Laboratories, the National Association of Corrosion Engineers (NACE), the Western Fire Chiefs Association, the Occupational Safety and Health Association, the Petroleum Equipment Institute (PEI), and the American Petroleum Institute (API).

Collectively, these organizations have published more than ten guides, codes, and standards for installing UST systems. As discussed above, generally these publications are written by committees of knowledgeable professionals and subjected to independent peer review.

Some of the most important codes follow:

- PEI/RPIOO–86 provides the most recently developed and comprehensive of the recommended practices for installation of underground storage tank systems;
- NFPA 30 addresses tank systems comprehensively from a fire explosion perspective. It references other codes and sets performance standards;
- API 1615 covers the factors that can contribute to successful installation of petroleum UST systems;
- NACE/RP–01–69 and RP–02–85 contain chapters on the installation of cathodic protection systems for metallic storage and piping systems.

In addition, several tank manufacturers also provide their own installation instructions. At least one manufacturer of FRP tanks seals the instructions onto the tank.

State practices display considerable variation. At least 23 states have established requirements for proper installation. Most of the state regulations reference NFPA 30 as a general installation standard. However, other consensus guides, codes, and standards related to installation are also included by reference in some state regulations. For example, eleven states require that tank systems be installed according to the manufacturer's instructions, ten states require certification of the installation, and five states require installer certification.

EPA has previously addressed installation requirements for UST systems in two ways. First, under the Hazardous Waste Tank Rules, underground tank installers must follow proper installation procedures (in effect by requiring adherence to industry consensus codes) and the installation must be inspected by a registered professional engineer or qualified installation inspector before covering, enclosing, or placing a tank system into operation.

Second, although the Interim Prohibition of Subtitle I does not explicitly require the proper installation of new underground tank systems, the existing EPA guidance ("The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks") recommends following the industry consensus codes and provides installation guidance in accordance with those codes.

*Approaches to Regulation.* The Agency considered six different methods or approaches that the owners and operators could use to assure themselves that the installations are properly completed. These alternative approaches are:

- Certification or approval of installers by tank system manufacturers;
- Certification of installers by state or local regulatory agencies;
- Inspection of the installations by registered professional engineers;
- Inspection of the installation by state or local agencies;
- Completion of a manufacturer supplied check list of installation procedures; and
- Testing of the tank and piping for leaks during and after installation.

EPA does not have information indicating that one of the above approaches is better than the others. EPA is seeking comment on the advisability of these approaches. The Agency would especially like comments on the relative merits of certifying the installation versus certifying the installers. A desirable attribute that should be considered with any approach is its flexibility in tailoring an installation to site-specific considerations.

EPA believes that regulation of installation practices is primarily an institutional problem. A key element to successful implementation of installation requirements will be a program for education and outreach. EPA intends to pursue such a program and seeks comment on how to proceed with an education and outreach program for owners, operators and installers regarding proper installation procedures.

Today's proposal builds on the Interim Prohibition Guidance, but is more explicit. Because of the importance of proper installation and its complexity, the Agency has proposed a set of nine performance criteria that must be met in order to satisfy § 280.20(c). These performance criteria are based upon recommended industry practice. They represent the major installation steps outlined in the Petroleum Equipment Institute Report RPI00–86, and the American Petroleum Institute Publication 1615.

The first of the proposed performance criteria is that precautions must be used to prevent damage to the tank and pipe coatings or structures during installation. Also, any damage to the tank or pipe must be repaired in accordance with the manufacturer's instructions. The Agency included this criteria because it believes that many tank and piping failures result from mishandling of the tanks before and during placement. The tank and pipe manufacturers generally provide instructions on proper storage and handling procedures. In addition, the tank and piping should be tested for structural failure at each major installation step (i.e., upon receipt of the tank, once the tank is placed in the ground, and after piping has been connected) prior to backfilling; tanks and piping should be pressurized with air and visually inspected for leaks using a soap solution. The test should be performed to provide assurance that the tank and piping are structurally sound before proceeding with the next installation step. The manufacturer's instructions must be followed when repairing tanks and piping to ensure that

the repaired tanks or piping will perform adequately. Generally, repair instructions are provided as a standard industry practice with each tank and piping system. However, if additional instructions are needed, the manufacturer must be contacted.

The second performance criterion is that the excavation must be large enough to properly backfill the tank, piping, and associated equipment. EPA believes that backfill is a major component of the structural integrity of the tank and piping system and that enough space must be provided in the excavation to adequately place and compact backfill. Sufficient excavation space is particularly necessary for proper, careful backfilling under the tank.

The third installation performance standard concerns the selection, placement and compaction of backfill materials. As mentioned above, EPA feels that the backfill is an important feature of the installation and that many tank and piping failures can be prevented by careful attention to backfilling. In general, the backfill material must be a clean, noncorrosive, free-flowing material such as washed sand or gravel. However, a specific type of backfill may be required by the manufacturer because of unique structural or coating features. The manufacturers also specify the thickness of lifts in which the backfill is placed, and the degree and method of compaction that must be used to support the tank and piping.

The fourth requirement is for supports and anchorage of tanks that are subject to high water tables or in flood prone areas. High water can create strong lifting forces on an UST, causing movement and structural failure if the tank is not properly supported. The possibility of a high water table that may result from flooding should be carefully considered when deciding whether anchorage and supports are needed. Surface water can fill the tank excavation area if the surface is not properly sealed. The tank manufacturers generally provide anchorage design information.

The fifth installation performance criterion concerns piping layout and installation. The Agency believes that unnecessarily complex piping layouts can complicate backfilling of the pipe system and lead to structural failure. Structural failure of the piping could also result from improper installation of the piping and piping accessories. Therefore, in today's proposal, EPA is requiring that the piping and piping accessories be installed in accordance with the manufacturer's instructions.

The sixth performance criterion is that the pipe joints must be cut accurately and deburred to provide liquid-tight seals. FRP pipe joints must be cut squarely and tapered cleanly to ensure a structurally sound joint. The tolerances and procedures for preparing FRP pipe joints are provided by the manufacturers. Steel pipe joints must also be prepared carefully to prevent failures. The pipe must be cut squarely and the thread cutting die must be sharp to produce tight fitting thread.

The seventh performance criterion is that swing joints or flexible connectors must be installed at the beginning and end of each line as well as where the line changes direction. Swing joints or flexible connectors prevent differential movement of the tank, piping and dispensing equipment from causing stress in the pipe joints. These swing joints can be constructed in several ways. A series of threaded elbows and connectors can be used with steel pipe. Flexible connectors can be used with either steel or FRP pipe.

The eighth performance criterion is that the tank and piping cathodic protection must be installed in accordance with the manufacturer's instructions, plans and specifications. Some of the cathodic protection systems have important layout and installation limitations. The manufacturers of these systems provide instructions on how to layout and install their systems.

The last installation performance criterion is that a tank and piping tightness test must be performed after the backfill is placed into the excavation area and before the tank and piping are placed into operation. This test must meet the same requirements as the tightness test in § 280.41(c)(1). API 1615 recommends performing this test as a final check that the tank and piping are properly installed. Eight states also require this test at new installations. The requirements for this test are similar to NFPA 329 requirements; however, EPA believes that the accuracy standard for the test in NFPA 329 cannot be met reliably. EPA is concerned that even with the other eight installation requirements that a final check of the tank and piping installations needs to be made. Tank and piping leaks could still occur even though the proper installation procedures are followed. The tightness test provides assurance that the tank and piping are structurally sound.

In addition to setting these nine performance criteria, the Agency is proposing today in § 280.20(d) to require that owners and operators certify that they have complied with certain requirements concerning the installation, leak detection, corrosion protection and financial responsibility associated with each new UST system. The Agency is proposing an amendment to the existing EPA notification form that must be submitted by owners upon first bringing an UST system into use. This proposed modification will cause owners and operators to indicate the manner in which the installation requirements have been met. EPA will require owners and operators of UST systems to use the Agency's form unless the states develop their own forms that require, at a minimum, the information required under the amended form. Other changes to the notification form are discussed later in Section 3 of this part of this preamble.

EPA has amended the notification form in a manner that makes it still easy to complete (in most cases, answers may be provided by checking a box) to minimize the burden on tank owners and operators, the majority of whom are small businesses. In the proposed form, the owners and operators are required to check off which of the six alternative methods were used to ensure proper installation of tanks and piping. There is also a provision for owners and operators to describe any other methods used to ensure proper installation.

For the purposes of complying with the certification requirements, an authorized representative of the owner and operator may sign the form. In addition to the owner and operator's signature, the tank installer must also sign the certification of compliance form.

The Agency requests comment on today's proposed installation requirements. In particular, EPA asks for comment and experience on checking a new tank system installation with a tightness test of the tank and piping. The Agency is concerned that the tightness test may be redundant because new tanks are also required to have release detection. For example, is such a requirement necessary with double-walled tanks or UST systems provided with some method of frequent to continuous excavation zone monitoring? The Agency seeks comment on when the tightness test should be performed. If the test is intended to detect installation errors, then should it be conducted after the tank system has completed any possible settling within the excavation area (e.g., 6 months or 1 year after installation)?

In addition to specifying key installation requirements in today's proposed rules the Agency is examining various programmatic means of ensuring improvement of UST installations. A

BEST COPY AVAILABLE

number of potential tools for improving installations have been identified; however, we are now in the process of determining the appropriateness of these tools in various situations.

*2. Implementation Schedules for Upgrading of Existing UST Systems (Section 280.21)*

a. Overview

Because of the potential problems associated with releases from UST systems, the proposed new tank performance standards require features designed to prevent releases, including: Proper tank and piping design, construction and installation; and corrosion protection systems. Later in this preamble, additional requirements that are being proposed today to prevent or minimize releases from all new UST systems are discussed in more detail, including: Release detection methods; overfill/spill protection devices; and, in the case of hazardous substance tank systems secondary containment and interstitial monitoring.

The majority of the estimated 1.4 million existing UST systems regulated under Subtitle I do not presently include any of the release prevention and detection features that are being proposed today for new UST systems. In fact, EPA estimates that approximately 80 percent of existing UST systems are bare steel and about 60 percent of them are more than ten years old. Most owners and operators do not yet practice any form of release detection and have not fitted their tanks with overfill/spills control equipment. Fortunately, most existing UST systems can be retrofitted with many of these safeguards (for example, cathodic protection to prevent corrosion at bare steel tank systems), thereby upgrading them with some of the protections expected to be provided by the proposed requirements and standards for new UST systems.

Today, EPA is proposing in § 280.21 two different schedules for upgrading existing UST systems to the new tank system design and construction requirements just described, and to the release detection requirements discussed in Section VI.D of this Preamble. As discussed in more detail below, EPA believes that the implementation of these requirements should be phased in because of the enormous size of the existing UST universe, and the practical implementation difficulties that owners and operators face as they upgrade their tanks to the new tank standards.

b. Current Practices

Most of the major oil companies, and at least one of the larger convenience store chains, have embarked on phased programs to upgrade their retail motor fuel tank systems. In ranking these UST systems on a priority list that is based on factors believed to be associated with the probability of release, these programs typically take into account the age of the UST systems, their material of construction (protected steel or not), and the corrosivity of the surrounding soils. The highest priority UST systems are replaced as quickly as possible with protected single-walled UST systems equipped with spill controls. The next priority UST systems are quickly repaired and upgraded to new tank standards. The lowest priority UST systems are those that already meet new tank standards or are otherwise unlikely to leak and thus have little need to be upgraded.

EPA has also identified several other major companies storing hazardous substances who have already embarked upon UST system upgrading programs. In many cases, these tanks appear to be phased out and replaced by either aboveground storage tanks or underground UST systems provided with secondary containment.

The majority of state and local regulations addressing new tank specifications have requirements for corrosion protection, release monitoring, and overfill/spill protection. However, four jurisdictions also explicitly mandate retrofitting existing tanks to these new tank specifications. One state requires retrofitting only as an option to removing, abandoning, or extending the life expectancy of the UST system. Other states increase release detection requirements as the UST system ages, thereby prompting voluntary retrofit or retirement of the UST system. Generally, state and local regulations address the various upgrading topics individually. For example, of the 18 UST regulations that include retrofit requirements for existing UST systems, 6 require corrosion/cathodic protection, 1 requires secondary containment, and 13 require some type of release detection. Eleven regulations specify retrofitting systems with overfill protection, with 5 of the 11 also requiring spill containment. Two jurisdictions have regulations which mandate the upgrading of tank systems in all four areas (corrosion protection, secondary containment, release detection and overfill/spill protection). In summary, there currently appears to be wide diversity concerning requirements for the upgrading of existing tank systems at the state and local level.

The majority of states have not yet established comprehensive UST regulations. However, 18 states are enforcing at least one of the major national consensus codes. Of these consensus codes, only the Uniform Fire Code, 1985, has guidelines addressing retrofit technologies. Eight states without comprehensive UST regulations enforce this standard and appear to therefore adhere to this code's retrofit guidelines for corrosion protection and spill containment.

Two nationally recognized standards address the retrofit of cathodic protection on existing tank systems. They are the American Petroleum Institute (API) publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems and the National Association of Corrosion Engineers (NACE) Recommended Practice RP–02–85, "Control of External Corrosion on Metallic Buried and Partially Buried, or Submerged Liquid Storage Systems."

Corrosion protection can be retrofitted to existing steel tank systems and is expected to be very effective in eliminating galvanic corrosion as a source of UST system releases. Such retrofitting is not an uncommon practice, and at least one major oil company and one major convenience store chain are retrofitting many of their unprotected steel tanks with corrosion protection. One corrosion engineering firm alone has retrofitted over 2500 tanks with cathodic protection. Because each UST site is unique in its exact requirements for adequate corrosion protection, in practice the retrofitting of corrosion protection must be designed for a specific site by a trained corrosion expert experienced in the protection of underground storage tank systems.

Although relatively inexpensive to do, it is critical that the retrofitting of cathodic protection only be undertaken by a trained professional. First, the corrosion engineer must gather a site history including detailed information on tank location, dimension, age, coating and lining, material of construction, type of backfill, anchor system, history of repair, and inventory problems. The engineer must also obtain information on possible interference sources (stray currents) and corrosion protection in place at nearby buried metal structures. Second, the corrosion engineer must do field testing. This includes measurement of structure-to-soil potentials, a site inspection, and at least one test boring at the end of each tank. The borings are generally used to produce analyses such

as structure-to-soil potential profiles and soil electrical resistivity profiles. Third, the soil samples obtained in the field borings are also analyzed in the laboratory to determine presence or absence of sulfides, chlorides, hydrocarbons, moisture content, conductivity, and pH of the soil.

After analysis of this data, a decision needs to be made as to whether or not the UST system is likely to be in good enough condition to upgrade. If the system is judged to be in sound enough condition to be upgraded, the proper type, number, and placement of anodes is next determined. In localities with relatively new coated tank systems in soils of low corrosivity, a tank system may be protected by a series of several sacrificial anodes. However, at sites with moderate to highly corrosive soils or with large bare steel tanks without any coatings, the analysis may reveal that sacrificial anodes cannot generate enough current to protect the system. In such cases, an impressed current system must be installed. Impressed current systems have been recommended to EPA by several highly experienced corrosion experts as a preferred system for retrofitting cathodic protection because impressed current can be used to protect any UST system in any soil conditions, and current output can be easily adjusted to changing conditions at the site.

Carefully applied in a wide variety of settings, retrofitting of corrosion protection to existing bare steel UST systems appears to have significant potential to forestall corrosion-induced releases that are otherwise inevitable in the future. It is a relatively inexpensive procedure when compared to the costs of UST system replacement. Several firms are available nationwide that offer the full array of necessary expertise and experience to correctly apply this technology. Application of this technology to the UST universe addressed by today's proposal will require an enormous expansion of their services, if many existing UST owners and operators decide to upgrade their unprotected UST systems instead of replacing them.

Existing tank systems can also be upgraded by applying release detection for the first time. The wide variety of release detection methods available for new tanks is discussed later in this Preamble, but they are generally applicable to existing tank systems as well. Most state UST regulations have some form of release detection requirements. While these regulations ultimately determine which method can be used, generally, the regulations offer the option of choosing among several release detection methods.

Implementation difficulties anticipated with retrofitting of release detection to the large number of existing UST systems addressed by today's proposal has led EPA to conclude that these requirements must be phased in over a significant period of time. In particular, recent experiences from state UST program enforcement of their new release detection requirements corroborate this concern. Several of the most aggressive state UST programs have decided to phase in their release detection requirements over a 4- to 5-year period and have advised EPA that this is the quickest that the large universe of tank systems can be realistically addressed. (For example, both Florida and New York are phasing in programs within this time frame). States attempting to require more immediate compliance have also discovered that actual compliance has taken much longer than originally intended (for example, this has proved to be the case in California, which tried to require release detection in one year but now reports that the phasein of release detection will take up to three years). EPA believes that the national UST program will experience these same problems. The current market conditions and technological capabilities of the release detection industry, the size of the regulated community, and the widespread lack of application of or familiarity with any release detection to date at most UST facilities indicates that requiring the immediate retrofitting of release detection at existing UST systems is not practical or achievable.

Another possible approach to release detection retrofitting is provided by interstitial monitoring. Technically, impermeable liners and vaults may be retrofitted to existing UST systems, however, they are very costly and impractical retrofit techniques. Installation of impermeable liners and vaults require the excavation and removal of the UST system and then its reinstallation. Currently, in the United States there is no widely available technology for retrofitting existing UST systems to provide double-walled protection. This form of secondary containment requires replacement of the single-walled UST with a double-walled one.

A potentially more simple retrofit technology that will provide existing tanks with a form of interstitial monitoring that can be continuously monitored is available in Europe and has been widely used for diesel fuel and heating oil tanks. Systems under development in this country for gasoline UST systems consist of coating the inside of the tank and then also retrofitting a membrane liner inside the tank to enable interstitial release detection in the space between the tank and liner. This offers several features that may make it a promising retrofit technology. However, it is only commercially available in this country on a very limited basis as a new technology, and must otherwise be imported.

Finally, in order to fully upgrade to the new tank standards being proposed today, all existing UST systems would also need to retrofit controls to address releases from spills and overfills. Releases from spills and overfills can be prevented by implementing a spill prevention program, which begins with the simple practice of good transfer techniques. These techniques consist primarily of assuring enough space is available in the tank to receive the load of product to be delivered, as well as to closely oversee the in-filling process to assure trouble-free transfers from the delivery truck. In addition, existing tank systems can be retrofitted with overfill/spill protection devices. There are already a variety of overfill/spill protection devices available that can be installed on existing tank systems, and several more are under development. Several current state UST regulations require existing tank systems to be eventually retrofitted with overfill/spill protection using one of several methods. (Spills and overfills are discussed in more detail in the next section of the preamble.)

c. Approaches to Regulation

The Agency has considered several approaches and requirements that could be used to upgrade existing UST systems, as well as ways of phasing in the release detection requirements. The following discussions focus on the reasoning behind the approach proposed today as well as some of the alternatives considered during its development.

In summary, EPA is today proposing that all existing UST systems storing regulated substances upgrade or replace to the new tank standards over no longer than a ten year period. The proposed upgrading consists of several steps. First, in § 280.30(a), all existing UST systems are immediately required to institute practices for the careful filling of tanks to avoid spills and overfills. Release detection must be phased in § 280.40(c) within a 3- to 5-year period based on the type of tank

(i.e., the bare steel UST systems before the protected systems). All UST systems that cannot apply a reliable and effective method of release detection within those time frames must be permanently closed. Within ten years, all UST systems must be retrofitted or replaced to comply with the new tank standards, including the provisions for corrosion protection under § 280.21 and spill/overfill control equipment under § 280.30(c).

*(1) Basic Requirement for Mandatory Upgrading or Closure of Existing UST Systems (Section 280.21).* Today's proposal requires all existing UST systems storing regulated substances to be upgraded to the new tank standards within 10 years or be closed. EPA believes the present unprotected condition of most existing UST systems provides the greatest and most immediate threat to human health and the environment. A significant level of future releases can be avoided if these UST systems are upgraded or replaced to the new tank standards. As discussed earlier in Section V of this preamble, the Agency has decided to propose a gradual upgrading or replacement approach as the most feasible and implementable with this large regulated universe. The regulatory impact analysis described in Section IX estimates that significant environmental benefits will result from upgrading or replacing all UST systems within 10 years. Upgrading would generally consist of instituting a corrosion protection system and some spill and overfill equipment at the typical tank system.

By proposing to give the regulated community the flexibility to plan for and set their own priorities in upgrading their UST systems, EPA intends to encourage a more rapid upgrading to take place voluntarily. It also provides state and local UST programs the flexibility to establish their own priorities for mandating the phasing in of the needed improvements. Several states and local programs are already using the age of the UST systems to trigger mandatory upgrading or replacement.

As an alternative to the proposed approach, EPA has also considered several other ways of requiring UST systems to be upgraded within the proposed 10-year period:

- All UST systems could be required to replace or upgrade based on age, phasing in required improvements at the oldest tank systems first.
- Separate milestone years could be identified for different stages of the upgrade. For example, release detection, spills and overfill controls, and cathodic protection, could be required by different cutoff dates. The tank owners could upgrade as quickly as they desired as long as they also met these individual milestone dates.
- All UST systems could be required to upgrade or replace only if and when they leaked. This approach is used by several states, including South Carolina, New York, and California (with hazardous substance tanks).

EPA decided to propose in § 280.21 that all upgrades (or closures) of substandard existing tank systems simply be completed within 10 years. This approach is believed to complement numerous current industry trends towards upgrading or replacing UST systems voluntarily, while also setting a maximum time limit within which the benefits of upgrading must be obtained nationwide. EPA believes that the proposed maximum 10-year time period will allow existing UST owner and operators numerous ways of planning an orderly transition towards achieving the protections afforded by new tank requirements. This target approach is also believed to have the distinct advantage of providing states and local programs with the flexibility to take any of the different approaches described above (or some other approach) as long it is completed within this ten year period. Although this is the maximum time period allowed, EPA will encourage a more rapid transition where possible, so that the benefits of these improvements can be realized sooner.

*(2) Phase-in of Release Detection at Existing UST Systems (Section 280.40(c)).* Today EPA is also proposing in § 280.40(c) (1)–(2) to require that all existing protected single-walled UST systems have release detection within 5 years of the effective date of the final regulation, and the more leak-prone bare steel UST systems within 3 years. This means that the vast majority of existing UST systems will be required to have release detection within three years. State experiences to date suggest that this timeframe will be difficult to achieve with a regulated universe of this size. EPA does not believe that this implementation can take place in less than this time frame. Upgrading all existing UST systems with any one of the proposed release detection methods being proposed today will generate a tremendous new demand for services. It is doubtful that system manufacturers and installers could supply their products and services to all UST owners and operators in a reliable fashion that would ensure full compliance in less than three years. More rapid implementation is made even more difficult by the fact that today's proposed requirements will cause release detection to be applied to the vast majority of existing UST systems for the first time.

As is discussed later in today's proposal (see Section VI.D.), the Agency expects many owners and operators of existing UST systems to choose the combined infrequent tank tightness testing and inventory control method during the 10-year interim period allowed for upgrading all USTs to the new tank standards. They are the most widely used methods today and require the least amount of retrofitting. EPA anticipates this approach will result in much of the demand for release detection services to be placed on these technologies. Thus, in order to be applied in a reliable fashion, the expansion of these services will have to be phased in. As is also discussed in more detail later in this Preamble, today's proposed 5-year phase-in period for protected steel or fiberglass UST systems is expected to enable approximately 20 to 25 percent of the existing UST systems, those that are less susceptible to leakage as a class—to actually retrofit release detection at a later date. Allowing this additional time for these more protective UST systems should not result in significant adverse impacts to human health and the environment because corrosion-induced releases (the most common by reported cause of releases today) should be significantly less frequent at these UST systems.

Another approach that the Agency considered for phasing in release detection requirements was to base the phase-in on tank system age instead of tank system type. Because EPA has some evidence that older existing UST systems are more likely to leak (because they do not have corrosion protection) than younger tanks, release detection could be required sooner at the older UST systems than the younger ones. For example, UST systems over 15 years in age (as well as those of unknown age) could be required to phase in release detection within two years, the UST systems between 5 and 15 years old within 4 years, and the most recently-installed protected UST systems within five years. This alternative approach could have similar practical impacts, however, because most of the protected UST systems have been installed recently and, thus, would be phased in last under both approaches. The major difference between these two phase-in approaches is that the older USTs would be *required* to have release detection much sooner under the alternative approach. The Agency solicits comments and information pertaining to

the benefits that could be obtained by phasing in release detection based on age instead of tank system type. Information is also solicited concerning data that may further reveal whether, and to what extent, older tanks and piping may pose significantly more of a threat to human health and the environment than younger tank systems.

*(3) Accelerated Upgrading or Closure of Existing UST Systems that Cannot Meet Release Detection Requirements (Section 280.40).* Today's proposal (in § 280.40(c)(3)) requires all existing UST systems that cannot provide a method of release detection that meets today's proposed requirements to be closed within 3 to 5 years. This requirement is based on the Agency's conclusion that all existing UST systems, particularly those unprotected from corrosion, must have a method of release detection to protect human health and the environment. Thus, UST systems unprotected from corrosion and without release detection would have to be closed before the end of the 3-year phase-in period that would begin on the effective date of the final regulations. Similarly, protected UST systems without release detection would have to be closed before the end of the 5-year phase-in period proposed today.

*(4) Request for Public Comment.* The Agency is requesting comments on today's proposed schedules for implementing this program; including the requirements for the upgrading of existing tank systems and the scheduled phase-in of release detection. Comments and information are specifically requested in the following four areas:

- Is the proposed 10-year limit for upgrading existing UST systems appropriate or should certain components of these required improvements be mandated sooner (for example, see the next section of this preamble concerning the phase-in of spills and overfill equipment)? Should the states and UST owner/operators be allowed to set their own priorities in upgrading to the new tank standard?
- Are the proposed requirements to upgrade release detection, corrosion protection, overfill/spill protection, and, in the case of hazardous substance tanks, upgrading to secondary containment adequate? For example, is it necessary for steel UST systems being retrofitted with cathodic protection to also be required to have an internal coating applied to the inside of the tank to ensure releases are prevented?
- EPA has been informed by several experts in the corrosion-protection field that impressed current corrosion protection is the preferred technology for retrofitting existing tanks. For retrofit purposes, should only the use of this technology be allowed or should EPA also allow retrofit of sacrificial anodes to existing bare (or inadequately coated) steel systems?
- Current recommended industry practices (API) include the use of structural integrity standards to determine if an existing tank is sound enough to be repaired, because it is unreasonable to cathodically protect and otherwise upgrade a tank that is in imminent danger of leaking. The Agency specifically requests comments on what minimum structural integrity requirements may be needed to ensure an existing tank system can be safely upgraded to the new tank standards. Information is also solicited concerning methods and expenses associated with assessing existing USTs to determine whether they should be upgraded.

*3. Notification Requirements (Section 280.22)*

On November 8, 1985, EPA published the Final Rule on Notification Requirements for Owners of Underground Storage Tanks (50 FR 46602). Included in that rule was the notification form. Owners of existing UST systems were required to fill out and submit the form to their designated state or local agencies by May 8, 1986. This earlier notification complied with the requirements of section 9002(a)(1) of the federal statute. Section 280.3(c) of the November 1985 final rule (which today's proposal re-designates as § 280.22) also required owners and operators who bring UST systems into use after May 8, 1986, to notify the designated state departments or agencies within 30 days of installation. Such notification by new UST systems should be made using the November 8, 1985, federal form, as modified in today's proposed rule, or an approved alternate state notification form.

Beginning 30 days after the issuance of the final regulations resulting from today's proposal, § 280.3(h) of the November 1985 rule (which today's proposal redesignates as § 280.22) requires any person who sells a tank intended to be used as an UST system to notify the purchaser of such tank of the new owner's notification obligations under the regulations.

Owners who place new UST systems into use should note that we are today not proposing to modify the notification form promulgated in November 1985, except to require additional information regarding certification of the methods used to comply with the installation, financial responsibility, release detection and corrosion protection requirements. In particular, the proposed modification to the form requires the installer of the new UST system to sign the form along with the owner. This information has been added to the form so that EPA can be assured that the installation has been completed competently.

**C. General Operating Requirements**

*1. Spill and Overfill Control (Section 280.30)*

As discussed earlier in Section III, spills and overfills can occur in a variety of ways, usually as the result of human error. Because spills and overfills account for at least 15 percent of all state-reported petroleum releases, EPA believes that incidents of spills and overfills should be addressed in future regulations. Thus, EPA is proposing today to require spill and overfill controls.

The situation can be improved markedly through the use of any of the following:

- Proper operating procedures to include measuring the available capacity in the tank and using dry-disconnect couplings on all transfer hoses;
- A liquid level sensor with an alarm that is triggered when the liquid reaches a predetermined level;
- An automatic shutoff device that is triggered when the liquid reaches a predetermined level; and
- A spill catchment basin located around the fill pipe.

Many of these types of devices can be used to provide protection on either new or existing tank systems.

EPA considered several alternative regulatory approaches to reducing spills and overfills. One approach was to require specific design and construction techniques to be implemented at all UST sites, both new and existing facilities. This approach, however, in certain respects deprives the states of the ability to require different types of solutions based on site-specific information concerning the location of the UST system with regard to valuable ground water and potable water sources, the type(s) of product to be stored, and the likelihood of overfills and spills causing significant adverse effects on human health and the environment. Thus, EPA chose instead to allow the use of any of the above techniques to address the problem.

Overfill and spill prevention requirements are recommended in most national association and industry standards as well as the majority of available state regulations. The proposed approach allows the states to

retain the variability currently in their regulations while staying within the minimum national standard provided by EPA. There is currently no data available to suggest that one approach to the elimination or reduction of overfills and spills is more effective than any other.

In § 280.30(a), EPA is proposing a general performance standard that will require all tank owners and operators to ensure that releases due to spills or overfills during product transfer or delivery do not occur. Owners and operators of all tank systems must ensure that the operator gauges the tank to determine that the capacity available in the tank is greater than the volume of product to be transferred. This measurement is the logical, necessary first step in preventing overfills—it assures that there is enough empty space for the product being delivered. The owners and operators must also ensure that other proper product transfer procedures are followed, such as overseeing the transfer operations, draining the hose carefully before disconnecting it, and using dry-disconnect couplings.

Under § 280.30(b), all new tank systems must be equipped with spill and overfill protection by installing one or more of the following devices:

- A liquid level sensor with an audible or visual alarm that is triggered when the tank reaches 95 percent of its capacity;
- An automatic flow shutoff device that is triggered when the tank reaches 95 percent of capacity;
- A spill catchment basin around the fill pipe; or
- An equivalent device approved by the appropriate regulatory authority.

This requirement is built upon the list of recommended spill and overfill protection equipment set forth in NFPA 30. Proper product transfer procedures as discussed in NFPA standard 385 and in API Bulletin 1621 "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets" describe, among other things, the requirements for the use of tight fill connectors and the need for the tank truck operator to oversee the transfer.

When existing tank systems are upgraded to new tank standards, or when external monitoring wells are put in place, the owner and operator must ensure that the system complies with the new tank design standards for overfill protection. As discussed later in this Preamble (see general requirements for release detection), existing and new spills may confound external-to-the-tank sensors and preclude the detection of a release from the UST system. Thus, today's proposal requires that any existing UST system using external release detection be provided with spill and overfill equipment.

There are several options for upgrading of overfill and spill equipment. One regulatory approach would be to require upgrading to new tank overfill and spill standards on the same schedule as the leak detection phase-in (i.e., 3–5 years). A second approach would be to require the retrofit of overfill and spill protection at the same time that corrosion protection of existing UST systems must be upgraded to new tank standards (i.e., within 10 years). The earlier phase-in (3–5 years) would help prevent overfill releases that would otherwise trigger alarms on newly installed external monitors. Florida, for example, requires monitoring and overfill protection retrofits simultaneously, at an earlier date than corrosion protection. Comments are requested on this issue of which time frame is most appropriate for phasing in spill and overfill equipment at existing UST systems.

The Agency has decided to propose in 280.30(c) a 10-year deadline for upgrading overfill protection at all existing UST systems to the level provided by the new tank standards. During the intervening period, owners must use improved product transfer procedures (280.30(a)). There are two major reasons for tying phase-in of overfill equipment to the cathodic protection retrofit requirement. The first is simplicity—keeping all the leak prevention upgrade requirements scheduled together will be easier to implement and more easily understood by the regulated community. The second is related to available technology. For several years, European countries have relied predominantly on overfill prevention as opposed to overfill and spill containment. These new types of prevention devices, both foreign and domestic, appear to be just beginning to enter the American market. A short upgrade deadline could force tank owners toward the overfill and spill containment equipment that is readily available now. A longer upgrade period gives the marketplace more time to adjust and could allow technological advances recently introduced more time to be made available.

*2. Operation and Maintenance of Corrosion Protection (Section 280.31)*

a. Background

Proper operation and maintenance of corrosion protection systems can reduce the incidence or volume of releases due to corrosion. Corrosion was found to be the single most common cause of releases in existing underground tank and piping systems reported by State and local officials in the two EPA State Release Incidents Studies. All presently available studies of UST releases and their causes cite corrosion as the leading cause of failure in the existing unprotected steel tank systems.

Today's proposed rule requires corrosion protection of all new steel tank systems as the means of preventing corrosion. All existing steel tanks systems will have to be upgraded to include corrosion protection within 10 years. In order to be effective, these corrosion protection systems must be inspected and maintained. Corrosion protection systems can fail in a number of ways. For example, coatings can deteriorate, wire leads to cathodic protection can break, sacrificial anodes can be consumed, impressed current can be shorted or otherwise fail, adequate potential may not be maintained. Proper operation and periodic maintenance of these systems can avoid all of these potential problems.

b. Current Practices

The National Association of Corrosion Engineers (NACE) provides guidance on the proper design, installation, operation, and maintenance of corrosion protection for steel tank systems. In particular, NACE provides standards for cathodic protection systems. In Chapter XIII of its publication "Guide for Inspection of Refinery Equipment," the American Petroleum Institute (API) has also developed recommended practices for the proper inspection and maintenance of corrosion protection for tank systems.

Over fifteen states already have requirements concerning the monitoring of corrosion protection systems. Seven require monthly inspections of impressed current rectifiers; nine require annual site inspections by a qualified person; one requires semi-annual inspections; and two require these inspections after the first year of operation and every five years thereafter. Most of these states require that the site inspections include measurements of the structure-to-soil and structure-to-structure potential as well as rectifier voltage and current readings.

Under the Hazardous Waste Tank Rules, inspections of corrosion protection for underground tank systems are required. Cathodic protection must be inspected at least annually. However, those systems with impressed current must be inspected at least every other month. Under Subtitle I, the Interim

Prohibition (Section 9003(g)) does not explicitly require the maintenance of corrosion protection at new UST systems. However, as explained in EPA's Interim Prohibition Guidance Manual, the performance of corrosion protection should be monitored periodically.

c. Today's Proposal

Today's proposed rule requires that all corrosion protection systems be operated and maintained to continuously provide corrosion protection to the metal components of an UST system. The Agency has not specifically addressed the issue of whether all metal components on a FRP tank or pipe should be protected by cathodic protection, but only requires that corrosion protection be provided. The Agency considered requiring cathodic protection for all metal components because of potential failure of such components (e.g., pumps, pump housing and fittings). Because such a requirement could be construed to cover other metal components such as striker plates, bushings, and bunghole covers, the Agency has not incorporated the requirements in today's rule. The Agency does not have sufficient data on failures of these individual metal components on a FRP tank or pipe to determine that this level of protection is needed. The Agency invites comment on which components, if any, should be cathodically protected, whether there are noncorrodible, metal alternatives for these components, and what form of corrosion protection is appropriate if cathodic protection is not required.

In today's proposed rule, EPA is proposing two different inspection schedules for coated steel tanks and piping with cathodic protection. After the initial inspection, it is proposed that factory installed cathodic protection systems (such as those included with sti.P3® tanks) be inspected at least every five years. All other cathodic protection systems on steel tanks and piping are to be inspected at least annually after the initial inspection. The less frequent inspection interval for the factory installed cathodic protection is proposed because of the stringent fabrication and installation standards for these tanks. EPA feels that there is less chance of damage to, or failure of, the factory installed cathodic protection systems that are built to national fabrication requirements (e.g., sti.P3) than for field fabricated systems. Generally, these factory installed systems have 30 year limited warranties provided by the tank manufacturer.

For field fabricated cathodic protection systems, EPA is proposing that the NACE standard for inspection intervals (not less than once per year) be adopted. EPA feels that this more stringent inspection standard is appropriate because there is more potential for faulty installation of these systems and for damage to the system either during or after installation. All steel piping will be subject to this requirement. The annual inspections required by NACE RP–02–85 (and the five year inspections noted above) ensure that adequate corrosion control has been achieved for underground steel structures by observing the following criteria:

- A negative (cathodic) potential of at least 0.85 volts as measured between the structure and a saturated copper-copper sulfate (Cu-$CuSO_4$) reference electrode contacting the soil; or
- A negative (cathodic) potential shift of at least ... mv as measured between the structure and a Cu-$CuSO_4$ reference electrode contacting the soil. This shift is the difference between the unprotected potential and the potential with the protective current applied; or
- A negative (cathodic) polarization potential shift of at least 100 mv measured between the structure and a Cu-$CuSO_4$ reference electrode contacting the soil. This shift is the polarization decay which is determined immediately after the protective current is interrupted.

There is currently a proprosal before a technical practices committee of NACE to revise the criteria for determining that cathodic protection systems are functioning properly. The proposed revisions would refine some criteria and there is discussion of deleting other criteria entirely. The Agency is today proposing that cathodic protection be monitored according to currently applicable NACE criteria. In the event these criteria are modified in the near future, the Agency will evaluate at that time whether to make parallel changes in its final regulations.

NACE RP–02–85 recommends more frequent inspection intervals where indicated by operating experience. The annual and bimonthly inspection requirements are therefore minimum requirements. In accordance with the NACE code, the bimonthly inspections of impressed current systems can be done by the owner or operator, and do not require the services of a corrosion expert. The third requirement, that the corrosion protection system be operated and maintained to protect the tank system from corrosion, effectively requires more frequent inspections when warranted.

As mentioned previously, the Agency is aware that some tank manufacturers recommend less frequent inspection intervals for coated tanks that have galvanic type cathodic protection systems attached to the tank body. The Steel Tank Institute recommends inspection by a corrosion expert of the cathodic protection system on this type of tank system one year after installation and every five years thereafter. The Agency seeks comments on the advantages and disadvantages of allowing less frequent inspections for those tank systems that are equipped with premanufactured corrosion protection.

In addition to the minimum requirements for inspections at least once per year or once every five years, today's proposal also requires testing or inspection of impressed current systems on a bi-monthly basis. The rule also specifies that those inspections that are required at least once a year or at least once every five years be conducted by a qualified corrosion expert. The bi-monthly impressed current test or inspection, however, may be conducted by employees of the owner or operator, provided the employee has been trained in the procedural steps for conducting and recording the results of the inspection or test. This distinction is made because the less frequent inspections require a complete knowledge of cathodic protection systems, their modes of failure or malfunction, proper diagnostic procedures, proper data interpretation and corrective action options whereas the bi-monthly inspection or test is principally a matter of visually verifying that the system is operational and performing adequately.

d. Inspections

The Agency has considered a range of alternatives for the required operation and maintenance of tank systems. Three alternatives included considerations for requiring maintenance and inspections for (1) the entire site, (2) the tank system equipment, and (3) the corrosion protection systems only. For each of these three approaches, consideration was also given to whether the requirements should apply to new tank systems only or to all tank systems. The Agency also considered a general performance standard which would simply require that the tank system would be maintained in proper working order.

The site inspection alternative could cover inspection of (1) piping and auxiliary equipment, (2) instrument controls and electrical systems, and (3)

concrete pads, foundations and surrounding flora and soils. These are discussed in more detail below.

*(1) Piping and auxiliary equipment.* All accessible piping, pumps, valves and fittings could be visually inspected for leaks, proper supports, proper alignment, external corrosion, and signs of fouling. Pumps and valves could be checked for leaking seals or other signs of mechanical wear.

*(2) Instruments, controls, and electrical systems.* These systems could be checked for proper power supply, signs of leaks or corrosion, integrity of mountings and enclosures, proper lubrication and adverse environmental conditions.

*(3) Foundations, pads and surrounding areas.* Concrete bases for pumps or other equipment could be checked for deterioration, erosion settlement, cracks, or spalling. Concrete pads and surrounding soil could be checked for subsidence, unexplained moisture spots and deterioration. Grass and other flora around the concrete could be checked for damage that could be caused by releases.

The second option, to inspect tank system equipment, would principally encompass item number 1 from the Site Inspection Alternative. Such an inspection could cover some items from item numbers 2 and 3 of the Site Inspection Alternative. For example, equipment foundations could be inspected for cracks and settling and the equipment could be checked for proper anchoring. Similarly, visual checks could be made of instruments, controls, and electrical components associated with various equipment items.

The Agency considered requiring an inspection for tank deflection as part of a tank system inspection. As the tank and surrounding soils shift due to settlement, aging and frost heave, the tank may be distorted from its original shape. Small distortions are expected at most installations and the tanks are designed to withstand them. However, failure of the tank's backfill or foundation anchors can lead to excessive distortion of the tank and rupture. This type of failure, while not widespread is reported to occur most often in FRP tanks. One way to measure this tank distortion is to measure the inside height of the tank and compare it to the original design height. If this tank deflection exceeds a limit which depends upon the design and the size of the tank then the tank could be expected to rupture and cause a release. At least two FRP tank manufacturers require a measurement of tank deflection after installation to assure proper backfill placement. If the deflection exceeds two percent of the original diameter, the tank must be reinstalled. The Agency is not aware of any tank inspection programs that include regular, periodic tank deflection tests and is today seeking comment on industry experience with tank deflection measurement programs. EPA specifically requests comments on the advisability of EPA requiring periodic tank deflection measurements for steel and FRP tanks as a means of preventing tank failures. Of particular concern is how EPA could set a deflection standard for the different tank styles and materials of construction.

The third option, to inspect only the corrosion protection system, is a subset of the tank system equipment inspection. In this option, only the corrosion protection system would be inspected regularly to ensure continued corrosion protection for steel tanks. Two types of corrosion protection system inspections were considered. One type of corrosion protection system inspection is the inspection of the cathodic protection of steel tanks and piping. This type of inspection is described earlier in this section of the Preamble.

The second type of corrosion protection system inspection considered by EPA evaluates the integrity of the cladding on composite tanks. As described earlier in this Preamble under performance standards for new UST systems, the Agency is concerned about the corrosion protection performance of composite tanks. In the absence of definitive performance data, the corrosion resistance of composite tanks is a subject of continuing debate. Measuring the rate of corrosion or the integrity of the cladding would provide confidence that the cladding on a composite tank is protecting the tank from external corrosion.

Theoretically, the rate of corrosion could be measured by determining the electrical current flowing between the tank and the surrounding soil. This current is proportional to the rate of metal oxidation or corrosion. However, the Agency is concerned that this current is difficult to reliably measure because it could be masked by the current from other metal structures and environmental factors.

The integrity of the cladding could be determined by a test similar to the holiday test that is used to assess the integrity of a coating or cladding prior to installation. In this test an electrical potential is induced between the tank and a metal rod that is inserted in the surrounding soil. Current flow between the tank and the rod could indicate a gap or holiday in the cladding.

EPA requests comments on the advisability of requiring corrosion protection inspections for composite tanks. The Agency is particularly interested in comments and field data regarding experience in conducting these tests and their ability to indicate failures in coatings and claddings.

The advantages and disadvantages of each of the above three general approaches to inspection requirements are not clearly established. The Agency is today seeking public comment and information on whether there is a need to have a broader requirement that addresses the maintenance and inspection of the entire site or other tank system equipment. The Agency presently has several reservations with these approaches, however, because the general site inspection and the tank system inspection alternatives may be duplicative of the release detection requirements. Release detection systems have been proposed that should provide effective warning of releases from all components of the tank system, thereby reducing the need for general inspections. Also, because the vast majority of underground tank systems are completely underground and inaccessible to inspection, an inspection requirement appears to promise little practical benefit. Finally, our scrutiny of the numerous state and local programs in place or under development reveals that they do not consider those broader requirements for inspection to be necessary. Therefore, the Agency is proposing to require regular inspection and maintenance of the cathodic protection systems only.

*3. Compatibility (Section 280.32)*

a. Overview

In proposing a regulation on compatibility, the Agency intends to prevent tank system structural failure due to chemical and physical interaction between the stored substance and the tank system material. A compatible substance will not interact with the tank system to undermine its integrity or promote its corrosion. While no stored substance is totally inert with respect to the materials of a tank system, compatibility exists when such interaction is minimal and does not result in structural failure or corrosion-related releases during the operating life of the tank system.

Issues of compatibility differ depending on the tank material used. Compatibility with metal tank systems means that chemical and electrochemical internal corrosion is held to a minimum. For plastic

materials, compatibility means that the dimensional, physical, and mechanical properties of the materials are not eroded by the material stored. For tank linings, compatibility means the material stored does not cause blistering, underfilm corrosion, and internal stress or cracking. Compatible materials will not be able to permeate the lining to cause corrosion or deterioration of the tank.

Incompatible substances can attack metallic and FRP tanks in different ways. The interior of metallic tanks can be subjected to various corrosive attacks. The stored substance or impurities within it may be corrosive agents, or either one may act as a catalyst enabling the other to corrode the tank. Corrosive processes are themselves complex. In certain cases, the process is self-limiting, because an oxide film is deposited over the corrosion site and prohibits further corrosion. In other cases, the oxide film may enhance the corrosive process. Also, agitation caused by inflows or outflows may dislodge the film.

Incompatible substances subject plastic tanks to physical deterioration in several ways. Incompatible substances may chemically react with and alter the mechanical properties of the tank system, resulting in structural failures. Solvation, a process in which the stored substance is absorbed into the plastic tank, may cause the tank material to warp, soften, weaken, or become brittle. Also, the stored substance can interact with the tank while the tank is under stress, as when under a heavy load, to produce environmental stress cracking. In this way, an incompatible substance can initiate cracks that could lead to structural failure.

Trace impurities can also cause incompatibility. For example, a few parts per million of chloride in solution can quickly break down a protective oxide layer on stainless steel and lead to corrosion. Also, while hydrochloric acid is compatible with polyvinyl chloride, trace levels of benzene will allow the HCl to deteriorate a PVC tank or pipe.

EPA's review of available information concerning the causes of releases indicates that incompatibility is not frequently reported as a cause of releases. In fact, incompatibility was not even listed as a cause of releases in several analyses. Available data further suggest that most petroleum products stored in underground tanks—the major portion of the UST regulated community—are compatible with most of the common tank and pipe materials available. However, EPA does have information on releases caused by the incompatibility of hazardous substances with tank system materials.

Two situations require owners and operators to address the issue of compatibility. First, adequate care must be taken in the initial match of tank and pipe material to stored substances. Second, owners and operators must carefully consider the use of existing tanks for substances other than those originally stored. It is conceivable that a lack of care in ascertaining the tank or pipe material could lead to the storage of an incompatible substance.

Also, it has been suggested to EPA that additives to substances may be altered over time and cause future compatibility problems. For example, alcohol blends in gasoline may have harmful effects on FRP tanks. However, the Agency has not been able to document any instances of releases due to this type of incompatibility. The increasing use of fiberglass tanks by many of the major oil companies may mitigate against the use of new additives that could undermine the structural integrity of FRP tanks.

b. Current Practices

Industry groups, such as ASTM, NACE, and UL, have established tests and criteria for evaluating different aspects of compatibility. Many of these are tests of physical properties evaluated before and after the material is placed in contact with the substance to be stored. If the property change is within prescribed limits, the substance is said to be compatible. Different tests of compatibility can be chosen based on the substance to be stored, tank material, and environmental conditions of the site. Because of the variability in these factors, no compatibility test applies to all circumstances.

Tank manufacturers generally take responsibility for disseminating information on their tank's or pipe's compatibility with various substances. Manufacturers will also test a potential customer's substance to ascertain compatibility or, in the case of FRP, to design a customized compatible resin. Some FRP tank manufacturers have extensive R&D programs to develop new resins resistant to specific substances.

Of 22 state and local UST programs that were evaluated, 8 specifically address compatibility through a general requirement that all tank owners and operators use compatible materials and substances. In addition, 15 states base their UST regulation in large part on one industry code—National Fire Protection Association 30—and reference it as a general performance standard. NFPA 30 requires compatibility between the stored substance and the tank material.

Under Subtitle I, the Interim Prohibition requires all new tank systems to be compatible with the substances stored. As stated in "The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks," EPA expects new tank system owners and operators to work with manufacturers to ascertain compatibility.

c. Approaches to Regulation

One of several approaches to compatibility that the Agency considered would require specific test protocols for compatibility. However, available information suggests that because no one compatibility test or set of tests would adequately cover all circumstances, such an approach would not be appropriate.

The Agency also considered a requirement that all tank owners and operators test for compatibility before placing the substances in the tank system. However, the compatibility of many substances is already well known and thus requiring all tank owners and operators to conduct compatibility tests should not be necessary.

The Agency also considered a requirement that tank owners and operators certify compatibility, particularly at existing tank systems which have had new or different substances introduced into the tank system. As mentioned above, this has been raised as a concern with respect to changes in gasoline blends that are stored in FRP tanks. There is also concern regarding the introduction of new substances into existing tanks where the precise nature of the tank material or lining is unknown. The Agency solicits comment on this issue and on whether some type of compatibility certification is necessary or appropriate for addressing such concerns.

d. Proposed Regulation

The Agency believes that the existing mechanisms for establishing compatibility are generally adequate and do not need to be improved by regulation. Manufacturers have taken the lead to demonstrate compatibility as an outgrowth of their desire to sell their equipment. Established test protocols are adequate and accurate for their intended use. As a result, today's proposal represents no change from the Interim Prohibition.

Today EPA proposes a performance standard requiring all tank system owners and operators to ensure the compatibility of the tank or piping with the regulated substance stored. EPA

believes this simple approach is sufficient given the minor role incompatibility appears to play in release incidents.

With this approach, the Agency intends to allow significant flexibility for state programs, while establishing a simple basic performance standard that prohibits any deterioration of any tank system due to incompatibility.

EPA expects that this standard will be easily satisfied by the regulated community. Compatible tank and pipe materials are well known and are already widely used to store the bulk of the substances regulated under Subtitle I. When new substances are to be stored in existing tanks or when new tanks are to be used for "unusual" substances, the Agency expects the owners and operators to take steps to ensure compatibility. These steps may include simply checking with the manufacturer, requesting the manufacturer to show compatibility, or commissioning compatibility tests.

A precaution that EPA has considered adding to this proposed rule is a requirement that all fill ports on new UST systems be equipped with a collar label that would provide information regarding the products which can be safely stored in the UST. This rule would require the owner and operator to check the collar prior to inserting a new product into the tank. The Agency is concerned, however, that it would be difficult to provide both complete and accurate information in such a condensed form. EPA solicits comment on this and other approaches of ensuring that all stored substance is compatible with the UST system.

*4. Repairs Allowed (Section 280.33)*

a. Overview

The repair of an existing bare steel tank typically involves the correction of deficiencies in the tank: repairing broken seams and welds, plugging corrosion-related holes, and applying an interior lining to extend the useful life of the tank. The application of the lining is an integral part of the repair process and consists of the application of a protective material to the entire interior surface of the tank. Pipes, fittings, and joints are not normally lined as part of this process due to the difficulty of applying the lining material in such confined spaces.

An existing steel tank is lined for two reasons: To provide additional internal corrosion protection and to repair tank systems that are not tight. In both cases, the lining is applied to extend the useful life of the tank.

Internal lining of a existing steel tank is a retrofit method that has been employed since the 1950s. (Both steel and FRP tanks can be lined internally provided they meet basic structural integrity requirements.) The American Petroleum Institute Bulletin 1631, "Recommendations for the Interior Lining of Existing Underground Storage Tanks," states that the following minimum standards must be met before a steel tank can be repaired:

- A tank may have no open seam or split more than 3 inches long;
- A tank may have no perforation larger than 1.5 inches in diameter, except under the gauge opening where the perforation may be no larger than 2.5 inches in diameter;
- A tank may have no more than 5 perforations (all less than 0.5 inches in diameter) in any one square foot area;
- A tank may have no more than 20 perforations (all less than 0.5 inches in diameter) in any 500 square foot area;
- Before measuring the diameter of perforations and the length of seams and splits, these openings must first be reamed until their edges are a minimum of ⅛ inch thick; and
- If any of these criteria are not met, the steel tank should not be repaired and lined. Tanks not meeting these criteria may not be structurally sound and should be closed permanently.

Usually FRP tanks are patched, rather than lined, with fiberglass matting and resin. For FRP tanks, the interior diameter of the tank should not have compressed more than one percent from its original measure in any direction. Tanks that have compressed more than one percent may be in danger of eventual failure and should not be patched. Patching is unable to provide the added structural support needed for such tanks.

b. Current Practices

Eight of the 21 states with regulations addressing tank repair refer to API 1631, the Uniform Fire Code, or similar guidelines. These guidelines include sections on tank purging, lining selection, tank manways, tank interior preparation, lining application, and tank sealing.

Currently, the Western Fire Chiefs Association is evaluating a proposal to eliminate from the Uniform Fire Code (UFC) the option of lining underground tanks in place. EPA plans to track the outcome of this proposal, and monitor industry efforts to develop improved recommended practices and concensus codes for tank repairs in response to the UFC proposal. The final rule may differ somewhat from today's proposal as the consensus codes upon which they are based may be changed in the near future.

A few companies account for over 99 percent of the services associated with lining of steel underground tanks in the United States. Contractors throughout the country are affiliated with these companies and perform tank lining according to the parent companies' stringent specifications. When the lining is installed in accordance with company specifications, it comes with a 10-year limited warranty against internal corrosion and defects in the lining materials.

Although the cost for removal and replacement of tanks is often significantly higher than the cost of lining a tank, tank owners and operators must evaluate this specific requirements based on operational needs and the technical feasibility of upgrading the existing tank.

c. Approaches to Regulation

One possible approach to repairs would be to prohibit any tank system repairs. If a tank system were found to be leaking, it would need to be replaced, or closed in accordance with applicable closure procedures. This regulatory option appears to be inappropriate because EPA has no definitive data to indicate that tank repair, if performed properly, does not work, and because a number of states currently permit tank repairs in their regulations. In addition, the choice of this regulatory option would prevent the use of an approach that may be particularly attractive to small businesses and which are able to make technically sound repairs to their existing tanks.

Another approach would be to allow unlimited repairs to the tank and its associated piping. This approach does not appear prudent because a tank system that leaks more than once indicates a propensity for failure that, given the consequences to the environment, is not worth risking.

In addition, the lining of pipes, joints, and fittings is not a viable method of repair. Wrapping or coating the leaking joint or section of pipe may under field conditions actually cause increased corrosion problems due to trapped moisture or incorrect coating application. It is typically more effective and less expensive to replace the leaking joint or section of pipe.

d. Today's Proposal

Today's proposed regulation diverges somewhat from the regulations for hazardous waste tank repairs. Under the Subtitle C regulations, repairs to existing hazardous waste tanks are allowed only

if they are extensive enough to constitute complete upgrading to the new tank standards (i.e., secondary containment). The system must also be tested and its integrity certified before it can be put back into service. A goal of the Subtitle C regulations is to replace or upgrade all tank systems with secondary containment as soon as possible, focusing first on leaking and old tanks.

Due in part to the size of the regulated community and other reasons discussed above in Section V, the Agency has decided to propose a rule for Subtitle I tank systems following a strategy that calls for an upgrading of all UST systems to new tank standards within 10 years. As described below, today's proposed repair regulations require upgrading to meet the corrosion protection provisions for new tank systems. Additionally, as in the Subtitle C hazardous waste tank rules, today's proposal requires that the integrity of tank systems must be tested before the system can be returned to service.

EPA believes that technically viable tank repairs should be an option available to tank system owners and operators. The approach proposed today in § 280.33 allows a one-time repair of tank vessels, if it can be accomplished in a technically sound manner, but requires the replacement of leaking sections of pipe, pipe joints, and fittings (if tightening joints does not stop the release). EPA decided to allow the tank repair process as a viable means of extending the useful life of an underground tank because many state and local regulations currently allow non-tight UST systems to be repaired, and acceptable industry recommended practices exist that, if followed, should extend the life of a tank appreciably and reliably. At present, EPA has no information to indicate that tank repairs conforming to API 1631 recommended practices are not effective or feasible.

On the other hand, repeated releases from the same tank are indicative of a fundamental problem in the tank system that most likely could not be rectified by continued repair. In addition, the repair of an already lined steel tank would require that the interior of the tank be sandblasted down to bare metal to allow the proper application of the new lining. This does not appear feasible and supports the proposed requirement that UST systems be repaired no more than one time.

The proposed approach also requires that some type of corrosion protection system must be retrofitted at the same time a steel tank is repaired/lined for failure due to corrosion. A tank that has failed due to corrosion will likely suffer additional corrosion following the repair/lining operation, unless this step is taken. According to API, bare steel tanks normally should be protected using an impressed current system, because this system can adjust voltage requirements for any tank-to-soil potential differential. Coated tanks may be protected using either the impressed current or sacrificial anode type of protection system provided that the coating is in reasonably good condition and still provides corrosion protection for the tank. Comment is specifically invited regarding this retrofit requirement for corrosion protection.

The proposed regulatory approach (in § 280.33(a)) for the repair of existing UST systems allows owners and operators to repair and line a tank to stop the tank from leaking or to extend the tank's useful life only if the person repairing the tank, or an independent registered professional engineer, will certify in writing that the repaired tank meets the following conditions:

- It passed the vacuum test with no adverse impact to the lining, determined by an internal inspection after the test;
- The liner material chosen is fully compatible with the contents to be stored in the tank;
- The tank has not been repaired or lined previously;
- A corrosion protection system is retrofitted if the tank being repaired is a steel tank that failed due to corrosion; and
- The tank was internally inspected and ultrasonically tested and determined to be structurally sound.

The use of the vacuum test proposed today (Section 280.33(d)) simulates a greater external pressure on the tank than would be found under normal operating conditions. A tank that is not properly relined (for example, if holes were not plugged or the surface improperly prepared) could not withstand the pressure of the test. Either the lining would not adhere or the tank could not hold the vacuum. A tank that is not structurally sound also would not hold the vacuum and could buckle.

EPA believes that immediate tank tightness tests are inappropriate for determining the success of repair procedures. Such tests cannot ascertain whether the lining material has properly bonded to the steel. In addition, tank tightness tests require tanks to be at least partially filled with product. EPA believes the owner and operator should know that the repaired system will hold product before introducing product into the system. Today's proposal (Section 280.33(f)) does require a tightness test within a year after the installation is completed. EPA believes that such a test is an important quality assurance test, if it is applied after the repaired tank has been subject to typical operating stresses for a sufficient period of time. A tightness test is unnecessary if the tank has interstitial monitoring or continuous to frequent monitoring because a repair failure will be quickly detected.

The owner and operator must replace all leaking pipes. The proposed regulations will not allow piping to be repaired (Section 280.33(e)). Leaking joints could first be tightened to see if this procedure corrects the leak. Joints and fittings that continue to leak after being tightened, or that are obviously damaged, must be replaced. The replacement piping must be installed in accordance with § 280.20, the performance standards for new UST systems.

*5. Recordkeeping*

a. Overview

Under the proposed regulations, recordkeeping is an important compliance tool for both owners and operators of UST systems and regulatory agencies. Records demonstrate that certain important past actions actually took place. When properly maintained, records can also serve to remind the owner and operator of regularly scheduled actions that must be performed in order to remain under warranty or within regulatory compliance. Finally, properly maintained records also allow later analysis of the tank systems by either the owner and operator or the regulatory agency.

Given the size of the regulated UST community, resources are not available that will allow a regulatory agency to physically inspect each major event as it occurs throughout the life of every underground tank system (for example, installation, release detection, repair, and closure). The availability of proper records, therefore, is the essential track record that allows the regulatory agency to gain rapid insight into the status of compliance at facilities when they are inspected.

b. Current Practices

Existing state and local regulations governing underground storage tanks address recordkeeping to some degree. Many of them have relatively comprehensive requirements. The most prevalent records required in state regulations involve notification, release detection, closure, operation and maintenance of corrosion protection systems, and tank system repair.

All existing programs that require release detection also require the maintenance of records for release detection. Daily recordkeeping of product inventory is usually required, including the amount of sales, deliveries, inventory on hand, measurements of water level in the tank, and reconciliation of any losses or gains. More than half of the programs examined require recordkeeping with other methods of release detection, including data derived from monitoring well samples, visual inspections, in-tank monitors, and interstitial space monitoring for double-walled UST systems.

Many of the regulations also address recordkeeping for tank closure. For example, temporarily out-of-service UST systems are normally subjected to the same recordkeeping requirements as operating tanks. Several regulations require documentation of temporary closure. Records of permanent tank abandonment or removal are also mandated. Usually, this includes record of the closed UST system's capacity, age, specific location at the site, as well as the date and method of closure. A few programs require recording of key closure information on the property deed as well as documentation concerning the disposal or reuse of permanently closed tanks.

Existing regulations often require maintenance of records for tests or checks of various system operations. Specifically, results of cathodic protection and leak detection system operational checks are to be recorded. In addition, records of the most recent tank and piping tightness test results must be maintained. Finally, results of maintenance service checks on corrosion protection, leak detection, and other system components are sometimes recorded.

Most state and local regulations require records of repair and/or substantial modification of tank systems. These records may include certifications from lining installers or repair contractors. In addition, certifications from the original tank manufacturer that a particular tank can be reused following repair are common.

Normally, the state regulations specify a minimum period of time for which tank system records must be maintained. This period varies from 1 year up to 6 years, with the majority of existing regulations specifying 3 years.

c. Approaches to Regulation

The regulatory approach to recordkeeping proposed by EPA today follows directly from the technical standards set out in today's rule. Although EPA could require owners and operators to adhere to the technical standards proposed today with minimal recordkeeping requirements, this approach would result in numerous implementation problems, if not making it completely impossible to determine whether individual UST systems are in compliance with these standards. EPA is convinced that there are several recordkeeping requirements that are essential and will serve both the regulated community and the implementing agency's mutual interests in assuring proper UST system management. These records will prompt effective UST system management and will demonstrate to the regulatory agency that the owner and operator are managing each UST system in accordance with the technical standards.

Accordingly, EPA believes that some recordkeeping is necessary in support of the technical standards for release detection, closure, operation and maintenance of corrosion protection systems, and UST system repair. Today's proposed recordkeeping requirements are intended to impose the minimum burden on the regulated community while at the same time still ensuring that owners and operators can demonstrate (on a site visit by the implementing agency) proper management of their tank systems. These requirements were not developed to ensure that compliance can be demonstrated over the total operating life of the facility; records demonstrating such long-term operational compliance were deemed unnecessarily burdensome. Given the enormous size of this regulated community, today's proposed recordkeeping requirements are instead intended to demonstrate recent compliance status prior to the on-site inspection by the implementing agency. In proposing these minimum requirements, EPA recognizes that state and local governments may want to augment them with more recordkeeping requirements as specific local conditions dictate.

Today's proposed rule sets forth recordkeeping requirements for release detection, closure, operation and maintenance of corrosion protection systems, and tank system repair. The recordkeeping requirements for release detection and closure are discussed later in this Preamble, where the corresponding technical requirements are described. Following is a discussion of the specific recordkeeping requirements for repairs and operation and maintenance of corrosion protection, and the general requirement that records be properly maintained and made available upon request.

*(1) Corrosion Protection Operation and Maintenance Records (Section 280.31(d)).* To assure continuing compliance with the performance standards in proposed 280.31 concerning the maintenance of corrosion protection at steel UST systems, all owners and operators with cathodically protected UST systems must retain records of recent maintenance service checks performed by a corrosion expert as well as inspections of each impressed current system s running condition by the owner and operator. The recordkeeping requirements in this area reflect the operation and maintenance standards proposed in 280.31. Thus, for field-constructed cathodic protection methods using impressed current, the results of the last three bi-monthly inspections must be available. For field constructed methods using anodes, the results of the last two annual service readings must be kept. At UST systems using premanufactured (and applied at the factory) corrosion protection under the tank warranty, the last service check conducted under the tank warranty, but completed no longer than five years ago, must be kept. Each of these requirements for recordkeeping were developed to reflect the level of oversight EPA believes is necessary to ensure corrosion protection is operating continuously and being properly monitored. For example, under today's proposal, the premanufactured cathodic protection systems for tanks require less frequent service checks and correspondingly less recordkeeping to ensure compliance with the operation and maintenance requirement. EPA expects that many corrosion protection systems will have at least annual service checks performed (and thus could have two service records under this proposed requirement) because cathodic protection for steel piping must be constructed in the field and is not available in a pre-manufactured form.

*(2) Tank Repair Records (Section 280.33(g)).* Also proposed today is a requirement that all owners and operators with repaired tanks retain a record that demonstrates the repair was properly conducted as required under 280.33. The certification of the repair required in 280.33(a) must be kept for as long as the tank is used for storage. Also, the results of the ultrasonic tank thickness test required by 280.33(a)(3) and the vacuum test required by 280.33(d) must also be retained for as long as the tank is used. These records are the minimum necessary to show

compliance with the 280.33 requirements.

No records of piping repairs are required because faulty piping and fittings cannot be repaired; they must be replaced in accordance with the new tank standards. Records concerning the repair of tanks must be kept for as long as the tank is used because it can only be repaired once, and a record of repairs will provide the owner and operator and implementing agency with the information that will ensure that more than one repair is not made and has been done properly.

*(3) Maintenance and Availability of Records (Section 280.34).* Today's proposal includes a provision that requires all UST system owners and operators to cooperate fully with the implementing agency by making all records immediately available regarding inspections, monitoring and testing results, and by complying with requests for document submission, testing and monitoring. This requirement stems from section 9005 of RCRA.

Also proposed is a provision that requires all the records required as part of the UST system standards be maintained either on-site and be available for immediate inspection, or at a readily available alternative site and be available for inspection upon 24 hours notice. This provision is intended to avoid unnecessary delays in determining compliance with today's proposed requirements during inspections. Most of the time, the Agency anticipates that all required records will be maintained on-site and therefore must be immediately available for inspection. However, the Agency recognizes that the maintenance of records on-site is not always possible at all sites. Therefore, if such records are stored off-site they must be available for inspection within 24 hours after the implementing agency provides notice to the owner and operator. This notice may be provided before an inspection takes place to make sure the records are available during the inspection.

*(4) Issues for Public Comment.* The Agency requests comment on today's proposed recordkeeping requirements. EPA also requests comment on the need for additional recordkeeping requirements. One type of record that the Agency considered requiring at all new UST systems in today's proposal is a site plan. This plan would show locations for the tank system components and would be useful for investigating suspected releases and for checking compliance. Several states now require site plans. The Agency did not include site plans for today's proposed recordkeeping requirements because of a number of issues noted below.

Comment is requested on several of the issues related to site plans. One of these issues is what features should be shown on the site plan. The Agency has considered requiring the site plan to show the locations of the tanks, piping, monitoring wells and other underground structures in the excavation area. A second issue is the level of detail that should be required. It has been reported to EPA that most tank installations are completed without engineering drawings. However, the installer could draw a schematic showing critical dimensions before closing the excavation. A third issue is whether the site plan should be submitted as part of the notification form or retained by the owner or operator at the tank site. The fourth site plan issue that EPA is requesting comment on today is whether the site plan should be retained for the life of the facility or some shorter period of time. EPA requests comments on these specific issues and on the advisability of including site plans as a part of the final recordkeeping requirements.

## D. Release Detection

### *1. General Strategy*

a. Overview

As discussed in Section V of today's Preamble, EPA has concluded that early detection is necessary to minimize contamination of soil, ground water, and surface water from underground storage tank system releases. Records from past release incidents indicate that, without the use of release detection, a release can become substantial before it is detected. In fact, the *Summary of State Reports on Releases from Underground Storage Tanks* notes that most release incidents were first detected by people seeing, tasting, or smelling the released material in the environment. To adequately protect human health and the environment, releases need to be detected well before they have become easily noticed through the basic human senses.

Several release detection methods are now available that can be used to detect releases before they have adverse impacts on human health and the environment. These methods range from periodic precision tests for tank tightness to continuous tank monitoring instruments. They vary widely in sophistication. Any method includes at least one sensor, a design that assures collection of data from any point in the tank system, and a data analysis capability to interpret results. (The variety of technologies available is described in detail in the sections below.) EPA believes that widespread implementation of release detection methods will result in more effective environmental protection. Several states and local communities implementing various approaches to release detection for UST systems are already recording a dramatic increase in the number of releases being detected. EPA is today proposing to allow several methods that, properly used by UST owners and operators, can quickly detect releases.

b. Current Practices

Release detection has been practiced as a voluntary activity by UST owners and operators only to a very limited degree in this country. They have mainly used the traditional methods of product inventory control and tank tightness testing. The *Summary of State Reports on Releases from Underground Storage Tanks* indicates that, for those incidents reporting a release detection method, about 20 percent of the releases were discovered as a result of inventory control and tank tightness testing. Most of the others were detected through inadvertent human observation (sight, smell or taste).

As a result of the limited use of release detection at existing UST systems, there is very little information concerning how to conduct release detection. Unlike many of the other aspects of proper UST management, recommended industry practices and consensus codes are not yet well established. Thus, a significant factor that has been recognized by EPA during the development of today's proposed approach towards release detection is the lack of industry consensus codes, recommended practices and guidances, and experience with release detection at UST systems.

The National Fire Protection Association's (NFPA) publication, "Recommended Practices No. 329: Underground Leakage of Flammable and Combustible Liquids, 1985," is one of the few documents presently available for use by UST owners and operators and state and local regulatory agencies as a source of guidance for appropriate release detection methods. NFPA 329 gives recommended procedures for the investigation, confirmation, abatement, and remediation of underground releases of petroleum products.

The most widely recognized information from NFPA 329 concerns its performance standard for a "precision test" (i.e., tightness test) that may be used to determine whether a tank is leaking. It defines a precision test as "any test that takes into consideration

the temperature coefficient of expansion of the product being tested . . . and is capable of detecting a loss of 0.05 gallons per hour." The recommendation that tank tightness testing be capable of detecting leaks as small as 0.05 gallons per hour was established over 40 years ago. It was based on performance NFPA believed could be achieved. However, in actuality, the standard is a goal that no one has yet demonstrated can be reliably met. NFPA 329 provides no guidance on how to meet this goal, but does describe several important variables that must be taken into account in conducting accurate tank tightness tests.

Although many state and local UST regulatory programs are just beginning to require release detection of various types, several of these programs suggest different possible regulatory approaches towards release detection that EPA could take. These programs often provide several methods for UST owners or operators to choose from in implementing release detection requirements. Some of the most common of these methods are tank tightness testing, inventory reconciliation, and monitoring wells. These methods are briefly discussed below.

Many states and local governments have adapted requirements for tank testing. Tank testing requirements generally build on NFPA 329. That is, the tightness testing techniques utilized must satisfy the requirements of NFPA 329 and be performed on a schedule or frequency set by the implementing agency. More than half of 23 states that were evaluated and determined to have enacted or promulgated UST regulations refer to NFPA 329. Seven other state and local regulations also incorporate the 0.05 gallon per hour detection requirement found in NFPA 329. In general, the frequency of the testing required by these programs increases with the age of the tank system.

Manual inventory control is the most commonly cited form of release detection in existing state or local regulations. Inventory reconciliation attempts to account for all product additions and removals in the operation of the UST system. The required frequency of the inventory control measurements and reconciliation varies, but all of the regulations that were reviewed by EPA identified the use of inventory control methods for release detection purposes. Several of the regulatory agencies require a more sophisticated form of inventory control, often referred to as in-tank monitoring.

Monitoring wells are another common method of UST release detection addressed in state and local regulations. Releases may be detected either by continuous or intermittent automatic sensors placed in the wells or by periodic manual sampling and analysis. Monitoring wells may be placed in the excavation area around the tank or within secondary containment. Generally, if secondary containment is used, a single monitoring well placed in a collection sump is considered adequate. The number of wells required by state and local programs, if no secondary containment is provided, ranges from two to six per UST site.

Also, various techniques exist for release detection within the walls of a double-walled tank. Manual (or continuous automatic) devices can be used to detect the presence of liquids or vapors, or changes in pressure or the level of liquids within the interstitial space between the walls.

EPA has noted that there sometimes is a difference between what particular state or local regulatory agencies require by regulation for release detection and what they actually implement or enforce. In some state and local jurisdictions, the regulatory agencies have been able to accomplish a higher level of control than that set forth in their regulations. In others, typically because of a lack of sufficient personnel, training and funds, the regulations have not been widely enforced. In addition, the quality control aspects of these regulatory programs are difficult to assess. For example, when a tank tightness test is currently performed on an existing tank, it is difficult, if not impossible, for the regulatory agency to verify the results. Thus, the impact of these new regulatory programs is not clearly established. However, EPA's study of local UST programs reveals that where release detection is being required, significant increases have occurred in the number of USTs found to be leaking.

A rapid increase in the development and implementation of many state and local UST regulatory agencies, as well as the development of the federal program, has spurred an increasing level of research and development of release detection technologies related to UST systems. For example, the American Petroleum Institute has recently prepared guidances concerning the use of monitoring well techniques and automated in-tank monitoring methods. Development of new release detection methods, often relying on sophisticated electronics, has also resulted in the formation of several new companies offering tank system testing. EPA has identified at least 250 different devices under development or already commercially available, primarily for use in release detection at petroleum UST systems. Presently, several of the release detection equipment manufacturers offer training programs for operators who purchase their systems. These training programs are usually short (at most five days) and may not have the time to adequately instruct the operators in both the theory and practice of tank system testing. Many new systems have circuitry that allows the integration of alarms and control equipment. The reliability of these new developments and of sensors, network design, and data analysis capabilities and performance has not been tested by long-term operation. Further, maintenance and quality assurance/quality control (QA/QC) programs are frequently not well developed.

The increasingly widespread availability and untried nature of these newly developed technologies, and the anticipated development of even more techniques, presents an additional challenge in generating release detection regulations for UST systems. As noted in the discussion of state regulations, a common approach is to allow the tank system to be equipped with one method from a list of release detection alternatives. However, as the number of available techniques increases, it becomes more difficult to provide quality control for the application of the various methodologies. Another approach taken by several states is to require the approval of various release detection methods on a device-by-device basis. This approach presents difficulties to an implementing agency because of the large number of sites that must be evaluated independently. The following section discusses the general regulatory approaches to release detection considered by EPA.

c. Approaches to Regulation

In developing today's proposal the Agency identified and evaluated the following different approaches towards establishing national requirements for release detection at UST systems. These approaches would establish fundamentally different roles for the federal government, state and local implementing agencies, and industry, by having each of these groups play a central role in one of the approaches:

- *General Performance Standard.* EPA would establish a release detection performance standard that would apply to all methods. The standard would require a detectable quantity (e.g., an amount leaked or a leak rate), a frequency of testing, a probability of detection, a probability of false alarm,

and a relationship of the detection limit to tank size. This approach would allow maximum flexibility (and responsibility) to industry to choose the reliable methods of release detection. EPA would provide technical guidance on designing, selecting, installing, and operating release detection;

• *Certification of Methods.* EPA would allow only release detection methods that have been approved by EPA. Approved methods would have to be backed up by specific procedures for installing, operating, and maintaining them, as well as by requirements for quality assurance/quality control and installer or operator qualifications. EPA would establish some measure of performance upon which to approve methods; or

• *Method-Specific Performance/ Requirements.* EPA would establish requirements concerning the use of individual classes of methods of release detection and their performance. The underlying performance of the different methods could vary depending on the effectiveness and reliability inherent in each method.

Each of the above approaches requires that EPA establish acceptable performance standards for release detection. There are two ways to establish such standards of performance. The first is to specify a standard based on a predetermined size of release or release rate that is expected to pose a threat to human health and the environment. Once this unacceptable level of release is established, setting performance standards for release detection is somewhat simplified. Unfortunately, this approach towards standard-setting does not appear to be possible at this time because: (1) Determining the size or rate of an unacceptable UST release should be site-specific, and (2) the Agency's present level of knowledge as to the rates, sizes, and the development of typical releases from UST systems is insufficient to know whether a particular standard of performance would result in most releases being detected before they posed a threat to human health and the environment. The second approach towards specifying performance standards is to base them on the technological limits of release detection and require them to take place at a minimum within these limits of current technology. The release detection standards specified in today's proposal are based on this second approach to standard-setting. The Agency selected this approach recognizing that the performance limits of various methods of release detection are not equally understood.

Because some methods of release detection (such as in-tank volumetric release detection systems) are presently better understood than others, EPA considered setting minimum standards based on the performance of the better-known devices. However, today's proposal rejects this approach in order to avoid prematurely excluding the use of many other potentially viable—but less understood—methods. For example, some out-of-tank release detection methods offer significant potential for detecting even small releases, are in common use, and are an integral part of many local and state programs. While the precision of some of the sensors used in these methods are well known, the impact of environmental sources of interference that limit accuracy is not yet well known.

The standards being proposed today for each method of release detection are based on EPA's current limited understanding of the present technologies. Preliminary evidence from EPA's research program suggests that some of these technologies may become more refined and reliable in the future. Therefore, while the Agency wants to set a standard that would challenge present technologies, there is also a practical need to develop a rule that does not go too far beyond the reach of current practices. The available data suggests that there already is a significant number of leaking UST systems. Thus, EPA believes a program of regular release detection—even at a minimum performance level that is not as good as may ultimately be possible—will significantly reduce threats to human health and the environment. With this in mind, EPA is setting different requirements for different classes of release detection methods. The discovery of releases identified simply through the initiation of this release detection program is expected to provide significant benefits nationwide.

If EPA were to set a general performance standard for all methods, such a standard should require that the performance of the release detection method, along with the frequency of the testing, be specified. The standard should include:

- An amount released or release rate;
- Probability of detection;
- Probability of false alarm; and
- Frequency of test.

This four-parameter specification defines the limits of the threat to the environment and the confidence with which these limits can be met. For example, if the detection limit is expressed as a release rate, the relationship of the detection limit to tank size, should also be stated. Selection of this approach, along with the specific values for each parameter, requires the knowledge that each general class of detection can be understood in terms of these parameters and can perform up to or better than each value set by EPA. EPA does not believe that the data required to specify such a comprehensive standard is sufficiently complete for most methods of release detection and is concerned that such an approach may preclude the use of many methods of detection that will not be understood in this way for the foreseeable future.

Today, EPA is proposing a method-specific performance requirement approach to release detection. For certain classes of methods, EPA is proposing specific standards for the four parameters described above. For other classes of methods, EPA determined that it had insufficient information to specify such standards. The following discussion provides details of the alternatives considered and the rationale for selecting the proposed approach.

*Approach 1—General Performance Standard.* Using this approach, EPA would require release detection at all UST systems and would establish the same release detection performance requirement for each method, but would not specify the particular methods that are acceptable or unacceptable. The general performance standard would specify a complete four parameter performance standard (i.e., the amount of release within a specified period of time that must be detectable by any method used with specified probabilities of success and failure). The choice of appropriate technology would be left in the hands of state and local regulators, the regulated community, and the vendors of release detection methods. EPA would periodically report on the results of numerous ongoing research efforts and provide guidance that would assist state, local, and industry officials in implementing the release detection requirement. As technology and the knowledge of performance capability evolves, the Agency could revise the general performance standard to reflect the then current state of the release detection art.

This approach has several advantages. First, all methods would adhere to the same standard and would be required to equally protect human health and the environment, and the relative performance of all the methods could be directly compared when

enough information is developed to allow it. Second, by simply specifying a general performance standard, this approach provides the greatest flexibility to UST owners in selecting and implementing their preferred method. Third, the Agency could develop such a rule fairly quickly and it could challenge the vendors of the different methods to develop more performance-oriented test data to show they could meet the general standards.

This approach has some disadvantages. Selection of a general performance standard may preclude the use of promising types of release detection (an outcome that EPA cannot predict and does not deny). This approach also requires that the capability of release detection technology, and the impact of an uncontrolled release, be known. Any standard defined today would have to be based primarily on the current performance of volumetric tank tightness tests because they are the best understood of the methods currently available. It is also uncertain under this approach how the performance of other methods could be compared to such a standard. Further, as knowledge of all the methods increases, future revision to a general performance standard developed based on today's limited data could result in some confusion and implementation difficulties in the regulated community and the states (who would have to revise their programs and reassess methods of detection to keep up with these changes).

A major problem in specifying a single release detection rule is that a "typical" quantity of product released at the tank is not easily related to the quantity-of-material measured by some methods of release detection especially most out of tank leak detection methods. A detectable quantity, may be expressed as a release volume rate (most easily defined for in-tank release detection systems) or as a concentration of soil contamination in ppm (most easily defined for external release detection systems). A single performance standard would require that the relationship between the release rate and concentration of soil contamination be quantified. In-tank measurements provide the most direct measure of a leak and can, in principle, identify a leak before any significant product is released into the environment (provided the test is conducted frequently and release exceeds the threshold of the test). The product level measurements can be quantified in terms of flow rate, and the performance of the release detection systems is reasonably well known. In practice, tank tightness tests are not performed as frequently as desired because of their impact on dispensing operations and cost. The automatic product level methods can be applied more frequently than tightness tests and thus could at least partially alleviate this problem. Data available to EPA on these methods, however, suggest that they may be less sensitive than some methods of tank tightness testing. Out-of-tank release detection methods can be operated continuously or frequently without affecting dispensing operations, but it may be necessary to calibrate monitors at each site to interpret a measurement as a rate of leakage. A further difficulty is that the performance of these out-of-tank monitors is not well known, and regulated substances may be released in significant quantities in the environment before a release is detected.

Under this approach, EPA would specify a four-parameter performance standard applicable to all classes of release detection methods. The standard considered by EPA for this purpose is the one specified today for tightness test devices; this standard was considered because: (1) The capability of tank tightness testing is the best known; and (2) this standard would challenge vendors to improve their knowledge of the capabilities of these and other classes of methods. EPA lacks sufficient data, however, to ascertain that the in-tank parameters are achievable by all other classes of methods. Moreover, EPA's research necessary to establish the technological limits of performance for each class and an evaluation of these systems will not be complete before final rules are written. Alternatively, EPA could eliminate those methods of release detection for which information is incomplete in the proposal, but did not, because it wants to maximize the number and variety of detection systems available for use.

If EPA selected this approach, each manufacturer of a release detection method will eventually specify the precision and accuracy of its methods in terms of the four-parameter test description. This performance data is needed for owners and operators to make environmentally protective and cost-effective choices. Of particular concern to EPA is how the performance of non-volumetric methods can be measured against the volumetric four-parameter standard described in today's proposal for tank tightness testing. Requiring all methods to meet this standard could necessitate on-site calibration each time such a method (e.g., soil gas or groundwater monitoring) is used.

*Approach 2—Certification of Methods.* Under this approach, EPA would establish criteria and procedures for judging and certifying the various commercially available methods and devices. EPA could review and evaluate methods through these established procedures as well as foster and accept the results of such reviews by independent professional associations capable of doing these certifications (e.g., Underwriters Laboratories or the American Society of Mechanical Engineers). Under this approach, the manufacturers of the various methods could conduct the necessary performance evaluation reviews and submit these results for consideration to EPA or an independent review organization.

Under this approach, a release detection method could not be used until approved by EPA. Thus, unacceptable or questionable methods would not be allowed until demonstrated to be accurate and reliable. This approach provides the clearest direction possible to the tank owner and operator about methods that can be used so that implementation by the regulators would be simple and straightforward.

There are several disadvantages to this approach. The most significant disadvantage is that it would be difficult to implement a certification program rapidly. Such a continuing, affirmative federal regulatory presence would also run counter to the approach being taken to bolster and encourage the lead of state and local programs in all aspects of this program. It would undoubtedly result in significant changes to regulations currently in place at the state and local levels. Based on the experiences of similar approaches taken under other EPA programs, it could take up to two or three years beyond final rule promulgation to begin actually approving devices, thereby delaying implementation of these release detection programs. These delays in program implementation would enable numerous releases to erupt undetected over the next several years with potentially significant adverse consequences to human health and the environment. This approach also would pose significant implementation problems; for example, decisions would have to be made as to which of these devices to review first. The first approved devices would have significant marketing advantages over methods yet to be reviewed.

*Approach 3—Method-Specific Performance Requirements.* Under the

approach which is proposed today, EPA would establish specific performance standards and a minimum frequency of test for each class of release detection methods. A different performance standard could be specified for each method and performance standards for some classes of methods would not contain all of the parameters discussed under approach 1. Restrictions governing the frequency of each method's use and siting would be specified. The type of performance standards for each general method would depend on the principle of its operation. For example, one criterion for volumetric tank tightness testing would be a minimum release rate, while for soil vapor monitors a minimum detectable concentration may be more suitable. The development of performance standards would be primarily based on data provided by manufacturers and the results of EPA research as well as that of other groups.

This approach is very similar to the first approach but provides performance standards for each specific method rather than establishing one performance standard for all methods. The primary advantage of this approach is that it would set separate standards for each class of release detection methods. These standards could be based on data available to EPA at this time. Also, this approach would allow industry and the states to have significant flexibility about the choice of individual methods that can meet the minimum performance standards. Because certain limitations of use will be necessary to meet this required performance, not all methods could be used in all situations; this would reduce misapplication and incorrect installation of methods.

The primary disadvantage of this approach is that standards of release detection performance will be nonuniform. The standard for one release detection system may be more or less stringent than other systems. Further, individual owners and operators may have more difficulty than under approach 1 in achieving a desired degree of protection. Another disadvantage is that future EPA revisions of specific performance standards to reflect new data could result in some confusion and implementation difficulties in the regulated community and the states.

Under this approach, a four-parameter performance standard can be specified today for tightness test devices, but not for other methods. The parameters selected are believed to be achievable by most in-tank release detection systems that are in current use; although some small modification to current operation might be required. The research necessary to establish the technological limits of performance and an evaluation of these systems will be complete before final rules are written. EPA encourages the developers of release detection systems to strive to detect the smallest leaks possible because the standard may become more stringent with time. The data are available to evaluate inventory reconciliation and EPA may develop a four-parameter specification for this method before promulgating final rules. EPA believes that the data are generally insufficient to specify a four-parameter standard for out-of-tank release detection methods at this time. EPA is conducting research on the performance of these devices but does not expect the results of this research to be available before the rules are finalized. Nevertheless, EPA did not eliminate these methods of release detection in the proposal because it wants to maximize the number and variety of detection systems available for use. Out-of-tank methods have detection potential equivalent to or better than the in-tank methods.

In addition, the out-of-tank release detection methods do not generally measure the rate of leakage; they detect the presence of leaked material. Therefore, an on-site calibration may be required if a four-parameter specification, which is volumetric in nature, is chosen.

EPA expects, under this approach, that manufacturers of a release detection method will eventually specify the precision and accuracy of its method in terms of the four-parameter description. Manufacturers or providers of release detection services will be in the position to furnish the performance data for their method that supports their claims. This information will give each owner and operator information for making cost-effective choices. EPA recognizes that any method of unknown performance has the potential for a significant level of false alarms and missed detections.

Today's proposal was developed to establish release detection standards using this third approach. Although preferable in several ways, EPA rejected the first approach at this time because the Agency did not feel that there were sufficient data to assure that all release detection systems meet a single standard. The Agency was concerned that the first approach (a general performance standard) could, at present, be based primarily on the performance of volumetric test methods, yet would apply to all methods. The second approach (certification of methods) was rejected because of the time delays that would be required for formal certification of adequate release detection. This would reverse the trends towards rapid implementation of release detection that are presently being fostered by numerous state and local programs. The third approach (method-specific performance requirements) is being proposed because the Agency believes that enough information is already available, and will be developed before the promulgation of final rules, to enable the establishment of standards that can in many ways limit possible confusion and abuses that might otherwise occur under the more general approach. This method specific performance standard approach would also avoid the delays associated with trying to certify and approve the various alternatives at the national level. It would still allow states and local governments to continue to take their different paths towards release detection as long as the underlying requirements for the methods are observed. Finally, this approach provides flexibility and choice to the regulated community, and also attempts to foster and limit their search to acceptable uses of allowed methods.

EPA recognizes that the third approach is a subset of the first approach. The Agency believes that, ultimately, a single performance standard that can be met by all classes of methods may be possible. However, this was not possible by time of proposal and must wait until the Agency has a better understanding of the behavior of UST releases and the performance of various methods of release detection. Although EPA is not planning to undertake certification of different methods of release detection, research has already begun, and more studies are planned, that will more conclusively reveal the dependability of, as well as the effect of factors controlling the performance of many different release detection methods. Should EPA decide to finalize the requirements for release detection proposed today, the results of much of this work may be provided in the form of guidances that should prove very helpful to state and local communities and to the regulated community in assessing which methods work best under different conditions. EPA will consider, however, selecting the first approach in the final rule, if sufficient data can be developed from ongoing research and public comment.

EPA has set up a testing apparatus in its Edison, New Jersey laboratory that has already begun to assess the performance of the different in-tank monitors under carefully controlled test conditions. The results of these investigations will be made available to both the owners of these commercially available devices, as well as to the public.

In our Las Vegas laboratory, we have begun an evaluation of out-of-tank monitoring methods of release detection and expect those efforts to provide significant additional information concerning monitoring for liquids or vapors in and immediately beneath the UST excavation area. Awareness of the potential need for external release detection should foster rapid development of new technologies and products for release detection. Because the external release detection industry has a relatively limited history, it has few reference standards and no consistent criteria for evaluating these devices. EPA has chosen to use a series of standard laboratory benchtop test methods and specifications to evaluate important operational parameters such as detectable quantities, specificity, response time, accuracy, and precision. Based on these and other data, EPA could determine the capabilities of each of the release detection devices for each of the four parameters in a general performance standard. EPA will report findings of this research as it is completed. Guidance documents may also result from these efforts.

*Public Comments.* EPA requests public comment concerning the feasibility of the three general approaches towards release detection standard-setting discussed above. Specifically requested are comments and information concerning:

- The appropriateness of the approach selected;
- The need for uniform performance standards applicable to all classes of release detection methods;
- The validity of the specific values of the four parameters proposed for tank tightness testing if these values were applied in a general performance standard to all classes of release detection methods;
- The appropriateness of specific values proposed for the performance standards required of each class of method;
- The need for a more complete performance standard with respect to certain methods; and
- The concept of making the performance standards more stringent as future research reveals how this can be accomplished.

EPA is particularly interested in research results and release detection performance data which permit the choice of a single four parameter general performance standard applicable to all categories of release detection methods or a better method-specific standard for each category of release detection methods. This information is important given the present state of knowledge about, and the rapid development of, the various release detection technologies.

The relationship between concentrations measured at an external leak detection monitoring point and a leak rate measured within the tank is difficult to develop. Mathematical models or the release of a tracer at a tank and measured by the external monitoring system may be used to estimate the performance of the external leak detection method. The Agency cannot provide at this time further guidance on the development of this relationship. Consequently, comparisons of the performance of tank tightness tests, inventory reconciliation techniques, pipe-line monitoring systems and external leak detection systems are difficult at best. The Agency seeks to develop a common performance standard for all leak detection monitoring techniques. Comments are solicited on how this may be done.

*2. General Requirements for All UST Systems (Section 280.40)*

Today, EPA is proposing to require release detection for all UST systems. In the following sections of the Preamble, the numerous methods and the performance requirements conditioning their use are discussed in detail. However, no matter which release detection method is chosen by an owner or operator, the Agency believes there are some requirements that must be adhered to at all UST systems to ensure that an adequate and reliable level of release detection is provided. Those general requirements proposed for release detection at all UST systems are briefly discussed below.

a. Capable of Detecting a Release From Any Portion of the UST System (Section 280.40(a)(1))

No matter which method of release detection is used by the UST owner and operator, it must be able to detect a release from all the components of the UST system. For example, release detection must be able to detect releases not only from the tanks, but from the underground piping and equipment. As discussed earlier in Section IV of this Preamble, releases from piping are an important source of the reported releases from UST systems and the definition of UST in Section 9001 includes underground piping connected to the tank. Thus, EPA has proposed in 280.40(a)(1) a general requirement that UST owners and operators use a release detection method that includes consideration of all the UST components. A test of the piping and another test of the tanks separately is one such alternative. If wells, barriers, or secondary containment are used, they must address all the UST system. A combination of more than one method can be used as long as each UST system component is monitored by one of the methods.

An associated concern with the question of the capability of detecting releases is the reliability or dependability of the method used. Even if it does address all the UST system components, it could fail to work and not detect a release. Under today's proposal, each UST system would be required to be monitored by only one method of release detection. Because no one method works perfectly, this will result in some releases not being detected. EPA considered requiring the use of more than one method at each site, and thereby providing a redundancy to the release detection that would provide more assurance that, if a release escaped one failed method of monitoring, it would be picked up by the other method before adverse impacts to human health and the environment could occur. This principle is a feature of the California UST program's approach towards release detection of existing UST systems.

The Agency rejected requiring the use of redundant methods of release detection for several reasons. First, as stated previously, most UST systems presently do not have any release detection, and the more widespread use of at least one method for each site is expected to reduce risks markedly, even if these methods do not work perfectly at all sites. The Agency's new UST system requirements and upgrading requirements for all UST systems (discussed later in this Preamble) are expected to dramatically reduce the number of releases that do occur over time, and the potential adverse impacts associated with any imperfections in particular release detection methods thereby will be diminished. Second, today EPA is proposing to allow the use of different methods of release detection, but only following several requirements that must be met to ensure that they are properly used. These performance requirements are intended to make the detection of releases using a single method much more certain. Third,

it is not clear that if redundant methods are used they will pick up the types of releases that might be missed by the first method. For example, a vapor monitoring method could miss the detection of very small releases. However, the added use of various in-tank tightness tests might miss them also if the releases were very small and below the detection thresholds for this method of detection. Finally, with the exception of requiring inventory controls, most existing state and local UST programs do not require redundant monitoring programs at UST sites.

In summary, the Agency was not convinced that the use of duplicative monitoring methods at each UST system would gain significant environmental benefits, in comparison to the possible adverse impacts on program implementation. The Agency specifically seeks comment concerning the proposed approach to require only one method of release detection at each UST system. For example, would a requirement that all environmental monitoring methods be coupled with an infrequent tightness testing program provide significant additional protection to human health and the environment that would justify such an approach?

b. Installation, Calibration, Operation, and Maintenance of Release Detection (Section 280.40(a)(2))

In order for any release detection method to reliably detect releases, it must be installed, calibrated, operated, and maintained properly. EPA believes that any system designed to detect releases within or outside of the UST system must account for various factors and variables, some of which may be unique to the equipment. Improper installation of any method could undermine its designed effectiveness. Improper operation of the monitoring method could also result in faulty measurements or equipment failure. Much of the equipment being developed for UST release detection has electronic or mechanical components that require periodic calibration and maintenance on schedules specific to the monitoring technique and equipment.

EPA believes that the suppliers of these release detection devices are in the best position to understand how they work and to specify proper installation and operation, as well as when and what routine maintenance and service checks for recalibration, operability, and running conditions are necessary. Thus, today EPA is proposing in 280.40(a)(2) to require that all release detection equipment and methods be installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions. An UST owner or operator who purchases and installs a monitoring device must adhere to what is considered good practice for that monitoring approach and equipment. For example, neglect of a system's maintenance so that it is out of operation or in need of recalibration would be a violation of this requirement. A written record of all calibration, maintenance and repair work will be required. This record should at least include the date and nature of work performed.

Because UST release detection is such a new and burgeoning field of technology, the Agency has identified several possible concerns that may be associated with a manufacturer's instructions for the proper installations, calibration, operation, and maintenance of various monitoring methods. With the wide variety of devices that are now available, many techniques are obviously new or in the experimental stage. Also, some of the methods require significant training to install and may require (under the requirements proposed today) some assessment of the site-specific conditions of the UST system. The manufacturer's representative may not be particularly well suited to acknowledge unusual location-specific variables that may preclude the use of the method at that particular site.

One approach to alleviating some of these concerns would be to require that all release detection methods applied externally to the UST system be installed and maintained by someone certified to do such work. A major drawback to this approach is that there do not appear to be any certification programs available or under development. The manufacturers of the various release detection methods do supply some expertise through different levels of training (some more rigorous than others). The Agency presently believes that, while the certification of release detection equipment installers is not presently required, the expertise of these manufacturers and installers will continue to improve rapidly as release detection becomes a more widespread practice. The Agency requests information and comment on the necessity for more than what is being proposed today concerning reliance on the manufacturer's instructions. Specifically, should special skills, judgment, and training be required of installers and operators of the various types of release detection methods so that the performance requirements for the methods being proposed today are met? Should certification of installation be required? Information also is solicited concerning experiences with the operation, use, and maintenance of various methods of release detection.

c. Performance Requirements and Records of Performance Claims (Section 280.40(a)(3))

The confident detection of small releases from UST systems represents a considerable technical challenge and is often, by its nature, a statistical process. The uncertainty in release detection is a consequence of a number of variables including environmental factors, operational practice, and instrumentation accuracy. Testing errors are manifested in one of two ways: (1) Missed detections of actual releases; and (2) false alarms that result in unnecessary release investigations and tank system repairs or replacements.

The detection of a small release is somewhat like trying to find a "needle in a haystack" (or a signal among various sources of noise). For release detection, the "needle" (or signal) is represented by the correct indication of the existence of a release and the "haystack" (or noise) is the sum of the interferences that may hinder or prevent the correct identification of the signal. Based on an analysis of the causes of fluctuations in testing measurements, the performance of different methods of release detection could be specified in terms of the probability of detection (PD) and the probability of false alarm (PFA) for a given leak rate (L). To develop this specification, it would be necessary to develop a history of measurement fluctuations for each method as determined for a range of test conditions. The actual state of the UST system being tested (e.g., whether, and at what rate, it is leaking) would also need to be understood to develop the performance claim. Classes of methods of release detection are not necessarily inhibited by similar sources of measurement fluctuation; for example, internal as well as external methods experience different sources of measurement noise. As a consequence, additional testing by an alternative release detection method should improve the confidence of release detection results.

EPA believes that widespread disclosure of release detection information will afford the UST owner or operator the means for making cost-effective decisions in the selection and implementation of release detection technology. Elements of information that are of particular interest to the owner or operator relate to the performance and operation of the release detection

method. As a consequence, EPA proposes to require UST owners and operators to request, obtain, and keep on file the information relevant to their release detection technology of his choice. The information obtained from the manufacturer should include statements that address each of the following:

- Detectable leak rate, including PD and PFA;
- Test data that support performance claims;
- Equipment operation;
- Equipment calibration requirements; and
- Equipment maintenance requirements.

EPA seeks public comment on this requirement for this information collection and its storage.

d. Release Detection Frequency (Section 280.40(a)(4))

As discussed in more detail in Section V.C. of today's Preamble, in developing today's proposed regulatory strategy, EPA decided to propose the use of "frequent to continuous" monitoring or sampling of release detection as necessary to protect human health and the environment at both new and existing petroleum UST systems. To carry out this portion of the strategy, EPA is proposing a general requirement in § 280.40(a)(4) that all UST systems (both new and existing) be sampled, monitored or otherwise tested for releases at least once every 30 days. All the release detection methods allowed today (and discussed later in this Preamble) would have to be applied at least once every 30 days under this general requirement.

There are two important exceptions to this general requirement. The first exception allows infrequent use of tank tightness testing at existing UST systems for 10 years, if manual (or automated) inventory reconciliation is performed both weekly and monthly. The second exception allows the use of tank tightness testing at new or upgraded UST systems if the tests are conducted at least once every six months along with inventory reconciliation at least monthly. (These exceptions to this general 30-day rule being proposed today, and the reasons for them, are discussed in more detail later in this Preamble.)

In considering the frequency of release detection needed, the Agency examined four different time periods for release detection monitoring: continuously, monthly, quarterly, and semi-annually. As was discussed earlier, given the uncertainty associated with the methods of release detection proposed today, EPA believes that one way to ensure more reliable results is to apply them frequently. Frequent monitoring will provide numerous measurements during the year that can be evaluated to determine trends (if any) as well as to reveal potential problems and malfunctions of the release detection equipment (or practices used).

Other than tank tightness testing, which is generally done infrequently, there do not appear to be any established preferences concerning how often release detection should be carried out, based on a review of the most aggressive state and local UST programs. For example, California opted for a weekly detection sampling under several alternatives allowed for existing UST systems. Florida requires a monthly frequency as a minimum for both new and existing tanks. Several other states appear to emphasize continuous monitoring when environmental monitoring methods are used. No one appears to use a semi-annual frequency for release detection.

EPA's Regulatory Impact Analysis (see Section IX for more details) provided in support of today's proposal does not show distinguishable differences between applying the variously modeled monitoring methods at different frequencies at new UST systems protected from corrosion. With existing UST systems there are some differences modeled between methods used frequently versus infrequently. However, the biggest improvement still appears to come from simply applying release detection in the first place no matter quickly it is reapplied. In general, EPA believes that the more frequently release detection is used, the more reliable release detection results will be, and the less likely releases will go undetected and present risks to human health and the environment.

EPA decided not to propose continuous release detection at all USTs for several reasons. Continuous monitoring is not easily retrofitted to existing UST systems. Also, as described earlier, the continuous monitoring technologies for either outside- or inside-the-tank applications are not yet in widespread use. The Agency is concerned that forcing the use of such technology may be premature until the methods are more proven and available to the regulated community. The Agency also believes that there are many methods of detection available that appear to offer significant promise for release detection purposes, including several manual methods. A continuous monitoring requirement would prohibit this type of release detection. On balance, the Agency has decided the best approach is to allow as much flexibility to owners and operators as is possible while remaining protective of human health and the environment. Most existing UST systems do not yet have release detection and it will take a tremendous effort nationally to have release detection applied at all of them within the timeframes mandated by today's proposal.

EPA decided for several reasons to propose that manual methods, if chosen by the owner or operator, must be used at least once every 30 days, as opposed to every 90 or 180 days. First, as previously explained, the more frequently release detection is correctly applied, the more opportunity is provided for early detection. Release detection applied at least once every 30 days should more adequately minimize the threat to human health and the environment. Second, a significant benefit can result from requiring at least 12 measurements per year by fostering trend analysis, comparability of results, and assuring that the method being used is providing reliable and meaningful results. The 30-day minimum frequency does not appear to conflict with most established state and local UST programs, and should not present an intolerable burden to owners and operators. The proposed approach allows the use of manual methods at a frequency that is believed workable for the regulated community. The additional flexibility provided by the manual methods allowed by the proposed 30-day monitoring requirement gives the regulated community more choice, which is intended to foster more rapid implementation.

EPA requests information and comment on the selection of a 30-day minimum monitoring frequency for all release detection methods, except tank tightness testing. (The frequency allowed for tightness testing coupled with inventory monitoring is discussed in Section VI.D.3.a. of this Preamble.)

e. Site Assessment for External Release Detection Methods (Section 280.40(b))

The performance standards for external release detection methods can only be partially defined because the necessary data does not yet exist to specify the smallest release that can be detected with a high probability of detection and a low probability of false alarm. Today's rule only specifies the release to be detected with the external methods and mandates several performance requirements on how and where different methods can be used (for example, they are required to be

used within or immediately below the UST system excavation area). Because all external release detection methods cannot be used at every site, EPA is proposing that an assessment be conducted to ensure these method-specific requirements can be met and the appropriate external monitoring method is chosen.

Any one of several factors could be present in a particular setting surrounding an UST system that might adversely impact the performance of any external release detection method. Therefore, users of external release detection methods must gather basic information about the status of nearby site conditions to ensure the method of external monitoring selected is appropriate for the site and is designed and installed properly. Today's proposal includes a general requirement in § 280.40(b) for UST owners and operators who may choose an external release detection method to conduct a site assessment. Any external release detection method whose application is determined to be inhibited by some site characteristic may be precluded from use at that site. Without certain basic information, which can only be obtained through a site assessment, the owner or operator could fail to identify factors that may inhibit the functioning of the release detection method. Thus, today's proposal requires that the assessment be sufficient to ensure the specific performance requirements proposed for the particular methods of external detection in § 280.41 are complied with.

EPA believes that using external release detection properly requires basic information about the subsurface within and immediately below the excavation area. Probably no external release detection method can be used at an existing site in a very shallow water table where significant levels of product have already been released. (Of course, corrective action may already be necessary at such site.) Similarly, the selection of a particular method will be influenced by such site information. For example, as discussed in more detail later in this Preamble, today's proposal precludes the use of ground-water table monitoring at locations where the depth to ground water exceeds 20 feet, or the use of vapor monitoring where background concentrations of total hydrocarbons in the excavation area exceed 500 ppm. Therefore, the site assessment requirement proposed today is intended to provide the basic information that is needed to: (1) Help the owner and operator determine whether the use of external release detection is appropriate for the site, (2) help the owner and operator select an external release detection system appropriate for site conditions, (3) aid in designing a network of sensors and wells which will give the greatest likelihood of detecting a release from any part of the UST system, and (4) indicate the potential for possible problems in interpreting data from the release detection system.

Of particular importance in a site assessment are potential sources of product and vapors, such as previous contamination from earlier releases and leaking UST systems at neighboring locations. Also, the site assessment must consider natural and man-made factors in or below the excavation area which will influence the movement of product and vapors (such as product type, water table depth, soil moisture, soil characteristics, excavation zone design, and subsurface utilities intersecting the excavation). EPA has identified several types of information which might be significant during a site assessment:

- UST SYSTEM CHARACTERISTICS
  - Existing UST System or New Installation
    (the excavation zone of new installations can be designed to enhance external release detection; existing sites are not able to be redesigned)
  - Existing Contamination
    (creates background levels in the excavation area against which new releases must be detected)
  - Tank Size and Number
    (a factor in determining how many sensors and wells are needed and where they should be located)
  - UST System Age and Construction
    (a possible indicator of excavation zone design and backfill characteristics)
  - Presence of Overfill Prevention Controls or Containment
    (a factor in sensor and well placement as well as sensor data interpretation)
  - Product Type
    (different products have different properties such as viscosity, density, and volatility which will influence sensor selection and product and vapor mobility)
  - Layout of Tanks, Pipes, and Connections
    (may influence sensor and well placement)
  - Adjacent UST Systems
    (potential interfering or confounding sources; may influence sensor and well placement, as well as sensor data interpretation)
- MAN-MADE SITE CHARACTERISTICS
  - Excavation Zone Design
  - Impermeable Liner
    (possible aid to sensor and well placement in well-designed installations)
  - Backfill Porosity and Permeability
    (influences product and vapor mobility)
  - Interfering Sources
    (possible cause of false positives; must be discriminated against in data interpretation; may influence well and sensor placement)
    - Adjacent Sources
    - Surface Spills
  - Spurious Pathways
    (man-made pathways from within or beneath the excavation area can influence product and vapor movement; must be taken into account in sensor and well placement)
    - Sewers
    - Underground Utilities
    - Pipes
    - Basements
    - Wells
  - Obstacles to Measurement
    - Electrical utility conduits in the excavation area
    - Pavement over the excavation
    - Buildings adjacent to or in the excavation area
    - Transient or steady-state releases
      (transient or intermittent releases such as spills may obscure continuous releases such as tank and piping leaks)
- SITE HYDROGEOLOGY
  (important factors in selecting external release detection systems likely to determine product and vapor movement within the excavation area, sensor and well placement, data interpretation procedures)
  - Vertical Structure
  - Soil Composition
  - Permeability and Porosity
  - Depth to Water (with seasonal variations)
  - Rainfall

The levels and variations in "background" concentrations of product within or beneath the UST excavation area are particularly important to the success of external release detection monitoring. In general, small releases are expected to be detected more

BEST COPY AVAILABLE

readily at relatively clean sites than slowly developing releases at heavily contaminated sites. The amount of contamination in the excavation area will depend on whether releases from the UST system have already occurred at a site, on the care used in the past to prevent spillage from tank filling operations, and on the location of the UST system with respect to such past and present sources of petroleum and hazardous substance contamination. Site assessments for existing UST systems are likely to be more complicated and difficult than assessments at new sites because of past operational practices that resulted in product releases; such existing contamination can obscure future efforts with external release detection.

EPA considers evaluation of the magnitude and extent of the existing contamination at both new and existing sites to be an important first step in determining how well external release detection monitoring will work at a particular site. Of primary importance are existing concentrations of total hydrocarbon vapors in soil gas in the unsaturated zone if vapor detection is to be the principal monitoring method. Likewise, existing contaminant concentrations in the soil below the UST system and the presence of floating free product on the water table are of principal concern if monitoring on the ground water is to be the principal detection method.

If EPA allows the use of external release detection in the final rule, more detailed guidance on performing site assessments may be provided at that time. In the meantime, EPA is soliciting information and comments on: (1) Whether site assessments should be required at all UST systems or just those where the use of external release detection systems are required; (2) whether different types of information should be obtained in site assessments at new locations as compared with site assessments at existing UST systems; (3) the necessary elements of a site assessment; (4) the use of site assessment data in selection of release detection sensors and systems; (5) the types and levels of contamination at sites where no releases have ever occurred; and (6) the variations in contamination levels over time at sites where releases have been known to occur.

f. Other General Issues Concerning External Release Detection Methods; Solicitation of Public Comments and Performance Data

In discussing external release detection, an important distinction must be made between release detection sensors and release detection methods. A release detection sensor is a physical device capable of responding to released product. Examples are flame ionization detectors for vapors and colorimetric pastes for determining the presence of floating product. A release detection method is the entire procedure by which releases are detected. The design of an external release detection method includes three essential components: (1) Sensor selection, (2) network design, and (3) selection of a method for data analysis.

Sensor selection is the process of selecting one or more devices which will operate satisfactorily in the environment of the specific site under consideration. Several factors to be considered include: (1) Whether the sensor will operate under saturated or unsaturated conditions (i.e., below or above an existing water table; (2) type of product to be detected; (3) necessary detection thresholds (e.g., vapor concentrations or product thicknesses); (4) sensor accuracy, precision, and drift; (5) sensor response times; (6) whether the sensor is to be operated automatically or manually; (7) whether the sensor is to be operated continuously or intermittently; (8) frequency of maintenance; and (9) the physical environment of the site, including such factors as ambient temperature range. In general, this information will be available from the manufacturer, and the release detection system owner or operator must ensure that appropriate sensors are chosen for the site in question. EPA believes that release detection sensors exist which have adequate sensitivity and which will function satisfactorily in the UST excavation area. EPA solicits comments on the adequacy of existing external release detection sensors and the type and values of minimum performance specifications which should be established as mandatory.

Network design is the process of determining the necessary numbers and locations of external release detection sensors, as well as the frequency of sampling. The overall objective of network design is to install a method which has the greatest practicable likelihood of detecting a release from the UST system and its associated piping. A useful detection method must also be capable of detecting a release as soon as possible to minimize hazards to human health and to prevent irreparable damage to the subsurface resource (and to minimize remedial action costs). The principal considerations in determining locations of wells and sensors are the geometry of the UST system (tanks and piping), the characteristics of the product, and factors which influence the mobility of product and vapors.

In general, EPA believes that the topic of network design is not well understood. In particular, the processes which govern product and vapor mobility and migration are poorly understood. Because product and vapor movement from a typical UST system is likely to involve three components (product, vapor, and water), exact prediction of the movement of product vapor in the subsurface environment is quite complex. While predictive methods are being developed by several investigators, product and vapor movement in the UST system excavation area is not well known at the present time. Today's requirements, which generally limit use of external methods to within or immediately below the excavation area, are intended to ensure that this uncertainty is kept to a minimum.

Factors which are believed to possibly affect network design include product characteristics, unsaturated zone characteristics, saturated zone characteristics, natural ambient environmental factors, and man-made site characteristics. These factors are listed in more detail below:

FACTORS INFLUENCING NETWORK DESIGN

- Product Characteristics
  - Vapor Pressure
  - Molecular Weight
  - Henry's Law Constant
  - Dielectric Constant
  - Density
  - Water Solubility
  - Viscosity
  - Boiling Point
- Unsaturated Zone Characteristics
  - Air-Filled Porosity
  - Pore Size and Shape
  - Volumetric Water Content
  - Unsaturated Zone Depth
  - Soil Organic Matter Concentration
  - Temperature and Temperature Gradients
  - Soil Texture
  - Retention
  - Microbial Influence
- Saturated Zone Characteristics
  - Water Table Fluctuations

Soil Characteristics
Natural Ambient Environmental Factors
Barometric Pressure Fluctuations (for vapor monitoring impacts)
Wind
Rainfall
Man-Made Site Characteristics
Excavation Zone Design
Liner and Backfill Characteristics Interfering Sources of Contamination
Spurious Pathways from or beneath the Excavation Zone (utility conduits, etc.)
Obstacles Aids to Measurement (e.g., paved areas over the UST system)

The relative importance of each of the above factors cannot presently be determined, and consequently the exact movement of product and vapor outside of the excavation zone cannot be predicted at all sites. EPA believes that the uncertainties involved in network design are likely to be more important to detection of releases than sensor performance characteristics. EPA solicits comments and information related to external release detection network design and the impact the excavation zone surrounding an UST will have on product and vapor movement.

At least four different approaches to the interpretation of data from release detection methods can be considered. The first is to determine a release from the appearance, taste, odor, or samples collected from observation wells. In this case, the decision that a release has occurred is left to the human observer and may be somewhat subjective. The second approach involves the statistical comparison of data collected at different times at one monitoring point, or at the same time from several monitoring points; in this case the decision that a release has occurred is made by statistical hypothesis testing. The third approach is to plot, over time, the measurements from a monitoring point to look for trends in the data. The fourth option is to establish alarm or action levels so that observation of values over this limit would immediately trigger some type of action. The action could range from making additional measurements to excavating the tank.

Incorrect decisions from any one of the four methods can be described as either false positives (concluding that a release has occurred when no release exists) or false negatives (concluding that no release has occurred when in fact one exists). False positives and negatives from sight, taste, or odor will be influenced by the sensitivity of the observer's senses and by his subjective decisions. The number of false positives and negatives from the other three options depends on the decision values chosen (statistically significant variations, changes in the rate at which measured concentrations increase, or the action level selected) and on the sampling frequency. Depending on the selected action level and frequency of sampling, the number of false positives can be progressively reduced while the detection of small releases becomes progressively more difficult. The number of false positives has consequences to both the tank owner and to the regulator, who must decide what action to take when the detection system indicates that a release may have occurred. The number of false negatives also is important, since adverse environmental impacts will generally increase when a release continues undetected. EPA solicits comments, including relevant data and recommendations, concerning methods of data analysis for external release detection systems.

*3. Requirements for New UST Systems (Section 280.41)*

Today EPA is proposing in 280.41 to require that all new UST systems be provided with release detection before they begin operation. The proposal allows UST owners and operators to choose from a wide variety of different release detection methods provided that they meet the requirements for each method. Methods allowed include:

- Tank tightness testing with monthly inventory reconciliation;
- Vapor monitoring within the soil gas of the excavation area;
- Monitoring for liquids on the ground water;
- Monitoring for releases in an interception barrier;
- Automatic monitoring of product level and inventory control;
- Interstitial monitoring between the UST and a secondary barrier; and
- Other methods approved by the implementing agency.

These methods and the proposed performance requirements and limitations are discussed below. Any special conditions for use of these methods for hazardous substance UST systems is also discussed below.

a. Tank Tightness Testing and Inventory Reconciliation Controls (Section 280.41(c))

EPA is today proposing to allow the use of tank tightness testing and inventory reconciliation control (or a method of equivalent performance) in combination as one method of release detection at new petroleum UST systems. Each of these two release detection components, and the requirements proposed concerning their use, is discussed separately below.

*(1) Tank Tightness Testing (Section 280.41(c)(1)).* Tank tightness testing is the most commonly used procedure for determining whether an UST system is leaking. A wide variety of tightness testing techniques are available, including many that are described in the report, *Underground Tank Leak Detection Methodology: A State-of-the-Art Review* (EPA 1986). All these techniques test the integrity of the tank; some test the integrity of the piping. Owners or operators who choose to use a method which only tests the tank must use another technique for testing the piping.

Tank testing techniques can be classified as either volumetric or non-volumetric. Volumetric tests identify whether a system is tight by measuring product level changes over time and converting these measurements to a flow rate based on tank geometry. Non-volumetric tests measure something other than product volume changes and, therefore, do not as easily define a flow rate. They simply indicate whether the tank or piping is leaking. These include ultrasound techniques and trace gas detectors.

The procedures for conducting volumetric tests generally involve filling the tank with product to a specified level and measuring the change in this level over a period of time. In addition, product temperature is measured so that the effects of temperature on product volume can be subtracted from the estimated product level measurement. If the estimated change in product level exceeds a certain amount, the system is judged to be non-tight. The various volumetric techniques differ in the method for measuring and recording the liquid level changes, in the temperature measurement and compensation procedures, in their data analysis methods, and their detection criterion.

There are a wide variety of volumetric tank tightness test methods currently available. All test methods require that dispensing operations at the UST be curtailed during the test. Some test methods overfill the tank, while others do not; some test the entire system, including piping, while others test either the tank or the piping. The most common test methods require extensive preparation to conduct a test, have a high cost per test, and as a consequence cannot be used frequently. More

recently developed systems can be permanently installed in the tank. These systems require initial capital investment, but can perform frequent tests with only minimum preparation and interruption to dispensing operations. These latter systems are the automatic product level monitoring systems that have a precision test mode for the conduct of a tightness test. (They are discussed in more detail in a later part of this section of the Preamble.)

The performance of the volumetric test methods is being evaluated in the EPA's research program being conducted in Edison, New Jersey and the test results will be available before the rule is finalized. In addition, the technological limits of volumetric tightness tests will also be determined. As noted earlier in this preamble, preliminary results suggest that reliable detection of leak rates at 0.05 gal/hr may be scientifically possible for tanks whose capacity is less than 12,000 gal.

A major concern with this method of release detection is that several key factors can significantly undermine the test's accuracy in actual practice. A review of several of these techniques, prior to EPA's National Motor Fuel Tank Survey in 1985, revealed that many of the leading commercially available procedures do not appear to adequately control these factors. Also, the way these tests are carried out at the site as well as their data analysis procedures, can provide other sources of operator-induced errors. Because tank tightness testing cannot be performed frequently, EPA considered not allowing the use of this method. However, the Agency has concluded that, because this method can provide reasonably accurate, though infrequent "checks" for releases, it should be allowed for release detection purposes, if it is used in compliance with several proposed performance requirements and limitations:

- The test must be used in combination with daily inventory measurements and monthly reconciliation techniques (or a test of equivalent performance);
- The test must be conducted at least every six months; and
- The test must be capable of detecting a release rate of at least 0.10 gallons per hour from the UST system, determined with a probability of detection of 0.99 and a probability of false alarms of 0.01.

Each of these limitations are discussed in more detail below.

*(a) Tightness Tests Must Be Used in Combination With Inventory Reconciliation Techniques.* As discussed previously in this Preamble, EPA has decided to propose the use of "frequent to continuous" release detection as part of the national strategy to regulate new UST systems. Numerous advantages were identified that caused the Agency to propose, at a minimum, monitoring for all new UST systems once every 30 days. However, the Agency believes it is unrealistic to require tank tightness testing that often. Tightness testing, as currently practiced, is a fairly expensive one-time procedure that requires the UST system to be out of service for a number of hours prior to and during the test. Because monthly testing is infeasible, the Agency is proposing that it must be combined with inventory reconciliation techniques (discussed in the next section of this Preamble) before it can be used to comply with today's release detection requirements for new UST systems.

The tank tightness testing technique is expected to be able to detect releases that may be too small for inventory reconciliation procedures to identify. In contrast, the inventory reconciliation is intended to address today's general requirement for frequent monitoring through the requirement of daily measurements reconciled at least monthly. Thus, the inventory reconciliation portion of this combined method of release detection is for use between the infrequent tightness tests required today.

The Agency considered allowing tightness testing alone for release detection. However, EPA believes that tightness testing can only be used practically on a relatively infrequent basis because of the cost and difficulty to the owner and operator associated with its use. Infrequent testing alone could provide too much time for the UST to leak in between the tests. Inventory reconciliation is intended to ensure that significant releases do not go undetected between tightness tests.

*(b) Tightness Tests Must Be Conducted at Least Every Six Months.* As discussed earlier, EPA has proposed a general requirement that all new UST systems be provided with a method of release detection that conducts a test at least once every 30 days. EPA is also proposing to allow the use of tank tightness testing at new UST systems if it is conducted at least once every six months and is combined with daily inventory measurements and monthly reconciliation techniques.

EPA's review of the various schedules for tightness testing of new petroleum UST systems currently used in several states reveals testing frequencies between one to five years depending on the age of the UST system. Most states that allow tightness testing for new UST systems protected from corrosion require it be used with inventory reconciliation, as well as to be performed at a minimum once every four or five years. Thus, the standard proposed today is much more stringent than what has been established for new petroleum UST systems in several states (such as Wisconsin, Rhode Island, Maryland, and Delaware). This more frequent standard was developed in keeping with today's proposed general approach to require more frequent monitoring in order to detect releases sooner. An important consideration in developing this proposed frequency was the Agency's uncertainty about the long-term use of inventory controls for release detection purposes. (Discussed in more detail in the next subsection of this Preamble.)

EPA specifically solicits comment on the appropriateness of a semi-annual testing frequency at new UST systems. Information indicating that the performance of new UST systems protected from corrosion does not warrant semi-annual testing could cause EPA to require less frequent tank testing in the final rule (as do many established state UST programs). Another key consideration in the decision concerning the frequency of tank testing is the effectiveness of inventory controls in detecting leaks. If a new UST system is provided with automated inventory control and reconciliation equipment, should EPA reduce the required frequency of tank tightness testing? On the other hand, to be consistent with its strategy to require "frequent to continuous" monitoring, should EPA allow tightness testing but require that it be used every 30 days, with the expectation that more practical, less expensive technologies may be developed that could be applied with such frequency in the future?

*(c) Performance Standard for Tightness Tests.* Today's proposal specifies the performance standard for tightness testing in terms of the minimum release to be detected (0.10 gallons per hour), the probability of detection ($P_D$=0.99), and the probability of false alarm ($P_{FA}$=0.01). A complete performance standard is proposed for tightness testing as a consequence of the advanced understanding of this technology. This exactness and reliability is also important considering the more infrequent testing schedule being considered for this test method. This standard applies to the testing of both the tanks and the underground piping.

As described earlier, a number of commercial tank testing techniques are currently available. Although the

commonly used NFPA criterion is 0.05 gallons per hour, and vendors of available testing techniques claim that their methods can reliably detect such a small release rate, at this time the Agency has not been provided with evidence that this standard is being reliably met by any device now in practice. EPA has initiated research that will evaluate the performance of many of the commercially available methods. This program is described in *Protocol for Evaluating Volumetric Leak Detection Methods for Underground Storage Tanks* (1986).

EPA has field experience with tank tightness testing. This experience is described in *Underground Motor Fuel Storage Tanks: A National Survey* (1986). The national survey experience suggests that the leak rate capable of being detected by current practice is higher than 0.05 gal/h. In the survey, EPA carried out a nationwide test of over 450 UST systems and was able to reliably detect releases of 0.1 gallons per hour with a $P_D=0.95$ and $P_{FA}=0.05$. The Agency used a modified, commercial tightness testing procedure that emphasized numerous quality control/assurance procedures and was supported by carefully designed statistical analyses. These tests were conducted with skilled and experienced practitioners.

EPA rejected the widely used 0.05 gal/h criterion in developing today's proposal because the Agency presently believes that this standard is not being reliably achieved with the most common tank sizes in use today (4,000 to 12,000 gallons capacity). Consideration was given to setting today's performance standard at 0.20 gallons per hour. However, EPA technical staff and the experience of the practitioners who executed the national survey have indicated that, if presently available procedures and practices were modified and improved, they could achieve a reliable detection of leak rates smaller than 0.20 gallons per hour.

EPA believes that its ongoing tank test evaluation program will result in significant new information that will result in dramatic improvements of current practice over the next few years. With significant improvements in today's practice, EPA believes many testing procedures and techniques should be able to reliably detect a release rate between 0.05 and 0.10 gallons per hour in the tanks that are widely in use today. Although at the present time quantitative data is unavailable concerning the achievement of the above performance levels at larger tanks (e.g., greater than 20,000 gallons in volume), EPA doubts that those levels can be achieved at the larger tanks.

Testing methods are affected, to varying degrees, by factors such as temperature changes, trapped vapor pockets, condensation and evaporation, and tank-end deflection. Some of these factors can be controlled or minimized by proper design of the equipment and test procedures. The degree to which any of these factors are in effect during a given test will also vary between different tanks, and even between separate tests on the same tank. (In the national field survey, at some of the UST systems, crews repeated tests at the same tank during the same day as well as at a different time several days later.) The ability of the available test methods to compensate for these variables is not yet well known and there is an important reliance on the test operator to recognize and adjust for these factors as they occur. These factors must be monitored very closely because even the slightest changes can either mask leaks that exist, or mimic a leak where none exists.

Volatile liquids such as gasoline, jet fuel, and many solvents are sensitive to temperature variations. For example, a temperature decrease of 0.02 °F in one hour within a 6,000 gallon tank containing gasoline would cause a decrease in the volume of 0.084 gallon. This change exceeds the 0.05 gallon per hour rate now commonly used to indicate a leak (NFPA, 1983). Temperature changes of this magnitude within a tank are common. One reason for this is that new product added to a tank is generally at a different temperature than product already in the tank. After product is added to the tank, it takes time for the tank contents to mix and achieve a nearly static condition. Even as the tank contents settle, the cooler, heavier product tends to settle towards the bottom of the tank, while the warmer, lighter product locates nearer the surface. In other words, the product tends to settle in layers, with a slight temperature drop from the surface to the bottom. This process is called stratification. With stratification, the rate of change of the temperature, and therefore the volume, may vary through the depth of the product.

Vapor pockets within the tank pose serious problems for tank tightness tests that require overfilling of the tank. These pockets are often present at high spots of sloped tanks or in protrusions, such as manways in the tops of tanks. These pockets of trapped vapor expand and contract with changes in temperature and barometric pressure. Furthermore, their size is difficult to estimate because they cannot be seen. Therefore, when present, they must be eliminated for a valid volumetric test to be performed.

Tank-end deflection may also affect the results of a tank tightness test. When a tank is filled in order to perform testing the ends of the tank may deflect outward. The technician performing the test must be aware of this phenomenon and apply the necessary adjustments or corrections to ensure accurate results.

Finally, evaporation and condensation activity inside the tank can affect test results under certain conditions.

Volumetric tests generally cannot be accurately applied to large tanks. The 0.05 gallon per hour criterion was originally developed for a 6,000 gallon tank. Most testing practitioners will not apply their tests to tanks greater than 20,000 gallons. This is due to the increasing effect of many of the variables which cloud the accuracy of this type of test.

Automatic product level monitors that have the capability of compensating for temperature fluctuations can be used to conduct a precision tank tightness test and, if used semi-annually with monthly inventory controls for release detection purposes, they must meet the same standard as other volumetric tank tightness test methods. As with other volumetric tests, tank operations must be curtailed during the test. The direct access of automatic in-tank equipment offers several advantages over other tank tightness methods. First, the tests can be conducted frequently without expense and without having a significant impact on dispensing operations because the systems are permanently installed in the UST. Second, these methods maximize the available test time because the set-up time can be made to be minimal.

EPA recognizes that the performance standard proposed today for tank tightness testing is challenging, but preliminary results from the EPA research program suggests that this standard is achievable. However, more frequent data sampling, a longer test time, improved compensation schemes, and better analysis algorithms might be required of available methods to achieve it.

*(2) Inventory Reconciliation Controls (Section 280.41(c)(2)).* Inventory reconciliation techniques detect releases by reconciling product deliveries, withdrawals and inventory remaining in the UST system each day to identify shortages. A large shortage in a single day or small persistent shortages over a month can indicate a release of product.

As discussed previously in the section on tank tightness testing, today's proposal only allows the use of tightness testing to detect releases if it is used with inventory reconciliation. Monthly inventory reconciliation is proposed as the means for detecting any significant releases that could occur between the more accurate, but less frequent, tightness tests.

Major concerns have been identified concerning the use of manual inventory control as a release detection method with new petroleum UST systems. Manual inventory control depends on considerable operator involvement, and with it the attendant opportunity for human error. In fact, several studies have shown that inventory control records often contain errors that diminish their utility for release detection. In one EPA study, *Underground Motor Fuel Storage Tanks: A National Survey* (where survey participants were required to supply one month's worth of inventory data on forms supplied by the EPA), 80 percent of the participants initially supplied incomplete or incorrect inventory data. Some of these records were corrected or completed through intensive follow-up contacts with EPA, and 50 percent of the inventory records were eventually complete enough for analysis. The Agency has serious reservations about depending on a long-term basis on manual inventory control for release detection because of this reliability issue. The Agency solicits comment and information on this issue.

Inventory reconciliation is a common and highly encouraged practice in the petroleum industry. Inventory is reconciled for management of the inventory, reorder policy, control functions and detection of large uncontrolled releases. Most state and local regulations require it as an element of their release detection strategy because it is inexpensive and can be done as part of the normal day's activities. Product deliveries, withdrawals, and tank inventory are reconciled daily to identify shortages or overages. Persistent shortages (or overages) over one or more months suggest the possibility of uncontrolled release of product from the UST system. Daily product level and dispensing pump measurements are required for meaningful inventory reconciliation. Product level measurements are made manually with a calibrated stick, or automatically with an in-tank product level monitor. The precision of either measurement can be approximately one-eighth inch. The automatic product level monitor has several important advantages over manual stick measurements. First, the measurements are not subject to operator error which could arise from misreading or improperly using the stick. Second, a more sophisticated data collection and analysis approach can be accommodated with the automatic monitors.

The performance of inventory reconciliation has not been articulated. The major sources of interference "noise" that limit the detection of releases using this methodology are:

- Withdrawal volume;
- Delivery volume;
- Product expansion or contraction;
- Structural deformation of the tank;
- Pilferage; and
- Product level measurement.

The first five sources of noise are systematic and are the largest sources of error in reconciling inventory. The fluctuation in product level measurement is random if the stick measurements are properly executed. Delivery uncertainties of several hundred gallons can occur. Withdrawal errors produced by pump calibration errors can be large. Pilferage will obviously affect the accuracy of the reconciliation. Product temperature changes and structural deformation can be large enough to be sensed by the stick measurements if the stick measurement is made shortly after filling a tank.

There are many means to reconcile inventory data. Some methods attempt to compensate for the errors and claim greater accuracy than the traditional method of reconciliation. Several different detection criteria have been developed to define a leak. The volume threshold is the most commonly used. A volume threshold is established and a leak is declared if a monthly shrinkage crosses a threshold. Thresholds of 100 to 200 gallons are typical. Another detection criterion requires that the difference in the number of overages or shortages each month exceed a specified threshold before a leak is suspected.

The primary limitations proposed today for the use of inventory reconciliation techniques for the purpose of release detection at new UST systems are:

- Inventory reconciliation (or another test of equivalent performance) must be used in combination with tightness testing;
- Inventory reconciliation controls must include reconciliation of product inputs, withdrawals and stored inventory each operating day so that a release greater than 5 percent of the flow through on a weekly basis or 0.5 percent of the flow through on a monthly basis will be detected;
- The height of the stored inventory must be measured to a 0.125 inch accuracy;
- Inputs must be reconciled with delivery receipts by measurement of tank inventory prior to and after delivery;
- Deliveries must be made through a drop tube;
- The product dispensing must be metered and recorded within an accuracy of 5 cubic inches for every 5 gallons of regulated substance withdrawn; and
- The inside of the tank must be checked for the presence of water at least every 30 days if any portion of the tank is in ground water.

Each of these performance requirements and limitations are discussed below.

*(a) Inventory Reconciliation (or Another Method of Equivalent Performance) Must Be Used in Combination With Tightness Testing (Section 280.41(c)).* Today's proposal requires that inventory reconciliation be used together with semi-annual tank tightness testing. Although inventory reconciliation is concerned with the measurement of product volume in the tank, it is generally believed to be less accurate than tank tightness testing. However, inventory reconciliation can provide a nearly continuous method of release detection once a base analysis period is obtained. Typically, the reconciliation is done monthly using 30 days of data. Therefore, a well-designed and properly executed inventory reconciliation test is believed to complement the more accurate but more infrequently done tightness tests.

Today's proposed rule also allows for any method or combination of methods of equivalent performance to be substituted for inventory reconciliation providing that the method(s) perform a tank test with the same frequency, tests the entire tank system (including the piping), and has the same or better performance. For example, an automatic in-tank volumetric level testing conducted weekly and monthly combined with an automatic pipe monitoring system would be an example of a substitute system, if the performance of these tests are equal to or better than the performance required of inventory reconciliation (discussed below).

*(b) Inventory Reconciliation Performance (Section 280.41(c)(2)).* Today's proposal sets performance requirements for inventory

reconciliation that generally agree with the American Petroleum Institute's Recommended Practice #1621, which provides detailed guidance on inventory reconciliation practices. Product inputs, withdrawals and stored inventory must be reconciled each operating day. The reconciliation must be accurate enough to identify an inventory loss of five percent of product volume flow through on a weekly basis and 0.5 percent of flow through on a monthly basis. The Agency is not proposing detailed requirements on inventory reconciliation procedures and report formats.

The required reconciliation accuracy of 0.5 percent of flow through on a monthly basis that is being proposed today is an API #1621 recommended practice and is equivalent to a 90 gallon loss in a typical monthly flow through of 18,000 gallons. Even though the error in one day may exceed this value, when 30 days are considered, the errors in individual days tend to balance out. EPA believes that this monthly standard can be met if the inventory control procedures are followed consistently. Equipment is commercially available that can accomplish this automatically. The 5 percent of weekly flow through loss standard is similar to the California weekly loss standard and is intended to provide early warning of major losses. Five percent of the weekly flow through for a typical monthly flow through of 18,000 gallons corresponds to approximately 200 gallons. The Agency included this requirement because it believes that the additional effort required to compute a weekly loss is justified by the additional confidence that large releases will be detected quickly.

The Agency is not aware of any research that suggests an optimum weekly loss standard. However, EPA believes that a more restrictive weekly loss standard (e.g., 2 percent of the flow through) would result in excessive false alarms because of the unavoidable inaccuracies associated with inventory measurements. On the other hand, the Agency believes that a less restrictive weekly loss standard (e.g., 10 percent of the flow through) would allow large releases to go undetected for too long. The 5 percent standard is believed to be achievable with consistent adherence to the industry-recommended inventory reconciliation practices. EPA also considered including a daily loss standard in today's proposal, but concluded that the interpretation of a single day's reconciliation is better left to the operator's judgment because of the many potential sources of error.

The probability of detection and the probability of false alarms for the above detection thresholds are not known, but sufficient data exists to evaluate and amend performance of the proposed inventory reconciliation performance requirements before the rule is finalized. At present, EPA is proposing to follow recommended industry practices, but requests comments and information on this approach.

*(c) Stored Inventory Measurement Accuracy (Section 280.41(c)(2)(ii)).* Today's proposal requires that the height of the stored product be measured to a 0.125 inch accuracy. The Agency believes that a major source of error in manual inventory control practices involves measurement of the height of the stored product. There are many reported cases of operators using improperly calibrated or damaged gauging poles, of operators neglecting to take tank level readings during bad weather, and of miscalculation of the stored volume from the tank level reading. Most manual gauging poles are calibrated in 0.125 inch increments. Therefore, if the operator adheres to standard industry practices in the gauging procedure, greater accuracy can be achieved through careful measurement practices. Although today's proposal does not require automatic level sensing equipment, the Agency believes that they too can significantly reduce the incidence of errors in inventory control.

*(d) Delivery Reconciliation (Section 280.41(c)(2)(iii)).* Another limitation in today's proposal is that product deliveries must be reconciled by measuring the tank before and after each delivery. The Agency is concerned that neither delivery receipts or tank level readings taken after delivery are consistently accurate. The Agency is therefore requiring that they be compared to each other to increase confidence that actual deliveries are accurately recorded.

*(e) Drop Tubes (Section 280.41(c)(2)(iv)).* Today's proposal requires that deliveries be made using a drop tube that extends to within one foot of the tank bottom. This tube is usually attached to the tank's fill pipe and minimizes the surface waves during product deliveries. A tank that is not equipped with a drop tube cannot be accurately measured for inventory for several hours after a delivery, making it difficult to reconcile the delivery. This appears to already be a common practice because many existing UST systems are reported to be already equipped with drop tubes.

*(f) Dispensing Meters (Section 280.41(c)(2)(v)).* Today's proposal requires that product dispensing be accurately metered. Accurate metering of product withdrawals is essential to inventory control. The Agency chose the National Conference on Weights and Measures standard of 5 cubic inches for every 5 gallons of product withdrawn. This is equivalent to 0.6 percent; which is the acceptable tolerance level for retail gasoline dispensing meters that retail gasoline facilities are already required to meet. However, many UST systems, such as those used for fleet service or farm use, are not metered this accurately. The Agency recognizes that some owners and operators if they choose this release detection method may have to install dispensing meters, or calibrate their existing meters to meet this requirement.

*(g) Water Detection (Section 280.41(c)(2)(vi)).* Today's proposal also requires that the operator check for water in the tank at least every 30 days if any portion of the tank is located in water. Ground water can intrude through a hole into a tank if it is at least partially below the water table. Petroleum products are less dense and immiscible in water, so incoming water will appear at the bottom of the tank. Generally, with manual inventory controls, the operator can apply a water-sensitive paste to the end of the gauge pole to determine how much water is in the tank. (Automated inventory measuring equipment is also available that can measure the presence and level of water in the bottom of an UST system.)

Water can also enter the tank through other means such as product deliveries, but the presence of (or rapid increases in) water in a petroleum UST system could result from ground-water intrusion and may need further investigation if the UST system is in ground water. Checking for water in the tank is recommended by the American Petroleum Institute's Recommended Practice 1621 as part of the daily inventory control practice. However, the Agency believes that for release detection purposes, only those tanks that are in ground water need to be checked for water, and that the inspection interval need only be every 30 days. A recent national EPA survey of motor fuel tanks found that approximately 20 percent of the UST systems are reported to be at least partially located within ground water.

*(h) Issues for Public Comment.* EPA is seeking public comment and performance-related information regarding the use of manual inventory

reconciliation for release detection. EPA is particularly interested in receiving comment on the appropriateness of the limitations proposed for the use of the method. Because of the limited performance data concerning the method, EPA has had to develop today's proposal based on partial information. Therefore, EPA is specially seeking information regarding the field performance of manual inventory controls or the results of any relevant performance evaluation studies. The Agency is also interested in receiving comment and information concerning automatic inventory measurement/reconciliation equipment. The Agency is considering whether it should be required in lieu of allowing the use of manual methods of inventory control with tank tightness testing at new UST systems.

In addition to these general areas, the Agency is interested in comments concerning three specific issues. The first of these concerns the accuracy requirement for inventory reconciliations. Accuracies of 5 percent of flow through on a weekly basis and 0.5 percent on a monthly basis are required in today's proposal. Should these accuracy values be increased or decreased? Should they be expressed as single values or as fractions of the tank volume instead of fractions of the flow through? Should there be an accuracy requirement for a single day's reconciliation?

A second specific issue that the EPA is interested in receiving comment on is the use of inventory control without metered dispensers. A 1984 EPA Chemical Advisory provides an inventory control procedure for non-metered tanks. In this method, the tank level is recorded using a gauge pole before and after each withdrawal and delivery. Changes in the tank level are estimated by comparing level readings made immediately before a withdrawal to the reading after the previous withdrawal. These differences can be accumulated over a period of time to calculate a loss or gain. The Agency did not allow this method for petroleum UST systems in today's proposal because it does not know of any criteria that can be used with this method to indicate a release. The Agency also does not have any way of confirming the accuracy and reliability of this method and seeks comment on the performance of this type of inventory control method and whether it should be allowed in the final regulations.

EPA is also interested in receiving comments on whether inventory controls should be required at all UST systems (where it is feasible to apply) before and after UST owners and operators phase in release detection over a 3- to 5-year period (the phase-in of release detection was discussed earlier in this preamble. As discussed earlier, EPA has identified several concerns with the current practice of manual inventory controls and is doubtful that it can be meaningfully applied on a widespread basis without significant increases in training and technical assistance. Even though numerous state UST programs require inventory control, today's proposal only requires that it begin within 3 to 5 years, and only if tank tightness testing is chosen as the method of release detection. EPA believes that application of the general phase-in schedule to include inventory controls will provide the regulated community with sufficient time to develop and implement the expertise and training necessary to ensure manual inventory requirements are carried out in a reliable way. EPA considered requiring a more rapid application of inventory controls at all UST systems (where it is feasible) than is proposed for the other methods of release detection, but is concerned that widespread implementation problems will result because of the labor-intensive nature of the method and the significant improvements and training that will be necessary to ensure sound practices are followed. The Agency solicits comment and information on this issue, including whether inventory controls would provide significant benefits and improvements in environmental protection if required at all UST systems where it is feasible.

b. Testing or Monitoring for Vapors Within the Soil Gas of the Excavation Area (Section 280.41(d))

Liquid hydrocarbon and other volatile products will vaporize when released into the soil surrounding the UST system. Today's proposal in 280.41(d) allows the use of a monitoring method that samples the soil gas in the excavation area surrounding the UST system to detect the presence of vapors that result from such releases.

The use of soil vapor monitoring for UST system release detection is very recent. Therefore, only limited information and experience exists with vapor sensors used in this capacity. However, vapor monitoring has been used for other purposes for a number of years, such as for industrial safety and ground-water plume mapping. As a result, a wide variety of vapor detection devices are available.

Commercially-available, manually operated devices use several operating principles, including flame ionization, gas chromatography, infrared absorbtion, and photo-ionization. Permanently installed continuous sensors use several operating principles, including catalytic combustion, diffusion, solid state semi-conductors, and product permeable materials. Although there is little documented performance data for the wide range of vapor detection equipment that is commercially available for release detection, many of these devices are expected to be able to detect very small concentrations. (EPA has already begun a survey of available methods to validate information obtained from vendors.) For example, portable gas chromatographs can detect and identify compounds in the parts per billion range; photo-ionization devices in the parts per million range. The limiting factor in the systems' accuracy is more likely to be the design and placement of sensors in wells so as to intercept vapors, and the capability of the release detection equipment to interpret correctly the same readings, rather than the sensors' sensitivity in detecting them.

In evaluating the use of this method, the Agency had to consider the present lack of information concerning sensor capabilities and the characteristics of vapor transport in the unsaturated zone under various conditions. Likewise, the Agency had to consider the uncertainties associated with interpreting the meaning of vapor gas measurements at sites where significant previous contamination levels exist in the form of background interferences. Although EPA is currently undertaking several studies to better characterize these processes, only preliminary results will likely be available in some areas by the time EPA develops a final rule. Thus, the Agency considered rejecting the use of this method for release detection purposes until many of these technical issues are settled.

However, EPA has concluded that this method of leak detection may be usefully applied in a manner that will detect releases if used within certain limitations. Limited data based on practical field experience suggests that the vapor levels in the excavation zone will rapidly and dramatically increase when a release of a highly volatile liquid (for example, gasoline) occurs. One study found that when fuel samples were introduced at 10 feet below the ground surface, trace quantities of vapors were detected at the surface within 10 hours. Vendors of these devices widely claim that vapor levels jump to 3,000 to 12,000 ppm when

gasoline releases into the excavation area. Therefore, today's proposal provides several important limitations on the use of this method that, when combined with corrective action of releases that are detected in the UST excavation area, are expected to effectively minimize potential adverse impacts to ground water.

Several primary limitations on the use of soil vapor monitoring for release detection are being proposed today:

- The backfill must be sufficiently porous to allow diffusion of vapors readily into the excavation area;
- The released liquid must be sufficiently volatile to result in detectable vapor levels;
- The measurement of soil gas contamination must not be rendered inoperative by ground water, rainfall, or flood conditions so that releases cannot be detected for more than 30 days;
- The level of background vapor contamination must not interfere with the detection of releases from the UST system, and cannot be greater than 500 ppm of total hydrocarbons as measured in the soil gas;
- The monitoring equipment must be capable of being pre-set to detect the type of regulated substance stored in the tank system at significant levels above background contamination in the excavation area;
- The monitoring well network (including the number and location of monitoring wells) must be designed to detect a release from any portion of the UST system in the excavation area, and be based on an assessment of the conditions immediately surrounding the UST system; and
- All monitoring wells open to outside access must be clearly marked for their purpose and secured from unauthorized entry.

Each of these limitations is discussed in more detail below.

*(1) Porous Backfill in the Excavation Area (Section 280.41(d)(1)).* Today's proposal limits the use of this method of release detection to UST excavation areas that have sufficient porosity for the diffusion of vapors from releases to the monitoring wells in the excavation area. As previously mentioned, EPA has recently begun the study of characteristics of vapor transport in the unsaturated zone. However, rapid transport of vapors would occur in many of the types of backfill that are used when proper installation procedures are followed (e.g., use of pea gravel, sand, crushed rock). Therefore, this proposed limitation is intended to exclude the use of this method at existing UST systems where soil removed from the excavation area was simply placed back at the time of installation, particularly if less than the most porous types of soil were used. The Agency is less confident that vapor detection will work as reliably under conditions where the soil gases might be just as likely to diffuse into the surrounding soils as into the other parts of the excavation area itself; such as excavation areas refilled with native surrounding soils or at sites with previous man-made disruptions (for example, pipeline conduits and foundations) within or beside the excavation area. The Agency suspects that many older installations will not be able to meet this limitation. Newer installations will generally be surrounded by porous soils if recommended good installation practices were followed.

*(2) The Volatility of the Liquid Stored (Section 280.41(d)(2)).* Liquids volatilize at different rates and, thus, intrinsically make available different concentrations of vapor gases for detection when a release occurs. Gasoline and many other petroleum products and solvents contain highly volatile components that are expected to produce high levels of vapors in the excavation area as a result of a release. Other substances, such as diesel fuels or heating oils, have a much lower volatility and will produce a much lower level of vapors as a result of a release. Today's proposal includes a general performance standard that limits the use of this method to UST systems storing liquids that are sufficiently volatile to be detected by the device and sampling method employed.

Sampling of gases may be either active (e.g., a soil gas sample is sucked through tubing to a central detection device) or passive (the gas travels unassisted based on the natural rate of diffusion through the excavation soil to the sensor). Thus, passive systems of vapor detection are expected to be less likely to meet this criterion, particularly with the less volatile substances (e.g., diesel fuels), than the more active sampling devices that mechanically draw soil gases towards the sensors. In general, the passive detectors may also need to be set to detect lower concentrations of vapors than the active sampling sensors, and also may need to have more monitoring sensors to be able to detect the volatilized gases from a release into the excavation area.

EPA expects that the determination of whether releases of the product stored in the UST will be reliably detected by a particular network of sensors is necessarily a site-by-site determination and cannot be specified for all sites in regulation. The volatility of the substance, the type of backfill in the excavation area, the type of sampling device used (active or passive), as well as the location and number of wells employed must all be considered together to determine if this limitation can be met at the site.

Today's general standard is intended to provide state and local governments and the regulated community the flexibility to design systems that are appropriate to the particular excavation area, the tank system configurations, and the substances stored. EPA has initiated several studies that will more completely characterize these factors and how they need to be considered. If the Agency decides to allow this method of release detection in the final rule, guidance will be provided on how to assure this limitation is met.

*(3) Avoidance of Other Interferences (Section 280.41(d)(3)).* EPA is today proposing a general performance standard that requires vapor monitoring be used only where ground water, rainfall, or soil moisture will not render the monitoring technique inoperative so that a release could go undetected for more than 30 days. This limitation is intended to ensure that the owner and operator applies this method at a particular site only after determining there are no interferences that could render this method of monitoring useless for release detection purposes over extended periods of time. Vapor monitoring sensors must not be located in the excavation area where they would be subject to inundation by a high water table. Also, at sites located in areas prone to flooding for extended periods of time, this method would not work and is insufficient for release detection purposes. A site located in a 25-year flood plain, for example, may not be able to make use of this method of detection if it is located in the excavation area such that it could be inundated by these flood waters for more than 30 days. Finally, in locations where heavy and continuous levels of precipitation are common, the type of monitoring method chosen, including the location of wells, would have to be able to detect soil vapor contaminants under these conditions at least every 30 days. The adequacy of detection performance under frozen topsoil conditions should also be considered.

*(4) Background Contamination and the Capability of Vapor Monitoring Equipment (Section 280.41(d)(4)).* Today EPA is proposing to limit the use of external vapor monitoring methods to sites that have relatively low levels of background concentrations of hydrocarbons to prevent an excessive number of false alarms and false

negatives (leaks not being detected). Previous contamination from surface spills and leaks can contaminate the soil and ground water to the point where small, slowly developing leaks may be difficult to detect. Natural factors such as fluctuating barometric pressure, temperature, soil moisture content, methane, microbial activity and ground-water elevation and direction are believed to contribute to fluctuations in contaminant levels that are measured by external leak detection methods at previously contaminated sites. The Agency has sought to develop a standard for when existing contamination is so high as to prevent the selection and use of vapor monitoring methods as an option in detecting new leaks or spills.

There appears to be very little experience with applying vapor monitoring to hazardous substances. The proposed wording in 280.41(d)(4) requires that the level of background contamination not interfere with the detection of release. This general performance standard establishes the limitation that all volatile hazardous substances are, in a similar manner, masked by the same background interferences as are volatile petroleum products when they are subject to vapor monitoring in the excavation area. This general standard is intended to make it clear that with the use of this type of method, it is incumbent upon the owner and operator to determine how the problem of background concentration will be adequately controlled given the sensitivity of the equipment used, the volatility of the substance stored, and the background level (if any) of contamination at the site's excavation area.

Today EPA is proposing to limit the use of this method to sites that have a background concentration of vapors in the excavation area of no more than 500 ppm of total hydrocarbons. This requirement stems in part from EPA's concerns about the interferences that are posed to this detection method by background vapor concentrations from prior releases; for example, available field data suggest that background vapor concentrations in the excavation areas at existing retail gasoline stations may range from essentially zero to 300,000 ppm. EPA is planning a field monitoring program to better characterize background vapor concentrations. However, it is expected that there will often be some background concentrations of vapor contamination in the excavation areas surrounding many UST systems that stem from an accumulation of small spills as a result of past poor housekeeping practices.

The proposed requirement is also based upon consideration of the unlikely event of a release occurring that adversely affects human health and the environment while the background concentration of total hydrocarbons in the excavation area remains below 500 ppm. As stated earlier, vapor detection sensors are believed to be very sensitive for use in monitoring for releases because they use the phenomenon that volatile liquids such as gasoline will, in a porous soil medium such as sand, rapidly volatilize and spread out through diffusion in the soil at high vapor concentrations that are relatively distant from the source of contamination. EPA has documented cases where vapors traveled hundreds of feet underground from the location of the volatile liquid that was released underground. Vapors have been noted in many cases to travel much farther than the liquids released underground, though not necessarily in the same direction. With an ongoing release (a leaking tank or pipe) or a large spill, soil gas vapor concentrations will generally increase to high levels in the presence of this continuing source of volatile liquid in the excavation area. With small spills of limited volume (for example the accumulation of many small spills from sloppy past practices), similar to the evaporation of liquid gasoline above ground, the volatilization/diffusion process will continue underground until the original release volume has almost entirely evaporated—except for residual amounts that become bound to the soil. Thus, a low background contamination vapor level in the soil gas of the porous soil medium that typically surrounds an UST system in the excavation area is a good indication that no recently released liquids are available nearby to be volatilized.

By setting today's proposed standard at a maximum background concentration of 500 ppm of total hydrocarbons in the soil gas of the excavation area, EPA intends to not allow vapor monitoring at sites with higher background concentrations (for example, 1000 ppm) that might, under some circumstances such as improper well placement, result in a release going undetected because it was masked by pre-established contamination levels. The level proposed today may actually be much lower than could be tolerated by available vapor monitoring methods for purposes of detecting releases into an UST excavation area. A release of a volatile liquid into an excavation area constructed according to current recommended practices is reported (by vendors of this equipment and some local officials already allowing it) to diffuse rapidly through the excavation area soils at much higher concentrations than 1000 ppm. However, particularly at background soil gas vapor concentrations of higher than 500 ppm, the Agency is concerned that an UST site might already have a need to undertake corrective action in accordance with Subparts F and G of today's proposed rule.

The Agency also considered setting the maximum allowed level of soil gas background contamination much lower, for example, at a concentration of 100 ppm total hydrocarbons. At this lower threshold level, however, the Agency is concerned that measured concentrations of total organic hydrocarbons in the soil gas of the excavation area can fluctuate widely due to: (1) Small amounts of residual liquid contamination bound to the soil that can volatilize when the barometric pressure lowers; (2) a rise in the nearby water table that frees some residual contamination previously bound within the soil matrix that then volatilizes; (3) a new surface spill, even a very small one; or (4) the impacts of several other factors currently under study by the Agency but not completely understood yet. Because of such factors, EPA believes setting the background standard at 100 ppm in the soil gas of the excavation area would virtually eliminate the use of this method of monitoring at existing sites because the number of false positives would be unacceptably high. This low background level was not chosen also because it is not believed to be necessary for assuring that a release of volatile liquids in the excavation area will be detected. For example, liquids present in the soil of the excavation area at concentrations below 100 ppm of total organic hydrocarbons (that have not yet completely volatilized) are expected to result in concentrations of total hydrocarbons in the soil gas that are much higher than 100-500 ppm. Thus, this approach coincides with EPA's proposed requirements on release reporting, discussed later in this Preamble, that requires reporting of all soil contamination that is greater than 100 ppm of total hydrocarbons.

The Agency is aware that some methods, such as the use of tracers in the tank, may permit external leak detection monitoring to be used at existing sites with relatively high background concentrations of hydrocarbons. Careful selection of the sensor, design of the monitoring network, and manner in which the data

is interpreted from external leak detection methods may allow their use at sites where previous contamination has occurred. The Agency does not seek to limit the development or use of these methods at sites with previous contamination.

The Agency seeks to encourage the use of vapor monitoring so as to assure accurate and early detection of leaks; however, it may be necessary in the final rule to limit the use of the method through the establishment of not a single background contamination value (500 ppm TOH) but ranges of contaminant levels where the use of vapor monitoring may be preferred, marginal, or unacceptable. Data from soil-gas measurements or soil cores, made during the site characterization effort, may be used to assess the applicability of a particular vapor monitoring system. Factors such as seasonal variability, network design, and method selection, which are known to affect soil-core and soil-gas measurement data, are presumed to be less important in the measurement of existing contaminant concentrations at sites when ranges of background concentrations are used to predict the accuracy and reliability of a vapor monitoring system at a particular site. Comments are solicited on this approach as well as on the procedures to be used in reporting data on existing contaminant concentrations. What ranges can be established to limit the use of external leak detection at existing, previously contaminated sites?

Another alternative to the establishment of a standard, or ranges, to limit the use of vapor monitoring at sites with relatively high background levels of contaminants is the on-site calibration of a vapor monitoring system with a small, controlled release of a volatile tracer. Such a test would provide an estimate for the amount of product that could be detected from a leaking tank and the time that would be required for the leak to be detected. Such an approach would be particularly useful in setting the alarm level for an external vapor monitoring system. However, future research is required before the Agency can provide technical guidance on this approach for assessing the performance of vapor monitoring equipment. Comments are solicited on this concept.

*(5) Must Be Capable of Being Pre-Set To Detect the Type of Substance Stored at Significant Levels Above Background in the Excavation Area (Section 280.41(d)(5)).* In developing today's proposal for vapor monitoring methods, EPA also considered proposing a threshold sensitivity requirement. For example, devices that are designed to detect only the explosive limits of hydrocarbon vapors would not be able to meet the requirements proposed today. However, as mentioned previously, some devices are available that can detect concentrations of contaminants in soil gas in the parts per billion range. EPA has proposed that the monitoring device used must be able to detect the background concentration level in the excavation area (which must be less than 500 ppm of total organic hydrocarbons) and "any significant increases" above it. The determination of what constitutes a "significant increase" for detection purposes will depend in part on what is the background level in the excavation area and the volatility of the substance stored in the UST system. A small increase over the background level would have more significance for lower volatility substances such as fuel oil than it would for highly volatile substances such as gasoline.

What is "significant" may also differ between passive and active vapor monitoring methods, with smaller increases having more significance for passive methods that require vapors to reach the sensors through the process of diffusion. Such small increases have less importance with methods that advect (mechanically pull) vapors to the monitoring sensors through suction, unless an increase in the level continues over time. Today's minimum requirements for at least one measurement at each sensor every 30 days will result in numerous readings that could be evaluated to determine whether such increasing concentrations over time represent a statistically significant trend.

EPA believes that evaluation of soil gas concentrations over time will identify the trends that will define a significant increase. Such trend analysis may reveal unabated increases in concentrations that provide clear evidence of a release. The Agency has initiated several studies concerned with environmental monitoring techniques. The results of these efforts are expected to be provided in guidance that will further explain how trend analysis should be used to determine whether an increase is actually significant or not. For example, any rapid and dramatic jump in concentration levels in the excavation area soil gas above the maximum background level of 500 ppm may be considered significant, for example, a measured jump to 1000 ppm of total organic hydrocarbons.

In today's proposal, the background standard against which a "significant increase" is judged is expressed in terms of a volumetric concentration of total organic hydrocarbons. This reference standard was chosen because it is a common measurement that can be made for all volatile substances. Vapor monitoring sensors can also be designed to detect particular constituents (such as benzene, xylene, and toluene) or volatile organic compounds (VOCs) in general. The determination of what is measured can significantly affect the way measurements are performed. For example, VOCs (including benzene) make up a small portion of the total hydrocarbons in gasoline. Therefore, equally effective monitoring would have to take place at proportionately lower concentrations for these other substances to assure that rapid detection would take place (for example, benzene at 5 ppm and VOCs at 125 ppm). Likewise, VOCs would tend to evaporate and diffuse very rapidly while the total hyrdocarbon measurement would be relatively slower to diminish through the volatilization/diffusion process. Thus, monitoring for benzene at low levels could miss very high concentrations of total hydrocarbons in the excavation area that are the result of large old leaks or spills where the passage of time has allowed the "light ends" of the product (e.g., benzene, toluene and xylene) to evaporate and move away through diffusion.

Today's proposal is in terms of a total organic hydrocarbon measurement in the soil gas because it is believed to be a more thorough test of the condition of the environment. It is at a higher level than corresponding values for benzene or VOCs because it measures the complete volatile fraction of a released regulated substance. For example, small concentrations of petroleum in the soil are generally going to produce high levels in the soil gas because of the volatility of hydrocarbons. Thus, EPA believes that 500 ppm total hydrocarbons found in the soil gas will be indicative of a much smaller concentration (e.g., 50 ppm) of total hydrocarbons in the soil or ground water.

*(6) Sensor and Well Network Based on Assessment of the Excavation Area (Section 280.41(d)(6)).* The number, type, and locations of sensors or wells in the excavation zone are important elements in the success or failure of vapor monitoring to reliably and rapidly detect releases. EPA considered the need to develop design requirements, such as the number and location of wells and their construction requirements. However, a general performance standard was proposed instead because

the optimum design of any given vapor monitoring system is based on the consideration of several site-specific factors, such as the type of soils in the excavation area; the level of the background contamination in the soil gas; the location of the water table; the size, number, and configuration of the tanks; the volitility of substance stored; and the type and location of monitoring devices used (e.g., passive or active, periodic or continuous sampling). Therefore, the performance standard simply requires that a monitoring well network be designed that is capable of intercepting the vapors resulting from any release of the regulated substance stored at that particular site. To comply with this requirement, a brief assessment of the factors mentioned above will be necessary to determine how many sensors or wells are needed, including their design and location. EPA has initiated research into the factors that impact monitoring well network design and will provide guidance in this area if vapor monitoring wells are allowed under the final rules. (See General Requirements section for more details concerning site assessments, well networks, sensor capabilities, and data analysis; all are topics on which the Agency is today seeking comment and information.)

This limitation is also intended to ensure that all detection takes place within the excavation area. Vendors of these devices commonly report that they should be used within the excavation area and local officials contacted by EPA who allow the use of this method have reported that this is a requirement they commonly employ to ensure more reliable release detection. Therefore, because of present limitations concerning data on soil vapor transport and the likelihood that vapors will disperse more quickly in the excavation area than in the surrounding undisturbed native soils, EPA has proposed limiting the use of vapor monitoring to within the excavation area.

*(7) Marking Monitoring Wells and Securing from Tampering (Section 280.41(d)(7)).* The final condition proposed for this method of release detection is that all monitoring wells be clearly marked and closed to outside access and tampering. This marking should make it distinct in appearance from that of the fill pipe. EPA has been informed by state, local, and industry officials about incidents where, for example, product deliveries have been inadvertently introduced into monitoring wells. EPA is concerned that such incidents could increase with today's proposed requirement that all vapor monitoring wells be located within the excavation area of the UST system. This proposal could also result in the placement of wells in close proximity to the tank fill port.

The requirement that monitoring wells be marked and secured from tampering can be met by simply locking well ports to prevent unauthorized outside entry and marking them as "observation wells." Care should be taken to not mark them with a color that signifies a fill port under the marking systems now prevalent in the retail gasoline marketing industry (as recommended by the American Petroleum Institute).

*(8) Issues for Public Comment.* Because of the limited experience with vapor monitoring as a release detection method, EPA is requesting comment on the appropriateness of each of the proposed requirements and standards, with supporting data and studies where available. Comments and information on detection limits, probabilities of detection and false alarms for various equipment, as well as on the appropriateness of every 30-day sampling using vapor monitoring is also solicited. EPA is especially interested in receiving information regarding the field performance of vapor sensors in detecting releases from underground storage tanks. The Agency requests comments specifically on whether the use of this technology should be limited at existing UST systems. Information and comments concerning the applicability and reliability of passive versus active vapor monitoring/sampling methods is requested.

The Agency requests public comment and available information, including summaries of field experiences, that would provide an indication of what constitutes an appropriate maximum background concentration and what constitutes a significant increase above background levels of contamination in the soil gas of the excavation area. For example, at an UST storing gasoline would an increase of 100 ppm, 200 ppm, 400 ppm, or 1000 ppm total hydrocarbons in the excavation area constitute a significant increase for release detection purposes? Are there advantages and disadvantages in the selection of the specific components of the soil gas to be measured (specific constituents, volatile organic compounds, total organic hydrocarbons) and should it vary for use in release detection versus the cleanup of releases?

The measurement of hydrocarbons, or organic solvents in the soil-gas, soil, and ground-water is a difficult process with the sampling and analytical methods being important factors. Standards are in various stages of development for many aspects of an on-going EPA site characterization study involving the measurement of organics. Soil-gas measurements may be made with a variety of methods some of which will identify individual constitutents in a complex mixture of hydrocarbons, e.g., gas chromatographic analysis. Some measurements include methane while others exclude this naturally occurring constitutent. Should soil-gas data used to characterize existing contamination at a site be reported in terms of ppm total hydrocarbons, or should some constitutents such as methane be reported separately? Should the units be in terms of ppm, or micrograms per cubic meter with respect to methane, benzene or some other standard?

The Agency also seeks information on the sensitivity, and reliability of external leak detection methods for use at previously contaminated sites. How and when can a leak of, for example, 0.1 gallons per hour be detected at a site with previous contamination? What levels of contamination will prevent external leak detection methods from being effective in detecting small, slowly developing leaks without an excessive number of false alarms? Data showing the fluctuation of contaminations over time at sites where leaks are not believed to be occurring is specifically requested. Data on the concentrations of organic contaminants in the soil gas, soils, and ground water is solicited for sites where no leakage from the tank system is believed to have occurred. These data will be useful in determining the long-term performance of external leak detection systems in contaminated environments where the sensitivity and response time of the external leak detection system must be assessed in relationship to alternative leak detection systems.

Finally, the Agency specifically requests comment on the applicability of the requirements proposed for vapor monitoring to new hazardous substance UST systems. Are more requirements necessary to assure that the use of this method can be done reliably with different hazardous substances? Do the requirements provide a sufficient standard of performance for UST owners and operators so that they may adequately develop a method that will work at a particular site, given the volatility of the substance stored?

c. Monitoring for Liquids on the Ground Water (Section 280.41(e))

Today's proposal also allows monitoring techniques that are based on detecting the physical presence of released liquids on top of the water table. Under this method, monitoring wells located within the excavation area take advantage of the physical properties of certain regulated substances that cause them to "float" on top of the ground water when released into the underground environment. This method can be used with most petroleum products because they are lighter than and largely immiscible with water, and may be used through a case-by-case variance for other regulated substances that are lighter than and immiscible with water.

Because it is keyed into particular properties of the liquids being stored, monitoring for liquids on the water table can be used for various types and sizes of UST systems. The technique also can be used for UST systems which are partially below the water table if the characteristics of the released liquid will cause it to float on top of the ground water. This method of release detection can be performed either manually or automatically. Three general techniques would be allowed:

- Physical inspection of ground water using a water sampling bailer to detect a visible thin film of product on the water table or to smell the product in the water sample;
- Application of a thin film of paste to a rod or tape which, when lowered into the well, will change color upon exposure to any hydrocarbons on top of the water table; and
- A variety of automatic sensing devices which, after placement in monitoring wells, can be continuously operated to electronically detect the physical presence of hydrocarbons on the ground water.

A major concern with the use of this method is that some soil and ground water will be contaminated before a release is detected. Some of the hundreds of organic compounds comprising gasoline are soluble in water and will dissolve and enter the ground water, including some which could under certain conditions present a risk to human health and the environment (such as benzene, toluene, and xylene in gasoline). This is particularly important because cleanup of an aquifer to drinking water requirements is not possible, as a matter of routine. On the other hand, several states allow the use of ground-water monitoring, reasoning that this method offers rapid and certain detection, if properly applied. In fact, at many sites no other method may work as well as ground-water monitoring to rapidly and assuredly detect leaks from single-walled tank systems. If EPA barred the use of ground-water monitoring, therefore, the effect might be the creation of a *de facto* class of tanks at some sites where secondary containment would be required. EPA is seeking public comment on this point.

Despite these concerns, however, the Agency has concluded that this method can be applied to detect and minimize releases if it is used within certain prescribed limits which are intended to ensure rapid detection. Therefore, today's proposal provides several important requirements on the use of this method that, when combined with rapid corrective action when a release is detected, is believed to effectively minimize potential adverse impacts to ground water.

The primary limitations on the use of ground-water table monitoring being proposed today are:

- The substance stored is immiscible in water and has a special gravity of less than one;
- The ground water must be in or very near the UST excavation area (never more than 20 feet below the ground surface) and the backfill soils must have a sufficient hydraulic conductivity (not less than $10^{-3}$ cm/sec) to allow the released product to flow freely to the monitoring wells;
- Monitoring equipment or practices must detect at a minimum the physical presence of a release of 0.125 inches of free product pooled on the ground water in the monitoring wells;
- The monitoring wells must be located in the excavation area, and the monitoring well network must be designed to detect a release from any portion of the UST system and be based on an assessment of the conditions immediately surrounding the UST system; and
- All monitoring wells open to outside access must be clearly marked for their purpose and secured from unauthorized entry.

Each of these limitations is discussed in more detail below.

(1) The substances stored is immiscible in water and has a specific gravity of less than one (Section 280.41(e)(1)).

Today EPA is proposing to require that ground water table monitoring only be allowed where the substance stored in the UST system is immiscible in water with a specific gravity less than one. This requirement is intended to restrict the use of this method to situations where a release from the UST system of the regulated substance stored will pool on top of the nearby water table (like many of the lighter petroleum substances such as gasoline). A specific gravity of less than water will assure this. The requirement also establishes the general criterion of immiscibility to assure that even small releases will not rapidly dissolve in water so that a sensor located on top of the groundwater table will not be able to detect the presence of the released material.

*(2) Twenty Foot Depth to Ground Water and Porous Soils (Section 280.41(e)(2)).* Today's proposal limits the use of this method of release detection to areas with shallow depths to the water table and porous soil conditions. These requirements are intended to assure that potential impacts to the environment are minimized and that release detection is more certain. Typically, UST excavations extend between 10 to 15 feet below the ground surface. Thus, a release would only have to normally travel between 0 to 30 feet to reach the ground-water table (at 10 to 45 foot depths) and the point of monitoring. While the amount of the release necessary to reach a monitoring well will vary under site-specific conditions, EPA expects in the shallow water and highly conductive soil conditions proposed today that small releases will rapidly reach the monitoring wells, rapid detection will be possible, and corrective action would be relatively simple. The porous soil conditions with at least a $10^{-3}$ cm/sec hydraulic conductivity are also intended to ensure rapid detection. Existing UST systems with proper installation procedures and sand or gravel backfill will be able to meet this condition provided that the soils beneath the UST system have a hydraulic conductivity of at least a $10^{-3}$ cm/sec or more between the UST system and the location of the sensors in the monitoring wells on the water table. This minimum conductivity was selected to ensure that releases do not begin to travel laterally and miss the monitoring points. The above conditions also promote more certainty in detecting a release because they require the point of monitoring to be very close to the UST system and, therefore, assure that there is little potential for interference with rapid detection once a release occurs.

Some industry representatives have recommended in discussions with EPA that the use of this release detection method be allowed at locations with a greater maximum depth to the water table, such as 40 feet. After examining this option, EPA identified two concerns with the use of this method of detection

at such lower depths to ground water. First, this approach would allow an increase in the amount of release that could occur prior to detection and, thus, an increase in the impacts that could require more extensive corrective action (including the amount of underlying soils contaminated). As depths to ground water increase, there is also an increased concern that a release could travel sideways before reaching ground water due to unknown soil conditions such as a layer of less conductive silts or clays. This could result in the release missing the monitoring wells located beneath the UST until detection of the release (if ever) is even more significant and difficult to correct.

Representatives of one manufacturer of continuous automated ground-water table monitoring equipment have stated to EPA staff that this equipment is not recommended at locations where depth to ground water exceeds 20 feet. The state of Florida UST program requires that the depth to water table at the time of drilling not exceed 20 feet for this type of monitoring. EPA's proposed requirement reflects the concerns addressed in the paragraphs above and these established approaches, by proposing to limit the use of this method to areas where the seasonal maximum depth to the water table from the ground surface does not exceed 20 feet.

Another approach considered by EPA was to limit the use of this method to areas where ground water is within the excavation area (typically, between 10 to 15 feet from the ground surface to the excavation bottom). This would reduce impacts, possible interferences at greater soil depths, time to detection, and clean-up costs to the minimum possible. This limitation could be particularly important at sites with complex native soil structure that could enhance the flow of leaked product away from, rather than towards, monitors. EPA did not, however, propose limiting this method to excavation area water table conditions. The Agency does not believe the difference of 5 to 10 feet from the proposed depth of 20 feet would result in contamination that would significantly increase adverse impacts to human health and the environment. In using a seasonal maximum depth to ground water, the Agency expects the distance between the excavation area and the ground water to be negligibly small for detection and cleanup purposes.

Finally, EPA is also concerned that ground-water table monitoring in relatively impermeable soils (or in soil with impermeable layers), or in disturbed soils, could result in a horizontal movement of released product to areas other than where the monitoring wells are located. Today's requirements that such methods be used only in highly conductive soils (for example, sand) is intended to minimize this concern by limiting its use to soils where this potential problem would be unlikely to occur.

*(3) Capability of Monitoring Equipment or Practices (Section 280.41(e)(3)).* In developing today's proposal, EPA considered the effectiveness of both the manual or automatic ground-water table monitoring techniques. A major constraint in trying to limit these methods to a particular threshold of detectability is the current lack of field experience and performance data on the long term reliability and operating performance of automated equipment.

EPA believes that both the manual and automated approaches have certain advantages and disadvantages. For example, manual monitoring relies on the ability and motivation of the owner or operator to properly perform the test at required intervals, and the tests are somewhat qualitative (determined by human sight or smell of the contents in a bailer that pulled a water sample from the observation well). As stated previously in this Preamble, most existing UST systems do not have release detection. Thus, this manual approach would require a significant change in owner and operator behavior. Manual methods do allow inspectors to take their own samples during visits to the site. Continuous, automated systems are subject to failings in proper installation, operation, and maintenance. However, they have the distinct advantage of being continuous and automatic and not subject to the need for routine human attention.

In order to provide flexibility to both the states and the regulated community, while encouraging technology innovation and improvement, EPA has decided to allow both manual and automatic methods under the proposed rule.

EPA also has concluded there is a need to limit the performance of both the manual and automated approaches so that small releases will be detected. Manual approaches, whether through physical inspection of monitoring samples for odors or a visual sheen, or the use of detection pastes, are invariably somewhat subjective. However, when the presence of product can be seen or smelled, a release is expected to be small if quick action is taken to correct the problem. Existing field experience with the automated detection devices is limited because they have only recently become available. EPA has no documented test results concerning their performance. However, manufacturers of these devices consistently claim they can detect product on the water table where it is within a thickness of from $\frac{1}{32}$ to $\frac{1}{8}$ inches. Therefore, EPA is proposing today a requirement that devices used at a minimum be capable of detecting a release measuring $\frac{1}{8}$ inch on the ground water. This approach applies to both the use of automated or manual techniques. This level of detection is expected to be achievable using current practices and equipment already available to the regulated community.

*(4) Monitoring Well Network Based on Assessment in the Immediate Vicinity of the UST (Section 280.41(e)(4)).* An important factor in the success or failure of the use of the ground-water monitoring method is the number, type, and location of wells that are used. In developing today's proposal, EPA considered requiring detailed design criteria. For example, Florida's requirements specify such criteria as minimum well diameter, well screen location, minimum screen opening size, backfill material, construction material, seal requirements, and cap requirements.

However, EPA has decided not to specify this level of design detail and is instead proposing a general performance standard requiring that the system be designed to detect a release from any portion of the UST system based on an assessment of the area in the immediate vicinity of the UST system (i.e., the excavation area and soils and water table immediately below it). This general approach is intended to provide the states and the regulated community significant flexibility in the design of well systems that allow various location-specific characteristics and local approaches to be considered.

When released liquids reach the water table, their dominant movement is expected to be primarily in the direction of ground-water flow. However, this direction is not often precisely known and is often difficult to determine in developed areas. Therefore, placing several wells on various sides of the UST system will increase the probability of detecting a release quickly. EPA considered requiring a minimum number of wells in various configurations and locations. However, there is no one optimum number and location of wells for all locations and EPA believes a brief assessment will have to be conducted at each location to tailor an approach that suits the conditions in

and immediately below the excavation area. The optimum approach will vary by the size, number, and design of the tank, as well as other site-specific factors (such as the depth to the water table and the type of substance stored). EPA has initiated research concerning the factors that influence proper well network design. EPA intends to publish guidance concerning an approach to determine the proper number, location, and types of wells under various conditions, if water table monitoring wells are allowed under the final rules.

In general, EPA has concluded that all monitoring wells should be located as close as possible to the UST system when using ground-water table monitoring. This is believed to assure the fastest and most certain detection of releases. Thus, today EPA is proposing that all monitoring wells must be located close enough to the UST system to be within or through the UST excavation area. Because EPA believes that the predominant flow of a release under the conditions specified today will be directly down to the water table, and well location through the excavation area will assure that the placement of monitoring points will be as close as possible to the pooled release.

*(5) Marking Monitoring Wells and Securing Them From Tampering (Section 280.41(e)(5)).* Today's proposal for monitoring liquids on the ground water requires that monitoring wells be located in the excavation area. As was discussed for vapor monitoring, EPA believes that the owner and operator must take steps to make sure all such wells are of different designs than product fill ports or otherwise clearly marked and closed to unauthorized outside access. Today's proposal requires that these simple, prudent steps be taken at all monitoring wells.

*(6) Issues for Public Comment.* EPA is seeking public comment and performance-related information regarding the use of liquid monitoring on the water table. EPA is particularly interested in receiving comment on the appropriateness of the requirements proposed for the use of this method of release detection. The Agency is also interested in receiving information on the design and use of this method in the field, particularly the likelihood of ambiguous or false detection results that are the result of previous contamination. Comments on whether specific techniques of ground-water table monitoring, or the method itself should be allowed, are also solicited; particularly in drinking water aquifer locations.

d. Monitoring for Releases in an Interception Barrier (Section 280.41(f))

Interception barriers are generally basin-shaped impermeable liners installed beneath the UST system to intercept downward-migrating releases and direct them to a monitoring well. These barriers have no walls and only offer partial containment of releases. Interception barriers are generally for use in regions where ground water will not normally reach them. They are often constructed of compacted natural clays, cement, soil-cement mixtures, or of synthetic materials. Today's proposal allows the use of interception barriers as a way of enhancing the capability of a detection device to intercept and detect a release from any portion of the UST system.

Because this method of monitoring enhancement is often used with only one monitoring well, it is important that the interception barrier properly intercept and direct releases to this single monitoring point. A faulty design or installation that does not catch a release; a crack or hole in the barrier; or improper routing of the release to the monitoring well are examples of ways this simple release detection enhancement scheme can potentially be undermined. Because of these and other possible problems with this method of release detection, the Agency considered not allowing it. However, it is allowed in at least three states (California, New York, and Kansas). and the Agency has concluded that it can provide adequate release detection at UST systems if carried out within certain limitations. Therefore, today's proposal includes this method subject to certain requirements that must be met before it can be used at a particular UST system. The requirements on the use of interception barriers that have been proposed today include:

- The interception barrier must be sufficiently thick and impermeable to ensure interception and detection of a release from the UST system;
- It must be designed to intercept any release and ensure its detection in the monitoring well;
- It must be compatible with the substance stored so as to not deteriorate in the presence of the released product;
- Soil moisture or rainfall must not render the monitoring method used inoperative for release detection purposes for more than 30 days;
- The barrier must always be above the highest historical ground-water level and not in a 25-year flood plain, unless the barrier and monitoring designs are intended to still operate under such conditions; and
- Monitoring wells must be clearly marked (or of a different design) and closed to unauthorized outside access and tampering.

These limitations are discussed in more detail below.

*(1) Impermeable Barrier (Section 280.41(f)(1)).* Today's proposal allows the use of interception barriers only if they are sufficiently thick and impermeable to permit interception and detection of releases. This limitation is intended to ensure that the barrier is, in fact, an obstacle to the downward migration of a release; and that the barrier would cause the release to accumulate and make contact with the barrier's detection device. Natural clays must have at least a $1x10^{-6}$ cm/sec impermeability. This value was chosen on the basis that a release would not be able to traverse a two foot thickness of such material in one month's time. (This is a typical minimum thickness that can be easily spread and compacted by hand on the bottom of an excavation area.) Also, artificial liners and cements must be of sufficient thickness to avoid cracking and splitting due to settling or other underground pressures.

*(2) Intercept and Detect Releases (Section 280.41(f)(2)).* Another general limitation to the use of interception barriers is that they must be designed to intercept all releases and ensure they are directed to the monitoring well. Because a release must be captured by the barrier and directed to the monitoring well before it can be detected, the design and construction of the barrier is important for the release detection to work. The barrier must be large enough to catch all releases and must not settle, warp, or otherwise deteriorate so that the release is misdirected away from the monitoring well.

There are no codes or recommended practices available concerning the design and construction of barriers. Therefore, EPA is proposing a performance standard for the design and construction of the barrier which must be met by the owner and operator utilizing this method. The barrier performs the function of enhancing the performance of the monitoring well(s) and thereby foregoes the need for several monitoring wells that follow a careful network design around the UST.

*(3) Barrier Compatibility (Section 280.41(f)(3)).* Whatever type and design of barrier is used, it is important that it be compatible with the substances stored in the UST. Small spills or releases cannot be allowed to undermine the integrity of the barrier because of the critical function it

performs in detecting releases. If the integrity of the barrier is undermined in any way by released product so that it will deteriorate and not deter a release for detection, the UST will no longer be equipped with reliable release detection.

*(4) Soil Moisture, Rainfall, and Ground-Water Level (Section 280.41(f)(4)–(5)).* The presence of water, from whatever source, within the interception barrier can undermine the monitoring device's ability to detect releases. Some barriers are designed to act as a bathtub and the monitoring is designed to take place on top of the captured water within the "wet" barrier. Other systems are so-called "dry" detection methods because they depend on the detection of released liquids within the low area (sump) of the barrier and pooled water can hinder the accuracy of this determination. Thus, this proposed general performance standard requires that the UST owner and operator consider possible interferences that could overcome the effectiveness of the barrier's detection technique, including a rising water table that overtakes the monitoring well's location within the barrier or a surface water saturation event in a flood-prone area (e.g., a 25-year flood plain) that could inhibit the detection of a release for more than 30 days.

*(5) Marking Monitoring Wells and Securing Them from Tampering (Section 280.41(f)(6)).* Today's proposal could result in a monitoring well in the excavation area that is open to aboveground, outside access. For the same reasons as discussed under other methods, these wells must be clearly marked and secured from unauthorized access and tampering.

*(6) Issues for Public Comment.* EPA solicits comment and information concerning the performance of interception barriers, particularly their efficacy in detaining and directing releases reliably to ensure their detection. EPA specifically requests comments and information concerning the proper design and use of such barriers, for example, the use of "dry" as contrasted to "wet" sump techniques of release detection. Also, the Agency requests comment concerning the $1 \times 10^{-6}$ cm/sec permeability requirement. EPA is concerned that small releases may not be intercepted and directed to the monitoring point by this type of barrier.

e. Automatic Monitoring of Product Level and Automatic Inventory Reconciliation (Section 280.41(g))

Automatic product level monitoring and automatic inventory reconciliation are two methods of release detection that rely on measurement of product volume in the tank. In product level monitoring the product level in the tank is measured several times during a period when there are no product inputs or withdrawals. A consistent drop in product level over a several hour period can indicate a release from the tank. In the second method, automatic inventory reconciliation, the operator reconciles product deliveries, withdrawals and inventory each day to identify shortages. A large shortage in a single day or small, persistent shortages over a month can indicate a release of product. Today s proposal allows the combined use of automatic product level monitoring and automatic inventory reconciliation to detect releases. Automatic product level monitoring requires measurement of small changes in product height, as little as 0.001 inches. In addition, small changes in product temperature must also be measured to accurately compensate for temperature-induced changes in the product volume. Several level sensing systems are available for UST systems and are claimed by vendors of these devices to detect release rates of 0.2 gallons per hour. Although there is little documented performance data for these systems, the sensitivity of these devices is expected to be extremely good in most situations. In fact, some manufacturers claim that their systems reliably detect release rates of 0.1 gallons per hour. There are EPA studies in progress that are evaluating the performance of these automatic level sensing systems.

Automatic inventory reconciliation requires that the product inputs, withdrawals and the stored volumes are reconciled daily for an extended period of time. Many of the errors associated with these measurements are random and a loss trend that is smaller than the typical measurement error can be detected by analyzing many daily losses as a group. For many years, manual methods have been an industry-recommended practice for detecting losses due to both theft and tank system leaks and is widely practiced. Generally, automatic inventory reconciliation requires significantly less diligence on the part of the operator to ensure consistent and accurate inventory computations.

There are several major concerns with the use of either automatic product level monitoring or automatic inventory reconciliation as release detection methods. Similar to tank tightness testing, there is a lack of performance data for product level monitoring systems. Also, the product level monitors detect releases from the tank only, and do not sense losses from the pipe system. Although significantly less so than manual methods, some automatic inventory reconciliation equipment involve considerable operator involvement, and with it, opportunity for human error. The Agency considered not allowing the use of either of these methods because of these major issues. However, EPA believes that these methods may be usefully applied in a manner that will detect releases if they comply with certain performance requirements. Today's proposal provides several important requirements concerning the use of these methods that, when combined with any necessary corrective action when a release is detected, are believed to effectively minimize potential adverse impacts on ground water.

Today's proposed requirements on the use of automatic product level monitoring (section 280.41(g)) are that the test be conducted at least once every 30 days when the tank is at least 80 percent full, and is capable of detecting a 0.2 gallon per hour leak rate with a probability of detection of 0.99 and a probablity of false alarm of 0.01.

Proposed requirements for the use of automatic inventory reconciliation are the same requirements proposed for inventory reconciliation used with tank tightness testing, except that inventory measurement must be done automatically:

- Inventory reconciliation controls must include reconciliation of inputs, withdrawals, and stored inventory each operating day so that a release greater than 5 percent of flow through on a weekly basis or 0.5 percent of flow through on a monthly basis will be detected;
- The height of the stored inventory must be automatically measured to a 0.125 inch accuracy;
- Inputs must be reconciled with delivery receipts by measurement of tank inventory prior to and after delivery;
- Deliveries must be made through a drop tube; and
- The product dispensing must be metered and recorded within an accuracy of 5 cubic inches for every 5 gallons of petroleum withdrawn.

These proposed requirements are discussed in more detail below.

*(1) Use of Both Methods Together.* Today's proposal requires that both automatic product level monitoring and automatic inventory reconciliation be used in combination. As previously mentioned, EPA has concerns about the performance of either of these methods

used alone. Product level monitoring generally can only be used to detect losses from the tank, so another method of release detection must be used for the piping system. Second, the performance claims of the product level monitoring system manufacturers have not been confirmed through independent testing nor is the reliability of these systems exactly known. Vendors of these devices do not commonly claim that product level monitoring can be done with the same effectiveness as tank precision tightness testing. Although testing and evaluation programs are in progress, EPA has concluded that it is prudent in this situation to require a second, redundant method (automatic inventory reconciliation) that is generally available using the same equipment to increase confidence that releases will be detected. Third, as with precision testing, automatic product level monitoring cannot be conducted on a continuous basis because inputs and withdrawals interfere with the test results. Often stations operate 24 hours a day, 7 days a week and must schedule monitoring periods. In such situations, automatic inventory reconciliation provides more frequent release detection. Conversely, the Agency is concerned that automatic inventory reconciliation, used alone, still may not provide adequate release detection because it may be subject to considerable error. EPA believes that requiring these automatic techniques to be used in combination increases confidence that releases will be detected, and that the incremental costs will be small because several level sensing systems are available that can perform both tank level sensing and inventory reconciliation operations.

*(2) Level Monitoring Requirements (Section 280.41(9)(1)).* Today's proposal requires that product level monitoring must be conducted at least every 30 days. As mentioned above, some stations are operated continuously and therefore their operators will have to schedule product level monitoring periods. Other stations close for a period each night, but the tank may not always be 80 percent full at night. The Agency considered requiring more frequent product level monitoring, but this is believed to be unnecessary if inventory is reconciled daily. Another consideration is that owners and operators would have some difficulty scheduling more frequent tests, even if done automatically.

Today's proposal also requires that the tank be at least 80 percent full during the test because this ensures that more of the tank surface is checked for releases. The Agency considered requiring the tank to be completely full, but decided that would make the performance of the test unnecessarily difficult for the regulated community to achieve. Tanks are routinely used at below 80 percent capacity most of the time during operation. Also, because this is a minimum requirement, the Agency expects the test will sometimes be conducted at full tank capacity.

Today's proposal requires that product level monitoring be conducted to detect a 0.2 gallon per hour leak rate, with a probability of detection of 0.99 and a probability of false alarms of 0.01. The 0.2 gallon standard is based on manufacturers' performance claims. As previously mentioned, the Agency is not aware of independent performance data for these systems.

The Agency chose this performance standard because it believes that it will challenge the manufacturers to prove that their systems can meet the standard and thereby will result in the approved use of these systems. EPA recognizes that the currently available systems may not provide adequate performance on tanks larger than 12,000 gallons.

The Agency's testing evaluation program in our Edison, New Jersey laboratory will soon be evaluating some of this equipment more closely. Should new information reveal that automatic product level monitoring is as effective as precision tank testing, this equipment may be held in the final rule to the same standard proposed today for tank tightness testing. The requirements proposed today for automatic product level monitoring are intended to hold users of these devices to the maximum performance described as achievable by their vendors. Therefore, while the proposal holds this equipment to a higher threshold rate than tank tightness testing, it is otherwise being held to the same probability of detection and false alarm.

*(3) Inventory Reconciliation Requirements (Section 280.41(g)(2)).*

Today's proposal sets the same requirements for inventory control and reconciliation as when it is required in combination with tank tightness testing, except that it must be performed using the same automatic equipment used for the monthly product level monitoring. (See the discussion of inventory controls in Section VI.D.3.a. of this Preamble for details concerning these requirements.) This equipment can generally be used for both purposes and today's proposal requires that they be used in combination (in order for it to satisfy today's requirements for release detection).

Although the performance of automatic inventory control and reconciliation has not been quantified, it is not yet believed to be sufficiently accurate to meet the performance standard of 0.1 gallons per hour required for the precision tightness test discussed earlier in this section of the Preamble. Therefore, it is not presented as a separate testing alternative in this proposal, unless it is used in combination with semi-annual tightness testing or monthly automatic product level checks. EPA, however, may accept automatic inventory reconciliation alone as a viable alternative release detection method in the final rule should it be demonstrated to meet the tank tightness test standard. The Agency solicits comment and performance information concerning the use of this method for release detection purposes.

f. Interstitial Monitoring Between the UST and a Secondary Barrier (Section 280.41(h))

Interstitial monitoring is a method of detecting releases in the space between the UST and a secondary barrier. It is believed to be reliable, easy to use, and the least expensive release detection system to operate once the secondary barrier is provided. Today's proposal allows the use of interstitial monitoring techniques that sample automatically or manually in the space between double-walled tanks and piping systems or single walled tanks and piping surrounded by an excavation liner.

The appropriate use of interstitial monitoring techniques varies with the design of secondary barrier used. The most common methods include either the use of concrete vaults, double-walled tanks and pipes, and synthetic flexible membrane or clay liners in the UST excavation area. Most of the various sensors associated with the liquid and vapor monitoring methods previously discussed for the other methods of release detection can be used within the secondary barrier. In many cases only one monitor is necessary because all releases are contained and, thus, more easily detected by a single sensor.

As with the case of other methods of release detection, there is little performance data concerning the use of the various techniques of release monitoring within the interstitial area between the UST system and the various types of secondary barriers surrounding it. Although this method is commonly perceived to be the most reliable form of release detection, an important concern with the various techniques of interstitial detection is

their improper use (e.g., the careless design, location, operation, and maintenance of the detection sensor or secondary barrier). When improperly used, these systems could result in false alarms or fail to detect releases but still provide a false sense of security concerning the UST system's integrity, the method's ability to detect releases, and the containment of releases. Another concern is ensuring the integrity of the secondary barrier so that releases do not escape detection by the single monitoring sensor. Today's proposal establishes several requirements concerning the use of secondary barriers and interstitial monitoring that are intended to ensure that it is effective in detecting releases. These limitations are:

- The design construction and installation of the secondary barrier must assure detection of any release from the UST system.
- Double-walled UST systems must use monitoring that is capable of detecting any breach in the inner wall;
- UST systems with a secondary barrier/liner within the excavation must use monitoring that is capable of detecting any release into the interstitial area:

—The secondary barrier must be sufficiently impermeable to permit containment and detection of a release;
—The secondary barrier is compatible with the regulated substance stored;
—The secondary barrier must be above ground water and not used in a 25-year flood plain unless the design specifically allows for these conditions, and must be compatible with the substance stored;
—The monitoring device must not be rendered incapable of detecting releases due to changes in soil moisture conditions or rainfall events;
—All monitoring wells open to outside access must be clearly marked for their purpose and secured from unauthorized entry.

- UST systems with internally-fitted membrane liners must use an automated device that can detect when the integrity of the tank is breached, and the liner must be compatible with the substance stored; and
- Tanks provided with interstitial monitoring must also have release detection for all attached underground piping and equipment.

Each of these limitations is discussed in more detail below.

*(1) Must Be Designed, Constructed and Installed To Assure Detection of Any Releases (Section 280.41(h)(1)).* The general performance standards approach that EPA is proposing today in § 280.40(h) for secondary barriers with interstitial monitoring is intended to enable tank owners and operators to follow any available industry codes and accepted engineering practices in establishing these secondary barriers. The industry consensus codes are, in fact, already now being followed for many of the new double-walled UST installations. Today's proposal in 280.40(h)(1) is intended to permit flexibility in the choice of secondary barriers and interstitial monitoring techniques that can be used. Some of the secondary containment barriers that can be used are double-walled tanks and pipes, concrete vaults, synthetic flexible membrane liners, and compacted or treated clay soils.

Existing consensus codes and recommended industry practices do not yet exist on a wide-spread basis for the use of secondary containment at UST systems. Today EPA is not proposing detailed design and construction standards in this area. The rapid development of numerous technologies at the national level precluded EPA proposal at detailed design standards. Instead, the owner and operator should consult with the UST system installer to determine which form of secondary containment is appropriate for the site and will assure releases are detected. For example, the Steel Tank Institutes "Standard for Dual Wall Underground Storage Tanks" can be used as guidance for meeting this requirement. In addition, United Laboratories is developing testing standards for the listing of flexible membrane linear systems for UST excavation applications that also can be used to assure compliance with this proposed performance standard. However, for many of the choices of secondary barriers the owner and operator will need to consult the guidance of a trained and experienced engineer familiar with accepted engineering practices in this area.

*(2) Must Detect Breaches in the Inner Wall of a Double-Walled UST System (Section 280.41(h)(2)).* A variety of interstitial detection techniques are allowed within the double-walled systems. The only limitations EPA is proposing today on their use is that they be able to detect a breach in the inner wall. Thus, the Agency is not requiring detection of breaches in the outer wall unless they can interfere with the detection of actual releases through the inner wall.

The techniques of monitoring for pressure or liquid level changes within the interstitial area would be activated by a failure of the outer wall but, in this condition, it is unable to detect if there is a breach in the inner wall (or whether an actual release is occurring). Therefore, under today's proposed limitation for double-walled UST systems, when a pressure monitor is being used, the owner and operator would have to assure breaches in the outer wall are immediately repaired so that release detection compatibility is maintained. Similarly, if the inner wall fails it must also be immediately repaired, or the tank system component replaced, because under this condition the pressure monitor system would no longer be able to ascertain whether a release to the environment was occurring.

*(3) Secondary Barriers Within the Excavation Area Must Be Able To Detect Any Release Between the UST System and the Barrier (Section 280.41(h)(3)).* Under specific circumstances, secondary barriers that surround an UST system in the excavation area (vaults, clay walls, or membrane liners) may not facilitate the detection of releases. Today, EPA is proposing some general limitations that would not allow the use of secondary barriers that are not sufficiently thick or impermeable to assure containment and detection of releases. Natural or artificial liners should not be used in the excavation area where site conditions could render them useless for release detection purposes. For example, flood waters or high ground water could invade the interstitial area and render the release detection sensors useless. Likewise, under such conditions the associated pressure gradients could force a substantial breach in an inadequately designed secondary barrier, thus providing a pathway for a future release to go undetected through the barrier after the return to low water conditions. Today's performance standard is intended to require avoidance of all the above conditions that could render release detection monitoring incapable of detecting releases. There are, however, barriers that can be engineered to work well in high water saturation conditions. In these instances, the barrier is filled deliberately (partially or fully) with water and the monitoring takes place on the water surface. Today's proposal allows the use of such designs. Both natural and artificial barriers that are incompatible with substances stored are prohibited because such incompatibility can weaken and ultimately breach the barrier's design. This could render them useless in containing a release sufficiently for detection purposes.

Secondary barriers that surround a UST system in the excavation area (vaults, clay walls, or membrane liners) can also trap soil moisture, rainfall, or flood waters to such an extent that the vapor or liquid monitoring device is rendered completely inoperative for release detection purposes. EPA is today proposing a general performance standard that requires the owner and operator to ensure that the monitoring technique used will not be rendered inoperative by these conditions on-site for more than 30 days.

There are two basic ways of meeting this limitation. First, an impermeable cap can be provided over the top of the secondary barrier system, thereby preventing rainfall and soil moisture from entering and pooling within the interstitial monitoring area. Second, equipment could be provided for periodically pumping out moisture that becomes trapped within the secondary barrier system, thereby maintaining the system's design for release detection.

For reasons already discussed above concerning other release detection methods using monitoring wells, all wells must be clearly marked and closed to unauthorized outside access.

*(4) Internally-Fitted Membrane Liners (Section 280.41(h)(4)).* EPA is aware of an interstitial monitoring technique within internally-fitted membrane liners that is currently available on a very limited basis in the United States. This technique has been widely used in West Germany for a number of years (primarily for diesel fuel storage). It consists of internally fitting a membrane liner into the inside of the tank and monitoring the space between using a device that maintains a partial vacuum pressure in the interstitial space. EPA has today proposed to allow the use of this type of monitoring technology, using those designs that are activated when the integrity of the tank is breached. Because the tank itself provides the structural support to the liner, a breach in the tank indicates a weakening of that support and a potential release. Also, once the vacuum is broken, and the interstitial monitor is activated, it will no longer be able to detect future releases. Thus, the tank would have to be replaced or repaired for the release detection to operate again. A breach in the membrane would also break the vacuum and cause the need for its immediate repair.

Today, EPA is also proposing the limitation that an internally-fitted membrane be compatible with the substance stored. Incompatible materials could render the membrane, and the release detection system associated with it, useless overtime.

*(5) Release Detection for the Piping (Section 280.42).* The final requirement proposed today for interstitial monitoring is that release detection be provided for the underground piping and equipment. Double-walled tanks and internally fitted membranes do not address release detection for piping. Other secondary barrier designs likewise do not always include piping. This requirement makes it clear that owners and operators must provide interstitial or some other type of monitoring for the underground piping and equipment attached to the tank that meets the requirements of one of the other methods of detection proposed today.

*(6) Issues for Public Comment.* EPA is seeking public comment and information on the reliability and effectiveness of various interstitial monitoring techniques, particularly as they are used with the different secondary containment designs. Specific comments are requested concerning the appropriateness of the limitations proposed today in assuring that releases from UST systems will be detected.

EPA is particularly interested in comments regarding todays performance standard for liner systems in the excavation area. The Agency is concerned that in the absence of detailed performance standards, some liners may not perform adequately. It has been reported to EPA in the past that field-seamed flexible membrane liners frequently leak. In addition, in the absence of a permeability standard, clay liners may not be sufficiently impermeable to intercept and direct a release to the monitoring point. Comment is requested regarding experience with performance and dependability of liner systems. In addition, EPA requests comment on performance standard that could be applied to liners and other types of secondary containment for the purpose of enhancing the success of release detection.

g. Other Methods Approved by the Implementing Agency (Section 280.41(i))

As previously described, today's proposal identifies requirements and general standards of performance for several basic methods of release detection for new UST systems. However, many other techniques and devices are under development in this rapidly growing field. EPA has identified over 250 devices being commercially developed. Some methods, other than the six general ones proposed, today may also be able to successfully detect releases within varying circumstances and limits. Therefore, in 280.41(i), EPA is also proposing to allow the use of other methods, or combinations of methods, of release detection that can be shown to reliably detect releases in a manner which is no less stringent than one of the allowed methods described above.

Many different methods of release detection are under development or already available. There are numerous in-tank non-volumetric monitoring devices (for example, helium gas tracer monitoring) under investigation; several devices for use in the physical or electronic measurement for the presence of liquids or vapors in the excavation area's soil (for example, U-tubes and soil resistivity sensors); numerous products for use in completely wrapping tanks to enhance release detection; and relatively sophisticated devices reported to detect small volume releases from pressurized pipes. EPA has not evaluated the performance of all these methods and, as described earlier, has rejected a regulatory approach towards release detection that would require certification of these methods or devices in regulation before they can be used.

A major concern with these other various methods, however, is whether they perform adequately or only work properly under specific conditions. One alternative that the Agency considered was simply to not allow any of these other methods, thereby restricting the use of release detection to those methods proposed today. This was rejected, however, because EPA believes that other methods, or combinations of methods, may be shown in the future to reliably detect releases. The Agency's intent is to foster continued experimentation, development, and use of other methods that can detect releases from UST systems at least as successfully as those specified today.

To further ensure that other methods, or combinations of methods, can be used if they are shown to reliably detect releases, today's proposal allows their use if they are approved by the implementing agency. To be approved, they must be shown to perform as capably as any of the other proposed methods of detecting releases before they migrate beyond the UST excavation area and result in adverse impacts to human health and the environment. These approvals may be site-specific or more generic, depending on the performance and limitations of the methods. For example, there are some sophisticated pipeline release detection devices available and under development that may be able to reliably detect small releases from pressurized pipes. Such devices, used with appropriate release detection for

the UST may constitute a combination of methods that would be allowed by the implementing agency.

EPA is presently collecting information and conducting research addressed to various methods of release detection. Should the Agency finalize the regulatory approach proposed today, the results of these research efforts may be provided in guidance that should be helpful to implementing agencies in deciding whether other methods of release detection should be allowed. These guidances would identify criteria to be considered in judging any additional methods and their performance in comparison to these six methods proposed today.

The Agency solicits public comment and performance information concerning other methods of release detection that may be capable of detecting releases from UST systems. Information concerning the accuracy and reliability of pressurized line leak detection devices is specifically requested along with public comment on whether they should be allowed in lieu of other methods of release detection for this type of piping. Comments are specifically requested concerning the feasibility of allowing the use of other methods or release detection if they are approved by the implementing agency to be no less stringent than any one of the six methods identified today.

*4. Secondary Containment For New Hazardous Substance UST Systems (Section 280.41(b))*

a. Overview

As discussed in the previous section, EPA is today proposing several methods of release detection for new UST systems. However, the Agency is concerned that releases of various hazardous substances can be more difficult to reliably detect than petroleum releases. Releases of hazardous substances may not be detected by some or all of the methods allowed for petroleum because most of these techniques and devices have apparently not been designed or calibrated to detect hazardous substances. In many instances, they may never have been previously used for this purpose. In contrast, the Agency has concluded that interstitial monitoring between the UST system and a secondary barrier surrounding it is a method that should be readily available for use in the detection of hazardous substance releases. As discussed previously, there are a number of approaches to secondary barriers for UST systems including vaults, double-walled tanks, and liners. The secondary barrier outside of the UST system prevents the movement of released material into the environment and enables the use of various interstitial monitoring techniques for detecting a release between this barrier and the UST system. These barriers should be readily available for use with hazardous substances.

Today EPA is also proposing § 280.41(b) to require the use of secondary containment/interstitial monitoring at all new hazardous substance UST systems. The Agency believes that a secondary barrier provides a more controlled environment, free of many of the factors that can reduce the probability of detection of some hazardous substances when other methods of release detection are used. A properly constructed and designed secondary barrier will ensure retention of a release for detection so that corrective action can be taken under Subparts F and G of the regulations (which includes free product removal and soil and ground-water cleanup). An added benefit of the secondary barrier will be to simplify the cleanup of releases from the tank system. Only a limited area can be contaminated if the secondary barrier retains the release for purposes of reliable detection and corrective action. This is a significant benefit for some highly mobile, highly soluble, or high specific gravity hazardous substances, which are difficult to remove from the soil or ground water and pose an inherently higher level of risk to human health when coupled with unreliable release detection.

There are several interstitial monitoring techniques that can be used to detect releases of hazardous substances in the interstitial area between an UST system and the secondary barrier surrounding it. These detection devices typically detect or monitor for the presence of either vapors or liquids and can operate either continuously or manually. Manual liquid detection systems come in a variety of designs. A number of these use chemical sensitive pastes that change color when exposed to water or hydrocarbons.

Some of the continuous liquid detection systems trigger an alarm by using a device that softens or dissolves if liquid (water or hydrocarbons) appears in the interstitial space. Other types of continuous liquid detection systems use level gauges or switches to set off alarms when the liquid rises to the detection level. In all of these liquid detection systems, the sampling point is usually at the lowest point in the secondary containment structure with all areas having free drainage to this point. This interstitial area must also be sealed off from the outside environment to prevent corrosion condensation or precipitation-induced interferences to the monitoring techniques.

Most vapor sensors used for monitoring the interstitial space are continuously in operation and can be used with volatile hazardous substances. However, some manual detectors that are marketed principally as personnel safety devices may also be used. These continuous interstitial monitoring techniques are activated when the concentration of hydrocarbon vapors exceeds a preset level. The preset level is set above the background level at the time of installation. Because of the confined nature of the space between the UST system and the secondary barrier, hydrocarbon vapors from a hazardous substance release are generally expected to reach the alarm quickly.

In addition to these monitoring methods, the interstitial space between the two walls of double-walled hazardous substance UST systems can be monitored using pressure sensors. The pressure systems use either a vacuum or a pressure sensing device in the interstitial space to detect failure of the inner or the outer walls. Loss of the vacuum or pressure signifies a breach in one of the two walls.

b. Current Practices

Four states (CA, DE, RI, SC) and Puerto Rico utilize secondary containment barriers for hazardous substance UST systems. California and Puerto Rico require them for new UST systems. South Carolina requires them only in ground-water sensitive areas (aquifer recharge or drinking water well zones). Rhode Island allows them as an alternative to leak monitoring.

In all the above states, double-wall UST systems are accepted as meeting requirements for new hazardous substance UST systems. In general, they state specifications for construction or approve the tanks on a case-by-case basis. For example, the outer jacket of a double-walled tank must be constructed of coated steel and cover at least the lower 85 percent of the circumference of the tank, and no penetrations through the jacket may be present other than manholes and fittings.

Three states (CA, DE, and RI) address requirements for vaults used as secondary barriers for hazardous materials. Specifications for construction of vaults is generally not given. Some states require visual observation of tanks in vaults as a leak detection method. This requirement implies a necessity for access to the

vault and space available for observation.

Under federal regulations, secondary containment with monitoring is required for underground hazardous waste tank systems. The secondary containment barrier must prevent the migration of a release into the soil, ground water, or surface water and must meet several design, installation, and operation criteria concerning the type of containment, capacity, material selection, foundation support, release collection, and sealing from infiltration of surface or ground water. A registered professional engineer must attest that the tank system design is adequate, and an independent installation inspector or professional engineer must inspect the tank system for adequate construction and installation. Monitoring must be provided between the primary and secondary containment structures to detect releases from the primary containment within 24 hours.

c. Approach to Regulation

EPA is today proposing in § 280.41(b) that secondary barriers with interstitial monitoring be required for all new UST systems storing hazardous substances. EPA is also proposing to allow the owner and operator to use an alternative method of detection if it can be demonstrated to accurately and reliably detect releases from the UST. Owners and operators must provide a demonstration of the applicability of any of the other methods to the implementing agency for approval prior to its use. (A more detailed discussion of this alternative demonstration immediately follows in the next section of the Preamble.)

*(1) General Performance Standards for Secondary Containment/Interstitial Monitoring (Section 280.41(h)).* The Agency is aware that the performance and durability of the many types of secondary containment barriers and interstitial monitoring techniques is unknown. New hazardous substances UST systems must therefore meet the performance requirements of (§ 280.41(h)). Many of these interstitial monitoring systems have been in use for only a short period of time at a limited number of sites. Of particular concern to the Agency is the use of synthetic membrane liners wrapped around and in immediate contact with the tank. This type of liner system could be subject to greater stresses during installation than a typical liner system which has fine-grained backfill between the liner and the tank. The increased stresses could result from friction among the tank, liner, and backfill, while placing the tank and compacting the backfill. These stresses could result in tears that allow the escape of releases prior to detection. Another containment technology that the Agency is concerned about is the bentonite clay barriers. Certain hazardous substances may be incompatible with bentonite clays and may not be effectively retained. Also, such sealed-soils have been found by the Agency under its hazardous waste program to perform significantly less effectively than man-made flexible membrane liners, for example. (See today's solicitation of information and public comment on this subject in the previous section of this preamble addressed to interstitial monitoring).

The Agency is today requesting information and comment on the applicability of the various secondary barrier methods and interstitial monitoring techniques to UST systems that contain hazardous substances.

*(2) Variance from Secondary Containment/Interstitial Monitoring Requirements for New/Upgraded Hazardous Substance UST Systems (Section 280.41(b)). (a) Overview.* EPA recognizes that secondary containment with interstitial monitoring may not be necessary for all hazardous substance tanks to protect human health and the environment, and that there may be alternative release detection methods that protect human health and the environment based on the tank system characteristics, location, and stored substance.

At present, there is an extensive and rapidly growing universe of release detection methods for petroleum substances. The Agency believes that, for hazardous substances which are similar to petroleum substances, some of the release detection methods currently available may be able to provide a similar level of protection. Further, new release detection methods may be developed in the future which will provide this level of protection for other hazardous substances.

Generally, there are two procedures through which variances can be obtained: (1) They can be specified in regulations and thus be self-implementing; or (2) they can be granted through a review and approval process. However, EPA is concerned that the large size of this regulated community poses unique challenges concerning variance implementation. For example, if the Agency selects a self-implementing system, it is possible for abuses to occur. On the other hand, the review and approval oversight process for implementing variances could be logistically overwhelming.

*(b) Current Practices.* Of the few states that do regulate hazardous substances, most allow tank owners to apply for variances based on equivalent technologies. For example, Rhode Island will consider variances from program requirements (and does not require secondary containment) if there is clear and convincing evidence that an "alternative design or operating standard is substantially equivalent to the regulation and will have no adverse effect on public health and the environment." California regulations allow categorical and site-specific variance requests. Categorical variances allow an alternative method of construction or monitoring which is applicable to more than one local agency jurisdiction. Site-specific variances would be applicable at one or more sites within one local agency's jurisdiction. Most states grant variances through a review and approval process.

EPA recently promulgated regulations for hazardous waste storage and treatment tank systems. They contain variance procedures for tanks storing hazardous wastes. The regulations basically require phased-in secondary containment with interstitial monitoring for underground tank systems. These regulations allow both a risk-based variance and a technology-based variance. The risk-based variance can be obtained if the "owner/operator demonstrates that there will be no substantial present or potential hazard to human health or the environment in the event hazardous waste is released from the storage or treatment system." It is not available for new underground hazardous waste tank systems. The technology-based variance can be obtained if the *"owner/operator can demonstrate to the Regional Administrator that alternative design and operating practices, together with location characteristics will prevent the migration of any hazardous waste or hazardous waste constituents into the ground water or surface water at least as effectively as secondary containment with interstitial monitoring."* "This type of variance would be granted, for example, if a release detection method not believed generally reliable will be reliable for a tank system because of its characteristics, location, and other factors such as the wastes stored or treated." However, variances based on ground water monitoring is not allowed because the overall strategy for regulating hazardous waste tank systems is based on the prevention of contamination of ground water by releases from tank systems.

BEST COPY AVAILABLE

*(c) Approaches to Regulation.* EPA has considered two basic approaches for granting variances for hazardous substance tanks: A chemical class approach and a tank system-specific approach. Through the class approach, the Agency would define groups of hazardous substances that would not require secondary containment when stored in underground tanks. The tank system-specific approach would grant variances by taking into account tank contents and siting considerations. In either case the variance would waive secondary containment requirements if an alternative release detection system design and operating practices applied to a protected single-walled tank can be shown to provide reliable protection of human health and the environment.

*(i) Chemical Class Approach.* The Agency examined various ways to create classes of hazardous substances for which a variance could be obtained. For example, a report prepared for EPA entitled *Evaluation of Grouping Methodologies Based on Regulated Substances Properties* investigated the feasibility of classifying the regulated substances based on their physical and chemical properties for the purpose of setting different tank standards. This report concluded that, while all of the methods considered did to some degree distinguish between potential impacts of different regulated substances, the relative differences in the results were not significant enough to confidently define groups of substances for different tank standards. The report further pointed out that the currently weak understanding of some basic transport processes (e.g., movement of liquids and vapors in the vadose zone) and key data deficiencies (e.g., a uniform scale of toxicity values) decreased the confidence in the results.

A feasibility study prepared for EPA, entitled *Risk-Based Ranking of Chemicals in UST Systems*, investigated the use of a preliminary scoring technique in which the chronic toxicity characteristics used to establish reportable quantity (RQ) levels under CERCLA were used to rank the chemicals stored in underground tanks. Then a panel of scientists used this information and additional information pertaining to the potential fate of these chemicals to sort them into categories of high, moderate, and low concern. The report found that chemicals stored in underground tanks vary substantially in terms of risk. Some concerns have been raised about this method (1) that toxicity characteristics used to set RQs were developed to address spills and emergency releases rather than the long-term, low-level continuous releases anticipated from underground tank systems; (2) environmental fate parameters considered did not address the role of biodegradation; and (3) environmental fate of compounds stored in underground tanks is likely to be not only site-dependent, but also solvent-dependent.

The Agency also considered various criteria which could be used to identify groups of hazardous substances which might require less stringent tank standards. The criteria included (1) detection of the substance by vapor-phase sensors; (2) detection by the human sense of smell; (3) high toxicity; and (4) cost of cleanup. Of these approaches, the detectability of hazardous substances appeared to be the most promising criterion for grouping hazardous substances. However, only limited analysis could be performed because many of the hazardous substances are solids under standard conditions, but would be dissolved in a vast array of unknown solvents and mixtures when found in underground storage tanks. Many of the release detection methods have not been assessed for the detection of hazardous substances.

Therefore, the Agency concluded that development of class criteria was difficult primarily due to the wide variety of tank siting conditions and tank contents, the lack of some basic data, and the currently weak understanding of some basic transport and fate processes. The development and analysis of these data was judged to be very time consuming. The Agency is continuing to examine this class approach based on the above criteria and today EPA is requesting public comment and information concerning feasible ways of implementing this approach.

*(ii) Tank System-Specific Approach.* Based on the above discussion, EPA is today proposing that variances from secondary containment requirements be obtained on a tank system-specific basis. This type of variance would be for each tank system taking into account considerations for tank contents and siting. Variances would only be available for new and upgraded existing tank systems, and would be granted by the implementing agency through a review and approval procedure. EPA, however, is still considering the feasibility of granting variances for classes of hazardous substances if the Agency receives evidence that would justify this type of exemption.

Today, EPA has proposed simple procedures in § 280.41(b) for use in applying for individual variances. These procedures are based somewhat on the procedural framework developed for variances that are applied for under the Agency's hazardous waste tank program in 40 CFR 264.193(h). (See 51 FR 25476; July 14, 1986.) If the Agency adopts this approach, guidance for developing and applying for a variance may need to be developed to give a clearer indication of the requirements that a tank owner or operator will need to meet. It is the Agency's intent if such guidance is developed it would be somewhat flexible in approach and some initial concepts which may be included in the guidance are laid out in the subsequent paragraphs.

Today, the Agency proposes that when applying for a tank system-specific variance the owner or operator must demonstrate the reliability of the alternate release detection method(s) to be used taking into account the stored substance, the immediate subsurface tank environment, the characteristics of the tank system, and the performance characteristics of the proposed release detection method and its site-specific design. This will be accomplished in the context of the requirements for at least one of the methods of release detection proposed in 280.41. These demonstrations will be expected to receive careful scrutiny that will determine, with considerable technical certainty, if the proposed use of a particular method will meet all requirements and perform reliably in detecting releases of the hazardous substances in the proposed setting for that particular UST system configuration. This closer type of oversight by the implementing agency is believed necessary to assure that the significant technical uncertainties that now exist concerning the use of several release detection methods—particularly with various hazardous substances—will be carefully reviewed before they are allowed to be used on a long-term basis.

During the early implementation of the variance procedures it may become evident that certain combinations of hazardous substance/release detection systems may be shown to provide reliable detection (for instance, highly volatile chemicals and vapor monitoring). The Agency anticipates that these variance applications will thus be simplified by allowing the tank owners and operators to take advantage of these previously demonstrated combinations and, thus, only be required to show that the site-specific environmental factors are appropriate

for the use of the proposed release detection.

The immediate subsurface tank environment will need to be assessed to determine if the methods of detection will work reliably. This means that the excavation zone and other subsurface areas between the UST and the proposed monitor installation points must be considered in the design of the method for the site. The evaluation of this area would include an assessment of factors such as soil types, site location, historical high water table, localized ground water flow patterns as well as any potential interferences that would affect the accuracy and reliability of the monitoring devices. Interferences are considered to be such things as clay layers, buried electrical lines, or a site located in a flood plain, which could result in periodic flooding of the vadose zone affecting the performance of some release detection systems, such as vapor monitors.

The five general release detection methods proposed for use with new UST systems are available to a tank owner or operator to use as an alternative to secondary containment with interstitial monitoring: frequent tightness testing and product inventory reconciliation; testing and monitoring of vapors in the excavation area; monitoring for liquids on the ground water; monitoring for liquids in the unsaturated zone between the UST and an impermeable barrier immediately below it; and automatic liquid monitoring and inventory control inside of the tank. Because all of these methods cannot be used in all situations, certain requirements on the use of each of these methods have been set by the Agency. These requirements are described above in Section VI.D.3. When selecting an alternative release detection method, the owner and operator must demonstrate that site-specific conditions meet these requirements.

Because the current state-of-knowledge of release detection of hazardous substances is relatively weak, the burden of data development and initial analysis of specific release detection methods and their application at a site is placed with the regulated community. This includes analysis of the number and placement of monitors, the detection threshold of the monitor, and the sampling frequency to insure reliable release detection. EPA believes that this approach will foster further experimentation and allow for careful selection and application of release detection systems. Because this field is rapidly developing, the Agency believes it is incumbent upon the owners and operators to work with release detection manufacturers in the development of adequate systems. The Agency will remain open to various methods for implementation of this type of variance. For example, the appropriate detectable level could vary from chemical to chemical because the Agency would want to be sure that a release could be detected before an environmental hazard developed.

The Agency, however, has several concerns about the feasibility of this approach. For example, the Agency believes that there are some hazardous substances for which variances should not be granted. These hazardous substances would include those that are acutely hazardous, pyrophoric, or highly water reactive. A specific example of these chemicals are those classified as Poison A in the U.S. Department of Transportation (DOT) Hazardous Materials Table. The Poison A category includes seven poisonous gases and liquids which when mixed with air in very small amounts are dangerous to life. The Agency also believes that the properties of other hazardous substances would either make them not amenable to some of the alternative release detection methods, or result in more careful scrutiny of variance applications. For instance, dense liquids (those with a specific gravity greater than water) cannot use the alternative of monitoring for liquids on the ground water. Substances with toxicity greater than benzene (one of the most toxic constituents of gasoline) might suggest more careful scrutiny of proposed alternative release detection methods. These highly toxic substances could be defined as those that are in the "X" category for the toxicity criterion used to establish CERCLA RQs. Approximately 60 of the hazardous substances expected to be found in UST systems have an RQ toxicity value of "X."

EPA today requests comments on the variance procedures discussed above, and is particularly interested in comments on the feasibility of implementing a risk-based variance procedure similar to that in the Hazardous Waste Tanks rules. However, today EPA has not proposed the use of the risk-based variance procedure for tanks storing hazardous substances because of several implementation concerns which include the wide array of hazardous substances and their associated solutions and mixtures, the size of this regulated community, and the potential administrative burdens that might be imposed by such a procedure. The Agency also requests comments and information on how (and by what basis) EPA might identify chemicals that have properties similar to petroleum that could warrant regulation in the manner that is being proposed today for petroleum UST systems.

*5. Additional Requirements for Piping at New UST Systems (Sections 280.42)*

a. Additional Requirements for Pressurized Piping (Section 280.42(a) and (b))

One method of withdrawing substances from an UST is to use a transfer pump which is usually placed in or near the tank. This pump withdraws regulated substances from the tank and forces it under pressure through a pipe to the dispensing meter. Because the substance is under pressure, a structural failure or leak in the transfer pipe will allow it to be released. Today's proposal contains additional release detection requirements for pressurized piping systems using less than continuous monitoring.

A major concern with the use of pressurized piping systems is the potential for large releases. Data from the Agency's State Release Incidents Survey indicate that releases from piping are somewhat larger than the releases from tanks. This same data also indicates that piping is involved in 20 to 35 percent of all releases reported to the states examined in the study. The Agency suspects that pressurized piping is involved in the larger piping releases because the other approach to product transfer, which uses suction pumps, fails to operate properly when there are leaks in the pipe. Also, it is widely reported that pressurized pipe is the most commonly used petroleum withdrawal system at new installations.

In addition to the general UST system release detection methods that were discussed earlier in this Preamble, pressure-loss sensors are commercially available for use as release detection with pressurized piping systems. These methods sense the pressure in the piping when the transmission pump begins to transfer petroleum from the tank to the product dispenser. A slower than expected rise in pressure could indicate a failure in the pipe and a possible release. This type of system automatically shuts off the product dispensing pipe when the pressure does not reach the expected preset level within a few seconds. Although there is little documented performance data for these piping pressure sensing methods, they are reported to detect at least large rates of release. One currently marketed

system is claimed to detect and shutdown in the presence of releases of 2 gallons per hour. Several more sensitive systems are also currently available or under development.

The characteristics of pressurized piping described above have caused the Agency to consider not allowing its use at new UST installations. However, this method of product transfer is reported to be widely applied at newer retail gasoline outlets, for example, and is an important factor in the current design of these new stations. EPA has concluded that this method of withdrawal can be used reliably, in a manner that protects human health and the environment, if continuous release detection methods are employed to ensure potentially large "run-away" releases from pressurized piping are detected quickly so they can be minimized and contained. As described earlier in this Preamble, the Agency believes that several release detection methods may be reliably applied in a manner that will rapidly and reliably detect releases, even from the piping. However, EPA is today proposing to allow frequent release detection that is not continuous. Because of the concern that run-away releases from pressurized piping can create a large release in a relatively short period of time, today's requirements for release detection at new UST systems could allow, under the 30-day sampling frequency required under § 280.40(d), a pressurized pipe leak to develop into a large release before it is detected.

Today EPA is proposing in § 280.42(b), as an addition to the other release detection requirements, that pressurized piping release detection and shutoff devices must be used at new UST systems with pressurized delivery lines, unless the piping system is provided with:

- A continuous method of release detection that complies with requirements proposed for new USTs in § 280.41; or
- Interstitial monitoring in accordance with the UST system release detection requirements in § 280.41(h).

The Agency has concluded that the above two methods of release detection adequately address the threat posed by underground pressurized run-away leaks, provided these methods include piping in their coverage.

Each of the additional requirements for pressure piping is discussed in more detail below.

*(1) Automatic Release Detection and Shutoff Equipment (Section 280.42(b)).* Today EPA is proposing that pressurized piping at new USTs without continuous release detection or interstitial monitoring must also be provided with automatic release detection and shutoff equipment. Numerous such devices are already commercially available and in widespread use. One of the performance requirements proposed today concerning this equipment is that the system be capable of automatically detecting a release rate of at least 2 gallons per hour. It has been reported to EPA that there is equipment commercially available that can achieve this performance and that it is relatively inexpensive to install. EPA believes that releases from pressurized piping can often rapidly advance to a level that is greater than 2 gallons per hour and will, therefore, activate these devices. Another performance standard proposed today for this equipment is that it must automatically shut off the transfer pipe when a release greater than 2 gallons per hour is detected. To minimize adverse environmental impacts, these releases should be stopped as quickly as possible. Again, equipment is reported to be widely available and in use that will be able to accomplish this performance requirement.

*(2) Issues for Public Comment.* Because of the limited experience with piping release detection methods, EPA has had to develop today's proposal based on partial information. Therefore, EPA is especially seeking information regarding the field performance of pressurized piping release detectors. EPA is requesting comment on the proposed methods and limitations with supporting data where available. We are also interested in receiving information concerning experience with releases from pressurized piping and whether additional requirements proposed today are needed to protect human health and environment.

b. Exemption For Suction Piping Systems (Section 280.42(b))

Today's proposal provides an exemption from the UST system release detection requirements of § 280.40-41 as they pertain to underground piping if a suction-type piping system is used that meets certain other requirements. This method of withdrawing regulated substances from an UST uses a suction pump which is usually placed away from the tank at or near the dispensing meter. This pump draws substances from the tank by applying a suction to the transfer pipe. Because the substance is at less than atmospheric pressure, a structural failure or leak in the transfer pipe will allow air or ground water to be drawn into the pipe instead of allowing the regulated substance to be released. In addition, if the leak is large enough and a significant amount of air enters the pipe, the pump and dispensing meter will operate erratically, calling the operator's attention to a suspected failure.

Although there is a lack of performance data for suction piping systems, many of these systems are currently in use in this country. In addition, suction piping systems also are in wide use in Europe. For example, West Germany has required suction piping for several years and it has been reported that these systems are successful in minimizing releases due to piping failures because they are considered "intrinsically safe."

The apparent inherent fail-safe nature of suction piping systems has caused EPA to allow (within certain limitations) an exemption for such piping from all release detection requirements in today's proposal. The requirements in today's proposal that suction piping systems must meet in order to be exempted from all other piping release detection requirements are:

- The underground piping operates at less than atmospheric pressure;
- The piping is sloped to drain back to the tank;
- Only one check valve is included in each suction line; and
- The check valve is located directly below, and as close as practical to the suction pump.

Each of these requirements are briefly discussed below.

*(1) Operating Pressure (Section 280.42(c)(1)).* Today's proposal allows an exemption from release detection requirements as they pertain to piping if the underground piping operates at less than atmospheric pressure. The pressure in the soil around the pipe will be atmospheric, if above the water table, or greater than atmospheric, if below the water table. When the pressure in the pipe is less than the atmospheric pressure, a lead in the pipe will allow air or ground water to enter the pipe and the contents of the pipe will not be released. Although EPA has little documented performance data concerning the operating pressures in typical suction piping systems, EPA believes that the currently marketed systems adequately prevent releases.

*(2) Piping Slope.* For a suction piping system to be exempt from the release detection requirements proposed in today's rule, it must be sloped to allow the pipe's contents to drain back into the tank in the event that the suction is released. The Agency believes that simply operating the piping at less than atmospheric pressure will prevent major releases. However, small releases for the piping would still be possible if a

leak were to occur at a low point in the piping. If a portion of the piping drains to a low point rather than back to the tank, then some amount of fluid would be trapped there in the event of a loss of suction. A leak at this low point could then allow trapped fluid to be released. This type of release would be small (tens of gallons) in a typical piping layout for retail petroleum product dispensing. However, it can be easily avoided by sloping the pipe back to the tank. If suction is lost in a properly sloped piping system, the contents of the pipe will drain back into the tank. The Petroleum Equipment Institute's RP100-86 "Recommended Practices for Installation of Underground Liquid Storage System" recommends sloping the line one-eighth inch per foot back to the tank for all piping systems. The Agency believes that this is an easily applied measure that will prevent even small releases from the suction piping systems.

*(3) Check Valves.* Today's proposal also requires that only one check valve be included with each suction line to be exempt from the piping release detection requirements. The rationale for this requirement is similar to the argument for the piping slope requirements. Check valves allow the movement of fluid in only one direction and are typically used in suction piping systems to prevent the fluid from returning to the tank. The check valve maintains the prime on the pump and allows dispensing to begin as soon as the pump is turned on. In addition, pump wear would be substantially increased if the line drained back into the tank after each use. When two check valves are used, then the fluid in the line between the check valves can develop a greater than atmostpheric pressure. This situation could result from a leak in the upper check valve or a leak in the line between the two check valves. A leak in this pressurized portion of the piping could then cause a small release in a fashion similar to a release in an improperly sloped line. The Agency believes that only one check valve is needed for the proper operation of the suction piping system. However, it has been reported that some existing suction piping systems have more than one check valve due to modification and repairs in the piping systems. This practice would not be allowed under today's proposed exemption from release detection for suction piping.

*(4) Check Valve Location.* The fourth and final requirement that suction piping must meet to be exempt from the piping leak detection requirements is that the check valve must be located directly below, and as close to as practical, to the suction pump. This requirement ensures that as much as possible of the piping is under suction when the transfer pump shuts off. Historically, check valves have been placed in one of several locations in suction piping systems. One location that is common in older suction piping systems is at the right angled joint directly above the tank. This location allows a large portion of the piping system to pressurize to one to three pounds per square inch when the transfer pump shuts off. While this pressurization is not nearly as great as the typical 40 pounds per square inch pressure in a pressurized piping system, it could cause a release out of a leak in the piping. There are several manufacturers of check valves for use directly below the pump and they are reported to operate satisfactorily in a wide range of conditions.

*(5) Issues for Public Comment.* Because of the limited performance data on suction piping system, EPA has had to develop today's proposal based on partial information. Therefore, EPA is seeking information regarding the field performance of suction piping systems. The Agency is particularly interested in receiving information on the potential for releases from suction piping systems.

The Agency is also seeking comment on the need for periodic monitoring of the suction piping systems to ensure that the system is operating as intended. It has been reported that the suction piping systems in West Germany are equipped with a bleed valve below the check valve for periodic inspection of the suction line. Every fifth year an inspector opens this valve to check the condition of the suction line. Air entering the line through the open valve indicates that suction is being maintained in the piping. No air entering indicates that suction is not being maintained in the line and the check valve or piping need repair. Fluid coming out of the line through this valve indicates that the line is pressurized and the piping system is in need of modification or repair. EPA is not aware of such a system in use in this country and requests comments on the availability of this type of system and the need for it.

*6. Requirements for Existing UST Systems*

Today EPA is proposing to require that all existing UST systems have release detection. To meet this requirement, UST owners and operators are provided with a wide variety of different monitoring methods to choose from.

In proposed 280.40 existing UST systems are allowed to use any of the monitoring methods that can be used by new UST systems: tightness testing and inventory reconciliation, vapor monitoring, liquids on the water table monitoring, automated in-tank monitoring, interception/detection barriers, secondary barriers with interstitial monitoring, or some other no less stringent detection method, or combination of methods, approved by the implementing agency. Any method used to meet the release detection requirement must meet the performance requirements provided for each method in 280.41 for new UST systems (as previously discussed in this Preamble). It must also meet the general release detection requirements for all UST systems provided in 280.40: a minimum monitoring frequency of no less than every 30 days; use of a method that detects releases from the tank and the piping; the required use of manufacturer instructions for installation, calibration, operation, and maintenance schedules; documentation of vendor performance claims; and a site assessment when external methods are used.

In accordance with § 280.30(b), for all methods used outside of an existing UST system (for example, vapor and groundwater table monitoring), the owner or operator must also retrofit the use of spill and overfill equipment at the same time as the release detection. As discussed in more detail in Section VI.D.2 of this Preamble, existing and new spills can confound the external sensors and preclude the detection of a leak in the UST system. Thus, any existing UST system that utilizes external release detection must also be provided with spill and overfill equipment at the same time.

Because the above alternative monitoring methods for new UST systems would require retrofitting and use of wells and other equipment at existing UST systems, the Agency evaluated whether any more implementable (and less burdensome) avenues might be open. As described earlier, tank tightness testing and inventory reconciliation are the two most widely used methods of release detection for UST systems. Both of these methods have the advantage of not requiring significant retrofitting (although tightness testing may require some retrofitting) and being more readily available to the regulated community than other methods.

Therefore, EPA is proposing to allow the use of the combination of infrequent tank tightness testing and manual (or automatic) inventory reconciliation

controls as another release detection method available for use by owners and operators of existing USTs.

The performance requirements proposed for tightness testing and inventory reconciliation controls were discussed earlier in this Preamble. Therefore, the discussion that follows focuses only on this additional proposed use—on an interim basis only—of infrequent tightness testing combined with inventory reconciliation at existing UST systems. (This interim method differs in frequency from the semi-annual tightness testing and inventory reconciliation proposed as an alternative available for new UST systems).

Under today's proposal in 280.40(c), an owner and operator of an existing petroleum UST system who chooses to use the infrequent tightness testing method to meet release detection requirements must repeat the tank test at least once every 3 years for steel UST systems that are not protected from corrosion; and once every 5 years for all other UST systems. The primary basis for this distinction is the fact that unprotected steel UST systems are more susceptible to corrosion and need to be tested more frequently than the protected steel or fiberglass UST systems.

In developing this proposed frequency for tank tightness testing, EPA reviewed the various schedules for tightness testing currently used in the states. For example, Connecticut specifies a schedule based on the type and age of the UST system, with annual tightness testing required for the oldest UST systems. Rhode Island varies between 1 and 5 years depending on the age of the UST system. New York requires testing every 5 years. The states with variable schedules apply more frequent tank testing to the older UST systems. Annual tightness testing is required to prompt the retirement of old UST systems and has been reported to have that effect in the states that require it.

EPA considered establishing a tank tightness testing requirement that, like several state programs, would require all old UST systems to be more frequently tested (thereby prompting their upgrading or replacement) for several reasons. However, a significant amount of data has been collected that reveals that existing tank systems have been found to leak at all ages. Furthermore, on a national basis, many of the existing tanks appear already to be over 10 years old or their age is unknown. In either situation, significant implementation difficulties are posed for a schedule based on age. Thus, as is discussed in more detail earlier in this Preamble, EPA has instead decided to propose that all UST systems be upgraded or replaced to the new tank standards within 10 years and to require tank testing on an infrequent schedule during this interim transition period. (See Section VI.D.3 for more details.)

Under the testing frequency proposed today, the vast majority of existing UST systems (the unprotected bare steel variety) will be required to conduct a tightness test once every 3 years if they choose this alternative method of release detection. Judging from experience in California, where several alternative detection methods have been allowed but the choice of tank testing predominates, it appears likely that many owners and operators will select this one alternative method of release detection if allowed for existing UST systems by EPA. This raises a concern about whether this frequency of tank tightness testing can be accomplished for such a large portion of the existing UST systems in this universe. To alleviate this concern somewhat, the Agency decided to propose a longer time period between tests for UST systems that are protected from corrosion (the primary cause of release). Current estimates are that new fiberglass and corrosion-protected steel UST systems may comprise as much as 20 to 25 percent of the existing tank universe by the time the final rule is effective. These safer (corrosion-resistant) existing UST systems would, therefore be required to conduct a tightness test only once every 5 years. This lower demand on tank testing, plus the numerous new replacement tanks that we expect will be installed within the first 5 years of the program using various other methods of detection should enable tank testing to be reliably accomplished at this more infrequent and implementable level nationwide.

EPA solicits comments and information concerning the use of infrequent tank tightness testing combined with inventory controls at existing UST systems during the 10-year period before all UST systems have to be replaced or upgraded to the new tank standards. EPA also solicits comments and information about the appropriateness of the proposed frequency of tank tightness testing combined with inventory reconciliation allowed at existing systems. Another frequency that was considered by the Agency during the development of this proposal was to require existing tank systems to perform annual tightness testing plus inventory controls if they are not provided with frequent to continuous monitoring after the 3- to 5-year phase-in period for release detection that is also being proposed today (see Section VI B.2 for more details on the phase-in period for release detection). Annual tightness testing plus inventory reconciliation would detect releases sooner than infrequent testing and would place less dependence on manual inventory reconciliation as a release detection method. This would reduce the quantity of a release at any one site prior to detection and thereby enable reductions in the potential environmental impacts and cleanup costs.

After the phase-in period of 3 to 5 years, the vendors of tank tightness testing services, as well as the regulated community, would be in a better position than today in providing annual tightness testing. EPA requests comment on whether annual tank testing is necessary and implementable for existing USTs after this initial phase-in period.

Today's proposal allows existing hazardous substance UST systems to use the same methods of release detection allowed for new UST systems. Similarly, existing hazardous substance UST systems are allowed to use the infrequent tank tightness testing and monthly inventory controls method of detection during the 10-year interim period when all existing UST systems must be upgraded or replaced to the new tank standards (with interstitial monitoring secondary containment for hazardous substances USTs).

In developing today's proposed approach for existing hazardous substance UST systems, the Agency was concerned about the lack of release detection for these UST systems. As discussed earlier, all release detection is being developed and primarily aimed at petroleum UST systems because they represent at least 95 percent of the UST universe. Through today's proposal, the Agency intends to encourage the extension of this developing technology to the many hazardous substance UST systems storing chemicals that are similar in nature and detectability to petroleum. Any hazardous substance UST system that cannot apply accurate and reliable release detection according to the limitations proposed today will be required to upgrade to secondary containment and interstitial monitoring within 3 to 5 years.

As with new hazardous substance USTs, the Agency considered requiring all existing hazardous substance UST systems to receive a variance if they wanted to apply a method of release detection other than secondary containment and interstitial monitoring. However, this was not proposed for

several reasons. First, with over 50,000 existing hazardous substance UST systems, the Agency was concerned that the variance process, as required for new UST systems, could not be accomplished within 3 to 5 years for existing UST systems. The Agency could be overwhelmed by variance requests, because an existing UST system would have to get a variance within 3 to 5 years or retrofit/replace with secondary containment. Second, EPA believes a variance process would unnecessarily slow down the development and application of other methods of release detection to hazardous substances that are very similar in nature (and detectability) to petroleum products. Instead, EPA will provide closer oversight of the review of these applications at new and upgraded UST systems (under the variance process previously described) and this will provide important experience for both EPA and the regulated community to discover what methods of release detection can be used with which types of hazardous substances. In the absence of such experience, a variance for existing UST systems would be difficult to accomplish. Third, the Agency will require submission of an alternative demonstration (and EPA review and oversight) after 10 years. Thus, anyone using any of these methods inappropriately and who has not been discovered through routine on-site inspections) will have to demonstrate the method is reliable when all existing UST systems are to be upgraded to new UST standards.

EPA requests comments and information on the appropriateness of the above approach toward allowing existing hazardous substances UST systems to utilize an alternative method of release detection for up to 10 years without an approved demonstration. Should the Agency set a shorter time frame for upgrading hazardous substance UST systems?

*7. Release Detection Recordkeeping (Section 280.43)*

EPA is today proposing that all UST owners and operators must maintain release detection records capable of demonstrating compliance with the applicable requirements of release detection in Subpart D. These records must include:

- All written performance claims, and their manner of determination for the method of release detection used, as provided by the equipment manufacturer or the installer, to be maintained for a period of 5 years; and
- The results of sampling, testing, or monitoring, to be maintained for at least one year, except that the results of tank tightness testing must be retained until records are available for the next test.
- A record of all calibration, maintenance and repair of release detection equipment maintained for at least one year from the date the service is performed.

The need to maintain a record of all release detection performance claims and their derivation, is discussed earlier in the Preamble (see Section VI.D.2). Among other uses, these materials provide owners and operators an important basis with which to evaluate the future performance of the equipment at a given site. Although many owners and operators will choose to retain such information for as long as they use the equipment, today's proposal requires in § 280.43(a) that they be retained for at least 5 years. This is intended to provide the implementing agency with sufficient time to ascertain the release detection method's compliance with the regulations through routine site inspection. EPA recognizes that these records may vary considerably in detail depending upon the owner and operator's choice of method and the availability of proof of performance from the vendors of the equipment.

Proposed § 280.43(b) requires all sampling, monitoring or testing results to be maintained for at least one year, except that the more infrequent tank tightness testing results allowed on an interim basis for existing UST systems must be retained until records are available from the next test. These requirements are expected to be sufficient for an inspector to determine that the UST owner and operator is complying with the release detection requirements. For example, the results of the last tightness test (plus a year's inventory control records), or the recorded results of monthly well samples, must be inspected to determine compliance with the applicable requirements for those methods of detection. Automatic, continuously-alarmed monitoring systems need not keep records that must be maintained for one year, because compliance will be determined during a site visit that shows whether the system is operating properly.

Section 280.43(c) requires a record of all calibration, maintenance and repair of release detection equipment be kept for at least one year after the service is completed.

After the service is performed for the owner and operator, many of the methods of release detection allowed in today's proposal are implemented through the use of automated equipment that consists of sensitive electronics and instrumentation. To work properly and within the specifications of the manufacture, such sophisticated methods of detection generally need to be periodically calibrated and maintained to assure measurement performance that will achieve designed detection performance. Repairs of this equipment will be inevitable over the life of its operation. Such periodic maintenance and repairs are necessary for the release detection sensors and data analysis to be able to achieve the performance standards proposed for each method today.

Maintenance calibration and repairs will be generally performed by the equipment installer or manufacturer according to schedules and procedures particular to the type of instrumentation used. Because of the critical nature of this activity, EPA is proposing that a record of such work be maintained for one year. A copy of any invoice receipts or a completed manufactured/installer maintenance checklist signed by a technician servicing the equipment would be sufficient record to enable an inspector to assure that proper steps are being taken towards calibrating and maintaining equipment. This record must be kept for at least one year to enable an inspector to assure during an on-siste visit that the instrumentation is being properly maintained by the owner and operator to obtain meaningful and reliable detection results.

**E. Reporting of Suspected Releases, Spills, and Release Investigation and Confirmation**

a. Overview

All suspected releases must be investigated in order to discover if an UST is leaking. This is a necessary step prior to the abatement and remediation of a possible release. In addition, reporting of suspected and/or confirmed releases to implementing agencies allows the authorities to ensure that appropriate actions are taken to protect human health and the environment.

EPA's State Release Incidents Study indicates that most releases today are first identified by sensory observation of the stored product in the environment. More than 70 percent of the releases were identified by these observations, which include the sight, taste, or smell of the released product in ground water, surface water, sewer lines, electrical conduit/vaults, excavations, or basements. Consequently, in most cases, it is necessary to conduct an investigation to identify (or confirm) the source of the suspected release.

The release investigation and confirmation process, however, is sometimes complex. For example, the owner of an UST system may typically be reluctant to begin the process of release investigation, due to the significant cost involved. In addition, complications are posed by the development and implementation of criteria and procedures to determine the appropriate circumstances for initiation, conduct, and conclusion of the confirmation process. Also, conclusive proof of the presence or absence of an underground release is not always easily obtained because release detection methods used may yield contradictory or inconclusive results. For instance, regulated substances could be discovered in the soils surrounding the UST, yet a tank tightness test may not indicate the presence of a leak. As discussed previously in this Preamble, tank tightness test results alone cannot absolve the UST owner/operator from consideration as a possible contaminant source because this method of detection cannot detect small releases or spills. Thus, another method of release detection (e.g., test samples taken from within the excavation) must be employed to corroborate or contradict the tightness test results. When previous results contradict each other, another release detection procedure may be warranted to corroborate whether the UST is leaking or not.

The accuracy of a release detection method is often an issue of concern during a suspected release investigation. For example, inventory control is used fairly frequently as a method for confirming releases; however, it possesses a variable accuracy that is influenced by a number of factors including temperature, meter calibration, and theft. Consequently, indications of small releases by inventory control must be carefully evaluated for the influence of such factors. Moreover, confirmation by another more conclusive release detection method may be necessary. Indications of leakage obtained from other monitoring methods may need to be similarly verified. There currently exists several inventory reconciliation analysis service firms that provide such an evaluation for a fee using computerized statistical techniques.

Testing methods must be utilized with great care to provide an effective means of release confirmation. For example, as discussed in Section VI.D. of this Preamble, the use of tightness testing to confirm releases relies upon the accuracy of the test procedures. Variables such as temperature, tank end deflection, and vapor pocket formation may substantially influence the results of the testing procedures. The use of testing methods for release confirmation is further complicated by the possible incompatibility of some hazardous substances with certain testing procedures. Equipment used in some test procedures may be damaged when exposed to specific hazardous substances that are stored in underground storage tanks. Thus, care must be exercised in choosing the appropriate testing method as well as in interpreting the test results to assure compliance with the performance requirements for tank tightness testing as specified elsewhere in today's rule.

All the above concerns have prompted EPA to propose requirements for the reporting, investigation and confirmation of releases today.

b. Current Practices

A review of state and local procedures specified in regulation for release reporting, investigation, and confirmation showed that nineteen states and one local regulation (out of 23 states and 4 local regulations recently reviewed) address leak investigation and confirmation. Most require the reporting of suspected releases. They also specify the type of evidence that should raise suspicion concerning an UST system's integrity. In most cases, this involves identifying variations in the reconciliation of product inventory in excess of a specified volume, such as 0.5 percent of total weekly throughput. Other indications often specified include a rapid change in the water level in the bottom of petroleum storage tanks, the observed presence of released material in the environment, or an alarm activated by a leak monitoring system. In any case, most of these regulations require any suspected release to be reported immediately to the implementing agency.

The investigative response for a suspected release is prescribed by all of these UST regulations. Less than half of them require a release investigation that consists exclusively of tightness testing as the specified investigation procedure. Several states give a detailed set of procedures for the identification of leaking systems. In all cases, the procedure begins with a recalculation of inventory records. Further steps may include a physical inspection of readily-accessible system components, the recalibration of system dispenser meters, and the tightness testing of the tank and associated piping.

The National Fire Protection Association (NFPA) 329, "Recommended Practice for Handling Underground Leakage of Flammable and Combustible Liquids," and the American Petroleum Institute (API) publication, "Underground Spill Cleanup Manual," provide methods and procedures currently used in the release confirmation process. This NFPA "Recommended Practice" is the current national standard most often cited by existing UST regulations. It addresses release investigation methods and tightness testing procedures in great detail. The investigation process calls for checking of various potential sources and emphasizes the possibility of multiple sources. The investigation process includes physical inspection, product inventory verification, and the tightness testing of the tank and piping system. NFPA's recommended approach is to require inspection of the storage facility, verification and reconciliation of inventory records, verification of proper dispenser calibration, pressure testing of the piping system, and tightness testing of the tank system. The American Petroleum Institute (API) 1628 recommended practice addresses release investigation procedures. Multiple methods of leak confirmation are emphasized by API, as opposed to reliance on a single release detection method. The possibility of multiple sources of release at the same facility is also stressed.

c. Regulatory Approaches

*(1) Reporting of Suspected Releases (Section 280.50(a)).* EPA considered three approaches towards requirements for release reporting that basically differed as to when the reporting would take place:

- Reporting of any suspected release when it is discovered;
- Reporting only when preliminary investigation has begun to reveal whether a release exists or possible sources of a release; and
- Reporting only when releases are confirmed.

Today's approach is based on the first approach (with the exception of small spill reporting) because it enables the implementing agency to become involved early in the development of procedures to be undertaken for release investigation. This provides the agency with the opportunity to provide guidance to help ensure the use of practices that are appropriate to the situation. The implementing agency also needs to be informed of suspected releases because, until it is confirmed and the source is identified, most often there is a general disavowel of responsibility for "suspected releases." The second approach was not chosen

because, while it reduces the reporting to only those situations where a responsible party is actually initiating an investigation into a suspected release, it does not allow the agency as much input into the initial planning and decision of whether to proceed with an investigation. Also, once an investigation has been initiated, its course has largely been decided and this choice sometimes predetermines its eventual results. The third approach would require the least amount of interaction between the implementing agency and the regulated community because only confirmed releases would be reported. However, this approach would allow very different investigative methods for similar situations, with a wide variation in the reliability of the results. Similarly, "borderline" incidents might never be investigated or confirmed.

The Agency rejected the last two approaches primarily because significant time periods could pass before investigations were initiated or releases confirmed. During these periods, the public would not be informed as to the possibility of a release and its potential adverse impact to human health and the environment. These approaches could also result in significant increased adverse impacts in the environment prior to the identification of any need for corrective action. Therefore, today's proposal requires reporting of all suspected releases to the implementing agency within 24 hours.

Several situations have been identified by EPA as warranting such quick reporting by the UST owner and operator. Many of these conditions have already been identified as warranting investigation in the two recommended practices mentioned earlier, as well as in several state UST regulations. EPA is proposing the reporting of all the following conditions within 24 hours because they are believed to represent important indications that a release has occurred. This requirement is satisfied by a telephone call. The situations requiring reporting a "suspected release" are:

- Testing, monitoring, or sampling results that exceed the specified limitations for release detection methods as set forth in today's proposed regulations;
- Unusual facility operating conditions including:

—Erratic behavior of regulated substance delivery/dispensing equipment,
—Sudden loss of regulated substance from the UST system,
—Unexplained presence of water in the tank, or
—Physical presence of the regulated substance or an unusual concentration of vapors in the immediate vicinity of the UST that are of unknown origin;

- Detection of regulated substance or any associated vapors in areas outside the immediate vicinity of the UST such as in soils, basements, sewers, utility conduits, or nearby surface water; and
- Any spill or overfill of a regulated substance that has entered the underground environment or surface waters, with the exception of small spills that can be immediately contained and completely removed.

The Agency is seeking public comment on the need to quickly report the above conditions. Of particular interest is the question of whether the unusual facility operating conditions proposed today are of sufficient concern or conclusive enough in nature to warrant immediate reporting. Are there other operating conditions that are indicative of a potential release requiring reporting? The reportable situations proposed today will result in some false reports if the equipment indicates a release although none has taken place. Should the owner and operator have more than 24 hours to determine, perhaps in coordination with the manufacturer, if the equipment is indeed operating correctly before reporting to the implementing agency?

Another important question is the reporting of spills and overfills. The Agency believes that spills are not an uncommon occurrence at many of the facilities in the regulated community. As was described earlier, today we are also proposing to require spill and overfill controls and procedures, with control equipment immediately applied at all new tanks and phased-in at existing tanks. The concern about spills reporting is that they appear to occur very frequently and generally in small quantities. The Agency believes very little threat is posed by the smaller spills if they are contained and completely cleaned-up, including contaminated surface soils.

The Agency is proposing a "reportable quantity" (RQ) approach to indicate to the owner or operator when reporting is necessary. This approach requires reporting of aboveground releases to land in excess of 25 gallons, and of aboveaground releases to water if they result in an oil sheen on the water, in accordance with the requirements of 40 CFR Part 110. The sheen test has been a useful trigger under Section 311 of the Clean Water Act for oil spills to navigable waters. A sheen is easily recognized and does not require the sometimes difficult determination of the volume of spilled petroleum. Further, it has been supported by scientific studies which have concluded that repeated and low level releases of oil may cause harm to aquatic environments. The choice of a 25-gallon reporting threshold is linked to data showing that this amount of petroleum is often left in the delivery lines of tanker trucks after product delivery to an UST, and to an analysis done for used oil when listing this waste as a RCRA hazardous waste was proposed. See the discussion of "Two Release Categories" in Section VI.F. of this preamble (for a more complete discussion of the rationale for selecting a 25-gallon reporting threshold).

Although reporting triggers have been established for aboveground releases, this does not relieve the owner or operator of the responsibility to undertake all other appropriate elements of the corrective action process under Subparts F and G for an aboveground release that is more or less than the reportable quantity. The Agency requests comments on the appropriateness of the proposed reporting cutoff of 25 gallons for aboveground releases to land and surface water.

*(2) Release Investigation and Confirmation At The Site (Section 280.51).* Some of the major shortcomings described above with less than immediate reporting by the owner or operator could be alleviated by providing a detailed set of standards and procedures in regulation for owners and operators to follow in the investigation and confirmation of suspected releases. However, EPA has determined that it is not possible to comprehensively cover in regulations the wide variety of possible situations that could occur with the investigation of UST releases. The Agency examined several approaches concerning the investigation and confirmation of releases.

In addition to an exact step-by-step investigation procedure, the Agency also considered an alternative approach that would not identify any procedures but rather would leave it completely to the implementing Agency to develop, on a site-by-site basis, requirements for release investigation and confirmation. Such an approach would provide much flexibility to the implementing agency, but would also provide the added burden of performing site-by-site determinations. EPA is concerned that such an approach could actually impede the timely implementation of suspected

release investigations because it would not allow initiative to be taken by owners and operators until they were certain as to their ultimate responsibilities based on a determination by the implementing agency.

Today EPA is proposing a third approach toward release investigation and confirmation: A basic, but not detailed, set of release investigation and confirmation requirements with notification of the suspected release to the implementing agency, so that the agency can have the opportunity to require specific confirmatory actions. After the immediate reporting of all suspected releases and reportable spills, the owner and operator must take one of possibly several routes to investigate and confirm a suspected release.

It should be emphasized that the confirmation provisions of the proposed regulations require UST owners and operators to initiate investigative actions when a suspected release is discovered. After the implementing agency is notified of a suspected release, it has the option under the proposed regulations to require a specific confirmation test to be performed by the owner and operator. The implementing agency has been provided the ability to select an investigative method that will produce the best results, because sometimes additional site-specific judgments are needed in the determination of the appropriateness of a particular confirmation test at a particular site. If such specific directions are not provided by the implementing Agency, the owner and operator must follow the procedure required by the proposed regulation. Of course, the owner and operator may undertake immediate corrective action rather than the release confirmation procedures under these proposed regulations.

Proposed § 280.51 establishes that a suspected release will need to be investigated by one of the following methods:

- A site-specific investigation, as required by the implementing agency, that determines whether a release has occurred impacting ground water or soils surrounding the excavation area. The purpose of this environmental assessment is to substantiate or disprove a release at that particular location.
- If a suspected release was detected within the interstitial area between the UST and the secondary barrier around it, an investigation must be performed to determine if the interstitial monitoring is working properly. For example, a double-walled tank may be investigated by the use of a second method of interstitial monitoring instead of tightness testing the tank or conducting soil borings and analysis outside the tank to substantiate or disprove the occurrence of a release;
- When a suspected release is identified by the failure of a tank and/or piping tightness test, an investigation that included all of the following steps would be sufficient to substantiate or disprove the presence of a release. A failure of any of these tests would be sufficient to substantiate a release has occurred for the purposes of initiating corrective action under Subpart F or G.
  - —Verification and reconciliation of any available inventory records to detect whether a discrepancy exists that exceeds the performance requirements set forth in § 280.41(c)(2) (5 percent of weekly flows through or 0.5 percent of monthly flow through);
  - —After isolating the piping from the tank, the piping fails or passes a retest that must be conducted within 7 days of the initial reporting of a suspected release to the implementing agency;
  - —After isolating the tank from the piping, the tank fails or passes a retest conducted within 7 days of the initial reporting despite excavating to the tank top and checking/tightening all loose fittings, vent pipes, or other UST system equipment; or
  - —Analysis of soil core samples indicates a level of hydrocarbon or chemical contamination in the unsaturated zone beneath the UST that would warrant corrective action in accordance with Subpart F or G.
- If a suspected release is identified by an inventory reconciliation discrepancy, or other unusual operating conditions, an investigation that evaluated all the following would substantiate or disprove the presence of a release. A failure of any of the tests would be sufficient to substantiate that a release has occurred:
  - —Tanks or piping fail a tightness test (conducted within 7 days of initial reporting) performed in accordance with § 280.41(c)(1); or
  - —Analysis of soil core samples indicates a level of hydrocarbon or chemical contamination in the unsaturated zone beneath the UST that would warrant corrective action in accordance with Subpart F or G.
- With approval by the implementing agency, the performance of an alternative investigation procedure that is no less determinative than any of the above approaches and is considered a more appropriate approach by the implementing agency for the suspected release conditions.

There are several important considerations that influenced the development of the above requirements. The first is an acceptance of tank tightness testing as a valuable tool for quickly evaluating the integrity of the UST. It is a procedure that can be performed rapidly, generally with little or no retrofitting of equipment, and should reliably identify large releases. However, this test is not completely determinative and cannot detect small release rates. Thus, where proposed and used as a method for investigating suspected releases, it must be backed up by the use of soil borings samples taken out of the unsaturated zone under the UST (or some equally determinative technique approved by the implementing agency). If both methods do not reveal a release condition, then the initial cause for concern about a suspected release can be discounted.

This regulatory approach is being proposed by EPA because it requires the owner and operator to rapidly begin and complete an investigation procedure (within 7 days) in the absence of specific direction from the implementing agency. However, EPA anticipates that this important interaction between the owner and operator and the implementing agency will often take place after the reporting required in § 280.50(a). In many situations this interaction is a necessary ingredient to establishing appropriate and expeditious measures unique to investigating and confirming that a release has taken place at a particular site. For example, sometimes the implementing agency may decide that a more rigorous examination of the ground water and soils surrounding the UST is needed at certain sites because of its nearness to public or private drinking water wells, or nearby places of human habitation (a public school or private residence, for example). Thus, today's proposal is intended to also allow for the development and use of special procedures or enforcement orders by the implementing agency in lieu of the specific investigation procedures proposed today, should they appear to be warranted by that agency to assure human health and the environment is protected.

The procedures proposed today generally require that two methods of measurement be used to corroborate whether a suspected release is actually a release requiring corrective action. Thus, for example, if a monitoring method has identified a suspected release, this can be verified by tank testing and soil borings, or ground water sampling and soils analysis, or any

other combination believed equally determinative by the implementing agency at that site. Tank testing and inventory controls, however, may not be sufficiently determinative because they may not be able to detect small releases.

Another important consideration is that particular methods of investigation may be unworkable, or may not be necessary, at certain sites. Therefore, today's proposal allows for the implementing agency to approve any investigative procedure believed to be no less determinative than any of the other methods allowed. For example, tank testing may prove unworkable in high water tables or at tanks with certain configurations and equipment. Therefore, other investigation techniques can be substituted by the implementing agency (for example, chromatographic mapping of the soil gas at the site). Also, there are situations where a full investigation may be unnecessary because, for example, the owner and operator has demonstrated to the satisfaction of the implementing agency that the original cause for suspecting a release was a result of a malfunctioning monitor which has been fixed and put back into operation. Finally, there may be situations where the implementing agency decides that the "suspected release" is in fact a release requiring an immediate site assessment and mitigating actions by the owner or operator as part of a corrective action under proposed Subpart F or G of the regulation. For example, a large discrepancy found through an inventory reconciliation or a large amount of product visible in an observation well may, in the judgment of the implementing agency, be sufficient evidence that a release has occurred and that further investigation would just delay needed corrective action.

*(3) Off-Site Impacts and Source Investigation (Section 280.52).* There is one other release investigation situation that is now commonly occurring and, therefore, is addressed by today's proposal. As stated earlier, releases are now often occurring (given the absence of release detection practices) without the owner or operator's knowledge. These releases are discovered off-site because of impacts to such things as nearby streams, buildings, utility lines or groundwater wells. However, there can be several possible sources in any one area where an impact has occurred. Therefore, a release can be verified but the source unknown.

An investigation is needed in these situations to identify possible sources of the release and to confirm and stop the actual source(s) from continuing to release regulated substances. Because each of these investigations are unique to the area of impact and will be directed by the implementing agency, today's proposal does not attempt to establish detailed procedures on how owners and operators must carry out any release investigation and confirmation activities. These are necessarily determined on a site-specific basis. However, today's proposal does obligate owners and operators to conduct investigations to identify the source of a known release. The same methods are expected to be used as those used when investigating a suspected release on-site under § 280.51. To protect human health and the environment, the implementing agency may require the owner or operator to test the tank or equipment for tightness or structural soundness or to conduct environmental testing to determine the magnitude, extent, and effect of the release.

**F. Corrective Action Requirements for Petroleum UST Systems**

Today's proposal sets forth separate corrective action regulations for UST systems that contain petroleum and those that contain hazardous substances. While the basic philosophy, objectives, and structures of the two sets of requirements are the same, EPA believes two distinct subparts addressing petroleum and hazardous substance UST systems are desirable as a means of avoiding confusion over which procedures are applicable to a particular site. The Agency solicits comments on this approach. Specifically, the Agency requests comment on whether the requirements should be integrated into one subpart in which only the differences in the two processes would be highlighted.

Corrective action is comprised of those activities required or otherwise necessary to respond adequately to a release from an UST that contains petroleum.[1] These requirements apply to regulated petroleum UST systems containing petroleum and such petroleum UST systems for which tank technical standards are being deferred (i.e., are subject to exclusions) by the Agency. This proposal divides specific regulatory requirements for petroleum UST corrective action into two stages.

Stage I consists of the immediate abatement actions that all owners and operators are required to take in response to a release from an UST containing petroleum. It incorporates relevant experience of state and local UST regulatory programs and some of the main features of these programs.

Stage II addresses requirements that specify longer-term corrective action measures that owners and operators must undertake if the implementing agency determines on the basis of submitted data and a site-specific risk assessment that additional corrective action is required to protect human health and the environment. Although owners operators will undertake the corrective action, the implementing agency will determine the measures necessary to protect human health and the environment.

The following sections discuss the steps owners operators must take to respond to a release and the complementary role of the implementing agency in overseeing the owner/operators' activities.

*1. Stage I: Immediate Corrective Action Steps*

a. Reporting Requirements

Section 9003(c)(3) mandates that EPA promulgate "requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank."

Based on available data, EPA believes that many petroleum UST releases and cleanups are currently not being reported to state and local authorities:

- A survey of UST release files in 50 states identified 12,444 state-reported releases.
- Another statistical study leads EPA to estimate that somewhere between 75,000 and 300,000 (5 to 20 percent of the million petroleum UST systems) may be leaking now or will leak in the near future.
- State and local cleanup officials have reported to EPA that typically over half of their work is triggered by reports

[1] The Agency proposes to apply the "hazardous substance" corrective action requirements to tanks containing both a petroleum and a hazardous substance if hazardous substances comprise 50% or more of the volume or weight of the total mixture. The Agency is interested in commenters' views of the feasibility (especially for a testing method) of using a concentration threshold to determine when such a mixture would be regarded as principally petroleum or principally hazardous substance, and, therefore, subject to the respective corrective action requirements. The Agency recognizes that several petroleum products (e.g., gasoline) inherently contain certain levels of hazardous substances (e.g., benzene, toluene, xylene), but regards these to be part of "petroleum" for the purposes of Subtitle I. The Agency requests comments on the frequency of, problems with, and suggested approach to corrective action requirements for UST systems containing both petroleum and a hazardous substance. The Agency believes that the largest group of such tanks contain waste oil mixed with hazardous substances (e.g., solvents).

of "nuisance conditions"—indicators of leaks from unidentified UST sources.

*(1) Two Release Categories.* To address the type of releases to be reported and the reporting trigger for those releases, the Agency proposes to classify releases into two categories: Releases below ground and releases aboveground. A release includes releases to secondary containment devices because the Agency believes such reporting is necessary for the Agency to ensure that released materials are removed from the secondary containment area in a timely fashion and that it is aware of any tank system repairs that may be necessary to prevent further releases from the primary tank system.[2]

Owners and operators must report all below ground petroleum releases of any amount that have been detected using the leak detection methods required by section 9003(c)(1) and described in Section VI.D of this proposal, or using any other indication of a release, such as visual observation. Although reporting of all below ground releases places a substantial reporting burden on owners and operators, the Agency views this requirement as an essential part of effective implementation and enforcement of the statutory requirements and objectives of Subtitle I because determination of the quantity of a below ground release is generally not possible.

For aboveground releases, however, EPA proposes a "reportable quantity" (RQ) approach. Above-ground releases to land must be reported if they exceed 25 gallons, and aboveground releases to water must be reported if they result in an oil sheen on the water, in accordance with the requirements of 40 CFR Part 110.

This approach recognizes the potentially high frequency of small aboveground spills (and, therefore, the potentially large reporting burden) and their limited environmental impact. Nonetheless, the Agency believes knowledge of frequent, repetitive, small releases of petroleum may indicate possible tank system and product management problems worthy of concern if allowed to accumulate. In addition, the Agency is concerned about the potential for a series of small aboveground releases of petroleum to effectively invalidate the use of some release detection methods.

The choice of the 25-gallon reporting threshold for petroleum is based on two separate rationales. The first is linked to data that show that this amount of petroleum is often left in the delivery lines of tanker trucks after product delivery to an UST. If this residual product cannot be returned to the truck, it has often been drained out around the fill pipe and spilled into the excavation area. The frequency of this kind of "routine" spillage seems to be high and of a sufficient magnitude to warrant a reporting requirement, while avoiding the requirement to report releases for much smaller quantities.

The 25-gallon reporting threshold is also based on an analysis done in establishing a CERCLA RQ for used oil when it was proposed for listing as a RCRA hazardous waste. Used oil was examined in this analysis for its aquatic toxicity, mammalian toxicity, ignitability, reactivity, and chronic toxicity. This analysis indicated an RQ of 100 pounds or about 20 gallons. As the only oil product so analyzed to-date, this analysis for used oil represents the best basis for establishment of a reporting threshold for aboveground releases to land associated with petroleum UST systems. Public comment is requested on the use of other reporting thresholds that are less than or greater than the 25 gallon threshold selected.

A reporting threshold does not reflect a determination that a release will necessarily present a hazard in that quantity and not a hazard in any smaller quantity. The Agency has found that the actual hazard will vary with the unique circumstances of the release. Extensive analysis is necessary to determine the hazard presented under a number of possible circumstances. The RQ analyses and resulting values represent a determination only of possible or potential harm.

Although reporting triggers have been established for aboveground releases, this does not eliminate the responsibility of the owners and operators to undertake all other appropriate elements of the UST corrective action process described in the proposed rule for an aboveground release that is less than the reportable quantity.

EPA solicits comments with supporting data on these two release categories, including the appropriate reporting threshold for aboveground releases to land and surface water.

*(2) Reporting Within 24-Hours.* Suspected releases shall be reported to the implementing Agency within 24 hours. This allows implementing officials to advise the owners and operators of the appropriateness of corrective action steps already taken and to suggest additional measures that could be implemented. This approach also ensures that the implementing agency can move quickly to assist a private party in taking corrective action or, in imminently dangerous situations, to intervene directly itself under the authority provided by Subtitle I or an approved state program. This capability for direct government response has been enhanced by the recent Superfund Amendments and Reauthorization Act of 1986, which established a fund for federal response to releases from petroleum UST systems. (Implementation of that authority is addressed below in Section VII.C. of this Preamble.)

b. Initial Abatement Requirements

If a release is confirmed in accordance with § 280.51 or 280.52, owners and operators must take all necessary actions to abate acute risks to human health and safety. The proposed requirements reflect the approaches taken in emergency responses under section 311 of the Clean Water Act and Superfund cleanups, responses to releases from hazardous waste tanks (Sections 264.196 and 265.196), as well as the experience and practices of existing state UST programs. At a minimum, these actions include stopping the release and mitigating fire and explosion hazards. Stopping the release means, at a minimum, removing as much petroleum from the tank system as is necessary to prevent further release and to allow inspection and repair of the tank system. Mitigation of fire and safety hazards may include contacting local fire and public safety officials for assistance; evacuating affected persons; installing venting systems; and recovering product leaking into subsurface structures, such as basements and sewers.

Once immediate health and safety concerns have been addressed, owners and operators must take additional steps to remove visibly contaminated soil in the excavation zone and in the immediately surrounding area.

Next, owners and operators must report these initial corrective action measures to the implementing agency. If corrective actions are taken immediately upon suspicion or detection of the release, the release and corrective action reports can be made at the same

[2] The Agency believes that the reporting of releases to secondary containment areas provides benefits for the Subtitle I regulatory program for the reasons cited. The Agency is aware, however, that such notification is presently not required for similar releases from Subtitle C-regulated tanks (40 CFR 264.196 and 40 CFR 265.196). The Agency has concluded that this difference in reporting requirements is necessary because the Subtitle I program lacks the opportunity to impose additional controls through a permitting process for tanks or facilities operating waste tanks such as is available for many regulated tanks under Subtitle C of RCRA.

time. However, initial corrective action measures must be reported no later than 20 days after a release is confirmed. If appropriate, this report should include verification of tank repair or closure.

Owners and operators are also responsible for conducting an investigation to determine the presence of free floating product on the water table. This investigation may rely on excavations, borings, or monitoring wells to identify the amount of free product, if any, present in the release area. Data generated should be sufficient to determine the need for free product removal activities. Finally, owners and operators are required to assemble from investigations of the release area or other sources, any information that the implementing agency considers necessary for completing the initial abatement actions described in these paragraphs. Possible data requirements are specified in the rule.

c. Free Product Removal

If free product is detected floating on ground water, the owner or operator must remove free product to the maximum extent possible. Unless alternative instructions are provided by the implementing agency, the owner or operator must submit a report for free product removal to the implementing agency within 30 days of confirming the release.

Removal of free product is proposed for inclusion as a Stage I activity (which will be performed at all sites where free product is discovered). The Agency believes, based primarily on state UST program experience, that mitigation of present and potential fire and safety hazards due to free product will require removal of the free product in virtually every instance. This requirement to remove floating free product to the maximum extent practicable in all cases reflects EPA's beliefs that: (a) Free product is a safety hazard if left uncontrolled, (b) free product is a continuing source of dissolved ground-water contamination, (c) free product removal is a relatively inexpensive corrective action measure, and (d) free product removal is a common practice today in nearly all UST release cases studied by the Agency.

d. Additional Site Investigation

Owners and operators are also responsible for investigating the nature and size of the release to determine the extent of additional soil and ground water contamination. This investigation may include collecting and analyzing soil samples, testing the ground water to define the nature and extent of any dissolved contamination plume, and testing adjacent drinking water supplies. While the Agency expects that collection and analysis of soil samples will be a part of virtually all such investigations, the Agency believes that ground water sampling and analysis may not be required at some sites (e.g., sites without fractures, faults or similar heterogeneous geological features) if the owners' and operators' investigation of the extent of soil contamination demonstrates that such contamination does not extend to or come in contact with the water table.

When conducting additional site investigations, owners and operators should make use of data collected during investigations conducted previously or concurrently for purposes other than corrective action. For instance, as discussed previously, § 280.40(b) of the rule requires that a site assessment be conducted to ensure that the method of external release detection selected is appropriate for the site and is designed and installed properly. Since studies of the magnitude and extent of contamination as well as the presence of free product are necessary for determining how well external release detection monitoring will work at a particular site, it is likely that data generated during a release detection site assessment will be applicable to additional site investigations conducted during corrective action. Besides, site investigation activities conducted during release detection and corrective action phases should be coordinated with efforts to assess the excavation area around the UST system prior to permanent tank closure. The activities required for this site assessment are specified at § 280.70(d) of the rule and resemble the requirements for release detection and corrective action investigations.

Information collected by owners and operators during free product removal and site investigations may be used by the implementing agency to determine whether additional information and/or a Corrective Action Plan for additional soil and/or ground water cleanup is necessary.

The above requirements comprise Stage I of the UST corrective action for petroleum tanks required by this proposal. These minimum requirements are applicable to all releases. These regulatory steps are further illustrated below in Table 3. Stage II of these proposed corrective action requirements are dependent on the risk presented by the release and are described below.

BILLING CODE 6560-50-M

*Table 3*

## Corrective Action Process for Petroleum Underground Storage Tanks

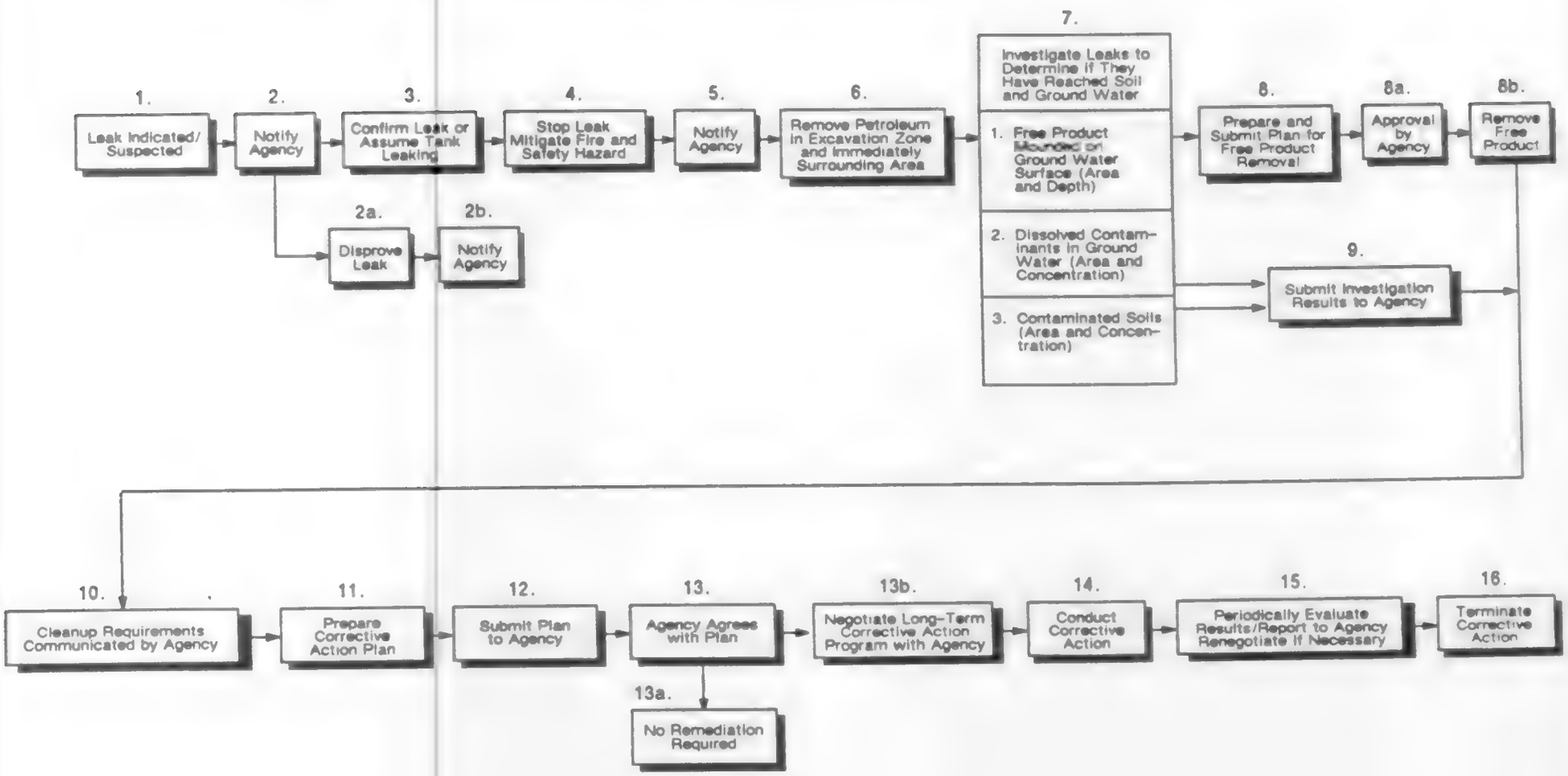


BILLING CODE 6560-50-C

*2. Stage II: Longer-Term Corrective Action*

Generally, reporting releases, abating acute risks, and free product removal are steps that must be taken in all cases of petroleum UST releases. After these steps, variations in the response to a release are likely to occur. Variations in the determination and implementation of appropriate longer-term remedial corrective action plans are discussed below.

To establish appropriate cleanup levels, EPA has studied various options and has evaluated state UST program experience. As a result, EPA proposes a site-specific approach for petroleum UST corrective action regulations. (For a full discussion of the options, see Section V of this Preamble.) This site-specific approach will require a risk assessment for each site to determine if and to what extent soil or ground-water contamination threatens human health or the environment.

a. Establishing a Corrective Action Plan

After the owner or operator has submitted the results of the previously required site investigations of possible soil and ground-water contamination (as described above), the appropriate implementing agency will conduct its analysis—a risk assessment—of the submitted site investigation data. Based on its risk assessment, the implementing agency will establish the requirements for additional cleanup as part of a cleanup plan that must be implemented by the owner or operator. EPA believes that some variability in how the results of the risk assessment process are used to establish cleanup requirements is required to reflect the variability in UST release sites. The Agency, however, intends to develop several tools designed to assist the implementing agency in conducting the risk assessment.

This required risk assessment must be an evaluation of the site-specific risk to human health and the environment based on data drawn from the particular site. At a minimum, the risk assessment should:

- Consider the quantity, toxicity, persistence, and mobility of the material released and include selection of indicator chemicals for use in the analysis;
- Determine the potential pathways of exposure and the number of persons who would be exposed to contamination at various intensities and durations;
- Estimate the concentrations of indicator chemicals at the exposure points identified;
- Estimate human intakes and exposures due to background sources and the release;
- Characterize the resulting risk, including the uncertainties in the risk assessment; and
- Consider the technological feasibility of corrective action measures.

On the basis of the risk assessment, the implementing agency will set the site-specific level that the owners or operators must achieve to clean up contaminated soil and ground water. Cleanup levels based on site characteristics must be identified for all affected media, including subsurface soils, ground water, and surface water. In selecting appropriate clean up levels through the risk assessment process the implementing agency may incorporate consideration of available health-based standards or a state's ground-water classification system (or the EPA's Ground-Water Protection Strategy).

The owner or operator must then submit to the implementing agency for review, in accordance with procedures established during approval of the implementing agency's program, a Corrective Action Plan for achieving the cleanup levels established through the risk assessment. An implementing agency may require owner or operator to commence cleanup before a Corrective Action Plan is approved if such action is necessary to protect human health and the environment. After the implementing agency has approved the Plan, the owner or operator must carry out the Plan. Cleanup could include excavating and repairing the tank (if this was not done as part of initial corrective action); containing the dissolved contamination plume with trenches and barriers; excavating additional contaminated soil; providing alternative drinking water supplies to area residents or applying point-of-use controls; restoring the ground-water source; restricting the use of the contaminated ground water; or allowing natural cleansing of an aquifer. Selection of a proposed remedy is the responsibility of the owners and operators, but the implementing agency must approve of the proposed remedy.

During the cleanup, the owner/operators must periodically evaluate the effectiveness of the remediation process. In some cases, the cleanup plan may be modified after these periodic evaluations. For example, existing state UST program experience indicates that the UST corrective action measures initiated with cleanup targets, which were based on the results of the risk assessment process, may sometimes reach a level at which progress toward the cleanup targets is no longer being made. In these situations, modification of the Corrective Action Plan may be appropriate to reassess the choice of a remedial measure or to allow monitoring procedures to be substituted for additional remedial measures, as long as conditions remain stable or improve.

*3. Reporting Requirements*

The Agency proposes that the owner or operator report all corrective actions, including all immediate response actions taken after a release is suspected or detected and all steps in longer-term corrective action. However, this proposed regulation does not specify the number of corrective action reports to be submitted or the method of reporting. EPA believes these requirements are best left to the discretion of the implementing agency, but is interested in receiving comments suggesting other approaches.

*4. Responsibilities of Implementing Agencies*

Implementing agencies must monitor the actions required of petroleum UST owners and operators. For example, implementing agencies are responsible for the review of all reports and summaries submitted by owners and operators. These reports include release reports, immediate abatement action reports, site investigation summaries, free product removal plans, Corrective Action Plans, and periodic progress reports on implementation of the Corrective Action Plan. The implementing agency may also assist in or undertake immediate abatement actions in response to a release.

After the owner or operator submits results of the site investigation, the implementing agency is responsible for performing and evaluating the site-specific risk and exposure assessment. On the basis of this assessment, the implementing agency determines the cleanup levels that the owner/operators must attain through response actions described in the Corrective Action Plan. Cleanup levels will be identified for all media affected by the release, including subsurface soil, ground water, and surface water. The implementing agency is also responsible for all oversight of the development and implementation of the Corrective Action Plan by owner and operators, and for the conduct of any public notice and/or public meetings on Corrective Action Plans as established in the public participation requirements of this rule (or under an approved state program).

**G. Corrective Action Requirements for Hazardous Substance UST Systems**

Corrective action is comprised of those activities required or otherwise necessary to respond adequately to a release from an UST system containing hazardous substances. UST systems subject to these requirements include regulated UST systems containing hazardous substances and UST systems containing hazardous substances for which tank technical standards are being deferred by the Agency.

This proposal divides specific regulatory requirements for UST hazardous substance corrective action into two stages. The first stage consists of the abatement actions that all owners and operators are required to take in response to a release from USTs containing hazardous substances. It follows requirements established for a response to a release from a hazardous waste tank regulated under Subtitle C of RCRA (40 CFR 264.196 and 265.196). Stage two addresses requirements that specify longer-term corrective action measures that owners and operators must undertake if the implementing agency determines on the basis of submitted data that additional corrective action is required to protect human health and the environment. Although owners and operators will undertake the corrective action, the implementing agency may intervene under the authority provided in RCRA or CERCLA, or as provided in an approved state program, if necessary to ensure that adequate measures are taken to protect human health and the environment.

The following sections discuss the steps owners and operators must take to respond to a release and the complementary role of the implementing agency in overseeing the owners' and operators' activities.

*1. Stage I: Immediate Corrective Action Steps*

a. Reporting Requirements

As with releases from USTs containing petroleum, to address the type of releases to be reported and the reporting trigger for those releases, the Agency proposes to classify releases into two categories: releases below ground and releases aboveground. A release includes releases to secondary containment devices because the Agency believes such reporting is necessary for the Agency to ensure that released materials are removed from the secondary containment area in a timely fashion and that it can be made aware of any tank system repairs that may be necessary to prevent further releases from the primary tank system.

Owners and operators must report all below ground hazardous substance releases of any amount that have been detected using the leak detection methods described in Section VI.D of this proposed rule, or using any other indication of a release, such as visual observation. Although reporting of all below ground releases places a substantial reporting burden on owners and operators, the Agency views this requirement as an essential part of effective implementation and enforcement of the statutory requirements and objectives of Subtitle I because determination of the quantity of a below ground release is generally not possible.

For aboveground releases, however, EPA proposes to base UST reporting on the reportable quantities developed under CERCLA (40 CFR Parts 117 and 302). The CERCLA RQs (i.e., reporting thresholds that warn of possible or potential hazard that should be investigated) already apply to UST releases of hazardous substances since such releases must also be reported to the National Response Center under CERCLA section 103. Although reporting triggers are proposed for notification of an aboveground release, this does not eliminate the responsibility of the owners and operator to undertake UST corrective action as required in today's proposed rule for all aboveground releases, including those that are less than the reportable quantity.

EPA solicits comments with supporting data on these two release categories, including using the reportable quantity thresholds of CERCLA to require reporting to the UST implementing agency as well as the National Response Center.

b. Initial Abatement Requirements

When a release is reported in accordance with Section 280.50, owners and operators must take all necessary actions to abate acute risks to human health and safety. The proposed requirements reflect the approach adopted for response to releases from hazardous waste tank systems regulated under RCRA. At a minimum, these actions include stopping the release and removal of any remaining hazardous substances as is necessary to prevent further release and to allow inspection and repair of the tank system to be performed. Owners/operators must take additional steps to prevent further migration of an aboveground release to soils or surface water, and remove visibly contaminated soil from an aboveground release.

Next, owners and operators must report these initial corrective action measures to the implementing agency. If corrective actions are taken immediately upon suspicion or detection of the release, the release and corrective action reports can be made at the same time. However, initial corrective action measures must be reported no later than 20 days after a release is confirmed. If appropriate, this report should include verification of tank repair or closure.

Owners and operators are also responsible for investigating the nature and size of the release to determine the extent of additional soil and ground-water contamination. This investigation may include collection and analysis of soil samples, installing of monitoring wells to identify the presence of free product, testing the ground water to define the nature and extent of any dissolved contamination plume, and testing adjacent drinking water supplies. This information, or other data that may be required, must be sufficient for the implementing agency to make a decision with respect to what type and degree of additional corrective action, if any, may be appropriate.

The above requirements comprise Stage I of the UST corrective action for hazardous substance tanks required by this proposed rule. These minimum requirements are applicable to all releases. Stage II actions of these proposed corrective action requirements are dependent on the risk presented by the release and are described below.

*2. Stage II: Longer-Term Corrective Action*

Generally, stopping the releases, release reporting, and containment of visible contamination are steps that must be taken in all cases of releases of hazardous substances from an UST. After these steps, variations in the response to a release are likely to occur. Variations in the determination and implementation of appropriate longer-term remedial corrective action plans are discussed below.

EPA proposes a site-specific approach for hazardous substance UST corrective action regulation. (For a full discussion of the options, see Section V of this Preamble.) This site-specific approach will require an assessment for each site to determine if soil or ground-water contamination threatens human health or the environment. As discussed in the section on additional site investigations for purposes of petroleum UST corrective action, owners and operators conducting additional site investigations for purposes of hazardous substance UST corrective action should utilize

relevant data generated during site investigations conducted for external leak detection and tank closure purposes.

a. Establishing a Corrective Action Plan

After an owner and operator has submitted the results of the previously required site investigations of possible soil and ground-water contamination (as described above), the appropriate implementing agency will conduct its analysis of the submitted site investigation data. The implementing agency may require additional assessments of the release to be performed. Based on its assessment, the implementing agency will establish the requirements for additional cleanup as part of a corrective action plan.

On the basis of the assessment, the implementing agency will set the site-specific requirements for free product removal and/or cleanup of contaminated soil and ground water that the owner and operator must attain as part of the corrective action plan. Clean-up levels based on site characteristics must be identified for all affected media, including subsurface soils, ground water, and surface water. In selection of appropriate clean-up levels through the risk assessment process, the implementing agency may incorporate consideration of available health-based standards or a state's ground-water classification system.

The owner and operator must then submit to the implementing agency for its review a plan for free product removal and for achieving the clean-up levels established through the risk assessment. After the implementing agency has approved the plan, the owner and operator must carry out the plan. Cleanup could include excavating and repairing the tank (if this was not done as part of initial corrective action); removing free product; containing the dissolved contamination plume with trenches and barriers; excavating additional contaminated soil; providing alternative drinking water supplies to area residents or applying point-of-use controls; restoring the ground-water source; restricting the use of the contaminated ground water; or allowing natural cleansing of an aquifer. Selection of a proposed remedy is the responsibility of the owner and operator, while the implementing agency must approve the proposed remedy.

During the clean-up, the owner and operator must periodically evaluate the effectiveness of the remediation process. In some cases, the clean-up plan may be modified after these periodic evaluations. For example, in some instances the UST corrective action measures initiated with cleanup targets based on the results of the assessment process may reach a level at which progress toward the cleanup targets is no longer being made. In these situations, modification of the plan may be appropriate to reassess the choice of a remedial measure or to allow monitoring procedures to be substituted for additional remedial measures as long as conditions remain stable or improve.

*3. Reporting Requirements*

The Agency proposes that owners and operators report all corrective action, including all immediate response actions taken after a release is suspected or detected and all steps in longer-term corrective action. However, the proposed regulation does not specify the number of corrective action reports to be submitted or the method of reporting. EPA believes these requirements are best left to the discretion of the implementing agency, but is interested in receiving comments suggesting other approaches.

*4. Responsibilities of Implementing Agencies*

The responsibilities of the implementing agency for tanks storing hazardous substances are similar to those for tanks storing petroleum.

**H. Removal From Use, Temporary Closure, and Permanent Closure (Section 280.80)**

a. Overview

When a UST reaches the end of its useful life, it must be permanently closed. Improper closure or abandonment of a UST may contaminate the environment and endanger the public health.

EPA's *State Release Incident Study* identified approximately 300 incidents implicating abandoned UST systems as the source. In addition, discussions with state officials suggest that many more improperly abandoned UST systems throughout the nation are leaking or may leak in the future. EPA believes that requirements for the proper closure of UST systems is necessary to prevent future releases from abandoned tanks.

There are two methods to permanently close a UST: Removal from the ground or closure in place. The choice of method depends on the particular site, the applicable state and local regulations, and financial considerations.

Both of these methods for permanent closure have advantages and disadvantages. Closure in place typically costs less than removal from the ground, but it is difficult to remove all product and residuals from the buried tank and to completely fill the tank with an inert material. Future construction at the site may be hampered by the presence of a UST filled with concrete or sand. Tank removal avoids these problems, but it costs somewhat more and creates a potentially dangerous situation when the tank's vapors are purged into the air. Disposal of removed tanks also presents a problem in many areas of the country.

b. Current Practices

Of the eighteen states with existing regulations for permanent closure, nearly all require the reporting of closure to the regulating authority and the removal of all product from the UST. Tanks closed in place must be filled with an inert material. Tanks closed by removal must be purged of vapors on site and either rendered useless before disposal or cleaned and prepared for reuse. Beyond this consensus, however, state regulations vary greatly. Some states allow closure in place only when tank removal is impossible or impractical. Some mandate precision testing of tanks prior to closure in place to ensure that the tank is not leaking.

Most states that address permanent closure also regulate temporary closure. These regulations allow a UST a limited time to remain out of service before it must be returned to service or permanently closed. The time limit and accepted procedures for temporary closure vary. Some states allow product to remain in the tank; others require the tank to be empty during temporary closure. Still others require that product be removed from the tank and replaced with water and a corrosion inhibitor.

There are also existing industry consensus codes, such as NFPA 30 and API 1604, which recommend procedures for permanent closure. Although these codes should ensure containment of product, they could allow a tank owner to literally cover up prior releases and leave a site that could cause future environmental contamination.

c. Today's Proposal

Today, EPA proposes a regulatory approach that builds on these existing consensus codes and state regulatory approaches. This approach will also require owners and operators to conduct a limited site assessment at the time of permanent closure. The advantage of this approach is that it will prevent contamination problems from being covered up at closure. With numerous closings of UST systems expected over the next five to ten years, EPA believes that it is important that owners and

operators of UST systems determine if there is a contamination problem before they walk away from these sites.

The proposed regulatory approach in 280.80 covers tanks temporarily out of service, and the temporary and permanent closure of tank systems. These are the topics covered by most state regulations. In summary, any tank that contains product is subject to release detection requirements regardless of whether the tank is in service. Tanks out of service for a period of time may become a receptacle for illegal dumping of hazardous materials unless the fill and delivery lines are capped. The Agency is proposing that after three months tanks must be temporarily closed, leaving only the vent line open. EPA solicits comments on the appropriateness of this time frame, and especially hopes to elicit data showing the environmental risks associated with different schedules.

At some later point, if the UST is not going to be put back in service, the system should be permanently closed. EPA believes that two years is a reasonable amount of time for a tank owner or operator to decide whether to permanently close or to re-use the tank. During this time the environment will remain protected by lines being capped and continued release detection. The Agency, however, needs to put a limit on how long "temporary" should be, and solicits comment on the 24 month limit proposed today.

*(1) Temporary Closure (Sections 280.80 (a) and (b)).* If a tank system is taken out of service for any period, the owner and operator must continue to maintain the corrosion protection system as well as monitor or test for leaks as required by the leak detection regulations. If a leak is detected, release investigation and corrective action regulations will apply.

A tank system out of service for 3 to 24 months must be temporarily closed. The owner or operator must:

- Continue monitoring for leaks;
- Leave the vent line open and functioning;
- Cap and secure all other lines, pumps, manways, and ancillary equipment;
- Notify the implementing agency of a return to service or permanent closure.

*(2) Permanent Closure (Sections 280.80(c)–(f)).* If a tank system is taken out of service for over 24 months, it must be permanently closed.

Today's proposal requires than any tank system that is taken out of service permanently must be removed from the ground or be closed in place. If the tank is removed, the owner and operator must:

- Remove all flammable liquids from the tank system;
- Remove all pipes from the UST; and
- Purge the UST of all hazardous vapors before removal and disposal.

If the tank is closed in place, the owner and operator must:

- Remove all flammable liquids from the tank system;
- Disconnect or cap all pipes; and
- Fill the tank system completely with an inert solid material.

The above steps are widely-accepted industry closure practices and are reflected in national consensus codes such as NFPA 30.

For permanent closure, EPA is proposing an additional step beyond the current industry recommended practices. The owner or operator must assess the site for contamination from the tank.

The use of release monitoring methods that utilize sensors external to the tank will meet this requirement. The owner or operator may also use such techniques as gas chromatograph mapping or the analysis of ground water or soil core samples for evidence of contamination by released product.

The purpose of this site assessment is to ensure that there is a clean site at closure. If this site assessment indicates that a release has occurred, the owners operator must perform corrective action in accordance with applicable regulations in Subparts F and G.

In an effort to keep owners and operators from improperly closing UST systems before these proposed regulations become effective and to combat contamination from UST systems improperly abandoned in the past, the Agency proposes that the closure provisions be applicable to UST systems taken out of operation prior to the effective date of these regulations. Thus, the proposal requires that UST systems that are improperly closed prior to the effective date of these regulations be revisited and properly closed. All UST systems improperly closed before the effective date of the final regulation must therefore be either removed or filled with an inert substance. There are no proposed requirements for UST systems properly closed in the past.

All owners and operators who improperly closed UST systems before the effective date of the regulation must, in addition to properly closing their systems, perform a site assessment and notify the implementing agency.

Congress expressed its concern for abandoned tanks by including tanks closed in place within Subtitle I's jurisdiction. The Agency believes that such tanks must be closed properly but believes that owners and operators who followed the NFPA code and the recommended practices described in API 1604 when they closed their tank systems, representing the state-of-the-art at the time, need not be required to revisit their tanks and conduct the site assessment required for improperly closed systems. EPA specifically solicits comments on the proposal to exempt tanks that were closed in accordance with API 1604 and NFPA 30 from the site assessment requirements.

d. Closure Records (Section 280.80(g))

EPA is proposing some basic requirements concerning recordkeeping that will ensure the closure requirements in 280.80 are being complied with. Section 280.80(g) requires that the sampling, testing, or monitoring results required during temporary closure (under § 280.80 (a) and (b)) be maintained for at least one year. Section 280.80(g) also requires that a record of the results of the area assessment performed for closure under § 280.80(d) be maintained for at least 3 years after permanent closure is completed. This closure record consists of the results of all tests, soils samples analysis, site inspections, or other site assessment methods required by the implementing agency. This record is instrumental in demonstrating that closure was performed properly. The proposed regulation also addresses the question of where records can be kept after UST system closure. In many instances, this will be conveniently accomplished at the closed site by either the owner and operator who caused the UST system to be permanently closed, or the new site owner and operator. In some instances, for example with the cessation of all operations on the site, this record may have to be kept off-site. However, this record must be made immediately available at the request of the implementing agency. The proposal also allows owners and operators the alternative of mailing a copy of these assessment results to the implementing agency, particularly if the records cannot be maintained at the closed facility.

## VII. RELATIONSHIP TO OTHER ASPECTS OF THE UST PROGRAM

### A. Interim Prohibition

Section 9003(g) of RCRA Subtitle I sets forth requirements for tank systems installed between May 7, 1985 and the effective date of the final rules resulting from today's proposal. During this period, UST installations used to store regulated substances must be corrosion protected, made of noncorrodible materials, or otherwise designed and

constructed to prevent releases during the operating life of the facility due to corrosion or structural failure. The tank material(s) of construction must also be compatible with the substance(s) to be stored.

The standards for new tank systems in today's proposed rules (as discussed in Section VI of this Preamble) are designed to modify and expand upon the Interim Prohibition requirements. The proposed rules include design, construction, installation, release detection, and compatibility standards for new tank installations. The Interim Prohibition requirements will continue in place until the effective date of the final rules when the standards for new tanks will replace the Interim Prohibition standards for most new UST systems. The Interim Prohibition will, however, remain in effect for those tanks which have been deferred from coverage under the technical standards in Subpart A (i.e., sumps, hydraulic lifts, bulk tanks, radioactive waste tanks, tanks containing electrical equipment, used oil tanks, and wastewater treatment tanks).

**B. Notification**

On November 8, 1985, EPA published the Final Rule on Notification Requirements for Owners of Underground Storage Tanks (50 FR 46602). A form to be used for the required notification was included as part of the rule.

The UST rules and standards for new tanks proposed today are not intended to affect these established notification requirements except to add to the information required to be submitted with the notification (see Section VI.B.). Owners of existing UST systems were required to notify their designated state agencies by May 8, 1986. Owners of new or replacement UST systems must notify their designated state agencies within 30 days of bringing the tank into use by submission of the November 8, 1985 federal form, or an approved alternate state notification form.

Section 9002(a)(6) of RCRA requires that, beginning thirty days after the issuance of the final new tank performance standards, and for 18 months thereafter, any person who sells a tank intended to be used in an UST system must advise the tank purchaser of the owner's notification requirements. This requirement would begin after the finalization of the new tank performance standards that are being proposed today.

**C. Leaking Underground Storage Tank Trust Fund**

Amendments to Subtitle I of RCRA recently enacted as part of the Superfund Amendments and Reauthorization Act of 1986 (SARA) provide for a Leaking Underground Storage Tank Trust Fund. The amendments provide funds for cleanup of petroleum spills from UST systems and give EPA, and states that enter into a cooperative agreement with EPA, the authority to respond to releases of petroleum from UST systems. These amendments to RCRA were necessary because no other federal environmental program includes specific authority for response to petroleum UST releases, although releases of petroleum affecting navigable waters can be responded to under section 311 of the Clean Water Act.

The amendments provide that the Administrator may issue an order requiring corrective action prior to the promulgation of final corrective action regulations under Subtitle I. After the promulgation of the corrective action regulations being proposed today, the Administrator may use this same order authority, under section 9003, as well as the enforcement authority of section 9006, to require owners or operators to undertake corrective action.

The Leaking Underground Storage Tank Trust Fund will be financed by taxes on motor fuels to pay for response costs in a limited set of circumstances. Before the effective date of the final corrective action rules, the Administrator, or states under cooperative agreements, may use the Fund to pay for a particular corrective action whenever that action is necessary to protect human health and the environment.

After the effective date of the corrective action regulations, the amendments provide for the use of the Fund primarily where the financial resources of the owner or operator are not available. In some cases, an identifiable and solvent owner or operator may be in compliance with all UST financial responsibility requirements (discussed elsewhere in today's **Federal Register**) but lack financial resources to pay the entire cost of a response. In those cases, the Administrator or a state with a cooperative agreement is authorized to use the Fund to pay the costs that exceed the level of financial responsibility required of the owner and operator by the final financial responsibility regulations.

If the owner and operator has failed to maintain the required level of financial responsibility, the Trust Fund may *not* be used, unless: (1) The owner or operator is insolvent; (2) there is an imminent and substantial threat to human health or the environment; or (3) there is a need to provide alternative water supplies or relocation of residents. In all other instances the Administrator, or state (under a cooperative agreement), can use the order authority provided by the Trust Fund and section 9006, to require corrective action by the responsible party prior to the use of the Trust Fund.

Before the effective date of the final corrective action regulations, cleanups carried out using the Trust Fund will be based on guidance issued by EPA. After the effective date of the final regulations, cleanups under the Trust Fund must be conducted in accordance with the corrective action regulations.

**D. Exempted Tank Studies**

The regulations proposed today do not apply to certain tank systems that were exempted under section 9001 of Subtitle I. Section 9009 of Subtitle I requires that EPA conduct a study of several of these systems and report to Congress by November 8, 1987. The report to Congress will include recommendations as to whether these tanks should be regulated in the future.

The Report to Congress will cover the following exempted tanks whose volume, including piping, is at least ten percent below ground:

- Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes, and
- Tanks used for storing heating oil for consumptive use on the premises where stored.

## VIII. RELATIONSHIP TO OTHER AGENCY PROGRAMS

This section discusses the relationship of today's proposed rules to certain other EPA regulatory programs. This discussion is for informational purposes only; no new requirements are being proposed.

**A. CERCLA**

Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund) requires development of a list of national priorities among known sites with releases and threatened releases of hazardous substances, pollutants, and contaminants. The National Contingency Plan (40 CFR Part 300) regulates development of the National Priorities List (of sites with releases) as well as appropriate

responses to the most serious releases. These regulations pursuant to CERCLA currently apply to releases of CERCLA-designated hazardous substances from underground storage tanks. CERCLA, however, does not apply to releases of petroleum from USTs or other sources.

Releases of hazardous substances from UST systems may require removal or remedial action responses by federal or state agencies, in accordance with 40 CFR Part 300. Some UST releases of hazardous substances are already included in the National Priorities List. When the final rules resulting from today's proposal become effective, owners of sites with releases from USTs containing nonpetroleum regulated substances are expected to be subject to the corrective action provisions of these rules and, in selected cases, the removal or remedial action measures of 40 CFR Part 300.

Under section 102(a) of CERCLA, EPA has promulgated regulations (40 CFR Part 302) that identify hazardous substances and quantities of releases of these hazardous substances that must be reported to the National Response Center. Those regulations contain reporting requirements for releases equal to or in excess of the established reportable quantities (RQs). Thus, UST releases of hazardous substances that exceed the RQs set forth in 40 CFR Part 302 will continue to be subject to those CERCLA reporting regulations, as well as any reporting requirements under this rule. UST releases of hazardous substances that are less than the reportable quantity will be subject to the release reporting requirements in the final published version of today's proposed regulations.

These provisions of CERCLA will not impact the vast majority of UST facilities because most facilities store only petroleum and thus are not subject to CERCLA requirements. However, for UST facilities storing regulated hazardous substances, certain releases will continue to be subject to CERCLA requirements as well as the final published version of today's proposed rules.

**B. Hazardous Waste Tank Program**

Under RCRA Subtitle C, EPA has promulgated regulations for UST systems containing hazardous wastes (40 CFR Part 264, July 14, 1986). The RCRA Subtitle I rules proposed today will, when finalized, apply to USTs containing "regulated substances." These regulated substances include hazardous substances defined in section 101(14) of CERCLA, *except* for hazardous wastes regulated under Subtitle C and petroleum. The exclusion of hazardous wastes within the definition of regulated substance avoids most of the overlapping jurisdiction of Subtitle I and Subtitle C. An overlap in jurisdiction does exist, however, for USTs containing petroleum wastes that are subject to the provisions of RCRA 3014. This overlap is discussed in the next section. There is also a potential overlap in jurisdiction for USTs containing mixtures of petroleum and hazardous wastes. Today's proposal resolves this potential overlap by excluding such USTs from the universe of USTs subject to the proposed requirements. Unless otherwise exempted, such USTs would be subject to the requirements of Subtitle C. It is intended that the final rules resulting from today's proposed rules will regulate, for the most part, a different set of UST systems from those regulated under Subtitle C.

**C. Used Oil Regulations**

Underground tanks storing used oil (e.g., automobile and truck used crankcase oil) are under the jurisdiction of Subtitle I. Pursuant to section 9001(2)(B) of RCRA, underground tanks containing "petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure . . ." are within the scope of Subtitle I. Thus under Subtitle I requirements, owners and operators of UST systems containing used oil were required to notify designated state agencies of the presence of such tanks by May 8, 1986. Owners and operators of newly installed used oil UST systems are subject to the requirements of the Interim Prohibition, which has been in effect since May 7, 1985.

Under Subtitle C of RCRA, EPA also has the authority to regulate recycled oil, and to regulate used oil that is disposed of under Subtitle C if such oil is identified or listed as a hazardous waste. Under the authority of Subtitle C of RCRA, EPA proposed to list used oil as hazardous waste (50 FR 49269–49270, November 29, 1985) and has proposed standards for recycled oil (50 FR 49250–49258, November 29, 1985). Since publication in the **Federal Register**, several important decisions in terms of these proposed rulemakings have been made, namely:

(1) Storage of used oil (even when recycled) will be regulated, and

(2) Recycled oil will *not* be listed as a hazardous waste (51 FR 41900, November 19, 1986).

The Agency is proposing today to defer application of the technical requirements to used oil UST systems. This is discussed in further detail in Section VI.A.4(c).

**D. Stage II Vapor Recovery Program**

The Agency is in the process of conducting rulemaking proceedings to decide whether and how to regulate vehicle refueling emissions. Under consideration are Stage II controls (which would be applied to gasoline pumps) or onboard canisters (which would be part of automobiles). The Agency has not yet made a decision as to which method to adopt for control of these emissions. If at some time EPA should decide to call for Stage II systems as a means for controlling emissions, the Agency would examine the interaction of these requirements with the UST Program.

**E. SPCC**

Under section 311 of the Federal Water Pollution Control Act, EPA has promulgated regulations for the prevention of and response to oil spills into navigable waters. These rules (40 CFR Part 112) known as the Spill Prevention Control and Countermeasure (SPCC) regulations are intended to prevent and contain releases of oil into surface waters which are navigable.

Comparatively few UST systems are subject to SPCC regulations. Only those tanks of greater than 42,000 gallons capacity that are located near navigable waters of the U.S. or adjoining shorelines may be affected. Releases from these UST systems must reach navigable waters or shorelines to be subject to SPCC response actions. For those comparatively few UST systems meeting the volume and location requirements indicated above, both today's proposed rules and the SPCC rules apply.

**F. DOE High-Level Radioactive Waste Program**

Under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) the U.S. Department of Energy (DOE) has promulgated rules for the management of high-level radioactive waste resulting from atomic energy defense activity. DOE Orders 5480.1, 5480.2, and 5820.2 regulate the underground tank storage of these wastes including corrective actions in the event of a release.

The UST rules proposed today include radioactive waste because any radionuclide is a "hazardous substance" under CERCLA. However, in view of the differences in high-level radioactive waste from other RCRA Subtitle I regulated substances and the much larger tanks storing this waste, EPA is proposing to defer from today's

proposed rules the DOE radioactive waste facilities. Until a determination is made as to whether, and how, the proposed UST rules should apply to DOE facilities storing high-level radioactive wastes, the proposed UST rules and requirements, except corrective action and the interim prohibition requirements, do not apply to these facilities. More details are provided on this in Section VI.A.4(e).

## IX. ECONOMIC AND REGULATORY IMPACTS

Section IX.A. discusses the Regulatory Impact Analysis of this proposed rule, as required by Executive Order 12291. Section IX.B. then discusses the analysis of the effects of the proposed rule on small businesses, as required by the Regulatory Flexibility Act. Requirements under the Paperwork Reduction Act are addressed in Section IX.C.

### A. Regulatory Impact Analysis

*1. Executive Order 12291*

Executive Order 12291 (46 FR 13193, February 19, 1981) requires regulatory agencies to conduct a Regulatory Impact Analysis (RIA) for any major rule. A major rule is one likely to result in (1) an annual cost of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

EPA has conducted an RIA to compare several regulatory alternatives for USTs, as explained in the following sections. The RIA provides an analysis based on the guidelines contained in the Office of Management and Budget's "Interim Regulatory Impact Analysis Guidance" and EPA's "Guidelines for Performing Regulatory Impact Analysis".

Based on the results of this analysis, the Agency has concluded that this proposed regulation is a major rule which produces significant net benefits to society. Average annualized costs are $210 million, which include incremental costs of installing and maintaining USTs, incremental detection and monitoring costs, incremental tank removal and replacement costs, incremental pipe repairs, and adjustments for value of product lost. Based on an existing population of 1.4 million USTs, as specified in Section II.B. of this Preamble, this corresponds to an annualized cost of $150 per UST. This increased expenditure of $150 per UST produces significant benefits due to both the prevention of releases from UST systems that otherwise would have gone undetected, as well as earlier detection of releases.

If it is assumed that the benefits of either preventing an aquifer from becoming contaminated or reducing the amount of contamination (due to earlier detection) are equal to the costs of corrective action avoided, annualized benefits are on the order of $1.53 billion or $1100 per UST. However, each potential corrective action must be evaluated on its own merits, as explained in Sections V.A.5. and V.B.4. of this Preamble. Due to the case-by-case nature of these cleanup decisions, it was not possible to quantify the precision with which a cost of corrective action avoided approach approximates benefits.

The purpose of Section IX.A.1. is to summarize the intent and findings of the RIA. Section IX.A.2. discussed the basic approach taken in the RIA, and specifies the regulatory alternatives analyzed. Section IX.A.3. lists the industries projected to be affected by the proposed action, and Section IX.A.4. discusses the methodologies employed in the cost, effectiveness, benefits, and economic impact analyses. Section IX.A.5. reviews the results of the cost effectiveness and economic impact analyses. The full draft RIA is available as part of the background documents supporting this proposed regulation. This proposed rule was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

*2. Basic Approach/Regulatory Alternatives*

A principal goal of Executive Order 12291 is to ensure that a regulation confers net benefit—that is, that the benefits of a regulation outweigh its costs to society. A second goal is that a regulation be cost-effective—that is, to ensure that a regulation is not selected if, among the group of feasible regulatory alternatives, there is an approach that is expected to confer benefits at least as high as the proposal but at lower cost, or to confer greater benefits than the proposal but at no greater cost. The RIA supports these goals by providing a systematic presentation of information on benefits, costs, and economic impacts in a way that clarifies the implications of alternative regulatory approaches. In addition to serving as a tool for selecting from among alternatives, the RIA process can also prove useful in developing new regulatory alternatives. However, ultimate selection of a regulatory alternative must be consistent with statutory directives.

The EPA has specific guidance regarding the contents and conduct of RIAs. The key elements of an RIA are: (1) Stating the need for and consequences of the proposal; (2) considering alternative approaches; (3) assessing benefits; (4) assessing costs; and (5) evaluating costs and benefits. These components are interdependent; for example, stating the need for the proposal, considering alternative approaches, and assessing costs all depend critically on understanding the base case in the absence of regulation. Thus, each part of an RIA must be developed with the others in mind. Certain data input and analytical steps occur more than once in addressing the key questions posed in an RIA.

The difficulties in preparing an RIA that will answer this broad array of interlocking questions are compounded by the complexity of the regulated universe and the large combination of approaches available for reducing damages. The proposed rule addresses the problem of leaking USTs by regulating several distinct groups of tanks: existing tanks and replacement tanks, including those used for petroleum and hazardous substances. The proposed rule employs a combination of approaches designed to reduce damages from these disparate populations including: Prevention of releases; early detection to minimize releases both from tanks and piping systems; and corrective action to reduce the impact of those releases that do occur.

The analytical problems posed by these goals and constraints are best addressed by combining as many of the analytical issues as possible into a single framework. That framework is the UST Model, a computer simulation model designed to yield estimates of releases and life-cycle costs for the entire UST universe. The use of this model ensures that, to the greatest extent possible, all of the data and assumptions required will be consistent across the analyses that go into the RIA. The cost outputs from the model include UST repair and replacement, detection and monitoring costs, value of product lost, and corrective action costs. Effectiveness measures include plume areas and durations that result for the leaks that occur during the period they remain undetected. The design and operation of this model are discussed in more detail in the RIA.

It was not practical to include all of the analysis directly in the UST model. Some important issues, including the

BEST COPY AVAILABLE

effects of the regulatory costs on businesses, risk reductions, and some other measures of benefits, were analyzed separately. However, these analyses were based on outputs from the UST model. For example, the UST model provides outputs regarding floating plumes and their duration. That information was then used in the risk analysis to characterize the dispersed plumes that resulted from the floating plumes, to provide a basis for assessing health risks due to ingestion of contaminated water.

*Grouping of Potential Actions into Distinct Options.* As discussed in detail in Section V of this Preamble, many actions can be taken to reduce damages from leaking USTs. They can be aimed at existing tanks, at new tanks, or at releases that have already occurred; they can emphasize leak prevention, leak minimization, or leak containment. Because the effectiveness of these various components of a regulatory strategy are interdependent, the RIA needs to account for that phenomenon. For example, the effectiveness of leak detection on reducing the ultimate damages from USTs depends on tank replacement requirements and corrective action requirements, and the effectiveness of actions taken as a result of such requirements. Thus, the approach used for the RIA is to analyze sets of components grouped into distinct regulatory options. The cost and effectiveness of these options are then computed as a whole, and compared to a "no further regulation" base case.

*Base Case and Options Modeled for the Analysis.* This section defines the regulatory options that were analyzed in the RIA. The prevention, detection, and corrective action components of these regulatory options are described below.

"NO FURTHER REGULATION" BASE CASE assumes no regulation beyond the interim prohibition requirements; existing tanks are mostly bare steel tanks without supplementary detection or inventory control. Tanks found to be leaking are replaced with corrosion-resistant tanks, assumed to be coated and cathodically protected.

OPTION I (Baseline level) requires manual inventory control, periodic leak detection within 3 years (5 years for corrosion-resistant tanks) for existing and new tanks, and corrosion-resistance for all replacement tanks. Given that the regulated community is allowed to choose from a variety of detection measures, the option is modeled as though half of operators choose quarterly vapor well monitoring, and the other half choose the less effective tank infrequent tightness tests every 3 years (5 years for corrosion-resistant tanks). Tanks are assumed to be replaced with coated and cathodically protected tanks with line leak detectors, and either quarterly vapor well monitoring or tightness tests every 5 years.

Steps assumed to be taken in response to a release are the same for this option as for all others. Where a release has occurred, an investigation and actions to reduce immediate hazards is followed by limited removal of contaminated soil, removal of any free product from the ground water, and ground-water cleanup at 40 percent of sites where ground water has been contaminated.

OPTION II—The Proposed Rule (Enhanced baseline plus targeted upgrading) is similar to Option I with upgrading to new tank standards within 10 years, though leak detection systems must be sampled monthly rather than quarterly and infrequent tightness tests are not permitted after tanks are replaced. For modeling purposes, operators are assumed to retrofit with cathodic protection and monthly vapor wells to meet new tank standards after 8 years. Replacement tanks are assumed to be coated and cathodically protected, with vapor wells sampled monthly.

OPTION III (Baseline plus secondary containment for new tanks) requires periodic leak detection for existing tanks and secondary containment with interstitial monitoring for new tanks. For existing tanks, this option was assumed to be identical to Option I; replacement tanks are assumed to be lined systems with interstitial monitoring.

OPTION IV (Class option) requires rapid replacement of existing tanks and secondary containment for replacement tanks at state-designated wellhead protection areas. Tanks in other areas are required to conform to baseline standards (Option I). It is assumed that 40 percent of the tank population is located within a wellhead protection area. Tanks located in these state-designated areas are assumed to be fitted with continuous vapor wells after one year, and then replaced before the fifth year with protected tanks in liners. The other 60 percent of tanks (those outside wellhead protection areas) are modeled the same as Option I. As in other options, ground water is cleaned up at 40 percent of sites where the release has reached ground water; all of these cleanups are assumed to be performed in the wellhead protection areas.

OPTION V (Emphasis on Prevention) For existing tanks, this option requires manual inventory control, frequent leak detection starting in 3 years, and early retirement. Replacement tanks must have secondary containment. Half of all existing tanks are modeled with continuous vapor well monitoring, and half are modeled with monthly vapor well monitoring and 3-year tightness tests. Existing tanks are replaced with lined systems either when they fail, or after 8 years.

*3. Affected Industries*

EPA has identified 3 classes of tank-owning facilities that would be directly affected by this proposed rulemaking: (1) Facilities using USTs for storing motor fuels for the retail market; (2) facilities using USTs for storing fuels for non-retail purposes; and (3) facilities using USTs for storing regulated hazardous substances. The major sector to be affected by this regulation is the motor fuel retailing sector. There are approximately 193,000 outlets selling motor fuel. Owners for these outlets range from the largest oil refiners to open dealers who own and operate a single station. Table 4 provides more detail about ownership and operation of retail motor fuel outlets.

Facilities using USTs for storing fuel for non-retail purposes cut across many sectors of the economy, both private and non-profit. Affected sectors include agriculture, mining and construction, manufacturing, utilities and transportation, wholesale trade, retail trade, services, governments, and non-profit organizations. Generally, such USTs are used to service in-house vehicle fleets.

Facilities using USTs for storing regulated hazardous substances are somewhat more limited to certain sectors of the economy. EPA has tentatively identified the following industries as owning the greatest number of chemical tanks: Industrial Inorganic Chemicals (SIC 2819); Plastic Materials and Resins (SIC 2821); Paints and Allied Products (SIC 2851); Industrial Organic Chemicals (SIC 2869); Chemical Preparations (SIC 2899); Plating and Polishing (SIC 3471); Chemical Wholesalers (SIC 5161); Petroleum Bulk Stations and Terminals (SIC 5171); Petroleum Product Wholesalers (SIC 5172); and Drycleaning Plants (SIC 7216). Subsequent analysis may reveal additional industries where a substantial fraction of facilities maintain USTs for storing regulated hazardous substances. EPA invites comment on this issue.

Economic impacts are far more likely to be significant for the retail fuel market than for the other two classes mentioned above. Reasons for this include: (1) There are no substitutes for USTs at a retail fueling facility; (2) there

are many outlets owned by small businesses and (3) there tend to be at least 3 USTs per facility, so UST costs represent a significant fraction of capital and operating expense. Thus, the economic analysis has focused on the retail motor fuel sector. Because the types of facilities in classes other than retail motor fuel are so diverse, and the potential for economic dislocation less significant (as will be discussed in Section IX.5.b.), detailed characterizations of facility types in classes other than retail motor fuel have not been developed as part of this analysis.

Table 4.—Ownership and Operation of Retail Motor Fuel Outlets

| Category | Number of firms | [illegible] operated | [illegible] | [illegible] |
|---|---|---|---|---|
| Refiners | 27 | [illegible] | 36,817 | 46,781 |
| Jobbers | [illegible] | 25,333 | 20,713 | 46,046 |
| Convenience stores | 516 | 14,732 | [illegible] | 14,732 |
| Independent Chains | 125 | 4,010 | 1,127 | 5,137 |
| Open dealers | [illegible] | [illegible] | 0 | [illegible] |
| Total | [illegible] | 134,343 | 58,657 | 193,000 |

*4. Methodology Employed*

This section specifies the methodologies used in this analysis. Methodologies are presented for costs, effectiveness, benefits, and economic impacts.

a. *Cost Estimation Methodology.* Estimating the costs of the proposed regulation requires the following: (1) Base case specification (i.e., from where are costs counted?); (2) cost element specification (i.e., which costs per tank are counted?); (3) tank universe specification (i.e., how many tanks are affected and how is this universe distributed over the relevant characteristics that affect costs and effectiveness?); and (4) accounting framework for costs (i.e., how are costs counted?). These are addressed in turn.

*Base Case.* The base case represents the point from which incremental costs and benefits of the proposed regulation will be estimated. The base case for this analysis is the status quo under the 1984 RCRA Reauthorization Amendments, which includes the Interim Prohibition against installing new bare steel tanks in corrosive settings. Any upgrading beyond this is included as a regulatory cost, even if such upgrading were voluntary. This ensures that regulatory costs are not understated.

*Cost Elements.* The major categories of costs include: (1) Initial facility costs (includes obtaining and installing new tanks); (2) detection and monitoring costs; (3) value of product lost; (4) tank removal and replacement, and pipe repairs; and (5) corrective action costs. Cost element 1 applies only to new tanks. Cost element 2 applies to all tanks. Cost elements 3, 4, and 5 apply only to leaking tanks. All costs are based on best available engineering estimates. Only cost elements affected by the proposed rules are analyzed.

*Tank Universe.* Descriptive data on the tank universe comes primarily from studies by EPA contractors, Census data, and industry sources. Key assumptions include number of tanks, age distribution, the distribution of hydrogeological settings, and the number of new tanks installed annually. These are documented in the Regulatory Impact Analysis.

*Accounting Framework.* Costs are estimated on a present value basis, based on costs incurred over a 30-year modeling period starting at the time of promulgation. The real discount rate used for the analysis is 3 percent per year. In the base case, tanks are assumed to last until leaks are detected, so the time horizon for operation and maintenance costs for existing tanks varies with each tank modeled. The cost of installing a replacement for each tank that fails and operating that tank up to the end of the 30-year time horizon is calculated for all tanks. All costs are presented on a pre-tax basis, so as to best capture the real resource costs to society.

b. *Effectiveness Estimation Methodology.* The benefits of improved release prevention and detection methods result from avoiding future release incidents or detecting releases earlier to reduce damages. Presumably, the benefits of avoiding such future pollution incidents can be valued. Such benefits include the on-site benefits of reduced health and safety risks, reduced material and structural damages, and improved inventory management. In addition, there are off-site benefits relating to improved health and safety, avoided property damage, improved aesthetics, option value, and existence value for the environmental media of soil, ground water, surface water, and air. The process of valuing such benefits is quite difficult and time-consuming, and is still ongoing. For that reason, the analysis of regulatory options presented in the Regulatory Impact Analysis focuses on the trade-off between costs and plume area avoided. Plume area avoided is a measure of the magnitude of contaminated ground water that is avoided due to a regulatory option. The underlying assumption is that benefits are directly proportional to plume area avoided.

For any given regulatory option, costs and effectiveness are modeled through the UST model. The UST Model provides a systematic basis for evaluating how different regulatory options would be expected to reduce the damages that motivate regulation. The UST Model provides information about the performance of different combinations of tank types and detection methods in different hydrogeologic settings. The cost outputs include the costs associated with product loss, UST repair and replacement, detection and monitoring, and corrective action. Measures of damages include plume areas and durations that result from the leaks that occur during the period they remain undetected. Thus, costs and effectiveness of any regulatory option are modeled by estimating costs and damages associated with the base case, costs and damages associated with the regulatory option, and subtracting.

c. *Benefits Estimation Methodology.* To the extent feasible, the benefits of today's proposed rule are estimated by predicting the reduction in damages which would occur if it were implemented, compared to a base case of no further regulation. There are numerous difficulties in estimating damage reductions, stemming partly from the large number of potentially important types of damages USTs can cause, partly from the difficulties in measuring and predicting damage reductions, and partly from the problems of valuing in dollars many of the most important damages.

In light of these difficulties, the approach used in measuring benefits is to estimate the monetary damages avoided by the regulatory options, and to supplement this with estimates of other avoided damages (such as damage to the health of individuals exposed to released products, and option/existence value of ground water) that are very difficult to express in monetary terms. Three basic steps must be taken to estimate monetary damages from leaking USTs: (1) Identification of the types of damages; (2) valuation in dollars of the damages estimated to occur; and (3) estimation of the frequency and extent of the different types of damage. In-depth studies of actual cases of damage from USTs were used to develop data for the first two steps. UST Model simulations were combined with data from EPA's State

Release Incidents Survey for estimates of the frequency of damage incidents under the base case and under the regulatory options.

Forty-four case studies of UST release incident damages were used to identify the types of damages caused by leaking USTs and place monetary values on some of the major types of damage. Damages were valued in dollars by estimating the actual sums spent to repair damages caused by releases (e.g., replacing contaminated wells, compensation for damaged structures) plus the losses to businesses closed or disrupted by the releases and the contamination they caused. The advantages of this approach include: (1) Damaged parties may identify damages that would otherwise be overlooked; (2) reported damages are "real" rather than abstract; (3) damaged parties may be able to provide monetary estimates of the damage costs; and (4) damaged parties can indicate intangibles.

There are disadvantages to this approach, however. The case study selection process probably identified and profiled incidents causing more damage than is typical from a release. Consequently, the findings must be interpreted with caution. Because they are not typical or average cases, scaling them up to estimate nationwide total damages may not accurately reflect benefits.

Given a distribution of monetary damages associated with serious release incidents, total damages are calculated using estimates of the number and size of leaks under the base case, the proposed rule, and various regulatory options. These estimates are made using the UST Model of tank system failures and releases. Data from the State Release Incidents Survey provide estimates of frequency with which releases of various sizes are likely to have serious consequences (e.g., lost drinking water, or vapor contamination). UST Model predictions of the timing of the damage incidents are used to discount the monetary damages back to the implementation time of the regulations, providing estimates of the present value of the damages.

The risks avoided by the proposed rule were not considered in the same framework discussed above, due to the problem of valuing health risks. Instead, the UST Model's outputs in terms of predicted frequencies and magnitudes of contamination incidents were used as inputs into a separate analysis of concentrations of carcinogens at various possible exposure points, the size of the exposed populations, and the duration of exposure. The UST Model, linked to a ground-water transport routine, provided all inputs except estimates of the size of the exposed population at different exposure points. The exposure estimates were made using estimates of private and public well distributions relative to USTs, based on nationwide Census data supplemented with in-depth case-by-case mapping exercises.

Other categories of benefits not readily amenable to valuation in dollars include aesthetic concerns, option value, and existence value. Although a contingent valuation approach provides some hope for ultimately being able to monetize such phenomena, such analysis has not yet been conducted. EPA invites comment on the general issue of benefits assessment of today's rule. EPA is particularly interested in comments regarding the valuation issues addressed above. The benefits analysis conducted to date is contained in the RIA.

*d. Economic Impacts Estimation Methodology.* Economic impacts result from the costs attributable to the regulatory alternative. The EPA guidelines for performing regulatory impact analysis recommend an analytical approach based on combined financial and market analysis, consisting of the following steps: (1) Segment the regulated industry into groups by relevant characteristics; (2) perform baseline financial analysis on segments or on model plants; (3) separate resource costs from transfers, such as taxes, that distribute the resource costs to parties other than the directly regulated community; (4) estimate effects of cost pass-throughs, including the assumption (and estimated likelihood) of no pass-through; and (5) where data allow, perform discounted cash flow analysis or return-on-investment analysis. The results will estimate the impacts of regulatory costs on firm or facility revenue and profit for the segments of the regulated industry. This is the basic approach employed in this Regulatory Impact Analysis.

According to the EPA guidelines, the general framework to be used is based on the static partial equilibrium model of supply and demand relationships in the affected markets. In this model, if regulations on suppliers increase the costs of providing a particular good or service, the market price of the affected good or service will increase and the amount provided to the market will decrease at any given price (i.e., the supply curve will shift upwards). In the short run, increased variable costs will determine the extent of supply curve shifts, though in the long run, fixed costs will also affect supply. The magnitude of the effects will depend on the relative sensitivity of supply and demand to changes in price (that is, the price elasticities of supply and demand). Economic effects (i.e., changes in profitability, plant closures, employment, inflation, capital availability, etc.) all flow from the changes in prices and quantities predicted by appropriate shifts in supply/demand schedules within the partial equilibrium framework. At a minimum it is helpful to examine the bounding cases of perfectly elastic demand (full absorption) and perfectly inelastic demand (full pass-through).

For the 3 classes affected (i.e., retail motor fuel USTs, non-retail motor fuel USTs, and hazardous substances USTs), the extreme case of full cost absorption is likely to be of most concern. This is the case because within any sector, UST regulatory requirements will not affect establishments uniformly. For example, for retail motor fuel, UST regulatory costs are independent of quantity of gasoline pumped. Therefore, regulatory costs per gallon are likely to be much less for high volume stations, thus limiting the potential for pass-through.

Thus, economic impacts analysis focuses on the extent to which the proposed regulation will affect the viability of firms. A return on assets approach is used in this analysis as the basic measure of viability. Return on assets was chosen because the rate of expected return on assets is reasonably consistent across size classes and across industries. Furthermore, documented benchmarks exist which correspond to likely failure and severe financial distress.

As with any environmental regulation, adverse economic effects on the industries directly affected are offset somewhat by potential economic gains for industries providing the goods and services as required by the proposed regulation. In this case, tank manufacturers, providers of leak detection equipment and services, and corrective action providers stand to gain from the proposed regulation. However, EPA's Guidance on Executive Order 12291 suggests that the economic impacts analysis should focus on the primary industries affected, not on those receiving secondary economic benefits. That is the approach followed in this regulatory impact analysis.

*5. Results*

a. Analysis of Cost and Effectiveness of UST Regulatory Options

This section presents and discusses cost-effectiveness exhibits showing the results of the analysis of the proposed rule and the alternative regulatory

options. The analysis shown is for the nation as a whole, considering the distribution of tank characteristics by age and hydrogeologic setting. All costs shown are for a population of 1.4 million tanks. Costs are for a 30-year period and are discounted at 3 percent.

The corrective action costs were calculated assuming the floating plume and some contaminated soil are removed at all sites where there is ground water contamination (50 percent of releases are assumed to result in ground-water contamination). In addition, the dispersed plume is removed at 40 percent of all sites where there is ground-water contamination, on the assumption that at 40 percent of all sites with ground-water contamination, a leaking facility will threaten a nearby ground-water well. Actual costs for corrective actions will differ from those presented here depending on the frequency that extensive cleanup actions are actually judged to be needed under site-specific criteria.

The analysis shows that the proposed rule and all of the alternative options could provide a great degree of protection relative to a "no further regulation" base case. The results could also be used to identify the most effective and least costly option. The reader must be cautioned, though, that this use of the analysis could be misleading because the ordering of the options in terms of cost and effectiveness is quite sensitive to changes in assumptions (e.g., assumptions about the effectiveness of detection methods). In addition, the identity of the apparent "low cost option" for technical standards is significantly affected by assumptions regarding the appropriate level of corrective action. Sufficient information is not yet available to ensure that the assumptions used in the analysis adequately reflect reality. The sensitivity of the results to changes in some key assumptions is presented further below. EPA is currently pursuing additional analyses where analytical results are sensitive to such key assumptions. EPA also invites comment on these issues.

*TABLE 5* shows the cost and effectiveness of the technical standards of each of the five regulatory options compared to the "no further regulation" base case. It does not include the costs of corrective action regulations. Table 5 shows that all the options can provide substantial improvements over the "no further regulation" base case: between 54 and 83 percent of the floating plume area that would occur under the base case is avoided by the various options. The main reasons for this improvement are the inventory control and periodic monitoring requirements for existing tanks in each option. Any program requiring at least inventory control in combination with periodic leak monitoring will alleviate a large portion of the potential damage from leaking underground storage tanks. Base detection (reflecting primarily sensory perception with some crude inventory control) is assumed to detect releases greater than 3 percent of monthly throughput. Inventory control is assumed to detect releases greater than 0.5 percent of monthly throughput, though only 25 percent of the time. Tank tightness tests are assumed to detect releases greater than 0.15 gallon per hour 90 percent of the time. Vapor wells are assumed to detect 70 percent of all releases. Effectiveness assumptions for other leak detection methods are detailed in the RIA. The more protective options are generally shown to have greater total present value costs, since they require earlier and more expensive upgrading of existing tanks. Today's proposal (originally Option II) ranks high in both effectiveness and cost minimization, partly because tank upgrading is a cost-effective means of minimizing releases from existing tanks.

TABLE 5.—COST AND EFFECTIVENESS OF OPTIONS: NO CORRECTIVE ACTION

| Scenario | Total present value cost | Annualized cost (billions of dollars) | Plume area avoided relative to base (percent) |
|---|---|---|---|
| Base case (No further regulation) | 31.0 | $1.58 | 0 |
| Today's proposal (Originally Option II) | 35.0 | 1.79 | [illegible] |
| Regulatory Alternatives | | | |
| Option I (Baseline level of regulation) | 33.0 | 1.68 | 54 |
| Option III (Stringent for new tanks) | 43.0 | [illegible] | [illegible] |
| Option IV | 45.0 | [illegible] | [illegible] |
| [Classified] | | | |
| Option V (Stringent) | 56.5 | [illegible] | [illegible] |

Note: Annualized costs calculated from total present value of all capital and operating costs, smoothed over 30 years at 3%. Annualization factor is 0.051 of total present value costs.

*TABLE 6* shows the dramatic change in both absolute and relative costs of the options when the costs of corrective actions are included. The base case jumps from the lowest in cost to the highest in cost, by many billions of dollars. This is because it is so lacking in protection that the costs of cleaning up the plumes that it allows to occur are extremely high. At the opposite extreme, the most protective technical options are revealed to save more than their incremental cost in avoided corrective action.

TABLE 6.—COST AND EFFECTIVENESS OF OPTIONS: WITH CORRECTIVE ACTION COSTS

| Scenario | Total present value cost | Annualized cost (billions of dollars) | Plume area avoided relative to base (percent) |
|---|---|---|---|
| Base Case (No Further Regulation) | 120.8 | [illegible] | 0 |
| Today's Proposal (Originally Option II) | [illegible] | [illegible] | [illegible] |
| Regulatory Alternatives | | | |
| Option I (Baseline Level of Regulation) | 113.9 | 5.81 | 54 |
| Option III (Stringent for New Tanks) | 118.6 | 6.05 | 55 |
| Option IV | [illegible] | 4.86 | 68 |
| [Classified] | | | |
| Option V (Stringent) | 97.1 | 4.95 | [illegible] |

Note: Annualized costs calculated from present value of all capital and operating costs, smoothed over 30 years at 3%. Annualization factor is 0.051 of total present value costs.

Options II and V are shown to be the most cost-effective options, though the differences among options are relatively small and quite sensitive to a number of uncertain assumptions. The performance of these two options illustrates the effectiveness of early retirement or upgrading of bare steel tanks, and frequent leak detection. The relative cost-effectiveness of Option V also illustrates that the most effective regulatory alternatives can, in fact, be the least costly in the long run because effective leak detection and early retirement and replacement of bare steel tanks with corrosion protected tanks eliminates a large proportion of potential corrective action costs. This result, of course, depends on the level of corrective action assumed to be appropriate.

Option III is the most costly alternative because tanks are replaced with secondary containment only after they leak. Corrective action costs are higher than the corrective action costs for the options requiring mandatory retirement. Option III also has high facility costs due to the secondary containment requirement for new tanks. Option III is, however, effective; it may eliminate 80 percent of the potential plume area. It is more costly than other options which have the same relative effectiveness.

*Sensitivity of Results to Assumptions.* The cost-effectiveness of the options is strongly affected by several of the assumptions used in the analysis of the options.

One important source of uncertainty in predicting the effects of the options is that many options allow choices. Option I, for instance, allows either quarterly vapor wells or tightness tests every five years. The analysis assumed that half of tank owners choose each method, but there is no way to be sure how the owners would actually choose. These choices are important because the two methods are substantially different in cost and effectiveness. If 100 percent vapor wells were chosen, and if vapor wells were as reliable as assumed in the modeling (able to detect 70 percent of releases) Option I would be less costly than any other option, even considering the cost of corrective action. This result is, however, sensitive to unverifiable assumptions about the operation of vapor wells.

The assumed effectiveness level of leak detection or leak monitoring alternatives has a direct effect on the results of the analysis. If leak detection is assumed to be effective and reliable, it can be shown to be highly cost-effective. On the other hand, if more conservative assumptions are made concerning its performance, it can be shown that options that protect against releases with more certainty (e.g., early retirement and secondary containment) are more effective. For example, if the proposed regulation is run through the model assuming all UST's use vapor wells and that those vapor wells detect 70 percent of releases, 68 percent of base case plume area is avoided. If vapor wells are assumed to detect 90 percent of releases, 76 percent of base case plume area is avoided. If vapor wells are assumed to detect 50 percent of releases, 59 percent of base case plume area is avoided. Additional sensitivity analysis is presented in the RIA.

The level of corrective action required and the estimated cost of corrective action will affect both the absolute cost of the options and the relative cost between options, as discussed in Sections V.A.5. and V.B.4. As corrective action costs increase, the absolute cost of the options increase. Also, increasing the estimated costs for corrective action will cause options requiring frequent leak detection or early retirement for existing tanks and secondary containment for new tanks to appear to be relatively more cost effective. At present, corrective action costs used in the model range from $26,000 to $388,000, with $140,000 being the corrective action cost for responding to the median plume.

A particularly important assumption, in light of its prominence in the proposed rule, is that retrofitted cathodic protection will stop localized corrosion of bare steel tanks, allowing them to perform virtually as well as new tanks, as discussed in Section VII.E.b.

Other assumptions that could affect the results include assumptions about the mix of hydrogeologic settings in which tanks are found, the discount rate used in computing present value costs, and the frequencies and costs associated with "false alarms," in which a detection method erroneously indicates that a system is leaking. Sensitivity analyses for these various assumptions are presented in the RIA.

As stated previously, EPA is pursuing additional analyses to help clarify some of these issues raised above. EPA invites comment on these issues.

b. Analysis of Economic Impacts

Economic impacts need to be considered for 3 previously mentioned classes of facilities with USTs: (1) facilities using USTs for storing motor fuels for retail marketing; (2) facilities using USTs for storing petroleum products for purposes other than retail motor fuel marketing; and (3) facilities using USTs for storing regulated hazardous substances.

Economic impacts are far more likely to be significant for the retail motor fuel marketing class than for the other two classes mentioned above. As stated previously, reasons for this include: (1) There are no substitutes for USTs in retail motor fuel marketing; (2) there are many outlets owned by small businesses; and (3) there tend to be at least 3 USTs per facility, so UST costs represent a significant fraction of capital and operating expense. Thus, the economic analysis has focused on the retail motor fuel marketing sector.

Economic impacts have been assessed for the retail motor fuels marketing class using a return on assets measure, as discussed in Section IX.A.4. That analysis has shown that, under the assumptions of no revenue increase per facility and limited ability of small firms to get loans to cover compliance-related costs, the burden on small firms could be significant. Because it is likely that small firms would bear a large share of the economic impact, these potential economic effects are discussed further in Section IX.B. (Regulatory Flexibility Act).

For the class of facilities using USTs for non-retail motor fuel storage, the option exists to cease using USTs and purchase motor fuel at retail. Thus, there are limits on the burden these facilities will face due to UST regulatory requirements. Furthermore, because these USTs are used primarily to fuel in-house vehicle fleets, and larger firms are probably more likely to maintain such fleets than smaller firms, smaller firms are not likely to be significantly represented among the class of firms using USTs for non-retail fuel storage. EPA has not yet been able to discover or develop definitive data which specifies how firms using USTs for non-retail motor fuel storage are distributed over size classes. Therefore, EPA invites comments on this issue.

There are additional reasons why EPA believes the non-retail fuel marketing classes will bear less significant economic impacts than the retail motor fuel marketing class. First, only a fraction of the firms in any given industry are identified as using USTs for non-retail motor fuel. In many cases, this fraction is less than five percent. Second, available data suggest that the average number of non-retail motor fuel USTs per establishment is less than 3. Third, USTs represent a smaller fraction of total capital stock for these industries than they do for the retail motor fuel marketing industry. Therefore, UST regulations are less likely to significantly affect return on assets.

Although facilities in this class can largely avoid the possibility of significant regulatory burden by ceasing to use USTs and switching to retail purchase of fuel, there is one burden that cannot be avoided by such a switch. Existing leaks will require corrective action as part of tank closure. However, to the extent that businesses owning such facilities are typically larger than the smallest retail motor fuel outlet owner, this impact is likely to be less severe.

Economic impacts on facilities using USTs to store regulated hazardous substances are also expected to be less significant than economic impacts on motor fuel retailing facilities, for reasons similar to those for non-retail fuels. First, for the ten chemical UST-intensive industries mentioned previously, the percentage of facilities in the industry owning chemical USTs ranges from 1 percent to 40 percent. This suggests the existence of substitutes for chemical USTs. Such substitutes include aboveground tanks, drums (especially for small businesses), and process changes. As one example of substitution, a switch from oil-based paint to water-based paint eliminates the need for solvents, which are the chemicals generally stored in USTs at paint-producing facilities. As another example, chemical USTs at petroleum bulk stations might store additives for gasoline. These additives could be blended in at an earlier point in the

distribution chain. The existence of such alternatives tends to mitigate the potential economic effects of regulations for chemical USTs. In addition, firms owning USTs storing regulated substances will typically be larger than the smallest firms in the retail motor fuel marketing class. However, corrective action responsibilities for existing tanks cannot be avoided by switching to substitutes, so corrective action requirements pose some potential for economic dislocation.

**B. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), agencies publishing a proposed or final rule must prepare and make available for comment a Regulatory Flexibility Analysis that describes the potential impact of the rule on small entities (i.e., small business, small organizations, and small governmental jurisdictions). The purpose of the Regulatory Flexibility Act is to ensure that regulations do not impose unnecessary costs or other burdens on such entities. No Regulatory Flexibility Analysis is required if the Agency's Administrator certifies that the rule will not have a significant impact on a substantial number of small entities.

The Agency has examined the potential impact on small entities of the rule being proposed today and has concluded that this regulation will have a significant impact on a substantial number of small entities. The Agency has therefore prepared a Preliminary Regulatory Flexibility Analysis, which is summarized below.

*Small Entities Potentially Affected by This Regulation.* For this Preliminary Regulatory Flexibility Analysis, the Agency divided the businesses potentially affected by the regulation into two categories: firms engaged in retail motor fuel marketing (e.g., gasoline service stations), and firms owning other USTs. An initial review of these two categories of businesses showed that firms engaged in retail motor fuel marketing included a substantial number of small businesses, including many with fewer than 10 employees and less than $100,000 in net worth. The category of other USTs breaks down into two sub-categories: non-retail petroleum USTs and hazardous substances USTs. A preliminary analysis of the category of businesses owning non-retail petroleum-containing USTs (i.e., those used to store petroleum products that are not retailed as motor fuel), revealed that such USTs are used for a variety of purposes by a large and diverse group of businesses. The most common uses of non-retail petroleum-containing USTs are to store motor fuel at facilities where fleets of vehicles or off-the-road vehicles are located. For example, the owner of a fleet of busses or a farmer with many gasoline-powered off-the-road vehicles would be likely to have an UST at his or her facility. Owners and operators of non-retail petroleum USTs are found in all sectors of American business, including farming, timber operations, mining, manufacturing, transportation, and wholesale and retail trade; and these owners and operators own and operate firms of all sizes. Similarly, owners and operators of USTs containing hazardous substances are also widely distributed throughout the economy.

Because firms owning non-retail petroleum and hazardous substance USTs fall into hundreds of Standard Industrial Classifications (SICs) and range in size and type from one-person nonprofit organizations to small governmental jurisdictions to major corporations, and because no data are currently available to identify these firms and entities, EPA is placing the primary emphasis of this Regulatory Flexibility Analysis on the retail motor fuel marketing sector. The Agency solicits comments both on the extent of small business ownership of USTs outside the retail motor fuel marketing sector and the industries in which UST-owning small businesses are located.

The Agency believes that, by focusing on the retail motor fuel marketing sector, the Regulatory Flexibility Analysis will identify those impacts of the proposed rule with the greatest potential of significantly affecting a substantial number of small entities. Several characteristics of the retail motor fuel marketing sector support the Agency's decision to emphasize this sector in its Regulatory Flexibility Analysis. First, all of the businesses in this sector must store their product in underground storage tanks; they cannot choose either not to store product or not to store it below ground. Second, this sector of the economy is overwhelmingly dominated by small businesses; it is estimated that more than 3-quarters of all retail motor fuel outlets are owned or operated by small businesses. Finally, data on which to base the analysis are available for this sector in sufficient quantity and quality to ensure that the Regulatory Flexibility Analysis will be reasonably accurate and will capture the most severe small-business impacts likely to occur as a result of the issuance of this proposed rule.

EPA has used a variety of data sources to develop estimates of the number of small businesses engaged in retail motor fuel marketing and to describe the economic and financial characteristics of this sector and these firms. The American Petroleum Institute, the National Association of Convenience Stores, the Petroleum Marketers Association of America, the Society of Independent Gasoline Marketers of America, and the Service Station Dealers of America have assisted EPA by providing data and by suggesting possible data sources. EPA also used data on the small businesses in this sector compiled by the Small Business Administration and the Department of Energy and data made available in many private-sector publications (particularly *The Lundberg Letter* and *National Petroleum News*).

For this Regulatory Flexibility Analysis, small businesses in the retail motor fuel marketing segment are defined as firms with less than $4.6 million in annual sales. This is the definition used by the Small Business Administration (SBA) to identify small businesses in this sector, and this annual sales figure has also been shown in EPA's preliminary analysis to reflect an appropriate size cutoff for small firms in this sector. This definition includes all firms in the retail motor fuel marketing sector with two or fewer outlets. Firms with $4.6 million in sales will typically have approximately $500,000 in assets and $250,000 in net worth. The SBA sales-based definition of small business includes those firms most vulnerable to significant economic impacts, and those firms least likely to have insurance to cover their corrective action expenditures. This definition also includes all firms with a net worth less than the costs of replacing 3 tanks or the cost of performing a corrective action that involves ground-water cleanup.

There are two major classes of firms in the small-business segment of this sector: those that own and operate their own outlets and those that operate outlets that they lease. Firms in this latter class are termed "lessee" or "independent" dealers. In the group of firms in this sector owning their own outlets are many "open" dealers, defined as firms owning and operating a single retail motor fuel outlet.

EPA estimates that in 1984, small businesses either owned or operated 75 percent of the 193,000 retail motor fuel outlets in the United States. Of this number, open dealers were estimated to own approximately 80,000 or 42 percent of all retail motor fuel outlets. Open dealer firms vary widely in size and age; some open dealers have new outlets, over $500,000 in assets, and $400,000 in

net worth, while others have older outlets with 30-year-old tanks, only $42,000 in assets and $30,000 in net worth. EPA estimates that the typical open dealer (the statistical median) has $90,000 in net worth, $210,000 in assets, and $14,000 in annual after-tax profits. Such a typical open dealer firm is thus a business earning a reasonable profit and having a reasonable expectation of continuing in business.

In addition to open dealers, small business owners in the retail motor fuel marketing sector include owners of small chains of retail outlets. It is common for owners of small chains to own 2 or 3 retail outlets and also to act as wholesale suppliers for several open dealers. (This business pattern is particularly common in rural areas.) It is also common for firms in this sector to own a chain of several convenience stores (C-stores), some of which do not supply gasoline. For such small C-stores chains, gasoline sales are not generally the primary line of business. EPA estimates that there were 3,700 such chains owning 8,200 retail motor fuel outlets in 1984.

The Agency estimates that 58,000 retail motor fuel outlets are operated by lessee dealers, whose outlets thus represent 30 percent of all retail motor fuel outlets. The majority of these lessee dealer-operated outlets are owned by large, vertically integrated petroleum firms that engage in production, refining, and marketing, but many are owned by independent marketers who own chains consisting of between 2 and 100 retail motor fuel outlets. The outlets operated by lessee dealers range in characteristics from some of the most modern and efficient outlets in the country to some of the most financially marginal operations in the retail motor fuel marketing sector. EPA estimates that the typical (statistical median) single-station lessee dealer is a firm with 82,000 in assets, 62,000 in net worth, and $6,000 a year in after-tax profits; the typical lessee dealer is thus a very small firm, but one which nevertheless has reasonable profits for the size of the business and a reasonable expectation of continuing in business.

Open dealers, who both own and operate an outlet, will have to meet all of the costs of UST regulations. However, the situation is more complex for lessee dealers because, although the terms and conditions of leases vary widely, the most common arrangement makes the lessee dealer responsible for "sounding the alarm," i.e., for operating whatever leak detection and inventory control systems have been agreed to by both the owner and the lessee, but not for maintaining or replacing tanks or paying for corrective action. However, EPA is aware that some lessors are attempting to alter these arrangements to increase the responsibilities of lessees by, for example, holding the lessee responsible for releases or requiring the lessee to buy the tanks. In the Preliminary Regulatory Flexibility Analysis, EPA has assumed that the terms of traditional lease arrangements will prevail, and the analysis therefore does not assess the impacts of changes in lease terms on lessee dealers. However, the analysis does consider cases in which severe economic impacts could cause the owner of a leased outlet to close the outlet and thus force the lessee dealer out of business.

Although the typical open dealer and lessee dealer are sound businesses, there are marginal firms in both categories. A marginal firm is defined as one that is making very low profits or that has an aging outlet and cannot afford to invest any substantial amount of money into this outlet. In time, outlets age and become more marginal, and, as a result, EPA estimates that existing outlets have tended to exit the industry at a rate of 2 to 4 percent per year. Because many of the outlets that close are replaced by new businesses that are small, this 2 to 4 percent exit rate does not necessarily mean that the small business share of the retail motor fuel marketing sector is significantly declining.

*Economic Impacts of the Proposed UST Regulations on Small Business.* EPA's Regulatory Flexibility Analysis has focused on the potential impact of the proposed regulation on currently existing retail motor fuel marketing outlets that are owned by small businesses. Today's proposed regulation will have very little impact on the costs of building new outlets or of entering the retail motor fuel marketing industry. The installation of coated and cathodically protected tanks or fiberglass reinforced plastic (FRP) tanks is standard at facilities that are being constructed today. Further, facilities that are being constructed today tend to have leak detection equipment installed at the time of construction. The costs of these measures add little to the total costs of constructing a new facility. Therefore, while the effect of this regulation may be to force existing outlets owned by small businesses to close, it may also have the effect of presenting an increased opportunity for entry by new outlets meeting today's regulatory standards, regardless of their size.

To examine the potential economic impacts of the proposed regulation on small businesses, EPA developed an economic impact model that could combine financial and economic data on firms in the industry with cost and probability-of-release data from the Regulatory Impact Analysis to estimate the rates at which existing firms in the retail motor fuel marketing sector leave the industry for reasons unrelated to UST regulations and as a result of business failures caused by these regulations. The economic impact model was used to develop these estimates assuming first that no revenue increase will occur and then that varying levels of revenue increase will occur. The economic impact analysis assumes that small firms will not be able to obtain insurance or to receive support from state UST funds designed to assist small firms to meet the costs of corrective action. Such state assistance might include loans, loan guarantees, insurance, or other programs designed to smooth the regulatory burden over time or over a larger affected population. The assumption that neither the insurance industry nor state funds will be available to assist small firms in meeting their corrective action costs reflects the situation confronted by most small firms today. EPA hopes to encourage both the insurance industry and the states to provide UST coverage for small firms in the future. If such coverage becomes available at a reasonable cost, the adverse impacts on small businesses predicted by the Regularly Flexibility Analysis could be significantly over-estimated.

The most important source of substantial impacts in today's proposed UST regulation is the cost of corrective action. EPA estimates that 89 percent of all small businesses owning retail motor fuel outlets would fail if they were forced to meet the full costs of corrective action for a release sufficiently serious to reach ground water. Fourteen percent of all small businesses owning retail motor fuel outlets would fail if they were forced to pay the average costs of corrective action for a release that does not reach ground water; in this second case, most of the firms that would fail would be considered marginal. If releases requiring a corrective action with average costs occur at the level estimated by the Regulatory Impact Analysis and no revenue increases are possible for small businesses, 10 percent of small firms will fail in each of the first five years as a result of these corrective action costs. A price increase of 5 percent on all goods and services

provided by retail motor fuel outlets would be necessary to enable retail motor fuel outlets owned by small firms to bear the costs of corrective action without failing in significant numbers. A price increase of this magnitude is unlikely, however, because a price increase of only 3 percent would enable these firms' larger competitors to bear the costs of all UST regulations with higher profits than these larger firms have today. With a 3 percent price increase, 3.7 percent of all small firms will fail as a result of corrective action costs in each of the first five years after promulgation. EPA also estimates that corrective action costs may be high enough and frequent enough to cause many independent marketers to close outlets that are operated by lessee dealers. It is possible that these closed outlets might be replaced by newer facilities, which might in turn be operated by lessee dealers.

EPA considered a variety of alternative approaches to the proposed corrective action requirements for USTs, including an exemption for small businesses in this sector. However, the Agency has determined that such an exemption would mean that EPA had failed to achieve the statutory goals set forth in Subtitle I. Because there is no difference in terms of the threat to human health and the environment posed by releases from USTs owned by small businesses and releases from those owned by large businesses, the Agency cannot justify exempting 76 percent of all retail motor fuel outlets in the United States from the corrective action requirements being proposed today, as would be necessary if small businesses were exempted. Instead, EPA has developed an approach to UST regulation that is designed to minimize corrective action costs by providing site-by-site flexibility in implementation.

EPA has attempted to provide the flexibility needed by small firms in this sector in the proposed requirements related to replacement and repair of leaking tanks and upgrading of existing tanks. Leaking tanks can be repaired rather than replaced whenever this is a feasible option. New tanks used to replace leaking tanks can be single-walled (although they must be coated and cathodically protected) rather than double-walled tanks, which are more expensive. Ten years are allowed for the upgrading of existing bare steel tanks, and the upgrade requirement can be met by retrofitting tanks with cathodic protection rather than by replacing the tanks. In combination, these requirements related to the replacement and upgrading of tanks will cause no more than 2 percent of small firms to exit the industry even in the absence of any revenue increases. The small firms forced to exit are marginal operations, and the exit caused by the regulation is simply a small acceleration of trends that are occurring in this industry. A regulation that required the replacement of all existing bare steel tanks with double-walled tanks within 3 years would cause the exit of 56 percent of all small businesses in this sector (assuming no revenue increase).

The regulations being proposed today include requirements for leak detection for USTs. EPA considers these requirements essential to the success of the UST program, and the costs of leak detection are not estimated to have significant economic impacts on small businesses. The costs of leak detection are relatively small, even compared to the profits of marginal small businesses. For example, tank tightness tests are assumed to cost $500 per test and need only be performed every 3 to 5 years. Further, according to industry sources, inventory control is already commonly practiced by many small firms. For example, most lessee dealers are required to conduct inventory control as a condition of their leases.

### C. Paperwork Reduction Act

Pursuant to section 3504(h) of the Paperwork Reduction Act of 1980, the reporting and recordkeeping provisions of today's proposed rule have been submitted to OMB for approval. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503, marked: Attention—Desk Officer for EPA. Should EPA promulgate a final rule, the Agency will respond to comments by OMB or the public regarding the information collection provisions of the rule.

## X. REVIEW OF SUPPORTING DOCUMENTS AND REQUEST FOR PUBLIC COMMENT

EPA invites public comments on all aspects of these proposed regulations, including all issues raised in the Preamble. In preparing this proposal, the Agency has used several sources of data. These sources have been placed in the rulemaking docket, which may be inspected by the public in LG–100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Copies of several of these documents are also available for public inspection and review in the libraries of EPA's Regional Offices.

Comments are solicited in regard to this information, especially their relevance to today's proposed rulemaking. The Agency requests that these comments be submitted by June 15, 1987 to the RCRA Docket Clerk [Docket No. UST–2], Office of Underground Storage Tanks, WH–562, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

## XI. SCHEDULE OF PUBLIC HEARINGS

The Agency will hold three public hearings on today's proposal. They are scheduled to convene at three different locations and at the dates indicated below:

1. May 28 (and 29, if necessary), 1987—The Westin Hotel, 2401 M Street, NW., Washington, DC 20037
2. June 1 (and 2, if necessary), 1987—The Registry Hotel, 15201 Dallas Parkway, Dallas, Texas 75248
3. June 4 (and 5, if necessary), 1987—Miyako Hotel, 1625 Post Street, San Francisco, California 94015

The hearings will begin at 9:30 a.m., with registration at 9:00 a.m. The hearings will end at 4:30 p.m., unless concluded earlier. Anyone wishing to make a statement at a hearing should notify, in writing, Ms. Helga Butler, Public Participation Officer, Office of Underground Storage Tanks [WH–565], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

### List of Subjects in 40 CFR Part 280

Administration practice and procedures, Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Underground storage tanks, Water pollution control, Water supply.

**Lee M. Thomas,**

*Administrator.*

March 29, 1987.

For the reasons set out in the Preamble, Part 280 of Title 40 of the Code of Federal Regulations is proposed to be revised as follows:

## PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

### Subpart A—Program Scope and Interim Prohibition

Sec.
280.10 Applicability.
280.11 Interim prohibition.
280.12 Definitions.

### Subpart B—New UST Systems: Design, Construction, Installation and Notification

Sec.
280.20 Performance standards for new UST systems.
280.21 Upgrading of existing UST systems.
280.22 Notification requirements.

### Subpart C—General Operating Requirements

Sec.
280.30 Spill and overfill control.
280.31 Operation and maintenance of corrosion protection.
280.32 Compatibility.
280.33 Repairs allowed.
280.34 Maintenance and availability of records.

### Subpart D—Release Detection

Sec.
280.40 General requirements for all UST systems.
280.41 Requirement for new UST systems.
280.42 Additional requirements for piping.
280.43 Recordkeeping

### Subpart E—Release Reporting and Investigation

Sec.
280.50 Reporting of suspected releases and spills.
280.51 Release investigation and confirmation.
280.52 Off-site impacts and source investigation.

### Subpart F—Corrective Action for UST Systems Containing Petroleum

Sec.
280.60 General.
280.61 Initial abatement requirements and procedures.
280.62 Free product removal.
280.63 Additional site investigation.
280.64 Soil ground water clean-up.
280.65 Reporting.
280.66 Public participation.

### Subpart G—Corrective Action for UST Systems Containing Hazardous Substances

Sec.
280.70 General.
280.71 Initial abatement requirements and procedures.
280.72 Additional site investigation.
280.73 Soil and ground-water clean-up.
280.74 Reporting.
280.75 Public participation.

### Subpart H—Out-of-Service UST Systems and Closure

Sec.
280.80 Temporary removal from use, temporary closure, and permanent closure.

**Authority:** Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Wate Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6912, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h)].

### § 280.10 Applicability.

(a) The requirements of this Part apply to any owner and operator of an UST system as defined in § 280.12 except as otherwise provided in paragraphs (b) and (c) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of § 280.11.

(b) Any UST system holding hazardous wastes that are listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other hazardous substances, are excluded from the requirements of this Part. This paragraph does not apply to any UST system containing petroleum.

(c) Subparts A, B, C, D, E, H and I do not apply to any of the following types of UST systems:

(1) Wastewater treatment tanks:

(2) Sumps;

(3) UST systems containing used oil;

(4) Underground bulk storage tanks;

(5) UST systems containing radioactive waste;

(6) Electrical equipment; and

(7) Hydraulic lift tanks.

### § 280.11 Interim prohibition.

(a) No person may install an UST system listed in § 280.10(c) for the purpose of storing regulated substances unless such UST system (whether of single or double wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the tank;

(2) Is cathodically protected against corrosion constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

(b) Notwithstanding paragraph (a) of this section, if soil tests conducted in accordance with ASTM Standard G57–78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohmcm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage task without corrosion protection may be installed in that location.

### § 280.12 Definitions

"Above ground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of an underground storage tank system and releases associated with overfills and transfer operations during regulated substance deliveries to or dispensing from an UST system.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that are used to distribute, meter, or control the flow of petroleum or hazardous substances from an underground storage tank.

"Below ground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the below ground portions of an underground storage tank system and releases associated with overfills and transfer operations as the regulated substance is delivered to or dispensed from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with materials so that physical inspection is precluded.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. A tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for extended periods of time and under varied environmental conditions (i.e., at different temperatures).

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping which joins the two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means burned on the premises.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired

by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Electrical equipment" means underground equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation area" is defined as the area containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing tank system" means a tank system which is used to contain an accumulation of regulated substances or for which installation has commenced on or prior to the effective date of this regulation. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals, or permits necessary to begin physical construction of the site or installation of the tank system, and if either (a) a continuous on-site physical construction or installation program has begun, or (b) the owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops, or raising animals, including fish, and associated residences and improvements. To be exempt from UST jurisdiction, a farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Flow-through process tank" is a tank that forms an integral part of an industrial or commercial process through which there is a steady or uninterrupted flow of materials during the operation of the process.

"Free product" refers to regulated substance in the non-aqueous phase (e.g., liquid not dissolved in water) that is beneath the surface of the ground.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance tank system" or "hazardous substance UST" means an underground storage tank system that contains an accumulation of hazardous substances defined in section 101(14) of CERCLA other than any substance regulated as a hazardous waste under Subtitle C of the Solid Waste Disposal Act (RCRA) or a mixture of such substances and petroleum in which hazardous substances comprise greater than 50% of the weight or volume of the mixture.

"Heating oil" refers to a type of fuel oil that is one of eight technical grades. These grades are: No. 1; No. 2; No. 4—light, No. 4—heavy; No. 5—light, No. 5—heavy; No. 6; and residual. Heating oil also refers to fuel oil substitutes such as kerosene or diesel when used for heating purposes.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air and hydraulic fluid to operate lifts, elevators, and other similar devices.

"Implementing agency" means EPA, or, in the case of a state with a program approved under section 9004, the designated state agency responsible for carrying out an approved UST program.

"Interstitial monitoring" is a leak detection method which entails the surveillance of the space between an UST system walls and the secondary containment system for a change in steady state conditions. In a double-walled tank, this change may be indicated by a loss of vacuum, a drop in pressure, a drop in the fluid level in a visible reservoir, or the detection of the regulated substance and/or water in the interstitial space. In a secondary containment system consisting of a liner (natural or synthetic) or a vault, the surveillance consists of frequent to continuous sampling from a monitoring well between the UST and the liner to detect the presence of regulated substance in the well(s).

"Inventory controls" are techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Motor fuel" is a petroleum-based fuel used in the operation of an engine that propels a vehicle for transportation of people or cargo.

"New tank system" means an UST system for which installation has commenced after the effective date of this regulation. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin physical construction of the site or installation of the tank, and if either (a) a continuous on-site physical construction or installation program has begun, or (b) the owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Non-commercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" is the period beginning from the time when the installation of the tank system is commenced until it is properly closed under § 280.80.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means: (a) in the case of an UST system in use on the date of enactment of the Hazardous and Solid Waste Amendments of 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and (b) in the case of any UST system in use before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, but no longer in use on the date of enactment of such Amendments, any person who owned such UST immediately before the discontinuation of its use.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.

"Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels.

"Petroleum tank system" or "Petroleum UST" means an UST system that contains an accumulation of petroleum or a mixture of regulated substances and petroleum in which petroleum comprises greater than 50% of the weight or volume of the mixture.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under (a) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq); (b) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq); or (c) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in (a) or (b) of this definition.

"Positive sampling, test, or monitoring results" refer to the results of sampling, testing, or monitoring using a method described in Subpart D that indicate a release from an UST system has occurred.

"Regulated substance" means: (a) any substance defined in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under Subtitle (C); and (b) petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial area between the UST system and a secondary barrier around it.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Secondary containment" is a system installed around an UST that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious liners (both natural and synthetic), double-walls or vaults.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Stormwater or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation or domestic commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur.

"Sump" means any pit or reservoir that meets the definition of tank, including troughs or trenches connected to it that serves to temporarily collect regulated substances.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of regulated substances and that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances which is constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an UST system, intrusion of ground water into a tank system).

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below-ground release.

"UST system" or "Tank System" means an underground storage tank and its associated ancillary equipment and containment system, if any.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility (including gathering lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or

(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d)(1) of (d)(2) of this definition;

(e) Surface impoundment, pit, pond, or lagoon;

(f) Storm water or waste water collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" shall not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

"Unsaturated zone" is the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation (i.e., the water table).

"Wastewater treatment tank" means a tank that is part of a wastewater treatment facility regulated under either Section 402 or 307(b) of the Clean Water Act, and which receives and treats or stores an influent wastewater which contains regulated substances.

## SUBPART B—NEW UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION

### § 280.20 Performance standards for new UST systems.

In order to prevent releases due to structural failure or corrosion for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

(a) *Tanks.* Each tank must be properly designed, constructed and protected from corrosion in accordance with a

code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass reinforced plastic.

[Note.—Underwriters Laboratories Standard 1316, "Standard for Glass- Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriter's Laboratories of Canada CAN 4–S615–M83 "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American society of Testing and Materials Standard D4021–86 may be used as guidance for complying with paragraph (a)(1) of this section.] or

(2) The tank is constructed of coated steel and cathodically protected in the following manner:

(i) The tank is coated and cathodically protected with factoryinstalled sacrificial anodes, and the cathodic protection system is operated and maintained by an independent corrosion expert in accordance with § 280.31(b)(2)

[Note: The following codes and standards may be used as guidance for complying with paragraph (a)(2)(ii) of this section:

(A) Steel Tank Institute "Specification for sti–P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(C) Underwriters Laboratories of Canada CAN4–S603– M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and CAN4– G03.1–M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids", and CAN4–S631–M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems."]; or

(ii) The tank is coated and cathodically protected with a field-installed cathodic protection system and the cathodic protection system is designed by an independent corrosion expert and operated and maintained in accordance with § 280.31(b) (1) and (c).

[Note: The following codes and standards may be used as guidance for complying with paragraph (a)(2)(ii) of this section:

(A) National Association of Corrosion Engineers (NACE) Standard RP–02–85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";

(B) National Association of Corrosion Engineers (NACE) Standard RP–02–85, "Control of External Corrosion of Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems" and Underwriters Laboratories of Canada CAN4–S603– M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."];

(3) The tank is constructed of a steel-fiberglass-reinforced-plastic composite;

[Note: The UL Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" may be used as guidance for complying with paragraph(a)(3) of this section.];

(4) The tank design, construction and corrosion protection is determined by the implementing agency to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a) (1) through (3) of this section.

(b) *Piping.* The underground piping must be properly designed, constructed and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of fiberglass reinforced plastic.

[Note: The following codes and standards may be used as guidance for complying with paragraph (b)(1) of this section:

(i) Underwriters Laboratories (UL) Subject 971, "UL Listed Non-Metal Pipe" and UL Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas"; or

(ii) Underwriters Laboratories of Canada (ULC) Guide ULC–107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids", and ULS Standard CAN4– S633–M81, "Flexible Underground Hose Connectors."];

(2) The piping is coated steel and cathodically protected with a field-installed cathodic protection system that is designed by an independent corrosion expert and operated and maintained in accordance with § 280.31(b) (1) and (c); or

[Note: The following codes and standards may be used as guidance for complying with paragraph (b) (2): National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code", American Petroleum Institute (API) Publication 1615, "Installation of Underground Petroleum Storage Systems"; API Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems and National Association of Corrosion Engineers Standard RP–01–69, "Control of External Corrosion on Submerged Metallic Piping Systems."]

(3) The piping design, construction and corrosion protection is determined by the implementing agency to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b) (1) and (2) of this section.

(c) *Installation.* All tanks and piping must be installed according to the manufacturer's instructions and must meet the following requirements:

(1) Precautions must be taken to prevent damage to the tank and piping coating during installation. Any damage must be repaired in accordance with the applicable manufacturer's instructions.

(2) The excavation must provide space for the tanks, piping and associated equipment, and for the placement and compaction of backfill materials, particularly under the circumference of the tank shell and ends.

(3) The backfill material must be clean, washed, non-corrosive material such as sand, crushed rock, or pea gravel. It must be selected in accordance with the manufacturer's instructions and placed and compacted in uniform lifts for proper support and protection of the tank and piping after installation.

(4) Supports and anchorage must be provided for installations located in areas subject to high water tables or flooding to avoid flotation.

(5) The piping layout must be designed to minimize crossed lines and interference with conduit and other tank system components. If crossing of lines is unavoidable, adequate clearance must be provided to prevent contact.

(6) The pipe joints must be cut accurately and deburred to provide liquid-tight seals.

(7) Swing joints or flexible connectors must be installed at the beginning and end of each line as well as where lines change direction.

(8) Installation of tank and piping cathodic protection must be in accordance with manufacturer's instructions, plans and specifications.

(9) Tank and piping tightness tests must be performed after backfill is installed and before the system is placed in operation. This test must be performed in accordance with § 280.41(c)(1).

Note.—Tank and piping system installation practices and procedures described in the following codes may be used as guidance for meeting the requirements of paragraph (c) of this section:

(i) American Petroleum Institute (API) Publication 1615, "Installation of Underground Petroleum Storage System"; or

(ii) Petroleum Equipment Institute (PEI) Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(iii) American National Standards Institute (ANSI), Standard B31.3, "Petroleum Refinery Piping", and ANSI Standard B31.4 "Liquid Petroleum Transportation Piping System".

(d) All owners and operators must submit information demonstrating compliance with paragraph (c) of this section and provide a certification of compliance on the UST notification form in accordance with § 280.22.

**§ 280.21 Upgrading of existing UST systems.**

(a) No later than (insert date 10 years after the effective date of the final regulations), all existing UST systems must:

(1) Comply with the requirements for new UST systems under § 290.20;

(2) Have a field installed cathodic protection system that is designed by an independent corrosion expert and operated and maintained in accordance with § 280.31; or

(3) Permanently close in accordance with § 280.60.

**§ 280.22 Notification requirements.**

(a) On or before May 8, 1986, each owner of an underground storage tank currently in use must submit, in the form prescribed in Appendix I of this section, a notice of the existence of such tank to the State or local agency or department designated in Appendix II of this section to receive such notice.

(b) On or before May 8, 1986, each owner of an underground storage tank taken out of operation after January 1, 1974 (unless the owner knows that such tank has been removed from the ground) must submit, in the form prescribed in Appendix I of this section, a notice of the existence of such tank to the State or local agency or department designated in Appendix II of this section to receive such notice.

(c) Any owner who brings an underground storage tank into use after May 8, 1986, must within 30 days of bringing such tank into use, submit, in the form prescribed in Appendix I of this section, a notice of existence of such tank to the State or local agency or department designated in Appendix II of this section to receive such notice.

(d) In States where State law, regulations, or procedures require owners to use forms that differ from those set forth in Appendix I of this section to fulfill the requirements of this section, the State forms may be submitted in lieu of the forms set forth in Appendix I of this section. If a State requires that its form be used in lieu of the form presented in this regulation, such form must meet the requirements of Section 9002.

(e) Owners required to submit notices under paragraphs (a) through (c) of this section must provide notices to the appropriate agencies or departments identified in Appendix II of this section for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

(f) Notices required to be submitted under paragraphs (a) through (c) of this section must provide all of the information indicated on the prescribed form (or appropriate State form) for each tank for which notice must be given.

(g) Beginning on December 9, 1985 through May 9, 1987 any person who deposits regulated substances in an underground storage tank must make reasonable efforts to notify the owner or operator of such tank of the owner's obligations under paragraphs (a) through (c) of this section.

(h) Beginning 30 days after the Administrator issues new tank performance standards pursuant to RCRA section 9003(e), any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraphs (a) through (c) of this section.

(i) Paragraphs (a) through (c) of this section do not apply to tanks for which notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(j) All owners and operators of new UST systems must certify in the notification form that the methods used comply with the following requirements:

(1) Installation of tanks and piping under § 280.20(c);

(2) Cathodic protection of steel tanks and piping under § 280.20 (a) and (b);

(3) Financial responsibility under Subpart I; and

(4) Release detection under §§ 280.41 and 280.42.

(k) All owners and operators of new UST systems must assure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in § 280.20(c).

BILLING CODE 6560-50-M

APPENDIX I to §280.22

# Notification for Underground Storage Tanks

FORM APPROVED
OMB NO. 2050-0049
APPROVAL EXPIRES 6-30-88

| | STATE USE ONLY |
|---|---|
| | I.D. Number |
| | Date Received |

## GENERAL INFORMATION

**Notification is required by Federal law for all underground tanks that have been used to store regulated substances since January 1, 1974, that are in the ground as of May 8, 1986, or that are brought into use after May 8, 1986. The information requested is required by Section 9002 of the Resource Conservation and Recovery Act, (RCRA), as amended.**

The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonably available records, or, in the absence of such records, your knowledge, belief, or recollection.

**Who Must Notify?** Section 9002 of RCRA, as amended, requires that, unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owner means:

(a) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and

(b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

**What Tanks Are Included?** Underground storage tank is defined as any one or combination of tanks that (1) is used to contain an accumulation of "regulated substances," and (2) whose volume (including connected underground piping) is 10% or more beneath the ground. Some examples are underground tanks storing: 1. gasoline, used oil, or diesel fuel, and 2. industrial solvents, pesticides, herbicides or fumigants.

**What Tanks Are Excluded?** Tanks removed from the ground are not subject to notification. Other tanks excluded from notification are:

1. farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. tanks used for storing heating oil for consumptive use on the premises where stored;
3. septic tanks;
4. pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979, or which is an intrastate pipeline facility regulated under State laws;
5. surface impoundments, pits, ponds, or lagoons;
6. storm water or waste water collection systems;
7. flow-through process tanks;
8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;
9. storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

**What Substances Are Covered?** The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), with the exception of those substances regulated as hazardous waste under Subtitle C of RCRA. It also includes petroleum, e.g., crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

**Where To Notify?** Completed notification forms should be sent to the address given at the top of this page.

**When To Notify?** 1. Owners of underground storage tanks in use or that have been taken out of operation after January 1, 1974, but still in the ground, must notify by May 8, 1986. 2. Owners who bring underground storage tanks into use after May 8, 1986, must notify within 30 days of bringing the tanks into use.

**Penalties: Any owner who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed $10,000 for each tank for which notification is not given or for which false information is submitted.**

## INSTRUCTIONS

Please type or print in ink all items except "signature" in Section V. **This form must by completed for each location containing underground storage tanks.** If more than 5 tanks are owned at this location, photocopy the reverse side, and staple continuation sheets to this form.

Indicate number of continuation sheets attached ☐

## I. OWNERSHIP OF TANK(S)

Owner Name (Corporation, Individual, Public Agency, or Other Entity)

Street Address

County

City State ZIP Code

Area Code Phone Number

Type of Owner *(Mark all that apply ☒)*

☐ Current ☐ State or Local Gov't ☐ Private or Corporate

☐ Former ☐ Federal Gov't (GSA facility I.D. no. _____) ☐ Ownership uncertain

## II. LOCATION OF TANK(S)

(If same as Section 1, mark box here ☐)

Facility Name or Company Site Identifier, as applicable

Street Address or State Road, as applicable

County

City (nearest) State ZIP Code

Indicate number of tanks at this location ☐

Mark box here if tank(s) are located on land within an Indian reservation or on other Indian trust lands ☐

## III. CONTACT PERSON AT TANK LOCATION

Name (If same as Section I, mark box here ☐) Job Title Area Code Phone Number

## IV. TYPE OF NOTIFICATION

☐ Mark box here only if this is an amended or subsequent notification for this location

## V. CERTIFICATION (Read and sign after completing Section VI.)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

| Name and official title of owner or owner's authorized representative | Signature | Date Signed |
|---|---|---|
| | | |

**CONTINUE ON REVERSE SIDE**

EPA Form 7530-1 (11-85) Page 1

Owner Name (from Section I) _____ Location (from Section II) _____ Page No. ____ of ____ Pages

**VI. DESCRIPTION OF UNDERGROUND STORAGE TANKS** *(Complete for each tank at this location.)*

| Tank Identification No. (e.g., ABC-123), or Arbitrarily Assigned Sequential Number (e.g., 1,2,3...) | Tank No. | Tank No. | Tank No. | Tank No. | Tank No. |
|---|---|---|---|---|---|
| **1. Status of Tank** *(Mark all that apply ☒)* | | | | | |
| Currently in Use | ☐ | ☐ | ☐ | ☐ | ☐ |
| Temporarily Out of Use | ☐ | ☐ | ☐ | ☐ | ☐ |
| Permanently Out of Use | ☐ | ☐ | ☐ | ☐ | ☐ |
| Brought into Use after 5/8/86 | ☐ | ☐ | ☐ | ☐ | ☐ |
| **2. Estimated Age (Years)** | | | | | |
| **3. Estimated Total Capacity (Gallons)** | | | | | |
| **4. Material of Construction** *(Mark one ☒)* | | | | | |
| Steel | ☐ | ☐ | ☐ | ☐ | ☐ |
| Concrete | ☐ | ☐ | ☐ | ☐ | ☐ |
| Fiberglass Reinforced Plastic | ☐ | ☐ | ☐ | ☐ | ☐ |
| Unknown | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other, Please Specify | _____ | _____ | _____ | _____ | _____ |
| **5. Internal Protection** *(Mark all that apply ☒)* | | | | | |
| Cathodic Protection | ☐ | ☐ | ☐ | ☐ | ☐ |
| Interior Lining (e.g., epoxy resins) | ☐ | ☐ | ☐ | ☐ | ☐ |
| None | ☐ | ☐ | ☐ | ☐ | ☐ |
| Unknown | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other, Please Specify | _____ | _____ | _____ | _____ | _____ |
| **6. External Protection** *(Mark all that apply ☒)* | | | | | |
| Cathodic Protection | ☐ | ☐ | ☐ | ☐ | ☐ |
| Painted (e.g., asphaltic) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Fiberglass Reinforced Plastic Coated | ☐ | ☐ | ☐ | ☐ | ☐ |
| None | ☐ | ☐ | ☐ | ☐ | ☐ |
| Unknown | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other, Please Specify | _____ | _____ | _____ | _____ | _____ |
| **7. Piping** *(Mark all that apply ☒)* | | | | | |
| Bare Steel | ☐ | ☐ | ☐ | ☐ | ☐ |
| Galvanized Steel | ☐ | ☐ | ☐ | ☐ | ☐ |
| Fiberglass Reinforced Plastic | ☐ | ☐ | ☐ | ☐ | ☐ |
| Cathodically Protected | ☐ | ☐ | ☐ | ☐ | ☐ |
| Unknown | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other, Please Specify | _____ | _____ | _____ | _____ | _____ |
| **8. Substance Currently or Last Stored in Greatest Quantity by Volume** *(Mark all that apply ☒)* | | | | | |
| **a. Empty** | ☐ | ☐ | ☐ | ☐ | ☐ |
| **b. Petroleum** | | | | | |
| Diesel | ☐ | ☐ | ☐ | ☐ | ☐ |
| Kerosene | ☐ | ☐ | ☐ | ☐ | ☐ |
| Gasoline (including alcohol blends) | ☐ | ☐ | ☐ | ☐ | ☐ |
| Used Oil | ☐ | ☐ | ☐ | ☐ | ☐ |
| Other, Please Specify | _____ | _____ | _____ | _____ | _____ |
| **c. Hazardous Substance** | ☐ | ☐ | ☐ | ☐ | ☐ |
| Please Indicate Name of Principal CERCLA Substance | _____ | _____ | _____ | _____ | _____ |
| OR | | | | | |
| Chemical Abstract Service (CAS) No. | _____ | _____ | _____ | _____ | _____ |
| Mark box ☒ if tank stores a mixture of substances | ☐ | ☐ | ☐ | ☐ | ☐ |
| **d. Unknown** | ☐ | ☐ | ☐ | ☐ | ☐ |
| **9. Additional Information (for tanks permanently taken out of service)** | | | | | |
| a. Estimated date last used (mo/yr) | / | / | / | / | / |
| b. Estimated quantity of substance remaining (gal.) | _____ | _____ | _____ | _____ | _____ |
| c. Mark box ☒ if tank was filled with inert material (e.g., sand, concrete) | ☐ | ☐ | ☐ | ☐ | ☐ |

EPA Form 7530-1 (11-85) Reverse

Page 2

BILLING CODE 6560-50-C

VII. CERTIFICATION OF COMPLIANCE (COMPLETE FOR EACH LOCATION)

| | Tank Identification No. (e.g., ABC–123) | | | | |
|---|---|---|---|---|---|
| | Tank No. | Tank No. | Tank No. | Tank No. | Tank No. |
| 10. Installation (mark all that apply): | | | | | |
| 1. The tank and piping installer was certified by the tank and piping manufacturers | ☐ | ☐ | ☐ | ☐ | ☐ |
| 2. The installer showed proof of certification by state or local regulatory agencies | ☐ | ☐ | ☐ | ☐ | ☐ |
| 3. The installation was inspected by a registerd professional engineer | ☐ | ☐ | ☐ | ☐ | ☐ |
| 4. The installation was inspected by state or local agencies | ☐ | ☐ | ☐ | ☐ | ☐ |
| 5. Manufacture-supplied checklists of installation procedures were completed | ☐ | ☐ | ☐ | ☐ | ☐ |
| 6. The tank and piping were tested for leaks during and after installation | ☐ | ☐ | ☐ | ☐ | ☐ |
| 7. Other Specify: | _____ | _____ | _____ | _____ | _____ |
| . Release Detection (mark all that apply): | | | | | |
| (a) Vapor monitoring | ☐ | ☐ | ☐ | ☐ | ☐ |
| (b) Groundwater monitoring | ☐ | ☐ | ☐ | ☐ | ☐ |
| (c) Monitoring above an impermeable barrier | ☐ | ☐ | ☐ | ☐ | ☐ |
| (d) Automatic in-tank monitoring and inventory control | ☐ | ☐ | ☐ | ☐ | ☐ |
| (e) Secondary containment with interstitial monitoring | ☐ | ☐ | ☐ | ☐ | ☐ |
| (f) Tank Testing: product inventory | ☐ | ☐ | ☐ | ☐ | ☐ |
| (g) Another method approved by the implementing agency. Specify: | _____ | _____ | _____ | _____ | _____ |
| 12. Corrosion Protection (if applicable): | | | | | |
| As specified for factory-installed cathodic protection for steel tanks | ☐ | ☐ | ☐ | ☐ | ☐ |
| As specified for field-installed cathodic protection for steel tanks | ☐ | ☐ | ☐ | ☐ | ☐ |
| As specified for steel piping | ☐ | ☐ | ☐ | ☐ | ☐ |
| Another method approved by the implementing agency Specify: | _____ | _____ | _____ | _____ | _____ |
| 13. I have financial responsibility in accordance with Subpart I: | | | | | |
| Method | _____ | _____ | _____ | _____ | _____ |
| Insurer | _____ | _____ | _____ | _____ | _____ |
| Policy # | _____ | _____ | _____ | _____ | _____ |
| 14. *OATH:* I certify that the information concerning installation provided in item 10 is true, to the best of my belief and knowledge | | | | | |
| Installer: | | | | | |
| NAME | | | | | |
| POSITION | | | | | |
| COMPANY | | | | | |

**Appendix II to § 280.22—List of Agencies Designated to Receive Notifications**

**Alabama (EPA Form)**

Alabama Department of Environmental Mgmt.
Ground Water Section/Water Division
1751 Federal Drive
Montgomery, Alabama 36130

**Alaska (EPA Form)**

Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811
907/465–2653

**American Samoa (EPA Form)**

Executive Secretary
Environmental Quality Commission
Office of the Governor
American Samoan Government
Pago Pago, American Samoa 96799
Attention: UST Notification

**Arizona (EPA Form)**

Attention: UST Coordinator
Arizona Department of Health Services
Environmental Health Services
2005 N. Central
Phoenix, Arizona 85004

**Arkansas (EPA Form)**

Arkansas Department of Pollution Control and Ecology
P.O. Box 9583
Little Rock, Arkansas 72219
501/562–7444

**California (State Form)**

Ed Anton
California Water Resources Control Board
P.O. Box 100
Sacramento, California 95801
916/445–9552

**Colorado (EPA Form)**

Kenneth Mesch, Section Chief
Colorado Department of Health
Waste Management Division
Underground Tank Program
4210 East 11th Avenue
Denver, Colorado 80220
303/320–8333 Ext. 4364

**Connecticut (State Form)**

Hazardous Materials Management Unit
Department of Environmental Protection
State Office Building
165 Capitol Avenue
Hartford, Connecticut 06106

**Delaware (State Form)**

Division of Air and Waste Management
Department of Natural Resources and Environmental Control
P.O. Box 1401
89 Kings Highway
Dover, Delaware 19903
302/736–5409

**District of Columbia (EPA Form)**

Attention: UST Notification Form
Department of Consumer and Regulatory Affairs
Pesticides and Hazardous Waste Management Branch
Room 114
5010 Overlook Avenue, S.W.
Washington, D.C. 20032

**Florida (State Form)**

Florida Department of Environmental Regulation
Solid Waste Section
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301
904/487–4398

**Georgia (EPA Form)**

Georgia Department of Natural Resources
Environmental Protection Division
Underground Storage Tank Program
3420 Normal Berry Drive
Hapeville, Georgia 30354

**Guam (State Form)**

James B. Branch, Administrator
Guam Environmental Protection Agency
P.O. Box 2999
Agana, Guam 96910
Overseas Operator (Commercial Call 646–8863)

**Hawaii (EPA Form)**

Chief, Noise and Radiation Branch
Hawaii Department of Health
591 Ala Moana Boulevard Honolulu, Hawaii 96813
808/548–4129

**Idaho (EPA Form)**

Underground Storage Tank Coordinator
Water Quality Bureau
Idaho Department of Health & Welfare
Division of Environment
450 W. State Street
Boise, Idaho 83720
208/334–4251

**Illinois (EPA Form)**

Underground Storage Tank Coordinator
Division of Fire Prevention
Office of State Fire Marshal
3150 Executive Park Drive
Springfield, Illinois 62703–4599

**Indiana (EPA Form)**

Division of Land Pollution Control, UST Program
Indiana State Board of Health
P.O. Box 7015
Indianapolis, Indiana 46207
317/243–5060

**Iowa (State Form)**

Iowa Department of Water, Air and Waste Management
900 East Grand
Des Moines, Iowa 50319
515/281–8692

**Kansas (EPA Form)**

Office of Environmental Geology
Kansas Department of Health & Environment
Forbes Field, Building 740
Topeka, Kansas 66620
913/862–9360 Ext. 221

**Kentucky (State Form)**

Natural Resources Cabinet
Division of Waste Management, Attention: Vicki Pettus
18 Reilly Road
Frankfort, Kentucky 40601
502/564–6716

**Louisians (State Form)**

Patricia L. Norton, Secretary
Louisiana Department of Environmental Quality
P.O. Box 44066
Baton Rouge, Louisiana 70804
504/342–1265

**Maine (State Form)**

Attention: Underground Tanks Program
Bureau of Oil & Hazardous Material Control
Department of Environmental Protection
State House—Station 17
Augusta, Maine 04333
207/289–2651

**Maryland (EPA Form)**

Science and Health Advisory Group
Office of Environmental Programs
201 West Preston Street
Baltimore, Maryland 21201

**Massachusetts (EPA Form)**

UST Registry, Department of Public Safety
1010 Commonwealth Avenue
Boston, Massachusetts 02215
617/566–4500

**Michigan (EPA Form)**

Ground Water Quality Division
Department of Natural Resources
Box 30157
Lansing, Michigan 48909

**Minnesota (State Form)**

Underground Storage Tank Program
Division of Solid and Hazardous Wastes
Minnesota Pollution Control Agency
1935 West County Road, B–2
Roseville, Minnesota 55113

**Mississippi (EPA Form)**

Department of Natural Resources
Bureau of Pollution Control
P.O. Box 10385
Jackson, Mississippi 39209

**Missouri (EPA Form)**

Gordon Ackley, UST Coordinator
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

**Montana (EPA Form)**

Solid and Hazardous Waste Bureau
Department of Health and Environmental Science
Cogswell Building, Room B–201
Helena, Montana 59620

**Nebraska (EPA Form)**

Nebraska State Fire Marshall
P.O. Box 94677
Lincoln, Nebraska 68509–4677

**Nevada (EPA Form)**

Attention: Underground Storage Tanks
Division of Environmental Protection
Department of Conservation and Natural Resources
Capitol Complex
201 S. Fall Street
Carson City, Nevada 89710
800/992–0900 Ext. 4670

**New Hampshire (EPA Form)**

Water Supply and Pollution Control Commission
Hazen Drive
P.O. Box 95
Concord, New Hampshire 03301
Attention: UST Registration
603/271–3503

**New Jersey (State Form)**

Underground Storage Tank Coordinator
Department of Environmental Protection
Division of Water Resources (CN–029)
Trenton, New Jersey 08625
609/292–0424

**New Mexico (EPA Form)**

New Mexico Environmental Improvement Division
Ground Water/Hazardous Waste Bureau
P.O. Box 968
Sante Fe, New Mexico 87504
505/827–2933 or 505/827–2918

**New York (EPA Form)**

Bulk Storage Section
Division of Water
Department of Environmental Conservation
50 Wolf Road, Room 326
Albany, New York 12233–0001
518/457–4351

**North Carolina (EPA Form)**

Division of Environmental Mgmt./Ground Water Section
Dept. of Natural Resources & Community Development
P.O. Box 27687
Raleigh, North Carolina 27611
919/733–5083

**North Dakota (State Form)**

Division of Hazardous Mgmt. and Special Studies
North Dakota Department of Health
Box 5520
Bismarck, North Dakota 58502–5520

**Northern Mariana Islands (EPA Form)**

Chief
Division of Environmental Quality
P.O. Box 1304
Commonwealth of Northern Mariana Islands
Saipan, CM 96950
Overseas Operator: 6984
Cable Address: Gov. NMI Saipan

**Ohio (State Form)**

State Fire Marshal's Office, UTN
Department of Commerce
8895 E. Main Street
Reynoldsburg, Ohio 43068
State Hotline 800/282–1927

**Oklahoma (EPA Form)**

Underground Storage Tank Program
Oklahoma Corporation Comm.
Jim Thorpe Building
Oklahoma City, Oklahoma 73105

**Oregon***

Underground Storage Tank Program
Hazardous and Solid Waste Division
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207
503/229–5788

**Pennsylvania (EPA Form)**

Pennsylvania Department of Environmental Resources
Bureau of Water Quality Management/Ground Water Unit
9th Floor, Fulton Building
P.O. Box 2063
Harrisburg, Pennsylvania 17120

**Puerto Rico (EPA Form)**

Director, Water Quality Control Area
Environmental Quality Board
Commonwealth of Puerto Rico
Santurce, Puerto Rico 00910
809/725–0717

**Rhode Island (EPA Form)**

UST Registration
Department of Environmental Management
204 Cannon Building
75 Davis Street
Providence, Rhode Island 02908
401/277–2234

**South Carolina (State Form)**

Attention: Susana Workman
Groundwater Protection Division
South Carolina Dept. of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
803/758–5213

**South Dakota (EPA Form)**

Office of Water Quality
Department of Water and Natural Resources
Joe Foss Building
Pierre, South Dakota 57501

---

*May be using a State form. Owners should consult EPA to determine whether such form is in compliance with Section 9002.

**Tennessee (EPA Form)**

Terry K. Cothron, Director
Division of Ground Water Protection
Tennessee Department of Health and Environment
150 Ninth Avenue, North
Nashville, Tennessee 37219–5404
615/741–7206

**Texas (EPA Form)**

Underground Storage Tank Program
Texas Water Commission
P.O. Box 13087
Austin, Texas 78711

**Utah (EPA Form)**

Kenneth L. Alkema
Division of Environmental Health
P.O. Box 45500
Salt Lake City, Utah 84145–0500

**Vermont (State Form)**

Underground Storage Tank Program
Vermont AEC/Waste Management Division
State Office Building
Montpelier, Vermont 05602
802/828–3395

**Virginia (EPA Form)**

Russell P. Ellison, III, P.G.
Virginia Water Control Board
P.O. Box 11143
Richmond, Virginia 23230–1143
804/257–6685

**Virgin Islands (EPA Form)**

205(J) Coordinator
Division of Natural Resources Management
14 F Building 111, Watergut Homes
Christianstead, St. Croix, Virgin Islands 00820

**Washington (State Form)**

Earl W. Tower, Supervisor
Department of Ecology, M/S PV–11
Management Division, Solid and Hazardous Waste
Olympia, Washington 98504–8711
206/459–6316

**West Virginia (EPA Form)**

Attention: UST Notification
Solid and Hazardous Waste/Ground Water Branch
West Virginia Department of Natural Resources
1201 Greenbriar Street
Charleston, West Virginia 25311

**Wisconsin (State Form)**

Bureau of Petroleum Inspection
P.O. Box 7969
Madison, Wisconsin 53707
608/266–7605

**Wyoming (EPA Form)**

Water Quality Division
Department of Environmental Quality
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, Wyoming 82002
307/777–7781

**Appendix III to § 280.22—Statement for Shipping Tickets and Invoices**

**Note.**—A new Federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98–616)) requires owners of certain underground storage tanks to notify designated State or local agencies by May 8, 1986 of the existence of their tanks. Notifications for tanks brought into use after May 8, 1986 must be made within 30 days. Consult EPA's regulations, issued on ____, 1985, to determine if you are affected by this law.

One-Time Notification Letter

Dear Customer: A new Federal law directs the Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for underground storage tanks. As part of the new law, owners of certain underground tanks used to store petroleum or hazardous substances must notify designated State or local agencies of the existence of their tanks by May 8, 1986. This includes owners of tanks currently used to store such substances and owners of tanks taken out of operation after January 1, 1974, but still in the ground. Owners who bring tanks into use after May 8, 1986, must notify within 30 days.

The purpose of the notification program is to assist EPA and the States in locating and evaluating underground storage tanks. Enclosed is a copy of EPA's regulations concerning owners of underground storage tanks, and a notification form.

Please review the regulations to determine if you are affected by the notification requirements. A list of the addresses of the State or local agencies designated to receive the notification is contained in the discussion to the regulations.

## Subpart C—General Operating Requirements

**§ 280.30 Spill and overfill control.**

(a) All owners and operators must ensure that releases due to spills or overfills do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that a person is physically present at all times during transfer to observe the transfer.

**Note.**—The transfer procedures described in NFPA 385 may be used as guidelines for compliance with paragraph (a) of this section. API publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets" and NFPA 30 provide further guidance on the matter of spill and overfill control.

(b) All new UST systems, as well as all existing UST systems using a method of external release detection specified under § 280.41(d) through (f) or (i), must use one or more of the following spill or overfill prevention devices:

(1) A sensor for measuring the level of product in the tank, equipped with an audible or visual alarm that is triggered when the tank is 95% full;

(2) A device designed to cause flow into the tank to shut off automatically when the tank is 95% full;

(3) A spill catchment basin around the fill pipe large enough to contain the volume of the hose; or

(4) An equivalent device designed to prevent releases due to spills and overfills that has been approved by the implementing agency.

(c) All owners and operators of existing UST systems must use one or more of the spill or overfill prevention devices specified in paragraph (b) for each tank no later than (insert date 10 years from the effective date of the final regulations).

**§ 280.31 Operation and maintenance of corrosion protection.**

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to assure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of the UST system.

(b) All UST systems equipped with cathodic protection systems must be inspected by an independent corrosion expert in accordance with the following minimum inspection schedule:

(1) The proper operation of field installed cathodic protection systems must be tested within six months of installation and at least annually thereafter;

(2) The proper operation of factory installed cathodic protection systems must be tested within six months of installation and at least every five years thereafter; or

(3) All sources of impressed current must be inspected and/or tested, as appropriate, at least annually.

(c) All UST systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is running properly.

(d) For all UST systems using corrosion protection measures, records must be maintained (in accordance with § 280.34) of the operation of these systems capable of demonstrating compliance with the performance standards in this section. These records must provide the following:

(1) The results of the last three inspections required on a bi-monthly basis;

(2) The results of testing from the last two service checks required annually; and

(3) The results of the last service check if required less frequently than on an annual basis.

(e) One or more of the following criteria must be used in performing such tests as required in the paragraph (b) of this section to determine that cathodic protection is adequate:

(1) A negative (cathodic) potential of at least 0.85 volts as measured between the structure and a saturated copper-copper-sulfate (Cu-Cu-$SO_4$) reference electrode contacting the soil; or

(2) A negative (cathodic potential) shift of at least 300 mv as measured between the structure and a Cu-Cu-$SO_4$ reference electrode contacting the soil. This shift is the difference between the unprotected potential and the potential with the protective current applied; or

(3) A negative (cathodic) polarization potential shift of at least 100 mv as measured between the structure and a Cu-Cu-$SO_4$ reference electrode contacting the soil. This shift is the polarization decay which is determined immediately after the protective current is interrupted.

(f) All UST system owners and operators of new underground tanks and connected piping must certify compliance with corrosion protection requirements on the notification form submitted pursuant to § 280.22.

**§ 280.32 Compatibility.**

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in such system.

**§ 280.33 Repairs allowed.**

(a) A tank may be repaired and relined if the owner and operator receives a certification in writing either by the person performing the repairs or an independent registered professional engineer, that:

(1) The vacuum test required in paragraph (d) of this section was conducted and was held with no adverse impacts on the relined material as determined by an internal inspection.

(2) The lining material is compatible with the regulated substance stored;

(3) The tank was inspected internally and ultrasonically tested and determined to be structurally sound; and

(4) The tank has not been repaired or relined previously.

**Note.**—The lining/repair procedures described in API 1631 may be used as guidelines for compliance with paragraph (a) of this section;

(b) All steel tanks with corrosion holes that are subsequently repaired must be retrofitted with a cathodic protection system that is designed by an independent corrosion expert and operated and maintained in accordance with § 280.31.

(c) Repairs to fiberglass reinforced plastic tanks may be made only by the manufacturer's authorized representatives.

(d) A vacuum test (at 5.3 in. Hg) must be performed on the tank by the tank repairer after the repair/relining is completed and before the UST system is put back into service.

(e) The owner and operator may not repair holes in piping and fittings, but must replace any piece of such piping or fittings from which a release has occurred. Replacement piping and fittings must meet the requirements of § 280.20(b) and (c), and § 280.32. Loose fittings and joints in piping that have been tightened to eliminate leakage may be put back into service.

(f) The owner and operator must have a tank tightness test (in accordance with § 280.41(c)(1)) performed within one year of the repair of all UST systems that are without interstitial monitoring or other release detection that is sampled at least every 30 days.

(g) All UST system owners and operators with a repaired tank must maintain records capable of demonstrating compliance with requirements of this section for the remaining operating life of the UST system. A signed certification in accordance with paragraph (a) of this section and a record of the results of all performance tests required under this section would satisfy this requirement.

**§ 280.34 Maintenance and availability of records.**

All UST system owners and operators shall cooperate fully with inspections, monitoring. and testing conducted by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended. All records required in this part must be maintained:

(a) On-site and be immediately available for inspection; or

(b) At a readily available alternative site and be provided for inspection within 24 hours to the implementing agency.

## Subpart D—Release Detection

**§ 280.40 General requirements for all UST systems.**

(a) Subject to paragraph (b) of this section, all owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that is:

(1) Capable of detecting a release from any portion of the UST system;

(2) Installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition;

(3) Capable of meeting the performance requirements for that method in § 280.41, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer;

(4) Sampled, tested, or checked for releases at a minimum frequency of at least once every 30 days, except as provided for tank testing in § 280.41(c)(1).

(b) If a method is planned for detecting releases outside of the tank, the owner or operator must perform a site assessment prior to installation of the detection system to assure compliance with the requirements in § 280.41 (d) through (f) or (i).

(c) All existing UST systems must comply with the release detection requirements of paragraphs (a) and (b) of this section and § 280.41 according to the following schedule:

(1) For any existing UST system that is not protected from corrosion and not constructed of non-corrodible materials: no later than (insert date three years after the effective date of the final regulations).

(2) For any existing UST system that is protected from corrosion or constructed of non-corrodible materials: no later than (insert date five years after the effective date of final regulations).

(3) Any existing UST system that cannot apply a method of release detection that complies with paragraphs (a) and (b) of this section and § 280.41 must permanently close in accordance with § 280.80 within (insert date 3 years after the effective date of the final regulations) if the UST system is not protected from corrosion or not constructed of non-corrodible materials, or within (insert date 5 years after the effective date of the regulation) if the UST system is protected from corrosion or constructed of non-corrodible materials.

**§ 280.41 Requirements for new UST systems.**

(a) Except as provided in paragraph (b) of this section, each owner and operator of a new UST system must use one of the following release detection methods specified in paragraphs (c) through (i) of this section in accordance with the requirements listed for each method, and must specify the method of release detection to be used on a

notification form in accordance with § 280.22 within 30 days of bringing the tank into use.

(b) Each owner and operator of a new hazardous substance UST system must use the method specified in paragraph (h) of this section unless the owner or operator has demonstrated compliance with another method specified in this section, along with the requirements of § 280.40, and has received approval from the implementing agency.

(1) The implementing agency must be notified in writing by the owner and operator of the intention to conduct and submit a demonstration for a variance.

(2) The notification of the implementing agency in paragraph (a)(1) of this section must:

(i) Describe the steps for conducting the demonstration and the time table for completing them; and

(ii) Address how each of the general requirements in § 280.40(a), as well as the requirements in § 280.41 (c) through (g) for the release detection method that is selected (or is being compared to), will be met at the site.

(c) A combination of tank system tightness testing and product inventory reconciliation (or another test of equivalent performance) may be used, but only if:

(1) Except as provided under paragraph (c)(3) of this section, the tightness test method(s) is conducted semi-annually and is capable of detecting a 0.1 gallon per hour leak rate with a probability of detection of 0.99 and a probability of false alarm of 0.01 from any portion of the UST system; and

(2) Inventory reconciliation (or another test of equivalent performance) is conducted weekly to detect a release of at least 5 percent of flow-through on a weekly basis, and monthly to detect a release of at least 0.5 percent of flow-through on a monthly basis in the following manner:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(ii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest ⅛ of an inch;

(iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume prior to and after delivery;

(iv) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(v) Product dispensing is metered and recorded within an accuracy of 5 cubic inches for every 5 gallons of product withdrawn; and

(vi) The measurement of any water level in the bottom of the tank is made to the nearest ⅛ of an inch at least once a month when any portion of the tank is located within the water table.

**Note.**—Practices described in the American Petroleum Institute (API) Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable as guidelines in meeting the requirement of paragraph (c)(2) of this section.

(3) At existing tank systems, prior to (insert date 10 years after the effective date of the final regulations), the tightness test must be conducted no less often than every five years for steel UST systems protected from corrosion or constructed of non-corrodible materials, and no less often than every three years for all other UST systems.

(d) Testing or monitoring for vapors within the soil gas of the excavation area may be used, but only if:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(2) The stored regulated substance is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation area in the event of a release from the UST system;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation area will not interfere with detection of releases from the UST system and, when measured in the soil gas, is no greater than 500 ppm of total hydrocarbons;

(5) The vapor monitors are designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and are capable of detecting any significant increase in concentration of total hydrocarbons above background levels;

(6) In the UST excavation area, the site is assessed to assure compliance with the requirements in paragraphs (d)(1) through (5) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation area from any portion of the UST system; and

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(e) Testing or monitoring for liquids on the ground water can be used, but only if:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(2) Ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, course silts or other permeable materials);

(3) All the monitoring wells or devices intercept the excavation area and the continuous monitoring devices or manual methods that are used are able to detect the presence of at least ⅛ of an inch of free product on top of the ground water in the monitoring wells;

(4) Within and immediately below the UST system excavation area, the site is assessed to ensure that the number and positioning of the monitoring wells or devices in the excavation area will detect releases from any portion of the UST system; and

(5) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(f) Testing or monitoring for liquids using at least one monitoring well or device in the unsaturated zone between the UST system and an impermeable barrier immediately below it may be used, but only if:

(1) The barrier underneath the UST system consists of either native soils or artificially-constructed material that is sufficiently thick and impermeable (at least 10–6 cm/sec) to permit interception and detection of a release from the UST system;

(2) The barrier is designed to intercept any release from the UST system and ensure its detection by the monitoring well or device;

(3) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause deterioration of the barrier;

(4) The ground water, soil moisture, or rainfall will not render the testing or sampling method that is used inoperative so that a release could go undetected for more than 30 days;

(5) The site is assessed to ensure that the interception barrier is always above the ground water and the UST system is not in a twenty-five year flood plain, unless the barrier and monitor designs are intended for use under such conditions; and

(6) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(g) Equipment for automatic in-tank monitoring that tests for the loss of product and conducts automatic

BEST COPY AVAILABLE

inventory reconciliation may be used, but only if:

(1) The automatic product level monitor test is conducted at a minimum frequency of at least once every 30 days when the tank is at least eighty percent full, and is capable of detecting 0.2 gallon per hour leak rate with a probability of detection of 0.99 and a probability of false alarm of 0.01; and

(2) Automatic inventory reconciliation (or another test of equivalent performance) is conducted in accordance with the requirements of § 280.41(c)(2).

(h) Interstitial monitoring between the UST system and a secondary barrier immediately around it may be used, but only if:

(1) The secondary barrier is designed, constructed and installed to ensure detection of any release from the UST system so that corrective action can be taken in accordance with Subpart F and G.

Note.—The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Storage Tanks" may be used as guidelines for aspects of the design and construction of underground steel double-walled tanks.

(2) For double-walled UST systems, the sampling or testing method is capable of detecting a release through the inner wall;

(3) For UST systems with a secondary barrier within the excavation area, the sampling or testing method used is capable of detecting any release within the area between the UST system and the secondary barrier:

(i) The secondary barrier around the UST system consists of native soils or artifically-constructed material that is sufficiently thick and impermeable (at least 10-6 cm/sec) to permit containment and detection of a release;

(ii) The liner or barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier;

(iii) The ground water, soil moisture or rainfall will not render the testing or sampling method that is used inoperative so that a release could go undetected for more than 30 days;

(iv) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(v) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(4) For tanks with an internally-fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(i) Any other type of release detection method, or combination of methods, can be used if it has been approved by the implementing agency. The implementing agency may approve such method if the owner and operator can demonstrate that the method is capable of detecting a release before it migrates beyond the excavation area as well as any of the methods allowed in paragraphs (c) through (h) of this section. If approved, the agency may impose any conditions on the use of the method that are necessary to protect human health and the environment.

### § 280.42 Additional requirements for piping.

(a) Except as provided in paragraph (c) of this section, each owner and operator of a new UST system must have release detection for the underground piping connected to each tank that meets the requirements in §§ 280.40 and 280.41.

(b) In addition to the requirements in paragraph (a) of this section, owners and operators of new UST systems with underground piping that conveys a regulated substance under pressure must also use a method of continuous release detection for such piping that is capable of automatically detecting and shutting off a release of at least 2 gallons per hour, unless the piping is provided with:

(1) Interstitial monitoring in accordance with § 280.41(h); or

(2) Continuous monitoring in accordance with § 280.41 (d) through (f) or (i).

(c) Owners and operators of new petroleum UST systems with underground piping that conveys petroleum under suction need not comply with the requirements in §§ 280.40 and 280.41 provided that:

(1) The below-grade piping operates at less than atmospheric pressure;

(2) The piping is sloped such that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) Only one check valve is included in each suction line;

(4) The check valve is located directly below, and as close as practical to, the suction pump;

(5) The suction piping run is installed with a minimum slope of 2 percent back to the connecting tank; and

(6) the piping run does not have a foot valve that maintains regulated substances in the pipe for the purpose of priming the pump.

### § 280.43 Recordkeeping.

All UST system owners and operators must maintain records in accordance with § 280.34 demonstrating compliance with all applicable requirements of this Subpart. These records must include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years from the date of installation;

(b) The results of any sampling, testing or monitoring must be maintained for at least one year, except that the results of tank tightness testing conducted in accordance with § 280.41(c)(1) must be retained until the next test is conducted as required under that Subsection; and

(c) Written documentation of all calibration, maintenance and repair of release detection equipment must be maintained for at least one year after the servicing work is completed.

## Subpart E—Release Reporting and Investigation

### § 280.50 Reporting of suspected releases and spills.

(a) *Suspected releases requiring reporting.* All UST owners and operators must report within 24 hours to the implementing agency any of the following conditions:

(1) Test, sampling, or monitoring results from a release detection method specified under § 280.41 that indicate a release may have occurred.

(2) Unusual operating conditions such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or the physical presence of the regulated substance or an unusual level of vapors on the site that are of unknown origin;

(3) Impacts in the surrounding area, such as evidence of regulated substances or resulting vapors in soils, basements, sewer and utility lines, and nearby surface water; and

(4) An indication from a gas chromatography or equivalent method that there is a concentration of at least 100 parts per million of total hydrocarbons in a soil sample.

(b) *Spill and overfill reporting.* Any spill or overfill of a regulated substance that exceeds its reportable quantity under CERCLA (40 CFR 302) and any spill or overfill of petroleum that exceeds 25 gallons or causes a sheen on surface water shall be reported to the

implementing agency within 24 hours. Any spill or overfill of petroleum of 25 gallons or less must be contained and cleaned up immediately, and if such clean up cannot be accomplished within 24 hours, the implementing agency must be notified within 24 hours.

Note.—A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported to the National Response Center *immediately* (not within 24 hours) under CERCLA Section 103. These reporting provisions (under CERCLA and RCRA Subtitle I) do not relieve the owner or operator of responsibility to take corrective action as necessary to protect human health and the environment, including containment and clean-up of spills that are not required to be reported.

**§ 280.51 Release investigation and confirmation.**

(a) Unless corrective action is initiated by the owner or operator under Subparts F and G, or is otherwise directed by the implementing agency, all suspected releases requiring reporting under § 280.50 (a)(1), (a)(2), or (a)(4) must be immediately investigated by the owner or operator using one of the following applicable procedures of this section. Confirmation of a release by one of these methods will require the owner and operator to comply with the requirements for corrective action under Subparts F and G.

(1) A site-specific investigation, under the direction of the implementing agency, of the suspected release incident to determine if a release has occurred and reached soils outside of the excavation zone or ground water;

(2) In the case of an UST system having secondary containment, an investigation of a possible release into the interstitial area between the UST and the secondary barrier using procedures that will determine if the interstitial monitoring is working properly;

(3) In the case of a failed tank or piping tightness test, an investigation in the following manner:

(i) A check of inventory records to detect a discrepancy that indicates a release may have occurred in accordance with the requirements in § 280.41(c)(2);

(ii) Isolation from the tank and retesting of the piping within seven days of the initial reporting to the implementing agency to determine if a release may have occurred in accordance with the requirements in § 280.41(c)(1);

(iii) Isolation from the piping and retesting of the tank within seven days of the initial reporting to the implementing agency to determine if a release may have occurred in accordance with the requirements in § 280.41(c)(1), (after the top of the tank has been excavated and all loose fitting, vent pipes or other equipment has been checked, replaced or tightened); and

(iv) Analysis of soil core samples for hydrocarbon and/or chemical contamination in the unsaturated zone under the UST system.

(4) In the case of a discrepancy during inventory reconciliation in accordance with § 280.41(c)(2), or any other suspected release, an investigation conducted in the following manner:

(i) A tightness test of the tanks and piping that is conducted within seven days of the initial reporting to the implementing agency to determine if a release may have occurred in accordance with the requirements in § 280.41(c)(1); and

(ii) Analysis of soil core samples for hydrocarbon and/or chemical contamination in the unsaturated zone under the UST system.

(5) Any other investigation procedure that is no less stringent than any of the procedures in paragraphs (a)(1) through (a)(4) of this section and is approved for that UST system by the implementing agency.

**§ 280.52 Off-site impacts and source investigation.**

As required by the implementing agency, all suspected releases requiring reporting under § 280.50(a)(3) must be investigated and confirmed or disproved by the owner and operator to establish whether corrective action requirements must be followed under Subparts F and G. When a release of a regulated substance is suspected, the implementing agency may require the owner or operator to test the tanks and piping for tightness or structural soundness, or require a site investigation to ascertain the location, magnitude, and effect of the leaking UST system.

## Subpart F—Corrective Action for UST Systems Containing Petroleum

**§ 280.60 General.**

Each owner and operator of an UST system containing petroleum shall, in response to a suspected or confirmed release from the UST system, comply with the requirements of this subpart. These requirements apply to all UST systems containing petroleum except USTs excluded under § 280.10(b).

**§ 280.61 Initial abatement requirements and procedures.**

(a) Upon confirmation of an actual release in accordance with Subpart E or discovery of a release in any other manner, the owners and operators shall:

(1) Report the release to the implementing agency within 24 hours in accordance with § 280.50;

(2) Stop any further release from the UST system;

(3) Mitigate fire and safety hazards;

(4) Remove and properly dispose of visibly contaminated soil from the excavation zone;

(5) Report initial corrective action taken, including a verification of tank repair or closure if appropriate, to the implementing agency within 20 days of confirmation or discovery of the release; and

(6) Conduct an investigation to determine the possible presence of free product and initiate free product removal as soon as practicable.

(b) The owners and operators must assemble from investigations of the site and the release, or from other sources (e.g., USGS maps, state and local agencies, SCS soil maps), such information as deemed necessary by the implementing agency for completing the corrective action measures required in paragraph (a) of this section. This information may include, but is not necessarily limited to, the following:

(1) Data on the nature and estimated quantity of the release;

(2) Data from surface and subsurface soil sampling and analyses;

(3) Data from ground water and/or surface water sampling and analyses; and

(4) Data from available sources and/or site investigations concerning surrounding populations, water quality and use, well locations, subsurface soil conditions, climatological conditions, and land usage.

(c) The information collected by the owners and operators during the course of the investigation under paragraph(a)(6) of this section must be submitted to the implementing agency according to the schedule established by the implementing agency under § 280.63. The implementing agency may request the collection and submission of additional information and/or a corrective action plan for additional soil and/or ground water cleanup.

**§ 280.62 Free product removal.**

At sites where an owner or operator's investigations under § 280.61(a)(6) indicate the presence of free product, the owner or operator must remove free floating product to the maximum extent practicable while continuing, as necessary, any actions initiated under § 280.61, and while preparing for subsequent actions required under § 280.63. In meeting the requirements of this section, the owner or operator shall:

(a) Conduct free product recovery in such a manner that such actions do not spread contamination into previously uncontaminated areas through untreated discharge or improper disposal techniques,

(b) Handle any flammable products in a safe and competent manner to prevent fires or explosions,

(c) Unless directed to do otherwise by the implementing agency, prepare and submit, within 30 days, a free product removal report to the implementing agency that provides at least the following information:

(1) The name of the person(s) responsible for implementing the plan;

(2) The estimated quantity and type of product on site and the product thickness in wells, boreholes, and excavations;

(3) Details of the product recovery system;

(4) Whether any discharge will take place on or off site during the recovery operation;

(5) The type of treatment and expected effluent quality from any discharge; and

(6) The disposition of the recovered product.

**§ 280.63 Additional site investigation.**

(a) Whenever an investigation under § 280.61(b) indicates that there may be additional remaining soil contamination from the release, or a removal in compliance with § 280.61(a)(4) indicates that the released product or product from contaminated soil may have reached ground water, or as directed by the implementing agency, the owners and operators shall:

(1) Conduct additional investigations of the release, the release site, and the surrounding area possibly affected by the release, to determine the full extent and location of soils contaminated by the release; and

(2) Conduct additional investigations of the release, the release site, and the surrounding area possibly affected by the release to determine the presence of dissolved contamination due to the release in the ground water.

(b) The information collected by the owners and operators during the course of the investigations under paragraph (a) of this section must be submitted in accordance with a schedule established by the implementing agency.

(c) The implementing agency may request the submission of a corrective action plan for additional soil and/or ground-water cleanup.

**§ 280.64 Soil and ground-water clean-up.**

(a) Owners and operators required by the implementing agency under § 280.61 (b) or (c) or § 280.63(c) to develop and submit a corrective action plan for responding to any contaminated soils or ground water shall submit such a plan according to a schedule established by the implementing agency.

(b) The implementing agency shall approve the corrective action plan only if it assures that implementation of the plan will provide adequate protection of human health, safety, and the environment. In making this determination, the implementing agency shall consider:

(1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(2) The hydrogeologic characteristics of the facility and the surrounding land;

(3) The proximity, quality, and current and future uses of ground water;

(4) An exposure assessment; and

(5) The proximity, quality, and current and future uses of surface waters.

(c) Upon approval of the corrective action plan, the owners and operators shall implement the plan and monitor, evaluate, and report the results of implementation, as required by the implementing agency.

**§ 280.65 Reporting.**

(a) For purposes of reporting under § 280.61(a)(1), the owners and operators of an UST system containing petroleum shall report—

(1) All below ground releases from the UST system in any quantity,

(2) All above ground releases to land from the UST system in excess of 25 gallons, or less than 25 gallons if the owners and operators are unable to contain or clean up the release within 24 hours; and

(3) All above ground releases to water which result in a sheen on the water.

(b) The owners and operators shall provide any additional information on corrective action beyond the initial notification required under § 280.61(a)(5) requested by the implementing agency.

**§ 280.66 Public participation.**

(a) For each corrective action plan submitted under § 280.63 and prior to the approval of that plan, the implementing agency shall provide an opportunity for public review and comment on the plan. The implementing agency shall provide notice to the public by means designed to reach those members of the public most directly affected by the release and the planned corrective action. Public notice shall provide adequate time for the review of the submitted plan by the affected public. Such notice may include, but is not limited to, public notice in local newspapers, including block advertisements, public service announcements, state register, or letters to individual households.

(b) If there is sufficient public interest, or for any other reason, the implementing agency may hold a public meeting to consider comments on the corrective action plan. The implementing agency shall hold a public meeting in any case where implementation of an approved corrective action plan does not achieve the established cleanup levels and termination of that plan is under consideration by the implementing agency.

(c) In deciding whether to approve or modify the corrective action plan, the implementing agency shall consider and respond to the comments from the public.

## Subpart G—Corrective Action for UST Systems Containing Hazardous Substances

**§ 280.70 General.**

Each owner and operator of an UST system containing a hazardous substance shall, in response to a confirmed or actual release from the UST system, comply with the requirements of this subpart. These requirements apply to all UST systems containing hazardous substances (including UST systems containing mixtures of hazardous substances and petroleum) except UST systems excluded under § 280.10(b).

**§ 280.71 Initial abatement requirements and procedures.**

(a) Upon confirmation of a release in accordance with Subpart E, or the discovery of an above ground release in any other manner, the owners and operators shall comply with the following:

(1) *Cessation of use: prevent flow or addition of hazardous substances.* The owner or operator must immediately stop the flow of the hazardous substance into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(2) *Removal of hazardous substances from the tank system or secondary containment system.* (i) If the release was from the tank system, the owners and operators must, within 24 hours after detection of the leak or, if the owners and operators demonstrate to the implementing agency that it is not possible, at the earliest practicable time, remove as much of the hazardous substance as is necessary to prevent

further release of hazardous substances to the environment and to allow inspection and repair of the tank system to be performed.

(ii) If the material was released to a secondary containment system, all released materials must be removed within 24 hours or in a timely manner as determined by the implementing agency.

(3) *Containment of visible releases to the environment.* The owner and operator must immediately conduct a visual inspection of any above ground release and, based upon that inspection:

(i) Prevent further migration of the release to soils or surface water;

(ii) Remove, and properly dispose of, any visible contamination of the soil or surface water; and

(iii) Conduct an investigation to determine the possible presence of free product.

(b) In accordance with the reporting requirements of § 280.74, the owners and operators must assemble from investigation of the site and the release, or from other sources (e.g., USGS maps, state and local agencies, SCS soil maps), such information as deemed necessary by the implementing agency for completing the corrective action measures required in paragraph (a) of this section. This information may include, but is not necessarily limited to, the following:

(1) Data on the nature and estimated quantity of the release;

(2) Data from surface and subsurface soil sampling and analyses;

(3) Data from ground-water and/or surface water sampling and analyses; and

(4) Data from available sources and/or site investigations concerning surrounding populations, water quality and use, well locations, subsurface soil conditions, climatological conditions, and land usage.

**§ 280.72 Additional site investigation.**

(a) Whenever an investigation under § 280.71(b) indicates that there may be additional remaining soil contamination from the release, or a removal in compliance with § 280.71(a)(2) indicates that the released product or contaminated soil may have reached ground water, or as directed by the implementing agency, the owners and operators shall:

(1) Conduct additional investigations of the release, the release site, and the surrounding area possibly affected by the release to determine the full extent and location of soils contaminated by the release; and

(2) Conduct additional investigations of the release, the release site, and the surrrounding area possibly affected by the release to determine the presence of dissolved contamination due to the release in ground water.

(b) The information collected by the owners and operators during the course of the investigations under paragraph (a) of this section must be submitted in accordance with a schedule established by the implementing agency.

(c) The implementing agency may request the submission of a corrective action plan for additional soil and/or ground-water cleanup.

**§ 280.73 Soil and ground-water cleanup.**

(a) The owners and operators required by the implementing agency under § 280.72(c) to develop and submit a corrective action plan for cleanup of any remaining contaminated soils or ground water shall submit such a plan in accordance with a schedule established by the implementing agency.

(b) Upon approval of the corrective action plan the owners and operators shall implement and monitor, evaluate and report the results of implementation to the implementing agency.

**§ 280.74 Reporting.**

(a) For purposes of reporting under § 280.71 the owners and operators of an UST containing hazardous substances shall report—

(1) All below ground releases in any quantity; and

(2) All above ground releases to land or surface waters in excess of the reportable quantity established under 40 CFR 302 for the released substance.

(b) Within 30 days of confirmation or discovery of a release to the environment, a report containing the following information must be submitted to the implementing agency:

(1) Likely route of migration of the release to the extent known from available information;

(2) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(3) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, these data must be submitted to the implementing agency as soon as they become available.

(4) Proximity to downgradient drinking water, surface water, and population areas; and

(5) Description of response actions taken or planned.

(c) The owners and operators shall provide any additional information on corrective action beyond the initial notification required under 280.81 requested by the implementing agency.

**§ 280.75 Public participation.**

(a) For each corrective action plan submitted under § 280.73 and prior to the approval of such plan, the implementing agency shall prc vide an opportunity for the public review and comment on the plan. The implementing agency shall provide notice to the public by means designed to reach those members of the public most directly affected by the release and the planned corrective action. Public notice shall provide adequate time for the review of the submitted plan by the affected public. Such notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, state register, or letters to individual households.

(b) If there is sufficient public interest, or for any other reason, the implementing agency may hold a public meeting to consider comments on the corrective action plan. The implementing agency shall hold a public meeting in any case where implementation of an approved corrective action plan does not achieve the established clean-up levels and termination of that plan is under consideration by the implementing agency. In deciding to approve or modify the corrective action plan, the implementing agency shall consider and respond to the comments from the public.

## Subpart H—Out-of-Service UST Systems and Closure

**§ 280.80 Temporary removal from use, temporary closure, and permanent closure.**

(a) When an UST system is taken out of service for less than 3 months and for regulated substances are left in the tank, the owner or operator must continue operation and maintenance as required in § 280.31, release detection as required in § 280.41, and must comply with Subparts E, F, and G if a release is suspected or confirmed.

(b) When an UST system is taken out of service for 3 months or more but less than 24 months, and regulated substances are left in the tank, the owner and operator must comply with paragraph (a) of this section and meet the following additional requirements:

(1) Leave vent lines open and functioning; and

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is taken out of service for longer than 24 months, it must be permanently closed.

(d) At least 30 days prior to permanent closure, the owner or operator must notify the implementing agency and assess the excavation area around the UST system for releases. This requirement is satisfied if one of the external monitoring release detection methods allowed under § 280.41 is in use at the site at the time of closure, or if the owner or operator [illegible]:

(1) Portable gas chromatograph mapping;

(2) Analysis of soil core samples for hydrocarbon and/or chemical contamination in the unsaturated zone;

(3) Analysis of groundwater surrounding the tank for released product; or

(4) Another site assessment method that has been approved by the implementing agency.

This provision applies to all UST system closures that took place before the effective date of these regulations and did not conform with paragraph (f) of this section.

(e) If a release is discovered as a result of the activities under paragraphs (a) through (d) of this section, or by any other manner, the owner or operator must comply with the corrective action requirements of Subparts F and G.

(f) All tanks that are taken out of service permanently must be emptied and either removed from the ground or be filled with an inert solid material.

[Note.—The closure procedures described in API 1604 "Recommended Practice for Abandonment or Removal of Used Underground Service Station Tanks" may be used as guidelines for compliance with paragraph (f).]

(g) All UST system owners and operators must maintain records in accordance with § 280.34 which are capable of demonstrating compliance with closure procedures required under this section. These records must:

(1) Be maintained in accordance with § 280.43 when release detection is conducted in accordance with the temporary closure requirements of § 280.80 (a) and (b); and

(2) Provide the results of the excavation area assessment required in § 280.80(d). Such results must be maintained for at least three years after permanent closure in one of the following ways:

(i) By the owner and operator who took the UST system out of service;

(ii) By the current owner and operator of the UST system; or

(iii) By mailing these records to the implementing agency if they cannot be maintained at the closed facility.

[FR Doc. 87-7630 Filed 4-16-87; 8:45 am]
BILLING CODE [illegible]

---

40 CFR Part 280

[FRL-3154-7]

## Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing financial responsibility requirements applicable to owners and operators of underground storage tanks containing petroleum under section 9003 (c) and (d) of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA). This proposal would establish requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank containing petroleum.

**DATES:** The Agency will consider all comments received by June 6, 1987 before taking final action on the proposed rule. Three public hearings will be held on the following dates: (1) May 28 (and 29, if necessary), 1987—Washington, DC; (2) June 1 (and 2, if necessary), 1987—Dallas, Texas; and (3) June 4 (and 5, if necessary), 1987—San Francisco, California.

**ADDRESSES:** Comments may be mailed to the Docket Clerk (Docket No. UST-3), Office of Underground Storage Tanks [WH-562A], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA, and all references used in this document, may be inspected in the public docket, located in Room LG-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

The Agency will hold public hearings on today's proposal at three different locations indicated below:

1. The Westin Hotel, 2401 M Street NW., Washington, DC 20037
2. The Registry Hotel, 15201 Dallas Parkway, Dallas, TX 75248
3. Miyako Hotel, 1625 Post Street, San Francisco, CA 94015.

The hearings will begin at 9:30 a.m., with registration at 9:00 a.m. The hearings will end at 4:30 p.m., unless concluded earlier. Anyone wishing to make a statement at a hearing should notify, in writing, Ms. Gerri Wyer, Hearings Coordinator, Office of Underground Storage Tanks [WH-562A], U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

I. Authority
II. Background
  A. Legislative and Regulatory Overview
    1. RCRA Subtitle I
    2. CERCLA Reauthorization
    3. Leaking Underground Storage Tank Trust Fund
  B. Key Provisions of Today's Proposal
  C. Rationale for the Agency's Approach
  D. Amount of Required Coverage
  E. Description of the Regulated Community
    1. Background
    2. Owners and Operators in Retail Motor Fuel Marketing
    3. Owners and Operators in Other Sectors
  F. Overview of Proposed Rule
III. Section-by-Section Analysis
  A. Applicability (§ 280.90)
    1. Owner or Operator
    2. New Tanks
    3. Tanks Taken Out of Operation
    4. State and Federal Government Entities
    5. Exemptions
    6. Deferrals
  B. Definition of Terms (§ 280.91)
    1. Accidental Release
    2. Bodily Injury
    3. Controlling Interest
    4. Legal Defense Costs
    5. Occurrence
    6. Property Damage
    7. Provider of Financial Assurance
    8. Substantial Business Relationship
    9. Tangible Net Worth
  C. Amount and Scope of Required Coverage (§ 280.92)
    1. Per-Occurrence Amount
    2. Aggregate Amounts
    3. Apportionment of Costs

4. Level of Coverage Under Separate Mechanisms
D. Allowable Mechanisms and Combinations of Mechanisms (§ 280.93)
1. Allowable Mechanisms
2. Allowable Combinations of Mechanisms
3. Allowable Mechanisms and Types of Costs Covered
4. Mechanisms Considered But Not Proposed
E. Financial Test of Self-Insurance (§ 280.94)
1. Features of Mechanism
2. Applicability to UST Requirements
3. Comparison of Subtitle I Financial Test of Self-Insurance with the Subtitle C Test for Liability Coverage
4. Availability
F. Guarantee (§ 280.95)
1. Features of Mechanism
2. Applicability to UST Requirements
3. Availability
4. Qualifications of Guarantors
G. Indemnity Contract (§ 280.96)
1. Features of Mechanism
2. Applicability to UST Requirements
3. Availability
H. Insurance and Risk Retention Group Coverage (§§ 280.97 and 280.98)
1. Features of Mechanisms
2. Applicability to UST Requirements
3. Availability
I. Surety Bond (§ 280.99)
1. Features of Mechanism
2. Applicability to UST Requirements
3. Availability
4. Qualifications of the Surety Company
J. Letter of Credit (§ 280.100)
1. Features of Mechanism
2. Applicability to UST Requirements
3. Availability
4. Lines of Credit
5. Qualifications of Issuing Institution
K. Use of State-Required Mechanism (§ 280.101)
L. State Fund or Other State Assurance (§ 280.102)
M. Standby Trust Fund (§ 280.103)
1. Features of Mechanism
2. Applicability to UST Requirements
3. Timing
N. Substitution of Financial Assurance Mechanisms by an Owner or Operator (§ 280.104)
O. Cancellation or Nonrenewal by a Provider of Financial Assurance (§ 280.105)
P. Reporting by Owner or Operator (§ 280.106)
Q. Recordkeeping (§ 280.107)
R. Drawing on Financial Assurance Mechanisms (§ 280.108)
1. Corrective Action Claims
2. Third-Party Compensation Claims
3. Payout of the Funds Drawn
S. Release from the Requirements of this Subpart (§ 280.109)
1. Need for Funds After Closure and Corrective Action
2. Availability of Financial Assurance Mechanisms
3. Release from Requirements One Year After Completion of Permanent Closure or One Year After Completion of Permanent Closure and Corrective Action
T. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance (§ 280.110)
U. Suspension of Enforcement (§ 280.111)
1. Eligible Applicants
2. Demonstrating Unavailability of Financial Assurance
3. Recordkeeping Requirements
4. Additional Criteria for Obtaining Initial Suspension
5. Initial Suspension Application Procedures
6. Criteria for Renewal of Suspension
7. Procedures for Suspension Renewals
IV. Major Differences Between this Proposal and Subtitle C Financial Responsibility Rules
V. Integration with Other EPA Programs
A. Other Subtitle I Rulemakings
B. Leaking Underground Storage Tank (UST) Trust Fund and Response Program
VI. State Program Approval
VII. Economic and Regulatory Impacts
A. Regulatory Impact Analysis
1. Compliance with Executive Order 12291
2. The Regulated Community
3. Assumptions and Methodology Used in the RIA
4. Annual Real Resource Costs
5. Economic Impacts
6. Benefits
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
VIII. Supporting Documents
IX. List of Subjects in 40 CFR Part 280

## I. Authority

These regulations are issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616) and the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499) (42 U.S.C. 6921, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h)).

## II. Background

This section provides a legislative and regulatory overview of EPA's program for regulating underground storage tanks (USTs) and describes the key provisions of today's proposed rules, the rationale for the Agency's approach to financial responsibility requirements, the required amounts of coverage, the regulated community, and an overview of the proposed rule. Section III of this preamble, "Section-by-Section Analysis," describes each provision of the rule.

### A. Legislative and Regulatory Overview

1. *RCRA Subtitle I.* On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984, Public Law 98–616. These amendments extended and strengthened the provisions of the Solid Waste Disposal Act of 1970 as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). One portion of this legislation, Subtitle I, provided for the development and implementation of a regulatory program for underground storage tanks (USTs) used to contain "regulated substances," which are defined as: petroleum; and hazardous substances listed under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), excluding hazardous wastes regulated under RCRA Subtitle C.[1]

Section 9003(a) of Subtitle I requires the EPA Administrator to promulgate requirements for release detection, prevention, and correction as necessary to protect human health and the environment. These requirements are being proposed and discussed separately elsewhere in today's **Federal Register**. Prior to the Superfund Amendments and Reauthorization Act of 1986 (SARA), section 9003(d) of Subtitle I provided the EPA Administrator with the discretion to establish a financial responsibility program for USTs. Under this section, the Administrator could require

[1] "Underground storage tank" is defined under RCRA Subtitle I, section 9001(1) as "any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any—

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines) regulated under —

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.),

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph,

(E) surface impoundment, pit, pond or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor."

Section 9001(8) further clarifies that "the term 'petroleum' means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)."

demonstration of financial responsibility for taking corrective action and compensating third parties, if deemed necessary and desirable, by means of any one, or any combination, of the following mechanisms: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer.

2. *CERCLA Reauthorization.* Section 205 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) amends sections 9003 (c) and (d) of Subtitle I to require the Agency to promulgate regulations requiring that owners or operators of underground storage tanks maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank. In addition to the allowable financial assurance mechanisms originally provided for in Subtitle I, SARA adds a provision in section 9003(d)(1) to enable the Administrator to allow use of "any other method" that he finds satisfactory.

SARA establishes a minimum amount of financial responsibility at $1 million per occurrence for USTs at facilities that are engaged in petroleum production, refining, or marketing, and an appropriate aggregate amount that the Administrator may establish. The Administrator is given the authority to establish higher per-occurrence levels of financial responsibility for particular classes or categories of USTs containing petroleum. The Administrator is also authorized under section 9003(d)(5)(B) to set minimum amounts lower than $1 million per occurrence "for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum."

Section 9003(d) was further amended by SARA to authorize the Administrator to suspend enforcement of the financial responsibility requirements for a particular class or category of USTs or in a particular State, if the Administrator determines that methods of demonstrating financial responsibility "are not generally available" to owners or operators in those classes, categories, or States. Before enforcement can be suspended, the Administrator must be satisfied either that steps are being taken to form a risk retention group for the class of tanks for which the suspension is sought or that the State is taking steps to establish a fund to provide evidence of financial responsibility for owners or operators in that State. Suspension of enforcement can be granted for a period of up to 180 days. At the end of that period, the Administrator may extend the suspension for an additional period not exceeding 180 days if he finds that substantial progress has been made in establishing a risk retention group, or that it is not possible to establish such a group and the State is unwilling or unable to establish a fund.

3. *Leaking Underground Storage Tank Trust Fund.* SARA amended Subtitle I by adding to section 9003 a new Subsection (h) which establishes a response program for releases from USTs containing petroleum. As part of this program, SARA establishes a $500 million Leaking Underground Storage Tank (UST) Trust Fund for payment of costs for corrective action, enforcement action, and recovery of costs incurred by the Administrator or a State. Before the effective date of requirements promulgated under section 9003(c), the Administrator or State may use funds from the Leaking UST Trust Fund to pay for a corrective action whenever such action is considered necessary by the Administrator or State to protect human health and the environment and to pay for enforcement and cost-recovery activities. After the effective date of the regulations, the Fund will pay for corrective action costs if any one of the following conditions exists:

(1) No owner or operator can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is subject to the corrective action regulations and capable of carrying out such corrective action properly;

(2) Prompt action by EPA or a State is necessary to protect human health or the environment;

(3) Corrective action costs exceed the required amount of financial responsibility and, considering the class or category of UST, expenditures are necessary to assure an effective corrective action; or

(4) The owner or operator has failed or refused to comply with an order to perform corrective action.

However, section 9003(h)(11) restricts the use of Fund monies at any facility where the owner or operator has not complied with the applicable financial assurance requirements. In these circumstances, the Fund can be used only if there is no solvent owner or operator, immediate action is required in response to an imminent and substantial endangerment of human health and the environment, or the necessary action involves temporary or permanent relocation of residents, alternative water supplies, or an exposure assessment, undertaken to protect human health.

The integration of the Leaking UST Trust Fund provisions with today's proposed financial responsibility requirements for USTs containing petroleum is further discussed in Section V of this preamble.

*B. Key Provisions of Today's Proposal*

In today's rulemaking, EPA proposes, as Subpart I of 40 CFR Part 280, requirements for a program of financial responsibility for the costs of taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from USTs containing petroleum. An advance notice of proposed rulemaking on financial responsibility for USTs containing regulated substances other than petroleum, including mixtures of petroleum and other regulated substances will be published subsequent to today's proposal. Hereinafter, the term "UST containing petroleum" is used to refer to an underground storage tank that contains petroleum.

Today's proposed financial responsibility requirements are applicable to owners or operators of USTs containing petroleum. Federal and State entities that own or operate USTs containing petroleum are exempt from the proposed financial responsibility rules and are not required to obtain special financial assurance mechanisms or otherwise demonstrate financial responsibility. All other owners or operators subject to these requirements must demonstrate financial responsibility by using or obtaining one or more of the following mechanisms: financial test of self-insurance, guarantee, indemnity contract, insurance, risk retention group coverage, surety bond, letter of credit, State-required mechanism, State fund, or other State assumption of responsibility. The rule specifies the conditions under which these mechanisms may be used and how these mechanisms can be combined to provide the required financial assurance.

Today's proposed rule requires $1 million per-occurrence coverage for all USTs for the costs of taking corrective action and compensating third parties. The rule also requires annual aggregate amounts to cover all releases from all petroleum-containing USTs owned or operated by an entity. The required aggregate levels have been set according to the number of tanks owned or operated.

The proposed rule does not apportion the required amount of financial assurance coverage between corrective action and third-party compensation costs. The required amount, therefore, must be available to cover whatever types of costs arise. If, however, costs are covered by different mechanisms, the amount of coverage for each type of cost must be equal to the minimum required amount.

Under the proposed rule, an owner or operator is required to maintain evidence of financial responsibility at the underground storage tank site or place of business. Evidence of financial assurance need not be submitted to EPA, except in the following circumstances:

—When notifying EPA of the installation of a new petroleum underground storage tank under proposed 40 CFR 280.22 (see UST technical standards proposed elsewhere in today's **Federal Register**);
—Within 30 days of a known or suspected release; and
—When coverage is being cancelled or otherwise rendered ineffective and the owner or operator is unable to obtain alternate financial assurance within a specified time period.

Owners or operators will be released from the financial responsibility requirements one year after closure of their USTs unless a release is detected or suspected, in which case they will be released one year after closure and any required corrective action are complete. An owner or operator must also maintain, at the tank site or place of business, a certification of compliance with Subpart I, which identifies the financial assurance mechanism or combination of mechanisms used to comply with the rules.

The proposed rules codify the provisions for obtaining an initial suspension of enforcement and a renewal of suspension, as established under section 9003(d)(5)(D). To suspend enforcement, the Administrator must determine that the financial assurance mechanisms are "not generally available" to the owners and operators in the particular class or State, and either steps are being taken to form a risk retention group, or a State is taking steps to establish a fund to be used as evidence of financial responsibility. Suspension of enforcement may be granted for a period not exceeding 180 days, with extensions of additional periods not exceeding 180 days if the Administrator continues to find that the allowable mechanisms are still generally unavailable to those owners or operators. To extend the suspension, the Administrator must also find that substantial progress has been made in establishing a risk retention group, or that it is not possible to establish such a group and the State is unwilling or unable to establish a fund. Section 280.111 of the proposed rule describes in detail the criteria and procedures that the Agency will use in reviewing requests for suspension of enforcement. Suspension of enforcement is discussed in detail in Section III.U of this preamble.

*C. Rationale for the Agency's Approach*

Releases arising from the operation of underground storage tanks containing petroleum may occur at any time. Once the owner or operator of an underground storage tank realizes that a release has occurred, he is immediately faced with a number of financial demands. First, the owner must spend money to detect the source of the release and to stop it to protect inventory and minimize cleanup costs. Then the owner must clean up the release to protect property value, to comply with State and Federal requirements to perform corrective action, and to prevent future liability (i.e., to prevent the release from damaging the health or property of others). Finally, the owner must compensate third parties for any property damage, bodily injury, or other harm the release may have caused.

EPA estimates that corrective action costs will typically range between $3,000 and $300,000. Third-party compensation costs, when incurred, are often in excess of $300,000. EPA's analyses show that all small businesses without financial protection will have difficulty meeting any but the lowest levels of corrective action costs. Even large firms may have difficulty meeting these costs if they own more than a few tanks and are faced with paying the costs associated with multiple releases. For these reasons, many UST owners and operators are already obtaining financial assurance for the risks posed by their USTs. The most common form of financial assurance is insurance. Many owners and operators of USTs already have pollution liability insurance to ensure that the costs of any potential UST releases will be paid. However, many other owners and operators have had difficulty obtaining pollution liability insurance.

Recognizing that many UST owners or operators currently cannot obtain insurance, EPA is proposing a financial responsibility program that will allow owners or operators to demonstrate evidence of financial responsibility through a wide variety of mechanisms, both private (i.e., a financial test of self-insurance, insurance, risk retention group coverage, surety bonds, letters of credit, guarantees, indemnity contracts, and State-required mechanisms) and public (i.e., State funds and other State assurances). The Agency took this approach so that owners and operators would have a wide variety of mechanisms to choose from and so that State agencies could include in their programs the broadest possible choice of equivalent mechanisms.

Some mechanisms allowed under today's proposal will not be available to all owners and operators. In particular, some responsible owners or operators will not be able to qualify as self-insurers and will not be able to obtain private assurance mechanisms from insurers, banks, sureties, or other providers of financial assurance. Furthermore, the Agency recognizes that some of the proposed financial assurance mechanisms (i.e., indemnity contracts, surety bonds, and letters of credit) have not traditionally been used to provide coverage for third-party liability claims. The Agency expects that some States will establish corrective action and third-party compensation programs to cover the financial responsibility obligations of UST owners or operators who may be unable to obtain other types of coverage. In addition, some classes or categories of UST owners or operators may form risk retention groups if more traditional insurance coverage is not available.

Given the limited availability of insurance and private assurance mechanisms to some UST owners and operators and for some types of required coverage, the formation of risk retention groups (which are captive insurance companies) and the creation of State funds or other State assurances appear to be promising approaches for achieving EPA's goal of ensuring that almost all UST owners and operators will be able to pay for the costs of taking corrective action and compensating third parties if releases from their USTs make such expenses necessary.

In establishing the required amount of financial assurance, the Agency decided to establish one minimum per-occurrence level for all owners or operators regulated under the proposed rule. The Agency rejected the option of establishing classes for purposes of setting different per-occurrence levels for several reasons. First, while many of the factors that could be used to establish such classes (such as age of the tank or tank material) may affect the likelihood of a release, they do not

affect the costs of a release once that release has occurred. (As discussed later in Section III.C on "Amount and Scope of Required Coverage," while the probability of a release is not an appropriate factor for determining per-occurrence amounts of coverage, it is an important factor in setting aggregate levels of coverage.) Second, while the costs of a release are affected by the proximity of a leaking UST to ground water, using location to establish classes of USTs in order to set appropriate levels of financial assurance was not considered to be a feasible procedure, given the large number of USTs to be regulated and the fact that many owners and operators have multiple USTs at different locations. Third, EPA has determined that a $1 million per occurrence level of assurance for all USTs will ensure that the costs of a release from an UST containing petroleum will not exceed the $1 million level more than one percent of the time. The Agency considers this to be an adequate level of assurance, fully consistent with its goals of protecting human health and the environment.

The Agency is proposing required aggregate levels of coverage according to the number of tanks owned or operated, because the amount of funds needed for corrective action or third-party compensation will increase as the number of USTs for which an owner or operator is responsible increases. The Agency decided not to base aggregate levels on tank characteristics, since a significant number of UST owners and operators have many tanks with different characteristics. This type of classification or categorization scheme might be difficult to develop and implement for purposes of financial assurance. The aggregates being proposed have been set at levels sufficiently high that UST owners or operators will not incur costs that exceed the aggregates more than one percent of the time. Again, the Agency considers this level of financial assurance to be fully consistent with its mandate to protect human health and the environment.

EPA's statutory mandate authorizes the suspension of enforcement of the financial responsiblity regulations for classes of USTs in specified circumstances. (See Section III.U of the preamble for a detailed description of EPA's proposed procedures for implementing this suspension of enforcement.) In allowing for enforcement suspensions, Congress recognized that some owners or operators may initially have difficulty coming into compliance with financial responsibility requirements. To address this difficulty, EPA's proposed procedures are intended to make initial suspensions relatively easy to obtain. At the same time, however, EPA wished to avoid abuses of the suspension provisions and is therefore proposing that owners or operators who seek to obtain a suspension by demonstrating that they are attempting to form a risk retention group must make a binding financial commitment to the group of $2,000 (the average expected UST insurance premium per facility for the coverage required by the proposed rule). In many cases, owners and operators must contribute substantially larger sums to capitalize the risk retention group adequately. Furthermore, EPA is proposing to make renewals of suspension of enforcement progressively more difficult to obtain than an initial suspension, in order to discourage owners and operators from seeking repeated suspensions. EPA believes this approach is consistent with the language and intent of the law and requests comments on this position.

In developing the analytical basis for the proposed rule being published today, EPA has drawn upon its experience with other financial responsibility programs designed to cover environmental costs. The RCRA Subtitle C program, which requires owners or operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) to demonstrate financial responsibility for closure, post-closure care, and third-party liability coverage, provided an important precedent for the proposed UST financial responsibility program. This program has been in effect for almost six years. The Agency's recent proposal that hazardous waste TSDFs with known continuing releases be required to demonstrate financial responsibility for corrective action also served as a model for the proposed rule. (51 FR 37854, October 24, 1986.)

Most of the types of financial assurance mechanisms allowed in the Subtitle C program are being proposed for UST owners and operators. (The one exception is a gradually-funded trust, which is not being proposed for Subtitle I but which is allowed under Subtitle C for closure and post-closure financial assurance and has been proposed for financial assurance for corrective action for continuing releases. See Section III.D.4.a of this preamble.) The Subtitle C and the proposed Subtitle I financial responsibility programs are also similar with respect to the applicability of requirements to Federal and State owners or operators, procedures for cancellations of mechanisms, and requirements for establishment of standby trust funds to support certain mechanisms.

The major differences between the proposed Subtitle I program and the Subtitle C program are in the former's less stringent reporting requirements, its broader range of allowable financial assurance mechanisms, and its incorporation of suspension of enforcement provisions. Some of the differences between the two regulatory programs reflect differences in the regulated communities, particularly in terms of numbers of owners and operators. Because the UST regulated community is many times larger than the Subtitle C community, the administrative burden of implementing the Subtitle I program was a key factor taken into account in formulating today's proposed rule.

As a new program, the Subtitle I financial responsibility requirements also afford the Agency an opportunity to find new ways to address the problem of unavailability of financial assurance to some owners and operators—a problem that the Agency has encountered in its implementation of Subtitle C liability coverage requirements. Thus, while experience under the Subtitle C financial responsibility program has provided important precedents for use in rulemaking for UST financial responsibility, EPA expects the development and implementation of the Subtitle I program to enhance its ongoing refinement of Subtitle C financial responsibility requirements.

The specific differences between the Subtitle C financial responsibility program and the proposed requirements for USTs containing petroleum are discussed in Section III, "Section-by-Section Analysis," and in Section IV, "Major Differences between this Proposal and Subtitle C Financial Responsibility Rules." Following, however, is a brief summary of two of the major differences and the rationale for these differences.

- *Types of Allowable Mechanisms.* The proposed UST requirements introduce several mechanisms that are not used or proposed for use under Subtitle C. These include non-parent guarantees and indemnity contracts. EPA proposes to allow non-parent guarantees and indemnity contracts because (1) they should provide adequate financial assurance, and (2) they increase the financial assurance options available to a significant number of UST owners or operators who do not have corporate parents but who do have substantial business

relationships with other firms. Non-parent guarantees and indemnity contracts offer a means for these other entities to provide financial assurance to a UST owner or operator.

• *Reporting Requirements.* Under the proposed UST requirements, evidence of financial responsibility must be reported to EPA when financial assurance is likely to be needed (e.g., in the event of a known or suspected release, or when an owner or operator fails to get alternate assurance after receipt of a notice of cancellation for an existing mechanism). Owners or operators of Subtitle C treatment, storage, and disposal facilities are, in contrast, required routinely to submit evidence of current financial responsibility. The less stringent approach proposed for UST owners or operators reflects the infeasibility of EPA's routinely reviewing information from up to hundreds of thousands of owners and operators.

Furthermore, EPA does not believe that a less stringent approach to reporting will necessarily result in an unacceptable rate of noncompliance with the rules. First, although reporting is not required as a routine matter, today's proposal requires owners and operators to certify compliance with the rules. In addition, many UST owners and operators already carry insurance for the required coverages being proposed today, indicating that adequate incentives exist to limit financial risk even in the absence of regulation. Other features of the Subtitle I program should encourage compliance with financial responsibility requirements. For example, § 9003(h) restricts the expenditure of monies from the Leaking UST Trust Fund for facilities whose owner or operator is not in compliance with the financial responsibility requirements. In such a case the owner or operator would be liable for the entire cost of a corrective action, whereas the owner or operator who complies with the financial responsibility requirements is eligible for Trust Fund monies for those corrective action costs that exceed the required amount of financial assurance coverage.

*D. Amount of Required Coverage*

Today's rule provides that all owners or operators of petroleum-containing USTs demonstrate evidence of financial responsibility in the amount of $1 million per occurrence for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating an underground storage tank. The aggregate amount of coverage required varies according to the number of tanks that are covered by the owner or operator. EPA is proposing the following aggregate levels:

| Aggregate level | Number of tanks covered |
|---|---|
| $1 million | 1–12. |
| $2 million | 13–60 |
| $3 million | 61–140 |
| $4 million | 141–250. |
| $5 million | 251–340 |
| $6 million | 341 or more. |

RCRA § 9003(d)(5)(C) provides the Administrator with the authority to establish classes or categories of underground storage tanks for the purposes of setting coverage levels. The Administrator may consider, but is not limited to, the following factors:

• Size, type, location, storage, and handling capacity of the tanks;

• Volume of petroleum handled by such tanks;

• Likelihood of release and the potential extent of damage from any release;

• Economic impact of the coverage limits, especially on small businesses in the retail motor fuel marketing sector;

• Availability of methods of financial responsibility in amounts greater than the coverage amount specified in the statute; or

• Other pertinent factors.

The Agency considered basing the coverage amounts per occurrence and in the aggregate on the factors listed above but rejected this approach except in one case: as discussed below, special consideration has been given to the economic plight of owners and operators of retail motor fuel outlets, the majority of whom are engaged in "small business" operations.

EPA's reasons for requiring all owners or operators to demonstrate evidence of financial responsibility at the $1 million per-occurrence level, as well as a description of the methodology used to set the aggregate levels included in today's proposal are presented below. A more complete analysis of how the aggregate levels were established is included in the supporting document for this rule, which is available in the docket.

The Agency has decided not to apportion per-occurrence and aggregate coverage between corrective action and third-party compensation for the reasons presented in Section III, "Section-by-Section Analysis." Consequently, the proposed rule requires that owners or operators who use one financial assurance mechanism to cover corrective action costs and another to cover third-party liability claims have $1 million per-occurrence coverage and the appropriate aggregate coverage under each of these mechanisms. Similarly, as also discussed in the section-by-section analysis, if an owner or operator uses one mechanism to cover liability claims arising from sudden releases and another mechanism to cover liability claims arising from nonsudden releases, each mechanism must carry the minimum $1 million per-occurrence coverage and the appropriate aggregate coverage for the number of tanks owned or operated.

Nothing in the proposed rule denies States the opportunity to set more restrictive financial responsibility requirements. States may choose, for example, to require higher coverage levels for particular owners or operators of petroleum USTs. However, to receive approval of their UST programs under § 9004 States may not set coverage levels lower than the minimum amounts specified in this rule. (The requirements and procedures for State program approval are proposed elsewhere in today's **Federal Register**.)

At this time, the Agency cannot predict the net effect of UST regulation on the level of per-occurrence or aggregate costs. The industry's awareness of and compliance with the leak detection requirements being proposed today in 40 CFR Part 280, Subpart D, may result in a lower average per-occurrence cost because releases may be detected sooner. It is harder to assess the effect that leak detection requirements will have on the level of aggregate costs. Because aggregate costs are composed of a series of occurrence costs, lower occurrence costs should result in lower aggregate costs. This effect may be countered, however, by the fact that more leaks will be detected, thus raising the levels of aggregate costs. One potential effect of promulgating corrective action requirements, however, may be to increase the levels of both occurrence and aggregate costs because of the application of stricter cleanup standards. If future levels of occurrence and aggregate costs show that they have been seriously overestimated or underestimated by the Agency, it may be necessary for EPA to revise the levels of required coverage in the future.

*E. Description of the Regulated Community*

1. *Background.* USTs containing petroleum and subject to Subtitle I jurisdiction are owned or operated by firms engaged in the business of retail

motor fuel marketing and by firms storing petroleum products for purposes other than retail motor fuel sales. A large number of USTs containing petroleum are also owned by governments at the Federal, State, and local level.

EPA estimates that, of the total population of 1.4 million petroleum USTs to be regulated under Subtitle I, more than half (approximately 695,000) are used for the purpose of storing motor fuels (e.g., leaded gasoline, unleaded gasoline, gasohol, diesel fuel) for retail sale. Approximately 651,000 USTs are used for the storage of petroleum products for purposes other than retail motor fuel sales. These estimates exclude those petroleum-containing USTs for which regulation has been deferred (e.g., used oil tanks) both in this proposed rule and in the proposed technical standards rule published elsewhere in today's **Federal Register**.

Exhibit 1 shows EPA's current estimates of the UST population that will be subject to the proposed rules, distributed according to industry sector. Approximately 39 percent of the facilities to be regulated are engaged in the retail sale of motor fuels. The 61 percent of facilities having USTs that store petroleum products used for purposes other than the retail sale of motor fuels are found in every major sector of the U.S. economy.

BILLING CODE 6560-50-M

Exhibit 1. PETROLEUM UST POPULATION BY INDUSTRY SECTOR

| Industry Sector | Number of Tanks | Number of Facilities |
|---|---|---|
| RETAIL MOTOR FUEL SALES | 695,000 | 193,000 |
| PETROLEUM PRODUCT STORAGE | | |
| Agriculture | 86,000 | 54,000 |
| Mining | 14,000 | 6,000 |
| Construction | 42,000 | 21,000 |
| Manufacturing | 75,000 | 30,000 |
| Transportation | 58,000 | 25,000 |
| Communications and Utilities | 39,000 | 19,000 |
| Wholesale and Retail Trade | 136,000 | 65,000 |
| Services | 54,000 | 26,000 |
| Government, Military | 49,000 | 6,000 |
| Government, Non-Military | 98,000 | 46,000 |
| | 651,000 | 298,000 |
| TOTAL USTs CONTAINING PETROLEUM | 1,346,000 | 491,000 |

Source: Meridian Research Inc., based on material derived from DRI Inc., 1985.

BILLING CODE 6560-50-C

2. *Owners and Operators in Retail Motor Fuel Marketing.* In studying the type of financial responsibility program suitable for UST owners and operators, EPA first concentrated on the retail motor fuel marketing sector, for the following reasons:

(1) Firms in this sector probably own more than 50 percent of all petroleum USTs.

(2) This sector was easy to study because all firms in this sector own USTs; there was thus no need to distinguish UST-owning firms from firms that do not own USTs.

(3) Fire code regulations require that to conduct business in this sector, all UST-owning firms must store petroleum products underground.

(4) Although the UST-owning firms in this sector range from some of the largest corporations in the world to very small firms, the vast majority of firms in this sector are small, with $500,000 or less in assets and an average net worth of $90,000. In general, the smaller a firm, the more difficulty it is likely to have in meeting financial responsibility obligations.

The retail marketing of motor fuels is performed at various types of business outlets, including

- Gasoline service stations,
- Convenience stores, and
- Other types of facilities, including marinas, car washes, and agricultural cooperatives, for which gasoline sales are not a major source of the income.

Approximately 193,000 retail outlets sell motor fuels. The owners of these outlets range from some of the largest corporations in the United States (e.g., Exxon, Mobil Oil) to very small businesses with no reported payroll. The operators and owners of these facilities are often not the same entity (e.g., the operator may lease the facility from its owner).

Exhibit 2 presents EPA's estimates of numbers of firms owning and operating retail motor fuel outlets, by firm category. Twenty-seven refiners (vertically integrated oil companies that produce, refine, and market a variety of petroleum products) each own, on average, 1,733 retail motor fuel outlets. Refiners thus own approximately 24 percent of all retail motor fuel outlets. Approximately 42 percent of retail motor fuel outlets are owned by "open dealer" firms (i.e., small businesses that own and operate one retail motor fuel outlet). The remaining 34 percent of retail motor fuel outlets are owned by jobbers, convenience stores, and independent chains. Exhibit 2 also shows that 58,657 retail motor fuel outlets (30 percent of the total number) are owned by refiners, jobbers, and independent chains but are operated by lessees.

EXHIBIT 2.—OWNERSHIP AND OPERATION OF RETAIL MOTOR FUEL OUTLETS

| Category | No. of firms | No. of retail outlets owned and operated | No. of retail outlets owned and leased | Total No. of retail outlets owned | Average No. of retail outlets owned per firm |
|---|---|---|---|---|---|
| Refiners [a] | 27 | 9,964 | 36,817 | 46,781 | 1,733 |
| Jobbers [b] | 8,766 | 25,333 | 20,713 | 46,046 | 5 |
| Convenience Stores [c] | 516 | 14,732 | 0 | 14,732 | 29 |
| Independent Chains [d] | 125 | 4,010 | 1,127 | 5,137 | 41 |
| Open Dealers [e] | 80,304 | 80,304 | 0 | 80,304 | 1 |
| Total | 89,738 | 134,343 | 58,657 | 193,000 | ..... |

[a] Refiners are large, vertically integrated oil companies owning refineries that produce petroleum products distributed through their wholesale and retail "branded" outlets.

[b] Jobbers are primarily wholesalers of petroleum products who may also own retail service stations or convenience store outlets.

[c] Approximately half of all convenience stores sell motor fuels. Convenience stores are defined to exclude jobbers.

[d] Independent chains are chains of service stations; they often sell "unbranded" or private-branded petroleum products. Independent chains are defined to exclude jobbers and convenience store owners.

[e] Open dealers both own and operate their gasoline marketing operations In many cases, open dealers are former lessee dealers who bought their locations from major oil companies or refiners.

Source: Meridian Research Inc., based on material derived from DRI Inc., 1985.

Firms owning retail motor fuel outlets vary tremendously in their financial strength as well as their size. For example, the median refiner firm has over $6 billion in net worth; this type of firm probably can afford very high corrective action costs and third-party liability awards. In contrast, the median open dealer firm, with a net worth of $90,000, will have difficulty affording even the costs of an UST release that does not reach ground water and does not require high corrective action expenditures or compensation of third parties. If this type of firm does not have pollution liability insurance or another financial assurance mechanism, releases from its USTs may cause damage to health and the environment that will not be remedied.

3. *Owners and Operators in Other Sectors.* Firms in industry sectors other than retail motor fuel marketing store petroleum products in USTs for a variety of purposes, including on-site vehicle refueling and bulk fuel storage (e.g., of motor fuels, heating oil). A preliminary review of California UST notification data suggests that, compared with the retail motor fuel marketing sector, a smaller percentage of USTs in these other sectors are owned by very large publicly held firms. These data also suggest that only a small percentage of UST owners in these other sectors are as small as the open dealer firms in the retail motor fuel marketing sector. Exhibit 3 lists the 10 industrial sectors, other than retail motor fuel marketing, in which USTs containing petroleum are most commonly found.

EXHIBIT 3.—TEN INDUSTRIAL SECTORS, OTHER THAN RETAIL MOTOR FUEL MARKETING, IN WHICH PETROLEUM USTS ARE MOST COMMONLY FOUND

| SIC code | Industry | Number of tanks |
|---|---|---|
| 5511 | Motor vehicle dealers | 38,000 |
| 421 | Trucking, local and long distance | 33,000 |
| 15, 16 | General contractors and heavy construction | 28,000 |
| 4811 | Telephone communications | 12,000 |
| 493 | Combination utility services | 9,000 |
| 3273 | Ready-mixed concrete | 8,000 |
| 5191 | Farm supplies, wholesale | 7,000 |
| 5083 | Farm machinery, wholesale | 6,000 |
| 7513 | Truck rental and leasing | 6,000 |
| 5211 | Lumber and other building materials dealers | 6,000 |
| | Total | 153,000 |

Source: DRI, 1985.

Some of the characteristics of the agricultural, government, and industrial owners of USTs in sectors other than retail motor fuel marketing are presented in Exhibit 4 which shows that a large number of agricultural facilities have USTs that are not exempted from Subtitle I's jurisdiction under section 9001(1)(A) (i.e., they have a capacity of more than 1,100 gallons). (See the proposed UST technical standards published elsewhere in today's **Federal Register**, for a discussion of the scope of this exemption.) It also shows that 52,000 local, State, and Federal government facilities have USTs. These government facilities constitute roughly one-sixth of the total number of facilities with USTs in all sectors other than the retail motor fuel marketing sector. Firms in industry sectors other than retail motor fuel marketing own a total of 651,000 USTs at 298,000 facilities.

EXHIBIT 4.—PETROLEUM USTs IN SECTORS OTHER THAN RETAIL MOTOR FUEL MARKETING

| Industry sector | Number of tanks | Number of facilities | Average number of facilities per owner |
|---|---|---|---|
| Agriculture: [1] | | | |
| Farms Owning One UST Facility | 74,000 | 46,000 | 1.00 |
| Farms Owning More Than One Facility | 12,000 | 8,000 | 2.47 |
| Subtotal, Agriculture | [illegible] | 54,000 | |
| Government: | | | |
| Local | 62,000 | 29,000 | [illegible] |
| State | [illegible] | 14,000 | |
| Federal | 56,000 | 9,000 | |
| Subtotal, All Government | 147,000 | 52,000 | |
| General Industry (other than retail motor fuel marketing sector): | | | |
| Privately held firms owning one UST facility | 281,000 | 129,000 | 1.00 |
| Privately held firms owning more than one UST facility | 48,000 | 22,000 | 5.15 |
| Publicly held firms or their subsidiaries | 89,000 | 41,000 | |
| Subtotal, General Industry | 418,000 | 192,000 | |
| Total, all sectors other than retail motor fuel marketing | 651,000 | 298,000 | |

[1] Includes only USTs with capacities of more than 1,100 gallons.
Source: Meridian Research Inc., based on material derived from DRI Inc., 1985.

*F. Overview of Proposed Rule*

Today's rule contains the following provisions for UST financial responsibility:

- Applicability.
- Definition of Terms.
- Amount and Scope of Required Coverage.
- Allowable Mechanisms and Combinations of Mechanisms, including:

—financial test of self-insurance
—guarantee
—indemnity contract
—insurance
—risk retention group coverage
—surety bond
—letter of credit
—State-required mechanism
—State Fund or other State assurance

- Standby Trust Fund.
- Substitution of Financial Assurance Mechanism.
- Cancellation or Nonrenewal by a Provider of Financial Assurance.
- Reporting by Owner or Operator.
- Recordkeeping.
- Drawing on Financial Assurance Mechanisms.
- Release from Requirements.
- Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance.
- Suspension of Enforcement.

Each section and the rationale for the Agency's approach are discussed in the section-by-section analysis of this preamble. Included in the analysis of the allowable mechanisms are discussions of the features of the mechanism, its applicability to UST requirements, and its availability to owners or operators. Procedures that must be followed for all mechanisms—such as requirements for reporting, and cancellation or substitution of instruments—are proposed under separate provisions in today's rule and discussed separately in the preamble.

## III. Section-by-Section Analysis

*A. Applicability (§ 280.90)*

Today's proposed rule would apply to all owners and operators of underground storage tanks containing petroleum, with certain exceptions and deferrals. If the owner and operator are separate parties, only one party is required to demonstrate financial responsibility.

An underground storage tank is defined in RCRA section 9001(1) as "any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground." Regulated substances are further defined by section 9001(2) to mean any CERCLA hazardous substance (excluding substances regulated as hazardous wastes under RCRA Subtitle C) and petroleum, which is defined by section 9001(8) to include crude oil or any fraction thereof that is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

Although section 9003(e)(6) requires the Administrator to promulgate financial responsibility requirements for USTs containing petroleum and other regulated substances (i e., any CERCLA hazardous substance not regulated as a RCRA hazardous waste), today's rule applies only to tanks containing petroleum. The Agency needs to gather additional information before proposing financial responsibility regulations for USTs containing other regulated substances. Additional data are needed on the types of tanks used to store these substances, the likelihood of releases, the magnitude of corrective costs related to releases of these substances, and the magnitude and likelihood of third-party liability claims. EPA plans to publish a separate advance notice of proposed rulemaking that addresses financial responsibility for USTs containing regulated substances not governed by this rule.

Several issues related to the applicability provisions under proposed Subpart I are discussed in more detail below:

1. *Owner or Operator.* The financial responsibility requirements for taking corrective action and compensating third parties set forth in today's proposed regulation would apply to all owners and operators of USTs containing petroleum, with certain exemptions and deferrals. However, if the owner and operator are separate

parties, only one party is required to demonstrate financial responsibility. The Agency chose the option of allowing either the owner or the operator to demonstrate financial responsibility because it increases flexibility for the regulated community, in which a large number of facilities are separately owned and operated, while still providing adequate financial assurance. This approach is consistent with the statutory language of RCRA Subtitle I and the financial responsibility rules developed by EPA under RCRA Subtitle C.

The Agency considered but rejected the option of requiring both owners and operators to demonstrate financial responsibility. Such an approach might provide somewhat greater assurance that the costs of taking corrective action and compensating third parties would be covered in the event that one party failed to provide adequate funds. And because owners and operators may be separately liable for third-party damages, this option would have ensured that both parties had funds available to cover their respective liabilities. On the other hand, both the owner and operator are responsible for performing corrective action under RCRA Subtitle I and 40 CFR Part 280, Subpart F, and, in many cases, both will be liable for third-party damages caused by releases arising from operating an underground tank. In the case of corrective action costs, it is unnecessary for both parties to obtain financial assurance because, if one party demonstrates financial responsibility, the Agency can order that party to undertake corrective action. In the case of third-party liability claims, the Agency expects that in most cases third parties will be compensated regardless of which party is directly liable and which party has financial assurance. (See "Supporting Document for Proposed Financial Responsibility Requirements for Underground Storage Tanks Containing Petroleum," hereinafter cited as Supporting Document.)

For the reasons stated above, the option of requiring both owners and operators to demonstrate financial responsibility could often result in unnecessary double coverage for corrective action and third-party liability for facilities owned and operated by separate entities, and would increase substantially the burden on the regulated community. Of course, States have the option of establishing more stringent requirements as they deem appropriate. Although owners or operators must obtain required coverage, suspension of enforcement under § 280.111 will occur only if neither the owner nor the operator is able to obtain financial assurance.

2. *New Tanks.* Under § 280.90(b) of the proposed financial responsibility regulations, an owner or operator of a new petroleum UST (defined in § 280.12 of the technical standards as a tank installed after the effective date of the UST regulations) would become subject to the financial responsibility requirements of this Subpart when the tank is put into operation.

3. *Tanks Taken Out of Operation.* Today's proposed financial responsibility requirements would apply to tanks taken out of operation prior to the effective date of the UST regulations. Because non-operational tanks are subject to the closure and corrective action requirements under Subparts F and H of the technical standards, the Agency has determined that financial assurance is also necessary to ensure that closure is undertaken properly and quickly. The owners and operators of these tanks will be released from the obligation to demonstrate financial responsibility in the same manner as the owners and operators of other USTs, namely one year after completion of closure, or if corrective action is required, completion of closure and corrective action (see § 280.109).

4. *State and Federal Government Entities.* Under § 280.90(c) of today's proposed regulations, State and Federal owners or operators of USTs containing petroleum will not be required to demonstrate financial responsibility for corrective action and third-party liabilities. The Agency recognizes that because Federal and State government entities are permanent and stable institutions, they have the requisite financial strength to cover the costs of taking corrective action and compensating third parties. In addition, these government entities have an incentive to meet corrective action and third-party liability obligations in a timely manner — since one reason they exist is to safeguard health and welfare. For these reasons, the Agency believes that it is not necessary to develop a financial test or other requirements for Federal and State government entities and thus exempts these entities from the financial responsibility requirements. This provision of the proposed regulations is consistent with the RCRA Subtitle C financial responsibility requirements for closure and post-closure care and third-party liability coverage. (See 40 CFR 264.140(c) and 265.140(c).)

The exemption under § 280.90(c) for Federal and State government entities extends to cases in which a tank is owned by a State or Federal government entity and operated by a private party (or operated by a State or Federal government entity while owned privately); that is, the private owner or operator in these cases need not obtain financial assurance. A State or Federal owner may, of course, require the private operator by contractual agreement to obtain insurance or provide other financial assurance. This approach is consistent with the Subtitle C financial responsibility requirements.

The financial responsibility regulations proposed today apply to government entities whose debts and liabilities are not the debts and liabilities of a State or the United States. In this way, the Agency intends to exclude from the classification of State and Federal government entities those entities whose enabling legislation specifies that their debts are not secured by general revenues. An example of the latter entity is an authority established under State or Federal law whose enabling legislation states that the bonds or notes of the authority are not deemed to constitute a debt or obligation of the State or Federal government entity and do not constitute bonds or notes issued or guaranteed by the State or Federal entity. Such authorities often rely on revenues generated from the project or facility the authority is established to set up (e.g., toll revenues from bridge and tunnel authorities).

5. *Exemptions.* The definition of underground storage tank in § 9001(1) contains a number of exclusions. (See footnote 1 to this preamble and § 280.12 of the technical standards for the types and definitions of underground storage tanks that are excluded.) Tanks included in these statutory exclusions are not subject to today's financial responsibility regulations.

In the technical standards for USTs proposed elsewhere in today's **Federal Register**, the Agency is proposing to exempt from the requirements of Part 280 USTs containing hazardous wastes that are listed or identifiable under Subtitle C of the Solid Waste Disposal Act, even if such tank contains Subtitle I regulated substances in addition to the hazardous wastes. This exemption applies to Subpart I by virtue of § 280.10, proposed elsewhere in today's **Federal Register**, which excludes these USTs from regulation under all of 40 CFR Part 280.

In addition, proposed Subpart I does not apply to owners or operators of

underground storage tanks containing hazardous substances or a mixture of petroleum and hazardous substances, if the hazardous substances comprise greater than 50 percent of the mixture (§ 280.90(d)). These tanks will be subject to financial responsibility rules that are being developed separately. The Agency is currently developing an advance notice of proposed rulemaking on financial responsibility for USTs containing hazardous substances.

6. *Deferrals.* Section 280.90(e) of today's proposal defers the applicability of financial responsibility requirements for (1) wastewater treatment tanks, (2) sumps containing petroleum, (3) USTs containing used oil, (4) underground bulk petroleum storage tanks, (5) tanks containing electrical equipment, (6) tanks containing radioactive wastes, and (7) hydraulic lift tanks. These tanks (and USTs containing hazardous substances) are deferred from regulation under Section 280.10 of the technical standards proposed elsewhere in today's **Federal Register**, except for the corrective action and notification requirements, because EPA has limited information about these tanks, or it is uncertain about the need to regulate them. (See preamble to technical standards for a more detailed discussion of these tanks.) For these reasons EPA believes it is also appropriate to defer consideration of financial responsibility requirements for these tanks.

The Agency intends to address the need for financial responsibility requirements for these tanks, and for tanks containing regulated substances not addressed in this rulemaking, in a forthcoming advance notice of proposed rulemaking. At that time, the Agency will request comments about the extent and nature of leaks from these tanks and the need for financial responsibility requirements for these tanks. EPA welcomes, however, any comments about these or other pertinent issues at this time. The Agency may propose to subject those tanks to financial responsibility requirements similar to those proposed today if, in response to the advance notice of proposed rulemaking, EPA does not receive any data or information indicating the need for different requirements.

*B. Definition of Terms (§ 280.91)*

Today's proposed rule, in § 280.91, sets forth definitions of terms that either codify definitions provided in RCRA Subtitle I, or introduce terms used specifically in Subpart I of Part 280. Terms such as "operator," "owner," "petroleum," and "release", which are defined in § 280.12 of the proposed UST technical standards rulemaking, apply to all of Part 280, including Subpart I, and therefore, are not defined in § 280.91.

1. *Accidental Release.* An "accidental release" is defined in the proposed rule as any sudden or nonsudden release of petroleum arising from operating an UST that results in a need for corrective action, bodily injury, or property damage, neither expected nor intended by the tank owner or operator. This definition is consistent with the Subtitle C program and conforms to standard insurance industry practice. The term "release" is not defined in Subpart I because it is defined in § 280.12.

In today's proposal, the Agency requires that the owner or operator demonstrate financial assurance for any accidental release. The rules define accidental release to clarify that the coverage required for taking corrective action and compensating third parties applies only to "accidental releases" and not to intentional releases.

The terms "sudden accidental releases" and "nonsudden accidental releases" are not defined. Although RCRA Subtitle I distinguishes "sudden accidental releases" from "nonsudden accidental releases," these terms do not need to be defined in Subpart I because an owner or operator must demonstrate financial assurance for both types of accidental releases. An owner or operator using separate assurance mechanisms to cover different types of accidental releases, such as one insurance policy for sudden accidental releases and a second policy for nonsudden accidental releases, has the flexibility to distinguish between these types of releases in any manner, as long as all types of accidental releases are covered by the mechanisms.

2. *Bodily Injury.* Because third parties will generally bring liability claims pursuant to State law, the proposed rule defines bodily injury as having the meaning given to it by applicable State law. However, the definition does not include those liabilities which, consistent with standard insurance industry practice, are excluded from coverage in liability insurance policies for "bodily injury." The proposed definition for "bodily injury" is consistent with the definition provided in Subtitle C. (See 40 CFR 264.141(g) and 265.141(g).)

The Agency is concerned, however, that deference to standard insurance industry practices has the potential to result in an unacceptably narrow scope of coverage for compensating third parties, particularly because relatively few insurers provide pollution liability insurance, which means that one or a small number of insurers could significantly influence standard practices for such coverage. For this reason, the Agency requests comment on whether the rules should be revised to specify exclusions, inclusions, or other contractual terms, conditions, or defenses that are necessary or unacceptable for coverage of third-party claims for bodily injury and property damage.

3. *Controlling Interest.* "Controlling interest" is defined as direct ownership of at least 50 percent of the voting stock of another entity. The Agency defines "controlling interest" to clarify that a guarantee is an acceptable mechanism for demonstrating financial assurance if it is provided by a firm that (1) possesses a controlling interest in the owner or operator (e.g., corporate parent), or (2) possesses a controlling interest in a firm that in turn possesses a controlling interest in the owner or operator (e.g., corporate grandparent), or (3) is controlled through stock ownership with a common parent firm that possesses a controlling interest in the owner or operator (e.g., corporate "sibling" or affiliated firm). Under the Subtitle C rules, only a firm directly owning at least 50 percent of the voting stock of the owner or operator can provide a guarantee as an allowable mechanism. Under the Subtitle I proposal, the Agency intends to make the guarantee more widely available to owners or operators by allowing affiliated firms and "grandparent" firms to provide guarantees, as explained below in Section III.F of this preamble.

4. *Legal Defense Costs.* "Legal defense costs" are defined as any expense incurred by an owner or operator or provider of financial assurance in defending against any claim brought to require corrective action or to recover the costs of corrective action, by or on behalf of a third party for bodily injury or property damage caused by an accidental release, or by any person to enforce the terms of a financial assurance mechanism.

The Agency has adopted the definition for "legal defense costs" from the Subtitle C regulations, but has broadened the definition to render it more applicable to the Subtitle I context. Sections 264.141(g) and 265.141(g) of Title 40 of the Code of Federal Regulations define legal defense costs to include only expenses incurred by the insurer in defending against third-party claims. The proposed definition is broader, in part, because it applies to mechanisms other than insurance and to corrective action as well as third-party liability claims

5. *Occurrence.* The Agency defines "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in the release of petroleum from an underground storage tank." This definition is consistent with long-standing standard insurance industry practices and the approach taken in the RCRA Subtitle C financial responsibility rules. (See 40 CFR 264.141(g) and 265.141(g).)

6. *Property Damage.* Because third parties will generally bring liability claims pursuant to State law, the proposed rule defines "property damage" as having the meaning given it by applicable State law; however, this term shall not include those liabilities which, consistent with standard insurance industry practice, are excluded from coverage in liability insurance policies. As noted in the discussion of the definition of "bodily injury," the Agency requests comment on this approach because of a concern about the potential for an unacceptably narrow scope of coverage.

7. *Provider of Financial Assurance.* The term "provider of financial assurance" is defined in today's proposal to cover all entities that provide financial assurance to an owner or operator of a petroleum UST: guarantors, indemnitors, insurers, risk retention groups, sureties, issuers of letters of credit, providers of State-required mechanisms, and States that have established a State fund or other State assurance. It does not include an owner or operator using a financial test for self-insurance. The term is used as a matter of convenience to avoid repetitive listings of all entities that act as providers of financial assurance and which would be subject to the same Subpart I provisions.

Providers of financial assurance are subject to the direct action and liability limits for guarantors under RCRA section 9003(d) (2) and (3). The term "guarantor" is defined in section 9003(d)(4) as any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection. In other words, the term "guarantor" in the statute is equivalent to the phrase "provider of financial assurance" in the rules.

Section 9003(d)(2) of RCRA Subtitle I provides that: "in any case where an owner or operator is in bankruptcy, reorganization, or other arrangement pursuant to the Federal Bankruptcy Code or where jurisdiction in any State court or the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial assurance must be provided . . . may be asserted directly against the guarantor providing such evidence of financial responsibility." If such direct action is taken against a provider of financial assurance, the provider is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

Section 9003(d)(3) of RCRA also provides that the total liability of the guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator. Section 9003(d)(3) provides: "Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or any other applicable law."

8. *Substantial Business Relationship.* "Substantial business relationship" is defined to mean that extent of a business relationship necessary under applicable State law to make a guarantee or indemnity contract issued incident to that relationship valid and enforceable. A guarantee or indemnity contract is issued "incident to" that relationship if it arises from and is dependent on existing economic transactions between the guarantor or indemnitor and the owner or operator. This definition is intended to allow guarantees and indemnity contracts issued by firms, such as petroleum wholesalers and suppliers to unrelated owners and operators, to be used as assurance mechanisms. These categories of mechanisms must be certified as valid and enforceable by the applicable State's Attorney General before they are allowed as acceptable assurance mechanisms. The Agency requests comments on the definition and how it will be interpreted under applicable State laws.

9. *Tangible Net Worth.* "Tangible net worth" is defined as the value of assets that remain after deducting the amount of liabilities and intangible assets, such as goodwill and rights to patents or royalties. As used in this definition, the term "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions. The Agency provides this definition to clarify that, according to generally accepted accounting principles, probable future economic benefits that are expected by a particular entity as a result of transactions not yet entered into are not considered "assets" and, therefore, are not included in the definition of "tangible net worth." In defining "tangible net worth," the Agency does not intend to limit the meaning of "tangible net worth" in a way that conflicts with generally accepted accounting principles or with applicable State law.

*C. Amount and Scope of Required Coverage (§ 280.92)*

The rule proposed today requires that all owners or operators of USTs containing petroleum demonstrate evidence of financial responsibility in the amount of $1 million per occurrence to cover corrective action and third-party compensation costs for accidental releases from their tanks. In addition, the Agency has established requirements for aggregate levels of coverage, based on the number of USTs to be covered by any financial instrument. The rationale for the amount and scope of required coverage is discussed below, as it pertains to the following topics:

(1) Per-Occurrence Amount.
(2) Aggregate Amounts.
(3) Apportionment of Costs.
(4) Level of Coverage Under Separate Mechanisms.

1. *Per-Occurrence Amount.* Section 9003(d)(5)(A) of RCRA Subtitle I indicates that EPA must establish a minimum amount of coverage of not less than $1 million per occurrence for petroleum USTs at facilities engaged in petroleum production, refining, or marketing. Section 205 of the Conference Report accompanying SARA confirms this interpretation. "The Administrator cannot set a minimum financial responsibility requirement of less than $1 million for tanks which are engaged in petroleum production, refining, or marketing. . . ." (House Report 99–962, 99th Congress, 2nd Session, p. 264.) The Administrator may require lower coverage amounts for petroleum USTs located at facilities that are not engaged in petroleum production, refining, or marketing and that are not used to handle substantial quantities of petroleum. Section 280.92(a) of today's rule proposes the $1 million amount as

the minimum amount of required coverage for all owners or operators of petroleum USTs.

EPA believes that the $1 million per-occurrence level suggested by Congress is sufficient to cover corrective action and third-party compensation costs arising from UST releases in the vast majority of cases. At the same time, the Agency recognizes that, on infrequent occasions, these costs will exceed the $1 million level. Congress recognized that the required coverage might not be entirely adequate in all cases and in § 9003(h)(2)(C) of Subtitle I, made provision for the use of the Leaking Underground Storage Tank Trust Fund to pay corrective action costs in instances where these costs exceed the level of financial responsibility required by EPA regulations. EPA has determined that coverage of $1 million per-occurrence would be adequate to cover the combined costs of corrective action and third-party liability in 99 percent of all occurrences.

The Agency relied on three data sources to confirm the suitability of Congress' suggested $1 million level of coverage: (1) EPA's estimate of corrective action costs; (2) the claims experience data of the two largest insurers of petroleum-containing USTs; and (3) an EPA-sponsored study entitled "Tort Liability Due to Releases From Underground Storage Tanks at Service Stations." In the two latter data sources, costs for corrective action and third-party liability are not distinguished. According to EPA's estimates of corrective action costs, the costs of cleaning up a dispersed plume that reaches ground water will seldom exceed $281,000. Thus the Agency is satisfied that when corrective action costs alone are involved, a $1 million per-occurrence level of coverage almost always will be sufficient to cover these costs.

The largest insurer of USTs owned by firms in the retail motor fuel marketing sector has not paid more than $1 million on a pollution liability claim (i.e., a claim on a pollution liability policy covering both corrective action and third-party compensation) in more than three years of operation and has had only one UST claim during the period in the $500,000 to $1 million range. During this period, this insurer has paid more than 200 claims, and approximately two to four percent of claims involved third-party liability. Similarly, the other major insurer of USTs in this sector has not paid a claim for more than $1 million. During this time period, both of these companies had issued many policies with per-occurrence limits in excess of $1 million. The average UST claim paid by these companies in 1985 for corrective action and third-party compensation was reportedly between $50,000 and $60,000; in recent months the value of the average UST claim has risen to $125,000. Thus, past insurance claims experience suggests that a $1 million level of per-occurrence coverage will be sufficient to cover both the costs of corrective action and third-party compensation.

The third source of information used to determine the per-occurrence level, the EPA-sponsored study mentioned above, was concerned only with UST claims that involved third-party liability. In general, the more serious (in terms of environmental damage) and costly a release, the more likely it is to involve third-party liability. This study found that 23 percent of these claims involved awards of more than $1 million; however, the 96–98 percent of UST release incidents that do not result in third-party damage claims were excluded from consideration. EPA believes that because of the methodology used in this study to obtain information about these claims (i.e., reviewing decisions in cases reaching the appellate level and searching product liability, environmental, and trial law publications for information on ongoing recent lower court cases), the study probably overrepresented the percentage of third-party liability claims for which awards of more than $1 million were granted. This methodology would tend to overrepresent the most serious UST liability cases because the majority of cases that were easily settled with insurers never reached the appellate court level or were never cited in legal publications. Even if this is so, if, as current insurance claims data indicate, not more than four percent of all UST claims involve third-party damages, and 23 percent of claims involving third-party damages cost over $1 million, then the maximum combined incidence of corrective action and third-party liability claims over $1 million should be 0.92 percent.

Examination of each of the three data sources on corrective action and third-party compensation costs thus allows the Agency to conclude that a $1 million per-occurrence limit is adequate to cover these combined costs 99 percent of the time. EPA's estimates of corrective action costs show that $1 million will cover virtually all releases involving only corrective action. Insurance claims experience demonstrates that, to date, no UST claim involving both corrective action costs and third-party liability awards has exceeded $1 million. The EPA-sponsored study of tort claims, which examines only claims involving third-party liability awards, does show that more than 1 percent of the claims examined exceeded $1 million; however, claims including third-party liability costs occur so infrequently (i.e., less than 4 percent of the time) it can be concluded that $1 million is sufficient to cover 99 percent of all UST releases (i.e., all corrective-action-only claims and 99 percent of all other claims filed).

A per-occurrence level designed solely to cover 99 percent of the releases involving third-party liability awards (instead of corrective action and/or third-party liability awards) would have to be set at a level greater than $10 million.

The Agency further believes that setting a per-occurrence level high enough to cover both corrective action and liability claims for more than 99 percent of all UST release incidents (i.e., a per-occurrence level of $1 million) is sufficient, appropriate, and equitable with regard to both small and large firms. The reasons underlying this belief include the following:

- A per-occurrence level high enough to cover fully the costs of the most serious and uncommon release incidents (e.g., incidents costing $10 million or more) would be unduly burdensome for the many small firms that are having difficulty obtaining pollution liability insurance even at a low per-occurrence level.
- A lower per-occurrence level is not appropriate for small firms because the threat to human health and the environment posed by releases from USTs is the same, in terms of severity, regardless of whether the leaking tank is owned by a small firm or a large firm.
- Large firms that can afford higher levels of per-occurrence coverage are not required to have higher levels because, as discussed above, $1 million should be sufficient to cover all corrective action and third-party liability costs in 99 percent of cases.

Factors such as the age of the tank, the material of which it is made, and the presence of a secondary containment system were not used to establish classes or categories of tanks for the purpose of setting a per-occurrence level. Although such factors do affect a tank's propensity to leak, there is no evidence to suggest that any of these factors affects the costs related to a release. The setting of an appropriate per-occurrence level depends on the costs of individual releases rather than on the probability that a release will occur, and there is therefore no reason

why the factors mentioned above should have a bearing on the per-occurrence level of coverage required. For example, a release from a 1-year-old tank can be just as expensive to address as a release from a 20-year-old tank.

A release incidence survey sponsored by EPA suggests that locational factors (e.g., proximity to ground water) may affect the size and costs of corrective action and liability related to releases. However, setting up classes or categories for the per-occurrence level based on locational factors for the entire United States might be difficult to implement for purposes of financial assurance. Furthermore, because the overwhelming majority of release incidents, regardless of location, incurred costs amounting to less than $1 million, taking such a classification scheme into consideration when setting levels would appear to add complexity without increasing the amount of protection provided. However, individual States are not precluded from using locational factors to set higher per-occurrence levels when that may be appropriate (e.g., for tanks located near important drinking water supplies).

EPA requests comments with regard to several of the issues raised in this section. First, in setting a per-occurrence limit, is the Agency's approach (i.e., to assure that in 99 out of 100 release incidents, corrective action and third-party liability costs will be covered) a reasonable approach? Second, are there good reasons for varying the per-occurrence level of coverage by size of tanks, throughput of tanks, or any other variable that might affect the level of cleanup costs for one occurrence? Third, to what extent, if any, should the Agency consider the economic impact on classes or categories of owners or operators in the setting of a required per-occurrence level of coverage?

2. *Aggregate Amounts.* Section 9003(d)(5)(A) of Subtitle I grants the Administrator discretion to set "an appropriate aggregate requirement" for the coverage of USTs containing petroleum. By aggregate amount, EPA means the total costs within a given year for all releases from petroleum-containing USTs covered by a single financial mechanism. (For the purposes of setting aggregate levels, any reference to tanks means only single containment units and does not include combinations of these units. This definition applies only with regard to required aggregate levels of coverage. See § 280.92(c).) If an owner or operator uses different mechanisms to cover different USTs, the appropriate annual aggregate is based on the number of tanks covered by each separate mechanism or combination of mechanisms.

For firms with 13 or more tanks, the Agency proposes, in § 280.92(b), levels of aggregate coverage that were derived from analyses of the various levels of costs for corrective action and third-party compensation associated with the average probabilities of releases for all bare steel tanks (i.e., steel USTs not protected from corrosion). EPA's analysis used an annual probability of 11.8 percent that a tank would experience a release. This probability is considerably higher than that based on insurance claims experience, tests of tanks by Chevron and Texaco, or regulatory experience in Santa Clara, California; Dade County, Florida; or the State of Maryland. The probabilities and costs used in the Agency's statistical analysis to develop the aggregate level requirements being proposed are described in more detail in the supporting document, which is available in the docket for this rulemaking.

The aggregate coverage is set at levels sufficiently high that corrective action and third-party liability costs will exceed aggregate levels of coverage required under Subpart I no more than one percent of the time. As stated earlier, the amount of aggregate coverage that a firm is required to carry depends on the number of tanks for which it is providing financial assurance.

However, EPA decided to depart from this one percent safety criterion for the $1 million aggregate level bracket (the lowest level of required coverage) due to the potentially adverse economic impact that strict adherence to such a criterion could have on small businesses. Although the analysis showed that $1 million was adequate to cover 1 to 5 tanks with a 99 percent probability that this aggregate level would not be exceeded, the Agency has expanded this bracket to allow coverage for 1 to 12 tanks. In so doing, over 99 percent of all firms within the retail motor fuel marketing sector that conform to the Small Business Administration's definition of a "small business" (i.e., a firm with less than $4.6 million in annual sales) are required to carry $1 million aggregate coverage. The firms in this sector most likely to be affected by this lowered aggregate requirement are small rural jobbers, currently without insurance, who could be subject to significant economic impacts if forced to obtain coverage at the $2 million aggregate level. With a $1 million aggregate, the economic impact on these firms will be minimal (see Regulatory Impact Analysis, Chapter 5). The savings in insurance premiums for these firms will be $2.8 million per year, while the increase in corrective action and third-party compensation costs that will not be met by owners or operators (or covered by their financial mechanisms) as a result of this bracket expansion will be $145,000 per year. EPA estimates that this lowered aggregate requirement could save up to $15 million annually in premium costs for those businesses in all sectors having 6 to 12 facilities.

For the purpose of determining appropriate aggregate levels of coverage, EPA has set a goal of ensuring that corrective action and third-party liability costs do not exceed the established aggregate levels more than one percent of the time. This means that out of 100 UST-owning firms having assurance instruments that provide aggregate coverage that conforms to levels set by EPA, no more than one of these firms should incur corrective action and third-party liability costs exceeding this aggregate level in any given year. EPA's analysis considered the full range of situations that firms owning or operating USTs might face, including the possibility that none of a firm's USTs would experience releases as well as the possibility that all of a firm's USTs would experience releases serious enough to involve third-party liability costs. A brief discussion of the Agency's development of appropriate aggregate requirements follows; a detailed discussion of the assumptions, methodology, and results of the analysis may be found in Chapter 3 of the supporting document.

The analysis used to determine appropriate aggregate levels reflects a statistical principle known as the Law of Large Numbers, which states that, for statistically independent events, the greater the number of events, the greater the likelihood that the outcome of these events will be close to the expected value (the average outcome per event times the number of events). Accordingly, if UST releases are assumed to be statistically independent events (i.e., a release at one UST does not increase the probability of a release at another UST owned by the same firm), as the number of covered USTs increases, the potential for release-related costs to exceed the aggregate level of coverage increases as well, although not proportionately. In other words, the aggregates necessary to provide a given level of assurance will be a decreasing multiple of the coverage for one tank.

EPA recognizes that, in some cases, UST releases will not be completely independent statistically. For example,

faulty management practices may increase the probability that all of a firm's USTs may experience releases. In such instances, a release from one UST will not cause a release from another UST, but releases from tanks owned by the same firm may be correlated to some degree. However, neither the factors contributing to such a correlation nor the degree of correlation can be predicted, and the Agency has therefore assumed that releases from USTs owned or operated by the same firm are statistically independent. If the Agency did not use this assumption, the annual aggregate levels of coverage required would have to be considerably higher in order to ensure that aggregate levels of coverage would not be exceeded by annual corrective action and third-party liability costs more than one percent of the time. The Agency requests comment on the use of this assumption in calculating appropriate levels of aggregate coverage.

In today's notice, EPA is proposing in § 280.92(b) the following aggregate levels:

| | | |
|---|---|---|
| 1–12 tanks | $1,000,000 | annual aggregate. |
| 13–60 tanks | $2,000,000 | annual aggregate. |
| 61–140 tanks | $3,000,000 | annual aggregate. |
| 141–250 tanks | $4,000,000 | annual aggregate. |
| 251–340 tanks | $5,000,000 | annual aggregate. |
| 341 or more tanks. | $6,000,000 | annual aggregate. |

EPA considered several alternatives in setting annual aggregates. For example, the Agency considered the possibility of setting the same aggregate level for all firms. This alternative was rejected because there would be insufficient coverage for owners or operators with numerous tanks or excessive coverage for owners or operators of few tanks.

EPA also considered the possibility of developing aggregate levels based on the goal of ensuring that firms would not incur corrective action and third-party compensation costs exceeding aggregate levels more than one percent of the time their USTs experienced releases (as opposed to one percent of the time, which includes years in which firms experience no UST releases). If the Agency had developed aggregate levels based on this objective, all firms with 2–60 USTs would need financial assurance at the $2 million aggregate level. The number of tanks in all other aggregate level brackets would remain unchanged. The Agency rejected this approach because of the burden it would have placed on small firms.

Another approach considered was to require no aggregate greater than that provided in currently existing insurance policies. In the retail motor fuel marketing sector, the highest aggregate available during 1986 for firms other than large refiners was $4 million. EPA decided not to limit the aggregate in this way because this would not be appropriate in view of the Agency's primary goal of protecting public health and the environment. EPA nevertheless recognizes that existing insurance capacity could present a problem for many firms who own large numbers of tanks. Although some firms requiring aggregate limits in excess of $4 million will be able to supplement or replace existing insurance coverage with other mechanisms (e.g., financial test of self-insurance, surety bonds, letters of credit), other firms required to obtain such coverage may not possess sufficient resources and thus may be unable to meet the requirements unless greater insurance capacity is made available or they obtain a suspension of enforcement, as discussed below.

EPA also considered varying the aggregate according to factors such as type of tank, its age, and/or the integrity of its construction. For example, cathodically protected tanks, double-walled tanks, and fiberglass tanks have fewer releases than other types of tanks; thus, costs incurred by firms owning these types of tanks are less likely to exceed any given aggregate. However, the problem of how to set appropriate aggregate levels for firms owning many different types of tanks of various ages and at many different locations, is extremely complex. Insurers are likely to consider such factors in their underwriting procedures; if they charge lower premium amounts for safer tanks, this may create an incentive for owners to install safer tanks and upgrade existing tanks.

EPA rejected varying the level of aggregate coverage required according to the type or age of tanks because of the complications involved in producing inventories of tanks and formulas for aggregates reflecting different proportions of bare steel and other types of tanks. For these reasons, the Agency used an average set of probabilities for bare steel tanks in its analysis of aggregate levels. EPA requests comments on the proposed approach to setting aggregate levels of coverage, the approaches considered but rejected, and suggestions for other approaches.

3. *Apportionment of Costs.* The Agency is proposing not to apportion financial assurance coverage between corrective action and third-party compensation because it is not possible to estimate or predict what relative amounts of funds would be needed for these two types of costs before the occurrence of an actual release. Such an approach permits flexibility: the coverage may be used up to the $1 million per-occurrence limit or the appropriate annual aggregate level for either corrective action or third-party liability costs. In addition, it may often be difficult to make a distinction between these two types of costs in cases involving third-party compensation for property damage. For example, the costs of cleaning up release effects that have occurred outside the boundaries of an owner's facility generally are considered corrective action costs. However, if an owner is sued by a third party for property damage, these expenses also could be considered third-party compensation costs.

Furthermore, neither the statute nor the legislative history indicates Congressional intent to specifically apportion the financial assurance coverage between corrective action and third-party compensation. The Agency requests comments on the issue of apportioning costs.

4. *Level of Coverage Under Separate Mechanisms.* The Agency is proposing that owners or operators who use separate mechanisms to provide coverage for corrective action and third-party compensation must have the minimum $1 million per-occurrence coverage and the appropriate aggregate coverage (based on number of tanks) for each type of cost.

EPA has taken this approach for the same reason that it has decided not to apportion financial assurance coverage between corrective action and compensation of third parties. Before an UST release occurs, it is difficult to predict what portion of coverage will be needed to satisfy corrective action costs and what portion of coverage will be needed to satisfy third-party compensation claims. The analyses performed by EPA to support the $1 million per-occurrence level and the aggregate levels did not consider corrective action costs and third-party liability costs separately because the classification of costs as corrective action costs or third-party liability costs sometimes depends on the circumstances. For example, if a corrective action order specifies that alternative water supplies be provided to residents of a community—it is a corrective action cost. If, however,

BEST COPY AVAILABLE

alternative water supplies must be provided as a result of a suit brought by third parties, it could be a third-party liability cost. Therefore, the only way the Agency can be sure that owners and operators will be able to cover the costs of UST releases in 99 percent of all cases is if they are required to carry the minimum per-occurrence and aggregate coverage for each separate assurance mechanism.

If separate mechanisms are used to cover third-party liability claims arising from sudden and from nonsudden accidental releases, coverage under each mechanism must be at the $1 million per-occurrence level at a minimum. (The aggregate coverage required under each mechanism would vary based on the number of covered tanks owned or operated.) Given the decision not to apportion coverage, having a separate mechanism for sudden and for nonsudden accidental releases would not provide more than the required level of coverage, because sudden and nonsudden accidental releases are mutually exclusive, and therefore each release would trigger only one type of coverage.

This proposal to allow separate mechanisms for separate costs will provide flexibility by allowing the regulated community to use mechanisms that are available to cover only either corrective action or third-party compensation. For example, some environmental impairment liability insurance policies may not provide coverage for "on-site cleanup." Similarly, some State funds may cover corrective action but exclude coverage for compensation of third parties. Allowing owners or operators to use separate financial mechanisms for corrective action and for compensation of third parties would permit owners or operators to use any appropriate and available mechanisms to cover their respective corrective action and third-party compensation obligations. EPA solicits comments on this approach.

*D. Allowable Mechanisms and Combinations of Mechanisms (§ 280.93)*

1. *Allowable Mechanisms.* The proposed rule requires owners or operators of USTs containing petroleum to provide financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases. The Agency is proposing, in § 280.93, to allow UST owners or operators to demonstrate financial responsibility for these types of costs through the use of any one of the following mechanisms: financial test of self-insurance, guarantee, indemnity contract, insurance, risk retention group coverage, surety bond, letter of credit, State-required mechanisms, or State fund or other State assumption of responsibility.

The set of allowable mechanisms differs in several ways from the set of mechanisms used for closure, post-closure care, and liability coverage under RCRA Subtitle C. First, RCRA Subtitle C does not allow indemnity contracts. For today's proposal, EPA considers indemnity contracts to be appropriate because they can provide adequate financial assurance while broadening the scope of third-party coverage for the owner or operator. Indemnity contracts are discussed in Section III.G of this preamble.

Second, unlike today's proposal, RCRA Subtitle C financial responsibility regulations for closure, post-closure care, and corrective action include a trust fund as a financial assurance mechanism. This mechanism was considered to be appropriate for owners or operators setting aside funds to cover the non-contingent costs of closure and post-closure care. However, this mechanism is not considered to be appropriate for UST owners or operators, as discussed in Part 3 of this Section.

Other differences between the allowable mechanisms under the Subtitle C and proposed Subtitle I rules are discussed in Section IV of this preamble.

The Agency is proposing a broader set of mechanisms for UST owners and operators primarily because the universe of UST owners or operators is much larger than the Subtitle C universe. Thus, the Agency is providing a wider range of alternatives to meet the financial assurance needs of owners or operators, even if some alternatives are not widely available or widely used. The Agency nevertheless acknowledges that allowing this broader set of mechanisms may raise certain legal and technical issues. First, several mechanisms that rely on parties other than the owner or operator to provide funds for third-party liability claims (i.e., guarantee, indemnity contract, surety bond, and letter of credit) will be provided by firms that agree to reimburse EPA for claims but that do not investigate or assess the validity of claims before payment. As these instruments are conventionally drafted, EPA, as the beneficiary of these instruments, would be the party primarily responsible for judging the validity and priority of claims. The Agency has sought, to the maximum extent possible, to draft instruments and procedures for distributing funds (described in Section III.R of this preamble) that would not require either the Agency or the provider of the instrument to decide on the validity and priority of third-party claims.

Second, provision of coverage for third-party liability claims by means of a guarantee, indemnity contract, or surety bond technically might fall under broad definitions of "the business of insurance" in particular State insurance laws. The Agency has sought in two ways to avoid having these mechanisms raise questions of State insurance regulation.

First, the parties allowed to provide guarantees have been limited to related firms based on a "controlling interest" and to unrelated firms engaged in a "substantial business relationship" with the owner or operator. (The definitions of "controlling interest" and "substantial business relationship" are presented in Section III.B.) Moreover, the parties allowed to provide indemnity contracts have been limited to firms engaged in a substantial business relationship with the owner or operator. (The reason for this difference between the guarantee and the indemnity contract is explained in Section III.G.) The Agency has set limits on who may provide these instruments in order to minimize problems with State insurance laws, which might otherwise regulate their issuance. However, many State insurance laws exempt from their jurisdiction firms that issue guarantees, indemnity contracts, or surety bonds, if the firms issue those instruments as actions "incidental to their legitimate business or activity." By specifying that only affiliated firms or firms with substantial business relationships may issue guarantees or indemnity contracts, the Agency expects to ensure that they will be exempt from insurance regulation. The Agency also believes that a similar restriction for providers of surety bonds is unnecessary because sureties are often regulated by State insurance commissions; thus, sureties may already have qualified to participate in "the business of insurance." The Agency, however, is soliciting comments on the following questions: Which States allow exemptions from their insurance regulations for guarantees, indemnities, and sureties incidental to legitimate business activities? What degree of affiliation and what types of business activities have been found to satisfy the requirement? In part, the Agency expects that a petroleum supplier could qualify to issue a guarantee or indemnity to a petroleum dealer under

this exemption. Have any States sought to regulate any such current contracts?

Second, in order to provide further assurance that the guarantee, indemnity contract, or surety bond will be valid and enforceable instruments, § 280.93 of the proposed rule requires that before those instruments may be used to establish financial responsibility, the Attorney General(s) of the States in which the petroleum underground storage tanks are located must have submitted a written statement to EPA that an instrument executed as required by the proposed rule is a legally valid and enforceable obligation in that State.

By legally valid and enforceable, the Agency means that (1) the instrument satisfies the necessary contractual formalities of the State's laws; (2) it satisfies the requirements for exclusion from regulation under the State's insurance laws; and (3) the procedures for drawing on the instrument found in § 280.108 of the proposed rule will be effective in the State.

The Agency requests comments and suggestions concerning the proposed range of allowable mechanisms.

2. *Allowable Combinations of Mechanisms.* The Agency is also proposing to allow UST owners or operators to demonstrate financial responsibility through the combination of financial assurance mechanisms. The Agency is allowing combinations of any of the proposed mechanisms to provide coverage for corrective action costs and/or all third-party compensation costs.

The proposed set of allowable combinations differs in two important ways from the set of allowable combinations used for closure, post-closure care, and liability coverage under RCRA Subtitle C.

First, the Subtitle C financial responsibility rules for closure and post-closure care expressly prohibit the combination of the financial test or guarantee with any other mechanism. The Subtitle C requirements for liability coverage, however, allow the combination of the financial test or guarantee with insurance, as a means of covering the deductible portion of an insurance policy. In allowing a financial test or a guarantee to be combined with other allowable mechanisms, the proposed rule adopts the general approach used for Subtitle C liability coverage: it allows the owner or operator to use his own financial strength to cover some costs and another financial assurance mechanism to cover the remaining costs.

Second, Subtitle C rules for closure, post-closure care, and liability coverage expressly prohibit the combination of the financial test and the guarantee. Under Subtitle C, a guarantor is required to be the parent corporation of the owner or operator. Therefore, the Agency prohibited, under Subtitle C, a financial test-guarantee combination because financial tests for a subsidiary owner or operator and a parent guarantor usually would be based on consolidated financial statements and, thereby, would double-count the same assets and liabilities. Under the proposed rule, a guarantor is not required to be the parent corporation of the owner or operator. The proposal does not require a parent-subsidiary relationship because owners or operators of USTs often will have an important business relationship with larger, integrated petroleum companies that may not be parent corporations but still may have an economic interest in providing a guarantee. Therefore, the Agency is allowing the financial test and guarantee to be combined if the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor, including a corporate parent guarantor. This provision avoids the double-counting problem of consolidated statements discussed above and gives the owner or operator the opportunity to combine the financial test with a non-parent guarantee. To use such a combination, a parent guarantor and its subsidiary owner or operator may have to obtain special unconsolidated financial statements.

The Agency considered allowing only the following mechanisms to be combined: (1) The financial test of self-insurance, (2) State fund or other State assumption of responsibility, (3) insurance, (4) risk retention group coverage, and (5) any one of the following mechanisms: guarantee, indemnity contract, surety bond, letter of credit, or some State-required mechanisms. This approach allows all possible combinations of mechanisms except combinations including more than one of the mechanisms listed in (5)—i.e., guarantee, indemnity contract, surety bond, letter of credit, and some State-required mechanisms—all of which require the use of a standby trust fund. For example, under this approach an owner or operator would be able to combine the financial test with two insurance policies and one mechanism listed in (5); however, the owner or operator could not combine the financial test and two insurance policies with two of the mechanisms listed in (5).

This approach was considered because the mechanisms in item (5) require the use of standby trust funds. If these mechanisms are used in combination, it may be difficult to determine and justify which instrument should be drawn upon first in the event of a claim. For example, if a claim for $100,000 arises and a letter of credit and a surety bond each assure $500,000 in costs, the providers of the instruments may disagree over who has to pay on the claim. Each provider knows that there is a possibility that no more claims will arise, so each has an incentive to have the other provider pay. The Agency therefore considered avoiding such situations by disallowing most combinations of these instruments.

However, the Agency decided against this approach because the allocation problem can be remedied through the use of a simple formula. In allocating required claims among financial assurance instruments, the Agency may draw on each mechanism in proportion to the total amount of coverage it provides. For example, a guarantee may be used to provide $800,000 of per-occurrence coverage (80 percent of $1 million) and a surety bond used to provide the remaininq 20 percent of coverage, or $200,000. Then if costs of $200,000 are incurred, EPA may draw $160,000 (80 percent of $200,000) from the guarantee and $40,000 (20 percent of $200,000) from the surety bond.

This approach does not preclude a contractual arrangement whereby a single mechanism is pledged to cover the first claims up to a certain amount. The approach simply allows the owner or operator to combine mechanisms and EPA to draw on them in an equitable manner.

The Agency requests comments and suggestions regarding the range of allowable combinations of mechanisms.

3. *Allowable Mechanisms and Types of Costs Covered.* Today's proposal allows a broad range of mechanisms and combinations of mechanisms for providing financial assurance for USTs containing petroleum. Each mechanism or allowable combination of mechanisms may be used to provide coverage for corrective action costs and/or third-party compensation for both sudden and nonsudden accidental releases. In addition, each mechanism or combination of mechanisms may provide coverage for a subset group of tanks. Therefore, the proposal for allowable mechanisms and combinations of mechanisms provides the following:

- Separate mechanisms may be used to provide financial assurance for corrective action and for third-party compensation for sudden and nonsudden accidental releases. For example, an owner or operator may

provide assurance for corrective action through the use of a letter of credit and for third-party compensation for accidental releases through an insurance policy.

- Combinations of mechanisms may be used to provide financial assurance separately for corrective action and third-party compensation. For example, an owner or operator may provide assurance for corrective action through a combination of a letter of credit and the financial test and for third-party compensation through a surety bond and insurance policy.
- Separate mechanisms or combinations of mechanisms may be used to provide financial assurance separately for different groups of tanks. For example, an owner of 100 tanks may cover 50 tanks with one mechanism or combination and the other 50 tanks with another mechanism or combination. (The aggregate level of coverage for each group of tanks is determined by the number of tanks covered by a mechanism or combination of mechanisms.)

For each type of cost covered by a mechanism or combination of mechanisms, each mechanism or combination of mechanisms must be at the full amount of required coverage. (See discussion in Section III.C.4.) Moreover, for each group of tanks covered by a mechanism or combination of mechanisms, each mechanism or combination of mechanisms must be at the full amount of required coverage.

In some cases, an owner or operator may be able to obtain a mechanism that covers third-party compensation for damages caused only by sudden accidental releases or for damages caused only by nonsudden accidental releases. These cases will probably arise for insurance policies, because insurance companies often make the distinction between sudden and nonsudden accidents. Therefore, the Agency wants to allow owners or operators to obtain separate insurance policies for sudden and nonsudden accidental releases, thus enhancing the availability of insurance as a financial assurance mechanism.

4. *Mechanisms Considered But Not Proposed.* a. *Trust Funds.* The Agency considered allowing the trust fund as a financial assurance mechanism for UST owners or operators, but has decided not to include the trust fund mechanism in this proposed rule. The Agency considered trust funds for the UST program because other Federal financial responsibility programs allow the use of trust funds to provide required financial assurance. For example, trust funds can be used to satisfy the financial assurance obligations of the owners or operators of hazardous waste management facilities under the RCRA Subtitle C closure and post-closure care financial responsibility regulations. However, the Agency believes that the trust fund is not an appropriate mechanism for UST financial assurance because the cost of funding a trust cannot be adequately balanced with the assurance a trust fund can provide.

The level of coverage a trust fund can provide for corrective action or third-party liability claims resulting from a petroleum UST release is dependent on the length of time the trust may be gradually funded and the resulting amount of the annual deposit. If the trust is required to become fully funded quickly, the short pay-in period would result in payments that are unaffordable for those owners or operators most likely to use the trust fund (i.e., those owners or operators unable to pass the financial test or afford coverage through another mechanism). In addition to its high costs, the trust fund provides limited financial assurance in the beginning of any pay-in period. In the event of a release early in the pay-in period, the funds available for corrective action and/or third-party liability might be inadequate to cover all of the expenses. Because affordable deposits often provide inadequate assurance, the trust fund is not proposed as a financial assurance mechanism for UST owners or operators.

However, the Agency also considered and rejected the use of trust funds in combination with another mechanism. For instance, a trust fund could be used in combination with an insurance policy to provide coverage of the insurance policy deductible and thereby lower insurance premiums. In such a case, the trust fund may prove to be more costly than paying the additional premium for first dollar coverage because (1) the owner or operator would have to set aside the full amount of the insurance policy deductible; (2) the trust fund deposits, unlike the insurance premium, would not be tax deductible; and (3) acceptable insurance policies may include "deductibles," whereby the insurer will pay the deductible amount and recover the cost from the insured (i.e., the insurer is responsible for the deductible amount only if insured is unable to pay). Therefore, the benefit to owners and operators of being able to use the trust fund in combination with another mechanism appears to be negligible, so the Agency decided to not propose trust funds as a mechanism to be used in combination with third-party mechanisms or the financial test. The Agency requests comments on this decision.

b. *Security Agreements.* The Agency also considered, but decided not to propose, security agreements as allowable financial assurance mechanisms. A security agreement creates a security interest in property that entitles the secured party (i.e., EPA in this case) to compensation equal to the value of the secured property should the owner or operator default on his obligation to take corrective action or compensate third parties. Security agreements are regulated by State laws that stipulate the process required to create a security interest.

The Agency decided to not propose security agreements at this time because it is uncertain whether security agreements would provide adequate assurance. The ability of a security agreement to provide adequate assurance depends on the value and liquidity of the collateral subject to the agreement; whether the administering agency can ensure that the owner or operator satisfies procedural requirements necessary to set up and maintain a security agreement; and whether the administering agency can seize and sell the collateral, if necessary, to obtain the assured funds. The types of collateral most likely to be used by owners or operators, such as goods in inventory, equipment, real property, or a lease, provide a questionable degree of liquidity, and their value can be difficult to determine. Because markets for such firm specific items are not likely to exist, there are not market prices for the items, and buyers would be difficult to find. Simultaneously, assets such as marketable securities are highly liquid and have an explicit market value, yet a firm is highly unlikely to use such assets as collateral, since they then cannot be used to fund a firm's ongoing operations.

Finally, the requirements for financing statements, filing and perfection of the security agreement, renewal of the security agreement, and maintenance of the collateral, differ slightly from State to State. Furthermore, the satisfaction of such procedural requirements for a security agreement is not supervised by the provider of the instrument, and would have to be reviewed periodically by the administering agency. Therefore, EPA has tentatively concluded not to allow security agreements to be used as financial assurance mechanisms.

The Agency solicits comments on allowing security agreements, particularly regarding suggestions of how a security interest might be

structured to provide adequate assurance.

*E. Financial Test of Self-Insurance (§ 280.94)*

1. *Features of Mechanism.* The financial test is the instrument by which a firm demonstrates that its resources are adequate to meet its obligations. If a firm can successfully meet the requirements of the financial test of self-insurance being proposed today in § 280.94 for the full amount of required coverage, the firm is not required to procure insurance or other financial responsibility mechanisms to demonstrate its ability to fulfill its obligations to perform corrective action or compensate third parties for damages arising from UST releases. The financial test of self-insurance is also used to qualify guarantors and indemnitors to provide guarantees and indemnity agreements to firms that own or operate USTs. (The provisions of the regulations which apply only to those firms using the financial test as guarantors or indemnitors are described in Sections III.F. and III.G., respectively.)

The criteria for the financial test of self-insurance were designed to ensure that self-insuring firms, guarantors, and indemnitors that met these criteria would be able to meet their corrective action and third-party liability obligations. How these firms arrange to pay these obligations is left to these firms to decide.

Under today's proposed rule, the chief financial officer of a firm using a financial test to demonstrate financial responsibility for the USTs it owns or operates, and/or to qualify as a guarantor of another firm's USTs, and/or to qualify as an indemnitor of another firm's USTs is required annually to sign a letter that attests to its ability to provide insurance coverage for a UST-owning or -providing firm. Using required wording as specified in the proposed rule, the letter from the chief financial officer must identify the costs covered by the Subtitle I financial test of self-insurance (corrective action costs and/or compensation of third parties) as well as certain other obligations for which financial tests are being used to demonstrate financial responsibility to EPA (or to an authorized State). It must also list the tanks that are covered and the names and addresses of the facilities where these tanks are located. The information required in the letter is necessary to identify which tanks are being covered by this financial test of self-insurance and to verify whether the owner or operator, guarantor, or indemnitor qualifies for the financial test of self-insurance. In addition, the implementing agency may request an owner or operator, guarantor, or indemnitor to submit at any time updated or additional information concerning financial condition.

The Agency also is considering adding a requirement that an owner or operator, guarantor, or indemnitor execute a binding written guarantee to EPA that the firm will pay the corrective action and third-party liability obligations that it is assuring by means of the financial test. The Agency is thereby seeking to have the highest possible priority as a claimant in a bankruptcy proceeding if the owner or operator, guarantor, or indemnitor goes bankrupt and no other form of financial assurance has been provided for the owner or operator's USTs. The Agency requests comments on the degree to which a written instrument from the owner or operator, guarantor, or indemnitor would improve the Agency's recovery in bankruptcy actions.

2. *Applicability to UST Requirements.* Section 9003(d)(2) of RCRA Subtitle I lists self-insurance as one of the mechanisms allowed to demonstrate evidence of financial responsibility. EPA has included a financial test as a method of demonstrating financial responsibility in several regulations proposed and promulgated since 1982, including the financial responsibility regulations for closure, post-closure care, and liability coverage promulgated under Subtitle C of RCRA and the proposed financial requirements for corrective action for known releases at hazardous waste treatment, storage, and disposal facilities. Moreover, many other government agencies (e.g., the U.S. Coast Guard, the Office of Surface Mining, and the Nuclear Regulatory Commission) have allowed financial tests in their financial responsibility regulations. (See the "Federal Financial Responsibility Requirements Under Federal Environmental Laws," November 1986, Draft Report.)

Underground storage tanks are owned by some of the largest and most financially viable firms in the world. Many of these firms currently assume financial responsibility for their USTs; that is, they are already paying from their own funds any corrective action and third-party liability costs arising from release incidents involving their USTs. Allowing the use of a financial test as an assurance mechanism will enable these large, financially viable firms to provide evidence of financial responsibility without having to pay the costs of procuring financial mechanisms from other parties.

Allowing the use of a financial test also may have another important advantage. As discussed elsewhere in this preamble, EPA is concerned that these financial responsibility regulations may place an additional burden on an already constrained pollution liability insurance market. If the most financially viable firms can self-insure, insurance may become more available to firms that do not have the size and financial strength to self-insure or to obtain other mechanisms.

To qualify as a self-insurer, a guarantor, or an indemnitor, a firm must meet the following criteria:

(1) The firm must have a tangible net worth equal to at least 10 times the appropriate aggregate, which is determined by the number of tanks for which the financial test is being used to demonstrate financial responsibility to EPA (or to an authorized State). If the firm is also using a financial test to demonstrate financial responsibility to EPA (or an authorized State) for the costs of:

—Closure and/or post-closure care at a Subtitle C facility (pursuant to 40 CFR 264.143, 264.145, 265.143 and 265.145 or to applicable regulations of an authorized State); and/or

—Liability coverage at a Subtitle C facility (pursuant to 40 CFR 264.147 and 265.147 or to applicable regulations of an authorized State); and/or

—Corrective action at a Subtitle C facility (pursuant to section 3004(u) of the Resource Conservation and Recovery Act, as amended, and 40 CFR 264.101, or to applicable regulations of an authorized State; and/or

—Current plugging and abandonment at a Class I Hazardous Waste Injection Well (pursuant to 40 CFR 144.63 or to applicable regulations of an authorized State),

the firm must have tangible net worth equal to at least 10 times the sum of these costs plus the required aggregate coverage for its USTs.

(2) The firm must have a tangible net worth of at least $10 million.

(3) The owner or operator must either:

(i) File financial statements with the SEC at least annually; or

(ii) Report the firm's tangible net worth annually to Dun and Bradstreet, which must have assigned the firm a financial strength rating of 4A or 5A.

(4) The firm's year-end financial statement, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion.

The Agency decided to require that firms using the financial test to qualify as self-insurers, guarantors, or indemnitors calculate the appropriate level of aggregate coverage based on the number of tanks that are being self-insured, guaranteed, and/or indemnified. For firms that are using a financial test to assure the obligations of more than one UST owner or operator, another approach would be to add together the required aggregate for each owner or operator to arrive at the total amount to be covered by the firm using the financial test. Thus, if a firm were using a financial test to provide a guarantee to an UST owner with 50 tanks and, consequently, a required aggregate of $2 million and an indemnity agreement to another UST operator, also with 50 tanks and a required aggregate of $2 million, the total level of coverage required for purposes of the financial test would be $4 million. The Agency rejected this approach, since some of the largest corporations in the United States might not have been able to guarantee or indemnify the firms they own or supply.

EPA recognizes that basing the required aggregate level on the number of tanks to be self-insured, guaranteed, and/or indemnified is associated with some small degree of risk under certain highly unlikely conditions. For example, it is theoretically possible but highly improbable that a firm using the financial test to demonstrate assurance for hundreds of thousands of USTs could do so with a tangible new worth of $60 million (i.e., 10 times the maximum required aggregate coverage of $6 million). EPA nevertheless considers that it is extremely unlikely that a firm with a $60 million tangible net worth would be in a position to, or would wish to, guarantee or indemnify hundreds of thousands of USTs. However, EPA is considering the possibility of extending the aggregate schedule beyond $6 million for firms using the financial test. The Agency requests comments on (1) its decision to base the level of aggregate coverage on the number of tanks assured and (2) on the possibility of extending the aggregate schedule beyond $6 million for firms using the financial test of self-insurance.

The financial test of self-insurance proposed by today's rule differs from the Subtitle C financial test for liability coverage promulgated under 40 CFR 264.147 and 265.147 in several respects. These differences, and the reasons for them, are briefly described in Section E.3 below.

In devising a financial test of self-insurance to be included in today's proposal, the Agency adhered to the following principles:

- The test should not allow more than one percent of firms using the test to fail without providing alternative financial assurance.
- The test should account for other financial obligations to EPA (or to an authorized State) that the firm is assuming by means of a financial test.
- The test should be easy to administer and verify and available to financially strong firms with very different financial structures. Specifically, this test should be available to privately held firms.

Because the per-occurrence and aggregate levels of coverage required by today's proposal should be sufficient to ensure that a firm's corrective action and third-party compensation costs will be exceeded no more than one percent of the time, the Agency reasoned that the same basic principle should apply to the financial test of self-insurance. In other words, the financial test of self-insurance should ensure that at least 99 out of 100 self-insuring firms will be able to meet corrective action and third-party compensation obligations. The Agency has not calculated the comparable level of safety achieved by the Subtitle C test because the Subtitle C test was developed according to a different principle: namely, that the financial test should minimize the sum of public and private costs. (For more information on the principles underlying the Subtitle C financial test, see the Background Document for the Financial Test and Municipal Revenue Test [November 30, 1981].) In contrast, the principle adhered to in developing today's proposed financial test of self-insurance is that it should achieve the same level of safety as the per-occurrence level of coverage suggested by Congress.

The Agency is aware that some UST owners or operators, guarantors, or indemnitors may be using financial tests to provide evidence of financial responsibility in accordance with other EPA regulations or comparable regulations of authorized States. In particular, an owner or operator, guarantor, or indemnitor may be using a financial test to demonstrate financial responsibility for the costs of closure, post-closure care, liability coverage, and corrective action under RCRA Subtitle C rules and for plugging and abandonment costs of Class I hazardous waste injection wells in the Underground Injection Well Control Program. To ensure that a firm has the financial strength to meet all its environmental obligations to EPA and authorized States, the Agency is requiring in the Subtitle I test that the firm have a tangible net worth of 10 times the sum of the annual aggregate amount to be covered to satisfy this regulation and all other amounts for which a financial test demonstrates financial assurance under other EPA regulatory programs and the comparable programs of authorized States.

EPA wishes to point out that by including in the Subtitle I financial test requirements other costs for which a financial test demonstrates assurance to EPA or to an authorized State, owners or operators, guarantors, or indemnitors are not relieved of their responsibility to comply with the other financial assurance requirements to which they are subject. For example, an owner or operator of both hazardous waste disposal facilities and USTs who wishes to use the financial test to satisfy financial assurance requirements must, in addition to complying with § 280.94, also comply with the financial test requirements of § 264.101, § 264.143, § 264.145, and § 264.147 for permitted facilities (or to the comparable requirements of an authorized State), or § 265.143, § 265.145, and § 265.147 for interim status facilities (and to the comparable requirements of an authorized State).

The final principle guiding the development of the Subtitle I financial test (i.e., accessibility and ease of administration and verification) is more important in the Subtitle I than in the Subtitle C context. Approximately 3,000 firms and public entities must comply with the Subtitle C financial assurance requirements, while an estimated 400,000 firms and public entities will have to comply with the Subtitle I financial assurance requirements. Further, the Subtitle I regulated community includes firms in almost every four-digit SIC code and almost every type of municipal government. In addition, less than 50 percent of the firms regulated under Subtitle C are privately held, whereas EPA's preliminary estimates show that more than 80 percent of the firms that will be required to provide evidence of financial responsibility under Subtitle I are privately held and are thus less likely to have independently audited financial statements.

Therefore, today's financial test has been designed to be easier to administer and verify and to be more accessible to privately held firms than the Subtitle C test. First, less documentation is required from a firm to demonstrate its ability to meet the Subtitle I test criteria

than is required for the Subtitle C test. (An independent certified public accountant's report on the firm's financial statements and a special report are not required.) Second, in conformity with the reporting requirements for all of the financial assurance mechanisms, the chief financial officer's letter, while it must be prepared annually, does not have to be sent to the implementing agency unless it is requested (although it does have to be kept at the place of business of the owner or operator). Third, because an auditor's opinion is not a requirement of the Subtitle I financial test, it is easier and less costly for the large numbers of privately held firms in the Subtitle I regulated community to use this financial test than it is for privately held firms to use the Subtitle C test. These and other differences between the two financial tests are discussed in more detail below.

3. *Comparison of Subtitle I Financial Test of Self-Insurance with the Subtitle C Test for Liability Coverage.* Because it is used to demonstrate responsibility for contingent costs, the Subtitle I financial test is more comparable to the Subtitle C test for liability coverage than to the Subtitle C test for closure and post-closure care. The Subtitle I financial test nevertheless differs from the Subtitle C test for liability coverage in the following respects:

(1) The tangible net worth requirement being proposed today is 10 times rather than 6 times the obligations to be covered.

(2) The financial test proposed today does not have a net working capital requirement or a requirement that owners or operators, guarantors, or indemnitors have one of the top four bond ratings assigned by Moody's or Standard and Poor's.

(3) The financial test proposed today does not have a requirement that a firm have a specific amount of assets within the United States.

(4) The financial test proposed today does not require an owner or operator, guarantor, or indemnitor to have or submit his financial statements, nor does it require an independent certified public accountant's report on the financial statement, or an independent certified public accountant's special report attesting to the accuracy of the information presented by the owner or operator, guarantor, or indemnitor.

(5) The chief financial officer's letter, while it must be updated annually and kept at the UST facility or the place of business of the owner or operator, does not have to be sent to EPA unless it is specifically requested by the Regional Administrator.

The Subtitle I financial test requires that firms have tangible net worth equal to 10 times the annual aggregate amount to be covered (plus specific other costs for which the owner or operator, guarantor, or indemnitor is using a financial test to demonstrate financial responsibility to EPA or to an authorized State). The Subtitle C financial test for liability coverage requires that firms have a tangible net worth equal to 6 times the annual aggregate amount to be covered and additionally imposes a net working capital or bond rating requirement. These differences are accounted for by the different goals these two financial tests were designed to achieve. The Subtitle C financial test was designed to minimize the sum of public and private costs. In contrast, the Subtitle I financial test was designed to ensure that at least 99 out of 100 self-insuring firms would be able to meet their corrective action and third-party compensation obligations. EPA's analysis shows that a firm that incurs costs that are equal to or less than one-tenth of its net worth has less than a one percent probability of failing as a result of its attempts to meet these costs (see supporting document and "Documentation of the Affordability Model," Meridian Research, Inc. and Versar, Inc., 1987; both can be found in the rulemaking docket).

The proposed Subtitle I financial test requires a tangible net worth figure, which is equal to net worth minus such intangible items as goodwill and rights to patents or royalties. The tangible net worth requirement of Subtitle I, like that of Subtitle C, is used to ensure that the assets being used to demonstrate financial responsibility to meet corrective action or third-party compensation obligations are more readily converted into cash than are some intangible assets such as goodwill.

Like the Subtitle C financial test for liability, this financial test of self-insurance requires that firms have at least $10 million in net worth. The Agency included this requirement for two reasons:

(1) Firms with less than $10 million in net worth fail at a significantly greater rate than firms with more than $10 million in net worth.

(2) As the net worth of a firm decreases, the likelihood increases that USTs that experience releases will be located on property representing a significant portion of the firm's net worth. Therefore, a firm with less than $10 million in net worth is less likely to be able to pay for cleanup and third-party compensation as a result of an UST release.

This net worth requirement is required in addition to the net worth multiple requirement, since firms using this financial test in combination with other mechanisms (see Section III.D.1) could conceivably meet the multiple with tangible net worth of less than $10 million.

The Subtitle C financial test for liability coverage also requires either a specified level of net working capital or a certain bond rating. The Agency did not include a net working capital requirement in the Subtitle I financial test for the following reasons:

- Even without such a requirement, the Agency was able to achieve its objective of assuring that 99 out of 100 firms passing the test would not fail without providing alternative financial assurance.
- Many viable UST-owning firms that almost always meet their financial obligations (e.g., electric utilities) often do not have positive net working capital.

The bond rating requirement in the Subtitle C test was allowed primarily as an alternative to the net working capital requirement because, as mentioned above, the Agency recognized that many strong and financially viable firms, such as electric utilities, do not normally maintain large amounts of net working capital. Because the financial test of self-insurance being proposed today does not have a net working capital requirement, there is no need for an alternative to ensure the test's availability to firms such as utilities.

The Agency has not proposed to require that firms using a financial test of self-insurance demonstrate that they have a minimum amount of assets in the United States, for two reasons: First, many privately held firms would incur additional costs to meet this requirement. Privately held firms that make their financial statements available to a financial database service, such as Dun and Bradstreet, do not always break out their United States assets separately. Therefore, these firms could not meet this requirement without incurring additional costs to verify the amount of their U.S. assets. Second, EPA could, if necessary, enforce judgments against the foreign assets of these firms if they failed to fulfill their financial assurance obligations.

According to the evidence already gathered by the Agency (see the EPA-sponsored report entitled "Financial Profile of Retail Motor Fuel Marketing Firms" in the docket for today's proposal), almost all firms that can satisfy this financial test have U.S. assets well above those that would be necessary to meet their financial

assurance obligations. The Agency reasoned that it was highly unlikely that firms passing the financial test would have insufficient U.S. assets to meet their financial assurance obligations, or that these firms would be willing to jeopardize their further participation in the U.S. market by failing to meet their financial assurance obligations.

Accordingly, the Agency did not feel justified in imposing additional costs on UST-owning firms wishing to use the financial test by requiring a minimum amount of U.S. assets.

Because firms using the financial test do not have to submit their financial statements to EPA, the Subtitle I test requires that firms opting to use the test either file annual financial statements with the Securities Exchange Commission (SEC) or report financial data to Dun and Bradstreet. EPA can easily obtain a firm's financial data from either of these two sources.

To verify that the financial data reported by a firm are accurate, the Subtitle C financial test requires that firms be independently audited. Firms that annually file financial data with the SEC must be independently audited to meet the SEC's requirements. Therefore, in this respect, the Subtitle I test departs from the Subtitle C test in allowing firms to submit financial data to Dun and Bradstreet as an alternative to using information from independently audited financial statements. Firms using this alternative, however, must receive from Dun and Bradstreet a financial strength rating of 4A or 5A.

EPA has decided to allow the use of Dun and Bradstreet financial reports and financial strength ratings in the Subtitle I financial test to provide an opportunity for privately held firms to make use of this financial test. There are many large firms that are privately held but that have a sufficiently high tangible net worth to be able to qualify as self-insurers.

A financial strength rating of 4A from Dun and Bradstreet indicates that, in Dun and Bradstreet's professional judgment, the firm is believed to have a tangible net worth of $10,000,000 to $49,999,999. A 5A rating indicates a net worth of $50,000,000 or more. Dun and Bradstreet does not assign financial strength ratings to firms believed to have submitted questionable data or to be experiencing serious financial difficulties.

The overwhelming majority of the firms that can satisfy the financial test of self-insurance being proposed today, which requires that firms either file a financial statement annually with the SEC or report financial data to Dun and Bradstreet and receive a financial strength rating of either 4A or 5A, are independently audited and have an accountant's report on the firm's fiscal year-end financial statements. The Agency recognizes that this will not be true in all cases, however. Dun and Bradstreet reports that approximately 75 percent of firms receiving 4A or 5A ratings from them submit independently audited financial statements, including an auditor's report attesting to his examination of the financial statement. The Agency has decided not to require firms wishing to use the financial test to be independently audited, so that firms that are not independently audited but have a 4A or 5A rating from Dun and Bradstreet (about 25 percent of the total with that rating) may use the test to prove financial ability.

The Subtitle I test, like the Subtitle C test, does not allow a firm that has received an adverse auditor's opinion or a disclaimer of opinion to qualify as a self-insurer. An adverse opinion indicates that, in the opinion of the auditor, a firm's financial statement does not present the firm's financial position, results of operations, or changes in financial position in a manner that conforms to generally accepted accounting principles (GAAP). A disclaimer of opinion on a financial statement states that the auditor does not express an opinion on the firm's financial statement. Auditors issue disclaimers of opinion if their examinations of a firm's financial statements have been limited in some way or if there are uncertainties regarding the firm's financial statements.

Firms qualifying for the financial test on the basis of their Dun and Bradstreet financial strength ratings will not necessarily have had a complete independent audit and thus may not have an independent auditor's opinion. Although Dun and Bradstreet ratings and independent auditors' opinions do not necessarily reflect professional financial judgment with regard to the same financial measures, EPA believes that a Dun and Bradstreet rating of 4A or 5A will provide at least as great a margin of safety as the margin ensured by prohibiting independently audited firms from using the financial test if they have received an adverse opinion or a disclaimer of opinion from an independent auditor.

Like the Subtitle C financial test for closure, post-closure care, and liability coverage, the financial test of self-insurance requires the chief financial officer of the firm taking the financial test of self-insurance to certify annually in a letter that the firm meets the criteria of this financial test. Instead of sending this letter to EPA each year, however, the owner or operator is required to have this updated letter at the underground storage tank site or at his place of business. The Subtitle C test requires, in addition to such a letter, a copy of a certified public accountant's report on the firm's year-end financial statements, and a special report from the CPA verifying the information contained in the chief financial officer's letter. The requirement that a firm be independently audited and that the firm's financial statements be accompanied by an accountant's report attesting to his examination of the firm's financial statements was included in the Subtitle C test rather than explicitly requiring that firms report to the SEC. The Agency recognized that some firms that are not publicly traded, and thus are not required to file independently audited financial statements with the SEC, might want to be independently audited in order to be able to use the financial test instead of procuring other, more costly, financial assurance mechanisms.

The Agency has not required firms using the Subtitle I financial test of self-insurance to obtain a special report from a certified public accountant verifying the information contained in the letter from the chief financial officer, because this type of requirement only makes sense in the context of a rule that requires the verification of many different or complex items. The Subtitle I financial test, which basically involves a minimum net worth requirement and a minimum net worth multiple, can easily be verified by EPA staff, or the staff of an implementing agency. Comments and suggestions regarding this provision are requested.

4. *Availability.* As proof of financial responsibility the financial test will be available only to owners or operators, guarantors, or indemnitors whose net worth (1) exceeds by 10 times the aggregate amount of coverage required for corrective action and third-party compensation (and, if applicable, other costs for which a financial test is being used to demonstrate financial responsibility to EPA or to an authorized State) and (2) equals at least $10 million. This requirement generally limits the use of the test to large firms that are financially stable. In the retail motor fuel marketing sector, only the large vertically integrated petroleum companies and some of the largest convenience store chains will be able to use the financial test. While such firms constitute less than 0.03 percent of the firms in this sector, they own more than 25 percent of the tanks in this industry.

The financial test may be used more widely for petroleum tanks owned by firms that are not engaged in retail motor fuel marketing, because firms in other sectors will typically own fewer tanks per firm and thus will have a lower aggregate requirement compared with their tangible net worth. In addition, the financial test may be used in combination with many of the other mechanisms (see discussion in Section III.D), thereby enabling firms to reduce the costs of financial responsibility by making partial use of the financial test. The Agency requests comments on the number of firms that are likely to be able to use the financial test of self-insurance, either alone or in combination with other mechanisms.

*F. Guarantee (§ 280.95)*

EPA is today proposing several related contractual forms by which one firm can promise to pay specified debts or perform specified obligations of another firm. These mechanisms include guarantees (§ 280.95) provided either by a related firm or by an unrelated firm engaged in a substantial business relationship with the owner or operator, and indemnity contracts (§ 280.96) provided by a firm engaged in a substantial business relationship with the owner or operator. (Indemnity contracts are discussed in detail in Section III.G of this preamble.) For both the guarantee and the indemnity contract, the guarantor or indemnitor must show that it is qualified to provide the guarantee or indemnity by first passing the financial test described above in Section III.E.

1. *Features of Mechanism.* A guarantee is a promise by one party (the guarantor) to pay specified debts or perform specified obligations of another party (the principal) in the event the principal fails to satisfy those debts or obligations. Generally, there is a contract between the principal and a third party, creating the primary obligation, and a contract between the principal and the guarantor creating the guarantee, which supports the primary obligation. If the principal defaults on the primary obligation, the guarantor is liable to the third party to meet the obligation created by the guarantee. In the guarantee in the proposed rule, however, the obligation between the principal and EPA or third parties rests on regulatory requirements and tort liability, not on a contractual obligation. If the owner or operator fails to perform corrective action or satisfy a judgment or award to third parties, the guarantor agrees to fund a standby trust, from which EPA will direct the payment of corrective action costs or third-party claims.

The wording of a guarantee used to meet the financial responsibility requirements in this proposed rule must be identical to that specified in § 280.95(c). EPA specifies how the guarantee must be worded to ensure that it will be legally sufficient and provide adequate financial assurance.

2. *Applicability to UST Requirements.* EPA has modified the basic guarantee for use in a number of financial assurance programs. For example, under RCRA Subtitle C financial responsibility regulations, 40 CFR 264.143 and 265.143, a guarantee given to EPA or a State by the corporate parent (i.e., a corporation that directly owns 50 percent or more of the voting stock of the owner or operator) may be used to provide financial assurance for closure and post-closure care of a hazardous waste management facility. Under 40 CFR 264.147 and 265.147 of the Subtitle C regulations, a guarantee given to any and all third parties who may suffer bodily injury or property damage from sudden or nonsudden accidental occurrences arising out of the operations of a hazardous waste management facility may be used to provide financial assurance for liability coverage. Finally, EPA recently proposed to allow a guarantee by the parent corporation of a hazardous waste facility to be used to provide financial assurance for corrective action (51 FR 37854, October 24, 1986). In all of these situations, the underlying obligation that the guarantee supports is not a contract but a regulatory requirement or tort liability.

The guarantee being proposed today is a guarantee that the guarantor will provide a specified amount of funds for corrective action and/or third-party liability if the owner or operator of the petroleum UST does not. It differs from the guarantees used in the Subtitle C regulations described above because the Agency has decided to allow both related firms and firms engaged in a substantial business relationship with the owner or operator to provide guarantees.

The Agency is allowing related firms that own a controlling interest in the owner or operator (parent firms), firms that own a controlling interest in a parent firm of the owner or operator, and affiliated firms that are controlled by a parent that also owns a controlling interest in the owner or operator to provide a guarantee. As defined in § 280.91, "controlling interest" means direct ownership of at least 50 percent of the voting stock. The Agency requests comments on these proposed definitions.

In contrast to the financial responsibility requirements for guarantors under Subtitle C of RCRA, the proposed rule also allows a firm that is engaged in a "substantial business relationship" with the owner or operator to provide a guarantee as an act incidental to that business. These firms are included in this regulation under Subtitle I to increase the number of potential financial assurance providers without sacrificing the validity or enforceability of the instrument. Section 280.91 of today's rule defines a "substantial business relationship" to mean that extent of a business relationship necessary under applicable State law to make a guarantee or indemnity contract issued incident to that relationship valid and enforceable. A guarantee or indemnity contract is considered incident to such a relationship if it arises from and depends on existing economic transactions between the guarantor or indemnitor and the owner or operator. The Agency requests comment on this definition and its interpretation under applicable State laws.

The Agency's intent in allowing firms that have an established business affiliation with owners and operators to be potential guarantors is to permit these firms, such as petroleum wholesalers and suppliers, to provide financial assurance for their customers if such mechanisms do not conflict with State insurance laws. The Agency requests comments on the degree to which firms that have substantial business relationships with regulated firms are now providing guarantees or indemnities to their customers, and the possibility that they will do so in the future.

Precedent for unrelated firms to provide guarantees was established in the financial responsibility program for liability coverage that was developed by the U.S. Coast Guard under the authority of the Outer Continental Shelf Lands Act (OCSLA). In the OCSLA program, owners of vessels and offshore facilities must demonstrate financial responsibility for liability for the costs of removal, cleanup, and damages resulting from oil spills above the Outer Continental Shelf. Frequently, owners of these vessels and facilities lease the operation of their structures to another party. As a condition of the lease, the practice has been for the leaseholder to provide financial responsibility for the owner's required liability coverage. Such demonstration is often made with a non-parent guarantee.

The Agency has contacted several State insurance commissions to

determine how States would view a guarantee provided by an unrelated firm as it relates to the State insurance laws. Most contacts at the State insurance commissions responded that the question would require examination on a case-by-case basis. Some States asked if a premium would be charged by the guarantor or if the guarantee would be available to the general public. Either circumstance would make regulation more likely. In order to ensure that State insurance regulations do not call into question the validity or enforceability of the guarantee, EPA is requiring, under § 280.93(a)(ii) of the proposed rule, that the guarantee can be used to provide financial assurance only if such mechanisms are certified as valid and legally enforceable by the Attorney General of the State in which an owner or operator's petroleum tanks are located.

3. *Availability.* Because it is difficult to project whether the guarantee mechanism will be generally available to owners or operators of USTs containing petroleum, the Agency requests comments on factors that might affect the willingness of corporate affiliates and unrelated firms with substantial business relationships with owners and operators to provide guarantees.

4. *Qualifications of Guarantors.* a. *Guarantee by Related Firm.* The Agency will recognize a guarantee from any corporation, partnership, or other firm possessing the necessary ownership interest in the firm that is the owner or operator of the petroleum UST (i.e., a corporation or other firm that directly owns 50 percent or more of the voting stock of the owner or operator). In addition to demonstrating the necessary ownership interest, the parent firm must demonstrate annually that it passes the financial test proposed in § 280.94 and described in Section III.E of this preamble.

In addition, the Agency will allow a guarantee from a firm possessing a controlling interest in the parent of the owner or operator, or from a firm that is controlled by a parent that also owns a controlling interest in the owner or operator. These relationships are sufficient to avoid regulation in most cases under State insurance laws. The Agency requests comments on whether the rule should state in more detail who may qualify to issue the guarantee.

b. *Non-Parent Guarantee.* As described above, EPA also is proposing to recognize guarantees for financial assurance for petroleum USTs from non-parent firms that demonstrate that they pass the financial test requirements of § 280.94 and who are engaged in a substantial business relationship with the owner or operator for whom the guarantee is issued incident to that business relationship.

EPA is requesting public comments on several aspects of the guarantee provision: first, on the wording of the guarantee, in particular on whether any changes to the wording would facilitate the settlement of third-party liability claims against the guarantor; second, on whether the wording of the guarantee should vary between guarantees provided by related and non-related firms; and third, on whether the guarantor should be required to indicate how claims would be assigned priorities, investigated, or paid.

*G. Indemnity Contract (§ 280.96)*

1. *Features of Mechanism.* Indemnification is a two-party contractual mechanism under which one party can obtain protection from another party against future losses or harm. An indemnity generally is for actual losses or damage (a "contract for indemnity"). Under such a contract, if the indemnitee actually suffers a loss, the indemnitee must pay the damages and is then reimbursed by the indemnitor. However, indemnity contracts (including insurance contracts, which are generally defined as a form of indemnity) may also require the indemnitor to pay the damages directly, and it is this type of contract that is being proposed by EPA.

To satisfy the requirements in today's proposal, if an owner or operator chooses to establish an indemnity contract to provide financial assurance, he must use the language provided in § 280.96. The standard language requirement relieves owners or operators from developing their own instruments and allows all parties (EPA, States, owners and operators, and indemnitors) to determine quickly whether particular instruments satisfy the regulatory requirements. The Agency solicits comments on the proposed wording requirement and on the specific wording itself.

2. *Applicability to UST Requirements.* In order to provide a broad range of options, the Agency is proposing to include indemnity contracts in the group of potential financial assurance mechanisms. Under this option, a firm with a substantial business relationship with the owner or operator may act as indemnitor, promising to indemnify the owner or operator for corrective action costs or third-party claims by paying a specified sum into the standby trust. The Agency believes that indemnities are currently being used within the petroleum industry for similar purposes. EPA does not have the authority, and is not attempting, to restrict the use of existing indemnity arrangements However, EPA also believes that insurance or guarantees may be preferable to the indemnity contract in many situations. Therefore, owners or operators may meet the financial responsibility requirements only if the indemnity is provided by firms that are involved in a substantial business relationship with the owner or operator.

The firm providing the indemnification is required to show that it is qualified to provide financial assurance by means of this instrument by demonstrating annually that it passes the financial test proposed in § 280.94 and described in Section III.E of this preamble. Another feature of the indemnity also strengthens the assurance that it provides: the indemnity payment does not go to the owner or operator, but instead, according to the contract, is placed directly into the standby trust.

Because indemnity contracts may be regulated under State insurance laws, the Agency is requiring a certification from the Attorney General of each State in which the contract might be used that the instrument is a valid and enforceable contract under State law. EPA has contacted approximately 15 State insurance commissions to determine how States would view a non-parent indemnity contract under the State insurance laws. Although the issue would be examined on a case-by-case basis, a majority of the States might consider it necessary for the non-parent corporation to qualify as an insurer unless the indemnity is provided incident to an existing business relationship. The Agency therefore is only allowing such firms to provide the indemnities.

3. *Availability.* The Agency does not have sufficient information to project the general availability and use of this mechanism. EPA is, therefore, requesting comments on whether firms currently in the petroleum industry, such as bulk petroleum suppliers, are already using indemnity contracts, between either related or unrelated corporations. The Agency further requests comments on the legal, economic, or financial factors that might govern the availability and use of indemnities.

*H. Insurance and Risk Retention Group Coverage (§§ 280.97 and 280.98)*

1. *Features of Mechanisms.* In the legal sense, insurance is a contractual arrangement in which the insurer agrees to compensate the insured for losses. The payment that the insurer receives is called a premium, and the insurance

contract is called a policy. By purchasing insurance, the insured transfers financial risk to the insurer. If insurance is purchased to satisfy a regulatory requirement (i.e., to provide evidence of financial responsibility for corrective action and third-party compensation), the regulatory agency (i.e., EPA) is not a party to the insurance contract. In this way, insurance differs from some of the other types of financial guarantees permitted by today's proposal. Insurance also differs from these other mechanisms in that its cost is actuarially based (i.e., the insurer bases premium amounts on the expected value of the claims the insurer expects to pay).

Insurance to cover on-site and off-site corrective action costs and third-party liability claims for accidental releases by petroleum-containing USTs in the retail motor fuel marketing sector (which includes jobbers and other fuel wholesalers) is currently provided in one of two ways: in the form of a stand-alone pollution liability insurance policy or as part of a larger property and casualty policy including coverages for other risks (e.g., other types of property damage, theft, etc.).

Risk retention groups function in the same manner as insurance companies: the individual risks of group members are transferred to a risk pool administered by the group or association.[2] In return, members of the association pay a premium based on the expected value of their individual losses. The cost of losses is borne by the risk retention group. The primary difference between an insurance company and a risk retention group is that insurance companies sell their services to the public at large, while risk retention groups are formed and operated by a group of members who face risks of a similar nature. Thus, risk retention group coverage is a type of insurance coverage. At this time, the Agency does not know whether the risk retention groups that may form to provide casualty coverage to members who must comply with the regulations being proposed today will provide these coverages in stand-alone pollution liability insurance policies, or as an element in insurance policies that also provide coverage for other risks.

2. *Applicability to UST Requirements.* Section 9003(a)(2) of RCRA includes insurance as one of the mechanisms that may be used to establish financial responsibility. Insurance was also one of the mechanisms authorized by the Agency to provide evidence of financial responsibility for bodily injury and property damage to third parties caused by sudden and nonsudden accidental occurrences arising from the operations of hazardous waste management facilities under Subtitle C regulations.

Today's proposal includes specific insurance requirements regarding:

- The qualifications of insurers,
- The qualifications of risk retention groups,
- "First-dollar" coverage,
- The provision by insurers of an endorsement or certificate of insurance,
- Coverage limits exclusive of legal defense costs, and
- A one-year discovery period.

It does not include specific requirements regarding policy type (i.e., occurrence-based versus claims-made format).

The following sections describe each of these requirements and the Agency's reasons for including them in today's proposal.

a. *Qualifications of Insurers Other than Risk Retention Groups.* Today's proposal requires that insurers be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one or more States (§ 280.97(c)). These are the same qualifications required under 40 CFR 264.147 and 265.147, the Subtitle C liability coverage requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities. These minimum qualifications will help to ensure that insurers are subject to some regulatory oversight by State insurance departments. At the same time, they should permit broad participation in the petroleum UST insurance market, since most insurers can easily meet the minimum qualifications. The Agency decided not to impose other requirements that might preclude involvement by otherwise qualified insurers, such as a rating in Best's Insurance Reports, which is available only to companies that have been in business for at least five years.

b. *Qualifications of Risk Retention Groups.* Today's proposal requires risk retention groups issuing coverage to "be chartered and licensed in at least one State and be authorized to operate in each State where a covered underground storage tank is located" (§ 280.98(c)). The Agency believes that these are minimal qualifications designed to conform to the requirements for risk retention groups included in the Risk Retention Act of 1986. Some of the controls over risk retention groups specified in the Risk Retention Act include requirements that each group submit:

- An operating plan, including a rating schedule, coverages to be offered, and limits, to every commissioner in States where the group intends to do business before it begins operation and
- A copy of the annual financial statement the group files in its domicile to regulators in every State in which it operates. The statement would have to be certified by an independent accountant and include an opinion on the group's reserves by a qualified actuary.

In addition, Federal courts have the authority to issue an injunction to stop a risk retention group from operating in all States if the court finds that the group's financial condition is precarious.

The Agency requests comments on the adequacy of these controls in ensuring that risk retention groups providing coverage in connection with this regulation will be able to fulfill their obligations to owners and operators and to the public given that different States will have different licensing requirements. Chartering States may impose minimum capitalization requirements on a risk retention group to guard against a group's insolvency. In addition to State requirements, would some type of Federal solvency or capitalization requirement be appropriate for groups providing coverage in connection with this regulation? To what extent would a Federal solvency requirement discourage the formation of risk retention groups to provide evidence of financial responsibility for corrective action and third-party compensation for damages arising from UST releases?

c. *First-Dollar Coverage.* Today's proposal requires that the insurance policy (or an endorsement to the policy) state that the insurer is liable for the payment of amounts within any deductible applicable to the policy. This requirement does not affect the insurer's right to be reimbursed by the insured for any payments made by the insurer.

By including this requirement, the Agency is attempting to ensure that disputes over who is responsible for paying amounts within deductible limits (i.e., the insurer or the insured) will not interfere with the prompt performance of corrective action measures or

[2] On October 27, 1986, President Reagan signed the Risk Retention Act of 1986 (Public Law 99-563). This legislation preempts many State regulatory provisions that would otherwise impede the establishment of group risk pooling arrangements to cover individual liability risks. Under the statute, membership in a risk retention group is limited to persons who are "engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations" (Section 2(a)(4)(F)).

payment of third-party liability claims. The same provision was included in the Subtitle C liability coverage requirements. The Agency is aware that this type of provision is standard in at least some UST pollution liability policies.

d. *Certificates or Endorsements.* Insurance policies issued in connection with these requirements must be either amended by attaching the endorsement or evidenced by the certificate of insurance, as specified in § 280.97(b). The purpose of requiring one of these additional documents is to demonstrate to the owner or operator and to the implementing agency that the insurance provided includes coverage for taking corrective action and for compensating third parties for bodily injury and property damage from accidental releases arising from operating an underground storage tank and that this coverage complies with Subpart I requirements. EPA believes that, because of the wide variation in types of policies that may be used to satisfy these regulatory requirements, owners and operators should have one or the other of these documents to demonstrate that the required coverage has been obtained. In addition, the Agency is concerned that some owners and operators of petroleum-containing USTs, particularly in non-retail motor fuel marketing sectors, may be of the opinion that their present insurance coverage satisfies these regulations, when, in fact, it does not.

The proposed language in the certificate of insurance and endorsement is based on the language for similar mechanisms under the Subtitle C liability coverage rules (§§ 264.151 (i) and (j)). The Subtitle C language has been modified slightly, to recognize explicitly the option of coverage through formation of a risk retention group coverage is allowable. The Agency requests comment on whether the proposed forms are acceptable to risk retention groups and other insurers.

e. *Legal Defense Costs.* While today's proposal requires that the insurance coverage provided to satisfy these requirements be exclusive of legal defense costs, the Agency acknowledges that there are valid arguments for the inclusion of legal defense costs and may permit these costs to be included in insurance limits of liability in the final rule. EPA's primary reason for excluding legal defense costs at this time is to ensure that the level of coverage provided by insurance is equivalent to the level of coverage provided by any of the other financial assurance mechanisms. For example, the $1 million in per-occurrence coverage provided by surety bonds or letters of credit can only be used to pay corrective action and/or third-party compensation costs; the surety bonds or letters of credit cannot be used to cover legal defense costs. If an owner or operator having one of these mechanisms wants to defend himself against a claim brought by a third party, he will have to provide the funds for his own defense from another source.

Insurance traditionally functions in another manner. The insured is required to surrender his right to conduct a legal defense against a third-party claimant to the insurance company. The insurer conducts a legal defense on behalf of the insured, with the funds for the defense being paid for by the insurer. These funds are generally included in the insurance policy's limits of liability.

In the third-party liability regulations promulgated under Subtitle C of RCRA (40 CFR 264.147 and 265.147), the Agency similarly required that insurance used to satisfy these regulations be exclusive of legal defense costs. The Agency excluded legal defense costs from the required limits of liability because of its concern that legal defense costs could absorb a major portion of the required coverage.

The Agency is nevertheless aware that in the Subtitle I context, it might not be important that insurance coverage be exclusive of legal defense costs. When the Subtitle C regulations were promulgated, the Agency had very little information about the frequency and costs of claims. In contrast, the Agency is aware that the major UST insurers have not yet paid a claim arising from an UST release (including the costs of corrective action, compensation of third parties, and legal defense) for more than $1 million. (During the same time period, the per-occurrence limits offered by insurers were often well in excess of $1 million.)

The Agency is also aware of the strong possibility that requiring insurance coverage to exclude legal defense costs may act to limit the number of USTs that are covered by insurance. Currently, many firms in the retail motor fuel marketing sector have insurance covering corrective action and compensation of third parties, but this insurance is only being sold by a few companies and it is not exclusive of legal defense costs. The Agency is also concerned that requiring insurance to be exclusive of legal defense costs would inhibit the entrance of new insurers (including risk retention groups) into the UST insurance market. In the promulgation of these regulations, the Agency wants to avoid the imposition of further constraints on an already limited insurance market. The Agency is aware that its primary concern, protection of human health and the environment, may be better served if larger numbers of UST owners or operators are able to purchase insurance, even if this insurance does not have all of the features that may be desired by EPA, than if UST owners or operators are not able to purchase insurance. For this reason, the Agency requests comments on whether current or prospective UST insurers are or would be willing to issue UST pollution liability insurance that is exclusive of legal defense costs and the reasons for their decisions If insurers are willing to issue this type of UST insurance coverage, EPA desires to know how this would be done and how much it would cost.

f. *One Year Discovery Period.* The Agency recognizes that there are two basic policy types that may be used to provide insurance in connection with this requirement: occurrence-based and claims-made. Many CGL policies are issued on an occurrence basis, while stand-alone pollution liability policies are currently issued on a claims-made basis. An occurrence-based policy covers claims arising from events that occur during the policy period, regardless of when a claim is filed. Under such a policy, the insured could be reimbursed for cleanup costs for a release that occurred within the period covered by the policy, even though the release was not discovered (and the claim was not submitted) until after the end date of the policy. In contrast, under a claims-made policy, coverage is triggered only by claims made during the policy period.

In a claims-made policy, a retroactive date may limit coverage to damages caused only by incidents that occur subsequent to that date. Thus, even if a claim is filed during the policy period, coverage would not be triggered if the claim arose from a release that had occurred before the retroactive date. The retroactive date is usually the date that the policyholder's first claims-made policy from an insurer went into effect. A retroactive period provision allows insureds to buy coverage that will apply to the period between the policy's retroactive date and the issue date of the policy. A discovery period provision (sometimes referred to as an extended reporting period or "tail" coverage) provides that an insured, for the payment of an additional premium, may extend coverage beyond the expiration of the policy for losses occurring during

the policy period, but not discovered (or claimed) until after its expiration.

The Agency is not proposing to require owners or operators to procure either occurrence-based or claims-made policies. However, the Agency is concerned that a claims-made insurance policy may leave gaps in coverage. For example, gaps may occur between claims-made insurance policies if claims are reported after the expiration date of one policy, from an incident that occurred during the policy period but before a new policy's retroactive date. Gaps in coverage may also arise when an owner or operator shifts to a claims-made insurance policy from certain other mechanisms, such as a guarantee. Claims made after the guarantee termination date for damages caused by releases occurring during the corporate guarantee's effective period may not be covered by the guarantee or insurance unless the owner or operator purchases a policy providing coverage retroactive to before the date of issue.

In order to reduce the likelihood of coverage gaps when insurance policies are changed or substituted, the Agency is proposing to require that all claims-made insurance and risk retention group policies include a one-year discovery period provision. Such tail coverage is available in existing policies (typically, at not more than 50 percent of the annual premium cost for the cancelled or unrenewed policy). EPA solicits comments from interested parties on the problem of insurance-related coverage gaps and suggestions for other options that might alleviate the problem.

3. *Availability.* The Agency recognizes that insurance will generally be the "mechanism of choice" for those owners or operators who cannot satisfy these financial responsibility requirements by passing a financial test of self-insurance or by obtaining a guarantee or indemnity agreement. For owners or operators, insurance has two major advantages over such mechanisms as letters of credit or surety bonds. First, insurance will be considerably less expensive than letters of credit or surety bonds for almost all owners or operators. For example, the fee for a surety bond or letter of credit is typically one to two percent of principal. Thus, an UST owner or operator would have to pay $10,000–$20,000 for a surety bond or letter of credit that provides $1,000,000 of coverage. In contrast, insurance coverage of $1,000,000 for an UST would likely cost only $2,000 to $4,000, depending on the type and condition of the facility and the UST, and the deductible selected. Second, insurance provides the owner or operator, as well as EPA, with financial assurance (i.e., insurers pay regardless of the owner's or operator's ability or willingness to pay), while surety bonds and letters of credit provide only EPA with financial assurance.

The Agency realizes that many UST owners and operators have been unsuccessful in their attempts to obtain pollution liability insurance for their USTs. According to information gathered by the Agency in meetings with insurers and industry associations for UST owners and operators in the retail motor fuel marketing industry sector, most jobbers, independent chain marketers, and convenience store owners generally can obtain pollution liability insurance for their USTs. However, the following categories of owners and operators in the retail motor fuel marketing sector have had difficulties obtaining pollution liability insurance for their USTs:

- Owners of USTs that do not meet underwriting criteria, particularly those with tanks over 15 years old or without an ongoing inventory control program;
- Owners of chains of retail outlets who do not belong to a trade association;
- Open dealers (persons who own and operate one or two retail outlets). EPA estimates that open dealers own 80,000 retail outlets; and
- Lessee dealers (also called independent dealers), except those who are included as named insureds on the policies obtained by their owners.

EPA estimates that, of the total number of approximately 190,000 retail motor fuel outlets, owners of USTs at 90,000 of these outlets are not currently insured for pollution liability, while the owners of USTs at 100,000 of these outlets are likely either to have insurance or to have the financial capacity to pass the financial test of self-insurance included in today's proposal.

To the best of the Agency's knowledge, there is not now an active market for pollution liability coverage for petroleum-containing USTs in industries other than retail motor fuel marketing. The Agency is uncertain of the extent to which the absence of such a market is the result of low demand for such insurance or of the unwillingness of insurers to cover such risks.

The Agency believes that the owners and operators of petroleum-containing USTs in industries other than retail motor fuel marketing have not actively sought to obtain all of these types of coverages in the past. Some of these owners and operators may have coverage as part of their CGL policies for the compensation of third parties for damages arising from sudden accidental releases. The Agency does not believe that most owners and operators of USTs in sectors other than retail motor fuel marketing currently have coverage for corrective action (including both on-site and off-site cleanup) or for compensating third parties for damages arising from nonsudden and sudden accidental releases.

The Agency is particularly interested in hearing from insurers and the regulated community with regard to both the cost and availability of pollution liability insurance for UST owners and operators, specifically:

(1) For what classes or categories of USTs or UST owners and operators is the insurance coverage required by today's proposal not generally available? What are the reasons for the general unavailability?

(2) How are premiums for pollution liability insurance affected by the number of USTs or facilities covered, the size of deductibles, the characteristics of USTs or facilities covered, the levels of coverage provided, and the other types of coverages (e.g., worker's compensation, credit card theft, etc.) that may be included in the entire policy package?

This information will aid the Agency in evaluating the regulatory impact of these regulations and in further developing suspension of enforcement procedures.

*I. Surety Bond (§ 280.99)*

1. *Features of Mechanism.* Surety bonds guaranteeing that the owner or operator will perform corrective action and/or compensate third parties, also known as performance bonds, are being proposed in § 280.99 as a financial assurance mechanism. Surety bonds represent agreements between three parties: the principal (i.e., the tank owner or operator); the obligee, the party to whom the principal makes a promise for completion of a specific act (i.e., the Agency); and the surety, the party that assures the obligee that the principal will fulfill his promise and, if the principal fails, that the surety will fulfill the principal's obligation to the obligee. Thus, a surety bond guarantees that if the owner or operator fails to perform corrective action or compensate third parties injured by a release, the surety either will (1) perform the corrective action in accordance with the corrective action regulations or pay the third-party liability claims or (2) fund the standby trust, as required by the Regional Administrator, up to the level of the bond sum. There are two

guaranteed levels of the proposed performance bond or "penal sum": the per-occurrence limit and the annual aggregate limit.

The Agency is proposing to allow performance surety bonds that provide sureties with two options: (1) to perform for the principal or (2) to pay the cost necessary to fulfill the principal's obligation. The Agency believes that allowing payment bonds in addition to performance bonds would be duplicative and provide no added benefit, because the surety can choose to exercise the payment option of the performance bond, which is equivalent to fulfilling the surety's obligation under a payment bond.

To satisfy the requirements in today's proposal, if an owner or operator chooses to establish a surety bond to provide financial assurance, he must use the language provided in § 280.99(b). The standard language requirement relieves sureties of the burden of developing the language of acceptable surety bonds and allows all parties (EPA, State regulators, owners and operators, and sureties) to determine quickly whether particular instruments satisfy the regulatory requirements. The Agency solicits comments on the specific proposed language of the bond.

The Agency has developed procedures, proposed in § 280.108, for drawing on third-party financial assurance mechanisms, including surety bonds. Briefly, for corrective action claims, the owner or operator notifies the Regional Administrator of the release and submits a copy of the surety bond. If the owner or operator fails to undertake the corrective action, the Regional Administrator can then direct the surety to fulfill its obligation under the bond, that is, either to perform the corrective action or to fund the standby trust fund to cover the costs of the corrective action. Similarly, for third-party claims, the Regional Administrator must be notified of the release and sent a copy of the surety bond. If an owner or operator fails to satisfy a third-party claim, attorneys representing the claimant and the principal on the bond must submit a signed certification of claim to the Regional Administrator, or the claimant must submit a copy of a final court decision, as provided by § 280.108(a)(2)(i). On the basis of the submission, the Regional Administrator will instruct the surety to perform (i.e., pay the claim) or fund the standby trust in the amount of the claim. See Section III.R of this preamble for further discussion of the proposed procedures for drawing on the financial assurance mechanisms.

2. *Applicability to UST Requirements.* The surety bond is one of the mechanisms listed in section 9003(d) of RCRA as a mechanism that can be used to demonstrate financial responsibility for USTs. In addition, various programs administered by EPA and other Federal agencies allow surety bonds to be used to demonstrate financial responsibility. (See "Federal Financial Responsibility Requirements under Federal Environmental Laws.") Such programs provide precedents to allow both performance and payment bonds to be used to assure that a specified action will be taken to address noncontingent events (or events that are certain to occur), such as facility closure, and contingent events (or events that may or may not arise), such as a release that requires corrective action or triggers third-party liability claims.

The Agency allows owners and operators of hazardous waste management facilities to demonstrate financial responsibility for closure and post-closure care with both performance and payment bonds. Under the Subtitle C regulations, a performance bond can be used to assure that an owner or operator of a facility with a permit will perform closure and/or post-closure care according to an EPA-approved plan (40 CFR 264.143(c), 264.145(c)). The performance bond proposed to be allowed for UST financial responsibility is similar to the existing Subtitle C performance bond. The Subtitle C regulations also allow payment bonds to be used by owners and operators of permitted and interim status facilities to demonstrate financial responsibility for closure and post-closure care (40 CFR 264.143(b), 264.145(b), 265.143(b), and 265.145(b)). Recently, EPA has proposed to allow performance bonds to be used to assure the costs of corrective action at hazardous waste management facilities that have experienced a release.

In addition to the RCRA Subtitle C financial responsibility program, EPA allows owners or operators of Class I hazardous waste injection wells to obtain performance bonds to assure the costs of plugging and abandonment, as required under the Safe Drinking Water Act (40 CFR 144.63). The Department of the Interior allows, under the authority of the Surface Mining Control and Reclamation Act, owners or operators of surface coal mining operations to use performance bonds to assure the costs of completion of reclamation of surface mines (30 CFR 800.12). In addition, the Nuclear Regulatory Commission has recently issued an advance notice of proposed rulemaking requesting public comment on various issues, including the use of performance bonds to demonstrate financial responsibility for the costs of cleaning up radioactive materials after sudden and nonsudden accidental or unexpected releases from radioactive materials handling facilities, spent fuel storage facilities, low-level radioactive waste land disposal facilities, and facilities related to uranium or thorium milling (50 FR 23960, June 7, 1985).

Although these programs allow the regulated parties to use performance bonds to demonstrate financial responsibility, surety bonds are not used generally. The Agency solicits information from sureties regarding whether surety bonds are likely to be available to owners and operators of USTs containing petroleum.

EPA has contacted several State insurance commissions to determine how States would view a surety bond for third-party liability coverage under the State insurance laws and has been informed that the same general principles probably would apply to surety bonds as apply to guarantees and indemnity contracts, as discussed in Sections III.F and III.G of this preamble. Although the issue may be examined on a case-by-case basis, a majority of the States might consider it necessary for the firm providing the surety bond to qualify as an insurer, particularly if the firm issuing the bond was not related to the owner or operator or providing the surety bond incident to its business activities. Two factors that may affect the decision are, first, whether a premium is charged, and, second, whether the surety bond would be made generally available. To address this issue, the proposed rule does not allow a surety bond to be used to demonstrate financial assurance unless the Attorney Generals in the States in which the tanks covered by the bond are located certify that the mechanism is valid and enforceable. See § 280.93(a)(ii).

3. *Availability.* The Agency is interested in receiving comments from the surety industry regarding the availability of the performance bonds proposed by today's rule. In particular, the Agency requests comments from surety companies on their willingness to issue performance bonds for third-party liability coverage and on the desirability of adding a separate payment bond mechanism.

4. *Qualifications of the Surety Company.* To be acceptable as a surety on a surety bond that names a branch or agency of the Federal government as the beneficiary, sureties must comply with the law and regulations of the Treasury

Department (as specified in Sections 9304 and 9308 of Title 31 of the United States Code). The names of companies meeting these Treasury requirements are published on July 1 of each year by the Department of the Treasury in *Circular 570; Surety Companies Acceptable on Federal Bonds.* Today's proposed rule incorporates this qualification requirement. This proposed qualification requirement is identical to the qualification requirement of the Subtitle C rules.

States may publish their own lists of companies that are acceptable as sureties on bonds naming the State as beneficiary. State lists may include the names of companies listed on Treasury Circular 570 that are registered to do business in that State and may also include the names of companies not on the Circular 570 list. A State seeking approval of its UST program under Section 9004 may impose stricter qualification standards than the Department of Treasury's standards. However, sureties that are not listed in Circular 570 are not qualified to issue bonds naming a State or State agency as the beneficiary in an EPA-approved State UST program because the State qualification requirement must be "no less stringent" than the Federal qualification requirement.

*J. Letter of Credit (§ 280.100)*

1. *Features of Mechanism.* A letter of credit is a financial instrument under which an issuing institution (the issuer) undertakes to meet a monetary obligation of its customer (the account party) if the latter fails to do so. Payment ordinarily is made to a predesignated third party, or beneficiary, who initiates payment by making a claim directly on the issuing institution. The issuer, in return for a fee, becomes the primary obligor and has recourse to the account party for reimbursement. Thus, a letter of credit is an instrument that substitutes the issuer's superior credit for the account party's credit, thereby facilitating a transaction between the account party and the beneficiary.

The letter of credit is required under the proposed rule to conform to the specific language prescribed in § 280.100(b). The Agency believes that the approach of stipulating the precise wording is both necessary and appropriate to ensure that any mechanism used by owners and operators provides adequate financial assurance. This rationale is particularly true of the letter of credit, for the Uniform Commercial Code (UCC) explicitly states that drafts on a letter of credit may not be valid unless the events required by the letter have occurred exactly as stipulated in the letter. Therefore, if the Agency allowed different formats for the letter of credit, the validity of the letter in providing financial assurance could be jeopardized if the issuer determines that the draft is not valid under the letter. The Agency requests comments and suggestions regarding the wording of the required letter of credit form.

2. *Applicability to UST Requirements.* Letters of credit may be used to satisfy the financial responsibility obligations of the owners or operators of hazardous waste management facilities under RCRA Subtitle C closure and post-closure care financial responsibility regulations, and the proposed Subtitle C financial responsibility regulations for corrective action (51 FR 37854, October 24, 1986). These regulations allow an EPA Regional Administrator to draw on the letter of credit if the owner or operator does not perform final closure, post-closure care, or corrective action in accordance with EPA regulations, or if, in the event the letter of credit is cancelled, the owner or operator cannot substitute an alternative financial assurance mechanism.

Moreover, existing or proposed financial responsibility regulations promulgated by the Nuclear Regulatory Commission under the Price-Anderson Act, Atomic Energy Act, and Nuclear Waste Policy Act allow owners or operators of various types of facilities to demonstrate financial responsibility using a letter of credit. For example, owners and operators of nuclear reactors may use letters of credit to demonstrate financial responsibility for secondary coverage to pay public liability claims in the event that claims exceed the level of primary coverage (10 CFR 140.21). This use of letters of credit to cover contingent liabilities serves as a precedent for using letters of credit to cover potential corrective action costs and third-party liability claims arising from releases from underground storage tanks.

For use as financial assurance instruments for USTs, letters of credit are well suited to maintaining evidence of financial responsibility for corrective action. If an owner or operator failed to perform corrective action in accordance with Federal or State regulations, EPA could draw on the letter of credit and use the money to perform corrective action. The letter of credit is a less desirable mechanism for coverage of third-party liability claims, since this use of letters of credit places EPA in the position of collecting and distributing money provided by the issuing institution. However, this concern is addressed in the provisions under § 280.108 (see preamble Section III.R) for drawing on the financial instruments.

As discussed in Section III.D of this preamble, the proposed rule requires a letter of credit to be certified by the appropriate Attorney General that it is valid and enforceable in a particular State.

The Agency requests comments and suggestions regarding use of the letter of credit as an UST financial assurance mechanism.

3. *Availability.* Because the issuance of letters of credit is based on the creditworthiness of the customer, banks will provide letters of credit only for firms that they believe will be able to pay for corrective action or third-party claims and that have adequate assets that could be seized if the firm's performance under the letter of credit is not satisfactory. Smaller UST owning firms may be required to post collateral in excess of 100 percent of the value of the letter of credit in order to receive a letter of credit. Therefore, letters of credit generally will be available only to firms with the ability to meet large financial obligations and with strong customer relationships with the issuing institution. The Agency requests comments on the availability and costs of letters of credit for owners or operators of underground storage tanks containing petroleum.

4. *Lines of Credit.* The Agency considered allowing lines of credit as well as letters of credit as financial assurance mechanisms. A line of credit is an arrangement in which a bank agrees to lend, at its discretion, funds required by the borrower for a fixed time period. The borrower may draw on the line of credit at any time during the period, thus ensuring the borrower's access to liquidity for that period.

Lines of credit are not allowed for RCRA Subtitle C financial assurance for closure, post-closure care, or liability coverage. However, lines of credit are used interchangeably with letters of credit as financial assurance mechanisms for some purposes under financial responsibility programs of the Nuclear Regulatory Commission (see, for example, 10 CFR 140.21).

The Agency has decided against proposing lines of credit as allowable financial assurance mechanisms, because lines of credit may not provide adequate financial assurance. As opposed to letters of credit, which represent an unconditional substitution of the issuer's credit for the credit of the customer, lines of credit represent commitments to disburse to the

borrower at his request funds up to a specified amount. Although lines of credit usually provide a guarantee of liquidity to a borrower for a specific time period, they may not be funded if the credit standing of the borrower has changed when funds are requested. Thus, the assurance a line of credit provides is conditional.

The Agency requests comments and suggestions regarding its decision not to include lines of credit among allowable mechanisms for UST financial responsibility.

5. *Qualifications of Issuing Institution.* The Agency proposes to require that an issuing institution have the authority to issue letters of credit and that its letter-of-credit operations be regulated and examined by a Federal or State agency. This provision is identical to the requirements for letter-of-credit issuers for closure, post-closure care, and corrective action under RCRA Subtitle C regulations.

The qualification provision should provide adequate assurance of the solvency of issuers, but a stronger approach may be advisable. A recent Supreme Court decision found that letters of credit generally are not covered by State or Federal deposit insurance (*FDIC* v. *Philadelphia Gear Corp.*, 54 U.S.L.W. 4525 (U.S.), May 27, 1986). Therefore, if the bank issuing a letter of credit becomes insolvent, the letter of credit may be unusable. To mitigate this potential problem, EPA could require that letters of credit be confirmed by a second issuer, who is usually chosen by the beneficiary. Under a confirmed letter of credit, the second issuer agrees to meet the obligation of the letter of credit if the issuing institution fails to do so. Although obtaining a confirmed letter of credit should not double the cost, the total expense to the owner or operator of a confirmed instrument will be higher. The Agency requests comments and suggestions on this issue.

*K. Use of State-Required Mechanism (§ 280.101)*

A number of States have adopted, or may in the future adopt, regulations that require UST owners or operators to demonstrate financial responsibility for taking corrective action and/or compensating third parties for bodily injury or property damage. Like the Federal regulations, many of these State regulations may require owners or operators to use specific financial mechanisms for these purposes.

The Agency recognizes that for States that do not plan to seek or have not yet obtained UST regulatory program approval, differences between State and Federal financial responsibility requirements might result in duplication and unnecessary costs to owners and operators. In those States that receive authorization to operate an UST program in lieu of the Federal program, there will be no duplication since only the State's requirements would apply. However, in those States that have not obtained Federal authorization, the owners or operators would be subject to Federal UST regulations and also to any State UST regulations that are in effect. To avoid unnecessary duplication and costs, the Agency is proposing, in § 280.101, to allow owners or operators to use State-required mechanisms to meet the Federal financial responsibility requirements if the EPA Regional Administrator has determined that such mechanisms provide assurances that are at least equivalent to those of mechanisms specified in the Federal requirements.

"Use of State-required mechanisms" means that the owner or operator may use a State-required mechanism if the underground storage tank is located in a State that requires owners or operators of underground storage tanks to demonstrate financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage. Allowing an approved State-required mechanism to qualify as a Federal mechanism will avoid duplication and unnecessary cost to UST owners and operators, while still providing adequate assurance of financial responsibility. As is allowed under Subtitle C financial responsibility regulations, the Regional Administrator may approve a State-required mechanism that is not otherwise specified under the Federal regulations if the mechanism provides a level of financial assurance at least equal to that provided under the Federal mechanisms. The use of a State-required mechanism would be subject to EPA enforcement, as part of the Federal program.

If an owner or operator wishes to use a State-required mechanism instead of the mechanisms allowed under the Federal regulations, the Regional Administrator must determine whether the State mechanism is at least equivalent to the mechanisms required under the Federal program. EPA is proposing to allow a State, any owner or operator, or any other interested party to petition the Regional Administrator to determine that any or all of the State's mechanisms are acceptable under the Federal program. The petition could be made on behalf of all of the UST owners and operators in the State, so that the Regional Administrator's acceptance of the State-required mechanism would then allow all of the UST owners and operators in the State to meet Federal requirements by using the State-required mechanism. The petitioner would submit to the Regional Administrator a copy of the appropriate State statutory and regulatory requirements and a discussion of the amount of funds for taking corrective action and/or compensating third parties for bodily injury or property damage that may be assured by the mechanism or set of mechanisms for which the petitioner seeks approval.

The Regional Administrator will evaluate the equivalency of the State mechanism principally in terms of (1) certainty that funds will be available for the required corrective action activities and third-party compensation costs, (2) the amount of funds that will be made available, and (3) the types of costs covered by the funds. Of key importance in judging the certainty of coverage is the protection of the funds against claims of creditors, the initial qualifications of financial institutions that will provide the mechanisms, and provisions required for future contingencies, including bankruptcy, cancellation, or changing mechanisms. With respect to amount of financial assurance, both the total amount of funds assured as well as the amount assured at different points in time are crucial to the equivalency determination. If the amount of coverage provided by the State mechanism is less than that required by EPA, the owner or operator must establish additional financial assurance for the remaining amount, through any of the means allowed in the Federal regulation. If the types of occurrences or costs covered by the State mechanism do not include the types of occurrences or costs covered under the Federal requirements, the owner or operator must establish separate financial assurance for the types of occurrences or costs not covered by the State-required mechanism.

The proposed rule states that, pending a determination by the Regional Administrator, an owner or operator covered by a State-required mechanism for which a petition has been submitted will be deemed in compliance with Subpart I for the amount and types of costs covered by the mechanism. The Agency requests comment on the desirability of this provision, which is based on § 264.149 of the financial responsibility rules under the Subtitle C.

*L. State Fund or Other State Assurance (§ 280.102)*

A condition of State program approval under Subsection 9004(a)(6) of RCRA is that the State promulgate requirements for "maintaining evidence of financial responsibility." Subsection 9004(c)(1) authorizes the use of "corrective action and compensation programs administered by State or local agencies or departments" as mechanisms to provide evidence of financial responsibility in State programs. In § 280.102 of today's proposal, EPA is authorizing the use of such corrective action and compensation programs (referred to as "State funds or other State assurances") to demonstrate financial responsibility, even for USTs in States that do not have State UST program approval or in States that have not applied for such approval.

In light of the Agency's philosophy of allowing all reasonable methods of demonstrating evidence of financial responsibility for corrective action and compensating third parties, EPA will review and approve State funds or other State assurances that provide assurance at least equivalent to that provided through other allowable mechanisms.

The Agency is aware that there are many possible approaches that can be used by States to design financial responsibility programs for corrective action and third-party compensation. Many States have funds that can be used to clean up petroleum product releases. Revenue sources for these State funds include fees (e.g., on tanks), taxes (e.g., on gasoline sales or imported petroleum), fines, penalties, and/or legislative appropriations. Some existing State funds are modeled after the Federal Hazardous Substance Response Trust Fund (or Superfund) but differ from the Superfund in that they can be used to address petroleum releases in addition to hazardous substance releases. Other State funds were created solely to address petroleum releases.

A State also may wish to sponsor insurance-type corrective action and third-party compensation programs (i.e., programs that allow owners or operators who cannot purchase insurance from private providers to purchase it from the State). A State might choose to provide State funds for UST financial responsibility for only a certain class or classes of UST facilities in the State or for certain types of costs (e.g., corrective action, compensation of third parties, emergency cleanups). Some States have funds—for example Florida's Inland Protection Fund and Maine's Groundwater Oil Cleanup Fund—that are explicitly authorized by State statute to be used for cleanup of contamination caused by underground storage tanks. Thus, existing State funds vary in their relative ability to be used to demonstrate financial responsibility for corrective action and third-party compensation at petroleum USTs.

EPA is proposing today to require that the person within the State government who is designated to authorize State fund expenditures or to administer the UST financial responsibility program describe, in a letter to the Regional Administrator, the types of coverage to be provided (i.e., corrective action, compensation of third parties, or both) and the level of coverage to be provided. The letter must describe the class of tanks covered (e.g., based on size, age, industry).

The Regional Administrator may require the State to submit additional information. A State official, rather than an individual owner or operator, must submit a letter to EPA on behalf of the owners or operators to be covered by the State assurance. Because a State fund or other assurance may be designed to cover certain class or classes of UST facilities in a State or only certain types of costs, EPA wants the State to interpret the laws and other documents establishing the mechanism and to specify what is covered.

The Regional Administrator will evaluate the equivalency of State funds or other State assurances principally in terms of (1) certainty that funds will be available for taking corrective action and/or compensating third parties (2) the amount of funds that will be made available and (3) the types of costs covered. The certainty that funds will be available under a State fund or other State assurance must be at least equivalent to the certainty that funds will be available under other allowable mechanisms. If the amount or types of costs covered by a State Fund or other State assurance are not as inclusive as the coverage required by § 280.92, other allowable mechaniams must be used to cover the amounts or types of costs not covered by the State fund or other State assurance.

The proposed rule states that, pending a determination by the Regional Administrator, an owner or operator covered by a State fund or other State assurance for which a petition has been submitted will be deemed in compliance with Subpart I for the amount and types of costs covered by the mechanism. This provision is based on § 264.150 for financial responsibility under the Subtitle C rules. The Agency requests comment on the desirability of this provision.

Section 280.102(d) of the proposed rule requires that within 60 days after a State fund or other State assurance is determined by EPA to be an acceptable mechanism, the State must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the State's assumption of responsibility. The letter or certificate from the State must include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action and/or for compensating third parties that is assured by the State. As required by § 280.107(b)(5), the owner or operator must maintain this letter or certificate on file as proof of financial responsibility. In addition, in the event a State becomes aware that its EPA-approved fund or other State assurance will not be able to provide financial assurance to the owners and operators to whom it applied, the person within the State government who is designated to authorize State fund expenditures or to administer the financial responsibility program must notify the Regional Administrator of such incapacity. See § 280.110(d).

Although not included in today's proposal, except to the extent that they may qualify as State-required mechanisms, local funds and other local government assurances might be established to demonstrate financial responsibility. The criteria by which the Regional Administrator might evaluate a local assurance could be the same as that used for evaluating State assurances. The Agency recognizes that it may be desirable to differentiate between the requirements for State funds and those for local funds. For this reason, the Agency requests comments and any further information on topics related to local funds. For example:

- Do any local funds exist currently? If so, what types of costs do they cover?
- Would the proposed regulations encourage the formation of any local funds?
- What criteria should be used to evaluate their acceptability under the Federal program?

*M. Standby Trust Fund (§ 280.103)*

1. *Features of Mechanism.* Under § 280.103 of the proposed rule the standby trust fund is the depository mechanism that must be established when an owner or operator obtains one of the following financial assurance instruments: guarantee, indemnity contract, surety bond, or letter of credit. Funds drawn under any of the instruments listed, pursuant to the

Regional Administrator's instruction, must be deposited directly into the standby trust fund by the institution making the payment. The Agency is proposing this requirement because, without such a depository mechanism, any funds drawn under those instruments that are payable to the Regional Administrator would have to be paid into the U.S. Treasury and could not be used specifically to pay for the UST corrective action or third-party liability claims for which the funds were intended (see 31 U.S.C. 3302). A standby trust fund must be established when the instrument is established so that it will be ready to accept full payment if the instrument is cancelled and the owner or operator has not obtained alternate assurance.

The rule proposes that the trustee must have the authority to act as a trustee and its trust operations must be regulated and examined by a Federal or State agency. This proposed trustee qualification requirement is the same as the trustee qualification requirement under the Subtitle C regulations. If the trust operations are not regulated and examined by a Federal agency, the trust operations must be regulated and examined by a State agency in each State in which a standby trust fund is established under this Subpart.

While the standby trust fund must be established at the same time the owner or operator obtains one of the mechanisms listed above, it will not be funded unless or until the Regional Administrator determines that the failure of the owner or operator to take corrective action and/or compensate third parties has triggered payment or performance under one of the mechanisms. (See section III.R of this preamble and proposed § 280.108.)

The wording of the standby trust agreement must be identical to the wording provided by § 280.103(b). Requiring specific wording in the agreement minimizes the administrative burden on the Regional Administrator by eliminating case-by-case review of standby trust agreements and provides owners and operators with the assurance that the agreements as worded will satisfy the regulatory requirements. The agreement specified by § 280.103(b) also describes requirements that the trustee of a standby trust must fulfill. For example, the agreement (1) describes the parameters within which the trustee may manage or invest the funds in the standby trust by referring to a "prudent person" standard and the types of accounts in which trust funds can be held; (2) lists the expressed powers and discretions conferred upon the trustee, such as to sell or otherwise dispose of trust property; (3) requires that the standby trust shall be irrevocable; and (4) provides that the trustee is immune from incurring personal liability for actions taken to administer the fund. If the trustee is subject to a personal liability claim related to his actions as trustee, the trustee shall be indemnified by the grantor. The Agency solicits comments on the wording of the standby trust agreement proposed by today's rule.

Under the proposal, the Regional Administrator will instruct the trustee to refund the balance of the standby trust to the owner or operator when the Regional Administrator determines that no additional corrective action costs or third-party liability claims will occur with respect to the release for which the funds were deposited initially. The Agency may consider the following factors when making this determination: Whether closure and, if required, corrective action have been completed as required by Subpart F of Part 280; whether all known third-party liability claims have been settled or adjudicated and satisfied; and whether additional third-party claims are likely to arise. The Agency requests suggestions of other factors that the Regional Administrator should consider in determining whether additional costs will arise as a result of a release covered by a standby trust fund.

2. *Applicability to UST Requirements.* The Subtitle I standby trust fund requirements and required wording of the agreement are similar to the standby trust fund requirements of the Subtitle C closure and post-closure care regulations. The Subtitle C regulations require that a standby trust fund be established when an owner or operator obtains a surety bond or a letter of credit. The wording of the Subtitle I standby trust fund agreement is generally consistent with the wording of the Subtitle C trust agreement in 40 CFR 264.151(a).

3. *Timing.* The standby trusts established for UST financial responsibility are less likely to be funded than the standby trust funds used for financial responsibility of closure and post-closure care at RCRA Subtitle C facilities. This difference arises because it is not certain that a UST release will occur, whereas closure is required at all RCRA treatment, storage, and disposal facilities (and post-closure care at all land disposal facilities). The Agency therefore considered allowing standby trust funds under the Subtitle I program to be established at the time they were needed as a depository for payments from a guarantor, indemnitor, surety, or bank. However, this option was rejected because the Agency believes that the immediate availability of the depository mechanism, if and when needed, is not certain.

The Agency also considered the costs related to establishing and maintaining a standby trust fund. The primary costs are the costs of managing the funds; other relatively minor costs include the administrative fee charged to establish the trust fund and fixed fees for simply maintaining the account. Because the costs of establishing a standby trust at the time the instrument is established will be minimal, since there will be no funds in the trust, the Agency does not believe that the requirement to establish the standby trust fund at the time the instrument is established will be particularly burdensome to UST owners or operators.

*N. Substitution of Financial Assurance Mechanisms by an Owner or Operator (§ 280.104)*

An owner or operator may substitute alternate financial assurance as specified in § 280.104 of today's rule, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfy the requirements of this subpart. After obtaining alternate financial assurance, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. Continuous coverage is necessary for ensuring the availability of funds at all times for corrective action and third-party liability claims, should a release occur from an UST containing petroleum.

The Agency is not proposing to require that the owner or operator receive prior written consent from the Regional Administrator when substituting alternate financial assurance mechanisms. This feature is consistent with the Agency's general approach in limiting UST reporting requirements because of the large numbers of owners or operators subject to these requirements. However, the Agency is proposing to require that owners or operators have proof of continuous financial assurance and maintain evidence of any substitutions. Specifically, owners and operators will be required to maintain records of changes in financial assurance mechanisms one year beyond the operating life of the facility. In addition the Agency is proposing to require

reporting by the owner or operator under limited circumstances, as discussed below, including failure to obtain alternate coverage upon incapacity of, or cancellation by, the provider of assurance. The Agency requests comments on whether the requirements to maintain proof of substitutions and report evidence of financial responsibility under certain conditions provide adequate safeguards against owners or operators cancelling a financial assurance mechanism before receiving alternate assurance.

*O. Cancellation or Nonrenewal by a Provider of Financial Assurance (§ 280.105)*

In § 280.105 of today's rule, the Agency is proposing cancellation provisions applicable to all mechanisms except the financial test of self-insurance. In proposing cancellation provisions, the Agency wished to avoid the situation whereby a provider of financial assurance cancels a mechanism because a release from an UST has been identified, thereby leaving an owner or operator without coverage when it is most needed. Therefore, under the proposed cancellation provisions, a provider of financial assurance may cancel, refuse to renew, or otherwise terminate an instrument, only if the provider first notifies the owner or operator at least 120 days in advance. If an alternate mechanism is not obtained within 60 days after the notice is received, the owner or operator must notify the Agency of such failure and submit evidence of the existing financial responsibility, the name and address of the provider of financial assurance, and the date of cancellation. An owner or operator will be out of compliance with the financial responsibility requirements if he does not obtain alternate coverage before the cancellation is effective. (Inability to obtain alternate coverage may make an owner or operator eligible for a suspension of enforcement.)

The Agency considered an alternative cancellation procedure that would require the provider of financial assurance to notify the Agency at the same time that it notifies the owner or operator of termination. However, the Agency rejected this approach because the proposed 60-day notice provides adequate time for the Agency to respond to the pending termination as circumstances require.

In cases where the owner or operator obtains an alternate mechanism within 60 days after receiving a notice of cancellation, requiring notification would increase only the reporting burden, not the degree of protection of human health and the environment. By contrast, if an owner or operator does not obtain an alternate mechanism within 60 days by his notifying EPA will alert the Agency to the possibility that, in another 60 days, the existing financial assurance mechanism will be terminated and therefore unable to provide funds. At this point, the Agency will have the opportunity to inspect the affected tanks to determine if any releases have occurred. By making this determination before the existing mechanism expires, the Agency can then assure that the still viable mechanism may be drawn upon to provide any necessary funds.

Under today's proposal, financial assurance mechanisms are drawn on only if the Regional Administrator determines or suspects that there is a release. As a result, corrective action or third-party liability claims may go unfunded after an owner or operator receives a cancellation notice. For example, if an owner or operator fails to obtain alternate assurance after receiving notification that his bank intends to cancel his letter of credit in 120 days, but no release has been detected or suspected, the Agency may not require the letter-of-credit issuer to fund the standby trust. If after 120 days, however, a release occurs at one of the facilities lacking coverage, the Agency may not be able to obtain from the owner or operator the funds necessary to address the release.

Requiring that funds be drawn on an existing mechanism in the event that an owner or operator receives a notice of cancellation and is unable to provide alternate assurance regardless of the existence of a release could avoid this potential for unfunded claims. Under the Subtitle C program of closure and post-closure financial responsibility, the Agency does require funding of the standby trust if the owner or operator receives a cancellation notice and is unable to get an alternate mechanism, partly because closure and post-closure costs will have to be paid for all facilities whereas an UST release may not occur.

The Agency nevertheless rejected this approach for UST financial responsibility, because it believes that only in rare circumstances will UST releases be discovered after cancellation of a mechanism, thus necessitating corrective action or compensation whose costs the owner or operator cannot pay. Therefore, in most cases, an automatic drawing of funds in the event the owner or operator receives a cancellation notice and is unable to obtain alternate assurance will be unnecessary. In addition, drawing funds unnecessarily could cause financial hardship to small firms whose coverage providers will seek reimbursement of the drawn funds from the owner or operator.

However, given this potential for unfunded corrective action and liability claims, the Agency invites comments on the proposed cancellation procedures and the extent to which they ensure adequate financial protection. Comments are requested specifically on the following issues: (1) Who should notify the Regional Administrator when assurance is cancelled or not renewed or an owner or operator fails to obtain alternate assurance after receiving a notice of termination? (2) Under what circumstances should funds be drawn from a mechanism if an owner or operator fails to obtain alternate assurance? (3) What amount of funds, if any, should be drawn from a mechanism if an owner or operator fails to obtain alternate assurance and no release has been detected or suspected? (4) What amount of funds, if any, should be drawn from a mechanism if a release has been detected or suspected? (5) How long should the period of cancellation be?

On this last point, the Agency has considered requiring providers of financial responsibility instruments to notify owners or operators 180 days in advance of their intention to cancel or terminate the instrument. Under such a provision, owners and operators would have 60 days from the time they received a cancellation notice to obtain alternate assurance; if they failed to do so, they would have to notify EPA by day 60, leaving the Agency 120 days before cancellation of the instrument to draw on the instrument, if necessary. This 120-day period during which EPA could draw on the mechanism would, relative to the 120-day cancellation provision being proposed, allow more time for EPA or the implementing agency to inspect the UST facility to determine if a release had occurred.

*P. Reporting by Owner or Operator (§ 280.106)*

Under § 280.107 of today's proposed rule, an owner or operator of a facility is required to keep evidence of financial responsibility at the UST site or his place of business. Section III.Q of this preamble describes the nature of the records that the owner or operator must maintain. In addition to the recordkeeping requirements, an owner or operator must submit the appropriate documentation of current financial responsibility to the Regional

Administrator in the following circumstances:

(1) When the owner or operator notifies the Regional Administrator of the existence of a new petroleum underground storage tank under § 280.22;

(2) Within 30 days after the owner or operator has a known or suspected release from a petroleum underground storage tank required to be reported under § 280.74;

(3) If the owner or operator fails to obtain alternate coverage as required by this subpart within 30 days after the owner or operator receives notice of:

- Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S.Code, naming a provider of financial as a debtor,
- Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
- Failure of a guarantor or indemnitor to meet the requirements of the financial test, or
- Other incapacity of a provider of financial assurance;

(4) If an owner or operator is unable to obtain alternate assurance within 60 days after receiving a notice of termination of a mechanism, as required by § 280.105(b); or

(5) If the owner or operator using the financial test fails to meet the requirements of the test, as required by § 280.94.

In addition, the Regional Administrator has the authority to require that owners or operators submit at any time documentation of financial assurance or other relevant information such as insurance policies or financial statements.

These provisions differ substantially from the reporting requirements of RCRA Subtitle C financial responsibility requirements. Under Subpart H of 40 CFR Parts 264 and 265, an owner or operator must submit evidence of financial assurance to EPA on an ongoing basis. For new facilities, an owner or operator first must submit evidence of financial assurance at least 60 days prior to the initial receipt of hazardous waste. Evidence of financial responsibility then is maintained with the Regional Administrator throughout the operating life of the facility and, in the case of financial responsibility for post-closure care, throughout the post-closure care period. The following events could trigger the submission of such evidence during the period of required demonstration: changes in cost estimates associated with closure and post-closure care; updated coverage to adjust for inflation; annual financial test submissions; and substitution of a different financial assurance mechanism.

The Agency considered similar requirements for UST financial responsibility out of concern that not requiring ongoing reporting of financial assurance could jeopardize the availability of funds for corrective action or third-party claims when needed. While EPA recognizes that requiring owners and operators to submit evidence of financial responsibility may improve overall compliance, the Agency believes that there are a number of reasons why reporting requirements should not and need not be so stringent.

First, the regulated UST community, measured in numbers either of firms or facilities, is very large. The requirements of today's rule will apply to an estimated 1.4 million USTs located at over 500,000 facilities. Receiving and processing financial assurance certifications on a regular basis from all UST owners or operators could place overwhelming administrative burdens on Regional offices and States.

Second, the Agency believes that requiring the submission of financial responsibility evidence only in certain circumstances is reasonable because other types of notification are already required at these times under the regulations and the new tank notification requirements under section 9002(a) of Subtitle I. Specifically, the proposed UST technical standards published elsewhere in today's **Federal Register** require operators to report releases of petroleum to the Regional Administrator. In addition, owners or operators who bring into use a new tank after the initial notification period (i.e., May 8, 1988) must notify the appropriate State or EPA of the existence, age, size, type, location, and uses of the new tank. Including information regarding financial assurance to the reports, when they are submitted, will not significantly add to their cost.

The Agency also believes that the absence of regular reporting from all UST owners or operators will not necessarily result in a high rate of non-compliance. To increase awareness of and compliance with the UST rules, EPA is preparing an extensive public outreach program aimed at providing UST owners and operators with information on all UST requirements, including financial responsibility, before the requirements become effective. Moreover, many UST owners and operators are already obtaining insurance to limit their exposure to future liability due to UST releases. (See Chapter 7 of the supporting document in the docket for today's proposal.) In addition, provisions in the Superfund Amendments and Reauthorization Act of 1986 (SARA) for the Leaking UST Trust Fund and suspension of enforcement, discussed in more detail below, create further incentives for owners or operators to comply with the financial responsibility regulations. Except in limited situations, the Leaking UST Trust Fund may be used to pay for costs in excess of the required amount of financial responsibility only if the owner or operator has maintained evidence of financial responsibility. Furthermore, in cases where EPA seeks to recover costs for an Agency response to an imminent threat to public health, full costs will be sought from an owner or operator who has not maintained financial responsibility (section 9003(h)(11)). In addition, the enforcement suspension provisions create incentives for owners or operators to demonstrate to the Agency that they have attempted to comply with the financial responsibility regulations. Because these provisions encourage compliance, there is less need for strict reporting requirements.

The Agency considered other reporting options but chose not to incorporate them into the proposed approach at the current time. These two options were among those considered:

- A requirement for submitting a certification of financial responsibility. This certification would require that the owner or operator submit to the Agency a postcard that lists the facility(ies) where USTs are located, the type of financial assurance used, the issuer of the financial assurance mechanism, and the mechanism number, where appropriate.
- A requirement that information on specific financial assurance mechanisms be submitted to the Agency. Submissions would include more complete information on the mechanism, including its term and amount.

These options would entail the reporting of financial assurance by all owners and operators for all their petroleum underground storage tanks. Although the Agency has decided against full reporting for the reasons discussed above, the full reporting options do have distinct advantages. First, full reporting would enable the Agency to target enforcement efforts toward owners or operators who fail to submit evidence of financial responsibility. These owners or operators may also be out of compliance with technical standards for USTs containing petroleum.

Second, the proposed rule requires owners or operators of new tanks to provide evidence of financial responsibility when they comply with the new tank notification requirements. Documentation of financial responsibility may be even more useful for existing tanks, which may have a higher release potential than new tanks. In addition, more stringent reporting requirements may not necessarily be burdensome for UST owners and operators. Under the two options described above, all UST owners or operators submit evidence of financial assurance only at the outset of the regulations, unless a release occurred or a mechanism was cancelled or not renewed. Furthermore, the burden of full reporting could be reduced by allowing providers, such as insurers, to submit evidence of financial assurance to EPA on behalf of insured owners and operators.

Finally, the alternatives for full reporting have specific advantages. The alternative of reporting information on each specific mechanism would provide the Agency with the most complete information for monitoring compliance. Moreover, in the case of some mechanisms—namely, letters of credit and surety bonds—it may be necessary or desirable to have these mechanisms submitted directly to the Agency. The contractual features of these mechanisms may be such that the implementing agency must know their exact wording, as well as the identity of the third-party issuer, in order to draw upon them. Furthermore, at the time of a release, owners or operators may have a substantial incentive not to submit the mechanisms, since this may mean that they will bear the costs of the funds drawn on the mechanisms. Requirements that all letters of credit or surety bonds be submitted to the Agency, regardless of whether the owner or operator has a release, could prevent such situations.

The alternative of reporting by postcard has the advantage of lower reporting costs for owners and operators and lower administrative burden to the Agency. The disadvantage, however, is that the amount of information that can fit on a postcard may not be adequate for compliance monitoring purposes.

The Agency has decided nevertheless to propose less stringent reporting requirements. It should be noted that under this proposed approach, while owners or operators will not be required to submit regular reports, the Agency nevertheless has the option of requesting copies of the mechanisms at any time. The Agency is requesting comments on the proposed option, as well as on those options that the Agency considered but is not proposing. In particular, the Agency would welcome suggestions of other options, not considered, that would ensure that funds will be available when needed but, at the same time, avoid unnecessary reporting burdens. The Agency will review such comments in deciding whether to revise the reporting procedures in the final rule.

*Q. Recordkeeping (§ 280.107)*

Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart until one year after closure or one year after the completion of closure and corrective action. An owner or operator must maintain such evidence at the UST site or the place of business of the owner or operator. He must maintain the following types of evidence for mechanisms used to demonstrate financial responsibility under Subpart I:

(1) Copies of assurance mechanisms specified in Sections 280.94-280.100, worded as specified.

(2) Letters from the chief financial officer supporting the use of financial tests, guarantees, or indemnity contracts based on year-end financial statements for the last completed fiscal year. Such evidence must be on file no later than 90 days after the close of each fiscal year.

(3) Originally signed duplicates of the standby trust funds worded as specified in § 280.103(b) for guarantees, indemnity contracts, surety bonds, or letters of credit.

(4) Originally signed duplicates of the insurance policies or risk retention group coverage policies with the endorsements or certificates of insurance and any amendments.

(5) Copies of letters or certificates from States regarding coverage by State funds or other State assurances.

The proposed rules also require the owner or operator to maintain a certification that the financial assurance mechanism used to demonstrate financial responsibility is in compliance with the requirements of the rule. Because EPA is not receiving financial responsibility reports on a regular basis, the Agency believes that requiring the additional certification will provide additional incentive for owners or operators to comply with the regulations at all times. Furthermore, the certification requirement will be useful in Agency enforcement efforts.

*R. Drawing on Financial Assurance Mechanisms (§ 280.108)*

Financial assurance mechanisms that are provided to the owner or operator by other parties, such as guarantees, indemnity contracts, surety bonds, and letters of credit, require action by EPA to initiate payment. Because third-party liability claims may be contested by an UST owner or operator, special procedures to draw on the financial assurance mechanisms are necessary. These special procedures are designed to minimize the administrative burden of processing the claims, while ensuring that valid claims are paid without unnecessary delay or difficulty.

1. *Corrective Action Claims.* When an UST owner or operator notifies the Regional Administrator of a release in accordance with Subpart F of 40 CFR Part 280 Section 280.50—Notification Requirements (being proposed elsewhere in today's **Federal Register** ), the owner or operator must provide the required evidence of financial assurance within 30 days. Once EPA possesses the evidence of the assurance mechanism, under § 280.108(a) of the proposed rule, it will be able to prepare and submit the appropriate instructions to the provider of financial assurance to fund the standby trust, if necessary. If the owner or operator fails to pay the costs of corrective action, the Regional Administrator can direct the provider to pay. For example, if an owner or operator uses a letter of credit as its financial assurance mechanism and submits an originally signed duplicate of the letter in the event of a release, EPA would be able to prepare an appropriate draft to order the issuer to fund the standby trust.

2. *Third-Party Compensation Claims.* Third-party compensation claims must be handled differently from corrective action claims because the UST owner or operator may contest a third-party compensation claim as invalid or inaccurate. Without a special procedure to evaluate claims, the Agency may be placed in the role of a claims adjuster. The Agency is proposing in § 280.108(b) a procedure that will minimize the administrative burden on the Agency by requiring the owner or operator and the third-party claimant to submit a document that certifies the validity and amount of the claim. The certification of the claim must be signed by attorneys representing each party. The certification is designed to allow an owner or operator to settle a claim with a third party without conceding liability in a document accessible by the public, which could be used against the owner

BEST COPY AVAILABLE

or operator in future claims. The Agency solicits comments on the wording of the certification document.

The Agency's intent in requiring submission of this certification is to avoid instances in which the Agency or the provider of financial assurance will be required to settle disputes between the owner or operator and the third-party claimant. In essence, the requirement to submit the signed certification requires the parties to assure that either they agree that the claim itself as well as the amount are valid or they have settled any disputes related to the validity or amount of the claim before coming to the Agency. Although this process may result in some delay in the payment of claims, the Agency believes that potential delays will be no greater than they would if insurers were to resolve claim disputes.

Requiring signed certification by attorneys representing each party will ensure that the document is a valid verification and not a product of fraud or misrepresentation. Attorneys are subject to disciplinary rules, one of which requires that "In the case of representing a client a lawyer shall not knowingly (a) make a false statement of material fact or law to a third person . . . " (Rule 4.1 of the ABA Model Rules (1983)). In addition, requiring the opposing attorneys to sign the same certification provides added assurance that the parties have in fact agreed to the validity and amount of the claim. Having notarized signatures from the parties and their attorneys on one form further demonstrates their agreement to the certification.

The procedure is designed to reduce administrative burdens and to allow efficient payment of valid claims. The Agency does not expect the requirement to submit a signed and notarized certification of claim to place undue burdens on owners or operators or third-party claimants.

Alternatively, if the owner or operator and the third-party claimant cannot agree on the validity and amount of the claim, a lawsuit may be required to determine whether the claim should be paid and, if so, the amount due. In some instances, the Agency may become involved in these lawsuits as an ancillary party. When the parties cannot agree, a final judgment by the court will be submitted by the third-party claimant, if such a judgment is won, indicating that the claim should be paid. By final judgment the Agency means the final disposition of the case on its merits; thus, a decision by a court of appeals may be required in some situations.

The Agency is soliciting comments on the potential effectiveness of this procedure in avoiding situations in which EPA or the provider of financial assurance will be required to make judgments concerning the validity of claims.

3. *Payout of the Funds Drawn.* The Regional Administrator will draw on financial assurance mechanisms once an estimate of the costs of immediate and long-term corrective action is available. The Regional Administrator will draw on the mechanism up to the amount of the estimated corrective action costs and known or expected third-party liability claims. Section 280.108(c) of the rule proposes that in cases where the Regional Administrator determines that all costs eligible for payment, both corrective action costs and third-party liability claims, may exceed the balance in the standby trust fund and the balance of the provider's obligation under the mechanism, the Regional Administrator will instruct the trustee to pay the corrective action costs first. The purpose of giving priority to corrective action costs over third-party liability claims is to prevent further damages. Cleaning up a release as quickly as possible will minimize further threats to human health caused by the release as well as third-party liability claims. If the amount of coverage is not absorbed fully by corrective action costs, the Regional Administrator will instruct the trustee to pay third-party liability claims in the order in which the Regional Administrator receives the notices of valid claims.

*S. Release from the Requirements of this Subpart (§ 280.109)*

The Agency proposes in § 280.109 to provide for the release of the owner or operator from the financial responsibility requirements of this subpart one year after completion of permanent closure of the tank(s) requiring coverage as required by § 280.80, or, if corrective action is required as in Subpart F of Part 280, one year after completion of the corrective action and closure. The release provision involves some difficult issues as discussed below.

1. *Need for Funds After Closure and Corrective Action.* After permanent closure of a tank is completed and any necessary corrective action performed, there still exists potential for future third-party liability claims resulting from latent injuries caused by releases from the tank that occurred before closure. If the owner or operator is released from financial responsibility requirements after permanent closure and corrective action have been completed, the future liability claims may not be covered by any party and may go unfunded.

2. *Availability of Financial Assurance Mechanisms.* Although releasing the owner or operator from these requirements only after closure and corrective action would ensure that such actions will have adequate funding, the provision may restrict the availability of mechanisms for financial assurance. For example, one rationale for terminating the Subtitle C liability coverage requirements at closure was that prolonging required coverage beyond closure would make providers unwilling to take the risk of such long-term commitments. The longer the financial responsibility requirements apply, the less likely it is that financial assurance mechanisms will be available for coverage of corrective action and liability claims.

In light of these difficulties, the Agency analyzed the following options for the release provisions:

a. *Release from Requirements at Permanent Closure.* This approach would provide the shortest time period for required coverage, thereby ensuring maximum availability of assurance mechanisms. The problem of future third-party liability claims, however, remains unresolved by this approach.

b. *Release from Requirements for Corrective Action and Liability Coverage at Different Times.* Under this approach, the owner or operator would be released from covering corrective action at the completion of such action (if it occurs after permanent closure) but would be required to continue third-party liability coverage for a period determined reasonable to ensure that future claims will be met. This approach would provide better assurance of coverage, but it may reduce the availability of financial assurance mechanisms since providers may be less willing to undertake longer-term commitments.

3. *Release from Requirements One Year After Completion of Permanent Closure or One Year After Completion of Permanent Closure and Corrective Action.* The Agency determined that the best option for the release provision would allow the owner or operator to be released from financial assurance one year after permanent closure or, if corrective action is needed at permanent closure, one year after corrective action and closure are complete. This approach ensures better availability of assurance mechanisms than requiring coverage for an extended period beyond permanent closure regardless of the need for corrective action. Adoption of this approach would

ensure better coverage of potential claims than would the approach that releases the owner/operator from requirements at permanent closure, although it may not cover future third-party liability claims more than one year after corrective action is completed. The option selected attempts to optimize availability of mechanisms and levels of coverage, rather than maximize one or the other.

The Agency requests comments and suggestions regarding these and any other potential alternatives for releasing owners or operators from Subpart I requirements.

The Agency also considered allowing an owner or operator to be released from the requirements of Subpart I only after the applicable statute of limitations for potential third-party liability actions had run out. The Agency decided against this approach because it may be very difficult to determine when the statute of limitations period begins under applicable State laws (i.e., whether at the time of a release, at the time of exposure, or at other times). Furthermore, such an approach may require coverage for many years because, in many cases, the statutory period will not commence until the injury has become manifest, which, for certain diseases with long latency periods, may be several decades after exposure to petroleum.

The proposal also authorizes the Regional Administrator to notify the owner or operator that he is not being released from financial responsibility requirements because the Agency has reason to believe that a release from a tank has not been addressed properly. This provision gives the Agency the opportunity to conduct an investigation prior to releasing the owner or operator from financial responsibility obligations and ensures that any release undetected by the owner or operator will be covered by financial assurance.

Any provision for release from financial responsibility requirements will be affected by the development of regulations for corrective action for underground storage tanks containing petroleum. In accordance with the regulations, release of the owner or operator from financial responsibility will not take place until one year after completion of corrective action in accordance with the approved corrective action plan.

*T. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance (§ 280.110)*

The proposed rule requires that any owner or operator named as a debtor in voluntary or involuntary bankruptcy proceedings (under Title 11 of the U.S. Code) notify the Regional Administrator within 10 days after commencement of such proceeding. In addition, a guarantor or indemnitor must notify the owner or operator by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the U.S. Code that names such guarantor or indemnitor as debtor. The proposed rule stipulates, furthermore, that any owner or operator who obtained financial responsibility using a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of a provider to issue a guarantee, indemnity contract, surety bond, insurance policy, risk retention group coverage policy, letter of credit, or State-required mechanism. Finally, proposed § 280.110 requires States to notify the Regional Administrator and owners and operators covered by a State fund or other State assurance within 30 days after the assurance mechanism becomes incapable of covering assured costs. The proposed rule adopts the provision in Subtitle C rules for the incapacity of owners or operators, guarantors, or financial institutions (see Sections 264.148 and 265.148), but amends the language to make it more applicable to the requirements for Subtitle I financial responsibility.

As is the case with the Subtitle C rules, the proposed rules do not require providers of financial assurance to notify EPA or covered owners or operators of the provider's incapacity or revocation of authority in all cases. For example, banks and insurance companies are generally not subject to the Bankruptcy Code (see 11 U.S.C. 109(b)), yet are not required to notify owners or operators if they become insolvent. In addition, providers other than States are not required to provide notice of the revocation of their authority. In some of these instances, an assurance mechanism may not provide adequate assurance. Thus, the Agency is concerned about whether owners or operators will become aware of such problems soon enough to enable them to obtain alternate coverage before their present coverage is terminated. The Agency requests comments on this problem.

*U. Suspension of Enforcement (§ 280.111)*

RCRA section 9003(d)(5)(D) authorizes the Administrator to suspend enforcement of the financial responsibility requirements for particular classes or categories of USTs containing hazardous substances or located in particular States. To suspend enforcement, the Administrator must determine (1) that methods of financial responsibility are not generally available for USTs in the class or category; and (2) that either (a) steps are being taken to establish a risk retention group for that class of tanks or (b) a State is taking steps to establish a corrective action and compensation fund under RCRA section 9004(c)(1). A suspension of enforcement may not exceed 180 days. The Administrator has the discretion to suspend enforcement for a period of less than 180 days.

After expiration of an initial suspension period, the Administrator may again suspend enforcement of the requirements, but only if either (1) "substantial progress" has been made in establishing a risk retention group or (2) the owners or operators of USTs belonging to the class or category demonstrate, and the Administrator finds, that the State is unable or unwilling to establish a corrective action and compensation fund and formation of a risk retention group is not possible. Because the Agency expects that most applicants will eventually demonstrate financial responsibility, the Agency expects that suspensions will generally not be renewed indefinitely.

The SARA Conference Report notes that the suspension procedures do not apply to a particular owner or operator who cannot get assurances, but rather to owners and operators of USTs in particular classes or categories or States (House Report 99-962, 99th Congress, 2nd Session, p. 234). In addition, the Agency interprets the statute to mean that enforcement may be suspended only if both the owners and the operators of USTs of a particular class or category are unable to obtain financial assurance.

The Agency is proposing procedures and criteria to review requests for suspension of enforcement of the Subpart I financial responsibility requirements. Suspensions may allow time for owners and operators of USTs of particular classes or categories or located in particular States to obtain coverage for corrective action and third-party compensation costs. Because some owners or operators of certain classes or categories of USTs may find that financial assurance mechanisms are not generally available upon the effective date of the rule, suspensions may be necessary to allow these owners and operators to comply with the

requirements through the formation of risk retention groups or the establishment of State funds.

In developing the proposed suspension of enforcement rules, the Agency faced several difficulties. It is difficult to gauge the number and type of petroleum-containing USTs whose owners and operators will be unable to obtain insurance or another form of financial assurance and who will thus seek suspension of enforcement. As a result, it is uncertain whether the suspension procedures should be designed to handle dozens or thousands of applications. In addition, EPA is constrained by the terms of SARA. For example, the Agency may not grant a suspension or renewal of suspension that exceeds 180 days. Thus, procedures for considering requests for suspension renewals should allow for determinations to be made prior to the expiration of the 180-day period.

To address these difficulties, the Agency is proposing relatively detailed procedures and criteria, which should enable EPA to grant or deny suspension requests in a timely fashion. The Agency requests comment on all aspects of the proposed suspension of enforcement procedures and on any alternative procedures.

This section of the preamble is organized into seven parts, which address the following issues: (1) The proposed requirements concerning what will be considered to constitute a class of USTs; (2) the proposed criteria for demonstrating that financial assurance is not generally available; (3) the evidence that must be maintained by class members; (4) how the Agency plans to judge whether the steps being taken to form a risk retention group or to establish a State fund are sufficient to warrant granting an initial suspension; (5) the proposed procedures for submitting and reviewing applications for an initial suspension; (6) the proposed criteria for renewing a suspension; and (7) the proposed renewal procedures.

1. *Eligible Applicants.* RCRA section 9003(d)(5)(D) authorizes the Administrator to suspend enforcement of the financial responsibility rules "for a particular class or category of underground storage tanks or in a particular State" if certain requirements are met. Two broad approaches could be used to create classes for purposes of suspension. First, as proposed in today's rule, the Agency could rely on owners and operators for whom financial assurance is generally unavailable to form classes and request suspension of enforcement. Second, the Agency could, in advance of suspension requests, define classes of USTs for which financial assurance is assumed to be not generally available and subsequently accept petitions from owners and operators who fall into such classes or from representatives of such owners and operators. Under this approach, owners and operators could also form their own classes, separate from those defined by EPA. The Agency requests comment on both of these approaches, as well as suggestions for alternative approaches.

Under the procedures proposed today, owners and operators seeking suspension of enforcement will be required to form their own classes. This approach places the initial burden of seeking an enforcement suspension on owners and operators. The Agency believes that the requirements for renewing suspension will encourage the formation (and the combining or reorganizing) of classes that will be most capable of obtaining risk retention group coverage. (See Section III.U.6 below.)

Under the second approach, the Agency could, in advance of suspension requests, define particular classes for which financial responsibility mechanisms are assumed to be generally unavailable by such criteria as similarity of operations, limited financial assets, and number of tanks. For example, the Agency could propose classes composed of small open dealers, small non-retail petroleum firms, or small local governments owning and operating USTs in nonauthorized States. Owners and operators in such a class would still be required to take steps to form a risk retention group (unless the State is establishing a fund). The Agency could revise these classes when it determines that the availability of financial assurance changes. These classes could include owners and operators of USTs located in States that have not received authorization to implement a State UST regulatory program in lieu of the Federal program. (EPA lacks the authority to suspend enforcement of any State laws, including EPA-authorized State UST programs.) Owners and operators could also form their own classes to seek suspension of enforcement under this approach, separate from the classes defined by EPA.

This second approach has two advantages. First, it might reduce the burden on owners and operators of seeking a suspension, particularly where an initial suspension is based on State efforts to establish a fund. In such an instance, owners and operators in that State who meet the requirements for class membership may not find it necessary to organize themselves into a class, select a class representative, submit a petition to EPA, and demonstrate the general unavailability of financial assurance. In other instances, however, class members would still need to organize themselves and take group actions towards forming a risk retention group or to prove that forming such a group is not possible.

Second, the Agency's burden of administering the suspension of enforcement process might be less, relative to that under the first approach, particularly in the period immediately after the rules become effective. Although EPA would be required to determine what financial assurance is available and to whom and publicize its findings, the Agency could conduct its investigations before requests for suspensions are received and thereby improve its ability to implement the initial suspension procedures in a timely manner.

The Agency has not proposed this approach for several reasons, however, including the following:

- The classes established by the Agency may not correspond with groupings of owners and operators necessary to establish viable risk retention groups. Thus, EPA-defined classes might restrain the formation of viable groups.
- Providers of financial assurance, including insurers, may be unwilling to describe the owners, operators, and tanks that they are willing to cover in a manner that enables EPA to define broad classes for which assurance is generally not available.
- EPA would be required to monitor the availability of financial assurance and adjust its definitions of classes, which could cause confusion within the regulated community.
- Defining classes that are not overinclusive (i.e., include owners or operators able to obtain assurance) might be difficult to avoid because the availability of assurance depends on many factors, which may include the nature of the business of the owner or operator (e.g., petroleum marketer, farmer), the condition of the tank, the financial characteristics of the owner and operator, and the willingness of firms that are related to, or have substantial business relationships with, the owner or operator to issue a guarantee or indemnity.

The Agency requests comments on this approach, including on what classes might be feasible for EPA to define.

2. *Demonstrating Unavailability of Financial Assurance.* To grant an initial suspension of enforcement or a suspension renewal, the Administrator

must find "that methods of financial responsibility satisfying the requirements of this subsection [subsection 9003(d)] are not generally available for underground storage tanks in that class or category. . . ." This section of the preamble discusses the criteria that the Agency will use in judging the availability of financial assurance and the methods by which class members must demonstrate their inability to obtain financial assurance.

a. *Criteria for Judging Unavailability.* Congress did not specify the conditions under which methods of financial assurance are not generally available. Under the rule proposed today, suspension of enforcement is available only if none of the mechanisms described in Subpart I are generally available to the owners or operators in a class. In addition, suspension will be available for only that portion of the required amount and that type of financial assurance that is not generally available to a class. For example, if assurance is available to cover corrective action costs but not to cover the costs of third-party compensation, a suspension would be available only for assurance of third-party compensation. Similarly, if some coverage is available to a class, but not in the amounts required by § 280.92, a suspension may be available for the required amount of coverage in excess of the available coverage.

The Agency will not consider financial assurance mechanisms to be generally unavailable in the following situations:

- The owner or operator is not able to obtain financial assurance because he fails to meet the standard underwriting practices of insurers offering coverage acceptable under § 280.97 (e.g., replacing old tanks, conducting a risk assessment); and
- The owner or operator does not certify compliance with all applicable requirements of Part 280 or with an enforceable compliance schedule.

The Agency proposes to consider cost when determining whether a method of financial assurance is generally unavailable. For example, even though a surety company is willing to sell a surety bond to owners or operators who can post the required amount of collateral, surety bonds would not be considered available to owners and operators who lack the financial resources to post sufficient collateral. However, in evaluating cost, the Agency proposes to exclude the costs of satisfying preconditions for coverage, such as risk assessments, installing leak detection equipment, or installing new tanks.

b. *Procedures for Demonstrating Unavailability.* Under the procedures proposed today, the Agency requires that written documentation of the general unavailability of financial assurance be submitted on behalf of the entire class, by groups within the class, or by each individual owner and operator in the class. For example, a letter from an insurance company stating that the insurer will not offer coverage to any individual member of the group identified in the letter could be used in lieu of letters from the insurer to individual members of the class.

Except as noted below, each member of the class or the entire class must demonstrate the unavailability of each type of allowable financial assurance, except a State fund or other State assurance. An owner or operator is not required to demonstrate the unavailability of a State fund or other State assurance because a State must submit to EPA a request for approval of such mechanism before it can be used to comply with the rules. An owner or operator is also not required to demonstrate the unavailability of a guarantee, indemnity contract, or surety bond unless the Attorney General of the State in which the USTs are located has certified to EPA that the mechanism is a legally valid and enforceable obligation in that State. (See § 280.93(b).) In addition, an owner or operator is not required to demonstrate the unavailability of a State-required mechanism that EPA has not already determined is acceptable under § 280.101.

However, an owner or operator certifying that its net worth is less than $200,000 need only demonstrate the unavailability of the following types of financial assurance mechanisms: insurance, indemnity contract, and guarantee. The Agency believes that firms of this size are generally unable to obtain other types of financial assurance mechanisms, such as surety bonds and letters of credit, or to pass the financial test.

To demonstrate the unavailability of the financial test, each owner and operator must maintain a statement certifying that it lacks the financial resources to meet the financial test requirements of § 280.94. Nevertheless, such evidence from individual owners and operators need not be submitted in a suspension petition. Instead, a class representative could submit a statement certifying that all or certain class members are unable to pass the financial test. The Agency is not proposing to require owners and operators to maintain detailed financial information because owners and operators who are capable of meeting the financial test have an incentive to use the financial test rather than to seek suspension of enforcement. For example, as described below in Section III.U.4.b, each person seeking a suspension based on efforts to establish a risk retention group must demonstrate a financial commitment to that cause in the amount of at least $2,000; using the financial test mechanism would be considerably less expensive.

To demonstrate the unavailability of a guarantee or indemnity contract, certified by the appropriate State Attorney General to be valid and enforceable, each class member must maintain written evidence that an effort to obtain such mechanism has been made (by either each class member, groups of members, or the class as a whole) and that no entity is qualified and willing to provide a guarantee or indemnity contract. In particular, evidence should be maintained proving that the firms that supply petroleum to the owner or operator are not willing or qualified to provide a guarantee or indemnity contract and that firms that have a controlling interest in the owner or operator or in a related firm (see § 280.95(a)(i)) are not willing or qualified to provide a guarantee. Although the proposed rules allow a guarantee or indemnity contract to be obtained from any firm that has a substantial business relationship with the owner or operator, owners or operators are required to seek such assurance only from their petroleum suppliers.

An owner or operator may demonstrate the unavailability of insurance or risk retention group coverage by maintaining letters or other proof of denial of coverage from several insurance companies and any risk retention groups known to provide appropriate coverage for petroleum underground storage tanks. These letters may be addressed to individual owners or operators, groups of owners or operators, or the class as a whole. The Agency is currently aware of several insurance companies that offer coverage and an association of insurers whose members may offer UST coverage either as a stand-alone policy or as part of a package of insurance. The terms and conditions of such insurance may vary considerably among insurers. The list of these companies is available from the RCRA/CERCLA Hotline at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, DC.

An owner or operator whose net worth is at least $200,000 may demonstrate the unavailability of a surety bond or letter of credit as

specified in §§ 280.99 and 280.100 by maintaining letters or other proof of denial of coverage from qualified surety companies or qualified issuers of letters of credit. These letters may be addressed to individual owners or operators, groups of owners or operators, or the class as a whole.

If USTs are located in a State having a State-required mechanism that EPA has already determined meets the requirements of § 280.101, an owner or operator of tanks located in that State may demonstrate the unavailability of the mechanism by maintaining letters or other proof of denial of coverage from several qualified providers of financial assurance who are known to offer the applicable coverage. In many instances where a State-required mechanism is similar to a Federally required mechanism (e.g., both are insurance policies), the same evidence may be used to demonstrate the unavailability of both mechanisms.

The Agency requests comments on the proposed methods for demonstrating the unavailability of coverage and suggestions for any alternative approaches.

3. *Recordkeeping Requirements.* The Agency proposes to require each member of a class attempting to form a risk retention group to maintain the following written documentation:

1. Proof that the owner and operator are members of a class applying for suspension of enforcement;
2. Proof that the owner and operator are unable to obtain financial assurance (which may include class letters attesting to the unavailability of assurance); and
3. Proof that the owner and operator are part of an association attempting to form a risk retention group.

Similarly, each member of a class in a State that is taking steps to establish a State fund satisfying the requirements of § 280.102 must maintain the following written documentation:

1. Proof that the owner and operator are members of a class applying for suspension of enforcement; and
2. Proof that the owner and operator are unable to obtain financial assurance (which may include class letters attesting to the unavailability of assurance).

This documentation must be maintained either at the owner's or operator's place of business or at the UST site(s). The documentation must be maintained until the owner or operator is released from the requirements of this subpart under § 280.109.

This documentation is necessary for the Agency to enforce the regulations. Each member of the class must maintain such evidence, even if the class representative, on behalf of the entire class, demonstrates that financial assurance is generally unavailable to the class.

4. *Additional Criteria for Obtaining Initial Suspension.* To be eligible for an initial suspension an applicant must demonstrate not only that financial assurance is generally not available, but also that steps are being taken to form a risk retention group or to establish a State fund. This section discusses how a risk retention group is established and what steps the Agency proposes to require that a class take towards forming such a group or that a State take in establishing a State fund before an initial suspension can be granted.

a. *Forming a Risk Retention Group.* A risk retention group is a corporation or other association whose primary activity is to assume and spread the liability exposure of its group members. Under the Risk Retention Act, as amended, the procedures for establishing a risk retention group generally include:

1. *Soliciting membership.* In general, the more members there are, the further the risks can be spread, and the lower each member's capital contribution will be.

2. *Conducting actuarial and risk analyses.* The actuarial analysis estimates the capitalization requirements of the group and the risk analysis determines insurance premiums for each member.

3. *Raising capital.* The risk retention group may raise the needed capital through membership contributions only and incorporate as a mutual risk retention group, or it may also raise money through a stock offering and incorporate as a stock-owned group. In either case, the risk retention group may seek reinsurance, which would reduce its capitalization requirements. This is the most difficult and time-consuming step.

4. *Developing an operating plan.* The operating plan includes the types of coverage, deductibles, coverage levels, rates, and rating classification systems for each line of insurance the group intends to offer. Before beginning operations, the operating plan must be submitted to the insurance commission in each State where the group intends to do business.

5. *Obtaining a charter and license as a liability insurance company* under the laws of a State and obtaining authorization to engage in the business of insurance under the laws of such State.

b. *Risk Retention Group Formation Steps Necessary to Obtain Suspension.* The Agency proposes to require that an applicant class seeking an initial suspension submit evidence that

- the class has formed an association;
- each member in the class has made a binding financial commitment of at least $2,000 per year to the association (e.g., payment of dues); and
- the association is undertaking actuarial and risk analyses to determine its capitalization requirements and the potential premiums for risk retention group members.

To demonstrate that the class has formed an association, the class must submit its articles of incorporation, partnership agreement, or, in the case of private associations, bylaws attesting to the existence of the association.

The Agency proposes to require a demonstration of a binding financial commitment to the association (e.g., payment of dues) by its members to deter bad-faith applications for suspension of the financial responsibility requirements. Moreover, substantial financial commitments will be necessary to form an adequately capitalized risk retention group. The Agency selected the $2,000 amount as representative of the average annual UST insurance premium. The amount of the minimum required financial commitment may be revised as premium levels change over time. In many cases, owners and operators will need to contribute substantially larger sums to capitalize a group. A class may satisfy this step by submitting with the suspension application evidence of a binding financial commitment to the association. Comments are requested on whether the Agency should specify appropriate uses of funds committed to an association and on how such commitment shall be demonstrated.

The Agency also proposes to require the class to undertake actuarial analyses to estimate the risk retention group's capitalization requirements and likely range of insurance premiums for risk retention group members. This requirement will help ensure that the class recognizes quickly the likely cost of risk retention group coverage and any need to expand the membership of a class or potential risk retention group. A class may demonstrate satisfaction of this requirement by submitting evidence of a valid contract for such analyses and/or the results of such analyses.

The Agency believes the proposed approach is feasible within the time that will be available to owners and operators and will not be burdensome to classes that actually establish risk retention groups. The Agency requests comments on the proposed approach as

well as suggestions of alternative steps that can be taken to demonstrate that progress is being made toward forming a risk retention group.

c. *State Fund Formation Steps Necessary to Obtain Suspension.* Instead of showing that efforts are underway to create a risk retention group, an applicant class may be eligible for a suspension by showing that a State is taking steps to establish a State fund satisfying the requirements of § 280.102. The Agency proposes to require that an applicant class show:

- evidence that legislation establishing a State fund has recently been enacted and the State is in the process of making the Fund operational (e.g., a copy of the State law and a description of the State implementation efforts and schedule); or
- if the legislature is in session, evidence that a bill to establish a State fund has been introduced and is pending (e.g., a copy of the bill and a description of its status in the legislative process); or
- if the legislature is not in session, evidence that an appropriate State executive entity or a legislator intends to seek establishment of such a fund in the next legislative session (e.g., a schedule of plans). Evidence of such an intention must describe the scope of the desired State fund (e.g., a copy of a bill drafted for subsequent introduction) so that EPA can determine the extent to which the fund will cover the amount and scope of coverage required under § 280.92.

The Agency requests comments on this proposed approach and on alternative approaches for demonstrating progress toward establishing a State fund, including an approach that relies solely on submission of a statement by an appropriate State entity. In addition, the Agency requests comment on the desirability of requiring each member of a class seeking a suspension to set aside at least $2,000 pending creation of the State fund. It may be desirable to set aside such funds in order to (1) demonstrate the financial commitment of each member of the applicant class to meet the financial responsibility requirements; (2) avoid giving those UST owners and operators that obtain a suspension a competitive advantage over UST owners and operators complying with the financial assurance requirements; and (3) provide funds to establish a risk retention group in the event that efforts to establish a State fund fail and a risk retention group must be formed. Moreover, requiring that owners and operators seeking to establish a State fund set aside a minimum of $2,000 would remedy the inequity of a regulation that would require only owners and operators establishing a risk retention group to set aside such funds. The Agency requests comments on whether such a requirement is desirable, how an owner or operator should demonstrate that such funds have been set aside, and what restrictions should be placed on the use of these funds.

5. *Initial Suspension Application Procedures.* Any class of petroleum-containing USTs may submit an application to the Agency for a 180-day suspension of the financial responsibility requirements. The Agency will not review applications from individual owners or operators applying for a suspension. As noted below, authorized States, rather than EPA, may suspend enforcement for USTs located within their jurisdiction.

After receiving an application, the Agency will review the application for completeness. (See Exhibit 5 for the initial suspension application procedures.) If additional information is necessary, the Agency will contact the representative of the class to request such information.

BILLING CODE 6560-50-M

-208-

**Exhibit 5**
**Initial Suspension of Enforcement Procedures**

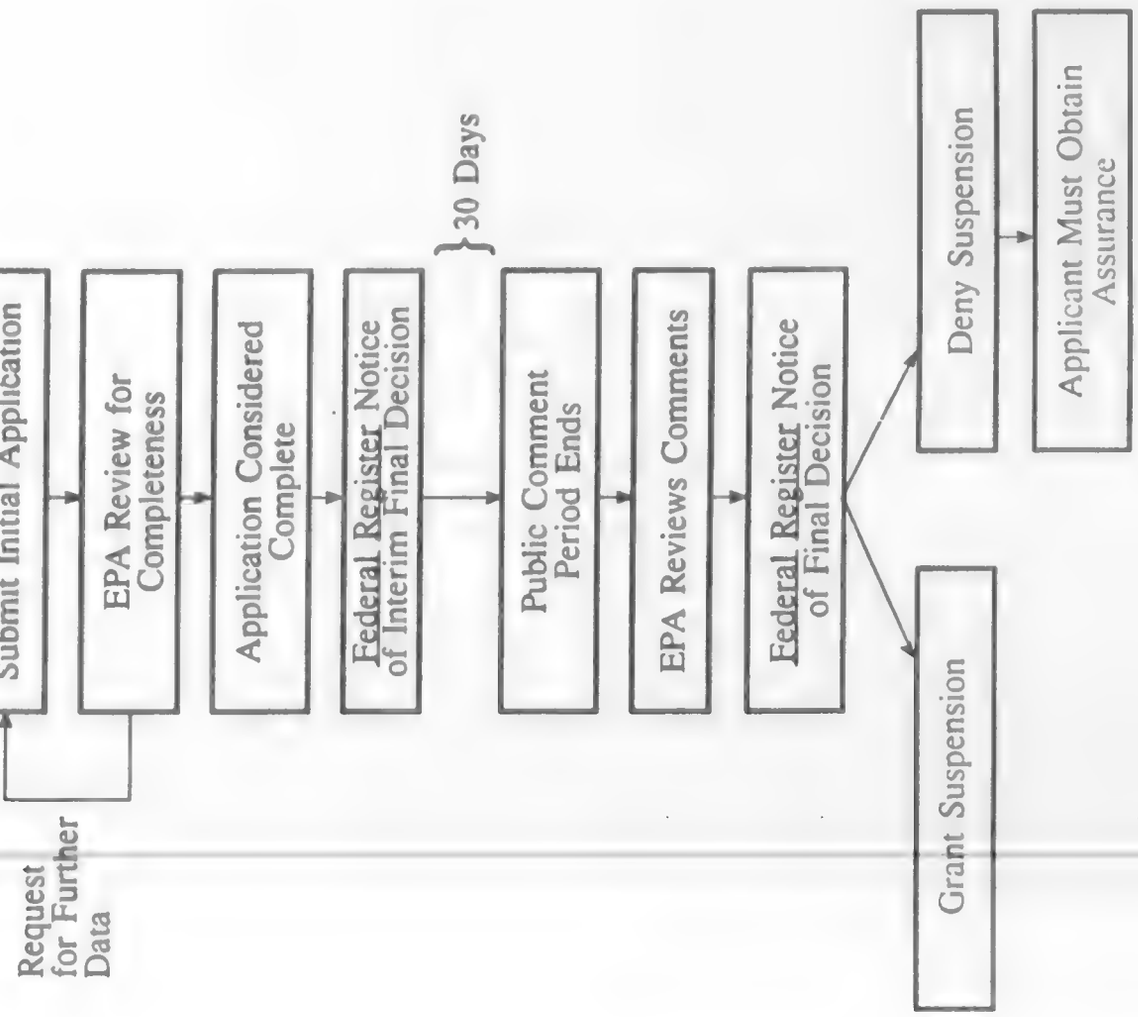


BILLING CODE 6560-50-C

When an application is complete, the Agency will not enforce the financial responsibility requirements for the applicant class if it appears that the applicant class has provided information indicating that a suspension may be appropriate. The Agency also considered, but rejected, the option of enforcing the financial responsibility requirements during the review period because this approach would be inequitable to those classes who have made a prima facie showing that they are entitled to a suspension for the period during which the application is considered. The Agency requests comments on the proposed approach, the option rejected, and other potential alternatives.

Under today's proposed rule, after determining that an application is complete, the Agency shall publish a notice in the **Federal Register** announcing the Agency's interim final decision and requesting public comment. In most cases, the Agency expects to allow the public 30 days to respond to the notice. If there is significant need for additional information or public involvement, the Agency may decide, on a case-by-case basis, to hold public hearings or extend the comment period. In most cases, the Agency expects to review all the comments and publish a final decision and a response to all comments in the **Federal Register** within 30 days after the close of the comment period.

If a suspension is granted, the suspension period is to begin on the date of the publication of an interim final decision approving a suspension. If, however, the interim final decision denies the petition and the final decision approves it, the suspension period begins on the date of the final decision. If enforcement is not suspended, the owners or operators in the applicant class must obtain appropriate financial assurance mechanisms. If a suspension request is denied, the Agency will explain in the **Federal Register** the reasons for the denial and the remedial steps that must be taken to comply with the financial responsibility requirements.

States authorized by the Agency to implement the UST program, as provided in RCRA section 9004(a), will make suspension of enforcement decisions regarding USTs located in their State. EPA will only suspend enforcement for USTs located in non-authorized States; the Agency lacks the authority to suspend enforcement of State laws; therefore, classes seeking suspension of enforcement from the Agency must consist of USTs located in non-authorized States only. If, during the application review period, a State receives authorization to implement the UST program, the class of USTs located in that authorized State will no longer be considered for suspension of enforcement by EPA.

The Agency considered, and rejected, two other options in resolving whether EPA or authorized States would be responsible for suspending enforcement for classes of USTs. Under the first option all suspension of enforcement decisions would be made by EPA, regardless of whether members of a class are located in an authorized State. However, EPA does not have authority to suspend enforcement of financial responsibility requirements in an authorized State. The second option would require that no class be larger than a single State. This option would prevent unnecessarily the formation of multi-state classes encompassing only non-authorized States and thereby increase the regulatory burden on both owners and operators and EPA.

The Agency considered several options in establishing the application review procedure. One option is to publish a notice announcing the receipt of an application, instead of a notice of the Agency's interim final decision on an application. To shorten the period of time necessary for at least an interim final decision on an application and to allow the public to comment on the Agency's reasons for approving or denying a petition before a final decision is made, the Agency rejected the former approach. The Agency also considered requiring notification of the public by means other than publication in the **Federal Register** (e.g., publication in State and local newspapers, letters to known interested parties). Instead of requiring such additional notices in all cases, the Agency, in consultation with States, will, on a case-by-case basis, decide whether additional notification is desirable.

The Agency requests comments on the proposed review procedure, including the length of the public comment period, and on optional methods for providing for public notice and participation in the Agency's review of applications for suspension of enforcement.

6. *Criteria for Renewal of Suspension.* A class of USTs containing petroleum may apply for a renewal of suspension of enforcement of the financial responsibility requirements if the class can demonstrate that (1) methods of financial responsibility are still not generally available, and (2) either (a) substantial progress has been made in establishing a risk retention group or (b) the State is unable or unwilling to establish a State fund and formation of a risk retention group is not possible.

a. *Unavailability of Financial Assurance.* To obtain a suspension renewal, an applicant must demonstrate that financial assurance mechanisms are still not generally available. This demonstration is required because conditions in the financial assurance markets and/or the composition of the applicant class may have changed since the initial suspension or previous renewal. For example, additional owners or operators may join the class as efforts are made to establish a viable risk retention group. The criteria and evidence for demonstrating lack of available assurance mechanisms are the same for a renewal as for the initial suspension. As noted earlier, certifications and evidence may be submitted to the Agency by the class representative rather than by each member of the class.

b. *Substantial Progress in Forming a Risk Retention Group.* The steps that must be taken by a class to demonstrate substantial progress in forming a risk retention group will vary from class to class, in part because the progress made by the time of the previous suspension will vary from class to class. Thus, to judge substantial progress the Agency proposes a combination of minimum standards and case-by-case evaluation. At a minimum, a class must demonstrate that it has formed an association that:

- Is taking steps toward completing actuarial and risk analyses;
- Either has sufficient membership to capitalize a risk retention group adequately or is actively seeking adequate capitalization, such as by increasing the group membership;
- Is composed of members who have each made a binding financial commitment of at least $2,000 per year to the association;
- Is taking steps toward completing an operating plan; and
- Is taking steps toward obtaining charter and license as a liability insurance company.

In addition, the Agency will review the adequacy of the steps taken by the class since the previous suspension. For example, classes eligible for a renewal must have progressed further in establishing a risk retention group than merely completing the steps identified immediately above.

However, for a class whose first suspension was based on ongoing State efforts to establish a fund and that seeks to demonstrate substantial progress in establishing a risk retention group, the Agency proposes requiring the class

applying for a renewal of suspension to demonstrate only that "steps are being taken to establish a risk retention group," as is generally required for an initial suspension. Similarly, for cases in which the composition of a class applying for renewal has changed substantially from that of the class initially receiving a suspension, the Agency will require the class to demonstrate only that steps are being taken to establish a risk retention group. In other words, this class must show that:

- The class has formed an association;
- Each member in the class has made a binding financial commitment of at least $2,000 per year to the association; and
- The association is undertaking actuarial and risk analyses to determine its capitalization requirements and the potential premiums for risk retention group members.

The Agency requests comment on the appropriateness of the proposed approach for determining substantial progress and on potential alternative approaches. The Agency also requests comments on whether the Agency should require that a class applying for a renewal of suspension of enforcement meet certain minimum standards of financial viability. The Agency is concerned that, even though substantial progress is being made to establish a risk retention group, the applicant class may be unable to establish a financially viable group. Options available to the Agency include setting net worth or capitalization requirements for classes attempting to establish risk retention groups or requiring that efforts are being made to expand the class or potential risk retention group such that the membership is sufficient for establishing a viable risk retention group.

c. *Inability or Unwillingness of a State to Establish a Fund.* Instead of seeking a renewal based on substantial progress in forming a risk retention group, a class may obtain an extension if it demonstrates that the State is unable or unwilling to establish a fund and that establishment of a risk retention group is not possible. To demonstrate that a State is unable or unwilling to establish a fund, an applicant class must submit such evidence for each State in which an UST is located for which suspension of enforcement is sought.

In general, evidence that a State is unwilling to establish a fund could include documents from the State legislature or State executive certifying that a bill to establish a State fund was introduced but failed to pass the legislature or was vetoed by the Governor, the Agency proposes to consider a State unable to establish a fund if the State is in the process of seeking to establish a fund, but has been unable to complete the process in the required period of time. Thus, a demonstration that a State is unable to establish a fund could include evidence that the State legislature has not been in session since the Subpart I rules became effective.

The Agency requests comments on this proposed approach and on alternative approaches, including the option of determining that any State that has not established a fund be considered as unable or unwilling to set up a fund.

d. *Impossibility of Forming a Risk Retention Group.* To obtain an extension based on the unwillingness or inability of a State to establish a fund, an applicant must also demonstrate that formation of a risk retention group is not possible, as mandated by RCRA section 9003(d)(5)(D). The Agency proposes that such evidence must include written correspondence or memoranda documenting the steps taken in attempting to form a risk retention group. These steps may include completion of actuarial and risk analyses; efforts to obtain adequate capitalization, such as through expansion of the membership of the class or potential risk retention group; efforts to obtain reinsurance; and analyses demonstrating that a risk retention group formed by the class would not be able to obtain a State charter or license as a liability insurance company. The evidence must also address why formation of a risk retention group is not possible.

The Agency requests comments on these proposed criteria and suggestions for alternative criteria.

7. *Procedures for Suspension Renewals.* The procedures for reviewing applications to renew a suspension are similar to those for initial suspensions. (See Exhibit 6 for the suspension renewal procedures.) After receiving an application, the Agency will review the application for completeness. If additional information is necessary, the Agency will identify the information gaps in a letter to the applicant class.

BILLING CODE 6560-50-M

-21B-

Exhibit 6

**Renewal of Suspension of Enforcement Procedures**

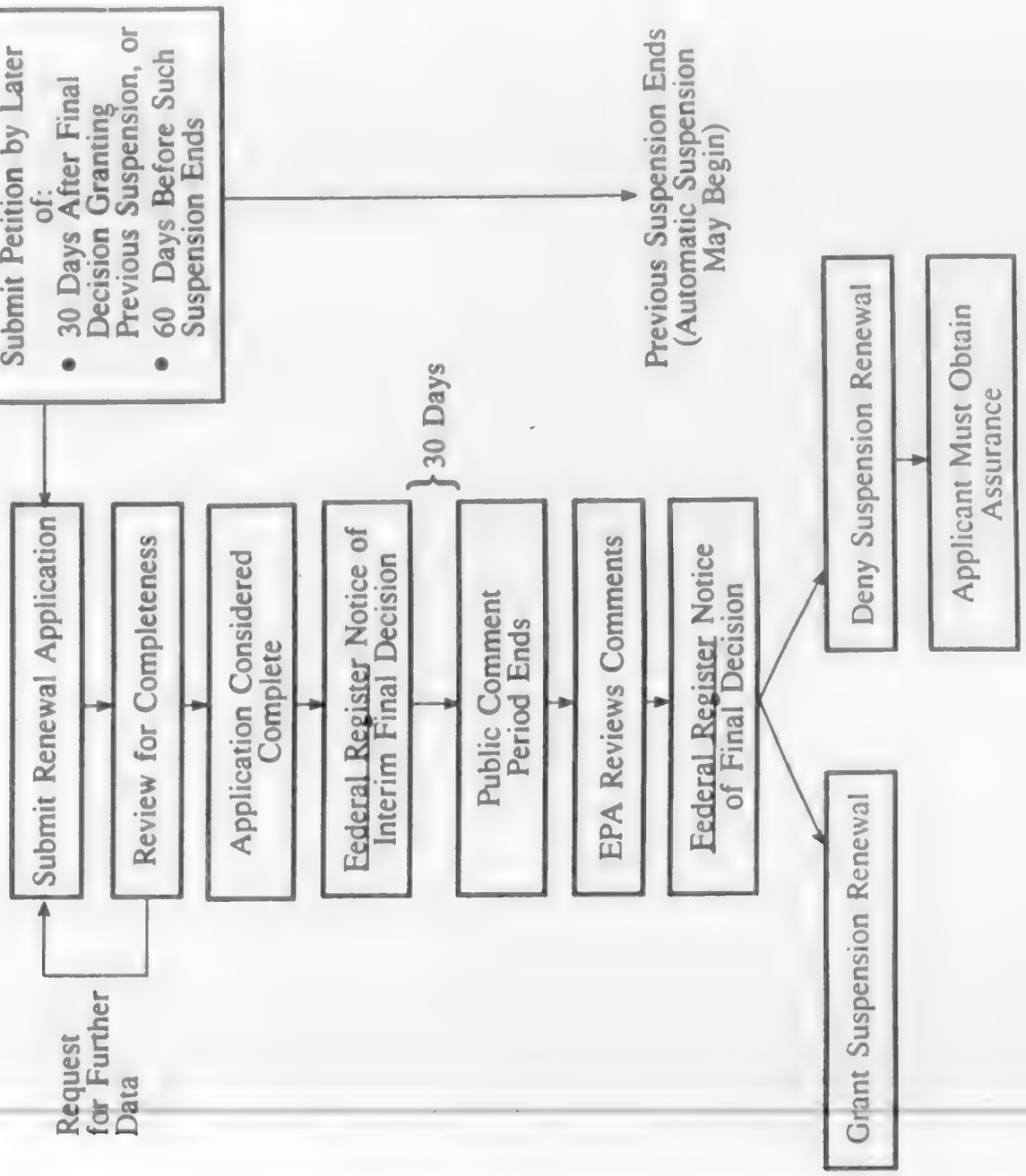


BILLING CODE 6560-50-C

Under today's proposed rule, after determining that an application is complete, the Agency shall publish a notice in the **Federal Register** announcing the Agency's interim final decision and asking for public comment. The public generally will have 30 days to respond to the notice. If there is significant need for additional information or public involvement, the Agency may decide, on a case-by-case basis, to hold public hearings, extend the comment period, or provide additional notice to the public. The Agency will review all the comments and publish a final decision and response to comments in the **Federal Register.**

Applications to renew suspensions must be received at least 60 days prior to the expiration of the previous suspension or 30 days after the previous final decision suspending enforcement for the class, whichever is later. If an application is received by such date and the Agency has not made an interim final decision on the renewal application before the end of the suspension period, a suspension of enforcement will automatically take effect pending review of the application. However, if an application is not received by such date, and the Agency has not made an interim final decision on the renewal application before the end of the suspension period, the class will become subject to enforcement of the financial responsibility requirements, even if the application is being reviewed by the Agency. In any case, if the Agency publishes an interim final decision to deny a renewal petition before the end of the previous suspension period, the class will be subject to enforcement when the previous suspension period ends.

In all cases, if a suspension renewal is granted, the renewal period will begin on the date of the expiration of the previous suspension period. Thus, if an initial suspension period ends and a class submits a renewal application 30 days later, the Agency may approve the application but the effective date of the suspension will be retroactive to the date of the end of the previous suspension period. If a suspension is not granted, the owners or operators in the applicant class must obtain the appropriate financial assurance mechanisms.

The Agency requests comment on these proposed suspension renewal procedures and suggestions for alternative procedures.

## IV. Major Differences Between This Proposal and RCRA Subtitle C Financial Responsibility Rules

### *A. Introduction*

EPA's financial responsibility requirements for RCRA Subtitle C treatment, storage, and disposal facilities provided a model for developing the proposed Subtitle I financial responsibility rules for USTs containing petroleum. In many respects, the proposed rules are similar or identical to existing RCRA Subtitle C financial responsibility rules for closure, post-closure care, and liability coverage, and to proposed financial responsibility rules for corrective action for known releases. However, in some instances the Subtitle C and Subtitle I rules differ. For example, each allows different types of mechanisms, and the requirements for the financial test of self-insurance and reporting differ as well.

The Subtitle I and Subtitle C rules are based on different statutory authority. EPA is mandated under RCRA Subtitle I (section 9003(c)) to require UST owners or operators to demonstrate financial responsibility for corrective action and third-party compensation. EPA is also required, under RCRA Subtitle C (section 3004(u)), to promulgate financial responsibility requirements for corrective action for known releases at hazardous waste treatment, storage, and disposal facilities. By contrast, financial assurance requirements for closure, post-closure care, and liability coverage at Subtitle C facilities were promulgated under section 3004(a)(6) of RCRA, which authorizes EPA to publish such requirements "as may be necessary or desirable."

Other major differences are explained below as they relate to specific provisions of the Subtitle I rule. For each section of proposed 40 CFR Part 280, Subpart I, where there are major differences from the Subtitle C regulations, the following sections identify what these differences are and, where relevant, describe the rationale for the differences.

### *B. Section 280.91 Definition of Terms for Financial Responsibility*

1. *Accidental Releases.* The proposed Subtitle I rule, unlike the Subtitle C rules, does not differentiate between sudden and nonsudden accidental releases.

Under the Subtitle C rules for liability coverage, owners and operators of land disposal facilities are required to demonstrate financial responsibility for third-party claims arising from both sudden and nonsudden accidental occurrences, whereas owners and operators of non-disposal facilities are required to maintain liability coverage for sudden accidental occurrences only. It is therefore necessary, in the Subtitle C rules, to define sudden and nonsudden accidental occurrences separately. Under the proposed Subtitle I rule, by contrast, all UST owners and operators are required to maintain coverage for both types of events. Because the requirements do not differentiate between the types of coverage, separate definitions are not provided.

2. *Legal Defense Costs.* The Subtitle I definition of legal defense costs is broader than the Subtitle C definition which takes into account only the legal defense costs of the insurer, and only those costs related to defenses against third-party claims. The broader definition under the proposed Subtitle I rule reflects the fact that, unlike the Subtitle C definition, it applies to mechanisms other than insurance and to corrective action as well as to third-party damage claims.

### *C. Section 280.92 Amount and Scope of Required Coverage*

1. *Level of Per-Occurrence Coverage.* Section 9003(d) of Subtitle I requires UST owners or operators of facilities engaged in petroleum production, refining, or marketing to carry at least $1 million of per-occurrence coverage for corrective action and third-party compensation. The proposed Subtitle I rules codify this per-occurrence statutory requirement. By contrast, Subtitle C provides no statutory guidance as to required or desirable levels of financial assurance. The amount of financial assurance required for the costs of closure and post-closure care at Subtitle C facilities is based on estimates by the owner or operator of the costs of the required tasks; the amount of per-occurrence required liability coverage for Subtitle C facilities is set by regulation: $1 million for sudden accidental occurrences and $3 million for nonsudden accidental occurrences.

2. *Level of Aggregate Coverage.* The Subtitle C rules require $2 million aggregate liability coverage for sudden accidental occurrences and $6 million aggregate liability coverage for nonsudden accidental occurrences. Subtitle I requirements provide for a range of aggregate levels for the combined costs of corrective action and liability claims due to both types of accidental occurrences; the range varies according to the number of USTs owned or operated.

The actual costs of releases will be directly related to the number of

treatment, storage, or disposal facilities (TSDFs) or USTs that are owned or operated by the same entity. The number of TSDFs owned or operated by a single entity varies from 1 to 50; however, the number of USTs owned or operated by a single entity can range from one to as many as several thousand. The range of levels of required aggregate coverage in the Subtitle I requirements reflects this greater variation in numbers of USTs owned or operated by a single responsible party. The aggregate levels under the Subtitle I rule were based on a statistical analysis of the effect of the number of tanks covered on the estimated aggregate levels of corrective action and third-party liability costs.

3. *Apportionment of Coverage.* Subtitle C contains separate regulations for financial assurance for corrective action and for third-party liability; under the proposed financial responsibility requirements for corrective action, only a financial test and a guarantee can be used to cover both types of costs simultaneously. Subtitle I combines requirements for corrective action financial assurance and third-party liability coverage into one regulation and allows the use of the same mechanisms for both types of coverage. In Subtitle I, Congress did not provide guidance on how coverage should be apportioned between the two different purposes for which financial assurance was specified.

The combined coverage of corrective action and third-party liability costs under the Subtitle I requirements corresponds to the way in which pollution liability insurance is currently being sold to UST owners and operators. Environmental impairment liability, which covers third-party liability for TSDFs, commonly excludes on-site cleanup.

*D. Section 280.93 Allowable Mechanisms and Combinations of Mechanisms*

1. *Allowable Mechanisms.* The proposed Subtitle I rule allows the use of indemnity contracts, while Subtitle C rules do not. Furthermore, Subtitle C requirements for liability coverage do not allow surety bonds and letters of credit for such coverage, but these are allowable mechanisms under the proposed Subtitle I rule. On the other hand, the Subtitle C requirements for financial assurance for closure and post-closure care and proposed Subtitle C requirements for financial assurance for corrective action allow the use of trust funds, while Subtitle I does not.

Indemnity contracts were not considered for Subtitle C. As proposed under Subtitle I, however, this instrument should provide adequate financial assurance. A trust fund mechanism (in contrast to a standby trust fund) is not proposed for the Subtitle I rules because funding the trust fund in a short period of time could be prohibitively expensive, while funding the trust fund over a longer pay-in period might not provide adequate financial assurance during the first years of tank operation.

Subtitle I allows surety bonds and letters of credit for corrective action and third-party liability coverage because, as designed, they should provide adequate assurance. (See the following sections on surety bonds and letters of credit for further discussion of why these mechanisms are allowed in the Subtitle I proposed rule.)

2. *Combinations of Mechanisms.* The mechanisms that may be combined to provide financial assurance under the Subtitle I rule differ from those that may be combined under the Subtitle C rules. Under the Subtitle C provisions for closure and post-closure care, the following mechanisms may be combined: trust funds, surety bonds, letters of credit, and insurance. The financial test and corporate guarantee may not be combined with any other mechanism. The Subtitle C provisions for liability coverage, however, allow the owner or operator of a TSDF to combine the financial test or corporate guarantee mechanisms with insurance, but do not allow the combination of a financial test and a corporate guarantee.

Under the proposed Subtitle I rule, all allowable mechanisms may be combined to provide coverage for corrective action and third-party liability, except for the financial test and corporate guarantee, which cannot be combined with each other if the financial statements of the owner or operator are consolidated with the financial statements of the guarantor. The Subtitle I rules thus differ from the Subtitle C rules first of all, in allowing financial tests and guarantees to be combined with other mechanisms, as well as insurance. The Agency's rationale for allowing combinations of the financial test and guarantee with other instruments under Subtitle I is, however, the same as its rationale for allowing either financial tests or corporate guarantees to be combined with insurance under the Subtitle C liability requirements: Such combinations can enable an owner or operator to use a financial test or guarantee to cover the deductible portion of his policy, thereby decreasing his insurance costs. In a similar fashion, a financial test (or guarantee) combined with mechanisms such as surety bonds or letters of credit can reduce the costs of those mechanisms.

The proposed Subtitle I rules further differ from the Subtitle C rules in allowing the combinations of a financial test and a guarantee where the financial statements of the owner or operator are not consolidated with those of the guarantor. Under Subtitle C, the combination of a financial test and a guarantee was disallowed in order to avoid the situation whereby the assets of a TSDF owner or operator could be double counted in the assets of its corporate parent. (Under the Subtitle C financial responsibility rules, only corporate parents can offer a guarantee to their subsidiaries; non-parent guarantees are not allowed). The proposed Subtitle I provision prohibiting the combination of a financial test and a guarantee in cases where the owner or operator has consolidated financial statements with the guarantor is intended to accomplish the same objective; that is, to prevent double counting of assets for purposes of demonstrating financial assurance.

*E. Section 280.94 Financial Test of Self-Insurance*

The Subtitle I financial test of self-insurance differs from the Subtitle C financial test for liability coverage in the following respects:

- The Subtitle I tangible net worth requirement is 10 times rather than 6 times the annual aggregate amount to be covered.
- The Subtitle I financial test does not have a net working capital requirement or a requirement that owners or operators have one of the top four bond ratings assigned by Moody's or Standard and Poor's.
- The Subtitle I financial test does not require that firms have a specific amount of assets within the United States.
- The Subtitle I financial test does not require a firm to have or submit an independent certified public accountant's report on his financial statements, or an independent certified public accountant's special report attesting to the accuracy of the information presented by the owner or operator of the firm.

The Subtitle I test was selected based on statistical analysis that indicated that firms that have net worth equal to 10 times their corrective action and third-party liability obligations will be able to meet these obligations 99 percent of the time. The Subtitle C test for liability coverage was designed with different objectives in mind: the multiple

net worth requirement was based on the expected level of reserves necessary to ensure that a firm could pay its obligations even if its financial condition was rapidly deteriorating.

The other differences between the two tests can be explained by the Agency's intention that the Subtitle I test be easier to administer, easier to verify, and more accessible to privately held firms than the Subtitle C test. Administrative simplicity and test availability were particularly important priorities because of the large size of the Subtitle I regulated community and the presence of regulated firms in virtually every industry sector.

*F. Section 280.95 Guarantee*

Subtitle C allows a guarantee for liability coverage only from a parent corporation that directly owns 50 percent of the voting stock of the owner or operator. The proposed Subtitle I requirements allow the guarantee to be provided by a related firm that (1) possesses a controlling interest in the owner or operator, or (2) possesses a controlling interest in a firm that in turn possesses a controlling interest in the owner or operator, or (3) is controlled through stock ownership by a parent corporation that also has a controlling interest in the owner or operator. A guarantee may also be provided by a firm that is engaged in a substantial business relationship with the owner or operator and is issuing the guarantee as an act incidental to that relationship. The Subtitle I definition of "substantial business relationship" should ensure that under many State insurance laws, the provision of guarantees incident to such relationship will not be considered as the "business of insurance" and therefore will not be subject to State regulation. Uncertainty about the applicability of State insurance laws was a major reason why the Agency did not propose nonparent guarantees under Subtitle C.

The Subtitle I provisions are intended to make the mechanism more broadly available by allowing corporate affiliates and corporate "grandparents" to provide guarantees, and by allowing firms, such as petroleum wholesalers, to provide guarantees to their customers.

*G. Section 280.96 Indemnity Contract*

The proposed Subtitle I rule allows the use of indemnity contracts; Subtitle C rules do not. The indemnitor must be a corporation engaged in a substantial business relationship with the owner or operator and must issue the guarantee incidental to that relationship. This provision is designed to allow petroleum suppliers who are currently providing indemnities against liability to their customers to continue to do so, without being subject to many State insurance laws. Unlike the Subtitle I guarantee, however, the indemnity is not allowed to be used by related firms, in order to ensure that such firms rely on the guarantee or other mechanisms.

*H. Section 280.97 Insurance*

The proposed Subtitle I rules for insurance policies closely follow the Subtitle C financial responsibility rules for liability coverage. Both require first-dollar coverage (exclusive of legal defense costs) and establish the same qualifications for insurers. Both also require an endorsement or a certificate of insurance as demonstrations of adequate insurance coverage; however, the wording and format of these documents as they are used for Subtitle C financial responsibility has been altered slightly for the Subtitle I rule. The major difference between the two programs is that insurance under Subtitle I can cover both corrective action costs and third-party damages. Under Subtitle C, insurance is not an allowable mechanism under the proposed corrective action financial responsibility rules for continuing releases, because such releases have already occurred; it is very unlikely therefore that insurance would be available to cover such releases.

*I. Section 280.99 Surety Bond*

1. *Use of Surety Bonds to Compensate Third Parties.* Surety bonds are an allowable mechanism to demonstrate financial assurance for liability coverage under the proposed Subtitle I rule but not under existing Subtitle C regulations.

At the time the Subtitle C rules for liability coverage were promulgated, the Agency believed that insurance would be obtainable. Further, because insurance is so well suited to this type of coverage, the Agency did not consider that other mechanisms besides insurance or the financial test would be necessary or desirable for demonstrating compliance with the rules. The Agency also questioned the validity and enforceability of surety bonds as a mechanism for assuring liability costs under State law.

Since the promulgation of these Subtitle C rules, however, the insurance market has been severely constrained, and the Agency has been exploring other options for demonstrating financial responsibility. As a result, the Agency is proposing in the Subtitle I rule to allow surety bonds (as well as other mechanisms) as alternatives to insurance. The Agency has developed procedures for drawing on these mechanisms, and requirements for the approval of such mechanisms as "valid and enforceable contracts" by the State Attorney General, in order to solve some of the possible problems that could inhibit the use of these mechanisms to cover, in particular, third-party liabilities.

2. *Use of Performance Bonds vs. Payment Bonds.* Under Subtitle I, performance bonds can be used to demonstrate financial responsibility for taking corrective action and compensating third parties. Under Subtitle C, both performance and payment bonds can be used to demonstrate financial responsibility for closure and post-closure care costs at permitted facilities. Neither type of bond is acceptable under the Subtitle C liability coverage rules.

In proposing performance bonds for the Subtitle I requirements, the Agency is also, in effect, allowing payment bonds, since performance bonds are written to allow a surety to choose to pay rather than perform.

*J. Section 280.100 Letter of Credit*

The proposed Subtitle I rules allow letters of credit as financial assurance mechanisms for liability coverage; the Subtitle C requirements for liability coverage do not.

Like surety bonds, letters of credit for liability coverage were not proposed under the Subtitle C requirements because the Agency assumed that owners or operators could use insurance and financial tests to demonstrate financial responsibility. The Agency has since discovered, however, that insurance for liability coverage may not be widely available. In addition, Subtitle I provides a statutory basis—by including letters of credit in its list of financial assurance mechanisms for both corrective action and third-party liability—for use of this mechanism. EPA therefore is proposing letters of credit for assurance under Subtitle I.

*K. Section 280.101 Use of State-Required Mechcnisms*

The Subtitle C rules require that the State-required mechanisms used to demonstrate compliance with the Federal financial responsibility requirements be "at least equivalent" to the financial mechanisms specified in Subtitle C. Subpart I substitutes the phrase "at least as stringent" in this same context.

The phrase "at least as stringent" more clearly emphasizes that State-required mechanisms must provide at least the same degree of assurance as

Federal mechanisms and is intended to parallel the requirement that State programs be no less stringent than the Federal program in order to receive State program approval under RCRA section 9004(b).

*L. Section 280.102 State Fund or Other State Assurance*

1. *Acceptability of State Funds as a Method of Assurance.* Existence of a State fund is listed as an acceptable method of assurance only in the proposed Subtitle I rules. State funds are allowed under Subtitle I because (1) RCRA section 9004(c)(1) explicitly allows their use in authorized State programs and (2) because State funds can provide adequate assurance. While existence of a State fund is not listed explicitly as an allowable mechanism under the Subtitle C rules, it is a type of State assumption of responsibility, which is allowed by the Subtitle C regulations.

2. *Submission to Regional Administrator of Description of State Fund or Other State Assurance.* Under Subtitle C, the owner or operator must submit to the Regional Administrator a letter from the State describing the State's assumption of responsibility and requesting that it be considered acceptable. Under the proposed Subtitle I rules, the State must submit to the Regional Administrator a description of the State fund or other State assurance.

The Subtitle I requirement that States submit a letter on behalf of all owners or operators to be covered by the State fund or other State assurance was included because some State funds were designed only to cover unusual emergencies and not all types of UST releases. EPA therefore considered that the State is more qualified than owners or operators to determine whether the State fund may be used to satisfy the Subpart I financial requirements.

*M. Section 280.103 Standby Trust Funds*

A standby trust fund is being proposed under Subtitle I as an allowable depository mechanism for funds drawn on guarantees, indemnity contracts, surety bonds, and letters of credit. Standby trust funds have also been proposed in the Subtitle C financial responsibility rules for corrective action for known releases, and are required in the financial responsibility rules for closure and post-closure care. Under Subtitle C they also are used as a mechanism to hold funds drawn from other mechanisms. Such a depository mechanism is necessary, since EPA cannot directly receive funds drawn on financial assurance instruments; the funds must instead be remitted to the Treasury. A Congressional appropriation would then be required to obtain the funds for their original purpose. Under Subtitle C, a standby trust is not required for the corporate guarantee for liability coverage because the funds are paid directly to the third-party claimant.

*N. Section 280.104 Substitution of Financial Assurance Mechanisms By An Owner or Operator*

Under the proposed Subtitle I requirements, an owner or operator may substitute one allowable financial assurance mechanism for another, provided that he maintains a mechanism or combination of mechanisms that satisfies the financial responsibility requirement. The Subtitle C rules require an owner or operator to submit evidence of alternate financial assurance and obtain the written consent of the Regional Administrator before he is allowed to substitute the alternate assurance for his existing mechanism.

The decision not to require the written consent of the Regional Administrator under the Subtitle I rule is consistent with the Agency's general approach under Subtitle I to limit reporting requirements. Nevertheless, under the proposed Subtitle I rules, owners or operators will still have to maintain proof of continuous financial assurance.

*O. Section 280.105 Cancellation or Nonrenewal by a Provider of Financial Assurance*

1. *Circumstances Under Which a Third-Party Financial Assurance Mechanism May Be Cancelled.* Under the proposed Subtitle I rule, a provider of financial assurance may cancel or fail to renew an assurance mechanism 120 days after giving notice of termination to the owner or operator. The 120-day period during which a third-party mechanism cannot be cancelled is identical to the cancellation provisions for insurance, surety bonds, corporate guarantees, and letters of credit in the Subtitle C regulations for closure and post-closure care financial assurance. Under the Subtitle C provisions for surety bonds, guarantees, and letters of credit, if an owner or operator fails to provide alternate assurance within the 120-day period, the Regional Administrator may draw on the mechanism. These provisions differ from the Subtitle C provisions for liability coverage, which only allow a corporate guarantee to be cancelled if and when the Regional Administrator approves alternate liability coverage. Insurance for liability coverage under Subtitle C may be cancelled 60 days after written notice is received by the Regional Administrator.

The 120-day requirement was adopted for the Subtitle I cancellation requirements to avoid the situation where a provider of financial assurance does not have a definite date by which he can cancel the mechanism. For both the Subtitle I proposed rule and the RCRA Subtitle C closure and post-closure care regulations, specifying a definite time by which a provider may cancel was intended to increase the availability of third-party instruments to the extent possible without endangering human health and the environment.

The Subtitle C liability coverage requirements for the corporate guarantee (which allow cancellation only if an alternate means of assurance has been approved) may provide better assurance of continuous coverage than the 120-day provision. However, such provisions were not considered to be appropriate for the Subtitle I rules, given the decision to allow guarantees to be provided by non-parent corporations. Such non-parent guarantees are expected to be an important means of complying with the regulations for many UST owners or operators; however, these mechanisms are unlikely to be offered unless the guarantor can ascertain his potential liability under the mechanism. A provision that allows cancellation of the guarantee only if alternate assurance is obtained would leave the guarantor uncertain as to when his liability would end.

2. *Time by Which an Owner or Operator Must Obtain Alternate Financial Assurance After Receiving a Notice of Cancellation from a Provider of Financial Assurance.* Under the proposed Subtitle I rule, owners or operators of petroleum USTs must obtain alternate coverage within 60 days after receiving a notice of cancellation or nonrenewal from a provider of financial responsibility. Under comparable provisions in the Subtitle C program (i.e., the cancellation provisions for surety bonds, letters of credit, and corporate guarantees for closure and post-closure care financial assurance), the owner or operator must obtain alternate coverage within 90 days after receiving a notice of cancellation of his existing financial assurance instrument. (The Subtitle C provisions for liability coverage are not comparable in this respect, since neither the insurance nor the corporate guarantee provisions set time limits for obtaining alternate coverage on the basis of the receipt of a cancellation notice.)

Given the 120-day notice of cancellation period, the time in that

period by which an owner or operator must obtain alternate coverage determines how long the Agency will have to draw on a mechanism before it is cancelled. Under the proposed Subtitle I rules, requiring owners or operators to obtain alternate financial assurance 60 days after receipt of a cancellation notice leaves the Agency 60 days in which to draw on the mechanism if the owner or operator fails to get alternate assurance and EPA determines that funds are needed. Under the Subtitle C rules, requiring owners or operators to obtain alternate assurance 90 days after receipt of a cancellation notice leaves the Agency 30 days in which to draw on the mechanism if the owner or operator fails to get alternate assurance. The Agency believes that the longer time period available in the Subtitle I case for deciding on whether to draw on existing mechanisms is necessary. In the Subtitle C case, it is certain that funds for closure and post-closure care will be needed. The Agency therefore will always draw on the existing financial assurance mechanism if the owner or operator fails to obtain alternate assurance after receiving notice that his existing mechanism will be cancelled. However, if an owner or operator of an UST (in the Subtitle I case) fails to obtain alternate assurance after receipt of a cancellation notice, it is not certain that funds will be needed from an existing mechanism. To justify drawing on the existing mechanism, the Agency must first determine whether a release has occurred or is suspected; this determination will probably require a site inspection. Therefore, the Agency will need a longer time period in the Subtitle I case than in the Subtitle C case to decide whether to draw upon the existing mechanism.

*P. Section 280.106 Reporting by Owner or Operator*

Under the Subtitle C requirements, an owner or operator must submit evidence of financial assurance to EPA. EPA maintains this evidence throughout the operating life of the facility and, if post-closure care is required, throughout the post-closure care period. Under the proposed Subtitle I rules, an owner or operator is not required to submit evidence of financial assurance on a regular basis. Instead, evidence is submitted only in the following circumstances:

(1) When the owner or operator notifies the Regional Administrator of the existence of a new petroleum underground storage tank under § 280.22;

(2) Within 30 days after the owner or operator has a known or suspected release from a petroleum underground storage tank required to be reported under § 280.74;

(3) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of

- commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
- suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
- failure of a guarantor or indemnitor to meet the requirements of the financial test, or
- other incapacity of a provider of financial assurance;

(4) When an owner or operator receives notice that an assurance mechanism is cancelled, as required by § 280.105(b); or

(5) If the owner or operator using the financial test fails to meet the requirements of the test, as required by § 280.94.

The Agency recognizes that requiring UST owners or operators to submit evidence of Subtitle I financial responsibility on a regular basis may improve compliance with the rule. However, the Agency believes that reporting requirements under Subtitle I need not and should not be as stringent as those of Subtitle C for the following reasons:

- The Subtitle I regulated community is much larger than the Subtitle C regulated community, therefore amplifying the problem of regular administrative review.
- The absence of regular reporting will not necessarily result in non-compliance. There is evidence that UST owners or operators are already obtaining insurance to limit their exposure to future costs of corrective action or third-party claims.
- The Leaking UST Trust Fund creates incentives for owners and operators to comply, since the Fund may limit the liability of owners or operators to the amount of required financial responsibility only if the owner or operator has maintained evidence of financial responsibility and if other conditions are met. The enforcement suspension provisions create incentives for owners or operators to demonstrate to the Agency that they have attempted to comply with the financial responsibility regulations.

*Q. Section 280.107 Recordkeeping*

Under Subtitle I, an owner or operator must maintain evidence of financial responsibility at the tank site or place of business until one year following closure. This requirement applies both to active mechanisms and mechanisms that have been cancelled or not renewed. In addition, if a release is confirmed, evidence of all assurance mechanisms covering such a release must be maintained until one year after completion of closure and corrective action. Under Subtitle C, there are no requirements for owners or operators to maintain evidence of financial responsibility at a hazardous waste facility or place of business.

The difference between Subtitle I and Subtitle C on recordkeeping is related to the difference between the two with respect to reporting of financial assurance to EPA. Because Subtitle C requires owners or operators to submit evidence of financial assurance to EPA under all circumstances, EPA controls the records of financial assurance, thus rendering unnecessary a requirement that owners or operators also maintain such evidence at the facility or place of business. In contrast, Subtitle I requires UST owners or operators to report financial assurance to EPA only under certain circumstances; therefore, owners or operators must be required to maintain records of financial assurance so that records can be accessed if necessary (for example, if a claim is made on an insurance policy from previous years).

The proposed Subtitle I rule, unlike the Subtitle C rule, also requires the owner or operator to maintain a certification that the financial assurance mechanism used to demonstrate financial responsibility is in compliance with the requirements of the rule. Because owners or operators are not required to submit evidence of financial assurance to EPA on a regular basis, the Agency believes that requiring the additional certification is necessary to provide incentives for owners or operators to comply with the regulations at all times. Furthermore, the certification requirement will serve as an enforcement tool. The certification is not necessary in the Subtitle C context because the more stringent reporting requirements enable the Agency to monitor at all times compliance with the rule.

*R. Section 280.108 Drawing on Financial Assurance Mechanisms*

Under Subtitle I, the Agency is proposing special procedures for drawing on certain mechanisms (i.e., guarantees, indemnity contracts, surety bonds, and letters of credit) for third-party liability claims; the Subtitle C

rules do not contain such procedures since (except for guarantees) these mechanisms are not allowed for liability coverage.

Guarantors, indemnitors, sureties, and providers of letters of credit do not have well-developed procedures for investigating claims of third-party liability. Instead, they require precise definitions of the triggers for payment under those mechanisms. Subtitle I, therefore, relies on either (1) agreements by both the owner or operator and the provider of financial assurance that the claim is valid and should be paid, or (2) a court order establishing a final judgment against the owner or operator. These two alternatives are similar to the procedures used to determine when insurance payments should be made, for cases in which the claim is not contested by the insurer, and provide a precise statement that can be relied upon by the provider of financial assurance.

*S. Section 280.109 Release from Financial Assurance Requirements*

Under Subtitle I, the owner or operator will be released from financial assurance requirements upon completion of closure of tanks requiring coverage or, if corrective action is required, upon completion of the corrective action and closure. Under Subtitle C financial assurance for closure and liability coverage, the owner or operator will be released from financial assurance requirements after certification that closure has been completed in accordance with the approved plan. For post-closure care, the owner or operator will be released after certification that the post-closure care period has been completed in accordance with the approved plan.

Subtitle I does not allow the automatic release of the owner or operator from financial assurance requirements at the closure of a tank because a release requiring corrective action could be discovered during closure and the costs of corrective action could go unfunded.

*T. Section 280.110 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance*

1. *Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance.* The proposed requirements for the Subtitle I program are the same as the Subtitle C requirements. The language of the requirements, however, has been amended to be more applicable to the specific assurance instruments and terminology of the Subtitle I proposal.

Under both sets of requirements, an owner or operator must notify the Regional Administrator by certified mail within 10 days of the start of a bankruptcy proceeding in which he is named as debtor. Under the Subtitle C requirements, a guarantor who is named as a debtor in a bankruptcy proceeding must notify the Regional Administrator, whereas under the Subtitle I rules in such a situation the guarantor must notify the owner or operator. The difference is due to the fact that under the Subtitle I requirements, EPA must be notified only if the owner or operator cannot get alternate coverage in the event of a guarantor's bankruptcy.

The proposed Subtitle I rule further differs from the Subtitle C requirements in that an indemnitor named as a debtor in a bankruptcy proceeding must also notify the owner or operator. The Subtitle C requirements do not have this provision for indemnitors, because indemnity contracts are not allowable financial responsibility mechanisms under the rules.

2. *Incapacity of a State Fund or Other State Assurance.* If a State is assuming responsibility for financial assurance under the Subtitle C requirements, it does not have to notify the owner or operator or Regional Administrator if it becomes incapable of assuming financial responsibility.

Under Subtitle I, however, a State that provides a State fund as evidence of financial responsibility must notify the owner or operator and the Regional Administrator if the State fund becomes incapable of providing financial responsibility as required under the financial assurance rules. The proposed Subtitle I rule requires this notification because incapacity of a State fund is a concrete, definable event that can occur for a number of reasons; for example, monies in a State fund could be depleted. Incapacity of a State assuming financial responsibility under Subtitle C is, by contrast, an extremely unlikely event.

*U. Section 280.111 Suspension of Enforcement*

RCRA section 9003(d)(5)(D) authorizes the Agency to develop procedures and criteria for suspending enforcement of the financial responsibility requirements for particular classes or categories of underground storage tanks or for underground storage tanks located in particular States. Subtitle C contains no comparable provisions.

## V. Integration with Other EPA Programs

In proposing the Subtitle I financial responsibility requirements, the Agency has considered the integration of these requirements with other EPA programs, including other Subtitle I rulemakings and the Leaking Underground Storage Tank Trust Fund program.

*A. Other Subtitle I Rulemakings*

Certain requirements in other Subtitle I rulemakings are relevant to the UST financial responsibility requirements proposed today. For instance, the provisions of the UST corrective action requirements may affect the availability of the financial assurance mechanisms proposed today by influencing the range and certainty of corrective action costs. In addition, reporting of a tank release under the corrective action requirements triggers the need to submit evidence of financial responsibility for review under the Subpart I financial responsibility requirements. The Agency is proposing today that owners or operators of petroleum USTs must provide evidence of financial assurance until one year after closure or, if corrective action is needed at closure, one year after closure and corrective action are completed. Thus, the procedures developed in UST closure and corrective action rulemakings for determining when closure occurs or, if corrective action has been completed, will affect the options chosen for terminating financial responsibility requirements.

In addition, the technical standards for USTs containing petroleum may influence the appropriate amounts of coverage. The release detection requirements eventually may lower costs of corrective action and third-party damages because releases will be detected earlier. UST technical standards should reduce the likelihood of releases from USTs containing petroleum; adjustments may therefore be needed to the aggregate amounts of coverage, which are based on the probability of a release. Because of these potential changes, the Agency will monitor the costs and frequency of releases and, if necessary, adjust the required amounts of coverage.

Finally, the Agency lacks sufficient data to set the appropriate amounts of financial responsibility for USTs containing regulated substances other than petroleum. Thus, EPA is developing an advance notice of proposed rulemaking to help gather data on the frequency of releases from such USTs, costs of corrective action and third-party damages, and the availability of the assurance mechanisms for the regulated community.

*B. Leaking Underground Storage Tank (UST) Trust Fund and Response Program*

SARA amended Subtitle I by adding a new Subsection 9003(h), to establish a response program for releases from USTs containing petroleum. As part of this program, Congress authorized the Administrator to issue corrective action orders and to expend monies from the Leaking Underground Storage Tank (UST) Trust Fund to pay for corrective action costs and certain enforcement and cost recovery activities at petroleum-containing UST sites. Before the effective date of regulations promulgated under section 9003(c) of Subtitle I, expenditures from the Leaking UST Trust Fund can be made when, in the judgment of the Administrator or State, corrective action is necessary to protect human health and the environment. After the effective date of these UST regulations, Fund monies can be used to pay for corrective action in any of the following situations:

(1) An owner or operator who is required to undertake the corrective action and who is capable of carrying out corrective action properly does not exist or cannot be identified;.

(2) Prompt action by the Administrator (or State) is necessary to protect human health and the environment;

(3) The financial resources of the owner or operator, including any UST financial assurance, are inadequate to pay the entire cost of the corrective action, and expenditures from the Fund are necessary to assure effective corrective action; or

(4) An owner or operator has failed or refused to comply with an order to perform corrective action.

Section 9003(h)(11) explicitly prohibits the expenditure of Fund monies for corrective action at any facility where the owner or operator has failed to maintain evidence of financial responsibility in the required amounts, except (1) in cases where there is no solvent owner or operator, or (2) in cases where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment, or (3) to undertake an "allowable corrective action" to protect human health. (Section 9003(h)(5) defines these allowable corrective actions to include "temporary or permanent relocation of residents and alternative water supplies" and exposure assessments undertaken to protect human health.)

The Trust Fund and the financial responsibility program under Subtitle I are closely related. The most basic relationship is that the level of coverage required in the financial responsibility regulations will affect the potential draw on the Trust Fund. This is because, according to the way the Trust Fund is established in the statute, the level of financial assurance required acts as a kind of "deductible" to the coverage provided by the Trust Fund. The Trust Fund may pay for the costs of corrective action that exceed the amount of coverage required under the financial responsibility rules. Thus, the higher the required coverage, the less the potential draw on the Trust Fund. If, however, the owner or operator does not maintain coverage in the amounts required in the financial responsibility regulations, the relationship is somewhat different. In these cases, the Trust Fund may be drawn upon only in the limited circumstances, as described above. In addition, in cases where EPA seeks to recover costs for a response to a leaking UST, full costs can be sought from owners or operators who have not maintained financial responsibility.

The Agency also may use monies from the Fund to cover corrective action costs for classes of tank owners and operators that are granted a suspension of enforcement of the financial responsibility requirements under § 280.111. Finally, States must pay for 10 percent of the costs of corrective action under the Trust Fund after the Federal UST regulations become effective. To finance their contributions, some States may create funds that also may be used as methods of assurance.

## VI. State Program Approval

Section 9004 of RCRA allows any State to submit an underground storage tank regulatory program for review and approval by EPA. EPA is proposing procedures and standards for State regulatory program approval elsewhere in today's **Federal Register** . An EPA-approved State UST regulatory program will operate "in lieu of" the Federal program. The Agency may approve the State program if the State demonstrates that its program (1) imposes requirements that are "no less stringent" than the Federal leak detection, prevention, correction, and financial responsibility requirements and (2) provides for adequate enforcement of compliance with such requirements. The statute, however, does allow EPA to grant interim approval to States that have established less stringent requirements in certain areas.

The Regional Administrator may approve a State UST program that fails to establish requirements that are "no less stringent" than the Federal requirements for all elements of the Federal program for an interim period. A State program may receive interim approval if the State does not have requirements that are "no less stringent" than the Federal requirements, for (1) maintaining a leak detection system or comparable system, (2) maintaining records of leak detection systems, (3) reporting of releases from tanks and corrective action used to respond to the release, and (4) tank closure. A State program cannot receive interim or final approval if it has financial responsibility requirements that are less stringent than those in today's rulemaking.

## VII. Economic and Regulatory Impacts

*A. Regulatory Impact Analysis*

1. *Compliance With Executive Order 12291.* Sections 2 and 3 of Executive Order 12291 (46 FR 131393, February 19, 1981) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a regulatory impact analysis be conducted. A major rule is defined as one that is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has conducted an RIA of the proposed Subtitle I financial responsibility requirements for petroleum-containing underground storage tanks. Based on this analysis, the Agency has concluded that this regulation may have annual costs of greater than $100 million. Therefore, today's proposed regulation is a major rule, as defined by E.O. 12291. The following five sections summarize the results of the RIA. Section 2. describes the regulated community affected by this regulation, Section 3. presents some of the methods and assumptions used to produce the RIA, Section 4. presents EPA's estimates of the annual real resource costs of the proposal, Section 5. discusses the regulation's economic impacts, and Section 6. describes its potential benefits.

2. *The Regulated Community.* This proposed regulation is estimated to apply to 1.4 million underground storage tanks (USTs) located at 468,000 separate facilities. For the purpose of this analysis, the regulated community was divided into four major sectors: retail motor fuel marketing, agriculture, local

government, and general industry. Retail motor fuel marketing is the largest single affected sector and includes 193,000 retail motor fuel outlets owned by almost 90,000 firms. This sector has been further subdivided into three segments: refiners, multi-outlet retail chains, and open dealers (defined as firms owning and operating a single retail motor fuel outlet). The agricultural sector includes all farms owning an UST with a capacity of more than 1,100 gallons; approximately 86,000 USTs located at 50,000 farms meet this definition. Local governments own 62,000 USTs. For the purposes of this analysis, the general industry sector includes all other sectors (i.e., sectors other than retail motor fuel marketing, agriculture, and local government) where USTs are located. Firms in the general industry sector range from large manufacturing concerns to small retail operations. USTs in this sector usually are used to provide motor fuel for fleets of vehicles (e.g., at trucking firms and automobile rental agencies) or to provide convenient access to motor fuel for off-the-road vehicles (e.g., construction equipment). The general industry sector is estimated to contain 418,000 USTs at 192,000 facilities owned by more than 137,000 firms.

3. *Assumptions and Methodology Used in the RIA.* Following are the key assumptions used to estimate the costs and other impacts of this regulation:

- Owners, rather than operators, satisfy and pay the costs of financial responsibility requirements, except when the owner is a private individual and the operator is a business corporation.
- All owners who qualify for self-insurance use this mechanism to satisfy their financial responsibility requirements, and incur real resource costs for developing and maintaining the required records and reports.
- All firms currently insured for corrective action and compensation of third parties will maintain their insurance to comply with this regulation.
- Firms that are not currently insured and that cannot use the financial test of self-insurance will attempt to obtain insurance (rather than other financial assurance mechanisms) to comply with this regulation.
- Insurance will only be available to those firms meeting insurers' qualifications for insurability. Such qualifications may include specifications with regard to tank age, prior release histories, etc. Because the number of currently uninsured firms that will meet these qualifications is uncertain, regulatory costs have been estimated for three scenarios: (1) no additional firms will be insured, (2) 50 percent of uninsured firms that cannot meet the financial test will be insured, and (3) 100 percent of uninsured firms that cannot meet the financial test will not be able to get insurance.
- Insurance premium costs for petroleum UST owners in industry (and government) sectors other than retail motor fuel marketing are equivalent to current and projected insurance premium costs for UST owners in the retail motor fuel marketing sector. (In sectors other than retail motor fuel marketing, there is no active UST insurance market.)
- Firms that cannot obtain insurance will apply for a suspension of enforcement and incur costs associated with documenting the fact that no financial assurance mechanisms are available and that progress toward the formation of a risk retention group or toward coverage under a State fund is being made. These costs will depend on the extent to which insurers and other providers of financial assurance mechanisms are willing to provide letters stating that entire classes of UST owners cannot obtain financial assurance. If insurers and other providers of financial mechanisms are willing to provide such letters, each owner will need one hour per year of managerial time for activities related to maintaining suspension of enforcement status. If insurers and other providers of financial mechanisms are unwilling to provide such letters, then each owner will need to provide individual proof of his or her inability to obtain financial assurance, and the time needed for activities related to maintaining suspension of enforcement status will rise to eight hours of managerial time per owner per year. (The costs of forming a risk retention group are not examined in the RIA.)
- For the purposes of analyzing economic impacts and possible benefits of the proposed financial responsibility regulation, firms that meet insurers' criteria for insurability incur corrective action costs and third-party liability costs consistent with insurance premiums and past and projected insurance claims experience. (The probabilities and costs of corrective actions used for this analysis are different from those used in the Technical Standards RIA. The Technical Standards RIA develops probabilities and costs of corrective action for all regulated USTs. The Financial Responsibility RIA, on the other hand, develops probabilities and costs of corrective action only for those facilities meeting insurers' criteria for insurability. The Financial Responsibility RIA thus excludes, for example, the probabilities and costs of corrective action for incidents occurring at facilities owned by firms unable to obtain insurance, incidents occurring before the owner has insurance, and release incidents that are not reported to the insurer.

4. *Annual Real Resource Costs.* The real resource costs of the proposed regulation are defined as those resources expended as a result of the regulation that would not have been expended in its absence. Real resource costs therefore exclude insurance costs for those owners or operators who already have insurance for their USTs. For owners or operators who purchase insurance in order to comply with this regulation, those portions of the premium used to pay for corrective action, third-party liability, and claims adjustment, do not represent real resource costs; these costs would be incurred in any case. The use of insurance simply transfers the payment of these costs from the owner or operator to the insurer. (The costs and regulatory impacts of corrective action attributable to the UST technical standards are analyzed in the Technical Standards Regulatory Impact Analysis.) The portion of insurance premiums that do represent real resource costs include the insurer's profits, administrative costs, and sales costs. These real resource costs are equal to about 40 percent of the total insurance premium cost. Also included in real resource costs are the recordkeeping and reporting costs associated with certifying compliance with this regulation, updating financial mechanisms annually, sending required reports to EPA (e.g., notifying EPA of bankruptcy), reporting associated with requesting a suspension of enforcement, etc.

The total annual real resource costs of the proposed financial responsibility requirements for all petroleum UST-owning sectors is estimated to be $284.6 million, assuming that all firms that do not have insurance or do not qualify for the financial test can purchase insurance. Using this assumption, no firms would have to apply for a suspension of enforcement. Under the assumption that 50 percent of the firms that do not have insurance or cannot qualify for the financial test can purchase insurance, the total annual real resource costs of the financial responsibility requirement range from $144.5 million to $159.1 million, depending on the cost of suspension of enforcement. Assuming that all firms that do not have insurance or cannot

qualify for the financial test could not purchase insurance reduces the real resource costs of the regulation to between $4.2 million and $33.4 million.

These real resource costs represent recordkeeping and reporting costs for those owners or operators who already have financial assurance mechanisms, the recordkeeping and reporting costs associated with applying for a suspension of enforcement, and other mandatory recordkeeping and reporting costs for all UST owners or operators. The lower cost estimate is applicable if insurers and other providers of financial assurance are willing to provide letters stating that entire classes of owners will not be able to obtain financial assurance. The higher cost estimate is applicable if each owner must obtain individual letters of rejection from providers of financial assurance.

5. *Economic Impacts.* The economic impacts of today's proposed regulation were carefully examined for the open dealer and small jobber segments of the retail motor fuel marketing sector. The open dealer segment was chosen for detailed analysis because severe economic impacts were considered to be most likely in this segment. Open dealer firms are small (the median net worth is $90,000 and the median value of assets is $210,000); none currently have UST insurance, and none can use the financial test; however, the use of USTs is essential to firms in this business. For UST-owning firms in the general industry sector with less than $1 million in assets, a screening analysis was performed to determine impacts.

The open dealer analysis only applies to those open dealer firms that can meet insurers' qualifications for insurability (e.g., with regard to age of tanks, release history, etc.). In the first year after implementation of the proposed financial responsibility requirements, an estimated 0.69 percent of existing open dealer firms meeting insurers' criteria for insurability would close as a result of the costs of insurance premiums. If all open dealer firms can meet insurers' qualifications for insurability, 555 firms would close. However, over the long run (10 years), EPA estimates that a smaller percentage of firms would exit the industry if they had UST insurance than if they did not. Although the costs of insurance premiums may force some low-profit, marginal open dealer firms to close, fewer larger, more profitable firms would close as a result of paying insurance premiums than would close if they were required to pay the costs of third-party liability awards and corrective actions from their own funds. To the extent that financial responsibility requirements help make insurance available to firms in this segment (and some insurers believe that this may be the case), the economic impact of these financial responsibility requirements on many firms in this segment may be lessened.

Outside of the open dealer segment, the economic impacts of the proposed financial responsibility requirements on the retail motor fuel marketing sector will be negligible. EPA's analysis of the economic impact of these requirements on small jobber firms found that if these firms, which typically own 13 or fewer tanks, can get insurance at the $1 million per-occurrence and aggregate levels, fewer firms would exit the industry with insurance than without it. However, if small jobber firms had to purchase insurance at the $2 million aggregate level, the economic impacts of this regulation would be significantly worse for these firms than if they were not insured.

In the general industry sector, EPA examined financial data for firms in 65 four-digit SIC code categories that contain firms that own USTs. In only 11 of these SIC code categories would the value of premiums exceed 10 percent of the before-tax profits of average firms in these categories having less than $1 million in assets. Most firms in these SIC code categories do not use USTs, and it is possible that, if the costs of today's regulation imposed severe impacts on those firms in these sectors that do use them, they could avoid these costs by closing their UST facilities.

6. *Benefits.* Today's proposal is associated with a variety of potential economic benefits that are discussed in qualitative terms in the RIA. For example, these regulations provide for an improved allocation of resources by ensuring that the costs of corrective action and third-party liability awards are reflected in the costs and in the pricing decisions of UST-owning firms in the affected sectors. Thus the proposed rule may result in greater internalization of costs and improved operation of the market. In addition, some industry sectors may experience fewer business disruptions as a consequence of a firm's use of UST insurance, because fewer small firms will be forced to exit the industry. In the case of smaller firms that could not pay for corrective action without insurance, having insurance may provide an incentive to report releases more promptly. (For example, in the absence of insurance, an owner might be reluctant to report a release having cleanup costs high enough to force him out of business). Further, requiring owners of USTs, to obtain a financial assurance mechanism provides an incentive for them to replace or upgrade their USTs to lower the costs of paying for the mechanism (e.g., lower insurance premiums). An increase in the number of tanks replaced or upgraded also will reduce the risk of environmental contamination and endangerment of human health.

There are also potential cost savings with regard to the use and administration of the Leaking UST Trust Fund set up by SARA. If the Leaking UST Trust Fund does not have adequate funds to pay for all UST corrective actions necessary to protect human health and the environment, these financial responsibility requirements will benefit human health and the environment by ensuring that the Trust Fund is used to address a larger number of serious releases (where there is no identifiable owner or operator).

Most of the benefits of the proposed regulation can be estimated only qualitatively at the present time. However, for the open dealer segment it was possible to compare quantitatively the value of corrective action costs and third-party liability awards that would be met if firms meeting insurers' qualifications of insurability were insured and the value of corrective action costs and third-party liability awards that would not be met if these firms did not have insurance. For open dealer firms qualifying for insurance, $1,119 per facility per year in corrective action costs and third-party liability awards would be left unfunded if such firms did not in fact purchase insurance. The total value of the unfunded financial responsibility remaining if all firms in the segment obtained insurance would be reduced by $88 million.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

EPA has conducted an analysis of the impacts of this regulation on small

businesses as part of its regulatory impact analysis (RIA) and has concluded that this regulation may have a significant economic impact on some small businesses. EPA examined the economic impacts of financial responsibility requirements in the small business segments of the retail motor fuel marketing industry and in general industry sectors. In the retail motor fuel marketing sector, this analysis found that economic impacts in the aggregate for firms meeting insurers' qualifications of insurability are very small in the short run but are actually favorable over the long run. However, the cost of insurance premiums may force some low-profit, marginal open dealer firms to close. Larger, more profitable open dealers and small jobbers and convenience store chains would actually have their rate of exit from the industry reduced if they could obtain insurance.

In the general industry sectors, in only 11 of 65 SIC codes examined would the cost of insurance premiums represent more than 10 percent of before-tax profits. Most firms in these SIC code categories do not use USTs, and it is possible that, if the costs of today's regulation imposed severe impacts on these firms, they would avoid these costs by closing their USTs. For small businesses not qualifying for insurance, the costs of applying for a suspension of enforcement are small and unlikely to cause a significant economic impact. However, the RIA does not fully consider all situations that might cause significant economic impacts, nor does it consider all developments that might mitigate the economic impacts of financial responsibility requirements. For example, economic impacts on small businesses might be greater than those estimated for firms that are able to obtain insurance, but only if these businesses are forced to pay a very high premium or if all their tanks are replaced.

On the other hand, the RIA does not examine the possibility that all corrective action costs and third-party liability awards might be paid by State funds financed by taxes on gasoline. Such funds would minimize economic impacts on small businesses and transfer the costs of these financial responsibility requirements to the consumers of motor fuel.

The Agency has conducted a separate RIA and Regulatory Flexibility Analysis of the UST technical standards proposed elsewhere in today's **Federal Register**. The technical standards RIA assesses the costs of corrective action attributable to corrective action requirements. The Agency concluded in that analysis that the technical standards, including corrective action requirements, would have a significant impact on a substantial number of small entities.

*C. Paperwork Reduction Act*

Pursuant to section 3504(h) of the Paperwork Reduction Act of 1980, the reporting and recordkeeping provisions of today's proposed rule have been submitted to the Office of Management and Budget (OMB) for approval. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Should EPA promulgate a final rule, the Agency will respond to comments by OMB or the public regarding the information collection provisions of the rule.

**VIII. Supporting Documents**

Background materials, including a supporting document, discussing the most significant issues raised by today's proposed rule have been prepared and are included in this rulemaking docket. Other **Federal Register** notices on financial assurance, and background documents, which were prepared for other financial assurance regulations under RCRA Subtitle C, Subpart H, include the May 2, 1986, final regulations on closure, post-closure care, and financial responsibility, 51 FR 16433; the March 19, 1985, proposed regulations, 50 FR 11068; the July 26, 1982, interim final, land disposal regulations, 47 FR 32274; the April 7, 1982, final rules on financial assurance for closure and post-closure care, 47 FR 15032; the January 12, 1981, interim final rules, 46 FR 2802; and the May 19, 1980, proposed regulations, 45 FR 33260.

These supporting materials are available for inspection by the public in Room LG–100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Copies of several of these documents also are available for public inspection and review in the libraries of EPA's Regional Offices.

**IX. List of Subjects in 40 CFR Part 280**

Administrative practice and procedure, Environmental protection, Insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Underground storage tanks, Water pollution control.

**Lee M. Thomas,**

*Administrator.*

March 29, 1987.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

1. The authority citation for Part 280 is revised to read as follows:

**Authority:** Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h)).

2. 40 CFR Part 280 is amended to add a new Subpart I as follows:

**Subpart I—Financial Responsibility**

Sec.

280.90 Applicability.
280.91 Definition of terms.
280.92 Amount and scope of required coverage.
280.93 Allowable mechanisms and combinations of mechanisms.
280.94 Financial test of self-insurance.
280.95 Guarantee.
280.96 Indemnity contract.
280.97 Insurance.
280.98 Risk retention group coverage.
280.99 Surety bond.
280.100 Letter of credit.
280.101 Use of State-required mechanism.
280.102 State fund or other State assurance.
280.103 Standby trust fund.
280.104 Substitution of financial assurance mechanisms by an owner or operator.
280.105 Cancellation or nonrenewal by a provider of financial assurance.
280.106 Reporting by owner or operator.
280.107 Recordkeeping.
280.108 Drawing on financial assurance mechanisms.
280.109 Release from the requirements of this subpart.
280.110 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.
280.111 Suspension of enforcement.

**§ 280.90 Applicability.**

(a) This subpart applies to owners and operators of all underground storage tanks containing petroleum except as otherwise provided in this section.

(b) The owners and operators of underground storage tanks installed after the effective date of these regulations become subject to the

BEST COPY AVAILABLE

requirements of this subpart at the time the tank is put into operation.

(c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of underground storage tanks containing a mixture of petroleum and other regulated substances in which petroleum is not the principal component.

(e) The requirements of this subpart do not apply to owners or operators of any of the following types of UST systems:

(1) Wastewater treatment tanks;

(2) Sumps;

(3) Underground storage tank systems containing used oil;

(4) Underground bulk storage tanks;

(5) Underground storage tank systems containing radioactive waste;

(6) Electrical equipment; and

(7) Hydraulic lift tanks.

**§ 280.91 Definition of terms.**

When used in this subpart, the following terms shall have the meanings given below:

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action, bodily injury, or property damage neither expected nor intended by the tank owner or operator.

"Bodily injury" shall have the meaning given to this term by applicable State law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought—

(1) By EPA or a State to require corrective action or to recover the costs of corrective action;

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) By any person to enforce the terms of a financial assurance mechanism.

"Occurrence" is an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

"Property damage" shall have the meaning given this term by applicable State law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of a underground storage tank through one of the mechanisms listed in §§ 280.95–280.102, including a guarantor, indemnitor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a State-required mechanism, or a State.

"Substantial business relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee or indemnity contract issued incident to that relationship valid and enforceable. A guarantee or indemnity contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor or indemnitor and the owner or operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

**§ 280.92 Amount and scope of required coverage.**

(a) Owners or operators of petroleum underground storage tanks must obtain coverage for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from operating petroleum underground storage tanks in the amount of at least $1 million per occurrence.

(b) Owners or operators of petroleum underground storage tanks must obtain annual aggregate coverage for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from operating petroleum underground storage tanks in at least the following amounts:

(1) For owners or operators of 1 to 12 petroleum underground storage tanks, $1 million;

(2) For owners or operators of 13 to 60 petroleum underground storage tanks, $2 million;

(3) For owners or operators of 61 to 140 petroleum underground storage tanks, $3 million;

(4) For owners or operators of 141 to 250 petroleum underground storage tanks, $4 million;

(5) For owners or operators of 251 to 340 petroleum underground storage tanks, $5 million; and

(6) For owners or operators of 341 or more petroleum underground storage tanks, $6 million.

(c) For purposes of paragraph (b) of this section only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in paragraph (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for corrective action or for compensating third parties for bodily injury and property damage caused by sudden accidental releases or for compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of coverage provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.

(e) If an owner or operator uses separate mechanisms or combinations of mechanisms for different petroleum underground storage tanks, the annual aggregate coverage required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) The amounts of coverage required under this section exclude legal defense costs.

**§ 280.93 Allowable mechanisms and combinations of mechanisms.**

(a) Subject to the limitations of paragraph (b) of this section, an owner or operator may use any one or combination of the mechanisms listed in §§ 280.94–280.102 to demonstrate financial responsibility under this subpart for one or more underground storage tanks.

(b) An owner or operator may use a guarantee, indemnity contract, or surety bond to establish financial responsibility only if the Attorney General(s) of the State(s) in which the underground storage tanks are located has (have) submitted a written statement to EPA that a guarantee, indemnity contract, or surety bond executed as described in this section is a legally valid and enforceable obligation in that State.

**§ 280.94 Financial test of self-insurance.**

(a) An owner or operator, guarantor, or indemnitor may satisfy the requirements of § 280.92 by passing a financial test of self-insurance that conforms to the requirements of this section. To pass the financial test of self-insurance, the owner or operator, guarantor, or indemnitor must meet the criteria of paragraphs (b)(1), (b)(2), and (b)(3)(i) or (b)(3)(ii), and (b)(4) of this section based on year-end financial statements for its latest completed fiscal year.

(b)(1) The owner or operator, and/or guarantor, and/or indemnitor must have a tangible net worth of at least 10 times:

(i) The total of the applicable aggregate amount required by § 280.92(b), based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to EPA under this section or to a State under a State program authorized by EPA under 40 CFR Part 281;

(ii) The sum of the current closure and post-closure care cost estimates and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, 264.143, 264.145, 265.143, and 265.145 and 40 CFR 264.147 and 265.147 or to a State under a State program authorized by EPA under 40 CFR Part 271; and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a State under a State program authorized by EPA under 40 CFR Part 145.

(2) The owner or operator, and/or guarantor, and/or indemnitor must have a tangible net worth of at least $10 million.

(3) The owner or operator, and/or guarantor, and/or indemnitor must either:

(i) File financial statements annually with the SEC; or

(ii) Report the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(4) The firm's year-end financial statement, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion.

(c) To demonstrate that it meets this test, the chief financial officer of the owner or operator, and/or guarantor, and/or indemnitor must sign, within 90 days of the close of each fiscal year, a letter worded exactly as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Letter From Chief Financial Officer**

I am the chief financial officer of [insert: name and address of the owner or operator, and/or guarantor, and/or indemnitor]. This letter is in support of the use of [the financial test of self-insurance, and/or guarantee and/or indemnity contract] to demonstrate financial responsibility for [insert "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating the underground storage tank(s) indicated below.

The following underground storage tanks at the following facilities are covered by this financial test or a financial test under an authorized State program by this owner or operator, guarantor, or indemnitor: [list for each tank: the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding State requirement, the name and address of facility where each tank is located, and whether each tank is covered by this financial test or a financial test under a State program authorized under 40 CFR Part 281].

A financial test, guarantee, or indemnity, is also being used by this owner or operator, and/or guarantor, and/or indemnitor to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or State programs authorized by EPA under 40 CFR Parts 271 and 145:

| | Amount |
|---|---|
| EPA Regulation: | |
| Closure (§§ 264.143 and 265.143) | $———— |
| Post-Closure Care (§§ 264.145 and 265.145) | ———— |
| Liability Coverage (§§ 264.147 and 265.147) | ———— |
| Corrective Action (§ 264.101) | ———— |
| Plugging and Abandonment (§ 144.63) | ———— |
| Authorized State Programs: | |
| Closure | ———— |
| Post-Closure Care | ———— |
| Liability Coverage | ———— |
| Corrective Action | ———— |
| Plugging and Abandonment | ———— |
| Total | $———— |

This [owner or operator, and/or guarantor, and/or indemnitor] [insert "has" or "has not"] filed financial statements with the Securities and Exchange Commission (SEC) for the latest fiscal year.

This [owner or operator, and/or guarantor, and/or indemnitor] [insert "has" or "has not"] provided financial information to Dun and Bradstreet and received a financial strength rating of 4A and 5A.

This [owner or operator, and/or guarantor, and/or indemnitor] has not received an adverse opinion or a disclaimer of opinion from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the following information. Tangible net worth is to be derived from the year-end financial statements of the owner or operator, and/or guarantor, and/or indemnitor for the latest completed fiscal year.]

| | Amount |
|---|---|
| 1. Amount of annual aggregate coverage to be demonstrated based on the number of tanks identified above | $———— |
| 2. Amount of closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test | $———— |
| 3. Sum of line 1 and line 2 | $———— |
| 4. Tangible net worth | $———— |
| 5. Is line 4 at least 10 times line 3? | Yes ___ No ___ |

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 280.94(c) as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(d) If an owner or operator, guarantor, or indemnitor using the test to provide financial assurance fails to meet the requirements of the financial test at the end of any fiscal year, the owner or operator, must obtain alternate coverage within 120 days of the end of the fiscal year.

(e) The Regional Administrator may require reports of financial condition at any time from the owner or operator, guarantor, or indemnitor. If the Regional Administrator finds, on the basis of such reports or other information, that the owner or operator, guarantor, or indemnitor no longer meets the financial test requirements, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(f) If the owner or operator, fails to obtain alternate coverage by the end of the 120-day or 30-day period, the owner or operator must notify the Regional Administrator of such failure.

**§ 280.95 Guarantee.**

(a) An owner or operator may satisfy the requirements of § 280.92 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that (i) possesses a controlling interest in the owner or operator;

(ii) Possesses a controlling interest in a firm described under (1)(i); or,

(iii) Is controlled through stock ownership with a common parent firm that possesses a controlling interest in the owner or operator; or,

(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 90 days of the close of each fiscal year the guarantor must demonstrate that it meets the financial test criteria of § 280.94 based on year-end financial statements for the latest completed fiscal year by completing the letter from the chief financial officer described in § 280.94(c) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any fiscal year, within 90 days of such failure the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. In this event, the guarantee will terminate no less than 120 days from the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternate coverage before such termination.

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Guarantee**

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of [name of State], herein referred to as guarantor, to the United States Environmental Protection Agency (EPA) and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 40 CFR 280.94(b) and agrees to comply with the requirements for guarantors as specified in 40 CFR 280.95(b).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List for each tank: the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding State requirement, and the name and address of the facility where each tank is located.]. This guarantee satisfies 40 CFR Part 280, Subpart I requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "On behalf of our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to EPA and to any and all third parties that:

In the event that the [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation for this guarantee and the Regional Administrator has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Regional Administrator, shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

In the event that the Regional Administrator determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR Part 280, Subpart F, the guarantor upon written instructions from the Regional Administrator shall fund a standby trust in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

In the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Regional Administrator, will fund a standby trust in accordance with the provisions of 40 CFR 280.108 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 40 CFR 280.94(b), guarantor shall send within 90 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR Part 280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR Part 280, Subpart I for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to the [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) Guarantor expressly waives notice of acceptance of this guarantee by EPA, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.95(c) as such regulations were constituted on the effective date.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(d) The owner or operator who uses a guarantee to satisfy the requirements of § 280.92 must also establish a standby trust fund at the same time that the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Regional Administrator under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

**§ 280.98 Indemnity contract.**

(a) An owner or operator may satisfy the requirements of § 280.92 by obtaining an indemnity contract that conforms to the requirements of this section. The indemnitor must be a firm engaged in a substantial business relationship with the owner or operator and must issue the indemnity as an act incident to that business relationship.

(b) Within 90 days of the close of each fiscal year, the indemnitor must demonstrate that it meets the financial test criteria of § 280.94 based on year-end financial statements for the latest completed fiscal year by completing the letter from the chief financial officer described in § 280.94(c) and must deliver the letter to the owner or operator. If the indemnitor fails to meet the requirements of the financial test at the end of any fiscal year, within 90 days of such failure the indemnitor shall send by certified mail, before cancellation or nonrenewal of the indemnity contract, notice to the owner or operator. In this event, the indemnity contract will terminate 120 days from the date the owner or operator receives the notification, as evidenced by the return

receipt. The owner or operator must obtain alternate coverage before such termination.

(c) The indemnity contract must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Contract for Indemnity**

Agreement made this [date] between [name of indemnifying entity] of [address], a business organized under the laws of the State of [insert State], herein referred to as indemnitor, and [name of owner or operator] of [address], herein referred to as indemnitee.

In consideration of ["the business relationship between indemnitor and indemnitee" and "the sum of [insert dollar amount], receipt of which is acknowledged,"] it is hereby agreed:

(1) Indemnitor meets or exceeds the financial test criteria of 40 CFR 280.94(b) and agrees to comply with the requirements specified in 40 CFR 280.95(b).

(2) Indemnitor undertakes to indemnify indemnitee from any and all costs, up to the limits specified in this agreement, of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified below that indemnitee may suffer as a result of claims, demands, costs, or judgments against it arising from operating the following underground storage tanks:

[List for each tank: the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding State requirement, and the name and address of the facility where each tank is located.]

(3) Indemnitor's liability under this contract shall not exceed [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(4) Indemnity under this agreement shall begin on [date] and shall continue until [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, indemnitor notifies indemnitee by certified mail, return receipt requested, that indemnitor will not extend the indemnification beyond the current expiration date.

(5) Indemnitee agrees to notify indemnitor, within 10 calendar days, by registered mail, return receipt requested, at indemnitor's address, of any claim(s) made against indemnitee on the obligations indemnified against.

(6) Indemnitor agrees to discharge its obligation under this contract by depositing, upon written request from the Regional Administrator, any indemnity due and owing under this contract into a standby trust in accordance with the provisions of 40 CFR 280.103 and 280.108.

(7) Indemnitor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming indemnitor as debtor, within 10 days after commencement of the proceeding.

(8) Indemnitor agrees to remain bound under this contract notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR Part 280.

I hereby certify that the wording of the indemnity is identical to the wording specified in 40 CFR 280.98(c) as such regulations were constituted on the effective date.

[Name of indemnitor]
[Authorized signature for indemnitor]
[Signature of witness or notary]
[Date]

(d) The owner or operator who uses an indemnity contract to satisfy the requirements of § 280.92 must also establish a standby trust fund at the same time the indemnity contract is established. Under the terms of the indemnity contract, all amounts paid by the indemnitor under the contract will be deposited directly into the standby trust fund in accordance with instructions from the Regional Administrator under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

**§ 280.97 Insurance.**

(a) An owner or operator may satisfy the requirements of § 280.92 by obtaining liability insurance that conforms to the requirements of this section. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (b)(1) of this section (except that instructions in brackets are to be replaced with the relevant information and the brackets deleted) or evidenced by a certificate of insurance worded as specified in paragraph (b)(2) of this section (except that instructions in brackets are to be replaced with the relevant information and the brackets deleted):

(1)

ENDORSEMENT

Name: [name of each covered location]
Address: [address of each covered location]
_____
_____
Policy Number:_____
Period of Coverage: [current policy period]
Name of [Insurer or Risk Retention Group]: _____
_____
Address of [Insurer or Risk Retention Group]:
_____
_____
Name of Insured:_____
Address of Insured:_____
_____

Endorsement:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List for each tank: the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding State requirement, and the name and address of the facility where each tank is located.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number] which was issued on [date]. The effective date of said [policy] is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.93–280.102.

c. Whenever requested by a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the ["Insurer" or "Group"] agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.

d. Cancellation of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the insured.

e. Any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 90 days after a copy of such written notice is received by the insured.

f. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within one year

of the effective date of the expiration, termination, or cancellation of the policy.

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(1) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States" or "chartered and licensed as a Risk Retention Group in at least one State and authorized to operate in each State where an underground storage tank covered by this policy is located"].

[Signature of authorized representative of Insurer or Risk Retention Group]
[Type name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(2)

CERTIFICATE OF INSURANCE

Name: [name of each covered location]
Address: [address of each covered location]

Policy Number:
Endorsement (if applicable):
Period of Coverage: [current policy period]
Name of [Insurer of Risk Retention Group]:
Address of [Insurer or Risk Retention Group]:

Name of Insured:
Address of Insured

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List for each tank: the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding State requirement, and the name and address of the facility where each tank is located.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number] which was issued on [date]. The effective date of said [policy] is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which the certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.93–280.107.

c. Whenever requested by a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the ["Insurer" or "Group"] agrees to furnish to the Regional Administrator a signed duplicate original of the policy and all endorsements.

d. Cancellation of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 120 days after a copy of such Written notice is received by the insured.

e. Any other termination of the insurance ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 90 days after a copy of such written notice is received by the insured.

f. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within one year of the effective date of the expiration, termination, or cancellation of the policy.

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(2) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States" or "chartered and licensed as a Risk Retention Group in at least one State and authorized to operate in each State where an underground storage tank covered by this policy is located"].

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(c) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in each State where a covered underground storage tank is located.

**§ 280.98 Risk retention group coverage.**

(a) An owner or operator may satisfy the requirements of § 280.92 by obtaining coverage from a risk retention group.

(b) Each risk retention group coverage policy must be amended by an endorsement worded as specified in § 280.97(b)(1) or evidenced by a certificate of insurance worded as specified in § 280.97(b)(2).

(c) The risk retention group must be chartered and licensed in at least one State and be authorized to operate in each State where a covered underground storage tank is located.

**§ 280.99 Surety bond.**

(a) An owner or operator may satisfy the requirements of § 280.92 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:
Period of coverage:
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation (if applicable):
Surety(ies): [name(s) and business address(es)]
Scope of Coverage: [List for each tank: the tank identification numbers provided in the notification(s) submitted pursuant to 40 CFR 280.22, or the corresponding State requirements, the name and address of the facility where each tank is located; and the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].
Penal sums of bond:
Per occurrence $
Annual aggregate $
Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Environmental Protection Agency, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "taking corrective action" and/or

"compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases": if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with 40 CFR Part 280, Subpart F and the Regional Administrator's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 40 CFR Part 280, Subpart I, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Regional Administrator that the Principal has failed to ["take corrective action, in accordance with 40 CFR Part 280, Subpart F and the Regional Administrator's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with 40 CFR Part 280 and the Regional Administrator's instructions," and/or "third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Regional Administrator under 40 CFR 280.108.

Upon notification by the Regional Administrator that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Regional Administrator has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Regional Administrator under 40 CFR 280.108.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 280.99(b) as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
State of Incorporation: _____
Liability limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium $ _____

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of § 280.92 must also establish a standby trust fund at the same time the surety bond is established. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Regional Administrator under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

**§ 280.100 Letter of credit.**

(a) An owner or operator may satisfy the requirements of § 280.92 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each State where used and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]
[Name and address of Regional Administrator(s)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name] of [address] up to the aggregate amount of [in words] U.S. dollars ($ [insert dollar amount]), available upon presentation [insert, if more than one Regional Administrator is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Resource Conservation and Recovery Act of 1976 as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $ [insert dollar amount] per occurrence and [in words] $ [insert dollar amount] annual aggregate:

[List for each tank: the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding State requirement, and the name and address of facility where each tank is located. If coverage is different for different tanks or locations, the type of coverage applicable to each tank or location must be indicated.]

This letter of credit is effective as of [date] and shall expire on [expiration date], but such expiration date shall be automatically extended for a period of [at least the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 280.100(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of § 280.92 must also establish a standby trust fund at the same time the letter of credit is established. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Regional Administrator under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

**§ 280.101 Use of State-required mechanism.**

(a) For underground storage tanks located in a State where EPA is administering the requirements of this subpart, where the State requires owners or operators of underground storage tanks to demonstrate financial responsibility for taking corrective action and/or for compensating third parties for bodily injury and property damage, an owner or operator may use a State-required financial mechanism to meet the requirements of § 280.92 if the Regional Administrator determines that the State mechanism is at least equivalent to the financial mechanisms specified in this subpart.

(b) The Regional Administrator will evaluate the equivalency of a State-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as he/she deems appropriate.

(c) The State, an owner or operator, or any other interested party may submit to the Regional Administrator a written petition requesting that one or more of the State-required mechanisms be considered acceptable for meeting the requirements of § 280.92. The submission must include copies of the appropriate State statutory and regulatory requirements and must show the amount of funds for corrective action and/or for compensating third parties assured by the mechanism(s). The Regional Administrator may require the petitioner to submit additional information as is deemed necessary to make this determination.

(d) Any petition under this section may be submitted on behalf of all of the State's underground storage tank owners and operators.

(e) The Regional Administrator will notify the petitioner of his/her determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of § 280.92 for underground storage tanks located in the State for the amounts and types of costs covered by such mechanisms.

**§ 280.102 State fund or other State assurance.**

(a) An owner or operator may satisfy requirements of § 280.92 for USTs located in a State which assures that monies will be available from a State fund to cover costs included in § 280.92 or otherwise assures that such costs will be paid if the Regional Administrator determines that the State's assurance is at least equivalent to the financial mechanisms specified in this subpart.

(b) The Regional Administrator will evaluate the equivalency of a State fund or other State assurance principally in terms of: certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as he/she deems appropriate.

(c) The State must submit to the Regional Administrator a description of the State fund or other State assurance to be supplied as financial assurance, along with a list of the classes of underground storage tanks to which the funds may be applied. The Regional Administrator may require the State to submit additional information as is deemed necessary to make a determination regarding the acceptability of the State fund or other State assurance. Pending the determination by the Regional Administrator, the owner or operator of a covered class of USTs will be deemed to be in compliance with the requirements of § 280.92 for the amounts and types of costs covered by the State fund or other State assurance.

(d) The Regional Administrator will notify the State of his/her determination regarding the acceptability of the State's fund or other assurance in lieu of financial mechanisms specified in this subpart. Within 60 days after the Regional Administrator notifies a State that a State fund or other State assurance is acceptable, the State must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the State's assumption of responsibility. The letter or certificate from the State must include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action and/or for compensating third parties that is assured by the State. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with § 280.107(b)(5).

**§ 280.103 Standby trust fund.**

(a) An owner or operator using any one of the mechanisms authorized by §§ 280.95, 280.96, 280.99, or 280.100 must establish a standby trust fund at the same time the mechanism is established. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the State in which the fund is established.

(b)(1) The standby trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank.

Whereas, the Grantor has elected to establish either a guarantee, indemnity

contract, surety bond, or letter of credit to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from one of the instruments listed.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

*Section 1. Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

*Section 2. Identification of the Financial Assurance Mechanism.* This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, indemnity contract, surety bond, or letter of credit, from which the standby trust fund is established to receive payments].

*Section 3. Establishment of Fund.* The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as a standby to receive payments and shall not consist of any property. Payments made by the provider of financial assurance pursuant to the Regional Administrator's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by EPA.

*Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"].* The Trustee shall make payments from the Fund as the Regional Administrator shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement. The Trustee shall reimburse the Grantor, or other persons as specified by the Regional Administrator, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Regional Administrator shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Regional Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

*Section 5. Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

*Section 6. Trustee Management.* The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; as such:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

*Section 7. Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

*Section 8. Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

*Section 9. Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

*Section 10. Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

*Section 11. Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

*Section 12. Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present

Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

*Section 13. Instructions to the Trustee.* All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Regional Administrator to the Trustee shall be in writing, signed by the Regional Administrator, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Regional Administrator hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Regional Administrator, except as provided for herein.

*Section 14. Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Regional Administrator if the Grantor ceases to exist.

*Section 15. Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

*Section 16. Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

*Section 17. Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of [insert name of State].

*Section 18. Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 280.103(b)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]

Attest:
[Title]
[Seal]
[Signature of Trustee]

Attest:
[Title]
[Seal]

(2) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(c) The Regional Administrator will instruct the trustee to refund the balance of the standby trust fund to the grantor if the Regional Administrator determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

**§ 280.104 Substitution of financial assurance mechanisms by owner or operator.**

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of § 280.92.

(b) After obtaining alternate financial assurance as specified in this subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

**§ 280.105 Cancellation or nonrenewal by a provider of financial assurance.**

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. Termination may not occur, however, during the 120 days beginning on the date the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew and the owner or operator fails to obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination, the owner or operator must notify the Regional Administrator of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with § 280.107(b).

**§ 280.106 Reporting by owner or operator.**

(a) An owner or operator must submit the appropriate forms listed in § 280.107(b) documenting current evidence of financial responsibility to the Regional Administrator:

(1) When the owner or operator notifies the Regional Administrator of the installation of a new underground storage tank under § 280.22;

(2) Within 30 days after the owner or operator identifies a known or suspected release from an underground storage tank required to be reported under § 280.74;

(3) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor or indemnitor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(4) As required by §§ 280.94(f) and 280.105(b).

(b) The Regional Administrator may require an owner or operator to submit evidence of financial assurance as described in § 280.107(b) or other information relevant to compliance with this subpart at any time.

**§ 280.107 Recordkeeping.**

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an underground storage tank until released from the requirements of this subpart under § 280.109. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in §§ 280.94–280.101 must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test, guarantee, or indemnity contract must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed fiscal year. Such evidence must be on file no later than 90 days after the close of the fiscal year.

(3) An owner or operator using a guarantee, indemnity contract, surety bond, or letter of credit must maintain an originally signed duplicate of the standby trust fund agreement and copies of any amendments to the agreement.

(4) An owner or operator using an insurance policy or risk retention group coverage must maintain an originally signed duplicate of the insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(5) An owner or operator covered by a State fund or other State assurance must maintain on file a copy of the letter from the State required under § 280.102(d).

(6) An owner or operator using an assurance mechanism specified in §§ 280.94–280.102 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of Subpart I of 40 CFR Part 280.

The financial assurance mechanism[s] used to demonstrate financial responsibility under Subpart I of 40 CFR Part 280 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]

[Signature of witness or notary]
[Name of witness or notary]
[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change.

**§ 280.108 Drawing on financial assurance mechanisms.**

(a) The Regional Administrator shall require the guarantor, indemnitor, surety, institution issuing a letter of credit, or, as applicable, other provider of financial assurance to place the amount of funds stipulated by the Regional Administrator, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, indemnity contract, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Regional Administrator determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Regional Administrator pursuant to Subpart F of a release from an underground storage tank covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2)(i) or (b)(2)(ii) of this section are satisfied.

(b) The Regional Administrator may draw on a standby trust fund when:

(1) The Regional Administrator makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, but the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 40 CFR Part 280, Subpart F; or

(2) The Regional Administrator has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[_____].

[Signatures]
Owner or Operator
Attorney for Owner or Operator
(Notary) Date

[Signature(s)]
Claimant(s)
Attorney(s) for Claimant(s)
(Notary) Date

(ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a underground storage tank covered by financial assurance under this subpart and the Regional Administrator determines that the owner or operator has not satisfied the judgment.

(c) If the Regional Administrator determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Regional Administrator shall pay third-party liability claims in the order in which the Regional Administrator receives certifications under paragraph (b)(2)(i) of this section and valid court orders under paragraph (b)(2)(ii) of this section.

**§ 280.109 Release from the requirements of this subpart.**

(a) Except as provided in § 280.109(b), an owner or operator is no longer required to maintain financial responsibility under this subpart for an underground storage tank after the tank has been properly closed or, if corrective action is required, after the tank has been properly closed and corrective action has been completed, as required by 40 CFR Part 280, Subpart F.

(b) A Regional Administrator may require an owner or operator to maintain financial responsibility for periods beyond paragraph (a) of this section if he/she has reason to believe that a release may have occurred that

has not been addressed properly by the owner or operator. In such a case, the Regional Administrator must notify the owner or operator in writing of the reason to believe that such a release may have occurred.

**§ 280.110 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.**

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Regional Administrator by certified mail of such commencement and submit the appropriate forms listed in § 280.107(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor or indemnitor providing financial assurance as debtor, such guarantor or indemnitor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee or indemnity contract specified in §§ 280.95 or 280.96.

(c) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, indemnity contract, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or State-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 60 days after such an event.

(d) Within 30 days after a State fund or other State assurance approved by the Regional Administrator under § 280.102 becomes incapable of paying for assured corrective action or third-party compensation costs, the State must submit:

(1) To the Regional Administrator a letter specifying such incapacity and identifying the classes of underground storage tanks no longer covered by the State fund or other State assurance; and

(2) To all owners or operators no longer covered by the State fund or other State assurance a letter specifying such incapacity and advising the owners or operators to obtain alternate coverage.

**§ 280.111 Suspension of enforcement.**

(a) A class of owners and operators of underground storage tanks, including owners and operators of underground storage tanks in a particular State, may obtain a suspension of enforcement of the provisions of this subpart if the class meets the requirements of this section and submits an application in compliance with this section to the Agency. Such suspension shall be for no more than 180 days. If enforcement is not suspended, the applicant class must comply with the financial responsibility requirements.

(b) An application for suspension of enforcement must demonstrate that:

(1) Methods of financial responsibility satisfying the requirements of this subpart are not generally available to the class; and

(2)(i) Steps are being taken to form a risk retention group to provide coverage for the class that will satisfy the requirements of § 280.98, or

(ii) The State in which underground storage tanks are located is taking steps to establish a fund to provide coverage for the class satisfying the requirements of § 280.102.

(c) A class of owners and operators of underground storage tanks may obtain a renewal of the suspension for a period not exceeding 180 days. Any such class must submit an application to EPA at least 60 days prior to the expiration of a suspension or 30 days after the publication of a final decision suspending enforcement for the class, whichever is later. The application for a renewal of suspension of enforcement must demonstrate that:

(1) Methods of financial responsibility satisfying the requirements of this subpart are not generally available to the class; and

(2)(i) Substantial progress has been made in establishing a risk retention group to provide coverage for the class that will satisfy the requirements of § 280.98, or

(ii) The formation of a risk retention group to provide coverage for the class that will satisfy the requirements of § 280.98 is not possible and the State in which the tank is located is unable or unwilling to establish a fund to provide coverage for the class satisfying the requirements of § 280.102.

(d)(1) Each member of a class granted or seeking suspension of enforcement shall maintain in writing:

(i) Proof that the owner and operator are members of the class;

(ii) Proof that the owner and operator are unable to obtain financial assurance; and

(iii) If a suspension or a request for a suspension is based on efforts to form a risk retention group, proof that the owner and operator are members of an association seeking to form a risk retention group.

(2) The documentation described in § 280.111(d)(1) shall be maintained at the underground storage tank site(s) or at the owner's or operator's place of business until the owner or operator is released from the requirements of this subpart under § 280.109.

(e)(1) Methods of financial responsibility satisfying the requirements of this subpart will be considered not generally available to a class for that portion of coverage required under § 280.92 for which written evidence is submitted demonstrating that the class:

(i) Has attempted to obtain financial assurance satisfying the requirements of this subpart from the known providers of financial assurance;

(ii) Was unable to obtain financial assurance due to reasons other than the failure to meet the standard underwriting practices of insurers offering coverage acceptable under § 280.97; and

(iii) Is in compliance with all applicable requirements of Part 280 or with an enforceable compliance schedule.

(2) For owners or operators who certify that their individual net worth is less than $200,000, the class need demonstrate the general unavailability only of insurance, guarantees, or indemnity contracts.

(3) A class need not demonstrate the general unavailability of:

(i) Guarantees, indemnity contracts, or surety bonds for underground storage tanks located in States where the the Attorney General of the State has not certified that such a mechanism is legally valid and enforceable in that State as provided by § 280.93(a)(ii);

(ii) State-required mechanisms that a Regional Administrator has not already determined meet the requirements of § 280.101; or

(iii) A State fund or other State assurance.

(f) To demonstrate that steps are being taken to form a risk retention group, the class must demonstrate that:

(1) The class is an association, as evidenced by articles of incorporation, partnership agreements, or bylaws;

(2) Each member of the class has a binding financial commitment of at least $2,000 per year to the association; and

(3) The association is undertaking actuarial and risk analyses to determine its capitalization requirements and the

potential premiums for risk retention group members.

(g) To demonstrate that the State in which the tank is located is taking steps to establish a fund to provide coverage satisfying the requirements of § 280.102, a class must submit evidence that:

(1) Legislation establishing a State fund has recently been enacted and the State is in the process of making the fund operational; or

(2) If the legislature is in session, a bill to establish a State fund has been introduced and is pending; or

(3) If the legislature is not in session, an appropriate State executive agency or a State legislator intends to seek establishment of such a fund in the next legislative session.

(h) To demonstrate that substantial progress has been made in establishing a risk retention group, a class must demonstrate:

(1) That steps have been taken to form a risk retention group, as provided by paragraph (d) of this section; and

(2) Except for a class whose initial suspension was based in part on a finding that a State was taking steps to establish a fund to provide coverage satisfying the requirements of § 280.102, or for a class whose composition has changed substantially since the initial suspension of enforcement, that the class has formed an association that:

(i) Is taking steps toward completing actuarial and risk analyses;

(ii) Either is composed of a sufficient number of members to capitalize a risk retention group adequately or is actively seeking adequate capitalization;

(iii) Is composed of members who have each made a binding financial commitment of at least $2,000 per year to the association;

(iv) Is taking steps toward completion of an operating plan; and

(v) Is taking steps toward obtaining a charter and license as a liability insurance company under the laws of a State; and

(3) Significant progress has been made in establishing a risk retention group since the previous suspension was granted.

(i) To demonstrate that forming a risk retention group is not possible, an applicant must submit written evidence documenting the steps taken in attempting to form a risk retention group, including the steps included in paragraph (d) of this section, and describing why forming a risk retention group is not possible.

(j) To demonstrate that a State is unable or unwilling to establish a fund to provide coverage satisfying the requirements of § 280.102, a class must submit appropriate evidence regarding the State in which the underground storage tanks for which suspension of enforcement is sought are located.

(k) Applications for an initial suspension of enforcement or a renewal shall contain the information required in this section and shall include the class representative's name, address, and telephone number and a precise description of the types of owners, operators, and underground storage tanks included in the class.

(l) Upon receiving an application for a suspension or a renewal of suspension, the Agency may request any additional information from any member of the class that it deems necessary to evaluate the application.

(m) After determining that an application is complete, the Agency shall publish a notice in the **Federal Register** announcing the Agency's interim final decision and requesting public comment within 30 days.

(n) After the close of the 30-day comment period, the Agency will publish the final decision and a response to all comments in the **Federal Register**.

(o)(1) An interim final or final decision to grant or deny an initial suspension of enforcement shall be effective when published. The period of an initial suspension shall begin on the date of an interim final decision granting a suspension or the date of the final decision granting a suspension that reverses an interim final decision denying a suspension.

(2) An interim final or final decision to grant or deny a renewal of suspension shall be effective when published or upon the expiration of the previous suspension, whichever comes first. The period of a renewal of suspension shall begin on the date of the expiration of the previous suspension period.

[FR Doc. 87-7631 Filed 4-16-87; 8:45 am]

BILLING CODE 6560-50-M

---

## 40 CFR Part 281

[FRL 3154-8]

## Underground Storage Tanks; State Program Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY** Subtitle I of the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, establishes a Federal program for the regulation of underground storage tanks. Subtitle I of RCRA also allows State programs containing tank standards that are no less stringent than the Federal requirements and for which there is adequate enforcement of compliance to operate in lieu of the Federal underground storage tank (UST) program upon approval by EPA. Today's proposal, which is a companion to the proposed Federal tank standards published elsewhere in today's **Federal Register**, sets forth the requirements and approval procedures for State underground storage tank programs. States with approved UST programs will have primary enforcement responsibility with respect to the requirements of their UST programs.

Subtitle I describes program elements that must be incorporated into approved State UST programs. Today's proposal describes these program elements in greater detail, as well as procedures EPA will follow when evaluating State applications for approval or when withdrawing approval of State programs. The purpose of today's rule is to establish clear requirements for State UST programs and streamlined procedures for State application submittal and evaluation.

**DATES:** Comments must be received on or before June 16, 1987. Public hearings will be held on this rulemaking in conjunction with public hearings on the proposed Federal Underground Storage Tank Technical Requirements, published elsewhere in today's **Federal Register.** Public hearings will be held from 9:30 A.M. to 5:00 P.M., unless concluded earlier, and will be carried over to a second day if necessary to allow commenters to speak who have requested to testify. These hearings are scheduled as follows:

1. May 28, 1987, 9:30 A.M. to 5:00 P.M., Washington, DC;
2. June 1, 1987, 9:30 A.M. to 5:00 P.M., Dallas, Texas;
3. June 4, 1987, 9:30 A.M. to 5:00 P.M., San Francisco, California.

Requests to present oral testimony must be submitted in writing and received at least one week prior to the scheduled hearing date.

**ADDRESSES:** Send comments to: Docket Clerk, Office of Underground Storage Tanks (WH-562A), Docket No. UST 4-1, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Requests to testify at a hearing may be mailed to: Gerri Wyer, Hearings Coordinator, Office of Underground Storage Tanks (WH-562A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

Hearings will be held at the following locations:

1. Washington, DC—The Westin Hotel, 2401 M Street NW., Washington, DC 20037;
2. Dallas—The Registry Hotel, 15201 Dallas Parkway, Dallas, Texas 75248;
3. San Francisco—The Miyako Hotel, 1625 Post Street, San Francisco, California 94015.

**FOR FURTHER INFORMATION CONTACT:** RCRA/Superfund Hotline, 1–(800) 424–9346; or in Washington, DC, 2–(202) 382–3000.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

I. Authority
II. Background
III. Summary of the Proposed Rule
  A. Synopsis of Today's Proposal
  B. Components of a Program Application
IV. Considerations Affecting Today's Rule
  A. State Involvement in Development of this Proposal
  B. Regulatory Approach to State Program Approval
V. Discussion of Significant Issues in Today's Rule
  A. Adequate Enforcement of Compliance
  B. Approval Procedures
  C. Determination of "No Less Stringent"
  D. Automatic Expiration of Interim Approval
  E. Withdrawal of Approval of State Programs
VI. Relationship to Other EPA Programs
  A. RCRA Hazardous Waste UST Program
  B. Leaking Underground Storage Tank Petroleum Response Fund
VII. Economic and Regulatory Impacts
  A. Regulatory Impact Analysis
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
VIII. List of Subjects in 40 CFR Part 281

## I. Authority

These regulations are proposed under sections 9004, 9005 and 2002 of the Solid Waste Disposal Act, as amended.

## II. Background

The President signed into law the Hazardous and Solid Waste Amendments on November 8, 1984. This law amends the Resource Conservation and Recovery Act (RCRA) to add Subtitle I, which established a Federal program for the regulation of underground storage tanks.

The Federal underground storage tank (UST) program under Subtitle I has several components. Section 9002 requires each owner of a UST in operation after 1973 to notify the designated State agency of the existence of the tank and the tank age, size, type, location, and use. This notification was due on May 8, 1986, or within 30 days after an owner brings a UST into use if it is brought into use after May 8, 1986.

Section 9003(a) of Subtitle I requires EPA to promulgate standards for underground storage tanks covering detection, prevention, and correction of releases. These regulations are set forth in a proposed rule published elsewhere in today's Federal Register.

Section 9003(g) establishes a prohibition on the installation of certain underground storage tanks during the period from May 8, 1985 until the effective date of EPA's tank standards established under section 9003(a).

New section 9003(h), added to Subtitle I under section 205 of the Superfund Amendments and Reauthorization Act of 1986, establishes a program for cleanup of petroleum from leaking underground storage tanks.

Subtitle I also provides a procedure by which States may administer and enforce State UST programs in lieu of the Federal program established under section 9003. Under section 9004, States may submit their programs for approval by EPA. State UST programs will be approved by EPA if the State program includes requirements that are no less stringent than the Federal UST standards in seven areas, meets the requirements for notification found under section 9002, and provides for adequate enforcement of compliance with these program requirements. Section 9004 specifies that a State program submitted to EPA for approval may cover petroleum substances, hazardous substances (not including hazardous wastes), or both. A State with an approved UST program has primary enforcement responsibility with respect to the requirements of its program. EPA retains authority to take enforcement action in approved States as necessary and will notify the designated lead State agency of any such intended action.

In a companion to this proposal, published elsewhere in today's Federal Register, EPA proposes the Federal standards for underground storage tanks. In this proposal, EPA establishes requirements which a State UST program must meet in order for EPA to approve the program under section 9004. These regulations, when final, will be codified in Part 281 of the Code of Federal Regulations.

## III. Summary of the Proposed Rule

### *A. Synopsis of Today's Proposal*

Section 9004 of RCRA sets forth a number of requirements for State UST program approval. First, section 9004(a) establishes the elements which must be included in a State program in order to receive EPA approval. These elements are leak detection, recordkeeping for leak detection, reporting of releases and corrective action, corrective action in response to a release, tank closure, financial responsibility, notification, and new tank standards. This proposed rule sets forth in more detail the requirements that must be present in State UST programs in order to have the program coverage required under section 9004.

Second, section 9004(b) requires that each of these program elements be no less stringent than the corresponding Federal program (as proposed elsewhere in today's Federal Register) for final approval. A detailed discussion of various approaches being examined by EPA for evaluating the stringency of State programs is provided in Section V.C.

Under section 9004(b) State programs may receive interim approval even if certain requirements are less stringent than the corresponding Federal standards. However, EPA is proposing that a State seeking interim approval must have each program element present in some form prior to interim approval. This proposal sets forth the procedures for final and interim approval and for approval expiration when a State with an interim program does not amend the program to meet Federal standards within statutorily-prescribed time periods.

Third, under section 9004 (a) and (c), State UST programs must also provide for adequate enforcement of compliance with the standards established under the UST program. To meet this requirement, under today's proposal State implementing agencies must have the legal authority to enter and inspect any site or premise subject to regulation, immediately restrain violators or potential violators by order or by suit, sue in a court of competent jurisdiction, and assess or sue to recover certain civil penalties. In addition, State implementing agencies must also have authority to request tank owners or operators to furnish information related to their tanks and to conduct monitoring or testing.

In addition to the legal authorities, State UST programs must maintain a compliance program including periodic inspections and provide for public participation in enforcement proceedings.

Finally, section 9004 (d) and (e) prescribe procedures EPA must follow in approving and withdrawing approval of State UST programs. Today's proposed rule establishes the procedures by which EPA will review applications submitted by States and approve or disapprove a program within 180 days as required by statute. In

addition, today's proposal sets forth the conditions and procedures under which EPA will revise or withdraw State UST program approval.

EPA plans to promulgate rules for technical tank standards under Part 280 and for State program approval under Part 281 at the same time in early 1988. A State may apply for approval after EPA promulgates all of the Part 280 Federal UST standards. Guidance issued with the final State UST program approval rulemaking will supplement the regulation with additional information on State application procedures and EPA review and evaluation of such applications.

*B. Components of a Program Application*

Section 281.20 of today's proposed regulation lists the parts of a State program approval application that States seeking approval must submit to EPA. EPA will attempt to design a standardized State application form that each State will submit. This form will contain the following parts: (1) a transmittal letter from the Governor of the State, (2) a description of the current State program, (3) a State program implementation plan including a Memorandum of Agreement, (4) a statement from the State Attorney General, and (5) copies of all applicable State laws and regulations. Following is a brief description of each of these components.

(1) A transmittal letter signed by the Governor of the State must accompany the original State application. This letter serves to transmit the State's formal request for UST program approval, and indicates that the Governor has approved the designated lead State agency for implementation of the UST program.

(2) The program description serves several purposes. First, it will describe the scope of the UST program for which approval is requested including whether the program covers only petroleum tanks, only chemical tanks, or both, and the extent to which it covers any Indian lands.

Today's proposal does not preclude States from adopting a State program that is broader in scope than the Federal program, for example, a State program that regulates all heating oil tanks. (Tanks used for storing heating oil for consumptive use on the premises where stored are excluded from the Federal UST program under section 9001(1)(B).) In such an approved State, the additional scope of coverage is not part of the Federally approved program. However, in approved States with requirements that are more stringent than the corresponding Federal requirements, for example, leak detection, the more stringent requirement is part of the approved program and enforceable as the Subtitle I standard in the State.

Second, this program description will also describe the organizational structure of the State implementing agency(ies). This includes both State agencies and local and municipal implementing agencies that may be jointly administering the UST program within a State. The program description must clearly delineate the jurisdictional responsibilities, program operation roles, and lines of communication and authority of these implementing agencies.

In addition, the program description should include the number of persons currently involved in UST program operations and their functions and those expected to be employed in the near future. State applications should also explain any limitations on hiring or utilization of staff.

Thirdly, the program description must explain how the State will meet the estimated costs of administering the program. All States must have some source of funding independent of Federal grant monies. The limited amount of Federal grant dollars available will probably not be sufficient to administer and enforce an adequate State UST program. Rather, these grants are seed money for States seeking to initiate program development while securing other sources of funding.

Finally, the description of current program operations must also explain compliance monitoring and enforcement procedures used by State implementing agencies. This description should clearly indicate what enforcement and compliance steps are taken and by which State implementing agencies.

At this time, there are no detailed approval criteria for the above areas of the program description. For example, the proposed regulations do not prescribe specific levels of State program funding or staffing or specific compliance monitoring and enforcement procedures. The program description, in general, will be used by EPA as background information to ensure that a viable State program does exist. However, EPA intends that in certain cases this information would be a basis for non-approval. For example, EPA would not approve a State program that does not contain a funding plan for implementation.

EPA is considering identifying, either in the final rule or in guidance, the specific criteria for disapproval in these areas. EPA solicits comment on the specific criteria for approving or rejecting a State program based on the program description. One issue already brought to EPA's attention is whether a State program can provide adequate enforcement and compliance when the program utilizes tank inspectors from local governments but has no established procedures for coordination and communication of these efforts with a State lead agency. EPA specifically solicits comments on how enforcement and compliance monitoring procedures in the program description should be evaluated.

(3) A third aspect of a State UST application is the State program implementation plan. EPA intends to approve State UST programs where not all program implementation steps have been taken but the State can provide a plan to achieve a fully implemented program within a reasonable period of time. The implementation plan describes what steps need to be taken and over what time period. This approach allows EPA to approve State programs at different stages of implementation, including new programs that will continue to improve and evolve during the next few years. This does not mean, however, that EPA will approve State programs that contain new tank standards, corrective action or financial responsibility requirements that are less stringent than corresponding Federal requirements.

While initial program approval requires that State authorities for corrective action, financial responsibility, notification, and new tank standards be no less stringent than Federal requirements, section 9004(b) allows a one to three year interim period after promulgation of Federal regulations under Part 280 to adopt requirements no less stringent than corresponding Federal requirements for leak detection, recordkeeping, reporting, and closure. States receiving interim approval under section 9004(b) must include a schedule for the needed legislative and/or regulatory action in the State program implementation plan.

In addition, this plan will contain a Memorandum of Agreement (MOA) between EPA and the State. The State will develop the draft MOA in coordination with EPA. The MOA delineates respective EPA and State responsibilities for UST program administration and enforcement and will be particularly important where a State is applying for a partial UST program.

In the future, EPA and the State may mutually agree to update and revise the State implementation plan to reflect

State program growth and change. State implementation plans will be consistent with annual grant agreements and EPA/State agreements.

Criteria for disapproval of a State UST program based on an inadequate State implementation plan will be further defined in guidance which EPA intends to develop between proposal and promulgation of this rule. EPA is considering specifically identifying, either in the final rule or in guidance, program implementation requirements that must be in place, rather than merely planned, at the time of approval. EPA requests comments on which requirements should be in place at the time of approval and the criteria for approving or rejecting programs based on this portion of a State application.

(4) A fourth component of the State UST program application is the statement from the State Attorney General certifying that State laws and regulations provide adequate authority to carry out and enforce the required elements of an approved program. The Attorney General's statement provides the foundation for ensuring that the State UST program is no less stringent than the Federal program it will replace. This statement must include statutory and regulatory checklists provided by EPA and a discussion on State authority in the areas of compliance monitoring and enforcement; the program elements of leak detection and prevention, recordkeeping, reporting, closure, financial responsibility, corrective action, new tank performance standards, and notification; and the scope of the program described in the State application.

(5) Finally, a State program application must include copies of all applicable State laws and regulations. This information will assist EPA in evaluating the rest of the application, and will serve as the basis for establishing a record of what State laws and regulations are in effect in approved States. EPA will codify State program applications and incorporate State laws and regulations by reference as part of its final approval of the State program. This will enable all interested parties to receive notice of the laws and regulations comprising the Subtitle I program in approved States.

## IV. Considerations Affecting Today's Rule

### *A. State Involvement in Development of this Proposal*

EPA's goal in establishing State program approval regulations under Section 9004 is to develop clear and streamlined approval procedures consistent with the statutory approval requirements. In order to take advantage of past experiences and States' familiarity with existing processes, EPA decided to build upon existing State program approval procedures developed under other EPA programs. EPA also consulted with numerous State representatives in an effort to improve on the Agency's past State program approval procedures in this proposal. This proposal incorporates many of their suggestions.

Several States commented on the importance of establishing flexible criteria for approval of State programs, while at the same time identifying specific State program requirements as early as possible. EPA recognizes that these two objectives may often be in tension but has attempted in this proposal to balance these objectives through the establishment of clear baseline criteria that will accomodate, to the greatest extent possible consistent with the statute, existing State UST programs. Almost half the States have some form of UST program.

Specifically, EPA has attempted to respond to these State concerns by clearly stating program application requirements in the regulation. In addition, EPA is considering an option for determining approval under which States could demonstrate that their requirements are no less stringent than the Federal standards by meeting certain program objectives rather than by comparing each State requirement to the corresponding Federal requirement.

States also commented that demonstration of program capabilities prior to approval would require States to operate their programs for at least a year, prior to seeking approval from EPA. In response to this, EPA is proposing that States seeking Federal approval of new programs with no "track record" of performance can submit an implementation plan, including a description of how all required program elements will be carried out in the future.

These issues are discussed further in other sections of this preamble.

### *B. Regulatory Approach to State Program Approval*

In this proposal EPA has developed a State UST program approval regulation that establishes basic requirements for approval of State UST programs and outlines EPA review procedures. EPA has chosen to incorporate basic State program requirements and review procedures in a regulation, rather than guidance, because a regulation ensures consistent application of program approval requirements and provides more opportunity for public participation in the development of the requirements. More detailed information on EPA evaluation procedures will be made available to the States in guidance documents issued by the EPA Office of Underground Storage Tanks (OUST) at the time of promulgation of the final UST State program approval rule. Such guidance for States will explain how to prepare a State application, including a Memorandum of Agreement and a State implementation plan.

This EPA guidance will include additional detail on procedures for initial approval, amending applications during the period of interim approval, revising approved programs, and withdrawal of State program approval.

## V. Discussion of Significant Issues in Today's Rule

### *A. Adequate Enforcement of Compliance*

In this proposal, EPA's review of State programs to ensure adequate enforcement of compliance will include specific legal authorities that must be available to the State enforcement agency, as well as State or local compliance programs, including periodic inspections. Under RCRA section 7002, EPA must also ensure opportunity for public participation in State enforcement. Following is a discussion of the issues raised by these requirements.

The first issue concerns requirements for inspection, monitoring, and compliance programs. The program description must outline the State's enforcement procedures in areas such as receipt and investigation of compliance information, but because of lack of information on specified procedures and a desire to maintain flexibility in approving a variety of State programs, EPA has not specified in today's proposal the particular procedures necessary for program approval. However, EPA cannot approve programs where procedures for compliance monitoring and enforcement are clearly inadequate. EPA requests comment on what enforcement and monitoring procedures the Agency should require for determining whether a State has demonstrated adequate enforcement of compliance, and the criteria by which EPA should evaluate such provisions. For example, should criteria be in the form of specific requirements or broad objectives? Are performance standards feasible? Should criteria be in regulation or guidance?

One specific compliance monitoring and enforcement requirement EPA

considered but did not include in today's proposal was the maintenance of an updated notification data base. Beginning May 8, 1986 owners of underground storage tanks are required under Section 9002 to notify their designated State agency, but there is no statutory requirement for updating this notification information after it is submitted. Many States with existing programs have incorporated similar reporting requirements in their programs. EPA considered making updates for notification a requirement for demonstrating adequate enforcement under Section 9001, but has tentatively decided not to include such a requirement for the following reasons. First, the notification update is not required as part of the Federal notification requirements. In addition, reporting requirements for corrective action and closure in approved State programs may duplicate the updated notification information to some extent. Although EPA has chosen not to incorporate a notification update requirement in today's proposal, the Agency solicits comment on whether such a requirement is an essential component of State UST enforcement capabilities.

A second issue is public participation. Today's proposal provides that State enforcement proceedings must ensure adequate opportunity for public participation, through State law providing citizen's rights to intervene or through procedures requiring State implementing agencies to respond to inquiries from the public. A third option for meeting this public participation requirement is also provided in the proposed regulation. Under this third hybrid option, States could meet this requirement if they have the authority to allow intervention as of right in a manner analogous to Rule 24(a)(2) of the Federal Rules of Civil Procedure and provide assurance that the State enforcement agency(ies) will not oppose intervention under the State analogue to Rule 24 on the ground that the applicant's interest is adequately represented by the State. Rule 24 allows intervention if the applicant can demonstrate to the satisfaction of the court that he or she "claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his or her ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." EPA solicits comment on whether these options provide sufficient flexibility to States and adequate opportunity for public participation in enforcement.

A third issue concerns legal authorities. Under the proposed regulation, a State must provide authority for assessing civil penalties of at least $10,000 per day, immediate injunction authority, and authority for entry, inspection and information gathering. Although EPA recognizes that State authority to issue orders and assess penalties administratively might speed enforcement proceedings, in this proposal EPA has chosen not to require administrative order or administrative penalty assessment authority as a condition for approval. However, the State must describe its means of assessing penalties and enforcing the requirements of the program in the program description and in the State program implementation plan. EPA solicits comments on whether these administrative enforcement authorities should be program approval requirements, particularly in light of EPA plans to reconsider the need for these authorities in States approved under Subtitle C of RCRA. EPA also solicits comment on whether States have adequate alternative means of ensuring compliance with State and local UST requirements.

*B. Approval Procedures*

Following is a more detailed discussion of the procedures for approval and revision of State programs. States may submit an application for approval on the date of promulgation of the Federal technical requirements. EPA Regional offices will review State applications to determine if the application is complete. Required program application components are: a transmittal letter signed by the Governor; a description of current State program operations and procedures; a plan for future implementation of State program requirements including a Memorandum of Agreement; an Attorney General's statement; and copies of applicable State laws and regulations.

After EPA determines that the State application is complete, EPA will make a final determination of approval or disapproval within 180 days. In the first stage of application review, the EPA Regional Administrator will make a tentative recommendation on approval or disapproval. EPA will then publish a tentative determination in the **Federal Register** and allow 30 days for public notice and comment. EPA will hold a public hearing if there is sufficient public interest shown during the comment period.

Next, the EPA Regional Administrator will evaluate the public comments and make a final decision on approval or disapproval within the statutorily-mandated 180 days. EPA will publish this decision in the **Federal Register.**

Though States may apply to operate all aspects of the UST program for both petroleum and hazardous substance tanks, approval of State UST programs may occur in phases. Section 9004 authorizes approval of State programs for interim periods and approval of certain types of partial programs.

Initially, State programs may be approved for a period of one to three years from the date of promulgation of Federal tank standards under Part 280 of today's proposal, even if their leak detection, recordkeeping, reporting, and closure requirements are less stringent than Federal standards. However, EPA believes that some requirements in each of these areas must be present at the time of interim approval and EPA solicits comment on what degree of program development should already be in place. For example, would locally adopted ordinances be sufficient?

States that choose to apply for interim approval must submit to EPA an amended application to their approved program by the end of the applicable time period. This amended application must show that the State's leak detection and prevention, recordkeeping, reporting, and closure requirements are no less stringent than corresponding Federal standards. EPA will review this amended application in the same manner as the original application. EPA will publish the tentative determination made by the EPA Regional Administrator in the **Federal Register,** and will make a final determination within 180 days. If a State fails to submit an amended application, or EPA disapproves its amended application, the approved status of the State's entire program will expire automatically. This issue is discussed further in this preamble under "Automatic Expiration of Interim Approval."

At some point in the future it may be necessary for States to submit revisions to approved programs for approval by EPA. This may occur, for example, when Federal or State authorities are changed by new legislation or rulemaking. EPA will treat revised applications similar to amended applications in that only those program areas affected by the change will be subject to review and revision by EPA. However, EPA review of revised applications will be streamlined. Instead of publishing a tentative determination in the **Federal Register**, EPA will publish

a proposed determination that becomes final immediately after 60 days if no unresolved adverse public comments are received. This immediate final rulemaking procedure has also been used in State program approval under Subtitle C of RCRA, and for approval of revisions to State Implementation Plans under the Clean Air Act. If EPA receives substantial adverse public comments that are unresolved, the Agency will then publish a notice withdrawing the immediate final decision and follow the procedures used for initial and amended applications. In addition, if EPA has reason to believe that a particular revision will receive significant adverse comment, EPA may choose to follow the usual review procedures for program applications, rather than begin with the immediate final rulemaking process.

Table I lists State program elements that must be no less stringent than corresponding Federal standards at the time of application and the various types of State program approval.

TABLE I

[UST State Program Elements Which Must Be No Less Stringent Than Federal Requirements]

| Partial-petroleum tanks | Partial-hazardous substance tanks | Complete-petroleum and hazardous substance tanks |
|---|---|---|
| TYPES OF APPROVAL: | | |
| *1.A. Application for Interim Approval* [1] | | |
| Corrective action | Corrective action | Corrective action. |
| Financial responsibility | Financial responsibility | Financial responsibility. |
| New tank standards | New tank standards | New tank standards. |
| Notification. | Notification. | Notification. |
| *1.B. Amended Application by End of Interim Period* | | |
| Leak detection and prevention | Leak detection and prevention | Leak detection and prevention. |
| Recordkeeping | Recordkeeping | Recordkeeping. |
| Reporting | Reporting | Reporting. |
| Closure. | Closure. | Closure. |
| *2. Application for Final Approval* | | |
| Corrective action | Corrective action | Corrective action, |
| Financial responsibility | Financial responsibility | Financial responsibility. |
| New tank standards | New tank standards | New tank standards. |
| Leak detection and prevention | Leak detection and prevention | Leak detection and prevention. |
| Recordkeeping | Recordkeeping | Recordkeeping. |
| Reporting | Reporting | Reporting. |
| Closure | Closure | Closure. |
| Notification. | Notification | Notification. |
| *3. Subsequent Revision to Approved Programs* | | |
| Program components affected by revision | Program components affected by revision | Program components affected by revision. |

[1] The period of interim approval extends one to three years from promulgation of the Federal tank standards under Part 280 proposed elsewhere in today's FEDERAL REGISTER. If State regulatory action alone is needed to make leak detection and prevention, recordkeeping, reporting, and closure requirements no less stringent than Federal standards, EPA may approve the program for one year. If State legislative action is needed, EPA may approve the State program for a two year period. If both State legislative and regulatory action is needed, EPA may approve the State program for a three year period. Note that these time periods begin on the date of promulgation of Federal regulations under Part 280. One to three years from the date of promulgation of these regulations, all interim approval will expire unless an amended State application covering the new or modified program requirements is submitted to EPA. Note also that all approved State programs must provide for adequate enforcement of compliance of the above program requirements and standards.

### *C. Determination of "No Less Stringent"*

A critical area of the State program approval process is the determination that State programs are "no less stringent" than Federal requirements. EPA's approach to this issue is based on an intent to develop a flexible State program approval process that will allow States to explore innovative approaches in program development and implementation, while providing the required level of stringency. The Agency believes that a flexible approach will encourage States to seek Federal approval to administer and enforce UST programs in lieu of the Federal program. State or local program administration and enforcement is an important component of a national UST program, as most environmental problems associated with leaking tanks are localized in nature, and the most effective response may be provided through a State or local program.

Federal law requires States seeking UST program approval to demonstrate that eight specific technical program elements are "no less stringent" than corresponding Federal requirements. These eight program elements are: leak detection; recordkeeping; reporting of releases and corrective action taken by owners and operators; corrective action; closure; financial responsibility; notification; and standards of performance for new underground tanks. EPA is considering several approaches to determining whether program requirements in States seeking approval are "no less stringent" than the Federal standards, and solicits comment on the following options and any variations or combinations of them.

A. One option EPA is examining is a holistic approach to evaluating the stringency of State UST program requirements. In this approach, the stringency of the total State program is compared to the overall stringency of the Federal requirements for leak detection, recordkeeping, reporting, corrective action, closure, financial responsibility, new tank performance standards, and notification. Individual State program elements, e.g., corrective action or financial responsibility, would be allowed to be less stringent than corresponding Federal requirements provided the total State program was determined to be no less stringent than

the overall Federal program. For example, less stringent leak detection standards could be balanced with more stringent tank standards.

This approach has several advantages. First, it ensures that each State program meets the same level of overall environmental and health protection as the Federal program. In addition, this option would give maximum flexibility to the States in crafting individual requirements which meet an overall Federal standard of environmental protection while also addressing State-specific concerns and environmental conditions.

However, this option also has several major disadvantages. EPA believes that statutory language of Section 9004 indicates Congressional intent that State requirements in each area be no less stringent than the corresponding requirements and standards promulgated by EPA. This interpretation would not allow EPA to evaluate a State program in terms of its overall stringency as proposed in this option. Another problem with such "trade-offs" between program elements is the potential for 56 State variations on the same overall requirements. Individual requirements for leak detection or new tank standards could vary from State to State provided the overall State programs were determined to be no less stringent than the total Federal requirements. This broad variability of State programs would not provide a clear baseline for State program requirements or consistent requirements for tank owners and operators nationwide. In addition, it is likely that the evaluation of State programs and the program approval process would be more difficult and more time consuming since EPA would need to complete an analysis of each State submittal to determine the overall stringency of each State program.

B. A second option under consideration by EPA would require the Agency to evaluate the stringency of each individual requirement within a program element. Under this approach, EPA would not approve a State program that has any requirement less stringent than the corresponding Federal requirement even if other State requirements ensure that the less stringent requirement does not make the State program overall less protective than the Federal program. For example, if the Federal new tank performance standard includes ten separate requirements, approved State programs would have to contain all ten of the requirements, each one determined by EPA to be no less stringent than the Federal requirement.

The advantage of this approach is that program approval criteria are clear and the administrative burden of seeking approval is easier for both EPA and the State. However, the serious disadvantage of this approach is that it allows less flexibility for States to formulate approvable programs that are also tailored to individual State needs. States with existing programs could be required to make substantial revisions to their programs in order to receive approval, and States without existing programs may be discouraged from developing innovative approaches to regulating underground storage tanks.

C. A third option is a compromise between the first two options, being less flexible than Option A but more flexible than Option B. Under the third option each program element (e.g., leak detection), would need to be no less stringent than the corresponding Federal standard, rather than each requirement within that element. EPA would evaluate each program element holistically allowing for the use of trade-offs within elements but no trade-offs would be allowed among elements, such as balancing less stringent leak detection standards with more stringent tank standards. EPA would consider the use of trade-offs within a program element by allowing States to demonstrate that, for example, overall leak detection objectives established by EPA could be met under the State program even though not all State leak detection requirements are as stringent as Federal requirements. For example, under the leak detection element, sampling frequency might be less frequent in conjunction with a more stringent State requirement for location of monitoring wells.

The advantage of this approach is that it provides EPA with a substantial amount of flexibility in approving a variety of existing and new State programs while ensuring that a baseline of protection is met. The disadvantage of this option, as for Option A, is that EPA would be required to develop objectives for each of the required program elements and guidance for States on how these objectives would be compared to ensure that the State element was no less stringent than the corresponding Federal standard.

Currently EPA favors Option C because it allows more flexibility than Option B and does not pose the problems noted above for Option A. The Agency will be continuing work to determine how these approaches, or combination of these approaches, could be implemented. EPA solicits comment on which of these approaches is feasible, and how they could be implemented effectively through guidance or incorporation in the final rule.

*D. Automatic Expiration of Interim Approval*

As noted elsewhere in this preamble, under Subtitle I State programs may receive interim approval for a period of one to three years from the date of promulgation of Federal tank standards under Part 280, proposed elsewhere in today's **Federal Register**, even if their existing leak detection and prevention, recordkeeping, reporting, and closure requirements are less stringent than the Federal standards. In order for an interim approved State program to maintain its approved status, a State must submit an amended application covering changes to the less stringent program components listed above by the end of the appropriate interim period, or its approval will expire automatically.

After a State submits an amended approval application, EPA will generally require 180 days to determine if approval will be granted. If an amended application is submitted to EPA, and is disapproved, approval of the entire program will expire at the time the amended program is disapproved. If a State does not submit an amended application by the end of the interim approval period, approval of the program will expire at that time. The expiration of interim approval under Subtitle I does not require EPA to terminate or withdraw the program since the approval terminates automatically under the statute. State programs with expired interim approval may, through a Cooperative Agreement with EPA, continue to implement parts of the Federal UST program until such States apply for and receive final approval.

EPA interprets the interim period to refer to the period of time the State has to submit an amended application, not that the State must receive final approval by the end of the grace period. Accordingly, interim approval expires at the end of the appropriate interim period if no amended application is submitted, or if an amended application is submitted, when EPA makes a determination to disapprove the amended application.

States that seek interim and then final approval are required to submit two separate approval applications for interim and final approval and undergo the 180 day EPA review twice. States that receive interim approval must be

prepared to meet final approval requirements by the end of the grace period or automatic expiration of approval will occur.

*E. Withdrawal of Approval of State Programs*

Withdrawal procedures are outlined in § 281.51 of today's proposal. EPA has designed separate withdrawal procedures for circumstances when an approved State voluntarily transfers program responsibilities back to EPA versus when EPA initiates proceedings to determine if approval of a State program should be withdrawn. If EPA initiates withdrawal, the proceedings are to be conducted in accordance with adjudicatory hearing proceedings as outlined in 40 CFR 271.23 (b) and (c) of the Subtitle C State program approval regulation. EPA considered, but rejected, an alternative approach calling for withdrawal procedures by regulation rather than an adjudicatory hearing process. An example of this alternative approach is found in 40 CFR 145.34, under the Underground Injection Control (UIC) program.

Because Subtitle I of RCRA, covering the regulation of underground storage tanks, lacks the statutory direction provided to the UIC program under the Safe Drinking Water Act, and because a precedent for adjudicatory hearings in withdrawal proceedings has been established for RCRA under Subtitle C, EPA has chosen to incorporate the adjudicatory hearing procedures. EPA solicits comment on this issue and on other optional approaches such as withdrawal by regulation in conjunction with an appeals process that incorporates an adjudicatory hearing.

## VI. Relationship to Other EPA Programs

*A. RCRA Hazardous Waste UST Program*

State UST program requirements and approval procedures will be treated independently of State authorization under other related EPA programs. Federal UST legislation, under Subtitle I of RCRA, was developed to address an environmental problem not adequately covered by existing EPA programs. Existing underground tank regulations promulgated under Subtitle C (40 CFR Part 264, July 14, 1986), are applicable only to hazardous wastes, which are not "regulated substances" under Subtitle I (except for petroleum wastes). Therefore, approval of a State UST program under Subtitle I of RCRA does not entitle a State to implement UST requirements under Subtitle C of RCRA. See "Relationships to Other EPA Programs" discussed under the proposal of Federal UST standards, published elsewhere in today's **Federal Register** for additional information.

*B. Leaking Underground Storage Tank Petroleum Response Fund*

Under the Superfund Amendments and Reauthorization Act of 1986, Subtitle I was amended to provide a trust fund for corrective action by EPA, and States under Cooperative Agreement, in response to leaking underground petroleum storage tanks. After promulgation of Federal regulations under Part 280, EPA intends to link use of the trust fund by States to progress in developing approvable State UST programs. EPA will establish the exact nature and extent of this relationship during the next six to twelve months as EPA develops the administrative framework and initial Cooperative Agreements under the trust fund.

## VII. Economic and Regulatory Impacts

*A. Regulatory Impact Analysis*

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis in connection with a major rule. A "major" rule is defined as one that is likely to result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises in domestic or export markets.

This proposal will have none of the above effects, because requirements for State UST programs as outlined in this proposal will not add substantial costs beyond those imposed under the Federal UST regulations proposed elsewhere in today's **Federal Register.** Because the proposed rulemaking does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis at this time. However, a Regulatory Impact Analysis has been prepared for the proposed Federal tank standards and is described in the preamble to that regulation, published elsewhere in today's **Federal Register.** Today's proposal was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

This proposal, in itself, will not have a significant impact on a substantial number of small entities, since Federal UST requirements will already be in effect in all States seeking program approval subsequent to promulgation of Federal UST requirements under Subtitle I. However, EPA has determined that the proposed rule for tank standards under Subtitle I, published elsewhere in today's **Federal Register,** will have a significant economic impact on a substantial number of small entities based on the analysis prepared for that proposed rule. (See the preamble to that proposal for a discussion of these impacts.)

*C. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW., Washington, DC 20503; marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

**List of Subjects in 40 CFR Part 281**

Administrative practice and procedure, Hazardous materials, Petroleum, State program approval, Underground storage tanks.

Dated: March 31, 1987.

**Lee M. Thomas,**

*Administrator.*

For reasons set out in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended by adding new Part 281 as follows:

## PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

**Subpart A—Purpose, General Requirements and Scope**

Sec.

281.10 Purpose.
281.11 General requirements.
281.12 Scope and definitions.

**Subpart B—Components of a Program Application.**

281.20 Program application.
281.21 Description of current State program.
281.22 State program implementation plan.
281.23 Attorney General's statement.

**Subpart C—Adequate Enforcement of Compliance**

281.30 Requirements for compliance program and authority.
281.31 Requirements for enforcement authority.
281.32 Requirements for public participation.
281.33 Sharing of information.

**Subpart D—Approval Procedures**

281.40 Approval procedures for State programs.
281.41 Amendment required at end of interim period.
281.42 Revision of approved State programs.

**Subpart E—Withdrawal of Approval of State Programs**

281.50 Criteria for withdrawal of approval of State programs.
281.51 Procedures for withdrawal of approval of state programs.

**Authority:** Sec. 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991(c), (d), (e)).

## Subpart A—Purpose, General Requirements and Scope

### § 281.10 Purpose.

(a) This subpart specifies the requirements that State programs must meet to be approved by the Administrator under Section 9004 of RCRA, and the procedures EPA will follow in approving, revising and withdrawing approval of State programs.

(b) State submissions for program approval must be in accordance with the procedures set out in this part.

(c) A State may apply for approval under this subpart at any time after the promulgation of release detection, prevention, and correction regulations under section 9003 of RCRA.

(d) Any State program approved by the Administrator under this Part shall at all times be conducted in accordance with the requirements of this part.

### § 281.11 General requirements.

(a) The following substantive elements of a State program must be addressed in a State application for approval:

(1) Requirements for all existing and new underground storage tanks:

(i) Leak detection and prevention;

(ii) Recordkeeping for leak detection;

(iii) Reporting of releases and corrective action;

(iv) Corrective action;

(v) Tank closure; and

(vi) Financial responsibility for corrective action and compensating injured third parties.

(2) Standards of performance for new tanks.

(3) Requirements for notification of the existence of tanks.

(4) Provisions for adequate enforcement of compliance with the above program elements.

(b) Except as provided in paragraph (c) of this section, the State must demonstrate that its requirements and standards for existing and new tanks are no less stringent than the Federal requirements and standards in 40 CFR Part 280, and that it has a program which provides adequate enforcement of compliance with these requirements.

(c) (1) The Administrator may approve State programs with requirements less stringent than the Federal requirements for a period of one to three years from the date of promulgation of regulations under Part 280. Such interim approval may be granted only if State regulatory and/or legislative change is required in order for the State program to be no less stringent than the Federal requirements and standards under Part 280 for one or more of the following program elements: leak detection and prevention; recordkeeping for leak detection; reporting of releases and corrective action; and closure.

(2) A State program may receive interim approval if it—

(i) Has requirements for:

(A) Leak detection and prevention;

(B) Recordkeeping for leak detection;

(C) Reporting of releases and corrective action; and

(D) Closure; and

(ii) Has requirements that are no less stringent than the corresponding Federal requirements for:

(A) Corrective action;

(B) Financial responsibility;

(C) Notification; and

(D) New tank standards; and

(iii) Provides for adequate enforcement of compliance with these requirements.

(3) A State with a program which has received interim approval must receive final approval of an amended program containing program elements which are no less stringent than the Federal requirements in accordance with the following schedule:

(i) If only State regulatory action is required, the State must submit an amended program to EPA for approval one year after issuance of the regulations under 40 CFR Part 280.

(ii) If only State legislative action is required, the State must submit an amended program to EPA for approval two years after the issuance of the regulations under 40 CFR Part 280.

(iii) If both State legislative and regulatory action are required, the State must submit an amended program to EPA for approval three years after issuance of the regulations under 40 CFR Part 280.

(d) States with programs approved under this Part are authorized to administer the State program in lieu of the Federal program and will have primary enforcement responsibility with respect to the requirements of the approved program. EPA retains authority to take enforcement action in approved States as necessary and will notify the designated lead State agency of any such intended action.

### § 281.12 Scope and definitions.

(a) *Scope.* (1) The Administrator may approve either partial or complete State programs. A "partial" State program regulates either solely petroleum tanks or solely hazardous substance tanks. If a "partial" State program is approved, EPA will administer the remaining part of the program. A "complete" State program regulates both petroleum and hazardous substance tanks.

(2) EPA will administer the UST program on Indian lands, except where Congress has clearly expressed an intention to grant a State authority to regulate petroleum and hazardous substance USTs on Indian lands. This will not impair a State's ability to obtain program approval for petroleum and/or hazardous substances on non-Indian lands in accordance with this part.

(3) Nothing in this subpart precludes a State from:

(i) Adopting or enforcing requirements that are more stringent or more extensive than those required under this part; or

(ii) Operating a program with a greater scope of coverage than that required under this part. Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the Federally approved program.

(b) *Definitions.* (1) The definitions in Part 280 apply to all subparts of this part.

(2) For the purposes of this part the term "interim approval" means the approval received by a State program that meets the requirements in § 281.11(c) (1) and (2) for the time period defined in § 281.11(c)(3).

(3) For the purposes of this part the term "final approval" means the approval received by a State program under which each program element is no

BEST COPY AVAILABLE

less stringent than the corresponding Federal requirements.

## Subpart B—Components of a Program Application

### § 281.20 Program application.

Any State that seeks to administer a program under this Part shall submit an application as designed by EPA that shall contain the following parts:

(a) A transmittal letter from the Governor of the State requesting program approval;

(b) A description in accordance with § 281.21 of the current State program and operating procedures;

(c) A State program implementation plan in accordance with § 281.22, covering future plans for State program implementation, and a Memorandum of Agreement;

(d) An Attorney General's statement in accordance with § 281.23; and

(e) Copies of all applicable State statutes and regulations.

### § 281.21 Description of current State program.

A State seeking to administer a program under this part must submit a description of the program it proposes to administer under State law in lieu of the Federal program. The description of a State's existing or planned program shall include:

(a) The scope of the State program:

(1) Whether the State program regulates petroleum or hazardous substances, or both;

(2) Whether the State has any existing authority over Indian lands or has existing agreements with Indian tribes relevant to the regulation of underground storage tanks;

(3) Whether the State program is more stringent or broader in scope than the Federal program, and in what ways; and

(4) Whether the State is applying for interim or final approval.

(b) The organization, structure, and jurisdiction of the State and local agencies with responsibility for administering the program. The jurisdiction and responsibilities of all State and local implementing agencies must be delineated, appropriate procedures for coordination set forth, and one State agency designated as a "lead agency" to facilitate communications between EPA and the State.

(c) Staff resources to carry out and enforce the required State program elements, both existing and planned, including the number of employees, agency where employees are located, general duties of the employees, and current limits or restrictions on hiring or utilization of staff.

(d) An existing State funding mechanism to meet the estimated costs of administering and enforcing the required State program elements, and any restrictions or limitations upon this funding.

(e) A description of applicable State procedures, including a complete description of the compliance monitoring and enforcement program and State administrative or judicial review procedures.

### § 281.22 State program implementation plan.

A State must submit a plan outlining how the State will administer and enforce the program elements required under this part, including steps to be taken to improve program administration and enforcement. This plan shall include:

(a) A discussion of how the program described under Section 281.21 will be implemented to meet requirements of this part;

(b) For a State program that must modify its statutory or regulatory requirements for leak detection and prevention, recordkeeping, reporting, or closure in order to be no less stringent than the Federal requirements, the plan must include a schedule for making such changes and for submitting an amendment to the State application in accordance with § 281.41;

(c) A Memorandum of Agreement negotiated with EPA containing proposed areas of coordination and shared responsibilities between the State and EPA and separate EPA and State roles and responsibilities in areas including, but not limited to: implementation of partial State programs; enforcement; compliance monitoring; EPA oversight; and sharing and reporting of information. Prior to approval, such MOA must be signed by the Regional Administrator and the appropriate official of the State lead agency.

### § 281.23 Attorney General's statement.

(a) A State must submit a statement including statutory and regulatory checklists as requested by EPA, from the Attorney General that the laws and regulations of the State provide adequate authority to carry out the program described under § 281.21 and to meet other requirements of this part. This statement may be signed by independent legal counsel for the State rather than the Attorney General, provided such counsel has full authority to independently represent the State Agency in court on all matters pertaining to the State program. This statement shall include citations to the specific statutes, administrative regulations, and where appropriate, judicial decisions which demonstrate adequate authority to regulate and enforce requirements for underground storage tanks. State statutes and regulations cited by the State Attorney General shall be fully effective by the time the program is approved.

(b) If a State currently has authority over underground storage tank activities on Indian Lands, the statement shall contain an appropriate analysis of the State's authority.

## Subpart C—Adequate Enforcement of Compliance

### § 281.30 Requirements for compliance program and authority.

State programs shall have the following authorities, procedures, and programs pertaining to investigation, compliance monitoring, and enforcement.

(a) Any authorized employee of the State engaged in compliance inspections, monitoring, and testing shall have authority to obtain by request any information from an owner or operator with respect to his/her tanks, tank contents and associated equipment. Any authorized employee of the State shall also have authority to request an owner or operator to conduct monitoring or testing.

(b) Authorized employees shall have the authority to enter any site or premises subject to underground storage tank regulations or in which records relevant to the underground storage tank program operation are kept in order to copy any records, obtain samples of regulated substances, and inspect and conduct monitoring or testing of tanks, associated equipment and the surrounding environment.

(c) State programs shall have procedures for receipt, evaluation, retention, and investigation of all records and reports required of owners or operators and shall provide for investigation for possible enforcement of failure to submit these records and reports.

(d) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance with program requirements. States shall maintain a program for periodic inspections of facilities subject to regulation in a manner designed to determine compliance or non-compliance, to verify accuracy of information submitted by owners or operators of regulated underground storage tanks and to verify

adequacy of methods used by owners or operators in developing that information.

(e) Investigatory inspections shall be conducted, samples shall be taken, and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

(f) State programs shall maintain a program for investigating information obtained regarding violations of applicable program requirements, including proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged and the State enforcement agency(ies) shall make available information on reporting procedures.

(g) State programs shall maintain a program which is capable of making comprehensive surveys of all facilities and activities subject to the State agency(ies) authority to identify persons subject to regulation who have failed to comply with program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to EPA upon request.

**§ 281.31 Requirements for enforcement authority.**

(a) Any State agency administering a program shall have the authority to implement the following remedies for violations of State program requirements

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;

(3) To assess or sue to recover in court civil penalties as follows:

(i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements shall be assessable up to at least $10,000 per tank.

(ii) Civil penalties for failure to comply with any State requirements or standards for existing or new tanks shall be assessable for each instance of violation up to at least $10,000 for each tank for each day of violation. If the violation is continuous, civil penalties shall be assessable up to at least $10,000 for each day of violation.

(b) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent that EPA must provide when it brings an action under Subtitle I of the Resource Conservation and Recovery Act.

(c) A civil penalty assessed, sought, or agreed upon by the State enforcement agency(ies) under paragraph (a)(3) of this section shall be appropriate to the violation.

**§ 281.32 Requirements for public participation.**

Any State administering a program shall provide for public participation in the State enforcement process by providing:

(a) Authority which allows intervention as of right in any civil action to obtain the remedies specified in § 281.31 by any citizen having an interest that is or may be adversely affected; or

(b) Assurance by the appropriate State agency that:

(1) It will publish notice of and provide at least 30 days for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);

(2) It will investigate and provide written responses to all citizen complaints about violations; and

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation; or

(c) Authority which allows intervention in a manner analogous to Federal Rule 24(a)(2), and assurance by the appropriate State enforcement agency that it will not oppose intervention under the State analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State.

**§ 281.33 Sharing of information.**

(a) States with approved programs shall furnish EPA, upon request, any information in their files obtained or used in the administration of the State program. Such information includes:

(1) Any information submitted to the State under a claim of confidentiality. The State must submit that claim to EPA when providing such information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with Federal regulations in 40 CFR Part 2; and

(2) Any information which is submitted to the State without a claim of confidentiality. EPA may make this information available to the public without further notice.

(b) EPA shall furnish to States with approved programs, upon request, any information in its files which the State needs to administer its approved State program. Such information includes:

(1) Any information which is submitted to EPA without a claim of confidentiality; and

(2) Any information submitted to EPA under a claim of confidentiality, subject to the conditions in 40 CFR Part 2.

## Subpart D—Approval Procedures

**§ 281.40 Approval procedures for State programs.**

(a) The following procedures are required for all applications, regardless of whether the application is for a partial or complete program, as defined in § 281.12, or for interim or final approval in accordance with § 281.11.

(b) Prior to submitting an application to EPA for approval of a State program, the State shall provide for public notice and comment in the development of its underground storage tank program.

(c) Upon receipt by EPA of a State program application, EPA will examine the application and notify the State as to whether its application is complete, in accordance with the application components required in § 281.20. The 180 day statutory review period shall begin only after all necessary information is received by EPA.

(d) The State and EPA may by mutual agreement extend the review period.

(e) After receipt of a complete program application, the Administrator shall tentatively determine approval or disapproval of the State program. EPA shall issue public notice of the tentative determination in the **Federal Register**; in enough of the largest newspapers in the State to attract statewide attention; and to persons on the State agency mailing list and any other persons whom the agency has reason to believe are interested. Such notice of the tentative determination shall also:

(1) Afford the public 30 days after the notice to comment on the State's submission and the tentative determination; and

(2) Include a general statement of the areas of concern if the Administrator indicates the State program may not be approved; and

(3) Note the availability for inspection by the public of the State program submission; and

(4) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the tentative determination unless sufficient public interest is not expressed, at which time the Regional Administrator may cancel the public hearing.

(f) Within 180 days of receipt of a complete State application, the Administrator shall make a final determination whether or not to approve

the State program taking into account the comments received. EPA shall give notice of its determination in the **Federal Register** and codify the approved State program. The notice shall include a concise statement of the reasons for this determination and a response to significant comments received.

**§ 281.41 Amendment required at end of interim period.**

(a) State programs that meet the requirements of § 281.11(c) (1) and (2) may be approved for one to three years from the date of promulgation of regulations under Part 280. States which receive such interim approval must adopt requirements which are no less stringent than the corresponding Federal requirements and standards within the timeframes specified under § 281.11(c)(3).

(b) At the end of the specified time period, a State with interim approval must submit to EPA an amendment to its application which includes all modified and new requirements for leak detection and prevention, recordkeeping, reporting, or closure, as specified in the State's program implementation plan. Such amended applications must also include a modified program description and State implementation plan, an Attorney General's statement and a Memorandum of Agreement that incorporate the amended program requirements, and copies of all applicable State statutes and regulations.

(c) Upon receipt of the application amendment, the Administrator shall follow the same review and approval procedures as required in § 281.40.

(d) If a State fails to submit an amendment within the specified timeframe, the interim approval of the State program shall expire upon the applicable date established under § 281.11(c), and the Subtitle I program shall automatically revert to EPA.

(e) If a State submits an amendment to the program application within the timeframe specified under § 281.11(c)(3) and the amendment is disapproved, the interim approval of the State program shall expire immediately upon disapproval and the Subtitle I program shall automatically revert to EPA.

(f) If interim approval of the State program expires, EPA shall notify the regulated community and the public of the re-establishment of the Federal program through a notice in the **Federal Register.**

**§ 281.42 Revision of approved State programs.**

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is changed or when responsibility for the State program is shifted to a new agency or agencies. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority or change in division of responsibility among State agencies. EPA will determine in each case whether a revision of the approved program is required.

(b) Whenever the Administrator has reason to believe that circumstances have changed with respect to an approved State program or the Federal program, the Administrator may request, and the State shall provide, a revised application as prescribed by EPA.

(c) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of Subtitle I pursuant to the procedures under this section, or under § 281.40 if EPA has reason to believe the proposed revision will receive significant adverse comment from the public.

(1) The Administrator shall issue public notice of planned approval or disapproval of a State program revision in the **Federal Register;** in enough of the largest newspapers in the State to attract statewide attention; and by mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested. The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of 30 days.

(2) The Administrator's decision on the proposed revision shall become effective 60 days after the date of publication in the **Federal Register** in accordance with paragraph (c)(1) of this section, unless an adverse comment pertaining to the State revision discussed in the notice is received during the comment period. If an adverse comment is received, EPA shall so notify the State and shall, within 60 days after the date of publication, publish in the **Federal Register** either:

(i) A withdrawal of the immediate final decision. EPA's planned decision shall then be treated as a tentative decision in accordance with the applicable procedures of 281.40 (e) and (f); or

(ii) A notice containing a response to adverse comments and which either affirms that the immediate final decision takes effect or reverses the decision.

(d) Revised State programs that receive approval shall be codified in the **Federal Register.**

## Subpart E—Withdrawal of Approval of State Programs

**§ 281.50 Criteria for withdrawal of approval of State programs.**

(a) The Administrator shall withdraw program approval when the Agency determines that a State no longer has adequate regulatory or statutory authority or is not administering and enforcing an approved program in accordance with this part. The State must have adequate capability to administer and enforce the State program. In evaluating whether such capability exists, the Agency will consider whether the State is taking timely and appropriate enforcement actions and will evaluate the quality and number of State compliance inspections.

(b) Such withdrawal of approval shall occur only after the State fails to take appropriate corrective action within a reasonable time, not to exceed 120 days after notice from the Administrator that the State is not administering and enforcing its program in accordance with the requirements of this part.

**§ 281.51 Procedures for withdrawal of approval of State programs.**

(a) The following procedures apply when a State with an approved program voluntarily transfers to EPA those program responsibilities required by Federal law.

(1) The State shall give EPA notice of the proposed transfer, and shall submit, at least 90 days prior to the transfer, a plan for the orderly transfer of all relevant program information necessary for EPA to administer the program.

(2) Within 30 days of receiving the State's transfer plan, EPA shall evaluate the plan and identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur, EPA shall publish notice of the transfer in the **Federal Register;** in enough of the largest newspapers in the State to attract statewide attention; and to persons on appropriate State mailing lists.

(b) The following procedures apply when EPA begins proceedings to determine whether to withdraw approval of a State program, either on its own initiative or in response to a petition from an interested person:

(1) Withdrawal proceedings shall be conducted in accordance with procedures set out in 40 CFR 271.23 (b) and (c), except for § 271.23(b)(8)(iii) to the extent that it deviates from requirements under § 281.50.

[FR Doc. 87-7632 Filed 4-16-87; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Friday
April 17, 1987

Part III

# Department of Health and Human Services Environmental Protection Agency

## Notice of the First Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles and Guidelines for Development of Toxicological Profiles

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Environmental Protection Agency**

[OPTS-400003; FRL-3174-9(a)]

# Notice of the First Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

**AGENCY:** Department of Health and Human Services (DHHS) and Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Superfund Amendments and Reauthorization Act (SARA) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) by establishing certain requirements for EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) of DHHS with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the two agencies to prepare a list of at least 100 hazardous substances, in order of priority, which are most commonly found at NPL facilities and which the agencies determine are posing the most significant potential threat to human health. Section 110 of SARA requires that the list be prepared no later than April 17, 1987. This notice contains that prioity list of 100 substances, and provides a brief summary of the methodology used to assemble the list.

**ADDRESS:** Comments on this notice should bear the docket control number OPTS-400003, and should be submitted to the following address: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street SW., Washington, DC 20460.

Comments which contain confidential business information (CBI) should clearly note that they contain CBI and should be sent in triplicate to the address given above. For further information regarding the submission of comments containing CBI, see Unit V of this notice. Non-confidential versions of comments on this notice will be available for public inspection in Room NE-G004 at the address given above from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-79), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404).

**SUPPLEMENTARY INFORMATION:**

## I. Background

On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

Section 110 of SARA amends section 104(i) of CERCLA by establishing requirements for the preparation of: (1) A list of hazardous substances found at NPL sites (in order of priority), (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances. The purpose of this notice is to identify the first 100 priority list substances and to provide a short summary of the methodology used by ATSDR and EPA to compile that list. Although the new statutory provisions have been added to CERCLA, this notice will refer to them as the section 110 requirements of SARA, to maintain a clear distinction in the notice between the new provisions and the existing requirements of CERCLA

With regard to the priority list requirement, section 110 of SARA states that ATSDR and EPA:

> shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the [CERCLA] National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under [CERCLA] is under consideration.

Section 110 further requires that the agencies prepare the first priority list within 6 months of the enactment of SARA (i.e., no later than April 17, 1987).

After compiling the first priority list, ATSDR must prepare toxicological profiles of the listed substances. Section 110 of SARA establishes a timetable for revising the priority list and preparing toxicological profiles of hazardous substances on the list; profiles of no fewer than 25 substances on the first priority list must be completed within 1 year of the enactment of SARA (by October 17, 1987). The profiles will be made available to the public, with a notice of availability and a request for public comment to be published in the **Federal Register**. The profiles will be revised as necessary in response to the public comments and additional data that subsequently become available to ATSDR (but no less often than once every three years). The toxicological profile process is described in greater detail in a notice which is published elsewhere in today's issue of the **Federal Register**.

The first priority list of 100 hazardous substances was prepared within 6 months of the enactment of SARA, as required by section 110. Unfortunately, ATSDR and EPA have not been able to solicit public comments on the preparation of the first priority list, because the time-constraints of SARA section 110 require the agencies to take extraordinary steps to expedite policy development and preparation of the first list and profiles. However, ATSDR and EPA have been as thorough as possible in compiling the first priority list, given the tight statutory timetable within which the agencies had no operate.

The methodology used to prepare the first priority list is summarized below. The agencies solicit public comment on this approach; such comments should be submitted in accordance with the instructions given in this notice. The listing process will be refined as future revisions of the list are prepared under less severe time-constraints. Later changes in the listing methodology will be based on comments received in response to this notice and on further evaluation of the process by ATSDR and EPA. All nonconfidential comments will be placed in the public file for this notice. A more detailed description of the listing methodology is contained in support documents which have been placed in the public file and are available for public review (see Unit V of this notice).

## II. Methodology for Selecting Substances on the First Priority List

### *A. General Approach Taken by ATSDR and EPA*

The hazardous substances listed in this notice were drawn from a list of 717 hazardous substances currently identified under section 102 of CERCLA. ATSDR and EPA used the CERCLA list to create a subset of hazardous substances which EPA has identified at National Priority List (NPL) sites. The two agencies then began a process of prioritizing that subset of hazardous substances based on the following three criteria for determining the degree to which each substance poses a potential human health risk: (1) Chemical toxicity, (2) frequency-of-occurrence of subset substances at NPL sites or other facilities, and (3) potential for human

exposure to the substances. These criteria reflect the requirements of SARA section 110, as well as the general practice of defining human health risk in terms of the toxicity and human exposure potential of a chemical substance.

*B. Evaluation of Hazard Scoring Systems for Ranking Chemical Substances Under the Toxicity Criterion*

The first step in prioritizing the subset of hazardous substances was the evaluation of existing hazard scoring systems and the selection of systems with the greatest applicability to the specific listing requirements in section 110 of SARA. In reviewing different hazard scoring systems, ATSDR and EPA focused on the evaluation of the toxicity ranking components of the systems; the exposure components of the scoring systems were not reviewed in detail, because they were considered more limited in their applicability to ranking of chemical risk under section 110. In addition, various approaches for characterizing frequency-of-occurrence and potential for human exposure were reviewed outside the context of the ranking schemes. These different approaches are discussed more fully in Units II.D. and II.E. of this notice.

ATSDR and EPA reviewed a number of hazard scoring systems for their degree of applicability to the ranking criterion of toxicity. Three general types of hazard scoring systems were identified:

1. Modeling schemes, which use a system of complex sub-models to combine the toxicological characteristics and environmental mobility and persistence of a substance into a single risk number, which takes into account chemical concentration at an exposure point (dose) and the probability of an effect as a function of dose.

2. Numerical schemes, which assign numerical sub-scores to the inherent toxicological and physical properties of a substance, and then combine the sub-scores into one or more hazard score(s).

3. General classification schemes, which assign chemical substances to hazard categories rather than assigning numerical sub-scores. The defining criteria for any hazard category can be quantitative or qualitative and, most often, can have a separate criteria component for toxicity, which could be used to provide a general grouping of chemical substances on the basis of toxicity.

The ATSDR and EPA review of potentially applicable scoring systems within these three categories was a two-tiered approach. Initially, scoring systems were screened to eliminate those systems that were not feasible because of large, site-specific data requirements (as required with modeling schemes), or that addressed only one type of toxic effect (usually acute toxicity). Each of these screening elements was considered to be a critical limitation of a particular scheme for its use in the toxicity ranking of substances under section 110 of SARA. In addition, systems which address only one type of toxic effect were eliminated from consideration.

Hazard scoring systems not eliminated by the initial screen were then evaluated in greater detail, based on the degree to which a substance's toxicity was characterized by each system, data quality and availability, the relevance of the scoring scheme for the toxicity ranking of hazardous substances under section 110, and any methodological flaws in the approach used to combine toxicity data. An ideal toxicity criterion ranking scheme should evaluate a wide range of toxic responses, distinguish between mild and severe toxic responses, have a readily available data base containing peer reviewed toxicology information, and use a relevant and plausible approach to combine toxicity data.

*C. Selection of Reportable Quantity as the Hazard Scoring System for Ranking Substances Under the Toxicity Criterion*

Based upon a comparison of the strengths and limitations of each scoring system reviewed, ATSDR and EPA selected the Reportable Quantity (RQ) scoring scheme for the toxicity ranking of hazardous substances under section 110 of SARA. The RQ scheme is described in several **Federal Register** documents (50 FR 13456, 51 FR 34535, and 52 FR 8140).

CERCLA section 103(a) requires that the person in charge of a vessel or facility notify the National Response Center immediately when there is a release of a hazardous substance in an amount equal to or greater than the reportable quantity for that substance. Section 102(b) of CERCLA establishes RQs for releases of hazardous substances at 1 pound, unless other reportable quantities were assigned to the substances under the Clean Water Act. CERCLA section 102(a) authorizes EPA to adjust all reportable quantities by regulation, and the Agency has done so for most of the 717 CERCLA hazardous substances.

ATSDR and EPA selected the RQ approach as a hazard scoring system for several reasons. It provides the most complete characterization of toxicity of all hazard scoring systems reviewed by the two agencies; all other schemes reviewed were more limited in either the consideration of different types of toxic effects, severity of effect, or potency. In addition, unlike most other ranking schemes, toxicity data used in the RQ approach are derived from primary, peer reviewed literature, and such data already are processed in a usable form for all hazardous substances frequently detected at NPL sites. Moreover, the determination of RQ health effect values utilizes weight-of-the-evidence considerations in the evaluation of data.

The RQ scoring system operates by correlating toxicity values to a tiered scale of RQ values (1, 10, 100, 1,000, and 5,000 pounds). For purposes of preparing the first priority list of hazardous substances, ATSDR and EPA used the lowest RQ value (representing the most severe human health hazard) for all candidate substances based upon acute mammalian toxicity; chronic mammalian toxicity, and carcinogenicity. The agencies did not use available RQ values for ignitability, reactivity, and aquatic toxicity of the substances, because these criteria were not considered relevant to the requirements and objectives of SARA section 110. Certain of the RQ health effect values were adjusted based on considerations of environmental persistence. The adjusted RQ value was the final figure for toxicity ranking under SARA section 110.

*D. Selection of a Data Source Relating to the Criterion of Frequency-of-Occurrence*

The second criterion used by ATSDR and EPA to prepare the first priority list of hazardous substances under section 110 of SARA was the frequency-of-occurrence of hazardous substances at NPL sites. The agencies evaluated various sources of data associated with this criterion. Ideally, frequency-of-occurrence data would include standardized monitoring data from sites on the NPL and would contain site-specific data on the frequency-of-detection and medium-specific location of hazardous substances at sites.

Using these data parameters for guidance, ATSDR and EPA decided to use Contract Laboratory Program (CLP) data for ranking substances under the frequency-of-occurrence criterion. The CLP is an EPA program which supports that Agency's hazardous waste activities by providing a range of state-of-the-art chemical analysis services of known quality. Many of the waste samples analyzed as part of site inspections and remedial investigations are part of the CLP. EPA's central

directive governing the structure and function of the CLP is to provide legally defensible analytical results. Therefore, a high level of quality assurance and documentation has been incorporated into all aspects of CLP activities.

A statistically constructed survey of a subset of the CLP data (CLP survey) was developed in 1984 from the program utilization records of the CLP. The CLP survey represents a random, stratified sample of sites and waste samples from those sites which were analyzed under the CLP from 1980 to 1984. The survey provides data on the percentage of sites at which a substance was detected at least once in any medium (i.e., frequency-of-occurrence) and the average and range of concentrations across media or matrices (e.g., soil, groundwater, drums, etc.). Data from 358 sites and 3,000 waste samples were extracted from hard-copy laboratory analysis records and then computerized to create the data base. In addition, survey data on volatile organics have been updated to include data from 1981 to 1987.

The CLP survey has a number of limitations for purposes of the priority list exercise. Although the survey provides a statistically representative sample of CLP sites, it does not necessarily provide a representative sample of all NPL sites or all hazardous waste sites. In addition, the agencies determined frequency-of-occurrence from data on NPL and non-NPL sites, while section 110 of SARA requires a determination of frequently occurring substances at NPL sites only.

However, the CLP survey information was selected by ATSDR and EPA to determine the frequency-of-occurrence for hazardous substances at NPL sites because it represents the most comprehensive data available for identification of hazardous substances most commonly found at those sites. The survey provides a representative sample of existing data that has been derived under quality-assured and standardized analytical methods. The system is automated and thus provides easily accessed data for application to chemical frequency determinations under SARA.

*E. Selection of Data Sources Relating to the Criterion of Potential for Human Exposure*

ATSDR and EPA considered a third criterion in preparing the first priority list of hazardous substances under section 110 of SARA: the potential for human exposure to those substances. The agencies evaluated various sources of data associated with this criterion. Ideally, data for the characterization of exposure potential at hazardous waste sites would contain detailed, site-specific information on hazardous substance contaminants, as well as identification of known or potential human exposure pathways, characterization of potentially exposed populations, and a determination of expected exposure levels and duration at each exposure point.

Using these data parameters for guidance, ATSDR and EPA selected the following sources of data for use in ranking substances under the criterion of human exposure potential.

1. *Surface water data, groundwater data, and indicator chemical substances.* ATSDR and EPA used the CLP survey data to derive a rough estimate of potential for human exposure to hazardous substances at NPL facilities. The agencies considered 3 types of exposure-related data from the CLP survey in prioritizing the list of 100 hazardous substances under SARA: the average concentration of the candidate substances detected in groundwater and surface water across the 385 NPL sites included in the CLP survey; the frequency of detection of those substances in groundwater and surface water across the 385 sites; and whether the substances had been selected for detailed exposure and risk assessment at Superfund Remedial sites (i.e., indicator substances).

The agencies believe that these data are the best readily available measures of potential human exposure. Groundwater and surface water are considered to be measures of mobility from the site and indicators of drinking water exposures. Many of the Superfund remedial actions to date have focused on protection from human health risks associated with contaminated drinking water. In addition, EPA has focused on indicator substances identified under CERCLA as substances for which the potential for human exposure has been determined to exist; ATSDR and EPA therefore recognized that the list of indicator substances should be used for the preparation of the first priority list under section 110 of SARA.

The use of CLP survey data for exposure characterization necessarily excluded considerations of environmental fate and mobility, exposure pathways, and population characteristics. In addition, some estimates of concentration derived from the CLP survey data were made from only a limited number of samples. However, the agencies believe that these limitations are outweighed by the fact that no other available data provide as accurate a measure of the potential for human exposure to hazardous substances at NPL sites.

2. *Adjusted RQ values.* As noted in Unit II.C. of this notice, RQ values may be adjusted for considerations of environmental persistence. This process involves adjusting the RQ values based on biodegradation, hydrolysis, and photolysis, collectively referred to as BHP. The BHP criteria are secondary to the primary RQ criteria of acute and chronic toxicity and carcinogenicity. The BHP criteria were used by ATSDR and EPA, where appropriate, to change the RQ value one level from the original value calculated with the primary criteria alone. The agencies based their use of these secondary criteria on the fact that substances which have a tendency to degrade to innocuous products pose a less serious health concern than equally toxic substances that have less tendency to degrade.

ATSDR and EPA also used other secondary criteria such as bioaccumulation, high reactivity, and hazardous degradation products to determine if an adjustment of RQ values was appropriate for a given substance. In cases where a degradation product was more toxic than the parent compound, the RQ value was adjusted downward.

The use of adjusted RQ values in the preparation of the first priority list ensured the consideration of a number of relevant exposure factors in this scoring exercise. However, the extent of this adjustment for each candidate substance was either "no change" or a one-level adjustment in the primary RQ value. The RQ adjustment thus served only as a crude indicator of the human exposure potential of those substances.

*F. Generation of the Priority List*

ATSDR and EPA used the ranking factors described above to represent the three criteria for determining the potential human health risk of the candidate substances. Toxicity was principally represented by RQ health effect values; frequency-of-occurence was principally represented by CLP site percent data; the potential for human exposure was principally represented by data on groundwater, surface water, and indicator chemical substances. The agencies generated an algorithm to calculate a hazard index value for each candidate substance, for purposes of placing the substances on the first priority list.

The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites by means of site percent data from the CLP survey. The

agencies divided the site percent data value for each substance (representing frequency-of-occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their site indices. The agencies then calculated an exposure index for each substance by ranking them based on the three exposure-related factors (with each factor receiving equal weight). The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each substance. The substances were prioritized based on their hazard indices.

The algorithm for calculating the hazard index is described in greater detail in the support document for this notice, which is contained in the public file notice. Note that the hazard index as described in this notice is not the same as the hazard index described in the Guidelines for Health Risk Assessment of Chemical Mixtures (51 FR 34014, September 24, 1986).

For purposes of assessing hazardous substances in toxicity profiles, ATSDR and EPA combined some of the candidate substances into groups. If substances are stereoisomers of one another, are readily metabolized to other substances on the list, or generally are characterized as mixtures with respect to toxicity and/or frequency-of-occurence, they were grouped together and occupy only one position on the priority list. Examples of these types of substances include: heptachlor and heptachlor epoxide; endrin and endrin aldehyde; aldrin and dieldrin; DDT, DDE, and DDD; isomers of lindane (BHC) and PCB's.

*G. Prioritization Within the First List of 100 Hazardous Substances*

The list of 100 prioritized substances has been separated into 4 priority groups of 25 substances each. ATSDR and EPA have listed the substances within each group in order of their Chemical Abstracts Services (CAS) Registry numbers, to reflect the somewhat inexact nature of the ranking algorithm and the uncertainties of the underlying data bases. The first (and highest) priority group of 25 hazardous substances is composed of the substances which will be the subject of the first toxicological profiles developed under section 110 of SARA.

## III. List of Substances

The following 100 hazardous substances comprise the first priority list of substances that will be the subject of toxicological profiles prepared by ATSDR. The substances are listed in 4 groups of 25 substances each. The four groups are listed in descending order of priority, with the first group having the highest priority substances of the first priority list. The substances within each group are listed in CAS number order.

### Priority Group 1

| CAS No. | Substance name |
|---|---|
| [illegible] | Benzo(a)pyrene |
| 53703 | Dibenzo(a),h)anthracene |
| [illegible] | Benzo(a)anthracene |
| 57125 | Cyanide |
| 60571 | Dieldrin/aldrin |
| [illegible] | Chloroform |
| 71432 | Benzene |
| 75014 | Vinyl chloride |
| 75092 | Methylene chloride |
| 76448 | Heptachlor/heptachlor epoxide |
| 79016 | Trichloroethene |
| [illegible] | N-nitrosodiphenylamine |
| 106467 | 1,4-Dichlorobenzene |
| 117817 | Bis(2-ethylhexyl)phthalate |
| 127184 | Tetrachloroethene |
| 205992 | Benzo(b)fluoranthene |
| 218019 | Chrysene |
| 1745016 | P-Dioxin |
| 7439921 | Lead |
| 7440020 | Nickel |
| 7440382 | Arsenic |
| 7440417 | Beryllium |
| 7440439 | Cadmium |
| 7440473 | Chromium |
| 11196825 | PCB–1260,54,48,42,32,21,1016 |

### Priority Group 2

| CAS No. | Substance name |
|---|---|
| 56235 | Carbon tetrachloride |
| 57749 | Chlordane |
| 62759 | N-nitrosodimethylamine |
| 72559 | 4,4'-DDE, DDT, DDD |
| 75003 | Chloroethane |
| 75274 | Bromodichloromethane |
| 75354 | 1,1-Dichloroethene |
| 78591 | Isophorone |
| 78875 | 1,2-Dichloropropane |
| 79005 | 1,1,2-Trichloroethane |
| 79435 | 1,1,2,2-Tetrachloroethane |
| 87865 | Pentachlorophenol |
| 91941 | 3,3'-Dichlorobenzidine |
| 92875 | Benzidine |
| 107062 | 1,2-Dichloroethane |
| 108883 | Toluene |
| 108952 | Phenol |
| 111444 | Bis(2-chloroethyl)ether |
| 121142 | 2,4-Dinitrotoluene |
| 319846 | BHC-alpha, gamma, beta, delta |
| 542881 | Bis(chloromethyl)ether |
| 621647 | N-nitrosodi-n-propylamine |
| 7439976 | Mercury |
| 7440666 | Zinc |
| 7782492 | Selenium |

### Priority Group 3

| CAS No. | Substance name |
|---|---|
| 71556 | 1,1,1-Trichloroethane |
| 74873 | Chloromethane |
| 75218 | Oxirane |
| 75252 | Bromoform |
| 75343 | 1,1-Dichloroethane |
| 84742 | Di-N-butyl phthalate |
| [illegible] | 2,4,6-Trichlorophenol |
| 91203 | Napthalene |
| [illegible] | Nitrobenzene |
| 100414 | Ethylbenzene |
| 107028 | Acrolein |
| 107131 | Acrylonitrile |
| 108907 | Chlorobenzene |
| 118741 | Hexachlorobenzene |
| 122667 | 1,2-Diphenylhydrazine |
| 124481 | Chlorodibromomethane |
| 156606 | 1,2-Trans-dichloroethene |
| 193395 | Indeno(1,2,3-cd)pyrene |
| [illegible] | 2,6,Dinitrotoluene |
| 1330207 | Total xylenes |
| 7221934 | Endrin aldehyde/endrin |
| 7440224 | Silver |
| 7440508 | Copper |
| 7664417 | Ammonia |
| 8001352 | Toxaphene |

### Priority Group 4

| CAS No. | Substance name |
|---|---|
| 51285 | 2,4-Diitrophenol |
| 59507 | P-Chloro-m-cresol |
| 62533 | Aniline |
| [illegible] | Benzoic acid |
| 67721 | Hexachloroethane |
| 74839 | Bromomethane |
| 75150 | Carbondisulfide |
| 75694 | Fluorotrichloromethane |
| 75718 | Dichlorodifluoromethane |
| 78933 | 2-Butanone |
| 84662 | Diethyl phthalate |
| 85018 | Phenanthrene |
| 87683 | Hexachlorobutadiene |
| 95487 | Phenol,2-methyl |
| 95501 | 1,2-Dichlorobenzene |
| 105679 | 2,4-Dimethylphenol |
| 108101 | 2-Pentanone, 4-Methyl |
| 120821 | 1,2,4-Trichlorobenzene |
| 120832 | 2,4-Dichlorophenol |
| 123911 | 1,4-Dioxane |
| 131113 | Dimethyl phthalate |
| 206440 | Fluoranthene |
| 534521 | 4,6-Dinitro-2-methylphenol |
| 541731 | 1,3-Dichlorobenzene |
| 7440280 | Thallium |

As stated in the notice describing the toxicological profile development process, published elsewhere in today's issue of the **Federal Register**, ATSDR and EPA will prepare profiles of the 25 substances in the first priority group later this year. That notice solicits comments on the toxicological profile development process; such comments

should be submitted in accordance with the instructions given in that notice.

### IV. Submission of Key Studies

The very tight timetable mandated by Congress for the preparation of the first 25 toxicological profiles prevents the consideration of studies or other data not already in the possession of EPA and ATSDR. By the time any other studies could be submitted, ATSDR and EPA already will have begun development and peer review of the first profiles. Persons wishing to submit studies or other data on the first 25 toxicological profiles should note that such data will only be considered by ATSDR and EPA for purposes of revising the initial profiles after those profiles are issued. However, ATSDR and EPA are committed to an expeditious review of any submitted studies and to making any necessary revisions of the first 25 profiles in a timely manner.

Nevertheless, this **Federal Register** notice does solicit unpublished key studies on the first 100 priority list substances, particularly if the submitter believes that the data would substantially affect the determination of levels of significant human exposure or the identification of toxicological data needs. Such studies should be submitted to EPA in accordance with the instructions given in this notice. The voluntary submission of such data would aid in the revision of the first 25 profiles. In addition, for the remaining 75 hazardous substances on the first priority list, the supplementary data would help to ensure that ATSDR will have all key studies in its possession and peer reviewed by the time ATSDR begins to draft future toxicological profiles.

In order to be useful to ATSDR and EPA in the preparation of toxicological profiles, any studies that are submitted voluntarily must provide sufficient detail as to test materials, test methods, and results obtained to permit proper evaluation and peer review. If the study already has been peer reviewed, the submitter is requested to identify the peer reviewers and provide copies of their comments.

### V. Administrative Record

Although both ATSDR and EPA are issuing this notice, the agencies are establishing a single administrative record for the notice. EPA has established a public version of this record with non-confidential materials pertaining to this notice (docket control number OPTS–400003). The public file is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Reading Room, NE–G004, 401 M St., SW., Washington, DC 20460. At this time there are no confidential materials in the record.

The record includes support documents for the first priority list. Any non-confidential public comments on the listing methodology or other non-confidential data or studies will be available for public inspection.

If a person intends to submit comments, data, or studies which contain confidential business information (CBI), the person must submit the materials in triplicate and mark the submissions as "confidential," "trade secret," or a similar designation. Any material which is marked as CBI will be handled in accordance with the procedures in 40 CFR Part 2. Any material which is not marked as CBI at the time it is submitted to EPA will be placed in the public file for this notice. ATSDR and EPA request that persons who submit CBI in response to this notice also submit a sanitized version of the materials which can be placed in the public file.

For the Agency for Toxic Substances and Disease Registry.

Dated: April 10, 1987.

**James O. Mason,**

*Administrator, Agency for Toxic Substances and Disease Registry.*

For the Environmental Protection Agency.

Dated: April 14, 1987.

**Lee M. Thomas,**

*Administrator, Environmental Protection Agency.*

[FR Doc. 87–8753 Filed 4–16–87; 8:45 am]

BILLING CODE 6560–50–M

---

**[ATSDR–1; FRL–3174–9(b)**

## Guidelines for Development of Toxicological Profiles

**AGENCIES:** Department of Health and Human Services (DHHS) and Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Under section 110 of the Superfund Amendments and Reauthorization Act (SARS), EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) of DHHS are required to prepare guidelines for the development of toxicological profiles of hazardous substances listed under that Act. This notice describes the procedures and criteria to be used by ATSDR and EPA in developing toxicological profiles, and solicits public comment on these guidelines.

**DATE:** Written comments on this notice should be submitted by July 16, 1987.

**ADDRESS:** Written comments and other data submitted in response to this notice should bear the docket control number ATSDR–1, and should be submitted to: Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Chamblee 28 South, 1600 Clifton Rd., Atlanta, GA 30333.

All written comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 28 South, Room 1103, 4770 Buford Highway, NE., Chamblee, GA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Georgi Jones, Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Chamblee 28 South, 1600 Clifton, Rd., Atlanta, GA 30333, Telephone: (404–454–4620).

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund, 42 U.S.C. 9601 et seq.).

Section 110 of SARA amends section 104(i) of CERCLA by establishing requirements for the preparation of: (1) Lists of hazardous substances in order of priority, (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances. Although the new statutory provisions are being added to CERCLA, this notice will refer to them as the section 110 requirements of SARA, to maintain a clear distinction in this notice between the new provisions and the existing requirements of CERCLA.

Section 110 requires ATSDR and EPA to prepare a priority-order list of the hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL) and which pose the most significant potential threat to human health. The agencies are required to revise the list on a periodic basis. The first priority list of 100 hazardous substances and a summary of the methodology used to prepare that list is published elsewhere in today's issue of the **Federal Register.**

After compiling the first priority list, ATSDR must prepare toxicological profiles of the listed substances. SARA

establishes a timetable for revising the priority list and preparing toxicological profiles of hazardous substances on the list; profiles of no fewer than 25 substances on the first priority list must be completed within 1 year of the enactment of SARA (by October 17, 1987). The toxicological profiles will be provided to the States and made available to the public, with a notice of availability and a request for public comment to be published in the **Federal Register**. The profiles will be revised as necessary in response to the public comments and additional data that subsequently become available to ATSDR.

SARA section 110 requires that the toxicological profiles be prepared in accordance with guidelines developed by ATSDR and EPA. This notice summarizes the guidelines being used for the development of the initial set of 25 profiles. The 2 agencies may modify these guidelines for purposes of preparing subsequent profiles, based on their experience in preparing the first 25 profiles and on public comments received in response to this notice.

## II. Statutory Responsibilities of ATSDR and EPA

ATSDR and EPA jointly developed the first priority list of hazardous substances as well as the guidelines for the preparation of the first 25 toxicological profiles. ATSDR has sole responsibility under SARA for the development and publication of all toxicological profiles. However, given the short statutory time period for publishing the first 25 profiles, the 2 agencies have agreed to develop the initial profiles jointly, and will draw on the full range of available chemical data which have been submitted to EPA under that agency's various statutory mandates to support the development of the profiles.

An Interagency Agreement between ATSDR and EPA will provide the funding mechanism to support the contractors who will assist in the preparation of the first 25 profiles. The agencies will use approximately 5 contractors (for which contract mechanisms already are in place) to prepare and provide for peer review of the initial profiles. This joint effort between the 2 agencies is intended to ensure that the toxicological profile requirements of SARA section 110 will be met in a timely and cost-efficient manner. Competitive bids will be solicited for contractor assistance in the preparation of subsequent sets of toxicological profiles.

Both ATSDR and EPA will review and edit the products of the contractors' efforts, as necessary, to ensure their scientific accuracy and their conformance to the requirements of SARA section 110 and the guidelines discussed in this notice. After the profiles are completed and made available for public comment, the agencies will jointly review the comments which are received and make necessary changes in the profiles with the assistance of the contractors.

## III. General Principles for the Development of Toxicological Profiles

ATSDR and EPA have agreed that the following general principles will apply to the preparation of the first 25 toxicological profiles:

1. The principal audiences for the profiles will be health professionals at the Federal, State, and local levels and members of the public involved with Superfund sites; ATSDR and EPA will make a special effort to solicit comments from the States, because the agencies are required by section 110 of SARA to provide profiles to the States.

2. Each profile will have a summary, written in non-technical language, for distribution to interested professionals and the general public.

3. The profiles will be developed in sufficient detail to meet the needs of health officials for current toxicological information on individual hazardous substances.

4. A primary function of the profiles will be to present and interpret the available toxicological and human data on the substances being profiled; these data may be used to evaluate the significance to individuals and the public-at-large of current or potential exposures to the subject hazardous substances. The profiles also will review the adequacy of available data on the substances and will identify toxicological data needs for which research programs should be designed and initiated pursuant to the requirements of section 110 of SARA.

5. The profiles will use existing assessment documents to the fullest extent consistent with the intent of SARA, plus new studies which subsequently become available to ATSDR and EPA. Studies which are key to the profiles will be critically reviewed.

6. As part of the development of the profiles, each profile will be peer reviewed in a manner consistent with the definition of peer review given in section 110 of SARA.

7. Toxicity data that are used to support the principal conclusions of a profile and which have not previously been peer reviewed will be subject to an independent peer review consistent with section 110 of SARA.

8. Generally, the level of detail in the profiles will be limited to summarizing the principal findings and conclusions of the studies which are found to be critical to evaluating the acute, subacute, and chronic health effects of the subject hazardous substances.

These general principles for the development of toxicological profiles are reflected in the discussion below of the content of the profiles and the procedures for their development.

## IV. Content of the Toxicological Profiles

Under section 110 of SARA, the toxicological profiles must contain, at a minimum, the following information:

> (A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.
>
> (B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.
>
> (C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Congress stated further that the development and implementation of a research program under section 110 of SARA must be coordinated "with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to [section 110 of SARA] are tested thoroughly at the earliest practicable date."

ATSDR and EPA have developed a detailed format which will serve as the guidelines for the content of the first 25 toxicological profiles. The format is presented in outline form in Appendix A to this notice. The agencies do not believe it is necessary for the initial profiles to include or refer to every major study of the first 25 substances, because such a comprehensive overview would repeat work that already has been done elsewhere and therefore is not necessary for the audience and purpose intended.

ATSDR and EPA have determined that the primary focus of the

toxicological profiles should be on the data most relevant for evaluating levels of significant human exposure and the acute, subacute, and chronic health effects of the subject hazardous substances (i.e., each profile will identify the quantity of a substance which represents a level of potential exposure that would constitute a public health concern based on available data). The agencies will consider multiple levels of exposure for each substance, and will evaluate more than one route of exposure (dermal, oral, and inhalation) and more than one exposure duration (short and long term). The profiles will discuss key studies which relate to the determination of significant levels of human exposure. There has been considerable discussion between ATSDR and EPA on how these determinations should be made, and it is clear that the concepts will evolve as the first toxicological profiles are developed in the coming months.

The toxicological profiles also must focus on important data needs that preclude the determination of significant levels of human exposure or contribute substantially to the uncertainty of such levels. With regard to the identification of these data needs, the agencies will assess the quality of the data which support the determination of significant human exposure levels and, where major gaps in the supporting data exist, identify those data needs in the toxicological profiles.

Since thses discussions will be the core of the profiles, ATSDR and EPA expect most of the public comments on the first 25 toxicological profiles to focus on these subject areas. Each profile will include a non-technical summary of the document's principal findings and conclusions.

## V. Support Data in the Profiles

The first 25 toxicological profiles will be based primarily on publicly available documents, studies, reports, and other data. The agencies and their contractors then will identify key studies which can appropriately serve as the basis for determining exposure levels which present a significant human health risk.

For many of the first 25 hazardous substances that are the subject of profiles, there have been recent chemical assessments done by EPA or other agencies which will assist ATSDR and EPA in identifying key studies for the purpose of drafting the toxicological profiles. In addition, there are extensive files of relevant studies within EPA and other Federal agencies which will be reviewed and evaluated.

The agencies and their contractors may identify key studies which support the determination of significant human exposure levels or the identification of data needs, but which have not previously been peer reviewed. In the case of such studies, the contractors will arrange for expert peer review to evaluate the data in the studies and determine the validity of the studies. These expert panels also will evaluate the adequacy of the data for characterizing toxicity and serving as key data in toxicological profiles.

It is possible that there are unpublished studies, currently unknown to ATSDR and EPA, which could be key studies for the development of certain toxicological profiles. The **Federal Register** notice containing the first priority list of hazardous substances, published elsewhere in today's issue of the **Federal Register**, discusses the procedures for handling the voluntary submission of such data to support the development of toxicological profiles.

## VI. Scientific Peer Review of Toxicological Profiles

In order to ensure that the toxicological profiles developed under section 110 of SARA are of high scientific and technical quality, ATSDR and EPA have taken steps to ensure that the toxicological profiles themselves are properly peer reviewed. The contractors responsible for the preparation of toxicological profiles will assemble a peer review panel for each hazardous substance which is the subject of a toxicological profile.

Each peer review panel will consist of no less than 3 and no more than 7 experts who collectively have knowledge of the substance's physical and chemical properties, toxicokinetics, key health end points in animals and humans, mechanisms of action, human exposure, and quantification of risk to humans. The experts will have distinguished themselves through research, publications, and peer recognition as being highly qualified to serve as peer reviewers of studies and evaluations of the substance in question. ATSDR and EPA will ensure that the chosen experts do not have a conflict of interest in their peer review of toxicological profiles of specific substances.

This contractor-conducted peer review, plus an internal review by scientific experts within ATSDR and EPA, will be conducted before the first 25 toxicological profiles are made available for public comment.

## VII. Solicitation of Public Comments and Other Data

### *A. Comments on the Process in General*

ATSDR and EPA solicit comments on their implementation of the entire toxicological profile process under section 110 of SARA, including the preparation of the priority lists of hazardous substances, the quidelines for preparing the profiles, and the content, format, and scope of the profiles. (For details on the methodology for preparing the priority lists of hazardous substances, see the joint notice published elsewhere in today's issue of the **Federal Register**.

Unfortunately, the agencies will not be able to make use of public comments in preparing the initial priority list of 100 substances and the first 25 toxicological profiles of substances on that list, because the time-constraints of SARA section 110 require ATSDR and EPA to take extraordinary steps to expedite policy development and preparation of the first list and profiles. However, public comments on the process will be used to revise the process, if necessary, prior to the preparation of subsequent lists and profiles. All public comments will be available for review in the public file for this notice.

### *B. Comments on the First 25 Profiles*

The **Federal Register** notice announcing the availability of the first 25 toxicological profiles (scheduled to be published no later than October 17, 1987) will solicit public comments on those profiles, and is expected to establish a 90-day comment period to ensure that there will be adequate time for the public to review and comment on the initial toxicological profiles.

## VIII. Administrative Record

Although both ATSDR and EPA are issuing this notice, the agencies are establishing a single administrative record for the notice. ATSDR has established the public record of materials pertaining to this notice (docket control number ATSDR–1). The record is available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the Agency for Toxic Substances and Disease Registry, Building 28 South, Room 1103, 4770 Buford Highway, NE., Chamblee, GA. The record includes support documents for the toxicological profile process.

For the Agency for Toxic Substances and Diease Registry:

Dated: April 10, 1987.

**James O. Mason,**

*Administrator, Agency for Toxic Substances and Disease Registry.*

For the Environmental Protection Agency:

Dated: April 14, 1987.

**Lee M. Thomas,**

*Administrator, Environmental Protection Agency.*

## APPENDIX—TOXICOLOGICAL PROFILES OUTLINE

### I. Introduction

A. *Purpose.* A description of the purpose/intent for this profile as outlined in SARA.

B. *Objectives.* Contains a brief discussion of the objectives for this profile, including the intended audience, as outlined in SARA.

C. *Responsible parties/agencies.*

### II. Health Effects Statement

This section of the profile, if removed from the rest of the document, should still be capable of conveying to the general lay public the substantive public health concerns associated with this substance. This section should be a health effects summary, written in layman's terms, to address issues such as:

A. Whether the substance is naturally occurring, synthetic only, or both.

B. How it is commonly used and where it is commonly encountered.

C. What its toxicity and hazards are (signs and general symptoms; acute, chronic, carcinogenicity, birth defects, etc.).

D. The potential for exposure via water, air, foodstuffs, commercial products, etc.

E. General statement on persistence in the environment.

F. Whether the substance is essential to human health; i.e., an essential nutrient.

G. A discussion of the relative benefit to society versus the risk.

H. A discussion or explanation of certain areas that may affect the layman's interpretation of the risk imposed by that particular substance. For example, vinyl chloride in its pure gaseous or liquid form is an extremely toxic (acute and chronic) and carcinogenic agent. However, it is most commonly encountered in polymeric form in plastics and, as such, is relatively inert and therefore harmless. A brief explanation of such would be appropriate here to avoid any misconception by the general public regarding risk through the use of vinyl chloride-containing plastics.

I. General discussion. This subsection should serve as a fairly complete and concise statement of the general health risks associated with the subject hazardous substance.

### III. Chemical Identity

*A. Structure*

1. CAS Registry number.
2. Molecular formula.
3. Chemical structure.
4. Chemical name (using current Collective Index).
5. Synonyms.
6. Trade names: To include names and makeup of commercial preparations utilizing this particular substance.

*B. Analytical Methods*

Should include an up-to-date listing of analytical methods (with detection limits and degree of accuracy) available for analysis in the following:

1. Environmental media.
a. Air.
b. Water.
c. Soil.
d. Food/food products.
2. Biomedical samples.
a. Fluids/exudates:
i. Blood/serum/plasma.
ii. Urine.
iii. Saliva.
iv. Seminal fluid.
v. Sebaceous fluid.
vi. Cerebrospinal fluid (CSF).
b. Tissues:
i. Adipose.
ii. Muscle.
iii. Hair, nails, skin.
iv. Other biopsy material as available.

*C. General Discussion*

### IV. Environmental Fate and Human Exposure Potential

*A. Environmental Background Levels*

1. Water.
2. Air.
3. Soil.
4. Foodstuffs.
5. Other products.

*B. Release to Environment*

1. Point source.
2. Non-point source.

*C. Environmental Fate*

1. Transport and partitioning.
a. Within media.
b. Between media.
2. Transformation and degradation.
a. Chemical degradation (or transformation).
b. Biodegradation (or biotransformation).
c. Bioaccumulation/bioconcentration.

*D. Human Exposure*

1. Normal background exposure.
2. Media-specific exposure (certain foodstuffs, water in certain areas, etc.).
3. Special risk populations.
4. Occupational exposures.

*E. General Discussion*

### V. Toxicokinetics/Pharmacokinetics

*A. Absorption*

Various exposure routes; inhalation, oral, dermal.

1. Animal studies.
2. Human.

*B. Distribution*

Identifies specific storage sites and depots.

1. Animal studies.
2. Human.

*C. Metabolism*

Identifies biotransformation pathways, metabolic products.

1. Animal studies.
2. Human.

*D. Excretion*

Identifies routes, time, products.

1. Animal studies.
2. Human.

*E. General Discussion*

### VI. Toxicity

*A. In Vitro Toxicity*

1. Enzyme systems (e.g., AChEI, MAOI).
2. Biochemical alterations (e.g., free radical formation).
3. Cellular system (e.g., monolayer cell culture systems).
4. Toxicity of metabolic products.
5. Proposed mechanism(s) of toxicity.

*B. Animal Toxicity*

The following subsections should all include a listing and discussion of the various toxic effects produced, the relative potency (dose-effect), the target organs/systems, and the mechanism(s) of action, if known.

1. Acute toxicity.
2. Subacute/subchronic toxicity.
3. Chronic toxicity.
4. Mutagenicity.
5. Reproductive and developmental toxicity.
6. Carcinogenicity.
7. Toxicity of metabolic (biotransformation) products.
8. Mechanism(s) of toxicity.

*C. Human Toxicity*

1. Case reports.
a. Synopsis of findings.
b. Synopsis of conclusions.
2. Epidemiological studies.
a. Acute toxicity.

b. Subacute/subchronic toxicity.
c. Chronic toxicity.
d. Reproductive and developmental toxicity.
e. Carcinogenicity.
f. Toxicity of metabolic (biotransformation) products.
g. Mechanism(s) of toxicity.
3. Experimental exposure studies.
a. Acute toxicity.
b. Subacute/subchronic toxicity.
c. Chronic toxicity.
d. Reproductive and developmental toxicity.
e. Carcinogenicity.
f. Toxicity of metabolic (biotransformation) products.
g. Mechanism(s) of toxicity.

*D. General Discussion*

1. Potential for human toxicity.
2. Comparison of long-term, low level exposure to short-term, high level exposure.
3. What is the relevance of these findings to the potential for human toxicity?

**VII. Levels of Significant Human Exposure**

Specific guidance for this section will be provided in a follow-up report.

*A. Conclusions Regarding Levels of Significant Human Exposure.*

1. Acute health effects.
2. Subacute/subchronic health effects.
3. Chronic health effects.

*B. General Discussion*

**VIII. Adequacy of Available Information**

Specific guidance for this section to be provided in a follow-up report.

*A. Conclusions Regarding Adequacy/ Inadequacy of Existing Information*

*B. Discussions Regarding Information Currently Under Development*

*C. General Discussion*

**IX. Physical Chemical Information**

*A. Physical/Chemical Properties*

1. Molecular weight.
2. Color.
3. Physical state.
4. Odor/odor threshold.
5. Melting/boiling points.
6. Autoignition temperature.
7. Solubility; water, organic solvents.
8. Density; vapor density.
9. Specific gravity.
10. Partition coefficient(s).
11. Vapor pressure.
12. Henry's Law constant.
13. Refractive index.
14. Flashpoint.
15. Flammable limits.

*B. General Discussion*

**X. Manufacture, Importation, and Use**

*A. Production*

1. Process.
2. Volume.
3. Sites of production.
4. Disposal.

*B. Importation*

*C. Uses*

*D. General Discussion*

**XI. Regulatory and Advisory Status**

*A. Regulatory (Enforceable) Standards*

1. Definition.
2. Purpose and use.
3. Regulatory (promulgating) agency.
4. Definitive levels/quantity, units, media.

*B. Advisory (Non-Enforceable) Guidance*

1. Definition.
2. Purpose and use.
3. Advising agency.
4. Definitive levels/quantity, units, media.

*C. General Discussion*

**XII. Summary and Recommendations**

Provides a summary review and discussion of all the preceding "General discussion" subsections.

*A. Synopsis*

Of relevant *in vitro*, animal, and human research findings.
1. Includes a review of homologous, inter-species toxic mechanisms.
2. Includes an assessment of the potential for adverse human health effects based on *in vitro* and/or non-human *in vivo* toxicity evaluations.

*B. Assessment*

Of potential exposure scenarios.

*C. Recommendations*

For future research, as deemed appropriate and necessary. Note: Specific guidance for developing this subsection will be provided in a follow-up report.

**XIII. Appendices to Toxicological Profiles**

*A. Data Bases Reviewed*

*B. Unpublished Documents Cited*

*C. Peer Review Process*

1. A description of the peer review procedures followed.
2. Identification of peer review members (and their affiliation).
3. A listing of those peer review comments not incorporated into the profile, with a brief explanation of the rationale for their exclusion.

*D. Reference Section*

[FR Doc. 87-8754 Filed 4-16-87; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Friday
April 17, 1987

Part IV

# Environmental Protection Agency

40 CFR Part 141

Water Pollution Control; National Primary Drinking Water Regulations—Volatile Synthetic Organic Chemicals; Para-Dichlorobenzene; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141 and 142**

**[WH-FRL-3138-4]**

## Water Pollution Control; National Primary Drinking Water Regulations—Volatile Synthetic Organic Chemicals; Para-Dichlorobenzene

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action is proposed under the Safe Drinking Water Act (SDWA), as amended on June 19, 1986 [Pub. L. 99-339, 100 Stat. 642 (1986)]. The Environmental Protection Agency (EPA) is proposing to amend the Maximum Contaminant Level Goal (MCLG) and reproposing the Maximum Contaminant Level (MCL) for para-dichlorobenzene (p-dichlorobenzene) in drinking water. Based on new data, the Agency is proposing to regulate p-dichlorobenzene as a probable human carcinogen and that the MCLG should be amended to zero and the MCL should be 0.005 mg/l. However, the Agency is also requesting comment on the evidence used to reclassify this substance. If after considering public comment on this proposal the Agency determines that p-dichlorobenzene is a Group C compound (limited evidence of carcinogenicity), then the MCLG and MCL will be set at 0.075 mg/l.

An MCLG is a non-enforceable health goal which must be set at the level which will result in no known or anticipated adverse health effect with an adequate margin of safety. An MCL is an enforceable standard for a substance in drinking water which must be set as close to the MCLG as is feasible with the use of the best technology, treatment techniques, and other means which are available (taking cost into consideration).

On November 13, 1985, EPA promulgated a Recommended Maximum Contaminant Level (RMCL), now called "MCLG" under the terminology of the 1986 SDWA Amendments, for p-dichlorobenzene of 0.75 mg/l and proposed an MCL of 0.75 mg/l (50 FR 46880 and 50 FR 46902, November 13, 1985). This notice proposes to amend the MCLG and the MCL based upon new health effects data for p-dichlorobenzene which have recently become available and which indicate that there is sufficient evidence to support the conclusion that the compound is a probable human carcinogen. EPA will publish the MCLG and promulgate the MCL for p-dichlorobenzene when it promulgates the MCLs for the other volatile organic chemicals (VOCs), which were also proposed on November 13, 1985.

In this notice, the Agency also requests public comment on the proposed provision that, in some instances, primacy agents may require point-of-use (POU) devices or bottled water as a condition for receiving variance or exemption from the NPDWRs for VOCs. Public comment is also solicited on the proposed conditions of use for POU devices and bottled water.

**DATES:** Written comments should be submitted on or before May 18, 1987.

A public hearing has been scheduled for May 4, 1987, from 9:00 a.m. to 12:00 p.m.

**ADDRESSES:** Send written comments on this proposed rule to p-DCB Comment Clerk, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at EPA, Room 2904 (rear), 401 M Street, SW., Washington, DC 20460. Supporting documents cited in this notice will be available for inspection at the Drinking Water Supply Branches in EPA's Regional Offices. (Listed under Supplementary Information.)

The public hearing will be held in Washington, DC—EPA (North Conference Center, Room #3), Waterside Mall, 401 M St. SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-7575.

For information on the hearing contact: Teresa Malone, EPA (WH-550D), 401 M St. SW., Washington, DC 20460. Phone: 202/382-7575.

**SUPPLEMENTARY INFORMATION:**

EPA Regional Offices:

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 223-6486, Jerome Healy

II. 26 Federal Plaza, Rm. 824, New York, NY 10278, Phone: (212) 264-1800, Walter Andrews

III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597-9873, John Capacasa

IV. 345 Courtland St., NE, Atlanta, GA 30365, Phone: (404) 881-3781, Robert Jourdan

V. 230 S. Dearborn St., Chicago, IL 60604, Phone: (312) 886-3781, Joseph Harrison

VI. 1201 Elm Street, Dallas, TX 75270, Phone: (214) 767-2620, James Graham

VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 236-2815, Gerald R. Foree

VIII. 999 18th St., Suite 500, Denver, CO 80202-2413, Phone: (303) 293-1413, Marc Alston

IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974-8076, William Thurston

X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 399-4092, Richard Thiel

**Table of Contents**

I. Statutory Requirements and Regulatory Background
II. MCLG for p-Dichlorobenzene—Background
  A. Occurrence
  B. Health Effects
III. MCLG for p-Dichlorobenzene—Proposed Amendment
IV. Reproposed MCL for p-Dichlorobenzene
  A. Technologies
  B. Costs
  C. Analytical Methods
  D. Determination of the MCL
V. Technology and Compliance for Variances and Exemptions
VI. Compliance Monitoring Requirements
VII. Public Notice Requirements
VIII. Economic Impact Assessment
IX. Other Statutory Requirements
X. References and Request for Public Comment
XI. List of Subjects

### I. Statutory Requirements and Regulatory Background

The Safe Drinking Water Act, as amended in 1986 (Pub. L. No. 99-339, 100 Stat. 642) ("SDWA" or "the Act") requires EPA to establish maximum contaminant level goals (MCLGs) for contaminants which in the judgment of the Administrator may have any adverse effect on the health of persons and which are known or anticipated to occur in public water systems. Section 1412(b)(3)(A). MCLGs are to be set at a level at which, in the Administrator's judgment, "no known or anticipated adverse effects on the health of persons occur and which allow an adequate margin of safety." Section 1412(b)(4). MCLGs are nonenforceable health goals.

An MCLG must be proposed at the same time EPA proposes a national primary drinking water regulation (NPDWR). An NPDWR establishes either: (a) A maximum contaminant level (MCL) or (b) a treatment technique for a contaminant. EPA may promulgate a treatment technique only if it is not "economically or technologically

feasible" to ascertain the level of a contaminant in drinking water. MCLs must be set as close to the MCLGs as is feasible. Under the Act, "feasible" means "feasible with the use of the best technology, treatment techniques and other means, which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration)." Section 1412(b)(5). Each national primary drinking water regulation which establishes an MCL must list the best available technology treatment techniques, and other means ("BAT") which are feasible for meeting the MCL. Section 1412(b)(6).

Under section 1415(a)(1)(A) of the SDWA, a State which has primary enforcement responsibility for public water systems, i.e., "primacy" (or EPA in the absence of State primacy), may grant variances from a national primary drinking water regulation to systems which cannot meet the requirements of a NPDWR because of the characteristics of the raw water sources that are reasonably available to those systems. The primacy agent may grant a variance provided that a system has applied best available technology and still cannot achieve the MCL and an unreasonable risk to health does not exist. Section 1415 further states that:

> The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator.

Section 1414(c) requires each owner or operator of a public water system to give notice to persons served of (1) any failure to comply with a maximum contaminant level, treatment technique, or testing procedure required by a NPDWR, or (2) failure to comply with any monitoring required pursuant to Section 1445 of the Act.

The SDWA requires regulation of 83 contaminants by June 19, 1989. p-Dichlorobenzene is one of these contaminants which is to be regulated.

## II. MCLG for p-Dichlorobenzene—Background

### *A. Occurrence*

In 1982, EPA conducted a Ground Water Supply Survey (GWSS) which sampled approximately 1000 drinking water supplies which use ground water as a source. Five hundred ground water supplies were selected at random and 500 were selected by States as having high potential for contamination by organic chemicals. p-Dichlorobenzene was detected in 5 supplies out of 466 from the random sample (maximum concentration: 0.0013 mg/l) and 4 supplies out of 479 from the nonrandom sample (maximum concentration: 0.0009 mg/l). Results were not available from the remaining 55 samples. p-Dichorobenzene has been detected in other national and State surveys at levels mostly less than 0.001 mg/l, but a few values ranged up to 0.009 mg/l.

### *B. Health Effects*

In its November 13, 1985 **Federal Register** notice, which promulgated MCLGs for certain volatile organic compounds, EPA classified these compounds according to the strength of evidence of carcinogenicity based on EPA's proposed Guidelines for Carcinogen Risk Assessment (49 FR 46294). These guidelines, which have since been promulgated as at 51 FR 33992, September 24, 1986, specify five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiological studies)
Group B—Probable human carcinogen
  Group B1—At least limited evidence of carcinogenicity in humans
  Group B2—Usually a combination of sufficient evidence in animals and inadequate data in humans
Group C—Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)
Group D—Not classified (inadequate animal evidence of carcinogenicity)
Group E—No evidence of carcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or in both epidemiological and animal studies)

From these classifications, three categories have been established for setting drinking water standards for substances, as described in the November 1985 **Federal Register** notice:

- Category I—Known or probable human carcinogens: good evidence of carcinogenicity (Group A or Group B above). MCLGs are set at zero.
- Category II—Equivocal evidence of carcinogenicity (Group C above). MCLGs are set based upon non-carcinogenic endpoints; the Reference Dose (RfD) (equivalent to the Acceptable Daily Intake (ADI)) with an additional uncertainty factor or, if acceptable non-carcinogenic data are not available, an upperbound lifetime risk calculation in the range of $10^{-5}$ to $10^{-6}$.
- Category III—Inadequate or no evidence of carcinogenicity in animals (Group D or E above). MCLGs are set based upon chronic toxicity using the RfD.

EPA promulgated the MCLG for p-dicholorobenzene at 0.75 mg/l (50 FR 6880, November 13, 1985). This MCLG, which was not challenged, was based upon the compound's classification in Group D and Category III (inadequate evidence of carcinogenicity to humans). The MCLG was based on chronic toxicity data from several negative carcinogenicity studies in rats and mice, including one chronic inhalation study and several subchronic inhalation and gavage studies. The compound had been shown to induce mitotic division in higher plants, but was negative for mutagenicity in bacterial assays and in studies on experimental animals (the dominant lethal study was in mice and the cytogenic study was in rat bone marrow cells). The November 1985 notice provides additional discussion of the basis for the MCLG for p-dichlorobenzene (50 FR 46880).

A suggested reference dose (RfD) of 3.75 mg/1 for paradichlorobenzene considering adverse health effects other than carcinogenic potential was calculated. This value was based upon the rat subchronic gavage study (see EPA d. Battelle, 1980 b.) which served as the dose range-finding study for the NTP bioassay. The RfD was based upon a NOAEL of 150 mg/kg/day. A total uncertainty factor of 1000 was used (100 and 10) to account for interspecies extrapolation and use of data from an exposure duration significantly less than lifetime. The MCLG was based upon the RfD of 3.75 mg/l and 20% drinking water contribution.

## III. MCLG for p-Dichlorobenzene—Proposed Amendment

EPA is proposing to amend the MCLG for p-dichlorobenzene to zero. As an alternative, EPA is proposing to amend the MCLG to 0.075 mg/l if, after public comment EPA determines that the weight of evidence indicates a reclassification of p-dichlorobenzene as a Group C substance.

EPA has reviewed two chronic toxicity and carcinogenicity studies, several subchronic toxicity studies and a variety of mutagenicity studies in its assessment of the carcinogenic potential of p-dichlorobenzene. These studies are described more fully below and also in the criteria document (EPAd). (See Section X, References and Request for Public Comment.)

A draft report of the recently completed National Toxicology Program (NTP) bioassay on p-dichlorobenzene (NTP, Toxicology and Carcinogenesis Studies of 1,4-Dichlorobenzene in F344/N Rats and $B_6C_3F_1$ Mice, 1986), in which p-dichlorobenzene was administered by gavage to F344/N rats and $B_6C_3F_1$ mice, indicated positive results (EPAf). Specifically, the bioassay demonstrated treatment-related increases in the incidence of renal tubular cell adenocarcinomas in male rats and in the incidences of hepatocellular carcinomas and hepatocelluar adenomas in male and female mice. Hepatoblastomas, rare tumor type in this mouse strain, were also found in male mice. This report has been reviewed by the NTP Board of Scientific Counselors (March 26, 1986) and is expected to be issued as a final report in the near future. EPA believes that this report has been sufficiently well-reviewed for consideration as part of the overall evidence on p-dichlorobenzene. If the conclusions of the final report differ from the draft report, EPA will reconsider this proposal to amend the MCLG.

The other available long-term (76 weeks exposure, 36 weeks further observation) carcinogenicity study revealed no treatment-related increase in tumor incidence or tumor type. This study (Riley et al. 1980) exposed Alderley Park rats to inhalation concentration of 75 and 500 ppm. At the higher level, observable effects were an increase in organ weights (both sexes) and an increase in urinary protein and coproporphyrin output (males).

Several subchronic toxicity studies with para-dichlorobenzene have been reported. The length of these studies were as follows: 13 weeks in rats and mice exposed orally (NTP, 1986), 192 days in rats and 367 days or less in rabbits, both exposed orally (Hollingworth et al., 1956), and 67 months or less in rats, rabbits, and guinea pigs exposed by inhalation (Hollingworth et al., 1956). Oral doses were given daily, 5 days/week, and inhalation exposures were 7 hours daily, 5 days/week. Toxic signs from treatment were evidence in each of these studies, with lesions and weight changes of liver and kidney prominent, but treatment-related carcinogenicity was not evident. However, exposures and survival were too short in these studies for an adequate assessment of carcinogenicity.

para-Dichlorobenzene has been reported as negative for mutagenicity in several strains of *Salmonella typhimurium* (Anderson et al. 1972; Anderson, 1976; Simmon et al, 1979; Haworth et al., 1983; Shimizu et. al., 1983; and NTP, 1986) and an *Escherichia coli* wp 2 system. para-Dichlorobenzene has been reported to increase back mutation frequency in the fungus *Aspergillus nidulans* (Prasad and Palmer, 1968; Prasad, 1970) and abnormal mitotic division in higher plants (Sharma and Battacharya, 1956; Sharma and Sarkar, 1957; Sruvastava, 1966; and, Gupta, 1972). para-Dichlorobenzene did not increase forward mutations in mouse lymphoma cells without metabolic activation, and equivocal results were obtained with metabolic activations (NTP, 1986). It did not induce unscheduled DNA synthesis in human lymphocytes *in vitro* (Perocco et. al., 1983), sister-chromated exchanges in Chinese hamster ovary cells with and without metabolic activation (NTP, 1986), or mitotic aberration in rat lung cell cultures (Guerin et al., 1971). All available animal mutagenicity studies have been negative.

Cytogenetic studies with rat bone marrow cells and a dominant lethal study in CD–1 mice were negative in animals treated with para-dichlorobenzene (Anderson and Richardson, 1976; Anderson and Hodge, 1976). The lower exposure level of 75 ppm was a NOEL (EPAc).

Based upon the results of the above studies and specifically the conclusions of the NTP report, EPA is proposing to amend the MCLG based upon reclassification of the overall evidence of carcinogenicity to the Group B2 Category (probable human carcinogen generally based on sufficient evidence in animals and adequate evidence in humans). Sufficient evidence of carcinogenicity from animal studies is defined as "an increased evidence of malignant tumors or combined malignant and benign tumors: (a) In multiple species or strains; or (b) in multiple experiments (e.g., with different routes of administration or using different dose levels); or (c) to an unusual degree with regard to high incidence, unusual site or type of tumor, or early age at onset. Additional evidence may be provided by data on dose-response effects, as well as information from short-term tests or on chemical structure" (51 FR 33992, 33999). The NTP bioassay showed an increase in tumors in both rats and mice, which, together with the previous studies, could be sufficent for classification in Group B2, based upon positive evidence in multiple species.

However, consideration of the overall weight of the evidence could also suggest the alternative view that p-dichlorobenzene should be classified in Group C with respect to oral exposure. Classification in Group C is generally based on limited evidence of oncogenic potential in animal studies without accompanying human evidence. Support for placing p-dichlorobenzene in Group C derives from:

(a) The uncertainties associated with the extrapolation of findings from studies in which the agent was administered by gavage in corn oil to the human exposure situation;

(b) The concern that the non-neoplastic histopathology present in both the rat and mouse studies might be associated with the neoplastic process and are not apt to be seen at current human exposures;

(c) An alternative interpretation of the Agency's cancer risk assessment guidelines which would diminish the significance of the finding of tumors in the mouse liver from "sufficient" to "limited";

(d) A concern that the maximum tolerated doses (MTDs) in the new NTP study may have been exceeded in one or more dose groups which would confound the observations; and

(e) The total weight of evidence from the NTP and earlier animal studies coupled with the short-term test results.

The EPA is, therefore, requesting comments on the total weight of evidence from the results of all of the p-dichlorobenzene studies. If the Agency determines that p-dichlorobenzene is a Group C substance as defined in the Agency's carcinogenicity classification guidelines, then the proposed MCLGs would be calculated as follows:

$$\text{MCLG} = \frac{\text{Rfd} \times \text{drinking water contribution}}{\text{Additional uncertainty factor}}$$

$$\text{MCLG} = \frac{3.75\ \text{mg/L} \times 0.20}{10}$$

$$\text{MCLG} = 0.075\ \text{mg/L}$$

EPA has tentatively calculated excess cancer risk rates for p-dichlorobenzene in a "what if" calculation based upon

the liver tumor data in male mice from the NTP bioassay (EPA d). These projections used in the linearized multi-stage model and associate a drinking water concentration of approximately 2 μg/1 with an upperbound excess lifetime cancer risk of $10^{-6}$ at the 95 percent confidence interval for p-dichlorobenzene. These are draft calculations and may be revised in the future.

As discussed above and in the November 1985 **Federal Register** notice, EPA considers compounds ranked in Group A, B1, or B2 to be known or probable human carcinogens (Category I in the three-category approach for setting MCLGs) and sets the MCLGs for these compounds at zero. EPA is proposing that the MCLG be amended to zero based upon para-dichlorobenzene being classified in Group B2. Public comments are requested on this proposal as well as on classifying para-dichlorobenzene in Group C. If Group C is determined to be appropriate, the MCLG would be set at 0.075 mg/l. The final determination will be in the final rule.

## IV. Reproposed MCL for p-Dichlorobenzene

As described above, MCLs are enforceable standards under the SDWA. EPA is to set each MCL as close to the MCLG as feasible with the use of the best available technology (taking cost into consideration). An MCL is to be established if it is economically and technologically feasible to ascertain the concentration of the contaminant in public water systems; otherwise, EPA is to require the use of a treatment technique.

The general approach to setting MCLs is to determine the feasibility of controlling a contaminant using various technologies to determine which are "best". This requires an evaluation of: (1) The availability and performance of various technologies for removing the contaminant; (2) the costs of the application of each technology; and (3) the availability and cost of analytical methods. Other factors that may be appropriate for examination include total costs of control and theoretical risks associated with various levels of control.

In determining whether technologies are economically available EPA considers whether they are reasonably affordable by regional and large metropolitan public water systems. This standard was established when the Safe Drinking Water Act was enacted in 1974 [see H.R. Rep. No. 93–1185, p. 18 (1974)] and reaffirmed when the Act was amended [see 132 Cong. Rec. S6287 (May 21, 1986)]. Technologies are also judged to be "best" based on the following factors: wide applicability, removal efficiency, cost effectiveness, high degree of compatibility with other water treatment processes, and the ability to achieve compliance for all water in a public water system.

In its November 1985 notice, EPA proposed an MCL equal to the MCLG (i.e., 0.75 mg/l) for p-dichlorobenzene because the level was achievable by the best available technology and the level could be measured within specific limits of precision and accuracy.

### *A. Technologies*

In the November 1985 notice, EPA proposed packed tower aeration (PTA) and granular activated carbon (GAC) adsorption as the best technologies generally available (BTGA) for removing p-dichlorobenzene (and the other VOCs) from drinking water. In today's notice, EPA is proposing these same technologies as the best available technologies (BAT), the standard which replaced BTGA under the SDWA Amendments (EPA b).

As explained above, the SDWA requires that each national primary drinking water regulation specify an MCL which is as close to the MCLG as is feasible. The term "feasible" means feasible with the use of the best technology, treatment techniques, and other means which the Administrator finds, are available. These technologies and techniques must be examined for efficacy under field conditions and not solely under laboratory conditions, and cost must be considered. Section 1412(b)(5) of the Act specifically states that GAC technology is feasible for the control of synthetic organic chemicals. In addition, any technology, treatment technique, or other means found to be the "best available" for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as GAC.

The 1986 amendments to the Act changed the requirement that "feasibility" in setting an MCL be based on best technology generally available (BTGA), considering cost, to that based on best available technology (BAT), considering cost. In addition, the technology selected must be tested for efficacy under field conditions, not just under laboratory conditions. The legislative history explains that the term "generally" was removed to assure that MCLs "reflect the full extent of current technology capability" [See Rep. No. 99–56, 99th Cong., 1st Sess., at 6 (1985)]. Read together with the legislative history, EPA has concluded that "best available technology" represents a broader standard, than "BTGA", allowing EPA to select a technology that is not necessarily in widespread use, as long as it has been field-tested beyond the laboratory. (See also the discussion of best available technology for variances, below.)

EPA has determined that PTA and GAC adsorption meet the engineering criteria for BAT and are "best" for the reasons discussed in the November 1985 notice. In summary, these technologies are commercially available and have been successfully applied or demonstrated for the removal of other VOCs from ground water with similar removal efficiencies in many plants in the U.S. PTA can achieve a high level (90–99 percent or more) of VOC removal including p-dichlorobenzene, from ground water under all anticipated conditions and is at least as effective for removal of VOCs as GAC. GAC can also achieve a high level of removal (up to 99 percent) for p-dichlorobenzene in ground water. GAC has been applied or demonstrated for a number of VOCs, and has been extensively studied. p-Dichlorobenzene was studied by WERL–ORD and was found to be very similar to the other VOCs in respect to GAC removal efficiencies. These studies are written up in the document, "Technologies and Costs for the Removal of Volatile Organic Chemicals from Potable Water Supplies" [See EPA b, "Technologies and Costs for Removal of VOCs from Potable Water Supplies" (May 1985).] The Agency has not identified a more effective technology to remove p-dichlorobenzene from ground water.

### *B. Costs*

The costs for removal (1983 dollars) of p-dichlorobenzene have been estimated for both PTA and GAC; costs for up to 99 percent removal (from 0.5 mg/l to 0.005 mg/l) for granular activated carbon range from 7¢–15¢/1,000 gallons for large to medium systems and are approximately 58¢/1,000 gallons for small systems. For packed tower aeration, costs are approximately 5¢–8¢/1,000 gallons for large to medium systems and 57¢/1,000 gallons for small systems. EPA considers these costs to be reasonable (EPA c).

### *C. Analytical Methods*

In the November 1985 notice, the Agency determined that three analytical methods, Methods 502.1, 503.1 and 524.1 are "economically and technologically feasible" for monitoring compliance with the MCLs for VOCs (including p-dichlorobenzene). In this notice, the Agency is requesting comment on the

economic and technical feasibility of two capillary column analytical techniques for removal of VOCs (including p-dichlorobenzene) from drinking water. These methods are:

(1) Method 524.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography/ Mass Spectrometry"

(2) Method 502.2, "Volatile Organic Compounds in Water by Purge and Trap Gas Chromatography with Photoionization and Electrolytic Conductors in Series."

The Agency has estimated method detection limits (MDLs), the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the true value is greater than zero, and practical quantitation levels (PQLs), the lowest level reliably achievable by the best laboratories within specified limits during routine laboratory operating conditions. The PQLs are based on a general rule that 5 to 10 times the MDL is a range of reliable operation; the results of inter-laboratory studies are used to confirm this general rule when available. For p-dichlorobenzene (and the other VOCs), EPA determined that the MDL ranges from 0.0002 to 0.0005 mg/l. (EPA a)

EPA estimated PQLs for the VOCs based on their MDLs. The PQL is a value which represents a practical and routinely achievable reliable measurement. EPA proposed setting PQLs 5 to 10 times the MDL in the November 1985 notice. In that notice, EPA reported the results of inter-laboratory studies confirming this estimate and determined PQLs for each substance. The PQLs based on these laboratory data are considered a "two-step removed" surrogate for laboratory performance and therefore are considered a conservative estimate of laboratory performance. Limitations in the data used for PQLs include the following: 1) performance evaluation samples are sent to the laboratories in which a limited number of concentrations are analyzed and the samples do not have matrix interferences as actual samples could, 2) PQLs are set based on EPA and State laboratory data which are considered to be representative of the best laboratories, (i.e., not all laboratories), and 3) samples are analyzed under controlled testing conditions which are not representative of routine performance. Thus, the PQLs represent a stringent target for performance for laboratories to achieve.

The inter-laboratory data available prior to the November 1985 notice demonstrated that the number of laboratories producing less accurate data generally increases as the concentration decreases. For the VOCs, the data suggested that 0.005 mg/l would be achievable by most laboratories within ±40 percent. A value of ±40 percent was considered appropriate based upon the desire to set the smallest interval on precision and accuracy (i.e., ± some percentage) that could be achieved by the majority of the best laboratories. A limit of ±20 percent would have been more desirable, resulting in a higher standard of performance but, at the time of proposal of the MCLs for the VOCs, the data showed that much smaller percentage of laboratories would have been able to achieve that level. At that time, a PQL of 0.005 mg/l, which is in the range of 5 to 10 times the MDL, was considered reasonable for the VOCs.

New performance evaluation studies for determining the PQLs have become available for VOCs since publicaton of the November 1985 notice. On May 27, 1986, EPA published these data in the **Federal Register** for public comment (51 FR 19076). For p-dichlorobenzene, these data, in addition to data previously published in the November 1985 notice (p. 46907), indicate that a PQL of 0.005 mg/l is appropriate. At this concentration level, EPA estimates that approximately three-fourths of the best laboratories can provide data within ±20 percent of the true value under the conditions of the evaluation. This PQL is in the range of 5 to 10 times the MDL and thus confirms the general rule discussed above. An acceptance range of precision/accuracy limit of ±20 percent was used, rather than ±40 percent as was used in the November 1985 proposal, since the data indicate that there has been some improvement in laboratory performance.

*D. Determination of the MCL*

In selecting an appropriate MCL for p-dichlorobenzene, EPA considered a range of pertinent factors. These factors include the availability and performance of treatment technologies, costs of meeting MCLs, and the availability and capability of analytical methods; EPA also examined health risks to determine what the risk would be at various levels. EPA is reproposing the MCL for p-dichlorobenzene at 0.005 mg/l based on the following factors:

- BAT (GAC and PTA) can remove p-dichlorobenzene down to 0.005 mg/l at low incremental costs. These technologies have removal efficiencies of 90–99 percent and are already being used successful in ground water by public water systems in the U.S.
- The costs for removal (in large to medium systems) are approximately 5¢ to 8¢/1,000 gallons for aeration and 7¢ to 15¢/1,000 gallons for GAC.
- Analytical methods are available and the PQL is 0.005 mg/l with precision/accuracy limits of ±20 percent.
- Total compliance costs are minimal since p-dichlorobenzene is expected to be found in very few water supplies at levels above 0.005 mg/l and it is removed by the same technologies that are used to remove other volatile contaminants.
- The draft theoretical upperbound lifetime risk using the conservative linear nonthreshold model (upper 95 percent confidence interval) is between $10^{-5}$ and $10^{-6}$ at 0.005 mg/l.

The Agency believes that, given all these factors, 0.005 mg/l is as close to the MCLG as is feasible, as required by Section 1412 (b)(5) of the Act. However, if the Agency, after public comment, classifies p-dichlorobenzene as a Group C substance and sets the MCLG at 0.075 mg/l, the MCL will also be set at 0.075 mg/l. Given the BAT removal capabilities, costs and performances of the available analytical methods, it would be "feasible" to set the MCL at the same level at the MCLG.

**V. Technology and Compliance for Variances and Exemptions**

Section 1415(a)(1)(A) of the Act, as amended , requires EPA to promulgate its determination of the best available technology for purposes of granting a variance. As with the technology selected as the basis for the MCL, Congress deleted the requirement that this technology be "generally" available.

In the November 1985 notice, EPA proposed that packed tower aeration and granular activated carbon were best technologies generally available for the VOCs (including p-dichlorobenzenene) under Section 1415. The Agency is proposing that packed tower aeration and granular activated carbon are also BAT under Section 1415 for p-dichlorobenze, at the reproposed MCL of 0.005 mg/l. These technologies are proposed at BAT for systems of all sizes since they are commercially available and effective in ground water for any size system, both from a design and an operational perspective. EPA acknowledges that the costs may be relatively higher for small systems for VOCs removal; however, EPA feels that the costs are reasonable. For p-dichlorobenzene, EPA expects that no system would need to install treatment to meet the proposed MCL of 0.005 mg/l. EPA will reexamine the issue of costs for small systems in the final rule for p-dichlorobenzene and the other VOCs.

The primacy agent may grant a variance only if it determines that the variance will not result in an unreasonable risk to health. The Agency will provide guidance on what constitutes an unreasonable risk to health prior to the effective date of this regulation.

Under Section 1415(a)(1)(A), if a primacy agent grants a variance, it must prescribe a schedule for compliance and implementation of any necessary control measures for the duration of the variance. In today's notice, the Agency is proposing that primary agents be allowed to require point-of-use (POU) devices or bottled water as a condition of obtaining a variance from an MCL for any VOC as follows. The conceptual process would be as follows:

- Public water systems would have to apply best available technology, treatment techniques, or other means available (BAT), to reduce the level of VOCs designated under Section 1415, i.e., packed tower aeration, granularactivated carbon.
- If the MCL could not be achieved, then the primacy agent could grant a variance provided that the variance would not result in an unreasonable risk to health (URTH). (EPA will specify the URTH level for each regulated contaminant, including VOCs).

In the case of a system in which the VOC level exceeds the URTH level, the primacy agent will be required to impose additional control measures in the interim until full compliance is reached. The primacy agent must determine that the control levels will ensure that the URTH level is not exceeded, before it can grant a variance from the NPDWR. EPA is proposing to allow these measures to include POU devices and bottled water.

Section 1416(b)(1)(B) of the Act directs the primacy agent to prescribe any necessary control measures when it grants an exemption. The primacy agent must find that there will be no unreasonable risk to health if it grants the exemption. This notice proposes, just as for variances, that POU devices and bottled water can be required as conditions for obtaining exemptions, as described in the last bullet above.

EPA feels that provision of central treatment should be the primary means of attaining MCLs. Although the long term goal for these systems is still to meet MCLs with centrally treated and distributed water, requiring POU or bottled water as a condition of receiving a variance or an exemption would provide an interim source of water that meets the MCLs, while the system brings its water supply into compliance. This is especially important in the case of exemptions for small systems, i.e., systems with less than 500 connections, because their exemptions may be extended for one or more two-year periods, perhaps indefinitely.

EPA is proposing the following conditions on the use of bottled water for variances and exemptions.

(1) A monitoring program is in place that provides reasonable assurances that bottled water meets all MCLs. Specifically, the public water system must monitor a representative sample of the bottled water for VOCs the first quarter that it supplies water to the public, and annually after the initially sample. The public water system may not supply bottled water which exceeds any of the EPA's MCLs as set out in 40 CFR 141 or FDA's quality measures as set out in 21 CFR 103. Results of the monitoring program shall be provided to the primacy agent, annually.

or,

The public water system must receive from the bottled water company certification that 1) the water is from an "approved source" as defined in 21 CFR 129.5, 2) all bottled water supplied to the public water system has been monitored as required in 21 CFR 129.80 and found to meet all of the MCLs as well as the FDA quality standards set out in 21 CFR 103. The public water system shall provide the certification to the primacy agent the first quarter that it supplies bottled water and annually thereafter.

(2) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system, via a door-to-door bottled water delivered system.

EPA believes these conditions are the minimum necessary to assure adequate drinking water quality while variances and exemptions from NPDWRs for VOCs are in place. For the same reason, EPA is proposing to impose certain conditions on point-of-use devices that are installed as a condition of receiving a variance or exemption. These conditions are similar to those proposed in the November 13, 1985 VOC proposal as 40 CFR 141.69(a)–(f) See 50 FR 46930. The conditions are as follows:

(1) It is the responsibility of the public water system to operate and maintain the point-of-use treatment system.

(2) The utility must develop a plan and obtain primacy agent approval for a monitoring scheme before point-of-use devices are installed for compliance. This monitoring scheme must provide health protection equivalent to a monitoring scheme for central water treatment.

(3) Effective technology must be properly applied under a plan approved by the primacy agent and the microbiological safety of the water must be maintained.

(4) The primacy agent must require adequate certification of performance field testing, and a rigorous engineering design review of the point-of-use devices proposed.

(5) The design and application of the proposed point-of-use devices must consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(6) All consumers shall be protected. Every building connected to the system must have the point-of-use device installed, maintained, and adequately monitored. The primacy agent must be assured that every building is covered by treatment and monitoring, and that the rights and responsibilities of the utility customer convey with title upon sale of property.

EPA recognizes that there are certain inconsistencies in the codification (i.e., the numbering scheme) for various regulatory provisions in this proposal, the November 13, 1985, VOC proposal, and the fluoride regulation promulgated on April 2, 1986. EPA will reconcile the numbering when it promulgates the final VOC rule.

## VI. Compliance Monitoring Requirements

EPA proposed compliance monitoring requirements for the VOCs in the November 1985 notice. These same compliance monitoring requirements would apply to the MCL proposed today. Consequently, EPA is not reproposing the monitoring requirements for p-dichlorobenzene. Compliance monitoring requirements for p-dichlorobenzene will be included along with the final VOC rules scheduled for completion later in 1987.

## VII. Public Notice Requirements

EPA will propose to amend the current public notification requirements in order to incorporate new statutory requirements imposed by the 1986 Amendments [Section 1414(c)] this month. According to the proposal, notices of violation of the MCL for a contaminant, as well as certain notices regarding variances and exemptions, must include specified language on the toxicological effects of contaminant. In that notice, EPA will propose specific language for public notices for violations of the p-dichlorobenzene MCL.

## VIII. Economic Impact Assessment

An economic impact assessment was prepared as background for the November 1985 notice and is entitled "Economic Impact Analysis of Proposed Regulations to Control Volatile

BEST COPY AVAILABLE

Synthetic Organic Chemicals (VOCs) in Drinking Water." The report presented estimates of the benefits and costs of regulatory alternatives for all the VOCs, including p-dichlorobenzene.

As mentioned earlier, p-dichlorobenzene has been detected in both ground and surface drinking water systems in a small number of cases at levels above a method detection level of 0.0005 mg/l. Based on random samples of ground and surface water systems, it is estimated that 200 to 800 ground and 30 to 40 surface water systems have detectable levels of p-dichlorobenzene. However, the data indicate that p-dichlorobenzene is found only at very low concentrations; no surface or ground water systems are expected to have the chemical present in their waters consistently at levels greater than 0.005 mg/l. For this reason, the reproposed MCL will have virtually no economic impact. In addition, since p-dichlorobenzene is detected at the same time that other volatile organic contaminants are analyzed, there would be no incremental cost of complying with the MCL for p-dichlorobenzene in addition to the MCLs proposed for the other volatile organic contaminants (see the November 1985 notice).

## IX. Other Statutory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This proposed action does not constitute a "major" regulatory action because it will not have a major financial or adverse impact on the regulated community. However, an Economic Impact Analysis was prepared during the regulation development and this regulation was submitted to the Office of Management and Budget for review.

### *B. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant effect on a substantial number of small systems, means should be sought to minimize the effects.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this proposed rule will not have a significant effect on a substantial number of small entities. The Small Business Administration defines a small water utility as one which serves fewer than 50,000 people. There are about 58,500 systems which for the purposes of this analysis are considered small systems. Of course, this analysis under the Regulatory Flexibility Act is to portray the regulated community against other U.S. entities. In this regard, most public water systems are considered small. Of the 58,500 small systems, none are expected to have consistent contamination levels greater than the proposed MCL. This proposal would thus impact virtually none of the "small" systems.

### *C. Paperwork Reduction Act*

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These requirements are not effective until approved by OMB.

## X. References and Request for Public Comment

The following references for this rulemaking are included in the Public Docket. The Public Docket is available for viewing in Washington, DC, at the address listed at the beginning of this notice. All public comments received on the November 1985 proposal are included in the Docket.

EPA a U.S. Environmental Protection Agency, Criteria and Standards Division, Analytical Methods/ Monitoring for VOCs in Drinking Water. (October, 1985)

EPA b U.S. Environmental Protection Agency, Criteria and Standards Division, Technologies and Costs for the Removal of Volatile Organic Chemicals from Potable Water Supplies. (May, 1985)

EPA c U.S. Environmental Protection Agency, Office of Program Development and Evaluation, Economic Impact Analysis of Proposed Regulations to Control Volatile Synthetic Organic Chemicals in Drinking Water. (October, 1985)

EPA d U.S. Environmental Protection Agency, Criteria and Standards Division, Criteria Document for ortho-Dichloro-benzene, meta-Dichlorobenzene and para-Dichlorobenzene. (February, 1987)

EPA f National Toxicology Program, Toxicology and Carcinogenesis Studies of 1,4-Dichlorobenzene in F344 Rats and $B_6C_3F_1$ Mice (Gavage Studies), draft report, 1986.

EPA requests public comments and relevant information on all aspects of the proposed regulations. In particular, EPA requests comments on the following items:

- Do the new carcinogenicity data prepared by NTP modify the weight of evidence sufficiently to change the classification of p-dichlorobenzene from Group D to a Group B2 or a Group C substance?
- At what level should the MCL be set? Is the approach to setting the MCL appropriate?
- Are GAC and packed tower aeration BAT under Section 1412?
- Should BAT (for Section 1415 variances) vary with system size or water source (e.g., ground or surface) or other factors for p-dichlorobenzene? On what basis?
- Are point-of-use devices and bottled water appropriate control measures for States to require as part of the conditions for receipt of variances and exemptions? Are the conditions of use for bottled water sufficient to protect public health?

### List of Subjects

*40 CFR Part 141*

Chemicals, Intergovernmental relations, Reporting and record-keeping requirements, Water supply.

*40 CFR Part 142*

Administrative practice and procedure, Chemicals, Radiation protection, Requirements, Intergovernmental relations, and Water supply.

Dated, April 13, 1987.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 is revised to read as follows:

**Authority:** 42 U.S.C. 300g–1, 300g–3, 300g–6, 300j–4, and 300j–9.

2. In § 141.2, paragraph (x) is added to read as follows:

**§ 141.2 Definitions**

* * * * *

(x) "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available for achieving the MCL set in each NPDWR (taking cost into consideration). For the purposes of achieving the MCL for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.

3. Section 141.50 is amended by adding paragraph (a)(6), to read as follows and removing paragraph (b)(3).

**§ 141.50 Maximum contaminant level goals for organic contaminants.**

(a) * * *

(6) para-Dichlorobenzene.

4. In § 141.61, (as proposed at 50 FR 46930, Nov. 13, 1985) paragraph (a)(8) is revised to read as follows:

**§ 141.61 Maximum contaminant levels for organic compounds.**

(a) * * *

| Contaminant | [illegible] level in mg/l |
|---|---|
| . . . . . | |
| (8) para-dichlorobenzene | [illegible] |

5. Section 141.63 is added to read as follows:

**§ 141.63 Best available technology for volatile organic chemicals.**

The Administrator, pursuant to Section 1412(b)(6) of the Act, hereby identifies the following as BAT for achieving the maximum contaminant level for para-Dichlorobenzene (§ 141.61 (a)(8)): Removal using packed tower aeration; removal using granular activated carbon.

## PART 142—NATIONAL INTERIM PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 (as proposed at 50 FR 46930, Nov. 13, 1985) continues to read as follows:

**Authority:** 42 U.S.C. 300g–2, 300g–3, 300g–4, 300g–5, 300j–4, and 300j–9.

2. Section 142.61 (as proposed at 50 FR 46931, Nov. 13, 1985) is proposed to be amended by revising paragraph (e) and adding new paragraphs (f) and (g) to read as follows:

**§ 141.61 Variances from the maximum contaminant level for volatile organic chemicals.**

* * * * *

(e) The primacy agent may require a public water system to use bottled water or point-of-use devices as a condition of granting a variance from NPDWRs for volatile organic chemicals.

(f) Public water systems that use bottled water as a condition for receiving a variance from NPDWRs for volatile ~~organic~~ chemicals must meet the following requirements:

(1) The primacy agent must require and approve a monitoring program for bottled water. The public water system must develop and put in place a monitoring program that provides reasonable assurances that the bottled water meets all MCLs. The public water system must monitor a representative sample of the bottled water for all regulated VOCs the first quarter that it supplies water to the public, and annually thereafter. Results of the monitoring program shall be provided to the primacy agent, annually. Or, the public water system must receive a certification from the bottled water company that (i) The bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a), (ii) the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1)–(3), and (iii) the bottled water does not exceed the MCLs or quality limits as set out in 21 CFR 103.35.

The public water system shall provide the certification to the primacy agent the first quarter after it supplies bottled water and annually thereafter.

(2) The public water system must be fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system, via door-to-door bottled water delivery.

(g) Public water systems that use point-of-use devices as a condition for obtaining a variance must meet the following requirements:

(1) It is the responsibility of the public water system to operate and maintain the point-of-use treatment system.

(2) The utility must develop a plan and obtain primacy agent approval for a monitoring scheme before point-of-use devices are installed for compliance. This monitoring scheme must provide health protection equivalent to a monitoring scheme for central water treatment.

(3) Effective technology must be properly applied under a plan approved by the primacy agent and the microbiological safety of the water must be maintained.

(4) The primacy agent must require adequate certification of performance field testing, and a rigorous engineering design review of the point-of-use devices proposed.

(5) The design and application of the proposed point-of-use devices must consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(6) All consumers shall be protected. Every building connected to the system must have the point-of-use device installed, maintained, and adequately monitored. The primacy agent must be assured that every building is covered by treatment and monitoring, and that the rights and responsibilities of the utility customer convey with title upon sale of property.

3. A new Subpart H is proposed to be added to Part 142 of Title 40 to read as follows:

### Subpart H—Conditions for Obtaining Exemptions

**§ 142.70 Bottled water and point of use devices.**

(a) The primacy agent may require a public water system to use bottled water or point-of-use devices as a condition for contaminants when using the systems's water would create an unreasonable risk to health.

(b) Public water systems that use bottled water as a condition for receiving an exemption from NPDWRs for volatile organic chemicals must meet the requirements set out in § 142.61(f) of this part.

(c) Public water systems that use point-of-use devices as a condition for receiving an exemption from NPDWRs for volatile organic chemicals must meet the requirements set out in § 142.61(g) of this part.

[FR Doc. 87–8671 Filed 4–16–87; 8:45 am]

[illegible]

federal register

Friday
April 17, 1987

Part V

# Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**43 CFR Part 11**

**Natural Resource Damage Assessments**

**AGENCY:** Department of the Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule provides amendments to the final natural resource damage assessment regulations to be codified at 43 CFR Part 11. The natural resource damage assessment regulations establish procedures for assessing damages to natural resources resulting from a discharge of oil or a release of a hazardous substance, and compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, also known as Superfund, or under the Clean Water Act (CWA). The regulations contain procedures for two types of assessments: standard, simplified "type A" procedures; and alternative "type B" procedures to be used in individual cases. The final regulations were published in two segments, the rule published on August 1, 1986 (51 FR 27674), contained the general assessment process, applicable to both types of assessments, and the type B procedures. The rule published on March 20, 1987 (52 FR 9042), contained type A procedures.

The natural resource damage assessment regulations are provided for the use of authorized Federal and State officials referred to in CERCLA as "trustees" for natural resources. These procedures will assist authorized officials to perform natural resource damage assessments for use in court actions or administrative proceedings when seeking compensation for injuries to natural resources.

This proposed rule is necessitated by the Superfund Amendments and Reauthorization Act (SARA), passed by Congress and signed by the President on October 17, 1986. This proposed rule modifies the final regulations to conform with changes enacted by SARA that, among others: extend the rebuttable presumption to assessments performed by State trustees; provide for the recovery of prejudgment interest on damage awards; provide for a statute of limitations that revives certain past claims; require notification of trustees in cases of discharges or releases that might injure natural resources of concern to the trustee; create new responsibilities for Indian tribes; require Federal trustees to retain sums recovered, without further appropriations, for use only to restore, replace, or acquire the equivalent resources; and require State trustees to use sums recovered only to restore, replace, or acquire the equivalent resources.

**DATES:** Comments on this proposed rule should be submitted by May 18, 1987.

**ADDRESS:** Comments should be sent to David Rosenberger, CERCLA 301 Project, Room 4354, Department of the Interior, 1801 "C" St. NW, Washington, DC 20240. Comments will be available for review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

David Rosenberger (202) 343–1301
Linda Burlington (202) 343–1301
Willie Taylor (202) 343–7531
Alison Ling (415) 556–8807

**SUPPLEMENTARY INFORMATION:** .

The contents of this preamble are listed in the following outline:

I. Introduction
II. Overview of Proposed Rule
A. Rebuttable Presumption
B. Definitions
C. Prejudgment Interest
D. Prohibition on Double Recovery
E. Statute of Limitations
F. Claims Against the Fund
G. Notice to Trustees
H. Statutory Exclusions
I. Indian Tribes
J. Appropriations Process
K. Sixty-Day Notice
L. Use of Sums Recovered as Damages
M. Correction

## I. Introduction

Pursuant to section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, and Executive Order 12316, August 14, 1981 (46 FR 42237), the Department of the Interior (the Department) published final natural resource damage assessment regulations on August 1, 1986 (51 FR 27674), and March 20, 1987 (52 FR 9042). The regulation published at 51 FR 27674 contained procedures for the overall natural resource damage assessment process and specific procedures for conducting type B assessments in individual cases. The regulations published at 52 FR 9042 contained simplified procedures for conducting type A assessments in coastal and marine environments. Hereafter, these natural resource damage assessment rules are collectively referred to as the final rules, or rule. In the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, October 17, 1986, Congress made several revisions to sections of CERCLA directly relating to the final rules promulgated by the Department. In addition, Executive Order 12580 (52 FR 2923, January 23, 1987) redelegated the responsibility to promulgate the natural resource damage assessment regulations to the Department of the Interior. Today, the Department is proposing to amend the final rules to conform with the amendments to CERCLA enacted by the passage of SARA.

## II. Overview of the Proposed Rule

### *A. Rebuttable Presumption*

The final rule published on August 1, 1986, provided that the rebuttable presumption attached only to assessments performed by Federal officials (see § 11.11 (51 FR 27726)). The Department, in the preamble to the rule, stated that it had adopted a position on this issue that was consistent with the Executive branch's prior interpretation of CERCLA in this matter (51 FR 27694, August 1, 1986).

Section 107(d)(1) of SARA amended section 107(f) of CERCLA to add a new subsection (2)(C), which reads:

> (C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal *or State* trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act. (emphasis added.)

This SARA amendment specifically allows the rebuttable presumption to attach to natural resource damage assessments performed in accordance with the final rules to be codified at 43 CFR Part 11 to State trustees, as well as Federal trustees. Section 111(c)(2) of SARA deleted section 111(h), the section of CERCLA that had previously provided for the rebuttable presumption, and included the language providing for the rebuttable presumption in section 107(f)(2)(C) of CERCLA.

To implement this change, the Department proposes to amend the final rules to provide that State officials may receive the benefit of a rebuttable presumption for assessments they perform in accordance with the Natural Resource Damage Assessment Regulations, to be codified at 43 CFR Part 11. Therefore, amendments are proposed to §§ 11.10, 11.11, 11.14(ff), and

11.91(c) of the final rule to add the words "and State" to conform with the new section 107(f)(2)(C) of CERCLA. Also, the references in the final rule to section 111(h) of CERCLA have been revised to read, section 107(f)(2)(C) of CERCLA.

*B. Definitions*

SARA amended certain definitions contained in CERCLA. Because of these amendments, and the inclusion of a new definition for the term "Indian tribe," the Department is proposing to amend several definitions contained in § 11.14 of the final rule. Some of these changes are technical in nature, to conform with new language added by SARA. The amendments to the definitions are as follows:

"Authorized official" Because of the new responsibilities of Indian tribes, the Department is proposing to amend its definition of "authorized official" to include a designated official of an Indian tribe as one who may, under the conditions of section 126(d) of CERCLA (see later discussion), perform a natural resource damage assessment.

"CERCLA" The Department is proposing to amend the definition of the term "CERCLA" to clarify that the term means CERCLA, as amended by SARA.

"Damages" The Department is proposing to amend the definition of the term "damages" to include amounts sought by an Indian tribe who may assert a claim.

"Fund" The Department is proposing to amend the definition of "Fund" to conform with the designation of the Fund as the "Hazardous Substance Superfund" found in section 517(c)(2) of SARA.

"Lead authorized official" The Department is proposing to amend the definition of "lead authorized official" to clarify that, under the conditions of section 126(d) of CERCLA, there are circumstances in which a designated official of an Indian tribe may act as lead authorized official.

"Natural resources" SARA amended the definition in CERCLA of the term "natural resources" to include resources of an Indian tribe. Therefore, the Department is proposing to amend the definition of the term "natural resources" in the final rule to include such resources.

"Rebuttable presumption" As discussed earlier in this preamble, SARA added a new section 107(f)(2)(C) to CERCLA to specifically provide that assessments performed in accordance with this rule by State trustees will be eligible to receive a rebuttable for assessments the States perform pursuant to the final rules. The Department is proposing to amend the definition of the term "rebuttable presumption" to conform with this new language of CERCLA.

"Trustee" SARA added a new section 107(f)(2)(A) and (B) to CERCLA to provide that:

> (2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—
>
> (A) Federal.—The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act and such section 311 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.
>
> (B) State.—The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and such section 311 for those natural resources under their trusteeship.

This new language replaced the previous language found in section 111(h)(1) of CERCLA, which was deleted by SARA. The new language was then placed in section 107(f)(2)(A) and (B). The previous language of section 111(h)(1) of CERCLA stated:

> In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f)(4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

The Department is proposing to amend the definition of the term "trustee" to reflect the designation of State officials by the State Governors.

"Indian tribe" The Department is proposing to add the definition of the term "Indian tribe," in § 11.14(uu), as found in section 101(36) of CERCLA, to correspond to a new definition of that term added by SARA.

*C. Prejudgment Interest*

The final rule made no reference to the recovery of prejudgment interest on damage claims. Section 107(b) of SARA amended section 107(a) of CERCLA to provide that:

> The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. . . .

The Department proposes to amend § 11.15 of the final rule to include prejudgment interest in the amounts recoverable as damages.

*D. Prohibition on Double Recovery*

SARA amended section 107(f)(1) of CERCLA to provide a specific statutory prohibition on double recovery of damages. Section 11.15(3) is proposed to be amended to ensure there is no double recovery of damages or of assessment costs. That is, damages or costs cannot be recovered twice for the same discharge or release and injured natural resource.

*E. Statute of Limitations*

The final rule contained no discussion of the statute of limitations for natural resource damage claims. However, the amendments to CERCLA have created a new statute of limitations that is directly related to the promulgation of the final rule and to the CERCLA remedial action program. For that reason, the Department proposes to amend the final rule to include a recognition of the new statute of limitations.

Under the original CERCLA, section 112(d) provided that a claim for damages must be commenced within three years from the date of the discovery of the loss or December 11, 1980, whichever is later. In SARA, the statute of limitations for claims against the Fund and actions for natural resource damages were treated in separate sections. Section 112(c) of SARA relating to claims against the Fund amended section 112(d) of CERCLA to provide in part that:

> No claim may be presented under this section for recovery of the damages referred to in section 107(a) unless the claim is presented within 3 years after the later of the following:
>
> (A) The date of the discovery of the loss and its connection with the release in question.
>
> (B) The date on which final regulations are promulgated under section 301(c).

Section 113(b) of SARA amended section 113 of CERCLA to add a new section 113(g)(1) relating to actions for natural resource damages:

> Except as provided in paragraphs (3) and (4), no action may be commenced for

damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 120 (relating to Federal facilities), or any vessel or facility at which a remedial action under this Act is otherwise scheduled, an action for damages under this Act must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this Act with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or section 120 (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before the enactment of the Superfund Amendments and Reauthorization Act of 1986.

The Conference Report states that:

This section . . . requires that civil actions for damages to natural resources generally be delayed until completion of the RI/FS at NPL sites and at certain other sites where the President is diligently proceeding with the RI/FS. The phrase "the President is diligently proceeding with a remedial investigation and feasibility study" includes cases where a potentially responsible party is performing an RI/FS under supervision of the President.

The Conferees have adopted these amendments relating to the time limits for initiating for natural resource damages because the ability for Federal and State trustees to pursue such claims and actions has been impaired by the failure of the President to promulgate regulations govering [sic] procedures for filing claims and assessing damages to natural resources.

These amendments are intended to revive causes of actions for natural resource damages that may have been foreclosed by the running of the statute of limitations relating to such actions under current law. A corresponding set of amendments in section 112 pertaining to the time limit for filing claims against the fund for natural resource damages is also intended to revive claims that may have been foreclosed.

H.R. Rep. No. 99–962, 99th Cong., 2d Sess. 223 (1986).

It is proposed to amend § 11.15 by adding a new subsection (d) providing that actions must be commenced in accordance with the statute of limitations set forth in section 113 of CERCLA.

That statutory amendment embodies in the law itself the guidance contained in § 11.84(c) of the final rule that the determination of damages shall account for the effects of response actions. In most cases now, natural resource damage claims must wait until remedial actions are completed or at least until a remedy is selected.

*F. Claims Against the Fund*

The final rule does not include procedures for the filing of claims against the Hazardous Substance Superfund (Fund). Rules for that purpose have been promulgated by the Environmental Protection Agency (EPA), at 40 CFR Part 306. Section 517 of SARA expressly deleted expenditures for natural resource damages and assessment costs from the Fund. However, the language authorizing such claims was retained and amended by Section 111 of SARA. The Department will amend its rule in the future in accordance with any action EPA may take with regard to its Natural Resoure Claims Procedures, published at 40 CFR Part 306.

*G. Notice to Trustees*

Section 11.20 of the final rule includes a reference to §§ 300.52(d) and 300.64(d) of the National Oil and Hazardous Substances Contingency Plan (NCP) that provide for the On Scene Coordinator (OSC) or lead agency to notify the agency acting as trustee when natural resources have been or are likely to be injured by a discharge of oil or a release of a hazardous substance being investigated under the NCP. In the reauthorization of CERCLA, a notification and coordination requirement was included in the language of CERCLA itself, making it a statutory requirement. The Department notes that EPA is currently revising the NCP to include notification to Federal and State trustees and Indian tribes. Section 11.20(a) of the final rule is proposed to be amended to include the new statutory requirement, and to specify that trustees should respond, as appropriate, and provide necessary coordination in a timely manner.

*H. Statutory Exclusions*

Section 107(f) of CERCLA originally contained several exclusions to liability. These exclusions included that no liability to the United States or a State shall be imposed where it has been demonstrated that the damages for injuries to natural resources were specifically identified as an irreversible commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. Section 107(f) was amended by SARA to extend this exclusion to liability for natural resource damages to an Indian tribe, "so long as, the damages to an Indian tribe occurred pursuant to a Federal permit or license, and the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe." Also, section 114(a) of SARA amended section 114(c) of CERCLA to preclude recovery of response costs or damages resulting from a release or threatened release of recycled oil from service station dealers who are not owners or operators of vessels or hazardous waste disposal facilities, under certain conditions. Because of these two additional statutory exclusions from liability, the Department proposes to amend §§ 11.24 and 11.71 to include these provisions in the damages that are excluded from liability under CERCLA.

*I. Indian Tribes*

SARA amended CERCLA to provide for the role of Indian tribes in the natural resource damage provisions. As stated earlier in this preamble, the definition of natural resources found at section 101(16) of CERCLA was amended by SARA to include resources "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by . . . any Indian tribe, or if such resources are subject to a trust restriction on alienation, any member of an Indian tribe." SARA also included Indian tribes in section 107(a)(4)(A), which establishes the liability of responsible parties for Federal or State costs of removal or remedial action. Section 107(f) of CERCLA was amended to provide that liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from a release, would also be to "any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation."

Other amendments to CERCLA relating to the role of Indian tribes include: to amend section 111(b)(1) to include Indian tribes as those who may assert claims against the Fund for injury to, or destruction or loss of natural resources; to amend section 111(c)(2) to

include Indian tribes as among those who may recover from the Fund for the costs of restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance; and to include Indian tribes in the section 111(i) requirement for Restoration Plans. The Department is proposing amendments to pertinent sections of the final rule to bring the rule into conformance with these amendments to CERCLA.

Section 207 of SARA added a new section 126 to CERCLA to provide in part, that:

(a) *Treatment Generally.*—The governing body of an Indian Tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding health authorities) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

* * * * *

(d) *Limitation.*—Notwithstanding any other provision of this Act, no action under this Act by an Indian tribe shall be barred until the later of the following:

(1) The applicable period of limitations has expired.

(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this Act.

Because of the language of this new section 126 of CERCLA, the Department proposes to amend its final rule to give Indian tribes substantially the same treatment as that given to the States, in accordance with the intent of Congress, as discussed earlier in this preamble. The changes to the rule provide that, under certain circumstances, an Indian tribe may perform an assessment and bring a claim for damages determined by the assessment, however, as discussed below, CERCLA does not provide the rebuttable presumption to assessments performed by Indian Tribes.

The SARA amendments to section 107(f) of CERCLA do not grant the rebuttable presumption to assessments performed by Indian tribes. Also, section 126 of CERCLA, which specifies that the governing body of an Indian tribe shall be afforded substantially the same treatment as a State, under certain circumstances, with respect to certain provisions of CERCLA, does not list the provisions of section 107(f) of CERCLA as among those provisions available to Indian tribes. Furthermore, no amendments by SARA in either section 111(h), which previous to SARA provided for the rebuttable presumption, or in section 107(f)(2)(C) of CERCLA, which now grants the rebuttable presumption to Federal and State trustees, contain any language extending the rebuttable presumption to Indian tribes. Therefore, from the language of the statute, the Department does not have the authority to grant the rebuttable presumption to Indian tribes within this proposed rule. The Department points out that, of course, if a Federal official, acting as trustee on behalf of an Indian tribe, performs the assessment of damages, that assessment of damages by the Federal official will be accorded the rebuttable presumption, as provided in section 107(f)(2)(C) of CERCLA.

*J. Appropriations Process*

Section 11.82(d)(2)(iv)(B) of the final rule provides that:

(B) If the acquisition of land for Federal management constitutes the only viable method of obtaining the lost services, the appropriation process must be included in the scheduling of such acquisition since funding for such acquisition will have to be obtained through appropriations.

Also, § 11.92(b) of the final rule provides that:

(b) *Land acquisition.* Any monies awarded for the purpose of acquiring land for Federal management shall be deposited in the general fund of the United States Treasury. Federal agencies shall acquire land for Federal management solely with monies appropriated for that purpose.

The preamble to the final rule, at 51 FR 27719, explained that the rule contains a restriction on Federal land acquisition as a means of restoration or replacement, unless such acquisition is the only feasible restoration or replacement alternative. Even in this case, funds to acquire the land must be placed in the general fund of the Federal Treasury and requested by the Federal agency through the normal appropriations process. The purpose of this limitation was to restrict the acquisition of private lands for Federal management under CERCLA, and, thus, the expansion of the Federal estate, without specific Congressional approval.

In the reauthorization of CERCLA, Congress added to section 107(f)(1) of CERCLA the provision that:

Sums recovered by the United States Government as trustee under this subsection *shall be retained by the trustee, without further appropriation,* for use only to restore, replace, or acquire the equivalent of such natural resources. (emphasis added.)

Therefore, the Department proposes to amend the final rule to delete the provisions requiring the use of the appropriation process for funds to acquire new lands where such acquisition is found to be necessary. The Department notes, however, that the acquisition of land for Federal management should be used only when such acquisition is the sole feasible restoration or replacement alternative. Also, in accordance with section 107(f)(1) of CERCLA and section 107(d)(2) of SARA, the Department is proposing to amend the rule to require that both sums recovered as damages and sums recovered as assessment costs by Federal or State trustees shall be retained by the trustee that incurred the cost.

*K. Sixty-Day Notice*

Section 11.91(d) of the final rule provided that the authorized official should allow up to 60 days for the potentially responsible party to respond to the damage claim demand. Section 113(b) of SARA amended section 113 of CERCLA to add subsection (g), relating to natural resource damage actions. Section 113(g) provides that, with respect to any facility listed on the National Priorities List, any Federal facility, or any vessel or facility at which a remedial action is otherwise scheduled, no action for damages may be commenced prior to 60 days after the authorized official provides to the President and the potentially responsible party a notice of intent to file suit. It is proposed to amend § 11.91(d) of the rule to incorporate this 60-day notice requirement.

*L. Use of Sums Recovered as Damages*

The final rule contained a requirement in §§ 11.92 and 11.93 that all sums awarded as damages under CERCLA be used for the purposes of restoration, replacement, or acquisition of equivalent resources. SARA amended the language of section 107(f)(1) of CERCLA to make this requirement explicit.

One area of confusion in the amendments to CERCLA is in that part of section 107(f) addressing the use of the sums recovered. In section 107 of SARA, that section specifically dealing with natural resources, Congress amended section 107(f)(1) of CERCLA to read:

Sums recovered by the United States government as trustee under this subsection shall be retained by the trustee, without

further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources.

Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State.

In section 207 of SARA, however, the earlier language of section 107(f) of CERCLA relating to the use of the sums recovered was amended to read:

Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal government the State government or the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.

This amendment was worked to state that the words "Indian tribe" would be inserted after the phrase "State government." Since section 107 of SARA had already deleted this sentence and replaced it with new language, it is unclear whether or where Indian tribes would be included in the final amended language.

The Department notes that the confusion in the language of CERCLA, as amended, regarding the use of sums recovered by Indian tribes does not require further amendment to the final rule. The Department addressed the issue of the use of all sums recovered as a damage award in the final rules. The purpose of § 11.92(e) of the final rules (now § 11.92(c) of this proposed rule) is to require that all sums recovered as a damage award be used to restore or replace the injured natural resources according to the Restoration Plan required by section 111 (i) of CERCLA.

In addition, Department notes that section 111 (i) of CERCLA was amended to require that:

Except in a situation requiring action avoid an irreversable loss of natural resources or to prevent or reduce any continuing danger natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources beloging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

Because Indian tribes were explicitly included in this restriction, all sums recovered as a damage award by a Federal or State trustee, or an Indian tribe, must be used to restore or replace the injured natural resource.

*M. Correction*

In the final rule, § 11.32(a)(1)(ii)(D) states that:

(D) When there is a natural resource claim against the Fund pursuant to section 111(c)(3) of CERCLA, the lead authorized official will be designated in accordance with the Natural Resource Claims Procedures, 40 CFR 306.20(b).

The reference to section 111(c)(3) of CERCLA is incorrect. Instead, the reference should be to section 111(c)(1) of CERCLA. The Department proposes to correct this statutory cite.

**Authorship**

The primary authors of this proposed rule are Alison Ling and Linda Burlington, Office of the Solicitor, David Rosenberger, U.S. Fish and Wildlife Service, and Willie Taylor, Office of Policy Analysis, all with the Department of the Interior. National Environmental Policy Act. Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) has been prepared.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).* The proposed rule provides technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. In addition, the estimate of the potential economic effects of this proposed rule is well below $100 million annually. As the proposed rule applies to Federal and State agencies acting as trustees for natural resources and Indian tribes it is not expected to have an effect on a substantial number of small entities. It has been determined that this proposed rule of 43 CFR Part 11 does not contain any information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 43 CFR Part 11**

Continental shelf, Environmental Protection, Fish, Forests and forest products, Grazing land, Indian lands, Hazardous substances, Mineral resources National forest, National parks, Natural resources, Oil pollution, Public lands, Wildlife, Wildlife refuges.

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986, and for the reasons set out in the preamble, Title 43, Subtitle A of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: April 15, 1987.

**Gale A. Norton,**

*Associate Solicitor, Division of Conservation and Wildlife.*

## PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. It is proposed to revise the authority citation for 43 CFR Part 11 to read as follows:

**Authority:** 42 U.S.C. 9651(c), as amended.

### Subpart A—Introduction

2. It is proposed to revise § 11.10 to read as follows:

**§ 11.10 Scope and applicability.**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq.,* and the Clean Water Act (CWA), 33 U.S.C. 1251–1376, provide that Federal and State agencies who are authorized to act as trustees of natural resources or Indian tribes may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance covered under CERCLA or the CWA and may seek to recover those damages. This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300, for the identification, investigation, study, and response to a discharge of oil or release of a hazardous substance, and it provides a procedure by which a Federal or State agency acting as trustee or Indian tribe can determine compensation for injuries to natural resources that have not been nor are expected to be addressed by response actions conducted pursuant to the NCP. The assessment procedures set forth in this part are not mandatory. However, they must be used by Federal or State officials acting as trustees in order to obtain the rebuttable presumption contained in section 107(f)(2)(C) of CERCLA. This part applies to assessments initiated after the effective date of this final rule.

3. It is proposed to revise § 11.11 to read as follows:

**§ 11.11 Purpose.**

The purpose of this part is to provide standardized and cost-effective procedures for assessing natural resource damages. The results of an assessment performed by a Federal or State official according to these procedures shall be accorded the evidentiary status of a rebuttable presumption as provided in section 107(f)(2)(C) of CERCLA.

4. It is proposed to amend § 11.14 by revising paragraphs (d), (g), (l), (r), (w), (z), (ff), and (rr) and by adding a new paragraph (uu), to read as follows:

**§ 11.14 Definitions.**

* * * * *

(d) "Authorized official" means the Federal or State official to whom is delegated the authority to act on behalf of the Federal or State agency designated as trustee, or a designated official of an Indian tribe, pursuant section 126(d) of CERCLA, to perform a natural resource damage assessment. As used in this part, authorized official is equivalent to the phrase "authorized official or lead authorized official," as appropriate.

* * * * *

(g) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, as amended.

* * * * *

(l) "Damages" means the amount of money sought by the Federal or State agency acting as trustee or Indian tribe as compensation for injury, destruction, or loss of natural resources as set forth in section 107(a) or 111(b) of CERCLA.

* * * * *

(r) "Fund" means the Hazardous Substance Superfund established by section 517 of the Superfund Amendments and Reauthorization Act of 1986.

* * * * *

(w) "Lead authorized official" means a Federal or State official authorized to act on behalf of all affected Federal or State agencies acting as trustees where there are multiple agencies, or a designated official of an Indian tribe where there are multiple tribes, affected because of coexisting or contiguous natural resources or concurrent jurisdiction.

* * * * *

(z) "Natural resources" or "resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976), any State, or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. These natural resources have been categorized into the following five groups: surface water resources, ground water resources, air resources, geologic resources, and biological resources.

* * * * *

(ff) "Rebuttable presumption" means the procedural device provided by section 107(f)(2)(C) of CERCLA describing the evidentiary weight that must be given to any determination or assessment of damages in any administrative or judicial proceeding under CERCLA or section 311 of the CWA made by a Federal or State trustee in accordance with the rule provided in this part.

* * * * *

(rr) "Trustee" means any Federal natural resources management agency designated in the NCP, 40 CFR Subpart G, and any State agency designated by the Governor of each State, pursuant to section 107(f)(2)(B) of CERCLA, that may prosecute claims for damages under section 107(f) or 111 (b) of CERCLA

(uu) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special progams and services provided by the United States to Indians because of their status as Indians.

5. It is proposed to amend § 11.15 by revising (a) introductory text and (c), by removing the period at the end of (a)(3)(iii) and adding the phrase "; and", and by adding new (a)(4), (d), and (e) to read as follows:

**§ 11.15 Actions against the responsible party for damages.**

(a) In an action filed pursuant to section 107(f) of CERCLA, or section 311(f) (4) and (5) of the CWA, a Federal or State agency acting as a trustee, or Indian tribe acting pursuant to section 126(d) of CERCLA, who has performed an assessment in accordance with this rule may recover:

* * * * *

(4) Interest on the amounts recoverable as set forth in section 107(a) of CERCLA. Such interest shall accrue from the later of: the date payment of a specified amount is demanded in writing, or the date of the expenditure concerned;

* * * * *

(c) Where an assessment determines that there is, in fact, no injury, as defined in § 11.62 of this part, the Federal or State agency acting as trustee, or Indian tribe acting pursuant to section 126(d) of CERCLA, may not recover assessment costs.

(d) There shall be no double recovery under this rule for damages or for assessment costs, that is, damages or assessment costs may only be recovered once, for the same discharge or release and natural resource, as set forth in section 107(f)(1) of CERCLA.

(e) Actions for damages and assessment costs shall comply with the statute of limitations set forth in section 113(g) of CERCLA.

**Subpart B—Preassessment Screen**

6. It is proposed to revise § 11.20 to read as follows:

**§ 11.20 Notification and detection.**

(a) *Notification.* (1) Section 104(b)(2) of CERCLA requires prompt notification of Federal and State natural resource trustees of potential damages to natural resources under investigation and requires coordination of the assessments, investigations, and planning under section 104 of CERCLA with such Federal and State trustees.

(2) The NCP at 40 CFR 300.52(d) and 300.64(d) provides for the OSC or lead agency to notify the Federal or State agency acting as trustee when natural resources have been or are likely to be injured by a discharge of oil or a release of a hazardous substance being investigated under the NCP.

(3) Federal and State natural resource trustees, upon such notification described in paragraphs (a)(1) and (2) of this section, shall take such actions, as may be appropriate, to provide timely response and coordination consistent with the NCP.

(b) *Previously unreported discharges or releases.* If a Federal or State agency acting as trustee or Indian tribe identifies or is informed of apparent injuries to natural resources that appear to be a result of a previously unidentified or unreported discharge of oil or release of a hazardous substance, he should first make reasonable efforts to determine whether a discharge or release has taken place. In the case of a discharge or release not yet reported or being investigated under the NCP, the

Federal or State agency acting as trustee or Indian tribe shall report that discharge or release to the appropriate authority as designated in the NCP, 40 CFR 300.51(b) and 300.63(b).

(c) *Identification of co-trustees.* The Federal or State agency acting as trustee or Indian tribe should assist the OSC or lead agency, as needed, in identifying other Federal or State agencies or Indian tribes whose resources may be affected as a result of shared responsibility for the resources and who should be notified.

7. It is proposed to amend § 11.21 by revising (a)(1), (b), and (c) to read as follows:

**§ 11.21 Emergency restorations.**

(a) *Reporting requirements and definition.* (1) In the event of a natural resource emergency, the Federal or State agency acting as trustee or Indian tribe shall contact the National Response Center (800/424–8802) to report the actual or threatened discharge or release and to request that an immediate response action be taken.

* * * * *

(b) *Emergency actions.* If no immediate response actions are taken at the site of the discharge or release by the EPA or the U.S. Coast Guard within the time that the Federal or State agency acting as trustee or Indian tribe determines is reasonably necessary, or if such actions are insufficient, the Federal or State agency acting as trustee or Indian tribe should exercise any existing authority it may have to take on-site response actions. The Federal or State agency acting as trustee or Indian tribe shall determine whether the potentially responsible party, if his identity is known, is taking or will take any response action. If no-site response actions are taken, the Federal or State agency acting as trustee or Indian tribe who may assert a claim may undertake limited off-site restoration action consistent with their existing authorities to the extent necessary to prevent or reduce the immediate migration of the oil or hazardous substance onto or into the resource for which the Federal or State agency may assert trusteeship or the resource for which an Indian tribe may assert a claim.

(c) *Limitations on emergency actions.* The Federal or State agency acting as trustee or Indian tribe may undertake only those actions necessary to abate the emergency situation, consistent with their existing authorities. The normal procedures provided in this part must be followed before any additional restoration actions other than those necessary to abate the emergency situation are undertaken. The burden of proving that emergency restoration was required and that restoration costs were reasonable and necessary based on information available at the time rests with the Federal or State agency acting as trustee or Indian tribe.

8. It is proposed to amend § 11.23 by revising (b), (e) introductory text, (e)(2), (f)(4), (g)(1) introductory text, (g)(1)(ii), and (g)(2) to read as follows:

**§ 11.23 Preassessment screen—general.**

* * * * *

(b) *Purpose.* The purpose of the preassessment screen is to provide a rapid review of readily available information that focuses on resources for which the Federal or State agency may assert trusteeship under section 107(f) of CERCLA, or for which an Indian tribe may assert a claim, as specified in section 126(d) of CERCLA. This review should ensure that there is a reasonable probability of making a successful claim before monies and efforts are expended in carrying out an assessment.

* * * * *

(e) *Criteria.* Based on information gathered pursuant to the preassessment screen and on information gathered pursuant to the NCP, the authorized official shall make a preliminary determination that all of the following criteria are met before proceeding with an assessment:

* * * * *

(2) Natural resources for which the Federal or State agency may assert trusteeship under CERCLA or for which an Indian tribe have been or are likely to have been adversely affected by the discharge or release;

* * * * *

(f) * * *

(4) If the Federal or State agency acting as trustee or Indian tribe already has a process similar to the preassessment screen, and the requirements of the preassessment screen can be satisfied by that process, the processes may be combined to avoid duplication.

* * * * *

(g) *Preassessment phase costs.* (1) The following categories of reasonable and necessary costs may be incurred in the preassessment phase of the damage assessment:

* * * * *

(ii) Trustee or Indian tribe identification and notification costs;

* * * * *

(2) The reasonable and necessary costs for these categories shall be limited to those costs incurred by the authorized official for, and specifically allocable to, site-specific efforts taken during the preassessment phase for assessment of damages to natural resources for which the agency is acting as trustee or for which the Indian tribe my assert a claim. Such costs shall be supported by appropriate records and documentation and shall not reflect regular activities performed by the agency or Indian tribe in management of the natural resource. Activities undertaken as part of the preassessment phase shall be taken in a manner that is cost-effective, as that phrase is used in this part.

9. It is proposed to amend § 11.24 by revising (b)(1)(i) and (b)(2), and by adding (b)(1)(v) to read as follows:

**§ 11.24 Preassessment screen—information on the site.**

* * * * *

(b) * * *

(1) * * *

(i) Resulting from the discharge or release were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environmental analysis, that the decision to grant the permit or license authorizes such commitment of natural resources, and that the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe; or

* * * * *

(v) Resulting from the release or threatened release of recycled oil from a service station dealer acting as any person described in section 107(a) (3) or (4) of CERCLA if such recycled oil is not mixed with any other hazardous substance and is stored, treated, transported or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

* * * * *

(2) An assessment under this part shall not be continued for potential injuries meeting one or more of the criteria described in paragraph (b)(1) of this section, which are exceptions to liability provided in sections 107 (f), (i), and (j) and 114(c) of CERCLA.

**Subpart C—Assessment Plan Phase**

10. It is proposed to amend § 11.30 by revising (c)(2) to read as follows:

**§ 11.30 Assessment Plan—general.**

* * * * *

(c) Assessment Plan phase costs. * * *

(2) The reasonable and necessary costs for these categories shall be limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, site specific efforts taken in the development of an Assessment Plan for a resource for which the agency is acting as trustee, or for which an Indian tribe may assert a claim. Such costs shall be supported by appropriate records and documentation, and shall not reflect regular activities performed by the agency or tribe in management of the natural resource. Activities undertaken as part of the Assessment Plan phase shall be taken in a manner that is cost-effective, as that phrase is used in this part.

11. It is proposed to amend § 11.31 by revising (a)(4) to read as follows:

**§ 11.31 Assessment Plan—content.**

(a) *General content and level of detail.* * * *

(4) The Assessment Plan shall contain procedures and schedules for sharing data, split samples, and results of analyses, when requested, with any identified potentially responsible parties and other Federal or State agencies acting as trustees or Indian tribes.

* * * * *

12. It is proposed to amend § 11.32 by revising (a) introductory text, (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A) introductory text, (a)(1)(ii) (B), (C), (D), and (E), (a)(1)(iii), (c), and (e) to read as follows:

**§ 11.32 Assessment Plan—development.**

(a) *Pre-development requirements.* The authorized official shall fulfill the following requirements before developing an Assessment Plan.

(1) *Coordination.* (i) If the authorized official's responsibility is shared with other Federal or State agencies acting as trustees or Indian tribes as a result of coexisting or contiguous natural resources or concurrent jurisdiction, the authorized official shall ensure that all other known affected Federal and State agencies or Indian tribes are notified that an Assessment Plan is being developed. This notification shall include the results of the Preassessment Screen Determination.

(ii) Authorized officials from different agencies or Indian tribes are encouraged to cooperate and coordinate any assessments that involve coexisting or contiguous natural resources or concurrent jurisdiction. They may arrange to divide responsibility for implementing the assessment in any manner that is agreed to by all of the affected Federal and State agencies acting as trustees or Indian tribes with the following conditions:

(A) A lead authorized official shall be designated to administer the assessment. The lead authorized official shall act as coordinator and contact regarding all aspects of the assessment and shall act as final arbitrator of disputes if consensus among the authorized officials cannot be reached regarding the development, implementation, or any other aspect of the Assessment Plan. The lead authorized official shall be designated by mutual agreement of all the Federal or State agencies acting as trustees or Indian tribes who may assert claims. If consensus cannot be reached as to the designation of the lead authorized official, the lead authorized official shall be designated in accordance with paragraphs (a)(1)(ii) (B), (C), (D), or (E) of this section:

* * * * *

(B) When the natural resources being assessed are located on lands or waters subject to the administrative jurisdiction of a Federal agency, a designated official of the Federal agency shall act as the lead authorized official.

(C) When the natural resources being assessed are located on lands or waters of an Indian tribe, the Indian tribe, or if such resources are subject to a trust restriction on alienation, any designated official of the Indian tribe, shall act as the lead authorized official, when acting pursuant to section 126(d) of CERCLA.

(D) For all other natural resources for which the State may assert trusteeship, a designated official of the State agency shall act as the lead authorized official.

* * * * *

(E) When there is a natural resource claim against the Fund pursuant to section 111(c)(1) of CERCLA, the lead authorized official will be designated in accordance with the natural resource claims procedures, 40 CFR 306.20(b).

(iii) If there is a reasonable basis for dividing the assessment, the Federal or State agencies acting as trustee or an Indian tribe, acting pursuant to section 126(d) of CERCLA, may act independently and pursue separate assessments, actions or claims so long as the claims do not overlap. In these instances, the agencies shall coordinate their efforts, particularly those concerning the sharing of data and the development of the Assessment Plans.

* * * * *

(c) *Public involvement in the Assessment Plan.* (1) The Assessment Plan shall be made available for review by any identified potentially responsible parties, other Federal or State agencies acting as trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate, before the performance of any methodologies contained therein.

(2) Any comments concerning the Assessment Plan received from identified potentially responsible parties, other Federal or State agencies acting as trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public, together with responses to those comments, shall be included as part of the Report of Assessment, described in § 11.90 of this part.

* * * * *

(e) *Plan modification.* (1) The Assessment Plan may be modified at any stage of the assessment as new information becomes available.

(2)(i) Any modification to the Assessment Plan that in the judgment of the authorized official is significant shall be made available for review by any identified potentially responsible party, any other affected Federal or State agencies acting as trustees or Indian tribes, and any other interested members of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate, before tasks called for in the modified plan are begun.

(ii) Any modification to the Assessment Plan in the judgment of the authorized official is not significant shall be made available for review by any identified potentially responsible party, any other affected Federal or State agencies acting as trustees or Indian tribes, and any other interested members of the public, but the implementation of such modification need not be delayed as a result of such review.

* * * * *

## Subpart D—Type A Assessments

13. It is proposed to amend § 11.40 by revising (c) to read as follows:

**§ 11.40 Type A assessments—general.**

* * * * *

(c) *Type A assessment costs.* The reasonable and necessary costs incurred in conducting assessments under this Subpart shall be limited to those costs incurred or anticipated by the authorized official for, and specially allocable to, incident-specific efforts taken in the assessment of damages for natural resources for which the agency

is acting as trustee or for which an Indian tribe may assert a claim. Such costs shall be supported by appropriate records and documentation, and shall not reflect regular activities performed by the agency or the Indian tribe in management of the natural resource. Activities undertaken as part of the damage assessment shall be taken in a manner that is cost-effective, as that phrase is used in this Part.

**Subpart E—Type B Assessments**

14. It is proposed to amend § 11.60 by revising (d)(2) to read as follows:

**§ 11.60 Type B assessments—general.**

* * * * *

(d) Type B assessment costs.

* * * * *

(2) The reasonable and necessary costs for these categories shall be limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, site specific efforts taken in the assessment of damages for a natural resource for which the agency is acting as trustee, or for which an Indian tribe may assert a claim. Such costs shall be supported by appropriate records and documentation, and shall not reflect regular activities performed by the agency or the Indian tribe in management of the natural resource. Activities undertaken as part of the damage assessment phase shall be taken in a manner that is cost-effective, as that phrase is used in this part.

15. It is proposed to amend § 11.71 by revising (g) introductory text, (g)(1) and by adding new paragraph (g)(5) to read as follows:

**§ 11.71 Quantification phase—service reduction quantification.**

* * * * *

(g) *Statutory exclusions.* In quantifying the effects of the injury, the following statutory exclusions shall be considered, as provided in section 107(f), (i), and (j) and 114 (c) of CERCLA, that exclude compensation for damages to natural resources that were a result of:

(1) An irreversible and irretrievable commitment of natural resources identified in an environmental impact statement or other comparable environmental analysis, and the decision to grant the permit or license authorizes such a commitment, and the facility was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that license or permit was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe; or

* * * * *

(5) Resulting from the release or threatened release of recycled oil from a service station dealer acting as any person described in section 107(a)(3) or (4) of CERCLA if such recycled oil is not mixed with any other hazardous substance and is stored, treated, transported or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other the applicable authorities.

* * * * *

(16) It is proposed to amend § 11.72 by revising (c)(5) to read as follows:

**§ 11.72 Quantification phase—baseline services determination.**

* * * * *

(c) Historical data.

* * * * *

(5) Studies conducted or sponsored by Federal or State agencies acting as trustees for Indian tribes for the resource in question;

* * * * *

17. It is proposed to amend § 11.82 by removing (d)(2)(iv)(B) and the letter designation (d)(2)(iv)(A) and by revising (e)(1) and (2) to read as follows:

**§ 11.82 Damage determination phase—Restoration Methodology Plan.**

* * * * *

(e) *Plan development.* (1) In developing the Restoration Methodology Plan, the guidance provided in § 11.81 of this part shall be followed.

(2)(i) The Restoration Methodology Plan shall be made available for review by any identified potentially responsible party, other Federal or State agencies acting as trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of at least 30 calendar days, with reasonable extensions granted as appropriate, before the authorized official's final decision on selection of the alternative.

(ii) Comments received from any identified potentially responsible party, other Federal or State agencies acting as trustees, other affected Federal or State agencies or Indian tribes, or any other interested members of the public, together with responses to those comments shall be included as part of the Report of Assessment, described in § 11.90 of this part.

* * * * *

18. It is proposed to amend § 11.83 by revising (b) to read as follows:

**§ 11.83 Damage determination phase—use value methodologies.**

* * * * *

(b) *Use values.* (1) For the purposes of this part, use values are the value to the public of recreational or other public uses of the resource, as measured by changes in consumer surplus, any fees or other payments collectable by the government or Indian tribe for a private party's use of the natural resources, and any economic rent accruing to a private party because the government or Indian tribe does not charge a fee or price for the use of the resource.

(2) Estimation of option and existence values shall be used only if the authorized official determines that no use values can be determined.

(3) In instances where the Federal or State agency acting as trustee or Indian tribe is the majority operator or controller of a for- or not-for-profit enterprise, and the injury to the natural resource results in a loss to such an enterprise, that portion of the lost net income due the agency from this enterprise resulting directly or indirectly from the injury to the natural resource may be included as a measure of damages under this part.

19. It is proposed to amend § 11.84 by revising (i) to read as follows:

**§ 11.84 Damage determination phase—implementation guidance.**

* * * * *

(i) *Scope of the analysis.* The authorized official must determine the scope of the analysis in order to estimate a diminution of use values.

(2) In assessments where the scope of analysis is Federal, only the diminution of use values to the Nation as a whole should be counted.

(3) In assessments where the scope of analysis is at the State level, only the diminution of use values to the State should be counted.

(4) In assessments where the scope of analysis is at the tribal level, only the diminution of use values to the tribe should be counted.

**Subpart F—Post Assessment Phase**

20. It is proposed to revise § 11.91 to read as follows:

**§11.91 Post-assessment phase—demand.**

(a) *Requirement and content.* At the conclusion of the assessment the authorized official shall present to the potentially responsible party a demand in writing for a sum certain, representing the damages determined in accordance with the requirements and guidance of § 11.40 or of § 11.80 of this part, and including the reasonable cost of the

assessment, and as adjusted, if necessary, by the guidance in §11.92(b) of this Part, delivered in such a manner as will establish the date of receipt. The demand shall adequately identify the Federal or State agency or Indian tribe asserting the claim, the general location and description of the injured resource, identification of the type of discharge or release determined to have resulted in the injuries, and the damages sought from that party.

(b) *Report of Assessment.* The demand letter shall include the Report of Assessment as an attachment.

(c) *Rebuttable presumption.* When performed by a Federal or State official in accordance with this part, the natural resource damage assessment and the resulting Damage Determination supported by a complete administrative record of the assessment including the Report of Assessment as described in § 11.90 of this part shall have the force and effect of a rebuttable presumption on behalf of any Federal or State claimant in any judicial or adjudicatory administrative proceeding under CERCLA, or section 311 of the CWA.

(d) *Potentially responsible party response.* The authorized official should, and as provided in section 113(g)(1) of CERCLA, in some cases must, allow at least 60 days from receipt of the demand by the potentially responsible party, with reasonable extensions granted as appropriate, for the potentially responsible party to acknowledge and respond to the demand, prior to filing suit.

21. It is proposed to revise § 11.92 to read as follows:

**§ 11.92 Post-assessment phase—restoration account.**

(a) *Disposition of recoveries.* (1) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA or section 311(f)(4) and (5) of the CWA by the Federal government acting as trustee shall be retained by the trustee, without further appropriation, in a separate account in the United States Treasury.

(2) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA, or section 311(f)(4) and (5) of the CWA by a State government acting as trustee shall either:

(i) Be placed in a separate account in the State treasury; or

(ii) Be placed by the responsible party or parties in an interest bearing account payable in trust to the State agency acting as trustee.

(3) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA or section 311(f)(4) and (5) of the CWA by an Indian tribe shall either:

(i) Be placed in an account in the tribal treasury; or

(ii) Be placed by the responsible party or parties in an interest bearing account payable in trust to the Indian tribe.

(b) *Adjustments.* (1) In establishing the account pursuant to paragraph (a) of this section, the calculation of the expected present value of the damage amount should be adjusted, as appropriate, whenever monies are to be placed in a non-interest bearing account. This adjustment should correct for the anticipated effects of inflation over the time estimated to complete expenditures for the restoration or replacement.

(2) In order to make the adjustment in paragraph (b)(1) of this section, the authorized official acting as trustee should adjust the damage amount by the rate payable on notes or bonds issued by the United States Treasury with a maturity date that approximates the length of time estimated to complete expenditures for the restoration or replacement.

(c) *Payments from the account.* Monies that constitute the damage claim amount shall be paid out of the account established pursuant to paragraph (a) of this section only for those actions described in the Restoration Plan required by § 11.93 of this Part.

(d) *Hazardous Substance Superfund Claims.* Claims against the Hazardous Substance Superfund must be for costs incurred as specified by the procedures promulgated by EPA at 40 CFR Part 306.

22. It is proposed to amend § 11.93 by revising (c) to read as follows:

**§ 11.93 Part-assessment phase—Restoration Plan.**

* * * * *

(c) Modifications may be made to the Restoration Plan as become necessary as the restoration proceeds. Significant modifications shall be made available for review by any responsible party, any affected Federal or State agencies acting as trustees or Indian tribes, and any other interested members of the public for a period of at least 30 days, with reasonable extensions granted as appropriate before tasks called for in the modified plan are begun.

* * * * *

[FR Doc. 87-8779 Filed 4-16-87; 8:45 am]
BILLING CODE 4310-10-M

# Reader Aids

Federal Register

Vol. 52, No. 74

Friday, April 17, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10
11807-11980.....13
11981-12128.....14
12129-12362.....15
12363-12510.....16
12511-12896.....17

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11809
5629.....12126
5630.....12129

**Administrative Orders:**

**Presidential Determinations:**
No. 87-12 of March 17, 1987.....11807

**5 CFR**

213.....11185
591.....12131
841.....12131
870.....12133
1201.....10875

**Proposed Rules:**
353.....11657
2411.....11995

**7 CFR**

210.....11186
271.....11811
272.....11021, 11811
273.....11021, 11811
274.....11811
278.....11811
301.....10357, 12363
354.....10364
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615, 12511
910.....10729, 11615, 12511
917.....12512
925.....11616
927.....11616
932.....12134
948.....12513
989.....12515
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1922.....11981
1944.....11981
1951.....11456, 11981

**Proposed Rules:**
220.....12419
246.....12527
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
908.....12535
910.....12536
945.....10893
979.....12185
994.....10984, 12185
1011.....12186
1040.....12537
1046.....11475
1106.....12538
1942.....12539
1955.....10577
1965.....10577

**9 CFR**

212.....11620
248.....11621

**Proposed Rules:**
245.....11659

**8 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024
318.....12517

**Proposed Rules:**
54.....12189
92.....10765
307.....12422
308.....12422
317.....10766, 11828
319.....10766, 11828
381.....11828

**10 CFR**

0.....11026
73.....12364

**Proposed Rules:**
2.....11475, 12192
50.....10771
430.....12342

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875

500.....10557
564.....10557
611.....12135
614.....12143
701.....12365
708.....12370
741.....12365

**Proposed Rules:**
325.....11476, 11660
337.....11492
522.....12425
612.....11080
705.....12427

**13 CFR**
311.....11626

**14 CFR**
21.....11627
23.....11627
39.....10558, 10735, 10736, 11630–11639, 11985, 11986, 12517–12519
71.....10559, 11028, 11032–11034, 11815
73.....10559, 10560, 11033, 11034
95.....10737
97.....12519
1215.....10880
1260.....12378

**Proposed Rules:**
29.....11997
39.....10581, 11081, 11663, 11664, 11997, 11998, 12544, 12545
71.....10582, 11082, 11828, 12286
75.....12000, 12286

**15 CFR**
370.....11640
371.....10741
376.....11640
399.....11457, 11640

**Proposed Rules:**
7.....11498
280.....11498
368.....10771

**16 CFR**
13.....12379

**Proposed Rules:**
13.....12430, 12546

**17 CFR**
200.....12147
203.....12147
241.....11458
270.....11187

**Proposed Rules:**
210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**
16.....11035
271.....10741
381.....10366

**Proposed Rules:**
4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**
24.....10561, 10970
133.....10668
146.....10970
148.....12149
172.....12149
177.....11216

**Proposed Rules:**
111.....10774
127.....12000

**20 CFR**
10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217

**Proposed Rules:**
200.....10384
615.....10774

**21 CFR**
5.....10881
81.....10882
172.....10882
175.....10883, 12380
177.....11641
184.....10884
193.....10561, 10562
201.....12152
341.....12521
510.....10668, 11040, 11041, 11988, 12153
520.....10668, 11041, 11988
522.....10668, 11816
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642, 11988, 12153, 12521
561.....10562, 12153
573.....10887
1308.....11042, 12285

**Proposed Rules:**
133.....12556
312.....12431
357.....12114
561.....12193
1301.....11091

**22 CFR**
2a.....12154
212.....11817

**Proposed Rules:**
41.....12001

**23 CFR**

**Proposed Rules:**
650.....11092
655.....11502

**24 CFR**
15.....12159
201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644

**Proposed Rules:**
200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**
120.....11467

**Proposed Rules:**
40.....11503

**26 CFR**
1.....10368, 10741, 10742, 12161
5f.....10368
54.....10563
602.....10368, 10563, 10742, 12161

**Proposed Rules:**
1.....10774, 12194
54.....10583
602.....10583, 10774

**27 CFR**

**Proposed Rules:**
9.....11689

**28 CFR**
0.....11043
545.....10528

**Proposed Rules:**
549.....10531

**29 CFR**
33.....11600
2644.....10368
2676.....12163

**Proposed Rules:**
1601.....11503
1625.....10584
1910.....10586, 12116, 12559
1915.....12559
1917.....12559
1918.....12559
1919.....12559
1926.....12120, 12288, 12559
1928.....12559

**30 CFR**
914.....10369, 10373
946.....11044

**Proposed Rules:**
700.....11829
723.....11287
724.....11287
733.....10898
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
934.....12002
935.....11692
937.....11287
938.....12195
939.....11287
941.....11287
942.....11287
947.....11287

**31 CFR**
1.....11989
103.....11436, 12641

**Proposed Rules:**
1.....12003

**32 CFR**
154.....11219
701.....11051
706.....10374, 10748, 10749
1630.....12641

**Proposed Rules:**
1662.....11830

**33 CFR**
60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646
165.....12380

**Proposed Rules:**
100.....10593, 10594, 10905, 10906, 11693
117.....11695, 12431

**34 CFR**
628.....11256
639.....12508

**Proposed Rules:**
206.....11448
650.....12360

**36 CFR**
1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**Proposed Rules:**
1.....12037
2.....12037
9.....10866

**37 CFR**

**Proposed Rules:**
307.....11096

**38 CFR**
1.....10888
17.....11259
36.....12381

**Proposed Rules:**
17.....10907

**39 CFR**
10.....10375
111.....10749

**Proposed Rules:**
111.....12432, 12559
265.....12434
447.....12196

**40 CFR**
52.....10751, 11259, 11647, 12164, 12522, 12523
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261, 12165–12167, 12525

261.....11819
266.....11819
271.....10568, 11263
721.....11822
761.....10688
799.....10377, 10752

**Proposed Rules:**
52.....10596, 11287, 11288, 11696
85.....12561, 12563
123.....12039
141.....10972, 12876
142.....10972
143.....10972
180.....11292, 11293, 12198
261.....11513
264.....12566
265.....12566
280.....12662, 12786
281.....12853
300.....11513
721.....12285

**41 CFR**

101-20.....11263
101-28.....11275
101-41.....12168
201-32.....10379

**42 CFR**

7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649

**Proposed Rules:**
405.....11517

**43 CFR**

426.....11938
2090.....12171

**Proposed Rules:**
11.....12886

**44 CFR**

64.....10753, 12178

**Proposed Rules:**
5.....10385
6.....10385
67.....11702

**45 CFR**

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870

**Proposed Rules:**
503.....11712, 12040

**46 CFR**

401.....11468

**Proposed Rules:**
Chapter I.....12439
154.....10598
276.....12199
382.....11518
502.....10912, 12208, 12212
503.....12212
586.....11832

**47 CFR**

0.....12382
1.....11652
2.....10568
22.....10571
73.....10381, 10382, 10568, 10757, 11471-11473, 11653, 11825, 12180, 12181
74.....10568, 11474
78.....10568

**Proposed Rules:**
1.....11519
21.....11519, 11838
73.....11519-11521, 11837, 11840-11842, 12214-12216, 12285
74.....11519
90.....10389
94.....11519, 11838

**48 CFR**

7.....11074
203.....12383
205.....12386
215.....11276
216.....12387
217.....11076, 12387
225.....12389
227.....12390
243.....12387
245.....12389
252.....11076, 11276, 12383, 12386, 12389, 12390
522.....12182
542.....11825
552.....12182
5315.....12414

**Proposed Rules:**
225.....12440
509.....10913

**49 CFR**

219.....10575
604.....11916
1003.....11277
1043.....11277
1052.....11991
1084.....11277
1207.....10382
1244.....12415
1249.....10382

**Proposed Rules:**
Ch. X.....11295
571.....10775
1312.....10913
1320.....11295

**50 CFR**

17.....10890, 11162, 11277
301.....10759
611.....10761
642.....10762
652.....10763
663.....11473
672.....10761, 11991, 12183
675.....10761, 11992
685.....12641

**Proposed Rules:**
222.....12040
227.....12040
640.....10780
642.....11713
651.....10781
652.....12575

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 13, 1987

The authentic text behind the news . . .

# The Weekly Compilation of **Presidential Documents**

## Administration of Ronald Reagan

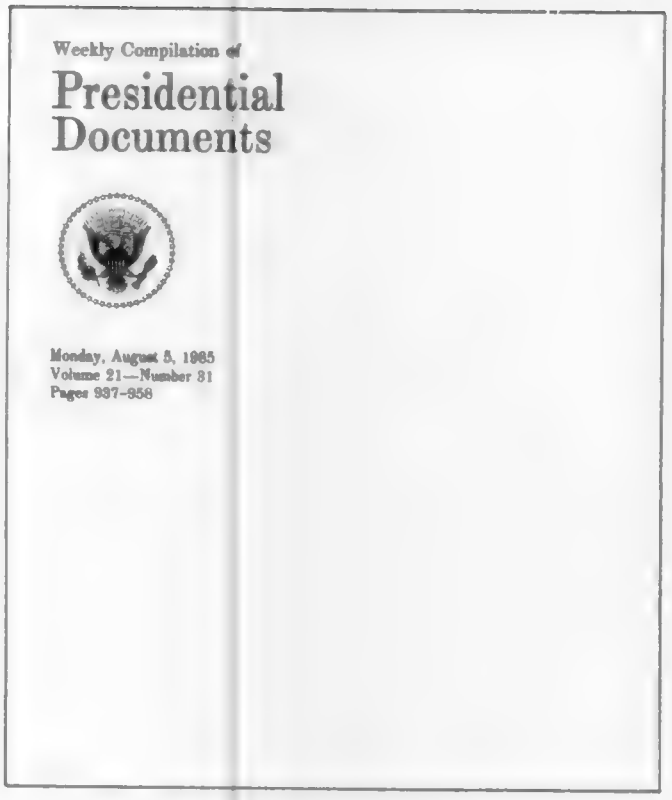


This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President and of nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration

## Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.
☐☐☐☐☐☐☐☐–☐

Order No. _____

**MasterCard and VISA accepted.**

**Credit Card Orders Only**
Total charges $ _____
Fill in the boxes below.

Customer's Telephone Nos.
Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

**ENTER MY SUBSCRIPTION FOR 1 YEAR TO: WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)**
**$84.00 Domestic; $80.00 Foreign**
**$105.00 if Domestic first-class mailing is desired.**

**PLEASE PRINT OR TYPE**

Company or Personal Name
Additional address/attention line
Street address
City State ZIP Code
(or Country)

(Rev 10-1-85)

(Rev. 10-1-86)

4-20-87
Vol. 52 No. 75

# Federal Register

Monday
April 20, 1987

United States
Governme
Printing Of
SUPERINTENDE
OF DOCUMENTS
Washington, DC

OFFICIAL BUSIN
Penalty for privat

**********5-DIGIT 48106
A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-20-87
Vol. 52 No. 75
Pages 12897-13068

# Federal Register

Monday
April 20, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 75

Monday, April 20, 1987

**ACTION**
NOTICES
Grants; availability, etc.:
VISTA Literacy Corps projects, 12946

**Agricultural Marketing Service**
RULES
Honey and watermelon research, promotion, and education orders, etc., 12898

**Agricultural Stabilization and Conservation Service**
NOTICES
Marketing quotas and acreage allotments:
Tobacco, 12947

**Agriculture Department**
*See* Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Food and Nutrition Service

**Animal and Plant Health Inspection Service**
RULES
Overtime services relating to imports and exports:
Commuted traveltime allowances, 12897
PROPOSED RULES
Plant pests and exportation and importation of animals and animal products:
Garbage, 12917
NOTICES
Environmental statements; availability, etc.:
Rangeland grasshopper cooperative management program, 12950

**Army Department**
NOTICES
Military traffic management:
International program—
Rate solicitation, 12958

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Blind and Other Severely Handicapped, Committee for Purchase From**
*See* Committee for Purchase From the Blind and Other Severely Handicapped

**Coast Guard**
PROPOSED RULES
Regattas and marine parades:
Children's Liver Foundation Trophy Race; correction, 13011

**Commerce Department**
*See* International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration

**Commission on Education of the Deaf**
NOTICES
Meetings, 12957

**Committee for Purchase From the Blind and Other Severely Handicapped**
NOTICES
Procurement list, 1987:
Additions and deletions, 12958

**Commodity Credit Corporation**
NOTICES
Loan and purchase programs:
Tobacco price support levels, 12947

**Commodity Futures Trading Commission**
NOTICES
Meetings; Sunshine Act, 13009
(5 documents)

**Deaf, Commission on Education of the**
*See* Commission on Education of the Deaf

**Defense Department**
*See also* Army Department
NOTICES
Meetings:
Science Board task forces, 12958
(3 documents)

**Education of the Deaf Commission**
*See* Commission on Education of the Deaf

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 12908
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 12940
Toxic substances:
Premanufacture notices, exemption applications, etc.; processing fees, 12940
NOTICES
Grants, State and local assistance:
Regional Administrator protest appeal determinations; subject index list, 13052
Meetings:
Chesapeake Bay Executive Council, 12963
Science Advisory Board, 12963

**Equal Employment Opportunity Commission**
NOTICES
Meetings; Sunshine Act, 13009

**Executive Office of the President**
*See* Management and Budget Office

**Federal Aviation Administration**
RULES
Transition areas; correction, 12899

PROPOSED RULES
Control zones, 12935

**Federal Communications Commission**
RULES
Common carrier services:
Land mobile satellite service; financial qualifications, 12911
Radio broadcasting:
Pre-sunrise operations by daytime-only AM radio broadcast stations; adjustment, 12912
PROPOSED RULES
Common carrier services:
Satellite communications—
Intersatellite interference reduction, application processing procedures, space station technical design standards, etc., 12944
Radio and television broadcasting:
Broadcast multiple ownership rules, 12945
NOTICES
Radio broadcasting:
FM stations; reclassification, 12964

**Federal Deposit Insurance Corporation**
NOTICES
Meetings; Sunshine Act, 13009

**Federal Emergency Management Agency**
NOTICES
Disaster and emergency areas:
Pennsylvania, 12965

**Federal Energy Regulatory Commission**
NOTICES
*Applications, hearings, determinations, etc.:*
El Paso Production Co., 12958
Gallagher, William W., 12962
Johnson, James J., 12962
Ladd Petroleum Corp., 12959
Newmont Oil Co., 12960
Oxy Pipeline, Inc., 12961
Tennessee Gas Pipeline Co. et al., 12963
Vintage Petroleum, Inc., 12962
Western Area Power Administration, 12962

**Federal Highway Administration**
NOTICES
Environmental statements; notice of intent:
Baltimore County, MD, 13000

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
First United Financial Services, Inc., et al., 12965
McCamic, Jeremy C., et al., 12966
Nebraska Capital Corp. et al., 12966

**Federal Trade Commission**
RULES
Prohibited trade practices:
Tarra Hall Clothes, Inc., et al., 12900
NOTICES
Premerger notification waiting periods; early terminations, 12966–12968
(3 documents)

**Food and Drug Administration**
NOTICES
Food additive petitions:
Union Carbide Corp., 12969

**Food and Nutrition Service**
NOTICES
Child nutrition programs:
Meals and milk, free and reduced price; income eligibility guidelines, 12950

**Health and Human Services Department**
*See* Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Social Security Administration

**Health Care Financing Administration**
NOTICES
Medicare:
End-stage renal disease program; network area designations
Correction, 13011
Lowest charge levels, 12969

**Health Resources and Services Administration**
NOTICES
Grants and cooperative agreements:
Acquired Immune Deficiency Syndrome (AIDS) regional education and training centers program, 12979

**Interior Department**
*See also* Land Management Bureau; Minerals Management Service; National Park Service
NOTICES
Environmental statements; availability, etc.:
Arctic National Wildlife Refuge, AK, 12980

**Internal Revenue Service**
NOTICES
Organization, functions, and authority delegations:
District Directors et al., 13008

**International Trade Administration**
NOTICES
Antidumping:
Drycleaning machinery from West Germany; correction, 13011
Industrial phosphoric acid from—
Israel, 12952

**Interstate Commerce Commission**
NOTICES
Rail carriers:
Waybill data; release for use, 12985
Railroad services abandonment:
CSX Transportation, Inc., 12985

**Justice Department**
NOTICES
Pollution control; consent judgments:
Fried Industries, Inc., et al., 12986
Wyoming Valley Sanitary Authority, 12986

**Land Management Bureau**
NOTICES
Environmental statements; availability, etc.:
American Telephone & Telegraph Co.; Western Region Lightguide Project, 12982

**Management and Budget Office**
NOTICES
Privacy Act; guidance:
"Call detail" programs to manage employees' use of Government's telecommunications systems, 12990

**Maritime Administration**
NOTICES
Trustees; applicants approved, disapproved, etc.:
BT Trust Co. of California, N.A., 13000

**Minerals Management Service**
NOTICES
Agency information collection activities under OMB review, 12983
Outer Continental Shelf; development operations coordination:
Tenneco Oil Exploration & Production, 12984

**National Bureau of Standards**
NOTICES
Information processing standards, Federal:
Calendar date, representation of local time of the day for information interchange, etc.; proposed, 12953

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Humanities National Council, 12986
Humanities Panel, 12987

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 12916
NOTICES
Meetings:
Gulf of Mexico and South Atlantic Fishery Management Councils, 12956
(2 documents)
Gulf of Mexico Fishery Management Council, 12955
North Pacific Fishery Management Council, 12956
Permits:
Foreign fishing, 12956

**National Park Service**
NOTICES
Meetings:
Illinois and Michigan Canal National Heritage Corridor Commission, 12984
Sleeping Bear Dunes National Lakeshore Advisory Commission, 12984

**National Railroad Passenger Corporation**
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 13066

**National Science Foundation**
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 12988
Committees; establishment, renewals, terminations, etc.:
Biological Facilities Centers Advisory Panel, 12988
Science Resources Studies Advisory Committee, 12988

**Nuclear Regulatory Commission**
PROPOSED RULES
Source material, etc.; domestic licensing:
Emergency preparedness for fuel cycle and other radioactive material licensees, 12921
NOTICES
Meetings:
Reactor Safeguards Advisory Committee
Proposed schedule, 12988

**Office of Management and Budget**
*See* Management and Budget Office

**Postal Service**
RULES
Practice and procedure rules:
Program Fraud Civil Remedies Act; implementation, 12900
PROPOSED RULES
Conflict of interests; attendance at group functions
Correction, 13011

**Public Health Service**
*See* Food and Drug Administration; Health Resources and Services Administration

**Research and Special Programs Administration**
RULES
Hazardous materials:
Miscellaneous amendments, 13034
NOTICES
Hazardous materials:
Inconsistency rulings, etc.—
Michigan, 13000
Vermont, 13062

**Securities and Exchange Commission**
NOTICES
Consolidated quotation plan and consolidated transaction plan fee schedules; amendments, 12997
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 12995
Philadelphia Stock Exchange, Inc., 12996
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 12997
*Applications, hearings, determinations, etc.:*
Bank Stock Fund, Inc., 12993
First Trust Foreign Investor U.S. Government Fund, L.P., 12994

**Social Security Administration**
PROPOSED RULES
Social security benefits and supplemental security income:
Conservative examinations and existing medical evidence; standards, 13014

**State Department**
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 12936
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee and International Radio Consultative Committee, 12999
Private International Law Advisory Committee, 12998

**Tennessee Valley Authority**
NOTICES
Meetings; Sunshine Act, 13009

**Transportation Department**
*See also* Coast Guard; Federal Aviation Administration; Federal Highway Administration; Maritime Administration; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 12999
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 12999
Hearings, etc.—
US Air-Piedmont acquisition case, 13000
(3 documents)

**Treasury Department**
*See also* Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 13007

**United States Information Agency**
NOTICES
Meetings:
Television Telecommunications Advisory Committee, 13000

**United States Railway Association**
RULES
Regulations removed and CFR Chapter vacated, 12916

**Separate Parts In This Issue**

**Part II**
Department of Health and Human Services, Social Security Administration, 13014

**Part III**
Department of Transportation, Research and Special Programs Administration, 13034

**Part IV**
Environmental Protection Agency, 13052

**Part V**
Department of Transportation, Research and Special Programs Administration, 13062

**Part VI**
National Railroad Passenger Corporation, 13066

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

**CFR PARTS AFFECTED IN THIS ISSUE**

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
354 ..... 12897
1200 ..... 12898
1205 ..... 12898
1207 ..... 12898
1250 ..... 12898
Proposed Rules:
330 ..... 12917

**9 CFR**
Proposed Rules:
94 ..... 12917

**10 CFR**
Proposed Rules:
30 ..... 12921
40 ..... 12921
70 ..... 12921

**14 CFR**
71 ..... 12899
Proposed Rules:
71 ..... 12935

**15 CFR**
13 ..... 12900

**20 CFR**
Proposed Rules:
404 ..... 13014
416 ..... 13014

**22 CFR**
Proposed Rules:
171 ..... 12936

**33 CFR**
Proposed Rules:
100 ..... 13011

**39 CFR**
224 ..... 12900
233 ..... 12900
273 ..... 12900
962 ..... 12900
Proposed Rules:
447 ..... 13011

**40 CFR**
52 ..... 12908
Proposed Rules:
52 ..... 12940
700 ..... 12940

**47 CFR**
25 ..... 12911
73 ..... 12912
Proposed Rules:
25 ..... 12944
73 ..... 12945

**49 CFR**
Ch. IX ..... 12916
107 ..... 13034
171 ..... 13034
172 ..... 13034
173 ..... 13034
174 ..... 13034
176 ..... 13034
177 ..... 13034
178 ..... 13034
179 ..... 13034
Proposed Rules:
701 ..... 13066

**50 CFR**
672 ..... 12916

# Rules and Regulations

Federal Register
Vol. 52, No. 75
Monday, April 20, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 354

[Docket No. 87-046]

### Commuted Traveltime Periods

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations in 7 CFR Part 354, which prescribe commuted traveltime allowances, by adding or removing commuted traveltime periods in Delaware, Kentucky, New Jersey, Ohio, Pennsylvania, Tennessee, and the Virgin Islands of the United States. Commuted traveltime periods reflect the time necessarily spent in reporting to, and returning from, the place at which an employee of Plant Protection and Quarantine performs Sunday, holiday, or unscheduled overtime duty.

**EFFECTIVE DATE:** April 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Eggert, Director, National Administrative Planning Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

**SUPPLEMENTARY INFORMATION:**

#### Background

We are amending the regulations in 7 CFR Part 354, entitled "Overtime Services Relating to Imports and Exports" (referred to below as the regulations), which set forth provisions for obtaining inspection, laboratory testing, certification, or quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal products, or other commodities during Sundays, holidays, or other times outside the regular tour of duty of Plant Protection and Quarantine (PPQ) employees who perform these services.

The regulations provide that, under certain circumstances, the charges for services of a PPQ employee shall include charges for a commuted traveltime period. Section 354.2 of the regulations contains administrative instructions prescribing commuted traveltime periods, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel to, and return from, the place where he or she performs the Sunday, holiday, or unscheduled overtime duty.

We are amending § 354.2 of the regulations by adding or removing commuted traveltime periods in Delaware, Kentucky, New Jersey, Ohio, Pennsylvania, Tennessee, and the Virgin Islands of the United States. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public where PPQ employees are available to perform Sunday, holiday, or unscheduled overtime duty and to inform the public of the commuted traveltime periods for this travel.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of articles and commodities requiring inspection and other services of a PPQ employee on a Sunday, holiday, or unscheduled overtime basis at the affected locations represents an insignificant portion of the total number that requires these services at locations in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Effective Date

The Commuted traveltime periods appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions of 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find for good cause that this rule be made effective less than 30 days after publication of this document in the **Federal Register.**

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

#### List of Subjects in 7 CFR Part 354

Agricultural commodities, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

## PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Under the circumstances described above, 7 CFR Part 354 is amended as follows:

1. The authority citation for Part 354 continues to read as follows:

**Authority:** 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing or adding in alphabetical order, the information as shown below:

**§ 354.2 Administrative instructions prescribing commuted traveltime.**

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

(In Hours)

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Remove: | | | |
| * * * * * | | | |
| Tennessee: | | | |
| Memphis | Dyersburg | | 4 |
| Millington | Dyersburg | | 3 |
| * * * * * | | | |
| Add: | | | |
| * * * * * | | | |
| Delaware: | | | |
| Wilmington | Bridgeton | | 3 |
| Wilmington | Trenton | | 3 |
| * * * * * | | | |
| Kentucky: | | | |
| Fort Campbell | Jackson, TN | | 5 |
| Louisville | Georgetown | | 3 |
| Undesignated ports. | | | 3 |
| * * * * * | | | |
| New Jersey: | | | |
| Leonardo | Freehold | | 2 |
| Leonardo | McGuire AFB | | 4 |
| Leonardo | Trenton | | 4 |
| Salem | Trenton | | 3 |
| Trenton | McGuire AFB | | 3 |
| * * * * * | | | |
| Ohio: | | | |
| Greater Cincinnati Airport. | Georgetown, KY | | 3 |
| * * * * * | | | |
| Pennsylvania: | | | |
| Philadelphia | Trenton | | 3 |
| Philadelphia | Bridgeton | | 3 |
| * * * * * | | | |
| Tennessee: | | | |
| Memphis | Jackson | | 4 |
| Millington | Jackson | | 4 |
| Nashville | Jackson | | 5 |
| * * * * * | | | |
| Virgin Islands | | | |
| Cruz Bay, St John, USVI | St. Thomas, USVI | | 3 |
| Undesignated ports. | | | 3 |
| * * * * * | | | |

Done at Washington, DC, this 15th day of April, 1987.

D. Husnik,

*Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.*

[FR Doc. 87-8772 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-34-M

## Agricultural Marketing Service

## 7 CFR Parts 1200, 1205, 1207, and 1250

## Research, Promotion, and Education Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action adds the Honey Research, Promotion, and Consumer Information Act and Watermelon Research and Promotion Act to the definition of the term "Act" in uniform rules of practice and procedure governing proceedings to formulate and amend orders under research, promotion, and education programs. This action also removes the Beef Research and Information Act from the definition of that term in the rules of practice and procedure, because that Act has been amended in such a manner as to render inapplicable these uniform rules of practice. When the uniform rules of practice and procedure were adopted, the corresponding subparts in the then applicable research, promotion and education programs were terminated. Those subparts, however, were not removed from the applicable CFR Parts. This action removes these duplicative subparts.

**EFFECTIVE DATE:** April 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523-S, AMS, USDA, Washington, DC 20250; telephone: (202) 447-5698.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act, the Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule is a technical amendment to the existing rules of practice and would impose no additional costs on persons affected or regulated by the several research, promotion and education orders.

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this action is impracticable, unnecessary, and contrary to the public interest, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this final rule makes technical revisions to the existing rules of practice, which are uniform for all applicable research and promotion programs; the rules are already applicable to those programs that are newly specified in the rules because of the existing definition of the term "Act"; and the final rule deletes duplicative language previously terminated but not removed from existing subparts in the Code of Federal Regulations.

On October 6, 1982, the Agricultural Marketing Service established 7 CFR Part 1200, Rules of Practice and Procedure Governing Proceedings Under Research, Promotion, and Education Programs; Rules of Practice and Procedure Governing Proceedings to Formulate and Amend an Order (47 FR 44684). Part 1200 applied uniformly to all applicable research, promotion, and education programs in operation at that time. Part 1200 was also intended to include any subsequent research, consumer information, promotion, and nutrition education acts established as Public Law by Congress and the definition of the term "Act" affects this intended coverage. This rule adds the Honey Research, Promotion, and Consumer Information Act and Watermelon Research and Promotion Act to the definition of the term "Act."

When 7 CFR Part 1200 was established, there were four research, promotion, and education programs in operation. These programs included Cotton Research and Promotion, 7 CFR Part 1205; Potato Research and Promotion Plan, 7 CFR Part 1207; Egg Research and Promotion, 7 CFR Part 1250; and Wheat and Wheat Foods Research and Nutrition Education, 7 CFR Part 1280. In addition, 7 CFR Part 1260 contained procedures to formulate a Beef Research and Information Order. With the establishment of Part 1200, each of the subparts setting out the procedures to formulate on order under the separate research, promotion, and education programs were rendered duplicative and unnecessary. Accordingly, the rule establishing Part 1200 terminated those subparts. Those subparts, however, were not at that time deleted from the Code of Federal Regulations. The wheat subpart was deleted as a result of the termination of the Wheat and Wheat Foods Research and Nutrition Education Order which was published October 31, 1986 (51 FR 39738). Therefore, this action deletes each of the following subparts from the Code of Federal Regulations: 7 CFR 1205.1-1205.19; 7 CFR 1207.1-1207.19; 7 CFR 1250.1-1250.19. Part 1260, Beef Research and Information has been amended since promulgation of Part 1200 by a new Part 1260, Beef Promotion and Research Order (51 FR 26132) and implementing regulations (51 FR 11557; 51 FR 35196). The newly amended Beef Promotion and Research Act (Pub. L. 99-198; 7 U.S.C. 1260 et seq.; effective January 1, 1986) does not provide for hearings to establish or amend an order. Therefore, this rule deletes reference to the Beef Research and Information Act in Part 1200.

List of Subjects

*7 CFR Part 1200*

Administrative practice and procedure.

*7 CFR Parts 1200, 1205, 1207, 1250*

Agricultural research.

Accordingly, the Agricultural Marketing Service is amending Chapter XI of Title 7 as follows:

## PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND EDUCATION PROGRAMS

1. The authority citation for Part 1200 is revised to read as follows:

**Authority:** Cotton Research and Promotion Act, as amended, Pub. L. 89–502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101–2119; Egg Research and Consumer Information Act, as amended, Pub. L. 93–428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701–2718; Floral Research and Consumer Information Act, Pub. L. 97–88, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301–4319; Potato Research and Promotion Act, as amended, Pub. L. 91–670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611–2627; Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95–113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401–3417; Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590; 98th Cong., approved October 30, 1984, 7 U.S.C. 4601–4612; Watermelon Research and Promotion Act, Pub. L. 99–198; 99th Cong., approved December 23, 1985, 7 U.S.C. 4901–4916.

2. Section 1200.2, paragraph (a) is revised to read as follows:

**§ 1200.2 Definitions.**

* * * * *

(a) The term "Act" means the Cotton Research and Promotion Act, as amended, Pub. L. 89–502, 89th Cong., approved July 13, 1966, 7 U.S.C. 2101–2119; the Egg Research and Consumer Information Act, as amended, Pub. L. 93–428, 93rd Cong., approved October 1, 1974, 7 U.S.C. 2701–2718; the Floral Research and Consumer Information Act, Pub. L. 97–88, 97th Cong., approved December 22, 1981, 7 U.S.C. 4301–4319; the Potato Research and Promotion Act, as amended, Pub. L. 91–670, 91st Cong., approved January 11, 1971, 7 U.S.C. 2611–2627; the Wheat and Wheat Foods Research and Nutrition Education Act, Pub. L. 95–113, 95th Cong., approved September 29, 1977, 7 U.S.C. 3401–3417; the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98–590, 98th Cong., approved October 30, 1984, 7 U.S.C. 4601–4612; the Watermelon Research and Promotion Act, Pub. L. 99–198; 99th Cong., approved December 23, 1985, 7 U.S.C. 4901–4916; and any subsequent research, consumer information, promotion, and nutrition education acts established as Public Law by Congress.

* * * * *

## PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for Part 1205 continues to read as follows:

**Authority:** Sec. 15, 80 Stat. 285; 7 U.S.C. 2114, Sec. 7, 80 Stat. 281, 7 U.S.C. 2106.

**§ 1205.1 through 1205.19 [Removed]**

2. Part 1205 is amended by removing Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate Orders Under the Cotton Research and Promotion Act (§§ 1205.1–1205.19).

## PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for Part 1207 continues to read as follows:

**Authority** Title III of Pub. L. 91–670; 84 Stat. 2041; 7 U.S.C. 2611–2627, as amended, unless otherwise noted.

**§ 1207.1 through 1207.19 [Removed]**

2. Part 1207 is amended by removing Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate a Plan Under the Potato Research and Promotion Act (§§ 1207.1–1207.19).

## PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation for Part 1250 continues to read as follows:

**Authority:** Pub. L. 93–428, 88 Stat. 1171 (7 U.S.C. 2701 *et seq.*) (Egg Research and Consumer Act).

**§§ 1250.1 through 1250.19 [Removed]**

2. Part 1250 is amended by removing Subpart—Rules of Practice and Procedure Governing Proceedings to Formulate an Order Under the Egg Research and Consumer Information Act (§§ 1250.1–1250.19).

Signed in Washington, DC, on April 9, 1987.

**Karen K. Darling,**

*Deputy Assistant Secretary, Marketing & Inspection Services.*

[FR Doc. 87–8597 Filed 4–17–87; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 87–AWP–6]**

### Revision to Montague, California Transition Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** An error was noted in the revision to the Montague, California, transition area that was published in the **Federal Register** on March 5, 1987, (52 FR 6778), (Airspace Docket No. 87–AWP–6). This action corrects that error.

**EFFECTIVE DATE:** 0901 UTC, June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297–1648.

**SUPPLEMENTARY INFORMATION:**

History

**Federal Register** document (87–4563), published on March 5, 1987, revised the Montague, California, transition area. An error was discovered in the revised description and this action corrects that error. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

## PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document (87–4563), as published in the

Federal Register on March 5, 1987, (52 FR 6778) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. § 71.181 is amended as follows:

**Montague, CA [Revised]**

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Siskiyou County Airport (lat. 41°46'54" N., long 122°28'01" W.); that airspace extending upward from 1,200 feet above the surface within 9.5 miles east and 6 miles west of the 356° and 176° bearings from the Montague RBN, extending from 8 miles north to 1 mile south of the RBN; and within 9.5 miles east and 6 miles west of the 180° bearing from the Montague RBN, extending 19 miles south of the RBN.

Issued in Los Angeles, California, on April 9, 1987.

**Wayne C. Newcomb,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 87-8732 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

**16 CFR Part 13**

**[Docket C-2797]**

### Prohibited Trade Practices; Tarra Hall Clothes, Inc., et al.

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of 30 day period for public comment on petition by Abraham Cohen to reopen and modify the order in Docket No. C-2797.

**SUMMARY:** Abraham Cohen, individual respondent in the order in Docket No. C-2797, filed a petition on April 2, 1987, requesting that the Commission reopen and modify the order.

**DATE:** The deadline for filing comments in this matter is May 15, 1987.

**ADDRESS:** Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. McDonald, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2971.

**SUPPLEMENTARY INFORMATION:** The petitioner, Abraham Cohen, no longer has an interest in the corporation in the order, Tarra Hall Clothes, Inc. He is now president of Hartz & Company, Inc., an importer of wool products and manufacturer of men's clothing. The order modification requested petitioner would remove petitioner from the order's prohibition on importing wool products except upon filing a bond with the Secretary of the Treasury in a sum double the value of the imported wool products and any duty thereon, conditioned upon compliance with the Wool Products Labeling Act of 1939. The petition was placed on the public record on April 15, 1987.

**List of Subjects in 16 CFR Part 13**

Labeling, Textile, Trade practices, Warranties, Wool.

**Emily H. Rock,**

*Secretary.*

[FR Doc. 87-8751 Filed 4-17-87; 8:45 am]

BILLING CODE 6750-01-M

## POSTAL SERVICE

**39 CFR Parts 224, 233, 273 and 962**

### Implementation of the Program Fraud Civil Remedies Act

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service adopts final regulations implementing the Program Fraud Civil Remedies Act of 1986. These regulations establish the administrative procedures for imposing the statutory authorized civil penalties and assessments against any person who makes, submits, or presents a false, fictitious or fraudulent claim or written statement to the Postal Service.

**EFFECTIVE DATE:** May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Chris Klepac, (202) 268-2962.

**SUPPLEMENTARY INFORMATION:** On March 11, 1987, the Postal Service published for comment in the **Federal Register** (52 FR 7454) proposed regulations implementing the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, enacted on October 21, 1986, codified at 31 U.S.C. 3801 through 3812. That Act generally provides that any person who knowingly submits a false claim or statement to the Federal Government in an amount less than $150,000 may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

The Postal Service received no public comments on its proposed regulations. For ease of administration, however, we decided to separate the rules governing the conduct of administrative hearings under the Act from the main body of the regulations. Accordingly, the hearing procedures will appear as Part 962 in title 39, Code of Federal Regulations, whereas the regulations implementing the remainder of the Act will appear as Part 273 of that title. In addition to conforming editorial changes, a new section expressly authorizing continuances and extensions is being added to the hearing procedures, and cross references to the new regulations are being incorporated in 39 CFR Parts 224 and 233.

Accordingly, the Postal Service amends 39 CFR Parts 224 and 233, and adds new Parts 273 and 962 to read as follows:

**List of Subjects in 39 CFR Parts 224, 233, 273 and 962**

Organization and functions (Government agencies), Administrative practice and procedure, Fraud, Penalties, Crime, Postal Service.

**PART 224—[AMENDED]**

1. The authority citation for Part 224 continues to read as follows:

**Authority:** 39 U.S.C. 203, 204, 401(2), 402, 403, 404, and 409.

**§ 224.1 [Amended]**

2. In § 224.1, paragraph (c)(4)(ii)(A) is amended by inserting "section 3803 of title 31," immediately after "title 18,".

**§ 224.6 [Amended]**

3. Section 224.6(b) is amended by—

a. Removing the "and" after the semicolon in paragraph (b)(15) and the period at the end of paragraph (b)(16);

b. Inserting a semicolon and "and" immediately after "conventions" in paragraph (b)(16); and

c. Republishing for the reader's convenience the introductory text of paragraph (b) and adding new paragraph (b)(17) reading as follows:

* * * * * *

(b) The Law Department: * * *

(17) Performs, through the General Counsel, the function of Reviewing Official under the Program Fraud Civil Remedies Act in accordance with Part 273 of this title.

**§ 224.7 [Amended]**

4. Section 224.7 is amended by adding immediately after the third sentence the following new sentence: "In addition, through the Chief Postal Inspector, it performs the function of Investigating Official under the Program Fraud Civil

Remedies Act in accordance with Part 273 of this title."

## PART 233—[AMENDED]

5. The authority citation for Part 233 continues to read as follows:

**Authority:** 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 2254.

### § 233.1 [Amended]

6. Section 233.1 is amended by adding at the end thereof the following new paragraph(c):

* * * * *

(c) *Issuance.* The Chief Postal Inspector, in accordance with Part 273 of this title, may issue documentary subpoenas under the Program Fraud Civil Remedies Act.

7. The undesignated center heading "Damage or Loss of Government Property" is removed and new Part 273 is added to read as follows:

## PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

273.1 Purpose.
273.2 Definitions.
273.3 Liability for false claims and statements.
273.4 Non-exclusivity of penalty authority.
273.5 Investigations of alleged violations.
273.6 Evaluation by reviewing official.
273.7 Concurrence of Attorney General.
273.8 Issuance of complaint.
273.9 Collection of civil penalties or assessments.
273.10 Reports.

**Authority:** 31 U.S.C. Chapter 38; 39 U.S.C. 401.

### § 273.1 Purpose.

This part establishes procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812) against any person who makes, submits, or presents, or causes to be made, submitted, or presented, a false fictitious, or fraudulent claim or written statement to the Postal Service. Procedures governing the hearing and appeal rights of any person alleged to be liable for such penalties and assessments are set forth in Part 962 of this title.

### § 273.2 Definitions.

(a) "Claim" means any request, demand, or submission—

(1) Made to the Postal Service of property, services, or money (including money representing grants, loans, insurance, or benefits); or

(2) Made to a recipient of property, services, or money from the Postal Service or to a party to a contract with the Postal Service—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the Postal Service which has the effect of decreasing an obligation to pay or account for property, services, or money.

(b) "Complaint" refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8.

(c) "Investigating Official" refers to the Chief Postal Inspector of the Postal Service or any designee within the United States Postal Inspection Service who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(d) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 of this title any designee within the Judicial Officer Department.

(e) "Knows or has reason know," for purposes of establishing liability under 31 U.S.C. 3802, means that, with respect to a claim or statement, although no proof of specific intent to defraud is required, a person—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim of statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(f) "Person"refers to any individual, partnership, corporation, association, or private organization.

(g) "Postmaster General" refer to the Postmaster General of the United States or his designee.

(h) "Presiding Officer" refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803 in accordance with Part 962 of this title.

(i) "Respondent" refers to any person alleged to be liable for civil penalty or assessment under 31 U.S.C. 3802.

(j) "Reviewing Official" refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(k) "Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Postal Service, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan or benefit.

### § 273.3 Liability for false claims and statements.

Section 3802 of title 31, United States Code, provides for liability as follows:

(a) Claims.

(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent; or

(ii) Includes or is supported by any written statement asserting a material fact which is false, fictitious, or fraudulent; or

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand

for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made, presented, or submitted to the Postal Service, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service, recipient, or party.

(4) Each claim for property, services, or money is subject to the civil penalty referred to in paragraph (a)(1) of this section regardless of whether such property, service, or money is actually delivered or paid.

(5) If the Government has made payment on a claim, a person subject to the civil penalty referred to in paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or twice the amount of that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. This assessment shall be in lieu of damages subtained by the United States because of such claim.

(b) Statements.

(1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making, presenting or submitting such statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made, presented, or submitted to the Postal Service when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service.

(c) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, the civil penalty referred to in paragraph (a)(1) of this section may be imposed on each such person without regard to the amount of any penalties collected or demanded from others.

(d) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment, an assessment may be imposed against any such person or jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

**§ 273.4 Non-exclusivity of penalty authority.**

(a) A determination by the Reviewing Official that there is adequate evidence to believe that a person is liable under 31 U.S.C 3802, or a final determination that a person is liable under such statute, may provide the Postal Service with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under Chapter 38 of title 31, United States Code.

(b) In the case of an administrative or contractual action to suspend or debar any person from eligibility to enter into contracts with the Postal Service, a determination referred to in paragraph (a) of this section shall not be considered as a conclusive determination of such person's responsibility pursuant to Postal Service procurement regulations.

**§ 273.5 Investigations of alleged violations.**

(a) Investigations of allegations of liability under 31 U.S.C. 3802 shall be conducted by the Investigating Official.

(b)(1) For purposes of an investigation under this part, the Investigating Official may issue a subpoena requiring the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the Postal Service. Any subpoena issued by the Investigating Official shall cite 31 U.S.C. 3804(a) as the authority under which it is issued, shall be signed by the Investigating Official, and shall command each person to whom it is directed to produce the specified documentary material at a prescribed time and place.

(2) In the case of contumacy or refusal to obey a subpoena issued pursuant to paragraph (b)(1) of this section, the district courts of the United States have jursidiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which the person receiving the subpoena resides or conducts business to issue such an order.

(c) Upon completing an investigastion under this part, the Investigating Official shall submit to the Reviewing Official a reporting containing the findings and conclusions of his investigation, including:

(1) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(2) A description of any evidence which supports allegations of liability under 31 U.S.C. 3802, or where applicable, a description of any evidence that tends to support a conclusion that such statute has not been violated;

(3) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(4) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(5) A statement of the amount of penalties and assessments that, considering the information described in paragraphs (c) (3) and (4) of this section, the Investigating Official recommends be demanded from the person alleged to be liable; and

(6) An estimate of the prospects of collecting the amount specified in paragraph (c)(5) of this section, and any reasons supporting such estimate.

(d) Nothing in these regulations modifies any responsibility of the Investigating Official to report violations of criminal law to the Attorney General

**§ 273.6 Evaluation by reviewing official.**

(a) Based upon the investigatory report prepared by the Investigating Offical, the Reviewing Official shall determine whether there is adequate evidence to believe that a person is liable under 31 U.S.C. 3802, and , if so, whether prosecution would likely result in the imposition and collection of civil penalties and applicable assessments.

(b) If the Reviewing Offical determines that a case has merit and should be referred to the Judicial Officer for assignment to a Presiding Officer, he must first transmit to the Attorney General a written notice containing the following information:

(1) A statement setting forth the Reviewing Official's reasons for proposing to refer the case to a Presiding Officer;

(2) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(3) A statement specifying the evidence that supports the allegations of liability;

(4) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(5) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(6) A statement of the amount of penalties and assessments that, considering the factors listed in paragraphs (b)(4) and (5) of this section, the Reviewing Official recommends be demanded from the person alleged to be liable; and

(7) A statement that, in the opinion of the Reviewing Official, there is a reasonable prospect of collecting the amount specified in paragraph (b)(6) of this section and the reasons supporting such statement.

(c) No allegations of liability under 31 U.S.C. 3802 with respect to any claim made, presented, or submitted by any person shall be referred to the Judicial Officer if the Reviewing Official determines that (1) an amount of money in excess of $150,000; or (2) property or service with a value in excess of $150,000 is requested or demanded in violation of section 3802 in such claim or in a group of related claims which are submitted at the time such claim is submitted.

**§ 273.7 Concurrence of Attorney General.**

(a) The Attorney General is required by 31 U.S.C. 3803(b) to respond to the Reviewing Official's written notice described in § 273.6 within 90 days. The Reviewing Official may refer allegations of liability to the Judicial Officer only if the Attorney General or his designee approves such action in a written statement which specifies—

(1) That the Attorney General or his designee approves the referral to the Judicial Officer of the allegations of liability set forth in the notice described in § 273.6; and

(2) That the initiation of a proceeding under the Program Fraud Civil Remedies Act is appropriate.

(b) If at any time after the Attorney General approves the referral of a case to the Judicial Officier, the Attorney General or his designee transmits to the Postmaster General a written finding that the continuation of any proceeding under the Program Fraud Civil Remedies Act with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such proceeding shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

**§ 273.8 Issuance of complaint.**

(a) If the Attorney General or his designee approves the referral of allegations of liability to the Judicial Officer, the Reviewing Official shall serve on the Respondent, pursuant to paragraph (b) of this section, a Complaint, which:

(1) Specifies the allegations of liability against the Respondent, including the statutory basis for liability;

(2) Identifies the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(3) Specifies the amount of penalties or assessments the Postal Service seeks to impose;

(4) Informs the Respondent of his right to request or oral hearing before, or a decision on the record by, a Presiding Officer concerning the allegations of liability and the amount of proposed penalties or assessments;

(5) Informs the Respondent of how to request a hearing described in paragraph (a)(4) of this section;

(6) Includes a copy of the procedures which govern hearings under the Program Fraud Civil Remedies Act, and which are set forth in Part 962 of this title; and

(7) Notifies the Respondent that his or her failure to request a hearing on the issues raised by the Complaint within 30 days of its receipt may result in the imposition of the proposed penalty and assessments pursuant to §§ 962.4(a) and 962.15(d) of this title.

(b) Service of a Complaint issued under paragraph (a) of this section must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the person sought to be served, or his or her agent, a written acknowledgment of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

**§ 273.9 Collection of civil penalties or assessments.**

(a) Any penalty or assessment imposed under the Program Fraud Civil Remedies Act may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under Part 962 of this title or pursuant to judicial review under 31 U.S.C. 3805 may be raised as a defense and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review. A civil action to recover a penalty or assessment shall be commenced within three years after the date on which the determination of liability for such penalty or assessment becomes final.

(b) The amount of any penalty or assessment which has become final may be collected by administrative offset in accordance with 31 U.S.C 3716, 3807.

(c) Any penalty or assessment imposed by the Postal Service under this part shall be deposited in the Postal Service Fund established by section 2003 of title 39.

**§ 273.10 Reports.**

(a) Not later than October 31 of each year, the Postmaster General shall prepare and transmit to the appropriate committees and subcommittees of the Congress an annual report summarizing actions taken under the Program Fraud Civil Remedies Act during the most recent 12-month period ending the previous September 30.

(b) The report referred to in paragraph (a) of this section shall include the following information for the period covered by the report:

(1) A summary of matters referred by the Investigating Official to the Reviewing Official under this part;

(2) A summary of matters transmitted to the Attorney General under this part;

(3) A summary of all hearings conducted by a Presiding Officer under Part 962 of this title, and the results of such hearings; and

(4) A summary of the actions taken during the reporting period to collect any civil penalty or assessment imposed under the Program Fraud Civil Remedies Act.

8. New Part 962 is added to read as follows:

## PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.
962.1 Purpose.
962.2 Definitions.
962.3 Petition for hearing.
962.4 Referral of complaint.
962.5 Scope of hearing; evidentiary standard.
962.6 Notice of hearing.
962.7 Hearing location.
962.8 Rights of parties.
962.9 Responsibilities and authority of presiding officer.
962.10 Prehearing conferences.
962.11 Respondent access to information.
962.12 Depositions; interrogatories; admission of facts; production and inspection of documents.
962.13 Subpoenas.
962.14 Enforcement of subpoenas.
962.15 Sanctions.
962.16 Disqualification of reviewing official or presiding official.
962.17 Ex parte communications.
962.18 Post-hearing briefs.
962.19 Transcript of proceedings.
962.20 Initial decision.
962.21 Appeal of initial decision to judicial officer.
962.22 Form and filing of documents.
962.23 Service of notice of hearing, other documents.
962.24 Computation of time.
962.25 Continuances and extensions.
962.26 Settlement.
962.27 Limitations.

**Authority:** 31 U.S.C. Chapter 38; 39 U.S.C. 401.

### § 962.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812).

### § 962.2 Definitions.

(a) "Attorney" refers to an individual authorized to practice law in any of the United States or the District of Columbia or a territory of the United States.

(b) "Complaint" refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8 of this title.

(c) "Initial Decision" refers to the written decision which the Presiding Officer is required by § 962.20 to render, and includes a revised initial decision issued following a remand.

(d) "Investigating Official" refers to the Chief Postal Inspector of the Postal Service or any designee within the United States Postal Inspection Service who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(e) "Judicial Officer" refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 any designee within the Judicial Officer Department.

(f) "Party" refers to the Postal Service or the Respondent.

(g) "Person" refers to any individual, partnership, corporation, association, or private organization.

(h) "Postmaster General" refers to the Postmaster General of the United States or his designee.

(i) "Presiding Officer" refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803.

(j) "Recorder" refers to the Recorder of the United States Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–6100.

(k) "Representative" refers to an attorney or other advocate.

(l) "Respondent" refers to any person alleged to be liable for a civil penalty or assessment under 31 U.S.C. 3802.

(m) "Reviewing Official" refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

### § 962.3 Petition for hearing.

Within 30 days of receiving the Postal Service's Complaint, issued pursuant to § 273.8 of this title, alleging liability under 31 U.S.C. 3802, the Respondent may request a hearing under the Program Fraud Civil Remedies Act by filing a written Hearing Petition with the Recorder in accordance with § 962.22(b). The Respondent's Petition must include the following:

(a) The words "Petition for Hearing Under the Program Fraud Civil Remedies Act," or other words reasonably identifying it as such;

(b) The name of the Respondent as well as his or her work and home addresses, and work and home telephone numbers; or other address and telephone number where the Respondent may be contacted about the hearing proceedings;

(c) A statement of the date the Respondent received the Complaint issued by the Reviewing Official;

(d) A statement indicating whether the Respondent requests an oral hearing or a decision on the record;

(e) If the Respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the Respondent intends to rely.

### § 962.4 Referral of complaint.

(a) If the Respondent fails to request a hearing within the specified period, the Reviewing Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an initial decision based upon the information contained in the Complaint.

(b) If the Respondent files a Hearing Petition, the Reviewing Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

### § 962.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record (1) to determine whether the Respondent is liable under 31 U.S.C. 3802, and (2) if so, to determine the amount of any civil penalty or assessment to be imposed.

(b) The Postal Service must prove its case against a Respondent by a preponderance of the evidence.

(c) The parties may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

### § 962.6 Notice of hearing.

(a) Within a reasonable time after receiving the Respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve, in accordance with § 962.23, upon the Respondent and the Reviewing Official, a Notice of Hearing containing the information set forth in paragraph (b) of this section.

(b) The Notice of Hearing required by paragraph (a) of this section must include:

(1) The tentative hearing site, date, and time;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

**§ 962.7 Hearing location.**

An oral hearing under this part shall be held—

(a) In the judicial district of the United States in which the Respondent resides or transacts business; or

(b) In the judicial district of the United States in which the claim or statement upon which the allegation of liability under 31 U.S.C. 3802 was made, presented, or submitted; or

(c) In such other place as may be agreed upon by the Respondent and the Presiding Officer.

**§ 962.8 Rights of parties.**

Any party to a hearing under this part shall have the right—

(a) To be accompanied, represented, and advised, by a representative of his own choosing;

(b) To participate in any prehearing or post-hearing conference held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the hearing;

(e) To present oral and documentary evidence relevant to the issues at the hearing;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

**§ 962.9 Responsibilities and authority of presiding officer.**

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the hearing, as well as, in accordance with § 962.7, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Issuing subpoenas, requiring the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Presiding Officer considers relevant and material to the hearing;

(6) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(7) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;

(8) Regulating the scope and timing of discovery;

(9) Regulating the course of the hearing and the conduct of the parties and their representatives;

(10) Examining witnesses;

(11) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(12) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(13) Establishing the record in the case; and

(14) Issuing a written initial decision containing findings of fact, conclusions of law, and determinations with respect to whether a penalty or assessment should be imposed, and if so, the amount of such penalty or assessment.

**§ 962.10 Prehearing conferences.**

(a) At a reasonable time in advance of the hearing, and with adequate notice to all parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conference to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations or admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witness lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled hearing date, time or site; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

**§ 962.11 Respondent access to information.**

(a)(1) Except as provided in paragraph (a)(2) of this section, the Respondent, at any time after receiving the Notice of Hearing required by § 962.6, may review, and upon payment of a duplication fee established under § 265.8(c) of this title, may obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to the allegations of liability, and upon which the findings and conclusions of the Investigating Official under § 273.5 of this title are based.

(2) The Respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law.

(b) At any time after receiving the Notice of Hearing required by § 962.6, the Respondent shall be entitled to obtain all exculpatory information in the possession of the Investigating Official or the Reviewing Official relating to the allegations or liability under 31 U.S.C. 3802. Paragraph (a)(2) of this section does not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(c) Requests to review or copy material under this section must be directed to the Reviewing Official who must respond within a reasonable time.

**§ 962.12 Depositions; interrogatories; admission of facts; production and inspection of documents.**

(a) General Policy and protective orders. The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) Depositions. (1) After the issuance of a Notice of Hearing described in § 962.6, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on the record, the Presiding Officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(c) Interrogatories to parties. After the issuance of a Notice of Hearing described in § 962.6, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) Admission of facts. After the issuance of a Notice of Hearing described in § 962.6, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) Production and inspection of documents. Upon motion of any party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) Limitations. Under no circumstances may a discovery procedure be used to reach—

(1) Documents, transcripts, records, or other material which a person is entitled to review pursuant to § 962.11;

(2) The notice sent to the Attorney General from the Reviewing Official under § 273.6 of this title; or

(3) Other documents which are privileged under Federal law.

**§ 962.13 Subpoenas.**

(a) General. Upon written request of either party filed with the Recorder or on his own initiative, the Presiding Officer may issue a subpoena requiring:

(1) Testimony at a deposition. The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Presiding Officer;

(2) Testimony at a hearing. The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and papers. In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) Voluntary cooperation. Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party books, papers, documents, or other tangible things whenever possible.

(c) Requests for subpoenas.

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or other tangible things sought.

(3) The Presiding Officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) Requests to quash or modify. Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Presiding Officer may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Presiding Officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) Form; issuance.

(1) Every subpoena shall state the title of the proceeding, shall cite 31 U.S.C. 3804(b) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Presiding Officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) Service. (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshall or deputy marshall, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Presiding Officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

**§ 962.14 Enforcement of subpoenas.**

In the case of contumacy or refusal to obey a subpoena issued pursuant to §§ 962.9(b)(5) and 962.13, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which a hearing under this part is being conducted or in which the person receiving the subpoena resides or conducts business to issue such an order.

**§ 962.15 Sanctions.**

(a) The Presiding Officer may sanction a person, including any party or representative, for—

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) Failure to comply with an order. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) Failure to prosecute or defend. If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.

(e) Failure to make timely filing. The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

**§ 962.16 Disqualification of reviewing official or presiding official.**

If a Respondent believes, in good faith, that the Reviewing Official or Presiding Officer should be disqualified because of personal bias, or other reason, the Respondent may file a timely and sufficient affidavit alleging such belief with supporting evidence. If the Presiding Officer finds that such allegations concerning the Reviewing Official are meritorious, he may direct the Reviewing Official to disqualify himself and request the appointment of a new Reviewing Official. Where a Respondent seeks the disqualification of a Presiding Officer, such Presiding Officer, may, in his discretion, disqualify himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

**§ 962.17 Ex parte communications.**

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

**§ 962.18 Post-hearing briefs.**

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

**§ 962.19 Transcript of proceedings.**

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

**§ 962.20 Initial decision.**

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with § 962.21, the decision of the Presiding Officer to the Judicial Officer.

(c) Unless the Respondent appeals the Presiding Officer's initial decision, such decision, including the findings and determinations, is final.

**§ 962.21 Appeal of initial decision to judicial officer.**

(a) *Notice of appeal and supporting brief.*

(1) A Respondent may appeal an adverse initial decision by filing, within 30 days after the Presiding Officer issues an initial decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period if the Respondent files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(2) The Respondent's Notice of Appeal must be accompanied by a written brief specifying the Respondent's exceptions, and any reasons for such exceptions, to the Presiding Officer's initial decision.

(3) Within 30 days of receiving the Respondent's brief, the Reviewing Official may file with the Judicial Officer a response to the Respondent's specified exceptions to the Presiding Officer's initial decision.

(b) *Form of review.*

(1) Review by the Judicial Officer will be based entirely on the record and written submissions.

(2) The Judicial Officer may affirm, reduce, reverse, or remand any penalty or assessment determined by the Presiding Officer.

(3) The Judicial Officer shall not consider any objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the objection before the Presiding Officer was caused by extraordinary circumstances.

(4) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer shall remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of judicial officer.*

(1) The Judicial Officer shall promptly serve each party to the appeal with a copy of his decision and a statement describing the right to judicial review under 31 U.S.C. 3805 of any Respondent determined to be liable under 31 U.S.C. 3802.

(2) The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties 60 days after it is issued unless a petition for judicial review is filed.

**§ 962.22 Form and filing of documents.**

(a) Every pleading filed in a proceeding under this part must—

(1) Contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), and a designation of the document (e.g., "Motion to Quash Subpoena");

(2) Contain the name, address, and telephone number of the party or other person on whose behalf the paper was filed, or the name, address and telephone number of the representative who prepared such paper; and

(3) Be signed by the party or other person submitting the document, or by such party's or person's representative.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–6100. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (b) of this section, shall be made through the Reviewing Official or designated Postal Service attorney. If a notice of appearance by a representative is filed on behalf of a Respondent, pleadings or document transmittals to, or communications with, the Respondent shall be made through his representative.

**§ 962.23 Service of notice of hearing, other documents.**

Unless otherwise specified, service of a Notice of Hearing or any other document under this part must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

**§ 962.24 Computation of time.**

(a) In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the applicable period of time is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

**§ 962.25 Continuances and extensions.**

Continuances and extensions may be granted under these rules for good cause shown.

**§ 962.26 Settlement.**

(a) Either party may make offers of settlement or proposals of adjustment at any time.

(b) The Reviewing Official has the exclusive authority to compromise or settle any allegations of liability under 31 U.S.C. 3802 without the consent of the Presiding Officer at any time after the date on which the Reviewing Official is permitted to refer allegations of liability to a Presiding Officer and before the date on which the Presiding Officer issues an initial decision.

(c) The Postmaster General has the exclusive authority to compromise or settle any penalty or assessment determined under this part at any time after the date on which the Presiding Officer issues an initial decision, or at any time after the date on which the Judicial Officer issues a decision on appeal, except during the pendency of an appeal to the appropriate United States district court pursuant to 31 U.S.C. 3805 or during the pendency of an action to collect any penalties or assessments pursuant to 31 U.S.C. 3806.

(d) The Attorney General has the exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition for judicial review, or a pending action to recover such penalty or assessment.

(e) The Reviewing Official may recommend settlement terms to the Postmaster General, or the Attorney General, as appropriate.

**§ 962.27 Limitations.**

A hearing under this part concerning a claim or statement allegedly made, presented, or submitted in violation of 31 U.S.C. 3802 shall be commenced within six years after the date on which such claim or statement is made, presented, or submitted.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87–8795 Filed 4–17–87; 8:45 am]

BILLING CODE 7710–12–M

---

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[A–5–FRL–3188–3]**

## Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Final rulemaking.

**SUMMARY:** USEPA is approving a revision to the Indiana State Implementation Plan (SIP) for carbon monoxide (CO). The revision pertains to a revised CO plan for Marion County, Indiana. USEPA's action is based upon the revision which was submitted by the State on March 4, 1985, in response to a February 24, 1984, notice of SIP deficiency issued under section 110(a)(2)(H) of the Clean Air Act (Act). On July 22, 1986 (51 FR 26269), USEPA proposed to approve this revision, because it ensures attainment and maintenance of the CO National Ambient Air Quality Standards (NAAQS) as expeditiously as is practicable.

**EFFECTIVE DATE:** This final rulemaking becomes effective on May 20, 1987.

**ADDRESSES:** Copies of this approval of the Marion County CO plan, the SIP revision, the proposed and final technical support documents, public comments on the notice of proposed rulemaking, and other materials relating to this rulemaking are available at the following addresses: (It is recommended that you telephone Steven D. Griffin, at (312) 353–3849, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015

Copies of this revision to the Indiana SIP are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Griffin, (312) 353–3849.

**SUPPLEMENTARY INFORMATION:** The 1977 Clean Air Act Amendments added Part D to Title I of the Act. Under this part, the States were required to revise their SIPs for all nonattainment areas and to submit the revisions to USEPA by January 1, 1979. The revised plans were to provide for attainment of the NAAQS by December 31, 1982, unless the States demonstrated that they could not attain the CO or ozone NAAQS by that date despite the implementation of all reasonably available control measures. If USEPA approved a plan which showed that attainment could not be achieved by December 31, 1982, the attainment date for CO or ozone could be extended up to December 31, 1987.

In the May 19, 1981, **Federal Register** (46 FR 27339), USEPA approved the 1979 Indiana CO SIP for Marion County. This plan was designed to show attainment of the CO NAAQS by December 31, 1982.

However, significant CO exceedances were monitored in Marion County during 1981 and 1982. Because of these, USEPA notified the State of Indiana on February 24, 1984, that the Marion County CO SIP was inadequate. USEPA required that a SIP revision be submitted within 1 year following the notice of SIP deficiency. The SIP deficiency notice was issued in accordance with USEPA policy appearing in the November 2, 1983, **Federal Register** (48 FR 50686). In addition, this submittal was to conform to the USEPA's "Guidance Document for the Correction of Part D SIP's for Nonattainment Areas", which was released on January 27, 1984. This document referenced the original transportation control plan elements which were published in the January 22, 1981, **Federal Register** (46 FR 7182).

The State of Indiana, in response to USEPA's notification, submitted a revised CO SIP for Marion County on March 4, 1985. USEPA reviewed this technical information and requested additional information. As a result, supplemental technical information was submitted to USEPA on October 7, 1985. In addition, the State of Indiana submitted its transportation control measures (TCMs) portion of the CO SIP on February 12, 1985.

### Air Quality Analysis

Three CO monitors were located in the CO nonattainment area during the period of 1981 thru 1983 (the base period of the SIP). During this period, the 8-hour CO standard of 9 parts per million (ppm) averaged over 8 hours (not to be exceeded more than once per year) was only violated at the L.S. Ayres site, which is located at the intersection of Washington and Meridian. The highest second-high 8-hour CO concentration monitored at this site was 11.7 ppm recorded in June 1981.[1] No violations of the 1-hour standard were recorded at any of the monitoring sites.

From a modeling and emission reduction standpoint, the most stringent CO concentration was 11.1 ppm recorded in 1983 and not the 11.7 ppm concentration recorded in 1981. The shorter control period (1983–1987) which results from the use of the 1983 concentration has the effect of limiting the impact of emissions reductions from the implementation of transportation control measures. However, the State has submitted documentation sufficient to call the 1983 reading into question. This submittal includes a duplication of the strip chart which supports the observation of the Indianapolis Air Pollution Control Division (APCD) that the monitor may have been unstable or malfunctioning on this day. Because the November 24, 1983, 8-hour concentration is discredited, the second-high concentration of 11.7 ppm monitored in 1981 becomes the baseline CO concentration for determination of required emissions reductions.

### Emission Inventory

The Indianapolis APCD developed the CO emission inventory for its post-1982 plan. It was assumed that major stationary source emissions of CO had a negligible impact on the CO concentrations in the nonattainment area because no such sources were known to be located near this area. The plan only addresses the mobile source CO emissions in the nonattainment area and in the central business district (CBD). The plan shows that the CO concentration patterns in the nonattainment area point to the existence of intersection-specific problem areas (hotspots) rather than to an areawide problem. Despite this, the plan includes both a demonstration of attainment based on a rollback of CBD mobile source CO emissions as well as a demonstration of attainment based on hotspot microscale dispersion modeling. An emissions inventory was developed for specific intersections as well as for the CBD. The mobile source emissions inventory was developed using USEPA's mobile source emissions factor models, MOBILE 2.5 and MOBILE 3. Due to timing constraints, the Indianapolis APCD used MOBILE 2.5 for the initial intersection-specific (hotspot) analysis. An updated hotspot analysis submitted on October 7, 1985, used MOBILE 3 as required by USEPA. The plan does include a comparison of the results from MOBILE 2.5 with those from MOBILE 3 for the CBD emissions total.

The annual and worst-case daily CBD mobile source emission factors were calculated for 1981, 1983 thru 1987, and 1995. These factors took into account the impact of the Federal Motor Vehicle Emission Control Program (FMVCP), but ignored other impacts such as the committed TCMs.

In regard to the base period and projected traffic levels, the plan notes that current (base period) and projected Vehicle Miles Traveled (VMT) were difficult to determine due to the limited amount of available traffic count data. Currently, each major CBD intersection receives one 48-hour traffic count every 3 years. There has been no continuous counting at a permanent site to provide detailed traffic trend data.

The Indianapolis APCD determined through the use of available traffic count data that despite the recent significant commercial growth in the downtown area, no upward trend in VMT was observed during the past decade. Excluding year-to-year variations, no overall increases in traffic levels are evident in the data. Nonetheless, the plan assumes a 1 percent per year growth rate for the VMT between 1981 and 1987. This assumption is consistent with the same assumption used by the Indianapolis Department of Transportation for short-term planning purposes.

Based on the use of a travel demand model for 1981, the Indianapolis APCD determined that the CBD had an average daily VMT of 395,400. Projecting the traffic demand to the year 2000 and accounting for both the assumed VMT growth rate and the impacts of planned traffic improvement projects, the Indianapolis APCD determined that the CBD VMT would increase by 27.7 percent between 1981 and the year 2000, giving an average annual growth rate of 1.4 percent. This growth rate was used to determine the 1995 VMT level. The same growth rates were applied to all arterials in the CBD.

The available data predicts that a 25.8 percent drop in annual CBD CO emissions will occur between 1981 (the base year of the rollback analysis) and 1987.

---

[1] Pursuant to 40 CFR 50.8, the 8-hour average CO standard concentration may not be exceeded *more than once* per year. Therefore, the second-highest CO concentration is the appropriate baseline concentration for computing required CO emissions reductions.

**Modeling and Demonstration of Attainment**

The Marion County plan approaches the CO demonstration of attainment in several ways. First, assuming the data for the L.S. Ayres site are the worst-case concentrations for the CBD, the SIP discusses a rollback analysis of the total CBD emissions. The highest second-high 8-hour CO concentration (11.7 ppm) in 1981 at the L.S. Ayres site was used in the rollback analysis.

Second, recognizing the hotspot nature of the emissions within the nonattainment area, the plan describes the results of an intersection-specific dispersion analysis using CALINE 3. This later analysis was updated in the October 7, 1985, submittal. The CALINE 3 line source dispersion model along with intersection-specific emission estimates by traffic link segments were used to calculate CO concentrations at 12 major intersections in the CO nonattainment area. These intersections were selected because either they had associated CO monitors or because they suffered from notable traffic congestion.

The hotspot modeling indicated that 5 intersections had the potential to violate the CO NAAQS in 1983. These intersections are: Pennsylvania and Washington; Delaware and Ohio; Meridian and 11th Street; Delaware and Michigan; and Delaware and Washington. Based on the modeling, none of these intersections has the potential to violate the CO NAAQS in 1986. The modeled worst-case intersection in 1986 was the intersection of Delaware and Ohio, for which an 8-hour concentration of 8.9 ppm was calculated.

USEPA had reviewed some of the initial CO modeling and expressed concern over several aspects of the modeling. The additional modeling data (second series) submitted on October 7, 1985, addressed USEPA's technical concerns on the first series of modeling. In the second series of modeling, the 12 intersections considered in the first modeling series were screened to determine which intersections were located in street canyons. Two intersections, Washington/Meridian and Pennsylvania/Market, were found to be street canyon locations. For these 2 intersections, 1983 and 1987 concentrations were calculated using a street canyon algorithm given in USEPA's indirect source evaluation guideline (EPA–450/4–78–001). The following 8-hour concentrations were calculated: 12.0 ppm in 1983 and 9.0 ppm in 1987 for Washington/Meridian; and 11.8 ppm in 1983 and 8.8 ppm in 1987 for Pennsylvania/Market.

The results of the revised CALINE 3 modeling showed no violations of the 8-hour CO NAAQS for 1987 at any of the 5 modeled intersections. The highest 1987 8-hour concentration modeled was 7.5 ppm at the intersection of Pennsylvania and Washington. Both the CBD emission rollback analysis and the hotspot modeling results imply that the CO NAAQS will be attained in the nonattainment area by December 31, 1987.

**Control Strategies**

The State of Indiana submitted its TCMs portion of the Marion County CO plan on February 12, 1985. The SIP included a commitment to implement a one-way pair project involving Washington and Maryland Streets in the CBD. This project is expected to provide better signal timing progression on Washington Street, to increase the average speed of traffic, and to shorten queue lengths significantly. The Maryland Street project was completed in 1985. The Washington Street project was scheduled for completion in August 1986; however, this deadline has been changed to December 31, 1987, for reasons to be explained later in this notice. This control measure will result in smoother traffic flow along Washington resulting in higher average vehicle speeds. The projected impact of the higher speeds was included in the modeling analysis for 1987. Higher vehicle speeds lead to significantly lower CO emission rates. The number of traffic lanes on Washington Street will be reduced while maintaining the existing street width, which will also lead to improvements in traffic flow. Marion County also expects the FMVCP to have a significant downward effect on CO emissions from mobile sources. All of the other transportation elements in the 1979 SIP have been implemented.

**Maintenance of the NAAQS**

In order to ensure maintenance of the CO NAAQS, a comparison was made between the anticipated increase in the traffic volume and the predicted change in the fleet composite CO emission factor for the CBD during the period of 1987 to 1995. A 27.6 percent reduction in the emission factor is expected betweeen 1987 and 1995. The CBD VMT is expected to increase by 13.5 percent uniformly throughout the CBD. Therefore, continued improvement in the downtown CO concentrations and maintenance of the NAAQS is expected to occur after 1987.

**Demonstration of Reasonable Further Progress**

The CO SIP submittal contains the anticipated yearly CO emission reductions in the CBD along with the yearly reduction needed to meet USEPA's "straight line" reasonable further progress (RFP) requirement. The data indicate that RFP was achieved in the CBD after 1984 and will be maintained through 1987. The SIP also presents a graphical CO emissions RFP demonstration for the worst-case hotspot intersection. This graphical presentation demonstrates that RFP will be achieved and maintained at this intersection through 1987.

**USEPA's Technical Review and Determination**

USEPA's review of the ambient monitor strip chart record for November 24, 1983, supports the Indianapolis APCD view that this second-high concentration at the L.S. Ayres site should be discredited due to probable monitor instability. USEPA has determined that the appropriate second-high 8-hour design concentration should be 11.7 ppm as monitored in 1981.

USEPA has determined that Indianapolis' plan has successfully demonstrated attainment of the CO NAAQS by December 31, 1987. Assuming that the L.S. Ayres site has the worst-case CO concentration site in the CBD, the rollback analysis shows CO emissions must be reduced by 22.8 percent from the 1981 CBD total. The plan predicts a 24.5 percent emission reduction by 1987 based on daily emissions, or a 25.8 percent emission reduction by 1987 based on annual emissions.

USEPA's review of the hotspot analysis as revised in the October 7, 1985, submittal shows that a demonstration of attainment by December 31, 1987, has been successfully made for the worst-case intersections. The ambient monitoring data from the 3 sites support the view that the CO nonattainment problem in downtown Indianapolis is hotspot in nature; therefore, by developing an approvable plan for the hotspot problems, Indiana has ensured the attainment and maintenance of the CO NAAQS throughout the nonattainment

area. Additionally, USEPA has determined that the Marion County CO plan appropriately demonstrates RFP toward attainment of the CO NAAQS.

**Public Comments on Proposed Rulemaking**

On July 22, 1986 (51 FR 26269), USEPA proposed to approve the Marion County CO plan as ensuring attainment and maintenance of the CO NAAQS throughout the CO nonattainment area. The Indianapolis APCD submitted comments on the proposed approval on September 29, 1986. The APCD supported USEPA's proposed approval of the plan but stated that the west connector for the one-way street pair would be delayed due to a land acquisition issue. The APCD anticipates that this TCM will be completed and in operation by December 31, 1987. Otherwise, the APCD has not monitored a CO NAAQS violation since publication of the proposed rulemaking notice and no other difficulties have resulted to prevent expeditious attainment and maintenance of the NAAQS.

USEPA agrees with APCD's conclusion that the delay in completion of the TCM will not jeopardize attainment of the CO NAAQS by December 31, 1987, because APCD has demonstrated that the CO NAAQS could be attained without implementation of the one-way street pair. As long as APCD remains committed to completion and operation of the TCM by December 31, 1987, the expeditiousness test of the Act is met.

No further public comments were received concerning this proposed rulemaking.

**Conclusion**

USEPA is approving the Marion County CO plan which demonstrates attainment of the NAAQS by December 31, 1987, and RFP in the existing nonattainment area. USEPA also approves the adopted transportation control measure (TCM).

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 13, 1987.

**Lee M. Thomas,**

*Administrator.*

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

**Subpart P—Indiana**

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows.

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding paragraph (c)(62) to read as follows:

**§ 52.770 Identification of plan.**

* * * * *

(c) * * *

(62) On March 4, 1985, Indiana submitted a revision to the Marion County carbon monoxide (CO) plan. USEPA approved this plan based on monitoring and modeling data and a commitment to implement a one-way street pair in the Indianapolis central business district. These elements demonstrate attainment of the CO National Ambient Air Quality Standards by December 31, 1987.

(i) Incorporation by reference.

(A) Marion County CO plan for attainment and maintenance of the CO NAAQS from Indianapolis Air Pollution Control Division, Sections 1.0, 3.4, 4.1, 4.2, 4.3.1, 4.3.2, 4.4, 5.1, 5.5.4, 6.1, 6.2.1, 6.2.2, 6.3, and 6.4, dated November 12, 1984.

(B) Letter from Indiana forwarding Marion County CO plan to USEPA, dated March 4, 1985.

(ii) Additional material.

(A) Portion of additional technical information from Indianapolis Air Pollution Control Division, including Section 1.0, dated August 28, 1985.

(B) Letter from Indiana forwarding additional technical information, dated October 7, 1985.

[FR Doc. 87–8691 Filed 4–17–87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 25**

**[Gen. Docket 84–1234; FCC 86–552]**

**Common Carrier Services; Establishment of Policies Pertaining to a Mobile Satellite Service; Financial Qualifications**

**AGENCY:** Federal Communications Commission.

**ACTION:** Declaratory Order.

**SUMMARY:** The Commission has clarified certain portions of its Second Report and Order in Gen. Docket 84–1234 (52 FR 4017; February 9, 1987) regarding the establishment of a mobile satellite service (MSS). In the Second Report, the Commission held that in order to participate in the consortium to be licensed to operate the MSS system, applicants were required to demonstrate their financial qualifications by placing $5 million into an escrow account. This declaratory order was adopted in response to petitions filed by two of the applicants seeking clarification of details regarding the escrow accounts. The Commission has clarified that unconditional letters of credit and performance bonds may be used to demonstrate financial qualifications as alternatives to establishing a $5 million escrow account. It has also clarified that any loans relied on by applicants to raise this sum must be unconditional and freely transferable to the consortium.

**EFFECTIVE DATE:** April 6, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau, (202) 634–1624.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Declaratory Order, Gen. Docket 84–1234, adopted April 2, 1987 and released April 6, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Summary of Declaratory Order**

In the *Second Report and Order* in

BEST COPY AVAILABLE

Gen. Docket 84–1234 (52 FR 4017; February 9, 1987), the Commission established policies to govern the establishment of a mobile satellite service (MSS). It determined that only one first generation MSS system was feasible and adopted a joint ownership structure for this system. The system's licensee was to be a consortium comprised of all qualified and willing entities that had MSS system applications on file as of the specified cut-off date. The Commission conditioned participation in the consortium on each applicant demonstrating its financial qualifications by making an initial $5 million cash contribution into the consortium and placing this amount into an escrow account by April 13, 1987.

In response to petitions for clarifications, the Common Carrier Bureau clarified several matters pertaining to the escrow accounts. The Bureau stated that since unconditional letters of credit and performance bonds provide as firm an assurance that funds are available as a cash deposit, these financial instruments would be acceptable alternatives to establishing an escrow account. The Bureau also clarified that any loans relied on by an applicant to raise the $5 million must be unrestricted by the lender. In other words, the funds must actually be available to the applicant to transfer to the consortium without further approval of the lender. The Bureau stated that in the *Second Report and Order*, the Commission intended that only applicants with unconditioned access to the required funds on April 13, 1987 be able to participate in the consortium, as well as in discussions on the formation of the consortium.

### Ordering Clauses

Pursuant to § 0.291 of the Commission's rules on delegations of authority, it is ordered that unconditional letters of credit and performance bonds may be submitted as alternatives to depositing $5 million in cash into an escrow account.

It is further ordered that each qualified applicant's April 13 notification to the Commission must contain documentation of the immediate availability of the $5 million and certification from the applicant that this sum is under its sole control and may be freely transferred by the applicant to the consortium upon the applicant's decision to join the consortium.

### List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

Albert Halprin,
*Chief, Common Carrier Bureau.*

[FR Doc. 87–8742 Filed 4–17–87; 8:45 am]
BILLING CODE 6712–01–M

---

## 47 CFR Part 73

**[MM Docket No. 87–3; FCC 87–101]**

## Adjustment of Pre-Sunrise Operations by Daytime-Only AM Radio Broadcast Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Interim policy.

**SUMMARY:** Pending the conclusion of current rule making, the FCC has adopted the interim policy of authorizing AM daytime-only radio broadcast stations not now permitted to do so, to operate pre-sunrise with a minimum power of 10 watts from 6 a.m. local time to local sunrise, between the first Sunday and the last day of April 1987, if they would not thereby infringe international agreements on protection against interference. This amendment carries out Congressional instructions in the statute that advanced the annual start of daylight saving time to the first Sunday in April. This will lessen disadvantages that the listening public and daytime-only stations would otherwise experience as a result of the earlier start of daylight saving time.

**EFFECTIVE DATE:** The policy entered into effect on March 24, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Louis C. Stephens, Mass Media Bureau, FCC, (202) 254–3394.

**SUPPLEMENTARY INFORMATION:**

### First Report and Order

Adopted: March 24, 1987.
Released: April 3, 1987.
By the Commission:

1. In the *Notice of Proposed Rule Making* we adopted in this proceeding on January 6, 1987, 52 FR 2566, published January 23, 1987, we invited comment on our proposal to amend the rules governing pre-sunrise operations by daytime-only AM radio broadcast stations. The purpose of the rule change is to offset, insofar as possible, the effects on broadcast service by daytime-only stations arising from the fact that, under Pub. L. No. 99–359, daylight saving time will now start on the first Sunday in April, instead of the last Sunday. Unless present requirements relating to pre-sunrise operations were adjusted, the change in the start of daylight saving time would have an adverse effect on daytime-only stations and their listeners. We accordingly proposed to permit daytime-only stations that can do so without infringing international agreements, to operate between 6:00 a.m. local time and local sunrise, using a minimum of 50 watts power or such higher power as they have been individually authorized to use presunrise. This operating time extension was proposed to apply during April of each year between the first Sunday and the last day of the month.[1]

2. We find that the record before us is insufficient for us to decide upon a permanent rule structure. Thus, this *First Report and Order* makes interim adjustments to permissible pre-sunrise operations by eligible daytime-only stations between April 5 and April 30, 1987. We shall conduct further rule making before we adopt definitive rule changes applicable to future years. The interim adjustments are those proposed, as stated in the previous paragraph, except that pending further rule making the minimum power will be 10 watts instead of the proposed 50-watts. The Commission will, as soon as possible, but in no event later than April 1, 1987, issue notifications to licensees that qualify for pre-sunrise operation in April 1987 at powers greater than those specified in previously issued authorizations.

### Background

3. As a general matter, daytime-only stations are not permitted to operate with their regularly licensed facilities until local sunrise. The FCC determines the time when local sunrise occurs at each station as of the fifteenth day of each month. That time, adjusted to the nearest quarter-hour, is prescribed in each station's license as the hour, expressed in local standard time, when it may start using its regularly licensed daytime facilities during that month. Since it advances local time one hour, the effect of daylight saving time on daytime-only stations is to delay, for the remainder of the month, the time they may begin daytime operation. The later start in the use of daytime facilities

[1] Starting daylight saving time on the first Sunday in April, instead of the last Sunday of that month, will mean that daylight saving time will begin three or four weeks earlier than previously. It will begin four weeks earlier in years when the first Sunday of April falls on the first or second day of the month. In years (like 1987) when the first Sunday falls between April 3 and April 7, daylight saving time will begin three weeks earlier than heretofore.

during the month of April deprives the public of one hour of a daytime-only station's service with daytime facilities during the important "drive time." [2] The effect is especially acute in the case of daytime-only only stations that do not qualify for Pre-Sunrise Service Authorizations (PSRA'S),[3] and therefore may not operate at all during all or part of the lost hour of morning broadcasting.

4. Congress recognized that the earlier start of daylight saving time would affect service by daytime-only stations. It directed, in section 2(d)(1) of Pub. L. No. 99–359 that:

> . . . the Federal Communications Commission shall, consistent with any existing treaty or other agreement, make such adjustment by general rules, or by interim action pending such general rules, with respect to the hours of operation of daytime standard amplitude modulation broadcast stations, as may be consistent with the public interest, including the public's interest in receiving interference-free service.

## The Comments

5. Eleven parties listed in Appendix A filed comments. No reply comments were received. Support for the proposed rule changes was expressed by the Maryland-District of Columbia-Delaware Broadcasters Association, WSAF, WATH and Voice of the Master.[4] The National Association of Broadcasters (NAB) expressed general support, but felt concerned at the resultant interference to groundwave signals of some clear channel stations. NAB urged the Commission to weigh carefully whether, taking into account the public interest factors unique to this proceeding (including the Congressional mandate and the limited period of adjusted pre-sunrise operation), it might be preferable to use some approach other than a 50-watt minimum power. The Association for Broadcast Engineering Standards (ABES), in principle, opposes the authorization of minimum pre-sunrise power that would cause interference to both the groundwave and skywave service rendered by Class I–A stations. In recognition of "mitigating" circumstances, however, ABES asks that, if the Commission adopts the proposed rule, it make it clear that this adjustment is for the sole purpose of offsetting the effects of Pub. L. 99–359, and that it will not constitute a precedent for action in other circumstances.

6. The Clear Channel Broadcasting Service (CCBS) submitted engineering studies showing that the pre-sunrise use of 50 watts or 25 watts could cause interference to the skywave and groundwave service areas of Class I clear channel stations. CCBS accordingly advocates that the minimum power be fixed at 10 watts. This would generally assure protection against interference to the groundwave (primary) service areas of Class I stations, although it would cause interference within their skywave (secondary) service areas. CCBS also differed with the anticipation expressed in the *Notice, supra,* that the added interference caused by stations operating under the proposed rule would occur, typically, for only 15 to 30 minutes a day during the added period of daylight saving time in April. Data provided in the Engineering Statement accompanying the CCBS comments indicates that in some areas the period of such added interference would range from 45 to 60 minutes each day, and that in some cases it could be as long as 75 minutes. CCBS believes that in no case should pre-sunrise operation be extended more than one hour. CCBS states also that letters received by several clear channel stations during experience in 1973 with a 50-watt minimum pre-sunrise power authorization such as the one now proposed indicated that it caused substantial interference to service by clear channel stations. [5] CCBS argues that allowing the amount of interference that may be expected to result from the proposed 50-Watt minimum pre-sunrise power for daytime-only stations would be contrary to the intent of section 2(d)(1) of Pub. L. No. 99–359, which directs the Commission to take into consideration the public interest in interference-free service, in adjusting the rules governing station operation by daytime-only stations.

7. Empire State, licensee of clear channel station WGY, Schenectady, N.Y., citing examples of the long range and uncertain character of skywave interference, opposes the proposed rule changes, and advocates that, instead of adopting them, the Commission provide each AM daytime-only station with a 50-watt FM station, an action that is beyond the scope of this proceeding. Palmer, licensee of clear channel station WHO, Des Moines, Iowa, also opposed the proposed rule, stating that the period between 5 and 8 a.m. is the "critical listening time" for the WHO audience. Palmer calculates, on the basis of an engineering study accompanying its comments, that between nine and ten million persons within WHO's groundwave service area would no longer be able to receive interference-free service from the station during the pertinent period. After noting WHO's farm and news programming during the early morning hours, Palmer concluded that its loss would be disproportionate to the service gain for daytime-only stations under the proposed rule, and referred to the express Congressional mandate that the Commission consider the public's interest in interference-free signals. Therefore, Palmer argues, the proposed rule change should not be adopted.

8. Price also opposes the proposed rule, arguing that the present rule governing pre-sunrise operations—§ 73.99, 47 CFR 73.99—strikes the right balance between the needs of clear channel and daytime-only stations. WGN advocates the middle position put forward by CCBS: establishing a minimum power of 10 watts, rather than 50 watts, on the basis that this strikes a better balance between the interests of service from unlimited-time and daytime-only stations, in keeping with the Congressional mandate to consider the public interest in interference-free service. Supporting engineering data accompanying the WGN comments

---

[2] Drive time is the period of peak radio listening during the morning hours when most people are traveling between home and place of work. It is thus a time of heightened opportunity for broadcasting service to the radio listening public, and a period of significantly high advertising revenues that are important to a station's ability to compete by providing desired program services.

[3] Section 73.99 of the Commission's Rules, 47 CFR 73.99, establishes the conditions under which daytime-only stations that qualify to do so may be issued PSRA's authorizing them to operate pre-sunrise between 6 a.m. local time and local sunrise, using the antenna systems they are licensed to employ starting at local sunrise. Eligibility to do so and the reduced power levels that may be used depend, under the rule, on the channel occupied, the need to protect other stations against interference, and limitations that derive from international commitments of the United States with respect to interference protection to stations in other countries.

[4] Voice of the Master also proposed the creation of a new class of low powered AM stations, which is outside the scope of this proceeding. This proposal will be associated with other comments under consideration concerning the overall program of possible revisions to the AM rules which is separately before the Commission.

[5] In 1973, the Commission adopted a minimum power of 50 watts for pre-sunrise broadcasting during extended daylight saving time. That action was taken as an interim measure pending further consideration of the basis for such operations that it would be appropriate to adopt in the form of definitive rule amendments. Within a year, however, the fuel crisis that had precipitated that extension of daylight saving time abated sufficiently that the period of daylight saving time was restored to its traditional scheduling. The need for it having thus ceased, the Commission ended the special provision for pre-sunrise operations during extended daylight saving time without reaching a conclusion on the mooted question of the power level it would have been appropriate to prescribe in a definitive rule amendment.

depicted the overlap of desired and interfering signals for clear channel station WGN (AM), Chicago, Illinois.

Discussion

9. The instruction in section 2(d)(1) of Pub. L. No. 99–359 confronts the Commission with the need to make difficult decisions. It is a familiar characteristic of signal propagation in the AM band that skywave reflection from the ionosphere of even low-power transmissions can cause interference during the nighttime at distances of hundreds of miles. *Any* augmentation of pre-sunrise operations by daytime-only stations above that which provides full protection to unlimited-time stations will inevitably increase the level of interference received by other stations. Thus, the mandate of Pub. L. No. 99–359 must be understood as calling upon the Commission to establish an appropriate balance between augmented pre-sunrise service by daytime-only stations and resultant incremental interference to other stations.

10. Out task, therefore, is to determine the power level for pre-sunrise operations by daytime-only stations that will enable them to reach a meaningful number of potential listeners, while not causing undue interference to service provided by other stations in this country that are licensed to operate during nighttime hours. As we have already noted, Congress has expressly forbidden any action that would involve infringement of international obligations of the United States. Therefore, it is only with respect to stations within the United States that the Commission must seek to establish an appropriate balance between service gains and losses. That balance cannot be found in a simple comparison of the numbers of persons who gain pre-sunrise service with the numbers of others who lose it. This is espectally apparent in the case of daytime-only stations assigned to the Class I–A clear channels. The primary service areas of the clear channel stations typically range from 100 to 200 miles from their transmitters, and protected secondary skywave service is provided beyond this to approxmately 750 miles from their transmitters. Even at the low powers contemplated for pre-sunrise operations by daytime-only stations, as the comments noted above observed, the population of wide areas within which the signals of the clear channel stations would be subject to interference would be substantial. Conversely, the potential audiences of daytime-only stations operating pre-sunrise at low power would total far fewer persons.

11. In these circumstances, given the Cogressional intent that some relief be provided to daytime-only stations, we must turn to factors other than comparative population counts for guidance as to where to strike the balance between augmented pre-sunrise service by daytime-only stations and optimal preservation of service by other stations. For this purpose, we think it appropriate to take into account the act that low-power pre-sunrise operations by daytime-only stations will provide service premarily—in some cases, exclusively—to the local communities to which they are assigned. By contrast, the interference those operations will causes would affect persons living at comparatively great distances from the communities to which clear channel stations are assigned. It is not a derogation of the potential usefulness of clear channel service at considerable distances from their principal communities to recognize, and attach decisive importance to, the needs of members of the immediate communities where daytime-only stations are assigned. In balancing the public interest considerations pertinent to our decision, we think that our legisiative mandate compels us to attach more importance to preservation of the capacity of daytime-only stations to provide local service during the April morning drive-time periods affected by the earlier start of daylight saving time than to the preservations of service by clear channels at very great distances from their principal communities. The well known characteristics of nighttime AM signal propagation permit no other conclusion, for no relief could be provided to daytime-only stations, that predominantly serve nearby listeners, without causing interference to vastly larger areas distant from clear channel stations.

12. Recognizing the trade-offs, we must determine where to strike the appropriate balance. We believe that the comments by CCBS, and the licensees of several clear channel AM stations suggests a reasonable approach. They advocate reducing the minimum power permitted for pre-sunrise operations by daytime-only stations to 10 watts, at which the primary, groundwave service rendered by Class I clear channel stations would generally by protected. Since the groundwave service of these stations is relatively constant, compared with the variable, intermitted, and less reliable secondary service rendered by their skywave signals, we believe that the primary focus of our concern here should be on the protection of groundwave service, not skywave service. It appears appropriate to protect the groundwave service of clear channel stations aganist interference, but undersirable to foreclose the opportunities for early morning broadcasting by daytime-only stations during the extended period of daylight saving time by requiring them to protect skywave service. As previously noted, groundwave service, although it generally ranges out 100 to 200 miles, reaches listeners far less remote from the station that those within the secondary service area, which extends out to approximately 750 miles from the transmitter.

13. The trade-off for preserving the groundwave service areas of major unlimited-time stations is, thus, reduced service range for some daytime-only stations during their pertinent April pre-sunrise operations. Fixing the generally applicable minimum power for pre-sunrise operations of daytime-only stations at 10 watts, as CCBS proposed, rather than the 50-watt level contemplated in the *Notice*, would result in shorter range for the pre-sunrise service of daytime-only stations that would have to be held to 10 watts in order to protect the groundwave service of clear channel stations. On the other hand, since the test that would be applied under the CCBS proposal is protection to groundwave service, it is possible that some daytime-only stations could operate at higher powers than under the proposal in the *Notice*. Although the *Notice* proposed not going below a 50-watt mimimum, the basis for calulating permissible pre-sunrise powers was protection to the skywave, as well as the groundwave, service of clear channel stations. As we understand the alternative put forward by CCBS, the permitted power for pre-sunrise operations during the pertinent period would be based on protecting only the groundwave service of the clear channel stations. On this basis, some daytime-only stations that would have been held down to 50 watts because of interference to skywave service might be permitted more than 50 watts if their permissible power were calculated on the less rigorous basis of protecting only the groundwave service of the clear channel stations. We believe that the CCBS proposal might provide the proper balance between clear channel stations and daytime-only sations. We think it desirable, before attempting to reach final decision on this matter, to invite further comment, directed particilarly to the approach that has been suggested by CCBS, and to the appropriate basis on which to evaluate, comparatively, the

benefits of enhanced local serivce to some members of the listening against the consequent interference to service available to others. We plan to issue a further Notice in the near future, inviting further comment on these and related issues.

14. Meanwhile, the statute makes it incumbent upon the Commission to alleviate the adverse effects that the earlier start of daylight saving time will have on service by daytime-only broadcast stations in April 1987. Pub. L. No. 99–359 provided the means for accomplishing this by expressly authorizing the Commission, pending completion of this rule making, to make appropriate adjustments by "interim action." We will exercise this authority by permitting pre-sunrise operations during April 1987 on the basis as proposed in the January 6, 1987, *Notice of Proposed Rulemaking, supra,* except that, in lieu of the proposed minimum power of 50 watts, we adopt, in the interim, a minimum power of 10 watts that will be applied during 1987.

We shall shortly notify the daytime-only stations that are affected by the 10-watt power minimum the specific powers that they may use during pre-sunrise operations conducted between 6 a.m. standard time and local sunrise from April 5, 1987, (the first Sunday in April, this year) through April 30, 1987, inclusive. Daytime-only stations that do not receive a specific notification for this period will be permitted to operate using facilities specified in pre-sunrise service authorizations previously issued.

**Paperwork Reduction Act**

15. The action taken herein has been analysed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection or record-keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

**Regulatory Flexibility Analysis**

16. Regulatory flexibility analysis.

*I. Need and Purpose of the Action*

The action taken here carries out a statutory instruction that the FCC adjust the hours of broadcasting by daytime-only AM radio stations appropriately to reflect the advance of the start of daylight saving time to the first Sunday in April. Insofar as is consistent with international agreements and the public interest, the rule lessens the burden placed on daytime-only stations whose start of daily operations would otherwise be deferred by an hour starting the first Sunday in April, 1987.

*II. Summary of Issues Raised by Public Comment in Response to the Notice of Proposed Rule Making in This Proceeding*

The only significant issues raised are those noted in paragraph 5 through 8, *supra.*

*III. Significant Alternatives Considered and Rejected*

For the reasons discussed in paragraphs 9 through 14, the Commission is aware of no reasonable alternatives to the action taken herein. It balances the need for relief, and for moderation of resultant interference, applies the interim conclusions reached to relief to be provided during April, 1987, and provides for further opportunity to review the associated questions before the adoption of definitive rule changes that would be regularly applicable in future years.

**Orders**

17. Accordingly, pursuant to authority contained in section 2 of Pub. L. No. 99–359, 15 U.S.C. 206(a), and taking into consideration: (a) the desirability of conducting further rule making before reaching final decision concerning what definitive rule changes would best fulfill the purposes of that statute; and (b) the need to give immediate effect to the interim provision applicable to pre-sunrise broadcasting in April 1987 in order to assure that the relief it provides will be timely, It is Ordered, effective immediately, That:

(1) The Chief of the Mass Bureau shall promptly issue to each daytime-only AM radio broadcast station whose minimum pre-sunrise operating power hereunder may not exceed 10 watts, an authorization to operate pre-sunrise between 6 a.m. local time and local sunrise, during the period April 5, 1987 through April 30, 1987, in accordance with the below stated conditions.

(2) The authorization of pre-sunrise operations by daytime-only stations during the above-stated period in April, 1987 shall be subject to the requirement that protection be provided to stations in other countries in accordance with international obligations of the United States.

(3) The Chief, Mass Media Bureau shall determine, and shall state in the authorizations directed to individual daytime-only stations, the powers at which they may conduct pre-sunrise operations during the above-stated period, using the antenna system that it is licensed to start using at local sunrise. He shall fix that power at the highest level, not exceeding 0.5 kW, that each station may use while duly protecting other stations against objectionable interference; provided that such power shall in no case be less than 10 Watts unless a lower level, or refraining from pre-sunrise broadcasting altogether, should be necessary to provide due interference protection to stations in other countries.

(4) Daytime-only stations receiving authorizations for pre-sunrise operations in conformance with the above-stated requirements and conditions may so operate during the above-prescribed period, without filing applications for such authorization, but only after submitting to the Chief, Mass Media Bureau, FCC Headquarters, Washington, DC 20554, a written statement containing the information which will be specified in the authorization.

(5) Daytime-only stations that do not receive authorizations issued hereunder, but that have previously issued PSRA's may, during the prescribed hours of April 1987, operate at the powers authorized in such PSRA's.

18. It is further ordered, That, this docket shall remain open for further rule making pursuant to a **Further Notice of Proposed Rule Making** that we will issue in due course.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

**Appendix A—Parties Who Filed Comments**

Association for Broadcast Enginering Standards (ABES)
Clear Channel Broadcast Service (CCBS)
Empire State Radio Partners, Ltd. (Empire State), licensee of clear channel station WGY, Schenectady, NY
Maryland-District-of Columbia-Delaware Broadcasters Association, Inc. (MD–DC–DE Asso.)
National Association of Broadcasters (NAB)
Palmer Communications, Inc. (Palmer), licensee of clear channel station WHO Des Moines, IA
Price Communications Corporation (Price), licensee of five clear channel stations:
- KOB, Albuquerque, NM
- KOMA, Oklahoma City, OK
- WLAC, Nashville, TN
- WOWO, Fort Wayne, IN
- WWKB, Buffalo, NY

Safe Broadcasting Corporation, licensee of daytime-only station WSAF, Triton, GA (WSAF)
Wath, Incorporation, (WATH) Licensee of daytime-only station WATH, Athens, OH
WGN Continental Braodcasting Company (WGN), licensee of clear channel station WGN, Chicago, IL
Voice of the Master

[FR Doc. 87–8747 Filed 4–17–87; 8:45 am]
BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### United States Railway Association

### 49 CFR Ch. IX

### Deletion of Regulations; Chapter Vacated

**AGENCY:** United States Railway Association.

**ACTION:** Removal of regulations.

**SUMMARY:** The United States Railway Association, created by the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) has been sunsetted by the Conrail Privatization Act of 1986 (Pub. L. 99–509). This document will remove the regulations of the Association from the Code of Federal Regulations.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Gallagher, (301) 229–2606.

**List of Subjects in 49 CFR Parts 901, 903, and 932**

Organization and functions, Sunshine Act, Privacy.

For the reasons set out in the **SUMMARY** statement, Title 49, of the Code of Federal Regulations is amended as follows:

1. Parts 901, 903, and 932 are removed; and

2. Chapter IX is vacated.

**Peter J. Gallagher,**

*General Counsel Corporate and Secretary.*

March 3, 1987.

[FR Doc. 87–8740 Filed 4–17–87; 8:45 am]

BILLING CODE 8240-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

**[Docket No. 61220–7033]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish target quota (TQ) allocated to hook-and-line gear in the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska will be achieved on April 15, 1987. The Secretary of Commerce is prohibiting retention of sablefish in this district by persons using hook-and-line gear after 12:00 noon April 15, 1987, through December 31, 1987.

**EFFECTIVE DATES:** From 12:00 noon April 15, 1987, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time (AST), December 31, 1987. Public comments may be submitted to the Regional Director until April 30, 1987.

**ADDRESS:** Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672.

Paragraph 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska, which is further divided annually into target quotas (TQs) for each groundfish species. For 1987, TQs were established for each of the groundfish species and apportioned among the regulatory areas and districts.

Section 672.2 of the regulations defines the West Yakutat District of the Eastern Regulatory Area in the Gulf of Alaska (Emergency interim rule, 52 FR 422, January 6, 1987). The TQ for sablefish is 4,000 mt in this district (52 FR 785, January 9, 1987). Paragraph 672.24(b)(1) of current regulations provides a share of the TQ for hook-and-line gear in the West Yakutat District equal to 95 percent of the TQ, or 3,800 mt. When the share of the TQ is taken, further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea.

Prior to the season starting date April 1, NMFS conducted an area registration program to better estimate numbers of vessels participating in the sablefish hook-and-line fishery in each district throughout the Gulf of Alaska. Based on results of the program, NMFS estimates that about 199 hook-and-line vessels are fishing for sablefish in the West Yakutat District. This estimate includes 107 vessels that were registered by April 1 and 92 more vessels that registered during the course of the season. Of this latter number, 54 vessels shifted from the Southeast Outside/East Yakutat District following the close of that district on April 9. About 2,230 mt have been landed through April 10. On the basis of the average catch rates experienced by the fleet through this date, NMFS estimates that the balance of the quota, or 1,570 mt, will be harvested by noon on April 15, 1987. Therefore, the West Yakutat District is closed to sablefish fishing by hook-and-line vessels at 12:00 noon, local time, on April 15, 1987. Further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea. This closure will be effective upon filing for public inspection with the **Federal Register** and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game under § 672.22(b). Public comments on this notice may be submitted to the Regional Director at the address above for 15 days following its effective date.

**Classification**

Overharvesting of sablefish, which would increase the risk of overfishing of this species, will result unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under § 672.22 and § 672.24 and is in compliance with Executive Order 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

Dated: April 15, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[Doc. 87–8837 Filed 4–16–87; 8:58 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 75
Monday, April 20, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

**Animal and Plant Health Inspection Service**

**7 CFR Part 330**

**9 CFR Part 94**

**[Docket No. 85-345]**

## Plant Pests and Exportation and Animal Products; Garbage

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document would change regulations that apply to garbage that can spread diseases or pests of livestock, poultry, or plants. It would expand the definition of garbage, free some garbage from regulation, and clarify which garbage is to be considered, for purposes of regulation, as "arriving" in a jurisdiction. The proposed rules would protect against the spread of diseases and pests without unnecessarily regulating garbage that does not present such risks.

**DATE:** Comments must be received May 20, 1987.

**ADDRESSES:** Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 85-345. Comments received may be inspected at Room 728 of the Federal building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald B. Caffey, Assistant to the Deputy Administrator, PPQ, APHIS, USDA, Room 656, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782, 301-436-7633.

**SUPPLEMENTARY INFORMATION:**

### Background

The Animal and Plant Health Inspection Service (APHIS) has garbage regulations concerning plant pests in 7 CFR 330.400 and garbage regulations concerning livestock and poultry diseases in 9 CFR 94.5. The two sets of regulations are substantially the same, the regulate garbage arriving in the United States, and its territories and possessions, in order to prevent the spread of plant pests and animal diseases.

### Definition of Garbage

The definition of garbage in the current regulations does not specifically include unconsumed meals and other food prepared for passengers and crew on aircraft. Such foods could spread plant and animal pests and diseases, and have been construed by the agency to be "garbage" subject to the regulations. The proposal would clarify the regulations specifically to include these foods in the definition of garbage.

### Regulated Garbage

Only certain garbage is regulated. For instances, garbage on vessels which travel solely between continental United States ports or solely between continental United States ports and Canadian ports is unlikely to contain any pests or organisms that could disseminate plant pests or animal diseases that are not already widely prevalent or distributed within and throughout the United States. Consequently, such garbage is not regulated by the regulations.

In general, the garbage regulations do regulate garbage that could spread animal diseases and plant pests from outside the United States, and plant pests from Hawaii and from territories and possessions of the United States.

APHIS believes that one of the most effective ways of ensuring that potentially harmful garbage is stored and disposed of so that it does not spread plant pests and animal diseases is to regulate it according to the itinerary of the means of conveyance the garbage is on or has come from. By regulating *all* garbage that is on or unloaded from a means of conveyance that has been to a jurisdiction where certain plant and animal diseases exist, APHIS is not put in the position of having to distinguish between "safe" garbage and "unsafe" garbage on the same means of conveyance.

APHIS recognizes, however, that certain steps can be taken to ensure that a mean of conveyance contains no potentially harmful garbage, even if it has at some time in the past been to a jurisdiction where plant pests and animal diseases exist. A means of conveyance, for example, that has been out of the United States and Canada during the previous two years is highly unlikely to be carrying potentially harmful garbage, even if it has been to a foreign port sometime in its history. Additionally, certain procedures for emptying, cleaning, and disinfecting the means of conveyance will guard against the dissemination of plant pests and livestock and poultry diseases.

### Garbage Regulated Because of Movements Outside the United States or Canada.

In general, regulated garbage would include garbage on or removed from a means of conveyance that within the preceding two years has been to a port outside the United States and Canada. The garbage is not regulated if the port is in Canada because the plant and animal disease situation in Canada presents little risk of transmitting plant and animal diseases and pests not already widely disseminated in the United States.

If a means of conveyance other than an aircraft would be accompanied by a certificate stating that it has been emptied of garbage and certain stores, and that it has subsequently been cleaned and disinfected under an inspector's supervision, and, after the cleaning and disinfection, and means of conveyance has not visited a non-Canadian foreign port, its garbage would not be regulated. The stores that would have to be removed would be: All meats and meat products, whatever the country of origin, except sterile, canned, cooked meats which are shelf-stable without refrigeration; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs. Garbage on or removed from an aircraft that within the preceding two years has been to a port outside the United States and Canada would not be regulated if all garbage and stores have previously been removed and, after the removal of the

garbage and stores, the aircraft has not visited a non-Canadian foreign port. Because of the comparably low volume of stores carried by an aircraft, as compared to that carried on other means of conveyance, documentation indicating the nature and country of origin of the aircraft's stores does not customarily accompany the aircraft. This is in contrast, for example, to the documentation that does customarily accompany stores on a vessel. Such lack of documentation on an aircraft would make it difficult for APHIS to make an accurate determination of whether specific stores left on an aircraft present a risk of disseminating diseases or plant pests in the United States. Consequently, this proposal would require that *all* garbage and stores be removed from an aircraft before subsequent garbage on the aircraft can qualify for an exemption from the garbage regulations.

In the case of an aircraft, neither cleaning and disinfection nor a certificate would be required, because APHIS believes that the removal of prohibited and restricted material, combined with removal modular galley construction and ordinary sanitary practices on airplanes, would ensure that there would be little risk of disseminating animal diseases and plant pests.

**Garbage Regulated Because of Movement from Hawaii, Territories, or Possessions.**

Garbage on or removed from a means of conveyance would also be regulated if the means of conveyance moved to the continental United States, either directly or indirectly, from Hawaii or from any territory or possession within the preceding year. Additionally, garbage would be regulated which is on or removed from any means of conveyance that within the preceding year moved from Hawaii to any territory or possession, or moved from any territory or possession to any other territory or possession or to Hawaii. Note that a one-year period is proposed for these movements, in contrast to the two-year period proposed for movements from outside the United States. This difference is because movements from Hawaii, or from territories or possessions, pose the risk of spreading only plant pests, whereas movements from outside the United States pose the risk of spreading both plant pests and animal diseases. Experience has shown that it is extremely unlikely that stores of plant origin would remain on a means of conveyance for over one year. Simply removing the stores would be adequate to protect against plant pests, because the plant pests that could be transmitted by the stores are unlikely to remain viable on the means of conveyance for very long after the stores are removed. In contrast, even after the stores are removed, some livestock or poultry disease organisms could remain viable on a means of conveyance for significant periods of time. Consequently, the two-year period appears necessary for means of conveyance arriving from places where livestock or poultry diseases exist that are not already disseminated in the United States.

As with movements from outside the United States, certain exceptions to the regulation of garbage are proposed for means of conveyance that move to the continental United States from Hawaii or territories or possessions; that move to Hawaii from territories or possessions; or that move to territories or possessions from other territories or possessions or from Hawaii.

If a means of conveyance other than an aircraft would be accompanied by a certificate from an inspector stating that it has been emptied of all garbage and all fresh fruits and vegetables, any garbage subsequently generated would not be regulated, if after the removal of the original garbage and stores, the means of conveyance has not visited the continental United States from Hawaii or a territory or possession; visited Hawaii from a territory or possession; or visited a territory or possession from any other territory or possession or from Hawaii. Aircraft garbage would be subject to similar provisions, except that a certificate would not be required for aircraft.

**Commingled**

It is also proposed that regulated garbage also include garbage that is commingled with regulated garbage. This is necessary since it would be virtually impossible to separate regulated garbage from other garbage, and since any disease organism or pests in regulated garbage would contaminate other garbage.

**Arriving**

The current garbage regulations regulate garbage on or unloaded from certain means of conveyance "arriving" in specific places. Under the current garbage regulations, there has been some confusion as to whether garbage on or removed from a means of conveyance would be regulated at a port of arrival in the continental United States, Hawaii or a territory or possession, when the port of arrival is not the first port of arrival in the specified jurisdiction. For example, would garbage on a ship or airplane continue to be regulated at the port of Philadelphia if the ship or airplane "arrived" in the port of New York from Europe, and then moved to the port of Philadelphia? Or would garbage on a ship or airplane be regulated at the port of Honolulu if the ship or airplane "arrived" in the port of Hilo from the United States Virgin Islands, and then moved to Honolulu?

In general, it was intended that garbage on or removed from these means of conveyance would be regulated at subsequent ports in the specified jurisdictions (exceptions are discussed above), since plant pests and disease organisms could still be on the means of conveyance at subsequent ports. The proposed amendments to the garbage regulations reflect this intent.

**Northern Mariana Islands**

The definition of "territories or possessions" in the current garbage regulations in 7 CFR does not include the Northern Mariana Islands. The Northern Mariana Islands *are* included in an otherwise identical definition in the garbage regulations in 9 CFR. Because the Northern Mariana Islands are a trust territory of the United States and because plant pests exist there that could spread to other jurisdictions in the United States, the Northern Mariana Islands would be included in the definition of "territories or possessions" in the garbage regulations in 7 CFR.

**Miscellaneous**

This document would also make certain nonsubstantive charges in the regulations for clarity.

**Executive Order 12291 and Regulatory Flexibility Act**

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of less than 100 million dollars; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United-States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although this document proposes changes that appear to be significant for helping to prevent the dissemination of plant pests and livestock and poultry

diseases, in almost all cases the adoption of the proposal would not require persons to change their current practices.

Under the circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

**List of Subjects in 7 CFR Part 330**

Customs duties and inspection, Garbage, Plant diseases, Plants (Agriculture), Quarantine, Transportation.

**List of Subjects in 9 CFR Part 94**

Animal diseases, Garbage, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products.

**Title 7—[Amended]**

**PART 330—FEDERAL PLANT PEST REGULATIONS, GENERAL: PLANT PESTS: SOIL, STONE, AND QUARRY PRODUCTS: GARBAGE**

Accordingly, 7 CFR Part 330 would be amended as follows:

1. The authority citation for Part 330 would be revised to read as follows:

**Authority:** 7 U.S.C. 147A, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 330.100, all definitions would be placed in alphabetical order and all lettered paragraph designations would be removed; and the definitions of "garbage" and "territories or possessions" would be revised and a new definition of "regulated garbage" would be added, to read as follows:

**§ 330.100 Definitions.**

* * * * *

*Garbage.* That material designated as "garbage" in § 330.400(b).

* * * * *

*Regulated garbage.* That material designated as "regulated garbage" in § 330.400(c) and § 330.400(d).

* * * * *

*Territories or possessions.* Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

* * * * *

3. In § 330.400, the heading would be revised; paragraph (a) would be revised; paragraphs (b), (c), and (d) would be redesignated as paragraphs (g), (h), and (i) respectively; and new paragraphs (b), (c), (d), (e) and (f) be added, as follows:

**§ 330.400 Regulation of certain garbage.**

(a) Hawaii, Puerto Rico, the Virgin Islands of the United States, Guam, and all other Insular Possessions of the United States are hereby quarantined, and the movement therefrom to other parts of the United States of garbage is hereby regulated as provided in this section to prevent the spread of the dangerous plant diseases and insect pests specified in §§ 318.13, 318.58, and 318.82 or other plant pests which exist in such areas. Also, to prevent the dissemination of plant pests and livestock and poultry diseases, garbage is regulated as otherwise provided in this part because of international movements of means of conveyance.

(b) *Garbage.* For purposes of this part, garbage means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on means of conveyance. For purposes of this part, garbage also means meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

**Note.**—Not all garbage is regulated for the purposes of this part. Garbage regulated for the purposes of this part is defined as "regulated garbage" in paragraphs (c) and (d) of this section.

(c) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has moved within the previous 2-year period to any port outside the United States and Canada. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is *not* included as regulated garbage under paragraph (c) of this section, if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had first been cleared of all garbage and of all meats and meat products, whatever the country of origin, except sterile, canned, cooked meats that are shelf-stable without refrigeration; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and

(B) That the means of conveyance had then been cleaned and disinfected under the inspector's supervision; and

(ii) Since being cleaned and disinfected, the means of conveyance has not visited a non-Canadian foreign port.

(2) *Exception 2.* Garbage on or removed from an aircraft is *not* included as regulated garbage under paragraph (c) of this section if the following conditions are met when the garbage is on or removed from the aircraft:

(i) The aircraft had been cleared of all garbage and all stores; and

(ii) After the garbage and stores referred to in paragraph (c)(2)(i) of this section were removed, the aircraft has not moved to a non-Canadian foreign port.

(d) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if at the time the garbage is on or removed from the means of conveyance, the means of conveyance has moved during the previous one-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii, or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is *not* included as regulated garbage under paragraph (d) of this section if the following two

conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector, saying that the means of conveyance had been cleared of all garbage and all fresh fruits and vegetables; and

(ii) After being cleared of the garbage and stores referred to in paragraph (d)(1)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2.* Garbage on or removed from an aircraft is *not* included as regulated garbage under pargraph (d) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) This aircraft had been previously cleared of all garbage and all fresh fruits and vegetables; and

(ii) After the garbage and stores referred to in paragraph (d)(2)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(e) Garbage that is commingled with regulated garbage is also regulated garbage.

(f) *Restrictions on regulated garbage.* (1) Regulated garbage shall not be on or removed from a means of conveyance, or be disposed of, unless in accordance with the provisions of this part.

(2) Regulated garbage is subject to general surveillance for compliance with this section by Animal and Plant Health Inspection Service inspectors and to such disposal measures as authorized by section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), section 10 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 164a), section 2 of the Act of February 2, 1930, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, 1903, as amended (19 U.S.C. 1306), to prevent the dissemination of plant pests and livestock or poultry diseases.

* * * * *

4. § 330.400, all references to "garbage" in redesignated paragraphs (g)(1), (h), and (i)(2) and (i)(3) would be changed to "regulated garbage"; and the first sentence in redesignated paragraph (g)(1) would be revised and made into two sentences to read as follows:

**§ 330.400 Regulation of certain garbage.**

* * * * *

(g)(1) All regulated garbage must be contained in tight, leak-proof covered receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptables shall be contained inside the guard rail if on a watercraft.

* * * * *

**Title 9—[Amended]**

**PART 94—[AMENDED]**

Accordingly, 9 CFR Part 94 would be amended as follows:

1. The authority citation for Part 94 would continue to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.5, the heading would be revised; paragraph (a) would be revised; paragraphs (b), (c), and (d) would be redesignated as paragraphs (f), (g), and (h), respectively; and new paragraphs (b), (c), (d), and (e) would be added, as follows:

**§ 94.5 Regulation of certain garbage.**

(a) *Garbage.* For purposes of this part, garbage means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crew's quarters, dining rooms, or any other areas on means of conveyance. For purposes of this subpart, garbage also means meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed.

**Note.**—Not all garbage is regulated for the purposes of this part. Garbage regulated for the purposes of this part is defined as "regulated garbage" in paragraphs (b) and (c) of this section.

(b) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has moved within the previous 2-year period to any port outside the United States and Canada. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is *not* included as regulated garbage under paragraph (b) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector stating the following:

(A) That the means of conveyance had first been cleared of all garbage and of the following: All meats and meat products, whatever the country of origin, except sterile, canned, cooked meats that are shelf-stable without refrigeration; all fresh and condensed milk and cream from countries designated in 9 CFR 94.1 as those in which foot-and-mouth disease exists; all fresh fruits and vegetables; and all eggs; and

(B) That the means of conveyance had then been cleaned and disinfected under the inspector's supervision; and

(ii) Since being cleaned and disinfected, the means of conveyance has not visited a non-Canadian foreign port.

(2) *Exception 2.* Garbage on or removed from an aircraft is *not* included as regulated garbage under paragraph (b) of this section if the following two conditions are met:

(i) The aircraft had been cleared of all garbage and all stores; and

(ii) After the garbage and stores referred to in paragraph (b)(2)(i) of this section were removed, the aircraft has not moved to a non-Canadian foreign port.

(c) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this part, garbage on or removed from a means of conveyance is regulated garbage, if the means of conveyance has moved during the previous one-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is *not* included as regulated garbage under paragraph (c) of this section if the following two conditions are met when the garbage is

on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an inspector, stating that the means of conveyance has been cleared of all garbage and all fresh fruits and vegetables; and

(ii) After being cleared of the garbage and stores referred to in paragraph(c)(1)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2.* Garbage or or removed from an aircraft is *not* included as regulated garbage under paragraph (c) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The aircraft had been cleared of all garbage and all fresh fruits and vegetables; and

(ii) After the garbage and stores referred to in paragraph (c)(2)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(d) Garbage that is commingled with regulated garbage is also regulated garbage.

(e) *Restrictions on regulated garbage.* (1) Regulated garbage shall not be on or removed from a means of conveyance, or be disposed of, unless in accordance with the provisions of this part. (2) Regulated garbage is subject to general surveillance for compliance with this section by Animal and Plant Health Inspection Service inspectors and to such disposal measures as authorized by section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), section 10 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 164a), section 2 of the Act of February 1, 1903, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, as amended (19 U.S.C. 1306), to prevent the dissemination of plant pests and livestock or poultry diseases.

* * * * *

3. In § 94.5, all references to "garbage" in redesignated paragraphs (f)(1), (g), and (h)(2) and (h)(3) would be changed to "regulated garbage"; and the first sentence in redesignated paragraph (b)(1) would be revised and made into two sentences to read as follows:

**§ 94.5 Regulation of certain garbage.**

(f)(1) All regulated garbage must be contained in tight, leak-proof covered receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles shall be contained inside the guard rail if on a watercraft.

* * *

* * * * *

Done in Washington, DC, this 14th day of April, 1987.

**Bert W. Hawkins,**

*Administrator, Animal and Plant Health Inspection Service.*

[Doc. 87-8659 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-34-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30, 40, and 70

### Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In 1981, the Nuclear Regulatory Commission (NRC) issued orders to require certain NRC fuel cycle and other radioactive material licensees to submit emergency plans to the NRC. The NRC is now proposing to amend its regulations to place a requirement for such emergency plans in its regulations. The proposed rule would require the approximately 30 licensees subject to the orders to revise their existing emergency plans which include, among other things, descriptions of the means and equipment to mitigate the consequences of an accident and to promptly notify offsite response organizations if an accident occurs that might result in a significant release of licensed radioactive material.

**DATES:** Comment period expires July 20, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

A free single copy of the draft Regulatory Analysis, including the environmental assessment and finding of no significant impact (NUREG-1140), may be obtained by writing to the Distribution Section, Document Control Branch, Division of Information Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Copies of NUREG-0762, -0767, -0810, -1179, -1189, and -1198, the technical reports referenced in this notice, may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Copies of the above NUREG reports and also comments received by the Commission on the proposed rule are available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stephen A. McGuire, Regulation Development Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (telephone: (301) 443-7900).

**SUPPLEMENTARY INFORMATION:**

**Background**

During the Commission's deliberations concerning nuclear power plant emergency preparedness after the Three Mile Island accident, the Commission directed the staff to evaluate the need to change the emergency preparedness regulations for fuel cycle and other radioactive material licensees.

In late 1980, the staff reevaluated previously submitted emergency plans for radioactive releases for fuel fabrication plants and found some apparent weaknesses. For example, some plans did not have arrangements for the prompt notification of offsite response organizations.

Upon noting these weaknesses, the NRC staff prepared orders requiring 62 licensees to submit comprehensive onsite radiological contingency plans (46 FR 12566). These orders, which were issued in February 1981, required some licensees, based on their licensed possession limits, to plan for actions that would be needed in the event of an accident. The actions would be those necessary to: protect workers, limit the release of radioactive materials, and mitigate adverse consequences of the accident. The orders were issued to operators of fuel processing and fabrication plants, $UF_6$ production plants, and radioactive material users authorized to possess large quantities of radioactive materials in unsealed form. The licensees selected were those

authorized to possess quantities of radioactive materials that could as a result of a severe accident potentially result in a radiation exposure in excess of 1 rem effective dose equivalent to someone offsite. As a result of these orders, about half of the affected licensees reduced their authorized possession limits for radioactive material, thus no longer requiring them to submit contingency plans to NRC.

On June 3, 1981, the Commission published in the **Federal Register** (46 FR 29712) an advance notice of proposed rulemaking on emergency preparedness for certain fuel cycle and other radioactive material licensees. In this advance notice, the Commission proposed to codify the radiological contingency planning requirements set forth in the Commission's orders, as well as consider requiring offsite emergency plans. The Commission noted in the advance notice that it would use factors such as possession limits, potential for accidental criticality, chemical toxicity of radioactive materials, and potential radiation hazards for all of the NRC licensees whose radioactive material possession limits were such that severe accidents could result in offsite radiation doses exceeding the lower end of the protective action guides established by the EPA.

**Public Comments on the Advance Notice of Proposed Rulemaking**

The Commission received 18 responses to its advance notice of proposed rulemaking. Comments were received from five Federal agencies, four State agencies, five corporations, one university, one laboratory, one nonprofit Federal corporation, and the Conference of Radiation Control Program Directors. The following discussion summarizes the major comments and gives the Commission's response to each comment.

*Comment:* Many commenters questioned the need for the suggested regulations. One Agreement State said there is ". . . little likelihood of a serious accident; those incidents which have occurred have been handled adequately without pre-existing plans, using existing resources and guidelines." Commenters said that many of the facilities that would be covered do not have the potential to exceed the EPA s protective action guide dose of 1 rem under any credible accident conditions. Uranium mills, $UF_6$ conversion plants, and low-level waste burial grounds were cited by commenters as examples. Another example where emergency plans were not considered necessary was the case in which the radioactive materials are spread among many different buildings so that release of a large proportion due to a single event is not credible. Several commenters said NRC already requires them to be adequately prepared to respond to an emergency, and that there is no need for additional regulations. The Agreement States of New Mexico and Washington said they were already adequately prepared for any credible accident and saw no need for a regulation. On the other hand, the State of New York saw a need to reevaluate the adequacy of its existing emergency planning.

One commenter said the need for the regulation should be tested against past accident experience to determine the urgency and realism of the proposal. Another commenter said that, compared to nuclear power plants, fuel cycle and byproduct material licensees have much less radioactive material, do not have a large energy source to act as a driving force and do not concentrate their radioactive materials in a single location. Thus the consequence of an accident would be much smaller, and there would never be a need to evacuate or shelter people.

*Response:* The NRC has carefully analyzed accident source terms, potential release fractions, and radiation doses attributable to a range of accidents at fuel cycle and other radioactive material licensees. The details are given in "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140. Specific conservative accident scenarios have been considered for specific types of licensees, and release fractions and doses have been calculated based on these scenarios. The accident history of different types of facilities has been considered. As a result of the analysis, some facilities, such as uranium mills and depleted uranium metal processors, are excluded from needing an emergency plan for responding to a release.

On the other hand, the analysis does indicate that, at a few licensed facilities, offsite doses due to an accident might theoretically exceed the lower end of the range of doses for which the EPA recommends that protective actions to protect the public be considered. In addition, in a few cases an accident could cause significant exposure to chemically toxic soluble uranium. The NRC would especially like to receive comments on the accident scenarios presented in the analysis. The NRC is particularly interested in comments concerning the conservatism in the analysis as it pertains to specific classes of facilities.

*Comment:* A second major comment was that the need for emergency plans should be evaluated on a case-by-case basis. Several examples were given where the licensed possession limits might indicate the need for a plan, but the actual circumstances would make a large release impossible. For example, a radiopharmaceutical manufacturer said that it uses only a small quantity of its iodine-125 at one time. The rest is stored in lead containers in a fume hood, the air from which is filtered three times before release. Commenters said the remoteness of the site should be a factor taken into consideration. In the case of one uranium mill, the nearest residence is 22 miles away. The comment was made that case-by-case review of the need for plans is feasible because so few licensees would be affected.

*Response:* The proposed rule would allow licensees the opportunity to demonstrate that an emergency plan for responding to a release would not be needed because no reasonably forseeable accident could result in doses to the public approaching the protective action guides.

*Comment:* Several commenters thought FEMA review of State and local emergency response capabilities was unnecessary because possible accidents would be so much smaller than at nuclear power plants. It was said that simpler, less complex review and evaluation processes were better. Several Agreement States objected to a FEMA review of their programs. Other commenters thought FEMA could make valuable contributions.

*Response:* The NRC has considered the nature and depth of the needed offsite coordination in the previously mentioned Regulatory Analysis and concluded that written site-specific State and local plans reviewed by FEMA are not needed because the accidents can be responded to as part of the community's general emergency response capabilities. These necessary capabilities (e.g., fire, ambulance, police support) are routinely used for emergencies of all sorts. The small potential doses, small areas affected, and small numbers of people involved are factors indicating that the community's normally existing emergency response capabilities are adequate and that additional response capabilities are not necessary.

*Comment:* Some commenters thought failure of uranium mill tailing dams should be included.

*Response:* The NRC has considered these events and concluded that they should not be included because radiation doses associated with such

accidents are so low that EPA protective action guides would not be exceeded even over a very long time (months or years), nor would the licensed materials present a chemical toxicity hazard. A complete explanation is presented in "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140.

*Comment:* Many commenters thought the NRC should provide a document describing the contents of the licensee's emergency plans and the nature of the preparedness needed.

*Response:* The NRC agrees and plans to revise its reports, NUREG–0762, "Standard Format and Content for Radiological Contingency Plans for Fuel Cycle and Materials Licensees," and NUREG–0610, "Standard Review Plan for the Review of Radiological Contingency Plans for Fuel Cycle and Materials Facilities." The revised reports will be published, possibly as Regulatory Guides, concurrently with the final rule.

*Comment:* Several commenters thought the suggested regulations would be burdensome and expensive to both licensees and to States and that the cost would greatly exceed the benefits.

*Response:* The NRC believes that the rule will not be excessively expensive or burdensome to States or local governments. States and local governments will not be expected to write specific plans for specific facilities or have other special emergency preparedness. The NRC believes that the normally available capabilities of States and local governments for responding to industrial emergencies and the normally available radiological health capabilities of States will be adequate to deal with accidents at fuel cycle and other radioactive material licensees. These radiological emergencies would involve small (not life threatening) doses, small areas, and small numbers of people. The potential risks are much lower than the risks from accidents involving chemical plants or the shipping of hazardous chemicals, to which States and local governments routinely respond. In other words, the response to radiological accidents at fuel cycle and other radioactive materials licensees can and should be handled by State and local governments as part of their normal emergency response capability without additional resources. Thus, an adequate level of emergency preparedness should not be a financial burden to State and local governments.

With regard to benefits, the benefits are admittedly small because of the low probability of exceeding protective action guide doses and the low probability that a dose of a few rems would have harmful consequences. Although costs to licensees were found to exceed potential benefits (see Regulatory Analysis, Section 3), the Commission concludes that the protection provided by engineered safety features should be bolstered by the ability to mitigate the consequences of an accident and reduce potential releases of radioactive materials.

*Comment:* Several commenters thought NRC should provide funding to States for State planning.

*Response:* The NRC sees no need for funding for State planning because a need for site-specific State planning beyond the emergency preparedness capabilities normally present has not been identified.

*Comment:* Several commenters objected to the way in which EPA's protective action guides were applied. They said the whole body guide was actually a 1 rem to 5 rem range, whereas the NRC arbitrarily selected 1 rem.

*Response:* The NRC considers 1 rem as the point at which planning should begin. The potential releases are relatively small, and the areas and numbers of people involved are small. Thus, it is practical to consider actions at the lower end of the protective action guide range.

*Comment:* Other commenters said that the ICRP Publication 26 methodology should be used to determine the protective action guides for radioactive materials that are inhaled and deposited in the body.

*Response:* The ICRP Publication 26 methodology was used.

*Comment:* One commenter said Part 72 spent fuel storage licensees should be covered under the regulation.

*Response:* The need for licensee emergency procedures for accidental releases by Part 72 licensees is being considered in a separate rulemaking published for public comment on May 27, 1986 (51 FR 19106).

*Comment:* One commenter said sealed sources should be covered under this regulation.

*Response:* The NRC considers that there is no need to include most sealed sources in this rulemaking because sealed source accidents are already adequately dealt with in other parts of the regulations. (See, for example, §§ 20.402(a), 20.403, 30.33(a)(2), 34.25, 34.32(g) and (h), and 70.60). In addition, based on the history of accidents involving sealed sources at licensed facilities, the NRC finds that additional emergency preparedness beyond that now existing at these facilities is not warranted.

However, the NRC has included in its rulemaking foils, plated sources, thin-window sealed sources (such as those sometimes used for americium-241) and sealed sources using low-melting temperature metal such as aluminum. The NRC is continuing to study this matter and specifically requests experimental information or other analyses on whether these types of sealed sources should be included in the rule.

*Comment:* The comment was made that a large number of byproduct material licensees do not list the specific radionuclides they will possess, but only a total curie limit for classes of nuclides, for example those with atomic numbers 3 through 83. (This approach is recommended in Regulatory Guide 10.5, "Applications for Type A License of Broad Scope," Item 8A and Item 8D.) This makes it impossible to determine, based on possession limits, whether extensive emergency preparedness is really appropriate.

*Response:* The NRC will not require emergency plans for a facility unless a significant accidental release of radioactive materials is credible. If a licensee would be covered by the rule because the licensee is authorized to possess material it does not possess and has no intention of possessing in the future, the solution is for the licensee to request a license amendment to reduce the licensed possession limit. If the licensee actually possesses or may possess in the future enough material to be covered by the regulation, but there are site-specific reasons why a significant release is not credible, the proposed rule would allow the licensee to demonstrate this.

**The Proposed Rule**

The Commission is proposing amendments to 10 CFR Parts 30, 40, and 70 on emergency preparedness. The proposed rule would cover fuel cycle and other radioactive material licensees that may have the potential for a significant accidental release of NRC-licensed materials. These proposed regulations would require certain licensees to maintain emergency plans for responding to such accidents.

*Licensees Needing Plans*

The criteria selected for establishing whether a licensed facility would be required to establish and maintain special emergency plans for significant accidental releases are whether a credible severe accident could theoretically deliver a radiation dose of 1 rem effective dose equivalent, 5 rems to the thyroid, or soluble uranium intake

exceeding 2 milligrams to a member of the public.

The EPA recommends that actions to protect the public be considered if projected whole body doses due to an accident are in the range of 1 to 5 rems, taking into account the practicality of the actions that would be taken. The proposed rule uses the 1-rem low end of the dose range as the criteria for establishing whether a licensed facility needs an emergency plan for responding to a release. In addition, conservative assumptions have been used to estimate the doses which could result from an accident. Doses that would result from an actual accident should realistically be far below the calculated doses on which the regulation is based.

The EPA's draft protective action guides apply to radiation received uniformly over the body. These guidelines are not applicable if the radiation dose is not uniform or if only some body organs receive the radiation dose. To account for radionuclides that are deposited nonuniformly in the body, such as those possessed by fuel cycle and other radioactive material licensees, the effective dose equivalent from these radionuclides is used to replace the whole body dose equivalent.

The effective dose equivalent is defined as the sum of the external radiation dose equivalent plus the dose equivalent to each body organ due to radioactivity deposited within the body multiplied by a risk weighting factor for the organ. The weighting factors are taken from "Recommendations of the International Commission on Radiological Protection," ICRP Publication 26, Pergamon Press, Oxford, 1977.

The conservative accident scenarios and dose calculations which form the technical basis for the proposed rule are described in detail in the previously mentioned "Regulatory Analysis of Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140.

Except for radioiodine doses, which are calculated for infants, doses are calculated for an average adult. Doses to infants and older children would be slightly different due to differences in their metabolisms. Unfortunately, doses to age groups younger than adults have not been calculated for the modern ICRP Publication 26 dosimetric models except for a few radionuclides. The NRC considers the differences between adult doses and child doses to be insignificant in comparison with the other uncertainties in the analysis. The NRC also considers that the inherent conservatism in its accident dose calculations and its use of the 1-rem lower end of the range for protective action consideration provide an adequate margin of safety. Public comments on this item are specifically requested.

For most licensees who would be required to establish and maintain a plan, the degree of risk is small. For most licensees, even worst-case doses to an individual on the plume centerline resulting at any distance are less than 5 or 10 rems. Realistically, actual doses that anyone would receive should be far lower. Finally, the probability of a serious radiological accident is small, less than $10^{-4}$/yr, and the probability of a serious accident simultaneous with highly adverse meteorology is less than $10^{-5}$/yr. Details are provided in the Regulatory Analysis, NUREG–1140, Sections 2.4, 2.5, and 3.

The rupture of a large heated cylinder of $UF_6$ is an exception in that both the probability and the consequences due to the chemical toxicity of the released material could be of greater concern than the radiation doses from any plausible accident at fuel cycle or other radioactive material facilities. As part of the analysis for this proposed rulemaking, the rupture outdoors of a hot cylinder containing 14 tons of $UF_6$ was analyzed, and predictions were made concerning the consequences of such a rupture. These predictions have been compared with the results of the actual release that occurred during the January 4, 1986, accident at the Sequoyah facility ("Rupture of a Model 48Y $UF_6$ Cylinder and Release of Uranium Hexafluoride," NRC Report NUREG–1179, February 1986). The quantity and duration of the release were quite close to what was predicted. Also, it appears that the actual onsite and offsite consequences were also quite close to what was predicted. ("Assessment of the Public Health Impact from the Accidental Release of $UF_6$ at the Sequoyah Fuels Corporation Facility at Gore, Oklahoma," NRC Report NUREG–1189, March 1986.)

Airborne releases due to a severe accident at these licensed facilities are likely to occur rapidly with little warning. The only types of accidents identified in NUREG–1140 for which protective action guide doses or the 2-milligram soluble uranium intake could theoretically be exceeded are a fire, a $UF_6$ cylinder rupture, and a criticality accident. Public input is sought on other types of accidents that might lead to significant releases of licensed materials. Releases from a fire could start even before the fire is detected or shortly thereafter. Plume travel time to nearby people is likely to be no more than a few minutes. Releases would usually end within half an hour to an hour when the local fire department has controlled the fire. As a result, protective actions must be taken very quickly to be effective.

In view of two factors—(1) realistically, radiation doses and soluble uranium intakes should generally be low compared to protective action guides and (2) the fast-moving nature of the accidents of concern—evacuation planning is not necessary, appropriate, or feasible. In particular, evacuation of neighborhoods before plume arrival will generally not be possible. Instead the emphasis of emergency preparedness should be on ending the accident as quickly as possible, reducing the quantity of material released, protecting workers onsite, and promptly restoring the facility to a safe condition. Offsite, it would be appropriate for police and fire personnel to move people out of areas of dense smoke or fumes or get them to seek shelter indoors. Such actions are routine for fires and chemical releases and would be expected whether there were an emergency plan or not.

The proposed amendments to Parts 30, 40 and 70 would require that licensees authorized to possess in excess of certain quantities of byproduct materials, source materials, and special nuclear materials must submit emergency plans for responding to releases or an evaluation that shows that offsite doses due to a release of radioactive materials under reasonable and plausible circumstances would not exceed 1 rem effective dose equivalent, a thyroid dose of 5 rems, or a soluble uranium intake exceeding 2 milligrams. The proposed rule would also cover any future plutonium fuel fabrication plants.

The table of quantities in Part 30 that would require evaluation of the need for an emergency plan was taken from "A Regulatory Analysis of Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140. The table lists quantities that might theoretically deliver an effective dose equivalent of 1 rem in the event of a severe accident. The quantities were calculated by assuming that the most exposed member of the public would inhale a fraction of $10^{-6}$ of those materials. External doses from cloudshine and groundshine are then added to the internal dose. The 1-rem effective dose equivalent is a 50-year dose commitment calculated by the methods of ICRP Publications 26, 28, and 30.

The table in Part 30 includes all nuclides, except for I–129, listed on 20 or more of NRC's approximately 9,000 byproduct material licenses. (I–129 was

not included in the table because saturation would prevent the thyroid from absorbing enough I–129 to reach the 5-rem protective action guide for thyroid dose. Thus, I–129 is too weakly radioactive to be significant to emergency planning.) The table also includes all betagamma emitters listed on any license for which the quantity to deliver a 1-rem effective dose equivalent would be less than 10,000 curies. The table also includes all alpha emitters listed on any license for which the quantity to theoretically deliver a 1-rem effective dose equivalent would be less than 2 curies.

The quantities in the table in Part 30 are different from quantities previously published in NUREG–0767, "Criteria for Selection of Fuel Cycle and Major Materials Licensees Needing Radiological Contingency Plans," Federal Register Notices with Orders to Licensees (46 FR 12566), and an Advance Notice of Rulemaking (June 3, 1981; 46 FR 29712). The main reasons for the differences are: (1) Dosimetric models from ICRP Publications 26, 28, and 30 have been used instead of the older models from ICRP Publication 2; and (2) release fractions have changed as the result of further study. The intercept fraction remains $10^{-6}$ for nondepositing radionuclides. In addition, two new pathways, external radiation from groundshine and from cloudshine, are included.

In Part 40, emergency plans would be required only for handling significant quantities of uranium hexafluoride. It was concluded in NUREG–1140 that uranium and thorium in chemical forms less volatile than uranium hexafluoride would not require emergency plans because plausible releases could not cause doses exceeding 1 rem effective dose equivalent, the threshold dose for requiring an emergency plan. The dose threshold would not be exceeded because the low volatility of uranium and thorium compounds, other than uranium hexafluoride, causes low release fractions and because the low specific activities of uranium and thorium result in low doses from a given weight of material.

The chemical toxicity of uranium and thorium are also not of concern except for the highly soluble uranium from a uranium hexafluoride release. Other compounds of uranium or thorium would not cause as large an intake due to lower quantities released and are not as acutely toxic as the very soluble uranium compound created by the uranium hexafluoride release.

In Part 70, plans would be required for potential releases of plutonium and releases due to criticality accidents in addition to uranium hexafluoride releases. The analyses for criticality accidents and plutonium releases are included in NUREG–1140.

*Hazardous Chemical Releases*

The NRC also considered requiring emergency planning for NRC-licensed facilities with nonradioactive hazardous chemicals. Certain NRC-licensed facilities that would be required to have an emergency plan for radioactive materials might also have nonradioactive hazardous chemicals. The issue of offsite emergency planning, preparedness, and response for release of hazardous chemicals is addressed by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, enacted October 17, 1986. (Single copies are available without charge by visiting or writing: Senate Document Room, Hart Senate Office Building, Room B–04, Washington, DC 20510.) Title III of that Act, independently entitled, "Emergency Planning and Community Right-To-Know Act of 1986," establishes a comprehensive and detailed program under the auspices of EPA and FEMA for community involvement, planning, training, emergency notification, response, and enforcement in the event of an offsite release of hazardous, extremely hazardous, and toxic chemicals. All facilities with a threshold quantity of any of several hundred listed chemicals are subject to the Act. By interim final rule, the EPA established threshold planning quantities and associated reportable quantities (November 17, 1986, 51 FR 41570).

The Act requires each State to establish local emergency planning committees in each area with a facility possessing in excess of the threshold quantities of hazardous chemicals. Facility operators are required to notify the emergency coordinator of the local emergency committee immediately upon a release of a reportable quantity of a listed hazardous chemical. Notification to the local coordinator of the release of an unlisted chemical is required as well if the chemical is subject to the entirely separate reportable quantities requirement of Superfund. The Act is to be fully implemented by October 16, 1988. Failure to immediately report a release may cause the facility owner or operator to be subject to an EPA fine of up to $25,000 (and imprisoned for up to two years if the violation is willful).

The Act also requires that each local emergency planning committee prepare an emergency plan for facilities under its jurisdiction. Plans must include the following: "(1) Identification of facilities subject to the requirements . . . (2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release . . . (3) Designation of a community response coordinator and facility emergency coordinators . . . (4) Procedures providing reliable, effective, and timely notification by the facility response coordinators and the community response coordinator to persons designated in the emergency plan and to the public that a release has occurred . . . (5) Methods for determining the occurrence of a release and the area or population to be affected by such release . . . (6) A description of emergency equipment and facilities in the community and at each facility . . . and identification of the persons responsible for such equipment and facilities . . . (7) Evacuation plans . . . (8) Training programs, including schedules for training of local emergency response and medical personnel . . . and (9) Methods and schedules for exercising the emergency plan."

The Act requires facility owners and operators to promptly provide local emergency planning committees with any information the committees need to develop and implement the emergency plans. Failure to provide requested information may result in an EPA fine of no more than $25,000 per day.

The Act presently does not cover radioactive materials because these are not listed in the Statutory reference (Chemical Emergency Preparedness Program, USEPA, November 1985, Revision 1, 9223.9–1A, available from EPA). However, a comparison of the content of a licensee's radiological emergency plan as would be required by this proposed rule indicates that the information likely to be requested from facility owners and operators by local emergency response committees if radiological hazards were covered would be contained in plans that meet the NRC's proposed rule.

A preliminary review of the EPA reference listed chemicals indicates that any NRC materials licensee that would be subject to radiological emergency planning for releases of radioactive materials will likely be subject to the new law. It is also highly likely that several hundred, if not thousands, of other materials licensees, that would not be subject to radiological emergency planning, will be subject to the new law. The new law is more comprehensive, detailed, and demanding than any program contemplated or recommended by the NRC staff for offsite emergency planning for nonradiological chemical

hazards. State and local participation in the emergency response program is mandatory, and the issuance of other permits and licenses to a chemical facility operator is not made contingent upon facility compliance. Rather, facility compliance is expected because of heavy civil penalties for failure to abide by the recordkeeping, reporting and notification provisions of the Act.

The NRC staff, accordingly, believes that the obligation of NRC to ensure adequate emergency planning and response for release offsite of hazardous chemicals can be met by requiring that applicants for licenses and for license renewals who would be subject to the radiological emergency planning requirements being proposed demonstrate and maintain substantial compliance with the Emergency Planning and Community Right-To-Know Act of 1986. Therefore, the proposed rule would require NRC licensees having the potential for significant offsite releases of radioactive materials to also demonstrate compliance with the requirements of the Emergency Planning and Community Right-To-Know Act of 1986 with respect to hazardous chemicals they may possess.

Licensees that would not be required by the rule to have an emergency plan for licensed material also would not be required to demonstrate to NRC compliance with the Emergency Planning and Community Right-to-Know Act of 1986. The proposed rule is directed toward and would affect only those licensees with the potential for a significant release of licensed radioactive material, taking into account both the radioligical and chemical toxicity of the licensed material. Undoubtedly, many NRC licensees who would not be covered by the proposed rule possess in excess of the threshold quantities of some hazardous chemical. The NRC in this rulemaking has not made a finding that those hazardous chemicals do not require emergency preparedness. Rather, the licensees are still required by EPA to comply with the requirements of the Emergency Planning and Community Right-to-Know Act of 1986 and would be subject to severe civil and criminal penalties for failure to comply.

Uranium hexafluoride production facilities are covered by the Act because they possess hydrogen fluoride and fluorine, both of which are on the list of hazardous chemicals. The local emergency planning committee for each area is required by the Act to decide, among other things, the area or population that could be affected by a release as well as procedures for timely notification of the public. NUREG–1140 recommended a distance of one mile from the release point as the area affected. This distance is based on U.S. Department of Transportation criteria for releases of hazardous chemicals in transport accidents. The criteria are those used by the Johns Hopkins University Laboratory Applied Physics Laboratory to derive the emergency action distances given in "Hazardous Materials-Emergency Response Guidebook," U.S. Department of Transportation Report DOT–P5800.2, 1980. However, the local emergency planning committees may select any distance of criteria they consider appropriate. In addition, the local emergency preparedness committees also select the means of notifying the public.

*Lessons Learned From a Uranium Hexafluoride Release*

On January 4, 1986, a cylinder filled considerably above its 14-ton capacity with uranium hexafluoride ruptured while being heated at the Sequoyah Fuels Corporation facility in Gore, Oklahoma. One worker died and several other workers were injured. The death and injuries were caused by exposure to hydrogen flouride, produced by a reaction of the uranium hexafluoride with airborne moisture.

After the accident, the NRC formed a Lessons-Learned Group that reviewed the accident and recommended improvements. (See "Release of $UF_6$ from a Ruptured Model 48Y Cylinder at Sequoyah Fuels Corporation Facility: Lessons-Learned Report," NRC report NUREG–1198, June 1986.) A number of the recommendations are relevant to this proposed rule and are discussed here. Readers wanting to know why the recommendations were made should refer to NUREG–1198.

*Recommendation 3.1.1.2. (1).* "The individuals responsible for development, maintenance, updates, and implementation of the contingency plan (i.e., the emergency plan) should be clearly identified at both the corporate and site levels."

*Resolution.* The recommendation was adopted in the proposed rule. The proposed rule would require each plan to describe the responsibilities of the licensee's personnel should an accident occur including responsibilities for developing, maintaining, and updating the plan.

*Recommendation 3.1.1.2 (2).* "Audits of contingency plan implementation should be conducted by individuals not having direct implementation responsibility, and the audits should include evaluation of the appropriateness of the plan, procedures, facilities, equipment (including location of facilities and equipment), training and periodic exercise in the spectrum of accidents or emergencies possible at the facility."

*Resolution.* The recommendation was generally adopted in the proposed rule by requiring that exercises be evaluated by individuals not having direct implementation responsibility for the plan. Audits of exercises should provide a good indication of how well the plan would really work in an emergency.

*Recommendation 3.1.2.2 (1).* "A systematic training program should be established to familiarize all plant personnel with the general contents of the contingency plan and appropriate response actions. Specific training should be provided to individuals (both site and corporate) who might be assigned specific response function and responsibilities."

*Resolution.* The recommendation was adopted in the proposed rule. The proposed rule would require the licensee to train workers how to respond in an emergency.

*Recommendation 3.1.2.2 (2).* "Offsite organizations who might be requested to support an emergency response should be invited to attend training specific to the response expected."

*Resolution.* The recommendation was adopted in the proposed rule. The proposed rule would require the licensee to offer instruction and orientation tours to fire, police, medical, and other offsite emergency personnel.

*Recommendation 3.1.3.2. (1).* "Drills and exercises involving substantial staff response to a spectrum of simulated emergency situations should be conducted periodically. The simulated events should be based on prepared scenarios to demonstrate specific objectives, and they should be observed and critiqued by qualified personnel. Any deficiencies observed should be evaluated and responsibility for corrective action assigned and followed."

*Resolution.* The recommendation was adopted in the proposed rule. The proposed rule would require quarterly communication checks and annual exercises to test response to simulated emergencies. Audits of exercises would be required by personnel having no direct implementation responsibility. Deficiencies in the plan would have to be corrected.

*Recommendation 3.1.3.2. (2).* "Drills and exercises should periodically include the offsite organizations which might be called upon for support (local

police, civil defense, health departments, etc.), as well as corporate personnel."

*Resolution.* The recommendation was adopted in the proposed rule. The proposed rule would require the licensee to invite offsite response organizations to participate in the licensee's exercises.

*Recommendation 3.1.4.2 (1).* "Consider requiring a designated Emergency Operation Center (EOC) onsite and an alternate EOC either offsite or in another onsite location which is unlikely to be impacted by the incident. The EOC and alternate EOC should contain adequate communications capability and accommodations to provide for coordination of the onsite emergency response activities and notifications and coordination with offsite supporting organizations. The EOC or alternate EOC should be accessible 24 hours a day."

*Resolution.* The proposed rule would require a control point rather than an emergency operations center. The term emergency operations center was intentionally not used in the rule because that term has a specific meaning in nuclear power plant emergency preparedness that would be inappropriate for the smaller, less complex, and generally faster moving accidents that fuel cycle and other radioactive material licenses would have to respond to. The proposed rule would also require the ability to perform notification and coordination even if parts of the facility were unusable due to the accident.

*Recommendation 3.1.4.2 (2).* "Locations of emergency equipment and kits should be reviewed by the NRC and licensees so that in the event of an emergency in a given facility location, or inaccessiblity of a large portion of the facility, access to adequate emergency equipment and facilities, including emergency decontamination facilities, can be assured. Equipment caches should be in multiple locations."

*Resolution.* The staff agrees with this recommendation and the proposed rule would require that notification of offsite response organizations and coordination of onsite response efforts be possible even if part of the facility or equipment is unavailable due to the accident. The prosed rule has no other specific requirements for multiple equipment caches, however. The exact locations of emergency equipment is appropriate for consideration when NRC reviews the licensee's submitted emergency plan.

*Recommendation 3.1.4.2 (3).* "Consideration should be given to providing strategically placed 'air capsule escape units' to allow workers to escape from portions of a facility in which there exists a potential for exposure to toxic fumes for more than a few moments."

*Resolution.* This recommendation was not specifically adopted in the proposed rule. The proposed rule would require means and equipment for mitigating the consequences of accidents, including those provided to protect workers onsite. However, in general, air capsule escape units are not believed to be useful or practical for accidents at fuel cycle and other radioactive material facilities. In most cases it is believed that the quickest and best way to escape the accident is to leave the area as quickly as possible. In the case of fires and explosions, attempted use of such capsules could increase hazard. Rather than adopt a general requirement, the use of air capsule escape units could be considered on a case-by-case basis for special situations in which ordinary means of escape are not available.

*Recommendation 3.1.4.2 (4).* "The facility comunications system should include a radio system compatible with local police or other offsite responder communictions systems. In addition, the licensee should attempt to identify beforehand to local and state police, insofar as practical, offsite individuals who would be called on for support in the event of an emergency at the site. Radio communications with police officials during an emergency can resolve specific issues."

*Resolution.* This recommendation was not specifically adopted in the proposed rule. The proposed rule would require the licensee to provide a means of notifying offsite response organizations, but whether that would include radios is appropriate for negotiation between the licensee and the offsite response organizations on a case-by-case basis. In general, the NRC would recommend radios but would consider other means of maintaining adequate communication. The rule also requires the licensee to provide appropriate instructions to offsite response organizations. The question of lists of individuals who might be called to the site will be discused in a guide on this subject.

*Recommendation 3.2.1.2 (1).* "The events described in the radiological contingency plan required of certain NMSS licensees should be reviewed to develop a consistent analysis and classification of events. The resulting classification should be used in NRC decision criteria to initiate transition of the NRC from a normal mode to higher response modes."

*Resolution.* This recommendation was adopted. The proposed rule includes a classification system for accidents.

*Recommendation 3.3.2.1.2 (1).* "Personnel of local agencies that might be called upon to respond to emergencies should be given training."

*Resolution.* This recommendation was adopted in the proposed rule. The licensee would be required to offer to police, fire, medical and other offsite emergency personnel information on how to respond to an accident as well as orientation tours of the facility.

*Recommendation 3.3.3.2.* "Hospital staff who might reasonably be expected to deal with injuries from a major accident should be trained to deal with all aspects of the injuries. Radiological plans and their use in drills are desirable."

*Resolution.* This recommendation was adopted in the proposed rule. The rule would require the licensee to offer instructions and orientation tours to medical personnel and would require the licensee to invite medical personnel to participate in the licensee's exercises.

*Recommendation 3.3.4.2.* "Radiological contingency planning should include site control plans and methods for implementing site access control. Local law enforcement groups that might be called on in an emergency should be trained."

*Resolution.* The NRC agrees with this recommendation, and the propsed rule would require means and equipment for mitigation the consequences of accidents. Site access control plans would be one means of mitigating the consequences of accidents and would be contained in the licensee's plans, as appropriate, for the particular site. The rule would require the licensee to offer instructions and orientation tours to police personnel

*Proposed requirements.* Licensees would be given the option of demonstrating that emergency plans for responding to accidental releases are not needed because doses would not exceed 1 rem effective dose equivalent as a result of a creditble accident at their specific facility. The table of radionuclides in the proposed regulations was developed using conservative, pessimistic, or "worst-case" assumptions. Each assumption is possible at some "generic" facility, but may not be realistic for a specific actual facility. Thus the licensee is given the option of analyzing accidents for the actual existing facility and determining site-specific maximum credible releases. If after the review, the NRC staff agrees that the resulting doses would be below 1 rem, an emergency plan for responding to the release would not be required.

The licensee also has the option of revising facility design, operating

procedures, or possession limits to reduce potential doses below 1 rem effective dose equivalent in lieu of perparing an emergency plan for responding to an accidental release.

If an emergency plan for responding to an accidental release is needed, it would include:

(1) *Facility description.* A brief description of the licensee's facility and area near the site. The purpose is to provide the reader with enough basic information to evaluate thelicensee's plan. Significant nearby facilities, such as schools, should be included in the site area description.

(2) *Types of accidents.* An identification of each type of accident for which protective actions might be needed. Typically, the accidents of concern are fires involving radioactive materials, releases of large quantities of uranium hexaflouride, and criticalities involving high-enriched uranium or plutonium. Releases of hazardous chemcials that could affect the radiological safety of the facility and result in releases of or exposure to radioactive materials must also be considered.

(3) *Classification of accidents.* A classification system for classifying accidents as site area emergencies or general emergencies. These classes are adopted from nuclear power plant emergency planning, but modified for fuel cycle and other radioactive material licensees. A general emergency means releases that may cause doses offsite exceeding 1 rem effective dose equivalent or 5 rems to the thyroid have occured, are in progress, or may occur. In this case, offsite actions may be needed. A site area emergency means events are in progress or have occurred that reaquire a response from offsite organizations, but doses woud not be expected to exceed 1 rem effective dose equivalent or 5 rems thyroid.

(4) *Detection of accidents.* Identification of the means of detecting each type of accident in a timely manner. The means of detection could include one or more of the following: fire alarms, criticality alarms, visual observation, stack monitors, or radiation monitors, as appropriate.

(5) *Mitigation of consequences.* A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment. Mitigating actions could include actions to reduce or stop the release and actions to protect workers such as evacuating the building or decontaminating personnel. Means for limiting releases could include sprinkler systems and other fire suppression systems, fire detection systems, physical separation of material, storage in fire-resistant containers, use of fire-resistant building materials, fire-fighting capabilities, procedures prohibiting flammable materials in areas where radioactive materials are found, filter systems, use of water sprays to knock-down $UF_6$, and others.

Equipment might include respiratory protection equipment for employees, evacuation alarms, and equipment possessed by the licensee to reduce or stop the release. It would not include equipment brought to the site by offsite response organizations.

This item is not intended to require backfits or design changes. Plant design is subject to a more complete safety review when the license application is reviewed.

(6) *Assessment of releases.* A brief description of the methods and equipment to assess releases of radioactive materials.

This does not mean real-time assessment. It means measurements made after the release has occurred to determine how much material was released. The NRC does not believe that real-time estimates of releases are generally possible for the types of accidents of concern. Significant releases are not likely to occur by way of monitored release paths. Monitored paths would generally contain filters that would reduce any release to negligible levels. Furthermore, if a release were detected from a monitored release path there would generally be no way to determine that additional material was not being released by way of unmonitored paths. In addition, even if one could assure that the entire release were monitored so that a release rate could be determined, there would be no way to know the duration of the release or whether the release rate would subsequently rise or fall greatly. This situation is different from that at nuclear power plants where the containment can be sampled and therefore the entire inventory subject to release can be calculated. Beyond this, measurements of releases would generally be made much too late to be of any usefulness during the emergency response. The recommended approach therefore is to estimate source terms for each accident type in the *planning* and then decide in the planning what recommendations would be made to offsite response organizations for each accident type. In summary, one cannot wait until a potential accident is underway to decide what recommendations should be made. There is not enough time during the accident.

(7) *Responsibilities.* A brief description of the responsibilities of licensee personnel should an accident occur, including the identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan. In general, responsibilities should be described for the position rather than by naming individuals so that personnel changes do not require amending the emergency plan. Offsite response organizations would generally include fire, police, medical, state radiological safety organizations, and perhaps other emergency personnel. (Agreement State licensees would notify the State rather than the NRC.)

(8) *Notification and coordination.* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The means of notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify NRC immediately after notification of the appropriate response organizations and not later than one hour after the licensee declares an emergency.

In general, the licensee would be expected to be able to contact the local police by radio so that adequate two-way communication could be maintained throughout the accident. In a few cases, the licensee may want to seek assistance from the Department of Energy under the Federal Radiological Emergency Response Plan (see 50 FR 46524; November 8, 1985).

(9) *Information to be communicated.* A brief description of the types of information on facility status, radioactive releases, and recommended actions, if necessary, to be given to offsite response organizations and to the NRC.

(10) *Training.* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel.

Instructions on how to deal with the radiation release should be appropriate for the personnel and should clearly state the specific actions expected of

them and things they should and should not do. After the more comprehensive initial training, refresher briefings are suggested annually. A desirable time would be soon after the exercise has been conducted so that training deficiencies can be corrected and recommendations of the audits relevant to training can be implemented. Refresher briefings for offsite response organizations should be conducted at a frequency considered appropriate by those organizations.

(11) *Recovery.* A brief description of the means of restoring the facility to a safe condition after an accident. Detailed procedures are not appropriate because the exact nature of the accident cannot be forseen. Instead general criteria are appropriate.

(12) *Exercises and audits.* Provisions for conducting quarterly communications checks with offsite response organizations and annual onsite exercises to test response to simulated emergencies. The licensee shall invite offsite response organizations to participate in the annual exercises. Exercises must use scenarios not known to exercise participants. An Audit of each exercise must be conducted by individuals not having direct implementation responsibility for the plan. Audits of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the audits must be corrected.

The exercises are for the purpose of familiarizing the licensee personnel with the emergency plan, training them in the use of site-specific response procedures, and for identifying and correcting deficiencies in the plan. All deficiencies in the plan must be corrected, including problems with procedures, training, staffing, equipment, etc. Participation by offsite personnel is not required. Annual means once each calendar year, at any time during the year.

The NRC would like comments specifically on whether exercises should be required annually or once every two years. The issue is whether the increased practice would improve the quality of the response sufficiently to make annual exercises worth their cost.

The case in favor of annual exercises can be summarized as follows. Exercises are valuable training opportunities that not only help to train personnel, but help identify deficiencies in emergency response plans and procedures. Since it is generally impracticable to exercise all portions of a program during each exercise, it is important to conduct exercises often enough to eventually cover all aspects of a program over a reasonable time period. Exercising annually is sufficient to meet this need. Experience has taught that by conducting exercises, portions of the plan and procedures that were thought to be adequate can be found to be deficient. For example, during the December 17, 1986 exercise at Allied Chemical, an emergency action level that initiates a general emergency was determined to be inappropriate and had to be revised. If not for the opportunity to actually use the emergency action levels during the exercise, this inconsistency could have persisted for many years undetected. Therefore, it is important to have annual exercises as a method to identify problem areas. In addition, personnel need these opportunities to actually demonstrate their capabilities. With several people trained to fill each emergency response position, an individual could go several years before having an opportunity to participate, even with an annual exercise frequency. With a two year frequency this could lead to personnel not having an opportunity to participate in an exercise for a considerable number of years.

The case in favor of less than annual exercises, for example, biennual exercises can be summarized as follows. While nuclear power plants exercise annually, the potential hazard from a radioactive materials facility is enormously lower and the complexity of the needed response is much less. Therefore, having the same exercise frequency as nuclear power plants is not justified in terms of the potential hazard nor needed to maintain an adequate level of preparedness. In addition, annual exercises could place an excessive burden on offsite response organizations. This burden may be difficult for them to meet especially considering that they may have to participate in many other exercises required by the Emergency Planning and Community Right-to-Know Act of 1986.

(13) *Hazardous chemicals.* A description sufficient to demonstrate the applicant's compliance with the Emergency Planning and Community Right-to-Know Act of 186, Title III, Pub. L. 99–499, if applicable to the applicant's activities at the proposed place of use of the radioactive material. This should include a summary of the information provided to the local emergency committee and to whom and when the information was sent.

In brief, the licensee is required to give prompt notification to appropriate offsite response organizations, providing these organizations with information on the situation and recommended actions, and assuring that these officials have been offered instruction in advance. In addition, in order to assure that offsite response organizations expected to respond to an accident have been consulted in the formulation of the plan, the licensee must allow such offsite organizations 60 days to comment on the plan and must provide these comments to the NRC.

The NRC has also considered the need for: (1) Formal public information programs for people living close to licensed facilities who might be advised to take protective actions if an accident occurred; and (2) formal notification of the potentially affected public in the event on an accident. The NRC has concluded that the need for any actions of this type are best left to the local offsite emergency response organizations and officials who have jurisdiction and responsibility for protecting the people in the vicinity of the facility. This approach has been adopted for hazardous chemicals in the Emergency Planning and Community Right-to-Know Act of 1986. The NRC will encourage State and local authorities to consider the need for such actions and to work with the licensee on a case-by-case basis.

Most, if not all, of the licensees who would be required to submit an emergency plan by this regulation have already submitted onsite Radiological Contingency Plans under the orders issued in 1981. Those plans already include essentially the same information that would be required under the new regulation, but most of the plans are likely to require some changes to meet the new rule. The NRC plans to allow licensees who have submitted Radiological Contingency Plans one year to make the necessary changes. Alternatively, these licensees could submit an evaluation showing that an emergency plan is not necessary. The changes or evaluation would then have to be submitted to the Commission as provided for in the proposed rule. The NRC would not expect those licensees to resubmit their entire plans when submitting changes. Rather, at the time of renewal of their licenses, licensees would resubmit their entire plan revised to conform to the new rule as a part of their renewal application. Licensees covered by the rule who have not submitted Radiological Contingency Plans would be allowed one year to submit either an emergency plan or an evaluation showing that an emergency plan is not needed.

The NRC will consult with FEMA as appropriate under the terms of the

FEMA–NRC memorandum of understanding. Agreement States receiving plans would also be free to consult FEMA if they desired. NRC encourages licensees to work with State governments to develop comprehensive emergency plans for other hazards.

The staff identified about 60 NRC licensees who would be covered by the rule as proposed. The staff estimated, however, that about 15 of those licensees would probably lower their possession limits so they would not be covered and that about 15 would probably demonstate that the 1-rem dose is not plausible. Realistically, probably no more than about 30 licensees would actually submit a emergency plan. Perhaps about 5 to 10 Agreement State licensees would also eventually be covered because the new requirements would be a matter of compatability with Agreement States.

**Finding of No Significant Environmental Impact: Availability**

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The rule not affect the probability or the size of accidental radioactive releases. It might is some cases reduce the doses people near the facility site could receive. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The environmental assessment and finding of no significant impact are contained in Section 4.3 of "A Regulatory Analysis for Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees," NUREG–1140. Single copies are available without charge upon written request from NRC Distribution Section, Office of Information Resources Management, USNRC, Washington, DC 20555.

**Paperwork Reduction Act Statement**

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of these requirements.

**Regulatory Analysis**

The Commission has prepared a regulatory analysis (NUREG–1140) on this proposed regulation. The analysis examines the accident scenarios considered by the Commission (see Section 2) as well as the costs and benefits of actions considered (see Section 3). The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis (NUREG–1140) may be obtained without charge upon written request from: Distribution Section, Office of Information Resources Management, USNRC, Washington, DC 20555.

As indicated previously, the Commission in particularly interested in receiving public comments on the regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities.

The proposed rule would required development and implementation of emergency plans by licensees who are authorized to possess significant amounts of radioactive material. These companies do not fall within the definition of a small business found in the Small Business Act, 15 U.S.C. 632, or within the small business size standards set forth in 13 CFR Part 121. The proposed rule affects about 60 out of some 9,000 licensees. However, the staff believes that about 15 of these licensees could amend their licenses to reduce quantities of material they are authorized to possess and about 15 could perform an evaluation showing no need to be covered by the rule. Realistically, probably no more than about 30 licensees would actually submit emergency plans. These 30 licensees are essentially identical to those issued orders to require onsite contingency plans in 1981. An additional 5 to 10 Agreement State licensees might have to submit emergency plans because the rule would be made an item of compatability with Agreement State programs.

Thus, the proposed rule would not impose a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act of 1980.

Any small entity affected by this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact, should notify the Commission of this in a comment that indicates the following:

(a) The small entity's size in terms of annual income or revenue and number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the small entity as compared to that on a larger entity;

(c) How the proposed regulations could be modified to take into account the entity's differing needs or capabilities.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

**Additional Views of Commissioners Asselstine and Carr**

Commissioner Asselstine stated, "I approve this proposed rule as far as it goes. However, I believe that in light of the fast-moving nature of the accidents of concern for the types of facilities covered by this proposed rule, the Commission should give further consideration to requiring a formal notification system for promptly alerting the public within an appropriate emergency planning zone (EPZ) in the event of an accident. Staff studies and experience from the January 4, 1986 accident at the Sequoyah Fuels Corporation facility demonstrate the necessity for quick decisions and prompt actions in the case of an emergency. The regulatory analysis prepared in support of this rule (NUREG–1140) states that 'The goal should be to make decisions on protective actions and start implementing these decisions within 5 or 10 minutes of discovering the accident.' Releases are expected to end within half an hour to an hour. It appears to me that in view of these circumstances, prompt notification of the affected public to enable individuals to take appropriate and timely protective actions is a sensible approach which the Commission should require. Along with requiring prompt notification system, I believe provisions for annual dissemination of information to the public located within an EPZ relating to notification methods and protective actions is also necessary. I would appreciate comments on these suggestions."

Commissioner Carr stated, "I agree that the proposed rulemaking should be published for public comment, but I am concerned about the conservatism used

by the staff in its accident dose calculations and its use of the 1-rem lower end of the range for protective action given the Commission policy (1985 Policy and Planning Guidance) that emergency planning should be based on realistic assumptions."

Commissioner Carr requests public comments on these concerns.

**List of Subjects**

*10 CFR Part 30*

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 40*

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

*10 CFR Part 70*

Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirement, Scientific equipment, Security measures, Special nuclear material.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, and 70.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 68 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.34(b), (c), and (f), 30.41(a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.36, 30.51, 30.52, 30.55, and 30.56(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.4, all definitions are alphabetized, the lettering system for the definitions is deleted, and three new definitions are added alphabetically to read as follows:

**§ 30.4 Definitions.**

* * * * *

"Effective dose equivalent" means the sum of the product of the dose equivalent to the organ or tissue and the weighting factors applicable to each of the body organs or tissues that are irradiated. Weighing factors are: 0.25 for gonads, 0.15 for breast, 0.12 for red bone marrow, 0.12 for lungs, 0.03 for thyroid, 0.03 for bone surface, and 0.06 for each of the other five organs receiving the highest dose equivalent.

"General emergency" means events may occur, are in progress, or have occurred that could cause the release of radioactive materials sufficient to cause doses offsite exceeding 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

"Site area emergency" means events may occur, are in progress, or have occurred that require offsite response but are not expected to cause a release of radioactive materials sufficient to cause doses offsite to exceed 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

3. In § 30.32, a new paragraph (g) is added to read as follows:

**§ 30.32 Application for specific licenses.**

* * * * *

(g)(1) Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in § 30.72, "Schedule C—Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release," must contain either:

(i) An evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials under reasonable and plausible circumstances would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(2) One or more of the following factors may be used to support an evaluation submitted under paragraph (g)(1)(i) of this section:

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in § 30.72 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineer safety features in the facility would cause the lease fraction to be lower than shown in § 30.72;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in § 30.72; or

(vii) Other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive material submitted under paragraph (g)(1)(ii) of this section must include the following information:

(i) *Facility description:* A brief description of the licensee's facility and area near the site.

(ii) *Types of accidents:* An identification of each type of accident for which protective actions may be needed.

(iii) *Classification of accidents:* A classification system for classifying accidents as site area emergencies or general emergencies.

(iv) *Detection of accidents:* Identification of the means of detecting each type of accident in a timely manner.

(v) *Mitigation of consequences:* A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) *Assessment of releases:* A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) *Responsibilities:* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(viii) *Notification and coordination:* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of

BEST COPY AVAILABLE

contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify NRC immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.

(ix) *Informatioin to be communicated:* A brief description of the types of information on facility status, radioactive releases, and recommended actions, if necessary, to be given to offsite response organizations and to the NRC.

(x) *Training:* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(xi) *Safe shutdown:* A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) *Exercises and audits:* Provisions for conducting quarterly communications checks with offsite response organizations and annual onsite exercises to test response to simulated emergencies. Quarterly communications checks will offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the annual exercises.

Participation of offsite response organizations in annual exercises although strongly recommended is not required. Exercises must use scenarios not known to exercise participants. The license shall conduct an audit of each exercise using individuals not having direct implementation responsibility for the plan. Audits of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the audits must be corrected.

(xiii) *Hazardous chemicals:* A description sufficient to demonstrate the applicant's compliance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499, if applicable to the applicant's activities at the proposed place of use of the byproduct material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to NRC. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

4. In § 30.34, a new paragraph (f) is added to read as follows:

**§ 30.34 Terms and conditions of licenses.**

* * * * *

(f) Licensees required to submit emergency plans by § 30.32(g) shall follow the emergency plan approved by the Commission. The licensee may change the approved plan without Commission approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the appropriate NRC Regional Office specified in § 30.6 within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan shall not be implemented without prior application to and prior approval by the Commission.

* * * * *

5. A new § 30.72 is added to read as follows:

**§ 30.72 Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.**

| Radioactive material[1] | Release fraction | Quantity (curies) |
|---|---|---|
| H–3 | .5 | 20,000 |
| C–14 | .5 | 1,000 |
| Na–22 | .01 | 9,000 |
| Na–24 | .01 | 10,000 |
| P–32 | .5 | 100 |
| P–33 | .5 | 1,000 |
| S–35 | .5 | 900 |
| Cl–36 | .01 | 5,000 |
| K–42 | .01 | 9,000 |
| Ca–45 | .01 | 20,000 |
| Sc–46 | .01 | 3,000 |
| Ti–44 | .01 | 100 |
| V–48 | .01 | 7,000 |
| Cr–51 | .01 | 300,000 |
| Mn–56 | .01 | 60,000 |
| Fe–55 | .01 | 40,000 |
| Fe–59 | .01 | 7,000 |
| CO–60 | .001 | 5,000 |
| Ni–63 | .01 | 20,000 |
| Cu–64 | .01 | 200,000 |
| Zn–65 | .01 | 5,000 |
| Ge–68 | .01 | 2,000 |
| Se–75 | .01 | 10,000 |
| Kr–85 | 1.0 | 6,000,000 |
| Sr–89 | .01 | 3,000 |
| Sr–90 | .01 | 90 |
| Y–91 | .01 | 2,000 |
| Zr–93 | .01 | 400 |
| Zr–95 | .01 | 5,000 |
| Nb–94 | .01 | 300 |
| Mo–99 | .01 | 30,000 |
| Tc–99 | .01 | 10,000 |
| Tc–99 | .01 | 400,000 |
| Ru–106 | .01 | 200 |
| Ag–110m | .01 | 1,000 |
| Cd–109 | .01 | 1,000 |
| Cd–113 | .01 | 50 |
| In–114m | .01 | 1,000 |
| Sn–113 | .01 | 10,000 |
| Sn–123 | .01 | 3,000 |
| Sn–126 | .01 | 1,000 |
| Sb–124 | .01 | 4,000 |
| Sb–126 | .01 | 6,000 |
| Te–127m | .01 | 5,000 |
| Te–129m | .01 | 5,000 |
| I–125 | .5 | 7 |
| I–131 | .5 | 5 |
| Xe–133 | 1.0 | 900,000 |
| Cs–134 | .01 | 2,000 |
| Cs–137 | .01 | 3,000 |
| Ba–133 | .01 | 10,000 |
| Ba–140 | .01 | 30,000 |
| Ce–141 | .01 | 10,000 |
| Ce–144 | .01 | 300 |
| Pm–145 | .01 | 4,000 |
| Pm–147 | .01 | 4,000 |
| Sm–151 | .01 | 4,000 |
| Eu–152 | .01 | 500 |
| Eu–154 | .01 | 400 |
| Eu–155 | .01 | 3,000 |
| Gd–153 | .01 | 5,000 |
| Tb–160 | .01 | 4,000 |
| Ho–166m | .01 | 100 |
| Tm–170 | .01 | 4,000 |
| Hf–172 | .01 | 400 |
| Hf–181 | .01 | 7,000 |
| Ir–192 | .001 | 40,000 |
| Au–198 | .01 | 30,000 |
| Hg–203 | .01 | 10,000 |
| Pb–210 | .01 | 1 |
| Bi–207 | .01 | 5,000 |
| Bi–210 | .01 | 600 |
| Po–210 | .1 | 500 |
| Ac–228 | .001 | 4,000 |
| Np–237 | .001 | 2 |
| Am–241 | .001 | 2 |
| Am–242 | .001 | 2 |
| Am–243 | .001 | 2 |
| Cm–242 | .001 | 80 |
| Cm–243 | .001 | 3 |
| Cm–244 | .001 | 4 |
| Cm–245 | .001 | 2 |
| Cf–252 | .0019 | 9(20 mg) |
| Any other beta-gamma emitter | .01 | 10,000 |
| Mixed fission products | .01 | 1,000 |
| Mixed corrosion products | .01 | 10,000 |
| Contaminated equipment bega-gamma | .001 | 10,000 |
| Irradiated materiala, any form other than solid noncombustible | .01 | 1,000 |
| Irradiated material, solid noncombustible | .001 | 10,000 |
| Mixed radioactive waste, beta-gamma | .01 | 1,000 |

| Radioactive material[1] | Release fraction | Quantity (curies) |
|---|---|---|
| Package mixed waste, beta-gamma[2] | .001 | 10,000 |
| Any other alpha emitter | .001 | 2 |
| Contaminated equipment, alpha | .0001 | 20 |
| Packaged waste, alpha[2] | .0001 | 20 |
| Combinations of radioactive materials listed above[1] | | |

[1] For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Schedule C exceeds one.

[2] Waste packaged in Type B containers does not require an emergency plan.

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

6. The authority citation for Part 40 is revised to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 112, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35 (a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.5, 40.25(c) and (d)(3) and (4), 40.28(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 40.4, all definitions are alphabetized, the lettering system for the definitions is removed, and two new definitions are added alphabetically to read as follows:

**§ 40.4 Definitions.**

* * * * *

"General emergency" means events may occur, are in progress, or have occurred that could cause the release of radioactive materials sufficient to cause doses offsite exceeding 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

"Site area emergency" means events may occur, are in progress, or have occurred that require offsite response but are not expected to cause a release of radioactive materials sufficient to cause doses offsite to exceed 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

8. A new paragraph (i) is added to § 40.31 to read as follows:

**§ 40.31 Applications for specific licenses.**

* * * * *

(i)(1) Each application to possess uranium hexafluoride in excess of 50 kilograms in a single container or 1000 kilograms total must contain either:

(i) An evaluation showing that the maximum intake of uranium by a member of the public due to a release under reasonable and plausible circumstances would not exceed 2 milligrams; or

(ii) An emergency plan for responding to the radiological hazards of an accidental release of source material and to any associated chemical hazards directly incident thereto.

(2) One or more of the following factors may be used to support an evaluation submitted under paragraph (i)(1)(i) of this section:

(i) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(ii) Facility design or engineered safety features in the facility would reduce the amount of the release; or

(iii) Other factors appropriate for the specific facility.

(3) An emergency plan submitted under paragraph (i)(1)(ii) of this section must include the following:

(i) *Facility description:* A brief description of the licensee's facility and area near the site.

(ii) *Types of accidents:* An identification of each type of accident for which protective actions may be needed.

(iii) *Classification of accidents:* A classification system for classifying accidents as site area emergencies or general emergencies.

(iv) *Detection of accidents:* Identification of the means of detecting each type of accident in a timely manner.

(v) *Mitigation of consequences:* A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) *Assessment of release:* A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) *Responsibilities:* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(viii) *Notification and coordination:* A commitment to and a brief description of the means of promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify NRC immediately after notification of the offsite response organizations and not later than one hour after the licensee declares an emergency.

(ix) *Information to be communicated:* A brief description of the types of information on facility status, radioactive releases, and recommended actions, if necessary, to be given to offsite response organizations and to the NRC.

(x) *Training:* A brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(xi) *Safe shutdown:* A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) *Exercises and audits:* Provisions for conducting quarterly communications checks with offsite response organizations and annual onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the annual exercises.

Participating of offsite response organizations in annual exercises although strongly recommended is not required. Exercises must use scenarios not known to exercise participants. The licensee shall conduct an audit of each exercise using individuals not having direct implementation responsibility for the plan. Audits of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the audits must be corrected.

(xiii) *Hazardous chemicals:* A description sufficient to demonstrate the applicant's compliance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499, if applicable to the applicant's activities at the proposed place of use of the source material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the NRC. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

9. In § 40.35, a paragraph (f) is added to read as follows:

**§ 40.35 Conditions of specific licenses issued pursuant to § 40.34**

* * * * *

(f) Licensees required to submit emergency plans by § 40.31(i) shall follow the emergency plan approved by the Commission. The licensee may change the plan without Commission approval if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within six months afte the change is made. Proposed changes that decrease the effectiveness of the approved emergency plan shall not be implemented without prior application to and prior approval by the Commission.

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

10. The authority citation for Part 70 continues to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32(a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (41 U.S.C. 2201(b)); §§ 70.7, 70.22a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 69 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59 and 70.60 (b) and (c) are issued under sec. 161o, 69 Stat. 950, as amended (42 U.S.C. 2201(o)).

11. In § 70.4, all definitions are alphabetized, the lettering system for the definitions is removed, and three new definitions are added alphabetically to read as follows:

**§ 70.4 Definitions.**

* * * * *

"Effective dose equivalent" means the sum of the products of the dose equivalent to the body organ or tissue and the weighting factors applicable to each of the body organs or tissues that are irradiated. Weighting factors are: 0.25 for gonads, 0.15 for breast, 0.12 for red bone marrow, 0.12 for lungs, 0.03 for thyroid, 0.03 for bone surface, and 0.06 for each of the other five organs receiving the highest dose equivalent.

"General emergency" means events may occur, are in progress, or have occurred that could cause the release of radioactive materials sufficient to cause doses offsite exceeding 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 miligrams of soluble uranium.

* * * * *

"Site area emergency" means events may occur, are in progress, or have occurred that require offsite response but are not expected to cause a release of radioactive materials sufficient to cause doses offsite to exceed 1 rem effective dose equivalent or 5 rems to the thyroid or an intake of 2 milligrams of soluble uranium.

* * * * *

12. In § 70.22, paragraph (i) is revised to read as follows:

**§ 70.22 Contents of applications.**

* * * * *

(i)(1) Each application to possess enriched uranium or plutonium in quantities such that a criticality accident alarm system is required, uranium hexafluoride in excess of 50 kilograms in a single container or 1000 kilograms total, or in excess of a 2 curies of plutonium in unsealed form or on foils or plated sources, must contain either:

(i) An evaluation showing that the maximum dose to a member of the public offsite due to a release of radioactive materials under reasonable and plausible circumstances would not exceed 1 rem effective dose equivalent or an intake of 2 milligrams of soluble uranium, or

(ii) An emergency plan for responding to the radiological hazards of an accidental release of special nuclear material and to any associated chemical hazards directly incident thereto.

(2) One of more of the following factors may be used to support an evaluation submitted under paragraph (i)(1)(i) of this section:

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident or to criticality because of the way it is stored or packaged;

(iii) In the case of fires or explosions, the release fraction would be lower than 0.001 due to the chemical or physical form of the material;

(iv) The solubility of the material release would reduce the dose received;

(v) The facility design or engineered safety features in the facility would cause the release fraction to be lower than 0.001;

(vi) Operating restrictions or procedures would prevent a release large enough to cause a member of the public offsite to receive a dose exceeding 1 rem effective dose equivalent; or

(vii) Other factors appropriate for the specific facility.

(3) Emergency plans submitted under paragraph (i)(1)(ii) of this section must include the following information:

(i) *Facility description:* A brief description of the licensee's facility and area near the site.

(ii) *Types of accidents:* An identification of each type of accident for which protective actions may be needed.

(iii) *Classification of accidents:* A classification system for classifying accidents as site area emergencies or general emergencies.

(iv) *Detection of accidents:* Identification of the means of detecting

each type of accident in a timely manner.

(v) *Mitigation of consequences:* A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) *Assessment of release:* A brief description of the methods and equipment to assess releases of radioactive materials.

(viii) *Responsibilities:* A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(viii) *Notification and coordination:* A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify NRC immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.

(ix) *Information to be communicated:* A brief description of the types of information on facility status, radioactive releases, and recommended actions, if necessary, to be given to offsite response organizations and to the NRC.

(x) *Training:* A Brief description of the training the licensee will provide workers on how to respond to an emergency and any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel.

(xi) *Safe shutdown:* A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) *Exercises and audits:* Provisions for conducting quarterly communications checks with offsite response organizations and annual onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the annual exercises. Participation of offsite response organizations in annual exercises although strongly recommended is not required. Exercises must use scenarios not known to exercise participants. The licensee shall conduct an audit of each exercise using individuals not having direct implementation responsibility for the plan. Audits must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the audits must be corrcted.

(xiii) *Hazardous chemicals:* A description sufficient to demonstrate the applicant's compliance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99–499, if applicable to the applicant's activities at the proposed place of use of the special nuclear material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to NRC. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

* * * * *

**§ 70.22 [Amended]**

13. In § 70.22 (i), footnote 3 is removed.

**§ 70.23 [Amended]**

14. In § 70.23(a)(11), footnote 2 is removed and reserved.

15. In § 70.32, paragraph (i) is revised to read as follows:

**§ 70.32 Conditions of licensee.**

* * * * *

(i) Licensees required to submit emergency plans in accordance with § 70.22(i) shall follow the emergency plan approved by the Commission. The licensee may change the approved plan without Commission approval if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate NRC Regional Office specified in Appendix D, Part 20 of this chapter, a copy of each change within six months after the change is made. Proposed changes that decrease the effectiveness of the approved emergency plan shall not be implemented without prior application to and prior to approval by the Commission.

* * * * *

Dated at Washington, DC, this 14th day of April, 1987.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

[FR Doc. 87–8801 Filed 4–7–87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 87–ASW–12]**

## Proposed Removal of Control Zone: Camden, AR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to remove the control zone at Camden, AR. One of the requirements to have a control zone is that hourly and special weather observations must be taken at the airport upon which the control zone is designated. This action is necessary since the required weather observations are no longer provided. This action will raise the floor of controlled airspace in the vicinity of the Harrell Field Airport, Camden, AR, to 700 feet above ground level.

**DATE:** Comments must be received on or before May 20, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–12, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Wheeler, Airspace and Procedures Branch, ASW–534, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 624–5561.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–12."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the control zone at Camden, AR. Weather observations must be taken during the times and dates a control zone is effective. Camden, AR, does not meet the criteria for retention of the control zone since Sunbelt Airlines ceased operation and no longer provides a weather observer. This action will raise the floor of controlled airspace to 700 feet above ground level in the vicinity of the Harrell Field Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures of (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones.

**The Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. § 71.171 is amended as follows:

Camden, AR [Removed].

Issued in Fort Worth, TX, on April 9, 1987.

**Larry L. Craig,**

*Assistant Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 87–8733 Filed 4–17–87; 8:45 am]

BILLING CODE 4910–13–M

---

**DEPARTMENT OF STATE**

**22 CFR Part 171**

**[SD–206]**

**The Freedom of Information Reform Act of 1986—Revision of Fees, Fee Waiver Policy, and the Law Enforcement Exemption**

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) regarding fees, fee waivers, and law enforcement records. It codifies the requirements for expeditious processing of FOIA requests which have been recognized in custom and practice since 1983 in accordance with Department of Justice guidance. It also revises the general fee schedule applicable to all requests under the FOIA, Privacy Act, Ethics in Government Act, and Executive Order 12356 as provided in Part 171.

**DATE:** Comments must be received on or before April 23, 1987.

**ADDRESSES:** Comments may be mailed to Frank M. Machak, Information and Privacy Coordinator, Room 1239, Department of State, 2201 C St., NW., Washington, DC 20520, or delivered to that office between 9:00 a.m. and 5:00 p.m., Monday through Friday. Comments received may be inspected in the Public Reading Room located in Room 1239 between 9:00 a.m. and 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Frank M. Machak (Information and Privacy Coordinator) 202–647–7740, or Cathleen Corken (Attorney Adviser) 202–647–3022.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically requires the Office of Management and Budget to develop and issue a schedule of fees and guidelines, pursuant to notice and comment, which OMB did on January 16, 1987. As the result of comments received, OMB issued the final publication of fee schedule and guidelines implementing certain provisions of the Reform Act on March 27, 1987 (52 FR 10012). In addition to the OMB guidelines, the Department of Justice provided agencies with advisory fee waiver policy guidance regarding the Reform Act in keeping with their statutory responsibility to encourage compliance with the FOIA; this guidance was distributed to all agency heads in a memorandum from Assistant Attorney General Stephen J. Markman on April 2, 1987. Finally, as the result of administrative practice and judicial precedents, the Department of Justice developed guidelines for agencies to use in considering requests

for expedition of FOIA requests; since this guidance has been a matter of custom and practice since 1983, the Department is codifying it in its rules at this time.

The amendments to 22 CFR Part 171 include both the OMB and Justice guidance, as well as the amended language of exemption 7 pertaining to law enforcement records.

The Department of State believes that the abbreviated public comment period for these proposed rules is reasonable in view of the month-long period during which OMB's guidance was subject to public comment. Further, in accordance with 5 U.S.C. 553(b)(3)(B), the Department finds it impractical to impose a lengthy public notice period due to the April 25 statutory deadline for rule promulgation and unnecessary in view of the considerable public comment received during OMB's notice period.

**List of Subjects in 22 CFR Part 171**

Administrative practice and procedure, Classified information, Freedom of Information, Privacy.

For the reasons set forth in the preamble, portions of Title 22, Chapter I, Subchapter R of the Code of Federal Regulations, are set forth below:

## PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for Part 171 is revised to read as follows and the authority citations following the sections in Part 171 are removed:

**Authority:** Sec. 3, Administrative Procedure Act, as amended (Pub. L. 89–478, Stat. 250); The Freedom of Information Act, as amended (5 U.S.C. 552); the Privacy Act (5 U.S.C. 552a); E.O. 12065; the Ethics in Government Act of 1978 (Pub. L. 95–521); (22 U.S.C. 2658 and 3926); and the Freedom of Information Reform Act of 1986 (Pub. L. 99–570).

2. Section 171.6 is revised to read as follows:

### § 171.6 Fees—general.

(a) The Department will charge a fee of $.25 per page for copies of documents which are identified by an individual and reproduced at the individual's request for retention, except that there will be no charge for requests involving costs of $1.00 or less.

(b) The Department will charge the actual cost of production for copies prepared by computer (such as tapes or printouts), including operator time.

(c) The Department will charge the actual direct costs of producing the document(s) for methods of reproduction or duplication other than those described in paragraphs (a) and (b) of this section.

(d) In those cases when estimated duplication charges are likely to exceed $25, the Department shall notify requesters of the estimated amount of fees, unless they have indicated in advance their willingness to pay fees as high as those anticipated. Such notice shall offer requesters the opportunity to confer with Department personnel with the objective of reformulating requests to meet their needs at lower costs.

(e) Certification under the official seal that a copy or extract made from an official document is a true copy; the fee for certifying each copy of each page is $2.00.

(f) The Department shall charge the actual costs for sending documents by special methods such as express mails, etc.

(g) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the Treasurer of the United States and delivered or mailed to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. The Department will assume no responsibility for cash sent by mail.

(h) Fees must be paid in full prior to release of requested documents and/or provision of services described above.

(i) A receipt for fees paid will be given only upon request.

(j) See § 171.13 for additional fees chargeable for Freedom of Information requests.

3. Section 171. 10 is amended by adding paragraphs (d), (e), (f), (g), (h), (i), (j), and (k) to read as follows:

### § 171.10 Definitions.

* * * * *

(d) The term "direct costs" means those expenditures which the Department actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(e) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department will attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph g of this section). Searches may be done manually or by computer using existing programming.

(f) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The Copy provided must be in a form that is reasonably usable by requesters.

(g) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph h of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(h) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Department will seek additional clarification before assigning the request to a specific category.

(i) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of

vocational education, which operates a program or programs of scholarly research.

(j) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in h of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(k) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Department may also look to the past publication record of a requester in making this determination.

(a) * * *

4. Section 171.11 is amended by revising paragraph (a)(7) to read as follows:

**§ 171.11 Exemptions.**

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (i) Could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair trial or an impartial adjudication; (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (v) would disclose techniques and procedures for law information investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (vi) could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

5. Section 171.12 is revised to read as follows:

**§ 171.12 Time limits.**

(a) Whenever possible, the Department will funish the requested records within 10 days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the request by the information and Privacy Coordinator, except as cited in § 171.4 of this subchapter.

(b) The Department will consider requests for expeditious handling whenever the requester can demonstrate one of the following:

(1) An individual's life or personal safety would be jeopardized by the failure to process a request immediately, or

(2) Substantial due process rights of the requester would be impaired by the failure to process immediately and that the information sought is not otherwise available.

6. Section 171.13 is revised to read as follows:

**§ 171.13 Fees.**

(a) In addition to fees cited in § 171.6, the following shall be applicable with respect to services rendered to members of the public under this subpart:

(1) The following is the range of categories and average grade levels for employees within each category who perform the search and review functions involved in responding to a FOIA request:

(i) Administration/clerical (to include GS–1 through GS–8 or FS–9): GS–5/5 or FS–9/1.

(ii) Professional (to include GS–9 through GS–13 or FS–5 through FS–2): GS–11/5 or FS–4/4.

(iii) Executive (to include GS–14 through SES or FS–2 through SFS): GS–15/1 or FS–1/1.

(2) The salary rates for these categories will be calculated based on the rates published on the "Department of State Salary Chart" effective at the time that the function was actually performed; copies of this chart are available in the Public Reading Room and will be provided upon request, as well as to requesters with their acknowledgment letters.

(3) The costs for manual search include the salary of the category of the employee who actually performed the search function (as provided in paragraph (a)(1) of this section plus an additional 16 percent of that rate to cover benefits.

(4) The cost for computer searches will be calculated based on the salary of the category of the employee who actually performed the computer search (as provided in paragraph (a)(1) of this section plus 16 percent of that rate to cover benefits, in addition to the direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(5) Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review (as provided in paragraph (a)(1) of this section plus 16 percent of the rate to cover benefits. Charges will be assessed only for the initial review (i.e., review undertaken the first time in order to analyze the applicability of specific exemption(s) to a particular record or portion of a record) and not for review at the administrative appeal level of the exemption(s) already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review will be assessed.

(6) If records requested under this Subpart are stored elsewhere than the headquarters of the Department of State at 2201 C. Street, NW., Washington, DC, the special costs of returning such records to the headquarters shall be included in the search costs. These costs will be computed at the actual cost of transportation of either a person or the requested record between the place where the record is stored and Department headquarters when, for time or other reasons, it is not feasible to rely on Government mail service or diplomatic pouch.

(7) When no specific fee has been established for a service, or the request

for a service does not fall under one of the above categories due to the amount or size or type thereof, the Information and Privacy Coordinator is authorized to establish an appropriate fee, pursuant to the criteria established in Office of Management and Budget Circular No. A–25, entitled "User Charges."

(b) Where it is anticipated that the fees chargeable under this Subpart will amount to more than $25 and the requester has not indicated in advance her/his willingness to pay fees as high as anticipated, the requester shall be promptly notified of the amount of the anticipated fees or such portion thereof as can readily be estimated. In appropriate cases, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable Departmental personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice or request shall suspend the running of the period for response by the Department until a reply is received from the requester.

(c) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Department determines that a record which has been requested, but which is exempt from disclosure under this Subpart, is to be withheld.

(d) The Department will begin assessing interest charges on an unpaid bill starting the the 31st day following the day on which the billing was sent. The accrual of interest will be stayed upon receipts of the fee, rather than upon its processing by the Department. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

(e) A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Department reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Department will aggregate any such requests and charge accordingly.

(f) The Department will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Department estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Department will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Requesters who have previously failed to pay fees charged in a timely fashion (i.e., within 30 days of the date of the billing), the Department will require such requesters to pay the full amount owed plus any applicable interest as provided above or demonstrate that they have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process new requests or a pending requests from such requesters.

When the Department acts under paragraphs (f)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from recept of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Department has received payments described above.

(g) In accordance with the provisions and authorities of the Debt Collection Act of 1982 (Pub. L. 97–365), the Department reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage repayment.

Section 171.14 is added to read as follows:

**§ 171.14 Categories of requesters for fee purposes.**

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) The Department will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(b) The Department will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) The Department will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.10(k) above, and the request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) The Department will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permits fees only for reproduction. Requesters must reasonably describe the records sought.

(e) In making a determination regarding a requester's eligibility under one of the categories in this section, the Department may require the requester to provide extensive relevant information regarding the proposed use of the documents and/or the requester's identity, background, education, occupation, organizational/institutional affiliation, etc. Failure to provide such information may result in the requester's forfeiture of consideration under one of the preferred categories under this section and/or of fee waiver consideration.

(f) For purposes of this section, the Department shall require requesters to sign a statement verifying the appropriateness of their inclusion in a perferred category.

(g) In determining future eligibility for preferred status and/or fee waiver, the Department will take into account the failure of a requester who was previously granted preferred status but failed to fulfill the obligations of that category.

Section 171.15 is added to read as follows

**§ 171.15 Fee waivers and appeals.**

(a) Waiver or reduction of any fee provided for in §§ 171.6 and 171.13 may be made upon a determination by the Chief of the Request Processing Section, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. The Department will utilize Department of Justice guidance and will employ the following six-factor analysis in making determinations regarding the waiver or reduction of fees; all six criteria must be satisfied before fees will be waived or reduced.

(1) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(2) Disclosure of the information "is not primarily in the commercial interest to the requester."

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclousure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in discloure, that disclosure is "primarily in the commercial interest of the requester."

(b) The Department will not waive or reduce fees for requesters (persons or organizations) from whom unpaid fees remain due to the Department for another information access request.

(c)(1) The Department's decision to refuse to waive or reduce fees as requested under paragraph (a) of this section may be appealed to the Chief of the Informaton Access Branch, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Information Access Branch Chief who may consult with other officials of the Department as appropriate. The requester will be notified within thirty working days from the date on which the Department received the appeal.

**Donald J. Bouchard,**

*Assistant Secretary, Bureau of Administration.*

April 16, 1987.

[FR Doc. 87–8859 Filed 4–17–87; 8:45 am]

BILLING CODE 4710–24–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[A–5–FRL–3188–7]**

### Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** U.S Environmental Protection Agency (USEPA).

**ACTION:** Extension of public comment period.

**SUMMARY:** On December 8, 1986 (51 FR 44081), USEPA proposed rulemaking to revise the sulfur dioxide designation for Pierce Township in Clermont County, Ohio from nonattainment to attainment of the National Ambient Air Quality Standards. A 30-day comment period was provided at the time of the proposed rulemaking. In response to a request from the Natural Resources Defense Council (NRDC), the public comment period was extended an additional 60 days to March 9, 1987. The NRDC has requested a further extension to enable them to examine and comment on the following data analysis that USEPA forwarded to NRDC on March 25, 1987.

1. NRDC requested a copy of a USEPA memorandum dated January 13, 1987, relating to coal sampling and analysis data from the Beckjord Plant as well as any other records containing or referring to such data. (This information is often used in determining the compliance status of a source.)

2. NRDC requested a copy of the air quality modeling demonstration used to develop the current federally enforceable emissions limits for the Beckjord Plant.

This information has been added to the docket for this rulemaking action and is available at the Region V Office of USEPA for public review. Additionally, USEPA has requested the most current information from the State of Ohio concerning the compliance status of the Beckjord plant. The information requested by NRDC and the information being submitted by the State may demonstrate that the Beckjord Plant is no longer in compliance with its emission limit under the federally approved Ohio State Implementation Plan. If this is demonstrated, USEPA may disapprove Ohio's redesignation request for Pierce Township without further proposal because USEPA can only redesignate an area to attainment if all sources with the potential to cause a nonattainment problems are in compliance with the SIP. See Sheldon Meyers', then Director of Office of Air Quality Planning and Standards, April 21, 1983, memorandum summarizing USEPA's section 107 Designation Policy.

Because this information has a bearing on the approvability of the redesignation request for Clermont County, USEPA believes the request for an extension is appropriate. Therefore, based upon NRDC's request, USEPA is extending the public comment period to May 15, 1987.

**DATE:** Comments must be postmarked on or before May 15, 1987.

**ADDRESSES:** Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region, Chicago, Illinois 60604, (312) 886–6088.

**Authority:** 42 U.S.C. 7401–7642

Dated: April 9, 1987.

**Robert Springer,**

*Acting Regional Administrator.*

[FR Doc. 87–8786 Filed 4–17–87; 8:45 am]

BILLING CODE 6560–50–M

### 40 CFR Part 700

**[OPTS–260002; FRL 3157–2]**

### Proposed Fees for Processing Premanufacture Notices, Exemption Applications and Notices, and Significant New Use Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Section 26(b) of the Toxic Substances Control Act (TSCA) authorizes EPA to require, by rule, the payment of a reasonable fee from any person required to submit data under section 4 or 5 of TSCA. EPA is proposing a rule that would require manufacturers, importers, and processors to pay fees for premanufacture notices (PMNs), PMN exemption applications and notices, and significant new use notices submitted under TSCA section 5 (a) and (h) (Section 5 notices) EPA is proposing a fee of $100 for section 5 notices submitted by small business concerns and for low volume exemption notices under 40 CFR 723.50 and test market exemption applications under § 720.38, and $2,500 for all other section 5 notices.

**DATES:** An informal hearing, if requested, will be held beginning approximately July 20, 1987. The exact time and location of the hearing will be available by calling EPA's TSCA Assistance Office. Comments on this proposed rule and requests for an informal hearing must be submitted by July 6, 1987.

**ADDRESS:** All comments should be sent to: OTS Document Control Officer (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St. SW., Washington, DC 20460.

Comments should include the docket number OPTS–260002. Comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE–G004 at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

**SUPPLEMENTARY INFORMATION:**

## I. Authority

Section 26(b) of TSCA provides that the Administrator may, by rule, establish fees for persons required to submit data under sections 4 and 5 of TSCA (including premanufacture notices, significant new use notices, and exemption applications and notices) to defray the costs of administering TSCA. EPA must take into account a submitter's ability to pay the fee and the Agency's cost of reviewing the submitted data. Section 26(b) provides for maximum fees of $100 for a "small business concern" and $2,500 for all others. Section 26(b)(2) of TSCA gives EPA authority to define "small business concern."

## II. Background

On July 11, 1986, EPA published in the **Federal Register** (51 FR 25250) a Notice of Availability of its "PMN User Fee Background Paper" (the paper) which includes (1) the costs that the Agency believes may be defrayed by the collection of such fees, (2) the major options that the Agency has identified for implementing section 26(b), (3) a preliminary estimate of the economic impacts of such options, and (4) a possible definition of "small business concern."

The costs that EPA believes may be defrayed through fees collected pursuant to section 26(b) include all costs associated with receiving, processing, storing, and analyzing data submitted pursuant to section 5, as well as all costs associated with regulatory and other actions that may be prompted by a submission. The direct cost elements that may be defrayed include the salaries and expenses (including supplies, training, travel, and equipment) of the EPA Office of Toxic Substances personnel associated with these section 5 activities, and the cost of associated data processing, computer equipment, and contractor effort. Direct costs also include support functions such as secretarial, clerical, and supervisory management. Indirect costs that may be defrayed include research and development in support of the PMN program. In addition, the Agency incurs other general overhead such as personnel processing, administrative management, budget execution, rent, and utilities.

EPA's analysis of direct costs (EPA, Office of Toxic Substances. D. Harper, D. McMurrer. "Economic Analysis of Proposed PMN Fee Rule", January 1987) indicates that certain costs are generally incurred with every type of section 5 notice. These costs are associated with the activities of providing pre-filing assistance to submitters, providing protection for confidential business information (CBI), processing, duplicating, and storing documents contained in submissions, and initial risk screening (usually including chemical characterization, environmental and human exposure analysis, and a preliminary toxicity review (including human and environmental effects)). These costs add up to approximately $3,000 to $3,200 per submission. Those submissions that require more detailed analysis and regulatory action cost approximately $13,000 to $15,000 more per submission. None of the above costs include indirect costs, i.e., general Agency overhead such as costs incurred by the Office of General Counsel, the Office of Policy, Planning and Evaluation, and the Office of Administration, and research and compliance costs.

Obviously, any fee that the Agency establishes pursuant to section 26(b) will recover substantially less than the total costs of administering section 5. For fiscal 1987, total Agency costs, both direct and indirect, could reach $22 million compared to the maximum recovery of costs that the Agency could receive pursuant to section 26(b) of $4.5 million.

The two major options discussed in the Paper were: (1) a flat fee of $2,500 with a $100 reduced fee for small business concerns, and (2) variable fees to reflect relative Agency costs. The rationale that EPA noted for the flat fee option was that it would defray review costs to the maximum extent possible under section 26(b), would be easy to administer and easy to understand, and would apply to a well defined group—all section 5 notice submitters. EPA also noted that it might discourage some firms from submitting section 5 notices.

The rationale given for the variable fee option was that because Agency costs vary according to the type of submission (regular PMN, low-volume exemption notice, polymer PMN, or test market exemption application), the amount of data provided with the section 5 notice, the number of CBI claims included with the notice, and whether a group of notices relate to a sequence of chemical intermediates, such a scheme would more accurately reflect the range of costs for individual submissions. For example, EPA could charge $1,250 for a section 5 notice that costs the Agency $2,500 to review, and charge $2,500 (the maximum permitted under section 26(b)) for one that costs the Agency $5,000 or more to review. The problem with this option is that it is complex to administer, and with an upper limit of $2,500, the Agency probably could not significantly differentiate fees.

The preliminary economic analysis that EPA provided in the Paper indicated that companies might not submit approximately 10 percent of their potential section 5 notices if EPA required the maximum fees permitted under section 26(b).

## III. Evaluation of Comments on EPA's "PMN User Fee Background Paper"

EPA received comments on the Paper from three associations and nine companies. The associations commenting were: Synthetic Organic Chemical Manufacturers Association (SOCMA), Chemical Manufacturers

Association (CMA), and National Paint and Coatings Association (NPCA). The companies commenting were Diamond Shamrock Chemicals Company; The Dow Chemical Company; Firmenich, Inc.; Hach Company; Hardman, Inc.; Hilton-Davis Chemical Company; Dynamit Nobel Chemicals; The O'Brien Corporation; and Pennzoil Products Company.

There was no unanimity on any of the options or issues presented in the Paper. However, most comments (10 out of 12) asserted that fees could or would affect innovation, in that some section 5 notices would not be submitted to EPA for review if a fee were imposed pursuant to section 26(b). One comment stated that there would be no adverse impact on innovation if fees were kept to $2,500 or less; one commenter opposed fees on philosophical grounds. The following table tallies the comments generated for certain options:

| Comment categories | No. of comments |
|---|---|
| A. Innovation: | |
| 1. Adverse impact generally | 10 |
| 2. No adverse impact if kept to max. of $2500 | 1 |
| 3. Specific concern for low volume, test market, and polymers | 5 |
| 4. Fees not a deciding factor as to commercialization after PMN review completed | 1 |
| B. Flat vs. Variable Fee Scheme: | |
| 1. Keep it simple | 2 |
| 2. Support variable fee | 3 |
| C. Relating Fees to Test Data, Extent of Confidentiality: | |
| 1. Support relating to amount of test data | 1 |
| 2. Oppose relating to amount of test data | 3 |
| 3. Support relating to extent of confidentiality | 1 |
| 4. Oppose relating to extent of confidentiality | 1 |
| D. Support Treating Related Notices as One for Fee Purpose | 2 |
| E. When to Pay: | |
| 1. Support paying with Notice of Commencement | 5 |
| 2. Support paying with section 5 submission | 1 |
| F. Support $40 Million Sales Definition of Small Business Concern | 2 |
| G. Support Alternative Fees (SOCMA suggests $50/$1500 scheme with exemptions for low volume chemicals) | 1 |

Significant concern was expressed by five comments for the negative impact on innovation that might be caused if the maximum $2,500 fee was assessed for low volume, test market, and polymer exemption submissions. Comments pointed out that some specialty chemicals are produced in very small lots, usually on a custom-order basis, and could not be expected to generate enough revenue to justify paying a $2,500 fee. Two comments stated that EPA's preliminary economic analysis supported their conclusions in this regard.

EPA did not receive any data illustrating the impact of particular fees on chemical innovation. Two comments addressed the quality of EPA's preliminary economic analysis. One comment expressed the belief that the "short term impact" of charging the maximum fee authorized by section 26(b) would be substantially greater than portrayed by EPA, and that "long term" impacts had not been given adequate weight by the Agency. Unfortunately, no additional data or analyses were presented that would permit the Agency to revise its estimate of fees' impact. One comment questioned EPA's estimate of revenues projected to be received by companies from sales of their new chemical substances because the revenue data used by EPA (PMN submitters' first and third year production estimates) were maximum estimates. The Agency believes that it used a reasonable methodology in view of the unavailability of any better estimates of production for these new chemical substances. The Agency solicits suggestions concerning practical alternative methods of estimating these revenues.

## IV. Discussion of Proposed Rule

After careful analysis of all the comments received by EPA on the Paper, and review of its economic analysis, the Agency has decided to propose a fee of $100 for all section 5 notices received from small business concerns and for all low-volume exemption notices and test market exemption applications, and $2,500 for all other section 5 submissions. The fees would be collected at the time of submission of the section 5 notice. EPA also proposes to define "small business concern" as any firm whose sales when combined with its parent company's (or the firm's sales, if no parent exists) totaled $40 million or less in its fiscal year preceding the submission date of its section 5 notice.

The Agency decided to propose a flat rather than variable fee scheme because (1) it has received no data or convincing argument to support a variable scheme; (2) it believes, at this time, that the difficulties of administering a variable scheme (i.e., developing and maintaining the detailed cost justification for each fee level and ascertaining whether a submission qualified for a particular fee) would outweigh the possible improvement in fairness; and (3) a variable scheme would probably result in the collection of revenue that was too small to warrant the effort of its establishment.

The Agency decided not to propose relating fees to the quantity or quality of test data submitted or the degree of confidentiality requested because it believes that the reaction that it received to these ideas was inconclusive, and because the costs and difficulties in administering the fee program would be significantly increased.

EPA decided to propose that all fees be collected at the time a firm submits its section 5 notice because EPA determined that its proposed fee structure would not sufficiently defray the Agency's costs of reviewing PMNs (which is not dependent on a new chemical substance's commercialization) if it permitted payment of fees with a Notice of Commencement of Manufacture or Import (NOC). The Agency estimates it would receive approximately $4.5 million annually with its proposal if fees were collected at the time of submission, compared to $2.0 million annually if it collected fees with NOCs. Furthermore, no data or compelling arguments were offered that collecting fees up front would have a significant impact on commercialization. One comment stated that fees are not a deciding factor as to commercialization after the PMN review is completed.

EPA is proposing the $40 million in annual sales definition for "small business concerns" because it is an integral part of another TSCA definition of small business (used to implement section 8(a)(3)(B)) and consequently has been though considerable public comment and review. The Agency has received no negative comment on this proposal (which was contained in the Paper).

TSCA section 8(a)(3)(B) requires the Agency to define, for purposes of secion 8(a) requirements concerning reporting and recordkeeping, "small manufacturers and processors". "Small manufacturer" was defined by EPA, in the **Federal Register**, Jan. 15, 1985 (50 FR 2047) (40 CFR 704.3), as firms whose parent company (or the manufacturers themselves if no parent exists) has either annual sales below $400 million *and* that produces a chemical at volumes less than 100,000 pounds annually at any individual production site, or sales less than $4 million, regardless of the quantity of chemicals produced by that manufacturer. However, because production volume projections are speculative for new chemical substances, the Agency is proposing using only the $40 million in sales portion of the definition.

In addition, SOCMA, which voiced major concern over the ability of its members to pay the maximum $2,500 fee, noted that the majority of its members have annual sales under $50 million. Presumably, EPA's proposed definition of "small business concern"

would alleviate the fee proposal's impact on most of SOCMA's members.

To ensure that only persons who qualify for the reduced $100 fee as small business concerns take advantage of the reduced fee, EPA is proposing to require each person paying the lower fee to certify in its section 5 notice that the person is a small business concern under proposed § 700.43.

EPA is proposing the submitters of low-volume exemption notices and test market exemption applications pay a reduced fee of $100 because the Agency's economic analysis (see Appendix) indicates that those submissions would be severely impacted by a higher fee. Also, EPA received convincing arugments from commenters that those submissions could tolerate only a nominal fee. EPA is not proposing but is still considering instituting the reduced $100 fee for polymer exemption PMNs. EPA's economic analysis indicates that almost 12 percent of new polymers reviewed by EPA would qualify for a $100 fee as a low volume exemption, as a submission from a small business concern, or both. Of the remaining 1058 new polymers, only 4 percent would be severely impacted by the imposition of a $2500 fee. EPA especially encourages the submission of data and comment only this aspect of its proposal, as well as the appropriateness of $100 as a "reduced" fee.

Finally, the Agency is not proposing to consider section 5 notices related to a sequence of intermediates in the same manufacturing process as one for fee purposes. EPA noted in its paper that the Agency often reviews these notices together and consequently, the costs for review of each such notice may be lower than for independent submissions. However, the costs of EPA handling each "sequenced" section 5 notice are still greater than the proposed fees, primarily because of the CBI procedures that apply to each notice and because indirect costs also would be allocated to each notice. Furthermore, because approximately one-half of the notices that EPA receives are "sequenced", the revenues that EPA would receive from its fee program if it provided special treatment for these notices would be reduced to such a point as to call into question the purpose of the fee program. Finally, the comments that EPA received on this issue did not persuade the Agency that there was general support for such special treatment.

The proposed rule also clarifies the status of joint submitters. EPA allows persons to submit section 5 notices jointly with others (for example, see 40 CFR 720.40(e) in the PMN rule). EPA is proposing that the fee would be the same for a joint submission of a section 5 notice as for the same kind of notice submitted by a single firm. However, with respect to the lower $100 fee for small business concerns, the lower fee would not apply to a joint submission unless all the joint submitters qualify as small business concerns under the proposed definition. Each of the joint submitters would be required in the section 5 notice to certify that it qualifies as a small business concern under proposed § 700.43.

## V. Economic Impacts

### *A. Introduction*

In analyzing the economic impact of the proposed rule (EPA, Office of Toxic Substances. D. Harper, D. McMurrer. "Economic Analysis of Proposed PMN Fee Rule." January 16, 1987), EPA considered both the rule's impact on chemical innovation (that is, the effect of a fee on a firm's decision to file a section 5 notice) as well as the total cost of the rule. The total cost of the rule will be the sum of (1) the revenues foregone by firms not willing to submit section 5 notices as a direct result of the fees, and (2) the cost of the fees.

The Agency believes that the impact on the expected profitability of a new chemical substance as a result of any potential fee is one of the most important factors to consider in evaluating fees' impact on innovation. At some point, a firm will choose not to submit a notice for a new chemical substance rather than incur any additional costs prior to commercialization. EPA's analysis focuses on this factor by evaluating fees as a percent of the present value of expected revenues.

### *B. Methodology*

For purposes of this analysis, the Agency estimated the impact of fees by examining fees as a portion of the present value of expected revenue for the sample section 5 notices. Based on the behavior characterized in a previous study of test costs on a limited number of PMNs (Centaur Associates Inc. 1985: Analysis of Withdrawn and Voluntarily Tested PMNs), if fees are no more than 1.0 percent of expected revenue, the Agency assumes that fees would have a minimal impact on new chemical substances' revenues and profits and that fees will not affect a firm's decision to commercialize a new chemical substance. Fees in the range of 1.0 to 3.0 percent of expected revenues are assumed to have a moderate impact on revenues and an indeterminate effect on a firm's marketing decisions. If fees are 3.0 percent or more of expected revenues, the Agency assumes that fees will have a severe impact on revenues and that the impact is likely to result in a firm choosing not to submit a section 5 notice.

### *C. Impacts*

EPA's economic analysis of the impact of its proposal shows that 236, or 10 percent of the total number of section 5 notices and exemption applications expected to be received by EPA in calendar year 1987 will not be submitted as a result of the imposition of fees. The foregone annual revenue from the unsubmitted notices is estimated to total $0.4 million. The total annual value of the fees that EPA expects to collect as a result of this proposal is $4.5 million. The total annual cost of the rule then is $4.9 million.

## VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of Regulatory Impact Analysis. This proposed rule is not major as that term is defined in section 1(b) because: the annual effect of the rule on the economy will be less than $100 million (less than $5 million); it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication as required by Executive Order 12291.

## VII. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. (b)), EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small businesses because the fee proposed for small business concerns affects only an insignificant number of potential section 5 notices and is nominal and most relative to any firm's overall revenues.

## VIII. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Numbers 2070–0012 and 2070–0038

**List of Subjects in 40 CFR Part 700**

Chemicals, Environmental protection, User fees.

Dated: April 13, 1987.

**Lee M. Thomas,**

*Administrator.*

Therefore, it is proposed that Chapter I, Subchapter R of 40 CFR be amended by adding Part 700, consisting at this time of Subpart C, to read as follows:

## PART 700—GENERAL

**Subpart A—B—[Reserved]**

**Subpart C—Fees**

Sec.
700.40 Purpose and applicability.
700.43 Definitions.
700.45 Fee payments.
700.49 Failure to remit fees.

Authority: 15 U.S.C. 2625.

**Subparts A—B—[Reserved]**

**Subpart C—Fees**

**§ 700.40 Purpose and applicability.**

(a) *Purpose.* The purpose of this subpart is to collect fees from manufacturers, importers, and processors who sumit notices and applications to EPA under section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) to defray part of EPA's cost of administering the Act.

(b) *Applicability.* This subpart applies to all manufacturers, importers, and processors who submit certain notices and applications to EPA under section 5 of the Act.

**§ 700.43 Definitions.**

Definitions in section 3 of the Act (15 U.S.C. 2602), as well as definitions contained in § 720.3 of this chapter, apply to this subpart ;unless otherwise specified in this seciton. In addition, the following definitions apply:

"Exemption application" means any application submitted to EPA under section 5(h)(1) of the Act, in accordance with § 720.38 of this chapter, or under section 5(h)(2) of the Act.

"Exemption notice" means any notice submitted to EPA under §§ 723.50 and 723.175 of this chapter.

"Joint submitters" means two or more persons who submit a section 5 notice together.

"Person" means a manufacturer, importer, or processor.

"Premanufacture notice" or "PMN" means any notice submitted to EPA pursuant to section 5(a)(1)(A) of the Act in accordance with Part 720 of this chapter or § 723.250 of this chapter.

"Section 5 notice" means any PMN, significant new use notice, exemption notice, or exemption application.

"Significant new use notice" means any notice submitted to EPA pursuant to section 5(a)(1)(B) of the Act in accordance with Part 721 of this chapter.

"Small business concern" means any person whose total annual sales in the person's fiscal year preceding the date of the submission of the applicable seciton 5 notice, when combined with those of the parent company (if any), are less than $40 million.

**§ 700.45 Fee payments.**

(a) *Persons who ;must pay fees.* Persons submitting a section 5 notice to EPA shall remit for each notice the appropriate fee identified in paragraph (b) of this section in accordance with the procedures in paragraph (d) of this section.

(b) *Fees.* Persons shall remit fee payments to EPA as follows:

(1) *Small business concerns.* Small business concerns shall remit a fee of $100 for each section 5 notice submitted.

(2) *Others.*Persons other than small business concerns shall remit fees according to the type of section 5 notice as follows:

(i) *Premanufacture notices.* Persons shall remit a fee of $2,500 for each PMN submitted.

(ii) *Significant new use notices.* Persons shall remit a fee of $2,500 for each significant new use notice submitted.

(iii) *Exemption applications.* (A) Persons shall remit a fee of $100 for each exemption application submitted under section 5(h)(1) of the Act and § 720.38 of this chapter.

(B) Persons shall remit a fee of $2,500 for each exemption application submitted under section 5(h)(2) of the Act.

(iv) *Exemption notices.* (A) Persons shall remit a fee of $100 for each exemption notice submitted under § 723.50 of this chapter.

(B) Persons shall remit a fee of $2,500 for each exemption notice submitted under § 723.175 of this chapter.

(c) *Joint submitters.* Joint submitters of a section 5 notice are required to remit the appropriate fee identified in paragraph (b) of this section for each section 5 notice regardless of the number of joint submitters for that notice. To qualify for the fee identified in paragraph (b)(1) of this section, each joint submitter of a section 5 notice must qualify as a small business concern under § 700.43.

(d) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency, Washington Accounting Office, attention: TS/PMN, P.O. Box 360227M, Pittsburg, PA 15251. The remittance may not be sent to EPA with the section 5 notice. The section 5 notice is to be sent to Document Control Officer, Office of Toxic Substance (TS–790), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(3) Persons who submit a section 5 notice shall place a unique identifying number, which may include a combination of letters and numbers, on each section 5 notice submitted. The same identifying number shall appear on the corresponding fee remittance under this section. If a remittance applies to more than one section 5 notice, persons shall include the identifying number for each section 5 notice to which the remittance applies and the amount of the remittance which applies to each notice.

(4) Any person who remits the fee identified in paragraph (b)(1) of this section shall write or type the words, "The company named in Part 1, section A is a small business concern under § 700.43" under "CERTIFICATION" on Page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25 (4–28–83)). (Approved by the Office of Management and Budget under Control Number 2070–0012 and 2070–0038.)

**§ 700.49 Failure to remit fees.**

EPA will not consider a section 5 notice to be complete, and will not begin to process or review it, until the appropriate remittance under § 700.45(d) has been sent to EPA as provided in § 700.45(d) and received by EPA.

[FR Doc. 87–8780 Filed 4–17–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 25**

**[CC Docket No. 86–496]**

**Satellite Communications; Extension of Comment Period**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment periods.

**SUMMARY:** This order extends the time for filing comments on the Notice of

Proposed Rulemaking which proposes revisions and amendments to the Commission's rules governing satellite communications. This action is taken in response to a motion by AT&T.

**DATES:** Comments on the proposed rules are not due on or before June 8, 1987 with reply comments due on or before July 27, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rosalee Gorman at (202) 634–1624.

**SUPPLEMENTARY INFORMATION:** The Notice of Proposed Rulemaking was published at 52 FR 6175 (March 2, 1987).

**List of Subjects in 47 CFR Part 25**

Satellite radio communications, Satellites.

**Order**

In the Matter of Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communication Services; CC Docket No. 86–496; RM–4206.

Adopted: April 7, 1987.

Released: April 13, 1987.

By the Domestic Facilities Division

1. Under consideration is a Motion for Extension of Time filed on behalf of American Telephone & Telegraph Company (AT&T) requesting additional time in which to file comments on the *Notice of Proposed Rulemaking* (NPRM) in the above-captioned matter. 2 FCC Rcd 762 (1987). This request is supported by GTE Spacenet Corporation (GTE). AT&T asks that the comment dates of April 27, 1987 and June 15, 1987 be extended until June 8, 1987 for initial comments and July 27, 1987 for reply comments. Based on the reasons discussed herein, good cause exists for extending the comment periods. AT&T's request is therefore granted.

2. In support of its request, AT&T states that due to the complexity of the issues involved in this proceeding, described by AT&T as an "omnibus" revision of Part 25 of the Commission's rules governing satellite communications, commenters need an additional six weeks in which to analyze and evaluate the proposals. These rules will affect the design, technical standards and operations of earth and satellite equipment, frequency coordination, monitoring and reporting requirements, licensing criteria and application procedures. In its supporting comments, GTE states that it has identified at least seventy-five issues on which it plans to comment. As pointed out by AT&T, some of the subjects raised by the NPRM have occupied entire dockets in other proceedings.

3. AT&T also asserts that the Commission's proposals will not only affect satellite services but also will impact on services that share frequency bands with satellite services such as those in its terrestrial microwave network. According to AT&T, the Commission's proposals are derived from diverse sources and have been developed over years of operations, further complicating the issues involved. Both AT&T and GTE state that they have already expended considerable effort in responding to the NPRM, including the establishment by AT&T of four task groups to study the questions raised. Both believe that their comments would be must more constructive and beneficial to the Commission if the requested extension were granted.

4. AT&T's request, as supported by GTE, demonstrates good cause for granting a six-week extension of time in this proceeding. In the past, the Commission has acknowledged that where complex and difficult technical issues are presented, as is the case in this NPRM, extensions of time in which to comment are not unreasonable. *See TV Signal for Captioning for the Deaf,* 36 Rad. Reg. 2d (P&F) 1197 (1976) where a two month extension for filing comments was granted. *See also Motions for Extensions of Time Before the Common Carrier Bureau,* 44 Rad. Reg. 2d (P&F) 96 (1978).

5. In addition, AT&T and GTE have already spent considerable time in studying and evaluating the issues involved in this proceeding. Their assertions that additional time is necessary are thus based upon careful preliminary consideration of the proposals and not on any desire to delay this proceeding.

6. Accordingly, pursuant to § 0.291 of the Commission's rules on delegation of authority, AT&T's request for an extension of time is granted. Comments in this proceeding are now due on June 8, 1987 and reply comments on July 27, 1987.

Federal Communications Commission.

**Thomas S. Tycz,**

*Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.*

[FR Doc. 87–8744 Filed 4–17–87; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket 87–7]**

**Radio and Television Broadcasting; Amendment of the Broadcast Multiple Ownership Rule**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed Rule; Extension of comment/Reply comment period.

**SUMMARY:** This action grants a motion for extension of time for filing comments and reply comments in response to the *Notice of Proposed Rule Making* in MM Docket No. 87–7 (Amendment of § 73.3555 of the Commission Rules, the Broadcast Multiple Ownership Rules), 52 FR 8086, March 16, 1987. The National Association of Broadcasters (NAB) requested that the deadline for filing comments be extended for 60 days to allow for the collection of relevant data and the completion of various studies that could be utilized by the Commission in resolving the issues raised in this proceeding. Since the *Notice* in this proceeding specifically requested the type of empirical and statistical data being collected by NAB and since the Commission was persuaded that the requested extension was reasonably necessary to facilitate the completion of the subject studies, the Commission is extending the dates. The Commission also dismissed as moot a motion for extension of time filed by the New York State Consumer Protection Board, in view of its action granting NAB's motion.

**DATES:** Comments are now due by June 15, 1987 and replies by July 15, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Rhodes, Mass Media Bureau, (202) 632–7792.

**SUPPLEMENTARY INFORMATION:** The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

**William H. Johnson,**

*Acting Chief, Mass Media Bureau.*

[FR Doc. 87–8746 Filed 4–17–87; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 52, No. 75
Monday, April 20, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### VISTA Literacy Corps Projects; Availability of Funds

**AGENCY:** ACTION.

**ACTION:** Notice of availability of funds; VISTA Literacy Corps projects.

The Division of VISTA and Service-Learning Programs, ACTION, announces the availability of funds for fiscal year 1987 for new VISTA Literacy Corps grants authorized by Section 109 of the Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99–551). VISTA Literacy Corps grants will be awarded for up to a twelve month period. No requests for renewals or continuations may be sought by grantees under this announcement.

Application packages and technical assistance on grant preparation are available from ACTION/VISTA Headquarters, 806 Connecticut Avenue NW., Washington, DC 20525, (202–634–9445).

#### A. Background and Purpose

Congress created Volunteers In Service To America (VISTA) in 1964 to alleviate and eliminate poverty and its related problems in the United States. VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency. VISTA also enlists the commitment and support of the private sector toward attainment of this goal. Literacy training and education represent a longstanding and integral part of the VISTA mission. VISTA Volunteers have been involved in the mobilization of community efforts to combat illiteracy among disadvantaged populations since the inception of the VISTA program.

The Domestic Volunteer Service Act Amendments of 1986 directed the VISTA program to commit additional volunteers to the literacy challenge through the formation of the VISTA Literacy Corps.

The statutory purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal and private sector financial and volunteer resources in attacking the problem of illiteracy particularly within low-income areas throughout the United States. In addition, the VISTA Literacy Corps will encourage public/private partnerships; promote voluntarism; heighten the visibility of the literacy issue; and increase the capacity of low-income communities to address their respective literacy needs.

*Objectives*

ACTION will award four grants through this notice for the placement of VISTA Literacy Corps Volunteers in ACTION Region III (KY, MD, DE, OH, PA, VA, DC, WV), Region IV (AL, FL, GA, MS, NC, SC, TN), Region V (IL, IN, IA, MI, MN, WI), and Region VI (AR, KS, LA, MO, NM, OK, TX). These four regions experience concurrently the highest poverty and illiteracy rates in the country as measured by the most recent census data and the English Language Proficiency Study. The Agency will be awarding one grant per region for VISTA Literacy Corps projects. Each grant will support a maximum of 15 VISTA Volunteers per ACTION region for one year of service. Each of the regions will focus on different emphasis areas of the literacy problem as prescribed below:

*Region III:* Literacy projects to provide comprehensive services that will curb the intergenerational transfer of illiteracy within families by instructing parents and children together. In particular VISTA will seek literacy programs affiliated with libraries and Head Start projects that focus on the overall concerns of low-income families in need. Such programs should have the reading materials available that will entice and challenge all age groups represented in the family unit.

*Region IV:* Literacy projects to provide special programs that will benefit unemployed parents. Cooperative arrangements with social services offices and job training partnership sites will receive priority consideration.

*Region V:* Literacy projects that concentrate on preventive educational training for potential school dropouts and other young adults who may be "educationally at risk" as well as programs that offer retraining and remedial skills enhancement particularly to inner-city youth.

*Region VI:* Literacy projects that assist migrant and immigrant families who are seeking permanent resident status under the new Immigration Control and Reform Act or other low-income individuals who would achieve literacy in English through such training.

Based on the accomplishments of these four pilot projects, VISTA will encourage the development of training materials and models, where possible, that can be replicated or adopted easily by other regions and areas of the nation sharing similar demographics.

#### B. Eligible Applicants

Eligible applicants for the VISTA Literacy Corps grants include: public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and state education agencies; local and state agencies administering adult basic education programs; educational institutions; libraries, anti-poverty organizations; and local, municipal and State governmental entities designated to administer job training plans under the Job Training Partnership Act.

#### C. Available Funds and Scope of Grant

ACTION anticipates awarding approximately $120,000 for each of the four grants to support the work of VISTA Literacy Corps Volunteers. The amount of each grant includes the monthly subsistence allowance for the VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the Volunteer upon completion of his/her service.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA Literacy Corps grant in the areas of transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Literacy Corps Program.

**D. General Criteria for Grant Selection**

The general criteria for the VISTA Literacy Corps projects are consistent with those established for the selection of VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission.

The project must:

- Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable published regulations, guidelines and ACTION policies.
- Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.
- Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.
- Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.
- Outline specific plans for the continuation of program activities upon the termination of ACTION funds.
- Have evidence of local public and private sector support (in the form of endorsement letters limited to those organizations, government entities, and education institutions, having direct involvement with the applicant).
- Have a permanent mechanism of self-evaluation.
- Provide frequent and effective supervision of the volunteers.
- Identify resources needed and make them available to volunteers to perform their tasks.
- Have the management and technical capability to implement the project successfully.

In addition to the general criteria, the authorizing statute stipulates that priority consideration will be given to the following literacy programs and projects that apply for funding:

- Those that assist individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individuals and families;
- Those that serve individuals reading at the zero to fourth grade levels;
- Those that focus on providing services to high risk populations, e.g., school dropouts and minority youth
- Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;
- Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk, and
- Statewide programs and projects that support the creation of new literacy efforts, encourage coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

**E. Application Review Process**

ACTION's VISTA Headquarters will review and evaluate all eligible applications submitted under this announcement. ACTION's VISTA and Service-Learning Director will make the final selection from among the applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

**F. Application Submission and Deadline**

One signed orignal and two copies of all completed applications must be submitted to the Director of VISTA and Service Learning Programs, ACTION, 806 Connecticut Avenue, NW., Room M–1000, Washington, DC 20525. The deadline for receipt of applications in 5 PM EST July 15, 1987. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. Application for Federal Assistance (SF 424, Pages 1–9) and VISTA Project Application (Form A–1421) with a detailed budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Information, or a letter of good standing from the Governor's Office.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. The professional affiliations and/or literacy-related activities of Board of Director Members should be specified.

Signed at Washington, DC, this 14th day of April, 1987.

Donna M. Alvarado,

*Director.*

[FR Doc. 87–8716 Filed 4–17–87; 8:45 am]

BILLING CODE [illegible]

---

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### Commodity Credit Corporation

### 1987–88 National Marketing Quota and Price Support Level for Flue-Cured Tobacco

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), USDA.

**ACTION:** Notice of determination of 1987–88 marketing quota.

**SUMMARY:** The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1987 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938 as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculutre determined the 1987 marketing quota for flue-cured tobacco to be 707 million pounds, approximately 3 percent below last year's quota, and that the price support level would be $1.435 per pound.

**EFFECTIVE DATE:** December 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Traczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Traczy.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major' since implementation of these

determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchses; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act") and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1987 marketing year for flue-cured tobacco the following:

1. The amount of domestic manufacturers' intentions;
2. The amount of the average exports for the 1984, 1985, and 1986 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national average yield goal;
7. The national acreage allotment;
8. The national acreage reserve:

A. For establishing acreage allotments for new farms, and

B. For making corrections and adjusting inequities in old farms;

9. The national acreage factor;
10. The national yield factor; and
11. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after due consideration of data, views, and recommendations received from flue-cured tobacco producers and others pursuant to a proposed Notice of Determination (51 FR 39768) which was published on October 31, 1986.

**Discussion**

Fifteen written comments were received during the comment period. Each discussed the procedure for estimating exports; suggestions ranged from approval of last year's procedure to the insistence that all Bureau of Census recorded exports be counted in the export component of the quota calculation. The major discussion of the comments centered around clarifying Bureau of Census export declarations and report codes to more accurately differentiate between kinds and origins of shipments. Based upon a review of these comments and the experience of establishing the 1986 national marketing quotas for flue-cured and burley tobaccos, it has been determined that the 1987 marketing quota determination will be based, in part, on using estimated exports. Such exports are the difference between domestic manufacturers' exported use and the total use of domestically grown flue-cured tobacco. However, USDA is discussing with the Bureau of Census the possibility of modifying certain export codes to more adequately describe tobacco shipments.

Eight of the comments urged that the reserve stock level calculation omit the 1986-crop loan receipts or that sales of post-1984 loan stocks be projected to the end of the marketing year. The 1938 Act does not provide for the omission of any post/1984 loan-stock tobacco. However, post-1984 loan-stock tobacco sold on a deferred sale basis was not included in this calculation.

Cost data is gathered on a per-acre basis. To convert data to a per-pound basis as required by the Act, USDA proposed to use a trend yield. Six commentors favored trend yields for such purpose.

Two commentors requested that the 1987 crop price support level be the same as was established for the 1986 crop. However, in accordance with the statutory formula set forth at sections 106(d) and (f) of the 1949 Act, the price support level must be reduced.

**Marketing Quotas**

Section 317(a)(1) of the 1938 Act (7 U.S.C. 1314c(a)(1)) provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 317(a)(1)(C) further provides that, with respect to the 1986 through 1989 marketing years, any reduction in the national marketing quota being determined shall not exceed six percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 138 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1987 crop of flue-cured by December 1, 1986. Six such manufacturers were required to submit such a statement for the 1987 crop and the total of their intended purchases for the 1987 crop was 355.0 million pounds.

Flue-cured tobacco exports, as recorded by the Bureau of Census, were 480.5 million pounds for the 1984–85 marketing year (July–June) and 435.0 million pounds for the 1985–86 year. World Agricultural Outlook Board USDA, estimates that Census-recorded exports will total 403.0 million pounds for the 1986–87 marketing year, making the projected 3-year average 439.5 million pounds.

However, domestic cigarette manufacturers export a certain amount of processed tobacco (blends) declared as unmanufactured tobacco exports, but which are included in the domestic manufacturers purchase intentions. Also, some leaf exporters may declare as flue-cured tobacco certain blends containing foreign-grown tobaccos. Because of these conditions, the Secretary adjusted flue-cured exports to more accurately reflect actual exports. Accordingly, the revised export totals are: 1984, 405.0 million pounds; 1985, 376.1 million pounds; and 1986, 368.0 million pounds. The 3-year average is 383.0 million pounds. This is virtually the same as given in the proposed notice.

In accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level is the greater of 100 million pounds or 15 percent of the 1986 marketing quota for flue-cured tobacco. The national marketing quota for the 1986 crop year was 728.5 million pounds (51

FR 28850). Accordingly, the reserve stock level for use in determining the 1987 marketing quota for flue-cured tobacco is 109 million pounds.

As of December 12, Flur-Cured Tobacco Stabilization Corporation had in its inventory 159.9 million pounds (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 50.9 million pounds.

The total of the three marketing quota components for the 1987–88 marketing year is 678.1 million pounds. Section 317 of the 1938 Act further provides that the Secretary may increase the total by 3 percent. To ensure adequate production, the Secretary exercised this discretionary authority in determining the quota. Accordingly, the national marketing quota for the marketing year beginning July 1, 1987 for flue-cured tabacco is 707 million pounds.

Section 317(a) of the 1938 Act (7 U.S.C. 1314c(a)) provides that, beginning in 1983 and at 5 year intervals thereafter, the farm acreage allotment and preliminary farm yield for each farm shall be adjusted to reflect increases or decreases in the past 5 years' moving county average yield per acre and the in national average yield goal shall be adjusted to the past 5 years' moving national yield. Accordingly, it has been determined that the national average yield goal of 1989 pounds per acre for the 1986–87 marketing years will be the national average yield goal for the 1987–88 marketing year.

In accordance with section 317(a)(3) of the 1938 Act (7 U.S.C. 1314c(a)(3)), the national acreage allotment for the 1987 crop of flue-cured tobacco is determined to be 355,455.00 acres, which is the result of dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1983 Act (7 US.C. 1314c(e)), the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1987 crop of flue-tobacco of 900 acres is adequate for these purposes.

## Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act. With respect to the 1987 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act.

Section 106(f)(4) of the 1949 Act provides that the level of support for the 1987 crop of flue-cured tobacco shall be: (1) The level in cents per pound at which the 1986 crop of flue-cured tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the maketing year for which the determination is being made, exluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the detemrination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 25 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages (between (A) (I) and (A) (II)) is 1.4 cents per pound, the same as was estimated in the proposed notice. The difference in the cost index from January 1 to December 31, 1986 is 3.6 cents per pound the same as appeared in the proposed notice. Applying these components to the price support formula (1.4 cents per pound, two-thirds weight; −3.6 cents per pound, one-third weight) give a decrease in price support of 0.3 cents per pound. Accordingly, the 1987 crop of flue-cured tobacco will be supported at 143.5 cents per pound.

## Determinations 1987–88 Marketing Year

Accordingly, the following determinations have been made for flue-cured tobacco for the marketing year beginning July 1, 1987:

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions for the 1987 year totaled 355 million pounds.

(b) *3-year average exports.* The 3-year average exports are 383.0 million pounds, based on exports of 405.0 million pounds, 376.1 million pounds and 368.0 million pounds for the 1984, 1985, and 1986 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 109 million pounds, based on 15 percent of 1986's national marketing quota of 728.5 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is −50.9 million pounds, based on a reserve stock level of 109 million pounds and anticipated loan holdings of 159.9 million pounds.

(e) *National marketing quota.* The national marketing quota is 707 million pounds based on the total of the three components which comprise the quota plus a three percent upward discretionary adjustment in those three components.

(f) *National average yield goal.* The national average yield goal is determined to be 1,989 pounds. This goal is based on the 5-year national average yield for the 1977–81 marketing years.

(g) *National acreage allotment.* The national acreage allotment of an acreage-poundage basis is determined to be 355,455.00 acres. This allotment is determined by dividing the national marketing quota of 707 million pounds by the national average yield goal of 1,989 pounds.

(h) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 900 acres.

(i) *National acreage factor.* The national acreage factor is determined to be 0.97.

(j) *National yield factor.* The national yield factor is determined and announced to be .8951.

(k) *Types of tobacco.* It has been determined that types 11, 12, 13, and 14 shall constitute one kind of tobacco for the 1986–87, 1987–88, and 1988–89 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any

one or more of the types of flue-cured tobacco.

(l) *Price support level.* The level of support is 143.5 cents per pound based on a 1986 support level of 143.8 cents per pound and a downward adjustment of 0.3 cents per pound. The 0.3 cents downward adjustment is based on 1.4 cents per pound increase in the market price component (⅔ weight) and 3.6 cents per pound decrease in the cost component (⅓ weight).

**Authority:** Secs. 301, 313, 317, 375, 52 Stat. 38, as amended, 47, as amended, 79 Stat. 66, as amended, 52 Stat. 66, as amended (7 U.S.C. 1301, 1313, 1314c, 1375); Secs. 106, 401, 74 Stat. 6, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1445, 1421).

Signed at Washington, DC, on April 8, 1987.

**Milton J. Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87-8820 Filed 4-17-87; 8:45 am]

BILLING CODE [illegible]

---

## Animal and Plant Health Inspection Service

**[Docket No. 87-015]**

### Rangeland Grasshopper Cooperative Management Program Final Environmental Impact Statement, Decision

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Based on the environmental analysis documented in the Final Environmental Impact Statement (FEIS), we have decided to implement the Integrated Pest Management (IPM) alternative as identified in the FEIS. The IPM alternative provides for the management of grasshoppers and Mormon crickets and is environmentally preferable to the other alternatives identified in the FEIS.

**FOR FURTHER INFORMATION CONTACT:** Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

**SUPPLEMENTARY INFORMATION:** On November 7, 1986, a notice was published in the **Federal Register** (51 FR 40470) announcing the availability of, and requesting comments on, a Draft Environmental Impact Statement (DEIS) on the Rangeland Grasshopper Cooperative Management Program. The official comment period ended December 22, 1986. However, we considered and responded to all comments on the DEIS that we received by January 16, 1987. The FEIS discusses the environmental impacts of several management alternatives and the rationale for the preferred alternative, Integrated Pest Management (IPM), which includes the use of *Nosema locustae*, a biological control. A notice was published in the **Federal Register** on March 20, 1987 (52 FR 89938) announcing the availability of the Final Environmental Impact Statement. The FEIS was filed with the U.S. Environmental Protection Agency on March 11, 1987.

Based on the environmental analysis documented in the FEIS, we have decided to adopt the IMP alternative as identified in the FEIS. In implementing the IPM alternative for the grasshopper and Mormon cricket management program, we will incorporate mitigation measures to minimize environmental impacts of the techniques utilized. The biological agents and chemical insecticides approved for use in the grasshopper and Mormon cricket management program are registered for this purpose pursuant to the Federal Insecticide Fungicide and Rodenticide Act, and will be applied according to label directions. Any unique site-specific concerns will be identified and addressed in the site-specific environmental analyses conducted in accordance with the FEIS.

The Organic Act of September 21, 1944 (7 U.S.C. 147a), the Act of April 6, 1937, as amended (7 U.S.C. 148-148e), 7 U.S.C. 450, and the Food Security Act of 1985, section 1773 (7 U.S.C. 148f), authorize APHIS to cooperate with State authorities to control infestations of grasshoppers and Mormon crickets.

Done in Washington, DC, this 15th day of April 1987.

**Richard R. Backus,**

*Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.*

[FR Doc. 87-8822 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-34-M

---

## Food and Nutrition Service

### Child Nutrition Programs Income Eligibility Guidelines

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice annouces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1987-June 30, 1988. These guidelines are used by schools, institutions, and centers participating in the National School Lunch and School Breakfast Programs, Special Milk Program for Children, Child Care Food Program and by commodity schools. The annual adjustments are made pursuant to section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

**EFFECTIVE DATE:** July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

**SUPPLEMENTARY INFORMATION:** This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for program participants, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612), and thus is exempt from the provisions of that Act.

### Background

Pursuant to sections 9 and 17 of the National School Lunch Act (42 U.S.C. 1758 and 42 U.S.C. 1766), and sections 3 and 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1772 and 1773(e)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals in the National School Lunch Program (7 CFR Part 210),

School Breakfast Program (7 CFR Part 220), Child Care Food Program (7 CFR Part 226), commodity schools (7 CFR Part 210), and the guidelines for free milk in the Special Milk Program (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to serve *free meals* to all children from any household with income at or below *130* percent of the poverty guidelines. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any household with income higher than *130* percent of the poverty guidelines, but at or below *185* percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program may, at local option, serve free milk to all children from any household with income at or below 130 percent of the poverty guidelines.

**Definition of Income**

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, social security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds or income from estates or trusts, (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income", as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs due to prohibitions in the National School Lunch Act and the child Nutrition Act of 1966.

**The Income Eligibility Guidelines**

The following are the Income Eligibility Guidelines to be effective from July 1, 1987 through June 30, 1988. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

[Effective from July 1, 1987 to June 30, 1988]

| Household size | Reduced price meals—185 percent | | | Free meals—130 percent | | | Federal poverty guidelines | | |
|---|---|---|---|---|---|---|---|---|---|
| | Year | Month | Week | Year | Month | Week | Year | Month | Week |
| **48 Contiguous United States, District of Columbia, Guam, and Territories** | | | | | | | | | |
| 1 | 10,175 | [illegible] | [illegible] | 7,150 | [illegible] | [illegible] | 5,500 | [illegible] | 106 |
| 2 | 13,690 | 1,141 | [illegible] | 9,620 | [illegible] | 185 | 7,400 | 617 | 143 |
| 3 | 17,205 | 1,434 | 331 | 12,090 | 1,008 | 233 | 9,300 | 775 | 179 |
| 4 | 20,720 | 1,727 | [illegible] | 14,560 | 1,214 | [illegible] | 11,200 | [illegible] | 216 |
| 5 | 24,235 | 2,020 | [illegible] | 17,030 | 1,420 | 328 | 13,100 | 1,092 | 252 |
| 6 | 27,750 | 2,313 | 534 | 19,500 | 1,625 | 375 | 15,000 | 1,250 | [illegible] |
| 7 | 31,265 | 2,606 | [illegible] | 21,970 | 1,831 | 423 | 16,900 | 1,409 | 325 |
| 8 | 34,780 | [illegible] | [illegible] | 24,440 | 2,037 | 470 | [illegible] | 1,567 | 362 |
| For each additional family member add | +3,515 | +293 | +68 | +2,470 | +206 | +48 | +1,900 | +159 | +37 |
| **Alaska** | | | | | | | | | |
| 1 | 12,691 | 1,058 | 245 | 8,918 | 744 | 172 | [illegible] | 572 | 132 |
| 2 | 17,094 | 1,425 | [illegible] | 12,012 | 1,001 | 231 | 9,240 | 770 | 178 |
| 3 | 21,497 | 1,792 | 414 | 15,106 | 1,259 | 291 | 11,620 | [illegible] | 224 |
| 4 | 25,900 | 2,159 | 499 | 18,200 | 1,517 | 350 | 14,000 | 1,167 | 270 |
| 5 | [illegible] | 2,526 | [illegible] | 21,294 | 1,775 | 410 | 16,380 | 1,365 | 315 |
| 6 | 34,706 | 2,893 | [illegible] | 24,388 | 2,033 | [illegible] | 18,760 | 1,564 | 361 |
| 7 | [illegible] | 3,260 | 753 | 27,482 | 2,291 | [illegible] | 21,140 | 1,762 | 407 |
| 8 | 43,512 | 3,626 | [illegible] | 30,576 | [illegible] | [illegible] | 23,520 | 1,960 | 453 |
| For each additional family member add | +4,403 | +367 | +85 | +3,094 | +258 | +60 | +2,380 | +199 | +46 |
| **Hawaii** | | | | | | | | | |
| 1 | 11,674 | 973 | 225 | [illegible] | [illegible] | 158 | 6,310 | [illegible] | 122 |
| 2 | 15,725 | 1,311 | [illegible] | 11,050 | [illegible] | 213 | [illegible] | 709 | 164 |
| 3 | 19,777 | 1,649 | [illegible] | 13,897 | 1,159 | [illegible] | 10,690 | [illegible] | [illegible] |
| 4 | [illegible] | 1,986 | [illegible] | 16,744 | 1,396 | 322 | 12,880 | 1,074 | 248 |
| 5 | 27,880 | 2,324 | 537 | 19,591 | 1,633 | 377 | 15,070 | 1,256 | 290 |
| 6 | 31,931 | 2,661 | 615 | [illegible] | 1,870 | 432 | 17,260 | 1,439 | 332 |
| 7 | [illegible] | [illegible] | [illegible] | 25,285 | 2,108 | 487 | 19,450 | 1,621 | 375 |
| 8 | 40,034 | 3,337 | 770 | 28,132 | 2,345 | 541 | 21,640 | 1,804 | 417 |
| For each additional family member add | +4,052 | +338 | +78 | +2,847 | +238 | +55 | +2,190 | +183 | +43 |

BEST COPY AVAILABLE

**AUTHORITY:** 42 U.S.C. 1758 Sec. 803 Pub. L. 97-35, 95 Stat. 521-535.

Dated: April 14, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-8821 Filed 4-17-87; 8:45 am]

BILLING CODE 3410-20-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-508-604]

### Preliminary Determination of Sales at Less Than Fair Value; Industrial Phosphoric Acid From Israel

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that industrial phosphoric acid (IPA) from Israel is being, or is likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Israel. We have notified the U.S. International Trade Administration (ITC) of our determinations, and we have directed the U.S. Customs Service to suspend liquidation of all entries of IPA from Israel that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 29, 1987.

**EFFECTIVE DATE:** April 20, 1987.

**FOR FURTHER INFORMATION:** Contact David Levine, Ross Cotjanle, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1673, 377-3534 or 377-0161.

**SUPPLEMENTARY INFORMATION:**

#### Preliminary Determination

We preliminarily determine that IPA from Israel is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margin is shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Israel.

#### Case History

On November 5, 1986, we received a petition filed in proper form by FMC Corporation and the Monsanto Company, on behalf of the U.S. industry producing IPA. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of IPA from Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry. The petition also alleged that critical circumstances exist with regard to imports of IPA from Israel.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on November 25, 1986 (51 FR 43651, December 3, 1986), and notified the ITC of our action. On December 22, 1986, the ITC determined that there is a reasonable indication that imports of IPA from Israel are materially injuring a U.S. industry (52 FR 612, January 7, 1987).

On January 9, 1987, we presented an antidumping duty questionnaire to Negev Phosphates Ltd. (NPL) and requested a response in 30 days. NPL accounted for virtually all exports from Israel to the United States of IPA during the period of investigation (June 1, 1986, through November 30, 1986). On February 5, 1987, respondent requested an extension of the due date for the questionnaire response. We granted the respondent an extension, and on February 27, 1987, we received a response to the quesionnaire. On March 13, 1987, the Department requested supplemental information. A supplemental response was received from the respondent on March 30, 1987. On April 1, 1987, the Department requested further clarification of certain information previously submitted by the respondent, and a second supplemental response was received from the respondent on April 6, 1987.

#### Scope of Investigation

The product covered by this investigation is IPA provided for in item 416.30 of the *Tariff Scedules of the United States* (TSUS).

#### Fair Value Comparisons

To determine whether sales of IPA from Israel in the United States were made at less than fair value, we compared the U.S. price to the foreign market value for the company under investigation using data provided in the response.

#### United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price based on the unpacked, C&F prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, terminal expenses and ocean freight.

#### Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for IPA on sales in the home market. We made deductions, where appropriate, for inland freight, terminal expenses, certain additional freight-related charges, packing, and quantity rebates. We made a circumstance of sale adjournment for differences in credit expenses incurred in both markets, in accordance with § 353.15(a) of our regulations.

We disallowed the following adjustments claimed by NPL. NPL claimed a level of trade adjustment to compensate for differences in levels of trade existing between the U.S. market and the home market for sales of IPA. Pursuant to § 353.19 of our regulations, we have disallowed this deduction because NPL has not established that NPL experienced actual differences in selling costs associated with sales at different levels of trade in the U.S. and the home markets.

NPL also claimed an adjustment for bad debt expenses. We disallowed this adjustment because we consider bad debt expenses to be indirect selling expenses since, under generally accepted accounting principles, bad debt is recovered over time by future price increases.

NPL claimed an offset in the home market for an expense which it claimed was "tantamount to a commission" on each U.S. sale. This expense appears from the response to be a price discount, and the sales value reported by NPL is net this expense. We, therefore, disallowed this adjustment.

We disallowed NPL's request for an adjustment for exchange rate risk insurance (EIS) receipts related to its U.S. sales. Participation in the EIS is an overall management technique to

safeguard against currency fluctuations. As such, indemnity payments resulting from the program do not qualify as directly-related expenses under § 353.15 of our regulations.

Finally, NPL requested an adjustment for differences in the costs of quality control tests performed on shipments in the two markets. We have disallowed this adjustment because it does not appear from the response that the different tests were conditions of the sales. As such, these tests are not directly related to specific sales of IPA, as required by section 353.15 of our regulations.

We will seek additional information on each of the disallowed adjustments prior to our final determination.

**Currency Conversion**

As Federal Reserve certified exchange rates were not available, we made currency conversions from new Israeli shekels to U.S. dollars in accordance with section 353.56(a) of our regulations, using the International Monetary Fund (IMF) International Financial Statistics.

**Critical Circumstances**

Petitioner alleged that "critical circumstances" exist with respect to imports of IPA from Israel. Under section 733(e)(1) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind or merchandise which is the subject of the investigation over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of import statistics, we find that there is no reasonable basis to believe or suspect that imports of IPA from Israel have been massive over a relatively short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies to this case. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Israel. We have notified the ITC of this determination.

**Verification**

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use the standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

**Suspension of liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of IPA from Israel that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of IPA from Israel exceeds the U.S. price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

| Manufacturer/producer/exporter | Estimated weighted-average [illegible] percentage |
|---|---|
| Negev Phosphates Ltd. (NPL) | [illegible] |
| All others | 6.60 |

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination or 45 days after the final determination.

**Public Comment**

In accordance with § 353.47 of the Commerce Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 3, 1987, at the U.S. Department of Commerce, Room 1412, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by May 27, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within seven days after the hearing transcript is available, at the above address in at least ten copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

April 14, 1987.

[FR Doc. 87-8811 Filed 4-17-87; 8:45 am]

[illegible]

---

**National Bureau of Standards**

**[Docket No. 70222-7022]**

**Three Proposed Federal Information Processing Standards (FIPS); Revisions to FIPS 4, 58, and 59**

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Notice of three proposed revisions to FIPS 4, Calendar Date; FIPS 58, Representations of Local Time of the Day for Information Interchange; and FIPS 59, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

**SUMMARY:** These revisions will adopt voluntary industry specifications developed by X3, an accredited committee of the American National Standards Institute (ANSI). The FIPS announcements for each of these standards have been revised to make them consistent with other recent FIPS for Data Elements and Representations and to indicate that new voluntary standards are being adopted.

Prior to submission of these proposed standards to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

These three revised Federal Information Processing Standards (FIPS) contain two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of each standard, are provided in their entirety in this notice; and (2) a specifications portion which deals with the technical requirements of the standards. Interested parties may obtain copies of the technical specifications from the American National Standards Institute, 1430 Broadway, New York, New York 10018, (212) 642–4900.

**DATE:** Comments must be submitted on or before July 20, 1987.

**ADDRESS:** Written comments on the proposed revisions to FIPS PUBS 4, 58, and 59 should be submitted to the Director, Institute for Computer Sciences and Technology, ATTN: Proposed Revisions to FIPS 4, 58, and 59, National Bureau of Standards, Technology Building, Room B–154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Shirley Radack, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 975–2833.

Ernest Ambler,

*Director.*

Dated: April 13, 1987.

**Federal Information Processing Standards Publication 4–1, 1987 Month Day**

*Announcing the Standard for Representation for Calendar Date and Ordinal Date for Information Interchange*

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representation for Calendar Date and Ordinal Date for Information Interchange.

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides a means of representing calendar date and ordinal date to facilitate interchange of data among information systems.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUBS 58–1, Representations of Local Time of Day for Information Interchange.

b. FIPS PUB 59–1. Representations of Universal Time, Local Time Differentials, and United States Zone References for Information Interchange.

c. American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange.

d. American National Standard ANSI X3.43–1986, Representations of Local Time of Day for Information Interchange.

e. American National Standard ANSI X3.51–1986, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

f. International Standard ISO 3307–1975, Information Interchange—Represenations of Time of the Day.

g. International Standard ISO 4031–1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplications and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* This Federal Data Element and Representation Standard is made available for data interchange among executive department and independents agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective six months after approval. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopts American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange. The latter was approved on July 30, 1985 as a revision of ANSI X3.30–1971, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are available for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 4–1 (FIPS PUB 4–1) and title. When mocrofiche is desired, this should be specified.

**Federal Information Processing Standards Publication 58–1, 1987 Month Day**

*Announcing the Standard for Representations of Local Time of Day for Information Interchange*

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representations of Local Time of Day for Information Interchange.

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides uniform time representations based upon both the 12- and 24-hour timekeeping systems. It provides a means for representing local time of the day in digital form for the purpose of interchanging information among data systems. It specifies the time elements and their sequencing, the use of separators between time elements and the representation of the meridiem designator.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUB 4–1, Representation for Calendar Date and Ordinal Date for Information Interchange.

b. FIPS PUB 59–1, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

c. American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange.

d. American National Standard ANSI X3–1986, Representations of Local Time of Day for Information Interchange.

e. American National Standard ANSI X3.51–1986, Representations of Universal Time, Local Time Differentials, and United States Zone References for Information Interchange.

f. International Standard ISO 3307–1975, Information Interchange—Representations of Time of the Day.

g. International Standard ISO 4031–1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplication and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* This Federal Data Element and Representation Standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective six months after approval. Use by Federal agencies is encouraged when such use contributed to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopts American National Standard ANSI X3.43–1986, Representations of Local Time of Day for Information Interchange. The latter was approved on June 23, 1986 as a revision of ANSI X3.43–1977, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are available for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 58–1 (FIPS PUB 58–1) and title. When microfiche is desired, this should be specified.

**Federal Information Processing Standards Publication 59–1, 1987 Month Day**

*Announcing the Standard for Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange*

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides uniform means for representing universal time, local time differentials, and United States time zone references to facilitate data interchange among information systems. It also relates local time expressions to universal time or a particular time zone.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUB 4–1, Representation for Calendar Date and Ordinal Date for Information Interchange.

b. FIPS PUB 58–1, Representation for Local Time of Day for Information Interchange.

c. American National Standard ANSI X3.30–1985, Representations for Calendar Date and Ordinal Date for Information Interchange.

d. American National Standard ANSI X3.43–1986, Representations of Local Times of Day for Information Interchange.

e. American National Standard ANSI X3.51–1986, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.

f. International Standard ISO 3307–1975, Information Interchange—Representations of Time of the Day.

g. International Standard ISO 4031–1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplication and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* The Federal Data Element and Representation Standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective six months after approval. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopt American National Standard ANSI X3.51–1986, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange. The latter was approved on June 23, 1986 as a revision of ANSI X3.51–1975, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are availabale for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 59–1 (FIPS PUB 59–1) and title. When microfiche is desired, this should be specified.

[FR Doc. 87–8812 Filed 4–17–87; 8:45 am]
BILLING CODE 3510–13–M

---

## National Oceanic and Atmospheric Administration

### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Council's Scientific and Statistical Committees will convene a joint public meeting, to review the Amendment to the Secretarial Red Drum FMP, the Shrimp Amendment, the Mackerel Stock Assessment, and data on Bluefish and Flounder, the Swordfish FMP, and the

Spiny Lobster Limited Entry Proposal; will convene at 8 a.m., and recess at 5 p.m., on April 21, 1987, will reconvene at 8:30 a.m., and recess at 5 p.m., on April 22, 1987, and reconvene at 8:30 a.m., and adjourn at 12 noon on April 23, 1987. The meeting will be held at the Ramada Inn, 5303 West Kennedy Boulevard, Tampa, FL. For further information, contact Wayne E. Swingle, 5401 West Kennedy Boulevard, Tampa, FL; telephone: (813) 228–2815.

Dated: April 14, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–8788 Filed 4–17–87; 8:45 am]

BILLING CODE [illegible]

## Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene public meetings with a closed session at the Le Pavillon Hotel, 803 Poydras, New Orleans, LA;

*Council*—On April 30, 1987, from 8:30 a.m. to 5 p.m., will review the Red Drum Amendment to the Secretarial Red Drum Fishery Management Plan (FMP); review the draft shrimp amendment; take action on Advisory Panel selection; and conduct a closed session to discuss personnel matters.

*Committees*—On April 29 at 8 a.m., the Red Drum Management Committee will convene; followed by the Administrative Policy Committee from 1 p.m. to 2 p.m.; the Advisory Panel Selection Committee from 2 p.m. to 4 p.m.; the Personnel Committee from 2 p.m. to 4 p.m. in the Council's suite, with a closed session not open to the public, to discuss personnel matters, and the Shrimp Management Committee from 4 p.m. to 5 p.m. For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: April 14, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–8789 Filed 4–17–87; 8:45 am]

BILLING CODE [illegible]

## Gulf of Mexico and South Atlantic Fishery Management Councils; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils will convene jointly and will also convene jointly with their Intercouncil Mackerel Management Committee at the Le Pavillon Hotel, 803 Poydras, New Orleans, LA:

*Joint Council*—Councils will convene April 28, 1987, at 8:30 a.m. to 5 p.m., to review actions on the Mackerel Fishery Management Plan (FMP) and Spiny Lobster Limited Entry Plan.

*Joint Committee*—Councils will convene April 27 with their Intercouncil Mackerel Management Committee to review actions on the Mackerel Management FMP. For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, Lincoln Center, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: April 14, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–8790 Filed 4–17–87; 8:45am]

BILLING CODE 3510–22–M

## North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Policy and Planning Committee will convene in Anchorage, AK, at 10 a.m., April 22–23, 1987, at the Federal Building, 701 C Street, Room C114, to discuss the Council's amendment cycle for fishery management plans; the Council's Statement of Organization, Practices, and Procedures, and to discuss how to better handle halibut proposals. The Committee may also discuss the need to revise the Council's joint venture permit review policy.

For further information contact Clarence Pautzke, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: April 14, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–8791 Filed 4–17–87; 8:45 am]

BILLING CODE 3510–22–M

## Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274–4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–673–5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the

Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: April 14, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

| Code fishery | Regional fishery management councils |
|---|---|
| ABS—Atlantic Billfishes and Sharks. | New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean. |
| BSA—Bering Sea and Aleutian Islands Groundfish | North Pacific. |
| GOA—Gulf of Alaska | North Pacific. |
| NWA—Northwest Atlantic Ocean. | New England, Mid-Atlantic. |
| SNA—Snails (Bering Sea) | North Pacific. |
| WOC—Pacific Groundfish (Washington, Oregon and California). | Pacific. |
| PBS—Pacific Billfishes and Sharks. | Western Pacific. |

Activity codes which specify categories of fishing operations applied for are as follows:

| Activity code | Fishing operations |
|---|---|
| 1 | Catching, processing and other support |
| 2 | Processing and other support only |
| 3 | Other support only |
| * | Vessel(s) in support of U.S. vessels (Joint Venture) |
| ** | Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities. |

*Joint Venture*

The Government of Denmark on behalf of the Faroe Islands has submitted permit applications for two trawlers, the *Radhamar* and the *F/V Olaf I Gardastovu*, for the Northwest Atlantic Ocean Fishery (NWA). The species and amounts requested for joint venture and *directed fishing are listed on the following chart:

S P E C I E S

[In Metric Tons]

| Northwest Atlantic Ocean Fisheries | | | | | | |
|---|---|---|---|---|---|---|
| Illex | Loligo | Mackerel | Herring | Red hake | Silver hake | American partner |
| 3,000 | 1,500 | 3,000 | 3,000 | 2,000 (*1,000) | 10,000 (*5,000) | Mayflower Int'l Gloucester, MA |

[FR Doc 87–8792 Filed 4–17–87; 8:45 am]

BILLING CODE 3510–22–M

## COMMISSION ON EDUCATION OF THE DEAF

### Public Meetings

**AGENCY:** Commission on Education of the Deaf.

**ACTION:** Notice of Public Meetings.

**SUMMARY:** Pursuant to Pub. L. 92–463, notice is hereby given of forthcoming public meetings of the Commission on Education of the Deaf. They will be held in Clarkston, Georgia on May 21; Minneapolis, Minnesota on May 28; Seattle, Washington on June 6; and Santa Fe, New Mexico on July 1. The purpose of the meetings is to receive public input about the current and future status and needs of education of persons who are deaf. These meetings will be open to the public.

**DATES:** May 21 in Clarkston, Georgia; May 28 in Minneapolis, Minnesota; June 6 in Seattle, Washington; and July 1 in Santa Fe, New Mexico. Meetings will be held from 9:00 a.m. until 5:00 p.m.

**ADDRESSES:** *Clarkston meeting:* Building H, Room 101, DeKalb College, 555 North Indian Creek Drive, Clarkston, Georgia.

*Minneapolis meeting:* Courtyards 5 and 6, Sheraton Park Place Hotel, 5555 Wayzata Boulevard, Minneapolis, Minnesota.

*Seattle meeting:* Victoria Room, Sea Tac Hilton Hotel, 17620 Pacific Highway South, Seattle, Washington.

*Santa Fe meeting:* Ballroom, Eldorado Hotel, 309 West San Francisco Street, Santa Fe, New Mexico.

For Scheduling: To schedule a time to make statements at the meetings, call: for the Clarkston meeting, Holly Lumpkin, (404) 299–4110, 8:00 a.m.–4:30 p.m., E.S.T. no later than May 18; for the Minneapolis meeting, Mary Alice Gregg, (612) 221–1337, 7:30 a.m. to 4:00 p.m., C.S.T. no later than May 25; for the Seattle meeting, Nancy Hatfield, (206) 323–5770, 9:00 a.m.–5:00 p.m. M.S.T. no later than June 3; and for the Santa Fe meeting, Henrietta Quintana, (505) 827–6721, 8:00 a.m.–4:30 p.m. M.S.T. no later than June 26. All numbers are TDD/Voice. These are not toll free numbers.

**FOR FURTHER INFORMATION CONTACT:** Monica Hawkins, Commission on Education on the Deaf, GSA Regional Office Building, Room 6846, 7th and D Streets, SW, Washington, DC 20407, (202) 453–4353 (TDD) or (202) 453–4684 (Voice.).

**SUPPLEMENTARY INFORMATION:** The Commission will hold four public meetings to receive statements from interested persons and organizations concerning educational needs of persons who are deaf. The four meetings will be held, first, in Clarkston, Georgia on May 21; second, in Minneapolis, Minnesota on May 28; third, in Seattle, Washington on June 6; and fourth, in Santa Fe, New Mexico on July 1.

The meetings are open to the public. The invitation for participation is extended to all interested persons, including deaf students and adults; representatives of professional associations working with people who are deaf; parents; teachers; private/public school and program administrators; and representatives of educational agencies of Federal, State, and local governments.

These meetings are also open to persons who wish to respond to the Notice of Inquiry published in the **Federal Register** on April 2, 1987 (52 FR 10722).

Oral statements should be limited to approximately ten minutes with an additional 5 minutes for discussion. The Commission reserves the right to impose further time limitations on all statements and further restrictions to avoid duplication of statements.

Persons scheduled to make statements at the meetings are to bring twenty copies of a written text or summary of their statements to the meeting.

Records will be kept of the meetings and will be available for public inspection at the office of the Commission on Education of the Deaf, GSA Regional Office Building, Room

6646, 7th and D Streets, SW., Washington, DC.

**Pat Johanson,**

*Staff Director, Commission on Education of the Deaf.*

April 15, 1987

[FR Doc. 87-8834 Filed 4-17-87; 8:45 am]

BILLING CODE 6820-SC-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Proposed Additions

**AGENCY:** Committee for purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Addition to Procurement List.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1987 commodities to be produced by workshops for the blind or other severely handicapped.

Comments must be received on or before May 19, 1987.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** C.W. Fletcher, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

*Additions:*

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1987, November 3, 1986 (51 FR 39945).

*Commodities:*

Arming Wire—1350-00-889-8165

Slacks, Utility, Woman's—8410-01-074-6193, 8410-01-074-6194, 8410-01-074-6195, 8410-01-074-6196, 8410-01-074-6197, 8410-01-074-6198, 8410-01-074-6199, 8410-01-074-7868, 8410-01-074-7869, 8410-01-074-7870, 8410-01-074-7871, 8410-01-074-7872, 8410-01-074-7873, 8410-01-074-7874, 8410-01-074-7003, 8410-01-074-7004

**C.W. Fletcher,**

*Executive Director.*

[FR Doc. 87-8794 Filed 4-17-87; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on LHX Requirements; Cancellation of Meeting

**ACTION:** Cancellation of meeting.

**SUMMARY:** The meeting notice for the Defense Science Board Task Force on LHX Requirements for April 25, 1987 as published in the **Federal Register** (Vol. 52, No. 67, Page 11310, Wednesday, April 8, 1987, FR Doc 87-7728.) has been cancelled. In all other respects the original notice remains unchanged.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 15, 1987.

[FR Doc. 87-8815 Filed 4-17-87; 8:45 am]

BILLING CODE 3810-01-M

### Defense Science Board Task Force on Computer Applications to Training and Wargaming

**ACTION:** Change in location of advisory committee meeting notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on Computer Applications to Training and Wargaming scheduled for April 23-24, 1987 as published in the **Federal Register** (Vol. 52, No. 59, Page 9912, Friday, March 27, 1987, FR Doc 87-6709) will be held at the Institute for Defense Analyses, Alexandria, Virginia. In all other respects the original notice remains unchanged.

April 15, 1987.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87-8816 Filed 4-17-87; 8:45 am]

BILLING CODE 3810-01-M

### Defense Science Board Task Force on Multi-National Cooperation for Follow-on Forces Attack Requirements

**ACTION:** Change in date of advisory committee meeting notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on Multi-National Cooperation for Follow-on Forces Attack Requirements scheduled for April 28-30, 1987 as published in the **Federal Register** (Vol. 52, No. 28, Page 4376-4377, Wednesday, February 11, 1987, FR Doc. 87-2828) will be held on June 4-5, 1987. In all other respects the original notice remains unchanged.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 15, 1987.

[FR Doc. 87-8817 Filed 4-17-87; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Army

### Military Traffic Management Command; Directorate of Personal Property; International Program Rate Solicitation

**AGENCY:** Military Traffic Management Command (MTMC), Department of the Army, DOD.

**ACTION:** Notice of Rate Solicitation 100-E., Volume 55 ITCBL.

**SUMMARY:** The next six-month cycle for the worldwide movement of household goods and unaccompainied baggage will be effective 1 October 1987. There are no significant changes for Volume 55. The initial filing date is 20 May 1987. The solicitation package for the October rate cycle will be distributed in April 1987.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Scott or Mrs. Naomi King, HQ, Military Traffic Management Command, Attn: MT-PPC, (Room 408), Falls Church, Virginia 22041-5050, (202) 756-2385.

**Robert F. Waldman,**

*Deputy Director, Directorate of Personal Property.*

[FR Doc 87-8632 Filed 4-17-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CI87-290-000]**

### El Paso Production Co.; Application

April 14, 1987.

Take notice that on February 6, 1987, El Paso Production Company (Production Company) of 2919 Allen Parkway, Suite 900, Houston, Texas 77019, filed with the Commission an Application for Certificate of Public Convenience and Necessity to continue sales of gas as a successor-in-interest to

El Paso Natural Gas Company (El Paso) in certain leases and wells located in Arizona, New Mexico, Colorado, Oklahoma and Texas previously held by El Paso. Production Company states that the properties for which the certificate is requested are those properties the gas from which El Paso produced into its system on an "NGPA price" basis, as opposed to a cost-of-service basis, and which are subject to the Commission's sale for resale Regulations Under the Natural Gas Act. Production Company further states that it has executed a contract with El Paso providing that, as successor-in-interest, Production Company will continue the sale of the gas to El Paso under the same conditions and at the same price as obtained while El Paso owned the properties, in accordance with orders, rules, and regulations of the Commission.

By conveyance dated July 16, 1986, and effective July 1, 1986, El Paso transferred to Production Company all of its interest in leases and wells, the production from which had previously been priced by El Paso on a "NGPA basis." That is, the production was priced into El Paso's system as a first sale by El Paso's production division to its transmission division at prices established solely by reference to Title I and other provisions of the Natural Gas Policy Act of 1978 (NGPA). El Paso did not transfer to Production Company, by such conveyance, any wells or leases the production from which continues to be priced into its system on a cost-of-service basis pursuant to Commission's Regulation Under the Natural Gas Act (NGA).

Any person desiring to be heard or to make any protest with reference to said application should on or before April 27, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in acoordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8762 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket Nos. CI87-387-000 and CI87-415-000]**

## Ladd Petroleum Corp.; Applications for Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

April 9, 1987.

Take notice that on March 27, 1987, as supplemented on April 7, 1987, Ladd Petroleum Corporation (Ladd) of 370 Seventeenth Street, Denver, Colorado 80202, filed applications pursuant to section 7 of the Natural Gas Act, 15 U.S.C. § 717f (1982) (NGA), and Part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157, for (1) authorization in Docket No. CI87-387-000 to abandon for a one-year limited-term sales of gas to Northern Natural Gas Company, Division of Enron Corp. (Northern) that are in excess of Northern's ratable take requirements from six wells in the Gomez Field, Pecos County, Texas, and (2) a blanket one-year limited-term certificate of public convenience and necessity with pregranted abandonment in Docket No. CI87-415-000 authorizing sales for resale in interstate commerce of such gas to third parties. Ladd also requests waiver of certain portions of Parts 154 and 271 of the Commission's Regulations, and requests expedited approval of the applications pursuant to the procedures of § 2.77 of the Commission's Regulations, 18 CFR 2.77.

In support of its applications Ladd states that the subject sales to Northern are made under a contract dated December 1, 1970, on file as Ladd's FERC Gas Rate Schedule No. 78, certificated in Docket No. CI76-743, and under a contract dated May 1, 1972, covered under Ladd's small producer exemption in Docket No. CS71-646. Ladd states Northern's takes of gas under the subject contracts have been substantially reduced without payment. On March 16, 1987, Ladd and Northern have executed agreements, to be effective the date of Commission authorization, amending the December 1, 1970, and May 1, 1972, contracts, to provide for the release of certain quantities of gas which are in excess of Northern's ratable take requirements for a primary term of twelve months and month-to-month thereafter, subject to termination by either party upon thirty days prior written notice, and to provide for the release and discharge of Northern from any minimum take requirement or take-or-pay liability, claim or demand for all past periods and continuing throughout the remaining terms of the agreements. The wells per contract, their spud dates, NGPA category and their approximate daily deliverability are shown below.

| Contract date | Well name | Spud date | NGPA category | Mcf/d |
|---|---|---|---|---|
| 12/1/70 | FSOC Leon No. 1 | 7/22/70 | 104 | 4,000 |
| | Ft. Stockton-Darel Res. No. 1 | 9/12/71 | 104 | 217 |
| | Ft. Stockton-Darel Res. No. 2 | 7/19/71 | 104 | [illegible] |
| 5/1/72 | South Gomez No. 1 | 7/20/72 | 104 | [illegible] |
| | South Gomez No. 2 | 4/20/73 | 104 | [illegible] |
| | South Gomez 3A No. 1 | 1/18/75 | 104 | [illegible] |
| | | | | 11,506 |

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Ladd to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-8763 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-357-000]

## Newmont Oil Co.; Re-Notice of Application for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pregranted Abandonment

April 14, 1987.

Take notice that on March 10, 1987, Newmont Oil Company (Newmont), 600 Jefferson, 9th Floor, Houston, Texas 77002, filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking blanket limited-term abandonment authorization and a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of certain natural gas, with pregranted abandonment, to be effective on April 1, 1987 and continuing through March 31, 1990, as more fully described in the Application which is on file with the Commission and open for public inspection.

Specifically, Newmont requests that the Commission authorize Newmont:

(1) To abandon for a three-year term sales for resale of gas subject to the Commission's NGA jurisdiction and previously certificated by the Commission as shown on Exhibit A, to the extent that such gas is released by Transcontinental Gas Pipe Line Corporation (Transco) for resale to third parties;

(2) To make sales for resale in interstate commerce for a period of three years of such abandoned gas, with pregranted abandonment of any such sale, without supply or market limitations; and

(3) A waiver of Part 154 of the Commission's Regulations concerning the establishment of rate schedules for any sales made under (2).

In support of its application Newmont states that it has entered into an Omnibus Contract Amendment and Settlement Agreement with Transco which provides for market responsive pricing, buyout of prior years take-or-pay deficiencies, a cap for producer deliverability, an annual quantity commitment providing for flexibility in takes for any given month, and assignment or release by Transco to third party purchasers of gas not purchased by Transco.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

EXHIBIT "A".—GAS CONTRACTS BETWEEN NEWMONT OIL COMPANY AND TRANSCONTINENTAL GAS PIPELINE COMPANY

| Field | FERC rate schedule and docket No. | Contract date | Transco contract No. | Vintage | Deliverability as 9/15/86 | | |
|---|---|---|---|---|---|---|---|
| | | | | | BWG | CSHD | Total |
| | | | | | MCFPD | MCFPD | MCFPD |
| Eugene Island Block 126 (Blocks 119, 120, 125 & 126) Offshore Louisiana | [a] CS 7150 | [a] 09-02-81 | 61166 | [a] 104 | | 33 | 33 |
| | | | | [b] 104 | | 50 | 89 |
| | | | | 106 | | 597 | 597 |
| Eugene Island Block 128 (Blocks 128 & 129) Offshore Louisiana | [a] CS 7150 | [a] 09-02-81 | 61168 | [c] 102 | 282 | 21 | 303 |
| | | | | [d] 104 | | 35 | 35 |
| | | | | 106 | | 90 | 90 |
| High Island 111, Offshore Texas | [a] CS 7150 | 09-01-76 | 06511 | [d] 104 | 660 | | 660 |
| | | | | [b] 194 | 5165 | | 5165 |

EXHIBIT "A".—GAS CONTRACTS BETWEEN NEWMONT OIL COMPANY AND TRANSCONTINENTAL GAS PIPELINE COMPANY—Continued

| Field | FERC rate schedule and docket No. | Contract date | Transco contract No. | Vintage | Deliverability as 9/15/86 | | |
|---|---|---|---|---|---|---|---|
| | | | | | GWG | CSHD | Total |
| | | | | | MCFPD | MCFPD | MCFPD |
| Ship Shoal Block 72 (Block 86 N/E 4) Offshore Louisiana [1] | 12,CI-453-000 | [3] 06-15-81 | 61125 | | | | |
| Ship Shoal Block 72 Offshore Louisiana Offshore Louisiana | [2] CS 7150 | [3] 09-02-81 | 61173 | [c] 102 | 1718 | 458 | 2176 |
| | | | | 106 | 56 | 38 | 40 |
| South Pelto Block 10 Offshore Louisiana | [2] CS 7150 | 09-23-76 | 06520 | [c] 102 | 7920 | 1858 | 9778 |
| | | | | [b] 104 | 3084 | | 3084 |
| South Pelto Block 10 Blocks 9 & Ship Shoal 68) Offshore Louisiana | [2] CS7150 | 08-15-78 | 06643 | [c] 102 | 293 | 1251 | 1544 |
| South Pelto Block 20 (Block 11) Offshore Louisiana | [2] CS 7150 | [3] 09-02-81 | 61169 | [c] 102 | 194 | 156 | 350 |
| | | | | [d] 104 | 191 | | 181 |
| | | | | [b] 104 | 156 | 144 | 300 |
| West Cameron Block 110 (Blocks 110 & 111 S/E 4) Offshore Louisiana | [2] CS 7150 | [3] 09-02-81 | 61167 | [b] 104 | 938 | | 938 |
| | | | | 106 | 2443 | | 2443 |
| Total | | | | | 24292 | 4770 | 29062 |

[1] New Lease however rate schedule was nevertheless obtained.
[2] Small producer certificate expired 3/31/79.
[3] Rollover contract; original date 9/8/57; Transco Contract No. 06118.
[a] Replacement contract or recompletion.
[b] 1973-1974 biennium gas.
[c] New gas on old lease.
[d] Post 1974 gas.

[FR Doc. 87-8764 Filed 4-17-87; 8:45 am]
BILLING CODE 6717-01-M

---

**[Docket Nos. OR87-1-000, OR87-2-000, OR87-3-000, OR87-4-000, OR87-5-000, OR87-6-000, OR87-7-000, and OR87-8-000**

## Oxy Pipeline, Inc.; Petitions for Declaratory Orders

April 15, 1987.

Take notice that on March 5, 1987, Oxy Pipeline, Inc. (OPI) tendered for filing petitions for declaratory orders in the above-referenced dockets, which request that the Commission issue order(s) finding that it has no jurisdiction under the Interstate Commerce Act over OPI's various pipelines, or in the alternative, requests that it be exempted from the requirements of sections 6, 19a and 20 of the Interstate Commerce Act, 49 U.S.C. 6, 19a, 20.

OPI has filed memoranda in support of its petitions for declaratory orders.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8767 Filed 4-17-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-414-000]

## Vintage Petroleum, Inc.; Application for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

April 14, 1987.

Take notice that on March 30, 1987, Vintage Petroleum, Inc. (Vintage), 502 S. Main Mall, Suite 400, Tulsa, Oklahoma, 74103 has filed an application under section 7(b) of the Natural Gas Act and § 2.77 of the Commission rules. Vintage requests that the Commission issue an order granting Vintage (1) authority, for a limited term of three (3) years, to abandon sales to Northern Natural Gas Co. (Northern) of certain gas which is subject to NGA jurisdiction from the well designated as J. W. Henderson #1, Ozona Field, Crockett County, Texas, and (2) blanket pre-granted authorization for a limited term of three (3) years for any future sales of such gas under its small producer certificate issued in docket No. CS84-61-000. Vintage states that it is subject to substantially reduced takes without payment. The deliverability involved is approximately 700 MCFD and the J. W. Henderson No. 1 well produces NGPA section 104 minimum rate gas.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8765 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF87-5051-000]

## Western Area Power Administration; Application

April 15, 1987.

Take notice that on April 2, 1987, the Under Secretary of the Department of Energy tendered to the Federal Energy Regulatory Commission, pursuant to authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 0204-108, a copy of rate order No. WAPA-28 for confirmation and approval on a final basis for a five year period to expire on the last day of the March 1992 billing period.

Pursuant to the authority delegated to the Under Secretary of the Department of Energy by Delegation Order No. 0204-108, as amended on May 28, 1986, the Under Secretary confirmed and approved on an interim basis, effective beginning on the first day of the April 1987 billing period, a New Rate Schedule RGP-F3 for Rio Grande Project Power marketed by the Western Area Power Administration (Western).

The new rate will be in effect pending the Commission's approval of it, or a substitute rate, on a final basis, or until superseded. The final revised FY 1985 Power Repayment Study dated February 1987, on which the power rate is based, indicates that a firm composite rate of 36.92 mills per kilowatthour (kWh) is necessary for project repayment. The new rate is an increase of 6.07 mills per kWh (19 percent) over the existing rates. Average annual project revenues are expected to increase from $2,388,000 to $2,840,000. The new rate is necessary to meet an increase in project interest expense caused by higher interest rates for additions and replacements and increases in operation and maintenance in future years. The Administrator of Western certifies that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8766 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2261-000]

## William W. Gallagher; Application

April 14, 1987.

Take notice that on February 6, 1987, William W. Gallagher filed an application pursuant to section 305(b) of the Federal Power Act to hold the following position:

| Position | Name of corporation | Classification |
|---|---|---|
| Chairman and President Director | Gallagher Capital Corp. Portland General Electric Co. | Authorized by law to underwrite. Public utility. |

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8806 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01

[Docket No. ID-2260-000]

## James J. Johnson; Application

April 14, 1987.

Take notice that on February 20, 1987, James J. Johnson filed an application pursuant to section 305(b) of the Federal Power Act to hold the following position:

| Position | Name of corporation | Classification |
|---|---|---|
| President and Director | NSP-Minn | Public utility |

| Position | Name of corporation | Classification |
|---|---|---|
| Director | Square D. Co. | Supplying electrical equipment |

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8807 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CP87-85-000]

## Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Technical Conference and Environmental Inspection

April 10, 1987.

Take notice that on April 22 and 23, 1987, members of the staff of the Federal Energy Regulatory Commission will conduct an environmental inspection of the replacement pipeline route through Burlington, Massachusetts, as proposed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. in Docket No. CP87-85-000. In addition, the Commission's staff will also conduct an environmental inspection of alternate pipeline routes in the towns of Burlington and Wilmington, Massachusetts.

The Commission's staff will also meet with officials of the town of Burlington, Massachusetts to discuss the proposed pipeline replacement project. Town officials attending the meeting will include: Mr. James D. Melchionna, Selectman; Mr. Richard Gladstone, Town Administrator; Ms. Colette Meunier, Planning Administrator; Mr. Syamal N. Chaudhuri, Superintendent of Public Works; and Ms. Joyce Frank, Counsel retained by the Board of Selectmen.

The technical conference will be held on April 23, 1987, at 9:00 a.m. at the Burlington Town Hall, Selectmen's Meeting Room. All parties to this proceeding and interested members of the public are invited to attend; however, mere attandance at the conference will not carry party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

Further information concerning the technical conference and environmental inspection can be obtained from Mr. James P. Daniel, Federal Energy Regulatory Commission, Environmental Evaluation Branch, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5364.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8805 Filed 4-17-87; 8:45 am]

BILLING CODE 6717-01-M

---

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3189-5]

## Chesapeake Bay Executive Council; Meeting

The Chesapeake Bay Executive Council established in accordance with the Chesapeake Bay Agreement of December 1983, will be held from 10:00 a.m. to 2:00 p.m. on May 7, 1987, at the Airlie House, Warrenton, Virginia. This notice is published pursuant to section 10(a)(2) of Pub. L. 92-463, "The Federal Advisory Committee Act."

The agenda of the quarterly council meeting will include, but is not limited to:

10:00-10:10 Opening Remarks
10:10-10:30 Implementation Committee Report to the Executive Council
10:30-12:30 Discussion of the questions* by the Council, Citizens Advisory Committee panel, and Scientific and Technical Advisory Committee panel
12:30-1:30 Lunch Break
1:30 PM Executive Council reconvenes and gives comment and directions
2:00 PM Council meeting adjourns

* Questions to be discussed include:

(1) How can we ensure that research critical to management of the Chesapeake estuarine system is properly identified, prioritized and funded?

(2) How can we improve our monitoring programs so that they can provide better information for planning, implementation and regulatory programs?

(3) How can we integrate information on the environmental requirements of living resources into planning, implementation and regulatory programs?

(4) How much reliance can and should we place on models in planning, implementation and regulatory programs?

(5) How can we improve the overall planning process of the Council and its supporting committees and subcommittees?

(6) Are there any significant restoration and protection issues that are not being addressed by the Executive Council and its supporting committees?

Written comments from the public are welcomed and should be received at the Chesapeake Bay Liaison Office no later than April 29, 1987 for distribution to the members. Questions about the meeting or written comments should be directed to Mr. Harry Wells, U.S. EPA, Chesapeake Bay Liaison Office, Annapolis City Marina, Suite 109-110, Annapolis, Maryland 21403. The telephone number is: Area 301/266-6873.

Dated: April 8, 1987.

**Charles S. Spooner,**

*Director, Chesapeake Bay Liaison Office.*

[FR Doc. 87-8785 Filed 4-17-87; 8:45 am]

BILLING CODE 6560-50-M

---

## Science Advisory Board

[FRL-3189-7]

## Long-Range Ecological Research Needs Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two-day meeting of the Long-Range Ecological Research Needs Subcommittee of the Science Advisory Board's Executive Committee will be held on May 27 and 28, 1987. The meeting will begin at 9:00 a.m. on May 27, and will be held in the Administrator's Conference Room 1103 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. Adjournment on May 28 will taken place no later than 12:00 p.m.

The main purpose of the meeting is to begin as assessment of EPA's ecological research needs, specifically those research needs that address ecological problems that may be encountered or may persist in the future. The Subcommittee will discuss the evolution of EPA's ecological research agenda, from Agency inception to the present. EPA's Office of Research and Development will provide a briefing

based on their activities as related to these issues. Related activities that are currently in progress or in the planning stages, by other agencies, nations, and the private sector, will be discussed. In addition, the Subcommittee will begin to identify the broad, long-range, scientific questions that research programs of many agencies must prepare to answer. The Subcommittee welcomes input and information pertinent to the evaluation of these long-range ecological research activities.

The meeting will be open to the public. Any member of the public who wishes to attend, present information to the subcommittee, or obtain information concerning the meeting, should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, (A101–F) Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. EPA, 401 M. Street, SW., Washington, DC 20460, Telephone (202) 382–2552 or FTS 8–382–2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than May 20, 1987 in order to be assured of space on the agenda.

Dated: April 14, 1987.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

[FR Doc. 87–8783 Filed 4–17–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Reclassification of FM Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission has reclassified many FM broadcast stations pursuant to the new classifications set forth in BC Docket 80–90. In BC Docket 80–90, existing class B and C FM stations were given until March 1, 1987 to modify their facilities to meet the minimum facilities required for such stations or else be reclassified. This Notice serves to advise the public that this reclassification has taken effect. An Attachment to this Public Notice listing all affected stations has been prepared and is available for inspection and duplication in the Commission's Public Reference Room (Room 239) at 1919 M Street, NW., Washington, DC. Copies of this List may also be purchased from ITS, Inc., the official FCC copy contractor (202) 857–3800.

**EFFECTIVE DATE:** March 2, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Gary Kalagian, (202) 632–2049 or John Boursy, (202) 634–6315.

**Larry D. Eads,**

*Chief, Audio Services Division.*

### Reclassification of FM Facilities Pursuant to BC Docket 80–90

In the *Report and Order* in BC Docket 80–90, 94 FCC2d 152 (1983), the Commission specified a minimum transmitting antenna height above average terrain (HAAT) of 300 meters and a minimum effective radiated power (ERP) of 100 kW for class "C" facilities. The *Report and Order* also specified that class "B" facilities have an ERP which exceeds 25 kW. In order to provide existing stations an opportunity to meet these minimums, the Commission indicated that existing stations would have three years from the effective date of the *Report and Order* (i.e. March 1, 1984) to submit an application for appropriate minimum facilities or be reclassified. Thus, to avoid reclassification, an application proposing minimum class "B" or "C" facilities must have been received by March 1, 1987. Since, however, March 1, 1987, fell on a Sunday, the Commission has accepted applications to meet the class "B" and "C" minimums filed by the close of business on March 2, 1987, pursuant to 47 CFR 1.4(i).

In a Public Notice released March 24, 1987, FCC 87–93, the Commission stated that it would prepare a list of reclassified facilities as soon as possible after March 2, 1987. The Attachment to this Public Notice consists of that list of reclassified facilities. Also included on the list are additional allotments and assignments which will be subsequently reclassified should their applications to meet the minimum class "B" or "C" facilities be returned or dismissed and/or existing construction permits expire.

The list is arranged by allotment groups in order by channel number. Under each channel number, the allotment groups are ordered alphabetically by state and city. Each allotment group contains an allotment as it was classified prior to March 2, 1987 and any license, construction permit or application associated with the allotment as of the close of business on March 2, 1987. A group appears on the list if the class of any facility included in the group changes.

The new class of a license, construction permit, or application was determined from the listed ERP and HAAT values and the zone of the transmitter site. In most situations, the new class of the allotment itself was determined from the highest class specified for the license, construction permit or application listed in that allotment group. An Order amending the FM Tables of Allotments (Sections 73.202 and 73.505) pursuant to the Commission's *Report and Order* in BC Docket 80–90 will be issued as soon as possible. (*See* Public Notice, FCC 87–93, released March 24, 1987, which further explains how the Commission administered the reclassification process).

For some groups, the allotment channel was changed by a prior Rulemaking and this fact is so indicated. Therefore, some stations appear in two groups because they may still be operating on the old channel and have an application pending or construction permit for operation on the new channel.

Non-commercial educational facilities were also reclassified at the close of business on March 2, 1987, and are included on the list. However, groups for these facilities do not have an allotment associated with them unless they are located within the Mexican Border Area. The separation distance requirements between non-commercial educational facilities on channels 218, 219 and 220, non-commercial facilities separated in frequency by 10.6 or 10.8 MHz (53 or 54 channels) or non-commercial facilities in the Mexican Border Area and allotments or assignments on the non-reserved channels will be based on these new classifications and the distance obtained from Table A, B, or C of § 73.207 of the Commission's Rules. For other non-commercial educational facilities, the reclassification was for administrative purposes only.

The class change for any license, construction permit, or application indicated on the attached list constitutes a modification of that facilities' authorization by the Commission. Any errors detected in this list should be brought to our attention immediately. Reclassified facilities will not be issued a new authorization solely because of reclassification. When a new authorization is issued for any reason, the new class will appear.

The inclusion on this list of any application, construction permit, or license is only for the purpose of determining the class of the allotment or assignment, and does *not* constitute a determination on the merits of any matter concerning an application, construction permit, license or allotment that may be pending before the Commission. These situations include, but are not limited to:

(1) Applications which have not yet been found sufficient for tender or acceptable for filing are included on the list. Inclusion on the list does *not* mean that the application is either tenderable or acceptable.

(2) Applications which have been returned and for which petitions for reconsideration are pending are included on the list. The inclusion on the list does *not* mean that the petition for reconsideration has been granted; rather, it means only that the application will have the listed class *if* the petition for reconsideration is granted.

(3) Applications which include waiver requests not to reclassify the allotment are included on the list. The class of the allotment group has not been changed because of these requests. This does *not* mean that the waiver of reclassification has been granted; rather, it means that the allotment class will remain the same pending action on the waiver request.

(4) Construction permits which have expired but have applications for reinstatement pending are included on the list. The inclusion on the list does *not* mean that the construction permit has been reinstated; rather, it means only that the construction permit will have the listed class *if* the construction permit is reinstated.

(5) Licenses for which renewals have not been granted are included on the list. The inclusion on the list does *not* mean that the renewal has been granted; rather, it means only that the license will have the listed class *if* the renewal is granted.

The Attachment to this Public Notice is available for inspection in the Commission's Public Reference Room, Room 239, 1919 M St. NW., Washington, DC.

Questions regarding this Public Notice or the attached list should be directed to Gary Kalagian (202) 632–2049 or John Boursy (202) 634–6315.

[FR Doc. 87–8745 Filed 4–17–87; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–754–DR]

### Amendment to Notice of a Major-Disaster Declaration; Pennsylvania

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–754–DR), dated November 9, 1985, and related determinations.

**DATED:** April 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

**Notice.**—The notice of a major disaster for the Commonwealth of Pennsylvania, dated November 9, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 9, 1985:

Clairton Municipal Authority in Allegheny County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Joe D. Winkle,**

*Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 87–8758 Filed 4–17–87; 8:45 am]

BILLING CODE 6718–21–M

## FEDERAL RESERVE SYSTEM

### First United Financial Services, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 13, 1987.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Financial Services, Inc.*, Arlington Heights, Illinois; to engage *de novo* through its subsidiary, Arlington Mortgage Company, Arlington Heights, Illinois, in making, acquiring and servicing loans or other extensions of credit for the company's account and for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Dallas Guaranty Bancshares, Inc.*, Dallas, Texas; to engage *de novo* in making, acquiring and/or servicing loans for itself or for others of the type made by a consumer finance company or commercial finance company pursuant to section 225.25(b)(1) of the Board's Regulation Y.

**C. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Founders Bancorp, Inc.*, Scottsdale, Arizona; to engage *de novo* through its subsidiary, Founders Bank Leasing Co., Inc., Scottsdale, Arizona, in the leasing of personal or real property, with the primary purpose of leasing automobiles pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by May 11, 1987.

2. *Valley Capital Corporation*, Las Vegas, Nevada; to engage *de novo* through its subsidiary, Valley Electronic Services, Inc., Las Vegas, Nevada, in providing financially related data processing and data transmission services facilities, and data bases, or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by May 11, 1987.

Board of Governors of the Federal Reserve System, April 14, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-8737 Filed 4-17-87; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 5, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Jeremy C. McComic,* Wheeling, West Virginia; to acquire 17.37 percent of the voting shares of American Bancorporation, Wheeling, West Virginia, and thereby indirectly acquire Quaker City National Bank, Quaker City, Ohio.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *John E. Rednour,* DuQuoin, Illinois; to acquire up to an additional 9.99 percent of the voting shares of Perry County Bancorp, Inc., DuQuoin, Illinois, and thereby indirectly acquire DuQuoin State Bank, DuQuoin, Illinois.

Board of Governors of the Federal Reserve System, April 14, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-8738 Filed 4-17-87; 8:45 am]

BILLING CODE 6210-01-M

## Nebraska Capital Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 11, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nebraska Capital Corporation,* Lincoln, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Havelock Bank, Lincoln, Nebraska. Comments on this application must be received by May 5, 1987.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Community Bankers, Inc.,* Granbury, Texas; to acquire 80 percent of the voting shares of Farmers and Merchants State Bank, Burleson, Texas.

Board of Governors of the Federal Reserve System, April 14, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-8739 Filed 4-17-87; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

## Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030187 AND 033187

| Name of acquiring person, name of acquired person, name of acquired [illegible] | [illegible] No. | [illegible] |
|---|---|---|
| (1) APV Holdings, PLC, Baker Perkins, PLC, Baker Perkins, PLC | 87-1139 | 3/04/87 |
| (2) Henry Crown & Co., Joanna Western Holdings, Inc., Joanna Western Consumer Products, Inc | 87-1145 | 3/05/87 |
| (3) Aoki Corp., Trust for the benefit of Mary M. Bodne, held by the Bodne Trust | 87-1154 | 3/05/87 |
| (4) Eastern Gas and Fuel Associates, Newmont Mining Corp., Peabody Holding Co., Inc | 87-1156 | 3/05/87 |
| (5) Peabody Holding Co., Inc., Eastern Gas and Fuel Associates, Coal Properties Corp | 87-1157 | 3/05/87 |
| (6) Dixons Group PLC, Cyclops Corp., Cyclops Corp | 87-1159 | 3/05/87 |
| (7) C.H. Beazer (Holdings) PLC, Edward Randall Phillips, Randall Phillips Builders, Inc., Philhall Corp | 87-1170 | 3/05/87 |
| (8) Lomas & Nettleton Financial Corp., National Bancshares Corp. of Texas, NBC's credit card accounts | 87-1174 | 3/05/87 |
| (9) Total Compagnie Francaise Des Petroles, Texas International Co., Texas International Co | 87-1142 | 3/06/87 |
| (10) Chrysler Corp., Beneficial Corp., Loan accounts | 87-1133 | 3/09/87 |
| (11) Isuzu Motors Ltd., Subaru-Isuzu Automotive Inc., Subaru-Isuzu Automotive Inc | 87-1134 | 3/09/87 |
| (12) Fuji Heavy Industries, Ltd., Subaru-Isuzu Automotive Inc., a joint venture, Subaru-Isuzu Automotive Inc., a joint venture | 87-1135 | 3/09/87 |
| (13) First Capital Holdings Corp. The E.F. Hutton Group Inc., E.F. Hutton Insurance Group, Inc | 87-1161 | 3/09/87 |
| (14) Transamerica Corp., Fairmont Financial, Inc., Fairmont Financial, Inc | 87-1163 | 3/09/87 |
| (15) Longview Fibre Co., Times Mirror Co., Times Mirror Land and Timber Co | 87-1165 | 3/09/87 |
| (16) Tele-Communications, Inc., J. Patrick Michaels, Jr. Atlantic American Holdings, Inc | [illegible] | 3/10/87 |
| (17) Royal Dutch Petroleum Co., John J. Maller, USA Petroleum Corp | 87-1151 | 3/10/87 |
| (18) PacifiCorp, Davis Oil Co., Davis Oil Co | 87-1169 | 3/10/87 |
| (19) Coca-Cola Enterprises, Inc., The Coca-Cola Co., The Coca-Cola Bottling Co. of the Mid-South | 87-1097 | 3/11/87 |
| (20) Waste Management, Inc., Chemlawn Corp., Chemlawn Corp | 87-1167 | 3/11/87 |
| (21) American Trading and Production Corp., NEAC Partnership, Globe-Wes Dawson | 87-1168 | 3/11/87 |
| (22) The United Co., Sandy Ridge Energy Corp., Knox Creek Coal Corp | 87-1202 | 3/11/87 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030187 AND 033187—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| (23) Genicom Corp., Mohawk Technologies, Inc., Mohawk Technologies, Inc. | 87-1195 | 3/12/87 |
| (24) J.H. Whitney & Co., Genicom Corp., Genicom Corp | 87-1106 | 3/12/87 |
| (25) Welsh, Carson, Anderson & Stowe IV, Genicom Corp., Genicom Corp | 87-1107 | 3/12/87 |
| (26) Anchor Media Ltd., WBC Associates, L.P., Wometco WLOS, Inc | 87-1152 | 3/12/87 |
| (27) Desk Morgan Limited, The Governor and Co. of the Bank of England, Johnson Matthey Commodities, Inc | 87-1155 | 3/12/87 |
| (28) Wakefern Food Corp., Mott's Super Markets, Inc., Mott's Super Markets, Inc | 87-1160 | 3/12/87 |
| (29) The Nomura Securities Co., Ltd., Eastdil Realty, Inc., Eastdil Realty, Inc | 87-1179 | 3/12/87 |
| (30) Daniel C. Sullivan, Lucky Stores, Inc., Yellow Front Stores, Inc | 87-1180 | 3/12/87 |
| (31) Cyprus Minerals Co., Moore McCormack Resources, Inc., Globe Metallurgical Inc | 87-1207 | 3/12/87 |
| (32) Super Valu Stores, Inc., Supermarket Operators of America Inc., Supermarket Operators of America Inc | 87-1171 | 3/13/87 |
| (33) Tennece, Inc., Unisys Corp., S-P Manne, Inc | 87-1177 | 3/13/87 |
| (34) Senior Engineering Group PLC, Cronus Industries, Inc., Southwestern Engineering Co | 87-1187 | 3/13/87 |
| (35) Kirschner Medical Corp., Minnesota Mining and Manufacturing Co., ("3"), Metal Orthopedic Implant Business | 87-1194 | 3/13/87 |
| (36) Manufacturers Hanover Corp., Barclays PLC, Barclays American/ Financial, Inc | [illegible] | 3/13/87 |
| (37) Thyssen-Bornemisza Community Trust, c/o TBG Holdings, Glasco, Inc. (a/k/a Ball-Incon Glass Packaging Corp.), Glasco, Inc. (a.k/a Ball-InCon Glass Packaging Corp.) | 87-1137 | 3/16/87 |
| (38) Revlon Group Incorporated, Beecham Group PLC, Germaine Monteil Cosmetiques and Diane Von Furstenberg | 87-1140 | 3/16/87 |
| (39) Ball Corp., Glasco, Inc., a/k/a Ball InCon Glass Packaging Corp., Glasco, Inc., a/k/a Ball InCon Glass Packaging Corp. | [illegible] | 3/16/87 |
| (40) Van Leer Group Foundation, American Flange & Manufacturing Co., Inc., American Flange & Manufacturing Co., Inc. | [illegible] | [illegible] |
| (41) Itel Corp., Castle & Cooke, Inc., Castle & Cooke, Inc | 87-1196 | 3/18/87 |
| (42) Castle & Cooke, Inc., Itel Corp., Itel Corp | 87-1197 | [illegible] |
| (43) The Horsburgh & Scott Co. ESOP, TRW Inc., TRW Inc | 87-1199 | [illegible] |
| (44) Rohm & Haas Co., Borden, Inc., Borden's Polyco polymer business | [illegible] | [illegible] |
| (45) Southmark Corp., Capital Holding Corp., Georgia International Life Insurance Co | 87-1176 | 3/19/87 |
| (46) Castle & Cooke, Inc., XTRA Corp., EXTRA Corp | [illegible] | 3/19/87 |
| (47) Gulf & Western Inc., Barclays PLC, Barclays PLC | 87-1217 | [illegible] |
| (48) Craig Corp., Slater Bros., Inc., Slater Bros., Inc | 87-1225 | 3/19/87 |
| (49) PetroCorp, Royal Dutch Petroleum Co., Shell Oil Co | [illegible] | [illegible] |
| (50) Great West Bancshares, Inc., Title USA Corp., Title USA Corp | [illegible] | [illegible] |
| (51) Occidental Petroleum Corp., Royal Dutch Petroleum Co., Shell | 87-1191 | 3/20/87 |
| (52) Coca-Cola Enterprises, Inc., Ouachita Coca-Cola Bottling Co., Inc., The Coca-Cola Bottling Co. of the Mid-South | 87-1223 | 3/20/87 |
| (53) Neosx, Inc., Rexnord Inc., Fairfield Manufacturing Co., Inc | 87-1183 | 3/23/87 |
| (54) Centex Corp., Melody Homes, Melody Homes | 87-1205 | 3/23/87 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030187 AND 033187—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| (55) USG Corp., Beecham Group PLC, Beecham Home Improvement Products, Inc. and BHI | 87-1138 | [illegible] |
| (56) Litton Industries, Inc., Lamb Technicon Corp., Lamb Technicon Corp | 87-1218 | 3/25/87 |
| (57) Mitsubishi Chemical Industries, Limited, Barnes Co., Inc., Western Litho Plate and Supply Co | 87-1231 | 3/25/87 |
| (58) Investment Ltd. Partnership, MRC Holdings Corp., Midland-Ross Corp | 87-1285 | 3/25/87 |
| (59) Borg-Warner Corp., General Electric Co., GE Credit Corp | 87-1149 | 3/26/87 |
| (60) PPG Industries, Inc., Allegheny International, Inc., Allegheny International Medical Technology, Inc | 87-1188 | 3/26/87 |
| (61) Thomas M. Vickers—an individual, Enron Corp., HNG Cortez Pipeline Co | 87-1206 | 3/26/87 |
| (62) Oak Industries Inc., Banner Industries, Inc., Railway Maintenance Equipment Co | 87-1233 | 3/26/87 |
| (63) Sconnix Broadcasting Co., Reliance Capital Group, L.P., Blair Broadcasting Corp | 87-1240 | 3/26/87 |
| (64) Convergent Technologies, Inc., Baron Data Systems, Baron Data Systems | 87-1241 | 3/26/87 |
| (65) Commerzbank Aktiengesellschaft, Allied-Signal Inc., Linotype Co. (U.S.A.) | 87-1242 | 3/26/87 |
| (66) Newell Co., Anchor Hocking Corp., Anchor Hocking Corp | 87-1246 | [illegible] |
| (67) The Clayton & Dubilier Private Fund II L.P., Borg-Warner Corp., Borg-Warner Industrial Products, Inc | 87-1247 | 3/26/87 |
| (68) The Pittston Co., WTC International N.V., WTC International N.V. | [illegible] | [illegible] |
| (69) WTC International N.V., The Pittston Co., The Pittston Co | 87-1270 | 3/26/87 |
| (70) The Pittston Co., WTC International, N.V., WTC International, N.V. | 87-1271 | [illegible] |
| (71) SouthernNet, Inc., Telecommunications Systems, Inc., Telecommunications Systems, Inc | 87-1285 | 3/26/87 |
| (72) The Ohio Mattress Co., A. Bart Lewis, Susan Lewis and Julie Lewis, Sealy Mattress Co. of Michigan, Inc | 87-1178 | [illegible] |
| (73) Daniel J. Sullivan, Allegheny International, Inc., Bally Engineered Structures Inc | 87-1215 | 3/27/87 |
| (74) Jack Dalton, Allegheny International, Inc., Bally Engineered Structures, Inc | 87-1216 | 3/27/87 |
| (75) Reebok International Ltd., AVIA Group International, Inc., AVIA Group International, Inc | 87-1230 | 3/27/87 |
| (76) Joh. H. Andresen, Textron Corp., Packaging Systems Division of Ex-Cell-O | 87-1181 | 3/29/87 |
| (77) Southmark Corp., M.D.C. Holdings, Inc., Mizel Petro Resources, Inc | [illegible] | 3/30/87 |
| (78) Santa Fe Southern Pacific Corp., Freeport-McMoRan, Inc., Freeport-McMoRan, Inc | [illegible] | 3/30/87 |
| (79) Beerley Investments Ltd., Oglebay Norton Co., Oglebay Norton Co | 87-1192 | 3/31/87 |
| (80) The Hanson Corp., Hanson Trust PLC, Kaiser Cement Corp | 87-1219 | 3/31/87 |
| (81) Lone Star Industries, Inc., Hanson Trust PLC, Northwest Terminal assets of Kaiser Cement | 87-1227 | 3/31/87 |
| (82) The Atlantic Foundation, Geac Systems International, Inc., Geac Systems International, Inc | [illegible] | 3/31/87 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

*Secretary.*

[FR Doc. 87-8748 Filed 4-17-87; 8:45 am]

BILLING CODE 6750-01-M

## Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010187 AND 013187

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| (1) Masco Corp., Alsons Corp., Alsons Corp | 87-0914 | 01/07/87 |
| (2) Flint Ink Corp., Allied-Signal, Inc., Sinclair and Valentine Division, Ridgeway Color Co | [illegible] | 01/07/87 |
| (3) Ethyl Corp., Nelson Research & Development Co., Nelson Research & Development Co | [illegible] | 01/08/87 |
| (4) Ethyl Corp., Nelson Research & Development Co., Nelson Research & Development Co | [illegible] | 01/08/87 |
| (5) Delaware North Cos. Inc., (Jacobs Family Trust, UPE), Oncap Holding Corp., Airport Concession Division | [illegible] | 01/08/87 |
| (6) Stewart A. Resnick, Texaco, Inc., Getty Agricultural Business, Inc | [illegible] | 01/08/87 |
| (7) Co-Steel, Inc., Texas Industries, Inc., Texas Industries, Inc | [illegible] | 01/12/87 |
| (8) Leon J. Simkins, Reed International, P.L.C., Deerfield Specialty Papers, Inc., Glassine Canada, Inc | [illegible] | 01/12/87 |
| (9) Fuqua Industries, Inc., Allegheny International, Inc., Allegheny International Exercise Co | [illegible] | 01/12/87 |
| (10) CDI Corp., The Estate of Ronald J. Smith, Technical Services, Inc | [illegible] | 01/14/87 |
| (11) American Financial Corp., Taft Broadcasting Co., Taft Broadcasting Co | [illegible] | 01/15/87 |
| (12) Trident Seafoods Corp., (Charles Bundrant, UPE), ConAgra, Sea-Alaska Products Division | [illegible] | 01/15/87 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010187 AND 013187—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| (13) ConAgra, Inc., Trident Seafoods Corp., (Charles Bundrant, UPE), Trident Seafoods Corp., (Charles Bundrant, UPE) | [illegible] | 01/15/87 |
| (14) Blue Shield of Western New York, Inc., Blue Shield of Northeastern New York, Inc., Blue Shield of Northeastern New York, Inc. | 87-0992 | 01/15/87 |
| (15) TeLerate Inc., Dow Jones & Co., Dow Jones Financial Services | 87-1000 | 01/15/87 |
| (16) ConAgra, Inc., Ernest J. Miller, Jr., Ernest J. Miller Enterprises, Inc., Interstate Feeders | [illegible] | 01/16/87 |
| (17) Nutrition World, Inc., General Host Corp., Hickory Farms Division | [illegible] | 01/16/87 |
| (18) Equitable of Iowa Companies Voting Trust, Alan Baer, Brandeis Department Store | 87-0974 | 01/16/87 |
| (19) Pope & Talbot, Inc., Potlatch Corp., Tissue Paper Plant at Ransom, PA | 87-0975 | 01/16/87 |
| (20) Ernest J. Miller, Jr. and E.J. Miller Enterprises, Inc., ConAgra, Inc., ConAgra, Inc. | 87-0981 | 01/16/87 |
| (21) The Kroger Co., Tengelmann Warenhandelsgesellschaft, Grocery Stores now operated by Family Center, Inc. | 87-0983 | 01/16/87 |
| (22) Mobil Oil Corp., FCS Energy Inc., (F. Browne Gregg, UPE), Big Four Mine | 87-0991 | 01/16/87 |
| (23) Mr. Sharad Tak, Lin Broadcasting Corp., WUSL-FM, a radio station | [illegible] | 01/20/87 |
| (24) Pacific Asset Holdings, L.P., Western Union Corp., Western Union Corp. | 87-1009 | 01/20/87 |
| (25) Brown Group, Inc., Whitencox Limited, Whitencox Limited | 87-1005 | 01/23/87 |
| (26) Cooper Industries, Inc., Joy Acquisition Corp., Petroleum Equipment and Products Segment | [illegible] | 01/27/87 |
| (27) Rite-Aid Corp., The Kroger Co., The Kroger Co | 87-0971 | 01/27/87 |
| (28) Irving Bank Corp., Gulf & Western Inc., Associates Commercial Corp. | 87-0993 | 01/27/87 |
| (29) Great Lakes Chemical Corp., Mr. John M. Huntsman, Huntsman Chemical Corp. | [illegible] | 01/27/87 |
| (30) Burnham Broadcasting Co., L.P., The Oklahoma Publishing Co., WVUE, New Orleans | 87-1002 | 01/27/87 |
| (31) N.W. Ayer & Son, Inc., Mickelberry Corp., The Cunningham & Walsh Group, Inc. | 87-1007 | 01/27/87 |
| (32) Outboard Marine Corp., Stratos Boat Co., Stratos Boat Co. | 87-1008 | 01/27/87 |
| (33) Bennett S. LeBow, Bell & Howell Co., COM products business of Bell & Howell Co | 87-1030 | 01/27/87 |
| (34) Waste Management, Inc., Valley Reclamation Charitable Trust, Valley Reclamation Co. | 87-0972 | 01/28/87 |
| (35) The Stanley Works, Acme Holding Corp., Acme Holding Corp. | 87-1006 | 01/29/87 |
| (36) Bailey Manufacturing Corp., Golden Nugget, Inc., GNAC Corp. and six other corporations | 87-1040 | 01/29/87 |

**FOR FURTHER IMFORMATION CONTACT:**
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

**Emily H. Rock,**

*Secretary.*

[FR Doc. 87–8749 Filed 4–17–87; 8:45 am]

BILLING CODE 6750–01–M

## Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020187 AND 022887

| Name of acquiring person; Name of acquired person; Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| (1) Paccar Inc., Trico Industries, Inc., Trico Industries, Inc. | 87-1037 | 02/02/87 |
| (2) Vendex International N.V., Leonard Riggio, Barnes & Noble Bookstore, Inc. | 87-1042 | 02/03/87 |
| (3) Rochester Telephone Corp., Enterprise Telephone Co., Enterprise Telephone Co. | 87-1048 | 02/05/87 |
| (4) NRM Operating Company, L.P., Mesa Operating Limited Partnership, Mesa Operating Limited Partnership | 87-1062 | 02/05/87 |
| (5) James R. Barker, Moore McCormack Resources, Inc., The Interlake Steamship Co. Moore McCormack | [illegible] | 02/05/87 |
| (6) Tambrands Inc., Hygeia Sciences, Inc., Hygeia Sciences, Inc. | 87-1078 | 02/05/87 |
| (7) Sandoz Ltd., Unilever N.V., Stauffer Seeds, Inc. | [illegible] | 02/10/87 |
| (8) William H. Binnie, Gordon Jewelry Corp., Catalog-Showroom Stores Div. | [illegible] | 02/10/87 |
| (9) Kraft, Inc., Holleb & Co., Inc., Holleb & Co., Inc. | [illegible] | 02/10/87 |
| (10) Sundor Group Limited Partnership, DWG Corporation, New Texsun, Inc. | 87-1074 | 02/10/87 |
| (11) The Dunron Co., Inc., Valtek Inc., Valtek Inc. | 87-1032 | 02/11/87 |
| (12) Florida Steel Corp., Blue Tee Corp., Knoxville Iron Co and Steel Service Co. | 87-1047 | 02/11/87 |
| (13) Richard A. Bernstein, Whittaker Corp., Whittaker General Medical Corp. | 87-1055 | 02/13/87 |
| (14) Peck-Lynn Group, Ltd., (Howard P. Hooper, UPE) Petrofina S.A., Vercon Div. | [illegible] | 02/13/87 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020187 AND 022887—Continued

| Name of acquiring person; Name of acquired person; Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| (15) American Financial Corp., The Circle K Corp., The Circle K Corp. | 87-1059 | 02/18/87 |
| (16) Edmund M. Hoffman, American Bottling Co., American Bottling Co. | 87-1080 | 02/18/87 |
| (17) Siemens Aktiengesellschaft, Telecom Plus International, Inc., Telecom Plus Communications, Inc., Telecom Plus Rental | 87-1087 | 02/18/87 |
| (18) Dr. Ghaith R. Pharaon, Murray Industries, Inc., Murray Industries, Inc. | [illegible] | 02/18/87 |
| (19) The Salk Institute for Biological Studies, Facing History and Ourselves National Foundation, Inc., B & D Ownership Corp. | 87-1096 | 02/18/87 |
| (20) Quantex Limited, (Christopher C. Skase, UPE), Princeville Development Corp., Princeville Development Corp. | 87-1109 | 02/19/87 |
| (21) Freeport-McMoRan Resource Partners, Ltd. Partnership, The Williams Companies, Agrico Chemical Co. | 87-1079 | 02/24/87 |
| (22) Lone Star Industries, Inc., Arthur A. Riedel and Northwest Aggregates Co., Pioneer Construction Materials Co., Western-Pacific | [illegible] | 02/24/87 |
| (23) Alan E. Clore, Kaiser Aluminum & Chemical Corp., Kaiser Aluminum & Chemical Corp. | 87-1092 | 02/24/87 |
| (24) Reliance Group Holdings, Inc., Symbol Technologies, Inc., Symbol Technologies, Inc. | [illegible] | 02/24/87 |
| (25) Hawker Siddeley Group Public Limited Co., Clarostat Mfg. Co., Inc., Clarostat Mfg. Co., Inc. | 87-1094 | 02/24/87 |
| (26) GB-Inno-BM S.A., Forest City Enterprises, Inc., FCE's Retail Home Improvement Center Div. | 87-1108 | 02/24/87 |
| (27) Fred G. Currey, The Greyhound Corp., GLI Operating Co. and BusLease, Inc. | 87-1113 | 02/24/87 |
| (28) Bank of New England, Commercial Credit Co., McCullagh Leasing, Inc. | 87-1116 | 02/24/87 |
| (29) Fred G. Currey, BusLease, Inc., BusLease, Inc. | 87-1120 | 02/24/87 |
| (30) The Prudential Insurance Company of America, Diamond Shamrock Corp., Diamond Shamrock Corp. | [illegible] | 02/25/87 |
| (31) Quantex Limited, (Christopher C. Skase, UPE), Princeville Development Corp., Princeville Development Corp. | 87-1103 | 02/25/87 |
| (32) Gerald H. Stool, American Century Corp., American Century Corp. | 87-1054 | 02/26/87 |
| (33) Atlantic Research Corp., ORI Group, Inc., ORI Group, Inc. | [illegible] | 02/26/87 |
| (34) The United Co., Cyprus Minerals Co., Sandy Ridge Energy Corp. | 87-1121 | 02/26/87 |
| (35) Christopher C. Skase, International H.R.S. Industries, Inc., Hal Roach Studios, Inc. | 87-1127 | 02/26/87 |
| (36) Norfolk Southern Corp., Ford Motor Co., Rouge Steel Co. | 87-1114 | 02/27/87 |

**FOR FURTHER INFORMATION CONTACT:**
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

**Emily H. Rock,**

*Secretary.*

[FR Doc. 87–8750 Filed 4–17–87; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87F-0097]

### Union Carbide Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Union Carbide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of vinyl chloride-acetate hydroxyl-modified copolymer, reacted with styrene-maleic anhydride copolymer, as a coating or component of a coating of articles intended for use in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3985) has been filed by Union Carbide Corp., P.O. Box 670, Bound Brook, NJ 08805, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of vinyl chloride-acetate hydroxyl-modified copolymer, reacted with styrene-maleic anhydride copolymer, as a coating or component of a coating of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 13, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-8735 Filed 4-17-87; 8:45 am]

BILLING CODE 4160-01-M

## Health Care Financing Administration

[BERC-373-FN]

### Medicare Program; Lowest Charge Levels

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final notice.

**SUMMARY:** In those cases in which, in the judgment of the Secretary, a specified medical service, supply, or piece of equipment generally does not vary significantly in quality from one supplier to another, the Medicare reasonable charge for the item or service may not exceed the lowest charge level (LCL) at which the item or service is widely and consistently available in a locality. We are adding certain items of durable medical equipment, medical supplies, and prosthetic devices to the items already subject to the LCL criterion of reasonable charge payment. Extending the listing of items reimbursed on the basis of LCL should result in more equitable payment for essentially similar items and services and should also result in savings to the Medicare program.

**EFFECTIVE DATE:** For items supplied on or after May 20, 1987.

**FOR FURTHER INFORMATION, CONTACT:** Roberta Epps (301) 594-3867.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 1833 of the Social Security Act (the Act) provides for payment for physician and most other Part B medical and other health services on a reasonable charge basis. (Exceptions include hospital outpatient services, which are paid for on a reasonable cost basis, and diagnostic laboratory services, which are paid for under a fee schedule.) The criteria for determining reasonable charge payments are described in section 1842(b)(3) of the Act. Under that section, payment for a given item or service is generally based on the lowest of: (1) The actual charge, (2) the physician's or supplier's customary charge for the service, or (3) the prevailing charge in the locality for similar items or services. Section 1842(b)(3) of the Act further provides that in the case of medical services, supplies and equipment (including equipment servicing) that, in the Secretary's judgment, do not vary significantly in quality from one supplier to another, the reasonable charge may not exceed the lowest charge level (LCL) at which a particular service or supply is widely and consistently available in a locality. Subpart E of our regulations at 42 CFR Part 405 define the terms and identify criteria for determination of reasonable charges. Our rules governing the application and calculation of the LCL are at 42 CFR 405.511.

Under section 42 CFR 405.509 of the regulations, services (other than physician services), supplies and equipment paid for on a reasonable charge basis are subject to an additional limitation known as the inflation-indexed charge (IIC). The IIC is the lowest of the fee screens (prevailing charge, customary charge, the prior IIC, or LCL) that is in effect on December 31 of the preceding fee screen year as updated by the annual change in the Consumer Price Index for all Urban Consumers (CPI-U). Customary charge, prevailing charge and lowest charge level screens are updated annually and the current year's reasonable charge may not exceed the lower of those screens or the IIC. The following example explains the relationship between the IIC and the LCLs in the general determination of reasonable charges.

*Example:* The LCL limit for an item is $90 on December 31, 1986. The other reasonable charge screens (prevailing charge, customary charge and IIC) in effect at that time are greater than the LCL level. The CPI-U increase, as compiled for the 12-month period ending on June 30, 1986, is 1.7 percent. Therefore, the IIC for fee screen year 1987 is $91.53 ($90.00 × 1.017). The reasonable charge for fee screen year 1988 will be the lowest of $91.53, the actual charge, the updated customary charge, the updated prevailing charge, or the updated LCL.

In 42 CFR 405.511, which implements the LCL provision, we define the LCL as the 25th percentile of the array of charges for a given item or service in the locality. The LCL is calculated annually as we perform other updates of reasonable charges. (As a result of changes to fee screen years and update cycles made by section 2306(b) of the Deficit Reduction Act of 1984 (Pub. L. 98-369) and section 9301(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), for items and services furnished on or after October 1, 1986, we calculate customary and prevailing charges and LCL limits in January of each year. Regulation revisions implementing these changes were published on October 1, 1986 (51 FR 34975). The LCL for items and services furnished after September 30, 1986 and before January 1, 1987 is the same as for items and services furnished before October 1, 1986.)

Under 42 CFR 405.511(b), we publish notice of any proposal to apply the LCL provision to a medical service, supply or

piece of equipment, and we give the public an opportunity to comment. Inclusion of a service, supply or piece of equipment in such a proposed notice reflects our proposed judgment that the particular item or service meets the criterion of section 1842(b)(3) of the Act that it does not vary significantly in quality from one supplier to another. We rely on public comment to give us a valuable check on our proposals and we consider comments before making a final determination.

**II. Contents of Proposed Notice**

On August 15, 1986 (51 FR 29310), we published a list of items and services that we proposed to add to the current list of items subject to the LCL provision. (We note that, although inclusion on the list would make the item or service subject to the LCL provision, the calculation of the LCL requires that the item or service be widely and consistently available in the locality used by the Medicare carrier for this purpose. In those localities where the item or service is infrequently furnished, the carrier might not be able to calculate an LCL, having the effect that the LCL would not be applied to the listed item in that particular locality. We did not describe this aspect of the LCL provision in our notice, since the methodology for making these calculations was already in place and our sole intention was to solicit comments on the proposed additions to the LCL list.)

In our selection of items for inclusion on the proposed list, we gave priority to items and services that are most frequently reimbursed under Medicare. (See S. Rep. No. 1230, 92d Cong., 2d Sess. 193 (1972).) The specific supplies and equipment identified for LCL purposes were those that account for the highest dollar volume of Medicare payment, as determined from our analysis of the Procedure File of the Part B Medicare Annual Data files for the 1983 calendar year. Certain items that do not account for a substantial dollar volume but are very similar to those that do also were included because failure to do so would invite use of the similar items solely to avoid the LCL limitation. Our decisions about proposed additions to the LCL list also were based on three studies and reports, which were identified in the proposed notice (see 51 FR 29, 312), among other factors.

We invited commenters who believe that an item or service in the proposed list varies significantly in quality from one supplier to another to provide detailed information to support their contention. We also invited commenters to suggest refinements of the HCFA Common Procedure Coding System (HCPCS), which is a system of codes used by the carriers for the identification of items and services on bills that we would use to describe items and services subject to the LCL provision.

Our proposed list identified primarily supplies, equipment and ambulance services. We did not propose at that time to extend the LCL provision to other widely prescribed services, such as physical therapy and chiropractic manipulation, but we invited public comment on the possible inclusion of these and other services in the future.

We also invited comments on the extent to which subsidized and nonsubsidized ambulance services exist in various localities, whether a different methodology is appropriate in the case of ambulance services because of subsidized services, and, if so, how such subsidized services should be defined and identified.

**III. Response to Public Comments**

We received timely comments from 744 owners and employees of ambulance companies (including police and fire department companies), 46 State and local governmental entities, 18 durable medical equipment suppliers and manufacturers (including associations), one labor union, 17 legislators, one physician, 27 professional associations (other than those for durable medical equipment), four attorneys, two physical therapists, and approximately 1000 beneficiaries and other individuals. All of the commenters opposed the proposal. Virtually all of the beneficiaries and individuals sent notes or petitions stating general opposition to extending the LCL provision to ambulance services.

*Comments on the Length of the Comment Period*

*Comment:* Several commenters asked for an extension of the 30-day comment period, citing the relative compexity of the proposal, the need for data from the Medicare carriers to do an item-by-item analysis of availability of products in specific localities and an analysis of financial impact, and the fact that the carriers had informed them that data were not readily available.

*Response:* We do not believe the data described by these commenters were necessary for interested parties to make informed comments on the proposal. As stated in the proposed notice, subjecting an additional item or service to the LCL methodology is based primarily upon the determination that the item or service does not vary significantly in quality from supplier to supplier. Commenters who believe that an item or service in the proposed list does vary significantly from one supplier to another were requested to specify in detail the nature of variations in quality, identify specific lower quality items, and provide data showing the relative market share of these products. We also asked commenters to provide detailed pricing information and discuss refinements of the HCPCS. Our expectation, therefore, was that we would receive comments concerning quality issues based upon the knowledge of the commenters.

Although the data requested by the commenters might assist them in the calculation of the precise financial impact of the proposal on specific products or services, such calculations would have primarily financial rather than legal significance. The use of the LCL methodology under the criteria of section 1842(b)(3) of the Act is specifically authorized by the statute and assumes that, in some cases, reimbursement for specific products would be decreased. Since the data do not presently exist in the format requested by the commenters and would take substantial time to create, we did not believe it would be appropriate to delay the rulemaking process in order to assemble information that is not directly pertinent to the process of assessing whether significant quality variations exist.

We do not believe that it is necessary or appropriate in the course of assessing whether an item should be added to the LCL list to announce exactly where the item is widely and consistently available in a locality. The question of availability in a locality pertains to the applicability of the LCL to particular products in a specific area, whereas the proposal and this notice pertain to whether the item should be added to the LCL list in the first place. Determinations about availability are made at the carrier level based on information available at the time that reasonable charges are determined. For the foregoing reasons, we did not grant requests for an extension of the 30-day comment period.

*Comments on Significant Variations in Quality*

*Comment:* A number of manufacturers of durable medical equipment and their associations objected to the absence in the proposed notice of data to establish clearly that items and services included in our list did not vary significantly in quality. In these commenters' view, the alleged absence of such data invalidates

the list since the statute and regulations require a judgment on the quality variation of each item on the list. The commenters stated that the Secretary cannot discharge his duty to determine lack of significant variation in quality by requiring the public to prove there are significant variations.

*Response:* The statutory requirement in section 1842(b)(3) of the Act that the Secretary make a determination that there is no significant variation in quality from one supplier to another does not identify the specific evidence to be used by the Secretary to establish the lack of significant variation or by the public as to the existence of significant variation. The statute calls for a judgment by the Secretary and does not prescribe either the process or the information to be relied upon. The process, established by regulation in 1978 (42 CFR 405.511, 43 FR 32300), has been for HCFA to identify items in sufficient detail that those items conforming to the description will not vary significantly in quality. The items described fulfill a specific medically determined need that can be provided by essentially similar items that meet that description. While prescribing practices may vary, the descriptions and circumstances under which items are used imply a high degree of substitutability and, hence, that the items do not vary significantly in quality. We then propose those items to the public by notice and solicit comments specific to those items so that we may benefit by the experience and knowledge of the public as to perceived significant variations in quality.

We recognize that there are variations between and among items but in our judgment such variations in quality do not *significantly* effect the medically necessary function of an item. The basic features of the items included under a HCPCS code are standard or sufficiently similar (for example, footrest, seat, etc., for wheelchairs) that items which have these features are identifiable as comprising a single, functionally equivalent item (for example, a wheelchair). Therefore, the items represent a commonality recognized and identified by the HCPCS code. Since each item within the code satisfies our coverage standards, we do not consider that any variations are significant. That is to say, if an item with a given HCPCS code is considered covered for a given medical need, then any item under that HCPCS code will be covered regardless of its source and is presumed to meet the need.

Potential items or services to be subject to the LCL were considered carefully before we published the notice of our proposed designation. We think that the opportunity for members of the health care profession and the general public to review the listing, and to call to our attention any information bearing on whether the item or service varies significantly in quality, is a valuable check on the validity and accuracy of our designation and assures that any final designation meets the requirements of section 1842(b)(3). The Secretary's judgment is not complete until after the comments have been reviewed. Therefore, only the final notice contains the pronouncement of the Secretary's judgment that an item or service does not vary significantly in quality. As indicated in the following response, we are making some revisions from the proposed listing.

It shoul also be noted that the procedure we followed in developing the proposed list was similar to the determination procedure used for standard wheelchairs and hospital beds, items currently subject to the LCL.

*Comment:* The majority of commenters contended that the products vary significantly in quality. Several examples were submitted, with descriptions of possible variations: ambulance services, wheelchairs, TENS, walkers and quad canes, commodes, oxygen concentrators, indwelling catheters (Foley-type), urinary collection and retention systems, and ostomy sets.

*Response:* For the most part, commenters on equipment and supplies described features of various items and how those features might differ in construction or fabrication. Possible consequences of failure were described. However, commenters generally did not: provide the identification of specific products considered of lower quality; indicate that negative consequences were in fact occurring; indicate that significantly lower quality items are now provided to Medicare patients; or indicate that there was any objective way to modify the HCPCS to partition the items into acceptable and unacceptable groupings.

In some cases, commenters pointed out special features primarily of a comfort or convenience nature that, in the case of certain patients, could have medical implications (for example, one patient might develop pressure ulcers using one design or construction of equipment while another design or construction is claimed to relieve such problems; or a particular design feature is of particular value to patients with limited dexterity). We note that where special features or services in excess of normal needs are covered, medically necessary and unattainable with items or services available at lowest charge levels (or even at prevailing and customary levels for non-LCL items or services), carriers have the authority under 42 CFR 405.506 to determine a reasonable charge that exceeds the customary charge, prevailing charge, or LCL of the normal item or service.

Upon review of comments and evaluation of additional information, we are not extending the LCL provisions to ambulance services and TENS. We also are clarifying the application of the LCL to certain ostomy supplies and to oxygen concentrators. However, we are extending the LCL provision to wheelchairs, walkers and quad canes, commodes, indwelling catheters (Foley-type), and urinary collection and retention systems, as proposed.

1. *Ambulance services.* We received extensive comments indicating that some lower charging ambulance companies receive government subsidies so that nonsubsidized companies could not compete at that price. Charges from such subsidized companies could determine the LCL. Moreover, several commenters indicated that within the same Medicare locality local governments have established a significantly different regulations on ambulance services with regard to both training and qualifications of personnel as well as requirements for equipment, with the result that there are significant differences in quality. We believe that, in light of these concerns, further study is warranted and we are therefore not including ambulance services in the list of services subject to LCL.

2. *Transcutaneous Electrical Nerve Stimulators (TENS).* Information developed in response to comments suggests that there may be significant quality variations among currently marketed TENS units, which are regulated by the Food and Drug Administration (FDA). We will attempt to ascertain more about any particular problem units and, for the time being, have decided to drop TENS from the list. We will consider excluding identified unreliable or ineffective units from program coverage and instituting LCLs for TENS at a later date.

3. *Ostomy sets.* One commenter provided a substantial discussion of the need for various ostomy bag accessories such as skin barriers, microporous tape and seal rings. We note that each of these items is coded and covered individually or can be purchased and paid for as a complete set. The concern expressed was that the present HCPCS code for bags sold separately does not distinguish between bags with or

BEST COPY AVAILABLE

without seal rings and that prices by lower charging suppliers might be for bags without seal rings while higher charging suppliers may be selling bags equipped with the seal ring. Thus, applying an LCL limit to ostomy bags generically could result in mixing products with significant quality differences.

Therefore, although LCLs will apply to other components of colostomy, ureterostomy and ileostomy sets, until a coding distinction is made, the limits will not apply to ostomy bags that are not supplied as part of a set (HCPCS codes A4365 and A4366).

4. *Oxygen concentrators.* One commenter pointed out that oxygen concentrators vary in their output capacity and that they have different safety features. No evidence was provided, however, in support of the commenter's assertion that differences in safety features represent a significant difference in quality.

We recognize that the output capacities of concentrators vary; that is, between 2, 3, 4, 5 or more liters per minute. As indicated in section IV of this notice, however, present HCPCS codes provide for coding of oxygen concentrtators on the basis of the amount of oxygen actually utilized (i.e., in 244 cubic feet intervals) rather than on the basis of output capacities. However, some carriers make payment for rental or purchase of an oxygen concentrator without regard to the amount of oxygem used through use of a local code or by using HCPCS code E1398 (oxygen concentrator, equivalent to over 1952 cubic feet) for all concentrators. In these cases, we agree with the commenter that an LCL limit should not be applied at this time because of significant differences between concentrators of differing capacity.

Thus, we are instructing these carriers to modify their coding system to distinguish between concentrators of varying capacity; that is, 2, 3, 4 or 5 or more liters per minute at 85 percent or greater concentration. Those carriers will apply the LCL to concentrators effective January 1, 1988 at which time charge data for equipment of varying capacities will be available. In the case of carriers that currently make payment based on the amount of oxygen used, the LCL limit will be applied effective May 20, 1987. While there may be charges for equipment of varying capacities included under a single utilization category (for example, 976 cubic feet), all equipment billed under this category presumably is capable of producing the requisite amount of oxygen. Thus, any variation in capacity between concentrators is not considered significant since any excess capacity not used is not medically required.

5. *Wheelchairs.* One commenter indicated that the following characteristics of wheelchairs vary in quality: framework tubing, wheel bearings, wheel shock absorbency, handrim design and seat comfort, durability and ability to prevent decubitus ulcers. We recognize that wheelchair characteristics can vary in quality. However, we have no reason to believe that these variations significantly affect the medically necessary function of the item and the commenter did not present any concrete information to warrant or support such a conclusion. Also, we note that standard wheelchairs have been subject to the LCL provision for several years. Our experience has not shown that the market for standard wheelchairs at or below the LCL or the market in general consists of items that significantly vary in quality. Therefore, we conclude that wheelchairs do not significantly vary in quality and we have included wheelchairs in this notice.

6. *Walkers and quad canes.* One commenter stated that quality variations in walkers and quad canes result in substantial variations in durability and service needs. The commenter cited examples of components of walkers and quad canes that vary in quality. We acknowledge that components may vary in quality. However, we have no reason to believe that the variations significantly affect the medically necessary function of these items. We are not aware of nor did the commenter provide supporting information for the assertion that walkers and quad canes significantly vary in quality. We, therefore, conclude that walkers and quad canes do not significantly vary in quality and we have included walkers and quad canes in this notice.

7. *Commodes.* One commenter stated characteristics of commodes (e.g., welding and finish, tips, product construction, and leg adjustability) vary in quality. We recognize that these features of commodes may vary in quality but we have no reason to believe that these variations significantly affect the medically necessary functions of these items. The commenter did not present any supporting information for the assertion that commodes significantly vary in quality and we have included commodes in this notice.

8. *Indwelling catheters, Foley type.* Two commenters indicated that various product quality characteristics, common to all types of Foley catheters, affect patient care and costs. We acknowledge the variations in quality among and between indwelling catheters. However, the FDA has determined that currently marketed catheters are safe and effective. To that agency's knowledge, no studies have demonstrated *significant* variations in quality among and between catheters. The choice of the type catheter selected for the patient's use is subject to the preference of the physician and the purpose of the catheter. Patient reaction to the material used in the manufacture of catheters (e.g. latexs, Teflon, etc.) has resulted in the development of catheters of various fabric construction. We have recognized and responded to the fabric differences in catheters through the denotation of our HCPCS codes for catheters.

We believe that indwelling catheters, Foley type, do not significantly vary in quality and we have included such catheters in this notice. We have no reason to believe that the variations among and between indwelling catheters, Foley type, significantly affect the medically necessary function of these items and the commenters did not present any concrete information to warrant or support the assertion that such catheters *significantly* vary in quality.

9. *Urinary collection and retention systems, drainage bags with tube and leg bags with tubes.* Several commenters asserted that the presence or absence of various features of drain bags affect system cost, comfort and usefulness to the patient. One commenter provided samples of the various components of urinary collection systems. We recognize that quality variations exist among and between urinary collection and retention systems, leg bags with tubes. However, we have no reason to believe that the variations significantly affect the medically necessary function of these items. The commenters did not present any concrete information to warrant or support the assertion that urinary collections and retention systems, drainage bags with tubes, and leg bags with tubes *significantly* vary in quality. We are of the opinion that such systems do not significanlty vary in quality and we have included these items in this notice.

As noted above, where features primarily of a comfort or convenience nature are medically necessary due to a patient's particular circumstances and are unattainable with items or services available at lowest charge levels, carriers have the authority to determine a reasonable charge that exceeds the customary charge, prevailing charge or LCL of the normal item or service.

*Comment:* One commenter suggested that HCFA establish guidelines specific

to each item against which quality variations could be tested. Several commenters suggested that services (or lack of services) by a supplier be taken into account by HCFA in determining whether quality variations exist. For example, suppliers of cervical collars, stump socks and oxygen equipment that furnished customized fitting or instructions in the use of otherwise identical items felt that they should be paid higher than the LCL payment, as did suppliers who provided patient monitoring or respiratory services.

*Response:* Many of the costs for services the commenters cited in their argument are costs for noncovered services. For example, respiratory therapy or home patient monitoring services furnished by durable medical equipment suppliers are not covered. Services such as fitting, set-up, delivery and instructions for use are generally required and no evidence was offered indicating that such services are not provided as required by any suppliers, including the more economical suppliers. On the contrary, these comments clearly suggest that in some cases the variations in charges are due to the provision of noncovered services. We note that where special features or services in excess of normal needs are covered, medically necessary and unattainable with items or services available at lowest charge levels (or even at prevailing and customary levels for non-LCL items or services), carriers have the authority under 42 CFR 405.506 to make payments based on charges higher than customary or prevailing charges or the LCL.

However, we are not extending the LCL limitation to stump socks. As noted earlier, we gave priority to items and services that are most frequently paid for under Medicare. We specifically identified for LCL purposes those items that account for the highest dollar volume of Medicare payment in the durable equipment, medical supply and prosthetic categories. Due to an error in transposition of the code number for prosthetic stockings, the code for stump socks (a low volume item) was inadvertently included in the proposewd list while prosthetic stockings were omitted. Since prosthetic stockings were not subject to comment, they also will not be subject to LCL limitations at this time.

*Comments on Widely and Consistently Available in a Locality*
*Comment:* Without providing additional detail, a number of commenters disagreed that all the items and services are widely and consistently available in their localities. One commenter, citing a 1981 report of the General Accounting Office (GAO), alleged that standard wheelchairs (currently subject to the LCL screens) are not widely and consistently available.

*Response:* We believe that the commenters are under the erroneous impression that payment levels will be established that do not reflect charges in their locality. The regulations define the charge at which an item or service is widely and consistently available as the 25th percentile of the array of charges for that item or service. In program instructions (section 5015.1 of the Medicare Carriers Manual), we further limit the definition of widely and consistently available to items or services for which there are at least four suppliers in the locality furnishing the service and at least 20 charges for the service in that locality during the quarter (July-September) from which the charge data are derived. Thus, there must be at least five charges at or below the LCL during that quarter. If an item cannot meet these thresholds, no LCL can be calculated or applied in that locality. These thresholds are higher than those usewd when the GAO made its observations. At the time of the GAO observations HCFA required only four charges to calculate an LCL.

*Comment:* Several commenters stated that suppliers whose charges were above the LCL would refuse to accept assignment, and beneficiaries would either have to pay additional out-of-pocket expenses or seek a supplier that accepts assignment, which might involve considerable travel.

*Response:* We do not believe these outcomes are likely. For several years standard wheelchairs and hospital beds have been subject to the LCL criteria. Our experience with the use of LCL as a limit on reimbursement for these two items has not demonstrated a decrease in supplier acceptance of assignment. On the contrary, assignment is at a high level for both standard hospital beds and standard wheelchairs and has remained constant over the years. Our most recent data show that the assignment rate for standard wheelchairs is 88 percent and the assignment rate for standard hospital beds is 95 percent. Based on these rates, we have no reason to expect supplier acceptancew of assignment to decrease significantly for any additional items or services because they are subject to the LCL criteria.

Furthermore, we believe that acceptance of assignment is a marketing tool for suppliers that has a strong bearing on their ability to attract patient self-referrals (patients who select their supplier without referral from another party such as a physician or discharge planner) and, more importantly, to receive referrals from third partiers such as physicians and hospital discharge planners. In many cases, refusal to accept assignment will cause patients and third parties to change their referrals to those suppliers who accept assignment. It is more likely that the more economical suppliers will continue to accept assignment because they are the ones currently charging near or below the LCL. Any change in referrals is likely to be to a more economical supplier and to result in decreased out-of-pocket expenditures for beneficiary coinsurance. To the extent that LCLs create lower thresholds for increased out-of-pocket costs, they also create greater incentives to find less expensive suppliers even among beneficiaries who now deal with suppliers who do not accept assignment. Thus, there may be shifts of currently unassigned services to suppliers who accept assignment.

In addition, we believe that in most cases the difference between current reimbursement and reimbursement under an LCL has been overestimated (see the final Regulatory Impact Analysis in section V of this notice) so that the impact on the income of any given supplier (and thus the impact of LCLs on assignment decisions) will be less than widely supposed. Finally, regarding the possibility that a beneficiary might have to travel far to find a supplier that accepts assignment, if the carrier determines that a locality structure is causing a substantial inconvenience, the carrier can request a reconfiguration to better facilitate the implementation of the LCL.

*Comment:* Suppliers asked that deluxe and convenience items be deleted from the list of items subject to LCL reimbursement because they are not widely and consistently available in a locality.

*Response:* The proposed notice stated that convenience or deluxe items or features are not generally covered by the Medicare program, but, under certain circumstances, the items may be fully covered and reimbursed. For sake of completeness and accuracy, we believe that it is reasonable for such items or services to be subject to the LCL provision when comparable, covered, medically necessary items are also subject to the LCL. In this manner, we have uniform LCLs for similar items or services. As indicated above, if a carrier does not receive at least 20 charges in the data period (July-September) or if these charges were made by fewer than four suppliers, the

carrier would not be allowed to calculate an LCL for the deluxe item or feature under applicable program instructions.

*Comment:* Commenters stated that the locality used for establishing the LCL may be as large as an entire State, theoretically requiring a beneficiary to travel hundreds of miles to obtain an item or service at the payable rate. A further comment was that the locality for the LCL is the same as the prevailing charge locality for physicians and may not be appropriate for the LCL.

*Response:* For the purpose of making reasonable charge determinations, a locality is the geographic area for which a Medicare carrier derives the prevailing charges for items or services. A locality usually is a political or economic subdivision of a State, and it should include a cross-section of the population with respect to economic and other characteristics.

Medicare carriers delineate localities on the basis of their knowledge of local conditions. The localities may differ in population density, economic level and other factors, including medical considerations, affecting charges for items or services.

The localities used to determine prevailing charges for physicians may be the same as the localities used to determine the prevailing charge for other items or services but this can differ. For example, in many carrier service areas there are multiple localities for physician services but a single state-wide locality for durable medical equipment. We agree with the commenter that the prevailing charge locality generally used for physician services may not be appropriate for a specific LCL. In fact, our program instructions (section 5015.3 of the Medicare Carriers Manual) provide that when calculating and implementing an LCL for an item there may be advantages in using localities other than those previously used for determining the prevailing charges for the item. Such revised localities could be broader or more limited than the previously used locality and the locality structure could vary between items. However, when an LCL locality is modified for a particular item, the modified locality must be used to calculate the prevailing charge for that item.

Where a carrier determines that a locality structure is causing substantial inconvenience for beneficiaries to obtain items at LCL levels (for example, the beneficiaries are not in the delivery area of any supplier whose customary charge is at or below the LCL for the items), the carrier can request a reconfiguration to better facilitate the implementation of the LCL.

*Comment:* A few suppliers asked for a general exception to the LCL payment level for rural areas because of the allegedly greater cost of furnishing items and services in those areas.

*Response:* Because there was no supporting evidence of excessive costs in rural areas, we do not believe that it has been shown that there is justification for a blanket urban/rural exception to the LCL limits. We will instruct carriers to be alert to problems that may arise in specific rural areas. We believe the existing policies, as outlined in the preceding response regarding carrier authority and responsibilities for locality determinations, are sufficient to respond to any need to make distinctions between geographic areas for the purpose of calculating LCLs for specific items.

*Comment:* One commenter stated that consideration should be given to examining the regional variations in LCL levels not only to reduce the unreasonably high calculations but also to increase those that may be unreasonably low. In the commenter's opinion, the proposal penalizes suppliers who kept their charges as low as possible.

*Response:* The LCL is based upon actual submitted charges by suppliers within a locality. We believe that in the marketplace the actual charges reflect the costs associated with the business (overhead expenses) plus a reasonable profit. The actual charge is determined by the supplier and not by HCFA. Therefore, LCLs are an accurate and fair representation of the self-determined practice in the locality. As discussed below under "Calculations of LCLs," inherent reasonableness principles may be applied where necessary, and extreme variations in regional LCL levels may warrant such an application. We do not agree that lower charging suppliers are harmed by the establishment of an LCL. A more reasonable expectation is that such suppliers will see some increase in business.

*Comments on Calculation of LCLs*

*Comment:* A few suppliers and others who had contacted carriers for charge data and at the 25th percentile were told that the information was not readily available. The commenters noted that reimbursement levels for some items have not risen due to statutory freezes and the application of other fee increase limitations (such as the use of the inflation-indexed charge). They questioned whether carriers have the requisite data on which to base accurate LCL limits.

*Response:* Except for the two items of durable medical equipment presently subject to the LCL limit, carriers have not routinely computed the 25th percentile of the array of charges; there was no need for such information. Moreover, the LCL limits for 1987 will be based on claims processed in the July through September 1986 period and such data would not have been available when the requests were made. However, the carriers have been instructed to compute LCL limits for all items and services included in the notice and we have no reason to question the availability or accuracy of the charge data that will be used to make these calculations.

*Comment:* One commenter asked if the reputation of the supplier for reliability and integrity could be taken into account in calculating an LCL.

*Response:* Consideration of supplier reputation is beyond the provisions of the statute, the legislative history, and our regulations. Also, judgments about reputation would be so subjective as to be totally unadministrable.

*Comment.* A commenter suggested that HCFA use the inherent reasonableness principle instead of the LCL criteria to set reimbursement levels for the listed items and services.

*Response:* From the reimbursement point of view, the LCL is one of several limitations used in calculating reasonable charges, to be used in addition to the determination of customary, prevailing charges and the inflation indexed charges (IICs). LCLs, prevailing charges, customary charges and the IICs are all based on the actual charging pattern of suppliers. The inherent reasonableness principle applies when using the standard reasonable charge determination mechanisms results in grossly excessive or deficient charges (42 CFR 405.502(g)). There may well be circumstances where it is appropriate for carriers or HCFA to apply inherent reasonableness for an item subject to any of the reasonable charge limits (e.g., customary charges, prevailing charges, LCLs and the IICs). This might be true, for example, where there is no competitive market, or Medicare is the dominant payer so that the allowance computed at the 25th percentile of the array of customary charges results in a grossly excessive charge. Therefore, the use of inherent reasonableness is limited to special circumstances, while the use of LCLs is required wherever it can be determined that items do not vary significantly in quality. The use of LCLs does not

guarantee an inherently reasonable result, so that this principle may be applied to those services for which LCLs have been established. Therefore the use of LCLs and the use of inherent reasonableness screens must be viewed as concurrent limitations, not as substitutes for one another.

*Miscellaneous Comments*

*Comment:* Some commenters indicated their belief that under the LCL provision they will receive only 25 percent of their charges.

*Response:* These commenters have confused the meaning of "25 percent of" and the "25th percentile." The 25th percentile of charges means an actual charge which is equal to or higher than one quarter of all the charges. Thus, at least one out of every four transactions is at this price or less.

*Comment:* Many commenters stated that companies with lower charges will be forced out of business because of a smaller margin between their costs and reimbursement, and that companies with higher charges will predominate in the market place, contrary to the purpose of the LCL. Commenters also stated that, as a result of the proposal, services will become less widely and consistently available at the LCL.

*Response:* We do not agree with this comment. Payment for services on the basis of the LCL to companies with lower charges will be at or near the same amount currently received under the customary and prevailing charge methodology. Companies with lower charges could benefit from additional business due to their willingness to furnish requested items at the LCL. We do not believe any company will suffer adverse consequences from the application of the LCL great enough to force it out of business. On the other hand, companies with charges higher than the 25th percentile should expect a decrease in reimbursement. Based on our experience with wheelchairs and hospital beds, where, respectively, 88 and 95 percent of the claims have been made on assigned basis and the suppliers therefore have accepted LCL payment levels as payment in full, we see no reason to expect that these items will become less widely and consistently available.

*Comment:* A supplier commented that it is locked into a participation agreement (to accept Medicare assignment for all claims) and could go out of business before the agreement ends.

*Response:* We believe the commenter greatly overestimates the impact that the LCL limit will have on program reimbursement. (See the final Regulatory Impact Analysis in section V of this notice.) In addition, after carriers prepared data on 1987 payment levels (including customary, prevailing and LCl screens), the data were made available to suppliers during the period in which they had to decide whether to participate in Medicare. Suppliers should have found this information helpful in order to make a decision regarding their participation for 1987. For 1987, suppliers were not locked into their 1986 agreement. For 1988 and succeeding years, these data will continue to be made available during the time period that suppliers have to decide whether to participate in the Medicare supplier participation program.

*Comment:* A commenter expressed his opinion that carriers have had no reason to record or array charge data for durable medical equipment and oxygen equipment because reimbursement for fiscal year (FY) 1987 will be based upon the FY 1985 charge updated by the consumer price index. Therefore, the proposal will only make work for the carriers.

*Response:* We believe the commenter is referring to the inflation-indexed charge (IIC) and assumes that only the IIC will be used to establish reasonable charge levels. However, in addition to the IIC, the customary, prevailing and LCL screens continue to be used to determine the reasonable charge. Carriers continually maintain charge files and update the customary and prevailing charge for items and services each January. This practice is ongoing despite the various payment caps and special payment rules.

The standard methodology for the determined of LCLs has been in place for years, and LCLs are now calculated for wheelchairs and hospitals beds. There will be, of course, some additional work involved in computing a larger number of LCL limits. However, this is largely an automated process, the costs of which will be outweighed by the savings.

*Comment:* When HCFA adopted the 25th percentile as the LCL, it stated that it would evaluate the effect of that decision. To the best of the commenters' knowledge, HCFA never did this.

*Response:* HCFA evaluated the effect of the 25th percentile as the LCL in a report dated April 6, 1982, which was cited in the preamble to the proposed notice. The study ("Evaluation of the Impact of the Lowest Charge Level (LCL) Provision (Regulation at 42 CFR 405.511, Reasonable Charges for Medical Services, Supplies and Equipment)") found that the 25th percentile was an appropriate percentile for the LCL. In addition, according to the study, because charges often do not vary widely for certain items, the 25th percentile frequently encompasses a much higher percentile of the charges. We ascertained that sometimes the charge at the 25th percentile is the same as the charge at higher percentiles. Further, for items subject to existing LCL limits, the lack of quality related problems and the industry acceptance (as evidenced by the high assignment rates) clearly reinforce the conclusion that the 25th percentile is an appropriate percentile for calculating the LCL.

*Comments on the Impact of LCLs*

*Comment:* Commenters alleged that beneficiaries will have to use lesser quality services and items and will need greater medical care to take care of problems caused by inferior products and services. They believe the impact analysis should have addressed the possibility of higher medical costs.

*Response:* We have no reason to believe application of the LCL limit to additional items and services will add to medical care costs as the commenter suggests. No evidence in support of this result was provided.

*Comment:* In a commenter's view placing items and services on the LCL list as proposed will cause the quality of products and related services to deteriorate. He projected that products will necessarily have shorter life spans, thus raising costs in the long run.

*Response:* Based on experience with standard hospital beds and wheelchairs, there is no evidence that the quality of products subject to LCL services will deteriorate. We have no evidence whatsoever that quality has suffered on these items. In addition, since 25 percent of the current market for items we propose to add to the list is composed of items that are now below or at what will become the LCL, we have no reason to believe that these items will deteriorate in quality simply because they are added to the LCL list. Due to competitive and economic factors, warranty considerations, and the product liability laws, we believe manufacturers will continue to maintain the quality of their products.

*Comment:* A commenter observed that any savings achieved by this proposal will be minimal due to the impact of the inflation-indexed charge on establishing reasonable charges.

*Response:* We agree that the inflation-indexed charge (IIC) screen will have a greater effect on calculating reasonable charge levels than was estimated in the proposed notice. The effect of the IIC and a revised estimate of the fiscal

impact of our actions are discussed in Section V of this notice.

*Comment:* In the opinion of some commenters, the ability of U.S. manufacturers to compete with foreign-based competitors will decrease while relatively inexpensive foreign products are inferior in quality.

*Response:* Medical equipment suppliers have an incentive to buy their equipment and supplies in as prudent a manner as possible. This includes judging the relative price and quality of the products they are buying while keeping in mind factors such as availability of parts and the value of manufacturer's insurance and warranties. These are buying decisions properly left to the purchasing suppliers. Nothing in the application of LCL interferes with these decisions or places different requirements of any nature on foreign or domestic manufacturers. We do not have any information to establish that foreign-made products subject to the LCL vary significantly in quality from American-made items and the commenters did not supply any.

We are revising downward the economic impact of this notice. In addition, as stated earlier in this notice, the difference between the LCL and the prevailing charge is often not significant. Consequently, we do not expect a significant shift to occur in medical equipment suppliers purchasing decisions.

*Comment:* One commenter recommended that a product-specific and locality-specific analysis of the impact of the proposed notice be undertaken.

*Response:* The type of analysis requested by the commenter is not necessary to meet the requirements of Executive Order 12291 or the Regulatory Flexibility Act. In any case, we do not generally have data readily available to undertake this type of analysis. Further, to undertake a product-specific and locality-specific analysis in this case, we would need not only the LCLs for each specific code for each locality as determined by the carriers, but we would also need reliable and comparable data on the frequency with which each item was furnished and paid for. Despite our long-term efforts to improve our data on Medicare Part B payments, we do not have such data.

*Comment:* Several commenters recommended that physical therapy services not be made subject to the LCL provision because there are wide differences in training among therapists and therefore in quality of service.

*Response:* We invited comments from the public on the possible inclusion of physical therapy in the future. At this time we are not making a determination to subject physical therapy services to the LCL. Any such decision will be published as a proposed notice subject to public comment.

## IV. List of Items

We are adding the following items to the list of items and services subject to the LCL provision, 42 CFR 405.511. Except as noted above under Section III of this notice, we are effectively adopting the list of items and services as proposed on August 15, 1986. In Section III, we explained that ambulance services will not be added to the list. Also deleted from the proposed list are TENS (E0720 and E0730) and stump socks (L8480). In addition, we note that certain colostomy supplies (A4365 and A4366), when obtained separately, are not subject to the LCL provision.

We are using the codes and terminology in the HCPCS to describe the services and items on the list. Except as specifically provided, all of the components of the items and devices listed below are subject to the LCL provision even if some of the components of an item are obtained separately by the beneficiary, or if some components are purchased while others are rented.

### *A. Items of Durable Medical Equipment*

1. Standard Wheelchair, fixed full length arms, fixed or swing away detachable foot rests (E1130).
2. Wheelchair, detachable arms, desk or full length, swing away detachable foot rests (E1140).
3. Wheelchair, detachable arms, (desk or full length), swing away detachable elevating leg rests (E1150).
4. Wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1160).
5. Amputee wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1170).
6. Amputee wheelchair, fixed full length arms, without footrests or leg rests (E1171).
7. Amputee wheelchair, detachable arms (desk or full length), without foot rests or leg rests (E1172).
8. Amputee wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1180).
9. Amputee wheelchair, detachable arms (desk or full length), swing away detachable elevating leg rests (E1190).
10. Amputee wheelchair, fixed full length arms, swing away detachable foot rests (E1200).
11. Economy wheelchair, fixed full length arms, fixed foot rest (E1010).
12. Fully reclining wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1050).
13. Fully reclining wheelchair, detachable arms, desk or full length, swing away detachable elevating leg rests (E1060).
14. Rollabout chair, without arms (E1030). (In lieu of medically necessary wheelchair (E1130)).
15. Rollabout chair, with fixed or removable arms (E1040). (In lieu of medically necessary wheelchair (E1130).)
16. Hospital Bed, with side rails, fixed height with mattress (E0250).
17. Hospital Bed, with side rails variable height, hi-ol, with mattress (E0255).
18. Hospital Bed, with side rails, semi-electric, head and foot adjustment, with mattress (E0260).
19. Hospital Bed, with side rails, total electric (head, foot and height adjustments, with mattress) (E0265).
20. Trapeze Bars, also known as patient helper, attached to bed, with grab bar (E0910).
21. Trapeze Bar, freestanding, complete with grab bar (E0940).
22. Walker, wheeled, without seat (E0141).
23. Walker, rigid (pick up), adjustable or fixed height (E0130).
24. Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips (E0105).
25. Cane, includes canes of all materials, adjustable or fixed, with tip (E0100).
26. Sitz-type bath, portable, fits over commode seat (E0160).
27. Sitz-type bath, portable, fits over commode seat, with faucet attachments (E0161).
28. Sitz bath chair (E0162).
29. Commode chair, stationary, with fixed arms (E0163).
30. Commode chair, stationary, with detachable arms (E0165).
31. Pail or pan for use with commode chair (E0167).
32. Foot rest, for use with commode chair, each (E0175).
33. Decubitus care mattress, includes flotation or gel mattress (E0190).
34. Oxygen contents, gaseous, per cubic foot (E0400).
35. Oxygen contents, gaseous, per 100 cubic feet (E0405).
36. Oxygen contents, liquid per pound (E0410).
37. Oxygen contents, liquid, per 100 pounds (E0415).
38. Stationary compressed gas system, includes use of container, regulator with flow gauge, humidifier/nebulizer, cannula or mask and tubing (E0425).

39. Oxygen system, gaseous, portable, includes portable container, supply container, regulator with flow gauge, humidifier, cannula or mask and tubing (E0430).

40. Oxygen system, liquid, stationary, includes use of reservoir, contents, indicator, flowmeter, humidifier, cannual or mask and tubing (E0440).

41. Oxygen system, liquid, portable, includes portable container, supply reservoir, flow, humidifier, cannula or masks, tubing and refill adaptor (E0435).

42. Oxygen concentrator, equivalent to 244 cubic feet (E1388).

43. Oxygen concentrator, equivalent to 488 cubic feet (E1389).

44. Oxygen concentrator, equivalent to 732 cubic feet (E1390).

45. Oxygen concentrator, equivalent to 976 cubic feet (E1391).

46. Oxygen concentrator, equivalent to 1220 cubic feet (E1392).

47. Oxygen concentrator, equivalent to 1464 cubic feet (E1393).

48. Oxygen concentrator, equivalent to 1708 cubic feet (E1394).

49. Oxygen concentrator, equivalent to 1952 cubic feet (E1395).

50. Oxygen concentrator, equivalent to over 1952 cubic feet (E1396).

51. Humidifier, durable for extensive supplemental humidification during IPPB treatments or oxygen delivery, e.g., cascabe (E0550).

52. Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery, e.g., cascade jr. (E0560).

53. Humidifier, durable glass or autoclavable plastic bottle (E0555).

54. Compressor, air power source for equipment which is not self-contained or cylinder driven (E0565).

55. Nebulizer, with compressor; e.g., Devilbiss pulmo-aid (E0570).

56. Nebulizer, durable, glass or autoclavable plastic, bottle type, for use with regulator or flowmeter (E0580).

57. Nebulizer, self-contained, ultrasonic (E0575).

58. Suction pump, home model, portable (E0600).

59. Seat lift chair, motorized to assist patient in standing and sitting (E0620).

60. Patient lift, hydraulic, with seat or sling (E0630).

61. Mattress, innerspring (E0271).

62. Mattress, foam rubber (E0272).

63. Bedside rails, half length (E0310).

64. Bedside rails, full length (E0310).

65. IPPB machines with automatic valves, exernal power source, includes cylinder regulator, built-in nebulization (E0510).

66. IPPB machines with automatic valves, electrically driven with internal compressor, built-in nebulization (E0515).

67. IPPB machines with manual valves, external power source, includes cyclinder regulator, built-in nebulization (E0500).

68. IPPB machines with manual valves, electrically driven with internal power source, built-in nebrulization (E0505).

69. Pressure pad, alternating with pump (E0180).

70. Pressure pad, alternating with pump, heavy duty (E0181).

*B. Medical Supplies*

1. Indwelling catheter, Foley type, two-way, teflon (A4341).

2. Indwelling catheter, Foley type, two-way, latex (A4342).

3. Indwelling catheter, Foley type, two-way, latex with teflon coating (A4343).

4. Indwelling catheter, Foley Type, two-way, all silicone (A4344).

5. Indwelling catheter, Foley type, two-way, silicone with customer coating (A4345).

6. Indwelling catheter, Foley type, three-way, latex or teflon for continuous irrigation (A4346).

7. Catheter insertion tray, includes catheter and drainage bag (A4353).

8. Urinary collection and retention system, drainage bag with tube (A4348).

9. Urinary collection and retention system, leg bag with tube (A4349).

10. Colostomy set (A4360).

11. Ureterostony set (A4430).

12. Surgical trays (A4550).

13. Catheter insertion tray, without tube and drainage bag (A4354).

14. Ideal bladder set (A4390).

15. Irrigation set for irrigation of ostomy (A4400).

*C. Prosthetic Devices*

1. Breast prosthesis, mastectomy bra (L8000).

2. Breast prosthesis, mastectomy form (L8020).

3. Cervical, Semi-rigid, adjustable (plastic collar) (L0140).

*D. Additional Items of Durable Medical Equipment to Be Subject to the LCL Provision*

In the August 15, 1986 notice we proposed that certain items normally considered either convenience or deluxe items or items with convenience or deluxe features be included as subject to the LCL criterion. We explained that convenience or deluxe items or features are not generally covered by the Medicare program. Where convenience or deluxe items or features are not medically necessary, reimbursement is limited to the reasonable charge for the comparable, covered, medically necessary item. In such circumstances, we proposed that the LCL applicable to the comparable, covered, medically necessary item would be used in determining the reasonable charge for the item.

However, we also stated that under certain circumstances (for example, due to the special medical needs of the beneficiary) items ordinarily classified as convenience or deluxe may be fully covered and reimbursed. In such situations, the LCL applicable to the following items is to be used in determining the reasonable charge for the items. For sake of completeness and accuracy, we are including in the list the HCPCS codes for both convenience or deluxe items (and for items with convenience or deluxe features), and the HCPCS codes of the comparable medically standard items.

1. Lightweight wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1240). (Comparable to E1140).

2. Lightweight wheelchair, fixed full length arms, swing away detachable foot rests (E1250). (Comparable to E1150).

3. Lightweight wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1260). (Comparable to E1140).

4. Lightweight wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1270). (Comparable to E1150).

5. Rigid walker, wheeled, with seat (E0142). (Comparable to E0141).

6. Folding walker, wheeled, without seat (E0143). (Comparable to E0141).

7. Walker, wheeled, with seat and crutch attachment (E0145). (Comparable to E0141).

8. Walker, wheeled, with seat (E0146). (Comparable to E1041).

9. Walker, folding (pick up), adjustable or fixed height (E0135). (Comparable to E0141).

10. Commode chair, mobile, with fixed arms (E0164). (Comparable to E0163).

11. Commode chair, mobile, with detachable arms (E0166). (Comparable to E0165).

## V. Regulatory Impact Analysis

*A. Introduction*

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. We consider all manufacturers and suppliers of durable medical equipment, medical supplies, prosthetic devices, and suppliers of ambulance services to be small entities for purposes of the RFA.

Although we stated in the proposed notice that our proposal met the $100 million criterion for a major rule under E.O. 12291, we now estimate that the impact of this notice will not exceed the $100 million threshold. Thus this notice does not qualify as a major rule under that criterion. However, at least one commenter stated that this notice could result in adverse effects meeting other criteria of E.O. 12291.

In light of that comment and the significant amount of interest shown by comments on the proposed notice, we have voluntarily prepared a final regulatory impact analysis. Furthermore, this final notice could have a significant impact on a substantial number of small entities. Thus, we have prepared a combined final regulatory flexibility analysis and regulatory impact analysis.

*B. Effect on Program Expenditures*

In the proposed notice, we estimated that the Medicare program would save $100 million by FY 1989 as a result of our proposal. However, we now estimate that savings under this final notice will be substantially lower.

The new savings estimates are:

| Fiscal year | Savings (in millions) |
|---|---|
| 1987 | [1] $10 |
| 1988 | 10 |
| 1989 | 20 |
| 1990 | [illegible] |
| 1991 | 20 |

[1] Estimates are rounded to the nearest $10 million.

There are two major reasons for this substantial drop in estimated savings. First, in response to several inquiries about the basis for our savings estimates in the proposed notice, we reconsidered and reexamined them and found that our earlier estimates had not fully taken into account the effect of the inflation indexed charge (IIC). When the effects of the IIC are more fully considered, the LCL increases program savings by only a marginal impact beyond those achieved by the IIC. Second, we removed ambulance services, TENS, and certain colostomy supplies from the list of LCL items, for reasons explained in Section III of this notice.

*C. Affected Entities*

Projected savings will result from the impact of this notice on thousands of small entities. However, the estimated savings represent only 1.5 percent of program expenditures for these services and items. Therefore, we do not expect the impact on any one entity to be great.

It is difficult to estimate the number of small entities affected and some commenters specifically inquired how we had done so. In determining this number, we consulted standard references for the particular sectors of the economy affected and talked with representatives from the appropriate trade associations. Based on the information received, we determined ranges of numbers that represent a consensus of what is probable, estimating that the following small entities will be affected:

—55,000–60,000 drugstores and
—fewer than 10,000 durable medical equipment suppliers.

We expect manufacturers and suppliers of durable medical equipment, medical supplies, and prosthetic devices, and beneficiaries to be affected by this notice. However, we do not have sufficient data to predict exactly the nature of the impact of this notice or the magnitude of such impact. Below, we discuss likely outcomes.

1. Suppliers

Suppliers (and manufacturers that sell directly) likely will review reasonable charges in the locality to determine what strategy will achieve the best profit. In response to this notice, we expect them to assess wholesale prices of products of current and future stocks and costs of maintaining these stocks; to compare these costs to the prevailing charge level and the lowest charge level in the localities in which they operate; to assess the population in terms of ability to pay; to consider whether or not to accept assignment; and to decide whether or not they can stock the equipment and supplies at lower prices from other manufacturers.

Decisions resulting from the foregoing assessments probably will vary from locality to locality and from supplier to supplier. For example, suppliers whose charges exceed the LCL might be expected to shift their stock to lower-priced items, to otherwise seek to make their operations more efficient, or to change their policies regarding acceptance of assignment. In general, in a given area, the more widely divergent the prices, the greater the likely effect of the notice on suppliers. When the lowest charge level on a distribution curve is not far from the 75th percentile of customary charges, there should be little effect.

2. Manufacturers and Distributors

Decisions made by the suppliers in response to this notice probably will affect the manufacturers and wholesale distributors. The impact on an individual manufacturer might vary depending upon the manufacturer's degree of diversification of products, variations in reasonable charge levels and demand from locality to locality, variations based on Medicare's portion of the market, optimization of profitability margins, and other considerations.

3. Beneficiaries

The effects of this notice on beneficiaries will depend on the characteristics of both local suppliers and the individual beneficiary. It is important to note that an LCL for a specific item might not be applicable in all localities. As explained above, the calculation of an LCL for a specific item requires that at least four suppliers in the locality furnish the item and that there be at least twenty charges for the item in that locality. Obviously, those beneficiaries in localities not operating under LCL requirements will not be subject to any of the effects of LCL.

This notice will affect beneficiaries by affecting supplier charging patterns and assignment rates. Suppliers have several options when it comes to the amount they will charge for their items. Some suppliers may decrease their charges, others may continue charging at their current level, while others may increase their charges despite the applicability of an LCL.

In our initial regulatory impact analysis, we acknowledged the possibility of adverse consequences on beneficiaries as a result of imposing the LCL. We stated that, in response to the imposition of the LCL, suppliers may decline to accept assignment or refuse to participate. However, there are reasons to believe that beneficiaries will not be adversely affected by changing assignment rates. For example, the amount of competition among suppliers in a locality could prevent a decline in

assignment rates. Also, the rapid growth in the elderly population may increase the volume of supplier business enough to offset any loss in income attributable to the LCL provision, thus mitigating the need for suppliers in that locality to lower their assignment rates. Furthermore, suppliers that do not accept assignment must consider the financial risk of collection for that portion of the fee that Medicare does not pay.

Even in areas where assignment rates or the number of participating suppliers decline significantly in response to the LCL provision, increases in beneficiary out-of-pocket expenses will depend on whether: beneficiaries have supplemental health insurance or are dually covered under both Medicare and Medicaid; the payment limits of these alternative payment sources; and the suppliers' total charges. The latest data available indicate that over 75 percent of all beneficiaries either have supplemental health insurance or are also covered under Medicaid.[1] While not all those with supplemental insurance will be covered for the additional charges for which Medicare will no longer pay, we believe that many beneficiaries will be covered.

*D. Alternatives*

There are three alternatives we considered in the course of preparing this notice. (1) We could have continued to apply the LCL provision to only two items of durable medical equipment. We expect that prices would have continued to rise on items and services not currently subject to the LCL. (2) We could have included in the list more items and services than those finally added by this notice. This probably would have further added to program savings; however, we would have had to include items and services about which we do not have enough data to ensure against significant variations in quality. (3) We could issue a notice, as we are doing, that contains a comprehensive list of durable medical equipment, medical supplies, and prosthetic devices that, as best as we can determine, satisfy the requirements for application of the LCL provision. For all of the reasons discussed throughout this notice we have determined that this approach is the most preferable.

[1] *Supplemental Health Insurance Coverage Among Aged Medicare Beneficiaries*, Series B, Descriptive Report No. 5, Pub. by the Health Care Financing Administration and the Public Health Service.

*E. Conclusion*

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise. For major rules, we must discuss those costs and benefits in an impact analysis, and explain why the potential benefits outweigh the potential costs to society.

For the most part, the costs and disadvantages that could result from this notice will take the form of reduced payment to certain small entities and, possibly, if the assignment rate is reduced, more initial out-of-pocket expenses for the beneficiary.

The primary benefit expected to result from this notice is the anticipated reduction in the cost to the Medicare program of durable medical equipment and of medical supplies. To the extent that suppliers continue to accept assignment, beneficiary liability will be reduced.

The application of the LCL provision to more items and services is expected to produce sustanital benefits in the form of economy and efficiency in the Medicare program, to eliminate wide variations in Medicare payment for virtually identical items and services, and to limit upward pricing trends of the health care marketplace as a whole. Therefore, we conclude that the overall benefits to society more than offset any resulting liabilities.

**VI. Paperwork Reduction Act**

The inclusion of new items and services in the list of items and services subject to the LCL provision does not impose paperwork collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 et seq.).

(Sections 1102, 1833, 1842(b)(3) and 1871 of the Social Security Act; 42 U.S.C. 1302, 13951, 1395u(b)(3) and 1395hh; 42 CFR 405.502 and 405.511)

(Catalog of Federal Domestic Assistance Program No. 13.774 Medicare-Supplementary Medical Insurance)

Dated: February 2, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: March 13, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87-8803 Filed 4-17-87; 8:45 am]

BILLING CODE 4120-01-M

**Health Resources and Services Administration**

**Acquired Immune Deficiency Syndrome (AIDS); Regional Education and Training Centers Program**

**AGENCY:** Health Resources and Services Administration, PHS, DHHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Bureau of Resources Development (BRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1987 funds are available for training grants to develop three regional Education and Training Centers (ETCs). These centers will provide Acquired Immune Deficiency Syndrome (AIDS)/Human Immunodeficiency Virus (HIV) training for health care personnel with the goal of training: (1) Community primary care providers to be able to counsel, diagnose, and manage patients and (2) selected trainees to act as instructors in their local areas. The centers will operate in collaboration with health professions schools, community hospitals and local health departments. Funds were appropriated by Pub. L. 99-591 for this purpose under the authority of section 301 of the Public Health Service (PHS) Act (42 U.S.C. 241).

**DATE:** To receive consideration, applications must be received by the close of business June 19, 1987 by the Grants Management Officer at the address below. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing.

**FOR FURTHER INFORMATION CONTACT:** Requests for technical or programmatic information should be directed to Mrs. June Horner, Chief, Education and Training Centers Program, Office of AIDS Services Program, Room 9-21, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443-6745). Training grant applications and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this notice may be requested from Mr. Donald C. Parks, Grants Management Officer, Bureau of Resources Development, Parklawn Building, Room 9-03, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443-2630).

**SUPPLEMENTARY INFORMATION:**

**Program Objectives**

The purpose of the training program is to support the development of regional ETCs for the health provider community. The program objectives for each center are to: (1) Provide (in collaboration with health professions schools, local hospitals, and health departments) education and training to primary care providers (and others) on the treatment and prevention of AIDS; (2) provide updates of new and timely information about HIV infection to some 1,000 primary and secondary health care providers; and (3) serve as the support system for area health professionals through AIDS hotline, clearinghouse, and referral activities.

**Availability of Funds**

A sum of $1,535,000 will be made available to fund three ETCs in FY 1987. The project period will be for 3 years. This requires submission of a budget for each of the 3 years. Funds will be awarded in FY 1987 for the first year. Funds for the next 2 years are subject to availability of funds.

**Eligible Applicants**

All public and private entities, non-profit and for-profit, are eligible to apply. Eligible entities may include, but are not limited to, schools in academic health science centers; professional associations: consortia of health care and community organizations, i.e., Area Health Education Centers (AHECs): public or private hospitals and local health departments which could develop coordinated regional AIDS education and training programs.

**Review Criteria**

Applications for training grants will be reviewed and rated according to the applicant's ability to demonstrate:

1. The most cost effective ways of providing AIDS education and training to the largest number of health care professionals within its region:
2. Coordination, if appropriate, with an AHEC:
3. Collaboration with the AIDS demonstration projects supported by HRSA, the Alcohol, Drug Abuse and Mental Health Administration, the Robert Wood Johnson Foundation, and other AIDS projects;
4. Collaboration with medical and health professions schools, medical societies, local hospitals, and other health professional organizations;
5. A strategy whereby curricula used in the ETC program will, to the extent possible, be included in the course offerings of undergraduate and graduate medical education programs within the applicant's area of responsibility.
6. How it would serve a multi-state area;
7. A plan for evaluating the effectiveness of the ETC;
8. Coordination with existing AIDS hotlines, clearinghouses, and treatment and evaluation centers; and,
9. A plan for training health professionals who serve large numbers of minority patients.
10. A plan for continuation of the ETCs in the absence of Federal funds.

Preference will be given to applicants who propose a strategy for including a broad variety of health professions disciplines, i.e. physicians, dentists, physician assistants, social workers, psychologists, counselors, nurse practitioners, nurses, etc., both in the program development process, as well as in the proposed composition of trainee groups.

**Allowable Costs**

A successful applicant under this notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the award; the regulations of the Department and the PHS applicable to grants; the cost principles specified in 45 CFR Part 74, Subpart Q; the applicable Office of Management and Budget (OMB) circular for non-profit grantees; and for for-profit organizations, Appendix VI of the PHS grants policy statement.

Indirect costs for training grants other than those awarded to State or local government agencies shall be reimbursed at 8 percent of total allowable direct costs exclusive of tuition and related fees and expenditures for equipment, or at the actual indirect cost rate, whichever results in a lesser dollar amount. State and local government agencies shall receive reimbursement at their full indirect cost rates.

**Other Award Information**

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance.

**Executive Order 12372**

The ETC Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

A number for the ETC Program is being requested for the OMB Catalog of Federal Domestic Assistance.

Dated: March 10, 1987.

**David N. Sundwall,**

*Administrator, HRSA.*

[FR Doc. 87-8736 Filed 4-17-87; 8:45 am]

BILLING CODE 4160-15-M

---

## DEPARTMENT OF THE INTERIOR

### Availability of the Arctic Wildlife Refuge, Alaska, Coastal Plain Resource Assessment and Final Legislative Environmental Impact Statement

**AGENCY:** Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** As required by section 1002(h) of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980, the Department of the Interior has prepared its report to Congress concerning future management of the coastal plain of the Arctic National Wildlife Refuge, Alaska. In accordance with 40 CFR §§ 1506.4 and 1506.8 of the Council on Environmental Quality's regulations to implement the National Environmental Policy Act (NEPA), this report incorporates a final legislative environmental impact statement (LEIS). It will be submitted to Congress for its deliberation as to whether or not further oil and gas exploration, and oil development, production and transportation should be considered on the 1.5-million-acre coastal plain of the Arctic Refuge.

**DATES:** The Secretary can take public comment into account before deciding whether or not to submit formally to Congress the final recommendation as it is now written. The Environmental Protection Agency will be publishing a Notice of Availability specifying the time available for this public review. However, comments may be submitted at any time, and will be forwarded to the appropriate congressional committees for their consideration

during congressional deliberations on the future management of the coastal plain.

**ADDRESS:** Address comments to the Director, U.S. Fish and Wildlife Service, Division of Refuges, Room 2343, 18th and C Sts., NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Noreen Clough, U.S. Fish and Wildlife Service, Division of Refuges, 18th and C Streets, NW., Room 2343, Main Interior Building, Washington, DC 20240, telephone (202) 343–4313.

Copies of the report/LEIS have been sent to Federal, State, and local agencies with jurisdiction by law or special expertise; to the Government of Canada and to the Yukon and Northwest Territories governments; to concerned conservation organizations; to affected Alaska Native regional and village corporations and other Native organizations; to the oil and gas industry; and other interested members of the public. Copies have been distributed to all those who provided substantive comments on the draft report or who asked to be added to the mailing list for the final report. Additionally, copies are available at major libraries in the State of Alaska and the other 49 states, in the Arctic National Wildlife Refuge headquarters in Fairbanks, the Refuge field office in Kaktovik, AK, and all Regional Offices of the Fish and Wildlife Service, as listed below:

Arctic National Wildlife Refuge, 101 12th Ave., Box 20, Fairbanks, AK 99701, telephone (907) 456–0250. (Arctic NWR-Kaktovik Field Station, Kaktovik, AK 99747).

U.S. Fish and Wildlife Service, Refuges and Wildlife, Lloyd 500 Building, Suite 1692, 500 NE Multnomah St., Portland, OR 97232, telephone (503) 231–6118.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Ave., SW, Room 1306, Albuquerque, NM 87103, telephone (505) 766–2321.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111, telephone (612) 725–3563.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring St., Atlanta, GA 30303, telephone (404) 221–3588.

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158, telephone (617) 965–5100.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225, telephone (303) 236–7920.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 1011 E. Tudor Rd., Anchorage, AK 99503, telephone (907) 786–3388.

Individuals wanting a copy of the document should contact Ms. Clough or the Anchorage Regional Office.

**SUPPLEMENTARY INFORMATION:** The Alaska National Interest Lands Conservation Act (ANILCA) of 1980 set aside more than 100 million acres of land in Alaska as national parks, preserves, wildlife refuges, and wilderness areas. At that time, the Congress specifically left open the question of future management of the 1.5-million-acre coastal plain of the 19-million-acre Arctic National Wildlife Refuge because of the area's potentially enormous oil and gas resources and its important wildlife values. Section 1002(h) of ANILCA required that the Secretary of the Interior prepare and submit to Congress a report concerning the resources of the coastal plain. The report is to contain the following:

(1) The identification of those areas within the Arctic Refuge coastal plain ("1002 area") that have oil and gas production potential and estimates of the volume of oil and gas;

(2) A description of the fish and wildlife, their habitats, and other resources in the 1002 area;

(3) An evaluation of the adverse effects of carrying out further exploration, development and production of oil and gas on the 1002 area;

(4) A description of how oil and gas, if produced within the 1002 area, may be transported to processing facilities;

(5) An evaluation of how this oil and gas relates to the national need for additional domestic sources of oil and gas; and

(6) The recommendations of the Secretary with respect to whether further exploration for, and the development and production of oil and gas in the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitat, and other sources are avoided or minimized.

The report/LEIS culminates more than 5 years of biological baseline studies, surface geological studies, and two seasons of seismic exploration surveys. The report/LEIS was prepared by the Fish and Wildlife Service, with cooperation from the U.S. Geological Survey and Bureau of Land Management.

The draft report/LEIS was released for public review and comment on November 24, 1986. Public hearings were held in January 1987 in Anchorage and Kaktovik, Alaska, and Washington, DC. These hearings were attended by representatives of the Governments of Canada and Alaska, Alaska Natives, other interested parties and the general public. More than 11,000 comment letters were received during the comment period, which closed February 6, 1987. Of these comment letters, more than 7,000 favored opening the Arctic Refuge coastal plain for oil and gas leasing and development.

To assist the Secretary of the Interior in making his recommendation, the report/LEIS analyzed a range of alternatives for management of the coastal plain: Opening the entire area for oil and gas leasing; opening a limited area to oil and gas leasing; permitting only additional exploration, including exploratory wells; taking no action regarding oil and gas activity but including the coastal plain in the comprehensive conservation planning process for the entire refuge; or designating the coastal plain as wilderness.

The potential environmental consequences of implementing these alternatives were also examined. Potential impacts were assessed for exploration, development drilling, and production. Impacts predicted for exploration and development drilling were minor or negligible on all wildlife resources on the coastal plain. Production of oil is expected to directly affect only 12,650 acres or 0.8 percent of the coastal plain. Consequences on species such as brown bears, snow geese, wolves, moose and the Central Arctic caribou are expected to be negligible, minor, or moderate. Potential major effects from production are limited to the Porcupine caribou herd and reintroduced muskoxen. A potential consequence to the Porcupine caribou herd would be displacement of portions of the herd seeking to calve in the upper Jago River area—the case only if the area were the site of a major producing oil field. It is unlikely, though possible, that such displacement would result in any appreciable decline in herd size. Effects on muskoxen could include displacement from currently used habitat, and a slowing of the herd's growth rate, as distinguished from a diminution in herd size.

Effects on subsistence could occur on the villagers of Kaktovik, and to a lesser degree in villages outside the coastal plain. In the case of the village of Kaktovik, a major restriction of subsistence activities could occur as a result of the physical changes proximate

to the village. Subsistence effects on villages outside the coastal plain and in Canada are expected to be minimal.

The Arctic Refuge coastal plain is rated by geologists as the most promising onshore oil and gas exploration area in the United States. Results of studies done indicate there is about a 19 percent chance that at least one "economic" oil field will be found, meaning enough oil can be recovered to make the cost of exploration and development worthwhile (estimated to be about 440 million barrels of oil). Assuming at least one economic field is found, estimates for the amount of oil that could be produced vary from a 95 percent chance of recovering 600 million barrels to a 5 percent chance of recovering 9.2 billion barrels (which would be approximately equal to Prudhoe Bay). The average of all estimates is 3.2 billion barrels. This amount of oil would mean that by the year 2005, the 1002 area could provide 4 percent of total U.S. oil demand and 8 percent of U.S. production, could reduce imports of foreign oil by nearly 9 percent, and could provide $79.4 billion in economic revenues. If 9.2 billion barrels are recovered, benefits to the economy are estimated as high as $325 billion. In 1986, U.S. domestic oil production dropped 9 to 10 percent. Production is predicted to drop an additional 4 to 5 percent in 1987, if prices do not drop this year. At the same time, U.S. oil consumption, which has exceeded domestic production since the 1960's, is expected to increase. Our oil imports are projected to exceed 50 percent of consumption of the 1990's. America's growing reliance on imported oil for the rest of the century could have potentially serious ramifications for our national security.

Based on the analyses conducted, public comment on the draft report, the national need for domestic sources of oil and gas, and the Nation's ability to develop such resources in an environmentally sensitive manner as demonstrated by two decades of success at Prudhoe Bay and elsewhere, the Secretary of the Interior has selected making available for consideration the entire Arctic Refuge coastal plain for oil and gas leasing as his preferred alternative. The step-by-step environmental planning, review, and evaluation procedures included in a leasing program provide the best opportunity for the Department to decide what areas to lease, based on the most accurate and advanced information available at each step of the leasing process.

The Secretary's preliminary recommendation appears in Chapter VIII of the final 1002 report/LEIS. The Secretary's recommendation will become final only upon formal submission by a separate Secretarial letter of the 1002 report/LEIS to the Congress of the United States.

Dated: April 15, 1987.

**Bruce Blanchard,**

*Director, Office of Environmental Project Review.*

[FR Doc. 87-8810 Filed 4-17-87; 8:45 am]

BILLING CODE 4310-55-M

---

## Bureau of Land Management

[NV-930-07-5101-09-XFKE]

## Intent To Prepare an Environmental Document on a Fiber Optic Cable System and Notice of Scoping Period for American Telephone and Telegraph Company's (AT&T) Western Region Lightguide Project

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management and the Forest Service will be jointly directing the preparation of an environmental document to be prepared by a third-party contractor on the impacts of a proposed fiber optic cable system, AT&T's Western Region Lightguide Project, located between Cheyenne, Wyoming and the Sacramento, California area.

**SUPPLEMENTARY INFORMATION:** AT&T proposes to construct a fiber optic cable system between Cheyenne, Wyoming and the Sacramento, California area. The proposed action would allow AT&T to provide a capacity of 1.7 gegabits per second on a 36 fiber, single-mode lightguide system between Cheyenne, Wyoming (AT&T's western region, most easterly Regional Center) and Sacramento, California (a North to South Regional Center along the Pacific Coast). The routing also allows for public long-distance service at intermediate service points along the system.

The proposed route will primarily utilize existing rights-of-way (ROW) throughout its length. From Cheyenne, Wyoming to Salt Lake City, Utah, the existing copper cable K-Carrier ROW would be utilized and would enter Salt Lake City by way of Immigration Canyon. An existing or new conduit would be used from Salt Lake City to Brigham City, Utah. The route would follow the existing AT&T L-4 ROW from Brigham City to Lucin, Utah. The highway ROW would be used from Lucin to Oasis, Nevada. The K-Carrier ROW would then be followed from Oasis to Parran, Nevada. The preferred route would be adjacent to Highway 95 from Parran to Fallon, Nevada. From Fallon the route would proceed west along Alternate 95 to the junction of Highway 50. From this junction, the preferred route would follow the K-Carrier to a point near Mustang, then cross the Truckee River to a power line corridor into Sparks and Reno, Nevada.

There are two equally considered routes between Reno and the Sacramento area. The Northern route would follow the K-Carrier ROW across the Toiyabe and Tahoe National Forests to a point North of Auburn, California; then follow a public highway to the Sacramento area. The southern route would leave Reno traveling south along Highway 395 to the junction of Franktown Road; along Franktown Road to U.S. 395; through Carson City to Minden, Nevada; then along Highway 88 through Woodfords, Kirkwood, and Plymouth, California and thence on to the Sacramento area. A considerable amount of the route along Highway 88 in California would follow the old abandoned Highway 88.

### Purpose and Need

The purpose and need for the AT&T proposed buried fiber optic communication cable between Cheyenne, Wyoming, and the Sacramento, California area is to enlarge the capacity of company facilities and to diversify communication systems. This enlargement of capacity and system diversification is needed for both existing and future AT&T clients. As a result of the divestiture of the U.S. market for nationwide interstate long-distance telephone service has become intensely competitive. Fiber optic technology has two major advantages over other communications systems: (1) It provides a higher quality of sound and digital data transmission than conventional systems, and (2) it is capable of transmitting much more information per cable than copper.

### Project Components

The proposed construction would consist of approximately 1,150 miles of ½ inch diameter fiber optic cable within an existing cable ROW or within existing public road ROW.

The appurtenances include:

—Regeneration stations every 22 miles on the average (10' x 16' x 8' building).
—An electrical power distribution line from the nearest source to each regeneration station.

—Splice boxes spaced every 9,000 feet on the average.
—Manholes spaced every 2,000 feet on the average.
—Marker poles placed every 1,000 feet.

**Tentative Alternatives Identified by AT&T**

1. No Action (decision not to grant federal permits or ROW required for construction, operation and maintenance of the proposal).

2. The Union Pacific Railroad Corridor between Cheyenne, Wyoming and Salt Lake City, Utah. This alternative would add 60 miles to the AT&T proposed route.

3. AT&T has prepared two segment alternatives to the proposed route between Salt Lake City, Utah and Reno, Nevada. These segments are as follows:

a. The Southern Pacific Railroad Corridor from Wells, Nevada to Reno. This segment would add 71 miles to the proposed route.

b. Highway 50 from Fallon, Nevada through Carson City, Nevada, north along Highway 395, to Franktown road, to Highway 395 into Reno, Nevada. This route would add approximately 17 miles to the Salt Lake City, Utah to Reno, Nevada segment. This segment alternative would allow for the opportunity to provide fiber optic cable service to Carson City, Nevada (the State Capitol). If the northern route between Reno and the Sacramento area is selected as a result of the NEPA process, Carson City could be by-passed and the residents would not have immediate access to AT&T's fiber optic system.

**Other Potential Alternatives**

Other alternative fiber optic cable locations identified for possible analysis in the environmental document are as follows:

Reno/Carson City, Nevada area to Sacramento, California area via the following linear ROW corridors:

—Interstate Highway 80 (I–80) transportation ROW.
—Southern Pacific Railroad route along the I–80 corridor.
—The Southern Pacific Pipeline Company ROW in the proximity of the I–80 transportation corridor (locate cable within the pipeline ROW width and/or inside of abandoned pipeline segments).
—U.S. Highway 50 transportation ROW.
—Kingsbury Grade (Nevada State Highway 207 transportation ROW) to US Highway 50 transportation ROW.

Reno/Carson City, Nevada area to Sacramento, California area via the following major ridge routes:

—Henness Pass (Hoke Valley to Camptonville, California along or adjacent to national forest and county roads on the Toiyabe and Tahoe National Forests).
—U.S. Highway 88 transportation ROW to Iron Mountain ridge route on the El Dorado National Forest to U.S. Highway 50 (Mormon Emigration Trail).
—U.S. Highway 50 transportation ROW to Peavine Ridge on the El Dorado National Forest back to US Highway 50 transportation ROW.

Cheyenne, Wyoming to Salt Lake City, Utah or Sacramento, California area via the following routes:

—General location of the Williams Telecommunications fiber optic ROW from Cheyenne, Wyoming to Salt Lake City, Utah.
—General location of the US Telecom, Inc. fiber optic ROW from Cheyenne, Wyoming to Reno Junction, California.

**Tentatively Identified Issues**

Physical, biological, and socioeconomic resource issues that might be of concern are listed below by general categories. The environmental document for the fiber optic cable system will include both a general and site-specific analysis of these resources.

Written responses to these issues are requested. The responses should identify the site-specific resource issue and location that would be of concern during the construction and operation of this project.

- Air quality
- Fire hazards
- Seasonal construction periods/ restrictions
- Visual resource impacts from ROW clearing and above surface facilities
- Noise during construction and operation
- Safety
- ROW clearing
- Herbicide use for vegetation control
- Impacts to other projects, existing ROW and land uses
- Crossing of fences, roads, highways, trails and other facilities
- Land rehabilitation
- Surface disturbance
- Affects to soil resources
- Control of runoff and sediment
- Geological hazards in unstable [illegible]
- Access to ROW
- ATV-ORV use of ROW
- Developed and dispersed recreation
- Wilderness
- Areas of critical environmental concern/special designation areas
- Threatened or endangered plants and wildlife
- Wildlife seasonal restrictions
- Riparian areas, flood plains, wetlands and stream crossings
- Cultural resources
- Use of Scenic Highway ROW
- Restrict project to existing ROW
- Power transmission lines for regeneration stations
- Removal of facilities made obsolete by fiber optics
- Installation and/or joint use of conduits in congested areas
- Worker accommodations
- Community service requirements
- Federal, state, and local government corridor planning direction
- Timber management and/or operations
- Social/economics
- Benefits to regional and local areas (communities)
- Cumulative impacts of other interrelated projects

**Tentative Schedule for Preparation of an EA/EIS**

*Project Schedule Element and Tentative Date*

Application Filed w/BLM & USFS—February 17, 1987
Scoping—April 1987
Preparation of EA/EIS—April–July 1987
Public & Agency Review of Draft EA/EIS—August 1987
Final EA/EIS Approval—September 1987
ROW Grant/Land Use Authorization—November 1987
Construction Period—January–September 1988

**ADDRESS:** Written scoping comments will be accepted until May 7, 1987. Comments should be sent to State Director (NV–933), Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

**FOR FURTHER INFORMATION CONTACT:** For further information or to acquire a copy of the Western Region Lightguide Project scoping document write to the above address or call Ed Tilzey, (702) 784–5448.

Dated: April 14,1987.

**Edward F. Spang,**

*State Director, Nevada.*

[FR Doc. 87–8724 Filed 4–17–87; 8:45 am]

BILLING CODE 7001–54–M

---

**Minerals Management Service**

**Agency Information Collection Activities Under OMB Review**

The proposal for the collection of information listed below has been submitted to the Office of Management

and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

*Title:* Report of Sales and Royalty Remittance

*Abstract:* The Report of Sales and Royalty Remittance is submitted by those individuals and companies producing minerals from leased Indian Lands or from leased Federal lands, both onshore and offshore. Respondents report monthly on oil and gas lease activities, documenting essential data used by the Royalty Management Program in the calculation of royalties due. Data include quantity and quality of the product, selling arrangement, price at which the product was sold and other pertinent information necessary to determine the correct royalty amount due, reconcile or audit data, and distribute and correlate payments with the appropriate accounts.

*Bureau Form Number:* MMS–2014
*Frequency:* Monthly
*Description of Respondents:* Oil and Gas Lessees, reporting activities from Indian or Federal onshore or offshore leases.
*Annual Responses:* 259,400
*Annual Burden Hours:* 259,400
*Bureau Clearance Officer:* Dorothy Christopher 703–435–6213

Dated: April 6, 1987.

**Jerry D. Hill,**

*Associate Director for Royalty Management.*

[FR Doc. 87–8728 Filed 4–17–87; 8:45 am]

BILLING CODE [illegible]

---

## Development Operations Coordination Document; Tenneco Oil Exploration and Production

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4885, Block 147, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 8, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 10, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–8729 Filed 4–17–87; 8:45 am]

BILLING CODE [illegible]

---

## National Park Service

## Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86, Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan Canal National Heritage Corridor Commission will be held May 5, 1987, beginning at 10 a.m. at the Village Hall, Main & Fremont Street, Lemont, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. Sec. 461 note, to implement and suppport the conceptual plan.

Matters to be discussed at the meeting will include the election of officers and the Economic Development Administration (EDA) grant.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: April 10, 1987.

**John Kawamoto,**

*Acting Regional Director, Midwest Region.*

[FR Doc. 87–8823 Filed 4–17–87; 8:45 am]

BILLING CODE 4310–70–M

---

## Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission will be held at

9:30 a.m. (EDT), May 1, 1987, at the Hart Visitor Center Auditorium, 9922 Front Street (M–72), Empire, Michigan.

The Commission was established by the Act of October 21, 1970, 84 Stat. 1076, 16 U.S.C. 460x–3, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Sleeping Bear Dunes National Lakeshore and with respsct to the provision of Sections 9 (zoning bylaws), 12 (scenic roads), and 13 (commerical properties) of this Act.

The members of the Commission are as follows:

Mr. John B. Daugherty (Chairman)
Ms. Uledene Merrill
Mr. George T. Schilling
Mr. Lawrence J. Verdier
Mr. Charles Rubner
Ms. Cathlene Search
Ms. Evangeline J. Stanchik
Dr. Michael Chubb
Mr. George Weeks
Mr. Gary Jones

The agenda for the meeting will include discussions of recent park development projects and future projects, development concept plans for North Manitou Island, the Glen Haven Village, and the Platte River Management Plan.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Richard R. Peterson, Superintendent, Sleeping Bear Dunes National Lakeshore, Empire, Michigan 49630, telephone (616) 326–5134.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Sleeping Bear Dunes National Lakeshore, Empire, Michigan.

Dated: April 10, 1987.

**John Kawamoto,**

*Acting Regional Director, Midwest Region.*

[FR Doc. 87–8824 Filed 4–17–87; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–55 (Sub-No. 196X)]**

### CSX Transportation, Inc.; Abandonment Exemption in Marion, Boyle and Lincoln Counties, KY; Exemption

CSX Transportation, Inc. (Applicant) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 34.82-mile line of railroad between milepost LC 68.63 near C&O Junction, Ky and milepost LC 103.5 near Stanford, KY, in Marion, Boyle, and Lincoln Counties, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective 30 days from service of this decision (unless stayed pending reconsideration). Petitions to stay must be filed by 10 days after service, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by 20 days after services with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commisison should be sent to applicant's representatives:

Lawrence H. Richmond, Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201

Charles M. Rosenberger, Patricia Vail, 500 Water Street, Jacksonville, FL 32202

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 9, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–8768 Filed 4–17–87; 8:45 am]

BILLING CODE 7035–01–M

### Release of Waybill Data for Use in General Studies of Rail Traffic

The Commission has received a request from the Association of American Railroads for permission to use certain data from the Commission's 1985 and, when available, 1986 waybill sample to carry out general studies of the amount and percentage of rail traffic moving on light density lines. The studies will be used to analyze in the aggregate the potential changes in the U.S. rail network in the event of significant declines in traffic volume. Specifically, they seek waybill data on car identification, origin location and railroad, destination location and railroad, the railroads and interchanges in the route, carloads, tons, and revenue.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (49 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275–6864.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–8755 Filed 4–17–87; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree; Fried Industries, Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Fried Industries, Inc. and Phillip Fried,* Civil Action No. 86–1207 was lodged with the United States District Court for the District of New Jersey on April 6, 1987. The proposed Consent Decree settles a lawsuit filed on March 27, 1986, pursuant to section 3008 of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. 6928, for injunctive relief and for assessment of a civil penalty against Fried Industries, Inc. and Phillip Fried ("Defendants"). The complaint alleges, among other things, that Defendants violated the Act by disposing of hazardous waste at their manufacturing plant located in East Brunswick, New Jersey, ("Fried facility"), without a permit. The complaint alleges that Fried's acts violated the Subchapter III program of RCRA, including section 7:26–12.1 *et seq.* of the New Jersey Solid and Hazardous Waste Regulations, N.J.A.C. 7:26–1.1 *et seq.,* and entitled the United States, pursuant to section 3008 of RCRA, 33 U.S.C. 6928, to injunctive relief and to recover a civil penalty of not more than $25,000 per day of violation.

The proposed Consent Decree provides for the permanent cessation of all manufacturing and production activities at the Fried facility. Defendants Fried Industries and Phillip Fried are also required, among other things, to decontaminate all equipment pursuant to an EPA approved decontamination plan prior to renting, leasing or selling any such equipment. The proposed Consent Decree imposes stipulated penalties for failure to comply with the Decree.

The Department of Justice will receive for a period of thirty (30) days from the publication date of this notice written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Fried Industries. Inc. and Phillip Fried,* D.J. Ref. 90–7–1–303.

The proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per copy page reproduction cost) payable to the Treasury of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–8769 Filed 4–17–87; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of a Stipulation of Dismissal Pursuant to the Clean Water Act; Wyoming Valley Sanitary Authority

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 10, 1987, a proposed Consent Decree in *United States, et al.* v. *Wyoming Valley Sanitary Authority,* Civil Action No. 85–1900, was lodged with the United States District Court for the Middle District of Pennsylvania. The proposed Consent Decree concerns the failure of the Wyoming Valley Sanitary Authority to implement an approvable pretreatment program prior to July 1, 1983. The proposed Consent Decree requires the defendant to pay a penalty of $15,000.00. Its pretreatment program has been approved since the filing of this complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* v. *Wyoming Valley Sanitary Authority,* D.J. Ref. # 90–5–1–1–2482.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, P.O. Box 11754, 3rd and Walnut Street, Harrisburg, Pennsylvania, and at the Region III Office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania.

Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–8770 Filed 4–17–87; 8:45am]

BILLING CODE 4410–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Humanities

### National Council on the Humanities; Meeting

April 13, 1987.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on May 6–8, 1987.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. The meeting scheduled on May 6, 1987, and a portion of the morning and afternoon sessions on May 7–8, 1987 will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the session on May 6, 1987, will be as follows:

*Committee Meeting*

3:00 p.m. until adjourned, Jefferson Lecture Committee (Closed to the Public), Discussion of Jefferson Lecture Nominees—Room 430

The agenda for the sessions on May 7, 1987, will be as follows:

8:30–8:30 a.m. Coffee for Council Members (Open to the Public)—Room 526

*Committee Meetings*

(Open to the Public)

Policy Discussion

9:30–10:30 a.m.
Education Programs—Room M–14
Fellowship Programs—Room 315
General Programs—Room 415
Research Programs—Room 316–2
State Programs—Room M–07 East

10:30 a.m. until adjourned (Closed to the Public), Discussion of specific grant applications before the Council

(Open to the Public)

Policy Discussion

2:00–2:30 p.m. Preservation Grants—Room M–07 West

2:30 p.m. until adjourned (Closed to the Public), Discussion of specific grant applications before the Council

The morning session on May 8, 1987, will convene at 8:30 a.m. in the stage area of the Old Post Office Pavillion. (Coffee for staff, guests, and Council members attending the meeting will be served from 8:30 a.m.–9:00 a.m.) A presentation by the Norwood School of Bethesda, Maryland, a grantee, is scheduled for 9:00 a.m. The plenary session of the meeting will begin at 9:30 a.m. in Council Room, M–09, and will be open to the public. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Conflicts of Interest Policy
E. Dates of Future Councils
F. Application Report and Gifts and Matching Report
G. Status of Fiscal year 1987 Funds
H. Fiscal Year 1988 Appropriation Request
I. Fiscal Year 1989 Budget Planning
J. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. Preservation Grants
4. Research Programs
5. General Programs
6. State Programs
7. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code 202–786–0322.

Stephen J. McCleary,

*Advisory Committee Management Officer.*

[FR Doc. 87–8797 Filed 4–17–87; 8:45 am]

BILLING CODE 7536–01–M

---

## Humanities Panel; Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

**FOR FURTHER INFORMATION CONTACT:** Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy or (3) information which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. DATE: May 1, 1987
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 316–2
PROGRAM: This meeting will review application for Summer Seminars for College Teachers in Arts, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

2. DATE: May 4, 1987
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 315
PROGRAM: This meeting will review the Summer Seminars for College Teachers applications in Foreign Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1988.

3. DATE: May 15, 1987
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 315
PROGRAM: This meeting will review applications received in the Faculty Graduate Study Program for one year of doctoral study in the humanities, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1988.

4. DATE: May 4–5, 1987
TIME: 7:30 a.m. to 5:30 p.m.
ROOM: 415
PROGRAM: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

5. DATE: May 14, 1987
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: M–14
PROGRAM: This meeting will review applications for Humanities Instruction in Elementary and Secondary and Higher Education, submitted to the Division of Education Programs, for projects beginning after August 31, 1987.

6. DATE: May 14–15, 1987
TIME: 7:30 a.m. to 5:30 p.m.
ROOM: 415
PROGRAM: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

7. DATE: May 19–20, 1987
TIME: 7:30 a.m. to 5:30 p.m.
ROOM: 415
PROGRAM: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after October 1, 1987.

Stephen J. McCleary,

*Advisory Committee Management Officer.*

[FR Doc. 87–8798 Filed 4–17–87; 8:45 am]

BILLING CODE 7536–01–M

## NATIONAL SCIENCE FOUNDATION

### Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 22, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESS:** Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers at the above address or (202) 357–7934.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1986.

The application received is as follows:

1. *Applicant:* David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

*Activity for Which Permit Requested*

Taking. The applicant is conducting a research study of seabird habitat and diet. It is proposed to collect species as follows:

| Species | Number |
|---|---|
| Emperor Penguin | 25 |
| Adelie Penguin | [illegible] |
| Chinstrap Penguin | 25 |
| Giant Fulmar | 10 |
| Cape Petrel | [illegible] |
| Antarctic Petrel | [illegible] |
| Snow Petrel | [illegible] |
| Antarctic Prion | 30 |
| Blue Petrel | [illegible] |
| Wilson's Storm Petrel | [illegible] |
| South Polar Skua | 25 |
| Antarctic Tern | [illegible] |
| Kelp Gull | [illegible] |
| Blue-eyed Shag | 25 |
| Kerguelen Petrel | 25 |

*Location*

Ocean waters along the western side of the Antarctic Peninsula.

*Dates*

June–July 1987.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

**Charles E. Myers,**

*Permit Office.*

[FR Doc. 87–8727 Filed 4–17–87; 8:45 am]

BILLING CODE 7555–01–M

### Biological Facilities Centers Panel; Notice of Establishment

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the establishment of the Biological Facilities Centers Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* Advisory Panel for the Biological Facilities Centers.

*Purpose:* Primarily to advise on the merit of proposals for research facilities and research-related purposes submitted to NSF for financial support. Additionally, the Panel provides oversight, general advice, and policy guidance to the Biological Facilities Centers Program.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 15, 1987.

[FR Doc. 87–8835 Filed 4–17–87; 8:45 am]

BILLING CODE 7555–01–M

### Science Resources Studies; Notice of Establishment

The Assistant Director for Scientific, Technological, and International Affairs has determined that the establishment of the Advisory Committee for Science Resources Studies is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* Advisory Committee for Science Resources Studies

*Purpose:* To provide advice concerning current and emerging science and technology issues, problems and opportunities and the kinds of data that would help illuminate them.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 15, 1987.

[FR Doc. 87–8836 Filed 4–17–87; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published March 17, 1987 (52 FR 8390). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designed by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the May 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

*ACRS Subcommittee Meetings*

*Severe Accidents,* April 22, 1987, Washington, DC. The Subcommittee will discuss the research plan intended to resolve the source term uncertainty areas and review the Expert Panels assessment of these programs.

*Severe Accidents,* April 23, 1987, Washington, DC. The Subcommittee will continue the review of the proposed generic letter for Individual Plant Examinations (IPEs) as part of the NRR Implementation Plan for the Severe Accident Policy Statement.

*Advanced Reactor Designs,* April 24, 1987, Washington, DC. The Subcommittee will review NUREG–1226, "Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants".

*Thermal Hydraulic Phenomena,* April 28, and 29, 1987, Idaho Falls, ID. The Subcommittee will: (1) Review the status of the thermal hydraulic research program, (2) review the activities of the INEL Technical Integration Center, (3) review the status of the proposed ISIF (Improved Scale Integral Facility), (4) review the final draft of the Research Compendium supporting the proposed ECCS Rule revision, (5) review the results of the OECD LOFT Program, (6) discuss the status of the TRAC Code Modeling effort, (7) discuss the status of the work of the RES Export's Group on Code Uncertainty, and (8) discuss briefly the issue of water hammer.

*Joint Metal Components/Auxiliary Systems,* May 5, 1987, Washington, DC. The Subcommittees will explore further the questions in Congressman P. Sharp's letter on implications for the safety of nuclear power plants of the recent Surry accidents.

*AC/DC Power Systems Reliability,* May 6, 1987, Washington, DC. The Subcommittee will review the proposed Station Blackout rule (SECY–85–163).

*Safety Research Program,* May 6, 1987, Washington, DC—CANCELLED.

*Waste Management,* May 18 and 19, 1987, Washington, DC. The Subcommittee will review selected pertinent nuclear waste management topics to be identified during an agenda planning session with NMSS and RES personnel on April 23, 1987.

*Regulatory Policies and Practices,* May 26, 1987, Washington, DC. The Subcommittee will continue its current review of the nuclear regulatory process.

*Decay Heat Removal Systems,* May 27, 1987, Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A–45.

*Generic Items,* May 27, 1987, Washington, DC. The Subcommittee will discuss the process involved in identifying, prioritizing, resolving and implementing generic issues, and unresolved safety issues (USIs) so as to determine the effectiveness of this process.

*Regional and I&E Programs,* May 29, 1987, Region IV, Arlington, TX. The Subcommittee will review the activities under the control of the Region IV Office.

*Babcock & Wilcox Reactor Plants,* June 2, 1987, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

*Joint Severe Accident/Probabilistic Risk Assessment,* June 3, 1987, Washington, DC. The Subcommittees will review the Research report NUREG–1150, "Reactor Risk Reference Document", which was issued in February 1987 for public comments.

*Occupational and Environmental Protection Systems,* June 9 and 10, 1987 (tentative), Washington, DC. The Subcommittee will discuss issues concerning emergency plans and other matters.

*Auxiliary Systems,* June 11, 1987, Washington, DC. The Subcommittee will discuss the heating, ventilation, and air conditioning (HVAC) system malfunctions and their impact on safety systems. Also, it will discuss the recent experience associated with inadvertent actuation of fire protection systems and its interaction on safety systems. In addition, it will discuss recent events associated with instrument air system malfunctions, AEOD findings concerning the instrument air systems malfunctions and its recommendations to alleviate this problem.

*Thermal Hydraulic Phenomena,* June 18, 1987, Washington, DC. The Subcommittee will review: MIST Program Status including results of MIST Phase III tests, IST Scaling Coordination, and plans for a follow-on test Program.

*Joint Severe Accidents/Probabilistic Risk Assessment,* July 8, 1987, Washington, DC. The Subcommittees will conclude its review of the Research report NUREG–1150, "Reactor Risk Reference Document", which was issued in February 1987 for public comment.

*Thermal Hydraulic Phenomena,* July 16 or 30, 1987, Washington, DC. The Subcommittee will review: (1) Development of Uncertainty Methodology for BE ECCS Codes, (2) Status of the Generic Issue addressing Steam Generator/Steam Line Overfill Issues, (3) Status of the Water Hammer Issue.

*Auxiliary Systems,* July 23, 1987, Washington, DC. The Subcommittee will discuss with the NRC research staff and the personnel from the Sandia National Laboratories the progress of the "Scoping Study" being performed by the Sandia National Laboratories for NRC on the need for future research in the fire protection area.

*Generic Items,* Date to be determined (July/August), Washington, DC. The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

*Decay Heat Removal Systems,* Date to be determined (July/August), Washington, DC. The Subcommittee will review: (1) The resolution status for GI 23: "RCP Seal Failure", and (2) the resolution status for GI 124: "AFW System Reliability".

*Thermal Hydraulic Phenomena,* Date to be determined (September/October), Washington, DC. The Subcommittee will review: (1) Final version of revised ECCS Rule, and (2) status of RES-proposed new integral test facility.

*Joint Seabrook/Occupational & Environmental Protection Systems/ Service Accidents,* Date to be determined, Washington, DC. The Subcommittee will review Brookhaven National Laboratory's report of the Seabrook Emergency Planning Sensitivity Study and other related matters.

*Seabrook Unit 1,* Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

*Joint Standardization of Nuclear Facilities/GE Reactors,* Date to be determined, Washington, DC. The Subcommittee will review the Staff SER and Chapter I of the EPRI Requirements Document, and the GE Licensing Basis Agreement.

*ACRS Full Committee Meeting*

May 7–9, 1987: Items are *tentatively* scheduled.

*A. *Quantitative Safety Goals (Open)*—Review proposed NRC Implementation Plan including definition of large radioactive releases.

*B. *Radwaste Management and Disposal (Open)*—Briefing regarding proposed advisory functions on radwaste matters.

*C. *BWR Pipe Crack Guidance (Open)*—ACRS comments regarding NRC requirements for BWR pipe crack inspection and repair (tentative).

*D. *Station Blackout (Open)*—Review proposed NRC rule regarding resolution of Generic Issue A–44, Station Blackout.

*E. *NRC Severe Accident Policy (Open)*—Review proposed NRC plan for implementation of the NRC severe accident policy (tentative).

*F. *Severe Accident Research Program (Open)*—Discuss report of NRC Panel of Experts regarding the NRC severe accident research program and consideration of uncertainties in severe accident evaluation.

*G. *Risks of Radwaste Management and Disposal (Open)*—Discuss proposed ACRS comments regarding the risks of radwaste handling and disposal.

*H. *ACRS Subcommittee Activity (Open)*—The Committee will hear and discuss reports of ACRS subcommittees regarding assigned activities including thermal hydraulic phenomena, systems interactions, and control room habitability.

*I. *Nuclear Power Plant Safety Systems (Open/Closed)*—Discuss proposed ACRS comments regarding safety systems in foreign nuclear power plants and other safety improvements.

*J. *Nuclear Safety in the U.S.S.R. (Open)*—Report by NRC Commissioner regarding recent visit to discuss soviet nuclear power plant safety.

*K. *Advanced Reactor Policy (Open)*—Review NUREG–1226, Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants.

*L. *NRC Long Range Planning (Open)*—Briefing regarding strategic planning effort of the NRC.

*M. *Future ACRS Activities (Open)*—Discuss anticipated ACRS activities and items proposed for consideration by the full Committee.

*N. *Appointment of New Members (Closed)*—Discuss qualifications of candidates for appointment to the ACRS.

June 4–6, 1987—Agenda to be announced.

June 9–11, 1987—Agenda to be announced.

Dated: April 15, 1987.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 87–8802 Filed 4–17–87; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### Privacy Act of 1974; Guidance on the Privacy Act Implications of "Call Detail" Programs to Manage Employees' Use of the Government's Telecommunications Systems

**AGENCY:** Office of Management and Budget.

**ACTION:** Publication in final form of guidance on the Privacy Act implications of "call detail" programs.

**SUMMARY:** Pursuant to its responsibilities under section 6 of the Privacy Act of 1974 (Pub. L. 93–579), the Office of Management and Budget (OMB) developed guidance on how, the recordkeeping provisions of that Act affect agencies' programs (so-called "call detail programs") to collect and use information relating to their employees use of long distance telephone systems. This proposal was published for public comment in the **Federal Register** on May 23, 1986 (51 FR 18982). Four comments were received, all from Federal agencies. The commentators generally supported the issuance of the guidance and suggested technical clarifications of certain points. Their suggestions have been incorporated into the final guidance below. This guidance:

- Describes the purposes of call detail programs and explains how they work.
- Notes that call detail records that contain only telephone numbers are not Privacy Act records, but that when linked with a name, they become Privacy Act records.
- Notes that when agencies start retrieving by reference to a linked number or name, they are operating a Privacy Act system of records.
- Urges agencies not to create artificial filing and retrieval schemes to avoid the Act.
- Suggests agencies establish a Privacy Act system of records in which to maintain these records, and provides a model notice for them to use.
- Discusses the disclosure provisions of the Act as they would pertain to such a call detail system, especially emphasizing that intra-agency disclosures for improper employee surveillance purposes or to identify and harass whistleblowers are not sanctioned under Section (b)(1) of the Privacy Act.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Veeder, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, telephone 202–395–4814.

### Guidance on the Privacy Act Implications of Call Detail Programs

*1. Purpose*

This guidance is being offered in conjunction with guidance on call detailing published by the General Services Administration. Whereas GSA's guidance focuses on how to create and operate such programs, this document explains the ways in which the Privacy Act of 1974 affects any records generated during the course of call detail programs.

Nothing in this guidance should be construed to (a) authorize activities that are not permitted by law; or (b) prohibit activities expressly required to be performed by law. Complying with these Guidelines, moreover, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited herein.

*2. Scope*

These Guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a).

*3. Effective Date*

These Guidelines are effective on the date of their publication.

*4. Definitions*

For the purposes of these Guidelines:

- All the terms defined in the Privacy Act of 1974 apply.
- "Call Detail Report"—This is the initial report of long-distance calls made during a specified period. A call detail report may be provided by a telephone company, the General Services Administration, or it may originate from a PBX (Private Branch Exchange) on an agency's premises. No monitoring of conversations takes place during or after the collection of data for this report. The report may contain such technical information as the originating number, destination number, destination city and State, date and time of day a call was made, the duration of the call, and actual or estimated cost of the call. At this stage, a call detail report contains no information directly identifying the individuals making or receiving calls.
- "Call Detail Information" or "Call Detail Records"—These are records generated from call detail reports through administrative, technical or investigative follow-up. In some cases call detail information or records will contain no individually identifiable information and therefore no Privacy Act considerations will apply. In other cases, the information and records will

be linked with individuals and the Privacy Act must be taken into consideration.

*5. Background*

Rapid growth in automated data processing and telecommunications technologies has created new and special problems relating to the Federal Government's creation and maintenance of information about individuals. At times, the capabilities of these technologies have appeared to run ahead of statutes designed to manage this kind of information, particularly the Privacy Act. An example is the establishment of call detail programs to help agencies control the costs of operating their long distance telephone systems. Call detail programs develop information about how an agency's telecommunications system is being used. The information may come from a number of sources, e.g., from agency installed or utilized devices to record usage information (pen registers or agency switching equipment); from central agency managers such as the General Services Administration or the Defense Communications Agency; or directly from the providers of telecommunications services.

There are many different purposes for call detail programs. Agency managers may use call detail information to help them choose more efficient and cost-effective ways of communicating. The information may be used to make decisions about acquiring hardware, software, or services, and to develop management strategies for using existing telecommunications capacity more efficiently. One aspect of this latter use may be the development of programs to identify unofficial use of the agency's telephone system. To this end, call detail programs work by collecting information about the use of agency telephone systems and then attempting to assign responsibility for particular calls to individual employees. Their two-fold purpose is to deter use of the system for unofficial purposes and to recoup for the government the cost of unofficial calls.

Soon, the establishment of call detail programs will become a government-wide priority, as part of a management initiative on reducing the government s administrative costs.

*6. Privacy Act Implications*

a. *Call Detail Records as Privacy Act Records.* The Privacy, Act of 1974 is the primary statute controlling the government's use of information about individuals. Not all individually identifiable information, however, qualifies for the Act's protections. With but few exceptions, only information that consists of "records" as defined by the Act, and which is maintained by an agency in a "system of records," triggers the Act's provisions. The Privacy Act defines a "record" as

> * * * any item, collection or grouping of information about an individual that is maintained by an agency including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph * * *.

A "system of records" is

> A group of any such records from which information is retrieved by the name of the individual or other identifying particular.

As we have indicated in our original Privacy Act implementing Guidelines (40 FR 28949, July 9, 1975), the mere capability of retrieving records by an identifying particular is not enough to create a system of records; the agency must actually be doing so.

The threshold question for call detail information, then, is whether a telephone number is a record within the meaning of the Privacy Act. The answer to this question depends upon how the telephone number is maintained.

Standing alone, a telephone number, is not a Privacy Act record. To achieve the status of a Privacy Act record, a telephone number must be maintained in a way that links it to an individual's name or some other identifying particular such as a Social Security Account Number.

When an agency assigns a specific phone number to an employee and maintains that information in a way that the name and number are inseparably connected, there is sufficient identification linkage that a Privacy Act record is created. (It should be noted that the Privacy Act does not require that the record be unique to the individual, only that it be "about" him or her and include his or her name or other identifying particular. Thus, a telephone number could be shared by several individuals and still meet the Privacy Act "record" definition.)

The initial call detail reports which contain only technical information about telephone usage do not consist of records within the meaning of the Privacy Act and they will therefore never reach the level of a system of records. For many areas of telecommunications management, the information in call detail reports will never become systems of records and the Privacy Act will have no application.

When, however, call detail records are used in management programs designed to control costs and determine individual accountability for telephone calls, Privacy Act considerations must be addressed. In order to carry out these kinds of call detail programs, agencies will have to link numbers and names so that they can determine who is responsible for what call. It is at this point, that the telephone number meets the Privacy Act definition of a "record."

b. *Call Detail Records in Privacy Act Systems of Records.* The next question, then, is when do files consisting of Privacy Act records, created by linking a telephone number and an individual's name become a system of records? This occurs when agencies use the Privacy Act record as a key to retrieve information from these files.

While it is important to remember that not every collection of data containing call detail records will be a Privacy Act system of records, agencies are cautioned against creating artificial filing schemes merely to avoid the effect of the Act when the establishment of a Privacy Act system of records would be appropriate. Since these records are clearly intended to establish individual responsibility for long distance telephone use, their use by the agency could have serious financial or disciplinary consequences for individual employees. By maintaining these records in conformance with the provisions of the Privacy Act, agencies can make certain that legitimate concerns about the implementation of call detail programs (e.g., improper use of the records for surveillance or employee harassment, unfairness, and record accuracy) are dealt with in a procedural framework that was designed to deal with such concerns.

Therefore, we recommend strongly that agencies create a Privacy Act system of records (or more than one system if that is appropriate) in which to maintain call detail records that contain information about individuals and are used to determine accountability for telephone usage.

Such a Privacy Act system of records might contain the following kinds of data:

- The initial call detail monthly listing (in whatever form it is kept, e.g., on paper, magnetic tape or diskettes);
- Locator information showing where in the agency specific telephones are located;
- Records relating to the identification of individual employees, and (1) linking them with specific calling numbers; (2) linking them with specific called numbers.

BEST COPY AVAILABLE

Note that not all Privacy Act records generated as a result of call detail programs would become a part of this system of records. Thus, investigative records of the Office of the Inspector General, personnel records reflecting administrative or disciplinary actions, finance and accounting records relating to cost attribution and recoveries, and the like, that are generated from call detail programs might be filed in appropriate existing systems and subjected to their particular disclosure/safeguarding provisions. In other instances, records (name and telephone number, for example) may be common to the call detail system and other systems.

To help the agencies construct their Privacy Act systems of records, we offer a model system notice in Appendix I.

c. *Disclosing from Call Detail Records Systems under Section (b) of the Privacy Act.* The Privacy Act provides 12 exceptions to its basic requirement that agencies must obtain the written consent of the record subject before disclosing information from a system of records. The following exceptions are the ones most relevant to the proposed Call Detail system of records:

• Section (b)(1). "To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." This exception does not contemplate unrestricted disclosures within the agency. Intra-agency disclosures of call detail records may be made only when there is an official need to know the information. The following are examples of disclosures that (b)(1) would permit:

—To individual supervisors to determine responsibility for specific telephone calls.
—To employees of the agency to review the call detail lists and identify calls made by the employee. Note that the other option for this kind of disclosure is a routine use (Section (b)(3)). Agencies that are concerned about establishing that employee A has an official, need to know about the calls made from employee B's telephone may wish to adopt a routine use authorizing the disclosures.
—To the employees of the Office of the Inspector General who are conducting investigations into abuse of the long distance telephone system;
—To employees of the Office of Finance and Accounting for processing of reimbursements for personal calls or for processing of administrative offsets of pay pursuant to the provisions of the Debt Collection Act;
—To Freedom of Information Act (FOIA) officers and legal advisers.

Some examples of disclosures that (b)(1) would not authorize are:

—To agency personnel to identify and harass whistleblowers;
—To agency personnel who are merely curious to know who is calling whom.

• Section (b)(2). "Required under section 552 of this title." Information may be disclosed both inside and outside the agency to the extent that the disclosure would be required by the Freedom of Information Act. Prior to the ruling of the Court of Appeals for the D.C. Circuit in *Bartel* v. *FAA*, 725 F.2d 1403 (D.C. Cir. 1984), longstanding agency practices and OMB interpretation treated this section as permitting agencies to initiate disclosure of material that they would be "required" to release under the FOIA. Disclosure under this interpretation did not depend on the existence of a FOIA request for the records; the mere finding that no FOIA exemption could apply and that the agency would therefore have no choice but to disclose, was sufficient. In fact, agencies relied upon this interpretation of the requirements of section (b)(2) to make routine disclosures of many documents, especially those traditionally thought to be in the public domain such as press releases, final orders, telephone books, and the like.

In Bartel, however, the court held that an agency must have received an actual FOIA request before disclosing pursuant to section (b)(2). In that case, the plaintiff, Bartel, brought a Privacy Act action asserting that his supervisor had gratuitously disclosed to three former colleagues the fact that Bartel had improperly obtained copies of their personnel records. The court interpreted the standard for (b)(2) disclosures to be other than a conditional one, i.e., not merely that the agency would have to disclose if such a request were received, but that the agency must have to do so because an actual FOIA request for the records has been made. Under this ruling, agency-initiated requests of FOIA releasable material would be improper.

The court noted, however, that material traditionally held to be in the public domain might constitute an exception to its FOIA-request-in-hand interpretation. In guidance issued in May 1985 (Memorandum from Robert P. Bedell to Senior Agency Officials for Information Resources Management, Subject: Privacy Act Guidance—Update, dated May 24, 1985) OMB suggested (without agreeing with the ruling) that agencies continue to make disclosures of these kinds of records without having received a FOIA request. We cautioned, however, that agencies should be careful about making gratuitous releases of sensitive classes of Privacy Act records without having received a request for them.

Applying the Bartel ruling to call detail information, there appear to be three distinct categories of records which could be considered for release under section (b)(2):

—Records which clearly fall into the "public domain" category. We suggest that these would be releasable either at the agency's initiation or in response to a FOIA request: the former because they are of the "traditionally released" class; the latter, because no FOIA exemption would prevent their disclosure. An example would be the names and office telephone numbers of agency employees. These are generally considered public information (obviously there may be exceptions for investigative and intelligence organizations), and the only applicable FOIA exemption, (b)(6), the personal privacy exemption, would not apply. Thus, disclosures of an employee's name and office telephone number would be appropriate under Privacy Act section (b)(2).
—Records which could be withheld under an applicable FOIA exemption and which, therefore, would not be required to be released. These could be, for example, records which contain sensitive information relating to on-going investigative or personnel matters such as records relating to the investigation of an employee for abuse of the agency's long distance telephone system. Such records could reasonably be withheld under FOIA exemption (b)(7) and, therefore, would not be releasable under section (b)(2) of the Privacy Act. An agency would not release these kinds of records either at its own initiative or in response to a FOIA request. It should be noted, however, that such records might be released under other sections of the Privacy Act, such as (b)(3), "for a routine use," or (b)(7) at the request of the head of an agency for an authorized civil or criminal law enforcement activity.
—Records for which no FOIA exemption applies but which contain sensitive information, e.g., records which reflect the results of official actions taken as a consequence of investigations of abuses of the telephone system. We suggest that agencies should be very cautious about initiating disclosure of these records without receiving a FOIA request since they appear to be of the category of records that concerned the Bartel court. Even with

a request, agencies will have to determine that the interest of the public in having the record clearly outweighs the privacy interest of the record subject in order to overcome the applicability of FOIA exemption (b)(6).

• Section (b)(3). "For a routine use." See the routine use section of the model system notice at Appendix I. A routine use is a disclosure of information that will be used for a purpose that is compatible with the purpose for which the information was originally collected.

The concept of compatibility comprises both functionally equivalent uses:

—For example, routine use (5) in the model notice would authorize disclosure to the Department of Justice to prosecute an egregious abuser of an agency's long distance telecommunications system. This disclosure is functionally compatible since one of the purposes of the system is to identify abusers and subject them to administrative or legal consequences.

As well as other uses that are necessary and proper:

—For example, routine use (2) in the model notice authorizes disclosure to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections pursuant to a specific statutory charter. Their purpose is in no way functionally equivalent to the purpose for which the system was established; it is, however, clearly necessary and proper.

• Section (b)(12). "To a consumer reporting agency." This disclosure exception was added to the original 11 by the Debt Collection Act of 1982. It authorizes agencies to disclose bad debt information to credit bureaus. Before doing so, however, agencies must complete a series of due process steps designed to validate the debt and to offer the individual the chance to repay it (see OMB Guidelines on the Debt Collection Act, published in the **Federal Register** on April 11, 1983 (48 FR 15556). It is possible that agencies will wish to disclose information, from call detail systems of records documenting an individual's responsibility for unofficial long distance calls as part of the bad debt disclosure. For this reason, the model system notice at Appendix I contains a statement identifying the system as one from which such disclosures can be made.

*7. Contact Point for Guidance*

Refer any questions about this guidance to Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, 395–4814.

**Appendix I—Proposed Model System Notice for Call Detail Records**

This is a proposed notice; agencies should modify it as appropriate.

*System Name:* Telephone Call Detail Records.

*System Location:* Records are stored at (name of Headquarters Office containing central files) and at (insert component locations).

*Categories of Individuals Covered by the System:* Individuals (generally agency employees and contractor personnel) who make long distance calls and individuals who received telephone calls placed from or charged to agency telephones.

*Categories of Records in the System:* Records relating to use of the agency telephones to place long distance calls; records indicating assignment of telephone numbers to employees; records relating to location of telephones. (Note that while few if any agencies will attempt to establish programs to control unofficial local calls, some telecommunications equipment will automatically record local as well as long distance call information. If local calling records are included in this system, they should be cited in the "categories of records" section of the notice.)

*Authority for Maintenance of the System:* (Cite appropriate agency "housekeeping" statute authorizing the agency head to create, collect and keep such records as are necessary to manage the agency.)

*Routine Uses of Records Maintained in the System:* Records and data may be disclosed, as is necessary, (1) to Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) in the event that material in this system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (6) to employees of the agency to determine their individual responsibility for telephone calls; (7) to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter; (8) to a telecommunications company providing telecommunications support to permit servicing the account. (Agencies should refrain from automatically applying all of their blanket routine uses to this system.)

*Disclosures to consumer reporting agencies:*

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

*Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in System:*

*Storage:* (Describe agency methods of storage.)

*Retrievability:* Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

*Safeguards:* (Describe methods for safeguarding.)

*Retention and Disposal:* Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

*System Manager(s) and Address(es):* (List central system manager and component subsystem managers, if appropriate.)

*Notification Procedures:* (Explain notification procedures.)

*Record Access Procedures:* (Explain how individuals may obtain access to their records.)

*Record Source Categories:* Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

*Systems Exempted From Certain Provisions of the Act:* None.

James C. Miller III,

*Director.*

[FR Doc. 87–8771 Filed 4–17–87; 8:45 am]

BILLING CODE 3110–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–15682; 811–1331]**

## Bank Stock Fund, Inc.; Order for Deregistration

April 15, 1986.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

*Applicant:* Bank Stock Fund, Inc.

*Relevant 1940 Act Section:* Section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company.

*Filing Date:* The application on Form N–8F was filed on January 2, 1987, and amended on April 8, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 11, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Lorna A. Schnase, Esq., Davis, Graham & Stubbs, 370 Seventeenth Street, Suite 4700, P.O. Box 185, Denver, Colorado 80201–0185.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney (202) 272–3037 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

**Applicant's Representations**

1. Applicant, a Colorado corporation, is registered under the 1940 Act as an open-end, non-diversified, management investment company.

2. On September 19, 1985, Applicant liquidated all securities in its portfolio at the then prevailing market prices, and placed such assets in a money market account with Applicant's custodian, United Bank of Denver. On October 4, 1985, George P. Apostalos ("Mr. Apostolas") died. Mr. Apostalos served as president of Applicant and president and principal shareholder of Applicant's investment adviser, Apostalos Advisors, Ltd, and of Applicant's principal underwriter, Apostalos Securities, Inc. Due to Mr. Apostalos' death and the in ability to secure a new investment adviser, Applicant's Board of Directors passed a resolution on October 9, 1985, recommending a plan of liquidation ("Plan") of Applicant and establishing a reserve a ("Reserve") of $50,000 to pay for liquidation expenses. Any portion of the Reserve remaining at the time Applicant completes the winding up of its affairs will be distributed pro rata to Applicant's securityholders as of October 9, 1985.

3. On February 27, 1986, Applicant's shareholders adopted the Plan. On March 25, 1986, Applicant field a Statement of Intent to Dissolve with the Colorado Secretary of State, thereafter notified its creditors of such filing, and intends to file its Articles of Dissolution upon completion of its liquidation and winding up of its affairs.

4. On July 23, 1986, Applicant made a liquidating distribution to its securityholders as of April 9, 1986, of $184,516.01 (approximately $3.11 per share), which represented Applicant's remaining assets less amounts held in the Reserve.

5. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. In addition, Applicant is not a party to any litigation or administrative proceeding, and is not now engaged and does not propose to engage in any business activities other than those necessary for winding up its affairs. Furthermore, Applicant is not aware of any remaining liabilities other than fees incurred for legal counsel, accounting, rent and utilities, bank custody, administrative expenses and miscellaneous, which are billed and paid on an on-going basis.

For the Commission, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–8827 Filed 4–17–87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Rel. No. IC–15681; 812–6650]**

## First Trust Foreign Investor U.S. Government Fund, L.P.; Notice of Application

Date: April 14, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

---

*Applicants:* First Trust Foreign Investor U.S. Government Fund, L.P. (the "Applicant" or the "Partnership").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from section 2(a)(19).

*Summary of Application:* Applicant seeks an order exempting Applicant's Managing General Partners and any successor Managing General Partners which may be elected in the future to the extent they would be deemed interested persons of the Applicant or its investment adviser or principal underwriter solely because they are general partners in the Partnership.

*Filing Date:* The application was filed on March 13, 1987 and amended on April 10, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, 300 West Washington Street, Chicago, Illinois 60606.

**FOR FURTHER INFORMATION CONTACT:** Denis R. Molleur, Staff Attorney (202) 272–2363 or H.R. Hallock, Jr., Special Counsel (202) 272–3030 (Division of Investment Management).

**Applicant's Representations**

1. The Applicant is a diversified, open-end management investment company registered under the 1940 Act. The Applicant is organized as a limited partnership in the State of Delaware and has been designed as a specialized investment vehicle for foreign investors; shares of the Applicant are to be offered exclusively to such foreign investors with the objective of seeking high current return and safety of principal and an exemption from Federal income and withholding taxes.

2. The Applicant will offer a single class of shares registered under the Securities Act of 1933 and the 1940 Act and purchasers will be required to become limited partners (the "Limited Partners") of the Applicant. The Applicant's Limited Partners will have the voting, approval, consent and other rights required under thg 1940 Act but,

consistent with the Delaware Revised Uniform Partnership Act, will not have the right to participate in the control of the Applicant's business.

3. The Applicant intends to include in its contracts a provision limiting the claims of creditors to the Applicant's assets. The Partnership Agreement provides for indemnification out of the Applicant's property for any limited partner held personally liable for any obligation of the Partnership and provides for the Applicant to assume the defense of any claim made against any Limited Partner, for any act or obligation of the Applicant, and satisfaction of any judgment. In addition, the Applicant may carry insurance in such amounts as the Managing General Partners consider reasonable to cover potential liabilities of the Partnership and the Managing General Partners will periodically review the question of the appropriateness of obtaining errors and omissions insurance for the Applicant.

4. The general partners of the Applicant consist of one corporate general partner (the "Non-Managing General Partner"), which will not take any role in management (except temporarily, in extraordinary circumstances) and a number of individual general partners (the "Managing General Partners"), who are expressly charged with the responsibility of managing the Partnership. The primary obligation of the corporate Non-Managing General Partner is to maintain, together with the Managing General Partners, a minimum one percent (1%) investment in Applicant to assure that Applicant will be treated as a partnership under the Internal Revenue Code of 1986, as amended.

5. The Managing General Partners (who must be individuals) will perform the same functions as directors of a corporation or the trustees of a business trust, and will assume all the responsibilities and obligations imposed by the 1940 Act on directors of an investment company. Each new general partner must be approved by at least a majority of the outstanding shares of the Applicant and upon such approval will serve for an indefinite period. However, Limited Partners representing 10% or more of the outstanding shares of the Applicant may also call a meeting of the Limited Partners to remove any or all of the general partners. Applicant intends to elect two or more independent Managing General Partners of each Partnership (functionally equivalent to non-interested directors or trustees) prior to the effective date of the Applicant's registration statement.

6. Clayton Brown Investments, Inc. ("CBI"), an Illinois corporation, is the corporate Non-Managing General Partner of Applicant. Clayton Brown & Associates, Inc., the principal underwriter of the Applicant's shares, owns 100% of the outstanding shares of CBI and owns 80.05% of the outstanding shares of Clayton Brown Advisors, Inc., the Applicant's investment adviser.

7. Clayton F. Brown owns approximately 66.87% of the outstanding shares of Clayton Brown & Associates, Inc. Mr. Brown is a Director of Clayton Brown Advisors, Inc. and is the Chairman of the Board, a Director and the Chief Executive Officer of Clayton Brown & Associates, Inc. Gerald E. Pelzer owns approximately 5.00% of the outstanding shares of Clayton Brown & Associates, Inc. Mr. Pelzer is a Director of Clayton Brown Advisors, Inc. and is the President, Chief Operating Officer and a Director of Clayton Brown & Associates, Inc.

8. The Managing General Partners are "interested persons" of the Applicant and its investment manager and principal underwriter, as defined in section 2(a)(19) of the Act, by virtue of being general partners of the Partnership and co-partners of CBI in the Applicant, which makes them "affiliated persons" of the Applicant. Mr. Pelzer, currently the sole Managing General Partner of the Applicant, would still be an "interested person" of the Applicant and its investment adviser and principal underwriter, notwithstanding the requested exemption, because of his positions as an officer and director and because of his stock ownership, as set forth in Paragraph 7.

9. Applicant requests that the Managing General Partners of the Partnership and any successor Managing General Partners which may be elected in the future be exempted from the provisions of section 2(a)(19) to the extent that they would be deemed to be "interested persons" of the Partnership or its investment adviser or principal underwriter solely because of their status as general partners of the Partnership and co-partners of CBI, the Non-Managing General Partner. Section 2(a)(19) contains a proviso that excludes those individuals who would be interested persons of an investment company solely because they are directors of an investment company. Applicant states that the Partnership has been structured so that the independent Managing General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Therefore, Applicant believes that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-8828 Filed 4-17-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24332; File No. SR-OCC-87-05]**

## Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on March 16, 1987, the options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal amends OCC rules regarding the calculation of margin on foreign currency settlement obligations that Clearing Members and their customers have elected to settle through OCC's Delivery-versus-Payment ("DVP") system. The proposal also amends OCC rules that authorize OCC to settle certain Clearing Member foreign currency obligations directly with Clearing Member customers, or customers' agents, through the DVP system. The Commission is publishing this notice to solicit comment on the rule change.

Under the proposed rule change, all obligations that a Clearing Member elects to settle through OCC's DVP system, either for itself or on behalf of a customer, will be margined on a per DVP basis.[1] Previously, all obligations that a Clearing Member elected to settle DVP, other than customer-initiated DVPs provided for in OCC Rule 1606A)c)(i),[2] were included in the

---

[1] *See* OCC Rule 602A(f)(3). The specific margin calculation for DVPs is set out in 602A(f)(3)(A) and (B).

[2] The Commission recently approved revisions to OCC Rule 1606A(c) in Securities Exchange Act Rel. No. 23888 (December 12, 1986), 51 FR 45828 ("Release No. 23888"). As revised, the rule established procedures by which OCC Clearing Members' customers could identify and settle, directly through OCC's DVP system, their gross exercises and assignments in foreign currency options ("selective gross-up" system). These settlement obligations that a customer elected to

Continued

Clearing Member's net obligation for margin purposes; only customer-related DVPs were margined separately. This method of margining left OCC exposed to risk if the in-the-money value of a Clearing Member's Clause (ii) DVP, that passed to the bank initiating the DVP, was unavailable to offset the Clearing Member's out-of-the-money DVP or regular-way settlement obligations.[3] In contrast, under the proposal, that in-the-money value of a Clause (ii) DVP would not be available to offset margin requirements for other Clause (ii) DVPs or regular-way settlement obligations.[4]

In addition, the proposal clarifies the description of the selective gross-up settlement system in Release No. 23888 and amends OCC rule 1606A(c)(i). As amended, rule clarifies that a Clearing Member can submit DVPs on behalf of its customer for all or any part of the customer's gross foreign currency option exercises and assignments or any netted combination thereof. The proposal also clarifies that dollars delivered or received via Clause (i) DVPs need not equal the net exercise price payable or receivable against the net quantity of foreign currency covered by the DVP. A Clearing Member's customer can pay or collect via Clause (i) DVPs, against receipt or delivery of a given quantity of foreign currency, a greater or lesser amount of U.S. dollars than the sum of the exercise prices of the currency covered by the DVP. Any remaining U.S. dollar obligations would be settled by the Clearing Member via Clause (ii) DVPs or regular-way pursuant to Rule 1606.

OCC believes the proposed changes to its margin rules protect OCC against its true risk exposure and accurately describe the method OCC currently is using to calculate margin on foreign currency settlement obligations. Moreover, with respect to the amendment to Rule 1606A(c)(i), OCC represents that if it accepts a netted Clause (i) DVP, under revised Rule 1606A(f)(3), OCC gets the same level of protection that it would have had if the customer's settlement obligation had been netted with the Clearing Member's settlement obligation.

This rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after notice is published in the **Federal Register**. Please file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Steet, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–87–5 and should be submitted by May 11, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 13, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–8825 Filed 4–17–87; 8:45 am]

BILLING CODE 8010-01-M

settle via DVP were previously referrred to as "gross DVPs" but herein are referred to as "Clause (i) DVPs." Although initiated by the Clearing Member's customer, the DVPs must be submitted by the Clearing Member and the Clearing Member remains liable to OCC for the margin required on those DVPs.

The term "Clause (ii) DVP" refers to a DVP pursuant to Rule 1606A(c)(ii). A Clause (ii) DVP can be used for all or any part of a Clearing Member's net settlement obligation, adjusted to eliminate obligations under exercises and assignments that the Clearing Member has elected to settle via Clause (i) DVPs.

[3] Rule 602A(f)(2) governs margining of regular-way settlement obligations in foreign currency options.

[4] In addition, the proposal amends Rules 602A(f)(2)(A) and (b) to clarify that a Clearing Member's margin obligation with respect to its obligation to deliver or receive a particular foreign currency is calculated on the basis of the Clearing Member's settlement amount for that currency, not for all currencies. Also, a conforming change to Rule 1605(b)(1) merely recognizes that netted settlement obligations exclude all obligations to deliver or receive foreign currency for which OCC has accepted DVPs and all amounts to be paid or collected pursuant to DVPs.

---

**[Release No. 34–24323; File No. SR–Phlx–87–02]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On February 2, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to ease restrictions imposed on approved persons or member organizations affiliated with options specialists or specialist units. The proposed rule change is intended to facilitate entry into the options specialist business by retail broker-dealers, among others.[3]

The proposal was noticed in Securities Exchange Act Release No. 24117 (February 19, 1987), 52 FR 6256 (March 2, 1987). No comments were received on the proposed rule change.

In its rule filing, the Phlx stated that the purpose of the proposed rule change is to facilitate the entry of diversified retail member organizations with corporate finance retail sales and research departments into the options specialist business. Historically, Exchange rules have imposed restrictions on options specialists, and on various persons affiliated with options specialists, which prevented diversified, well capitalized retail member organizations from acting as options specialists at the Exchange. In general, there rules have prohibited options specialists, their member organizations and their corporate parents, from engaging in business transactions with issuers of specialty securities (or insiders of such issuers), from accepting orders in specialty securities from the issuer, insiders or other parties, from trading in options on their specialty securities and from trading in specialty securities, except pursuant to market making functions. As a result, with some exceptions, such member organizations have avoided the options specialist business since they would be required to curtail or eliminate portions of their present business activities as they relate to specialty securities.[4]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1983)

[3] The Commission previously approved on an accelerated basis a rule change (File No. SR–Phlx–86–44) identical to the one discussed herein for a period up to one year. *See* Securities Exchange Act Release No. 24057 (February 4, 1987), 52 FR 4320. The current proposal will make permanent the changes in SR–Phlx–86–44, and was issued as a companion filing in order to solicit comment on the proposed changes.

[4] The restrictions on specialist organizations were extended to cover approved persons or affiliated upstairs firms of a specialist unit whose business relationship with issuers raised similar conflicts of interest problems, so that they would not be placed in a more advantageous position vis-a-vis other market participants because of their association with the specialist unit.

The Phlx believes that the regulatory and competitive environment has changed significantly since these rules were first adopted, and that in light of the highly sophisticated surveillance techniques in effect at the Exchange and increased competition from other markets, there is no longer a continuing need for these prohibitions as they relate to affiliated upstairs firms. The Phlx believes that the proposed rule change will assist the Exchange in remaining competitive with other markets which recently were granted approval by the Commission to adopt proposed rule changes relaxing their exchanges' restrictions on the activities of affiliated upstairs firms.

The proposal will amend Phlx Rule 1020 to provide an exemption (for the affiliated upstairs firms only) from (1) the trading restrictions pertaining to purchases and sales of speciality securities for the account of an approved person, as specified in Phlx Rule 1020(e); (2) the prohibitions against entering into business transactions with issuers [of specialty securities as specified in Rule 1023(a)] and (3) the prohibition against accepting orders in specialty securities from the issuer, insiders and other parties as specified in Rule 1023(b). This exemption will be available to an approved person or other affiliated upstairs member organization which obtains prior Exchange approval of firm procedures designed to restrict the flow of material non-public information between it and its affiliated specialist, *i.e.*, a "Chinese Wall".[6]

The Chinese Wall is designed to prevent the specialist organization and the affiliated upstairs firm from making material non-public corporate or market information available to each other and to ensure the specialist does no trading while in possession of material non-public information derived for the affiliated upstairs firm from its relationship with the issurer or with knowledge of pending transactions or the upstairs firms' recommendation. The guidelines provide procedures to be used in temporary allocation of the book where a specialist unit becomes "contaminated" following a breach of the Chinese Wall. The guidelines also specify that a firm's procedures should ensure that information regarding securities positions, trading activities and margin financing arrangements between the affiliated upstairs firm and the specialist unit should be available solely to senior management in the upstairs firm exercising general managerial oversight of the specialist unit. Once in place, these procedures will substantially lessen the need for the prohibitions contained in the rules discussed above to the extent they apply to upstairs firms affiliated with specialists. The restrictions themselves would remain in effect as to the specialist organization itself.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[7] and the rules and regulations thereunder. The Commission believes, for the reasons stated in the release approving the American and New York Stock Exchange proposals regarding specialists affiliated with integrated firms, that the Chinese Wall guidelines proposed by the Phlx are adequate to prevent the communication of unpublished price-sensitive information about issuers of publicly held securities to those departments of the firm which might misuse the information for market trading purposes. At the same time, the procedures should facilitate the entry of diversified retail broker-dealers into the specialist business on the Exchange floor and in so doing enhance the depth and liquidity in the equity options market.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: April 10, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8829 Filed 4-17-87; 8:45 am]

BILLING CODE 8010-01-M

[5] The Commission has previously approved similar proposals by the American and New York Stock Exchanges regarding specialists affiliated with integrated firms. *See* Securities Exchange Act Release No. 23768 (November 3, 1986), 51 FR 41183.

[6] Any firm wishing to obtain an exemption for its non-specialist activities from the restrictions specified in amended Rule 1020 must establish a Chinese Wall in conformity with Exchange guidelines between the specialist unit and its affiliated upstairs member firm. The exemption is voluntary. Any affiliated upstairs firm not wishing to satisfy the Exchange criteria will remain subject to the restrictions discussed above.

[7] 15 U.S.C. 78f (1982).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1985).

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

April 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Tandem Computers Incorprated
Common Stock, $.025 Par Value (File No. 7-9876)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 5, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-8830 Filed 4-17-87; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-24334; File Nos. 4-218 and S7-433]**

## Joint Industry Plan; Notice of Filing and Summary Effectiveness of Amendments to the Consolidated Quotation Plan and Consolidated Transaction Plan Fee Schedules

On March 31, 1987, the participants in the Consolidated Tape Association ("CTA") and Consolidated Quotation Plan ("CQ Plan") submitted amendments[1] to the Plan governing the

[1] The amendments to the CQ and CTA Plans were submitted pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"). The CTA Plan amendments also were submitted pursuant to Rule 11Aa3-1 under the Act.

operation of the consolidated quotation reporting system ("CQS") and the Plan governing the operation of the consolidated transaction reporting plan ("CTA Plan").[2]

**I. Description of the Amendments**

The purpose of the amendments is to revise Network B[3] fees to accommodate "Other Services" services subscribers offer customers that differ from conventional services;[4] raises the Network B analysis programs charge; and establishes a new combined, lower fee for receipt of Network B last sale and bid-ask data by nonprofessional subscribers. The amendments also make several conforming and technical changes.[5]

First, the amendments incorporate into the CTA and CQ Plans new fees for Other Services that are substantially lower than other professional Network B charges. In effect, the new fees charge the broker-dealer or vendor on the basis of "device equivalency" as if the broker-dealer or vendor were serving its customers by manual interrogation of a last sale data base.

Second, the amendments reduce the monthly fees vendors pay to provide their nonprofessional customers with Network B data. Previously vendors paid $5.00 under the CTA Plan and $4.00 under the CQ Plan. The amendment provides for a single, combined monthly fee of $3.00 for CTA and CQ data.

Finally, the amendments increase the monthly Network B analysis programs charge from $50 to $200. Under the old fee schedule, use of CTA and CQ data for other categories of computer programs (for example, compilation of stock tables and operations control programs) required payment of a monthly fee of $200. Thus, the fee increase merely brings the fee for the analysis program classification in line with similar classifications.

The participants stated that they designed the amendments to permit wider dissemination of market data by making it less expensively available to investors. They believe that the new fees also offer greater flexibility to broker-dealers and vendors in designing new market data services. Finally, the participants stated that they believe the amendments fulfill the national market system objectives of dissemination of last sale information and thus are consistent with Section 11A of Securities Exchange Act of 1934.

**II. Summary Effectiveness of the Amendments**

Rule 11Aa3–2 provides that the Commission may, upon publication of notice of the amendment, summarily put into effect for 120 days an amendment to a national market system plan. The Commission first must determine, however, that it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission believes the amendments meet these standards.

First, the fees for "Other Services" already are in effect under experimental authority granted the CQS and CTA.[6] Moreover, making these fees a permanent part of the CTA and CQ Plan fee structure and reducing the non-professional fees will enable a greater number of investors to receive last sale and quotation data and should encourage innovation among broker-dealers and vendors in creating new methods of providing information to customers.

Finally, the Commission believes that the increase in the fee subscribers pay for the program analysis classification also is consistent with the Act. The Commission believes the increase corrects an apparent inequity among the charges for different computer program classifications.

**III. Request for Comment**

To assist the Commission in determining whether to approve permanently the amendments, interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 11, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 13, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–8826 Filed 4–17–87; 8:45 am]

BILLING CODE 8010-01-M

[2] The participants requested that the proposed amendments be put into effect summarily pursuant to Rule 11Aa3–2 (c)(4). That section empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

[3] "Network B" refers to the consolidated data stream representing transaction and quotation data on eligible securities that are listed on the American Stock Exchange ("Amex") or that are traded on another exchange but substantially meet the Amex listing standards.

[4] Examples of "Other Services" are services that allow customers to: (1) Obtain real-time stock market information over the telephone through an automated process involving a computer-generated voice; (2) obtain real-time stock market information over a leased printer located in their homes or offices; or (3) enter orders from their homes or offices on personal computers.

[5] The Commission recently approved similar changes to the CTA and CQ Plans Network A Fee Schedules. *See* Securities Exchange Act Release No. 24130 (February 20, 1987), 52 FR 6413 (March 3, 1987), approving amendments restructuring the Network A fees for professional subscribers, creating contractual and fee provisions for "Other Services" and establishing a single, lower fee for receipt of Network A data by non-professional subscribers.

[6] *See* Securities Exchange Act Release No. 20216 (September 23, 1986), 48 FR 44299, in which the Commission approved amendments to the CTA and CQ Plans authorizing the Plan administrators (i.e., the New York Stock Exchange and the Amex) to engage in market tests and pilot programs of limited scope and duration without the prior approval of the Operating Committee or, implicitly, the Commission.

## DEPARTMENT OF STATE

**[Public Notice CM–8/1069]**

### Secretary of State's Advisory Committee on Private International Law; Meeting

The 40th meeting of the subject Advisory Committee will take place at 10:00 a.m. on Friday, May 8, 1987, in Room 413 of the Federal Mediation and Conciliation Service Building at 2100 K Street, NW., Washington, DC. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting agenda will include a review of domestic and international developments relevant to international work on private law unification/

harmonization, including the status of the four conventions to the U.S. ratification of which the U.S. Senate gave advice and consent in October, 1986, the status of the 1973 Washington Convention Providing a Uniform Law on the Form of an International Will and the draft Administration-proposed federal legislation transmitted to Congress entitled: "The International Child Abduction Act". In light of the endorsement of the 1984 Hague Convention on the Law Applicable to Trusts and on Their Recognition by three national organizations, the Advisory Committee will be asked to make a recommendation concerning possible U.S. signature and ratification of that Convention. There will be discussion of the American Bar Association's May educational programs in New York, Chicago and Los Angeles on tbe 1980 U.N. Convention on Contracts for the International Sale of Goods, that was ratified by the United States in December, 1986 and will enter into force for the United States and ten other countries on January 1, 1988. (See State Department notice in 52 FR (March 2, 1987) at pp. 6262–80).

Entry to the building at 21st and K Streets is controlled and will be facilitated by advance arrangements. Members of the general public planning to attend should, prior to May 8, notify the Office of the Assistant Legal Adviser for Private International Law (L/PIL), Department of State, Washington, DC 20520 (telephone: (202) 653–9851) of their name, affiliation, address and telephone number.

**Peter H. Pfund,**

*Assistant Legal Adviser for Private International Law and Vice Chairman, Secretary of State's Advisory Committee on Private International Law.*

[FR Doc. 87–8726 Filed 4–17–87; 8:45 am]

BILLING CODE 4710–07–M

---

**[Public Notice CM–8/1068]**

## Legal Panel on International Telecommunications Law of the U.S. Organization for the International Telegraph and Telephone Consultative Committee and International Radio Consultative Committee; Meeting

The Department of State announces the second meeting of the Panel on International Telecommunications Law which is under the auspices and authority of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and International Radio Consultative Committee (CCIR). The Panel's meeting will convene on Tuesday, May 5, 1987 in Room 1105, Department of State, 2201 C Street NW., Washington, DC.

The meeting will begin at 10:30 a.m.

The agenda will include discussion of committee organization and future work plans.

Members of the general public may attend the meeting and join in the discussion. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of the Deputy U.S. Coordinator for International Communications and Information Policy, Mr. Thomas J. Ramsey, State Department, Washington, DC; telephone (202) 647–5832. All attendees must use the C Street entrance to the building.

Dated: April 8, 1987.

**Earl S. Barbely,**

*Chairman, U.S. CCITT National Committee.*

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 87–8731 Filed 4–17–87; 8:45 am]

BILLING CODE 4710–07–M

---

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ending April 10, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

*Docket No. 44776*

*Parties:* World Airways, Inc., Presidential Airways, Inc. and Key Airlines, Incorporated.

*Date Filed:* April 6, 1987.

*Subject:* Application of World Airways, Inc., Presidential Airways, Inc. and Key Airlines, Incorporated, pursuant to sections 401(h), 408 and 416 of the Act, and § 303.54 of the Department's Procedural Regulations request that the Department approve by exemption the proposed acquisition of Key by World.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87–8774 Filed 4–17–87; 8:45 am]

BILLING CODE 4910–62–M

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended April 10, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket No. 44798*

*Date Filed:* April 9, 1987.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 7, 1987.

*Description:* Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to operate one-stop Portlant, Oregon-Seoul, Korea services via Tokyo, Japan.

*Docket No. 44802*

*Date Filed:* April 9, 1987.

*Due Date for Answers, Conforming Applications, or Motions to Modify* Scope: May 7, 1987.

*Description:* Application of "B" Airways, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests permanent authority to engage in foreign charter air transportation and persons and property.

*Docket No. 44808*

*Date Filed:* April 10, 1987.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* May 8, 1987.

*Description:* Application for Transwede Airways AB pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in charter foreign air transportation of persons and their accompanying baggage: Between any point or points in Sweden, Norway

or Denmark and any point or points in the United States.

Phyllis T. Kaylor,

*Chief, Documentary Services Division.*

[FR Doc. 87-8775 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-62-M

---

[Docket 44719]

**US Air-Piedmont Acquisition Case; Prehearing Conference**

Served: April 16, 1987.

Notice is hereby given that pursuant to Department of Transportation Order 87-4-39 instituting this proceeding a prehearing conference will be held on April 22, 1987, at 10 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

The parties are directed to submit one copy to each other and four copies to the Judge of: (1) Any proposed changes in the procedural schedule contained in the instituting order, (2) proposed stipulations, (3) proposed information requests, (4) any objections or proposed changes to the Evidence Request attached to the instituting order, (5) a statement of issues and specific subissues, (6) a statement of material facts known to be at issue with respect to such issues and subissues indicating their relevance to the applicable law and Departmental standards for consideration of the application, and (7) a statement of position. The above material shall be delivered to the Judge and Washington counsel for all parties, or if none, otherwise served on all parties, by 1:00 p.m., April 21, 1987.

The parties shall also deliver to the Judge *forthwith* two copies of all documents previously filed in this proceeding, including the documents submitted with the application.

Dated at Washington, DC, April 16, 1987.

Ronnie A. Yoder,

*Administrative Law Judge.*

[FR Doc. 87-8893 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-62-M

---

[Docket 44719]

**US Air-Piedmont Acquisition Case; Assignment of Proceeding**

Served: April 16, 1987

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Building, 400 Seventh Street, SW., Washington, DC. 20590. Telephone (202) 366-2142.

Dated at Washington, DC., April 16, 1987.

Elias C. Rodriguez,

*Chief Administrative Law Judge.*

[FR Doc. 87-8894 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-62-M

---

[Docket 44719]

**US Air-Piedmont Acquisition Case; Prehearing Conference**

Served: April 16, 1987.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on April 22, 1987, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, April 16, 1987.

Ronnie A. Yoder,

*Administrative Law Judge.*

[FR Doc. 87-8895 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-62-M

---

## Federal Highway Administration

**Environmental Impact Statement; Baltimore County, MD**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Cancellation of the notice of intent.

**SUMMARY:** This notice rescinds the previous Notice of Intent (issued September 25, 1986 to prepare an environmental impact statement for a proposed highway widening project on I-695 (Baltimore Beltway) between Maryland Route 140 (Reisterstown Road) and U.S. Route 40 (Pulaski Highway).

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (301) 962-4010 or Mr. Louis Ege, Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calveret Street, Room 310, Baltimore, Maryland 21202, Telephone: (301) 333-1130.

**SUPPLEMENTARY INFORMATION:** Additional environmental analyses have indicated that no significant impacts are anticipated to result from the proposed highway project. Therefore, an environmental impact statement is not now proposed for the widening of I-695 (Baltimore Beltway) from MD Route 140 (Reisterstown Road) to U.S. Route 40 (Pulaski Highway) in Baltimore County, Maryland. An environmental assessment, however, is being prepared and will be made available to the public for review and comment. A public hearing will be scheduled upon completion of the environmental assessment. A public notice will be issued announcing the time and place of the hearing.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program)

Emil Elinsky,

*Division Administrator, Baltimore, Maryland.*

[FR Doc. 87-8730 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-22-M

---

## Maritime Administration

**Approval of Applicant as Trustee; BT Trust Company of California, N.A.**

Notice is hereby given that BT Trust Company of California, N.A., with offices at 343 Sansome Street, San Francisco, California, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: April 15, 1987.

By order of the Maritime Administrator.

James E. Sari,

*Secretary.*

[FR Doc. 87-8814 Filed 4-17-87; 8:45 am]

BILLING CODE 4910-81-M

---

## Research and Special Programs Administration

[Docket No. IRA-21]

**Inconsistency Ruling No. IR-8; Notice of Decision on Appeal; State of Michigan Rules and Regulations Affecting Radioactive Materials Transportation**

**AGENCY:** Research and Special Programs Administration; DOT.

**ACTION:** Decision of appeal.

**SUMMARY:** In response to the appeal of the Michigan State Fire Safety Board and Deprtment of Health from the findings made in Inconsistency Ruling No. IR-8 (49 FR 46637; November 27, 1984), that Inconsistency Ruling is affirmed.

**EFFECTIVE DATE:** April 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward H. Bonekemper, III, Office of Chief Counsel, Research and Special

Programs Administration, 400 Seventh Street SW., Washington, DC 20590 (Tel. 202/366–4400).

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 27, 1984, the Department published nine inconsistency rulings (IR–7 through 15; 49 FR 46632 *et seq.*) concerning state and local restrictions on radioactive materials transportation in the states of Michigan, New York and Vermont. Included in this omnibus proceeding was Inconsistency Ruling No. 8 (IR–8) dealing with the regulations of the Michigan State Fire Safety Board (SFSB) and Department of Health (DPH), as codified in two parallel sets of ten rules. The Ruling found that Rules 3 through 6 and sections of Rules 1, 7 and 10 of the SFSB and DPH regulations are inconsistent with the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801–1811) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with section 112(a) of the HMTA (49 U.S.C. app. 18111(a)).

The procedural regulations governing Departmental issuance of inconsistency rulings are codified in 49 CFR 107.201–107.211. Prior to November 1, 1985, these regulations provided for the issuance of rulings by the Associate Director for Hazardous Materials Regulations (§ 107.209) and the issuance of decisions on appeal from such rulings by the Director of the Materials Transportation Bureau § 107.211). IR–8 was issued in accordance with § 107.209 on November 20, 1984. As required by § 107.211, within 30 days of issuance on IR–8 an appeal was filed by the Michigan Department of Attorney General on behalf of the SFSB and DPH (hereinafter referred to collectively as "Michigan" or, the "State"). Comments opposing the appeal were filed by the Electric Utility Companies' Nuclear Transportation Group.

Under a reorganization plan effective November 1, 1985, the Materials Transportation Bureau was abolished and its hazardous materials responsibiliites were assigned to a new Office of Hazardous Materials Transportation. The functions formerly performed by the Bureau Director were assigned to the Administrator of RSPA. (See 50 FR 45728, November 1, 1985.) Accordingly, this decision on appeal is issued by the Administrator of RSPA.

## II. The Appeal: Issues and Decision

### *A. Introduction*

In its appeal, Michigan raises both general and specific arguments against the findings made in IR–8. Michigan also concedes the findings of definitional inconsistency made with respect to Rules 1 and 10 and does not include those findings within the scope of its appeal. I have considered Michigan's arguments in the order presented.

Michigan's general arguments are that IR–8 is based on NRC (not RSPA) regulations, IR–8 incorrectly assumes that Federal regulations are adequate, and IR–8 fails to utilize a worst-case scenario for analyzing the adequacy of cask rules. I find, respectively, that IR–8 is properly based on RSPA regulations, the adequacy of Federal regulations is irrelevant, and a worse-case scenario analysis is neither required nor relevant.

Michigan's specific arguments challenge IR–8's findings of consistency concerning the State's requirements concerning communications, information, documentation, certification, container testing, written State approval, and incident notification; the State's transportation approval criteria, and the State's incorporation by reference of Federal regulations. I find that the State's arguments are without merit because the provisions at issue exceed the State's authority, conflict with Federal requirements, or have other legal defects described below.

Many of the findings being appealed were discussed exhaustively in IR–8. I have responded only to the specific issues rasied on appeal and generally have not reiterated the Rulings's discussions, with which I concur.

### *B. Michigan's General Arguments*

1. Michigan's first general argument is that IR–8's findings of inconsistency were improperly based on interpretations of another agency's regulations. Michigan argues as follows:

> First, Inconsistency Ruling IR–8, to a large degree, predicates its findings of inconsistency on regulations of the U.S. Nuclear Regulatory Commission (NRC); specifically, 10 CFR Part 71 and 10 CFR Part 73. In so doing, it acknowledges that its rulings result not from *its* own regulations but rather from its interpretation of the regulations of another agency. Whether that agency, the NRC, agrees with these interpretations is rarely if ever disclosed in the Ruling. Assuming, *arguendo*, that the NRC does agree with them, the recourse of the Petitioners to challenge those interpretations would apparently require them to seek an administrative review before the NRC. This Petitioners submit, discloses a fatal weakness in the regulations of the U.S. DOT and/or the MTB, i.e., their failure to independently promulgate their own clear and complete preemptive rules on the shipment of hazardous materials. Under the circumstances, many of the conclusions in the Ruling are unsupported by any regulations of the U.S. DOT on the shipping of hazardous materials.

Although no specific examples are cited, Michigan argues that the Ruling's findings of inconsistency were based on the NRC regulations in 10 CFR Parts 71 and 73. While it is true that IR–8 contains frequent references to the NRC regulations, this is because the HMR specifically incorporate by reference the NRC requirements at issue. Incorporation by reference is an efficient practice specifically recognized in the regulations of the Federal Register at 1 CFR Part 51.

In order to discuss the requirements of the HMR, it becomes necessary to turn to the text of the NRC regulations which are cited in the HMR. For example, the HMR at 49 CFR 173.413 state that "(e)ach Type B(U) or Type B(M) package must be designed and constructed to meet the applicable requirements in 10 CFR Part 71." In order to determine whether a state or local requirement is inconsistent with § 173.413 of the HMR, the Department has to refer to the language of the NRC regulations in 10 CFR Part 71. However, the findings of consistency or inconsistency are based on an RSPA regulation, specifically § 173.413 of the HMR.

In summary, despite IR–8's frequent reference to the text of NRC regulations, those regulations have been incoporated by reference in the HMR, and thus Michigan's contention that "many of the conclusions in the Rulings are unsupported by any regulations of the U.S. DOT" is without merit.

2. Michigan's second general argument is that "the Ruling relies on the naive assumption that under the various federal regulations there is an adequate, uniform system of regulation in place throughout the United States" but that "(t)his assumption is subject to much dispute." To support this contention, Michigan cites a 1984 National Academy of Science report entitled *Social and Economic Aspects of Radioactive Waste Disposal*, which stated, *inter alia*, that "redundancies and incompleteness seem to exist in the current NRC/DOT regulations."

Even if one accepts the findings of the cited report, they provide no basis for reversal of IR–8. The findings in IR–8 do not rely on an assumption, naive or otherwise, "that . . . there is an adequate, uniform system of regulation in place throughout the United States."

Rather, the findings in IR–8 are based on the existence of Federal regulations governing specific areas of radioactive materials transportation safety with which Michigan requirements are in conflict. Those rules (known collectively as HM–164) have been judicially determined to provide an adequate level of safety nationwide. See *City of New York v. DOT,* 715 F.2d 732 (1983), *cert. den.* 104 S. Ct. 1403 (1984)

Furthermore, in adopting those rules, the Department was implementing the express Congressional objectives underlying enactment of the HMTA: (1) "To protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce "(49 U.S.C. app. § 1801); and (2)" to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S. Rep. No. 1192, 93d Cong., 2d sess. 37 (1974)).

Michigan appears to take the position that, since the objective of regulatory uniformity has been questioned in a report on radioactive waste disposal, state or local regulations which conflict with what Federal regulations do exist in the Federal scheme should be upheld. This argument must fail. The Congressional purpose in enacting the premption provision in section 112(a) of the HMTA was to achieve regulatory uniformity by overriding inconsistent state or local rules. That Congressional purpose is frustrated when state and local governments adopt requirements like those at issue in this proceeding.

3. Michigan's third general argument seeks to justify the State's issuance of packaging regulations for radioactive materials. The State takes issue with the Ruling's observation (at 49 FR 46642) that Michigan could address the safety issues raised by transportation of hazardous materials across major bridges through designation of alternate preferred routes:

> Michigan does *not* have that option, since the Mackinac Bridge is the only transportation link between our two peninsulas. Adopting packaging regulations for containers that would be necessity have to be transported across that major bridge was the only realistic response Michigan could make, under these circumstances.

Michigan's argument is based on the premise that Federal standards for spent fuel shipping casks are inadequate to deal with the types of accidents which could occur on a "major bridge." Michigan stated in its original response to the application for inconsistency ruling, "(s)uch an accident could occur if a shipping cask were to plummet from a major bridge and strike a concrete pier or pedestal." While conceding the low probability of a worst-case accident, Michigan contended that the consequences would be great if one were to occur and cited a U.S. District Court opinion which criticized the Department for failure to adequately consider the problems posed by low probability/high consequence accidents. *City of New York v. DOT,* 539 F. Supp. 1237 (1982)). However, the decision of the District Court is without relevance to this proceeding, as it was reversed on appeal before IR–8 was issued. (*Ibid.,* 715 F.2d 732 (2d Cir., 1983); *cert. den.,* 104 S.CT. 1403 (1984)).

Michigan's argument relies on consideration of only the possible consequences of a worst-case accident without regard to the probability that such consequences would ever occur. The department, however, expressly rejected exclusive reliance on the worst-case approach to safety analysis when promulgating HM–164 (46 FR at 5300, January 19, 1981):

> It is DOT's opinion that public policy for the routing of radioactive materials should be based not only upon a concern for worst-case accident consequences, but also upon all other factors which contribute to the overall risk involved in transporting large quantity radioactive materials.

The reasonableness of this decision was one of the issues raised by the City of New York in its legal challenge to the validity of HM–164. In its reversal of the District Court opinion cited by Michigan, and specifically in upholding DOT's decision that HM–164 would have no significant impact on the human environment under NEPA, the Court of Appeals for the Second Circuit ruled on the issue as follws:

> Here, DOT considered a rule that might be expected to generate a catastrophic accident approximately once every 300 million years. After receiving advice from all sides, the Department decided that such a remote possibility, even of a serious consequence, did not create a "significant" risk for the human environment. Disquieting as it may be to even contemplate such matters, this decision cannot be said to be an abuse of discretion. (*Ibid.,* 715 F.2d 732, 752.)

For the foregoing reasons, I do not consider the consequences of a worst-case accident such as that postulated by Michigan to be a sufficient basis for creating an exception to the rule of national applicability. Michigan is not the only state to have major bridges or deep waterways. If sufficient grounds existed for amending the Federal safety rules (and the Department is unaware of any such grounds) to resolve the alleged problem of major bridges, then the answer would lie in amending the rule of national applicability, not in creating individual exceptions. The option of filing a petition for rulemaking was stated in IR–8 (49 FR 46642).

*C. Michigan's Specific Arguments*

1. Rule 4 section R 29.554; DPH section R 325.5804)

Rule 4 prohibits the transportation of radioactive materials in Michigan unless the transport vehicle or an escort vehicle "is equipped with continuous 2-way communications by radiotelephone or other means acceptable to the state fire marshal . . . ." Section 173.22(c) of the HMR requires compliance with the NRC standards on communications capability. Upon comparison, Rule 4 was found to be inconsistent under both the "dual compliance" and the "obstacle" tests. Michigan takes issue with both conclusions.

In IR–8 the Associate Director found that compliance with both the Federal and the state rules was impossible because use of the communications equipment required by the Federal rule could not provide the "continuous" communication required by Michigan due to the existence of radiotelephone dead zones. Michigan argues that the requirement for continuous communications "constitutes an ongoing communication but not an ongoing *uninterrupted* communication." Michigan further argues that the acceptance of radiotelephone dead zones is implicit in the rule. However, the plain English meaning of the word "continuous" (e.g., "marked by uninterrupted extension in space, time, or sequence." (*Webster's New Collegiate Dictionary,* 1977) and "extending or prolonged without interruption or cessation, unceasing" (*American Heritage Dictionary of the English Language,* 1976) is to the contrary. Furthermore, in IR–16 (50 FR 20872, May 20, 1985), which considered a City of Tucson ordinance, the Department found that "[n]ot withstanding the City's explanation of its legislative intent, the actual language of the law must govern." 50 FR at 20877. Likewise, here the plain meaning controls, and the requirement thus is clearly inconsistent.

Michigan's assertion that "continuous" does not mean what dictionaries say it means demonstrates the difficulties which transporters encounter when presented with overlapping state and Federal regulatory schemes. Even if I were to accept the State's interpretation of "continuous," I nevertheless would find its open-ended and vague highway vehicle

communication equipment requirement inconsistent under the "obstacle" test.

Michigan alleges that the IR–8 "obstacle" test finding on this issue was based upon the "unsupported hypothecation" that the Michigan rule necessitates a different means and/or frequency of communication. To the contrary, the Ruling was based on the premise that the Michigan rule *authorizes* the requirement of different means and frequencies of communication.

In a similar vein, Michigan appeals the finding that the requirement that rail vehicles and vessels carrying radioactive materials be "equipped with communications equipment acceptable to the State Fire Marshal" is inconsistent. It argues that the Ruling relied on an erroneous assumption that Rule 4 requires different communications equipment than would be required under the HMTA or the HMR. It further states that "the unconstrained authority of the State Fire Marshal facilitates greater consistency between Rule 4 and the federal rules rather than creating obstacles."

Again, the Ruling was based upon the State Fire Marshal's unfettered discretion under Rule 4 to require different communications equipment. While that official's decisions might be consistent, they could as readily be inconsistent. Thus, I concur with the finding of inconsistency on the basis that a state or local rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impedes the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA. Therefore, I find Rule 4 to be inconsistent with the HMTA or the HMR and thus preempted.

2. Rule 3 (SFSB section R 29.553; DPH section R 325.5803)

Rule 3 (SFSB section R 29.555; DPH section R 325.5805)

Rule 3 provides application procedures for obtaining permission to transport radioactive materials in Michigan, and Rule 5 specifies criteria for approval of such applications. IR–8 found both rules inconsistent as obstacles to the accomplishment and execution of the HMTA and the HMR.

Michigan appeals this decision on several grounds. It advances three general arguments and then addresses specific requirements which were found inconsistent in the Ruling.

General Arguments

First, Michigan contends that these rules must be analyzed in light of the principle that "states share a responsibility and retain individual authority to regulate some aspects of hazardous material transportation." While section 112(a) of the HMTA (49 U.S.C. app. 1811(a)) clearly authorizes state and local regulations which are consistent with the HMTA and the HMR, the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of routing and training requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing and training requirements other than (1) those identical to Federal requirements or (2) state-designated alternate routes under 49 CFR 177.825(b), are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA.

Second, Michigan contends that Rules 3 and 5 do not consititute a routing rule because they were intended to carry out the State's enforcement and emergency response activities and not to route hazardous materials shipments. The State contends:

> What [rules 3 and 5] seek to accomplish is merely to assure the safe passage of materials through the State of Michigan. To conclude that they restrict or delay shipments of hazardous materials it is necessary to assume that the State of Michigan has no duty or role in effectuating the safe shipment of hazardous materials.

The latter statement is a *non-sequitur*. While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law. In fact, the purpose of DOT's inconsistency ruling process is to provide a forum for resolution, in specific instances, of the extent to which state or local governments, for whatever reason, may restrict, delay or otherwise regulate hazardous materials transportation.

The issue requiring resolution is whether the state or local requirement is inconsistent with the HMTA or the HMR. However, it is the effect, both actual and potential, not the intent of state or local rules which determines their consistency with the HMTA and the HMR. Therefore, I reject Michigan's contention that its requirements cannot be inconsistent because they are intended to enhance safety and facilitate emergency response.

Third, Michigan argues by analogy to a military environment that DOT is going beyond its appropriate role in finding Rules 3 and 5 inconsistent:

> The ruling's conclusion that Rules 3 and 5 fall within the definition of "Routing rule" discloses a failure to distinguish between the functions of strategy and tactics and the different and distinct roles which they play in assuring the safe transportation of hazardous materials. The role of the [OHMT], under the HMTA, is to see that the strategy of Congress is obeyed. The role of the individual states is to devise tactics that will assure the daily or case-by-case compliance with the congressional strategy.
>
> The situation is not unlike that which occurs in the military. A division headquarters determines strategically that an objective should be obtained. The responsibility of achieving that objective is placed upon a line officer, i.e., company commander. His responsibility is to evaluate the terrain and other conditions and employ the necessary means to accomplish the objective.

The State's military analogy fails to appreciate the detailed role which Congress has given to HMTA in the implementation of the HMTA. For example, it overlooks the authority in the HMTA (49 U.S.C. app. 1804(a)) for the DOT to issue regulations governing the transportation of hazardous materials and the specific provision that "Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing . . . of hazardous materials . . ."

In summary, the State's military analogy and the conclusions drawn therefrom are inappropriate for resolving the inconsistency issues at hand. I find unpersuasive the State's general arguments opposing the Ruling's conclusions concerning the inconsistency of Rules 3 and 5 and, therefore, deny the appeals based on these general arguments.

Information Requirements

Michigan appeals the holding in IR–8 that certain information requirements of Rule 3 are inconsistent as obstacles to the accomplishment of the objectives of the HMTA and the HMR.

First, it contends that Rule 3(a)(iv) is not a prohibited obstacle. That rule requires Rule 5 permit applicants to provide:

> The reasons for the choice of the proposed route of travel from the site of origin to the receiver of the radioactive material, including the designation of alternative routes and the reasons for the selection of the proposed route and the rejection of alternative routes.

The State argues that the Ruling erred in concluding that this Rule was intended to facilitate state approvals of

route selections on a shipment-by-shipment basis or to divert hazardous materials shipments away from the Interstate Highway System without proper State designation of an alternative route. It asserts that these conclusions are erroneous, that there is no express authority to approve or disapprove a route selection, that there is no practical alternate route, and that it does not intend to prohibit Interstate Highway System shipments of hazardous materials.

Michigan does not reveal what the purpose of this information requirement is. In any event, the relevant point is that this information requirement is obviously burdensome to transporters of radioactive materials. It requires them to identify alternative routes even when only a single route may be permissible under 49 CFR § 177.825 and then to list the advantages of the selected route and the disadvantages of rejected routes. This requirement, therefore, either is necessary for an inconsistent purpose or is unnecessary but burdensome; in either event, it is an obstacle to the accomplishment of the objectives of the HMTA and the HMR.

Second, Michigan appeals the Ruling's holding that Rule 3(b), which requires information on the proposed means of conveyance, is an inconsistent obstacle. Conceding that this information requirement is redundant with Federal and other state rules, Michigan states that "the burden of the requirement placed on the carrier is so light that the matter is diminimis [sic], i.e., the requirement of Rule 3(b) is insufficient to constitute an obstacle."

There is no *de minimis* exception to the "obstacle" test. Any obstacle, no matter how arguably inconsequential, to the accomplishment and execution of the HMTA or the HMR is inconsistent and thus preempted. In reaching this conclusion, I must consider, in the context of the regulatory scheme of which they are a part, the potential impact of *"de minimis"* information requirements which might be imposed by as many as 50 states and thousands of counties and municipal jurisdictions throughout the United States.

Third, the State appeals the Ruling's holding that Rule 3(e)(iii) is an obstacle and thus inconsistent. That Rule requires a Rule 5 permit applicant to provide an estimated date and time of the departure of the radioactive material from Michigan.

The State argues that Rule 3(e)(iii) is not inconsistent because any burden is *de minimis*, and because the State has as legitimate a concern to know when to expect the hazardous materials to leave the State as it has to know when the hazardous materials will arrive in the State—the latter requirement, the State contends, having been legitimated by the failure of IR–8 to question Rule 3(e)(ii).

As indicated above, there is no *de minimis* exception to the "obstacle" rule. IR–8 *did* consider Rule 3(e)(ii), which requires arrival information, as one of several information requirements it found invalid as redundant with DOT/NRC requirements, not furthering transportation safety and representing the type of multiplicity which Congress sought to preclude by enacting the HMTA.

The primary problem with Rule 3(e)(iii), as with Michigan's other information requirements, is that it is either redundant with existing Federal requirements (and therefore inconsistent for requiring multiple submissions), or requires submission of information DOT has determined in its regulatory notices requirements is not necessary for transportation safety. In either event, it contributes to the type of multiplicity the HMTA was intended to eliminate. Therefore, I find all the information requirements under appeal to be inconsistent with the HMTA or the HMR and thus preempted.

Documentation Requirements

Michigan also appeals the Ruling's holding that three Rule 3 documentation requirements imposed on Rule 5 applicants fail the "obstacle" test and thus are inconsistent with the HMR.

First, Michigan argues that there was no basis in IR–8 for holding that Rule 3(g) is inconsistent. That rule requires submission of "Copies of any required NRC approval of the proposed route of travel and any other NRC licensing action specific to the shipment, such as an import license or a license to transport." The State contends that the Ruling's finding that this requirement will greatly increase the possibility of a compromising disclosure of security information is based solely on conjecture and fear, and that there consequently is no basis for the "obstacle" finding. While the degree of increased security risk is uncertain, there is no dobut that any additional distribution of sensitive documents increases the risk of improper disclosure.

In addition, the Ruling was based on more than one ground. I affirm its conclusion that this requirement adds to the paperwork burden on radioactive materials transportation with no demonstrable safety benefit, subjects applicants to potential liability for violating DOT regulations (which presents a "dual compliance" problem), and increases the security risks involved in such transportation. If the State believes it needs more comprehensive notification than that provided in the NRC regulations (10 CFR 73.21), it should file a rulemaking petition with the NRC.

Second, the State appeals the holding in IR–8 that its Rule 3(h) is an obstacle and thus inconsistent. That rule requires a Rule 5 applicant to provide:

> A copy of the emergency plan for the carrier which describes procedures to be taken in an emergency to eliminate or minimize the radiation exposure of the public. The plan shall include a provision for notification of the state police operations division upon implementation of the plan.

Michigan contends that IR–8, while recognizing that state and local governments must bear the responsibility for the safety and protection of their citizens through emergency planning and preparedness, deprives the state of a valuable emergency response planning tool. It observes an inexplicable dichotomy between the consistency of a "non-burdensome" requirement placed upon carriers to coordinate emergency response with many local agencies and the inconsistency of a "burdensome" requirement upon them to provide an emergency plan to the State, which has responsibility for effective coordinated and comprehensive emergency response.

There is no dichotomy with respect to the IR–8 decision on this issue. Michigan incorrectly asserts that the local coordination requirement was "found to be no burden"; that issue was not and is not before DOT. That requirement is a Federal requirement and as such, its consistency with the HMTA and the HMR is not an issue under section 112(a) of the HMTA.

On the other hand, the issue of whether Michigan's emergency plan requirement is an "obstacle" was decided correctly in IR–8. DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent.

Again, if Michigan believes that it should receive this information from carriers of radioactive materials, it should file a rulemaking petition with the NRC.

Third, the State appeals the IR–8 decision finding inconsistent Rule 3(i), which requires a proposed recovery plan

when transportation is over a major bridge or on a vessel. The appeal rationale is the same as that for Rule 3(h). I deny the appeal for the same reasons as I denied the Rule 3(h) appeal, that is, the Rule 3(i) is an information requirement which goes beyond the DOT/NRC requirements, creates confusion, imposes burdens on transporters and thus is inconsistent.

Therefore, I find all the documentation requirements under appeal to be inconsistent with the HMTA or the HMR and thus preempted.

Certification Requirements

Michigan appeals the determinations in IR–8 that several portions of its Rules 3 and 5 requiring certifications are inconsistent with the HMTA or the HMR.

First, the State appeals the decision that Rules 3(f) and 3(j) are inconsistent. They require a Rule 5 applicant to submit, respectively, an attestation of a safety inspection within the prior six months by a law enforcement agency acceptable to the State Fire Marshal (and evidence thereof to be carried in the vehicle) and a certification that the shipment will be in compliance with the State's rules and all applicable state and Federal statutes, rules and regulations.

Michigan argues that without advance receipt of these documents, it must conduct an in-state inspection of the papers being carried on the vehicle transporting the radioactive materials. It states that if the required attestation or certification is missing or defective, its only enforcement option then would be detention or expulsion of the vehicle carrying the hazardous materials.

The State observes that explusion would not be satisfactory to DOT and says that detention would not be satisfactory to the State. This observation is irrelevant to the issue of consistency; however, detention of the vehicle for resolution of a "paper" violation poses less risk than detention for resolution of a substantive safety violation requiring on-scene repairs.

Having provided no other basis for advance submission of these documents, Michigan thus has failed to justify its requirement for advance certification of information required by Federal regulations to be carried on vehicles (49 CFR Part 396; 49 CFR 172.204). In this connection, I have considered and now reaffirm the position taken in an earlier inconsistency ruling:

> No matter what the form, any State or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations. (IR–2, 44 FR 75566 at 75571, Dec. 20, 1979).

Thus, I find that Rules 3(f) and 3(j) are redundant, unnecessary, burdensome and inconsistent with the HMR.

In summary, the information, documentation, and certification requirements of Rules 3 and 5 are inconsistent with the HMTA or the HMR. In addition, as indicated in IR–8, DOT has clearly demonstrated its intent to occupy the field of prenotification to the exclusion of requirements adopted by state and local governments. Application of this principle invalidates each of these requirements individually and cumulatively as obstacles to the accomplishment of the goals of, and thus inconsistent with, the HMTA and the HMR.

Rule 5 Provisions

Michigan appeals the determinations in IR–8 that the Rule 5 transportation approval criteria are an obstacle to the accomplishment and execution of the HMTA and the HMR and therefore are inconsistent. It notes that no provision of Rule 5 was found consistent.

First, the State appeals the decision concerning Rule 5(a), which requires the Rule 3 application requirements to be met before transportation of radioactive materials will be approved. It challenges the Ruling's finding that this requirement is an obstacle to the accomplishment of the HMTA's dual purpose of increased safety and national uniformity because it could redirect carriers to other states to avoid the administrative burden and planning delays inherent in complying with Michigan's application procedure. The State says:

> The full impact of this sophistry is that the mere promulgation of rules by any state, irrespective of the fact that each individual rule might be found to be consistent with the HMTA, automatically constitutes an obstacle to the HMTA, because it is a burden on the carrier to comply with all of them. The only way under this theory that a state could avoid creating such an obstacle is to never promulgate any rules.
>
> Such sophistry is an anathema to the fact that ours is a republican form of government, with the power residing originally in the individual states. The ruling on Rule 5(a) must be reversed.

My analysis of this argument begins with Article I of the Constitution of the United States, which states that "Congress shall have power . . . to regulate commerce . . . among the several States. . . ." Article VI of the Constitution further provides:

> This Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

Pursuant to its Article I "Commerce Clause" authority and in recognition of the Article VI "Supremacy Clause," Congress enacted the HMTA and provided therein for the preemption of state and local requirements inconsistent with the HMTA and regulations issued thereunder (Section 112(a)). One of the long-recognized tests for consistency is whether a state or local requirement is an obstacle to the accomplishment and execution of the objectives of a Federal statute or regulation. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978). In turn, one of the objectives of the HMTA was "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974).

State and local requirements that impede (i.e., present an obstacle to) hazardous materials transportation that is being conducted in accordance with the HMTA and the HMR inconsistent prior restraints on such transportation. Transportation carried out within the Federal framework of the HMTA and the HMR is presumptively safe, and additional safe, and additional state or local requirements concerning matters covered by Federal law or regulation are inconsistent and thus preempted. Similarly, where the Department has examined an area otherwise within its authority to adopt regulations and has declined to regulate, state and local requirements in that area may be preempted where they have adverse impacts on the Federal regulatory scheme and the transportation that occurs thereunder.

Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT also has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted.

For that reason as discussed above, I denied Michigan's appeal concerning the prenotification requirements of Rule 3 and found them to be inconsistent. Rule 5(a) requires fulfillment of all these inconsistent requirements as a condition precedent to transportation approval. A requirement for compliance with an inconsistent provision is itself inconsistent. Therefore, I find Rule 5(a) inconsistent with the HMTA and the HMR.

Second, Michigan appeals the finding that Rule 5(b) is inconsistent. It contends that the requirement in Rule 5(b) for written approval of the radioactive material transportation application is consistent because "nowhere in the Ruling is there cited any supportable basis for finding that the application requirement of Rule 3 is inconsistent." As I indicated earlier, there are several reasons why Rule 3 constitutes an obstacle to accomplishment and execution of the goals of the HMTA and the HMR and thus is inconsistent. Because I have determined that Rule 3 is inconsistent, it logically follows that Rule 5(b) is inconsistent.

Third, the State appeals IR–8's finding that Rule 5(c) of the SFSB rules (DPH Rule 5(b)) is inconsistent. Those rules require certification of compliance with all Federal and state laws and regulations. Michigan argues that IR–8 found this rule redundant because it repeats a Rule 3(j) requirement, that this rule merely reinforces Rule 3(j) and places no additional burdens on any shipper or carrier, and that the redundancy with DOT's requirements is overcome by the State's earlier discussion on the need for Rule 3(j).

As indicated IR–8, whether set forth as an approval criterion or an application requirement, this certification is an inconsistent redundancy because it requires applicants to provide the same certification required on DOT shipping papers. Thus, for the same reasons as Rule 3(j), Rule 5(c) of the SFSB rules (DPH Rule 5(b)) is inconsistent.

Fourth, Michigan appeals the finding of inconsistency concerning Rule 5(d) of the SFSB rules (DPH Rule 5(c)), which establishes as a criterion for transportation approval the acceptability to the State Fire Marshal and the Department of Health of the Rule 3(h) emergency plan. The state argues that since the Ruling's finding of inconsistency as to Rule 3(h) was erroneous, the finding as to this rule is equally erroneous. For the same reasons I determined Rule 3(h) to be inconsistent, I find Rule 5(d) of the SFSB rules (DPH Rule 5(c)) to be inconsistent.

Fifth, the State appeals IR–8's finding that Rule 5(e) of the SBSB (DPH Rule 5(d)) is inconsistent. That rule requires that the following criterion be met before approval is granted:

> A certificate of compliance for the container has been issued by the NRC, and the container has been tested and approved for hypothetical accident conditions pursuant to the provisions of 10 CFR 71.36 [now § 71.73].

It was found in IR–8 to be inconsistent because it imposes additional packaging standards. The gist of the State's argument follows:

> Quality control of a product is achieved through the process of testing. This is a fundamental procedure that is applied throughout industry, a typical example being that of Michigan's automobile manufacturers. The Petitioners submit that testing of containers is an implicit responsibility of the shipper or carrier to assure compliance with the NRC requirements on containers and that Rule 5(e) of the SFSB (Rule 5(d) of the DPH) is only intended to verify that compliance.
>
> On the other hand, this does not mean that each container must be tested. As required by 10 CFR 71.73 (previously in 10 CFR 71.36) and the associated Appendix B, the testing involves only a showing that the container can survive hypothetical accident conditions. Actual testing is unnecessary.
>
> For these reasons, Petitioners assert that this Rule is neither an obstacle nor inconsistent with the requirements of the NRC.

This sheds little light on the meaning and proposed operation of Rule 5(e). This Rule falls within the scope of the prohibition enunciated in IR–2 that: "State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal Regulations." 44 FR 75566 at 75568.

Therefore, I find Rule 5(e) of the SFSB (DPH Rule 5(d)) to be inconsistent with the HMTA and the HMR.

Sixth, Michigan appeals the finding in IR–8 that Rules 5 (f) and (g) of the SFSB (Rules 5 (e) and (f) of the DPH) are inconsistent. These rules impose container testing standards which exceed those of the NRC, which are incorporated in the HMR (49 CFR 173.416). The State justifies them on the basis of its unique geographical situation, its dependence on very high major bridges, its busy inland waterway system, and the depth of the Great Lakes. It contends that these conditions justify more stringent container standards to assure container integrity in the event of an accident.

While these conditions *might* provide a basis for a rulemaking petition or for a 49 CFR 107.215 application for waiver of preemption, they do not provide a justification for overriding the complete Federal preemption of packaging design, construction and equipment requirements for hazardous materials transportation. Thus, I find Rules 5 (e) and (f) of the SFSB (DPH Rules 5 (e) and (f)) to be inconsistent.

In summary, therefore, I find all the appealed Rule 3 and Rule 5 provisions to be inconsistent with the HMTA or the HMR.

3. Rule 6 (SFSB section R29.556; DPH section R325.5806)

Michigan appeals the finding that Rule 6 is inconsistent. That rule states:

> Upon granting approval to transport, the state fire marshal shall notify the applicant, in writing, before the shipment of the radioactive material and shall include any conditions or limitations to the approval as determined necessary by the state fire marshal and the department of public health.

The State contends that Rule 6 merely prescribes procedures for notification to the applicant of the state's approval of the shipment and, as such, represents neither an obstacle nor an inconsistency.

Having found the application requirements of Rule 3 and the approval criteria of Rule 5 inconsistent, IR–8 discussed Rule 6 in the context of whether the approval process itself is inconsistent. That approach was appropriate since Rule 6 appears to prohibit shipments of radioactive material without prior written state approval, and appears to authorize the establishment of conditions and limitations at the discretion of state officials. Whether Rule 6 is interpreted as constituting a portion of the State's substantive permit requirements or construed as merely facilitating execution of the substantive permit requirements of Rules 3 and 5, it is inconsistent.

I specifically adopt the following analysis contained in IR–8:

> In the instant case, Michigan has imposed a requirement to obtain State approval in writing (in effect, a permit) which applies only to those parties wishing to transport highway route controlled quantity radioactive material in Michigan. This requirement is based on a presumption that Michigan has the authority to control, and ultimately, to prohibit this form of interstate commerce.
>
> Michigan asserts that this authority stems from the State's public safety power; that radioactive materials transportation poses higher risks in Michigan than elsewhere; and that the State has a duty to protect the public from those risks. This argument fails to

recognize that, in enacting the HMTA, Congress granted to the Secretary of Transportation, and not to the States, the authority to designate as hazardous those materials whose transportation poses an unreasonable risk and to issue regulations to protect the Nation adequately against those risks. Generally, in the absence of Departmental involvement in a safety issue, States and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) Traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists, for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo. (49 FR at 46643)

Therefore, I find that Rule 6 itself, and in conjunction with Rules 3 and 5, constitutes an obstacle to the accomplishment and execution of the HMTA and the HMR, thus is inconsistent with them, and, therefore, preempted.

4. Rule 7 (SFSB section R29.557; DH section R325.5807)

Michigan appeals the finding in IR–8 that Rules 7 (b) and (c) are inconsistent. Rule 7 requires the carrier of radioactive materials to notify Michigan state police in the event of: (a) any schedule change of more than six hours, (b) any incident causing a delay in transport, and (c) any implementation of the required emergency plan.

The State says Rules 7 (a) and (b) may prove identical to Federal rules in some situations but that they "prescribe that the carrier exercise a greater duty of immediacy and thereby provide for earlier warning to the state to facilitate changes in arrangements for emergency response." Therefore, the State contends that they are not inconsistent. As to Rule 7(c), the State contends that its consistency is tied to the consistency of Rule 3(h) and that both are consistent.

Rule 7(a) is identical to 10 CFR 73.37(f)(4) and was properly found consistent in IR–8. Rule 7(b), however, contains undefined terms ("incident" and "delay") which make its meaning unclear, and constitutes purported state action in a field (incident notification) totally occupied by Federal regulation (10 CFR 73.37(f)(4); 49 CFR 171.15 and 171.16)). As such, Rule 7(b) is inconsistent. Finally, Rule 7(c) also is inconsistent since its validity depends upon that of Rule 3(h), which I previously have determined to be inconsistent.

Thus, Rules 7 (b) and (c) are inconsistent and preempted because they pose obstacles to the accomplishment and execution of the goals of the HMTA and the HMR.

5. Rule 10 (SFSB section R29.560; DPH section R325.5810)

Michigan states that Rule 10's incorporation by reference of Federal regulatory provisions is redundant and that deeming them inconsistent would not have an adverse impact on its rules. Rule 10(1) incorporates by reference the following sections of the Code of Federal Regulations:

(a) 10 CFR 71.36;

(b) 49 CFR 172.203(d), and

(c) 49 CFR 173.389(b).

IR–8 found Rule 10(1)(c) inconsistent because the cited rule had been deleted. Similarly, 10 CFR 71.36 has been deleted. Therefore, I find both Rules 10(1) (a) and (c) are inconsistent with the HMTA and the HMR.

**III. Conclusion**

For the reasons indicated above and for the reasons set forth in IR–8 itself, I affirm the determination of the Associate Director of the Materials Transportation Bureau in IR–8 that the Michigan State Fire Safety Board Rules 3, 4, 5, 6, 7 (b) and (c), and 10(1)(c) and Department of Public Health Rules 3, 4, 5, 6, 7 (b) and (c), and 10(1)(c) are inconsistent with the HMTA and the HMR. In addition, I find Rule 10(1)(a) to be inconsistent with the HMTA and HMR.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on April 13, 1987.

**M. Cynthia Douglass,**

*Administrator, Research and Special Programs Administration.*

[FR Doc. 87–8832 Filed 4–17–87; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: April 14, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Financial Management Service**

*OMB Number:* New
*Form Number:* TFS 3881
*Type of Review:* New
*Title:* Payment Information Form, ACH Vendor Payment System
*Description:* The information is being requested as a technological requirement. Treasury will use the information to electronically transmit payment to vendor's financial institution. The affected public consists of large for-profit businesses. This information would result in vendors receiving payment in a more timely and efficient method
*Respondents:* Businesses
*Estimated Burden:* 25,000 hours
Clearance Officer: Douglas C. Lewis, (202) 436–5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Internal Revenue Service**

*OMB Number:* 1545–0928
*Form Number:* 8390
*Type of Review:* Revision
*Title:* Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809
*Description:* Life insurance companies are required to provide data so the Secretary of Treasury can compute the: (1) Stock earnings rate of the 50 largest stock companies; and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual life insurance companies.

*Respondents:* Businesses
*Estimated Burden:* 1,964 hours
*OMB Number:* 1545–0301
*Form Number:* Letter 1117(c), Notices 633 and 634
*Type of Review:* Extension
*Title:* Confirmation Letter
*Description:* To fully satisfy some audit objectives, it is necessary to directly communicate with taxpayers and/or other knowledgeable parties to obtain verification of information such as correct amount of tax due, all required returns filed, etc. Response information is used to determine the accuracy of tax and general ledger accounts, etc.
*Respondents:* Individuals, State or local governments, Farms, Businesses, Federal agencies or employees, Non-profit institutions
*Estimated Burden:* 799 hours
Clearance Officer: Garrick Shear, (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington DC 20503.

**U.S. Customs Service**

*OMB Number:* 1515–0060
*Form Number:* CF–1300
*Type of Review:* Extension
*Title:* Master's Oath of Vessel in Foreign Trade
*Description:* The form is used by the master of the vessel to attest to the truthfulness of all other forms associated with the manifest, such as certificates for Safety of Life at Sea (SOLAS), water pollution, etc. The form also serves to record information on tonnage tax payments in order to prevent overpayments of that tax.
*Respondents:* Businesses
*Estimated Burden:* 18,326 hours
Clearance Officer: B.J. Simpson, (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Wasington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington DC 20503.

**Dale A. Morgan,**
*Departmental Reports Management Officer.*
[FR Doc. 87–8777 Filed 4–17–87; 8:45 am]
BILLING CODE 4810–25–M

## Internal Revenue Service

**[Delegation Order No. 225]**

### Delegation of Authority; District Directors, et al.

**AGENCY:** Internal Revenue Service, Treasury.
**ACTION:** Delegation of Authority.

**SUMMARY:** District Directors, Service Center Directors, and Compliance Center Director and/or their delegates are authorized to execute, Forms 870–AD, Offer of Waiver or Restriction on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, or Form 906, Closing Agreement on Final Determination Covering Specific Matters. These forms may be executed only for commodity issues arising from commodity straddles entered into and disposed of prior to January 1, 1982 and other tax shelter initiative issues claimed on tax returns for years ended prior to January 1, 1983.
**EFFECTIVE DATE:** April 6, 1987.
**FOR FURTHER INFORMATION CONTACT:** Melvin L. Chambless, OP:EX:C:T, Room 2518, 1111 Constitution Ave., NW., Washington, DC 20224 (202) 566–6441.

**Ralph Shilling,**
*Deputy, Assistant Commissioner (Examination).*

Order No. 225.
Effective Date: April 6, 1987.

### Authority of Examination Managers and Supervisors GM–13 and GM–14 in Pre-1983 Non-TEFRA Tax Shelter Cases

**[Supplements Delegation Order Nos. 60 and 66 and amends and supplements Delegation Order No. 97 (as revised)]**

The authority vested in the Commissioner of Internal Revenue by 26 CFR 301.6020–1, 26 CFR 301.6201–1, 26 CFR 301.7121–1(a), 26 CFR 301.7701–9, and Treasury Department Order No. 150–07, Treasury Department Order No. 150–09, and Treasury Department Order No. 150–10, as revised, is hereby delegated as follows:

1. The Associate Commissioner (Operations), Assistant Commissioners (Examination) and (International), Regional Commissioners, Assistant Regional Commissioners (Examination), District Directors, Service Center Directors, and Compliance Center Director, Chiefs, Examination Division, and Examination Managers and Supervisors GM–13 and GM–14 in Districts, Service Centers and Compliance Center are hereby authorized in cases under their jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue liability, of such person (or of the person or estate for whom he/she acts) to close pre-ERTA tax shelter commodity issues, based on the Servicewide administrative positions developed by Appeals, Chief Counsel, and Examination, and other tax shelter initiative issues based on settlement positions reached by Chief Counsel or Appeals on the specific shelter where the initial investment was made prior to January 1, 1983. These agreements will be executed on Form 870–AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, and Form 906, Closing Agreement on Final Disposition Covering Specific Matters. The authority delegated herein extends only to tax shelter issues, including penalties or related statutory issues that must be adjusted due to settlement of the tax shelter issues. This authority, also extends to tax shelter issues on subsequent year returns where benefits from pre-1983 tax shelters are claimed.

2. The authorities contained in this order are intended to supplement the authorities contained in Delegation Order No. 60 (as revised), Delegation Order No. 66 (as revised), and amends and supplements Delegation Order No. 97 (as revised). The delegation of authority granted herein may not be redelegated.

Dated: April 6, 1987.
Approved:
**James I. Owens,**
*Deputy Commissioner.*
[FR Doc. 87–8809 Filed 4–17–87; 8:45 am]
BILLING CODE 4830–01–M

## UNITED STATES INFORMATION AGENCY

### Television Telecommunications Advisory Committee

The Television Telecommunications Advisory Committee has scheduled a meeting for May 13, 1987, at the United States Information Agency, 301 Fourth Street SW., Room 800, Washington, DC.

The meeting will commence at 10:30 a.m., and will adjourn at 2:00 p.m.

Members of the public wishing to attend the meeting should contact Ms. Louise Wheeler at (202) 485–8890 for further information.

Dated: April 13, 1987.
**Charles N. Canestro,**
*Federal Register Liaison.*
[FR Doc. 87–8725 Filed 4–17–87; 8:45 am]
BILLING CODE 8230–01–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 75
Monday, April 20, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., May 1, 1987.

**PLACE:** 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–8863 Filed 4–16–87; 11:58 am]

BILLING CODE 6351-01-M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., May 8, 1987.

**PLACE:** 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–8864 Filed 4–16–87; 11:58 am]

BILLING CODE 6351-01-M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., May 15, 1987.

**PLACE:** 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–8865 Filed 4–16–87; 11:58 am]

BILLING CODE 6351-01-M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., May 22, 1987.

**PLACE:** 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–8866 Filed 4–16–87; 11:58 am]

BILLING CODE 6351-01-M

---

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., May 29, 1987.

**PLACE:** 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Market Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–8867 Filed 4–16–87; 11:58 am]

BILLING CODE 6351-01-M

---

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DATE AND TIME:** 2:00 pm (Eastern Time) Monday, April 27, 1987.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Flood of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC, 20507.

**STATUS:** Closed to the public.

**MATTERS TO BE CONSIDERED:**

*Closed*

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.) **CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued: April 15, 1987.

Cynthia C. Matthews,

*Executive Officer, Executive Secretariat.*

[FR Doc. 87–8846 Filed 4–16–87; 10:19 am]

BILLING CODE 6750-06-M

---

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, April 14, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required that the application of Hastings City Bank, Hastings, Michigan, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Bellevue, Michigan, and Nashville, Michigan, branches of Comerica Bank—Battle Creek, Battle Creek, Michigan, and for consent to establish those two branches of Comerica Bank—Battle Creek as branches of Hastings City Bank, be moved from the agenda for consideration at the closed meeting to the agenda for consideration at the open meeting.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: April 15, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 87–8868 Filed 4–16–87; 11:59 am]

BILLING CODE 6714-01-M

---

**TENNESSEE VALLEY AUTHORITY**

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUCEMENT:** To be published April 17, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2 p.m. (EDT), Tuesday, April 21, 1987.

**PREVIOUSLY ANNOUNCED PLACE OF MEETING:** TVA Chattanooga Office Complex, Missionary Ridge Building, 1101 Market Street, Chattanooga, Tennessee.

**STATUS:** Open.

**ADDITIONAL MATTERS:** The following items are added to the previously announced agenda:

F. UNCLASSIFIED

2. Conflict-of-Interest Guidelines Implemenation Plan.[1]

3. Proposal to Authorize Use of TVA Vehicles for Transportation between Home and Work for Canine Handlers in the Public Safety Service

**CONTACT PERSON FOR MORE INFORMATION:** Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

**SUPPLEMENTARY INFORMATION:**

**TVA Board Action**

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: April 15, 1987.

Approved:

**C.H. Dean, Jr.,**

*Director and Chairman.*

**John B. Waters,**

*Director.*

[FR Doc. 87–8838 Filed 4–16–87; 9:20 am]

BILLING CODE 8120–01–M

[1] This item was approved by individual Board members. This would give formal ratification to the Board's action.

# Corrections

Federal Register

Vol. 52, No. 75

Monday, April 20, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-428-037]

### Drycleaning Machinery From West Germany; Final Results of Antidumping Duty Administrative Review

*Correction*

In notice document 87-7813 beginning on page 11299 in the issue of Wednesday, April 8, 1987, make the following correction:

On page 11300, in the last column, in the third column of the table under "Margin (percent)", the last entry "0.84" should read "0.48".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[HSQ-143-PN]

### Medicare Program; End Stage Renal Disease Program; Revised Network Area Designations

*Correction*

In notice document 87-7927 beginning on page 11550 in the issue of Thursday, April 9, 1987, make the following corrections:

1. On page 11553, in the second column, in the second complete paragraph, in the ninth line, "22 the" should read "22 with the".

2. On page 11554, in the first column, under "Network Area #15", under the entry for "Colorado" insert "Nevada".

BILLING CODE 1505-01-D

## POSTAL SERVICE

### 39 CFR Part 447

### Code of Ethical Conduct for Postal Employees; Proposed Amendment To Allow Attendance at Group Functions

*Correction*

In proposed rule document 87-8424 beginning on page 12196 in the issue of Wednesday, April 15, 1987, make the following correction:

§ 447.24 [Corrected]

On page 12197, in the third column, in § 447.24(b)(7), Example (2), in the eighth line, "may authorize" should read "may not authorize".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CCGD3 87-06]

### Regatta; Children's Liver Foundation Trophy Race, Barnegat Bay, Near Toms River, NJ

*Correction*

In proposed rule document 87-7299 beginning on page 10594 in the issue of Thursday, April 2, 1987, make the following correction:

On page 10595, in the first column, under **FOR FURTHER INFORMATION CONTACT**, the telephone number should read "(212) 668-7974".

BILLING CODE 1505-01-D

BEST COPY AVAILABLE

federal register

Monday
April 20, 1987

Part II

# Department of Health and Human Services

**Social Security Administration**

**20 CFR Parts 404 and 416**

**Standards for Consultative Examinations and Existing Medical Evidence; Proposed Rules**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Parts 404 and 416**

**[Regulations Nos. 4 and 16]**

## Standards for Consultative Examinations and Existing Medical Evidence

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rules.

**SUMMARY:** Section 9 of Pub. L. 98–460 requires that the Secretary issue regulations to establish standards for consultative examinations. These regulations must include standards for determining when to obtain a consultative examination, the type of consultative examination to be purchased, and monitoring procedures for both the purchase process and the consultative examination reports. Every reasonable effort must be made to obtain from the claimant's medical sources the medical evidence necessary to make a determination before evaluating medical evidence obtained from another source on a consultative basis. Section 9 also requires consideration of all evidence available in a claimant's case record, and development of a complete medical history covering at least the preceding 12 months in any case where a decision is made that the individual is not under a disability. We understand this provision to mean that a 12-month medical history is not required if the disability is alleged to have begun less than 12 months before application. In such cases, no purpose would be served in developing a 12-month medical history.

These proposed rules reflect the statutory requirements.

**DATE:** We will consider your comments if we receive them no later than June 19, 1987.

**ADDRESSES:** Send your written comments to the Commissioner of Social Security, Department of Health and Human Sevices, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–7415.

**SUPPLEMENTARY INFORMATION:**

### Evidence From Medical Sources

One of the factors required to establish that an individual is disabled is a medically determinable severe impairment. This severity and the individual's residual functional capacity (i.e., what the individual can still do despite limitations) are established through medical evidence. Objective and complete medical evidence produces quality determinations and prompt decisions. We consider all material facts in the individual's record to determine whether the individual is disabled.

We request and make every reasonable effort to obtain medical evidence from the sources who have treated the individual for the impairment(s) since the alleged disability onset date when the individual is applying for benefits, and during the preceding 12 months when the case of an individual receiving benefits is undergoing review.

The quality of medical examinations has a major impact on the quality of our decisionmaking. We try to make decisions based on evidence from treating sources because of the continuing relationship between the claimant and physician. When the available evidence of record is not sufficient for making a disability decision, a consultative examination is purchased, at government expense, from the treating source whenever possible. Since basing a decision on evidence from a treating or other medical source is not always possible for a variety of reasons, it may be necessary to purchase a consultative examination from an independent source at government expense. In some instances we may order a consultative examination from an independent source while awaiting receipt of treating or other medical source evidence, but the report will not be evaluated until that evidence is received or every reasonable effort has been made to obtain it.

### Program Integrity

Since the enactment of the Medicare/Medicaid anti-fraud and abuse amendments of 1977, an escalation in the prosecution of medical service providers for fraud and abuses in those programs has raised the issue of the propriety of using these and other offenders in SSA's disability programs. We are, therefore, proposing rules in §§ 404.1503a and 416.903a barring our use of any individual or entity, for example, as a medical consultant, review physician, consultative examination provider or diagnostic test facility, found guilty of professional misconduct.

### Consultative Examinations

Consultative examinations are medical examinations purchased by the State agency from physicians and other qualified health professionals outside the agency.

If an individual's treating or other medical sources cannot provide us with sufficient medical evidence about his or her impairment(s) for us to determine whether the individual is disabled or blind, we may ask the individual to have one or more physical or mental examinations or tests. We will pay for those examinations that we arrange. When we arrange the examination or test, we will give the individual reasonable notice of the date, time, and place the examination or test will be given, indicate the type of examination or test that will be given, and the name of the person who will do it. We will also give the examiner any necessary background information about the individual's condition when the individual's own physician will not be doing the examination or test.

If an individual is applying for benefits and does not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange to get information to determine disability or blindness, we may find that the individual is not disabled or blind. If the individual is already receiving benefits and does not have a good reason for failing or refusing to take part in a consultative examination or test that we have arranged, we may determine that the disability or blindness has stopped.

### Standards for Consultative Examinations

While SSA has gone a long way toward stronger management of the consultative examination process, Congress, in enacting section 9 of Pub. L. 98–460, made clear that SSA should reflect this stronger management in regulations. *See* H. Rep. No. 98–618, 98th Cong., 2d Sess. 19–20 (1984).

Under existing regulations, consultative examinations may be obtained to secure additional information necessary to make a disability determination or to resolve conflicting information. Evidence

obtained through a consultative examination is considered in conjunction with all other medical and nonmedical evidence submitted in connection with a disability claim. Until passage of section 9 of Pub. L. 98–460, there was no statutory requirement for regulatory standards specifying particular cases in which consultative examinations would be purchased, identifying the types of consultative examinations to be purchased, or requiring any standard procedures to be followed in establishing and monitoring purchase policies.

Because consultative examinations are purchased at government expense, we have had guidelines which cover the standards to be used in purchasing and monitoring such examinations. For some time, we have had in place in our operating manuals these internal guidelines for managing every aspect of the consultative examination process from deciding when to purchase an examination, to guidance to be provided to the person performing the consultative examination, to monitoring the actual consultative examination delivery process and the reports which it produces. In the House report on section 9 (cited above), Congress expressed satisfaction over our success in better management of the consultative examination process, but believed that our standards should be reflected in regulations. These regulations are being issued to comply with the congressional mandate.

In addition to incorporating our existing operating procedures into this regulation, we are adding further provisions in three areas. First, we have identified certain time periods which we think can serve as a frame of reference for scheduling a consultative examination. These minimum scheduling times are intended to emphasize our intent that sufficient time be made available for thoroughly examining the claimant to obtain a complete picture of the claim. They are meant to ensure sufficient time for a full consultative examination including development of case history. They are not meant as inflexible rules to be applied mechanically and thereby preventing appropriate judgment on the part of the State and professional individuals. Second, standards are included to ensure that laboratory fees paid to consultative examination providers for services are reasonable and do not represent excessive mark-up by the source. Third, we emphasize that State rules must be followed regarding minimum qualification levels for physicians' and psychologists' assistants.

The minimum scheduling times for consultative examinations were developed by a panel of regional office and State agencies physicians and administrators convened to assist us in the preparation of these regulations (among other things). Since many State agencies currently have such standards (some based on the duration of the examination, others on the numbers of patients who can be scheduled for consultative examinations per hour), we are interested in establishing national norms to assure that all claimants receive equitable treatment when attending a consultative examination. We are particularly interested in the reaction of the public and the medical community to these recommendations and encourage widespread comment from interested parties during the period of public comment on the Notice of Proposed Rulemaking.

The proposed policy will carry out the intent of section 9 of Pub. L. 98–460 by including in the regulations all major guidelines contained in existing instructional issuances. This provides better access for the public to SSA standards used for consultative examinations in disability claims.

The regulated consultative examination material will be that which falls under the categories mandated by Congress. Those categories are:

(1) Standards to be utilized by State and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations.

(2) Standards for the type of referral to be made.

(3) Procedures to monitor the referral process used.

(4) Procedures to monitor the product of health professionals to whom cases are referred.

These standards are being included in Subpart P of Part 404 and Subpart I of Part 416. We are adding new §§ 404.1519 through 404.1519u and new §§ 416.919 through 416.919u. We are also updating the Table of sections for Subpart P and Subpart I.

**Definitions**

We are proposing to revise §§ 404.1502 and 416.902 to define what we mean by "medical source," "treating source," and "source of record".

**The 12-Months Medical History**

We are proposing changes in paragraph (b) of 20 CFR 404.1512 and 416.912, and 20 CFR 404.1593 and 416.993, to indicate that we will develop a complete medical history covering at least the preceding 12 months in any case where an unfavorable determination is made, unless the disability is alleged to have begun less than 12 months before application. *See* Sen. Rep. No. 98–466, 98th Cong., 2d Sess., 26 (1984). We are also indicating that we will make every reasonable effort to obtain from the individual's treating and other medical sources the evidence necessary to make a determination before evaluating medical evidence obtained from another source on a consultative basis. Reasonable effort is defined to mean an initial request and, if the evidence is not received within 10 days, one followup request to the treating source for medical evidence. The source will have 20 days from the followup to reply (unless experience indicates a longer period is advisable in a particular case) before we evaluate the evidence that may be obtained on a consultative basis. In some instances we may order a consultative examination while awaiting receipt of treating or other medical source evidence.

In addition, we are proposing to amend paragraph (a) of 20 CFR 404.1520 and 416.920 to more clearly state that we consider all evidence available in the individual's case record when we make a determination. (These regulations pertaining to "Multiple Impairments" were published in the **Federal Register** on March 5, 1985, and appear in their current form at 50 FR 8726.)

We are proposing to revise 20 CFR 404.1593 and 416.993 to recognize that development of medical evidence in continuing disability review cases will be guided by the special requirements of the medical improvement review standard and to affirm that consultative examinations are purchased with only one purpose, to provide information necessary to reach a decision in a case.

**Medical Assessment Requirement**

We are also proposing to revise §§ 404.1513 (b)(6) and (c), 404.1545(a) and 404.1546 as well as §§ 416.913 (b)(6) and (c), 416.945(a) and 416.946 to delete references to medical assessments and to refer instead to medical source statements as to what a person can still do despite his or her impairment(s). These revisions accomplish two things: they remove all reference to the term "medical assessment," which was not clearly defined and was thus open to various interpretations; and they indicate that we will consider all of the medical and other evidence in determining whether a person is disabled, including medical source statements as to what a person can still

do despite impairment, and that medical source statements alone are not determinative of whether or not the person is disabled. We believe these are important changes. There has been confusion among adjudicators as to what constitutes a "medical assessment." This has resulted in special requests being made to elicit information which was already at hand but not labeled "medical assessment." We have revised the regulations by deleting the term "medical assessment" and indicating what we mean, i.e., medical source statements as to what the person can still do despite impairment(s).

**Treating Source Opinions**

The Senate Finance Committee, in its consideration of the provision that became section 9, indicated in its report that it did not intend to alter in any way the relative weight that the Secretary places on reports received from treating physicians and from physicians who perform consultative examinations. (S. Rep. No. 466, 98th Cong., 2d. Sess. 26 (1984).) Accordingly, to clarify our existing policy with respect to the weight which we place on opinions of treating sources and in response to certain Federal Circuit Court of Appeals decisions and other statements regarding our policy, we are setting forth our policy with respect to opinions of treating sources. Therefore, we are proposing to revise §§ 404.1527 and 416.927 to clearly indicate those instances when a treating source opinion will be conclusive, when it will be given preference, and when neither conclusiveness nor preference will be granted.

**Regulatory Procedures**

*Executive Order 12291.* These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major rule. The cost of implementing this disability provision of Pub. L. 98–460 (section 9) is negligible. Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act.* We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect a small number of disability claimants under title II and title XVI of the Social Security Act.

*Paperwork Reduction Act.* These proposed regulations contain information collection requirements in §§ 404.1512(b), 404.1513 (b) and (c), 404.1519n(c), 404.1593 (b) and (c), 416.912(b), 416.913 (b), and (c), 416.919n(c), and 416.993 (b) and (c).

As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on these information collections should direct them to the Commissioner of Social Security and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: February 3, 1987.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

Approval: March 13, 1987.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

## PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950 )

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

1. The authority citation for Subpart P is revised to read as follows, and all other authority citations which appear throughout Subpart P are removed.

**Authority:** Secs. 202, 205, 216, 221, 222, 223, 225 and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405, 416, 421, 422, 423, 425 and 1302; Sec. 505 (a) and (c) of Pub. L. 96–265, 94 Stat. 473.

2. The Table of Contents for Subpart P is amended by adding an entry for § 404.1503a, and by adding the following center headings and §§ 404.1519–404.1519u, to follow § 404.1518, to read as follows:

**Subpart P—Determining Disability and Blindness**

Sec.

* * * * *

404.1503a Program integrity.

* * * * *

**Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations**

404.1519 The consultative examination.
404.1519a When we will purchase a consultative examination and how we will use it.
404.1519b When we will not purchase a consultative examination.
404.1519e Purchase of the consultative examinations at the reconsideration level.
404.1519f Securing medical evidence at the ALJ hearing level.

**Standards for the Type of Referral and for Report Content**

404.1519g Type of purchased examinations and selection of source.
404.1519h Your treating physician or psychologist.
404.1519i Other sources for consultative examinations
404.1519j Objections to the designated physician or psychologist.
404.1519k Purchase of medical examinations, laboratory tests, and other services.
404.1519l Requesting examination by a specific physician, psychologist or institution—ALJ hearing level.
404.1519m Diagnostic surgical procedures.
404.1519n Informing the examining physician or psychologist of examination scheduling and/or duration, report content and signature requirements.
404.1519o When a properly signed consultative examination report has not been received.
404.1519p Reviewing reports of consultative examinations.
404.1519q Conflict of interest.

**Authorizing and Monitoring the Referral Process Used**

404.1519s Authorizing and monitoring consultative examinations.

**Procedures to Monitor the Consultative Examination**

404.1519t Consultative examination oversight.
404.1519u Direct purchase of medical services across State lines.

* * * * *

3. Section 404.1502 is revised to read as follows:

**§ 404.1502 General definitions and terms for this subpart.**

As used in the subpart—

"Secretary" means the Secretary of Health and Human Services.

"State agency" means that agency of a State which has been designated by

the State to carry out the disability determination function.

"Treating source" means your own physician or psychologist who has provided you with medical treatment or evaluation and who has an ongoing treatment relationship with you. "Source of record" means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have an ongoing treatment relationship with you. "Medical sources" refers to both treating sources and sources of record.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

4. Section 404.1503a is added to read as follows:

**§ 404.1503a Program integrity.**

We will not use in our program any individual or entity who is excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted, under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is revoked or suspended by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such individual or entity for any activity described in this section or as a result of formal disciplinary proceedings. Also see §§ 404.1519(a) and 404.1519g(b).

**§ 404.1508 [Amended]**

5. Section 404.1508 is amended by adding the cross-reference "(see § 404.1527)." at the end of the penultimate sentence.

6. Section 404.1512 is amended by revising paragraph (b) to read as follows:

**§ 404.1512 Your responsibility to submit evidence.**

* * * * *

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. We will consider only impairment(s) you say you have or about which we receive evidence. Before deciding that you are not disabled, we will develop your complete medical history (i.e., evidence from the records of your medical sources) covering at least the preceding 12 months, unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you in getting medical reports from your own medical sources when you give us permission to request them. Every reasonable effort means that we will make an initial request and, after 10 days, one followup request to your medical source to obtain the medical evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. The medical source will have 20 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances we may order a consultative examination while awaiting receipt of medical source evidence. If we ask you to do so, you must contact your medical sources to help us get the medical reports. If we ask you, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.)

7. Section 404.1513 is amended by revising paragraph (b)(6) and paragraph (c) to read as follows. The heading of paragraph (b) and (b) introductory text are republished.

**§ 404.1513 Medical evidence of your impairment.**

* * * * *

(b) *Medical reports.* Medical reports should include—

* * * * *

(6) Statements about what you can still do despite your impairment(s) based on the medical source's findings on the factors under paragraph (b) (1) through (5) of this section (except in statutory blindness claims, and disability claims for widows, widowers, and surviving divorced spouses). (See § 404.1527.)

(c) *Statements about what you can still do.* Statements about what you can still do (based on the medical source's findings on the factors under paragraph (b) (1) through (5) of this section) should describe—

(1) The medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the medical source's opinion about your ability to reason or make occupational, personal, or social adjustments. (See § 404.1527.)

* * * * *

8. The following center headings and new §§ 404.1519 through 404.1519u are added immediately after § 404.1518 to read as follows:

**Standards To Be Used in Determining When a Consultative Examination Will Be Obtained in Connection With Disability Determinations**

**§ 404.1519 The consultative examination.**

(a) *General.* A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating physician or psychologist, another source of record, or an independent source. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 404.1519a through § 404.1519f. Selection of the source for the examination will be consistent with the provisions of § 404.1503a.

(b) *Recontacting medical sources.* When evidence received from your treating physician or other medical sources is inadequate to allow us to determine whether you are disabled, additional information may be readily available from your treating physician or other medical sources in your record (that is, your case file) and must be obtained when significant to the disability determination. Whenever possible, this contact will be made by a physician since a direct doctor-to-doctor contact is very productive. Before purchasing an examination, therefore, every consideration will be given to whether the additional information needed is readily available from the

records of your medical treatment sources. (See § 404.1517(b) for reasons why more evidence may be needed and § 404.1593 for your obligation to have a consultative examination when we request it.)

**§ 404.1519a When we will purchase a consultative examination and how we will use it.**

(a)(1) *General.* The decision to purchase a consultative examination for you will be made after full consideration is given to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis, etc.) is readily available from the records of your medical sources. We will seek clarification from a medical source who has provided a report when that report contains a conflict or ambiguity, or does not contain all necessary information or when the information supplied is not based on objective evidence. We will not, however, seek clarification from a medical source when it is clear that the source either cannot or will not provide the necessary findings, or cannot reconcile a conflict or ambiguity in the findings provided from the source's records. Therefore, before purchasing a consultative examination, we will consider not only existing medical reports, but also the background report containing your allegations and information about your vocational background, as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will do this by comparing the persuasiveness and value of the evidence. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. In addition, other situations, such as one or more of the following, will normally require a consultative examination (these situations are not all-inclusive):

(1) The specific additional evidence needed for adjudication has been pinpointed and high probability exists for obtaining it through purchase.

(2) The additional evidence needed is not contained in the records of your treating sources.

(3) Evidence that may be needed from your treating or other medical sources cannot be obtained for reasons beyond your control, such as death or noncooperation of the medical source.

(4) Highly technical or specialized medical evidence which is needed is not available from your treating sources.

(5) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved.

(6) There is an indication of a change in your condition that is likely to affect your ability to function, but current severity is not documented.

(7) Information provided by any source appears not to be supported by objective evidence.

**§ 404.1519b When we will not purchase a consultative examination.**

A consultative examination will not be purchased in the following situations (these situations are not all-inclusive):

(a) In disability insurance benefit claims, when you do not meet the insured status requirement in the calendar quarter you allege you became disabled or later and there is no possibility of establishing an earlier onset.

(b) In disabled widow(er) benefit claims, when the alleged month of disability is after the end of the 7-year period specified in § 404.335(c)(1) and there is no possibility of establishing an earlier onset, or when the 7-year period expired in the past and all the medical evidence in your file establishes that you were not disabled on or before the expiration date.

(c) In disability insurance benefit claims, when insured status expired in the past and the medical evidence in your file establishes that you were not disabled on or before the expiration date.

(d) When any issues about the actual performance of substantial gainful activity or gainful activity have not been resolved.

(e) In childhood disability claims, when it is determined that your alleged childhood disability did not begin before the month of attainment of age 22. In this situation, you could not be entitled to benefits as a disabled child unless found disabled before age 22.

(f) When, on the basis of your allegations and all available medical reports in your case file, it is apparent that you do not have an impairment(s) which will have more than a minimal effect on your capacity to work.

(g) When you either have no medical source or your medical source refuses to provide a medical report and, in the adjudicator's judgment based on your allegations and observations, there is no reasonable likelihood of disability.

(h) Childhood disability claims filed concurrently with the number holder's claim and entitlement cannot be established for the number holder.

(i) Survivors childhood disability claims where entitlement is precluded based on nondisability factors.

**§ 404.1519e Purchase of consultative examinations at the reconsideration level.**

(a) When you request a review of our initial determination at the reconsideration level of review, consultative medical examinations will be obtained when needed, but not routinely. A consultative examination will not, if possible, be performed by the same physician or psychologist used in the initial claim.

(b) Where the evidence tends to substantiate an affirmation of the initial denial but you state that the treating physician or psychologist considers you disabled, we will consider obtaining a consultative examination from your physician or psychologist. This is to ensure that all relevant evidence has been obtained and that we have thoroughly reconsidered your claim.

**§ 404.1519f Securing medical evidence at the ALJ hearing level.**

(a) Where there is a conflict in the medical evidence at the hearing level of review before an administrative law judge (ALJ), the ALJ will try to resolve it by comparing the persuasiveness and value of the conflicting evidence. The ALJ's reasoning will be explained in the decision rationale. Where such resolution is not possible, the ALJ will secure additional medical evidence (e.g., clinical findings, laboratory tests, diagnosis, prognosis, etc.) to resolve the conflict. Even in the absence of a conflict, the ALJ will also secure additional medical evidence when the file does not contain clinical findings, laboratory tests, a diagnosis, or a prognosis necessary for a decision.

(b) Before requesting a consultative examination, the ALJ will ascertain whether the information is available as a result of a recent examination by any of your medical sources. If it is, the ALJ will request the evidence from that medical practitioner. If contact with the medical source is not productive for any reason, or if there is no recent examination by a medical source, the ALJ will obtain a consultative examination.

**Standards for the Type of Referral and for Report Content**

**§ 404.1519g Type of purchased examinations and selection of source.**

(a) The types of examinations and tests we purchase depend upon the additional evidence needed for the disability determination. We will purchase only the specific evidence needed. For example, if special tests (such as X-rays, blood studies, or EKG) will furnish the additional evidence needed for the disability determination, a more comprehensive medical examination will not be authorized.

(b) The physician or psychologist selected to do the examination or test must be qualified. The physician's or psychologist's qualifications must indicate that the physician or psychologist is currently licensed in the State and has the training and experience to perform the type of examination or test requested. The physician or psychologist may use support staff to help perform the examination. Any such support staff must meet appropriate licensing or certification requirements of the State. See also § 404.1503a.

**§ 404.1519h Your treating physician or psychologist.**

When in our judgment your treating physician or psychologist is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and furnishes complete and timely reports, your treating physician or psychologist will be selected to do the purchased examination. Even if only a supplemental test is required, your treating physician or psychologist is ordinarily the preferred source.

**§ 404.1519i Other sources for consultative examinations.**

In the following situations, a source other than your treating physician or psychologist will be used for a purchased examination or test (these situations are not all-inclusive):

(a) Your treating physician or psychologist prefers not to perform such an examination or does not have the equipment to provide the specific data needed, e.g., ventilatory studies are needed, and your physician does not wish to make arrangements to obtain these tests.

(b) There are conflicts or inconsistencies in your file which cannot be resolved by going back to your treating physician or psychologist.

(c) You prefer a source other than your treating physician or psychologist and have a good reason for your preference.

(d) We know from experience through previous purchase of evidence that your treating physician or psychologist may not be a productive source, e.g., does not provide complete or timely reports.

**§ 404.1519j Objections to the designated physician or psychologist.**

You or your representative may object to your being examined by a designated physician or psychologist. If there is a good reason for the objection, we will schedule the examination with another physician or psychologist. A good reason may be where the consultative examination physician or psychologist had previously represented an interest adverse to you. For example, the physician or psychologist may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider are: language barrier, office location of consultative examination physician or psychologist (2nd floor, no elevator, etc.), travel restrictions, and examination by the physician or psychologist in connection with a previous unfavorable determination. If the objection is because a physician or psychologist allegedly "lacks objectivity" (in general, but not in relation to you personally) we will review the allegations (see § 404.1519s). To avoid a delay in processing your claim, the consultative examination in your case will be changed to another physician or psychologist while a review is being conducted. Any objection to use of the substitute physician or psychologist will be handled in the same manner. However, if we previously conducted such a review and found that the reports of the consultative physician or psychologist in question conform to our guidelines, then we will not change your examination.

**§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.**

We may purchase medical examinations, X-rays and laboratory tests (including specialized tests such as pulmonary functions, EKGs, stress tests, etc.) from a licensed physician or psychologist, hospital or clinic. Psychiatric evaluations and psychological evaluations and tests are also included in this category.

(a) The rates of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar types of service. The State will determine the rates of payment to be used for purchasing such services. The amount of reimbursement to the physician provider will be the amount billed for the services or the rates of payment which the State uses for purchasing such services, whichever is lower.

(b) If a physician's bill, or a request for payment for a physician's services includes a charge for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the test was personally performed or supervised by the physician who submitted the bill (or for whose services the request for payment was made) or by another physician with whom that physician shares his or her practice, the payment will be based on the physician's usual and customary charge for the test or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount.

(2) If the bill or request for payment indicates that the test was performed by an independent laboratory, the amount of reimbursement will not exceed the billed cost of the service or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount. A nominal payment may be made to the physician for collecting, handling and shipping the specimen to the laboratory if the physician bills for such a service. The total reimbursement may not exceed the rates of payment which the State uses for purchasing such services.

(c) The State will assure that it can support the rates of payment it uses. The State shall also be responsible for monitoring and overseeing the rates of payment it uses to ensure compliance with paragraphs (a) and (b) of this section.

**§ 404.1519l Requesting examination by a specific physician, psychologist or institution—ALJ hearing level.**

In an unusual case, an ALJ may have reason to request an examination by a particular physician, psychologist or institution. Some examples include the following:

(a) Conflicts in the existing medical evidence require resolution by a recognized authority in a particular specialty;

(b) The impairment requires hospitalization for diagnostic purposes; ■

(c) Your treating physician or psychologist is in the best position to submit a meaningful report.

**§ 404.1519m Diagnostic surgical procedures.**

We will not order diagnostic surgical procedures such as myelograms and arteriograms for the evaluation of disability under the Social Security program. In addition, we will not order procedures such as cardiac catheterization and surgical biopsy. However, if any of these procedures have been performed as part of a workup by your treating physician or other medical source, the results may be secured and used to help evaluate an impairment(s)'s severity.

**§ 404.1519n Informing the examining physician or psychologist of examination scheduling and/or duration, report content and signature requirements.**

The physicians or psychologists who perform consultative examinations will have a good understanding of the Social Security disability program and their evidentiary role. They will be made fully aware of their responsibilities and obligations regarding confidentiality as described in § 401.105(e). Consulting physicians or psychologists will be fully informed at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician to take a case history and perform the examination (including any needed tests). The following scheduling intervals should be applied for examinations.

(1) General medical examination—at least 20 minutes;

(2) Comprehensive general medical examination—at least 30 minutes;

(3) Comprehensive musculoskeletal or neurological examination—at least 20 minutes;

(4) Comprehensive psychiatric examination—at least 40 minutes;

(5) Psychological examination—at least 60 minutes (Additional time may be required depending on types of psychological tests administered); and

(6) All others—at least 30 minutes or in accordance with accepted medical practices.

We recognize that actual practice will dictate that some examinations may be scheduled with greater or less frequency, depending on the circumstances in a particular situation. The purpose of these scheduling time frames is to ensure that such examinations are complete and that sufficient time is made available to obtain the information needed to make an accurate determination in your case. State agencies will monitor the scheduling of examinations to ensure that any overscheduling is avoided, as overscheduling may lead to examinations of so short a duration as to preclude the possibility of a thorough examination.

(b) *Report content.* The reported results of your medical history, examination, pertinent requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help us determine the nature, severity, duration of the impairment and residual functional capacity. Pertinent points in your medical history, such as a description of chest pain, will reflect your statements of your symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination will include the objective medical facts.

(c) *Elements of a complete examination.* A complete examination is one which involves all the elements of a standard examination in the applicable medical specialty. When a complete examination is involved, the report will include the following elements:

(1) Your major or chief complaint(s).

(2) A detailed description, within the area of specialty of the examination, of the history of your major complaint(s).

(3) A description, and disposition, of pertinent "positive," as well as "negative," detailed findings based on the history, examination and laboratory test related to the major complaint(s) and any other abnormalities reported or found during examination or laboratory testing.

(4) The results of laboratory and other tests (e.g., x-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of this Subpart P).

(5) The diagnosis and prognosis for your impairment(s).

(6) A statement as to what you can still do despite your impairment(s) (except in statutory blindness claims, and disability claims for widows, widowers, and surviving divorced spouses). This statement must describe the consultative physician's or psychologist's opinion concerning your ability, despite your impairment(s), to do basic work activities such as sitting, standing, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the consultative physician's or psychologist's opinion as to your ability to reason or make occupational, personal, or social adjustments.

(i) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, the major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(ii) When less than a complete examination is required (for example, a specific test or study is needed), not every element is required.

(d) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The examining physician's or psychologist's signature on a report annotated "not proofed" or "dictated but not read" is not acceptable. The physician's or psychologist's rubber stamp signature or the physician's or psychologist's signature entered by any other person is not acceptable.

**§ 404.1519o When a properly signed consultative examination report has not been received.**

The following explains what adjudicative action we take if a consultative examination report is received unsigned or improperly signed.

(a) *Adjudication without a properly signed report.* Cases involving only the types of determinations specified in paragraphs (a) (1) and (2) of this section will be adjudicated without waiting for a properly signed consultative examination report. A properly signed consultative examination report will be obtained after the disability

determination is made by us and included in the file. However, if the signature of the physician or psychologist who performed the original examination cannot be obtained because that physician or psychologist is deceased, the consultative examination will be rescheduled with another physician or psychologist.

(1) Continuous period of disability allowance with an onset date as alleged or earlier than alleged; or

(2) Continuance of disability.

(b) *Adjudication with a properly signed report.* We will not use an unsigned or improperly signed consultative examination report to make the types of determinations specified in paragraphs (b) (1), (2), (3), and (4) of this section. When needed for adjudication, a properly signed consultative examination report (including any supplement) must be obtained. If the signature of the physician or psychologist who performed the original examination cannot be obtained because that physician or psychologist is out of the country for an extended period of time, on an extended vacation, seriously ill, deceased, or cannot be contacted for any other reason, the consultative examination will be rescheduled with another physician or psychologist.

(1) Denial; or

(2) Cessation; or

(3) Period of disability allowance which has ended; or

(4) Allowance with an onset date later than alleged.

**§ 404.1519p Reviewing reports of consultative examinations.**

(a) We will review the report of the consultative examination to determine whether the specific information requested has been furnished. We will consider these factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decisionmaking in terms of the impairment it assesses.

(2) Whether the report is internally consistent. Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the physical findings. Whether the conclusions correlate the findings from your medical history, physical examination and laboratory tests and explain all abnormalities.

(3) Whether the report is consistent with the other information available to us within the specialty of the examination requested. Whether the report fails to mention an important or relevant complaint within that specialty that is noted on other evidence in the file (e.g., your blindness in one eye, amputations, flail limbs or claw hands, etc.).

(4) Whether this is an adequate report of examination as compared to standards set out in the course of a medical education.

(5) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, we will contact the examining consultative physician or psychologist, give an explanation of our evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) Where the examination discloses new diagnostic information or test results which are significant to your treatment, we will consider referral of the consultative examination report to your treating physician or psychologist.

(d) We will perform ongoing special management studies on the quality of consultative examinations purchased from major medical sources and the appropriateness of the examinations authorized.

(e) We will take steps to ensure that consultative examinations are scheduled only with medical sources who have the equipment required to provide an adequate assessment and record of the level of severity of your alleged impairments.

**§ 404.1519q Conflict of interest.**

All implications of possible conflict of interest between SSA medical consultants and their medical practices will be avoided. SSA medical consultants are not only those who work for us directly but also those who do review and adjudication work for us in the State agencies that make disability decisions for us. Our review physicians and psychologists will not perform consultative examinations for the Social Security disability programs without prior approval. In addition, they will not acquire or maintain, directly or indirectly, including any member of their families, any financial interest in a medical partnership or similar relationship in which consultative examinations are provided. Sometimes one of our review physicians or psychologists will have prior knowledge of a case (e.g., the claimant was a patient). Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on prior treatment or examination of the claimant.

**Authorizing and Monitoring the Referral Process Used**

**§ 404.1519s Authorizing and monitoring consultative examinations.**

We will ensure that referral for consultative examinations and the purchase of consultative examinations are made in accordance with our policies. We will also monitor both the referral process and the product of the consultative examinations obtained. This monitoring will include reviews by independent medical specialists under direct contract with SSA. The following rules apply:

(a) Day-to-day responsibility for the consultative examination process rests with the State agencies that make disability determinations for us.

(b) The State agency will maintain a good working relationship with the medical community in order to recruit sufficient physicians and other providers of medical services to ensure ready availability of consultative examination providers.

(c) The State agency administrator will work consistent with Federal and State laws to achieve appropriate rates of payment for purchased medical services.

**Procedures To Monitor the Consultative Examination**

**§ 404.1519t Consultative examination oversight.**

(a) Each State agency will be responsible for comprehensive oversight management of its consultative examination program with special emphasis on key providers.

(b) A key consultative examination provider is a provider meeting at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security disability programs of at least $100,000; or

(2) Any consultative examination provider where the practice of medicine (or osteopathy) is primarily directed towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers, by dollar volume, in the State as evidenced by prior year data.

(c) State agencies have flexibility in managing their consultative examination programs but at a minimum will provide:

(1) An ongoing active recruitment program for consultative examination providers;

(2) A process for orientation, training, and review of new consultative examination providers:

(3) Procedures for control of scheduling consultative examinations;

(4) Procedures to ensure that close attention is given to specific evaluation issues involved in each case. Medical or supervisory approval will be required for the authorization or purchase of a consultative examination. The agency will encourage active participation by physicians in the consultative examination oversight program;

(5) Procedures to ensure that only required examination and tests are authorized in accordance with the standards set forth in this subpart. No open-ended authorizations will be issued. Additional tests or studies at the request of the consulting physician must be authorized in the same way as described in paragraph (c)(4) of this section;

(6) Ongoing review of consultative examination results to ensure that written guidelines are met;

(7) Procedures for handling complaints;

(8) A systematic onsite review program of key providers that will include annual onsite reviews of such providers when claimants are present for examinations. This provision does not contemplate that such reviews will involve participation in the actual examination but rather offer an opportunity to talk with claimants at the provider's site before and after the examination and review the provider's overall on-line operation;

(9) Procedures for evaluating claimant reactions to key providers;

(d) We, through our regional offices, will undertake at least one comprehensive review of each State agency annually to evaluate the State's management of the consultative examination process. The review team will include our regional medical advisor or his regional physician delegate. The review will involve visits to key providers, with State staff participating, including a program physician when the visit will deal with medical techniques, judgment, or factors that go to the core of medical professionalism;

(e) The State agencies will cooperate with us and our regional offices when we conduct monitoring activities in connection with their oversight management of their consultative examination programs.

**§ 404.1519u Direct purchase of medical services across State lines.**

Where necessary, a State agency may use a medical source in a neighboring State for a consultative examination. In such cases, the State agency will notify the neighboring State agency. The State agency requesting the examination will use its fee schedule in determining the fee to be paid to the source unless the neighboring State agency objects. Where such situations arise, the State agency desiring the examination will ask the neighboring State agency to make the arrangements using the fee schedule of the neighboring State agency.

9. Section 404.1520 is amended by revising paragraph (a) to read as follows:

**§ 404.1520 Evaluation of disability in general.**

(a) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination whether you are disabled. When you file a claim for disability benefits, we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further. Finally, it is possible for you to be found disabled for a period of time in the past although you are not now disabled. (Once you have been found eligible to receive disability benefits, we follow a somewhat different order of evaluation to determine whether your eligibility continues, as explained in § 404.1594(f)(6).)

* * * * *

10. Section 404.1527 is revised to read as follows:

**§ 404.1527 Medical opinions about your impairment or disability by physicians, psychologists or other acceptable medical sources.**

(a) *General.* Under the statute, we are responsible for making the decision about whether you meet the statutory definition of disability. You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See § 404.1505.) Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See § 404.1508.) Except in cases of widows, widowers, and surviving divorced spouses, the decision as to whether you are disabled may involve more than medical considerations and we may have to consider such factors as age, education, and past work experience. Such vocational factors are not within the expertise of medical sources.

(b) *Medical opinions that are conclusive.* A medical opinion by a treating source will be conclusive as to the medical issues of the nature and severity of your impairment(s) where we find that (1) it is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) *Medical opinions that are not fully supported.* If an opinion by a treating source(s) is not fully supported, we will make every reasonable effort (i.e., an initial request and, after 10 days, one followup request) to obtain from your treating source(s) the relevant evidence that supports the medical opinion(s) before we make a determination as to whether you are disabled.

(d) *Inconsistent medical opinions.* Where we find that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, we must resolve the inconsistency. If necessary to resolve the inconsistency, we will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychologist. Our determination will be based on all the evidence in your case record, including the opinions of the medical sources. In resolving an inconsistency, we will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

**Example.**—In a case involving arthritis of the shoulder, where the X-rays confirm bony destruction, the examinations indicate minimal swelling and inflammation, but the treating source supplies evidence of greater restriction in the range of motion than found by the consultative physician, we will ask the treating source for further interpretation of

the range of motion studies. If the treating source supplies a reasonable explanation, e.g., that the individual's condition is subject to periods of exacerbation, the treating source's explanation will be given some extra weight over that of the consultative physician.

(e) *Medical opinions that will not be considered conclusive nor given extra weight.* We will not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability. Thus, opinions that the individual's impairment meets the Listing of Impairments in Appendix 1 of this Subpart, where the medical findings which are the basis for that conclusion would not meet the specific criteria applicable to the particular impairment as set out in the Listing, will not be conclusive nor given extra weight. Likewise, an opinion(s) as to the individual's residual functional capacity which is not in accord with regulatory requirements set forth in §§ 404.1545 and 404.1546 will not be conclusive nor given extra weight.

**Example 1.**—A medical opinion that an impairment meets listing 2.02, but the medical findings show that the individual's visual acuity in the better eye after best correction is 20/100, would not be conclusive nor would it be given extra weight since listing 2.02 requires that the remaining vision in the better eye after best correction be 20/200 or less.

**Example 2.** A medical opinion that the individual is limited to light work when the evidence shows that he or she can lift a maximum of 50 pounds and lift 25 pounds frequently will not be considered as conclusive nor given extra weight. This is because the individual's exertional capacity exceeds the criteria set forth in the regulations for light work.

11. Section 404.1545 is amended by revising paragraph (a) to read as follows:

**§ 404.1545 Your residual functional capacity.**

(a) *General.* Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in the following paragraphs; (b) physical abilities; (c) mental impairments, and (d) other impairments. A residual functional capacity assessment may include descriptions (even your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations in addition to those usually made during formal medical examinations may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities. This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 404.1560 through 404.1569, your vocational background is considered along with your residual functional capacity in arriving at a disability decision. In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 404.1594.

* * * * *

12. Section 404.1546 is revised to read as follows:

**§ 404.1546 Responsibility for assessing and determining residual functional capacity.**

The State agency medical consultants or other medical consultants designated by the Secretary are responsible for ensuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency medical consultant must assess residual functional capacity where it is required. This assessment is based on all of the evidence we have, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical consultant designated by the Secretary (see § 404.1545). For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 404.918, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the Administrative Law Judge or Appeals Council.

13. Section 404.1593 is revised to read as follows:

**§ 404.1593 Medical evidence in continuing disability review cases.**

(a) *General.* If you are entitled to cash benefits or if a period of disability has been established for you because you are disabled, we will have your case file with the supporting medical evidence previously used to establish or continue your entitlement. Generally, therefore, the medical evidence needed will be that required to make a current determination as to whether you are still disabled, as defined under the medical improvement review standard (see §§ 404.1579 and 404.1594).

(b) *Obtaining evidence from your medical sources.* You must give us reports from your physician, psychologist, or others who have treated or evaluated you, as well as any other evidence that will help us determine if you are still disabled (see § 404.1512). You must have a good reason for not giving us this information or we may find that your disability has ended (see § 404.1594(e)(2)). If we ask you, you must contact your medical sources to help us get the medical reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources. Every reasonable effort means that we will make an initial request and, after 10 days, one followup request to your medical source to obtain the medical evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. The medical source will have 20 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the preceding 12 months (see § 404.1512(b)).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled (see § 404.1517). We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 404 1519a through 404 1519f.

## PART 416—[AMENDED]

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Subpart I is revised to read as follows, and all other authority citations which appear throughout Subpart I are removed.

**Authority:** Secs. 1102, 1614, and 1631, of the Social Security Act, as amended, 42 U.S.C. 1302, 1382c, and 1383.

2. The Table of Contents for Subpart I is amended by adding an entry for § 416.903a, and by adding the following center headings and §§ 416.919 through 416.919u, to follow: § 416.918, to read as follows:

**Subpart I—Determining Disability and Blindness**

Sec.

* * * * *

416.903a Program integrity.

* * * * *

**Standards to be Used in Determining when a Consultative Examination will be obtained in Connection with Disability Determinations**

416.919 The consultative examination.
416.919a When we will purchase a consultative examination and how we will use it.
416.919b When we will not purchase a consultative examination.
416.919c Purchase of title XVI slight impairment examinations.
416.919e Purchase of the consultative examinations at the reconsideration level.
416.919f Securing medical evidence at the ALJ hearing level.

**Standards For the Type of Referral and For Report Content**

416.919g Type of purchased examinations and selection of source.
416.919h Your treating physician or psychologist.
416.919i Other sources for consultative examinations
416.919j Objections to the designated physician or psychologist.
416.919k Purchase of medical examinations, laboratory tests, and other services.
416.919l Requesting examination by a specific physician, psychologist or institution—ALJ hearing level.
416.919m Diagnostic surgical procedures.
416.919n Informing the examining physician or psychologist of examination scheduling and/or duration, report content and signature requirements.
416.919o When a properly signed consultative examination report has not been received.
416.919p Reviewing reports of consultative examinations.
416.919q Conflict of interest.

**Authorizing and Monitoring the Referral Process Used**

416.919s Authorizing and monitoring consultative examinations.

**Procedures to Monitor the Consultative Examination**

416.919t Consultative examination oversight.
416.919u Direct purchase of medical services across State lines.

* * * * *

3. Section 416.902 is revised to read as follows:

### § 416.902 General definitions and terms for this subpart.

As used in the subpart—

"Secretary" means the Secretary of Health and Human Services.

"State agency" means that agency of a State which has been designated by the State to carry out the disability determination function.

"Treating source" means your own physician or psychologist who has provided you with medical treatment or evaluation and who has an ongoing treatment relationship with you. "Source of record" means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have an ongoing treatment relationship with you. "Medical sources" refers to both treating sources and sources of record.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or is receiving benefits based on disability or blindness.

4. Section 416.903a is added to read as follows:

### § 416.903a Program integrity.

We will not use in our program any individual or entity who is excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted, under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is revoked or suspended by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such individual or entity for any activity described in this section or as a result of formal disciplinary proceedings. Also see §§ 416.919(a) and 416.919g(b).

### § 416.908 [Amended]

5. Section 416.908 is amended by adding the cross-reference "(see § 416.927)". at the end of the penultimate sentence.

6. Section 416.912 is amended by revising paragraph (b) to read as follows:

### § 416.912 Your responsibility to submit evidence.

* * * * *

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. We will consider only impairment(s) you say you have or about which we receive evidence. Before deciding that you are not disabled, we will develop your complete medical history (i.e., evidence from the records of your medical sources) covering at least the preceding 12 months, unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you in getting medical reports from your own medical sources when you give us permission to request them. Every reasonable effort means that we will make an initial request and, after 10 days, one followup request to your medical source to obtain the medical evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. The medical source will have 20 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances we may order a consultative examination while awaiting receipt of medical source evidence. If we ask you to do so, you must contact your medical sources to help us get the medical reports. If we ask you, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.)

7. Section 416.913 is amended by revising paragraph (b)(6) and paragraph (c) to read as follows the heading of paragraph (b) and (b) introductory text are republished.

**§ 416.913 Medical evidence of your impairment.**

* * * * *

(b) *Medical reports.* Medical reports should include—

* * * * *

(6) Statements about what you can still do despite your impairment(s) based on the medical source's findings on the factors under paragraph (b) (1) through (5) of this section (except in statutory blindness claims). (See § 416.927.)

(c) *Statements about what you can still do.* Statements about what you can still do (based on the medical source's findings on the factors under paragraph (b) (1) through (5) of this section) should describe—

(1) The medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the medical source's opinion about your ability to reason or make occupational, personal, or social adjustments. (See § 416.927.)

* * * * *

8. The following center headings and new §§ 416.919 through 416.919u are added immediately after § 416.918, to read as follows:

**Standards to be Used in Determining When a Consultative Examination Will be Obtained in Connection with Disability Determinations**

**§ 416.919 The consultative examination.**

(a) *General.* A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating physician or psychologist, another source of record, or an independent source. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 416.919a through § 416.919f. Selection of the source for the examination will be consistent with the provisions of § 416.903a.

(b) *Recontacting medical sources.* When evidence received from your treating physician or other medical sources is inadequate to allow us to determine whether you are disabled, additional information may be readily available from your treating physician or other medical sources in your record (that is, your case file) and must be obtained when significant to the disability determination. Whenever possible this contact will be made by a physician since a direct doctor-to-doctor contact is very productive. Before purchasing an examination, therefore, every consideration will be given to whether the additional information needed is readily available from the records of your medical sources. (See § 416.917(b) for reasons why more evidence may be needed and § 416.993 for your obligation to have a consultative examination when we request it.)

**§ 416.919a When we will purchase a consultative examination and how we will use it.**

(a) *General.* (1) The decision to purchase a consultative examination for you will be made after full consideration is given to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis, etc.) is readily available from the records of your medical sources. We will seek clarification from a medical source who has provided a report when that report contains a conflict or ambiguity, or does not contain all necessary information or when the information supplied is not based on objective evidence. We will not, however, seek clarification from a medical source when it is clear that the source either cannot or will not provide the necessary findings, or cannot reconcile a conflict or ambiguity in the findings provided from the source's records. Therefore, before purchasing a consultative examination, we will consider not only existing medical reports, but also the background report containing your allegations and information about your vocational background, as well as other pertinent evidence in your file.

(2) When we purchase a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. We will do this by comparing the persuasiveness and value of the evidence. We will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on your claim. In addition, other situations, such as one or more of the following, will normally require a consultative examination (these situations are not all-inclusive):

(1) The specific additional evidence needed for adjudication has been pinpointed and high probability exists for obtaining it through purchase.

(2) The additional evidence needed is not contained in the records of your treating sources.

(3) Evidence that may be needed from your treating or other medical sources cannot be obtained for reasons beyond your control such as death or noncooperation of the medial source.

(4) Highly technical or specialized medical evidence which is needed is not available from your treating sources.

(5) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved.

(6) There is an indication of a change in your condition that is likely to affect your ability to function, but current severity is not documented.

(7) Information provided by any source appears not to be supported by objective evidence.

**§ 416.919b When we will not purchase a consultative examination.**

A consultative examination will not be purchased in the following situations (these situations are not all-inclusive):

(a) When any issues about the actual performance of substantial gainful activity have not been resolved.

(b) When, on the basis of your allegations and all available medical reports in your case file, it is apparent that you do not have an impairment(s) which will have more than a minimal effect on your capacity to work.

(c) When you do not meet all of the nondisability requirements.

**§ 416.919c Purchase of title XVI slight impairment examinations.**

(a) You may have filed a title XVI disability claim even though there is no history of medical treatment and the alleged impairment is apparently slight. This situation may occur, for example, where a State or local welfare agency requires you to obtain a formal title XVI determination before it will authorize welfare payments to you. The procedures that follow may be applied by us in the development of such a case. The method of obtaining medical

evidence described in this section will be used by us only when:

(1) You have no history of medical examination or treatment or there is some existing medical evidence but it is not relevant; and

(2) Your impairment appears to be slight, based on the nature of the allegations and the observations of record.

(b) The absence of a medical examination or treatment is not, of itself, evidence of a slight impairment. An objective of this procedure, therefore, is to assure that you are given an opportunity to submit medical evidence at no personal expense. (Any doubt as to whether the impairment is slight will be resolved in favor of doing the usual development.) Alternatively, we will contact you for supplemental information before proceeding with the development.

(c) Essentially, we will ask you to have an appropriate medical examination (at our expense) and to have the report of the examination sent to us.

(d) You will be advised that:

(1) An examination is necessary in order to evaluate your current condition;

(2) We must receive evidence of this examination; and

(3) We will pay the costs involved.

(e) We will not ordinarily make an appointment for this examination. Rather, we will ask you to make arrangements for a medical examination. If we can furnish the names of physicians or psychologists near your residence who can be expected to give a relatively prompt appointment, we will do so. If you request assistance in making the appointment, we will make the necessary arrangements. Additionally, if you appear to be unable to prosecute your claim, we will help you.

(f) When we notify you that an examination is necessary, we will enclose with the notice a medical report form, a form for you to authorize release of the medical report to us, and a letter to the provider. The letter to the provider will explain the reason for the examination and provide your allegations as to complaints and symptoms. However, the alleged impairment will not be specified as that may direct the examination at a specific impairment. The letter to the provider will also point out that the report of the examination should contain adequate medical history and a physical examination to permit an independent determination by us concerning the nature, severity, and duration of your impairment. It may also be necessary to preauthorize certain minimal laboratory testing such as hematocrit, white blood cell and differential, and urinalysis. The provider will be advised to request, by telephone, authorization for additional laboratory tests he or she deems necessary. Finally, the letter will state the approximate fee we will pay for the examination. If only a slight impairment is involved, the report of such an examination will provide the evidence needed to make a determination.

(g) *Action after evidence is requested.* If we ask you to have an examination, you will be presumed able to obtain it unless there is evidence to the contrary. If we do not receive a report within a reasonable time, and there is no indication that you did not receive the request for evidence, we will decide the case on the evidence in file. Your claim may be denied at any point if you are uncooperative (see § 416.916) and there is no indication that you are unable, rather than unwilling, to provide the requested information.

### § 416.919e Purchase of consultative examinations at the reconsideration level.

(a) When you request a review of our initial denial determination at the reconsideration level of review, consultative medical examinations will be obtained when needed, but not routinely. A consultative examination will not, if possible, be performed by the same physician or psychologist used in the initial claim.

(b) Where the evidence tends to substantiate an affirmation of the initial denial but you state that the treating physician or psychologist considers you disabled, we will consider obtaining a consultative examination from your physician (or psychologist). This is to ensure that all relevant evidence has been obtained and that we have thoroughly reconsidered your claim.

### § 416.919f Securing medical evidence at the ALJ hearing level.

(a) Where there is a conflict in the medical evidence at the hearing level of review before an administrative law judge (ALJ), the ALJ will try to resolve it by comparing the persuasiveness and value of the conflicting evidence. The ALJ's reasoning will be explained in the decision rationale. Where such resolution is not possible, the ALJ will secure additional medical evidence (e.g., clinical findings, laboratory tests, diagnosis, prognosis, etc.) to resolve the conflict. Even in the absence of a conflict, the ALJ will also secure additional medical evidence when the file does not contain clinical findings, laboratory tests, a diagnosis, or a prognosis necessary for a decision.

(b) Before requesting a consultative examination, the ALJ will ascertain whether the information is available as a result of a recent examination by any of your medical sources. If it is, the ALJ will request the evidence from that medical practitioner. If contact with the medical source is not productive for any reason, or if there is no recent examination by a medical source, the ALJ will obtain a consultative examination.

## Standards for the Type of Referral and for Report Content

### § 416.919g Type of purchased examinations and selection of source.

(a) The types of examinations and tests we purchase depend upon the additional evidence needed for the disability determination. We will purchase only the specific evidence needed. For example, if special tests (such as X-ray, blood studies, or EKG) will furnish the additional evidence needed for the disability determination, a more comprehensive medical examination will not be authorized.

(b) The physician or psychologist selected to do the examination or test must be qualified. The physician's or psychologist's qualifications must indicate that the physician or psychologist is currently licensed in the State and has the training and experience to perform the type of examination or test requested. The physician or psychologist may use support staff to help perform the examination. Any such support staff must meet appropriate licensing or certification requirements of the State. See also § 416.903a.

### § 416.919h Your treating physician or psychologist.

When in our judgment your treating physician or psychologist is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and furnishes complete and timely reports, your treating physician or psychologist will be selected to do the purchased examination. Even if only a supplemental test is required, your treating physician or psychologist is ordinarily the preferred source.

### § 416.919i Other sources for consultative examinations.

In the following situations, a source other than your treating physician or psychologist will be used for a purchased examination or test (these situations are not all-inclusive):

(a) Your treating physician or psychologist prefers not to perform such

an examination or does not have the equipment to provide the specific data needed, e.g., ventilatory studies are needed, and your physician does not wish to make arrangements to obtain these tests.

(b) There are conflicts or inconsistencies in your file which cannot be resolved by going back to your treating physician or psychologist.

(c) You prefer a source other than your treating physician or psychologist and have a good reason for your preference.

(d) We know from experience through previous purchase of evidence that your treating physician or psychologist may not be a productive source, e.g., does not provide complete or timely reports.

**§ 416.919j Objections to the designated physician or psychologist.**

You or your representative may object to your being examined by a designated physician or psychologist. If there is a good reason for the objection, we will schedule the examination with another physician or psychologist. A good reason may be where the consultative examination physician or psychologist had previously represented an interest adverse to you. For example, the physician or psychologist may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider are: language barrier, office location of consultative examination physician or psychologist (2nd floor, no elevator, etc.), travel restrictions, and examination by the physician or psychologist in connection with a previous unfavorable determination. If the objection is because a physician or psychologist allegedly "lacks objectivity" (in general, but not in relation to you personnally) we will review the allegations (see § 416.919e). To avoid a delay in processing your claim, the consultative examination in your case will be changed to another physician or psychologist while a review is being conducted. Any objection to use of the substitute physician or psychologist will be handled in the same manner. However, if we previously conducted such a review and found that the reports of the consultative physician or psychologist in question conform to our guidelines, then we will not change your examination.

**§ 416.919k Purchase of medical examinations, laboratory tests and other services.**

We may purchase medical examinations, X-rays and laboratory tests (including specialized tests such as pulmonary functions, EKGs, stress tests, etc.) from a licensed physician or psychologist, hospital or clinic. Psychiatric evaluations and psychological evaluations and tests are also included in this category.

(a) The rates of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar types of service. The State will determine the rates of payment to be used for purchasing such services. The amount of reimbursement to the physician provider will be the amount billed for the services or the rates of payment which the State uses for purchasing such services, whichever is lower.

(b) If a physician's bill, or a request for payment for a physician's services includes a charge for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the test was personally performed or supervised by the physician who submitted the bill (or for whose services the request for payment was made) or by another physician with whom that physician shares his or her practice, the payment will be based on the physician's usual and customary charge for the test or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount.

(2) If the bill or request for payment indicates that the test was performed by an independent laboratory, the amount of reimbursement will not exceed the billed cost of the service or the rates of payment which the State uses for purchasing such services, whichever is the lesser amount. A nominal payment may be made to the physician for collecting, handling and shipping the specimen to the laboratory if the physician bills for such a service. The total reimbursement may not exceed the rates of payment which the State uses for purchasing such services.

(c) The State will assure that it can support the rates of payment it uses. The State shall also be responsible for monitoring and overseeing the rates of payment it uses to ensure compliance with paragraphs (a) and (b) of this section.

**§ 416.919l Requesting examination by a specific physician, psychologist or institution—ALJ hearing level.**

(a) In an unusual case, an ALJ may have reason to request an examination by a particular physician, psychologist or institution. Some examples include the following:

(1) Conflicts in the existing medical evidence require resolution by a recognized authority in a particular specialty;

(2) The impairment requires hospitalization for diagnostic purposes; or

(3) Your treating physician or psychologist is in the best position to submit a meaningful report.

**§ 416.919m Diagnostic surgical procedures.**

We will not order diagnostic surgical procedures such as myelograms and arteriograms for the evaluation of disability under the Social Security program. In addition, we will not order procedures such as cardiac catheterization and surgical biopsy. However, if any of these procedures have been performed as part of a workup by your treating physician or other medical source, the results may be secured and used to help evaluate an impairment(s)'s severity.

**§ 416.919n Informing the examining physician or psychologist of examination scheduling and/or duration, report content and signature requirements.**

The physicians or psychologists who perform consultative examinations will have a good understanding of the Social Security disability programs and their evidentiary role. They will be made fully aware of their responsibilities and obligations regarding confidentiality as described in § 401.105(e). Consulting physicians or psychologists will be fully informed at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician to take a case history and perform the examination (including any needed tests). The following scheduling intervals should be applied for examinations.

(1) General medical examination, at least 20 minutes;

(2) Comprehensive general medical examination, at least 30 minutes;

(3) Comprehensive musculoskeletal or neurological examination, at least 20 minutes;

(4) Comprehensive psychiatric examination, at least 40 minutes;

(5) Psychological examination, at least 60 minutes (Additional time may be required depending on types of psychological tests administered); and

(6) All others, at least 30 minutes or in accordance with accepted medical practices.

We recognize that actual practice will dictate that some examinations may be scheduled with greater or less frequency, depending on the circumstances in a particular situation. The purpose of these scheduling time frames is to ensure that such examinations are complete and that sufficient time is made available to obtain the information needed to make an accurate determination in your case. State agencies will monitor the scheduling of examinations to ensure that any overscheduling is avoided, as overscheduling may lead to examinations of so short a duration as to preclude the possibility of a thorough examination.

(b) *Report content.* The reported results of your medical history, examination, pertinent requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help us determine the nature, severity, duration of the impairment and residual functional capacity. Pertinent points in your medical history, such as a description of chest pain, will reflect your statements of your symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination will include the objective medical facts.

(c) *Elements of a complete examination.* A complete examination is one which involves all the elements of a standard examination in the applicable medical specialty. When a complete examination is involved, the report will include the following elements:

(1) Your major or chief complaint(s).

(2) A detailed description, within the area of specialty of the examination, of the history of your major complaint(s).

(3) A description, and disposition, of pertinent "positive," as well as "negative," detailed findings based on the history, examination and laboratory tests related to the major complaint(s) and any other abnormalities reported or found during examination or laboratory testing.

(4) The results of laboratory and other tests (e.g., X-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of Subpart P of Part 404).

(5) The diagnosis and prognosis for your impairment(s).

(6) A statement as to what you can still do despite your impairment(s) (except in statutory blindness claims). This statement must describe the consultative physician's or psychologist's opinion concerning your ability, despite your impairment(s), to do basic work activities such as sitting, standing, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the consultative physician's or psychologist's opinion as to your ability to reason or make occupational, personal, or social adjustments.

(i) In addition, the consultative physician or psychologist will consider, and provide some explanation or comment on, the major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the physician or psychologist who signs the report.

(ii) When less than a complete examination is required (for example, a specific test or study is needed), not every element is required.

(d) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory tests results. The examining physician's or psychologist's signature on a report annotated "not proofed" or "dictated but not read" is not acceptable. The physician's or psychologist's rubber stamp signature or the physician's or psychologist's signature entered by any other person is not acceptable.

**§ 416.919o When a properly signed consultative examination report has not been received.**

The following explains what adjudicative action we take if a consultative examination report is received unsigned or improperly signed.

(a) *Adjudication without a properly signed report.* Cases involving only the types of determinations specified in paragraphs (a) (1) and (2) of this section will be adjudicated without waiting for a properly signed consultative examination report. A properly signed consultative examination report will be obtained after the disability determination is made by us and included in the file. However, if the signature of the physician or psychologist who performed the original examination cannot be obtained because that physician or psychologist is deceased, the consultative examination will be rescheduled with another physician or psychologist.

(1) Continuous period of disability allowance with an onset date as the filing date or earlier than the filing date; or

(2) Continuance of disability.

(b) *Adjudication with a properly signed report.* We will not use an unsigned or improperly signed consultative examination report to make the types of determinations specified in paragraphs (b) (1), (2), (3), and (4) of this section. When needed for adjudication, a properly signed consultative examination report (including any supplement) must be obtained. If the signature of the physician or psychologist who performed the original examination cannot be obtained because that physician or psychologist is out of the country for an extended period of time, on an extended vacation, seriously ill, deceased, or cannot be contacted for any other reason, the consultative examination will be rescheduled with another physician or psychologist.

(1) Denial; or

(2) Cessation; or

(3) Period of disability allowance which has ended; or

(4) Allowance with an onset date later than the filing date.

**§ 416.919p Reviewing reports of consultative examinations.**

(a) We will review the report of the consultative examination to determine whether the specific information requested has been furnished. We will consider these factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate

basis for decisionmaking in terms of the impairment it assesses.

(2) Whether the report is internally consistent. Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the physical findings. Whether the conclusions correlate the findings from your medical history, physical examination and laboratory tests and explain all abnormalities.

(3) Whether the report is consistent with the other information available to us within the specialty of the examination requested. Whether the report fails to mention an important or relevant complaint within that specialty that is noted on other evidence in the file (e.g., your blindness in one eye, amputations, flail limbs or claw hands, etc.).

(4) Whether this is an adequate report of examination as compared to standards set out in the course of a medical education.

(5) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, we will contact the examining consultative physician or psychologist, give an explanation of our evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) Where the examination discloses new diagnostic information or test results which are significant to your treatment, we will consider referral of the consultative examination report to your treating physician or psychologist.

(d) We will perform ongoing special management studies on the quality of consultative examinations purchased from major medical sources and the appropriateness of the examinations authorized.

(e) We will take steps to ensure that consultative examinations are scheduled only with medical sources who have the equipment required to provide an adequate assessment and record of the level of severity of your alleged impairments.

**§ 416.919q Conflict of interest.**

All implications of possible conflict of interest between SSA medical consultants and their medical practices will be avoided. SSA medical consultants are not only those who work for us directly but also those who do review and adjudication work for us in the State agencies that make disability decisions for us. Our review physicians and psychologists will not perform consultative examinations for the Social Security disability programs without prior approval. In addition, they will not acquire or maintain, directly or indirectly, including any member of their families, any financial interest in a medical partnership or similar relationship in which consultative examinations are provided. Sometimes one of our review physicians or psychologists will have prior knowledge of a case (e.g., the claimant was a patient). Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on prior treatment or examination of the claimant.

**Authorizing and Monitoring the Referral Process Used**

**§ 416.919s Authorizing and monitoring consultative examinations.**

We will ensure that referral for consultative examinations and the purchase of consultative examinations are made in accordance with our policies. We will also monitor both the referral process and the product of the consultative examinations obtained. This monitoring will include reviews by independent medical specialists under direct contract with SSA. The following rules apply:

(a) Day-to-day responsibility for the consultative examination process rests with the State agencies that make disability determinations for us.

(b) The State agency will maintain a good working relationship with the medical community in order to recruit sufficient physicians and other providers of medical services to ensure ready availability of consultative examination providers.

(c) The State agency administrator will work consistent with Federal and State laws to achieve appropriate rates of payment for purchased medical services.

**Procedures To Monitor the Consultative Examination**

**§ 416.919t Consultative examination oversight.**

(a) Each State agency will be responsible for comprehensive oversight management of its consultative examination program with special emphasis on key providers.

(b) A key consultative examination provider is a provider meeting at least one of the following conditions:

(1) Any consultative examination provider with an estimated annual billing to the Social Security disability programs of at least $100,000; or

(2) Any consultative examination provider where the practice of medicine (or osteopathy) is primarily directed towards evaluation examinations rather than the treatment of patients; or

(3) Any consultative examination provider that does not meet the above criteria, but is one of the top five consultative examination providers, by dollar volume, in the State as evidenced by prior year data.

(c) State agencies have flexibility in managing their consultative examination programs but at a minimum will provide:

(1) An ongoing active recruitment program for consultative examination providers;

(2) A process for orientation, training, and review of new consultative examination providers;

(3) Procedures for control of scheduling consultative examinations;

(4) Procedures to ensure that close attention is given to specific evaluation issues involved in each case. Medical or supervisory approval will be required for the authorization or purchase of a consultative examination. The agency will encourage active participation by physicians in the consultative examination oversight program;

(5) Procedures to ensure that only required examination and tests are authorized in accordance with the standards set forth in this subpart. No open-ended authorizations will be issued. Additional tests or studies at the request of the consulting physician must be authorized in the same way as described in paragraph (c)(4) of this section;

(6) Ongoing review of consultative examination results to ensure that written guidelines are met;

(7) Procedures for handling complaints;

(8) A systematic onsite review program of key providers that will include annual onsite reviews of such providers when claimants are present for examinations. This provision does not contemplate that such reviews will involve participation in the actual examination but rather offer an opportunity to talk with claimants at the provider's site before and after the examination and review the provider's overall on-line operation;

(9) Procedures for evaluating claimant reactions to key providers;

(d) We, through our regional offices, will undertake at least one comprehensive review of each State agency annually to evaluate the State's management of the consultative examination process. The review team will include our regional medical advisor or his regional physician delegate. The review will involve visits to key providers, with State staff

participating, including a program physician when the visit will deal with medical techniques, judgment, or factors that go to the core of medical professionalism;

(e) The State agencies will cooperate with us and our regional offices when we conduct monitoring activities in connection with their oversight management of their consultative examination programs.

**§ 416.919u Direct purchase of medical services across State lines.**

Where necessary, a State agency may use a medical source in a neighboring State for a consultative examination. In such cases, the State agency will notify the neighboring State agency. The State agency requesting the examination will use its fee schedule in determining the fee to be paid to the source unless the neighboring State agency objects. Where such situations arise, the State agency desiring the examination will ask the neighboring State agency to make the arrangements using the fee schedule of the neighboring State agency.

9. Section 416.920 is amended by revising paragraph (a) to read as follows:

**§ 416.920 Evaluation of disability in general.**

(a) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination whether you are disabled. When you file a claim for disability benefits we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further. (Once you have been found eligible to receive disability or blindness benefits, we follow a somewhat different order of evaluation to determine whether your eligibility continues as explained in §§ 416.986 and 416.994.)

* * * * *

10. Section 416.927 is revised to read as follows:

**§ 416.927 Medical opinions about your impairment or disability or blindness by physicians, psychologists or other acceptable medical sources.**

(a) *General.* Under the statute, we are responsible for making the decision about whether you meet the statutory definition of disability. You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See § 416.905). Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See § 416.908). Except in cases of children, the decision as to whether you are disabled may involve more than medical considerations and we may have to consider such factors as age, education, and past work experience. Such vocational factors are not within the expertise of medical sources. Also, you can only be found blind if you meet the statutory definition of blindness (see §§ 416.981 through 416.986).

(b) *Medical opinions that are conclusive.* A medical opinion by a treating source will be conclusive as to the medical issues of the nature and severity of your impairment(s) where we find that: (1) It is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) *Medical opinions that are not fully supported.* If an opinion by a treating source(s) is not fully supported, we will make every reasonable effort (i.e., an initial request and, after 10 days, one followup request) to obtain from your treating source(s) the relevant evidence that supports the medical opinion(s) before we make a determination as to whether you are disabled.

(d) *Inconsistent medical opinions.* Where we find that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, we must resolve the inconsistency. If necessary to resolve the inconsistency, we will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychologist. Our determination will be based on all the evidence in your case record, including the opinions of the medical sources. In resolving an inconsistency, we will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

**Example.**—In a case involving arthritis of the shoulder, where the X-rays confirm bony destruction, the examinations indicate minimal swelling and inflammation, but the treating source supplies evidence of greater restriction in the range of motion than found by the consultative physician, we will ask the treating source for further interpretation of the range of motion studies. If the treating source supplies a reasonable explanation, e.g., that the individual's condition is subject to periods of exacerbation, the treating source's explanation will be given some extra weight over that of the consultative physician.

(e) *Medical opinions that will not be considered conclusive nor given extra weight.* We will not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability. Thus, opinions that the individual's impairment meets the Listing of Impairments in Appendix 1 of Subpart P of Part 404 of this chapter, where the medical findings which are the basis for that conclusion would not meet the specific criteria applicable to the particular impairment as set out in the Listing, will not be conclusive nor given extra weight. Likewise, an opinion(s) as to the individual's residual functional capacity which is not in accord with regulatory requirements set forth in §§ 416.945 and 416.946 will not be conclusive nor given extra weight.

**Example 1.**—A medical opinion that an impairment meets listing 2.02, but the medical findings show that the individual's visual acuity in the better eye after best correction is 20/100, would not be conclusive nor would it be given extra weight since listing 2.02 requires that the remaining vision in the better eye after best correction be 20/200 or less.

**Example 2.**—A medical opinion that the individual is limited to light work when the evidence shows that he or she can lift a maximum of 50 pounds and lift 25 pounds frequently will not be considered as conclusive nor given extra weight. This is because the individual's exertional capacity exceeds the criteria set forth in the regulations for light work.

11. Section 416.945 is amended by revising paragraph (a) to read as follows:

**§ 416.945 Your residual functional capacity.**

(a) *General.* Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations. If you have more than one impairment, we will consider all of your impairments of which we are aware. We consider your capacity for various functions as described in the following paragraphs; (b) physical abilities; (c) mental impairments, and (d) other impairments. A residual functional capacity assessment may include descriptions (even your own) of limitations that go beyond the symptoms that are important in the diagnosis and treatment of your medical condition. Observations of your work limitations in addition to those usually made during formal medical examinations may also be used. These descriptions and observations, when used, must be considered along with the rest of your medical record to enable us to decide to what extent your impairment(s) keeps you from performing particular work activities.

This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s). Then, using the guidelines in §§ 416.960 through 416.969, your vocational background is considered along with your residual functional capacity in arriving at a disability decision. In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement you have experienced is related to your ability to work as discussed in § 416.994(b).

* * * * *

12. Section 416.946 is revised to read as follows:

**§ 416.946 Responsibility for assessing and determining residual functional capacity.**

The State agency medical consultants or other medical consultants designated by the Secretary are responsible for ensuring that the agency makes a decision about your residual functional capacity. In cases where the State agency makes the disability determination, a State agency medical consultant must assess residual functional capacity where it is required. This assessment is based on all of the evidence we have, including any statements regarding what you can still do, that have been provided by treating or examining physicians, consultative physicians, or any other medical consultant designated by the Secretary (see § 416.945). For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer, or, if the disability hearing officer's reconsidered determination is changed under § 416.1418, with the Director of the Office of Disability Hearings or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for deciding your residual functional capacity rests with the Administrative Law Judge or Appeals Council.

13. Section 416.993 is revised to read as follows:

**§ 416.993 Medical evidence in continuing disability review cases.**

(a) *General.* If you are entitled to payments because you are disabled or blind, we will have your case file with the supporting medical evidence previously used to establish or continue your entitlement. Generally, therefore, the medical evidence needed will be that required to make a current determination as to whether you are still disabled, as defined under the medical improvement review standard (see § 416.994), or blind (see §§ 416.981 and 416.986).

(b) *Obtaining evidence from your medical sources.* You must give us reports from your physician, psychologist, or others who have evaluated you, as well as any other evidence that will help us determine if you are still disabled (see § 416.912). You must have a good reason for not giving us this information or we may find that your disability has ended (see § 416.994(b)(4)(ii)). If we ask you, you must contact your medical sources to help us get the reports. We will make every reasonable effort to help you in getting medical reports when you give us permission to request them from your physician, psychologist, or other medical sources. Every reasonable effort means that we will make an initial request and, after 10 days, one followup request to your medical source to obtain the medical evidence necessary to make a determination before we evaluate medical evidence obtained from another source on a consultative basis. The medical source will have 20 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability or blindness has ended, we will develop a complete medical history covering at least the preceding 12 months (see § 416.912(b)).

(c) *When we will purchase a consultative examination.* A consultative examination may be purchased when we need additional evidence to determine whether or not your disability or blindness continues. As a result, we may ask you, upon our request and reasonable notice, to undergo consultative examinations and tests to help us determine if you are still disabled or blind (see § 416.917). We will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 416.919a through 416.919f.

[FR Doc. 87-8524 Filed 4-17-87; 8:45 am]
BILLING CODE 4190-11-M

BEST COPY AVAILABLE

Federal Register

Monday
April 20, 1987

Part III

# Department of Transportation

**Research and Special Programs Administration**

**49 CFR Part 107, et al.**

**Transportation of Hazardous Materials; Miscellaneous Amendments; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Parts 107, 171, 172, 173, 174, 176, 177, 178, and 179**

**[Docket No. HM-166U; Amdt. No. 107-16, 171-93, 172-109, 173-201, 174-63, 172-26, 177-70, 178-88, and 179-40]**

# Transportation of Hazardous Materials; Miscellaneous Amendments

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action is being taken to incorporate into the Department's Hazardous Materials Regulations a number of changes based on petitions from industry and initiation within the Department. This action is necessary to update the regulations, to eliminate the need for DOT approvals, and to reduce RSPA's backlog of rulemaking petitions.

The amendments in this rulemaking are intended primarily to reduce government regulations and paperwork, and to clarify existing regulations.

**EFFECTIVE DATE:** This amendment is effective May 18, 1987, except for § 172.519(b)(2) and (b)(4) which will be effective May 18, 1988. However, compliance with the regulations as amended herein, is authorized as of April 20, 1987. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Washington, DC 20590, (202) 366-4488.

**SUPPLEMENTARY INFORMATION:** On June 3, 1986, the RSPA published a Notice of Proposed Rulemaking, Docket No. HM-166U; Notice No. 86-3 (51 FR 19866), which proposed a number of miscellaneous amendments to the Hazardous Materials Regulations. Notice 86-3 included a brief statement regarding each proposal and invited public comment prior to the closing date of July 31, 1986. On July 30, 1986 the RSPA published a notice (51 FR 27223) which extended the deadline date for filing comments to September 4, 1986.

The RSPA received sixty comments regarding the proposed rulemaking. The majority of commenters expressed support for the proposals. A few commenters suggested certain changes for improving specific aspects of the rulemaking. Four commenters offered certain changes. Listed below is a section by section summary of the amendments along with a summary of the comments and RSPA's comments why the recommended changes were or were not adopted:

A. Part 107

In appendix A to Subpart B, the address under "Motor Carriers" is changed because effective October 1, 1986, the Bureau of Motor Carrier Safety (BMCS) was disbanded and reorganized under the Associate Administrator for Motor Carriers. For this reason, the reference to BMCS is changed to the new title in Part 173 and Part 177.

B. Part 171

1. In § 171.7, paragraph (c)(1) is revised to update the latest ASME Code Reference.

2. Paragraph (d)(2) is amended by changing "1982" to read "1985".

3. Paragraph (d)(3)(ii) is amended by changing "1975" to read "1984".

4. Paragraph (d)(3)(iii) is amended by changing the title and "1971" to read "1983".

5. Paragraph (d)(3)(iv) is amended by changing "1972" to read "1985".

6. Paragraph (d)(3)(ix) is amended by changing "1977" to read "1985".

7. Paragraph (d)(1) is revised and paragraphs (d)(3)(x), (d)(3)(xi) and (d)(3)(xii) are added based on a petition from the Compressed Gas Association. These changes were not included in the notice of proposed rulemaking. However, since these changes are only updating the regulation, public notice is not considered necessary.

8. Four commenters responded to the proposed change to § 171.7(d)(5) and § 171.8 regarding ASTM D 4359-84 "Standard Test Method for Determining Whether A Material is a Liquid or a Solid". Although there were no serious objections to the proposed change there was concern that ASTM D 4359-84 may not be a suitable guide for determining whether a material meets the definition of a liquid or a solid. One commenter was concerned that they may find themselves in a position of having to try and comply with three different methods for determining if a material should be treated as a liquid or solid. RSPA believes that the proposed changes should be added as proposed. We believe that any problems that arise as a result of specifying this method will be outweighed by the benefits of its adoption. For this reason, paragraph (d)(5)(xxxiv) has been added as proposed.

In § 171.12, the introductory text of paragraph (a) is amended by changing the reference to "§ 173.12(a)" to read "§ 171.12a".

C. Part 172

In § 172.101 the Table is amended as follows:

1. The entry *"1-Bromo-3-nitrobenzene (unstable at 56°C)"* has been removed.

2. The entry "Compound, water treatment, liquid. *See* Water treatment, liquid" is removed.

3. The entry "Ethylene dibromide (RQ-1000/454) is revised by changing the hazard class, label, and packaging section references.

4. An entry for "Ethyl phosphonothioic dichloride, anhydrous" is reinstated.

5. The hazard class for "Ethylene glycol diethyl ether (diethyl cellosolve)" is changed from "Combustible liquid" to "Flammable liquid".

6. The entry "Gasohol (*gasoline mixed with ethyl alcohol*) *See* Gasoline" is revised to read "Gasohol (*gasoline mixed with ethyl alcohol containing 20% maximum alcohol) See* Gasoline". Also, § 172.336 (c)(4) and (c)(5) are revised as proposed.

7. The ID number of "Ink", Combustible liquid, is changed from "UN2867" to "UN1210".

8. The entry "Air, refrigerated liquid (cryogenic liquid)" has been added as proposed.

9. The proposed entry for "Aluminum alkyl" and "Aluminum alkyl halide" is not included in this rulemaking as proposed. On July 15, 1986, RSPA published an emergency final rule (51 FR 25639) which added paragraph (a)(1) to § 172.102. In view of that action, the proposed change for these two entries has been withdrawn.

10. Paragraph (a)(4) in § 172.202 is revised to require the unit of measure to be identified on the shipping paper. To be consistent with this revision, § 172.202(c)(1) has also been revised.

11. Footnote 8 of Table 2 in § 172.504 is amended to authorize the use of an Oxygen placard in order to eliminate the need for dual placarding.

12. Six commenters responded to the proposed change to § 172.519(b)(2) and (b)(4). One commenter recommended that the proposed weight of 200 pounds per ream be reduced to 165 (175 nominal) pounds per ream based on comparative studies of different placards. Two commenters supported the proposal and two recommended the matter be handled in a separate rulemaking. Upon further consideration of the matter, including an inquiry made to a supplier of placards, RSPA believes the proposed weight should be adjusted based on satisfactory experience with waterproofed placards having a weight

less than 200 pounds per ream. A 175 minimum weight is being adopted with credit for the weight of waterproofing materials included. Placard manufacturers may produce placards from stock having a weight per ream below 175 pounds if they determine the weight per sheet would be 175 pounds with the waterproofing material added. RSPA does not agree that this matter requires a separate rulemaking action and will monitor the performance of placards produced according to this rule to determine if further action is needed.

D. Part 173

1. Paragraph (b)(4) of § 173.11 is revised, as proposed, to require a shipper to identify the type of packaging on the registration statement.

2. Paragraph (b)(2) of § 173.12 is revised to require the open-head polyethylene drum to pass the same drop test as specified for the fiber drum.

3. The California Highway Patrol recommended that the introductory text of § 173.25(c) which reads "Hazardous materials classed Poison B" be changed to be consistent with § 177.841(e). RSPA agrees with this commenter and has revised the introductory text to read "Hazardous materials which are required to be labeled Poison".

4. In § 173.31, Retest Table 2 is amended by adding DOT Specification 110A600–W multi-unit tank car tanks.

5. Eleven commenters raised questions regarding portable tanks and the proposed amendments to §§ 173.32(a) and 173.32c. Several of the commenters raised questions which will require RSPA to spend a considerable amount of time in order to reach a decision. Since this rulemaking is already several weeks behind its anticipated publication date, RSPA has withdrawn the proposed changes to § 173.32(a) and § 172.32c from this rulemaking and will include them in a separate rulemaking in the near future.

6. In § 173.33, paragraph (d)(13) has been amended by changing "Director, Regional Motor Carrier Safety Office" to read "Regional Director of Motor Carrier Safety".

7. Included in this rulemaking, but not included in the notice, is an amendment in § 173.34(e)(8) to increase the number of pounds of water capacity from ten to twelve. This amendment is necessary in order to bring the maximum size in line with the 4B240ET specification.

8. Paragraph (g) in § 173.51 is amended to include a reference to 14 CFR 108.11.

9. Paragraph (b) in § 173.57 is removed as proposed.

10. An editorial correction is made in § 173.81(b) in order for the package marking to coincide with the § 172.101 Table.

11. Seven commenters supported the proposed change to § 173.86(h) and (i) which would eliminate costly and redundant data accumulation and testing of a material which represents a minimal hazard.

12. The introductory text of § 173.87 is revised to provide an exception to the Department of Defense (DOD) for shipments made under the provisions of § 173.7(a).

13. One commenter supported the proposed change to § 173.93(a)(2) which will eliminate some of the burden on shippers of smokeless powder for small arms.

14. Editorial corrections are made in § 173.104(c) to make the making requirements the same as the proper shipping name listed in the § 172.101 Table.

15. The use of DOT Specification 17C metal drums in § 173.122(a)(4) for the packaging of acrolein, inhibited is removed as proposed.

16. In § 173.164(a)(2), Specification 17C drums is added for the packaging of chromic acid or chromic acid mixture, dry.

17. RSPA received two comments regarding the co-mingling of inside boxes of smokeless powder under the provisions of § 173.197a. One commenter recommended that the net weight of smokeless powder in one box be increased from 16 pounds to 32 pounds. The commenter suggested this increase based on shipping experience under a Bureau of Explosives approval and a DOT exemption. RSPA does not agree that the net weight should be increased because the proposed change is to authorize the co-mingling of inside boxes without further approval. The B of E approval and the DOT exemption were not issued to provide for mixing different powders in one outside package.

18. The proposed change to § 173.220 to authorize the use of fiberboard boxes with inside polyethylene bags for packaging magnesium or zirconium scrap consisting of borings, shavings, or turnings is adopted as proposed.

19. The proposed change for "§173.245(a)" Note 2 should have read "§ 173.245a" Note 2. Although the proposed change was based on an AAR petition they have stated that the proposed amendment still does not authorize the presence of cobalt. Based upon their comments and upon further consideration, RSPA has revised the last sentence of Note 2 to reference ASTM B162–80 which counts cobalt as nickel. The same change has been made in §§173.253(a)(7); 173.271(a)(9); 173.294(a)(2), (a)(3) and (b); 179.202–8; 179.202–11 and 179.202–16 and will not be repeated in each of these referenced sections.

20. In § 173.262(b)(4) reference to "§ 178.353–5" is corrected to read "§ 178.343–5".

21. In § 173.266, paragraph (f)(2) is revised to provide for the proper identification plate marking for stainless steel cargo tanks.

22. Paragraph (d)(1) in § 173.277 has been removed.

23. The proposed amendment to § 173.300(a) to clarify that a cryogenic liquid is subject to regulation without regard to the pressure in the container is withdrawn. Two commenters stated that the proposed amendment would present a hardship to distributors of atmospheric cryogenic liquids and cryogenic helium, at pressures below 25.3 psig. Upon further consideration, RSPA agrees with these commenters and withdraws the proposed amendment.

24. The proposed change to § 173.301(k) to not require the outside packaging to provide valve protection if the cylinder has a protective collar or neck ring is adopted.

25. Paragraph § 173.302(a)(5)(iv) is revised by removing the restriction of a maximum 3000 psi marked service pressure on 3AL cylinders used in oxygen service.

26. The Table in § 173.304(a)(2) is amended by authorizing the use of (1) DOT–3AL1800 cylinders for carbon dioxide and (2) DOT–4BW225 for the transportation of sulfur dioxide.

27. In Note 6 of § 173.314(c) the figure "¾" is changed to read "82.5".

28. In § 173.315 paragraph (c) is revised to correct an omission that was made in Docket HM–115 on June 16, 1983.

29. In § 173.316, the Table in paragraph (c)(2) is revised to provide filling limits for "air, refrigerated liquid".

30. In § 173.318, paragraph (b) is revised to require the use of a primary and a secondary system of pressure relief devices on cargo tanks used in certain cryogenic service. With the exception of paragraphs (b)(3) and (b)(5), all of paragraph (b) is revised and rearranged for clarity. Paragraphs (b)(3) and (b)(5) are now paragraphs (b)(9) and (b)(10), respectively. Paragraphs (f)(2) and (f)(3) have been amended to provide filling limits for "air, refrigerated liquid" and to increase the filling limit authorized for "hydrogen" when transported in cargo tanks.

31. Except for minor editorial changes, the proposed changes to § 173.320 is adopted.

32. Section 173.965 *Cotton and other fibers,* is added as proposed.

**E. Part 174**

The proposed change in § 174.9(b) regarding whether heater coil inlet and outlet pipes "must" or "may" be left open for drainage is withdrawn. Based upon the data from the Federal Railroad Administration, RSPA agrees that the pipes "must" be left open for drainage and for airing out which helps to prevent rusting within the coils.

**F. Part 176**

In § 176.76, paragraph (g)(2) is added to authorize small passenger vessels of 100 gross tons, or less, to carry a hazardous material in a portable tank under certain conditions.

**G. Part 177**

1. In § 177.814, paragraph (b) is amended by changing "Director, Regional Motor Carrier Safety Office" and "Director of Regional Motor Carrier Safety Office" to read "Regional Director of Motor Carrier Safety". Also, a similar change is made in § 177.824(f) and § 177.824(f)(2).

2. Nineteen commenters supported the removal of paragraph (k) in § 177.834 which pertains to access to mixed ladings. The paragraphs is removed as proposed, and references to it in §§ 177.835, 177.837, 177.838, 177.839, 177.840 and 177.841 are corrected.

3. Five commenters supported the proposed change to § 177.841(e) to prohibit a motor carrier from carrying poisons or irritating materials in the passenger compartment of a motor vehicle. One commenter suggested that the wording be amended to include sleeper berth. RSPA agrees with this commenter and has revised the sentence accordingly.

4. One commenter agreed with the proposed change in § 177.848(b). However, he also suggested that a new paragraph be added in § 172.203(m) to require additional information to be added on the shipping paper. RSPA believes that this suggested change goes beyond the scope of this rulemaking. Also, the suggested wording may be controversial. For these reasons, the commenters suggestion is not adopted.

**H. Part 178**

1. A change to § 178.38–10(c) is included in this final rule to eliminate confusion due to the fact that there are optional test pressures authorized in the hydrostatic test prescribed in § 178.38–14. Good design and performance is assured by using two times the service pressure in the formula instead of three times the service pressure.

2. In § 178.42–14, the introductory text of paragraph (a) is revised to specifically state the location where the marking requirements must be on a DOT Specification 3E cylinder.

3. The proposed changes to correct and update the DOT–3AL Specification (§ 178.46) are incorporated, as proposed.

4. In § 178.51–10(d) and § 178.61–10(b) the ratio of tangential length to outside diameter is revised to read "4.1" instead of "4.0".

5. A correction is made in § 178.53–9(a) by changing "0.40" to read "0.04".

6. Section 178.54 for 4B240–FLW cylinders is removed from Part 178. Part 173 will continue to authorize the use of these cylinders.

7. In § 178.245–1, the introductory text of paragraph (a) is revised to bring the specification for DOT–51 tanks in line with the MC 331 and MC 338 specifications.

8. Docket HM–166T changed the words "tank motor vehicle" to read "cargo tank" in several sections in Part 178. However, as pointed out by the California Highway Patrol, the words "tank motor vehicle" makes better sense in § 178.337–1(d) and § 178.337–13(b). RSPA agrees and these two sections are revised accordingly.

**I. Part 179**

1. An editorial change is made in § 179.100–13(a) by removing the word "directly" in the second sentence.

2. The proposed changes regarding bottom outlets and fittings in § 179.100–14(a)(1) and § 179.100–14(a)(3) are adopted, as proposed.

3. The proposed change in § 179.102–2(a)(3) to allow the use of a new insulation package for chlorine tank cars is adopted.

4. The proposed revision to § 179.102–13 has been withdrawn as requested by the petitioner. The AAR stated that they believe the requirements for hydrogen fluoride tank cars now are adequately covered by the AAR's Specification for Tank Cars, § 2.1.7. Since the time the AAR submitted its petition, they have worked wth the CMA on improving the proposed specification and § 2.1.7 incorporates the improvements.

5. The proposed revisions to § 179.103–5(b)(1) and (b)(4) were based on a petition by the AAR. RSPA proposed in the last sentence of § 179.103–5(b)(1) that the permanent attachment of supplementary exterior fittings be approved by the Director, Office of Hazardous Materials Transportation. RSPA is well aware of the approval authority by the AAR Committee on Tank Cars in Part 179 of 49 CFR. Requiring RSPA approval in this particular section was an error on our part and § 179.103–5(b)(1) has been amended by changing "approved by the Director, Office of Hazardous Materials Transportation" to read "approved by the AAR Committee on Tank Cars".

6. No objections were received regarding the proposal to clarify the heading in each of the Tables in § 179.200–7. However, the AAR requested that the same change be made in § 179.220–7. RSPA agrees with this commenter and has revised § 179.220–7 accordingly.

7. The proposed revision of § 179.200–13 was intended to clarify the present discrepancies in the nozzle-to-tank joints between pressure tank car tanks and non-pressure tank car tanks. The AAR, upon further consideration, has requested a few editorial changes. RSPA has revised § 179.200–13 as requested.

8. The proposed changes to § 179.200–17 were suggested by the AAR and were intended to clarify the present wording. RSPA changed the wording in the last sentence of paragraph (a)(1) by requiring approval by the Director, Office of Hazardous Materials Transportation. Again, our reason for proposing approval by the Director, OHMT was not intended and "approval by the AAR Committee on Tank Cars" appears in the final rule.

9. Except for minor changes, sections 179.202–8, 179.202–11, 179.202–16, 179.202–18, 179.220–19, 179.221–1, 179.222 and 179.301 are revised as proposed in the notice. In § 179.220–7 the Tables are changed as discussed in § 179.200–7.

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, the RSPA has further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is not considered necessary because the anticipated impact is minimal

The following list of **Federal Register** Thesaurus of Indexing Terms apply to this rulemaking:

**List of Subjects**

*49 CFR Part 107*

Hazardous materials transportation, Emergency exemptions.

*49 CFR Part 171*

Hazardous materials transportation, Definitions, Incorporation by Reference.

*49 CFR Part 172*

Hazardous materials transportation, Labeling, Packaging and containers.

*49 CFR Part 173*

Hazardous materials transportation, Packaging and containers.

*49 CFR Part 174*

Hazardous materials transportation, Railroad Safety.

*49 CFR Part 176*

Hazardous materials transportation, Maritime carriers.

*49 CFR Part 177*

Hazardous materials transportation, Motor carriers.

*49 CFR Part 178*

Hazardous materials transportation, Packaging and containers.

*49 CFR Part 179*

Hazardous materials transportation, Railroad safety.

Hazardous materials transportation, Railroad safety.

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 continues to read as follows:

**Authority:** 49 U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53 and App. A of Part 1, Pub. L. 89–670 (49 U.S.C. 1653(d), 1655).

2. In Appendix A to Subpart B, the address and telephone number for "Motor Carriers" is revised to read as follows:

**Appendix A to Subpart B—List of Department of Transportation Officials Through Whom Application for Exemptions Seeking Priority Treatment of the Basis of Existing Emergencies May be Initiated by Telephone**

* * * * *

**Motor Carriers**

Chief, Standards Development Division, Office of Motor Carrier Standards, Federal Highway Administration, Department of Transportation, Washington, DC 20590. Day 202–366–2981 and Night 202–267–2100.

* * * * *

## PART 171—GENERAL INFORMATION REGULATIONS, AND DEFINITIONS

3. The authority citation for Part 171 continues to read as follows:

**Authority:** 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 171.7, paragraphs (d)(1), (d)(2), (d)(3)(ii), (d)(3)(iii), (d)(3)(iv), and (d)(3)(ix) are revised; paragraphs (d)(3)(x), (d)(3)(xi), (d)(3)(xii), and (d)(5)(xxxiv) are added to read as follows:

**§ 171.7 Matter incorporated by reference.**

* * * * *

(d) * * *

(1) ASME Code means Sections II (Parts A and B), V, VIII (Division I), and IX of the 1986 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code" and addenda thereto through June 30, 1985".

(2) AAR Specifications for Tank Cars means the 1985 edition of the "Association of American Railroads Specifications for Tank Cars, Specification M–1002".

(3) Compressed Gas Association:

* * * * *

(ii) CGA Pamphlet C–6, is titled, "Standards for Visual Inspection of Steel Compressed Gas Cylinders", 1984 edition.

(iii) CGA Pamphlet C–7 is titled, "Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers", 1983 edition including Appendix A issued April 15, 1983.

(iv) CGA Pamphlet C–8, is titled, "Standard for Requalification of DOT–3HT Seamless Steel Cylinders", 1985 edition.

* * * * *

(ix) CGA Pamphlet G–4.1 is titled, "Cleaning Equipment for Oxygen Service", 1985 edition.

(x) CGA Pamphlet G–2.2 is titled, "Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia", 1985 edition.

(xi) CGA Technical Bulletin TB–2 is titled, "Guidelines for Inspection and Repair of MC–330 and MC–331 Cargo Tanks", 1980 edition.

(xii) CGA Pamphlet C–6.1 is titled, "Standards for Visual Inspection of Aluminum Compressed Gas Cylinders", 1984 edition.

* * * * *

(5) American Society for Testing and Materials:

* * * * *

(xxxiv) ASTM D 4359–84 is titled, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid", 1984 edition.

* * * * *

5–6. In § 171.8, a definition for "Liquid" and "Solid" is added in their proper alphabetical order to read as follows:

**§ 171.8 Definitions and abbreviations.**

* * * * *

"Liquid" means a material that has a vertical flow of over 2 inches (50 mm) within a three minute period, or a material having one gram (lg) or more liquid separation, when determined in accordance with the procedures specified in ASTM D 4359–84, "Standard Test Method for Determining whether a Material is a Liquid or Solid", 1984 edition.

* * * * *

"Solid" means a material which has a vertical flow of two inches (50 mm) or less within a three-minute period, or a separation of one gram (lg) or less of liquid when determined in accordance with the procedures specified in ASTM D 4359–84 "Standard Test Method for Determining Whether a Material is a Liquid or Solid", 1984 edition.

* * * * *

**§ 171.12 [Amended]**

7. Paragraph 171.12(a) is amended by replacing the section reference "§ 173.12a" with the section reference "§ 171.12a".

## PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

8. The authority citation for Part 172 continues to read as follows:

**Authority:** 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

9. In § 172.101, the Hazardous Materials Table is amended by removing, adding, or revising the following entries.

**§ 172.101 Hazardous materials table.**

| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | Identification number | Label(s) required (if not excepted) | Packaging | | Maximum net quality in one package | | Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Exceptions | Specific requirements | Passenger carrying aircraft or rail car | Cargo aircraft only | Cargo vessel | Passenger vessel | Other requirements |
| (1) | (2) | (3) | (3a) | (4) | 5(a) | 5(b) | 6(a) | 6(b) | 7(a) | 7(b) | 7(c) |
| | *REMOVE* | | | | | | | | | | |
| | *1-Bromo-3-Nitrobenzene (unstable at 56° C).* | Forbidden | | | | | | | | | |
| | Compound, water treatment, liquid. *See* Water treatment, liquid. | | | | | | | | | | |
| | *REVISE* | | | | | | | | | | |
| | Ethylene dibromide | Poison B | UN 1605 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | Stow away from living quarters. |
| | Ethylene glycol diethyl ether (*diethyl Cellosolve*). | Flammable liquid | UN 1153 | Flammable | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Gasohol (*gasoline mixed with ethyl alcohol containing 20% maximum alcohol*). *See* Gasoline. | | | | | | | | | | |
| | Ink | Combustible Liquid | UN 1210 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | [illegible] | | | | | | | | | | |
| | Air, refrigerated liquid (cryogenic liquid). | Nonflammable Gas | UN 1003 | Nonflammable Gas | 173.320 | 173.318 | Forbidden | 300 pounds | 1,2 | 1,2 | Stow separate from flammables. Do not overstow with other cargo. |
| | Ethyl phosphonothoic dichloride, anhydrous. | Corrosive material | NA 1760 | Corrosive | 173.244 | 173.245 173.245a | 1 quart | 1 quart | 1 | 4 | |

10. In § 172.202, paragraphs (a)(4) and (c)(1) are revised to read as follows:

**§ 172.202 Description of hazardous materials on shipping papers.**

(a) * * *

(4) Except for empty packagings, cylinders for compressed gases, and packagings of greater than 110 gallons capacity, the total quantity by weight (net or gross as appropriate) or volume, including the unit of measure, of the hazardous material covered by the description. For example: "800 lbs", "55 gal".

* * * * *

(c) * * *

(1) Abbreviations may be used to specify the type of packaging and unit of measurement for total quantity. For example: "10 ctns. Paint, Flammable liquid, UN1263, 500 lbs".

* * * * *

11. In § 172.336, paragraphs (c)(4) and (c)(5) are revised to read as follows:

**§ 172.336 Identification numbers; special provisions and exceptions.**

* * * * *

(c) * * *

(4) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol in a compartmented cargo tank or tank car, if the identification number is displayed for the distillate fuel having the lowest flash point.

(5) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol transported in a cargo tank, if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point.

* * * * *

12. In § 172.504, footnote 8 in Table 2 is revised to read as follows:

**§ 172.504 General placarding requirements.**

* * * * *

(d) * * *

[8] A NON-FLAMMABLE GAS placard is not required on a motor vehicle displaying a FLAMMABLE GAS placard or an OXYGEN placard.

* * * * *

13. In § 172.519, paragraphs (b)(2) and (b)(4) are revised to read as follows:

**§ 172.519 General specifications for placards.**

* * * * *

(b) * * *

(2) A weight of 175 pounds per ream of 24 by 36-inch sheets (waterproofing materials included);

* * * * *

(4) Been treated with plastic or other waterproofing material that will give it the ability to withstand open weather exposure (including rain) for 30 days without a substantial reduction in effectiveness.

## PART 173—SHIPPERS–GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for Part 173 continues to read as follows:

**Authority:** 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

15. In § 173.11, paragraph (b)(4) is revised to read as follows:

**§ 173.11 Shipper's registration statement; flammable cryogenic liquids.**

* * * * *

(b) * * *

(4) The type of packaging and the serial number or vehicle identification number of each portable tank and cargo tank, and the reporting mark and number of each tank car, owned, leased, or otherwise controlled by the shipper and used to offer a flammable cryogenic liquid for transportation.

* * * * *

16. In § 173.12, paragraph (b)(2) is revised to read as follows:

**§ 173.12 Exception for shipment of waste material.**

* * * * *

(b) * * *

(2) A four foot drop test as specified in § 178.224–2(b).

* * * * *

17. In § 173.25, the introductory text of paragraph (c) is revised to read as follows:

**§ 173.25 Authorized packages and overpacks.**

* * * * *

(c) Hazardous materials which are required to be labeled Poison, may be transported in the same motor vehicle with material that is marked or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals provided the Poison B material is marked, labeled, and packaged in accordance with this subchapter, conforms to the requirements of paragraph (a) of this section and is overpacked as specified in § 177.841(e) or is in an overpack meeting the following requirements:

* * * * *

18. In § 173.31, Retest Table 2 following paragraph (d)(6) is amended by adding Specification 110A600–W in its proper numerical sequence to read as follows:

**§ 173.31 Qualification, maintenance, and use of tank cars.**

* * * * *

(d) * * *

RETEST TABLE 2

| Specification | Retest interval—years | | Retest pressure p.s.i. | | Safety relief valve pressure-p.s.i. | |
|---|---|---|---|---|---|---|
| | Tank | Safety [illegible] | Tank hydrostatic [illegible] sion[2] | Tank [illegible] test | Start-to-discharge | Vapor tight |
| 110A600–W | 5 | 2 | [illegible] | 100 | 450 | [illegible] |

* * * * *

19. In § 173.33, paragraph (d)(13) is amended by revising the last sentence to read as follows:

**§ 173.33 Qualification, maintenance, and use of cargo tanks.**

* * * * *

(d) * * *

(13) * * * However, upon a written request to, and with the approval of the Regional Director of Motor Carrier Safety, for the region in which a motor carrier has its principal place of business, the carrier may maintain the reports at a regional or terminal office.

* * * * *

**§ 173.34 [Amended]**

20. In § 173.34, in paragraph (e)(8) is amended by replacing the words "not over ten pounds" with the words "not over twelve pounds".

21. In § 173.51, paragraph (g) is revised to read as follows:

**§ 173.51 Forbidden explosives.**

* * * * *

(g) Loaded firearms (except as provided in 14 CFR 108.11).

* * * * *

22. In § 173.57, paragraph (b) is removed and reserved as follows:

**§ 173.57 Rocket ammunition.**

(a) * * *

(b) [Reserved]

23. In § 173.58, paragraph (b) is removed and reserved as follows:

**§ 173.58 Ammunition for small arms.**

(a) * * *

(b) [Reserved]

24. In § 173.81, the heading and paragraph (b) are revised to read as follows:

**§ 173.81 Cord, detonating.**

* * * * *

(b) Each outside packaging shall be plainly marked "CORD, DETONATING-HANDLE CAREFULLY".

* * * * *

25. In § 173.86, paragraph (a)(2) is revised and paragraphs (h) and (i) are added to read as follows:

**§ 173.86 New explosives definitions; approval and notification.**

(a) * * *

(2) Has previously produced the explosive compound, mixture or device, but has made a change in the formulation, design, process or production equipment. An explosive compound mixture or device will not be considered a "new explosive" if an agency listed in paragraph (b) of this section has determined and confirmed in writing that there are no significant differences in hazard characteristics from the explosive compound, mixture or device previously approved. The written determination must be submitted to and approved by, the Director, OHMT before the explosive is offered for transportation.

* * * * *

(h) The requirements of this section do not apply to small arms ammunition which is:

(1) Not a forbidden explosive under § 173.51;

(2) Ammunition for rifle, pistol, or shotgun;

(3) Ammunition with inert projectile or blank ammunition; and

(4) Ammunition not exceeding 50 caliber for rifle or pistol cartridges or 8 gauge for shotshells.

(i) If experience or other data indicate that the hazard of a material (device) containing an explosive composition is greater or less than indicated according to the definition and criteria specified in §§ 173.53, 173.86, and 173.100 of this Part, the Director, OHMT may, following examination in accordance with paragraph (b) of this section, revise its classification or except the material (device) from the requirements of this subchapter.

26. In § 173.87, the first sentence is amended to read as follows:

**§ 173.87 Explosives in mixed packaging.**

Unless specifically authorized in this subchapter, explosives may not be packaged in the same outside packaging with other articles unless packaged by the DOD in accordance with § 173.7(a).

* * *

27. In § 173.93, paragraph (a)(2) is added to read as follows:

**§ 173.93 Propellant explosives (solid) for cannon, small arms, rockets, guided missiles, or other devices, and propellant explosives (liquid).**

(a) * * *

(2) Smokeless powder for small arms may be shipped as Class B explosives in packagings approved in accordance with § 173.197a.

* * * * *

28. In § 173.104, the heading and paragraph (c) are revised to read as follows:

**§ 173.104 Cord, detonating; fuse, mild detonating, metal clad; or flexible linear shaped charge, metal clad.**

* * * * *

(c) Cord, detonating *flexible;* fuse, mild detonating, metal clad and flexible linear shaped charges, metal clad shall be packed in wooden or fiberboard boxes. Each package shall be marked "CORD, DETONATING-HANDLE CAREFULLY" or "FLEXIBLE LINEAR SHAPED CHARGES, METAL CLAD-HANDLE CAREFULLY", as appropriate.

29. In § 173.122, paragraph (a)(4) is removed and reserved to read as follows:

**§ 173.122 Acrolein, inhibited.**

(a) * * *

(4) [Reserved]

* * * * *

30. In § 173.164, paragraph (a)(2) is revised to read as follows:

**§ 173.164 chromic acid or chromic acid mixture, dry.**

(a) * * *

(2) Specification 17C, 17H, or 37A (§§ 178.115, 178.118, 178.131 of this subchapter) metal drums. Spec. 37A metal drums constructed from 22-gauge steel throughout are authorized for a gross weight of 490 pounds or less when shipped in a carload or truckload lot.

* * * * *

31. In § 173.197a, the section is revised to read as follows:

**§ 173.197a Smokeless powder for small arms.**

Smokeless powder for small arms in quantities not exceeding 100 pounds net weight transported in one rail car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. Maximum quantity in any inside packaging may not exceed 8 pounds. Inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. In addition, inside packages which have been examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT, may be overpacked in DOT-12A65, 12B65, or 12H65 fiberboard boxes provided all inside containers are firmly packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 16 pounds. Each outside package must bear a FLAMMABLE SOLID label.

32. In § 173.220, the introductory text of paragraph (a) is revised and paragraph (a)(3) is added to read as follows:

**§ 173.220 Magnesium or zirconium scrap consisting of borings, clippings, shavings, sheets, turnings, or scalpings, and magnesium metallic (other than scrap), powder, pellets, turnings, or ribbon; magnesium aluminum.**

(a) Magnesium or zirconium scrap consisting of borings, shavings, or turnings, must be packed in closed metal barrels or drums, wooden barrels, metal pails, fiber drums, fiberboard boxes with inside polyethylene bags or liner, or four-ply paper bags. Fiberboard boxes with inside polyethylene bags or liner or paper bags are not authorized for less-than-carload or less-than-truckload shipments.

* * * * *

(3) When transported by vessel, magnesium scrap may not be carried in paper bags and zirconium scrap may only be packaged in an hermetically sealed metal drum not exceeding 80 pounds net weight.

* * * * *

33. In § 173.245a, footnote 2 following the Table in paragraph (a) is revised to read as follows:

**§ 173.245a Corrosive liquids, n.o.s. shipped in bulk.**

(a) * * *

[2] Specification 103ANW tank car tanks must be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent. Specification 103A tank car tanks must be lead-lined steel or must be made of steel with at least 10 percent nickel cladding. Specification 103AW, 111A100F2, or 111A100W2 tanks must be lead-lined steel or made of steel with a minimum nickel cladding of 1/16 inch thickness. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162-80.

* * * * *

34. In § 173.253, paragraphs (a)(7) and (a)(8) are revised to read as follows:

**§ 173.253 Chloroacetyl chloride.**

(a) * * *

(7) Specification 103AW, 111A60W2, or 111A100F2 (§§ 179.200, 179.201 of this subchapter). Tanks cars. Tanks must have a nickel cladding of 1/16 inch minimum thickness. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162-80.

(8) Specification 103ANW (§§ 179.200 and 179.201 of this subchapter). Tank cars. Tanks must be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent.

* * * * *

**§ 173.262 [Amended]**

35. In § 173.262, in paragraph (b)(4) is amended by replacing the reference "§ 178.353-5" with the reference "178.343-5" in the last sentence.

36. In § 173.266, the eight sentence in paragraph (f)(2) is revised to read as follows:

**§ 173.266 Hydrogen peroxide solution in water.**

* * * * *

(f) * * *

(2) * * * The tank metal identification plate required shall be marked "DOT MC 310-$H_2O_2$" or "DOT MC 312-AL-$H_2O_2$" or "DOT MC 312-SS-$H_2O_2$", as appropriate, and in addition, the cargo tank shall be clearly marked in letters not less than one inch high "FOR HYDROGEN PEROXIDE ONLY". * * *

37. In § 173.271, paragraphs (a)(7), (a)(8)(iv), and (a)(9) are revised to read as follows:

**§ 173.271 Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiosphosphoryl phosphorus chloride.**

(a) * * *

(7) Speification 103ANW (§§ 179.200, 179.201 of this chapter). Tank cars. Tanks must be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent.

(8) * * *

(iv) Specification MC 311 or MC 312 cargo tanks. Tanks must be fabricated of solid nickel at least 95 percent pure and not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 98.7 percent. Authorized only for phosphorus oxychloride and phosphorus trichloride.

(9) Specification 103A [1], 103AW, 111A60W2, or 111A00F2 (§§ 179.200, 179.201 of this subchapter). Tank cars. Specification 103A [1], tanks must be lead-lined steel or made of steel with nickel cladding of at least 10 percent of the shell thickness. Specification 103AW, 111A60W2, or 111A100F2 tanks must be lead-lined steel or made of steel with nickel cladding with a minimum thickness of 1/16 inch. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162-80.

* * * * *

38. In § 173.277, paragraph (d)(1) is removed and reserved as follows:

**§ 173.277 Hypochlorite solutions.**

* * * * *

(d) * * *

(1) Reserved]

* * * * *

39. In § 173.294, the heading, paragraphs (a)(2), (a)(3), and (b) are revised to read as follows:

**§ 173.294 Chloroacetic acid, liquid or solution.**

(a) * * *

(2) Specification 103ANW, 103AW, 111A60W2, or 111A100F2 (§§ 179.200, 179.201 of this subchapter). Tank cars. Specification 103AW, 111A60W2, or 111A100F2 tanks cars must be nickel clad with a nickel thickness of at least 20 percent of the shell thickness. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

(3) Specification MC 310, MC 311, or MC 312 (§ 178.343 of this chapter). Cargo tanks. Tanks must be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron, Type 304 of 316 stainless steel or be suitably lined. Nickel metal test coupons for welding procedures qualification must contain no more than 1 percent iron.

* * * * *

(b) Chloroacetic acid, anhydrous, when shipped as a liquid must be shipped in Specification 103ANW tank cars fabricated of nickel containing not more than 1 percent iron or in Specification 103AW or 111A60W2 tank car tanks with nickel cladding of at least 20 percent of the shell thickness or be provided with a suitable corrosive resistant coating or lining. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

40. In § 173.301, paragraph (k)(1) is revised to read as follows:

**§ 173.301 General requirements for shipment of compressed gases in cylinders.**[1]

* * * * *

(k) *Outside packagings.* * * *

(1) Outside packaging must provide protection for the cylinder. Unless the cylinder has a protective collar or neck ring, the outside packaging must provide protection to the valve against accidental functioning and damage.

* * * * *

41. In § 173.302, paragraph (a)(5)(iv) is revised to read as follows:

**§ 173.302 Charging of cylinders with nonliquefied compressed gases.**

(a) * * *

(5) * * *

(iv) The pressure in the cylinder may not exceed 3,000 psig at 70° F.

* * * * *

42. In § 173.304, the Table in paragraph (a)(2) is amended by revising the entries for carbon dioxide and sulfur dioxide as follows:

**§ 173.304 Charging of cylinders with liquefied compressed gas.**

(a) * * *

(2) * * *

| Kind of gas | Maximum permitted filling density (percent) (see note 1) | Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in §§ 173.34(a), (b), and 173.301(j) (see notes following table) |
|---|---|---|
| . . . | . | . |
| Carbon dioxide (see notes 4, 7, and 8). | 68 | DOT–3A1800; DOT–3AX1800; DOT–3AA1800; DOT–3AAX1800; DOT–3; DOT–3E1800; DOT–3HT2000; DOT–39; DOT–3AL1800 |
| . . . | . | . |
| Sulfur dioxide (see note 8). | 125 | DOT–3A225; DOT–3AA225; DOT–3B225; DOT–4A225; DOT–4B225; DOT–4BA225; DOT–4BW225; DOT–4B240ET; DOT–3; DOT–4; DOT–25; DOT–26–150; DOT–38; DOT–39; DOT–3E1800; and DOT–3AL225 |
| . . . | . | . |

43. In § 173.314, the third sentence of Note 6 following the Table in paragraph (c) is revised to read as follows:

**§ 173.314 Requirements for compressed gases in tank cars.**

* * *

(c) * * *

**Note 6:** * * * The discharge capacity of each of these safety relief devices must be sufficient to prevent building up of pressure in the tank in excess of 82.5 precent of the tank test pressure. * * *

* * * * *

44. In § 173.315, the introductory text of paragraph (c) is revised to read as follows:

**§ 173.315 Compressed gases in cargo tanks and portable tanks.**

* * * * *

(c) Except as otherwise provided, the loading of a liquefied gas into a cargo tank or portable tank shall be determined by weight or by a suitable liquid level gauging device. The vapor pressure (psig) at 115°F. must not exceed the design pressure of the cargo tank or portable tank container. The liquid portion of the gas shall not fill the tank at 105°F. if the tank is insulated, or at 115°F. if the tank is uninsulated, except that this requirement shall not apply to:

* * * * *

45. In § 173.316, the Table in paragraph (c)(2) is revised to read as follows:

**§ 173.316 Cryogenic liquids in cylinders.**

* * * * *

(c) * * *

(2) * * *

| Pressure control valve setting (maximum start-to-discharge pressure psig) | Maximum permitted filling density (percent by weight) | | | | | |
|---|---|---|---|---|---|---|
| | [illegible] | Argon | [illegible] | Oxygen | [illegible] | [illegible] |
| 45 | 82.5 | 133 | [illegible] | [illegible] | 12.5 | 109 |
| 75 | [illegible] | 130 | 74 | 105 | 12.5 | 104 |
| 105 | 78.4 | 127 | 72 | 103 | 12.5 | 100 |
| 170 | 76.2 | 122 | 70 | 100 | 12.5 | 92 |
| 230 | 75.1 | 119 | [illegible] | [illegible] | 12.5 | 85 |
| 295 | 73.3 | 115 | [illegible] | 96 | 12.5 | 77 |
| 360 | 70.7 | 113 | [illegible] | [illegible] | 12.5 | ..... |
| 450 | [illegible] | 111 | [illegible] | [illegible] | 12.5 | ..... |
| 540 | [illegible] | 107 | [illegible] | [illegible] | 12.5 | ..... |
| 625 | 60.1 | 104 | [illegible] | [illegible] | 12.5 | ..... |
| Design service temperature (°F.) | −320 | −320 | −320 | −320 | −452 | −411 |

* * * * *

46. In § 173.318, paragraphs (b), (f)(2), and (f)(3) are revised to read as follows:

**§ 173.318 Cryogenic liquids in cargo tanks.**

* * * * *

(b) *Pressure relief systems and pressure control valves.*—(1) *Types of pressure relief systems.*—(i) *Tanks in oxygen and flammable cryogenic liquid service.* Except as otherwise provided in this paragraph, each tank in oxygen and flammable cryogenic liquid service must be protected by two independent pressure relief systems which are not connected in series, namely:

(A) A primary system of one or more pressure relief valves; and

(B) A secondary system of one of more frangible discs or pressure relief valves. For a tank in carbon monoxide service, the secondary system must be pressure relief valves only.

(ii) *Tanks in helium and atmospheric gas (except oxygen) cryogenic liquid service.* For a tank used in helium and atmospheric gas (except oxygen) cryogenic liquid service, the tank must be protected by at least one pressure relief system consisting of:

(A) One of more pressure relief valves; or

(B) A combination of one or more pressure relief valves and one or more frangible discs.

(2) *Capacities of pressure relief systems.*—(i) *Tanks in oxygen or flammable cryogenic liquid service.* For tanks in oxygen or flammable cryogenic liquid service, the primary system and the secondary system of pressure relief devices must each have a flow capacity equal to or greater than that calculated by the applicable formula in paragraph 5.3.2 or paragraph 5.3.3 of CGA Pamphlet S–1.2. In addition:

(A) The primary pressure relief system must have his total flow capacity at a pressure not exceeding 120 percent of the tank's design pressure.

(B) The secondary pressure relief system must have this total flow capacity at a pressure not exceeding 150 percent of the tank's design pressure.

(ii) *Tanks in helium and atmospheric gas (except oxygen) cryogenic liquid service.* For tanks in helium and atmospheric gas (except oxygen) cryogenic liquid service, the pressure relief system must have a flow capacity equal to or greater than that calculated by the applicable formula in paragraphs 5.3.2 or 5.3.3 of CGA Pamphlet S–1.2. If the pressure relief system consists of a combination of pressure relief valves and frangible discs, the pressure relief valves must have a total venting capacity equal to or greater than that calculated by the applicable formula in paragraph 4.1.10.1.1 of CGA Pamphlet S–1.2. The pressure relief system must have this total flow capacity at a pressure not exceeding 150 percent of the tank's design pressure.

(3) *Type and construction of pressure relief devices.*—(i) Each pressure relief device must be designed and constructed for a pressure equal to or exceeding the tank's design pressure at the coldest temperature reasonably expected to be encountered.

(ii) Pressure relief devices must be either spring-loaded pressure relief valves of frangible discs. Pressure relief valves must be of a type that automatically open and close at predetermined pressures.

(4) *Setting of pressure relief devices.*—(i) On a tank used in oxygen or flammable cryogenic liquid service, the pressure relief devices must perform as follows.

(A) Each pressure relief valve in the primary relief system must be set-to-discharge at a pressure no higher than 110 percent of the tank's design pressure.

(B) Each pressure relief device in the secondary pressure relief system must be designed to commence functioning at a pressure no lower than 130 percent and no higher than 150 percent of the tank's design pressure.

(ii) On a tank used in helium and atmospheric gas (except oxygen) cryogenic liquid service, the pressure relief devices in the pressure relief system must be designed to commence functioning at no higher than 150 percent of the tank's design pressure.

(5) *Optional pressure relief devices and pressure control valves.* In addition to the required pressure relief devices, a cargo tank in cryogenic liquid (except carbon monoxide) service may be equipped with one or both of the following:

(i) One or more pressure control valves set at a pressure below the tank's design pressure.

(ii) One or more frangible discs set to function at a pressure not less than one and one-half times or more than two times the tank's design pressure.

(6) *Maximum filling rate.* (i) For a tank used in oxygen and flammable cryogenic liquid service, the maximum rate at which the tank is filled must not exceed the liquid flow capacity of the primary pressure relief system rated at a pressure not exceeding 120 percent of the tank's design pressure.

(ii) On tanks used in helium and atmospheric gas (except oxygen) cryogenic liquid service, the maximum rate at which the tank is filled must not exceed the liquid flow capacity of the pressure relief valves rated at 150 percent of the tank's design pressure.

(7) *Arrangement and location of pressure relief devices.* (i) The discharge from any pressure relief system must be directed upward and be unobstructed to the outside of the protective housing in such a manner as to prevent impingement of gas upon the jacket or any structural part of the vehicle.

(ii) Each pressure relief valve must be arranged or protected to prevent the accumulation of foreign material between the relief valve and the atmospheric discharge opening in any relief piping. The arrangement must not impede flow through the device.

(iii) Each pressure relief valve must be designed and located to minimize the possibility of tampering. If the pressure setting or adjustment is external to the valve, the valve adjustment must be sealed.

(iv) Each pressure relief device must have direct communication with the vapor space of the tank at the midlength of the top centerline.

(v) Each pressure relief device must be installed and located so that the cooling effect of the contents during venting will not prevent the effective operation of the device.

(8) *Connections.* (i) Each connection to a pressure relief device must be of sufficient size to allow the required rate of discharge through the pressure relief device. The inlet connection must be not less than one-half inch nominal pipe size.

(ii) A shut-off valve may be installed in a pressure relief system only when the required relief capacity is provided at all times.

(9) *Pressure relief devices for piping hose and vacuum-insulated jackets.* (i) Each portion of connected liquid piping or hose that can be closed at both ends must be provided with either a hydrostatic pressure relief valve without an intervening shut-off valve, or a check valve permitting flow from the pipe or hose into the tank. If used, the relief valve must be located so as to prevent its discharge from impinging on the tank, piping, or operating personnel.

(ii) On a vacuum-insulated cargo tank the jacket must be protected by a suitable relief device to release internal pressure. The discharge area of this device must be at least 0.00024 square inch per pound of water capacity of the tank. This relief device must function at a pressure not exceeding the internal design pressure of the jacket, calculated in accordance with the ASME Code, or 25 psig, whichever is less.

(10) *Tank inlet, outlet, pressure relief device and pressure control valve markings.* (i) Each tank inlet and outlet, except pressure relief devices and pressure control valves, must be permanently marked to indicate whether it communicates with "vapor" or "liquid" when the tank is filled to the maximum permitted filling density.

(ii) Each pressure relief valve must be plainly and permanently marked with the pressure, in psig, at which it is set-to-discharge, the discharge rate of the device in SCF per minute (SCFM) of free air, and the manufacturer's name or trade name and catalog number. The marked set-to-discharge pressure valve must be visible with the valve in its installed position. The rated discharge capacity of the device must be determined at a pressure of 120 percent of the design pressure of the tank.

(iii) Each pressure control valve must be plainly and permanently marked with the pressure, in psig, at which it is set-to-discharge.

(f) * * *

(2) *Air, argon, helium, nitrogen, and oxygen, cryogenic liquids* must be loaded and shipped in accordance with the following table:

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

| Maximum set-to-discharge pressure [illegible] | Maximum permitted filling density (percent by weight) | | | | |
|---|---|---|---|---|---|
| | [illegible] | Argon | [illegible] | Nitrogen | Oxygen |
| 26 | | | 12.5 | | |
| [illegible] | 80.3 | [illegible] | 12.5 | 74 | [illegible] |
| 40 | 79.2 | | 12.5 | | |
| 50 | 78.0 | | 12.5 | | |
| 55 | 77.3 | [illegible] | 12.5 | 71 | [illegible] |
| 60 | 76.8 | | 12.5 | | |
| 80 | 75.3 | | 12.5 | | |
| 85 | 75.1 | 121 | 12.5 | | [illegible] |
| 100 | 73.0 | | 12.5 | | |
| 105 | 73.7 | | 12.5 | 67 | |
| 120 | 72.2 | | 12.5 | | |
| 140 | 71.4 | | 12.5 | | |
| 145 | 70.9 | 115 | 12.5 | 64 | [illegible] |
| 160 | 69.9 | | 12.5 | | |
| [illegible] | 67.3 | 110 | [illegible] | 61 | [illegible] |
| 250 | [illegible] | 108 | 12.5 | 57 | [illegible] |
| 275 | [illegible] | 105 | 12.5 | [illegible] | 86 |
| 325 | 59.4 | 101 | | [illegible] | [illegible] |
| Design service [illegible] | −320°F | −320°F | −452°F | −320°F | −320°F |

(3) *Carbon monoxide, hydrogen (minimum 95 percent para-hydrogen), ethylene, and methane or natural gas, cryogenic liquids* must be loaded and shipped in accordance with the following table:

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

| Maximum set-to-discharge pressure (psig) | Maximum permitted filling density (percent by weight) | | | |
|---|---|---|---|---|
| | [illegible] | [illegible] | [illegible] | Methane or natural gas |
| 13 | | | [illegible] | |
| 15 | [illegible] | | 8.6 | [illegible] |
| 17 | 74.0 | | [illegible] | |
| [illegible] | | 59.6 | | 40.0 |
| 25 | [illegible] | | | |
| 30 | 72.0 | 52.7 | 6.3 | [illegible] |
| 35 | | | | |
| 40 | | [illegible] | | 38.6 |
| 45 | 71.5 | | | |
| 50 | | 51.4 | 5.6 | 38.2 |
| 55 | | | | |
| 60 | | [illegible] | | |
| 70 | | 50.2 | 5.7 | 37.5 |
| 80 | | [illegible] | | |
| 90 | | | | |
| 100 | | 48.4 | 5.4 | [illegible] |
| 115 | | 48.2 | | |
| 125 | | | 5.0 | |
| 150 | | | 4.5 | |
| 175 | 62.5 | [illegible] | | |
| 265 | [illegible] | | | |
| Design service [illegible] | −320°F | −156°F | −423°F | −260°F |

* * * * *

47. Section 173.320 is revised to read as follows:

**§ 173.320 Cryogenic liquids; exceptions.**

(a) Atmospheric gases and helium, cryogenic liquids, in Dewar flasks, insulated cylinders, insulated portable tanks, insulated cargo tanks, and insulated tank cars, designed and constructed so that the pressure in such packagings will not exceed 25.3 psig under ambient temperature conditions during transportation are not subject to the requirements of this subchapter when transported by motor vehicle or railcar except as specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) Sections 171.15 and 171.16 of this subchapter pertaining to the reporting of incidents, not including a release that is the result of venting through a pressure control valve, or the neck of the Dewar flask.

(2) Subparts A, B, C, and D of Part 172, (§§ 174.24 for rail and 177.817 for highway) and in addition, Part 172 in its entirety for oxygen.

(3) Subparts A and B of Part 173, and §§ 174.1 and 177.800, 177.804, 177.807, and 177.823 of this subchapter.

(b) The requirements of this subchapter do not apply to atmospheric gases and helium:

(1) During loading and unloading operations (pressure rises may exceed 25.3 psig); or

(2) When used in operation of a process system; such as a refrigeration system (pressure may exceed 25.3 psig).

(c) For transportation aboard aircraft, see § 171.11 of this subchapter.

48. Section 173.965 is added to read as follows:

**§ 173.965 Cotton and other fibers.**

Cotton and the fibers jute, hemp, flax, sisal, coir, kapok, or similar vegetable fibers, when offered for transportation by water, must be packaged in bales, securely and tightly bound with rope, wire, or other similar means.

## PART 176—CARRIAGE BY VESSEL

49. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806(b), 1808; 49 CFR Part 1, unless otherwise noted.

50. In § 176.76, paragraph (g)(2) is added to read as follows:

**§ 176.76 Highway vehicles, railroad vehicles, freight containers, and portable tanks containing hazardous materials.**

* * * * *

(g) * * *

(2) Small passenger vessels of 100 gross tons, or less, may carry a hazardous material in a portable tank only when 16 or less passengers are on board and only when specifically authorized by the Officer-in-Charge, Marine Inspection, by endorsement of the vessel's Certificate of Inspection.

* * * * *

## PART 177—CARRIAGE BY PUBLIC HIGHWAY

51. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805; 49 CFR Part 1, unless otherwise noted.

52. In § 177.814, paragraph (b) is revised to read as follows:

**§ 177.814 Retention of manufacturer's certificate and retest reports.**

* * * * *

(b) Upon a written request to, and with the approval of, the Regional Director of Motor Carrier Safety, for the region in which a motor carrier has his principal place of business, a motor carrier may retain the certificate and other data specified in paragraph (a) of this section at a regional or terminal office. The address and jurisdictions of the Regional Directors of Motor Carrier

Safety are shown in § 390.40 of Chapter III of this title.

* * * * *

53. In § 177.824, the introductory text of paragraph (f) and the last sentence of paragraph (f)(2) are revised to read as follows:

**§ 177.824 Retesting and inspection of cargo tanks.**

* * * * *

(f) *Reporting requirements.* Each motor carrier shall file with the Chief, Standards Development Division, Office of Motor Carrier Standards, Federal Highway Administration, Department of Transportation, Washington, DC 20590, a written listing of all MC 330 and MC 331 cargo tanks he has in service. Each motor carrier, upon placing in service or withdrawing from service any MC 330 and MC 331 cargo tank (other than a cargo tank used in interchange service which is reported upon by another carrier), shall file a supplemental report with the Office of Motor Carrier Standards.

* * * * *

(2) * * * However, upon a written request to, and with the approval of the Regional Director of Motor Carrier Safety, for the region in which a motor carrier has his principal place of business, the carrier may maintain the reports at a regional or terminal office.

* * * * *

54. In § 177.834, paragraph (k) is removed and reserved to read as follows:

**§ 177.834 General requirements.**

* * * * *

(k) [Reserved]

* * * * *

55. In §§ 177.835, 177.837, 177.838, 177.839 and 177.840 the first line following each of the section headings is revised and paragraph (g) in § 177.838 is revised to read as follows:

**§ 177.835 Explosives.**

(See also §§ 177.834 (a) to (j).)

* * * * *

**§ 177.837 Flammable liquids.**

(See also §§ 177.834 (a) to (j).)

* * * * *

**§ 177.838 Flammable solids and oxidizing materials.**

(See also §§ 177.834 (a) to (j).)

* * * * *

(g) Smokless powder for small arms in quantities not exceeding 100 pounds net weight transported in one rail car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. Maximum quantity in any inside packaging may not exceed 8 pounds. Inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT. In addition, inside packages which have been examined by the Bureau of Explosives or the Bureau of Mines and approved by the Director, OHMT, may be overpacked in DOT-12A65, 12B65, or 12H65 fiberboard boxes provided all insider containers are firmly packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 16 pounds. Each outside package must bear a FLAMMABLE SOLID label.

**§ 177.839 Corrosive liquids.**

(See also §§ 177.834 (a) to (j).)

* * * * *

**§ 177.840 Compressed gases, including cryogenic liquids.**

(See also §§ 177.834 (a) to (j).)

* * * * *

56. In § 177.841, the first line following the section heading is revised and paragraph (e) is amended by adding a sentence at the end to read as follows:

**§ 177.841 Poisons.**

(See also §§ 177.834 (a) to (j).)

* * * * *

(e) * * * No motor carrier may transport a packaging containing a material which is required to be labeled "Poison", "Poison gas", or "Irritant" in the driver's compartment (including a sleeper berth) of a motor vehicle.

57. In § 177.848, paragraph (b) is revised to read as follows:

**§ 177.848 Segregation and separation chart of hazardous materials.**

* * * * *

(b) Cyanides or cyanide mixtures must not be loaded or stored with acids or any other acidic materials which could release hydrocyanic acid from cyanides.

* * * * *

## PART 178—SHIPPING CONTAINER SPECIFICATIONS

58. The authority citation for Part 178 continues to read as follows:

**Authority:** 49 U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

59. In § 178.38, § 178.38–10, paragraph (b) is amended by revising the formula to read as follows:

**§ 178.38 Specification 3B; seamless steel cylinders.**

**§ 178.38–10 Wall thickness.**

* * * * *

(b) * * * P=at least two times service pressure or 450 pounds per square inch, whichever is the greater; * * *.

60. In § 178.42, § 178.42–14, the introductory text of paragraph (a) is revised to read as follows:

**§ 178.42 Specification 3E; seamless steel cylinders.**

**§ 178.42–14 Marking.**

(a) Marking on each cylinder by stamping plainly and permanently on the shoulder, top head, neck or sidewall as follows;

* * * * *.

61. In § 178.46, § 178.46–4(a), § 178.46–5(d)(1) and footnote 1 of (d)(2), § 178.46–6(c), and § 178.46–8(e) are revised to read as follows:

**§ 178.46 Specification 3AL; seamless cylinders made of definitely prescribed aluminum alloys.**

**§ 178.46–4 Duties of the inspector.**

(a) The inspector shall determine that all materials are in compliance with the requirements of this specification.

* * * * *

**§ 178.46–5 Authorized material and identification of material.**

* * * * *

(d) * * *

(1) CHEMICAL COMPOSITION LIMITS [1]

[Chemical Composition (in weight percent)]

| Aluminum Assoc. alloy designation No. | Si | Fe | Cu | Mn | Mg | Cr | Zn | Ti | Pb | Bi | Other [2] | | Al |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | Each | Total | |
| 6351 | 0.7–1.3 | 0.50 | 0.10 | 0.40–0.80 | 0.40–0.80 | ..... | 0.20 | 0.20 | 0.01 | 0.01 | 0.05 | 0.15 | Remainder. |
| 6061 | 0.40–0.80 | 0.70 | 0.15–0.40 | 0.15 | 0.80–1.20 | 0.04–0.35 | 0.25 | 0.15 | 0.01 | 0.01 | 0.05 | 0.15 | Do. |

[1] ASTM B 221–76 Standard Specification for Aluminum-Alloy Extruded Bars, Rods, Shapes, and Tubes, Table 1 Chemical Composition Limits, except for Pb and Bi. Limits are in percent maximum unless otherwise indicated.

[2] Analysis is regularly made only for the elements for which specific limits are shown, except for unalloyed aluminum. If however, the presence of other elements is suspected to be, or in the course of routine analysis is indicated to be in excess of specified limits, further analysis is made to determine that these other elements are not in excess of the amount specified. (Aluminum Association Standards and Data/Sixth Edition 1979).

(2) *Mechanical Property Limits.*

* * * * *

[1] "D" represents specimen diameters. When the cylinder wall is greater than 3/16 inch thick, a retest without reheat treatment using the 4D size specimen is authorized if the test using the 2 inch size specimen fails to meet elongation requirements.

* * * * *

**§ 178.46–6 Manufacture.**

* * * * *

(c) Thickness of the cylinder base may not be less than the prescribed minimum wall thickness of the cylindrical shell. The cylinder base must have a basic torispherical, hemispherical, or ellipsoidal interior base configuration where the dish radius is no greater than 1.2 times the inside diameter of the shell. The knuckle radius may not be less than 12 percent of the inside diameter of the shell. The interior base contour may deviate from the true torispherical, hemispherical or ellipsoidal configuration provided that—

(1) Any areas of deviation are accompanied by an increase in base thickness;

(2) All radii of merging surfaces are equal to or greater than the knuckle radius;

(3) Each design has been qualified by successfully passing the cycling tests in § 178.46–6(f); and

(4) Detailed specifications of the base design are available to the inspector.

* * * * *

**§ 178.46–8 Openings.**

* * * * *

(e) All openings must be threaded. Threads must comply with the following:

(1) Each thread must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must conform to one of the following:

(i) American Standard Pipe Thread (NPT) type, conforming to the requirements of Federal Standard H–28 (1978), Section 7;

(ii) National Gas Taper Thread (NGT) type, conforming to the requirements of Federal Standard H–28 (1978), Sections 7 and 9; or

(iii) Other taper threads conforming to other standards may be used provided the length is not less than that specified for NPT threads.

(3) Straight threads, when used, must conform to one of the following:

(i) National Gas Straight Thread (NGS) type, conforming to the requirements of Federal Standard H–28, (1978), Sections 7 and 9;

(ii) Unified Thread (UN) type, conforming to the requirements of Federal Standard H–28, (1978), Section 2;

(iii) Controlled Radius Root Thread (UNJ) type, conforming to the requirements of Federal Standard H–28 (1978), Section 4.

(iv) Other straight threads conforming to other recognized standards may be used provided that the requirements in subparagraph (e)(4) of this section are met.

(4) All straight threads must have at least 6 engaged threads, a tight fit, and a factor of safety in shear of at least 10 at the test pressure of the cylinder. Shear stress must be calculated by using the appropriate thread shear area in accordance with Federal Standard H–28 (1978), Appendix A5, Section 3.

62. In § 178.51, § 178.51–10, paragraph (d), is revised to read as follows:

**§ 178.51 Specification 4BA; welded or brazed steel cylinders made of definitely prescribed steels.**

**§ 178.51.–10 Wall thickness.**

* * * * *

(d) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.

**§ 178.53–9 [Amended]**

Paragraph (a) of § 178.53–9 is amended by replacing the number "0.40" with the number "0.04".

**§ 178.54 [Removed and Reserved]**

63. Section 178.54 is removed and reserved.

64. In § 178.61, §178.61–10, paragraph (b) is revised to read as follows:

**§ 178.61 Specification 4BW; welded steel cylinders made of definitely prescribed steels with electric-arc welded longitudinal seam.**

**§ 178.61–10 Wall thickness.**

* * * * *

(b) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.

65. In §178.245–1, the introductory text of paragraph (a) is revised to read as follows:

**§ 178.245 Specifications 51; steel portable tanks.**

(a) Tanks must be seamless or welded steel construction or combination of both and have a water capacity in excess of 1,000 pounds. Fusion welded tanks must be postweld heat treated and radiographed as prescribed in the ASME Code except that each tank constructed in accordance with Part UHT of the ASME Code must be postweld heat treated. Where postweld heat treatment is required, the tank must be treated as a unit after completion of all the welds in and/or to the shell and heads. The method must be as prescribed in the ASME Code. Welded attachments to pads may be made after postweld heat treatment is made. A tank used for anhydrous ammonia must be postweld heat treated. The postweld heat treatment must be as prescribed in the ASME Code, but in no event at less than 1050°F. tank metal temperature. Additionally, tanks constructed in

accordance with Part UHT of the ASME Code must conform to the following requirements:

* * * * *

**§ 178.337–1 [Amended]**

66. Paragraph (d) of § 178.337–1 is amended by replacing the words "cargo tanks" with the words "tank motor vehicle".

**§ 178.337–13 [Amended]**

67. Paragraph (b) of § 178.337–13 is amended by replacing the second and third words "cargo tanks" with the words "tank motor vehicle".

## PART 179—SPECIFICATIONS FOR TANK CARS

68. The authority citation for Part 179 continues to read as follows:

**Authority:** 49 U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

69. In § 179.100, § 179.100–13(a), § 179.100–14(a)(1) and (a)(3) are revised to read as follows:

**§ 179.100 General specifications applicable to pressure tank car tanks.**

**§ 179.100–13 Venting, loading and unloading valves, measuring and sampling devices.**

(a) Venting, loading and unloading valves must be of approved design, made of metal not subject to rapid deterioration by the lading, and must withstand the tank test pressure without leakage. The valves shall be bolted to seatings on the manway cover, except as provided in § 179.103. Valve outlets shall be closed with approved screw plugs or other closures fastened to prevent misplacement.

* * * * * *

**§ 179.100–14 Bottom outlets.**

(a) * * *

(1) The extreme projection of the bottom washout equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars.

* * * * * *

(3) If the bottom washout nozzle extends 6 inches or more from shell of tank, a V-shaped breakage groove shall be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case may the nozzle wall thickness at the root of the "V" be more than ¼-inch. Where the nozzle is not a single piece, provision shall be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without continuous center sills, the breakage groove or its equivalent may not be more than 15 inches below the tank shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * * *

70. In § 179.102, § 179.102–2, paragraph (a)(3) is revised to read as follows:

**§ 179.102 Special commodity requirements for pressure tank car tanks.**

**§ 179.102–2 Chlorine.**

(a) * * *

(3) Insulation must be 4 inches minimum thickness of corkboard or of polyurethane foam or must be 2 inches minimum thickness of 4 pounds per cubic foot minimum density ceramic fiber covered by 2 inches minimum thickness of glass fiber.

* * * * * *

71. In § 179.103, § 179.103–5, paragraphs (b)(1) and (b)(4) are revised to read as follows:

**§ 179.103 Special requirements for class 114A * * * tank car tanks.**

**§ 179.103–5 Bottom outlets.**

* * * * * *

(b) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments shall be secured to car by at least ⅜-inch chain, or its equivalent, except that bottom outlet closure plugs may be attached by ¼-inch chain. When the bottom outlet closure is of the combination cap and value type, the pipe connection to the valve shall be closed by a plug, cap, or approved quick coupling device. The bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings must be approved by the AAR Committee on Tank Cars.

* * * * * *

(4) If the outlet nozzle extends 6 inches or more from shell of tank, a V-shaped breakage groove shall be cut (not cast) in the upper part to the outlet nozzle at a point immediately below the lowest part of value closest to the tank. In no case may the nozzle wall thickness at the roof of the "V" be more than ¼-inch. On cars without continous center sills, the breakage groove or its equivalent may not be more than 15 inches below the tank shell. On cars with continous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * * *

72. In § 179.200, § 179.200–7, paragraphs (b), (c), (d), (e), and (f) are amended by changing the heading in each Table; § 179.200–13 is revised, and in § 179.200–17, paragraphs (a)(1), (a)(6), (a)(7), (b)(1), and (b)(3) are revised to read as follows:

**§ 179.200 General specifications applicable to non-pressure tank car tanks**

**§ 179.200–7 Materials.**

(a) * * *

(b) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition [1] | Minimum elongation in 2 inches (percent) weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

(c) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition [2] [3] | Minimum elongation in 2 inches (percent) 0 temper weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

(d) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition [1] | Minimum elongation in 2 inches (percent) weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

(e) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition [1] | Minimum elongation in 2 inches (percent) weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

(f) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition [1] | Minimum elongation in 2 inches (percent) weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

**§ 179.200–13 Manway ring or flange, safety relief device flange, bottom outlet nozzle flange, bottom washout nozzle flange and other attachments and openings.**

(a) These attachments shall be fusion welded to the tank and reinforced in an approved manner in compliance with the requirements of Appendix E, figure 10, of the AAR Specifications for Tank Cars.

(b) The opening in the manway ring must be at least 16 inches in diameter except that acid resistant lined manways must be at least 18 inches in diameter before lining.

(c) The manway ring or flange, shall be made of cast, forged or fabricated metal. The metal of the dome, tank, or nozzle must be compatible with the manway ring or flange, so that they may be welded together.

(d) The openings for the manway or other fittings shall be reinforced in an approved manner.

**§ 179.200–17 Bottom outlets.**

(a) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments shall be secured to the car by at least ⅝-inch chain, or its equivalent, except that the bottom outlet closure plugs may be attached by ¼-inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection to the valve shall be closed by a plug, cap, or approved quick coupling device. The bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings shall be approved by the AAR Committee on Tank Cars.

* * * * *

(6) To provide for the attachment of unloading connections, the discharge end of the bottom outlet nozzle or reducer, the valve body of the exterior valve, or some fixed attachment thereto, shall be provided with one of the following arrangements or an approved modification thereof. (See Appendix E. Fig. E17 of the AAR Specifications for Tank Cars for illustrations of some of the possible arrangements.)

(i) A bolted flange closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.1) or including an auxiliary valve with a threaded closure.

(ii) A threaded cap closure arrangement including a minimum 1-inch NPT pipe plug (see Fig. E17.2) or including an auxiliary valve with a threaded closure.

(iii) A quick-coupling device using a threaded plug closure of at least 1-inch NPT or having a threaded cap closure with a minimum 1-inch NPT pipe plug (see Fig. E17.3 through E17.5). A minimum 1-inch auxiliary test valve with a threaded closure may be substituted for the 1-inch pipe plug (see Fig. E17.6). If the threaded cap closure does not have a pipe plug or integral auxiliary test valve, a minimum 1-inch NPT pipe plug shall be installed in the outlet nozzle above the closure (see Fig. E17.7).

(iv) A two-piece quick-coupling device using a clamped dust cap must include an in-line auxiliary valve, either integral with the quick-coupling device or located between the primary bottom outlet valve and the quick-coupling device. The quick-coupling device closure dust cap or outlet nozzle shall be fitted with a minimum 1-inch NPT closure (see Fig. E17.8 and E17.9).

(7) If the outlet nozzle extends 6 inches or more from the shell of the tank, a V-shaped breakage groove shall be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of valve closest to the tank. In no case may the nozzle wall thickness at the root of the "V" be more than ¼ inch. The outlet nozzle on interior valves or the valve body on exterior valves may be steam jacketed, in which case the breakage groove or its equivalent must be below the steam chamber but above the bottom of center sill construction. If the outlet nozzle is not a single piece, or if exterior valves are applied, provisions shall be made for the equivalent of the breakage groove. On cars without continuous center sills, the breakage groove or its equivalent must be no more than 15 inches below the tank shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * *

(b) * * *

(1) The extreme projection of the bottom washout equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars.

* * * * *

(3) If the washout nozzle extends 6 inches or more from the shell of the tank, a V-shaped breakage groove shall be cut (not cast) in the upper part of the nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case may the nozzle wall thickness at the root of the "V" be more than ¼ inch. Where the nozzle is not a single piece, provisions shall be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without continuous center sills, the breakage groove or its equivalent may not be more than 15 inches below the outer shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

73. In § 179.202, § 179.202–8, § 179.202–11, and § 179.202–16 are revised to read as follows:

**§ 179.202 Special commodity requirements for non-pressure tank car tanks.**

**§ 179.202–8 Chloracetyl chloride.**

Tank cars used to transport chloracetyl chloride must have a nickel cladding with a minimum thickness of 1/16 inch. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80. Specification DOT–103ANW tank car tanks used to transport chloracetyl chloride shall be fabricated or solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of 96.7 percent.

**§ 179.202–11 Phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.**

Specification 103ANW tank cars used to transport phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride, shall be fabricated of solid nickel at least 95 percent pure and containing not more than 1 percent iron. Metal test coupon for welding procedure qualification must contain not more than 1 percent iron. All cast metal parts of the tank in contact with the lading must have a minimum nickel content of approximately 96.7 percent. Specification 103A tank cars used to transport phosphorus oxybromide, phosphorus oxychloride, thiophosphoryl

chloride must be lead-lined steel, or made of steel with a nickel cladding of at least 10 percent of the shell thickness. Specifications 103AW, 111A100F2, or 111A60W2 tank cars used to transport phosphorus oxybromide, phosphorus oxychloride, thiophosphoryl chloride must be lead-lined steel or made of steel with a minimum thickness of nickel cladding of 1/8-inch. Nickel cladding must be low carbon nickel in accordance with ASTM B162–80. Specification 103EW tank cars used to transport phosphorus trichloride and thiophosphoryl chloride must have tanks fabricated from Type 316 stainless steel. Unlined Specification 103A, 103AW, 111A100F2, or 111A100W2 tank cars are authorized for phosphorus trichloride only.

**§ 179.202–16 Chloroacetic acid, liquid.**

(a) Tank cars used to transport chloroacetic acid, liquid, must have tanks with nickel cladding of at least 20 percent of the shell thickness. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

(b) Chloroacetic acid, anhydrous, when shipped as a liquid, shall be shipped in Specification 103ANW tank car tanks fabricated of nickel containing not more than 1 percent iron, or in Specification 103AW or 111A60W2 tank car tanks with nickel cladding of at least 20 percent of the shell thickness, or be provided with a suitable corrosion resistant coating or lining. Metal test coupons for welding procedure qualification must contain not more than 1 percent iron. Nickel cladding in tanks must be low carbon nickel in accordance with ASTM B162–80.

74. In § 179.220, § 179.220–1 is revised; § 179.220–7 paragraphs (b), (c), (d), and (e) are amended by changing the heading in each Table; § 179.220–18, paragraphs (a)(1), (a)(6), (b)(1), and (b)(3) are revised and in § 179.220–19, the last sentence of paragraph (c) is revised to read as follows:

**§ 179.220 General specifications applicable to nonpressure tank car tanks consisting of an inner container supported within an outer shell (Class DOT–115).**

**§ 179.220–1 Tanks built under these specifications must meet the requirements of § 179.220, § 179.221, and § 179.222.**

**§ 179.220–7 Materials.**

* * * * *

(b) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition[1] | Minimum elongation in 2 inches (percent) weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

(c) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition[2] [6] | Minimum elongation in 2 inches (percent) weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

(d) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition[1] | Minimum elongation in 2 inches (percent) weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

(e) * * *

| Specifications | Minimum tensile strength (p.s.i.) welded condition[1] | Minimum elongation in 2 inches (percent) weld metal (longitudinal) |
|---|---|---|
| | | |

* * * * *

**§ 179.220–18 Bottom outlets.**

(a) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars. All bottom outlet reducers and closures and their attachments shall be secured to car by at at least 5/8-inch chain, or its equivalent, except that bottom outlet closure plugs may be attached by 1/4-inch chain. When the bottom outlet closure is of the combination cap and valve type, the pipe connection to the valve shall be closed by a plug, or cap. The bottom outlet equipment should include only the valve, reducers and closures that are necessary for the attachment of unloading fixtures. The permanent attachment of supplementary exterior fittings shall be approved by the AAR Committee on Tank Cars.

* * * * *

(6) If outlet nozzle and its closure extends below the bottom of the outer shell, a V-shaped breakage groove shall be cut (not cast) in the upper part of the outlet nozzle at a point immediately below the lowest part of the valve closest to the tank. In no case may the nozzle wall thickness at the root of the "V" be more than 1/4-inch. The outlet nozzle or the valve body may be steam jacketed, in which case the breakage groove or its equivalent must be below the steam chamber but above the bottom of the center sill construction. If the outlet nozzle is not a single piece or its exterior valves are applied, provision shall be made for the equivalent of the breakage groove. On cars without continuous center sills, the breakage groove or its equivalent may not be more than 15 inches below the outer shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * *

(b) * * *

(1) The extreme projection of the bottom washout equipment may not be more than that allowed by Appendix E of the AAR Specifications for Tank Cars.

* * * * *

(3) If washout nozzle extends below the bottom of the outer shell, a V-shaped breakage groove shall be cut (not cast) in the upper part of the nozzle at a point immediately below the lowest part of the inside closure seat or plug. In no case may the nozzle wall thickness at the root of the "V" be more than 1/4-inch. Where the nozzle is not a single piece, provisions shall be made for the equivalent of the breakage groove. The nozzle must be of a thickness to insure that accidental breakage will occur at or below the "V" groove or its equivalent. On cars without a continuous center sill, the breakage groove or its equivalent may not be more than 15 inches below the outer shell. On cars with continuous center sills, the breakage groove or its equivalent must be above the bottom of the center sill construction.

* * * * *

**§ 179.220–19 Safety relief devices.**

* * * * *

(c) * * * Except for tanks for

chloroprene (see § 179.222–1), tanks equipped with vents shall be stenciled "Not for flammable liquids".

75. In § 179.221–1, is amended by adding an entry at the end of the Table to read as follows:

**§ 179.221 Individual specification requirements applicable to tank car tanks consisting of an inner container supported within an outer shell.**

**§ 179.221–1 Individual specification requirements.**

* * * * *

| Specification | 115A60W1 | 115A60ALW | 115A60W6 |
|---|---|---|---|
| * | * | * | * |
| Special reference | § 179.222–1 | | § 179.222–1 |

76. Sections 179.222 and 179.222–1 are added to read as follows:

**§ 179.222 Special commodity requirements for DOT 115A tank car tanks.**

In addition to § 179.220 and § 179.221 the following requirements are applicable.

**§ 179.222 Chloroprene.**

DOT 115A tank car tanks used to transport chloroprene shall be equipped with a safety vent of a diameter not less than 12 inches complying with § 179.221–1 instead of a safety relief valve. The outer shell shall be stenciled "CHLOROPRENE" on both sides in letters not less than four inches high.

77. In § 179.301 and Table in paragraph (a) is revised to read as follows:

**§ 179.301 Individual specification requirements for multi-unit tank car tanks.**

(a) * * *

| DOT specification | 106A500–X | 106A800–X | 110A500–W | 110A600–W | 110A800–W | 110A1000–W |
|---|---|---|---|---|---|---|
| Bursting pressure, p.s.i. (see § 179.300–5) | (1) | (1) | 1250 | 1500 | 2000 | 2500 |
| Minimum thickness shell, inches | 15/32 | 11/16 | 1/2 | 9/16 | 15/32 | 19/32 |
| Test pressure, p.s.i. (see § 179.300–16) | 500 | 500 | 500 | 600 | 800 | 1000 |
| Safety relief devices, p.s.i. (see § 179.300–15) | | | | | | |
| Start-to-discharge, or burst maximum, p.s.i. | 375 | 500 | 375 | 450 | 600 | 700 |
| Vapor-tight, minimum p.s.i. | 300 | 480 | 300 | 360 | 480 | 560 |

[1] None specified.

Issued in Washington, DC, on April 3, 1987 under authority delegated in 49 CFR 1.53.

**M. Cynthia Douglass,**

*Administrator, Research and Special Programs Administration.*

[FR Doc. 87–7864 Filed 4–17–87; 8:45 am]

BILLING CODE 4910-60-M

Federal Register

Monday
April 20, 1987

Part IV

# Environmental Protection Agency

**Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1986; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3189-6]

### Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1986

This notice publishes the subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1986. These determinations were made pursuant to the EPA protest procedures set forth at 40 CFR 35.939 (assistance awarded prior to May 12, 1982), 40 CFR Part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 CFR Part 33, March 28, 1983 Final Rules (assistance awarded after March 28, 1983).

This is the Ninth EPA subject index which lists only the decisions issued in the year stated. The first index, listing Regional Administrator protest appeal determinations issued during the period 1974 through 1977, was published at 43 FR 29086–95 (July 5, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812–18 (May 2, 1979), the index of 1979 determination published at 45 FR 58770–74 (September 4, 1980), the index of 1980 determination published at 46 FR 30476–80 (June 8, 1981), the index of 1981 and 1982 determinations published at 49 FR 36004–15 (September 13, 1984), the index of 1983 decisions published at 50 FR 4148–54 (January 29, 1985), the index of 1984 decisions published at 50 FR 23061–68 (May 30, 1985) and the index of 1985 decisions published at 51 FR 32038–46 (September 8, 1986).

The index lists 40 appeal determinations and 3 reconsideration request determinations issued by the EPA Regional Administration in 1986.

The determinations are cited informally with the names of the assistance receipients and protesters shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for the year. This number is not part of the preferred citation which should state the following: Grantee, State, (EPA Region _____, date of determination) (Protest of _____).

The issues have been divided into two major subject headings and then alphabetized. Procedural protest issues are listed under the heading "Protest Appeals;" substantive procurement issues are listed under the heading "Procurement."

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the Office of General Counsel in EPA headquarters.

**FOR FURTHER INFORMATION CONTACT:** Anthony F. Guadagno: Grants, Contracts, and General Law Division (LE–132G), Office of General Counsel, United States Environmental Protection Agency, Washington, DC 20460; (202) 382–5313.

Dated: April 3, 1987.

Francis S. Blake,

*General Counsel (LE–130).*

### Bid Protest Appeals—Procedural Matters

*A/E Judgment*

86:03 Alice, TX (VI, 1–15–86) (*W.T. Young Const. Co.*) (EPA examines the factors on which grantee bases a procurement decision to determine if materially incomplete or erroneous) (where rational basis is lacking but causes no harm to competition, EPA will not reverse grantee decision).

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (EPA defers to A/E judgment concerning minimum performance needs unless it lacks a rational basis) (finding that engineer's judgment has a rational basis does not mean that EPA believes the specifications reflect the best engineering judgment. No opinion is offered by EPA regarding the relative merits of one product to another or their suitability for particular applications).

86:11 Struthers, OH (V, 2–27–86) (*Air-O-Lator*) (failure to demonstrate basis for rejecting equipment).

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (grantee demonstrated performance based reasons for technical criteria of engines).

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*) (equipment rejected because it could not interface with previously installed equipment).

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (a bid which fails to meet a material term of the specifications must be rejected as nonresponsive—a material term cannot be waived after bid opening in order to accept a low bid).

*Burden of Proof*

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (protester alleging restrictive specifications must show it was excluded—grantee must then show that specifications were based on minimum project needs and that there was a rational basis for excluding protester's equipment—burden then shifts to protester to show that the specifications were not based on minimum performance requirements or that there was no rational basis).

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (protest concerning specifications—protester must refute grantee's prima facie showing of rational basis).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (where protester failed to prove equipment was excluded by specifications it could not challenge the specifications as unduly restrictive).

86:38 South Valley, UT (VIII, 10–28–86) (*Western Road Machinery Co.*) (unsupported and groundless claims rejected as frivolous).

*Exhaustion of Administrative Remedy*

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (late protest asserting Buy American violation raises matter of contract administration. EPA will not order grantee to undo existing contract; relief is limited to allowability of costs).

86:29 Kankakee, IL (V, 7–7–86) (*Global Const. Co.*) (appeal dismissed as premature where it was filed with EPA before grantee issued determination).

*Jurisdiction*

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (post-contract award matters are not protestable) (EPA will not consider appeal involving matter currently in court).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (post-contract award decisions concerning subcontract equipment are not protestable by prime).

86:39 Columbus, OH (V, 10–29–86) (*Ingersoll-Rand*) (EPA regulations and protest appeal procedures do not apply to procurements that are not EPA funded).

86:40 Michigan City, IN (V, 11–4–86) (*Tenco Hydro, Inc.*) (subcontractor substitution is a matter of contract administration and not protestable).

*Procedures*

86:07 Clay Township, IN (V, 1–29–86) (*Iacobelli Const., Inc.*) (protester who did not appeal dismissal of its protest cannot reassert issues related to original procurement during a new protest following rebidding).

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (EPA will not consider appeal involving matter currently in State court).

86:09 Newberg, OR (X, 2–10–86) (*Metal Dynamics Int'l Corp.*) (appeal filed with wrong office at EPA and was consequently untimely).

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (protest improperly submitted to State instead of to grantee).

86:14 Anne Arundel County, MD (III, 3–7–86) (*Amocams Telemetry Systems, Inc*) (protest appeal improperly filed with EPA Headquarters instead of with Regional Counsel's office) (notification that contract is being awarded to competitor can reasonably be considered a final determination of a bid protest).

86:29 Kankakee, IL (V, 7–7–86) (*Global Const. Co.*) (protest must be filed with grantee and determination made before appeal can be filed with EPA).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (nominal error in addressing protest to City instead of to the municipal authority which was the grantee was insufficient grounds for dismissing protest).

*Rational Basis Test*

86:03 Alice, TX (VI, 1–15–86) (*W.T. Young Const. Co.*) (EPA examines the factors on which grantee bases a procurement decision to determine if materially incomplete or erroneous) (where rational basis is lacking but causes no harm to competition, EPA will not reverse decision).

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (EPA defers to A/E judgment concerning minimum performance needs unless it lacks a rational basis) (finding that engineer's judgment has a rational basis does not mean that EPA believes the specifications reflect the best engineering judgment. No opinion is offered by EPA regarding the relative merits of one product to another or their suitability for particular applications).

86:11 Struthers, OH (V, 2–27–86) (*Air-O-Lator*) (failure to demonstrate basis for rejecting equipment).

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (grantee demonstrated performance based reasons for technical criteria of engines) (EPA will not substitute its technical judgment for that of the grantee's consulting engineer if the grantee presents a rational engineering basis in support of its actions).

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (by finding a rational basis for specifications, EPA does not give an opinion that the specifications reflect the best, or only, rational engineering judgment concerning a product or its suitability for a particular use).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (grantee demonstrated performance reasons for design requirements).

*Recipient Determination*

86:14 Anne Arundel County, MD (III, 3–7–86) (*Amocams Telemetry Systems, Inc.*) (protest appeal improperly filed with EPA Headquarters instead of with Regional Counsel's office) (notification that contract is being awarded to competitor can reasonably be considered final determination of a bid protest).

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (award to a competitor gives protester notice its protest was denied) (protester's burden to demonstrate timeliness).

*Reconsideration*

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (EPA authority) (same test as used for judicial review, *i.e.*, there must be clear showing of material factual mistake, newly discovered evidence, or substantial legal error) (denied where no showing of factual mistake, new evidence or error of law).

85:48 Frederick, MD (III, 1–24–86) (RDP Co.) (*Reconsideration*) (the standard of reconsideration of bid protests is limited to whether the original determination was clearly erroneous as a matter of law or fact) (reconsideration denied where facts raised to clarify party's argument could have been presented during original appeal).

86:05 Southbridge, MA (I, 5–13–86) (*Vulcan Ind., Inc.*) (*Reconsideration*) (inherent authority of EPA to reconsider will only be used where there is newly discovered evidence or clear error of law or fact in original determination).

86:17 Mattabassett-Cromwell, CT (I, 5–22–86) (*Crouse Combustion and Komline-Sanderson*) (*Reconsideration*) (denied because no showing of material factual mistake, newly discovered evidence, or substantial legal error) (parties cannot reargue points previously discussed).

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (in the absence of a clear showing of material factual mistake, newly discovered evidence, or substantial legal error, EPA will not reconsider a protest appeal determination).

*Regulations*

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (Section 33.1120(b)(2) limits protest review to issues of federal law or regulation. Violations of State or local law are not subject to EPA review).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (for grant awarded prior to 1983, grantee has option whether to follow Part 33 instead of Part 35 regulation).

*Remedy*

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (potential Buy American violation is a matter of contract administration. EPA will not order grantee to undo existing contract. Relief is limited to allowability of costs under the grant).

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Inc.*) (a contract already awarded under a defective IFB will not necessarily be disturbed by EPA since the harm caused by the IFB deficiencies cannot usually be rectified after contract award without substantial project delay. The potential gain achieved by rewriting the IFB would not overcome the harm caused to the project and other bidders due to delay and expense of rebidding).

*Review*

Authority and Scope of Review

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (EPA may review a grant recipient's procurement action independent of a protest appeal and when a procurement action is protested, may look beyond the recipient's written protest determination).

Sua Sponte Review

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (a contract already awarded under a defective IFB will not necessarily be disturbed by EPA since the harm caused by the IFB deficiencies cannot usually be rectified after contract award without substantial project delay. The potential gain achieved be rewriting the IFB would not overcome the harm caused to the project and other bidders due to delay and expense of rebidding).

86:42 Columbus, OH (V, 11–18–86) (*Kokosing Const. Co.*) (where appeal dismissed because of untimely protest, EPA nevertheless reviewed the merits).

*Standing*

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (supplier may protest specifications).

86:07 Clay Township, IN (V, 1–29–86) (*Iacobelli Const., Inc.*) (non-bidder lacks standing to protest contract awarded on

rebid even though he bid on initial procurement).

86:09 Newberg, OR (X, 2–10–86) (*Metal Dynamics Int'l Corp.*) (subcontractor lacks standing to protest equipment evaluation).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (subcontractor has standing to protest restrictive application of specifications. Prime contractor cannot protest post-contract award decisions concerning subcontract equipment).

86:28 La Plata, CO (VIII, 6–25–86) (*Mendez Excavation Co.*) (potential MBE subcontractor has standing to protect MBE efforts made by prime contract bidder).

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*) (potential supplier may protest unduly restrictive specifications but cannot protest evaluation of its equipment by the engineer).

86:34 Manchester, NH (I, 8–6–86) (*New England Concrete Pipe Corp.*) (subcontractor supplier cannot protest award of subcontract on grounds that prime contractor selected equipment not meeting specifications).

86:35 Eureka Springs, AR (VI, 8–12–86) (*Hardison Fluid Equipment, Inc.*) (without addressing the issue of standing, EPA Region VI allowed a subcontractor supplier to protest rejection of its equipment based on criteria not specified in the IFB).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (subcontractor supplier may not challenge responsiveness of competitor's equipment or grantee's evaluation of competitor's equipment).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (subcontractor equipment supplier was permitted to protest rejection of its equipment claiming unduly restrictive application of specifications). (Note: Compare Manchester, NH (I, 8–6–86) and New York, NY (II, 3–3–84) denying standing).

86:38 South Valley, UT (VIII, 10–28–86) (*Western Road Machinery Co.*) (nonresponsive bidder lacks standing to protest grantee's rejection of all bids) (where third low bidder is not next in line to receive award, it lacks standing to protest).

86:40 Michigan City, IN (V, 11–4–86) (*Tenco Hydro, Inc.*) (subcontractor substitution may not be protested).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (where specifications exclude a supplier's equipment, the supplier may protest the prequalification process without first submitting its equipment for evaluation).

*Summary Disposition*

86:29 Kankakee, IL (V, 7–7–86) (*Global Const. Co.*) (dismissal for failure to exhaust administrative remedies).

*Time Limitations*

86:01 St. Andrews, GA (IV, 1–10–86) (*Marley Pump Co.*) (protest that brand name or equal specifications are unduly restrictive must be filed before bid opening).

86:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (protest challenging application of specifications must be filed prior to bid opening where specifications are applied as written) (this decision explains significant changes from Part 35 to Part 33 regulation).

86:04 Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (protest alleging proprietary specifications must be filed before bid opening) (the purpose of EPA's regulation is to prevent the serious delay of a project and to protect the competitive bidding process. A supplier has ample time to file protest prior to bid opening, and if he fails to object to the specifications he waives any right to later raise this issue).

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (protest challenging technical design features of brand name or equal specification is untimely when filed after bid opening).

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (award to a competitor gives protester notice its protest was denied) (protester's burden to demonstrate timeliness).

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (protest that contractor's selection of equipment violated Buy American provision must be filed by supplier within 7 days of knowing contractor's decision) (time limitation requirement necessary in order to maintain construction schedule).

86:09 Newberg, OR (X, 2–10–86) (*Metal Dynamics Int'l Corp.*) (where appeal filed within 7 days but at wrong office at EPA—it was late).

86:14 Anne Arundel County, MD (III, 3–7–86) (*Amocams Telemetry Systems, Inc.*) (notification that contract was being awarded to protester's competitor was reasonable notice of rejection of the protest and started the appeal clock).

86:05 Southbridge, MA (I, 5–13–86) (*Vulcan Ind., Inc.*) (*Reconsideration*) (protest challenging brand name or equal specification must be filed before bid opening).

86:22 Brunswick, MO (VII, 5–15–86) (*Jay Shartran Co.*) (supplier/manufacturer's protest challenging application of brand name or equal specifications cannot be filed after prime bid opening where the specification itself gave notice of basis for protest).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (where prequalification was denied, offeror timely protested within 7 days of adverse evaluation—Note: the 7 day time limit applied because evaluation rather than specifications was being challenged).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump. Co.*) (a protest by an equipment supplier challenging specifications as unduly restrictive must be filed before the prime contract bid opening date. The requirement that protests be filed within 7 days of knowledge of the basis of protest, which is applicable to other types of protests, does not apply to protests concerning unduly restrictive specifications).

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*) (where specifications exclude supplier, a protest must be filed before bid opening, not after equipment evaluation and rejection) (equipment supplier's protest was late where it was filed more than 7 days after alleged restrictive application of specifications).

86:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (protest alleging that technical or design features of the specifications are unduly restrictive must be filed before bid opening, where the specifications, as written, give notice of the basis for the protest).

86:35 Eureka Springs, AR (VI, 8–12–86) (*Hardison Fluid Equipment, Inc.*) (where prime contractor is told by grantee that proposed subcontract equipment is rejected, the time for subcontractor to protest may begin to run on or about the date the prime contractor received notice).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (protest alleging unduly restrictive specifications was dismissed for failure to file prior to bid opening).

86:42 Columbia, OH (V, 11–18–86) (*Kokosing Const. Co.*) (where unsuccessful bidder had ability to examine successful bidder's bid at time of bid opening, it had burden of discovering basis for protecting responsiveness of that bid and filing a protest in less than the 15 days taken).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (where protest was filed untimely but grantee rebid the contract and the protest was still active, there was sufficient time for grantee to revise restrictive specifications and the protest was deemed timely).

86:05 Southbridge, MA (I, 5–13–86) (*Vulcan Ind., Inc.*) *(Reconsideration)* (protest based on improprieties in solicitation clearly apparent before bid opening must be filed before bid opening) (an offeror of "or equal" equipment that does not meet specifications cannot wait until equipment rejection to file protest).

**Procurement**

*A/E Services*

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (a recipient is expected to evaluate equipment submittals, including "or equal" items, and may not separately charge a prime contract bidder for evaluating equipment listed in its bid as "or equals").

*Bid Shopping*

86:12 Mokena, IL (V, 3–3–86) (*Modern Builders Ind. Concrete Co.*) (EPA does not prohibit bid shopping).

*Bidders & Offerors*

No entries.

*Bids*

Acceptance Period

No entries.

Addendum

No entries.

Alternates

No entries.

Ambiguity

86:32 Coleraine-Bovey-Taconite, MN (V, 7–25–86) (*Kenko, Inc.*) (where it was unclear from bid whether unit prices were included for certain items, bid was ambiguous and nonresponsive).

Base Bids

86:26 Huntington, WV (III, 5–27–86) (*Crouse Combustion Systems, Inc.*) (IFB required bidders to base its bid on brand name equipment and it was unclear how "or equal" prices would be evaluated).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.)* (the single base bid method of soliciation and evaluation for equipment may not be used to determine the low responsive bidder and, further, a bid evaluation method which favors the naming of brand name items to the exclusion of "or equals" violates this fundamental principle).

Cancellation of Solicitation

No entries.

Evaluation

86:03 Alice, TX (VI, 1–15–86) (*W.T. Young Const. Co.*) (as contract award criterion, "available funds" need not be available on day of bid opening).

86:04 Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (engineer's opinion concerning enhanced performance reliability and maintenance accomplished by requiring certain design features deferred to by EPA).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (period for allowing performance tests can be limited by grantee, otherwise costs and delay could be excessive).

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (on prequalification submittals, A/E judgment concerning capital costs, life cycle costs and maintenance and operation costs is given deference).

86:21 Chelan, WA (X, 5–9–86) (*Lyco, Inc.*) (different manufacturers treated differently—grantee improperly waived requirements for one manufacturer while rigidly enforcing similar requirements against another manufacturer).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (a recipient is expected to evaluate equipment submittals, including "or equal" items, and may not separately charge a prime contract bidder for evaluating equipment listed in its bid as "or equals").

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*) (subcontractor supplier cannot protest improper evaluation of its equipment).

86:35 Eureka Springs, AR (VI, 8–12–86) (*Hardison Fluid Equipment, Inc.)* (grantee improperly rejected equipment meeting terms of its specification on basis of undisclosed criteria).

Late

86:06 Weslaco, TX (VI, 1–28–86) (*Nunn & Schumway Const. Co., Inc.*) (bid delivered to wrong office but nevertheless in exclusive possession of contracting authority prior to bid submission deadline and of actual bid opening may not be rejected as late).

Mistake

86:13 South Burlington, VT (I, 3–5–86) (*Pizzagalli, Const. Co.*) (where bidder presented clear and convincing evidence of bid mistake, its nature, how it occurred, and the intended price, bid correction is allowable) (where no bid displacement, evidence outside the bidding documents may be considered in determining whether bidder has met clear and convincing evidence standard).

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (correction resulting in bid displacement permitted where mistake and intended bid clear on the face of bid) (words-over-numbers reconciliation clause not controlling).

86:16 Cecil County, MD (III, 3–11–86) (*Cecil Const. Corp.*) (where bid is significantly below A/E estimate and other bids, and grantee has reason to suspect mistake, grantee must ask bidder to verify bid, calling attention to the suspected error) (where mistake was clear and intended amount was evident from worksheets, bid correction must be permitted where there is no bid displacement).

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (words-over-numbers reconciliation clause should not be mechanically applied where it results in bizarre result clearly unintended by the bidder. Correction of unit prices is permitted where the mistake and intended bid are clearly apparent from the face of the bid).

Preparation Costs

No entries.

Qualified

No entries.

Rejection of All Bids

86:38 South Valley, UT (VIII, 10–28–86) (*Western Road Machinery Co.*) (where grantee discovered its specifications eliminated equipment which could meet its performance needs, it had good cause to reject all bids and resolicit).

86:45 Hudson County, NJ (II, 12–31–86) (*James L. Horan, Inc.*) (where only tow bids received, both far exceeding engineer's estimate, grantee has reasonable basis for rejecting all bids).

Signature

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (failure to execute Bid Security Form waived as a minor irregularity where bidder otherwise committed to its bid).

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (failure to sign bid in one place did not render bid nonresponsive since bid was signed elsewhere and clearly evidenced bidder's intent to be bound).

Time to Prepare

No entries.

Unbalanced

No entries.

Unit Pricing

No entries.

Bonds

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (failure to execute

Bid Security Form waived as a minor irregularity where bidder otherwise committed to its bid).

86:31 Orange, TX (VI, 7–15–86) (*Baytown Const. Co.*) (where bid bond was made payable to an entity other than the grantee, the grantee determined it was nevertheless enforceable under State law—EPA affirmed).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (in the absence of clear IFB language, performance warranty bond requirements are matters of responsibility).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (150% bond warranty equipment for 5 years was found to be inordinately high and unduly burdensome).

*Buy American Act*

86:01 St. Andrews, GA (IV, 1–10–86) (*Marley Pump Co.*) (question of Buy American Act violation will not be reached unless domestic product is shown to meet the minimum performance requirements).

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (listing a foreign supplier in a "brand name or equal" clause does not give that supplier a preference and does not violate the Buy American Act).

86:10 Cheyenne, WY (VIII, 2–26–86) (*Roscoe Brown, Inc.*) (product found to be 50% domestic) (matter of contract administration).

86:22 Brunswick, MO (VII, 5–15–86) (*Jay Shartran Co.*) (domestic materials comprised 73% of the pump equipment so a comparison of costs was therefore unnecessary).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (a foreign manufacturer may be specified as a brand name under a "brand name or equal" specification) (where equipment is procured by subcontract, compliance with Buy American provisions of the Clean Water Act is generally a matter of contract administration, not protestable to EPA).

*Competitive Negotiation*

No entries.

*Conflict of Interest*

No entires.

*Engineering Judgment*

86:04 Town of Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (EPA deferred to opinion concerning technical adequacy and compliance of proposed equipment—also deferred to decision to require certain design features to enhance performance reliability and maintenance).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (deference to performance based reasons for design criteria).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (exercise of judgment in the design of incineration equipment and technical adequacy and compliance of proposed equipment given deference by EPA where rational basis for decision).

86:26 Huntington, WV (III, 5–27–86) (*Crouse Combustion Systems, Inc.*) (where rational basis for engineer's decision, EPA would not substitute its opinion for that of engineer concerning the technical adequacy or compliance of proposed equipment).

85:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (Reconsideration) (by finding a rational basis for specifications, EPA does not give an opinion that the specifications reflect the best, or only, rational engineering judgment concerning a product or its suitability for a particular use).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (rational basis for determining certain design criteria to be necessary for performance needs) (EPA does not decide whether specifications reflect best judgment and EPA decision does not reflect an opinion regarding relative merits of one supplier's equipment versus another).

*Experience Requirements*

86:11 Struthers, OH (V, 2–27–86) (*Air-O-Lator*) (EPA reversed grantee decision which found supplier did not meet the specified experience) (no rational basis for rejecting equipment and grantee failed to justify need for requirement).

*Invitation for Bids (IFB)*

Alternate

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (design specifications to be met by alternate equipment must be clearly identified in the IFB).

Defective

86:32 Coleraine-Bovey-Taconite, MN (V, 7–25–86) (*Kenko, Inc.*) (where IFB received by bidder was missing two pages, bidder was responsible for learning of the clearly apparent omission and submitting the unit prices included on missing pages with its bid).

*Jurisdiction*

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (violation of State law is not protestable unless the action also violates federal law or regulation).

*License Requirement*

No entries.

*Listing*

86:12 Mokena, IL (V, 3–3–86) (*Modern Builders Ind. Concrete Co.*) (incomplete list could be completed after bid opening where it was matter of responsibility).

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (bid shopping does not violate EPA regulation but rather is a matter exclusively of State or local law. Where IFB did not expressly state that listing subcontractors was a matter of responsiveness, the failure to provide such information with the bid was correctly waived as non-material deficiency).

*Minority Business and Women's Business Enterprise (MBE/WBE)*

86:02 San Bernardino, CA (IX, 1–15–86) (*MCI Constructors, Inc.*) (grantee determination findings bidders nonresponsible for failing to meet positive efforts requirements given deference by EPA).

86:06 Weslaco, TX (VI, 1–28–86) (*Nunn & Schumway Const. Co., Inc.*) (goals are not quotas and a contract may not be deemed nonresponsible merely for failure to attain the goal. Where, as here, contractor met the goal, he is presumed to have made positive efforts).

86:19 Anne Arundel County, MD (III, 4–28–86) (*Ferguson Trenching Co., Inc.*) (grantee's determination that bidder is nonresponsible failing to demonstrate good faith efforts is upheld by EPA where it has a rational basis).

86:23 Decatur, IL (V, 5–16–86) (*Paul A. Laurence Co.*) (where bidder certifies it will meet the MBE/WBE goals, the failure to document positive efforts is a matter of responsibility even if the IFB states it is a matter of responsiveness).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (fact that a firm is a MBE does not excuse it from meeting the technical specifications).

86:28 La Plata, CO (VIII, 6–25–86) (*Mendez Excavation Co.*) (compliance with MBE/WBE requirements is generally a matter of responsibility and defects may be cured after bid opening).

86:33 Elyria, OH (V, 7–30–86) (*Wilson Bennett, Inc.*) (where IFB did not clearly make MBE/WBE requirements matters of responsiveness, grantee improperly rejected bid as nonresponsive. Bid rejection was affirmed, however, because post-bid submissions of MBE/WBE requirements failed to demonstrate bidder "responsibility") (grantee required that only MBEs certified by grantee be used).

*Prequalification*

86:18 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (supplier may protest specifications after being rejected if it is before prime contract bids are opened).

86:21 Chelan, WA (X, 5–9–86) (*Lyco, Inc.*) (challenge to the specifications and equipment evaluation demonstrated the specification eliminated competition and created unjustified sole source).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (functional equivalent of direct procurements subject to EPA review) (submittal rejected as nonresponsive for failure to meet material terms of bidding documents. Grantee had rational basis for rejecting equipment as technically inadequate where offer failed to submit information needed for evaluation).

86:26 Huntington, WV (III, 5–27–86) (*Crouse Combustion Systems, Inc.*) (rational basis for rejecting submittal which substantially deviated from specifications where grantee demonstrated the specifications were performance related).

86:41 Corry, PA (II, 11–18–86) (*Lyco, Inc.*) (where specifications exclude a supplier's equipment, the supplier may protest the prequalification process without first submitting its equipment for evaluation) (prequalification process does not excuse offerors from meeting material specifications).

*Responsibility*

86:02 San Bernardino, CA (IX, 1–15–86) (*MCI Constructors, Inc.*) (grantee's determination finding bidders nonresponsible for failing to meet MBE positive efforts requirements given deference by EPA).

86:06 Weslaco, TX (VI, 1–28–86) (*Nunn & Schumway Const. Co., Inc.*) (bid may not be deemed nonresponsible merely for failure to attain MBE goal; where contractor met goal, it is assumed to have made positive efforts).

86:19 Anne Arundel, MD (III, 4–28–86) (*Ferguson Trenching Co., Inc.*) (grantee's determination finding bidder nonresponsible for failing to demonstrate good faith efforts is upheld by EPA where it has a rational basis) (failure to meet definitive MBE responsibility criteria rendered bid nonresponsible).

86:24 Sidney, NB (VII, 5–20–86) (*Nuncon Const. Corp.*) (where low bidder failed to submit financial information within 10 days of bid opening, he was properly rejected as nonresponsible) (EPA defers to grantee determination of nonresponsibility in absence of bad faith or evidence of no rational basis) (grantee acted reasonably in limiting its review to information provided within the normal review period for determining a bid protest and EPA will not cause grantee to reopen decision based on information made available only during appeal).

86:28 La Plata, CO (VIII, 6–25–86) (*Mendez Excavation Co.*) (where post-bid opening MBE compliance efforts were considered by grantee, EPA deferred to affirmative findings of responsibility) (grantee exercised reasonable discretion in the amount of time it permitted responsibility defects to be cured).

86:31 Orange, TX (VI, 7–15–86) (*Baytown Const. Co.* ) (EPA will not reverse a rationally based grantee decision affirmatively finding bidder responsible).

86:33 Elyria, OH (V, 7–30–86) (*Wilson Bennett, Inc.*) (where IFB did not clearly make MBE/WBE requirements matters of responsiveness, grantee improperly rejected bid as nonresponsive. Bid rejection was affirmed, however, because post-bid submissions of MBE/WBE requirements failed to demonstrate bidder "responsibility") (grantee required that only MBEs certified by grantee be used).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (bid could not be rejected as nonresponsive for failure to provide performance bond) (post bid opening information must be considered by grantee).

*Responsiveness*

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (under "brand name or equal" specifications, equipment which meets performance requirements but fails to meet specified design features is nonresponsive and cannot be accepted even if grantee concludes it meets the project needs).

86:04 Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (EPA will defer to engineer's rationally based decision concerning technical adequacy or compliance of proposed equipment).

86:12 Mokena, IL (3–3–86) (*Modern Builders Ind. Concrete Co.*) (bid may not be rejected for failure to submit subcontractor list where IFB did not make it matter of responsiveness).

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (failure to execute Bid Security Form waived as a minor irregularity where bidder otherwise committed to its bid).

86:24 Sidney, NB (VII, 5–20–86) (*Nuncon Const. Corp.*) (finding of nonresponsiveness due to failure to submit financial information after bid opening was in error).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (prequalification submittal rejected as nonresponsive for failure to submit information needed for evaluation).

86:31 Orange, TX (VI, 7–15–86) (*Baytown Const. Co.*) (where bid bond was made payable to wrong legal entity it was nevertheless enforceable under State law and the bid was therefore responsive).

86:54 Anne Arundel County, MD (III, 7–18–86) (*Roberts Filter Manuf. Co.*) (*Reconsideration*) (a bid which fails to meet a material term of the specifications must be rejected as nonresponsive—a material term cannot be waived after bid opening in order to accept a low bid).

86:32 Coleraine-Bovey-Taconite, MN (V, 7–25–86) (*Kenko, Inc.*) (where bid failed to include unit prices for items on the pages that were missing from the IFB given to the bidder, the bid was nonresponsive. Bidder should have realized the IFB was missing pages).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (grantee improperly rejected subcontractor supplier as nonresponsive for failing to satisfy performance bond requirements; EPA required grantee to evaluate responsibility of suppliers) (where prime contract bidder is responsive, grantee may award contract and require substitution of subcontractor equipment to meet specifications).

86:38 South Valley, UT (VIII, 10–28–86) (*Western Road Machinery Co.*) (where equipment was determined to be adequate for performance needs but it did not meet specified physical characteristics, the bid was nonresponsive and grantee properly rejected all bids and readvertised).

86:42 Columbus, OH (V, 11–18–86) (*Kokosing Const. Co.*) (submittal of alternative construction sequence with bid does not render bid nonresponsive where the submission does not materially deviate from the sequence stated in the IFB, even though the submittal was not made in accordance with procedures set forth in IFB).

*Specifications*

Brand Name or Equal

85:55 Little Blue Valley, MO (VII, 1–13–86) (*Roots-Dresser Ind.*) (*Reconsideration*) (when recipient does not specifically identify salient features but specifies detailed technical features, each feature is deemed a necessary requirement of the equipment which must be met by offeror in order to be responsive. Equipment must not merely

meet performance needs but must meet all specified design features).

86:05 Southbridge, MA (I, 1–24–86) (*Vulcan Ind., Inc.*) (equipment must meet technical design features specified in order to be "equal." Performance equivalence does not make it "equal").

86:26 Huntington, WV (III, 5–27–86) (*Crouse Combustion Systems, Inc.*) (IFB ambiguously mixed the terms "brand name of equal" and "alternate equipment proposals") (IFB improperly stated that equipment which "substantially" met the specifications could be accepted) (IFB was unclear on how "or equal" equipment prices would be evaluated—may be similar to single base bidding) (IFB must permit bids to be based on "or equal" items which will be evaluated after contract award).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (where "brand name or equal" specifications are used, bidders for the prime contract who commit to meeting the specifications must be permitted to base their bids on "or equal" equipment items without risk of being rejected as nonresponsive because one of their equipment items is determined to be unacceptable after bid opening) (bidder commits to meeting the specifications in the IFB and if it is determined by the grantee that the equipment fails to meet the specification, the contractor may be required to substitute conforming equipment and must do so at no additional cost to the grantee).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (use of "or equal" specification does not eliminate undue restrictiveness of design specifications based on a proprietary product) (where specifications describe unique system and recite detailed design specifications, those salient features cannot be disregarded by grantee).

Design (See also Unduly Restrictive Specifications)

No entries.

Local Preference

No entries.

Minimum Need (See also Unduly Restrictive Specifications)

No entries.

Oral Statements

86:04 Tappahanock, VA (III, 1–17–86) (*Envirodyne Systems, Inc.*) (design features intended to enhance performance reliability and maintenance supported by rational performance basis).

Performance

86:07 Clay Township, IN (V, 1–29–86) (*Iacobelli Const., Inc.*) (unreasonable for bidder to rely on oral statements of grantee).

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (equipment performance test period can be limited to avoid excessive cost and delay).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (where design criteria were stated as operational performance requirements such as producing 16% cake solids, grantee had rational performance reasons for the requirements).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (coupling performance and design specifications does not unduly restrict design criteria which every bidder must meet regardless of equipment performance).

Restrictive (See Unduly Restrictive)

Unduly Restrictive

86:13 St. Louis, MO (VII, 4–8–86) (*John Fabic Tractor Co.*) (specification is not unduly restrictive where it is reasonably based on performance needs).

86:21 Chelan, WA (X, 5–9–86) (*Lyco, Inc.*) (specifications copied from one manufacturer's catalog which eliminated all competition created *de facto* sole source procurement) (where a particular manufacturer's specification is used by A/E as starting point for writing project specifications, it must be opened to eliminate unnecessary design features and to permit competition) (improper to require all manufacturers to perform difficult test developed by competitor which is not a national standard).

86:25 Huntington, WV (III, 5–23–86) (*RAM Engineering, Inc.*) (where protester failed to prove equipment was excluded by specifications it could not challenge the specifications as unduly restrictive).

86:27 Chelan, WA (X, 6–24–86) (*Marley Pump Co.*) (only those characteristics and features of a brand name equipment item which are essential to the minimum performance needs of a project may be specified as salient characteristics).

86:35 Eureka Springs, AR (VI, 6–12–86) (*Hardison Fluid Equipment, Inc.*) (where grantee rejection of equipment was not based on specified salient characteristics but on an unstated interpretation which it failed to describe in IFB, rejection was improper).

86:37 Newberg, OR (X, 10–3–86) (*Envirex, Inc.*) (grantee met burden of demonstrating specification was performance related and reflective of the project's minimum performance needs; design criteria were stated in terms of operational performance and efficiency levels rather than physical characteristics).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (where specifications unduly restrict competition, the problem is not cured by permitting alternate equipment bids, since alternate can be rejected at the will of the grantee) (specification requiring suppliers to copy a competitor's design placed suppliers at disadvantage in violation of Clean Water Act).

Salient Requirements

No entries.

Sole Source

86:13 St. Louis, MO (VII, 4–8–86) (*John Fabric Tractor Co.*) (where only one manufacturer was listed on prequalified equipment list, it was not sole source procurement because two suppliers were prequalified and several others were capable of competing)

86:21 Chelan, WA (X, 5–9–86) (*Lyco, Inc.*) (specifications based on manufacturer's catalog eliminated all competition and created *de facto* sole source).

86:41 Corry, PA (III, 11–18–86) (*Lyco, Inc.*) (where specifications permit only one manufacturer of equipment, it creates impermissible sole source procurement, in the absence of performance justification for confining procurement to the equipment).

State and Local Law

86:03 Alice, TX (VI, 1–15–86) (*W.T. Young Const. Co.*) (EPA will not consider issues of State law in absence of overriding federal requirements.).

86:08 Woodbridge, NJ (II, 2–6–86) (*Metcalf & Eddy, Inc.*) (EPA will defer to a State court's determination unless overriding federal requirement).

86:31 Orange, TX (VI, 7–15–86) (*Baytown Const. Co.*) (EPA accorded deference to grantee legal opinion that under State law a bid bond made out to the wrong term would nevertheless be enforceable).

*Subcontract Award*

86:17 Mattabassett-Cromwell, CT (I, 3–28–86) (*Crouse Combustion Systems and Komline-Sanderson*) (grantee decision rejecting subcontract equipment is a matter of contract administration and not protestable).

86:30 Wappingers Falls, NY (II, 7–14–86) (*Myerco, Inc.*). (potential supplier lacks standing to protest the grantee's adverse evaluation of its equipment).

86:34 Manchester, NH (I, 8–6–86) (*New England Concrete Pipe Corp.*) (subcontractor supplier cannot protest award of subcontract on grounds that prime contractor selected equipment not meeting specifications).

86:36 Caledonia, MN (V, 9–10–86) (*Austgen Biojet and Fluidyne Corp.*) (grantee may award contract to prime contract bidder and require substitution of subcontractor equipment to meet specifications).

86:40 Michigan City, IN (V, 11–4–86) (*Tenco Hydro, Inc.*) (substitution of a listed subcontractor is an issue of contract administration and not protestable).

*Subcontractor Listing (See Listing Requirements) Waiver*

86:15 Dupont, PA (III, 3–7–86) (*Marona Const. Co.*) (failure to execute Bid Security Form waived as a minor irregularity where bidder otherwise committed to its bid and grantee properly protested).

86:42 Columbus, OH (V, 11–18–86) (*Kokosing Const. Co.*) (immaterial deviation from IFB instructions was properly waived where IFB did not clearly make it a matter of responsiveness and no prejudice resulted to other bidders).

[FR Doc. 87–8784 Filed 4–17–87; 8:45 am]

BILLING CODE [illegible]

Federal Register

Monday
April 20, 1987

Part V

# Department of Transportation

**Research and Special Programs Administration**

**State of Vermont Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste; Decision on Appeal; Notice**

BEST COPY AVAILABLE

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. IRA-30]

### Inconsistency Ruling No. IR-15; Decision on Appeal; Vermont Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste

**AGENCY:** Research and Special Programs Administration; DOT.

**ACTION:** Decision on Appeal.

**SUMMARY:** In response to the appeal of the Vermont Agency of Transportation from the findings made in Inconsistency Ruling No. IR-15 (49 FR 46660; November 27, 1984), that inconsistency Ruling is affirmed.

**EFFECTIVE DATE:** April 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward H. Bonekemper, III, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel: 202/366-4400).

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 27, 1984, the Department of Transportation (DOT) published nine inconsistency rulings (IR-7 through 15; 49 FR 46632 *et seq.*) concerning state and local restrictions on radioactive materials transportation in the states of Michigan, New York and Vermont. Included in this omnibus proceeding was Inconsistency Ruling No. 15 (IR-15) dealing with regulations of the Vermont Agency of Transportation (hereinafter "Vermont" or "the State"). The Ruling found that Rules I(e), III(D)(3-4), III(E-L) and IV through VIII are inconsistent with the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801-1811) or the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with § 112(a) of the HMTA (49 U.S.C. app. 1811(a)).

The procedural regulations governing Departmental issuance of inconsistency rulings are codified in 49 CFR 107.201-107.211. Prior to November 1, 1985, these provided for the issuance of rulings by the Associate Director for Hazardous Materials Regulation (§ 107.209) and the issuance of decisions on appeal from such rulings by the Director of the Materials Transportation Bureau (§ 107.211). IR-15 was issued in accordance with § 107.209 on November 20, 1984. As required by § 107.211, Vermont filed an appeal within 30 days of issuance of IR-15. Comments opposing the appeal were filed by the Electric Utility Companies' Nuclear Transportation Group.

Effective November 1, 1985, the Research and Special Programs Administration (RSPA) underwent a reorganization in which the Materials Transportation Bureau was abolished and its hazardous materials responsibilities were assigned to the Office of Hazardous Materials Transportation. The functions formerly performed by the Bureau Director were assigned to the Administrator of RSPA. (See 50 FR 45728, November 1, 1985.) Accordingly, this decision on appeal is issued by the Administrator of RSPA.

## II. The Appeal

### *A. Introduction*

Vermont has appealed IR-15 only with respect to its Rules III(G), III(J), III(K), V and VII. Therefore, I will consider and discuss only those rules.

Many of the findings being appealed were discussed exhaustively in IR-15. I will respond only to the specific issues raised on appeal and generally will not reiterate the Ruling's discussions, with which I fully concur. As my decision demonstrates, DOT has almost totally occupied the field of radioactive hazardous materials transportation safety, and thus most state and local regulation in that field will be found inconsistent and thus preempted.

### *B. Rule III(G)*

Vermont appeals the finding in IR-15 that its Rule III(G) is inconsistent with the HMR. Rule III(G) requires carrier submission of an emergency plan before shipment of irradiated reactor fuel or radioactive wastes which are highway route controlled quantities under 49 CFR 173.403 (referred to as "RADWAS" in the Vermont regulations). The specific requirement is for:

> (G) A copy of an emergency plan which describes procedures to be taken by the carrier in an emergency to eliminate or minimize the radiation exposure of the public.

Vermont contends that there are good reasons why this Rule goes beyond the driver training requirements of 49 CFR 177.825. It says that the usefulness of the Federal requirements would be severely compromised in many accidents where the driver would be killed or rendered unconscious: The State concludes by stating:

> Vermont submits that Rule III-G fills a disturbing lacuna in the Federal regulatory scheme. Given, on the one hand, the slight additional burden imposed on carriers by Rule III-G, and, on the other, the paralysis that all too easily might result from the ignorance of law enforcement and rescue personnel who arrive on accident scene and find a dead or unconscious driver, the validity of Rule III-G should be upheld.

Vermont mistakenly implies that DOT's driver training requirements in 49 CFR 177.825(d) are the only means whereby emergency response to radioactive materials incidents has been addressed in the HMR. However, 49 CFR 173.22(c) requires shippers of irradiated reactor fuel to comply with Nuclear Regulatory Commission (NRC) requirements for a physical protection plan. The NRC regulations (10 CFR 73.37(b)) include a requirement for licensees to make advance arrangements with local law enforcement agencies along shipment routes for their response to an emergency or a call for assistance. Also, 10 CFR 73.21(c) authorizes access to licensees' "safeguards information" regarding such shipments by state and local law enforcement authorities responsible for emergency response.

It is clear that DOT and NRC have determined what information and documentation requirements should be imposed on carriers for the safe transportation of radioactive materials, including information needed for emergency response. Therefore, state and local requirements applicable to carriers going beyond the Federal requirements create confusion for transporters, are obstacles to the accomplishment of the objectives of the HMTA and the HMR, and thus are inconsistent with them. (IR-2 (44 FR 75566, Dec. 20, 1979); IR-6 (48 FR 760, Jan. 6, 1983); IR-8 (49 FR 46637, Nov. 27, 1984). Thus, I affirm the finding in IR-15 that Vermont's Rule III(G) is inconsistent.

### *Rule III(J)*

Vermont appeals the finding in IR-15 that Rule III(J) is inconsistent with the HMTA. That Rule requires carriers of highway route controlled quantities of radioactive materials to provide—

> (J) A certificate that a bond or insurance *acceptable to the Secretary* [of the Vermont Agency of Transportation] has been posted to cover all types of damages caused by release of the shipped RADWAS materials, and in no event shall such bond or insurance be for less than Five Million Dollars ($5,000,000) total damages. (Emphasis added.)

Vermont contends that IR-15 found an inconsistency between the State's $5,000,000 requirement and the amount required by a Federal Highway Administration regulation, in effect prior to January 1, 1985, incorporated in the HMR (49 CFR 177.804). However, the State contends that any inconsistency ceased on January 1, 1985, when the

Federal requirement increased to $5,000,000.

Vermont's argument that Rule III(J) is saved simply because the Federal indemnification level and the State's level are both $5,000,000 must fail. In fact, the State's requirement for a bond or insurance "acceptable to the Secretary" (with $5,000,000 being the minimum acceptable amount) is at variance with the Federal limit. A Vermont official has apparent authority to increase the liability coverage required by the HMR. IR–15 correctly stated that "State adoption of higher insurance coverage requirements can operate as barriers to transportation." 49 FR 46664. A similar New York State Thruway Authority (NYSTA) indemnification requirement was addressed in IR–10 (49 FR 46645, Nov. 17, 1984):

> By denying the use of the Thruway to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification, the NYSTA rule directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported. For this reason, the NYSTA rule necessarily poses an obstacle to the accomplishment of the Congressional objective of enhancing hazardous materials transportation safety. 49 FR 46646.

The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification. They have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR. Therefore, I affirm the finding in IR–15 that Rule III(J) is inconsistent with the HMTA.

*Rule III(K)*

Vermont appeals the finding in IR–15 that its Rule III(K) is inconsistent with the HMTA and the HMR.

That Rule requires carriers of highway route controlled quantities of radioactive materials to file—

> (K) A certificate giving the point of origin and point of destination of the shipment and stating that the route to be used is the shortest and most direct, or if not so, then stating the explicit reason(s) that the proposed route was chosen.

Vermont contends that IR–15 incorrectly characterized this requirement as imposing an inconsistent route selection criterion. It argues that Rule III(K) is a reporting requirement, not a route selection requirement, and that it does not interfere with carriers' compliance with the route selection criteria of 49 CFR 177.825(a).

The State says that this requirement is needed for Vermont to keep itself apprised of developments affecting route selection, i.e., state and local requirements elsewhere which may operate to direct traffic to Vermont. Upon learning of improper regulatory obstacles elsewhere, the State contends, it could then apply for an inconsistency ruling or institute judicial proceedings.

Even if not used by the State as a routing criterion, Rule III(K) nevertheless must withstand analysis as a possibly inconsistent information requirement. To the extent that Vermont desires information on origin and destination of shipments passing through Vermont, it already receives that information under an NRC regulation (incorporated in the HMR by general reference in §§ 173.22 and 177.825) requiring notification to governors of spent fuel shipments (10 CFR 73.37(f)). As indicated above, DOT and NRC have totally occupied the field of information requirements relating to transportation of radioactive materials. Thus, information requirements different from or in addition to them create an unjustifiable obstacle to accomplishment of the goals of the HMTA and the HMR. IR–2, IR–6, IR–8 (all *supra*).

Therefore, I affirm the finding in IR–15 that Rule III(K) is inconsistent with the HMTA and the HMR.

*Rule V*

Vermont appeals the finding in IR–15 that its Rule V is inconsistent with the HMTA and the HMR.

Vermont's Rule V provides:

*V. Approval notification.*

> Upon the Secretary granting approval to transport, the applicant shall be notified in writing, not less than 48 hours before the scheduled shipment and the Secretary shall indicate any conditions or limitations to the approval, including but not limited to: operation of highway vehicles or railcars at reduced speed over High Level Bridge(s) or other locales deemed of risk, and prohibition or interruption of transport due to inclement weather or other adverse conditions.

Although expressly noting that it is not appealing the IR–15 finding of inconsistency as to Vermont's Rule IV prohibiting transport of radioactive wastes in Vermont without the Secretary's prior written approval, the State argues that Rule V is not inconsistent. It contends that IR–15 improperly intepreted Rule V as imposing some additional burden on carriers.

The gist of the State's argument follows:

> By its own terms, Rule V should be a boon to carriers in that it protects them against summary or capricious administrative action by requiring the Secretary to make known to them, in writing at least 48 hours in advance, his position on approval of the proposed shipment, together with any conditions or limitations attached to the approval. The requirement that the Secretary afford adequate advance written notice should be particularly helpful to carriers in fulfilling their federally mandated obligation to "consider available information" before applying route selection criteria. *See* 49 C.F.R. 177.825(a)(1983).

The State goes on to list the following types of route-related matters about which carriers will have information by virtue of this rule: interstate highway repaving projects, civil disobedience threats, special events causing traffic congestion, bridge failures, rock slides, and washouts.

By its very terms, however, Vermont's Rule V is more than an administrative provision specifying which State official will provide what notice to carriers concerning road conditions in Vermont. It speaks of "the Secretary granting approval to transport" and indicating "any conditions or limitations to the approval".

In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR. IR–8 (49 FR 46637), IR–10 (49 FR 46645), IR–11 (49 FR 46647), IR–12 (49 FR 46650), IR–13 (49 FR 46653) (all Nov. 27, 1984). Vermont's Rule V purports to authorize state approvals, conditions, and limitations in this field and thus is inconsistent. Furthermore, it is inconsistent because of its inextricable link with the basic prior approval provisions in Vermont's Rule IV (which the State is not appealing).

Therefore, I affirm the finding in IR–15 that Rule V is inconsistent with the HMTA and the HMR.

*Rules VII(A)–(B)*

Vermont appeals the findings in IR–15 that its Rules VIII (A) and (B) are inconsistent with the HMTA to the extent that they impose an obligation to

act upon transporters of radioactive materials.

Those provisions state:

(A) Each motor vehicle shipment of RADWAS shall be monitored by:
(1) a leading State Police vehicle occupied by at least one law enforcement officer;
(2) a vehicle occupied by State Monitoring Team personnel; and
(3) a trailing State Police vehicle occupied by at least one law enforcement officer.
(4) Each shipment by railcar or barge through or in the State shall be accompanied as directed by the Secretary.

The State asserts that IR–15 incorrectly speculated that these provisions might require a carrier to wait at a State border until monitoring personnel arrived. It says that there are no "explicit" requirements placed on carriers although "[s]ome minimal degree of cooperation is implicit"—similar, it says, to a carrier's compliance with speed limits, traffic laws, etc. The state sets forth several practical reasons for state monitoring, including inadequate resources of towns along the route, bad weather, and long emergency response times.

Section 173.22(c) of the HMR requires shippers of irradiated reactor fuel to provide physical protection under a plan established under NRC requirements. The latter provide, in 10 CFR 73.37(c), that a transport vehicle carrying spent nuclear fuel must:

(1) In a heavily populated area, be either:
(i) Occupied by at least two persons and escorted by an armed member of the local law enforcement agency in a mobile unit of such agency, or
(2) In any other area, either:
(i) Be occupied by at least two people,
(ii) Be escorted by a separate vehicle containing at least two persons, or
(iii) Meet one of the heavily populated area criteria.

These provisions evince a clear intent of DOT and NRC to fully occupy the field of escorts for transportation of radioactive materials. Thus, although escort requirements identical to the DOT/NRC requirements (IR–14, 49 FR 46656 (Nov. 27, 1984)) or notice requirements facilitating compliance with such escort requirements (IR–17, 51 FR 20925 (June 9, 1986)) may be consistent, requirements for other additional or special escorts for radioactive transportation are inconsistent. IR–11, 49 FR 46647 (Nov. 27, 1984); IR–13, 49 FR 46653 (Nov. 27, 1984).

Thus, IR–15 was correct in finding Rules VII (A) and (B) inconsistent insofar as they impose an obligation upon transporters because they provide escort standards different from those in the HMR. To the extent they merely indicate the nature of escorts the State will provide, they are not "requirements" subject to preemption under 49 USC app. § 1811(a). However, the State has foregone the opportunity to specifically deny that these rules require a carrier to wait at its borders for escorts other than those required by the HMR. Thus, these rules may constitute a requirement upon carriers and, to the extent that they do, they are inconsistent with the HMTA and the HMR. Therefore, I affirm the finding in IR–15 to that effect.

*Rule VII(C)*

Finally, Vermont appeals the finding in IR–15 that its Rule VII(C) is inconsistent. That rule provides:

(C) The ranking State police officer accompanying the shipment shall be the authority to modify the conditions of the approval in response to weather, accident or exigent circumstances which may affect the safety of the shipment. Any modification which will result in a delay of more than two hours in the time of departure of the shipment from Vermont shall be appoved by the Secretary or his designee.

As it did with respect to its Rule V, the State argues that its Rule VII(C) approval modification procedures place a burden on the State rather than on carriers of radioactive materials. It contends that this Rule contains an explicitly limited delegation of authority, should assist carriers in complying with the "emergency conditions" provisions of 49 CFR 177.825(b)(2)(i), and thus is consistent with the HMR.

Section 177.825(b)(2)(i) authorizes the carrier to deviate from a preferred route when justified by "emergency conditions". State or local governments have authority to provide notice of such conditions and to restrict or suspend all traffic operations when road, weather, traffic or other hazardous conditions or circumstances warrant. IR–3, 46 FR 18918 (Mar. 26, 1981); *American Trucking Assn.* v. *City of Boston*, C.A. 81–628–MA (D. Mass. 1981); *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp 509 (R.I. 1982), *aff'd* 698 F. 2d 559 (1st Cir. 1983). However, Vermont has not provided sufficient justification for its decision to single out radioactive materials traffic for different types of control than hazardous materials generally.

Rule VII(C) says that the ranking State police officer "shall be the authority to modify the conditions of the approval" and states that significant modifications "shall be approved by the Secretary or his designee." These are inconsistent with the carrier discretion and responsibility provided by the HMR and demonstrate the correctness of the finding in IR–15 that Rule VII(c) is an inconsistent element of an inconsistent state approval system. That rule is inconsistent on its own terms and also inconsistent because of its inextricable link with the basic prior approval provisions in Vermont's Rule IV. I affirm the finding of inconsistency.

III. Conclusion

For the reasons indicated above and for the reasons set forth in IR–8 itself, I affirm the determination by the Associate Director of the Materials Transportation Bureau in IR–8 that Vermont Agency of Transportation Rules III(G), III(J), III(K), V and VII are inconsistent with the HMTA and the HMR.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on April 13, 1987.

M. Cynthia Douglass,

*Administrator, Research and Special Programs Administration.*

[FR Doc. 87–8833 Filed 4–17–87; 8:45 am]

BILLING CODE [illegible]

federal register

Monday
April 20, 1987

Part VI

# National Railroad Passenger Corporation

49 CFR Part 701

**Freedom of Information Act; Schedule of Fees and Other Administrative Changes; Proposed Rule**

**NATIONAL RAILROAD PASSENGER CORPORATION**

**49 CFR Part 701**

**Freedom of Information Act; Schedule of Fees and Other Administrative Changes**

**AGENCY:** National Railroad Passenger Corporation (Amtrak, or the Corporation).

**ACTION:** Proposed rules and request for public comments.

**SUMMARY:** The National Railroad Passenger Corporation (NRPC), also known as Amtrak, proposes to amend its rules concerning the Freedom of Information Act (FOIA) to incorporate recent changes to the Act regarding the establishment of fees charged for the search, review, and duplication of records in response to FOIA requests. These proposed rules follow the guidelines established by the Office of Management and Budget (OMB) and the Department of Justice. In addition, NRPC proposes to amend its FOIA regulations to reflect certain administrative changes within the Corporation.

**DATES:** Comments are due on or before April 22, 1987 so that NRPC can meet statutory requirements to publish revised FOIA fee regulations in final form no later than April 25, 1987. A further discussion of the comment period is found in **SUPPLEMENTARY INFORMATION.**

**ADDRESS:** Address comments to the Freedom of Information Office, National Railroad Passenger Corporation, 400 North Capitol Street, NW., Washington, DC 20001.

Comments received will be available for public inspection at the above address from 8:30 a.m. to 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Medaris Oliveri, FOIA Officer, (202) 383–3991.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Reform Act) requires the Office of Management and Budget to promulgate guidelines containing a uniform schedule of FOIA fees that are applicable to all agencies. On January 16, 1987, OMB published a notice of proposed guidelines on the establishment of fees under the Freedom of Information Act in the **Federal Register**, 52 FR 1992. On March 27, 1987, OMB published final guidelines regarding the implementation of certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570). The final guidelines incorporated changes deemed appropriate as a result of public comments received. The purpose of this notice is to issue proposed implementing regulations in conformance with OMB's final guidelines to fulfill the mandate of the Reform Act requiring that regulations be issued in final form no later than April 25, 1987. NRPC would normally provide a 60-day public comment period. However, the NRPC has determined that a shorter comment period is appropriate in light of the fact that NRPC regulations directly follow, almost verbatim, the OMB final guidelines and otherwise reflect only changes in administrative detail. The affected public received notice through OMB's proposed guidelines that agencies would be required to issue implementing regulations based on OMB's proposed guidelines. OMB provided a 30-day public comment period to address specific issues raised in their proposed guidelines. Comments received were considered prior to publication of OMB's final guidelines.

**Lists of Subjects in 49 CFR Part 701**

Organization and Function (government agencies) Freedom of Information.

For reasons set forth in the preamble, it is proposed to amend 49 CFR Part 701 as set forth below:

**PART 701—[AMENDED]**

1. The authority citation for Parts 700 and 701 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 99–570) which contains the Freedom of Information Reform Act of 1986 and Sec. 306(g) Rail Passenger Service Act, 45 U.S.C. 546(g).

**§ 701.2 [Amended]**

2. In § 701.2, the definition of "President" in paragraph (b) is revised to read as follows: "President means the President of the Corporation or his delegee."

**§ 701.3 [Amended]**

3. In § 701.3(a), remove the expression "the Freedom of Information Act" and Substitute in its place the word "law."

4. In § 701.3, paragraph (b) is revised to read as follows: "(b) A requested record of the Corporation may be withheld from disclosure if it comes within one or more of the exemptions in 5 U.S.C. 552(b) or is otherwise exempted by law."

**§ 701.4 [Amended]**

5. In § 701.4, paragraph (a)(4) is revised to read as follows: "(4) The request shall be addressed to the Freedom of Information Officer, National Railroad Passenger Corporation, 400 North Capitol Street, NW., Washington, DC 20001."

6. In § 701.4, paragraph (c), remove the expression "employee handling the request" and substitute in its place the expression "Freedom of Information Officer."

7. In § 701.4, paragraph (d) is revised to read as follows: "(d) The submission of a FOIA request constitutes an agreement by the requester to pay the fees specified in § 701.7 unless the requester is entitled to a fee waiver or specifies in the request a different amount to which the Corporation agrees in writing."

8. In § 701.4, a new paragraph (e) is added to read as follows: "(e) Searches will be made for requested records in order of receipt. Each so-called "continuing request" will be treated as a one-time request."

9. Section 701.7 is revised to read as follows:

**§ 701.7 Fees.**

(a) *Categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall begin upon receipt of a proper request by the Freedom of Information Office which reasonably describes the records sought and which identifies the specific category of the requester. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories.

(1) *Commercial use requesters*— When records are requested for commercial use, the fee policy of NRPC is to levy full allowable direct costs for search, review for release, and duplication of records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents nor waiver or reduction of fees based on an assertion that disclosure would be in the public interest. Commercial use is defined as use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, NRPC shall first look to the use to which a requester will put the documents requested. Where a requester does not explain the use or where explanation is insufficient, NRPC may draw reasonable inferences

from the requester's identity and charge fees accordingly.

(2) *Representatives of the news media*—When records are requested by representatives of the news media, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. The term "representatives of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subcription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through an organization, even though not actually employed by that entity. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section, and the request must not be made for commercial use as this term is defined under paragraph (a)(1) of this section.

(3) *Educational and noncommercial scientific institution requesters*— When records are requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use or to further an individual goal, but are sought in furtherance of scholarly or scientific research.

(4) *All other requesters*—For other requesters who do not come under the purview of paragraphs (a)(1) through (3) of this section, the fee policy of NRPC is to levy full reasonable direct cost of search for and duplication of records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, in order to avoid payment of fees. When NRPC believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, NRPC may aggregate any such requests and charge accordingly. Before aggregating requests from more than one requester, NRPC must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may NRPC aggregate multiple requests on unrelated subjects from one requester.

(c) *Waiver of reduction of fees.* (1) NRPC may waive all fees or levy a reduced fee when disclosure of the information is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(2) In determining whether disclosure is in the public interest, the following factors may be considered:

(i) The relation of the records to the operations or activities of the government;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of the contribution to the public understanding of the subject;

(v) the nature of the requester's personal interest, if any, in the information requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(3) *Burden of proof*—In all cases, the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(d) *Advance payment.* (1) When NRPC estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, NRPC may require a requester to make an advance payment of the entire fee before continuing to process the request.

(2) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), NRPC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (g) and make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When NRPC acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from intial denial plus permissible extensions of these time limits) will begin only after NRPC has received fee payments under paragraph (d)(1) or (2) of this section

(e) *Fee schedule*—(1) *Manual searches for records.* NRPC will charge $27 per hour for the salary and fringe benefits of personnel conducting the search. NRPC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(2) *Computer Searches for Records.* For each request, NRPC will change the actual direct cost of providing this service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to search for records responsive to the request and operator/programmer salary apportionable to the search. NRPC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(3) *Duplication Costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charges will be $.25 per page.

(ii) The fee for reproducing copies of records over 8½ × 14 inches or whose physical characteristics do not permit

reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through NRPC or commercial sources.

(iii) For copies prepared by computer such as tapes or printouts, NRPC shall charge the actual cost, including operator time, of production of the tape or printout.

(4) *Other forms of duplication.* For other methods of reproduction or duplication, NRPC shall charge the actual direct costs of producing the document(s).

(f) *Restrictions in accessing fees.* (1) In accordance with section (4)(A)(iv) of the Freedom of Information Act, as amended, with the exception of requesters seeking documents for a commercial use, NRPC shall provide the first 100 pages of duplication and the first two hours of search time without charge.

(2) NRPC shall not charge fees to any requester, including commercial-use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(3) With the exception of requesters seeking documents for a commercial use, NRPC shall not charge fees for computer search until the cost of the search equals the equivalent dollar amount of two hours of the salary of the operator performing the search.

(h) *Payment procedures.* (1) A request will not be deemed to have been received by the Freedom of Information Office until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

(2) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, or a money order.

(3) Remittances shall be made payable to National Railroad Passenger Corporation and mailed to the Freedom of Information Office.

(i) *Late charges.* Interest may be charged those requesters who fail to pay fees charged. NRPC may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(j) *Other procedures.* NRPC shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. NRPC may choose to contract with outside services to locate, reproduce and disseminate records in response to FOIA requests when deemed the most efficient and least costly method. When documents responsive to a request are maintained for distribution by government agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, NRPC will inform requesters of the steps necessary to obtain records from those sources.

**Stephen C. Rogers,**

*Acting Vice President-Law.*

[FR Doc. 87-8874 Filed 4-17-87; 11:20 am]

BILLING CODE 9000-00-M

# Reader Aids

Federal Register

Vol. 52, No. 75

Monday, April 20, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10
11807-11980.....13
11981-12128.....14
12129-12362.....15
12363-12510.....16
12511-12896.....17
12897-13068.....20

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**

5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11809
5629.....12126
5630.....12129

**Administrative Orders:**

Presidential Determinations:

No. 87-12 of March 17, 1987.....11807

**5 CFR**

213.....11185
591.....12131
841.....12131
870.....12133
1201.....10875

**Proposed Rules:**

353.....11657
2411.....11995

**7 CFR**

210.....11186
271.....11811
272.....11021, 11811
273.....11021, 11811
274.....11811
278.....11811
301.....10357, 12363
354.....10364, 12897
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615, 12511
910.....10729, 11615, 12511
917.....12512
925.....11616
927.....11616
932.....12134
948.....12513
989.....12515
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1922.....11981
1944.....11981
1951.....11456, 11981
1200.....12898
1205.....12898
1207.....12898
1250.....12898

**Proposed Rules:**

220.....12419
246.....12527
330.....12917
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
908.....12535
910.....12536
945.....10893
979.....12185
994.....10984, 12185
1011.....12186
1040.....12537
1046.....11475
1106.....12538
1942.....12539
1955.....10577
1965.....10577

**9 CFR**

212.....11620
248.....11621

**Proposed Rules:**

245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024
318.....12517

**Proposed Rules:**

54.....12189
92.....10765
94.....12917
307.....12422
308.....12422
317.....10766, 11828
319.....10766, 11828
381.....11828

**10 CFR**

0.....11026
73.....12364

**Proposed Rules:**

2.....11475, 12192
30.....12921
40.....12921
50.....10771
70.....12921
430.....12342

**11 CFR**

100.....11187

102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
611.....12135
614.....12143
701.....12365
708.....12370
741.....12365

**Proposed Rules:**

325.....11476, 11660
337.....11492
522.....12425
612.....11080
705.....12427

**13 CFR**

311.....11626

**14 CFR**

21.....11627
23.....11627
39.....10558, 10735, 10736, 11630–11639, 11985, 11986, 12517–12519
71.....10559, 11028, 11032–11034, 11815, 12899
73.....10559, 10560, 11033, 11034
95.....10737
97.....12519
1215.....10880
1260.....12378

**Proposed Rules:**

29.....11997
39.....10581, 11081, 11663, 11664, 11997, 11998, 12544, 12545
71.....10582, 11082, 11828, 12286, 12935
75.....12000, 12286

**15 CFR**

370.....11640
371.....10741
376.....11640
399.....11457, 11640

**Proposed Rules:**

7.....11498
280.....11498
368.....10771

**16 CFR**

13.....12379, 12900

**Proposed Rules:**

13.....12430, 12546

**17 CFR**

200.....12147
203.....12147
241.....11458
270.....11187

**Proposed Rules:**

210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**

16.....11035
271.....10741
381.....10366

**Proposed Rules:**

4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
148.....12149
172.....12149
177.....11216

**Proposed Rules:**

111.....10774
127.....12000

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217

**Proposed Rules:**

200.....10384
404.....13014
416.....13014
615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883, 12380
177.....11641
184.....10884
193.....10561, 10562
201.....12152
341.....12521
510.....10668, 11040, 11041, 11988, 12153
520.....10668, 11041, 11988
522.....10668, 11816
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642, 11988, 12153, 12521
561.....10562, 12153
573.....10887
1308.....11042, 12285

**Proposed Rules:**

133.....12556
312.....12431
357.....12114
561.....12193
1301.....11091

**22 CFR**

2a.....12154
212.....11817

**Proposed Rules:**

41.....12001
171.....12936

**23 CFR**

**Proposed Rules:**

650.....11092
655.....11502

**24 CFR**

15.....12159
201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644

**Proposed Rules:**

200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**

120.....11467

**Proposed Rules:**

40.....11503

**26 CFR**

1.....10368, 10741, 10742, 12161
5f.....10368
54.....10563
602.....10368, 10563, 10742, 12161

**Proposed Rules:**

1.....10774, 12194
54.....10583
602.....10583, 10774

**27 CFR**

**Proposed Rules:**

9.....11689

**28 CFR**

0.....11043
545.....10528

**Proposed Rules:**

549.....10531

**29 CFR**

33.....11600
2644.....10368
2676.....12163

**Proposed Rules:**

1601.....11503
1625.....10584
1910.....10586, 12116, 12559
1915.....12559
1917.....12559
1918.....12559
1919.....12559
1926.....12120, 12288, 12559
1928.....12559

**30 CFR**

914.....10369, 10373
946.....11044

**Proposed Rules:**

700.....11829
723.....11287
724.....11287
733.....10898

845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
934.....12002
935.....11692
937.....11287
938.....12195
939.....11287
941.....11287
942.....11287
947.....11287

**31 CFR**

1.....11989
103.....11436, 12641

**Proposed Rules:**

1.....12003

**32 CFR**

154.....11219
701.....11051
706.....10374, 10748, 10749
1630.....12641

**Proposed Rules:**

1662.....11830

**33 CFR**

60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646
165.....12380

**Proposed Rules:**

100.....10593, 10594, 10905, 10906, 11693, 13011
117.....11695, 12431

**34 CFR**

628.....11256
639.....12508

**Proposed Rules:**

206.....11448
650.....12360

**35 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**Proposed Rules:**

1.....12037
2.....12037
9.....10866

**37 CFR**

**Proposed Rules:**

307.....11096

**38 CFR**

1.....10888
17.....11259
36.....12381

**Proposed Rules:**

17.....10907

**39 CFR**

10.....10375

111.....10749
224.....12900
233.....12900
273.....12900
962.....12900
Proposed Rules:
111.....12432, 12559
265.....12434
447.....12196, 13011

40 CFR

52.....10751, 11259, 11647, 12164, 12522, 12523, 12908
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261, 12165–12167, 12525
261.....11819
266.....11819
271.....10568, 11263
721.....11822
761.....10688
799.....10377, 10752
Proposed Rules:
52.....10596, 11287, 11288, 11696, 12940
85.....12561, 12563
123.....12039
141.....10972, 12876
142.....10972
143.....10972
180.....11292, 11293, 12198
261.....11513
264.....12566
265.....12566
280.....12662, 12786
281.....12853
300.....11513
700.....12940
721.....12285

41 CFR

101–20.....11263
101–28.....11275
101–41.....12168
201–32.....10379

42 CFR

7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649
Proposed Rules:
405.....11517

43 CFR

426.....11938
2090.....12171
Proposed Rules:
11.....12886

44 CFR

64.....10753, 12178
Proposed Rules:
5.....10385
6.....10385
67.....11702

45 CFR

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870
Proposed Rules:
503.....11712, 12040

46 CFR

401.....11468
Proposed Rules:
Chapter I.....12439
154.....10598
276.....12199
382.....11518
502.....10912, 12208, 12212
503.....12212
586.....11832

47 CFR

0.....12382
1.....11652
2.....10568
22.....10571
25.....12911
73.....10381, 10382, 10568, 10757, 11471–11473, 11653, 11825, 12180, 12181, 12912
74.....10568, 11474
78.....10568
Proposed Rules:
1.....11519
21.....11519, 11838
25.....12944
73.....11519–11521, 11837, 11840–11842, 12214–12216, 12285, 12945
74.....11519
90.....10389
94.....11519, 11838

48 CFR

7.....11074
203.....12383
205.....12386
215.....11276
216.....12387
217.....11076, 12387
225.....12389
227.....12390
243.....12387
245.....12389
252.....11076, 11276, 12383, 12386, 12389, 12390
522.....12182
542.....11825
552.....12182
5315.....12414
Proposed Rules:
225.....12440
509.....10913

49 CFR

Ch. IX.....12916
107.....13034
171.....13034
172.....13034
173.....13034
174.....13034
176.....13034
177.....13034
178.....13034
179.....13034
219.....10575
604.....11916
1003.....11277
1043.....11277
1052.....11991
1084.....11277
1207.....10382
1244.....12415
1249.....10382
Proposed Rules:
Ch. X.....11295
571.....10775
701.....13066
1312.....10913
1320.....11295

50 CFR

17.....10890, 11162, 11277
301.....10759
611.....10761
642.....10762
652.....10763
663.....11473
672.....10761, 11991, 12183, 12916
675.....10761, 11992
685.....12641
Proposed Rules:
222.....12040
227.....12040
640.....10780
642.....11713
651.....10781
652.....12575

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List April 13, 1987

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

| Title | Price | Revision Date |
|---|---|---|
| 1, 2 (2 Reserved) | $9.00 | Jan. 1, 1987 |
| 3 (1985 Compilation and Parts 100 and 101) | 14.00 | [1] Jan. 1, 1986 |
| 4 | 14.00 | Jan. 1, 1987 |
| **5 Parts:** | | |
| *1–1199 | 25.00 | Jan. 1, 1987 |
| 1200–End, 6 (6 Reserved) | 16.50 | Jan. 1, 1986 |
| **7 Parts:** | | |
| *0–45 | 25.00 | Jan. 1, 1987 |
| 46–51 | 16.00 | Jan. 1, 1987 |
| *52 | 23.00 | Jan. 1, 1987 |
| 53–209 | 18.00 | Jan. 1, 1987 |
| *210–299 | 22.00 | Jan. 1, 1987 |
| 300–399 | 10.00 | Jan. 1, 1987 |
| 400–699 | 15.00 | Jan. 1, 1987 |
| 700–899 | 17.00 | Jan. 1, 1986 |
| 900–999 | 20.00 | Jan. 1, 1986 |
| 1000–1059 | 15.00 | Jan. 1, 1987 |
| 1060–1119 | 13.00 | Jan. 1, 1987 |
| *1120–1199 | 11.00 | Jan. 1, 1987 |
| *1200–1499 | 18.00 | Jan. 1, 1987 |
| 1500–1899 | 9.50 | Jan. 1, 1987 |
| 1900–1944 | 23.00 | Jan. 1, 1986 |
| 1945–End | 23.00 | Jan. 1, 1986 |
| 8 | 9.50 | Jan. 1, 1987 |
| **9 Parts:** | | |
| *1–199 | 18.00 | Jan. 1, 1987 |
| *200–End | 16.00 | Jan. 1, 1987 |
| **10 Parts:** | | |
| 0–199 | 29.00 | Jan. 1, 1987 |
| *200–399 | 13.00 | Jan. 1, 1987 |
| 400–499 | 14.00 | Jan. 1, 1987 |
| 500–End | 23.00 | Jan. 1, 1986 |
| 11 | 7.00 | Jan. 1, 1986 |
| **12 Parts:** | | |
| 1–199 | 11.00 | Jan. 1, 1987 |
| 200–299 | 22.00 | Jan. 1, 1986 |
| 300–499 | 13.00 | Jan. 1, 1987 |
| 500–End | 26.00 | Jan. 1, 1986 |
| 13 | 19.00 | Jan. 1, 1987 |
| **14 Parts:** | | |
| 1–59 | 20.00 | Jan. 1, 1986 |
| 60–139 | 19.00 | Jan. 1, 1986 |
| *140–199 | 9.50 | Jan. 1, 1987 |
| 200–1199 | 14.00 | Jan. 1, 1986 |
| 1200–End | 11.00 | Jan. 1, 1987 |
| **15 Parts:** | | |
| 0–299 | 10.00 | Jan. 1, 1987 |
| 300–399 | 20.00 | Jan. 1, 1986 |
| 400–End | 14.00 | Jan. 1, 1987 |

| Title | Price | Revision Date |
|---|---|---|
| **16 Parts:** | | |
| 0–149 | 12.00 | Jan. 1, 1987 |
| 150–999 | 10.00 | Jan. 1, 1986 |
| 1000–End | 19.00 | Jan. 1, 1987 |
| **17 Parts:** | | |
| 1–239 | 26.00 | Apr. 1, 1986 |
| 240–End | 19.00 | Apr. 1, 1986 |
| **18 Parts:** | | |
| 1–149 | 15.00 | Apr. 1, 1986 |
| 150–399 | 25.00 | Apr. 1, 1986 |
| 400–End | 6.50 | Apr. 1, 1986 |
| 19 | 29.00 | Apr. 1, 1986 |
| **20 Parts:** | | |
| 1–399 | 10.00 | Apr. 1, 1986 |
| 400–499 | 22.00 | Apr. 1, 1986 |
| 500–End | 23.00 | Apr. 1, 1986 |
| **21 Parts:** | | |
| 1–99 | 12.00 | Apr. 1, 1986 |
| 100–169 | 14.00 | Apr. 1, 1986 |
| 170–199 | 16.00 | Apr. 1, 1986 |
| 200–299 | 6.00 | Apr. 1, 1986 |
| 300–499 | 25.00 | Apr. 1, 1986 |
| 500–599 | 21.00 | Apr. 1, 1986 |
| 600–799 | 7.50 | Apr. 1, 1986 |
| 800–1299 | 13.00 | Apr. 1, 1986 |
| 1300–End | 6.50 | Apr. 1, 1986 |
| 22 | 28.00 | Apr. 1, 1986 |
| 23 | 17.00 | Apr. 1, 1986 |
| **24 Parts:** | | |
| 0–199 | 15.00 | Apr. 1, 1986 |
| 200–499 | 24.00 | Apr. 1, 1986 |
| 500–699 | 8.50 | Apr. 1, 1986 |
| 700–1699 | 17.00 | Apr. 1, 1986 |
| 1700–End | 13.00 | Apr. 1, 1986 |
| 25 | 24.00 | Apr. 1, 1986 |
| **26 Parts:** | | |
| §§ 1.0–1.169 | 29.00 | Apr. 1, 1986 |
| §§ 1.170–1.300 | 16.00 | Apr. 1, 1986 |
| §§ 1.301–1.400 | 13.00 | Apr. 1, 1986 |
| §§ 1.401–1.500 | 20.00 | Apr. 1, 1986 |
| §§ 1.501–1.640 | 15.00 | Apr. 1, 1986 |
| §§ 1.641–1.850 | 16.00 | Apr. 1, 1986 |
| §§ 1.851–1.1200 | 29.00 | Apr. 1, 1986 |
| §§ 1.1201–End | 29.00 | Apr. 1, 1986 |
| 2–29 | 19.00 | Apr. 1, 1986 |
| 30–39 | 13.00 | Apr. 1, 1986 |
| 40–299 | 25.00 | Apr. 1, 1986 |
| 300–499 | 14.00 | Apr. 1, 1986 |
| 500–599 | 8.00 | [2] Apr. 1, 1980 |
| 600–End | 4.75 | Apr. 1, 1986 |
| **27 Parts:** | | |
| 1–199 | 20.00 | Apr. 1, 1986 |
| 200–End | 14.00 | Apr. 1, 1986 |
| 28 | 21.00 | July 1, 1986 |
| **28 Parts:** | | |
| 0–99 | 16.00 | July 1, 1986 |
| 100–499 | 7.00 | July 1, 1986 |
| 500–899 | 24.00 | July 1, 1986 |
| 900–1899 | 9.00 | July 1, 1986 |
| 1900–1910 | 27.00 | July 1, 1986 |
| 1911–1919 | 5.50 | [3] July 1, 1984 |
| 1920–End | 29.00 | July 1, 1986 |
| **30 Parts:** | | |
| 0–199 | 16.00 | [4] July 1, 1985 |
| 200–699 | 8.50 | July 1, 1986 |
| 700–End | 17.00 | July 1, 1986 |
| **31 Parts:** | | |
| 0–199 | 11.00 | July 1, 1986 |
| 200–End | 16.00 | July 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| **32 Parts:** | | |
| 1–39, Vol. I | 15.00 | [5] July 1, 1984 |
| 1–39, Vol. II | 19.00 | [5] July 1, 1984 |
| 1–39, Vol. III | 18.00 | [5] July 1, 1984 |
| 1–189 | 17.00 | July 1, 1986 |
| 190–399 | 23.00 | July 1, 1986 |
| 400–629 | 21.00 | July 1, 1986 |
| 630–699 | 13.00 | July 1, 1986 |
| 700–799 | 15.00 | July 1, 1986 |
| 800–End | 16.00 | July 1, 1986 |
| **33 Parts:** | | |
| 1–199 | 27.00 | July 1, 1986 |
| 200–End | 18.00 | July 1, 1986 |
| **34 Parts:** | | |
| 1–299 | 20.00 | July 1, 1986 |
| 300–399 | 11.00 | July 1, 1986 |
| 400–End | 25.00 | July 1, 1986 |
| **35** | 9.50 | July 1, 1986 |
| **36 Parts:** | | |
| 1–199 | 12.00 | July 1, 1986 |
| 200–End | 19.00 | July 1, 1986 |
| **37** | 12.00 | July 1, 1986 |
| **38 Parts:** | | |
| 0–17 | 21.00 | July 1, 1986 |
| 18–End | 15.00 | July 1, 1986 |
| **39** | 12.00 | July 1, 1986 |
| **40 Parts:** | | |
| 1–51 | 21.00 | July 1, 1986 |
| 52 | 27.00 | July 1, 1986 |
| 53–60 | 23.00 | July 1, 1986 |
| 61–80 | 10.00 | July 1, 1986 |
| 81–99 | 25.00 | July 1, 1986 |
| 100–149 | 23.00 | July 1, 1986 |
| 150–189 | 21.00 | July 1, 1986 |
| 190–399 | 27.00 | July 1, 1986 |
| 400–424 | 22.00 | July 1, 1986 |
| 425–699 | 24.00 | July 1, 1986 |
| 700–End | 24.00 | July 1, 1986 |
| **41 Chapters:** | | |
| 1, 1–1 to 1–10 | 13.00 | [6] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | 13.00 | [6] July 1, 1984 |
| 3–6 | 14.00 | [6] July 1, 1984 |
| 7 | 6.00 | [6] July 1, 1984 |
| 8 | 4.50 | [6] July 1, 1984 |
| 9 | 13.00 | [6] July 1, 1984 |
| 10–17 | 9.50 | [6] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | 13.00 | [6] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | 13.00 | [6] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | 13.00 | [6] July 1, 1984 |
| 19–100 | 13.00 | [6] July 1, 1984 |
| 1–100 | 9.50 | July 1, 1986 |
| 101 | 23.00 | July 1, 1986 |
| 102–200 | 12.00 | July 1, 1986 |
| 201–End | 7.50 | July 1, 1986 |
| **42 Parts:** | | |
| 1–60 | 15.00 | Oct. 1, 1986 |
| 61–399 | 10.00 | Oct. 1, 1986 |
| 400–429 | 20.00 | Oct. 1, 1986 |
| 430–End | 15.00 | Oct. 1, 1986 |
| **43 Parts:** | | |
| 1–999 | 14.00 | Oct. 1, 1986 |
| 1000–3999 | 24.00 | Oct. 1, 1986 |
| 4000–End | 11.00 | Oct. 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| **44** | 17.00 | Oct. 1, 1986 |
| **45 Parts:** | | |
| 1–199 | 13.00 | Oct. 1, 1986 |
| 200–499 | 9.00 | Oct. 1, 1986 |
| 500–1199 | 18.00 | Oct. 1, 1986 |
| 1200–End | 13.00 | Oct. 1, 1986 |
| **46 Parts:** | | |
| 1–40 | 13.00 | Oct. 1, 1986 |
| 41–69 | 13.00 | Oct. 1, 1986 |
| 70–89 | 7.00 | Oct. 1, 1986 |
| 90–139 | 11.00 | Oct. 1, 1986 |
| 140–155 | 8.50 | [7] Oct. 1, 1985 |
| 156–165 | 14.00 | Oct. 1, 1986 |
| 166–199 | 13.00 | Oct. 1, 1986 |
| 200–499 | 19.00 | Oct. 1, 1986 |
| 500–End | 9.50 | Oct. 1, 1986 |
| **47 Parts:** | | |
| 0–19 | 17.00 | Oct. 1, 1986 |
| 20–39 | 18.00 | Oct. 1, 1986 |
| 40–69 | 11.00 | Oct. 1, 1986 |
| 70–79 | 17.00 | Oct. 1, 1986 |
| 80–End | 20.00 | Oct. 1, 1986 |
| **48 Chapters:** | | |
| 1 (Parts 1–51) | 21.00 | Oct. 1, 1986 |
| 1 (Parts 52–99) | 16.00 | Oct. 1, 1986 |
| *2 | 27.00 | Dec. 31, 1986 |
| 3–6 | 17.00 | Oct. 1, 1986 |
| 7–14 | 23.00 | Oct. 1, 1986 |
| 15–End | 23.00 | Oct. 1, 1986 |
| **49 Parts:** | | |
| 1–99 | 10.00 | Oct. 1, 1986 |
| 100–177 | 24.00 | Oct. 1, 1986 |
| 178–199 | 19.00 | Oct. 1, 1986 |
| 200–399 | 17.00 | Oct. 1, 1986 |
| 400–999 | 21.00 | Oct. 1, 1986 |
| 1000–1199 | 17.00 | Oct. 1, 1986 |
| 1200–End | 17.00 | Oct. 1, 1986 |
| **50 Parts:** | | |
| 1–199 | 15.00 | Oct. 1, 1986 |
| 200–End | 15.00 | Oct. 1, 1986 |
| CFR Index and Findings Aids | 27.00 | Jan. 1, 1987 |
| Complete 1987 CFR set | 595.00 | 1987 |
| Microfiche CFR Edition: | | |
| Complete set (one-time mailing) | 155.00 | 1983 |
| Complete set (one-time mailing) | 125.00 | 1984 |
| Complete set (one-time mailing) | 115.00 | 1985 |
| Subscription (mailed as issued) | 185.00 | 1986 |
| Subscription (mailed as issued) | 185.00 | 1987 |
| Individual copies | 3.75 | 1987 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing these parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing these chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

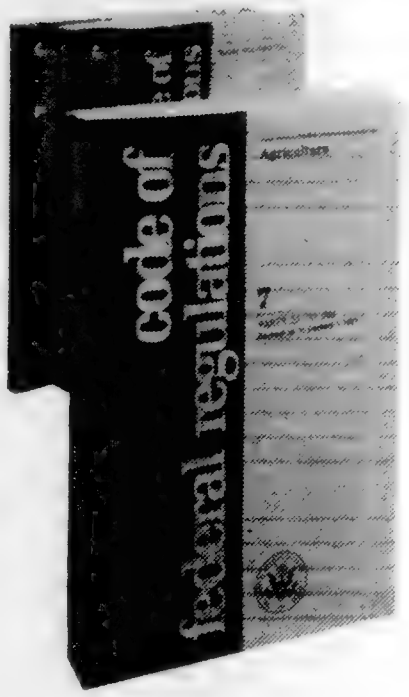


*Just Released*

# Code of Federal Regulations

**Revised as of January 1, 1987**

| Quantity | Volume | Price | Amount |
|---|---|---|---|
| | Title 7—Agriculture | | |
| _____ | Parts 0–45 (Stock No. 869–001–00006–6) | $25.00 | $_____ |
| _____ | Part 52 (Stock No. 869–001–00008–2) | 23.00 | _____ |
| _____ | Parts 1200–1499 (Stock No. 869–001–00018–0) | 18.00 | _____ |
| | Title 9—Animals and Animal Products | | |
| _____ | (Part 200–End) (Stock No. 869–001–00024–4) | 16.00 | _____ |
| | Title 10—Energy | | |
| _____ | (Parts 200–399) (Stock No. 869–001–00026–1) | 13.00 | _____ |
| | | **Total Order** | $_____ |

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

*Please do not detach*

## Order Form

**Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

**Charge to my Deposit Account No.**

☐☐☐☐☐☐–☐

Order No._____

VISA®

MasterCard

**Credit Card Orders Only**

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

**PLEASE PRINT OR TYPE**

**For Office Use Only.**

| | Quantity | Charges |
|---|---|---|
| Enclosed | | |
| To be mailed | | |
| Subscriptions | | |
| Postage | | |
| Foreign handling | | |
| MMOB | | |
| OPNR | | |
| UPNS | | |
| Discount | | |
| Refund | | |

4-21-87
Vol. 52 No. 76

# Federal Register

Tuesday
April 21, 1987

United State
Governmen
Printing Offi
SUPERINTENDEN
OF DOCUMENTS
Washington, DC 2(

OFFICIAL BUSINE
Penalty for private use, $300

**********5-DIGIT 48106
A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

L
2
S
6
P
1
87
M I

4-21-87
Vol. 52 No. 76
Pages 13069–13214

# Federal Register

Tuesday
April 21, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 76

Tuesday, April 21, 1987

**Administrative Conference of the United States**
NOTICES
Meetings:
Regulation Committee, 13112

**Agency for International Development**
RULES
Program Fraud Civil Remedies Act; implementation, 13071

**Agricultural Marketing Service**
RULES
Potatoes (Irish) grown in Washington, 13069
PROPOSED RULES
Watermelon research and promotion plan, 13086

**Agriculture Department**
*See* Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service

**Air Force Department**
NOTICES
Meetings:
Scientific Advisory Board, 13119

**Alcohol, Tobacco and Firearms Bureau**
RULES
Alcohol; viticultural area designations:
Northern Neck George Washington Birthplace, 13079

**Animal and Plant Health Inspection Service**
RULES
Animals, purebred; recognized breeds and books of record:
Aberdeen-Angus cattle, 13070

**Centers for Disease Control**
NOTICES
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—
School health education to prevent spread of AIDS, national program, 13126
School health education to prevent spread of AIDS, State and local programs, etc., 13130
Sexually transmitted diseases research, demonstrations, and public and professional education programs; correction, 13132

**Coast Guard**
RULES
Districts, marine inspection zones, and captain of port zones:
Boundary changes and unit reassignments, 13082

**Commerce Department**
NOTICES
Meetings:
Private Sector Initiatives Presidential Board of Advisors, 13114

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 13114
China, 13115

**Commodity Credit Corporation**
NOTICES
Loan and purchase programs:
Tobacco price support levels, 13112

**Consumer Product Safety Commission**
NOTICES
Settlement agreements:
Whirlpool Corp., 13117

**Copyright Royalty Tribunal**
NOTICES
Cable royalty fees:
Distribution proceedings, 13118

**Defense Department**
*See* Air Force Department

**Drug Enforcement Administration**
NOTICES
*Applications, hearings, determinations, etc.:*
Hoffmann La Roche, Inc., 13136
Norac Co., Inc., 13136
Park & King Pharmacy, 13136
Warrenville Drug Co., Inc., 13138

**Economic Regulatory Administration**
NOTICES
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
Anaheim, CA, 13119

**Education Department**
PROPOSED RULES
Elementary and secondary education:
Drug-free schools and communities; Hawaiian natives program, 13212

**Employment and Training Administration**
NOTICES
Adjustment assistance:
AT&T Technologies, Inc., et al., 13141, 13142 (2 documents)
Cameron Iron Works, Inc., et al., 13142
Express Services, Inc., et al., 13142
Hazle Garment, Inc., et al., 13142
Louisiana-Pacific Corp., 13143
Seismic Prospecting of Denver, Inc., et al., 13142
Smurfit Newsprint Corp., 13143

**Energy Department**
*See also* Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission

NOTICES
Environmental statements; availability, etc.:
Weldon Spring, MO, 13119
Grants; availability, etc.:
International energy conferences, 13119

**Energy Information Administration**
NOTICES
Natural gas, high cost; alternative fuel price ceilings and incremental price threshold, 13120

**Environmental Protection Agency**
RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Clopyralid; correction, 13173
NOTICES
Toxic and hazardous substances control:
Premanufacture notices receipts; correction, 13173

**Farm Credit Administration**
NOTICES
Senior Executive Service:
Performance Review Board; membership, 13124

**Federal Aviation Administration**
RULES
Airport radar service areas; correction, 13173

**Federal Communications Commission**
NOTICES
Meetings; Sunshine Act, 13171

**Federal Energy Regulatory Commission**
NOTICES
*Applications, hearings, determinations, etc.:*
Columbia Gas Transmission Corp., 13122
El Paso Production Co. et al., 13123
Great Lakes Gas Transmission Co., 13123
Michigan Consolidated Gas Co., 13124

**Federal Home Loan Bank Board**
NOTICES
Receiver appointments:
Southern Floridabanc Savings Association, 13125 (2 documents)
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 13125
*Applications, hearings, determinations, etc.:*
Cumberland Federal Savings & Loan Association, 13124
Maryland Federal Savings & Loan Association, 13124
Washington Federal Savings & Loan Association, 13125

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 13125

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 13171
*Applications, hearings, determinations, etc.:*
Bank of Philadelphia Employee Stock Ownership Stock Bonus Plan & Trust et al., 13126
Branch Corp. et al., 13126

**Food and Drug Administration**
PROPOSED RULES
GRAS or prior-sanctioned ingredients:
Iron and iron salts, 13086
Human drugs:
Oral contraceptives; patient package insert requirements, 13107
NOTICES
Human drugs:
Oral contraceptive drug product labeling, 13132

**Forest Service**
NOTICES
Columbia River Gorge National Scenic Area; interim guidelines, availability, 13114

**General Services Administration**
RULES
Federal Information Resources Management Regulation:
ADP protests; GSA Board of Contract Appeals Correction, 13173

**Health and Human Services Department**
*See* Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration

**Health Care Financing Administration**
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—Washington, 13133
Medicare:
Ambulatory surgical centers; covered surgical procedures; list, 13176

**Interior Department**
*See* Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

**International Development Cooperation Agency**
*See* Agency for International Development

**International Trade Commission**
NOTICES
Meetings; Sunshine Act, 13171

**Interstate Commerce Commission**
NOTICES
Rail carriers:
Atchison, Topeka & Santa Fe Railway Co. et al.; demurrage charges exemption, 13136

**Justice Department**
*See* Drug Enforcement Administration

**Labor Department**
*See also* Employment and Training Administration; Mine Safety and Health Administration; Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 13140
Meetings:
Trade Negotiations and Trade Policy Labor Advisory Committee, 13140
Organization, functions, and authority delegations:
Pension and Welfare Benefits Administration, 13139

**Land Management Bureau**
RULES
Land resources management:
Veterans homestead requirements; obsolete provisions removed, 13084
NOTICES
Mineral interest applications:
Wyoming, 13135
Oil and gas leases:
Wyoming, 13134
Withdrawal and reservation of lands:
Utah, 13134

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
Bailey Brothers Coal Co., 13143
Chapperal Coal Corp., 13144
J&B Mining Co., 13144
McCoy Elkhorn Coal Corp., 13145
Pyro Mining Co., 13145
Rhonda Coal Co., 13146
S.A.B. Coal Co. No. 4, 13146
Scarab Energy Corp., 13147
Shannon Coal Co., Inc., 13147

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
Chevron U.S.A. Inc., 13135
Union Texas Petroleum Corp., 13135

**National Institute for Occupational Safety and Health**
*See* Centers for Disease Control

**Nuclear Regulatory Commission**
NOTICES
Safety analysis and evaluation reports; availability, etc.:
Northeast Nuclear Energy Co., 13158
*Applications, hearings, determinations, etc.:*
Public Service Co. of New Hampshire et al.; correction, 13173

**Pension and Welfare Benefits Administration**
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Pennfield Precision Machining, Inc., 13150
Phelps Time Lock Security Corp. et al., 13148
Restated Arens Controls, Inc., et al., 13150

**Postal Service**
NOTICES
Meetings; Sunshine Act, 13171

**Public Health Service**
*See* Centers for Disease Control; Food and Drug Administration

**Securities and Exchange Commission**
NOTICES
Meetings; Sunshine Act, 13171
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 13159, 13160 (2 documents)
Midwest Clearing Corp., 13161
Midwest Securities Trust Co., 13162
National Association of Securities Dealers, Inc., 13163
New York Stock Exchange, Inc., 13163
*Applications, hearings, determinations, etc.:*
CitiCMO, Inc., 13164
Franklin Tax-Advantaged High Yield Securities Fund (a California Limited Partnership) et al., 13167
Hal Roach Studios, Inc., 13168

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Permanent program submission:
Pennsylvania, 13109

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Coast Guard; Federal Aviation Administration

**Treasury Department**
*See also* Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities under OMB review, 13170
Committees; establishment, renewals, terminations, etc.:
Form 990 Advisory Committee, 13170

**United States Information Agency**
NOTICES
Art objects, importation for exhibition:
Son of Heaven: Imperial Arts of China, 13170

**Veterans Administration**
PROPOSED RULES
Vocational rehabilitation and education:
Term-by-term enrollment certification; withdrawal, 13110

---

**Separate Parts in This Issue**

**Part II**
Department of Health and Human Services, Health Care Financing Administration, 13176

**Part III**
Department of Education, 13212

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
946.....13069

**Proposed Rules:**
1210.....13086

**9 CFR**
151.....13070

**14 CFR**
71.....13173

**21 CFR**
**Proposed Rules:**
182.....13086
184.....13086
186.....13086
310.....13107

**22 CFR**
224.....13071

**27 CFR**
9.....13079

**30 CFR**
**Proposed Rules:**
938.....13109

**33 CFR**
3.....13082

**34 CFR**
**Proposed Rules:**
230.....13212

**38 CFR**
**Proposed Rules:**
21.....13110

**40 CFR**
180.....13173

**41 CFR**
201-32.....13173

**43 CFR**
2090.....13084

# Rules and Regulations

Federal Register
Vol. 52, No. 76
Tuesday, April 21, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 946

### Irish Potatoes Grown in Washington; Suspension of Provision on Mandatory Committee Membership for Certified Seed Producers in District No. 5, and Conforming Change

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule will suspend a provision in § 946.25(c) of the marketing order that requires one producer member and that member's alternate on the State of Washington Potato Committee from District No. 5 to be a certified seed producer. Suspension of the provision will allow any producer in District No. 5 to serve on the committee. Over the years, the number of tablestock market producers relative to seed producers has increased. The rule also will make conforming changes in § 946.104 of the rules and regulations issued under the order to reflect the suspension of the order provision. This action was recommended unanimously by the committee.

**EFFECTIVE DATE:** This final rule becomes effective April 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400, telephone (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (The Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This rule will suspend an order provision in § 946.25(c) requiring one producer member of the State of Washington Potato Committee from District No. 5, and that member's alternate, to be a certified seed producer. It will also remove the requirement in § 946.104(a)(5) of the rules and regulations that makes only potato seed producers eligible for committee membership from District No. 5. These actions are designed to make the producer membership from District No. 5 more representative of the producer makeup in that district. District No. 5 includes 17 counties west of the Cascade mountain range slope in Washington. It is bounded on the south by the Oregon border, on the north by the Canadian border, and on the west by the Pacific Ocean.

There are approximately 60 handlers of Washington potatoes subject to regulation under the marketing order for potatoes grown in Washington. In addition, there are approximately 350 producers of Washington potatoes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities. This action is primarily of an administrative nature and, as such, does not impose any additional costs on handlers or producers.

A proposed rule inviting comments on this action was published in the February 26, 1987, **Federal Register** (52 FR 5778). Interested persons were given until March 9, 1987, to file written comments. None were received.

The rule is issued under the Marketing agreement and Order No. 946, both as amended (7 CFR Part 946), regulating the handling of Irish potatoes grown in the State of Washington. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based on the recommendation of the State of Washington Potato Committee established under the order, and upon other available information.

The rule will suspend the proviso in § 946.25(c) of the marketing order regarding District No. 5 producer representation. The proviso being suspended reads as follows: "*Provided,* That one producer member of the committee from District No. 5, with his respective alternate, shall be a certified seed producer". Section 946.104(a)(5) of Subpart—Rules and Regulations (7 CFR 946.100 through 946.142) allocates one producer member and alternate member to District No. 5 and requires each to be a certified seed producer. A conforming change in § 946.104(a)(5) is necessary because of the suspension.

The suspension of the proviso in § 946.25(c) and the conforming change in § 946.104(a)(5) removing the certified seed producer requirements are necessary to reflect changes in the producer makeup in that district in recent years. District No. 5 had originally been composed mostly of certified seed producers. However, the number of tablestock growers has increased over the years, and currently they substantially exceed seed growers. Allowing both certified seed and tablestock growers to serve on the committee in District No. 5, will foster more equitable producer representation on the committee reflective of the current producer makeup and recognize that it is inequitable to allot the one position for District No. 5 only to certified seed producers.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the committee, and other information, it is

hereby found and determined that the proviso in § 946.25(c) obstructs the establishment of equitable producer representation of District No. 5 and thus does not tend to effectuate the declared policy of the Act and is suspended pursuant to § 946.63(b).

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Procedures for obtaining names of eligible candidates for the member and alternate member for District No. 5 are in progress and are expected to be completed soon. The vote for nominees to fill these positions is scheduled to begin in April. Hence, postponing the effective date of this action would not allow the nominations to be conducted as scheduled. Moreover, this action is not controversial and is fully supported by the producers in District No. 5.

**List of Subjects in 7 CFR Part 946**

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, 7 CFR Part 946 is amended as follows:

## PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 946.25(c) is revised by changing the colon to a period and by indefinitely suspending the proviso in paragraph (c) which reads as follows: *"Provided,* That one producer member of the committee from District No. 5, with his respective alternate, shall be a certified seed producer."

3. Section 946.104 is amended by removing the last sentence in paragraph (a)(5). As revised § 946.104(a)(5) reads as follows:

**§ 946.104 Reapportionment of committee membership.**

(a) * * *

* * * * * *

(5) District No. 5—One producer member and one handler member.

Dated: April 14, 1987.

**Karen K. Darling,**

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 87–8861 Filed 4–20–87; 8:45 am]

BILLING CODE 3410-02-M

**Animal and Plant Health Inspection Service**

**9 CFR Part 151**

**[Docket No. 86–086]**

## Recognized Breeds and Books of Record; Aberdeen-Angus Cattle

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the "Recognition of Breeds and Books of Record of Purebred Animals" regulations by adding the Irish Angus Herd Book to the list of recognized books of record for Aberdeen-Angus cattle. This action is necessary because Veterinary Services has determined that the book qualifies for this listing, thereby providing for duty-free entry into the United States of cattle that are registered in the book.

**EFFECTIVE DATE:** May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dr. William E. Ketter, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8565.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on June 3, 1986 (51 FR 19846–19848), we proposed to amend the regulations in 9 CFR Part 151 (referred to below as the regulations) by adding to the list of recognized books of record for Aberdeen-Angus cattle the Irish Angus Herd Book, maintained by the Irish Angus Cattle Association, Ltd. Comments on this proposal were solicited for a period of 60 days; however, no comments were received.

Veterinary Services has examined and approved the Irish Angus Herd Book, thereby making it eligible to be added to the list contained in the regulations. In accordance with the regulations and 19 U.S.C. 1202, Schedule 1, Part 1, Item 100.01, cattle that are registered in a recognized book of record may enter the United States free of duty if imported for breeding purposes.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". The Department has determined that this action will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Under this final rule, Aberdeen-Angus cattle listed in the Irish Angus Herd Book may be imported duty-free into the United States for breeding purposes. We anticipate that the number of these Aberdeen-Angus cattle imported into the United States annually will be less than one percent of the total number of cattle imported into the United States annually. For most cases of importation of Aberdeen-Angus, cattle small entities are not involved and will not be affected. In a few cases, small entities will benefit by being allowed to import these cattle, but no adverse effects on small entities are expected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 151**

Animals, Animal pedigree, Imports, Purebred animals.

## PART 151—RECOGNITION OF BREEDS AND BOOKS OF RECORD OF PUREBRED ANIMALS

Accordingly, 9 CFR Part 151 is amended as follows:

1. The authority citiation for Part 151 is revised to read as set forth below and the authority citations following all the sections in Part 151 are removed.

**Authority:** 19 U.S.C. 1202; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 151.9, the chart in paragraph (a) is amended by adding the following after Code 1112 under the heading "Cattle":

**§ 151.9 Recognized breeds and books of record.**

* * * * *

(a) * * *

CATTLE

| Code | Name of breed | Book of record | By whom published |
|---|---|---|---|
| | | * * * * * | |
| 116 | Aberdeen-Angus | Irish Angus Herd Book | Irish Angus Cattle Society Ltd., John L. Murphy, Secretary, Agriculture House, Kildare Street, Dublin 2, Ireland. |
| | | * * * * * | |

Done in Washington, DC, this 16th day of April, 1987.

J.K. Atwell,

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87-8862 Filed 4-20-87; 8:45 am]

BILLING CODE 3410-34-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### 22 CFR Part 224

### Implementation of the Program Fraud Civil Remedies Act; Request for Comments

**AGENCY:** Agency for International Development, IDCA.

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Agency for International Development is issuing interim regulations to implement the Program Fraud Civil Remedies Act of 1986. The regulations will establish administrative procedures for imposing the statutorily authorized civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Agency for International Development.

**DATES:** Effective date is April 21, 1987. Comments must be received on or before May 21, 1987.

**ADDRESS:** Written comments should be mailed to the Assistant General Counsel of Litigation and Enforcement, Agency for International Development, Department of State, Room 6947, Washington, DC 20523.

**FOR FURTHER INFORMATION CONTACT:** Gary Winter, (202) 647-8874.

**SUPPLEMENTARY INFORMATION:** The Program Fraud Civil Remedies Act, Pub. L. 99-509, enacted on October 21, 1986, codified at 31 U.S.C. 3801 through 3812 generally provides that any person who knowingly submits a false claim or statement to the Federal Government in an amount less than $150,000 may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement and in certain cases, in which the Government has paid the false claim, to an assessment equal to double the amount falsely claimed.

This action will not have a significant economic impact on a substantial number of small entities; does not constitute a "major rule" under Executive Order No. 12291; and is not a major Federal action significantly affecting the quality of the human environment.

### List of Subjects in 22 CFR Part 224

Claims, Penalties.

For the reasons set forth in the preamble, Title 22, Chapter II of the Code of Federal Regulations is amended to add a new Part 224 to read as follows:

## PART 224—PROGRAM FRAUD CIVIL REMEDIES

Sec.

224.1 Basis and purpose.
224.2 Definitions.
224.3 Basis for civil penalties and assessments.
224.4 Investigation.
224.5 Review by the reviewing official.
224.6 Prerequisites for issuing a complaint.
224.7 Complaint.
224.8 Service of complaint.
224.9 Answer.
224.10 Default upon failure to file an answer.
224.11 Referral of complaint and answer to the ALJ.
224.12 Notice of hearing.
224.13 Parties to the hearing.
224.14 Separation of functions.
224.15 Ex parte contacts.
224.16 Disqualification of reviewing official or ALJ.
224.17 Rights of parties.
224.18 Authority of the ALJ.
224.19 Prehearing conferences.
224.20 Disclosure of documents.
224.21 Discovery.
224.22 Exchange of witness lists, statements, and exhibits.
224.23 Subpoenas for attendance at hearing.
224.24 Protective order.
224.25 Fees.
224.26 Form, filing and service of papers.
224.27 Computation of time.
224.28 Motions.
224.29 Sanctions.
224.30 The hearing and burden of proof.
224.31 Determining the amount of penalties and assessments.
224.32 Location of hearing.
224.33 Witnesses.
224.34 Evidence.
224.35 The record.
224.36 Post-hearing briefs.
224.37 Initial decision.
224.38 Reconsideration of initial decision.
224.39 Appeal to A.I.D. Administrator.
224.40 Stays ordered by the Department of Justice.
224.41 Stay pending appeal.
224.42 Judicial review.
224.43 Collection of civil penalties and assessments.
224.44 Right to administrative offset.
224.45 Deposit in Treasury of the United States.
224.46 Compromise or settlement.
224.47 Limitations.

**Authority:** 22 U.S.C. 2381; 31 U.S.C. 3801-3812.

### § 224.1 Basis and Purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the Statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims for written statements to the Agency for International Development or to its agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

### § 224.2 Definitions.

*A.I.D.* means the Agency for International Development.

*ALJ* means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

*Benefits* means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

*Claim* means any request, demand, or submission—

(a) Made to A.I.D. for property, services, or money (including money

representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from A.I.D. or to a party to a contract with A.I.D.—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to A.I.D. which has the effect of decreasing an obligation to pay or account for property, services, or money.

*Complaint* means the administrative complaint served by the reviewing official on the defendant under § 224.7.

*Defendant* means any person alleged in a complaint under § 224.7 to be liable for a civil penalty or assessment under § 224.3.

*Government* means the United States Government.

*Individual* means a natural person.

*Initial decision* means the written decision of the ALJ required by § 224.10 or § 224.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

*Investigating official* means the Inspector General for A.I.D. or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

*Knows or has reason to know,* means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

*Makes,* wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

*Person* means any individual, partnership, corporation, association, or private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

*Representative* means an attorney.

*Reviewing official* means the General Counsel of A.I.D. or his designee who is:

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of A.I.D. in which the investigating official is employed; and

(c) Is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

*Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, A.I.D., or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

### § 224.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed;

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to A.I.D., a recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of A.I.D. or such recipient or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject to in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement, shall be subject to in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severely against any combination of such persons.

**§ 224.4 Investigation.**

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued, and shall identify the records or documents sought;

(2) He or she may designate a person to act on his behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefore, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

**§ 224.5 Review by the reviewing official.**

(a) If, based on the report of the investigating official under § 224.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 224.3 of this part, the reviewing official shall, transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 224.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 224.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

**§ 224.6 Prerequisites for issuing a complaint.**

(a) The reviewing official may issue a complaint under § 224.7 only if:

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 224.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in (b)), the amount of money or the value of property or services demanded or requested in violation of § 224.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

**§ 224.7 Complaint.**

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 224.8.

(b) The complaint shall state:

(1) Allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

**§ 224.8 Service of complaint.**

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his representative.

**§ 224.9 Answer.**

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant:

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

**§ 224.10 Default upon failure to file an answer.**

(a) If the defendant does not file an answer within the time prescribed in § 224.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 224.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 224.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying defendant's motion under paragraph (d) is not subject to reconsideration under § 224.38.

**§ 224.11 Referral of complaint and answer to the ALJ.**

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

**§ 224.12 Notice of hearing.**

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 224.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

**§ 224.13 Parties to the hearing.**

(a) The parties to the hearing shall be the defendant and A.I.D.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

**§ 224.14 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of A.I.D. who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the A.I.D. Administrator, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in A.I.D., including in the offices of either the investigating official or the reviewing official.

**§ 224.15 Ex parte contacts.**

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiry about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 224.16 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that the reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the A.I.D. Administrator may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

**§ 224.17 Rights of parties.**

Except as otherwise limited by this part, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

**§ 224.18 Authority of the ALJ.**

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ may:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes or regulations.

**§ 224.19 Prehearing conferences.**

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ shall issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

**§ 224.20 Disclosure of documents.**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 224.4(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 224.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 224.9.

**§ 224.21 Discovery.**

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 224.22 and 224.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service a party may file an opposition to the motion and/or a motion for protective order as provided in § 224.24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 224.24.

(e) *Deposition.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the answer prescribed in § 224.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbation transcript of the deposition which it shall make available to all other parties for inspection and copying.

**§ 224.22 Exchange of witness lists, statements and exhibits.**

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 224.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds

good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) shall be deemed to be authentic for the purpose of admissibility at the hearing.

**§ 224.23 Subpoenas for attendance at hearing.**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefore not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 224.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

**§ 224.24 Protective order.**

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or, with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

**§ 224.25 Fees.**

The party requesting a subpoena shall pay the cost of the fee and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in the United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of A.I.D., a check for witness fees and mileage need not accompany the subpoena.

**§ 224.26 Form, filing and service of papers.**

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

**§ 224.27 Computation of time.**

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

**§ 224.28 Motions.**

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

**§ 224.29 Sanctions.**

(a) The ALJ may sanction a person, including any party or representative for:

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition or for the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

**§ 224.30 The hearing and burden of proof.**

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 224.3, and if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) A.I.D. shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

**§ 224.31 Determining the amount of penalties and assessments.**

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the A.I.D. Administrator, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the A.I.D. Administrator in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the A.I.D. Administrator from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

**§ 224.32 Location of hearing.**

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

**§ 224.33 Witnesses.**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for such other parties to subpoena such witness for cross-examination at the hearing of the witness who made the statement. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 224.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding

without regard to the scope of his or her direct examination. To the extent permitted by the ALJ cross-examination on matters outside the scope of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

**§ 224.34 Evidence.**

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 224.24.

**§ 224.35 The record.**

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record of the hearing may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 224.24.

**§ 224.36 Post-hearing briefs.**

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing briefs, at a time not exceeding 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

**§ 224.37 Initial decision.**

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claim or statements identified in the complaint, or any portion thereof, violate § 224.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 224.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the A.I.D. Administrator. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the A.I.D. Administrator, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the A.I.D. Administrator and shall be final and binding on the parties 30 days after it is issued by the ALJ.

**§ 224.38 Reconsideration of initial decision.**

(a) Except as provided in paragraph (d), any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) When a motion for reconsideration is made, the time periods for appeal to the A.I.D. Administrator contained in § 224.38, and for finality of the initial decision in § 224.36(d), shall begin on the date the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

**§ 224.39 Appeal to A.I.D. Administrator.**

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the A.I.D. Administrator by filing a notice of appeal with the A.I.D. Administrator in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 224.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The A.I.D. Administrator may extend the initial 30 day period for an additional 30 days if the defendant files with the A.I.D. Administrator a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the A.I.D. Administrator, the ALJ shall forward the record of the proceeding to the A.I.D. Administrator.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the A.I.D. Administrator.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the A.I.D. Administrator shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the A.I.D. Administrator that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the A.I.D. Administrator shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The A.I.D. Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in an initial decision.

(k) The A.I.D. Administrator shall promptly serve each party to the appeal with a copy of his/her decision. At the same time, the authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of his/her decision, a determination that a defendant is liable under § 224.3 is final and is not subject to judicial review.

**§ 224.40 Stays ordered by the Department of Justice.**

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the A.I.D. Administrator a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

**§ 224.41 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

**§ 224.42 Judicial review.**

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

**§ 224.43 Collection of civil penalties and assessments.**

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

**§ 224.44 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 224.42 or § 224.43, or any amount agreed upon in a compromise or settlement under § 224.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under the subsection against a refund of an over payment of Federal taxes, then or later owing by the United States to the defendant.

**§ 224.45 Deposit in Treasury of United States.**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 224.46 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The A.I.D. Administrator has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during pendency of any review under § 224.42 or during the pendency of any action to collect penalties and assessments under § 224.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 224.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the A.I.D. Administrator, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the A.I.D. Administrator, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

**§ 224.47 Limitations.**

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 224.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 224.10(b) shall be deemed notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

**Ain H. Kivimae,**

*Deputy Assistant to the Administrator for Management.*

April 13, 1987.

[FR Doc. 87-8840 Filed 4-20-87; 8:45 am]

BILLING CODE 6116-01-M

---

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

**[T.D. ATF-250 Re: Notice No. 570]**

### Establishment of the Northern Neck George Washington Birthplace Viticultural Area.

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Final Rule, Treasury decision.

**SUMMARY:** This final rule establishes a viticultural area located in the tidewater area of Virginia to be known as the Northern Neck George Washington Birthplace. Because the viticultural area named has five words, it may appear on wine labels or in advertisement on one line or two (in the same size and style of print type). This viticultural area is a five-county peninsula or neck located to the east of Fredericksburg, Virginia. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling

and advertising will help consumers identify the wines they may purchase. It will also allows wineries to better designate the specific grape-growing area where their wines come from.

**EFFECTIVE DATE:** May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Reisman, FAA, Wine and Beer Branch. Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202–566–7626).

**SUPPLEMENTARY INFORMATION:**

## Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

The petition should include:

(a) Evidence that the name of the viticultural area is locally and/ or nationally know as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural area from the surrounding areas;

(d) A description of the specific boundaries of the viticultural area based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

## Petition

ATF received a petition proposing an American viticultural area to be know as George Washington Birthplace. The petitioner, Carl F. Flemer, Jr. is the owner of Ingleside Plantation Vineyards, a bonded winery located in Oak Grove, Westmoreland County, Virginia. The 590,080 acre (922 square mile) viticultural area includes all the land in the five counties (Westmoreland, King George, Richmond, Northumberland and Lancaster) of the Northern Neck. There are 16 established vineyards and one winery with a total of 92.5 acres planted in vitis Vinifera and French-American hybird grapes located within the boundary of the viticultural area. The petitioner owns a bonded winery located within a few miles of the historic National Park Service landmark (known as George Washington Birthplace National Monument). The monument, which consists of a park facility and memorial home (the original home of George Washington was destroyed by fire), is located on 538 acres of land.

## Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 570, in the **Federal Register** on Tuesday, September 17, 1985 (FR 37692). That notice proposed establishment of the Northern Neck viticultural area and solicited public comment concerning the proposal.

ATF had determined that the name Northern Neck satisfied informational requirements that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition. ATF felt that the evidence for the use of the name George Washington Birthplace to describe the entire five-county petitioned area was not conclusive.

## Name of the Area

ATF initially had reservations about the use of the petitioned name George Washington Birthplace for the entire five-county peninsula because of insufficient evidence to substantiate its use in describing this area. Furthermore, the name Northern Neck appeared to be more appropriate than that of George Washington Birthplace because of the content of the name evidence provided by the petitioner.

The petitioner acknowledged that the petitioned area is locally known as the Northern Neck. However, he claimed that the name Northern Neck is not very well known throughout the rest of Virigina and is almost unknown regionally and nationally. The petitioner stated that George Washington's name and close relationship to the five-county area was the most important and readily recognizable name associated with the area. On this basis, the petitioner still maintained that the name George Washington Birthplace was the most appropriate name for the viticultural area.

The evidence of name submitted by the petitioner did not establish that the name George Washington Birthplace was predominantly associated with the petitioned five-county area of land. On the hand, the evidence showed that the name Northern Neck has been well documented for over three centuries and is still used today in maps and other commonly used reference sources to describe the five-county peninsula.

## Discussion of Comments

In Notice No. 570, ATF invited comments from interested parties regarding the proposal of the establishment of the Northern Neck viticultural area. AFT was particularly interested in receiving comments regarding evidence of name and boundary of the viticultural area.

ATF received 81 comments during the 45-day comment period. None of those comments disputed the geographical evidence (climate, soil, etc.) or boundaries presented in the notice of proposed rulemaking. However, all of the comments addressed whether the name of the viticultural area should be Northern Neck or George Washington Birthplace. Seventy-four of the comments favored the name George Washington Birthplace, 6 of the comments favored the name Northern Neck and 1 comment favored either name.

## Approved Name

Although the petitioner and commenters provided some evidence supporting use of the name George Washington Birthplace, the evidence that the entire peninsula is locally or nationally known as referring to the area specified in the petition, more strongly supports the name Northern Neck. The land area proposed by the petitioner encompasses the entire neck or peninsula separated by the Rappahannock and Potomac Rivers and the Chesapeake Bay.

The notice of proposed rulemaking referred to many sources that identified the five-county area as the Northern Neck.

The notice also documented that George Washington's name was associated with entire Northern Neck because he was born there and frequented the area throughout his life. Today, both names are found on landmarks and businesses located

within the boundaries of the five-county area.

In addition, evidence gathered during the rulemaking process from sources such as the University of Virginia, The College of William and Mary, George Mason University, Rappahannock Community College, and the Commonwealth of Virginia, shows that both names have been used to identify the area. Furthermore, the names George Washington Birthplace and Northern Neck are often used together to identify and describe the area because of the unique history of the five-county area and the important link our first president had to it.

Therefore, a viticultural area name combining the names Northern Neck and George Washington Birthplace has been approved by ATF. The use of these two names on wine labels and advertisements would insure consumer recognition as to the identity and origin of the wine. This combined name is appropriate since the Northern Neck is, in fact, the birthplace of America's first president, George Washington.

**Evidence of Boundaries**

The Northern Neck George Washington Birthplace viticultural area is a peninsula bounded on the north by the Potomac River and Potomac Creek, on the east by the Chesapeake Bay, on the south by the Rappahannock River and on the west by the King George County/Stafford County line. The boundaries of the viticultural area were prominently marked by the petitioner on two U.S.G.S. maps.

The map names and complete boundary descriptions can be found in the new § 9.109, as added by this Treasury Decision. Having verified the boundaries, ATF agrees that they meet the requirements for approval of the Northern Neck George Washington Birthplace as an American viticultural area.

**Evidence of Geographical Characteristics**

*Climate and Rainfall*

The Northern Neck George Washington Birthplace viticultural area extends approximately 100 miles from the Chesapeake Bay westward to within a few miles of the City of Fredericksburg, Virginia. The distance on land from north to south between the Potomac and Rappahannock Rivers varies from 10 to 20 miles, making the area a long narrow neck or peninsula between the two tidal rivers. The climate begins to change throughout the proposed viticultural area, from the gentle influence of the Chesapeake Bay and the Potomac and Rappahannock Rivers to the more harsh influences of Piedmont Virginia in the interior land areas.

Historical evidence of favorable grape-growing conditions within the viticultural area was documented in Notice No. 570. The climate of the Northern Neck George Washington Birthplace viticultural area is greatly influenced by the Chesapeake Bay, the Potomac and Rappahannock Rivers. The viticultural area is almost surrounded by these bodies of water. The fanning effect from these waters tend to moderate the climate, and this is the chief reason native stands of longleaf pine (pinus taeda), southern bayberry (myrica cerifera) and other plants are found growing from King George County eastward to the Chesapeake Bay. These varieties of native stands are not found in any substantial degree to the west of King George County in Stafford County. By contrast there are native stands of hemlock (tsuga canadenas) in Stafford County which are not found anywhere on the Northern Neck.

These climate features are the main characteristics which distinguish the Northern Neck George Washington Birthplace from the sourrounding areas, and support its designation as a distinguishable viticultural area.

*Soils*

The Northern Neck George Washington Birthplace viticultural area is entirely within the Northern Coastal Plain with topography running into two general agricultural types called neckland and upland. Neckland, located along the river flats, is nearly level with a gently sloping plateau along the center of the Northern Neck with elevations beginning at 50 feet above sea level and reaching 190 feet above sea level in the western areas of Westmoreland and King George Counties.

The soils of the Northern Neck have been formed from material that has been transported by marine and steam action. The soils are also varied in age; the upland ridges are older and well drained while soils of the necklands are considered younger soils.

Sandy clay and other well-drained soil types are found on the ridge which extends generally through the center of King George County and eastward through Westmoreland County. Other agricultural soils are found along each of the rivers, in what is generally called the river flats, with excellent air drainage and a moderating climate influenced by the huge bodies of surrounding water.

**Conclusion**

The climate of the Northern Neck George Washington Birthplace viticultural area is milder, its native plants are of more southern variety, its snowfall less severe, its frost free days greater, and its temperatures more even and moderate than the adjoining Piedmont Plateau Region located to the west. This climate produces favorable grape-growing conditions. The U.S. Department of Agriculture classifies the soils of the Northern Neck as prime farmland. These factors, combined with a short but freezing winter season, abundant yearly rainfall, and a generally dry, sunny, grape ripening and harvest time, provide favorable grape-growing conditions for wine production.

After careful analysis of the evidence gathered pursuant to the petition, ATF finds the Northern Neck George Washington Birthplace viticultural area to be a delimited grape-growing region distinguishable by geographical features.

**Miscellaneous**

ATF does not wish to give the impression by approving Northern Neck George Washington Birthplace as an American viticultural area that it is approving or endorsing the quality of the wine that comes from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Northern Neck George Washington Birthplace wines.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule will not impose or otherwise cause a significant increase in reporting, recordkeeping, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291. 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries. Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

### Disclosure

A copy of the petition and supporting evidence are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4406, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue NW., Washington, DC 20226.

### Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

### List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

### Issuance

## PART 9—[AMENDED]

Accordingly, 27 CFR Part 9, American Viticultural Areas, is amended as follows:

**Paragraph A.** The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

**Par. B.** The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.109, to read as follows:

### Subpart C—Approved American Viticultural Areas

Sec.

* * * * * *

9.109 Northern Neck George Washington Birthplace.

* * * * * *

**Par. C.** Subpart C of 27 CFR Part 9 is amended by adding § 9.109, which reads as follows:

### § 9.109 Northern Neck George Washington Birthplace.

(a) *Name.* The name of the viticultural area described in this section is "Northern Neck George Washington Birthplace."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Northern Neck George Washington Birthplace viticultural area are 2 U.S.G.S. 1:250,000 scale maps. They are entitled:

(1) Washington, DC; Maryland; Virginia, 1957 (Revised 1979); and

(2) Richmond, VA; MD., 1973.

(c) Boundaries. The Northern Neck George Washington Birthplace viticultural area consists of all of the lands in the Counties of Westmoreland, King George, Northumberland, Lancaster and Richmond, in the Commonwealth of Virginia. The boundaries of the Northern Neck George Washington Birthplace viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Beginning on the Washington, DC; Maryland; Virginia U.S.G.S. map at a point on Potomac Creek where the King George County western boundary line at its northermost point intersects Potomac Creek the boundary proceeds easterly and southeasterly on the Richmond, VA; MD. U.S.G.S. map, along the Virginia shoreline of the Potomac River for approximately 66 miles to Smith Point on the Chesapeake Bay;

(2) Thence southerly along the shoreline of the Chesapeake Bay for approximately 20 miles to Windmill Point at the mouth of the Rappahannock River;

(3) Thence northwesterly along the banks of the Rappahannock River for approximately 72 air miles to Muddy Creek at the point where the western boundary line of King George County at its southernmost point begins;

(4) Thence northward along the King George County/Stafford County line approximately 7 miles to the point of the beginning.

March 30, 1987.

**Stephen E. Higgins,**

*Director.*

Approved: April 3, 1987.

**John P. Simpson,**

*Deputy Assistant Secretary, Regulatory, Trade and Tariff Enforcement.*

[FR Doc. 87–8860 Filed 4–20–87; 8:45 am]

BILLING CODE 4810-31-M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 3

**[CGD 87–008]**

## Changes to Coast Guard District Boundaries and Reassignment of Units

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule redescribes the boundaries of Coast Guard Districts and reassigns various Marine Inspection and Captain of the Port Zones to reflect organizational changes in the Coast Guard. The Coast Guard, in conjunction with an internal realignment of support functions, is reducing the number of Coast Guard districts from 12 to 10. The Third and Twelfth Coast Guard Districts are being disestablished. The geographic area previously under the jurisdiction of the Twelfth Coast Guard District is being absorbed into the Eleventh Coast Guard District. The geographic area previously under the jurisdiction of the Third Coast Guard District is being divided; the northern portion becomes part of the First Coast Guard District and the southern portion becomes part of the Fifth Cost Guard District. This rule also assigns the Marine Inspection and Captain of the Port Zones previously in the Twelfth District to the Eleventh District, and those previously in the Third District to the First and Fifth Coast Guard Districts. These organizational changes will not affect any Coast Guard services to the public.

**FOR FURTHER INFORMATION CONTACT:** LCDR B.A. CALHOUN, Commandant U.S. Coast Guard (G–CPA), Washington, DC (202–267–2405).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking was not prepared for this regulation. These amendments are matters relating to agency organization and are exempt from the notice and comment requirements of 5 USC 553(b). Since this rule reflects current organizational

changes being placed in effect and has no substantive effect, good cause exists to make it effective in less than 30 days after publication, under 5 U.S.C 533(d). The rulemaking merely changes District boundaries and reassigns Marine Inspection and Captain of the Port Zones to conform with changes in the Coast Guard's internal organization. There will be no effect on the public, since the First and Fifth Coast Guard Districts and Eleventh Coast Guard District will continue to perform all functions affecting the public that were previously performed by the Third and Twelfth Coast Guard Districts, respectively.

Drafting information: LCDR E.A. Calhoun, project manager; and LT. S. Sylvester, project counsel, Office of the Chief Counsel.

**Discussion**

In order to free up manpower for vital operational missions the Coast Guard is undertaking a realignment of functions within the organization. This realignment will result in the consolidation of many administrative and support activities, previously performed by the Coast Guard district offices, at two new commands: the regional Maintenance and Logistics Commands. The district offices will be primarily involved in the operational control of Coast Guard units in their areas. The Maintenance and Logistic Commands will begin operation on July 1, 1987.

One result of this ongoing realignment is the disestablishment of the Third and Twelfth Coast Guard Districts. Responsibility for the Coast Guard units and the administration of Coast Guard programs within the former Third Coast Guard District is being divided between the First Coast Guard District in Boston, Massachusetts and the Fifth Coast Guard District in Portsmouth, Virginia. Responsibility for the Coast Guard units and the administration of Coast Guard programs within the former Twelfth Coast Guard District is being assumed by the Eleventh Coast Guard District.

These changes are being implemented in phases. Some functions have already been transferred and others will be transferred during the next two months. All transfers will be completed by June 30, 1987 and the offices of the Commander, Third Coast Guard District and Commander, Twelfth Coast Guard District will be disestablished on that date. Rather than publishing a series of notices as each function is transferred, April 30, 1987 has been chosen as an appropriate date for amending the geographic description of the Coast Guard Districts and reassigning the affected Marine Inspection Zones and Captain of the Port Zones. The actual date of transfer of administrative functions or operational control of affected units may precede or follow this date and, in many cases, the offices of Commander, Third Coast Guard District and Commander, Twelfth Coast Guard District will complete action on pending matters after transferring responsibility for new cases to the successor districts. Therefore, during the transition period Coast Guard officials may be exercising authority in locations that do not conform to the revised geographic areas of responsibility. This could include, but is not limited to, actions involving claims and litigation, civil penalty assessment, bridge permits and regulations, security and safety zones, regulated navigation areas, and pollution prevention and response.

No search and rescue stations or other types of Coast Guard units will be closed or moved. This notification serves to inform the public of the new district boundaries so that in those instances where the public desires to contact the cognizant district commander, the public can determine the proper district commander and his location.

This action is being taken as part of an ongoing realignment of Coast Guard functions and organization. This realignment is necessary to increase overall efficiency and effectiveness of the Coast Guard. This change will also tend to make the remaining ten districts more equal in terms of geographic area and responsibilities.

Elsewhere in Title 33, regulations may refer to or be arranged under headings for the Third Coast Guard District and the Twelfth Coast Guard District, for example: Part 80, *Colregs Demarcation Lines*; Subchapter G, *Regattas and Marine Parades*, Part 100; and Part 165, *Regulated Navigation Areas and Limited Access Areas*.

Affected sections in these parts will be redesignated and references to the Third Coast Guard District and Twelfth Coast Guard District will be deleted in future rulemaking documents. Since these changes are editorial in nature, and require extensive redrafting, they will be handled in later rulemakings. It is anticipated that these changes will be published prior to July 1, 1987.

**Regulatory Evaluation**

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided for in section 1(a)(3) of the Order. It is considered to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This final rule places no requirements on any sector of the public. It will not affect Coast Guard services delivered to the public. The rule reflects a change in internal Coast Guard organization, streamlining the logistics and support functions. In accomplishing this, some functions, and personnel, will be transferred from one location to another. Since the impact of the final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 3**

Coast Guard areas, Districts, Marine inspection zones, Captain of the port zones.

**Final Regulation**

In consideration of the foregoing, Part 3 of Title 33 of the Code of Federal Regulations is amended as set forth below.

## PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES AND CAPTAIN OF THE PORT ZONES

1. The authority citation for Part 3 continues to read as follows:

**Authority:** 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. In § 3.01–1, paragraph (b) is revised and paragraph (h) is added, to read as follows:

**§ 3.01–1 General description.**

* * * * *

(b) The two Coast Guard Areas are the Atlantic Area (see § 3.04–1 of this part) and the Pacific Area (see § 3.04–3). The Coast Guard Area Commander is in command of a Coast Guard Area; the offices are referred to as a Coast Guard Area Office. Area Commanders have the responsibility of determining when operational matters require the coordination of forces and facilities of more than one district.

* * * * *

(h) Descriptions in this part are based on North American Datum 1927 unless otherwise indicated.

3. In § 3.04–1, paragraph (b) is revised to read as follows:

**§ 3.04–1 Atlantic area.**

* * * * *

(b) The Atlantic Area is comprised of the land areas and U.S. navigable waters of the First, Second, Fifth, Seventh, Eighth and Ninth Coast Guard

BEST COPY AVAILABLE

Districts and the ocean areas lying east of a line extending from the North Pole south along 95° W. longitude to the North American land mass; thence along the east coast of the North, Central, and South American land mass to the intersection with 70° W. longitude; thence due south to the South Pole. These waters extend east to the Eastern Hemisphere dividing line between the Atlantic and Pacific Areas which lies along a line extending from the North Pole south along 100° E. longitude to the Asian land mass and along a line extending from the South Pole north along 17° E. longitude to the African land mass.

4. In § 3.04–3, paragraph (b) is revised to read as follows:

**§ 3.04–3 Pacific area.**

* * * * *

(b) The Pacific Area is comprised of the land areas and the U.S. navigable waters of the Eleventh, Thirteenth, Fourteenth, and Seventeenth Coast Guard Districts and the ocean areas lying west of a line extending from the North Pole south along 95° W. longitude to the North American land mass; thence along the west coast of the North, Central, and South American land mass to the intersection with 70° W. longitude; thence due south to the South Pole. These waters extend west to the Eastern Hemisphere dividing line between the Atlantic and Pacific Areas which lies along a line extending from the North Pole south along 100° E. longitude to the Asian land mass and along a line extending from the South Pole north along 17° E. longitude to the African land mass.

5. In § 3.05–1, paragraph (b) is revised to read as follows:

**§ 3.05–1 First district.**

* * * * *

(b) The First Coast Guard District is comprised of: Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut; New York except that part north of latitude 42°N. and west of longitude 74°39′ W; that part of New Jersey north of 39°57′ N. latitude, east of 74°27′ W. longitude, and northeast of a line from 39°57′ N. 74°27′ W. north west to the New York, New Jersey, & Pennsylvania boundaries at Tristate; all U.S. naval reservations on shore at Newfoundland; the ocean area encompassed by the Search and Rescue boundary between Canada and the United States easterly to longitude 63° W; thence due south to latitude 41°N; thence southwesterly along a line bearing 219° T to the point of intersecuon at 36°43′, N. latitude, 67°30′ W. longitude with a line bearing 122° T from the New Jersey shoreline at 39°57′ N latitude (in the vicinity of Tom's River, New Jersey); thence northwesterly along this line to the coast.

**§ 3.15–1 [Removed]**

6. In Subpart 3.15, the subpart heading and § 3.15–1 are removed.

**§ 3.15–10 [Redesignated as § 3.05–25]**

7. Section 3.15–10 is redesignated § 3.05–25.

**§ 3.15–25 [Redesignated as § 3.25–05]**

8. Section 3.15–25 is redesignated § 3.25–05.

**§ 3.15–55 [Redesignated as § 3.05–35]**

9. Section 3.15–55 is redesignated as § 3.05–35.

**§ 3.15–60 [Redesignated as § 3.05–30]**

10. Section 3.15–60 is redesignated as § 3.05–30.

11. In § 3.25–1, paragraph (b) is revised to read as follows:

**§ 3.25–1 Fifth district.**

* * * * *

(b) The Fifth Coast Guard District is comprised of: Delaware; Maryland; Virginia; District of Columbia; North Carolina; that portion of New Jersey south of 39°57′ N. latitude, west of 74°27′ W. longitude, and southwest of a line extending northwesterly from 39°57′ N., 74°27′ W. to the New York, New Jersey, and Pennsylvania boundaries at Tristate; that portion of Pennsylvania east of a line drawn along 78°55′ W. longitude south to 41°00′ N. latitude, thence west to 70°00′ W. longitude, and thence south to the Pennsylvania-Maryland boundary; the ocean area encompassed by a line bearing 122° T from the New Jersey shoreline at 39°57′ N. latitude (in the vicinity of Tom's River, New Jersey) to 36°43′ N. latitude, 67°30′ W. longitude; thence along a line bearing 219° T to the point of intersection with a line bearing 122°T from the shoreline at the North Carolina—South Carolina border; thence northwesterly along this line to the coast.

12. In § 3.55–1, paragraph (b) is revised to read as follows:

**§ 3.55–1 Eleventh district.**

* * * * *

(b) The Eleventh Coast Guard District is comprised of: Arizona; Utah; Nevada; California; and the ocean area bounded by a line from the California-Oregon state line westerly to 40° N. latitude, 150° W. longitude; thence southeasterly to 5° S. latitude, 100° W. longitude; thence northeasterly to the border between Guatemala and Mexico on the Pacific Coast (14°38′ N. latitude, 92°19′ W. longitude).

**§§ 3.60–1 and 3.60–10 [Removed]**

13. In Subpart 3.60, the subpart heading and §§ 3.60–1 and 3.60–10 are removed.

**§ 3.60–55 [Redesignated as § 3.55–20]**

14. Section 3.60–55 is redesignated as § 3.55–20.

Dated: April 16, 1987.

J.C. Irwin,

*Vice Admiral, U.S. Coast Guard, Acting Commandant.*

[FR Doc. 87–8892 Filed 4–20–87; 8:45 am]

BILLING CODE 4910–14–M

---

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 2090

[AA–320–07–4211–02; Circular No. 2594]

## Special Laws and Rules; Final Rulemaking Removing Obsolete Provisions Concerning Homestead Requirements for Veterans

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final Rulemaking Removing Obsolete Regulatory Provisions Concerning Homestead Requirements for Veterans.

**SUMMARY:** This final rulemaking will delete from the existing regulations in 43 CFR Part 2090 obsolete provisions under which veterans could become eligible for a homestead entry on the public lands. These provisions have become obsolete because all laws governing homestead entries on public lands in the fourteen Western States and Alaska were repealed by section 702 of the Federal Land Policy and Management Act of 1976. The Subpart was retained after the enactment of the Federal Land Policy and Management Act to facilitate the processing of veteran homestead entries pending at that time.

**EFFECTIVE DATE:** April 21, 1987.

**ADDRESS:** Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Gary L. Rowe, (202) 343–8693.

**SUPPLEMENTARY INFORMATION:** This final rulemaking reflects the administrative action of removing from the existing regulations provisions whose statutory authority has been

repealed. Therefore, this document is published as a final rulemaking with an effective date as of the date of publication. The provisions being removed are those covering entries for veterans homesteads authorized by the Act of October 17, 1940, as amended (50 U.S.C. App. 561–572) and the Act of September 27, 1944, as amended (43 U.S.C. 279–283). The regulatory provisions have been retained to facilitate the processing of applications that were pending at the time the statutes were repealed. All pending actions have been completed, and, therefore, the regulations are no longer needed. This administrative action removes the regulations in Subpart 2096 from the Code of Federal Regulations. To the extent that any question may exist or arise concerning rights associated with the regulations being removed, earlier editions of the Code of Federal Regulations will remain available to assist in interpretation.

The principal author of this final rulemaking is Gary L. Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 43 CFR Part 2090**

Airports, Alaska, Coal, Grazing lands, Indian lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

Under the authority of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2090, Group 2000, Subchapter B, Chapter II of the Code of Federal Regulations is amended as set forth below.

Dated: April 13, 1987.

**J. Steven Griles,**

*Assistant Secretary of the Interior.*

**PART 2090—[AMENDED]**

1. An authority citation for Part 2090 is added to read:

**Authority:** R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1701 et seq.; 30 U.S.C. 189; 48 U.S.C. 462 note.

**Subpart 2096—[Removed]**

2. Part 2090 is amended by removing Subpart 2096 in its entirety.

[FR Doc. 87–8886 Filed 4–20–87; 8:45 am]

BILLING CODE [illegible]

# Proposed Rules

Federal Register
Vol. 52, No. 76
Tuesday, April 21, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1210

### Extension of Time for Receipt of Post-Hearing Briefs; Proposed Watermelon Reasearch and Promotion Plan

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Post-hearing briefs; extension of filing period.

**SUMMARY:** Notice is hereby given that the time period for filing written briefs on testimony presented at the public hearing on the proposed Watermelon Research and Promotion Plan is extended from April 20, 1987 to April 30, 1987. The extension will give interested persons additional time to file with the hearing clerk proposed findings and conclusions, and written arguments or briefs based upon evidence received at the hearing.

**DATE:** *Comments Due:* April 30, 1987.

**ADDRESS:** Comments should be sent to: Hearing Clerk, Room 1079, U.S. Department of Agriculture, Washington, DC 20250. Four copies of all written material shall be submitted. This material will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Watermelon Research and Promotion Act of 1985 (Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, approved December 23, 1985, 99 Stat. 1622) a continuous public hearing was held in Las Vegas, Nevada, on February 18 and 19 and in Atlanta, Georgia, on February 24 and 25, 1987 regarding the proposed Watermelon Research and Promotion Plan (52 FR 3588, Feb. 4, 1987). At the hearing, April 20, 1987 was established as the deadline for filing briefs based on evidence received at the hearing.

The Department has received a request for an extension of the deadline from the proponent group who provided the significant portion of the testimony. An extension of the deadline is justified to ensure that the intent of the proponents' proposal is made as clear as possible for further consideration by the USDA. Accordingly, the deadline for filing briefs is being extended by ten days to April 30, 1987.

Dated: April 17, 1987.

J. Patrick Boyle,

*Administrator.*

[FR Doc. 87–9082 Filed 4–17–87; 4:52 pm]

BILLING CODE 3410-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 182, 184, and 186

[Docket No. 79N–0269]

### Iron and Iron Salts; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to affirm that elemental iron (iron) and ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric phosphate, ferric pyrophosphate, and ferric sulfate (iron salts) are generally recognized as safe (GRAS) as direct human food ingredients. However, the agency is not proposing to take any action on the listing of iron and several iron salts as GRAS substances in dietary supplements. FDA is also proposing to affirm that ferric oxide and oxides of iron are GRAS for use as indirect food ingredients. FDA is not proposing to take any action on the listing in Part 181 (21 CFR Part 181) of iron caprylate, iron tallate, iron linoleate, and iron naphthenate as prior-sanctioned driers that may migrate from food packaging material. In addition, FDA is proposing not to affirm that ferric sodium pyrophosphate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric ethylenediamine tetraacetate (EDTA), and sodium ferricitropyrophosphate are GRAS as direct human food ingredients (although ferric sodium pyrophosphate will continue to be listed in Part 182 as GRAS for use in dietary supplements). The safety of iron and of these iron salts has been evaluated under the comprehensive safety review conducted by the agency.

**DATE:** Comments by June 22, 1987.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Robert Leo Martin, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of elemental iron (reduced, electrolytic, or carbonyl), ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric phosphate, ferric pyrophosphate, ferric sodium pyrophosphate, ferric sulfate, iron caprylate, iron linoleate, iron tallate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric EDTA, sodium ferricitropyrophosphate, oxides of iron, ferric oxide, and iron naphthenate has been evaluated. (These substances will be referred to collectively as "iron and iron salts" in this proposal unless specifically delineated.)

In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency is proposing to affirm that elemental iron, ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferric ammonium citrate, ferric citrate, ferric phosphate, and ferric pyrophosphate are GRAS for use as nutrient supplements in

conventional foods [1] and in infant formulas. The agency is proposing to affirm that ferrous sulfate is GRAS for these uses and as a processing aid. The agency is proposing to affirm as GRAS the use of ferric chloride and ferric sulfate as flavoring agents. The agency also is proposing to affirm that ferric oxide and oxides of iron are GRAS for use as indirect human food ingredients.

However, FDA has tentatively decided not to take any action with regard to the prior sanctions for the use of iron caprylate, iron linoleate, iron naphthenate, and iron tallate in food. Finally, in the absence of adequate biological studies and food use information, FDA is proposing to find that it cannot affirm.that the use of ferric sodium pyrophosphate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric EDTA, and sodium ferricitropyrophosphate in food is GRAS.

The GRAS status of the use of iron reduced and of certain iron salts in dietary supplements (i.e., over-the-counter vitamin preparations in forms such as capsules, tablets, liquids, and wafers) is not affected by this proposal. The agency did not request consumer exposure data on dietary supplement uses when it initiated this review. Without exposure data, the agency cannot evaluate the safety of using these ingredients in dietary supplements. The use of these ingredients in dietary supplements will continue to be listed in Subpart F of Part 182 (21 CFR Part 182). The uses of iron and iron salts prescribed by food additive regulations in 21 CFR Parts 172 through 178 also are not affected by this proposed regulation.

## I. Background Information

Iron is the fourth most abundant element in the earth's crust, exceeded only by oxygen, silicon, and aluminum. Iron is essential for a number of biological processes and is present in all living matter. In water and soil, it is usually in the form of ferrous and ferric oxides and hydroxides, but in biological materials, the forms are considerably more numerous and varied. Thus, the iron in food may be ingested in its elemental form, as relatively simple inorganic and organic compounds, and as iron complexes, such as heme, in which iron is bound to porphyrin.

Iron is widely distributed in the animal body, where it exists in both ionic (loosely bound; "inorganic") and nonionic (tightly bound; "organic") forms. Iron is easily oxidized or reduced and thus is found as a minute but vital part of certain enzymes that are involved in electron transfer (e.g., cytochrome, cytochrome oxidase, succinic dehydrogenase, and xanthine oxidase). Normally, approximately 70 percent of human body iron is functional or "essential" iron (i.e., in hemoglobin, myoglobin, and intracellular iron-containing enzymes), and 30 percent is storage or "nonessential" iron (i.e., in hemosiderin and ferritin). In women the storage reserve tends to be less than half that in men.

Iron deficiency is widely viewed as a prime example of nutritional inadequacy. In 1968, the World Health Organization characterized nutritional anemia as the most frequent type of malnutrition in the world. However, it has proven difficult to define "iron deficiency" with sufficient precision to obtain a reliable measure of its prevalence. Estimates are usually based on the incidence of hypochromic anemia and on the assumption that iron deficiency is the principal cause of that condition. Even if this assumption is correct, the estimates would denote only overt, and not latent, iron deficiencies. Furthermore, no unanimity exists concerning what constitutes normal hematological values. Use of different standards would alter the apparent incidence of anemia.

Because iron deficiency occurs in some individuals, and the content, form, and availability of iron in foods vary greatly, it has become customary to fortify certain foods with forms of iron to help ensure nutritional adequacy. Three factors must be considered whenever the decision is made to fortify foods with iron: (1) The level of iron to be added, (2) the vehicle to be used, and (3) the form of iron to be added.

The level of iron added to food is affected by an FDA regulation that imposes certain labeling requirements on foods that are fortified to provide 50 percent or more of the U.S. Recommended Daily Allowance of a vitamin or mineral in a single serving (21 CFR 101.9). Iron fortification of foods is usually kept below this level to avoid these labeling requirements.

The selection of a suitable vehicle for the addition of iron is important and depends largely on the eating habits of a given culture or country. Whatever food is selected should be one that is already widely consumed by the population and that will remain stable and palatable after enrichment.

In selecting the form of iron that is to be used as a fortifying agent in a food, one must consider, the chemical and physical properties of both the iron compound and the food to be fortified. Solubility, stability, availability, organoleptic qualities, and cost are also factors in making this selection. Consequently, the food industry has used several different iron compounds, and no one iron compound has been clearly preeminent as an enrichment agent.

Of the compounds used by the food industry, ferric phosphate, ferric pyrophosphate, ferric sodium pyrophosphate, ferrous gluconate, ferrous lactate, ferrous sulfate, and iron reduced have been considered GRAS for use as nutrients and dietary supplements. Ferric sulfate and oxides of iron have been considered GRAS for use in paper and paperboard products used in food packaging.

In addition to the iron forms listed above, ferrous carbonate, ferrous citrate, ferrous fumarate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric oxide, and iron peptonate have been authorized by FDA as unpublished GRAS substances for use as nutrients and dietary supplements or as ingredients of paper and paperboard products used in food and food packaging.

Additionally, in response to inquiries from the food industry, FDA has included sodium ferric EDTA, ferrous ascorbate, iron polyvinylpyrrolidone, and sodium ferricitropyrophosphate in this review to determine if these substances are GRAS.

FDA has also reviewed the safety of iron caprylate, iron linoleate, iron naphthenate, and iron tallate, which are prior-sanctioned for use in the manufacture of food-packaging materials.

The compounds described below are those iron compounds that have been evaluated by FDA.

### *Elemental Iron*

The term "elemental iron" is the synonym for the three forms of metallic iron used in food fortification: reduced iron, electrolytic iron, and carbonyl iron. The processes employed in preparing elemental iron determine the particle size, surface area, density, amount of impurities, and other factors that in turn profoundly influence the bioavailability of the product.

"Reduced iron" or "ferrum reductum" is widely used as a term for all food-grade powdered iron. However, confusion exists about the meaning of this term because in metallurgy it refers to a specific form of powdered iron. Reduced iron is prepared by reacting ground ferric oxide with hydrogen or carbon monoxide at an elevated

[1] FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in § 170.3(n) (21 CFR 170.3(n)).

temperature. The purity of the product reflects the purity of the ferric oxide used. The reduced product is pulverized, and those particles that pass through a 100 mesh sieve (149 microns and less) are used for food fortification.

Electrolytic iron is produced by plating chemically pure iron onto stainless steel electrodes. The iron deposit is removed from the electrodes, ground, and sieved to food-grade specifications. The resulting iron particles have irregular, dendritic, or fernlike shapes that provide greater surface areas than the more symmetrical reduced iron powder.

Elemental iron is obtained in the carbonyl iron process by decomposing iron pentacarbonyl [$Fe(Co)_5$] under controlled conditions. The iron pentacarbonyl is produced by treating scrap or reduced iron with carbon monoxide under heat and pressure. This process yields iron particles of high purity and small size (0.5 to 10 microns in diameter).

Food-grade specifications for elemental iron are listed in the Food Chemicals Codex under "iron, reduced," "iron, electrolytic," and "iron, carbonyl."

*Ferrous Gluconate*

Ferrous gluconate is prepared by reacting barium or calcium gluconate with ferrous sulfate. It usually occurs as the dihydrate and is a pale, yellow-green powder with an odor of caramel. Ferrous gluconate is very soluble in water but nearly insoluble in alcohol. Its solutions are acid to litmus.

*Ferrous Citrate*

Ferrous citrate is prepared from the reaction of sodium citrate with ferrous sulfate or by direct action of citric acid on iron filing. The resulting product is insoluble in water, alcohol, and acetone. It is soluble in dilute acid.

*Ferrous Fumarate*

Ferrous fumarate occurs as a red-orange to red-brown powder. It is prepared by mixing hot aqueous solutions of sodium fumarate and ferrous sulfate. The product is slightly soluble in water but insoluble in alcohol.

*Ferrous Lactate*

Ferrous lactate, as prepared commercially, contains three molecules of water and is a greenish-white powder or crystalline mass. It is prepared by reacting calcium lactate with ferrous lactate or by direct reaction of lactic acid with iron filings. On exposure to air, it becomes darker and incompletely soluble in water.

*Ferrous Sulfate*

Ferrous sulfate usually occurs in hydrated forms. The heptahydrate forms blue-green monoclinic crystals that are soluble in water and absolute methanol but only slightly soluble in ethanol. It is prepared by reacting sulfuric acid with iron. In dry air, the compound is efflorescent, and in moist air, the compound is oxidized to brown ferric sulfate. Most ferrous sulfate is a byproduct of the steel industry.

*Ferric Phosphate*

Ferric phosphate is usually prepared by reacting sodium phosphate with ferric citrate or ferric chloride. The product is an odorless, yellowish-white to buff powder. The product occurs as the dihydrate. It is insoluble in water and acetic acid but is soluble in mineral acids.

*Ferric Pyrophosphate*

Ferric pyrophosphate is prepared by reacting sodium pyrophosphate with ferric citrate. As it is prepared commercially, it contains nine molecules of water and is a yellowish-white powder. It is insoluble in water and acetic acid but is soluble in mineral acids.

*Ferric Sulfate*

Ferric sulfate is prepared by reacting sulfuric acid and nitric acid with ferrous salts. The resulting product contains approximately 20 percent water and is yellowish in color. It is slightly soluble in water but nearly insoluble in alcohol.

*Oxides of Iron*

The term "oxides of iron" refers to ferrous oxide (FeO) and ferric oxide ($Fe_2O_3$) or to mixtures of ferrous oxide and ferric oxide.

Ferrous oxide is a black powder that oxidizes in the air. It can be made by heating ferrous oxalate in the absence of air. Ferric oxide is a red powder and is found in nature both as hematite and in hydrated forms (as rust and limonite). It can be prepared by calcining ferrous sulfate or hydrated ferric oxide. Ferric oxide is insoluble in water but soluble in acid.

*Iron Caprylate*

Iron caprylate is also known as "iron octanoate." The pure compound is prepared by reacting salts of octanoic acid with iron salts. However, because iron octanoate is relatively insoluble in oil, the octanoates used commercially are the more soluble salts of a branched-chain isomer, 2-ethyl hexanoic acid. This product is also referred to as iron caprylate.

*Iron Linoleate*

Iron linoleate is usually prepared by reacting iron salts with linseed oil or with the fatty acids of linseed oil. The final product contains not only iron linoleate but also iron salts of the other fatty acids present.

*Iron Naphthenate*

Iron naphthenate is obtained when iron salts are reacted with the various mixed acids occurring in naphthalene-base crude petroleums.

*Iron Tallate*

Iron tallate is prepared from the reaction of various iron salts with tall oil. Commercially tall oil is a byproduct derived from the waste liquors of pine wood pulp mills. It consists of a mixture of fatty and cyclic acids. Oleic and linoleic acids comprise the bulk of the fatty acids, although some linolenic and stearic acids are also present. The product resulting from the reactions of various iron salts with this mixture is referred to as iron tallate.

*Ferrous Carbonate*

Ferrous carbonate is an odorless, white solid prepared by treating solutions of ferrous salts with alkali carbonate salts. Ferrous carbonate is insoluble in water but soluble in dilute acids.

*Ferric Ammonium Citrate*

Ferric ammonium citrate is prepared by the reaction of citric acid with ferric hydroxide, followed by the addition of ammonium hydroxide. Ferric ammonium citrate is a complex salt of ammonia, iron, and citric acid. It can exist in two forms, depending on the concentrations of the initial reactants: (1) Ferric ammonium citrate, brown, and (2) ferric ammonium citrate, green. Both forms are soluble in water but insoluble in alcohol. According to industry representatives, ferric ammonium citrate is one of the few soluble iron compounds that can be added to dairy products without inducing an off-flavor.

*Ferric Chloride*

Ferric chloride is usually prepared from the reaction of chlorine with ferrous sulfate or ferrous chloride. It can also be prepared by reacting ferric oxide with hydrogen chloride. It is very hygroscopic and water soluble. It readily forms a hexahydrate.

*Ferric Citrate*

Ferric citrate is prepared from reaction of citric acid with ferric hydroxide. The product is soluble in hot

water and practically insoluble in alcohol.

*Iron Peptonate*

Iron peptonate is prepared by adding ferric oxide to peptones. The resulting product is a compound of undetermined structure. It contains 16 to 18 percent iron in nonionic form. It is made water-soluble by the addition of sodium citrate.

*Sodium Ferric Ethylenediamine Tetraacetate (EDTA)*

Sodium ferric EDTA (synonyms: Sodium iron EDTA, ferric versenate, sodium iron edetate, ferric sodium edetate) is prepared from disodium EDTA and ferric nitrate. It is readily soluble in water and in alkaline media but is insoluble in acid. Disodium EDTA is listed in 21 CFR 172.135 for use as a preservative in various foods and multivitamin preparations at concentrations of 36 ro 500 parts per million. It chelates some of the iron present in these preparations to form the ferric EDTA complex.

*Ferrous Ascorbate*

Ferrous ascorbate can be prepared by treating ferrous hydroxide with ascorbic acid to yield a blue-violet product containing 16 percent iron.

*Iron Polyvinylpyrrolidone*

Iron polyvinylpyrrolidone is a mixture of reduced iron or an iron salt with polyvinylpyrrolidone in unspecified proportions. Although polyvinylpyrrolidone forms stable water-soluble complexes with various ions, complex formation of iron with polyvinylpyrrolidone presumably does not occur. The resulting product is nothing more than a mixture of reduced iron or an iron salt dispersed throughout the polyvinylpyrrolidone.

*Sodium Ferricitropyrophosphate*

Sodium ferricitropyrophosphate is a mixture of salts of uncertain composition produced by combining sodium pyrophosphate with ferric citrate.

*Ferric Sodium Pyrophosphate*

Ferric sodium pyrophosphate (sodium ferric pyrophosphate) usually occurs as a hydrate. The commercial product contains 15.5 to 16.5 percent iron and 50.5 to 52.5 percent phosphorus pentoxide.

**II. Regulatory Status of Iron and Iron Salts**

FDA listed iron reduced, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric phosphate, ferric pyrophosphate, and ferric sodium pyrophosphate as GRAS nutrients in a regulation published in the **Federal Register** of November 20, 1959 (24 FR 9368). Subsequently, FDA listed them as GRAS nutrients/dietary supplements in a regulation published in the **Federal Register** of January 31, 1961 (26 FR 938).

However, in a regulation published in the **Federal Register** of September 5, 1980 (45 FR 58837), the agency divided the nutrient/dietary supplement category into separate listings for GRAS dietary supplements (21 CFR Part 182, Subpart F) and for GRAS nutrients (21 CFR Part 182, Subpart I). For example, iron reduced is listed as GRAS in § 182.5375 for use in dietary supplements and in § 182.8375 for use in food as a nutrient. Similarly, ferric phosphate (§ 182.5301), ferric pyrophosphate (§ 182.5304), ferric sodium pyrophosphate (§ 182.5306), ferrous gluconate (§ 182.5308), ferrous lactate (§ 182.5311), and ferrous sulfate (§ 182.5315) are listed for use as dietary supplements and under §§ 182.8301, 182.8304, 182.8306, 182.8308, 182.8311, and 182.8315, respectively, for use in food as nutrients.

After the published GRAS lists discussed above were established, FDA issued advisory opinion letters that stated that ferric ammonium citrate, ferrous carbonate, ferrous citrate, ferric citrate, and iron peptonate are GRAS for use as nutritional supplements. Also, FDA stated in an opinion letter dated October 27, 1980, that ferric chloride is GRAS when used as a direct food additive.

In addition to direct food use, iron and iron salts are used in food-packaging materials. Iron reduced, ferrous sulfate, ferric sulfate, and the oxides of iron are listed as GRAS in regulations published in the **Federal Register** of June 17, 1961 (26 FR 5421) (currently codified at 21 CFR 182.90) as substances migrating to food from paper and paperboard food-packaging materials. Iron caprylate, iron linoleate, iron naphthenate, and iron tallate are prior-sanctioned food ingredients listed in 21 CFR 181.25 for use as driers in food-packaging materials. Moreover, in a letter dated December 15, 1959, FDA stated that ferric oxide is GRAS for use in food packaging.

In an advisory opinion letter, FDA stated that the use of iron oxide to color food-packaging materials was acceptable.

In the following regulations, FDA has approved iron and iron salts for the following uses: (1) In 21 CFR 172.350, ferrous fumarate for use as a source of iron in foods for special dietary use; (2) in 21 CFR 172.430, iron ammonium citrate for use as an anticaking agent in salt; (3) in 21 CFR 175.105, ferric chloride for use in adhesives; (4) in 21 CFR 175.300, iron and iron oxides for use in resinous and polymeric coatings; (5) in 21 CFR 175.390, iron oxide for use in zinc-silicon matrix coatings; (6) in 21 CFR 176.170, ferric chloride and ferrous ammonium sulfate for use as components of paper and paperboard in contact with aqueous and fatty foods; (7) in 21 CFR 176.180, ferric chloride for use as a component of paper and paperboard in contact with dry food; (8) in 21 CFR 177.1200, ferrous ammonium sulfate for use in cellophane; and (9) in 21 CFR 177.2600, iron oxide for use in rubber articles intended for repeated use. In addition, in 21 CFR 73.160, FDA approved the use of ferrous gluconate as a color additive for the coloring of ripe olives. These regulations are not affected by this proposal.

The use of iron and iron compounds for enrichment is required by the following food standards: Bakery products (21 CFR Part 136), cereal flours and related products (21 CFR Part 137), and macaroni and noodle products (21 CFR Part 139). FDA in the past has defined the types of iron compounds that may be used in these regulations as "forms which are harmless and assimilable." More recently, the agency has stated that "any safe and suitable" form of iron may be used. The term "safe and suitable" is defined in 21 CFR 130.3(d).

Section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) lists iron (salt not specified) as a required nutrient in infant formula, subject to level restrictions. FDA is reviewing all nutrient levels in infant formulas under a contract with the American Academy of Pediatrics. Any necessary modifications in the nutrient levels of iron and iron salts in infant formula will be proposed in a separate rulemaking under section 412(a)(2) of the act.

Iron and iron salts also may be used to fortify foods as described in 21 CFR Part 104 and in special dietary foods as described in 21 CFR Part 105.

**III. Consumer Exposure to Iron and Iron Salts in Food**

In 1971 and 1975, the National Academy of Sciences/ National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which iron and iron salts were used and the levels at which they were used. NAS/NRC combined this manufacturing information with information on consumer consumption

of foods to obtain an estimate of consumer exposure to iron and iron salts. The surveys showed that the direct food uses of iron and iron salts are mainly for nutrient fortification and dietary supplement uses. Ferrous sulfate was also reported to be used as a processing aid. Additionally, the 1975 NAS/NRC survey reported that ferric sulfate is used in fats and oils, processed cheeses, and snack foods as a flavoring agent. Also, the Select Committee on GRAS Substances (the Select Committee) learned that ferric chloride is added to nonalcoholic beverages as a flavoring agent.

According to the NAS/NRC surveys, the total amounts of iron and iron salts used by food manufacturers were as follows: ferric phosphate, 639,450 pounds (1975 survey); ferric pyrophosphate, 2,426 pounds (1970 survey); ferric sodium pyrophosphate, 37,485 pounds (1975 survey); ferrous gluconate, 3,749 pounds (1970 survey); ferrous sulfate, 595,350 pounds (1975 survey); "iron reduced," 1,124,550 pounds (1975 survey); and ferric ammonium citrate, 29,988 pounds (1975 survey). During the period between 1970 and 1975, the amount of added elemental iron almost doubled, while that of ferrous sulfate, ferric phosphate, and ferric sodium pyrophosphate decreased by over 10, 40, and 90 percent, respectively.

### IV. Opinions of the Select Committee on Iron and Iron Salts

Iron and iron salts have been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the searches were chosen to discover any articles that considered: (1) Chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 386 abstracts on iron and iron salts was reviewed, and 198 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The Select Committee, which was composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB), summarized information from the scientific literature review and other sources in a report to FDA. In this report, the Select Committee also carefully evaluated all of the available safety information on iron and iron salts (see Appendix). In the Select Committee's opinion (Ref. 1, pp. 49–50):

> The body content of iron in the normal individual is regulated primarily by absorptive processes. Relatively small amounts of iron are absorbed when body stores of iron are high and relatively large amounts when body stores are low. This regulation of iron absorption is faulty in individuals with the metabolic disorder, hemochromatosis.
>
> Although hemochromatosis is generally considered a rare, genetically transmitted disorder, several investigators believe that a latent form of hemochromatosis may be much more common. In Sweden, where food fortification with iron is at a higher level than in the United States, and where medicinal iron supplements are widely consumed, investigators reported several cases of hemochromatosis and iron overload in a sparsely populated district. The significance of these findings with respect to the general population of Sweden, or to other populations is not yet clear. However, these findings suggest that it is possible that a significant number of apparently normal and unidentified individuals might be at risk of developing liver damage from intakes of iron which are innocuous and, in fact, probably beneficial for the population at large.
>
> It should be noted that in the United States (and probably in other industrialized countries), individuals ingesting large amounts of iron may achieve these intakes through regular consumption of iron supplements. For these individuals, food fortification contributes a relatively small fraction of total intake. The question of total intake of iron by the U.S. population and its relation to chronic iron toxicity merit further study. Monitoring of the population with respect to iron nutritional status is essential. The estimated per capita intake of 5 mg per day obtained from food fortification comprises more than one-third the total intake for much of the population.
>
> Iron deficiency is a leading nutritional problem in the United States. Intakes of iron are below recommended levels for a large fraction of the population. Hence, it is evident that an increase in iron fortification of select foods could be an important public health measure.
>
> The form of iron utilized to fortify foods should be of adequate bioavailability. Iron forms evaluated in this report which appear to be adequately bioavailable are elemental iron (reduced, electrolytic, carbonyl), ferrous ascorbate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, and ferric citrate. In contrast, the bioavailability of ferrous carbonate ferrous oxide, ferric oxide, ferric phosphate, ferric pyrophosphate, or ferric sodium pyrophosphate is relatively low compared with ferrous sulfate. Insufficient data are available to judge the relative bioavailability of the other iron preparations considered in this report.
>
> Experimental data are sparse for most of the forms of iron considered in this report. Animal studies have been largely confined to determination of the acute toxicity and bioavailability of specific iron forms. Such studies have limited relevance in evaluating the possible hazards of the addition of iron to food. Few reports are available on the effects of long-term feeding experiments. An extensive literature exists on the use of certain forms given as hematinics, but the reports are largely anecdotal and their interpretation is of questionable value. Certain compounds have been employed extensively for many years both as additions to food and in the treatment of iron deficiency with no reported adverse effects. In view of the need for, and wide use of, iron compounds, it would appear prudent to place this historical and anecdotal experience on a scientifically rigorous basis in the reasonably near future. The Select Committee emphasizes the need for well-controlled chronic feeding studies with most of the individual compounds, before confident appraisal can be made of their relative merits or hazards.

In light of the considerations above, the Select Committee concluded that there is no evidence in the available information on reduced, electrolytic, and carbonyl iron, ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric citrate, ferric phosphate, or ferric pyrophosphate that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used at levels now current and in the manner now practiced or, if deemed necessary, at somewhat higher levels to meet nutritional needs. However, the Select Committee stated that it was not possible to determine without additional data whether a major increase in consumption would constitute a dietary hazard (Ref. 1, p. 50).

The Select Committee stated that "serious deficiencies exist in the experimental data or clinical experience with a number of iron compounds employed or suggested as iron fortifying agents for foods." It concluded that because of these deficiencies, it had insufficient data upon which to base an evaluation of ferric oxide, iron peptonate, iron polyvinylpyrrolidone, sodium ferric EDTA, sodium ferricitropyrophosphate, or ferric sodium pyrophosphate when these substances are used as food ingredients (Ref. 1, p. 51).

The Select Committee also stated that "several iron compounds are used in the preparation of paper and paperboard materials contacting foods or as ingredients used to hasten the drying of films used in coating the inner surface of food cans. Neither the amounts used for these purposes nor the extent to which they might migrate to foods are known to the Select Committee. However, the

extent of their migration to food is believed to be very slight." It concluded that there is no evidence in the available information on elemental iron, ferrous sulfate, ferric chloride, ferric oxide, ferric sulfate, iron caprylate, iron linoleate, iron tallate, or the oxides of iron that demonstrates, or suggests reasonable grounds to suspect, a hazard when they are used as ingredients of paper and paperboard materials or in films coating the inner surface of cans in the manner now practiced or that might reasonably be expected in the future (Ref. 1, p. 51).

Finally, the Select Committee stated that no information was available on the metabolism or toxicity of the various substances included under the term "iron naphthenate." It concluded that in view of this deficiency, it had insufficient data upon which to base an evaluation of iron naphthenate when that substance is used as an ingredient of films that coat the inner surface of cans containing food (Ref. 1, p. 51).

### V. FDA's Evaluation and Proposed Actions on Iron and Iron Salts

FDA has undertaken its own evaluation of all available information on iron and iron salts including the conclusions of the Select Committee. The agency concludes that no change in the current GRAS status of elemental iron (reduced, electrolytic, or carbonyl), ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric citrate, ferric phosphate, and ferric pyrophosphate is necessary. Therefore, in accordance with the opinion of the Select Committee, the agency proposes to affirm that the use of these substances as nutrient supplements for direct addition to conventional human food is GRAS.

Because the NAS/NRC survey did not specifically request data on dietary supplement use, FDA does not have adequate data upon which to judge the exposure from the use of iron and iron salts as dietary supplements. Without such exposure data, the agency cannot evaluate the safety of the use of these substances in dietary supplements and can take no action on the GRAS status of iron and iron salts for this use. Therefore, FDA is not taking any action on the listing of iron reduced, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric phosphate, ferric pyrophosphate, and ferric sodium pyrophosphate in §§ 182.5375, 182.5308, 182.5311, 182.5315, 182.5301, 182.5304, and 182.5306, respectively, for use as dietary supplements.

FDA is also not affirming in Part 186 (21 CFR Part 186) the GRAS status of the indirect use of any of the iron compounds listed above because this use of these substances is authorized under § 184.1(a) (21 CFR 184.1(a)) (October 19, 1983; 48 FR 48456). However, in accordance with the Select Committee's opinion, and based on its own review of the available data, the agency is proposing to affirm as GRAS the use of ferric oxide and the oxides of iron as indirect food ingredients.

The agency also is proposing to affirm that the use of ferric chloride and ferric sulfate as flavoring agents for direct addition to food is GRAS. The 1975 NAS/NRC food survey reported that ferric sulfate was being used as a flavoring agent. Additionally, manufacturers reported to the Select Committee that ferric chloride is used as a flavoring agent in nonalcoholic beverages. The Select Committee did not evaluate these direct food uses of ferric chloride. However, based on its evaluation of these limited uses, FDA has tentatively concluded that these uses are safe. The agency is therefore proposing to affirm that the use of ferric chloride and ferric sulfate as flavoring agents is GRAS.

FDA is proposing to make no change on the prior-sanctioned listing in § 181.25 of iron caprylate, iron tallate, and iron linoleate when used as a component of driers. The agency is also proposing to make no change on the prior-sanctioned status of iron naphthenate for this use. Even though the Select Committee stated that it had insufficient relevant information upon which to evaluate iron naphthenate, the agency has tentatively concluded that based on the limited use, and the past history of indirect food use, of this ingredient, no health concerns exist. Additionally, the agency notes that iron naphthenate is approved for use under food additive regulations (21 CFR 175.300, 175.380, 175.390, 176.170, and 177.1210) for articles intended for use in contact with food.

Based on its review of the available data, FDA agrees with the Select Committee that there are insufficient use information and biological data upon which to base a safety evaluation of ferric oxide, iron peptonate, iron polyvinylpyrrolidone, sodium ferric EDTA, sodium ferricitropyrophosphate, or ferric sodium pyrophosphate for use as direct food ingredients. Without consumer exposure data and relevant biological studies, the safety of a food ingredient cannot be evaluated. Therefore, the agency advises that unless food use information and biological data are submitted as comments on this proposal, these ingredients will not be affirmed as GRAS for any direct food use.

However, as noted earlier in this preamble, the GRAS status of the use of iron salts in dietary supplements is not affected by this proposal. Ferric sodium pyrophosphate is listed in § 182.5306 (21 CFR 182.5306) for use in dietary supplements and in § 182.8306 (21 CFR 182.8306) for use as a nutrient. The agency is taking no action on the dietary supplement listing at the present time, but the agency is proposing to remove ferric sodium pyrophosphate from the list of nutrients in Part 182 because of the lack of information about this ingredient.

The agency notes that the 1971 and 1975 NAS/NRC survey of food manufacturers did not distinguish among the types of ferric ammonium citrate used in food but solicited information under the name "ferric ammonium citrate." Of the two types of ferric ammonium citrate (ferric ammonium citrate, brown, and ferric ammonium citrate, green), ferric ammonium citrate, green, is a regulated food additive (anticaking agent), whereas ferric ammonium citrate, brown, has been accorded GRAS status. Indications are that both are used as a nutrient and as a dietary supplement. In several of the reported biological studies, it was not clear which form of ferric ammonium citrate was used. Based on the considerations above and on the safety data available, the agency will consider both ferric ammonium citrate, brown, and ferric ammonium citrate, green, to be GRAS and has included both forms in proposed § 184.1296.

FDA is proposing to affirm the GRAS status of elemental iron, ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferric ammonium citrate, ferric citrate, ferric phosphate, ferric pyrophosphate for use as nutrient supplements in conventional foods, of ferrous sulfite for use as a nutrient supplement in conventional foods and as a processing aid, and of ferric chloride and ferric sulfate for use as flavoring agents when they are used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)). The agency is proposing not to include in the GRAS affirmation regulations for these substances the levels of use reported in the 1971 NAS/NRC survey. Both FASEB and the agency have concluded that a large margin of safety exists for these substances, and that a

reasonably foreseeable increase in the level of consumption of these substances will not adversely affect human health.

Furthermore, the agency believes that excessive consumption of these substances will not occur. The major use of these substances is for fortification of traditional foods, and when used for this purpose, the food standards regulations specify the amount of the substance that can be added.

Additionally, §§ 101.9(a)(2) and 104.20 (21 CFR 101.9(a)(2) and 104.20) clearly delineate the agency's policy with regards to the addition of nutrients to foods. Section 101.9(a)(2) (21 CFR 101.9(a)(2)) specifies that "If any vitamin and/or mineral is added to a food so that a single serving provides 50 percent or more of the U.S. Recommended Daily Allowance * * * unless such addition is permitted or required in other regulations, e.g., a standard of identity or nutritional quality guideline, or is otherwise exempted by the Commissioner the food shall be considered a food for special dietary use within the meaning of § 105.3(a)(1)(iii) * * *." Section 104.20 (21 CFR 104.20) delineates the agency's policy on fortification of foods. The agency expects that there will be adherence to these guidelines and that as a result there will be no net increase in the use of these ingredients as nutrients.

The agency notes that there are numerous use situations covered by this document in which it may be possible for iron and one or more of its salts to be used interchangeably for a specific technological purpose or in a certain food class. To the extent that such substitutions are based on economic or technological considerations, the agency has no basis to object to such substitutions. The agency believes that the interchangeable nature of iron and iron salts is self-limiting (i.e., constraints are placed on the amount of iron and iron salts that can be used in various foods by production of such effects as an off-taste, solubility concerns, product deterioration, discoloration, and reduced palatability). Additionally, further constraints are placed on use by regulations promulgated in 21 CFR Parts 101, 104, and 105 and by the Infant Formula Act of 1980. Therefore, the agency is proposing to affirm the GRAS status of these ingredients when they are used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1). To make clear, however, that the affirmation of the GRAS status of these ingredients is based on the evaluation of currently known uses, the proposed regulations set forth the technical effects that FDA evaluated.

As stated above, section 412(g) of the act authorizes the use of iron (salt not specified) in infant formula. The 1971 NAS/NRC survey reported the use of ferric sodium pyrophosphate and ferrous sulfate as nutrient supplements in infant formula. However, neither iron nor any of the other iron salts were reported being used. The agency has evaluated the use of iron and iron salts in infant formulas and has concluded that to the extent that it is technologically feasible, any iron compound affirmed as GRAS for direct food use as a nutrient can be used in infant formula. Consequently, the agency is proposing to include use in infant formula in the GRAS affirmation regulations set forth in this document.

The affirmation of GRAS status of the uses of iron and iron salts is based on the safety data available to FDA. It is not based on bioavailability. Although the issue of bioavailability of iron and iron salts is important, this issue can be separated from the evaluation of the safety of these ingredients. The agency is currently evaluating the bioavailability of nutrients, including iron and iron salts, and this issue will be addressed in a **Federal Register** document in the near future. In the meantime, FDA concurs with the Select Committee that all of the iron substances being affirmed as GRAS are sources of iron that are moderately or highly bioavailable.

In issuing GRAS affirmation regulations for iron and iron salts, the agency includes in paragraph (a) of each regulation a description of the identity of the substance that is being affirmed as GRAS and, where appropriate, a description of the commercial methods of manufacture. However, in the case of many of the iron salts, the agency has been unable to list suitable methods of manufacture because of a lack of information on these processes. The agency, therefore, is specifically soliciting information and comments on the manufacturing processes for the iron and iron salts listed in the regulations.

The Select Committee stated that no food-grade specifications exist for several iron compounds, and that there is a need to establish such specifications. The agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for these compounds. When acceptable specifications are developed, the agency will incorporate them into these regulations. Until specifications are developed, FDA has determined that the public health will be adequately protected if these commercial iron compounds comply with the description in the proposed regulations and are of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

Copies of the scientific literature review on iron and iron salts, reports of the mutagenic evaluations for ferric orthophosphate (ferric phosphate), ferric pyrophosphate, ferrous gluconate, ferrous sulfate, and sodium ferric pyrophosphate, reports of the teratogenic evaluation for ferric sodium pyrophosphate and ferric sulfate, a report on iron bioavailability, and the report of the Select Committee are available for review at the Dockets Management Branch (address above) and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

| Title | Order No. | Price code | Price [1] |
|---|---|---|---|
| Iron and iron salts (scientific literature review) | PB 221-236 | A05 | $10.50 |
| Ferrous sulfate (mutagenic evaluation) | PB 245-435/AS | A03 | 7.50 |
| Ferrous gluconate (mutagenic evaluation) | PB 245-477/AS | A03 | 7.50 |
| Ferric orthophosphate (mutagenic evaluation) | PB 245-514/AS | A03 | 7.50 |
| Ferric sodium pyrophosphate (mutagenic evaluation). | PB 245-495/AS | A03 | 7.50 |
| Ferric pyrophosphate (mutagenic evaluation) | PB 257-876/AS | A03 | 7.50 |
| Ferric sodium pyrophosphate (teratogenic evaluation). | PB 245-524/AS | A03 | 7.50 |
| Ferric Sulfate (teratogenic evaluation) | PB 245-532/AS | A03 | 7.50 |
| Iron and iron salts (Select Committee report) | PB 178-676/AS | A05 | 10.50 |
| The bioavailability of iron sources and their utilization in food enrichment. | PB 224-122 | A05 | 10.50 |

[1] Price subject to change.

### VI. Reference

The following information has been placed in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Evaluation of the Health Aspects of Iron and Iron Salts as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, MD.

### VII. Economic and Environmental Assessments

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substances covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

The agency's findings that there will be no economic impact and no significant impact on a substantial number of small entities if the proposed rule is promulgated, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch.

### VIII. Additional Prior Sanctions

The agency is unaware of any prior sanction for the use of these ingredients in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The actions proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof that establishes the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate regulation under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before June 22, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects

*21 CFR Part 182*

Food ingredients, Spices and flavorings.

*21 CFR Part 184*

Food ingredients.

*21 CFR Part 186*

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 182, 184, and 186 be amended as follows:

## PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

**§ 182.90 [Amended]**

2. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entries for "Ferric sulfate," "Ferrous sulfate," "Iron, reduced," and "Oxides of iron."

**§§ 182.8301, 182.8304, 182.8306, 182.8308, 182.8311, 182.8315, and 182.8375 [Removed]**

3. By removing § 182.8301 *Ferric phosphate,* § 182.8304 *Ferric pyrophosphate,* § 182.8306 *Ferric sodium pyrophosphate,* § 182.8308 *Ferrous gluconate,* § 182.8311 *Ferrous lactate,* § 182.8315 *Ferrous sulfate,* and § 182.8375 *Iron reduced.*

## PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

4. The authority citation for 21 CFR Part 184 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

5. By adding new § 184.1296, to read as follows:

**§ 184.1296 Ferric ammonium citrate.**

(a) Ferric ammonium citrate (iron ammonium citrate) is prepared by the reaction of ferric hydroxide with citric acid, followed by treatment with ammonium hydroxide, evaporating, and drying. The resulting product occurs in two forms depending on the stoichiometry of the initial reactants.

(1) Ferric ammonium citrate (iron ammonium citrate, CAS Reg. No. 1332–98–5) is a complex salt of undetermined structure composed of 16.5 to 18.5 percent iron, *ca* 9 percent ammonia, and 65 percent citric acid and occurs as reddish brown or garnet red scales or granules or as a brownish-yellow powder.

(2) Ferric ammonium citrate (iron ammonium citrate, CAS Reg. No. 1333–00–2) is a complex salt of undetermined structure composed of 14.5 to 16 percent iron, *ca* 7.5 percent ammonia, and 75 percent citric acid and occurs as thin transparent green scales, as granules, as a powder, or as transparent green crystals.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 116 (ferric ammonium citrate, brown) and p. 117 (ferric ammonium citrate, green), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food with no limitation other than current good manufacturing practice. The affirmation of these ingredients as generally recognized as safe (GRAS) as direct human food ingredients is based upon the following current good manufacturing practice conditions of use:

(1) The ingredients are used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredients are used in food at levels not to exceed current good manufacturing practice. The ingredients may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

6. By adding new § 184.1297, to read as follows:

**§ 184.1297 Ferric chloride.**

(a) Ferric chloride (iron (III) chloride, $FeCl_3$, CAS Reg. No. 7705–08–0) may be prepared from iron and chlorine or from ferric oxide and hydrogen chloride. The pure material occurs as hydroscopic, hexagonal, dark crystals. Ferric chloride hexahydrate (iron (III) chloride hexahydrate, $FeCl_3.6H_20$, CAS Reg. No. 10025–77–1) is readily formed when ferric chloride is exposed to moisture.

(b) The Food and Drug Administration is developing food-grade specifications for ferric chloride in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavoring agent as defined in § 170.3(o)(12) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

7. By adding new § 184.1298, to read as follows:

**§ 184.1298 Ferric citrate.**

(a) Ferric citrate (iron citrate, CAS Reg. No. 2338–05–8) is prepared from reaction of citric acid with ferric hydroxide. It is a compound of indefinite ratio of citric acid and iron.

(b) The Food and Drug Administration is developing food-grade specifications for ferric citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

8. By adding new § 184.1301, to read as follows:

**§ 184.1301 Ferric phosphate.**

(a) Ferric phosphate (ferric orthophosphate, iron phosphate, $FePO_4xH_2O$, CAS Reg. No. 10045–86–0) is an odorless, yellowish-white to buff-colored powder and contains from one to four molecules of water of hydration. It is prepared by reacting sodium phosphate with ferric chloride or ferric citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 118, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

9. By adding new § 184.1304, to read as follows:

**§ 184.1304 Ferric pyrophosphate.**

(a) Ferric pyrophosphate (iron pyrophosphate, $FePO_4.xH_2O$, CAS Reg. No. 10058–44–3) is a tan or yellowish white colorless powder. It is prepared by reacting sodium pyrophosphate with ferric citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 120, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

10. By adding new § 184.1307, to read as follows:

**§ 184.1307 Ferric sulfate.**

(a) Ferric sulfate (iron (III) sulfate, $Fe_2(SO_4)_3$, CAS Reg. No. 10028–22–5) is a yellow substance that may be prepared by oxidizing iron (II) sulfate or by treating ferric oxide or ferric hydroxide with sulfuric acid.

(b) The Food and Drug Administration is developing food-grade specifications for ferric sulfate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavoring agent as defined in § 170.3(o)(12) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

11. By adding new § 184.1307a, to read as follows:

**§ 184.1307a Ferrous ascorbate.**

(a) Ferrous ascorbate (CAS Reg. No. 14536–17–5) is a reaction product of

ferrous hydroxide and ascorbic acid. It is a blue-violet product containing 16 percent iron.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous ascorbate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

12. By adding new § 184.1307b, to read as follows:

**§ 184.1307b Ferrous carbonate.**

(a) Ferrous carbonate (iron (ii) carbonate, $FeCO_3$, CAS Reg. No. 563–71–3) is an ordorless, white solid prepared by treating solutions of iron (II) salts with alkali carbonate salts.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous carbonate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

13. By adding new § 184.1307c, to read as follows:

**§ 184.1307c Ferrous citrate.**

(a) Ferrous citrate ($C_6H_6FeO_7$, CAS Reg. No. 23383–11–1) is a slightly colored powder or white crystals. It is prepared from the reaction of sodium citrate with ferrous sulfate or by direct action of citric acid on iron filings.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

14. By adding new § 184.1307d, to read as follows:

**§ 184.1307d Ferrous fumarate.**

(a) Ferrous fumarate ($C_4H_2FeO_4$, CAS Reg. No. 141–01–5) is an odorless, reddish-orange to reddish-brown powder. It may contain soft lumps that produce a yellow streak when crushed. It is prepared by admixing hot solutions of ferrous sulfate and sodium fumarate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 120, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

15. By adding new § 184.1308, to read as follows:

**§ 184.1308 Ferrous gluconate.**

(a) Ferrous gluconate ($C_{12}H_{22}FeO_{14}2H_2O$, iron (II) gluconate dihydrate, CAS Reg. No. 6047–12–7) is a fine yellowish-gray or pale greenish-yellow powder or granules. It is prepared by reacting hot solutions of barium or calcium gluconate with ferrous sulfate or by heating freshly prepared ferrous carbonate with gluconic acid in aqueous solution.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 122, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

16. By adding new § 184.1311, to read as follows:

**§ 184.1311 Ferrous lactate.**

(a) Ferrous lactate ($C_6H_{10}FeO_6$, CAS Reg. No. 590–552–2) in the trihydrate form is a greenish-white powder of crystalline mass. It is prepared by reacting calcium lactate with ferrous sulfate or by direct reaction of lactic acid with iron filings.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous lactate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

17. By adding new § 184.1315, to read as follows:

**§ 184.1315 Ferrous sulfate.**

(a) Ferrous sulfate heptahydrate ($FeSO_4 \cdot 7H_2O$, CAS Reg. No. 7782–63–0) is prepared by the action of sulfuric acid on iron. It occurs as pale, bluish-green crystals or granules. Progressive heating of ferrous sulfate heptahydrate produces ferrous sulfate (dried). Ferrous sulfate (dried) consists primarily of ferrous sulfate monohydrate (CAS Reg. No. 17375–41–6) with varying amounts of ferrous sulfate tetrahydrate (CAS Reg. No. 20908–72–9) and occurs as a grayish-white to buff-colored powder.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 123 (ferrous sulfate heptahydrate) and p. 124 (ferrous sulfate, dried), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter and as a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

18. By adding new § 184.1375, to read as follows:

**§ 184.1375 Iron, elemental.**

(a) Iron, elemental (CAS Reg. No. 7439–89–6) is metallic iron obtained by any of the following processes: Reduced iron, electrolytic iron, and carbonyl iron.

(1) Reduced iron is prepared by reacting ground ferric oxide with hydrogen or carbon monoxide at an elevated temperature. The process results in a grayish-black powder, all of which should pass through a 100-mesh sieve. It is lusterless or has not more than a slight luster. When viewed under a microscope, it appears as an amorphous powder free from particles having a crystalline structure. It is stable in dry air.

(2) Electrolytic iron is prepared by electrodeposition. It is an amorphous, lusterless, grayish-black powder. It is stable in dry air.

(3) Carbonyl iron is prepared by the decomposition of iron pentacarbonyl. It occurs as a dark gray powder. When viewed under a microscope, it appears as spheres built up with concentric shells. It is stable in dry air.

(b) Iron, elemental (carbonyl, electrolytic, or reduced) meets the specifications of the Food Chemicals Codex, 3d Ed. (1981) (iron, carbonyl, p. 151; iron, electrolytic, p. 151; iron, reduced, p. 152), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

## PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

19. The authority citation for 21 CFR Part 186 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

20. By adding new § 186.1300, to read as follows:

**§ 186.1300 Ferric oxide.**

(a) Ferric oxide (iron (III) oxide, $Fe_2O_3$, CAS Reg. No. 1309–37–1) occurs naturally as the mineral hematite. It may be prepared synthetically by heating brown iron hydroxide oxide. The product is red-brown to black trigonal crystals.

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(2) The ingredient is used at levels not to exceed current good manufacturing practice.

21. By adding new § 186.1374, to read as follows:

**§ 186.1374 Iron oxides.**

(a) Iron oxides (oxides of iron, CAS Reg. No. 97705–33–85) are undefined mixtures of iron (II) oxide (CAS Reg. No. 1345–25–1, black cubic crystals) and iron (III) oxide (CAS Reg. No. 1309–37–1, red-brown to black trigonal crystals).

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(2) The ingredient is used at levels not to exceed current good manufacturing practice.

Dated: April 15, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

**Appendix—Select Committee's Review of Selected Safety [1] Studies on Iron and Iron Salts**

*A. Introduction*

Iron, in contrast with most other metals, is regulated in the body primarily by absorption rather than by excretion. It has long been known that little iron is excreted in the urine even when large doses are ingested. This fact led McCance and Widdowson in 1937 to conclude that iron in the body must be regulated by controlled absorption. A number of comprehensive reviews on iron absorption since that time have amply confirmed the critical importance of the gastrointestinal tract in controlling the total body iron. Absorption is strongly influenced by the status of iron stores and the erythropoietic activity in the body. Extrinsic factors such as the form of ingested iron, the nature of accompanying food, the composition of intestinal secretions, the products of digestion, and the pH of the intestinal contents can all affect the absorption of iron.

Since the normal diet contains several times the amount of iron needed to maintain iron balance, it is obvious that availability of iron, rather than its total intake, is the limiting factor in achieving adequate absorption. It is generally agreed that iron of animal origin, with the exception of eggs, is more readily available to man than the iron in plants. Heme, the principal source of iron in animal tissues and organs, is directly and rapidly absorbed, whereas nonheme iron is more slowly and less completely absorbed. The difference in bioavailability of plant and animal iron is so great that heme iron is generally considered independently of nonheme iron in iron balance studies. Bjorn-Rasmussen, *et al.* fed 32 young men meals containing both heme and nonheme (plant) iron appropriately labeled. They found that the absorption of heme iron averaged 37 percent but absorption of nonheme iron only 5 percent. Layrisse and Martinez-Torres obtained similar results with subjects fed a diet of meat, beans, maize, and rice. In this instance, absorption of heme iron was 27 percent while that of nonheme iron was 6 percent. One factor probably contributing to the superior bioavailability of heme iron is its protection from agents which may react with nonheme iron compounds to reduce their absorption.

Although there are individual differences among the various iron compounds, ferrous salts are generally more readily absorbed in man than ferric salts. This has been observed both clinically and experimentally. Brise and Hallberg used two isotopes to study the absorption of 14 different iron salts. The absorption ratio for the various iron salts studied was as follows: Ferrous succinate, 1.22; ferrous lactate, 1.06; ferrous glycine sulfate, 1.02; ferrous fumarate, 1.01; ferrous sulfate, 1.00; ferrous glutamate, 0.96; ferrous gluconate, 0.89; ferrous citrate, 0.74; ferrous tartrate, 0.64; ferrous pyrophosphate, 0.59; ferric choline isocitrate, 0.43; ferric sulfate, 0.36; ferric citrate, 0.31; and, ferric versenate (ferric EDTA), 0.24. A partial explanation for the more rapid absorption of ferrous salts may be the greater solubility of ferrous than ferric hydroxide in the alkaline milieu of the duodenum. Insoluble salts, such as the various iron phosphates, are poorly available. The presence of precipitating agents, certain chelators, and lowered gastric acidity also significantly reduce iron absorption. Gastrectomy and achlorhydria markedly impair iron absorption.

The absorption of iron is significantly less when given after a meal than when administered to a fasting subject. Brise found that the absorption of iron (as ferrous sulfate) after a light meal was only 56 percent of that by the same subject in a fasting state. Phytates, which occur mainly in cereal foods, are often claimed to inhibit iron absorption by the formation of insoluble iron phytates during the process of digestion. However, the findings with phytate are difficult to interpret, since they depend somewhat upon the nature of the other food constituents. Phytates in some foods are bound to proteins or other plant constituents and have little effect on iron. Thus, Sharpe *et al.* found no correlation between the natural phytate content of oats and the bioavailability of iron. However, when sodium phytate was added to milk, the availability of iron to human subjects was sharply reduced. Iron utilization is also reduced when the amount of wheat bran in the diet is increased. This reduction has been attributed to the phytate content of the bran although phytin-free fiber also reduces iron utilization.

Both heme and ascorbic acid are known to enhance the absorption of iron. When beef, a rich source of heme, was substituted for an equivalent amount of egg albumin, the absorption of nonheme iron from a test meal increased more than five-fold. Similarly, the addition of relatively small amounts of ascorbic acid has been reported to increase the absorption of iron from maize porridge. When papaya containing 66 mg of ascorbic acid was consumed with 100 g of maize, five times as much iron was absorbed than from maize alone. Ascorbic acid is thought to act both by reducing some of the ferric iron to the ferrous state, and by forming simple chelates with the remainder. Both actions increase the solubility of iron in the intestine.

The formation of iron chelates is an important factor in the regulation and facilitation of iron absorption. Iron forms complexes with a large number of organic compounds which keep the iron available for absorption by preventing the formation of poorly soluble hydroxides and phosphates. The stability of these iron complexes or chelates varies widely depending upon the size, the nature of the ligand, and other factors. Chelates with low stability will release their iron to receptor sites in the intestinal mucosa, whereas highly stable chelates will prevent this release. Chelate stability is generally expressed as a stability constant, K. Forth states that chelates with K values below 12–13 will release their iron to mucosal receptors. Most iron chelates considered in this report have K values well below this threshold.

Of perhaps even greater importance than extrinsic factors in modifying the absorption of iron, is a systemic regulatory mechanism dependent upon the iron status of the individual. This mechanism is poorly understood. It does stimulate iron absorption during iron deficiency, during active erythropoiesis, and during the latter half of pregnancy. Conversely, it tends to decrease the absorption of iron when erythropoiesis is depressed or when an iron overload develops. Monsen *et al.* have estimated that an individual with low iron stores absorbs approximately 20 percent of nonheme iron from a high availability meal. This was defined as meals containing more than 90 g lean meat, poultry or fish; 30 to 90 g of these foods plus 25 to 75 mg ascorbic acid; or a non-meat, non-fish meal with more than 75 mg ascorbic acid. When consuming such meals, persons with adequate iron stores absorb about 7 to 8 percent, and individuals with high iron stores absorb only about 4 percent of the dietary nonheme iron.

[1] "Evaluation of the Health Aspects of Iron and Iron Salts as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, MD 20014, pp. 19–48, 1980.

The detailed mechanism of iron absorption is still somewhat controversial. It is generally agreed that iron is bound by receptors in the brush border of mucosal cells in the upper small intestine; transferred across the membrane by an unknown, but presumably energy-dependent process; transported to the basal surface of the epithelium by a carrier; and finally delivered to the iron-transporting protein, transferrin, in the plasma. As already indicated, the iron status of the individual, his erythropoietic rate, and other factors regulate the amount of iron transported across the intestinal muscosa. Transferrin transports iron to the bone marrow, liver, or other tissues where it can be utilized for the synthesis of hemoglobin, cytochromes, ferritin, and other iron-containing compounds. Ferritin is an iron-storage molecule with a large iron-binding capacity. It exists as a ferric oxide complex and a protein shell (apoferritin). When saturated, each molecule can contain up to 4500 iron atoms although it usually contains less than 3000. Ferritin provides a mobile reserve of iron to meet the varying needs of the body. Large amounts are found in the liver, spleen, and hematopoietic organs, and lesser amounts in other tissues which have no apparent iron-storage function. Serum ferritin has been used as an index of total body iron because it mirrors closely the quantity of iron stored in the tissues.

Another substance which functions as an iron-storage compound is hemosiderin. Its structure is ill-defined, being a relatively amorphous compound, containing up to 35 percent iron. Hemosiderin exists in the tissues as a brown, granular, readily stainable pigment; its iron is mainly ferric hydroxide. It has been suggested, on the basis of similar physical characteristics, that hemosiderin is formed from the denaturation and proteolytic cleavage of ferritin. Up to certain levels, both ferritin and hemosiderin are deposited in liver and spleen in roughly equal amounts. Morgan and Walters concluded from human necropsy material that hemosiderin begins to predominate when total iron storage requirements exceed approximately 1 mg per g of liver or spleen.

Iron is an important but complex determinant in the susceptibility of animals to infection. On the one hand, iron deficiency impairs host defense mechanisms and reduces the animals resistance to microbial attack. On the other hand, iron is essential for microbial growth; its availability to the invading microoganisms is reduced when blood levels are low.

The bulk of excreted iron is found in the feces, which includes not only the unabsorbed portion from ingested food but also small amounts from biliary excretion, desquamation from epithelial surfaces and gastrointestinal blood loss. These losses amount to approximately 1 mg per day or less. Virtually none is lost through the urine. Green *et al.* reported that the daily excretion of an 80 kg male subject was approximately 0.1 mg. Menstrual loss is highly variable but averages about 15 to 20 mg monthly. Because of the great differences in physiological availability of iron compounds in food, an overall absorption rate of 10 percent has been adopted in estimating the Recommended Dietary Allowance (RDA). Thus, in order to provide the necessary retention of 1 mg iron per day in men and in postmenopausal women, the RDA has been set at 10 mg. For women of childbearing age, the RDA is increased to 18 mg to allow for the extra demands imposed by menstruation, pregnancy and lactation. For infants, the recommended allowance is 1.5 mg per kg body weight. During pregnancy, daily supplements of 30 to 60 mg of iron are recommended.

Oral administration of large doses of soluble iron compounds to fasting experimental animals may cause irritation and ulceration of the gastrointestinal mucosa. Doses in the lethal range produce marked erosion and mucosal sloughing if death is delayed for 24 to 48 hours.

The acute toxicities of various iron salts for laboratory animals show wide variations among different iron salts and animal species. Thus, 150 to 305 mg iron per kg body weight has been reported as the $LD_{50}$ for mice given ferrous sulfate by mouth, but 3800 mg per kg is the comparable oral dose with ferrous carbonate. Species differences also appear to be great. The $LD_{50}$ for ferrous fumarate was reported to be 516 mg iron per kg in the mouse but more than 2300 mg per kg in rat. Dogs given lethal amounts of iron consistently displayed reduced cardiac output, increased peripheral resistance, decreased plasma volume, hemoconcentration, decreased blood volume, and lowered blood pressure. Metabolic acidosis and the accumulation of organic acids were also evident before circulatory collapse.

An estimated 2000 human cases of iron poisoning occur annually with approximately 12 deaths. Most cases occur among children, especially those in the 1 to 2 year age group, who poison themselves accidently with oral iron preparations prescribed for adults. In a review of 1645 cases in which children had ingested toxic agents, Greengard and McEnery reported the ferrous sulfate was responsible for 6.2 percent of the incidents. In adults, cases of acute toxicity have been observed almost exclusively among individuals with suicidal intentions.

Crotty estimated the average lethal dose for an adult male to be 200 to 250 mg per kg body weight (about 14 g of elemental iron) or approximately 1000 times the Recommended Dietary Allowance.

Large doses of iron salts cause severe gastroenteritis with hematemesis, abdominal pain, diarrhea, tachycardia, rapid respiration, depression, lassitude, and shock. Hemmorrhagic necrosis and sloughing of the gastric mucosal areas with extension into the submucosa are commonly observed. The necrotic surfaces are covered with an iron-containing pigment. Similar, but less severe, changes are noted in the small intestine, with the most striking damage in the proximal portions. Metabolic acidosis is common in these cases.

Acute toxicity resulting from consumption of iron-fortified foods has not been reported. The Select Committee considers that studies of acute toxicity of the various iron forms are of limited usefulness in evaluating the safety of iron and iron salts as food ingredients.

Subchronic and chronic toxicities of iron are characterized by disorders associated with excessive iron loading or storage in the body. The storage iron is predominantly in the form of insoluble hemosiderin, and an increase in iron storage is called hemosiderosis or simply siderosis. Under certain conditions, organs may contain grossly excessive amounts of storage iron and show evidence of damage. Such a condition is termed hemochromatosis. As Jacobs has commented, a problem often encountered in interpreting iron disorders is compounded by the semantic confusion resulting from the indiscriminate use of hemochromatosis and hemosiderosis as synonyms for iron loading.

In this report, the term *hemosiderosis* is applied to conditions of increased iron stores confined mainly to the cells of the reticuloendothelial system and without obvious malfunction or disease which can be attributed to the presence of the iron. The term *hemochromatosis* is applied when the organs containing excessive amounts of storage iron show evidence of damage, usually fibrosis. It is distinguished from hemosiderosis by well characterized clinical signs and

symptoms, even though the total amount of iron in the body may be comparable in the two conditions.

Generalized hemosiderosis may result from chronic ingestion of large amounts of bioavailable iron, from repeated transfusions, and from certain microcytic hypochromic anemias, such as thalassemia major. Substantial iron overload resulting from dietary intake is rare. The most striking example of such a dietary overload is the hemosiderosis which occurs among members of the Bantu tribe in South Africa who consume large amounts of a beverage prepared in iron drums and pots. The resulting brew is of a low pH and contains 40 to 89 mg iron per liter. The iron in the beverage is well absorbed, presumably in the form of small soluble complexes produced during fermentation. The average iron intake of adult Bantu men was estimated to be about 100 mg per day and even greater intakes are possible among heavy drinkers. In the siderotic Bantu, hemosiderin is deposited in the liver parenchymal and Kupffer cells and in the spleen and bone marrow. Significant involvement of parenchymal tissues in organs other than the liver is uncommon, even in the presence of marked siderosis. The pattern of both organ and cellular deposition of iron appears to differ from that found in hemochromatosis.

Hemochromatosis is generally regarded as a disease entity characterized by extensive iron deposits in the liver, skin, heart, pancreas, and spleen. Its etiology remains controversial. The typical patient with hemochromatosis will show portal cirrhosis, bronze pigmentation, diabetes mellitus, endocrinopathy, arthropathy, and cardiac insufficiency. The normal control of iron absorption is faulty in these individuals but the basic metabolic defect has not yet been identified. The dominant view regards hemochromatosis as a rare inborn error of metabolism, and considerable evidence supports this contention. One or more abnormalities in iron metabolism have been repeatedly recognized in 25 to 75 percent of first-degree relatives of patients with this condition. Siblings are often affected and in a few cases overt disease has been detected in successive generations. McDonald, however, has argued that hemochromatosis is always secondary to dietary, toxic or other factors responsible for increased retention of iron.

The frequency of hemochromatosis has been estimated at 1 in 20,000 hospital admissions and at 1 in 7000 hospital deaths. However, this apparent low frequency has been questioned by some investigators who believe it to be a gross underestimation of the true frequency, inasmuch as diagnosis has usually been restricted to the end stage of the disease.

Crosby has been critical of the iron fortification program in the United States; he believes it may contribute to the development of hemochromatosis among susceptible individuals. This concern prompted Olsson and coworkers to search for cases in Sweden, which has fortified foods with iron for more than 30 years. The average iron intake in Sweden is considerably higher than in the United States (19 mg versus 12 mg per day); 42 percent of the Swedish intake come from food fortification. Olsson *et al.* studied the iron status of virtually all (347 of 363) persons between 30 and 39 years of age in a small rural district in Sweden. All persons with elevated serum iron levels (above 300 μg per dl) were subjected to further tests to evaluate possible iron overload. Nine men (of 197), but no women, had persistently high serum iron levels. Four of these demonstrated increased iron stores, as indicated by high transferrin iron saturation (over 70 percent), increased iron excretion induced by deferoxamine injection, and liver parenchymal iron. Phlebotomy revealed excessive mobilizable iron stores in one man. Although the investigators characterized their findings as "pre-clinical hemochromatosis," each of the four men was in good health, with no clinical signs of the disorder. Liver function and glucose tolerance tests were normal in all cases. None had laboratory signs of organ damage attributable to iron.

In a more recent report, Olsson extended to 17, his series of patients with suspected hemochromatosis. This group consisted of 14 men and 3 women between the ages of 36 to 78 years, who had been treated in a regional hospital serving approximately 133,000 inhabitants. Two of the patients had been identified as possible hemochromatotics from their clinical signs and symptoms, three from clinical and laboratory investigations of their relatives, and the remainder from routine laboratory tests or from liver biopsies performed to clarify suspected hepatic disorders. Transferrin iron saturation, serum ferritin, urinary iron excretion after deferoxamine injection, and liver iron were elevated in all cases. Cirrhosis or significant fibrosis was reported in 11, and elevated serum transaminase in 14 of the patients. Abnormal glucose tolerance curves were present in 10 cases, but only three patients required insulin treatment. Abnormal pigmentation was noted in several of the patients, but this was seldom marked. Joint pains were reported by seven patients. Phlebotomies were performed on 12 of the patients. Only two of the 17 patients exhibited all of the typical signs and symptoms normally associated with hemocromatosis.

The most reliable method for assessing body iron stores is the chemical estimation in various tissues, especially the liver. Sheldon reported the mean concentration of liver nonheme iron in patients with hemochromatosis to be 3.6 percent dry weight (range 1.0 to 7.6 percent). The median hepatic concentrations found in 422 adult Swedish men was about 0.05 percent. The median values for Czechoslovakian males was about 0.10 and that for American males, about 0.08 percent. In a study of 3983 liver specimens from 18 different countries, only three were found to contain iron in concentrations approaching 1 percent, the lower limit of that found in hemochromatosis.

Attempts to produce hemochromatosis experimentally have been largely unsuccessful. Various iron preparations have been administered in large amount to rabbits, dogs, mice, rats, guinea pigs, and chickens. They have been given orally with normal and deficient diets, and in single or multiple doses intravenously, subcutaneously, intraperitoneally, and intramuscularly. Heavy deposits of iron in many tissues have been induced both after oral and parenteral administration, but the associated fibrosis of the liver, spleen, and pancreas, characteristic of human hemochromatosis, has not been observed.

The only study known to the Select Committee in which liver injury in animals has been reported to resemble human hemochromatosis, is that of Lisboa. This investigator administered a total of 3.5 to 5.8 g iron per kg body weight to dogs intravenously and/or intramuscularly by repeated injections of iron dextran or iron sorbitol. Of 19 dogs, six survived the experimental period of 35 to 47 months, and five developed cirrhosis. Liver histology showed disorganization of lobular architecture, with nodular regeneration, slight fibrosis, and mild inconsistent mononuclear infiltration. Massive deposits of iron were found in the parenchyma. There were no signs of diabetes.

On the other hand, Brown and coworkers also repeatedly injected iron

(as saccharated iron oxide) intravenously into dogs over a period of 6 to 10 weeks, until a total of 0.5 to 1.0 g per kg had been administered. The animals were sacrificed 81 and 84 months after the start of the experiment. Large amounts of iron were found in the liver, spleen, bone marrow, and lymph nodes, but liver function tests and histologic sections at biopsy or necropsy failed to reveal any evidence of cirrhosis. There was no diabetes or pancreatic fibrosis. Blindness developed about 3 years after the start of the experiment with lesions resembling those of retinitis pigmentosa. (Lisboa found no sign of this condition in his animals). In a subsequent experiment, Brown *et al.* injected dogs intravenously, intraperitoneally, or intramuscularly with 125 to 250 mg iron (as iron dextran or saccharated iron oxide) daily or twice weekly until the death of the animals. Death occurred in 5 to 10 months after total injections of 2.5 to 3.3 g iron per kg body weight. After about 4 months when more than 2 g iron has been injected, the animals showed a decreased serum albumin, anorexia, apathy, and weight loss. One dog developed ascites and anasarca. Except for scattered, small areas of focal necrosis and massive reticuloendothelial iron deposits, the livers of these dogs did not appear seriously damaged. There was no fibrous tissue response to the iron deposits, and no evidence of hemochromatosis, cirrhosis, or diabetes.

Feeding studies in animals also have failed to produce changes resembling hemochromatosis. Rather fed rats a diet containing 6 percent ferric citrate (about 1 g iron per kg per day) for 6 to 18 months. At necrospy, livers were engorged with hemosiderin, chiefly in the parenchymal and Kupffer cells, with large deposits also in the spleen, abdominal lymph nodes, pancreas, kidneys, and adrenals. However, cirrhosis was not observed in any of the experimental animals. Similarly, Finch *et al.* fed mice a diet containing 2 percent ferric citrate (about 500 mg iron per kg per day) for 24 days. The liver iron increased twenty-fold during this period and represented 74 percent of the total body iron, in contrast to 17 percent in the control animals. No other change was reported. Adult mongrel dogs fed about 200 mg iron per kg daily as ferric citrate for 2 to 6 months developed marked hepatic parenchymal hemosiderosis but no cirrhosis or fibrosis. Kinney *et al.* fed adult male rats a corn grit diet supplemented with 2 percent ferric citrate which provided about 300 mg iron per kg daily. After 27 to 33 days, the liver iron of the experimental rats was 3.6 times that of controls and after 56 to 61 days it was 16.3 times. This histological picture was that of progressive hemosiderosis of the hepatic parenchyma and of the reticuloendothelial system.

*B. Biological effects of individual forms of iron*

1. Elemental iron powders

Included under this heading are iron particles produced by the reduction of iron oxide, by electrolysis, or by decomposition of iron pentacarbonyl. As pointed out earlier, all these forms of elemental iron have often been erroneously subsumed within the terms "reduced iron" or "ferrum reductum." However, the bioavailability of each depends upon its particle size, surface area, and purity; these properties vary with the method of preparation.

Elemental iron has certain disadvantages as a fortifying agent for flour. Its high density compared with flour makes it difficult to maintain stable blends of uniform content, and its dark color may be objectionable in some products such as pasta. Nevertheless, the chemical inertness and low cost of this form have made it an important agent in fortifying flour and other products requiring extended periods of storage. Waddell estimated that approximately 30 percent of all iron added to grain products in 1970 was elemental iron; a recent survey by NRC suggests that the percentage may be even higher today. This survey revealed that in 1975, almost 80 percent of the total fortification of foods with iron was with elemental iron.

Berg and van Pelt state that electrolytic iron of "small particle size" is currently used by all manufacturers of infant cereals. The Select Committee has no data on the relative use of the different forms of elemental iron for other food fortification.

The effectiveness of "reduced iron" in repleting hemoglobin of anemic rats or chicks was studied in a collaborative experiment among eight American and Canadian laboratories. Compared with ferrous sulfate, which was assigned a biological value of 100, the "reduced iron" has an average rating of 46, with values in the individual laboratories ranging from 27 to 100. Amine *et al.*, in similar bioassays with anemic rats and chicks, reported bioavailability of reduced iron to be 91.4 percent that of ferrous sulfate.

The importance of particle size in the absorption and utilization of powdered iron was convincingly demonstrated by Motzok *et al.* They determined the biological values of different-sized particles in repleting the hemoglobin of anemic rats and chicks. The iron particles were 7 to 10 microns, 14 to 19 microns and 27 to 40 microns in size. The investigators found the biological values compared with ferrous sulfate were 45, 21 and 12 in the rat, and 65, 49 and 41 in the chick, respectively.

In man even higher values for the bioavailability of reduced iron have been reported by Cook *et al.* Iron reduced by hydrogen was milled to particles 5 to 10 microns in size, incorporated into dinner rolls, and consumed by human volunteers. The bioavailability of the reduced iron was 95 percent that of ferrous sulfate in rolls similarly prepared. The major determinant for the bioavailability of elemental iron appeared to be the size of the particles. Sacks and Houchin compared the ability of elemental iron powder of different particle size prepared by different techniques, to repair iron deficiency in rats. They found carbonyl iron to be the most effective of the various forms tested. This form can be obtained in extremely pure form and manufactured to rigid specifications. With particles less then 5 microns in size, carbonyl iron was 66 percent as bioavailable as ferrous sulfate. Electrolytic iron particles were somewhat larger (up to 20 microns) and have a 48 percent bioavailability, while hydrogen-reduced iron with particle size up to 149 microns had a bioavailability only 24 percent that of ferrous sulfate.

Powdered iron appears to be among the least toxic of the various preparations tested. Shanas and Boyd administered "reduced iron" intragastrically to rats. Below doses of 10 g per kg body weight there was no evidence of gastrointestinal irritation. No deaths occurred in animals receiving less than 50 g per kg and the $LD_{50}$ was 98.6 g per kg body weight. Death was apparently caused by bowel obstruction rather than by cellular damage. At this dosage level death usually occurred within 48 hours. When death was delayed to 60 hours, it resulted primarily from severe gastroenteritis complicated by dehydration, hemoconcentration, and electrolyte imbalance. As previously stated, the Select Committee considers such acute studies of little relevance to the questions of food fortification.

Carbonyl iron has been reported to have a comparably low acute toxicity. Volkheimer *et al.* fed massive doses (250 g) to fasting dogs without apparent harm. Sacks and Houchins gave 1 to 2 g intragastrically to 100 g rats, and Crosby fed 5 g doses to rats (weight and age not reported). No diarrhea, intestinal lesions, or other ill effects were noted.

Crosby, serving as his own subject, consumed 5 to 10 g doses without discomfort.

Sacks and Houchins fed 130 mg carbonyl iron per kg body weight daily to rats for 6 months. Upon necropsy they found no stainable iron in the duodenum, liver or pancreas. Siderosis was seen in the spleen, but the investigations claimed this to be no more marked than that observed in animals fed a laboratory ration.

2. Ferrous compounds

It has been repeatedly demonstrated that iron in the ferrous state is more readily absorbed from the intestinal tract of man than ferric iron. The difference can be explained most readily by the formation of undissociated ferric hydroxide at the pH existing in the small intestine when a ferric salt is given. Furthermore, the ferric iron is more apt than the ferrous to form other insoluble or complex compounds which further reduce absorption. Brise and Hallberg concluded that the difference in absorption between ferrous and ferric iron is of such a magnitude that "ferric iron has no place in oral iron therapy." However, in contrast to man's relative inability to absorb ferric iron, rats, dogs, and chicks appear to absorb both ferrous and ferric iron with roughly equal facility. For this reason, Narasinga Rao *et al.* have criticized the customary use of these animals in studying iron availability from human diets. They recommended the monkey as a more appropriate animal model.

Moore *et al.* in 1939, first reported that ascorbic acid increased the absorption of nonheme iron in food. It has not been confirmed repeatedly that ascorbic acid given in combination with various iron salts, both ferrous and ferric will significantly enhance the absorption of iron from the diet. The enhancing property of ascorbic acid is believed to result from its dual action of reducing the ferric iron and of forming soluble chelates. The soluble iron-ascorbate chelate maintains solubility in the neutral or alkaline milieu of the duodenum and also prevents the formation of insoluble ligands such as oxalates, carbonates, and phytates which would precipitate iron. It has a low stability constant which suggests that the chelate would readily release its iron to mucosal receptors.

As little as 60 mg ascorbic acid added to a meal of rice more than tripled the absorption of iron. Cook and Monsen tested the effect of various doses of ascorbic acid on the absorption of iron from a semisynthetic diet containing no meat. They found the absorption to be directly proportional to the amount of added ascorbic acid over the range of 25 to 1000 mg. At these extremes, iron absorption was increased 1.65 to 9.57 times, respectively, that of the unsupplemented diet. The investigators concluded that individuals who routinely ingest large amounts of ascorbic acid may increase their iron absorption several-fold, thus posing a potential problem among persons with faulty iron-regulatory mechanisms.

Moller reported that iron given as synthetic ferrous ascorbate was much more readily absorbed in pigs of different ages than when fed as ferric ammonium citrate, iron fructose, or iron dextran. The Select Committee is aware of no other report in which the synthetic form has been employed. As stated earlier, stoichiometric or excess quantities of ascorbic acid are usually added to an iron salt and the resulting preparation considered to be ferrous ascorbate. Mikhaylova found that a ferrous ascorbate "preparation" was more effective than hydrogen-reduced iron, ferrous carbonate, or ferrous malate in raising the serum level of iron in patients with iron-deficiency anemia. Administration of 1 g of ferrous ascorbate increased the serum iron from 28 micrograms to 200 micrograms per 100 ml serum within 3 hours. The serum level remained elevated in some patients 24 hours after ingestion of ferrous ascorbate, an effect not observed with any other iron preparation tested. Beresford *et al.* administered a solution of labeled ferrous sulfate together with ascorbic acid via nasogastric tube to 19 infants and young children. The authors designated the resulting preparation as ferrous ascorbate. The average absorption of the labeled iron in children with normal temperatures was 41.2 percent of the administered dose but only 15.1 percent during their febrile states.

Twenty stock mice were injected subcutaneously with 0.2 ml of "ferrous ascorbate" containing 0.3 mg iron at weekly intervals for 43 weeks without developing tumors at any site.

*Ferrous carbonate.* Ferrous carbonate was the earliest preparation used in the treatment of iron deficiency anemias. It was first adopted by the French physician Pierre Blaud in 1831 to treat "chlorosis" and for decades, ferrous carbonate in the form of "Blaud's Pills" or "Blaud's Mass" was the accepted hematinic. A mixture of 15 percent ferrous carbonate with sucrose (ferrous carbonate saccharate) forms a more soluble preparation and has also been used as a hematinic.

When given orally to dogs, the acute toxicity of ferrous carbonate was reported to be less than that of ferrous sulfate, gluconate, or succinate and has therefore been suggested as an alternative to more commonly used therapeutic agents. D'Arcy and Howard administered as much as 1.0 g iron per kg body weight as ferrous carbonate to dogs for 15 days, with no toxic signs, or evidence of damage to the stomach or intestine at necropsy. Ferrous sulfate and ferrous gluconate caused vomiting, diarrhea, or gastrointestinal damage at iron intakes of one-fourth or less of this amount. The low toxicity of this compound probably results from its relative insolubility in the gastrointestinal tract. Its low solubility probably also explains its poor bioavailability. Fritz *et al.* found it to be 0 to 6 percent as effective as ferrous sulfate in repleting hemoglobin anemic chicks and rats.

*Ferrous citrate.* Little information is available on the safety of ferrous citrate. Citrate is produced in normal metabolic processes and no hazard is suspected when it is ingested in moderate amounts. Ferrous citrate is absorbed moderately well, but more poorly than some of the other ferrous compounds investigated. Brise and Hallberg compared its absorption with other iron compounds in man. In five normal subjects, the absorption of iron from ferrous citrate was 56 to 91 percent (average 74 percent) that of ferrous sulfate. It has a low stability constant which suggests that its iron should be relinquished to the mucosal receptors. Seven other ferrous salts were more readily absorbed than citrate, and only tartrate and pyrophosphate among the ferrous salts tested showed poorer absorption. Theuer *et al.*, however, reported that ferrous citrate provided the greatest iron availability of eight salts tested when added to liquid infant formulas. Anemic rats were fed supplements of a lyophilized, milk-based infant formula containing 0.25 mg iron as ferrous citrate daily. The hemoglobin increase in these rats was greater than that attained from any other iron supplement, including ferrous sulfate.

The amount of ferrous citrate used as a dietary supplement in foods is not known and the Select Committee is not aware of current use in infant formulas. It is reportedly used in a special dietary beverage at a level of 16.9 mg per liter, and in an extremely small percentage of the milk sold by dairies. The International Nutritional Anemia Consultative Group, on the basis of bioavailability and cost, lists ferrous citrate as a commercially available compound and recommends its use as a fortifying agent in beverages and sugars.

*Ferrous fumarate.* Ferrous fumarate is used extensively as an oral hematinic for adults and infants, but the extent of its addition to foods is not known. It is an iron supplement to certain cereals and beverages and to a corn-soy-milk blended food. It has been reported to produce unacceptable flavors in milk, but to be an acceptable additive in cocoa powder and coffee. Ferrous fumarate is relatively soluble and is readily absorbed from the gastrointestinal tract. It, too, has a relatively low stability constant. Fritz *et al.* reported that it was as effective as ferrous sulfate in repleting hemoglobin in rats and chicks made anemic on a low-iron diet. Similarily, it was absorbed as well as ferrous sulfate by normal human subjects. Its acute toxicity in animals is less than that of ferrous sulfate and of ferrous gluconate; it causes less gastric irritation in rabbits and vomiting in cats than these compounds.

Clinical studies have confirmed the effectiveness of ferrous fumurate as a hematinic. The incidence of side effects is approximately that experienced with ferrous sulfate or ferrous gluconate. A total of 118 men and women were given 74 mg iron, three times daily for 14 days, in the form of ferrous fumarate. Side-effects were reported in 26.4 percent of the cases, compared with 27.9, 31.5, and 13.9 percent from subjects receiving ferrous sulfate, ferrous gluconate, and placebo, respectively. The common complaint was constipation (10 percent), followed by diarrhea (6.4 percent) and "heartburn" (5.5 percent). Six (5.5 percent) of the subjects discontinued therapy. Ferrous fumarate enjoys one advantage in pill form over the other iron salts: It is stable without a sugar coating, thus reducing the danger of overdosing in children attracted by the sweet taste of coated pills. It is widely used in pill or liquid form as iron supplements sold over the counter. The Physicians' Desk Reference lists more than a score of such preparations currently available.

Ferrous fumarate is one of the compounds recommended by the International Nutritional Anemia Consultative Group for use in infant formulas on the basis of its bioavailability and cost.

*Ferrous gluconate.* Relatively large amounts of the gluconate anion are produced daily by the normal individual, and the consumption of moderate amounts poses no significant hazard. The solubility and safety of various gluconates have made it a popular vehicle with which to introduce certain metallic cations into the body as dietary supplements. Gluconate salts are GRAS with copper (21 CFR 182.5260, and 182.8260), sodium (21 CFR 182.6757), manganese (21 CFR 182.5452, and 182.8452), zinc (21 CFR 182.5788, and 182.8988), and calcium (21 CFR 182.1199), as well as with iron (21 CFR 182.5308, and 182.8308). Ferrous gluconate is also used as a color additive in ripe olives (21 CFR 73.160).

The bioavailability of ferrous gluconate is high, approaching that of ferrous sulfate whereas its acute toxicity is significantly less. Its low stability constant should allow a rapid release of iron to intestinal receptors. When given at levels of 100 mg iron per day to male patients with iron-deficiency anemia it produced an increase in hemoglobin of about 65 percent within 4 weeks. Two of 20 patients developed abdominal pains and diarrhea within the first week and one complained of vomiting. Hallberg *et al.* gave 196 normal subjects 180 mg iron in the form of ferrous gluconate daily for 14 days. Approximately one-quarter of the subjects complained of side effects, the most common of which was constipation. No difference could be detected in the incidence or type of side effects between these subjects, and those receiving an equal amount of iron in the form of ferrous sulfate. Hoppe *et al.* in 1955 reviewed the toxicity of the various iron compounds used therapeutically and concluded that ferrous gluconate appeared to be less toxic and irritating than the other common sources of iron then used in anemia therapy. A number of ferrous gluconate preparations are available without prescription as sources of iron supplementation.

When thermally processed and freeze-dried, ferrous gluconate maintained high availability in both soy and milk infant formula products.

Ferrous gluconate was tested for mutagenic activity in a series of *in vitro* microbial assays with and without metabolic activation by mammalian systems. Both the plate and suspension test procedures were employed with *Salmonella typhimurium* strains TA–1535, –1537, and –1538 and *Saccharomyces cerevisiae*, strain D4 as the test organisms. Activating preparations were made from lung, liver, and testes of ICR random-bred mice, Sprague-Dawley rats and *Macaca mulatta* monkeys. Ferrous gluconate was mutagenic in the activation tests systems with TA–1538 and monkey liver tissue using the suspension test procedure. However, in reviewing these data, the investigator subsequently concluded that the results were variable, and no firm conclusion could be drawn. None of the other tests was positive. Ferrous gluconate was nonmutagenic in tests with *Drosophila.*

Haddow and Horning reported that weekly subcutaneous injections of 5 mg ferrous gluconate into 20 stock mice for 13 weeks produced one fibroma at the site of injection, one thecoma, and one thymoma.

Ferrous gluconate was injected into the egg air cell and yolk at preincubation and after 96 hours of incubation. Air cell treatment at 96 hours produced a significant increase in mortality and abnormalities over the control birds. The abnormalities included anophthalmia, buphthalmia, ablepharia, eyelid dysplasia, cleft palate, and exencephaly.

*Ferrous lactate.* Ferrous lactate is very soluble, and its iron is readily bioavailable. No stability constant could be found for this compound, but values for other metallic lactate complexes suggest that the iron from ferrous lactate would be readily given up to mucosal receptors. The anion is produced in normal metabolic processes at levels many-fold that employed in usual iron supplementation. Brise and Halberg compared the absorption of various iron salts and found ferrous lactate to be one of the most effective studied. Its average absorption in five human subjects was 106 percent that of ferrous sulfate used as a standard. Theuer *et al.* reported similar results when ferrous lactate was added to milk- or soy-based infant formula products and then heated and freeze-dried. The relative biological value (RBV) based on the hemoglobin repletion test was 104 in the soy isolate base and 118 in the milk base compared with ferrous sulfate. The addition of this salt as a fortifying agent in beverages has been recommended by the International Nutrition Anemia Consultative Group, on the basis of its bioavailability and cost.

Weekly subcutaneous injections of 5 mg of ferrous lactate trihydrate (1.0 mg iron) into 20 albino mice were associated with two carcinomas and one fibrosarcoma at the injection sites within the 21 week test period.

Alterman investigated the teratogenic effects of ferrous lactate to the developing chick embryo. Various scattered abnormalities occurred, but serious abnormalities were not significantly greater or different from controls. The investigator concluded that ferrous lactate was nonteratogenic under the test conditions employed.

*Ferrous sulfate.* Ferrous sulfate has been the most thoroughly investigated of the iron salts and has become recognized as the standard against

which other compounds are evaluated. It appears to be the most acutely toxic of the iron salts currently used in foods. However, it is difficult to place these salts in rank order, for as Hoskins has pointed out, the $LD_{50}$ values may reflect variations in strain specificity or prior treatment of the animals rather than intrinsic toxicity of the iron salt. Further, it is the opinion of the Select Committee that acute toxicity has little relevance to the safety of iron fortification of foods.

Rats receiving 100 to 300 mg iron per kg body weight intragastrically as ferrous sulfate survived and showed no gross evidence of liver necrosis. Four of six rats receiving 400 mg per kg died within 40 hours and 39 of 55 rats receiving 500 mg per kg within 12 hours. The latter animals suffered periportal or midzonal liver cells necrosis. The surviving animals developed peripheral vasoconstriction and diarrhea within 1 hour following iron ingestion.

They were listless but exhibited only moderate decreases in blood pressure. Electron microscopic examination of the liver cells revealed stainable iron in swollen or necrotic hepatocytes although these cells appeared normal by light microscopy. The parenchymal cells were irreversibly injured and became greatly swollen prior to necrosis. All animals receiving iron, including those with no other evidence of cell injury, had characteristic granules in the intracristal lumina of liver cell mitochondria. These mitochondrial changes appear to be the first observable effects of acute iron toxicity.

Dogs given 150 to 400 mg iron per kg as ferrous sulfate by gavage or by enema, or 10 mg per kg intravenously, began to hyperventilate within an hour after administration. Marked metabolic acidosis developed with blood pH values as low as 6.7 after 6 hours. The severity of the acidosis was roughly proportional to the amount of ferrous sulfate administered. The cardiac output decreased progressively because of diminished venous return, but arteriolar constriction maintained normal blood pressure until final collapse. When animals survived the acute phase of iron intoxication, their blood pH returned to normal within 24 hours. The direct cause of death in most cases was respiratory failure.

Acute toxicity of ferrous sulfate in man is highly variable. As little as 1 g (about 3 mg iron per kg body weight) has proved fatal in an adult, whereas recovery has been reported in a 30-month-old child who had ingested 15 g (about 250 mg iron per kg body weight). The extensive experience with therapeutic doses of ferrous sulfate and other iron salts in the treatment of iron deficiency in all age groups indicates a low toxicity. Thus, adults in many cases have taken 300 mg ferrous sulfate three times daily for years without apparent ill effects. Murphy reported a woman who had taken over 4.5 kg of ferrous sulfate over a 19-year period with no clinical or biochemical evidence of hemochromatosis or other pathology. For most of this period, she had taken three 200 mg tablets of ferrous sulfate daily and for approximately 12 months had taken six tablets daily. Her serum iron, total iron-binding capacity, and liver function tests were within normal limits. Liver biopsy was not performed. Wallerstein and Robbins reported hemochromatosis in a patient with chronic hemolytic anemia who had ingested about 500 g iron in the form of ferrous sulfate over a period of 12 years.

Ferrous sulfate was found not to be teratogenic to the developing chick embryo. The administration of up to 200 mg per kg of ferrous sulfate orally to pregnant rats or of 160 mg per kg to pregnant mice for 10 consecutive days had no clearly discernible effect on nidation or on maternal or fetal survival. The number of abnormalities seen in either soft or skeletal tissues did not differ from controls.

Ferrous sulfate was tested for mutagenic activity with *S. cerevisiae*, strain D4, and *S. typhimurium*, strains TA–1535, –1537, and –1538 with and without activation. Mutagenicity was evaluated by both plate and suspension assay procedures. According to the investigators, the results from the Salmonella suspension assay "strongly suggest" some mutagenic activity after metabolic activation. No mutagenicity was observed using the plate assay procedure with or without metabolic activation. Results with the yeast indicator organisms showed no mutagenic activity. Ferrous sulfate showed no mutagenic activity when tested in *Drosophila*.

No tumors were reported among 10 mice (strains A and FAIC) receiving single intradermal injections of 0.05 ml of 0.05 M ferrous sulfate (about 0.15 mg iron). Weekly subcutaneous injection of 2.5 mg of ferrous sulfate (0.5 mg iron) into 20 stock mice for 16 weeks produced one fibroma at the injection site.

Ferrous sulfate promotes the oxidation of fat, producing undesirable effects on color, flavor, and aroma during storage of fat-containing products. To prevent the induction of rancidity in enriched flours, an encapsulated ferrous sulfate has been developed, which significantly lengthens the storage life. It has the added advantage of possessing a density similar to flours, thus eliminating the settling problem encountered with elemental iron.

As mentioned earlier, ferrous sulfate is the standard against which other iron compounds are compared for bioavailability and has been so recommended by the Association of Official Analytical Chemists. Although its relative biological value (RBV) thus becomes 100 by definition, this does not imply that it is completely utilized. Actually, the absorption in man may vary widely from less than 1 to more than 50 percent, depending on the individual and various other factors.

3. Ferric compounds

References have already been made to the greater bioavailability of iron in ferrous than in ferric compounds. This has been demonstrated both in laboratory and clinical studies. Clinical investigators report that patients with hypochromic anemia generally require about five times as much ferric iron as ferrous iron to achieve maximal hemoglobin production. The difference in effectiveness is attributed in large part to the lesser solubility of ferric compounds in the intestine. However, Viteri *et al.* claim that aqueous solutions of ferrous salts are rapidly oxidized to the ferric state unless strict reducing conditions are maintained. In any event, ferric compounds remain a major source of food fortification, although they appear to be relinquishing their preeminence in flavor of elemental iron. In 1970, according to the NRC survey, more than twice as much ferric phosphate and ferric sodium pyrophosphate were used to fortify foods as elemental iron. By 1975, this ratio had been reversed, because of a marked increase in the use of elemental iron and a precipitous decline in that of ferric sodium pyrophosphate.

*Ferric ammonium citrate.* Ferric ammonium citrate is an unpublished GRAS substance of uncertain structure. It is prepared by adding ferric hydroxide to an aqueous solution of citric acid and ammonia, neutralizing the mixture and then drying. It has enjoyed some popularity as a medicament, for it is relatively well utilized by the body and lacks the objectionable astringent properties found in other ferric salts.

Heath used it successfully to treat "hypochromic anemia." He recommended that patients be given 2 g per day (0.4 g iron) initially, with gradual increases to 6 g daily (1.2 g iron). Patients were successfully treated on this regimen for many months. He claimed this dosage schedule could be tolerated with ease by the majority of

BEST COPY AVAILABLE

the patients. Only occasional cramps or diarrhea developed and these symptoms disappeared during the course of the treatment.

The acute toxicity of ferric ammonium citrate is low, with oral $LD_{50}$ values ranging from 1.75 (guinea pig) to 5.0 (mouse) g per kg body weight. One fatality has been reported in a woman who consumed 15 g of this compound (with an unknown quantity of whiskey). She died three days later with toxic hepatitis. In another case, a 58 year-old woman received 10 g ferric ammonium citrate per day for 23 days and 12.5 g on the 24th day. On the 25th day, the patient lost consciousness, but recovered when the medication was discontinued.

The use of ferric ammonium citrate in food is minor and was estimated at 1400 kg in 1974. The reported levels of this usage were 10 mg per liter in milk and frozen dairy products, and 15 mg per kg in cheese. It was stated that in recent years, as much as 150 millions of liters of milk nationwide had been fortified with ferric ammonium citrate although accurate figures are not available.

The availability of iron in ferric ammonium citrate compares favorably with that of ferrous sulfate when fed to animals. Fritz *et al.* reported its RBV as 98 to 115 as measured by hemoglobin repletion in anemic chicks and rats. Hinton and Moran reported it to be as effective as ferrous sulfate when baked in bread, in the regeneration of hemoglobin in anemic rats. However, in severely anemic patients, the iron was poorly available when baked in bread. Similarly, when used to fortify chappatti made from wheat flour, only 2 to 4 percent of the iron was absorbed.

*Ferric chloride.* The NRC survey of food processors indicated that ferric chloride was not widely used as a food additive. It was reportedly added only to nonalcoholic beverages and at levels less than 0.01 percent. It is authorized as a component of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) and with dry foods (21 CFR 176.180).

The acute toxicity for ferric chloride in animals appears to be comparable with that of ferrous sulfate, based on their respective iron content. Hoppe *et al.*, in their extensive review of the acute toxicity of iron compounds, reported five cases in which a tincture of ferric chloride has been taken. The ingestion of 45 ml (about 6 g of the salt) proved fatal to a male adult but as much as twice this amount has been taken by the other four patients without fatality.

Ferric chloride is readily soluble and efficiently absorbed. Blumberg and Arnold compared the bioavailability of ferric chloride and ferrous sulfate in enriched breads. When fed at two levels, both preparations were equally effective in producing hemoglobin regeneration in anemic rats. The iron from each of these compounds was four to five times as available as the iron in ferric phosphate.

Pirzio-Biroli *et al.* administered labeled ferric chloride to subjects during a standard meal. They reported an absorption of 5 percent in normal and 22 percent in iron-deficient subjects. Layrisse and Martinez-Torres obtained similar results when ferric chloride was incorporated in pancakes made from maize. The average absorption in 8 normal subjects was 4.2 percent. When heme (veal muscle) was added to the diet, iron absorption increased to 7.5 percent.

Ammerman *et al.* fed radioactive iron in the form of ferric oxide, ferric chloride, ferrous carbonate or ferrous sulfate to calves and lambs. The availability of iron from ferric chloride, as measured by the levels of $^{59}Fe$ in the serum and red blood cells did not differ significantly from that of ferrous sulfate. A more recent study, however, indicates that although the bioavailability of iron in ferric chloride is reasonably good, it is significantly less than that of ferrous sulfate.

*Ferric citrate.* Ferric citrate is unpublished GRAS, and is generally referred to as iron citrate. No data are available on the use of this compound as a fortifying agent in food. The citrate ion is widely distributed in plants and animals and is a naturally occurring component of the diet. Relatively large amounts are produced and oxidized by normal metabolic processes in man. The iron from ferric citrate is more readily available than from most of the ferric compounds. Its bioavailability in anemic chicks and rats averaged 73 percent that of ferrous sulfate.

Rather, in an attempt to induce hemochromatosis, fed large amount of ferric citrate to rats for most of their normal life spans. Diets containing 16 and 4 percent protein and 6 percent ferric citrate were fed to 90-day-old male Addis rats for up to 521 days. The daily intake of ferric citrate was approximately 6 g per kg body weight or about 1 g per kg of elemental iron daily. The iron content of the liver per 100 g dry weight increased from 38.5 to 1070 mg in the rats on the high protein diet (average duration 352 days) and from 73.9 to 1775 mg per 100 g dry weight among those on the low protein diet (average duration 434 days). Despite extensive hemosiderin deposits in the liver and pancreas for both groups, equivalent to those observed in hemochromatosis, no fibrosis of either organ was observed.

Twenty stock mice were injected subcutaneously with 5 mg ferric citrate (about 40 mg iron per kg body weight) weekly for 33 weeks. Thirteen mice survived the experimental period. No tumors were reported.

*Ferric phosphate.* Ferric phosphate (ferric orthophosphate) has been one of the major sources of iron for the fortification of breakfast cereals and flour, because its relative chemical inertness and inconspicuous white color minimize changes in the appearance and taste of the fortified product. These properties have made ferric phosphate attractive to the food processors. However, the use of ferric phosphate is declining, having dropped by 40 percent between 1970 and 1975. This decline has been attributed to the high cost and low RBV of this compound.

The low absorption of ferric phosphate has been demonstrated repeatedly. Pla and Fritz, employing their hemoglobin repletion assay in rats and chicks, reported ferric phosphate to be only 12 percent as effective as ferrous sulfate. It fared even more poorly when the increase in plasma iron in man was used as an index of absorption. With this criteria, ferric phosphate was only 7 percent as effective as ferrous sulfate. When baked in dinner rolls, less than 1 percent of the iron in ferric phosphate was available, contrasting with 8.6 percent of reduced iron and 5.7 percent of ferrous sulfate.

Hodson suggest that storage of foods fortified with ferric phosphate may convert the iron to the ferrous state and improve its absorbability. He analyzed canned liquid dietary foods to which ferric phosphate has been added and found up to 90 percent of the iron to be in the ferrous form after 5 to 6 months storage. However, the product had also been fortified with ascorbic acid, and the cans had limited headspace, conditions favorable to a reducing environment. The storage conditions and thermal processing procedures were not described.

Food grade ferric phosphate was tested for mutagenicity against *S. cervisiae*, strain D4 and *S. Typhimurium*, strains TA–1535, –1537, and –1538. The tests were conducted with and without addition of metabolic activation preparations derived from lung, liver and testes of ICR random-bred mice, Sprague-Dawley rats, and *M. mulatta* monkeys. None of the tests revealed mutagenic activity.

*Ferric pyrophosphate.* Ferric pyrophosphate is very insoluble in water and is generally added to fat-

containing foods, where more soluble sources of iron might induce rancidity. Its use, however, is quite limited, and estimates indicate that only about one metric ton was used by American food processors in 1970. A 1975 survey failed to reveal any use.

The relative biological value (RBV) of ferric pyrophosphate was only 7 percent that of ferrous sulfate, as determined by the chick hemoglobin repletion assay. However, when the diet was subjected to heat and pressure processing (1055 g per $cm^2$ and 121° for 15 minutes), the RBV increased to 90 percent and did not differ significantly from that of ferrous sulfate. Theurer *et al.* also found ferric pyrophosphate to be an excellent iron source when infant formulas containing this salt were subjected to commercial sterilization processes.

No acute or chronic toxicity data for ferric pyrophosphate, either with animals or man are available for the Select Committee. This compound has been tested for mutagenic activity in a series of *in vitro* microbial assays with and without metabolic activation. The organisms employed were *S. typhimurium*, strains TA–1535, –1537 and –1538 and *S. cerevisiae*, strain D4. Activating preparations were made from lung, liver and testes of ICR random-bred mice, Sprague-Dawley rats, and *M. mulatta* monkeys. Ferric pyrophosphate induced no mutagenic activity in these tests. It showed little toxicity to the developing chick embryo when administered via the air sac before incubation at levels up to 200 mg per kg (10 mg per egg). Air cell treatment after a 96-hour incubation gave a calculated $LD_{50}$ of 43 per kg (2.2 mg per egg). The observed abnormalities did not differ in kind or number from controls.

*Ferric sodium pyrophosphate.* Ferric sodium pyrophosphate shares with ferric phosphate the light color and the chemical inertness desired by industry as an iron fortifying agent for grain products. In 1970 it comprised about 16 percent of all iron products used for fortification and, together with ferric phosphate, was the major iron source for the enrichment of cereals, rice, macaroni, and similar products. A 1975 survey, however, revealed a drop of approximately 95 percent in the use of ferric sodium pyrophosphate as a fortifying agent. It is more costly and less biologically available than ferric phosphate, which probably contributed to its reduced use. The iron provided by this compound in 1970 was estimated to be about 0.7 mg per person day, but this value has dropped to less than 0.05 mg in 1975.

The bioavailability of ferric sodium pyrophosphate has been determined by various techniques and has been shown to be poor. Pla and Fritz found its iron availability to be only 13 percent of ferric sulfate as determined by the hemoglobin repletion method in rats and chicks. When measured by an increase of plasma iron in man, it was rated as 7 with ferrous sulfate as 100. When baked in dinner rolls, less than 1 percent was absorbed. It was only 15 percent as efficient as ferrous sulfate when fed to anemic rats in iron-fortified cereal milk diets. Rois *et al.* confirmed the poor absorption from infant cereal and stated it was an undependable source of iron to meet the nutritional needs of the infant. However, sterilization of infant formulas and heat and pressure processing of diets have been reported to convert ferric sodium pyrophosphate from a poor to a relatively good supplemental iron source. The reason for this increase is not known. Wood *et al.* speculated that processing may enhance the formation of soluble chelates which are more readily absorbed than the inorganic salt.

At a concentration of 1.25 percent, ferric sodium pyrophosphate was tested for mutagenicity in several *in vitro* microbial assays, with and without metabolic activation. The organisms employed were *S. typhimurium*, strains TA–1535, –1537, and –1538 and *S. cerevisiae*, strain D4. Activating preparations were made from lung, liver and testes of ICR random-bred mice, Sprague-Dawley rats, and *M. mulatta* monkeys. No mutagenic activity was observed in these tests.

Intraperitoneal injection of 1600 mg per kg of ferric sodium pyrophosphate (about 300 mg iron) into pregnant rats and mice for 10 consecutive days, had no discernable effect on nidation, on maternal or fetal survival, or on fetal abnormalities.

*Ferric sulfate.* Ferric sulfate is GRAS for use in paper and paperboard food packaging materials. No data are available to the Select Committee on the amounts used for this purpose. Ferric sulfate is slowly soluble in water. Brise and Hallberg reported its absorption in man to be 36 percent that of ferrous sulfate while Fritz *et al.* found it to be 83 percent as effective in hemoglobin repletion in chicks and rats.

Viteri *et al.* state that ferrous sulfate, added to solutions as an enrichment agent, is actually ingested in most cases as ferric sulfate. According to these investigators, 80 percent of the ferrous iron is rapidly oxidized in aqueous solutions to the ferric state unless strict reducing conditions are maintained. They compared the absorption of iron from ferric sulfate with that from sodium ferric EDTA and from hemoglobin. When 5 mg labeled iron in these forms were given to children (mostly iron deficient) with a milk-rice-sugar formula, 34.4 percent of hemoglobin iron, 8.6 percent of sodium ferric EDTA iron, and only 3.3 percent of ferric sulfate iron were absorbed. Normal and iron-deficient men also showed a similar pattern of absorption. Addition of ascorbic acid and of sodium ferric EDTA enhances the absorption of iron from ferric sulfate.

*Oxides of Iron.* Ferrous and ferric oxides are categorized as "oxides of iron" (21 CFR 182.90) which accords them GRAS status as substances migrating to food from paper and paperboard products used in food packaging. Ferric oxide, in addition, has been given unpublished GRAS status as a dietary supplement. "Synthetic iron oxide" is also authorized as a color additive in pet food, not to exceed 0.25 percent by weight of food (21 CFR 73.200). Ferrous oxide is practically insoluble in water but readily soluble in acids. It is readily oxidized to the ferric state in the presence of air. No biological data are available to the Select Committee for this compound.

Ferric oxide is poorly absorbed from the gastrointestinal tract. Doty *et al.* introduced ($^{59}Fe$) ferric oxide into the stomach of rats by gavage. Four hours after administration, 99.3 percent of the labeled material could be recovered, indicating an absorption of less than 1 percent. Tests for bioavailability reflect this poor solubility. Fritz *et al.* reported a bioavailability in anemic chicks and rats of 0 to 6 percent for ferric oxide compared with that of ferrous sulfate. Of the 19 iron preparations tested for their ability to regenerate hemoglobin in anemic animals, only ferric oxide and ferrous carbonate showed relative biological values below 10 percent.

No tumors were produced when dialyzed 5 percent collodial ferric oxide was injected subcutaneously into 20 CBA mice in doses of 0.2 ml weekly for 16 weeks. Single intraperitoneal injections of 0.5 mg of ferric oxide suspension (concentration not reported) into 15 albino mice also failed to produce tumors during an observation period of 5 months.

Epidemiologic evidence suggests that exposure to hematite dust (mainly ferric oxide) increases the risk of lung cancer in man, but the role of ferric oxide in its development is still uncertain. Ferric oxide given intratracheally or by inhalation has not been found carcinogenic in hamsters, mouse, or guinea pig. Stenback *et al.*, however, claimed that ferric oxide given intratracheally increased the

carcinogenic potential of subcutaneously injected dimethylnitrosamine (DMN) on respiratory tissues. With DMN alone, 12 of 24 Syrian golden hamsters developed tumors, none of which was in the respiratory system. With DMN injection followed by repeated endotracheal instillations of ferric oxide, 14 of 30 animals showed tumors, including four in the respiratory system.

*Sodium ferricitropyrophosphate.* Sodium ferricitropyrophosphate is a mixed salt of uncertain composition produced by combining sodium pyrophosphate with ferric citrate. According to industry representatives it is soluble and leaves no off-flavor, properties which make it a useful source of iron in the fortification of milk. Between 1955 and 1967, it was used in the preparation of multivitamin and mineral concentrates for the dairy industry. There is no evidence that it is not used for this purpose.

No data are available on the biological or toxicological properties of sodium ferricitropyrophosphate.

4. Iron Complexes

*Iron caprylate.* The Select Committee was unable to obtain any production data on iron caprylate or on the other iron compounds used to hasten the drying of films which coat the inner surfaces of food containing cans. The film coating a no. 303 can (capacity about 0.5 kg) weighs approximately 170 mg, of which 10 percent is dryer. The dryer in turn contains, 6 to 7 percent iron, or about 0.1 mg iron per can for a total of 0.2 mg iron per kg of contents. It is not known how much would migrate into the food, but the amount is believed to be very small.

Caprylic acid is a naturally occurring constituent of many foods, readily metabolized and utilized by man. Few biological data are available for 2-ethyl hexanoic acid, whose iron salt would also be found in the film coating. It has been reported that the minimal lethal dose of this compound by mouth for rats was 1600 mg per kg body weight.

*Iron linoleate.* The possible exposure to iron from iron linoleate would be roughly the same as that discussed for iron caprylate; namely, a maximum of 0.2 mg per kg canned contents. Linoleic acid and the other fatty acids in linseed oil, which might form iron salts are naturally occurring food components readily metabolized and utilized by man.

*Iron naphthenate.* Iron naphthenate encompasses a mixture of iron salts and acids of variable composition. The Select Committee is unaware of biological studies on naphthenic acids or on iron naphthenates. The possible migration into food might be similar to that described above for the other iron salts in can coatings.

*Iron peptonate.* Iron peptonate is an iron complex which is unpublished GRAS as a dietary supplement. There is no evidence that it has any current usage. The Grocery Manufacturers of America surveyed its membership in 1976 and reported that none of the firms queried was using iron peptonate for iron supplementation. No information on its biological effects is available to the Select Committee.

*Iron polyvinylpyrrolidone.* As indicated earlier iron or iron salts with polyvinylpyrrolidone (PVP) are used as mixtures of variable proportions, authorized as tableting adjuvants or stabilizers in various mineral and vitamin concentrates (21 CFR 75.355). The Select Committee is not aware of the use of any chemically defined iron-PVP complex as an iron fortifying agent in foods, nor of the biological properties of such a complex.

*Iron tallate.* The fatty acid fractions of tall oil comprises about half the total acid content and consist mainly of oleic and linoleic acids. Both are naturally occurring constituents of many edible oils, and are consumed without ill effect in relatively large amounts. Acute toxicity tests of the resin fraction have given $LD_{50}$ values of 4.6 g per kg for mice and guinea pigs and 7.6 g per kg for rats. Tall oil resins have been fed at levels of 50 mg per kg per day to rats and 40 mg per kg per day to beagle dogs for 2 years with no significant differences from controls in their hematology, urinalyses, and liver and kidney function tests.

*Sodium ferric EDTA.* Ethylene diamine tetraacetic acid (EDTA) forms water-soluble chelates with many metallic ions, including iron, and this property has been widely exploited. Its disodium salt is used to solubilize trace minerals in animal feeds (21 CFR 573.360) and to stabilize iron salts in liquid multivitamin preparations (21 CFR 172.135). It is also used as a preservative or to promote color retention in a variety of food products in concentrations of 36 to 500 ppm (21 CFR 172.135).

Ferric EDTA is a very stable complex with a stability constant well above the threshold for release of iron to mucosal receptors. Helbook and Saltman present evidence that the iron chelate is transported intact across the intestinal mucosa. In the plasma, the iron is relinquished very slowly to plasma transferrin, so that most of the chelate is eliminated in the urine.

Ferric EDTA has been shown to be an effective source of iron for animals and for iron-deficient patients. Anderson *et al.* fed cereal-milk diets supplemented with 100 mg iron per 100 g diet in the form of sodium ferric EDTA to 5-day old Pitman-Moore miniature pigs for 28 days. Efficient utilization of iron from this source was observed. It was significantly greater than that obtained with equivalent amounts of catalytically reduced iron or sodium iron pyrophosphate. Iron absorption from the EDTA complex was 90 percent that of ferrous sulfate.

Will and Vilter administered sodium ferric EDTA containing 100 mg iron three times daily to three anemic patients for 35 to 59 days. The total doses of elemental iron administered were 10.5 to 17.7 g. The hematologic response was comparable to that from equivalent doses of ferrous sulfate.

Brise and Hallberg found the absorption of iron from sodium ferric EDTA to be the least of 14 iron salts tested and only 20 percent that of ferrous sulfate. This finding may be misleading, for the investigators added 10 mg ascorbic acid to the ferrous sulfate solution to prevent oxidation of the ferrous ion. Since ascorbic acid promotes iron absorption, the net result of such differential treatment would be to decrease the percentage absorption of sodium ferric EDTA compared with ferrous sulfate.

Cook and Monsen reported that the absorption of iron from test meals was reduced by 28 percent at a 1:1 molar ratio of EDTA with iron and by half at a 2:1 molar ratio. The authors estimated that American diets may contain 50 to 100 mg EDTA daily, amounts shown by this study to impair significantly the absorption of nonheme iron.

Layrisse and Martinez-Torres, on the other hand, claim that sodium ferric EDTA possesses certain advantages over other iron salts, including ferrous sulfate. They reported that iron absorption in human subjects from maize or milk enriched with this compound was consistently greater than from ferrous sulfate enrichment. Iron absorption from sodium ferric EDTA or from ferrous sulfate-fortified sugar was comparable, but the chelated form was considered perferable since it precipitated more slowly from tannin-containing beverages, thus allowing better absorption of the iron.

A recent study from the same laboratory suggested that ferric EDTA was a more reliable salt than ferrous sulfate as an enrichment agent in foods. These investigators added either ferric EDTA or ferrous sulfate to six different foods (sugar, cane syrup, milk, sweet manoic, wheat, or maize) and determined the iron absorption in man.

The mean iron absorption from ferrous sulfate ranged from 2.0 percent from maize to 30.0 percent from refined sugar. On the other hand, no significant difference could be detected in the iron absorption from these foods enriched with ferric EDTA (range 8.2 to 13.1 percent); these results indicate that ferric EDTA is less affected than ferrous sulfate by substances in food which inhibit iron absorption.

Viteri *et al.* have also demonstrated excellent bioavailability of iron from sodium ferric EDTA when given to infants and adults. They, too, claim this chelated form is superior to ferrous sulfate as a source of available iron. Referring to unpublished studies in their laboratory, they reported preliminary findings which showed that infants absorbed labeled iron in milk fortified with sodium ferric EDTA 2.5 times better than iron from ferrous sulfate. They suggested that one reason for the greater availability of iron in this form than from most iron salts may be due to the solubility of the iron EDTA complex at the pH characteristic of the duodenum and upper jejunum. The affinity of EDTA for iron is very strong at these pHs and tends to protect it from forming insoluble and unabsorbable complexes. No adverse effects were reported in any of these studies from the administration of sodium ferric EDTA.

Ascorbic acid and EDTA appear to display opposing effects on the absorption of iron. Ferrous sulfate labeled with $^{59}Fe$ was placed in an isolated rat intestinal loop together with various amounts of ascorbic acid and/or EDTA. Iron absorption was significantly higher in the presence of ascorbic acid. When both compounds were added, EDTA was capable of negating the enhancing effects of ascorbic acid even at molar ratios of ascorbates: EDTA as high as 4:1.

The variable results obtained with the iron EDTA complex are confusing, and suggest that the experimental conditions or the presence or absence of other substances are critical in evaluating its effectiveness as an iron source.

[FR Doc. 87-8850 Filed 4-20-87; 8:45 am]
BILLING CODE 4160-01-M

---

**21 CFR Part 310**

**[Docket No. 86N-0337]**

## Oral Contraceptives; Patient Package Insert Requirement

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to revise the requirements for patient package inserts for oral contraceptive drug products. FDA is taking this action to adopt recommendations made by FDA's Advisory Committee on Fertility and Maternal Health Drugs. The revised requirements will enable patient package inserts to reflect more expeditiously current information about this class of drug products.

FDA is also proposing to remove the labeling regulations for oral postcoital contraceptives and medroxyprogesterone acetate injectable for contraception.

**DATE:** Comments by July 20, 1987.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Howard P. Muller, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 11, 1970 (35 FR 9001), FDA first required manufacturers and dispensers of oral contraceptives to make information available to patients about the use of these products. The regulation adopted at that time required that oral contraceptives be dispensed with a brief informational leaflet describing the product's benefits and risks. The leaflet—now called a patient package insert—contained information about side effects associated with use of oral contraceptives and emphasized the importance of patients discussing use of these drugs with their physicians. The leaflet noted that a booklet containing more information about the drug product was available from the patient's physician.

In 1978, in response to new information on the benefits and risks of oral contraceptive use, FDA revised its patient package insert requirements for oral contraceptives (see the **Federal Register** of January 31, 1978 (43 FR 4214)). As revised, the patient package insert regulation significantly expanded the amount of information required to be provided to patients. The revised patient package insert regulation contained detailed requirements on the content of the patient package insert and on the ways they were to be prepared and distributed. At the same time, the agency also made available a guideline patient package insert text that reflected these expanded informational requirements. Manufacturers could adopt the guideline text to comply with the regulatory requirements.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of revised guideline texts for physician labeling and patient labeling for oral contraceptives. The revisions are intended to ensure that the latest and most accurate information on the benefits and risks of oral contraceptive use is brought to the attention of drug users. The revisions are the result of a combined effort by FDA's Advisory Committee on Fertility and Maternal Health Drugs, FDA scientists from the Center for Drugs and Biologics, and representatives of the drug industry, health care professions, and consumer advocacy organizations to update and improve oral contraceptive drug product labeling. Transcripts of the advisory committee meetings have been placed on file in the Dockets Management Branch (address above).

In addition, FDA is proposing to revise the oral contraceptive patient labeling rule. The proposed rule changes would simplify the content and format of the patient package insert to make the document more understandable and to enable the inserts to reflect current information about this class of drugs in a more timely fashion.

Under the proposed rule, the oral contraceptive patient package insert regulation would be amended from a listing of specific items to be included in the patient package insert to an enumeration of general categories of information. The current regulation details not only the kind of information to be included in the patient package insert, but also the specific conclusions the patient package insert is required to reach. This specificity means that any significant new information learned about the drug's benefits and risks can only be reflected in the patient package insert text after the oral contraceptive patient package insert regulation has been revised, i.e., on completion of notice and comment rulemaking. This procedural obligation may delay communication of important new information about oral contraceptives to drug product users. The proposed revision would make it easier for manufacturers to update patient package inserts to reflect new information about oral contraceptives.

The agency is proposing several other changes to simplify the oral contraceptive patient package insert and to allow manufacturers and other labelers greater flexibility in developing patient package inserts. First, the proposal would eliminate the current requirement that a summary patient

package insert be included in the drug package in addition to the required separate detailed patient package insert leaflet. Under the proposed revision, the summary can be combined with the more detailed patient package insert into a single leaflet. The proposal would require that each leaflet accompany or be placed in each package dispensed to the patient.

In addition, to enhance manufacturers' flexibility in preparing patient package inserts, the agency is proposing to eliminate current requirements with respect to printing specifications for the patient package insert. Except in the regulations imposing patient package insert requirements for specific drug products, FDA has not established printing specifications for drug labeling. FDA has found that its routine review of final printed labeling for drugs subject to new drug applications (this would include all oral contraceptives) and its other compliance activities have been adequate to ensure that drug labeling is legible and readable for its intended audiences. FDA now believes that this kind of monitoring of labeling practices obviates the need to mandate printing specifications for patient labeling.

Finally, FDA proposes to establish more flexible distribution requirements for oral contraceptive patient package inserts. Under current requirements, the patient package insert must physically accompany the drug product from the manufacturer or labeler through the wholesaler to the dispenser of the product. The proposal would permit distributors of oral contraceptives to adopt whatever distribution method they choose, provided all persons in the distribution chain receive an adequate number of the patient package inserts to meet their responsibilities.

As noted, FDA is making available a revised guideline text for oral contraceptive patient package inserts. It should be emphasized that this revised guideline applies only to combination estrogen-progestogen oral contraceptives. Manufacturers of such products may rely on that guideline to meet the requirements of the current regulation. Manufacturers of progestogen-only oral contraceptive drug products may continue to rely on the guideline text published in the **Federal Register** of January 31, 1978 (43 FR 4223). The agency intends to issue a revised guideline text for progestogen-only products in the near future.

FDA is also proposing to remove the regulations in 21 CFR 310.501(b) for oral postcoital contraceptives and § 310.501a for injectable medroxyprogesterone acetate for contraception because there are no marketed drug products currently approved for these uses.

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule would modify the format and style of the oral contraceptive labeling regulation to make it more easily understood and readable. In addition, the proposal would amend the regulations from a listing of specific items to be included in the patient package insert to an enumeration of general categories of information. No additional burdens are imposed upon manufacturers. Therefore, the agency concludes that this proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if promulgated, will not have a significant economic impact on small entities as defined by the Regulatory Flexibility Act.

**List of Subjects in 21 CFR Part 310**

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 310 be amended as follows:

## PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

**Authority:** Secs. 502, 503, 505, 701, 52 Stat. 1051, 1052, 1053, 1055 as amended (21 U.S.C. 352, 353, 355, 371); 5 U.S.C. 553; 21 CFR 5.11.

2. By revising § 310.501 to read as follows:

**§ 310.501 Patient package inserts for oral contraceptives.**

(a) *Requirement for a patient package insert.* The safe and effective use of oral contraceptive drug products requires that patients be fully informed of the benefits and the risks involved in their use. An oral contraceptive drug product that does not comply with the requirements of this section is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352). Each dispenser of an oral contraceptive drug product shall provide a patient package insert to each patient (or to an agent of the patient) to whom the product is dispensed, except that the dispenser may provide the insert to the parent or legal guardian of a legally incompetent patient (or to the agent of either). The patient package insert is required to be placed in or accompany each package dispensed to the patient.

(b) *Distribution requirements.* (1) Each manufacturer and distributor of an oral contraceptive drug product shall provide sufficient numbers of patient package inserts to each person to whom it ships the product to permit the dispenser to give one insert to each patient receiving the drug.

(2) Patient package inserts for oral contraceptives dispensed in acute care hospitals or long-term care facilities will be considered to have been provided in accordance with this section if provided to the patient before administration of the first oral contraceptive and every 30 days thereafter, as long as the therapy continues.

(c) *Patient package insert contents.* A patient package insert for an oral contraceptive drug product is required to contain the following:

(1) The name of the drug.

(2) A summary section including a statement concerning the effectiveness of oral contraceptives in preventing pregnancy, the contraindications to the drug's use, and a statement of the risks and benefits associated with the drug's use.

(3) A statement of the effectiveness of oral contraceptives.

(4) Information that the patient should provide to the prescriber before taking the drug.

(5) A statement of medical conditions that deserve special consideration in connection with oral contraceptive use and about which the patient should inform the prescriber.

(6) A warning regarding the serious side effects of oral contraceptives.

(7) A boxed warning concerning the risks associated with cigarette smoking and oral contraceptive use.

(8) A statement of other serious adverse reactions and potential safety hazards that may result from the use of oral contraceptives.

(9) Information on precautions the patients should observe while taking oral contraceptives, including the following:

(i) A statement that identifies activities and drugs, foods, or other substances the patient should avoid because their interactions with oral contraceptives are known, likely to

occur, and likely to have clinical significance; and

(ii) A statement of risks to the mother and unborn child from the use of oral contraceptives before or during early pregnancy; and

(iii) A statement concerning excretion of the drug in human milk and associated risks to the nursing infant.

(10) A statement concerning possible side effects which may help the patient evaluate the benefits and risks from the use of oral contraceptives.

(11) A statement of possible benefits associated with oral contraceptive use.

(12) Information about how to take oral contraceptives properly, including information about what to do if the patient forgets to take the product, information about becoming pregnant after discontinuing use of the drug, a statement that the drug product has been prescribed for the use of the patient and should not be used for other conditions or given to others, and a statement that the patient's pharmacist or practitioner may have a more technical leaflet about the drug product that the patient may ask to review.

(13) The following information about the drug product and the patient package insert:

(i) The name and place of business of the manufacturer, packer, or distributor, or the name and place of business of the dispenser of the product.

(ii) The date, identified as such, of the most recent revision of the patient package insert placed prominently immediately after the last section of the labeling.

(d) *Other indications.* The patient package insert may identify indications in addition to contraception that are identified in the professional labeling for the drug product.

(e) *Guidelines.* The Food and Drug Administration has made available guidelines for patient package inserts for oral contraceptive drug products. A guideline is available for the class of combination estrogen-progestogen oral contraceptive and a separate guideline is available for the progestogen-only oral contraceptives. Any person may use the appropriate guideline to meet the requirements of this section.

(f) *Requirement to supplement new drug application.* Holders of approved applications for oral contraceptive drug products that are subject to the requirements of this section are required to submit supplements under § 314.70(c) of this chapter to provide for the labeling required by this section. Such labeling may be put into use without advance approval by the Food and Drug Administration.

**§ 310.501a [Removed]**

3. By removing § 310.501a *Medroxyprogesterone acetate injectable for contraception.*

Dated: March 30, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87-8848 Filed 4-20-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 938

### Pennsylvania Permanent Regulatory Program; Modification; Public Comment and Opportunity for Public Hearing

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing procedures for the public comment period and for hearing on the substantive adequacy of program amendments submitted by the Commonwealth of Pennsylvania as modifications to the Pennsylvania Permanent Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Pennsylvania Surface Mining Conservation and Reclamation Act to (1) clarify information needs concerings access to properties for purposes of coal refuse disposal, coal prep plants and for underground mining activities and (2) to establish a fund to provide loans to deep mine operators unable to obtain surety bond. This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

**DATES:** Written comments not received on or before 4:00 p.m. May 21, 1987, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on May 18, 1987, beginning at 9:00 a.m. at the location shown below under "**ADDRESSES**".

**ADDRESS:** Written comments should be mailed or hand delivered to: Mr. Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

If a public hearing is held its location will be: Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. 11 and 15, Camp Hill, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Biggi, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg Pennsylvania 17101; Telephone: (717) 782-4036

**SUPPLEMENTARY INFORMATION:**

#### I. Public Comment Procedures

*Availability of Copies*

Copies of the Pennsylvania program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each person may receive, free of charge, one single copy of the proposed modifications by contracting the Harrisburg Field Office.

Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4 Harrisburg, Pennsylvania 17101

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 "L" Street, NW., Washington, DC 20240

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation is support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at location other than Harrisburg, Pennsylvania, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

*Public Hearing*

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business May 6, 1987. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than

a public hearing, may be held and the results of the meeting included in the Administrative Record.

*Public Meeting*

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

**II. Background on the Pennsylvania State Program**

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** notice (47 FR 33050). Subsequent action concerning the conditions of approval and program amendments are identified at 30 CFR 938.15 and 938.16.

**III. Submission of Program Amendment**

On January 22, 1987, Pennsylvania submitted for OSMRE's approval an amendment to the State program which revises the Pennsylvania Surface Mining Conservation and Reclamation Act. Two specific sections of the legislation modify the approved regulatory program:

(1) Section 4.2(F)(II) of the State Act has been modified to clarify information needs concerning access to properties for purposes of coal refuse disposal, coal prep plants and for underground mining activities. The amended language provides that in the case of permit applications for coal refuse disposal areas, coal preparation facilities not situated on a permit area and the surface activities of underground mines, the applicant shall submit a description of the documents upon which the applicant bases the right to enter upon the surface land and conduct mining activities. It further provides that the State regulatory authority shall have access to permitted areas for a period of five years after completion or abandonment of mining and reclamation activities.

(2) A new Section 4.7 has been created to establish an Anthracite Deep Mine Operators' Bond Fund to provide loans to anthracite deep mine operators unable to obtain surety bond. The following categories of anthracite deep mine operators would be eligible to use the fund to meet their bond obligation: (1) Operators who have sought and been denied a bond by three separate bonding companies and (2) operators whose bonds are cancelled due to the insolvency or bankruptcy of any insurance company or surety company.

Operators who use the fund to meet their bond obligations will be required to pay a fee of twenty-five cents for each ton of coal extracted from mining operations for which the required bond has not been posted. In addition each operator must file with the regulatory authority one thousand dollars toward the bond obligation.

The per ton fee is to be continued until the fund has reached a level that equals the number of acres for which no bond has been posted multiplied by the per-acre bonding requirement established by the regulations of the Department. The fees paid by an operator may be used only to secure the reclamation obligations of the operator.

The Director is seeking comment on the adequacy of the proposed amendment in satisfying the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. The Director must find that the amendment provisions are consistent with SMCRA and no less effective than the Federal regulations. The full text of the proposed amendment is available for review in the OSMRE Administrative Record under No. PA 631 at the addresses listed above.

**IV. Additional Determinations**

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 938**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 14, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87-8899 Filed 4-20-87; 8:45 am]

BILLING CODE 4310-05-M

---

**VETERANS ADMINISTRATION**

**38 CFR Part 21**

**Veterans Education; Term-by-Term Enrollment Certifications**

**AGENCY:** Veterans Administration.

**ACTION:** Withdrawal of proposed regulations.

**SUMMARY:** On page 30151 and 30152 of the **Federal Register** of June 30, 1983 there was published a notice of intent to amend part 21 to require that certifications of enrollment be made each term, quarter or semester. Interested people were given 30 days in which to submit comments, suggestions or objections regarding the proposal. The VA (Veterans Administration) is withdrawing that proposal.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** The VA received one telephone call and 273 letters, many containing more than one comment, suggestion or objection. Veterans and other VA beneficiaries submitted 155 letters. There were also six letters in the form of petitions which were signed by an additional 334 people. Officials of educational institutions submitted 95 letters. Officials of educational and other organizations wrote 13 letters. Two officials of State approving agencies submitted letters, as did one Federal official and one interested citizen. Three of the veterans, five college officials and one educational organization supported the proposal and urged that it be adopted. The remainder of the letter writers had various objections and suggestions.

While the VA was reviewing the letters, the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 was enacted. Section 319 of that Act generally prohibits the VA from requiring that educational institutions certify enrollments on a term, quarter or semester basis. Accordingly, the VA is withdrawing its proposal which would have required them to do so.

Approved: April 2, 1987.

**Thomas K. Turnage,**

*Administrator.*

[FR Doc. 87-8896 Filed 4-20-87; 8:45 am]

BILLING CODE 8320-01-M

# Notices

Federal Register
Vol. 52, No. 76
Tuesday, April 21, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Regulation; Public Meetings

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of two meetings of the Committee on Regulation of the Administrative Conference of the United States. The committee has scheduled these meetings to consider further the Administrative Conference study of federal user fees and a draft committee recommendation on the subject.

**DATES:** *First Meeting*—Thursday, May 7, 1987; 9:30 a.m. until noon; *Second Meeting*—Friday, May 15, 1987; 9:30 a.m. until noon.

Location: Offices of Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days before the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

**SUPPLEMENTARY INFORMATION:** The Committee on Regulation will discuss and take action on a draft recommendation on user fees that was published for comment on March 12 and discussed at a public hearing on April 2 (*see* FR 7814). The meeting scheduled for May 15 will not be held if the committee completes its consideration of this matter on May 7. If the committee adopts a proposed recommendation on user fees, it will be presented to the Assembly of the Administrative Conference at a meeting on June 11–12, 1987.

Dated: April 16, 1986.

Jeffery S. Lubbers,

*Research Director.*

[FR Doc. 87–8934 Filed 4–20–87; 8:45 am]

BILLING CODE 6110–01–M

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 1987 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42–44, 53–55) and Cigar-Filler (Type 46) Tobaccos

**AGENCY:** Commodity Credit Corporation (CCC), USDA.

**ACTION:** Ntice of Proposed Determination of 1987 Price Support Levels for Six Kinds of Tobacco.

**SUMMARY:** The purpose of this Notice of Proposed Determination is to request comments with respect to levels of price support for fire-cured (type 21), tobacco, (2) fire-cured (types 22–23), (3) dark air-cured (types 35–36), (4) Virginia sun-cured (type 37), tobacco, (5) cigar-filler and binder (types 42–44, 53–55) tobacco, and (6) cigar-filler (type 46) kinds of tobacco for the 1986 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

**DATE:** Comments must be received on or before May 21, 1987 to be assured of consideration.

**ADDRESS:** Written comments should be sent to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741, USDA South Building, 14th and Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Miller, (202) 447–8839 or Kenneth Robison, (202) 447–5188. A Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals industries, Federal, State or local Governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and numbr of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a noticed of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983). It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Determination of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are

in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1986 crop of the six kinds of tobacco covered by the notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1987 crop of a kind of tobacco shall be the level in cents per pound at which the 1986 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1987 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1986 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii). Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1987 crop of such kind of tobacco will be the 1986 level, adjusted by the difference between (plus or minus) the 1987 "basic support level" and the 1986 "basic support level".

In addition, section 106(f)(6)(B) provides that to the extent requested by the board of directors of an association through which price support is made available to producers ("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco.

The levels of price support for the 1986 crops of various kinds of tobacco, which are determined in accordance with sections 106(f)(6)(A) are as follows:

| Kind and type | Support (cents per pound) |
|---|---|
| Virginia fire-cured, type 21 | 120.0 |
| KY–TN fire-cured, types 22–23 | 124.2 |
| Dark air-cured, types 35–36 | 105.8 |
| Virginia sun-cured, type 37 | 106.0 |
| Cigar-filler and binder, types 42–44, 53–55 | 91.6 |
| Puerto Rican, type 46 | 75.0 |

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year (298). For the 1987-crop year, the average parity indexes for the three previous years are: 1984—1130; 1985—1120; and 1986—1097. The average of the parity indexes for these years is 1116 and the ratio of the 1984–86 index to the 1959 index is 3.74. For the 1986-crop year, the average parity indexes used to calculate the 1986 "basic support level" were: 1983—1104; 1984—1130; 1985—1120. The ratio of the 1983–85 index to the 1959 index equaled 3.75. Thus, the "basic support level" for the 1986 and 1987 crops of the various kinds of tobaccos and the annual decrease are as shown in the following table:

| Kind and type | Basic support level | | Decrease in 1987 from 1986 |
|---|---|---|---|
| | 1986 | 1987 | |
| | Cents per pound | | |
| Virginia fire-cured, type 21 | 145.5 | 145.1 | .4 |
| Kentucky-Tennessee fire-cured, types 22–23 | 145.5 | 145.1 | .4 |
| Dark air-cured, types 35–36 | 129.4 | 129.0 | .4 |
| Virginia sun-cured, type 37 | 129.4 | 129.0 | .4 |
| Cigar-filler and binder, types 42–44, 54–55 | 107.2 | 107.0 | .2 |
| Puerto Rican, type 46 | 111.4 | 111.1 | .3 |

Section 106(d) of the Act provides the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco. Since the 1987 "basic support level" is below the 1986 "basic support level", section 106(d) is not applicable for the 1987 crop.

As noted in the following table, the supplies of all these kinds of tobacco for which price support is made available are currently at, or in excess of, the supply deemed adequate to meet domestic use and export needs. As a result of these increased supplies of tobacco, the quantity to tobacco pledged as collateral for CCC price support loans has also become ample to excessive.

| Kind and type | Million Pounds | | | | |
|---|---|---|---|---|---|
| | 1986/87 production | 1986/87 Total Supply | 1986/87 Reserve Supply | 1986-Crop CCC Loan Collateral | 1986/87 CCC Loans as percent of production |
| Virginia fire-cured, type 21 | 3.6 | 9.5 | 12.5 | 1.0 | 20.0 |
| Kentucky-Tennessee fire-cured types, 22-23 | 35.1 | 131.4 | 118.0 | 9.0 | 28.0 |
| Dark air-cured types 35-36 | 11.1 | 62.0 | 57.6 | 3.0 | 30.2 |
| Virginia sun-cured, type 37 | .1 | 1.0 | 1.5 | [2] | 5.5 |
| Cigar-filler, and binder, types 42-44, 53-55 | 12.2 | 72.7 | 75.2 | 3.5 | 28.7 |
| Puerto Rican, type 46 | .2 | 5.8 | 2.4[1] | .2 | 100 |

[1] Three times annual disappearance past 3 marketing years.
[2] Less than 50,000 pounds.

Because of the oversupply situation for fire-cured (type 21), fire-cured (type 22–23), dark air-cured, Virginia sun-cured, Puerto Rican filler, and cigar-filler and binder (types 42–44; 53–55), the proposed 1987 maximum support level for each kind consists of the 1986 level of support decreased by the difference between the 1987 "basic support level" and the 1986 "basic support level". However, this level could be reduced further if any of the producer associations request that the support level for their respective kind be reduced.

**Proposed Determinations**

Accordingly, the Secretary of Agriculture proposes to determine and announce the maximum price support level for the following kinds of tobacco (1987-crop) at the levels set forth below:

| Kind and type | Amount (maximum) (cents per pound) |
|---|---|
| Virginia fire-cured, type 21 | 119.6 |
| KY–TN fire-cured, types 22–23 | 123.8 |
| Dark air-cured, types 35–36 | 105.4 |
| Virginia sun-cured, type 37 | 105.6 |
| Cigar-filler and binder, types 42–44, 53–55 | 91.4 |
| Puerto Rican filler (type 46) | 74.7 |

Comment are requested with respect to the appropriate level of price support of such kinds of tobacco.

**Authority:** Secs. 4 and 5, Stat. 1070, 1072, as amended, (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 406, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended, 1055, (7 U.S.C. 1441, 1445, 1421, 1423, 1426).

Signed at Washington, DC, on April 16, 1987.

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–8847 Filed 4–20–87; 8:45 am]

BILLING CODE 3410-05-M

## Forest Service

### Columbia River Gorge National Scenic Area; Interim Guidelines; Availability

The Columbia River Gorge National Scenic Area Act of November 17, 1986, requires that the Secretary of Agriculture develop Interim Guidelines for the Scenic Area outside of Urban Areas. These Guidelines will identify land use activities which are inconsistent with the Act and govern the authority to acquire land without consent of the owner. The Interim Guidelines establish the standards by which proposed facilities and land uses will be evaluated for consistency with the Scenic Area Act.

Draft Interim Guidelines have been prepared and are available for review from the National Scenic Area, 902 Wasco Avenue, Suite 301, Hood River, OR 97031. Comments of the Interim Guidelines must be received by the Scenic Area Manager no later than May 13, 1987. For further information, contact Katherine Jesch, Scenic Area Planner, (503) 386–2333.

**Arthur W. DuFault,**

*National Scenic Area Manager.*

[FR Doc. 87–8839 Filed 4–20–87; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

**AGENCY:** Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

**SUMMARY:** The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on April 27, 1987. Committee meetings will also be held on this date. Public comment is welcome.

**TIME AND PLACE:** Presidential Board of Advisors on Private Sector Initiatives.

Monday, April 27, 1987, 11:15 a.m.–1:00 p.m., at the American Red Cross National Headquarters, Rooms to be Posted, 17 and E Streets, NW., Washington, DC 20006.

**Committee Meetings**

Monday, April 27, 1987, 10:00 a.m.–11:00 a.m., at the American Red Cross National Headquarters, Rooms to be Posted, 17 and E Streets, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

**Robert R. Brumley,**

*Deputy General Counsel.*

April 16, 1987.

[FR Doc. 87–9056 Filed 4–20–87; 8:45 am]

BILLING CODE 3510-BP-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

April 16, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 21, 1987. For further information contact

Janet Heinzen, International Trade Specialist (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

CITA directives dated October 17, 1986 and January 28, 1987 (51 FR 37625 and 52 FR 3327) established import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month periods which begin, in the case of Category 641, on May 29, 1986; and, in the case of Category 341, on February 1, 1987.

On March 27, 1987, the Governments of the United States and the People's Republic of Bangladesh exchanged diplomatic notes to further amend the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, to establish the specific limits for man-made fiber textile products in Categories 641 and 647/648, produced or manufactured in Bangladesh and exported during the four-month period which began on October 1, 1986 and extended through January 31, 1987.

The agreement also establishes specific limits for cotton and man-made fiber textile products in Categories 336, 341pt. (sublimit of Category 341), 641 and 647/648, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1987 and extends through January 31, 1988.

In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports in Categories 336, 341pt., 641 and 647/648 at the agreed limits for the twelve-month period which began on February 1, 1987 and extends through Janaury 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisons.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 16, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive cancels and supersedes the directive of October 17, 1986, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of man-made fiber textile products in Category 641, produced or manufactured in Bangladesh and exported during the twelve-month period which began on May 29, 1986 and extends through May 28, 1987.

In addition, this directive amends, but does not cancel, the directive of January 28, 1987 concerning cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1987 and extends through January 31, 1988.

Effective on April 21, 1987, the directive of January 28, 1987 is amended to include the following import restraint limits for cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1987 and extends through January 31, 1988.

| Category | 12-Month restraint limit [1] |
|---|---|
| 336 | 60,000 dozen. |
| 341pt.[2] | 408,100 dozen. |
| 641 | 500,000 dozen of which not more than 175,000 dozen shall be in Category 641pt.[3] |
| 647/648 | 636,000 dozen of which not more than 413,400 dozen shall be in Category 647pt./648pt.[4] |

[1] The limits have not been adjusted to account for any imports exported after January 31, 1987

[2] A sublimit of Category 341—1,166,000 of which not more than 408,100 dozen shall be in TSUSA numbers 384.4608, 384.4610 and 384.4612

[3] In Category 641, blouses made from fabric with two or more colors in the warp and/or the filling in TSUSA numbers 384.9110 and 384.9120

[4] In Category 647/648, long trousers and slacks in TSUSA numbers 381.2370, 381.2375, 381.2859, 381.3190, 381.3335, 381.3549, 381.6679, 381.6984, 381.8531, 381.8672, 381.8835, 381.8840, 381.9234, 381.9310, 381.9575, 381.9580, 381.9846, 381.9974, 384.1950, 384.2010, 384.2015, 384.2017, 384.2030, 384.2040, 384.2050, 384.2267, 384.2345, 384.2348, 384.2351, 384.2355, 384.2667, 384.2783, 384.5482, 384.5684, 384.7756, 384.7856, 384.8241, 384.8242, 384.8244, 384.8245, 384.8247, 384.8256, 384.8258, 384.9000, 384.9172, 384.9174, 384.9176, 384.9372 and 384.9678.

Textile products in Category 336 which have been exported to the United States prior to February 1, 1987 shall not be subject to this directive.

Textile products in Category 336 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out this directive, man-made fiber textile products in Categories 641 and 647/648, produced or manufactured in Bangladesh and exported to the United States during the four-month period which began on October 1, 1986 and extended through January 31, 1987, shall, to the extent of any unfilled balances be charged against the restraint limits established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be charged to the limits established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8988 Filed 4–20–87; 8:45 am]

BILLING CODE 3510-DR-M

---

## Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

April 17, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 23, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

CITA directives dated July 18, 1986 (FR 26459), August 25, 1986 (51 FR 30692), October 24, 1986 (51 FR 39408) and January 27, 1987 (52 FR 3160) established restraint limits for cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month periods beginning on July 24, 1986,

August 28, 1986, October 27, 1986 and January 28, 1987, respectively.

During consultations held February 23–27, 1987 between the Governments of the United States and the People's Republic of China, agreement was reached to establish specific limits for the Categories 319, 637, 650 and 659–S, produced or manufactured in China and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

In addition, the two governments also agreed that overshipments of the limit for the July 24, 1986 through July 23, 1987 period of 5,000 dozen would be charged to the restraint limits established for Category 637, starting with the twelve-month period which began on January 1, 1987 and each of the subsequent four-year periods to be established under a new bilateral agreement. Category 637 is subject to phased entry procedures for goods exported in excess of the limit established for the period which began on July 24, 1986.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry, or withdrawal from warehouse, for consumption in the United States of cotton and man-made fiber textile products in Categories 319, 637, 650 and 659–S, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of the specified limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 17, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury,*
*Washington, D.C. 20229*

Dear Mr. Commissioner: This directive cancels and supersedes those portions of the directives of July 18, 1986, August 25, 1986 and October 24, 1986 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for cotton and man-made fiber textile products in Categories 637, 659–S [1] and 319/320pt.,[2] produced or manufactured in the People's Republic of China and exported during the twelve-month periods which began, in the case of Category 637, on July 24, 1986; in the case of Category 659–S, on August 28, 1986; and, in the case of Category 319/320pt., on October 27, 1986.

This directive cancels and supersedes the directive of January 27, 1987 concerning imports of man-made fiber textile products in Category 650, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 28, 1987.

In carrying out this directive, entry of goods exported during the July 24, 1986 through December 31, 1986 period and in excess of the limit established for Catetory 637 for the period July 24, 1986 through July 23, 1987 shall be permitted entry, but shall not be charged to the 1987 restraint limit, for consumption in the United States in the following amounts during the indicated thirty-day periods.

| Period | Amount to be entered (dozen) |
|---|---|
| April 23–May 22, 1987 | [illegible],000 |
| May 26–June 25, 1987 | [illegible],000 |
| June 26–July 27, 1987 | [illegible],000 |

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 23, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 319, 637, 650 and 659–S, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of the following restraint limits[3]:

| Category | Twelve-month restraint limit |
|---|---|
| 319 | [1] 2,150,000 |
| 637 | [2] 270,000 |
| 650 | [2] 68,000 |
| 659–S | [3] 1,050,000 |

[1] Square yards.
[2] Dozen.
[3] Pounds.

Also effective on April 23, 1987, you are directed to charge the following amounts to the restraint limits established for Categories 319, 637, 650 and 659–S for the period which began on January 1, 1987 and extends through December 31, 1987.

| Category | Amount to be charged | Import period |
|---|---|---|
| 319 | [1] 134,300 | Jan. 1, 1987–Mar. 28, 1987 |
| 637 | [2] 5,000 | Jan. 1, 1987–April 22, 1987. |
| 650 | [2] 800 | Jan. 1, 1987–Jan. 31, 1987. |
| 659–S | -0- | Jan. 1, 1987–April 22, 1987. |

[1] Square yards.
[2] Dozen.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 19, 1983, as amended, which provide, in part, that: (1) Certain specific limits may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limit in that agreement year; (2) subject to consultations, specific limits may be increased for carryover and carryforward up to 10 percent of the applicable category limit in any agreement year according to the terms specified in the agreement; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In Carrying out the above directions, the Commission of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

[1] In Category 659, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353.

[2] In Category 320, only TSUS items 320.——, 321.——, 322.——, 326.——, 327.—— and 328.—— with statistical suffix 66.

[3] The limits have not been adjusted to account for any imports exported after December 31, 1986.

exception to the rule-making provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-8973 Filed 4-20-87; 8:45 am]

BILLING CODE 3510-DR-M

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 87-C0002]

## Whirlpool Corp., a Corporation; Provisional Acceptance of a Settlement Agreement

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Whirlpool Corporation, a corporation.

**DATE:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 6, 1987.

**ADDRESS:** Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Leonard H. Goldstein, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

**SUPPLEMENTARY INFORMATION:**

Dated: April 15, 1987.

**Sheldon D. Butts,**

*Deputy Secretary.*

### Settlement Agreement and Order

[CPSC Docket No. 87-C0002]

In the matter of Whirlpool Corp., a corporation.

1. This Settlement Agreement and Order, entered into between Whirlpool Corporation, a corporation (hereinafter, "Whirlpool"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

**I. The Parties**

2. Whirlpool is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located at Benton Harbor, Michigan 49022.

3. Whirlpool has manufactured certain canister vacuum cleaners, identified further in paragraph 6 and 7 below (hereinafter, "canister vacuum cleaners"), (a) for sale to a consumer for use in or around a permanent or temporary household or residence, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence. These canister vacuum cleaners are "consumer products" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSC"), 15 U.S.C. 2052(a)(1).

4. Whirlpool manufactured and sold these canister vacuum cleaners to Sears, Roebuck and Co. (hereinafter, "Sears") for resale in stores located throughout the United States. Whirlpool, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSC, 15 U.S.C. 2052(a)(1), (4) and (11).

5. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory agency established by Congress pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

**II. The Product**

6. Whirlpool manufactured approximately 1,240,000 canister vacuum cleaners from 1976 through 1983. Sears sold the vacuum cleaners to consumers under its "Kenmore" brand name.

7. The inside compartment of the canister vacuum cleaner contains a dust bag, motor filter and motor fan housing. The motor filter fits directly over the motor fan housing, and prevents dust from entering into an air intake opening at the top of the motor fan housing (hereinafter, "air intake opening").

**III. Staff Allegations of a Defect in the Canister Vacuum Cleaner and of a Failure by Whirlpool To Comply With the Reporting Requirements of Section 15(b) of the CPSA**

8. The defect in the canister vacuum cleaner consists of the potential accessibility consumers of rotating motor fan blades contained within the air intake opening.

9. If the lid of the canister vacuum cleaner is open for any reason while the motor is operating, and if a consumer removes the motor filter and accidentally inserts a finger or fingers into the air intake opening, the rotating motor fan blades within the air intake opening can cause severe finger lacerations or amputations.

10. During the period prior to May 1986, when Whirlpool asked the Commission staff for an advisory opinion concerning the vacuum cleaners in question, the company has received 19 reports from consumers alleging finger lacerations or amputations within the air intake opening of the canister vacuum cleaner.

11. In June 1983, Whirlpool placed a guard over the air intake opening thereby eliminating the laceration and amputation hazard as to those canister vacuum cleaners having a guard.

12. Whirlpool knew or should have known by June 1983 that the air intake opening was accessible to users of the canister vacuum cleaner, and could cause severe lacerations or amputations if accessed while the vacuum cleaner was operating.

13. Whirlpool had received sufficient informattion by June 1983 to reasonably support the conclusion that canister vacuum cleaners, described in paragraphs 6 and 7 hereof, contained a defect which could create a substantial product hazard, but the company failed to report such information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

**IV. Allegations of Whirlpool Corp.**

14. Whirlpool denies each and all of the staff allegations with respect to its canister vacuum cleaners. It further and specifically denies that its canister vacuum cleaners contain a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies an obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b) with respect to these canister vacuum cleaners.

**V. Agreement of the Parties**

15. Whirlpool and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

16. Whirlpool agrees to settle the Commission's claim for a civil penalty by payment of the amount of $75,000 within 30 days of final acceptance of

this Settlement Agreement by the Commission and service of the Commission's Order on Whirlpool. This payment is made in settlement of disputed allegations by the staff that Whirlpool violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to canister vacuum cleaners manufactured by Whirlpool between 1976 and 1983. Whirlpool makes no admission of any fault, liability or statutory violation and expressly denies any fault, liability or statutory violation. The Commission does not make any determination that such canister vacuum cleaners described in paragraphs 6 and 7 hereof, contain a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued.

18. Upon final acceptance of this Settlement Agreement by the Commission, Whirlpool knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty. By making this waiver, Whirlpool does not concede that its canister vacuum cleaners contain a defect which creates or could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a).

19. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the $75,000 settlement amount by Whirlpool, the Commission agrees to waive its right to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the matters encompassed by this Settlement Agreement and Order.

20. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 15 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

21. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Whirlpool to appropriate legal action.

22. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Whirlpool Corporation.

Dated: March 6, 1987.

By:

Stephen E. Upton,

*Senior Vice President, Corporate Communications, Education and Government Affairs.*

Dated: April 15, 1987.

Consented to by:

David Schmeltzer,

*Associate Executive Director, Directorate for Compliance and and Administrative Litigation.*

**Order**

Upon consideration of the Settlement Agreement of the parties, it is hereby

*Ordered* that Whirlpool Corporation shall pay within 30 days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the sum of $75,000 to the Consumer Product Safety Commission.

Provisionally accepted on the 15th day of April, 1987.

By Order of the Commission.

**Sayde E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 87-8876 Filed 4-20-87; 8:45 am]

BILLING CODE 6355-01-M

## COPYRIGHT ROYALTY TRIBUNAL

**[Docket No. CRT 87-2-85CD]**

### Commencing 1985 Cable Distribution Proceeding and Setting Certain Procedural Dates

**AGENCY:** Copyright Royalty Tribunal.

**ACTION:** Notice of commencement of proceeding; Notice of certain procedural dates.

**SUMMARY:** The Copyright Royalty Tribunal announces that a controversy exists regarding the distribution of the royalties paid by cable operators for the calendar year 1985. The Tribunal also announces certain procedures and an initial schedule which will govern the 1985 cable distribution proceeding.

**DATES:** The 1985 cable distribution controversy is declared as of April 22, 1987. Parties shall submit prehearing statements June 1, 1987. Written direct cases shall be submitted for Phase I on June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653-5175.

**SUPPLEMENTARY INFORMATION:** On January 13, 1987, the Copyright Royalty Tribunal (Tribunal) solicited public comments as to whether a controversy exists concerning distribution of the 1985 cable copyright royalty fees. 52 FR 1373. Comments were initially due March 2, 1987, but by Order dated February 27, 1987, the Tribunal extended the comment period to April 1, 1987. Based upon the written comments, the Tribunal concludes that a controversy exists as to the distribution of the 1985 cable copyright royalty fees, both in Phase I and in Phase II of the proceeding, effective April 22, 1987.

The Tribunal will initiate a proceeding to determine the proper distribution of the 1985 cable fund. The procedures for the proceeding will be the same as those governing the 1983 and 1984 cable distribution proceedings. See, *Notice of Commencement of Proceeding; Notice of Adoption of Procedures,* 50 FR 13845 (April 8, 1985).

The initial schedule for the 1985 cable distribution proceeding is as follows:

June 1, 1987—Parties submit Prehearing Statements. The statement shall include (1) Notice of Intent to Participate in Phase I, Phase II or both; (2) A brief description of the nature of the works for which claims are made; (3) Identification of Phase I categories against which any Phase II claims are asserted; and (4) Identification of parties encompassed within a claimant group.

June 22, 1987—Parties exchange and file with the Tribunal their written direct cases in Phase I.

The Tribunal expects that settlement negotiations will continue during this period, and that it and all affected parties will be informed immediately of any successful conclusion of negotiations. Further procedural dates will be issued by Order to the parties involved.

Dated: April 16, 1987.

**J.C. Argetsinger,**

*Chairman.*

[FR Doc. 87-8884 Filed 4-20-87; 8:45 am]

BILLING CODE 1410-09-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board; Meeting

April 15, 1987.

The meeting location for the USAF Scientific Advisory Board Ad Hoc Committee on Airships, announced in **Federal Register** 52 FR 11529, has changed. The USAF Scientific Advisory Board Ad Hoc Committee on Airships will now meet on May 6th and 7th, 1987. All other information remains the same.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–8891 Filed 4–20–87; 8:45 am]

BILLING CODE 3910–01–M

## DEPARTMENT OF ENERGY

### International Research Center for Energy Economic Development Energy Conferences; Solicitation for a Grant Application

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of solicitation for a grant application.

**SUMMARY:** DOE announces that it is conducting negotiations with the International Research Center for Energy Economic Development (ICEED) to support the conduct of two international energy conferences. These negotiation are expected to result in the renewal of Grant No. DE–FG01–86IE10538 in which DOE will provide $23,000 of the total estimated cost of $136,828 for the performance period of fourteen months estimated to begin April 21, 1987.

*Scope of Study:* The grant will provide assistance for two international conferences. The first conference, "Issues in the Canadian-U.S. Energy Relationship", will discuss such topics as; interaction of Canadian and U.S. energy policies, U.S. petroleum industry in Canada, imports of Canadian natural gas by the United States, the role of the electric power sector, revival of the concept of North American energy market, and energy in the Canadian-U.S. trade relationship. The second conference, "Managing Energy Uncertainly", will examine the impact of the December 1986 OPEC production agreement on the petroleum industries of various nations, the fate of netback arrangements, the effects of the new pricing system on Japan, rising U.S. Congressional protectionist attitudes, the $18 price level and downstream operations, Pacific Basin energy trade patterns, methods to reduce downside risks, increasing cost advantages and efficiency in production, and changes in exploration and production levels.

Dated: April 16, 1987.

**Stephan J. Michelsen,**

*Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 87–9138 Filed 4–20–87; 11:38 am]

BILLING CODE 6450–01–M

### Announcement of Extension of Comment Period on the Draft Environmental Impact Statement for Remedial Action at the Weldon Spring Site

The Department of Energy (DOE) published an announcement of availability of a draft environmental impact statement (DOE/EIS–117D), Remedial Action at the Weldon Spring Site on March 9, 1987 (52 FR 7190). Written comments were requested by April 20, 1987. As a result of a request from the Environmental Protection Agency, Region VII, dated April 15, 1987, the DOE has decided to extend the comment period for the draft EIS until May 5, 1987. Written comments should be received by May 5, 1987 in order to ensure consideration in preparation of the final EIS. Comments received after that date will be considered to the extent practicable.

For further information, contact: Rodney R. Nelson, U.S. Department of Energy, Weldon Spring Site Remedial Action Office, Route 2, Highway 94, South, St. Charles, Missouri 63303, telephone: (314) 441–8978.

Issued at Washington, DC April 17, 1987.

**Grover A. Smithwick,**

*Principal Deputy Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 87–9142 Filed 4–20–87; 11:43 am]

BILLING CODE 6450–01–M

### Economic Regulatory Administration

**[Docket No. ERA C&E–87–48; OFP Case No. 61071–9366–20–22]**

### Acceptance of Petition for Exemption and Availability of Certification by City of Anaheim, CA

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of acceptance.

**SUMMARY:** On March 30, 1987, City of Anaheim, California (Anaheim or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption form the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301, *et seq.*) for a peakload powerplant to be located in Anaheim, California.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on peakload. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures are found at 10 CFR 503.41.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption

from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

**DATES:** Written comments are due on or before June 5, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

Docket No. ERA C&E–87–48 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Myra Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington DC 20585, Telephone (202) 586–6769

Steven E Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947

**SUPPLEMENTARY INFORMATION:** The peakload facility will consist of a 45 MW combustion turbine and auxiliary equipment.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to the petitioner's petition.

The petitioner submitted a certified statement by a duly authorized officer to the effect that the proposed oil and/or gas-fired combustion turbine generators will be operated as a peakload powerplant.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioner has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by the petitioner pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC, on April 13, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–8885 Filed 4–20–87; 8:45 am]

BILLING CODE 6450–01–M

---

## Energy Information Administration

## Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective May 1, 1987. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Department of Energy Energy, Information Administration, 1000 Independence Avenue, S.W., Room BE–034, Washington, DC 20585, Telephone: (202) 586–6077.

### Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

| State: | *Per million BTU's* |
|---|---|
| Alabama | $2.06 |
| Arizona [1] | 2.13 |
| Arkansas [1] | 2.65 |
| California [1] | 2.13 |
| Colorado [2] | 2.12 |
| Connecticut [1] | 2.21 |
| Delaware [1] | 2.29 |
| Florida | 2.16 |
| Georgia | 2.30 |
| Idaho [1] | 2.12 |
| Illinois | 1.90 |
| Indiana | 2.02 |
| Iowa [1] | 1.93 |
| Kansas [1] | 1.93 |
| Kentucky [1] | 2.09 |
| Louisiana | 2.64 |
| Maine | 2.19 |
| Maryland [1] | 2.29 |
| Massachusetts | 2.18 |
| Michigan [1] | 2.09 |
| Minnesota | 1.84 |

| | Per million BTU's |
|---|---|
| Mississippi | [illegible] |
| Missouri [1] | [illegible] |
| Montana [2] | 2.12 |
| Nebraska [1] | 1.93 |
| Nevada [1] | 2.13 |
| New Hampshire [1] | 2.21 |
| New Jersey [1] | [illegible] |
| New Mexico [1] | [illegible] |
| New York | [illegible] |
| North Carolina [1] | 2.33 |
| North Dakota [1] | 1.93 |
| Ohio | [illegible] |
| Oklahoma [1] | 2.65 |
| Oregon | 2.01 |
| Pennsylvania [1] | [illegible] |
| Rhode Island [1] | 2.21 |
| South Carolina [1] | 2.33 |
| South Dakota [1] | 1.93 |
| Tennessee [1] | 2.33 |
| Texas | 2.55 |
| Utah [2] | 2.12 |
| Vermont [1] | 2.21 |
| Virginia | 2.21 |
| Washington | 2.07 |
| West Virginia [1] | [illegible] |
| Wisconsin [1] | 2.09 |
| Wyoming [2] | 2.12 |

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.

[2] Region based price computed as the weighted average price of Regions E, F, G and H.

## Section II.—Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during February 1987 was $19.72 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending April 14, 1987, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of February 1987. This lag adjustment factor was applied to the February price yielding $19.83 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective May 1, 1987, is $4.45 per million BTU's.

## Section III.—Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 continguous States on a permanent basis.

### *A. Data Collected*

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: For each selling price, the number of gallons sold to large industrial users in the months of December 1986, January 1987, and February 1987.[3] All reports of volume sold and price were identified by the State into which the oil was sold.

### *B. Method Used to Determine Alternative Price Ceilings*

#### (1) Calculation of Volume-Weighted Average Price

The prices which will become effective May 1, 1987, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, December 1986, January 1987, and February 1987. Reported prices for sales in December 1986 were adjusted by the percent change in the nationwide volume-weighted average price from December 1986 to February 1987. Prices for January 1987 were similarly adjusted by the percent change in the nationwide volume-weighted average price from January 1987 to February 1987. The volume-weighted 3-month average of the adjusted December 1986 and January 1987, and the reported February 1987 prices were then computed for each State.

#### (2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C). Using the adjusted prices and associated prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

#### *(3) Calculation of Ceiling Price*

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of December 1986, January 1987, and February 1987. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric Utilities, governmental bodies (Federal, State, and Local), and the military are excluded.

average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 6 residual oil in 19 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending April 14, 1987, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of February 1987. A regional lag adjustment factor was similarly calculated for four regions. There are: One for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

**Listing of States by Region**

States were grouped by the FERC to form eight distinct regions as follows:

*Region A:* Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

*Region B:* Delaware, Maryland, New Jersey, New York, Pennsylvania.

*Region C:* Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia.

*Region D:* Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, Wisconsin.

*Region E:* Iowa, Kansas, Missouri, Minnesota, Nebraska, North Dakota, South Dakota.

*Region F:* Arkansas, Lousiana, New Mexico, Oklahoma, Texas.

*Region G:* Colorado, Idaho, Montana, Utah, Wyoming.

*Region H:* Arizona, California, Nevada, Oregon, Washington.

Issued in Washington, DC, April 17, 1987.

L.A. Pettis,

*Deputy Administrator, Energy Information Administration.*

[FR Doc. 87-9004 Filed 4-20-87; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket No. RP87-55-000]**

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 15, 1987.

Take notice that on April 10, 1987, Columbia Gas Transmission Corporation (Columbia) tendered for filing One Hundred and Seventeenth Revised Sheet No. 16 to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1987. The revised tariff sheet reflects an adjustment to Columbia's current non-gas commodity sales rates effective April 1, 1987 to recognize the amortization of certain costs incurred by Columbia to reform its high-cost contracts with certain Southwest producers. Columbia proposes an annual amortization of such costs of $79,153,545, which results in an impact on Columbia's non-gas commodity sales rate of 15.74¢ per Dth.

The instant filing is contingent upon Commission action on Columbia's April 6, 1987 Request for Rehearing of the Commission's March 30, 1987 order issued in Dockets Nos. TA87-4-21, *et al.* In the underlying PGA filing in that docket, Columbia had included $18,092,620 in its projected current cost of gas representing the amortization of the aforementioned contract reformation costs for the subject PGA period (April 1, 1987 through August 31, 1987). The Commission's March 30 order rejected the includion of the $18,092,620 in the cost of purchased gas without prejudice to Columbia filing to collect such costs, on a prospective basis, in a proceeding pursuant to section 4 of the Natural Gas Act. Columbia's Request for Rehearing asked the Commission, *inter alia,* to permit recovery of those contract reformation costs as gas costs, or alternatively, to consolidate such filing with Columbia's general rate filing in Docket No. RP86-168, and permit Columbia to recover the subject contract reformation costs effective April 1, 1987, subject to refund. In the event the Commission grants rehearing of Columbia's Request in Docket Nos. TA87-4-21, *et al.,* Columbia will withdraw the instant filing.

As support for the cost of service, exclusive of the contract reformation costs, Columbia incorporates by reference its September 30, 1986 section 4(e) filing in Docket No. RP86-168, *et al.,* as revised by Motion on February 27, 1987, as well as Columbia Gulf Transmission Company's initial and revised filings in Docket No. RP86-167-000.

Pursuant to § 388.110 of the Commission's Regulations, Columbia has requested that the Commission treat certain contract reformation information and data as commercially sensitive and confidential data, the disclosure of which would be harmful to Columbia. Due to the highly confidential and proprietary nature of the information contained in "Confidential Binder A" Columbia submits that access to the contents thereof be limited to parties other than producers and interstate pipelines to this proceeding. Columbia will maintain copies of the Confidential Binder A at its Charleston, West Virginia and Washington, DC offices for parties other than producers and interstate pipelines to review, which will be subject to appropriate protective conditions. Columbia submits that a protective order of the nature of the one issued by the Presiding Judge in Columbia's ongoing section 4 rate case in Docket No. RP86-168, *et al.* would be appropriate.

Columbia requested such waivers of the Commission's Regulations as may be necessary to make the instant filing, subject to refund, effective April 1, 1987.

Copies of the filing, exclusive of Confidential Binder A, were served by Columbia upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 22, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing, exclusive of Confidential Binder A, are on file with the Commission and are available for public inspection. A copy of this filing,

including Confidential Binder A, is in the non-public file with the Commission.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-8869 Filed 4-20-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-289-000]

## El Paso Production Co. and El Paso Natural Gas Co.; Application for Certificates of Public Convenience and Necessity

April 14, 1987.

Take notice that on February 6, 1987, El Paso Production Company ("Production Company") and El Paso Natural Gas Company ("El Paso") filed with the Commission an Application for Certificates of Public Convenience and Necessity to continue sales of gas to Northwest Pipeline Company ("Northwest") as successors-in-interest to Beta Development Company ("Beta"). They state that El Paso acquired an undivided fifty percent (50%) interest in certain wells and leases owned by Beta, the production from which was sold to Northwest. El Paso subsequently transferred the properties to its subsidiary Production Company which was organized to consolidate the production functions of the company.

El Paso seeks a certificate of public convenience and necessity applicable to the sales made from the properties to Northwest during the interim period before transfer of the properties to Production Company. Production Company seeks a certificate for the continued sales to Northwest. The sales are conducted under the same terms and conditions as applied when Beta was the interest owner, in accordance with orders, rules, and regulations of the Commission.

El Paso acquired from Beta one-half (½) of its leasehold interest in certain wells located in San Juan County, New Mexico by Assignment of Oil and Gas Leases dated September 11, 1983. Beta previously was making sales in interstate commerce of natural gas for resale at these wellheads to Northwest pursuant to the small producer exemption certificate issued at Docket No. CS76-612. Therefore, El Paso is requesting authorization, effective August 19, 1983, and continuing through June 10, 1986, for the continuation of the sale to Northwest of natural gas produced from the one-half (½) leasehold interest acquired by El Paso, all as more fully set forth in the application. The natural gas produced from those leasehold interests continued to be sold under the same terms and conditions as applied when Beta held the interests.

Effective July 1, 1986, El Paso transferred its interest in the Beta properties to Production Company by Conveyance dated July 16, 1986. Thus, effective July 1, 1986, Production Company requests issuance of a certificate of public convenience and necessity authorizing the continued sale of gas from those properties to Northwest as successor in interest to El Paso.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 27, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-8870 Filed 4-20-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. TA87-6-51-000, 001]

## Great Lakes Gas Transmission Co.; Tariff Filing

April 14, 1987.

Take notice that Great Lakes Gas Transmission Company (Great Lakes) on April 9, 1987, tendered for filing Sixth-A Revised Sheet Nos. 57(i) and 57(ii) and Substitute Seventh Revised Sheet Nos. 57(i) and 57(ii) to its FERC Gas Tariff, First Revised Volume No. 1.

Sixth-A Revised Sheet Nos. 57(i) and 57(ii) reflect changes in the gas purchased prices applicable to Northern Minnesota Utilities ("NMU"), the abovementioned filing reflects a significant price decrease in the purchased gas component of the commodity charge for deliveries within contract demand from $1.80774 to $1.60 per MMBtu and a reduction in the purchased gas component of the overrun rate from $1.60 to $1.56 per MMBtu for the month of April, 1987. These gas purchase price changes result from recent negotiations between TransCanada Pipelines Limited ("TransCanada") and NMU, which Great Lakes is hereby implementing. NMU and TransCanada have agreed that the commodity charges for gas purchased by NMU will be negotiated on a monthly basis and that if such negotiations are unsuccessful, the prices under the pre-existing contractual arrangements that would have become effective except for these new contractual arrangements, would become effective on the first day of the month for which the new price negotiations are unsuccessful. These arrangements have been reflected in an amendment dated March 25, 1987 to the Gas Purchase Contract between TransCanada and Great Lakes dated October 9, 1970.

On March 30, 1987, Great Lakes filed Seventh Revised Sheet Nos. 57(i) and 57(ii) to be effective May 1, 1987 which reflects its semi-annual change in the surcharge rate and a PGA adjustment to reflect the gas purchase costs at the time of the filing. Therefore, Great Lakes has also filed six copies of Substitute Seventh Revised Sheet Nos. 57(i) and 57(ii), to be effective May 1, 1987, which reflect the gas purchase price changes for NMU resulting from the filing herewith.

Great Lakes requests waiver of the 30 day notice requirement of the Commission's Regulations and any other necessary waivers so as to permit the above mentioned tariff sheets to become effective as requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-8871 Filed 4-20-87; 8:45]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

[Docket No. RP84-13-004]

## Michigan Consolidated Gas Co., Interstate Storage Division; Proposed Changes in FERC Gas Tariff

April 14, 1987.

Take notice that on April 2, 1987, Michigan Consolidated Gas Company—Interstate Storage Division (ISD) tendered for filing proposed changes to the following tariff sheets in its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2 and Original Volume No. 3:

| | [illegible] |
|---|---|
| Original Volume No. 1: | |
| Sixth Revised Sheet Nos. 63 & 64 | X-7 |
| Sixth Revised Sheet Nos. 87 & 94 | X-9 |
| Sixth Revised Sheet Nos. 110 & 111 | X-11 |
| Sixth Revised Sheet Nos. 132 & 139 | X-13 |
| Sixth Revised Sheet Nos. 155 & 162 | X-15 |
| Tenth Revised Sheet No. 192 | X-19 |
| Eighth Revised Sheet No. 193 | X-19 |
| Ninth Revised Sheet No. 216 | X-20 |
| Seventh Revised Sheet No. 217 | X-20 |
| First Revised Sheet No. 262 | X-20-1 |
| First Revised Sheet No. 263 | X-20-1 |
| Original Volume No. 2: | |
| Fifth Revised Sheet Nos. 6 & 7 | X-23 |
| Fifth Revised Sheet No. 29 | X-23 |
| Fifth Revised Sheet No. 30 | X-24 |
| Fifth Revised Sheet Nos. 51 & 52 | X-25 |
| Fifth Revised Sheet Nos. 73 & 74 | X-26 |
| Fifth Revised Sheet No. 96 | X-27 |
| Fifth Revised Sheet Nos. 117 & 118 | X-28 |
| Fourth Revised Sheet No. 154 | X-30 |
| Original Volume No. 3: | |
| Second Revised Sheet No. 2 | S-1, S-2, S-3, S-4, S-5, S-6, |

The proposed changes reflect a decrease of $2,607,240 in the cost of service that underlies ISD's presently effective rates.

ISD states that the proposed rate reduction is required by Article V of the Stipulation and Agreement in Docket No. RP84-13-000, which was accepted and approved by the Commission in its letter order dated January 11, 1985. Article V requires ISD to make an appropriate rate filing if the Federal income tax rate (46%) upon which ISD's rates are predicated is increased or decreased. The Tax Reform Act of 1986 reduces the Federal corporate income tax rate to 34%, effective July 1, 1987. Consequently, the Federal income tax amount embodied in ISD's cost of service is to be reduced by $2,607,240. This amount is calculated pursuant to Article V by multiplying $217,270 times each 1 percent change in Federal corporate income tax rate.

ISD requests that this proposed rate reduction become effective on July 1, 1987, which is the effective date of the new Federal corporate income tax rate and thus the effective date required by Article V. ISD states that copies of its filing have been served upon its customers and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions of protests should be filed on or before April 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-8872 Filed 4-20-87; 8:45 am]

BILLING CODE 6717-01-M

## FARM CREDIT ADMINISTRATION

### Performance Review Board; Designation of Members

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice.

**SUMMARY:** In accordance with the provisions in Title 5, U.S.C. 4314(c)(4), the Farm Credit Administration hereby publishes the names of the executives who are designated as members of the Agency's Performance Review Board. The members of the Board are as follows:

1. Francis J. Boyd, Jr.
2. David C. Baer.
3. Frederick R. Medero.
4. Larry W. Edwards.
5. Thomas G. McKenzie.
6. Dennis L. Barringer.
7. Michael J. Powers.
8. George D. Irwin.
9. Harold D. Schuler.
10. Paul C. Redmer.
11. Eldon W. Stoehr.

William A. Sanders, Jr.,

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87-8900 Filed 4-20-87; 8:45 am]

BILLING CODE 6705-01-M

## FEDERAL HOME LOAN BANK BOARD

[No. AC-593]

### The Cumberland Federal Savings and Loan Association, Louisville, KY; Final Action Approval of Conversion Application

Dated: April 8, 1987.

Notice is hereby given that on April 2, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Cumberland Federal Savings and Loan Association, Louisville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-8856 Filed 4-20-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-591]

### Maryland Federal Savings and Loan Association, Hyattsville, MD; Final Action Approval of Conversion Application

Dated: April 8, 1987.

Notice is hereby given that on March 26, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Maryland Federal Savings and Loan Association, Hyattsville, Maryland for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-8857 Filed 4-20-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-592]

**Washington Federal Savings and Loan Association, Washington, D.C.; Final Action Approval of Conversion Application**

Dated: April 8, 1987.

Notice is hereby given that on April 2, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Washington Federal Savings and Loan Association, Washington, DC for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 105565, Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8858 Filed 4-20-87; 8:45 am]

BILLING CODE 6720-01-M

---

[No. 87-463]

**Application for Unlisted Trading Privileges and Opportunity for Hearing Cincinnati Stock Exchange**

Dated: April 16, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The Cincinnati Stock Exchange has filed, pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1, an application with the Federal Home Loan Bank Board ("Board") for Unlisted trading privileges in the following securities: Home Federal Savings and Loan Association, San Diego, California (FHLBB No. 3143), Common Stock, $0.01 Par Value.

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the application at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC. 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

**FOR FURTHER INFORMATION CONTACT:** John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202-377-6415) or at the above address.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8897 Filed 4-20-87; 8:45 am]

BILLING CODE 6720-01-M

---

**Southern Floridabanc Savings Association, Boca Raton, FL; Appointment of Receiver**

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Southern Floridabanc Savings Association, Boca Raton, Florida, on April 16, 1987.

Dated: April 16, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8923 Filed 4-20-87; 8:45 am]

BILLING CODE 6720-01-M

---

**Southern Floridabanc Savings Association, Boca Raton, FL; Appointment of Receiver**

Notice is hereby given that the Circuit Court of the State of Florida for the County of West Palm Beach has confirmed the appointment by the Comptroller of the State of Florida ("Florida") of a receiver for Southern Floridabanc Savings Association, Boca Raton, Florida ("Southern Floridabanc"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Comptroller of the appointment as receiver for Southern Floridabanc, for the purpose of liquidation, effective April 16, 1987.

Dated: April 16, 1987.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary*

[FR Doc. 87-8924 Filed 4-20-87; 8:45 am]

BILLING CODE 6720-01-M

---

## FEDERAL MARITIME COMMISSION

**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007690-020
Title: The India, Pakistan, Bangladesh, Ceylon & Burma Outward Freight Conference
Parties:
The Scindia Steam Navigation Co., Ltd.
The Shipping Corporation of India, Ltd.
Waterman Isthmian Line
Synopsis: The proposed amendment would increase the conference admission fee from $5,000 to $25,000. The parties have requested a shortened review period.

Agreement No: 202-010656-019
Title: North Europe-U.S. Gulf Freight Association
Parties:
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Company, Inc.
Gulf Container Line (GCL), B.V. (GCL)
Sea-Land Service, Inc.
Hapag-Lloyd AG
Trans Freight Lines
Nedlloyd Lijnen, B.V.
Synopsis: The proposed amendment would permit the continued independent operations in the agreement trade of Wallenius Line (a carrier associated with GCL) or

any other carrier organized under the terms of Agreement No. 207–009498 with respect to vehicular and non-containerizable cargo as described in Agreement No. 202–010656.

By Order of the Federal Maritime Commission.

Dated: April 16, 1987.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87–8896 Filed 4–20–87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The noticants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 6, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank of Philadelphia Employe Stock Ownership Stock Bonus Plan and Trust*, Philadelphia, Mississippi; to retain 18.6 percent of the voting shares of Philadelphia Capital Corporation, Philadelphia, Mississippi, and thereby retain Bank of Philadelphia, Philadelphia, Mississippi.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. LT Corporation, Inc., James I. Tims, and Robert L. Tims, all of Cleveland, Mississippi; to acquire 51.3 percent of the voting shares of First Bolivar Capital Corporation, Cleveland, Mississippi, and thereby indirectly acquire First National Bank of Bolivar County, Cleveland, Mississippi.

Board of Governors of the Federal Reserve System, April 15, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87–8855 Filed 4–20–87; 8:45 am]

BILLING CODE 6210-01-M

### Branch Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments, regarding each of these applications must be received not later than May 13, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Branch Corporation*, Wilson, North Carolina; to acquire 100 percent of the voting shares of Community Bancorporation, Inc., Greenville, South Carolina, and thereby indirectly acquire Community Bank, Greenville, South Carolina.

2. *Branch Corporation of South Carolina*, Wilson, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank, Greenville, South Carolina.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CB Bancshares, Inc.*, Fort Valley, Georgia; to acquire 100 percent of the voting shares of Cook Banking Company, Cochran, Georgia. Comments on this application must be received by May 10, 1987.

2. *First National Bancorp*, Gainesville, Georgia; to merge with Banks County Financial Corporation, Homer, Georgia, and thereby indirectly acquire Bank of Banks County, Homer, Georgia. Comments on this application must be received by May 10, 1987.

3. *Randolph Bancshares, Inc.*, Oxford, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Alabanc, Inc., Wadley, Alabama, and thereby indirectly acquire First Bank, Wadley, Alabama.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illinois Regional Bancorp, Inc.*, Elmhurst, Illinois; to acquire 100 percent of the voting shares of Plum Grove Bancorporation, Inc., Rolling Meadows, Illinois, and thereby indirectly aquire First Commercial Bank of Rolling Meadows, Rolling Meadows, Illinois. Comments on this application must be received by May 7, 1987.

Board of Governors of the Federal Reserve System, April 15, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87–8854 Filed 4–20–87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Cooperative Agreements To Support School Health Education To Prevent the Spread of Acquired Immunodeficiency Syndrome (AIDS); Availability of Funds for Fiscal Year 1987

#### Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for cooperative agreements to support the development and implementation of effective health education about AIDS for youth, school, and college populations (elementary through college-age youth, parents, and relevant school, health, and education personnel). Funds will be available to national private-sector education and health organizations and other national agencies that serve youth. These organizations must be able to help increase the number of schools, colleges, or agencies that serve youths who do *not* attend school, providing effective AIDS education that is locally

determined, consistent with community values, and appropriate to community needs.

**Authorizing Legislation**

These programs are authorized under section 301 (a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and section 311 (b) and (c) of the Public Health Service Act (42 U.S.C. 243 (b)), as amended. The Catalog of Federal Domestic Assistance Number is *13.118.*

**Program Background and Objectives**

As of 3/2/87, approximately 32,000 cases of AIDS, as defined by the CDC surveillance case definition, had been reported. Although the vast majority of AIDS cases and documented infections have occurred among homosexual and bisexual men and intravenous drug abusers, infection with the AIDS virus is also spreading among heterosexuals (from infected men to women or from infected women to men) and perinatally (from infected mothers to newborn infants).

An estimated 1–1.5 million Americans already are infected and cases resulting from heterosexual transmission of the virus are expected to increase. By the end of 1991, the cumulative total of AIDS cases in the United States is estimated to reach 270,000 with over 179,000 deaths due to AIDS. Because infected persons are capable of spreading the virus to others for years before experiencing signs or symptoms of disease, the Public Health Service (PHS) has recommended major public health education efforts to inform the public, especially youth, school, and college populations, about AIDS and how to prevent becoming infected with the AIDS virus.

Every school day, more than 47 million students attend 90,000 elementary and secondary schools in 15,500 school districts across the Nation. A significant proportion of these students (and youths who do *not* attend school) may make behavior choices that unknowingly place them at increased risk for contracting and spreading the AIDS virus. These young persons need to be informed about AIDS before making these choices.

The Nation's schools could inform 90–95% of our young people about the increasing number of infected individuals, the fatal nature of the disease, the lack of a preventive vaccine or cure for the disease, and specific means by which individuals can protect themselves now and in the future from becoming infected.

The objective of these cooperative agreements is to help increase the number of schools, colleges and other organizations that serve youth, providing effective education about AIDS that is locally determined, consistent with community values, and appropriate to community needs. Assistance provided by national organizations will provide a wide range of educational options from which local educators and others can choose in determining the most effective and appropriate strategies to teach young people about AIDS.

The effectiveness of AIDS education in schools may be influenced by the extent to which it is integrated within a more comprehensive program of school health education that establishes a foundation for understanding the relationships between personal behaviors and health. For example, education about AIDS may be more effective if students at appropriate ages were knowledgeable about community health, communicable diseases, such as sexually transmitted diseases, and drug abuse; and have opportunities to learn peer resistance skills, communication skills, building self-esteem, etc.

These cooperative agreements thus will stress the importance of providing immediate education about behaviors that increase the risk of AIDS for junior high, high school, and college-age youths, and the importance of providing such education within a more comprehensive program of kindergarten through grade twelve school health education that establishes a foundation for understanding the relationships between personal behaviors and health. Education about AIDS in the early elementary grades principally should be provided to allay excessive fears of young children about the AIDS epidemic and contracting the disease.

*I. National Programs for School Health Education To Prevent the Spread of AIDS*

A. Purpose

The purpose of these programs is to assist national education, health, and social service organizations that serve youth to increase the number of schools and other organizations providing effective AIDS education for youth, school, and college populations in communities throughout the U.S.; and to facilitate collaboration between public and private sector agencies to implement a coordinated national program to help schools nationwide provide effective education about AIDS.

There is a strong need to provide effective education about AIDS for school-age youth. Cooperative agreements with national organizations are intended to utilize and integrate each organization's unique and complementary organizational capabilities and constituencies to help with the implementation and diffusion of such programs.

B. Cooperative Activities

1. *Recipient Activities*–(a) Use organizational capacities and constituencies to help with the implementation and diffusion of effective AIDS education for school or college populations, or for youths who do not attend school; and to promote educational programs that are locally determined, consistent with community values, and appropriate to community needs.

(b) Establish specific, measurable, and realistic program objectives at national, State, and local levels to increase the number of schools, colleges, or other institutions providing effective AIDS education; and develop a plan of operation to meet the objectives.

(c) Develop a plan of operation, including but not limited to: Influencing changes in policies, actions, knowledge/attitudes/ beliefs, skills, or availability/accessibility of resources and services that will help to increase the number of schools, colleges, or institutions providing effective AIDS education.

(d) Develop, diffuse, and disseminate educational strategies, materials, and resources that will help schools, colleges, or other institutions in providing effective AIDS education.

(e) Assess progress in achieving objectives and in carrying out activities.

(f) Involve official education and health agencies and other relevant organizations in the planning, implementation, and evaluation of the program.

(g) Provide copies of AIDS education curricula, program descriptions, progress reports, and educational materials to be included in CDC's Combined Health Information Database, and use the Database to avoid duplication of efforts in developing needed resources.

(h) Participate with CDC and other national organizations in an annual conference and one workshop about AIDS education for youth, school, and college populations.

2. *Centers for Disease Control Activities*—(a) Provide information about AIDS and the prevention of infection with the AIDS virus, guidance on the development or selection of curricula and materials, and other guidance, recommendations, and standards that may be used as a basis for planning, implementing, and

assessing effective AIDS education for youth, school, and college populations.

(b) Identify and develop prototype educational materials and assessment instruments that can be adopted for use by students, parents, and school personnel.

(c) Provide information about resources relevant to AIDS education in schools, including program descriptions, educational materials, policies, and curricula; and assure the availability of such information through CDC's Combined Health Information Database (CHID).

(d) Provide technical assistance related to attainment and assessment of program objectives, development of educational materials and strategies, and dissemination of successful strategies, experiences, and evaluations.

(e) Plan meetings of national, State, and local education agencies to address issues and program activities related to improving AIDS education for youth, school and college populations.

C. Eligible Applicants

Eligible applicants are *national* organizations which may be private, non-profit, health, education, social service, professional, or voluntary organizations with organizational capacities and experience to help schools and other organizations that serve school-age youth to provide effective education about AIDS.

D. Availability of Funds

Approximately $1,400,000 will be available in Fiscal Year 1987 to fund approximately 12 cooperative agreements.

Up to 7 cooperative agreements will be awarded to *national organizations that propose programs to increase the number of schools* (public and private, elementary, middle/junior high, and/or high schools) *and/or agencies serving youths who do not attend school providing effective AIDS education.* Each of these cooperative agreements will receive an average award of approximately $100,000.

One cooperative agreement may be awarded to *a national organization that represents colleges of education* to increase the number of colleges providing preservice and inservice training to help teachers provide effective education about AIDS. This cooperative agreement will be funded at a level of approximately $100,000.

One cooperative agreement may be awarded to *a national organization that represents college and university health services* to increase the number of colleges and universities providing effective AIDS education for college students and personnel. This cooperative agreement will be funded at a level of approximately $100,000.

One cooperative agreement may be awarded to *a national organization that proposes a program intended to increase the availability of AIDS education to Black youths* in schools and/or in organizations that serve the needs of Black youths who do not attend school. This cooperative agreement will be funded at a level of approximately $100,000.

One cooperative agreement may be awarded to *a national organization that proposes a program intended to increase the availability of effective AIDS education to Hispanic youths* in schools and/or in organizations that serve the needs of Hispanic youths who do not attend school. This cooperative agreement will be funded at a level of approximately $100,000.

One cooperative agreement may be awarded to *a national organization that represents State education agencies* to help these agencies increase the number of schools providing effective AIDS education. This cooperative agreement will be funded at a level of approximately $300,000.

It is expected that the initial cooperative agreements will be awarded on or about September 15, 1987, and will be funded for a 12 month budget period with a project period of 1 to 5 years. Funding estimates outlined above may vary and are subject to change.

E. Use of Funds

Funds may be used to support personnel, their training and travel, and to purchase supplies and services directly related to planning, organizing, and conducting the activities described in this announcement.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS education for youth, school, and college populations if approved in accordance with paragraph G. below, entitled *Review of Materials.* Funds from the project may not be spent for research activities, for surveys, or for questionnaires except as may be needed to collect the basic evaluation requirements of this announcement.

Funds shall not be used for purchasing computer equipment, office equipment or furnishings, renting or leasing office space, or to support construction or renovation, unless specifically approved.

F. Reporting Requirements

An annual progress report which includes data and activities related to the achievement of measurable objectives will be required. Annual financial status and performance reports are required 90 days after the end of a budget period.

G. Review of Materials

The applicant must plan to use a panel of education and public health professionals and representatives of target populations (e.g. students, parents, teachers, administrators, etc.) to review the appropriateness of educational materials (written materials, pictorials, audiovisuals, questionnaires, etc.) developed or used in the proposed program. The panel should be guided by the extent to which materials are consistent with scientific and technical information published in various CDC and PHS recommendations and guidelines, and the extent to which the content is appropriate for its intended purpose and target group(s).

Specifically, applicants for cooperative agreements will be required to include in the application the following:

(1) Identification of a panel of no less than five persons including education and public health professionals and representatives of target populations (e.g. students, parents, teachers, administrators, etc.). The identity of proposed members of the panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the panel;

(2) A letter or memorandum from the proposed project director, countersigned by the business office, which includes concurrence with this guidance and assurance that its provisions will be observed.

(3) When a cooperative agreement is awarded, the recipient will:

(a) Convene the panel and present for its assessment actual copies of written materials, pictorials, and audiovisuals proposed to be used;

(b) Provide for assessment by the panel, draft text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals proposed to be used;

(c) Prior to expenditure of funds for use of these materials, assure that project files are documented with a statement of approval signed by the panel.

(d) Provide to CDC the approval statements of the panel for all proposed written materials, audiovisual materials, and pictorials approved during the quarter.

This page should be no longer than one typed, single-spaced page.

H. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

a. The magnitude of, and likelihood of the applicant achieving, during this budget period: (1) Proposed increases in the number of schools, colleges, and universities, and other agencies that serve school-age youth who do *not* attend school, providing effective AIDS education as a result of the applicant's proposed activities; (2) and/or estimated increases, in the numbers of youths, school, or college populations receiving effective AIDS education as a result of the applicant's proposed activities;

b. The applicant's demonstrated ability to help schools, colleges, or agencies that serve school-age youth who do not attend school in communities across the Nation provide effective education about health; the scope and efficiency of its national network and constituencies for rapidly disseminating information and activities; current and previous activities (if any) that have successfully contributed to the implementation and diffusion of effective health education in schools, colleges, or agencies that serve the needs of youths who do not attend school; and its unique sensitivity, experience, awareness, or skills that will help the applicant to achieve proposed program objectives;

c. The applicant's demonstrated ability to coordinate efforts with other national organizations; and to plan and carry out complementary, collaborative, and organized national education efforts;

d. The quality of proposed objectives for this budget period in terms of importance, specificity, measurability, and feasibility; and the specificity and feasibility of the applicants timetable for implementation of program activities.

e. The extent to which the applicant's activities reflect: (1) The immediate and urgent need for educating youths of junior high school-age and above, and/or youths who do *not* attend school, about how to protect themselves from infection with the AIDS virus; and (2) the need for integrating education about AIDS into a more comprehensive program of school health education that establishes a foundation for understanding the relationships between personal behaviors and health;

f. The usefulness of assessment data that will be obtained to measure program objectives and monitor program activities during the first program year, and the feasibility of obtaining and using that data to improve programs;

g. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds; and

h. The number and qualifications of proposed staff, and time allotted for them to accomplish program activities.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives and carrying out activities as planned, including incorporating effective AIDS education within comprehensive school health education programs;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds; and

d. Program activities are modified to resolve problems and improve effectiveness and efficiency.

I. Special Guidelines for Application Preparation

A one and one-half day preapplication meeting will be held in the Washington, D.C. area in the latter part of May.

The purpose of this meeting is to help potential applicants to:

1. Understand the scope and intents of the National Programs for School Health Education to Prevent AIDS;

2. Understand the scope and intents of the State and Local Programs for School Health Education to Prevent AIDS;

3. Plan coordinated, complementary approaches to increasing the number of schools, colleges, organizations providing effective AIDS education for school-age youth; and

4. Become familiar with the Public Health Service grants policies, and application and review procedures.

Each potential applicant may send not more than 2 representatives to this meeting.

*Please provide to the Grants Management Officer by May 1, 1987 the full names, titles, agency, street address, city, state, zip code, and telephone numbers of the persons that are planning to attend this meeting.* Attendees will be notified of the specific dates and times of the meeting as soon as possible.

While the information is intended to assist all potential applicants in preparing their applications, attendance at this meeting is not mandatory for the submission of an application, nor will such attendance or non-attendance be used in any way in the evaluation of applications and in the selection of potential awardees.

*Applications*

A. Application Content

(1) The initial application for a new project period must include a narrative for the part of this announcement under which funds are requested that describes the following:

(a) *Need.* The applicant should briefly describe the need to increase the number of schools, colleges, and other agencies providing effective AIDS education for school-age populations.

The applicant also should identify specific modifiable barriers that its organization can resolve to help with the implementation and diffusion of AIDS education programs for youth, school, and college populations.

This section should be no longer than three typed, single-spaced pages.

(b) *Capacities.* The applicant should describe its organization's capacity to achieve the proposed increase in the number of schools, colleges, or other organizations providing effective AIDS education.

The description should address the organization's structure, the interests and constituencies it represents (e.g., parents, students, teachers, health organizations, religious organizations, etc.), its demonstrated ability to help schools, colleges, or other organizations provide education about health for school-age populations; the scope and efficiency of its national network for rapidly disseminating information and other communications; and current and previous activities (if any) that have successfully reduced barriers that hinder the provision of effective AIDS education in schools, colleges, or organizations that serve the needs of youths who do not attend school.

This section should be no longer than three typed, single-spaced pages.

(c) *Coordination.* The applicant should describe its organization's demonstrated ability to coordinate efforts with other national organizations; and its capacity to plan and carry out collaborative, complementary, and organized national efforts for effective AIDS education. The applicant's description should demonstrate a recognition of relevant activities (current or planned) of local and State education agencies and/or of other national organizations.

This section should be no longer than two typed, single-spaced pages.

(d) *Objectives.* The applicant should identify objectives that are specific, measurable, and feasible to be accomplished during the first program

year. The objectives should clearly identify outcomes intended (e.g. increases in the number of schools, colleges, or other organizations providing effective AIDS education; specific changes in policy, actions, knowledge/ attitudes/beliefs, skills, and availability of resources or services; increases in the number of youths, school, or college populations receiving effective AIDS education as a result of the applicants proposed activities; etc.).

This section should be no longer than two typed, single-spaced pages.

(e) *Activities.* The applicant should identify the specific activities that will be undertaken to achieve each of the program's objectives during the first program year. The applicant's workplan should describe who will do what, when, and where to implement the activities.

Activities related to helping schools should clearly reflect: (1) The immediate and urgent need for educating junior high and high school students about how to protect themselves from infection with the AIDS virus; and (2) the need for integrating education about AIDS into a more comprehensive program of school health education that establishes a foundation for understanding the relationships between personal behaviors and health.

This section should be no longer than ten typed, single-spaced pages.

(f) *Assessment.* The applicant should identify the specific data that it will obtain to assess progress in meeting its objectives and conducting its activities during the first program year. The applicant also should describe how that information will be obtained, and how it will be used to improve the program.

This section should be no longer than five typed, single-spaced pages.

(g) *Evidence of Support.* The applicant should identify the extent to which relevant organizations (e.g., education and health agencies) support the proposal. If the program requires the participation or collaboration of other education or health organizations, evidence of support and agreement to participate must be provided by appropriate officials of those organizations.

This section should be no longer than one typed, single-spaced page with copies of letters of support attached.

(h) *Transfer of Technology.* The applicant should plan to share a description of the program and evidence of effectiveness with other agencies interested in AIDS education for youth, school, or college populations. The applicant should submit a description of the program and all educational materials developed by the program to be included in CDC's Combined Health Information Database.

The applicant should include plans to utilize the database in avoiding duplication of efforts and incorporating available programs/materials as the database grows.

This section should be no longer than one typed, single-spaced page.

(2) *Continued Funding.* An application for continuing funding of these activities within an approved project period should contain the following information:

a. Description of activities performed and results achieved during the prior budget period;

b. Short-term objectives for the new budget period;

c. A description of the method of operation that will be used to accomplish any new objectives;

d. An evaluation plan which will help determine if the methods are effective and the objectives are being achieved; and

e. A budget and accompanying justification consistent with the purpose and objectives of the project.

(3) *Index.* Each application must contain an index specifically directing the reviewers to each section of the application that corresponds with Recipient Activities.

B. Application Submission and Deadline Date

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before *July 15, 1987.*

(1) *Deadline.* Applications shall be considered as meeting the deadline if they are either.

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

(2) *Late Applications.* Applications which do not meet the criteria in 1.a or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. Other Submission and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

**Where to Obtain Additional Information**

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Jack Jones, Public Health Advisor, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control. Atlanta, Georgia 30333, Telephone (404) 329–3824 or FTS 236–3824.

Dated: April 15, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87–8851 Filed 4–20–87; 8:45 am]

BILLING CODE 4160–18–M

---

## Cooperative Agreements To Support School Health Education To Prevent the Spread of Acquired Immunodeficiency Syndrome; State and Local Programs and Demonstration/Training Programs for School Health Education To Prevent the Spread of AIDS; Availability of Funds for Fiscal Year 1987

**Introduction**

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for cooperative agreements to support the development and implementation of effective health education about AIDS for school populations (elementary through high school-age youth, parents, and relevant school, health, and education personnel). Funds will be available to assist State and local education agencies (SEAs and LEAs) in areas with a cumulative total of 200 and 150 or more AIDS cases respectively. These agencies must be able to carry out and promote appropriate actions to help increase the number of schools, and agencies that serve school-age youth who do *not* attend school, providing effective education about AIDS that is locally determined, consistent with community values, and appropriate to community needs.

**Authorizing Legislation**

These programs are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and section 311(b)(c) of the Public Health Service Act (42 U.S.C. 243 (b)), as amended. The Catalog of Federal Domestic Assistance Number is *13.118.*

**Program Background and Objectives**

AIDS constitutes a significant and growing threat to the health of all people in the United States. Although the vast majority of AIDS cases and documented infections have occurred among homosexual and bisexual men and intravenous drug abusers, infection with the AIDS virus also is spreading among heterosexuals (from infected men to women or from infected women to men) and perinatally (from infected mothers to newborn infants).

An estimated 1–1.5 million Americans already are infected and cases resulting from heterosexual transmission of the virus are expected to increase. Because infected persons are capable of spreading the virus to others for years before experiencing signs or symptoms of disease, the Public Health Service (PHS) has recommended the initiation of major public education efforts to inform the public, especially youth, school, and college populations, about AIDS- and how to prevent becoming infected with the AIDS virus.

The objective of these cooperative agreements is to help increase the number of schools, and other agencies that serve school-age youth who do not attend school, that provide effective AIDS education that is locally determined, consistent with community values, and appropriate to community needs.

These cooperative agreements will stress both the importance of providing immediate education for junior high, high school, and college-age youths about behaviors that increase the risk of AIDS, and the importance of providing such education within a more comprehensive program of kindergarten through grade twelve school health education that establishes a foundation for understanding the relationships between personal behaviors and health. Education about AIDS in the early elementary grades principally should be provided to allay excessive fears of young children about the AIDS epidemic and contracting the disease.

*A. Eligible Applicants*

Eligible applicants are the official State education agency (SEA) in states from which a cumulative total of 200 or more AIDS cases, as defined by the CDC case definition, were reported to CDC as of 12/29/86; and local education agencies (LEAs) of cities from which a cumulative total of 150 or more AIDS cases, as defined by the CDC case definition, were reported to CDC as of 12/29/86. For the purpose of this agreement, the term "state" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa.

SEA proposals must give priority to assisting local education agencies in cities with a high reported incidence of AIDS *that do not receive funding directly from CDC for purposes described in this cooperative agreement.*

LEAs that receive funding directly from CDC for purposes described in the announcement will not be eligible for fiscal support that may be provided directly from CDC to their SEA unless specifically requested and approved.

*Applications submitted by the SEA and LEAs from the same state must be coordinated to assure that unnecessary duplication of activities (e.g., data collection, teacher training, materials development) does not occur. No more than one LEA application will be funded in each city.* In a city served by more than one LEA, the LEAs are encouraged to collaborate in proposing coordinated, complementary activities; to submit one application with one LEA identified as the coordinating agency and recipient of the award; and to submit a discrete and individually justified budget, narrative, and workplan for each LEA collaborating in the proposal.

*B. Availability of Funds*

A total of approximately $5,100,000 will be available in Fiscal Year 1987 to fund approximately 10 cooperative agreements with SEAs and 12 cooperative agreements with LEAs, as follows:

1. Approximately $4,100,000 will be available to fund approximately 10 cooperative agreements with SEAs and 12 cooperative agreements with LEAs *to increase the number of schools, and number of agencies that serve school-age youths who do not attend school, that provide effective AIDS education.*

Priority funding will be given to approved applications from SEAs and LEAs in states and cities from which a cumulative total of over 1500 AIDS cases, as defined by the CDC case definition, were reported to CDC as of 12/29/86. New York, California, Florida, Texas, New Jersey, New York City (NY), San Francisco (CA), and Los Angeles (CA) are eligible areas for priority funding. Awards to these States and cities may be approximately $300,000.

The second funding priority will be given to approved applications from SEAs in States from which a cumulative total of 200 or more AIDS cases, as defined by the CDC case definition, were reported to CDC as of 12/29/86; and from LEAs in cities from which a cumulative total of 150 or more AIDS cases, as defined by the CDC case definition were reported to CDC as of 12/29/86. Illinois, Pennsylvania, Georgia, Massachusetts, District of Columbia, Maryland, Washington, Louisiana, Virginia, Connecticut, Puerto Rico, Colorado, Ohio, Michigan, Houston (TX), Miami (FL), Dallas (TX), Newark (NJ), Chicago (IL), Philadelphia (PA), Atlanta (GA), Boston (MA), Ft. Lauderdale (FL), Seattle (WA), San Diego (CA), New Orleans (LA), Denver (CO), Baltimore (MD), and Jersey City (NJ) are areas eligible for second funding priority. Awards to these States and cities may be approximately $125,000.

2. In addition, approximately $1,000,000 will be available to fund an optional Training/Demonstration activity in 2–3 LEAs and one SEA applying for the cooperative agreements described above.

It is expected that the initial cooperative agreements will be awarded on or about September 15, 1987, and will be funded for a 12 month budget period with a project period of 1 to 5 years. Funding estimates outlined above may vary and are subject to change.

*C. Application Submission and Deadline Date*

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before *July 15, 1987.*

(1) *Deadline.* Applications shall be considered as meeting the deadline if they are either.

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

(2) *Late Applications.* Applications which do not meet the criteria in 1.a or

b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

*D. Other Submission and Review Requirements*

1. All applications will be subjected to an objective review by an ad hoc review committee.

2. Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where to Obtain Additional Information**

Information on application procedures, copies of application forms, Program Announcement, and other material may be obtained from Marsha Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Jack Jones, Public Health Advisor, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 329–3824 or FTS 236–3824.

Dated: April 15, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87–8852 Filed 4–20–87; 8:45 am]

BILLING CODE 4160–18–M

---

## Project Grants for Sexually Transmitted Diseases Research, Demonstrations, and Public and Professional Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1987; Correction

A notice announcing the availability of funds for Fiscal Year 1987 for project grants for Sexually Transmitted Diseases (STD) Research, Demonstrations, and Public Information and Education, and Professional Education, Training, and Clinical Skills Improvement Activities was published in the **Federal Register** on Friday, March 27, 1987 (52 FR 9944). The notice is corrected as follows:

1. On page 9944, third column, "AVAILABILITY OF FUNDS, A *New Applications*," line five, change "aware" to "award."

2. On page 9946, second column, "OTHER SUBMISSION AND REVIEW REQUIREMENTS," is corrected to read: "Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Program."

All other information and requirements in the notice remain the same.

Dated: April 15, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87–8853 Filed 4–20–87; 8:45 am]

BILLING CODE 4160–18–M

---

## Food and Drug Administration

**[Docket No. 86D–0335]**

## Oral Contraceptive Drug Product Labeling

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is revising the guideline texts of professional and patient labeling for estrogen-progestogen combination oral contraceptive drug products. This revision is being made to incorporate important new information about the benefits and risks of oral contraceptive drug product use.

**EFFECTIVE DATES:** *Professional labeling*: Effective April 21, 1987, a person may adopt the revised labeling guideline for estrogen-progestogen combination oral contraceptive drug products and rely on it to meet FDA's professional labeling requirements for prescription drugs. *Patient package insert*: Effective April 21, 1987, a person may rely on the revised guideline to meet the patient package insert requirement set forth in 21 CFR 310.501 for estrogen-progestogen combination oral contraceptive drug products.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for a copy of either guideline to the Legislative, Consumer, and Professional Relations Branch (HFN–365), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8012.

**FOR FURTHER INFORMATION CONTACT:** Philip Corfman, Center for Drugs and Biologics (HFN–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

**SUPPLEMENTARY INFORMATION:** Guidelines texts for professional and patient labeling for oral contraceptive drug products were previously made available through a notice published in the **Federal Register** of December 7, 1976 (41 FR 53633), and amended in the **Federal Register** of May 27, 1977 (42 FR 27303) and in the **Federal Register** of January 31, 1978 (43 FR 4223).

FDA is charged with assuring that drugs are safe and effective for their intended uses and that their labeling provides adequate information for such uses and is not false or misleading. The full disclosure of information to health professionals and, where appropriate, to patients concerning warnings and contraindications is an important element in the discharge of that responsibility. The statutory scheme anticipates that new information concerning the safety and effectiveness of marketed drugs may require that FDA prescribe changes in their labeling to reveal limitations on use or to warn of previoulsy unanticipated hazards.

FDA has revised the professional and patient labeling of estrogen-progestogen orgal contraceptive products to incorporate important new information about oral contraceptives. This information includes evidence of a deceased incidence of benign breast disorders, functional ovarian cysts and pelvic inflammatory disease, as well as some evidence of protection against the development of ovarian and endometrial cancer. Additionally, oral contraceptive use has been reported to decrease the incidence of iron deficiency anemia and to decrease the incidence of dysmenorrhea.

The revisions are the result of the combined efforts of FDA scientists in the Center for Drugs and Biologics as well as members of FDA's Advisory Committee on Fertility and Maternal Health Drugs. FDA also considered the oral and written comments submitted by interested members of the public, including representatives of health professions, consumer organizations, and the pharmaceutical industry.

This notice, announcing the availability of revised guidelines, is issued under 21 CFR 10.90(b) of FDA's regulations which provides for the use of guidelines to establish procedures of general applicability that are not legal requirements, but are acceptable to the agency. A person who follows a guideline can be assured that his or her conduct is acceptable to the agency. FDA advises that the professional labeling guideline for estrogen-progestogen oral contraceptive drug products complies with the prescription drug labeling regulations in 21 CFR 201.56, 201.57, and 201.100, and that the patient package insert guideline for such

products complies with the requirements of 21 CFR 301.501. Under the provisions of 21 CFR 314.70(c), manufacturers are required to submit supplemental new drug applications advising the agency that the professional labeling or pateient package inserts are being revised. However, under § 314.70(c)(2) the guideline labeling texts may be used before approval of a supplement covering adoption of the new labeling. A person may choose to use alternative labeling statements that are different from the guideline. If a person chooses to depart from the guideline, he or she may discuss the matter further with the agency to prevent an expenditure of money and effort for labeling that the agency may later determine to be unacceptable.

Effective April 21, 1987, a person may adopt the professional labeling guideline or patient package insert guideline for estrogen-progestational oral contraceptive drug products. Comments will be considered in determining whether future changes to the guidelines are necessary.

Interested persons may submit written comments on these guidelines to the Dockets Management Branch (address above). Two copies should be submitted except that individuals may submit single copies. Comments should be identified with the docket number found in brackets in the the heading of this document. The guidelines and comments reveived may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 30, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87–8849 Filed 4–20–87; 8:45 am]

BILLING CODE 4160–01–M

---

## Health Care Financing Administration

### Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of a Washington State Plan Admendment

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing on June 3, 1987 in Seattle, Washington to reconsider our decision to disapprove Washington State Plan Amendment 86–8.

Closing Date: Request to participate in the hearing as a party must be received by the Docket Clerk by May 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider our decision to disapprove a Washington State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues thast will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Washington SPA 86–8 violates section 1902(a)(10)(C)(i)(III) of the Social Security Act.

Under SPA 86–8, Washington proposes to disregard the costs of health insurance premiums in determining an individual's countable income when determining Medicaid eligibility.

Under section 1902(a)(10)(C)(i)(III) of the Act, in determining eligibility under the Medicaid program, States must apply the same income and resource methodologies, including income and resource disregards, as are used in the related cash assistance programs (e.g., Aid to Families with Dependent Children (AFDC), and the Supplemental Security Income (SSI) programs). The cash assistance programs do not contain any income disregards for the costs of health insurance premiums. Therefore, HCFA has determined SPA 86–8 violates section 1902(a)(10)(C)(i)(III) of the Act.

Section 2373(c) of DEFRA permits States in certain circumstances to apply in their Medicaid programs less restrictive income and resource methodologies than are applied in the cash assistance programs. However, under HCFA's implementation of section 2373(c) only those less restrictive provisions which are already in a State's approved State plan may continue to be applied. The provisions of SPA 86–8 are not in Washington's currently approved State plan and are thus not permitted under section 2373(c) of DEFRA.

We would like to note that Washington has referred to the decision of the Ninth Circuit court of Appeals in *Cubanski* v. *Heckler* with respect to the State of California in support of Washington SPA 86–8. The mandate of the *Cubanski* decision only governs California amendment no. 83–14. We believe the Court of Appeals decision to be wrong and on February 23, 1987 the United States Supreme Court granted our petition for *certiorari* to review that decision. Thus, unless the Supreme court affirms the *Cubanski* holding, we will not apply the Court of Appeal's interpretation of section 1903(f) or the Deficit Reduction Act moratorium to any situation not covered by the mandate in the *Cubanski* case.

The notice to Washington announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Ronald W. Kero,
Acting Director, Division of Medical Assistance Department of Social and Health Services MS HB–41 Olympia, Washington 98504.

Dear Mr. Kero: This is to advise you that your request for reconsideration of the decision to disapprove Washington State Plan Amendment No. 86–8 was received on March 17, 1987.

Washington SPA 86–8 proposes to disregard the costs of health insurance premiums in determining an individual's countable income when determining eligibility. You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent regulations. The issues to be considered at the hearing are: (1) Whether the plan amendment violates section 1902(a)(10)(C)(i)(III) of the Social Security Act which requires States in determining eligibility under the Medicaid program to apply the same income and disregards as are used in the related cash assistance programs, and (2) whether the disapproval of the amendment is precluded by the moratorium established by section 2373(c) of the Deficit Reduction Act of 1984.

I am scheduling a hearing on your request to be held on June 3, 1987 at 10:00 a.m. in Room 470–472, 2901 Third Avenue, Seattle, Washington. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary

between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L. Roper, M.D.,

*Administrator.*

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: April 13, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 87–8931 Filed 4–20–87; 8:45 am]

BILLING CODE 4120-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY–920–07–4111–15; W–80191]

### Proposed Reinstatement of Terminated Oil and Gas Lease; Natrona County, WY

April 13, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–80191 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–80191 effective July 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarabis,**

*Chief, Leasing Section.*

[FR Doc. 87–8842 Filed 4–20–87; 8:45 am]

BILLING CODE 4310-03-M

[UT–942–07–4220–10; U–54908]

### Utah; Proposed Withdrawal of Public Land; Opportunity for Public Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 344,641.44 acres of public land for the protection of three sites currently being considered by the State of Utah for the Department of Energy's Superconducting Supercollider project, near Salt Lake City, Utah. This notice closes the land for up to 2 years from mining location. The land will remain open to surface entry and mineral leasing.

**DATE:** Comments and request for a public meeting should be received by July 20, 1987.

**ADDRESS:** Comments and meeting requests should be sent to: Utah State Director, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, Utah 84111–2303.

**FOR FURTHER INFORMATION CONTACT:** Lillie Hikida, BLM, Utah State Office, 801 524–3074.

On April 15, 1987, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from location under the mining laws, subject to valid existing rights:

**Salt Lake Meridian, Utah**

T. 1 N., R. 9 W.,
Sec. 1, Lots 1, 2, SW¼NE¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 3–15, 17, All;
Sec. 18, Lots 1–4, NE¼, E½W½, NE¼SE¼, S½SE¼;
Sec. 19–31, 33–35, All.
T. 1 S., R. 9 W.,
Sec. 1, 3–15, 17–31, 33–35, All.
T. 2 S., R. 9 W.,
Sec. 1, 3–6, All;
Sec. 7, Lots 1, 2, 4, E½, E½NW¼, NE¼SW¼;
Sec. 8–15, 17–31, 33–35, All.
T. 3 S., R. 9 W.,
Sec. 1, 3–7, All;
Sec. 8, N½, N½SW¼, SE¼;
Sec. 9–15, All;
Sec. 17, E½, S½NW¼, SE¼;
Sec. 18, All.
T. 1 N., R. 10 W.,
Sec. 1, 3–15, 17–22, All;
Sec. 23, N½, N½SW¼, SW¼SW¼, SE¼;
Sec. 24–31, All;
Sec. 33, N½;
Sec. 34, 35, All.
T. 1 S., R. 10 W.,
Sec. 1, 3, All;
Sec. 4, S½NE¼, S½;
Sec. 5, Lots 3, 4, S½NW¼, S½;
Sec. 6–13, All;
Sec. 14, All, except for patented portion;
Sec. 15, 17–22, All;
Sec. 23, All, except for patented portion;
Sec. 24–31, 33–35, All.
T. 2 S., R. 10 W.,
Sec. 1, 3–15, 17–31, 33–35, All.
T. 3 S., R. 10 W.,
Sec. 1, 3–7, All;
Sec. 8 N½, SW¼, NE¼SE¼, S½SE¼;
Sec. 9–15, 17, 18, All.
T. 1 N., R. 11 W.,
Sec. 1, 3–15, 17–31, 33–35, All.
T. 2 S., R. 11 W.,
Sec. 1, 3–15, 17–31, 33–35, All.
T. 1 S., R. 11 W.,
Sec. 1, 3–15, 17–31, 33–35, All.
T. 3 S., R. 11 W.,
Sec. 1, 3–15, 17, 18, All.
T. 1 N., R. 12 W.,
Sec. 1, 3–15, 17–21, All.
Sec. 22, All except patented por.;
Sec. 23–26, All;
Sec. 27, All except patented por.;
Sec. 28–31, All;
Sec. 33–34, All except patented por.'
Sec. 35, All.
T. 1 S., R. 12 W.,
Sec. 1, 3–15, 17–31, 33–35, All.
T. 2 S., R. 12 W.,
Sec. 1, 3–15, 17, 18, All.
T. 1 N., R. 13 W.,
Sec. 1, 3–15, 17–31, 33–35, All.
T. 1 S., R. 13 W.,
Sec. 1, 3–15, 17–31, 33–35, All.
T. 2 S., R. 13 W.,
Sec. 1, 3–15, 17, 18, All.
T. 1 N., R. 14 W.,
Sec. 1, 3, 10–15, 22–27, 34, 35, All.
T. 1 S., R. 14 W.,
Sec. 1, 3, 10–15, 22–27, 34, 35, All.
T. 2 S., R. 14 W., SLM, UT
Sec. 1, 3, 10–15, All.

The area described contains 344,641.44 acres in Tooele County, Utah. There are no lands to be excepted from those described above, except as noted above.

The purpose of the proposed withdrawal is protection of three sites currently being considered by the State of Utah for the Department of Energy's Superconducting Supercollider Project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Utah State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request of the Utah State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be

published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the land by the Bureau of Land Management.

Dated: April 15, 1987.

**Orval L. Hadley,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-8887 Filed 4-20-87; 8:45 am]

BILLING CODE 4310-DQ-M

---

**[WY-930-07-5410-10 ZKKH; W-101124]**

## Conveyance of Federally-owned Mineral Interests Application; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of receipt of conveyance of Federally-owned mineral interests application.

**SUMMARY:** Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Leland Forrest Asa has applied to purchase the mineral interests in the following described land:

Sixth Principal Meridian, Nebraska

T. 23 N., R. 58 W.,
Sec. 1, lots 1 and 2.

The area described contains 80.20 acres.

Additional information concerning this application may be obtained from the Branch of Land Resources, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

Upon publication of this notice in the **Federal Register**, the mineral interests in the land described above will be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or 2 years from the date of filing of the application, June 2, 1986, whichever occurs first.

**Melvin Schlagel,**

*Acting Deputy State Director, Lands and Renewable Resources.*

[FR Doc. 87-8841 Filed 4-20-87; 8:45 am]

BILLING CODE 4310-22-M

---

## Minerals Management Service

## Outer Continental Shelf; Development Operations Coordination Document; Chevron U.S.A. Inc.

**AGENCY:** Mineral Management Service Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 299 Federal Unit agreement No. 14-08-0001-8850, has submitted a DOCD describing the activities it proposes to conduct on the Main Pass Block 299 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 9, 1987.

**ADDRESS:** a copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9: a.m. to 3:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Dessauer: Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2860

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 14, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-8843 Filed 4-20-87; 8:45 am]

BILLING CODE 4310-MR-M

---

## Outer Continental Shelf; Development Operations Coordination Document; Union Texas Petroleum

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Union Texas Petroleum has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 3159 and 2329, Blocks 384 and 385, respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 13, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice if to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, exclutives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 14, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-8844 Filed 4-20-87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

**[Notice No. 40129]**

### The Atchison, Topeka & Santa Fe Railway Co. and Ulysses Irrigation Pipe Co.; Exemption To Waive Demurrage Charges

**AGENCY:** The Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission grants The Atchison, Topeka and Santa Fe Railway Company an exemption under 49 U.S.C. 10505 from the civil and criminal forfeiture penalties of 49 U.S.C. 10741, 10761, 11902, 11903, and 11904 in order to waive collection of demurrage charges assessed against certain shipments received by Ulysses Irrigation Pipe Company at Ulysses, KS.

**DATE:** This decision will be effective on May 21, 1987.

**ADDRESSES:** Send pleadings referring to No. 40129 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Michael W. Blaszak, 80 East Jackson Blvd., Chicago, IL 60604.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan Area).

Decided: April 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-8922 Filed 4-20-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Registration; Hoffmann La Roche, Inc.

By Notice dated January 20, 1987, and published in the **Federal Register** on February 3, 1987; (52 FR 3357), Hoffmann La Roche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I. |
| Alphacetylmethadol (9010) | II. |
| Levorphanol (9220) | II. |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 14, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-8889 Filed 4-20-87; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration; Norac Co., Inc.

By Notice dated January 28, 1987, and published in the **Federal Register** on February 5, 1987; (52 FR 3719), Norac Company, Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Ibogaine (7260) | I. |
| Tetrahydrocannabinols (7370) | I. |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basis classes of controlled substances listed above is granted.

Dated: April 14, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-8888 Filed 4-20-87; 8:45 am]

BILLING CODE 4410-09-M

**[Docket No. 86-6]**

### Revocation of Registration; Park and King Pharmacy

On December 11, 1985, the Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration (DEA), issued an Order to Show Cause to Leon Earl Waters, Jr., trading as Park and King Pharmacy, of 2665 King Street, Jacksonville, Florida 32204, proposing to revoke DEA Certificate of Registration AP 1160453, and deny any pending applications for renewal of the registration as a retail pharmacy, under 21 U.S.C. 823(f). The statutory predicate for the proposed revocation was that Leon Earl Waters, Jr., president and registered pharmacist of Park and King Pharmacy, unlawfully dispensed controlled substances other than pursuant to the lawful order of a practitioner, and for further reason that on May 10, 1985, in the Circuit Court for Duval County, Florida, Mr. Waters entered a plea of nolo contendere to the felony offense of possession of a controlled substance with intent to deliver or sell. The withholding of adjudication on these charges constitutes a final judgment of the trial court, subject to review, and is a conviction within the meaning and intent of 21 U.S.C. 824(a)(2). See *United States v. Hartsfield*, 387 F. Supp. 16 (U.S.D.C., M.D. Florida 1975); *United States v. Cook*, 10 M.J. 138 (U.S. Ct. Mil. App. 1981); *Matter of Stephen Granet Rosen*, D.D.S., DEA Docket No. 84-44, 50 FR 46844 (1985).

On January 10, 1986, Mr. Waters, proceeding through counsel, requested a hearing on the issues raised by the Order to Show Cause. The Matter was placed on the docket of Administrative Law Judge Francis L. Young and was subsequently heard in Jacksonville, Florida on April 17, 1986. On July 15, 1986, the Administrative Law Judge issued his Opinion and Recommended Ruling, Findings of Fact, Conclusion of Law and Decision. On August 15, 1986, the Administrative Law Judge transmitted the record to the

Administrator. On September 24, 1986, Judge Young requested that the Administrator return the record when counsel for both sides made known a desire that the record be supplemented by additional material. The Administrator complied with the request and, on November 14, 1986, the Administrative Law Judge issued his revised Opinion and Recommended Decision. Judge Young again transmitted the record to the Administrator on December 24, 1986. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Leon Earl Waters, Jr. is a licensed pharmacist in Florida and president and registered pharmacist of Park and King Pharmacy. In January 1985, the criminal activities of Leon Earl Waters came to the attention of the Jacksonville, Florida Sheriff's Office when the Vice Squad received information from a confidential source that a named individual was receiving considerable amounts of controlled substances from Park and King Pharmacy without a valid prescription. In the course of their investigation of Park and King Pharmacy, investigators obtained a computer printout of prescriptions dispensed to the said individual. The printout revealed that on 41 occasions in 1984, the woman had received 50 Tylenol #3 tablets, a Schedule III narcotic controlled substance. Although these prescriptions were listed as having been issued by a physician, the physician named had not seen the woman since 1982, nor had he written or called in any prescriptions for her in 1984. As the individual subsequently admitted, the 2050 Tylenol #3 tablets had been delivered to her by Leon Earl Waters without the authorization of a physician. The woman had been receiving controlled substances illegally from Mr. Waters since 1980, even after she was hospitalized for drug dependency, a fact known to Mr. Waters.

When the investigators confronted Mr. Waters with the evidence, he admitted that he knew the individual and that she was taking too many drugs but insisted that the physician had been calling in the refills. He then contacted the individual for the purpose of arranging a meeting at the pharmacy where they could "get their stories straight." The individual agreed to cooperate with the investigators and went to the pharmacy wearing a concealed recording device. During the course of their conversation, Mr. Waters counselled the individual to tell the authorities that she'd called the doctor's office and asked them to call in the prescriptions to Park and King Pharmacy. He hypothesized that the doctor's office would deny having been called or having authorized the refills, thus making it their word against that of the doctor's office. Mr. Waters admonished the individual to stick to her story because he could get into a great deal of trouble and could lose his pharmacy.

The Administrative Law Judge concluded that there was a lawful basis for revocation of the subject registration and for the denial of any pending applications for its renewal. Judge Young also concluded that there was no basis for a lesser action and recommended that the Administrator revoke the registration and deny any pending applications for its renewal. After the Administrative Law Judge certified and transmitted the record, including his original Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision dated July 15, 1986, to the Administrator, counsel for both sides requested the opportunity to supplement the record with additional material. At Judge Young's request, the Administrator returned the record to him.

On October 7, 1986, in a joint post-hearing filing, it was stipulated that: (1) On June 1, 1986, Leon Earl Waters, Jr. sold and thereby divested himself of all rights, title of interest in King and Park Pharmacy, 2665 King Street, Jacksonville, Florida to a purchaser who was then operating a pharmacy at the same address. Mr. Waters has not been employed by said pharmacy since the sale; and (2) Since the sale of King and Park Pharmacy, Mr. Waters as a licensed pharmacist under the laws of the State of Florida, has been and is currently employed as a pharmacist with another drugstore.

Upon reviewing all of the new evidence, the Administrative Law Judge concluded that the issues under consideration in this matter had become moot and not appropriate for consideration because the registration with which this proceeding is concerned no longer exists. Judge Young based his position on the following facts: (1) The registration which is the subject of this proceeding states on its face that it "expires" on March 31, 1986. The record contains no application for its renewal; (2) Mr. Waters sold the pharmacy for which he held the subject registration and is presently employed in a pharmacy owned by somebody else. Therefore, Judge Young contends Mr. Waters has discontinued the pharmacy operation for which he held the subject registration; and (3) 21 CFR 1301.62 provides that: "the registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business of professional practices."

In a memorandum dated October 17, 1986, counsel for DEA made several points in support of the revocation of Mr. Waters' registration: (1) If the registrant was a medical practitioner, there is no question but that the DEA would not permit him to surrender his registration or withdraw his application for registration during the 23rd hour of a proceeding to revoke the registration or deny the application; (2) The registrant's ability to direct the destiny of his registration or application terminated once the agency had issued an Order to Show Cause, seeking to revoke the registration or deny the application; (3) If a registrant or applicant were permitted to withdraw at any time, he could put the agency to the expense of a hearing, with a commitment of public resources which is not insubstantial, and then at the last minute duck the issue by mailing in his registration or, in the case of a pharmacy, by selling out. If this were to occur, the person could then avoid any or all of the collateral sanctions which accompany the revocation of a registration. He could reopen at a later time or in a different location, submitting a new application for registration and truthfully answering on such application that he had never had a registration revoked or denied. This would diminish the chances that the application would be noticed for further administrative proceedings; and (4) If there were no final order following the last minute withdrawal of a Respondent, another full hearing on the new application might be required. Such a measure would prevent the administrative processes of DEA from operating effectively.

After considering the Administrative Law Judge's revised opinion, together with the post-hearing papers filed by the parties, the Administrator concludes that this matter is not moot. The practice of the Drug Enforcement Administration, as well as its predecessor agency, since the implementation of the Controlled Substance Act has been to maintain registrations on a day-to-day basis pending resolution of administrative proceedings seeking to revoke such registrations. The Respondent in this matter possessed a viable DEA registration when he received the Order

to Show Cause which initiated the proceedings. That registration remained in effect, on a day-to-day basis, following its nominal expiration date on March 31, 1986. The same administrative "hold" that prevented the registration from expiring also prevented the Respondent from renewing the registration. Accordingly, the Administrator concludes that neither the nominal expiration date on the face of the Respondent's registration nor his inability to file a renewal application have any effect upon the matter pending before the Administrator.

The Administrative Law Judge also concluded that the Respondent's DEA registration terminated, pursuant to 21 CFR 1301.62, when Respondent Waters sold his pharmacy to new owners. That a new entity has been registered on the premises formerly occupied by Respondent Waters and his pharmacy is not disputed. The question is whether a registration which is the subject of an ongoing administrative proceeding can be terminated by the unilateral action of the registrant in declaring his decision to discontinue his business or professional practice. As agency counsel pointed out in his memorandum to the Administrative Law Judge, permitting a registrant to terminate his registration unilaterally, during the eleventh hour of a proceeding to revoke that registration, would permit the registrant to avoid any of the collateral effects of revocation and could require the Administration to grant the individual another full evidentiary hearing should he decide to re-establish his business or professional practice and apply for a new registration shortly thereafter. DEA's regulations permit an applicant for registration to modify or withdraw his application at any time prior to the issuance of an Order to Show Cause seeking to deny the application. That regulation, 21 CFR 1301.37(a), effectively precludes an applicant's abrupt and unilateral termination of proceedings by requiring the Administrator's permission for withdrawal of an application at any time after issuance of the Order to Show Cause. The "application," apart from the applicant who filed it, becomes the subject of the proceedings and cannot be withdrawn without the Administrator's permission. Similarly, the Administrator concludes that a "registration," apart from the registrant who possessed it, becomes the subject of a revocation hearing and likewise cannot be withdrawn without the Administrator's prior approval. Accordingly, the registration which was in the possession of Respondent Waters and Park and King Pharmacy remains the subject of these proceedings.

In his first opinion in this matter, the Administrative Law Judge concluded that the registration of Leon Waters and Park and King Pharmacy was inconsistent with the public interest. Mr. Waters dispensed controlled substances, unlawfully, over a period of four years. He gave narcotic drugs to a young woman who he knew had a drug abuse problem and who he knew had been hospitalized for that condition. Judge Young concluded that the record in this matter established Mr. Waters' calculated and continued unwillingness to fulfill the responsibilities of a pharmacist and DEA registrant. Society entrusts professionals, such as pharmacists and physicians, with the responsibility for control over a force which, when properly used, has great benefit for mankind, but when abused is a force for evil and destruction. It follows that society cannot tolerate the presence of individuals within these professions who abdicate their professional responsibility and permit themselves to be a conduit by which controlled substances are diverted from legitimate medical use and become that force for evil and human destruction. The Administrator concludes, as did the Administrative Law Judge, that the registration of Mr. Waters, and Park and King Pharmacy, is inconsistent with the public interest and that such registration must be revoked.

Having considered the record of those proceedings in its entirety, including the initial and revised opinions of the Administrative Law Judge, the Administrator of the Drug Enforcement Administration, pursuant to the authority granted to the Attorney General in 21 U.S.C. 823 and 824 and delegated to the Administrator in 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP1160453, previously issued to Leon Earl Waters, Jr., d.b.a. Park and King Pharmacy, be, and it hereby is, revoked, effective immediately. Any applications for renewal of such registration are hereby denied.

Should another pharmacy desire to seek waiver of the regulatory prohibition of 21 CFR 1316.76(a), so as to permit the supervised employment of Leon Waters as pharmacist, the Administrator will grant such a waiver.

Dated: April 16, 1987.

**John C. Lawn,**

*Administrator.*

[FR Doc. 87-8890 Filed 4-20-87; 8:45 am]

BILLING CODE 4410-09-M

**Warrenville Drug, Co., Inc.; Denial of Application**

On December 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Warrenville Drug, Co., Inc., Aiken Blvd., P.O. Box 155, Warrenville, South Carolina 29851, proposing to deny the application for a DEA Certification of Registration submitted by the pharmacy. The statutory predicate for the Order to Show Cause was that registration of the pharmacy would be inconsistent with the public interest as evidenced by the conviction of Andrew J. Chavous, officer, shareholder and pharmacist at Warrenville Drug Company, in the United States District Court for the District of South Carolina on April 30, 1986, of illegal distribution of controlled substances, a felony relating to controlled substances.

The Order to Show Cause was sent to Warrenville Drug Co., Inc. registered mail, return receipt requested. DEA received the receipt which indicated that the Order to Show Cause was received on January 2, 1987, by Mr. Chavous at the pharmacy. More than thirty days have elapsed since the Order to Show Cause was received, and the Drug Enforcement Administration has received no response. Pursuant to 21 CFR 1301.54(a) and (d), Warrenville Drug Co., Inc. is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that an investigation of Andrew Chavous was initiated after DEA received information from a confidential source that Mr. Chavous was dispensing controlled substances without prescriptions from Warrenville Drug. In May, 1985, a DEA Special Agent accompanied the confidential source to Warrenville Drug in Warrenville, South Carolina, where she filled a prescription for morphine. The prescription which the source had was in a fictitious name, which Mr. Chavous, the dispensing pharmacist, knew was not the name of the confidential source. A few days later the DEA Agent and the confidential source returned to the pharmacy with another prescription for morphine with the same fictitious name. Mr. Chavous filled the prescription, and then discussed trading drugs for stereo equipment with the DEA Agent. On July 3, 1985, the DEA Agent met Mr. Chavous in the parking lot of a pharmacy in a neighboring

community and obtained a bottle containing 24 morphine tablets in exchange for $360. The bottle bore the manufacturer's label. There was no prescription exchanged. On September 4, 1985, Mr. Chavous sold the DEA Agent a pint bottle of liquid morphine.

On September 24, 1985, the DEA Agent made arrangements to meet with Mr. Chavous in a local parking lot and to receive controlled substances to sell for him. After he delivered two bottles, one containing 100 Valium tablets, a Schedule IV controlled substance, and the other 100 Adipex tablets, a Schedule IV controlled substance, he was arrested. Mr. Chavous was indicted for three counts of illegal distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). On November 21, 1985, Mr. Chavous pled guilty to one count of illegal distribution of Valium, a Schedule IV controlled substance. He was subsequently convicted and sentenced on April 30, 1986, to four years probation, 300 hours of community service, and a fine of $1,500.

After Mr. Chavous' arrest, an audit was conducted at Warrenville Drug by DEA Investigators. The results of this accountability revealed substantial shortages of Valium and Adipex, as well as shortages of other controlled substances for the four-month audit period. The investigation also revealed numerous recordkeeping violations relating to the handling of controlled substances. On June 25, 1986, the South Carolina Board of Health and Environmental Control revoked the South Carolina controlled substance registration of Andrew Chavous. The pharmacy's registration was not revoked, and Mr. Chavous was permitted to maintain an ownership interest, but not to have access to, or to acquire, possess, or dispense any controlled substances.

As evidenced by the application for registration submitted in this matter, Mr. Chavous maintains an ownership interest in Warrenville Drug Co., Inc., the applicant for registration. There is no evidence that Mr. Chavous is not involved in the operation of the pharmacy and may exert control over matters which involve the dispensing of controlled substances. In addition, the applicant submitted no evidence in mitigation or explanation of the evidence found in the investigative file.

The Administrator concludes that Mr. Chavous' felony conviction relating to controlled substances constitutes sufficient grounds for denial of the application for registration of the pharmacy in which he has an ownership interest. The Administrator of DEA has consistently held that the registration of a corporate registrant may be revoked or denied upon a finding that a natural person who is an owner, officer or key employee, has been convicted of a felony offense relating to controlled substances. This is especially significant when the felony relates to dispensing controlled substances from a registered pharmacy. See: *Taneytown Pharmacy*, Docket No. 86–56, 51 FR 45068 (1986); *Spoon's Pharmacy*, Docket No. 84–42, 50 FR 46520 (1985); and *K & B Successors, Inc.*, Docket No. 82–15, 49 FR 34588 (1984).

The Administrator concludes that, based upon the facts and circumstances involved in this matter, the application for registration submitted by Warrenville Drug Co., Inc. should be denied. In addition to Mr. Chavous' felony conviction, the previous pharmacy registrant has demonstrated a lack of compliance with the regulations involving the maintenance of records documenting the receipt and dispensing of controlled substances. The Administrator finds that registration of Warrenville Drug Co., Inc. would be inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that the application for a DEA Certificate of Registration submitted by Warrenville Drug Co., Inc. be, and it hereby is denied. This order is effective April 21, 1987.

Dated: April 16, 1987.

**John C. Lawn,**

*Administrator.*

[FR Doc. 87–8940 Filed 4–20–87; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Office of the Secretary

**[Secretary of Labor's Order 1–87]**

### Delegation of Authority and Assignment of Responsibilities for Pension and Welfare Benefits Administration

April 13, 1987.

**1. Purpose.**

To delegate authority and assign responsibilities for the administration of the Department of Labor's responsibilities under the Employee Retirement Income Security Act (ERISA), Welfare and Pension Plans Disclosure Act (WPPDA) and the Federal Employees' Retirement System Act of 1986 (FERSA).

**2. Background**

ERISA places responsibility in the Department of Labor for the administration of a comprehensive program to protect the interests of participants and beneficiaries of private employee benefit plans. Secretary's Order 1–84 established the Office of Pension and Welfare Benefit Programs as a separate agency within the Department of Labor and delegated authority and assigned responsibility for ERISA and WPPDA activities to the Administrator. The authority placed in the Office of Pension and Welfare Benefit Programs was transferred by Secretary's Order 1–86 to a successor agency, the Pension and Welfare Benefits Administration (PWBA) which is headed by an Assistant Secretary for Pension and Welfare Benefits who reports to the Secretary of Labor.

FERSA requires the Department of Labor to, among other things administer and enforce the fiduciary responsibility, prohibited transaction, and bonding provisions of FERSA. These new responsibilities will also be handled by PWBA.

**3. The Pension and Welfare Benefits Administration (PWBA)**

The Pension and Welfare Benefits Administration, which is headed by an Assistant Secretary for Pension and Welfare Benefits who reports to the Secretary of Labor, continues as the successor agency to the Office of Pension and Welfare Benefit Programs in the Department of Labor.

**4. Delegation of Authority and Assignment of Responsibilities**

a. *The Assistant Secretary for Pension and Welfare Benefits* is delegated authority (including the authority to redelegate) and assigned responsibilities, except as hereinafter provided, for carrying out programs and activities to be performed by the Secretary of Labor under:

(1) The Employee Retirement Income Security act of 1974, as amended, except for Subtitle C of Title III and Title IV;

(2) The Welfare and Pension Plans Disclosure Act of 1985 as amended; and

(3) The Federal Employees' Retirement System Act of 1986.

Included in the delegation under 4a.(1) is authority to request information the Internal Revenue Service (IRS) posseses to be used in connection with the administration of Title I of the ERISA of 1974.

b. *The Assistant Secretary for Administration and Management* is responsible for providing all administrative support services to

PWBA such as personnel, payroll, budget, accounting, contracting and grants and other such services deemed necessary in support of the PWBA mission.

c. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all officials of the Department relating to the administration of the statutes listed in 4a. above and for bringing appropriate legal actions on behalf of the Secretary, and representing the Secretary in all civil proceedings. The Solicitor of Labor is also authorized to request information the IRS possesses to be used in connecion with the administration of Title I of ERISA.

d. *The Inspector General* is authorized to request information the IRS possesses to be used in connection with the administration of Title I of ERISA.

**5. Reservation of Authority**

The submission of reports and recommendations to the President and the Congress concerning the administration of the statutes listed in 4a. above and responsibilities under Subtitle C of Title III of ERISA are reserved to the Secretary. Responsibilities under Title IV of ERISA are carried out by the Pension Benefit Guaranty Corporation.

**6. Directives Affected**

Secretary's Order 9–80 and 1–86 are canceled.

**7. Effective Date**

This Order is effective immediately.

**William E. Brock,**

*Secretary of Labor.*

[FR Doc. 87–8902 Filed 4–20–87; 8:45 am]

BILLING CODE 4510-23-M

---

## Labor Advisory Committee for Trade Negotiations and Trade Policy; Steering Subcommittee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: May 12, 1987, 9:30 a.m., Rm S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, DC, this 14th day of April 1987.

**Robert W. Searby,**

*Deputy Under Secretary International Affairs.*

[FR Doc. 87–8901 Filed 4–20–87; 8:45 am]

BILLING CODE 4510-28-M

---

## Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**Background**

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

**List of Recordkeeping/Reporting Requirements under Review**

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**Comments and Questions**

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

*Extension*

Employment Standards Administration
Payment of Compensation Without Award
1215–0022; LS–206
On occasion
Businesses or other for-profit
34,200 responses; 8,550 hours; 1 form
Used by insurance carriers and self insurers to report the payment of compensation benefits to injured claimants.

*Extension*

Employment Standards Administration
Pre-Hearing Statement
1215–0085; LS–18
On occasion
Individuals or households; businesses or other for-profit 6,800 responses; 1,088 hours; 1 form
Used to refer cases to the Office of Administrative Law Judges for formal hearing under the Longshore Act and extensions.

*Extension*

Occupational Safety and Health Administration
Grantee Quarterly Progress Report
1218–0100; OSHA 171
Quarterly
New Directions training and education program grantees; labor organizations; employer associations; educational institutions; and other nonprofit organization
200 responses; 2,400 hours
The OSHA 171 is used to collect information concerning activities conducted by grantees. The information is used to monitor and manage the program.

*Reinstatment*

Departmental Management
Women's Bureau Regional III Women Veteran's Job Information Packet Evaluation Form

1225–0035

Reporting on occassion
Individuals or households
1,360 responses; 326 hours

The information will be used to make decisions about the content of the Women's Bureau Region III Women Veteran's Job Infomation Packet, the cost effectiveness of a national distribution of the packet and the most effective dissemination strategy for the information.

Signed at Washington, DC this 16th day of April, 1987.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 87–8903 Filed 4–20–87; 8:45 am]

BILLING CODE 4510–27–M

## Employment and Training Administration

### Investigations Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance; AT&T Technologies et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 1, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 1, 1987.

The petition filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 6th day of April 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner. Union/workers/firm | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| AT&T Technologies, (Workers) | Mesquite, TX | 4/6/87 | 3/23/87 | 19,457 | Communications Power Supplies. |
| Abex Corporation Waukesha, Division (Company) | Rochester, NY | 4/6/87 | 3/22/87 | 19,458 | Grey Metal Castings. |
| Amboy Terminaling (I.U.O.E.) | Perth Amboy, NJ | 4/6/87 | 3/17/87 | 19,459 | Product Packaging. |
| Amoco Production, Co (Workers) | Denver, CO | 4/6/87 | 3/26/87 | 19,460 | Oil & Natural Gas. |
| Amercan Electric Co. (Workers) | Pittsfield, NH | 4/6/87 | 3/20/87 | 19,461 | Electrical Outlets. |
| American Motors Jeep Corp. (U.A.W.) | Toledo, OH | 4/6/87 | 3/20/87 | 19,462 | Jeep Vehicles. |
| Ansco Answering Serv. (Workers) | Snyder, TX | 4/6/87 | 3/25/87 | 19,463 | Answering Service |
| Arcticwear Manufacturenng Co. (Workers) | Thief River Falls, MN | 4/6/87 | 3/20/87 | 19,464 | Snowmobile Clothing. |
| Armstrong Drilling (Company) | Wooster, OH | 4/6/87 | 3/24/87 | 19,465 | Oil & Gas Wells. |
| Automotive Proving Grounds (UAW) | Pecos, TX | 4/6/87 | 3/25/87 | 19,466 | Auto Tires. |
| Bandera Energy Co. (Company) | Midland, TX | 4/6/87 | 3/11/87 | 19,467 | Oil & Gas |
| Bata Shoe Co., Inc. (Company) | Belcamp, MD | 4/6/87 | 3/31/87 | [illegible] | Athletic Footwear. |
| Beckley Lick Run. Co. (UMWA) | Beckley, WV | 4/6/87 | 3/26/87 | [illegible] | Coal |
| Belcher & Windels, Inc. (Company) | Golden, CO | 4/6/87 | 3/25/87 | 19,470 | Oil & Gas |
| Carbery Fabncation Co. (Company) | Odessa, TX | 4/6/87 | 3/26/87 | 19,471 | Pressure Vessels. |
| Caterpillar Industrial Inc. (IAAMAW) | Dallas, OR | 4/6/87 | 3/27/87 | 19,472 | Industrial Forklift Trucks. |
| Certified Brakes (Lear Siegler) (USW) | Danville, KY | 4/6/87 | 3/30/87 | 19,473 | Drum & Disc Brakes. |
| Copperweld Corp. (Company) | Manetta, GA | 4/6/87 | 3/27/87 | 19,474 | Steel |
| Colorado Electro-Optics Inc. (Company) | Boulder, CO | 4/6/87 | 3/24/87 | 19,475 | Security Systems. |
| Cricketeer Manufacturing Co. (ACTWU) | Harrodsburg, KY | 4/6/87 | 3/27/87 | 19,476 | Men's Coats. |
| Exxon, Western Division Production Department (Workers) | Thousand Oaks, CA | 4/6/87 | 3/16/87 | 19,477 | Crude Oil |
| Ford Motor Co., Canton Forge Plant (UAW) | Canton, OH | 4/6/87 | 3/26/87 | 19,478 | Frged Auto Parts. |
| General Electric Ohio Lamp Plant (IUE. AFL CIO) | Warren, OH | 4/6/87 | 3/18/87 | 19,479 | Incandescent Lamps. |
| Glassco Apparel, Co. (Workers) | Scranton, PA | 4/6/87 | 3/30/87 | 19,480 | Apparel |
| High Plains Oil Corp. (Company) | Denver, CO | 4/6/87 | 3/23/87 | 19,481 | Oil & Natural Gas. |
| Jet Oilfield Equipment Rental & serv., Inc. (Workers) | Dickinson, ND | 4/6/87 | 1/10/87 | 19,482 | Oilfield Equipment. |
| Jewell Ridge Coal Corp. (Workers) | Jewell Ridge, VA | 4/6/87 | 3/23/87 | 19,483 | Coal |
| Koch Exploration, Co. Div. of Koch Industries (Workers) | Denver, CO | 4/6/87 | 3/30/87 | 19,484 | Oil & Natural Gas |
| LTV Steel, Co. (Workers) | Paramus, NJ | 4/6/87 | 3/30/87 | 19,485 | Steel |
| Loftis Co. (Workers) | Midland, TX | 4/6/87 | 2/4/87 | 19,486 | Pipeline Protection |
| 3 M Company (USWA) | Newark, NJ | 4/6/87 | 3/24/87 | 19,487 | Bottle Cap Liner Seals. |
| Marathon International Oil Co. (Workers) | Houston, TX | 4/6/87 | 3/24/87 | [illegible] | Crude Oil. |
| Mineral Search, Inc. (Workers) | Houston, TX | 4/6/87 | 3/19/87 | [illegible] | Oil Exploration. |
| North American Systems (ILGWU) | Clifton, NJ | 4/6/87 | 3/26/87 | [illegible] | Coffee Filters. |
| Ogden Allied Services Corp. (SGU) | Pittsburgh, PA | 4/6/87 | 3/29/87 | 19,491 | Steel |
| Optex Technologies (Workers) | El Paso, TX | 4/6/87 | 3/19/87 | 19,492 | Computer Components. |
| Ortho Fertilizer Division, Chevron Chemical Co. (Workers) | Ft. Madison, IA | 4/6/87 | 3/30/87 | 19,493 | Fertilizers |
| Oster Company (IBEW) | Wilwaukee, WI | 4/6/87 | 3/19/87 | 19,494 | Clipper Blades |
| Paper Converting Machine, Co. (UAW) | Green Bay, WI | 4/6/87 | 3/25/87 | [illegible] | Paper Converting Machinery |
| Perspectives, Inc. (Company) | Blanchester, OH | 4/6/87 | 3/30/87 | 19,496 | Ice Buckets |
| Primary Fuels, Incorp. (Workers) | Denver, CO | 4/6/87 | 3/24/87 | 19,497 | Oil & Natural Gas. |
| Primary Fuels, Incorp. (Workers) | Houston, TX | 4/6/87 | 3/24/87 | 19,498 | Oil & Natural Gas |
| Primary Fuels, Incorp. (Workers) | Midland, TX | 4/6/87 | 3/24/87 | 19,499 | Oil & Natural Gas. |
| Ranchers Cotton Oil (ILWU) | Bakersfield, CA | 4/6/87 | 3/27/87 | 19,500 | Cottonseed Oil |
| Ranchers Cotton Oil (ILWU) | Fresno, CA | 4/6/87 | 3/27/87 | 19,501 | Cottonseed Oil |
| Scovill Apparel Fasteners, Inc. (UAW) | Watertown, CT | 4/6/87 | 3/26/87 | 19,502 | Snap Fasteners. |
| Sea B Mining Co., (Workers) | Jewell Ridge, VA | 4/6/87 | 3/23/87 | 19,503 | Coal |
| Smart Styles Inc. (Workers) | Clarks Summit, PA | 4/6/87 | 3/30/87 | 19,504 | Dresses |
| Spring Fever Limited (Workers) | Springvale, ME | 4/6/87 | 3/24/87 | 19,505 | Women's Apparel |
| Square D. Company (IBEW) | Milwaukee, WI | 4/6/87 | 3/23/87 | 19,506 | Programmable Controllers |

APPENDIX—Continued

| Petitioner: Union/workers/firm | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Toub Distributors (Workers) | Thorofare, NJ | 4/6/87 | 3/26/87 | 19,507 | School Supplies. |
| United Detector Technology Caribe, Inc. (Workers) | Juncos, PR | 4/6/87 | 3/27/87 | 19,508 | Photo Sensors. |
| Valero Producting (Workers) | San Antonio, TX | 4/6/87 | 3/26/87 | 19,509 | Oil & Gas |
| Wilker Brothers, Co. (Workers) | McKenzie, TN | 4/6/87 | 3/23/87 | 19,510 | Pajamas, Robes. |

[FR Doc. 87-8915 Filed 4-20-87; 8:45 am]
BILLING CODE 4510-30-M

---

[TA-W-18,739 et al.]

**Dismissals of Applications for Reconsideration; AT&T Technologies, Inc., et al.**

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the AT&T Technologies, Incorporated, AT&T Technology Systems, Reading, Pennsylvania; U.S. Steel Mining Company, Gary #50 Mine and Gary #51 Mine, Pineville, West Virginia. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore, dismissals of the applications were issued.

TA-W-18,739; AT&T Technologies, Incorporated, AT&T Technology Systems, Reading, Pennsylvania; Hazleton, Pennsylvania (March 30, 1987)

TA-W-18,627; U.S. Steel Mining Company, Gary #50 Mine, Pineville, West Virginia (March 30, 1987)

TA-W-18,621; U.S. Steel Mining Company, Gary #51 Mine, Pineville, West Virginia (March 31, 1987)

Signed at Washington, DC, this 14th day of April 1987.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-8918 Filed 4-20-87; 8:45 am]
BILLING CODE 4510-30-M

---

[TA-W-19,269 et al.]

**Dismissals of Applications for Reconsideration; Cameron Iron Works, Inc., et al.**

Pursuant to 29 CFR § 90.18 applications for administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance for workers at the Cameron Iron Works, Incorporated, Houston, Texas; Lucas-Milhaupt, Cudahy, Wisconsin; Consolidation Coal Company, Amonate #31 Mine, Amonate, Virginia. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-19,269; Cameron Iron Works, Incorporated, Houston, Texas (April 8, 1987)

TA-W-18,664; Lucas-Milhaupt, Cudahy, Wisconsin (April 1, 1987)

TA-W-18,841; Consolidation Coal Company, Amonate #31 Mine, Amonate, Virginia (March 31, 1987)

Signed at Washington, DC, this 15th day of April 1987.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-8919 Filed 4-20-87; 8:45 am]
BILLING CODE 4510-30-M

---

[TA-W-19,156 et al.]

**Dismissals of Applications for Reconsideration; Express Services, Inc., et al.**

Pursuant to 29 CFR § 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for Workers at the Express Services, Incorporated, Midland, Texas; International Titanium Incorporated of Washington, Moses Lake, Washington; Impala Drilling, incorporated, College Station, Texas Indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-19,156; Express Services, Incorporated, Midland Texas (April 8, 1987)

TA-W-19,036; International Titanium, Incorporated of Washington, Moses Lake, Washington (April 8, 1987)

TA-W-19,146; Impala Drilling, Incorporated, College Station, Texas (April 8, 1987)

Signed at Washington, DC, this 14th day of April 1987.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-8920 Filed 4-20-87; 8:45 am]
BILLING CODE 4510-30-M

---

[TA-W-18,724 et al.]

**Dismissals of Applications for Reconsideration; Hazle Garment, Inc., et al.**

Pursuant to 29 CFR § 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Hazle Garment, Incorporated, Hazleton, Pennsylvania; Beckley Coal Mining Company, Glen Daniel, West Virginia; Consolidation Coal Company, Jenkinjones #4 Mine, Jenkinjones, West Virginia. The review indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-18,724; Hazle Garment, Incorporated, Hazleton, Pennsylvania (March 27, 1987)

TA-W-18,842; Beckley Coal Mining Company, Glen Daniel, West Virginia (March 30, 1987)

TA-W-18,841; Consolidation Coal Company, Jenkinjones #4 Mine, Jenkinjones, Virginia (March 31, 1987)

Signed at Washington, DC, this 15th day of April 1987.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-8917 Filed 4-20-87; 8:45 am]
BILLING CODE 4510-30-M

---

[TA-W-19,170 et al.]

**Dismissals of Applications of Reconsideration; Seismic Prospecting of Denver, Inc., et al.**

Pursuant to 29 CFR 90.18 applications

of administrative reconsideration were filed with the Director of the Office of trade Adjustment Assistance of workers at the Seismic Prospecting of Denver. Incorporated, Englewoord, Colorado; Gerard Mills, Mazeltion, Pennsylvania; Ranger Fuel Corporation, Sabine (Becklely #2) Mine, Becklley, West Virginai indicated that the applications contained no new substantial informaiton which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA–W–19,170; Seismic Prospecting of Denver, Incorporated, Englewood, Colorado (April 10, 1987)

TA–W–18,942 Gerard Mills, Hazeltion, Pennsylvania (April 9, 1987)

TA–W–18,844; Ranger Fuel Corporation, Sabine (Beckley #a2) Minem Beckley, West Virginia (April 3, 1987)

Singed at Washington, DC, this 14th day of April 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 8916 Filed 4–20–87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA–W–18,616]

**Smurfit Newsprint Corp. Clackamas Mill, Oregon City, OR; Negative Determination Regarding Application for Reconsideration**

By an application dated March 8, 1987 the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance filed on behalf of workers and former workers at Smurfit Newsprint Corporation, Clackamas Mill, Oregon City OR. The denial notice was signed on February 20, 1987 and published in the **Federal Register** on March 10, 1987 (52 FR 7330).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation off facts or of the law justified reconsideration of the decision.

The petitioners request an explanation as to how the Department can certify workers at another company facility (Molalla Mill) and not certify workers at the Clackamas Mill. Petitioners claim that both mills produced the same product, had the same customers and served the same market in the same time periods.

In order for a work group to become certified eligible to apply for adjustment assistance it must meet all three group eligibility criteria of the Group Eligibility Requirements of the Trade Act of 1974—significantly decreased employment; decreased sales or production and increased imports contributing importantly to worker separations. Investigative findings show that workers at the Molalla Mill petitioned the Department a year earlier (TA–W–16,728) and met all the criteria for certification. The investigative period covered was from 1983 to 1985.

The Clackamas investigation was instituted on November 17, 1986 and all workers were laid off on December 26, 1986. The investigative findings show that the decreased sales or production criterion of the Act was met for workers at the Clackamas Mill in 1985. Although workers at the Clackamas Mill met the decreased employment and sales or production criteria in 1986 they did not meet the "contributed importantly" test of the increased import criterion for 1986. This test is usually demonstrated through a survey of the firm's customers. The Department surveyed the major customers of Smurfit Corporation for the January to September 1985 and 1986 periods. The survey revealed that the respondents who imported were not important in the survey period. All the customers who imported either had remained the same during the survey period. One of the major customers commented that the sizes and grades purchased from Smurfit are not manufactured by foreign producers.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly the application is denied.

Signed at Washington, DC, this 10th day of April 1987.

**Barbara Ann Farmer,**

*Acting Director, Office of Program Management, UIS.*

[FR Doc. 8914 Filed 4–20–87; 8:45 am]

BILLING CODE 4510-30-M

---

[TA–W–16,637]

**Louisiana-Pacific Corp., Ashland, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 28, 1986 applicable to all workers of Louisiana-Pacific Corporation. Ashland, Wisconsin. The certification notice was published in the **Federal Register** on May 19, 1986 (51 FR 18387).

On the basis of additional information, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information from the company revealed that some workers were retained beyond the April 15, 1986 termination date. In May, 1986 the Ashland firm recalled all workers and then shut the plant down permanently in July, 1986.

The intent of the certification is to cover all workers at the Ashland plant of Louisiana-Pacific who were affected by the decline in sales or production of lumber related to import competition. The notice, therefore, is amended by deleting the April 15, 1986 termination date and inserting a new termination date of September 1, 1986.

The amended notice applicable to TA–W–16,637 is hereby issued as follows:

All workers of Louisiana-Pacific Corportion, Ashland, Wisconsin who became totally or partially separated from employment on or after January 1, 1985 and before September 1, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of April 1987.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87–8913 Filed 4–20–87; 8:45 am]

BILLING CODE 4510-30-M

---

## Mine Safety and Health Administration

[Docket No. M–87–79–C]

**Bailey Brothers Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Bailey Brother Coal Co., P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 6

BEST COPY AVAILABLE

Mine (I.D. No. 44–05384) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any working of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle or 45 degrees.

2. Petitioner requests a modification of the standards to allow for a 20-foot cut to be taken in the face. In further support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin or error of ±5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill streel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987.

Copies of the petition are available for inspection at that address.

Dated: April 9, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8904 Filed 4–20–87; 8:45 am]

BILLING CODE 4510–43–M

---

[Docket No. M–87–87–C]

## Chapperal Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Chapperal Coal Corporation, 441 Marion Branch Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its No. 3 Mine (I.D. No. 15–08257) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install a carbon monoxide system in lieu of a point-type system. In support of this request, petitioner states that:

(a) Carbon monoxide (CO) sensor will be installed at the beginning and end of each belt flight and at intervals not to exceed 2,000 feet along the belts. The CO sensors will be capable of giving early warning of a fire automatically. An audible and visual signal will be activated when the level is 10 parts per million (ppm) above ambient air. All persons will be withdrawn to a safe area. The signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor;

(b) If the CO system is affected by a power interruption or other malfunction, the belts will continue to operate and qualified persons will monitor the belt conveyor with suitable instruments;

(c) Each CO sensor will be visually examined weekly during production periods to ensure proper functioning. The monitoring system will be calibrated with know concentrations of CO and gas every six weeks; and

(d) The primary intake will be separated from the belt conveyor entry with permanent stoppings.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987. Copies of the peitition are available for inspection at that address.

Dated: April 13, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8905 Filed 4–20–87; 8:45 am]

BILLING CODE 4510–43–M

---

[Docket No. M–87–94–C]

## J and B Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

J & B Mining Company, 304 Crest Street, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 5 Mine (I.D. No. 15–15438) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987. Copies of the petition are available for inspection at that address.

Dated: April 13, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8906 Filed 4–20–87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M–87–59–C]**

## McCoy Elkhorn Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

McCoy Elkhorn Coal Corporation, General Delivery, Kimper, Kentucky 41539 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 8–A Mine (I.D. No. 15–13439) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to deteriorating roof conditions and an overall seam height of twelve feet, certain areas of the return aircourse are unsafe to travel.

3. As an alternate method, petitioner proposes to establish two evaluation points where a qualified person can examine the quantity and quality of air used to ventilate the return aircourse. The examinations will be made daily and recorded in the Pre-Shift/On-Shift Examination Book.

4. In further support of this request, petitioner states:

(a) The return airway is not a part of the mine's escapeway system;

(b) Air passing through this area does not pass over any electrical power sources; and

(c) No methane has been detected in the face area or in the immediate return area with a hand-held detection device.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the mines affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mines Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987. Copies of the petition are available for inspection at that address.

Dated: April 13, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–8907 Filed 4–20–87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M–86–234–C]**

## Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed an amendment to a petition for modification. On November 26, 1986, Pyro Mining Company submitted a petition to modify the application of 30 CFR 75.312 (air passing through abandoned, inaccessible, or robbed area) to its Pyro #9 Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. On February 6, 1987, MSHA published notice of the petition in the **Federal Register** (52 FR 3891), allowing interested parties 30 days to submit comments. On March 23, 1987, petitioner submitted a request to amend the originally submitted petition for modification to designate 30 CFR 75.303 (preshift examination) as the standard to be affected. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that within 3 hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons shall examine such workings and any other underground area of the mine. Each such examiner shall examine every working section in such workings and shall make tests in each working section for accumulations of methane.

2. Petitioner states that the northeast sub-mains serves as the intake aircourse for three operating sections. These submains have taken considerable weight from horizontal and vertical stresses. As a result of these stresses, the effective area has been reduced, causing a high pressure area for the fan to overcome.

3. As an alternate method, petitioner proposes to cut the southwest panel into the main aircourse (northeast sub-main) at the intake air shaft and to use the panel to ventilate number one and three units.

4. In further support of this request, petitioner states that:

(a) Continuous reading methane and carbon monoxide sensors will be placed

where intake air from the rooms dump into the 1st main southeast;

(b) The methane sensor will be set to alarm if the level reaches ± 0.25%;

(c) An audible alarm will sound on number three unit to alert miners if the limits are exceeded. The alarm will be fail-safe and activated by the computer;

(d) An immediate investigation will begin if an alarm sounds. Persons will be withdrawn to a safe place until the cause of the alarm is determined; and

(e) The intake aircourse will be examined weekly.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: April 9, 1986.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8908 Filed 4-20-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-91-C]**

## Rhonda Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Rhonda Coal Company, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 6 Mine (I.D. No. 44-06180) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of least 20 feet and at an angle of 45 degrees.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In further support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of ± 5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments mut be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987. Copies of the petition are available for inspection at that address.

Dated: April 13, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8909 Filed 4-20-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-90-C]**

## S.A.B. Coal Co. No. 4; Petition for Modification of Application of Mandatory Safety Standard

S.A.B. Coal Company No. 4, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 1 Mine (I.D. No. 44-06051) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In further support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without

the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry will be at 30 degree angles to the rib. The holes drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of ± 5 degrees. This pattern will provide a 10-foot barrier in all directions to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle an opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987. Copies of the petition are available for inspection at that address.

Dated: April 14, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8910 Filed 4-20-87; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-87-60-C]**

## Scarab Energy Corp.; Petition for Modification of Application of Mandatory Safety Standard

Scarab Energy Corporation, P.O. Box 68, Petros, Tennessee 37845 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its Mine No. 3R (I.D. No. 40-02939) located in Anderson County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer banks of elevated roadways.

2. Petitioner states that application of the standard will result in a diminution of safety to the miners affected because berms confine water runoff to the road surface which washes away the surfacing materials, resulting in a dangerous road surface. The berms also hamper the removal of snow and ice with a motor grader.

3. As an alternate method, petitioner states that:

(a) Daily inspections of all coal-hauling vehicles will be made. Any defects will be corrected before the vehicle is put into service;

(b) A specific traffic system and rules will be developed for the roads. These rules will be posted throughout the mine area, on the bulletin board, and will become a part of the training and retraining programs;

(c) All haulage vehicles will have original manufacturers brakes and an emergency braking system;

(d) All equipment operators will be trained in the use of haulage equipment and the safety of vehicles on haulage roads;

(e) Where abrupt drop-offs occur along the outer banks, elevation will be provided to cause the vehicles to gravitate toward the highwall side of the road;

(f) Roadway surfaces will be kept free of debris, excessive water, snow, and ice; and

(g) The speed at which trucks will be operated will be consistent with conditions of roadway clearance, visibility and traffic. Trucks operating on any descending grade will be restricted to 10 miles per hour.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987. Copies of the petition are available for inspection at that address.

Dated: April 13, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8911 Filed 4-20-87; 8:45 am]

BILLING CODE 4510-43-M

**[Docket No. M-87-93-C]**

## Shannon Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Shannon Coal Company, Inc., P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 2 Mine (I.D. No. 44-06177) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In further support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry

will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of ±5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 21, 1987. Copies of the petition are available for inspection at that address.

Dated: April 13, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-8912 Filed 4-20-87; 8:45 am]

BILLING CODE [illegible]

---

## Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 87-36; Exemption Application No. D-6282 et al.]**

## Grant of Individual Exemptions; Phelps Time Lock Security Corp. et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Phelps Time Lock Security Corporation Employees Profit Sharing Plan (the Plan)

**Located in Miami, Florida**

[Prohibited Transaction Exemption 87-36; Exemption Application No. D-6282]

*Exemption*

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain real property by the Plan to Robert C. Gilbert,[1] a party in interest with respect to the Plan, provided that the terms of the proposed sale are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date of its consummation.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 23, 1986 at 41 FR 45962.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

### IBI, Inc. Profit Sharing Plan and Trust Agreement and IBI, Inc. and Top Home Center, Inc. Defined Benefit Pension and Trust (the Plans)

[Prohibited Transaction Exemption 87-37; Exemption Application Nos. D-6397 and D-6398]

*Exemption*

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of 5 years, to the proposed sales by IBI, Inc. (IBI) of contracts for deed (Contracts) to the Plans, nor to the guarantee of repayment by certain shareholders of IBI, provided that the terms and conditions of such sales are at least as favorable to the Plans as those which the Plans could receive in similar transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1987 at 52 FR 3361.

*Temporary Nature of Exemption*

This exemption is temporary and will expire 5 years after the date of grant. Subsequent to the expiration of this exemption, the Plans may continue to

---

[1] The notice of proposed exemption published in the **Federal Register** on December 23, 1986 (51 FR 45962) stated that the real property (the Property) would be sold by the Plan to Phelps Time Lock Security Corporation (the Employer). Subsequent to the date of the publication of the proposed exemption in the **Federal Register**, the applicant requested that the Property be sold to Mr. Robert C. Gilbert, (Mr. Gilbert) the Plan trustee and sole shareholder of the Employer, rather than to the Plan. All interested persons were notified of the sale of the Property by the Plan to Mr. Gilbert rather than to the Employer and no comments and/or requests for a hearing have been received by the Department. All other representations made in the notice of proposed exemption concerning this transaction remain unchanged.

hold Contracts originated during this 5-year period until repaid. Should the applicant wish to continue selling Contracts to the Plans beyond the 5-year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Midwest Financial Group Employee Savings Plan and Trust (the Plan)**

**Located in Kankakee, Illinois**

[Prohibited Transaction Exemption 87–38; Exemption Application No. D–6664]

*Exemption*

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of a parcel of real property located at the Northwest corner of East Station and South Dearborn Streets, Kankakee, Illinois (the Property) by the Plan to First Trust and Savings Bank of Kankakee (the Employer) for $99,000, provided that the terms of the transaction were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction was consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 13, 1987 at 52 FR 4687.

*Effective Date:* This exemption is effective December 31, 1986.

Written Comments: The Department received one comment from the applicant with regard to the notice of proposed exemption. The applicant represented that in order to avoid the occurrence of additional excise tax penalties, the Plan sold the Property to the Employer for $99,000 on December 31, 1986. The applicant represents that the sale was completed in accordance with the terms and conditions contained in the notice of proposed exemption. On the basis of the applicant's representations, the Department has decided to amend the final exemption to provide for an effective date of December 31, 1986.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**James S. Torchia, D.D.S. Inc. Profit Sharing Plan and James S. Torchia, D.D.S. Inc. Pension Plan (the Plans)**

**Located in Tulsa, Oklahoma**

[Prohibited Transaction Exemption 87–39; Exemption Application Nos. D–6759 and D–6760]

*Exemption*

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of an undivided interest in a parcel of real property located at 9405 South Yale, Tulsa, Oklahoma, by the Plans to Dr. James S. Torchia, a party in interest with respect to the Plans, provided that the terms of the transaction are not less favorable to the Plans that those obtainable in an arm's-length transaction with an unrelated person at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 13, 1987 at 52 FR 4688.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Jamestown Clinic, Ltd. Employee Retirement Plan (the Plan)**

**Located in Jamestown, ND**

[Prohibited Transaction Exemption 87–40; Exemption Application No. D–6936]

*Exemption*

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain improved real property to Medical Properties, Inc., a party in interest with respect to the Plan, provided that such sale is on terms no less favorable to the Plan than the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1987 at 52 FR 3366.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Donald S. Perkins Defined Benefit Plan and Trust (the Plan)**

**Located in Chicago, Illinois**

[Prohibited Transaction Exemption 87–41; Exemption Application No. D–6984]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of certain publicly traded securities to the Plan by Donald S. Perkins (Mr. Perkins), a disqualified person with respect to the Plan, provided that the terms of sale are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction is consummated.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 9, 1987 at 52 FR 7240.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975 (c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or

[2] Since Mr. Perkins is the only participant in the Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of April, 1987.

Elliot I. Daniel,

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87-8936 Filed 4-20-87; 8:45 am]

BILLING CODE 4510-29-M

---

[Application No. D-6900]

## Proposed Exemption Involving Pennfield Precision Machining, Inc. Profit Sharing Plan (the Plan) Located in Sellersville, PA; Withdrawal

In the **Federal Register** dated December 23, 1986 (51 FR 45966), the Department of Labor published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the prospective cash sale by the Plan of certain unimproved real property to John F. Matczak and Carl F. Tate, parties in interest with respect to the Plan.

By letter dated February 25, 1987 the applicants have requested that the exemption application be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 10th day of April, 1987.

Elliot I. Daniel,

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87-8937 Filed 4-20-87; 8:45 am]

BILLING CODE 4510-29-M

---

[Application No. D-6747 et al.]

## Proposed Exemptions; Restated Arens Controls, Inc. et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for complete statement of the fact and representations.

### Restated Arens Controls, Inc. Salaried Employees' Retirement Plan (the Plan)

### Located in Evanston, IL

[Application No. D-6747]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(A) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a proposed loan (the Loan) by the Plan, not exceeding 25 percent of the assets of the Plan, to Arens Controls, Inc. (the Employer), provided the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

*Summary of Facts and Representations*

1. The Plan is a defined benefit plan with 42 participants and net assets having a fair market value of $2,106,188 as of February 26, 1986. The trustee of the Plan (the Trustee) is State National Bank of Evanston, Illinois. The trustee makes investment decisions for the Plan. The Employer, which maintains its principal place of business in Evanston, Illinois, is engaged in the manufacture and sale of mechanical remote control devices.

2. The Employer requests an exemption to borrow an amount of not more than 25 percent of the Plan's assets. The Loan proceeds will be used by the Employer to purchase certain land and an industrial building (the Property) located at 2017 Greenleaf Street, Evanston, Illinois. The Property is presently leased by the Employer from the estate of Calhoun Norton, a deceased officer and shareholder. It is used by the Employer as its business premises. The lease expires the earlier

of July 1, 1987 or at such time as the parties execute a purchase and sale agreement on the Property.

3. The Loan, which will be evidenced by a promissory note, will have a duration of 15 years. It will be an adjustable rate loan bearing a fixed rate of interest of 9¾ percent per annum for the first three years. At the end of the initial three year period the Loan is in effect, the interest rate will be adjusted by the Trustee according to the rate of interest the Trustee is charging at that time for a comparable loan. The Trustee will serve as the independent fiduciary for the Plan with respect to the proposed Loan.

4. The Loan will be secured by a duly recorded first mortgage on the Property. The Property will be insured against casualty loss in favor of the Plan to the extent of the amount of Loan. The Property was initially appraised at $850,000 on April 4, 1983 by Mr. John H. Marling, M.A.I., and independent appraiser affiliated with the Marling Group, Limited of Northfield, Illinois. In an updated appraisal of February 17, 1986, Messrs. Jules H. Marling, Jr., M.A.I., C.R.E.; James Passalino, J.D.; and Stephen E. Fennell, M.A.I. Candidate, independent appraisers (the Appraisers) affiliated with Sudler Marling, Inc. of Chicago, Illionis, successor firm, again placed the fair market value of the Property at $850,000. The Appraisers stated that they had personally reinspected the Property and performed a thorough investigation and analysis of existing market conditions. In a July 29, 1986 addendum to their earlier report, the Appraisers concluded that there was no change in their valuation estimate for the Property.

At all times the value of the Property will exceed 150 percent of the outstanding balance of the Loan. If the value of the Property ever falls below this level, the Trustee will require that the Employer pledge additional collateral.

5. As stated above, the Trustee has been designated as the independent fiduciary for the Loan. No principals of the Employer sit on the Board of Directors of the Trustee or vice versa. The sole commercial relationship existing between the Trustee and the Employer are two checking accounts maintained by the Trustee on behalf of the Employer and its parent corporation, Arens, Industries, Inc. (AII). These accounts represent less than one-tenth of one percent of the total deposits held by the Trustee in interest-bearing and non-interest bearing accounts.

In addition, the Trustee represents that its Trust Department has been engaged in the administration of qualified retirement trusts for approximately 25 years and that it currently has 90 plans under administration. In administering these plans, including the one under consideration, the Trustee states that it understands its responsibilities, liabilities and duties as a fiduciary under the Act.

The Trustee also represents that the Loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries. The Trustee states that the terms of the Loan are reasonable and the interest rate is appropriate in the current climate for debt securities. The Trustee also represents that it would make a similar loan to the Employer on the same terms and conditions as the proposed Loan. Additionally, the Trustee states that it has examined the overall investment objectives of the Plan as they relate to the Plan's investment portfolio and it explains that it has considered the Plan's liquidity needs and the diversification of the Plan's assets. Based on these factors, the Trustee believes the Loan complies with Plan's investment objectives and it feels the Loan and other Plan assets satisfy the cash flow needs of the Plan at present as well as in the future.

As the independent fiduciary, the Trustee will monitor the terms and conditions of the Loan including the fair market value of the collateral. In addition, the Trustee will take all actions that are necessary and proper to enforce and protect the interests of the Plan and its participants and beneficiaries.

6. In summary, it is represented that the proposed transaction satisfy the criteria for an exemption under section 408(a) of the Act because: (a) The Loan will not represent more than 25 percent of the Plan's assets; (b) the Loan will be secured by a first mortgage on the Property which has a fair market value of approximately 160 percent of the Loan amount; (c) the Trustee, which will serve as the independent fiduciary for the Plan in monitoring the terms and conditions of the Loan, believes the Loan is in the best interests of the Plan and its participants and beneficiaries; and (d) the value of the Property plus any other collateral pledged will at all times exceed 150 percent of the outstanding balance of the Loan.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**Dental Associates, P.C. Money Purchase Plan (the Money Purchase Plan) and Profit Sharing Plan (the Profit Sharing Plan, Collectively, the Plans)**

**Located in Northford, CT**

[Application Nos. D–6886 and D–6869]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordanoe with the procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975). If the exmeption is granted the restictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resuting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) Of the Code shall not apply to the proposed cash sale of an interest (the Interest) in a certain parcel of unimproved real property (the Property) by the Plans to Dr. Joseph Connolly (Dr. Connolly), the sole shareholder of the Plan sponsor, provided that the sale price is not less than the fair market value of the Interest as of the date of the sale plus the increase in the cost of living as refelcted by the Consumer Price Index from May, 1986, to the date of closing.

*Summary of Facts and Representations*

1. The Profit Sharing Plan and the Money Purchase Plan are defined contribution plans with the same three participants and assets of $96,418.65 and $106,151.38, respectively, as of September 30, 1985. The assets of the Plans are held in a common trust. Dr. Connolly and his wife are the trustees of the Plans.

2. The interest is one-half interest in Northford Triangle Associates (Northford), a Connecticut general partnership. The Plans acquires the Interest from Donald and Dorothy McCluskey of Northford, CT, the other parties in Northford, in the spring of 1985 for $45,000. The applicant represents that the McCluskeys are unrelated to the Plan, Dr. Connolly or the Plan's sponsor. The Property is the sole asset of Northford.

3. The applicant represents that, to economic conditions in North Branford, CT, the location of the Property, now is an appropriate time to subdivide and improve the Property. However, if the Plans were to participate in the subdivision and improvement of the Property, they might be liable for unrelated business income tax. Therefore, the applicant wishes to sell its Interest to Dr. Connolly for cash for

its appraised fair market value to enable the Plan to realize the appreciation on the Property.

4. The Property was appraised on April 15, 1986 by Susan Haller, G.R.I., of Beazly Company Realtors, who is represented to be independent of Dr. Connolly and the Plan's sponsor. Ms. Haller estimated the Property 's fair market value as $95,000. The Plan's Interest is therefore worth $47,500. Ms. Haller represents that the Property's value is held down by the fact that the Property's highest and best use would be commercial, but that it is zoned for residential use, for which the Property has minimal appeal.

5. Dr. Connolly will pay the appraised fair market value for the Interest, $47,500, plus the increase in the cost of living, as reflected in the Consumer Price Index, from May, 1986, the first month after the appraisal, to the date of closing, as well as all costs associated with the transaction. The applicant represents that the Plans have borne no expenses associated with holding the Interest. The Plans will bear no costs with respect to the transaction.[1]

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The Plans will receive no less than the appraised fair market value for the Interest; (b) the transaction will be for cash ; and (c) the Plans will not bear any costs with respect to the transaction.

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the Plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 405.

For Further Information Contact: Mr. David Lurie of the Department, telphone (202) 523–8194. (This is not a toll-free number).

**Sterling-Rock Falls Clinic Self-Employed Retirement Trust (the Plan)**

**Located in Sterling, Illinois**

[Application No. D–6878]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale for cash by the Plan of an undivided three-fourths interest in certain real property (the Three-Fourths Interest) from the individual account of John R. Erickson, M.D. (Dr. Erickson), a party in interest with respect to the Plan, to Dr. Erickson, provided that the price paid is no less than the greater of the fair market value of the Three-Fourths Interest on the date of sale or the total expenses to the Plan in connection with the acquisition and holding of the Three-Fourths Interest.

*Summary of Facts and Representations*

1. The Plan is a defined contribution H.R. 10 (Keogh) plan under which individual accounts are maintained for each participant to which all contributions, forfeitures, investment income, gains or losses and expenses are credited or deducted. The Plan currently has 23 participants. The Plan sponsor is Sterling-Rock Falls Clinic, a partnership engaged in the practice of medicine. The Plan's trustee is the Central National Bank of Sterling (the Trustee) of Sterling, Illinois.

2. On April 30, 1980, the Trustee purchased on behalf of Dr. Erickson's individual account in the Plan an undivided three-fourths interest in a condominium residential unit in Bayway Isles-Point Brittany Six (the Condominium), in St. Petersburg, Florida. At the same time Dr. Erickson's wife, Mrs. Marion Erickson, (Mrs. Erickson) purchased an undivided one fourth interest in the Condominium as tenant in common.[2] The Condominium was purchased from unrelated third parties for $88,000. Accordingly, the amount representing the original purchase price for the Three-Fourths Interest was approximately $66,000. The applicant represents that as of March 4, 1987, the Plan has expended $83,367.36 in connection with the acquisition and retention of the Three-Fourths Interest, including the original purchase price, legal expenses, real estate taxes, personal property taxes, utilities, maintenance, and condominium fees.

3. The applicant represents that at the time the Plan bought the Three-Fourths Interest Florida real estate was at a peak in terms of appreciation of value and rental income. Although the Plan purchased the Three-Fourths Interest in the expectation that reasonable rental income and continuing appreciation in value would be realized, neither has been forthcoming. Since its purchase, the Condominium has been rented to third parties only during the four months of the winter season. Moreover, little if any appreciation has taken place. Accordingly, the applicant concludes that the Three-Fourths Interest has not been a good investment for the Plan.

4. The applicant represents that the Condominium was offered for sale in January, 1985 through the Florida Real Estate Center, Inc., of St. Petersburg, Florida for $90,500. The applicant states that there have been no offers to purchase at that price or any other.

5. Carolyn A. Melley, S.R.E.A., of McKeon & Stroud, Inc., real estate appraisers and consultants doing business in St. Petersburg, Florida, stated that the fair market value of the Condominium was $80,000 as of August 18, 1986.

6. The applicant acknowledges that Dr. Erickson made use of and paid nominal rent for the Condominium from time to time during the off season in the years 1980–1986. The applicant further represents that he will prepare Form 5330 (Return of Initial Excise Tax) with respect to this use, and will file this return with the Internal Revenue Service and pay all applicable excise taxes within 60 days from the date of the grant of this exemption.

7. Accordingly, the applicant proposes that the Plan sell the Three-Fourths Interest in the Condominium to Dr. Erickson for the greater of the fair market value of the Three-Fourths Interest on the date of sale or the total expenditure of the Plan in connection with the acquisition and retention of the Three-Fourths Interest, including, but not limited to the purchase price, legal expenses, property taxes, insurance, maintenance and condominium fees.

8. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Three-Fourths Interest will be sold for the greater of its fair market value on the date of sale as determined by an independent appraiser or for the total expenses to the Plan in connection with the acquisition and holding of the Three-Fourths Interest; (b) the sale represents

[1] The applicant represents that the proposed transaction will not cause the contribution limitations imposed by section 415 of the Code to be exceeded for either Plan.

[2] In this proposed exemption the Department expresses no opinion as to whether the purchase of the Condominium by Dr. Erickson's individual account in the Plan and by Mrs. Erickson as tenants in common violated any of the provisions of Part 4 of Title I of the Act.

a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions, fees, or taxes by the Plan; (d) the Plan will not suffer any loss with respect to its outlay in connection with its purchase and holding of the Three-Fourths Interest; and (e) Dr. Erickson, the participant whose individual account in the Plan is affected by this proposed exemption, has determined that the proposed transaction would be in the interest of his individual account in the Plan, in his interest and in that of his beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Plumbers & Steamfitters Local 60 Pension Fund (the Plan)**

**Located in Metairie, LA**

[Application No. D–6935]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted: (1) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective April 10, 1987, to the cash purchase by the Plan of a parcel of improved real property (the Property) located in Metairie, Louisiana, from the Plumbers & Steamfitters Local 60 Home Association, Inc. (the Association), a party in interest with respect to the Plan; (2) the restrictions of section 406(b)(2) of the Act shall not apply, effective April 10, 1987, to the lease of space in the Property to the Plumbers & Steamfitters Local 60 Education Trust (the Trust); and (3) the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 10, 1987, to the lease of space in the Property to Gardner, Robein & Healey (Gardner), a party in interest with respect to the Plan, provided that the terms of the transactions are at least as favorable to the Plan and the Trust as arms length transactions between unrelated parties would be.

*Summary of Facts and Representations*

1. The Plan is a multiemployer pension plan established and maintained in accordance with section 302(c)(5) of the Labor Management Relations Act of 1947 (the LMRA). The Plan has approximately 1000 participants and more than $61,000,000 in assets. Participants in the Plan are employees of employers who are signatory to or bound by collective bargaining agreements executed with Local Union No. 60, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO (the Union). The Union covers employees in the New Orleans area. The Plan is administered by a Board of Trustees (the Trustees) composed of three Union and three employer members. The Union Trustees are also officers of the Union.

2. The Association is a realty corporation owned by the paid-up, current members of the Union. The applicant represents that the Association may be considered as the Union. The officers and directors of the Association serve as such only while they are officers of the Union. The sale or purchase of any immovable property must be approved by a two-thirds vote of a properly constituted meeting of Union members. The applicant represents that such a vote and approval has been acquired with respect to the Plan's proposed purchase of the Property. Gardner serves as legal counsel for the Union and the Plan and therefore is a party in interest with respect to the Plan under section 3(14)(C) of the Act.

3. The Property is located at 2540 Severn Avenue, Metairie, Louisiana. It consists of the land and a four story office building. Currently the Trust, also administered under the LMRA, is and will remain, a tenant in the Property.[5] Gardner is also a tenant in the Building. If this proposed exemption is granted, the Plan and the Plumbers & Steamfitters Local 60 Welfare Fund (the Welfare Fund) will move from their current offices into the Property.[6]

4. The Property was appraised on May 21, 1986 by W. John Tessier, I.F.A.S. and C.J. Tessier, Jr. of W.J. Tessier, Inc., independent realtors and appraisers located in New Orleans. The Tessiers appraised the fair market value of the Property as $6,500,000.

5. The Plan's Board of Trustees offered the Association $6,400,000 for the Property, which was accepted by the Association on January 2, 1987. The applicant represents that the Plan will purchase the Property on April 10, 1987 in order to prevent the Property from being foreclosed upon.

6. Waters, Parkerson & Co., Inc., Registered Investment Counsel serves as the Plan's independent investment advisor (the Advisor). The Advisor has reviewed the proposed purchase of the Property by the Plan and the leases of space to the Trust and Gardner. With respect to the Plan's purchase of the Property, the Advisor examined the appraisal by the Tessiers, a detailed analysis of projected cash flows and rates of return prepared by Thomas L. Axelrad, an independent real estate consultant in New Orleans, and the current leases (including the leases to the Trust and Gardner), consulted with third parties familiar with the commercial real estate market in the greater New Orleans area, and analyzed the diversification of the Plan's assets. Mr. Axelrad's analysis found that the yields from the Property are favorable as compared to other real estate investments of similar risk and quality; that many of the tenants are committed to the buildings, and/or have made a significant financial investment, thereby reducing turnover; the Property has a superior location and a low likelihood of significant new competition, and the Property has the potential for growth in value as a hedge against inflation. The Advisor concluded that the Property should produce very favorable results over the long term and that it compares favorably with the investment goals of the Plan.

7. With respect to the lease to the Trust, the Advisor found, based on consultation with an independent leasing consultant, that the lease to the Trust is fair and reasonable, and that: (a) The Trust is the first and primary tenant in the Property; (b) the Trust provides its own janitorial service; and (c) the majority of the Trust's space is painted concrete block interior, rather than finished office space, which required far less construction expense for the owner.

8. With respect to the lease of office space to Gardner, the Advisor found, based on consultation with the

[5] The applicant represents that this lease is exempt from the prohibitions of section 406 of the Act by reason of Prohibited Transaction Exemption 78–6 (PTE 78–6, 43 FR 23024). The Department offers no opinion herein as to whether the condition of PTE 78–6 have been met.

[6] The applicant represents that the lease to the Welfare Fund will be covered by Prohibited Transaction Exemptions 76–1, Part C and 77–10 (PTE 76–1, C, 41 FR 12,740, PTE 77–10 (42 FR 33918). The Department offers no opinion herein as to whether the conditions of PTE's 76–1, C and 77–10 will be met.

independent leasing consultant that the lease's rate appears to be slightly above the prevailing rates in the Property's building category and that the lease terms are normal. The Advisor concluded that the lease to Gardner is beneficial to the owner of the Property.

9. In summary, the applicant represents that the proposed transactions meet the criteria of section 408(a) because: (a) The Plan will acquire the Property for no more than the Property's appraised fair market value; (b) the Plan's Advisor has concluded that the acquisition of the Property will be a beneficial long term investment for the Plan; and (c) the leases to the Trust and to Gardner are at fair market rent and at standard terms.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.]

**Dr. Phillips, Inc., Employee Trust Profit Sharing Plan (the Plan)**

**Located in Orlando, Florida**

[Application No. D–6962]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of five parcels of improved real property (the Parcels) and a tract of unimproved land (the Tract) for the total cash consideration of $1,235,000, to Dr. Phillips, Inc. (the Employer), a party in interest with respect to the Plan, provided the total amount paid for the Parcels and the Tract is not less than fiar market value at the time the transaction is consummated.

*Summary of Facts and Representations*

1. The Plan is a defined contribution plan with 47 participants and total assets having a fair market value of approximately $2,386,563 as of August 31, 1986. The trustee of the Plan (the Trustee) is Freedom Savings and Loan Association of Tampa, Florida. Investments decisions for the Plan are made by the Trustee subject to the direction of a five-member Plan committee comprised of officers, directors and employees of the Employer. The Employer, which maintains its principal place of business in Orlando, Florida, is the owner of commercial and industrial real estate located in the Orlando, Florida area. The Employer develops such real estate for rental purposes.

2. Among the assets of the Plan are the Parcels and the Tract. These properties were transferred to the Plan during 1986 by Lockwood Associates, Inc. (Lockwood), a Delaware corporation that was wholly owned by the Plan and engaged in real estate brokerage and leasing prior to its dissolution on November 26, 1986. The Parcels and the Tract are located on or near North Orange Blossom Trail, one of the major north-south routes leading through Orlando, Florida and also designated as U.S. Highway 441. The Parcels and the Tract are also located in commercial/industrial areas and is adjacent to other properties that are owned and leased by the Employer. With one limited exception (see paragraphs 2.e and 3 below), none of the land comprising the Parcels and the Tract is leased to a party in interest. In addition, none of the land comprising the Parcels and the Tract is encumbered by a mortgage. The Parcels and the Tract presently produce annual rental income to the Plan of $116,935.

Following is descriptive information about the Parcels and the Tract.

a. *Parcel One (Parcel One) 1224 West Amelia Street.* Parcel One, which is located at the corner of West Amelia Street and Hames Avenue, is approximately one block off North Orange Blossom Trail. It was acquired by Lockwood on July 2, 1954 from the Ozark Corporation (Ozark), a predecessor of the Employer. The purchase price for Parcel One was $3,214. Following the purchase, Lockwood constructed a building on Parcel One. The building was completed about September 1, 1954 at an initial cost of $17,691. Since that time, Lockwood made improvements to the building at a total additional cost of $24,908. Until June 30, 1985, Parcel One was leased to Mr. Jack Morrison, Jr. and it was used as a furniture frame and upholstery shop. Parcel One remains vacant at this time.

b. *Parcel Two (Parcel Two) 2120 North Orange Blossom Trail.* Parcel Two, together with a building situated thereon, was acquired by Lockwood from the Employer on August 6, 1957 at a total price of $72,406. Subsequent to the acquisition, Lockwood placed equipment on Parcel Two at a cost of $2,042. Lockwood also had Parcel Two paved and made other land improvements to this property between 1957–1967 at a total cost of $11,639. On August 31, 1979, additional buildings and improvements were placed upon Parcel Two by Lockwood at a cost of $40,632. Parcel Two is presently leased as a rental lot for used automobiles to H and S Equipment Rental Company at a monthly rental of $1,753 or an annual rental of $21,046.

c. *Parcel Three (Parcel Three) 2550 North Orange Blossom Trail.* Parcel Three was acquired by Lockwood on May 2, 1952 from Ozark at a cost of $36,860. Lockwood subsequently made numerous improvements to Parcel Three for a total cost of $106,626. At present, Parcel Three is leased to Black and Todd, Inc. for an annual rental of $26,558. It is used as a restaurant by the lessee.

d. *Parcel Four (Parcel Four) 1861–31 Traylor Boulevard.* Parcel Four was acquired by Lockwood from Ozark on May 2, 1952 at a cost of $4,168. Lockwood constructed improvements on Parcel Four. The improvements were completed about September 1, 1953 at a total cost of $21,689. Subsequent to the construction of the improvements, Lockwood spent $53,630 on improvements to the building comprising Parcel Four plus $9,325 on paving and land improvements. Parcel Four is presently leased to Continental Baking Company (Continental) where it is used as a warehouse and distribution center for the retail sale of bread and an associated truck repair facility for Continental's delivery trucks. The monthly rental paid by Continental for its use of Parcel Four is $2,487 or a total annual rental of $29,851.

e. *Parcel Five (Parcel Five) 2200 North Orange Blossom Trail.* Parcel Five and the improvements situated thereon were acquired by Lockwood from the Employer on August 6, 1957 at a total cost of $55,783. Subsequent to the purchase, Lockwood expended a total of $36,120 on building improvements, $5,905 on equipment purchases and $9,393 on land improvements and paving. Most of Parcel Five is currently leased to James and Carol Trunk at a monthly rental of $3,000 or $36,000 annually and it is used as a dealership for payloaders (small motorized loading trucks). A small portion of Parcel Five is leased to the Trustee (see paragraph 3 below).

In addition to the Parcels, the Plan owns the Tract which is vacant land behind Parcels Two and Five. The Tract was acquired by Lockwood for $7,342 from the Employer on February 2, 1970 in order to round out Lockwood's ownership of the portion of the block in which the Tract is located. Portions of

the Tract are leased to the lessees of Parcels Two and Five. The rental for those properties includes the right to use the Tract.

Aside from the costs expended during its ownership of the Parcels and the Tract, Lockwood has paid real estate taxes on the subject properties. Although such information is not readily available for prior years, the Employer has represented that for the years 1984, 1985 and 1986, Lockwood paid real estate taxes of $10,673, $13,385 and $9,178, respectively.

3. In mid-1985, the State of Florida initiated a road widening project. The Trustee owned and occupied property adjacent to Parcel Five on which it constructed a branch banking facility. As a result of the road widening project, the Trustee realized that it would lose street access to its drive-in teller facilities. Accordingly, at the Trustee's request, Lockwood commenced leasing the north 20 feet of Parcel Five to the Trustee on July 1, 1985 under the terms of a written net lease (the Lease). The Lease is for a duration of approximately 29 years. The rental rate for the initial two years of the Lease is $290 per month or $3,480 annually. During the remaining years the Lease is in effect, the rental will be increased in accordance with the Consumer Price Index.[5] To the Employer's best knowledge, all rental payments under the Lease have been timely paid. Because the Lease constitutes a prohibited transaction in violation of the Act, the Employer represents that the Trustee will pay the Internal Revenue Service (the Service) all excise taxes that may be due by reason of the Trustee's past and continued leasing of a portion of Parcel Five from the Plan as well as the Trustee's use of the Tract, within 90 days of the date of the publication in the **Federal Register** of the grant of the notice of proposed exemption.

4. Because the Employer proposes to use the Parcels and the Tract in an overall development program, it requests an administrative exemption in order to acquire the properties from the Plan. Accordingly, the Employer will purchase the Parcels and the Tract for a cash price reflecting the fair market value of the Parcels and Tract as determined by an independent appraiser. The Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale.

5. The Parcels and the Tract were initially appraised by Mr. Thomas W. Bledsoe, M.A.I., S.R.P.A. Associate, an independent appraiser affiliated with Consortium Appraisal and Consulting Services of Winter Park, Florida. In appraisal reports prepared by Mr. Bledsoe in April 1985, he determined the fair market values of the Parcels inclusive of the Tract were as follows as of January 3 and 4, 1985: Parcel One, $125,000; Parcel Two, $325,000; Parcel Three, $285,000; Parcel Four, $170,000; and Parcel Five, $330,000.

In updated appraisal reports prepared by Mr. Bledsoe on May 20, 1986, he represented that he had reinspected the properties as of May 8, 1986 but found no material change in their value. Mr. Bledsoe also stated that he took into consideration the possibility of having the Employer pay a higher market value for the properties by reason of their proximity to the Employer's business premises. However, he said he found no support that would indicate that the Employer should be required to pay a premium price. In Mr. Bledsoe's opinion, the fair market value of the Parcels and the Tract, in relation to the adjoining properties owned by the Employer, would be no different than it would to other potential buyers in the market place. Thus, the aggregate sales price for the Parcels and to Tract will be $1,235,000.

In addition to determining the fair market value of the properties, Mr. Bledsoe completed an analysis of the Lease with the objective of determinig whether the Trustee had been paying the Plan the fair market rental value of the subject real estate. Mr. Bledsoe explained that for the type of property involved (which consists primarily of land) the portion of Parcel Five leased to the Trustee had a fair market value of $34,560 as of May 7, 1985 and an annual fair market rental value of $3,456 based upon a 10 percent rate of return and incremental adjustments to the Lease. Although the contract rental in the Lease was $3,480 annually (or $290 monthly), Mr. Bledsoe submitted that this was less than a one percent differential. Accordingly, it was his opinion that the contract rental of $3,480 should be considered the market rental for the portion of Parcel Five that is leased to the Trustee.

6. In summary, it is represented that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price for each Parcel inclusive of the Tract is based on their fair market values as determined by an independent appraiser; (c) the Plan will not be required to pay any real estate fees or commissions in connection therewith; (d) the sale will permit the Plan to diversify its investment and to maintain a greater percentage of its assets in more liquid investments; and (d) within 90 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption, the Trustee will pay all applicable excise taxes that may be assessed by the Service by reason of its past and continued leasing of a portion of Parcel Five as well as the Trustee's use of the Tract.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**Duggins Construction, Inc. Defined Benefit Pension Plan (the Plan)**

**Located in El Centro, California**

[Application No. D–7001]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain improved real property (the Property) to Triple D Investments (Triple D), a party in interest with respect to the Plan, provided that the Plan receives not less than the fair market value of the Property as of the date of sale.

*Summary of Facts and Representations*

1. The Plan is a defined benefit plan with eleven participants and assets of $1,176,644.00 as of October 31, 1986. The trustees of the Plan are Ray Duggins and James Duggins, each of whom is a shareholder and officer of Duggins Construction Inc. (the Employer). Ray Duggins, James Duggins and the Employer each holds a ⅓ partnership interest in Triple D. The Employer is engaged in the construction industry.

2. The Property is located at 902 South Second Street in El Centro, California. The Plan purchased the Property on January 2, 1985 from Tiffany Investment Corp., an unrelated party, for $115,000. Since acquisition of the Property, the Plan has expended $8,524.00 for capital impovements and $9,121.00 for operating expenses. The Plan currently leases the Property to an unrelated party on a month-to-month basis at a rent of

[5] The Department is not, herein, proposing any exemptive relief for the Lease.

$1,930.00 per month. However, for the period from August 15, 1986 to January 15, 1987, the Employer leased a portion of the subject property. In this regard, the applicant states that Form 5330, Return of Initial Excise Taxes Relating to Pension and Profit Sharing Plans, will be filed with the Internal Revenue Service and that all appropriate excise taxes for the leasing transaction will be paid by the Employer within 60 days of a grant of an exemption for the sale of the Property.

3. The applicant requests an exemption that will permit the Plan to sell the Property to Triple D for cash at a price greater than its fair market value in order to improve the Plan's liquidity. The applicant represents that the additional liquidity will (a) permit future benefit payments without restricting investments to low-yielding money market funds; and (b) facilitate capital improvements on a second parcel of real estate located at 1150 McCallum Street, El Centro, California (McCallum property).[6] The improvements to the McCallum property, which is currently leased to an unrelated party, will enable the Plan to charge a higher rent thereby increasing Plan income.

4. The Property was appraised by William S. Smith, A.R.A., an independent real estate appraiser in El Centro, California, as of October 22, 1986. Mr. Smith appraised the fair market market value of the Property as $145,000. The applicant proposes to purchase the Property from the Plan for cash in the amount of $150,000, a price greater than the Property's appraised fair market value. The applicant represents that the Plan will not incur any expenses or commissions concerning the Plan's sale of the Property.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) This will be a one-time cash transaction;

(2) The Plan will receive greater than fair market value for the Property; and

(3) The Plan will pay no fees or commissions in connection with the proposed transaction.

For Further Information Contact: Betsy Scott of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

[6] The Department is expressing no opinion as to whether the use of Plan assets for the improvement of the McCallum property violates any provisions of Part 4 of Title I of the Act.

**A. Raimondo, Inc. Defined Contribution Pension Plan and Trust (the Plan)**

**Located in Greensburg, Pennsylvania**

[Application No. D–7013]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The proposed cash purchase of certain improved real property (the Property) by the Plan from A. Raimondo, Inc. (the Employer), a party in interest with respect to the Plan; and (2) the proposed lease (the Lease) of the Property by the Plan to the Employer, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those between unrelated parties.

*Summary of Facts and Representations*

1. The Plan is a money purchase pension plan with two participants and assets of $596,410.72 as of April 30, 1986. The Employer is in the masonry reconstruction and restoration business in the greater Pittsburgh, Pennsylvania area.

2. The applicant is seeking an exemption to permit the Plan to acquire the Property and lease it to the Employer. The Property consists of an office and warehouse building containing 8,050 square feet located on 6.679 acres in Hempfield Township, Westmoreland County, Pennsylvania. The Property serves as the Employer's place of business. The Property was appraised as of February 24, 1987, by H. Kenneth Gehr, an independent real estate appraiser in Jeannette, Pensylvania. The applicant represents that Mr. Gehr is unrelated to the parties in interest in this transaction. As of the appraisal date, the Property's fair market value was $148,500. The applicant proposes to sell the Property to the Plan for a sales price of $125,000.[7] This amount falls below the appraised fair market value and represents approximately 21% of the Plan's assets.

3. An independent fiduciary, Halliwell & Associates, Inc., employee benefits consultants in Pittsburgh, Pennsylvania, has agreed to monitor the lease throughout its term. The applicant represents that substantially less than 1% of the independent fiduciary's fees are derived from services rendered of the Employer.

4. The Lease will be for ten years with an additional five-year renewal period. The applicant represents that renewal of the Lease will be finalized only with the approval of the independent fiduciary. The rent will be triple net and will require the Employer-lessee to pay taxes, maintenance and utilities expenses. The applicant represents that the independent fiduciary will select a qualified independent appraiser to re-appraise the Property at least every three years to determine the appropriate fair market rental value. Mr. Gehr appraised the fair market rental value, as of February 24, 1987, as $2,500.00 per month. The rent will be adjusted annually to reflect changes in the Consumer Price Index, but will at no time be adjusted below $2,500.00 per month.

5. The independent fiduciary has examined the proposed transactions within the context of the Plan's investment portfolio and funding policy. The independent fiduciary concluded that:

a. The overall value of the investment will represent only 21% of the total value of the Plan's assets and thus will significantly contribute to the diversification of the investments of the Plan in line with the stated funding policy;

b. The Employer is a profitable building restoration enterprise in an area demonstrating a growing need for its services. The independent fiduciary projects the Employer's business to continue at existing or even higher levels for the next few years. Because of the Employer's financial condition, the independent fiduciary deems there to be very small overall risk of loss by the Plan on the proposed transactions;

c. The projected return to the Plan is above average and will provide a favorable level of income for the foreseeable future, especially when compared to the returns currently available from alternative investments;

d. The proposed rent compares favorably with others and is appropriate and at fair market value; and

e. Under the provisions of the Lease, the independent fiduciary will be

[7] The applicant represents that the Plan would not be in violation of section 415 of the Code if the difference between the sales price and the fair market value of the Property were to be treated as a contribution to the Plan.

empowered to enforce all of the terms of the Lease. The independent fiduciary will verify the collection of rent and will ensure that the Property is adequately insured and maintained. The independent fiduciary wil monitor the transactions to safeguard the interests of the Plan and its participants and beneficiaries.

6. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because:

(a) The Plan will pay below fair market value for the Property;

(b) The Employer will pay at least the Property's fair rental value under the Lease;

(c) The rent will be adjusted annually to reflect changes in the Consumer Price Index and will be re-appraised at least every three years by a qualified independent appraiser to determine the appropriate fair market rental value; and

(d) An independent fiduciary has reviewed the transactions and has concluded that they are in and best interests of the protective of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction: The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contract: Betsy Scott of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**Weight Watchers of Arizona, Inc. Defined Contribution Pension Plan (the Plan)**

**Located in Phoenix, Arizona**

[Application No. D–7065]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restirctions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale for $125,000 of an unimproved parcel of real property (the Property) from the Plan to Robert Machiz, Iris Machiz, Gerald Appell, and Isabelle Appell (the Applicants), parties in interest with respect to the Plan; provided that the sales price is not less than the fair market value of the Property as of the date of sale.

*Summary of Facts and Representations*

1. The Plan is a defined contribution plan with 26 participants as of February 1987 and net assets with a value of approximately $632,738 as of September 1986. The Applicants are the only shareholders, members of the Board of Directors, and the officers of the Weight Watchers of Arizona, Inc. (the Employer), located at 1608 E. Earll Drive, Phoenix, Arizona. The Applicants also serve as the trustees of the Plan and have discretionary authority over the investment decisions of the Plan.

2. The Property is located 125 feet north of the northeast corner of 16th Street and Earll Drive, Phoenix, Arizona and is adjacent to and south of two parcels of real property owned by the Applicants. The Property is a level, street grade, rectangular vacant parcel totalling 10,061 square feet with a 60.9 frontage along 16th Street, a one mile north/south arterial roadway. Prior to the passage of the Act, the Property was acquired by a predecessor defined benefit plan (the Benefit Plan) on December 10, 1973, as an Employer contribution with a fair market value of $24,322. At that time, the Employer contemplated leasing the Property for expansion of the corporate headquarters but was precluded from doing so after the passage of the Act. It is represented that the Employer and the Applicants have not used the Property nor has the Property generated income.

In 1976 the Benefit Plan was converted to the current Plan which since that time has held the Property as an investment vehicle which has appreciated in value. It is represented that the real estate taxes paid since the Plan acquired the Property total $4,500. These taxes on the Property were paid by the Employer and treated as a Plan expense paid in addition to the annual contribution required under the Plan.

The Applicants represent that the current fair market value of the Property constitutes approximately 20% of the Plan's assets in 1986.

3. The Property was appraised at $125,000 on January 19, 1987, by Donald C. Duncan, A.S.A. (Mr. Duncan) and Thomas Raynak (Mr. Raynak) of Iver C. Johnson and Company, Ltd., (Iver) located in Phoenix, Arizona. Mr. Duncan is a member of the American Society of Appraisers and the vice president of and chief appraiser with Iver. Mr. Raynak is a staff appraiser with Iver. Both Mr. Duncan and Mr. Raynak represent that they are independent and have no present or contemplated interest in the Property nor has their compensation or employment been contingent on their appraised value of the Property. Mr. Duncan and Mr. Raynak indicated that due to the proximity of the Property to the land owned by the Applicants that the value to them would be five to ten percent above market value and that the appraised value of $125,000 includes that premium.

4. It is represented that the Applicants intend to go forward on the commercial development on the two parcels which they own and which are adjacent to the subject Property. The Applicants propose to purchase the Property from the Plan for $125,000 in cash in order to consolidate it with such development. The Plan will incur no costs of commissions or finder's fees in connection with the sale. It is represented that the proceeds of the sale of the Property will be used to diversify the Plan's portfolio of investments.

5. In summary, the Applicants represent that the proposed transaction satisfies the criteria of section 408(a) because:

(a) This will be a one-time transaction for cash;

(b) The Plan will be able to invest the proceeds from the sale of the Property in income producing assets; and

(c) The sale price is the fair market value of the Property as determined by independent appraisers and includes a premium due to the proximity of the Property to other real estate owned by the Applicants.

For Further Information Contact: Angelena Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**Richard F. Pawlowski, M.D., P.C. Defined Benefit Pension Plan (the Plan)**

**Located in Carmichael, California**

[Application No. D–7086]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by

the Plan of a certain parcel of unimproved real property (the Property) to Dr. and Mrs. Richard F. Pawlowski (the Pawlowskis), disqualified persons with respect to the Plan, provided that the consideration paid for the Property is not less than the greated of its fair market value on the date of the Sale or the price originally paid by the Plan plus its holding costs.

*Summary of Facts and Representations*

1. The Plan is a defined benefit plan with total assets of $870,778.29 as of September 30, 1986. The Pawlowskis are the sole participants and fiduciaries of the Plan. Dr. Pawlowski is the sole owner of the Plan sponsor, a medical corporation (the Employer).[a]

2. The Property is located at Powers Drive, Lot 226, Ridgeview Village #4 in El Dorado Hills, California. The Plan purchased the Property in July, 1983 from an unrelated party for $57,520.45. Since the acquisition of the Property, the Plan has expended $3,157.06 for property taxes. The applicants represent that the Property has been undeveloped throughout the holding period and that it has not been used for any purpose.

3. The applicant request an exemption that will permit the Plan to sell the Property to the Pawlowskis for cash in order to improve the Plan's liquidity and to divest the Plan of an asset which has not appreciated substantially in value. The Pawlowskis desire to construct their primary residence on the Property. The applicants represent that no attempts have been made to sell the Property to an unrelated party.

4. The Property was appraised by Sheri L. Donaldson, an Independent real estate appraiser in Shingle Springs California, as of December 20, 1986. The applicants represent that Ms. Donaldson is unrelated to the Pawlowskis. Ms. Donaldson appraised the fair market value of the Property as $59,000. The applicants propose to purchase the Property from the Plan for cash in the amount of $60,677.51, which represents the total of the Plan's expenditures connected with the acquisition and holding of the Property and which is in excess of the Property's appraised fair market value. The applicants represent that the Plan will not incur any expenses or commissions in connection with the Sale.

5. In summary, the applicants represent that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) This will be a one-time cash transaction;

(2) The Plan will receive greater than fair market value for the Property; and

(3) The Plan will pay no commissions or expenses in connection with the proposed transaction.

Notice to Interested Persons: Because The Pawlowskis are the sole Plan participants, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that that material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of April, 1987.

Elliot I. Daniel,

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87–8938 Filed 4–20–87; 8:45 am]

BILLING CODE 4510-29-M

[a] Since the Pawlowskis are the sole Plan participants and Dr. Pawlowski is the sole owner of the Plan sponsor, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

### Northeast Nuclear Energy Co.; Integrated Safety Assessment Program; Availability of the Draft Integrated Safety Assessment Report for the Millstone Nuclear Power Station, Unit No. 1

The Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation has published its Draft Integrated Safety Assessment Report (ISAR) (NUREG–1184) related to the Northeast Nuclear Energy Company's (licensee) Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

The Integrated Safety Assessment Program (ISAP) was initiated by the NRC to conduct integrated assessments for operating reactors to establish integrated implementation schedules. This report documents the review of Millstone Unit No. 1, which is one of two plants being reviewed under the pilot program for ISAP. This report indicates how 85 topics selected for review were addressed and presents the staff's recommendations regarding the corrective actions to resolve the 85 topics and other actions to enhance plant safety. The report is being issued in draft form to obtain comments from the licensee, nuclear safety experts, and the Advisory Committee for Reactor Safeguards. Once those comments have been resolved, the staff will present its positions, along with a long-term implementation schedule from the licensee, in the final version of this report.

The draft ISAR is being made available at the NRC's Public Document

Room, 1717 H Street, NW., Washington, DC 20555 and at Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385 for inspection and copying. A free single copy of draft NUREG–1184, to the extent of supply, may be obtained by writing to the Distribution Section, Document Control Branch, Division of Information Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 15th day of April, 1987.

For the Nuclear Regulatory Commission.

**Cecil O. Thomas,**

*Director, Integrated Safety Assessment Project Directorate, Division of PWR Licensing–B, Office of Nuclear Reactor Regulation.*

[FR Doc. 87–8933 Filed 4–20–87; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24345; File No. SR–CBOE–87–09]**

### Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Terms of Options Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Text of the Proposed Rule Change**

Additions are italicized; deletions are bracketed.

Terms of Option Contracts

Rule 24.9. No change.

. . . Interpretations and Policies:

.01 The procedures for adding and deleting strike prices for index options are provided in Rule 5.5 and Interpretations and Policies related thereto, as otherwise generally provided by Rule 24.9, and include the following:

a. Regardless of the price of an index, the interval between strike prices will be no less than $5.00.

b. New series of index option contracts may be added up to the fifth business day prior to expiration.

c. When a new series of index option contracts with a new expiration cycle are opened for trading, two strike prices above and two strike prices below the current index price may be added.

d. When the value of the index underlying a class of index options reaches a strike price, the Exchange may add one or more additional strike prices such that there are up to [two] *three* strike prices above and [two] *three* strike prices below the strike price which has been reached.

e. In unusual market conditions, the Exchange may add additional series of index option contracts up to [three] *four* strike prices above and [three] *four* strike prices below the current index price.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change will provide necessary flexibility for the Exchange to add series of index option contracts at sufficient price intervals away from the existing index value to allow appropriate trading strategies to be effectuated.

In recent days, the index value in the S&P 100 Index Options ("OEX") has, on an intra-day basis, moved as many as 13 points. This volatile price movement results in two particularly acute problems in trading. First, the volatility dramatically increases the price of the existing options, thereby limiting the ability to hedge with lower priced options. Second, the process for introduction of new strikes requires some degree of lead time and consequently relief cannot be offered to the marketplace rapidly enough to deal with this circumstance.

The Exchange has previously secured some relief in this area. *See* SR-CBOE–84–22, as amended. As approved by the Commission, the referenced proposed rule change allows for the maintenance of two out-of-the-money strike prices in index options, and a third can be added in unusual market conditions. This relief, however, has been inadequate to deal with the increasing circumstances wherein index options trade through a substantial number of strike prices on a very short-term basis. The Exchange believes that the addition of an additional out-of-the-money strike price interval in unusual market conditions is an appropriate step.

The Exchange believes that the proposed rule change is consistent with the Securities Exchange Act of 1934 and in particular the requirements of section 6 of the Act and the Rules and Regulations thereunder in that the proposed rule change will accommodate market participants' investment needs and objectives, increase market depth and liquidity and improve the market efficiency. It should also be noted that the Exchange does not believes that the increased number of strike prices will impair market efficiency by dispersing trading activity. To the contrary, the Exchange believes that market participants are enabled, by hedging activity in the additional strike prices, to assume greater positions in the preexisting option series.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that this proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV Solicitation of Comments**

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with rspect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies so such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 12, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 15, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Docs. 87-8926 Filed 4-20-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. 34-24347; File No. SR-CBOE-87-12]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on March 20, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would enable the Exchange to add two-and-a-half cent exercise prices in British pound option contracts, either singly or at the same time as the next exercise price is added.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The Purpose of this proposed rule change is to allow the listing of additional exercise prices in British pound option contracts to enable the Exchange to compete with the Chicago Mercantile Exchange and the Philadelphia Stock Exchange, Inc. ("Phlx") both of which currently have $.025 strike price intervals on British pound option contracts. The statutory basis for the proposed rule change is section 6(b)(5) of the Act, in that it is designed to facilitate transactions in British pound option contracts.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act because the rule change is substantively identical to a proposed rule change previously filed by the Phlx and approved by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. This rule change will provide investors in a non-volatile currency with more choices as to their participation in this market. The flexibility of switching from a $.05 to $.025 intervals will enable the Exchange to be competitive with the Chicago Mercantile Exchange and the Phlx which currently have $.025 intervals on British Pound option Contracts.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change is substantively identical to a rule proposal previously filed by the Phlx and approved by the Commission.[1] The strike price revision also is similar to others the Commission has approved in non-volatile currencies.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 12, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

Dated: April 15, 1987.

[FR Doc. 87-8927 Filed 4-20-87; 8:45 am]

BILLING CODE 8010-01-M

---

[1] *See* Securities Exchange Act Release No. 24103, February 13, 1987.

[Rel. No. 34-24330; File No. SR-MCC-87-2]

## Self-Regulatory Organizations; Midwest Clearing Corp.; 1987 Trade Recording Fee Schedule; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 2, 1987, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, with Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the 1987 Trade Recording Fee Schedule.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Midwest Clearing Corporation has implemented a revised schedule of charges for trade recording for trades recorded on or after March 2, 1987. The MCC fee changes will result in lower trade recording costs for most firms.

Each year MCC analyzes the cost of providing trade recording and clearing services to its participants in order to determine how well the fee structure matches the cost of providing these services. The study includes an analysis of MCC services as they compare with services and fees in other market places and to determine how well MCC has addressed the broader needs of the financial community. The analysis indicated that MCC could improve the cost effectiveness of trade recording services for all participants by lowering costs for trades in the 1–1000 share category and eliminating the trade per day discount calculations previously offered to high volume participants. To encourage large firms to use MCC services, a discount for high volume users who record 10,000 or more trades per month will still be in effect but will apply to that category of trades in the 1000 share size and above where a slight increase in fees would have an impact. The new structure effectively lowers costs for most participants while assuring MCC that the cost of providing trade recording services is covered.

The proposed rule change is consistent with section 17A(b)(3)(D) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among MCC's Participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Midwest Clearing Corporation does not believe that the proposed fee schedule will impose any burdens on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments have neither been solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 12, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 13, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

### Exhibit A—1987 Trade Recording Fees

Effecitve March 2, 1987, MCC Trade Recording fees will be changed to the following schedule:

| Trade size in shares | Price/trade side |
|---|---|
| [illegible] | [illegible] |
| 100–199 | 0.20 |
| [illegible] | 0.23 |
| [illegible] | [illegible] |
| 400–499 | [illegible] |
| [illegible] | 0.32 |
| [illegible] | 0.35 |
| 700–799 | [illegible] |
| 800–899 | 0.41 |
| [illegible] | 0.44 |
| 1000–1499 | 0.47 |
| [illegible] | 0.64 |
| [illegible] | 0.81 |
| [illegible] | 0.98 |
| [illegible] | 1.15 |
| [illegible] | 1.32 |
| 4000–4499 | 1.49 |
| [illegible] | 1.66 |
| 5000 and up | 1.83 |

The monthly MCC/MSTC billing statement will continue to reflect the total number of trades by type (round/mix lot, odd lot, etc.). The associated fees will continue to be provided in an additional statement titled "Trade Recording Fees" which will be provided each month. This statement will reflect the above schedule, categorized by share size with the appropriate fee applied.

In addition, a discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1000 shares and larger when a participant exceeds 10,000 recorded trade sides each month.

Discount Schedule

Total trades recorded exceeds 10,000 trades in any given month.

| Total size in shares | Discount | Effective price/ trade [illegible] |
|---|---|---|
| 1000–1499 | $0.15 | [illegible] |
| 1500–1999 | 0.15 | 0.49 |
| 2000–2499 | 0.15 | [illegible] |
| 2500–2999 | 0.15 | [illegible] |
| 3000–3499 | 0.15 | 1.00 |
| 3500–3999 | 0.15 | 1.17 |
| 4000–4499 | 0.15 | 1.34 |
| [illegible] | 0.15 | 1.51 |
| 5000 and up | 0.15 | [illegible] |

For participants whose volume qualifies them for the discount, the "Trade Recording Fees" statement will reflect the cost for trades in the 1000 share and above category less the $0.15 per trade side discount. The statement will show a total trade recording fee for the month including non-discounted trades.

This fee will continue to be charged through the MST System as a cash adjustment separate from the MCC/MSTC monthly billing. Both fees will be processed on the sixth business day of the month via a "BLCLND" entry on the daily activity report.

[FR Doc. 87–8878 Filed 4–20–87; 8:45 am]

BILLING CODE 8010-01-M

---

[Release No. 34–24342; File No. SR–MSTC–87–4]

## Self-Regulatory Organizations; Midwest Securities Trust Co.; MSTC Revised Policy on Liability for Lost Use of Funds Due to the Late Processing of Call/Put/Maturity Redemptions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1987, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is a Bulletin and Procedures describing Midwest Securities Trust Company's ("MSTC") revised policy on liability for lost use of funds due to the late processing of call/put/maturity redemptions.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

MSTC has historically adhered to a policy, approved by its Board of Directors, of not assuming liability or honoring claims for the lost use of funds caused by the delay in crediting payments to the accounts of MSTC Participants. The rationale for this policy was based principally on MSTC's limited profit objective and the nature of MSTC's capacity as an agent in the maintenance and safekeeping of securities on behalf of its Participants. However, recent events in call/put/maturity redemptions have occasioned a re-review of this policy, both from the point of view of the MSTC Depository and MSTC Participants. Declines in interest rates occurring primarily in the last half of 1986 resulted in a significant increase in the number of full and partial redemptions of public and private debt securities, particularly municipal bonds. The increased redemption volume caused considerable burdens on the operations staffs of financial intermediaries, securities depositories and their participants, which sometimes resulted in delayed redemption processing and payments to the ultimate beneficial holders of such securities.

In some instances, delays in processing and crediting to MSTC Participants of collected funds has allowed MSTC to invest collected funds which would otherwise be made available and distributed to its participants. Based on the foregoing, as well as independent analysis by MSTC management, MSTC's Board of Directors has approved a change in MSTC's current liability policy in recognition of MSTC's responsibility to act expeditiously for its Participants and promptly distribute income funds. As described more fully in the attached Exhibit, and subject to the conditions contained therein, for called bonds with a payable date on May 1, 1987 or thereafter, MSTC will assume liability for lost use of funds for the period of time beginning on the seventh (7) business day after such payable date, and ending on the actual payment date. MSTC will compute and pay interest due Participants automatically upon the crediting of the redemption proceeds. MSTC will not, however, pay interest or honor claims where such interest is $500.00 per cusip or less. Furthermore, MSTC will not assume liability for interest payments when the (i) cause of delay in payment is wholly or substantially due to acts or failure to act on the part of a third party (such as an issuer, trustee or agent), or (ii) the third party is not in substantial compliance with the industry standards set forth in Securities Exchange Act Release No. 34–23856 (December 3, 1986, the substance of which has been previously distributed to MSTC Participants).

Finally, the attached Bulletin describes MSTC's plan to distribute accrued interest income to Participants. On or about July 15, 1987, MSTC will prorate and refund such income in proportion to each Participants dollar volume of call collection activity (amounts collected and disbursed to participants) during the time periods described in the Bulletin.

The purpose of the interest refund policy is to refund invested collected funds which would otherwise be available to Participants, as well as alleviate the costly and time consuming process to both MSTC and Participants in the preparation, research and resolution of individual call/put/maturity claims for payment dates prior to May 1, 1987.

The proposed rule change is consistent with the Securities Exchange Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of securities transactions. The proposed rule change also clarifies certain MSTC responsibilities and obligations regarding the safekeeping of securities and funds which are in its custody or control.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

While MSTC has not generally solicited or received comments, members of MSTC's Operations Committee and Board of Directors have reviewed and approved the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submission should refer to File No. SR–MSTC–87–4 and should be submitted by May 12, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 14, 1987.

**Shirley E.Hollis,**

*Assistant Secretary.*

[FR Doc. 87–8880 Filed 4–20–87; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–24344; File No. SR–NASD–87–12]**

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change**

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 20, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend its By-Laws and Code of Procedure to provide Extended Hearing Committees for certain disciplinary actions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24184, March 5, 1987) and by publication in the **Federal Register** (52 FR 7717, March 12, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 15, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87–8879 Filed 4–20–87; 8:45 am]

BILLING CODE [illegible]

---

**[Release No. 34– 24341; File No. SR–NYSE–87–11]**

**Self-Regulatory Organizations; New York Stock Exchange, Inc.; Opening Price Settlement of Expiring NYSE Composite and Beta Index Options**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 6, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

On March 13, 1987 the Exchange filed a proposed rule change to change the settlement pricing of expiring stock index options to the opening prices on expiration Friday.[1] That rule filing only was effective with respect to index options contracts expiring in June. In particular, the Exchange modified the definition of "Current Index Group Value" in Rule 700(b)(17) to permit the Exchange to specify that the value upon exercise of options on the NYSE Composite Index and the NYSE Beta Index on expiration Friday is to be calculated from the opening prices for the constituent stocks on that day. The Exchange made conforming changes to the contract specifications for options on both indexes to make clear that trading ceases on the Thursday before expiration Friday. The Exchange now proposes to make permanent the rule changes proposed in that filing.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) *Purpose.* The purpose of the proposed rule change is to ameliorate the impact of the concurrent expiration of index options and futures on the markets for individual stocks and on the stock market as a whole. The Exchange believes that settling index futures and options based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's opening procedures in handling the accompanying stock volume, is the best strategy for addressing widely-held concerns about the actual and potential

[1] *See* SR–NYSE–87–06, and 3/16/87 Letter to Sharon M. Lawson, Branch Chief, SEC, from Daniel P. Odell, Assistant Secretary, NYSE. This rule filing was approved in Securities Exchange Act Release No. 24276.

BEST COPY AVAILABLE

impact of the derivative products on the pricing mechanism and integrity of the stock market.

(b) Statutory Basis. The basis under the Act for the proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commision and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 12, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 14, 1987.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-8881 Filed 4-20-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. IC-15687; 812-6474]**

## CitiCMO, Inc.; Collateralized Mortgage Obligations

April 15, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act")

*Applicant:* CitiCMO, Inc.

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order conditionally exempting Applicant and certain trusts that it may from all provisions of the 1940 Act in connection with the proposed issuance of collateralized mortage obligations and sale of beneficial ownership interests in such trust.

*Filing Date:* The application was filed on November 13, 1986 and amended on February 26, and April 3, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. CitiCMO, Inc., 55 Water Street, New York, NY 10043.

**FOR FURTHER INFORMATION CONTACT:** Denis R. Molleur, Staff Attorney at (202) 272-2363 or Brion R. Thompson, Special Counsel at (202) 272-3016 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

*Applicant's Representations*

(1) Applicant is an indirect, wholly-owned subsidiary of Citicorp, a Delaware corportion. Applicant, a newly-formed Delaware Corporation, was incorporated to facilitate the financing of mortgage loans through the establishment of one or more trusts ("Trusts") for the limited purpose of issuing one or more series ("Series") of bonds ("Bonds") and investing in certin Mortgage Certificates [1] which will be used to collateralize such Bonds. No Trust will engage in any other unrelated business or investment activity.

(2) Applicant will establish one or more Trusts pursuant to separate trust agreements (each a "Trust Agreement") between Applicant, as settlor, depositor and sole beneficial owner, and Wilmington Trust Company or another independent bank, trust company or fiduciary acting as owner trustee (the "Owner Trustee").

(3) Under the terms of each Trust Agreement, Applicant will convey trust property to the related Trust in return for certificates or other instruments evidencing beneficial ownershjip of the Trust created under such Trust Agreement ("Trust Certificates"). Each Trust, acting through the Owner Trustee, will issue on or more Series of Bonds and, simultaneously with the sale of

---

[1] "Mortgage Certificates" will be limited to mortgage pass-through certificates and certain other certificates which are fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA Certificates"), Morgage Participation Certificates and certain other certificates issued by the Federal Home Loan Mortgage Corportion ("FHLMC Certificates") and Guaranteed Mortgage Pass-Through Certificates and Stripped Mortgage-Backed Securities issued by the Federal National Mortgage Association ("FNMA Certificates") (collectively, "Mortgage Certificates"). Mortgage Certificates included in the Collateral may or may not be Whole Pool Collateral. In addition to the Mortgage Certificates directly securing the Bonds, a Series may have additional collateral which may include cash, a letter of credit, certain collection accounts, debt service reserve funds and other reserve funds, the reinvestment income on such distributions and deposits, and/or payments under any minimum principal payment agreement.

such Series, purchase the Mortgage Certificates that will secure such Series of Bonds. Each Trust will pledge the collateral ("Collateral") for a particular Series of Bonds, including the Mortgage Certificates and certain other collateral, which may include on or more reserve funds, to the independent trustee (the "Bond Trustee") under an indenture (the "Indenture") between the Trust and the Bond Trustee, as supplemented by a series suplement ("Series Supplement") relating to such Series and will be subject to the lien of the related Indenture. The Bond Trustee will hold such Collateral as security only for that Series of Bonds, and the holders of Bonds of such Series (the "Bondholders") will be entitled to the equal and porportionate benefits of such security as if the same had been granted by a corporate issuer.

(4) In the case of each Series of Bonds: (a) Each Trust will hold no substantial assets other than the Mortgage Certificates; (b) the Bonds will be secured by Mortgage Certificates having a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned by the Owner Trustee to the Bond Trustee and will be subject to the lien of the related Indenture.

(5) Each Series of Bonds to be issued may contain one or more classes of variable or floating rate Bonds which will have a fixed maximum rate of interest ("interest rate cap") that will be payable on the Bonds (or the minimum rate of interest, in the case of an inverse-floating rate Bond). Any Series of Bonds containing one or more classes of variable or floating interest rate Bonds will be structured with reference to the interest rate caps for that particular Series, insuring that the scheduled distributions on the Mortgage Certificates together with the other Collateral pledged to secure the Bonds will be sufficient to make all payments on principal and interest on the Bonds, even if the interest rate on any class of variable or floating interest rate Bonds climbed to the interest rate cap in the first interest period and remained constant throughout the life of the Bonds.

(6) Applicant further intends to sell Trust Certificates representing the beneficial ownership in each Trust to not more than one hundred investors in transactions not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933 ("1933 Act"). Such investors will be those who traditionally engage in investing in mortgages or mortgage related instruments, or such other investors who would qualify as "accredited investors" as such term is defined in Regulation D to the 1933 Act ("Owners"). The subsequent transfer of Trust Certificates will be also limited to private placements to these types of investors. Each investor will represent that it is purchasing such Trust Certificates for investment purposes. The Trust Agreement relating to each Trust will prohibit the transfer of Trust Certificats for such beneficial interests if there would be more than one hundred Owners of such certificates at any time.

(7) Neither the holders of the beneficial interests of any of the Trusts, the Owner Trustee nor the Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the Owners of the Trust, the Owner Trustee nor the Bond Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest on any Bonds; (3) change the priority of payment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) change the provisions in the Indenture in such a manner as to affect the calculation of the debt service requirement for any Bond or the rights of the holder of any Bond to the provisions for mandatory redemption of Bonds; (6) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Certificates; (7) terminate the lien of the Indenture on any Collateral at any time subject thereto (except in certain limited circumstances expressly permitted in the Indenture); or (8) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

(8) The ability of the Applicant to sell Trust Certificates in each Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account, debt service reserve fund or Reserve Fund created pursuant to the Indenture to support payments of principal and interest on the Bonds.

(9) No Owner of a controlling interest in a Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either (a) any custodian which may hold the Collateral on behalf of the Bond Trustee or (b) any nationally recognized statistical rating agency rating the Series of Bonds. Moreover, none of the Owners of the Trust Certificates of a particular Trust will be affiliates of the Bond Trustee under the Indenture relating to the Bonds issued by such Trust.

(10) The interest of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the Owners of the Trust Certificates because: (a) The Mortgage Certificates which initially will be deposited into each Trust will not be speculative in nature since they will consist solely of the Mortgage Certificates, which are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) each Series of Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; (c) the Indenture under which a Series of Bonds will be issued subjects the Collateral pledged to secure the Bonds of such Series, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any of such Collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders;[2] and (d) the Owners of the Trust Certificates are entitled to receive current distributions representing the residual payments on the Collateral from each Trust in accordance with the terms of the applicable Trust Agreement, which distributions are analogous to dividends payable to a

[2] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the issuing Trust (and any Owner of Trust Certificates thereof) until (i) the Bond Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Bond Trustee has received all fees currently owed to it, (iii) the firm of independent accountants have received all fees owed to it for services rendered under the Indenture, and (iv) to the extent required by any Series Supplement executed in connection with the issuance of a Series of Bonds, deposits have been made to certain Reserve Funds which will ultimately be used to make payments of principal and interest on the Bonds. Once amounts have been released from the lien of the Indenture, the Trust Agreement for each Trust provides that the Owner Trustee under the Trust Agreement has a lien superior to that of the Owners of the Trust Certificates of the Trust to the remaining cash flow.

shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, unless the Trust elects to be treated as a "real estate mortgage investment conduit" ("REMIC") pursuant to the Internal Revenue Code of 1986, the Owners will be liable for the expenses, taxes and other liabilities of the Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the Trust estate. The choice of the form of issuer for the Bonds and the identity of the owners of the equity interests in such issuer, however, will not alter in any respect the payments made to the holders of such Bonds, which will be payments governed by an indenture meeting the requirements of the Trust Indenture Act of 1939.

(11) The election by any Trust to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. Any Trust that elects to be treated as a REMIC will provide for the payment of administrative fees and expenses by any of four methods which are set forth in the application. Each Trust will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods are selected by such Trust.

(12) The aggregated interests of the Owners of the Trust Certificates in the Collateral and the expected payments to be made to the Owners of the Trust Certificates will be far less than the payments made to Bondholders. In addition, Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 120 percent of the aggregate original principal amount of such Bonds at the time of issuance.

(13) Except to the extent permitted by the limited right to substitute mortgage collateral, it will not be possible for the Owners of the Trust Certificates to alter the mortgage collateral initially deposited into Trust, and in no event will such right to substitute mortgage collateral result in a dimunition in the value or quality of such mortgage collateral. Although it is possible that any mortgage collateral substituted for the mortgage collateral initially deposited into a Trust may have a different prepayment experience than the substituted mortgage collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any mortgage collateral will be determined by market conditions beyond the control of the Owners of the Trust Certificates, which market conditions are likely to affect all mortgage collateral of similar payment terms and maturities in a similar fashion; (b) the interests of the Owners of the Trust Certificates are not likely to be greatly different from those of the Bondholders with respect to mortgage collateral prepayment experience; and (c) to the extent that it may be possible for the Owners of the Trust Certificates to cause the substitution of mortgage collateral which has a different prepayment experience than the original mortgage collateral, this situation is no different for the Bondholders than the traditional structure for collateralized mortgage obligations where the Bonds are issued by an entity which is a wholly-owned subsidiary. Further, due to the fact that there will be more than one Owner of each Trust, it appears less likely that such Owners will be able to agree on any desired substitution of mortgage collateral than if there were a single Owner which could unilaterally decide on the timing and execution of the substitution.

(14) The requested order is necessary and appropriate in the public interest because: (a) The acquisition of the Mortgage Certificates and issuance of Bonds by the Trusts are not the types of activities intended to be regulated by the Act; (b) the disclosure to Owners of a Trust and the restriction of such potential Owners to a limited number of sophisticated investors provide safeguards adequate to assure that such potential Owners do not require the protection of the Act; (c) the activities of the Trusts will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation; and (d) the exemption sought is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

*Applicant's Conditions*

Supplicant agrees that if an order is granted it will be expressly conditioned on the following:

(1) Each Series of Bonds will be registered under the Securities Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Secutrities Exchange Act of 1934, as amended. The mortgage collateral directly securing the Bonds will be limited to Mortgage Certificates.

(3) If new mortgage collateral is substituted, the substitute mortgage collateral must: (i) Be of equal or better quality than the mortgage collateral replaced; (ii) have similar payment terms and cash flow as the mortgage collateral replaced; (iii) be insured or guaranteed to the same extent as the mortgage collateral replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4). In addition, new mortgage collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

(4) All Collateral securing a Series of Bonds will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in 1933 Act Rule 405, 17 CFR 230.405) of the Applicant. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral for the Bonds.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with Applicant or any of the Trusts. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1940 Act.

(6) No less often than annually, an independent public accountant will audit the books and records of the Trust and will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

(7) The Trust Certificates will be offered and sold only to (i) institutional or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Trust Certificates and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interest therein. Non-institutional accredited investors will be limited to not more than 15, will pay a purchase price of at least $200,000 for such Trust Certificates and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their

primary residence). Further, non-institutional accredited investors will have such knowledge and experience financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing a Trust Certificate and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understands the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Owners will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities.

(8) In addition, the above representations regarding the equity interests in the Trusts, the payment of Trust expenses upon the election of REMIC status and the issuance of floating rate Bonds (as more fully described in the application) will be express conditions to the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 87-8928 Filed 4-20-87; 8:45 am]

BILLING CODE 8015-01-M

---

[Release No. IC-15685; 812-6614]

## Franklin Tax-Advantaged High Yield Securities Fund (A California Limited Partnership) et al.; Application

April 15, 1987

**AGENCY.** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act")

---

*Applicants:* Franklin Tax-Advantaged High Yield Securities Fund (A California Limited Partnership) and Franklin Tax-Advantaged U.S. Government Securities Fund (A California Limited Partnership) ("Applicants" or "Partnerships").

*Summary of Application:* Applicants seek an order exempting Applicants' independent Managing General Partners from section 2(a)(19) to the extent that they are deemed "interested persons" solely because they are general partners in the Partnerships.

*Relevant 1940 Act Sections:* Exemption requested under sections 6(c) from section 2(a)(19).

*Filing Dates:* The application was filed on February 4, 1987, and amended on April 10, 1987.

*Hearing or Notification of Hearing:* If not hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on May 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, c/o Murray L. Simpson, Gaston Snow & Ely Bartlett, 101 California Street, Suite 3000, San Francisco, California 94111.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Carson G. Prailey (202) 272-3015, or Special Counsel Karen L. Skidmore, (202) 272-3023, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

*Applicant's Representations*

1. Each Applicant filed a registration statement under the Securities Act of 1933 ("1933 Act") and the 1940 Act (File Nos. 33-11963 and 33-11962), on February 13, 1987 which have not yet been declared effective. Each Applicant will be registered under the 1940 Act as a diversified, open-end management investment company. Each Applicant is also organized as a limited partnership in the State of California and has been designed as a specialized investment vehicle to preserve certain tax benefits for investors that would not be available if Applicants were organized in a corporate or trust form; shares of The Franklin Tax-Advantaged High Yield Securities Fund (A California Limited Partnership), which will invest in fixed income debt securities, will be offered exclusively to foreign investors seeking interest income or capital gains that are not subject to federal income tax (or federal tax-withholding requirements) when received by such foreign investors; shares of the Franklin Tax-Advantaged U.S Government Securities Fund (A California Limited Partnership), which will invest in United States Government Securities, will be offered to both foreign and domestic investors seeking income that is not subject to federal income tax (or to federal withholding) for qualifying foreign investors and which also may not be subject to state and local income tax. Each Partnership will offer a single class of shares, in the form of Partnership interests, and purchasers will be required to become limited partners of that Partnership.

2. The general partners of each Partnership will consist of one corporate general partner (the "Non-Managing General Partner"), which will not play any role in management (except temporarily, in extraordinary circumstances), and a number of individual general partners (the "Managing General Partners"), who establish the investment policies of each Partnership and supervise and review its operations. Only natural persons may serve as Managing General Partners. A majority of the Managing General Partners will be Independent Managing General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the 1940 Act); and/or any person who may become a successor or additional Independent General Managing Partner as provided in the Partnership Agreement; five of the eight current Managing General Partners are Independent Managing General Partners.

3. The primary obligation of the corporate Non-Managing General Partner is to maintain a minimum one percent (1%) investment in each Partnership to assure that each Partnership will be treated as a partnership under the Internal Revenue Code of 1986. The Managing Partners are expressly charged with the responsibility of managing each Partnership. The Managing General Partners will perform the same functions as directors of a corporation, act only by majority vote, and will assume all the responsibilities and obligations imposed by the 1940 Act upon directors of an incorporated investment company.

4. The Managing General Partners have been appointed for indefinite terms. The Partnership Agreement provides that if at any time the number of Managing General Partners is reduced to less than three, the remaining

Managing General Partners shall, within 120 days, call a meeting of shareholders for the purpose of electing one or more successors so as to restore the number to at least three. The Partnership Agreement provides that each new general partner must be approved by at least a majority of the outstanding shares of each Partnership and, upon such approval, will serve for an indefinite period. However, shareholders representing 10% or more of the outstanding shares of each Partnership may also call a meeting to remove any or all of the general partners.

5. Consistent with the California Revised Limited Partnership Act, each Partnership's Limited Partners have no right to control or otherwise participate in the management of the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and giving consents and approvals and other rights required under the 1940 Act. Applicants represent that they will obtain an opinion of California counsel for each Partnership that the existence or exercise of these voting rights does not subject the Limited Partners to liability as general partners under California law.

6. Each Partnership intends to include in its contracts a provision limiting the claims of creditors to the Applicant's assets. The Partnership Agreement of each Applicant provides for indemnification out of the Partnership's property for any Limited Partner held personally liable, and provides for the Partnership to assure the defense of any claim made against any Limited Partner, for any act or obligation of the Partnership, and satisfaction of any judgment. Each Partnership may carry insurance in such amounts as the Managing General Partners consider reasonable to cover potential liabilities of the Partnership and Managing General Partners will periodically review the question of the appropriateness of obtaining errors and omissions insurance for each Partnership.

7. Franklin Partners, Inc. ("FPI"), a California corporation, is the corporate Non-Managing General Partner of each Partnership. FPI is a wholly-owned subsidiary of Franklin Resources, Inc., ("FRI") which also owns 100% of the stock of Franklin Advisers, Inc., ("FAI"), the investment manager for each Partnership, and of Franklin Distributors, Inc., ("FDI") the distributor and principal underwriter for the shares of each Partnership. The principal shareholders of FRI include Charles B. Johnson (approximately 20%) and Rupert H. Johnson (approximately 17%), each of whom is also a Managing General Partner of each Partnership. Messrs. Charles Johnson and Rupert Johnson are also directors and executive officers of each Partnership, FRI, FAI, FDI and FPI.

8. All of the Managing General Partners may be deemed to be "interested persons" of each Partnership and its investment manager and principal underwriter, as defined in section 2(a)(19) of the 1940 Act, by virtue of being partners of each Partnership and co-partners of FPI. However, Messrs. Charles Johnson and Rupert Johnson, will remain "interested persons" of each Partnership and its investment adviser and principal underwriter, notwithstanding the issuance of the requested exemption, because of their separate and direct affiliations as officers and directors and because of their stock ownership, as set forth in Paragraph 7. In addition to the Johnsons, Mr. Jamieson, a third Managing General Partner, will also remain an "interested person" of each Partnership notwithstanding the issuance of the requested exemption, because he is an officer of each Partnership and an affiliate of a registered broker-dealer.

9. The Independent Managing General Partners are "interested persons" of each Partnership within the meaning of section 2(a)(19) of the 1940 Act by virtue of being partners of the Partnership, which makes them "affiliated persons" of the Partnership within the meaning of section 2(a)(3) of the 1940 Act.

10. Applicants request that the Partnerships and their Independent Managing General Partner (and any person who may become a successor or additional Independent Managing General Partner as provided in the Partnership Agreement) be exempted from the provisions of section 2(a)(19) to the extent that the Independent Managing General Partners would be deemed to be "interested persons" of the Partnerships solely because such Independent Managing General Partners are general partners of the Partnerships and co-partners of FPI, the corporate Non-Managing General Partner. Each Partnership has been structured so that the Independent Managing Partners are the functional equivalents of the disinterested directors of an incorporated registered investment company. Section 2(a)(19) excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of the investment company; there is no equivalent exception for partners or co-partners of an investment company. Therefore, granting the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Shirely E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-8882 Filed 4-20-87; 8:45 am]

BILLING CODE 8010-01-M

---

**[Release No. IC-15686; 812-6640]**

## Hal Roach Studios, Inc.; Application

**DATE:** April 15, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act")

*Applicant:* Hal Roach Studios, Inc. (the "Applicant").

*Relevant 1940 Act Sections:* Order requested under section 3(b)(2) or, alternatively under section 6(c).

*Summary of Application:* Applicant seeks an order declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, or, alternatively, granting it an exemption from all provisions of the Act and the rules and regulations thereunder.

*Filing Date:* The application was filed on February 27, 1987 and amended on April 13, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 11, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secreatary, SEC, 450 5th Street, Washington, DC 20549. Thomas C. Emma, Hal Roach Studios, Inc., 1600 North Fairfax Avenue, Los Angeles, California 90046.

**FOR FURTHER INFORMATION CONTACT:** Denis R. Molleur, Staff Attorney (202) 272–2383 or H.R. Hallock, Jr., Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

*Applicant's Representotives*

(1) Applicant is engaged primarily in the distribution of motion pictures. It distributes motion pictures in the broadcast syndication, pay/cable television, home video, and non-theatrical markets. Applicant also manufactures prerecorded videocassettes for home use, produces the televison program "Kids, Incorporated," and distributes its sound system products and associated audiocassettes.

(2) With the exceptions of the acquisition of distribution rights to motion pictures, and the explotation of these rights in the cable television, non-theatrical and foreign markets, all of Applicant's business is conducted by its wholly-owned subsidiaries. In addition to its wholly-owned subsidiaries, Applicant owns less than a majority of the common stock of Robert Halmi, Inc. ("Halmi"), a leading producer of television and feature films, and Colorization, Inc. ("Colorization"), which has developed a computerized process for converting black and white film into color videotape. Further, Applicant owns convertible debt securities of Halmi and H R Broadcasting Corporation ("HRBC"), which owns two television stations, WTTO-Birmingham and WCGV-Milwaukee. Applicant's investments in Halmi, HRBC, and Colorization at the end of the nine months ended December 31, 1986, accounted for approximately 28.6%, 12.6%, and 4.8%, respectively, or 45.9% of Applicant's assets on an unconsolidated basis. Additionally, Applicant is negotiating for the sale of a majority interest of its wholly-owned subsidiary, The Singing Machine Company, to a group comprised of the management of The Singing Machine Company, for cash and notes.

(3) More then 40% of Applicant's assets currently are investment securities, thus, Applicant technically is an investment company, as defined in section 3(a)(3) of the 1940 Act. Applicant's percentage of investment securities exceeded the 40% threshold on June 9, 1986, when Applicant acquired common stock and Convertible Subordinated Debentures issued by Halmi. At present, Applicant is relying upon the transient investment company exemption provided by Rule 3a-2, pursuant to resolution of Applicant's Board of Directors on April 23, 1986. For purposes of determining the percentage of Applicant's assets represented by investment securities its film library is valued at cost less amortization. If the value of the film library was trebled from the value stated on the balance sheet, and Applicant believes that the value of the library is substantially in excess of three times the book value, then Applicant's investment securities would be less than 40% of total assets.

(4) Since its inception in 1971, Applicant has been engaged primarily in the business of distribution of home videocassettes, the production of a television series, and the distribution of home videocassettes, the production of a television series, and the distribution of sound products. All of Applicant's investments are in the entertainment area, and compliment Applicant's operations. The investments in Halmi was a key transaction for Applicant, giving it access to Halmi's films through a Production and Distribution Agreement. Without the investment in Halmi by Applicant, Halmi would not have agreed to enter into the Production and Distribution Agreement. Applicant's purchase of convertible notes from HRBC comports with Applicant's expansion plans within the entertainment industry. HRBC, and its two wholly-owned television stations, represents an important new business for Applicant, and may also serve as an additional avenue for Applicant to distribute its motion pictures. If favorable opportunities are present, Applicant intends to acquire additional interests in United States television stations to expand its television broadcast business. Applicant's investment in Colorization represents an important business for Applicant. Because the vast majority of the Hal Roach Film Library consists of black and white films, the ability to convert these motion pictures into color videotape will generate new public interest and increased sales for films that have a limited market potential in the black and white version. Because of Applicant's ownership interest in Colorization, Applicant has been able to negotiate an agreement to receive priority access to Colorization's coloring process, as well as a favorable price.

(5) Applicant's annual and other reports have included detailed discussions of its endeavors in these areas, and its has never professed a policy of being engaged in the business of investing or trading in securities. At the time it acquired its investment securities, Applicant did not, nor does it presently, intend to become or hold itself out as an investment company.

(6) Applicant's officers and directors are personnel with substantial experience in the entertainment industry, primarily in the distribution of motion pictures. They devote their full time to the management of Applicant's motion picture distribution operations, and the operation of Applicant's subsidiaries. None of them have experience as investment advisors, and none are employed by Applicant to offer investment advice or monitor financial investments. In addition, of the approximately 55 employees of Applicant other than its executive officers, no one is employed to research or monitor investments for Applicant.

(7) In the nine months ended December 31, 1986, Applicant's investment securities accounted for approximately 56.2% of its net income. It should be noted that over half of Applicant's income from investment securities for this period was from an increase of equity in the income of Halmi, an adjustment required by accounting procedures. Applicant has not received any dividend distribution from its investment securities, nor has it recognized gains from sales of investment securities. With the exception of the Halmi common stock, there is no established market for any of Applicant's investment securities. Although the shares of Halmi are traded on the American Stock Exchange, the shares owned by Applicant are unregistered, and Applicant has agreed to contractual provisions that limit the ability of Applicant to sell or otherwise dispose of the shares. Furthermore, Applicant's operating income for the nine months ended December 31, 1986, was three times its income from investment securities.

*Applicant's Conditions*

If the requested order is granted, the Applicant agrees to the following conditions:

1. Applicant will not engage in the short term trading of investment securities for speculative purposes so as to bring Applicant's activities within those intended to be regulated by the Act.

2. Applicant intends to continue to be primarily engaged in non-investment company businesses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-8929 Filed 4-20-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Form 990 Advisory Committee; Termination

This notice cancels the Form 990 Advisory Committee established by the Commissioner of Internal Revenue.

The Form 990 Advisory Committee was established to encourage active participation by states in the design of Tax Form 990. It has been determined by the Commissioner of Internal Revenue that the important and worthwhile purposes and functions of the Committee can now better be continued on an ad hoc basis and that its charter be terminated.

**Jill E. Kent,**

*Acting Assistant Secretary of the Treasury (Management).*

[FR Doc. 87-8925 Filed 4-20-87; 8:45 am]

BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: April 15, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0678
*Form Number:* IRS Form 637A
*Type of Review:* Resubmission
*Title:* Registration for Tax-Free Sales and Purchases of Fuel Used in Aircraft
Description: Certain sellers and purchasers are exempt from the Internal Revenue Code section 4041(c) excise tax on aviation fuel if they use this form to register for tax-free transactions. The data collected is used to determine if the applicants qualify for exemption from excise taxes.
*Respondents:* Individuals, Farms, Businesses
*Estimated Burden:* 2,829 hours
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Departmental Reports Management Office.*

[FR Doc. 87-8877 Filed 4-20-87; 8:45 am]

BILLING CODE 4810-25-M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Son of Heaven: Imperial Arts of China" (see list)[1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Flag Pavillion/Art Pavilion, Seattle center, Seattle, Washington, Beginning on or about February 1, 1988, to on or about June 1, 1988; at the Convention Center or Pan Am Plaza, Indianapolis, Indiana, beginning on or about June 19, 1988, to on or about September 7, 1988, and at the Louisiana Science Center, New Orleans, Louisiana, beginning on or about October 2, 1988, to on or about January 31, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 3, 1987.

**C. Normand Poirier**

*Acting General Counsel and Congressional Liaison.*

[FR Doc. 87-8845 Filed 4-20-87; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-7976, and the address is Room 700, U.S. Information agency, 301 4th Street, SW., Washington, DC 20547.

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 76
Tuesday, April 21, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL COMMUNICATIONS COMMISSION**

April 10, 1987.

The Federal Commission has rescheduled the following items for consideration at the April 16, 1987, Open Meeting.

*Agenda, Item No., and Subject*

Common Carrier—1—Title: *Report and Order* regarding implementation of subscriber line charges, Docket Nos. 78–72 and 80–286. Summary: The Commission will consider a Recommended Decision and Order of the Federal/State Joint Board in CC Docket Nos. 78–72 and 80–286 regarding subscriber line charges, federal lifeline and high cost assistance and modifications to the interstate common line pooling mechanisms.

Common Carrier—2—Title: MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78–72, 80–286 and 86–297. Summary: The Commission will consider recommendations of two Joint Boards regarding the separations procedures applicable to Central Office Equipment; the procedures applicable to the Revenue Accounting Expenses in Account 662; and the procedures necessary to conform the Separations Manual (Part 67) to the new accounting rules in the Uniform System of Accounts.

Common Carrier—3—Title: In the Matter of Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, to conform it with Part 36, Jurisdictional Separations Procedures. Summary: The FCC will consider whether to adopt a Notice of Proposed Rulemaking to conform its Part 69 Access Charge Rules to the new Part 36 Separations Procedures.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–8972 Filed 4–17–87; 10:44 am]

BILLING CODE 6712-01-M

---

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, April 27, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 17, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–9035 Filed 4–17–87; 3:34 pm]

BILLING CODE 6210-01-M

---

**INTERNATIONAL TRADE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 52 FR 11416—dated April 8, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 2:30 p.m., Monday, April 13, 1987.

**CHANGE IN TIME OF THE MEETING:** 3:00 P.M., Monday, April 13, 1987.

In conformity with 19 CFR 201.37(b), Commissioners Liebeler, Brunsdale, Eckes, and Rohr determined that Commission business required the change in time of the meeting on April 13, 1987, and affirmed that no earlier announcement of the change to the time was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Lodwick disapproved.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 523–0161.

**Kenneth R. Mason,**

*Secretary.*

April 13, 1987.

[FR Doc. 87–9016 Filed 4–17–87; 2:53 pm]

BILLING CODE 7020-02-M

---

**POSTAL SERVICE BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 52 FR 12111, April 14, 1987.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** May 4, 1987.

**CHANGE:** Addition of the following agenda item:

Capital Investment: Beverly Hills (CA) Post Office

**Authority:** By telephone vote on April 15, 1987, the Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirements of the Government in the Sunshine Act because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed action of the Board.

In accordance with section 552b(f)(1) of Title 5, United States Code and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel has certified that in his opinion the additional agenda item of the meeting may properly be closed to the public for the reason cited above.

**CONTACT PERSON FOR MORE INFORMATION:** David F. Harris, (202) 268–4800.

**David F. Harris,**

*Secretary.*

[FR Doc. 87–8975 Filed 4–17–87; 11:13 am]

BILLING CODE 7710-12-M

---

**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 20, 1987:

An open meeting will be held on Tuesday, April 21, 1987, at 2:00 p.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, April 21, 1987, at 2:00 p.m., will be:

1. Consideration of wheather to reverse the no-action position taken by the Division of Corporation Finance with respect to the exclusion of a shareholder proposal submitted by the California Public Employees' Retirement System from the proxy material for the 1987 annual meeting of

Union Camp Corporation. For further information, please contact Cecilia D. Blye at (202) 272–2573.

2. Consideration of whether to reverse the noaction position taken by the Division of Corporation Finance with respect to the exclusion of a shareholder proposal submitted by the California Public Employees' Retirement System from the proxy material for the 1987 annual meeting of Aluminum Company of America.

The subject matter of the closed meeting scheduled for Tuesday, April 21, 1987, following the 2:00 p.m. open meeting will be:

Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Litigation matter.
Formal orders of investigation.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at, (202) 272–2092.

Jonathan G. Katz,

*Secretary.*

April 17, 1987.

[FR Doc. 87–9051 Filed 4–17–87; 4:02 pm]

BILLING CODE 8010-01-M

# Corrections

Federal Register

Vol. 52, No. 76

Tuesday, April 21, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**[OPTS-51668; FRL-3176-6]**

### Certain Chemicals Premanufacture Notices

*Correction*

In notice document 87-6714 beginning on page 9932 in the issue of Friday, March 27, 1987, make the following correction:

On page 9933, in the first column, under **P 87-816**, in the seventh line, "owy" should read "oxy".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[PP 1F2439, 4F3054/R878; FRL 3180-1]**

### Pesticide Tolerances for Clopyralid

*Correction*

In rule document 87-7260 beginning on page 10565 in the issue of Thursday, April 2, 1987, make the following corrections:

1. On page 10566, in the table, in entry "Mbyp", the second and third columns should read "0.05" and "0.1" respectively.

2. Also on page 10566, in the table, in entry "Kidney", the text in the second and third columns should be removed.

BILLING CODE 1505-01-D

## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 201-32**

**[FIRMR Amendment 8]**

### GSA Board of Contract Appeals ADP Protests

*Correction*

In rule document 87-7110 beginning on page 10379 in the issue of Wednesday, April 1, 1987, make the following corrections:

1. On page 10379, in the first column, the FIRMR Amendment No. in the heading should read as set forth above.

**§ 201-32.402-5 [Corrected]**

2. On page 10380, in the first column, in § 201-32.402-5(a), in the sixth line, "Rules 29—48" should read "Rule 29—48".

**§ 201-32.403-3 [Corrected]**

3. On the same page, in the third column, in § 201-32.403-3(a)(1), in the second line, "(if already made)" should read "(if not already made)".

BILLING CODE 1505-01-D

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-443-OL, 50-444-OL, (ASLBP No. 82-471-02-OL) (Offsite Emergency Planning)]**

### Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 and 2); Hearing

*Correction*

In notice document 87-7785 appearing on page 11388 in the issue of Wednesday, April 8, 1987, make the following correction:

In the second column, in the first line, the dates should read "July 20-24, 1987".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Part 71**

**[Airspace Docket No. 86-AWA-40]**

### Establishment of Airport Radar Service Areas

*Correction*

In rule document 87-7772 beginning on page 11178 in the issue of Tuesday, April 7, 1987, make the following corrections:

1. On page 11178, in the first column, the Airspace Docket No. in the heading should read as set forth above.

2. On the same page, in the third column, in the first complete paragraph, in the 17th line, "TRSA" should read "ARSA"; and in the 19th line "ARSA" should read "TRSA".

BILLING CODE 1505-01-D

L
2
S S
6
P
1
87
M I

federal register

Tuesday
April 21, 1987

Part II

# Department of Health and Human Services

**Health Care Financing Administration**

## Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers; Final Notice

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**[BERC-274-FN]**

## Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final notice.

**SUMMARY:** This final notice announces additions and revisions to the current list of surgical procedures for which facility services are covered when the procedures are performed in an ambulatory surgical center. Our current list of covered ASC procedures was published in the **Federal Register** on August 5, 1982 (47 FR 34099). The changes contained in this final notice result from our consideration of the public comments received in response to a proposed notice published on February 16, 1984 (49 FR 6023), which requested additions or revisions to the current list of ASC procedures and charge schedules for the new procedures, and subsequent consultation which medical organizations.

**EFFECTIVE DATE:** For ambulatory surgical center procedures that are being removed from the current list, the effective date will be July 20, 1987. The effective date for procedures being added to the list is May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Rita McGrath, (301) 594–6719, for issues related to these additions to and revisions of the ASC list.

Vivian Braxton, (301) 594–8452, for issues related to ASC reimbursement group levels.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 934 of Pub. L. 96–499, the Omnibus Reconciliation Act of 1980, amended Title XVIII of the Social Security Act (the Act) to authorize Medicare Part B coverage for facility services furnished in connection with certain surgical procedures performed in an ambulatory surgical center (ASC), (42 CFR 416.60 and 416.61). In addition, for those procedures performed in the ambulatory surgical facility or on an outpatient basis in a hospital, 100 percent of the physician's reasonable charge will be paid if the physician accepts assignment. (Under the usual procedures, Medicare reimburses 80 percent of the physician's reasonable charge and the beneficiary is responsible for the remainder (42 CFR 405.240).)

With respect to the surgical procedures covered under this provision, section 1833(i)(1) of the Act requires the Secretary to specify, in consultation with appropriate medical organizations, surgical procedures that, although appropriately performed in an inpatient hospital setting, may also be performed safely in certain ambulatory settings. The report accompanying the legislation (Report of the Committee on the Budget to Accompany H.R. 7765, H.R. No. 96–1167, 96th Cong., 2d Sess. 390 (1980)) explained that Congress intended that procedures currently performed on an ambulatory basis, especially in physicians' offices, that do not generally require the more elaborate facilities of an ASC, should not be included in the list of covered procedures.

In line with this Congressional intent, our current regulations specify the following four requirements regarding the range of covered services:

1. Procedures on the list are to be those commonly performed on an inpatient basis but which also may, consistent with accepted medical practice, be safely performed in an ambulatory surgical facility (42 CFR 417.65(a)(1)).

2. The list is to exclude procedures that are commonly performed, or that may be safely performed, in physicians' offices (42 CFR 416.65(a)(2)).

3. Procedures should be limited to those requiring a dedicated operating room and not requiring an overnight stay (42 CFR 416.65(a)(3)).

4. The list should not contain procedures excluded from Medicare coverage (42 CFR 416.65(a)(4)).

We recognize that for individuals with certain medical conditions, a procedure on the list may be safely performed only on an inpatient basis. The choice of operating site remains a matter for the professional judgement of the patient's physician.

The current list of covered ASC procedures was published as a final notice on August 5, 1982 (47 FR 34099). ASC covered procedures are classified according to a four group payment classification system, as follows:

Group 1—$231
Group 2—$275
Group 3—$296
Group 4—$336

The ASC facility payment for all procedures in each group is at a single rate adjusted for geographic variation. This prospectively determined facility group rate does not include physicians' fees and other medical items and services (for example, prosthetic devices) for which separate payment is authorized under other provisions of the Medicare program. Rather, the rate is a standard overhead amount which covers the cost of services such as nursing, supplies, equipment and use of the facility. (A detailed explanation of the reimbursement methodology can be found in the March 23, 1982, issue of the **Federal Register** (47 FR 12579).)

Further, section 9343 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) provides that by July 1, 1987, and annually thereafter, the Secretary must review and update ASC payment rates; in addition, the list of procedures must be reviewed and updated by April 21, 1987 and every 2 years thereafter.

### II. Provisions of the Proposed Notice

Advances in medical science make additions or revisions to the list of covered ASC procedures necessary to keep pace with changing practices. On February 16, 1984, we issued a proposed notice (49 FR 6023) seeking suggestions for possible additions or revisions to the current list of ASC procedures. We asked that respondents, in proposing additions, specifically consider the four requirements contained in 42 CFR 416.65(a). We also requested that suggestions for additional procedures or changes in existing procedures refer to each surgical procedure according to the HCFA Common Procedure Coding System (HCPCS) or the American Medical Association (AMA) *Physicians' Current Procedural Terminology, Fourth Edition* (CPT–4) terminlogy and coding. (The AMA's CPT–4 terminnology and coding is included, with permission, in the HCPCS system. For the surgical procedures under consideration, the codes would be the same.)

We also included a list of suggested additions to the current list of covered ASC procedures in the proposed notice. Those suggestions were taken from comments received after publication of our initial list of covered procedures, and did not represent an initial finding by HCFA that they should be covered. That list of procedures was set out by body system and the general term for procedures, and included reference to applicable HCPCS and CPT–4 codes, but did not list each procedure code separately. The list suggested 54 types of procedures for coverage as ASC procedures, 17 of which were ophthalmologic procedures. If each procedure code had been listed, it would have appeared that we were proposing a much larger expansion of ASC coverage. For example, the 17 ophthalmologic procedures in the list of suggestions would have included 44 separate

procedure codes. (See section V.C., below, for further discussion of the distinction between procedure codes and general types of procedures.)

We also requested charge schedules from ASCs, especially for proposed new procedures, so that we could ensure that any new procedures would be accurately assigned to payment groups.

## III. Discussion of Public Comments on the Proposed Notice

We received 60 pieces of correspondence concerning suggestions for possible additions or revisions to the current list of ASC procedures covered under Medicare. We received comments from the American Academy of Orthopaedic Surgeons, the American Academy of Ophthalmology, and the Freestanding Ambulatory Surgical Association. The remainder of the comments were from individual practitioners. Most of the comments we received were in the form of lists. Some commenters suggested adding extensive portions or the entire surgical section of CPT–4 to the list of approved ASC procedures. Virtually every CPT–4 code in the surgery section of the manual was commented upon at least once. While the proposed notice specifically requested that suggested surgical procedures be accompanied by HCPCS or CPT–4 terminology and coding, some commenters listed their own descriptions of procedures without any code. In most instances, such descriptions could be correlated with an existing CPT–4 code.

1. *Comment:* Three commenters stated that the current ASC reimbursement levels are inadequate; they believe that HCFA should expedite the process of increasing facility rates and allege that local hospitals are marking up charges, while ASC reimbursement rates remain meager. One commenter specifically recommended adding a fifth reimbursement group, and included extensive recommendations as to how procedures should be grouped.

*Response:* We are in the process of updating the current ASC facility payment rates as required under section 9343 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509. We expect to publish shortly a separate notice in the **Federal Register** proposing revised rates. With respect to the comment concerning adding the fifth payment group, sufficient data were not available in a timely manner to evaluate the appropriateness of revising our current classification system. In our February 18, 1984 notice (49 FR 6023), we specifically asked for charge schedules for new procedures from ASCs. We also stated that based on the data in our files and the charging information received as a result of the notice, we would classify each procedure that we added to the list of covered surgical procedures to one of the four payment groups. We did not receive any charge schedules, even from the commenter who suggested a revised five group system. However, we recently completed a survey of over 500 Medicare participating ASCs from which we collected facility cost and charge data. If analysis of these new data warrant changes to our four group classification system, such revisions will be published in the **Federal Register** in the 1988 updating of the ASC facility payment rates.

2. *Comment:* One commenter stated that procedures and settings should not be mandated by regulation by rather that the physician and patient should make these decisions. In a related vein, three other commenters suggested that there be no restrictive list of procedures or that all procedures in the CPT–4 be covered.

*Response:* The statute does not mandate the setting in which procedures should be performed; the physician and patient are free to make these decisions. However, the amount of payment does depend on the procedure and setting. Section 1833(i)(1) of the Act specifically requires that the Secretary, after consultation with appropriate medical organizations, develop a list of surgical procedures that can be performed appropriately and safely on an ambulatory basis instead of in a hospital on an inpatient basis.

3. *Comment:* One commenter requested that the portion of section 934 of Pub. L. 96–499 pertaining to surgical procedures performed in a physician's office be implemented.

*Response:* In addition to payment for surgical procedures performed on an ambulatory basis in an ASC or hospital outpatient department, section 934 of Pub. L. 96–499 provides for payment for certain costs associated with specific surgical procedures (as determined by the Secretary) performed in a physician's office under certain conditions. While we have published ASC regulations, no regulations have been issued dealing with that portion of the law providing for physician office surgery. Although we support the objective of moving surgery from the inpatient to outpatient setting (when safe and appropriate), we have not been able to overcome the administrative problems (including the role of Peer Review Organizations) involved in covering and determining appropriate payment for ambulatory surgery in a physician's office.

4. *Comment:* Many commenters recommended covering CPT–4 codes that are miscellaneous, catch-all unlisted procedures (that is, with codes ending in "99" digits).

*Response:* We have not included any unlisted procedures, since the reimbursement of unlisted procedures would thwart the very purpose of an approved ASC list.

5. *Comment:* Three commenters proposed added or deleted wording from certain CPT–4 procedure descriptions to fit verbatim a procedure they felt should be covered.

*Response:* We have an agreement with the AMA to use CPT–4 as part of the HCPCS coding system (Agreement on the use of CPT–4; Schweiker and Sammons; February 1, 1983). Under the terms of that agreement, we may not tamper with the AMA copyright.

6. *Comment:* One commenter expressed the opinion that sequestrectomy is no longer considered an effective procedure and that it should be deleted from the list as outdated.

*Response:* We are taking this comment under consideration, although we are not deleting the relevant procedure codes from the list now. We are consulting the Public Health Service (PHS) through our normal process. Once PHS makes a recommendation as to the safety and efficacy of sequestrectomy, we will then make a decision regarding coverage of these procedures. If it is determined that we should no longer cover these procedures, we will issue an appropriate manual change in our usual manner. We will also publish in the **Federal Register** a revised list of covered surgical procedures and revisions as appropriate.

7. *Comment:* The majority of commenters proposed the addition of a number of ophthalmologic procedures. Typical comments recommended including:

(1) Any eye surgery requiring admission to a hospital;

(2) All eye procedures listed in the proposed notice;

(3) All eye procedures listed in CPT–4;

(4) All eye procedures that can be done in 90 minutes under local anesthesia.

*Response:* We are required to publish a list of covered procedures, and we have decided to do so using CPT–4 procedure codes. We do not believe it would be medically appropriate to cover all CPT–4 ophthalmologic procedure codes if furnished in an ASC. Nonetheless, almost all of the 44 ophthalmologic procedures in the February 18, 1984 notice, are included in

the new list. (Four of the five procedure codes included under Iridectomy (CPT–4 codes 66600–66635) were already covered and were erroneously listed as suggested in that notice.) In response to comments, the majority of all CPT–4 eye procedures will now be covered when performed in an ASC.

We reviewed each procedure code that was omitted, and each code was omitted for specific reasons, such as:

- It is an unlisted code (that is, a code ending in "99", specifying the anatomical site but not the procedure);
- HCFA accepted the specific recommendation of the American Academy of Ophthalmology that it not be covered;
- It is a procedure commonly done in a doctor's office; or
- It is a procedure best done in a hospital.

## IV. Provisions of the Final Notice

### *A. Procedures Added to the New ASC List*

As noted above, nearly all commenters recommended substantial expansion of the list of covered ASC procedures, including expansion substantially beyond the suggested procedures included in the proposed notice. We compiled the suggestions in a single list by CPT–4 codes. The great majority of all the surgical codes included in CPT–4 were recommended at least once. Our medical staff reviewed the recommended additions, consulting with other specialist physicians and medical organizations as appropriate, and made the determination, in each case, as to whether a particular code or series of codes should be covered if performed in an ASC. When we arrayed the proposed covered ASC services by site of service, we found that our program data showed that many of them were not commonly furnished on an inpatient basis or were furnished in physicians' offices a majority of the time. Based on these data, it would be contrary to our regulations (42 CFR 416.65(a)) and program objectives to continue to cover them. We decided that if data indicate that a procedure is performed on an inpatient basis 20 percent of the time or less or in the physicians' office 50 percent of the time or more, it should not be covered in an ASC. Based on our analysis of available claims payment data, we believe these levels best reflect the legislative objectives of (1) moving procedures from the more expensive hospital setting to the less expensive ASC setting and (2) preventing the migration of procedures from the less expensive physicians' office setting to the ASC. (We also applied these tests to the current list of over 400 individual CPT–4 codes, and we intend to delete codes that did not meet them in a proposed notice that will be published in the **Federal Register** at a later date.)

In applying the principles set forth in § 416.65, we have also recognized that many procedures that generally are performed on an inpatient basis may be performed in an ASC in some cases, particularly if a patient is generally healthy and capable. As a result, after consideration of recommendations from commenters and medical organizations that were consulted, we determined that many proposed procedure codes could reasonably be performed in an ASC, in at least a significant number of cases. It was recognized that a number of these procedures should generally be performed on an inpatient basis. Nonetheless, when such a procedure may safely be performed in an ASC, it is reasonble for Medicare to pay for it in that setting, rather than require it to be performed, unnecessarily, in a more expensive setting.

This final notice lists only additions to and deletions from the current list of ambulatory surgical center procedures that result from our consideration of the public comments received in response to the propsed notice. As noted above, we intend to publish a proposed notice in the **Federal Register** at a later date to delete a significant number of procedure codes from the current list. We may also propose to add some additional procedures to the list, beyond those recommended in response to our earlier proposed notice. When public comments on that proposed notice have been received and reviewed, we will publish our final determination regarding those proposed changes, and will then publish a complete list of covered codes in the **Federal Register**.

The expansion of the list of covered services, as measured by number of procedure codes, overstates the actual magnitude of changes. The codes are used to differentiate, in many cases, slight differences between procedures. For example, under the Eye and Ocular Adnexa System, Removal Cataract is broken down into 8 separate codes. Thus, even though this list includes more than four times as many procedure codes as those covered in the original list, we estimate that the number of types of procedures covered under this final notice is only about twice as many as under the previous rule. This, of course, depends on how one defines "type of procedure". We emphasize that the procedures that are covered in ASCs are those that we believe can be performed safely in ASCs under the circumstances described in our regulations at 42 CFR 416.65.

When we initially promulgated the ASC payment rates in 1982, we used cost and charge data from approximately 40 ASCs to develop an indexing method for ranking each procedure based on a facility's charge for an individual procedure as compared to its average charge for all procedures offered. Thus, we could determine how a facility values a given procedure it offers. Using this indexing method, we established a four group classification system for payment purposes. Since such data were not available to permit the indexing of new procedures into the established payment groups, we relied on the medical expertise of our staff physicians to properly classify the newly added procedures into the appropriate payment groups. As previously stated, we recently completed a survey of over 500 Medicare participating ASCs from which we collected information relating to the facility overhead expenses and charge information on procedures performed in ASCs. If analysis of these new data warrant re-assignment of covered procedures to other payment groupings or revision of the four group classification system, such changes will be published in the **Federal Register** in the 1988 updating of the ASC payment rates.

We have used the most recent available version of the CPT–4 (Fourth Edition, 987 printing) for the codes included in this listing. The AMA revises the procedure codes included in CPT–4 annually. Section 9343 of Pub. L. 99–509 requires us to update the ASC list every two years. When we do this, we will use the most recent version of CPT–4 available at that time.

### *B. Suggested Procedures Not Added to the Expanded ASC List*

Of the procedure codes referenced in the proposed notice many are included in the expanded list. The following procedures, identified by CPT–4 codes, have been excluded for these reasons:

Available information indicates these are not commonly performed on an inpatient basis or are doctor's office procedures:

10061 Incision—Incision and drainage of abscess (eg. carbuncle, suppurative hidradenitis, and other cutaneous or subcutaneous abscesses); complicated
10081 Incision—Incision and drainage of pilonidal cyst; complicated
10121 Incision—Incision and removal of foreign body, subcutaneous tissues; complicated
13120 Miscellaneous—Repair, complex, scalp, arms, and/or legs; 1.1 cm to 2.5 cm

13131 Miscellaneous—Repair, complex, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 1.1 cm to 2.5. cm
13151 Miscellaneous—Repair, complex, eyelids, nose, ears and/or lips; 1.1 to 2.5 cm
16010 Burns, Local Treatment—Dressings and/or debridement, initial or subsequent; under anesthesia, small
14000 Miscellaneous—Adjacent tissues transfer or rearrangement, trunk; defect 10 sq cm or less
14040 Miscellaneous—Adjacent tissues transfer or rearrangement, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; defect 10 sq cm or less
15400 Miscellaneous—Application of xenograft (heterograft), skin
20910 General—Cartilage graft; costochondral
20924 General—Tendon graft, from a distance (e.g., palmaris, toe extensor, plantaris)
21400 General—Excision of benign cyst or tumor of mandible; simple
21030 General—Excision of benign tumor or cyst of facila bone other than mandible
21493 Genenral—Treatment of closed or open hyoid fracture; without manipulation
24305 Humerus (Upper Arm) and Elbow—Tendon lengethening, single, each
25031 Humerus (Upper Arm) and Elbow—Incision and drainage; infected bursa
25624 Forerm and Wrist—Treatment of closed carpal scaphiod (navicular) fractureu; with manipulation
26320 Hands and Fingers—Removal of implant from finger or hand
26641 Hands and Fingers—Treatment of carpometacarpal dislocation, thumb, with manipulation
26760 Hands and Fingers—Treatment of open distal phalangel fracture, finger or thumb, with uncomplicated soft tissue closure, each
27323 Femur (Thigh Region) and Knee Joint—Biopsy, soft tissues; superficial
27604 Leg (Tibia and Fibula) and Ankle Joint—Incision and drainage; infected bursa
28022 Foot—Arthrotomy with exploration, drainage or removal of loose or foreign body;
28043 Foot—Excision, benign tumor; subcutaneous
28100 Foot—Excision or curettage of bone cyst or benign tumor, talus or calcaneus
28104 Foot—Excison or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus
28106 Foot—Excision or curettage of bone cyst or benign tumor, tarsal or matatarsal bones, except talus or calcaneus; with iliac or other autogenous bone graft (including obtaining graft)
28116 Foot—Ostectomy, excision of tarsal coalition
28119 Foot—Ostectomy, calcaneus; for spur, with or without plantar fascial release
28160 Foot—Hemiphalangectomy or interphalangeal joint excision, single, each
28192 Foot—Remove foreign body, deep
28236 Foot—Transfer of tendon, anterior tibial into tarsal bone
28238 Foot—Advancement of posterior tibial tendon with excision of accessory navicular bone (Kidner type procedure)
28288 Foot—Ostectomy, partial, exostectomy or condylectomy, single, metatarsal head, second through fifth, each metatarsal head, (separate procedure)
28460 Foot—Treatment of open tarsal bone fracture (except talus and calcaneus), with uncomplicated soft tissue closure, each
28480 Foot—Treatment of open metatarsal fracture, with uncomplicated soft tissue closure, each
30100 Nose—Excision—Biopsy, intranasal
30220 Nose—Insertion, nasal septal prosthesis (button)
31528 Larynx—Laryngoscopy, direct; with dilation, initial
40819 Larynx—Excision of frenum, labial or buccal (frenumectomy, frenulectomy, frenectomy)
41006 Toungue, Floor of Mouth—Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, deep, supramylohyoid
41008 Tongue, Floor of Mouth—Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; submandibular space
41017 Tongue, Floor of Mouth—Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; submandibular
41100 Tongue, Floor of Mouth—Biopsy of tongue; anterior two-thirds
41825 Dentoalveolar Structures—Excision of lesion or tumor (except listed above); without repair
42300 Salivary Gland and Ducts—Drainage of abscess; parotid, simple
42310 Salivary Gland and Ducts—Drainage of abscess; submaxillary or sublingual, intraoral
42510 Salivary Gland and Ducts—Parotid duct diversion, bilateral (Wilke type procedure); with ligation of both submandibular (Wharton's) ducts
42550 Salivary Gland and Ducts—Injection procedure for sialography
44385 Intestines—Fiberoptic evaluation of small intestinal (Kock) or pelvic pouch
45100 Rectum—Biopsy or anorectal wall, anal approach (eg, congenital megacolon)
45108 Rectum—Anorectal myomectomy
45150 Rectum—Division of stricture of rectum
45310 Rectum—Endoscopy—Proctosigmoidoscopy; for removal of polyp or papilloma
46050 Anus—Incision and drainage, perianal abscess, superficial
46210 Anus—Cryptectomy; single
50555 Kidney—Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy
50557 Kidney—Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration, with or without biopsy
51860 Bladder—Cystorrhaphy, suture or bladder wound, injury or rupture; simple
53260 Urethra—Excision or fulguration; urethral polyp(s), distal urethra
53270 Urethra—Excision or fulguration; Skene's glands
53442 Urethra—Removal of perineal prostheis introduced for continence
56400 Vulva and Introitus—Incision—Incision and drainage, abscess of vulva, extensive
56500 Vulva and Introitus—Destruction—Destruction of lesion(s), vulva (eg, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), simple; chemical
56510 Vulva and Introitus—Destruction of condylomata, vulva, multiple; surgical excision
57700 Cervix Uteri—Cerclage of uterine cervix (tracheloplasty)
60000 Thyroid Gland—Incision and drainage of thyroglossal cyst, infected
64412 Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System—Injection, anesthetic agent; spinal accessory nerve
64413 Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System—Injection, anesthetic agent; cervical plexus
64435 Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System—Injection, anesthetic agent; paracervical (uterine) nerve
64508 Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System—Injection, anesthetic agent; carotid sinus (separate procedure)
64620 Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System—Destruction by neurolytic agent; intercostal nerve
64783 Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System—Excision of neuroma; hand or foot, each additional nerve, except same digit (list separately by this number)
65240 Eyeball—Removal of foreign body, intraocular; from lens (without extraction lens), magnetic extraction
65270 Eyeball—Repair of laceration; conjunctiva, with our without nonperforating laceration sclera, direct closure
65600 Anterior Segment—Cornea—Tatoo cornea, mechanical or chemical
66740 Anterior Segment—Iris, Ciliary Body—Cyclodialysis, initial
66761 Anterior Segment-Iris, Ciliary Body—Coreoplasty ("iridotomy") by photocoagulation; for glaucoma
66770 Anterior Segment—Iris, Ciliary Body—Destruction of cyst or lesion iris or ciliary body (nonexcisional procedure)

66820 Anterior Segment—Lens—Discission of secondary membraneous cataract ("after cataract") and/or anterior hyaloid incisional technique (Ziegler or wheeler Knife)

67105 Posterior Segment-Retinal Detachment—Repair of retinal detachment photocoagulation (laser or xenon arc, one or more sessions) with drainage of subretinal fluid

67112 Posterior Segment—Retinal Detachment—Repair of retinal detachment (one or more stages, same hospitalization); previously operated upon, any technique

67141 Posterior Segment—Retinal Detachment—Prophylaxis of retinal detachment (eg, retinal break, lattice degeneration) without drainage, one or more sessions; cryotherapy, diathermy

67145 Posterior Segment—Retinal Detachment— Prophylaxis of retinal detachment (eg, retinal break, lattice degeneration) without drainage, one or more sessions; photocoagulation (laser or xenon arc)

68335 Ocular Adnexa—Conjunctiva—Repair of symblepharon; with free graft conjunctiva or buccal mucous membrane (includes obtaining graft)

68340 Ocular Adnexa—Conjunctiva—Repair of symblepharon; division of symblepharon with or without insertion of conformer or contact lens

68770 Ocular Adnexa—Lacrimal System—Closure of lacrimal fistula (separate procedure)

69222 Middle Ear—Debridement, mastoidectomy cavity, complex (e.g., with anesthesia or more than routine cleaning); unilateral

69223 Middle Ear—Debridement, mastoidectomy cavity, complex (e.g., with anesthesia or more than routine cleaning); bilateral

69540 Middle Ear—Excision—Excision aural polyp

92018 Eye/Ocular Adnexa—Ophthalmological examination and evaluation, under general anesthesia, with or without manipulation of globe for passive range of motion or other manipulation to facilitate diagnostic examination; complete

92019 Eye/Ocular Adnexa—Opthalmological examination and evaluation, under anesthesia, with or without manipulation of globe for passive range of motion or other manipulation to facilitate diagnostic examination; limited

Available information indicates these are hospital inpatient procedures:

27332 Femur (thigh region) and Knee Joint—Excision—Arthrotomy, knee, for excision of semilunar cartilage (meniscectomy); medical OR lateral

27333 Excision—Arthrotomy, Knee, for excision of semilunar cartilage (meniscectomy); medial AND lateral

57200 Vagina—Repair—Colporrhaphy, suture of injury of vagina (nonobstetrical)

HCFA agrees with the American Academy of Orthopaedic Surgeons that the following are hospital inpatient procedures:

25350 Forearm and Wrist—Repair, Revision or Reconstruction—Osteotomy, radius, distal third

25355 Forearm and Wrist—Repair, Revision or Reconstruction—Osteotomy, middle or proximal third

25365 Forearm and Wrist—Repair, Revision or Reconstruction—Osteotomy, radius and ulna

27080 Pelvis and Hip Joint—Excision—Excision; ischial bursa

27082 Pelvis and Hip Joint—Excision—Excision; trochanteric bursa or calcification

27340 Femur (thigh region) and Knee Joint—Excision—Excision, prepatellar bursa

27600 Leg (tibia and fibula) and Ankle Joint—Incision—Fasciotomy, leg, anterior compartment, for closed space decompression

27602 Leg (tibia and fibula) and Ankle Joint—Incision—Fasciotomy, leg, anterior compartment, for closed space decompression; including posterior compartment decompression

28300 Foot—Repair, Revision or Reconstruction—Osteotomy; calcaneus (Dwyer or Chambers type procedure), with or without internal fixation

28304 Foot—Repair, Revision or Reconstruction—Osteotomy, midtarsal bones, other than calcaneus or talus

HCFA agrees with the American Academy of Orthopaedic Surgeons that the following procedures are obsolete:

28060 Foot—Excision—Fasciectomy, excision of plantar fascia; partial (separate procedure)

28150 Foot—Excision—Phalangectomy, single, each

28296 Foot—Repair, Revision or Reconstruction—Hallux valgus (bunion) correction, with or without sesamoidectomy; with metatarsal osteotomy (Mitchell or Lapidus type procedure)

HCFA agrees with the Society of Thoracic Surgeons that the following is a hospital procedure:

33219 Heart and Pericardium—Pacemaker—Repair of pacemaker; with replacement of pulse generator

No utilization data are available for the following procedure:

91010 Gastroenterology—Esophageal motility study

We will continue to consider comments on an ongoing basis. If new information is received about the above excluded procedures, or we receive additional suggested additions or revisions to the current list, we will continue to evaluate them for future ASC list expansions or revisions.

*C. Procedures to be Deleted from the Current ASC List*

As discussed above, we consulted with several medical organizations and reviewed their recommendations on the list of proposed ASC procedures. In several cases, it was recommended that a procedure on the current list be deleted as not conforming to the requirements of § 416.65. HCFA concurred with their recommended deletions and also identified other ASC procedures for which deletion is justified. Thus, we are deleting certain procedures from the current ASC list 90 days from the publication date of this notice.

We wish to reiterate that the following procedures are being deleted now as a result of recommendations and review flowing from our consideration of comments received on the February 16, 1984 proposed notice. Subsequent to our receipt of those comments and recommendations, our independent analysis of program data not available at the time of the proposed notice demonstrated that yet other procedures on the current list are commonly furnished in doctors' offices or do not otherwise meet the criteria of § 416.65. We are not deleting those procedure codes through this notice because we must offer an opportunity for public comment. Therefore, we intend to propose those other deletions in a separate notice to be published in the Federal Register at a later date.

Based on our review of comments and consultation on recommendations received in public comments, we have decided to delete the following codes:

- We agree with the American Academy of Orthopaedic Surgeons (AAOS) recommendation that the following are hospital procedures.

23105 Shoulder—Excision—Arthrotomy for synovectomy; glenohumeral joint

23106 Archomioclavicular, sternoclavicular joint

23480 Shoulder—Repair, Revision of Reconstruction—Osteotomy, clavicle, with or without internal fixation;

23485 with bone graft for nonunion or malunion (includes obtaining graft and/or necessary fixation)

24102 Humerus (Upper Arm) and Elbow—Excision—Arthrotomy, elbow; for synovectomy

24365 Humerus (Upper Arm) and Elbow—Repair, Revision and Reconstruction—Arthroplasty, radial head;

24366 with implant

25105 Forearm and Wrist—Excision—Arthrotomy, wrist joint; for synovectomy

25115 Forearm and Wrist—Radical excision of bursa, synovia of wrist, or forearm tendon sheaths (eg, tenosynovitis, fungus, Tbc, or other granulomas, rheumatoid arthritis); flexors
25116 extensors (with or without transposition of dorsal reinaculum)
25118 Forearm and Wrist—Synovectomy, extensor tendon sheath, wrist, single compartment;
25119 with resection of distal ulna
26130 Hand and Fingers—Excision—Synovectomy, carpometacarpal joint
26565 Hand and Fingers—Repair, Revision or Reconstruction—Osteotomy for correction of deformity; metacarpal
26850 Hand and Fingers—Arthrodesis—Arthrodesis, metacarpophalangeal joint, with or without internal fixation;
26852 with autogenous graft (includes obtaining graft)
27625 Leg (tibia and fibula) and Ankle Joint—Arthrotomy, ankle, for synovectomy;
27626 including tenosynovectomy
27705 Leg (tibia and fibula) and Ankle Joint—Repair, Revision or Reconstruction—Osteotomy; tibia
27707 fibula
27709 tibia and fibula
28070 Foot—Repair—Excision—Synovectomy; intertarsal or tarsometatarsal joint, each
28302 Foot—Repair, Revision or Reconstruction—Osteotomy; talus

• We have determined that the following is a pediatric procedure, which should not have been included on the current ASC list:

31520 Larynx—Endoscopy—Laryngoscopy direct; for aspiration; diagnostic, newborn

• We agree with the American College of Obstetricians and Gynecologists (ACOG) that the following are hospital procedures:

56200 Female Genital System—Repair—(see also 56800) Perineoplasty, repair of perineum, nonobstetrical (separate procedure)
57000 Vagina—Incision—Colpotomy; with exploration
57135 Vagina—Excision—Excision of vaginal cyst or tumor

• We agree with ACOG, that the following is an office procedure.

56600 Vulva and Introitus—Excision—Biopsy of vulva (separate procedure)

• We agree with the American Academy of Ophthalmologists recommendation that the following are doctor's office procedures:

67800 Ocular Adnexa—Orbit—Excision or Removal of Lesion Involving More Than Skin (Ie, Involving Lid Margin, Tarsus, And/Or Palpebral Conjunctiva)—Excision chalazion; single
67805 multiple, different lids
68705 Ocular Adnexa—Lacrimal System—Repair—Correction of everted punctum, cautery
67915 Ocular Adnexa—Orbit—Repair Ectropion, Entropion—Repair of ectropion; thermocauterization
67922 Ocular Adnexa—Orbit—Repair Ectropion, Entropion—Repair entropion; thermocauterization

• HCFA staff physicians, in consultation with other practicing specialist physicians, have determined that the following should be deleted from the current list, since no facility fee should be allowed for any non-surgical procedure. This procedure involves supervision and interpretation only:

74740 Gynecological and Obstetrical—Hysterosalpingography; supervision and interpretation only

*D. Changes in ASC Payment Groups*

We made the following changes in the current assignment of codes to ASC payment groups based on comments we received from the Freestanding Ambulatory Surgical Association (FASA). We agreed with the revised group recommendation by FASA in all but one case. In the experience of HCFA medical staff, the resource allocation for procedure 11644 warranted Group 2 reimbursement, rather than the FASA recommendation of Group 3.

• The following procedures were moved from Group 1 to Group 2:

11626 Skin, Subcutaneous and Areolar Tissues—Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter over 4.0 cm
11646 Skin, Subcutaneous and Areola Tissues—Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter over 4.0 cm

• The following procedure was moved from Group 3 to Group 4:

64716 Nervous System—Exploration, Neurolysis or Nerve Decompression (Neuroplasty)—Neurolysis and/or transposition cranial nerve (specify)

• The following procedures were moved from Group 4 to Group 3:

66600 Anterior Segment-Iridectomy, with corneoscleral or corneal section; for removal of lesion
66625 peripheral for glaucoma (separate procedure)
66630 sector for glaucoma (separate procedure)
66635 "optical" (separate procedure)

*E. Revision to CPT–4*

• The following procedures were revised to conform to the most recent editions of CPT–4, as follows:

19121 was replaced with 19120–Excision of cyst, fibroadenoma or other benign tumor, aberrant breast tissue, duct lesion or nipple lesion (except 19140), male or female, one or more lesions
19141 was replaced with 19140—Mastectomy for gynecomastia through circumareolar or other incision
21350 was deleted from the CPT–4–Treatment of closed or open fracture of malar area, including zygomatic arch and malar tripod without manipulation
27375 was replaced with 29870—Arthroscopy-Arthroscopy, knee, diagnostic, with or without synovial biopsy (separate procedure)
27376 was replaced with 29870—Arthroscopy-Arthroscopy, knee, diagnostic, with or without synovial biopsy (separate procedure)
27377 was replaced with 29874—Arthroscopy-Arthroscopy, knee surgical; for removal of loose body or foreign body (eg, osteochondritis dissecans fragmentation, chondral fragmentation)
27378 was replaced with 29881—Arthroscopy-Arthroscopy, knee surgical; with meniscectomy (medial or lateral including any meniscal shaving)
43700 was replaced with 43235—Esophagus-Endoscopy-Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; complex diagnostic
43702 was replaced with 43239—Esophagus-Endoscopy-Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for biopsy and/or collection or specimen by brushing or washing
43709 was replaced with 43247—Esophagus-Endoscopy-Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of foreign body
43711 was replaced with 43251—Esophagus-Endoscopy-Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of polypoid lesion(s)
43712 was replaced with 43255—Esophagus—Endoscopy-Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for control of hemorrhage (eg, electrocoagulation, laser photocoagulation)
43714 was replaced with 43258—Esophagus-Endoscopy-Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for ablation of tumor or mucosal lesion (eg, electrocoagulation, laser photocoagulation)
49506 was replaced with 49505—Repair-Herinoplasty, Herniorrhaphy, Herniotomy-Repair inguinal hernia, age 5 or over
49551 was replaced with 49550—Repair-Herinoplasty, Herniorrhaphy, Herniotomy-Repair femoral hernia, groin incision

52100 was replaced with 52000—Endoscopy-Cystourethroscopy; (separate procedure)
52105 was replaced with 52005—Cystourethroscopy, with ureteral catheterization, with or without irrigation, instillation, or ureteropyelography, exclusive or radiologic service
52110 was replaced with 52010—Endoscopy-Cystoscopy, Urethroscopy, Cystrourethroscopy Notes-Cystourethroscopy, with ejaculatory duct catheterization, with or without irrigation, instillation, or duct radiography, exclusive of radiologic service
52202 was replaced with 52204—Transurethral Surgery—Cystourethroscopy, with biopsy
52212 was replaced with 52214—Transurethral Surgery—Cystourethroscopy, with fulguration (including cryosurgery) of trigone, bladder neck, prostatic fossa, urethra, or periurethral glands
52222 was replaced with 52224—Transurethral Surgery—Cystourethroscopy, with fulguration (including cryosurgery) or treatment of MINOR (less than 0.5 cm) lesion (s), with or without biopsy
52232 was replaced with 52234—Transurethral Surgery—Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of, SMALL bladder tumor(s) (0.5 to 2.0 cm)
52800 was replaced with 52317—Endoscopy-Transurethral Surgery (Urethra and Bladder)—Litholapaxy; crushing or fragmentation or calculus by any means in bladder and removal of fragments, simple; small (less than 2.5 cm)
54154 was replaced with 54152—Male Genital System—Excision—Circumcision, clamp procedure; except newborn
66980 was replaced with 66983 or 66984—Anterior Segment-Lens-Removal Cataract-Intracapsular cataract extraction with insertion of intraocular lens prosthesis (one stage procedure)

## V. Regulatory Impact Statement and Regulatory Flexibility Analysis

### *A. Requirements*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for documents such as this that are considered "major rules" because they are likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the document will not have a significant economic impact on a substantial number of small entities.

### *B. Entities Affected*

A substantial number of small entities will be affected. Not only will ASCs (approximately 682 of which participate in Medicare, at present) be affected, but hospitals in many areas may be affected, depending on patients' choice of surgery site. The effect on some entities may be substantial. Although, for the reasons discussed below, we estimate the net impact of this notice on Medicare program expenditures to be negligible, we can assume that ASCs will benefit as a result of this expanded list of covered procedures. We also expect the number of Medicare participating ASCs to gradually increase, due to increased willingness of patients to use ASCs, changes in State certificate-of-need laws, continuing interest in health care cost containment, improved medical technology, and financial incentives resulting from the expanded list of covered procedures.

Individual physicians, group practices, HMOs, and other organized groups of practitioners are also considered small entities under the RFA. (Individuals, such as beneficiaries, are not.) To the extent that performance of the surgical procedures included on the ASC list is shifted from a hospital inpatient setting to either a hospital outpatient setting or an ASC, physicians (both surgeons and anesthesiologists) may benefit because, if they accept assignment, Medicare will pay them 100 percent of reasonable charges.

This proposed expansion of the list of covered ASC procedures will also affect payments to hospitals for procedures performed in their outpatient departments once section 9343(a) of Pub. L. 99–509 is implemented. That amendment enacted a new section 1833(i)(3) of the Act to provide that when hospital outpatient departments perform procedures approved for ASCs, the payment to the hospitals will be the lesser of:

- 80 percent of the hospital's aggregate cost or charges (less any applicable deductible); or
- 80 percent of the aggregate blended amount for those services based on a limit composed, in FY 1987, 75 percent of hospital costs and 25 percent of the ASC rates, and, in FY 1988 and thereafter, 50 percent of hospital costs and 50 percent of the ASC rates.

Since we are developing separate regulations to implement section 9343(a), we will assess and discuss the effect of those limits in those documents.

### *C. Anticipated Economic Outcomes*

We do not have data available now that would enable us to estimate quantitatively the effects of this notice on the economy but we estimate that its net impact on Medicare program expenditures, rounding to the nearest $10 million, will be negligible. This notice will permit facility fees to be paid when procdures are furnished in an ASC that previously have been paid for only when furnished in hospitals. (The physicians furnishing ambulatory surgical services are paid regardless of site, but must collect deductible and coinsurance amounts from beneficiaries if the procedure is not on the ASC list.)

ASC payments are lower than either inpatient or outpatient hospital payments, and we therefore expect some program savings. Nonetheless, we do not expect a large volume of services to shift in setting from hospitals to ASCs. We believe that growth of ASCs would be likely to have beneficial, not adverse, effects on competition, investment, productivity, and innovation. We know of no compelling reasons to assume that the effects on employment, if any, would be adverse. This notice will not meet any of the criteria of E.O. 12291.

It is difficult to project accurately and quantitatively the overall economic impact of expanding and revising the list of covered procedures in ASCs. We expect that, to the extent that this expansion of the list of covered ASC services enables ASCs to compete more effectively with hospitals, prices related to the affected surgical services would decrease, not increase. We also expect that economies of production sought under the incentives of competition could reduce costs in many cases. However, if hospitals experience a decline in volume of these services, due to shifts to ASCs, their unit costs could increase. Further, the patterns of delivery of surgical services are constantly changing and are affected by a number of factors.

- In many States, certificate-of-need (CON) laws restrict the growth of new ASCs. This situation could change, however, as many State CON laws are being revised.
- If Medicare and private insurance payment rates for procedures performed in ASCs are updated in the future,

potential investors may perceive a greater financial incentive to fund more ASCs.

• The surgeon's or attending physician's views of the safety and efficacy of performing procedures in ASCs, as well as considerations of payment for services, may or may not be in favor of shifting more patients to ASCs, depending on a number of local variables.

• The costs of setting up an ASC vary a great deal, depending on the range of services to be provided. For example, an ASC specializing only in eye surgery would be much less expensive to build, equip, and staff, than a full-service ASC.

We expect the savings resulting from paying facility payments that are lower than outpatient hospital costs to be offset in two ways.

• Larger amounts will be paid by Medicare to some physicians, because Medicare pays physicians, as an incentive to shift surgical procedures, 100 percent of reasonable charges when a physician accepts assignment for a procedure on the ASC list performed in an ASC or in a hospital on an outpatient basis. (If a procedure is performed on an inpatient basis, or if the physician does not accept assignment, the physician receives 80 percent of reasonable charges and the patient is liable for the 20 percent coinsurance amount.)

• When a service on the ASC list is furnished in an ASC, we will pay both physician and facility fees, whereas we pay only physician fees for services furnished in offices. Further, the physician is paid only 80 percent of the Medicare allowed charge for an office procedure. Therefore, there is an incentive to shift the site of service from the doctor's office to an ASC. To the extent that this occurs, our program expenditures will be increased.

We estimate that the net savings impact of this expansion of the list of covered ASC procedures would be less than $10 million for FY 1987 and subsequent fiscal years.

*D. Alternatives Considered*

Alternatives to revising the list of procedures were not considered because updates are required by law. Alternative lists and items on the list were considered, as discussed earlier in this notice. However, the procedures contained in this notice are those we consider appropriate based on our best medical judgment.

We are not mandating where these procedures must be performed. The decision as to where the surgery will be performed is made by the patient and the patient's physician. The decision may include financial considerations, but also is motiviated by such factors as the patient's general health, the presence or absence of complicating conditions, convenience of location or scheduling, or confidence in a particular facility.

*E. Conclusion*

We conclude that this notice will have a significant economic impact on a substantial number of small entities, and we have therefore provided a discussion that we believe presents the interaction of variables involved in assessing the impact. This discussion, in combination with the rest of the preamble of this notice serves as a regulatory flexibility analysis consistent with the RFA.

## VI. Additions to the List of Covered Surgical Procedures for ASCs

On May 21, 1987, Medicare Part B coverage is available for facility services furnished in connection with the following surgical procedures when performed in an ambulatory surgical center.

| CPT-4 code | Payment group | Description |
|---|---|---|
| | | Integumentary System |
| | | Skin, Subcutaneous and Areolar Tissues |
| Incision | | |
| 10141.. | 2 | Incision and drainage of hematoma; complicated. |
| Excision debridement | | |
| 11042.. | 1 | Debridement; skin, and subcutaneous tissue |
| 11043.. | 1 | Debridement; skin, subcutaneous tissue, and muscle |
| 11044.. | 1 | Debridement; skin, subcutaneous tissue, muscle, and bone. |
| Excision-benign lesions | | |
| 11471.. | 2 | Excision of skin and subcutaneous tissue for hidradenitis, perianal, perineal, or umbilical; with other closure. Miscellaneous |
| 11772.. | 3 | Excision of pilonidal cyst of sinus; complicated. |
| Repair-simple | | |
| 12006.. | 2 | Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); 20.1 cm to 30.0 cm. |
| 12007.. | 2 | Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); over 30.0 cm. |
| 12017.. | 2 | Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 20.1 cm to 30.0 cm. |
| 12018.. | 2 | Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; over 30.0 cm. |
| Repair-intermediate | | |
| 12036.. | 2 | Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); 20.1 cm to 30.0 cm. |
| 12037.. | 2 | Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); over 30.0 cm. |
| 12046.. | 2 | Layer closure of wounds of neck, hands, feet and/or external genitalia; 20.1 cm to 30.0 cm. |
| 12047.. | 2 | Layer closure of wounds of neck, hands, feet and/or external genitalia; over 30.0 cm. |
| 12056.. | 2 | Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 20.1 cm to 30.0 cm. |
| 12057.. | 2 | Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; over 30.0 cm. |
| Repair-complex | | |
| 13101.. | 1 | Repair, complex, trunk; 2.6 cm to 7.5 cm. |
| 13121.. | 1 | Repair, complex, scalp, arms, and/or legs; 2.6 cm to 7.5 cm. |
| 13132.. | 2 | Repair, complex, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 2.6 cm to 7.5 cm. |
| 13152.. | 3 | Repair, complex, eyelids, nose, ears, and/or lips; 2.6 cm to 7.5 cm. |

BEST COPY AVAILABLE

| CPT–4 code | Payment group | Description |
|---|---|---|
| 13300.. | 3 | Repair, unusual, complicated, over 7.5 cm, any area. |
| Adjacent tissue transfer or rearrangement | | |
| 14001.. | 3 | Adjacent tissue transfer or rearrangement, trunk; defect 10.1 sq cm to 30.0 sq cm. |
| 14020.. | 3 | Adjacent tissue transfer or rearrangement, scalp, arms and/or legs; defect 10 sq cm or less. |
| 14021.. | 3 | Adjacent tissue transfer or rearrangement, scalp, arms and/or legs; defect 10.1 sq cm to 30.0 sq cm. |
| 14041.. | 3 | Adjacent tissue transfer or rearrangement, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; defect 10.1 sq cm to 30.0 sq cm. |
| 14060.. | 3 | Adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10 sq cm or less. |
| 14061.. | 3 | Adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10.1 sq cm to 30.0 sq cm. |
| 14300.. | 3 | Adjacent tissue transfer or rearrangement, more than 30 sq cm, unusual or complicated, any area. |
| 14350.. | 3 | Filleted finger or toe flap, including preparation of recipient site. |
| Free skin grafts | | |
| 15200.. | [illegible] | Full thickness graft, free, including direct closure of donor site, trunk; 20 sq cm or less. |
| 15201.. | 3 | Full thickness graft, free, including direct closure of donor site, trunk; each additional 20 sq cm. |
| 15220.. | [illegible] | Full thickness graft, free, including direct closure of donor site, scalp, arms, and/or legs; 20 sq cm or less. |
| 15221.. | [illegible] | Full thickness graft, free, including direct closure of donor site, scalp, arms, and/or legs; each additional 20 sq cm. |
| 15240.. | 3 | Full thickness graft, free, including direct closure of donor site, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 20 sq cm or less. |
| 15241.. | 3 | Full thickness graft, free, including direct closure of donor site, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; each additional 20 sq cm. |
| 15260.. | [illegible] | Full thickness graft, free, including direct closure of donor site, nose, ears, eyelids, and/or lips; 20 sq cm or less. |
| 15261.. | [illegible] | Full thickness graft, free, including direct closure of donor site, nose, ears, eyelids, and/or lips; each additional 20 sq cm. |
| 15350.. | 3 | Application of allograft (homograft), skin. |
| 15410.. | 3 | Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; 100 sq cm or less. |
| 15412.. | 3 | Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; between 101 and 160 sq cm. |
| 15414.. | 3 | Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; between 161 and 230 sq cm. |
| 15416.. | 3 | Free transplantation of skin flap by microsurgical technique, including microvascular anastomosis; over 230 sq cm. |
| Repair | | |
| Pedicle flaps (skin and deep tissues) | | |
| 15500.. | 4 | Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on trunk. |
| 15505.. | 4 | Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on scalp, arms, or legs. |
| 15510.. | 4 | Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on forehead, cheeks, chin, mouth, neck, axillae genitalia, hands, or feet. |
| 15515.. | 4 | Formation of tube pedicle without transfer, or major "delay" of large flap without transfer; on eyelids, nose, ears, or lips. |
| 15540.. | 4 | Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to trunk. |
| 15545.. | 4 | Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to scalp, arms, or legs. |
| 15550.. | 4 | Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to forehead, cheeks, chin, mouth, neck, axillae, genitalia, or hands, feet. |
| 15555.. | 4 | Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; to eyelids, nose, ears, or lips. |
| 15580.. | 4 | Primary attachment of open or tubed pedicle flap to recipient site requiring minimal preparation; cross finger pedicle flap, including free graft to donor site. |
| 15600.. | 4 | Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at trunk. |
| 15610.. | 4 | Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at scalp, arms, or legs. |
| 15620.. | 4 | Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at forehead, cheeks, chin, neck, axillae, genitalia, hands (except 15625), or feet. |
| 15625.. | 4 | Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; section pedicle of cross finger flap. |
| 15630.. | 4 | Intermediate "delay" of any flap, primary "delay" of small flap, or sectioning pedicle of tubed or direct flap; at eyelids, nose, ears, or lips. |
| 15650.. | 4 | Transfer, intermediate, of any pedicle flap (e.g., abdomen to wrist, Walking tube), any location. |
| 15700.. | 4 | Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; trunk. |
| 15710.. | 4 | Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; scalp, arms, or legs. |
| 15720.. | 4 | Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands, or feet. |
| 15730.. | 4 | Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap; eyelids, nose, ears, or lips. |
| Other grafts | | |
| 15740.. | [illegible] | Graft; island pedicle flap. |
| 15745.. | [illegible] | Graft; myocutaneous flap. |
| 15750.. | [illegible] | Graft; neurovascular pedicle flap. |
| 15755.. | [illegible] | Graft; free flap (microvascular transfer). |
| 15760.. | [illegible] | Graft; composite (full thickness of external ear or nasal ala), including primary closure, donor area. |
| 15770.. | [illegible] | Graft; derma-fat-fascia. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| Miscellaneous procedures | | |
| 15840.. | 4 | Graft for facial nerve paralysis; free fascia graft (including obtaining fascia). |
| 15841.. | 4 | Graft for facial nerve paralysis; free muscle graft (including obtaining graft). |
| 15842.. | 4 | Graft for facial nerve paralysis; free muscle graft by microsurgical technique. |
| 15845.. | 4 | Graft for facial nerve paralysis; regional muscle transfer. |
| Pressure ulcers (decubitus ulcers) | | |
| 15920.. | 3 | Excision, coccygeal pressure ulcer, with coccygectomy; with primary suture. |
| 15922.. | 3 | Excision, coccygeal pressure ulcer, with coccygectomy; with local or regional skin flap closure. |
| 15931.. | 3 | Excision, sacral pressure ulcer, with primary suture. |
| 15933.. | 3 | Excision, sacral pressure ulcer, with primary suture; with ostectomy. |
| 15941.. | 3 | Excision, ischial pressure ulcer, with primary suture; with ostectomy (ischiectomy). |
| 15944.. | 3 | Excision, ischial pressure ulcer, with local or regional skin flap closure. |
| 15945.. | 3 | Excision, ischial pressure ulcer, with local or regional skin flap closure; with ostectomy. |
| 15946.. | 3 | Excision, ischial pressure ulcer, with ostectomy, with muscle flap or myocutaneous flap closure. |
| 15950.. | 3 | Excision, trochanteric pressure ulcer, with primary suture. |
| 15951.. | 3 | Excision, trochanteric pressure ulcer, with primary suture; with ostectomy. |
| 15952.. | 3 | Excision, trochanteric pressure ulcer, with local rotation skin flap closure. |
| 15953.. | 3 | Excision, trochanteric pressure ulcer, with local rotation skin flap closure; with ostectomy. |
| 15954.. | 3 | Excision, trochanteric pressure ulcer, with bipedicle flap closure. |
| 15955.. | 3 | Excision, trochanteric pressure ulcer, with bipedicle flap closure; with ostectomy. |
| 15956.. | 3 | Excision, trochanteric pressure ulcer, with muscle or myocutaneous flap closure. |
| 15958.. | 3 | Excision, trochanteric pressure ulcer, with muscle or myocutaneous flap closure; with ostectomy. |
| 15960.. | 3 | Excision, heel pressure ulcer, with primary suture. |
| 15961.. | 3 | Excision, heel pressure ulcer, with primary suture; with ostectomy. |
| 15964.. | 3 | Excision, heel pressure ulcer, with skin flap closure. |
| 15965.. | 3 | Excision, heel pressure ulcer, with skin flap closure; with ostectomy. |
| 15966.. | 3 | Excision, heel pressure ulcer, with other flap closure. |
| 15967.. | 3 | Excision, heel pressure ulcer, with other flap closure; with ostectomy. |
| 15970.. | 3 | Excision, leg pressure ulcer, with primary suture. |
| 15971.. | 3 | Excision, leg pressure ulcer, with ostectomy. |
| 15972.. | 3 | Excision, leg pressure ulcer, with local skin flap(s). |
| 15973.. | 3 | Excision, leg pressure ulcer, with local skin flap(s); with ostectomy. |
| 15974.. | 3 | Excision, leg pressure ulcer, with muscle or myocutaneous flap closure. |
| 15975.. | 3 | Excision, leg pressure ulcer, with muscle or myocutaneous flap closure; with ostectomy. |
| 15980.. | 3 | Excision, knee pressure ulcer, with local skin flap closure. |
| 15981.. | 3 | Excision, knee pressure ulcer, with local skin flap closure; with ostectomy. |
| 15982.. | 3 | Excision, knee pressure ulcer, with other flap closure. |
| 15983.. | 3 | Excision, knee pressure ulcer, with other flap closure; with ostectomy. |
| Burns, local treatment | | |
| 16015.. | 1 | Dressing and/or debridement, initial or subsequent; under anesthesia, medium or large, or with major debridement. |
| Breast | | |
| Incision | | |
| 19020.. | 1 | Mastotomy with exploration or drainage of abscess, deep. |
| Excision | | |
| 19160.. | 4 | Mastectomy, partial. |
| 19180.. | 4 | Mastectomy, simple, complete. |
| 19182.. | 4 | Mastectomy, subcutaneous. |
| | | Musculoskeletal System |
| | | General |
| Incision | | |
| 20005.. | 1 | Incision of soft tissue abscess (e.g., secondary to osteomyelitis); deep or complicated. |
| Excision | | |
| 20205.. | 1 | Biopsy, muscle; deep. |
| 20225.. | 2 | Biopsy, bone, trocar or needle; deep (vertebral body, femur). |
| 20240.. | 2 | Biopsy, excisional; superficial (e.g., ilium, sternum, spinous process, ribs, trochanter of femur). |
| 20245.. | 2 | Biopsy, excisional, deep (e.g., humerous, ischium, femur). |
| 20250.. | 4 | Biopsy, vertebral body, open; thoracic. |
| 20251.. | 4 | Biopsy, vertebral body, open; lumbar or cervical |
| Introduction or Removal | | |
| 20525.. | 1 | Removal of foreign body in muscle; deep or complicated. |
| 20650.. | 1 | Insertion of wire or pin with application of skeletal traction, including removal (separate procedure). |
| 20660.. | 2 | Application of tongs or caliper, including removal (separate procedure). |
| 20661.. | 1 | Application of halo; including removal cranial. |
| 20662.. | 1 | Application of halo; pelvic. |
| 20663.. | 1 | Application of halo; femoral. |
| 20665.. | 2 | Removal of tongs or halo applied by another physician. |
| 20680.. | 1 | Removal of implant; deep (e.g., buried wire, pin, screw, metal band, nail, rod or plate). |

| CPT–4 code | Payment group | Description |
|---|---|---|
| Grafts (or Implants) | | |
| 20900.. | 1 | Bone graft, any donor area; minor or small (e.g., dowel or button). |
| 20902.. | 4 | Bone graft, any donor area; major or large. |
| 20912.. | 4 | Cartilage graft; nasal septum. |
| 20920.. | 4 | Fascia lata graft; by stripper. |
| 20922.. | 4 | Fascia lata graft; by incision and area exposure, complex or sheet. |
| 20926.. | 4 | Tissue grafts, other (e.g., paratenon, fat, dermis, etc.). |
| Miscellaneous | | |
| 20955.. | 4 | Bone graft with microvascular anastomosis; fibula. |
| 20960.. | 4 | Bone graft with microvascular anastomosis; rib. |
| 20962.. | 4 | Bone graft with microvascular anastomosis; other bone graft (specify). |
| 20969.. | 4 | Free osteocutaneous flap with microvascular anastomosis; other than iliac crest, rib, metatarsal, or great toe. |
| 20970.. | 4 | Free osteocutaneous flap with microvascular anastomosis; iliac crest. |
| 20971.. | 4 | Free osteocutaneous flap with microvascular anastomosis; rib. |
| 20972.. | 4 | Free osteocutaneous flap with microvascular anastomosis; metatarsal. |
| 20973.. | 4 | Free osteocutaneous flap with microvascular anastomosis; great toe with web space. |
| 20975.. | 2 | Electrical stimulation to aid bone healing; invasive (operative). |
| | | Head |
| Incision | | |
| 21010.. | 3 | Arthrotomy, temporomandibular joint; unilateral. |
| 21011.. | 3 | Arthrotomy, temporomandibular joint; bilateral |
| | | General |
| Excision | | |
| 21034.. | 4 | Excision of malignant tumor of facial bone other than mandible. |
| 21044.. | 4 | Excision of malignant tumor of mandible. |
| 21050.. | 4 | Arthrectomy, temporomandibular joint; unilateral. |
| 21060.. | 4 | Meniscectomy, temporomandibular joint; unilateral. |
| 21061.. | 4 | Meniscectomy, temporomandibular joint; bilateral. |
| Introduction or Removal | | |
| 21100.. | 4 | Application of halo type appliance for maxillofacial fixation, includes removal (separate procedure). |
| Fracture and/or Dislocation | | |
| 21320.. | 1 | Manipulative treatment, nasal bone fracture; with stabilization. |
| 21325.. | 3 | Open treatment of nasal fracture; uncomplicated. |
| 21330.. | 4 | Open treatment of nasal fracture; complicated, with internal and/or external skeletal fixation. |
| 21335.. | 4 | Open treatment of nasal fracture; with concomitant open treatment of fractured septum. |
| 21338.. | 4 | Open treatment of nasoethmoid fracture; without external fixation. |
| 21340.. | 4 | Treatment of closed or open nasoethmoid complex fracture, with splint, wire or headcap fixation, including repair of canthal ligaments and/or the nasolacrimal apparatus. |
| 21365.. | 4 | Open treatment of closed or open complicated, (e.g., multiple fractures), or malar area, including zygomatic arch and malar tripod, with internal skeletal fixation and multiple surgical approaches. |
| 21450.. | 4 | Treatment of closed or open mandibular fracture; without manipulation. |
| 21451.. | 4 | Treatment of closed or open mandibular fracture; with manipulation, may include external fixation. |
| 21452.. | 4 | Treatment of open mandibular fracture; without manipulation. |
| 21453.. | 4 | Treatment of open mandibular fracture; with manipulation. |
| 21480.. | 2 | Uncomplicated treatment of temporomandibular dislocation, initial or subsequent. |
| 21485.. | 3 | Complicated manipulative treatment of temporomandibular dislocation, initial or subsequent. |
| 21490.. | 4 | Open treatment of temporomandibular dislocation |
| 21494.. | 3 | Treatment of closed or open hyoid fracture; with manipulation. |
| 21495.. | 4 | Open treatment of closed or open hyoid fracture. |
| | | Neck (soft tissues) and thorax |
| Incision | | |
| 21501.. | 1 | Incision and drainage, deep abscess or hematoma. |
| 21502.. | 3 | Incision and drainage, deep abscess or hematoma; with partial rib ostectomy. |
| 21510.. | 3 | Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess). |
| 21555.. | 1 | Excision benign tumor; subcutaneous. |
| Excision | | |
| 21556.. | 2 | Excision, benign tumor, deep; subfascial, intramuscular. |
| 21600.. | 3 | Excision of rib, partial. |
| 21610.. | 3 | Costotransversectomy (separate procedure). |
| | | Abdomen |
| Excision | | |
| 22900.. | 2 | Excision, abdominal wall tumor, subfacial (e.g., desmoid). |
| | | Shoulder |
| Incision | | |
| 23000.. | 3 | Removal of subdeltoid (or intratendinous) calcareous deposits. |
| 23020.. | 3 | Capsular contracture release (Sever type procedure) for Erb's palsy. |
| 23030.. | 1 | Incision and drainage; deep abscess or hematoma. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 23035.. | 2 | Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess. |
| 23040.. | 4 | Arthrotomy, glenohumeral joint, for infection, with exploration, drainage or removal of foreign body. |
| 23044.. | 4 | Arthrotomy with exploration, drainage or removal of foreign body, acromioclavicular, sternoclavicular joint. |
| Excision | | |
| 23066.. | 1 | Biopsy, soft tissues; deep. |
| 23076.. | 1 | Excision, benign tumor; deep, subfascial or intramuscular. |
| 23100.. | 4 | Arthrotomy for biopsy, glenohumeral joint. |
| 23101.. | 4 | Arthrotomy for biopsy or for excision of torn cartilage, acromioclavicular, sternoclavicular joint. |
| 23130.. | 4 | Acromionectomy, partial or total. |
| 23140.. | 4 | Excision or curettage of bone cyst or benign tumor of clavicle or scapula. |
| 23150.. | 4 | Excision or curettage of bone cyst or benign tumor of proximal humerus. |
| 23180.. | 3 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), clavicle. |
| 23182.. | 3 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), scapula. |
| 23184.. | 3 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), proximal humerus. |
| 23190.. | 3 | Ostectomy of scapula, partial (e.g., superior medial angle). |
| 23195.. | 3 | Resection humeral head. |
| Introduction or Removal | | |
| 23331.. | 2 | Removal of foreign body; deep (e.g., Neer prosthesis removal). |
| Repair, Revision of Reconstruction | | |
| 23405.. | 3 | Tenomyotomy; single. |
| 23406.. | 3 | Tenomyotomy; multiple through same incision. |
| Fracture and/or Dislocation | | |
| 23505.. | 2 | Treatment of closed clavicular fracture; with manipulation. |
| 23515.. | 4 | Open treatment of closed or open clavicular fracture, with or without internal or external skeletal fixation. |
| 23605.. | 2 | Treatment of closed humeral (surgical or anatomical neck) fracture; with manipulation. |
| 23610.. | 4 | Treatment of open humeral (surgical or anatomical neck) fracture, with uncomplicated soft tissue closure. |
| 23625.. | 2 | Treatment of closed greater tuberosity fracture; with manipulation. |
| 23630.. | 4 | Open treatment of closed or open greater tuberosity fracture, with or without internal or external skeletal fixation. |
| 23655.. | 1 | Treatment of closed shoulder disclocation, with manipulation; requiring anesthesia. |
| 23658.. | 4 | Treatment of open shoulder dislocation, with uncomplicated soft tissue closure. |
| 23660.. | 4 | Open treatment of closed or open shoulder dislocation. |
| 23665.. | 2 | Treatment of closed shoulder dislocation, with fracture of greater tuberosity, with manipulation. |
| 23670.. | 4 | Open treatment of closed or open shoulder dislocation, with fracture of greater tuberosity. |
| 23675.. | 2 | Treatment of closed shoulder dislocation, with surgical or anatomical neck fracture, with manipulation. |
| 23680.. | 4 | Open treatment of closed or open shoulder dislocation, with surgical or anatomical neck fracture. |
| Manipulation | | |
| 23700.. | 2 | Manipulation under anesthesia, including application of fixation apparatus (dislocation excluded). |
| | | Humerus (upper arm) and elbow |
| Incision | | |
| 23930.. | 1 | Incision and drainage; deep abscess or hematoma. |
| 23935.. | 2 | Incision, deep, with opening of (e.g., cortex for osteomyelitis or bone abscess). |
| 24000.. | 2 | Arthrotomy, elbow, for infection, with exploration, drainage or removal of foreign body. |
| Excision | | |
| 24075.. | 2 | Excision, benign tumor; subcutaneous. |
| 24076.. | 2 | Excision, benign tumor; deep, subfascial or intramuscular. |
| 24100.. | 4 | Arthrotomy, elbow; for synovial biopsy only. |
| 24101.. | 4 | Arthrotomy, elbow; with joint exploration, with or without biopsy, with or without removal of foreign body. |
| 24110.. | 3 | Excision, or curettage of bone cyst or benign tumor, humerus. |
| 24115.. | 4 | Excision or curettage of bone cyst or benign tumor, humerus; with primary autogenous graft (includes obtaining graft). |
| 24116.. | 4 | Excision or curettage of bone cyst or benign tumor, humerus; with homogenous or other nonautogenous graft. |
| 24120.. | 3 | Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process. |
| 24125.. | 4 | Excision of curettage of bone cyst or benign tumor of head or neck of radius or olecranon process; with primary autogenous graft (includes obtaining graft). |
| 24126.. | 4 | Excision or curettage of bone cyst or benign tumor of head or neck of radius or olecranon process; with homogenous or other nonautogenous graft. |
| 24130.. | 3 | Excision, radial head. |
| 24140.. | 2 | Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis), humerus. |
| 24145.. | 2 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), radial head or neck. |
| 24147.. | 2 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), olecranon process. |
| 24155.. | 4 | Resection of elbow joint (arthrectomy). |
| Introduction or removal | | |
| 24160.. | 2 | Implant removal; elbow joint. |
| 24164.. | 2 | Implant removal; radial head. |
| 24201.. | 1 | Removal of foreign body; deep. |
| Repair revision and reconstruction | | |
| 24301.. | 3 | Muscle or tendon transfer, any type, single (excluding 24320–24331). |
| 24310.. | 3 | Tenotomy, open, elbow to shoulder, single, each. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 24330.. | 4 | Flexor-plasty, elbow, (e.g., Steindler type advancement). |
| 24331.. | 4 | Flexor-plasty, elbow, (e.g., Steindler type advancement); with extensor advancement. |
| 24340.. | 4 | Tenodesis for rupture of biceps tendon at elbow. |
| 24342.. | 4 | Reinsertion of ruptured biceps tendon, distal, with or without tendon graft (includes obtaining graft). |
| 24356.. | 4 | Fasciotomy, lateral or medical (e.g., "tennis elbow" or epicondylitis); with partial ostectomy. |
| 24420.. | 4 | Osteoplasty, humerus (e.g., shortening or lengthening) (excluding 64876). |
| 24470.. | 4 | Hemiepiphyseal arrest (e.g., for cubitus varus or valgus, distal humerus). |
| 24495.. | 4 | Decompression fasciotomy, forearm, with brachial artery exploration. |
| Fracture and/or dislocation | | |
| 24505.. | 1 | Treatment of closed humeral shaft fracture; with manipulation. |
| 24506.. | 2 | Treatment of closed humeral shaft fracture; percutaneous insertion of pin or rod. |
| 24510.. | 3 | Treatment of open humeral shaft fracture, with uncomplicated soft tissue closure. |
| 24515.. | 4 | Open treatment of closed or open humeral shaft fracture, with or without internal or external skeletal fixation. |
| 24530.. | 1 | Treatment of closed supracondylar or transcondylar fracture, without manipulation. |
| 24531.. | 2 | Treatment of closed supracondylar or transcondylar fracture, without manipulation; with traction (pin or skin). |
| 24535.. | 1 | Treatment of closed supracondylar or transcondylar fracture, with manipulation. |
| 24536.. | 2 | Treatment of closed supracondylar or transcondylar fracture, with manipulation; with traction (pin or skin). |
| 24538.. | 2 | Treatment of closed supracondylar or transcondylar fracture, with manipulation; with percutaneous skeletal fixation. |
| 24540.. | 4 | Treatment of open supracondylar or transcondylar fracture, with uncomplicated soft tissure closure. |
| 24542.. | 4 | Treatment of open supracondylar or transcondylar fracture, with uncomplicated soft tissue closure; with traction (pin or skin). |
| 24545.. | 4 | Open treatment of closed or open supracondylar or transcondylar fracture, with or without internal or external skeletal fixation. |
| 24565.. | 1 | Treatment of closed epicondylar fracture, medial or lateral; with manipulation. |
| 24570.. | 3 | Treatment of open epicondylar fracture, medial or lateral; with uncomplicated soft tissue closure. |
| 24575.. | 4 | Open treatment of closed or open epicondylar fracture, medial or lateral, with or without internal or external skeletal fixation. |
| 24577.. | 1 | Treatment of closed condylar fracture, medial or lateral; with manipulation. |
| 24578.. | 3 | Treatment of open condylar fracture, medial or lateral with umcomplicated soft tissue closure. |
| 24579.. | 4 | Open treatment of closed or open condylar fracture, medial or lateral, with or without internal or external skeletal fixation. |
| 24580.. | 1 | Treatment of closed comminuted elbow fracture (fracture distal humerus and/or proximal ulna radius), treatment with traction, (pin or skin); without manipulation. |
| 24581.. | 1 | Treatment of closed comminuted elbow fracture (fracture distal humerus and/or proximal ulna radius), treatment with traction, (pin or skin); without manipulation. |
| 24583.. | 4 | Treatment of open comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), with uncomplicated soft tissue closure. |
| 24585.. | 4 | Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), with or without internal or external skeletal fixation. |
| 24586.. | 4 | Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna and/or proximal radius), with or without internal or external skeletal fixation; with elbow resection. |
| 24605.. | 1 | Treatment of closed elbow dislocation; requiring anesthesia. |
| 24610.. | [redacted] | Treatment of open elbow dislocation, with uncomplicated soft tissue closure. |
| 24615.. | [redacted] | Open treatment of closed or open elbow dislocation. |
| 24620.. | [redacted] | Treatment of closed Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head). |
| 24625.. | 4 | Treatment of open Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head), with uncomplicated soft tissue closure. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 24635 | 4 | Open treatment of closed or open Monteggia type of fracture dislocation at elbow (fracture proximal end of ulna with dislocation of radial head), with or without internal or external skeletal fixation. |
| 24655.. | 1 | Treatment of closed radial head or neck fracture; with manipulation with complicated soft tissue closure. |
| 24665.. | 4 | Open treatment of closed or open radial head or neck fracture, with or without internal fixation or radial head excision. |
| 24666.. | 4 | Open treatment of closed or open radial head or neck fracture, with or without internal fixation or radial head excision; with implant. |
| 24675.. | 1 | Treatment of closed ulnar fracture, proximal end (olecranon process); with manipulation. |
| 24680.. | 3 | Treatment of open ulnar fracture, proximal end (olecranon process); with uncomplicated soft tissue closure. |
| 24685.. | 4 | Open treatment of closed or open ulnar fracture, proximal end (olecranon process), with or with without internal or external skeletal fixation. |
| | | Forearm and Wrist |
| Incision | | |
| 25005.. | 2 | Tendon sheath incision; at wrist for other stenosing tenosynovitis. |
| 25028.. | 1 | Incision and drainage, deep abscess or hematoma. |
| 25035.. | 2 | Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess). |
| 25040.. | 2 | Arthrotomy, radiocarpal or mediocarpal joint, for infection, with exploration, drainage, or removal of loose or foreign body. |
| Excision | | |
| 25066.. | 1 | Biopsy, soft tissues; deep. |
| 25076.. | 1 | Excision, benign tumor, deep, subfascial or intramuscular. |
| 25085.. | 3 | Capsulotomy, wrist (e.g., for contracture). |
| 25100.. | 2 | Arthrotomy, wrist joint; for biopsy. |
| 25101.. | 3 | Arthrotomy, wrist joint; with joint exploration, with or without biopsy, with or without removal of foreign body. |
| 25107.. | 3 | Arthrotomy distal radioulnar joint for repair of triangular cartilage complex. |
| 25110.. | 3 | Excision, lesion of tendon sheath. |
| 25120.. | 3 | Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process). |
| 25125.. | 4 | Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process); with primary autogenous graft (includes obtaining graft). |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 25126.. | 4 | Excision or curettage of bone cyst or benign tumor of radius or ulna (excluding head or neck of radius and olecranon process); with homogenous or other nonautogenous graft. |
| 25130.. | 3 | Excision or curettage of bone cyst or benign tumor of carpal bones. |
| 25135.. | [illegible] | Excision or curettage of bone cyst or benign tumor of carpal bones; with primary autogenous graft (includes obtaining graft). |
| 25136.. | 4 | Excision or curettage of bone cyst or benign tumor of carpal bones; with homogenous or other nonautogenous graft. |
| 25145.. | [illegible] | Sequestrectomy (e.g., for osteomyelitis or bone abscess). |
| 25146.. | [illegible] | With suction irrigation. Sequestrectomy (e.g., for osteomyelitis or bone abscess). |
| 25150.. | 2 | Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); ulna. |
| 25151.. | 2 | Partial excision (craterization, saucerization or diaphysectomy) of bone (e.g., for osteomyelitis); radius. |
| 25210.. | [illegible] | Carpectomy; one bone. |
| 25215.. | [illegible] | Carpectomy; all bones of proximal row. |
| 25230.. | [illegible] | Radial styloidectomy (separate procedure). |
| 25240.. | 3 | Excision distal ulna (Darrach type procedure). |
| 25248.. | 2 | Exploration for removal of deep foreign body. |
| Repair, revision or reconstruction | | |
| 25274.. | [illegible] | Repair, tendon or muscle, extensor, secondary, with tendon graft (includes obtaining graft), each tendon. |
| 25280.. | [illegible] | Lengthening or shortening of flexor or extensor tendon, single, each tendon. |
| 25290.. | [illegible] | Tenotomy, open, single, flexor or extensor tendon, each tendon. |
| 25295.. | [illegible] | Tenolysis, single flexor or extensor tendon, each tendon. |
| 25300.. | 3 | Tenodesis at wrist; flexors of fingers. |
| 25301.. | 3 | Tenodesis at wrist; extensors of fingers. |
| 25315.. | 3 | Flexor origin slide for cerebral palsy. |
| 25316.. | [illegible] | Flexor origin slide for cerebral palsy; with tendon(s) transfer. |
| 25317.. | [illegible] | Flexor origin slide for Volkmann contracture. |
| 25318.. | [illegible] | Flexor origin slide for Volkmann contracture; with tendon(s) transfer. |
| 25320.. | 4 | Capsulorrhaphy or reconstruction, capsulectomy, wrist (includes synovectomy, resection of capsule, tendon insertions). |
| 25390.. | 4 | Osteoplasty radius OR ulna; shortening. |
| 25391.. | 4 | Osteoplasty, radius OR ulna; lengthening with autogenous bone graft. |
| 25392.. | 4 | Osteoplasty, radius AND ulna; shortening (excluding 64876). |
| 25393.. | 4 | Osteoplasty, radius AND ulna; lengthening with autogenous bone graft. |
| 25450.. | 4 | Epiphyseal arrest by epiphysiodesis or stapling; distal radius OR ulna. |
| 25455.. | 4 | Ephiphyseal arrest by epiphysiodesis or stapling; distal radius AND ulna. |
| Fracture and/or Dislocation | | |
| 25505.. | 1 | Treatment of closed radial shaft fracture; with manipulation. |
| 25510.. | 3 | Treatment of open radial shaft fracture, with uncomplicated soft tissue closure. |
| 25515.. | 4 | Open treatment of closed or open radial shaft fracture, with or without internal or external skeletal fixation. |
| 25535.. | 1 | Treatment of closed ulnar shaft fracture; with manipulation. |
| 25540.. | 3 | Treatment of open ulnar shaft fracture, with uncomplicated soft tissue closure. |
| 25545.. | 4 | Open treatment of closed or open ulnar shaft fracture, with or without internal or external skeletal fixation. |
| 25565.. | 1 | Treatment of closed radial and ulnar shaft fractures; with manipulation. |
| 25570.. | 3 | Treatment of open radial and ulnar shaft fractures, with uncomplicated soft tissue closure. |
| 25575.. | 4 | Open treatment of closed or open radial and ulnar shaft fractures, with or without internal or external skeletal fixation. |
| 25605.. | 1 | Treatment of closed distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid; with manipulation. |
| 25610.. | 2 | Treatment of closed, complex, distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, requiring manipulation; without external skeletal fixation or percutaneous pinning. |
| 25611.. | 2 | Treatment of closed, complex, distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, requiring manipulation; percutaneous pinning or pins and plaster technique. |
| 25615.. | [illegible] | Treatment of open distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, with uncomplicated soft tissue closure. |
| 25620.. | 4 | Open treatment of closed or open distal radial fracture (e.g., Colles or Smith type) or epiphyseal separation, with or without fracture of ulnar styloid, with or without internal or external skeletal fixation. |
| 25626.. | 3 | Treatment of open carpal scaphoid (navicular) fracture, with uncomplicated soft tissue closure. |
| 25628.. | [illegible] | Open treatment of closed or open carpal scaphoid (navicular) fracture, with or without skeletal fixation. |
| 25635.. | [illegible] | Treatment of closed carpal bone fracture (excluding carpal scaphoid (navicular)); with manipulation, each bone. |
| 25640.. | 4 | Treatment of open carpal bone fracture (excluding carpal scaphoid (navicular)), with uncomplicated soft tissue closure, each bone. |
| 25645.. | 4 | Open treatment of closed or open carpal bone fracture (excluding carpal scaphoid (navicular)), each bone. |
| 25660.. | [illegible] | Treatment of closed radiocarpal or intercarpal dislocation, one or more bones, with manipulation. |
| 25665.. | [illegible] | Treatment of open radiocarpal or intercarpal dislocation, one or more bones, with uncomplicated soft tissue closure. |
| 25670.. | [illegible] | Open treatment of closed or open radiocarpal or intercarpal dislocation, one or more bones. |
| 25675.. | 1 | Treatment of closed distal radioulnar dislocation with manipulation. |
| 25676.. | [illegible] | Open treatment of closed or open distal radioulnar dislocation, acute or chronic. |
| 25680.. | [illegible] | Treatment of closed trans-scaphoperilunar type of fracture dislocation, with manipulation. |
| 25685.. | 3 | Open treatment of closed or open trans-scaphoperilunar type of fracture dislocation. |
| 25690.. | 1 | Treatment of lunate dislocation, with manipulation. |
| 25695.. | 3 | Open treatment of lunate dislocation. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| | | Hands and fingers |
| Incision | | |
| 26011.. | 1 | Drainage of finger abscess; complicated (e.g., felon, etc). |
| 26020.. | 1 | Drainage of tendon sheath, one digit and/or palm. |
| 26025.. | 1 | Drainage of palmar bursa; single, ulnar or radial. |
| 26030.. | 1 | Drainage of palmar bursa; multiple or complicated. |
| 26034.. | 2 | Incision, deep, with opening of cortex (e.g., for osteomyelitis or bone abscess). |
| 26035.. | 2 | Decompression fingers and/or hand, injection injury (e.g., grease gun, etc.). |
| 26070.. | 2 | Arthrotomy, for infection, with exploration, drainage or removal of loose or foreign body; carpometacarpal joint. |
| 27075.. | 2 | Arthrotomy with exploration, drainage or removal of loose or foreign body; metacarpophalangeal joint. |
| 26080.. | 2 | Arthrotomy with exploration, drainage or removal of loose or foreign boyd; interphalangeal joint, each. |
| Excision | | |
| 26100.. | 3 | Arthrotomy for synovial biopsy; carpometacarpal joint. |
| 26105.. | 3 | Arthrotomy for synovial biopsy; metacarpophalangeal joint. |
| 26110.. | 3 | Arthrotomy for synovial biopsy; interphalangeal joint, each. |
| 26115.. | 3 | Excision of benign tumor; subcutaneous. |
| 26116.. | 3 | Excision of benign tumor; deep, subfascial, intramuscular. |
| 26124.. | 4 | Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); with single digit involvement. |
| 26126.. | 4 | Fasciectomy, palmar, complicated, requiring skin grafting (includes obtaining graft); each additional digit. |
| 26135.. | 4 | Synovectomy, metacarpophalangeal joint including intrinsic release and extensor hood reconstruction, each digit. |
| 26160.. | 3 | Excision of lesion of tendon sheath or capsule (e.g., cyst or ganglion. |
| 26170.. | 3 | Excision of tendon, palm, flexor, single (separate procedure), each. |
| 26180.. | 3 | Excision of tendon, finger, flexor (separate procedure). |
| 26200.. | 3 | Excision or curettage of bone cyst or benign tumor of metacarpal. |
| 26205.. | 3 | Excision or curettage of bone cyst or benign tumor of metacarpal; with autogenous graft (includes obtaining graft). |
| 26210.. | 3 | Excision or curettage of bone cyst or benign tumor of proximal, middle or distal phalanx. |
| 26215.. | 3 | Excision or curettage of bone cyst or benign tumor of proximal middle or distal phalanx; with autogenous graft (includes obtaining graft). |
| 26230.. | 3 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis); metacarpal. |
| 26235.. | 3 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis); proximal or middle phalanx. |
| 26250.. | 4 | Radical resection (ostectomy) for tumor, metacarpal. |
| 26255.. | 4 | Radical resection (ostectomy) for tumor, metacarpal; with autogenous graft (includes obtaining graft). |
| 26261.. | 4 | Radical resection (ostectomy) for tumor, proximal or middle phalanx; with autogenous graft (includes obtaining graft) |
| Repair, revision or reconstruction | | |
| 26440.. | 3 | Tenolysis, simple, flexor tendon; palm OR finger, single, each tendon. |
| 26442.. | 3 | Tenolysis, simple, flexor tendon; palm AND finger, each tendon. |
| 26445.. | 3 | Tenolysis, extensor tendon, dorsum of hand or finger; each tendon. |
| 26449.. | 4 | Tenolysis, complex, extensor tendon, dorsum of hand or finger, including hand and forearm. |
| 26471.. | 2 | Tenodesis; for proximal interphalangeal join stabilization. |
| 26474.. | 2 | Tenodesis; for distal joint stabilization. |
| 26476.. | 3 | Tendon lengthening, extensor, single, each. |
| 26477.. | 3 | Tendon shortening, extensor, single, each. |
| 26490.. | 4 | Opponens plasty; sublimis tendon transfer type. |
| 26492.. | 4 | Opponens plasty; tendon transfer with graft (includes obtaining graft). |
| 26494.. | 4 | Opponens plasty; hypothenar muscle transfer. |
| 26496.. | 4 | Opponens plasty; other methods. |
| 26497.. | 4 | Tendon transfer to restore intrinsic function; ring and small finger. |
| 26498.. | 4 | Tendon transfer to restore intrinsic function; all four fingers. |
| 26499.. | 4 | Correction claw finger; other methods. |
| 26500.. | 4 | Tendon pulley reconstruction; with local tissues (separate procedure). |
| 26502.. | 4 | Tendon pulley reconstruction; with tendon or fascial graft (includes obtaining graft) (separate procedure). |
| 26508.. | 4 | Thenar muscle release for thumb contracture. |
| 26510.. | 4 | Cross intrinsic tranfer. |
| 26516.. | 2 | Capsulodesis for M-P joint stabilization; single digit. |
| 26517.. | 2 | Capsulodesis for M-P joint stabilization; two digits. |
| 26518.. | 3 | Capsulodesis for M-P joint stabilization; three or four digits. |
| 26542.. | 4 | Primary repair of collateral ligament, metacarpophalangeal joint; with local tissue. |
| 26552.. | 4 | Reconstruction thumb with toe. |
| 26555.. | 4 | Positional change of other finger. |
| 26557.. | 4 | Toe to finger transfer; first stage. |
| 26558.. | 4 | Toe to finger transfer; each delay. |
| 26559.. | 4 | Toe to finger transfer; second stage. |
| 26568.. | 4 | Osteoplasty for lengthening of metacarpal or phalanx. |
| 26570.. | 4 | Bone graft, (includes obtaining graft); metacarpal. |
| 26574.. | 4 | Bone graft, (includes obtaining graft); phalanx. |
| Fractures and/or dislocations | | |
| 26605.. | 1 | Treatment of closed metacarpal fracture, single; with manipulation, each bone. |
| 26607.. | 2 | Treatment of closed metacarpal fracture, single, with manipulation, with skeletal fixation, each bone. |
| 26610.. | 2 | Treatment of open metacarpal fracture, single, with uncomplicated soft tissue closure, each bone. |
| 26645.. | 1 | Treatment of closed carpometacarpal fracture dislocation, thumb (Bennett fracture), with manipulation. |

| CPT-4 code | Payment group | Description |
|---|---|---|
| 26650.. | 2 | Treatment of closed carpometacarpal fracture dislocation, thumb (Bennett fracture), with manipulation; with skeletal fixation. |
| 26655.. | 3 | Treatment of open carpometacarpal fracture dislocation, thumb (Bennett fracture), with uncomplicated soft tissue closure. |
| 26660.. | 3 | Treatment of open carpometacarpal fracture dislocation, thumb (Bennett fracture), with uncomplicated soft tissue closure; with skeletal fixation. |
| 26665.. | 3 | Open treatment of closed or open carpometacarpal fracture dislocation, thumb (Bennett fracture), with or without internal or external skeletal fixation. |
| 26675.. | 1 | Treatment of closed carpometacarpal dislocation, other than Bennett fracture, single, with manipulation; requiring anesthesia. |
| 26676.. | 2 | Treatment of closed carpometacarpal dislocation, other than Bennett fracture, single, with manipulation; with percutaneous pinning. |
| 26680.. | 2 | Treatment of open carpometacarpal dislocation, other than Bennett fracture, single, with uncomplicated soft closure. |
| 26685.. | 3 | Open treatment of closed or open carpometacarpal dislocation, other than Bennett fracture; single, with or without internal or external skeletal fixation. |
| 26686.. | 3 | Open treatment of closed or open carpometacarpal dislocation, other than Bennett fracture; complex, multiple or delayed reduction. |
| 26705.. | 1 | Treatment of closed metacarpophalangeal dislocation, single, with manipulation; requiring anesthesia. |
| 26706.. | 2 | Treatment of closed metacarpolphalangeal dislocation, single, with manipulation; with percutaneous pinning. |
| 26710.. | 2 | Treatment of open metacarpophalangeal dislocation, single, with uncomplicated soft tissue closure. |
| 26715.. | 3 | Open treatment of closed or open metacarpophalangeal dislocation, single, with or without internal or external skeletal fixation. |
| 26727.. | 2 | Treatment of unstable phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with manipulation, requiring traction or fixation, each. |
| 26730.. | 2 | Treatment of open phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with uncomplicated soft tissue closure, each. |
| 26735.. | 3 | Open treatment of closed or open phalangeal shaft fracture, proximal or middle phalanx, finger or thumb, with or without internal or external skeletal fixation, each. |
| 26744.. | 2 | Treatment of open articular fracture, involving metacarpophalangeal or proximal interphalangeal joint; with uncomplicated soft tissue closure, each. |
| 26746.. | 3 | Open treatment of closed or open articular fracture, involving metacarpophalangeal or proximal interphalangeal joint, each. |
| 26765.. | 3 | Open treatment of closed or open distal phalangeal fracture, finger or thumb, each. |
| 26780.. | 2 | Treatment of open interphalangeal joint dislocation, single, with uncomplicated soft tissue closure. |
| 26785.. | 3 | Open treatment of closed or open interphalangeal joint dislocation, single. |
| | | Pelvis and Hip Joint |
| Incision | | |
| 26990.. | 2 | Incision and drainage; deep abscess or hematoma. |
| 26991.. | 2 | Incision and drainage; infected bursa. |
| 26992.. | 2 | Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess). |
| 27000.. | 3 | Tenotomy, adductor, subcutaneous, closed (separate procedure). |
| 27001.. | 4 | Tenotomy, adductor, subcutaneous, open; unilateral. |
| 27002.. | 4 | Tenotomy, adductor, subcutaneous, open; bilateral. |
| 27003.. | 4 | Tenotomy, adductor, subcutaneous, open, with obturator neurectomy; unilateral. |
| 27004.. | 4 | Tenotomy, adductor, subcutaneous, open, with obturator neurectomy; bilateral. |
| 27030.. | 4 | Arthrotomy, hip, for infection, with drainage. |
| 27033.. | 4 | Arthrotomy, hip, for exploration or removal of loose or foreign body. |
| 27035.. | 4 | Hip joint denervation, intrapelvic or extrapelvic intra-articular branches of sciatic, femoral or obturator nerves. |
| Excision | | |
| 27040.. | 4 | Biopsy, soft tissues; superficial. |
| 27041.. | 4 | Biopsy, soft tissues; deep. |
| 27047.. | 4 | Excision, benign tumor; subcutaneous. |
| 27048.. | 4 | Excision, benign tumor; deep, subfascial, intramuscular. |
| 27052.. | 4 | Arthrotomy for biopsy; hip joint. |
| 27065.. | 4 | Excision of bone cyst or benign tumor; superficial (wing of ilium, symphysis pubis, or greater trochanter of femur) with or without autogenous bone graft. |
| 27066.. | 4 | Excision of bone cyst or benign tumor; deep, with or without bone graft. |
| 27080.. | 4 | Coccygectomy, primary. |
| Introduction and/or removal | | |
| 27087.. | 2 | Removal of foreign body; deep. |
| 27095.. | 1 | Injection procedure for hip arthrography; with anesthesia. |
| Fractures and/or dislocations | | |
| 27201.. | 4 | Treatment of open coccygeal fracture. |
| 27202.. | 4 | Open treatment of closed or open coccygeal fracture. |
| Manipulation | | |
| 27275.. | 2 | Manipulation, hip joint, requiring general anesthesia. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| | | Femur (Thigh Region) and Knee Joint |
| Incision | | |
| 27301.. | 2 | Incision and drainage of deep abscess, infected bursa, or hematoma. |
| 27303.. | 2 | Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess). |
| 27310.. | 4 | Arthrotomy, knee, for infection, with exploration, drainage or removal of foreign body. |
| Excision | | |
| 27324.. | 2 | Biopsy, soft tissues; deep. |
| 27327.. | 1 | Excision, benign tumor; subcutaneous. |
| 27328.. | 2 | Excision, benign tumor; deep, subfascial, or intramuscular. |
| 27330.. | 4 | Arthrotomy, knee; for synovial biopsy only. |
| 27345.. | 4 | Excision of synovial cyst of popliteal space (Baker's cyst). |
| 27350.. | 4 | Patellectomy or hemipatellectomy. |
| 27355.. | 4 | Excision or curettage of bone cyst or benign tumor of femur. |
| 27360.. | 4 | Partial excision (craterization, saucerization or diaphysectomy) of bone, (e.g., for osteomyelitis), femur, proximal tibia and/or fibula. |
| Introduction and/or removal | | |
| 27372.. | 3 | Removal foreign body, deep. |
| Repair, Revision or Reconstruction | | |
| 27390.. | 4 | Tenotomy, open, hamstring, knee to hip; single. |
| 27391.. | 4 | Tenotomy, open, hamstring, knee to hip; multiple, one leg. |
| 27392.. | 4 | Tenotomy, open, hamstring, knee to hip; multiple, bilateral. |
| 27393.. | 4 | Lengthening of hamstring, tendon; single. |
| 27394.. | 4 | Lengthening of hamstring, tendon; multiple, one leg. |
| 27395.. | 4 | Lengthening of hamstring, tendon; multiple, bilateral. |
| 27396.. | 4 | Transplant, hamstring tendon to patella; single. |
| 27397.. | 4 | Transplant, hamstring tendon to patella; multiple. |
| 27400.. | 4 | Tendon or muscle transfer, hamstrings to femur (Eggers type procedure). |
| 27420.. | 4 | Reconstruction for recurrent dislocating patella; (Hauser type procedure). |
| 27422.. | 4 | Reconstruction for recurrent dislocating patella; with extensor realignment and/or muscle advancement or release (Campbell, Goldwaith, etc., type procedure). |
| 27424.. | 4 | Reconstruction for recurrent dislocating patella; with patellectomy. |
| 27425.. | 4 | Lateral retinacular release (any method). |
| 27430.. | 4 | Quadriceps plastry (Bennett or Thompson type). |
| 27435.. | 4 | Capsulotomy, knee, posterior capsular release. |
| Fracture and/or dislocations | | |
| 27522.. | 3 | Treatment of open patellar fracture, with uncomplicated soft tissue closure. |
| 27524.. | 4 | Open treatment of closed or open patellar fracture, with repair and/or excision. |
| Excision | | |
| 27532.. | 1 | Treatment of closed tibial fracture, proximal (plateau); with manipulation. |
| Fractures and/or dislocations | | |
| 27534.. | 3 | Open treatment of closed tibia fracture, proximal, (plateau), with uncomplicated soft tissue closure. |
| Excision | | |
| 2227552.. | 1 | Treatment of closed knee disclocation; requiring anesthesia. |
| 27562.. | 1 | Treatment of closed patellar dislocation; requiring anesthesia. |
| Fractures and/or dislocations | | |
| 27564.. | 4 | Treatment of open patellar dislocation, with uncomplicated soft tissue closure. |
| 27666.. | 4 | Open treatment of closed or open patellar, dislocation, with or without partial or total patellectomy. |
| Manipulation | | |
| 27570.. | 2 | Manipulation of knee joint under general anesthesia (includes application of traction or other fixation devices). |
| Incision | | |
| 27603.. | 2 | Incision and drainage; deep abscess or hematoma. |
| 27607.. | 2 | Incision, deep with opening of bone cortex (e.g., for osteomyelitis or bone abscess). |
| 27610.. | 2 | Arthrotomy, ankle, with exploration, drainage or removal of loose or foreign body. |
| 27612.. | 4 | Arthrotomy, ankle, posterior capsular release with or without Achilles tendon lengthening. |
| | | Leg (Tibia and Fibula) and Ankle Joint |
| Excision | | |
| 27620.. | 3 | Arthrotomy, ankle, for biopsy. |
| 27630.. | 3 | Excision of lesion of tendon sheath or capsule (e.g., cyst or ganglion). |
| 27635.. | 3 | Excision or curettage of bone cyst or benign tumor, tibia or fibula. |
| 27637.. | 4 | Excision or curettage of bone cyst, or benign tumor, tibia or fibula; with primary autogenous graft (includes obtaining graft). |
| 27638.. | 4 | Excision or curettage or bone cyst, or benign tumor, tibia or fibula; with primary homogenous graft. |
| 27640.. | 4 | Partial excision (craterization, saucerization, or diaphysectomy) of bone, (e.g., for osteomyelitis); tibia. |
| 27641.. | 4 | Partial excision (craterization, saucerization, or diaphysectomy) of bone, (e.g., for osteomyelitis); fibula. |
| Repair, Revision or Reconstruction | | |
| 27675.. | 4 | Repair for dislocating peroneal tendons; without fibular osteotomy. |
| 27680.. | 3 | Tenolysis, including tibia, fibula and ankle flexor; single. |

| CPT-4 code | Payment group | Description |
|---|---|---|
| 27681.. | 4 | Tenolysis, including tibia, fibula and ankle flexor; multiple (through same incision), each. |
| 27685.. | 3 | Lenghtening or shortening of tendon; single (separate procedure). |
| 27686.. | 4 | Lengthening or shortening of tendon; multiple (through same incision), each. |
| 27690.. | 4 | Transfer or transplant of single tendon (with muscle redirection or rerouting); supeficial (e.,g., anterior tibial extensors into midfoot). |
| 27691.. | 4 | Transfer or transplant of single tendon (with muscle redirection or rerouting); anterior tibial or posterior tibial through interosseous space. |
| 27692.. | 4 | Transfer or transplant of single tendon (with muscle redirection or rerouting); each additional tendon. |
| Fractures and/or Dislocations | | |
| 27756.. | 4 | Open treatment of closed or open tibial shaft fracture, with internal skeletal fixation; simple. |
| 27758.. | 4 | Open treatment of closed or open tibial shaft fracture, with internal or external skeletal fixation; complicated. |
| 27764.. | 3 | Treatment of open distal tibial fracture (medial malleolus), with uncomplicated soft tissue closure. |
| 27766.. | 3 | Open treatment of closed or open distal tibial fracture (medial malleolus), with fixation. |
| 27781.. | 1 | Treatment of closed proximal fibula or shaft fracture; with manipulation. |
| 27782.. | 3 | Treatment of open proximal fibula or shaft fracture, with uncomplicated soft tissue closure. |
| 27784.. | 4 | Open treatment of closed or open proximal fibula or shaft fracture, with or without internal or external skeletal fixation. |
| 27790.. | 3 | Treatment of open distal fibula fracture (lateral malleolus), with uncomplicated soft tissue closure. |
| 27792.. | 4 | Open treatment of closed or open distal fibular fracture (lateral malleolus), with fixation. |
| 27802.. | 1 | Treatment of closed tibia and fibula fractures, shafts; with manipulation. |
| 27804.. | 3 | Treatment of open tibia and fibula fractures, shafts, with uncomplicated soft tissue closure (e.g., "pins above and below"). |
| 27842.. | 1 | Treatment of ankle dislocation; requiring anesthesia. |
| 27844.. | 3 | Treatment of open ankle dislocation, with uncomplicated soft tissue closure. |
| 27846.. | 4 | Open treatment of closed or open ankle dislocation. |
| 27848.. | 4 | Open treatment of closed or open ankle dislocation; with fixation. |
| Manipulation | | |
| 27860.. | 1 | Manipulation of ankle under general anesthesia (includes application of traction or other fixation apparatus). |
| | | Foot |
| Incision | | |
| 28002.. | 2 | Deep infection, below fascia, requiring deep dissection, with or without tendon sheath involvement; single bursal space, specify. |
| 28003.. | 2 | Deep infection, below fascia, requiring deep dissection, with or without tendon sheath involvement; multiple areas. |
| 28005.. | 2 | Incision, deep, with opening of bone cortex (e.g., for osteomyelitis or bone abscess). |
| 28035.. | 4 | Tarsal tunnel release (posterior tibial nerve decompression). |
| Excision | | |
| 28045.. | 2 | Excision benign tumor; deep, subfascial, intramuscular. |
| 28050.. | 3 | Arthrotomy for synovial biopsy; intertarsal or tarsometatarsal joint. |
| 28062.. | 4 | Fasciectomy, excision of plantar fascia; radical (separate procedure). |
| 28102.. | 4 | Excision or curettage of bone cyst or benign tumor, talus or calcaneus; with iliac or other autogenous bone graft (includes obtaining graft). |
| 28103.. | 4 | Excision or curettage of bone cyst or benign tumor, talus or calcaneus; with homogenous bone graft. |
| 28107.. | 3 | Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus; with homogenous bone graft. |
| 28118.. | 3 | Ostectomy, calcaneus; partial. |
| 28120.. | 3 | Partial excision (craterization, saucerization, sequestrectomy, or diaphysectomy) of bone (e.g., for osteomyelitis), talus or calcaneus. |
| 28122.. | 3 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (e.g., for osteomyelitis), tarsal or metatarsal bone, except talus or calcaneus. |
| 28140.. | 3 | Metatarsectomy. |
| 28171.. | 3 | Radical resection for tumor; tarsal (except talus or calcaneus). |
| 28173.. | 3 | Radical resection for tumor; metatarsal. |
| 28175.. | 3 | Radical resection for tumor; phalanx. |
| Introduction and/or Removal | | |
| 28193.. | 2 | Remove foreign body; complicated. |
| Repair Revision or Reconstruction | | |
| 28250.. | 2 | Division of plantar fascia and muscle ("Steindler stripping") (separate procedure). |
| 28260.. | 3 | Capsulotomy, midfoot; medial release only (separate procedure). |
| 28261.. | 3 | Capsulotomy, midfoot; with tendon lengthening. |
| 28296.. | 4 | Hallux valgus (bunion) correction, with or without sesamoidectomy; with metatarsal osteotomy (e.g., Mitchel, Chevron, or concentric type procedures). |
| 28297.. | 4 | Hallux valgus (bunion) correction, with or without sesamoidectomy; Lapidus type procedure. |
| 28315.. | 3 | Sesamoidectomy, first toe (separate procedure). |
| 28320.. | 4 | Repair of nonunion or malunion; tarsal bones (calcaneus, talus, etc). |
| 28322.. | 4 | Repair of nonunion or malunion; metatarsal, with or without bone graft (includes obtaining graft). |
| Fracture and/or Dislocation | | |
| 28405.. | 1 | Treatment of closed calcaneal fracture; with manipulation including Cotton or Bohler type reductions. |
| 28406.. | 2 | Treatment of closed calcaneal fracture; with manipulation and skeletal fixation. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 28420.. | 4 | Open treatment of closed or open calcaneal fracture, with or without internal or external skeletal fixation; with primary iliac or other autogenous bone graft (includes obtaining graft). |
| 28435.. | 1 | Treatment of closed talus fracture; with manipulation. |
| 28436.. | 2 | Treatment of closed talus fracture; with manipulation and percutaneous pinning. |
| 28465.. | 4 | Open treatment of closed or open tarsal bone fracture (except talus and calcaneus), with or without internal or external skeletal fixation, each. |
| 28485.. | 4 | Open treatment of closed or open metatarsal fracture, with or without internal or external skeletal fixation, each. |
| 28500.. | 3 | Treatment of open fracture great toe, phalanx or phalanges, with uncomplicated soft tissue closure. |
| 28505.. | 4 | Open treatment of closed or open fracture great toe, phalanx or phalanges, with or without internal or external skeletal fixation. |
| 28520.. | 3 | Treatment of open fracture, phalanx or phalanges, other than great toe, with uncomplicated soft tissue closure, each. |
| 28525.. | 3 | Open treatment of closed or open fracture, phalanx or phalanges, other than great toe, with or without internal or external skeletal fixation, each. |
| 28545.. | 1 | Treatment of closed tarsal bone dislocation; requiring anesthesia. |
| 28546.. | 2 | Treatment of closed tarsal bone dislocation, with percutaneous skeletal fixation. |
| 28555.. | 4 | Open treatment of closed or open tarsal bone dislocation, with or without internal or external skeletal fixation. |
| 28575.. | 1 | Treatment of closed talotarsal joint dislocation; requiring anesthesia. |
| 28585.. | 4 | Open treatment of closed or open talotarsal joint dislocation, with or without internal or external skeletal fixation. |
| 28605.. | 1 | Treatment of closed tarsometatarsal joint dislocation; requiring anesthesia. |
| 28606.. | 2 | Treatment of closed tarsometatarsal joint dislocation, with percutaneous skeletal fixation. |
| 28615.. | 4 | Open treatment of closed or open tarsometatarsal joint dislocation, with or without internal or external skeletal fixation. |
| 28645.. | 4 | Open treatment of closed or open metatarsophalangeal joint dislocation. |
| 28670.. | 3 | Treatment of open interphalangeal joint dislocation, with uncomplicated soft tissue closure. |
| 28675.. | 4 | Open treatment of closed or open interphalangeal joint dislocation. |
| Arthroscopy | | |
| 29870.. | 4 | Arthroscopy, knee, diagnostic, with or without synovial biopsy (separate procedure). |
| 29874.. | 4 | Arthroscopy, knee, surgical; for removal of loose body or foreign body (e.g., osteochondritis dissecans fragmentation, chondral fragmentation). |
| 29875.. | 4 | Arthroscopy, knee, surgical; synovectomy, limited (e.g., plica or shelf resection). |
| 29876.. | 4 | Synovectomy, major, two or more compartments (e.g., medial ro lateral). |
| 29877.. | 4 | Debridement/shaving of articular cartilage (chondroplasty). |
| 29881.. | 4 | Arthroscopy, knee, surgical; with meniscectomy (medial or lateral including any meniscal shaving). |
| 29887.. | 4 | Drilling for intact osteochondritis dissecans lesion with internal fixation. |
| Respiratory System | | |
| | | None |
| Excision | | |
| 30116.. | 2 | Excision, nasal polyp(s), extensive; bilateral. |
| 30117.. | 2 | Excision, intranasal lesion; internal approach. |
| 30118.. | 2 | Excision, intranasal lesion; external approach (lateral rhinotomy). |
| 30125.. | 3 | Excision dermoid cyst, nose; complex, under bone or cartilage. |
| 30150.. | 4 | Rhinectomy; partial. |
| 30160.. | 4 | Rhinectomy; total. |
| Removal Foreign Body | | |
| 30310.. | 1 | Removal of foreign body, intranasal; requiring general anesthesia. |
| 30320.. | 2 | Removal foreign body; by lateral rhinotomy. |
| Repair | | |
| 30400.. | 4 | Rhinoplasty, primary; lateral and alar cartilages and/or elevation of nasal tip. |
| 30410.. | 4 | Rhinoplasty, primary; complete, external parts including bony pyramid, lateral and alar cartilages, and/or elevation of nasal tip. |
| 30420.. | 4 | Rhinoplasty, primary; including major septal repair. |
| 30430.. | 4 | Rhinoplasty, secondary; minor revision (small amount of nasal tip work). |
| 30435.. | 4 | Rhinoplasty, secondary; intermediate revision (bony work with osteotomies). |
| 30450.. | 4 | Rhinoplasty, secondary; major revision (nasal tip work and osteotomies). |
| 30520.. | 4 | Septoplasty or submucous resection, with or without cartilage scoring, contouring or replacement with graft. |
| 30580.. | 4 | Repair fistula; oromaxillary (combine with 31030 if antrotomy is included). |
| 30600.. | 4 | Repair fistula; oronasal. |
| Other Procedures | | |
| 30915.. | 4 | Ligation arteries; ethmoidal. |
| 30920.. | 4 | Ligation arteries; internal maxillary artery, transantral. |
| | | Accessory Sinuses |
| Incision | | |
| 31032.. | 4 | Sinusotomy, maxillary (antrotomy); radical unilateral (Caldwell-Luc) with removal antrochoanal polyps. |
| 31033.. | 4 | Sinusotomy, maxillary (antrotomy); radical, bilateral (Caldwell-Luc) with removal antrochoanal polyps. |
| 31070.. | 3 | Sinusotomy frontal; external, simple (trephine operation). |
| | | Larynx |
| Endoscopy | | |
| 31513.. | 2 | Laryngoscopy, indirect (separate procedure); with vocal cord injection. |
| 31527.. | 2 | Laryngoscopy, direct; with insertion of obturator. |

| CPT-4 code | Payment group | Description |
|---|---|---|
| 31528.. | 2 | Laryngoscopy, direct; with dilatation, initial. |
| 31576.. | 1 | Laryngoscopy, flexible fiberscopic; with biopsy. |
| 31577.. | 1 | Laryngoscopy, flexible fiberscopic; with removal of foreign body. |
| 31578.. | 1 | Laryngoscopy, flexible fiberscopic; with removal of lesion. |
| | | Trachea and Bronchi |
| Incision | | |
| 31600.. | 2 | Tracheostomy, planned (separate procedure). |
| 31612.. | 1 | Tracheal puncture, percutaneous for aspiration of mucus (transtracheal aspiration). |
| 31613.. | 2 | Tracheostoma revision; simple, without flap rotation. |
| 31614.. | 2 | Tracheostoma revision; complex, with flap rotation. |
| Endoscopy | | |
| 31615.. | 1 | Tracheobronchoscopy through established tracheostomy incision. |
| 31622.. | 1 | Bronchoscopy; diagnostic, (flexible original), with or without cell washing or brushing. |
| 31628.. | 1 | Bronchoscopy; with transbronchial lung biopsy, with or without fluoroscopic guidance. |
| 31631.. | 1 | Bronchoscopy; with tracheal dilation and placement of tracheal stent. |
| 31641.. | 1 | Bronchoscopy; with destruction of tumor or relief of stenosis by any method other than excision (eg. laser). |
| 31646.. | 1 | Bronchoscopy; with therapeutic aspiration of tracheobronchial tree, subsequent. |
| 31656.. | 1 | Bronchoscopy; with injection of contrast material for segmental bronchography (fiberscope only). |
| 31659.. | 1 | Bronchoscopy; with other bronchoscopic procedures. |
| Introduction | | |
| 31700.. | 1 | Catheterization, transglottic (separate procedure). |
| 31708.. | 1 | Instillation of contrast material for laryngography or bronchography, without catheterization. |
| 31710.. | 1 | Catheterization for bronchography, with or without instillation of contrast material. |
| 31715.. | 1 | Transtracheal injection for bronchography. |
| 31717.. | 1 | Catheterization with bronchial brush biopsy. |
| 31719.. | 1 | Transtracheal (percutaneous) introduction of indwelling tube for therapy (tickle tube). |
| 31720.. | 1 | Catheter aspiration (separate procedure); nasotracheobronchial. |
| | | Cardiovascular System |
| Repair, Ligation and Other Procedures | | |
| 37609.. | 1 | Ligation or biopsy, temporal artery. |
| 37735.. | 4 | Ligation and division and complete stripping of long or short saphenous veins with radical excison of ulcer and skin graft and/or interruption of communicating veins of lower leg, with excision of deep fascia; unilateral. |
| 37737.. | 4 | Ligation and division and complete stripping of long or short saphenous veins with radical excision of ulcer and skin graft and/or interruption of communicating veins of lower leg, with excision of deep facia; bilateral. |
| 37760.. | 4 | Ligation and perforators, subfascial, radical (Linton Type), with or without skin graft. |
| 37785.. | 3 | Ligation, division and/or excision of secondary varicose veins (clusters) of leg; unilateral. |
| 37787.. | 3 | Ligation, division and/or excision of secondary varicose veins (clusters) of leg; bilateral. |
| | | Hemic and Lymphatic System |
| | | Lymph Nodes and Lymphatic Channels |
| Incision | | |
| 38305.. | 1 | Drainage of lymph node abscess or lymphadenitis; extensive. |
| 38308.. | 1 | Lymphangiotomy or other operations on lymphatic channels. |
| Excision | | |
| 38530.. | 3 | Biopsy or excision of lymph node(s); internal mammary node(s) (separate procedure). |
| 38542.. | 3 | Dissection; deep jugular node(s). |
| 38550.. | 3 | Excision of cystic hygroma, axillary or cervical, without deep neurovascular dissection; simple. |
| 38555.. | 4 | Excision of cystic hygroma, axillary or cervical, without deep neurovascular dissection; complex. |
| Radical Lymphadenectomy (Radical Resection of Lymph Nodes) | | |
| 38700.. | 4 | Suprahyoid lymphadenectomy; unilateral. |
| 38701.. | 4 | Suprahyoid lymphadenectomy; bilateral. |
| 38740.. | 3 | Axillary lymphadenectomy; superficial. |
| 38745.. | 3 | Axillary lymphadenectomy; complete. |
| 38760.. | 3 | Inguinofemoral lymphadenectomy, superficial, including Cloquet's node (separate procedure); unilateral. |
| 38761.. | 3 | Inguinofemoral lymphadenectomy, superficial, including Cloquet's node (separate procedure); bilateral. |
| Introduction | | |
| 38790.. | 1 | Injection procedure for lymphangiography; unilateral. |
| 38791.. | 1 | Injection procedure for lymphangiography; bilateral. |
| | | Digestive System |
| | | Lips |
| Excision | | |
| 40525.. | 3 | Excision lip; full thickness, reconstruction with local flap (Estlander or fan). |
| 40527.. | 3 | Excision lip; full thickness, reconstruction with cross lip flap (Abbe-Estlander). |
| 40530.. | 3 | Resection of lip, more than one-fourth, without reconstruction. |
| Repair (Cheiloplasty) | | |
| 40650.. | 3 | Repair lip, full thickness; vermilion only. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 40654 | | Repair lip, full thickness; over one as half vertical height, or complex. |
| | | Vestibule of Mouth |
| Incision | | |
| 40801.. | 1 | Drainage of abscess, cyst, hematoma, vestibule of mouth; complicated. |
| 40805.. | 1 | Removal of embedded foreign body; complicated |
| Excision, destruction | | |
| 40814.. | 2 | Excision of lesion of mucosa and submucosa; with complex repair. |
| 40816.. | 2 | Excision of lesion of mucosa and submucosa; complex with excision of underlying muscle. |
| 40818.. | 2 | Excision of mucosa as donor graft |
| Repair | | |
| 40831.. | 2 | Closure of laceration; over 2.6 cm or complex. |
| 40840.. | 2 | Vestibuloplasty; anterior. |
| 40842.. | 2 | Vestibuloplasty; posterior, unilateral. |
| 40843.. | 2 | Vestibuloplasty; posterior, bilateral. |
| 40844.. | 3 | Vestibuloplasty; entire arch. |
| 40845.. | 4 | Vestibuloplasty; complex. |
| | | Tongue, Floor of Mouth |
| Excision | | |
| 41114.. | 2 | Excision of lesion of tongue with closure; with local tongue flap. |
| 41115.. | 1 | Excision of lingual frenum (frenectomy). |
| 41116.. | 1 | Excision lesion of floor of mouth. |
| 41120.. | 3 | Glossectomy; less than one-half tongue. |
| Repair | | |
| 41251.. | 3 | Repair laceration up to 2 cm; posterior one-third of tongue. |
| | | Dentoalveolar Structures |
| Incision | | |
| 41806.. | 2 | Removal embedded foreign body; from bone. |
| Excision, destruction | | |
| 41826.. | 2 | Excision of lesion or tumor (except listed above); with simple repair. |
| 41827.. | 3 | Excision of lesion or tumor (except listed above); with complex repair. |
| | | Palate, Uvula |
| Excision, destruction | | |
| 42104.. | 1 | Excision, lesion of palate, uvula; without closure. |
| 42106.. | 1 | Excision, lesion of palate, uvula; with simple primary closure. |
| 42107.. | 1 | Excision, lesion of palate, uvula; with local flap closure. |
| 42120.. | 2 | Resection of palate or extensive resection of lesion. |
| 42140.. | 2 | Uvulectomy, excision of uvula. |
| Repair | | |
| 42182.. | 1 | Repair laceration of palate; over 2 cm or complex. |
| | | Salivary Gland and Ducts |
| Incision | | |
| 42305.. | 1 | Drainage of abscess; parotid, complicated. |
| 42320.. | 1 | Drainage of abscess; submaxillary external. |
| 42325.. | 2 | Fistulization of sublingual salivary cyst (ranula). |
| 42335.. | 2 | Sialolithotomy; submandibular (submaxillary), complicated, intraoral. |
| 42340.. | 2 | Sialolithotomy; parotid, extraoral or complicated intraoral. |
| Excision | | |
| 42408.. | 2 | Excision of sublingual salivary cyst (ranula). |
| 42410.. | 4 | Excision of parotid tumor or parotid gland; lateral lobe, without nerve dissection. |
| 42440.. | 4 | Excision of submandibular (submaxillary) gland. |
| 42450.. | 4 | Excision of sublingual gland. |
| Repair | | |
| 42500.. | 3 | Plastic repair of salivary duct, sialodochoplasty; primary or simple. |
| 42505.. | 4 | Plastic repair of salivary duct, sialodochoplasty; secondary or complicated. |
| 42507.. | 4 | Parotid duct diversion, bilateral (Wilke type procedure). |
| 42508.. | 4 | Parotid duct diversion, bilateral (Wilke type procedure); with excision of one submandibular gland. |
| 42509.. | 4 | Parotid duct diversion, bilateral (Wilke type procedure); with excision of both submandibular glands. |
| Other procedures | | |
| 42600.. | 1 | Closure salivary fistula. |
| 42665.. | 1 | Ligation salivary duct, intraoral. |
| | | Pharynx, Adenoids, and Tonsils |
| Incision | | |
| 42720.. | 1 | Incision and drainage abscess; retropharyngeal or parapharyngeal, intraoral approach. |
| 42725.. | 1 | Incision and drainage abscess; retropharyngeal or parapharyngeal, external approach. |

| CPT-4 code | Payment group | Description |
|---|---|---|
| Excision | | |
| 42806.. | 2 | Biopsy; nasopharynx, survey for unknown primary lesion. |
| 42808.. | 1 | Excision of lesion of pharynx. |
| 42860.. | 2 | Excision of tonsil tags. |
| 42870.. | 2 | Excision lingual tonsil (separate procedure). |
| 42880.. | 2 | Excision nasopharyngeal lesion (e.g., fibroma). |
| Repair | | |
| 42900.. | 2 | Suture pharynx for wound or injury. |
| 42950.. | 4 | Pharyngoplasty (plastic or reconstructive operation on pharnyx). |
| Other procedures | | |
| 42955.. | 2 | Pharyngostomy (fistulization of pharynx, external for feeding). |
| | | Esophagus |
| Endoscopy | | |
| 43204.. | 1 | Esophagoscopy, rigid or flexible fiberoptic (specify); for injection sclerosis of esophageal varices. |
| 43219.. | 1 | Esophagoscopy, rigid or flexible fiberoptic (specify); for insertion of plastic tube or stent. |
| 43226.. | 1 | Esophagoscopy, rigid or flexible fiberoptic (specify); for insertion of wire to guide dilation. |
| 43227.. | 1 | Esophagoscopy, rigid or flexible fiberoptic (specify); for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation). |
| 43228.. | 1 | Esophagoscopy, rigid or flexible fiberoptic (specify); for ablation of tumor or mucosal lesion. |
| 43235.. | 1 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; complex diagnostic. |
| 43239.. | 1 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for biopsy and/or collection of specimen by brushing or washing. |
| 43247.. | 1 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of foreign body. |
| 43251.. | 1 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for removal of polypoid lesion(s). |
| 43255.. | 1 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation). |
| 43258.. | 1 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for ablation of tumor or mucosal lesion (e.g., electrocoagulation, with laser photocoagulation). |
| 43260.. | 3 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection. |
| 43262.. | 3 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection; for sphincterotomy/papillotomy. |
| 43263.. | 2 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection; for pressure measurement of sphincter of Oddi. |
| 43264.. | 3 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without specimen collection; for removal of stone(s) from biliary and/or pancreatic ducts. |
| Manipulation | | |
| 43450.. | 1 | Dilation of esophagus, by unguided sound or bougie single or multiple passes; initial session. |
| 43451.. | 1 | Dilation of esophagus, by unguided sound or bougie single or multiple passes; subsequent session. |
| 43453.. | 1 | Dilation of esophagus, over guide wire or string. |
| 43455.. | 1 | Dilation of esophagus, by balloon or Stark dilator. |
| 43456.. | 1 | Dilation of esophagus by balloon or Stark dilator; retrograde. |
| | | Intestines (Except Rectum) |
| Enterostomy-external fistulization of intestines (separate procedure) | | |
| 44345.. | 4 | Revision of colostomy; complicated reconstruction in depth. |
| 44346.. | 4 | Revision of colostomy; with repair of paracolostomy Lernia. |
| Endoscopy, small bowel and stomal | | |
| 44360.. | 1 | Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; diagnostic. |
| 44361.. | 1 | Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for biopsy and/or collection of specimen by brushing or washing. |
| 44363.. | 1 | Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for removal of foreign body. |
| 44364.. | 1 | Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for removal of polypoid lesion(s). |
| 44366.. | 1 | Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation). |
| 44369.. | 1 | Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for ablation of tumor or mucosal lesion (e.g., laser). |
| 44380.. | 1 | Fiberoptic ileoscopy through stoma. |
| 44382.. | 1 | Fiberoptic ileoscopy through stoma; with biopsy and/or collection of specimen by brushing or washing. |
| 44388.. | 1 | Fiberoptic colonoscopy through colostomy. |
| 44389.. | 1 | Fiberoptic colonoscopy through colostomy; for biopsy and/or collection of specimen by brushing or washing. |
| 44390.. | 1 | Fiberoptic colonoscopy through colostomy; for removal of foreign body. |
| 44391.. | 1 | Fiberoptic colonoscopy through colostomy; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation). |
| 44392.. | 1 | Fiberoptic colonoscopy through colostomy; for removal of polypoid lesion(s). |
| | | Rectum |
| Incision | | |
| 45000.. | 3 | Transrectal drainage of pelvic abscess. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 45005.. | 1 | Incision and drainage of submucosal abscess, rectum. |
| 45020.. | 2 | Incision and drainage of deep supralevator, pelvirectal, or retrorectal abscess. |
| Excision | | |
| 45170.. | 3 | Excision of rectal tumor, simple, transanal approach. |
| 45180.. | 3 | Excision and/or electrodesiccation of malignant tumor of rectum, transanal approach; [illegible] |
| 45181.. | 3 | Excision and/or electrodesiccation of malignant tumor of rectum, transanal approach; therapeutic. |
| Endoscopy | | |
| 45355.. | 1 | Colonoscopy, with standard sigmoidoscope, transabdominal via colotomy, single or multiple. |
| 45360.. | 1 | Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; diagnostic procedure. |
| 45365.. | 1 | Colonoscopy, fiberoptic, beyond 25 cm to spenic flexure; for biopsy and/or collection of specimen by brushing or washing. |
| 45367.. | 1 | Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for removal of foreign body. |
| 45368.. | 1 | Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation). |
| 45370.. | 1 | Colonoscopy, fiberoptic, beyond 25 cm to splenic flexure; for removal of polypoid lesion(s). |
| 45378.. | 1 | Colonoscopy, fiberoptic, beyond splenic flexure; diagnostic procedure. |
| 45379.. | 1 | Colonoscopy, fiberoptic, beyond splenic flexure; for removal of foreign body. |
| 45380.. | 1 | Colonoscopy, fiberoptic, beyond splenic flexure; for biopsy and/or collection of specimen by brushing or washing. |
| 45382.. | 1 | Colonoscopy, fiberoptic, beyond splenic flexure; for control of hemorrhage (e.g., electrocoagulation, laser photocoagulation). |
| 45385.. | 1 | Colonoscopy, fiberoptic, beyond splenic flexure; for removal of polypoid lesion(s). |
| Repair | | |
| 45500.. | 4 | Proctoplasty; for stenosis. |
| 45505.. | 4 | Proctoplasty; for prolapse of mucous membrane. |
| 45521.. | 1 | Perirectal injection of sclerosing solution for prolapse; hospital. |
| 45560.. | 4 | Repair of rectocele (separate procedure). |
| Manipulation | | |
| 45900.. | 1 | Reduction of procidentia (separate procedure) under anesthesia. |
| 45915.. | 1 | Removal of fecal impaction or foreign body (separate procedure) under anesthesia. |
| | | Anus |
| Incision | | |
| 46000.. | 2 | Fistulotomy, subcutaneous. |
| 46040.. | 2 | Incision and drainage of ischiorectal and/or perirectal abscess (separate procedure). |
| 46045.. | 2 | Incision and drainage of intramural, intramuscular or submucosal abscess, transanal, under anesthesia. |
| 46080.. | 2 | Sphincterotomy, anal, division of sphincter (separate procedure). |
| Excision | | |
| 46200.. | 2 | Fissurectomy, with or without sphincterotomy. |
| 46211.. | 2 | Cryptectomy; multiple (separate procedure). |
| 46260.. | 2 | Hemorrhoidectomy, internal and external, complex or extensive. |
| 46261.. | 2 | Hemorrhoidectomy, internal and external, complex or extensive; with fissurectomy. |
| 46285.. | 2 | Fistulectomy; second stage. |
| | | Anus |
| Introduction | | |
| 46750.. | 4 | Sphincteroplasty, anal, for incontinence or prolapse; adult. |
| 46753.. | 4 | Graft (Thiersch operation) for rectal incontinence and/or prolapse. |
| 46754.. | 4 | Removal of Thiersch wire or suture. |
| 46760.. | 4 | Sphincteroplasty, anal, for incontinence, adult, muscle transplant. |
| Destruction | | |
| 46924.. | 1 | Destruction of lesion(s), anus (eg, condyloma, papilloma, molluscum contagiosum, herpectic vesicle), estensive, any method. |
| 46937.. | 2 | Cryosurgery of rectal tumor; benign. |
| 46938.. | 2 | Cryosurgery of rectal tumor; malignant. |
| | | Abdomen, Peritoneum, and Omentum |
| Incision | | |
| 49000.. | 4 | Exploratory laparotomy, exploratory celiotomy (separate procedure). |
| Endoscopy | | |
| 49302.. | 4 | Peritoneoscopy with guided transhepatic cholangiography; without biopsy. |
| 49303.. | 1 | Peritoneoscopy with guided transhepatic cholangiography; with biopsy. |
| Introduction | | |
| 49400.. | 1 | Pneumoperitoneum; initial. |
| 49401.. | 1 | Pneumoperitoneum; subsequent. |
| 49420.. | 1 | Insertion of intraperitoneal cannula or catheter for drainage or dialysis; temporary. |
| 49421.. | 1 | Insertion of intraperitoneal cannula or catheter for drainage or dialysis; permanent. |
| 49425.. | 1 | Peritoneal-venous shunt (e.g., Le Veen shunt). |
| 49426.. | 1 | Revision of peritoneal-venous shunt. |
| | | Repair |

| CPT-4 code | Payment group | Description |
|---|---|---|
| Hernioplasty, Herniorrhaphy, Herniotomy | | |
| 49510.. | 4 | Repair inguinal hernia, age 5 or over; with orchiectomy, with or without implantation of prosthesis. |
| 49540.. | 4 | Repair lumbar hernia. |
| 49552.. | 4 | Repair femoral hernia, Henry approach. |
| 49570.. | 4 | Repair epigastric hernia, properitoneal fat (separate procedure); simple. |
| 49575.. | 4 | Repair epigastric hernia, properitoneal fat (separate procedure); complex. |
| 49581.. | 4 | Repair umbilical hernia; age 5 or over. |
| 49590.. | 4 | Repair spigelian hernia. |
| Urinary System | | |
| | | Kidney |
| Incision | | |
| 50020.. | 5 | Drainage of perirenal or renal abscess (separate procedure). |
| 50040.. | 4 | Nephrostomy, nephrotomy with drainage. |
| Excision | | |
| 50200.. | 1 | Renal biopsy, percutaneous by trocar or needle. |
| 50205.. | 4 | Renal biopsy, percutaneous; by surgical exposure of kidney. |
| Introduction | | |
| 50390.. | 1 | Aspiration and/or injection of renal cyst or pelvis by needle, percutaneous. |
| 50392.. | 1 | Introduction of intracatheter or catheter into renal pelvis for drainage and/or injection, percutaneous. |
| 50393.. | 1 | Introduction of ureteral catheter or stent into ureter through renal pelvis for drainage and/or injection, percutaneous. |
| 50394.. | 1 | Injection procedure for pyelography (as nephrostogram, pyelostogram, antegrade pyeloureterograms) through nephrostomy or pyelostomy tube, or indwelling ureteral catheter (separate procedure). |
| 50396.. | 1 | Manometric studies through nephrostomy or pyelostomy tube, or indwelling ureteral catheter. |
| 50398.. | 1 | Change of nephrostomy or pyelostomy tube. |
| Endoscopy | | |
| 50553.. | 1 | Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization. |
| 50559.. | 1 | Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance with or without biopsy and/or fulguration. |
| 50561.. | 1 | Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus. |
| 50570.. | 1 | Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service. |
| 50572.. | 1 | Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization. |
| 50576.. | 1 | Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration, with or without biopsy. |
| 50578.. | 1 | Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance, with or without biopsy and/or fulguration. |
| 50580.. | 1 | Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exlusive of radiologic service; with removal of foreign body or calculus. |
| | | Ureter |
| Introduction | | |
| 50684.. | 1 | Injection procedure for ureterography or ureteropyelography through ureterostomy or indwelling ureteral catheter (separate procedure). |
| 50690.. | 1 | Injection procedure for visualization of ilial conduit and/or ureteropyelography, exclusive of radiologic service (separate procedure). |
| Endoscopy | | |
| 50953.. | 1 | Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization. |
| 50955.. | 1 | Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy. |
| 50957.. | 1 | Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration, with or without biopsy. |
| 50959.. | 1 | Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance with or without biopsy and/or fulguration (not including provision of material). |
| 50961.. | 1 | Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus. |
| 50970.. | 1 | Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service. |
| 50972.. | 1 | Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with ureteral catheterization. |
| 50974.. | 1 | Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 50976.. | 1 | Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration, with or without biopsy. |
| 50978.. | 1 | Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with insertion of radioactive substance, with or without biopsy and/or fulguration (not including provision of material). |
| 50980.. | 1 | Ureteral endoscopy through ureterotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with removal of foreign body or calculus. |
| | | Bladder |
| Incision | | |
| 51005.. | 1 | Aspiration of bladder; by trocar or intracatheter. |
| 51010.. | 1 | Aspirations of bladder; with insertion of suprapubic catheter. |
| Introduction | | |
| 51600.. | 1 | Injection procedure for cystography or voiding urethrocystography. |
| 51605.. | 1 | Injection procedure and placement of chain for contrast and/or chain urethrocystography. |
| 51610.. | 1 | Injection procedure for retrograde urethrocystography. |
| 51710.. | 1 | Change of cystostomy tube; complicated. |
| | | Bladder |
| Repair | | |
| 51865.. | 4 | Cystorrhaphy, suture of bladder wound, injury or rupture; complicated. |
| 51900.. | 4 | Closure of vesicovaginal fistula, abdominal approach. |
| | | Ureter |
| Endocopy-cystoscopy, urethroscopy cystourethroscopy notes | | |
| 52005.. | 1 | Cystourethroscopy; with ureteral catheterization, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service. |
| 52007.. | 1 | Cystourethroscopy; with ureteral catheterization and brush biopsy of ureter and/or renal pelvis. |
| 52010.. | 1 | Cystourethroscopy; with ejaculatory duct catheterization, with or without irrigation, instillation, or duct radiography, exclusive of radiologic service. |
| | | Bladder |
| Transurethral surgery (urethra, and bladder) | | |
| 52204.. | 3 | Cystourethroscopy, with biopsy. |
| 52214.. | 3 | Cystourethroscopy, with fulguration (including cryosurgeryor laser surgery) of trigone, bladder neck, prostatic fossa, urethra, or periurethral glands. |
| 52224.. | 3 | Cysatourethroscopy, with fulguration (including cryosurgery or laser surgery) or treatment of MINOR (les than 0.5 cm) lesion(s), with or without biopsy. |
| 52234.. | 3 | Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) and/or resection of; SMALL bladder tumor(s) (0.5 to 2.0 cm). |
| 52235.. | 3 | Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of; MEDIUM bladder tumor(s) (2.0 to 5.0 cm). |
| 52240.. | 3 | Cystourethroscopy, with fulguration (including cryosurgery) and/or resection of; LARGE bladder tumor(s). |
| 52250.. | 3 | Cystourethroscopy, with insertion of radioactive substance, with or without biopsy or fulguration. |
| 52260.. | 3 | Cystourethroscopy, with dilation of bladder for interstitial cystitis; general or conduction (spinal) anesthesia. |
| 52270.. | 3 | Cystourethroscopy, with internal urethrotomy; female. |
| 52275.. | 3 | Cystourethroscopy, with internal urethrotomy; male. |
| 52276.. | 3 | Cystourethroscopy with direct vision internal urethrotomy. |
| 52277.. | 3 | Cystourethroscopy, with resection of external sphincter (sphincterotomy). |
| 52281.. | 3 | Cystourethroscopy, with calibration and/or dilation of urethral stricture or stenosis, with or without meatotomy and injection procedure for cystography, male or female. |
| 52283.. | 3 | Cystourethroscopy, with steroid injection into stricture. |
| 52285.. | 3 | Cystourethroscopy for treatment of the female urethral syndrome with any or all of the following: urethral meatotomy, urethral dilation, internal urethrotomy, lysis of urethrovaginal septal fibrosis, lateral incisions of the bladder neck, and fulguration of polyp(s) of urethra, bladder neck, and/or trigone. |
| 52290.. | 3 | Cystourethroscopy; with ureteral meatotomy, unilateral or bilateral. |
| 52300.. | 3 | Cystourethroscopy; with resection or fulguration of ureterocele(s), unilateral or bilateral. |
| 52305.. | 3 | Cystourethroscopy; with incision or resection of orifice of bladder diverticulum, single or multiple. |
| 52310.. | 4 | Cystourethroscopy, with removal of foreign body calculus or ureteral stent from urethra or bladder; simple. |
| 52315.. | 4 | Cystourethroscopy, with removal of foreign body calculus or ureteral stent from urethra or bladder; complicated. |
| 52317.. | 4 | Litholapaxy: crushing of fragmentation or calculus by any means in bladder and removal of fragments simple; small (less than 2.5 c.m.). |
| 52318.. | 4 | Litholapaxy: crushing of fragmentation or calculus by any means in bladder and removal of fragments, simple; complicated or large (over 2.5 c.m.). |
| 52320.. | 4 | Cystourethroscopy (including ureteral catheterization); with removal of ureteral calculus. |
| 52330.. | 4 | Cystourethroscopy (including ureteral catheterization); with manipulation, without removal of ureteral calculus. |
| 52332.. | 4 | Cystourethroscopy, with insertion of indwelling ureteral stent (e.g., Gibbons or double-J type). |
| 52335.. | 3 | Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method). |
| Transuretheral surgery (vesical neck and prostate) | | |
| 52340.. | 3 | Cystourethroscopy with incision, fulguration, or resection of bladder neck and/or posterior urethra (congenital valves, obstructive hypertrophic mucosal folds). |
| 52500.. | 3 | Transurethral resection of bladder neck (separate procedure). |
| Transurethral surgery (uretha and bladder) | | |

| CPT-4 code | Payment group | Description |
|---|---|---|
| 52601.. | 4 | Transurethral resection of prostate, including control of postoperative bleeding, complete (vasectomy, meatotomy, cystourethroscopy, urethal calibration and/or dilation, and internal urethrotomy are included). |
| 52606.. | 4 | Transurethral fulguration for postoperative bleeding occurring after the usual follow-up time. |
| 52612.. | 4 | Transurethral resection of prostate; first stage of two-stage resection (partial resection). |
| 52614.. | 4 | Transurethral resection of prostate; second stage of two-stage resection (resection completed). |
| 52620.. | 4 | Transurethral resection; of residual obstructive tissue after 90 days postoperative. |
| 52630.. | 4 | Transurethral resection; of regrowth of obstructive tissue longer than one year postoperative. |
| 52640.. | 4 | Transurethral resection; of postoperative bladder neck contracture. |
| 52650.. | 4 | Transurethral cryosurgical removal of prostate (postoperative irrigations and aspiration of sloughing tissue included). |
| 52700.. | 4 | Transurethral drainge of prostatic abscess. |
| | | Urethra |
| Incision | | |
| 53000.. | 2 | Urethrotomy or urethrostomy, external (separate procedure); pendulous urethra. |
| 53010.. | 2 | Urethrotomy or urethrostomy, external (separate procedure); perineal urethra, external. |
| 53020.. | 2 | Meatotomy, cutting of meatus (separate procedure); except infant. |
| 53040.. | 2 | Drainage of deep periurethral abscess. |
| Excision | | |
| 53220.. | 3 | Excision or fulguration of carcinoma of urethra. |
| 53230.. | 3 | Excision of urethral diverticulum (separate procedure); female. |
| 53235.. | 3 | Excision of urethral diverticulum (separate procedure); male. |
| 53240.. | 3 | Marsupialization of urethral diverticulum, male or female. |
| 53265.. | 3 | Excision or fulguration; urethral caruncle. |
| 53275.. | 3 | Excision or fulguration; urethral prolapse. |
| Repair | | |
| 53400.. | 4 | Urethroplasty; first stage, for fistula, diverticulum, or stricture, e.g., Johannsen type. |
| 53405.. | 4 | Urethroplasty; second stage (formation of urethra), including urinary diversion. |
| 53410.. | 4 | Urethroplasty, one-stage reconstruction of male anterior urethra. |
| 53420.. | 4 | Urethroplasty, two-stage reconstruction or repair of prostatic or membranous urethra; first stage. |
| 53425.. | 4 | Urethroplasty, two-stage reconstruction or repair of prostatic or membranous urethra; second stage. |
| 53430.. | 4 | Urethroplasty, reconstruction of female urethra. |
| 53440.. | 4 | Operation for correction of male urinary incontinence, with or without introduction of prosthesis. |
| 53447.. | 4 | Removal, repair or replacement of inflatable sphincter including pump and/or reservoir and/or cuff. |
| 53449.. | 4 | Surgical correction of hydraulic abnormality of inflatable sphincter device. |
| 53450.. | 4 | Urethromeatoplasty, with mucosal advancement. |
| 53460.. | 4 | Urethromeatoplasty, with partial excision of distal urethral segment (Richardson type procedure). |
| Suture | | |
| 53502.. | 4 | Urethrorrhaphy, suture of urethral wound or injury, female. |
| 53510.. | 4 | Urethrorrhaphy, suture of urethral wound or injury; perineal. |
| 53515.. | 4 | Urethrorrhaphy, suture of urethral wound or injury; prostatomembranous. |
| 53520.. | 4 | Closure of urethrostomy or urethrocutaneous fistula, male (separate precedure). |
| | | Male Genital System |
| | | Penis |
| Incision | | |
| 54001.. | 1 | Slitting of prepuce, dorsal or lateral (separate procedure); except newborn. |
| Excision | | |
| 54105.. | 1 | Biopsy of penis; deep structures. |
| 54110.. | 3 | Excision of penile plaque (Peyronie disease). |
| 54115.. | 3 | Removal of foreign body from deep penile tissue (e.g., plastic implant). |
| 54120.. | 3 | Amputation of penis; partial. |
| 54125.. | 4 | Amputation of penis; complete. |
| 54152.. | 2 | Circumcision, clamp procedure; except newborn. |
| 54161.. | 2 | Circumcision, surgical excision other than clamp or dorsal slit; except newborn. |
| Introduction | | |
| 54205.. | 1 | Injection procedure for Peyronie disease; with surgical exposure of plaque. |
| 54220.. | 1 | Irrigation of corpora cavernosa for priapism. |
| 54230.. | 1 | Injection procedure for corpora cavernosography. |
| Repair | | |
| 54440.. | 4 | Plastic operation of penis for injury. |
| | | Testis |
| Excision | | |
| 54505.. | 1 | Biopsy of testis, incisional (separate procedure; unilateral). |
| 54506.. | 1 | Bilateral. |
| 54510.. | 1 | Excision of local lesion of testis. |
| 54530.. | 3 | Orchiectomy, radical, for tumor; inguinal approach. |
| Repair | | |
| 54670.. | 2 | Suture or repair of testicular injury. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 54680.. | 4 | Transplantation of testis(es) to thigh (because of scrotal destruction). |
| | | Epididymis |
| Excision | | |
| 54700.. | 2 | Incision and drainage of epididymis, testis and/or scrotal space (e.g., abscess or hematoma). |
| 54820.. | 1 | Exploration of epididymis, with or without biopsy. |
| 54830.. | 2 | Excision of local lesion of epididymis. |
| 54860.. | 3 | Epididymectomy; unilateral. |
| 54861.. | 3 | Epididymectomy; bilateral. |
| Repair | | |
| 54900.. | 3 | Epididymovasostomy, anastomosis of epididymis to vas deferens; unilateral. |
| 54901.. | 3 | Epididymovasostomy, anastomosis of epididymis to vas deferens; bilateral. |
| | | Tunica vaginalis |
| Repair | | |
| 55060.. | 3 | Repair of hydrocele (Bottle type). |
| Incision | | |
| 55120.. | 1 | Removal of foreign body in scrotum. |
| | | Scrotum |
| Excision | | |
| 55150.. | 3 | Resection of scrotum. |
| Repair | | |
| 55175.. | 3 | Scrotoplasty; simple. |
| 55180.. | 3 | Scrotoplasty; complicated. |
| | | Vas deferens |
| Repair | | |
| 55400.. | 3 | Vasovasostomy, vasovasorrhaphy; unilateral. |
| 55401.. | 3 | Vasovasostomy, vasovasorrhaphy; bilateral. |
| | | Spermatic cord |
| Excision | | |
| 55500.. | 3 | Excision of hydrocele of spermatic cord, unilateral (separate procedure). |
| 55520.. | 3 | Excision of lesion of spermatic cord (separate procedure). |
| 55535.. | 4 | Excision of varicocele or ligation of spermatic veins for varicocele; abdominal approach. |
| 55540.. | 4 | Excision of varicocele or ligation of spermatic veins for varicocele; with hernia repair. |
| | | Seminal vesicles |
| Incision | | |
| 55605.. | 1 | Vesiculotomy; complicated. |
| Excision | | |
| 55650.. | 4 | Vesiculectomy, any approach; unilateral. |
| 55651.. | 4 | Vesiculectomy, any approach; bilateral. |
| 55680.. | 4 | Excision of Mullerian duct cyst. |
| | | Prostate |
| Incision | | |
| 55720.. | 1 | Prostatotomy, external drainage of prostatic abscess, any approach; simple. |
| | | Female Genital System |
| | | Vagina |
| Perineum | | |
| 56000.. | 2 | Incision and drainage of perineal abscess (nonobstetrical). |
| | | Vulva and introitus |
| Incision | | |
| 56440.. | 3 | Marsupialization of Bartholin's gland cyst. |
| Destruction | | |
| 56515.. | 3 | Destruction of lesion(s), vulva; extensive, any method. |
| Excision | | |
| 56740.. | 3 | Excision of Bartholin's gland or cyst. |
| | | Vagina |
| Incision | | |
| 57020.. | 1 | Colpocentesis (separate procedure). |
| Excision | | |
| 57105.. | 3 | Biopsy of vaginal mucosa; extensive, requiring suture (including cysts). |
| 57103.. | 3 | Excision of vaginal septum. |
| Repair | | |

BEST COPY AVAILABLE

| CPT–4 code | Payment group | Description |
|---|---|---|
| 57268.. | 4 | Repair of enterocele, vaginal approach (separate procedure). |
| | | Cervix uteri |
| Excision | | |
| 57520.. | 2 | Biopsy of cervix, circumferential (cone), with or without dilation and curettage, with or without Sturmdorff type repair. |
| Repair | | |
| 57720.. | 3 | Trachelorrhaphy, plastic repair of uterine cervix, vaginal approach. |
| Manipulation | | |
| 57820.. | 2 | Dilation and curettage of cervical stump. |
| | | Ovary |
| Excision | | |
| 58900.. | 4 | Biopsy of ovary, unilateral or bilateral (separate procedure). |
| | | Endocrine System |
| | | Thyroid gland |
| Excision | | |
| 60200.. | 3 | Excision of cyst or adenoma of thyroid, or transection of isthmus. |
| 60220.. | 4 | Total thyroid lobectomy, unilateral. |
| 60225.. | 4 | Total thyroid lobectomy, unilateral; with contralateral subtotal lobectomy, including isthmus. |
| | | Nervous System |
| | | Skull, Meninges, and Brain |
| Puncture for injection, drainage or aspiration | | |
| 61020.. | 1 | Ventricular puncture through previous burr hole, frontanelle, suture, or implanted ventricular catheter/reservoir; without injection. |
| 61026.. | 1 | Ventricular puncture through previous burr hole, frontanelle, suture, or implanted ventricular catheter/reservoir; with injection of drug or other substance for diagnosis or treatment. |
| 61050.. | 1 | Cisternal or lateral cervical puncture; without injection (separate procedure). |
| 61070.. | 1 | Puncture of shunt tubing or reservoir for aspiration or injection procedure. |
| | | Spine and Spinal Cord |
| Puncture for injection, drainage, or aspiration | | |
| 62270.. | 1 | Spinal puncture, lumbar diagnostic. |
| 62273.. | 1 | Injection, lumbar epidural, of blood or clot patch. |
| 62274.. | 1 | Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, simple. |
| 62276.. | 1 | Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, differential. |
| 62277.. | 1 | Injection of anesthetic substance, diagnostic or therapeutic; subarachnoid or subdural, continuous. |
| 62278.. | 1 | Injection of anesthetic substance, diagnostic or therapeutic; epidural or caudal, single. |
| 62279.. | 1 | Injection of anesthetic substance, diagnostic or therapeutic; epidural or caudal, continuous. |
| 62288.. | 1 | Injection of substance other than anesthetic, contrast, or neurolytic solutions; subarachnoid (separate procedure). |
| 62289.. | 1 | Injection of substance other than anesthetic, contrast, or neurolytic solutions; epidural or caudal. |
| | | Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System |
| Introduction/injection of anesthetic agent (nerve block), diagnostic or therapeutic—somatic nerves | | |
| 64408.. | 1 | Injection, anesthetic agent; vagus nerve. |
| 64410.. | 1 | Injection, anesthetic agent; phrenic nerve. |
| 64415.. | 1 | Injection, anesthetic agent; brachial plexus. |
| 64417.. | 1 | Injection, anesthetic agent; axillary nerve. |
| 64420.. | 1 | Injection, anesthetic agent; intercostal nerve, single. |
| 64421.. | 1 | Injection, anesthetic agent; intercostal nerves, multiple, regional block. |
| 64430.. | 1 | Injection, anesthetic agent; pudendal nerve. |
| 64442.. | 1 | Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, single level. |
| 64443.. | 1 | Injection, anesthetic agent; paravertebral facet joint nerve, lumbar, each additional level. |
| Sympathetic nerves | | |
| 64510.. | 2 | Injection, anesthetic agent; stellate ganglion (cervical sympathetic). |
| 64520.. | 2 | Injection, anesthetic agent; lumbar or thoracic (paravertebral sympathetic). |
| 64530.. | 2 | Injection, anesthetic agent; celiac plexus, with or without radiologic monitoring. |
| Destruction by neurolytic agent (eg, chemical, thermal, electrical, radiofrequency)—somatic nerves | | |
| 64600.. | 2 | Destruction by neurolytic agent, trigeminal nerve; supraorbital, infraorbital, mental, or inferior alveolar branch. |
| 64605.. | 2 | Destruction by neurolytic agent, trigeminal nerve; second and third division branches at foramen ovale. |
| 64610.. | 2 | Destruction by neurolytic agent, trigeminal nerve; second and third division branches at foramen ovale under radiologic monitoring. |
| 64622.. | 2 | Destruction by neurolytic agent; paravertebral facet joint nerve, lumbar, single level. |
| 64630.. | 2 | Destruction by neurolytic agent; pudendal nerve. |
| Exploration, neurolysis or nerve decompression (neuroplasty) | | |
| 64712.. | 3 | Neurolysis, major peripheral nerve, arm or leg; sciatic nerve. |
| 64713.. | 3 | Neurolysis, major peripheral nerve, arm or leg; brachial plexus. |
| 64714.. | 3 | Neurolysis, major peripheral nerve, arm or leg; lumbar plexus. |
| 64722.. | 3 | Decompression; unspecified nerve(s) (specify). |
| 64726.. | 3 | Decompression; plantar digital nerve. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 64727.. | 4 | Internal neurolysis by dissection, with or without microdissection (list separately in addition to code for primary neuroplasty). |
| Transection or avulsion of nerve | | |
| 64732.. | 3 | Transection or avulsion of; supraorbital nerve. |
| 64734.. | 3 | Transection or avulsion of; infraorbital nerve. |
| 64736.. | 3 | Transection or avulsion of; mental nerve. |
| 64738.. | 3 | Transection or avulsion of; inferior alveolar nerve by osteotomy. |
| 64740.. | 3 | Transection or avulsion of; lingual nerve. |
| 64742.. | 3 | Transection or avulsion of; facial nerve, differential or complete. |
| 64744.. | 3 | Transection or avulsion of; greater occipital nerve. |
| 64772.. | 3 | Transection or avulsion of other spinal nerve, extradural. |
| Excision-somatic nerves | | |
| 64774.. | 3 | Excision of neuroma; cutaneous nerve, surgically identifiable. |
| 64776.. | 3 | Excision of neuroma; digital nerve, one or both, same digit. |
| 64778.. | 3 | Excision of neuroma; digital nerve, each additional digit (list separately by this number). |
| 64782.. | 3 | Excision of neuroma; hand or foot, except digital nerve. |
| 64784.. | 3 | Excision of neuroma; major peripheral nerve, except sciatic. |
| 64786.. | 3 | Excision of neuroma; sciatic nerve. |
| 64787.. | 3 | Insertion of plastic cap on nerve end. |
| 64788.. | 3 | Excision of neurofibroma or neurolemmoma; cutaneous nerve. |
| 64790.. | 3 | Excision of neurofibroma or neurolemmoma; major peripheral nerve. |
| 64795.. | 3 | Biopsy of nerve. |
| Excision-sympathetic nerves | | |
| 64802.. | 4 | Sympathectomy, cervical; unilateral. |
| 64803.. | 4 | Sympathectomy, cervical; bilateral. |
| Nerve repair by suture (neurorrhaphy) | | |
| 64830.. | 4 | Microdissection and/or microrepair of nerve (list separately in addition to code for nerve repair). |
| 64831.. | 4 | Suture of digital nerve, hand or foot; one nerve. |
| 64832.. | 4 | Suture of digital nerve, hand or foot; each additional digital nerve. |
| 64834.. | 4 | Suture of one nerve, hand or foot; common sensory nerve. |
| 64835.. | 4 | Suture of one nerve, hand or foot; median motor thenar. |
| 64836.. | 4 | Suture of one nerve, hand or foot; ulnar motor. |
| 64837.. | 4 | Suture of each additional nerve, hand or foot. |
| 64840.. | 4 | Suture of posterior tibial nerve. |
| 64856.. | 4 | Suture of major peripheral nerve, arm or leg, except sciatic; including transportation. |
| 64857.. | 4 | Suture of major peripheral nerve, arm or leg, except sciatic; without transposition. |
| 64872.. | 4 | Suture of nerve; requiring secondary or delayed suture (list separately in addition to code for primary neurorrhaphy). |
| 64874.. | 4 | Suture of nerve; requiring extensive proximal mobilization, or transposition of nerve (list separately in addition to code for nerve suture). |
| 64876.. | [illegible] | Suture of nerve; requiring shortening of bone of extremity (list separately in addition to code for nerve suture). |
| Neurorrhaphy with nerve graft | | |
| 64890.. | 4 | Nerve graft (includes obtaining graft), single strand, hand or foot; up to 4 cm length. |
| 64891.. | 4 | Nerve graft (includes obtaining graft), single strand, hand or foot; more than 4 cm length. |
| 64892.. | 4 | Nerve graft (includes obtaining graft), single strand, arm or leg; up to 4 cm length. |
| 64893.. | 4 | Nerve graft (includes obtaining graft), single strand, arm or leg; more than 4 cm length. |
| 64895.. | 4 | Nerve graft (includes obtaining graft), multiple strands (cable), hand or foot; up to 4 cm length. |
| 64896.. | 4 | Nerve graft (includes obtaining graft), multiple strands (cable), hand or foot; more than 4 cm length. |
| 64897.. | 4 | Nerve graft (includes obtaining graft), multiple strands (cable), arm or leg; up to 4 cm length. |
| 64898.. | 4 | Nerve graft (includes obtaining graft), multiple strands (cable), arm or leg; more than 4 cm length. |
| 64901.. | 4 | Nerve graft, each additional nerve; single strand. |
| 64902.. | 4 | Nerve graft, each additional nerve; multiple strands (cable). |
| 64905.. | 4 | Nerve pedicle transfer; first stage. |
| 64907.. | 4 | Nerve pedicle transfer; second stage. |
| | | Eye/Ocular Adnexa |
| | | Eyeball |
| Removal of eye | | |
| 65110.. | [illegible] | Exenteration of orbit (does not include skin graft), removal of orbital contents; only. |
| Secondary implant procedures | | |
| 65130.. | 3 | Insertion of ocular implant secondary; after evisceration, in scleral shell. |
| 65135.. | 3 | Insertion of ocular implant secondary; after enucleation, muscles not attached to implant. |
| 65140.. | [illegible] | Insertion of ocular implant secondary; after enucleation muscles attached to implant. |
| 65150.. | 3 | Reinsertion of ocular implant; with or without conjunctival graft. |
| 65155.. | 3 | Reinsertion of ocular implant; with use of foreign material for reinforcement and/or attachment of muscles to implant. |
| 65175.. | 3 | Removal of ocular implant. |
| Removal of ocular foreign body | | |
| 65245.. | 4 | Removal of foreign body, intraocular; from lens (without extraction lens), nonmagnetic extraction. |
| 65260.. | 4 | Removal of foreign body, intraocular; from posterior segment, magnetic extraction, anterior or posterior route. |
| 65265.. | 4 | Removal of foreign body, intraocular; from posterior segment, nonmagnetic extraction. |

| CPT-4 code | Payment group | Description |
|---|---|---|
| **Repair of laceration of eyeball** | | |
| 65272.. | 2 | Repair of laceration; conjunctiva, by mobilization and rearrangement, without hospitalization. |
| 65280.. | 4 | Repair of laceration; cornea and/or sclera, perforating, not involving uveal tissue. |
| 65285.. | 4 | Repair of laceration; cornea and/or sclera, perforating, with reposition or resection of uveal tissue. |
| 65290.. | 3 | Repair of wound, extraocular muscle, tendon and/or Tenon's capsule. |
| | | Anterior Segment—Cornea |
| **Excision** | | |
| 65400.. | 1 | Excision of lesion, cornea (keratectomy, lamellar, partial), except pterygium. |
| 65410.. | 1 | Biopsy of cornea. |
| 65426.. | 1 | Excision or transposition of pterygium, with graft. |
| **Keratoplasty** | | |
| 65710.. | 4 | Keratoplasty (corneal transplant), lamellar; autograft. |
| 65720.. | 4 | Keratoplasty (corneal transplant), lamellar; homograft, fresh. |
| 65725.. | 4 | Keratoplasty (corneal transplant), lamellar; homograft, preserved. |
| 65730.. | 4 | Keratoplasty (corneal transplant), penetrating (except in aphakia); autograft. |
| 65740.. | 4 | Keratoplasty (corneal transplant), penetrating (except in aphakia); homograft, fresh. |
| 65745.. | 4 | Keratoplasty (corneal transplant), penetrating (except in aphakia); homograft, preserved. |
| 65750.. | 4 | Keratoplasty (corneal transplant), penetrating, in aphakia. |
| | | Anterior Segment-Anterior Chamber |
| **Incision** | | |
| 65800.. | 1 | Paracentesis of anterior chamber of eye (separate procedure); with diagnostic aspiration of aqueous. |
| 65805.. | 1 | Paracentesis of anterior chamber of eye (separate procedure); with therapeutic release of aqueous. |
| 65810.. | 4 | Paracentesis of anterior chamber of eye (separate procedure); with removal of vitreous and/or discission of anterior hyaloid membrane, with or without air injection. |
| 65815.. | 1 | Paracentesis of anterior chamber of eye (separate procedure); with removal of blood, with or without irrigation and/or air injection. |
| **Other Procedures** | | |
| 65865.. | 1 | Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure; goniosynechiae. |
| 65870.. | 1 | Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); anterior synechiae, except goniosynechiae. |
| 65875.. | 1 | Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); posterior synechiae. |
| 65880.. | 1 | Severing adhesions of anterior segment of eye, incisional technique (with or without injection of air or liquid) (separate procedure); corneovitreal adhesions. |
| 65900.. | 4 | Removal of epithelial downgrowth, anterior chamber eye. |
| 65920.. | 4 | Removal of implanted material, anterior segment eye. |
| 65930.. | 4 | Removal of blood clot, anterior segment eye. |
| 66020.. | 1 | Injection, anterior chamber (separate procedure); air or liquid. |
| 66030.. | 1 | Injection, anterior chamber (separate procedure); medication. |
| | | Anterior Segment-Anterior Sclera |
| **Excision** | | |
| 66130.. | 4 | Exision of lesion, sclera. |
| 66150.. | 4 | Fistulization of sclera for glaucoma; trephination with iridectomy. |
| 66155.. | 4 | Fistulization of sclera for glaucoma; thermocauterization with iridectomy. |
| 66160.. | 4 | Fistulization of sclera for glaucoma; sclerotomy with punch of scissors, with iridectomy. |
| 66165.. | 4 | Fistulization of sclera for glaucoma; iridencleisis or iridotasis. |
| 66170.. | 4 | Fistulization of sclera for glaucoma; trabeculectomy ab externo |
| **Repair** | | |
| 66220.. | 4 | Repair of scleral staphyloma; without graft. |
| 66225.. | 4 | Repair of scleral staphyloma; with graft. |
| **Revision Operation Wound** | | |
| 66250.. | 4 | Revision or repair of operative wound of anterior segment, any type, early or late, major or minor procedure. |
| | | Anterior Segment-Iris, Ciliary Body |
| **Iridotomy, Iridectomy** | | |
| 66500.. | 1 | Indotomy by stab incision (separate procedure); except transfixion. |
| 66505.. | 1 | Iridotomy by stab incision (separate procedure); with transfixion as for iris bombe. |
| 66605.. | 3 | Iridectomy with corneoscleral or corneal section; with cyclotomy. |
| **Repair** | | |
| 66680.. | 4 | Repair of iris, ciliary body (as for iridodialysis). |
| 66682.. | 4 | Suture of iris, ciliary body (separate procedure) with retrieval of suture through small incision (e.g., McCannel suture). |
| **Destruction** | | |
| 66700.. | 1 | Cyclodiathermy; initial. |
| 66701.. | 1 | Cyclodiathermy; subsequent. |
| 66720.. | 1 | Cyclocryotherapy; initial. |
| 66721.. | 3 | Cyclocryotherapy; subsequent. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 66741.. | 3 | Cyclodialysis; subsequent. |
| 66762.. | 3 | Coreoplasty by photocoagulation (one or more sessions) (eg, for improvement of vision). |
| | | Anterior Segment-Lens |
| Incision | | |
| 66821.. | 1 | Discission of secondary membraneous cataract ("after cataract") and/or anterior hyaloid; laser surgery (one or more stages). |
| Removal Cataract | | |
| 66915.. | 4 | Expression of lens, linear, one or more stages. |
| 66945.. | 4 | Extraction of lens with or without iridectomy in presence of fistulization bleb and/or by temporal, interior or inferotemporal route, intracapsular or extracapsular. |
| 66984.. | 4 | Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or phacoemulsification technique. |
| Posterior Segment-Vitreous | | |
| 67005.. | 4 | Removal of vitreous, anterior approach (open sky technique of limbal incision); partial removal. |
| 67010.. | 4 | Removal of vitreous, anterior approach (open sky technique of limbal incision); subtotal removal with mechanical vitrectomy (such as VISC or Rotoextractor). |
| 67015.. | 2 | Aspiration or release of vitreous, subretinal or choroidal fluid, pars plana approach (posterior sclerotomy). |
| 67025.. | 2 | Injection of vitreous substitute, pars plana approach (separate procedure) excludes air or balanced salt solutions. |
| 67030.. | 2 | Discission of vitreous strands (without removal), pars plana approach. |
| 67036.. | 4 | Virectomy, mechanical, pars plana approach. |
| | | Posterior Segment-Retinal Detachment |
| Repair | | |
| 67101.. | 4 | Repair of retinal detachment, one or more sessions, same hospitalization, cryotherapy or diathermy, with or without drainage or subretinal fluid. |
| 67107.. | 4 | Repair of retinal detachment (one or more stages, same hospitalization); scleral buckling (such as lamella excision, imbrication or encircling procedure), with or without implant, may include procedures 67101–67105. |
| 67108.. | 4 | Repair of retinal detachment (one or more stages, same hospitalization); with vitrectomy, any method, with or without air tamponade, may include procedures 67101–67107 and/or removal of lens by same technique. |
| 67109.. | 4 | Repair of retinal detachment (one or more stages, same hospitalization); by technique other than 67101–67108. |
| 67120.. | 4 | Removal of implanted material, posterior segment, extraocular. |
| | | Posterior Segment-Other Procedures |
| Destruction-Retina, Choroid | | |
| 67208.. | 1 | Destruction of localized lesion of retina (e.g., maculopathy, choroidopathy, small tumors), one or more sessions; cryotherapy, diathermy. |
| 67218.. | 1 | Destruction of localized lesion of retina or choroid (e.g., choroidopathy), one or more stages; radiation by implantation of source (includes removal of source. |
| 67227.. | 1 | Destruction of extensive or progressive retinopathy (e.g., diabetic retinopathy), one or more sessions; cryotherapy, diathermy. |
| Scleral Repair | | |
| 67250.. | 4 | Scleral reinforcement (separate procedure); without graft. |
| 67255.. | 4 | Scleral reinforcement (separate procedure); with graft. |
| | | Ocular Andexa-Extraocular Muscles |
| 67320.. | 3 | Transposition of extraocular muscle (e.g., for paretic muscle), one or more stages, one or more muscles, with displacement of plane of action more than 5mm. |
| 67331.. | 3 | Strabismus surgery on patient previously operated on; not involving reoperation of muscles. |
| 67332.. | 3 | Strabismus surgery on patient previously operated on; involving reoperation of muscles. |
| Other Procedures | | |
| 67350.. | 3 | Biopsy of extraocular muscle. |
| | | Ocular Adnexa-Orbit |
| Exploration, Excision | | |
| 67400.. | 4 | Orbitotomy without bone flap (frontal approach); for exploration, with or without biopsy. |
| 67405.. | 4 | Orbitotomy without bone flap (frontal approach); with drainage only. |
| 67412.. | 4 | Orbitotomy without bone flap (frontal approach); with removal of lesion. |
| 67413.. | 4 | Orbitotomy without bone flap (frontal approach); with removal of foreign body. |
| 67415.. | 1 | Transconjunctival or aspirational biopsy. |
| Other Procedures | | |
| 67550.. | 4 | Orbital implant (implant outside muscle cone); insertion. |
| 67560.. | 4 | Orbital implant (implant outside muscle cone); removal or revision. |
| | | Ocular Adnexa-Eyelids |
| Incision | | |
| 67715.. | 1 | Canthotomy (separate procedure). |
| Excision or Removal of Lesion Involving More Than Skin (IE, Involving Lid Margin, Tarsus, and/or Palpebral Conjunctiva) | | |
| 67830.. | 3 | Correction of trichiasis; incision of lid margin. |
| 67835.. | 2 | Correction of trichiasis; incision of lid margin, with free mucous membrane graft. |
| Tarsorrhaphy | | |

| CPT-4 code | Payment group | Description |
|---|---|---|
| 67880.. | 1 | Construction of intermarginal adhesions, median tarsorrhaphy, or canthorrhaphy. |
| 67882.. | 3 | Construction of intermarginal adhesions, median tarsorrhaphy, or canthorrhaphy; with transposition of tarsal plate. |
| Repair, Blepharoptosis, Lid Retraction | | |
| 67901.. | 1 | Repair of blepharoptosis; frontalis muscle technique with suture. |
| 67902.. | 1 | Repair of blepharoptosis; frontalis muscle technique with fascial sling (includes obtaining fascia). |
| 67903.. | 1 | Repair of blepharoptosis; (tarso) levator resection, internal approach. |
| 67904.. | 1 | Repair of blepharoptosis; (tarso) levator resection, external approach. |
| 67906.. | 1 | Repair of blepharoptosis; superior rectus technique with fascial sling (includes obtaining fascia). |
| 67907.. | 1 | Repair of blepharoptosis; superior rectus tendon transplant. |
| 67908.. | 1 | Repair of blepharoptosis; conjunctivo-tarso-levator resection (Fasanella-Servat type). |
| 67909.. | 1 | Reduction of overcorrection of ptosis. |
| Reconstructive Surgery, Blepharoplasty Involving More Than Skin (ie, Involving Lid Margin, Tarsus, and/or Palpebral Conjunctiva) | | |
| 67935.. | 2 | Suture of recent wound, eyelid, involving lid margin, tarsus, and/or palpebral conjunctiva) direct closure; full thickness. |
| 67961.. | 3 | Excision and repair of eyelid, involving lid margin, tarsus, conjunctiva, canthus, or full thickness, may include preparation for skin graft or pedicle flap with adjacent tissue transfer or rearrangement; up to one-fourth of lid margin. |
| 67966.. | 3 | Excision and repair of eyelid, involving lid margin, tarsus, conjunctiva, or full thickness, may include preparation for skin graft or pedicle flap with adjacent tissue transfer or rearrangement; over one-fourth of lid margin. |
| 67971.. | 3 | Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; up to two-thirds of eyelid, one stage or first stage. |
| 67973.. | 3 | Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; total eyelid, lower, one stage or first stage. |
| 67974.. | 3 | Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; total eyelid, upper, one stage or first stage. |
| 67975.. | 3 | Reconstruction of eyelid, full thickness by transfer of tarsoconjunctival flap from opposing eyelid; second stage. |
| | | Ocular Adnexa-Conjunctiva |
| Excision, Destruction | | |
| 68130.. | 1 | Excision of lesion, conjunctiva; with adjacent sclera. |
| Conjunctivoplasty | | |
| 68320.. | 2 | Conjunctivoplasty; with conjunctival graft or extensive rearrangement. |
| 68325.. | 2 | Conjunctivoplasty; with buccal mucous membrane graft (includes obtaining graft). |
| 68326.. | 2 | Conjunctivoplasty, reconstruction cul-de-sac; with conjunctival graft or extensive rearrangement. |
| 68328.. | 3 | Conjunctivoplasty, reconstruction cul-de-sac; with buccal mucous membrane graft (includes obtaining graft). |
| Other Procedures | | |
| 68360.. | 2 | Conjunctival flap; bridge or partial (separate procedure). |
| 68362.. | 2 | Conjunctival flap; total (such as Gunderson thin flap or purse string flap). |
| | | Ocular Adnexa-Lacrimal System |
| Excision | | |
| 68500.. | 3 | Excision of lacrimal gland (dacryoadenectomy), except for tumor; total. |
| 68505.. | 3 | Excision of lacrimal gland (dacryoadenectomy), except for tumor; partial. |
| 68510.. | 3 | Biopsy of lacrimal gland. |
| 68520.. | 3 | Excision of lacrimal sac (dacryocystectomy). |
| Excision | | |
| 68540.. | 4 | Excision of lacrimal gland tumor; frontal approach involving osteotomy. |
| 68550.. | 4 | Excision of lacrimal gland tumor; frontal approach. |
| Repair | | |
| 68720.. | 3 | Dacryocystorhinostomy (fistulization of lacrimal sac to nasal cavity). |
| 68745.. | 3 | Conjunctivorhinostomy (fistulization of conjunctiva to nasal cavity); without tube. |
| 68750.. | 3 | Conjunctivorhinostomy (fistulization of conjunctiva to nasal cavity); with insertion of tube or stent. |
| | | Auditory System |
| | | External Ear |
| Excision | | |
| 69105.. | 1 | Biopsy external auditory canal. |
| 69110.. | 2 | Excision external ear; partial, simple repair. |
| 69120.. | 3 | Excision external ear; complete amputation. |
| 69140.. | 2 | Excision exostosis(es), external auditory canal. |
| 69145.. | 2 | Excision soft tissue lesion, external auditory canal. |
| 69150.. | 4 | Radical excision external auditory canal lesion; without neck dissection. |
| | | Middle Ear |
| Incision | | |
| 69440.. | 3 | Middle ear exploration through postauricular or ear canal incision. |
| 69450.. | 3 | Tympanolysis, transcanal. |
| Repair | | |
| 69632.. | 4 | Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; with ossicular chain reconstruction, e.g., postfenestration. |

| CPT–4 code | Payment group | Description |
|---|---|---|
| 69633.. | 4 | Tympanoplasty without mastoidectomy (including canalplasty, atticotomy and/or middle ear surgery), initial or revision; with ossicular chain reconstruction and synthetic prosthesis (e.g., total ossicular replacement prosthesis, TORP). |
| 69635.. | 4 | Tympanoplasty with antrotomy or mastoidotomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); without ossicular chain reconstruction. |
| 69636.. | 4 | Tympanoplasty with antrotomy or mastoidotomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); with ossicular chain reconstruction. |
| 69637.. | 4 | Tympanoplasty with antrotomy or mastoidotomy (including canalplasty, atticotomy, middle ear surgery, and/or tympanic membrane repair); with ossicular chain reconstruction and synthetic prosthesis (e.g., total ossicular replacement prosthesis, TORP). |
| 69641.. | 4 | Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); without ossicular chain reconstruction. |
| 69642.. | 4 | Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with ossicular chain reconstruction. |
| 69643.. | 4 | Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with intact or reconstructed wall, without ossicular chain reconstruction. |
| 69644.. | 4 | Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); with intact or reconstructed canal wall, with ossicular chain reconstruction. |
| 69645.. | 4 | Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); radical or complete, without ossicular chain reconstruction. |
| 69646.. | 4 | Tympanoplasty with mastoidectomy (including canalplasty, middle ear surgery, tympanic membrane repair); radical or complete, with ossicular chain reconstruction. |
| 69661.. | 4 | Stapedectomy with reestablishment of ossicular continuity, with or without use of foreign material; with footplate drill out. |
| 69666.. | 4 | Repair oval window fistula. |
| 69667.. | 4 | Repair round window fistula. |
| 69670.. | 4 | Mastoid obliteration (separate procedure). |
| 69676.. | 4 | Tympanic neurectomy; unilateral. |
| 69677.. | 4 | Tympanic neurectomy; bilateral. |
| | | External Ear |
| Other procedures | | |
| 69700.. | 2 | Closure postauricular fistula, mastoid (separate procedure). |
| | | Middle Ear |
| Other procedures | | |
| 69720.. | 4 | Decompression facial nerve, intratemporal; lateral to geniculate ganglion. |
| 69725.. | 4 | Decompression facial nerve, intratemporal; including medial to geniculate ganglion. |
| 69740.. | 4 | Suture facial nerve, intratemporal, with or without graft or decompression; lateral to geniculate ganglion. |
| 69745.. | 4 | Suture facial nerve, intratemporal, with or without graft or decompression; including medial to geniculate ganglion. |

(Section 1833(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(1); 42 CFR 416.65))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 87–8930 Filed 4–20–87; 8:45 am]

BILLING CODE 4120–01–M

L
2
S
6
P
1
87
M I

federal register

Tuesday
April 21, 1987

Part III

# Department of Education

**Office of Elementary and Secondary Education**

**34 CFR Part 230**

**Drug-Free Schools and Communities; Hawaiian Natives Program; Notice of Proposed Rulemaking**

**DEPARTMENT OF EDUCATION**

**Office of Elementary and Secondary Education**

**34 CFR Part 230**

**Drug-Free Schools and Communities—Hawaiian Natives Program**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to issue regulations governing the Drug-Free Schools and Communities—Hawaiian Natives Program. This program is authorized by section 4134 of the recently enacted Drug-Free Schools and Communities Act of 1986. Under this program, the Department provides financial assistance to organizations primarily serving and representing Hawaiian Natives to plan, conduct, and administer activities authorized by the Act.

**DATE:** All comments on these proposed regulations must be received on or before May 21, 1987.

**ADDRESS:** Comments should be addressed to Mr. Dick Hays, Chairman, OESE Drug-Free Schools Task Force, U.S. Department of Education, 400 Maryland Avenue, SW., Mail Stop: 6277, Washington, DC 20202. Telephone: (202) 732–4599.

**FOR FURTHER INFORMATION CONTACT:** Mr. Allen King, OESE Drug-Free Schools Task Force, U.S. Department of Education, 400 Maryland Avenue, SW., Mail Stop: 6277, Washington, DC 20202. Telephone: (202) 732–4599.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Drug-Free Schools and Communities Act ("the Act"), which was signed by the President on October 27, 1986, authorizes a variety of alcohol and drug abuse prevention programs for fiscal years 1987, 1988, and 1989.

Section 4112(a)(3) of the Act provides that from the total amount appropriated for programs under the Act for any fiscal year, 0.2 percent must be reserved for programs for Hawaiian Natives under section 4134. From the sums reserved, the Secretary makes awards to organizations primarily serving and representing Hawaiian Natives to plan, conduct, and administer programs, or portions thereof, that are authorized by and consistent with the provisions of the Act for the benefit of Hawaiian Natives. The organizations must be recognized by the Governor of the State of Hawaii (section 4134(a)).

The Hawaiian Natives Program is subject to applicable law protecting students' rights in research, experimental programs, and testing. See section 439 of the General Education Provisions Act (20 U.S.C. 1232h) and its implementing regulations in 34 CFR Part 98.

**Summary of Major Provisions**

The proposed regulations state that programs must be provided for Hawaiian Natives. The proposed regulations also specify that the Secretary provides financial assistance through grants or cooperative agreements (§ 230.3) and establish the criteria that the Secretary uses to evaluate applications for funding (§ 230.21).

**Executive Order 12291**

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The only organizations eligible to receive awards are those recognized by the Governor of Hawaii as primarily serving and representing Hawaiian Natives.

**Paperwork Reduction Act of 1980**

These proposed regulations do not contain any information collection requirements covered by the Paperwork Reduction Act of 1980.

**Invitation To Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for further inspection, during and after the comment period, in Room 2135, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in the proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 230**

Drug abuse, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.199, Drug-Free Schools and Communities—Hawaiian Natives Program)

Dated: April 3, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 230 to Chapter II to read as follows:

## PART 230—DRUG-FREE SCHOOLS AND COMMUNITIES—HAWAIIAN NATIVES PROGRAM

**Subpart A—General**

Sec.

230.1 What is the Drug-Free Schools and Communities—Hawaiian Natives Program?
230.2 Who is eligible to apply for an award?
230.3 What activities may the Secretary fund?
230.4 What regulations apply?
230.5 What definitions apply?

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary make an Award?**

230.20 How does the Secretary evaluate an application?
230.21 What selection criteria does the Secretary use?

**Subpart D—What Conditions Must Be Met After an Award?**

230.30 What conditions must a grantee meet in coordinating services?

**Authority:** 20 U.S.C. 4644, unless otherwise noted.

**Subpart A—General**

**§ 230.1 What is the Drug-Free Schools and Communities—Hawaiian Natives Program?**

The Drug Free Schools and Communities—Hawaiian Natives Program provides financial assistance to organizations primarily serving and representing Hawaiian Natives to plan, conduct, and administer programs for Hawaiian Natives that are authorized by and consistent with the Drug-Free

Schools and Communities Act of 1986 (the "Act").

(Authority: 20 U.S.C. 4644)

**§ 230.2 Who is eligible to apply for an award?**

Any organization primarily serving and representing Hawaiian Natives, that is recognized by the Governor of Hawaii, may apply for a grant or cooperative agreement under this program.

(Authority: 20 U.S.C. 4644)

**§ 230.3 What activities may the Secretary fund?**

The Secretary provides assistance to plan, conduct, and administer activities that are authorized by and consistent with the Act for the benefit of Hawaiian Natives. These activities may include, but are not limited to, the following:

(a) Local broadly-based programs for drug and alcohol abuse prevention, early intervention, rehabilitation referral, and education for all age groups.

(b) Training programs concerning drug abuse education and prevention for teachers, counselors, other educational personnel, parents, local law enforcement officials, judicial officials, other public service personnel, and community leaders.

(c) The development and distribution of educational and informational materials to provide public information (through the media and otherwise) for the purpose of achieving a drug-free society.

(d) Technical assistance to help community-based organizations and local and intermediate educational agencies and consortia in the planning and implementation of drug abuse prevention, early intervention, rehabilitation referral, and education programs.

(e) Activities to encourage the coordination of drug abuse education and prevention programs with related community efforts and resources.

(Authority: 20 U.S.C. 4132(a)(1–5), 4644)

**§ 230.4 What regulations apply?**

The following regulations apply to the Drug-Free Schools and Communities—Hawaiian Natives Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Programs), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 230.

(Authority: 20 U.S.C. 4644)

**§ 230.5 What definitions apply?**

(a) *Definitions in the Act.* The following terms used in this part are defined in the Act:

Hawaiian Native (Section 4134(b))
Drug abuse education and prevention (Section 4141(b)(1))

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Department
EDGAR
Grant
Secretary

(c) *Other definitions.* The following definition also applies to this part:

"Act" means the Drug-Free Schools and Communities Act of 1986.

(Authority: 20 U.S.C. 4644)

## Subpart B—[Reserved]

## Subpart C—How Does the Secretary Make an Award?

**§ 230.20 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 230.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 4644)

**§ 230.21 What selection criteria does the Secretary use?**

The Secretary uses the following selection criteria in evaluating each application:

(a) *Understanding of problems and needs.* (15 points) The Secretary reviews each application to determine how adequately the applicant has identified problems and needs related to alcohol and drug abuse among Hawaiian Natives.

(b) *Plan to address problems and needs.* (30 points) The Secretary reviews each application to determine the quality of the proposed plan to address the identified problems and needs.

(c) *Coordination with other activities, balance of services.* (15 points) The Secretary reviews each application to determine—

(1) The degree to which the applicant has coordinated with State and other organizations administering alcohol and drug abuse programs in developing the application;

(2) The adequacy of the applicant's plans for coordination with State and national alcohol and drug abuse prevention activities; and

(3) The adequacy of the applicant's plans to achieve balance in providing services among Hawaiian Natives.

(d) *Management plan.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the applicant's program, including—

(1) The extent to which the plan is effective and ensures proper and efficient administration of the program;

(2) The manner in which the plan provides for the applicant's use of resources and personnel to achieve its objectives;

(3) The adequacy of the resources the applicant plans to use—including facilities, equipment, and supplies;

(4) How the plan will ensure that the program will select participants, who are otherwise eligible to participate, for activities without regard to race, color, sex, age, or handicapping condition; and

(5) The schedules of work and completion dates for activities identified in the plan.

(e) *Quality of key personnel.* (20 points) (1) The Secretary reviews each application to determine the quality of key personnel proposed for the program, including—

(i) The qualifications of the program director;

(ii) The qualifications of each of the other key personnel;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the program; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, sex, national origin, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in alcohol and drug abuse education and prevention; and

(ii) Any other qualifications that pertain to the quality of the program and services, including the capacity for training, evaluation, and dissemination.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the applicant's plan to evaluate the effectiveness of the proposed program, including the extent to which the methods of evaluation are appropriate, are objective, and produce data that are quantifiable.

(Authority: 20 U.S.C. 4644)

## Subpart D—What Conditions Must Be Met After an Award?

### § 230.30 What conditions must a grantee meet in coordinating services?

In carrying out its responsibilities under this program, each grantee shall—

(a) Coordinate its activities and services with local, State, and national efforts to combat alcohol and drug abuse;

(b) Achieve balance in the provision of services among Hawaiian Natives; and

(c) Ensure that any materials produced or distributed with funds awarded to the applicant under the Act reflect the message that illicit drug use is wrong and harmful.

(Authority: 20 U.S.C. 4644)

[FR Doc. 87-8935 Filed 4-20-87; 8:45 am]

BILLING CODE 4000-01-M

# Reader Aids

Federal Register

Vol. 52, No. 78

Tuesday, April 21, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10
11807-11980.....13
11981-12128.....14
12129-12362.....15
12363-12510.....16
12511-12896.....17
12897-13068.....20
13069-13214.....21

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11809
5629.....12126
5630.....12129

**Administrative Orders:**

**Presidential Determinations:**
No. 87-12 of March 17, 1987.....11807

**5 CFR**

213.....11185
591.....12131
841.....12131
870.....12133
1201.....10875

**Proposed Rules:**
353.....11657
2411.....11995

**7 CFR**

210.....11186
271.....11811
272.....11021, 11811
273.....11021, 11811
274.....11811
278.....11811
301.....10357, 12363
354.....10364, 12897
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615, 12511
910.....10729, 11615, 12511
917.....12512
925.....11616
927.....11316
932.....12134
946.....12365
948.....12513
989.....12515
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1822.....11981
1944.....11981
1951.....11456, 11981
1200.....12096
1205.....12096
1207.....12096
1250.....12096

**Proposed Rules:**
220.....12419
246.....12527
330.....12917
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
908.....12535
910.....12536
945.....10893
979.....12185
994.....10984, 12185
1011.....12186
1040.....12537
1046.....11475
1106.....12538
1210.....13086
1942.....12539
1955.....10577
1965.....10577

**8 CFR**

212.....11620
248.....11621

**Proposed Rules:**
245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024
151.....13070
318.....12517

**Proposed Rules:**
54.....12189
92.....10765
94.....12917
307.....12422
308.....12422
317.....10766, 11828
319.....10766, 11828
381.....11828

**10 CFR**

0.....11026
73.....12364

**Proposed Rules:**
2.....11475, 12192
30.....12921
40.....12921
50.....10771
70.....12921
430.....12342

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
611.....12135
614.....12143
701.....12365
708.....12370
741.....12365

**Proposed Rules:**

325.....11476, 11660
337.....11492
522.....12425
612.....11080
705.....12427

**13 CFR**

311.....11626

**14 CFR**

21.....11627
23.....11627
39.....10558, 10735, 10736, 11630–11639, 11985, 11986, 12517–12519
71.....10559, 11028, 11032–11034, 11815, 12899, 13173
73.....10559, 10560, 11033, 11034
95.....10737
97.....12519
1215.....10880
1260.....12378

**Proposed Rules:**

29.....11997
39.....10581, 11081, 11663, 11664, 11997, 11998, 12544, 12545
71.....10582, 11082, 11828, 12286, 12935
75.....12000, 12286

**15 CFR**

370.....11640
371.....10741
376.....11640
399.....11457, 11640

**Proposed Rules:**

7.....11498
280.....11498
368.....10771

**16 CFR**

13.....12379, 12900

**Proposed Rules:**

13.....12430, 12546

**17 CFR**

200.....12147
203.....12147
241.....11458
270.....11187

**Proposed Rules:**

210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**

16.....11035
271.....10741
381.....10366

**Proposed Rules:**

4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
148.....12149
172.....12149
177.....11216

**Proposed Rules:**

111.....10774
127.....12000

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217

**Proposed Rules:**

200.....10384
404.....13014
416.....13014
615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883, 12380
177.....11641
184.....10884
193.....10561, 10562
201.....12152
341.....12521
510.....10668, 11040, 11041, 11988, 12153
520.....10668, 11041, 11988
522.....10668, 11816
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642, 11988, 12153, 12521
561.....10562, 12153
573.....10887
1308.....11042, 12285

**Proposed Rules:**

133.....12556
182.....13086
184.....13086
186.....13086
310.....13107
312.....12431
357.....12114
561.....12193
1301.....11091

**22 CFR**

2a.....12154
212.....11817
224.....13071

**Proposed Rules:**

41.....12001
171.....12936

**23 CFR**

**Proposed Rules:**

650.....11092
655.....11502

**24 CFR**

15.....12159
201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644

**Proposed Rules:**

200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**

120.....11467

**Proposed Rules:**

40.....11503

**26 CFR**

1.....10368, 10741, 10742, 12161
5f.....10368
54.....10563
602.....10368, 10563, 10742, 12161

**Proposed Rules:**

1.....10774, 12194
54.....10583
602.....10583, 10774

**27 CFR**

9.....13079

**Proposed Rules:**

9.....11689

**28 CFR**

0.....11043
545.....10528

**Proposed Rules:**

549.....10531

**29 CFR**

33.....11600
2644.....10368
2676.....12163

**Proposed Rules:**

1601.....11503
1625.....10584
1910.....10586, 12116, 12559
1915.....12559
1917.....12559
1918.....12559
1919.....12559
1926.....12120, 12288, 12559
1928.....12559

**30 CFR**

914.....10369, 10373
946.....11044

**Proposed Rules:**

700.....11829
723.....11287
724.....11287
733.....10898
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
934.....12002
935.....11692
937.....11287
938.....12195, 13109
939.....11287
941.....11287
942.....11287
947.....11287

**31 CFR**

1.....11989
103.....11436, 12641

**Proposed Rules:**

1.....12003

**32 CFR**

154.....11219
701.....11051
706.....10374, 10748, 10749
1630.....12641

**Proposed Rules:**

1662.....11830

**33 CFR**

3.....13082
60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646
165.....12380

**Proposed Rules:**

100.....10593, 10594, 10905, 10906, 11693, 13011
117.....11695, 12431

**34 CFR**

628.....11256
639.....12508

**Proposed Rules:**

206.....11448
230.....13212
650.....12360

**36 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**Proposed Rules:**

1.....12037
2.....12037
9.....10866

**37 CFR**

**Proposed Rules:**

307.....11096

**38 CFR**

1.....10888

17.....11259
36.....12381
Proposed Rules:
17.....10907
21.....13110

39 CFR

10.....10375
111.....10749
224.....12900
233.....12900
273.....12900
962.....12900
Proposed Rules:
111.....12432, 12559
265.....12434
447.....12196, 13011

40 CFR

52.....10751, 11259, 11647, 12164, 12522, 12523, 12908
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261, 12165–12167, 12525, 13173
261.....11819
266.....11819
271.....10568, 11263
721.....11822
761.....10688
799.....10377, 10752
Proposed Rules:
52.....10596, 11287, 11288, 11696, 12940
85.....12561, 12563
123.....12039
141.....10972, 12876
142.....10972
143.....10972
180.....11292, 11293, 12198
261.....11513
264.....12566
265.....12566
280.....12662, 12786
281.....12853
300.....11513
700.....12940
721.....12285

41 CFR

101–20.....11263
101–28.....11275
101–41.....12168
201–32.....10379, 13173

42 CFR

7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649
Proposed Rules:
405.....11517

43 CFR

426.....11938
2090.....12171, 13084
Proposed Rules:
11.....12886

44 CFR

64.....10753, 12178
Proposed Rules:
5.....10385
6.....10385
67.....11702

45 CFR

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870
Proposed Rules:
503.....11712, 12040

46 CFR

401.....11468
Proposed Rules:
Chapter I.....12439
154.....10598
276.....12199
382.....11518
502.....10912, 12208, 12212
503.....12212
586.....11832

47 CFR

0.....12382
1.....11652
2.....10568
22.....10571
25.....12911
73.....10381, 10382, 10568, 10757, 11471–11473, 11653, 11825, 12180, 12181, 12912
74.....10568, 11474
78.....10568
Proposed Rules:
1.....11519
21.....11519, 11838
25.....12944
73.....11519–11521, 11837, 11840–11842, 12214–12216, 12285, 12945
74.....11519
90.....10389
94.....11519, 11838

48 CFR

7.....11074
203.....12383
205.....12386
215.....11276
216.....12387
217.....11076, 12387
225.....12389
227.....12390
243.....12387
245.....12389
252.....11076, 11276, 12383, 12386, 12389, 12390
522.....12182
542.....11825
552.....12182
5315.....12414
Proposed Rules:
225.....12440
509.....10913

49 CFR

Ch. IX.....12916
107.....13034
171.....13034
172.....13034
173.....13034
174.....13034
176.....13034
177.....13034
178.....13034
179.....13034
219.....10575
604.....11916
1003.....11277
1043.....11277
1052.....11991
1084.....11277
1207.....10382
1244.....12415
1249.....10382
Proposed Rules:
Ch. X.....11295
571.....10775
701.....13066
1312.....10913
1320.....11295

50 CFR

17.....10890, 11162, 11277
301.....10759
611.....10761
642.....10762
652.....10763
663.....11473
672.....10761, 11991, 12183, 12916
675.....10761, 11992
685.....12641
Proposed Rules:
222.....12040
227.....12040
640.....10780
642.....11713
651.....10781
652.....12575

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List April 13, 1987**

L
2
S
6
P
1
87
M I

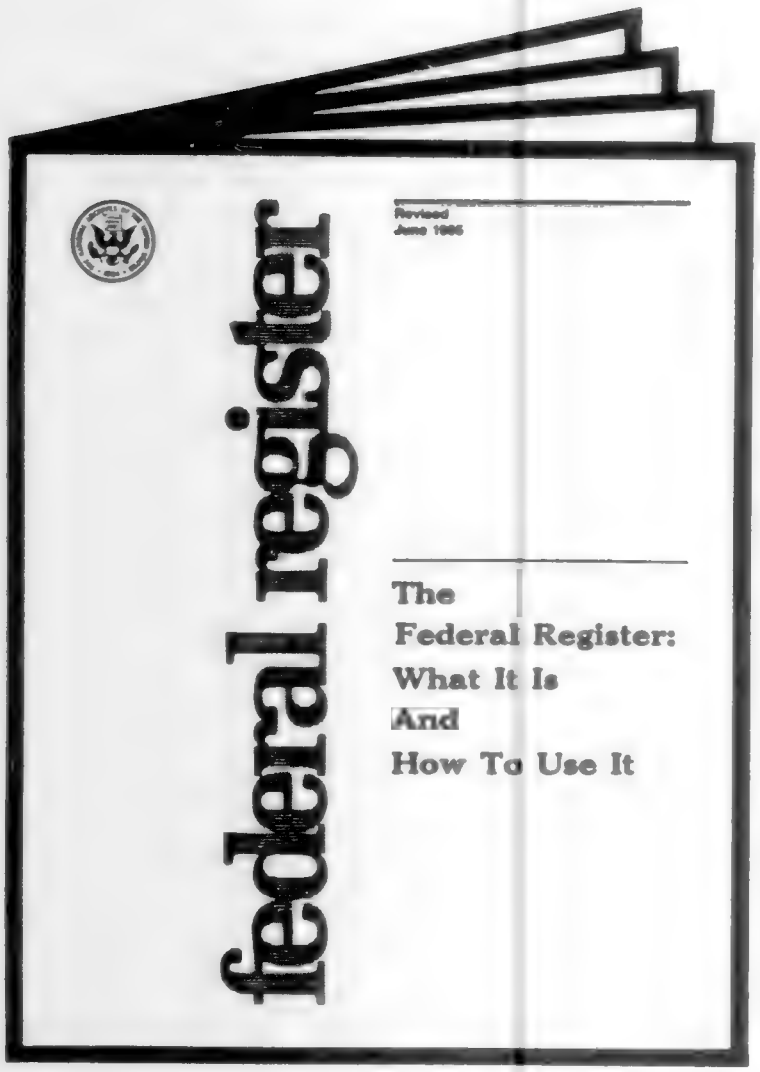


**Announcing the Latest Edition**

# The Federal Register: What It Is and How to Use It

**A Guide for the User of the Federal Register—Code of Federal Regulations System**

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

**Price $4.50**

## Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐☐ – ☐

Order No. _____

**MasterCard and VISA accepted.**

**Credit Card Orders Only**

Total charges $ _____

Fill in the boxes below.

Customer's Telephone Nos.

Area Code Home Area Code Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month / Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday - Friday (except holidays)

Please send me _____ copies of **The Federal Register - What It Is and How To Use It,** at $4.50 per copy, Stock No. 022-003-01116-1

**Please Print or Type**

Name - First, Last

Company name or additional address line

Street address

City State ZIP Code

(or Country)

(Rev. 11–85)

L
2

S S
7

P
2

87

M I

4-22-87
Vol. 52 No. 77

# federal register

Wednesday
April 22, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S Government Printing Office
(ISSN 0097-6326)

4-22-87
Vol. 52 No. 77
Pages 13215-13424

# Federal Register

Wednesday
April 22, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 77

Wednesday, April 22, 1987

**Administrative Conference of the United States**
NOTICES
Meetings:
Administration Committee, 13258

**Agriculture Department**
*See also* Animal and Plant Health Inspection Service; Commodity Credit Corporation; Food and Nutrition Service; Rural Electrification Administration; Soil Conservation Service
PROPOSED RULES
Immigration Reform and Control Act; implementation; rural labor, 13246
NOTICES
Agency information collection activities under OMB review, 13258
Meetings:
Dairy Policy National Commission, 13258

**Animal and Plant Health Inspection Service**
RULES
Swine health protection:
Enforcement; State status; removal—
Oklahoma, 13230

**Antitrust Division**
NOTICES
Competitive impact statements and proposed consent judgments:
National Medical Enterprises, Inc., et al., 13326

**Army Department**
NOTICES
Meetings:
Science Board, 13283
(2 documents)

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Commerce Department**
*See also* International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 13262
(2 documents)

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Jamaica, 13281
Thailand, 13282

**Commodity Credit Corporation**
PROPOSED RULES
Loan and purchase programs:
Cotton, 13248
NOTICES
Loan and purchase programs:
Peanut price support program, 13259

**Defense Department**
*See also* Army Department; Navy Department
NOTICES
Meetings:
Science Board task forces, 13283

**Energy Department**
*See* Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department

**Environmental Protection Agency**
RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Ammonium nitrate and urea, 13239
Superfund program:
Extremely hazardous substances list and threshold planning quantities and notification requirements; emergency planning and community right-to-know programs, 13378
PROPOSED RULES
Hazardous waste:
Underground storage tanks—
Financial responsibility requirements; correction, 13375
NOTICES
Agency information collection activities under OMB review, 13302
Committees; establishment, renewals, terminations, etc.:
Biotechnology Science Advisory Committee, 13303
Pesticide programs:
Confidential information and data transfer to contractors, 13304
(2 documents)
Inert ingredients in pesticide products; policy statement, 13305
Pesticide registration, cancellation, etc.:
S.C. Johnson & Son, Inc., 13309
Superfund program:
Joint use of vehicles for transportation of hazardous and nonhazardous materials; study, 13310
Toxic and hazardous substances control:
Chemical testing; data receipt, 13311

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
RULES
Airworthiness directives:
Aerospatiale, 13233
Honeywell Inc., 13231
McDonnell Douglas, 13232
PROPOSED RULES
Airworthiness directives:
British Aerospace, 13249
Short Brothers PLC, 13251

**Federal Communications Commission**
RULES
Communication equipment:
Perimeter protection systems; non-licensed operation
Correction, 13241

Practice and procedure:
National Environmental Policy Act; radiofrequency radiation; environmental evaluation, 13240
Radio services, special:
Amateur service—
Novice operators; privileges expanded, 13243
Radio stations; table of assignments:
California, 13241, 13242 (2 documents)
South Carolina, 13242
South Dakota, 13242
Virgin Islands, 13243
PROPOSED RULES
Radio stations; table of assignments:
Tennessee, 13253
NOTICES
Meetings:
ITU World Administrative Radio Conference Advisory Committee, 13311
Radio broadcasting:
FM vacant channel applications; universal window filing period, 13311
Television broadcasting:
Cable television; excessive radio frequency leakage, 13312

**Federal Emergency Management Agency**
NOTICES
Flood insurance program:
Financial assistance/subsidy arrangement, 13312

**Federal Energy Regulatory Commission**
RULES
Electric utilities (Federal Power Act):
Water quality certification; waiver of Clean Water Act requirements, 13234
NOTICES
Electric rate and corporate regulation filings:
Carolina Power & Light Co. et al., 13285
Environmental statements; availability, etc.:
Erie Pipeline System, 13287
Meetings; Sunshine Act, 13374
Natural gas certificate filings:
K N Energy, Inc., et al., 13288
Small power production and cogeneration facilities; qualifying status:
AEM Corp. et al., 13290

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
Citicorp, 13317

**Fish and Wildlife Service**
PROPOSED RULES
Endangered and threatened species:
California freshwater shrimp, 13254

**Food and Drug Administration**
NOTICES
Meetings:
Advisory committees, panels, etc., 13423

**Food and Nutrition Service**
RULES
Food stamp program:
Retailer/wholesaler amendments, 13220

**Health and Human Services Department**
*See also* Food and Drug Administration; National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
Public Health Service, 13318

**Hearings and Appeals Office, Energy Department**
NOTICES
Special refund procedures; implementation, 13291, 13297 (2 documents)

**Immigration and Naturalization Service**
RULES
Certificates of citizenship for adopted children, 13229
Nonimmigrant classes:
Nonimmigrant classification change; students in educational institutions in the U.S., etc., 13223
NOTICES
Anti-Drug Abuse Act of 1986; pilot project, 13330

**Interior Department**
*See* Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

**International Trade Administration**
NOTICES
Antidumping:
Bicycle tires and tubes from Korea, 13262
Industrial phosphoric acid from—
Belgium, 13263
Pads for woodwind instrument keys from Italy, 13265
Polyvinyl chloride sheet and film from Taiwan, 13266
Sugar and syrups from Canada, 13267
Antidumping and countervailing duties:
Administrative review requests, 13268, 13269 (2 documents)
Countervailing duties:
Cotton sheeting and sateen from Peru, 13270
Cotton yarn from Peru, 13271
Textile mill products and apparel from Colombia, 13272
Export privileges, actions affecting:
Gregg, Werner Ernst, 13279

**International Trade Commission**
NOTICES
Import investigations:
Cryogenic ultramicrotome apparatus and components, 13324
Dynamic randon access memories, components, and products containing same, 13324
Heavyweight motorcycles, 13325

**Interstate Commerce Commission**
RULES
Practice and procedure:
Licensing and related services; fees, 13244

**Justice Department**
*See also* Antitrust Division; Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Pottstown, PA, 13326
Shenango Inc., 13326

**Land Management Bureau**
NOTICES
Realty actions; sales, leases, etc.:
Utah, 13322
Survey plat filings:
Wyoming, 13322
Wild horse and burro program policy statement; draft availability, 13322
Withdrawal and reservation of lands:
Colorado, 13323
(2 documents)
New Mexico; correction, 13323

**Minerals Management Service**
RULES
Outer Continental Shelf operations:
Protection of proprietary geological data and information, 13235

**National Aeronautics and Space Administration**
RULES
Grant and cooperative agreement handbook
Correction, 13375
NOTICES
Agency information collection activities under OMB review, 13330

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Music Advisory Panel, 13331
Visual Arts Advisory Panel, 13331

**National Highway Traffic Safety Administration**
NOTICES
Meetings:
Rulemaking, research, and enforcement programs, 13372

**National Institutes of Health**
NOTICES
Meetings:
National Cancer Institute, 13319
(3 documents)
National Center for Nursing Research Advisory Council, 13318
National Heart, Lung, and Blood Institute, 13319, 13320
(3 documents)
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 13320
National Institute of Dental Research, 13321
National Institute of General Medical Sciences, 13321

**National Mediation Board**
NOTICES
Meetings; Sunshine Act, 13374

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish; correction, 13375
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic spiny lobster; correction, 13257
NOTICES
Endangered and threatened species:
River dolphins; status review, 13280
Permits:
Marine mammals, 13281

**National Park Service**
NOTICES
National Register of Historic Places:
Pending nominations—
Alaska et al., 13323

**National Transportation Safety Board**
NOTICES
Meetings; Sunshine Act, 13374

**Navy Department**
RULES
Navigation, COLREGS compliance exemptions:
USS LEYTE GULF, 13237
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 13283, 13284
(3 documents)
Naval Postgraduate School, Board of Advisors to Superintendent, 13284
Navy Resale System Advisory Committee, 13284
Navy Research Advisory Committee, 13285

**Nuclear Regulatory Commission**
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 13331
Meetings; Sunshine Act, 13374
Operating licenses, amendments; no significant hazards considerations:
Bi-weekly notices, 13331
*Applications, hearings, determinations, etc.:*
Duke Power Co., 13364
Pacific Gas & Electric Co., 13366
Union Electric Co., 13367

**Personnel Management Office**
RULES
Freedom of Information Act; implementation
Uniform fee schedule and administrative guidelines, 13215
NOTICES
Agency information collection activities under OMB review, 13368
(3 documents)

**Presidential Documents**
PROCLAMATIONS
Imports and exports:
Electronics and power tool imports from Japan; duty increase (Proc. 5631), 13412
EXECUTIVE ORDERS
Committees; establishment, renewals, terminations, etc.:
Compensation of Career Federal Employees, President's Commission (EO 12592), 13417
Science and technology; government and private sector collaboration (EO 12591), 13414
ADMINISTRATIVE ORDERS
Imports and exports:
Electronics and power tool imports from Japan; duty increase (Memorandum of April 17, 1987), 13419

**Public Health Service**
*See* National Institutes of Health

**Rural Electrification Administration**
NOTICES
Environmental statements; availability, etc.:
McKenzie Electric Cooperative, Inc., 13261

**Securities and Exchange Commission**
NOTICES
Agency information collection activities under OMB review, 13368
Self-regulatory organizations; proposed rule changes:
Pacific Stock Exchange, Inc., 13369
Philadelphia Stock Exchange, Inc., 13371
*Applications, hearings, determinations, etc.:*
Public utility holding company filings, 13371

**Small Business Administration**
NOTICES
License surrenders:
First Tampa Capital Corp., 13372

**Soil Conservation Service**
NOTICES
Environmental statements; availability, etc.:
Morrison Siphon Farm Irrigation RC&D Measure, CO, 13261

**Surface Mining Reclamation and Enforcement Office**
PROPOSED RULES
Permanent program submission:
Virginia, 13252

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Federal Aviation Administration; National Highway Traffic Safety Administration

**Treasury Department**
NOTICES
Agency information collection activities under OMB review, 13372

**United States Information Agency**
NOTICES
Art objects, importation for exhibition:
Passport to the World; Greek marble stele, 13373

**Veterans Administration**
RULES
Vocational rehabilitation and education:
Foreign medical schools, 13238

---

**Separate Parts in This Issue**

**Part II**
Environmental Protection Agency, 13378

**Part III**
Presidential Documents, 13412

**Part IV**
Department of Health and Human Services, Food and Drug Administration, 13423

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**
**Proclamations:**
5631.....13412
**Executive Orders:**
12591.....13414
12592.....13417
**Administrative Orders:**
Memorandums:
April 17, 1987.....13419

**5 CFR**
294.....13215

**7 CFR**
271.....13220
278.....13220
**Proposed Rules:**
1d.....13246
713.....13248

**8 CFR**
214.....13223
341.....13229

**9 CFR**
166.....13230

**14 CFR**
39 (3 documents).....13231–13233
1260.....13375
**Proposed Rules:**
39 (2 documents).....13249, 13251

**18 CFR**
4.....13234

**30 CFR**
250.....13235
**Proposed Rules:**
946.....13252

**32 CFR**
706.....13237

**38 CFR**
21.....13238

**40 CFR**
180.....13239
300.....13378
355.....13378
**Proposed Rules:**
280.....13375

**47 CFR**
1.....13240
15.....13241
73 (5 documents).....13241–13243
97.....13243
**Proposed Rules:**
73.....13253

**49 CFR**
1002.....13244

**50 CFR**
675.....13375
**Proposed Rules:**
17.....13254
640.....13257

# Rules and Regulations

Federal Register
Vol. 52, No. 77
Wednesday, April 22, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 294**

## Implementation of the Freedom of Information Act; Uniform Fee Schedule, Guidelines, and Miscellaneous Amendments

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations to implement the requirements of the Freedom of Information Reform Act of 1986. The revisions also reflect the provisions of the "Uniform Freedom of Information Act Fee Schedule and Guidelines," which the Office of Management and Budget (OMB) published on March 27, 1987. In addition, this revision will adjust the remainder of the freedom of information regulations to improve clarity, update organizational references, and streamline processing.

**DATES:** This interim rule will become effective on April 25, 1987; Comments must be received on or before June 1, 1987.

**ADDRESS:** Comments may be sent or delivered to Michael Crum, Assistant Director for Information Management, Administration Group, Office of Personnel Management, Room 6410, 1900 E St. NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** William C. Duffy, (202) 632–7714.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 includes a requirement that each agency promulgate regulations that specify a schedule of fees for processing freedom of information requests and that establish procedures and guidelines for determining when such fees should be waived or reduced. The Act stipulates that the schedule of fees must conform to guidelines issued by the Director of OMB. OMB issued the required guidelines on March 27, 1987, in a document entitled "Uniform Freedom of Information Act Fee Schedule and Guidelines." Agencies are required to promulgate implementing regulations by April 25, 1987.

OPM is amending Part 294 of its regulations to implement these new provisions of law and the OMB guidelines. In addition, OPM is revising other portions of Part 294 to improve clarity, update organizational information, and streamline the processing of requests. The following is a section-by-section description of the amendments and revisions to the attached regulations.

- Section 294.101, which consists of introductory material, has been revised to improve clarity.
- Section 294.102, which defines terms, has been expanded for clarity and to add definitions needed because of the new requirements of law.
- Section 294.103 (Access to the Requesters Own Records) has been redesignated as § 294.105 and all subsequent sections have been renumbered accordingly. It covers requests from individuals for records filed under their own name and has been revised to improve clarity.
- A new § 294.103, containing the procedures for assigning requests and requesters to categories, has been developed.
- A new § 294.104 contains procedures for clarifying a requesters category.
- Section 294.106 (formerly § 294.104) describes OPM's *Index to Information.* OPM has eliminated the requirement to issue quarterly updates to the *Index.* This section now includes public notice, as required by 5 U.S.C. 552(a)(2)(C), that publication of the *Index* more frequently than annually would be unnecessary and impractical.
- Section 294.107 (formerly § 294.105) tells where to obtain records from OPM. The wording has been revised to improve clarity; and, the names and addresses of organizations, and the subject matter listing, have been updated. In addition, OPM has revised the procedures that its organizations must follow in forwarding requests for the action of other OPM components or other Government agencies. The section also makes it clear that OPM is not obligated to create records for the purpose of responding to a Freedom of Information Act request.
- Section 294.108 (formerly § 294.106) contains procedures for obtaining records. It has been revised to improve clarity.
- Section 294.109 (formerly § 294.107) concerns the payment, computation, and waiver of fees. For the most part, the provisions of this section are new and implement requirements of the Freedom of Information Reform Act.
- Sections 294.110, 294.111 (formerly §§ 294.108 and 294.109), and § 294.401 have been updated to reflect current organizational information and references.

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and 30-day delay in the effective date are being waived because the timetable established by the Freedom of Information Reform Act of 1986 requires the promulgation of agency implementing regulations by April 25, 1987.

Under section 8(a)(2) of Executive Order 12291, I am claiming an exemption to the OMB review provision. I have determined that allowing a 10-day OMB review before publication in the **Federal Register** would prevent OPM from meeting the April 25, 1987, statutory deadline.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

### List of Subjects in 5 CFR Part 294

Administrative practice and procedure, Freedom of information.

U.S. Office of Personnel Management
**Constance Horner,**
*Director.*

Accordingly, OPM is amending Part 294 of Title 5 of the Code of Federal Regulations as follows:

## PART 294—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for Part 294 is revised to read as follows:

**Authority:** 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502, as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99–570.

2. Subparts A and D of Part 294 are revised to read as follows:

**Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act**

Sec.
294.101 Purpose.
294.102 General definitions.
294.103 Definitions of categories and assignment of requests and requesters to categories.
294.104 Clarifying a requesters category.
294.105 Access to the requester's own records.
294.106 Index of information.
294.107 Places to obtain records.
294.108 Procedures for obtaining records.
294.109 Fees.
294.110 Appeals.
294.111 Custody of records; subpoenas.

* * * * *

**Subpart D—Cross References**

294.401 References.

### Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

#### § 294.101 Purpose.

This subpart contains the regulations of the Office of Personnel Management (OPM) implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. Except as provided by § 294.105, OPM will use the provisions of this subpart to process all requests for records.

#### § 294.102 General definitions.

All of the terms defined in the Freedom of Information Act, and the definitions included in the "Uniform Freedom of Information Act Fee Schedule and Guidelines" issued by the Office of Management and Budget apply, regardless of whether they are defined in this subpart.

"Direct costs" means the expenditures that an agency actually incurs in searching for, duplicating, and reviewing documents to respond to an FOIA request. Overhead expenses (such as the cost of space, and heating or lighting the facility in which the records are stored), are not included in direct costs.

"Disclose or disclosure" means making records available, on request, for examination and copying, or furnishing a copy of records.

"Duplication" means the process of making a copy of a document necessary to respond to an FOIA request. Among the forms that such copies can take are, paper, microform, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk).

"Records," "information," "document," and "material" have the same meaning as the term "agency records" in section 552 of title 5, United States Code.

"Review" means the process of initially examining documents located in reponse to a request to determine whether any portion of any document located, may be withheld. It also includes processing documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

"Search" means the time spent looking for material that is responsive to a request, including page-by-page, or line-by-line identification of material within documents. The definition assumes that searches will be carried out in the most efficient and least expensive manner so as to minimize the cost for both the agency and the requester.

#### § 294.103 Definitions of categories and assignment of requests and requesters to categories.

OPM will apply the definitions and procedures contained in this section to assign requesters to categories. The four categories established by 5 U.S.C. 552(a) are requests for commercial use, requests for non-commercial use made by educational or non-commercial scientific institutions, requests for non-commercial use made by representatives of the news media, and all others.

(a) *Request for commercial use.* A "commercial use request" is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a request properly belongs in this category, OPM will look first to the intended use of the documents being requested.

(b) *Request for non-commercial use made by an educational or non-commercial scientific institution.* OPM will include requesters in one of the two categories described in paragraphs (b)(1) and (2) of this section when the request is being made as authorized by, and under the auspices of, a qualifying institution; and the records are sought, not for a commercial use, but in furtherance of scholarly or scientific research.

(1) "Educational institution" refers to any public or private, preschool, elementary, or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program or programs of scholarly or scientific research.

(2) A "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a) of this section, and which is operated solely to conduct scientific or scholarly research, the results of which are not intended to promote any particular product or industry.

(c) *Request from a representative of the news media.* "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish, broadcast, or otherwise disseminate news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals who make their products available for purchase or subscription by the general public. Free-lance journalists may be regarded as representatives of the news media, if they demonstrate a solid basis for expecting publication, or some other form of dissemination, through a particular organization even though they are not actually employed by it. OPM will assign news media officials to this category only when a request is not for commerical use. If a person meets the other qualifications for inclusion, OPM will not apply the term "commercial use" to his or her request for records in support of a news dissemination function.

(d) *Requests from others.* The category "all others," consists of any requesters not covered by paragraph (a), (b), or (c). However, as provided by § 294.105, OPM will use its Privacy Act regulations, rather than this subpart, when individuals ask for records about themselves that may be filed in OPM systems of records.

**§ 294.104 Clarifying a requesters category.**

(a) *Seeking clarification of a requester's category.* OPM may seek additional clarification before assigning a person to a specific category if—

(1) There is reasonable cause to doubt the requesters intended use of records; or

(2) The intended use is not clear from the request itself; or

(3) There is any other reasonable doubt about qualifications that may affect the fees applicable or the services rendered under § 294.109.

(b) *Prompt notification to requester.* When OPM seeks clarification as provided by paragraph (a) of this section, it will provide prompt notification either by telephone or in writing of the information or materials needed.

(c) *Effect of seeking clarification on time limits for responding.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request for records as being received, until the official who is assigned responsibility for making a decision on releasing the records has—

(1) Received any additional clarification sought under paragraphs (a) and (b) of this section; and

(2) Determined that the clarifying information is sufficient to correctly place the requester in one of the categories prescribed in this section.

**§ 294.105 Access to the requester's own records.**

When the subject of a record, or a duly authorized representative of the subject, requests his or her own records from a Privacy Act system of records, as defined by 5 U.S.C. 552a(a)(5), and the record is maintained so that it can be retrieved by the subject's name or other personal identifier, OPM will process the request under the Privacy Act procedures in Part 297 of this chapter.

**§ 294.106 Index of information.**

(a) OPM publishes OPM Document No. 1, *Index to Information* annually and issues supplements during the year when there is a sufficient volume of new or revised material. This index contains material published and offered for sale or available for public inspection and copying.

(b) A copy of this index is available at no cost from the—

Internal Distribution Submit, Office of Personnel Management, Room B443, 1900 E Street, NW., Washington, DC 20415

(c) OPM indexes material for the convenience of the public. Indexing does not constitute a determination that all of the material listed is within the category that is required to be indexed by 5 U.S.C. 552(a)(2). Most of OPM's publications may be found in OPM's Library in Room 5H27 of the above address.

(d) As provided by 5 U.S.C. 552(a)(2), OPM has determined that it is unnecessary and impractical to publish the *Index to Information* more frequently than annually because of the small number of revisions that occur.

**§ 294.107 Places to obtain records.**

(a) Address requests for OMP records to the officials listed in paragraph (b), (c), or (d) of this section.

(b) The following is a list of key Washington, DC officials of OPM and their principal areas of responsibility. Address requests for records to the appropriate official using the address below and the official's title.

Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

| Send to— | For subject-matter about— |
|---|---|
| Associate Director for Administration. | Administrative services; information management, financial management; personnel. |
| Associate Director for Retirement and Insurance. | Retirement; life and health insurance. |
| Associate Director for Personnel Systems and Oversight. | Personnel management in agencies; pay; position classification; wage grade jobs; performance management; employee and labor relations. |
| Assistant Director for Workforce Information. | Government-wide personnel statistics; official personnel and employee medical folders. |
| Associate Director for Training and Investigations. | Nationwide training. |
| Assistant Director for Federal Investigations. | Background investigations and related records on individuals. |
| Associate Director for Career Entry. | Nationwide examining and testing for employment, promotions, administrative law judges, affirmative employment programs for minorities, women, veterans, and the handicapped. |
| Director, Washington Area Service Center. | Examining, testing, and training operations in Washington, DC. |
| Director, Office of Government Ethics. | Ethics and conflict of interest. |
| Director, Office of Executive Personnel. | Senior Executive Service. |

(c) Direct requests for records on subjects not specifically referred to in this section or in the *Index,* to—

Information Systems Plans and Policies Division, Office of Personnel Management, Room 6410, 1900 E Street, NW., Washington, DC 20415

(d) The following is a list of OPM regional offices. Address requests for regional records to the Regional Director, Office of Personnel Management in the appropriate region:

Boston Region—Boston Federal Office Building, 10 Causeway Street, Boston, MA 02222–1031

New York Region—Jacob K. Javits Building, 26 Federal Plaza, New York, NY 10278

Philadelphia Region—William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106

Atlanta Region—Richard B. Russell Federal Building, Suite 904, 75 Spring Street, SW., Atlanta, GA 30303

Chicago Region—John C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn Street, Chicago, IL 60604

Dallas Region—1100 Commerce Street, Dallas, TX 75242

St. Louis Region—300 Old Post Office Building, 815 Olive Street, St. Louis, MO 63101

Denver Region—12345 West Alameda Parkway, P.O. Box 25167 Denver, CO 80225

San Francisco Region—211 Main Street, 7th Floor, San Francisco, CA 94105

(e) *When an organization does not have records in its custody.* When an OPM organization receives a Freedom of Information Act request for OPM records that it does not have in its possession, it will normally either—

(1) Retrieve the records from the organization that has possession of them; or

(2) Promptly forward the request to the appropriate organization. If a person has asked to be kept apprised of anything that will delay the official receipt of a request, OPM will provide notice of this forwarding action. Otherwise, OPM may, at its option, provide such notice.

(f) *Applying the time limits.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request to be received until it arrives in the OPM organization that has responsibility for the records sought.

(g) *Records from other Government agencies.* When a person seeks records that originated in another Government agency, OPM may refer the request to the other agency for response. Ordinarily, OPM will provide notice of this type of referral.

(h) *Creating records.* If a person seeks information from OPM in a format that does not currently exist, OPM will not ordinarily compile the information for the purpose of creating a record to respond to the request. OPM will advise the individual that it does not have records in the format sought. If other existing records would reasonably respond to the request or portions of it, OPM may provide these.

**§ 294.108 Procedures for obtaining records.**

(a) *Mailing or delivering a request.* Any person may ask for records under section 552 of title 5, United States Code, by directing a letter to one of the organizations listed in § 294.107, or by delivering a request in person at the addresses listed in that section during business hours on a regular business day.

(b) *Proper marking.* Each request for records should have a clear and prominent notation on the first page, such as "Freedom of Information Act Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with "FOIA Request" or "Freedom of Information Act Request."

(c) *Contents of request letter.* A request must describe the records sought in sufficient detail to enable OPM personnel to locate the records with a reasonable amount of effort.

(1) OPM will regard a request for a specific category of records as fulfilling the requirements of this paragraph, if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive to OPM operations.

(2) Whenever possible, a request should include specific information about each record sought, such as the date, number, title or name, author, recipient, and subject matter of the record.

(3) If an OPM organization determines that a request does not reasonably describe the records sought, it will either provide notice of any additional information needed or otherwise state why the request is insufficient. OPM will also offer the record seeker an opportunity to confer, with the objective of reformulating the request so that it meets the requirements of this section.

(d) *Medical records.* OPM or another Government agency may disclose the medical records of an applicant, employee, or annuitant to the subject of the record, or to a representative designated in writing. However, medical records may contain information about an individual's mental or physical condition that a prudent physician would hesitate to give to the individual. Under such circumstances, OPM may disclose the records, including the exact nature and probable outcome of the condition, only to a licensed physician designated in writing for that purpose by the individual or his or her designated representative.

(e) *Publications.* If the subject matter of a request includes material published and offered for sale (e.g., by the Superintendent of Documents), OPM will explain where a person may review and/or purchase the publications.

(f) *Responses within 10 working days.* Except in unusual circumstances (as defined in 5 U.S.C. 522(a)(6)(B)), OPM will determine whether to disclose or deny records within 10-working days after receipt of the request (excluding weekends and holidays) and will provide notice immediately of its determination and the fees required, if any, as prescribed by § 294.109.

**§ 294.109 Fees.**

(a) *Applicability of fees.* OPM entities will furnish, without charge, reasonable quantities of materials that they have available for free distribution to the public. Subject to payment of fees as specified in this section, OPM may furnish other material. These fees are intended to recoup the full allowable direct costs of providing services.

(b) *Payment of fees.* Individuals may pay fees by check or money order, payable to the Office of Personnel Management.

(1) OPM will not assess fees for individual requests if the total charge would be less than $25, except as provided in paragraph (b)(5) of this section.

(2) If a request may reasonably result in a fee assessment of more than $25, OPM will not release records unless the requester agrees to pay the anticipated charges.

(3) If the request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, OPM will promptly provide notification of the estimated fees. This notice will offer an opportunity to confer with OPM staff to reformulate the request to meet the requester's needs at a lower cost. Upon agreement to pay the required fees, OPM will further process the request.

(4) As described in § 294.107, OPM ordinarily responds to Freedom of Information Act requests in a decentralized manner. Because of this, OPM may at times refer a single request to two or more OPM entities to make separate direct responses. In such cases, each responding entity may assess fees as provided by this section, but only for direct costs associated with any response the component has prepared.

(5) OPM may aggregate requests and charge fees accordingly, when there is a reasonable belief that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests to evade the assessment of fees.

(i) If multiple requests of this type occur within a 30-day period, OPM may provide notice that it is aggregating the requests and that it will apply the fee provisions of this section, including any required agreement to pay fees and any advance payment.

(ii) Before aggregating requests of this type made over a period longer than 30 days, OPM will assure that it has a solid basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees.

(iii) OPM will not aggregate multiple requests on unrelated subjects from one person.

(6) If fees for document search are authorized as provided in paragraph (f) of this section, OPM may assess charges for an employee's (or employees') time spent searching for documents and other direct costs of a search, even if a search fails to locate records or if records located are determined to be exempt from disclosure.

(7) Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(c) *Payment of fees in advance.* If OPM estimates or determines that fees are likely to exceed $250, OPM may require the payment of applicable fees in advance.

(1) If an OPM official, who is authorized to make a decision on a particular request, determines that the requester has a history of prompt payment of FOIA fees, OPM will provide notice of the likely cost and obtain satisfactory assurances of full payment.

(2) When a person, or an organization that a person represents, has previously failed to pay any fee charged in a timely manner, OPM will require full payment of all fees in advance. In this section, an untimely payment is considered to be a payment that is not made within 30 days of the billing date.

(3) OPM will not begin to process any new request for records, if a person, or an organization that a person represents, has not paid previous fees, until that individual has paid the full amount owed plus any applicable interest and made a full advance payment for the new request.

(4) If a request, which requires the advance payment of fees under the criteria specified in this section, is not accompanied by the required payment, OPM will promptly notify the requester that he or she must pay the required fee within 30 days and that OPM will not

further process the request until it receives payment.

(5) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(6) To encourage the repayment of debts incurred under this subpart, OPM may use the procedures authorized by Pub. L. 97-365, the Debt Collection Act of 1982. This may include disclosure to consumer reporting agencies and the use of collection agencies.

(d) *Waiver of fees.* OPM will furnish documents under this subpart without any charge, or at a reduced charge, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and is not primarily in the commercial interest of the requester.

(1) Anyone who asks for waiver of fees under this section, must explain why he or she is entitled to a waiver. The explanation must be in sufficient detail to allow OPM to make an informed decision on the waiver request. A statement that essentially quotes section 552(a)(4)(A)(iii) of the Freedom of Information Act or the provisions of this section, does not satisfy this requirement. An OPM official may deny a waiver of fees without further consideration if the required explanation is not provided.

(2) A requester may appeal the denial of a waiver request as provided by § 294.110.

(e) *Rates used to compute fees.* The following rates form the basis for assessing reasonable, standard charges for document search, duplication, and review as required by 5 U.S.C 552(a)(4). The listing of rates below should be used in conjunction with the fee components listed in paragraph (f) of this section, the first-100-pages of paper copies exception in paragraph (g) of this section, and the first-2-hours manual records search exception in paragraph (h) of this section.

Employee time...Salary rate plus 16% to cover benefits.
Photocopies (up to 8½" × 14").....$0.13 a page.
Printed materials, per 25 pages or fraction thereof.....$0.25.
Computer time.....Actual direct cost.
Supplies and other material...Actual direct cost.
Other costs not identified above...Actual direct cost.

(f) *Fee components by category of user.* For the purpose of assessing fees under this section, requests may have three cost components. These are the cost of document search, the cost of duplication, and the cost of review. When computing the fee applicable to a request, OPM will apply the rates in paragraph (e) of this section, to the cost components that apply to the requesters category. Cost components apply to categories of requesters as follows:

(1) A commercial use requester—Pays actual direct costs for document search, duplication, and review.

(2) A requester from an educational and non-commercial scientific institution and a representative of the news media—Pays actual direct costs for document duplication when records are not sought for commercial use. (Requesters in this category do not pay for search and review.)

(3) All other requesters—Pay actual direct costs for document search and duplication. (Requesters in this category do not pay for review.)

(g) *First 100 pages of paper copies.* There will be no charge to categories of requesters included in paragraphs (f) (2) and (3) of this section for the first 100 pages of paper copies, size 8½" by 11" of 11" by 14" or for a reasonable substitute for this number of copies. An example of a reasonable substitute is a microfiche containing the equivalent of 100 pages.

(h) *First 2 hours of manual records search.* OPM will not charge requesters in the "all other" category for the first 2 hours of manual records search. If a person asks for records from a computerized data base, OPM will use the following formula, promulgated by the Office of Management and Budget, to provide the equivalent, in computer records search time, of 2 hours of manual records search.

(1) OPM will add the hourly cost of operating the central processing unit that contains the record information to the operator's hourly salary plus 16 percent.

(2) When the cost of a search (including the operator's time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search (i.e., the operator), OPM will begin assessing charges for computer search.

**§ 294.110 Appeals.**

(a) When an OPM official denies records or a waiver of fees under the Freedom of Information Act, the requester may appeal to the—

Office of the General Counsel, Office of Personnel Management, Washington, DC 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by OPM's Office of the General Counsel to the—

Deputy Director, Office of Personnel Management, Washington, DC 20415

(c) If an official of another agency denies a Freedom of Information Act request for records in one of OPM's Government-wide systems of records, the requester should consult that agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's Office of the General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement explaining why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information or a denial of a fee waiver is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place of business, or in which the agency records are situated, or in the District of Columbia.

**§ 294.111 Custody of records; subpoenas.**

(a) The Chief, Information Systems Plans and Policies Division, Administration Group, OPM, has official custody of OPM records. A subpoena or other judicial order for an official record from OPM should be served on the—

Chief, Information Systems Plans and Policies Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

(b) See § 297.505 of this chapter for the steps other officials should take on receipt of a subpoena or other judicial order for an official personnel record.

* * * * *

## Subpart D—Cross References

**§ 294.401 References.**

The table below provides assistance in locating other OPM regulations in Title 5 of the Code of Federal Regulations that have provisions on the disclosure of records:

| Type of information | Location |
|---|---|
| Classification appeal records | 511.616 |
| Classified information | 175.101 |
| Employee performance folders | 293.311 |
| Examination and related subjects records | 300.201 |
| Grade and pay retention records | 536.307 |
| Investigative records | 736.105 |
| Job grading reviews and appeals records | 532.707 |
| Leave records | 297 Subpart E. |
| Medical information | 297.204 & 297 Subpart E |

| Type of information | Location |
|---|---|
| Official Personnel Folders | 293.311 |
| Privacy and personnel records | 297 |
| Retirement | 831.106 |

[FR Doc. 87-9027 Filed 4-21-87; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 271 and 278

[Amdt. No. 280]

### Food Stamp Program; Retailer/ Wholesaler Amendments

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the three provisions of the Food Security Act of 1985 (Pub. L. 99–198, 99 Stat. 1354, et seq.) which revised sections 3(k), 9(c) and 12(e) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 *et seq.* ). The first provision amends the definition of retail food store to require that sales volume at the time of application be determined by visual inspection, sales records, purchase records, or other inventory or accounting methods which are customary or reasonable in the retail food industry. The second provision affects the sellers of retail food stores and wholesale food concerns who sell their firms during a disqualification period by making the seller subject to continued disqualification and to a civil money penalty which the Secretary may request the Attorney General collect through civil litigation. A bona fide purchaser or transferee is not subject to the civil money penalty and is not required to furnish a bond to be authorized to accept food stamps. The third provision of the Food Security Act contained in this rule concerns the release of information which firms are required to submit to the Food and Nutrition Service (FNS) regarding their participation in the Food Stamp Program (FSP). Under this provision, such information may be released by FNS to State agencies administering the Special Supplemental Food Program for Women, Infants and Children (WIC) so as to improve WIC Program compliance by participating retail stores. This rule also requires withdrawal from the Food Stamp Program of firms which are removed from the WIC Program as a result of violations of that program's regulations.

**EFFECTIVE DATE:** The provisions of this rule contained in § 278.1(o) shall be effective May 22, 1987. All other provisions of this rule are effective retroactively to April 1, 1987 because Pub. L. 99–198 specifically requires this effective date.

**FOR FURTHER INFORMATION CONTACT:** Emory Rice, Supervisor, Retailer Participation and Program Litigation Section, at 3101 Park Center Drive, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria Virginia 22302. (703) 756–3427.

**SUPPLEMENTARY INFORMATION:**

#### Classification

*Executive Order 12291*

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The rule will affect the economy by less than $100 million a year. The rule will not raise costs or prices for consumers, industries, government agencies or geographic regions. There will be no adverse effects upon competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the rule as "not major".

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.1551. For the reasons set forth in the Final rule, related Notice(s) to 7 CFR Part 3015 subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovermental consultation with State and local officials.

*Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96–354. S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action, while affecting some retail food firms, will not have a significant impact on a substantial number of small entities. This rule may have a significant economic impact on some small entities affected by the rule. However, only a small number of firms will be affected.

*Paperwork Reduction Act*

This regulation does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act.

*Justification for Publishing a Final Rule Effective Less Than Thirty Days From Publication.*

Pub. L. 99–198, Section *1583,* mandates that certain of the provisions of this final action be effective April 1, 1987. Therefore, implementation of the provisions concerning determination of food sales volume, procedures when a disqualified store is sold and release of information on firms to WIC State agencies must occur no later than April 1, 1987. Thus, publication of the prescribed provisions not less than 30 days prior to the effective date is not required under 5 U.S.C. 553(d) because implementation of those provisions of the rule by April 1, 1987 is mandated by law.

#### Background

On December 3, 1986, the Department published in the **Federal Register** a proposed rule to implement three provisions of the Food Security Act of 1985 (Pub. L. 99–198, 99 Stat. 1354 *et seq.*) which revised sections 3(k), 9(c) and 12(e) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 *et seq.*). The proposed rule also required withdrawal from the Food Stamp Program of firms which are removed from the WIC Program as a result of violations of that program's regulations. A 60 day comment period was provided.

A total of 53 comment letters were received as of February 17, 1987. Of these comment letters, 44 express support for the WIC provisions and 2 support the entire proposed rule as written.

*Determination of Food Sales Volume at Time of Application (§ 271.2)*

One commenter expressed support for the change in the definition of retail food store to include the statement that sales volume is to be determined by visual inspection, sales records, purchase records, or other inventory or accounting methods that are customary or reasonable in the retail food industry. The commenter did not seem to realize that this provision reflects existing FNS practice. The Department has decided no change in the provision is required.

*Procedures When a Disqualified Store is Sold (§ 278.6(f))*

We received one general comment from a retailer association to the effect

that store owners should not be held responsible for the actions of their clerks. This comment does not relate to the purpose of this provision which is to prevent circumvention of sanctions by transferring the store. The Department has decided that no change to this provision is necessary.

*Withdrawal of Firms for WIC Program Violations (§ 278.1(o))*

The December 3, 1986, publication proposed withdrawal from the Food Stamp Program of firms which are removed from the WIC Program as a result of violations of that program's regulations.

One commenter suggested that firms whose contracts with the WIC Program are not renewed should be withdrawn from the Food Stamp Program. WIC Program vendors' contracts may not be renewed for a variety of reasons, including both violations of program regulations and administrative reasons. Firms are not afforded the opportunity to appeal State agency decisions not to renew WIC Program contracts. The Department does not believe that failure to renew a WIC Program contract is an acceptable reason for withdrawing a store's Food Stamp Program authorization since there may be no relationship between nonrenewal of the WIC contract and a firm's suitability as a food stamp retailer. Thus, the Department has decided against specifically requiring in this rule that firms be removed from the Food Stamp Program when their WIC Program contracts are not renewed.

The December 3, 1986, proposal provided that FNS *shall* withdraw the authorization of a firm which has been removed from the WIC Program for violations. One commenter suggested that the regulatory language should be changed to provide that FNS *may* withdraw such a store so that FNS could consider lesser sanctions such as a formal warning or FNS investigation. The Department believes that a store which has been determined, with due process, to have violated the WIC Program regulations has clearly demonstrated a lack of business reputation and integrity sufficient to warrant its removal from the Food Stamp Program. Thus, the Department has retained in this final rule the provision that FNS *shall* withdraw such firms.

The December 3, 1986, proposal specified that removal from the Food Stamp Program could be based on any act which constitutes a violation of the WIC Program's regulations and which is shown to constitute a misdemeanor or felony violation of law or for other specified program violations. One commenter pointed out that in some States WIC vendors may be disqualified from the WIC Program on the basis of a point system. Under this system stores may be disqualified for a mixture of violations, not all of which are the types of violations specified in the December 3 proposal. The Department believes that a firm should be withdrawn from the Food Stamp Program if any of the WIC Program violations which were the basis for the WIC disqualification were among those specified in this rule. The Department, therefore, has added language to § 278.1(o) to make it clear that a firm will be withdrawn from the Food Stamp Program if it is disqualified from the WIC Program and the WIC disqualification is based in whole or in part on the WIC violations specified in § 278.1(o) of this rule.

Another commenter stated that the provision which withdraws firms from the Food Stamp Program for WIC Program violations will result in an increase in appeals of WIC Program disqualifications. The Department recognizes that appeals of WIC disqualifications may increase as a result of this rule. In many cases, the potential loss of revenue for stores is much greater from withdrawal from the Food Stamp Program than from disqualification from the WIC Program. However, the Department believes that the possible increase in appeals is counterbalanced by the deterrent effect on violations that will be achieved by this rule. In addition, the Department believes that it is important for FNS to maintain this provision in the interest of cross-compliance by retail firms participating in both of these major Federal feeding programs.

One commenter expressed concern that the time required for WIC Program officials to notify Food Stamp Program (FSP) officials of WIC disqualifications and the time required to provide stores with notice of FSP disqualification and FSP appeal rights would reduce the time the store is withdrawn from the FSP. Both the WIC notifications to FNS and the FSP withdrawal notices to stores will occur prior to the effective date of the WIC disqualification. Thus, the times required for these actions will not effect the length of the food stamp withdrawal. The time required for a store's administrative review of the food stamp withdrawal may delay the effective date of a sustained withdrawal somewhat. However, the review by the Food Stamp Review Officer is limited to confirming that the store has been disqualified and that the disqualification was based, in whole or in part, on one or more of the violations specified in this rule. The Department does not believe that this will be a long process and, thus, believes that any impact on the length of the food stamp withdrawal will be minimal.

Finally, the Department wishes to clarify § 278.1(o) of this rule which pertains to the withdrawal from the Food Stamp Program of firms which have been disqualified from the WIC Program. The December 3, 1986 proposal provided, at § 278.1(o)(7), that FNS shall not withdraw a firm's Food Stamp Program authorization unless the firm had been provided notice of the possible withdrawal prior to the time set for review of the WIC removal. The intent of this provision is to insure that the firm is notified of the possible withdrawal from the Food Stamp Program prior to expiration of the time period prescribed for *requesting* review of the WIC action. Thus, in order to protect due process as suggested by counsel, the Department has added language to § 278.1(o) to clarify the intent of this provision. In addition, the paragraphs in Section 278.1(o) are being renumbered to correct a technical oversight in the December 3, 1986 publication.

*Release of Information on Firms to WIC State Agencies (§ 278.1(q))*

The December 3, 1986, publication proposed that information which a firm is required to submit to FNS under section 9(c) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2018(c)) may be released to WIC State agencies. This provision is based on an amendment to the Food Stamp Act contained in section 1521 of the Food Security Act of 1985. Previously FNS had been prohibited by law from releasing information submitted by firms to WIC State agencies. Only two comments were received on this provision. These commenters suggested that FNS should release to WIC State agencies information about firms other than that submitted to FNS by the firms. Specifically, the commenters were interested in receiving information on which firms have been determined to possibly be violating Food Stamp Program rules and information on Food Stamp Program investigations. FNS has always had the authority to release such information to WIC State agencies provided protected information was not included. In fact, in many areas information on investigations is being released in various forms to WIC State agencies. Since FNS has the authority to release this information and does currently provide this information to WIC State agencies, the Department does not believe it is necessary to

provide for this authority in the rule. Thus, the provision for release of information to WIC State agencies is being adopted in this final rule as proposed.

**Implementation**

The provisions of this final rule contained in § 278.1(o) are effective May 22, 1987. All other provisions of this rule will become effective April 1, 1987.

**List of Subjects**

*7 CFR Part 271*

Administrative practice and procedures, Food stamps, Grant programs-Social programs.

*7 CFR Part 278*

Administrative practice and procedures, Banks, Banking claims, Food stamps, Groceries-retail, Groceries, General line-wholesaler penalties.

Therefore, 7 CFR Parts 271 and 278 are amended as follows:

1. The authority citation for Parts 271 and 278 continues to read:

Authority: 7 U.S.C. 2011–2029.

**PART 271—GENERAL INFORMATION AND DEFINITIONS**

2. In § 271.2 Definitions, the definition of "Retail food store" is amended by adding after the words "food sales volume" in paragraph (1) the following, "as determined by visual inspection, sales records, purchase records, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry".

**PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS**

3. In § 278.1:

a. Paragraph (b)(4)(ii) is amended by adding a new sentence after the last sentence.

b. Paragraphs (o), (p), (q), and (r) are redesignated as paragraphs (p), (q), (r), and (s) respectively and a new paragraph (o) is added. Newly designated paragraph (r) is revised.

The additions and the revision read as follows:

**§ 278.1 Approval of retail food stores and wholesale food concerns.**

* * * * *

(b) * * *

(4) * * *

(ii) * * * A buyer or transferee shall not, as a result of the transfer or purchase of a disqualified firm, be required to furnish a bond prior to authorization.

* * * * *

(o) Removal from the Special Supplemental Food Program, for Women, Infants, and Children (WIC)

(1) FNS shall withdraw the Food Stamp Program authorization of any firm which is disqualified from the WIC Program based in whole or in part on any act which constitutes a violation of that program's regulation and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(i) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time.

(ii) Exchanging cash or credit for WIC food instruments;

(iii) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(iv) Accepting WIC food instruments from unauthorized persons;

(v) Exchanging non-food items for a WIC food instrument;

(vi) Charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price; or

(vii) Charging for food items not received by the WIC customer or for foods provided in excess of those listed on the food instrument.

(2) FNS shall not withdraw the Food Stamp Program authorization of a firm which is disqualified from the WIC Program unless prior to the time prescribed for securing review of WIC disqualification action, the firm was provided notice that it could be withdrawn from the Food Stamp Program based on the WIC violation. Once a firm has served the period of removal from WIC specified by the State agency, the firm may reapply for Food Stamp Program authorization and be approved if otherwise eligible.

* * * * *

(r) Safeguarding privacy. The contents of applications or other information furnished by firms, including information on their gross sales and food sales volumes and their redemptions of coupons, may not be used or disclosed to anyone except for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations, except that such information may be disclosed to and used by State agencies that administer the Special Supplemental Food Program for Women, Infants and Children (WIC). Such purposes shall not exclude the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law.

* * * * *

4. In § 278.6, the text of paragraph (f) is redesignated as paragraph (f)(1). New paragraphs (f)(2), (f)(3), and (f)(4) are added to read as follows:

**§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.**

* * * * *

(f) Criteria for civil money penalty. * * *

(2) In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store or wholesale food concern shall be subjected to and liable for a civil money penalty in an amount to reflect that portion of the disqualification period that has not expired, to be calculated using the method found at § 278.6(g). If the retail food store or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this subsection.

(3) At any time after a civil money penalty imposed under paragraph (f) (2) of this section has become final under the provisions of Part 279, the Food and Nutrition Service may request the Attorney General institute a civil action to collect the penalty from the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business.

(4) A bona fide transferee of a retail food store shall not be required to pay a civil money penalty imposed on the firm prior to its transfer. A buyer or transferee (other than a bona fide buyer or transferee) may not be authorized to accept or redeem coupons and may not be authorized to accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

* * * * *

5. Section 278.9 is amended by adding a new paragraph (f) as follows:

**§ 278.9 Implementation of amendments relating to participation of retail food stores, wholesale food concerns and insured financial institutions.**

* * * * *

(f) *Amendment No. 280.* The provisions for Part 271 and §§ 278.1(r) and 278.6(f) of No. 280 are effective retroactively to April 1, 1987. The provision for § 278.1(o) is effective May 22, 1987.

Dated: April 16, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-8991 Filed 4-21-87; 8:45 am]

BILLING CODE 3410-30-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 214

[INS Number 1015-87]

### Nonimmigrant Classes; F-1 Academic Students

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Immigration and Naturalization Service is revising the regulations regarding F-1 academic students to streamline administrative procedures and eliminate burdensome paperwork while maintaining control over students by more effective use of institutional sponsorship of the students by the schools. This rule is a refinement of a major revision to the student regulatory package published on April 5, 1983 at 48 FR 14575.

**EFFECTIVE DATE:** May 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3320.

**SUPPLEMENTARY INFORMATION:** On August 4, 1986, the Service published proposed regulations relating to F-1 nonimmigrant students and schools approved for their attendance in the **Federal Register** at 51 FR 27867. The sixty-day comment period ended October 3, 1986.

The regulations proposed to change the definition of duration of status, to change the procedures for a nonimmigrant student to transfer between schools, to streamline the process for a nonimmigrant student to obtain a first period of practical training upon graduation, and to require the Service to deny any change of status request for change of nonimmigrant status from student to temporary worker (H classification) when the student has engaged in practical training after completion of studies.

Seventy-seven individuals and organizations submitted written comments on the proposed regulations. Fifty commenters stated that they were in general agreement with the rule, while nine opposed it. Eighteen commenters did not express a general opinion, commenting only on a specific portion of the proposal. Many commenters made observations on various specific parts of the proposal. The Service has carefully analyzed all comments and has identified six major areas of concern, as well as a number of general and technical points. The major areas of concern are:

(1) Limitations on and exceptions to the term "duration of status",

(2) Requirements for seeking school transfer,

(3) Requirements for granting practical training,

(4) Special requirements for practical training for students engaged in work-study programs,

(5) Changes to the recordkeeping requirements, and

(6) Bar of change to H nonimmigrant status.

### Duration of Status

Under current regulations, F-1 nonimmigrant students are considered to be in status while pursuing a full course of study in only one educational program (e.g., elementary school, high school, bachelor's degree or master's degree) and any period or periods of authorized practical training, plus thirty days.

In the proposed regulations, duration of status was defined to mean the period during which a student is pursuing a full course of studies in any educational program, and any period or periods of authorized practical training, plus sixty days. The definition was limited, in that a student who has been in status for eight consecutive academic years would be required to file for extension of stay. There were also three exceptions to the duration of status definition in the proposed rule. A student who goes out of status because he/she meets one of these exceptions would be required to apply for reinstatement in order to be put back into duration status. The proposal also indicated conditions under which a student could engage in less than a full course of study and still be considered in status.

Thirty-six individuals commented on various aspects of the definition, limitations and exceptions to duration of status. All commenters were in favor of the extension of the duration of status to all levels of study. Seventeen commenters indicated opposition to use of the phase "limited to" when describing reasons for which a person could be considered in status while engaging in less than a full course of study, indicating that the reasons given were not inclusive enough, and recommending that the phrase "such as" or "for example" be substituted. They also objected to the Service's allowing a person to be less than full-time student during only one term of a program of studies, citing the parts of the proposed rule dealing with exceptions to duration of status as sufficient to correct abuse. Three commenters also objected to the Service's indicating that such a student would be in status during an illness but for no other reason. They recommended that there may be other legitimate medical reasons (such as pregnancy or a legitimate family emergency) during which a student should still be considered in status. Three commenters also objected to the Service's stating that a foreign student may take less than a full course of studies when "directed" to do so by a designated official, indicating that designated officials do not direct, but merely advise, a course of action.

In this final rule, the Service has revised the language to indicate that a designated official may advise a student, and deleted the provision that a person may be less than a full-time student only once during a program of studies, agreeing that other parts of the regulation will control abuse of this provision. The final rule also indicates that a student will be considered in status for medical conditions other than illness. The Service feels that to extend this provision even further to individuals who have a family emergency would leave the provision open to too wide an interpretation and would lead to inconsistency, and therefore rejected that recommendation.

Similarly, the final rule limits the valid academic reasons for which a student may be considered to be in status. If these reasons were only considered examples, there would be no definitive guidelines for designated school officials and the reasons would be subject to individual interpretation. In addition, the Service would have no method for systematically reviewing the interpretations used by designated school officials.

Comments also recommended that the limitations and exceptions to the duration of status definition be dropped

entirely. Several commenters indicated that the exceptions actually caused the definition to become a "date certain" provision, a provision that was contained in the regulation in the past and has been discarded as too cumbersome to administer. Concern was expressed that the Service was intruding into what should be an academic decision between the school and its individual students. It was also suggested that the penalty for exceeding the maximum time limits expressed in these exceptions (being declared out of status and having to request reinstatement), was too harsh for the violation, and would place an excessive workload on both the schools and the Service to administer.

The exceptions to the duration of status provisions were placed in the proposed regulation to insure that the Service could review the status of a student who was taking a significant period of time to complete a specific educational program, above and beyond what the school had estimated would be the expected completion date when the student began the program. The Service feels that the time elements are generous and that the provisions will affect a very small percentage of individuals, as the vast majority of foreign students progress toward their educational objectives in a satisfactory manner, well within the time limits set by the exceptions. The Service does, however, accept the recommendation that the review be conducted by way of application for extension of stay, rather than reinstatement.

Accordingly, in the final rule, an individual will be required to submit an application for extension of stay to the Service if, based on the date on the Form I–20 A–B issued at the beginning of the program, the individual exceeds the applicable maximum time period expressed in paragraph 7(b). It should also be noted that the Service has added language to clarify that this date changes as a student progresses to each educational level, but the date does not change while a student remains at the same educational level. Thus, a student admitted in a bachelor's degree program which the school indicates he will complete in 4½ years needs to request an extension of stay if he is going to remain in any bachelor's degree program more than six years. If he/she transfers between schools, still seeking a bachelor's degree, or changes majors, still seeking a bachelor's degree, the date on which he/she needs to request an extension does not change. If the same student completes that bachelor's degree program in 4½ years, and then transfers (either at the same school or to a different school) to a master's degree program which the school indicates he/she will complete in 2½ years, the student would never have to complete an extension of stay application unless he/she needed to continue the master's degree program more than 3½ years beyond the date the master's program began. A student may continue to attend school while an application for extension is pending. The student must establish there are valid educational reasons for not completing the program in the allotted time before the extension will be granted.

The final rule requires the Service to come in contact with only those students who are taking a significantly longer period of time to complete a program than what the school originally anticipated, and to review the validity of the reasons for that delay, or to come in contact with students who have been in the United States for eight consecutive years.

**Transfer Procedures**

Sixteen individuals and organizations indicated a desire to include a mechanism to inform the school from which a student was transferring that the transfer had been completed. They all indicated that the schools had a responsibility for the student until the transfer had been completed. In addition, sixteen commenters discussed what was perceived to be a new requirement for the designated school official to insure that a student was taking a full course of study at the school the student was last authorized to attend before effecting a transfer. Two commenters indicated the fifteen-day time period for a school official to forward documents to the Service on transfer was too short. All commenters favored the decision in the proposed regulation to streamline and simplify the transfer procedures.

The final rule requires the designated school official at the school to which the student is transferring to provide a copy of the completed transfer of Form I–2.0 A–B to the school from which the student is transferrring. The Service recognizes that the procedure will be cumbersome, and will include a sheet in the next revision of Form I–20 A–B to accomplish this without photocopying.

The current regulations require a student to establish that he/she is a bona fide nonimmigrant student who has been taking a full course of study at the last school which he/she was authorized to attend before a same-level transfer may be authorized. The proposed regulation emphasized that the designated official of the new school must ascertain whether this is true before effecting a transfer. It is anticipated that this can be determined in a variety of ways, whichever is most convenient for the designated official, such as review of the student's prior transcript, knowledge of admissions requirements and procedures, or personal contact with the designated official at the prior school. A particular school may also place the burden on the student to provide this evidence at the time the transfer is completed. The Service feels that the fifteen-day time period in the proposed regulations is sufficient for forwarding documents to the Service.

**Practical Training**

Four commenters objected to the proposal to allow designated officials to certify eligibility for practical training in situations where the designated official and the head of the student's academic department or professor both certify that employment comparable to the proposed employment is not available to the student in the country of the student's last foreign residence. In addition, five individuals or organizations indicated that the certification should not be required at all, or that the certification should not be required for students who accept practical training prior to graduation. Four individuals stated that the list of individuals who can make the certification should be expanded, while eight individuals stated that the time period during which a student is barred from accepting practical training (nine months) should be lowered.

In the final rule, the Service has eliminated the need for a certification regarding availability of training in the home country only for those individuals attending a school which requires or makes optional practical training for candidates for a degree in that field. It is felt the certification is not necessary in those instances. The final rule retains the authority of a designated official to certify practical training but does not expand the list of those who may certify, as the intent is to limit this authority to those who would have the best opportunity to know the world-wide employment situation in a particular field. The final rule also retains the nine-month bar for accepting practical training, as it is felt the initial goal of the educational process should be academic achievement.

**Work-Study**

Twenty commenters also questioned the placement of paragraph (10)(iii)(D)(1) regarding work-study

programs in the section on practical training after completion of studies. It was requested that the Service better defiene the work-study concept to be more in line with previously articulated Service policy, namely that "work-study" can be accomplished in either alternating terms or parallel terms (where a student takes classes for part of the day and works for part of the day). In addition, twenty commenters objected to the proposal that students who engage in work-study programs be barred from participating in practical training after completion of studies.

The final rule retitles this section "Curricular practical training programs" to more closely coincide with the statement of previous Service policy, and places this section in the paragraph on practical training prior to graduation. The final rule also describes a mathematical computation which will bar participation in post-completion practical training to some, but not all, students who engage in this type of employment experience.

### Changes to the Record-Keeping Requirements

Nine commenters specifically addressed the changes in the record-keeping requirements. It was pointed out that the retention of the student's admission number and nonimmigrant class are vital to the record report system, and therefore should be added to the record-keeping requirements. Four commenters applauded the Service for bringing the record-keeping requirements more in line with the Requirements of the Family Education Rights and Privacy Act of 1974 (FERPA), although three additional commenters indicated that other changes should be made. One commenter pointed out that the time within which the school was allowed to respond to the Service's request for information were inappropriate if the Service was holding an individual in custody. Seven additional commenters mentioned that the time periods for response may not be sufficient at large schools.

The final rule adds a requirement that the school keep a photocopy of the student's I–20ID copy, so that the additional data mentioned in the comments can be captured. Language has also been added to indicate that a school is required to respond orally on the same day to an oral request for information concerning a student in custody and that the school may ask for a formal written request after the fact, if the school so desires. The record-keeping requirements have been brought in line with the Service's interpretation of the FERPA requirements, and no additional changes were made. The Service also feels that the time elements for response are sufficient.

### Change to H Nonimmigrant Status

Fifty-four comments were received by the Service concerning the proposal to bar F–1 students who have engaged in practical training after completion of studies from changing nonimmigrant status to the H category. Twelve individuals commented in favor of the rule, including six who specifically stated they could accept a grandfather clause provision. Forty-two commenters were opposed to the provision, including six who indicated they would favor the provision if a grandfather clause were added.

There were four general areas of concern expressed by those not in favor of the regulation as proposed. First, some commenters indicated that the proposal would have an adverse effect on the ability of United States businesses to hire qualified workers. It was pointed out both that those who are in practical training create a pool of desirable new employees, and that in some cases, practical training situations often legitimately evolve into situations which require a temporary worker. The Service has a great concern for the needs of American business, and recognizes the need to balance the needs of business with the protection of the labor market. In addition, in this particular situation, the general concerns of the educational exchange community must also be taken into account. It is felt by the Service that the needs of the business community can more than adequately be met by the ability to obtain the services of these particular individuals immediately upon graduation, if they intend to fill a temporary position.

The second concern expressed the feeling that the proposed regulation is a contradiction of the statute, which specifically provides for such a change of status, and that the Service has therefore overstepped its regulatory authority in the proposal. Section 214 of the Act gives the Attorney General sole authority to control the admission and conditions of stay of monimmigrants in the United States. Section 248 gives the Attorney General discretionary authority to change the nonimmigrant status of individuals who meet certain requirements. The Service currently precludes the approval of an application for certain nonimmigrants in the M–1 classification in a regulation which parallels the proposal at 8 CFR 248.1(d). Based on these facts, it is determined the Service would not be overstepping its regulatory authority by implementing the proposed regulation.

The third point raised in the comments is that the proposed regulation discriminates against individuals who are already in practical training programs, and entered those programs with the understanding that a change of nonimmigrant status to a temporary worker category would be permitted under the regulations. The Service accepts this premise.

The fourth point raised is that the Service is revising the regulations merely on a preception that abuse of the system is occurring when, in fact, either there is no abuse or the abuse is minimal. The Service agrees that a regulation of such impact should not be promulgated without sufficient statistical data to either substantiate or refute this perception. Therefore, the Service has deleted the proposal to require the Service to deny any change of status request for change of nonimmigrant status from student to temporary worker (H classification) when the student has engaged in practical training after graduation. The Service may again propose some action after studying whether abuse of the practical training system is occurring.

### General Comments

Four individuals indicated a sense that the proposed regulation shifted the burden for record-keeping and accountability for students from the Service to designated school officials. Two indicated that they felt there would be a much higher percentage of the school officials' time devoted to immigration matters if the proposed regulation were put into effect. These comments were contrasted with more numerous comments indicating that the ability to effect change without Service involvement (especially the notification transfer procedure and the certification of the first period of practical training) would significantly reduce the amount of time a designated school official spent on immigration matters. The Service sees no additional changes that could be made, nor were any specifically recommended, to further reduce this workload.

There commenters indicated that the Service, by eliminating itself from certain actions, is abrogating its enforcement responsibility. On the contrary, the Service believes that implementation of this regulation will allow it to concentrate resources on the small number of students who are most likely to violate the regulations, and therefore takes a more responsible approach to enforcement of the

regulations. At this time, the Service does intend to again require, within one year of the effective date of this regulation, the submission of Form I–721 from designated officials.

**Technical Comments**

There were five technical points that were raised by commenters. Five commenters indicated agreement with paragraph (4)(ii) of the proposal, regarding notation on the visa page of students who have transferred. One commentor accurately stated that in certain circumstances, Service inspectors will need to endorse Form I–20AB upon readmission of certain students, in order for the Service's computer database to be updated. A sentence of this effect has been added to the regulation.

Four commenters stated that the phrase "post-graduate" as used in paragraph (f)(5)(i) was inappropriate. They recommended the phrase "post-doctoral". This change was incorporated into the final regulation. One commenter pointed out the Service practice of admitting a foreign student for thirty days with Form I–515 is contrary to the definition of duration of status in paragraph (f)(5)(ii). As the Service desires to continue use of the I–515 procedure, the definition was revised. Two commenters objected to allowing district directors to review the decision of a designated school official to allow a person to carry less than a full course of study. Both saw this as an intention of the Service to "second-guess" the designated school official. This requirement is currently in the regulation, and the Service is not aware of any abuse by Service officers. The intent is to acknowledge that a final determination still rests with the Service.

In paragraph (f)(10)(iii)(A), ten commenters indicated that requiring a student in practical training to submit a request for a second period "immediately" upon employment is imprecise, and will lead to confusion. The final rule replaces the term with a more definitive term.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. While portions of the rule deal with record-keeping requirements, compliance with them will not result in a significant effect on the economy or operation of the affected institutions or individuals. The rule is not a major rule within the meaning of section 1(b) of E.O. 12291. The information collections contained in this rule have been cleared under Paperwork Reduction Act.

**List of Subjects in 8 CFR Part 214**

Administrative practice and procedure, Aliens, Employment, Schools, Students.

For the reasons set forth in the preamble, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

## PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 is revised to read as follows:

**Authority:** Secs. 101, 103 and 214 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101, 1103 and 1184.

2. In § 214.2, paragraphs (f)(4)(ii), (5), (6)(ii)–(v), (7), (8), and (10) are revised to read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

* * * * *

(f) * * *

(4) * * *

(ii) *Student who intends to transfer or has transferred between schools.* If an F–1 student has transferred or intends to transfer between schools and has been issued an I–20A–B by the school to which he or she has or intends to transfer, the name of the new school does not have to be specified on the student's visa to allow reentry into the United States after a temporary absence. If the student has not yet attended the new school, the inspecting officer will endorse Form I–20 ID Copy to indicate the new school, and will endorse Form I–20A–B and forward it to the Service's Data Processing Center.

(5) *Duration of status*—(i) *General.* For purposes of this chapter, duration of status means the period during which the student is pursuing a full course of studies in any educational program (e.g., elementary or high school, bachelor's or master's degree, doctoral or post-doctoral program) and any periods of authorized practical training, plus sixty days within which to depart from the United States. An F–1 student who continues from one educational level to another is considered to remain in status, provided the transition to the new educational program is accomplished according to the transfer procedures outlined in paragraph (f)(8) of this section. An F–1 student at an academic institution is considered to be in status during the summer if the student is eligible, and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer, is considered to be in status during that vacation provided the student is eligible, intends to register for the next term, and has completed the equivalent of an academic year prior to taking the vacation. A student who is compelled by illness or other medical condition to interrupt or reduce a course of study is considered in status during the illness or other medical condition. The student must resume a full course of study upon recovery.

(ii) *Condition.* Subject to the condition that the alien's passport is valid for at least six months at all times while in the United States, including any automatic revalidation accorded by the agreement between the United States and the country which issued the alien's passport (unless the alien is exempt from the requirement for presentation of a passport):

(A) Any alien admitted to the United States as an F–1 student is to be admitted for duration of status as defined in paragraph (f)(5)(i) of this section except that a student may be admitted for 30 days with Form I–515; and

(B) Any alien granted a change of nonimmigrant classification to that of an F–1 student is considered to be in status for duration of status as defined in paragraph (f)(5)(i) of this section.

(iii) *Conversion to duration of status.* Any F–1 student in college, university, seminary, conservatory, academic institution, or language training program who is pursuing a full course of study and is otherwise in status as a student, is automatically granted duration of status. The dependent spouse and children of the students are also automatically granted duration of status if they are maintaining F–2 status. Any alien converted to duration of status under this paragraph need not present Form I–94 to the Service. This paragraph constitutes offical notification of conversion to duration of status. The Service will issue a new Form I–94 to the alien when the alien comes into contact with the Service.

(6) * * *

(ii) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a maximum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs

a lesser course load to complete the course of study during the current term;

(iii) Study in a post-secondary language, liberal arts, fine arts or other non-vocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within category (1) or (2) of § 213.3(c), and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(iv) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week provided that the dominant part of the course of study consists of classroom instruction, and twenty-two clock hours a week provided that the dominant part of the course of study consists of laboratory work; or

(v) Study in a primary or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

A designated official may advise an F–1 student to engage in less than a full course of study for valid academic reasons, limited to English language difficulties; unfamiliarity with American teaching methods or reading requirements; or improper course level placement. Although permission of the Service is not required to advise a student to take less than twelve semester or quarter hours, whether a student is, in fact, considered to be pursuing a full course of studies is subject to review and approval by the Service.

(7) *Extension of stay*—(i) *Request after eight consecutive academic years.* Any student who has been in student status for eight consecutive academic years must request an extension of stay from the Service. The application must be submitted to the Service on Form I–538. A student who has submitted an application for extension of stay may continue in student status until a decision is rendered by the Service. Departures from the United States of short duration during the academic year or during a vacation period do not break the continuity of a period of stay. Once a student has been granted an extension of stay, he or she does not have to request another extension until an additional eight-year period has elapsed.

(ii) *Request after extended period in one academic level.* Students who remain in one educational level for an extended period of time must request an extension of stay. The applicant must be submitted to the Service on Form I–538. The applicant must establish that there are valid academic reasons for going beyond the time limits. A student is required to request an extension of stay when according to the date on Form I–20A–B issued at the beginning of his or her program at the particular educational level:

(A) Studies are expected to be completed in two years or less, and the course is not completed within six months after the date studies are expected to be completed; or

(B) Studies are expected to be completed in more than two but within four years, but the course is not completed within one year after the date the studies are expected to be completed.

(C) Studies are expected to be completed in more than four years, but the course is not completed within eighteen months after the date the studies are expected to be completed.

(8) *School transfer*—(i) *Eligibility.* An F–1 student is eligible to transfer to another school if the student:

(A) Is a bona fide nonimmigrant student;

(B) Has been pursuing a full course of study at the school the student was last authorized to attend during the term immediately preceding the transfer (or the last term preceding a vacation as provided in paragraph (f)(5)(i) of this section);

(C) Intends to pursue a full course of study at the school to which the student intends to transfer; and

(D) Is financially able to attend the school to which the student intends to transfer.

(ii) *Transfer procedure.* The following procedures must be followed before a transfer will be considered to be completed:

(A) The F–1 student must obtain a properly completed Form I–20A–B from the school to which the student intends to transfer. The student must inform the designated school official at the school the student is currently attending of his or her intention to transfer;

(B) The student must enroll in the new school in the first term after leaving the previous school or the first term after vacation as provided in paragraph (f)(5)(i) of this section. The student must complete page 2 of Form I–20A–B as instructed and submit the Form I–20A–B to a designated school official of the new school within fifteen days after the date the student begins classes at the new school; and

(C) The designated school official receiving the Form I–20A–B must:

(*1*) Sign the reverse side of the Form I–20 ID Copy in the space provided for the designated school official's signature, thereby acknowledging the student's attendance in class;

(*2*) Return the Form I–20 ID Copy to the student;

(*3*) Add the name of the school from which the student has transferred to the front page of Form I–20A–B, item 2(C), and initial the addition;

(*4*) Submit the Form I–20A–B to the Service's Data Processing Center within thirty days of receipt from the student; and

(*5*) Submit a copy of Form I–20A–B to the school which the student was last authorized to attend.

(iii) *Student not pursuing a full course of study.* A student who wants to transfer to another school but has not pursued a full course of study at the school the student was last authorized to attend must apply for and be granted reinstatement to student status in accordance with the provisions of paragraph (f)(12) of this section before he or she may request a transfer. The student must include Form I–20A–B from the school which he or she intends to attend, if reinstated. If reinstatement is granted, the student is eligible to attend the new school without transfer.

* * * * *

(10) *Practical training*—(i) *Practical training prior to completion of studies*—(A) *General.* Temporary employment for practical training prior to completion of studies may be authorized only:

(*1*) After completion of all course requirements for the degree (excluding thesis or equivalent), if the student is in a bachelor's, master's or doctoral degree program;

(*2*) If the student is attending a high school, college, university, seminary, or conservatory which requires or makes optional practical training of candidates for a degree in that field or for a high school diploma; or

(*3*) During the student's annual vacation if the student is attending a college, university, seminary, or conservatory.

A student may not be granted permission to accept practical training prior to completion of studies unless the student has been in student status for nine months. A student in a language training program may not be granted permission to accept practical training

BEST COPY AVAILABLE

prior to completion of studies. A student may not be granted practical training exceeding twelve months in the aggregate prior to completion of studies.

(B) *Making a request to accept practical training prior to completion of studies.* A student must submit a request for practical training prior to completion of a course of study to the designated school official of the school the student is authorized to attend. The request must consist of:

(*1*) A completed request for practical training on Form I–538;

(*2*) Form I–20 ID Copy; and

(*3*) A certification from the head of the student's academic department or the professor who is the student's academic advisor stating that upon his or her information and belief, employment comparable to the proposed employment is not available to the student in the country of the student's foreign residence (unless the student is applying under paragraph (f)(10)(i)(A)(*2*) of this section).

(C) *Action upon request to accept practical training prior to completion of studies.* The designated school official must:

(*1*) Certify on Form I–538 that the proposed employment is for the purpose of practical training, that it is related to the student's course of study, and that upon the designated school official's information and belief, employment comparable to the proposed employment is not available to the student in the country of the student's foreign residence (unless the student is applying under paragraph (f)(10)(i)(A)(*2*) of this section);

(*2*) Endorse the Form I–538 to show that practical training from (date) to (date) has been authorized, and send the form to the Service's Data Processing Center; and

(*3*) Endorse Form I–20 ID Copy with the endorsement "practical training prior to completion of studies from (date) to (date) authorized", and return the form to the student.

(D) *Curricular practical training programs.* An F–1 student enrolled in a college, university, conservatory, or seminary having a curricular practical training program (such as alternate work/study, internship, or cooperative education) as part of the regular curriculum may participate in the program without obtaining a change of nonimmigrant status. Such programs shall be treated similar to practical training prior to completion of studies as defined in paragraph (f)(10)(i)(A)(*2*) of this section. Periods of actual off-campus employment in any such program which is full-time (no concurrent coursework) will be deducted from the total of twelve months practical training time before graduation for which the student is eligible. Periods of actual off-campus employment in any such program in which coursework and employment are engaged at the same time ("parallel programs") will be deducted from the total of twelve months' practical training time at the rate of 50% (one month deducted for every two months of parallel coursework and practical training). A student who participates in a curricular practical training experience for which six months or more of the practical training time prior to graduation is deducted is not eligible for practical training after completion of studies. A student may engage in practical training only after receiving the Form I–20 ID Copy endorsed to that effect.

(ii) *Practical training after completion of studies*—(A) *General.* Temporary employment for practical training after completion of studies may be authorized only:

(*1*) After completion of the course of study, if the student intends to engage in only one course of study; or

(*2*) After completion of at least one course of study, if the student intends to engage in more than one course of study. A student may not be granted permission to accept practical training after completion of studies unless the student has been in student status for nine months. After completion of studies, a student may not be granted practical training exceeding twelve months. A student in a language training program may not be granted permission to accept practical training after completion of studies.

(B) *Request to accept a first period of practical training after completion of studies.* A student must submit a request to accept a first period of practical training to the designated school official no more than sixty days prior to completion of the course of study, but less than thirty days after completion of the course of study. The request must consist of:

(*1*) A completed request for practical training on Form I–538;

(*2*) Form I–20 ID Copy; and

(*3*) A certification from the head of the student's academic department or the professor who is the student's academic advisor stating that upon his or her information and belief, employment comparable to the proposed employment is not available to the student in the country of the student's foreign residence.

(C) *Action upon a request to accept a first period of practical training after completion of studies.* The designated school official must:

(*1*) Certify on Form I–538 that the proposed employment is for the purposes of practical training, that it is related to the student's course of study, and that upon the designated school official's information and belief, employment comparable to the proposed employment is not available to the student in the country of the student's foreign residence;

(*2*) Endorse Form I–538 to show that practical training from (date) to (date) has been authorized, and send the form to the Service's Data Processing Center; and

(*3*) Endorse the Form I–20 ID Copy with the endorsement "First period of practical training authorized from (date) to (date)" and return the form to the student.

A student may engage in practical training only after receiving the Form I–20 ID Copy endorsed to that effect.

(D) *Computation dates for practical training.* For purposes of computation, the "beginning" date of the first period will be the date of completion of studies and the "ending" date will be a date six months after the date of completion of studies. The actual date of commencement of practical training will be determined by the Service at the time of application for a second period of practical training. The actual date of commencement of practical training will be the date the student begins employment, or a date sixty days after the date of completion of studies, whichever is earlier.

(iii) *Second period to continue practical training after completion of studies*—(A) *General.* A second period to continue practical training after completion of studies may not be granted unless the student has actually begun qualified employment during the first authorized period. A student shall submit his or her application for a second period to continue practical training within 30 days after he or she begins qualified employment.

(B) *Request for second period to continue practical training after completion of studies.* A student must submit a request for a second period to continue practical training. The request must be submitted to the Service office having jurisdiction over the actual place of employment. The request must consist of:

(*1*) A completed request for practical training on Form I–538, properly certified by the designated school official;

(*2*) The Form I–20 ID Copy; and

(*3*) A letter from the applicant's employer stating the applicant's occupation, the exact date employment began, the date employment will terminate, and describing in detail the duties of the applicant in the employment.

The letter from the student's employer must be seen by the designated school official before the designated school official's certification is made. There is no requirement that the student re-establish to the Service that the employment engaged in is not available to the student in the country of the student's foreign residence.

(C) *Action upon request for a second period to continue practical training after completion of studies.* The district director must determine that the student began qualified employment during the first period of practical training, that the stated employment is related to the student's course of study, and that the student can complete practical training within the maximum time authorized. Upon approval of the student's request to continue practical training the district director must:

(*1*) Endorse Form I–538 with the approval stamp, show that practical training from (date) to (date) has been authorized, and send the Form I–538 to the Service's Data Processing Center; and

(*2*) Endorse the Form I–20 ID Copy with the endorsement "Second period of practical training authorized from (date) to (date)", and return the form to the student.

A student who has been authorized a first period of practical training may continue to be employed while the application for a second period of practical training is pending until he or she receives a decision from the Service. A student may in no case continue employment beyond twelve months.

(D) *Computation dates for practical training.* The actual "beginning" date of the second period of practical training will be the end date of the first period. The "end" date of the second period will be the date twelve months after the exact date employment began, or fourteen months after the date of completion of studies, whichever is earlier. The student therefore has a maximum of twelve months' work authorized.

* * * * *

3. In § 214.3, paragraphs (g)(1)(i) through (xii) are revised and a new undersigned paragraph is added after paragraph (g)(1)(xii) to read as follows:

**§ 214.3 Petitions for approval of schools.**

* * * * *

(g) * * *

(1) * * *

(i) Name.

(ii) Date and place of birth.

(iii) Country of citizenship.

(iv) Address.

(v) Status, i.e., full-time or part-time.

(vi) Date of commencement of studies.

(vii) Degree program and field of study.

(viii) Whether the student has been certified for practical training, and the beginning and end dates of certification.

(ix) Termination date and reason, if known.

(x) The documents referred to in paragraph (k) of this section.

(xi) The number of credits completed each semester.

(xii) A photocopy of the student's I–20 ID Copy.

A Service officer may request any or all of the above data on any individual student or class of students upon notice. This notice will be in writing if requested by the school. The school will have three work days to respond to any request for information concerning an individual student, and ten work days to respond to any request for information concerning a class of students. If the Service requests information on a student who is being held in custody, the school will respond orally on the same day the request for information is made, and the Service will provide a written notification that the request was made after the fact, if the school so desires. The Service will first attempt to gain information concerning a class of students from the Service's record system.

* * * * *

Dated: March 23, 1987.

**Richard E. Norton,**

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 87–8069 Filed 4–21–87; 8:45 am]

BILLING CODE 4410–10–M

---

**8 CFR Part 341**

**[INS: 1007–87]**

## Certificates of Citizenship for Adopted Children; Interim Rule With Request for Comment

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule change will implement section 22 of Pub. L. 99–653, the Immigration and Nationality Act Amendments of 1986, regarding issuance of certificates of citizenship for adopted children. The effect of this rule change is to facilitate acquisition of United States citizenship by adopted alien children once they enter the United States.

**DATES:** Interim final rule effective November 6, 1986. Comments must be received on or before May 22, 1987.

**ADDRESS:** Submit written comments, in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–5014.

**SUPPLEMENTARY INFORMATION:** On November 14, 1986, President Reagan signed Pub. L. 99–653. Section 22 of Pub. L. 99–653 amended section 341 of the Immigration and Nationality Act, 8 U.S.C. 1452, to permit an adopting United States citizen parent(s) to apply to the Attorney General for a certificate of citizenship in behalf of an adopted child. This provision is an alternative to a petition for naturalization before the court.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is impracticable and unnecessary as the changes have been mandated by the passage of Pub. L. 99–653.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 8 CFR Part 341**

Citizenship and naturalization, Issuance of certificate, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

## PART 341—CERTIFICATES OF CITIZENSHIP

1. The authority citation for Part 341 continues to read as follows:

**Authority:** Secs. 103, 309(c), 332, 333, 337, 341, 344, 66 Stat. 173, 238, 252, 254, 258, 263, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455.

2. Section 341.7 is revised to read as follows:

**§ 341.7 Issuance of certificate.**

If the application is granted, a certificate of citizenship shall be issued and, unless the claimant is unable by

reason of mental incapacity or young age to understand the meaning thereof, he/she shall take and subscribe to the oath of renunciation and allegiance, prescribed by Part 337 of this chapter, before an officer of the Service within the United States. Thereafter, delivery of the certificate shall be made in the United States to the claimant or the acting parent or guardian, either personally or by certified mail. The child in whose behalf an application for issuance of a certificate of citizenship is made pursuant to section 341(b) of the Act must meet the requirements of section 341(b)(2) at the time the application is approved. The child becomes a citizen of the United States upon approval of the application. The certificate of citizenship issued pursuant to such approval will reflect the approval date of the application.

Dated: April 8, 1987.

Richard E. Norton,

*Associate Commissioner, Examinations Immigration and Naturalization Service.*

[FR Doc. 87-9068 Filed 4-21-87; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 166

[Docket No. 87-052]

### Swine Health Protection Provisions

**AGENCY:** Animal Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the regulations to remove Oklahoma from the list of States that have primary enforcement responsibility under the Swine Health Protection Act (the Act), in order to help ensure that requirements under the Act for the feeding of garbage to swine are enforced in Oklahoma. As a result of this action, the provisions of the Act and the Federal regulations concerning swine health protection are now being enforced in Oklahoma by the Secretary of Agriculture of the United States.

**EFFECTIVE DATE:** April 22, 1987. We will consider your comments if we receive them on or before June 22, 1987.

**ADDRESS:** Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-052. Comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. G.H. Frye, Chief Staff Veterinarian, Program Planning Staff, Veterinary Services, Room 839, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

**SUPPLEMENTARY INFORMATION:**

#### Background

The "Swine Health Protection Provisions" regulations (contained in 9 CFR Part 166 and referred to below as the Federal regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.* and referred to below as the Act). To prevent the introduction into, and dissemination within, the United States of certain diseases of swine, the authorities cited above regulate both the treatment of garbage that is to be fed to swine and the feeding of that garbage. Except for certain emergency actions, the Act provides that its provisions and the Federal regulations are to be enforced by the Secretary of Agriculture of the United States (Secretary) only in States that do not have primary enforcement responsibility under the Act.

#### Primary Enforcement Responsibility in Oklahoma

The Act provides that a State has primary enforcement responsibility for violations of laws and regulations concerning treatment of garbage to be fed to swine, and the feeding of that garbage, whenever the Secretary determines the following: (1) That the State has adopted adequate laws and regulations concerning both the treatment of garbage to be fed to swine and the feeding of that garbage that meet both the minimum standards of the Act and any regulations promulgated under the Act; (2) that the State has adopted and is implementing adequate procedures for the effective enforcement of these laws and regulations; and (3) that the State keeps records and makes reports showing compliance with paragraphs (1) and (2) as the Secretary may require.

Before the publication of this interim rule, Oklahoma was listed in § 166.15(c) of the Federal regulations as a State having primary enforcement responsibility under the Act. Because of budgetary considerations, however, Oklahoma can no longer meet our requirements for primary enforcement responsibility, and animal health officials in that State have requested that we assume full responsibility for enforcement of the Swine Health Protection provisions. Therefore, according to the requirements of section 10(b) of the Act, we gave Oklahoma 90-day notification of our intention to assume full enforcement responsibility, and are now removing that State from the list of States that have primary enforcement responsibility under the Act. Therefore, the provisions of the Act and the Federal regulations are now being enforced by the Secretary in Oklahoma.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increse in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The amendments made by this document will not cause significant changes in requirements for affected persons, and will instead change only which government entity will enforce certain regulations that guard against certain diseases of swine.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This interim rule contains no information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Exective Order 12372, which requires intergovernmental consultation with State and local

officials. (See 7 CFR Part 3015, Subpart V).

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted to help ensure that certain requirements for the feeding of garbage to swine under the Act are enforced in Oklahoma.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find that prior notice and other public procedures with respect to this interim rule are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We require that comments concerning this interim rule be submitted within 60 days of its publication. We will discuss any comments received and any amendments required in a final rule that will be published in the **Federal Register**.

**List of Subjects in 9 CFR Part 166**

African swine fever, Animal diseases, Foot-and-mouth disease, Hog cholera, Hogs, Garbage, Swine vesicular disease, Vesicular exanthema of swine.

**PART 166—SWINE HEALTH PROTECTION**

Accordingly, 9 CFR Part 166 is amended as follows:

1. The authority citation for 9 CFR Part 166 continues to read as follows:

**Authority:** 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51 and 371.2(d).

2. Section 166.15(c) is revised to read as follows:

**§ 166.15 State status.**

* * * * *

(c) The following States have primary enforcement responsibility under the Act: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.

* * * * *

Done at Washington, DC, this 16th day of April, 1987.

**J.K. Atwell,**

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87-9038 Filed 4-21-87; 8:45 am]

BILLING CODE 3410-34-M

---

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 87-NM-25-AD; Amdt. 39-5610]**

## Airworthiness Directives: Honeywell Inc., Sperry Commercial Flight Systems Division (Sperry Corp., Aerospace and Marine Group) Electronics Flight Systems Symbol Generators

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of airplanes equipped with certain Sperry Electronics Flight Instrument Systems (EFIS) Symbol Generators, by individual letters. This AD imposes a restriction on flight operations in instrument meteorological conditions (IMC) until modification or replacement of certain EFIS Symbol Generators is accomplished. This AD is prompted by reports of failure of the Attitude and Heading Reference Systems (AHRS) due to electronic contamination originating in the EFIS symbol generator boxes. This condition, if not corrected can result in frozen unflagged attitude and heading displays on both instrument panels.

**DATES:** Effective May 11, 1987. This AD was effective earlier to all recipients of Priority Letter AD 87-06-02, dated March 13, 1987.

**ADDRESSES:** The applicable service information may be obtained from Honeywell Inc., Sperry Commercial Flight Systems Division (formerly Sperry Corporation, Aerospace and Marine Group), P.O. Box 29000, Phoenix, Arizona 85038-9000. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Thompson, Western Aircraft Certification Office, Supervisor, ANM-173W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297-1375.

**SUPPLEMENTARY INFORMATION:** On March 13, 1987, the FAA issued Priority Letter AD 87-06-02, applicable to all airplanes equipped with Sperry Attitude and Heading Reference (AHRS) Model AH-600 P/N 7003360-9xx, installed as part of Sperry SZP-6000 or SPZ-8000 Digital Automatic Flight Control Systems. This combination is known to be installed in, but not limited to, de Havilland Model DHC-8, British Aerospace Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR-42 series airplanes. The Priority Letter AD imposes a restriction against flight operations in instrument meteorological conditions (IMC) until replacement or modification of all faulty EFIS Symbol Generators has been accomplished.

This AD is necessary because of a report of dual, simultaneous failure of the Sperry Corporation AH-600 Attitude and Heading Reference Systems (AHRS) primary attitude and heading displays. The attitude and heading presentations on both instrument panels froze (no response to airplane changes) and remained unflagged. Correct airplane attitude and heading information is essential for safe operation of the airplane under adverse conditions. The attitude and heading display problems have been determined to be caused by electronic contamination originating in certain Sperry Electronics Flight Instrument System (EFIS) Symbol Generator boxes.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a

final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Honeywell Inc., Sperry Commercial Flight Systems Division (Sperry Corporation, Aerospace and Marine Group).—**

Applicable to the following models of Sperry Electronics Flight Instrument Systems (EFIS) Symbol Generators, which have not been modified to Mod Level S or subsequent:

| Model | Sperry part numbers |
|---|---|
| SG–810 | 7004544–901 |
| SG–811 | 7004544–811 |
| SG–810 | 7004544–902 |

**Note.**—These systems are known to be installed in, but not limited to, de Havilland Model DHC–8, British Aerospace Model BAe 125–800, Cessna Model 650, and Aerospatiale Model ATR–42 series airplanes.

Compliance is required as indicated, unless previously accomplished.

To reduce the possibility of AHRS attitude and heading computations being contaminated, which can result in frozen attitude and heading displays on both instrument panels, accomplish the following:

A. Prior to further flight, install a placard adjacent to the first pilot's electronic attitude direction indicator (EADI), in full view of the pilot, stating "FLIGHT INTO KNOWN IMC PROHIBITED."

B. Modification of the Sperry EFIS Symbol Generator models listed above to Mod Level S or subsequent, or installation of the following Sperry EFIS Symbol Generator models, constitutes terminating action for the operational and placard requirements of paragraph A., above:

| Model | Sperry part numbers | Mod level (or subsequent) |
|---|---|---|
| SG–811 | 7004544–211 | V |
| SG–811 | 7004544–311 | AD |
| SG–811 | 7004544–411 | U |
| SG–811 | 7004544–611 | R |

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Honeywell Inc., Sperry Commercial Flight Systems Division (formerly Sperry Corporation, Aerospace and Marine Group), P.O. Box 29000, Phoenix, Arizona 8538–9000. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

Issued in Seattle, Washington, on April 15, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87–8943 Filed 4–21–87; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 87–NM–36–AD; Amdt. 39–5611]**

**Airworthiness Directives: McDonnell Douglas Model DC–9–81, –82, and –83 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–81, –82, and –83 airplanes, equipped with certain Goodyear Aerospace Corporation main landing gear wheels, which requires inspection of the main landing gear wheels to assure that cracked wheels are removed from service. This amendment is prompted by numerous reports of cracks found in wheels. This condition, if not corrected, could result in wheel failure and potential damage to adjacent tires, engines, or the airplane.

**EFFECTIVE DATE:** May 11, 1987.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6323.

**SUPPLEMENTARY INFORMATION:** Ten instances of cracked wheels have been reported by an operator of DC–9–80 series airplanes equipped with Goodyear Aerospace Corporation main landing gear wheels, Part Number 5007897. The cracked wheels were discovered on airplanes having logged 550 to 1350 landings. Investigation revealed that the cracking initiates at the 0.028-inch corner radius on the inside of the outboard wheel half near the tie bolts, and propagates outward. Analyses by the wheel and airframe manufacturers have determined that the cracks are due to fatigue. This condition, if not corrected, could result in wheel failure and potential damage to adjacent tires, engines, or the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A32–219, dated February 17, 1987, which describes ultrasonic, eddy current, and fluorescent penetrant inspections of the Goodyear main landing gear wheel, Part Number 5007897, for cracks. In addition, the wheel manufacturer has developed a modification to the wheel which will prevent premature cracking, and reidentifies the wheel as Goodyear wheel assembly Part Number 5007897–1.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections of the wheel, and removal of cracked wheels, if found, in accordance with the service bulletin previously mentioned. Replacement with Goodyear wheel assembly, Part Number 5007897–1, constitutes terminating action for the inspection requirements of this AD.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is

impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to McDonnell Douglas Model DC–9–81, –82, and –83 airplanes, certificated in any category, equipped with Goodyear main landing gear wheel assemblies, Part Number 5007897.

Compliance required as indicated, unless previously accomplished.

To minimize the potential for a wheel failure, accomplish the following:

A. Within the next 150 landings after the effective date of this AD, unless the wheel was inspected within the last 150 landings, inspect the wheel assembly for cracks in accordance with McDonnell Douglas Alert Service Bulletin A32–219, dated February 17, 1987, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. If no cracks are found, repeat the inspections specified in paragraph A., above, at each tire change or every 300 landings, whichever occurs first.

C. If crack(s) are found, replace the wheel before further flight.

D. Replacement with Goodyear wheel assembly Part Number 5007897–1 constitutes terminating action for the inspections required by paragraphs A. and B., above.

E. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 11, 1987.

Issued in Seattle, Washington, on April 15, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87–8942 Filed 4–21–87; 8:45 am]

BILLING CODE [illegible]

---

**14 CFR Part 39**

**[Docket No. 86–ASW–22; Amdt. 39–5517]**

## Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 350 and AS 355 Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Aerospatiale Model AS 350 and AS 355 helicopters by individual letters. The AD requires repetitive inspection, repair, or replacement, as necessary, of main rotor head components, main gearbox suspension bars, and ground resonance prevention system components. This AD is needed to prevent failure or unacceptable deterioration of main rotor head, main gearbox suspension, or ground resonance prevention components which could result in failure of a main rotor head or main gearbox suspension component and consequent loss of control of the helicopter.

**EFFECTIVE DATE:** April 22, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86–15–10 issued July 30, 1986, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1987.

Compliance: As indicated in the body of the AD.

**ADDRESSES:** The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service bulletins is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

**FOR FURTHER INFORMATION CONTACT:** John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, telephone No. 513.38.30 or R. T. Weaver, Rotorcraft Standards Staff, ASW–110, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624–5122.

**SUPPLEMENTARY INFORMATION:** On July 30, 1986, priority letter AD 86–15–10 was issued and made effective immediately as to all known U.S. owners and operators of certain Aerospatiale Model AS 350 and AS 355 series helicopters. The AD was prompted by three reports of main rotor head component damage and main gearbox suspension bar damage in AS 355 helicopters which exhibited severe vibrations on approach or landing. Because of similarities in design, the Model AS 350 was included in the AD.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued July 30, 1986, to all known U.S. owners and operators of certain Aerospatiale Model AS 350 and AS 355 helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons. The AD, as published, also adds inspection and rework requirements for landing gear components and adds a repetitive inspection requirement.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct

an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Societe Nationale Industrielle Aerospatiale (SNIAS):** Applies to Aerospatiale Model AS 350 and AS 355 series helicopters certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent the failure of main rotor head star arms and main gearbox suspension bars, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD:

(1) For Model AS 350 series helicopters, inspect the main rotor head components, the main gearbox suspension bars (struts), and the landing gear ground resonance prevention components (aft spring blades and hydraulic shock absorbers) in accordance with Service Bulletin (SB) 01.17a, paragraph CC.3.

(2) For Model AS 355 series helicopters, inspect the main rotor head components, the main gearbox suspension bars (struts), and the landing gear ground resonance prevention components (aft spring blades and hydraulic shock absorbers) in accordance with SB 01.14a, paragraph CC.3.

(b) Rework or replace damaged components in accordance with SB 01.17a or 01.14a (as applicable).

(c) Repeat the inspections and rework of paragraphs (a) and (b) in intervals not to exceed 300 hours' time in service.

(d) In the event the helicopter is subjected to a hard landing or to high surface winds, when parked without effective tiedown straps installed, repeat the inspections of paragraph (a) for the main rotor head star arms and the main gearbox suspension bars before further flight.

(e) In the event of a landing which exhibits abnormal self-sustained dynamic vibrations (ground resonance type vibrations) repeat all the inspections of paragraph (a).

(f) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by the Manager, Aircraft Certification Office, AEU–100, FAA Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

(g) In accordance with §§ 21.197 and 21.199, flight is permitted to a base where the inspections required by this AD may be accomplished.

The manufacturer's specifications and procedures shall be done in accordance with Aerospatiale SB 01.17a or 01.14a (as applicable).

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1). Copies may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support. These documents may be examined in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 156, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective April 22, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD 86–15–10, issued July 30, 1986, which contained this amendment.

Issued in Fort Worth, Texas, on March 3, 1987.

**Don P. Watson,**

*Acting Director, Southwest Region.*

[FR Doc. 87–8941 Filed 4–21–87; 8:45 am]

BILLING CODE 4910-13-M

---

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 4**

**[Docket No. RM85–6–001; Order No. 464–A]**

## Electric Utilities; Waiver of the Water Quality Certification Requirements of the Clean Water Act

Issued: April 13, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order denying rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 464, issued on February 11, 1987. In Order No. 464, the Commission adopted rules to define when the certification requirements of section 401(a)(1) of the Clean Water Act have been waived by failure of a state or other authorized certifying agency to act on a request for certification filed by an applicant for a Commission hydroelectric license. The rule allows a certifying agency one year after the certifying agency's receipt of a request for section 401 certification to grant or deny the license applicant's certification request.

**EFFECTIVE DATE:** April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert Keegan, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, (202) 357–[illegible]

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

**I. Background**

The Federal Energy Regulatory Commission (Commission) is denying rehearing of Order No. 464, issued on February 11, 1987.[1] In Order No. 464, the Commission adopted rules to define when the certification requirements of section 401(a)(1) of the Clean Water Act (CWA) have been waived by failure of a state or other authorized certifying agency to act on a request for certification filed by an applicant for a Commission hydroelectric license. The rule allows a certifying agency one year after the certifying agency's receipt of a request for section 401 certification to grant or deny the license applicant's certification request.

Only one applicant sought rehearing of Order No. 464. On March 13, 1987, Pacific Gas and Electric Company (PGandE) filed a request for rehearing of Order No. 464.

**II. Discussion**

PGandE asks the Commission to clarify that an accepted license application is deemed to contain all the information necessary for a decision by a certifying agency on a request for section 401 certification. PGandE cites to the Commission's notice of proposed rulemaking (NOPR) in this proceeding [2]

[1] 52 FR 5446 (Feb. 23, 1987), III FERC Stats. and Regs. ¶ 30,730 (1987).

[2] 50 FR 32,229 (Aug. 9, 1985), FERC Proposed Regulations ¶ 32,416 at 33,196.

for the proposition that the Commission has recognized that public notice of a license application constitutes evidence that information sufficient to rule on a certification request has been received. PGandE argues that, without the clarification it seeks, certifying agencies could deny a certification request because they had not obtained from applicants state environmental or other documentation requirements, even if these are not required due to Federal preemption principles.

The Commission is denying PGandE's rehearing request. Order No. 464 addressed the time period within which certifying agencies may grant or deny section 401 certification requests; it did not purport to define the procedural and substantive requirements that a certifying agency may impose on a certification applicant. Rather both the NOPR to which PGandE cites and Order No. 464 pointed out that the Commission's pre-filing consultation requirements for hydroelectric license applicants can be of significant assistance in providing certifying agencies with adequate information to analyze certification requests. It was not, however, the Commission's intention to substitute its judgment for that of the certifying agency with respect to the information deemed necessary for an informed decision on a certification request.[3]

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9059 Filed 4-21-87; 8:45 am]

BILLING CODE 6717-01-M

---

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 250

### Oil and Gas and Sulphur Operations in the Outer Continental Shelf

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of final rulemaking.

**SUMMARY:** This notice revises the timeframes for protection of proprietary geological data and analyzed geological information generated on a lease in the Outer Continental Shelf (OCS). This revision will provide additional assurance that the party that incurred the cost to produce the geological data and information will have a reasonable opportunity for exclusive use of them during a subsequent lease sale. The rule changes would apply to leases that are within the primary term specified in the lease and will provide added protection until a lease is offered within 50 miles of the well.

**DATES:** This rule becomes effective May 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** John V. Mirabella, Telephone: (703) 648-7816 or (FTS) 959-7816.

**SUPPLEMENTARY INFORMATION:** Current regulations at 30 CFR 250.3 provide 2-year terms of protection for geological data and analyzed geological information collected on a lease. A lessee generates geological data and information from exploration wells hoping to have exclusive use of that data and information during a lease sale involving any adjacent or nearby unleased blocks. In portions of the OCS where lease sales occur on a biennial basis, this has provided the lessee with the exclusive use of the geological data and information during a lease sale subsequent to the submission of that data and information. However, in portions of the OCS where lease sales occur less frequently, the lessee has exclusive use of the geological data and information during a lease sale only if the data and information are submitted within 2 years of a lease sale. In some cases, drilling activities are intentionally delayed until such time that the data and information will be submitted within 2 years of an anticipated lease sale.

Current Minerals Management Service (MMS) rules and policies with regard to suspensions of production and with regard to lease extensions include provisions which ensure that lease exploration occurs during the primary term. The timing of when the drilling operations will occur during the primary term is a decision which is left to the lessee. However, MMS does not want its rules to create a reason for a lessee to delay drilling—as can happen with existing rules concerning protection of geological data and information collected on a lease.

The situation described shows that, in certain cases, current rules governing protection of geological data and information result in an incentive for lessees to delay drilling until late in the primary term. The amendment modifies the term of protection of geological data and information to create a situation where that data and information generated early in the primary term would have an increased likelihood of being protected during a subsequent lease sale. This is accomplished by protecting geological data and analyzed geological information for a minimum of 2 years and for additional time when a lease sale has not occurred such that a lease is offered within 50 miles of the well.

On June 30, 1983, MMS issued a proposed rule addressing the term of protection of geological and geophysical data and information collected either on a lease or under a permit.

Final action on the June 30, 1983, notice is being issued separately for rules governing operations on a lease and for rules governing operations under a permit. The notice of final rulemaking now being issued addresses only the term of protection of proprietary data and information collected on a lease.

In response to the June 30, 1983, notice of proposed rulemaking, timely comments were received from 20 interested parties—16 oil and gas production/exploration companies, 1 trade/technical association, 2 States, and 1 support/service contractor.

The majority of the commenters (15 out of 20) favored the concept of increased term of protection for proprietary data and information.

The primary reason given for favoring the increased protection was that the company developing costly data and information should be entitled to exclusive use of the data and information for at least one lease sale subsequent to the collection of the data or information, and this was not always the case under current rules. A lesser number of commenters (5 out of 20) opposed the proposed increased protection. The primary reason given for opposing the change was that it restricted the free flow of geological and geophysical data and information which are needed by the public for the development of offshore oil production and by the States to determine the impact of such development.

In developing this rule change, MMS has considered both the needs of the public and the States for these data and information and the need to provide certain minimum protection for the party incurring the cost of obtaining the data. In the case of data and information obtained under a lease, the primary

---

[3] The nature and scope of a certifying agency's information-gathering authority and decisional standards have been the subject of court review. *See* Power Authority of the State of New York v. Williams, 457 2nd 728 (C.A.N.Y. 1983); Arnold Irrigation District v. Dept. of Environmental Quality, 717 P. 2d 1274 (Or App. 1986). PGandE expresses concern that certifying agencies could require compliance with state environmental or other documentation requirements even if such requirements are obviated by federal preemption principles. The court in *Arnold Irrigation District* noted that the issue is not Federal preemption of state regulation but rather what criteria Congress intended the states to consider in deciding whether to issue certification in compliance with the CWA. 717 P.2nd at 1278 n.4.

factor in drilling decisions should be proper development of the lease. However, MMS recognizes that geological data and information from an existing lease are important in evaluating the potential of nearby tracts. In offering protection for the longer of 2 years from the date of submission or to the end of the primary term specified in the lease, MMS has established a system which will not penalize a lessee who drills early in the primary term in cases where the next lease sale does not occur until late in the primary term.

This final rule amends the rules for protection of geological data and analyzed geological information and not for geophysical data and information and interpreted geological information. Postlease geophysical data and information and interpreted geological information generated on a lease are currently protected for 10 years, and the rules governing their release are not being modified.

Many commenters to the June 30, 1983, notice raised specific points concerning the proposed change in the regulation. Each of these comments was considered, and those pertaining to operations under a lease, in total or in part, are discussed below.

Several commenters questioned the use of a planning area as the criteria used to determine when a lease issuance would allow release of geophysical information. Some commenters felt that this was too broad an area for the information to be relevant while other commenters felt that a planning area was not well enough defined. One commenter questioned what would be done for a leasing moratorium in a portion of the planning area. In place of a planning area, commenters suggested criteria of various distances from 50 miles to as small as 10 miles. These comments were considered in regard to prelease operations. However, since rules governing operations under a lease are being changed only with regard to geological data and information, these detailed comments relating to geophysical data and information are not applicable to this final rule.

Two commenters suggested that, to avoid confusion when a 50-mile area cuts through a lease, MMS clearly state that if any portion of an issued lease is within the specified distance, then the data will be released. The MMS agrees with this comment, and the rule has been changed accordingly.

Several commenters expressed confusion over the wording of the proposed rule. The revision to the structure of the rule should clear up any confusion as to the meaning of the rule.

One commenter felt that "data and information" in sections 26(a) and (c) of the Outer Continental Shelf Lands Act (OCSLA) are not the same as "data and information" in section 18(h) of the OCSLA. The basic treatment of data and information is an established part of this rule and has not been changed. This amendment only covers the term of protection. The basic question of what data should be protected is outside the scope of this rulemaking.

There were comments both in favor of and against the concept of applying the amended rule to all data in the possession of MMS and not just data submitted after the amended rule becomes effective. The MMS feels it is necessary to apply the amended rule to all data whether it was submitted before or after the amended rule becomes effective. Many companies generated data and information with the understanding that a lease sale would occur prior to the end of the minimum term of protection but, subsequently, anticipated lease sales were delayed. The MMS feels that to be fair to these companies, it is necessary to apply the amended rule to all data in the possession of MMS.

One commenter suggested that 60 days after issuance of a lease be changed to 6 months after issuance of a lease to allow for challenges to a lease. Another commenter suggested that the criterion should be 60 days after the lease is no longer subject to challenge. The MMS considers the offering of a lease to be an opportunity for a lessee to use data and information. The data and information should then be released whether or not a lease was issued.

One commenter suggested that further protection of data is needed and suggested that data and information not be released until all immediately adjacent unleased acreage has been offered for lease and until it is reoffered in cases where a lease bid has been rejected. The MMS considers that, for operations on a lease, providing protection until a lease within 50 miles is offered will provide a reasonable length of time for the lessee to have exclusive use of geological data and analyzed geological information. The MMS does not feel that it is appropriate to assure that all adjacent tracts are leased.

Several commenters questioned particular wording used in the regulation. The MMS has modified the wording where appropriate to improve clarity.

On March 18, 1986, MMS published a notice of proposed rulemaking (51 FR 9316) to consolidate rules governing offshore oil and gas operations. This rule change to modify terms of protection to geological data and information generated under a lease amends existing regulations. However, the change now being made will also be considered for inclusion at the appropriate location for the rules which were proposed on March 18, 1986.

The notice of proposed rulemaking of March 18, 1986, proposed comprehensive changes to the regulations governing oil and gas operations in the OCS. Several comments were received concerning the rules proposed on March 18, 1986, providing MMS with current public views on the subject. Accordingly, MMS has used the 1983 comments in combination with comments received in response to the March 1986 notice of proposed rulemaking to develop this final rule.

As is the case under current rules, data and information will be released when a lease expires. The following are examples of how the rule will trigger the release of geological data and information for active leases.

For a lease which is within the primary term specified in the lease, all geological data and analyzed geological information will be protected for an initial period of 2 years. If, during those 2 years, a block has been offered, such that any portion of the block is within 50 miles of the well, then the data and information will be released at the end of the 2 years. If not, then the data and information will be protected until 60 days after a block is offered within 50 miles of the well from which the data and information were generated.

At the end of the primary term specified in the lease, all geological data and analyzed geological information that has been protected for 2 years or more will be released. After that time, all geological data and analyzed geologic information will be released 2 years after they were submitted, regardless of whether the data and information were submitted before or after the primary term specified in the lease.

In each case, the release of the data and information is controlled by the primary term specified in the lease. Thus, the protection period will not increase as a result of lease extensions due to suspension of production or suspensions of operations.

The Department of the Interior (DOI) has determined that this rule is not expected to cause an increase in costs or prices to consumers, other industries, or governmental entities. Furthermore, this rule does not constitute a major rule under Executuve Order 12291, and

therefore, a regulatory impact analysis is not required.

The DOI has also determined that this document will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

This rule does not contain information collection requiring approval under 44 U.S.C. 3501 *et seq.*

Author: This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: March 12, 1987.

**William D. Bettenberg,**

*Director, Minerals Management Service.*

**PART 250—[AMENDED]**

For the reasons set forth above, 30 CFR Part 250.3 is amended as shown below.

1. The authority citation for Part 250 continues to read as follows:

**Authority:** Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.* (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

2. Section 250.3 is amended to revise paragraph (b) as follows:

**§ 250.3 Data and information to be made available to the public.**

* * * * *

(b) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geological data and analyzed geological information, submitted pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee except under one of the following conditions based on the status of the lease at the time of release of the data or information:

(1) For leases no longer in effect, the data and information will be released.

(2) For a lease in effect, and within the primary term specified in the lease, the data and information may be released 2 years after submission of the data or information or 60 days after a lease sale such that any portion of an offered block is within 50 miles of the well, whichever is later.

(3) For leases in effect and beyond the primary term specified in the lease, and data and information will be released 2 years after submission.

(4) For all leases, the data and information may be released if the Director determines that release of such data and information is necessary for the proper development of the field or area.

* * * * *

[FR Doc. 87-8994 Filed 4-21-87; 8:45 am]

BILLING CODE 4310-MR-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS LEYTE GULF

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS LEYTE GULF (CG-55) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully. with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** April 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS LEYTE GULF (CG-55) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (Water), Vessels.

**PART 706—[AMENDED]**

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

**§ 706.2 [Amended]**

2. Table Five of § 706.2 is amended by adding the following vessel:

| [illegible] | Number | Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i) | All masthead light less than 4.5 [illegible] above forward masthead light. Annex I, sec. [illegible] | [illegible] lights not over all other lights and obstructions. Annex I, sec. 2(f) | Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i) | All masthead lights not visible over forward light 1,000 [illegible] aft of ship in all normal degrees of trim. Annex I, sec. 2(b) | Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a) | After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a) | Fore and aft horizontal separation attained |
|---|---|---|---|---|---|---|---|---|---|
| USS LEYTE GULF | CG-55 | | | | | | X | X | X |

Dated: April 9, 1987.
Approved.
**John Lehman,**
*Secretary of the Navy.*
[FR Doc. 87-9003 Filed 4-21-87; 8:45 am]
BILLING CODE 3810-AE-M

## VETERANS ADMINISTRATION

### 38 CFR Part 21

### Veterans Education; Foreign Medical Schools

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The Administrator of Veterans Affairs has the authority by law to deny or discontinue educational assistance to any veteran enrolled in an institution of higher learning not located in a State if the Administrator determines that the enrollment is not in the best interest of the veteran or the Federal Government. The Administrator is exercising this authority by providing additional criteria a foreign medical school must meet before a veteran's enrollment in the school's courses may be approved. This should ensure that the medical education veterans are receiving abroad is comparable to that which other veterans are receiving in the United States.

**EFFECTIVE DATE:** March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** On pages 32667 and 32668 of the **Federal Register** of September 15, 1986, there was published a notice of intent to amend Part 21 concerning the approval of enrollments of veterans and eligible persons in foreign medical schools. The notice stated that except for some modifications designed to make certain criteria consistent with Title 38, United States Code, the proposed regulations agreed with the regulations used by the Department of Education to determine the eligibility of foreign medical schools under the guaranteed student loan program (34 CFR 601.1 through 601.7). Interested persons were given 30 days to submit comments, suggestions or objections.

The VA received one letter. The writer stated that he agreed with the objective of bringing VA regulations into agreement with those used in the guaranteed student loan program to determine the eligibility of foreign medical schools.

During the comment period the Higher Education Amendments of 1986, Pub. L. 99-498, were enacted. Section 435 of that Act requires the Secretary of Education to issue further regulations governing the approval of foreign medical schools under the guaranteed student loan program. The law contains specific criteria which must appear in the new regulations. These included a minimum percentage of students who must pass the examinations administered by the Educational Commission for Foreign Medical Graduates when less than 60 percent of the students enrolled in the school are nationals of the country in which the school is located.

It appears that it will be some time before the Department of Education will issue these regulations. Waiting for the issuance of those regulations would considerably delay the implementation of those regulations, which the VA proposed on September 15, 1986. Rather than delay implementation of those regulations the VA is making them final. Once the Department of Education adopts regulations which include the criteria contained in the Higher Education Amendments of 1986, the VA will further amend its regulations to make them agree with those of the Department of Education.

This amended final regulation, as originally proposed, contained several references to the Director of the VA's Education Service. Due to an internal reorganization that position no longers exists. The final regulations instead contain references to the Director of the VA's Vocational Rehabilitation and Education Service.

The VA has determined that this amended final regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs of prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprised to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended final regulation, therefore, it exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the VA does not believe that the Congress intended RFA to apply to foreign small entities. Even if this were not the case, the number of small entities affected would not be substantial. There are approximately 125 foreign medical schools with courses approved for VA training. Although there are insufficient data available to enable the VA to state the exact number of these which are small entities, the VA estimates that the percentage is small. A small percentage of 125 is not substantial number.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

### List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 31, 1987.
**Thomas K. Turnage,**
*Administrator.*

## PART 21—[AMENDED]

38 CFR Part 21, *Vocational Rehabilitation and Education*, is amended by revising § 21.4260 to read as follows:

**§ 21.4260 Courses in foreign countries.**

(a) *Approval of postsecondary courses in foreign countries.* (1) In order to be approved a postsecondary course offered in a foreign country must meet all the provisions of this paragraph. A course offered by a foreign medical school (other than one located in Canada) must also meet all of the provisions of paragraph (b) of this section. (38 U.S.C. 1676)

(i) The educational institution offering the course is an institution of higher learning, and

(ii) The course leads to a standard college degree or its equivalent.

(2) For the purpose of this paragraph, a degree is the equivalent of a standard college degree when the program leading to the degree has the same entrance requirements as one leading to a degree granted by a public degree-granting institution of higher learning in that country. (38 U.S.C. 1676; Pub. L. 96–466)

(b) *Approval of courses offered by a foreign medical school.* In addition to meeting all the criteria stated in paragraph (a) of this section, a course offered by a foreign medical school (other than one located in Canada) must also meet all of the following criteria:

(1) The school satisfies the criteria for listing as a medical school in the World Directory of Medical Schools published by the World Health Organization (WHO).

(2) The evaluating bodies (such as medical associations or educational agencies) whose views are considered relevant by the Director, Vocational Rehabilitation and Education Service and which are located in the same country as the school—

(i) Recognize the school as a medical school, and

(ii) Approve the school.

(3) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom instruction at least 32 months long. This program must be—

(i) Supervised closely by members of the school's faculty, and

(ii) Provided either.

(A) Outside the United States in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, or

(B) Inside the United States, through a training program for foreign medical students which has been approved by all the medical licensing boards and evaluating bodies whose views are considered relevant by the Director, Vocational Rehabilitation and Education Service.

(4) The school has graduated classes during each of the two 12-month periods immediately preceding the date on which the VA receives the school's application for approval of its courses.

(5) The Director, Vocational Rehabilitation and Education Service shall withdraw approval of any course when the course or the school offering it fails to meet any of the approval criteria in this section or in Chapter 36, Title 38, United States Code.

(6) In making the decisions required by this paragraph, the Director, Vocational Rehabilitation and Education Service may consult with the Secretary of Education. The Director may review any information about a foreign medical school which the Secretary may make available. (38 U.S.C. 1676)

(c) *Approval of enrollments in foreign courses.* (1) Except as provided in paragraph (c)(2) of this section, the Veterans Administration will approve the enrollment of a veteran of eligible person in a course offered by an educational institution not located in a State when—

(i) The veteran or eligible person meets the eligibility and entitlement requirements of §§ 21.1040 through 21.1045, §§ 21.3040 through 21.3046 or §§ 21.5040 and 21.5041, as appropriate;

(ii) The veteran's or eligible person's program of education meets the requirements of § 21.4230 or § 21.5230 as appropriate; and

(iii) The course meets the requirements of this section and all other applicable VA regulations.

(2) The VA may deny or discontinue the payment of educational assistance allowance to a veteran or eligible person pursuing a course in an institution of higher learning not located in a State when the VA finds that the veteran's or eligible person's enrollment is not in the best interest of the veteran, eligible person or the Federal Government. (38 U.S.C. 1676)

[FR Doc. 87–8953 Filed 4–21–87; 8:45 am]
BILLING CODE 8320–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–300157A; FRL–3189–2]

### Ammonium Nitrate and Urea; Pesticide Tolerance Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule exempts ammonium nitrate and urea from the requirement of a tolerance when used as inert ingredients (adjuvant/intensifier for herbicides) in pesticide formulations applied to growing crops only. This regulation was requested by BASF Corp.

**EFFECTIVE DATE:** Effective on April 22, 1987.

**ADDRESS:** Written objections may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Rosalind Gross, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

**SUPPLEMENTARY INFORMATION:** FPA issued a proposed rule, published in the **Federal Register** of January 7, 1987 (52 FR 563), which announced that BASF Corp., Parsippany, NJ 07054, had requested that 40 CFR 180.1001(d) be amended by establishing exemptions from the requirement of a tolerance for ammonium nitrate and urea when used as inert ingredients (adjuvant/intensifier for herbicides) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids: carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, these ingredients are useful and do not pose a hazard to humans or the environment. EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Ammonium nitrate and urea were subjected to these new review procedures. Based on these new review procedures and the indirect food use clearance for ammonium nitrate under 21 CFR 176.180 and the direct food use clearance for urea under 21 CFR 184.1923, the Agency has determined that no additional test data will be required to support this regulation.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticides are considered useful for the purposes for which the exemptions are sought. It is concluded that the exemptions from the requirement of a tolerance will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 9, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredients as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * * *

(d) * * *

| Inert ingredients | [illegible] | [illegible] |
|---|---|---|
| . . . . . | | |
| Ammonium nitrate (CAS Reg. No. 6484-52-2). | ..... | Adjuvant/ intensifier for herbicides. |
| . . . . . | | |
| Urea (CAS Reg. No. 57-13-6). | ..... | Adjuvant/ intensifier for herbicides. |
| . . . . . | | |

[FR Doc. 87-8674 Filed 4-21-87; 8:45 am]

[illegible]

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 1**

**[General Docket No. 79-144; FCC 87-63]**

## Environmental Evaluation of Radiofrequency Radiation From FCC-Regulated Services

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rule.

**SUMMARY:** This item amends Part 1 of the Commission's Rules to categorically exclude certain FCC-regulated services from routine environmental evaluation for potential human exposure from radiofrequency (RF) radiation. Other designated services must make such an evaluation. This item is a consequence of the Commission's legal responsibilities under the National Environmental Policy Act of 1969.

**EFFECTIVE DATE:** May 26, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert F. Cleveland, Office of Engineering and Technology, FCC, telephone (202) 653-8169.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order*, General Docket 79-144, FCC 87-63, Adopted February 12, 1987, and Released April 9, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Second Report and Order**

1. This *Second Report and Order* amends the FCC's Rules to further define Commission policy regarding evaluation of potentially hazardous human exposure to radiofrequency (RF) radiation emitted by FCC-regulated facilities and operations.

2. In the earlier *Report and Order* (50 FR 11151; 3/20/85) in this proceeding the Commission amended its rules in Part 1 implementing the National Environmental Policy Act of 1969 (NEPA). The amendment provided that potential human exposure to environmental RF radiation would be explicitly evaluated at the time of licensing or authorization of designated FCC-regulated services. At the same time, a *Further Notice of Proposed Rule Making* (50 FR 10814; 3/18/85) proposed that most other FCC-regulated services would be categorically excluded from such routine environmental evaluation. This proposal was based on the premise that these other services do not generally cause excessive human exposures due to such factors as their low operating power, intermittent use, or relative inaccessibility.

3. We requested comment on our proposal for categorical exclusion and, also, we asked for responses to a list of specific questions relating to this issue. The comments received generally supported the Commission's proposed exclusions, and much useful information and data were submitted in response to the list of questions. The comments and responses are summarized in Appendix C of this item.

4. This item amends § 1.1307(b) of the FCC Rules and Regulations by specifying that routine environmental evaluation, with regard to RF radiation exposure will only be required for services licensed or approved under the following Parts of the Rules: Part 5 (experimental radio), Part 25 (satellite communications), Part 73 (radio and television broadcast), Part 74, Subpart A (experimental broadcast), and Part 74, Subpart G (low power television). All other FCC-regulated services are categorically excluded from routine environmental evaluation for RF radiation as outlined in Part 1.

5. In addition to our proposal for categorical exclusion, we had also requested comment on a second proposal to require routine

environmental evaluation under Part 1 of the Rules for ship earth stations. This proposal was based on our tentative conclusion that these transmitters might cause excessive exposures to RF radiation. We have modified this original proposal, and, in an accompanying *Third Notice of Proposed Rule Making* we are proposing to amend Part 80 of the FCC Rules to add a requirement that ship earth stations and ship radar stations not cause excessive exposure to RF radiation.

6. With the attached item the Commission continues its development of policy regarding the issue of human exposure to RF radiation emitted from FCC-regulated sources. This policy can basically be summarized as follows. The larger, more powerful, or more accessible RF sources must be evaluated for their potential to cause excessive and possibly hazardous exposures. This evaluation could take place either at the time of a Commission action on an application, or, in the case of ship earth stations and ship radar stations, we are proposing to establish a specific requirement for manufacturers and users. The very large number of relatively low-powered, inaccessible, or intermittent sources will be categorically excluded from evaluation, unless required on an ad hoc basis by the Commission or FCC staff.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

8. This item has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

**Ordering Clauses**

9. Accordingly, it is ordered that, effective May 28, 1987, Part 1 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended as set forth below and that this amendment will be applicable to applications filed on or after this effective date.

**List of Subjects in 47 CFR Part 1**

Practice and procedure, National Environmental Policy Act, Radiofrequency radiation.

**Rule Changes**

Part 1, Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

**Authority:** Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

2. Section 1.1307 is amended by revising the note following paragraph (b) as follows:

**§ 1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.**

* * * * *

(b) * * *

**Note.**—The provisions of paragraph (b) shall only apply to facilities and operations licensed or authorized under Parts 5, 25, 73, and 74 (Subparts A and G only) of the FCC Rules and Regulations. Facilities and operations licensed or authorized under other Parts or Subparts of the FCC Rules and Regulations shall be categorically excluded from consideration under this paragraph unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraphs (c) or (d) of this section.

* * * * *

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*
[FR Doc. 87-8956 Filed 4-21-87; 8:45 am]
BILLING CODE 6712-01-M

---

**47 CFR Part 15**

**[GEN Docket 85-231]**

## Non-licensed Operation of Perimeter Protection Systems; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final Rule; correction.

**SUMMARY:** On February 27, 1987, the Commission adopted a Report and Order in GEN Docket 85-231 to provide for the non-licensed operation of perimeter protection systems in the 54-72 and 76-88 MHz bands under Part 15 of the Rules. This document corrects an error in that document.

**FOR FURTHER INFORMATION CONTACT:** Liliane Volcy, Technical Standards Branch, Office of Engineering & Technology, (202) 653-7316.

**SUPPLEMENTARY INFORMATION:** The full text of the Commission's Report and Order, GEN Docket 85-231, FCC 87-75, adopted February 27, 1987, released March 13, 1987, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

**§ 15.324 [Corrected]**

The Commission's Report and Order, 52 FR 9296 (March 24, 1987) is corrected by removing on page 9298 under § 15.324(b) the words "76-78 MHz" and inserting, in their place, the words "76-88 MHz."

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*
[FR Doc. 87-8968 Filed 4-21-87; 8:45 am]
BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-221; RM-5296]**

## Radio Broadcasting Services; Grover City, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes FM Channel 297B1 for Channel 296A at Grover City, CA, and modifies the Class A license of Station KLOI(FM), in response to a petition filed by R and L Broadcasters. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 28, 1987.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-221, adopted March 27, 1987, and released April 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202(b) [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended under California by revising Channel 297B1 to read Channel 296A at Grover City.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8965 Filed 4-21-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-100; RM-5031]**

## Radio Broadcasting Services; Morgan Hill and Freedom, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel FM 241A to Morgan Hill, CA, as that community's first local service, and substitutes Channel 298A for 240A at Freedom, CA, in response to a petition filed by Eric R. Hilding and Claudia W. Bartosiewicz. With this action, this proceeding is terminated.

**DATES:** Effective May 28, 1987; The window period for filing applications on Channel 241A at Morgan Hill, CA will open on May 29, 1987, and close on June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau (202) 634-6530, concerning the allotment. Questions related to the application process should be addressed to Dennis Williams, Chief, FM Branch, Mass Media Bureau, (202) 632-6908.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-100, adopted March 19, 1987, and released April 14, 1987. The full text of this Commission decision available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended by adding Morgan Hill, Channel 241A, under California.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8961 Filed 4-21-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-72; RMs-5073; 5240; 5404; 5405; 5406]**

## Radio Broadcasting Services; Columbia, Greenwood, Hartsville, Lexington, North Augusta and West Columbia, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 248C1 for Channel 250 at Columbia, SC, and modifies the license of Station WCOS to specify operation on the newly allocated channel, thus eliminating long-standing egregious short-spacings between Station WCOS and three co- or adjacent channel stations, at the request of the licensee, WCOS, Inc.; allocates Channel 253A to Lexington, SC, as the community's first local FM service, at the request of Standard Broadcasting, Inc.; allocates Channel 253A to Hartsville, SC, at the request of Hartsville Broadcasting Company, Inc.; and on the Commission's own motion reallocates Channel 261A from Columbia to West Columbia, to reflect its actual use there by Station WSCQ. Channel 253A can be allocated to Lexington and Hartsville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Channel 248C1 can be allocated to Columbia in compliance with the Commission's minimum distance separation requirements and used at Station WCOS' transmitter location. The request of South Carolina Educational TV Commission to allocate Channel 248C2 to Greenwood, SC, and reserve it for noncommercial educational use is denied since it would require Station WCOS at Columbia to involuntarily downgrade its operation on its present channel or to relocate its transmitter and operate on Channel 253C1. The request of Gospel Radio, Inc. to allocate Channel 248A to North Augusta, SC, is denied since it would require Station WCOS and the affected stations to remain operating short-spaced. With this action, this proceeding is terminated.

**DATES:** Effective May 28, 1987; The window period for filing applications for Channels 253A at Hartsville and Lexington, SC, will open on May 29, 1987, and close on June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-72, adopted March 25, 1987, and released April 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for South Carolina is amended by deleting Channels 250 and 261A and adding Channel 248C1 at Columbia, adding Channel 253A at Hartsville, adding Channel 253A at Lexington, and adding Channel 261A at West Columbia.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8964 Filed 4-21-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-341; RM-5331]**

## Radio Broadcasting Services; Lowry, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allocates Channel 264 to Lowry, South Dakota, as the community's first local FM service, at the request of the South Dakota State Board of Directors for Educational Television. Channel 264 can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

**DATES:** Effective May 28, 1987; The window period for filing applications will open on May 29, 1987, and close on June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–341, adopted March 27, 1987, and released April 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for South Dakota is amended by adding Lowry, Channel 264.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–8963 Filed 4–21–87; 8:45 am]

BILLING CODE 6712–01–M

---

**47 CFR Part 73**

**[MM Docket No. 86–259; RM–5274]**

## Radio Broadcasting Services; Cruz Bay, Virgin Islands

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 222B to Cruz Bay, Virgin Islands, as that community's first FM service, at the request of Christopher Zoller. A site restriction of 6.2 kilometers (3.9 miles) east of the community is required. With this action, this proceeding is terminated.

**DATES:** Effective May 28, 1987. The window period for filing applications will open on May 29, 1987, and close on June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–259, adopted March 27, 1987, and released April 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended, under Virgin Islands by adding Channel 222B to Cruz Bay.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–8962 Filed 4–21–87; 8:45 am]

BILLING CODE 6712–01–M

---

**47 CFR Part 97**

**[PR Docket No. 86–161]**

## Amendment of the Amateur Radio Service Rules To Expand the Privileges Available to Novice Operators

**AGENCY:** Federal Communications Commission.

**ACTION:** Request for stay denied.

**SUMMARY:** The FCC expanded the requirements of the written examination for the Novice Operator license, effective March 21, 1987. Martin Schwartz of Ameco Publishing Corporation sought a temporary stay until July 21, 1987, so that small businesses would not experience significant monetary losses due to obsolete inventory of test preparation materials. The FCC said that the mere allegation of adverse financial impact, without more, is insufficient to show irreparable injury warranting a stay. The FCC found that other parties who had already published new materials would like suffer injury. The FCC also found that a stay would not be in the public interest since Novices should possess the greater knowledge that would come from preparing for the expanded examination.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 97**

Amateur radio, Examinations, Radio.

**Order**

Adopted: March 25, 1987.
Released: April 13, 1987.

By the Deputy Chief, Private Radio Bureau.

In the matter of amendment of the amateur radio service rules to expand the privileges available to novice operators; PR Docket No. 86–161, RM 5022 RM–5038, RM 5023 RM–5251, RM 5024 RM–5281, and RM 5025 RM–5282.

1. On February 10, 1987, the FCC released a *Report and Order* in this proceeding which expanded the operating privileges of Novice operator licensees in the amateur service. Since proficiency examinations are required in this service, the FCC concomitantly expanded the requirements of the written examination for the Novice operator license. The effective date of this action was March 21, 1987.

2. On March 11, 1987, Martin Schwartz of Ameco Publishing Corporation filed a petition to temporarily stay the effective date of the expanded examination requirement.[1] He sought to avoid "significant monetary losses to many small businesses including distributors, and publishers, as well as clubs and individuals who purchased materials which were rendered obsolete overnight by the March 21st date." Schwartz requested that the new examination requirements go into effect July 21, 1987.

---

[1] Mr. Schwartz did not seek to stay the new operating privileges.

3. Before a grant of a request for stay is warranted, the petitioner must demonstrate that a failure to grant a stay would lead to irreparable injury, that granting the stay would not harm other interested parties and that the stay would be in the public interest. See, *Pochahontas Cable TV, Inc. and Newport TV Cable, Inc.*, 40 RR 2d 891 (1977); 64 FCC 2d 698 (1977). After consideration of Schwartz's arguments, it is concluded that the petitioner has not demonstrated that a stay is warranted.

4. The irreparable injury that Schwartz seeks to show is presumably to be found in an obsolete inventory of test preparation materials, although he has provided no estimate of the magnitude or value of such inventory. However, the mere allegation of adverse financial impact, without more, is insufficient to show irreparable injury warranting a stay. See, *Wisconsin Gas Co.* v. *FERC*, 758 F2d 669 (D.C. Cir., 1985).

5. As to the other factors required for a stay, we find that other interested parties are likely to be injured by a grant of the relief. Other parties have published materials in reliance on the rules we adopted. Grant of a stay here would harm them by invalidating the products they have brought to the market.

6. Finally, Schwartz asserts that grandfathering Novices who pass the old test during the requested interim period makes more sense than causing "havoc in testing."

7. We disagree. Novice Class operators have extensive new operating privileges. To help prevent interference, operational problems and personal injury from operation at microwave frequencies, Novices should possess the greater knowledge that would come from preparing for the expanded examination.

8. In view of the foregoing, we find that a grant of the stay would not be in the public interest.

9. Under the authority delegated by § 0.331 of the FCC Rules, *It is ordered*, That the Request for Stay *Is Denied*.

Federal Communications Commission.

**Ralph A. Haller,**

*Deputy Chief, Private Radio Bureau.*

[FR Doc. 87–8967 Filed 4–21–87 8:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 2)]

### Practice and Procedure; Fees for Services Performed In Connection With Licensing and Related Services [1]

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** On December 18, 1986, at 51 FR 45348, the Commission published a notice reopening its 1984 user fee decision [published, as corrected, at 49 FR 27154 (July 2, 1984)] and its 1985 user fee decision [published, as corrected, at 50 FR 47224 (November 15, 1985)] and seeking comments on the proposed adjustments to the fee schedule required by the decision in *Central & Southern Motor Freight Tariff Ass'n Inc.* v. *United States*, 777 F.2d 722 (D.C. Circuit, 1985).

In this decision the Commission adopts the proposed modifications which will increase the Commission's filing fee for the Fee Item (74), the filing of tariffs, rate schedules and contracts, including supplements, to $6.00 per series transmitted and which will change two items in the 1984 schedule.

The proposed 1986 fee schedule update is adopted.

Further, the description of the Fee Item (60) of the schedule relating to formal complaints is clarified.

**EFFECTIVE DATE:** June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. King, (202) 275–7428.

**SUPPLEMENTAL INFORMATION:** As a result of the court's decision in *Central & Southern Motor Freight Tariff Ass'n, Inc.* v. *United States*, 777 F.2d 722 (D.C. Cir. 1985), the Commission has reviewed its calculation of the operations overhead cost factor used to develop fees for performing services for the public and its calculations of the specific costs for the tariff filing fee. In the notice of proposed rulemaking (NPR), the Commission proposed to modify its calculations of the operations overhead cost factor and the calculation of the tariff filing fee. No comments were received from the public on the Commission's proposals. Accordingly, those proposals are being adopted.

Based on actual budget data, the Commission has changed its calculation of operations overhead costs from 10.82 percent to 9.34 percent for its 1984 fee schedule. Since the Commission's fees are set at levels lower than its fully distributed costs (due to a rounding down procedure), the recalculation of operations overhead has little effect on the actual fee levels. Only two fee items on the 1984 schedule will change: Fee Item (42), A notice or petition to discontinue passenger train service, should have been established at $6,200 rather than $6,300, and Fee Item (44), An application for use of terminal facilities or other applications under 49 U.S.C. 11103, should have been established as $5,200 rather than $5,300. Anyone who filed either type of application between July 2, 1984, and November 4, 1985, when the 1984 fee schedule was in effect would be entitled to a refund of $100. A review of the Commission's fee records shows that no such filings were made during that time period. Therefore, refunds are not required.

Upon re-examination, the direct labor cost for processing tariff filings has been calculated at $3.35. The fully allocated cost level for 1984 should have been $5.98. Thus our calculation of $4.86 in our 1984 fee decision (which produced a fee of $4.00) was lower than our our actual costs. In 1985, the tariff filing fee increased to $5.00, when fees were adjusted to reflect 1985 costs of services. However, based upon the change in direct labor noted above and taking into consideration update factors for 1985, the tariff filing fee must be increased to $6.00 because our fully allocated costs for processing a tariff filing is $6.17.

We will make the increase in the tariff filing fee effective on June 1, 1987, to provide adequate time for our staff to notify those persons who use our monthly tariff filing billing system.

The Commission is required to recalculate its costs for providing services to public annually. See 49 CFR 1002.3. In our NPR we outlined our projected fee costs for 1986. There was no increase in direct labor costs because there was no Governmental general schedule wage increase. Our general and administrative expenses decreased slightly in 1986, which resulted in slightly lower fully distributed costs. Since no decrease is substantial enough to cause any reductions in fees, there will be no change in the Commission's fee schedule for 1986 other than the change in the tariff filing fee discussed above.

It has been brought to our attention that there have been questions raised as to whether the filing fee of $500 for Fee Item (60) would apply to a formal complaint against a transportation

[1] This decision embraces Ex Parte No. 246 (Sub-No. 3), *Regulations Governing Fees for Services—1985 Update*, 2 ICC 2d 23 (1985) and Ex Parte No. 246 (Sub-No. 4), *Regulations Governing Fees for Services Performed In Connection With Licensing and Related Services—1986 Update*.

broker because the description of that fee item reads, "A complaint alleging unlawful rate or practices of carriers." That fee was intended to cover any type of formal complaint filed against any regulated entity. Complaints filed pursuant to 49 U.S.C. 11701 against a broker or a complaint against a freight forwarder of household goods are included in that fee category. See Appendix D, Fee Item (60), *1984 User Fee Decision*, 1, ICC 2d 60. Accordingly, the item description (60) is modified to read, "A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods.

This decision should not have a significant impact upon the quality of the human environment or the conservation of energy resources. Nor should it have a significant effect on a substantial number of small entities.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289–4357 (D. C. Metropolitan area).

**List of Subjects in 49 CFR Part 1002**

Administrative practices and procedures and Common carriers.

*It is ordered:*

(1) The Commission's decisions of April 25, 1984, and September 19, 1985, are reopened, modified and supplemented to the extent set for in the decision.

(2) The filing fees for Fee Item (42) contained in our 1984 fees schedule is reduced to $6,200 and the filing fee for Fee Item (44) contained in the 1984 fee schedule is reduced to $5,200.

(3) The final rules are adopted. These rules will be effective on June 1, 1987.

(4) The fee schedule adopted in our 1985 User Fee Decision, 2 ICC 2d 23 (1985), as modified in this decision, is adopted as the Commission's 1986 fee schedule.

Decided: April 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

**Noreta R. McGee,**

*Secretary.*

Title 49 of the Code of Federal Regulations is amended as follows:

## PART 1002—FEES

1. In Part 1002 the authority citation continues to read as follows:

**Authority:** 5 U.S.C. 533, 31 U.S.C. 9701, and 49 U.S.C. 10321.

2. In 1002.2 paragraphs (f) (60) and (74) are revised as follows:

* * * * *

(f) * * *

(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods—$500.00.

* * * * *

(74) The filing of tariffs, rate schedules, and contracts, including supplements—$6.00 per series transmitted.

* * * * *

[FR Doc. 87–9002 Filed 4–21–87; 8:45 am]

BILLING CODE 7035–01–M

# Proposed Rules

Federal Register
Vol. 52, No. 77
Wednesday, April 22, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 1d

### Rural Labor

**AGENCY:** Department of Agriculture.

**ACTION:** Proposed rule.

**SUMMARY:** Section 302(a) of the Immigration Reform and Control Act of 1986, Pub. L. No. 99–603 (hereinafter referred to as the "Act") states that "seasonal agricultural services" means "the performance of field work relating to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." This authorized the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services" for the purposes of the Act. This notice proposes regulations to define the words and terms necessary to carry out the responsibility of the Secretary under section 302(a) of the Act.

**DATE:** Comments must be received no later than May 13, 1987.

**ADDRESS:** Send comments to room 227–E, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250. Written comments received may be inspected in Room 227–E of the Administration Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Al French, Acting Special Assistant (for Labor Affairs) to the Assistant Secretary for Economics, Room 227–E, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, phone (202) 447–4737.

**SUPPLEMENTARY INFORMATION:**

## Background

The Act makes it illegal for employers to employ, recruit, or hire undocumented aliens in the United States and imposes penalties upon employers who violate the Act. This prohibition implements one of the purposes of the Act, which is to reduce the flow of illegal aliens into the United Syates, in part, by reducing the incentive of the employment opportunities available in this country. At the same time, Congress recognized that many of the agricultural employers in the nation were dependent upon illegal alien workers to meet their production and harvesting needs. To address the needs of those agricultural employers, the Act created the Special Agricultural Workers program.

Prior to the enactment of the Act, the Immigration and Nationality Act established a program for the importation of alien workers to perform temporary services or labor. 8 U.S.C. 1101(a)(15)(H)(ii)(b). The H–2 program, as it is popularly referred to, provides for the employment of temporary alien workers by employers certified by the Department of Labor to have a shortage of qualified domestic workers. The existing H–2 program was deemed to be insufficient to meet the needs of certain agricultural employers. In an effort to fulfill the labor requirements of such employers, Congress created the H–2A program in the Act. 8 U.S.C. 1101(a)(15)(H)(ii)(a). The H–2A program in essence is a revised version of the H–2 program with shorter time requirements.

As a result of testimony offered by agricultural employers in hearings, Congress was convinced that the H–2A program was too structured to meet the needs of certain "agricultural interests, particularly western growers of perishable agricultural commodities . . . who have come to rely heavily on the existence of an undocumented work force." p. 83, H.R. Rep. No. 682, Part 1, 99th Cong., 2nd Sess. (1986). In a further effort to meet the needs of these growers of perishable agricultural commodities, the Act amended the Immigration and Nationality Act to create a class of immigrant aliens called Special Agricultural Workers. Section 302 of the Act. The Special Agricultural Workers program is restricted to aliens who have resided and worked in the United States for qualifying periods identified by the Act while performing seasonal agricultural services. "Seasonal agricultural services" are defined by the Act to be "field work related to planting, cultural practices, cultivation, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined by the Secretary of Agriculture."

Under the Special Agricultural Workers program of the Act, alien workers that have performed seasonal agricultural services in this country for a prescribed period of time are permitted to apply for temporary residence in the United States. The proposed rule essentially determines the particular fruits, vegetables, and other perishable commodities in which an alien worker may perform field work to qualify as having performed seasonal agricultural services. The Immigration and Naturalization Service (INS) accepts applications from the alien workers and considers them in light of the proposed rule. The INS will determine which special agricultural workers shall be admitted into the United States for temporary residence.

## Explanation

The legislative history of the Act indicates that Congress considered several different factors which could be used to help in identifying other perishable commodities. Included among the factors considered were, whether the field work is seasonal, and whether the labor demand is unpredictable. The legislative history does not reflect clearly congressional intention on the meaning of "fruits and vegetables of every kind."

In an effort to comply with congressional intent regarding the fruits, vegetables, and other perishable commodities to be included within the definition of "seasonal agricultural services," consideration was given to creating an exhaustive list of the commodities to be included and to seeking an extant list of commodities that included the necessary commodities. Lists are cumbersome and rarely exhaustive. For that reason, broad, generic definitions are being proposed.

The effort in carrying out the responsibility of the Secretary of

Agriculture to promulgate definitions also entailed defining several other terms in this proposed rule. The terms defined in the proposed rule are "critical and unpredictable labor demands," "field work," "fruits," "horticultural specialties," "other perishable commodities," "seasonal," "seasonal agricultural services," and "vegetables." A definition for each of these terms is needed to understand the fruits, vegetables, and perishable commodities that are to be included within the definitions of "seasonal agricultural services."

"Critical and unpredictable labor demands" is defined to make it clear that the use of alien workers is predicated upon unpredictable circumstances and the more immediate needs for labor which result from those circumstances. Typical of the circumstance which creates the critical, yet unpredictable demand for labor is weather or other climate conditions. As a result, a labor force would be needed on short notice.

"Field work" is defined to clarify the types of activities that workers may perform on agricultural land that will qualify as "seasonal agricultural services."

"Fruits" is defined in general botanical terms.

"Horticultural specialties" is defined to identify a group of perishable commodities that are neither fruits nor vegetables; but are produced as a result of seasonal field work and have critical and unpredictable labor demands.

"Other perishable commodities" is defined to include a broad group of commodities that are neither fruits nor vegetables; but are produced as a result of seasonal field work, and have critical and unpredictable labor demands.

"Seasonal" is defined to delineate the period during which any seasonal agricultural service is performed. The definition makes it clear that a person who is employed seasonally may still be employed throughout the year while performing different seasonal agricultural services.

"Seasonal agricultural services" is defined exactly as set out in the Act.

"Vegetables" is defined in general botanical terms.

The Secretary determined that the term "fruits and vegetables of every kind" leaves little discretion in the identification of the particular fruits and vegetables to be included within the definition of "seasonal agricultural services."

Adoption of a botanical definition is reasonable because of its clear scientific basis. It is recognized that this approach, while scientifically and legally sound, could lead to certain commonly perceived incongruities. C. Wilson and W. Loomis *Botany* (5th Ed. 1971) note the popular misconceptions regarding fruits and vegetables:

> Confusion beclouds the use of the terms fruit and vegetable. Many fruits, such as the tomato, squash, cucumber, corn, and eggplant are popularly called vegetables. From a botanical standpoint these are fruits, and they may be distinguished from vegetables if the definition of fruits is kept in mind. A fruit always develops from a flower and is always composed of at least one ripened and mature ovary with which may be fused other parts of structures associated with the flower. Any edible part of the plant that does not conform to this definition of a fruit should be classified a vegetable.

While the botany literature in defining fruits and vegetables makes reference to their being edible, it is clear from the context in which these definitions are discussed that the reference is to consumption of the fruit or vegetable by humans. Thus, "human edible" has been made an explicit part of the botanical definitions of fruits and vegetables in this proposed rule.

The requirement in the proposed rule that the fruits or vegetables be human edible comports with congressional intent, especially given the distinction drawn by Congress between fruits and vegetables as opposed to other perishable commodities. While the broad botanical definitions in this proposed rule include virtually all fruits and vegetables, it is estimated that few additional alien workers will be eligible to be admitted as Special Agricultural Workers as a result. "Other perishable commodities" is essentially a listing of those commodities that are not fruits or vegetables; but are produced as a result of seasonal field work, and have critical and unpredictable labor demands.

The commodities excluded do not meet these criteria. For example, certain commodities are excluded because they are not produced as a result of field work as that term is defined in this proposed regulation. Commodities excluded based upon this expression of congressional intent include birds, livestock, animal specialties and the like.

**Regulatory Impact**

USDA has reviewed this proposed rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the INS will use this proposed rule to assist it in determining which special agricultural workers will be admitted to the United States for temporary residence. Thus, the primary benefits of this proposed rule are internal to the operation of the United States government.

This action, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Act**

This proposed rule defines fruits, vegetables, other perishable commodities, and other related and necessary terms to clarify the term "seasonal agricultural services." The proposed rule does not contain any compliance or reporting requirements, or any timetables. The proposed rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the proposed rule, in and of itself, will have no significant impact upon small entities.

**Paper Reduction Act**

This proposed rule does not require additional procedures or paperwork not required already by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502 et seq.) are inapplicable.

**National Environmental Policy Act**

This proposed rule will not have an impact upon the environment.

**List of Subjects in 7 CFR Part 1d**

Immigration, Rural labor.

1. In 7 CFR a new Part 1d "Rural Labor—Immigration Reform and Control Act of 1986—Definitions" is proposed to be added after Part 1c, to read as follows:

## PART 1d—RURAL LABOR—IMMIGRATION REFORM AND CONTROL ACT OF 1986—DEFINITIONS

Sec.

1d.1 Scope.
1d.2 Critical and unpredictable labor demands.
1d.3 Field work.
1d.4 Fruits.
1d.5 Horticultural specialties.
1d.6 Other perishable commodities.
1d.7 Seasonal.
1d.8 Seasonal agricultural services.
1d.9 Vegetables.

**Authority:** Section 302(h) of Pub. L. No. 99–603; 100 Stat. 3422.

BEST COPY AVAILABLE

**§ 1d.1 Scope.**

The following definitions are applicable only to the Immigration Control and Reform Act of 1986, Pub. L. No. 99–603, and are published to fulfill the Secretary's responsibilities under that Act. Unless otherwise indicated, any list in this part is for illustrative purposes and is not intended to be an exclusive list of all of the commodities to be included or excluded.

**§ 1d.2 Critical and unpredictable labor demands.**

"Critical and unpredictable labor demands" means that a 60 day period during which field work is to be initiated cannot be predicted with any certainty.

**§ 1d.3 Field work.**

"Field work" means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse. Thus, the drying, processing, or packing of fruits, vegetables, and other perishable commodities in the field and the "on the field" loading of transportation vehicles are included. Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural land are included. Supervising any of these activities shall be considered performing the activities.

**§ 1d.4 Fruits.**

"Fruits" means the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence.

**§ 1d.5 Horticultural specialties.**

"Horticultural specialties" means field grown, containerized, and greenhouse produced nursery crops which include juvenile trees, shrubs, seedlings, budding, grafting and understock, fruit and nut trees, small fruit plants, vines, ground covers, foliage and potted plants, cut flowers, herbaceous annuals, biennials and perennials, bulbs, corms, and tubers.

**§ 1d.6 Other perishable commodities.**

"Other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands. This includes Christmas trees, cut flowers, herbs, hops, horticultural specialties, spanish reeds (arundo donax), spices, sugar beets, and tobacco. Commodities that do not experience critical and unpredictable labor demands such as aquacultural products, birds, cotton, dairy products, earthworms, fish including oysters and shellfish, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and poultry products, trees, soybeans, sugar cane, wildlife, and wool, are not considered perishable commodities.

**§ 1d.7 Seasonal.**

"Seasonal" means the employment pertains to or is of the kind performed exclusively at certain seasons or periods of the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he or she may continue to be employed during the year.

**§ 1d.8 Seasonal agricultural services.**

"Seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities.

**§ 1d.9 Vegetables.**

"Vegetables" means the human edible leaves, stems, roots, or tubers of herbaceous plants.

Done at Washington, DC, this 20th day of April 1987.

**Peter C. Meyers,**

*Acting Secretary of Agriculture.*

[FR Doc. 87–9125 Filed 4–21–87; 8:45 am]

BILLING CODE 3410–01–M

---

## Commodity Credit Corporation

## 7 CFR Part 713

## Cotton Loan Deficiency Payments

**AGENCY:** Commodity Credit Corporation, U.S. Department of Agriculture (USDA).

**ACTION:** Proposed rule.

**SUMMARY:** This purpose of this proposed rule is to amend the regulations governing loan deficiency payments for the 1987 through 1990 crops of upland cotton. Under the proposed rule, if loan deficiency payments are made available with respect to a crop of upland cotton, a producer of eligible upland cotton may forego loan eligibility on one or more bales of upland cotton and instead receive a loan deficiency payment based upon the quantity of eligible cotton the producer agrees not to pledge as loan collateral. A determination to receive a loan deficiency payment with respect to a portion of a producer's total upland cotton production will not, under the proposed rule, affect the eligibility of the producer's remaining production to be pledged to the Commodity Credit Corporation as security for a price support loan.

**DATE:** Comments must be received on or before May 22, 1987, to be assured of consideration.

**ADDRESS:** Send comments to Director, Cotton, Grain and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be made available for public inspection in Room 3627-South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Beverly Pritts, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447–8374.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to the provisions of this proposed rule since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this

action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1985).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0004, 0560–0030, 0560–0050, 0560–0071, 0560–0084, and 0560–0092 have been assigned.

*Loan Deficiency Program*

Currently, the regulations at 7 CFR 713.55 provide that, as a condition of eligibility for a loan deficiency payment, eligible producers must agree to forego obtaining a price support loan on their total farm production.

In order to provide producers more flexibility in making their marketing decisions, it has been determined that these regulations should be amended to allow eligible producers of upland cotton to obtain loan deficiency payments with respect to their production on a bale-by-bale basis for the 1987 and subsequent crops of upland cotton.

The public is invited to comment on these proposed amendments. Consideration will be given to any data, views, and recommendations that may be received relating to these issues.

**List of Subjects in 7 CFR Part 713**

Cotton, Feed grains, Price support programs, Wheat, Rice.

Accordingly, the regulation at Part 713 of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 713—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR Part 713 continues to read as follows:

**Authority:** Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1444, 1383, as amended, 1448; 91 Stat. 950, as amended, 950, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462, 1463, 1464 (7 U.S.C. 1441–1, 1444–1, 1444b, 1445b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445h, 1421, 1423, and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309).

2. Section 713.55 is revised to read as follows:

**§ 713.55 Loan deficiency program.**

(a) The Secretary will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a corp year.

(b) Loan deficiency payments on wheat, feed grains, rice and 1986 crop of upland cotton.

(1) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop of wheat, feed grains, rice, or the 1986 crop of upland cotton, the producer of such commodity must:

(i) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with Parts 1421 and 1427 of this title;

(ii) Agree to forego obtaining such loans or purchases; and

(iii) Otherwise comply with all program requirements.

(2) The loan deficiency payment applicable to a crop of wheat, feed grains, rice, or the 1986 crop of upland cotton shall be computed by multiplying the loan payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan in accordance with Parts 1421 and 1427 of this title but not to exceed the product obtained by multiplying:

(i) The individual farm program acreage for the crop determined in accordance with § 713.108 by

(ii) The farm program payment yield for the farm provided in § 713.6.

(c) Loan deficiency payments on 1987 and subsequent crops of upland cotton.

(1) In order to be eligible for any loan deficiency payments if such payments are made available for a crop of upland cotton, the producer must:

(i) Comply with all of the program requirements to be eligible to obtain loans in accordance with Part 1427 of this title;

(ii) Agree to forego obtaining such loans on the quantity of upland cotton with respect to which a loan deficiency payment is requested; and

(iii) Otherwise comply with all program requirements.

(2) The loan deficiency payment applicable to a crop of upland cotton shall be computed by multiplying the loan payment rate, determined in accordance with paragraph (c) of this section, by the quantity of the crop eligible to be pledged as collateral for a price support loan in accordance with Part 1427 of this title but with respect to which the producer agrees to forego obtaining such loan, but not to exceed the product obtained by multiplying:

(i) The individual farm program acreage for the crop determined in accordance with § 713.108 by

(ii) The farm program payment yield for the farm provided in § 713.6.

(d) The loan payment rate for a crop shall be the amount by which the level of price support loan originally determined for the crop exceeds the level at which CCC has announced, in accordance with Parts 1421 and 1427 of this title, that producers may repay their price support loans.

(e) With respect to upland cotton, an amount not to exceed one-half of such payment may be made and, with respect to rice, an amount not to exceed one-half of such payments shall be made in accordance with Part 770 of this chapter.

Signed at Washington, DC, on April 17, 1987.

**Milt J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–8982 Filed 4–21–87; 8:45 am]

BILLING CODE 3410–05–M

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 86–NM–222–AD]**

### Airworthiness Directives: British Aerospace Model BAe–146 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to British Aerospace Model BAe–146 series airplanes, that would require periodic inspection and replacement, if necessary, of the flap system torque limiters. This proposal is prompted by reports of loss of primary drive of the flap torque limiters due to excessive sprocket wear. Failure of the flap drive system could result in reduced controllability of the airplane.

**DATES:** Comments must be received no later than June 15, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional

Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–222–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by Administration before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–222–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**Discussion**

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Model BAe–146 airplanes. There have been reports of loss of primary drive of the flap system torque limiters due to excessive sprocket wear. Failure of the flap drive system could result in reduced controllability of the airplane.

British Aerospace has issued Alert Service Bulletin No. 27–A54, Revision 1, dated April 22, 1986, which described procedures for inspection of the torque limiter drive sprocket splines for excessive backlash, and replacement, if necessary. The CAA has classified this alert service bulletin as mandatory.

British Aerospace has also issued Service Bulletin 27–54–70193A, Revision 1, dated June 3, 1986, which describes a modification of the flap drive system which, if accomplished, terminates the need for the repetitive inspections described in Alert Service Bulletin 27–A54.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require repetitive inspections of the torque limiter drive sprocket splines and replacement, if necessary, in accordance with BAe Alert Serivce Bulletin 27–A54, Revision 1, dated April 22, 1986. Modification of the flap drive system in accordance with BAe Service Bulletin 27–54–70193A, Revision 1, dated June 3, 1986, would constitute terminating action for the repetitive inspection requirements.

It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,400 per inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($480). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**British Aerospace:** Applies to Model BAe–146 series airplanes listed in British Aerospace BAe–146 Service Bulletin 27–54–70193A, Revision 1, dated June 3, 1986, certificated in any category.

Compliance required within 60 days after the effective date of this AD.

To prevent the loss of primary or secondary drive of the flap system torque limiter output, accomplish the following, unless previously accomplished:

A. Inspect torque limiter drive sprocket splines for excessive backlash and replace, if necessary, in accordance with BAe Alert Service Bulletin 27–A54, Revision 1, dated April 22, 1986.

B. Repeat the following inspections described in BAe Service Bulletin 27–A54, Revision 1, dated April 22, 1986:

1. Paragraph 2A: at intervals not exceeding 600 landings.

2. Paragraph 2B: at intervals not exceeding 200 landings.

C. Modification of the flap drive system in accordance with BAe Modification Service Bulletin 27–54–70193A, Revision 1, dated June 3, 1986, terminates the repetitive inspection requirements of paragraph B., above.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20014. These documents may be examined at the

FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 15, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-8945 Filed 4-21-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 87-NM-26-AD]

## Airworthiness Directives: Short Brothers PLC Model SD3-60 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-60 series airplanes, that would require installation of an aluminum cover to protect the flight data recorder (FDR). This proposal is prompted by reports of corrosion of circuit cards in the electronic section of the recorder, which has resulted in the inability to obtain data from the FDR. The proposed AD is needed to prevent the loss of information that, in the event of an accident, may be used to determine the cause and, thereby, prevent future accidents.

**DATES:** Comments must be received no later than June 15, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-26-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-26-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of reports of corrosion of the circuit cards in the electronic section of the flight data recorder (FDR) on certain Short Brothers Model SD3-60 airplanes. This condition, if not corrected, would result in the lack of recorded information on the recording tape. In the event of an accident, this data is used to determine the cause and, thereby, prevent future accidents.

Short Brothers issued Service Bulletin SD360-31-04, Revision 2, dated October 1986, which describes the installation of a cover to prevent corrosion in the FDR. The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the installation of an aluminum cover to protect the FDR, in accordance with the previously mentioned service bulletin.

It is estimated that 43 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,440.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80.). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Short Brothers PLC:** Applies to Model SD3-60, serial numbers SH3601 through SH3679, certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To prevent the potential for the loss of recorded information from the flight data recorder, due to the corrosion, accomplish the following:

A. Install a flight data recorder cover in accordance with the Shorts Service Bulletin No. SD360-31-04, Revision No. 2, dated October 1986.

B. Inspect the installed flight data recorder for corrosion of the circuit cards and correct as required in accordance with the appropriate recorder maintenance manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Moutain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 15, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87–8944 Filed 4–21–87; 8:45 am]

BILLING CODE 4910–13–M

---

DEPARTMENT OF THE INTERIOR

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 946**

**Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to Virginia Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing the receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments would restore the phrase "to the extent required under State law" to the regulations governing subsidence protection and subsidence control plan requirements with respect to structures and facilities. This notice sets forth the times and locations that the Virginia program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments relating to Virginia's proposed modification of its program not received on or before 4:00 p.m. on May 22, 1987, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request at 1:00 p.m. on May 18, 1987 at the Big Stone Gap Field Office. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William R. Thomas at the Big Stone Gap Field Office by the close of business on or before May 7, 1987. If no one has contacted Mr. Thomas to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under "**ADDRESSES**".

**ADDRESSES:** Written comments and requests for a hearing should be mailed or hand-delivered to: Office of Surface Mining Reclamation and Enforcement, Attention: Virginia Administrative Record, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219. Copies of the proposed amendment, the Virginia program, the Administrative Record on the Virginia program and a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE office and the office of the Virginia Division of Mined Land Reclamation listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523–2925.

**FOR FURTHER INFORMATION CONTACT:** Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13 and 946.15.

## II. Submission of Amendment

By letter dated March 20, 1987 (Administrative Record No. VA–597), Virginia submitted a proposed amendment to Sections 480–03–19.784.20(f)(2) and 480–03–19.817.121(c)(2) of its Coal Surface Mining Reclamation Regulations. Section 480–03–19.784.20(f)(2) requires that subsidence control plans for underground mines include a description of the measures to be taken to mitigate or remedy any subsidence-related material damage to structures or facilities. Section 480–03–19.817.121(c)(2) requires that the permittee of an underground mine either correct any material subsidence-caused damage to structures or facilities or compensate the owner of such structures or facilities for the full amount of any diminution in value resulting from subsidence. The amendment would alter the damage correction provisions of both rules by restoring the phrase "to the extent required under State law", which, as codified at 30 CFR 946.12(b)(3), was disapproved in the rulemaking announcing the Director's decision on the revised set of Coal Surface Mining Reclamation Regulations submitted by Virginia by letter of November 8, 1985 (51 FR 42548–42555, November 25, 1986).

As explained in Finding 9 of the November 25, 1986 **Federal Register** notice (51 FR 42551), the Director disapproved this phrase because, on February 21, 1985, the Secretary suspended an identical phrase contained in the corresponding Federal regulations at 30 CFR 817.121(c)(2) to comply with the decision of the U.S. District Court for the District of

Columbia in *In re: Permanent Surface Mining Regulation Litigation II)* (Civil Action 79–1144, October 1, 1984). The court remanded this provision, which specified that an operator need be responsible for subsidence damage to structures only to the extent required by State law, for failure to provide adequate notice and opportunity to comment in accordance with the Administrative Procedure Act.

On July 8, 1985, OSMRE reproposed 30 CFR 817.121(c)(2) as promulgated on July 1, 1983. In the same notice, OSMRE also requested comment on proposed revisions to 30 CFR 784.20. On February 17, 1987, after considering all public comments, OSMRE promulgated a revised version of 30 CFR 784.20 and repromulgated 30 CFR 817.121(c)(2) as it existed prior to the February 21, 1985 suspension notice (52 FR 4860–4868). Under these rules, operator responsibility for subsidence damage to structures or facilities will be determined by the applicable provisions of State law. Therefore, Virginia has requested that the Director remove his disapproval of similar provisions in the Commonwealth's regulations.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Virginia satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Virginia program, and the Director will remove his previous disapproval.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Big Stone Gap, Virginia will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on May 7, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

*Public Meeting*

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FUTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

## IV. Procedural Determinations

*1. Compliance with the National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*3. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 946**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 15, 1987.

**Brent Walquist,**

*Deputy Director, Operations and Technical Services.*

[FR Doc. 87–8980 Filed 4–21–87; 8:45 am]

BILLING CODE 4310–05–M

---

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 86–28; RM–5109]**

## Radio Broadcasting Services; Frayser, TN; Denial of Proposal

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; denial of proposal.

**SUMMARY:** This document denies a petition filed by Earl Daly requesting the allotment of Channel 225A to Frayser, Tennessee because petitioner failed to provide information as to the provision of city grade coverage from the available site area. The channel cannot be alloted in compliance with the Commission's technical requirements. With this action, this proceeding is terminated.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–28, adopted March 6, 1987, and released April 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–8960 Filed 4–21–87; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the California Freshwater Shrimp

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine the California freshwater shrimp (*Syncaris pacifica*) to be an endangered species. The species is threatened by introduced predatory fish and deterioration or loss of habitat resulting from water diversion and impoundments, agricultural activities and development, urbanization, and water pollution. The California freshwater shrimp is known from only eleven streams in Napa, Marin, and Sonoma Counties, California. Determination of this animal as endangered would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks comments and relevant data from the public on this proposal.

**DATES:** Comments from all interested parties must be received by June 22, 1987. Public hearing requests must be received by June 8, 1987.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

**SUPPLEMENTARY INFORMATION:**

### Background

The California freshwater shrimp, *Syncaris pacifica* (Holmes), is a decapod crustacean of the family Atyidae. Samuel J. Holmes first described *S. pacifica* as *Miersia pacifica* in 1895. In 1900, Holmes erected a new genus, *Syncaris*, for the California atyids based on notable differences in the chelae (pinchers) and rostrum (horn-shaped structure between the eyes). *S. pacifica* can be distinguished from *Palaemonias*, the only other atyid genus in the United States, by its well-developed, stalked eyes. It is the only surviving species in the genus *Syncaris*.

Adults may reach 5 centimeters (cm) (2½ inches) in length. Nearly transparent in water, the adults appear out of water to be greenish-gray to almost black with pale blue uropods (tail fins). An adult female lays relatively few eggs, (50–70, Hedgpeth 1975; 100–120, Eng 1981). While she carries the eggs on her body for 8 to 9 months, slow overwintering development of the eggs occurs. During this period, many larvae die due to adult female death and genetic or embryonic developmental problems. As a result, the number of embryos emerging from the eggs during May are reduced typically by 50 percent. During the first summer, larval growth is rapid, but sexual maturity is not reached until the second summer.

The California freshwater shrimp is endemic to gentle gradient (less than 1 percent), low elevation (below 115 meters [380 feet]), freshwater streams in Marin, Napa, and Sonoma Counties, California. The species, a true freshwater shrimp, inhabits quiet portions of tree-lined streams with underwater vegetation and exposed tree roots. Once common in the streams of the three counties, *S. pacifica* now occurs only within restricted portions of 11 streams. The shrimp's transparency, secretive habits, and rapid escape behavior contribute to its inconspicuousness and make it difficult to capture. The Califonia Department of Fish and Game (CDFG) attributed the decline in shrimp populations primarily to degradation and loss of their habitat resulting from increased urbanization, overgrazing, agricultural development, dam construction, and water pollution (CDFG 1980). Essentially compatible with native fish species, *S. pacifica* is threatened by the introduction of exotic predators, especially fishs of the sunfish family. Because of the species' low reproductive potential, slow maturity, restricted distribution, and specialized habitat requirements, *S. pacifica* is particularly vulnerable to habitat loss and predation by exotic species against which its natural defense mechanisms are ineffective.

On June 4, 1974, the Service entered into a contract with the Sierra Club Foundation to investigate the status of freshwater shrimps in Pacific drainages. A final report under this contract was submitted in September 1975 by Dr. Joel W. Hedgpeth. Dr. Hedgpeth concluded in his report that *Syncaris pacifica* had been extirpated in some streams and was reduced in distribution and abundance in other streams. This report cited dredging, streambed gravel stockpiling, stream diversion, and building of summer gravel dams as the major factors responsible for the decline of the California freshwater shrimp. Larry Serpa (1985) reported the species inhabited 11 streams in the Russian River, San Francisco Bay, and other coastal drainages. These streams are East Austin, Salmon, Laguinitas, Big Austin, Sonoma, Huichica, Green Valley, Jonive, Walker, Yulupa, and Blucher.

The California freshwater shrimp was proposed as a threatened species on January 12, 1977, in the **Federal Register** (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796), under a provision of the 1978 amendments to the endangered Species Act of 1973, which required withdrawal of all pending proposals if they were not finalized within two years of the proposal. On March 23, 1980, the Service received from CDFG a series of annotated maps delineating the known, current distribution of the California freshwater shrimp. These maps summarize the distribution data collected by CDFG in 1979 and 1980. Additional distributional data were received by the Service from the CDFG on October 30, 1980. CDFG later sent to the Service detailed information on the distribution, life history, and status of the shrimp in 1981 (Eng 1981, Serpa 1985). These maps and additional data constitute significant new information on which to propose endangered status for the California freshwater shrimp.

### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the California freshwater shrimp (*Syncaris pacifica* (Holmes)) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.*

The preferred habitat of the California freshwater shrimp is quiet, tree-lined pools and undercut banks along small, free-flowing, permanent streams. Livestock, agricultural activities and development, water pollution, heavy earth-moving equipment, and residential development have enroached upon and/or threaten these stream banks. Siltation from poor soil conservation practices, sand and gravel mining, and the building of temporary summer dams have destroyed shrimp habitat. Water diversions from the steams resulting in intermittent stream flow are flow are also detrimental to the species. Many streams currently or historically harboring the shrimp maintained a permanent flow. Various combinations of the above activities have extirpated the species from the Semple Creek, Laguna de Santa Rose Creek, Santa Rose Creek, Atascadero Creek, and the Napa River. Thes extirpations probably represent more than half of the historic range of the shrimp. The concrete lining of streams and rivers for flood control caused the extinction of *Syncaris pasadenae*, a species historically known from southern California. This flood control technique has extirpated the California freshwater shrimp in Santa Rosa Creek. The channelization and lining is likely to continue and increase as this area experiences rapid urban growth.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.*

Not applicable.

*C. Disease or Predation.*

Predation by fish significanly threatens the California freshwater shrimp, especially in altered habitats where cover from tree roots and underwater vegetation has been reduced or is absent. Introduced bluegill (*Lepomis*) exist in portions of Huichica Creek. Predation significantly threatens the California freshwater shrimp in East Austin Creek where temporary summer dams confine steelhead (*Salmo gairdneri*) Sacramento squawfish (*Ptychocheilus grandis*), and Tule perch (*Hysterocarpus traski*) with the shrimp in artifical pools (Bill Cox, CDFG, pers. comm, 1985). The effect of these dams on shrimp and steelhead populations is now being studied.

*D. The Inadequacy of Existing Regulatory Mechanisms.*

The California State Fish and Game Commission lists the California freshwater shrimp as endangered. However, State law provides no protection on privately-owned lands. The species receives some protection in those portions of its range within Samuel P. Taylor State Park and Golden Gate National Recreation Area.

*E. Other Natural or Manmade Factors Affecting its Continued Existence.*

In the past, the shrimp was capable of recovering from environmental extremes, such as drought and spring floods, that resulted in localized extirpations. Historic silvicultural practices may have reduced the range of the species by altering the normal hydrologic regime. Today, these natural events devastate populations of the shrimp because the current loss of suitable habitat makes it difficult to effectively repopulate affected areas.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the preferred action is to list the California freshwater shrimp as endangered. The continued degradation and loss of suitable habitat by the threats discussed under Factor A in the "Summary of Factors Affecting the Species" could result shortly in a substantial loss of the remaining populations, especially those colonies in East Austin Creek. Because of conflicts with long standing economic interest and recreational practices in those streams harboring the California freshwater shrimp, the shrimp may shortly become extinct, as was the case with its, *Syncaris pasadenae*. Provided with protection from habitat degradation and loss, local isolated colonies may repopulate many portions of its historic range. Critical habitate is not being designated for the species at this time for the reasons discussed below.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the California freshwater shrimp at this time. As discussed under "Summary of Factors Affecting the Species," this species and its habitat are vulnerable to several activities, some of which could be carried out by a single individual, which makes the species vulnerable to acts of vandalism. These activities are difficult to regulate and control because the habitat of the shrimp predominantly occurs on privately-owned land. The precise pinpointing of localities that would result from publication of critical habitat descriptions and maps in the **Federal Register**, would make this species and its habitats more vulnerable to vandalism and would increase enforcement problems. The U.S. Army Corps of Engineers (COE), the Federal agency most involved with the shrimp, is aware of known localities and all other involved parties and land owners will be notified of the location and importance of this species' habitat. Therefore, it would not be prudent to determine critical habitat for the California freshwater shrimp at this time.

**Available Conservation Measures**

Conservation measures provided to species listed as endangerd or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or

destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the service. The only known Federal activity that may affect the California freshwater shrimp is the authorization of temporary summer dams on East Austin Creek (by the COE). These gravel structures are built by local residents to impound water for swimming. The COE has issued an individual permit to a private organization authorizing three of these structures on East Austin Creek. This permit does not expire until 1990, provided that the permittee adheres to the general and special conditions of the permit such as consultation with the appropriate State and Federal agencies. Special permit conditions require the permittee to reduce the number, size, and height of these dams, including the amount of water impounded, and to reduce the number and size of beaches by 1990. The COE may modify, suspend, revoke, or cancel the permit at any time before 1990 if any of these conditions are not met by the permittee.

The Act and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communciations may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **ADDRESSES** section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

California Department of Fish and Game. 1980. Unpublished range maps for *Syncaris pacifica*.

Eng, L.L. 1981. Distribution, life history, and status of the California freshwater shrimp, *Syncaris pacifica* (Holmes). Inland Fisheries Endangered Species Special Publication 18–1. Sacramento, Calif.

Hedgpeth, J.W. 1975. California fresh and brackish water shrimps, with special reference to the present status of *Syncaris pacifica* (Holmes). Report submitted to the Office of Endangered Species, U.S. Fish and Wildlife Service.

Holmes, S.J. 1895. Notes on west American crustacea. Proc. Calif. Acad. Sci. 4:563–[illegible].

Holmes, S.J. 1900. Synopsis of California stalk-eyed crustacea. Occas. Pap. Calif. Acad. Sci. 7:7–262.

Serpa, L. 1985. *Syncaris pacifica*. Unpublished document developed for The Nature Conservancy.

### Author

The primary author of this proposed rule is Dr. Jeurel Singleton, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, Calif. (916/978–4866 or FTS 460–4866).

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Proposed Regulation Promulgation

## PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "CRUSTACEANS," to the List of Endangered and Threatened Wildlife:

**§ 17.11 | Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| Crustaceans | | | | | | | |
| Shrimp, California freshwater | *Syncaris pacifica* | U.S.A. (CA) | NA | E | | NA | NA |

Dated: March 24, 1987.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87-9034 Filed 4-21-8; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 640

### Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of minority report; correction.

**SUMMARY:** This notice corrects an omission in the summary of the notice of availability of a minority report on Amendment 1 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic which appeared in the **Federal Register** on April 3, 1987 (52 FR 10780).

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3722.

In rule document 87-7334, beginning on page 10780, column 3, under the "**SUMMARY**" heading, the last sentence on page 10780 which continues on page 10781 should read "A minority report on this Amendment, prepared by five members of the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council is available to the public."

(16 U.S.C. 1801 *et seq.*)

Dated: April 17, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-9070 Filed 4-21-87; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 77
Wednesday, April 22, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Administration; Public Meeting

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Meeting of the Committee on Administration.

*Date*: Friday, May 8, 1987.

*Time*: 9:00 a.m.

*Location*: Department of Commerce, 14th & Constitution Avenue, NW., Room 5859, Washington, DC.

*Agenda*: (1) Professor Harold Bruff's study of constitutional issues in federal agency use of various alternative means of dispute resolution; and (2) Professor Marianne K. Smythe's study of innovative dispute resolution processes at the CFTC.

*Contact*: Charles Pou, Jr.

**Public Participation**

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact person. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

**Jeffrey S. Lubbers,**

*Research Director.*

April 17, 1987.

[FR Doc. 87–9080 Filed 4–21–87; 8:45 am]

BILLING CODE 6110–01–M

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

April 27, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report: (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contract person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 477–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent yu from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Animal and Plant Health Inspection Service

9 CFR Part 76—Hog Cholera and Other Communicable Disease
On occasion
Small businesses or organizations; 332 responses; 216 hours; not applicable under 3504(h)
Dr. R. Ormiston, (301) 436–8065

- Farmers Home Adminstration

7 CFR 1948–B, Energy Impacted Area Development Assistance Program
Recordkeeping; On occasion
State or local government; Non-profit institution; 98 responses; 50 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

New

- Food and Nutrition Service

Evaluation of Effective Applicant Matching Systems
One time survey
State or local governments; 170 responses; 290 hours; not applicable under 3504(h)
Melody Bacha, (703) 756–3115

- Food and Nutrition Service

Evaluation of the One-Tier Federal Quality Control Pilot Project
Once per respondent
State or local governments; Federal agencies or employee; 858.6 responses; 91 hours; not applicable under 3504(h)
Ted Macaluso, (703) 756–3115.

**Jane A. Benoit,**

*Departmental Clearance Officer.*

[FR Doc. 87–9037 Filed 4–21–87; 8:45 am]

BILLING CODE 3410–01–M

### National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: NATIONAL COMMISSION ON DAIRY POLICY

Time and Place: Syracuse Marriott, 6302 Carrier Parkway, East Syracuse, New York.

Status: Open.

Matters to Be Considered: On May 4, the Commission will hold a public hearing to receive testimony on the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm. The meeting on May 5 is expected to review the public hearing, discuss Commission matters with the Executive Director, and discuss background materials related to the dairy industry.

Written Statements May Be Filed Before or After the Meeting With: Contact person named below.

Contact Person for More Information: Dr. David R. Dyer, Executive Director, National Commission on Dairy Policy, 1401 New York Ave., NW., Suite 1100, Washington, DC 20005, (202) 638–6222.

Signed at Washington, DC, this 15th day of April 1987.

**David R. Dyer,**

*Executive Director, National Commission on Dairy Policy.*

[FR Doc. 87–9094 Filed 4–21–87; 8:45 am]

BILLING CODE 3410–05–M

## Commodity Credit Corporation 1987-Crop Peanut Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice of proposed determination—1987-crop peanut price support differentials for warehouse and farm-stored loan and purchase program.

**SUMMARY:** This notice sets forth proposed adjustment to the price support loan and purchase rates for the 1987-crop of quota and additional peanuts for differences in peanut type, quality, location and other factors. The adjustments apply to the warehouse-stored loan price support operations and farm-stored price support operations and are authorized by section 403 of the Agricultural Act of 1949 (the "1949 Act").

**EFFECTIVE DATE:** Comments must be received on or before May 22, 1987, in order to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Solomon J. Whitfield, Tobacco and Peanuts Division, ASCS, USDA, Room 5725 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7127. A Preliminary Impact Analysis describing options considered in developing this proposed determination and the impact of implementing such options is available upon request from Mr. Whitfield.

**SUPPLEMENTARY INFORMATION:** This notice of proposed determination has been reviewed under USDA procedures in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that this proposed determination will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enteprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed determination applies are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In order to allow for adequate review of the comments and for the publication of a final determination prior to the end of the peanut planting period, it has been determined that the comment period will be limited to 30 days.

On the basis of an environmental evaluation, it has been determined that this action will have no significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitats, water quality, air quality, and land use and appearance. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed. This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

In accordance with section 108B of the 1949 Act, as added by Section 705 of the Food Security Act of 1985, average price support levels are announced by the Secretary of Agriculture for each crop year for quota and additional peanuts. Quota peanuts are peanuts (except green peanuts) which are marketed or considered marketed from a farm for domestic edible use. This includes all peanuts which are dug on a farm except for the following: (1) Green peanuts; (2) peanuts which are pledged as loan collateral at the level of price support for additional peanuts and not redeemed by the producer; and (3) peanuts which are marketed under a contract between a handler and a producer for exportation or crushing. Additional peanuts are any peanuts which are marketed from a farm other than peanuts which are marketed or considered to be marketed as quota peanuts. Section 403 of the 1949 Act provides that adjustments may be made in these support levels for differences in type, quality, location and other factors. Section 403 further provides that such adjustments shall, so far as practicable, be made in such manner that the average level of support will, on the basis of anticipated incidences of such factors, be equal to the level of support announced by the Secretary of Agriculture for the crop year involved. The regulations governing price support for peanuts are set forth at 7 CFR Part 1446.

A ton of farmers stock peanuts will normally include a proportion of high quality edible peanuts referred to as sound mature kernels (SMK) and sound splits (SS), as well as smaller quantities of lower quality loose shelled kernels (LSK), other kernels (OK) and damaged kernels (DK). Under the differentials applicable to the 1986 and preceding crop years, the value of any ton of farmers stock peanuts has been determined on the basis of the quantity and mix of these kernel values, plus a premium for extra large kernels (ELK) in the case of Virginia-type peanuts, and discounts for such factors as excess foreign material, split kernels and damaged kernels.

On February 13, 1987, the Secretary of Agriculture announced the national average support rates for quota and additional peanuts for the 1987 crop. Those rates were, respectively, $607.47 per ton and $149.75 per ton. Those rates are the same as the rates that applied to the 1986 crop.

The 1986-crop differentials were developed by setting the SMK value for Virginia-type peanuts at 2 percent higher than the SMK value for Runner-type peanuts. The Spanish-type SMK value was set at one-half percent higher than the SMK value for Runner-type peanuts. Depending on whether the peanuts are suitable for cleaning and roasting, the SMK value for Valencia-type peanuts was set to be the same as that for Spanish or Virginia-type peanuts. It is proposed that the differentials for the 1987 crop maintain the same relationship for SMK values between types. In addition, it is proposed that the other premiums and discounts remain the same for the 1987 crop.

Because of the averaging required by Section 403 of the 1949 Act, determining the actual SMK values for peanut types must take into account the expected incidence of quality variations and other factors for which premiums or discounts are allowed or made. The CCC customarily uses a five-year average from the immediately preceding five crop years for this purpose. The proposed 1987 differentials have been calculated in that manner except that for Virginia-type peanuts a five-year average covering the 1981, 1982, 1984, 1985 and 1986 crops was used. The 1983 crop was excluded from the average and replaced by the 1981 crop because of the extreme weather conditions that affected the quality of 1983-crop peanuts

in the area where Virginia-type peanuts are customarily grown.

Under the proposed 1987-crop differentials, the price support value for additional peanuts would, as in the past, be computed by a two-step process, in which the peanuts are valued as if they were quota peanuts and that value is then reduced by the factor which is equal to the ratio of the national average additional support price ($149.75-per ton) to that for quota peanuts ($607.47-per ton). That factor for the 1987 crop is the same as for the 1986 crop—.2465.

Before making a final determination with repsect to these matters, consideration will be given to any relevant data, views, recommendations or other comments which are submitted in writing within the comment period to the Director, Tobacco and Peanuts Division, ASCS–USDA, Room 5750–South Building, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this Notice will be made available for inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5750–South Building.

**Proposed Determination**

Accordingly, CCC hereby proposes that the price support differentials for the 1987-Crop Peanut Warehouse and Farm-Stored Loan and Purchase Program shall be as follows:

(a) *Average 1987 Support Values by Type Per Average Grade Ton of Peanuts.*

| | Per average grade ton |
|---|---|
| (1) *Support Value for Warehouse-Stored Loans:* | |
| Type: | |
| Virginia | [illegible] |
| Runner | 511.61 |
| Spanish | [illegible] |
| Valencia: | |
| Southwest area—suitable for cleaning and roasting | [illegible] |
| Southwest area—not suitable for cleaning and roasting | [illegible] |
| Areas other than Southwest | 573.26 |
| (2) *Support Value for Farm-Stored Loans:* | |
| Type: | |
| Virginia | [illegible] |
| Runner | 612 |
| Spanish | 573 |
| [illegible] | |
| Southwest Area | [illegible] |
| Areas Other Than Southwest | [illegible] |

(b) *Calculation of Support Prices for Quota Peanuts.* The support price per ton for 1987-crop quota peanuts of a particular type and quality shall be calculated on the basis of the following rates, premiums, and discounts (with no value assigned to damaged kernels (DKs)), except that the minimum support value for any quota lot of eligible peanuts of any type shall be 7 cents per pound of kernels in the lot:

(1) *Kernel Value Per Ton Excluding Loose Shelled Kernels (LSKs).*

(i) The price per ton for each percent of sound mature (SM) and sound split (SS) kernels shall be:

| | Percent |
|---|---|
| Type: | |
| Virginia | [illegible] |
| Runner | 8.572 |
| Spanish | [illegible] |
| Valencia: | |
| Southwest area—suitable for cleaning and roasting | [illegible] |
| Southwest area—not suitable for cleaning and roasting | 8.615 |
| Areas other than Southwest | [illegible] |

(ii) The price per ton for each percent of other kernels shall be: All types, per percent, $1.40.

(iii) A premium of $0.35 per ton will be allowed for each percent of Extra Large Kernels (ELKs) for Virginia-type peanuts only. However, no premium for ELKs shall be allowed for any ton of such peanuts containing more than four-percent DKs.

(2) *Price of LSKas Per Pound.* The price for each pound of LSKs shall be: All types, per pound, $0.07.

(3) *Foreign Material Discount.* For all types of peanuts, the discount per ton for foreign material shall be as follows:

| Percent | Discount |
|---|---|
| 0–4 | $0 |
| 5 | 1.00 |
| 6 | 2.00 |
| 7 | 3.00 |
| 8 | 4.00 |
| 9 | 5.00 |
| 10 | 6.00 |
| 11 | 7.00 |
| 12 | 8.50 |
| 13 | 10.00 |
| 14 | 11.50 |
| 15 | 13.00 |
| 16 and over | (1) |

[1] For each full percent in excess of 15 percent deduct an additional $2.

(4) *SS Kernel Discount.* For all types of peanuts, the discount per ton for SS kernels shall be as follows:

| Percent | Discount |
|---|---|
| 1 through 4 | $0 |
| 5 | 1.00 |
| 6 | 1.60 |
| 7 and over | (1) |

[1] For each full percent in excess of 6 percent deduct an additional $0.80.

(5) *DK Discount.*

(i) For all types of peanuts, the discount per ton for DKs shall be as follows:

| Percent | Discount |
|---|---|
| 1 | $0 |
| 2 | 3.40 |
| 3 | 7.00 |
| 4 | 11.00 |
| 5 | 25.00 |
| 6 | 40.00 |
| 7 | 80.00 |
| 8 to 9 | 80.00 |
| 10 and over | 100.00 |

(ii) Notwithstanding the above discount schedule, the DK discount for Segregation 2 peanuts transferred from additional to quota loan pools shall not exceed $25 per ton.

(6) *Price Support Adjustment for Peanuts Sampled with Other Than Pneumatic Sample.* The support price per ton for Virginia-type peanuts sampled with other than a pneumatic sampler shall be reduced by $0.10 per every percentage point of SM and SS kernels.

(7) *Mixed Type Discount.* Individual lots of farmers stock peanuts containing mixtures of two or more types in which there is less than 90 percent of any one type will be supported at a price which is $10 per ton less than the support price available to the type in the mixture having the lowerst support price.

(8) *Location Adjustments.*

(i) The price otherwise applicable to farmers stock peanuts delivered to the association for a warehouse-stored loan in order to receive price support advances in the States specified below, where peanuts are not customarily shelled or crushed, shall be discounted as follows:

| State | Per ton |
|---|---|
| Arizona | $25.00 |
| Arkansas | [illegible] |
| California | [illegible] |
| Louisiana | 7.00 |
| Mississippi | 10.00 |
| Missouri | [illegible] |
| Tennessee | [illegible] |

(ii) The price otherwise applicable to farmers stock peanuts pledged as collateral for a farm-stored loan in order to receive price support advances in Puerto Rico and all other States, territories and possessions of the United States (excluding the States specified in Paragraph (8)(i) and Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and

Virginia), shall be discounted $40.00 per ton.

(9) *Virginia-Type Peanuts.* Virginia-type peanuts, in order to be eligible for price support as Virginia-type, must contain 40 percent or more "fancy" size peanuts, as determined by a presizer with the rollers set at 34/64 inch space. Virginia-type peanuts so detemined to contain less than 40 percent "fancy" size peanuts will be supported (but not classed) as though they were Runner-type.

(10) *Discount for Aspergillus Flavus Mold (Segregation 3 Peanuts).* There will be no discount applied to Segregation 3 peanuts for Aspergillus flavus mold when such peanuts are pledged as loan collateral at the additional loan rate. Should such peanuts later be transferred to a quota loan pool under the General Regulations Governing 1986 Through 1990-Crops Peanut Warehouse Storage Loans and Handler Operations set forth at 7 CFR Part 1446, they will be discounted at the rate of $25 per net ton from the level of price support applicable to the type of quota peanuts.

(c) *Calculation of Support Values for Additional Peanuts.* The support price per ton for 1987-crop additional peanuts of a particular type and quality shall be calculated on the basis of 24.65 percent of the same rates, premiums and discounts which are applicable to quota peanuts. This percentage was computed by dividing the national average price support loan rate per ton for 1987-crop additional peanuts by the national average price support loan rate per ton for 1987-crop quota peanuts.

Signed at Washington, DC, on April 17, 1987.

Milt Hertz,

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87-8981 Filed 4-21-87; 8:45 am]

BILLING CODE 3410-05-M

## Rural Electrification Administration

### McKenzie Electric Cooperative, Inc., Finding of No Significant Impact

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Finding of no significant impact.

**SUMMARY:** Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Part 1500-1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a 115 kV 53 km (33 miles) transmission line. The transmission line which will be initially operated at 69 kV, will originate at the Ivan Omlid Substation located 1.6 km (1 mile) south of Watford City, North Dakota, and will tie into an existing 69 kV line at about 1.6 km (1 mile) west of the Swenson substation near Charlson, North Dakota. The line would generally run north from Watford City for about 27 km (17 miles) and then turn east for another 26 km (16 miles) and finally tie into an existing 69 kV transmission line. The project will be located in McKenzie County, North Dakota and will be built by McKenzie Electric Cooperative, Inc. (McKenzie Electric), of Watford City, North Dakota.

**FOR INFORMATION CONTACT:** REA's Environmental Assessment (EA) and FONSI and McKenzie Electric's Borrower's Environmental Report (BER) may be reviewed at the office of the Director, Northwest Area—Electric, Room 0205, South Agriculture Building, Rural Electrification Administration, Washington, DC. 20250, telephone no. (202) 382-1411: or at the office of McKenzie Electric Cooperative, Inc. (Wayne A. Retzlaff, Manager), P.O. Box 649, Watford City, North Dakota 58854, telephone no. (701) 842-2311, during regular business hours. Copies of the BER, EA and FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

**SUPPLEMENTARY INFORMATION:** REA, in conjunction with a request for construction approval from McKenzie Electric, has reviewed the BER submitted by McKenzie Electric and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The project consists of constructing a 53 km 115 kV transmission line in McKenzie County, North Dakota. REA determined that the proposed project will have no effect on floodplains, wetlands, important farmland, prime rangelands or forest lands, threatened or endangered species or critical habitat, and any property listed or eligible for listing in the **National Register of Historic Places.** No matters of potential environmental concern were identified by REA.

Alternatives examined for the proposed project included no action, energy conservation, upgrading/rebuilding the existing transmission system, alternative transmission routes, and underground construction. REA determined that the proposed construction of the 115 kV transmission line is an environmentally acceptable alternative. It will aid McKenzie Electric to maintain adequate and reliable service to its present consumers in the area and provide sufficient power to Mountrail Electric Cooperative, Inc. (Mountrail), of Stanley, North Dakota, which by contract is required to serve the future needs of the town of New Town, North Dakota. Based upon the BER, REA prepared an EA concerning the proposed project and its impacts. REA has independently evaluated the proposed project, and has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

In accordance with REA Environmental Policy and Procedures (7 CFR Part 1794), McKenzie Electric advertised and requested comments on the environmental aspects of the proposed project in the McKenzie County Farmer, a local newspaper. There were no comments.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR 3015 Subpart V. in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: April 15, 1987.

Harold V. Hunter,

*Administrator.*

[FR Doc. 87-8983 Filed 4-21-87; 8:45 am]

BILLING CODE 3410-15-M

## Soil Conservation Service

### Morrison Siphon Farm Irrigation RC&D Measure, Colorado

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Morrison Siphon Farm Irrigation RC&D Measure, La Plata County, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sheldon G. Boone, State

Conservationist, Soil Conservation Service, 2490 West 26th Avenue, Denver, Colorado 80211, telephone (303) 964–0292.

**SUPPLEMENTARY INFORMATION:** The Environmental Assessment of this federally assisted action indicates that the measure will not cause significant local, regional or national impacts on the environment. As a result of these findings, Mr. Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this measure.

This farm irrigation measure concerns a plan to improve the irrigation system. The planned works of improvement include installing 950 lf. of concrete siphon underground, replacing the present structure.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single-copy requests. Basic data developed during the environmental evaluation are on file and may be received by contacting Mr. Sheldon G. Boone. No administrative action on implementation of the proposal will be taken until May 22, 1987.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: April 14, 1987.

**Kenneth A. Pitney,**

*Assistant State Conservationist.*

[FR Doc. 87–8946 Filed 4–21–87; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Annual Survey of State Tax Collection
Form Number: Agency—F–5, F–5A, F–5–L1, F–5–L2; OMB–0607–0046
Type of Request: Extension of a currently approved collection
Burden: 79 respondents; 109 reporting hours
Needs and Uses: Census uses this survey to obtain tax data from state governments and the District of Columbia. The national income accounts incorporate data taken from this survey. Officials and researchers use these data in the analysis of state government finances, and in long-established Census Bureau reports.
Affected Public: State or local governments
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Office, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: April 15, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–8984 Filed 4–21–87; 8:45 am]

BILLING CODE 3510-07-M

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: Economic Development Administration
TITLE: Evaluation of Local Technical Assistance Projects
FORM NUMBER: Agency—NA; OMB—NA
TYPE OF REQUEST: New collection
BURDEN: 135 respondents; 27 reporting hours
NEEDS AND USES: The purpose of the evaluation is to provide Federal, State, and local officials involved in designing and operating technical assistance programs with information and a set of principles which will assist them in making choices that will have a significant and positive effect on economic development.
FREQUENCY: One time.
RESPONDENT'S OBLIGATION: Voluntary
OMB DESK OFFICER: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503,

Dated: April 15, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–9014 Filed 4–21–87; 8:45 am]

BILLING CODE 3510-CW-M

## International Trade Administration

**[A–580–073]**

### Bicycle Tires and Tubes From Korea; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke in Part

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke in Part.

**SUMMARY:** In response to a request by an exporter the Department of Commerce has conducted an administrative review of the antidumping finding on bicycle tires and tubes from Korea. The review covers one exporter of this merchandise and the periods April 1, 1985 through March 31, 1986 and April 1, 1982 through June 30, 1983. This firm made all sales of this merchandise to the United States at not less than fair value.

As a result of the review, the Department has tentatively determined to revoke the antidumping finding with respect to Korea Inoue Kasei, Co., Ltd.

Interested parties are invited to comment on these prelminary results and tentative determination to revoke in part.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Fargo or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5256.

**SUPPLEMENTARY INFORMATION:** On March 22, 1984, the Department of

Commerce ("the Department") published in the **Federal Register** (49 FR 10693) the final results of its last administrative review of the antidumping finding on bicyle tires and tubes from Korea (44 FR 22051, April 13, 1979). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, one exporter requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published notices of initiation on May 20, 1986 (51 FR 18475) and on May 30, 1986 (51 FR 19580). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of biycle tires and tubes, currently classified under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated.

The review covers one exporter of Korean bicycle tires and tubes to the United States and the periods April 1, 1985 through March 31, 1986 and April 1, 1982 through June 30, 1983.

**United States Price**

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the ex-factory price to unrelated purchasers in the United States. No deductions were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value, the Department used the price to a third country, as defined in section 773(a)(1)(B) of the Tariff Act, since there were insufficient quantities of such or similar merchandise sold in the home market. The third-country prices were based on either delivered or f.o.b., prices to unrelated purchaser in the third country. Where appropriate, we made adjustments for ocean freight and insurance. No other adjustments were claimed or allowed.

**Preliminary Results of the Review and Tentative Determination to Revoke in Part**

As a result of our review, we preliminarily determine that no margins exist for the periods April 1, 1985 through March 31, 1986 and April 1, 1982 through June 30, 1983.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protection order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Korea Inoue Kasei Co., Ltd. requested revocation of the finding and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding under circumstances specified in the written agreement. This firm made all sales at not less than fair value for two years.

Therefore, we tentatively determine to revoke the antidumping finding on bicycle tires and tubes from Korea with respect to Korea Inoue Kasei Co., Ltd. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise exported by this firm and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Further, as provided for by § 353.48(b) of the Commerce Regulations no cash deposit of estimated antidumping duties is required for Korea Inoue Kasei Co., Ltd. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at rates published in the final results of the last administrative review for each of those firms (49 FR 10693, March 22, 1984).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit is required. These deposit requirements are effective for all shipments of Korean bicycle tires and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)), and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Dated: April 16, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-9061 Filed 4-21-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-602]

## Preliminary Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid From Belgium

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that industrial phosphoric acid (IPA) from Belgium is being, or is likely to be, sold in the United States at less than fair value. We also preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Belgium. We have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to suspend liquidation of all entries of IPA that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by June 29, 1987.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary Martin, Jessica Wasserman, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830, 377-1442, or 377-0161.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

We preliminarily determine that IPA from Belgium is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). The estimated weighted-average margin is shown in the "Suspension of Liquidation" section of this notice. We also preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Belgium.

**Case History**

On November 5, 1986, we received a petition filed in proper form by FMC Corporation and Monsanto Company, on behalf of the U.S. industry producing IPA. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of IPA form Belgium are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry. The petition also alleged that critical circumstances exist with regard to imports of IPA from Belgium.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on November 25, 1986 (51 FR 43648, December 3, 1986), and notified the ITC of our action. On December 22, 1986, the ITC determined that there is a reasonable indication that imports of IPA from Belgium are materially injuring a U.S. industry (52 FR 612, January 7, 1987).

On January 9, 1987, we presented an antidumping duty questionnaire to Societe Chimique Prayon-Rupel S.A. (SCPR) and requested a response in 30 days. SCPR accounted for virtually all exports from Belgium to the United States of IPA during the period of investigation (June 1—November 30, 1986). On January 29, 1987, at the request of respondent, we granted an extension of the due date for the questionnaire respose. On February 18, 1987, respondent requested an additional extension of the due date for the questionnaire response until February 27, 1987. We received a response to the questionnaire on February 27, 1987. On March 16, 1987, the Department requested supplemental information. We received supplemental responses on March 23 and 27, 1987.

**Scope of Investigation**

The product covered by this investigation is IPA provided for in item 416.30 of the *Tariff Schedules of the United States* (TSUS).

**Fair Value Comparisons**

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for the company under investigation using data provided in the responses.

**United States Price**

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price when the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price based on packed and unpacked c.i.f. prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and unloading costs.

As provided in section 772(c) of the Act, we used the exporter's sales price, where appropriate, to represent the United States prices for merchandise sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the unpacked price f.o.b. or c.i.f. SCPR's leased storage tanks in Bayonne, New Jersey, or Houston, Texas. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, U.S. indirect selling expenses (including the cost of leasing storage tanks, sampling and testing the merchandise, and U.S. inventory carrying costs), U.S. commissions, U.S. discount and U.S. credit expenses.

**Foreign Market Value**

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for IPA on sales in the home market. When comparing foreign market value to purchase price sales, we made deductions, where appropriate, from the home market price for inland freight and prompt payment discounts. We added U.S. packing costs and commissions paid in the U.S. market where appropriate. We allowed an offset for indirect selling expenses in the home market (which includes the cost of sampling and testing the merchandise and home market inventory carrying costs) up to the amount of the commissions in the U.S. market in accordance with § 353.15(c) of the Commerce Regulations. We have made an adjustment under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses in the United States and home markets.

SCPR claimed an adjustment to the home market price for certain expenses which the company claims are direct selling expenses (*i.e.*, truck loading costs, water dilution costs, preparing sales and shipping invoices, and sampling costs). We have disallowed SCPR's claim because it has not shown that the items included in the category are directly related to specific sales of IPA, as required by § 353.15 of our Regulations. We are also not allowing a claim for a difference in circumstances of sales adjustment based upon the difference in size between the U.S. and the Belgian markets. There is no basis for such an adjustment under the Commerce Regulations. We will seek additional information on these disallowed adjustments prior to our final determination.

When comparing foreign market value to U.S. exporter's sales prices, we made deductions, where appropriate, from the home market price for inland freight, credit expense, and prompt payment discounts. We allowed an offset for indirect selling expenses incurred on home market sales up to the amount of the indirect selling expenses and commissions incurred for sales in the U.S. market, in accordance with § 353.15(c) of the Commerce Regulations.

**Currency Conversion**

For comparisons involving purchase price transactions, when calculating foreign market value, we made currency conversions from Belgian francs to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York. For comparisons involving exporter's sales price transactions, we used the official exchange rate for the date of purchase pursuant to section 615 of the Trade and Tariff Act of 1984. We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of the Commerce Regulations, as it supersedes that section of the Regulations.

**Critical Circumstances**

Petitioners alleged that imports of IPA from Belgium present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we have considered the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of import statistics, we find that there is no reasonable basis to believe or suspect that imports of IPA from Belgium have been massive over a relatively short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies to this case. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of IPA from Belgium. We have notified the ITC of this determination.

### Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use the standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of IPA from Belgium that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

| Manufacturer/producer/exporter | Estimated weighted-average margin percentage |
|---|---|
| Societe Chimique Prayon-Rupel | 16.40 |
| All Others | 16.40 |

### ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination or 45 days after the final determination.

### *Public Comment*

In accordance with § 353.47 of the Commerce Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on May 27, 1987, at the U.S. Department of Commerce, Room 1414, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by May 20, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within seven days after the hearing transcript is available, at the above address in at least ten copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

April 14, 1987.

[FR Doc. 87–8986 Filed 4–21–87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A–475–817]

## Antidumping Duty Administrative Review; Pads for Woodwind Instrument Keys From Italy

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results and Termination of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on pads for woodwind instrument keys from Italy. The review covers the one known manufacturer and/or exporter of pads for woodwind instrument keys to the United States currently covered by the order, and the period April 25, 1984 through August 31, 1985. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value, as established in the final determination of sales at less than fair value, published in the **Federal Register** on July 11, 1984 (49 FR 28295). Interested parties are invited to comment on these preliminary results.

Due to the partial revocation of this antidumping duty order, the administrative review of the period September 1, 1985 through August 31, 1986 is terminated.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Laura Merchant or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 377–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 21, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 37137) an antidumping duty order on pads for woodwind instrument keys from Italy. On May 23, 1986, the petitioner requested, in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review for the period April 25, 1984 through August 31, 1985. We published a notice of initiation of the administrative review on July 9, 1985 (51 FR 24884). The review as initiated covered the two known manufacturers/exporters of this merchandise to the United States covered by the order at that time.

On August 18, 1986, the petitioner requested, in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review for the period

September 1, 1985 through August 31, 1986, for one of the manufacturers/exporters covered by the order at that time, Luciano Pisoni Fabbrica Assessori Instrumenti Musicali ("Pisoni"). We published a notice of initiation of that administrative review on September 8, 1986 (51 FR 31961).

At the time at which the two reviews described above were initiated, the Department's 1984 antidumping order was the subject of litigation. On June 12, 1986, the United States Court of International Trade found that the Department had erred in certain respects and remanded the final determination for a redetermination on those pads manufactured or exported by Pisoni. As a result of those remand proceedings, the Department found that pads for woodwind instrument keys from Italy, manufactured or exported by Pisoni, are not being, nor are likely to be, sold in the United States at less than fair value. On September 15, 1986, the Court affirmed the Department's redetermination on remand. On November 5, 1986, the Department published in the **Federal Register** (51 FR 40239) a partial revocation of the antidumping duty order on pads with regard to merchandise produced or exported by Pisoni.

As a consequence of this revocation with respect to Pisoni we have limited the review initiated on July 9, 1986 to the remaining manufacturer/exporter covered by the order, Pads Manufacture, s.r.l., and we have terminated the review which was initiated on September 8, 1986.

**Scope of the Review**

Imports covered by the review are shipments of pads for woodwind instrument keys from Italy currently classifiable under item 726.7000 of the Tariff Schedules of the United States Annotated. The review covers one manufacturer/exporter of pads, Pads Manufacture s.r.l., and the period April 25, 1984 through August 31, 1985.

**Preliminary Results of the Review**

We were successful in our attempt to contact Pads Manufacture, s.r.l. concerning this review, and we have received sufficient evidence to conclude that Pads Manufacture is no longer in operation. The assessment rate for the period and the cash deposit rate for Pads Manufacture, s.r.l. will be the most recent rate for the firm, which was established in our final determination of sales at less than fair value published in the **Federal Register** on July 11, 1984 (49 FR 28295).

As the result of this review, we preliminarily determine that the following margin exists:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Pads Manufacture, s.r.l. | 4/25/84–8/31/85. | 1.03 |

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request a hearing within 5 days of the publication. Any hearing, if requested, will be held 30 days after the date of publication, or the first workday thereafter. The Department will publish the final results of the administrative review including the resuts of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions for Pads Manufacture directly to the Customs Service.

As provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for Pads Manufacture.

For any future entries of this merchandise from a new exporter not covered in this administrative review, whose first shipments occurred after August 31, 1985, and who is unrelated to Pads Manufacture or Pisoni, a cash deposit of 1.03 percent shall be required. These deposit requirements are effective for all shipments of pads for woodwind instrument keys entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556 August 13, 1985).

Dated: April 11, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–9064 Filed 4–21–87; 8:45 am]

BILLING CODE [illegible]

[A–583–081]

## Polyvinyl Chloride Sheet and Film From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part.

**SUMMARY:** In response to requests by the petitioner and ten respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on polyvinyl chloride sheet and film from Taiwan. The review covers eight exporters of this merchandise to the United States and generally consecutive periods from June 1, 1983 through May 31, 1986. The review indicates the existence of dumping margins for one of the firms. When inadequate information was received in response to our questionnaire, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

The Department intends to revoke the antidumping finding with respect to Taiwanese polyvinyl chloride sheet and film exported by Fashion Plastics Fabrication Co., Everlush Industrial Co., Ltd., Eclat International, Elanvital International, S.M. & Roger Co., and Wondertex Ind. Co.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Linda L. Pasden or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/5255.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 20, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 36897) a tentative determination to revoke in part the antidumping finding on polyvinyl chloride sheet and film from Taiwan (43 FR 28457, June 30, 1978). On December 18, 1984, the Department published in the **Federal Register** (49 FR 49128) the final results of its last administrative review of the antidumping finding. We began this review of the finding under our old regulations. After the promulgation of our new regulations, the petitioner and ten respondents

requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation on May 30, 1986 (51 FR 19580), July 17, 1986 (51 FR 25923), and October 3, 1986 (51 FR 35382). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of unsupported, flexible, calendered polyvinyl chloride ("PVC") sheet, film and strips, over 6 inches in width and over 18 inches in length, and at least 0.0002 inch but not over 0.020 inch in thickness, currently classifiable under items 771.4312 and 774.5595 of the Tariff Schedules of the United States Annotated.

The review covers eight exporters of Taiwanese PVC to the United States from whom a review was requested and generally consecutive periods from June 1, 1983 through May 31, 1986. Orchard Corporation provided an inadequate response to the Department's questionnaire. For that firm the Department used the best information available. The best information available is that firm's rate from the last review. The Department will not cover Hop Kee Hong (Hong Kong) and Lumay Products Corporation in this review or future section 751 reviews because they do not export merchandise covered by the finding to the United States. This is not a proposal to revoke the finding with respect to these two firms. Should these firms begin exporting the covered merchandise to the United States, we shall treat them as new exporters.

The Department will not cover K.E. Kingstone and Taiwan Eva in this or future section 751 reviews because they only shipped Taiwanese PVC manufactured by Ocean Plastics Co., Ltd. Ocean Plastics was excluded from the finding (43 FR 4810, June 30, 1978). The exclusion of these two firms from the finding pertains only to shipments manufactured by Ocean Plastics. Should these firms begin exporting the covered merchandise manufactured by another firm, we shall treat them as new exporters.

*Preliminary Results oo the Review and Intent to Revoke in Part*

As a result of our review, we preliminarily determine that the following margins exist:

| Manufacturer/ exporter | Time period | Margin (percent) |
|---|---|---|
| Fashion Plastics Fabrication. | 06/01/83–09/20/84. | [1] 5.90 |
| Union Industries Ltd. | 06/01/83–05/31/84, 06/01/84–05/31/85. | [1] 11.37, [1] 11.37 |
| Orchard Corporation. | 06/01/85–05/31/86. | 12.04 |

[1] No shipments during the period.

Fashion Plastics Fabrication Co. requested partial revocation of the finding. That firm has not exported Taiwanese polyvinyl chloride sheet and film to the United States since December 1978. As provided for in § 353.54(e) of the Commerce Regulations, Fashion Plastics has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that Taiwanese polyvinyl chloride sheet and film imported into the United States is being sold by that firm at less than fair value.

As a result of our review, we intend to revoke the finding on PVC sheet and film from Taiwan with respect to Fashion Plastics Fabrication Co. This firm has not exported to the United States since December 1978, a period of over five years. If the finding is revoked, it will apply to all unliquidated entries of this merchandise exported by Fashion Plastics Fabrication Co. and entered, or withdrawn from warehouse, for consumption on or after September 20, 1984.

The Department also intends to revoke the finding with respect to Everlush Industrial Co., Ltd., Eclat International, Elanvital International, S.M. & Roger Co., and Wondertex Ind. Co. These five firms previously only shipped Taiwanese PVC manufactured by Cathay Plastics Industry. We revoked the finding with respect to Cathay (49 FR 7841, March 1, 1984). The revocation of these five firms from the finding pertains only to shipments manufactured by Cathay.

Should these firms begin exporting Taiwanese polyvinyl chloride sheet and film to the United States manufactured by another firm, we shall treat them as new exporters.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments from the remaining known manufacturers/exporters not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (49 FR 49128, December 18, 1984). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1986 and who is unrelated to any reviewed firm any other previously reviewed firm, a cash deposit of 12.04 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese polyvinyl chloride sheet and film entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, intent to revoke in part and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Dated: April 16, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87–9062 Filed 4–21–87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A–122–085]

## Sugar and Syrups From Canada; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

BEST COPY AVAILABLE

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to requests by a respondent, the Department of Commerce has conducted an administrative review of the antidumping order on sugar and syrups from Canada. The review covers one manufacturer/exporter of this merchandise to the United States and the period from April 1, 1985 through March 31, 1986. The review indicates the existence of no dumping margins for the firm during the period.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** J. David Dirstine or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/5255.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 24, 1987, the Department published in the **Federal Register** (52 FR 9322) the final results of its last administrative review of the antidumping order on sugar and syrups from Canada. After the promulgation of our new regulations, respondents requested in accordance with §353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on May 20, 1986 (51 FR 18475). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of Review

Imports covered by the review are shipments of Canadian sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar. Sugar and syrups are currently classifiable under items 155.2025, 155.2045, and 155.3000 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of Canadian sugar and syrups and the period April 1, 1985 through March 31, 1986.

### United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the packed, delivered or f.o.b. duty-paid plant price to unrelated purchasers in the United States. Where applicable, we made adjustments for U.S. duty, brokerage, and U.S. and Canadian inland freight. Where applicable, we added Canadian duties paid at the time of importation into Canada of the raw material used to produce the sugar and syrups because these duties were rebated when the sugar and syrups were exported to the United States. No other adjustments were claimed or allowed.

### Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the packed, f.o.b. or delivered price with adjustments, where applicable, for inland freight, and indirect selling expenses to offset commissions to unrelated parties on U.S. sales. No other adjustments were claimed or allowed.

### Preliminary Results of the Review

As a result of our comparision of United States price to foreign market value, we preliminarily determine that no dumping margins exist for Lantic Sugar, Ltd. for the period April 1, 1985 through March 31, 1986.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication of the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided by section 751(a)(1) of the Tariff Act, since there was no margin, the Department shall not require a cash deposit of estimated dumping duties for Lantic Sugar, Ltd. For any future shipments form the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms.

For any future entries of this merchandise from a new exporter, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian sugar and syrups entered, or withdrawn from warelhouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §§ 353.53a of the Commerce Regulations (19 CFR 353.53a)

Dated: April 16, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–9063 Filed 4–21–87; 8:45 am]

BILLING CODE 3510-DS-M

## Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

### Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews

of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than April 30, 1988.

| Antidumping duty proceedings and firms | Periods to be reviewed |
|---|---|
| Iron Construction Castings from Canada: | |
| Fondene Grandmere | 10/21/85–02/28/87 |
| Fondene Laroche | 10/21/85–02/28/87 |
| La Perle Foundry | 10/21/85–02/28/87 |
| Mueller Canada | 10/21/85–02/28/87 |
| Sodium Nitrate from Chile: | |
| SQM | 03/01/86–02/28/87 |
| Viscose Rayon Staple Fiber from Finland: | |
| Kemira Oy Sateri | 03/01/86–02/28/87 |
| Certain Brass Fire Protection Products from Italy: | |
| Giacomini | 03/01/86–02/28/87 |
| Giacomini/Gambrook (Switzerland) | 03/01/86–02/28/87 |
| Circular Welded Pipes and Tubes from Thailand: | |
| First Steel Industry | 09/26/85–02/28/87 |
| Saha Thai Steel Pipe | 09/26/85–02/28/87 |
| Siam Steel Pipe | 09/26/85–02/28/87 |
| Thai Steel Pipe | 09/26/85–02/28/87 |
| Thai Union Steel Pipe | 09/26/85–02/28/87 |

| Countervailing duty proceedings | Periods to be reviewed |
|---|---|
| Certain Apparel from Argentina | 01/01/86–12/31/86 |
| In-Shell Pistachios from Iran | 12/30/85–12/31/86 |
| Certain Iron—Metal Construction Castings from Mexico | 01/01/86–12/31–86 |
| Textile Mill Products from Mexico | 01/01/86–12/31/86 |
| Certain Textile Mill Products and Apparel from Sri Lanka | 01/01/86–12/31/86 |
| Certain Welded Carbon Steel Pipe & Tube from Turkey | 10/21/85–12/31/86 |

We also received requests to review four Japanese television manufacturers but, due to injunctive orders issued by the Court of International Trade, we are deferring initiation of those reviews until the injunctive orders may be dissolved.

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Dated: April 9, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–8985 Filed 4–21–87; 8:45 am]

BILLING CODE 3510-DS-M

## Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of amendment of final results of countervailing duty administrative review in accordance with decision upon remand.

**SUMMARY:** The CIT has upheld remand results submitted by the Department on August 15, 1986. The remand involved the final results of an administrative review of the countervailing duty order on pig iron from Brazil, covering the period January 1, 1981 through December 31, 1981.

As a result of the remand decision, the Department has determined the net subsidy to be 24.23 percent *ad valorem* for one firm, Cimetal, and 7.01 percent *ad valorem* for all other firms.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** John D. Miller or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 16, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 9923) the final results of its administrative review of the countervailing duty order on pig iron from Brazil. The review covered the period January 1, 1981 through December 31, 1981. The results of that review were challenged in the Court of International Trade ("CIT") by an importer, Philipp Brothers, Inc. Pursuant to an injunction issued on April 19, 1984, the Department instructed the U.S. Customs Service, on April 23, 1984, to continue suspension of liquidation of entries of the subject merchandise imported by Philipp Brothers during the review period. On February 14, 1986, the CIT in *Philipp Brothers, Inc.* v. *United States*, Slip Op. 86–16, 10 CIT ____, 630 F. Supp. 1317 (1986) remanded to the Department two aspects of the review. On August 15, 1986, we submitted the final results of the remand to the CIT. The remand results were upheld in Slip Op. 86–107, 11 CIT ____, (October 23, 1986).

### Remand Results

Pursuant to the remand in *Philipp Brothers*, the Department was required to explain the use of country-wide rates for assessment purposes. We explained that, at the time the review was conducted, there was no statutory provision concerning whether or when the Department should assess countervailing duties on a country-wide or company-specific basis.

While the language of paragraph (2) of section 751(a) of the Tariff Act of 1930 ("the Tariff Act") makes clear that the Department is to assess antidumping duties on an entry-by-entry basis, there is no parallel provision for the assessment of countervailing duties. Instead, the langauge of section 751(a)(1) simply calls for the determination of "any net subsidy." The Department's consistent and long-standing practice has been to assess countervailing duties on a country-wide basis in administrative reviews. After considering the 1984 amendments to section 706(a)(2) of the Tariff Act (establishing a presumption of country-wide rates except if the Department determines that significant differentials exist between companies receiving benefits) and § 355.22(d)(3) of the Department's proposed regulations (which would clarify the basis for company-specific countervailing duty rates in administrative reviews) (50 FR 24207, June 10, 1985), we found, in accordance with the CIT's instructions, that there was a "significant differential" in the receipt of subsidies by one producer, Cimetal. We found a company-specific rate for Cimetal of 24.23 percent *ad valorem* and a country-wide rate for all other firms of 7.01 percent *ad valorem*. Plaintiff did not challenge this result.

Also pursuant to the remand, the Department was required to explain to the CIT whether it had treated a lag in the collection of an offset tax to the Industrial Products Tax ("IPI") export credit premium as a separate countervailable subsidy, or whether it had simply adjusted the offset tax allowed under section 771(6)(C) of the Tariff Act because of the delay in collection. If the latter, the CIT instructed the Department to address the arguments raised by plaintiff concerning its methodology.

We explained that the lag in collection of the offset tax was not treated as a separate countervailable subsidy. In order to take into account the benefit received from the IPI export credit premium resulting from the delay in collection of the offset tax, we calculated the benefit from the IPI credit and the obligation for the payment of the offset tax based on the date of shipment, rather than the date on which the IPI credit was received by the exporter.

Plaintiff argued that this methodology lacked "symmetry," alleging that it utilized both accrual and cash-based analysis. However, the CIT upheld the Department's methodology as reasonable both in fact and in law. This

methodology takes into account the fact that, while we could not always determine the date on which the applicant actually received the IPI credit, we could verify the date on which the exporter became entitled to receive the benefit and the date on which the obligation for payment of the offset tax was imposed. As the record demonstrated, the Government of Brazil agreed to offset the subsidy completely. We determined that payment was late beginning 45 days after the end of the relevant month, and noncollection of the offset tax by that date resulted in a failure of the Government of Brazil to offset completely the benefit from the IPI credit.

As a result of the remand decison, the final results of the administrative review of the countervailing duty order on pig iron from Brazil, covering the period January 1, 1981 through December 31, 1981, are amended to incorporate the reasoning and calculations set forth above. Accordingly, the net subsidy during the period of review is 24.23 percent *ad valorem* for Cimetal and 7.01 percent *ad valorem* for all other firms. The Department will instruct the Customs Service to assess countervailing duties of 24.23 percent for Cimetal, and 7.01 percent for all other firms, of the f.o.b. invoice price on all entries of the subject merchandise, imported by Philipp Brothers and exported on or after January 1, 1981 and on or before December 31, 1981.

This notice does not affect the deposit rate currently required on all entries of pig iron from Brazil of 4.65 percent *ad valorem*.

Dated: April 16, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87-9065 Filed 4-21-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[C-333-001]

## Cotton Sheeting and Sateen From Peru; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on cotton sheeting and sateen from Peru. The review covers the period January 1, 1984 through December 31, 1984 and three programs.

As a result of the review, the Department has preliminarily determined the bounty or grant to be 0.31 percent *ad valorem* for the period of review, a rate we consider to be *de minimis*. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Al Jemmott or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 5, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43946) the final results of its last administrative review of the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501, February 1, 1983). The Government of Peru requested an administrative review of the order in accordance with § 355.10 of the Commerce Regulations. We published the initiation on May 30, 1986 (51 FR 19580). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of Review

Imports covered by the review are shipments of Peruvian cotton sheeting and sateen consisting of: (1) Plain woven cotton fabric sheeting, not fancy or figured and not napped, made of singles yarn with an average yarn number between 3 and 26, imported in Textile and Apparel Category 313, currently classifiable under items 320.—34 and 320.—77 of the Tariff Schedules of the United States annotated ("TSUSA"); and (2) 100 percent carded cotton sateen fabrics woven with a satin weave and not napped, imported in Textile and Apparel Category 317, currently classifiable under TSUSA items 320.—50, 320.—93, 321.—50, and 321.—93.

The review covers the period January 1, 1984 through December 31, 1984 and three programs.

### Analysis of Programs

*(1) The Export Law*

The aim of the law for the Promotion of Exports of Nontraditional Goods ("the Export Law") is to improve Peru's foreign trade structure by promoting nontraditional exports.

Articles 8 and 9 of the Export Law permit firms that decentralize their businesses within the country or that export nontraditional goods to invest or reinvest a larger portion of their income, free of income tax, than is permitted other firms. Three exporters used the nontraditional export provision of these articles during the period of review. To calculate the benefit, we divided each exporter's additional tax credit by its total exports and multiplied the result by its percentage of total exports of cotton sheeting and sateen to the United States during the review period. We preliminarily determine the benefit from Articles 8 and 9 to be 0.06 percent *ad valorem*.

Article 12 of the Export law permits each manufacturer and/or exporter to use accelerated depreciation. Two exporters used this article during the period of review. To calculate the benefit, we divided each exporter's tax savings (the difference between what the company paid and what it would have paid absent the accelerated depreciation) by its total sales of all products and multiplied the result by its percentage of total exports of cotton sheeting and sateen to the United States during the review period. We used total sales of all products as the denominator because firms are able to claim accelerated depreciation on equipment used for both domestic and export sales. We preliminarily determine the benefit from Article 12 to be 0.04 percent *ad valorem*.

Article 14 of the Export Law grants each manufacturer and/or exporter a tax deduction for each permanent job created. One exporter used this article during the period of review. To calculate the benefit, we divided the difference in the exporter's taxes before and after the deduction by its total sales of all products and multiplied the result by its percentage of total exports of cotton sheeting and sateen to the United States during the review period. We used total sales of all products as the denominator because the job created can be in either domestic or export production. We preliminarily determine the benefit from Article 14 to be 0.01 percent *ad valorem*.

Article 16 of the Export Law permits exporters to suspend payment of import duties on capital goods used to manufacture merchandise for export. The suspension of duties is contingent upon meeting yearly export targets set in the Export Law. If exporters achieve all targets within a maximum of five years, they are eligible for full exemption from payment of duties. The exemption takes effect in the year that the export targets are reached. If

exporters fail to meet the export targets, they must pay the duties with penalties. Four exporters used Article 16 during the period of review, including one that fulfilled the requirements for exemption from payment of duties.

We consider these import duty suspensions to be equivalent to one-year interest-free loans because there is uncertainty from year to year whether the duties will be paid or exempted from payment. If an exemption occurs, we expense the full amount of the exemption in the year of receipt. We calculated the benefit from the suspensions, or "loans", outstanding during the review period using a 1983 commercial benchmark because we assume that the interest paid in 1984 was based on a loan rolled over in 1983. We used as a benchmark the effective annual interest rate for short-term promissory notes. We allocated each exporter's benefit over its total exports for the review period. For the exporter that obtained the exemption, we allocated the full amount of the exemption plus the interest benefit (for the import duty suspension during the portion of the review period before the actual exemption occurred) over that firm's total exports. We then weight-averaged each exporter's benefit by its share of the total exports of cotton sheeting and sateen to the United States. We preliminarily determine the benefit from Article 16 to be 0.20 percent *ad valorem*. Because two exporters imported in 1984 additional equipment on which import duties were suspended, we preliminarily determine the benefit, for purposes of cash deposit of estimated countervailing duties, to be 0.60 percent *ad valorem*.

*(2) Other Programs*

We examined the following programs and preliminarily determine that exporters of cotton sheeting and sateen did not use them during the period of review.

(A) Certificate of Tax Rebate ("CERTEX"); and

(B) Nontraditional Export Fund ("FENT").

**Preliminary Results of Review**

As a result of the review, we preliminarily determine the total bounty or grant to be 0.31 percent *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department therefore intends to instruct the Customs Service to assess no countervailing duties for shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984.

Further, because of the additional import duty exemptions obtained under Article 16 in 1984, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.71 percent of the f.o.b. invoice price on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 335.10 of the Commerce Regulations (19 CFR 355.10).

Dated: April 16, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87-9066 Filed 4-21-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[C-333-002]

## Cotton Yarn From Peru; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on cotton yarn from Peru. The review covers the period January 1, 1984 through December 31, 1984, and three programs.

As a result of the review, the Department has preliminary determined the bounty or grant to be 2.39 percent *ad valorem* for 1984. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Al Jemmott or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 9, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44324) the final results of its last administrative review of the countervailing duty order on cotton yarn from Peru (48 FR 4506, February 1, 1983). The Government of Peru requested an administrative review of the order in accordance with § 355.10 of the Commerce Regulations. We published the initiation on May 30, 1986 (51 FR 19580). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

Imports covered by the review are shipments of various Peruvian cotton yarns currently classifiable under the following item numbers of the Tariff Schedules of the United States: 300.60, 301.01 through 301.60, 301.70, 301.80, 301.82, 301.84, 301.86, 301.88, 301.92, 301.94, 301.96, 301.98, 301.01 through 302.60, 302.70, 302.80, 302.82, 302.84, 302.86, 302.88, 302.92, 302.94, 302.96, and [illegible].

The review covers the period January 1, 1984 through December 31, 1984 and three programs.

**Analysis of Programs**

*(1) The Export Law*

The aim of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law") is to improve Peru's foreign trade structure by promoting nontraditional exports.

Articles 8 and 9 of the Export Law permit firms that decentralize their businesses within the country or that export nontraditional goods to invest or reinvest a larger portion of their income, free of income tax, than is permitted other firms. One exporter used the decentralization provision of these articles during the period of review. To calculate the benefit, we divided the exporter's tax credit by its total sales of all products and multiplied the result by its percentage of total exports of cotton yarn to the United States during the

review period. We used total sales of all products as the denominator because firms qualified for benefits under the decentralization provision rather than under the nontraditional export provision. We preliminarily determine the benefit from Articles 8 and 9 to be 0.09 percent *ad valorem*.

Article 16 of the Export Law permits exporters to suspend payment of import duties on capital goods used to manufacture merchandise for export. The suspension of duties is contingent upon meeting yearly export targets set in the Export Law. If exporters achieve all targets within a maximum of five years, they are eligible for full exemption from payment of duties. The exemption takes effect in the year that the export targets are reached. If exporters fail to meet the export targets, they must pay the duties with penalties. Four exporters used Article 16 during the period of review, including one that fulfilled the requirements for exemption from payment of duties.

We consider these import duty suspensions to be equivalent to one-year interest-free loans because there is uncertainty from year to year whether the duties will be paid or exempted from payment. If an exemption occurs, we expense the full amount of the exemption in the year of receipt. We calculated the benefit from the suspensions, or "loans," outstanding during the review period using a 1983 commercial benchmark because we assume that the interest paid in 1984 was based on a loan rolled over in 1983. We used as a benchmark the effective annual interest rate for short-term promissory notes. We allocated each exporter's benefit over its total exports for the review period. For the exporter that obtained the exemption, we allocated the full amount of the exemption, plus the interest benefit (for the import duty suspension during the portion of the review period before the actual exemption occurred) over that firm's total exports. We then weight-averaged each exporter's benefit by its share of the total exports of cotton yarn to the United States during the review period. We preliminarily determine the benefit from Article 16 to be 2.30 percent *ad valorem*. Because the benefit from the import duty exemption does not continue beyond 1984, we preliminarily determine the benefit, for purposes of cash deposit of estimated countervailing duties, to be 0.91 percent *ad valorem*.

*(2) Other Programs*

We examined the following programs and preliminarily determine that exporters of cotton yarn did not use them during the period of review:

(A) Certificates of Tax Rebate ("CERTEX"); and

(B) Nontraditional Export Fund ("FENT").

**Preliminary Results of Review**

As a result of the review, we preliminarily determine the total bounty or grant to be 2.39 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 2.39 percent of the f.o.b. invoice price on any shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984.

Further, because the benefit from the import duties exonerated under Article 16 does not continue beyond 1984, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 1.00 percent of the f.o.b. invoice price on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a) (1) of the Tariff Act (19 U.S.C. 1675(a) (1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: April 16, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87-9067 Filed 4-21-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-401]

## Final Affirmative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Colombia

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Colombia of certain textile mill products and apparel as described in the "Scope of Investigations" section of this notice. The estimated net bounty or grant is determined to be 13.34 percent *ad valorem* for certain textile mill products and 16.33 percent *ad valorem* for apparel. The Department of Commerce and Colombian manufacturers and exporters of certain textile mill products and apparel have entered into a suspension agreement. However, we continued the investigations at the request of petitioners. The suspension agreement will remain in force and we shall not issue countervailing duty orders.

**EFFECTIVE DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas Bombelles, Office of Investigations, or Steve Nyschot, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; Telephone: (202) 377-3174 or (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

Based upon our investigations, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Colombia of certain textile mill products and apparel. For purpose of this investigation, the following programs are found to confer bounties or grants:

- Tax Reimbursement on Exports under law 636 of 1984.
- Export Financing through the Export Promotion Fund.
- We estimate the net bounty to be 13.34 percent *ad valorem* for certain textile mill products and 16.33 percent *ad valorem* for apparel.

**Case History**

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industries producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Colombia of textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations and, on August 13, 1984, we initiated such investigations (49 FR 32892 August 17, 1984). These investigations were initiated by the Department under the title "Certain Textiles and Textile Products from Colombia." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of our investigations to "Certain Textile Mill Products and Apparel from Colombia." The scope of these investigations remains the same as announced in the initiation and the preliminary determinations. We stated that we expected to issue preliminary determinations by October 16, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 20, 1984 (49 FR 40198 October 15, 1984).

Since Colombia is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and (b) of the Act apply to the investigations. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the Government of Colombia in Washington, DC, on August 24, 1984. Based on the responses to the preliminary questionnaire, we selected four textile producers and exporters and three apparel producers and exporters, who account for at least 60 percent of the value of textile mill products and apparel exported to the United States from Colombia. On October 23, 1984, we presented a supplemental questionnaire to the Government of Colombia in Washington, DC requesting responses from these selected companies. We received responses to our supplemental questionnaire on December 4, 1984. One textile producer, Polymer S.A. did not respond to our questionnaire. Although the response to the preliminary questionnaire states that Polymer receives certain export benefits, counsel for respondents informed us that Polymer does not, in fact, export any products under investigation. Therefore, Polymer is not subject to this investigation.

One company, Creaciones Inesita, requested exclusion from these investigations on the grounds that it does not export any textile mill products or apparel. By the terms of section 355.38 of our regulations, Inesita could not be excluded because it does not produce or export "merchandise subject to the investigation," (*i.e.*, certain textile mill products and apparel that are exported to the United States). Also, it is the Department's policy not to exclude a firm that has never exported, since the Department has no past records which it can use to assess whether the firm, when it begins to export, will apply for and receive export benefits. In this case, all of the firms investigated received export benefits, such as the program providing for tax reimbursement on exports and for export financing through the Export Promotion Fund. Every Colombian firm is entitled by law to these benefits and, arguably, Inesita would need to receive these benefits in order to compete effectively against other Colombian exporters.

On December 20, 1984, we issued our preliminary determinations in these investigations (49 FR 50753, December 31, 1984). We preliminarily determined that benefits constituting bounties or grants within the meaning of the Act were being provided to manufacturers, producers, or exporters in Colombia of the subject merchandise.

We conducted a verification of the responses of the Government of Colombia and the textile and apparel companies between January 29 and February 8, 1985. Petitioners and respondents waived the opportunity to participate in a public hearing. However, we did receive their written comments regarding our investigations in briefs received on February 1 and February 25, 1985. On March 5, we received their written comments on our verification. We have addressed these comments in the "Comments" section of this notice.

Certain respondents in these investigations have raised issues as to whether petitioners have standing to file these cases. Petitioners have also made comments regarding our methodology in selecting companies to receive detailed questionnaires and our investigation of only those companies that account for 60 percent of exports of the subject merchandise to the United States. We have addressed these issues in our final determination in *Certain Textile Mill Products and Apparel from Malaysia*, (50 FR 9852, March 12, 1985). See that notice for our comments on those issues.

On March 5, 1985, the Department of Commerce and a representative of the Colombian producers and exporters who account for at least 85 percent of exports of certain textile mill products and apparel to the United States subject to these investigations signed a suspension agreement, as provided for under section 704 of the Act (50 FR 9863, March 12, 1985). Under the agreement, these Colombian manufacturers and exporters voluntarily rennounced the receipt of all the benefits described below as bounties or grants.

On March 18, 1985, the petitioners requested that these investigations be continued under section 704(g) of the Act. Therefore, we are required to issue final determinations in these investigations.

**Scope of the Investigations**

The products covered by these investigations are certain textile mill products and apparel, which are described in Appendix A, attached to this notice.

**Analysis of Programs**

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigations. These principles are described in the "Subsides Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

For purposes of these determinations, the period for which we are measuring

bounties or grants ("the review period") is calendar year 1983.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and oral and written comments by interested parties, we determine the following:

*Programs Determined to Confer Bounties or Grants*

I. We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Colombia of certain textile mill products and apparel under the following programs:

A. Tax Reimbursement on Exports Under Law 636 of 1984

The Government of Colombia provides payments to exporters of textiles and apparel in the form of negotiable tax certificates ("CATS") that may be used for the payment of various taxes or sold on the stock exchange at a discount. Rebates are calculated as a percentage of the value of the exported product attributable to the domestic value-added and imported inputs on which duties have been paid. The Government of Colombia contends that the CAT is not a bounty or grant because it represents a non-excessive rebate of indirect taxes.

Traditionally, we have applied a three-prong test to determine whether the rebate of cumulative, prior-stage indirect taxes borne by inputs that are physically incorporated into a final product provides a benefit. Where an indirect tax rebate system incorporates rebates on import duties, or where there is a fixed duty drawback system instead of an individual duty drawback system, we have determined that we must apply a linkage analysis similar to our test for rebate systems that are designed exclusively to rebate indirect taxes. This linkage analysis involves determining whether the system is intended to operate as a drawback system; the government properly ascertained the level of the fixed drawback; and whether the schedules are revised periodically so that the drawback amounts reflect the amount of duty paid. Where these conditions are met, the Department will consider a system that rebates indirect taxes and import duties, or a fixed duty drawback system, not to provide a benfit when the amount rebated on physically incorporated inputs equals (or is less than) the fixed amount set in the rebate schedule for the exported product. (*See:* "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: (Certain Apparel from Thailand," (50 FR 9819, March 4, 1985)).

With respect to the first prong of the test, we determine that, for textiles and apparel, the CAT program operates for the purpose of rebating import duties and indirect taxes. The taxes and duties rebated under the CAT program include those on inputs that are physically incorpated into the final product. From the documents submitted by the Colombian Government itemizing the taxes and duties eligible for inclusion in the CAT rebate on textiles and apparel, we conclude that a significant portion of the CAT rebate applies to import duties and indirect taxes on inputs physically incorpated in the exported products.

To satisfy our second test, the questionnaire response of the Government of Colombia states that each of the major product categories of textiles and textile products was analyzed in a 1978 tax incidence study. Cost structures were established on a firm-by-firm basis for the largest firms and the major categories of products. The average tax incidence on each input was calculated determine the average value of taxes and import duties in the f.o.b. value of the final product. We determine that this procedure constitutes a reasonable method of calculating a fixed duty drawback.

With respect to our third test, we determine that because the rate of indirect taxes and import duties on inputs physically incorporated into the exported product is less than the full rate of CAT rebate, there is an excessive remission of indirect taxes and import duties on exported goods. We reviewed the documents submitted by the government in its questionnaire response and at verification showing its detailed calculation of the rebate rates. The calculations separate the inputs for each product and list import duties and domestic indirect taxes, as well as indirect taxes embedded in domestically-produced inputs. The government also includes in its calculation of the CAT rebate rate certain direct taxes.

On April 1, 1984, the Government of Colombia abolished the CAT program and replaced it with a new tax reimbursement program, the CERT. The CERT program eliminated several deductions allowed under the CAT, and adjusted others to reflect changes in the tax and duty incidence on the production of textiles and apparel. The overall effect of the change was to raise the rebate rate under the CERT program to 15.00 and 20.00 percent for textiles and to 20.00 percent for apparel. The former CAT rebates were 12.00 and 15.00 percent for textiles and 15.00 percent for apparel. We verified that rebates under this program are based on updated tax incidence calculations, using the model from the 1978 study. It is our policy to take into account for cash deposit purposes program-wide changes that occur after the review period and prior to a preliminary determination if we have verified information on the change and the magnitude of the resulting benefit.

To determine the benefit from this excessive remission of indirect taxes and import duties, we calculated the average incidence of indirect taxes and import duties on physically incorporated inputs for textiles and apparel, using tables provided by the Colombian government. These tables show the average incidence of indirect taxes and import duties on physically incorporated inputs in textiles and apparel. In addition, we allowed an adjustment to this rate based on the fact that the tax and duty incidence is calculated on the f.o.b. value of exported products, while the amount of CERT rebate upon export is determined by multiplying the CERT rate by the portion of the value of the exported product attributable to domestic value-added and imported inputs on which duties have been paid. Based on this calculation, we find an allowable rebate of 9.60 percent for textiles and 6.00 percent for apparel. Subtracting these amounts from the weighted-average CERT rebate rate on textiles (the CERT rate was weight-averaged by the proportions of textiles which receive 15 percent and those which get 20 percent) and the 20.00 percent CERT rebate on apparel, we calculate an estimated net bounty or grant of 7.00 percent *ad valorem* for textiles and 14.00 percent *ad valorem* for apparel.

B. Export Financing Through the Export Promotion Fund

1. *Working Capital Loans Under Resolution 59.* Colombian manufacturers of certain textile mill products and apparel for export receive short-term financing under Resolution 59, which was passed by the Monetary Board of Colombia on August 30, 1972. It authorizes the provision of working capital loans to companies which produce, store or sell merchandise other than coffee and petroleum, exclusively for export. Resolution 59 financing is administered by the Export Promotion Fund ("PROEXPO"), a government agency, and is disbursed by banks and other financial institutions.

The interest rate on such loans during the period of investigation was 19 percent per annum until March 31, 1983, and 18 percent afterwards. The duration of loans is six months, and the

maximum principal is 80 percent of the value of the merchandise. Because this loan program is limited to exports, we consider that it confers a bounty or grant to the extent that financing is made available as preferential interest rates. In our preliminary determinations, we chose an interest rate of 36 percent, based on best evidence, as the short-term commercial interest rate against which to measure the benefit conferred by Resolution 59 loans.

At verification we examined data from the Central Bank, the Monetary Board, commercial banks and other financial institutions. The information we examined indicated that there is no single predominant alternative source of non-preferential, short-term financing in Colombia.

The Colombian government has established many different lines of credit, with fixed interest rates, rediscount rates and rediscount margins, in order to assist Colombia's economic development. Some credit lines, such as PROEXPO, are targeted to specific economic sectors, while others are generally available to all industry. Through high reserve requirements and a variety of forced investments, the government controls a majority of the available lending capital in the economy. These funds are used to capitalize the diverse credit lines, which are lent to borrowers through banks and other financial institutions. The remaining resources of the banks and other institutions may be lent at or below legal maximum interest rate of 36 percent per annum. They may also be lent as a portion of the government-directed special credit line, since the total amount of government fund lending that any credit institution processes is not limited to the amount of its capital held in reserves and forced investments. Although credit institutions may lend from their own resources at rates as high as 36 percent, they may find it more profitable to process a government fund loan because the high rediscount margin of most of these funds requires the credit institution to furnish on average only 10 percent of the principal amount of the loan.

We found that borrowers in Colombia generally negotiate a "package" loan agreement with a bank. The package will consist of funds drawn from several credit lines at statutorily-controlled interest rates and may include funds from the bank's own resources, at an interest rate of 30 to 36 percent per annum.

Thus, we determine that the non-preferential alternative to Resolution 59 loans is a package of generally available government credit lines and commerical borrowing. To calculate the short-term benchmark, we used Central Bank data to estimate the amount of capital lent through government credit lines that are generally available, and that are available for lending at unregulated interest rates. We then weight-averaged the statutory interest rates on generally available government funds and the average commercial interest rate in 1983, to find a short-term benchmark interest rate of 28.19 percent. Comparing this benchmark rate to the 18 and 19 percent interest rates on PROEXPO loans, we calculate an estimated net bounty or grant of 2.09 percent *ad valorem* for textiles and 0.84 percent *ad valorem* for apparel.

2. *Special Line of Credit to the Textile Industry.* In 1982 the Government of Colombia established a special line of credit to the textile industry that refinanced all outstanding short-term as well as certain long-term PROEXPO Loans. The outstanding balances were combined and refinanced in December 1982 or early 1983 for a term of two years at an interest rate of 18 percent. Three textile producers and one apparel producer under investigation had loans outstanding under this program during the review period.

At verification, we learned that one of the conditions set by the government for refinancing under this program was that the companies meet minimum export goals for 1983. Since the refinancing is contingent upon export performance, we determine that the program constitutes an export bounty or grant to the extent that financing is made available at preferential rates.

In our preliminary determinations, we used the short-term commercial loan benchmark of 36 percent as the best information available for a long-term loan benchmark. During verification, we learned that all commercial banks and credit institutions are prohibited from lending at terms longer than one year. The only sources of long-term financing in Colombia are the various financial funds and special credit lines established by the government. The terms, conditions and interest rates for all of these funds are regulated by the government.

Our long-term loan methodology requires the use of company-specific benchmark rates when available. Long-term interest rates may vary widely from industry to industry, from year to year, and usually depend on many factors, such as a company's size and creditworthiness. In Colombia, the cost of long-term credit does not vary widely from company to company because the interest rates are set by the government.

Many of the preferential and non-preferential long-term loans that we saw on companies' books were not granted in the same year as the special credit line for the textile industry. However, the interest rates set on these long-term loans have remained constant since the loans were granted. We therefore determine that the most appropriate long-term benchmark is the weighted-average interest rate during the review period of those government funds that offer long-term financing to a broad spectrum of industries and that are not contingent on export performance. These funds include the Industrial Financial Fund (FFI), the Private Investment Fund (FIP), the Industrial Development Institute (IFI), and the Capital Formation Fund (FCE).

We calculated the weighted-average benchmark rate according to the total amount of loans made through each of these funds in 1983 and the corresponding average long-term interest rate established for each one. In this way, we determine that the national average non-preferential long-term interest rate in Colombia during 1983 was 25.55 percent.

One of the apparel firms that we verfied, Fabricato, entered into court-ordered reorganization during the review period. Interest and principal payments on all its outstanding debt were suspended. We verified that this practice is consistent with Colombian bankruptcy laws and procedures. Consistent with our past practice, we have not included this company's refinanced loans in our calcuation of the benefits from this program.

Loans from the special credit line for the textile industry were negotiated at the end of 1982 and in early 1983. Since we did not have the appropriate information to calculate each company's weighted cost of capital for those years, we used the 1983 national average cost of long-term debt as the discount rate for both years. Using this method, we calculated an estimated net bounty or grant from this program of 4.00 percent *ad valorem* for textiles and 1.21 percent *ad valorem* for apparel.

3. *Credit for Capital Investment Under Decree 2366.* Under Decree 2366, PROEXPO provides long-term financing for capital investment through commercial banks. The annual amount of the loan cannot exceed two million pesos and maximum term is five years. The annual interest rate for these loans is 14 percent, though we found that banks can charge a spread over this rate in special circumstances. Three of the companies under investigation, representing both textile and apparel

exports, had loans outstanding under this program during the review period.

This financing is available only to applicants whose investment projects are approved by PROEXPO. Since PROEXPO financing is limited to exporters, we determine that this program confers a bounty or grant on exports of the subject merchandise. Using the same methodology and long-term interest rate benchmark described for the "Special Credit Line for Textiles," we calculate an estimated net bounty or grant of 0.25 percent *ad valorem* for textiles and 0.28 percent *ad valorem* for apparel.

*II. Programs Determined Not to Confer Bounties or Grants*

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Colombia of certain textile mill products and apparel under the following programs:

A. Employee Training Program

El Servicio Nacional de Aprendizaje ("SENA") provides general education and training programs to unemployed and underemployed workers in Colombia. We determine that this program does not confer a bounty or grant because we verified that it is not limited to a specific industry or enterprise, or group of industries or enterprises, or to companies in a specific region.

B. Duty and Tax Exemptions for Imported Materials Under the Plan Vallejo

The Plan Vallejo provides exemptions from customs duties and the Colombian sales tax for imported raw materials and intermediate inputs which are subsequently exported as a component of the finished product. The exemption from import charges imposed on items physically incorporated into the exported product is not countervailable. At verification we examined both import and export manifests submitted to Customs by participating companies. These manifests must account for all goods imported duty-free and subsequently exported. Each year the companies must prove to Customs, through actual documents, that they have in fact exported as part of a finished good all materials imported duty-free under Plan Vallejo. To the extent that all merchandise imported duty-free is physically incorporated into a final product and subsequently exported, we determine that this program does not confer a bounty or grant.

C. Financing through the Private Investment Fund and the Industrial Development Institute

The Private Investment Fund (FIP) and the Industrial Development Institute (IFI) provide long-term financing to certain industrial sectors and for selected projects. At verification we examined the lending distribution statistics and the annual reports of these funds. Based on our review of these documents, we determine that IFI and FIP financing is not limited to a specific enterprise or industry, or industry or group of enterprises or industries, or to companies located in specific regions of Colombia.

*III. Programs Determined Not to be Used*

We determine that the companies under investigation did not use the following programs which were listed in our notice of initiation:

A. Free Industrial Zones

The Colombian government has established Free Industrial Zones ("FIZ") dedicated to export production. Manufacturers located in a FIZ receive certificates worth 15 percent of the f.o.b. value of the Colombian value-added on exported merchandise. We determine that this program was not used by the companies under investigation.

B. Export Insurance

Decree 444 of 1967 created an export credit insurance program to provide commercial, political and special risk insurance on exports. Petitioners alleged that the Government of Colombia pays a portion of the cost of this program. We verified that the program is managed by a private company under contract to PROEXPO. We determine that this program was not used by the companies under investigation for exports to the United States.

C. Duty and Tax Exemptions for Capital Equipment Under the Plan Vallejo

The Plan Vallejo provides exemptions from customs duties and the Colombian sales tax for capital equipment which is imported exclusively for the production of exports. We verified that this program was not used by the companies under investigation.

E. Countertrade

The countertrade program, authorized by Decree 370 of February 15, 1984, allows any company to engage in countertrade, if such trade will create new markets or new products. We verified that this program was not used by the companies under investigation, during the review period.

**Petitioners' Comments**

*Comment 1.* Petitioners contend the Department should choose a short-term benchmark that reflects the effective cost of alternative financing that was available to the textile industry during the period of investigation. An effective benchmark should include fees and other charges that constitute incidental costs of borrowing. Petitioners further argue that the Department should reject the "average interest rate" information supplied by respondents, as these rates included the cost of the preferential loans under investigation.

*DOC Position.* As stated in the Subsidies Appendix, the Department's policy is to choose as a short-term benchmark "the most appropriate national average commercial method of short-term financing." During verification, we found that there is no single predominant source of short-term non-preferential financing in Colombia. We verified that it is common commercial practice to negotiate loan agreements with funds drawn from several sources, including government-mandated credit lines and banks' own resources. Therefore, for purposes of our final determinations, we calculated a national average non-preferential interest rate as our short-term benchmark. This interest rate is based on a weighted-average of generally available government funds and the average short-term interest rate on loans from banks' own resources. We verified that the borrowing fees apply to both preferential and non-preferential financing. Therefore, we have not added such fees to either the preferential interest rate or our short-term benchmark.

*Comment 2.* Petitioners argue that the CAT program is fully countervailable, and that no allowance for "rebatable" indirect taxes should be allowed, since the Colombian government has not provided the Department with an adequate fiscal-incidence study.

*DOC Position.* We verified that the 1978 tax incidence study establishes a link between eligibility for the rebates and indirect taxes and import duties actually paid.

*Comment 3.* Petitioners allege that in calculating the extent of the overrebate in the CAT program for the preliminary determinations, the Department considered "indirect social taxes" on inputs to be rebatable. Petitioners contend that these taxes (*e.g.*, social security and social welfare payments) are not rebatable even if they are related to physically incorporated inputs. They argue, therefore, that these

social taxes must not be included in the determination of "allowable" CAT rebates.

*DOC Position.* We agree. To determine the benefit from the excessive remission of indirect taxes and import duties, we have calculated the average incidence of only those indirect taxes and import duties on physically incorporated inputs for textiles and apparel. We verified that these "indirect social taxes" are in fact direct taxes paid by upstream producers. The CERT rates which were used for these final determinations do not include these social taxes.

*Comment 4.* Petitioners argue that, based on the "best information available," the Department should presume that the 71 exporters and manufacturers of textiles and textile products who received CATs during the review period, but were not included in the "sample," received CAT benefits at the highest level conferred on any firm in the sample. Petitioners further argue that the calculation of subsidies conferred by the CAT should include those benefits.

*DOC Position.* We do not believe that section 776(b) of the Act mandates the use of the best information available in this instance. The information we requested, and verified, provides a sufficient basis for our final determinations. For a full discussion of the methodology used to select companies to respond to our questionnaire, see "Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Malaysia" (50 FR 9852, March 12, 1985).

*Comment 5.* Petitioners contend that the Department correctly found that all PROEXPO loans under Resolution 59 and Decree 2366 made to the "sample" firms are countervailable since these loans are limited to firms that produce, store or sell goods for export. Furthermore, petitioners argue that even if these loans are not limited to exports, they must be shown to be "generally available" in order not to be countervailable.

*DOC Position.* We agree. See our discussion of this program in the "Export Financing through the Export Promotion Fund" section of this notice.

*Comment 6.* Petitioners argue that the Department should treat the suspension of interest payments on loans to one company in the "sample" as a countervailable benefit even if the suspension of interest is a normal procedure in Colombian bankruptcy reorganization. Petitioners maintain that the reason for the company not paying interest (*i.e.*, the court-ordered reorganization) is irrelevant. They urge the Department to treat these as zero-interest loans.

*DOC Position.* We disagree. Since we verified that the suspension of interest is a normal practice in Colombian bankruptcy reorganization, we find that this benefit is not limited to a specific industry or enterprise, or group of industries or enterprises, or companies located in a specific region of Colombia.

*Comment 7.* Petitioners note that the government's initial questionnaire response reveals that at least two exporters not included in the "sample" received export insurance under Colombia's export insurance program. They argue that, since the questionnaire responses provided no information on the extent of the coverage, the costs of alternative insurance, or the extent to which the premiums cover the program's costs, the Department should assume, as "best information available," that the program offers insurance at preferential rates.

*DOC Position.* We found this not to be used by the firms under investigation. See DOC Position to Comment 4 above.

*Comment 8.* Petitioners allege that benefits conferred by IFI loans are countervailable because the questionnaire response states that they are available only to "medium or large industrial companies." They add that the record does not show that IFI loans are *de facto* "generally available."

*DOC Position.* We disagree. The Department has consistently held that medium-or large-sized businesses constitute more than one group or enterprises or industries. Furthermore, we found at verification that the IFI loan program is not limited, *de facto*, to a specific enterprise or industry, or group of enterprises or industries, and, therefore, is not countervailable.

*Comment 9.* Petitioners argue that the exclusion of benefits from the deferral of payments on an IFI loan granted to one "sample" company was incorrect. Petitioners argue that the appropriate standard (for whether to include or exclude the benefit from IFI loans) is whether the loan deferral is consistent with "commercial considerations" and not whether the loan deferral is "consistent with normal commercial practices."

*DOC Position.* We determined that the IFI program is not countervailable. (See our response to Comment 8 above.) Furthermore, IFI loans normally have a deferral period for principal repayments. Thus, the deferral of IFI loans payment is not countervailable because it is not provided to a specific enterprise or industry, or a group of enterprises or industries.

*Comment 10.* Petitioners contend that the Department must assume that the four firms which did not participate in the verification but which received IFI loans during the review period, as disclosed in the questionnaire responses, received benefits equal to the most highly subsidized IFI loans on record. The Department must, therefore, include these loans in the final subsidy calculation.

*DOC Position.* We disagree. See DOC Position on Comment 8 above.

*Comment 11.* Petitioners argue that the employee training program (SENA) is countervailable since the respondents have not shown that this program is generally available. Hence, the Department must consider the allegations in the petition to be the "best information available."

*DOC Position.* We verified that SENA is a domestic program not limited to a specific enterprise or industry, or group or enterprises or industries, or to companies in a specific region of Colombia, and, therefore, find that the program is not countervailable. See our discussion of this program in the "Programs Determined Not to Confer a Bounty of Grant" section of this notice.

*Comment 12.* Petitioners allege that according to the "best information available," the FIP loan program is countervailable because the record indicates that only the textile industry has used it. Moreover, the questionnaire reponses show that at least one non-verified firm has a FIP loan outstanding during 1983.

*DOC Position.* We verified that the FIP loan program is available to all industries in Colombia and therefore find that the program is not countervailable. See our discussion of this program in the "Programs Determined Not to Confer a Bounty or Grant" section of this notice.

*Comment 13.* Petitioners allege that the Free Industrial Zone program must be countervailed since as least four "non-sampled" textile or textile product exporters received benefits under this program during the review period.

*DOC Position.* We have found that this program was not used by the firms under investigation. See DOC Position on Comment 4 above.

*Comment 14.* Petitioners argue that the export "sales" of textile items resulting from Colombia's countertrade requirement would not have occurred without this program, and therefore are a benefit to respondents. Petitioners add that the benefit to the exporter is the selling price, less variable costs.

*DOC Position.* We verified that countertrade was not used by the

companies under investigation during the review period. Furthermore, Colombia's coutertrade system is not a "mandatory" program. We verified that the government, rather than "mandating" a countertrade transaction, must approve it. The burden falls on the applicant to convince the government that the particular export sale could not have been made in any way other than through a barter agreement. In order to receive approval for a countertrade transaction the exporter and/or importer must present a contract setting forth the terms of the transaction, formalized by the parties, prior to seeking the government's approval.

*Comment 15.* Petitioners allege that the PROEXPO loan programs are countervailable even if, as the Government of Colombia claims, they constitute a domestic and not an export subsidy, since they were granted at a below-market rate of financing.

*DOC Position.* We determine that PROEXPO loans are countervailable because they are limited to exporters and are provided at preferential rates. See our discussion of this program in the "Export Financing Through the Export Promotion Fund" section of this notice.

*Comment 16.* Petitioners contend that benefits from all PROEXPO special credit line financing received during the review period are countervailable, even if the loans were almost completely repaid by the date of the final determination.

*DOC Position.* We agree. See our decision on this program in the "Export Financing Through the Export Promotion Fund" section of this notice.

**Respondents' Comments**

*Comment 1.* Respondents argue that the eight textile producing companies and the two petitioning unions have not demonstrated their standing by submitting data to that effect required by Department regulations, and, therefore, the Department should terminate the investigations as to textile mill products and apparel.

*DOC Position.* We disagree. See our decision on standing in "Final Negative Countervailing Duty Determinations: Certain Textile Mill Products and Apparel from Malaysia" (50 FR 9852, March 12, 1985).

*Comment 2.* Respondents contend that the Department improperly determined that there was an excessive rebate of indirect taxes under the CAT program. Respondents argue that it was improper to calculate the value of the benefit on the basis of the data submitted by the six sample companies. Furthermore, respondents argue that the Department improperly disregarded numerous indirect taxes on inputs on which the CAT levels are based.

*DOC Position.* We agree. For the purposes of these final determinations, we used the Colombia government's tax incidence study to calculate average incidence of only those indirect taxes and import duties on physically incorporated inputs into textiles and apparel. See our discussion in the section of this notice on "Tax Reimbursement on Exports Under Law 636 of 1984."

*Comment 3.* Respondents argue that the Department should reject the unrealistically high 36 percent interest rate, used as a benchmark for Resolution 59, Resolution 14 and Decree 2366 loans in its preliminary determinations, and use the average interest rate calculated and documented by the Government of Colombia.

*DOC Position.* On the basis of best information available we used a 36 percent long-term and short-term benchmark for our preliminary determinations. For our final determinations, we constructed long-term and short-term benchmarks based upon additional, verified information concerning alternative sources of non-preferential financing. See our discussion of the benchmark issue in the "Export Financing through the Export Promotion Fund" section of this notice.

*Comment 4.* Respondents contend that the Department has improperly characterized refinancing by the Government of Colombia of outstanding PROEXPO loans held by the textile and apparel industry as an export subsidy. Respondents argue that these loans would be almost completely repaid by the time of the final determinations and that, therefore, only the outstanding portion of the loans should be considered in determining any deposit rate.

*DOC Position.* We disagree. We verified that only PROEXPO loans were refinanced under this Special Credit Line, and, since PROEXPO loans are limited to exporters, this program constitutes an export subsidy. To determine that benefit from a loan program it is the Department's policy to calculate the benefit as it accrues on the date of each interest payment throughout the review period. We only take into account program-wide changes or cessation of beneftis when such changes occur before our preliminary determination. See our discussion of this program in the "Export Financing Through the Export Promotion Fund" section of this notice.

*Comment 5.* Respondents contend that the 1978 CAT fiscal-incidence study, as supplemented by documents related to increases in indirect taxes and rebate costs, continues to be a valid basis for evaluating the CAT/CERT rebates. Respondents maintain that documents provided during the verification demonstrate that the Government of Colombia has calculated the incidence of each rebatable cost and indirect tax paid on inputs and that this evidence justifies the increases in the CAT/CERT rates.

*DOC Position.* We agree. See our discussion of this program in the "Tax Reimbursement on Exports under Law 636 of 1984" section of this notice.

*Comment 6.* Respondents argue that long-term financing through the IFI and the FIP is not countervailable since it is not limited to specific enterprises or industries or groups of enterprises or industries.

*DOC Position.* We agree. See our discussion of these programs in the "Programs Determined Not to Confer a Bounty or Grant" section of this notice.

*Comment 7.* Respondents contend that none of the companies under investigation participated in the Free Industrial Zone progam and that, in any case, no countervailable benefits are conferred by a company's location in a Fee Industrial Zone.

*DOC Position.* At verification, we fund that none of the companies under investigation were located in a Free Industrial Zone.

*Comment 8.* Respondents maintain that the countertrade program was not used by any of the companies under investigation, and that countertrade, as it operates in Colombia, does not confer any countervailable benefit.

*DOC Position.* Since we found at verification that this program was not used by the companies under investigation during the review period, the issue of a potential benefit from countertrade is moot.

*Comment 9.* Respondents maintain that the employee training program, SENA, does not provide any countervailable benefits to any textile or any apparel company because the training benefits it provides to workers are generally available to all Colombian companies.

*DOC Position.* We agree. See our determination on this progam in the "Programs Determined Not to Confer a Bounty or Grant" section of this notice.

*Comment 10.* Respondents argue that the subsidy rates for the "Special Credit Line" to the textile industry were greatly overstated in the preliminary determinations because we treated as zero-interest loans the financing received by one company which is undergoing court-ordered reorganization

and which, therefore, made no interest payments in 1983.

*DOC Position.* We agree. At verification we obtained additional information on standard Colombian practice and laws regarding debt repayments and bankruptcy procedures. Consistent with past practice, we excluded this company's refinanced loans from our calculation in determining the benefit to the textile industry from the special credit line.

**Comment by Creaciones Inesita, A Party to the Proceeding**

Creaciones Inesita, a Colombian apparel manufacturer, filed an application for exclusion from these investigations. The Department denied this request, and Creaciones Inesita filed a separate comment pertaining to its request for exclusion.

*Comment.* Creaciones Inesita applied for exclusion on the basis that it has not exported any products at all, either to the United States or to any third countries, and that it does not receive benefits either alleged in the petition or subject to the investigations. Creaciones Inesita argues that the Department's position not to exclude if from this proceeding on the basis that it does not export violates section 19 CFR 355.38 of the Department's regulations, which states in part that "any firm which does not benefit from a subsidy . . . shall . . . be excluded from a countervailing duty order." The company also argues that since the Department sent it a questionnaire, the decision not to exclude it represents a change of Department policy.

*DOC Position.* The Department has consistently held that it cannot exclude non-exporting firms. The Department inadvertently sent Inesita a countervailing duty questionnaire. However, the Department could not determine from Inesita's response whether or not Inesita receives any bounties or grants. Thus, even if Inesita had exported, the Department could not have excluded Creaciones Inesita. See our decision on this issue under the "Case History" section of this notice.

**Verification**

In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. During the verification we followed normal procedures, including meetings with government officials and inspection of documents as well as inspection of the records of the companies exporting the merchandise under investigation to the United States.

**Administrative Procedures**

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a). Written views have been received and considered in reaching these final determinations. In the event the March 5, 1985, suspension agreement is violated, the Department, in accordance with section 703(d) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries or withdrawals from warehouse, for consumption of the subject merchandise and will issue final countervailing duty orders as required by section 704(i)(1)(C) of the Act.

This notice is published pursuant to sections 303 and 705(d) of the Act (19 U.S.C. 1303, 1671d(d)).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

April 3, 1987.

**Appendix—List of TSUSA Codes Under Which There Were Imports From Colombia Into the United States During 1983**

[The products covered by these investigations are certain textile mill products and apparel. The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States Annotated (TSUSA) listed below]*

**Textile Mill Products**

*Yarns and Threads*

300.6020 300.6026 301.0000 301.2000 301.3000
302.2024 302.3026 302.4026 302.4028 302.5026
303.2042 310.5047 310.9120

*Fabric*

320.0002 320.0040 320.0056 320.1038 320.1040
320.1044 320.1054 320.1058 320.1092 320.2032
320.2054 320.2058 320.2092 320.3026 320.3028
320.3058 320.4094 321.1002 321.1092 322.1058
322.1064 322.3092 323.0068 323.0092 323.1068
324.1092 325.1092 326.1092 331.2018 331.2020
331.3020 336.1540 336.8457

*Special Construction Fabric*

345.5075 346.1000 351.3000 351.4010 351.8060
355.6510 357.1500 357.4500

*Textile Furnishings*

360.1515 360.4825 363.0520 363.0540 363.8000
364.2300 365.7625 365.7865 365.8640 365.8670
366.8680 366.1540 366.2180 366.2480 366.2490
366.6500 366.6900 366.7925 367.6025

*Miscellaneous*

[illegible]

**Wearing Apparel**

*Apparel*

370.2400 370.2800 372.1030 372.1060 372.1080
372.4500 374.1000 374.3550 374.6040 376.2430
376.2830 376.2886 378.0550 378.0553 378.6030
378.6530 379.0210 379.0220 379.0240 379.0490
379.0640 379.0642 379.0646 379.2020 379.2350
379.2610 379.3162 379.3164 379.3166 379.3168
379.3180 379.4020 379.4050 379.4320 379.4620
379.4640 379.4670 379.5550 379.6210 379.6217
379.6219 379.6220 379.6230 379.6240 379.6260
379.8260 379.7250 379.7630 379.8311 379.8340
379.8351 379.8358 379.8357 379.8358 379.8359
379.8360 379.8420 379.8735 379.8804 379.8822
379.8824 379.8926 379.8928 379.9020 379.9555
379.9562 379.9564 379.9566 379.9568 379.9575
379.9585 379.9610 379.9620 379.9645 383.0213
383.0225 383.0235 383.0300 383.0330 383.0350
383.0390 383.0505 383.0506 383.0570 383.0600
383.0606 383.0622 383.0631 383.0816 383.0830
383.0805 383.0810 383.0815 383.0841 383.0860
383.1510 383.1611 383.1612 383.1613 383.1680
383.1841 383.2014 383.2016 383.2060 383.2205
383.2212 383.2214 383.2230 383.2240 383.2306
383.2310 383.2215 383.2725 383.2330 383.2340
383.2350 383.2352 383.2360 383.2365 383.2715
383.2730 383.2920 383.3010 383.3060 383.3445
383.3448 383.3455 383.3770 383.4300 383.4700
383.4716 383.4717 383.4718 383.4724 383.4726
383.4753 383.4761 383.4765 383.5030 383.5038
383.5041 383.5086 383.5090 383.5800 383.6200
383.6230 383.6360 383.6371 383.7205 383.7210
383.7522 383.7532 383.7534 383.7536 383.7538
383.7541 383.7544 383.7546 383.7548 383.7552
383.7554 383.7556 383.7558 383.7558 383.7562
383.7695 383.8012 383.8043 383.8125 383.8621
383.8670 383.9015 383.9032 383.9037 383.9040
383.9050 383.9056 383.9057 383.9060 383.9069
383.9061 383.9062 383.9063 383.9064 383.9066
383.9070 383.9211 383.9225 383.9230 383.9240
383.9245 383.9255

*Headwear*

702.0600 702.1200 703.1610 703.1620 703.1630
703.1640 703.1650

*Gloves*

704.1585

*Luggage and Handbags*

706.3640 706.4106 706.4150

*Mattresses, Pillows and Cushions*

[illegible]

[FR Doc. 87-8867 Filed 4-21-87; 8:45 am]

[illegible]

---

**Werner Ernst Gregg; Order Denying Permission To Apply for or Use Export Licenses**

On February 18, 1986, Werner Ernst Gregg (Gregg), 8647 Raytown Road, Kansas City, Missouri 64138 was convicted, on three counts, of violating Section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1982) (AECA). As provided in Section 11(h) of the Export Administration Act of 1979 (50 U.S.C. app. 2401 through 2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985)) (the Act), no person convicted of a violation of Section 38 of the AECA[1] or certain other

[1] In addition to section 38 of the AECA, section 11(h) also provides that any person convicted of a violation of section 793, 794, or 798 of Title 18, United States Code, and section 9(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)) may be denied the privilege of applying for or using any export licenses.

provisions of the United States Code shall be eligible, at the discretion of the Secretary,[2] to apply for or use any export license issued pursuant to the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 368 through 399 (1986)) (the Regulations), for a period of up to ten years from the date of conviction. In addition, the Secretary may revoke any export license issued in accordance with the Act or the Regulations in which a person convicted of violating Section 38 of the AECA has an interest at the time of conviction. Further, any firm, corporation or business organization which is related, through affiliation, ownership, control, position of responsibility or other connection in the conduct of trade or related services, to any person convicted of violating Section 38 of the AECA, may also be denied the privilege of applying for or using any export license issued pursuant to the Act or the Regulations.[3]

Pursuant to §§ 370.15 and 372.1(h) of the Regulations, upon notification that a person has been convicted of violating Section 38 of the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to the Act and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Gregg's conviction for violating section 38 of the AECA, I have consulted with the Acting Director, Office of Export Enforcement, and have decided as follows: (1) Gregg may not apply for or use any license until February 16, 1996, ten years from the date of his conviction; (2) Gregg International is a party related to Gregg through ownership; (3) given Gregg International's related party status, all outstanding licenses issued to Gregg International are hereby revoked and Gregg International may not apply for or use any export license until February 16, 1996.[4]

Accordingly, it is hereby

*Ordered*

I. All outstanding export licenses, including, but not limited to, all individual validated licenses, bulk licenses and general licenses, in which Gregg appears or participates, in any manner or capacity , are herby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. Until February 16, 1996, Gregg is denied the privilege of applying for or using any export license, including, but not limited to, any individual validated license, bulk license or general license, issued under or authorized by the Act and the Regulations.

III. After notice and opportunity for comment, any firm, corporation or business organization with which Gregg may hereafter be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services may also be subject to the provisions of this Order. One business organization now known to be related to Gregg in the conduct of trade or related services and which is therefore denied the privilege of using or applying for any export license and whose outstanding export licenses are hereby revoked is: Gregg International, 8647 Raytown Road, Kansas City, Missouri 64138.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, may do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Gregg or Gregg International or whereby either Gregg or Gregg International may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

V. This order is effective immediately and shall remain in effect until February 16, 1996.

VI. A copy of this order shall be served upon Gregg and Gregg International. This order shall be published in the **Federal Register**.

Dated: April 9, 1987.

**Richard M. Seppa,**

*Acting Director, Office of Export Licensing.*

[FR Doc. 87-8997 Filed 4-21-87; 8:45 am]

BILLING CODE 3510-DT-M

---

[2] This authority has been delegated by the Secretary to the Director, Office of Export Licensing.

[3] Related parties may be prohibited from applying for or using any export licenses issued pursuant to the Act and the Regulations in order to prevent circumvention or evasion of any order issued pursuant to section 11(h) of the Act.

[4] In accordance with §§ 370.15 and 372.1(h)(2) of the Regulations, Gregg and Gregg International have have notified by letter that they may not apply for or use any export license until February 16, 1996. In addition, Gregg and Gregg International have been notified that Gregg International is a party related to Gregg through ownership and that, as a result, all of the oustanding export licenses presently held by Gregg International have been revoked.

---

## National Oceanic and Atmospheric Administration

## Listing of Endangered and Threatened Species; Action To Review the Status of River Dolphins

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of intent to conduct status reviews and request for information.

**SUMMARY:** NMFS will review the status of the Amazon, Ganges, Indus, and LaPlata river dolphins to determine whether any of these species should be added to the List of Threatened and Endangered Species. To ensure that the reviews are comprehensive, the Service is soliciting information and data concerning the status of these species. A review of the Chinese river dolphin is underway.

**DATE:** Comments and information should be received on or before June 22, 1987.

**ADDRESS:** Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Margaret C. Lorenz, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235 (202/673-5349).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4 of the Endangered Species Act and 50 CFR Part 424 contain provisions allowing the Secretary of the Interior or the Secretary of Commerce to add or remove a species from the List of Endangered and Threatened Wildlife. If the Secretary determines there is substantial scientific or commercial information indicating that listing a certain species may be warranted, a status review is conducted.

A species is determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Determinations concerning decisions on listings are made solely on the best scientific and commercial data available after a status review of the species is conducted and after taking into account any efforts being made by a State or foreign nation, or its subdivision, to protect the species. NMFS believes there is substantial scientific and commercial information indicating that the status of the following river dolphins should be reviewed: Amazon or boutu (*Inia geoffrensis*); Ganges or susu (*Platanista gangetica*); Indus or susu (*Platanista minor*); and LaPlata or franciscana (*Pontoporia blainvillei*).

**Biological Information Solicited**

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning the status of these river dolphins from any interested person. We request that data, information, and comments be accompanied by (1) supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications and (2) the person's name, address, and any association, institution, or business that the person represents.

These reviews are in addition to NMFS' review of the Chinese river dolphin (52 FR 4800, Feb. 17, 1987).

Dated: April 17, 1987.

**Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87-9013 Filed 4-21-87; 8:45 am]

BILLING CODE 3510-22-M

---

**Marine Mammals; Application for Permit; New York Aquarium (P112F)**

Notice is hereby given that an Applicant has applied in due form for Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name New York Aquarium
   b. Address Boardwalk & West 8th Street, Brooklyn, New York 11224
2. Type of Permit: Public Display
3. Name of Number of Marine Mammals: Beluga Whales (*Delphinapterus leucas*) 2
4. Type of Take: Live Import
5. Location of Activity: Canada, Western Hudson Bay
6. Period of Activity: 3 Years

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested parties in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: April 7, 1987.

**Dr. Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87-9071 Filed 4-21-87; 8:45 am]

BILLING CODE 3510-22-M

---

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

**Establishment of Guaranteed Access Levels for Certain Cotton, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products From Jamaica**

April 16, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on April 22, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

**Background**

A notice published in the **Federal Register** on March 23, 1987 (52 FR 9206) announced the establishment of guaranteed access levels for Categories 340/640, 341/641, 345/845, 352/652 and 632 in accordance with the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, and under the Special Access Program for certain properly certified textile products assembled in Jamaica from fabric formed and cut in the United States.

Textile products in the foregoing categories exported from Jamaica before March 1, 1987, shall not be denied entry for lack of a visa or certification. Exports from Jamaica of products qualifying for the Special Access Program for entry under TSUSA 807.0010, exported from Jamaica on or after September 1, 1986, in the case of Category 340/640; and exported from Jamaica on or before June 1, 1987, in the case of Categories 341/641, 345/845, 352/652 and 632; must be accompanied by a properly completed CBI Export Declaration (Form ITA-370p).

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish guaranteed access levels for properly certified textile products assembled in Jamaica from fabric

formed and cut in the United States and exported from Jamaica in the foregoing categories.

A description of the textile categories in terms of T.S.U.S.A numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27086) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 16, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC*
[illegible]

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program as set forth in 51 FR 21208 (June 11, 1986), you are directed to prohibit, effective on April 22, 1987, entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, man-made fiber and other vegetable fiber textiles and textile products in Categories 341/641, 345/845, 352/652 and 632, produced or manufactured in Jamaica and exported from Jamaica on or after March 1, 1987 which are not properly visaed. You are also directed to prohibit entry of the foregoing categories exported from Jamaica on or after June 1, 1987 which are not certified in accordance with the certification requirements for products assembled in Jamaica from fabric formed and cut in the United States. The same requirement is hereby established for products in Category 340/640 that were exported on and after September 1, 1986.

The following guaranteed access levels have been established for properly certified textile products assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during the periods September 1, 1986 through December 31, 1987 for Category 340/640 and June 1, 1987 through December 31, 1987 for Categories 341/641, 345/845, 352/652 and 632.

| Category | 16–mo level |
|---|---|
| 340/640 | 200,000 dozen. |

| Category | 7-mo level |
|---|---|
| 341/641 | 116,667 dozen. |
| 345/845 | 29,167 dozen. |
| 352/652 | 554,167 dozen. |
| 632 | 729,a167 dozen pairs. |

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8989 Filed 4–21–87; 8:45 am]
BILLING CODE [illegible]

---

## Adjustment and Establishment of Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

April 16, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 22, 1987. For further information contact Ross Arnold, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

A CITA directive dated December 30, 1986 (51 FR 47046) establishes limits for certain cotton, wool and man-made fiber textile products, including Categories 330–359 and 630–659 (Group II) and Categories 410–459 (Group III), produced or manufactured in Thailand and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987.

As a result of consultations held in December 1986, the Group II limit is being adjusted by shift from Group III, special carryforward used, and 1984 and 1985 overshipment charges. It is also being adjusted to account for carryforward used under the agreement. The Group III limit has been reduced to account for shift to Group II.

In addition, as a result of consultations held November 23, 1986, betweeen the Governments of the United States and Thailand, agreement was reached to establish a designated consultation level (DCL) for wool textile products in Category 448 within the Group III limit for the 1987 agreement year.

As a result, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to make the following adjustments:

Group III
- Shift from Group III—1,515,000 square yards equivalent
- Special carryforward used in 1986—5,000,000 square yards equivalent
- Regular carryforward used in 1986—5,702,909 square yards equivalent
- 1984 overshipments—8,000,000 square yards equivalent
- 1985 overshipments—1,050,000 square yards equivalent

Group III
- DCL for Category 448—10,500 dozen
- Shift to Group II—1,515,000 square yards equivalent.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), Novembrer 9, 1984 (49 FR 44782, July 14, 1986 (51 FR 25386) and in Statistical Headnote 5,

Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC*

April 16, 1987.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 23, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.,

Effective on April 22, 1987, the directive of December 23, 1986 is hereby amended to include an individual limit for wool textile products in Category 448 and adjusted limits for cotton, wool and man-made fiber textile products in Groups II and III, pursuant to the terms of the Bilateral Cotton, Wook and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended. Category 448 is a sublevel of Group III and shall remain part of the group.

| Category | Adjusted 12-mo limit [1] |
|---|---|
| Group II: | |
| 330–359 and 630–659 | 75,170,085 square yards equivalent. |
| Group III: | |
| 410–459, 448 | 1,515,000 squre yards equivalent 10,500 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8974 Filed 4–21–87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Defense Science Board Task Force on Technology Base Management; Meeting

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Technology Base Management will meet in closed session on June 10–11, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue exploration and development of a broad range of advanced technologies, ensuring that they are properly structured and coordinated to facilitate the most efficient use of available resources to general technology and stimulate technical innovation in military systems.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

April 17, 1987.

[FR Doc. 87–9084 Filed 4–21–87; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 14 May 1987.

Time of Meeting: 0900–1630 hours.

Place: Logistics Center, Fort Lee, VA.

Agenda: The Logistics and Support Systems Functional Subgroup of the Army Science Board will meet to review current logistic initiatives to include the OSD-directed computer aided logisitic system. This meetinig will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87–8947 Filed 4–21–87; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Opening Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 7 and 8 May 1987

Time of Meeting:

0800–1200 hours, 7 May, Defense Communications Agency HQ, Arlington, VA

1200–1700 hours, 7 May, Pentagon, Washington DC

0800–1700 hours, 8 May, HQ, Information Systems Engineering Cmd, Ft Belvoir, VA

Agenda: The Army Science Board Ad-Hoc Panel on Army Information Management Concepts and Architecture will meet to gather facts for its study. On the first day, the panel will conduct a discussion with DCA leaders to determine the current status of the Defense Digital Network and strategic communication and information management systems. During the afternoon session the panel will consider its findings to date and outline its report. On the second day the panel will hear briefings on sustaining Information Management programs from the Information Systems Engineering Command. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

**Sandra F. Gearhart,**

*Administrative Assistant, Army Science Board.*

[FR Doc. 87–9137 Filed 4–21–87; 8:45 am]

BILLING CODE 3710-08-M

## Department of the Navy

### Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Capabilities Task Force will meet May 6–7, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's future needs and balance of strategic offensive/defensive forces, potential initiatives to enhance strategic capabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: April 15, 1987.

**Harold L. Stoller,**

*Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.*

[FR Doc. 87–9005 Filed 4–21–87; 8:45am]

BILLING CODE 3810-AE-M

---

## Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet May 12–13 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: April 15, 1987.

**Harold L. Stoller,**

*Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.*

[FR Doc. 87–9006 Filed 4–21–87; 8:45 am]

BILLING CODE 3810-AE-M

---

## Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet May 20–21, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda for the meeting will consist of discussions of key issues related to national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: April 15, 1987.

**Harold L. Stroller,**

*Commander, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.*

[FR Doc. 87–9007 Filed 4–21–87; 8:45 am]

BILLING CODE 3810-AE-M

---

## Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on May 14–15, 1987, in Herrmann Hall at the school. On both days the first session will commence at 8:15 a.m. and terminate at 12:00 noon and the second session will commence at 1:15 p.m. and terminate at 5:00 p.m. All sessions are open to the public.

The purpose of the meeting is to elicit the advice of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting contact: Commander M.R. Merickel, USN (Code 007), Naval Postgraduate School, Monterey, California 93943–5000, Telephone: (408) 646–2513.

Dated: April 15, 1987.

**Harold L. Stoller,**

*Commander, JAGC, USN, Federal Register Liaison Officer.*

FR Doc. 87–9008 Filed 4–21–87; 8:45 am]

BILLING CODE 3810-AE-M

---

## Navy Resale Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Navy Resale System Advisory Committee will meet on May 18, 1987, in the Ballroom of the Omni International Hotel, 777 Waterside Drive, Norfolk, Virginia 23510. The meeting will consist of two sessions: the first from 8:00 a.m. to 8:50 a.m.; and the second from 9:00 a.m. until 4:30 p.m. The purpose of the meeting is to examine policies, operations, and organization of the Navy Resale System and to submit recommendations to the Secretary of the Navy. This agenda will include discussions of the organization of the Resale System, planning, financial management, merchandising, field support, and industrial relations.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting be closed to the public because it will involve discussions of information pertaining solely to trade secrets and confidential commercial or financial information. These matters fall

within the exemptions listed in subsections 552b (c)(2)(4), and (9)(B) of WR 18 April 86 Title 5, United States Code. Therefore, the second session will be closed to the public.

For further information concerning this meeting, contact: Commander, R.F. Hendricks, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 606, Crystal Mall, Building No. 3, Arlington, Virginia 22202, Telephone Number: (202) 695–5457.

Dated: April 9, 1987.

**H.L. Stoller,**

*Commander, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 87–9009 Filed 4–21–87; 8:45 am]

BILLING CODE 3810-AE-M

---

## Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser Eye Protection will meet on May 7 and 8, 1987. The meeting will be held at the Pentagon, Washington, DC. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on May 7; and commence at 8:00 a.m. and terminate at 4:00 p.m. on May 8, 1987. All sessions of the meetings will be closed to the public.

The purpose of the meeting is to review the current Navy and DOD R&D laser eye protection programs. The agenda will include technical briefings and discussions addressing the current and projected threat, cockpit compatability, operational requirements and organizational responsibilities. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meetings shall be closed to the public because they will be concerned with matters listed in section 552(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 9, 1987.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87–9010 Filed 4–21–87; 8:45 am]

BILLING CODE 3810-AE-M

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER87–288–000 et al.]**

## Carolina Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

April 14, 1987.

Take notice that the following filings have been made with the Commission:

### 1. Carolina Power & Light Company

[Docket No. ER87–288–000]

Take notice that on April 3, 1987, Carolina Power & Light Company (CP&L), tendered for filing a letter recognizing that any charges in excess of one mill per kwh will constitute a change in rate requiring a timely filing of a change in rates pursuant to part 35 of the Commission's Regulations.

CP&L states that the Public Works Commission of the City of Fayettville agrees with the above interpretation.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 2. Iowa Public Service Company

[Docket No. ER87–20–000]

Take notice that on March 31, 1987, Iowa Public Service Company filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue up to $135 million of short-term unsecured promissory notes to commercial banks, its parent or affiliated companies and commercial paper dealers. All proposed notes are to be issued on or before April 30, 1988, and will bear final maturity date no later than April 30, 1989.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 3. New York State Electric & Gas Corporation

[Docket No. ER87–366–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on April 3, 1987, tendered for filing pursuant to Section 35.12 of the Regulations under the Federal Power Act, as a rate schedule, an agreement with Rochester Gas & Electric Corporation (RG&E). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to RG&E. Service under this agreement was scheduled to commence on February 8, 1987 and be terminated on March 7, 1987 unless extended in writing by mutual agreement.

NYSEG has filed a copy of this filing with Rochester Gas & Electric Corporation and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that February 8, 1987 be allowed as the effective date of the filing.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 4. Niagara Mohawk Power Corporation

[Docket No. ER87–293–000]

Take notice that on April 2, 1987, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to a letter dated March 5, 1987, which the Commission found to be erroneous as to the effective dates referenced in the letter.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 5. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER87–279–000]

Take notice that on April 2, 1987, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively the Companies) jointly tendered for filing a letter requesting that the proposed effective date in Docket No. ER87–279–000 be postponed to January 1, 1988. The Companies state that Northern States Power Company (Wisconsin) has reached a settlement agreement with its wholesale customers in Docket No. ER87–359–000. A term of the settlement agreement is to postpone the effective date of the filing in the above mentioned docket. To accomodate the requested effective date, the Companies request waiver of the requirement of § 35.3 of the regulations.

*Comment date:* April 30, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 6. Ohio Edison Company

[Docket No. ER87–369–000]

Take notice that Ohio Edison Company on April 7, 1987, tendered for filing, on its own behalf, and on behalf of Pennsylvania Power Company and Allegheny Power Service Corporation, Supplement No. 1 to the OE–APS Energy Supply Agreement of May 2, 1983. The proposed changes involve changes in

the monthly and daily reservation charges and provides an expanded termination provision. These changes are being made to meet market conditions.

This filing was served upon the Public Utilities Commissions of Ohio, Pennsylvania, Maryland, Virginia and West Virginia.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Ohio Edison Company**

[Docket No. ER87-374-000]

Take notice that Ohio Edison Company (Ohio Edison) on April 9, 1987 tendered for filing proposed changes in its FERC Electric Tariff Schedule No. 150 and Supplements 1 through 5 applicable to sales and service to American Municipal Power-Ohio). The proposed changes would increase revenues for jurisdictional sales and service as the result of an increase in the regulation capacity charge by $741,187.55 based on the twelve months ending February 28, 1988.

Ohio Edison proposed an effective date of March 26, 1987 for the increase in charges for Regulation Capacity.

Ohio Edison states that the reason for the proposed increase for Regulation Capacity charge is to conform with the retail General Service Large Customers tariffs as approved by the Public Utilities Commission of Ohio in the manner provided for and as described in Schedule 150 and its Supplements.

According to Ohio Edison, a copy of the filing was served on AMP-Ohio, the jurisdictional customer affected by the proposed charges and The Public Utilities Commission of Ohio.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this document.

**8. Pacific Gas and Electric Company**

[Docket No. ER86-107-000]

Take notice that on April 6, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing and acceptance a proposed refund to Sierra Pacific Power Company (Sierra). The refund follows from refunds PGandE's Gas Department received from its gas suppliers and which it passed on to PGandE's Electric Department and its customers.

Copies of the filing were served on Sierra and the California Public Utilities Commission.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**9. Pacific Gas and Electric Company**

[Docket No. ER87-368-000]

Take notice that Pacific Gas and Electric Company (PGandE), on April 4, 1987, tendered for filing a revised rate schedule supplement for firm transmission service to the State of California Department of Water Resources (DWR).

The revised rate schedule supplement is revised to provide for the addition of three delivery points and charges for transmission service provided to those delivery points. These delivery points were not included on the tariff sheet filed in the PGandE/DWR 1986 Rate Settlement (Docket No. ER86-120), which was accepted for filing and designated Supplement No. 8 to Rate Schedule FERC No. 77 on June 19, 1986.

PGandE has requested a waiver of the notice requirements of Section 35.3 of the Commission's Regulations so as to permit an effective date of January 2, 1986 for the proposed rate schedule supplement.

Copies of this filing were served upon the California Public Utilities Commission.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**10. Public Service Electric and Gas Company**

[Docket No. ER87-371-000]

Take notice that on April 9, 1987, Public Service Electric and Gas Company (Public Service) tendered for filing an initial Rate Schedule pursuant to which Public Service will receive Atlantic City Electric Company's, Jersey Central Power and Light Company's and Rockland Electric Company's shares of the State of New Jersey's allocation of non-preference hydroelectricity from the New York Power Authority's St. Lawrence Project and will distribute to those utilities their respective proportionate shares of the net economic benefit realized by Public Service as a result thereof.

Public Service requests a waiver of notice requirements with the parties' consent so that the Rate Schedule can be made effective as of July 1, 1986 in order to preserve the benefits of the power.

Public Service states that a copy of this filing has been served by mail upon the companies and the New Jersey Board of Public Utilities.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**11. SES Millbury Company, L.P.**

[Docket No. ER87-372-000]

Take notice that on April 9, 1987, SES Millbury Company, L.P. ("SES Millbury") tendered for filing (1) a proposed initial rate schedule ("SES Millbury Rate Schedule No. 1"), consisting of an Electric Power Purchase Agreement (the "Agreement"), dated as of December 17, 1985, governing sales by SES Millbury to New England Power Company ("NEP") of electric power generated by a biomass fueled small power production facility under construction in Millbury, Massachusetts (the "Facility") and (2) a petition for waiver of the Commission's regulations requiring that cost-of-service data be submitted with the rate schedule and that the rate schedule must be submitted to more than 120 days before electric service commences.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**12. South Carolina Electric & Gas Company**

[Docket No. ER87-367-000]

Take notice that South Carolina Electric & Gas Company ("SCE&G") on April 6, 1987, tendered for filing a contract for purchases of economic energy by Florida Power and Light Company from SCE&G.

SCE&G requests an effective date of February 1, 1987, for the contract. SCE&G requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Regulations.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**13. South Carolina Electric & Gas Company**

[Docket No., ER87-370-000]

Take notice that South Carolina Electric & Gas Company (SCE&G) tendered for filing on April 8, 1987, Fourteenth Revised Sheet No. 5, Fourteenth Revised Sheet No. 6, to its FERC Electric Tariff, Original Volume No. 1. These sheets contain proposed reductions to SCE&G's rates and charges to its municipal, rural electric cooperative and public power body sales-for-resale customers.

SCE&G proposes to place the revised tariff sheets containing the proposed rate reduction into effect on February 5, 1987.

SCE&G states that the proposed rates would decrease revenues by approximately $739,085 for the 12 month period ending December 31, 1986.

SCE&G states that the proposed decreased rate is necessitated by its last approved Settlement Agreement with its

municipal, rural electric cooperative and public power body sale-for-resale customers wherein this wholesale rate would track the Company's large general service rate.

Copies of the filing have been served upon SCE&G's jurisdictional customers and the South Carolina Public Service Commission.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**14. Virginia Electric and Power Company**

[Docket No. ER87-289-000]

Take notice that on April 8, 1987, Virginia Electric and Power Company (the Company) tendered for filing a Certificate of Concurrence by Appalachian Power Company (Appalachian) to Modification No. 25 to the Interconnection Agreement dated February 1, 1948 between the Company and Appalachian. In addition, the Company filed a revised page 3 to Modification No. 25 to correct two errors in the original filing.

The Company requests a waiver of the Commission's notice requirements as to permit a February 1, 1987 effective date.

Copies of the supplemental filing were served upon the North Carolina Utilities Commission, the Virginia State Corporation Commission and the Public Service Commission of West Virginia.

*Comment date:* April 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any peson desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9023 Filed 4-21-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-329-001]

## Erie Pipeline System; Intent To Prepare a Draft Environmental Impact Statement and Request for Comments on Its Scope

April 17, 1987.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has determined that approval of this project would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's General Policy and Interpretations [18 CFR 2.82(b)], a draft environmental impact statement (DEIS) will be prepared by the FERC.

**Introduction**

On February 18, 1987, Erie Pipeline System (Erie) filed an amended application with the FERC seeking a certificate of public convenience and necessity to construct and operate 379 miles of 30-inch-diameter pipeline and a total of 39,800 horsepower of compression and related metering facilities in Ohio and Pennsylvania. Erie filed its application pursuant to section 7(c) of the Natural Gas Act (NGA) and Subpart E of Part 157 of the FERC's regulations under the Natural Gas Act—the optional certificate and abandonment procedures [18 CFR 157.100, *et seq.*].

The optional certificate procedures do not lessen the requirement that Erie comply with all applicable environmental laws; nor do the optional certificate procedures exempt Erie from state and local permit requirements. The National Environmental Policy Act applies equally to applications filed under traditional NGA section 7 procedures and to applications filed under the optional certificate procedures. State and local permit requirements relating to construction and other environmental matters apply equally as well.

Erie would be a partnership of ANR Eastern Pipeline Company and a corporation to be formed by The Columbia Gas System, Inc. Erie has designed its facilities to transport up to 425,000 Mcf per day of natural gas on a firm basis. Erie would also provide interruptible transportation service to the extent that capacity is available. Erie proposes to receive and/or to deliver gas supplies anywhere along the entire route of the pipeline, provided that it is economically feasible to do so. At this time, Erie is actively seeking contracts to transport gas and none of its capacity has been committed to any shipper.

The Commission staff will analyze the environmental impact of Erie's known proposed facilities that extend from a point of interconnectin with an ANR Pipeline Company compressor station in Defiance County, Ohio, to a terminal point in Clinton County, Pennsylvania, in this DEIS. Erie will seek authorization for any additional interconnections to carry out this proposed service as contracts are signed. Erie is also seeking in Docket No. CP86-330-001 a blanket certificate of public convenience and necessity under § 284.221 of the FERC's regulations to provide self-implementing transportation services for others. Should Erie or any other company make known their need for additional facilities that are required to implement service through the Erie Pipeline Project, the staff will either include these facilities in the DEIS or supplement the environmental impact statement. For example, such facilities could include additional pipeline east of Clinton County, Pennsylvania to deliver gas further to the east.

**Location and Land Requirements**

Figure 1 shows the location of the pipeline.[1] Table 1 identifies the counties crossed by the proposed pipeline and the location of three new compressor stations. Approximately 3,500 acres of land would be disturbed during construction and about 2,300 acres would be retained as permanent right-of-way for the pipeline.

**Outline of Current Issues**

The DEIS will address the environmental concerns that have been identified by intervenors and individuals in their letters and motions filed with the FERC. These include, but are not limited to, the following:

Soils

—Impacts on drainage tile systems, compaction, top soil placement, settling, erosion, and surface rock.

Land Use

—Effects on public lands.
—Emient domain.
—Future development effects and tax considerations.
—Effects on roads.

[1] Figure 1 is not printed in the **Federal Register**, but is available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357-8118.

BEST COPY AVAILABLE

TABLE 1.—PROPOSED ERIE PIPELINE PROJECT FACILITIES

| Company and proposed facilities | Location/State/County | Right-of-way width (feet) | | Comments |
|---|---|---|---|---|
| | | Construction | Permanent | |
| Ene Pipeline System: | | | | |
| 379 miles of 30-inch-diameter pipeline | OH; Defiance, Henry, Wood, Seneca, Huron, Ashland, Wayne, Summit, Stark, Columbiana; PA: Lawrence, Butler, Armstrong, Clanon, Jefferson, Clearfield, Elk, Cameron, Clinton. | 75 | [illegible] | New. |
| East Defiance Compressor Station | OH: Defiance | | | 10,000 hp, 20-acre site. |
| Columbiana Compressor Station | OH: Columbiana | | | 15,000 hp 30-acre site. |
| Leidy Compressor Station | PA: Clinton | | | 14,800 hp, 20-acre site. |

Pipeline Safety

—Encroachment on residential properties.
—Impact on farming, commercial, and industrial operations.
—Safety considerations during construction and operation.
—Effects from blasting.
—Compatibility with other pipelines and storage operations.

Topography and Geology

—Effects on wells.
—Seismic considerations and stability of the region.
—Limestone/bedrock effects.

Aesthetics

—Effect of appearance of the right-of-way.

Cultural Resources

—Historic properties and archaeology.

Air and Noise Quality

—Operations at the proposed compressor stations.
—Dust.

Wildlife, Fisheries, and Their Habitat

—General concerns identified.

Water Resources

—Impact on stream crossings.
—Wetlands.

Clearing of Trees

—Acreage.

Threatened and Endangered Species

—State and Federal listed species.

Alternatives, route modifications, and specific mitigating measures will also be considered in the staff's analysis. After comments from this notice are received and analyzed and the various issues are investigated, the staff will publish a DEIS entitled "Erie Pipeline Project."

**Comment and Scoping Procedure**

The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties to the proceeding. A 45-day period will be allotted for review and comment. Any person may file a petition to intervene on the basis of the staff DEIS [18 CFR 2.82(c)]. After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a final EIS will then be published by the staff and distributed.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties to the proceeding, and the public. Additional information about the project was also mailed to everyone that is on the environmental mailing list. This information is available upon request. (See the first footnote in this notice.) Written comments are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Written comments must be filed on or before June 8, 1987, reference Docket No. CP86-329-001, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent at the same address to the Project Manager identified below.

A public scoping meeting will be held in Ohio for this project. The date, location, and format of the meeting will be identified in a subsequent Federal Register notice. Commenters are encouraged to nominate a potential scoping meeting location(s).

Additional information about the proposal, including detailed route maps of limited areas of the proposed route, is available from Mr. Kenneth Frye, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, at the above address or by telephone: (202) 357-9039.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-9060 Filed 4-21-87; 8:45 am]
[illegible] CODE 6717-01-M

---

**[Docket Nos. CP87-280-000 et al.]**

**K N Energy, Inc., et al.; Natural Gas Certificate Filings**

Take notice that the followings filings have been made with the Commission:

**1. K N Energy, Inc.**

[Docket No. CP87-280-000]

April 14, 1987.

Take notice that on April 6, 1987, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP87-280-000 a request pursuant to § 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for 9 domestic and agricultural customers, under the certificate issued in Docket No. CP83-140-000, as amended, pursuant to the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of sales taps to various end users which are located along its jurisdictional pipelines and are listed below:

| [illegible] | Peak day volumes (Mcf) | Location | End-use |
|---|---|---|---|
| (1) Louis Dible | [illegible] | Thomas Co., KS | Irrigation. |
| (2) Marvin Albers | [illegible] | Thomas Co., KS | Irrigation. |
| (3) Ervin Nightengale | 14 | Scott Co., KS | Irrigation. |
| (4) James Nightengale | [illegible] | Scott Co., KS | Irrigation. |
| (5) Thomas Richardson, Jr. | [illegible] | Hamilton Co., NE | Irrigation. |
| (6) Herman Ames | 24 | Wichita Co., KS | Irrigation. |
| (7) Nick Gillen | [illegible] | Wichita Co., KS | Irrigation. |
| (8) Donald Griebel | 2 | Valley Co., NE | Domestic. |
| (9) Hess Brothers | 14 | Scott Co., KS | Irrigation. |

Applicant indicates that the total estimated cost of the proposed taps would be $8,550 and that the customers would reimburse a portion of this cost through the imposition of a connection charge which varies by state. Applicant states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on Applicant's peak day and annual deliveries.

*Comment date:* May 29, 1987, in accordance with Standard Paragraph G at the end of this notice.

**2. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP79-396-004]

**United Gas Pipe Line Company**

[Docket No. CP79-400-002]

April 13, 1987.

Take notice that on April 8, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, jointly referred to as Petitioners, filed in Docket Nos. CP79-396-004 and CP79-400-002, respectively, a petition to amend the Commission's order issued April 28, 1980, pursuant to section 7(c) of the Natural Gas Act, so as (i) to allow United to tender for exchange Pan-Alberta Gas Ltd. (Pan-Alberta) volumes purchased by third parties, and (ii) to authorize the addition of a number of best-efforts balancing receipt points for the mutual exchange of natural gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by the order issued April 28, 1980, in Docket Nos. CP79-396-000 and CP79-400-000, they were authorized, *inter alia*, to transport and exchange natural gas.

Petitioners explain that pursuant to an amendment dated March 15, 1987, to the original gas exchange and transportation agreement dated August 10, 1979, Petitioners propose to allow United to tender for exchange certain volumes of natural gas from Pan-Alberta and purchased by third parties, and to establish ten additional receipt points for Northern and nineteen additional receipt points for United, all of which are considered as best-efforts, interruptible balancing points. Petitioners further state that no new facilities are required. Petitioners state that the proposed amendment is caused by a take-and-pay settlement between Northwest Alaskan Pipeline Company (Northwest Alaskan), Pan-Alberta, and United as described in Northwest Alaskan's January 27, 1987, tariff filing in Docket No. RP87-34-000. It is explained that as part of that settlement, United would aid Pan-Alberta in marketing volumes within the United States. Therefore, it is stated, United requires amendment of the United/Northern agreement to allow Pan-Alberta volumes to be exchanged to United's pipeline system for such marketing purposes.

*Comment date:* April 24, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**3. Northwest Pipeline Corporation**

[Docket No. CP87-274-000]

April 14, 1987.

Take notice that on April 2, 1987, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0900 filed in Docket No. CP87-274-000 a request pursuant to § 157.205 and § 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new delivery point under authorization issued in Docket No. CP82-433-000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that by order issued January 10, 1986, in Docket No. CP86-177-000, 34 FERC ¶ 62,102, Northwest was authorized to transport, on an interruptible basis, up to 10,000 MMBtu's of natural gas per day for Chevron Chemical Company's (Chevron) predecessor of ownership, CPEX Pacific, Inc. (CPEX), from various receipt points on Northwest's system to a point of interconnection, the Deer Island Meter Station, with the facilities of Northwest Natural Gas Company near St. Helens, Oregon, pursuant to a transportation agreement dated October 30, 1985 (Agreement).

By amendatory orders issued June 20, 1986 and September 11, 1986, in Docket No. CP86-177-001, 35 FERC ¶ 61,376, and Docket No. CP86-177-004, 36 FERC ¶ 61,274, Northwest was authorized to add a second delivery point, the Finley Plant, and to increase the interruptible transportation volume for delivery from 10,000 MMBtu's per day to 25,000 MMBtu's per day, it is stated.

Northwest states that it has entered into an amendment, dated February 1, 1987, to the Agreement to add the Kennewick Plant as a third transportation point. Northwest further states that the proposed Kennewick Plant delivery point is an existing delivery point to Cascade Natural Gas Company in Benton County, Washington. Northwest indicates that the volumes delivered to the Kennewick Plant delivery point would be utilized by Chevron for fuel gas and feedstock for the manufacture fertilizer products.

Northwest states that the total quantity of natural gas to be transported for Chevron would not exceed the currently authorized maximum quantities of 25,000 MMBtu's per day until June 20, 1987, and 10,000 MMBtu's per day thereafter.

Northwest claims that it has sufficient mainline capacity to accomplish the deliveries at the proposed additional delivery point without detriment or disadvantage to any of its existing customers. Also, it is stated that the proposed delivery point addition is not prohibited by Northwest's existing tariff.

*Comment date:* May 29, 1987, in accordance with Standard Paragraph G at the end of this notice.

**4. Southern Natural Gas Company**

[Docket No. CP87-270-000]

April 14, 1987.

Take notice that on March 27, 1987, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-270-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to add a delivery point for service to Alabama Gas Corporation (Alagasco), an existing distribution customer, under the certificate issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to construct and operate the metering and appurtenant facilities for service to Alagasco, which would redeliver the gas to an electric generating plant in Jefferson County, Alabama.

It is stated that Southern would be reimbursed by Alagasco for the construction cost, estimated at $300,000, while Southern would continue to own the facilities. It is asserted that deliveries through the proposed delivery point, where the facilities are designed to permit the delivery of up to 1,268 MMBtu per hour, would be within Alagasco's existing entitlement from Southern.

It is further asserted that the new delivery point would have no impact on Southern's peak day deliveries and that the addition of the facilities is not

prohibited by an existing tariff of Southern.

*Comment date:* May 29, 1987, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules or Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission of its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-9024 Filed 4-21-87; 8:45 am]
BILLING CODE 6717-01-M

---

[Docket Nos. QF84-377-002 et al.]

## AEM Corp. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: May 22, 1987, in accordance with Standard Paragraph E at the end of this notice.

April 14, 1987.

Take notice that the following filings have been made with the Commission.

### 1. AEM Corp.

[Docket No. QF87-377-002]

On March 27, 1987, AEM Corp. (Applicant), of 1445 Palisades Drive, Pacific Palisades, California 90272, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility was previously certified as a qualifying cogeneration facility on December 11, 1984, (Docket No. QF84-377-000, 29 FERC ¶ 62,254 (1984)). On November 28, 1986, Applicant filed an application for recertification of the qualifying cogeneration facility (Docket No. QF84-377-001) requesting a change in the location of the facility. The facility will be located approximately seven miles north of Colstrip, Rosebud County, Montana, adjacent to State Highway 39 in the northeast quarter of section 32, T3N, R41E. The facility will consist of a fluidized bed combustion boiler, a back pressure/condensing steam turbine generator, and related auxiliary equipment. Applicant states that the primary energy source of the facility will be waste in the form of subbituminous coal refuse and char which is produced as a by-product in an adjacent affiliated coal liquefaction plant. The net electric power production capacity of the facility will be 30 megawatts.

### 2. IVLP Corporation

[Docket No. QF85-253-001]

On March 26, 1987, IVLP Corporation (Applicant), c/o Catalyst Energy Development Corporation, of 180 Maiden Lane, 32nd Floor, New York, New York 10038 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Recertification of the small power production facility is requested due to the change of ownership from Time Energy Systems, Inc. to Catalyst Energy Development Corporation through its 100% owned subsidiary, IVLP Corporation. All other characteristics of the facility remain as proposed in the original application.

### 3. Kamine Engineering Milford Cogen. Corporation

[Docket No. QF86-1045-001]

On March 27, 1987, Kamine Engineering Milford Cogen. Corporation (Applicant), of 1620 Route 22 East, Union, New Jersey 07083 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The recertification is requested due to a change in ownership from Riegel Products Corporation to Kamine Engineering Milford Cogen. Corporation and the facility configuration. The facility will consist of a combustion turbine-generator, a heat recovery steam generator equipped with supplementary firing, and two extraction-condensing steam turbine generators. The primary energy source for the facility will be natural gas. The maximum electric power production capacity of the facility will be 45.89 MW. The expected start-up date for the facility is November 1988.

### 4. Scrubgrass Power Corporation

[Docket No. QF87-346-000]

On April 1, 1987, the Scrubgrass Power Corporation of Suite 1050, 10 Post Office Square, Boston, Massachusetts 02109 (Applicant), submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Scrubgrass Township, Venango County near the

town of Kennerdell, Pennsylvania. The facility will consist of two circulating fluidized-bed combustion boilers and a steam turbine generator. The Applicant states that the primary energy source will be waste in the form of bituminous coal. The thermal energy output will be used in a wood kiln for lumber drying and in sewage sludge drying. The electric power production capacity of the facility will be 80 MW. Installation of the facility will begin in late 1987.

**Standards Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9025 Filed 4-21-87; 8:45 am]

BILLING CODE 6717-01-M

---

## Office of Hearings and Appeals

### Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $373,099,143.01, plus accrued interest, in alleged crude oil overcharge funds obtained from 42 firms. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

**DATE AND ADDRESS:** Applications for refund must be filed by December 31, 1987, and should be addressed to: Subpart V Crude Oil Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** In accordance wtih 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from 42 firms, listed in appendix A to the Decision, from judicial and administrative proceedings involving alleged crude oil violations. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the Federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each State's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by December 31, 1987 and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows.

Dated: April 15, 1987.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### Decision and Order of the Department of Energy

*Implementation of Special Refund Procedures*

April 15, 1987.

Names of Cases: A. Tarricone, Inc., *et al.*
Dates of Filing: August 21, 1986, *et al.*
Case Numbers: KEF-0049, *et al.*

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed 42 Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from the firms whose names and OHA case numbers appear in Appendix A. To date, these 42 firms have remitted $373 million to the DOE, pursuant to court-approved settlements, DOE consent orders or remedial orders.[1] An additional $25 million in interest has accrued on that amount as of March 31, 1987. This Decision and Order establishes final procedures for distributing those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or cannot ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the 42 firms listed in Appendix A and have determined that such procedures are appropriate.

### I. The Proposed Decisions and Orders

In four separate Proposed Decisions and Orders (PD&Os) issued between September and December 1986, OHA established tentative procedures to distribute the funds involved in these 42 cases.[2] Appendix B lists the date of issuance and the **Federal Register** citation for the notices that were published soliciting comments on each PD&O. Since the issues involved are the same, we are combining all 42 cases into the present Final Decision and Order.

---

[1] Three firms, noted in Appendix A, are making yearly payments to the DOE as specified in their individual consent orders, and have an outstanding liability of $31,228,316.52. These funds will also be disbursed pursuant to the procedures established in this Decision. The DOE will give notice when such additional funds are received.

[2] One case which was included in the A. Tarricone PD&O, Peter L. Hirschburg/United Independent Oil, OHA Case Number KEF-0063, was subsequently dismissed pursuant to a request from the ERA. *See* October 1, 1986 letter from Thomas O. Mann, OHA Deputy Director, to Jerry F. Thompson, Director, ERA Office of Management and Information Systems.

The OHA tentatively concluded in the four PD&Os that the monies in these cases should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"), issued in conjuction with Paragraph IV.B.1 of the Settlement Agreement approved by the court in *In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. July 7, 1986) (Order approving settlement). The MSRP announed that the DOE will employ a refund process for restitution of alleged crude oil violation amounts (held in escrow by the DOE or received in the future) using the special refund procedures codified at 10 CFR Part 205, Subpart V. Under that process, the OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Up to 20 percent of the alleged crude oil violations amounts will be reserved to satisfy claims from injured parties. The MSRP calls for the remaining 80 percent of the funds to be disbursed to the State and Federal governments for indirect restitution. After all valid claims are paid, any remaining funds from the claim reserve will also be divided between the State and Federal governments. The Federal government's share of the funds will ultimately be deposited into the general fund of the Treasury of the United States.

In the PD&Os, the OHA proposed to reserve initially the full 20 percent of the alleged crude oil violation amounts for direct restitution to claimants. We also proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The PD&Os stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we proposed to calculate refunds on the basis of a per gallon refund amount derived by dividing the crude oil overcharge monies received in the 42 cases by the total consumption of petroleum products in the United States during the period of price controls. Comments were solicited regarding the tentative distribution process set forth in the PD&Os.

## II. Discussion of the Comments Received

In response to the PD&Os, the OHA received comments from the following: a group of 33 States and Territories of the United States; a group of nine ocean carriers which sail under foreign flags; a group of 32 foreign flag air carriers; Philip P. Kalodner, counsel for potential claimants; and four Indian tribes.[3] In general, these comments addressed the issues of the size of the fund reserved to satisfy the claims of injured parties, the timing of any refund payments, the standards for showing injury, and the calculation of refunds. We will now address each of these areas.

### *A. Size of Reserve and Timing of Payments*

A number of commenters expressed opinions of the size of the reserve which the OHA should maintain for the payment of crude oil refund claims. Comments from potential claimants urged the OHA to reserve more than 20 percent of the funds to avoid a possible shortfall in the amount required for payments to injured persons. However, the parties to the Settlement Agreement represented to the court that 20 percent of the funds would be more than adequate to satisfy individual claims, and the settlement permits only downward adjustment of the reserve from the initial 20 percent figure. The States advocated that less than 20 percent of the crude oil Subpart V funds be reserved for claimants. Since the OHA has had no experience in the crude oil refund area under the MSRP, we have no basis on which to adjust the reserve at this time.

We also received comments from potential applicants that addressed the timing of payments under the Subpart V process. Some commenters encouraged the OHA to consolidate all crude oil refunds into one lump sum payment, while others urged that we delay any refunds until all applications are received, in order to assure that the reserve is sufficient to satisfy all valid claims. It is too early in the crude oil Subpart V process for the OHA to be able to make any definitive statements about the timing of refunds. It is clear that we are faced with a "rolling" process in which moneys will flow into and out of the escrow account as new settlements are made and refunds determined and paid. The OHA will adhere to the Subpart V regulations which govern this process in order to give reasonable notice to the public of proposed refund procedures in each individual proceeding, to receive comments on those procedures, and to allow for the submission of applications for refund.

In a related area, one commenter suggested that once a claimant's purchase volumes are approved, its application should be deemed a continuing claim against all funds involving alleged crude oil violations, without a requirement that the claimant file additional information. At this early stage of our consideration of this type of refund application we are unable to accept this suggestion. We do not yet know whether additional information may be necessary to consider a claim for a particular fund in the future. However, we will notify claimants whose volumes are approved of any additional information needed in order to be considered for future refunds.

### *B. Standards for Showing Injury*

The proposal in the PDOs which generated the most attention in the comments concerns the standards for showing injury in crude oil refund proceedings under Subpart V. Most potential applicants advocated the use of the well-established presumption in OHA refund proceedings of injury for end-users (ultimate consumers), provided their business was unrelated to the petroleum industry. Others submitted comments that urged the OHA to use presumptions of injury for resellers and retailers based on the type adopted in various major refiner refund proceedings. A number of comments urged the OHA to follow Subpart V precedents and permit claimants to use estimates to establish the number of gallons of petroleum products purchased. Related comments requested guidance on whether it was necessary for applicants to identify their suppliers in order to receive a refund. Finally, the States contended that Paragraph IV.B.1[4]

---

[3] In their comments, the Indian tribes stated that they should be included in any "second stage refund proceeding in this case" since "in many cases the Indians . . . would receive no benefit from distributions to State governments." Comments submitted by Sonosky, Chambers & Sachse in McAlester Fuel Company, Case No. KEF-0045, at 1. The Indians' concerns, however, were addressed by a stipulation with the States entered by the United States District Court in Kansas as part of the Settlement Agreement. *See* Stipulation with the National Congress of American Indians, approved by June 12, 1986 (modifying Paragraph II. B.3.f.ii of the Settlement Agreement). According to the stipulation, the States will include the Indian tribes in distributing the benefits of the oil overcharge funds. The stipulation specifies that Indian tribal governments "are entitled to receive an appropriate equitable share of the benefits from State energy-related restitutionary programs to be funded under the Agreement" either through participation in general State programs, or through separate State-funded tribal restitutionary programs. *Id.* at 2.

[4] Paragraph IV.B.1 provides as follows:

B. Pending and Future Proceedings. DOE and the States agree:

Continued

of the Settlement Agreement bans the use of these presumptions in Subpart V proceedings, and requires end-user claimants to submit detailed evidence of injury in order to receive refunds for crude oil overcharges.

The OHA intends to apply relevant precedents to crude oil Subpart V proceedings. The States are incorrect in claiming that Paragraph IV.B.1 supports the position that no presumptions are to be permitted in crude oil Subpart V proceedings. To the contrary, Paragraph IV.B.1 specifically indicates that the settlement does not amend the Subpart V regulations. Section 205.282(e) of these regulations explicitly provides for the use of appropriate presumptions of injury in any Subpart V claim, and the OHA has employed presumptions in thousands of refund cases since 1981. Presumptions are reasonable because the Department has a duty to identify injured persons and, to the extent possible, to make direct refunds to them. *See Citronelle-Mobile Gathering Inc. v. Edwards*, 669 F.2d 717, 723 (Temp. Emer. Ct. App. 1982); Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, section 3003(b). To achieve this, refund procedures must take account of the complexity of oil overcharge proceedings, difficulty in actually proving an overcharge, passage of time, difficulties in locating records and relevant market data, and the agency's expertise in the structure of the industry and its functioning during the period of controls. The Settlement Agreement itself took account of these factors and did not require any party to the Stripper Well Litigation to provide proof of injury in order to receive a refund. At the same time, the settlement specified that there shall be a Subpart V claims process for injured persons who were not parties to the Stripper Well Litigation. The imposition of new standards for proof of injury would be inconsistent with this provision.

The States also claim that the *Tenneco* decision, cited in the Settlement Agreement, supports their position. To the contrary, the *Tenneco* decision, which established procedures for distributing funds remitted by that firm pursuant to a DOE consent order, incorporated several different kinds of presumptions. For example, firms that had already received refunds directly from Tenneco were presumed to be ineligible for further refunds from OHA. 9 DOE ¶ 82,538 at 85,201. Spot purchasers of Tenneco products were also presumed to be ineligible for refunds under Subpart V. *Id.* End-users were not required to show they absorbed any overcharges in order to receive a refund. 9 DOE ¶ 82,538 at 85,202. Under the *Tenneco* standard an end-user had only to prove its volume of purchases from Tenneco in order to establish injury and receive a refund. *See e.g. Tenneco Oil Co./Defense Logistics Agency*, 9 DOE ¶ 82,588 (1982). This is the same standard that the OHA will apply in deciding crude oil refund claims submitted by end-users under Subpart V. The States' position confuses the requirement of showing absorption of overcharges, which was applied to refiners and resellers in adjudicating refund claims under Subpart V for refined petroleum product overcharges and will be applied to the same firms in these proceedings, with the different standard applied to end-users. Refiners and resellers (unlike end-users of refined petroleum products) had the opportunity under DOE statutes and regulations to pass through overcharges in the prices of the same products resold within the same regulated industry. Far from supporting the States' position, the page of the *Tenneco* decision cited in the Settlement Agreement does not relate at all to end-user claimants, but deals instead with Entitlements Program participants, *i.e.* refiners, and allocation claimants.[5] *Id.* at 85,206. Thus, the language on which the States rely is irrelevant to the treatment of end-user claimants. *Id.*

The position advanced by the States is deficient as a matter of common sense as well. Under the presumptions we are adopting for crude oil refunds, end-users (ultimate consumers) whose businesses are unrelated to the petroleum industry need establish only the volume of petroleum products they purchased during the controls period to prove that they were injured by crude oil overcharges; they do not have to submit any further evidence to prove that they absorbed the overcharges. This policy serves important practical concerns. Analysis of the impact of crude oil overcharges on end-users is beyond the scope of a refund proceeding. *See Office of Enforcement: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983) at 88,308. End-users generally were not subject to price controls and were not required to keep records which justified selling price increases by reference to cost increases. If, for example, a brick manufacturer filed a claim for a refund on the fuel oil it purchased during the period August 1973 through January 1981, it is only reasonable to conclude that the firm was harmed by the amount of the crude oil overcharges allocated to the fuel oil which it used to manufacture bricks. Performing an economic analysis of the effect of the overcharges on the price of bricks would be duplicative.[6] Using the approach advocated by the States would be costly and inefficient and would mean that virtually no end-users would receive restitution for the crude oil overcharges they experienced. *See Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050. It would also be inconsistent with the mandate in the Settlement Agreement that the refund process be completed as expeditiously as possible. Settlement Agreement ¶ IV.B.4.

This standard for end-users has recently been described in a shorthand fashion as a "presumption of injury," but its use was based on the practical considerations noted above, a factor also underlying the standard for proving injury from antitrust violations (courts do not attempt to determine whether

---

1. *Modification of Policy.* In order to carry out its remedial authority under the ESA and EPAA, within 20 days following the date of the Approval Order, DOE will issue a modification of the Statement of Restitutionary Policy concerning Alleged Crude Oil Violations issued in June 21, 1985 (50 FR 27400; July 2, 1985). DOE will publish that modification (hereinafter the Modified Policy) in the **Federal Register**. The Modified Policy will state that the policy of DOE is to process applications for refunds pursuant to existing Subpart V regulations and that in such administrative proceedings involving Alleged Crude Oil Violations, OHA will continue to require that each claimant must affirmatively demonstrate that it has been injured by the alleged violation and that it should therefore receive a refund. *See e.g. Office of Special Counsel/Tenneco Oil Co.*, 9 DOE ¶ 82,536, at 85,206 (1982). The Modified Policy will state that individuals claiming such injury may file claims but OHA will not accept claims on behalf of classes, associations or trade groups. Nothing in the Modified Policy will preclude a claimant from attempting to prove injury through the use of econometric evidence of the type that was submitted in the Stripper Well evidentiary proceedings before the OHA nor preclude OHA from using the findings contained in the Report of the Office of Hearings and Appeals, *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., filed June 21, 1985). Nothing contained herein may be construed to amend the Subpart V regulations.

5 In fact the page of the Tenneco decision cited in the Settlement Agreement specifically provides that allocation claimants "need not conclusively establish all of the elements of a violation on Tenneco's part and resulting injury on the claimant's part." 9 DOE at 85,206. Instead, "an applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of the injury which was sustained by the claimant." Id.

6 By contrast, petroleum refiners and resellers had the opportunity under DOE statutes and regulations to pass through increased costs of refined petroleum products by raising the prices of the very same products that they charged to their customers. Regulated firms in the petroleum industry were required to keep records showing how their cost increases justified price increases, and the OHA has generally examined the question of absorption versus passthrough when considering large refund applications submitted by these firms.

first purchasers were able to "pass on" the effects of the violation).[7] *See* Additional Comments of Philip P. Kalodner at 5–20, summarizing the developing of OHA caselaw regarding refunds to end-user claimants.

Three related matters deserve discussion. The first question is whether applicants must identify their suppliers and prove their exact gallonage to receive refunds. In view of the finding in the OHA Report that crude oil overcharges increased the prices to consumers of all domestic petroleum products, applicants need not identify their suppliers in order to receive refunds. OHA Report, Federal Energy Guidelines ¶ 90,507 at 90,620. For purposes of these crude oil overcharge proceedings, it matters only that the applicant purchased petroleum products in the United States market during the period August 1973 through January 1981. Following OHA precedent, reasonable estimates of purchase volumes will be permitted.

The second question is whether the limited presumptions of injury for resellers and retailers used for smaller claims in recent refined product Subpart V cases, such as *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), should be permitted in crude oil refund proceedings. These presumptions will *not* apply here. Reseller and retailer applicants for crude oil refunds must make a specific showing of injury. 51 FR at 27901. There is an important distinction between product refund cases under Subpart V and crude oil cases which is particularly relevant to this issue. In a case like *Marathon*, in which refunds are made for alleged overcharges in sales of refined products, the overcharges were confined to purchasers of Marathon products. This we concluded produced a change in the competitive position of resellers of Marathon products, and the presumptions of injury for Marathon resellers reflect this fact. By contrast, because of the crude oil allocation program, market prices for refined products generally increased when crude oil overcharges occurred, and all resellers—regardless of their suppliers—were therefore affected by crude oil overcharges. Accordingly, a reseller or retailer must submit evidence to show the extent to which it absorbed crude oil overcharges. Under the circumstances, resellers and retailers will be permitted to use presumptions to show they were injured in crude oil refund cases. These claims of applicants may, however, use the type of econometric evidence that was submitted to the OHA in the Stripper Well proceeding to show that they were injured by crude oil overcharges. 51 FR at 27901; Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, section 3003(b)(2)

Finally, we should note that utilities have been permitted to receive refunds in Subpart V refund proceedings only to the extent that they notify the applicable state regulatory body and pass on the entirety of the refund to its retail customers. For example, in *A. Tarricone, Inc./Consolidated Edison Company of New York, Inc.*, 15 DOE ¶ 85,038 (1986), the utility received a refund based upon its purchases of product after it had certified "that as a regulated utility it will notify [the State utility commission] of any refund received and will also pass such refund on to its retail customers on a dollar for dollar basis." 15 DOE at 88,074.[8] To receive a refund in any crude oil refund proceeding, a regulated utility will have to submit a similar certification.

### C. Calculation of Refunds

The final matter addressed by the commenters concerns the calculation of refund amounts in crude oil cases. The PD&Os contemplated using a volumetric method for allocating the overcharges among each gallon of refined petroleum products sold in the United States during the period of federal price controls. That allocation would be made by dividing crude oil overcharge moneys ("the numerator") by the total consumption of petroleum products in the United States during the period of price controls ("the denominator"). 51 FR at 29691. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986); *A. Tarricone, Inc.*, 51 FR 35275 (October 2, 1986) (proposed decision).

The States maintained that overcharges from each alleged crude oil violation should be presumed to be spread equally among all gallons of petroleum products sold in the specific violation period set forth in each consent order under consideration. This suggestion is not workable, since it adds enormous complexity with little gain in accuracy. Refund applicants would then be required to produce separate purchase records tailored to each of dozens or even hundreds of individual refund proceedings, and consolidated expedited analysis and payment of claims would be an impossibility.

Most other commenters generally supported the volumetric method which allocated the overcharges among all refined petroleum products sold in the United States during the period of price controls.[9] We have determined that, based on the virtues of this approach, it should be followed in these cases. The volumetric approach presumes that alleged crude oil violations were spread equally and therefore increased the price of all gallons of petroleum products, rather than attempting to tie violations to any specific transactions. In fact, nearly all of the funds involved in these proceedings were obtained through consent orders in which no actual violations were conceded. Moreover, during the period of price controls the Entitlements Program widely dispersed the impact of crude oil overcharges among domestic refiners, and caused the market price of all petroleum products to increase. *See generally OHA Report, In re: The Department of Energy Stripper Well Exemption Litigation*, Fed. Energy Guidelines ¶ 90,507. For these reasons, the volumetric method offers the fairest and most reasonable method for apportioning the crude oil overcharges involved over the products sold in the United States during the period of controls. The volumetric approach is also efficient, having been used by the OHA in hundreds of prior Subpart V refund proceedings involving refined petroleum products, and we conclude that it is equally suited for the crude oil area.

## III. Crude Oil Refund Procedures

After considering the comments received, we have concluded that the $373 million received in these 42 proceedings, plus interest, should be distributed in accordance with the procedures discussed above and in the PD&Os. Since we have not yet had sufficient experience in paying refunds for alleged crude oil violations, we have decided at this time to reserve the full 20 percent of the alleged crude oil violation amounts for direct refunds to injured

---

[7] *See* Hanover Shoe, Inc. v. United Machine Corp., 392 U.S. 481 (1968); Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). This approach to end-user claims has also been applied to private enforcement actions brought under Section 210 of the Economic Stabilization Act. Eastern Airlines, Inc. v. Atlantic Richfield Co., 609 F.2d 497 (Temp. Emer. Ct. App. 1979).

[8] That Terricone case involved a different DOE consent order from the one which is subject to the present decision.

[9] Many commenters suggested various modifications which could be made to the volumetric calculations. These comments were addressed in the April 8, 1987 notice analyzing general comments the OHA received about procedures for processing refund applications in crude oil refund proceedings. 52 FR 11737 (April 10, 1987). These matters were not addressed in the four PD&Os, and we will calculate the volumetric amount in the present cases by using for the numerator only the money available in the 42 subaccounts in question.

claimants. The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *MAPCO Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and demonstrate that they were injured. *See Id.* Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 (1986). Applicants who were end-users (ultimate consumers) of petroleum products whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges, and need not submit any further evidence of injury beyond volumes of product purchased in order to receive a refund. *Id.* It is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. In view of the difference between firm-specified refined product refund cases and crude oil refund proceedings under Subpart V, discussed in Section II.B, *supra*, there is no basis for using the presumption that spot purchasers were not injured by crude oil overcharges. Resellers and retailers of petroleum products must submit detailed evidence of injury, and may not use presumptions of injury established by the OHA in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type used in the OHA Report to the District Court in the Stripper Well litigation, Federal Energy Guidelines ¶ 90,507 (June 19, 1985), and the OHA intends to use the final and April 1, 1985 draft Reports in evaluating refund applications submitted under Subpart V. Parties to MDL 378 who received refunds from one of the escrows established in the settlement have waived their rights to apply for crude oil refunds under Subpart V.

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the money available in each subaccount by the total consumption of petroleum products in the United States during the period of price controls.[10] The total volumetric amount for these proceedings is $0.000185. Interest through March 31, 1987, would increase that amount to $0.000197. The deadline for filing refund applications will be December 31, 1987. Depending on the type of refund applications received, we may establish a minimum refund amount for eligible claimants. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 82,225 (1982).

To receive a refund from these settlement funds, a petroleum purchaser must file an application for refund. No application forms will be provided. Instead, applicants should submit the material outlined below in the form of a letter. The letter should be clearly labelled "Application for Crude Oil Refund" and should include the following information:

(1) Identifying information including (a) the applicant's name, (b) the applicant's address, (c) the applicant's social security number or employer number, (d) an indication whether the applicant is a corporation, (e) the name and telephone number of a person to contact for additional information, and (f) the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and use of petroleum products. If the applicant did business under more than one name or a different name during the period of price controls, the applicant should list these names;

(3) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons on which applicant bases its claim;

(4) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(5) A statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in these cases;

(6) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass the overcharges through to its own customers); and

(7) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its retail customers.

The application should be typed or printed and mailed to the following addresses: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence avenue SW., Washington, DC 20585.

Applicants may be required to submit additional information to document their refund claims. Any applicant that has already filed a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in these proceedings.

The remaining 80 percent of the funds—$296,494,628.89 in principal plus $19,660,292.47 in interest through March 31, 1987—will be immediately disbursed to the State and Federal governments for indirect restitution.[11] We will direct the DOE's Office of the Controller to segregate this amount and distribute $74,123,657.22 in principal plus $4,915,073.12 in interest to the States and $222,370,971.67 in principal plus $14,745,219.35 in interest to the Federal government.[12] Thus, as of March 31,

---

[10] We will use the estimate that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868 n.4 (1986).

[11] As noted in the PD&O entitled Brownlie, Wallace, Armstrong and Bander, Inc., *et al.*, 51 F.R. 41530 (November 17, 1986), the state and Federal governments have already received their 80 percent share of the funds involved in the four cases consolidated in the PD&O. *See Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986). The entire amount remitted by those four firms, $2,480,856.90 plus $476,622.72 interest, therefore has been excluded in calculating the 80 percent portion of the funds to be distributed in this determination to the state and Federal governments

[12] This distribution reflects a ratio of 25 percent to the State governments and 75 percent to the Federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for one-half of the advance, the Settlement Agreement provides that for amounts which the OHA transfers to the State and Federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. This arrangement shall continue until the OHA has distributed the next $400 million. Settlement Agreement, Paragraph II.B.3.c.II. The first transfer of funds to the States by the OHA occurred on August 7, 1986, when the OHA transferred $104,061,950.61 to the State and Federal governments. Stripper Well Exemption Litigation, 14 DOE ¶ 85,382 (1986). The $4 million in excess of $100 million was disbursed 75 percent to the Federal government and 25 percent to the states. Under the Agreement, the next $396 million, including the $316 million disbursed to the states and Federal government under this Decision and Order, will be disbursed using the 75–25 percent formula

1987, the total refund to the states is $79,038,730.34, and the total refund to the Federal government is $237,116,191.02. Each state's share of the funds is set forth in the Settlement Agreement and is based on each State's consumption of petroleum products during the period of price controls.[18] These funds are subject to the same limitations and reporting requirements as all other crude oil moneys received by the States under the settlement.

It is Therefore Ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by the firms identified in Appendix A to this Decision and Order may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed no later than December 31, 1987.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer as provided in paragraphs (4) and (6) below 80 percent of the total current net equity as of March 31, 1987, from each of the subaccounts (within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States) listed in Appendix A to this Decision and Order, except for the following four accounts: Brownlie, Wallace, Armstrong and Bander; Cordele Operating Company; Henry H. Gungoll Associates; and Juniper Petroleum Corporation.

(4) The Director of Special Accounts and Payroll shall transfer $79,038,730.34 of the funds obtained pursuant to paragraph (3) above into a subaccount denominated "Crude Tracking-States," Number 999DOE003W0. The Director of Special Accounts and Payroll shall disburse to each state its share of that amount, determined pursuant to the calculation of ratios for distribution to States and territories set forth in the Settlement Agreement, plus interest from April 1, 1987 to the date of disbursement. Those disbursements shall be accomplished pursuant to instructions previously received from each State in the Stripper Well Exemption Litigation refund proceeding. From the disbursement to the Virgin Islands, the Director shall deduct $170,800.00, and from the disbursement to Guam, the Director shall deduct $1,600.00. This $172,400.00 shall be transferred into a subaccount denominated "Warner Amendment Adjustment," Number BBBBBBBBBB.

(5) The funds distributed pursuant to paragraph (4) above are subject to the same limitations and reporting requirements as are all other crude oil moneys received by the States under the Settlement Agreement.

(6) The Director of Special Accounts and Payroll shall transfer $237,116,191.02 of the funds obtained pursuant to paragraph (3) above into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002W0.

(7) This is a final order of the Deaprtment of Energy.

Dated: April 15, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

## APPENDIX A

A. Tarricone, Inc., *et al. Case Nos. KEF-0049, et al.*

| OHA case No. | Name of firm | Consent order No. | Date of filing | Principal remitted as of 3/31/87 |
|---|---|---|---|---|
| KEF-0049 | A. Tarricone, Inc | N00M90025Z | 8/21/86 | $255,000.00 |
| KEF-0050 | Alliance Oil and Refining | 650X00300Z | 8/21/86 | 2,500,000.00 |
| HEF-0486 | Andrus Interest, Inc | 650X00340Z | 3/20/84 | [1] 1,590,000.00 |
| KEF-0051 | Atlantic Richfield Co | RARE00301Z | 8/21/86 | 320,288,898.71 |
| KEF-0052 | Avant Petroleum, Inc | 6C0X00264Z | 8/21/86 | 1,700,000.00 |
| KEF-0053 | Bass Enterprises Production Company | 650C00376Z | 8/21/86 | 1,679,352.37 |
| KFX-0127 | Brownlie, Wallace, Armstrong & Bander | 810C00962Z | 2/26/85 | [2] 468,750.00 |
| KEF-0078 | City of Long Beach, Cal | 999C90018Z | 9/18/86 | 1,006,090.86 |
| KEF-0054 | Coastal Petroleum Refiners | 6C0X00305Z | 8/21/86 | 500,000.00 |
| KEF-0055 | Condor Operating Company | 670C00233Z | 8/21/86 | 260,960.54 |
| KFX-0128 | Cordele Operating Company | 800C20052Z | 2/26/85 | [3] 1,300,000.00 |
| KEF-0056 | Corpening Enterprises | 800C00105Z | 8/21/86 | 101,161.74 |
| KEF-0057 | Cox, Edwin L. and Berry R | 850C00366Z | 8/21/86 | 1,206,698.00 |
| KEF-0058 | Crestmont Oil and Gas | 950C00057Z | 8/21/86 | 237,811.94 |
| HEF-0498 | Crysen Corporation | 940X00234Z | 7/26/84 | [4] 4,700,000.00 |
| KEF-0059 | Dorchester Exploration | 6C0C00676Z | 8/21/86 | 243,000.00 |
| KEF-0060 | Double U Oil Company/J.E. Guenther | 610C00467Z | 8/21/86 | 250,000.00 |
| KEF-0037 | Energy Reserves Group | 740C01203Z | 5/13/86 | 488,515.85 |
| KEF-0061 | Enstar Corporation | 6C0C00257Z | 8/21/86 | 3,000,000.00 |
| KEF-0062 | Franks Petroleum, Inc | 650C00375Z | 8/21/86 | 350,000.00 |
| KEF-0043 | Giant Industries, Inc | N00S90040Z | 8/30/86 | 354,927.11 |
| KEF-0035 | Grigsby Oil and Gas | 641C00011Z | 4/29/86 | 1,148,189.55 |
| KFX-0129 | Henry H. Gungoll Associates | 660C00387Z | 3/18/85 | [5] 143,980.81 |
| KEF-0064 | IU International and Texfel Petroleum | 960C00025Z | 8/21/86 | 975,000.00 |
| KEF-0065 | J.M. Petroleum Corp | 6A0X00318Z | 8/21/86 | 270,000.00 |
| KEF-0066 | Jones Drilling Corp | 660C00494Z | 8/21/86 | 285,606.89 |
| KFX-0130 | Juniper Petroleum Corp | 999C90001Z | 4/12/85 | [6] 568,126.09 |
| KEF-0067 | Kilroy Company of Texas | 650C00368Z | 8/21/86 | 180,000.00 |
| HEF-0295 | Langham Petroleum and Development, Inc | 540X00433Z | 10/13/83 | [7] 6,895,968.48 |

[18] Pursuant to an April 11, 1986 letter agreement between the ERA and the Virgin Islands and Guam, we are withholding $170,800.00 from the refund to the Virgin Islands and $1,600.00 from the refund to Guam. These amounts were inadvertently overpayed to the Virgin Islands and Guam in February 1983 when distributions of oil overcharge funds were made to the states and territories pursuant to section 155 of the Further Continuing Appropriations Act of 1982, Pub. L. No. 99-377 (the Warner Amendment). We will direct the DOE's Office of Controller to deposit the withheld amounts into a separate subaccount pending a further order from the OHA.

APPENDIX A—Continued

A. Tarricone, Inc., *et al. Case Nos. KEF-0049, et al.*

| OHA case No. | Name of firm | Consent order No. | Date of filing | Principal remitted as of 3/31/87 |
|---|---|---|---|---|
| KEF-0079 | Liberty Trading Co., Inc | 6C0X00275Z | 9/19/86 | 100,000.00 |
| KEF-0068 | Lunday Thagard Oil Corp | N00S98076Z | 8/21/86 | 1,971,000.00 |
| KEF-0069 | Mar Low Corporation | 640X00254Z | 8/21/86 | 165,595.76 |
| KEF-0045 | McAlester Fuel Company | 662C00547Z | 6/30/86 | 9,663,400.36 |
| KEF-0070 | McMoran Oil and Gas Company | 650C00373Z | 8/21/86 | [illegible] |
| HEF-0576 | McTan Corporation | 6A0X00266Z | 4/3/85 | 100,000.00 |
| KEF-0071 | Minro Oil Company | 650X00351Z | 8/21/86 | 2,722,402.30 |
| KEF-0072 | Oxy Petroleum | 920C00032Z | 8/21/86 | 2,717,320.75 |
| HEF-0569 | Pyro Energy Corporation | 610C00052Z | 3/11/85 | 210,000.00 |
| KEF-0073 | Sabine Corporation | 650C00370Z | 8/21/86 | 190,000.00 |
| KEF-0075 | Southwestern Refining Co | [illegible] | 8/21/86 | 316,382.90 |
| KEF-0076 | Texacota, Inc | 6C0C00255Z | 8/21/86 | 315,000.00 |
| KEF-0077 | Texas Pacific Oil Company | 6A0C00257Z | 8/21/86 | 1,300,000.00 |
| | Total | | | $373,099,143.01 |

[1] Total liability for Andrus is $5,300,000.00. Amount still owed is $3,710,000.00.
[2] 60% of this amount has already been distributed to the state and federal governments.
[3] *See* note 2.
[4] Total liability for Crysen is $7,114,287.00. Amount still owed is $2,414,287.00.
[5] *See* note 2.
[6] *See* note 2.
[7] Total liability for Langham is $32,000,000.00. Amount still owed is $25,104,031.52.

APPENDIX B

A. Tarricone, Inc., et al., Case Nos. KEF-0049, et al.

| Name of proposed decision and order | Date of issuance | Federal Register citation |
|---|---|---|
| *A. Tarricone, Inc., et al.* | 9/23/86 | 51 FR 35275 (October 2, 1986). |
| *McAlester Fuel Company.* | 10/27/86 | 51 FR 40498 (November 7, 1986). |
| *Brownlie, Wallace, Armstrong and Bander, Inc., et al.* | 11/7/86 | 51 FR 41530 (November 17, 1986). |
| Andrus Interest, Inc., et al. | 11/20/86 | 51 FR 44373 (December 9, 1986). |

[FR Doc. 87-9011 Filed 4-21-87; 8:45 am]
BILLING CODE [illegible]

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces the procedures for refunding to adversely affected parties the $2,750,000 obtained as a result of a consent order between the DOE and Pyrofax Gas Corporation. The funds are being held in escrow following the settlement of an enforcement proceeding brought by the DOE's Economic Regulatory Administration.

**DATE AND ADDRESS:** Applications for refund of a portion of the Pyrofax consent order funds must be filed within 90 days of this notice's publication in the Federal Register. Applications should be filed in duplicate, and should refer to Case Number HEF-0157. Address applications to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision concerns the disbursement of the $2,750,000 that the DOE obtained pursuant to a consent order with Pyrofax Gas Corporation. The Decision finalizes the refund procedures that were outlined in a Proposed Decision and Order issued October 16, 1986. 51 FR 37,641 (October 23, 1986).

Pyrofax remitted the funds to settle all claims and disputes with the DOE regarding the manner in which it applied the federal price regulations to its propane sales between November 1, 1973, and January 27, 1981. The DOE audit that uncovered Pyrofax's alleged pricing violations identified 129 firms that Pyrofax's practices may have injured. To apply for refunds, these identified purchasers should submit completed copies of the suggested application form appended to the Decision. Pyrofax customers not identified in the DOE audit may also apply for refunds. Unidentified customers should submit monthly schedules of their Pyrofax propane purchasers in addition to the suggested refund application form. All applicants whose claims exceed $5,000 must, in addition, prove that they did not pass along the alleged overcharges to their own customers.

As the Decision and Order published with this Notice indicates, customers who purchased propane from Pyrofax between November 1, 1973, and January 27, 1981, may now apply for refunds. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an Application for Refund is explained in the Decision and Order.

Dated: April 14, 1986.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

April 14, 1987.

**Decision and Order of the Department of Energy**

*Implementation of Special Refund Procedures*

Name of Petitioner: Pyrofax Gas Corporation.
Date of Filing: October 13, 1983.
Case Number: HEF-0157.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Pyrofax Gas Corporation (Pyrofax). This Decision and Order contains the procedures which the OHA has established to distribute funds received pursuant to that consent order.

**I. Background**

Pyrofax, headquartered in Houston, Texas, is a "reseller-retailer" of propane as that term was defined in 10 CFR 212.31. A DOE audit of Pyrofax's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, Pyrofax signed a consent order with the DOE. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Pyrofax does not admit that it violated the regulations.

The DOE audit alleged that between November 1, 1973, and January 27, 1981, Pyrofax committed possible pricing violations in its propane sales. The consent order, signed on March 23, 1981, settled all disputes between the DOE and Pyrofax regarding these alleged violations. The consent order required Pyrofax to deposit $2,750,000 into an interest-bearing escrow account for ultimate distribution by the DOE. Of this amount, $2,183,000 represented alleged overcharges to Pyrofax customers identified in the DOE audit. The remaining $567,000 represented alleged overcharges to individuals not directly identified in the audit—primarily Pyrofax home delivery customers. Pyrofax remitted the total sum of $2,750,000 on July 31, 1981.[1]

The OHA outlined tentative procedures for distributing the Pyrofax consent order fund in a Proposed Decision and Order issued October 16, 1986, 51 FR 37,641 (October 23, 1986). In order to notify all potentially affected parties, the Proposed Decision was published in the **Federal Register**. In addition, copies of the Proposed Decision were mailed to Pyrofax customers identified in the ERA audit, various petroleum dealers' associations, and others who had expressed interest in the proceeding. The OHA allowed 30 days for interested parties to comment on the proposed refund procedures.

Comments regarding the distribution of any funds that remain after injured parties have received refunds were submitted collectively on behalf of the States of Arkansas, Delaware, Iowa Louisiana, North Dakota, Rhode Island, and West Virginia. Since this Decision concerns only compensation to parties that Pyrofax's alleged overcharges injured directly, those comments will not be addressed individually. After all claims have been processed, any remaining funds will be distributed in accordance with the recently enacted Petroleum Overcharge Distribution and Restitution Act of 1986. *See* H.R. 5300, Title III, 99th Cong., 2d Sess., Cong. Rec. H11319–21 (daily ed. October 17, 1986). Since no other comments were received, the refund procedures outlined in the Proposed Decision will be adopted.

**II. Presumptions Used To Formulate Refund Procedures**

The DOE procedural regulations set forth general guidelines for OHA to follow in devising a plan to distribute funds received following an enforcement proceeding. 10 CFR Part 205, Subpart V. These guidelines, called Subpart V, may be used to compensate persons injured by a firm's violations of the Mandatory Petroleum Price Regulations. The Subpart V process is used to determine both who the firm's alleged pricing violations injured, and the extent of their injuries. For a detailed description of Subpart V procedures, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

In implementing the Subpart V guidelines, we must consider whether Pyrofax propane purchasers were injured by the alleged overcharges, or whether they passed through the overcharges to their own customers. To help determine the level of a purchaser's injury without incurring inordinate expenses, we will adopt two rebuttable presumptions and two findings regarding injury, discussed below. (DOE procedural regulations specifically authorize the use of presumptions and findings in refund cases. *See* 10 CFR 205.282(e).)

The first presumption is that Pyrofax customers claiming small refunds were injured by the alleged overcharges. Without this presumption, each applicant would have to sort through records dating as far back as 1973 to gather proof that it absorbed the alleged overcharges. The cost to the applicant of gathering this information and the OHA of analyzing it, could exceed the actual refund amount. Therefore, applicants entitled to refunds under $5,000 will not need to submit detailed proof of injury. *See Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

The second presumption is that Pyrofax's alleged overcharges did not injure spot purchasers. (Spot purchasers are those who were not regular Pyrofax customers.) Spot purchasers, because they were not obliged by contract to purchase fixed volumes from Pyrofax, had considerable discretion as to when and where they bought their propane. Thus, a spot purchaser would not have bought Pyrofax propane unless it felt sure that it could recover all of its costs in a subsequent resale. *See Vickers*, 8 DOE at 85,396–97. A spot purchaser, therefore, will not receive a refund unless it presents evidence to both rebut this presumption and establish the extent of its injury.

In addition, we find that end users (those who actually used Pyrofax propane for purposes other than resale) were injured by the alleged overcharges. Since end users were not subject to price controls, they were not required to keep records showing whether or not they passed through the Pyrofax propane cost increases to their own customers. Thus, an analysis of the impact of the alleged overcharges on end users is beyond the scope of this proceeding.

Finally, we find that public utilities, agricultural cooperatives, or other firms whose prices are regulated by government agencies or cooperative agreements need not submit detailed proof of injury. Such firms would have routinely passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. Such firms applying for refunds should submit plans explaining both how their

[1] As of March 31, 1987, the Pyrofax escrow account contained $3,605,943, including accrued interest.

customers will benefit from the refund, and how they will alert the appropriate regulatory body or membership group to funds received. Such firms should note, however, that their sales to nonmembers will be treated the same as sales by any other reseller.

The findings and rebuttable presumptions discussed above will apply equally to the Pyrofax customers identified in the DOE audit, and to those purchasers whom the audit did not identify. The methods for refunding money to identified and unidentified customers are explained below.

### III. Refund Procedures for Identified Purchasers

As in previous cases, we will use the information in the audit files to distribute part of the consent order fund. The audit files identify 129 Pyrofax customers and the portion of the escrow account to which each is entitled. Based on a review of the audit files, we have determined that some of these identified customers are spot purchasers. As previously explained, spot purchasers, listed in Appendix 2, will not be eligible for refunds unless they can prove injury. The remaining identified purchasers, listed in Appendices 1 and 3, may apply for refunds as described below.

To apply for a refund, an identified purchaser must submit two completed copies of a refund application form (see the suggested form in Appendix 4). In addition, an identified reseller or retailer of Pyrofax propane claiming a refund greater than $5,000 must submit detailed proof that it absorbed the alleged overcharges and, furthermore, was injured by them. Generally, we require such a firm to demonstrate (i) that it maintained a "bank" of unrecovered costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices. Alternatively, such a firm may choose to limit its claim to $5,000. *See Vickers*, 8 DOE at 85,396. *See also Office of Enforcement*, 10 DOE ¶85,029 at 88,125 (1982).

### IV. Refund Procedures for Other Purchasers

The individuals who purchased Pyrofax propane for home heating purposes were not identified in the DOE audit. These home delivery customers, and other as yet unidentified purchasers who believe they were injured by Pyrofax's alleged overcharges, may apply for refunds under the "volumetric method." Under this method, a successful claimant's refund is computed by multiplying a factor called the volumetric by the number of gallons of Pyrofax propane the claimant purchased. The volumetric factor in this case is $0.00757 per gallon, representing the average dollar refund an applicant may receive per gallon of Pyrofax propane it purchased.[2]

A Pyrofax customer applying for a refund under the volumetric method must submit two copies of both a refund application (see the suggested form in Appendix 4) and a monthly schedule of the number of gallons of Pyrofax propane it purchased between November 1, 1973 and January 27, 1981.[3] As required of identified purchasers, unidentified resellers or retailers of pyrofax propane whose claims exceed $5,000 must submit the detailed proof of injury discussed in section III above.

All applicants should be aware that, as in previous cases, only claims for at least $15 plus interest will be processed. We have adopted this minimum because the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). In the unlikely event that valid claims exceed the funds in the escrow account, claims will be prorated.

### V. Summary of Refund Application Procedures

We will now accept refund applications from individuals who purchased Pyrofax propane between November 1, 1973, and January 27, 1981. The information each applicant must submit is summarized below:

(1) Each applicant should submit two completed copies of the suggested refund application form in Appendix 4, or its equivalent.

(2) If the applicant was not identified in the audit files, it must submit two copies of a monthly schedule of the number of gallons of Pyrofax propane it purchased between November 1, 1973, and January 27 1981. (Home delivery customers may, instead, submit tables of the number of dollars they paid Pyrofax for home heating each month.)

(3) All resellers and retailers of Pyrofax propane whose claims exceed $5,000 must submit proof, as explained in this Decision, that they absorbed the alleged overcharges. (Agricultural cooperatives, public utilities and end users of Pyrofax propane whose claims exceed $5,000 need not submit proof of injury.)

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Pyrofax Gas Corporation pursuant to the Consent Order executed on March 23, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: April 14, 1987.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

APPENDIX 1—PYROFAX GAS CORPORATION

| First purchasers | Share of settlement[1] |
|---|---|
| ACF Industries, 750 Third Avenue, New York, New York 10017 | $202 |
| Accura Tool Company, Post Office Box 153, Columbiana, Ohio 44408 | 5,739 |
| Agway Petroleum Corporation, Post Office Box 706, Syracuse, New York 13221 | 2,971 |
| Allied Chemical Corporation, Columbia Rd. & Park Ave., Morristown, New Jersey 07960 | 1,495 |
| Allied New Hampshire Gas Co. (Northern Utilities), Post Office Box 508, Portsmouth, New Hampshire 03801 | 4,615 |
| American Bread Company, 702 Murfreesboro Road, Nashville, Tennessee 37210 | 76 |
| American Hoechst Corporation, Post Office Box 1400, Greer, South Carolina 29652 | 5,866 |
| Anchor Hocking Glass Corporation, 109 N. Broad Street, Lancaster, Ohio 43130 | 3,892 |
| Armco Steel Corporation, 703 Curtis Street, Middletown, Ohio 45043 | 31,747 |
| Armstrong Cork, Concord Street, Lancaster, Pennsylvania 17604 | 28,822 |
| Ashland Gas Service, Post Office Box 391, Ashland, Kentucky 41101 | 1,906 |
| Athens Oil Company, 77 Elmwood, Athens, Ohio 45701 | 622 |
| Auburn Steel Co., Inc., 635 West 11th Street, Auburn, Indiana 46706 | 5,719 |
| Baxter Kelly & Faust, 215 Commerce Boulevard, Anderson, South Carolina 29621 | 155 |
| Bechtel Power Corporation, Attention: Louis Nassar, P.O. Box 3965, San Francisco, California 94119 | 18,708 |

[2] We computed the volumetric factor by dividing the $2,750,000 escrow principal amount by the estimated 363,210,214 gallons of propane Pyrofax sold during the consent order period.

[3] We recognize that Pyrofax's former home delivery customers may not have records of the number of gallons of Pyrofax propane they purchased. Therefore, home delivery customers may submit tables listing the amount of money they paid Pyrofax for home heating propane. Using this information and the average prevailing price of propane during the consent order period, we will attempt to compute the number of gallons the home delivery customers purchased from Pyrofax.

APPENDIX 1—PYROFAX GAS CORPORATION—Continued

| First purchasers | Share of settlement[1] |
|---|---|
| Berks Welding, Stevens Rd. & Portland St., West Conshohocken, PA 19428 | 1,978 |
| Berkshire Gas Company, 115 Cheshire Road, Pittsfield, Massachussets 01201 | 13,443 |
| Bethlehem Steel Corporation, Martin Tower, Bethlehem, Pennsylvania 18016 | 2,041 |
| Cabot Corporation, Satellite Division, 125 High Street, Boston, Massachusetts 02110 | 5,106 |
| Cargill, Inc., Gainesville, Georgia 30543 | 6,475 |
| Carr Lowery Company, 2201 Kloman Street, Baltimore, Maryland 21203 | 7,016 |
| Celotex Corporation, W. Pittston, Pennsylvania 18643 | 1,343 |
| Central Foundry Company, Post Office Box 188, Holt, Alabama 35404 | [illegible] |
| Champion Building Products, One Champion Plaza, Stamford, Connecticut 06921 | 153 |
| Cherokee Brick & Tile Company, Post Office Box 4567, Macon, Georgia 31208 | 2,163 |
| City of Harrisburg Arkansas, Harrisburg, Arkansas 72432 | [illegible] |
| City of Lebanon Tennessee, Lebanon, Tennessee 37087 | [illegible] |
| City of Tallahassee Florida, Tallahassee, Florida 32300 | 2,951 |
| Collier Gas Company, 1016 S. Madison Street, Whiteville, North Carolina 28472 | [illegible] |
| Connecticut Natural Gas Co., 100 Columbus Boulevard, Hartford, Connecticut 06103 | 23,153 |
| Consolidated Gas Transmission Corp., 445 W. Main Street, Clarkesburg, West Virginia 26301 | 1,225 |
| Cornell Dubilier Corporation, Wayne Interchange Plaza I, Wayne, New Jersey 07470 | [illegible] |
| Crane Company, 757 3rd Ave., 4th Floor, New York, New York 10017 | [illegible] |
| Dan River Inc., 2291 Memorial Drive, Danville, Virginia 24541 | 26,423 |
| Dana Corporation, 4500 Dorr Street, Toledo, Ohio 43697 | 812 |
| Dayton Power & Light, 25 North Main Street, Dayton, Ohio 45459 | 93,467 |
| Delmarva Power & Light Company, 800 King Street, Wilmington, Delaware 19899 | 28,283 |
| Diebold, Inc., 818 Mulberry Road, S.E., Canton, Ohio 44707 | 3,517 |
| Dietrich Industries Inc., 2121 Elida Road, Lima, Ohio 45802 | 1,362 |

APPENDIX 1—PYROFAX GAS CORPORATION—Continued

| First purchasers | Share of settlement[1] |
|---|---|
| Digital Equipment Corporation, 146 Main Street, Maynard, Massachusetts 01754 | 50 |
| Disston, Inc., Post Office Box 3000, Danville, Virginia 24541 | 612 |
| Dresser Ind. Inc. (tool group), 1505 Elm Street, Dallas, Texas 75221 | 3,726 |
| Eastern Shore Rendering Company, Post Office Box 1551, Salisbury, Maryland 21801 | 7,090 |
| Eastern Stainless Steel Corp., Post Office Box 1975, Baltimore, Maryland 21203 | 13,382 |
| Elite Metal Products, 40 South St. Mary's Street, Post Office Box 467, St Mary's, Pennsylvania 15857 | 2,779 |
| Everlon Fabrics Corporation, Railroad Avenue, Closter, New Jersey 07624 | 3,794 |
| Excello Corporation, 2855 Coolidge, Troy, Michigan 48084 | 756 |
| Fetterolf Development Corporation, Post Office Box 103, Skippack, Pennsylvania 19474 | 550 |
| Flame Rite Gas Inc., Newport Road, Gordonville, Pennsylvania 17529 | 4,052 |
| Fletcher Brick, Highway 25, Fletcher, North Carolina 28723 | 3,694 |
| Grumman Aerospace, d/b/a Flexible Bus Company, 1111 Stewart Avenue, Bethpage, New York 11714 | 4,532 |
| Flexible Corporation, Post Office Box 3190, Marietta, Georgia 30062 | 766 |
| Franklin Aluminum, 881 Bevis Road, Franklin, Georgia 30217 | 956 |
| Frito Lay Inc., Frito Lay Tower, Dallas, Texas 75235 | 502 |
| General Electric, 3135 Eastern Turnpike, Fairfield, Connecticut 06430 | 56,321 |
| General Steel Industries, Inc., Post Office Box 16000, St. Louis, Missouri 63105 | 7,935 |
| Gibson Greeting Cards Inc., 2100 Section Road, Cincinnati, Ohio 45237 | 57 |
| Glenshaw Glass Company, 1101 William Flynn Highway, Glenshaw, Pennsylvania 15116 | 79,545 |
| GTE Sylvania (KY), Post Office Box 396, Madisonville, Kentucky 42431 | 8,904 |
| Indiana Farm Bureau, 120 E. Market Street, Indianapolis, Indiana 46204 | 91,719 |
| ITT Grinnell Corporation, 260 W. Exchange Street, Providence, Rhode Island 02901 | 1,423 |

APPENDIX 1—PYROFAX GAS CORPORATION—Continued

| First purchasers | Share of settlement[1] |
|---|---|
| Levitt's Furniture Corp., Group 1, d/b/a J. Homestock, Inc., 180 State Line Plaza, Enfield, Connecticut 06082 | [2] 110 |
| John-Manville Corporation, Post Office Box 5108, Denver, Colorado 80217 | 168,626 |
| Kaiser Aluminum and Chemical, 300 Lakeside Drive, Oakland, California 94643 | 4,534 |
| Kerr Glass Manufacturing, 501 S. Shotto Place, Los Angeles, California 90020 | 308 |
| Lear Siegler Inc., 3171 S. Bundy Drive, Santa Monica, California 90406 | 1,803 |
| Lenox Crystal Inc., Lenox Road, Mount Pleasant, Pennsylvania 15666 | 548 |
| Linde Company, One Linde Drive, Goldsboro, North Carolina 27530 | 2,270 |
| Lithonia Lighting Inc., Industrial Boulevard, Conyers, Georgia 30207 | 5,333 |
| Macy's d/b/a J. Homestock, Inc., 151 West 34th Street, New York, New York 10001 | [2] 117 |
| Manchester Gas Company, 1260 Elm Street, Manchester, New Hampshire 03101 | 2,772 |
| Monongahela Power Company, 1310 Fairmount Avenue, Fairmount, West Virginia 26554 | 59,358 |
| Nabisco Inc., River Rd. & Deforest Ave., Hanover, New Jersey 07936 | 135 |
| New Jersey Natural Gas Company, 601 Bang Avenue, Asbury Park, New Jersey 07712 | 16,776 |
| North American Rockwell, New Castle, Pennsylvania 16100 | 20,247 |
| North Electric Company, Post Office Box 11315, Kansas City, Missouri 64112 | 109 |
| Ohio Steel Tube, 2 Oliver Plaza, Pittsburgh, Pennsylvania 15222 | 275 |
| Otis Elevator Company, 750 3rd Avenue, New York, New York 10017 | 1,177 |
| Owens Corning Fiberglass, Fiberglass Tower, Toledo, Ohio 43659 | 282 |
| PPG Industries Inc., One Gateway Center, Pittsburgh, PA 15222 | 9,609 |
| Pennsylvania Gas & Water Company, 39 Public Square, Wilkes Barre, Pennsylvania 18711 | 7,669 |
| Peterbilt Motors, Madison, Tennessee 37115 | 969 |
| Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19103 | 165,399 |

APPENDIX 1—PYROFAX GAS CORPORATION—Continued

| First purchasers | Share of settlement [1] |
|---|---|
| Philadelphia Gas Works, 1800 N. 9th Street, Philadelphia, Pennsylvania 19122 | 309,021 |
| Pilgrim Glass, Ceredo, West Virginia 25507 | 1,522 |
| Pittsburg Forging, Coraopolis, Pennsylvania 15108 | 1,890 |
| Pretty Products, Inc., 437 Cambridge Road, Coshocton, Ohio 43812 | [illegible] |
| Prior Coated Metals, Marietta, Georgia 30000 | [illegible] |
| Public Service Electric & Gas Company, 80 Park Plaza T5E, Newark, New Jersey 07101 | 150,280 |
| Royster Company, Two Commercial Place, Norfolk, Virginia 23510 | 2,358 |
| Scott Paper Company, Scott Plaza 1, Philadelphia, Pennsylvania 19113 | 192 |
| Shenango China, Post Office Box 120, New Castle, Pennsylvania 16103 | 9,631 |
| South Jersey Gas Company, 1 S. Jersey Plaza, Hammonton, New Jersey 08037 | 3,910 |
| Southern Coil Coating, Post Office Box 160, Sumter, South Carolina 29150 | 118 |
| Southern G.C.M., Griffin, Georgia 30223 | 164 |
| Specialty Paper Company, 802 Miami Chapel Road, Dayton, Ohio 45401 | 157 |
| Square D. Company, 1415 S. Roselle Road, Palatine, Illinois, 60067 | 15,608 |
| Standard Register, Post Office Box 1167-T, Dayton, Ohio 45401 | 330 |
| Standard Steel Company, 3441 N.W. Guam, Portland, Oregon 97208 | 1,810 |
| Sybron-Taylor Instr. Co., 1100 Midtown Tower, Rochester, New York 14604 | 616 |
| Tecumseh Products Company, 100 E. Patterson, Tecumseh, Michigan 49286 | 4,676 |
| Thatcher Glass Manufacturing Company, Post Office Box 1505, Elmira, New York 14902 | 13,246 |
| Tifton Aluminum Company, Southwell Boulevard, Tifton, Georgia 31794 | 5,014 |
| Tuck Industries, 1 A LeFervre Lane, New Rochelle, New York 10801 | 2,174 |
| Universal Cyclops Specialty Steel 652 Washington Road, Pittsburgh, Pennsylvania 15228 | 3,571 |
| Universal Rundle Corporation, North & East Street, New Castle, Pennsylvania 16103 | [illegible] |

APPENDIX 1—PYROFAX GAS CORPORATION—Continued

| First purchasers | Share of settlement [1] |
|---|---|
| Waterford Park Inc., Post Office Box 254, Chester, West Virginia 26034 | 8,173 |

[1] These figures do not include accrued interest.

[2] The $227 due to J. Homestock, Inc., is divided between the company's two former owners: Macy's of New York and Levitt's Furniture Corporation. (Levitt's purchased Homestock from Macy's in August 1977.)

APPENDIX 2

| Spot purchasers [1] | Share of settlement [2] |
|---|---|
| Diversified Chemicals & Propellants, Post Office Box 447, Westmont, Illinois 60559 | $188,343 |
| Dixie Chemical, Old Cherry Point Road, New Bern, North Carolina 28560 | 419 |
| East Side Gas Company, 5010 N. Post Road, Indianapolis, Indiana 46240 | 419 |
| Petrolane Gas Service, 632 S. 84th Street, Milwaukee, Wisconsin 53214 | 1,240 |
| Gas, Inc., 4205 Jonesboro Road, Union City, Georgia 30291 | 723 |
| Gas Oil Products [3] | [illegible] |
| Good Housekeeping Gas Company, Post Office Box 2269, Jacksonville, Florida 32201 | 4,008 |
| H.J. Poist Gas Company, 360 Main Street, Laurel, Maryland 20707 | 792 |
| Midway Bottle Gas Company, 757 Stultz Road, Martinsville, Virginia 24112 | [illegible] |
| Pengite Company, Malvern, Pennsylvaina 19355 | 48,574 |
| Pulici Gas & Oil (PA), Hawley, Pennsylvania 18428 | 100 |
| Savannah Valley Gas Company, Route 6, Box 8, Elberton, Georgia 30635 | [illegible] |
| Stenger Gas Corporation, Kent Plaza, Chestertown, Maryland 21620 | 199 |
| Sure Flame Gas Co., Inc., 334 West Main Street, Springfield, Kentucky 40069 | 2,517 |
| U.G.I. Corporation, Post Office Box 858, Valley Forge, Pennsylvania 19482 | 32,878 |

[1] The audit files indicate that these companies purchased Pyrofax propane on an irregular, sporadic basis. They are thus considered "spot purchasers," and are not entitled to refunds. These firms may submit evidence to the contrary, however. For example, if a firm is an end user or public utility, it will be eligible for a refund even if it is a sport purchaser.

[2] These figures do not include accrued interest.

[3] The current address of this firm is unknown.

APPENDIX 3

| First purchasers' addresses unknown | Share of settlement [1] |
|---|---|
| Energy Imports | $17,680 |
| Grefco | 5,905 |
| Hook Bros. L-P Gas Company | 1,519 |
| Johnson Bronze Company | [illegible] |
| New Jersey Zinc | 17,645 |
| Roncari Industries | [2] 2 |
| Star Finishing Company | [2] 12 |
| Valley Service Company | [illegible] |

[1] These figures do not include accrued interest.

[2] As the Decision and Order states, we will not process refund claims for under $15.00.

## Appendix 4

RF277-_____

DOE use Only

Suggested Format

*Application for Pyrofax Refund—HEF-0157*

Please submit *two copies* of this form. Answer "n/a" to questions that do not apply to you.

1. Name and address of applicant firm during refund period (November 1, 1973—January 27, 1981):

_____

_____

_____

2. Name of person or firm to whom refund check should be issued and address to which check should be sent:

_____

_____

_____

_____

Contact Person:

_____

Telephone

_____ _____

3. (a) Did you or your firm purchase Pyrofax propane between November 1, 1973 and January 27, 1981?

Yes _____

No _____

(b) Is your firm listed in Appendix 1, 2, or 3 of the Decision? If no, you *must* attach a table listing the amount of Pyrofax propane you purchased *each month* between November 1, 1973, and January 27, 1981.

Yes _____

No (table attached) _____

(c) If yes, indicate your refund claim as listed in Appendix 1, 2 or 3:

$_____

(d) If no, compute your refund claim using the volumetric method (multiply the total gallons of Pyrofax propane listed on your purchase table by $0.00757 per gallon):

$_____

4. Type of applicant (check one):

_____

end user

_____

consumer

_____

public utility

_____

agricultural cooperative

_____

propane reseller or retailer

_____

_____

_____

Other (please specify the nature of your business)

5. If you checked "propane reseller or retailer" in 4 *and* claim exceeds $5,000, will you (check one):

_____limit your claim to $5,000, or

_____attach to this form the detailed proof of injury discussed in the Decision.

6. Was your firm a spot purchaser of Pyrofax propane? (See Appendix 2.) If yes, you must attach detailed evidence to override the presumption that spot purchasers were not injured by Pryofax's alleged overcharges.

Yes _____

No _____

7. (a) Has the applicant firm changed ownership since November 1, 1973?

Yes _____

No _____

(b) If yes, attach a statement explaining why the applicant should receive a refund instead of the previous owners. Additionally, provide a signed statement from the previous owners indicating that they do not claim a refund. Attach the names and addresses of the previous owners.

8. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? If you, attach an explanation.

Yes _____

No _____

9. Have you or a related firm filed any other application for refund involving any Pyrofax product? If yes, attach an explanation.

Yes _____

No _____

10. Have you are a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf? If yes, attach an explanation.

Yes _____

No _____

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application form which will be placed in the OHA Public Reference Room.

_____

Date

_____

Signature of Applicant

_____

Title

[FR Doc. 87-9012 Filed 4-21-87; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3190]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)* requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

### Office of Pesticides and Toxic Substances

*Title:* Pesticide Applicator Certification Form (EPA Form 8500-17); Training and Examination of Applicators (EPA ICR #0155). (This is a revision of a currently approved collection.)

*Abstract:* In order to minimize the threat to human health and the environment caused by pesticide misuse, EPA conducts a program to certify pesticide applicators in states whose programs have not received Agency approval (Colorado for private applicators and Nebraska for private and commercial applicators). Individuals applying for or renewing certification as applicators or restricted-use pesticides must complete EPA form 8500-17. In addition to providing background information, this form requires applicants to establish their competency in pesticide use through completion of a training program or via examination.

*Respondents:* Certain pesticide applicators seeking certification.

*Estimated Annual Burden:* 59,829 hours.

### Office of Research and Development

*Title:* Measurement of Soil Ingestion in Children Ages 2.5-7 (EPA ICR #1356). (This is a new collection.)

*ABSTRACT:* EPA will conduct a study of soil ingestion in children to develop methodology for evaluating risk and to pretest public response to random-digit dialing.

*Respondents:* Parents of 100 children in the Tri-Cities area, Washington.

*Estimated Annual Burden:* 705 hours.

* * * * *

### Agency PRA Clearance Requests Completed by OMB

EPA has received no action notices from OMB since publishing the last **Federal Register** notice.

* * * * *

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503.

Dated: April 17, 1987.

**Daniel J. Fiorino, Director,**

*Information and Regulatory Systems Division.*

[FR Doc. 87-9078 Filed 4-21-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00081; FRL-3190-8]

## Biotechnology Science Advisory Committee; Announcement of Committee Members

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of Biotechnology Science Advisory Committee Members.

**SUMMARY:** On July 2, 1986, the EPA announced its intent to prepare a list of candidates from which nominees would be selected for the Biotechnology Science Advisory Committee (BSAC) and/or its Subcommittees. A list of such candidates was prepared and from that list were selected individuals to form the BSAC. The BSAC was established to provide expert scientific advice to the EPA Administrator concerning issues relating to applications of modern biotechnology.

**SUPPLEMENTARY INFORMATION:** Members of the Biotechnology Science Advisory Committee and their backgrounds are:

*Rita Colwell, Chairperson*: B.S. Purdue University, M.S. Purdue University, Ph.D. University of Washington. Vice-President of Academic Affairs, and Professor of Microbiology, University of Maryland. Research Interests: Marine biotechnology, marine and estuarine microbial ecology; survival of pathogens in the aquatic environment, microbial biodegradation. Committees: EPA Environmental Research Board, appointed 1984; National Science Foundation, Biotechnology Committee, January 30, 1984; Natural Resources Defense Council, Diversity Task Force, 1982-present; International 877–470 Cell Research Organization, 1979-present.

*Robert Colwell:* A.B. Harvard College, Ph.D. University of Michigan. Professor, University of California, Berkeley, Department of Zoology. Research Interests: Community Biology: species interaction and coevolution, species diversity and biogeography, patterning in space and time, adaptive morphologies and life histories and bilogical systematics. Committees: NIH RAC Working Group on Release into the Environment, 1984-present; Ad Hoc Consultant to EPA and USDA, 1984-present.

*Douglas Rouse:* B.S. Ottawa University, M.S. Colorado State University, Ph.D. Pennsylvania State University. Associate Professor, University of Wisconsin. Research Interests: Plant pathology, mathematical modeling and quantitative analysis, population dynamics, use of biocontrol agents in the field, practical plant breeding experience.

*David Stahl:* B.S. University of Washington, M.S. University of Illinois, Ph.D. University of Illinois. Assistant Professor of Veterinary Microbiology, Department of Veterinary Pathobiology, University of Illinois, Urbana. Research Interests: Molecular approaches of microbial ecology, molecular phylogeny of microorganisms, ribosomal RNA processing.

*James Tiedje*: B.S. Iowa State University, M.S. Cornell University, Ph.D. Cornell University. Assistant, Associate and Professor, Departments of Crop and Soil Sciences and Public Health, Michigan State University, 1968-present. Acting Director for Development of Research, Michigan Agricultural Experiment Station, 1977–78. Research Interests: Role of terrestial (and aquatic) bacteria on nitrogen, sulfate, carbon, phosphate and hydrogen cycles, microbial degradation of xenobiotic chemicals. Committees: USDA Competitive Grants Review Panel, 1980–81. FIFRA Scientific Advisory Panel.

*Richard Merrill*: A.B. Columbia College, B.A. Oxford University, M.A. Oxford University, LL.B. Columbia University School of Law. University of Virginia School of Law: Associate Professor, 1969–72; Professor, 1972–77; Associate Dean, 1974–75; Daniel Caplin Professor, 1977–85; Arnold Leon Professor, 1985-present; Dean, 1980-present. Chief Counsel, U.S. FDA, 1975–77. Committees: Council of the Institute of Medicine, National Academy of Sciences; IOM Member, 1977-present.

*Ralph Mitchell*: B.A. Trinity College, Dublin, Ireland, M.S. Cornell University, Ph.D. Cornell University. Gordon McKay Professor of Applied Biology, Division of Applied Sciences, Harvard University, 1970-Present. Research Interests: Industrial microbiology. Committees: National Research Council, National Committee on Water Quality, American Society of Microbiology, Committee on Environmental Hazards.

*Charles Hagedorn*: B.S. Kansas State University, M.S. Iowa State University, Ph.D. Iowa State University. Professor of Agronomy and Plant Pathology, Virginia Polytechnic University, 8/86-present. Manager and Senior Microbiologist, Crop Science Laboratory, Allied Corporation, 9/83–7/86. Research Interests: Environmental Microbiology, Microbial Ecology, Soil, Aquatic and Agricultural Microbiology. Committees: Member, Review Panel, EPA Biotechnology Risk Assessment Program, effective 12/10/85. Member, Environmental Chemistry and Physics Review Panel, EPA, Columbus, Ohio 1980–83.

*Jay Hair*: B.S. Clemsom University, M.S. Clemson University, Ph.D. University of Edmonton, Canada. Research and Management Consultant, South Carolina Wildlife and Marine Resources Department, 1976–77. Assistant Professor of Wildlife Biology, Clemson University, 1973–77. Special Assistant, U.S. Department of Interior, Office of the Assistant Secretary, Fish and Wildlife and Parks, 1978–80. Associate Professor of Zoology and Forestry, 1977–81. Executive Vice-President, National Wildlife Federation, 1981-present. Committees: American Association for the Advancement of Science; American Forestry Association; Association of University Fisheries and Wildlife Program Administrators; Ecological Society of America; International Association of Fish and Wildlife Agencies; Wildlife Society; Nature Conservancy.

*Susan Gottesman*: B.S. Radcliffe College, Ph.D. Harvard. Acting Chief, Biochemical Genetics Section, Laboratory, of Molecular Biology, National Cancer Institute, National Institutes of Health. Research Interests: Global control of gene expression in gram negative bacteria; genetic control of bacterial cell growth; regulation of proteolysis in *E. coli*; site specific recombination. Committees: RAC Risk Assessment Subcommittee, RAC Phage Working Group; RAC Human Gene Therapy Working Group; RAC Working Group on Release to the Environment; RAC Working Group on Revision of the Guidelines.

*Francis Macrina*: B.S. Cornell University, Ph.D. Syracuse. Professor and Chairman, Department of Microbiology and Immunology, Virginia Commowealth University. Research Interests: Antibiotic resistance in oral and intestinal flora. Committees: EPA Science Advisory Board: Study Group on Biotechnology 1985–86, NIH RAC Working Group on Gram Positive Bacteria; Consultant, FDA, use of antibiotics in animal feed.

Dated: April 15, 1987.

Victor J. Kimm,

*Acting Assistant Administrator, Pesticides and Toxic Substances.*

[FR Doc. 87-9077 Filed 4-21-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100039; FRL-3191-3]

## Planning Research Corporation, Sycom, Inc., and Logic Unlimited, Inc.; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

Planning Research Corporation (PRC), and its subcontractors, Sycom, Inc., and Logic Unlimited, Inc., have been awarded a contract to perform work for EPA's Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to PRC and its subcontractors Sycom, Inc. and Logic Unlimited, Inc. in accordance with 40 CFR 2.307(h) and 40 CFR 2.308(h)(2), respectively. This action will enable PRC, Sycom, Inc., and Logic Unlimited, Inc. to fulfill the obligations of the contract and serves to notify affected persons.

**DATE:** PRC, Sycom, Inc., and Logic Unlimited, Inc. will be given access to this information no sooner than April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** By mail:

William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-01-7361, PRC, Sycom, Inc., and Logic Unlimited, Inc. will provide general ADP programming services to OPP and assist in the conversion of existing ADP systems to an ADABAS environment, and in the design and development of new ADP systems for use by OPP and its community.

OPP has determined that access by PRC, Sycom, Inc., and Logic Unlimited, Inc. to information on all pesticide chemicals is necessary for the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with PRC, Sycom, Inc., and Logic Unlimited, Inc. prohibits use of the information for any purpose other than the purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, PRC, Sycom, Inc., and Logic Unlimited, Inc. are required to submit for EPA approval a security plan under which CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and its subcontractors until the above requirements have been fully satisfied. Records of information provided to this contractor and its subcontractors will be maintained by the Project Officer for this contract in OPP. All information supplied to PRC, Sycom, Inc., and Logic Unlimited, Inc. by EPA for use in connection with this contract will be returned to EPA when PRC, Sycom, Inc., and Logic Unlimited, Inc. have completed their work.

Dated: April 14, 1987.

**Susan H. Wayland,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 87-9073 Filed 4-21-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100038; FRL-3190-4]

## Dynamac Corporation; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

Dynamac Corporation has been awarded a contract to perform work for the EPA Office of Drinking Water, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. Contractor access to FIFRA and FFDCA CBI is authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2) respectively. This action will enable Dynamac Corporation to fulfill the obligations of the contract and serves to notify affected persons.

**DATE:** Dynamac Corporation will be given access to this information no sooner than April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-03-3417, Dynamac Corporation will provide technical support to EPA's Office of Drinking Water in the development of drinking water criteria documents and health advisory documents. This contract involves no subcontractors.

The Office of Drinking Water and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract.

These evaluations may be used in subsequent regulatory decisions under FIFRA.

| | |
|---|---|
| Acifluorofen | KDB |
| Alachlor | Endothall |
| Aldicarb | Fenamiphos |
| Ametryn | Fluometuron |
| Ammonium sulfamate | Fonofos |
| Atrazine | Glyphosate |
| Baygon | Hexazinone |
| Bentazon | Maleic hydrazide |
| Bromacil | MCPA |
| Butylate | Methomyl |
| Carbaryl | Methyl parathion |
| Carbofuran | Metolachlor |
| Carboxin | Metribuzin |
| Chloramben | Nabam |
| Chlordane | Nitrate |
| Chlorothalonil | Oxamyl |
| Cyanazine | Paraquat |
| Cycloate | Pentachlorophenol |
| 2,4-D | Picloram |
| Dacthal | Prometon |
| Dalapon | Pronamide |
| DBCP | Propachlor |
| Diazinon | Propazine |
| Dicamba | Propham |
| 1,2-Dichloropropane | Simazine |
| Dieldrin | 2,4,5-T |
| Dimethrin | 2,4,5-TP |
| Dinoseb | Terbuthiuron |
| Diphenamid | Terbacil |
| Diquat | Terbufos |
| Disulfoton | Treflan |
| Diuron | |

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA

under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.301(h)(2), the contract with Dynamac Corporation prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, Dynamac Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Drinking Water. All information supplied to Dynamac Corporation by EPA for use in connection with this contract will be returned to EPA when Dynamac Corporation has completed its work.

Dated: April 8, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 87-8683 Filed 4-21-87; 8:45 am]

BILLING CODE 6560-50-M

---

**[OPP-36140; FRL-3190-1]**

## Inert Ingredients in Pesticide Products; Policy Statement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces certain policies designed to reduce the potential for adverse effects from the use of pesticide products containing toxic inert ingredients. The agency is encouraging the use of the least toxic inert ingredient available and requiring the development of data necessary to determine the conditions of safe use of products containing toxic inert ingredients. In support of these policies, the Agency has categorized inert ingredients according to toxicity. The Agency will (1) require data and labeling for inert ingredients which have been demonstrated to cause toxic effects; (2) in selected cases, pursue hearings to determine whether such inert ingredients should continue to be permitted in pesticide products; (3) require data on inert ingredients which are similar in chemical structure to chemicals with demonstrated toxic properties, or which have suggestive, but incomplete data on toxicity; and (4) subject all new inert ingredients, both for food and non-food uses, to a minimal data set and scientific review. The Agency is soliciting comments on these policies.

**EFFECTIVE DATE:** This policy is effective on April 22, 1987, subject to revision if comments received warrant such revision.

**ADDRESSES:** Three copies of written comments bearing the document control number [OPP-36140] should be submitted, by mail, to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket is available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Tina Levine, Hazard Evaluation Division (TS-769C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. (703-557-9307).

Office location and telephone number: Rm. 788E, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-9307).

**SUPPLEMENTARY INFORMATION:** EPA is issuing this notice announcing certain policies regarding inert ingredients in pesticide products.

### I. Definitions

1. *Active ingredient.* An ingredient which will prevent, destroy, repel, or mitigate any pest, or will alter the growth or maturation or other behavior of a plant, or cause the leaves or foliage to drop from a plant, or accelerate the drying of plant tissue.

2. *Inert ingredient.* For purposes of this policy, any intentionally added ingredient in a pesticide product which is not pesticidally active. This definition does not include impurities.

3. *Closely similar product.* A pesticide product that (1) contains the same active ingredient(s) in substantially the same percentage(s) as a product already registered, (2) is intended for the same use pattern as the already-registered product, and (3) contains no greater percentage of any List 1 or List 2 inert ingredient than the already-registered product.

### II. Background and Legal Authority

*A. The Federal Insecticide, Fungicide, and Rodenticide Act.*

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), requires that all pesticide products sold or distributed in commerce be registered by the Environmental Protection Agency (EPA or Agency). Prior to the establishment of EPA, the Department of Agriculture (USDA) registered pesticides under FIFRA. Most of the data requirements and regulatory activities under FIFRA have focused on the active ingredient. There are two exceptions to this general policy: (1) A battery of acute toxicity tests on the pesticide formulation, which generally includes both active and inert ingredients, is routinely required for registration of an end-use product; (2) The Agency has imposed certain labeling requirements for hazardous inert ingredients (49 FR 37960, September 26, 1984).

*B. Federal Food, Drug, and Cosmetic Act*

In addition to its mandate under FIFRA, EPA has authority to regulate pesticide products under the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 of FFDCA authorizes EPA to establish tolerances or safe levels of pesticide residues in raw agricultural commodities; section 409 similarly authorizes EPA to issue food additive regulations for pesticide residues in processed foods. Prior to the establishment of the EPA, the Food and Drug Administration (FDA) had the responsibility for establishing tolerances and food additive regulations for pesticide residues.

The FDA has issued several notices explaining its policy with regard to regulation of inert ingredients in pesticides under the FFDCA. In 1961, FDA published a notice in the Federal Register stating that USDA had determined that each component of registered pesticide products, including

the inert ingredients, were pesticide chemicals and thus subject to the requirement of tolerances or exemption under FFDCA (26 FR 10640, November 14, 1961). In 1969, the FDA established a policy regarding data requirements and review procedures for clearance of inert ingredients (34 FR 6041, April 3, 1969). This notice set forth general toxicity data requirements and stated that residue data requirements would depend on the toxicity of the chemical. However, the policy allowed a less formal review process if FDA could conclude that the inert ingredient was generally recognized as safe for the stated purpose. Exemptions from the requirement of a tolerance for inert ingredients have generally occurred through the informal request procedure, rather than the formal petition process required for active ingredients. Inert ingredients exempt from the requirement of a tolerance are codified in 40 CFR 180.1001.

There are currently approximately 1,200 inert ingredients in pesticide formulations. About half of these have been cleared for food use under section 408 or 409 of FFDCA. Many of these chemicals had been approved by the FDA for non-pesticidal use as food additives, for example, as flavorings or in packaging, before they began being used in pesticide formulations. These chemicals were generally exempted from the requirement of a tolerance with little systematic review or screening by the EPA. Inert ingredients in products registered only for non-food uses also have received little scientific review.

### III. Development of Regulatory Policy for Inert Ingredients

Because of concern that some inert ingredients in pesticide products might cause adverse effects to humans or the environment, the Agency developed a draft strategy for the regulation of inert ingredients, which was reviewed by the FIFRA Scientific Advisory Panel and was made available to the public in Spring 1986. This **Federal Register** notice announces the policy of the Agency regarding inert ingredients in pesticide products and is based on the strategy.

EPA has divided the approximately 1,200 intentionally-added inert ingredients currently contained in pesticide products into four toxicity categories:

1. Inerts of toxicological concern (List 1).
2. Potentially toxic inerts/high priority for testing (List 2).
3. Inerts of unknown toxicity (List 3).
4. Inerts of minimal concern (List 4).

EPA has identified about 50 inert ingredients as being of significant toxicological concern. This list was assembled on the basis of known toxicity of the chemical; no consideration was given to the potential for exposure. The criteria used to place chemicals on List 1 were carcinogenicity, adverse reproductive effects, neurotoxicity or other chronic effects, or developmental toxicity (birth defects). These effects must have been demonstrated in laboratory or human studies and the data subject to peer review. The criteria also included documented ecological effects and the potential for bioaccumulation. These criteria and the list itself were reviewed by the FIFRA Scientific Advisory Panel. List 1, inerts of toxicological concern, is as follows:

LIST 1—INERTS OF TOXICOLOGICAL CONCERN

| CAS No | Chemical name |
|---|---|
| 62-53-3 | Aniline. |
| 1332-21-4 | Asbestos fiber. |
| 71-43-2 | Benzene. |
| 1332-21-9 | 1,4-Benzenediol. |
| 3068-88-0 | B-Butyrolactone. |
| 7440-43-9 | Cadmium compounds. |
| 75-15-0 | Carbon disulfide. |
| 56-23-5 | Carbon tetrachloride. |
| 108-90-7 | Chlorobenzene. |
| 67-66-3 | Chloroform. |
| 62-73-7 | DDVP. |
| 106-46-7 | *p*-Dichlorobenzene. |
| 117-87-7 | Di-ethyl hexyl phthalate (DEHP). |
| 57-14-7 | 1,1-Dimethyl hydrazine. |
| 540-73-8 | 1,2-Dimethyl hydrazine. |
| 534-52-1 | Dinitro-*o*-cresol. |
| 51-28-5 | Dinitrophenol. |
| 123-91-1 | Dioxane. |
| 106-89-8 | Epichlorhydrin. |
| 110-80-5 | Ethanol, 2-ethoxy (cellusolve). |
| 111-15-9 | Ethanol ethoxy acetate. |
| 96-45-7 | Ethylene thiourea. |
| 107-06-2 | Ethylene dichloride. |
| 109-86-4 | Ethylene glycol monomethyl ether; methyl cellosolve. |
| 140-88-5 | Ethyl acrylate. |
| 77-83-8 | Ethyl methyl glycidate. |
| 50-00-0 | Formaldehyde. |
| 70-30-4 | Hexachlorophene. |
| 110-54-3 | *n*-Hexane. |
| 302-01-2 | Hydrazine. |
| 78-59-1 | Isophorone. |
| 7439-92-1 | Pb Compounds. |
| 569-64-2 | Malachite Green. |
| 1191-80-6 | Mercury oleate. |
| 591-78-6 | Methyl *n*-butyl ketone. |
| 74-87-3 | Methyl chloride. |
| 75-09-2 | Methylene chloride. |
| 79-46-9 | 2-Nitropropane. |
| 25154-52-3 | Nonylphenol. |
| 30525-89-4 | Paraformaldehyde. |
| 87-86-5 | Pentachlorophenol. |
| 127-18-4 | Perchlorethylene (PERC). |
| 108-95-2 | Phenol. |
| 90-43-7 | *o*-Phenylphenol. |
| 78-87-5 | Propylene dichloride (1,2-dichloropropane). |
| 75-56-9 | Propylene oxide. |
| 8003-34-5 | Pyrethrins and pyrethroids. |
| 81-88-9 | Rhodamine B. |
| 10588-01-9 | Sodium dichromate. |
| 131-52-2 | Sodium pentachlorophenate. |
| 62-56-6 | Thiourea. |
| 26471-62-5 | Toluene diisocyanate. |
| 79-00-5 | 1,1,2-Trichloroethane. |
| 56-35-9 | Tributyl tin oxide. |
| 79-01-6 | Trichloroethylene. |
| 1330-78-5 | Tri-orthocresylphosphate (TOCP). |
| 78-30-8 | Tri-orthocresylphosphate (TOCP). |

EPA has further identified about 60 inert ingredients which the Agency believes are potentially toxic and should be assessed for effects of concern (List 2). Many of these inert ingredients are structurally similar to chemicals known to be toxic; some have data suggesting a basis for concern about the toxicity of the chemical. Most of the chemicals on List 2 have been designated for testing through the National Toxicology Program (NTP), the EPA Office of Toxic Substances (OTS) or other regulatory or government bodies. The FIFRA Scientific Advisory Panel has also reviewed this list. Because testing is ongoing for most of chemicals on List 2, it is expected to change periodically. It is the Agency's policy to have all additions, deletions or changes to List 1 or 2 reviewed by the FIFRA Scientific Advisory Panel. List 2, potentially toxic inerts/ high priority for testing, is as follows:

LIST 2—POTENTIALLY TOXIC INERTS/HIGH PRIORITY FOR TESTING

| CAS No. | Chemical name |
|---|---|
| 85-68-7 | Butyl benzyl phthalate. |
| 84-74-2 | Dibutyl phthalate. |
| 84-66-2 | Diethyl phthalate. |
| 131-11-3 | Dimethyl phthalate. |
| 117-84-0 | Dioctyl phthalate. |
| 95-49-8 | 2-Chlorotoluene. |
| 1319-77-3 | Cresol. |
| 95-48-7 | *o*-Cresol. |
| 106-44-5 | *p*-Cresol. |
| 108-39-4 | *m*-Cresol. |
| 108-94-1 | Cyclohexanone. |
| 95-50-1 | *o*-Dichlorobenzene. |
| 112-34-5 | Diethylene glycol mono butyl ether (butyl carbitol). |
| 111-90-0 | Diethylene glycol mono ethyl ether (carbitol). |
| 111-77-3 | Diethylene glycol mono methyl ether (methyl carbitol). |
| 34590-94-8 | Dipropylene glycol mono methyl ether. |
| 111-76-2 | 2-Butoxy-1-ethanol (ethylene glycol mono butyl ether). |
| 5131-66-8 | 1-Butoxy-2-propanol (1,2-propylene glycol-1-mono butyl ether). |
| 124-16-3 | 1-Butoxy ethoxy-2-propanol. |
| 107-98-2 | 1-Methoxy-2-propanol. |
| 31387-26-8 | Propylene glycol monobutyl ether. |
| 25498-49-1 | Tripropylene glycol mono methyl ether. |
| 577-11-7 | Dioctyl sodium sulfosuccinate. |
| 141-79-7 | Mesityl oxide. |
| 108-10-1 | Methyl isobutyl ketone. |
| 75-52-5 | Nitromethane. |
| 108-88-3 | Toluene. |
| 29385-43-1 | Tolyl triazole. |
| 95-14-7 | 1,2,3-Benzotriazole. |
| 120-32-1 | 2-Benzyl 4-chlorophenol. |
| 75-00-3 | Chloroethane. |
| 66-54-0 | *p*-Chloro-*m*-xylenol. |
| 97-23-4 | Dichlorophene. |
| 68-12-2 | Dimethyl formamide. |
| 100-41-4 | Ethyl benzene. |
| 149-30-4 | Mercaptobenzothiazole. |
| 74-83-9 | Methyl bromide. |
| 75-43-4 | Chlorodifluoromethane. |
| 75-43-4 | Dichlorofluoromethane. |
| 75-45-6 | Chlorodifluoromethane. |
| 75-37-6 | 1,1-Difluoroethane. |
| 75-68-3 | 1-Chloro-1,1-difluoroethane. |
| 25186-06-3 | Isopropyl phenols. |
| | Petroleum hydrocarbons. |
| 1330-20-7 | Xylene. |
| 100-02-7 | *p*-Nitrophenol. |
| 106-88-7 | Butylene oxide. |
| 79-24-3 | Nitroethane. |
| 75-05-8 | Acetonitrile. |
| 96-48-0 | gamma-Butyrolactone. |
| 71-55-6 | 1,1,1-Trichloroethane. |
| 102-71-6 | Triethanolamine. |
| 111-42-2 | Diethenolamine. |
| 97-88-1 | Butyl methacrylate. |
| 80-62-6 | Methyl methacrylate. |

LIST 2—POTENTIALLY TOXIC INERTS/HIGH PRIORITY FOR TESTING—Continued

| CAS No. | Chemical name |
|---|---|
| | Xylene-range aromatic solvents. |
| 95-82-9 | Dichloroaniline. |
| 95-76-1 | Dichloroaniline. |
| 626-43-7 | Dichloroaniline. |
| 554-00-7 | Dichloroaniline. |
| 608-27-5 | Dichloroaniline. |
| 608-31-1 | Dichloroaniline. |
| 101-84-8 | Diphenyl ether. |
| 76-13-1 | Trichlorotrifluoroethane. |
| 75-69-4 | Trichlorofluoromethane. |
| 75-71-8 | Dichlorodifluoromethane. |
| 79-14-2 | Dichlorotrifluoroethane. |

Inert ingredients were put on List 4 (minimal hazard or risk) if they were generally regarded as innocuous. These included inert ingredients such as cookie crumbs, corn cobs, and substances "generally recognized as safe (GRAS)" by the FDA (21 CFR Part 182). There are approximately 300 inert ingredients in this category.

An inert ingredient was placed on List 3 if there was no basis for listing it on any of the other three lists. There are approximately 800 inert ingredients in this category.

Lists 3 and 4 are not addressed further in this notice since the Agency will be taking no particular regulatory actions with respect to these inert ingredients at this time. Applications for exemptions from the requirement of tolerances for Lists 3 and 4 inert ingredients are discussed in unit VI.

These lists were developed to establish priorities for regulatory activities related to existing inert ingredients. The Agency intends to focus its initial regulatory efforts on the inerts of toxicological concern. For this reason, the current policy notice is most specific with regard to inert ingredients on List 1. As resources permit, EPA will extend its activities to the other inert ingredients.

## IV. Inerts of Toxicological Concern (List 1)

In order to reduce the potential for adverse effects to humans or the environment, it is the policy of the Agency to encourage the use in pesticide products of the least toxic inert ingredients available and to require development of the information necessary to determine the conditions under which various chemicals may be used safely as inert ingredients in pesticide products. In line with this policy, EPA has developed procedures for dealing with new and existing pesticide registrations containing inerts of toxicological concern. It should be noted that the Agency is currently engaged in a comprehensive review of various chlorinated solvents, several of which are on List 1 or List 2. The data gathering described in Section A.3. below will support that effort. As conclusions are made in the Solvents Project, the inerts policy with respect to those substances will be reviewed to see whether adjustments in status would be appropriate. In the meantime, chemicals under review in the Solvents Project are subject to the requirements described below.

### *A. Existing Registrations*

1. *Substitution.* Registrants are encouraged to substitute inert ingredients not included in List 1 or List 2 for inerts of toxicologic concern (List 1) now contained in their products. Registrants electing to substitute should submit a new Confidential Statement of Formula as a proposed amendment to the registration. The revised Confidential Statement of Formula should be sent to: Product Manager, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

2. *Labeling.* As an immediate step to inform users and the general public of the presence of an inert of toxicological concern, EPA is directing registrants of each product containing an inert ingredient on List 1 to submit applications (to the product manager at the above address) to amend their registrations to add the following statement to the label:

This product contains the toxic inert ingredient (*name of inert*).

The wording should be placed in close proximity to the ingredients statement in a type size comparable to other front panel text.

Registrants are required to submit the application not later than October 20, 1987. (At the top of each application, please write in bold letters "INERTS".) No pesticide product containing a List 1 inert ingredient may be released for shipment after October 20, 1988 unless the product bears an amended label which complies with the provisions listed above. EPA may initiate cancellation proceedings under section 6(b)(1) of FIFRA for any product registrations containing a List 1 inert ingredient for which an amended label is not submitted in a timely fashion.

3. *Data Requirements.* In addition, any registrant who retains an inert of toxicologic concern in his or her product(s) will be subject to data call-in under section 3(c)(2)(B) of FIFRA. The data requirements will take into consideration the chemical's existing data base and the product's use pattern. Because of the demonstrated biological activity of chemicals on List 1, EPA may require as much data as would be required by 40 CFR Part 158 for an active ingredient. For many of these inert ingredients, adequate toxicity data exist, but additional exposure data would be required. In addition, data on environmental fate, ecological effects and residue chemistry may be required. The Agency intends to issue data call-in letters for this data beginning in April 1987.

4. *Hearings.* For certain inert ingredients on List 1, EPA intends to issue Nottces of Intent to Hold a Hearing under FIFRA section 6(b)(2). The purpose of these hearings will be to gather and present information on the risks and benefits of these inert ingredients. Based on the information presented during that hearing EPA will determine whether pesticide products containing a particular inert ingredient on List 1 should be cancelled, be subject to additional restrictions, or be allowed to continue their current registrations without change. Hearings conducted under FIFRA section 6(b)(2) are formal adjudicatory proceedings conducted according to the procedures in 40 CFR Part 164. Evidence is presented under oath by witnesses, who are subject to cross-examination. EPA has the burden of proceeding, but the ultimate burden of proof rests on registrants. Decisions are based only on evidence in the hearing record. The presiding Administrative Law Judge makes an Initial Decision which may be appealed to the Administrator who makes the Final Decision.

EPA expects to issue the first Notice of Intent to Hold a Hearing concerning an inert ingredient on List 1 in 1987. Subsequent notices may cover several List 1 inert ingredients with similar functions in pesticide formulations, e.g. solvents.

5. *Reclassifying Inert Ingredients As Active Ingredients.* The Agency has also identified several inerts of toxicological concern which are present in pesticide formulations to act against some pest, although not necessarily the pest targeted by the formulation. For example, an ingredient may be added to a rodent bait to repel flies. Although these ingredients have traditionally been designated as inert ingredients, EPA believes that they are actually active ingredients. These inert ingredients are formaldehyde, paraformaldehyde, hexachlorophene, 2,2-dichloro vinyl dimethyl phosphate, and the pyrethins/pyrethoids. EPA recently indicated its intent to reclassify formaldehyde and paraformaldehyde as active ingredients when used in pesticide products to prevent microbial damage to such products (52 FR 321,

BEST COPY AVAILABLE

January 5, 1987). EPA intends to similarly reclassify the other inert ingredients that prevent damage to pesticide formulations by pests as active ingredients in those formulations. This will simplify the process of obtaining data under FIFRA section 3(c)(2)(B).

6. *Revocation of Exemptions from Tolerance.* Any pesticide chemical used on food must have a tolerance or an exemption from the need for a tolerance. If the Agency determines that an inert of toxicological concern is no longer used in any food-use pesticide product, the exemption(s) from the need for a tolerance will be revoked for that inert ingredient. In addition, there may be circumstances in which EPA will replace existing exemptions with finite tolerances. Such action will be taken when the data gathered through the data call-in activities on inerts of toxicological concern enable the Agency to establish a finite tolerance.

*B. New Registrations*

In general, no new product that contains an inert of toxicological concern will be registered unless the product is closely similar to an existing product, as defined above. In limited circumstances, other products may be registered if review indicates that the risk of unreasonable adverse effects to humans or on the environment will be decreased by such a registration. As specified above, the label of any product containing such an inert ingredient will be required to indicate the presence of the inert ingredient. In addition, the product will be registered conditionally, subject to any data requirements that the Agency imposes on registrants of similar products.

**V. Potentially Toxic Inerts/High Priority for Testing**

The Agency's goal is to collect enough information on each inert ingredient on List 2 to determine whether further regulatory actions such as those for inerts on List 1 are necessary. In order to make this determination, the Agency is monitoring ongoing testing and gathering existing information on the potential adverse effects of these substances and will require additional testing from industry if it is needed.

*A. Existing Registrations*

EPA does not plan to issue any specific requirements in the near future for inert ingredients on List 2. If an inert ingredient is moved from List 2 to List 1, as new data or information becomes available, it will become subject to the requirements outlined in Section IV of this notice.

*B. New Registrations*

Closely similar products containing List 2 inert ingredients will continue to be registered.

Applications for registration of other products (e.g., new uses) containing inert ingredients that are on List 2 will be reviewed on a case-by-case basis. The Agency will consider the current weight-of-evidence with respect to the hazards posed as well as the potential for increased exposure when deciding whether the product meets the standard for registration.

**VI. New Inert Ingredients and New Food-Uses of Existing Inerts**

Any inert ingredient proposed for use in a pesticide product is considered to be a "new" inert ingredient if it is not currently identified as present in some approved pesticide formulation or has never been in a previously registered product. The minimal data generally required to evaluate the risks posed by the presence of a new inert ingredient in a pesticide product is a subset of the kinds of data typically required for active ingredients under 40 CFR Part 158. A description of the data required and guideline number as listed in 40 CFR Part 158 follows:

DATA REQUIRED TO EVALUATE RISKS POSED BY INERT INGREDIENTS IN PESTICIDE PRODUCTS

| | Guideline ref. number 40 CFR Part 158 |
|---|---|
| 1. KIND OF DATA REQUIRED: | |
| *Residue Chemistry:* | |
| Description of the pesticide or type of pesticide formulation(s) in which the inert will be used and the maximum percent by weight it can occupy in any formulation | |
| Description regarding the range of use patterns and range of concentrations of the inert material [1] | 171–3 |
| 2. KIND OF DATA REQUIRED: | |
| *Product Chemistry:* | |
| Description of the chemical or chemical mixture including structural formula(e) | 61–1 |
| Chemical Abstracts Service (CAS) Registry Number and file | 61–1 |
| Any technical bulletins available on the inert: | |
| Purpose of inert in pesticide formulation (i.e., solvent, emulsifier, etc.) | 61–1 |
| Discussion of possible toxic contaminants such as nitrosamines, polynuclear aromatics or dioxins | 61–3 |
| Batch analyses [2] | 62–1 |
| Density/specific gravity | 63–7 |
| Solubility | 63–8 |
| Vapor Pressure | 63–9 |
| Dissociation Constant | 63–10 |
| Octanol/Water Partition Coefficient | 63–11 |
| pH | 63–12 |
| *Toxicology:* | |
| 90-day feeding study: rodent and dog [3] | 82–1 |
| Subchronic dermal toxicity [4] | 82–2; 82–3 |
| Teratology study: rodent | 83–3 |
| Gene mutation test | 84–2 |
| Structural chromosomal aberration test | 84–2 |
| Other genotoxic effects | 84–4 |
| 3. KIND OF DATA REQUIRED: | |
| *Ecotoxicology:* [5] | |
| Acute 96-hr fish LC50 (preferable in rainbow trout or bluegill) | 72–1 |
| 48-hr LC50 or EC50 in daphnia | 72–2 |
| Avian oral LD50 (preferably in mallard or bobwhite) | 71–1 |
| 8-day avian dietary LC50 (preferable in mallard or bobwhite) | 71–2 |
| *Environmental Fate:* [5] | |
| Hydrolysis | 161–1 |
| Aerobic soil metabolism | 162–1 |
| Photodegradation in water | 161–2 |
| Photodegradation on soil | 161–3 |
| Koc or Kd | 163–1 |

[1] For use on food crops, include whether preharvest and/or postharvest application, or use on livestock, and any use restrictions.

[2] Batch analyses would be required only if there are possible contaminants of concern or if a mixture of variable composition is involved.

[3] If the inert is used in a food-use product, two subchronic feeding studies will be required.

[4] This study may be substituted for the 90-day feeding studies if only non-food use is proposed. The duration of a subchronic dermal study will depend on the potential duration and frequency of human exposure.

[5] Ecotoxicology and environmental fate testing are required only for formulations used outdoors.

In certain circumstances, EPA may waive some or all of these data requirements, for example, if the applicant can show that the proposed new use pattern of the inert ingredient will result in little or virtually no exposure. Data or use information

should address dietary, groundwater or applicator exposure, as appropriate. In gathering the data to be submitted to the Agency, the applicant should contact manufacturers, trade associations, etc., who may be able to assist in identifying appropriate data. As a minimum, applicants whose formulations contain new food-use inert ingredients should contact the FDA to obtain data and information on inert ingredients that may have approved food additive uses.

In addition to new inert ingredients, the data requirements and review process described above will be used to evaluate requests for additional exemptions from tolerances and changes in exemptions from tolerances of inerts already cleared for food-use and for exemptions from tolerances for existing inert ingredients not presently used on foods. The requirements outlined constitute our "base set" of data needs. If these studies indicate potential human health concerns or ecotoxicity, or potential groundwater contamination, further testing may be required to fully assess the risks and define acceptable uses.

**VII. Proprietary Inert Ingredients or Mixtures**

In the case of some products, the registrant is not aware of the identity of all of the inert ingredients. These products contain a substance (usually a combination of several inert ingredients) which is designed to perform a particular function in pesticide products (e.g., to act as a solvent or emulsifier) but which is sold to pesticide registrants under a trade name without disclosure of the substance's constituents. The seller of such a substance typically will claim that the identity of the constituents is a trade secret. Many of these "proprietary inerts" are marketed in this manner today. EPA has allowed pesticide products containing such substances to be registered if the applicant for registration first arranged to have the supplier of the proprietary inert substance disclose its formula to EPA.

This practice poses problems in administering the data call-in and labeling requirements contemplated by this Notice. For instance, EPA may know that a proprietary inert substance contains a List 1 inert ingredient, but may be unable to disclose that fact to the registrants of the products that contain the proprietary substance. EPA obviously cannot require these registrants to list the inert ingredient on their labels, or subject them to a data requirement, until the confidentiality problem is overcome. The approaches set forth below address this problem.

*A. Existing Registrations*

If a product with an existing registration contains an inert of toxicological concern comprising part of a proprietary inert ingredient or mixture, the Agency will request the formulator of the ingredient or mixture to divulge the presence and identity of the inert of toxicological concern to the registrant so that the registrant can label the product properly. If the producer of the proprietary ingredient or mixture refuses to divulge this information, the Agency will require the formulator to justify the claim of confidential business information under 40 CFR Part 2. If EPA reviews the claim and determines that it is without merit, EPA will so inform the formulator of the ingredient or mixture. Thereafter, following the appropriate procedures in EPA regulations, EPA may inform registrants that the proprietary inert ingredient or mixture contains a specific ingredient. If EPA does not decide to disallow a CBI claim, EPA may none-the-less require, under FIFRA section 3(c)(2)(B), that the registrant provide EPA with information showing that the registrant knows the composition of the proprietary inert ingredient or mixture. In either case, once EPA has determined that a registrant is aware that his product contains an inert of toxicological concern which is present in a proprietary inert ingredient or mixture used to formulate the product, EPA will inform the registrant of the regulatory actions being initiated because of the presence of that inert ingredient.

*B. Applications for New Registrations*

If a registrant submits an application for a new use or identical or a substantially similar use containing an inert of toxicological concern as part of a proprietary inert ingredient or mixture, the Agency will notify the registrant that the product cannot be registered based on the inert ingredients which are contained in the formulation. It will be the responsibility of the registrant to contact the formulator/supplier of any proprietary ingredient or mixtures used in the pesticide formulation and determine the identity of the inert(s) of toxicological concern present in the pesticide formulation.

*C. Registrant's Ongoing Responsibility for the Composition of Pesticide Products*

Units VII.A. and VII.B. discuss the procedures the Agency will employ to ensure that a registrant is aware that his product contains an inert of toxicological concern as part of a proprietary inert ingredient or mixture. With the exception of knowing about the presence of inerts of toxicological concern, the Agency does not at this time plan to require that an applicant know or find out the composition of a proprietary inert ingredient or mixture in order to obtain registration. An applicant is, however, required to ensure that the Agency is informed of its composition by its producer.

In addition, the Agency does hold a registrant responsible for the certified limits of each inert ingredient in his product, including those that are present as part of a proprietary inert ingredient or mixture. An applicant who does not know the composition of an inert ingredient or mixture, and cannot persuade his supplier or producer to disclose it, may certify to an upper and lower limit of the ingredient or mixture as introduced into his product. In this case, the fact that the applicant uses a proprietary inert ingredient or mixture whose composition is not known to him does not remove his responsibility for maintaining the composition of each of those inert ingredients within its certified limits and assuring that the composition of the proprietary inert ingredient(s) or mixture(s) he uses will not change over time. EPA believes that a contractual arrangement between formulator and supplier is the best way to ensure that the formulator can rely on the composition of the material received, short of having direct knowledge of its composition.

Dated: April 13, 1987.

**J.A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 87-8787 Filed 4-21-87; 8:45 am]

BILLING CODE [illegible]

---

[OPP-30278; FRL-3189-6]

## S.C. Johnson and Son, Inc.; Applications To Register Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to conditionally register pesticide products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATE:** Comment by May 20, 1987.

**ADDRESS:** By mail submit comments identified by the document control number [OPP-30278] and the file symbol to:

Information Services Section (TS–757C), Program Management and Support Division, Attn: Product Manager (PM) 17, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM #2, Attn: PM 17, Registration Division (TS–767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Arturo Castillo, PM 17, (703–557–2690).

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to conditionally register pesticide products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

**I. Products Involving a Changed Pattern**

1. File Symbol: 4822–EOU. Applicant: S.C. Johnson and Son, Inc., 1525 Howe St., Racine, WI 53403. Product name: Raid Fogger Plus. Insecticide. Active ingredient: Fenoxycarb ethyl [2-(p-phenoxyphenoxy)ethyl]carbamate 0.60%. Proposed classification/Use: General. For domestic indoor use to control roaches and fleas.

2. File Symbol: 4822–GNR. Applicant: S.C. Johnson and Son, Inc. Product name: Raid Roach and Ant Killer VI Plus. Insecticide. Active ingredient: Fenoxycarb 1.0%. Proposed classification/Use: General. For domestic indoor use to control roaches and ants.

3. File Symbol: 4822–GNE. Applicant: S.C. Johnson and Son, Inc. Product name: Raid Roach and Ant Killer III Plus. Insecticide. Active ingredient: Fenoxycarb 0.50%. Proposed classification/Use: General. For domestic indoor use to control roaches and ants.

4. File Symbol: 4822–EOO. Applicant S.C. Johnson and Son, Inc. Product name: Raid Roach and Ant Killer V Plus. Insecticide. Active ingredient: Fenoxycarb 1.0%. Proposed classification/Use: General. For domestic indoor use to control roaches and ants.

5. File Symbol: 4822–EOL. Applicant: S.C. Johnson and Son, Inc. Product name: Raid Fogger II Plus. Insecticide. Active ingredient: Fenoxycarb 1.20%. Proposed classification/Use: General. For domestic indoor use to control roaches and fleas.

6. File Symbol: 4822–EOI. Applicant: S.C. Johnson and Son, Inc., 1525 Howe St., Racine, WI 53403. Product name: Raid Roach and Ant Killer II Plus. Insecticide. Active ingredient: Fenoxycarb ethyl [2-(p-phenoxyphenoxy)ethyl]carbamate 0.5%. Proposed classification/Use: General. For domestic indoor use to control roaches and ants.

7. File Symbol: 4822–EOT. Applicant: S.C. Johnson and Son, Inc. Product name: Raid Roach and Ant Killer Plus. Insecticide. Active ingredient: Fenoxycarb 0.5%. Proposed classification/Use: General. For domestic indoor use to control roaches and ants.

8. File Symbol: 4822–EOA. Applicant: S.C. Johnson and Son, Inc. Product name: Raid Roach and Ant Killer IV Plus. Insecticide. Active ingredient: Fenoxycarb 1.0%. Proposed classification/Use: General. For domestic indoor use to control roaches and ants.

9. File Symbol: 4822–EOE. Applicant: S.C. Johnson and Son, Inc. Product name: Raid Flea Killer IV plus. Insecticide. Active ingredient: Fenoxycarb 0.15%. Proposed classification/Use: General. For domestic indoor use to control roaches and ants. Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

Dated: April 6, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–8781 Filed 4–21–87; 8:45 am]

BILLING CODE 6560–50–M

---

[SW H–FRL–3190–6]

## Study of Joint Use of Vehicles for Transportation of Hazardous and Nonhazardous Materials

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the availability of the report to Congress, Study of Joint Use of Vehicles for Transportation of Hazardous and Nonhazardous Materials. Section 118(j) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) directs the Administrator of EPA, in consultation with the Secretary of Transportation, to conduct a study of the problems associated with the joint use of vehicles for transportation of both hazardous materials and to submit a report, with recommendations, to Congress on the results of this study not later than 180 days after the enactment of SARA. This report satisfies this statutory mandate in SARA.

**ADDRESS:** Requests for copies of the report may be addressed to the U.S. Environmental Protection Agency, Public Information Center, PM 211B, Washington, DC 20460 or call (202) 646–6410. An additional source for availability is the U.S. Environmental Protection Agency, Center for Environmental Research Information, 26 West St. Clair St., Cincinnati, Ohio 45268; Tel (513) 569–7562.

**FOR FURTHER INFORMATION CONTACT:** Dr. K. Jack Kooyoomjian, Senior Project Officer, Response Standards and Criteria Branch, Emergency Division (WH–548B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline 1–800/424–9346; in the Washington, DC metropolitan area at 1–202/382–3000.

**Jack W. McGraw,**

*Deputy Administrator.*

[FR Doc. 87–9079 Filed 4–21–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-44019; FRL-3191-2]

## TSCA Chemical Testing; Receipt of Test Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces test data submissions received by EPA during January–March, 1987 from voluntary industry testing programs on certain chemical substances or groups of chemicals considered by EPA under section 4 of the Toxic Substances Control Act (TSCA).

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Telephone: (202) 554–1404.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires the EPA to issue a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a). In the **Federal Register** of June 30, 1986 (51 FR 23705), EPA issued procedures for entering into Enforceable Consent Agreements (ECAs) under section 4 of TSCA. Those procedures provide that EPA will follow the procedures specified in section 4(d) in providing notice of test data received pursuant to ECAs. In addition, EPA from time to time receives industry submissions of test data developed voluntarily (i.e., not under test rules or ECAs) on chemicals EPA has considered for testing under section 4. Although not required by section 4(d), EPA periodically issues notices of receipt of such test data.

### I. Test Data Submissions

This notice announces test data submissions received during January–March, 1987 from such industry testing programs.

Table 1 lists the chemicals by CAS No., date received, submitter, and study.

TABLE 1—VOLUNTARY TEST DATA SUBMISSIONS UNDER TSCA SECTION 4, 2ND QUARTER (JANUARY–MARCH) FY 87

| Chemical | CAS No. | Date Rec'd. | Submitter | Study |
|---|---|---|---|---|
| 2-Mercapto-benzothiazole | 149–30–4 | 3/26/87 | CMA [1] | Washing efficacy in removal from Fischer 344 male and female rats dosed topically. |
| 2-Mercapto-benzothiazole | 149–30–4 | 3/26/87 | CMA | Washing efficacy in removal from female guinea pigs dosed topically.a |
| 2-Mercapto-benzothiazole disulfide. | 120–78–5 | 3/26/87 | CMA | Washing efficacy in removal from Fischer 344 male and female rats dosed topically. |
| 2-Mercapto-benzothiazole disulfide. | 120–78–5 | 3/26/87 | CMA | Washing efficacy in removal from female guinea pigs dosed topically. |
| 2-Mercapto-benzothiazole | 149–30–4 | 3/26/87 | CMA | Disposition in Fischer 344 male and female rats dosed orally. |
| Calcium naphthenate | 61789–36–4 | 3/30/87 | Shell Oil Co. | Two-year cutaneous carcinogenicity study with oil additive SAP 011 and its carrier oil in female STCF mice. |
| Calcium naphthenate | 61789–36–4 | 3/30/87 | Shell Oil Co. | Sebaceous gland suppression test with SAP 011, an oil fraction, in female C3H mice. |

[1] Chemical Manufacturers Association.

EPA has established a public record for this quarterly receipt for data notice (docket number OPTS–44019). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, NE–G004, 401 M St., SW., Washington, D.C. 20460.

Dated: April 13, 1987.

**Joseph J. Merenda,**

*Director, Existing Chemical Assessment Division.*

[FR Doc. 87–9074 Filed 4–21–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Advisory Committee for the ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Main Committee Meeting

April 14, 1987.

The Space WARC Advisory Committee will convene its next meeting on May 21, 1987. The Committee will be reviewing the work of the working groups and will be considering recommendations and advice to the Commission concerning U.S. Proposals and U.S. participation within the intersessional work program of the International Telecommunication Union in preparation for the second session in 1988. Detail regarding the date, place and agenda of the meeting are provided below.

*Chairman:* Ronald F. Stowe (202) 383–6433.

*Vice Chairman:* Stephen E. Doyle (916) 355–6941.

*Date:* Thursday, May 21, 1987.

*Time:* 9:30 a.m.–4:00 p.m.

*Location:* Federal Communications Commission 1919 M Street, NW., Room 856, Washington, DC 20554.

Designated Federal Employee: Thomas S. Tycz (202) 632–3214.

*Agenda:* (1) Adoption of Agenda. (2) Approval of Minutes. (3) Status of ITU Preparatory Activities. (4) Working Group Reports. (5) Comments on Notice of Inquiry. (6) Recommendations for SWAC Report. (7) Date of Next Meeting. (8) Other Business. (9) Adjournment.

For additional information, please contact Thomas S. Tycz (202) 634–1860.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87–8969 Filed 4–21–87; 8:45 am]

BILLING CODE 6712–01–M

[Report No. W–14]

### Window Notice for the Filing of FM Broadcast Applications

Released: April 7, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period

beginning April 7, 1987, and ending May 15, 1987, inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

| CHANNEL–281 A | |
|---|---|
| Tucson | AZ |

| CHANNEL–288 A | |
|---|---|
| Columbus | OH |

| CHANNEL–287 A | |
|---|---|
| Pine Bluff | AR |
| Idyllwild | CA |
| Milford | DE |
| Gooding | ID |
| Shelbyville | KY |
| South Fort Polk | LA |
| Albuquerque | NM |
| Stillwater | NY |
| Cameron | TX |
| Narrows | VA |

| CHANNEL–287 C | |
|---|---|
| Altamont | OR |

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*
[FR Doc. 87–8970 Filed 4–21–87; 8:45 am]
BILLING CODE 6712–01–M

## Finding of Excessive Cable Television Leakage

April 3, 1987.

The Federal Communications Commission is concerned about the excessive levels of radio frequency (RF) energy leaking from cable television systems. Excessive leakage can cause harmful interference to communications users, including such safety-of-life services as aviation, police, and fire. An adequate monitoring and maintenance program by cable system operators can minimize the potential for interference problems.

FCC Rule § 76.605(a)(11) specifies the maximum permissible RF leakage limits. Section 76.601 of the Rules requires that cable television systems be designed, installed, and operated in a manner that fully complies with FCC Rules. To ensure compliance with the leakage limits, cable system operators should have a regular program for detecting, locating, and correcting leakage. Section 76.601(b)(1) requires most operators to make formal leakage measurements annually. In addition, §§ 76.614 and 76.619(d) require an ongoing program of monitoring for signal leakage at systems which utilize aviation frequencies. This program must substantially cover the entire plant at regular intervals. Excessive leaks which are detected are required to be documented and repaired.

The quantity and level of leaks found during our inspections indicate that many monitoring and maintenance programs are either inadequate or nonexistent. Cable television system operators are expected to make aggressive efforts to minimize leakage and comply with leakage limitations.

Failure to provide an adequate program of regular leakage monitoring and repair, as evidenced by system logs, leakage and other information found during an FCC inspection, may result in a monetory forfeiture for the willful violation of FCC monitoring rules. Leakage detected during an FCC inspection which could have been prevented, had an adequate monitoring program existed, may be also deemed willful and result in a forfeiture.

Questions concerning this matter should be directed to Ron Parver, Cable Television Branch, at 202–632–7480.

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*
[FR Doc. 87–8971 Filed 4–21–87; 8:45 am]
BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Offer To Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency (FEMA).

**ACTION:** Notice to Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy.

**SUMMARY:** The Federal Insurance Administration is publishing in this Notice the Financial Assistance/Subsidy Arrangement for 1987–1988 governing the duties and obligations of insurers participating in the Write-Your-Own Program (WYO) of the National Flood Insurance Program (NFIP). The Financial Assistance, Subsidy Arrangement sets forth the responsibilities of the Government to provide financial and technical assistance to the insurers. It is verbatim what is set out as Appendix A to 44 CFR Part 62 and is republished for information and convenience.

This Notice relates to the final rules which was published in the Federal Register on April 25, 1985, page 16236, regarding changes in the National Flood Insurance Program's regulations dealing with the issuance of flood insurance policies and the adjustment of claims and the establishment of a program of assistance to private sector property insurance companies in underwriting flood insurance using the Standard Flood Insurance Policy. In 1985, a copy of the offer to participate in the Arrangement was incorporated in a final rule and, this year, as in 1986, a copy of the offer is being published as a Notice.

**DATE:** The offer is effective upon publication in the Federal Register. The Financial Assistance/Subsidy Arrangement is effective with resect to flood insurance policies written under the Arrangement with an effective date of October 1, 1987, and later.

**SUPPLEMENTARY INFORMATION:** By way of background, the Federal Insurance Administration, working with insurance company executives, FEMA's Comptroller's Office and FEMA's Office of the Inspector General, addressed the operating and financial control procedures. The Statistical Plan, Accounting Procedures, and the Financial Control Plan were specifically referenced in the final rule, and, in addition, procedural manuals have been issued by the FIA in aid of implementation by the WYO companies of the procedures published in the final rule, such as the Flood Insurance Manual, Flood Insurance Adjuster's Manual, Rollover Procedures and FEMA Letter of Credit Procedures, all of which comprise the operating framework for the WYO Program.

The purposes of this Notice are:

(1) To offer, publicly, financial assistance to protect against underwriting losses resulting from floods on Standard Flood Insurance Policies written by private sector insurers;

(2) To provide a method by which the offer may be accepted; and

(3) To provide notice of the duties and obligations under the Financial Assistance/Subsidy Arrangement for the Arrangement year 1987–88.

### Method of Acceptance of Offer

1. Acceptance of this offer shall be by telegraphed or mailed notice of acceptance or signed Arrangement to the Administrator prior to midnight EDT September 30, 1987.

2. The telegraphed or mailed notice of acceptance to the Administrator must be authorized by an official of the insurance company who has the authority to enter into such arrangements.

3. A duly signed original copy of the Notice of Acceptance must be on filed with the Administrator by November 16, 1987.

4. If (1), (2) or (3) above are not satisfied, the acceptance will be considered by the Administrator as conditional and the commitment of NFIP resources to fulfill the "Undertaking of the Government" under Article IV of the Arrangement will take a lower priority than those needed to fulfill the requirement of the other participating insurance companies.

5. Send all acceptance of this offer to: FEMA, Attn: Federal Insurance Administrator, WYO Program, Washington, D.C. 20472.

**Offer to Provide Financial Assistance**

Pursuant to the provisions of the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128, Reorganization Plan No. 3 of 1978 (3 CFR 1978 Comp., p. 329), E.O. 12127, dated March 31, 1979 (3 CFR 1979 Comp., p. 376), Delegation of Authority to Federal Insurance Administration, subject to all regulations promulgated thereunder and, to the duties, obligations and rights set forth in the Financial Assistance/Subsidy Arrangement as printed below, the Federal Insurance Administrator, hereinafter referred to as the "Administrator", offers to enter into the Financial Assistance/Subsidy Arrangement with any individual private sector property insurance company. This offer is effective only in a state in which such private sector insurance company is licensed to engage in the business of property insurance.

*Federal Emergency Management Agency Federal Insurance Administration Financial Assistance/Subsidy Arrangement*

*Purpose:* To assist the Company in Underwriting Flood Insurance using the Standard Flood Insurance Policy.

*Accounting Date:* Pursuant to section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

*Effective Date:* October 1, 1987.

*Issued by:* Federal Emergency Management Agency, Federal Insurance Administration, Washington, D.C. 20472.

*Article I—Findings, Purpose, and Authority*

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the Program) carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, and Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

*Article II—Undertakings of the Company*

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including

1.1 Community Eligibility/Rating Criteria
1.2 Policyholder Eligibility Determination
1.3 Policy Issuance
1.4 Policy Endorsements
1.5 Policy Cancellations
1.6 Policy Correspondence
1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standars. The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Compahy, along with the National Flood Insurance Progam (NFIP) Write-Your-Own (WYO) Financial Control Plan, Claims Questions and Answer Manual, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written undere the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;

1.2 Endorsement Processing—7 days;

1.3 Cancellation Processing—15 days;

1.4 Correspondence, Simple and/or Status Inquiries—7 days;

1.5 Correspondence, Complex Inquiries—20 days;

1.6 Supply, Materials, and Manual Requests—7 days;

1.7 Claims Draft Processing—7 days from completion of file examination;

1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.

1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, *not* calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. (Reference: Article IV, Section A). The Company shall invest all funds held in the accounts established pursuant hereto, which funds are not necessary to meet current expenditures, in obligations of the United States Government. Such income as is derived from these investments shall be utilized to meet the obligations of the Company pursuant to flood insurance policies issued hereunder.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation.

*Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds*

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. below, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, Section E).

The Company shall be entitled to withhold 15.0% of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions and/or salaries of their insurance agents brokers, or other entities producing qualified flood insurance applications and other marketing expense.

With the agreement of the Administrator, the company may pay 3% of the company's written premium on the policies covered by this Arrangement for the right to obtain a reimbursement of state or municipal tax paid on the policies covered by this Arrangement.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Loss payments may include payments as a result of awards or judgments for punitive damages arising under the scope of this Arrangement and policies of flood insurance issued pursuant to this Arrangement provided that prompt notice of any claim for punitive damages is received by the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services, along with a copy of any material pertinent to the claim for punitive damages.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the letter of Credit established pursuant to Article IV.

*Article IV—Undertakings of the Government*

A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections (C), (D), and (E). Request for funds shall be only when net premium income and income derived from investments and disinvestments have been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursement by the recipient organization for allowable Letter of Credit costs.

Request for payment on letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This letter of Credit may be drawn against the Company for any of the following reasons:

1. payment of claim as described in Article III, Section D; and

2. refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

*Article V—Commencement and Termination*

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assitance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the Federal Register and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, or (2) require the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the service provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangements may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owned to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

*Article VI—Information and Annual Statements*

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

*Article VII—Cash Management and Accounting*

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums and interest income collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. At the end of each fiscal year, the Company shall remit to the FIA any funds in excess of those required to meet expenses for loss and loss adjustment. Such liabilities shall be defined as liabilities established for case reserves and reserves established for losses incurred but not reported, plus $5,000.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiumns collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which

shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this a arrangement shall be closed.

*Article VIII—Arbitration*

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's no-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissiable as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

*Article IX—Errors and Omissions*

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

*Article X—Officials Not to Benefit*

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may rise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

*Article XI—Offset*

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

*Article XII—Equal Opportunity*

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

*Article XIII—Restriction on Other Flood Insurance*

As a condition of entering into this Arrangement the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

*Article XIV—Access to Books and Records*

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination, shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

*Article XV—Compliance with Act and Regulations*

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

*Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured*

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this ____ day of _____, 1986.

_____

Company

The United States of America Federal Emergency Management Agency.

by _____

_____

(Title)

by _____

(Title)

**Notice of Acceptance for Federal Emergency Management Agency Federal Insurance Administration**

*Financial Assistance/Subsidy Arrangement (Arrangement)*

Whereas, in 1986, there was published a Notice of Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/ Subsidy Arrangement (hereafter, the Arrangement).

Whereas, the above cited Arrangement, as published in and reprinted from the Federal Register, does not provide sufficient space to type in the name of the company.

Whereas, the Arrangement may include several individual companies within a Company Group and the Arrangement as published in and reprinted from the Federal Register does not provide sufficient space to type in a list of companies.

Therefore, the parties hereby agree that this Notice of Acceptance form is incorporated into and is an integral part of the entire Arrangement and is substituted in place of the signature block contained in the Federal Register under Article XVI of the Arrangement. The above mentioned Arrangement is effective in the States in which the insurance company(ies) listed below is (are) duly licensed to engage in the business of property insurance:

_____
_____
_____
_____
_____
_____
_____
_____

In witness, whereof, the parties hereto have accepted the Arrangement on this ____ day of _____, ____.

The United States of America, Federal Emergency Management Agency.

By: _____
Title: _____
By: _____
Title: _____

*Exhibit A*

FEE SCHEDULE

| Range (by covered loss) | Fee |
|---|---|
| Erroneous assignment | $40.00 |
| CWP | 70.00 |
| $0.01 to $200.00 | 70.00 |
| $200.01 to $400.00 | [illegible] |
| $400.01 to $600.00 | 110.00 |
| $600.01 to $800.00 | 130.00 |
| $800.01 to $1,000.00 | 150.00 |
| $1,000.01 to $1,500.00 | 180.00 |
| $1,500.01 to $2,000.00 | [illegible] |
| $2,000.01 to $2,500.00 | [illegible] |
| $2,500.01 to $3,000.00 | [illegible] |

FEE SCHEDULE—Continued

| Range (by covered loss) | Fee |
|---|---|
| $3,000.01 to $3,500.00 | 260.00 |
| $3,500.01 to $4,000.00 | [illegible] |
| $4,000.01 to $4,500.00 | [illegible] |
| $4,500.01 to $5,000.00 | 320.00 |
| $5,000.01 to $6,000.00 | 350.00 |
| $6,000.01 to $7,000.00 | 370.00 |
| $7,000.01 to $8,000.00 | [illegible] |
| $8,000.01 to $9,000.00 | [illegible] |
| $9,000.01 to $10,000.00 | 420.00 |
| $10,000.01 to $15,000.00 | [illegible] |
| $15,000.01 to $20,000.00 | 490.00 |
| $20,000.01 to $25,000.00 | [illegible] |
| $25,000.01 to $30,000.00 | [illegible] |
| $30,000.01 to $35,000.00 | [illegible] |
| $35,000.01 to $40,000.00 | [illegible] |
| $40,000.01 to $45,000.00 | [illegible] |
| $45,000.01 to $50,000.00 | 670.00 |
| $50,000.01 to $75,000.00 | [illegible] |
| $75,000.01 to $100,000.00 | [illegible] |
| $100,000.01 to $125,000.00 | 1,100.00 |
| $125,000.01 to $150,000.00 | 1,250.00 |
| $150,000.01 to $175,000.00 | 1,400.00 |
| $175,000.01 to $200,000.00 | 1,550.00 |
| $200,000.01 to limits | 1,700.00 |

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $50) and limited to the amount of insurance purchased.

**Harold T. Duryee,**

*Federal Insurance Administrator.*

[FR Doc. 87-8990 Filed 4-21-87; 8:45 am]

BILLING CODE 4718-01-M

## FEDERAL RESERVE SYSTEM

### Citicorp; Proposal To Underwrite and Deal in Commercial Paper to a Limited Extent

Citicorp, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, Citicorp Securities, Inc. ("CSI"), in the activities of underwriting and dealing in, to a limited degree, commercial paper to the extent that such security is currently eligible for ownership, but not for underwriting or dealing in by member banks.

CSI currently underwrites and deals in securities that member banks are permitted to inderwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)).

CSI would conduct these activities on a nationwide basis from its offices located in New York, Houston, San Franscisco, Miami and Chicago.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding Company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously approved underwriting and dealing in commercial paper by a bank holding company in *The Chase Manhattan Corporation*, 73 Federal Reserve Bulletin ____ (Order dated March 18, 1987).

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices. Citicorp maintains that permitting it it engage in the proposed activities would be procompetitive and would establish a new source of income, increase liquidity of bank balance sheets, and thereby increase bank safety and soundness. In addition, Citicorp believes the proposal would not result in adverse effects.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Citibank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities.

Citicorp states that it would not be "engaged principally" in such activities on the basis of restrictions that would limit the amount of the proposed activity relative to the total business conducted by CSI relative to the total market in such activity.

Citicorp has committed that it will limit CSI's proposed activities with regard to commercial paper according to the same percentage limitations as contained in its application of March, 1985, regarding other investment securities (50 FR 20847). Under these limitation, Citicorp would limit the sales volume of CSI's proposed activities in the first year to no more than five percent of CSI's total underwriting and dealing in all securities (both eligible and ineligible), to no more than seven percent in the second year, and to no more than ten percent beginning in the third year. Citicorp further commits to limit CSI's underwriting of commercial paper in any calendar year to three

percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year and will limit CSI's dealing activities so that at no time will CSI hold for dealing commercial paper in excess of three percent of the total amount of commercial paper underwritten by all firms domestically during the previous calendar year.

Any request for a hearing on this application must comply with section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 8, 1987.

Board of Governors of the Federal Reserve System, April 20, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-9231 Filed 4-21-87; 8:56 am]

BILLING CODE 6210-01-M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Statement of Organization, Functions and Delegations of Authority; Public Health Service

Part H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to revise Chapter HA (Office of the Assistant Secretary for Health) and Chapter HC (Centers for Disease Control). This revision will reflect the transfer of the National Center for Health Statistics (NCHS) from the Office of the Assistant Secretary for Health (OASH) to the Centers for Disease Control (CDC). This transfer will strengthen the national Center for Health Statistics by placing it in an organization environment more closely related to its mission and orientation. Specifically:

(1) The statement of the Office of the Assistant Secretary for Health (42 FR 61318, December 2, 1977, as amended most recently at 52 FR 1972-73, January 16, 1987) is amended to delete the title and statement for the National Center for Health Statistics (HAS). The responsibilities of this Center are transferred to the Centers for Disease Control.

(2) The statement for the CDC (45 FR 67772-67776, October 14, 1980 and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 52 FR 6221, March 2, 1987) is amended to reflect the transfer of functions of the National Center for Health Statistics to the Centers for Disease Control.

**Office of the Assistant Secretary for Health**

*Under Part H, Chapter HA, Office of the Assistant Secretary for Health, HA-10, Organization,* delete item (11), NCHS (HAS). Renumber items (12) through (17) as items (11) through (16).

*Under Section HA-20, Functions,* delete the title and statement for the *National Center for Health Statistics (HAS).*

*Section HA-30, Delegations of Authority.* All delegations and redelegations of authority made to PHS officials which were in effect prior to the effective date of this reorganization shall continue in effect pending further redelegations.

**Centers for Disease Control**

*Under Part H, Chapter HC, Centers for Disease Control, Section HC-B, Organization and Functions,* after (HCR) add the following title and statement for the National Center for Health Statistics:

*National Center for Health Statistics (HCS).* (1) Provides national leadership in health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operations of the health services system: Health costs and expenditures, changes in the health status of people, and environmental, social and other health hazards; (3) administers the Cooperative Health Statistics System; (4) stimulates and conducts basic and applied research in health data systems and statistical methodology; (5) coordinates to the maximum extent feasible, the overall health statistical and epidemiological activities of the program and agencies of PHS and provides technical assistance in the planning, management and evaluation of statistical programs of PHS; (6) maintains operational liaison with statistical units of other health agencies, public and private, and provides technical assistance within the limitations of staff resources; (7) fosters research, consultation and training programs in international statistical activities; (8) participates in the development of national health statistics policy with other Federal agencies; (9) directs the environmental and epidemiological statistics programs of the Center; and (10) in its role as the Government's principal general-purpose health statistics organization as designated by the Office of Management and Budget, provides the Assistant Secretary for Health with consultation and advice on statistical matters.

Approval Date: April 2, 1987.

**Otis R. Bowen, M.D.,**

*Secretary.*

[FR Doc. 87-8993 Filed 4-21-87; 8:45 am]

BILLING CODE 4160-17-M

---

## National Institutes of Health

### National Center for Nursing Research; Advisory Council Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Center for Nursing Research Advisory Council, National Center for Nursing Research, June 8-9, 1987, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on June 8, from 9:00 am to recess. Agenda items to be discussed will include the Director's Report, the Federal Budget process, Human and Animal Welfare, Freedom of Information Act and the Privacy Act, and Nursing Research Priorities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code section 10(d)) of Pub. L. 92-463, the meeting will be closed to the public on June 9, 9:00 am to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be open on June 9, immediately following the review of applications, if any policy issues are raised which need further discussion.

Mrs. Ruth K. Aladj, Executive Secretary, National Center for Nursing Research Advisory Council, National Institutes of Health, Building 38A, Room B2E17, Bethesda, Maryland 20894, (301) 496-0523, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: April 13, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87-9048 Filed 4-21-87; 8:45 am]

BILLING CODE 4140-01-M

### National Cancer Institute; Meeting of the Cancer Research Manpower Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, June 18-19, 1987, Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on June 18 at 8:30 a.m. to 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 18 from 9 a.m. to recess and on June 19 at 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708) will provide summary of the meeting, roster of Committee members, and substantive program information upon request.

Ms. Cynthia Sewell, Executive Secretary, Westwood Building, 5333 Westbard Avenue, Room 838, Bethesda, Maryland 20892 (301/496-7721) will provide other information pertaining to the meeting.

Dated: April 13, 1987.

Betty J. Beveridge,

*Committee Management Office, NIH.*

[FR Doc. 87-9045 Filed 4-21-87; 8:45 am]

BILLING CODE 4140-01-M

### National Cancer Institute; Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, on April 29-May 1, 1987, Holiday Inn, Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on April 29 from 7:30 p.m. to 8 p.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 29 from approximately 8 p.m. to recess, and from 8 a.m. on April 30 to adjournment on May 1 for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Carolyn Strete, Executive Secretary, Cancer Control Grant Review Committee, National Cancer Institute, Westwood Building, Room 810, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2378) will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting due to the late arrival of 80 grant applications which are to be reviewed at the next National Cancer Advisory Board Meeting.

(Catalog of Federal Domestic Assistance number 13.399, project grants and contracts in cancer control, National Institutes of Health)

Dated: April 13, 1987.

Betty J. Beveridge,

*Committee Managment Officer, NIH.*

[FR Doc. 87-9042 Filed 4-21-87; 8:45 am]

BILLING CODE 4140-01-M

### National Cancer Institute; Meeting of the Frederick Cancer Research Facility Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, May 7-8, 1987, Building 549, Executive Board Room, at the Frederick Cancer Research Facility, Frederick, Maryland 21701.

The meeting will be open to the public on May 7 from 8:30 a.m. to 9:30 a.m. to discuss administrative matters, future meetings, and to hear the Deputy Director's report on items of interest to NCI and the Committee. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 7 from 9:30 a.m. to recess and on May 8 from 8:30 a.m. to adjournment for the review, discussion and evaluation of research being conducted by the Basic Research Program, Molecular Mechanisms of Carcinogenesis Laboratory. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301, 496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, Frederick Cancer Research Facility, Building 427, Frederick, Maryland 21701 (301, 698-1108) will provide substantive program information upon request.

Dated: April 13, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87-9043 Filed 4-21-87; 8:45 am]

BILLING CODE 4140-01-M

### National Institutes of Health; National Heart, Lung, and Blood Institute; Meeting of the Heart, Lung, and Blood Research Review Committee A

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 25-26, 1987, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 25 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood

Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 25, from approximately 10 a.m. until adjournment on June 26 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: April 13, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–9466 Filed 4–21–87; 8:45 am]

BILLING CODE 4140–01–M

---

## National Heart, Lung, and Blood Institute, Meeting of the Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on June 25, 1987, in Building 31, Conference Room 9.

This meeting will be open to the public on June 25 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) Pub. L. 92–463, the meeting will be closed to the public from approximately 10 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: April 13, 1987.

**Betty J. Beveridge,**

*NIH Committee Management Officer, NIH.*

[FR Doc. 87–9047 Filed 4–21–87; 8:45 am]

BILLING CODE 4140–01–M

---

## National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, June 16–18, 1987, at the Bethesda Ramada Hotel, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting will be open to the public on June 16, from 7:30 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 16 from approximately 8 p.m. to recess, and from 8 a.m. on June 17 to adjournment on June 18, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Therefore, this meeting is concerned with matters exempt from mandatory disclosure under secs. 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Norman S. Braveman, Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 5508, Bethesda, Maryland 20892, phone (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: April 13, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–9050 Filed 4–21–87; 8:45 am]

BILLING CODE 4140–01–M

---

## National Institute of Arthritis and Musculoskeletal and Skin Diseases; National Arthritis and Musculoskeletal and Skin Diseases Advisory Council Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on May 20 and 21, 1987, Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public May 20 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on May 20 from 1 p.m. to adjournment and again on May 21 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the

review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Acting Executive Secretary, National Arthritis and Musculoskeletal and Skin Disease Advistory Council, MIAMS, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (310) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: April 13, 1987.

Betty J. Beveridge,

*NIH, Committee Management Officer.*

[FR Doc. 87–9041 Filed 4–21–87; 8:45 am]

BILLING CODE 4140–01–M

## Institute of Dental Research; Meeting of the NIDR Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Special Grants Review Committee, National Institute of Dental Research, June 2–3, 1987, in the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815. The Committee will meet in the Palladian East Room on June 2 and in the Chase Room on June 3. The meeting will be open to the public from 9 a.m. to 9:30 a.m. on June 2 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 2 from 9:30 a.m. to recess and on June 3 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Rose Marie Petrucelli, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 519, Bethesda, MD 20892, (telephone 301/496–7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121–Diseases of the Teeth and Supporting Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13–122–Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845–Dental Research Institutes; National Institutes of Health)

Dated: April 13, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–9044 Filed 4–21–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of General Medical Sciences; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for June 1987.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately two hours at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301–496–7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Minority Access to Research Careers Review Committee.

Executive Secretary: Dr. Agnes Donahue, Room 949 Westwood Building, Telephone: 301–496–7585.

Dates of Meeting: June 11–12, 1987.

Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

Open: June 11, 1987, 8:30 a.m.–10:30 a.m.

Closed: June 11, 1987, 10:30 a.m.–5:00 p.m., June 12, 1987, 8:30 a.m.—adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Executive Secretary: Dr. Helen Sunshine, Room 950 Westwood Building, Telephone: 301–496–7125.

Dates of Meeting: June 15–16, 1987.

Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

Open: June 15, 1987, 8:30 a.m.–10:30 a.m.

Closed: June 15, 1987, 10:30 a.m.–5:00 p.m., June 16, 1987, 8:30 a.m.—adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Executive Secretary: Ms. Linda Engel, Room 950 Westwood Building, Telephone: 301–496–7125.

Dates of Meeting: June 19, 1987.

Place of Meeting: Building 31, Conference Room 4, National Institutes of Health, Bethesda, Maryland.

Open: June 19, 1987, 8:30 a.m.–10:30 a.m.

Closed: June 19, 1987, 10:30 a.m.—adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Executive Secretary: Dr. Rodney Ulane, Room 952 Westwood Building, Telephone: 301–496–4772.

Dates of Meeting: June 29–30, 1987.

Place of Meeting: Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

Open: June 29, 1987, 8:30 a.m.–10:30 a.m.

Closed: June 29, 1987, 10:30 a.m.–5:00 p.m., June 30, 1987, 8:30 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 13–859, 13–862, 13–863, 13–880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: April 13, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–9049 Filed 4–21–87; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[Utah U-55679 (UT-040-07-4212-13)]

### Realty Action; Exchange of Public and Private Lands in Iron County

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** It is proposed to exchange public lands in the E½, E½E½NW¼, Sec. 23 and E½, Sec. 26, T. 32 S., R. 13 W., SLB&M, totaling 680 acres, for non-federal land owned by Nelson and Melvin Bulloch in the N½, Sec. 28 and E½, Sec. 29, T. 33 S., R. 13 W., SLB&M, totaling 640 acres. The exchange of public lands is authorized by the provision of section 206 of the Federal Land Policy and Management Act of 1976 (43 USC 1716). The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

**SUMMARY:** The purpose of this exchange is to promote the orderly administration of public and private land. The lands exchanged are of equal value.

**DATE:** Comments should be submitted on or before June 8, 1987.

**ADDRESS:** Comments should be sent to: Area Manager, Beaver River Resource Area Office, Bureau of Land Management, 444 South Main, Suite C-3, Cedar City, Utah 84720.

**SUPPLEMENTARY INFORMATION:** The terms and conditions applicable to the exchange are:

1. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, (43 U.S.C. 945).

2. The Exchange will be of the surface estate only with all mineral rights being retained by the United States.

3. Title transfer will be subject to valid existing rights including oil and gas lease U-32809.

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any objections, this realty action notice will become the final determination of the Department of the Interior.

Dated: April 10, 1987.

**Morgan S. Jensen,**

*District Manager.*

[FR Doc. 87-8948 Filed 4-21-87; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-940-07-4520-12]

### Filing of Plats of Survey; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Filing of plats of survey.

**SUMMARY:** The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., April 13, 1987.

**Sixth Principal Meridian**

T. 46 N., R. 71 W.

The plat representing the dependent resurvey of a portion of the east boundary, the south and west boundaries, and the subdivisional lines, T. 46 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 457, was accepted April 1, 1987.

T. 47 N., R. 71 W.

The plat representing the dependent resurvey of the south and west boundaries, and the subdivisional lines, T. 47 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 458, was accepted April 1, 1987.

T. 26 N., R. 85 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of certain sections, T. 26 N., R. 85 W., Sixth Principal Meridian, Wyoming, Group No. 470, was accepted April 1, 1987.

T. 31 N., R. 95 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 31 N., R. 95 W., Sixth Principal Meridian, Wyoming, Group No. 467, was accepted April 1, 1987.

These surveys were executed to meet certain administrative needs of this Bureau.

T. 54 N., R. 85 W.

The plat representing the dependent resurvey of the subdivisional lines and the subdivision of section 29, and the survey of the subdivision of section 29, T. 54 N., R. 85 W., Sixth Principal Meridian, Wyoming, Group No. 454, was accepted April 1, 1987.

T. 31 N., R. 100 W.

The plat representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the subdivision of section 34, T. 31 N., R. 100 W., Sixth Principal Meridian, Wyoming, Group No. 494, was accepted April 1, 1987.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

**ADDRESS:** All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: April 14, 1987.

**Dennis D. Bland,**

*Acting Chief Cadastral Surveyor for Wyoming.*

[FR Doc. 87-8949 Filed 4-21-87; 8:45 am]

BILLING CODE 4310-22-M

[AA-250-07-4321-02]

### Draft Wild Horse and Burro Program Policy Statement; Availability

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of Draft Wild Horse and Burro Program Policy Statement.

**SUMMARY:** The purpose of this notice is to inform the public of the availability of a draft wild horse and burro program policy statement and to solicit public comment on the draft.

**DATE:** All comments must be received by May 22, 1987.

**DATES:** The mailing address to request a copy of the draft policy statement is as follows: Division of Wild Horses and Burror (250), Bureau of Land Management, Premier Building, Room 901, Washington, DC 20240.

**FOR FURTHER INFORMATION, CONTACT:** John S. Boyles Chief, Division of Wild Horses and Burros (250), Bureau of Land Management, Premier Building, Room 901, Washington, DC 20240; telephone (202) 653-9215.

**SUPPLEMENTARY INFORMATION:** The draft policy statement provides for more efficient administration of the Wild Free-Roaming Horse and Burro Act (Pub. L. 92-195, as amended) and ensures humane treatment of the animals. The draft incorporates the recommendations of the national Wild Horse and Burro Advisory Board, which was established by the Secretaries of the Interior and Agriculture in February 1986. The Board met four times to hear testimony and gather data on issues affecting the administration of Pub. L. 92-195. The Board presented its report to the Secretaries in December 1986.

Dated: April 15, 1987.

**Robert F. Burford,**

*Director, Bureau of Land Management.*

[FR Doc. 87-9015 Filed 4-21-87; 9:27 am]

BILLING CODE 4310-84-M

[CO-940-07-4220-11; C-020060]

## Colorado; Proposed Continuation of Withdrawal

April 9, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for the Deep Lake Recreation Area, be modified and the withdrawal be continued for 20 years insofar as it affects approximately 185 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

**DATE:** Comments should be received on or before July 21, 1987.

**ADDRESS:** Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 1611, dated April 4, 1958, for an indefinate period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. This order affects lands in T. 3 S., R. 88 W., Sixth Principal Meridian, Colorado. This area aggregates approximately 185.00 acres of land in the White River National Forest, Garfield County, Colorado.

The purpose of this withdrawal is for the administration and protection of the Deep Lake Recreation Area. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

**Evelyn W. Axelson,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-8951 Filed 4-21-87; 8:45 am]

BILLING CODE 4310-JB-M

---

[CO-940-07-4220-10; C-44206]

## Colorado; Cancellation of Withdrawal Application

April 13, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, has canceled withdrawal application C-44206. This notice will terminate the segregation imposed by this application; however, all of the lands remain closed to surface entry by other actions. The lands have been and remain open to mineral leasing.

**DATE:** April 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, (303) 236-1768.

Notice is hereby given that the segregation imposed by Notice of Proposed Withdrawal published September 4, 1986, 51 Fed. Reg. 31725, 31726 (1986) (FR Doc. 86-19897), as amended, is terminated and the case closed.

**Evelyn W. Axelson,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-8950 Filed 4-21-87; 8:45 am]

BILLING CODE 4310-JB-M

---

[NM-940-07-4220-11; NM NM 1180]

## New Mexico; Proposed Withdrawal Continuation; Correction

Notice of Proposed Withdrawal Continuation under Serial No. NM NM 1180 appearing as FR Doc. 81-11377 (filed April 14, 1981) April 15, 1981, issue of the **Federal Register** on pages 22042-22043, line 18 is modified to include "for a period of 25 years" following the word "entirety." Line 50 is corrected to read section 17, Tracts A and B HES 414 instead of section 17, Tracts A and B HES 44.

Dated: April 13, 1987.

**Dennis R. Erhart,**

*Acting Deputy State Director, Operations.*

[FR Doc. 87-8952 Filed 4-21-87; 8:45 am]

BILLING CODE 4310-FB-M

---

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properites being considered for listing in the National Register were received by the National Park Service before April 11, 1987. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 6, 1987.

**Beth Grosvenor,**

*Acting Chief of Registration, National Register.*

ALASKA

**Ketchikan Gateway**

Ketchikan, *First Lutheran Church*, 1200 Tongass Ave.

GEORGIA

**Clarke County**

Athens, *Young Women's Christian Association Complex*, 345-347 W. Hancock St.

HAWAII

**Hawaii County**

Paauhau, *Paauhau Plantation House*, Paauhau Mauka

**Honolulu County**

*Pohaku Lanai (50-OA-226)*
*Tsoong Nyee Society Cook House*
Honolulu, *Jones Austin, Residence*, 2230 Kamehameha Ave.

ILLINOIS

**Brown County**

Mount Sterling, *Mount Sterling Commercial Historic District*, Roughly bounded by Brown City.
Courthouse, Alley on East, South St., and Alley on West

MARYLAND

*Baltimore (Independent City)*
*Baltimore College of Dental Surgery*, 429-433 N. Eutaw St.

NEVADA

*Carson (Independent City)*
Kitzmeyer Furniture Factory, 319 N. Carson St.

NORTH CAROLINA

Bladen County

Elizabethtown vicinity, *Mt. Horeb Presbyterian Church and Cemetery*, SW corner of NC 87 and SR 1717 Jct.

OHIO

Franklin County

Lockbourne vicinity, *Landes, Samuel, House*, 590 Hibbs Rd.

Hamilton County

Cincinnati, *Laurel Homes Historic District*, Roughly bounded by Liberty and John Sts., Ezzard Charles Dr., and Linn St.

Harrison County

New Athens, *Franklin College Building No. 5*, Main St.

Lucas County

Toledo, *Valentine Theater Building*, 405–419 St. Clair and 402—412 Adams

Stark County

Massillon, *First National Bank Building*, 11 Lincoln Way W.

Wood County

Bowling Green, *Boom Town Historic District*, Roughly bounded by W. Wooster, S. Church, N. Grove, N. Maple, and Buttonwood

PUERTO RICO

San Juan County

Old San Juan, *US Post Office & Courthouse*, Block bounded by Calle San Justo, Calle Tanca, Calle Commercio, and Calle Recinto Sur

VIRGINIA

Amelia County

Chula vicinity, *Dykeland*, VA 632

Culpeper County

Rapidan, *Rapidan Historic District*, Jct. of VA 614, VA 615, and VA 673

Westmoreland County

Colonia Beach, *Bell House*, 821 Irving Ave.

WASHINGTON

Kittitas County

Ellensburg, *First Railroad Addition Historic District*, Roughly bounded by Tenth Ave., D St., Ninth Ave., and A St.

Thurston County

Olympia, *Funk House*, 1201 E. Olympia Ave.
Olympia, *LOTUS (motor vessels)*, Fiddlehead Marina, B. Dock
Olympia, *Reinhart—Young House*, 1106 E. Olympia Ave.
Olympia, *Rudkin, Frank House*, 1005 E. Olympia Ave.

[FR Doc. 87–9029 Filed 4–21–87; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–256]**

### Certain Cryogenic Ultramicrotome Apparatus and Components Thereof; Commission Decision Not To Review an Initial Determination Suspending the Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Nonreview of an initial determination granting complainant's motion for suspension of the investigation.

**SUMMARY:** The Commission has determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) granting complainant's motion to suspend the above-captioned investigation during the pendency of a patent reexamination proceeding in the United States Patent and Trademark Office (PTO).

**FOR FURTHER INFORMATION CONTACT:** Paul R. Bardos, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–523–0375.

**SUPPLEMENTARY INFORMATION:** On January 22, 1987, complainant Research and Manufacturing Co., Inc. filed a motion (Motion No. 256–10) to suspend the investigation during the pendency of a proceeding before the PTO to reexamine complainant's U.S. Letters Patent No. 3,680,420, the patent at issue in the investigation. Complainant filed a request for reexamination with the PTO on January 28, 1987. Respondents opposed the motion to suspend and the Commission investigative attorney supported it. On March 12, 1987, the presiding ALJ granted complainant's motion in an ID (Order No. 14) suspending the investigation pending the conclusion of reexamination proceedings in the PTO. No petitions for review or comments from Government agencies have been received. Authority for the Commission's action is contained in 19 U.S.C. 1337(b)(1) and 19 CFR 210.53–210.59.

Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: April 15, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–9017 Filed 4–21–87; 8:45 am]

BILLING CODE 7020-02-M

**[Investigation No. 337–TA–242]**

### Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Commission Decision to Review and Remand Initial Determination to the Administrative Law Judge

**AGENCY:** International Trade Commission.

**ACTION:** Review and remand of initial determination.

**SUMMARY:** The Commission has determined to review and remand to the presiding administrative law judge (ALJ) an initial determination (ID) terminating the above-captioned investigation as to respondents NEC Corporation and NEC Electronics Inc. (collectively referred to as NEC).

**FOR FURTHER INFORMATION CONTACT:** Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0480.

**SUPPLEMENTARY INFORMATION:** On March 12, 1986, the Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 U.S.C. 1337a in the unlawful importation into and sale in the United States of certain dynamic random access memories (DRAMs) by reason of alleged infringement of ten U.S. patents owned by complainant Texas Instruments Incorporated (TI). TI alleged that DRAMs imported and sold by NEC infringed certain claims of U.S. Letters Patent 4,533,500 (the '500 patent) and U.S. Letters Patent 4,593,843 (the '843 patent) owned by TI.

On January 6, 1987, respondent NEC filed a motion (Motion No. 242–301) pursuant to Commission rule 210.51(a), requesting termination of the investigation as to NEC. NEC argued that it should be terminated from the investigation because it is impliedly licensed under the '500 and '843 patents. On March 18, 1987, the presiding ALJ issued an ID granting NEC's motion for termination on the basis that NEC is impliedly licensed under the '500 and '843 patents. Complaints TI and the

Commission investigative attorneys filed petitions for review of the ID. Respondents NEC, Hitachi, Ltd. and Hitachi America, Ltd. filed replied to the petitions. No government agency comments were received.

Copies of the nonconfidential version of the ALJ's ID, the Commission's Action and Order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–523–0002.

Issued: April 17, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–9018 Filed 4–21–87; 8:45 am]

BILLING CODE 7020-02-M

---

[Investigation No. TA–203–17]

## Heavyweight Motorcycles; Import Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Institution of an investigation under section 203(i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2)) and scheduling of a hearing to be held in connection with the investigation.

---

**SUMMARY:** Following receipt of a request filed on April 9, 1987, by the United States Trade Representative under authority delegated by section 5(a) of Executive Order 11846, the United States International Trade Commission instituted investigation No. TA–203–17 under section 203(i)(2) of the Trade Act of 1974 for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the domestic industry concerned of the termination of import relief presently in effect with respect to motorcycles having engines with total piston displacement over 700 cubic centimeters, provided for in item 692.52 of the Tariff Schedules of the United States (TSUS). Such relief is provided for in Presidential Proclamation 5050 of April 15, 1983 (48 FR 16639) and is set forth in item 924.20 of the appendix to the TSUS. The relief is scheduled to terminate on April 16, 1988.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 206, Subparts A and D (19 CFR Part 206), and Part 201, Subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** George L. Deyman (202–523–0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

**SUPPLEMENTARY INFORMATION:**

### Participation in the Investigation

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than 21 days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

### Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

### Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 21, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 13, 1987. All persons desiring to appear at the hearing and make oral presentations, with the exception of public officials and persons not represented by counsel, should file prehearing briefs by May 14, 1987, and attend a prehearing conference to be held at 9:30 a.m. on May 15, 1987, in room 117 of the U.S. International Trade Commission Building. Posthearing briefs must be submitted not later than the close of business on May 27, 1987. Confidential material should be filed in accordance with the procedures described below.

Parties are encouraged to limit their testimony at the hearing to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

### Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 27, 1987. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

**Authority:** This investigation is being conducted under the authority of section 203 of the Trade Act of 1974. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: April 16, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-9020 Filed 4-21-87; 8:45 am]

BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

### Lodging of a Stipulation of Dismissal Pursuant to the Clean Water Act; Pottstown, PA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 3, 1987 a proposed Consent Decree in *United States, et al. v. Borough of Pottstown* Civil Action No. 84-6280, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed Consent Decree concerns the failure of the Borough of Pottstown to implement an approvable pretreatment program at the Pottstown Waste Water Treatment Plant prior to July 1, 1983. The proposed Consent Decree requires the defendant to pay a penalty of $25,000.00. Its pretreatment program has been approved since the filing of this complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al. v. Borough of Pottstown*, D.J. Ref. # 90-5-1-1-2467.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania, and at the Region III Office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

*Assistant Attorney General, Land and Natural Resources Division.*

FR Doc. 87-8998 Filed 4-21-87; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Air Act; Shenango Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 9, 1987, a proposed Amended Consent Decree in *United States v. Shenango Incorporated*, C.A. 80-1172, was lodged with the United States District Court for the Western District of Pennsylvania. The Motion for Civil Contempt and to Enforce Judgment filed by United States alleged violations of a Consent Decree entered on October 16, 1980, and of the Clean Air Act by Shenango due to its failure to comply with the capacity and mass emission standards for particulates set forth in the 1980 Consent Decree at its Neville Island, Pennsylvania facility.

The Amended Consent Decree requires Shenango to achieve and demonstrate compliance with the Clean Air Act emission standards at the Neville Island facility and to pay a civil penalty of $500,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Amended Consent Decree. Comments shall be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Shenango Incorporated*, DOJ ref. 90-2-3-1099.

The proposed Amended Consent Decree may be examined at the office of the United States Attorney, J. Alan Johnson, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Amended Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Amended Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $8.60 (10 cent a page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-8999 Filed 4-21-87; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### United States of America v. National Medical Enterprises, Inc., and NME Hospitals, Inc.; Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed consent decree and competitive impact statement have been filed with the United States District Court for the Eastern District of California, Fresno Division, in *United States v. National Medical Enterprises, Inc. and NME Hospitals, Inc.*, Civil Action No. CV-F-83-481.

The amended compliant filed by the Department of Justice in this case alleged that the acquisition by National Medical Enterprises, Inc. ("NME") of Modesto City Hospital of Medesto, California, violated section 7 of the Clayton Act, 15 U.S.C. 18, because it may substantially lessen competition in the provision of general acute care hospital services in the Modesto, California, area. In addition to NME, the amended complaint names as a defendant NME Hospitals, Inc., a wholly-owned subsidiary of NME. The proposed final judgment would prohibit NME and NME Hospitals, Inc., for a ten-day period after entry of the decree, from acquiring any general acute care hospital in the Modesto area market without prior approval from the Department of Justice or the Court.

Public comment on the proposed judgment is invited for a period of 60 days from the date of this notice. Comments should be addressed to John W. Clark, Chief, Professionals and Intellectual Property Section, Antitrust Division, United State Department of Justice, Room 9903, 555 4th Street, NW., Washington, DC 20001. All comments

will be filed with the Court and published in the **Federal Register.**

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

John F. Greaney,

Steven B. Kramer,

*U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001, Telephone: (202) 724–7425.*

**United States District Court for the Eastern District of California, Fresno Division**

[Civil No. CV–F–83–481–REC]

*United States of America,* Plaintiff, v. *National Medical Enterprises, Inc., and NME Hospitals, Inc.,* Defendants; *Stipulation and Order Regarding Proposed Final Judgment.*

Filed: April 8, 1987.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has now withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgement by serving notice thereof on defendants and by filing the notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment;

(3) In the event the plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding; and

(4) The parties agree that each will bear its own costs and attorneys fees that have been incurred in connection with this case and shall not seek any assessment of those costs or fees against the opposing party.

For Plaintiff United States of America:

Charles F. Rule,

*Acting Assistant Attorney General.*

Roger B. Andewelt,

John W. Clark,

Fred E. Haynes,

*Attorneys, U.S. Department of Justice.*

For Defendants National Medical Enterprises, Inc., and NME Hospitals, Inc.:

Robert Fabrikant, *Esquire,*

Richard A. Feinstein, *Esquire,*

*McKenna, Conner & Cuneo, 1575 I Street, NW, Washington, DC 20005.*

John F. Greaney,

Steven B. Kramer,

*Attorneys, United States Department of Justice, Washington, DC 20001 (202) 724–7425.*

*Order*

It is so Ordered this ——— day of ———, 1987.

Robert E. Coyle,

*United States District Judge.*

**United States District Court for the Eastern District of California, Fresno Division**

[Civil No. CV–F–83–481 REC]

*United States of America,* Plaintiff, v. *National Medical Enterprises, Inc., and NME Hospitals, Inc.,* Defendants; *Final Judgment.*

Filed: April 8, 1987.

Whereas, plaintiff, United States of America, having filed its Amended Complaint herein on February 21, 1984, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against, an admission by, or an estoppel against any party with respect to any such issue;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, without adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Amended Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "General acute care hospital" means any hospital facility with an organized medical staff which provides 24-hour acute inpatient care, including basic services (*e.g.*, medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy and dietary), secondary services (*e.g.*, obstetrics and pediatrics), or tertiary services (*e.g.*, certain kinds of cancer and cardiac care).

B. "Modesto area market" means all of Stanislaus County (including the City of Modesto), California, except for the communities of Turlock and Denair, and also includes the communities of Ripon and Escalon in southern San Joaquin County, California.

C. "NME" means defendant National Medical Enterprises, Inc.; each division, subsidiary, or affiliate thereof (including defendant NME Hospitals, Inc.); and each officer, director, employee, attorney, agent, or other person acting for or on behalf of NME.

D. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

III

A. The provisions of this Final Judgment shall apply to NME, its successors or assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. NME shall require as a condition of the sale or other disposition of Doctors Medical Center in Modesto, California that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. In the event that NME sells a division, subsidiary, or affiliate and that division, subsidiary, or affiliate does not own, operate, control, lease, or manage, directly or indirectly, any general acute care hospital in the Modesto area market, then said division, subsidiary, or affiliate shall, once sold, no longer be bound by this decree, and the entity purchasing said division, subsidiary, or affiliate shall not be bound by this decree simply as a result of said purchase.

IV

NME is hereby enjoined and restrained for a period of ten (10) years from the entry of this Final Judgment

BEST COPY AVAILABLE

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-9020 Filed 4-21-87; 8:45 am]

BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

### Lodging of a Stipulation of Dismissal Pursuant to the Clean Water Act; Pottstown, PA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 3, 1987 a proposed Consent Decree in *United States, et al. v. Borough of Pottstown* Civil Action No. 84-6280, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed Consent Decree concerns the failure of the Borough of Pottstown to implement an approvable pretreatment program at the Pottstown Waste Water Treatment Plant prior to July 1, 1983. The proposed Consent Decree requires the defendant to pay a penalty of $25,000.00. Its pretreatment program has been approved since the filing of this complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al. v. Borough of Pottstown*, D.J. Ref. # 90-5-1-1-2487.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania, and at the Region III Office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

*Assistant Attorney General, Land and Natural Resources Division.*

FR Doc. 87-8998 Filed 4-21-87; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Air Act; Shenango Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 9, 1987, a proposed Amended Consent Decree in *United States v. Shenango Incorporated*, C.A. 80-1172, was lodged with the United States District Court for the Western District of Pennsylvania. The Motion for Civil Contempt and to Enforce Judgment filed by United States alleged violations of a Consent Decree entered on October 16, 1980, and of the Clean Air Act by Shenango due to its failure to comply with the capacity and mass emission standards for particulates set forth in the 1980 Consent Decree at its Neville Island, Pennsylvania facility.

The Amended Consent Decree requires Shenango to achieve and demonstrate compliance with the Clean Air Act emission standards at the Neville Island facility and to pay a civil penalty of $500,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Amended Consent Decree. Comments shall be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Shenango Incorporated*, DOJ ref. 90-2-3-1099.

The proposed Amended Consent Decree may be examined at the office of the United States Attorney, J. Alan Johnson, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Amended Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Amended Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $8.60 (10 cent a page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-8999 Filed 4-21-87; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### United States of America v. National Medical Enterprises, Inc., and NME Hospitals, Inc.; Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed consent decree and competitive impact statement have been filed with the United States District Court for the Eastern District of California, Fresno Division, in *United States v. National Medical Enterprises, Inc. and NME Hospitals, Inc.*, Civil Action No. CV-F-83-481.

The amended compliant filed by the Department of Justice in this case alleged that the acquisition by National Medical Enterprises, Inc. ("NME") of Modesto City Hospital of Medesto, California, violated section 7 of the Clayton Act, 15 U.S.C. 18, because it may substantially lessen competition in the provision of general acute care hospital services in the Modesto, California, area. In addition to NME, the amended complaint names as a defendant NME Hospitals, Inc., a wholly-owned subsidiary of NME. The proposed final judgment would prohibit NME and NME Hospitals, Inc., for a ten-day period after entry of the decree, from acquiring any general acute care hospital in the Modesto area market without prior approval from the Department of Justice or the Court.

Public comment on the proposed judgment is invited for a period of 60 days from the date of this notice. Comments should be addressed to John W. Clark, Chief, Professionals and Intellectual Property Section, Antitrust Division, United State Department of Justice, Room 9903, 555 4th Street, NW., Washington, DC 20001. All comments

will be filed with the Court and published in the Federal Register.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

John F. Greaney,

Steven B. Kramer,

*U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001, Telephone: (202) 724-7425.*

**United States District Court for the Eastern District of California, Fresno Division**

[Civil No. CV-F-83-481-REC]

*United States of America,* Plaintiff, v. *National Medical Enterprises, Inc., and NME Hospitals, Inc.,* Defendants; *Stipulation and Order Regarding Proposed Final Judgment.*

Filed: April 8, 1987.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has now withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgement by serving notice thereof on defendants and by filing the notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment;

(3) In the event the plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding; and

(4) The parties agree that each will bear its own costs and attorneys fees that have been incurred in connection with this case and shall not seek any assessment of those costs or fees against the opposing party.

For Plaintiff United States of America:

Charles F. Rule,

*Acting Assistant Attorney General.*

Roger B. Andewelt,

John W. Clark,

Fred E. Haynes,

*Attorneys, U.S. Department of Justice.*

For Defendants National Medical Enterprises, Inc., and NME Hospitals, Inc.:

Robert Fabrikant, *Esquire,*

Richard A. Feinstein, *Esquire,*

*McKenna, Conner & Cuneo, 1575 I Street, NW, Washington, DC 20005.*

John F. Greaney,

Steven B. Kramer,

*Attorneys, United States Department of Justice, Washington, DC 20001 (202) 724-7425.*

*Order*

It is so Ordered this ——— day of ———, 1987.

Robert E. Coyle,

*United States District Judge.*

John F. Greaney,

Steven B. Kramer,

*U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001, Telephone: (202) 724-7425.*

**United States District Court for the Eastern District of California, Fresno Division**

[Civil No. CV-F-83-481 REC]

*United States of America,* Plaintiff, v. *National Medical Enterprises, Inc., and NME Hospitals, Inc.,* Defendants; *Final Judgment.*

Filed: April 8, 1987.

Whereas, plaintiff, United States of America, having filed its Amended Complaint herein on February 21, 1984, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against, an admission by, or an estoppel against any party with respect to any such issue;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, without adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Amended Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "General acute care hospital" means any hospital facility with an organized medical staff which provides 24-hour acute inpatient care, including basic services (*e.g.*, medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy and dietary), secondary services (*e.g.*, obstetrics and pediatrics), or tertiary services (*e.g.*, certain kinds of cancer and cardiac care).

B. "Modesto area market" means all of Stanislaus County (including the City of Modesto), California, except for the communities of Turlock and Denair, and also includes the communities of Ripon and Escalon in southern San Joaquin County, California.

C. "NME" means defendant National Medical Enterprises, Inc.; each division, subsidiary, or affiliate thereof (including defendant NME Hospitals, Inc.); and each officer, director, employee, attorney, agent, or other person acting for or on behalf of NME.

D. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

III

A. The provisions of this Final Judgment shall apply to NME, its successors or assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. NME shall require as a condition of the sale or other disposition of Doctors Medical Center in Modesto, California that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. In the event that NME sells a division, subsidiary, or affiliate and that division, subsidiary, or affiliate does not own, operate, control, lease, or manage, directly or indirectly, any general acute care hospital in the Modesto area market, then said division, subsidiary, or affiliate shall, once sold, no longer be bound by this decree, and the entity purchasing said division, subsidiary, or affiliate shall not be bound by this decree simply as a result of said purchase.

IV

NME is hereby enjoined and restrained for a period of ten (10) years from the entry of this Final Judgment

BEST COPY AVAILABLE

from, directly or indirectly, purchasing, consolidating with, acquiring control of, entering into a management contract with, or leasing any general acute care hospital located in the Modesto area market without the prior written consent of plaintiff, or if plaintiff objects, the approval of the Court upon NME's establishing, by a preponderance of the evidence, that the proposed transaction will not substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country. In the event that NME shall seek the approval of the Court for a proposed transaction, plaintiff shall, if requested by NME and if plaintiff in the exercise of its discretion considers the request to be reasonable, join with NME in expediting any and all proceedings by the Court in connection therewith.

V

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to NME made to its principal office, be permitted:

(1) Access during office hours of NME to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of NME, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of NME and without restraint of interference from it, to interview officers, employees and agents of NME, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge in the Antitrust Division, made to NME's principal office, NME shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section V. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VI

Jurisdication is retained by this Court for the purpose of enabling any of the parties of this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

VII

This Final Judgment will expire on the tenth anniversary of the date of its entry by the Court.

VIII

Entry of this Final Judgment is in the public interest.

---

*United States District Judge.*

Dated:

John F. Greaney,
Steven B. Kramer,
*U.S. Department of Justice, 555 4th Street, N.W., Washington, D.C. 20001, Telephone: (202) 724–6310.*

**United States District Court for the Eastern District of California Fresno Division**

[Civil No. CV–F–83–481 REC]

*United States of America*, Plaintiff, v. *National Medical Enterprises, Inc., and NME Hospitals, Inc.*, Defendants, *Competitive Impact Statement.*

Filed: April 8, 1987.

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relative to the proposed final judgment submitted for entry in this antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

On October 31, 1983, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, challenging the December 30, 1982 acquisition of Modesto City Hospital by National Medical Enterprises, Inc. ("NME"), through its subsidiary, NME Hospitals, Inc., as a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The complaint (which was later amended) charged that the effect of the acquisition may be substantially to lessen competition among providers of general acute care hospital services in the Modesto area market. The amended complaint sought defendants' divestiture of Modesto City Hospital and an injunction against any future acquisitions by defendants without prior notice to the government or approval by the Court.

The government and the defendants have stipulated that the proposed final judgment may be entered after compliance with the APPA. Entry of the proposed final judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify and enforce the proposed final judgment and to punish violations of it.

**II. Background Events**

On December 30, 1982, NME, through its subsidiary, NME Hospitals, Inc., acquired the assets of Modesto City Hospital, of Modesto, California, from Modesto City Hospital, Inc., for approximately $8 million in cash. At the time of the acquisition, NME also owned Doctors Medical Center, the largest hospital in Modesto. Before the acquisition, Doctors Medical Center directly competed with Modesto City Hospital in the provision of general acute care hospital services in the Modesto area market,[1] an area which includes Modesto and most of Stanislaus County, California (except the communities of Turlock and Denair), as well as the communities of Ripon and Escalon in southern San Joaquin County, California. This is the geographic area from which the hospitals attract the vast majority of their patients.

General acute care hospitals provide a broad range of integrated and interrelated health care services, unduplicated by any other health care provider. General acute care hospital services include most complex surgical and diagnostic procedures and many medical procedures requiring general anesthesia or continuous monitoring of a patient's condition. In many cases, these services can be safely, conveniently, and economically performed only in a hospital setting. These and other unique characteristics distinguish general acute care hospital services from services provided by other health care providers such as clinics, freestanding ambulatory surgery centers, and doctor's offices.

Prior to the defendants' acquisition of Modesto City Hospital, the Modesto area market for the provision of general

---

[1] Defendants have since announced plans to consolidate Modesto City Hospital with Doctors Medical Center. Under the consolidation, which is in progress, most of Modesto City Hospital's general acute care services will be transferred to Doctor's Medical Center and Modesto City Hospital will be converted to alternative uses (including ambulatory care, geriatric medicine, and an expansion of its adolescent chemical dependency unit).

acute care hospital services was highly concentrated. NME's Doctors Medical Center controlled approximately 34 percent of the licensed general acute care hospital beds, and Modesto City Hospital had approximately 14 percent of the licensed hospital beds. The remaining beds were divided among four other hospital competitors.

As a result of the December 30, 1982 acquisition of Modesto City Hospital by NME, Doctors Medical Center and Modesto City Hospital are under the common control of NME, and NME controls about half of the hospital beds in the Modesto area market. The Herfindahl-Hirschman Index (a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers) rose at least 900 points, from 2376 to at least 3336, a strong indication that the market became even more highly concentrated as a consequence of the acquisition.[2]

Based upon these and other facts, the amended complaint alleges that the effect of the defendants' acquisition of Modesto City Hospital may be substantially to lessen competition in the provision of general acute care hospital services in the Modesto area market in violation of section 7 of the Clayton Act.

The defendants have consented the government's case. They have argued that the relevant product market not only includes general acute care hospital services, but also services provided by other health care providers, such as doctors' offices and ambulatory surgery centers. They have also argued that the relevant geographic market for the provision of these services extends as far north as Stockton and as far south as Merced, California. In the defendants' view, the relevant market was unconcentrated before their acquisition of Modesto City Hospital, and the acquisition only nominally increased market concentration.

Trial of the case commended on July 9, 1985. On July 18, 1985, during the presentation of the government's evidence, the presiding judge announced his intention to dismiss the case with prejudice because of misconduct by government attorneys. The dismissal order was entered on July 24, 1985. *United States* v. *National medical Enterprises, Inc.*, 107 F.R.D. 628 (E.D. Cal. 1985). The government appealed, and on June 23, 1986, the Ninth Circuit vacated the dismissal of the action so that the district court judge could reconsider the motion to dismiss pursuant to certain standards set out in the opinion. *Id.*, 792 F.2d 906, 914 (9th Cir. 1986). The Ninth Circuit's opinion was amended on September 9, 1986, and in late 1986 the case was returned to the district court for further proceedings.

[2] As the amended complaint makes clear, the market shares of the hospitals can also be measured by annual inpatient days and by gross patient revenues. Under either measure, the post-merger HHI is in excess of 3800, and the change in the HHI exceeds 1100 points.

## III. Explanation of the Proposed Final Judgment

The government and the defendants have stipulated that the proposed final judgment may be entered by the Court at any time after compliance with the APPA. The proposed final judgment does not constitute an admission by any party as to any issue of fact or law. Under the provisions of section 2(e) of the APPA, entry of the proposed final judgment is conditioned upon a determination by the Court that it is in the public interest to do so.

The proposed final judgment enjoins the defendants, for a ten-year period after entry of the judgment, from acquiring any general acute care hospital in the Modesto area market without the prior approval of the Department of Justice or the Court. Acquisitions having a significant adverse effect on competition in this market can involve dollar amounts that do not require reporting under the premerger reporting program created by section 7A of the Clayton Act, 15 U.S.C. 18(a). The proposed final judgment eliminates the possibility that defendants could make such acquisitions without notice to the government for the next ten years. Should the defendants seek Court approval of such an acquisition, they must affirmatively demonstrate to the Court that the acquisition would not substantially lessen competition in any line of commerce in any section of the country.

The proposed judgment also requires the defendants to produce to the Department upon request certain information concerning their compliance with the judgment.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the final judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the final judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person wishing to comment upon the final judgment may within the statutory 60-day comment period submit written comments to John W. Clark, Chief, Professions & Intellectual Property Section, Antitrust Division, United States Department of Justice, 555 4th Street, NW., Room 9903, Washington, DC 20001. These comments and the Department's responses will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department, which remains free to withdraw its consent to the judgment at any time prior to entry. The judgment provides that the Court retains jurisdiction over this action and that any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

## VI. Alternatives to the Proposed Final Judgment

The government considered requiring the divestiture of an NME-owned hospital but was unable to achieve that result in negotiations, and it became apparent that divestiture could be accomplished only after as successful completion of the litigation.

Given the current posture of the case, it would not be possible to reach the merits of the government's case until the defendants' motion to dismiss for prosecutorial misconduct is resolved. This could involve protracted litigation, which would be costly and time consuming. Furthermore, once the motion to dismiss is resolved, resumption of the trial on the merits, together with possible appeals, would also require the expenditure of significant time and resouces in the face of substantial uncertainty that the government ultimately would succeed. The government had presented much of its case at the time the defendants made their motion to dismiss, and the course of the trial causes the government to be less confident of its ability to prevail on the merits than it was before the trial began. Even if the government were ultimately to prevail on the merits, there would be problems associated with obtaining adequate relief: as noted earlier, NME currently is in the process

of consolidating Modesto City Hospital with Doctors Medical Center, which when complete will make it less certain that two viable independently competing hospitals could be recreated. Therefore, we concluded that the proposed Final Judgment was the best alternative available to the government at the current time and that its entry is in the public interest.

**VII. Determinative Materials and Documents**

There are no materials or documents that the government considered determinative in formulating the proposed final judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated:

Respectively submitted,

John F. Greaney,

Steven B. Kramer,

*Attorneys, United States Department of Justice, Antitrust Division.*

[FR Doc. 87-9022 Filed 4-21-87; 8:45 am]

BILLING CODE 4410-01-M

## Immigration and Naturalization Service

**[Public Notice INS #1004-87]**

## Anti-Drug Abuse Act of 1986; Pilot Project

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of pilot project.

**SUMMARY:** Section 1751 of the Anti-Drug Abuse Act of 1986 amended certain provisions of the Immigration and Nationality Act, in order to provide greater enforcement authority to the Immigration and Nationalization Service (INS) as one of the federal agencies engaged in the fight against illegal narcotics trafficking. It also called for establishment of a four-city pilot project between the INS and local law enforcement agencies, to enhance automated information exchanges and operational support in locating and apprehending alien narcotics traffickers and drug offenders. This notice provides the public with information relating to that pilot project.

**FOR FURTHER INFORMATION CONTACT:** Walter D. Cadman, Acting Deputy Assistant Commissioner, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-2997.

**SUPPLEMENTARY INFORMATION:** On October 27, 1986 the President signed into law the Anti-Drug Abuse Act of 1986, Pub. L. 99-570. Subtitle M (section 1751) of that omnibus drug control Act, entitled the Narcotics Traffickers Deportation Act, amended sections 212(a)(23), 241(a)(11) and 287 of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(23), 1251(a)(11) and 1357, as follows:

—Section 212(a)(23) was amended to render excludable any alien convicted of a violation involving controlled substances, as defined in 21 U.S.C. 802.

—Section 241(a)(11) was amended to render deportable any alien convicted of a violation involving controlled substances, also as defined in 21 U.S.C. 802.

Section 287 was amended by addition of new subsection (d) to require that when the Immigration and Naturalization Service (INS) is expeditiously informed that an alien has been arrested for a violation of any law relating to controlled substances, the Service must promptly determine whether or not to issue a detainer.

Lastly, Subtitle M also provides for a one-year pilot project in four cities to be designated by the Attorney General, designed for enhanced automated exchange of information between INS and state and local agencies, and calls for increases in INS Investigations personnel. The statute states, in pertinent part,

"[The] Attorney General, acting through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities . . . The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens . . . At the end of the first year of the pilot program, the Attorney General shall provide for an evaluation of the effectiveness of the program and shall report to Congress on such evaluation and on whether the pilot program should be extended or expanded."

Notice is hereby given that, in accordance with the specifications laid out in the statutory language, the Commissioner of Immigration and Naturalization has determined that the pilot project mandated by law shall be carried out in the following four cities: New York, New York; Chicago, Illinois; Miami, Florida; and Los Angeles, California.

Dated: April 15, 1987.

**Alan C. Nelson,**

*Commissioner, Immigration and Naturalization.*

[FR Doc. 87-9001 Filed 4-21-87; 8:45 am]

BILLING CODE 4410-10-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 87-36]**

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Agency Report Forms Under OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittals letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by May 4, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** Ray S. Mayfield, NASA Agency Clearance Officer, Code NM, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

**Reports**

Title: Establishment of Merits of Continuing Research Projects.
OMB Number: 2700-0045.
Type of Request: Revision.
Frequency of Report: Annually.
Type of Respondent: Non-profit institutions.
Annual Responses: 1,529.
Annual Burden Hours: 30,580.

Abstract-Need/Uses: The continued applicability of sponsored researched to NASA's needs and the intrinsic merit of project effort is verified by requiring updated technical proposals for review and evaluation prior to re-authorizing on-going work.

Title: Property Management and Control.
OMB Number: 2700–0047.
Type of Request: Revision.
Frequency of Report: Annually.
Type of Respondent: Non-profit institutions.
Annual Responses:57,675.
Abstract-Need/Uses: Property records and reporting are required to ensure appropriate utilization, safekeeping, accountability and control for items provided by NASA or acquired with NASA-provided funds.
Title: Patents.
OMB Number: 2700–0048.
Type of Request: Revision.
Frequency of Report: Annually.
Annual Recordkeeping Hours: 27,684.
Abstract-Need/Uses: Reports and records regarding patents are required to comply with statutes and the OMB and NASA implementing regulations.
Title: Financial Monitoring and Control.
OMB Number: 2700–0049.
Type of Request: Revision.
Frequency of Report: Monthly.
Annual Recordkeeping Hours: 92,280.
Abstract-Need/Uses: Financial recordkeeping and reporting are required to ensure proper accountability for and use of NASA-provided funds.

**Ray S. Mayfield,**

*Director, Management Analysis Office.*

April 16, 1987.

[FR Doc. 87–8976 Filed 4–21–87; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships Section) to the National Council on the Arts will be held on May 6–8, 1987, from 9:00 a.m.—6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, May 8, from 11:00 a.m.–1:00 p.m. The topics for discussion will include guidelines revisions, policy issues and the Five-Year Planning Document.

The remaining sessions of this meeting on May 6–7, from 9:00 a.m.–6:00 p.m. and on May 8, from 9:00–11:00 a.m. and from 2:00 p.m.–6:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

April 15, 1987.

[FR Doc. 87–8995 Filed 4–21–87; 8:45 am]

BILLING CODE 7537-01-M

### Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Painting Fellowships Section) to the National Council on the Arts will be held on May 11–14, 1987, from 9:00 a.m.–6:00 p.m., and on May 15, 1987, from 9:00 a.m.–6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

April 15, 1987.

[FR Doc. 87–8996 Filed 4–21–87; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee on Severe Accidents; Postponement

The ACRS Subcommittee on Severe Accidents scheduled for April 23, 1987 has been postponed to May 28, 1987. Notice of this meeting was previously published Friday, April 3, 1987 (52 FR 10835).

Dated: April 16, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87–9067 Filed 4–21–87; 8:45 am]

BILLING CODE 7590-01-M

### Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

**I. Background**

Pursuant to Public Law (P. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on April 8, 1987 (52 FR 11352) through April 10, 1987.

**Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 5, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Arkansas Power and Light Co., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, AR**

*Date of amendment request:* December 12, 1986.

*Description of amendment request:* The amendment request identifies five proposed changes in the Arkansas Nuclear One, Unit 1, Technical Specifications as follows:

1. Change Table 4.1–3 at Item 1.c to delete the reference to footnote (11) and to delete the footnote itself. The item and the footnote relate to a requirement applicable from date of license through Cycle 2 only and therefore are no longer applicable.

2. Change Table 4.1–3 to delete Item 7 and associated footnote; change Specification 3.3.1 to replace paragraph *(G) with paragraph (G) as noted in this specification and delete the associated footnote; and change Specification 3.3.4 to replace paragraphs *(B) and *(C) as noted in this specification and delete the associated footnote. The changes relate to the requirements associated with the sodium thiosulfate system which was removed from service as authorized by a previous amendment to the license.

3. Change Figure 6.2–1, Management Organization Chart, and Figure 6.2–2, Functional Organization for Plant Operations, to reflect a reorganization of certain positions within the generation, transmission and engineering operations of Arkansas Power and Light Company.

4. Change Specification 3.6.2 to correct a misspelled word; add page numbers to pages 60, 61 and 66c which apparently were missing as a result of the licensee's duplication process; correct a misspelled word in Specification 4.4.1.1.2.a; correct designation "NRC" for "AEC" in Specification 4.4.1.1.2.d; change "integrated rate tests" to "integrated leak rate tests" in Specification 4.4.1.1.4; correct misspelled words in Specifications 4.4.1.2.1.a and 4.4.1.2.1.f; change Specification 4.8 to correct the title to read "Emergency Feedwater Pump Testing"; correct a misspelled word in the Bases of Specification 4.9; add appropriately "4.21 Sprinkler Systems" which apparently was removed in the licensee's duplication of the page 110t; correct a misspelled word in the Bases of Specification 4.26; correct the title in the Index of "Surveillance Standards" to read "Surveillance Requirements"; and correct a misspelled word in the Bases of Specification 2.

5. Change Specification 6.5.2.2 to allow the Safety Review Committee (SRC) to be composed of at least eight members in addition to the chairman. Changes identified above that are requested to correct errors which occurred only in the licensee's duplication process are not being considered by the Commission. The official Commission record is correct and therefore no changes are necessary.

*Basis for proposed no significant hazards consideration determination:* The Commission's staff has reviewed the licensee's no significant hazards consideration determinations and agrees with the licensee's analyses. All of the proposed changes are to remove ambiguities, remove outdated requirements, correct misspelled words, provide consistency within the Technical Specifications or to provide for administrative and organizational changes.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples in 51 FR 7750. An example of actions involving no significant hazards considerations is Example (i), an amendment involving a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed Technical Specification modifications correct typographical errors, provide consistency within the Technical Specifications and provide for administrative changes. The proposed changes fall within this example. Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

*Attorney for licensee:* Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Suite 700, Washington, DC 20036.

*NRC Project Director:* John F. Stolz.

**Carolina Power and Light Co., Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, SC**

*Date of amendment request:* March 9, 1987.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS). Section 6.0, Administrative Controls, for the H.B. Robinson Steam Electric Plant, Unit No. 2, to reflect organization changes.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power and Light Company has reviewed their proposed change in accordance with 10 CFR 50.92(c) and has determined that the proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the amendment changes the organizational structure to reflect organizational changes due to promotions and reorganization without any reduction in the level of management oversight of activities affecting plant safety. Furthermore, the redundant addition of a requirement for PNSC review to Section 6.5.1.6.6 provides further assurance that such reviews will be appropriately carried out.

(2) Create the possibility of a new or different kind of accident than previously evaluated because there are no physical plant modifications or changes involved.

(3) Involve a significant reduction in a margin of safety because organizational control and accountability are enhanced by these changes.

The NPC staff has reviewed the licensee's determination and agrees with their evaluation in this regard and, therefore, proposes to determine that the proposed change does not involve a significant hazards consideration.

*Local Public Document Room Location:* Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

*Attorney for licensee:* Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Lester S. Rubenstein.

**Commonwealth Edison Co., Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IL**

*Date of application for amendments:* March 5, 1987.

*Description of amendments request:* The amendments would revise the Technical Specifications to require that the High Energy Line Break isolation sensors be operable.

*Basis for proposed no significant hazards consideration determination:* The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. 10 CFR 50.92(c) states that a proposed amendment will involve no significant hazards considerations if the proposed amendments do not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

This amendment requests the addition of a new Technical Specification requiring high energy line break isolation sensors to be operable. These sensors automatically detect and isolate high energy line breaks in the Steam Generator Blowdown and Auxiliary Steam systems before auxiliary building environmental conditions exceed predicted values.

The proposed change does not involve a significant hazards consideration because operation of Byron Units 1 and 2 in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Requiring high energy line break isolation sensors to be operable does not affect the probability of an accident occurring. The consequences of an accident may actually be decreased. The sensors are designed to detect an increase in temperature due to a high energy line break and initiate a signal to close valves to isolate the source of high energy. This ensures that operation of equipment is not impacted by an adverse environment. Therefore, when equipment is required to be operable to respond to an accident condition, there is a greater probability it will be available.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The additional requirements imposed by the new Technical Specifications are designed to limit the potential consequences if an accident occurs. A new or different kind of accident is not created as a result.

3. Involve a significant reduction in the margin of safety. The addition of a new Technical Specification does not delete the requirements for operability of any other Technical Specification. Requiring high energy line break sensors to be operable prevents the potential for damage to safety-related systems and structures in the auxiliary building. This will not reduce the margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing examples in 48 FR 7751 of amendments that are considered not likely to involve a significant hazards consideration. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification; for example, a more stringent surveillance requirement. In this case, the proposed change is similar to Example (ii) since the change is providing additional limitations, restrictions, and controls not presently included in the Technical Specifications. The proposed amendment requires high energy line break isolation sensors to be operable. Currently the Technical Specifications do not have any requirements for high energy line break isolation sensors.

Therefore, based on the above considerations, the staff has determined that this change does not involve significant hazards consideration.

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

*Attorney to licensee:* Michael Miller, Isham, Lincoln and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

*NRC Project Director:* Steven A. Varga.

**Commonwealth Edison Co., Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, IL**

*Date of application for amendments:* December 4, 1986, supplemented March 3, 1987.

*Description of amendments request:* This proposed amendment clarifies Sections 3.5 and 4.5–Reactor Containment Fan Coolers following a recent modification to the reactor containment fan coolers (RCFC) and converts the entire section into the Standardized Technical Specification format.

In 1984, the heat exchangers for Zion's 10 RCFC's were exhibiting degradation of the service water cooling coil tubing. This tubing had degraded to the extent that through-wall holes had developed and leakage had occurred. The RCFSs design function is to remove heat from the containment atmosphere and transfer it to the service water system under both normal and accident conditions. The plugging of leaking coil tubes was compromising this function. Therefore, a modification was planned to replace the existing RCFC service water cooling coils with new coils of a design that would minimize the degradation phenomenon.

This replacement activity also was intended to upgrade the heat removal capability of the RCFC's by increasing both the heat transfer capabilities of the coil and the air flow rate. Associated with this effort was a goal to simplify the operation of the RCFC's. The simplification of the RCFC by the elimination of the "normal" air path would result in increased reliability.

The need for the two existing modes of operation, normal and accident, was reviewed as part of this effort. The results of this review demonstrated that the FSAR did not take any credit for any effects of containment cleanup from the existing moisture separators and HEPA filters. Thus, the existence of two separate air flow paths, and the resultant need to actuate the accident mode, was superfluous.

The resulting RCFC modification had the following elements:

—Replacement of the RCFC heat exchanger
—Removal of the moisture separators
—Removal of the HEPA filters
—Air control dampers permanently placed in the accident mode

Technical Specification 4.5.1.A.3 states: "Each fan cooler damper shall be stroked to the accident position and the position indication checked during each refueling outage." In addition, the basis for this section states; "The testing program is adequate to ensure continued availability of each of the fan coolers. It will further provide assurance of the continued operability of those fan cooler components used only during an accident situation."

Thus, the intent of the RCFC refueling surveillance is to ensure that the accident air flow path is available. A simple verification that the dampers remain in the accident position satisfies the surveillance requirements. Therefore, the placement of the control dampers in the accident position does not preclude the performance of the surveillance requirements of Section 4.5. This proposed amendment also alters the format of Sections 3.5 and 4.5 to the

Standardized Technical Specification format.

*Basis for proposed no significant hazards consideration determination:* 10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

In addition, the Commission has provided guidance in the practical application of these criteria by publishing eight examples in 51 FR 7751. The licensee provided the following discussion regarding the above three criteria:

*Criterion 1*

The proposed change, and the underlying modifications, have no effect on the operation of Zion's RCFCs. The physical modification has not affected the availability of the accident air flow path during accident conditions. Rather, the physical modification has resulted in the accident flow path being continuously available and increased heat removal capacity. Thus, the RCFCs are always available to perform their safety function.

Chapter 14 of the Zion FSAR assumes that three RCFCs are operating in the post-LOCA containment environment to remove energy from the containment atmosphere. The ability of Zion's RCFCs to perform this function has been increased as a result of this physical modification. The heat removal capability has been increased and the need to automatically transfer from the normal to the accident air flow path has been eliminated. Thus, the RCFCs ability to perform their designed function has not degraded.

The modification of the verb "stroke" to the verb "verify" merely clarifies the intent of the existing surveillance to ensure that the accident flow path is continuously available. The existing Technical Specification surveillance requires that the dampers be stroked and verified in their accident positions every refueling. There is no requirement to stroke the dampers back to the normal flow path position. Thus, the modification of the verb "stroke" to the verb "verify" merely formalizes the preexisting intent of the Zion Technical Specifications.

Based upon the above discussion, the proposed amendments do not involve a significant increase in the probability or consequences of any accident previously evaluated.

*Criterion 2*

The clarification of the existing intent of the Zion Technical Specifications and the alteration of the format of Section 3.5 and 4.5 has no effect on any of Zion's systems or structures. As discussed above, the RCFCs heat removal capability and reliability has been increased. These improvements do not result in any additional system interactions. Thus, there can be no potential for any previously unanalyzed malfunction or component failure.

The RCFCs are intended to remove energy from inside of the containment structure following a main steam line break or a loss of coolant accident. The analyses for these accidents contained in Zion's FSAR have been reviewed. Based upon the lack of system interaction discussed above, the underlying physical modification, will not affect any of the pre-existing accident sequences.

Thus, this proposed amendment does not create the possibility of a new or different kind of accident from those previously evaluated.

*Criterion 3*

The RCFCs will remain continuously available to perform their intended safety function. The physical modifications to the RCFCs have resulted in more efficient and reliable operation. Thus, the margin of safety has been increased as a result of the physical RCFC modification.

However, the proposed amendment only involves the clarification and reformatting of the Zion Technical Specifications which does not affect the safety function of the RCFCs. Since the RCFCs ability to remove energy from inside of the Zion containment structure will be unaltered by this administrative clarification, there will be no change in the margin of safety due to the proposed Technical Specification amendment.

This proposed change involves clarifying the existing intent and reformatting of Sections 3.5 and 4.5 of the existing Zion Technical Specifications. Thus, example (i) is applicable in this instance. Example (i) reads as follows:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specification, correction of an error, *or* a change in nomenclature.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92 and is similar to examples for which no significant hazards consideration exists, Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposed to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

*Attorney to licensee:* P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

*NRC Project Director:* Steven A. Varga

**Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of amendment request:* March 11, 1987.

*Description of amendment request:* The proposed amendment would revise the Technical Specifications to include station batteries nos. 23 and 24 under the existing provisions for station batteries nos. 21 and 22. Currently, the Technical Specifications numerically list only batteries nos. 21 and 22. The proposed change will add batteries nos. 23 and 24 wherever batteries nos. 21 and 22 are cited. The actual modification to the Indian Point 2 battery system was reviewed and accepted in NRC Safety Evaluation dated May 2, 1980. The modification eliminated the automatic transfer of loads between the original redundant safety-related batteries 21 and 22 by using additional batteries 23 and 24 as "swing buses." Each D.C. transfer circuit was provided transfer capability between batteries 21 and 22 and batteries 23 or 24. The modification was made to improve the reliability of the dc power system.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (March 6, 1986 51 FR 7751) of amendments that are not likely to involve a significant hazards consideration. The proposed change is enveloped by example (ii) which relates to changes that constitute an additional limitation, restriction or control not presently included in the Technical Specifications. The staff proposes to

determine that the amendment does not involve a signification hazards consideration since it adds restrictions not currently in theTechnical Specifications.

*Local Public Document Room location:* White Plains Public Library,100 Martine Avenue, White Plains, New York 10610.

*Attorney for licensee:* Brent L. Brandenburg, Esq., 4 Irving Place,New York, New York 10003.

*NRC Project Director:* Steven A. Varga.

**Duke Power Co., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, NC**

*Date of amendment request:* December 7, 1985, as supplemented March 16 and April 2, 1987.

*Description of amendment request:* In 51 FR 22234 dated June 18, 1986, the Commission noted that amendments had been proposed to change the Technical Specifications (TSs) to add some of the changes required by the NRC in its Generic Letter (GL) 85–09, "Technical Specifications for Generic Letter 83–28, Item 4.3." Item 4.3 of GL 83–28, "Required Actions Based on Generic Implication of Salem ATWS Events," established the requirement for automatic actuation of shunt trip attachments on reactor trip breakers. Additional requirements of GL 85–09 regarding items to be addressed by TSs were noted to be outside the scope of 51 FR 22234. The licensee's supplemental requests of March 16 and April 2, 1987 propose to add these additional requirements of GL 85–09 to the TSs.

Specifically, the additional requests would add the reactor trip bypass breaker to TS Table 4.3–1, "Reactor Trip System Instrumentation Surveillance Requirements." The associated table entries for operational test frequencies for the shunt trip and undervoltage trip attachments and applicable modes for which surveillance is required would be added by table notation consistent with GL 85–09. The Bases would be supplemented to address these surveillance requirements.

*Basis for proposed no significant hazards consideration determination:* The proposed changes to the Technical Specifications are submitted by the licensee in response to GL 85–09. In GL 85–09, the Commission notes its conclusion that:

> Technical Specification changes should be proposed by licensees to explicitly require independent testing of the undervoltage and shunt trip attachments during power operation and independent testing of the control room manual switch contacts during each refueling outage. The Commission also concluded that these tests are necessary to ensure reliable reactor trip breaker operation.

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards consideration by providing certain examples (51 FR 7744). One of the examples of an amendment likely to involve no significant hazards consideration relates to changes that (ii) constitute additional limitations, restrictions, or controls not presently included in the Technical Specifications. The proposed amendment of the Technical Specifications matches the example because it would impose additional surveillance requirements for the reactor trip breaker undervoltage and shunt trip attachments not presently included in the Technical Specifications.

The above proposed changes would require testing of the undervoltage and shunt trip attachments in accordance with Generic Letter 85–09 for required actions based on generic implications of the Salem ATWS event. Therefore the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

This notice supplements the proposed changes addressed in 51 FR 22234 and does not otherwise alter those previous proposed changes nor the Commission's prior proposed determination of no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC) Station, North Carolina 28223.

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

*NRC Project Director:* B.J. Youngblood.

**Florida Power Corp., et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, FL**

*Date of amendment request:* January 24, 1985, as supplemented February 17, 1987.

*Description of amendment request:* The amendment proposed by the licensee would make corrections to the Engineered Safety Features Actuation System (ESFAS) Instrumentation Specifications. The proposed corrections are:

1. Delete Items 5.d. (Tables 3.3–3 and 4.3–2) and 5.a.4 (Table 3.3–4), "Manual Initiation (HPI Isolation)" from "Reactor Building Isolation".

2. Reverse the inequality sign for Item 5.a.5 (Table 3.3–4) "RCS Pressure Low (HPI Isolation)" so that the setpoint must be greater than or equal to 1500 psig.

*Basis for proposed no sionificant hazards consideration determination:* The Commission's staff has determined that the proposed changes are administrative in that they correct errors and inconsistencies in the TSs.

With respect to the first item, the diverse containment isolation function or "HPI Isolation" was added to the plant and the Technical Specifications as a part of the NUREG–0578 Short Term Corrective Actions. At that time, the licensee mistakenly included the "Manual Initiation" functional group in the specification. A specific manual initiation circuit for the diverse containment isolation does not exist, therefore, this functional group should be deleted from the Technical Specifications.

The second item is simply a typing error. The inequality sign in item 5.a.5. (Table 3.3–4) "RCS Pressure Low (HPI Isolation)" must indicate a setpoint of greater than or equal to 1500 psig.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). One of the examples of actions involving no significant hazards considerations is example (i), a purely administrative change to the technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The licensee has determined, and the Commission's staff agrees, that the changes proposed in this amendment application are administrative, intended to correct errors and thus accurately reflect the actual plant configuration. Therefore, the Commission proposes to determine that the application for amendment involves no significant hazards considerations.

*Local Public Document Room location:* Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

*Attorney for licensee:* R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

*NRC Project Director:* John F. Stolz.

**Florida Power Corp., et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating. Plant, Citrus County, FL**

*Date of amendment request:* February 17, 1987.

*Description of amendment request:* This submittal would update air lock surveillance Technical Specifications (TSs) to reflect the exemption issued December 9, 1986, for Crystal River Unit

3 regarding the requirements of 10 CFR Part 50, Appendix J, III.D.2(b)(ii). The exemption allows an air lock seal test in place of the air lock pressure test while the reactor is in a shutdown or refueling mode. The amendment would change TS 4.6.1.3 so that the full pressure (Pa) test will continue to be performed at least once per six months; however, prior to ascending to Mode 4, the test will only be conducted if maintenance activities had been performed which could have affected air lock sealing capability.

The amendment would also delete a footnote to TS 4.6.1.3.a regarding 10 CFR Part 50, Appendix J.

*Basis for proposed no significant hazards consideration determination:* This change conforms to the latest revision of the Standard Technical Specifications (NUREG–0452). Substituting an air lock seal test for an air lock pressure test while the reactor is in a shutdown or refueling mode will have no significant impact upon plant operation or safety. Tests as described in the TSs will continue to demonstrate containment integrity.

Previous air lock leakage test results have been within limits as specified by TSs. Based on the history of the containment air locks and previous test results, it is unlikely that significant leakage would occur.

Based on the above, the licensee finds the amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because previous test results were satisfactory and significant leakage is not expected. Both air lock tests ensure containment integrity.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require a physical modification.

(3) Involve a significant reduction in the margin of safety. Any reduction in the margin of safety will be insignificant since air lock seal tests and air lock full pressure leakage tests will provide assurance that the air lock will not leak excessively nor affect containment integrity.

The Commission's staff has reviewed the licensee's no siqnificant hazards consideration findings and based on its review, agrees with the licensee's conclusions. Accordingly, the staff proposes to determine that the requested amendment does not involve a sqmificant hazards consideration.

*Local Public Document Room location:* Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

*Attorney for licensee:* R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

*NRC Project Director:* John F. Stolz.

**GPU Nuclear Corp., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA**

*Date of amendment request:* February 3, 1987.

*Description of amendment request:* A Condenser Vent Stack Continuous Iodine Sampler has been installed at TMI–1 to collect samples of radioiodine during normal plant operations. This modification will provide the capability to continuously sample the condenser offgas for radioactive gaseous iodine effluents which are released to the atmosphere through the vent stack during normal condenser air removal. Consequently, GPUN has submitted Technical Specification Change Request (TSCR) No. 157 to include additional sampling and analysis requirements in Table 4.22–2 which are commensurate with this new capability for continuous iodine sampling. Previous plant capabilities were limited to grab sampling on a monthly frequency. However, quantification of trace iodine by laboratory analysis will be better represented by continuous sampling. This will also facilitate annual dose calculations for unrestricted areas to ensure compliance with the limits of 10 CFR Part 20 and Appendix I to 10 CFR Part 50.

*Basis for proposed no significant hazards consideration determination:* A proposed amendment to an operating license does not involve significant hazards considerations if the three standards provided by the Commission in 10 CFR 50.92(c) are met. Pursuant to the provisions of 10 CFR 50.91, the licensee has provided an analysis of no significant hazards considerations using the Commission's standards. The Commission's staff has reviewed the licensee's proposed amendment and analysis. Each of the 10 CFR 50.92(c) standards is discussed below as it applies to the operation of TMI–1 in accordance with this TSCR for the Condenser Vent Stack Continuous Iodine Sampler:

Standard 1. The proposed amendment should not involve a significant increase in the probability or consequences of an accident previously evaluated because the release of radioiodines is unaffected. Continuous condenser offgas sampling has no effect the probability or consequences of radioiodine releases to the environment. The proposed amendment will only provide a means for more accurate quantification and assessment of these radioiodine releases due to condenser offgas system gaseous effluents. Adding this sampling system does not defeat nor degrade any existing features and functions of the condenser air removal system or offgas condenser radiation monitoring system.

Standard 2. The proposed amendment should not create the possibility of a new or different kind of accident from any accident previously evaluated. Condenser offgas sampling does not affect radioiodine releases, condenser operation, nor condenser radiation monitoring. The Condenser Vent Stack Continuous Iodine Sampler provides improved sampling capability, to allow for more accurate analysis of radioiodine releases during normal plant operation. During potential conditions of high radioiodine releases, continuous sampling is performed by another system.

Standard 3. The proposed amendment should not involve a significant reduction in a margin of safety because it requires additional sampling and analysis in the TSs vice reduced sampling. With the capability for continuous condenser offgas sampling, the ability to quantify any release of radioiodine to the environment from gaseous condenser effluents will be improved.

Accordingly, based upon the above discussion, the Commission proposes to determine that the application for amendment does not involve significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

*Attorney for licensee:* Ernest L. Blake, Jr., of Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz.

**GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA**

*Date of amendment request:* February 5, 1987.

*Description of amendment request:* The proposed amendment revises the operability requirements of the main steam safety valves (MSSVs). In particular, the amendment would allow operation at up to 5% full power with only two MSSVs per steam generator operable under a restrictive set of conditions. The restrictions placed on this operation include the following:

1. The plant must have been subcritical for at least one hour since power operation above 5% power.

2. The Reactor Protection System (RPSl overpower trip setpoint is set to less than 5% full power.

For power operation above 5% full power, the operability requirements for MSSVs are not being changed. The purpose of the amendment is to provide for efficient in-place testing of MSSVs following valve maintenance during Cold Shutdown or refueling.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if it meets three standards as described in 10 CFR 50.92. The Commission's staff has reviewed the licensee's analysis concerning no significant hazards considerations and finds their analysis satisfactory. Each standard is discussed in turn.

Standard 1. The proposed amendment should not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee reviewed the TMI–1 Final Safety Analysis Report (FSAR) Chapter 14 accidents that depend upon operation of the Main Steam Safety Valves (MSSVs) during some phase of the accident. Seventeen accidents were evaluated. The licensee's review indicates that operation under the proposed amendment will not impact the events analyzed in Chapter 14 of the TMI–1 FSAR and the TMI–1 Reload Reports remain bounding. Therefore, the proposed amendment to allow MSSV testing does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

Standard 2. The proposed amendment should not create the possibility of a new or different kind of accident from any accident previously evaluated. Results of various licensee analyses indicate that MSSV operability requirements are conservatively bounded by the existing safety analysis in all cases. The proposed amendment does not change the physical design, installation, operation or maintenance of individual safety valves. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3. The proposed amendment should not involve a significant reduction in a margin of safety. The licensee's analysis indicates that the total minimum valve relief capacity per steam generator using the two smallest safety valves per steam generator is almost twice the total calculated reactor coolant system heat generation under the conditions allowed by the amendment. By requiring two MSSVs per generator, the total required relief capacity is almost four times the potential heat load. Therefore, operation under the conditions of the amendment would not involve a significant reduction in a margin of safety.

Accordingly, based on the above discussions, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

*Attorney for licensee:* Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz.

**GPU Nuclear Corp., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA**

*Date of amendment request:* February 24, 1987.

*Description of amendment request:* A Chlorine Detecion System was installed at TMI–1 as a result of control room habitability studies conducted as part of NUREG–0737. The Chlorine Detection System provides an alarm and isolates the control room in the event of an onstie chlorine gas release. The purpose of this proposed amendment is to provide operability and surveillance requirements on this new system.

*Basis for proposed no significant hazards consideration determination:* In 10 CFR 50.92, the Commission provided three standards for when a proposed amendment does not involve a significant hazards consideration. The licensee's no significant hazards consideration, as presented in their February 24, 1987 application, is acceptable to the NRC staff. A discussion of each of the three standards follows:

1. Operation of the facility in accordance with the proposed amendment should not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The design basis event related to this change is an accidental release of chlorine. The proposed amendment has no effect on the probability of occurrence of this design basis event. The potential consequences of an accidental release of chlorine are reduced because the proposed change provides additional assurance that the Chlorine Detection System (CDS) is operable and therefore capable of promptly detecting the chlorine release and initiating isolation of the control building ventilation system.

2. Operation of the facility in accordance with the proposed amendment should not create the possibility of a new or different kind of accident from any accident previously evaluated. The design basis event related to this change is an accidental release of chlorine. The proposed amendment has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated. The proposed amendment provides additional assurance that the CDS is maintained within the limits determined by the existing safety analyses and is unrelated to the possibility of creating a new or different kind of accident.

3. Operation of the facility in accordance with the proposed amendment should not involve a significant reduction in a margin of safety. The proposed criteria constitute an additional control not presently included in the Technical Specifications. Therefore, the overall margin of safety for the plant is increased.

The Commission has provided guidelines pertaining to the application of the three standards by listing specific examples in 51 FR 7750. The proposed amendment is considered to be in the same category as example (ii) of amendments that are considered not likely to involve significant hazards consideration in that the proposed change constitutes an addition control not presently included in the Technical Specifications.

Accordingly, based on the above discussions, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

*Attorney for licensee:* Ernest L. Blake, Jr., of Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz.

**GPU Nuclear Corp., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA**

*Date of amendment request:* March 5, 1987.

*Description of amendment request:* This Technical Specification Change Request (TSCR) (i.e., amendment application) proposes to raise the reactor protection system (RPS) high reactor coolant system (RCS) pressure trip setpoint from 2300 psig to 2355 psig. Also, this TSCR proposes to raise the arming threshold for the anticipatory reactor trip on turbine trip from the current 20% reactor power level to a level of 45% reactor power. This TSCR also proposes to modify the language of the basis of the Technical Specification Safety Limit section concerning High RCS Pressure Trip in order to accurately reflect the history and meaning of the current limit.

When TMI–1 was originally licensed, the high pressure reactor trip setpoint was 2355 psig, and the plant did not have an anticipatory reactor trip on turbine trip. As a result of the TMI–2 accident, the Commission decided to reduce the challenges to and opening of the power operated relief valve (PORV). As documented in NUREG–0737, the Babcock and Wilcox (B&W) designed reactors were to satisfy the Commission's concerns by (1) lowering the reactor high pressure trip setpoint to 2300 psig, (2) raising the PORV setpoint from 2250 psig to 2450 psig, and (3) installing an anticipatory reactor trip on turbine trip when reactor power was greater than 20%. However, operational experience indicated that a number of unscheduled reactor trips were caused as a result of these changes. In order to correct this undesired result, the B&W Owners Group submitted two topical reports for NRC review. Specifically, BAW–1890, "Justification for Raising Setpoint for Reactor Trip on High Pressure", was submitted in September 1985, and BAW–1893, "Basis for Raising Arming Threshold for Anticipatory Reactor Trip on Turbine Trip", was submitted in October 1985. The NRC staff approved these topical reports by Safety Evaluations dated April 22, 1986, and April 25, 1986. The basic conclusion of the NPC Safety Evaluations was that the high pressure reactor trip could be returned to its original value and the arming threshold of the anticipatory reactor trip on turbine trip could be increased to 45% with negligible changes in the PORV opening frequency. The proposed amendment is based on these BAW Topical Reports.

*Basis for proposed no significant hazards consideration determination:* In 10 CFR 50.92, the Commission provided three criteria for determining if a proposed amendment involves no significant hazards considerations. Each standard is discussed as follows:

1. The proposed amendment should not involve a significant increase in the probability or consequences of an accident previously evaluated. The accident analysis contained in the TMI–1 Final Safety Analysis Report (FSAR) was conducted assuming a high RCS pressure trip setpoint of 2390 psig. This conservatively bounds the proposed trip setpoint of 2355 psig. The anticipatory reactor trip on turbine trip is an additional safety feature which was not factored into FSAR analyses. The purpose of this anticipatory reactor trip, as stated in NUREG–0737, is to reduce the frequency of challenges to the PORV. However, the PORV failing open is an event which has been analyzed and found acceptable in the TMI–1 FSAR. The consequences of this event are not affected by changing the anticipatory reactor trip setpoint. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. The proposed amendment should not create the possibility of a new or different kind of accident from any accident previously evaluated. The TMI–1 FSAR accident analyses bound the changes proposed in this amendment. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment should not involve a significant reduction in a margin of safety. The NRC Safety Evaluations for the B&W Topical Reports (BAW–1890 and BAW–1893) conclude that changing these setpoints still satisfies the requirements of NUREG–0737 regarding PORV openings and PORV caused small-break loss of coolant accidents. Similarly, the requirements on these matters embodied in IE Bulletin 79–05B are also met. Also, returning the high pressure reactor trip setpoint to 2355 psig and increasing the arming threshold of the anticipatory reactor trip on turbine trip will reduce the frequency of automatic trips and thus reduce the number of challenges to plant safety systems. Analysis indicates that these setpoint changes result in a negligible increase in PORV opening frequency. Thus, the proposed amendment does not result in a significant reduction in a margin of safety.

Based on the above discussion, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

*Attorney for licensee:* Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz.

**Mississippi Power & Light Co., System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MI**

*Date of amendment request:* March 19, 1987.

*Description of amendment request:* The amendment would make three changes to the Technical Specifications [TSs]: (1) Revise Figure 6.2.1–1, "Offsite Organization," to reflect changes in the management of licensing activities, emergency planning, plant engineering, and Unit 2 construction and to reflect the addition of the training and accounting groups which are now a part of the Unit Organization; (2) revise Figure 6.2.2–1, "Unit Organization," to reflect changes in management of the plant security group, records and office services, plant technical support, and industrial safety, and to reflect deletion of the position of Technical Assistant to the GGNS General Manager and transfer of the training and accounting groups to the Offsite Organization; and (3) change TS 6.5.2–2 to reflect a title change of one of the members of the Safety Review Committee (SRC).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The

licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

The proposed organizational changes would strengthen the GGNS Unit and Offsite Organizations. The changes would provide more efficient administration of plant licensing and engineering functions. Chain of command functions would be changed to ensure proper management attention to designated areas of responsibility. Consolidation of areas that have similar responsibilities would create a more effective organizational structure.

Change (1) consists of changes in the Offsite Organization. The Nuclear Licensing Department would be reorganized internally. The reorganization of the Nuclear Licensing Department would provide a more effective licensing management function, a more centralized focus on communications with the NRC and a stronger administrative function. The department would retain all the present responsibilities except for emergency planning. The emergency planning group would report to the Assistant to the Vice President, Nuclear Operations which would provide for higher level management attention to emergency planning activities. The Nuclear Plant Engineering Department would add two middle level managers to assist the Director in managing six of the seven engineering support groups in the Department. This change would provide for greater management attention and direction to the six engineering groups. A seventh group, Operational Analysis, would continue to report to the Director, thus continuing to provide independent assessments of operational problems to the Director. The responsibilities of the Nuclear Plant Engineering Department would not be changed. The transfer of the Training Superintendent and the Accountant (Controller) from the Unit Organization to the Offsite Organization would be made to facilitate the proper chain of command for the activities of these managers. The Training Superintendent is responsible for the training of all employees including radworkers and plant modification groups as well as Unit 1 operations staff. The Accountant's (Controller responsibilities include cost control activities for plant modifications in addition to cost control activities for plant operations. The Training Superintendent and Accountant will report to the Site Director, who will provide a higher level of management attention to these two functions. The GGNS Unit 2 construction manager would be downgraded from Manager to Superintendent to reflect the present suspension of construction activities at Unit 2.

Change (2) consists of changes in the Unit Organization. The Technical Support Superintendent, who presently reports to the Manager, Plant Operations, would report to the Manager, Plant Support. This transfer would allow the Manager, Plant Operations to concentrate his attention on daily operations and would more merely distribute the work load between the plant operations staff and the plant support staff. This transfer would also balance the membership on the Plant Safety Review Committee (PSRC) so that there would be three members representing plant operations functions and three members representing plant support functions. The Industrial Safety Coordinator would report to the Chemistry/Radiation Control Superintendent instead of the Manager Plant Operations to more closely coordinate industrial safety activities with radiation safety activities. The Office Services Superintendent would be downgraded to the position of a Supervisor reporting to the Records and Material Superintendent. This change would consolidate plant clerical functions thus increasing management effectiveness of these administrative activities. The Plant Security Supervisor would be upgraded to Superintendent without change in responsibilities or reporting level. The position of Technical Assistant to the GGNS General Manager would be deleted because necessary technical assistance is available from the managers of the three departments reporting to the General Manager—Manager, Plant Operation; Manager, Plant Maintenance; and Manager, Plant Support.

Change (3) is a change from the present title, Director, Nuclear Licensing and Safety, to Director, Nuclear Licensing. The word "Safety" would be deleted from the name of the department to more clearly differentiate nuclear licensing activities (which is primarily concerned with nuclear safety) from industrial safety activities.

The persons assigned to the newly created positions would meet qualification requirements specified in the Updated Final Safety Analysis Report. The proposed changes in Technical Specifications do not involve a change in plant hardware, plant operating procedures, or plant emergency procedures. The changes to the Offsite Organization would strengthen the licensing project management and administrative functions, provide a more effective management for Nuclear Plant Engineering support groups, place higher management attention on emergency planning, decrease unnecessary emphasis on Unit 2 construction and facilitate broader and higher level management attention to training and accounting activities. The changes to the Unit Organization would more equally distribute the workload between plant support staff and plant operations staff, consolidate record and clerical functions, increase the management position level for security activities, and delete an unnecessary technical assistant position. The PSRC composition would be unchanged by this reorganization but movement of the Technical Support Superintendent from the operations staff to the support staff would result in three members from each functional group on the PSRC. The proposed change to the SRC is only a change to the title of one of the members and represents no change to the membership of the body.

For the reasons cited above, the proposed organizational changes would not: Involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated; or involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that the proposed changes do not involve significant hazards considerations.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

*NRC Project Director:* Walter R. Butler.

**Northeast Nuclear Energy Co., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, CT**

*Date of amendment request:* February 13, 1987.

*Description of amendment request:* The proposed amendment would lower the Reactor Water Cleanup (RWCU) system isolation set point from the existing reactor vessel low water level to the low-low water level. The proposed change would allow the

RWCU system to operate with a reactor vessel water level that is four (4) feet lower than the level allowed by the existing Technical Specifications Table 3.7.1.

*Basis for proposed no significant hazards consideration determination:* The proposed change to the Technical Specifications involves the automatic action of the RWCU system isolation valves which close on a low reactor vessel water level signal. The low water level signal isolates lines that penetrate the reactor vessel and the primary containment, and connect to primary systems which are not required during isolation conditions and are located outside of the primary containment.

RWCU system isolation is achieved by closure of redundant valves in the RWCU 8 inch return pipe to the reactor vessel via the feedwater piping (closure of a check valve on backflow and closure of motor operated isolation valve 1–CU–28) coincident with closure of redundant motor operator isolation valves in the 8 inch pipe from the reactor vessel via the recirculation loop to the RWCU system (isolation valves 1–CU–2 and parallel valves 1–CU–3 and 1–CU–5).

RWCU system isolation on low level limits the amount of reactor coolant that can be released into the reactor building in the unlikely event of a gross RWCU system failure outside the containment drywell. Automatic closure of the RWCU system isolation valves following a postulated failure of the primary coolant boundary that lowers the reactor vessel water level to the trip setting, prevents increased radioactivity in the RWCU system and provides added assurance against uncontrolled releases of radioactivity from the RWCU system.

Operating experience has shown that reactor safety is compromised by too many unnecessary (non accident) isolations of the RWCU system. Pressure transients and resultant coolant void collapse following main steam isolation valve closure cause the indicated water level to decrease enough to activate the low water signal and isolate the RWCU system. The capability to remove excess reactor coolant through the RWCU system while the feedwater control system throttles back to satisfy the new reduced feedwater demand is thereby lost. Without this capability there is an increase in the risk that feedwater pumps will trip (because of the slow flow control response) due to high reactor vessel water level. Failure to restart increases the frequency of dependence on emergency safety features to provide core cooling.

Lowering the reactor vessel water level trip point for RWCU isolation could increase the amount of reactor coolant water released into the reactor building. (assuming a complete severence of the eight inch RWCU system piping outside drywell containment) before RWCU system isolation by the low low water level signal. However this increase is well within design basis accident values. For primary coolant system breaks inside the containment drywell increased delay in closure of the RWCU isolation valves caused by the change from low to low-low set point signal will have little effect, because the RWCU system is itself a closed system.

Lowering the reactor vessel water level set point, which causes RWCU system isolation, would eliminate unnecessary RWCU system isolations that can occur following certain events, e.g., main steam isolation valve (MSIV) closure with subsequent indicated reactor water level decrease due to the resulting pressure spike. The licensee stated in a March 13, 1987 telephone conversation that operating experience at Millstone Nuclear Power Station, Unit No. 1 (Millstone 1), has shown that reactor safety could be enhanced by eliminating unnecessary RWCU system isolation following reactor scram. In the past, reactor scrams have caused the indicated reactor vessel water level to decrease from the normal level to the low reactor vessel water level causing unnecessary isolation of the RWCU system . During this postscram recovery period the reactor feedwater control system throttles back to match the drastically reduced steam flow. If or when reactor vessel water level reaches the high level set point the feedwater pumps trip off. The proposed changes to Table 3.7.1 of the technical specifications make the RWCU system available during the postscram recovery period to bleed off excess water from the reactor vessel preventing loss of electric power to the main feedwater pumps because the feedwater could not be reduced fast enough to avoid the high water level pump trip signal. The proposed change reduces the risks associated with loss of feedwater, i.e., failure of the feedwater pump(s) to restart, and eliminates the time consuming tasks of a dedicated control room operator to restore the RWCU system to the operating condition. The net benefit of the proposed change is the increased ability to remove excess water from the reactor vessel via the RWCU system during scram recovery periods thereby preventing high reactor vessel water level which causes reactor feedwater pump trip.

The licensee has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety (i.e., safety-related) previously evaluated in the final safety analysis report have not been increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the final safety analysis report has not been created. There has not been a reduction in the margin of safety as defined in the basis for any technical specification.

Changes in plant response for RWCU system isolation time following a break in the RWCU system due to the proposed setpoint change are bounded by current accident analyses. Therefore, no new unanalyzed event is created. The consequences of the proposed change will not impact the margins of safety in that the fuel cladding and the primary containment and primary coolant pressure boundaries will remain intact. Although the proposed change could allow a greater quantity of core cooling water to escape into the reactor building following a RWCU system pipe break outside the drywell, the consequences are bounded by the design basis loss of coolant accident and the main steam line break.

The licensee has reviewed the proposed changes, in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, in that they are bounded by and do not affect the current design basis accident analyses.

2. Create the possibility of a new or different kind of accident from any previously analyzed. This is a setpoint change with no new associated failure modes. Changes in plant response due to the proposed setpoint change are bounded by current analyses. This change does not affect the function or operation of the RWCU system or the primary containment isolation system.

3. Involve a significant reduction in a margin of safety, in that this setpoint change does not affect the protective barriers and does not impact any safety limits.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750, March 6, 1986). The changes proposed herein

most closely resemble (but are not totally aligned with) example (vi), a change which may either result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. This is a setpoint change with no new associated failure modes.

Based on the information provided by the licensee, the staff proposes to determine that the licensee request involves no significant hazards consideration.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

*NRC Project Director:* Cecil O. Thomas.

**Pacific Gas and Electric Co., Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, CA**

*Date of amendment request:* June 10, 1986 (LAR 86–04).

*Description of amendment request:* The proposed amendment would revise the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 by adding the laundry/solid radwaste storage facility effluent release points to Technical Specification (TS) Figure 5.1–3, "Map Defining Unrestricted Areas and Site Boundary for Radioactive Gaseous and Liquid Effluents." The proposed change is in accordance with an NRC staff request. The laundry/solid radwaste storage facility includes two buildings, one with a solid radwaste storage area on the ground floor and a laundry on the second floor, and the other with only a solid radwaste storage area. As defined in the Standard Review Plan Sections 11.1 and 11.5, Regulatory Guide 1.21, and NUREG–0017 regarding gaseous source terms, the facility is not a major or potentially significant pathway for the release of radioactive material during normal reactor operation, including anticipated operational occurrences. Any airborne radioactive material present in this facility will be principally low-level activity in particulate form, which will be removed by HEPA filters before release to the atmosphere.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revision to the Technical Specifications will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because (a) the radwaste storage area below the laundry was constructed as part of the original plant design as outlined in FSAR Update Section 11.5.6 and (b) in accordance with 10 CFR 50.59, a safety evaluation was performed which determined that there were no unreviewed safety questions and that a Technical Specification change was not required for construction of the laundry and the second radwaste storage building. The facility does not significantly change the function of the laundry/solid radwaste storage facility to TS Figure 5.1–3 in Technical Specification 5.1.3 is an administrative change that provides additional information and does not affect the accident analysis.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the relocation of the laundry/solid radwaste storage provisions and proposed addition to the Technical Specifications do not significantly affect the laundry/solid waste storage functions as outlined in the FSAR or changes in parameters governing normal operation.

(3) Involve a significant reduction in the margin of safety because the proposed change to include the laundry/solid radwaste storage facility in the Technical Specifications only involves inclusion of additional information that is not presently included in the Technical Specifications.

Accordingly, the licensee has determined that the proposed change to the Technical Specifications involves no significant hazards considerations. The NRC staff has reviewed the proposed amendment and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that a no significant hazards consideration is involved in the proposed amendment.

*Local Public Document Room location:* California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

*Attorneys for licensee:* Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Project Director:* Steven A. Varga.

**Pacific Gas and Electric Co., Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, CA**

*Date of amendment request:* June 10, 1986 (LAR 86–05).

*Description of amendment request:* The proposed amendments would change the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to clarify the requirements of Table 4.11–2 "Radioactive Gaseous Waste Sampling and Analysis Program" for containment purge releases by specifying an appropriate lower limit of detection (LLD) for each type of analysis to be performed. The present type of activity analysis specified for principal gamma emitters with a $10^{-4}$ LLD would be replaced with the following expanded entry in the table: (1) Principal gamma emitters (noble gases) with a $10^{-4}$ LLD, (2) I–131 and I–133 with a $10^{-9}$ LLD, and (3) principal gamma emitters (particulate) with a $10^{-9}$ LLD. Also, the type of activity analysis for principal gamma emitters for the waste gas decay tank, the plant vent, and the steam generator blowdown tank vent would be clarified by adding "(noble gases)." The LLDs included in the revised Table 4.11–2 would permit detection at levels that are no more than 3% of the dose rate limits of Technical Specification 3/4.11.2.1.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves a no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes only clarify the requirements of Table 4.11–2 and do not affect the accident analysis.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed changes clarify the requirements of Table 4.11–2 and provide a more conservative containment purge LLD than that presently required for principal gamma emitters (particulates) and for I–131 and I–133.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards considerations.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that a no significant hazards consideration is involved in the proposed amendments.

*Local Public Document Room location:* California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

*Attorneys for licensee:* Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Project Director:* Steven A. Varga.

**Pacific Gas and Electric Co., Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, CA**

*Date of amendment request:* August 14, 1986 (LAR 86–09).

*Description of amendment request:* The proposed amendments would revise the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to change Technical Specification Figure 6.2–1, "Offsite Organization," Figure 6.2–2, "Plant Organization," and Technical Specifications 6.5.2 and 6.7 to reflect PG&E corporate and plant organizational changes and to change Technical Specification 6.5.2.9.a to specify that minutes of the General Office Nuclear Plant Review and Audit Committee (GONPRAC) meetings will be forwarded to the President within 14 working days following each meeting.

The changes to Technical Specification Figure 6.2–1 and Technical Specifications 6.5.2 and 6.7 reflect PG&E corporate organizational changes. The title of the "Executive Vice President Facilities and Electric Resources Development" was changed to "President".

The change to Technical Specification Figure 6.2–2 reflects a plant organizational change. The plant security organization is reporting to the Assistant Plant Manager-Support Services in order to provide additional management oversight of the security organization activities.

The change to Technical Specification 6.5.2.9.a specifies that minutes of GONPRAC meetings be forwarded to the President within 14 working days following each meeting to clarify the specified time period. Furthermore, it is impractical to prepare, review, distribute, and issue these minutes within a 14 calendar day schedule, considering weekends, holidays, and periodic unavailability of key personnel.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves a no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are all administrative in nature, involving changes in nomenclature, organizational structure, and time allowed to distribute GONPRAC minutes.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in a margin of safety because the proposed changes are administrative and do not affect accident analyses.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards considerations.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that a no significant hazards consideration is involved in the proposed amendments.

*Local Public Document Room location:* California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

*Attorneys for licensee:* Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Project Director:* Steven A. Varga.

**Pacific Gas and Electric Co., Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, CA**

*Date of amendment request:* December 19, 1986 (LAR 86–12).

*Description of amendment request:* The proposed action would amend Facility Operating Licenses DPR–80 and DPR–82 for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, respectively, by deleting Unit 1 License Conditions 2.C.(6)h, 2.C.(8), and 2.C.(10), regarding calculations for small-break LOCAs, control of heavy loads, and masonry walls, respectively, and Unit 2 License Condition 2.C.(7), regarding masonry walls.

The staff, in a letter of December 9, 1986 to the licensee, concluded that the requirements of Section II.K.3.31 of NUREG–0737 regarding small-break LOCA calculations have been met and the requirements of License Condition 2.C.(6)h in the Unit 1 full power license have been satisfied. The staff concluded in a letter of October 24, 1986 to the licensee, that the Unit 1 License Condition 2.C.(10) regarding Phase II of the control of heavy loads is no longer necessary, and no further action on this item is required. The staff concluded, in a letter of November 4, 1986 to the licensee, that the energy-balance technique as applied to the masonry walls at the Diablo Canyon Plant is acceptable, that the masonry walls are appropriately qualified and that the

requirements set forth in License Conditions 2.C.(10) and 2.C.(7) regarding masonry walls in the Units 1 and 2 full power licenses, respectively, have been satisfied.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves a no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revision to the will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative changes to the Facility Operating Licenses to delete license conditions no longer needed on the basis of earlier staff evaluations.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not necessitate physical alterations of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed changes are administrative and do not affect the accident analyses.

Accordingly, the licensee has determined that the proposed amendments to the Facility Operating License DPR–80 and DPR–81 involve no significant hazards considerations.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that a no significant hazards consideration is involved in the proposed amendments.

*Local Public Document Room location:* California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

*Attorneys for licensee:* Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Project Director:* Steven A. Varga.

**Pacific Gas and Electric Co., Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, CA**

*Date of amendment request:* February 10, 1987 (LAR 87–01).

*Description of amendment request:* The proposed amendments would revise the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to allow for the replacement of a limited number of fuel rods with filler rods or vacancies if such replacement is demonstrated to be acceptable by a cycle-specific reload analysis. The current Technical Specification 5.3.1 states that each fuel assembly in the core shall contain 264 fuel rods clad with Zircaloy-4. This amendment would allow for a reduction in the number of fuel rods per assembly and replacement of defective rods with filler rods consisting of either Zircaloy-4 or stainless steel, or with vacancies. The ability to replace defective rods wth filler rods or vacancies would permit utilization of the remaining energy in fuel assemblies.

Before replacement of any fuel rods, a safety and environmental evaluation would be made by the licensee on a cycle-specific basis as part of the reload safety evaluation process. The core reload analysis ensures that the safety criteria and design limits, including peaking factors and core average linear heat rate effects, are not exceeded. An explicit model with each discrete rod identified will be used to predict core performance based on actual core inventory. The core reload methodology does not change when filler rods or vacancies are used. The filler rods or vacancies in a fuel assembly will be modeled as required for the specific core location.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standard for determining whether a significant hazards consideration exists (10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves a no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change will not:

(1) Involve a significant increase in the probability of consequences of an accident previously evaluated because a reload safety evaluation will be performed for each cycle to confirm that fuel assemblies with filler rods or vacancies in specified locations will meet the mechanical, nuclear, and thermal-hydraulic limits described in FSAR Update, Chapter 4 for fuel assemblies containing 264 fuel rods.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the cycle specific reload safety evaluation will confirm that a proposed core design with filler rods or vacancies in specified locations meets existing design limits.

(3) Involve a significant reduction in the margin of safety because the proposed core designs with filler rods or vacancies in specified locations will be within existing design limits.

Accordingly, the licensee has determined that the proposed change to the Technical Specification 5.3.1, "Fuel Assemblies" involves a no significant hazards consideration.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that a no significant hazards consideration is involved in the proposed amendments.

*Local Public Document Room location:* California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

*Attorneys for licensee:* Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Project Director:* Steven A. Varga.

**Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, CA**

*Date of amendment request:* March 13, 1987 (LAR 87–02).

*Description of amendment request:* The proposed amendments would revise the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Unit 1 and 2 and to change the steam generator water level low setpoint from 25 to 15 percent of the narrow range instrument span. The specific change would be made in Table 2.2–1, "Reactor Trip System Instrumentation Trip

Setpoints," of Technical Specification 2.2.1 and the associated Bases.

Both units of the Diablo Canyon Plant have experienced spurious reactor trips at low power from the steam generator water level low coincident with steam/feedwater flow mismatch signal. Plant transients have caused the steam generator water level to drop below the low-level set point and a momentary steam/feedwater flow mismatch signal to be generated, resulting in reactor trips. An actual flow mismatch condition does not exist, but due to the sensitivity of the flow transmitters a signal is generated. Changing the setpoint for the steam generator water level low signal would significantly reduce the probability of reactor trips resulting from false flow mismatch signals.

The effect of decreasing the steam generator water level low setpoint on the FSAR Update Chapter 15 accident analyses has been evaluated. The analyses that could be affected are (1) Section 15.2.8, "Loss of Normal Feedwater," (2) Section 15.2.9, "Loss of Offsite Power to the Station Auxiliaries (Station Blackout)," and (3) Section 15.4.2.2, "Major Rupture of a Main Feedwater Pipe." As stated in the FSAR Update, accident mitigation for these three accidents is provided by the steam generator water level low-low reactor trip. The steam generator water level low coincident with steam/feedwater flow mismatch reactor trip is not considered for accident mitigation in the anaylses. The analyses demonstrate that the steam generator water level low-low reactor trip provides adequate protection for each of the accidents. The proposed steam generator water level low setpoint of 15 percent narrow range instrument span coincident with steam/feedwater flow mismatch reactor trip would continue to provide backup protection to the steam generator water level low-low reactor trip.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves a no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change will not:

(1) Involve a significant increase in the probability of consequences of an accident previously evaluated because the steam generator water level low coincident with steam/feedwater flow mismatch reactor trip is not considered for accident mitigation in accordance with the FSAR Update accident analyses.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change in setpoint does not eliminate the steam generator water level coincident with steam/feedwater flow mismatch reactor trip.

(3) Involve a significant reduction in the margin of safety because the proposed changes are administrative and do not affect the accident analyses.

Accordingly, the licensee has determined that the proposed amendments to the Facility Operating License DPR–80 and DPR–81 involve no significant hazards considerations.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that a no significant hazards consideration is involved in the proposed amendments.

*Local Public Document Room location:* California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

*Attorneys for licensee:* Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Project Director:* Steven A. Varga.

**Pacific Gas and Electric Co., Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, CA**

*Date of amendment request:* March 13, 1987 (LAR 87–03).

*Description of amendment request:* The proposed amendments would change the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units I and 2 to clarify the requirements of three Technical Specifications.

The specific changes would include the following:

(1) Technical Specification 4.7.5.1, "Control Room Ventilation System," would be revised to clarify the requirements for operating redundant equipment in each train of the control room ventilation system during surveillance testing. The revision would specify the number of hours the heaters must be operating on the control room ventilation system to meet the intent of the specification and addresses how the redundant equipment of each train of the ventilation system must be tested to meet the surveillance requirements.

(2) Technical Specification 3.3.1, Table 3.3–1, "Reactor Trip System Instrumentation," would be revised to modify Action Statement 2.c to clarify the applicable thermal power level and to delete "at least once every 12 hours" from the Action Statement because the time interval for the quadrant power tilt ratio (QPTR) surveillance is already specified in Technical Specification 4.2.4.2.

(3) Technical Specification 4.3.1.1, Table 4.3–1, "Reactor Trip System Instrumentation Surveillance Requirements," would be revised to clarify that the plant heat balance surveillance requirement for the power range nuclear instruments is to be performed after 15 percent thermal power is exceeded, but before 30 percent thermal power is reached, or within 24 hours, whichever occurs first.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves a no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not:

(1) Involve a significant increase in the probability of consequences of an accident previously evaluated because a reload safety evaluation will be performed for each cycle to confirm that fuel assemblies with filler rods or vacancies in specified locations will meet the mechanical, nuclear, and thermal-hydraulic limits described in FSAR Update, Chapter 4 for fuel assemblies containing 264 fuel rods.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the cycle specific reload safety evaluation will confirm that a proposed core design with filler rods or vacancies in specified locations meets existing design limits.

(3) Involve a significant reduction in the margin of safety because the proposed core designs with filler rods or vacancies in specified locations will be within existing design limits.

Accordingly, the licensee has determined that the proposed change to the Technical Specification 5.3.1, "Fuel Assemblies" involves a no significant hazards consideration.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that a no significant hazards consideration is involved in the proposed amendments.

*Local Public Document Room location:* California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

*Attorneys for licensee:* Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Project Director:* Steven A. Varga.

**Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, NY**

*Date of amendment request:* September 18, 1985 and March 6, 1987.

*Description of amendment request:* This amendment request was previously noticed on March 12, 1986 (51 FR 8600). The March 6, 1987 amendment request supercedes the previous request. The purpose of these changes is to implement Technical Specifications related to containment ambient temperature. Limiting containment ambient temperature will ensure that the peak containment accident pressure does not exceed the desiqn pressure of 47 psig durino steam line break or loss of coolant accidents. This temperature limit is not currently in the Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The following analysis was provided by the licensee:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not increase the probability of an accident previously evaluated. The Authority has analyzed the effect raising the containment ambient temperature to 130 °F has on peak containment accident pressure during a loss of coolant accident. The results show that the calculated peak containment accident pressure is less than the containment design pressure. Therefore, the consequences of an accident previously evaluated are unchanged.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change of increasing the containment ambient temperature to 130 °F does not create the possibility of a new or different kind of accident than previously evaluated. Limiting containment ambient temperature ensures that the peak containment accident pressure will not exceed the design pressure during steam line break or loss of coolant accidents. The Authority has evaluated these accidents previously with a containment ambient temperature of 120 °F. Therefore, this analysis is not creating the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed change of increasing the containment ambient temperature to 130 °F does not involve a significant reduction in a margin of safety. The Authority performed an analysis which calculated the peak containment accident pressure using a containment ambient temperature of 130 °F. The results of the analysis for the LOCA show that the peak containment accident pressure increased to 41.2 psig, which is an increase of 0.6 psig over the value for a containment ambient temperature of 120 °F. Applying this 0.6 psig increase to the steam line break analysis results in a peak containment accident pressure of 41.6 psig. Both resulting peak containment accident pressures are well below the containment design pressure of 47 psig.

Based on the above, the staff proposed to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Steven A. Varga.

**Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, NY**

*Date of amendment request:* March 4, 1987.

*Description of amendment request:* The licensee provided the following description:

(a) This revision seeks to amend the Indian Point 3 Technical Specifications in response to Generic Letter 85–09 (GL 85–09) by:

(1) Revising page 3.5–8 and Table 3.5–2 to add limiting conditions for operation to the reactor trip breakers and automatic trip logic;

(2) Adding the reactor trip and bypass breakers to the surveillance test requirements of Table 4.1–1; and

(3) Revising Item 20 of Table 4.1–1 to reflect the standardized technical specification requirements for the reactor protection automatic trip logic, including the staggered test basis.

(b) Editorial changes are proposed for Table 4.1–1 of the IP–3 Technical Specifications to facilitate the incorporation of GL 85–09 changes and improve the table's coherency by:

(1) Making minor spelling and format corrections to Items 1, 14, 16, 21, 28, 30, 31, 32, 34, 35, 36, 38 and 39;

(2) Moving all footnotes to the last page of the table;

(3) Relocating Items 29 through 41 on sheets 3 through 5 to provide for a more even distribution; and

(4) Deleting the footnote tying Item 35 to degraded grid modifications as the associated modifications are now complete and Item 35 is now in effect.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety.

The following analysis was provided by the licensee:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Neither the probability nor the consequences of an accident are increased since new surveillance requirements are being added to insure increased reliability of the reactor protection system. These new requirements reflect procedures placed in effect after installation of the shunt trip attachment to the reactor trip breakers. These current procedures independently test the undervoltage and shunt trip attachments during power operation and independently test the control room manual trip circuits during each refueling outage. Thus the proposed amendment provides additional assurance that the reactor protection system will perform as assumed in previously evaluated design basis accidents. In addition, editorial changes are also made. None of these changes increases the probability or the consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated? The possibility of a new or different kind if accident is not created. The proposed surveillance requirements accompanying the recent shunt trip modification reduce the probability of an Anticipated Transient Without Scram.

(3) Does the proposed amendment involve a significant reduction in margin of safety?

The proposed amendment provides additional assurance that the margin of safety for previously analyzed events will not be reduced. By requiring the independent testing of the shunt trip and undervoltage coils, the proposed changes to the Technical Specifications increase the reliability of the reactor trip breakers. Thus, the proper operation of the reactor protection system as assumed in the Safety Analysis for Indian Point 3 is enhanced. This assures that the margin of safety is not reduced.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Steven A. Varga.

**Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, NY**

*Date of amendment request:* March 6, 1987.

*Description of amendment request:* The licensee provided the following description:

The proposed changes to the Indian Point 3 Technical Specifications relate to the Reactor Vessel Level Indication System (RVLIS). The guidelines and recommendations of Generic Letter No. 83–37 have been utilized in preparing revisions to Tables 3.5–5 and 4.1–1. Editorial change have also been included in the revised table (i.e., columns 1, 2 and 3 headings added to Table 3.5–5, Sheet 2 of 3; footnote marked ***** was moved to top of Sheet 3 of 3, Table 3.5–5).

The purpose of these proposed changes is to incorporate the appropriate limiting conditions for operation and the surveillance requirements for RVLIS. The installation of RVLIS will be implemented in accordance with the requirements of NUREG–0737, Item II.F.2, "Instrumentation for Detection of Inadequate Core Cooling." RVLIS outputs are displayed on the plant Qualified Safety Parameter Display System. The system performs an input autocalibration sequence by automatically injecting test signals directly into every input on a regular schedule while the system is on line. The proposed limiting conditions of operation (LCO) and surveillance requirements are consistent with other Post Accident Monitoring Systems LCOs contained in Table 3.5–5 (e.g. Reactor Coolant System Subcooling Margin Monitor, Core Exit Thermocouples, etc.).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The following analysis was provided by the licensee:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Neither the probability nor the consequences of an accident previously evaluated in the FSAR are increased since the RVLIS is a new post-TMI modification aimed at enhancing the plant's overall safety. This goal is accomplished by providing the operators with an additional advanced warning of a potential Inadequate Core Cooling (ICC) condition following an accident. The proposed changes add operational criteria for RVLIS in the Technical Specifications. RVLIS does not affect the analysis of any previously evaluated accidents and decreases the consequences of small break loss of coolant accidents.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The possibility of a new or different kind of accident is not created as evidenced by the NRC Safety Evaluation Report transmitted to the Authority on May 29, 1984 which found acceptable the proposed use of the Westinghouse RVLIS. This is based on the fact that the method and manner of plant operation is unchanged. The installation of RVLIS is not an initiating event of any accident. The system is being implemented in response to NUREG–0737, Item II.F.2, and NRC Generic Letter 83–37.

3. Does the proposed amendment involve a significant reduction in a margin of safety.

The proposed change incorporates RVLIS into the IP–3 Technical Specifications. RVLIS will provide the operators with an additional way of detecting a potential ICC condition. Therefore, the operators' handling of an ICC condition will be enchanced and there will be no significant reduction in a margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Steven A. Varga.

BEST COPY AVAILABLE

**Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, CO**

*Date of amendment request:* December 23, 1986.

*Description of amendment request:* The amendment would delete a table listing the shock suppressors on Class I piping systems (Table 4.3.10–1, Class I Shock Suppressors) and the references thereto, and allow Class I piping system snubbers to be intentionally removed from service for a period not to exceed 72 hours without requiring an engineering evaluation. In addition, certain typographical errors existing in the Technical Specifications will be corrected.

*Basis for proposed no significant hazards consideration determination:* Certain of the proposed changes to LCO 4.3.10 and SR 5.3.8 pertain to deleting the snubber tables from the Technical Specifications and correcting typographical errors. These changes are administrative in nature and will have no effect on the ability of the shock suppressors to protect the structural integrity of a safety related systems.

LCO 4.3.10.b has been chanoed. to clarify the difference in requirements for intentionally removing a snubber from service and discovering an inoperable snubber. In the first case, 72 hours allows time for repair or replacement of snubbers during power operation. No engineering evaluation is required since the time period the snubber(s) are out of service is known.

If a snubber is found inoperable and the time that it has been in this condition is in question, an engineering evaluation is reouired to determine if any plant evolutions or transients since operability was last verified have affected the associated piping and equipment.

Based on the above evaluation, it is the staff's initial determination that operation of Fort St. Vrain in accordance with the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in any margin of safety. Accordingly, the staff proposes to determine that the proposed changes will not involve a significant hazards consideration.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado.

*Attorney for licensee:* Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201–0840.

*NRC Project Director:* Herbert N. Berkow.

**Public Service Electric and Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, NJ**

*Dates of amendment request:* March 13 and 26, 1987.

*Description of amendment request:* Hope Creek FSAR Section 9.4.2.3 states that "The exhaust air transit time between the refueling area monitors and the Reactor Building Ventilation System (RBVS) exhaust system isolation dampers is greater than the combined time for damper closure and the monitor response." The FSAR identifies the exhaust air transit time as being 12 seconds and the combined monitor response and damper closure time as less than 11 seconds. The combined monitor response and damper closure time is the sum of the Refueling Floor Exhaust Radiation-High trip function response time and the Secondary Containment Ventilation System Automatic Isolation Damper Maximum isolation time. Technical Specification Table 3.3.2–3 gives the Refueling Floor Exhaust Radiation-High trip function response time as a maximum of 4.0 seconds. Technical Specification Table 3.6.5.2–1 gives the Secondary Containment Ventilation System Automatic Isolation Damper maximum isolation time as 10 seconds. Combining these values yields a combined monitor response and damper closure time of 14 seconds, which is in conflict with the FSAR statement above.

In its March 13, 1987 letter, the licensee requested that the damper isolation time of 10 seconds identified in Technical Specification Table 3.6.5.2–1 be revised to 7 seconds, as indicated in its March 26, 1987 letter. Such a change would result in a combined monitor response and damper closure time of less than 11 seconds, thereby bringing the Technical Specification into agreement with the FSAR. The licensee stated that the actual measured response times are already within the proposed response time limits.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because it constitutes a more limiting Technical Specification than is currently in place and would bring the Technical Specifications into agreement with the FSAR.

The proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated because no hardware changes to existing plant equipment are being proposed, and the dampers (and their associated isolation times) are mitigative in nature, not causal.

The proposed change does not involve a significant reduction in a margin of safety because the change actually increases the margin of safety by requiring a shorter damper isolation time, thereby bringing the Technical Specifications into agreement with the FSAR analysis.

Based on the above discussion, the staff agrees with the licensee's findings of no significant hazards consideration associated with the proposed amendment. Furthermore, the staff notes that the proposed change is similar to an Example (ii) amendment identified in the "Final Procedures and Standards or No Significant Hazards Considerations" published in the March 6, 1986 Federal Register (51 FR 7744) as not likely to involve significant hazards considerations. Accordingly, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

*Attorney for licensee:* Troy B. Conner, Jr., Esqire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Elinor G. Adensam.

**Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, CA**

*Date of amendment request:* October 2, 1986, as supplemented April 1, 1987.

*Description of amendment request:* The proposed Technical Specification amendment incorporates recommendations contained in Generic

Letter 84–15, "Proposed Staff Action to Improve and Maintain Diesel Generator Reliability", and includes additions and changes to the specifications which were necessitated by the addition of two Transamerica Delaval Diesel Generators to supplement onsite emergency power requirements.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the Commission's staff agrees, that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of Generic Letter (G.L.) 84–15 recommendations involves changes to the operability and surveillance requirements of diesel generators. The changes add requirements for new systems, improve requirements for existing systems, and incorporate NRC recommendations. The changes demonstrate the operability of required systems to ensure safe operation of the plant. Therefore, these changes do not increase the probability or consequences of an accident.

The proposed modifications to incorporate the new diesels do not significantly alter the accident analysis in Chapter 14 of the Updated Safety Analysis Report (USAR). The modification of the electrical distribution system was designed to meet single failure criteria and withstand the effects of load rejection. The system's interaction evaluation concluded that a failure of one diesel generator and associated power distribution system would not introduce any unacceptable interactions or any failures in the remaining electrical distribution with its train. Therefore, this change does not increase the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously analyzed. Implementation of G.L. 84–15 recommendations involves changes which demonstrate the operability and surveillance of critical plant systems. The changes to the operability and surveillance requirements do not create the possibility of a new or different kind of accident.

The accident analysis in Chapter 14 of the USAR is not changed by the addition of the new diesels because the additional capacity ensures that the power distribution system will support required safety related loads. The system's interaction review shows that no new or different failure modes were created. This modification does not therefore create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The changes instigated by G.L. 84–15 improve operability and surveillance requirements and therefore preserve the margin of safety. They will not reduce the margin of safety.

The design basis for the emergency power system is that a single failure of the system (including diesel generators) will not preclude the reactor protection system and safety features system from performing their safety function. The modification of the emergency power system does not change this basis. Based on the system's interaction review and the design basis documents, this change will not reduce the margin of safety. The modification to the emergency power system will provide redundant emergency power sources for the control room, technical support center, and nuclear services electrical building essential heating, ventilating, and air conditioning systems. It will also provide additional capacity for future loads while ensuring that the existing emergency power system is not overloaded. This, therefore, increases the existing margin of safety.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

*Local Public Document Room location:* Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

*Attorney for licensee:* David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

*NRC Project Director:* John F. Stolz.

**Southern California Edison Co., et al, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, CA**

*Dates of amendment request:* August 28 and November 21, 1986.

*Description of amendment request:* The proposed amendments would add new license conditions for San Onofre 2 and 3 to establish the methodology to be used to determine the schedule for implementation of NRC-required plant capital modifications to San Onofre Nuclear Generating Station, Units 2 and 3. Specifically, the changes would amend the San Onofre 2 and 3 operating licenses to require the licensees to implement and maintain in effect an "Integrated Living Schedule Program Plan" (The Plan). The Plan will be used to schedule plant capital modifications that are either (1) required by the NRC rules, orders or license conditions, or (2) required to fulfill commitments made by the licensees to the NRC or other regulatory agencies. The proposed changes are consistent with the recommendations of Generic Letter 83–20, "Integrated Living Schedule for Implementation of Plant Modifications," which was issued by the NRC staff on May 9, 1983.

The Plan has as its goal the implementation of plant capital modifications in a stable, controlled manner with the implementation of projects with the greatest potential for enhancing the safe operation of the unit generally given highest priority. Projects of regulatory origin will be ranked using the Westinghouse Analytical Ranking Process to specifically determine the relative potential safety contribution of each plant capital modification. The safety ranking will then be used as a primary criterion in scheduling the projects.

The Plan will take into consideration the need to minimize outage time, and the available financial and manpower resources, while at the same time implementing those plant capital modification projects deemed necessary for enhanced plant safety. The Plan provides for integration of all future NRC-required work into one comprehensive schedule and has built-in mechanisms for changes to the schedule when new plant capital modifications are identified or when key program milestones cannot be achieved due to considerations beyond the control of the licensees.

*Basis for proposed no significant hazards determination:* The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated: or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety. The basis for this proposed finding is given below.

1. The proposed changes establish an administrative means for tracking and scheduling NRC-required plant capital modifications and commitments of the licensees. The Plan does not affect the plant configuration nor NRC-mandated schedules for implementation of modifications. Because the proposed license conditions do not affect the plant configuration, no accident analyses are affected; therefore, the proposed changes do not increase the probability or consequences of any previously evaluated accident.

2. The proposed changes will not alter the configuration of the plant or its operation; therefore, the proposed changes do not create a new or different kind of accident from any previously evaluated.

3. The proposed changes are administrative and do not affect any accident analyses or involve any modification to the plant configuration; therefore, the proposed changes do not involve a reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed change adds a new license condition requiring the establishment and maintenance of The Integrated Living Schedule Program Plan. The proposed change is administrative since this license condition will require that NRC-required plant capital modifications and plant capital modification resulting from SCE commitments be tracked and scheduled. The license condition will not allow changes to be made to NRC-required implementation dates without following existing NRC regulations for changes. Therefore, the proposed change is administrative in nature and similar to Example (i) of 51 FR 7751.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* General Library, University of California at Irvine, Irvine, California 92713.

*Attorney for Licensees:* Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

*NRC Project Director:* George W. Knighton.

**Tennessee Valley Authority, Dockets Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, AL**

*Date of amendment request:* February 6, 1987.

*Description of amendment request:* The proposed amendment would change the technical specifications of Browns Ferry Nuclear Plant (BFN) Units 1, 2 and 3 to clarify the applicability of definition 1.0.C.2 so that the definition will not be erroneously applied while in Cold Shutdown or Refueling. This clarification is made by changing the sentence, "This is not applicable if the unit is already in Cold Shutdown or Refueling." to read "This definition is not applicable in Cold Shutdown or Refueling."

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using standards in 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. By clarifying that the provisions of definition 1.0.C.2 are not applicable during Cold Shutdown and Refueling, application of definition 1.0.C.2 is restricted to the operating conditions intended in the model LCO 3.0.5 provided by NRC letter dated April 10, 1980 to All Power Reactor Licensees. This clarification of the applicability of definition 1.0.C.2 only during the Run and Startup/Hot Standby modes and the Hot Shutdown condition will not result in any increase in the probability or consequences of an accident previously analyzed since it is more restrictive and consistent with the assumptions of current analyses.

2. The provisions of definition 1.0.C.2 are applicable only during the Run and Startup/Hot Standby modes and the Hot Shutdown condition will not eliminate or modify any protective functions. It does not permit any new operational conditions. It is essentially an additional restriction. Therefore, no possibility of any new or different kind of accident is created by this clarification.

3. This clarification of the applicability of definition 1.0.C.2 only during the Run and Startup/Hot Shutdown condition is administrative in nature. It does not involve any reduction in any margin of safety.

Since the application for amendment involves a proposed change that is encompassed by the criteria for which no significant hazards consideration exists, TVA has made a proposed determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

*Local Public Document Room location:* Athens Public Library, South and Forrest, Athens, Alabama 35611.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

*NRC Assistant Director for Projects:* John A. Zwolinski.

**Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, MO**

*Date of amendment request:* March 27, 1987.

*Description of amendment request:* The licensee proposes to revise Technical Specification 5.3.1 to allow for the replacement of a limited number of fuel rods with filler rods or vacancies if such replacement/vacancy is acceptable based on the results of the cycle-specific reload analysis. Also, a sentence which addresses the maximum enrichment of the initial core would be deleted.

*Basis for proposed no significant hazards consideration determination:*

The proposed license amendment would allow the use of filler rods or vacancies in fuel assemblies. These fuel assemblies will meet the same mechanical, nuclear, and thermal hydraulic limits as an original fuel assembly, as described in FSAR Chapter 4. The reload safety evaluation for each cycle will confirm that the use of a fuel assembly with filler rods or vacancies in a core design does not result in an existing design limit being exceeded. Therefore, this license amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As discussed above, a fuel assembly with filler rods or vacancies satisfies the same design limits as an original fuel assembly. Therefore, this license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the use of a fuel assembly with filler rods or vacancies will not result in an existing design limit being exceeded. Therefore, this change does not reduce the margin of safety.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. Example (i) relates to a purely administrative change to the technical specifications. The amendment would also delete a sentence which addresses the maximum enrichment of the initial core. This sentence is historical and has no current applicability and therefore represents a purely administrative change.

Based on the above discussions, the amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a reduction in the required margin of safety. Based on the foregoing, the Commission has determined that the reouested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, DC 20036.

*NRC Project Director:* B.J. Youngblood.

**Union Electric Co., Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, MO**

*Date of amendment request:* March 27, 1987.

*Description of amendment request:* This amendment application requests that the applicable modes for Item 6.g of Technical Specification Table 3.3-3 be clarified regarding the blocking, during normal plant startups and shutdowns, of auxiliary feedwater (AFW) start signals which are automatically generated upon the trip of both main feedwater pumps. This clarification would be in the form of a note that would allow the blocking of this start signal to the motor-driven AFW pumps just before shutdown of the last operating main feedwater pump during plant shutdowns and would require the restoration of this function just after the first main feedwater pump is placed into service during plant startups.

*Basis for proposed no significant hazards consideration determination:* This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. No credit is taken for this start signal in the accident analyses which assume that AFW actuation is generated by the low-low steam generator water level signal. This change has no effect on this or other start signals (i.e., safety injection signal, loss of offsite power) which remain available to respond to accident situations. The use of the block switches precludes the undesired ESF actuation during plant startups and shutdowns under conditions where the motor-driven startup feedwater pump provides the necessary feedwater source.

This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is being clarified to achieve consistency with those documents establishing the licensing bases for the Callaway Plant (i.e., NUREG-0830, SER related to the operation of the Callaway Plant, Section 7.3.2.7 and FSAR Sections 7.3.6.1.1.a, 15.2.6, and 15.2.7).

This change does not involve a significant reduction in a margin of safety. This is based on the fact that no design changes are involved and the change to clarify mode applicability is consistent with the staff's safety evaluation of the auxiliary feedwater system actuation design.

Based on the above information, the Commission has determined that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036.

*NRC Project Director:* B.J. Youngblood.

**Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, WA**

*Dates of amendment requests:* January 6, March 3 and 12, 1987.

*Description of amendment request:* This proposed amendment, if approved, will change the WNP-2 Technical Specifications by modifying the Surveillance Requirements of Section 4.1.5, Standby Liquid Control System (SLCS). Specifically, this change would increase the concentration and minimum flow rate of sodium pentaborate decahydrate solution maintained in the SLCS storage tank.

The regulation for ATWS mitigation (10 CFR 50.62(c)(41) requires that the SLC System have a minimum flow capacity and boron content equivalent in control capacity to 86 gallons per minute of 13 weight percent sodium pentaborate solution. The present specification requires a minimum flow rate of 41.2 gallons per minute and a minimum concentration of 13.4 percent. Accordingly, Section 4.1.5 of the WNP-2 Technical Specifications must be changed to comply with the regulation.

The SLC System design modification at WNP-2 will result in an increased injection rate by simultaneous operation of both SLCS pumps. The minimum sodium pentaborate concentration will also be increased to 13.6 weight percent. The higher concentration levels are necessary to meet the equivalency requirements at the minimum flow rate presently required by the Technical Specifications for each of the two pumps.

*Basis for proposed no significant hazards consideration determination:* The proposed amendment to the WNP-2 Technical Specification to require conformance with the Regulation is similar to Example (vii) provided by the Commission (51 FR 7751, March 6, 1986) of the types of amendment not likely to involve significant hazards consideration. Example (vii) denotes an amendment to make a license conform to changes in the regulation when the license change results in very minor

changes to facility operations clearly in keeping with the regulations.

In addition, the Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment per 10 CFR 50.92 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the SLCS sodium pentaborate solution concentration and flow rate required by the NRC for reactivity control independent of the control rods exceed the values previously presented in the Technical Specification and the change does not affect the possibility of an ATWS.

(2) Create the possibility of a new or different kind of accident than previously evaluated because the increase in the SLCS tank solution flow rate and concentration provide sufficient boron to achieve a cold plant shutdown and the temperature limits are adjusted to accommodate the maximum allowable concentrations so as to preclude solute precipitation.

(3) Involve a significant reduction in a margin of safety because, over the entire range of permissible tank volumes, higher minimum SLCS tank solution concentration actually increases the boron available to achieve a cold shutdown and the rate of its addition has been increased also increasing the margin of safety.

Based on the above considerations, the Commission proposes to determine that the requested change to the WNP–2 Technical Specifications involves no significant hazards considerations.

*Local Public Document Room location:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

*Attorney for the Licensee:* Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036.

*NRC Project Director:* Elinor G. Adensam.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, WA**

*Date of amendment request:* March 27, 1987.

*Description of amendment request:* The proposed amendment would revise the WNP–2 Technical Specifications (TS) to support the operation of WNP–2 at full rated power during the upcoming Cycle 3. The proposed amendment request to support this reload changes the Technical Specifications in the following areas: (1) Establishes operating limits for all fuel types for the upcoming Cycle 3 operation; (2) reflects the replacement of approximately 148 initial core fuel assemblies with Advanced Nuclear Fuels (ANF) Corporation fuel assemblies for the upcoming Cycle 3 operation; and (3) modifies the Bases section of the Technical Specifications to account for the use of ANF fuel assemblies.

To support the license amendment request for operation of WNP–2 during Cycle 3, the Supply System submitted, as attachments to the application, the following:

I. WNP–2 Cycle 3 Reload Summary Report (WPPSS–EANF–109) Includes the Startup Physics Test Program
II. WNP–2 Cycle 3 Reload Analysis (XN–NF–87–25)
III. WNP–2 Cycle 3 Plant Transient Analysis (XN–NF–87–24)
IV. WNP–2 LOCA–ECCS Analysis MAPLHGR Results (XN–NF–85–139)
V. Technical Specification Changes

During the second refueling outage approximately 148 General Electric (GE) initial fuel assemblies (approximately one fifth of the core) will be replaced with new, but substantially similar, ANF, Type ANF (8 x 8c bundles, 2.72 (weight) percent enrichment), fuel assemblies.

*Basis for proposed no significant hazards consideration determination:* The proposed amendment to the WNP–2 Technical Specifications to support this reload is very similar to Example (iii) provided by the Commission (51 FR 7751, March 6, 1986) of the types of amendments not likely to involve significant hazards considerations. Example (iii) is an amendment to reflect a core reload where:

(1) No fuel assemblies significantly different from those found previously acceptable to the Commission for a previous core at the facility in question are involved;

(2) No significant changes are made to the acceptance criteria for the Technical Specifications;

(3) The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and

(4) The NRC has previously found such methods acceptable.

This reload will consist of 764 assemblies, approximately 488 of which are twice burned (two operating cycles) GE fuel assemblies, 128 of which are once burned Exxon fuel assemblies and approximately 148 of which are new ANF fuel assemblies. The ANF fuel assemblies are very similar to the Exxon and the GE fuel assemblies except for slight differences in the mechanical, thermal-hydraulic and nuclear design.

Although the ANF fuel is very similar to the existing fuel, the slight differences in mechanical, thermal-hydraulic and nuclear design of the bundles, and the use of different analysis methodologies, required that a wide range of reanalyses be performed by ANF Corporation. These reanalyses included reanalyzing for anticipated operational occurrences, performing LOCA analyses for the ANF fuel and analyzing for the rapid drop of a high worth control rod to assure that excessive energy will not be deposited in the fuel. Analyses for normal operation of the reactor consisted of fuel evaluations in the areas of mechanical, thermal-hydraulic and nuclear design.

The use of the ANF type fuel assemblies and the associated analytical methods used for the Cycle 3 reload analyses have been previously approved by the NRC staff for use in other boiling water reactors (BWR's). Based on these prior reviews, the NRC staff has determined that there are only small differences between the use of ANF and GE analytical methods.

This core reload involves the use of fuel assemblies that are not significantly different from those found previously acceptable to the Commission for a previous core at this facility. The proposed amendment would change the Technical Specifications to reflect new operating limits associated with the fuel to be inserted into the core based on the new core physics and are within the acceptance criteria. In the analyses supporting this reload, there have been no significant changes in acceptance criteria for the Technical Specifications and those analytical methods used have previously been found acceptable by the NRC.

The only difference between this reload and Example (iii) provided by the NRC is related to the use of the ANF analytical methods which are slightly different from the GE methods used for Cycle 1 and the Exxon (now ANF) methods used for Cycle 2. The ANF analytical results are not significantly different from those previously found

acceptable to the NRC for the previous cores at WNP–2 and the methods previously have been approved by the staff for use in other BWR's.

In addition to providing examples of amendments not likely to involve a significant hazards consideration, the Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On the basis of the evaluation performed in accordance with 10 CFR 50.92, and the fact that the analytical methods used have been approved previously by the NRC staff and do not provide results significantly different, the Supply System has concluded, and the staff agrees, that operation of WNP–2 in accordance with the proposed reload amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes to the Technical Specifications reflect new operating limits associated with the fuel to be inserted in the core and which are based on reanalyses using the new core physics with results that remain within the previously accepted operating limits; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the ANF fuel technology and the design of the fuel is not significantly different from that used in the previous cores which were found acceptable to the NRC staff; or (3) involve a significant reduction in the margin of safety because the margin of safety for all accidents or operational occurrences analyzed for Cycle 3 operation is either identical to or more conservative than that used for Cycle 2.

Based on the above considerations, the Commission proposes to determine that the requested change to the WNP–2 Technical Specifications involves no significant hazards considerations.

*Local Public Document Room location:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

*Attorney for the Licensee:* Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036.

*NRC Project Director:* E. Adensam.

**Wisconsin Electric Power Co., Docket Nos. 50–266 and 50–301 Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, WI**

*Date of amendments request:* January 6, 1987.

*Description of amendments request:* The proposed change to the Technical Specifications (TS) would provide clarification in the remarks column of Table 15.4.1–1 concerning the frequency for conduct of reactor coolant flow logic channel testing. Specifically, logic channel testing for loss of coolant flow in both loops shall be tested each refueling interval.

*Basis for proposed no significant hazards consideration determination:* The licensee has performed analysis in accordance with the standards of 10 CFR 50.92 to determine if the proposed change involves any significant hazards considerations. The licensee states that the proposed change provides clarification with respect to the conditions necessary for performance of a portion of a surveillance requirement and, therefore, would not increase the probability or consequences of a previously evaluated accident. Secondly, the change involves no physical or procedural changes to the plant and, therefore, would not create the possibility of a new or different kind of accident from those previously evaluated. Lastly, the licensee states that the proposed change would not involve a significant reduction in a margin of safety because the change clarifies the operational conditions necessary to perform that portion of the surveillance requirement which would not result in any reduction of a safety margin.

The staff has reviewed the licensee's analysis and concurs with their findings. The staff, therefore, proposes to determine that the amendments would involve no significant hazards considerations.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

*NRC Project Director:* George E. Lear.

**Wisconsin Electric Power Co., Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, WI**

*Date of amendments request:* January 8, 1987.

*Description of amendments request:* The proposed amendments would modify the Technical Specifications to change the number of channels listed in Table 15.3.5–5, Item 10, "Containment Hydrogen Monitors" from four to two. The proposed amendments would also correct an error in Table 15.3.5–2, "Instrument Operation Conditions for Reactor Trip." The change would correctly indicate that for the low flow (both loops) trip the number of channels to trip is 2/loop (both loops) instead of 2/loop (any loop) as is currently indicated. The change would also clarify that the minimum operable channels and minimum degree of redundancy figures for the low flow trip are "per loop" figures.

Lastly, the proposed amendments would change the term "zero power physics testing" to "low power physics testing" in the footnote for Item 2 of Table 15.3.5–2 and modify the wording of the set points for Items 9, 10a and 10b of Table 15.3.5–1 to eliminate ambiguity.

*Basis for proposed no significant hazards consideration determination:* The licensee has evaluated the proposed Technical Specification change request with respect to the criteria of 10 CFR 50.92 and has determined that the proposed amendments would not result in a significant hazards consideration. The licensee has indicated that the proposed amendments are largely administrative in nature and are not the result of plant modifications or procedural changes; and would thus not create the possibility of a new or different kind of accident from an accident previously evaluated. Further, because the proposed amendments are not the result of physical or procedural changes, they will not increase the probability or consequences of an accident previously evaluated.

Lastly, while the amendments propose a reduction in the number of hydrogen monitor channels required by the Technical Specifications, the proposed number of channels still meets the staff guidance as contained in Generic Letter 83–37 and, therefore, would not constitute a significant reduction in a margin of safety. The remaining changes being administrative (correcting errors or clarifying language to reduce ambiguity) cannot affect the margin of safety.

The staff has reviewed the licensee's determination and concurs with their findings. Therefore, the staff proposes to determine that the proposed amendments involve no significant hazards consideration.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* George E. Lear.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assess.nent, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

**Arizona Public Service Company, et al. Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, AZ**

*Date of application for amendments:* July 14, 1986, as supplemented by letters dated December 2, 1986, and February 9, 1987.

*Brief description of amendments:* The amendments delete certain sections of the Technical Specifications pertaining to the fire protection program, since the program is currently in the FSAR. A change is also made to the Unit 1 license concerning the fire protection program.

*Date of issuance:* April 8, 1987.

*Effective date:* April 8, 1987, to be implemented within 30 days of issuance.

*Amendment Nos.:* 14 and 8.

*Facility Operating License Nos.: NPF–41 and NPF–51:* Amendments revised the license for Unit 1 and the Technical Specifications for both Unit 1 and Unit 2.

*Date of initial notice in the* **Federal Register:** December 30, 1986 (51 FR 47074).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1987.

No significant hazards consideration comments were received: No.

*Local Public Document Room location:* Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

**Arizona Public Service Company, et al. Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, AZ**

*Date of application for amendments:* January 19, 1987.

*Brief description of amendments:* The amendments revise the Technical Specifications to remove Main Steam Isolation Valves (MSIVs) from the list of valves that are subjected to the requirements of Specification 3/4.6.3, "Containment Isolation Valves," since another Specification 3/4.7.1.5, "Main Steam Line Isolation Valves," specifically provides the operability and surveillance requirements for the MSIVs.

*Date of issuance:* April 8, 1987.

*Effective date:* April 8, 1987.

*Amendment Nos.:* 15 and 9.

*Facility Operating License Nos.: NPF–41 and NPF–51:* Amendments revised the license for Unit 1 and the Technical Specifications for both Unit 1 and Unit 2.

*Date of initial notice in the* **Federal Register:** February 11, 1987 (52 FR 4402).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1987.

No significant hazards consideration comments were received: No.

*Local Public Document Room location:* Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

**Carolina Power & Light Co., Dockets Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, NC**

*Date of application for amendments:* August 7, 1985.

*Brief description of amendments:* The Unit 1 amendment corrects a typographical error in the Unit 1 Facility Operating License. The Unit 2 license is amended to be consistent with the Unit 1 license by removing restrictions on by-product, source and special nuclear materials used for sample analysis or instrument calibration or associated with radioactive apparatus or components.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendments Nos.:* 105 and 135.

*Facility Operating Licenses Nos. DPR–71 and DPR–62.* Amendment revised the licenses.

*Date of initial notice in* **Federal Register:** October 9, 1985 (50 FR 41243).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

**Carolina Power and Light Co., Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, SC**

*Date of application for amendment:* December 18, 1986.

*Brief description of amendment:* The amendment revises the Technical Specifications by replacing the existing heatup and cooldown curves in Figures 3.1–1 and 3.1–2, respectively, with two sets of curves. The replacement curves are applicable for up to 12.5 and 15 effective full power years (EFPY), respectively.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.* 113.

*Facility Operating License No. DPR–23.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5851). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

**Commonwealth Edison Co., Docket No. 50–237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, IL**

*Date of application for amendment:* December 10, 1986, as supplemented January 28 and February 5, 1987.

*Brief description of amendment:* This amendment changes the Dresden 2 License and Technical Specifications to support Cycle 11 operation.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.* 95.

*Provisional Operating License No. DPR–19.* The amendment revised the license and the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 28, 1987 (52 FR 2876); February 6, 1987 (52 FR 3894). In the February 5, 1987 letter Commonwealth Edison requested, pursuant to 10 CFR 2.107, permission to withdraw that portion of its previous amendment request which originally proposed a Minimum Critical Power Ratio (MCPR) safety limit of 1.05. Commonwealth Edison agrees to continue to use the existing MCPR limit of 1.06 for residual 8x8R General Electric fuel in the Dresden Unit 2 Cycle 11 Reload. The U.S. Nuclear Regulatory Commission has granted the request of Commonwealth Edison to withdraw this portion of its December 10, 1986 application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

**Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, WI**

*Date of application for amendment:* March 20, 1984 as amended August 24, 1984.

*Brief description of amendment:* The amendment authorizes changes to the Technical Specifications pertaining to (1) new reporting requirements of 10 CFR 50.73 and (2) addition of details to the requirements of the reports for diesel generator failures.

*Date of Issuance:* April 8, 1987.

*Effective date:* April 8, 1987.

*Amendment No.:* 55.

*Provisional Operating License No. DPR–45.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 20, 1984 (49 FR 25358); October 24, 1984 (49 FR 42816).

The Commission's related evaluation for the license amendment is contained in a Safety Evaluation dated April 8, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

**Duke Power Co., et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, SC**

*Date of application for amendments:* December 13, 1985.

*Brief description of amendments:* The amendments change the Technical Specifications related to reporting requirements for primary coolant iodine spikes, and delete existing shutdown requirements if coolant iodine activity limits are exceeded for 800 hours in a 12 month period.

*Date of issuance:* April 1, 1987.

*Effective date:* April 1, 1987.

*Amendment Nos.:* 25 and 15.

*Facility Operating License Nos. NPF–35 and NPF–52.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 27, 1986 (51 FR 30565). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

**Duke Power Co., et al., Docket Nos 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, SC**

*Date of application for amendments:* July 31, 1985, as supplemented October 10, 1986.

*Brief description of amendments:* The amendments would modify Technical Specification Surveillance Requirement (4.8.2.1.1a.3) to allow battery operation when there is minor electrolyte leakage.

*Date of issuance:* April 1, 1987.

*Effective date:* April 1, 1987.

*Amendment Nos.:* 26 and 16.

*Facility Operating License Nos. NPF–35 and NPF–52.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5852). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

**Duke Power Co., et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, SC**

*Date of application for amendments:* July 31, 1985, as supplemented November 8, 1985, March 7 and October 1 and 10, 1986.

*Brief description of amendments:* The amendments modify Technical Specifications 6.5, 6.6, 6.8 and 6.10 regarding "Administrative Controls."

*Date of issuance:* April 2, 1987.

*Effective date:* April 2, 1987.

*Amendment Nos.:* 27 and 17.

*Facility Operating License Nos. NPF–35 and NPF–52.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5852). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 2, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

**Florida Power Corp., et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, FL**

*Date of application for amendment:* February 17, 1986, as supplemented November 19 and 25, 1986, and February 17, 1987.

*Brief description of amendment:* The amendment changed the expiration date for Facility Operating License No. DPR–72 from September 25, 2008 to December 3, 2016, 40 years from the issuance of the operating license.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.:* 97.

*Facility Operating License No. DPR–72.* Amendment revised the operating license.

*Date of initial notice in* **Federal Register:** October 8, 1986 (51 FR 36090). Since the date of the initial notice, the licensee submitted clarifying information dated November 19 and 25,

1986, and February 17, 1987. This information did not change the original application in any way and, therefore, did not warrant renoticing.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated March 26, 1987, and a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

**Florida Power Corp., et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, FL**

*Date of application for amendment:* September 2, 1986, as supplemented January 15, 1987.

*Brief description of amendment:* The amendment relaxes action statements for Technical Specification (TS) 3.8.1.1 in order to increase diesel generator reliability. A supplemental submittal on January 15, 1987 made clarifications in the Bases of the TS.

*Date of issuance:* April 7, 1987.

*Effective date:* April 7, 1987.

*Amendment No.:* 98.

*Facility Operating License No. DPR–72.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 19, 1986 (51 FR 41854). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

**Florida Power and Light Co., et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, FL**

*Date of application of amendments:* July 19, 1985.

*Brief description of amendments:* The amendment for the St. Lucie Plant, Unit No. 1 revised the technical specifications to add Incore Thermocouples, Containment Sump Water Level (narrow and wide ranges), Containment Pressure, and Reactor Vessel Level Monitoring System to Tables 3.3–11 and 4.3–7. The amendment for St. Lucie Plant, Unit No. 2 revised the technical specifications to add the Reactor Vessel Level Monitoring System to Tables 3.3–10 and 4.3–7. Appropriate operability and actions statements and surveillance requirements were included.

*Date of Issuance:* April 7, 1987.

*Effective Date:* April 7, 1987.

*Amendment Nos.:* 79 and 19.

*Facility Operating License Nos. DPR–67 and NPF–16:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 11, 1985 (50 FR 37073 at 37082).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida 33450.

**Georgia Power Co., Oglethorpe Power Corp., Municipal Electric Authority of Georgia, City of Dalton, GA, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling Count, GA**

*Date of application for amendment:* September 9, 1986

*Brief description of amendment:* The amendment modifies the description of the refueling interlock surveillance requirements to clarify them.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.:* 135.

*Facility Operating License No. DPR–57.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5855).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

**GPU Nuclear Corp., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA**

*Date of application for amendment:* January 28, 1987.

*Brief description of amendment:* This amendment prescribes additional fire detection and suppression operability requirements that encompass the fire protection modifications accomplished during the 6R outage as part of the commitments to satisfy 10 CFR Part 50, Appendix R.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

Amendment No. 127.

*Facility Operating License No. DPR–50.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5856) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Indiana and Michigan Electric Co., Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, MI**

*Date of application for amendments:* November 13, 1986.

*Brief description of amendments:* The amendments change the Technical Specifications to clarify that Section 3/4.4.5 allows crevice flushing of steam generators in Mode 4. This is a partial approval of the licensee's proposed amendment to change the overall intent from operable to integrity.

This amendment also changes Table 4.4–1, footnote 2, to require second and subsequent inspections on one steam generator during each inspection.

*Date of issuance:* April 1, 1987.

*Effective date:* April 1, 1987.

*Amendment Nos.:* 103 and 89.

*Facility Operating License Nos. DPR–58 and DPR–74.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 17, 1986 (51 FR 45203) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Indiana and Michigan Electric Co., Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, MI**

*Date of application for amendments:* August 19, 1986.

*Brief description of amendments:* The amendments would change the Technical Specifications on snubbers to correct a number of errors, and to allow surveillance inspections to be performed sooner. The change to clarify that the fluid observation port at the entrance to the valve operator must be checked and full to have an operable snubber was deleted and agreed to by the licensee.

*Date of issuance:* April 7, 1987.

*Effective date:* April 7, 1987.

*Amendment Nos.:* 104 and 91.

*Facility Operating License Nos. DPR–58 and DPR–74.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 24, 1986 (51 FR 33951).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Indiana and Michigan Electric Co., Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, MI**

*Date of application for amendment:* December 5, 1986.

*Brief description of amendment:* The amendment revises the Technical Specifications for the Quadrant Power Tilt Ratio to require that limits be verified once per hour for twelve hours or until verified acceptable at 95% or greater rated thermal power.

*Date of issuance:* April 7, 1987.

*Effective date:* April 7, 1987.

*Amendment No.: 105.*

*Facility Operating License No. DPR–58.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 14, 1987 (52 FR 1555) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Louisiana Power and Light Co., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, LA.**

*Dates of applications for amendment:* October 15, 1986, as supplemented by letters dated November 19, 1986 and February 9, 1987.

*Brief description of amendment:* The admendment revised the Technical Specifications by updating the organizational charts in Sections 6 to reflect the reorganization within LP&L's Nuclear Operations group. The November 19, 1986 and February 9, 1987 letters were explanatory in nature and did not make any substantive changes.

*Date of issuance:* April 3, 1987.

*Effective date:* April 3, 1987.

*Amendment No.:* 18.

*Facility Operating License No.: NPF–38.* Amendment revised the Technical Specifications.

*Dates of initial notice in* **Federal Register:** December 17, 1986 (51 FR 45208).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

**Maine Yankee Atomic Power Co., Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, ME**

*Date of application for amendment:* October 7, 1982, April 13, 1984, and March 4, 1985, clarified April 26, 1985.

*Brief description of amendment:* The amendment changed the Maine Yankee Technical Specifications (TS) such that the areas of the TS concerning operability and surveillance for new noble gas effluent monitors, high range radiation monitors and water level monitors in the containment are simplified. The areas of the TS concerning surveillance requirements for Containment Pressure Monitors were changed to reflect certain aspects of NUREG–0737. In addition, the entire Section 3.9 of the TS was rewritten to reflect an overall simplification of language.

*Date of issuance:* March 26, 1987.

*Effective Date:* March 26, 1987.

*Amendment No.:* 94.

*Facility Operating License No. DPR–36:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 20, 1983 (48 FR 33082); June 20, 1984 (49 FR 25363) and May 21, 1985 (50 FR 20969 at 20983). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wiscasset Public Library, High Street, Wiscasset, Maine.

**Maine Yankee Atomic Power Co., Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, ME**

*Date of application for amendment:* April 3, 1981 as supplemented April 10, 1984 and September 12, 1985.

*Brief description of amendment:* The amendment revised the testing requirements for hydraulic shock suppressors (snubbers) and added requirements for mechanical snubber operability and testing.

*Date of issuance:* April 3, 1987.

*Effective Date:* April 3, 1987.

*Amendment No.:* 95.

*Facility Operating License No. DPR–36:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 20, 1984 (49 FR 25363 and November 19, 1986 (51 FR 41843 at 41863).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wiscasset Public Library, High Street, Wiscasset, Maine.

**Mississippi Power & Light Co., System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MI**

*Date of application for amendment:* October 17, 1986.

*Brief description of amendment:* The proposed amendment would change the Technical Specifications (TSs) by: (1) Deleting the two-minute time limit for closing a stuck open safety relief valve (SRV) and changing the temperature limit of the suppression pool water from 105° to 110 °F; (2) adding a requirement to bypass the thermal overload protection device for the motor operated valve in the reactor core isolation cooling (RCIC) turbine bypass line; and (3) changing the nomenclature of a secondary containment isolation valve in the residual heat removal (RHR) discharge line to the liquid radwaste system.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.* 29.

*Facility Operating License No. NPF–29.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1986 (52 FR 5862).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

**Mississippi Power & Light Co., System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MI**

*Date of application for amendment:* May 22, 1986 as revised December 9, 1986 and January 29, 1987.

*Brief description of amendment:* This amendment changes the Technical Specifications (TSs) for alternating current electrical power systems by reducing excessive testing of the three onsite emergency diesel generators to be consistent with the recommendations provided in the NRC Generic Letter 84–15 "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability."

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.* 30.

*Facility Operating License No. NPF–29.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5859).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

**Mississippi Power & Light Co., System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MS**

*Date of application for amendment:* May 28, 1986 as amended November 11, 1986 and February 13, 1987.

*Brief description of amendment:* This amendment changes the Technical Specifications (TSs) for the drywell airlock by: (1) Changing the wording to indicate only one drywell airlock; (2) rearranging Action Statement "a" to clarify that all actions in the statement are parts of the same action; (3) changing the drywell overall airlock leakage test frequency from the present, once per six months, to each cold shutdown if not performed within the previous six months; (4) changing the surveillance requirement regarding the verification that only one door in the airlock can be opened at a time from once per six months to once per 18 months; and (5) changing the drywell airlock inflatable seal pressure instrumentation channel functional test from once per 31 days to once per 18 months.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.* 31.

*Facility Operating License No. NPF–29.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5861).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

**Mississippi Power & Light Co., System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MS**

*Date of application for amendment:* November 11, 1986, as revised January 20, 1987.

*Brief description of amendment:* The requested amendment changes the Technical Specifications and associated Bases for the reactor pressure vessel (RPV) pressure and temperature limits to be consistent with the limits provided by the vendor for the nuclear steam supply system, General Electric Company.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.* 32.

*Facility Operating License No. NPF–29.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5863).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

**Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, NE**

*Date of application for amendment:* August 19, 1986.

*Brief description of amendment:* The amendment deleted the tabular listings of safety-related snubbers from the Technical Specifications in accordance with Generic Letter 84–13.

*Date of issuance:* March 26, 1987.

*Effective date:* Within 30 days of issuance.

*Amendment No.:* 105.

*Facility Operating License No. DPR–40.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 10, 1986 (51 FR 32264 at 32278).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

**Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. I, Washington County, NE.**

*Date of application for amendment:* January 7, 1986 [sic–(1987).

*Brief description of amendment:* The amendment modifies the surveillance requirements for the hydrogen and oxygen monitoring system for the waste gas decay tanks to clarify that a daily channel check is required for this system when it is in service.

*Date of issuance:* March 26, 1987.

*Effective date:* March 26, 1987.

*Amendment No.:* 106.

*Facility Operating License No. DPR–40.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 11, 1987 (52 FR 4400 at 4414).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

**Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, NE**

*Date of application for amendment:* January 8, 1986 [sic] (1987).

*Brief description of amendment:* The amendment deleted the hydrogen flouride detectors from Tables 2–11 and 3–3 of the Technical Specifications.

*Date of issuance:* March 30, 1987.

*Effective date:* March 30, 1987.

*Amendment No.:* 107.

*Facility Operating License No. DPR–50.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5864).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* W. Dale Clark Library, 215

South 15th Street, Omaha, Nebraska 68102.

**Pennsylvania Power & Light Co., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, PA**

*Date of application for amendments:* December 26, 1985.

*Brief description of amendments:* The licensee in their December 26, 1985, submittal requested several Technical Specification changes for Units 1 and/or 2 which are administrative in nature. The Technical Specification changes are described below:

(1) Corrections to Table 3.6.3–1 (Units 1 and 2) (a) Containment Instrument Gas *Unit 1:* Page 3/4 6–25 of the Unit 1 Technical Specifications (TS) previously listed valve number 1–26–070 as an isolation valve in the Containment Instrument Gas System. The amendment deletes this valve from the Table, and adds valve number 1–26–164. *Unit 2:* Page 3/4 6–25 of the Unit 2 Technical Specifications deletes valves 2–26–070 from Table 3.6.3–1. (b) High Pressure Coolant Injection (HPCI) *Unit 1:* The amendment adds valve HV–155F046 as a Minimum Recirculation Flow (penetration X–211) isolation valve on Page 3/4 6–26. *Unit 2:* Page 3/4 6–25: the amendment adds valve HV–255F046 as a Minimum Recirculation Flow isolation valve. (c) Reactor Core Isolation Cooling (RCIC) *Unit 1:* Page 3/4 6–26 lists HV–149F019: the amendment adds HV–149F021 as a RCIC minimum recirculation flow (penetration X–216) isolation valve on Page 3/4 6–26. *Unit 2:* Page 3/4 6–26: the amendment adds valve HV–249F021 as a minimum Recirculation Flow isolation valve. (d) Integrated Leak Rate Testing (ILRT) *Unit 1:* Page 3/4 6–24 contained a typographical error. Valve 1–57–195 now reads 1–57–194.

(2) Addition to Plant Operations Review Committee (PORC) Membership *Units 1 and 2:* The licensee has added the Assistant Superintendent-Outages to the PORC Composition listing in Section 6.5.1.2.

(3) Deletion of Offsite Organization Position *Units 1 and 2:* The deletion of the position "Vice President-Engineering and Construction-Nuclear" and the subsequent realignment as indicated in Figure 6.2.1–1 reflects PP&L's shift from construction to operation of the Susquehanna plant.

(4) Generic Letter No. 85–19 *Units 1 and 2:* The licensee has changed both Units 1 and 2 Technical Specifications based on the recommendations of Generic Letter 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes". The licensee has added the appropriate information in accordance with Generic Letter 85–19.

(5) Snubbers *Unit 1:* Two changes have been made to specification 3/4.7.4: (1) Deletion of references to Table 3.7.4–1. Removal of the snubber table was approved by NRC via Amendment 36 to the Unit 1 Operating License. The references to it were inadvertently left in the text of Specification 3/4.7.4. (2) Correction of sampling expression. The correct expression is 35 (1 + C/2).

*Date of issuance:* April 6, 1987.

*Effective date:* April 6, 1987.

*Amendment Nos.:* 63 and 34.

*Facility Operating License Nos. NPF–14 and NPF–22:* Amendments revised the Technical Specifications.

*Dates of initial notice in* **Federal Register:** May 21, 1986 (51 FR 18690).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 6, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

**Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, OR**

*Date of application for amendment:* January 31, 1986, as supplemented May 16, 1986 and February 26, 1987.

*Brief description of amendment:* The amendment revises the Technical Specification (TS) by providing editorial corrections to TS Sections 4.4.6.1.b and 3.4.9.3. Table 3.6–1 is revised to permit the operation of valve MD–059 to be administratively controlled in order to provide consistency between TS Sections 3.6.1.1, 3.6.3.1 and 3.7.8.3.

By letter dated February 26, 1987, PGE requested that the portion of this application pertaining to the deletion of valve CV–8825 from Table 3.6–1 be withdrawn.

*Date of issuance:* April 2, 1987.

*Effective date:* April 2, 1987.

*Amendment No.:* 126.

*Facilities Operating License No. NPF–1:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 30, 1986 (51 FR 27287).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon 97205.

**Portland General Electric Co., et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, OR**

*Date of application for amendment:* October 31, 1986.

*Brief description of amendment:* The amendment revises the reactor vessel material irradiation surveillance schedule and the pressure-temperature limits.

*Date of issuance:* April 9, 1987.

*Effective date:* April 9, 1987.

*Amendment No.:* 127.

*Facilities Operating License No. NPF–1:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5865). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon 97205.

**Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, NY**

*Date of application for amendment:* December 19, 1986, as supplemented January 3, 1987 and March 13, 1987.

*Brief description of amendment:* The amendment changes Table 3.7–1 of the Technical Specifications to reflect installation of new containment isolation valves in the Traveling Incore Probe Purge System, Recirculation Pump Mini-Purge System, and ADS Accumulator System.

*Date of issuance:* April 3, 1987.

*Effective date:* April 3, 1987.

*Amendment No.:* 108.

*Facility Operating License No. DPR–59.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 28, 1987 (52 FR 2887). The January 3 and March 13, 1987 submittals provided clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Power Authority of the State of New York, Docket No. 50–333, James A FitzPatrick Nuclear Power Plant, Oswego County, NY**

*Date of application for amendment:* December 23, 1986, as supplemented March 13, 1987.

*Brief description of amendment:* The amendment changes the Technical Specifications to permit fuel reloading and Cycle 8 operation. Included in the Cycle 8 core will be four Westinghouse QUAD+ demonstration fuel assemblies.

*Date of issuance:* April 3, 1987.

*Effective date:* April 3, 1987.

*Amendment No.:* 109.

*Facility Operating License No. DPR–59.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 28, 1987 (52 FR 2888). The March 13, 1987 submittal provided clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, NY**

*Date of application for amendment:* September 19, 1985.

*Brief description of amendment:* The amendment changes the Technical Specifications to revise notification and reporting requirements, as requested by NRC Generic Letter 83–43 dated December 19, 1983, to be consistent with the new requirements in 10 CFR 50.72 and 50.73.

*Date of issuance:* April 3, 1987.

*Effective date:* April 3, 1987.

*Amendment No.:* 110.

*Facility Operating License No. DPR–59.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 20, 1985 (50 FR 47869).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, NY**

*Date of application for amendment:* January 14, 1987.

*Brief description of amendment:* The amendment revises the Technical Specifications to permit the discharge of more than one region of fuel (72 assemblies) from the reactor after 162 hours have elapsed since shutdown.

This elapse time was 400 hours.

*Date of issuance:* April 2, 1987.

*Effective date:* April 2, 1987.

*Amendment No.:* 72.

*Facilities Operating License No. DPR–64:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5866).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

**Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, CO**

*Date of application for amendment:* May 10, 1984 as supplemented December 27, 1984.

*Brief description of amendment:* The amendment increases the Circulator Speed-High Steam trip setting listed in Table 4.4–3 of the Technical Specifications.

*Date of issuance:* April 6, 1987.

*Effective date:* April 6, 1987.

*Amendment No.:* 52.

*Facility Operating License No. DPR–34.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 20, 1984 (49 FR 25372).

The December 27, 1984 submittal provided supplemental information and did not change the initial determination published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado.

**Public Service Electric & Gas Co., Docket No. 50–354, Hope Creek Generating Station, Salem County, NJ**

*Dates of application for amendment:* May 30, 1986, as supplemented on December 24, 1986, and February 6, 1987.

*Brief description of amendment:* This amendment revises the Technical Specifications to permit long-term operation with one recirculation loop out of service.

*Date of issuance:* April 7, 1987.

*Effective date:* April 7, 1987.

*Amendment No.:* 3.

*Facility Operating License No. NPF–57:* Amendment revises the Technical Specifications.

*Date of initial notice in the* **Federal Register:** January 28, 1987 (52 FR 2889).

The February 7, 1987, submittal provided clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

**Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, CA**

*Date of application for amendment:* December 18, 1984, as revised April 26, 1985, supplemented May 22, 1985, and superseded October 30, 1985.

*Brief description of amendment:* This amendment revised the TSs by establishing limiting conditions for operation based on the Spent Fuel Pool (SFP) water temperature. It included requirements for use of the Decay Heat Removal System as an alternate/supplemental SFP cooling means when SFP temperatures reach specified limits.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.:* 84.

*Facility Operating License No. DPR–54.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 4, 1986 (51 FR 20373).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

**South Carolina Electric & Gas Co., South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, SC**

*Date of application for amendment:* June 27, 1986, as supplemented November 21, 1986, and February 25, 1987.

*Brief description of amendment:* The amendment reduces the reactor coolant system flow measurement uncertainty from 3.5% to 2.1%.

*Date of issuance:* March 30, 1987.

*Effective date:* March 30, 1987.

*Amendment No.* 60.

*Facility Operating License No. NPF-12.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 30, 1986 (51 FR 27269).

The letters dated November 21, 1986, and February 27, 1986, provided supplemental information and did not change the initial determination published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**South Carolina Electric & Gas Co., South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, SC**

*Date of application for amendment:* December 11, 1986.

*Brief description of amendment:* The amendment increases the required boron concentration for the accumulators and the refueling water storage tank.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.* 61.

*Facility Operating License No. NPF-12.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5868).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**South Carolina Electric & Gas Co., South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, SC**

*Date of application for amendment:* December 9, 1986, as supplemented March 2, 1987.

*Brief description of amendment:* The amendment allows the licensee the flexibility to reconstitute fuel assemblies.

*Date of issuance:* April 2, 1987.

*Effective date:* April 2, 1987.

*Amendment No.:* 62.

*Facility Operating License No. NPF-12.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5868).

The March 2, 1987 letter provided supplemental information which did not change the initial determination published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**South Carolina Electric & Gas Co., South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, SC**

*Date of application for amendment:* April 29, 1985 as supplemented June 10, 1985.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 3/4.8.4 "Electrical Equipment Protective Devices" by indicating which devices are required to be operable and by eliminating the specific list of electrical equipment protective devices for containment penetrations (Table 3.8.1) from the TS. The amendment also incorporates the administrative page numbering changes to the Index and the TS pages that are necessary as a result of deleting the table.

*Date of issuance:* April 6, 1987.

*Effective date:* April 6, 1987.

*Amendment No.:* 63.

*Facility Operating License No. NPF-12.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 9, 1986 (51 FR 12239).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**Southern California Edison Co., et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, CA**

*Dates of applications for amendments:* March 17, June 13, and September 30, 1986 (Reference PCN-192).

*Brief description of amendments:* The amendments revise Technical Specification 3/4.8.1.1, "Electrical Power Systems, AC Sources," concerning reduced frequency of Emergency Diesel Generator (EDG) fast starts, reduced number of EDG tests and revised diesel fuel oil surveillance.

*Date of issuance:* April 9, 1987.

*Effective date:* April 9, 1987 to be implemented within 30 days of issuance.

*Amendment Nos.:* 59 and 48.

*Facility Operating License Nos. NPF-10 and NPF-15.* Amendments revise the Technical Specifications.

*Date of initial notices in* **Federal Register:** February 11, 1987 (52 FR 4418).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* General Library, University of California at Irvine, Irvine, California 92713.

**Union Electric Co., Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, MO**

*Date of application for amendment:* January 9, 1986.

*Brief description of amendment:* The amendment modifies the Technical Specifications to require 48 hour restoration in the event of loss of one of the diverse reactor trip features, independent verification of the operability of the undervoltage and shunt trip attachments, and independent testing of the control room manual reactor trip switch contacts during each refueling outage.

*Date of issuance:* April 3, 1987.

*Effective date:* April 3, 1987.

*Amendment No.:* 19.

*Facility Operating License No. NPF-30.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 27, 1986 (51 FR 30583).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1987

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

**Vermont Yankee Nuclear Power Corp., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, VT**

*Date of application for amendment:* January 30, 1979, as supplemented November 27, 1984.

*Brief description of amendment:* The amendment changes the Technical Specifications to require that the inservice examinations of the piping, components, and their supports be performed in accordance with 10 CFR 50.55a(b)(2) rather than by an earlier edition of the ASME Code Section XI. The remainder of the requests contained in the January 30, 1979 and November 27, 1984 applications pertain to NRC's continuing review of the inservice Inspection and Inservice Testing programs, and will be acted upon separately.

*Date of issuance:* March 31, 1987.

*Effective date:* March 31, 1987.

*Amendment No.:* 99.

*Facility Operating License No. DPR–28:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 23, 1983 (48 FR 38425).

The November 27, 1984 submittal provided additional clarifying information and therefore did not change the determination of the initial **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

**Virginia Electric and Power Co., et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, VA**

*Date of application for amendments:* November 25, 1986.

*Brief description of amendments:* The amendments modify Technical Specifications 3/4.12 (Radiological Monitoring) to reflect established practices, to agree with NRC approved documents, and to conform to NRC guidance.

*Date of issuance:* March 31, 1987.

*Effective date:* 14 days from the date of issuance.

*Amendment Nos.:* 92 and 77.

*Facility Operating License Nos. NPF–4 and NPF–7.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 26, 1987 (52 FR 5870).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room locations:* Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, WA**

*Date of amendment request:* July 10, 1986.

*Brief description of amendment:* This amendment revises WNP–2 Technical Specification 3.4.2 (Safety/Relief Valves) and Bases Section 3/4.4.2 to reflect revised safety/relief valve setpoint tolerances for all 18 valves and to reflect a revised setpoint for 2 valves.

*Date of issuance:* March 27, 1987.

*Effective date:* March 27, 1987.

*Amendment No.:* 38.

*Facility Operating License No. NPF–21:* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 10, 1986 (51 FR 32282).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, WA**

*Date of amendment request:* May 27, 1986.

*Brief description of amendment:* This amendment changes the reporting requirements for iodine spiking to eliminate the short term reporting requirements of Technical Specification 3.4.5, instead requiring that iodine spike reporting be added to the Annual Report required by Technical Specificaiton 6.9.1.5.

*Date of Issuance:* March 31, 1987.

*Effective Date:* March 31, 1987.

*Amendment No.:* 39.

*Facility Operating License No. NPF–21:* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 13, 1986 (51 FR 29016).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comment received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

**Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)**

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the

Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 5, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

**Alabama Power Co., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, AL.**

*Date of application for amendments:* September 2, 1986, as supplemented February 9, 25, and 27, 1987.

*Brief description of amendments:* Technical Specification (TS) 4.7–9 is changed on a one-time basis and Table 4.7–3 is added for the same time periods. The changes are related to visual inspection requirements of snubbers at both units and are based on the

application of statistical methodology while meeting the existing confidence levels. The February 25, 1987, request is a revision of the September 2, 1986, request.

*Date of issuance:* March 30, 1987.

*Effective date:* March 30, 1987.

*Amendment Nos.:* 69 and 61.

*Facilities Operating License Nos. NPF–2 and NPF–8.* Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. Comments were requested on the initial application of September 2, 1986, which was noticed on October 22, 1986 (51 FR 37503). No significant hazards consideration comments received: No. The Commission's related evaluation of the amendment, and final no significant hazards considerations determination are contained in a Safety Evaluation dated March 30, 1987.

*Attorney For Licensee:* Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*Local Public Document Room location:* George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

*NRC Project Director: Lester S. Rubenstein.*

**Cleveland Electric Illuminating Co., Duquesne Light Company, Ohio Edison Co., Pennsylvania Power Co., Toledo Edison Co., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, OH**

*Date of Application for amendment:* March 4, 1987, as supplemented on March 19, 1987.

*Brief description of amendment:* The amendment changes the maximum isolation time allowed by the Technical Specifications from 50 seconds to 20 seconds for operation of the Reactor Core Isolation Cooling (RCIC) system inboard containment isolation valve. It also deletes from the Technical Specifications the load represented by the valve's direct-current (DC) operator and identification of the motor control center through which DC power is supplied to the operator. These changes are being made in relation to conversion of this normally-closed, DC motor operated valve to be normally-open with an alternating-current (AC) operator.

*Date of Issuance: April 1, 1987.*

*Effective Date:* April 1, 1987.

*Amendment No.:* 3.

*Facility Operating License No. NPF–58:* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (52 FR 7346, March 10, 1987). By letter dated March 19, 1987, the licensees submitted information concerning future activities relative to the RCIC System, but this information did not change the initial application or result in changing the no significant hazards determination. Therefore, no renotice of the application was warranted.

The Commission's related evaluation of the amendment, consultation with the State of Ohio, and finally no significant hazards considerations determination are contained in a Safety Evaluation dated April 1, 1987.

*Attorney For Licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

*NRC Project Director:* Walter R. Butler.

**Indiana and Michigan Electric Co., Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, MI**

*Date of Application for amendment:* March 30, 1987.

*Brief description of amendment:* The amendment revises the Technical Specification on a one-time basis to allow the weights of three row 8 baskets to be substituted for three adjacent row 9 baskets in the ice condenser.

*Date of Issuance:* April 3, 1987.

*Effective Date:* April 3, 1987.

*Amendment No.:* 90.

*Facility Operating License No. NPR–74:* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 1987.

*Attorney For Licensee:* Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library,

500 Market Street, St. Joseph, Michigan 49085.

*NRC Project Director:* B. J. Youngblood.

**Toledo Edison Co. and The Cleveland Electric Illuminating Co., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, OH**

*Date of Application for amendment:* March 30, 1987 (telecopied), as confirmed March 31, 1987.

*Brief description of amendment:* This amendment revised the TSs to change from four to three the minimum number of sequencer channels for emergency diesel generator loading required to be operable.

*Date of Issuance: April 3, 1987.*

*Effective Date:* April 30, 1987.

*Amendment No.:* 102.

*Facility Operating License No. NPF–3:* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

*State Contacted:* In accordance with the Commission's regulations, consultation was held with the State of Ohio by telephone. The state expressed no concern either from the standpoint of safety or of our no significant hazards consideration determination.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 3, 1987.

*Attorney for Licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, OH 43606.

*NRC Project Director:* John F. Stolz.

Dated at Bethesda, Maryland, this 16th day of April, 1987.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II.*

[FR Doc. 87–8932 Filed 4–21–87; 8:45 am]

BILLING CODE 7590–01–M

---

**[Dockets Nos. 50–269, 50–270, 50–287]**

**Duke Power Company (Oconee Nuclear Station, Units 1, 2 and 3); Confirmatory Order Modifying Licenses**

I

Duke Power Company (DPC or the licensee) is the holder of Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55 which authorize the operation of Oconee Nuclear Station, Units 1, 2 and 3 (the facilities) at power levels not in excess of 2568 megawatts thermal of each unit. The facilities consist of pressurized water reactors located at the licensee's site in Oconee County, South Carolina.

II

On April 3, 1987, by telephone and subsequently by letter dated April 6, 1987, the licensee for Oconee Units 1, 2 and 3 informed the staff that recent fouling in the low pressure service water (LPSW) system (lake water) side of the reactor building cooling units (RBCU) and low pressure injection (LPI) coolers had resulted in an inability to transfer total design basis accident (DBA–LOCA) heat loads. Consequently, the licensee has reduced power levels in Oconee Units 1 and 2 to a maixmum of 91.5% and 81.7%, respectively, in order to match accident (LOCA) heat transfer requirements with the capability of the degraded heat exchangers. Oconee Unit 3 is currently shutdown and its affected heat exchangers will be cleaned and performance tested during the outage and assured they are operable and declared operable for full power operation. Additional emergency actions have been proposed by the licensee to justify continued operation of Oconee Units 1 and 2 for the interim period until the fouling can be corrected as discussed below.

The Reactor Building Cooling Units (RBCU) provide the design heat removal capacity following a loss-of-coolant accident (LOCA) with all three coolers operating continuously and circulating the steam-air mixture past the cooling tubes to transfer heat from the containment atmosphere to the LPSW which is passed through the cooler tubes. The LPI system in the recirculation mode cools the water from the reactor building sump. Long term cooling is by recirculation of injected water from the reactor building sump to the core by the LPI pumps. Heat is transferred through the LPI coolers to the LPSW system.

By letter telecopied on April 6, 1987, the licensee committed to establish new interim maximum allowable power levels and change the reactor protection system (RPS) high flux trip setpoints for Oconee Units 1 and 2 and to specify operability for the third non-engineered safeguards LPI pump for Units 1 and 2.

On April 3, 1987, verbal authorization was granted by the Office of Nuclear Reactor Regulation (NRR) for the licensee to continue operation. This authorization was granted only after a discussion and review of the facts as presented by the licensee in a telephone conference call with the NRC and by followup telecopy dated April 6, 1987. April 6 and 7, 1987 letters supplemented the original letter. The initial waiver of compliance would have expired at midnight on April 8, 1987. On the evening of April 8, 1987, it was extended to Friday, April 10, 1987 at 5:00 p.m.

III

The licensee provided a conservative calculation which compared the LOCA heat removal requirements with the current degraded heat exchanger capacity in order to ensure that the post-LOCA equipment qualification temperature limits will not be exceeded and required decay heat removal requirements can be satisfied. The calculation indicated that a scram from the above indicated power levels for Oconee Units 1 and 2, respectively, will produce decay heat levels within the heat exchanger capabilities. Actual heat transfer and flow rates through the degraded heat exchangers have been confirmed by testing. The licensee has committed to reduce the RPS high flux trip setpoint to 91.5% and 81.7% of rated power for Units 1 and 2, repectively, in order to ensure that these power levels are not exceeded in the interim until the heat exchanger fouling can be corrected. The staff has reviewed the licensee's heat transfer calculational method and assumptions and reviewed the overpower trip setpoint and concurs that adequate accident heat removal requirements will be maintained with the current degraded heat exchangers.

The licensee has also explained why the fouling problem will not accelerate over the next six months and further degrade the coolers' performance. The licensee stated that the turbidity levels in the lake water are very low, and the fouling has only recently been noted with more than ten years of plant operation without cleaning the LPI and RBCU coolers. We have reviewed the information and concur that accelerated degradation during the interim period is unlikely. Also, increased flow through the LPI coolers will not diminish flow to these other coolers.

In addition, the licensee has committed to ensure that adequate LPI cooling is provided in the interim by requiring the nonessential LPI pumps in both Units 1 and 2 to be operable. In the case of Unit 2, when operating at 81.7% an upper limit of 55°F has been placed on the lake water temperature to ensure acceptable heat removal capability. Lake water temperature will be monitored daily for Unit 2 to verify compliance with the above limit. The licensee has also proposed weekly monitoring of lake water temperature for Unit 1 to assure that the design basis of 75°F is not exceeded. The staff finds the above commitments and surveillance to be conservative and acceptable for assuring heat transfer capability.

The licensee has committed not to operate Unit 2 with degraded coolers beyond midnight April 22, 1987. After that time, all LPI and RBCU coolers will have been cleaned and tested to verify that they are in an operable condition intended for full power plant operation.

The licensee will operate Unit 1 at reduced power until the end of Cycle 10 outage currently scheduled to begin August 29, 1987. Although the Unit 1 LPI coolers will be cleaned to later than April 30, 1987, they will not be tested and evaluated for full power operation until the Cycle 10 outage. Until that time, the licensee indicated that because of both the additional margin provided by cleaning the Unit 1 LPI cooler and because the fouling occurs slowly over an extended time period, these items will ensure adequate heat removal capability at the reduced power levels from the period of April 30 to August 29, 1987. The staff concurs with the licensee's assessment.

The licensee has also evaluated other safety-related coolers serviced by the LPSW system. In addition to the LPI and RBCU coolers, the LPSW cools the high pressure injection pump motor bearing coolers, the motor driven emergency feedwater pump motor air coolers and the turbine driven emergency feedwater pump turbine bearing oil coolers. The licensee has discussed the testing program for these coolers which confirmed acceptable flow rates through them and believes that a similar fouling problem does not exist. We concur with the licensee's conclusion.

I find the licensee's commitments acceptable and conlude that the plant's safety can be maintained in the interim until the fouling can be corrected and the units returned to full power. In view of the foregoing, I have determined that these commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161b, and 161i, of the Atomic Energy Act of 1954, as amended and the Commission's regulations in 10 CFR 2.204 and Part 50, it is hereby ordered, effective immediately, that licenses DPR–38, DPR–47 and DPR–55 are amended as follows:

*A. Oconee Unit 1, License No. DPR–38*

1. Until the 1A LPI cooler is cleaned, tested, evaluated for full power

operation, and approved for full power operation by the Regional Administrator, Region II, Oconee Unit 1 operation will be at reduced power levels and will have a reduced RPS high flux trip setpoint to ensure that adequate shutdown removal can be provided under accident conditions, as follows:

a. the RPS high flux trip setpoint shall be 91.5% rated power;

b. the maximum allowable power level shall be 91.5% rated power; and

c. in addition to the requirements of Technical Specification 3.3.2, the remaining non-ES LPI pump, capable of taking suction from the reactor building emergency sump and discharging into the RCS, shall be operable. The remaining non-ES LPI pump may be inoperable for a period of 24 hours. If the non-ES LPI pump is not restored to operable status within 24 hours, the reactor shall be placed in a hot shutdown condition within an additional 12 hours. If the requirements of 3.3.8(b) are not met within 24 hours following hot shutdown, the reactor shall be placed in a condition with RCS pressure below 350 psig and RCS temperature below 250° F within an additional 24 hours.

2. Oconee Unit 1 shall not operate at any power level after the end of Cycle 10 unless the Regional Administrator, Region II, has approved the 1A LPI cooler for full power operation.

*B. Oconee Unit 2, License No. DPR–47*

1. Until the 2A LPI cooler is cleaned, tested, evaluated for full power operation, and approved for full power operation by the Regional Administrator, Region II, Oconee Unit 2 operation will be at reduced power levels and will have a reduced RPS high flux trip setpoint to ensure that adequate shutdown heat removal can be provided under accident conditions, as follows:

a. the RPS high flux trip setpoint shall be 81.7% rated power;

b. if lake water temperature is equal to or less than 55° F, the maximum allowable power level shall be 81.7% rated power; if the lake water temperature exceeds 55° F, Unit 2 shall proceed to shutdown in accordance with Technical Specification 3.0;

c. in addition to the requirement of Technical Specification 3.3.2, the remaining non-ES LPI pump, capable of taking suction from the reactor building emergency sump and discharging into the RCS, shall be operable. The remaining non-ES LPI pump may be inoperable for a period of 24 hours. If the non-ES LPI pump is not restored to operable status within 24 hours, the reactor shall be placed in a hot shutdown condition within an additional 12 hours. If the requirements of 3.3.9(c) are not met within 24 hours following hot shutdown, the reactor shall be placed in a condition with RCS pressure below 350 psig and RCS temperature below 250° F within an additional 24 hours.

2. Oconee Unit 2 shall not operate at any power level after midnight of April 22, 1987, unless the Regional Administrator, Region II has approved the 2A LPI cooler for full power operation.

*C. Oconee Unit 3, License No. DPR–55*

Oconee Unit 3 shall remain shutdown until the 3A and 3B LPI coolers are approved for full power operation by the Regional Administrator, of Region II.

The Regional Administrator, Region II, may relax or rescind any of the above conditions upon a showing by the licensee of good cause.

V

The licensee or any other person who has an interest adversely affected by this Order may request a hearing on this Order within 20 days of the date of issuance. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. A copy shall be sent to the Office of the General Counsel, Assistant General Counsel for Enforcement, at the same address, and the Regional Administrator, Region II at 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30303. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 10th day of April, 1987.

For the Nuclear Regulatory Commission.

**Frank J. Miraglia,**

*Director, Division of PWR Licensing-B.*

[FR Doc. 87–9040 Filed 4–21–87; 8:45 am]

BILLING CODE 7590–01–M

**[Docket Nos. 50–275–OLA and 50–323–OLA; ASLBP No. 86–523–03–LA]**

## Pacific Gas and Electric Co.; Diablo Canyon Nuclear Power Plant, Units 1 and 2; Hearing

April 15, 1987.

### A. Hearing

Before Administrative Judges: B. Paul Cotter, Jr., Chairman; Glenn O. Bright, Dr. Jerry Harbour.

Please take notice that an evidentiary hearing in the captioned proceeding will commence in the Bay View Room of the San Luis Bay Inn, Avila Beach, California, at 9:00 A.M. on Tuesday, June 16, and continue from day to day until completed. The hearing will be held pursuant to the Atomic Energy Act, as amended, 42 U.S.C. 2011, *et seq.*

### B. Limited Appearance Statements

Also please notice that limited appearance statements will be held from 3:00–6:00 P.M. at the same location on Monday, June 15, 1987.

Any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene may request in writing permission to make a limited appearance statement pursuant to the provisions of 10 CFR 2.715 of the Commission's Rules of Practice. A member of the public does not have a right to participate; limited appearance statements will be heard only at the discretion of the Board, at a time designated in order not to interfere with the taking of evidence in the formal hearing. Forms for requesting permission to present such statements will be available. Individual presentations must be germane to the issues under consideration by the Board, and may be no more than five minutes in length.

Written limited appearance statements may be submitted to the Board at any time prior to the closing of the record in this proceeding. Such statements may be of any length, and may be delivered to the Board at the hearing site, or mailed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Docketing and Service Division, Washington, DC 20555. Both oral and written statements will be made a part of the official record of this proceeding.

For the Atomic Safety and Licensing Board.

**B. Paul Cotter, Jr.,**

*Chairman, Administrative Judge.*

[FR Doc. 87–9086 Filed 4–21–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-483]

## Union Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF-30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, located in Callaway County, Missouri.

The amendment would authorize on an expeditious basis a revision to Table 3.3-5 of the technical specifications (TS) to increase the Engineered Safety Features (ESF) response times by fifteen seconds for Items: 2.a. (Containment Pressure-High-1, Safety Injection); 3.a. (Pressurizer-Low, Safety Injection); and 4.a. (Steam Line Pressure-Low, Safety Injection). The need for the amendment arose as the licensee was made aware of a misinterpretation of the surveillance requirements in TS Table 3.3-5. Although all equipment had been determined to be operational as required, the timing of equipment operation to meet response time requirements was misinterpreted. The licensee has evaluated the current steam line break analysis for the Callaway Plant and determined that the increase in the above mentioned ESF response times is acceptable. These revisions to the technical specifications would be made in response to the licensee's application for amendment dated April 16, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed amendment does not involve a significant increase in the probability or consequences of accidents previously evaluated. An increase in the acceptable criterion for the ESF response time is acceptable since the evaluation of the impact of the increased delay on the steam line break event demonstrated that the departure from nucleate boiling design basis is still met.

The licensee has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes associated with this proposed change, as no design changes have been made. No new accident is created because the same equipment is assumed to perform in the same manner as before. Therefore, an increase in the ESP response times for high containment pressure, low pressurizer pressure, and low steam line pressure does not create the possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report.

The licensee has determined that the proposed amendment does not involve a significant reduction in a margin of safety. There is no impact on the consequences on protective boundaries, and all acceptance criteria in the analysis of record are still met. Therefore, the safety limits will still be met.

The Commission has reviewed the licensee's significant hazards consideration determination and agrees with the licensee's analysis. Therefore, operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in extending shutdown because under the current TS, the licensee cannot meet certain ESF response times in Table 3.3-5. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

Normally, the Commission will not issue the amendment until the expiration of the notice period. However, should circumstances change during the notice period, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significnt hazards consideration. Comments on the proposed determination may be telephoned to D. L. Wigginton, Acting Director of Project Directorate III-3, by collect call to 301-492-8005 or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and should cite the publication date and page number of this **Federal Register** notice. All comments received by May 7, 1987 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Bethesda, Maryland, this 17th day of April, 1987.

For the Nuclear Regulatory Commission.

**Thomas W. Alexion,**

*Project Manager, Project Directorate III-3, Division of Reactor Projects.*

[FR Doc. 87-9039 Filed 4-21-87; 8:45 am]

BILLING CODE [illegible]

BEST COPY AVAILABLE

## OFFICE OF PERSONNEL MANAGEMENT

### Request for Extension of RI 30–1 Submitted to OMB for Clearance

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., Chapter 35), this notice announces a request to extend a public information collection. Form RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is completed by Civil Service Retirement System disability annuitants (under age 60) to annually provide employment and medical documentation verifying their continued disability. A statement from the annuitant's physician must accompany this form. There are 8,000 individuals who respond annually for a total public burden of 8,000 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

**DATES:** Comments on this proposal should be received within 10 working days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3201, New Executive Office Building, NW., Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

[FR Doc. 87–8977 Filed 4–21–87; 8:45 am]

BILLING CODE 6325–01–M

### Request for Extension of RI 25–15 Submitted to OMB for Clearance

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., Chapter 35), this notice announces a request to extend an information collection from the public. RI 25–15, Survey of Student's Eligibility to Receive Benefits, is used within the Civil Service Retirement System to determine continuing eligibility of unmarried dependent children between 18 and 22 years of age to receive survivor annuity benefits provided they are students. It annually collects information regarding marital status, current full-time school attendance and future plans for full-time school attendance. There are 20,000 students who respond annually for a total public burden of 1,666 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

**DATES:** Comments on this proposal should be received within 10 working days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3201, New Executive Office Building, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

[FR Doc. 87–8978 Filed 4–21–87; 8:45 am]

BILLING CODE 6325–01–M

### Request to Revise SF 2803 Submitted to OMB for Clearance

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., chapter 35), this notice announces a revised public information collection which was submitted to the Office of Management and Budget for clearance. SF 2803, Application to Make Deposit or Redeposit, is completed by Federal employees and Members to make application for deposit or redeposit to the Civil Service Retirement and Disability Trust Fund. There are 4,000 individuals who apply annually for a total public burden of 1,000 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

**DATE:** Comments on this proposal should be received within 10 working days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3201, New Executive Office Building, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

[FR Doc. 87–8979 Filed 4–22–87; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Agency Forms Under Review of Office of Management and Budget

Agency Clearance Office: Kenneth A. Fogash, (202) 272–2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549

**Extension**

*Rule 17a–5 and Form X–17A–5*

*File No. 270–242*

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–5 and Form X–17A–5 (17 CFR 240.17a–5 and 17 CFR 249.617) which prescribes periodic financial reports by broker and dealers.

The potential affected persons are approximately 8800 registered broker-dealers for an estimated twelve hours each.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Room 3228 NEOB, Washington, DC 20503.

**Jonathan G. Katz,**

*Secretary.*

April 17, 1987.

[FR Doc. 87–9052 Filed 4–21–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-24354; File No. SR-PSE-87-06]

## Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Issuance of Rights to Purchase Special Memberships

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 27, 1987 the Pacific Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange's Board of Governors ("Board") has authorized subject to membership approval, the issuance to seat owners of rights to purchase special memberships. These special memberships would permit the holder to trade only the Financial News Composite Index ("FNCI"), the PSE High Technology Index ("PSE") and such other new products as may be determined by the Board. The Exchange also is proposing a new section 13 of Rule IX, to outline the privileges, duties, obligations and limitations of holders of special options memberships.

The proposed offering regarding special memberships is being done pursuant to the procedures set forth in Article V, Section 1 of the Exchange's Constitution, as amended in 1983. Pursuant to Section 1, the sale or lease of additional memberships by the Exchange beyond the 516 authorized must be approved in writing by a majority of the Exchange members. Accordingly, the proposed rights offering will not be implemented unless a minimum of 259 votes are cast in favor of the offering.

On March 24, 1987, the Exchange sent to membership owners of record proxy material regarding the rights offering. If approved, this proposal would provide for the creation of a maximum of 25 special memberships. The results of the proxy vote will be known on April 23, 1987, unless a decisive number of votes is received at an earlier time.

*Rights Offering for Special Memberships*

A. The special non-voting membership created by these rights would allow the holder to trade only in options overlying the FNCI, the PSE and such other new products as the Board may determine to include in the special membership.

B. The special memberships created by these rights will expire on December 29, 1989, unless extended by the Board.

C. The memberships will be transferable through the facilities of the Exchange for a $100 transfer fee, and may be leased or transferred under established procedures with a $100 fee.

D. The memberships will have *no right to vote* in any election or amendment to the Constitution.

E. One right will be issued to each membership owner of record as of April 24, 1987.

F. Twenty such rights will be required for the purchase of this special membership.

G. Since there are 516 memberships outstanding, the Exchange will purchase 16 rights at the opening of trading of the rights, or shortly thereafter. This will leave 500 rights outstanding. Based on the requirement of 20 rights for the purchase of this special membership, the rights provide the potential for the creation of 25 such special memberships. (The Exchange will retire the 16 rights purchased unless it becomes necessary to resell these at the end of the rights period to permit someone with almost 20 rights to exercise).

H. The exercise price for the purchase of this special membership (with 20 rights) will be $500.

I. The rights will expire if not exercised by 2:00 p.m. (Pacific Time) on December 31, 1987.

J. When exercised, the special membership will be subject to regular Exchange dues and other charges incurred, but will not be subject to the special membership fee due to expire December 31, 1987.

K. Purchasers of rights need not qualify as members of the Exchange (although rights may be exercised only by persons duly approved fur such special membership in the Exchange).

*Constitutional Amendment*

If the proposal to create 25 special memberships is approved, implementation of the offering will require the amendment of Article V to reflect the number of special memberships created exclusively by exercise of the special membership of rights.

This amendment will take place after the rights expire on December 31, 1987, unless the maximum number of seats is created by the exercise of rights at an earlier date. The Exchange will consider the membership's approval of this rights offering as the authorization required under Article V to amend Section 1 to reflect the number of special memberships created by the offering.

*Proxy Voting Procedures*

Proxy forms for the membership vote on the two rights offerings and Constitutional amendment were sent to all voting members by registered mail on March 24, 1987. To be counted, the proxies must be *received* at the Exchange by 2:00 p.m. (PDT) on April 22, 1987.

*Results of Vote*

Results from the proxy vote will be mailed to all seat owners on April 23, 1987, and posted on all of the trading floors. Results also may be obtained by telephone after 1:00 p.m. (PDT) on April 23, 1987.

*The Transfer Process for Special Rights*

A. Members desiring to sell (or buy) their right(s) may do so only through the facilities of the Exchange.

B. A person desiring to sell his right(s) shall file with the Exchange a formal offering thereof stating the net price acceptable, and must deposit with the Exchange the warrant(s) evidencing such rights. Any purported sale effected as a result of any offer other than through the facilities of the Exchange will be absolutely void and will confer no rights upon the purchaser.

C. A formal bid stating the net price to be paid shall be filed by the prospective purchaser with the Exchange. Prospective purchasers must deposit a check made out to the Pacific Stock Exchange for $500 or for the price of the bid, whichever is less, for each right bid for. When a bid is executed, the Exchange will immediately notify the prospective purchaser, who will have five business days from the date of such execution to submit a cashier's check or certified check, made out to the Pacific Stock Exchange for the balance of the bid, if any. If such check is not received by 4:00 p.m. (Pacific Time) of the fifth business day, the execution will be considered void, and $500 or the price of the bid, whichever is less, will be given to the seller(s) involved in such execution.

D. All bids and offers must be in increments of $50. Bids or offers at the same price will be given priority based on time or receipt by the Exchange.

E. All bids and offers must be made at the Surveillance/Compliance Departments, 233 South Beaudry, 12th floor, in Los Angeles or Membership Services, 155 Sansome Street, second floor, San Francisco. The prices of all bids and offers (not just the best bid and offer) will be posted in such places.

F. The Exchange and its officers, members and employees shall not be subject to any liability in connection with any bid for or offer of a right or in connection with the handling or processing of bids, offers or transactions.

G. The sale of a regular or special right shall be deemed arranged at the time the formal bid and offer are matched in price and confirmed by the Exchange.

H. The acquisition of rights pursuant to the above process, or in any other way, shall create no presumption that the purchaser is entitled to qualify for membership. Rights may be exercised and memberships purchased, only by persons who qualify for membership or special membership under normal qualification procedures. Upon exercise of regular rights, the normal Exchange transfer fee will be applicable.

*Ownership of Memberships*

Where memberships are subject to lease agreements in standard Exchange form, the Board has determined that the actual membership owner, or "backer," is the person properly entitled to receive, and to sell (or exercise) the rights, because the attributes of the rights relate primarily to membership value fluctuations and not to actual use of membership privileges. However, where memberships are subject to private provisions or agreements, the parties must determine between themselves who is properly entitled to receive and deal in the rights. In any case, the Exchange will act only on instructions of membership owners in good standing.

Under Exchange Rule IX, section 3(b) the purchaser of a seat has ten calendar days after a sale is arranged to consummate the transaction (by submitting full payment to the Exchange). This rule will remain in effect throughout the time period of the rights offerings. All purchasers and sellers are on notice that only holders of record of Exchange seats on *April 24,* will receive the newly-issued rights, if the Board proposal is approved. To be a holder of record on April 24, a purchaser must consummate the trade on or before April 24.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

The Exchange's proposal to create special memberships arises from a desire to provide additional liquidity and facilitate transactions in index options. The Exchange believes that the special limited memberships will be less expensive than a full membership (which carries wider trading privileges and voting rights). By offering less expensive special memberships, the Exchange's goal is to attract additional capital exclusively for its listed index options.

The purpose for the new section 13 of Rule IX is to make clear the privileges, duties and obligations assigned to the newly-created special memberships. In addition, section 13 described the limitations of membership rights on the new class.

Special members will be permitted to trade on the options floor as Market Makers or Floor Brokers only in options on FNCI, PSE and such other products as the Board may determine to include, but can not trade as principal and agent for the same options class on the same day. Despite being designated as special members, such persons still will be required to adhere to the Exchange's trading and disciplinary rules. The Exhange believes that index options are sufficiently different from equity options to have a separate class of traders performing principal and agency functions in these products. However, because the value of a special membership is less than a regular membership, fees associated with the purchase or transfer are set at the lesser sum of $100.

In creating these special memberships, the Exchange specifically intended to withhold voting rights. Accordingly, special members will not be entitled to enjoy the privileges set forth in Article III, sections 1(c) and 2(b), and Article V, sections 2 and 3. Although special membership will confer only limited trading rights, special members still will be subject to trading rules, just as regular members would, during the course of their trading activity.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934, in that the creation of such special memberships will remove or limit the impediments to a free and open market, and promote just and equitable principles of trade.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not impose any burden on competition but will, instead, have a favorable impact on competition by increasing the number of members participating in the Exchange's auction market.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments on the proposed rule Change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file

number in the caption above and should be submitted by May 13, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 16, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-9053 Filed 4-21-87; 8:45 am]

BILLING CODE 8010-01-M

---

[Release No. 34-24352; File No. SR-PHLX-87-01]

## Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc, Relating to European Exercise for Value Line Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 23, 1987, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX"), pursuant to Rule 19b-4, hereby proposes the following rule change: (Brackets indicate deletions; italics indicates additions.)

*Rule 1000A. Applicability and Definitions*

(a) No change. (b) (1–11) No change.
*(b)(12) The term "European option" means an option contract that can be exercised only on the last trading day prior to the day it expires.*

*Rule 1006A. Other Restrictions on Options Transactions and Exercises*

With respect to index options, restrictions on exercise may be in effect until the opening of business on the last trading day before the expiration date. *With respect to Value Line index European option contracts, restrictions on exercise will be in effect until the last trading day prior to expiration.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to allow the PHLX to offer European style option contracts on the Value Line index. The PHLX presently trades American style options on the Value Line index (XVL) and would differentiate the proposed Value Line index European options by using the symbol VLE to identify the "current index value". The Value Line index is broad-based, encompassing approximately 1,700 exchange-listed and over-the-counter securities, and is an equally weighted geometric average of their prices. The PHLX believes that a European exercise feature respecting Value Line index options would particularly appeal to potential Value Line index options sellers and spread traders, since it restricts exercise until the trading day prior to expiration. Except for the proposed restriction on early exercise, trading in the Value Line index European options would be conducted in accordance with existing PHLX equity option and index option rules.

The proposed rule change is consistent with Section 6(b)(5) of the Securities and Exchange Act of 1934 in that it will facilitate transactions in securities and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solcited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concening the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 13, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 16, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-9054 Filed 4-21-87; 8:45 am]

BILLING CODE 8010-01-M

---

[Release No. 35-24374]

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 16, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are

available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 11, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Columbus and Southern Ohio Electric Company (70–7384)**

Columbus and Southern Ohio Electric Company ("C&SOE"), 215 N. Front Street, Columbus, Ohio, a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

C&SOE proposes to sell to Buckeye Steel Castings Company ("Buckeye"), a C&SOE industrial electricity customer, a portion of its Buckeye Substation No. 82, located upon real estate owned by Buckeye in Columbus, Ohio, that consists of transformation and other related equipment, for a total price of $640,000, which includes all expenses to be incurred by C&SOE in the sale. The equipment will be separated from the remaining substation equipment owned by C&SOE which is used to serve other customers. In connection with the sale, the equipment will be released from the lien of C&SOE's indenture of mortgage and deed of trust.

C&SOE also proposes to lease to Buckeye certain additional equipment at Buckeye Substation No. 82, referred to as "leased breakers." The lease agreement provides for a one year renewable term, monthly cash rental payments of $5,150.00, and annual revision of rental charges by C&SOE. None of the rental payments shall be applied to reduce the purchase price of the transformer equipment or to reduce the cost of electric service provided to Buckeye.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–9055 Filed 4–21–87; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[License No. 04/04–0226]**

### First Tampa Capital Corp.; Surrender of License

Notice is hereby given that First Tampa Capital Corporation (FTCC), 6200 Courtney Campbell Causeway, Tampa, Florida, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). FTCC was licensed by the Small Business Administration on January 18, 1984. Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on April 10, 1987, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: April 15, 1987.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 87–8081 Filed 4–21–87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Public Meeting Regarding Rulemaking, Research and Enforcement Programs

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

**DATES:** The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on May 22, 1987, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by May 12, 1987. If sufficient time is available, questions received after the May 12 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by May 12, and the issues to be discussed will be mailed to interested persons on May 19, 1987, and will be available at the meeting.

**ADDRESS:** Questions for the May 22 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The public meeting will be held in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on May 22, 1987. The meeting will begin at 10:30 a.m., and will be held in Room 2230, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on April 17, 1987.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 87–9072 Filed 4–21–87; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: April 16, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511 Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0205
*Form Number:* 5452
*Type of Review:* Revision
*Title:* Corporate Report of Nontaxable Dividends
*Description:* Form 5452 is used by corporations to report their nontaxable distributions as required by Internal Revenue Code section 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.
*Respondents:* Farms, Businesses
*Estimated Burden:* 1,190 hours

*OMB Number:* 1545–0200
*Form Number:* 5307
*Type of Review:* Extension
*Title:* Short Form Application for Determination for Employee Benefit Plan (Other than Collectively Bargained Plans)
*Description:* This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS National Office or a field prototype plan approved by an IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code sections 401(a) and 501(a) and ERISA (Pub. L. 93–406). It may not be used to request a ruling for collectively bargained plans.
*Respondents:* Businesses
*Estimated Burden:* 90,418 hours

*OMB Number:* 1545–0441
*Form Number:* 6559
*Type of Review:* Extension
*Title:* Transmitter Report of Magnetic Media Filing
*Description:* Form 6559 is needed to identify the transmitters of wage and/or pension information who file on magnetic media. The Social Security Administration (SSA) uses the information to secure the transmitters signature attesting to the accuracy of the information transmitted.
*Respondents:* State of local governments, Farms, Businesses, Federal agencies or employees, Non-profit institutions
*Estimated Burden:* 16,700 hours

*OMB Number:* 1545–0390
*Form Number:* 5306
*Type of Review:* Extension
*Title:* Application for Approval of Prototype or Employer Sponsored Individual Retirement Account
*Description:* This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if plans may be approved.
*Respondents:* Businesses
*Estimated Burden:* 1,273 hours

*OMB Number:* 1545–0213
*Form Number:* 5578
*Type of Review:* Extension
*Title:* Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax
*Description:* Form 5578 is used by private schools that do not file form 990, Schedule A, to certify that they have a racially nondiscriminatory policy toward students, as outlined in Revenue Procedure 75–50. The Service uses the information to help ensure that the school is maintaining a nondiscriminatory policy, in keeping with its exempt status.
*Respondents:* Non-profit institutions
*Estimated Burden:* 736 hours

Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**
*Departmental Reports Management Officer.*
[FR Doc. 87–9028 Filed 4–21–87; 8:45 am]
BILLING CODE 4810–25–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the Greek marble stele to be included in the exhibit, "Passport to the World" imported from abroad for the temporary exhibition without profit within the United States is of cultural significance. This object is imported pursuant to a loan agreement with the Greek Ministry of Culture. I also determine that the temporary exhibition or display of the Greek marble stele at the University Museum of the University of Pennsylvania beginning on or about May 6, 1987 to on or about December 15, 1987 is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 17, 1987.

**C. Normand Poirier,**
*Acting General Counsel.*
[FR Doc. 87–9068 Filed 4–21–87; 8:45 am]
BILLING CODE 8230–01–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 77
Wednesday, April 22, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ENERGY REGULATORY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** April 13, 1987, 52 FR 11911.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** April 15, 1987, 10:00 a.m.

**CHANGE IN THE MEETING:** The following item has been added:

*Item No., Docket No. and Company*

RP-8
RP86-110-001, Texas Eastern Transmission Corporation
RP86-93-000, United Gas Pipe Line Company
RP85-175-000, Transwestern Pipeline Company
CP86-585-000, Panhandle Eastern Pipe Line Company
CP86-586-000, Trunkline Gas Company
CP86-521-000, Texas Gas Transmission Company
CP86-578-000, Northwest Pipeline Corporation
RP86-105-000, ANR Pipeline Company
CP86-589-000 and RP86-104-000, Colorado Interstate Gas Company
RP85-169-000 and CP86-311-000, Consolidated Gas Transmission Company
RP86-155-000, Northwest Central Pipeline Corporation
RP86-97-003, Natural Gas Pipeline Company of America
RP85-206-000, Northern Natural Gas Company
TA85-3-29-000, TA85-1-29-000, TA86-1-29-000,
TA86-1-29-002, TA86-5-29-000, RP83-137-000 and CP85-190-000, Transcontinental Gas Pipe Line Corporation
RP86-134-000, MIGC, Inc.

Lois D. Cashell,
*Acting Secretary.*
[FR Doc. 87-9057 Filed 4-17-87; 4:31 pm]
BILLING CODE 6717-02-M

**NATIONAL MEDIATION BOARD**

**TIME AND DATE:** 2:00 p.m., Wednesday, May 6, 1987.

**PLACE:** Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Ratification of the Board actions taken by notation voting during the month of April, 1987.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

**DATE OF NOTICE:** April 15, 1987.

Charles R. Barnes,
*Executive Director, National Mediation Board.*
[FR Doc. 87-9109 Filed 4-20-87; 10:43 am]
BILLING CODE 7550-01-M

**NATIONAL TRANSPORTATION SAFETY BOARD**

**TIME AND DATE:** 9:00 a.m., Tuesday, April 28, 1987.

**PLACE:** NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

**STATUS:** The items will be open to the public.

**MATTERS TO BE CONSIDERED:**

1. *Railroad Accident Report:* Rear-End Collision of Boston Maine Corp. Commuter Train No. 5324 with Consolidated Rail Corp. Train TV-14, at Brighton, Massachusetts, May 7, 1986.

2. *Marine Accident Report:* Fire and Explosion on Board the Panamanian Passenger Ship EMERALD SEAS in the Atlantic Ocean Near Little Stirrup Cay, Bahamas, July 30, 1986.

**FOR MORE INFORMATION CONTACT:** Ray Smith, (202) 382-6525.

Ray Smith,
*Federal Register Liaison Officer.*
April 17, 1987.
[FR Doc. 87-9091 Filed 4-20-87; 9:02 am]
BILLING CODE 7533-01-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of April 20, 27, May 4, and 11, 1987.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of April 20**

*Thursday, April 23*

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Revision to NRC Policy Statement, "Guidelines for NRC Review of Agreement State Radiation Control Programs" (Tentative) (*Postponed* from April 16)

**Week of April 27—Tentative**

*Thursday, April 30*

2:00 p.m.
Briefing on Advanced Boiling Water Reactor Review (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of May 4—Tentative**

*Wednesday, May 6*

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

*Thursday, May 7*

2:00 p.m.
Briefing on State of the Nuclear Industry (Public Meeting)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of May 11—Tentative**

*Wednesday, May 13*

10:00 a.m.
Briefing on NRC/DOE Comparability Study (Closed—Ex. 1)
2:00 p.m.
Periodic Briefing by INPO (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) was held on April 14. Affirmation of "Exemptions from 18 USC (208(a) (Financial Interest Posing Conflict of Interest) for NRC Employees" (Public Meeting) was held on April 16.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (202) 634-1498.

**CONTACT PERSON FOR MORE INFORMATION:** Robert McOsker (202) 634-1410.

Robert B. McOsker,
*Office of the Secretary.*
April 16, 1987.
[FR Doc. 87-9085 Filed 4-20-87; 8:52 am]
BILLING CODE 7590-01-M

# Corrections

Federal Register
Vol. 52, No. 77
Wednesday, April 22, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 675

[Docket No. 61225-7052]

### Groundfish of the Bering Sea and Aleutian Islands

*Correction*

In rule document 87-5972 beginning on page 8592 in the issue of Thursday, March 19, 1987, make the following correction:

§ 675.20 [Corrected]

On page 8601, in the first column, in § 675.20(e)(3), in the third line, "paragraph (3)(1)(i) or (ii)" should read "paragraph (e)(1)(i) or (ii)".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 280

[FRL-3154-7]

### Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

*Correction*

In proposed rule document 87-7631 beginning on page 12786 in the issue of Friday, April 17, 1987, make the following correction:

On page 12786, in the second column, under **DATES**, in the second line, the comment deadline should read "June 16, 1987".

BILLING CODE 1505-01-D

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1260

[NASA Grant and Cooperative Agreement Handbook Instruction 84-3]

### Miscellaneous Changes to the NASA Grant and Cooperative Handbook

*Correction*

In rule document 87-8513 beginning on page 12378 in the issue of Thursday April 16, 1987, make the following correction:

On page 12378, in the third column, in amendatory instruction 6., in the second line, "paragraph (c)" should read "paragraph (e).

BILLING CODE 1505-01-D

L
2
S
7
P
2
87
M I

Federal Register

Wednesday
April 22, 1987

Part II

# Environmental Protection Agency

40 CFR Parts 300 and 355
Extremely Hazardous Substances List and Threshold Planning Quantities; Emergency Planning and Release Notification Requirements; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 300 and 355**

**[FRL-3173-6]**

# Extremely Hazardous Substances List and Threshold Planning Quantities; Emergency Planning and Release Notification Requirements

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Section 302 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law on October 17, 1986, required the Administrator of EPA to publish a list of extremely hazardous substances within 30 days. The Administrator was also required to simultaneously publish an interim final regulation establishing a threshold planning quantity for each substance on the list and initiate a rulemaking to finalize these regulations. The list and planning quantities trigger emergency planning in States and local communities under SARA. On November 17, 1986, EPA published an interim final rule codifying the statutorily prescribed list of extremely hazardous substances, the corresponding threshold planning quantities for those substances, and the local and State reporting requirements for facilities at which extremely hazardous substances or other "hazardous substances" are present. On November 17, EPA also proposed revisions to the list of extremely hazardous substances. Today's rulemaking revises the list of extremely hazardous substances, the threshold planning quantities, and the emergency planning and release reporting requirements based on public comments received on the interim final rule and proposed revisions.

**EFFECTIVE DATES:** This rule becomes effective on May 17, 1987 for purposes of facility planning notification under section 302 and May 22, 1987 for purposes of emergency release notification under section 304. Other dates relevant to this rule include the following:

1. State emergency response commissions are to be established by April 17, 1987.
2. Facility notifications for emergency planning are required by May 17, 1987.
3. State commissions are to establish emergency planning districts by July 17, 1987.
4. State commissions are to establish local emergency planning committees by August 17, 1987.
5. Facility emergency release notifications to the local emergency planning committee begin on August 17, 1987 or on the date on which the committee is formed if prior to that date.
6. Facility notifications to local committees concerning facility representatives are due by September 17, 1987.
7. Emergency response plans should be completed by the local emergency planning committees by October 17, 1988.

**ADDRESS:** The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Horner, Chemical Engineer, Preparedness Staff, Office of Solid Waste and Emergency Response, WH-562A, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The Chemical Emergency Preparedness Hotline, at 1-800/535-0202, in Washington, DC at 1-202/479-2449 can also be contacted for further information.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background
    1. Superfund Amendments and Reauthorization Act of 1986 (SARA)
    2. Title III
    3. Emergency Planning and Notification Requirements Under Title III
    4. Emergency Planning Program
II. Summary of Public Comments
III. Summary of Revisions to the Interim Final Rule
IV. Responses to Major Public Comments
  A. Emergency Planning
  B. Emergency Release Notifications
  C. Criteria Used to Identify Extremely Hazardous Substances
  D. List of Extremely Hazardous Substances
  E. Determination of Levels of Concern
  F. Threshold Planning Quantities
  G. Reportable Quantities
  H. Miscellaneous
V. Relationship to CERCLA
  A. Relationship of Title III to the National Contingency Plan
  B. Relationship of This Rule to CERCLA section 103 Reporting Requirements
VI. Effective Dates
VII. Regulatory Analyses
  A. Regulatory Impact Analysis
  B. Regulatory Flexibility Analysis
  C. Paperwork Reduction Act
VIII. Supporting Information

## I. Introduction

### *A. Statutory Authority*

This regulation is issued under Title III of the Superfund Amendments and Reauthorization Act of 1986, (Pub. L. 99-499), ("SARA" or "the Act"). Title III of SARA is known as the Emergency Planning and Community Right-to-know Act of 1986.

### *B. Background*

#### 1. Superfund Amendments and Reauthorization Act of 1986 (SARA)

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA") which revises and extends the authorities established under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). Commonly known as "Superfund," CERCLA provides authority for federal cleanup of uncontrolled hazardous waste sites and response to releases of hazardous substances. Title III of SARA establishes new authorities for emergency planning and preparedness, emergency release notification, community right-to-know reporting, and toxic chemical release reporting.

#### 2. Title III

Title III of SARA, also known as the "Emergency Planning and Community Right-to-Know Act of 1986", is intended to encourage and support emergency planning efforts at the State and local levels and provide the public and local governments with information concerning potential chemical hazards present in their communities. The emergency planning requirements of this Act recognize the need to establish and maintain contingency plans for responding to chemical accidents which can inflict health and environmental damage as well as cause significant disruption within a community.

Title III is organized into three subtitles. Subtitle A, which establishes the framework for local emergency planning, will be described in more detail in the following section. Subtitle B provides the mechanism for community awareness with respect to hazardous chemicals present in the locality. This information is critical for effective local contingency planning. Subtitle B includes requirements for the submission of material safety data sheets and emergency and hazardous chemical inventory forms to State and local governments, and the submission

of toxic chemical release forms to the States and the Agency. Subtitle C contains general provisions concerning trade secret protection, enforcement, citizen suits, and public availability of information.

Today's rule revises the interim final rule, published on November 17, 1986, (51 FR 41570), which set forth the basic elements for initiation of local emergency planning. The preamble to that rule described the Title III framework in more detail. Following is a summary of the statutory provisions directly related to today's final rule.

3. Emergency Planning and Notification Requirements Under Title III

Subtitle A of Title III is concerned primarily with emergency planning programs at the State and local levels. Section 301 requires each State to establish an emergency response commission by April 17, 1987. The State commission is responsible for establishing emergency planning districts and appointing, supervising, and coordinating local emergency planning committees.

Section 303 governs the development of comprehensive emergency response plans by the local emergency planning committees and provision of facility information to the committee. The local emergency planning committee is responsible for completing an emergency plan meeting the requirements of section 303 by October 17, 1988 and reviewing the plan at least annually. Under section 303(d), facilities subject to emergency planning must designate a facility representative who will participate in the local emergency planning effort as a facility emergency response coordinator. This designation must be made by September 17, 1987 or 30 days after establishment of the local emergency planning committee, whichever is earlier. Section 303(d) also requires facilities to provide the committee with information relevant to development or implementation of the local emergency response plan.

Section 302 required the Administrator of EPA to publish a list of extremely hazardous substances and threshold planning quantities (TPQs) for such substances within 30 days of enactment of SARA. Any facility where an extremely hazardous substance is present in an amount in excess of the threshold planning quantity is required to notify the State commission by May 17, 1987 or 60 days after the facility first begins handling an extremely hazardous substance in excess of its TPQ. Such notification should be in writing and specify the name and an accurate and current locational address of the facility. Other facilities may also be designated by the commission or the Governor. In turn, the State emergency response commission must notify EPA of such facilities. The Agency encourages State commissions to provide such notice by August 17, 1987 to the EPA Regional Administrator for the standard Federal Region in which the State is located. The Agency requests that the notification provide a list of the covered facilities with their current and accurate locational addresses organized by emergency planning district, if practicable.

The list of extremely hazardous substances is defined in section 302(a)(2) as "the list of substances published in November, 1985 by the Administrator in Appendix A of the Chemical Emergency Preparedness Program Interim Guidance". This list was established by EPA to identify chemical substances which could cause serious irreversible health effects from accidental releases. Section 302(a)(3) further required EPA to initiate a rulemaking to revise the threshold planning quantities.

Section 304 establishes requirements for immediate reporting of certain releases of hazardous substances to the local planning committees and the State emergency response commissions, similar to the release reporting provisions under section 103 of CERCLA. Section 304 also requires follow-up reports on the release, its effects, and response actions taken. An interim final rule, published on November 17, 1986 set forth the list of extremely hazardous substances, threshold planning quantities and reporting requirements. A companion rule requested comments on the interim final rule and proposed deletions from and additions to the list of extremely hazardous substances. Today's rule finalizes the list and associated planning requirements based on public comments.

4. Emergency Planning Program

After the enactment of Superfund (1980), it became apparent that emergency response, although vital to the protection of public health and the environment from accidental releases of hazardous substances, was not enough protection against the possibility of releases of extremely hazardous substances. For many chemicals, it is not sufficient merely to plan for cleanup of releases once they have occurred because of the hazard the releases pose to surrounding populations. Rather, it is important to facilitate emergency planning which can help prevent the accident and enable timely and effective emergency response in the event of a hazardus release. To aid in such planning, the Agency initiated the voluntary Chemical Emergency Preparedness Program (CEPP)—a part of the Agency's Air Toxics Strategy for addressing both continuing and accidental releases of toxic substances into the air environment. Under CEPP, EPA developed the list of substances referred to in section 302(a) (now known as "extremely hazardous substances") and guidance materials to help local communities focus their planning efforts.

Title III of SARA mandates the type of program advocated by the Agency's CEPP. It encourages State and local governments to establish the infrastructure needed to facilitate emergency planning and provides technical support to these programs. It also requires certain facilities to supply the information on substances present at the facility which is necessary for contingency planning.

The extremely hazardous substances list and its threshold planning quantities are intended to help communities focus on the substances and facilities of the most immediate concern for emergency planning and response. EPA strongly emphasizes, however, that while the list finalized today includes many of the chemicals which may pose an immediate hazard to a community upon release, it is not to be considered a list of all substances which are hazardous enough to require community emergency response planning. There are tens of thousands of compounds and mixtures in commerce in the United States, and in specific circumstances, many of them could be considered toxic or otherwise dangerous. The list published today represents only a first step towards development of an effective emergency response planning effort at the community level. Without a preliminary list of this kind, it would be very difficult for most communities to know where to begin identification of potential chemical hazards among the many chemicals present in any community.

Similarly, the threshold planning quantities are *not* absolute levels above which the extremely hazardous substances are dangerous and below which they pose no threat at all. Rather, the threshold planning quantities are intended to provide a "first cut" for community emergency response planners where these extremely hazardous substances are present. After identification of facilities at which extremely hazardous substances are present in quantities greater than the threshold planning quantities, the community will have the basis for

further analysis of the potential danger posed by these facilities. Also, they will be able to identify other facilities posing potential chemical risks to the community and develop contingency plans to protect the public from releases of hazardous chemicals. Sections 311 and 312 of Title III provide a mechanism through which a community will receive material safety data sheets and other information on extremely hazardous substances, as well as many other chemicals, from many facilities which handle them. A community can then assess and initiate planning activities, if desirable, for quantities below the threshold planning quantity and for other substances of concern to them. A proposed rule setting forth the requirements for reporting under sections 311 and 312 was published on January 27, 1987 (51 FR 2836).

In addition to the assistance provided by the extremely hazardous substance list and the threshold planning quantities, community emergency response planners will be further aided by the National Response Team's *Hazardous Materials Emergency Planning Guide*. A separate notice of availability of this document was published in the **Federal Register** on March 17, 1987. (52 FR 8360,61) as required under section 303(f) of Title III. The planning guide will be supplemented at a later date with Technical Guidance to assist local emergency planning committees in the technical evaluation of potential chemical hazards and the prioritization of sites. This technical document will provide more detailed guidance on identifying and assessing the hazards associated with the accidental release of hazardous substances on a site-specific basis. In addtion to the toxicity of the substance, such an assessment should address site-specific considerations such as the conditions of storage or use of the substance (e.g. whether under temperature or pressure), the physical properties of the substance (e.g. physical state (solid, liquid, gas), volatility, dispersability, reactivity), the location (e.g. distance to affected populations), and the quantity of the substance. The Technical Guidance will address such considerations to assist local planners in hazard indentification and analysis essential to effective emergency response planning.

Following is a summary of comments received by the Agency on the interim final rule, EPA's responses to major comments, and a description of revisions to the rule.

## II. Summary of the Public Comments

A total of 81 letters was received on the interim final rule and proposed rule.

There were several comments on the emergency planning program infrastructure and notification requirements, especially requests for clarification of notification requirements and exemptions. In particular, clarifications were requested on federally permitted releases, continuous releases and the relationship of the Title III reporting requirements to CERCLA reporting requirements.

Other major comments focused on the criteria used to identify chemicals for inclusion in the list of extremely hazardous substances, the need for additional criteria to address chronic or acute non-lethal health effects and physical and chemical properties.

Many commenters suggested changes to the extremely hazardous substance list, primarily deletions of specific chemicals, and expressed support for proposed deletions to the list. Other commenters opposed the deletions on the basis that the criteria for deletion were too narrow. Several recommended deletions of non-reactive, non-powdered solids.

Other commenters questioned the methodology used in setting threshold planning quantities and/or suggested changes to the threshold planning quantities for specific chemicals. Another topic of concern was the percent mixture policy, with some commenters opposing it and others stating that it was not appropriate in all [illegible]

In addition, a major issue was the inconsistency between reportable quantities (RQs) and threshold planning quantities for a number of chemicals, particularly where the reportable quantities exceed threshold planning quantities.

Other comments included lack of funding for State and local programs, use of the metric system, protection of confidential business information, and the content of an emergency response plan.

## III. Summary of Revisions to the Interim Final Rule

Several changes from the interim final rule should be noted. First, while the interim final rule was placed in Part 300 of Title 40 of the Code of Federal Regulation, the final rule has been placed in Part 355. Part 300 is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In the interim final rule, the Agency announced its intention to evaluate the placement of Title III rules. After consideration, the Agency has decided to place all Title III regulations in Subpart 335 et seq. since some of Title III is not specifically germane to the NCP and the Agency believes that all Title III rules should reside in one place in the Code of Federal Regulations. For clarity, today's rule republishes the list of extremely hazardous substances and associated regulations in its entirety.

This section described the significant changes that have been made to the interim final rule, based upon public comments on that rule and on the proposed rule. The following summary is organized according to the sections of the rule.

*Section 355.20 (formerly § 300.92)—Definitions*

The definition of "Commission" was revised to indicate that the Governor of a State will be the State emergency response commission, if no commission is designated, for all commission responsibilities in addition to planning, such as receipt of emergency release notifications and community right-to-know information and processing requests from the public for information under section 324. This change was made to better accord with the statutory language and to clarify, in response to commenters' concern, the entity to be notified after April 17, 1987 of a release under section 304 if no State commission has been established.

A definition of transportation-related release has been added in response to comments requesting clarification of the term.

*Section 355.30 (formerly § 300.93)—Emergency Planning*

In response to commenters who asked how the TPQ is to be calculated, EPA has added a definition of the phrase "amount of any extremely hazardous substance" to paragraph (a). Thus, to determine whether the facility has present an amount of an extremely hazardous substance which equals or exceeds the TPQ, the owner or operator must determine the total amount of an extremely hazardous substance present at any one time at a facility, regardless of location, number of containers or method of storage. Additionally, the amount of an extremely hazardous substance present in mixtures or solutions in excess of one (1) percent must be included in the determination.

*Section 355.40 (formerly § 300.94)—Emergency Release Notification*

In response to several comments with respect to the exemption for on-site releases, EPA has revised the

applicability of this section to parallel the statutory exemption. The phrase "results in exposure to persons solely within the boundaries of the facility" was substituted for "results in exposure to persons outside the boundaries of the facility". Thus, releases need not result in *actual* exposure to persons off-site in order to be subject to release reporting requirements.

Several commenters requested that "continuous" releases be added to the exemptions listed under applicability to the extent that such releases are exempt from reporting under CERCLA. EPA agrees, based on the language in section 304(a) which requires that releases reportable under that Section occur in a manner which would require notification under section 103(a) of CERCLA. EPA has added this exemption to paragraph (a) along with other similar exemptions from section 103(a) notification under CERCLA (e.g., pesticide product releases under section 103(e)). However, because "statistically significant increases" from a continuous release must be reported as an episodic release under section 103(a) of CERCLA, such releases must also be reported under section 304(a). This has also been clarified in today's rule.

EPA has also clarified the effective date for emergency release notifications. EPA agrees with commenters who argued that the reporting provisions should not come into effect on November 17, 1986 as stated in the interim final rule, but rather when the entity to which reports must be made is established. Accordingly, section 304 notifications must be made to the Commission beginning May 22, 1987 since the State emergency response commission is to be already established by that date. After April 17, 1987, the Governor becomes the Commission until a Commission is established and notifications should be made to him/her. Beginning August 17, 1987, notifications should also be made to the local committees. If no local emergency planning committee is established by August 17, 1987, local notifications must be made to the appropriate local emergency response personnel. In many cases, facilities will already be alerting relevant local officials, such as fire departments, to those releases.

As noted by a commenter, notification is to be made to the "community" emergency coordinator as stated in the statute rather than the "local" emergency coordinator as stated in the interim final rule.

In response to comments, the alternative reporting for CERCLA hazardous substances which are not extremely hazardous substances is clarified to note its expiration after April 30, 1988 and that the exception concerns the immediate notice, not the follow-up report. These changes better accord the exception with the statutory language. In addition, EPA responded to requests from commenters by clarifying the exception for transportation-related releases in § 355.40(b)(4)(ii) (formerly § 300.94(b)(4)(ii)) by specifying the contents of the notice and further defining "transportation-related release" in accordance with the legislative history of this provision.

*Appendix A and B (formerly Appendix D and Appendix E)—List of Extremely Hazardous Substances and Threshold Planning Quantities*

The appendices republish the list set out in the interim final rule with the addition of four new chemicals and the revised final threshold planning quantities.

The Agency is adding to the list of extremely hazardous substances four of the five chemicals proposed for addition in the proposed rule published on November 17, 1986. The other chemical, urea,3-(3,4-dichlorophenyl)1-methoxy-1-methyl-, CAS number 330–55–2, will not be added to the list because of new data that indicates that this chemical does not meet the acute toxicity criteria. The Agency has determined that this chemical does not meet the present criteria.

In the interim rule, 40 chemicals were proposed for deletion from the list of extremely hazardous substances. Based upon public comment and upon reconsideration of the statutory criteria for revisions of the list, EPA has decided not to delete these substances from the list in this rulemaking. EPA agrees with commenters who indicated that under section 302(a)(4), chemicals should not be deleted from the list if they can be shown to have other health effects resulting from a short-term exposure at specified levels. The Agency does not currently have available criteria for determining such levels.

The Agency has also changed the way in which threshold planning quantities are applied to solids based on commenters' concerns. Under today's rule, the threshold planning quantity listed for each solid-form substance applies only if certain criteria are met. Otherwise the threshold planning quantity is 10,000 pounds. Since solids generally do not present an airborne release hazard unless they are handled in certain forms or are highly reactive, only those forms or levels of reactivity which can potentially result in an airborne release apply to the threshold planning quantity listed. Therefore, the listed threshold planning quantity will apply only to that fraction of the total quantity of a solid with a particle size less than 100 microns, that fraction of a solid in solution, or that fraction of a solid in molten form at any time. An adjustment factor of 0.3 to account for maximum potential volatility is also applied to solids in molten form. The total quantity in molten form must be multiplied by 0.3 and then compared to the listed threshold planning quantity to determine if reporting is required for that chemical. With respect to reactivity, only solids with a National Fire Protection Association (NFPA) rating, or those that meet the criteria for a rating of 2, 3, or 4 for reactivity, do not default to a threshold planning quantity of 10,000 pounds. Solids on the list of extremely hazardous substances in Appendices A and B have two TPQ values. The first applies to solids that meet the form (i.e., <100 microns) or reactivity criteria described above; the second TPQ (10,000 pounds) are for solids that don't meet the form or reactivity criteria.

In addition, the Agency has made two changes in threshold planning quantity categories. The "any amount" category has been eliminated and a new one-pound category added for substances considered to be of the highest potential hazard. The two-pound category has also been eliminated with two chemicals reassigned to the one-pound category and the others in this category reassigned to a new ten-pound category. These changes were made in response to commenters' concerns over the inconsistency between TPQ levels and CERCLA RQ levels.

A number of chemicals have been moved to different threshold planning quantity categories in this rule based on revised categories discussed above or on new or reevaluated toxicity data. Those chemicals whose threshold planning quantities were reassigned are noted in the list in Appendix A and B; the reasons for the reassignments are indicated in footnotes. Approximately 36 chemicals were moved to lower categories while 12 were assigned higher TPQ values. More details on these reassignments can be found in the technical support documents which are available in the public docket.

## IV. Responses to Major Public Comments

A document summarizing the comments and responses to all the public comments is available in the public docket to this final rule. The major issues raised by the commenters and the Agency's response to them are described below.

*A. Emergency Planning*

1. Emergency Planning Under section 302

A number of comments focused on the emergency planning requirements of Title III. One commenter requested that the rule be amended to allow existing State and local laws the provide substantially similar protection to supercede the specific provisions of the federal rule.

Section 321 of SARA discusses the relationship of Title III to other federal, State, and local laws. This section generally provides that nothing in Title III shall preempt any State or local law, or affect any State of local law. However, material safety data sheets, if required under a law passed after August 1, 1985, must be identical in content and form to that required under section 311. Accordingly, while Title III does not supercede State or local laws, EPA has no authority to waive the requirements imposed under Title III. These requirements, including the threshold planning quantities, are intended to be minimum standards. However, EPA will work with States which have developed reporting forms and planning structures to determine the most efficient approaches to coordinate Title III requirements with existing State or local structures, forms and requirements where appropriate to avoid duplication of effort.

Several commenters feel that EPA should require States to notify the Agency when the State emergency response commissions/local emergency planning committees are established. EPA should then publish this information in the **Federal Register** or disseminate it in some way so that all affected parties could have access to it. One commenter noted that covered facilities must know to whom to report in order to comply with the notification requirements to Title III.

States are not required to provide information on the establishment of the State emergency response commissions and local emergency planning committees to EPA. However, the Agency strongly encourages States to notify the public, especially potentially affected facilities, and EPA as soon as the State emergency response commissions and local emergency planning committees are established. The Agency suggests that the facility contact the Governor's office if it does not have information on the commission. EPA Regional Administrators are writing to the Governors of each State and Territory to inform them of Title III requirements, to offer information and technical assistance in the development of the State and local planning structure and to request that they notify EPA of the establishment of the State emergency response commission.

One commenter believes that EPA should explain fully its expectations as to the responsibilities of the State emergency response commissions and local emergency planning committees. In response to this comment, EPA notes that Title III implementation is primarily a State and local responsibility. EPA does not intend to oversee the operation of individual commissions and committees. With respect to State responsibilities under Title III, EPA recommends that States review the appropriate sections of Title III when establishing their State emergency response commissions and local emergency planning committees and laying out the commission and committee responsibilities regarding planning and public availability. The Agency recommends that the State emergency response commission be as broad-based as possible, including key State agencies such as environmental protection, emergency management, health, occupational safety and health, labor and transportation, as well as other public and private sector representation as the State deems appropriate. EPA's Regional Offices are available to assist States in establishing and implementing the planning structure described in Section 301.

One commenter believes that the local planning committees could impose significant requirements on small businesses. The commenter feels EPA should clarify the information requirements in the emergency planning guidance and in the final rule.

With respect to the emergency planning guidance, the National Response Team's *Hazardous Materials Emergency Planning Guide* (notice of availability published on March 17, 1987, 52 FR 8360) describes the information requirements established under Title III and how this information will be useful in developing a local emergency plan.

The Agency is also clarifying the Title III emergency planning and notification requirements based upon public comment. With respect to the issue of burden on small businesses, the Agency's small business analysis does not show that these emergency planning requirements will cause a significant burden to small facilities. Because small facilities are likely to use or store fewer extremely hazardous substances and handle smaller amounts, the level of planning required will be commensurately smaller. In addition, unreasonable burdens on small facilities can be prevented because owners/operators of subject facilities will be represented on local emergency planning committees.

Facilities subject to section 302 will designate a facility emergency coordinator to participate in the planning process. Participation by the facility in the planning process provides an opportunity for the facility to present concerns regarding the burden of planning to the committee and to ensure that committee requests for information are necessary for planning. In particular, small businesses may wish to encourage special small business representation on the local emergency planning committee and also make their concerns known through their emergency coordinators.

One commenter stated that an extremely hazardous substance that was not stored on site but produced in a process such as an incinerator should be exempt from both threshold planning quantity calculation and exempt from release reporting if the release is covered by a Clean Air Act permit. EPA agrees that if none of the material is present on site and less than a TPQ is present at any one time during the year, then the extremely hazardous substance need not be reported to the local emergency planning committee. Further, if the release is federally permitted under section 101(10) of CERCLA, then the release need not be reported under section 304 of SARA.

Another commenter believes that there should be an exemption for plants over 5000 meters or some other distance from a community. EPA disagrees. No long distance exemption exists under section 302. For further discussion on plant distance from a community, see section F.1.a. below.

*B. Emergency Release Notifications*

1. Recipients and Providers of Section 304 Notification

Two commenters questioned the requirements under § 309.94(b)(1) of the interim final rule (now § 355.40(b)(1)) that directs facilities to notify relevant local and State emergency response personnel following an emergency release if there is no State commission or local committee. One commenter believed that this sentence should be deleted as it exceeds EPA's authority.

Along the same lines, one commenter expressed the concern that State commissions and local committees must be notified after a release, but in many States these commissions and local committees are not yet established. States are required to establish their commissions by April 17, 1987 and those commissions must establish local

committees not later than 30 days after the designation of emergency planning districts or by August 17, 1987, whichever is earlier.

In order to alleviate confusion over whom to notify prior to the dates upon which the commission and committee are to be established, EPA has revised the effective date of the notification requirements. As previously discussed, under today's rule the release notification requirements to the State commission become effective on May 22, 1987 and to local committees beginning August 17, 1987. If a committee is in existence prior to that date, notification should be made to it as of the date of its establishment.

Section 301 of SARA provides that if the State commission is not set up by April 17, 1987, the Governor must operate as the State commission, and thus notification must be made under today's rule even if no commission is established. Where no commission is established, the notifications would be made to the State Governor. Local committees are required to be established not later than 30 days after the designation of emergency planning districts or by August 17, 1987, whichever is earlier. If local committees are not set up by August 17, notifications must still be made, but should be provided to local emergency personnel such as local emergency management offices or fire departments. As indicated by the legislative history of this provision, Congress intended that emergency release notification requirements become effective as of the dates when the commissions and committees are to be established. EPA, however, has delayed the effective date of release notification to the State since the list of extremely hazardous substances and reporting requirements have been under revision. Local and State governments may make any arrangements necessary for the receipt of the release information when commissions and committees are not yet established. Further discussion of effective dates can be found under section VI of this preamble.

One commenter believes that for transportation-related releases, the emergency release notification requirements should apply to the operator, rather than the owner of the facility. No changes were made to the rule in this regard because section 304 allows either the owner or operator to give notice after a release. Owners and operators may make private arrangements concerning which party is to provide release notification; however, under section 304 both owner and operator are responsible if no notification is provided.

The same commenter requested the Agency to define the term "transportation-related release." The Agency has defined this term for purposes of the release notification requirements in the revised final regulation.

2. Scope of Section 304 Reporting

One commenter recommended that EPA adopt under SARA the same policy formulated under section 102 of CERCLA to determine whether an RQ has been reached. The method used by CERCLA does not require aggregation of either releases from separate facilities or releases of different hazardous substances at the same facility. EPA agrees that this policy should be equally applicable to releases under section 304 due to similarity to section 103 of CERCLA.

One commenter believes that the section 304 emergency release notification requirements should apply to all releases that meet the notification thresholds and that have the potential for affecting anyone outside the facility boundaries. As discussed in section III above, EPA agrees that its codification of the statutory exemption for on-site releases, by requiring the release to result in exposure to persons off-site, could be interpreted to be broader than the actual statutory language. In today's rule, EPA has revised the regulations to better accord with the statutory language.

One commenter stated that releases into water or soil should also be covered under the SARA section 304 requirements rather than just air releases which the commenter believed was indicated in the November 17, 1986 regulations. However, the interim final rule did not indicate that the release notification requirements were only applicable to air releases. Although the original CEPP program was concerned primarily with the dangers of air releases (and the TPQs developed under section 304), section 304 of Title III, like section 103 of CERLCA, covers releases into all media.

3. Types of Releases That Are Exempt From Section 304 Reporting

*i. Main Categories of Exemption.* Several commenters asked for clarification of the various exemptions from section 304 reporting requirements. The statute provides several exemptions from notification. These are: (a) "Federally permitted releases" as determined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 section 101(10); (b) releases which only result in exposure to persons within the facility boundaries; (c) releases from a facility which produces, uses, or stores no hazardous chemicals; (d) "continuous releases" as defined under CERCLA section 103 (f); and (e) releases of a FIFRA-registered pesticide, as defined under CERCLA section 103(e).

It should be noted, however, that some releases occurring at a facility which are not reportable under section 304 may still constitute reportable releases under CERCLA section 103 and must, if so, be reported to the National Response Center. Release reporting under section 304 is in addition to release notifiction under CERCLA section 103. Thus, notice to the National Response Center may be required even if no local of State reporting is required. CERCLA section 103, for instance, does not contain an on-site release exemption.

*ii. Federally Permitted Releases.* Seven commenters stated that "federally permitted releases" should be exempted from SARA section 304 release reporting. EPA agrees, but had already included this exemption in § 300.94 (now § 355.40), the emergency release notification section of the regulation. The exemption for "federally permitted releases" is identical to that under section 103 of CERCLA. Section 101(10) of CERCLA defines "federally permitted releases" for purposes of section 103 of CERCLA and release notification under Title III and includes 11 types of specific releases permitted under certain State and federal programs. As EPA issues clarifications of "federally permitted release" under section 103 of CERCLA, these clarifications will apply equally to releases notifications under section 304 of SARA. The issuance of rules clarifying the definition of "federally permitted release." will be the subject of a later rulemaking.

One commenter asked whether the "federally permitted release" exemption applies fully to State permitted releases. State permitted releases are exempted only to the extent that the releases are considered "federally permitted" under section 101(10) of CERCLA.

*iii. Continuous Releases.* Seven commenters requested that a clarification be made of the regulation establishing an exemption from reporting under section 304 for any "continuous release" of an extremely hazardous substance or CERCLA hazardous substance. Several commenters cited the Conference report on the Superfund Amendments and Reauthorization Act which states "releases which are continuous or

frequently recurring and do not require reporting under CERCLA are not required to be reported" under section 304. (H.R. Rep. No. 963, 99th Cong. 2d Sess, at 285 (1986))

Section 103(f) of CERCLA provides relief from the reporting requirements of section 103(a) for a release of a hazardous substance that is continuous and stable in quantity and and rate. (Instead, continuous releases are subject to annual reporting under section 103(f)).

As discussed in section III above, EPA agrees that this exemption from immediate release notification should apply to SARA section 304 to the same extent that such releases are not subject to reporting under CERCLA section 103(a) and clarifies the regulation today to that effect. Thus, "continuous releases" which require annual reporting under section 103(f) of CERCLA rather than immediate reporting under section 103(a) are not subject to reporting under section 304 of SARA. Unlike CERCLA section 103, however, there is no provision for alternative annual reporting under section 304. (Some continuous releases will be subject to annual reporting under section 313 of SARA.) In addition, because "statistically significant increases" from a "continuous release" must be reported as an episodic release under CERCLA section 103(a), such releases must also be reported under SARA section 304. Any clarifications or regulations interpretating "continuous" or "statistically significant increases" releases under CERCLA section 103(f) will also apply to SARA section 304.

One commenter noted that some power plants without federal permits may daily exceed RQ levels for some extremely hazardous substances such as $SO_2$ or $SO_3$. The commenter desired a clarification of the intent of EPA on this matter. Since such substances are non-CERCLA hazardous substances, reporting is not necessary as pursuant to CERCLA. In addition, such releases need not be reported if they qualify as "continuous" or "federally permitted releases" under CERCLA as discussed above. "Statistically significant increases" would be subject to section 304 reporting.

One commenter stated that a variance procedure is needed in the section 304 requirement to exclude or otherwise exempt upset conditions and baseline conditions under normal operations. EPA disagrees because upset releases are episodic and precisely the type of release intended to be reported under Title III. "Baseline conditions" are exempt only if "continuous" or "federally permitted." The fact that a release can be predicted from an upset situation or periodically from normal operations would exempt virtually all releases from all facilities from ever reporting, since most releases occur from either normal operations or upset conditions.

*iv. Exclusion of Certain Types of Waste and Facilities Under Section 304.* One commenter asked for an interpretation of "release" that would not include any disposal of hazardous waste or solid waste, if disposal is performed according to the permitting and other relevant requirements of the Resource Conservation and Recovery Act (RCRA) or the Toxic Substances Control Act (TSCA), or other applicable federal or State law.

Disposal of hazardous substances at a disposal facility in accordance with EPA regulations is not subject to CERCLA notification.

Regardless of the outcome of that decision, it is important to note that spills and accidents occurring during disposal *and outside of the approved operation,* that result in reportable releases of extremely hazardous substances or CERCLA hazardous substances, must be reported to the State emergency response commission and local emergency planning committee as well as to the National Response Center. In addition, PCB releases of an RQ or more from a TSCA-approved facility (as opposed to disposal into such a facility), must be reported under section 304 (and to the National Response Center).

The RCRA disposal issue is similar to PCB disposal under TSCA. In a final rule issued in April 1985, EPA determined that where the disposal of wastes into permitted or interim status facilities is properly documented through the RCRA manifest system and RCRA regulations are followed, notification under CERCLA does not provide a significant additional benefit as long as the facility is in substantial compliance with all applicable regulations and permit conditions. However, spills and accidents occurring during disposal that result in releases of reportable quantities of hazardous substances must be reported to the National Response Center under CERCLA § 103. 50 FR 13461 (April 4, 1985). EPA believes that the same rationale applies to section 304. Thus, no notification of proper disposal into such RCRA facilities is required under today's rule.

Another commenter wanted to know if mining and mineral extraction wastes were exempt under section 304. There is no such exclusion under section 304 and the release notification requirements apply if the wastes are CERCLA hazardous substances or extremely hazardous substances.

*v. Releases from Facilities Not Handling "Hazardous Chemicals".* Several commenters requested that since certain chemicals at research laboratories are exempt from the definition of "hazardous chemicals" and thus exempt from release notification requirements under section 304, that this exclusion be extended to section 302 planning requirements.

SARA defines "hazardous chemical" under section 311. Under section 311(e) "any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual" is excluded from the definition of "hazardous chemical." Section 304 of SARA also states that releases of extremely hazardous substances and CERCLA substances are reportable under section 304 only when from a facility where hazardous chemicals are produced, used, or stored. However, because the planning requirements are not tied in any way to "hazardous chemicals," the "hazardous chemical" exclusion of section 304 does not extend to section 302.

In addition, for emergency notification purposes under section 304, if a release of an extremely hazardous substance or CERCLA substance exceeds the reportable quantity and occurs on a facility that produces, uses, or stores a "hazardous chemical," the facility owner or operator must notify the required parties. Accordingly, the research laboratory is exempt from section 304 emergency notification only if *no* hazardous chemicals are present at the facility, other than those used at the laboratory under the direct supervision of a technically qualified individual.

*vi. Other Exemptions from Section 304 Reporting.* Section 304(a) applies to releases which require notification under section 103(a) of CERCLA or, for substances which are not "hazardous substances" under CERCLA, releases which "occur in a manner which would require notification under section 103(a)" of CERCLA. As indicated above, "continuous" releases as defined under section 103(f) do not require immediate release reporting under section 103(a) except for "statistically significant increases." Because such releases do not "occur in a manner" which requires immediate release reporting under section 103(a) of CERCLA, they are also not reportable under section 304 of SARA.

In addition, there are other types of releases which are not reportable under section 103(a) of CERCLA. For instance,

EPA has been asked whether the application of pesticide products by an agricultural producer constitutes a reportable release under section 304. The application of a registered pesticide generally in accordance with its purpose is exempt from section 103(a) notification under section 103(e) of CERCLA. Because such releases are not reportable under section 103(a) of CERCLA, they are also exempt from release reporting under section 304(a) of SARA, and EPA has clarified the release reporting regulations to include this exemption. Similarly, section 101(22) of CERCLA excludes several types of releases from the definition of "release" and thus from release reporting under CERCLA section 103(a). These releases, which include emissions from engine exhaust, certain nuclear material releases, and the normal application of fertilizer, are also excluded from release notification under section 304 of SARA.

With respect to other exemptions, one commenter requested that section 304 be clarified to indicate whether the CERCLA "petroleum exclusion" applies to release reporting under Title III. The commenter felt that since "petroleum, including crude oil or any fraction thereof" is exempt from reporting under section 103 of CERCLA, it should also be exempt from reporting under section 304 of SARA.

However, "petroleum" is exempted generally from CERCLA responsibilities since it is excluded from the definition of a "hazardous substance" under section 101(14) and "pollutant or contaminant" under section 101(33) of CERCLA. Because no such exclusion exists under Title III, if extremely hazardous substances are present in petroleum, those substances are subject to applicable emergency planning and release notification requirements under Title III.

One commenter felt that particulates and other substances emitted from power plants should be exempt from § 300.94 (now § 355.40) emergency release notification requirements.

Such a release is exempt from § 355.40 if it is "federally permitted" as defined under Section 101(10) of CERCLA, "continuous" as defined under section 103(f) of CERCLA, or confined within the site. As mentioned before, the Agency is currently developing regulations defining "federally permitted" and "continuous releases." Such rules and interpretations will also apply to release notification under Title III.

*vii. Mixtures.* With regard to facilities which produce, use, or store mixtures, one commenter stated that this kind of facility should be exempt from section 302 notification requirements if the extremely hazardous substance component information is not available on the MSDS provided by the manufacturer. EPA disagrees. If the facility which produces, uses, or stores mixtures knows or reasonably should know the components of the mixture, the facility owner or operator must notify under section 302 if the extremely hazardous substance component is more than one percent and more than the TPQ. The facility owner or operator is not under an obligation, however, to inquire of the manufacturer the components of the mixture. Section IV. F.3 below discusses the one percent de minimis limit of extremely hazardous substances in mixtures for purposes of determining quantities applicable to the threshold planning quantities.

The same commenter believes that the de minimis concept should also be applied in the determination of emergency release notification. EPA disagrees, since the de minimis quantity was set in place for threshold quantities simply to make the calculation of the total amount of extremely hazardous substances on a facility more straightforward for planning purposes. The more dilute an extremely hazardous substance is, the more difficult it is to identify the substance in a mixture and the less likely to be released in a large quantity. For release reporting, however, the "de minimis" is the RQ because the extremely hazardous substance is already in the environment potentially doing harm. But whether or not the RQ is exceeded depends on the amount of the substance in the mixture, if known. This is the CERCLA "mixture" rule. See April 4, 1985 RQ rule (50 FR 13463).

4. Section 304 Transportation Issues

One commenter asked how an important carrier will know if he/she is carrying an extremely hazardous substance. First, EPA notes that the definition of facility in Title III does not cover transportation facilities with respect to facility planning notification and participation under section 302. However, local communities should take into account the local routes on which extremely hazardous substances will be transported in developing their emergency response plans.

Second, the definition of facility does cover some transportation facilities for purposes of release notification under section 304. However, because section 329 defines "facility" to include only "motor vehicles, rolling stock, and aircraft," vessels are not subject to section 304. Third, with respect to the degree of knowledge required, section 304 does not specify the degree of knowledge required for release reporting, or even that any knowledge is required. However, because of the close relationship between section 304 of SARA and section 103 of CERCLA, EPA interprets section 304 to require the same degree of knowledge as required under CERCLA section 103. Neither section 103 of CERCLA or section 304 of SARA impose separate monitoring or testing requirements on facility owners and operators.

One commenter asked if the release regulations apply differently to foreign flag carriers as opposed to domestic carriers. As noted above, ships are not covered under section 304.

One commenter requested clarification of the responsibility of transportation operators in the event of a spill or release of extremely hazardous substances or CERCLA substances. Although owners/operators of transportation facilities are not required to notify State and local authorities with regard to section 302 contingency planning, they are required to report releases under section 304.

With regard to stationary facilities, Section 304 requires owners and operators to report releases to the local emergency planning committee and to the State emergency response commission. Owners and operators of transportation facilities under section 304 are allowed to call the 911 emergency number in lieu of calling the State commission and local committee, or in the absence of a 911 number, the operator. The rationale for this separate reporting is that transportation operators on the road may very well not know the telephone numbers of the relevant State and local entities. If the transportation operator is in a community which has a generic emergency number rather than 911, the generic number should be used instead of 911. Note that if the release is of a CERCLA hazardous substance, a call to the National Response Center is also required. Local committees should consider training all personnel responsible for receiving telephone notice of such a release, so that proper notification procedures will be maintained.

One commenter asked if section 304 release notification requirements apply to pipelines, barges, and other vessels as well as to other transportation facilities. Section 327 of SARA states that Title III does not apply to the transportation of any substance or chemical, including transportation by pipeline, except as provided in section 304. Section 304 requires notification from facilities of releases of extremely hazardous

substances and CERCLA hazardous substances. The word "facility" is defined in section 329 to mean stationary items, which would include pipelines. The definition also includes, for purposes of section 304, motor vehicles, rolling stock, and aircraft. Because barges and other vessels are not included in the definition of "facility," they are not subject to section 304 reporting requirements.

Another commenter asked when and where an air carrier should report a release. For instance, should he/she report the release to the State where the release occurred or wait until the airport of destination to report? EPA believes that since aircraft should always have radio communication capabilities, the report should be given to the State(s) likely to be affected by the release as soon as possible after release. Reporting the release on arrival at the destination will not necessarily enable the provision of timely emergency response to the affected areas.

5. The Mechanics of Section 304 Reporting

One commenter stated that section 304 notification should go to the local emergency planning committee only, rather than to the local emergency planning committee *and* the State emergency response commission. Section 304 requires notification to both entities.

One commenter stated that section 304 release notification requirements should apply to reporting to the National Response Center under CERCLA section 103 as well as to State and local authorities. Although many releases subject to section 304 reporting requirements are also subject to reporting requirements under CERCLA section 103, no reporting to the National Response Center is currently required for the 256 extremely hazardous substances which are not "hazardous substances" under CERCLA. EPA intends to designate these 256 extremely hazardous substances as "hazardous substances" under CERCLA section 102. At that time, releases of such substances will also become reportable to the National Response Center under CERCLA section 103.

One commenter believes that the telephone notification to the National Response Center under CERCLA section 103 should suffice for the new requirements under SARA section 304. The commenter feels that the requirement to call the State and local authorities is too much of a burden when added to the existing CERCLA-required call to the National Response Center. EPA disagrees. The basic purpose behind the emergency planning and notification requirements of Title III is to protect the public in the event of dangerous chemical releases through the establishment of local and State emergency response capability. Because State and local participation for effective and timely emergency response is central to Title III, these entities must be alerted to potentially dangerous chemical releases. Thus, telephone notification to the federal government alone, through the National Response Center, does not meet the intent of the statute.

Three commenters requested a simplification in words or chart of the various requirements for release notification under section 103 of CERCLA and section 304 of SARA. CERCLA section 103 concerns reporting requirements for releases of "hazardous substances" as defined under section 101(14) of CERCLA. Under section 103 of CERCLA, a release of a hazardous substance in an amount equal to or in excess of its RQ which is not otherwise exempted under CERCLA, must be reported to the National Response Center. SARA section 304 provides a similar reporting requirement for releases of hazardous substances as defined under section 304 as well as releases which require notification under CERCLA section 103. However, reporting under section 304 must be given by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee and to the State emergency planning commission rather than the National Response Center under CERCLA section 103.

With respect to transportation of a substance subject to the requirements of section 304 or storage incident to such transportation, owners and operators may call the 911 emergency number in lieu of calling the State commission and local committee, or in the absence of a 911 number, may call the operator. The rationale for this separate reporting is that transportation operators on the road may very well not know the telephone numbers of the relevant State and local entities. If the transportation operator is in a community which has a generic emergency number rather than 911, the generic number should be used instead of 911. Note that if the release is of a CERCLA hazardous substance, a call to the National Response Center is also required.

Further, EPA intends to designate under section 102 of CERCLA all extremely hazardous substances which are not already defined as "hazardous substances" under section 101(14) of CERCLA. The designation will include all 256 extremely hazardous substances that are not presently "hazardous substances" under CERCLA. At that time, any substance requiring local and State release reporting under section 304 of SARA will also require reporting to the National Response Center under section 103. In addition, the extremely hazardous substances will continue to trigger contingency planning requirements in addition to release reporting.

With regard to the contents of the required notification under SARA section 304 and CERCLA section 103, the required contents of section 304 emergency notification is set out in § 355.40 (formerly § 300.94). Although section 103(a) of CERCLA does not specify the contents of release notification, the information necessary under section 103(a) for potential federal response, e.g., type of substance and nature, location, and effects of the release, should not differ for any practical purpose from the content of the notice specified under section 304.

Section 304 also requires follow-up written emergency notice to the State emergency response commission and the local emergency planning committee. The content of this notice is set out in § 355.40 (formerly § 300.94).

6. The Contents of Section 304 Notices

Two commenters believe that the CERCLA and Title III telephone notification should include the same basic information, such as whether the incident is still ongoing, abatement actions by whatever entities, cause and injuries in the incident if known, amount spilled, etc. The required contents of the emergency notification was set out in the interim final rule, and is republished in today's rule. The Agency does not believe that the notification specified in Section 304 and today's rule should vary from the CERCLA notification in any significant way.

One commenter believes that the final rule should include guidance on how to report information on "known or anticipated . . . health risks" under SARA section 304(b)(2)(F) (immediate report) and 304(c)(2) (follow-up report). At the same time, the commenter stated that since general health information is already given on a "material safety data sheet" (MSDS) for the chemical, then an indication that "severe adverse health effects may be expected" should suffice. EPA disagrees. The health information contained in an MSDS is general and will not be specific enough to be of use to health professionals, especially if the chemical name is confidential on the MSDS.

One commenter stated that the requirement regarding the inclusion of any known or anticipated health effects associated with the release is a mistake since anticipating health effects is speculative at best and the release report should stick to fact, not speculation.

EPA disagrees. The inclusion of this requirement in the interim final rule, and today's rule, is based on the contents of the notice specified in section 304(b)(2) of SARA.

Several commenters wrote to the Agency regarding the written follow-up emergency notice.

One commenter stated that the written report should include where the incident took place and the cause of the accident, to be consistent with CERCLA and RCRA. EPA believes that the location of the release is always essential for emergency response purposes and should be identified in any release notification under section 304.

One commenter believes that the written notification requirements should also include results of a facility's inspection. The inspection specifies the preventive measures to be applied to prevent future releases. EPA agrees that this may be an effective preventive tool but has not made this information a requirement for release reporting. State and local governments may wish to require such information. In addition, a release prevention program under CERCLA will require a releaser who has more than a specified number of releases of a certain hazardous substance, or releases in certain quantities above the RQ, to report in writing to EPA and to the State the specific steps that are being taken to prevent reoccurrence of the release.

The same commenter felt that written follow-up information should go not only to the local planning committee but also to the State commission and to the State environmental agency. Section 304(c) of SARA mandates that follow-up notification go to the same entities that received the initial oral notification, i.e., the State commission and the local committee. State environmental agencies may request the information. In addition, in most cases, environmental agencies will be represented on the commission and therefore the information will be available to them.

*C. Criteria Used to Identify Extremely Hazardous Substances*

1. Toxicity Criteria

a. *Narrowness of Criteria.* Several commenters suggested the need to broaden the selection criteria to include other health effects that may result from short-term exposures. The commenters contend that Congress intended the Agency to take these other toxic effects into account in developing a comprehensive approach to emergency planning.

The Agency agrees with the commenters that the intent of Congress is to include substances that cause both short-term and long-term health effects following short-term exposure. Under the Chemical Emergency Preparedness Program, it was the Agency's intent to take into account all toxic effects to humans that may be associated with short-term exposure to chemicals. However, a review of available data indicated limited information on other effects resulting from short-term exposures to airborne substances. In addition, generally accepted methods of extrapolating data on health effects resulting from multiple or long-term exposure to indicate effects that may result from short-term exposure are not available. Comments were requested in the proposed rule on how chronic and other health effects from short-term exposures could be incorporated into criteria for the list. The commenters had no specific suggestions for such criteria. In the future, the Agency intends to consider the development of additional toxicity criteria for acute non-lethal and chronic effects due to short-term exposure. In the meantime, EPA agrees that substances cannot be deleted from the extremely hazardous substances list until the Agency can evaluate non-acute toxic effects from short-term exposure to these substances.

b. *Oral and Dermal Toxicity Data.* Comments were received concerning the Agency's inclusion of oral and dermal lethality values in addition to inhalation toxicity data to identify air toxicants as opposed to relying only on inhalation toxicity data. Some commenters expressed support for the Agency's position, while others suggested that the use of such data is inappropriate or should be modified. The Agency is using acute lethality data from the oral, dermal, and inhalation routes in order to identify chemicals with high inherent toxicity. Consideration of inhalation data only would lead to the omission of many chemicals for which there may be no inhalation studies; if these chemicals are highly toxic by oral or dermal administration, the Agency believes they may be potentially hazardous via the inhalation route and should be so identified. Other organizations such as the European Economic Community and the World Bank agree that these data should be used in identifying acutely toxic chemicals. Based on these reasons, the Agency is retaining the use of oral and dermal lethality values.

c. *Use of $LC_{LO}$ and $LD_{LO}$ Data.* In the absence of median lethal concentration or doses ($LC_{50}$ or $LD_{50}$) data, lowest lethal concentration or dose ($LC_{LO}$ or $LD_{LO}$) data were used to identify extremely hazardous substances. Several commenters questioned the use of such data. Other commenters suggested that when such data are used, they should be evaluated more stringently than $LD_{50}$ or $LC_{50}$ data and lower criteria values should be specified. Even with the amount of animal acute lethality data that is available, there are chemicals for which there are no standard acute lethality test data. $LC_{LO}$ and $LD_{LO}$ values may be more variable than those provided from median lethality tests, but for the purposes of screening large numbers of chemicals, it is deemed necessary to provide a second level screening tool in preference to missing potentially toxic chemicals because chemicals are not adequately tested. Because there is no quantitative basis for comparison of $LC_{LO}$ and $LD_{LO}$ values with $LC_{50}$ or $LD_{50}$ values, it is not possible to develop additional criteria levels for these values. At present, for the purposes of identifying highly toxic chemicals, the Agency will continue to treat $LC_{LO}$ and $LD_{LO}$ data in the same manner as the $LC_{50}$ and $LD_{50}$ data in the absence of the latter. Currently, approximately ten percent of the total number of chemicals on the list have been identified based on $LC_{LO}$ or $LD_{LO}$ data.

d. *Exposure Time.* Several commenters questioned the use of inhalation toxicity data based on any reported exposure times of up to eight hours or with no reported exposure time. Acute inhalation toxicity test results depend upon the concentration of the chemical in air and the duration of the exposure periods. Because of this, $LC_{50}$ and $LC_{LO}$ values for a chemical may vary depending upon how long the animals were exposed to the substance. The Agency chose to make maximum use of available acute toxicity data to screen for acutely toxic chemicals and, therefore, chose to use $LC_{50}$ and $LC_{LO}$ values with exposure periods up to eight hours or with no reported exposure period. The Agency believes that this conservative approach, which might identify more chemicals than would be found using a specified period such as four hours as a cut-off time, is in accordance with the intent of Congress to protect public health and safety. In the absence of other data, and considering the general relationship of $LC_{50}$ and $LC_{LO}$ values, it is believed that

BEST COPY AVAILABLE

such substances represent potential hazards as acutely toxic chemicals. Additionally, there is no available scientifically accepted method to adjust data from varying exposure times to obtain a normalized value. The Agency is therefore not making such an adjustment.

e. *Use of Animal Data.* Several commenters were concerned with the use of animal data to identify extremely hazardous substances potentially harmful to humans. They believed that human data should be used in preference to animal data when available and that animal data should be further evaluated to determine its applicability to humans. The Agency has chosen to use data from the most sensitive mammalian species because present state-of-the-science does not allow prediction of the species that is the appropriate surrogate for humans for a given chemical. The human population is very heterogeneous and, in fact, comprises many subpopulations with varying degrees of sensitivity to the toxicity of a chemical. One of the main principles supporting all animal toxicity testing is that the biological activity of chemicals as reflected in toxic effects in animals can also lead to toxic effects in humans. Ideally, all toxicity tests should be conducted with an animal species/strain which most accurately reflects the toxic response in humans. There are no data available, however, to indicate which species most accurately reflects the human response for every chemical. To obtain such data, extensive laboratory work on a variety of species would need to be conducted. Further, only data on toxicity to humans could verify which is the appropriate species for a given chemical. The Agency wil retain the use of data from the most sensitive species tested to screen chemicals. If data on humans are available for specific chemicals, they will be evaluated on a case-by-case basis.

2. Physical/Chemical Properties

Several commenters suggested using vapor pressure and ability to disperse as criteria to limit the number of high-boiling point liquids and solids on the list. Consequently, the chemicals remaining on the list would be those with higher dispersion potential. One commenter suggested the publishing of more than one list of extremely hazardous substances based on different release and dispersion scenarios. Several commenters suggested the evaluation of other physical and chemical properties of substances, such as flammability, reactivity, and combustibility, as criteria for listing chemicals.

The list of extremely hazardous substances, mandated by Congress, is presently based on inherent acute toxicity. Physical and chemical properties of substances on the list are considered in establishing the threshold planning quantities (see below), but these factors are not used as criteria for listing because each chemical could be handled at non-ambient conditions. Because of very variable conditions, the Agency believes it is appropriate to deal with factors such as ability to disperse and physical/chemical properties on a site-specific basis. Local emergency planning committees will consider these factors at the community level when assessing potential exposure of vulnerable populations. EPA urges communities to take all these factors into account to identify other hazardous substances with which they may be concerned and to prioritize all such substances in the community for emergency planning.

The Agency does intend to evaluate hazards other than toxicity as identified in section 302(a)(4) and to develop appropriate criteria based on these physical/chemical properties, e.g., flammability, for revising the list of extremely hazardous substances in the future. However, EPA has not considered these additional properties in the context of this rulemaking.

3. Use of RTECS

Several commenters were concerned with the Agency's use of the National Institute of Safety and Health's (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) Database. The overall comments were that RTECS is neither intended for, nor is it capable of, being used as a primary source of health data and that the database is not peer-reviewed. The present screening criteria can be applied to any experimental toxicity data on chemical substances. The RTECS data base was used as the principal source of toxicity data for identifying acutely toxic chemicals because it represents the most comprehensive respository of acute toxicity information available with basic toxicity information and other data on approximately 87,000 chemicals. It is widely accepted and used as a toxicity data source by industry and regulatory agencies alike. Although RTECS itself is not formally peer-reviewed, the data presented are from scientific literature which has been edited and in most cases peer reviewed by the scientific community before publication. The Agency recognizes some limitations associated with using this data base, but for the purpose of screening acute toxicity data, RTECS represents the single best source of information since it is the most comprehensive data source available.

*D. List of Extremely Hazardous Substances*

1. Changes to the List in this Rule

a. *Deletions.* In the companion proposal to the interim final rule published on November 17, 1986, the Agency proposed the deletion of 40 chemicals which do not now meet the acute lethality listing criteria. They no longer meet the existing criteria because new data have recently become available, existing data have been reevaluated, or errors occurred in the RTECS data base. Several commenters supported some or all of the proposed changes; however, other commenters challenged the deletion of these chemicals before the Agency has determined that they pose no other health hazards as a result of a short-term exposure.

The Agency has decided not to delete any of the 40 chemicals proposed for deletion at this time. When the list of extremely hazardous substances was developed in 1985 (as the list of acutely toxic chemicals for the voluntary Chemical Emergency Preparedness Program) it was intended as an example list. When the list became part of Title III of SARA, the Administrator of EPA was given the authority to revise the list, but only after various criteria were considered. These criteria include the toxicity, reactivity, volatility, dispersibility, combustibility or flammability of a substance. The section 302 definition of the term "toxicity" includes any short- or long-term health effect which may result from short-term exposure. Based on this statutory provision, the Agency believes that substances cannot be deleted from the list until EPA has taken into account the other (i.e., long-term) health effects resulting from a short-term exposure to the substances at specified levels. The criteria for determining such levels are not available. In the future, the Agency intends to address the development of additional toxicity criteria for acute non-lethal and chronic effects due to short-term exposure. Until these criteria are available and the forty chemicals in question can be reassessed, these chemicals have been assigned the TPQ level of lowest concern, namely 10,000 pounds.

b. *Additions.* In the interim final rule, the Agency proposed the addition of five chemicals to the list and requested

public comments on the proposed additions. One comment was received concerning urea, 3-(3,4-dichlorophenyl)-1-methoxy-1-methyl-. The commenter believed that the toxicity of this chemical did not meet the criteria and submitted unpublished toxicity data to support its claim. The Agency has reviewed the submitted data and finds that the chemical does not meet the present criteria. Therefore, the chemical will not be added to the list. The remaining four of these five chemicals are added to the list in this rule.

c. *Additional Suggested Changes.* A number of commenters recommended the deletion of specific chemicals from the list in addition to those in the interim final rule. As discussed above, the Agency has decided not to delete any chemical until other health effects resulting from short-term exposure have been assessed. Further, such deletions will be accomplished through rulemaking. One commenter suggested additions to the list. The Agency will take this request under consideration and any additions will be proposed in later rulemaking.

d. *Radioactive Materials, Food, Drugs, and Cosmetics.* The Agency requested comments on whether radioactive materials and chemicals used as food additives, drugs, and cosmetics should be added to the list. Such chemicals were not considered for the list if they were not listed in the 1977 Toxic Substances Control Act Inventory. Commenters expressed conflicting opinions as to whether radioactive materials and the chemicals used in foods, drugs, and cosmetics should be listed. After review of the comments, the Agency has decided to maintain its original policy with respect to these chemicals and thus will not consider these substances for addition to the list at this time.

E. *Determination of Levels of Concern*

1. Use of IDLH Values

Two commenters supported the use of the Immediately Dangerous Life and Health Level (IDLH) as developed by NIOSH as the level of concern. A third commenter supported the use of IDLH only as an interim measure. Two commenters suggested that if the IDLH is used, then appropriate uncertainty factors should be employed. Another commenter suggested that the Agency continue to identify more appropriate alternatives.

The Agency recognizes that the IDLH has some limitations as a measure for protecting general populations. First, as commenters pointed out, the IDLH is based upon the response of a healthy, male worker-population and does not take into account exposure of more sensitive individuals such as the elderly, pregnant women, children, or people with various health problems. Second, the IDLH is based upon a maximum 30 minute exposure period which may not be realistic for accidental airborne releases. Based on these considerations, the Agency has identified the development of more appropriate chemical emergency exposure levels for the general public as a priority. However, at present, the IDLH value, or an estimation of level of concern based on acute toxicity data for substances that do not have a published IDLH, appears to be a suitable measure of relative toxicity for use in the methodology for establishing threshold planning quantities (see discussion under F).

2. Use of Acute Lethality Data

Two commenters addressed the use of acute lethality data to determine levels of concern. It is the Agency's policy to make maximum use of available acute toxicity data not only to identify chemicals for the list but also to serve as the basis for determining the levels of concern. This approach enables the Agency to develop levels of concern for all the chemicals on the list and to utilize this value as the toxicity ranking factor in establishing the TPQs.

One commenter was concerned that interchangeable use of LC and LD data would result in similar threshold planning quantities for substances with differing potential for harm. As the threshold planning quantities are not a measure of absolute risk, but rather a trigger for facility reporting, the Agency will continue to use both LC and LD data. Further, these data are not used interchangeably, as factors are applied in estimating level of concern to take into account differences between LC and LD data.

Three commenters expressed concern over the use of $LC_{LO}$ and $LD_{LO}$ data when IDLH and $LC_{50}$ and $LD_{50}$ values are not available to estimate levels of concern. Specific comments addressed the length of $LC_{LO}$ exposure time, the need to adjust the threshold planning quantities downward when $LC_{LO}$ and $LD_{LO}$ are used, and the perceived inappropriateness of using such data. The Agency recognizes that these values are often derived from studies that vary in quality. However, the Agency has chosen to continue using the $LC_{LO}$ and $LD_{LO}$ values in order to calculate a level of concern even when the data are limited. Factors are applied in the calculation to take into account the fact that these values may be lower than $LC_{50}$ and $LD_{50}$ values.

F. *Threshold Planning Quantities*

1. Methods Used to Establish Threshold Planning Quantities

Under section 302, if the Agency did not develop threshold planning quantities for each of the 402 substances on the list of extremely hazardous substances within 30 days after the date of enactment of Title III, then the threshold planning quantity would become two pounds. Interim final threshold planning quantities were published simultaneously with the publication of the list on November 17, 1986. Any facility that has one or more of the chemicals on the list of extremely hazardous substances in quantities in excess of the threshold planning quantity must provide notification to the State emergency response commission by May 17, 1987. Because of this, the Agency believes that the two-pound threshold planning quantity for all 402 substances would overwhelm local emergency planning efforts and would not take into account differences in potential hazards posed by individual substances.

The Agency considered four possible approaches for development of threshold planning quantities and invited public comments on each of them.

Approach 1. *Specific Quantity Prediction.* Under this approach, the Agency would have determined the specific quantity of each chemical that, if accidentally released in a specified situation, would result in significant acute health effects at a fixed distance from the release site.

Approach 2. *Dispersion/Toxicity Ranking Method.* Under this approach, the Agency assigned chemicals to threshold planning quantity categories based on an index that accounts for the toxicity and the potential to become airborne of each chemical in an accidental release. This approach is based on relative ranking and the assignment of each chemical to one of a series of threshold planning quantity categories, but does not give a measure of absolute risk.

Approach 3. *Toxicity Ranking Method.*

Under this approach, the Agency would have assigned categories of threshold planning quantities based solely on a relative ranking of each chemical's toxicity.

Approach 4. *Two Pound Quantity for All Chemicals.* Under this option, the default quantity mandated by Congress

of two (2) pounds would have been used.

a. *Approach 2.* After considerable analysis, the Agency chose to develop threshold planning quantities using Approach 2 with modifications as described below. Several commenters supported the use of Approach 2, although some did have a reservation concerning exclusion of hazards other than acute lethality. Some commenters criticized the assumptions made, for example that liquids should be assessed at their boiling points. Some commenters suggested that the threshold planning quantities should reflect the ability of the substance to be dispersed in air. Several commenters felt that distance and storage conditions should be incorporated into the threshold planning quantity calculation.

Approach 2 provides a basis for relative measures of concern rather than absolute values, and the Agency continues to believe that such measures are appropriate for facility reporting for emergency response planning. Under Approach 2, the level of concern for each chemical is used as an index of toxicity, and physical state and volatility are used to assess its ability to become airborne. The two indices are combined to produce a ranking factor. Chemicals with a low-ranking factor (highest concern), based on the Agency's technical review, are assigned a quantity of one pound (see discussion in 2.b. below). It is believed that the one-pound quantity represents a reasonable lower limit for the most extremely hazardous substances on the list. Chemicals with the highest ranking factors, indicating lower concern, were assigned a threshold planning quantity of 10,000 pounds. This ensures that any facility handling bulk quantities of any extremely hazardous substances would be required to notify the State commission. Between the limits of one pound and 10,000 pounds, chemicals were assigned to intermediate categories of 10, 100, 500 or 1,000 pounds based on order of magnitude ranges in the ranking factors. The selection of the intermediate categories was based on standard industrial container sizes between one and 10,000 pounds.

The Agency believes that limited State and local resources should be focused on those substances that potentially will cause the greatest harm should an accidental release occur. The TPQs developed in Approach 2 meet the objective such that substances that are most likely to cause serious problems (extremely toxic gases, solids likely to be readily dispersed, or highly volatile liquids) have lower TPQs than those that might be toxic but are not likely to be released to the air (non-reactive, non-powdered solids).

With respect to commenters who believe that other hazards should be considered, criteria presently are not established to assess hazards other than acute lethality. However, EPA intends to develop such criteria in the future for listing additional chemicals as extremely hazardous substances. When such criteria are available, the Agency will assess their appropriateness for consideration in calculating threshold planning quantities of chemicals which meet this criteria.

In response to comments concerning the assumptions made in calculating threshold planning quantities, many of these assumptions were designed to be conservative. Liquids, for example, were examined for the degree of volatilization expected from a spill at both 25 °C and at the chemical's boiling point. Since many of the extremely hazardous substances may be handled at temperatures greater than ambient, an assessment of the degree of volatilization at an elevated temperature is appropriate. Therefore, the Agency chose to evaluate the degree of volatilization expected at the liquid's boiling point for ranking against gases and powdered solids. Actual site conditions associated with the liquid that influence the degree of volatilization (such as spill area and temperature) should be addressed during community planning efforts.

With respect to comments on the volatilization model used by the Agency, this model was compared to other available models to calculate the vapor generation rate from a liquid spill. Some of these models include factors that account for wind and cooling associated with evaporation. Results from the model used by the Agency were of the same order of magnitude and within the range predicted by the other models tested. An order of magnitude change in the ranking factor of a chemical is required to change its threshold planning quantity. Therefore, even though the simple model used by the Agency to estimate volatilization does not account for wind or cooling effects of evaporation, it is appropriate for purposes of ranking the chemicals. The Agency believes that Approach 2 does account for the ability of an extremely hazardous substance to disperse by considering a substance's physical properties. However, as discussed below, Approach 2 has been modified to better reflect the dispersibility of solids by including particle size and whether the solid might be handled in solution or molten form for calculating the threshold planning quantities. No modification has been made to account for the actual behavior of vapor or airborne particles because of the wide degree of variation of site-specific conditions that could affect airborne dispersion. The source strength, meteorology and terrain must also be considered with distance to accurately account for the degree of dispersion.

Finally, EPA disagrees with commenters who felt that distance to vulnerable populations and storage conditions should be incorporated into TPQ calculation. The inclusion of distance to potential vulnerable populations in the threshold planning quantity calculation is inappropriate as site conditions vary greatly. It is therefore better to consider distance at the planning stage at the community level. A forthcoming technical guidance document which will supplement the NRT *Hazardous Materials Planning Guide*, will provide information on how this may be accomplished.

The Agency has decided that the total amount of a chemical present at a facility must be used for judging whether a threshold planning quantity has been exceeded, regardless of distance between containers or the size of containers. Storage conditions are more appropriately addressed at the planning stage and will also be described in the aforementioned technical guidance document.

b. *Solids.* Threshold planning quantities for solids were originally calculated under the assumption that they could be completely dispersed if in powdered form. Several commenters noted that the threshold planning quantities are not appropriate for non-powdered, non-reactive solids since they are not likely to become airborne. They argued that even powdered materials which may be dispersed as aerosols will rapidly fall out unless the particle size is very small and, thus, the threshold planning quantity should be set higher than 10,000 pounds for non-powdered, non-reactive solids.

The Agency agrees that additional factors should be considered in establishing the threshold planning quantities for solids since solids can take many forms. Accordingly, EPA has modified Approach 2, so that the threshold planning quantity for each solid now applies only if it is a powder with a particle size less than 100 microns, or it is handled in solution or molten form, or it has a National Fire Protection Association rating of 2, 3 or 4 for reactivity. If the solid does not meet these specific criteria, the threshold

planning quantity will default to 10,000 pounds, the highest TPQ level. The Agency has not raised the highest TPQ level above 10,000 pounds because it believes that any chemical present in this quantity or greater, which meets the Agency's criteria for an extremely hazardous substance, should be brought to the attention of the State commission and the local planning committee, irrespective of the physical form of the solid substance. This will enable planning officials to evaluate such solids and the facilities that handle them on a case-by-case basis.

Accordingly, the TPQ calculation for a solid applies only to the fraction of the total quantity of solid with a particle size less than 100 microns, or in molten form, or in solution. In addition, for solids in molten form, the amount molten at any time is multiplied by an adjustment factor of 0.3 to conservatively account for the maximum volatilization of the spilled molten substance that is likely to take place.

Thus the quantity applicable to the threshold planning quantity calculation is the molten portion times 0.3.

c. *Other Approaches.* Two commenters discussed Approach 1. One commenter considered that Approach 1 was more appropriate than Approach 2 for calculating chemical-specific threshold planning quantities. The assumptions used in Approach 1 were numerous and could lead to highly variable results. It would be difficult to choose the appropriate release scenario for setting the threshold planning quantity from among the many release scenarios possible under Approach 1. For these reasons the Agency still considers Approach 2 to be the most appropriate for calculating threshold planning quantities.

No comments were received on Approach 3. Commenters expressed support for not allowing the threshold planning quantity to default to two pounds as proposed in Approach 4.

2. Suggested Reassignments to Different Threshold Planning Quantities

a. *Threshold Planning Quantity Adjustments.* Eleven commenters suggested that a total of eight specific chemicals should have higher threshold planning quantities, and four suggested that twelve should have lower threshold planning quantities. In addition one commenter suggested that substances used in foods, food additives, color additives, drugs, cosmetics or any substance used in personal, family or household products should be raised to 5,000 pounds, and another suggested that two pounds for pesticides is too low.

Two of the chemicals suggested for reassignment to higher threshold planning quantities are solids and would be subject to the conditions for solids as discussed above. The data used for calculating threshold planning quantities has been reviewed, and threshold planning quantities were recalculated as appropriate. Threshold planning quantities were reassigned based upon new data received by EPA showing different physical properties or toxicity levels. The threshold planning quantity was reduced for 36 substances based on updated acute toxicity data. For the same reason, 12 chemicals have higher threshold planning quantities. These reassignments are noted in the list and are discussed in the technical support documents available in the public docket.

Some factors mentioned by commenters for consideration in lowering the assigned threshold planning quantities included vapor pressure and toxicity, both of which are included in the present calculation. In addition, commenters suggested reassignment based on reactivity. The Agency has considered reactivity on an individual basis. Several reactive chemicals were assigned threshold planning quantities lower than their calculated values following individual review. Reactivity is also considered in determining whether the threshold planning quantity for solids which are not powdered, dissolved or liquefied should become 10,000 pounds. For certain reactive solids, the threshold planning quantity does not increase to 10,000 pounds even if the solid is not in powdered form.

b. *Change in TPQ for Nickel Carbonyl.* Several commenters suggested that the "any quantity" threshold planning quantity for nickel carbonyl should not be used because of the level of detectability and compliance questions that may arise. Further, the "any quantity" level gives a misleading impression of the actual hazard of the substance as compared to other extremely hazardous substances.

After review of the comments and evaluation of additional information on nickel carbonyl, the Agency has decided to assign nickel carbonyl to a newly established one-pound TPQ category along with two other chemicals with similar ranking. The Agency continues to recognize the higher toxicity of nickel carbonyl and the two other chemicals as compared to all other substances on the list by placing them in the lowest TPQ category established by this rule. Further, the assignment of nickel carbonyl to the one-pound category is further supported by taking into consideration its relative instability in air. The reassignment will also eliminate any possible confusion with respect to compliance.

c. *Relationship Between EPA's Threshold Planning Quantities and Other Similar Standards.* One commenter took issue with the TPQ values assigned to the chemicals, suggesting that communities would implicitly rank the chemical for hazard potential solely on the basis of the TPQ value and without regard to handling or transport considerations. EPA intends the TPQ values assigned to materials in the rule to apply to potential nonambient conditions as may occur at fixed facilities. It should be noted that during transportation, the assumption of non-ambient conditions would not frequently apply and that many transported substances may meet existing hazard class definitions of DOT and therefore be currently subject to existing regulations contained in Title 49 of the Code of Federal Regulations (49 CFR). All SARA section 302 substances will be covered when listed under section 103 of CERCLA. Further elaboration of special considerations for chemicals in transit is covered by technical guidance documents published by DOT.

Another commenter said that their State system differed in the threshold planning quantities set and suggested EPA adopt their system. This State has adopted storage thresholds of 55 gallons of any liquid, 200 cubic feet of any gas, and 500 pounds of any solid. These State-adopted storage thresholds provide virtually no distinction among chemicals for differences in either toxicity or ability to become airborne. Additionally, no facility would be required to notify the State commission or the local planning committee unless the facility contained a minimum of approximately 500 pounds of any extremely hazardous substance. The Agency believes that these threshold quantities would not be sufficiently conservative for many chemicals and overly conservative for other chemicals. Therefore, the Agency believes that the threshold planning quantities published today are more appropriate since they take into account the relative toxicities of the extremely hazardous substances and their ability to become airborne. As a result, the TPQs range from one pound to 10,000 pounds and trigger reporting in a manner that is more consistent with the potential hazards these chemicals are likely to pose.

d. *Relationship Between RQ Values and TPQ Values.* Several commenters expressed concern that a number of

substances on the extremely hazardous substances list had RQ levels under CERCLA that exceeded the TPQ values and therefore emergency planning would be required for quantities of chemicals that would not require notification under the RQ reporting rules. In the interim final rule, the Agency acknowledged these inconsistencies and agrees with commenters who argued that the TPQ should not be lower than the RQ for the same substance.

In response to these concerns, the Agency has taken several actions. First, in a separate rulemaking under CERCLA section 102, the Agency has already proposed lowering the RQ values of seven of these chemicals. Second, as discussed elsewhere in this rule, changes in the TPQ quantitative categories and the reassignment of TPQ values based on reevaluation of the toxicity data has resulted in elimination of inconsistencies for seven other chemicals. Third, seven of the substances are solids which have been assigned TPQ values of 10,000 pounds unless they meet special conditions regarding physical form or chemical properties. Solids in solution, in molten form, of a particle size of 100 microns or less, or of a highly reactive nature revert to the lower TPQ values. Fourth, the Agency is currently reviewing additional information on five other chemicals and plans to propose revisions of their RQ values based on this new information. Finally, EPA intends to resolve the two remaining inconsistencies by adjusting the RQs of the substances as part of a proposed rule later this year. In that rulemaking, EPA will designate the remaining extremely hazardous substances as CERCLA hazardous substances under CERCLA Section 102 and revise the one pound statutory RQs for the extremely hazardous substances.

3. Threshold Planning Quantities for Mixtures, Solutions, or Formulations.

The interim final rule included a one percent de minimis limit of the extremely hazardous substances in mixtures, solutions, or formulations for purposes of determining quantities applicable to the threshold planning quantities.

A number of commenters supported the idea of a percentage limit for calculating threshold planning quantities, and most of these supported the one percent mixture decision. Certain commenters thought that the one percent minimum level should be raised or that specific test results should be used or that the DOT methodology for the applicable concentration for reportable quantities be used. (50 FR 13464, April 4, 1985). One commenter suggested that the one percent level employed by Occupational Safety and Health Administration (OSHA) for carcinogens should be included.

The concentration of a chemical in a mixture that is associated with a potential hazard depends upon the type of toxicity concern. The commenters, for example, refer to OSHA's use of a level of 0.1 percent as a concern cut-off level for a carcinogen in a mixture. Regarding the acute toxicity concerns of the extremely hazardous substances listed in this rule, however, EPA believes that the release of an amount equal to the threshold planning quantity of the substance at concentrations of less than one percent is not likely to give rise to a concentration equal to the level of concern off-site. Therefore, the Agency believes that the one percent de minimis rule is appropriate for purposes of emergency planning.

Alloys, amalgams, or polymers are not considered mixtures for the purpose of this rule because unlike simple mixtures, their properties are demonstrably different from those of their components; the reporting of alloys and amalgams is not required unless they are specifically listed. In evaluating whether to notify for mixtures, facility owners or operators should compare the appropriate threshold planning quantity with the actual amount of the extremely hazardous substance present in the mixture. For example, if the TPQ threshold for a given chemical on the list is 100 pounds and that chemical is 20 percent by weight of a mixture, notification would be necessary if 500 pounds or more of that mixture is present at a facility.

When considering potential hazards specifically from airborne releases it is unlikely, even assuming large releases of a mixture, that concentrations of less than one percent will generate severe airborne exposure levels of the toxic component off-site. Conversely, it is not deemed to be a precedent to raise the TPQ determination limit of any extremely hazardous substance in a mixture to a level greater than one percent. Therefore, the Agency has decided to retain the one percent minimum for the evaluation of all mixtures, solutions, or formulations containing extremely hazardous substances for section 302 planning purposes.

For emergency release notification, there is no de minimis quantity under either CERCLA section 103 or SARA section 304. When determining if notification is required for a release of mixtures and solutions containing extremely hazardous substances or hazardous substances, the Agency applies the weight percent calculations as is illustrated above for SARA section 302 calculations. (The "mixture rule" for CERCLA section 103 is further explained in 50 FR 13463 (April 14, 1985), where the regulation for mixtures and solutions is outlined in CERCLA rulemaking pertaining to RQ release reporting.)

*G. Reportable Quantities*

Several commenters questioned the reportable quantities set either under the one pound level established under section 304 of SARA or levels set under section 102 of CERCLA. The one pound statutory RQs under SARA section 304 are for those substances not already listed as CERCLA "hazardous substances" under section 101(14) and subject to notification requirements under section 103. The extremely hazardous substances which are not CERCLA hazardous substances will be designated under CERCLA section 102 as part of a rulemaking later this year at which time the statutory RQs will also be adjusted. Comments concerning RQs for CERCLA notification under section 103 will be considered and addressed in the ongoing CERCLA rulemakings to adjust RQs.

*H. Miscellaneous*

1. Trade Secret/Confidentiality Issues

Several commenters raised questions and concerns regarding trade secret information. With regard to section 304 notification and chemical identity of an extremely hazardous substance, one commenter wants to provide the same information that he/she has provided on the MSDS. However, EPA believes that the actual chemical name must be given along with the trade name in the section 304 release notification. This specific chemical name will be of use to the health professional while the trade name may not be of such use. In any case, section 304 emergency notification is not subject to Title III trade secret protection.

One commenter indicated that EPA should define a trade secret more clearly and provide for the protection of such secrets when they are necessary in the contingency plan. EPA agrees. Trade secret regulations regarding trade secret claims and other confidentiality issues will be issued by EPA in the future. These regulations will provide that specific chemical identity may be claimed confidential at the time of the contingency planning. The chemical identity must be submitted to EPA along with a substantiation explaining why

the chemical identity is trade secret. These procedures will be more fully explained in the future trade secret regulations.

One commenter stated that regulations are necessary for the determination of the validity of the local planning committee request for information which a facility believes is confidential before EPA issues a compliance order. EPA believes that questions concerning the validity of local requests are largely to be handled at the State and local level, except for claims of trade secrets concerning specific chemical identity. Trade secrets regulations will be issued later this year. The Agency does not believe further regulation is necessary in this area.

One commenter believes that the guidance documents should discourage the collection by localities of confidential information and should specify when confidential information is justified. Another commenter believes that EPA should more carefully define "emergency response plan" to exclude confidential information given to the local committee as background material. Section 322 is quite specific about what information collected under Title III can be withheld as confidential. Under Title III, only the specific chemical identity can be withheld, in accordance with the procedures set forth under section 322. Because no confidentiality issues other than those to be addressed in the forthcoming section 322 regulations are relevant under Title III, EPA does not believe further guidance is necessary at this time.

ii. Enforcement

One commenter believes that EPA should issue procedures for the issuance of compliance orders. EPA agrees that such procedures should be developed in the future. The Agency will develop such procedures either by regulation or guidance and may adopt procedures for the issuance of such orders that have been developed under other environmental laws.

One commenter stated that although he believes that notification to emergency personnel of releases that endanger the health of community residents is necessary, EPA is not authorized to penalize the failure to notify with civil and criminal penalties. He also wrote that this requirement to notify is currently accomplished on a voluntary basis, as recommended by the Chemical Manufacturer's Association. With respect to EPA's authority to assess penalties or seek criminal and civil penalties for owners' or operators' failure to notify under section 304, EPA disagrees. Section 325(b) provides for civil, administrative and criminal penalties for enforcement of emergency notification requirements under section 304.

Another commenter felt that since section 304 imposes penalties for failure to "immediately" notify State and local authorities of a release of an extremely hazardous substance, it is implicit that this assumes "immediately after the releaser becomes aware" of the existence of a release. EPA agrees that a knowledge requirement is implicit under section 304. However, if the facility owner/operator should have known of the release, then the fact that he or she was unaware of the release will not relieve the owner/operator from the duty to provide release notification. EPA believes no change is needed in the regulatory language.

## V. Relationship to CERCLA

### *A. Relationship of Title III to The National Contingency Plan*

Although Title III is a free-standing Title within SARA, it is closely related to preparation and response activities under CERCLA.

For that reason, the interim final rule was placed in a new Subpart I within the existing National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR 300). However, due to differences in authority, trade secret protection and key definitions, and because of the need for simplicity and accessibility for a wide range of users, EPA has recodified the November 17, 1986 provisions. Today's final rule republishes the emergency planning and notification requirements, as part of 40 CFR 355. All of the Title III provisions will now be located apart from the NCP in Parts 355 et seq. of Title 40 of the Code of Federal Regulations.

### *B. Relationship of This Rule to CERCLA Section 103 Reporting Requirements*

Under section 103 of CERCLA, any person in charge of a facility at which there is a release of a hazardous substance, as defined in CERCLA section 101(14), equal to or in excess of its reportable quantity must report immediately to the National Response Center. The National Response Center will then alert the appropriate federal emergency response personnel of the release. This notification includes transportation incidents and releases from vessels as well as fixed-facility emergencies.

The notification to the State emergency response commission under section 302 is not triggered by a release incident, but rather by the presence of certain quantities of an extremely hazardous substance at a facility. No release or event of any kind is required for a section 302 report. This notification is an initial action in a process that culminates in the development of community emergency response plans. Section 304 in contrast, establishes reporting requirements similar to CERCLA section 103 release reporting. However, instead of requiring notification only to the National Response Center for CERCLA substances when certain quantities of these chemicals are released, facilities must under section 304 also notify State and local emergency response officials of these releases, and of releases of extremely hazardous substances which have not been designated as CERCLA hazardous substances. Note that the reporting requirements under section 304 are *in addition to*, not in replacement of, notification to the National Response Center under CERCLA section 103.

## VI. Effective Dates

As indicated in the opening section of this preamble, this rule is effective on May 17, 1987 for purposes of facility planning notification and 30 days after publication for release notification requirements. (Local release notifications, however, do not need to be made until August 17, 1987 or when the local committees are established, if earlier.)

EPA established a May 17, 1987 effective date for the facility planning notifications under § 355.30, rather than providing 30 days between publication and effective data as required under section 553(d) of the Administrative Procedure Act (APA) because section 302 of SARA requires notification to be made by May 17. The primary purpose of the revised final rule is to finalize the list of substances and TPQs that trigger the May 17 notification. In order for all facilities affected by these requirements to be certain of whether or not they must provide the statutory notification by the date on which such notification must be made, EPA has made the effective date of the rule coincident with the statutory date, even if this rule is published less than 30 days in advance of that date, as would otherwise be required by section 553(d). EPA believes that the confusion generated by a later effective date constitutes "good cause" for suspension of the 30 day requirement, as provided under section 553(d)(3) of the APA.

## VII. Regulatory Analyses

### *A. Regulatory Impact Analysis*

Executive Order 12291 requires each federal agency to determine if a

regulation is a "major" rule as defined by the order and to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Under E.O. 12291, a "major" rule is one that is likely to result in (1) an annual adverse (cost) effect in the economy of $100 million, (2) a major increase in costs or prices for consumers, individual industries, federal, State, or local government, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises in domestic or export markets. The Agency has decided that, although the changes represented in this revised final rule are minor relative to the interim final rule, these two rules should be considered together as a "major" rule for the purposes of E.O. 12291. This decision is based on the fact that the interim final and revised final are essentially a single rulemaking effort under section 302(a)(3) of SARA and that EPA was unable to prepare a regulatory impact analysis for the interim final rule, as explained in more detail below.

Today's rule is a revision of the interim final rule published November 17, 1986. Because of the short time frame for development of that rule (30 days from enactment of SARA), EPA was unable to conduct a regulatory analysis prior to publication of that final rule. However, in the interim final rule, EPA stated that such analysis would be completed as part of the revised final rule published today. Accordingly, EPA has prepared an RIA to assess the economic impact of the statutory and regulatory requirements codified in the interim final rule on the regulated community (i.e., facilities manufacturing, processing, using or storing one or more extremely hazardous substances in excess of the threshold planning quantity), as well as State and local government entities. The costs summarized here are presented in detail in the *Regulatory Impact Analysis in Support of Rulemaking Under Sections 302, 303, and 304 of the Superfund Amendments and Reauthorization Act of 1986.* This document is available in the public docket for this rulemaking. The revised final rule published today has just minor revisions resulting in small incremental costs from the interim final rule and thus the RIA is applicable to both rules.

The costs associated with the interim final regulation result directly from the requirements spelled out by Congress in sections 302, 303, and 304 of SARA. Congress explicitly mandated, among other things, the setting up of State emergency response commissions and local emergency planning committees, the development of emergency response plans, the naming of facility coordinators, and the reporting of certain releases of extremely hazardous substances. The regulatory option chosen by EPA reduced to some extent the statutory reporting burden on the regulated community and the administrative burden on State and local governments by adopting many threshold planning quantities above the statutory default level of two pounds and by clarifying the statutory requirements.

For the chosen regulatory approach, total regulated community costs attributable to sections 302 and 303 are expected to be primarily one-time costs, because they deal with statute and rule familiarization, and compliance determination. Section 302 costs consist of an initial notification to the State emergency response commission, and the development of tracking systems for extremely hazardous substances. Most of these types of costs are reasonably expected to occur in the first year (1987) that the statute requirements are in effect. Under section 303, facilities must designate an emergency response coordinator and engage in ongoing activities related to emergency planning and response. Under section 304, facilities must report certain releases of extremely hazardous substances to various government entities.

A total of 5.6 million facilities will need to become familiar with the statutory and regulatory requirements and make a compliance determination because they may use or store chemicals that are on the extremely hazardous substances list. Of these, 1.5 million are expected to have at least one extremely hazardous substance in excess of the statutory two pound threshold planning quantity.

Costs for statute and rule familiarization to facilities for sections 302 and 304 are expected to total $353 million in 1987. Section 302 baseline costs (in the absence of EPA's revised threshold planning quantities) are estimated to be $375 million for facilities, for a total cost of $728 million in 1987 (1986 dollars).

Costs for emergency planning activities (Section 303) by facilities are expected to be incurred primarily in 1988 at a total of $416 million, assuming that no planning of this type has occurred. Therefore this is an upper bound estimate for the particular activities costed. Emergency release notification costs (Section 304) are estimated to be $81 million for facilities in the first two years.

The Agency currently estimates that by increasing the TPQs on most of the extremely hazardous substances from the statutory level of two pounds, facilities will realize a reduction in burden of $70 million from the statutory requirements to the interim final rule because those facilities with small quantities of substances will not have to notify authorities and participate in emergency planning. The methodology used for this analysis did not allow for a detailed comparison to be made between the interim final and revised final rules. However, the minor revisions made by today's final rule should result in only small incremental costs from the interim final rule.

EPA believes that the approach adopted in the interim final rule and revised final rule will benefit the regulated community, State and local governments, and the general public. By raising the threshold planning quantities over the two-pound statutory level for each substance, the Agency has reduced the reporting burden for the regulated community and government entities without significantly increasing the risk to the general public. The adopted approach will facilitate the setting of priorities of potential chemical hazards on the part of facilities and local emergency planning committees. Such prioritization is an essential component of emergency response planning.

Government costs imposed by the statutory requirements under the emergency planning provisions of Title III include costs borne by State emergency response commissions and local emergency planning committees. This analysis does not attempt to analyze the Section 301 cost of establishing State emergency response commissions and local emergency planning committees. Instead, those costs associated with the statutory requirements for receipt of information and planning are estimated even though they do not appear in the final rule. For local emergency planning committees, the major costs, like those for facilities, will occur in 1987 and 1988. The costs for local planning committees include statute and rule familiarization under section 302 and the preparation of a local emergency plan under section 303. These costs for local emergency planning committees total $80 million. Major costs for State emergency response commissions include the receipt and distribution of facility notifications, and the review of local emergency plans. These costs estimated for State commissions total $1.8 million

in 1987 and 1988. Both the State and local authorities will design data systems for the storage of release information under section 304. The initial startup and ongoing costs for receiving and storing data related to emergency release notifications are expected to be $27 million in 1987 and 1988 for both the State and local authorities. Continuing costs for both State and local governments include: reviewing and storing information under sections 302 and 304, and the updating and review of emergency plans under section 303. However, the Agency does not have enough data or judgment to estimate these ongoing costs for sections 302 and 303.

*B. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 requires that an analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities". EPA has performed a preliminary small business analysis. The small business definition used for the analysis is any facility with ten or less employees. Based on this analysis, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities.

*C. Paperwork Reduction Act*

The reporting and notification requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980. 44 U.S.C. 35501, et seq. and have been assigned OMB control number 2050–0046.

**VIII. Supporting Information**

**List of Subjects 40 CFR Parts 300 and 355**

Chemicals, hazardous substances, extremely hazardous substances, intergovernmental relations, community right-to-know, Superfund Amendments and Reauthorization Act, air pollution control, chemical accident prevention, chemical emergency preparedness, threshold planning quantity, reportable quantity, community emergency response plan, contingency planning, reporting and recordkeeping requirements.

Dated: April 17, 1987.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

1. The title of Subchapter J of Title 40 is revised to read as follows:

**SUBCHAPTER J—SUPERFUND, EMERGENCY PLANNING, AND COMMUNITY RIGHT-TO-KNOW PROGRAMS**

**PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN**

2. The authority citation for Part 300 is revised to read as follows:

**Authority:** Sec. 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9505 and Sec. 311(c)(2), Pub. L. 92–500, as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237 (August 20, 1981); E.O. 11735, 38 FR 21243 (August 1973).

**§§ 300.91–300.95 (Subpart I) [Removed]**

3. Part 300 is amended by removing Subpart I consisting of §§ 300.91 through 300.95.

**Appendices D and E [Removed]**

4. Part 300 Appendices D and E are removed.

5. Subchapter J of Title 40 of the Code of Federal Regulations is amended by adding a new Part 355 to read as follows:

**PART 355—EMERGENCY PLANNING AND NOTIFICATION**

Sec.

355.10 Purpose
355.20 Definitions
355.30 Emergency planning
355.40 Emergency release notification
355.50 Penalties

**Appendix A—The List of Extremely Hazardous Substances, and their Threshold Planning Quantities (Alphabetical Order)**
**Appendix B—The List of Extremely Hazardous Substances and their Threshold Planning Quantities (CAS Number Order)**

**Authority:** Sections 302, 303, 304, 325, 328 and 329 of the Emergency Planning and Community Right-to-Know Act of 1986, Pub. L. 99–499, 100 Stat. 1613, 42 U.S.C. § 11002, 11003, 11004, 11025, 11028, and 11029 (1986).

**§ 355.10 Purpose.**

This regulation establishes the list of extremely hazardous substances, threshold planning quantities, and facility notification responsibilities necessary for the development and implementation of State and local emergency response plans.

**§ 355.20 Definitions.**

*Act* means the Superfund Amendments and Reauthorization Act of 1986.

*CERCLA* means the Comprehensive Emergency Response, Compensation and Liability Act of 1980, as amended.

*CERCLA Hazardous Substance* means a substance on the list defined in Section 101(14) of CERCLA.

**Note.**—Listed CERCLA hazardous substances appear in Table 302.4 of 40 CFR Part 302.

*Commission* means the emergency response commission, or the Governor if there is no commission, for the State in which the facility is located.

*Environment* includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

*Extremely Hazardous Substance* means a substance listed in Appendices A and B of this Part.

*Facility* means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

*Hazardous Chemical* means any hazardous chemical as defined under § 1910.1200(c) of Title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

*Mixture* means a heterogenous association of substances where the various individual substances retain their identities and can usually be separated by mechanical means. Includes solutions or compounds but does not include alloys or amalgams.

*Person* means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

*Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or CERCLA hazardous substance.

*Reportable Quantity* means, for any CERCLA hazardous substance, the reportable quantity established in Table 302.4 of 40 CFR Part 302, for such substance, for any other substance, the reportable quantity is one pound.

*Threshold Planning Quantity* means, for a substance listed in Appendices A and B, the quantity listed in the column "threshold planning quantity" for that substance.

**§ 355.30 Emergency planning.**

(a) *Applicability.* The requirements of this section apply to any facility at which there is present an amount of any extremely hazardous substance equal to or in excess of its threshold planning quantity, or designated, after public notice and opportunity for comment, by the Commission or the Governor for the State in which the facility is located. For purposes of this section, an "amount of any extremely hazardous substance" means the total amount of an extremely hazardous substance present at any one time at a facility at concentrations greater than one percent by weight, regardless of location, number of containers, or method of storage.

(b) *Emergency planning notification.* The owner or operator of a facility subject to this section shall provide notification to the Commission that it is a facility subject to the emergency planning requirements of this Part. Such notification shall be provided: on or before May 17, 1987 or within sixty days after a facility first becomes subject to the requirements of this section, whichever is later.

(c) *Facility emergency coordinator.* The owner or operator of a facility subject to this section shall designate a facility representative who will participate in the local emergency planning process as a facility emergency response coordinator. The owner or operator shall notify the local emergency planning committee (or the Governor if there is no committee) of the facility representative on or before September 17, 1987 or 30 days after establishment of a local emergency planning committee, whichever is earlier.

(d) *Provision of information.* (1) The owner or operator of a facility subject to this section shall inform the local emergency planning committee of any changes occurring at the facility which may be relevant to emergency planning.

(2) Upon request of the local emergency planning committee, the owner or operator of a facility subject to this section shall promptly provide to the committee any information necessary for development or implementation of the local emergency plan.

(e) *Calculation of TPQs for solids and mixtures.* (1) If a container or storage vessel holds a mixture or solution of an extremely hazardous substance, then the concentration of extremely hazardous substance, in weight percent (greater than 1%), shall be multiplied by the mass (in pounds) in the vessel to determine the actual quantity of extremely hazardous substance therein.

(2)(i) Extremely hazardous substances that are solids are subject to either of two threshold planning quantities as shown on Appendices A and B (i.e., 500/10,000 pounds). The lower quantity applies only if the solid exists in powdered form and has a particle size less than 100 microns; or is handled in solution or in molten form; or meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3 or 4 for reactivity. If the solid does not meet any of these criteria, it is subject to the upper (10,000 pound) threshold planning quantity as shown in Appendices A and B.

(ii) The 100 micron level may be determined by multiplying the weight percent of solid with a particle size less than 100 microns in a particular container by the quantity of solid in the container.

(iii) The amount of solid in solution may be determined by multiplying the weight percent of solid in the solution in a particular container by the quantity of solution in the container.

(iv) The amount of solid in molten form must be multipled by 0.3 to determine whether the lower threshold planning quantity is met.

(Approved by the Office of Management and Budget under the control number 2050–0046)

**§ 355.40 Emergency release notification.**

(a) *Applicability.* (1) The requirements of this section apply to any facility: (i) at which a hazardous chemical is produced, used or stored and (ii) at which there is release of a reportable quantity of any extremely hazardous substance or CERCLA hazardous substance.

(2) This section does not apply to: (i) Any release which results in exposure to persons solely within the boundaries of the facility. (ii) Any release which is a "federally permitted release" as defined in section 101 (10) of CERCLA, (iii) any release which is "continuous," as defined under section 103 (f) of CERCLA (except for "statistically significant increases" as defined under section 103(e) of CERCLA and (v) any release exempt from CERCLA section 103(a) reporting under section 101(22) of CERCLA.

**Note to paragraph (a).**—Releases of CERCLA hazardous substances are subject to the release reporting requirements of CERCLA section 103, codified at 40 CFR Part 302, in addition to the requirements of this Part.

(b) *Notice requirements.* (1) The owner or operator of a facility subject to this section shall immediately notify the community emergency coordinator for the local emergency planning committee of any area likely to be affected by the release and the State emergency response commission of any State likely to be affected by the release. If there is no local emergency planning committee, notification shall be provided under this section to relevant local emergency response personnel.

(2) The notice required under this section shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

(i) The chemical name or identity of any substance involved in the release.

(ii) An indication of whether the substance is an extremely hazardous substance.

(iii) An estimate of the quantity of any such substance that was released into the environment.

(iv) The time and duration of the release.

(v) The medium or media into which the release occurred.

(vi) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(vii) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordination pursuant to the emergency plan).

(viii) The names and telephone number of the person or persons to be contacted for further information.

(3) As soon as practicable after a release which requires notice under (b)(1) of this section, such owner or operator shall provide a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required under paragraph (b)(2) of this section, and including additional information with respect to:

(i) Actions taken to respond to and contain the release,

(ii) Any known or anticipated acute or chronic health risks associated with the release, and,

(iii) Where appropriate, advice regarding medical attention necessary for exposed individuals.

(4) Exceptions. (i) Until April 30, 1988, in lieu of the notice specified in paragraph (b)(2) of this section, any owner or operator of a facility subject to this section from which there is a release of a CERCLA hazardous substance which is not an extremely hazardous substance and has a statutory reportable quantity may provide the same notice required under CERCLA section 103(a) to the local emergency planning committee.

(ii) An owner or operator of a facility from which there is a transportation-related release may meet the requirements of this section by providing the information indicated in paragraph (b)(2) to the 911 operator, or in the absence of a 911 emergency telephone number, to the operator. For purposes of this paragraph, a "transportation-related release" means a release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee.

(Approved by the Office of Management and Budget under the control number 2050-0046)

**§ 355.50 Penalties.**

(a) *Civil penalties.* Any person who fails to comply with the requirements of § 355.40 shall be subject to civil penalties of up to $25,000 for each violation in accordance with section 325(b)(1) of the Act.

(b) *Civil penalties for continuing violations.* Any person who fails to comply with the requirements of § 355.40 shall be subject to civil penalties of up to $25,000 for each day during which the violation continues, in accordance with section 325(b)(2) of the Act. In the case of a second or subsequent violation, any such person may be subject to civil penalties of up to $75,000 for each day the violation continues, in accordance with section 325(b)(2) of the Act.

(c) *Criminal penalties.* Any person who knowingly and willfully fails to provide notice in accordance with § 355.40 shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two (2) years, or both (or, in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five (5) years, or both) in accordance with section 325(b)(4) of the Act.

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 75-86-5 | Acetone Cyanohydrin | | 10 | 1,000 |
| 1752-30-3 | Acetone Thiosemicarbazide | e | 1 | 1,000/10,000 |
| 107-02-8 | Acrolein | | 1 | 500 |
| 79-06-1 | Acrylamide | d, l | 5,000 | 1,000/10,000 |
| 107-13-1 | Acrylonitrile | d, l | 100 | 10,000 |
| 814-68-6 | Acrylyl Chloride | e, h | 1 | 100 |
| 111-69-3 | Adiponitrile | e, l | 1 | 1,000 |
| 116-06-3 | Aldicarb | c | 1 | 100/10,000 |
| 309-00-2 | Aldrin | d | 1 | 500/10,000 |
| 107-18-6 | Allyl Alcohol | | 100 | 1,000 |
| 107-11-9 | Allylamine | | 1 | 500 |
| 20859-73-8 | Aluminum Phosphide | b | 100 | 500 |
| 54-62-6 | Aminopterin | | 1 | 500/10,000 |
| 78-53-5 | Amiton | | 1 | 500 |
| 3734-97-2 | Amiton Oxalate | | 1 | 100/10,000 |
| 7664-41-7 | Ammonia | l | 100 | 500 |
| 16919-58-7 | Ammonium Chloroplatinate | a, e | 1 | 10,000 |
| 300-62-9 | Amphetamine | | 1 | 1,000 |
| 62-53-3 | Aniline | d, l | 5,000 | 1,000 |
| 88-05-1 | Aniline, 2,4,6-Trimethyl- | | 1 | 500 |
| 7783-70-2 | Antimony Pentafluoride | | 1 | 500 |
| 1397-94-0 | Antimycin A | c, e | 1 | 1,000/10,000 |
| 86-88-4 | ANTU | | 100 | 500/10,000 |
| 1303-28-2 | Arsenic Pentoxide | d | 5,000 | 100/10,000 |
| 1327-53-3 | Arsenous Oxide | d, h | 5,000 | 100/10,000 |
| 7784-34-1 | Arsenous Trichloride | d | 5,000 | 500 |
| 7784-42-1 | Arsine | | 1 | 100 |
| 2642-71-9 | Azinphos-Ethyl | | 1 | 100/10,000 |
| 86-50-0 | Azinphos-Methyl | | 1 | 10/10,000 |
| 1405-87-4 | Bacitracin | a, e | 1 | 10,000 |
| 98-87-3 | Benzal Chloride | d | 5,000 | 500 |
| 98-16-8 | Benzenamine, 3-(Trifluoromethyl)- | e | 1 | 500 |
| 100-14-1 | Benzene, 1-(Chloromethyl)-4-Nitro- | | 1 | 500/10,000 |
| 98-05-5 | Benzenearsonic Acid | | 1 | 10/10,000 |
| 98-09-9 | Benzenesulfonyl Chloride | | 100 | 10,000 |
| 3615-21-2 | Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)- | e, g | 1 | 500/10,000 |
| 98-07-7 | Benzotrichloride | | 1 | 100 |
| 100-44-7 | Benzyl Chloride | d | 100 | 500 |
| 140-29-4 | Benzyl Cyanide | e, h | 1 | 500 |

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 15271-41-7 | Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha, 2-beta, 4-alpha, 5-alpha, 6E))-. | e | 1 | 500/10,000 |
| 534-07-6 | Bis(Chloromethyl) Ketone | a | 1 | 10/10,000 |
| 4044-65-9 | Bitoscanate | a | 1 | 500/10,000 |
| 10294-34-5 | Boron Trichloride | a | 1 | 500 |
| 7637-07-2 | Boron Trifluoride | a | 1 | 500 |
| 353-42-4 | Boron Trifluoride Compound With Methyl Ether (1:1) | a | 1 | 1,000 |
| 28772-56-7 | Bromadiolone | a | 1 | 100/10,000 |
| 7726-95-6 | Bromine | e, i | 1 | 500 |
| 106-99-0 | Butadiene | a, e | 1 | 10,000 |
| 109-19-3 | Butyl Isovalerate | a, e | 1 | 10,000 |
| 111-34-2 | Butyl Vinyl Ether | a, e | 1 | 10,000 |
| 1306-19-0 | Cadmium Oxide | a | 1 | 100/10,000 |
| 2223-93-0 | Cadmium Stearate | c, e | 1 | 1,000/10,000 |
| 7778-44-1 | Calcium Arsenate | a | 1,000 | 500/10,000 |
| 8001-35-2 | Camphechlor | a | 1 | 500/10,000 |
| 56-25-7 | Cantharidin | a | 1 | 100/10,000 |
| 51-83-2 | Carbachol Chloride | a | 1 | 500/10,000 |
| 26419-73-8 | Carbamic Acid, Methyl-, 0-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)- | a | 1 | 100/10,000 |
| 1563-66-2 | Carbofuran | | 10 | 10/10,000 |
| 75-15-0 | Carbon Disulfide | i | 100 | 10,000 |
| 786-19-6 | Carbophenothion | a | 1 | 500 |
| 2244-16-8 | Carvone | a, e | 1 | 10,000 |
| 57-74-9 | Chlordane | a | 1 | 1,000 |
| 470-90-6 | Chlorfenvinfos | a | 1 | 500 |
| 7782-50-5 | Chlorine | | 10 | 100 |
| 24934-91-6 | Chlormephos | a | 1 | 500 |
| 999-81-5 | Chlormequat Chloride | e, h | 1 | 100/10,000 |
| 107-20-0 | Chloroacetaldehyde | a | 1,000 | 10,000 |
| 79-11-8 | Chloroacetic Acid | a | 1 | 100/10,000 |
| 107-07-3 | Chloroethanol | a | 1 | 500 |
| 627-11-2 | Chloroethyl Chloroformate | a | 1 | 1,000 |
| 67-66-3 | Chloroform | d, i | 5,000 | 10,000 |
| 542-88-1 | Chloromethyl Ether | d, h | 1 | 100 |
| 107-30-2 | Chloromethyl Methyl Ether | c, d | 1 | 100 |
| 3691-35-8 | Chlorophacinone | a | 1 | 100/10,000 |
| 1982-47-4 | Chloroxuron | a | 1 | 500/10,000 |
| 21923-23-9 | Chlorthiophos | e, h | 1 | 500 |
| 10025-73-7 | Chromic Chloride | a | 1 | 1/10,000 |
| 7440-48-4 | Cobalt | a, e | 1 | 10,000 |
| 62207-76-5 | Cobalt, ((2,2'-(1,2-Ethanediylbis (Nitrilomethylidyne))Bis(6-Fluorophenolato))(2-)-N,N',O,O')-. | a | 1 | 100/10,000 |
| 10210-68-1 | Cobalt Carbonyl | e, h | 1 | 10/10,000 |
| 64-86-8 | Colchicine | e, h | 1 | 10/10,000 |
| 117-52-2 | Coumafuryl | a, e | 1 | 10,000 |
| 56-72-4 | Coumaphos | | 10 | 100/10,000 |
| 5836-29-3 | Coumatetralyl | e | 1 | 500/10,000 |
| 95-48-7 | Cresol, o- | d | 1,000 | 1,000/10,000 |
| 535-89-7 | Crimidine | e | 1 | 100/10,000 |
| 4170-30-3 | Crotonaldehyde | | 100 | 1,000 |
| 123-73-9 | Crotonaldehyde, (E)- | | 100 | 1,000 |
| 506-68-3 | Cyanogen Bromide | | 1,000 | 500/10,000 |
| 506-78-5 | Cyanogen Iodide | e | 1 | 1,000/10,000 |
| 2636-26-2 | Cyanophos | e | 1 | 1,000 |
| 675-14-9 | Cyanuric Fluoride | e | 1 | 100 |
| 66-81-9 | Cycloheximide | e | 1 | 100/10,000 |
| 108-91-8 | Cyclohexylamine | e, i | 1 | 10,000 |
| 287-92-3 | Cyclopentane | a, e | 1 | 10,000 |
| 633-03-4 | C. I. Basic Green 1 | a, e | 1 | 10,000 |
| 17702-41-9 | Decaborane(14) | e | 1 | 500/10,000 |
| 8065-48-3 | Demeton | e | 1 | 500 |
| 919-86-8 | Demeton-S-Methyl | e | 1 | 500 |
| 10311-84-9 | Dialifor | e | 1 | 100/10,000 |
| 19287-45-7 | Diborane | e | 1 | 100 |
| 84-74-2 | Dibutyl Phthalate | a | 10 | 10,000 |
| 8023-53-8 | Dichlorobenzalkonium Chloride | a, e | 1 | 10,000 |
| 111-44-4 | Dichloroethyl Ether | a | 1 | 10,000 |

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 149-74-6 | Dichloromethylphenylsilane | e | 1 | 1,000 |
| 62-73-7 | Dichlorvos | | 10 | 1,000 |
| 141-66-2 | Dicrotophos | | 1 | 100 |
| 1464-53-5 | Diepoxybutane | d | 1 | 500 |
| 814-49-3 | Diethyl Chlorophospate | e, h | 1 | 500 |
| 1642-54-2 | Diethylcarbamazine Citrate | | 1 | 100/10,000 |
| 93-05-0 | Diethyl-p-Phenylenediamine | a,e | 1 | 10,000 |
| 71-63-6 | Digitoxin | c, e | 1 | 100/10,000 |
| 2238-07-5 | Diglycidyl Ether | | 1 | 1,000 |
| 20830-75-5 | Digoxin | e, h | 1 | 10/10,000 |
| 115-26-4 | Dimefox | | 1 | 500 |
| 60-51-5 | Dimethoate | | 10 | 500/10,000 |
| 2524-03-0 | Dimethyl Phosphorochloridothioate | | 1 | 500 |
| 131-11-3 | Dimethyl Phthalate | | 5,000 | 10,000 |
| 77-78-1 | Dimethyl Sulfate | d | 1 | 500 |
| 75-18-3 | Dimethyl Sulfide | | 1 | 100 |
| 75-78-5 | Dimethyldichlorosilane | e, h | 1 | 500 |
| 57-14-7 | Dimethylhydrazine | d | 1 | 1,000 |
| 99-98-9 | Dimethyl-p-Phenylenediamine | | 1 | 10/10,000 |
| 644-64-4 | Dimetilan | e | 1 | 500/10,000 |
| 534-52-1 | Dinitrocresol | | 10 | 10/10,000 |
| 88-85-7 | Dinoseb | | 1,000 | 100/10,000 |
| 1420-07-1 | Dinoterb | | 1 | 500/10,000 |
| 117-84-0 | Dioctyl Phthalate | | 5,000 | 10,000 |
| 78-34-2 | Dioxathion | | 1 | 500 |
| 646-06-0 | Dioxolane | a, e | 1 | 10,000 |
| 82-66-6 | Diphacinone | | 1 | 10/10,000 |
| 152-16-9 | Diphosphoramide, Octamethyl- | | 100 | 100 |
| 298-04-4 | Disulfoton | | 1 | 500 |
| 514-73-8 | Dithiazanine Iodide | | 1 | 500/10,000 |
| 541-53-7 | Dithiobiuret | | 100 | 100/10,000 |
| 316-42-7 | Emetine, Dihydrochloride | e, h | 1 | 1/10,000 |
| 115-29-7 | Endosulfan | | 1 | 10/10,000 |
| 2778-04-3 | Endothion | | 1 | 500/10,000 |
| 72-20-8 | Endrin | | 1 | 500/10,000 |
| 106-89-8 | Epichlorohydrin | d, l | 1,000 | 1,000 |
| 2104-64-5 | EPN | | 1 | 100/10,000 |
| 50-14-6 | Ergocalciferol | c, e | 1 | 1,000/10,000 |
| 379-79-3 | Ergotamine Tartrate | | 1 | 500/10,000 |
| 1622-32-8 | Ethanesulfonyl Chloride, 2-Chloro- | | 1 | 500 |
| 10140-87-1 | Ethanol, 1.2-Dichloro-, Acetate | | 1 | 1,000 |
| 563-12-2 | Ethion | | 10 | 1,000 |
| 13194-48-4 | Ethoprophos | | 1 | 1,000 |
| 538-07-8 | Ethylbis(2-Chloroethyl)Amine | e, h | 1 | 500 |
| 371-62-0 | Ethylene Fluorohydrin | c, e, h | 1 | 10 |
| 75-21-8 | Ethylene Oxide | d, l | 1 | 1,000 |
| 107-15-3 | Ethylenediamine | | 5,000 | 10,000 |
| 151-56-4 | Ethyleneimine | | 1 | 500 |
| 2235-25-8 | Ethylmercuric Phosphate | a, e | 1 | 10,000 |
| 542-90-5 | Ethylthiocyanate | | 1 | 10,000 |
| 22224-92-6 | Fenamiphos | | 1 | 10/10,000 |
| 122-14-5 | Fenitrothion | | 1 | 500 |
| 115-90-2 | Fensulfothion | e, h | 1 | 500 |
| 4301-50-2 | Fluenetil | e | 1 | 100/10,000 |
| 7782-41-4 | Fluorine | k | 10 | 500 |
| 640-19-7 | Fluoroacetamide | j | 100 | 100/10,000 |
| 144-49-0 | Fluoroacetic Acid | | 1 | 10/10,000 |
| 359-06-8 | Fluoroacetyl Chloride | c, e | 1 | 10 |
| 51-21-8 | Fluorouracil | | 1 | 500/10,000 |
| 944-22-9 | Fonofos | | 1 | 500 |
| 50-00-0 | Formaldehyde | d,l | 1,000 | 500 |
| 107-16-4 | Formaldehyde Cyanohydrin | e, h | 1 | 1,000 |
| 23422-53-9 | Formetanate Hydrochloride | e,h | 1 | 500/10,000 |
| 2540-82-1 | Formothion | | 1 | 100 |
| 17702-57-7 | Formparanate | | 1 | 100/10,000 |
| 21548-32-3 | Fosthietan | e | 1 | 500 |

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 3878-19-1 | Fuberidazole | e | 1 | 100/10,000 |
| 110-00-9 | Furan | | 100 | 500 |
| 13450-90-3 | Gallium Trichloride | | 1 | 500/10,000 |
| 77-47-4 | Hexachlorocyclopentadiene | d, h | 1 | 100 |
| 1335-87-1 | Hexachloronaphthalene | a, e | 1 | 10,000 |
| 4835-11-4 | Hexamethylenediamine, N,N'-Dibutyl- | | 1 | 500 |
| 302-01-2 | Hydrazine | | 1 | 1,000 |
| 74-90-8 | Hydrocyanic Acid | | 10 | 100 |
| 7647-01-0 | Hydrogen Chloride (Gas Only) | e, l | 1 | 500 |
| 7664-39-3 | Hydrogen Fluoride | | 100 | 100 |
| 7722-84-1 | Hydrogen Peroxide (Conc >52%) | e, l | 1 | 1,000 |
| 7783-07-5 | Hydrogen Selenide | | 1 | 10 |
| 7783-06-4 | Hydrogen Sulfide | l | 100 | 500 |
| 123-31-9 | Hydroquinone | l | 1 | 500/10,000 |
| 53-86-1 | Indomethacin | a, e | 1 | 10,000 |
| 10025-97-5 | Iridium Tetrachloride | a, e | 1 | 10,000 |
| 13463-40-6 | Iron, Pentacarbonyl- | | 1 | 100 |
| 297-78-9 | Isobenzan | | 1 | 100/10,000 |
| 78-82-0 | Isobutyronitrile | e, h | 1 | 1,000 |
| 102-36-3 | Isocyanic Acid, 3,4-Dichlorophenyl Ester | | 1 | 500/10,000 |
| 465-73-6 | Isodrin | | 1 | 100/10,000 |
| 55-91-4 | Isofluorphate | c | 100 | 100 |
| 4098-71-9 | Isophorone Diisocyanate | b, e | 1 | 100 |
| 108-23-6 | Isopropyl Chloroformate | e | 1 | 1,000 |
| 625-55-8 | Isopropyl Formate | e | 1 | 500 |
| 119-38-0 | Isopropylmethylpyrazolyl Dimethylcarbamate | e | 1 | 500 |
| 78-97-7 | Lactonitrile | e | 1 | 1,000 |
| 21609-90-5 | Leptophos | e | 1 | 500/10,000 |
| 541-25-3 | Lewisite | c, e, h | 1 | 10 |
| 58-89-9 | Lindane | d | 1 | 1,000/10,000 |
| 7580-67-8 | Lithium Hydride | b, e | 1 | 100 |
| 109-77-3 | Malononitrile | | 1,000 | 500/10,000 |
| 12108-13-3 | Manganese, Tricarbonyl Methylcyclopentadienyl | e, h | 1 | 100 |
| 51-75-2 | Mechlorethamine | c, e | 1 | 10 |
| 950-10-7 | Mephosfolan | | 1 | 500 |
| 1600-27-7 | Mercuric Acetate | | 1 | 500/10,000 |
| 7487-94-7 | Mercuric Chloride | | 1 | 500/10,000 |
| 21908-53-2 | Mercuric Oxide | | 1 | 500/10,000 |
| 108-67-8 | Mesitylene | a, e | 1 | 10,000 |
| 10476-95-6 | Methacrolein Diacetate | | 1 | 1,000 |
| 760-93-0 | Methacrylic Anhydride | | 1 | 500 |
| 126-98-7 | Methacrylonitrile | h | 1 | 500 |
| 920-46-7 | Methacryloyl Chloride | | 1 | 100 |
| 30674-80-7 | Methacryloyloxyethyl Isocyanate | e, h | 1 | 100 |
| 10265-92-6 | Methamidophos | | 1 | 100/10,000 |
| 558-25-8 | Methanesulfonyl Fluoride | | 1 | 1,000 |
| 950-37-8 | Methidathion | | 1 | 500/10,000 |
| 2032-65-7 | Methiocarb | | 10 | 500/10,000 |
| 16752-77-5 | Methomyl | h | 100 | 500/10,000 |
| 151-38-2 | Methoxyethylmercuric Acetate | | 1 | 500/10,000 |
| 80-63-7 | Methyl 2-Chloroacrylate | | 1 | 500 |
| 74-83-9 | Methyl Bromide | l | 1,000 | 1,000 |
| 79-22-1 | Methyl Chloroformate | d, h | 1,000 | 500 |
| 624-92-0 | Methyl Disulfide | | 1 | 100 |
| 60-34-4 | Methyl Hydrazine | | 10 | 500 |
| 624-83-9 | Methyl Isocyanate | f | 1 | 500 |
| 556-61-6 | Methyl Isothiocyanate | b, e | 1 | 500 |
| 74-93-1 | Methyl Mercaptan | | 100 | 500 |
| 3735-23-7 | Methyl Phenkapton | | 1 | 500 |
| 676-97-1 | Methyl Phosphonic Dichloride | b, e | 1 | 100 |
| 556-64-9 | Methyl Thiocyanate | e | 1 | 10,000 |
| 78-94-4 | Methyl Vinyl Ketone | | 1 | 10 |
| 502-39-6 | Methylmercuric Dicyanamide | | 1 | 500/10,000 |
| 75-79-6 | Methyltrichlorosilane | e, h | 1 | 500 |
| 1129-41-5 | Metolcarb | | 1 | 100/10,000 |
| 7786-34-7 | Mevinphos | | 10 | 500 |

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 315-18-4 | Mexacarbate | | 1,000 | 500/10,000 |
| 50-07-7 | Mitomycin C | [redacted] | 1 | 500/10,000 |
| 6923-22-4 | Monocrotophos | [redacted] | [redacted] | 10/10,000 |
| 2763-96-4 | Muscimol | a, h | 1,000 | 10,000 |
| 505-60-2 | Mustard Gas | e, h | [redacted] | [redacted] |
| 7440-02-0 | Nickel | a, d | [redacted] | 10,000 |
| 13463-39-3 | Nickel Carbonyl | [redacted] | [redacted] | [redacted] |
| 54-11-5 | Nicotine | c | 100 | 100 |
| 65-30-5 | Nicotine Sulfate | e | [redacted] | 100/10,000 |
| 7697-37-2 | Nitric Acid | | 1,000 | 1,000 |
| 10102-43-9 | Nitric Oxide | c | 10 | 100 |
| 98-95-3 | Nitrobenzene | [redacted] | 1,000 | 10,000 |
| 1122-60-7 | Nitrocyclohexane | e | [redacted] | [redacted] |
| 10102-44-0 | Nitrogen Dioxide | | 10 | 100 |
| 62-75-9 | Nitrosodimethylamine | d, h | [redacted] | 1,000 |
| 991-42-4 | Norbormide | [redacted] | 1 | 100/10,000 |
| [redacted] | Organorhodium Complex (PMN-82-147) | [redacted] | 1 | 10/10,000 |
| 65-86-1 | Orotic Acid | a, e | 1 | 10,000 |
| 20816-12-0 | Osmium Tetroxide | [redacted] | 1,000 | 10,000 |
| 630-60-4 | Ouabain | c, e | 1 | 100/10,000 |
| 23135-22-0 | Oxamyl | [redacted] | [redacted] | 100/10,000 |
| 78-71-7 | Oxetane, 3,3-Bis(Chloromethyl)- | 1 | [redacted] | [redacted] |
| 2497-07-6 | Oxydisulfoton | e, h | [redacted] | [redacted] |
| 10028-15-6 | Ozone | [redacted] | [redacted] | 100 |
| 1910-42-5 | Paraquat | [redacted] | 1 | 10/10,000 |
| 2074-50-2 | Paraquat Methosulfate | [redacted] | 1 | 10/10,000 |
| 56-38-2 | Parathion | c, d | [redacted] | 100 |
| 298-00-0 | Parathion-Methyl | [redacted] | 100 | 100/10,000 |
| 12002-03-8 | Paris Green | [redacted] | 100 | 500/10,000 |
| 19624-22-7 | Pentaborane | [redacted] | [redacted] | [redacted] |
| 76-01-7 | Pentachloroethane | a, d | [redacted] | 10,000 |
| 87-86-5 | Pentachlorophenol | a, d | 10 | 10,000 |
| 2570-26-5 | Pentadecylamine | [redacted] | 1 | 100/10,000 |
| 79-21-0 | Peracetic Acid | [redacted] | 1 | [redacted] |
| 594-42-3 | Perchloromethylmercaptan | | 100 | [redacted] |
| 108-95-2 | Phenol | | 1,000 | 500/10,000 |
| 97-18-7 | Phenol, 2,2'-Thiobis(4,6-Dichloro- | e | 1 | 100/10,000 |
| 4418-66-0 | Phenol, 2,2'-Thiobis(4-Chloro-6-Methyl-Phenol, 2,2'-Thiobis (4-Chloro-6-Methyl)- | [redacted] | [redacted] | 100/10,000 |
| 64-00-6 | Phenol, 3-(1-Methylethyl)-, Methylcarbamate | [redacted] | 1 | 500/10,000 |
| 58-36-6 | Phenoxarsine, 10,10'-Oxydi- | [redacted] | 1 | 500/10,000 |
| 696-28-6 | Phenyl Dichloroarsine | d, h | 1 | [redacted] |
| 59-88-1 | Phenylhydrazine Hydrochloride | [redacted] | 1 | 1,000/10,000 |
| 62-38-4 | Phenylmercury Acetate | | 100 | 500/10,000 |
| 2097-19-0 | Phenylsilatrane | e, h | 1 | 100/10,000 |
| 103-85-5 | Phenylthiourea | | 100 | 100/10,000 |
| 298-02-2 | Phorate | | 10 | 10 |
| 4104-14-7 | Phosacetim | [redacted] | 1 | 100/10,000 |
| 947-02-4 | Phosfolan | [redacted] | 1 | 100/10,000 |
| 75-44-5 | Phosgene | I | 10 | 10 |
| 732-11-6 | Phosmet | [redacted] | [redacted] | 10/10,000 |
| 13171-21-6 | Phosphamidon | [redacted] | [redacted] | 100 |
| 7803-51-2 | Phosphine | | 100 | [redacted] |
| 2703-13-1 | Phosphonothioic Acid, Methyl-, O-Ethyl O-(4-(Methylthio)Phenyl) Ester | [redacted] | 1 | [redacted] |
| 50782-69-9 | Phosphonothioic Acid, Methyl-, S-(2-(Bis(1-Methylethyl)Amino)Ethyl O-Ethyl Ester | [redacted] | 1 | 100 |
| 2665-30-7 | Phosphonothioic Acid, Methyl-, O-(4-Nitrophenyl) O-Phenyl Ester | [redacted] | 1 | 500 |
| 3254-63-5 | Phosphoric Acid, Dimethyl 4-(Methylthio) Phenyl Ester | [redacted] | 1 | [redacted] |
| 2587-90-8 | Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester | c, e, [redacted] | 1 | 500 |
| 7723-14-0 | Phosphorus | b, h | 1 | 100 |
| 10025-87-3 | Phosphorus Oxychloride | [redacted] | 1,000 | [redacted] |
| 10026-13-8 | Phosphorus Pentachloride | b, e | 1 | [redacted] |
| 1314-56-3 | Phosphorus Pentoxide | b, e | [redacted] | 10 |
| 7719-12-2 | Phosphorus Trichloride | | 1,000 | 1,000 |
| 84-80-0 | Phylloquinone | a, e | 1 | 10,000 |
| 57-47-6 | Physostigmine | [redacted] | [redacted] | 100/10,000 |
| 57-64-7 | Physostigmine, Salicylate (1:1) | [redacted] | 1 | 100/10,000 |
| 124-87-8 | Picrotoxin | [redacted] | 1 | 500/10,000 |

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 110-89-4 | Piperidine | e | 1 | 1,000 |
| 5281-13-0 | Piprotal | ■ | 1 | 100/10,000 |
| 23505-41-1 | Pirimifos-Ethyl | ■ | 1 | 1,000 |
| 10025-65-7 | Platinous Chloride | a, e | 1 | 10,000 |
| 13454-96-1 | Platinum Tetrachloride | a, e | 1 | 10,000 |
| 10124-50-2 | Potassium Arsenite | d | 1,000 | 500/10,000 |
| 151-50-8 | Potassium Cyanide | b | 10 | 100 |
| 506-61-6 | Potassium Silver Cyanide | b | 1 | 500 |
| 2631-37-0 | Promecarb | e, h | 1 | 500/10,000 |
| 106-96-7 | Propargyl Bromide | ■ | 1 | 10 |
| 57-57-8 | Propiolactone, Beta- | ■ | 1 | 500 |
| 107-12-0 | Propionitrile | | 10 | 500 |
| 542-76-7 | Propionitrile, 3-Chloro- | | 1,000 | 1,000 |
| 70-69-9 | Propiophenone, 4-Amino- | e, g | 1 | 100/10,000 |
| 109-61-5 | Propyl Chloroformate | ■ | 1 | 500 |
| 1331-17-5 | Propylene Glycol, Allyl Ether | a, e | 1 | 10,000 |
| 75-56-9 | Propylene Oxide | I | 100 | 10,000 |
| 75-55-8 | Propyleneimine | d | 1 | 10,000 |
| 2275-18-5 | Prothoate | ■ | 1 | 100/10,000 |
| 95-63-6 | Pseudocumene | a, e | 1 | 10,000 |
| 129-00-0 | Pyrene | c | 5,000 | 1,000/10,000 |
| 140-76-1 | Pyridine, 2-Methyl-5-Vinyl- | ■ | 1 | 500 |
| 504-24-5 | Pyridine, 4-Amino- | h | 1,000 | 500/10,000 |
| 1124-33-0 | Pyridine, 4-Nitro-, 1-Oxide | ■ | 1 | 500/10,000 |
| 53558-25-1 | Pyriminil | e, h | 1 | 100/10,000 |
| 10049-07-7 | Rhodium Trichloride | a, e | 1 | 10,000 |
| 14167-18-1 | Salcomine | ■ | 1 | 500/10,000 |
| 107-44-8 | Sarin | e, h | 1 | 10 |
| 7783-00-8 | Selenious Acid | | 10 | 1,000/10,000 |
| 7791-23-3 | Selenium Oxychloride | ■ | 1 | 500 |
| 563-41-7 | Semicarbazide Hydrochloride | ■ | 1 | 1,000/10,000 |
| 3037-72-7 | Silane, (4-Aminobutyl)Diethoxymethyl- | ■ | 1 | 1,000 |
| 128-56-3 | Sodium Anthraquinone-1-Sulfonate | a, e | 1 | 10,000 |
| 7631-89-2 | Sodium Arsenate | d | 1,000 | 1,000/10,000 |
| 7784-46-5 | Sodium Arsenite | d | 1,000 | 500/10,000 |
| 26628-22-8 | Sodium Azide (Na(N3)) | b | 1,000 | 500 |
| 124-65-2 | Sodium Cacodylate | e | 1 | 100/10,000 |
| 143-33-9 | Sodium Cyanide (Na(CN)) | b | 10 | 100 |
| 62-74-8 | Sodium Fluoroacetate | | 10 | 10/10,000 |
| 131-52-2 | Sodium Pentachlorophenate | ■ | 1 | 100/10,000 |
| 13410-01-0 | Sodium Selenate | e | 1 | 100/10,000 |
| 10102-18-8 | Sodium Selenite | h | 100 | 100/10,000 |
| 10102-20-2 | Sodium Tellurite | ■ | 1 | 500/10,000 |
| 900-95-8 | Stannane, Acetoxytriphenyl- | e, g | 1 | 500/10,000 |
| 57-24-9 | Strychnine | ■ | 10 | 100/10,000 |
| 60-41-3 | Strychnine, Sulfate | e | 1 | 100/10,000 |
| 3689-24-5 | Sulfotep | | 100 | 500 |
| 3569-57-1 | Sulfoxide, 3-Chloropropyl Octyl | ■ | 1 | 500 |
| 7446-09-5 | Sulfur Dioxide | e, l | 1 | 500 |
| 7783-60-0 | Sulfur Tetrafluoride | ■ | 1 | 100 |
| 7446-11-9 | Sulfur Trioxide | b, e | 1 | 100 |
| 7664-93-9 | Sulfur Acid | | 1,000 | 1,000 |
| 77-81-6 | Tabun | c, e, h | 1 | 10 |
| 13494-80-9 | Tellurium | ■ | 1 | 500/10,000 |
| 7783-80-4 | Tellurium Hexafluoride | e, k | 1 | 100 |
| 107-49-3 | TEPP | | 10 | 100 |
| 13071-79-9 | Terbufos | e, h | 1 | 100 |
| 78-00-2 | Tetraethyllead | c, d | 10 | 100 |
| 597-64-8 | Tetraethyltin | c, e | 1 | 100 |
| 75-74-1 | Tetramethyllead | c, e, l | 1 | 100 |
| 509-14-8 | Tetranitromethane | | 10 | 500 |
| 1314-32-5 | Thallic Oxide | a | 100 | 10,000 |
| 10031-59-1 | Thallium Sulfate | h | 100 | 100/10,000 |
| 6533-73-9 | Thallous Carbonate | c, h | 100 | 100/10,000 |
| 7791-12-0 | Thallous Chloride | c, h | 100 | 100/10,000 |

APPENDIX A.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 2757-18-8 | Thallous Malonate | c, e, | 1 | 100/10,000 |
| 7446-18-6 | Thallous Sulfate | | 100 | 100/10,000 |
| 2231-57-4 | Thiocarbazide | | 1 | 1,000/10,000 |
| 21564-17-0 | Thiocyanic Acid, 2-(Benzothiazolylthio)Methyl Ester | a, e | 1 | 10,000 |
| 39196-18-4 | Thiofanox | | 100 | 100/10,000 |
| 640-15-3 | Thiometon | a, e | 1 | 10,000 |
| 297-97-2 | Thionazin | | 100 | 500 |
| 108-98-5 | Thiophenol | | 100 | 500 |
| 79-19-6 | Thiosemicarbazide | | 100 | 100/10,000 |
| 5344-82-1 | Thiourea, (2-Chlorophenyl)- | | 100 | 100/10,000 |
| 614-78-8 | Thiourea, (2-Methylphenyl)- | e | 1 | 500/10,000 |
| 7550-45-0 | Titanium Tetrachloride | e | 1 | 100 |
| 584-84-9 | Toluene 2,4-Diisocyanate | | 100 | 500 |
| 91-08-7 | Toluene 2,6-Diisocyanate | | 100 | 100 |
| 110-57-6 | Trans-1,4-Dichlorobutene | | 1 | 500 |
| 1031-47-6 | Triamiphos | | 1 | 500/10,000 |
| 24017-47-8 | Triazofos | | 1 | 500 |
| 76-02-8 | Trichloroacety Chloride | | 1 | 500 |
| 115-21-9 | Trichloroethylsilane | e, h | 1 | 500 |
| 327-98-0 | Trichloronate | e, k | 1 | 500 |
| 98-13-5 | Trichlorophenylsilane | e, h | 1 | 500 |
| 52-68-6 | Trichlorophon | | 100 | 10,000 |
| 1558-25-4 | Trichloro(Chloromethyl)Silane | | 1 | 100 |
| 27137-85-5 | Trichloro(Dichlorophenyl)Silane | | 1 | 500 |
| 998-30-1 | Triethoxysilane | | 1 | 500 |
| 75-77-4 | Trimethylchlorosilane | | 1 | 1,000 |
| 824-11-3 | Trimethylolpropane Phosphite | e, h | 1 | 100/10,000 |
| 1066-45-1 | Trimethyltin Chloride | | 1 | 500/10,000 |
| 639-58-7 | Triphenyltin Chloride | e | 1 | 500/10,000 |
| 555-77-1 | Tris(2-Chloroethyl)Amine | e, h | 1 | 100 |
| 2001-95-8 | Valinomycin | c, e | 1 | 1,000/10,000 |
| 1314-62-1 | Vanadium Pentoxide | | 1,000 | 100/10,000 |
| 108-05-4 | Vinyl Acetate Monomer | d, l | 5,000 | 1,000 |
| 3048-64-4 | Vinylnorbornene | a, e | 1 | 10,000 |
| 81-81-2 | Warfarin | | 100 | 500/10,000 |
| 129-06-6 | Warfarin Sodium | e, h | 1 | 100/10,000 |
| 28347-13-9 | Xylylene Dichloride | | 1 | 100/10,000 |
| 58270-08-9 | Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino) Carbonyl)Oxy)Imino)Pentanenitrile)-,(T-4)- | | 1 | 100/10,000 |
| 1314-84-7 | Zinc Phosphide | | 100 | 500 |

*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4

Notes:

a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.

b This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.

c The calculated TPQ changed after technical review as described in the technical support document.

d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.

e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).

f The statutory 1 pound reportable quantity for methyl isocyanate may be adjusted in a future rulemaking action.

g New chemicals added that were not part of the original list of 402 substances.

h Revised TPQ based on new or re-evaluated toxicity data.

I TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.

k The TPQ was revised after proposal due to calculation error.

l Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| | Organorhodium Complex (PMN-82-147) | | 1 | 10/10,000 |
| 50-00-0 | Formaldehyde | d, l | 1,000 | 500 |
| 50-07-7 | Mitomycin C | | 1 | 500/10,000 |
| 50-14-6 | Ergocalciferol | c, e | 1 | 1,000/10,000 |

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 51-21-8 | Fluorouracil | [redacted] | 1 | 500/10,000 |
| 51-75-2 | Mechlorethamine | c, e | [redacted] | 10 |
| 51-83-2 | Carbachol Chloride | [redacted] | [redacted] | 500/10,000 |
| 52-68-6 | Trichlorophon | [redacted] | 100 | 10,000 |
| 53-86-1 | Indomethacin | a, e | 1 | 10,000 |
| 54-11-5 | Nicotine | [redacted] | 100 | 100 |
| 54-62-6 | Aminopterin | [redacted] | 1 | 500/10,000 |
| 55-91-4 | Isofluorphate | c | 100 | 100 |
| 56-25-7 | Cantharidin | [redacted] | 1 | 100/10,000 |
| 56-38-2 | Parathion | c, d | 1 | 100 |
| 56-72-4 | Coumaphos | | 10 | 100/10,000 |
| 57-14-7 | Dimethylhydrazine | [redacted] | [redacted] | 1,000 |
| 57-24-9 | Strychnine | c | 10 | 100/10,000 |
| 57-47-6 | Physostigmine | [redacted] | 1 | 100/10,000 |
| 57-57-8 | Propiolactone, Beta- | [redacted] | 1 | [redacted] |
| 57-64-7 | Physostigmine, Salicylate (1:1) | [redacted] | 1 | 100/10,000 |
| 57-74-9 | Chlordane | d | [redacted] | 1,000 |
| 58-36-6 | Phenoxarsine, 10,10'-Oxydi- | e | 1 | 500/10,000 |
| 58-89-9 | Lindane | d | 1 | 1,000/10,000 |
| 59-88-1 | Phenylhydrazine Hydrochloride | e | 1 | 1,000/10,000 |
| 60-34-4 | Methyl Hydrazine | | 10 | [redacted] |
| 60-41-3 | Strychnine, Sulfate | e | 1 | 100/10,000 |
| 60-51-5 | Dimethoate | | 10 | 500/10,000 |
| 62-38-4 | Phenylmercury Acetate | | 100 | 500/10,000 |
| 62-53-3 | Aniline | d, l | 5,000 | 1,000 |
| 62-73-7 | Dichlorvos | | 10 | 1,000 |
| 62-74-8 | Sodium Fluoroacetate | | 10 | 10/10,000 |
| 62-75-9 | Nitrosodimethylamine | d, h | 1 | 1,000 |
| 64-00-6 | Phenol, 3-(1-Methylethyl)-, Methylcarbamate | [redacted] | 1 | 500/10,000 |
| 64-86-8 | Colchicine | e, h | 1 | 10/10,000 |
| 65-30-5 | Nicotine Sulfate | [redacted] | 1 | 100/10,000 |
| 65-86-1 | Orotic Acid | a, e | 1 | 10,000 |
| 66-81-9 | Cycloheximide | e | 1 | 100/10,000 |
| 67-66-3 | Chloroform | d, l | 5,000 | 10,000 |
| 70-69-9 | Propiophenone, 4-Amino- | e, g | 1 | 100/10,000 |
| 71-63-6 | Digitoxin | c, e | 1 | 100/10,000 |
| 72-20-8 | Endrin | | 1 | 500/10,000 |
| 74-83-9 | Methyl bromide | l | 1,000 | 1,000 |
| 74-90-8 | Hydrocyanic Acid | | 10 | 100 |
| 74-93-1 | Methyl Mercaptan | | 100 | 500 |
| 75-15-0 | Carbon Disulfide | l | 100 | 10,000 |
| 75-18-3 | Dimethyl Sulfide | [redacted] | 1 | 100 |
| 75-21-8 | Ethylene Oxide | d, l | 1 | 1,000 |
| 75-44-5 | Phosgene | l | 10 | 10 |
| 75-55-8 | Propyleneimine | d | 1 | 10,000 |
| 75-56-9 | Propylene Oxide | l | 100 | 10,000 |
| 75-74-1 | Tetramethyllead | c, e, l | 1 | 100 |
| 75-77-4 | Trimethylchlorosilane | [redacted] | 1 | 1,000 |
| 75-78-5 | Dimethyldichlorosilane | e, h | 1 | 500 |
| 75-79-6 | Methyltrichlorosilane | e, h | 1 | 500 |
| 75-86-5 | Acetone Cyanohydrin | | 10 | 1,000 |
| 76-01-7 | Pentachloroethane | a, d | 1 | 10,000 |
| 76-02-8 | Trichloroacetyl Chloride | [redacted] | 1 | [redacted] |
| 77-47-4 | Hexachlorocyclopentadiene | d, h | 1 | 100 |
| 77-78-1 | Dimethyl Sulfate | d | 1 | 500 |
| 77-81-6 | Taben | c, e, h | [redacted] | 10 |
| 78-00-2 | Tetraethyllead | c, d | 10 | 100 |
| 78-34-2 | Dioxathion | [redacted] | 1 | 500 |
| 78-53-5 | Amiton | [redacted] | 1 | 500 |
| 78-71-7 | Oxetane, 3,3-Bis(Chloromethyl)- | [redacted] | 1 | 500 |
| 78-82-0 | Isobutyronitrile | e, h | 1 | 1,000 |
| 78-94-4 | Methyl Vinyl Ketone | [redacted] | 1 | 10 |
| 78-97-7 | Lactonitrile | [redacted] | 1 | 1,000 |
| 79-06-1 | Acrylamide | d, l | 5,000 | 1,000/10,000 |
| 79-11-8 | Chloroacetic Acid | [redacted] | 1 | 100/10,000 |
| 79-19-6 | Thiosemicarbazide | | 100 | 100/10,000 |

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 79-21-0 | Peracetic Acid | | 1 | 500 |
| 79-22-1 | Methyl Chloroformate | d, h | 1,000 | 500 |
| 80-63-7 | Methyl 2-Chloroacrylate | | 1 | 500 |
| 81-81-2 | Warfarin | | 100 | 500/10,000 |
| 82-66-6 | Diphacinone | | 1 | 10/10,000 |
| 84-74-2 | Dibutyl Phthalate | | 10 | 10,000 |
| 84-80-0 | Phylloquinone | a, e | 1 | 10,000 |
| 86-50-0 | Azinphos-Methyl | | 1 | 10/10,000 |
| 86-88-4 | ANTU | | 100 | 500/10,000 |
| 87-86-5 | Pentachlorophenol | a, d | 10 | 10,000 |
| 88-05-1 | Aniline, 2,4,6-Trimethyl- | | 1 | 500 |
| 88-85-7 | Dinoseb | | 1,000 | 100/10,000 |
| 91-08-7 | Toluene 2,6-Diisocyanate | | 100 | 100 |
| 93-05-0 | Diethyl-p-Phenylenediamine | a, e | 1 | 10,000 |
| 95-48-7 | Cresol, o- | | 1,000 | 1,000/10,000 |
| 95-63-6 | Pseudocumene | a, e | 1 | 10,000 |
| 97-18-7 | Phenol, 2,2'-Thiobis(4,6-Dichloro-(4,6-dichloro)- | | 1 | 100/10,000 |
| 98-05-5 | Benzenearsonic Acid | | 1 | 10/10,000 |
| 98-07-7 | Benzotrichloride | d | 1 | 100 |
| 98-09-9 | Benzenesulfonyl Chloride | | 100 | 10,000 |
| 98-13-5 | Trichlorophenylsilane | e, h | 1 | 500 |
| 98-16-8 | Benzenamine, 3-(Trifluoromethyl)- | | 1 | 500 |
| 98-87-3 | Benzal Chloride | | 5,000 | 500 |
| 98-95-3 | Nitrobenzene | I | 1,000 | 10,000 |
| 99-98-9 | Dimethyl-p-Phenylenediamine | | 1 | 10/10,000 |
| 100-14-1 | Benzene, 1-(Chloromethyl)-4-Nitro- | | 1 | 500/10,000 |
| 100-44-7 | Benzyl Chloride | | 100 | 500 |
| 102-36-3 | Isocyanic Acid, 3,4-Dichlorophenyl Ester | | 1 | 500/10,000 |
| 103-85-5 | Phenylthiourea | | 100 | 100/10,000 |
| 106-89-8 | Epichlorohydrin | d, I | 1,000 | 1,000 |
| 106-96-7 | Propargyl Bromide | | 1 | 10 |
| 106-99-0 | Butadiene | a, e | 1 | 10,000 |
| 107-02-8 | Acrolein | | 1 | 500 |
| 107-07-3 | Chloroethanol | | 1 | 500 |
| 107-11-9 | Allylamine | | 1 | 500 |
| 107-12-0 | Propionitrile | | 10 | 500 |
| 107-13-1 | Acrylonitrile | d, I | 100 | 10,000 |
| 107-15-3 | Ethylenediamine | | 5,000 | 10,000 |
| 107-16-4 | Formaldehyde Cyanohydrin | e, h | 1 | 1,000 |
| 107-18-6 | Allyl Alcohol | | 100 | 1,000 |
| 107-20-0 | Chloroacetaldehyde | | 1,000 | 10,000 |
| 107-30-2 | Chloromethyl Methyl Ether | c, d | 1 | 100 |
| 107-44-8 | Sarin | e, h | 1 | 10 |
| 107-49-3 | TEPP | | 10 | 100 |
| 108-05-4 | Vinyl Acetate Monomer | d, I | 5,000 | 1,000 |
| 108-23-6 | Isopropyl Chloroformate | | 1 | 1,000 |
| 108-67-8 | Mesitylene | a, e | 1 | 10,000 |
| 108-91-8 | Cyclohexylamine | e, I | 1 | 10,000 |
| 108-95-2 | Phenol | | 1,000 | 500/10,000 |
| 108-98-5 | Thiophenol | | 100 | 500 |
| 109-19-3 | Butyl Isovalerate | a, e | 1 | 10,000 |
| 109-61-5 | Propyl Chloroformate | | 1 | 500 |
| 109-77-3 | Malononitrile | | 1,000 | 500/10,000 |
| 110-00-9 | Furan | | 100 | 500 |
| 110-57-6 | Trans-1,4-Dichlorobutene | | 1 | 500 |
| 110-89-4 | Piperidine | | 1 | 1,000 |
| 111-34-2 | Butyl Vinyl Ether | a, e | 1 | 10,000 |
| 111-44-4 | Dichloroethyl Ether | | 1 | 10,000 |
| 111-69-3 | Adiponitrile | e, I | 1 | 1,000 |
| 115-21-9 | Trichloroethylsilane | e, h | 1 | 500 |
| 115-26-4 | Dimefox | | 1 | 500 |
| 115-29-7 | Endosulfan | | 1 | 10/10,000 |
| 115-90-2 | Fensulfothion | e, h | 1 | 500 |
| 116-06-3 | Aldicarb | c | 1 | 100/10,000 |
| 117-52-2 | Coumafuryl | a, e | 1 | 10,000 |
| 117-84-0 | Dioctyl Phthalate | | 5,000 | 10,000 |
| 119-38-0 | Isopropylmethylpyrazolyl Dimethylcarbamate | | 1 | 500 |

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 122-14-5 | Fenitrothion | a | 1 | 500 |
| 123-31-9 | Hydroquinone | f | 1 | 500/10,000 |
| 123-73-9 | Crotonaldehyde, (E)- | | 100 | 1,000 |
| 124-65-2 | Sodium Cacodylate | a | 1 | 100/10,000 |
| 124-87-8 | Picrotoxin | e | 1 | 500/10,000 |
| 126-98-7 | Methacrylonitrile | h | 1 | 500 |
| 128-56-3 | Sodium Anthraquinone-1-Sulfonate | a, e | 1 | 10,000 |
| 129-00-0 | Pyrene | c | 5,000 | 1,000/10,000 |
| 129-06-6 | Warfarin Sodium | e, h | 1 | 100/10,000 |
| 131-11-3 | Dimethyl Phthalate | a | 5,000 | 10,000 |
| 131-52-2 | Sodium Pentachlorophenate | a | 1 | 100/10,000 |
| 140-29-4 | Benzyl Cyanide | e, h | 1 | 500 |
| 140-76-1 | Pyridine, 2-Methyl-5-Vinyl- | a | 1 | 500 |
| 141-66-2 | Dicrotophos | a | 1 | 100 |
| 143-33-9 | Sodium Cyanide (Na(CN)) | b | 10 | 100 |
| 144-49-0 | Fluoroacetic Acid | a | 1 | 10/10,000 |
| 149-74-6 | Dichloromethylphenylsilane | a | 1 | 1,000 |
| 151-38-2 | Methoxyethylmercuric Acetate | a | 1 | 500/10,000 |
| 151-50-8 | Potassium Cyanide | b | 10 | 100 |
| 151-56-4 | Ethyleneimine | d | 1 | 500 |
| 152-16-9 | Diphosphoramide, Octamethyl- | | 100 | 100 |
| 287-92-3 | Cyclopentane | a, e | 1 | 10,000 |
| 297-78-9 | Isobenzan | a | 1 | 100/10,000 |
| 297-97-2 | Thionazin | | 100 | 500 |
| 298-00-0 | Parathion-Methyl | c | 100 | 100/10,000 |
| 298-02-2 | Phorate | | 10 | 10 |
| 298-04-4 | Disulfoton | | 1 | 500 |
| 300-62-9 | Amphetamine | a | 1 | 1,000 |
| 302-01-2 | Hydrazine | d | 1 | 1,000 |
| 309-00-2 | Aldrin | d | 1 | 500/10,000 |
| 315-18-4 | Mexacarbate | | 1,000 | 500/10,000 |
| 316-42-7 | Emetine, Dihydrochloride | e, h | 1 | 1/10,000 |
| 327-98-0 | Trichloronate | e, k | 1 | 500 |
| 353-42-4 | Boron Trifluoride Compound With Methyl Ether (1:1) | a | 1 | 1,000 |
| 359-06-8 | Fluoroacetyl Chloride | c, e | 1 | 10 |
| 371-62-0 | Ethylene Fluorohydrin | c, e, h | 1 | 10 |
| 379-79-3 | Ergotamine Tartrate | a | 1 | 500/10,000 |
| 465-73-6 | Isodrin | | 1 | 100/10,000 |
| 470-90-6 | Chlorfenvinfos | a | 1 | 500 |
| 502-39-6 | Methylmercuric Dicyanamide | a | 1 | 500/10,000 |
| 504-24-5 | Pyridine, 4-Amino- | h | 1,000 | 500/10,000 |
| 505-60-2 | Mustard Gas | e, h | 1 | 500 |
| 506-61-6 | Potassium Silver Cyanide | b | 1 | 500 |
| 506-68-3 | Cyanogen Bromide | | 1,000 | 500/10,000 |
| 506-78-5 | Cyanogen Iodide | e | 1 | 1,000/10,000 |
| 509-14-8 | Tetranitromethane | | 10 | 500 |
| 514-73-8 | Dithiazanine Iodide | e | 1 | 500/10,000 |
| 534-07-6 | Bis(Chloromethyl) Ketone | e | 1 | 10/10,000 |
| 534-52-1 | Dinitrocresol | | 10 | 10/10,000 |
| 535-89-7 | Crimidine | e | 1 | 100/10,000 |
| 538-07-8 | Ethylbis(2-Chloroethyl)Amine | e, h | 1 | 500 |
| 541-25-3 | Lewisite | c, e, h | 1 | 10 |
| 541-53-7 | Dithiobiuret | | 100 | 100/10,000 |
| 542-76-7 | Propionitrile, 3-Chloro- | | 1,000 | 1,000 |
| 542-88-1 | Chloromethyl Ether | d, h | 1 | 100 |
| 542-90-5 | Ethylthiocyanate | a | 1 | 10,000 |
| 555-77-1 | Tris(2-Chloroethyl)Amine | e, h | 1 | 100 |
| 556-61-6 | Methyl Isothiocyanate | b, e | 1 | 500 |
| 556-64-9 | Methyl Thiocyanate | a | 1 | 10,000 |
| 558-25-8 | Methanesulfonyl Fluoride | a | 1 | 1,000 |
| 563-12-2 | Ethion | | 10 | 1,000 |
| 563-41-7 | Semicarbazide Hydrochloride | e | 1 | 1,000/10,000 |
| 584-84-9 | Toluene 2,4-Diisocyanate | | 100 | 500 |
| 594-42-3 | Perchloromethylmercaptan | | 100 | 500 |
| 597-64-8 | Tetraethyltin | c, e | 1 | 100 |

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 614-78-8 | Thiourea, (2-Methylphenyl)- | | 1 | 500/10,000 |
| 624-83-9 | Methyl Isocyanate | f | 1 | 500 |
| 624-92-0 | Methyl Disulfide | | 1 | 100 |
| 625-55-8 | Isopropyl Formate | | 1 | 500 |
| 627-11-2 | Chloroethyl Chloroformate | | 1 | 1,000 |
| 630-60-4 | Quabain | c, e | 1 | 100/10,000 |
| 633-03-4 | C. I. Basic Green 1 | a, e | 1 | 10,000 |
| 639-58-7 | Triphenyltin Chloride | | 1 | 500/10,000 |
| 640-15-3 | Thiometon | a, e | 1 | 10,000 |
| 640-19-7 | Fluoroacetamide | | 100 | 100/10,000 |
| 644-64-4 | Dimetilan | | 1 | 500/10,000 |
| 646-06-0 | Dioxolane | a, e | 1 | 10,000 |
| 675-14-9 | Cyanuric Fluoride | | 1 | 100 |
| 676-97-1 | Methyl Phosphonic Dichloride | b, e | 1 | 100 |
| 696-28-6 | Phenyl Dichloroarsine | d, h | 1 | 500 |
| 732-11-6 | Phosmet | | 1 | 10/10,000 |
| 760-93-0 | Methacrylic Anhydride | e | 1 | 500 |
| 786-19-6 | Carbophenothion | | 1 | 500 |
| 814-49-3 | Diethyl Chlorophosphate | e, h | 1 | 500 |
| 814-68-6 | Acrylyl Chloride | e, h | 1 | 100 |
| 824-11-3 | Trimethylolpropane Phosphite | e, h | 1 | 100/10,000 |
| 900-95-8 | Stannane, Acetoxytriphenyl- | e, g | 1 | 500/10,000 |
| 919-86-8 | Demeton-S-Methyl | | 1 | 500 |
| 920-46-7 | Methacryloyl Chloride | | 1 | 100 |
| 944-22-9 | Fonofos | | 1 | 500 |
| 947-02-4 | Phosfolan | | 1 | 100/10,000 |
| 950-10-7 | Mephosfolan | | 1 | 500 |
| 950-37-8 | Methidathion | | 1 | 500/10,000 |
| 991-42-4 | Norbormide | | 1 | 100/10,000 |
| 998-30-1 | Triethoxysilane | | 1 | 500 |
| 999-81-5 | Chlormequat Chloride | e, h | 1 | 100/10,000 |
| 1031-47-6 | Triamiphos | | 1 | 500/10,000 |
| 1066-45-1 | Trimethyltin Chloride | | 1 | 500/10,000 |
| 1122-60-7 | Nitrocyclohexane | e | 1 | 500 |
| 1124-33-0 | Pyridine, 4-Nitro-, 1-Oxide | | 1 | 500/10,000 |
| 1129-41-5 | Metolcarb | | 1 | 100/10,000 |
| 1303-28-2 | Arsenic Pentoxide | d | 5,000 | 100/10,000 |
| 1306-19-0 | Cadmium Oxide | | 1 | 100/10,000 |
| 1314-32-5 | Thallic Oxide | | 100 | 10,000 |
| 1314-56-3 | Phosphorus Pentoxide | b, e | 1 | 10 |
| 1314-62-1 | Vanadium Pentoxide | | 1,000 | 100/10,000 |
| 1314-84-7 | Zinc Phosphide | | 100 | 500 |
| 1327-53-3 | Arsenous Oxide | d, h | 5,000 | 100/10,000 |
| 1331-17-5 | Propylene Glycol, Allyl Ether | a, e | 1 | 10,000 |
| 1335-87-1 | Hexachloronaphthalene | a, e | 1 | 10,000 |
| 1397-94-0 | Antimycin A | c, e | 1 | 1,000/10,000 |
| 1405-87-4 | Bacitracin | a, e | 1 | 10,000 |
| 1420-07-1 | Dinoterb | | 1 | 500/10,000 |
| 1464-53-5 | Diepoxybutane | | 1 | 500 |
| 1558-25-4 | Trichloro(Chloromethyl)Silane | | 1 | 100 |
| 1563-66-2 | Carbofuran | | 10 | 10/10,000 |
| 1600-27-7 | Mercuric Acetate | | 1 | 500/10,000 |
| 1622-32-8 | Ethanesulfonyl Chloride, 2-Chloro- | e | 1 | 500 |
| 1642-54-2 | Diethylcarbamazine Citrate | | 1 | 100/10,000 |
| 1752-30-3 | Acetone Thiosemicarbazide | | 1 | 1,000/10,000 |
| 1910-42-5 | Paraquat | | 1 | 10/10,000 |
| 1982-47-4 | Chloroxuron | | 1 | 500/10,000 |
| 2001-95-8 | Valinomycin | c, e | 1 | 1,000/10,000 |
| 2032-65-7 | Methiocarb | | 10 | 500/10,000 |
| 2074-50-2 | Paraquat Methosulfate | | 1 | 10/10,000 |
| 2097-19-0 | Phenylsilatrane | e, h | 1 | 100/10,000 |
| 2104-64-5 | EPN | | 1 | 100/10,000 |
| 2223-93-0 | Cadmium Stearate | c, e | 1 | 1,000/10,000 |
| 2231-57-4 | Thiocarbazide | | 1 | 1,000/10,000 |
| 2235-25-8 | Ethylmercuric Phosphate | a, e | 1 | 10,000 |
| 2238-07-5 | Diglycidyl Ether | | 1 | 1,000 |
| 2244-16-8 | Carvone | a, e | 1 | 10,000 |

BEST COPY AVAILABLE

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 2275-18-5 | Prothoate | e | 1 | 100/10,000 |
| 2497-07-6 | Oxydisulfoton | e, h | 1 | 500 |
| 2524-03-0 | Dimethyl Phosphorochloridothioate | e | 1 | 500 |
| 2540-82-1 | Formothion | e | 1 | 100 |
| 2570-26-5 | Pentadecylamine | e | 1 | 100/10,000 |
| 2587-90-8 | Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester | c, e, h | 1 | 500 |
| 2631-37-0 | Promecarb | e, h | 1 | 500/10,000 |
| 2636-26-2 | Cyanophos | e | 1 | 1,000 |
| 2642-71-9 | Azinphos-Ethyl | e | 1 | 100/10,000 |
| 2665-30-7 | Phosphonothioic Acid, Methyl-,O-(4-Nitrophenyl) O-Phenyl Ester | e | 1 | 500 |
| 2703-13-1 | Phosphonothioic Acid, Methyl-,O-Ethyl O-(4-(Methylthio)Phenyl) Ester | e | 1 | 500 |
| 2757-18-8 | Thallous Malonate | c, e, h | 1 | 100/10,000 |
| 2763-96-4 | Muscimol | a, h | 1,000 | 10,000 |
| 2778-04-3 | Endothion | e | 1 | 500/10,000 |
| 3037-72-7 | Silane, (4-Aminobutyl)Diethoxymethyl- | e | 1 | 1,000 |
| 3048-64-4 | Vinylnorbornene | a, e | 1 | 10,000 |
| 3254-63-5 | Phosphoric Acid, Dimethyl 4-(Methylthio) Phenyl Ester | e | 1 | 500 |
| 3569-57-1 | Sulfoxide, 3-Chloropropyl Octyl | e | 1 | 500 |
| 3615-21-2 | Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)- | e, g | 1 | 500/10,000 |
| 3689-24-5 | Sulfotep | | 100 | 500 |
| 3691-35-8 | Chlorophacinone | e | 1 | 100/10,000 |
| 3734-97-2 | Amiton Oxalate | e | 1 | 100/10,000 |
| 3735-23-7 | Methyl Phenkapton | e | 1 | 500 |
| 3878-19-1 | Fuberidazole | e | 1 | 100/10,000 |
| 4044-65-9 | Bitoscanate | e | 1 | 500/10,000 |
| 4098-71-9 | Isophorone Diisocyanate | b, e | 1 | 100 |
| 4104-14-7 | Phosacetim | e | 1 | 100/10,000 |
| 4170-30-3 | Crotonaldehyde | | 100 | 1,000 |
| 4301-50-2 | Fluenetil | e | 1 | 100/10,000 |
| 4418-66-0 | Phenol, 2,2'-Thiobis(4-Chloro-6-Methyl)- | e | 1 | 100/10,000 |
| 4835-11-4 | Hexamethylenediamine, N,N'-Dibutyl- | e | 1 | 500 |
| 5281-13-0 | Piprotal | e | 1 | 100/10,000 |
| 5344-82-1 | Thiourea, (2-Chlorophenyl)- | | 100 | 100/10,000 |
| 5836-29-3 | Coumatetralyl | e | 1 | 500/10,000 |
| 6533-73-9 | Thallous Carbonate | c, h | 100 | 100/10,000 |
| 6923-22-4 | Monocrotophos | e | 1 | 10/10,000 |
| 7440-02-0 | Nickel | a, d | 1 | 10,000 |
| 7440-48-4 | Cobalt | a, e | 1 | 10,000 |
| 7446-09-5 | Sulfur Dioxide | e, l | 1 | 500 |
| 7446-11-9 | Sulfur Trioxide | b, e | 1 | 100 |
| 7446-18-6 | Thallous Sulfate | | 100 | 100/10,000 |
| 7487-94-7 | Mercuric Chloride | e | 1 | 500/10,000 |
| 7550-45-0 | Titanium Tetrachloride | e | 1 | 100 |
| 7580-67-8 | Lithium Hydride | b, e | 1 | 100 |
| 7631-89-2 | Sodium Arsenate | d | 1,000 | 1,000/10,000 |
| 7637-07-2 | Boron Trifluoride | e | 1 | 500 |
| 7647-01-0 | Hydrogen Chloride (Gas Only) | e, l | 1 | 500 |
| 7664-39-3 | Hydrogen Fluoride | | 100 | 100 |
| 7664-41-7 | Ammonia | l | 100 | 500 |
| 7664-93-9 | Sulfuric Acid | | 1,000 | 1,000 |
| 7697-37-2 | Nitric Acid | | 1,000 | 1,000 |
| 7719-12-2 | Phosphorus Trichloride | | 1,000 | 1,000 |
| 7722-84-1 | Hydrogen Peroxide (Conc >52%) | e, l | 1 | 1,000 |
| 7723-14-0 | Phosphorus | b, h | 1 | 100 |
| 7726-95-6 | Bromine | e, l | 1 | 500 |
| 7778-44-1 | Calcium Arsenate | d | 1,000 | 500/10,000 |
| 7782-41-4 | Fluorine | k | 10 | 500 |
| 7782-50-5 | Chlorine | | 10 | 100 |
| 7783-00-8 | Selenious Acid | | 10 | 1,000/10,000 |
| 7783-06-4 | Hydrogen Sulfide | l | 100 | 500 |
| 7783-07-5 | Hydrogen Selenide | e | 1 | 10 |
| 7783-60-0 | Sulfur Tetrafluoride | e | 1 | 100 |
| 7783-70-2 | Antimony Pentafluoride | e | 1 | 500 |
| 7783-80-4 | Tellurium Hexafluoride | e, k | 1 | 100 |
| 7784-34-1 | Arsenous Trichloride | d | 5,000 | 500 |

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 7784-42-1 | Arsine | e | 1 | 100 |
| 7784-46-5 | Sodium Arsenite | a, e | 1,000 | 500/10,000 |
| 7786-34-7 | Mevinphos | | 10 | 500 |
| 7791-12-0 | Thallous Chloride | c, h | 100 | 100/10,000 |
| 7791-23-3 | Selenium Oxychloride | | 1 | 500 |
| 7803-51-2 | Phosphine | | 100 | 500 |
| 8001-35-2 | Camphechlor | | 1 | 500/10,000 |
| 8023-53-8 | Dichlorobenzalkonium Chloride | a, e | 1 | 10,000 |
| 8065-48-3 | Demeton | e | 1 | 500 |
| 10025-65-7 | Plantinous Chloride | a, e | 1 | 10,000 |
| 10025-73-7 | Chromic Chloride | | 1 | 1/10,000 |
| 10025-87-3 | Phosphorus Oxychloride | d | 1,000 | 500 |
| 10025-97-5 | Iridium Tetrachloride | | 1 | 10,000 |
| 10026-13-8 | Phosphorus Pentachloride | b, e | 1 | 500 |
| 10028-15-6 | Ozone | | 1 | 100 |
| 10031-59-1 | Thallium Sulfate | h | 100 | 100/10,000 |
| 10049-07-7 | Rhodium Trichloride | a, e | 1 | 10,000 |
| 10102-18-8 | Sodium Selenite | h | 100 | 100/10,000 |
| 10102-20-2 | Sodium Tellurite | | 1 | 500/10,000 |
| 10102-43-9 | Nitric Oxide | c | 10 | 100 |
| 10102-44-0 | Nitrogen Dioxide | | 10 | 100 |
| 10124-50-2 | Potassium Arsenite | d | 1,000 | 500/10,000 |
| 10140-87-1 | Ethanol, 1,2-Dichloro-, Acetate | | 1 | 1,000 |
| 10210-68-1 | Cobalt Carbonyl | e, h | 1 | 10/10,000 |
| 10265-92-6 | Methamidophos | | 1 | 100/10,000 |
| 10294-34-5 | Boron Trichloride | | 1 | 500 |
| 10311-84-9 | Dialifor | | 1 | 100/10,000 |
| 10476-95-6 | Methacrolein Diacetate | | 1 | 1,000 |
| 12002-03-8 | Paris Green | | 100 | 500/10,000 |
| 12108-13-3 | Manganese, Tricarbonyl Methylcyclopentadienyl | e, h | 1 | 100 |
| 13071-79-9 | Terbufos | e, h | 1 | 100 |
| 13171-21-6 | Phosphamidon | | 1 | 100 |
| 13194-48-4 | Ethoprophos | | 1 | 1,000 |
| 13410-01-0 | Sodium Selenate | | 1 | 100/10,000 |
| 13450-90-3 | Gallium Trichloride | | 1 | 500/10,000 |
| 13454-96-1 | Platinum Tetrachloride | a, e | 1 | 10,000 |
| 13463-39-3 | Nickel Carbonyl- | | 1 | 1 |
| 13463-40-6 | Iron, Pentacarbonyl | | 1 | 100 |
| 13494-80-9 | Tellurium | | 1 | 500/10,000 |
| 14167-18-1 | Salcomine | | 1 | 500/10,000 |
| 15271-41-7 | Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-(((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha, 2-beta, 4-alpha, 5-alpha, 6E))-. | e | 1 | 500/10,000 |
| 16752-77-5 | Methomyl | h | 100 | 500/10,000 |
| 16919-58-7 | Ammonium Chloroplatinate | a, e | 1 | 10,000 |
| 17702-41-9 | Decaborane(14) | | 1 | 500/10,000 |
| 17702-57-7 | Formparanate | | 1 | 100/10,000 |
| 19287-45-7 | Diborane | | 1 | 100 |
| 19624-22-7 | Pentaborane | | 1 | 500 |
| 20816-12-0 | Osmium Tetroxide | | 1,000 | 10,000 |
| 20830-75-5 | Digoxin | e, h | 1 | 10/10,000 |
| 20859-73-8 | Aluminum Phosphide | b | 100 | 500 |
| 21548-32-3 | Fosthietan | | 1 | 500 |
| 21564-17-0 | Thiocyanic Acid, 2-(Benzothiazolylthio)Methyl Ester | a, e | 1 | 10,000 |
| 21609-90-5 | Leptophos | | 1 | 500/10,000 |
| 21908-53-2 | Mercuric Oxide | | 1 | 500/10,000 |
| 21923-23-9 | Chlorthiophos | e, h | 1 | 500 |
| 22224-92-6 | Fenamiphos | | 1 | 10/10,000 |
| 23135-22-0 | Oxamyl | | 1 | 100/10,000 |
| 23422-53-9 | Formetanate Hydrochloride | e,h | 1 | 500/10,000 |
| 23505-41-1 | Pirimifos-Ethyl | | 1 | 1,000 |
| 24017-47-8 | Triazofos | | 1 | 500 |
| 24934-91-6 | Chlormephos | | 1 | 500 |
| 26419-73-8 | Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)- | | 1 | 100/10,000 |
| 26628-22-8 | Sodium Azide ($Na(N_3)$) | | 1,000 | 500 |
| 27137-85-5 | Trichloro(Dichlorophenyl)Silane | | 1 | 500 |
| 28347-13-9 | Xylylene Dichloride | | 1 | 100/10,000 |
| 28772-56-7 | Bromadiolone | | 1 | 100/10,000 |

APPENDIX B.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

| CAS No. | Chemical name | Notes | Reportable quantity* (pounds) | Threshold planning quantity (pounds) |
|---|---|---|---|---|
| 30674-80-7 | Methacryloyloxyethyl Isocyanate | e, h | 1 | 100 |
| 39196-18-4 | Thiofanox | | 100 | 100/10,000 |
| 50782-69-9 | Phosphonothioic Acid, Methyl-, S-(2-(Bis(1-Methylethyl)Amino)Ethyl) O-Ethyl Ester | d | 1 | 100 |
| 53558-25-1 | Pyriminil | e, h | 1 | 100/10,000 |
| 58270-08-9 | Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino)Carbonyl)Oxy)Imino)Pentanenitrile)-, (T-4)- | d | 1 | 100/10,000 |
| 62207-76-5 | Cobalt, ((2,2'-(1,2-Ethanediylbis(Nitrilomethylidyne))Bis(6-Fluorophenolato))(2-)-N,N',O,O')- | d | 1 | 100/10,000 |

*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

Notes:

a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.
b This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.
c The calculated TPQ changed after technical review as described in the technical support document.
d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.
e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).
f The statutory 1 pound reportable quantity for methyl isocyanate may be adjusted in a future rulemaking action.
g New chemicals added that were not part of the original list of 402 substances.
h Revised TPQ based on new or re-evaluated toxicity data.
i TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.
k The TPQ was revised after proposal due to calculation error.
l Chemicals on the original list that do not meet the toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

[FR Doc. 87-9089 Filed 4-20-87; 11:24 am]
BILLING CODE 6560-50-M

federal register

Wednesday,
April 22, 1987

Part III

# The President

Proclamation 5631
Executive Order 12591
Executive Order 12592
Memorandum of April 17, 1987

Federal Register
Vol. 52, No. 77
Wednesday, April 22, 1987

# Presidential Documents

Title 3—

The President

## Proclamation 5631 of April 17, 1987

## Increase in the Rates of Duty for Certain Articles From Japan

By the President of the United States of America

A Proclamation

1. On April 17, 1987, I determined pursuant to section 301 of the Trade Act of 1974, as amended ("the Act") (19 U.S.C. 2411), that the Government of Japan has not implemented or enforced major provisions of the Arrangement concerning Trade in Semiconductor Products, signed on September 2, 1986, and that this is inconsistent with the provisions of, or otherwise denies benefits to the United States under, a trade agreement; and is unjustifiable and unreasonable and constitutes a burden or restriction on United States commerce. Specifically, the Government of Japan has not met its commitments to increase market access opportunities in Japan for foreign-based semiconductor producers or to prevent "dumping" through monitoring of costs and export prices of exports from Japan of semiconductor products. I have further determined, pursuant to section 301(b) of the Act (19 U.S.C. 2411(b)), that the appropriate and feasible action in response to such failure is to impose increased duties on certain imported articles that are the products of Japan.

2. Section 301(a) of the Act (19 U.S.C. 2411(a)) authorizes the President to take all appropriate and feasible action within his power to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that (1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, a trade agreement; or (2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce. Section 301(b) of the Act authorizes the President to suspend, withdraw, or prevent the application of benefits of trade agreement concessions with respect to, and to impose duties or other import restrictions on the products of, such foreign government or instrumentality for such time as he determines appropriate. Pursuant to section 301(a) of the Act, such actions can be taken on a nondiscriminatory basis or solely against the products of the foreign government or instrumentality involved. Section 301(d)(1) of the Act (19 U.S.C. 2411(d)(1)) authorizes the President to take action on his own motion.

3. I have decided, pursuant to section 301(a), (b), and (d)(1) of the Act, to increase U.S. import duties on the articles provided for in the Annex to this Proclamation that are the products of Japan.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to sections 301(a), (b), and (d)(1) and section 604 of the Act (19 U.S.C. 2483), do proclaim that:

1. Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is modified as set forth in the Annex to this Proclamation.

2. The United States Trade Representative is authorized to suspend, modify, or terminate the increased duties imposed by this Proclamation upon publication in the Federal Register of his determination that such action is in the interest of the United States.

3. This Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 17, 1987, except that it shall not apply with respect to articles that were admitted into a U.S. foreign trade zone on or before March 31, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

ANNEX

Subpart B of part 2 of the Appendix to the Tariff Schedules of the United States is modified by inserting in numerical sequence the following new items and superior heading, set forth herein in columnar form, in the columns designated "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively:

*Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 17, 1987*

| | | | |
|---|---|---|---|
| | "Articles the product of Japan: | | |
| 945.83 | Automatic data processing machines, of the type of which the constituent units are integrated in the same housing, whether finished or unfinished, which incorporate a microprocessor-based calculating mechanism, are capable of handling data words of at least 16-bits off the microprocessor, and are designed for use with a non-CRT display unit, whether or not capable of use without an external power source (provided for in item 676.15, part 4G, schedule 6). | 100% ad val. | No change |
| 945.84 | Automatic data processing machines, of the type of which the consituent units are separately housed, whether finished or unfinished, which incorporate a microprocessor-based calculating mechanism, are capable of handling data words of at least 16-bits off the microprocessor, designed for use while affixed to or placed on a table, desk, or similar place (provided for in item 676.15, part 4G, schedule 6) | 100% ad val. | No change |
| 945.85 | Rotary drills, not battery powered, with a chuck capacity of 1/2 inch or more; electropneumatic rotary and percussion hammers; and grinders, sanders, and polishers (except angle grinders, sanders, and polishers, belt sanders, and orbital and straight-line sanders), the foregoing which are hand-directed or -controlled tools with self-contained electric motor (provided for in item 683.20, part 5, schedule 6) | 100% ad val. | No change |
| 945.86 | Complete color television receivers containing in a single housing apparatus for receiving and displaying off-the-air each standard U.S. broadcast channel, with or without external speakers, having a single picture tube intended for direct viewing, with a video display diagonal of 18, 19, or 20 inches (all the foregoing provided for in item 684.92, part 5, schedule 6) | 100% ad val. | No change |

[FR Doc. 87-9269

Filed 4-21-87; 11:09 am]

Billing code 3195-01-M

**Editorial note:** For the President's statement of Apr. 17 on the duty increases, see the *Weekly Compilation of Presidential Domucents* (vol. 23, no. 15).

# Presidential Documents

**Executive Order 12591 of April 10, 1987**

## Facilitating Access to Science and Technology

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Technology Transfer Act of 1986 (Public Law 99–502), the Trademark Clarification Act of 1984 (Public Law 98–620), and the University and Small Business Patent Procedure Act of 1980 (Public Law 96–517), and in order to ensure that Federal agencies and laboratories assist universities and the private sector in broadening our technology base by moving new knowledge from the research laboratory into the development of new products and processes, it is hereby ordered as follows:

**Section 1.** *Transfer of Federally Funded Technology.*

(a) The head of each Executive department and agency, to the extent permitted by law, shall encourage and facilitate collaboration among Federal laboratories, State and local governments, universities, and the private sector, particularly small business, in order to assist in the transfer of technology to the marketplace.

(b) The head of each Executive department and agency shall, within overall funding allocations and to the extent permitted by law:

(1) delegate authority to its government-owned, government-operated Federal laboratories:

(A) to enter into cooperative research and development agreements with other Federal laboratories, State and local governments, universities, and the private sector; and

(B) to license, assign, or waive rights to intellectual property developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.

(2) identify and encourage persons to act as conduits between and among Federal laboratories, universities, and the private sector for the transfer of technology developed from federally funded research and development efforts;

(3) ensure that State and local governments, universities, and the private sector are provided with information on the technology, expertise, and facilities available in Federal laboratories;

(4) promote the commercialization, in accord with my Memorandum to the Heads of Executive Departments and Agencies of February 18, 1983, of patentable results of federally funded research by granting to all contractors, regardless of size, the title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the government;

(5) implement, as expeditiously as practicable, royalty-sharing programs with inventors who were employees of the agency at the time their inventions were made, and cash award programs; and

(6) cooperate, under policy guidance provided by the Office of Federal Procurement Policy, with the heads of other affected departments and agencies in the development of a uniform policy permitting Federal contractors to retain rights to software, engineering drawings, and other technical data generated by Federal grants and contracts, in exchange for royalty-free use by or on behalf of the government.

**Sec. 2.** *Establishment of the Technology Share Program.* The Secretaries of Agriculture, Commerce, Energy, and Health and Human Services and the Administrator of the National Aeronautics and Space Administration shall select one or more of their Federal laboratories to participate in the Technology Share Program. Consistent with its mission and policies and within its overall funding allocation in any year, each Federal laboratory so selected shall:

(a) Identify areas of research and technology of potential importance to long-term national economic competitiveness and in which the laboratory possesses special competence and/or unique facilities;

(b) Establish a mechanism through which the laboratory performs research in areas identified in Section 2(a) as a participant of a consortium composed of United States industries and universities. All consortia so established shall have, at a minimum, three individual companies that conduct the majority of their business in the United States; and

(c) Limit its participation in any consortium so established to the use of laboratory personnel and facilities. However, each laboratory may also provide financial support generally not to exceed 25 percent of the total budget for the activities of the consortium. Such financial support by any laboratory in all such consortia shall be limited to a maximum of $5 million per annum.

**Sec. 3.** *Technology Exchange—Scientists and Engineers.* The Executive Director of the President's Commission on Executive Exchange shall assist Federal agencies, where appropriate, by developing and implementing an exchange program whereby scientists and engineers in the private sector may take temporary assignments in Federal laboratories, and scientists and engineers in Federal laboratories may take temporary assignments in the private sector.

**Sec. 4.** *International Science and Technology.* In order to ensure that the United States benefits from and fully exploits scientific research and technology developed abroad,

(a) The head of each Executive department and agency, when negotiating or entering into cooperative research and development agreements and licensing arrangements with foreign persons or industrial organizations (where these entities are directly or indirectly controlled by a foreign company or government), shall, in consultation with the United States Trade Representative, give appropriate consideration:

(1) to whether such foreign companies or governments permit and encourage United States agencies, organizations, or persons to enter into cooperative research and development agreements and licensing arrangements on a comparable basis;

(2) to whether those foreign governments have policies to protect the United States intellectual property rights; and

(3) where cooperative research will involve data, technologies, or products subject to national security export controls under the laws of the United States, to whether those foreign governments have adopted adequate measures to prevent the transfer of strategic technology to destinations prohibited under such national security export controls, either through participation in the Coordinating Committee for Multilateral Export Controls (COCOM) or through other international agreements to which the United States and such foreign governments are signatories.

(b) The Secretary of State shall develop a recruitment policy that encourages scientists and engineers from other Federal agencies, academic institutions, and industry to apply for assignments in embassies of the United States; and

(c) The Secretaries of State and Commerce and the Director of the National Science Foundation shall develop a central mechanism for the prompt and efficient dissemination of science and technology information developed abroad to users in Federal laboratories, academic institutions, and the private sector on a fee-for-service basis.

**Sec. 5.** *Technology Transfer from the Department of Defense.* Within 6 months of the date of this Order, the Secretary of Defense shall identify a list of funded technologies that would be potentially useful to United States industries and universities. The Secretary shall then accelerate efforts to make these technologies more readily available to United States industries and universities.

**Sec. 6.** *Basic Science and Technology Centers.* The head of each Executive department and agency shall examine the potential for including the establishment of university research centers in engineering, science, or technology in the strategy and planning for any future research and development programs. Such university centers shall be jointly funded by the Federal Government, the private sector, and, where appropriate, the States and shall focus on areas of fundamental research and technology that are both scientifically promising and have the potential to contribute to the Nation's long-term economic competitiveness.

**Sec. 7.** *Reporting Requirements.* (a) Within 1 year from the date of this Order, the Director of the Office of Science and Technology Policy shall convene an interagency task force comprised of the heads of representative agencies and the directors of representative Federal laboratories, or their designees, in order to identify and disseminate creative approaches to technology transfer from Federal laboratories. The task force will report to the President on the progress of and problems with technology transfer from Federal laboratories.

(b) Specifically, the report shall include:

(1) a listing of current technology transfer programs and an assessment of the effectiveness of these programs;

(2) identification of new or creative approaches to technology transfer that might serve as model programs for Federal laboratories;

(3) criteria to assess the effectiveness and impact on the Nation's economy of planned or future technology transfer efforts; and

(4) a compilation and assessment of the Technology Share Program established in Section 2 and, where appropriate, related cooperative research and development venture programs.

**Sec. 8.** *Relation to Existing Law.* Nothing in this Order shall affect the continued applicability of any existing laws or regulations relating to the transfer of United States technology to other nations. The head of any Executive department or agency may exclude from consideration, under this Order, any technology that would be, if transferred, detrimental to the interests of national security.

Ronald Reagan

THE WHITE HOUSE,
*April 10, 1987.*

[FR Doc. 87-9270
Filed 4-21-87; 11:10 am]
Billing code 3195-01-M

**Editorial note:** For the President's statement of Apr. 10, on signing EO 12591, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 15).

# Presidential Documents

**Executive Order 12592 of April 10, 1987**

## President's Commission on Compensation of Career Federal Executives

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory commission on compensation of career Federal executives, it is hereby ordered as follows:

**Section 1.** *Establishment.* There is established the President's Commission on Compensation of Career Federal Executives. The Commission shall be composed of seven members, to be appointed or designated by the President, not more than four of whom shall be employees of the Federal government. The President shall designate the Chairman of the Commission.

**Sec. 2.** *Functions.* (a) The Commission shall study the levels of compensation paid to career members of the Senior Executive Service (SES) and shall advise the President and the Director of the Office of Personnel Management on its findings and recommendations, including its conclusions on:

(1) what effects inflation has had on these pay levels;

(2) how these pay levels compare with those of similarly situated executives in the private sector;

(3) how these pay levels affect the recruitment and retention of career executives in the Federal service;

(4) whether these pay levels are appropriate;

(5) how compensation of the Senior Executive Service should relate to compensation of (a) Executive Level employees, and (b) GS/GM employees; and

(6) whether legislation should be proposed to alter the President's authority to adjust SES compensation levels.

(b) The Commission shall report its findings and recommendations to the President and the Director of the Office of Personnel Management no later than August 1, 1987.

**Sec. 3.** *Administration.* (a) The heads of Executive departments and agencies shall, to the extent provided by law, provide the Commission such information with respect to the compensation of career Federal executives as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) The Director of the Office of Personnel Management shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with such administrative services, facilities, staff, and other support services as may be necessary for the effective performance of its functions.

Sec. 4. *General.* (a) Notwithstanding the provisions of any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, except that of reporting annually to the Congress, which are applicable to the Commission established by this Order, shall be performed by the Director of the Office of Personnel Management, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 30 days after submission of its report to the President.

Ronald Reagan

THE WHITE HOUSE,
*April 10, 1987.*

[FR Doc. 87-8271
Filed 4-21-87; 11:12 am]
Billing code 3195-01-M

# Presidential Documents

**Memorandum of April 17, 1987**

## Determination Under Section 301 of the Trade Act of 1974

**Memorandum for the United States Trade Representative**

Pursuant to section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that the Government of Japan has not implemented or enforced major provisions of the Arrangement concerning Trade in Semiconductor Products ("the Arrangement"), signed on September 2, 1986, and that this is inconsistent with the provisions of, or otherwise denies benefits to the United States under, the Arrangement; and is unjustifiable and unreasonable, and constitutes a burden or restriction on U.S. commerce. I also have determined, pursuant to section 301 of the Act, to proclaim increases in customs duties to a level of 100 percent *ad valorem* on certain products of Japan in response. The tariff increases I am proclaiming shall be effective with respect to the covered products of Japan which are entered on and after April 17, 1987. I am taking this action to enforce U.S. rights under a trade agreement and to respond to the acts, policies and practices of the Government of Japan with respect to the Arrangement.

*Reasons for Determination*

In the Arrangement, the Government of Japan joined the Government of the United States in declaring its desire to enhance free trade in semiconductors on the basis of market principles and the competitive positions of the semiconductor industries in the two countries. The Government of Japan committed: (1) to impress upon Japanese semiconductor producers and users the need aggressively to take advantage of increased market access opportunities in Japan for foreign-based semiconductor firms; and (2) to provide further support for expanded sales of foreign-produced semiconductors in Japan through establishment of a sales assistance organization and promotion of stable long-term relationships between Japanese purchasers and foreign-based semiconductor producers. Finally, both Governments agreed that the expected improvement in access by foreign-based semiconductor producers should be gradual and steady over the period of the Arrangement.

Although the Government of Japan has taken some steps toward satisfying these obligations, they have been inadequate; foreign-based semiconductor producers still do not have access in that market equivalent to that enjoyed by Japanese firms.

In the Arrangement, the Government of Japan also committed: (1) to prevent "dumping" through monitoring of costs and export prices of semiconductor products exported from Japan; and (2) to encourage Japanese semiconductor producers to conform to antidumping principles. Again, the Government of Japan has taken steps toward satisfying these obligations, but they have been inadequate.

Consultations were held with the Government of Japan on numerous occasions between September 1986 and April 1987 in order to enforce U.S. rights under the Arrangement and to ensure that the Government of Japan undertake concerted efforts to fulfill its obligations under the Arrangement. To date these obligations have not been met.

On March 27, 1987, I announced my intention to raise customs duties to a level of 100 percent *ad valorem* on as much as $300 million in Japanese exports to the United States in response to the lack of implementation or enforcement by the Government of Japan of major provisions of the Arrangement. I also announced that the products against which retaliatory action would be taken would be selected after a comment period ending April 14, 1987. Finally, I announced that sanctions would remain in effect until there is firm and continuing evidence that indicates that the Government of Japan is fully implementing and enforcing the Arrangement.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
*Washington, April 17, 1987.*

[FR Doc. 87-9272
Filed 4-21-87; 11:13 am]
Billing code 3195-01-M

**Editorial note:** For the President's statement of April 17 on the duty increases, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 15).

federal register

Wednesday
April 22, 1987

Part IV

# Department of Health and Human Services

**Food and Drug Administration**

**Advisory Committee; Meeting**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**Advisory Committee; Meeting**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting

The following advisory committee meeting is announced:

*Oncologic Drugs Advisory Committee*

*Date, time, and place.* April 22, 9 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer treatment.

*Agenda—Open public hearing.* Interested persons asking to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* The committee will discuss the expanded therapy and testing of interleukin-2 (IL–2) and IL–2 with lymphokine-activated killer (LAK) cells in patients with advanced melanoma and renal cancer. Members of the National Cancer Institute (NCI) advisory councils and NCI staff will participate in the discussion. The joint recommendations by FDA/NCI for patient participation in therapy and testing under a modified Group C Protocol will be presented. The sites for treatment and testing will be the NCI clinical and comprehensive cancer centers.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFW–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Because of the need for immediate consideration of this urgent and important public health issue, the Commissioner is authorizing an exception to the requirement to publish this notice 15 days before the meeting, in accordance with 21 CFR 14.20(a).

Dated: April 16, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87–9261 Filed 4–21–87; 11:07 am]

BILLING CODE 4160–01–M

L
2
S S
7
P
2
87
M I

# Reader Aids

Federal Register

Vol. 52, No. 77

Wednesday, April 22, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357-10556.....1
10557-10724.....2
10725-10874.....3
10875-11018.....6
11019-11184.....7
11185-11452.....8
11453-11610.....9
11611-11806.....10
11807-11980.....13
11981-12128.....14
12129-12362.....15
12363-12510.....16
12511-12896.....17
12897-13068.....20
13069-13214.....21
13215-13424.....22

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11809
5629.....12126
5630.....12129
5631.....13412

**Executive Orders:**
12591.....13414
12592.....13417

**Administrative Orders:**
Memorandums:
April 17, 1987.....13419
Presidential Determinations:
No. 87-12 of March 17, 1987.....11807

**5 CFR**

213.....11185
294.....13215
591.....12131
841.....12131
870.....12133
1201.....10875

**Proposed Rules:**
353.....11657
2411.....11995

**7 CFR**

210.....11186
271.....11811, 13220
272.....11021, 11811
273.....11021, 11811
274.....11811
278.....11811, 13220
301.....10357, 12363
354.....10364, 12897
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615, 12511
910.....10729, 11615, 12511
917.....12512
925.....11616
927.....11616
932.....12134
946.....13069
948.....12513
989.....12515
1040.....11455
1097.....10729
1137.....10730
1434.....11617-11619
1468.....10731
1472.....10731
1475.....10725
1922.....11981
1944.....11981
1951.....11456, 11981
1200.....12898
1205.....12898
1207.....12898
1250.....12898

**Proposed Rules:**
1d.....13246
220.....12419
246.....12527
330.....12917
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
713.....13248
908.....12535
910.....12536
945.....10893
979.....12185
994.....10984, 12185
1011.....12186
1040.....12537
1046.....11475
1106.....12538
1210.....13086
1942.....12539
1955.....10577
1965.....10577

**8 CFR**

212.....11620
214.....13223
248.....11621
341.....13229

**Proposed Rules:**
245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024
151.....13070
166.....13230
318.....12517

**Proposed Rules:**
54.....12189
92.....10765
94.....12917
307.....12422
308.....12422
317.....10766, 11828
319.....10766, 11828

381.....11828

**10 CFR**

0.....11026
73.....12364
**Proposed Rules:**
2.....11475, 12192
30.....12921
40.....12921
50.....10771
70.....12921
430.....12342

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
611.....12135
614.....12143
701.....12365
708.....12370
741.....12365
**Proposed Rules:**
325.....11476, 11660
337.....11492
522.....12425
612.....11080
705.....12427

**13 CFR**

311.....11626

**14 CFR**

21.....11627
23.....11627
39.....10558, 10735, 10736, 11630–11639, 11985, 11986, 12517–12519, 13231–13233
71.....10559, 11028, 11032–11034, 11815, 12899, 13173
73.....10559, 10560, 11033, 11034
95.....10737
97.....12519
1215.....10880
1260.....12378, 13375
**Proposed Rules:**
29.....11997
39.....10581, 11081, 11663, 11664, 11997, 11998, 12544, 12545, 13249, 13251
71.....10582, 11082, 11828, 12286, 12935
75.....12000, 12286

**15 CFR**

370.....11640
371.....10741
376.....11640
399.....11457, 11640
**Proposed Rules:**
7.....11498
280.....11498
368.....10771

**16 CFR**

13.....12379, 12900
**Proposed Rules:**
13.....12430, 12546

**17 CFR**

200.....12147
203.....12147
241.....11458
270.....11187
**Proposed Rules:**
210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**

4.....13234
16.....11035
271.....10741
381.....10366
**Proposed Rules:**
4.....10898
11.....10898
375.....10898
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
148.....12149
172.....12149
177.....11216
**Proposed Rules:**
111.....10774
127.....12000

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
270.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217
**Proposed Rules:**
200.....10384
404.....13014
416.....13014
615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883, 12380
177.....11641
184.....10884
193.....10561, 10562
201.....12152
341.....12521
510.....10668, 11040, 11041, 11988, 12153
520.....10668, 11041, 11988
522.....10668, 11816
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642, 11988, 12153, 12521
561.....10562, 12153
573.....10887
1308.....11042, 12285
**Proposed Rules:**
133.....12556
182.....13086
184.....13086
186.....13086
310.....13107
312.....12431
357.....12114
561.....12193
1301.....11091

**22 CFR**

2a.....12154
212.....11817
224.....13071
**Proposed Rules:**
41.....12001
171.....12936

**23 CFR**

**Proposed Rules:**
650.....11092
655.....11502

**24 CFR**

15.....12159
201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644
**Proposed Rules:**
200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**

120.....11467
**Proposed Rules:**
40.....11503

**26 CFR**

1.....10368, 10741, 10742, 12161
5f.....10368
54.....10563
602.....10368, 10563, 10742, 12161
**Proposed Rules:**
1.....10774, 12194
54.....10583
602.....10583, 10774

**27 CFR**

9.....13079
**Proposed Rules:**
9.....11689

**28 CFR**

0.....11043
545.....10528
**Proposed Rules:**
549.....10531

**29 CFR**

33.....11600
2644.....10368
2676.....12163
**Proposed Rules:**
1601.....11503
1625.....10584
1910.....10586, 12116, 12559
1915.....12559
1917.....12559
1918.....12559
1919.....12559
1926.....12120, 12288, 12559
1928.....12559

**30 CFR**

250.....13235
914.....10369, 10373
946.....11044
**Proposed Rules:**
700.....11829
723.....11287
724.....11287
733.....10898
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
934.....12002
935.....11692
937.....11287
938.....12195, 13109
939.....11287
941.....11287
942.....11287
946.....13252
947.....11287

**31 CFR**

1.....11989
103.....11436, 12641
**Proposed Rules:**
1.....12003

**32 CFR**

154.....11219
701.....11051
706.....10374, 10748, 10749, 13237
1630.....12641
**Proposed Rules:**
1662.....11830

**33 CFR**

3.....13082
60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646
165.....12380
**Proposed Rules:**
100.....10593, 10594, 10905, 10906, 11693, 13011
117.....11695, 12431

**34 CFR**

628.....11256
639.....12508
**Proposed Rules:**
206.....11448
230.....13212
650.....12360

**36 CFR**

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564

**Proposed Rules:**

1.....12037
2.....12037
9.....10866

**37 CFR**

**Proposed Rules:**

307.....11096

**38 CFR**

1.....10888
17.....11259
21.....13238
36.....12381

**Proposed Rules:**

17.....10907
21.....13110

**39 CFR**

10.....10375
111.....10749
224.....12900
233.....12900
273.....12900
962.....12900

**Proposed Rules:**

111.....12432, 12559
265.....12434
447.....12196, 13011

**40 CFR**

52.....10751, 11259, 11647, 12164, 12522, 12523, 12908
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261, 12165–12167, 12525, 13173, 13239
261.....11819
266.....11819
271.....10568, 11263
300.....13378
355.....13378
721.....11822
761.....10688
799.....10377, 10752

**Proposed Rules:**

52.....10596, 11287, 11288, 11696, 12940
65.....12561, 12563
123.....12039
141.....10972, 12876
142.....10972
143.....10972
180.....11292, 11293, 12198
261.....11513
264.....12566
265.....12566
280.....12662, 12786, 13375
281.....12853
300.....11513
700.....12940
721.....12285

**41 CFR**

101–20.....11263
101–28.....11275
101–41.....12168
201–32.....10379, 13173

**42 CFR**

7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649

**Proposed Rules:**

405.....11517

**43 CFR**

426.....11938
2090.....12171, 13084

**Proposed Rules:**

11.....12886

**44 CFR**

64.....10753, 12178

**Proposed Rules:**

5.....10385
6.....10385
67.....11702

**45 CFR**

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870

**Proposed Rules:**

503.....11712, 12040

**46 CFR**

401.....11468

**Proposed Rules:**

Chapter I.....12439
154.....10598
276.....12199
382.....11518
502.....10912, 12208, 12212
503.....12212
586.....11832

**47 CFR**

0.....12382
1.....11652, 13240
2.....10568
15.....13241
22.....10571
25.....12911
73.....10381, 10382, 10568, 10757, 11471–11473, 11653, 11825, 12180, 12181, 12912, 13241–13243
74.....10568, 11474
78.....10568
97.....13243

**Proposed Rules:**

1.....11519
21.....11519, 11838
25.....12944
73.....11519–11521, 11837, 11840–11842, 12214–12216, 12285, 12945, 13253
74.....11519
90.....10389
94.....11519, 11838

**48 CFR**

7.....11074
203.....12383
205.....12386
215.....11276
216.....12387
217.....11076, 12387
225.....12389
227.....12390
243.....12387
245.....12389
252.....11076, 11276, 12383, 12386, 12389, 12390
522.....12182
542.....11825
552.....12182
5315.....12414

**Proposed Rules:**

225.....12440
509.....10913

**49 CFR**

Ch. IX.....12916
107.....13034
171.....13034
172.....13034
173.....13034
174.....13034
176.....13034
177.....13034
178.....13034
179.....13034
219.....10575
604.....11916
1002.....13244
1003.....11277
1043.....11277
1052.....11991
1084.....11277
1207.....10382
1244.....12415
1249.....10382

**Proposed Rules:**

Ch. X.....11295
571.....10775
701.....13066
1312.....10913
1320.....11295

**50 CFR**

17.....10890, 11162, 11277
301.....10759
611.....10761
642.....10762
652.....10763
663.....11473
672.....10761, 11991, 12183, 12916
675.....10761, 11992, 13375
685.....12641

**Proposed Rules:**

17.....13254
222.....12040
227.....12040
640.....10780, 13257
642.....11713
651.....10781
652.....12575

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List April 13, 1987**

BEST COPY AVAILABLE

L
2
S S
7
P
2
87
M I

# Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected),* the *Federal Register Index,* or both.

**LSA • List of CFR Sections Affected**

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.

$24.00 per year

**Federal Register Index**

The Index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

$22.00 per year

*A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.*

*Note to FR Subscribers:*
*FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.*

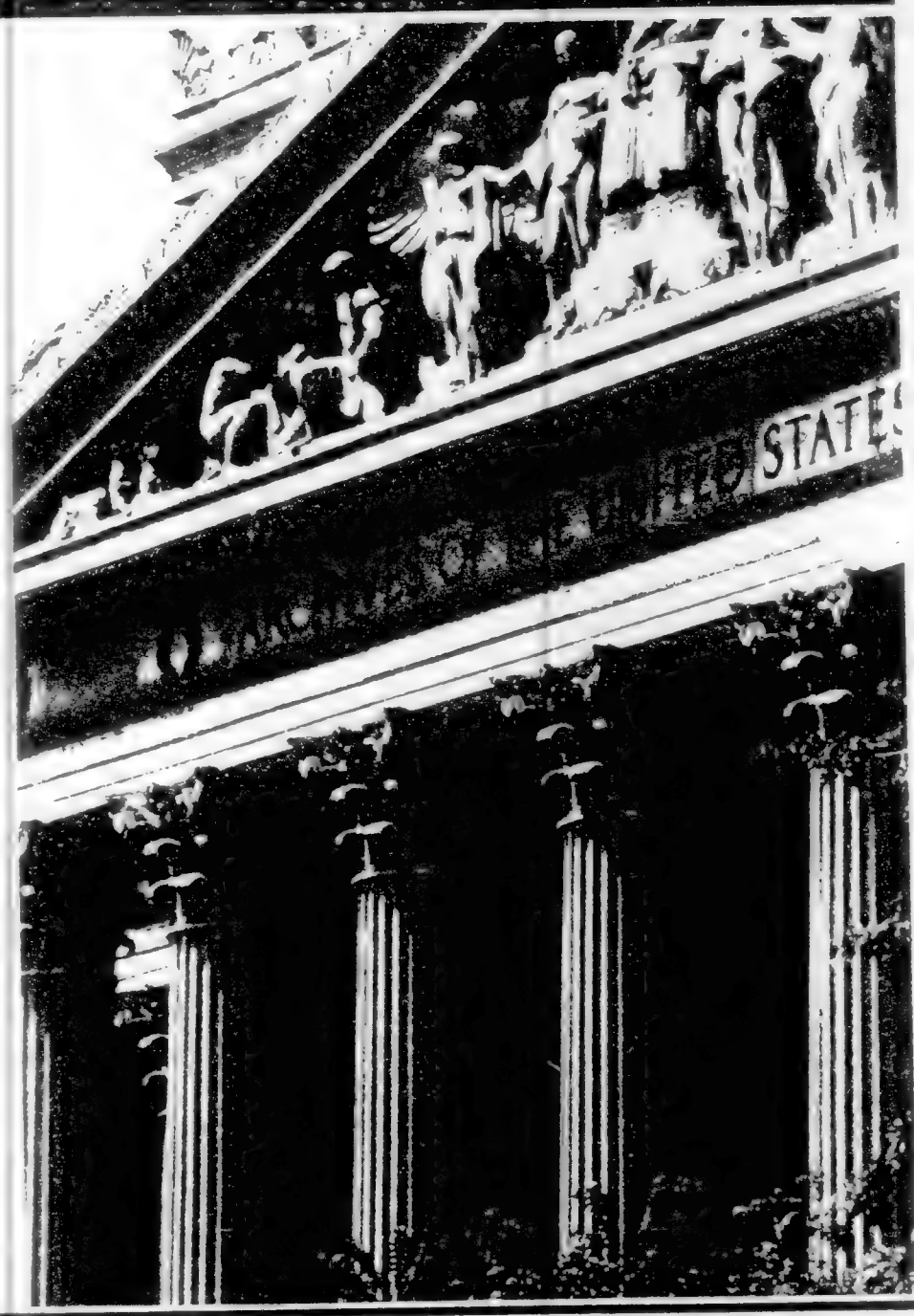


## Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No _____

MasterCard and VISA accepted.

**Credit Card Orders Only**

Total charges $_____

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone Nos.

Area Code Home ☐☐☐ ☐☐☐☐☐☐☐ Area Code Office ☐☐☐ ☐☐☐☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please enter the subscription(s) I have indicated

___ **LSA** List of CFR Sections Affected $24.00 a year domestic, $30.00 foreign

___ **Federal Register Index** $22.00 a year domestic; $27.50 foreign

**PLEASE PRINT OR TYPE**

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

(Rev 10-1-85)

L
2
S S
8
P
3
87
M I

4-23-87
Vol. 52 No. 78

# Federal Register

Thursday
April 23, 1987

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington DC 20402

OFFICIAL BUSINESS
Penalty for private use $300

**********5-DIGIT 48106

A FR SERIA300S NOV 87 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

L
2
S S
8
P
3
87
M I

4-23-87
Vol. 52 No. 78
Pages 13425-13624

# Federal Register

Thursday
April 23, 1987

BEST COPY AVAILABLE

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

# Contents

Federal Register

Vol. 52, No. 78

Thursday, April 23, 1987

**Administrative Conference of the United States**
PROPOSED RULES
Recommendations:
Federal agency hiring of private attorneys, 13448

**Agricultural Marketing Service**
RULES
Almonds grown in California, 13427
PROPOSED RULES
Grapes grown in California, 13457

**Agriculture Department**
*See* Agricultural Marketing Service; Food and Nutrition Service; Soil Conservation Service

**Antitrust Division**
NOTICES
Competitive impact statements and proposed consent judgments:
Hughes Tool Co. et al., 13533

**Army Department**
*See also* Engineers Corps
NOTICES
Meetings:
Science Board, 13496

**Centers for Disease Control**
NOTICES
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—
Conference of Mayors sponsored AIDS information exchange, etc., 13524
Public health and primary care physicians preparation for disease prevention and health promotion, etc., 13524

**Coast Guard**
RULES
Lifesaving equipment:
Immersion suits, 13445
PROPOSED RULES
Lifesaving equipment:
Immersion suits, 13479

**Commerce Department**
*See* Foreign-Trade Zones Board; International Trade Administration

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Sri Lanka, 13495
Export visa requirements; certification, etc.:
Korea, 13495

**Customs Service**
PROPOSED RULES
Organization and functions; field organization, ports of entry, etc.:
Port Huron, MI, 13473

**Defense Department**
*See also* Army Department; Engineers Corps
RULES
Acquisition regulations:
Contractor records; availability; correction, 13447
NOTICES
Meetings:
Electron Devices Advisory Group, 13496

**Drug Enforcement Administration**
RULES
Prescriptions:
Schedules III and IV; prescriptions refilled
Correction, 13430
NOTICES
*Applications, hearings, determinations, etc.:*
Knoll Pharmaceuticals, 13546
Marion Laboratories, Inc., 13546

**Economic Regulatory Administration**
NOTICES
Consent orders:
Vanderbilt Energy Corp., 13499

**Education Department**
PROPOSED RULES
Educational research and improvement:
Drug-free schools and communities program; training and demonstration grants, etc., 13608
NOTICES
Grants; availability, etc.:
Bilingual education—
State educational agency program, 13490
Drug-free schools and communities program, etc., 13614 (2 documents)
Meetings:
Education Statistics Advisory Council, 13498

**Energy Department**
*See* Economic Regulatory Administration; Federal Energy Regulatory Commission

**Engineers Corps**
NOTICES
Environmental statements; availability, etc.:
Oakland Inner Harbor, CA, 13497
Tony's and Marine Creeks, Fort Worth, TX, 13497

**Environmental Protection Agency**
PROPOSED RULES
Air pollutants, hazardous; national emmission standards:
Coke oven emissions from wet-coal charged by-product coke oven batteries, 13586
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one, 13478

**Executive Office of the President**
*See* Presidential Documents; Science and Technology Policy Office

**Farm Credit Administration**
RULES
Farm credit system:
Regulatory accounting practices—
Technical amendments, 13428

**Federal Communications Commission**
RULES
Common carrier services:
Separations manual; treatment of a host/remote local deal switching complex; interpretation letter, 13445
Radio stations; table of assignments:
Florida, 13445
Louisiana, 13446
Texas, 13446
Television stations; table of assignments:
New York, 13446
PROPOSED RULES
Common carrier services:
Aeronautical services via International Maritime Satellite Organization, 13481
Radio services, special:
Amateur service and private land mobile services—
Frequency allocations, 13481
NOTICES
Agency information collection activities under OMB review, 13517
*Applications, hearings, determinations, etc.:*
Bishop, Thaddeus, et al., 13517
(2 documents)
Dunn, Vera L., et al., 13518
King, Ronald W., et al., 13518
Lookingglass Prairie Limited Partnership et al., 13518
Saltzman, Charles J., et al., 13519
Top of the Hill Broadcasters, a California Limited Partnership, et al., 13519
Word of Life Ministries, Inc., et al., 13519
Zawila, William, et al., 13520

**Federal Deposit Insurance Corporation**
NOTICES
Meetings; Sunshine Act, 13562

**Federal Election Commission**
NOTICES
Meetings; Sunshine Act, 13562

**Federal Energy Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Black River Basin, NY, et al., 13503
Natural gas certificate filings:
Columbia Gas Transmission Corp. et al., 13499
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitons to amend, 13515
*Applications, hearings, determinations, etc.:*
Alabama-Tennessee Natural Gas Co., 13505
Algonquin Gas Transmission Co., 13505
American Royalty Producing Co., 13505, 13506
(2 documents)
Anadarko Petroleum Corp., 13506
ANR Pipeline Co. et al., 13507
(2 documents)
ARCO Oil & Gas Co., 13508
Black, Aubrey C., et al., 13508
DeNovo Oil & Gas, Inc., et al., 13509
Kaiser-Francis Oil Co., 13509
Premier Resources, Ltd., et al., 13510
Samedan Oil Co., 13510
Samson Resources Co., 13511
Texaco Gas Marketing Inc., 13511
Texaco Inc. et al., 13511
Transcontinental Gas Pipe Line Corp., 13512
TXG Gas Marketing Co., 13512
United Gas Pipe Line Co., 13513
Vesta Energy Co., 13513
Walter Oil & Gas Corp., 13513
WTG Exploration, Inc., 13514

**Federal Highway Administration**
NOTICES
Environmental statements; availability, etc.:
Raleigh and Wake County, NC, 13558

**Federal Maritime Commission**
NOTICES
Investigations, hearings, petitions, etc.:
Taiwan, Korea, and China; shipping in U.S./Far East trades, 13520
Organization, functions, and authority delegations:
Director, Domestic Regulations Bureau, 13521

**Federal Reserve System**
PROPOSED RULES
Credit by brokers and dealers (Regulation T):
Mortgage related securities, 13458
Freedom of Information Act; implementation, 13458
NOTICES
Federal Open Market Committee:
Domestic policy directives, 13523
*Applications, hearings, determinations, etc.:*
Amsterdam-Rotterdam Bank N.V., 13521
Bank of New York Co., Inc., 13523
Briscoe, Lenard C., et al., 13522
Keycorp et al., 13522

**Fish and Wildlife Service**
PROPOSED RULES
Hunting and sport fishing:
Open areas list; additions, 13484

**Food and Nutrition Service**
PROPOSED RULES
Food stamp program:
Application and standardized benefit project, 13450

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
Virginia, 13489

**Health and Human Services Department**
*See* Centers for Disease Control; Health Care Financing Administration

**Health Care Financing Administration**
NOTICES
Privacy Act; systems of records, 13525

**Housing and Urban Development Department**
NOTICES
Real estate settlement procedures; special information booklet and settlement statement, 13566

**Interior Department**
*See also* Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 13527

**Internal Revenue Service**
RULES
Employment taxes and collection of income taxes at source:
Backup withholding relating to notified payee underreporting, 13430
NOTICES
Organization, functions, and authority delegations:
District Directors et al., 13560

**International Trade Administration**
NOTICES
Antidumping:
Fresh cut flowers from—
Kenya, 13490
Mexico, 13491
Countervailing duties:
Fresh cut flowers from—
Peru, 13491
Export trade certificates of review, 13492, 13493 (2 documents)
Meetings:
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee, 13494
Short supply determinations:
Steel strip, 13494

**International Trade Commission**
NOTICES
Import investigations:
Bicycle tires and tubes from Taiwan, 13532

**Interstate Commerce Commission**
PROPOSED RULES
Rail carriers:
Cost ratio for recyclables; compliance procedures, 13482
NOTICES
Railroad operation, acquisition, construction, etc.:
Austin, TX, 13532
Railroad services abandonment:
Missouri Pacific Railroad Co., 13533

**Justice Department**
*See* Antitrust Division; Drug Enforcement Administration; Prisons Bureau

**Labor Department**
RULES
Federal claims collection:
Salary offset
Correction, 13563

**Land Management Bureau**
RULES
Land resource management:
Special laws and rules; segregation and opening of public lands procedures
Correction, 13563
NOTICES
Environmental concern; designation of critical areas:
Cassia Resource Area, ID, et al., 13527
Meetings:
Phoenix District Advisory Council, 13528
Rock Springs District Advisory Board, 13528
Realty actions; sales, leases, etc.:
Michigan, 13528
Oregon, 13529
Survey plat filings:
Colorado, 13530
Montana, 13530
Withdrawal and reservation of lands:
Arizona, 13530

**National Highway Traffic Safety Administration**
NOTICES
Emergency medical services; information resource managers; conference, 13558

**National Institute for Occupational Safety and Health**
*See* Centers for Disease Control

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Chem-Nuclear Systems, Inc., 13546
*Applications, hearings, determinations, etc.:*
A-1 Inspection, Inc., 13549
Duke Power Co., 13550
Illinois Power Co. et al., 13555

**Pension Benefit Guaranty Corporation**
RULES
Freedom of Information Act; implementation
Uniform fee schedule and administrative guidelines, 13437
PROPOSED RULES
Freedom of Information Act; implementation
Uniform fee schedule and administrative guidelines, 13474

**Personnel Management Office**
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 13556

**Postal Rate Commission**
RULES
Freedom of Information Act; implementation
Uniform fee schedule and administrative guidelines, 13443

**Postal Service**
RULES
International Mail Manual:
Surface Air Lift Service to—
57 additional countries and revised rate schedules, 13442

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
Cancer Control Month (Proc. 5633), 13620
Law Day, U.S.A. (Proc. 5634), 13622
Minority Cancer Awareness Week, National (Proc. 5632), 13618
EXECUTIVE ORDERS
Committees; establishment, renewals, terminations, etc.:
Arts and the Humanities, President's Committee (EO 12593), 13624
ADMINISTRATIVE ORDERS
Nicaraguan emergency; continuation (Notice of April 21, 1987), 13425

**Prisons Bureau**
NOTICES
Discipline Hearing Officer; pilot project, 13546

**Public Health Service**
*See* Centers for Disease Control

**Science and Technology Policy Office**
NOTICES
Meetings:
White House Science Council, 13556

**Securities and Exchange Commission**
NOTICES
Meetings; Sunshine Act, 13562

**Soil Conservation Service**
NOTICES
Environmental statements; availability, etc.:
Bainbridge Township, IL, 13488
Harding Park, OH, 13488
Lower Caney Bayou Watershed, AR, 13489
Power Dam Road, OH, 13488

**State Department**
NOTICES
Committees; establishment, renewals, terminations, etc.:
United States Missions in the Soviet Union Assessment Review Panel; meeting, 13557
Meetings:
Oceans and International Environmental and Scientific Affairs Advisory Committee, 13557

**Surface Mining Reclamation and Enforcement Office**
NOTICES
Agency information collection activities under OMB review, 13531

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See also* Coast Guard; Federal Highway Administration; National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Amerijet International, Inc., 13558

**Treasury Department**
*See also* Customs Service; Internal Revenue Service
NOTICES
Notes, Treasury:
X-1989 series, 13559

**Veterans Administration**
RULES
Medical benefits:
Adult day health care, 13440
NOTICES
Agency information collection activities under OMB review, 13560

---

**Separate Parts In This Issue**

**Part II**
Department of Housing and Urban Development, 13566

**Part III**
Environmental Protection Agency, 13586

**Part IV**
Department of Education, 13608

**Part V**
The President, 13618

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**1 CFR**
Proposed Rules:
Ch. III..... 13448

**3 CFR**
Proclamations:
5632..... 13618
5633..... 13620
5634..... 13622
Executive Orders:
12367 (Amended by EO 12593)..... 13624
12513 (*See* Notice of April 21, 1987)..... 13425
12593..... 13624
Administrative Orders:
Notices:
April 21, 1987..... 13425

**7 CFR**
981..... 13427
Proposed Rules:
273..... 13450
925..... 13457

**12 CFR**
624..... 13428
Proposed Rules:
220..... 13458
261..... 13458

**19 CFR**
Proposed Rules:
101..... 13473

**21 CFR**
1306..... 13430

**25 CFR**
35a..... 13430
602..... 13430

**29 CFR**
20..... 13563
2603..... 13437
Proposed Rules:
2603..... 13474

**34 CFR**
Proposed Rules:
764..... 13608
765..... 13608
766..... 13608

**38 CFR**
17..... 13440

**39 CFR**
10..... 13442
3001..... 13443

**40 CFR**
Proposed Rules:
61..... 13586
180..... 13478

**43 CFR**
2090..... 13563

**46 CFR**
160..... 13445
Proposed Rules:
160..... 13479

**47 CFR**
67..... 13445
73 (4 documents)..... 13445, 13446
Proposed Rules:
Ch. I..... 13481
2..... 13481

**49 CFR**
215..... 13447
252..... 13447

**49 CFR**
Proposed Rules:
1135..... 13482
1145..... 13482

**50 CFR**
Proposed Rules:
32..... 13484
33..... 13484

L
2
S
8
P
3
87
MI

Federal Register
Vol. 52. No. 78
Thursday, April 23, 1987

# Presidential Documents

Title 3—

## The President

**Notice of April 21, 1987**

## Continuation of Nicaraguan Emergency

On May 1, 1985, by Executive Order No. 12513, I declared a national emergency to deal with the threat to the national security and foreign policy of the United States constituted by the situation in Nicaragua. On April 22, 1986, I announced the continuation of that emergency beyond May 1, 1986. Because the actions and policies of the Government of Nicaragua continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 1, 1985, and subsequently extended, must continue in effect beyond May 1, 1987. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Nicaragua. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
*April 21, 1987.*

[FR Doc. 87-9360
Filed 4-21-87; 4:54 pm]
Billing code 3195-01-M

**Editorial note:** For the text of the President's message to the Congress, dated Apr. 21, on the continuation of the Nicaraguan emergency, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 16).

L
2
S
8
P
3
87
M I

# Rules and Regulations

Federal Register
Vol. 52, No. 78
Thursday, April 23, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 981**

## Almonds Grown in California; Administrative Rules and Regulations Governing Crediting for Marketing Promotion Expenses

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule changes the administrative rules and regulations established under the Federal marketing order for California almonds to allow handlers of California almonds to receive credit against their annual advertising assessments for certain costs directly related to their own mail order promotions. Such credit will be limited to $25,000 per handler per crop year. This rule gives handlers a new opportunity to take advantage of crediting.

**EFFECTIVE DATE:** April 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administrative Branch, F&V, AMS, USDA, Washington, DC 20250 telephone: (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing Orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 102 handlers of almonds under the marketing order for California almonds will be subject to regulation during the course of the current season. There are about 7,500 almond producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The average annual crop value for almond producers for the 1983–84 through 1985–86 seasons was $328,199,333. The average annual gross revenues for the last three years was approximately $43,760 for producers. The majority of handlers and producers of almonds may be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. This rule will provide a new method for handlers of California almonds to receive credit against their annual advertising assessments for certain expenses incurred in conjunction with their own mail order promotions. The rule will allow handlers additional flexibility in their advertising expenditures in order to promote the sale of California almonds which will benefit growers and handlers. It is the Agency's view that participating handlers may avail themselves of this added flexibility with only minimal recordkeeping requirements involving the completion of ABC Form 31 and submission of appropriate proofs of performance. These requirements would not involve significant costs.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant impact on a substantial number of small entities.

Information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 (OMB Control No. 0581–0071).

Notice of this action was published in the **Federal Register** on January 16, 1987 (52 FR 1918). Written comments were invited from interested persons until February 17, 1987. No comments were received.

This action revises § 981.441 of Subpart—Administrative Rules and Regulations issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based on a unanimous recommendation of the Almond Board of California (ABC), which works with USDA in administering the order, and other information.

Section 981.41(c) of the order provides that the ABC, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against their annual advertising assessments. That paragraph also provides that a handler shall not receive credit for allowable expenditures that would exceed that portion of such handlers assessment obligation which is designated for marketing promotion, including paid advertising. Section 981.41(e) provides that before crediting is undertaken, the Secretary, after recommendation by the ABC, shall prescribe appropriate rules and regulations as are necessary to effectively regulate such activity.

Section 981.441 currently prescribes rules and regulations to regulate the crediting of paid advertising expenditures and two types of other marketing promotion expenditures. This action will revise that section to add authority for the crediting of certain marketing promotion expenditures related to mail order promotions. These new creditable expenditures will be the cost of purchasing mailing lists to be used to conduct mail order promotions and the cost of envelopes and postage to mail printed promotional materials. The

amount of credit a handler can receive for mail order promotion will be limited to $25,000 per crop year. This rule will give handlers a new opportunity to take advantage of crediting.

The ABC has not generally recommended that credit be allowed for marketing promotion expenditures other than paid advertising because of the difficulty of verifying such expenditures. However, the new creditable expenses are verifiable through invoices and postal receipts. Procedures for filing claims for credit are included in the rule. These procedures are similar to those currently in effect for paid media advertising.

After consideration of all relevant matter presented, including the Board's recommendation and other available information, it is further found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The regulation provides handlers with additional flexibility in crediting advertising and promotion expenditures, and handlers should have the opportunity to utilize this increased flexibility as soon as possible; (2) handlers are aware of this action and need no additional time to comply; and (3) no useful purpose would be served by delaying the effective date of this action.

**List of Subjects in 7 CFR Part 981**

Agricultural Marketing Service, Marketing agreements and orders, Almonds, California.

For reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

### Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by adding paragraph (d)(1)(iii) as follows:

**§ 981.441 Crediting for marketing promotion including paid advertising.**

* * * * *

(d) * * *

(1) * * *

(iii) For costs directly related to mail order promotion subject to the following conditions:

(A) Credit shall only be granted for the following expenditures:

(*1*) For the purchase of mailing lists to conduct mail order promotions.

(*2*) For the cost of envelopes and postage to mail promotional materials.

(B) Credit for mail order promotion shall be limited to a total of $25,000 per handler per crop year.

(C) Handlers must file claims with the Board in order to receive credit for mail order promotion expenditures. Except as provided in paragraph (b) of this section, no credit shall be granted unless a preliminary claim is filed on or before July 15 of the succeeding crop year and a final claim is filed on or before October 15 of the succeeding crop year. Each preliminary claim must be filed on an ABC Form 31 (claim for advertising credit), stating that proof of performance will be submitted as expeditiously as possible, but no later than October 15. If this preliminary claim is not filed on or before July 15, there will be no consideration of the claim under any circumstances. Each final claim must be submitted on ABC Form 31 and accompanied by appropriate proofs of performance such as invoices or postal receipts.

Dated: April 17, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 87–9213 Filed 4–22–87; 8:45 am]

BILLING CODE 3410-02-M

## FARM CREDIT ADMINISTRATION

## 12 CFR Part 624

## Farm Credit System Regulatory Accounting Practices; Temporary Regulations

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA) publishes amendments to its temporary regulations which were published on December 24, 1986 (51 FR 46597) and amended on January 26, 1987 (52 FR 2670), relating to the utilization of regulatory accounting practices (RAP) by Farm Credit System (System) institutions. These amendments establish the circumstances under which System Federal land bank associations (FLBAs) are authorized to use RAP to adjust the value of their stock for regulatory purposes to reflect the use of RAP by the district Federal land bank (FLB).

**EFFECTIVE DATE:** These amendments are effective on December 24, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Robert E. Donnelly, Office of Analysis and Supervision, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4450

Or

Gary L. Norton, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020

**SUPPLEMENTARY INFORMATION:** The FCA Board adopted temporary rgulations implementing the Farm Credit Act Amendments of 1986 (1986 Amendments), (Pub. L. 99–509), relating to the utilization of RAP by System institutions, and the reporting and disclosure requirements associated therewith (51 FR 4697). The FCA Board published certain technical amendments to the regulations on January 26, 1987 (52 FR 2670). The public was given until February 24, 1987 to submit comments on the regulations. A public hearing on the regulations was held at FCA offices in McLean, Virginia on February 27, 1987. The FCA Board is in the process of reviewing the comments on the regulations and the transcript of the public hearing, and will act on and publish responses to those comments in the near future. However, one of the comments raised an issue on the use of RAP by FLBAs. the FCA Board determined that the issue required separate and expedited attention. The matter was considered by the FCA Board at its special meeting on April 17, 1987, and is the subject of this publication.

The temporary regulations authorize System banks and associations to use RAP to amortize a portion of their provisions for loan losses and banks to amortize a portion of their interest costs over a period not to exceed 20 years, provided the conditions set forth in the regulations are met.

The Farm Credit Corporation of America (FCCA), on behalf of the 37 banks of the System, commented that the regulations create an operational problem which arises from the appropriate accounting treatment of an FLBA's investment in an FLB on books and records of the FLBA under generally accepted accounting principles (GAAP). FLBAs do not lend to borrowers, but rather act as agents for district FLBs in originating and servicing loans in the FLBA's territory. The debt issued to finance the loan is issued by the FLB, not the FLBA. Therefore, FLBAs generally do not carry a loan loss reserve or any interst expenses on their books. However, in order to borrow from the FLBA a borrower must purchase stock in the association, which, in turn, purchases stock in the

FLB. The value of the borrower's stock in the FLBA is directly related to the value of the FLBA's stock in the FLB (i.e., impairment of the FLBA's stock caused impairment of the borrowers stock.) The FLB can cure its stock impairment by the use of RAP. However, because FLBAs do not have loan loss reserves or debt interest costs to defer and amortize, they are not able to utilize RAP at the FLBA level to correct impairment of stock and participation certificates held by borrowers. The FCA Board agrees with the comments raised by the FCCA and determined that the regulations should be amended promptly to address this issue in order to avoid confusion and uncertainty among FLBA boards of directors regarding their authorities. The FCCA acknowledged that the temporary regulations conform with the expressed provisions of the 1986 Amendments, but asserted their belief that the FCA had the authority under the 1986 Amemdments to permit a passthrough from FLBs to FLBAs of RAP treatment and that such action would be consistent with the intent of Congress in enacting the legislation.

Unlike all other System institutions, FLBAs are highly dependent on the district FLBs for financial viability. FLBAs have limited capacity to generate revenues from sources other than their district FLBs. As a result of continued losses by several FLBs, FLBAs in those districts have experienced losses that have resulted in impairment of their borrower-held stock. Due to the passthrough of the purchase of stock and participation certificates between FLBs and FLBAs (i.e., for each share purchased by a borrower from a FLBA, a corresponding share of equal value must be bought by the FLBA in its district FLB), impairment of the FLB will usually result in an impairment of the stock and participation certificates of FLBAs in the district.

Because the regulations did not give consideration to the unique relationship between FLBs and their FLBAs, the FCA Board is amending the regulations to allow the FLBAs to use RAP to reflect the use of RAP by FLBs. Accordingly, § 624.104 is redesignated as section 624.105 and a new § 624.104 is added that authorizes FLBAs to utilize RAP in determining the value of the associations' investments in their district FLBs.

The amendments to the regulations authorize a FLBA to use RAP for purposes of maintaining the value of its stock and participation certificates at par or face value. In conformity with all other institutions, the regulations limit the use of RAP by a FLBA to only such amounts as are necessary to cure an impairment of its stock and participation certificates for regulatory purposes. The use of RAP does not change the GAAP value of those FLBA equities. As a prerequisite to the use of RAP, FLBs are required to enter into agreements with the Farm Credit System Capital Corporation (Capital Corporation) and to request direct financial assistance from the Capital Corporation. Since any agreements entered into by the FLBs with the Capital Corporation (with or without Capital Corporation assistance to the FLBs) will have a direct impact on the FLBAs, the amendments do not require FLBAs to undertake such actions themselves.

The FCA Board also adopted an amendment to section 624.110 to provide that the accounting, reporting, and disclosure requirements contained in Subpart B apply to all institutions, including FLBAs. Boards of directors of FLBAs that elect to use RAP must adopt resolutions to that effect. A board's resolution must provide that the FLBA's stock and participation certificates (equities) are to be issued and retired on either a RAP or GAAP basis. The FCA believes the related policy and business decisions have the same accounting, disclosure, and legal implications to the FLBAs as they have to other System institutions. If an FLBA board elects to retire equities on a RAP basis, the board of directors must obtain a legal opinion from independent counsel stating that the policies and procedures to be followed conform with the requirements of all applicable laws. This same requirement applies to all institutions that elect to retire stock on a RAP basis. The Board made clear that two or more institutions can jointly request a single legal opinion that is prepared in a manner that will be appropriate for use by the boards of directors of each of the requesting institutions.

The amendments are issued as amendments to the regulations published on December 24, 1986, and have the same effective date as those regulations. For the same reasons discussed in connection with the promulgation of the regulations in December 1986, the FCA Board determined, based on the Board's finding, for good cause and in accordance with 5 U.S.C. 553 (b) and (d), that prior public comment and a delay in the effective date are impracticable, unnecessary, and contrary to the public interest. For the same reasons, the FCA Board determined, in accordance with 12 U.S.C. 2252(b), that an emergency existed that authorized publication of these amendments to the regulations without prior review by the appropriate congressional committees.

**List of Subjects in 12 CFR Part 624**

Accounting, Agricultural, Banks, Banking, Credit, Rural areas.

As stated in the preamble, Chapter VI, Title 12, Code of Federal Regulations is amended as follows:

1. The title of Part 624 is revised to read as follows:

## PART 624—REGULATORY ACCOUNTING PRACTICES—TEMPORARY REGULATIONS

2. The authority citation for Part 624 is revised to read as follows:

**Authority:** 12 U.S.C. 2001, 2014, 2073, 2093, 2122, 2159, 2205, 2254, Pub. L. 99–509.

### Subpart A—Deferral and Amortization of Premiums, Interest Expenses and Provisions for Loan Losses

3. Subpart A is amended by redesignating § 624.104 as § 624.105 and by adding a new § 624.104 to read as follows:

**§ 624.104 Federal land bank association passthrough of RAP.**

Each Federal land bank association in a district in which the Federal land bank, in accordance with § 624.105, is retiring stock and participation certificates at par or face amount as determined in accordance with RAP may utilize RAP to value of the association's investment in the Federal land bank as is necessary to maintain a book value of the association's stock and participation certificates equal to par or face amount determined in accordance with RAP.

### Subpart B—Accounting and Disclosure

4. Section 624.110 is revised to read as follows:

**§ 624.110 General.**

System institutions that adopt and use RAP in accordance with the provisions of Subpart A of this part shall employ accounting practices, make reports to the Farm Credit Administration, and provide disclosure to stockholders and loan applicants in accordance with the provisions of Subpart B of this part.

5. Section 624.113 is amended by revising paragraphs (a), (b) introductory text and (b)(1) to read as follows:

**§ 624.113 Financial reporting and disclosure.**

(a) Each institution that uses RAP in accordance with the provisions of this part shall prepare and issue its financial statements to stockholders in

accordance with Part 620 of this chapter. In addition, each such institution shall disclose clearly in footnotes to its financial statements the regulatory accounting practices adopted by the institution and shall reconcile the differences between the application of GAAP and RAP.

(b) Each Federal land bank, bank for cooperatives, and the Central Bank for Cooperatives that is deferring its provision for loan losses in accordance with §§ 624.103 and 624.111(b), each production credit association that is deferring its provision for loan losses in accordance with § 624.103, and each Federal land bank association that is using RAP to passthrough the use of RAP by the district Federal land bank in accordance with § 624.104 shall comply with the requirements of this paragraph.

(1) Not later than 30 days after the institution has adopted and used RAP the institution shall provide each stockholder and holder of participation certificates with a clearly written notification of the following matters:

* * * * *

William A. Sanders, Jr.,

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87-9179 Filed 4-22-87; 8:45 am]

BILLING CODE 6705-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1306

### Refilling of Prescription for Controlled Substances in Schedules III and IV

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Final rule; correction.

**SUMMARY:** DEA is correcting the notice regarding the refilling of prescriptions for controlled substances in Schedules III and IV which appeared in the Federal Register on January 16, 1987 (52 FR 1903–1904), and again on February 5, 1987 (52 FR 3604–3606) following OMB review and approval of the document.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control at (202) 633–1216.

**SUPPLEMENTARY INFORMATION:** DEA has amended regulations for the refilling of prescriptions for controlled substances in Schedules III and IV to reduce the paperwork required of dispensing pharmacists, and to establish a single source document from which to monitor refill activity, thereby more easily detecting abuse and/or frequent refilling. The notice did not acknowledge the favorable comments made by the American Pharmaceutical Association.

The following correction is made in the Final Rule published on January 16, 1987 (52 FR 1903–1904) and on February 5, 1987 (52 FR 3604–3606):

Under *Supplementary Information* paragraph 2 reads: "Eleven comments were received in response to the notice of proposed rulemaking." This is revised to read as follows:

"Twelve comments were received in response to the notice of proposed rulemaking. A letter from the American Pharmaceutical Association dated August 4, 1986 conveys the enthusiastic and strong support for the proposed rule. They concur in DEA's view that the revision will reduce paperwork required of dispensing pharmacists. Furthermore, it is APhA's view that DEA and regulatory and enforcement agencies at the state and local levels will benefit even more from the proposed refilling rule, since all activity related to an individual patient's use of the drug will be available for examination at a single location on the original prescription."

Dated: April 17, 1987.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-9196 Filed 4-22-87; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 35a and 602

[T.D. 8137]

### Employment Taxes and Collection of Income Tax at Source; Backup Withholding Relating to Notified Payee Underreporting

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to notified payee underreporting of interest or dividend payments. Changes to the applicable tax law were made by the Interest and Dividend Tax Compliance Act of 1983. These regulations affect payors, brokers, and payees of reportable interest, original issue discount, dividend, and patronage dividend payments and provide them with guidance necessary to comply with the law. These regulations explain when a payor of these payments must begin backup withholding, how to inform payees that they are subject to backup withholding, how payees can prevent or stop backup withholding resulting from payee underreporting, and when a payor must stop withholding.

**EFFECTIVE DATE:** April 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Laura Ann M. Lauritzen of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:LR:T) (LR–160–86) (202–566–3829, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains temporary regulations concerning the underreporting of interest, original issue discount, dividends, or patronage dividends by payees and the requirement on payors to impose backup withholding on these payments. Section 3406 was added to the Internal Revenue Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 371).

On October 4, 1983, the Federal Register published Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR Part 35a) under sections 3406 and 6676 of the Internal Revenue Code of 1954 (26 CFR 35a.9999–1; T.D. 7916, 48 FR 45362, as amended on November 25, 1983, by T.D. 7922, 48 FR 53111). Additional temporary regulations were published in the Federal Register on November 25, 1983 (26 CFR 35a.9999–2; T.D. 7922, 48 FR 53106, as amended on December 20, 1983, by T.D. 7929, 48 FR 56342, and on March 13, 1984, by T.D. 7922, 49 FR 9417), on December 20, 1983 (26 CFR 35a.9999–3; T.D. 7929, 48 FR 56332, as amended on January 3, 1984, by T.D. 7933, 49 FR 63, and on August 22, 1984, by T.D. 7966, 49 FR 33236), on February 28, 1984 (26 CFR 35a.9999–3A; T.D. 7946, 49 FR 7227), and on August 22, 1984 (26 CFR 35a.9999–4T, T.D. 7966, 49 FR 33237, as amended on August 29, 1984, by T.D. 7972, 49 FR 34340; and 26 CFR 35a.9999–5, T.D. 7967, 49 FR 33240, as amended on September 19, 1984, by T.D. 7973, 49 FR 36645, on August 20, 1985, by T.D. 8046, 50 FR 33526, on April 3, 1986, by T.D. 8046, 51 FR 11447, and on December 19, 1986, by TD 8110, 51 FR 45453). Those regulations were published primarily to provide guidance under the Interest and Dividend Tax Compliance Act of 1983.

This document adds new §§ 35a.3406–1 and 35a.3406–2 to 26 CFR part 35a.

Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983. Section 35a.3406–1 is being reserved for regulations that will be published in the near future under section 3406(a)(1)(B), concerning backup withholding due to an incorrect taxpayer identification number. Section 35a.3406–2 will contain the temporary regulations in this document, issued under section 3406(a)(1)(C), and will remain in effect until superseded by final regulations on this subject.

Those payors who received notice to begin backup withholding due to a notified payee underreporting prior to the effective date of these regulations and began withholding pursuant to those notices should continue withholding. Those payors, however, who received or should have received a notice to begin backup withholding prior to the effective date and either did not begin backup withholding or did not receive that notice, must begin backup withholding by the close of the 30th day after the day of receipt of a subsequent notice, titled "Special Backup Withholding Notice Under § 35a.3406–2(e)(1) of the Code of Federal Regulations."

The special backup withholding notice consists of a letter (numbered 2254) that incorporates the first notice which has been updated by deleting those payees listed in the first notice who have obtained a determination from the Service that backup withholding should stop. The Service will mail the special notice to payors shortly after publication of these regulations. No penalties will be assessed against payors for the failure to withhold on or before 30 days after the effective date of these regulations.

The Service plans to send its regular notices to begin backup withholding due to notified payee underreporting (CP 543) to payors around the end of May, 1987. Thus, although these regulations are effective upon publication, most payors will not have to begin withholding under section 3406(a)(1)(C) until around the end of June, 1987.

These temporary regulations are necessary to provide immediate guidance to payors, brokers, and payees when there is a notified payee underreporting. The Internal Revenue Service intends to publish a notice of proposed rulemaking in the **Federal Register** in the near future that will provide comprehensive rules regarding backup withholding. Generally, the pertinent provisions of all the temporary regulations with respect to backup withholding will be incorporated in the notice of proposed rulemaking. The notice of proposed rulemaking will provide the public an opportunity to comment on the regulations.

**Explanation of Provisions**

These temporary regulations provide guidance concerning the backup withholding process resulting from a notified payee underreporting of reportable interest; original issue discount, dividend, or patronage dividend payments (hereafter, "reportable interest or dividend payments").

*Definition of a Notified Payee Underreporting*

A payee will be subject to backup withholding if a notified payee underreporting has occurred. A notified payee underreporting occurs when the Internal Revenue Service: (1) Determines that a payee has underreported interest or dividend payments, (2) mails at least 4 notices to the payee over a period of at least 120 days (hereafter, "the notice period") with respect to the underreporting of interest or dividend payments, and (3) in the case of any payee who has filed a return for the taxable year, assesses any deficiency of tax attributable to that underreporting.

The Service will determine that there is a payee underreporting if for a taxable year a payee failed to include in his tax return for that year any portion of a reportable interest or dividend payment required to be shown on that tax return, or if a payee may have been required to file a return for that year and to include a reportable interest or dividend payment in the return but failed to file a return.

Once the Service determines that a payee has underreported interest or dividend payments, the Service will send at least 4 notices to the payee during the notice period advising the payee that he may become subject to backup withholding as a result of payee underreporting. In some cases, the notice to the payee will be incorporated with other notices that the Service provides to the payee.

If a payee has filed a return for the taxable year, any deficiency of tax attributable to the payee's failure to report interest or dividend payments must be assessed (pursuant to section 6213) before the Service will notify payors and brokers that the payee is subject to backup withholding due to notified payee underreporting. However, if a payee files a Tax Court petition primarily to delay an assessment and backup withholding, then, upon a finding of the Tax Court to that effect, the payee may be assessed $5,000 in damages under section 6673.

After a notified payee underreporting has occurred, the Service may require the payee to provide the names of all of his payors and brokers to the Service. In addition, these regulations provide that the payee may be required to inform the Service of the numbers of all his accounts with respect to which reportable interest or dividend payments are being made.

*Notice to Payors and Brokers Regarding Backup Withholding*

The Service will notify payors and brokers that the payee is subject to backup withholding due to a notified payee underreporting. The notice to payors and brokers will generally include: The payee's name, taxpayer identification number, address, the statement that the payee is subject to backup withholding under section 3406(a)(1)(C), and at least one account number (if the payor provided an account number on a Form 1099 filed with the Internal Revenue Service for the payee) to assist the payors in locating all payments of the payee subject to backup withholding. In addition, the notice will instruct payors and those brokers holding an instrument in street name (hereafter referred to collectively as "payors") to begin backup withholding on those payments pursuant to section 3406(a)(1)(C) and to notify the payee that backup withholding has begun.

A broker who receives notice that a payee is subject to backup withholding due to a notified payee underreporting and through whom the payee subsequently acquires a readily tradable instrument as defined in section 3406(h)(6) with respect to which the broker is not the payor is required to notify the payor of that instrument that the payee is subject to backup withholding due to a notified payee underreporting. The broker is required to give this information to the payor in connection with the transfer instructions for the acquisition. See A–41 of § 35a.9999–1 for the time and manner in which the broker is required to provide this information. Upon receiving the notice from a broker a payor is required to begin backup withholding under the same rules that apply to payors who receive a notice from the Service to begin backup withholding.

In this connection, payors must begin backup withholding on all reportable interest and dividend payments by the close of the day 30 days after the date the payor receives the notice. Backup withholding applies to all existing

accounts paying reportable interest or dividend payments that a payor can locate using reasonable care.

Reportable interest and dividend payments subject to backup withholding due to notified payee underreporting are defined in section 3406(b)(2) and § 35a.3406–2(a)(4). Distributions from individual retirement accounts and other designated distributions specified in A–18 of § 35a.9999–3 are not reportable interest or dividend payments subject to backup withholding under section 3406(a)(1)(C).

Once backup withholding due to a notified payee underreporting begins, the Internal Revenue Service will not notify payors to stop backup withholding nor brokers that the payee is no longer subject to backup withholding until the payee obtains a determination from the Service with respect to the notified payee underreporting and resolves any payee underreporting in the manner prescribed in § 35a.3406–2(g).

*Request for a Determination by a Payee*

A payee may request a determination from the Service to prevent backup withholding from starting or to stop backup withholding once it has begun. To obtain a determination, a payee must show that: (1) No payee underreporting occurred, (2) any payee underreporting has been corrected, (3) withholding under section 3406(a)(1)(C) has caused (or would cause) undue hardship and it is unlikely that any payee underreporting by the payee will occur again, or (4) a bona fide dispute exists with the Service as to whether there has been any payee underreporting.

In general, if the Service makes a determination during the notice period, the payee will not be subject to backup withholding due to a notified payee underreporting with respect to the taxable year in question. If the Service makes a determination after backup withholding has begun, the Service will provide the payee with a certification and will provide his payors and brokers (who were previously notified by the Service regarding backup withholding under section 3406(a)(1)(C)) with a notice. The notice and certification will state that the payee is no longer subject to backup withholding under section 3406(a)(1)(C) and will advise payors that backup withholding is to stop.

*Definition of Stop Date*

The payor must stop backup withholding as of the close of the day immediately before the stop date. If the Service makes a determination by October 15 that any underreporting has been corrected or that a bona fide dispute exists, the stop date is January 1 of the following year. However, if the payor receives the notice from the Service or the certification from the payee after December 1, or if a determination is made that no underreporting occurred or that an undue hardship exists (or would exist), the stop date is the day that is 30 days after the earlier of the date the payor receives the notice from the Service to stop backup withholding or the date the payor receives a copy of the certification provided to the payee by the Service. In cases where the stop date is determined by reference to the date a notice is received or a certification is provided, a payor may elect to determine the stop date on any day during that 30-day period.

The payee, however, will continue to be subject to backup withholding if provisions of section 3406(a)(1), other than notified payee underreporting, require backup withholding.

*Miscellaneous*

Once a notified payee underreporting occurs, the payee may not certify to any payor or broker under section 3406(a)(1)(D) that he is not subject to backup withholding due to a notified payee underreporting.

Payors are required to remit to the Service amounts withheld due to a notified payee underreporting in the same manner as other backup withholding under section 3406(a)(1). See A–47 of § 35a.9999–1 for requirements relating to remitting to the Service amounts withheld under section 3406.

These regulations also explain how backup withholding applies, describe the requirements for a payee to obtain a determination from the Internal Revenue Service, and provide guidance on procedural and miscellaneous issues including treatment of joint accounts and joint returns.

**Regulatory Flexibility Act**

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Non-Applicability of Executive Order 12291**

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

**Paperwork Reduction Act**

The collection-of-information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0112.

**Drafting Information**

The principal author of these temporary regulations is Laura Ann M. Lauritzen of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**List of Subjects**

*26 CFR Part 35a*

Employment taxes Withholding Sick pay.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR Parts 35a and 602 are amended as follows:

## PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

**Paragraph 1.** The authority citation for Part 35a is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 35a.3406–2 also issued under 26 U.S.C. 3406(c)(3)(D) and 3406 (i).

**Par. 2.** New §§ 35a.3406–1 and 35a.3406–2 are added immediately before § 35a.9999–1 to read as follows:

**§ 35a.3406–1 Imposition of backup withholding due to notification of an incorrect taxpayer identification number. [Reserved]**

**§ 35a.3406–2 Imposition of backup withholding for notified payee underreporting of reportable interest or dividend payments.**

(a) *Requirement that a payor backup withhold due to a notified payee underreporting*—(1) *In general.* Except as otherwise provided in paragraph (a)(5) of this section, backup withholding under section 3406(a)(1)(C) applies to any reportable interest or dividend payment (as defined in section 3406(b)(2) and paragraph (a)(4) of this

section) made to a payee, if the Internal Revenue Service or a broker (as defined in section 3406(h)(5) and paragraph (a)(7) of this section and pursuant to section 3406(d)(2)(B)(ii)(III)) notifies a payor (as defined in section 3406(h)(4) and in paragraph (a)(6) of this section) that the payee is subject to backup withholding due to a notified payee underreporting (as defined in paragraph (a)(2) of this section). The payor is required under section 3406(c)(4) and paragraph (c)(1) of this section to inform the payee that backup withholding under section 3406(a)(1)(C) has begun. The requirements for the notice that a payor must send to a payee are set forth in paragraph (c) (2) and (3) of this section. The period for which backup withholding is required due to a notified payee underreporting is described in section 3406(e)(3)(A) and in paragraph (e) of this section. See section 3406(c)(3) and paragraph (g) of this section for the rules regarding how a payee may obtain a determination from the Internal Revenue Service that withholding under section 3406(a)(1)(C) be stopped or not started.

(2) *Definition of notified payee underreporting.* The term "notified payee underreporting" means that the Internal Revenue Service has—

(i) Determined that there was a payee underreporting as defined in paragraph (a)(3) of this section,

(ii) Mailed at least four notices to the payee (over a period of at least 120 days) with respect to the underreporting as prescribed in paragraph (f)(1) of this section, and

(iii) Assessed any deficiency attributable to the underreporting in the case of any payee who has filed a return.

(3) *Definition of a payee underreporting.* The term "payee underreporting" means that the Internal Revenue Service has determined, for a taxable year, that—

(i) A payee failed to include in his return of tax under chapter 1 of the Internal Revenue Code for such year any portion of a reportable interest or dividend payment required to be shown on such tax return, or

(ii) A payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

See paragraph (a)(5) of this section for certain payments to be taken into account in determining whether there is payee underreporting even though those payments may not be defined as reportable interest or dividend payments in paragraph (a)(4) of this section or even though backup withholding under section 3406(a)(1)(C) may not apply to such payments.

(4) *Definition of a reportable interest or dividend payment*—(i) *In general.* See section 3406(b)(2), A–2 of § 35a.9999–1, A–5 of § 35a.9999–3, and A–15 of § 35a.9999–2 for the definition of reportable interest or dividend payment.

(ii) *Exceptions*—(A) *Patronage dividends.* Patronage dividends are treated as reportable interest or dividend payments for purposes of backup withholding under section 3406(a)(1)(C) only if 50 percent or more of the reportable amount is paid in money or by qualified check (as defined in section 1388(c)(4)), and then only to the extent that the payment is in money or by qualified check. See the second paragraph in A–10 of § 35a.9999–3 for an example of how this rule applies.

(B) *Window payments.* Pursuant to section 3406(b)(7), window payments as defined in A–42 of § 35a.9999–1 and A–9 of § 35a.9999–2 are not treated as reportable interest or dividend payments for purposes of backup withholding under section 3406(a) (1)(C).

(5) *Reportable interest or dividend payments excluded from backup withholding.* The following reportable interest or dividend payments are not subject to backup withholding:

(i) *Certain dividends.* Certain dividend payments as defined in A–9 of § 35a.9999–3.

(ii) *Minimal payments.* Minimal payments as defined in A–19 of § 36a.9999–2 if the payor elects not to impose backup withholding on such amounts.

(iii) *Original issue discount.* Original issue discount as defined in section 1273, unless there is a payment in cash. See A–15 of § 35a.9999–2.

(iv) *Payments subject to other withholding.* Payments already subject to withholding under another provision of the Internal Revenue Code.

Reportable minimal payments (to the extent reported on an information return), patronage dividends, original issue discount, and window payments shall be taken into account in determining whether underreporting (as defined in paragraph (a)(3) of this section) has occurred, even though those payments may not be defined as reportable interest or dividend payments under paragraph (a)(4) of this section or even though backup withholding under section 3406(a)(1)(C) may not apply to such payments.

(6) *Definition of payor.* See section 3406(h)(4), A–41 of § 35a.9999–1, and A–1 of § 35a.9999–3 for the definition of payor. The term payor includes a broker who holds an instrument in street name.

(7) *Definition of broker.* See section 3406(h)(5) for the definition of broker.

(b) *Notice to payors and brokers regarding backup withholding*—(1) *Notice from the Internal Revenue Service.* The Internal Revenue Service will notify—

(i) Payors to begin backup withholding on reportable interest or dividend payments due to a notified payee underreporting pursuant to section 3406(a)(1)(C); and

(ii) Brokers pursuant to section 3406(c)(5) that a payee is subject to backup withholding under section 3406(a)(1)(C).

(2) *Notice from a broker.* A broker who receives a notice from the Internal Revenue Service that a payee is subject to backup withholding due to a notified payee underreporting and through whom the payee subsequently acquires a readily tradable instrument (as defined in section 3406(h)(6)) with respect to which the broker is not the payor is required to notify the payor of that instrument that the payee is subject to backup withholding under section 3406(a)(1)(C) in the time and manner provided in A–41 of § 35a.9999–1.

(3) *Accounts subject to backup withholding.* (i) *In general.* After receiving notice from the Internal Revenue Service or from a broker, as provided in section 3406(d)(2)(B) and paragraphs (b) (1)(i) and (2) of this section, that a payee is subject to backup withholding under section 3406(a)(1)(C), payors are required to withhold 20 percent of all reportable interest or dividend payments subject to backup withholding made with respect to all accounts of the payee.

(ii) *Joint accounts.* Payors are required to withhold on joint accounts if the payee subject to backup withholding under section 3406(a)(1)(C) is the first person listed on the account at the time the payor receives the notice to begin backup withholding. Backup withholding shall continue to apply to reportable interest and dividend payments made to that account even if the order of the names on the account is subsequently changed, provided that the name of the payee subject to backup withholding remains on the account.

(iii) *Exception.* Payors are not requied to withhold on reportable interest or dividend payments made with respect to an account of the payee that could not be located with reasonable care. The payor will be considered to have exercised reasonable care if the payor uses the name and taxpayer identification number (or names and

taxpayer identification numbers if a joint return was filed by the payees) provided on the notice from the Internal Revenue Service or from a broker as prescribed in paragraphs (b) (1)(i) and (2) of this section and in certain circumstances identified in this paragraph (b)(3)(iii) any account numbers provided by the Internal Revenue Service in locating all accounts of a payee or payees. If a payee uses a different name on an account than the name stated on the notice from the Internal Revenue Service or from a broker (for instance, due to marriage or adoption) and the payor can associate both names with the payee using records kept in the ordinary course of business, the payor will be treated as exercising reasonable care if the payor uses both names to locate accounts of the payee. If the taxpayer identification number is not provided to the payor or broker by the Internal Revenue Service, or if the taxpayer identification number provided by the Internal Revenue Service does not match the taxpayer identification number of the payee on the records that the payor or broker maintains in the ordinary course of business, the payor or broker is required to use any account numbers provided by the Internal Revenue Service to identify the payee and the payee's taxpayer identification number. This information must be used by the payor to locate other accounts of the payee and by the broker to locate the payors with respect to whom the payee subsequently acquires a readily tradable instrument through that broker.

(c) *Notice from payors of backup withholding due to a payee underreporting*—(1) *In general.* A payor is required under section 3406(c)(4) to notify the payee in accordance with paragraph (c)(2) of this section that backup withholding has begun because of a notified payee underreporting. Payors who are notified by a broker that a payee is subject to backup withholding under section 3406(a)(1)(C) are also required to send the notice in accordance with paragraph (c)(2) of this section. As a result, the notice requirements provided in A–39 of § 35a.9999–1 and in the appendix to § 35a.9999–2 shall not apply to those payors notified by a broker that a payee is subject to backup withholding under section 3406(a)(1)(C). The payor must send the notice required by paragraph (c)(2) of this section to the payee no later than 15 days after the date that the payor makes the first payment subject to backup withholding under section 3406(a)(1)(C). The payor must send the notice of backup withholding by first-class mail to the payee at his last known address. Rules similar to the rules in A–17, A–18, A–19, and A–20 of § 35a.9999–1 shall apply to the requirement to provide notice by first-class mail.

(2) *Form of the notice to the payee with respect to notified payee underreporting.* The notice to the payee required by paragraph (c)(1) of this section must state—

(i) That the Internal Revenue Service has given notice that the payee has underreported reportable interest or dividends;

(ii) That, as a result of such underreporting, the payor is required under section 3406(a)(1)(C) of the Internal Revenue Code to withhold 20 percent of reportable interest and dividend payments made to the payee no later than the close of the day 30 days after the date that the payor received the notice;

(iii) The date that the payor received the notice to begin backup withholding under 3406(a)(1)(C);

(iv) That the payee must obtain a determination from the Internal Revenue Service in order to stop the backup withholding under section 3406(a)(1)(C); and

(v) That while he is subject to backup withholding due to payee underreporting, the payee may not certify to a payor making reportable interest or dividend payments (or to a broker acquiring a readily tradable instrument for the payee) that he is not subject to backup withholding under section 3406(a)(1)(C). See section 3406(a)(1)(D) for the backup withholding rules with respect to a payee's failure to make the certification under section 3406(a)(1)(D).

(3) *Exceptions.* A notice provided to a payee on or before April 23, 1987, will be deemed to satisfy the provisions of paragraph (c)(2) of this section if it informs the payee that the payor has been instructed by the Internal Revenue Service to start backup withholding on reportable interest or dividend payments to the payee. If a payor who has started backup withholding due to notified payee underreporting on or before April 23, 1987, has not provided adequate notice to the payee on or before April 23, 1987, then the payor must provide notice to the payee in the manner prescribed in paragraph (c)(2) of this section by the date that is 45 days after April 23, 1987.

(d) *Notice to stop backup withholding*—(1) *In general.* The Internal Revenue Service will provide written certification to the payee that backup withholding is to stop and will notify the payors who were contacted pursuant to paragraph (b) of this section to stop withholding after the Internal Revenue Service makes a determination under paragraph (g) of this section that backup withholding with respect to a payee should stop. The Internal Revenue Service will also notify the brokers who were contacted pursuant to paragraph (b) of this section that the payee is no longer subject to backup withholding under section 3406(a)(1)(C) and that the brokers are no longer obligated to provide notices to payors under paragraph (b)(2) of this section. A broker who receives certification under this section from the Internal Revenue Service is not required to provide the certification to any payors to which the broker has previously provided the notice required under paragraph (b)(2).

(2) *Date notice to stop withholding will be provided*—(i) *Underreporting corrected or bona fide dispute.* If the Internal Revenue Service makes a determination as set forth in paragraph (g)(1) (ii) or (iv) of this section during the 12-month period ending on October 15, of any calendar year, the Internal Revenue Service will provide the certification or notice required by paragraph (d)(1) of this section no later than December 1 of such calendar year.

(ii) *No underreporting or undue hardship.* If the Internal Revenue Service makes a determination as set forth in paragraph (g)(1) (i) or (iii), the Internal Revenue Service will provide the notices required by paragraph (d)(1) of this paragraph no later than the 45th day after the day on which the Internal Revenue Service makes its determination.

(e) *Period during which withholding is required*—(1) *In general.* Upon receiving notice from the Internal Revenue Service after April 23, 1987, to begin backup withholding under section 3406(a)(1)(C) or notification from a broker stating that the payee is subject to backup withholding under section 3406(a)(1)(C), the payor must impose backup withholding on all reportable interest and dividend payments made to the payee during the period beginning after the close of the 30th day after the day on which the payor receives the notice provided in paragraph (b) (1)(i) or (2) of this section and ending as of the close of the day before the stop date (as described in paragraph (e)(2) of this section). Pursuant to section 3406(e)(5)(C), the payor may elect to begin backup withholding at any time during the 30-day period described in this paragraph.

(2) *Stop date*—(i) *Underreporting corrected or bona fide dispute.* In the case of a determination that the

underreporting has been corrected or that a bona fide dispute exists (as defined in paragraphs (g)(1)(ii) or (iv) of this section), the stop date is—

(A) January 1 following the 12-month period ending on October 15th of any calendar year in which the determination has been made or, if later,

(B) The day that is 30 days after the earlier of—

(*1*) The date on which the payor receives written notification from the Internal Revenue Service (under paragraph (d)(2) of this section) that withholding is to stop; or

(*2*) The date on which the payor receives a copy of the written certification provided to the payee by the Internal Revenue Service that withholding is to stop.

(ii) *No underreporting or undue hardship.* In the case of a determination that no payee underreporting occurred or that an undue hardship exists or could exist (as defined in paragraph (g)(1)(i) or (iii) of this section), the stop date is that date specified in paragraph (e)(2)(i)(B) of this section.

(iii) *Payor election to shorten or eliminate grace period.* The payor with respect to any payee may elect to determine the stop date without regard to the grace period provided in section 3406(e)(5)(B) (*i.e.*, without regard to the words "the day that is 30 days after" in paragraph (e)(2)(i)(B) of this section) or by substituting a shorter grace period.

(iv) *Examples.* The provisions of paragraph (e)(2)(i) may be illustrated by the following examples:

*Example (1).* The Internal Revenue Service makes a determination by October 15, 1987, that any underreporting with respect to A has been corrected. X, a payor who has been notified to backup withhold on payments of interest to A due to notified payee underreporting, receives written notice from the Internal Revenue Service on December 1, 1987, informing X that A is no longer subject to backup withholding under section 3406(a)(1)(C) and that X must stop backup withholding as of the close of December 31, 1987, or if later, the earlier of the close of the day 30 days after receipt of the notice from the Internal Revenue Service or receipt of the copy of the written certification provided to the payee by the Internal Revenue Service. The stop date, as provided in paragraph (e)(2)(i)(A) of this section, is January 1, 1988, and the payor must stop backup withholding as of the close of December 31, 1987.

*Example (2).* Assume the same facts as in *Example (1)* except that X, due to a change of address or for other reasons, does not receive the notice from the Internal Revenue Service to stop backup withholding until December 15, 1987. In addition, A does not provide X with a copy of the certification that was provided to A by the Internal Revenue Service until December 15, 1987. The stop date, as provided in paragraph (e)(2)(i)(B) of this section, is January 14, 1988 (30 days after December 15, 1987), because that date is later than January 1, 1988. However, if a payor elects pursuant to section 3406(e)(5)(C) and paragraph (e)(2)(iii) of this section to determine the stop date without regard to that 30-day grace period, the stop date is January 1, 1987.

*Example (3).* Assume the same facts as in *Example (2)* except that on December 10, 1987 (rather than on December 15, 1987), A provides X with a copy of the certification from the Internal Revenue Service. The stop date, as provided in paragraph (e)(2)(i)(B) of this section, is January 9, 1988 (30 days after December 10, 1987), because that date is earlier than January 14, 1988 (30 days after the day X received notice from the Internal Revenue Service), but later than January 1, 1988.

(f) *Notice to payees from the Internal Revenue Service*—(1) *Notice period.* After the Internal Revenue Service determines that a payee underreporting exists as defined in paragraph (a)(3) of this section, the Internal Revenue Service, pursuant to section 3406(c)(1)(B), will mail to the payee at least four notices over a period of at least 120 days (hereafter referred to as the "notice period") before payors and brokers will be notified that the payee is subject to backup withholding due to a notified payee underreporting as provided in paragraph (b)(1) of this section. The notices may be incorporated with other notices provided to the payee by the Internal Revenue Service.

(2) *Payee subject to withholding.* After the Internal Revenue Service provides the notices described in paragraph (f)(1) of this section, the Internal Revenue Service will send the notices required by paragraph (b) of this section unless—

(i) A payee obtains a determination under paragraph (g) of this section, or

(ii) In the case of a payee who has filed a tax return, the Internal Revenue Service has not assessed the deficiency attributable to the underreporting.

(3) *Disclosure of names of payors and brokers.* The Internal Revenue Service pursuant to section 3406(c)(5) may require a payee subject to backup withholding due to a notified payee underreporting to disclose the names of all of his payors of reportable interest or dividend payments and the names of all of the brokers with whom the payee has accounts which may involve reportable interest or dividend payments. To the extent required in the request from the Internal Revenue Service, the payee shall also provide his account numbers and other information necessary to identify the payee's accounts.

(4) *Backup withholding certification.* Once a payee receives a final notice from the Internal Revenue Service notifying him that his reportable interest or dividend payments are subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C), the payee shall not certify to any payor or broker, under penalties of perjury, that he is not subject to backup withholding under section 3406(a)(1)(C). See paragraph (k)(2) of this section for the penalties that will apply to a payee who makes a false certification. The payee may not make the certification until the payee receives the certification provided in paragraph (d)(1) of this section from the Internal Revenue Service advising the payee that he is no longer subject to backup withholding under section 3406(a)(1)(C) (as provided in A–33 of § 35a.9999–1). See A–37 of § 35a.9999–1 for the rule applicable to a payor who makes reportable interest or dividend payments to a payee who fails to certify that he is not subject to backup withholding due to notified payee underreporting.

(g) *Determination by the Internal Revenue Service that backup withholding should not start or should be stopped*—(1) *In general.* A payee may prevent backup withholding from starting or stop in once it has started if, for the taxable year with respect to which there is a notified payee underreporting and any other taxable payee—

(i) Shows that there was no payee underreporting (as provided in paragraph (g)(2) of this section);

(ii) Corrects any payee underreporting (as provided in paragraph (g)(3) of this section);

(iii) Shows that backup withholding will cause or is causing an undue hardship (as defined in paragraph (g)(4) of this section) and that it is unlikely that the payee will underreport interest or dividend payments again; or

(iv) Shows that a bona fide dispute exists as to whether any underreporting has occurred (as provided in paragraph (g)(5) of this section).

(2) *No underreporting.* A payee may show that no underreporting of interest or dividends exists by presenting receipts or other satisfactory documentation to the Internal Revenue Service showing that all taxes relating to such payments were reported and paid timely or evidence showing that the payee did not have to file a return for the taxable year in question or that the underreporting determination is based upon a factual, clerical, or other mistake.

(3) *Correcting any payee underreporting*—(i) *Before issuance of a statutory notice of deficiency.* Before a statutory notice of deficiency is issued

to a payee pursuant to section 6212, the payee may correct underreporting by filing a return if one was not previously filed and paying taxes, penalties, and interest due with respect to any underreported interest or dividend payments.

(ii) *After issuance of a statutory notice of deficiency.* After a statutory notice of deficiency is issued to a payee, the payee may correct underreporting at any time by filing a return if one was not previously filed and paying the entire deficiency and any other taxes including penalties and interest attributable to any payee underreporting of interest or dividend payments. Thus, for example, a payee may correct underreporting after assessment of a deficiency by paying the entire assessment with respect to that deficiency and any other taxes including penalties and interest attributable to any payee underreporting of interest or dividend payments for other taxable years.

(4) *Undue hardship.* A determination of undue hardship will be based on the overall impact to the payee of having 20 percent of reportable interest and dividend payments withheld. Factors that will be considered in determining whether backup withholding causes undue hardship include, but are not limited to, the following:

(i) Whether estimated tax payments, and other credits for current tax liabilities, or amounts withheld on employee wages or pensions, in addition to backup withholding, would cause significant over-withholding;

(ii) The payee's health, including the payee's ability to pay foreseeable medical expenses;

(iii) The extent of the payee's reliance on interest and dividend payments to meet necessary living expenses and the existence, if any, of other sources of income;

(iv) Whether other income of the payee is limited or fixed (*e.g.*, social security, pension, and unearned income);

(v) The payee's ability to sell or liquidate stocks, bonds, bank accounts, trust accounts, or other assets, and the consequences of doing so;

(vi) Whether the payee reported and timely paid the most recent year's tax liability, including interest and dividend income; and

(vii) Whether the payee has filed a bankruptcy petition with the United States Bankruptcy Court.

In addition to the above factors, the Internal Revenue Service must conclude that it is unlikely that any payee underreporting will occur again.

(5) *Bona fide dispute.* The Internal Revenue Service may make a determination under this paragraph if there is a dispute between the payee and the Internal Revenue Service on a question of fact or law that is material to a determination under paragraph (g)(1)(i) and, based upon all the facts and circumstances, the Internal Revenue Service finds that the dispute is asserted in good faith by the payee and there is a reasonable basis for the payee's position. See the example provided in paragraph (j)(2)(ii) of this section for an illustration of this provision.

(h) *Requests for determinations*—(1) *In general.* A payee may request a determination under one or more of the provisions of paragraph (g) of this section. Following its review of a request for a determination under paragraph (g) of this section, the Internal Revenue Service will either provide the payee with a written certification as prescribed in paragraph (d) of this section if the evidence presented warrants the requested determination or will provide the payee with a written notice informing him that a determination was not made.

(2) *Determinations made during the notice period.* In general, if a determination is made during the notice period as defined in paragraph (f)(1) of this section, then the payee will not be subject to backup withholding due to a notified payee underreporting with respect to any taxable year for which a determination was made.

(3) *Determinations made after the notice period.* If a determination is made after the notice period, as defined in paragraph (f)(1) of this section, the Internal Revenue Service will provide a notice to payors and brokers, and a certification to the payee as provided in paragraph (d)(1) of this section.

(i) [Reserved].

(j) *Payees filing a joint return*—(1) *In general.* For purposes of section 3406(a)(1)(C), if payee underreporting is found to exist with respect to a joint return filed by a husband and wife, then the provisions of this section shall apply to the payees collectively. As a result, both payees will be subject to backup withholding on accounts in their individual names as well as accounts in their joint names. Either or both payees may satisfy the criteria for a determination that no payee underreporting exists, that the underreporting has been corrected, or that a bona fide dispute exists (as provided in paragraphs (g)(1) (i), (ii), or (iv) of this section). Both payees, however, must satisfy the criteria for a determination that backup withholding will cause or is causing undue hardship (as provided in paragraph (g)(1)(iii) of this section).

(2) *Exceptions*—(i) *Innocent spouse.* A spouse who files a joint return may obtain a determination that withholding should stop or not start with respect to payments made to his or her individual accounts, if the spouse—

(A) Shows that he or she did not underreport income because he or she is an innocent spouse as described in section 6013(e), or

(B) Shows that there is a bona fide dispute as to whether he or she is an innocent spouse and hence did not underreport income.

(ii) *Example.* The provisions of paragraph (j)(2)(i) may be illustrated by the following example:

*Example.* H and W filed a joint return in 1986 on which H failed to include $2,000 of interest income. In 1987, the Internal Revenue Service determined that a payee underreporting exists with respect to H and W for the 1986 tax year. After properly notifying H and W of the underreporting and assessing the tax, the Internal Revenue Service sent notices to payors to begin backup withholding on the joint and individual accounts of H and W and to brokers informing them that H and W are subject to backup withholding under section 3406(a)(1)(C) on their joint and individual accounts. W claims that she is an innocent spouse and requests a determination that she did not underreport interest or dividend income so that her individual accounts will not be subject to backup withholding.

The Internal Revenue Service questions her status as an innocent spouse. If the Internal Revenue Service determines, based upon all the facts and circumstances, that there is a reasonable basis for W's claim to be an innocent spouse and that the claim is made in good faith, W will have a bona fide dispute with the Internal Revenue Service. Consequently, the individual accounts of W will not be subject to further backup withholding due to a notified payee underreporting as provided in paragraph (g)(5) of this section.

The Internal Revenue Service will notify payors to stop backup withholding under section 3406(a)(1)(C) and brokers that W is no longer subject to backup withholding under section 3406(a)(1)(C) on W's individual accounts. Backup withholding will not restart on those accounts unless the Internal Revenue Service ultimately determines that W is not an innocent spouse. In that event the Internal Revenue Service will notify the payors to start backup withholding under section 3406(a)(1)(C) and the brokers that W is subject to backup withholding under section 3406(a)(1)(C) with respect to the individual accounts of W.

(iii) *Divorced or legally separated payee.* A payee who, at the time of the request for a determination under paragraph (g) of this section, is divorced or legally separated under state law may obtain a determination that undue hardship exists (or would exist) under paragraph (g)(1)(iii) of this section with

respect to reportable interest and dividend payments made to his or her individual accounts if the divorced or legally separated payee satisfies the criteria for a determination under paragraph (g)(4) of this section.

(k) *Penalties*—(1) *Failure to withhold.* See A–2 of § 35a.9999–3 for rules relating to penalties applicable to a payor who fails to withhold on reportable interest and dividend payments made to a payee subject to backup withholding.

(2) *False certification*— (i) *Criminal penalty under section 7205(b).* If any individual willfully makes a false certification under section 3406(d) (1) or (2), then that individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(ii) *Civil penalty under section 6682*— (A) *In general.* In addition to any criminal penalty provided by law, if any individual makes a statement under section 3406 which results in a decrease in the amounts deducted and withheld under chapter 24 of the Internal Revenue Code and, as of the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. The penalty is due upon notice and demand and pursuant to section 6682 collection is not subject to the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code. See section 6682.

(B) *Waiver of penalty.* The payee may obtain a waiver (in whole or part) of the penalty imposed under section 6682(a) and paragraph (k)(2)(ii)(A) of this section if it is established to the satisfaction of the Internal Revenue Service that the taxes imposed under subtitle A of the Internal Revenue Code with respect to the payee for the taxable year in which the false certification was made are equal to or less than the sum of—

(*1*) The credits against taxes allowed by part IV of subchapter A of chapter 1 of the Internal Revenue Code, and

(*2*) The payments of estimated tax which are considered payments on account of such taxes.

(C) *Procedure for seeking a waiver.* To request a waiver under section 6682(b) and paragraph (k)(2)(ii)(B) of this section, the payee must submit to the Internal Revenue Service a written statement with supporting documents to establish all the facts necessary in order to obtain the waiver. The statement must be signed by the person that otherwise would be subject to the penalty imposed by section 6682(a) and paragraph (k)(2)(ii)(A) of this section and must contain a declaration that it is made under penalties of perjury.

(3) *Delay of assessment.* If a payee institutes or maintains a suit with the United States Tax Court primarily to delay assessment and the payee's position is frivolous or groundless, or the payee unreasonably failed to pursue available administrative remedies, the court may award up to $5,000 in damages under section 6673. The damages will be assessed against and collected from the payee in the same manner as the underlying tax.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 3.** The authority citation for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 4.** Section 602.101(c) is amended by inserting in the appropriate place in the table:

"§ 35a.3406–2..... 1545–0112".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: April 14, 1987.

**J. Roger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87–9156 Filed 4–20–87; 3:18 p.m.]

BILLING CODE 4830–01–M

## PENSION BENEFIT GUARANTY CORPORATION

**29 CFR Part 2603**

### Examination and Copying of Pension Benefit Guaranty Corporation Records

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Interim rule.

**SUMMARY:** This is an interim amendment to the Pension Benefit Guaranty Corporation's regulation implementing the Freedom of Information Act. The amendment modifies the fee and fee waiver provisions of the regulation in conformance with the Freedom of Information Reform Act of 1986 and implementation guidelines issued by the Office of Management and Budget. This action is necessary to comply with the statutory requirements and those guidelines. The effect of this amendment is to conform the fee waiver provisions to the law, to establish fee schedules in accordance with the standards established by OMB guidelines, and to notify the public of those provisions.

**EFFECTIVE DATE:** April 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation (PBGC), as a Federal Government corporation, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. 552, which provides, among other things, for public access to information from records of Government corporations. On June 3, 1975, the PBGC promulgated its regulation entitled Examination and Copying of Pension Benefit Guaranty Corporation Records, 29 CFR Part 2603, establishing the basic policies and procedures that it uses to process requests for information under the Freedom of Information Act.

The Freedom of Information Reform Act of 1986 (Reform Act), Pub. L. 99–570, modified FOIA's fee and fee waiver provisions, effective April 25, 1987, and directed that each government agency subject to FOIA promulgate regulations, pursuant to notice and public comment, specifying fee schedules and establishing procedures and guidelines for reduction or waiver of fees. The Reform Act also directed the Office of Management and Budget to promulgate guidelines containing a uniform schedule of fees for all such agencies. Agency regulations are to be promulgated by April 25, 1987.

On January 16, 1987, OMB published a notice and request for public comment on its Proposed Fee Schedule and Administrative Guidelines. On March 27, 1987, OMB published its Fee Schedule and Guidelines in final form, incorporating changes considered appropriate as a result of the comments received from the public. Because of the April 25, 1987, effective date of the new fee and fee waiver provisions in the Reform Act, and because of the statutory requirement that regulations to implement such provisions be published for notice and comment, the PBGC is publishing two documents in the **Federal Register** concurrently: A Proposed Rule that requests public comments, and this

Interim Rule that is effective on April 25, 1987. Because of the statutory effective date and the statutory requirements concerning promulgation of these regulations, and because these regulations follow the OMB guidelines on fee schedules that were published only after notice and public comment, the PBGC finds that good cause exists for making this interim rule effective immediately.

**E.O. 12291 and The Regulatory Flexibility Act**

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 of February 17, 1981 (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers, individual industries or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export-markets.

Statutory increases in fees are likely to be offset by statutory decreases in fees. Accordingly, the PBGC certifies pursuant to section 605 of the Regulatory Flexibility Act that this regulation will will not have a significant economic impact on a substantial number of small entities. In light of this certification, compliance with sections 603 and 604 is waived.

**List of Subjects in 29 CFR Part 2603**

Freedom of information.

In consideration of the foregoing, the Pension Benefit Guaranty Corporation hereby amends Part 2603 of Subchapter A of Chapter XXVI, Title 29, Code of Federal Regulations, as follows:

## PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

1. The authority for Part 2603 is revised to read as follows:

**Authority:** 5 U.S.C. 552, as amended by secs. 1801–1804, Pub. L. 99–570, 100 Stat. 3207–3248; 29 U.S.C. 1302(b)(3).

**§ 2603.1 [Amended]**

2. Section 2603.1 is amended by adding the phrase ", review," between "search" and "and" in the last sentence.

3. Section 2603.32 is amended by removing from paragraph (a) the phrase "Office of the Executive Director," and inserting, it its place, "Communications and Public Affairs Department,"; and by revising paragraph (c) to read as follows:

**§ 2603.32 Submittal of requests for access to records.**

* * * * *

(c) To avoid delay in receipt of a sufficiently complete request at the Corporation, each such request should identify the category of the requester, as defined in § 2603.51(b); reasonably describe the records sought, as provided in § 2603.33; and state specifically that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable, or will be acceptable up to an amount not exceeding a named figure.

4. Section 2603.36 is revised to read as follows:

**§ 2603.36 Receipt by agency of request.**

(a) The disclosure officer shall, upon receipt of a request for access to records, have the date and time of such receipt immediately inscribed thereon. Except as provided in paragraphs (b) through (d) of this section, the request shall be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall begin on the next business day following such date.

(b) A request for access to records shall be deemed received only if such request is sufficiently complete, as set forth in §§ 2603.33 through 2603.35.

(c) To protect requesters from an unexpected accrual of liability greater than they may wish to assume for access to requested records, when the Corporation anticipates that search, review, and/or duplication charges under Subpart B of this part may be substantial, the requester will be given prompt notification of the Corporation's estimate of the costs and no receipt of a complete request will be deemed to have occurred unless or until the requester has perfected the request by assurance of payment. Such assurance may be in the form of a statement that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable or will be acceptable up to an amount not exceeding a named figure. To avoid delay in receipt of a sufficiently complete request, the requester may include such statement in the request.

(d) Where it is known or estimated that a request for access to records will require charges for search, review, and/or duplication services in excess of $250, or where the requester has previously failed to pay a fee charged in a timely fashion, such request shall not be deemed received until the Corporation has received fee payments or assurance of payment, as required under the provisions of § 2603.54(b).

5. The heading of Subpart B of Part 2603 is revised to read as follows:

**Subpart B—Fees for Services and Waiver Policy**

6. Section 2603.51 is revised to read as follows:

**§ 2603.51 Charge for services.**

(a) *Generally.* Pursuant to the provisions of the Freedom of Information Act, as amended, the payment of standard charges as set forth in the fee schedule in § 2603.52 will, except as otherwise provided in this subpart, be required according to the category of the requester to cover the direct costs of searching for, reviewing, and/or duplicating records requested under the Act from the Corporation. No fee will be charged if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) "Direct costs" means those expenditures which the Corporation actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under the Act and these regulations. Direct costs include, for example, the salary of the employee performing work (*i.e.*, the basic rate of pay plus benefits) or an established average pay for a homogeneous class of personnel (*e.g.*, all administrative/clerical or all professional/executive), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" means all time spent looking for material that is responsive to a request under the Act and these regulations, including page-by-page or line-by-line identification of materials within a document, if required, and may be done manually or by computer using existing programming. "Search" should be distinguished from "review" which is defined in paragraph (a)(3) of this section.

(3) "Review" means the process of examining documents located in response to a request under the Act and these regulations to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) "Duplication" means the process of making a copy of a document necessary to respond to a request under the Act and these regulations, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(b) *Categories of requesters.* Requesters who seek access to records under the Act and these regulations are divided into four categories: commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The Corporation will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* When records are requested for commercial use, the Corporation will assess charges, as set forth in §§ 2603.52 through 2603.55, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under the provisions of 5 U.S.C. 552(b) and these regulations.

(i) "Commercial use" request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) In determining whether a request properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. Moreover, where the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Corporation will require the requester to provide clarification before assigning the request to this category.

(2) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution, the Corporation will assess charges, as set forth in §§ 2603.52 through 2603.55, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(ii) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* When records are requested by representatives of the news media, the Corporation will assess charges, as set forth in §§ 2603.52 through 2603.55, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(ii) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraph (b) (1) through (3), of this section, the Corporation will assess charges, as set forth in §§ 2603.52 through 2603.55, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of search time and there will be no charge for search time in the event of requests under the Privacy Act of 1974 for records about themselves from subjects of records filed in the Corporation's systems of records. Search fees, where applicable, may be charged even if the record searched for is not found.

(c) *Aggregation of requests.* If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation will aggregate any such requests and charge accordingly. In no case will the Corporation aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which searching, review, and duplication facilities or services may be made available to the requester without charge or at a reduced charge are set forth in § 2603.55.

7. Section 2603.52, is amended by revising the section heading, the heading and the introductory sentence in paragraph (a), paragraph (a)(1), and the heading and the introductory sentence in paragraph (b); renumbering paragraph (c) as paragraph (b)(5); removing the phrase "as computed pursuant to the fee schedule in paragraph (b) of this section" from new paragraph (b)(5); and adding new paragraph (c) to read as follows:

**§ 2603.52 Fee Schedule.**

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search and review time.* (i) Ordinary search and review by custodial or clerical personnel, $1.75 for each one-quarter hour or fraction thereof of employee worktime required to locate or obtain the records to be searched and to make the necessary review; and (ii) search or review requiring services of professional or supervisory personnel to locate or review requested records, $4.00 for each one-quarter hour or fraction thereof of professional or supervisory personnel worktime.

* * * * *

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following

BEST COPY AVAILABLE

fee schedule and subject to the following conditions.

* * * * *

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

8. Section 2603.53 is amended by revising paragraph (a) to read as follows:

**§ 2603.53 Computerized records.**

(a) Charges for information that is available in whole or in part in computerized form will be made available at the actual direct cost to the Corporation, including the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to the request, personnel salaries apportionable to the search, and tape or printout production or an established agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches. Charges will be computed at the rates prescribed in § 2603.52 (a) and (b).

* * * * *

9. Section 2603.54 is amended by removing from paragraph (a) the reference to "§§ 2603.52–2603.53" and inserting, in its place, "§§ 2603.51 through 2603.53"; and by revising paragraphs (b) and (c) to read as follows:

**§2603.54 Payment of fees.**

* * * * *

(b) *Advance payment or assurance of payment.* Advance payment or assurance of payment may be required under the following rules.

(1) Where the Corporation estimates or determines that charges allowable under the rules in this subpart are likely to exceed $250, the Corporation may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this regulation, the Corporation will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to the Act and this regulations, the Corporation may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the Corporation may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee. When advance payment or assurance of payment is required by the Corporation under this paragraph, the request shall not be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall not begin until the Corporation has received the required fee payments or assurance of payment.

(c) *Late payment interest charges.* The Corporation may assess late payment insterest charges on any amounts unpaid by the 31st day following the day following issuance of a bill to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

10. Section 2603.55 is revised to read as follows:

**§ 2603.55 Waiver or reduction of charges.**

(a) The disclosure officer may waive or reduce fees otherwise applicable under §§ 2603.51 through 2603.53 when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activites of the government and is not primarily in the commercial interest of the requester. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under §§ 2603.51 through 2603.53 when the requester has demonstrated his inability to pay such fees.

Issued in Washington, DC, this 14th day of April, 1986.

Royal S. Dellinger,

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87–9122 Filed 4–22–87; 8:45 am]

BILLING CODE 7708–01–M

## VETERANS ADMINISTRATION

### 38 CFR Part 17

### Adult Day Health Care

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The Veterans Administration (VA) is amending its medical regulations (38 CFR Part 17) to incorporate new sections providing Adult Day Health Care. Section 103 of Pub. L. 98–160, Veterans' Health Care Amendments of 1983, amended 38 U.S.C. 620 to authorize the VA to furnish adult day health care in VA facilities and by contract with non-VA facilities. This amendment will provide an adult day program for the VA as an alternative to nursing home care. The authority for these regulations will expire on September 30, 1988.

**DATES:** Effective: April 23, 1987.

The incorporation by reference of a certain publication is approved by the Director of the Federal Register as of April 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** James R. Kelly, Acting Director, Patient Treatment Service, Office of Geriatrics and Extended Care, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3692.

**SUPPLEMENTARY INFORMATION:** Comments from eight organizations were received concerning the proposed regulatory changes published on pages 26027–26028 of the **Federal Register** of July 18, 1986. All the commentators expressed their support of the VA's involvement in Adult Day Health Care.

One commentator expressed the concern that § 17.51e(d)(3)(i), requiring the provision of medical services, was unnecessary and costly. Pub. L. 98–160 clearly states that Adult Day Health Care serve as a substitute for nursing home care. The VA, therefore, could not implement Adult Day Health Care without the provision of medical services, as such services are required in nursing home care. At the same time, it is not the VA's intention to have the Adult Day Health Care physician serve as a patient's primary care physician. Rather, the physician's role includes: treatment planning, medication review, consultation and liaison with the Adult Day Health Care staff and the patient's primary care provider and direct medical services when at the Center or when needed.

Another commentator indicated that the eligibility criteria for Adult Day Health Care for nonservice-connected

veterans, as published in the proposed regulations, incorrectly differentiated between a veteran who was placed in a VA facility rather than a private facility in that a nonservice-connected veteran could receive care for an unlimited period of time in a VA facility, but was limited to six months of care in a private facility. This commentator was correct and § 17.51f has been added to reflect the six-month limitation on care for nonservice-connected veterans regardless of the location of care and to reflect the extension policy beyond six months for nonservice-connected veterans. Section 17.51e(b) as it appeared in the proposed regulations has been removed.

**Executive Order 12291**

The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The Administrator certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. These final regulations, the authority for which will expire on September 30, 1988, concern authorizing the furnishing of Adult Day Health Care as an alternative to Nursing Home Care, in connection with a research study as prescribed by section 103(b) of Pub. L. 98–160. Although these regulations specify certain terms and conditions for institutions in order to participate as providers under this program, such institutions are already subject to many of these requirements under existing Federal, State, and local laws, regulations and codes. The cost limitation and veteran eligibility criteria were imposed by Pub. L. 98–160. The number of institutions which will provide this care is greatly limited by the small number of Adult Day Health Care centers which offer medical/health care and by the funding limitations of this program. In addition, most of the governmental jurisdictions which offer such care have a population in excess of 50,000, and therefore do not come within the RFA definition of a "small entity." For these reasons these regulations will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 38 CFR Part 17**

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contract, Grants programs—health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

(Catalog of Federal Domestic Assistance Number: 64.002.)

Approved: April 1, 1987.

**Thomas K. Turnage,**

*Administrator.*

38 CFR Part 17, Medical, is amended by adding new §§ 17.51c, 17.51d, 17.51e, 17.51f, and 17.51g to read as follows:

## PART 17—[AMENDED]

**Adult Day Health Care**

Sec.

17.51c Definition of adult day health care.
17.51d Adult day health care in Veterans Administration facilities.
17.51e Adult day health care in private facilities.
17.51f Extension of adult day health care beyond six months.
17.51g Provision of services to adult day health care institutions.

**Adult Day Health Care**

**§ 17.51c Definition of adult day health care program.**

The adult day health care program is a therapeutic day care program which provides medical and rehabilitation services to disabled veterans in a congregate setting. The Veterans' Health Care Amendments of 1983, Pub. L. 98–160, authorizes the VA to furnish this program until September 30, 1988. (38 U.S.C. 529(f)(1)(A))

**§ 17.51d Adult day health care in Veterans Administration facilities.**

(a) VA facilities may provide adult day health care to:

(1) Any veteran who has a service-connected disability rated at 50 percent or more who is determined by the VA to be in need of such care.

(2) Any veteran who has been furnished care in a hospital under the direct jurisdiction of the Administrator or any veteran who has been furnished care by the Administrator in a hospital in Alaska or Hawaii if the VA determines that the veteran has received maximum benefits for such care in such hospital, but will require a protracted period of adult day health care which can be furnished in an institution furnishing adult day health care.

(3) Any person (i) who has been furnished care in any hospital of any of the Armed Forces, (ii) who the appropriate Secretary concerned and the VA have determined has received maximum hospital benefits but requires a protracted period of adult day health care, and (iii) who upon discharge from the armed forces will become a veteran.

(b) Adult day health care furnished in VA facilities shall not include travel and incidental expenses (or transportation in lieu thereof) except as authorized by § 17.100. (38 U.S.C. 620(f)(1)(A)(i))

**§ 17.51e Adult day health care in private facilities.**

Veterans eligible under § 17.51d for adult day health care may be transferred to any public or private institution not under the jurisdiction of the Administrator which furnishes adult day health care for such care at VA expense if:

(a) The cost of adult day health care in such institution will not exceed 45 percent of the cost of care furnished by the VA in a general hospital under the direct and exclusive jurisdiction of the Administrator, as such cost may be determined annually by the Administrator, or not to exceed 50 percent of such cost where determined necessary by the Administrator, upon the recommendation of the Chief Medical Director, to provide adequate care;

(b) A contract between the institution and the VA is awarded in accordance with Federal and VA acquisition law and regulations;

(c) A VA inspection finds that the institution meets the following standards:

(1) The institution shall meet all Federal, State and local laws, regulations, and codes pertaining to health and safety such as provisions regulating:

(i) Construction, maintenance, and equipment;

(ii) Sanitation;

(iii) Buying, dispensing, safeguarding, administering, and disposing of medications and controlled substances.

(2) The institution shall meet the applicable provisions of the National Fire Protection Association's Life Safety Code, entitled NFPA 101 Life Safety Code 1985, dated February 7, 1985, (which is incorporated by reference). Incorporation of the 1985 edition of the Life Safety Code was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1

CFR Part 51. The code is available for inspection at the Office of the Federal Register Information Center, Room 8301, 1110 L Street, NW, Washington, DC. Copies may be obtained from: National Fire Protection Association, Battery March Park, Quincy, MA 02269. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**. The institution shall provide sufficient staff to assist patients in the event of fire or other emergency.

(3) The institution shall have the capability (including sufficient qualified staff) to provide:

(i) Medical Services including a medical director at least on a consulting basis and the provision of direct patient care;

(ii) Services of a registered nurse;

(iii) Social services provided by a qualified social worker;

(iv) Rehabilitation services including occupational and physical therapy;

(v) Assistance for daily living including bathing, feeding, toileting, ambulation, and transferring;

(vi) Care management;

(vii) Nutrition services including counseling, regular meals, and special diets;

(viii) Recreation therapy;

(ix) Transportation to and from home; and

(x) The maintenance of individual client records. These records shall include a treatment plan, periodic reevaluations, progress notes, discharges summaries, and other usual and customary information normally included in a client record. (38 U.S.C. 620(f)(A)(1))

**§ 17.51f Extension of adult day health care beyond 6 months.**

(a) Directors of health care facilities may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of adult day health care in a VA facility or in a public or private facility at VA expense beyond six months when the need for adult day health care continues to exist and

(1) Arrangements for payment of such care through a public assistance program (such as Medicaid) for which the veteran has applied, have been delayed due to unforeseen eligibility problems which can reasonably be expected to be resolved within the extension period, or

(2) The veteran has made specific arrangements for private payment of such care, and

(i) Such arrangements cannot be effectuated as planned because of unforeseen, unavoidable difficulties, such as a temporary obstacle to liquidation of property, and

(ii) Such difficulties can reasonably be expected to be resolved within the extension period; or

(3) The veteran is terminally ill and life expectancy has been medically determined to be less than six months.

(4) In no case may an extension under (1) or (2) exceed 45 days. (38 U.S.C. 620(f)(1)(A)(i))

**§ 17.51g Provision of services to adult day health care institutions.**

VA facilities may enter into agreements to provide resources (whether equipment, space, or personnel) to institutions furnishing adult day health care at VA expense under § 17.51e if:

(a) The resources will be used solely to furnish adult day health care, and

(b) The agreement provides the VA with reimbursement for the full cost of such resources including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. (38 U.S.C. 620(f)(1)(B))

[FR Doc. 87-9146 Filed 4-22-87; 8:45 am]

BILLING CODE 8320-01-M

## POSTAL SERVICE

### 39 CFR Part 10

### International Surface Air Lift Service to 57 Additional Countries and Revised Rate Schedules

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to agreements with certain postal administrations, the Postal Service intends to begin International Surface Air Lift Service to certain new destinating countries at postage rates indicated in the tables below. The Postal Service also announces revised postal pound rates based on the network expansion and improved transportation and handling changes.

**EFFECTIVE DATE:** May 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Leon W. Perlinn, (202) 268-2673.

**SUPPLEMENTARY INFORMATION:** By a notice published in the **Federal Register** on March 19, 1987 (52 FR 8627), the Postal Service announced that it was proposing to begin International Surface Air Lift Service to certain new destinating countries at revised postal rates based on the network expansion and improved transportation and handling changes. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, (39 CFR 10.1)), and which are to become effective on the date service begins.

No comments were received. Accordingly, the Postal Service states that it intends to provide International Surface Air Lift Service on May 23, 1987 at the rates indicated in the table below.

**List of Subjects in 39 CFR Part 10**

Postal Service, Foreign relations.

**PART 10—[AMENDED]**

The authority citation for Part 10 continues to read as follows:

**Authority:** 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

INTERNATIONAL SURFACE AIR LIFT SERVICE

[Postal Pound Rates]

| Groups | Full service | | Dropship[1] | |
|---|---|---|---|---|
| | Regular | M/BAG | Regular | M/BAG |
| 1 | $2.65 | $2.28 | $2.55 | $2.04 |
| 2 | 2.35 | 1.88 | 2.05 | 1.64 |
| 3 | 2.22 | 1.78 | 1.92 | 1.54 |
| 4 | 3.10 | 2.48 | 2.80 | 2.24 |
| 5 | 3.90 | 3.12 | 3.60 | 2.88 |

[1] For International Surface Air Lift Mail presented at the J.F. Kennedy airmail facility, Queens Borough, New York City by the mailer.

INTERNATIONAL SURFACE AIR LIFT SERVICE RATE GROUPS

[New Destination Countries for: Rate Groups [2]]

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| Algeria, Canary Islands, Egypt, Libya, Morocco, Tunisia, Turkey, and USSR. | None..... | None..... | None..... | Angola, Bahrain, Bangladesh, Benin, Burkina Faso, Burundi, Cameroon, Central Africa Rep, Congo, Ethiopa, Gabon, Ghana, Iran, Iraq, Israel, Ivory Coast, Jordan, Kenya, Kuwait, Lebanon, Liberia, Madagascar, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Oman, Pakistan, Qatar, Reunion, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sri Lanka, Sudan, Syria, Tanzania, Togo, Uganda, United Arab, Emirates, Yemen, Peop. Dem. Rep., Yemen Arab Republic, Zaire, Zambia, and Zimbabwe. |

[2] A list of the 67 current countries by rate group may be obtained by writing the Office of Marketing, Market Development Division, U.S.P.S. Headquarters, 475 L'Enfant Plaza West SW., Washington, DC 20260–6331, or by calling that Division at [202] 268–2263.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the Federal Register as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

Fred Eggleston,

*Assistant General Counsel Legislative Division.*

[FR Doc. 87–9194 Filed 4–22–87; 8:45 am]

BILLING CODE 7710-12-M

## POSTAL RATE COMMISSION

### 39 CFR Part 3001

[Docket No. RM87–3] Order No. 754]

### Freedom of Information Act: Fees; Order Adopting Interim Rules

Issued: April 17, 1987.

**AGENCY:** Postal Rate Commission.

**ACTION:** Interim rules.

**SUMMARY:** These interim rules implement the Freedom of Information Reform Act of 1986, Pub. L. 99–570, and the Office of Management and Budget (OMB) Fees Schedule and Guidelines issued pursuant to that Act and published at 52 FR 10012 (March 27, 1987).

They are set forth for comment and suggested revision before adoption in definitive form.

**DATES:** The interim rules will take effect on May 26, 1987. Comments must be received on or before May 18, 1987.

**ADDRESS:** Comments should be directed to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

**FOR FURTHER INFORMATION CONTACT:** David F. Stover, General Counsel, Postal Rate Commission (202–789–6820).

**SUPPLEMENTARY INFORMATION:** Under the FOIA Reform Act of 1986, new statutory rules govern the charging of fees. The legislation permits agencies to charge certain direct costs of responding to FOIA requests, distinguishes different classes of requesters with differing liability for fees, and requires in some cases that limited searching and duplication be provided free. The act also required OMB to issue Guidelines and a fee schedule, which agency rules are to follow. These rules follow the OMB document.

The FOIA Reform Act calls upon agencies, pursuant to notice-and-comment procedures, to promulgate rules conforming to the OMB guidelines, and to do so by the 180th day after its enactment (*i.e.*, April 25, 1987). The deadline is satisfied by publication of rules, even if their effective date is later. The impending statutory deadline has led to the decision to issue these rules on an interim basis, inviting comment on them with a view to making any needed revision after consideration of the comments. Such procedures have been used where it is infeasible both to meet a statutory deadline for rulemaking and to give a normal opportunity for comment on a pre-promulgation basis; *e.g., American Transfer & Storage Co. v. ICC*, 719 F.2d 1283 (5th Cir. 1983); *Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877 (3d Cir. 1982). The present situation is similar to these. Rather than unduly abbreviate the comment period on this set of rules, in order to meet the statutory deadline, we have chosen to follow the interim rule procedure. This is particularly appropriate here since these rules simply adopt the OMB guidelines which were themselves subjected to public comment and to revision in light of the comments received.

The Commission finds that these amendments do not constitute a major rule, as they affect only fees incidental to FOIA requests and should thus have a negligible economic impact. They can be expected to have no measurable effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in domestic or export markets. In addition, the changes are limited to those already mandated by Congressional enactment. This finding that the changes do not constitute a major rule applies as well to the Regulatory Flexibility Act.

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedure, Freedom of information, Postal Service.

**PART 3001—[AMENDED]**

1. The authority for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 3603, 3622, 3623, 84 Stat. 759–761; (5 U.S.C. 553), 80 Stat. 383, unless otherwise noted.

**§ 3001.42 [Amended]**

2. Revise § 3001.42(c)(4) to read as follows:

* * * * *

(c) * * *

(4) *Fees—general information.* Documents furnished pursuant to the Freedom of Information Act, as amended, are subject to fees governed by the following provisions. As used herein,

(i) "Direct costs" means expenditures the Commission actually incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee performing work (the basic pay rate of such employee plus 16 percent to cover benefits) and the cost of operating required machinery.

(ii) "Search" means all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

(iii) "Duplication" means making copies of documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(iv) "Review" means examining documents located in response to a commercial-use request to determine whether any porton is exempt from mandatory disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

(v) A "commercial use" request is a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(vi) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(vii) A "noncommercial scientific institution" is an institution, not operated on a "commercial" basis (as defined above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(viii) A "representative of the news media" is any person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that concerns current events or would be of current interest to the public. Freelance journalists may be regarded as working for a news medium if they demonstrate (for example, by a publication contract or a past record of publication) a solid basis for expecting publication through such organization even though not actually employed by it.

Except in the case of commercial-use requesters, the first 100 pages of duplication and the first two hours of search time will be provided without charge. A "page" for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy. "Search time" for these purposes refers to manual searching; if the search is performed by computer, the amount not charged for will be the search cost equivalent to two hours' salary of the person performing the search. No requester will be charged a fee when the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for two hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection. Documents will be provided without charge when disclosure of the information would be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

* * * * *

2. Add a new § 3001.42(c)(5), to read as follows:

(c) * * *

(5) *Fees—schedule; administrative provisions.* Fees will be charged in accordance with the following provisions:

(i) The level of fee charged depends on the category of requester:

(*a*) A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(*b*) A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(*c*) A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(*d*) A request from any other requester will be charged the full direct cost of searching for and duplicating records responsive to the request, except that the first 100 pages of duplication and the first two hours of search will be furnished without charge.

(*e*) A request from a record subject for records about himself or herself filed in a Commission system of records will be charged fees under the Privacy Act of 1974 (which permits charges only for duplication).

(ii) Fees shall be calculated as follows:

(*a*) *Manual search:* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time will be charged for even if the Commission fails to locate records or if records located are found exempt from disclosure.

(*b*) *Computer search:* At the actual direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request, runs, and operator salary apportionable to the search.

(*c*) *Review (commercial-use requests):* At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level of an exemption already applied, will be charged for.

(*d*) *Duplication:* At 15 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(*e*) *Additional services:* Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actual cost.

(iii) (*a*) Should it reasonably appear that a requester, or a group of requesters, have attempted to evade fees by breaking down a request into a series of requests, the Commission will aggregate the separate requests. The period of time within which such multiple requests are filed will be a major consideration in making such a determination. However, multiple requests from one requester covering unrelated subjects will not be aggregated.

(*b*) Interest at the rate prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills, starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

(*c*) Advance payment may be required only when the allowable fees are likely to exceed $250, in which case advance payment in part or in full may be required of requesters with no history of prompt payment, and satisfactory assurance of payment from requesters with such history; or when the requester has previously failed to pay a fee timely (within 30 days of the billing date), in which case the Commission may require full payment of the amount owed, plus applicable interest, or a demonstration that the fee has in fact been paid, together with full advance payment of the estimated fee. When advance payment is required, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act (10 working days from receipt of initial requests, 20 working days from receipt

of appeals of initial denials, and any permissible extensions of these limits) begin only after such payment has been received.

* * * * *

By the Commission.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 87-9099 Filed 4-22-87; 8:45 am]

BILLING CODE 7715-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Part 160

**[CGD 84-069a]**

### Lifesaving Equipment; Immersion Suits

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule; Suspension of effective date.

**SUMMARY:** The effective date of the final rule for lifesaving equipment which appeared in the **Federal Register** on January 12, 1987 (52 FR 1185) is being suspended. Two changes to the specification for immersion suits are needed in light of recent interpretations of the International Convention for Safety of Life at Sea which came to our attention after the comment period closed. It would be pointless for the Coast Guard to issue Certificates of Approval for immersion suits which do not fully comply with the requirements of the International Convention for Safety of Life at Sea, as amended, and IMO Resolution A-521. Postponement of the effective date of the final rule is therefore necessary in order to leave current approvals of exposure suits in effect until the public has an opportunity to comment on these latest proposed changes. The effective date of final rule (52 FR 1185) is hereby suspended until further notice. The effective date will occur with the finalization of the Supplemental Notice of Proposed Rulemaking. A supplemental notice of proposed rulemaking addressing the needed changes is published elsewhere in this issue of the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** LCDR William M. Riley, Survival Systems Branch, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1444.

Dated: March 16, 1987.

**W.J. Ecker,**

*Capt., U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87-9181 Filed 4-22-87; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 67

### Treatment of a Host/Remote Local Deal Switching Complex; Interpretation Letter

**AGENCY:** Federal Communications Commission.

**ACTION:** Interpretation letter.

**SUMMARY:** Under delegated authority the Common Carrier Bureau in response to a request by Shenandoah Telephone Company has provided an interpretation of the Separations Manual, Part 67 of the FCC Rules and Regulations. This issue concerns a clarification of the separations treatment of a "host/remote complex" as it relates to an exchange and separate rate points. The interpretation is intended to clarify the meaning of a host/remote local dial switching complex in § 67.138(a)(2) in relations to an exchange and a separate rate point.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael Wilson, Common Carrier Bureau, Audits Branch, (202) 632-7500.

**William J. Tricarico,**

*Secretary.*

March 31, 1987.

Mr. Warren B. French,
*Shenandoah Telephone Company,*
P.O. Box 246,
Edinburg, VA 22824

Dear Mr. French: This is in response to your letter of September 22, 1986, to Mr. Michael W. Wilson, requesting clarification of the separations treatment of a "host/remote local dial switching complex." In your letter, you asked whether paragraph 67.138(a)(2) of the Commission's Rules can be interpreted to imply that an exchange is a separate rate point, and that only host remote dial switching complexes within one exchange (rate point) would be considered a local dial office.

We have reviewed the Joint Board's recommended decision of September 23, 1983 and the Commission's decision concerning that recommendation, and have found no support for your position that a host office and each remote office can each be treated as a local dial office. In fact, the rule which you cited in your letter, specifically states that a host/remote local dial switching complex, which includes all of its remote locations, is treated as one local dial office. Furthermore, there is no indication in either the Joint Board's recommendation discussion or the related Commission order, that the definition of an exchange relates to a separate rate point. Therefore, we believe that your host/remote office and all of its remote locations should be considered as one local dial office.

You also requested our recommendation for the appropriate waiver request to assist you in clarifying your request. An appropriate waiver request on this issue must show the impact of your request on your state and interstate revenue requirements. It must also explain why the current rule is inappropriate for your company. Finally it must request either a permanent waiver or a waiver for a specific period of time.

I hope this explanation clarifies the treatment required for host/remote complexes. If you have any questions concerning this response, please contact Michael Wilson of my staff at 202-632-7500.

Sincerely,

Gerald Brock,

*Chief, Accounting and Audits Division.*

[FR Doc. 87-9160 Filed 4-22-87; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 86-84; RM-5018]**

### Radio Broadcasting Services; Springfield, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 270A to Springfield, Florida, as a second FM channel at the request of Springfield Broadcasters. With this action, this proceeding is terminated.

**DATES:** Effective June 1, 1987; the window period for filing applications will open on June 2, 1987, and close on July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-84, adopted February 5, 1987, and released April 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202(b), the Table of Allotments, in the entry for Springfield, Florida, Channel 270A is added.

**Mark. N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-9161 Filed 4-22-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-280; RM-5201; RM-5507]**

## Radio Broadcasting Services; Brusly and New Roads, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 242A to Brusly, Louisiana as that community's first FM Channel at the request of Rick Pevey. It also substitutes channel 293C2 for Channel 292A at New Roads, Louisiana and modifies the license of Station KQXL(FM), New Roads to specify the new channel at the request of Citywide Broadcasting Corporation. With this action, this proceeding is terminated.

**DATES:** Effective June 1, 1987. The window period for filling applications will open on June 2, and close on July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** D. David Weston, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTAY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-280, adopted March 27, 1987, and released April 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended by adding the entry of Channel 242A to Brusly, Louisiana and substituting Channel 293C2 for Channel 292A at the entry for New Roads, Louisiana.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-9162 Filed 4-22-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-118; RM-5139]**

## Television Broadcasting Services: Bath, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document assigns UHF-TV Channel 14- to Bath, New York as the community's first local TV service, at the request of Melvin Watkins. Supporting comments were filed by Watkins and William H. Walker, Jr. A site restriction of 13.4 kilometers (8.4 miles) south is imposed. With this action, this proceeding is terminated.

**DATE:** Effective June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-118, adopted February 5, 1987, and released April 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Television Table of Assignments for New York is amended by adding Bath, Channel 14-.

**Mark N. Lipp,**

*Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-9164 Filed 4-22-87; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 86-67; RM-5070]**

## Radio Broadcasting Services; Georgetown, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 299A to Georgetown, Texas, as the community's second FM service, at that request of Werlinger Communication Company. A site restriction of 8.0 kilometers (5.0 miles) north of Georgetown is required. With this action, this proceeding is terminated.

**DATES:** Effective June 1, 1987; The window period for filing applications will open on June 2, 1987, and close on July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-67, adopted March 27, 1987, and released April 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended by adding

Channel 299A under Georgetown, Texas.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-9163 Filed 4-22-87; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF DEFENSE

**48 CFR Parts 215 and 252**

## Department of Defense, Federal Acquisition, Regulation Supplement; Availability of Contractor Records; Correction

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule; correction.

**SUMMARY:** This document corrects an interim rule on Availability of Contractor Records which was published April 8, 1987 (52 FR 11276) (FR Doc. 87-7817). The action is necessary to correct errors in section numbers cited in Parts 215 and 252.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Accordingly, the Department of Defense is correcting 48 CFR Parts 215 and 252 as follows:

1. On page 11277, in paragraph 2 of the amendatory language and in the text, section "215.873" is corrected to read "215.875".

2. On page 11277, section 252.215-7001 is corrected by changing the reference in the introductory text from "215.873" to read "215.875".

[FR Doc. 87-9090 Filed 4-22-87; 8:45 am]

BILLING CODE 3810-01-M

# Proposed Rules

Federal Register
Vol. 52, No. 78
Thursday, April 23, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

### Revised Draft Recommendation on Agency Hiring of Private Attorneys; Request for Comment

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Request for public comments.

**SUMMARY:** The Administrative Conference's Committee on Governmental Processes has under consideration a revised draft recommendation on federal agency hiring of private attorneys. Interested persons are invited to comment on the draft recommendations.

**DATE:** Comments due by Tuesday, May 12, 1987.

**ADDRESS:** Send comments to David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** David M. Pritzker, 202–254–7065.

**SUPPLEMENTARY INFORMATION:** On October 28, 1986, the Administrative Conference published for public comment a draft recommendation on federal agency hiring of private attorneys. (See 51 FR 39378.) After receiving comments from numerous federal agencies and others, the Conference's Committee on Governmental Processes chose to conduct additional research and to revise its proposed recommendation.

The new draft is based in part on a study prepared by Professor William V. Luneburg of the University of Pittsburgh School of Law. Professor Luneburg's report draws upon a preliminary survey by the firm of Wolf, Block, Schorr and Solis-Cohen of Philadelphia, Pennsylvania, and a report on relevant ethical considerations by Professor Ronald D. Rotunda of the University of Illinois College of Law. Copies of any of these papers may be obtained from the Administrative Conference.

The proposed recommendation takes the position that government agencies should continue to obtain most of the legal services that they need from in-house government attorneys. However, agencies should be able to hire private attorneys when needed. Any agency that anticipates a need to hire private attorneys should prepare written public guidelines for this purpose. When deciding to seek outside legal counsel, an agency should assure itself that it can exercise sufficient control over the performance of the services to be obtained and that obtaining these services from private attorneys is cost-effective. Appropriate competitive procedures should be followed by the agency to avoid any favoritism and to help assure quality service at a reasonable price. The recommendation also addresses various ethical concerns and the question of whether a fee cap is advisable.

The Conference's Committee on Governmental Processes will meet again on May 19 for further consideration of the draft recommendation in the light of any comments that may be received. At that time, the committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for June 11 and 12, 1987. Comments should be sent to the address given above.

### Draft Recommendation: Agency Hiring of Private Attorneys

In 1985 the Federal Government employed over 20,000 lawyers in various positions. At the same time it spent millions of dollars to retain private attorneys to perform a variety of services, including legal advice, negotiation, and litigation. The two public entities that accounted for most of these expenditures were the Federal Deposit Insurance Corporation (FDIC) and the Federal Home Loan Bank Board (FHLBB). The attorney fees paid by the FDIC and the FHLBB have increased rapidly since 1982 and have been primarily in their capacities as receivers or liquidators of failed banks or savings and loans for which they have provided deposit insurance. In those cases, the legal fees and other expenses are borne by the estate of the failed bank. However, available statistics indicate that most other federal agencies, including government corporations, utilize the services of private attorneys at least occasionally—in some instances on a regular basis—and the fees they pay usually come from appropriated funds.

The Conference has considered the variety of situations in which government agencies use private attorneys. This recommendation is limited to those attorneys with whom the agency establishes an attorney-client relationship, i.e., attorneys who represent the agency or provide legal advice or services to it. This would not include, for example, individuals hired to do independent research and reports, arbitrators hired to decide personnel or other disputes, persons hired to perform mediation or similar services in connection with negotiated rulemaking, or any other individual hired by an agency to do a particular task, who may happen to be an attorney, but is not being hired specifically to act in that capacity.[1]

In the private sector, it is cost-effective both to employ a full-time legal staff and to contract out some legal assignments. Many corporations have focused attention on methods to ensure that the size of the in-house staff is optimal and that work is contracted out only when necessary or for certain categories of work. Guidelines, criteria, and procedures have been developed to ensure that the cost of high quality legal services is not unnecessarily high.

Concern for cost-effectiveness, a multi-faceted goal which does not look at the factor of price in isolation, is clearly approriate in the public sector. However, additional considerations bear on the decision of the federal government to rely on outside counsel. An agency should also be acutely aware of the need for control over the activities of outside counsel to ensure, among other things, that the constitutional vesting of governmental authority in "officers" of the United States is observed in fact and not as a matter of legal fiction. The need for close control may vary with the circumstances, though with regard to litigation, it must

[1] The Administrative Conference has not studied the appointment of independent counsel under the Ethics in Government Act, 28 U.S.C. 591–598, and takes no position on any special concerns that may be applicable in such situations.

generally assume preeminent importance.[2]

Furthermore, in procuring the services of attorneys, agencies must be scrupulous to avoid favoritism, or even the appearance of favoritism, which can erode public confidence in the integrity and fairness of the government. Competitive procedures, whether mandated by the Competition in Contracting Act or imposed as a matter of agency policy, will not only eliminate or reduce the prospect or appearance of favoritism, but may result in higher quality legal services and substantial savings in cost. However, when an agency determines that it needs legal services from a private attorney, the emphasis on cost as embodied in the Federal Acquisition Regulation may undermine the ability of the government to obtain the quality of legal services required.

Attorneys performing work for the government must maintain the highest ethical standards. There should be a special sensitivity to questions of appearances and propriety, so that there is no basis for suggesting any loss of public confidence in the administration of justice or the integrity of the governmental process. The hiring of outside counsel may raise important questions regarding conflicts between the interests of the government and others, which federal criminal law (18 U.S.C. 202 *et seq.* ), ethics rules applicable to federal employees, and codes of professional responsibility seek to guard against. The principal ethical problem for outside attorneys involves simultaneous representation of the agency and a party with interests adverse to the agency, albeit in an unrelated matter. An important related question involves an attorney or firm appearing before an agency in a non-adversarial role, on behalf of another client, while simultaneously acting as attorney for the agency in a different matter. In order to protect fully the government and the public, every effort must be made to discover conflicts or potential conflicts before work is contracted out, and to assure that, during the course of the representation, such problems are immediately disclosed to the agency so that it may take appropriate action.

In order to assure that all of these concerns are taken into account, any agency that anticipates a need to hire private attorneys should prepare written public guidelines concerning when and how it will seek outside counsel. As an element of agency control, as well as to avoid later misunderstandings, appropriate written instructions should be given to attorneys when they are retained. The FDIC, FHLBB, and the Department of Justice have developed documents for these purposes, and agencies drafting guidelines and instructions should refer to them as possible models. Agencies may also find useful models in the private sector for some elements of their guidelines.

To respond to the concerns surrounding government use of outside counsel, agencies should prepare an annual public report listing basic information relating to legal service contracts awarded.

The Conference has also considered whether there should be a fixed cap on hourly fees to be paid to private attorneys hired by agencies, and has concluded that a government-wide limitation is inadvisable. However, it may be appropriate for individual agencies to set hourly rates, provided that such limits are set at realistic levels. In many cases, the aggregate cost of legal services does not depend on hourly rates alone, and all relevant facts should be considered in determining the economic efficiency of a proposed contract for legal services. In hiring private counsel, agencies can also take into consideration the attorney's willingness to negotiate fees, seeking the most competitive fees available, while securing the skills and efficiency required.

**Recommendation**

*1. Use of In-House Government Attorneys*

(a) Government agencies should continue to obtain most of the legal services that they need from in-house government attorneys. Where an agency perceives an ongoing need for outside legal assistance, it should consider the alternative of expanding its in-house legal staff.

(b) When agencies cannot develop the necessary legal resources in-House, they should explore the possibility of utilizing the expertise found at other agencies of the government, on a temporary or short-term basis. The Office of Personnel Management should establish a procedure for sharing information among agencies on the kinds of legal resources available within the government.

*2. Guidelines for Hiring Outside Counsel*

Each agency that anticipates a need to hire private attorneys should prepare written public guidelines detailing the criteria for: (a) Deciding whether or not to seek outside legal assistance, (b) the factors relevant to the choice of attorney or firm, (c) the procedures for procurement, (d) how the agency will supervise hired counsel, (e) billing practices, and (f) review of fees.

*3. The Decision to Hire Outside Counsel*

When an agency is considering whether to hire outside counsel, the agency should first assure itself that it can exercise sufficient control over the performance of the services to be obtained and that such employment is cost-effective. The "price" of the services in direct monetary terms should not, however, be the sole test for cost-effectiveness. The quality of the services provided is also of utmost importance in assessing the benefit to be gained from the use of outside counsel.

*4. Competition*

In obtaining outside counsel, the agency should employ appropriate competitive procedures that reduce or eliminate the fact or appearance of favoritism and help assure that the requisite quality of service is obtained at a reasonable price. The Office of Federal Procurement Policy should review the existing provisions of the Federal Acquisition Regulation to ensure that legal services can be procured consistently with the objectives of this recommendation.

*5. Supervision and Control*

The contracting agency should retain sufficient control and exercise adequate supervision over the performance of outside counsel so that the governmental and public interests at stake are fully protected. To facilitate supervision and control, the agency should at the outset provide the attorney with specific written instructions expressing the agency's expectations, procedures, and restrictions (including strictures on conflicts of interest). Supervision and control are particularly important where the outside counsel is engaged for litigation purposes.

*6. Public Reports*

Each agency that hires outside counsel should prepare a public report annually, listing for each case: (a) The attorney and type of work involved, (b)

[2] The Conference recognizes, of course, that with limited statutory exceptions most litigation on behalf of the United States is conducted by the Department of Justice.

the reason for going outside for assistance, (c) what competitive procedures were used, if any, (d) the fee range or other basis for compensation, and (e) the actual fee paid. For routine cases involving small amounts, aggregate figures should be acceptable.

*7. Ethical Considerations*

(a) An agency should require outside counsel whom they plan to hire to disclose fully in writing all matters pending before, or reasonably expected to come before, that agency, and all other possible conflicts of interests, so that the agency can decide whether to proceed with the hiring in light of the information disclosed. If the attorney-client privilege or other rules prevent outside counsel from making full disclosure to the agency, then the outside counsel should not be permitted to accept the agency employment. Outside counsel who do accept agency employment should be required to sign statements indicating counsel's awareness that certain kinds of work cannot be undertaken while they represent the agency.

(b) Federal agencies and such private attorneys as they retain should be particularly mindful of the ethical provisions imposed by statutes, regulations, executive orders, codes of professional conduct, and any applicable guidelines that are relevant to conflict of interest and other potential ethical problems. Such provisions and guidelines should be explicitly referenced in the agency's contracts with outside counsel.

(c) Whether or not an attorney retained by an agency is deemed a special government employee pursuant to 18 U.S.C. 202(a), those rules that would automatically have applied to a special government employee should be adopted by the contract with the attorney unless they are clearly inappropriate. Such contracts should also incorporate other relevant rules of employee responsibilities and conduct (see 5 CFR Part 735) to the extent that they are appropriate.[3]

(d) The Department of Justice and the Office of Government Ethics should provide guidance on the applicability of 18 U.S.C. 203–208 to agency hiring of outside counsel. Subject to that guidance, agency guidelines should provide that, for purposes of disqualification based on the prohibition against simultaneous or sequential representation of opposing parties, different departments or independent agencies of the federal government should normally be considered to be different clients.[4] The guidelines should also provide that, if more than one agency has an interest in the matter, then the definition of "client" should include any such agency. The guidelines should also make clear that all lawyers in the firm, including all branch offices of the firm, are subject to the applicable restrictions on simultaneous or sequential representation, and that these restrictions apply not merely to litigation, but to all matters in which an attorney-client relationship has been established.

(e) The guidelines should also address the varying circumstances in which an attorney may represent other clients in matters involving the agency. The guidelines should identify those situations that should be avoided.

(f) If a private attorney represents a particular agency frequently, then their attorney-client relationship should be considered as a continuing one. In such a situation, neither the attorney nor the attorney's firm should agree to represent another client in a matter involving the client agency without the agency's explicit consent, even if, at that time, the attorney is not representing or advising the agency on a specific matter.

*8. Limitations on Hourly Rates*

No government-wide limitation on hourly rates should be established for hiring of private counsel. It may be appropriate for agencies to set a fixed cap on hourly rates that they pay to private attorneys for routine legal tasks; a higher fee cap may be appropriate for unusual or complex legal work. However, such limits, if adopted, should be set at realistic levels, in line with fees typically charged for similar services in the same locale, so that agencies hiring outside counsel will be able to obtain the needed degree of expertise.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 87–9308 Filed 4–22–87; 8:45 am]

BILLING CODE 3110–01–M

[3] See 5 CFR 735.301–.306, which prescribe ethics and conduct rules for special government employees. See, particularly, 5 CFR 735.301, which advises agencies that appropriate ethics and conduct rules for regular employees, stated elsewhere in Part 735, may also be made applicable by regulation to special government employees.

[4] The Department of Justice should consider, in accordance with Recommendation 84–5, 1 CFR 305.84–5, whether to issue a regulation that explicitly preempts any state rule of attorney practice that is in conflict with its guidance.

---

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 273**

**[Amd. No. 289]**

## Food Stamp Program; Simplified Application and Standardized Benefit Project

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rulemaking establishes procedures for conducting a project involving the use of simplified food stamp application and benefit determination procedures for recipients of certain types of categorical aid. This project is authorized by subsection 8(e) of the Food Stamp Act of 1977, as amended by section 1520 of the Food Security Act of 1985 (7 U.S.C. 2017(e)). The goals of the project are improved administrative efficiency and reduced error rates.

**DATE:** Comments on this proposed rule must be received on or before June 22, 1987 to be assured of consideration.

**ADDRESS:** Comments should be submitted to M. Patricia Warner, Chief, Administration and Design Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 706.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this proposed rulemaking should be directed to Ms. Warner at the above address or by telephone at (703) 756–3385.

**SUPPLEMENTARY INFORMATION:**

**Classification**

*Executive Order 12291*

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified not major because the provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export

markets. These provisions will not significantly raise the Food Stamp Program's total benefit and administrative expenses. It is expected that the operation of these projects will result in administrative cost savings and error reduction in the Food Stamp Program (FSP). The project will be operated in a maximum of five States and five political subdivisions. Because these provisions will deal only with the administration of the FSP in these sites, they will not affect industry or trade in any substantive manner.

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). S. Anna Kondratas, Acting Administrator, Food and Nutrition Service (FNS), has certified that the action will not have a significant economic impact on a substantial number of small entities. The proposed rule establishes procedures under which State and local agencies will operate the Simplified Application and Standardized Benefit Project. As participation is voluntary and some administrative cost savings should result, there should be no significant adverse impact on the workload, staffing needs, or paperwork of participating State or county agencies.

*Reporting and Recordkeeping*

The reporting and recordkeeping requirements contained in this proposed regulation which come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) have been submitted to OMB for their review and approval.

**Background**

Section 17(d) of the Food Stamp Act, as amended by Pub. L. 97–98 (December 21, 1981), authorized the Secretary to conduct a simplified Application Demonstration Project. The Simplified Application Demonstration Project was an attempt to reduce the administrative burden of food stamp benefit calculations by simplifying programs rules. The demonstration project tested how different approaches to standardizing and simplifying policy affect benefits, administrative costs, and errors in the FSP. Four sites—the State of Illinois, the State of Oklahoma, and San Diego and Fresno Counties, California—Participated in the demonstration. Each developed and implemented its own version of policy simplification; however, all four focused on simplifying the process of determining food stamp benefit levels for households that are already eligible for other programs, particularly Aid to Families with Dependent Children (AFDC). The legislation allowed the participating sponsors to decide which categories of households would be project eligible—households all of whose members received AFDC, Supplemental Security Income (SSI) and/or Medicaid (pure households), or households only some of whose members received AFDC, SSI and/or Medicaid (mixed households). In Illinois, program simplification entailed assigning food stamp benefits to pure AFDC households based on standard benefit tables under which all households within certain categories received the same food stamp allotment. In Oklahoma, income equal to the maximum state AFDC payment ( plus any applicable AFDC "$30 and ⅓" earned income disregard) was used as the food stamp gross-income standard for AFDC households. Income equal to countable SSI income plus the State supplemental payment was used as the food stamp gross-income standard for SSI/Medicaid households. The California sites used AFDC income definitions to establish FSP eligibility and benefit levels. The San Diego project involved both pure and mixed AFDC households; only pure AFDC households were project eligible in Fresno. The evaluation of the demonstration showed that simplified procedures could, depending upon the type of benefit standardization implemented, significantly reduce administrative costs and error rates.

The 1985 Food Security Act (Pub. L. 99–198, December 23, 1985) established the use of simplified application and standardized benefit procedures as an operational alternative. By and large, the operational guidelines contained in the legislation authorizing the Simplified Application Demonstration Project (Pub. L. 97–98) have been repeated in the new legislation (Pub. L. 99–198). (These guidelines are discussed below.) Rather than establish the Simplified Application and Standardized Benefit Project as an operational alternative available to all States, however, the 1985 legislation specifically limits its operation to a maximum of five States and five political subdivisions.

Both the demonstration project legislation (Pub. L. 97–98) and the project legislation (Pub. L. 99–198) required the Secretary of Agriculture to consult with the Secretary of Health and Human Services to ensure that application processing and benefit determinations are unified to the extent practical. Discussions are ongoing between the two Departments to achieve this goal.

*General—§ 273.23(a)*

The Simplified Application and Standardized Benefit Project will simplify FSP application and benefit determination procedures for households in which one or more members receive AFDC under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) of SSI under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) or medical assistance (Medicaid) under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). As in the demonstration project, project operators will be given the option of deciding which of these categories of households will be project eligible: pure AFDC, pure SSI, pure Medicaid, mixed AFDC, mixed SSI, mixed Medicaid, and/or multiple benefit households containing members receiving some combination of AFDC, SSI and Medicaid benefits.

By virtue of: (1) Having applied and been found eligible for these other programs and (2) indicating a desire to receive food stamps, project eligible households would be considered to have satisfied the food stamp application requirements of subsection 5(a) of the Food Stamp Act. Project eligible households would have their food stamp eligibility determined using information contained in their AFDC, SSI, or Medicaid application. (Depending on the contents of those applications and operational features of the project, i.e., the inclusion of mixed households, some additional information may be required.) Eligibility of these other programs would make project eligible households—whether they be pure, mixed, or multiple benefit households—categorically food stamp resource eligible. Households would have to meet the food stamp income eligibility standards. However, the calculation of food stamp gross income would be simplified because the gross income definitions of these other aid programs, rather than food stamp income definitions, could be used. Such income definitions would apply to household members not receiving AFDC, SSI or Medicaid as well, if they are included in the project eligible

universe. Project eligible households would have to meet other non-financial food stamp eligibility criteria if they are applicable.

By establishing the above financial and non-financial eligibility requirements in the project legislation, Congress clearly did not intend that project eligible households be categorically food stamp eligible. This is understandable since the legislation provides for the inclusion of mixed households in the project eligible universe. The potential variation in "other" household members' income levels necessitates that such households meet the FSP income eligibility standards for gross and net income. However, the 1985 Food Security Act did establish categorical FSP eligibility for pure AFDC and pure SSI households. If pure AFDC and/or pure SSI households are included in the project eligible universe, they could be considered categorically FSP eligible without having to meet any further project requirements other than indicating their desire to receive food stamps.

To further simplify FSP administration, benefits provided to project eligible households could be standardized by category of assistance and household size, rather than being individually determined. The Secretary, however, is required to ensure that the average allotment by household size for households participating in the project is not less than the average allotment that would have been received by each category of households had the project not been in operation.

*Selection of Project Operators—§ 273.23(b)*

Because the legislation limits the operation of the project to a maximum of five States and five political subdivisions, FNS will competitively select project operators. Political entities wishing to participate in the project will submit a Work Plan describing how the project will work and detailing anticipated impacts on administrative costs, error rates, and benefit levels. A Notice soliciting Simplified Application and Standardized Benefit Project Work Plans will be published concurrently with the final regulations. States and/or political subdivisions will be given 90 days to prepare and submit their plans to FNS.

FNS current plans for evaluating Work Plans and selecting project operators are as follows. First, all Work Plans will be initially reviewed to ensure that they meet minimum requirements for technical quality, i.e., the information provided is sufficient to allow an evaluation of the effects of the proposed design. If the Work Plans have sufficient technical merit, they will then be rated on: (1) Their conformance to the requirements contained in the regulations; and (2) their net effect on Federal costs, i.e., administrative cost savings and benefit impacts. These two elements would be equally weighted. Comments are specifically requested on these criteria and their weights. Alternative and/or additional criteria and substantiating rationale are welcome and will be carefully considered. Final selection criteria and weights will be published with the Notice.

*The Work Plan—§ 273.23(c)*

The Work Plan should be a stand alone document which will provide complete information on how the State and/or political subdivision intends to implement and operate the project. A draft guide for preparing the Work Plan will be available from FNS during the Spring of 1987. Persons wishing a copy should either write or call Ms. Warner at the address and/or phone number shown above. Names will be placed on a mailing list and copies will be distributed as soon as they are available. The final guide will be distributed based on the mailing list when final regulations are published.

The following information must be in the Work Plan.

(a) Project universe. Describe project eligible households by their type, e.g., pure AFDC, pure SSI, mixed AFDC/SSI, or mixed AFDC; their number; and their proportion of the caseload. In the case of a submittal by a political subdivision, the political subdivision's total caseload as a percentage of the total Statewide caseload should also be shown. Data on the political subdivision's share of the State's error rate should also be shown if such information is available.

(b) Project tasks. The implementation plan should describe planning tasks and estimated time for task completion. The operational plan should decribe current procedures used for application processing, benefit delivery, quality control case review, project monitoring, and other related activities and should describe how such procedures will be changed as a result of the project. While this section of the plan need not be as detailed as manual material, it should provide sufficient information to allow a complete and thorough understanding of the State or political subdivisions' plan for project implementation and operation.

(c) Benefit methodology. For those States choosing to standardize benefits, the benefit methodology will be the centerpiece of the plan. Actual development of the benefit methodology is discussed in detail below. For purposes of the Work Plan, the submitting agency should fully describe how the benefit methodology was developed and the impact it will have on household benefits. In describing benefit impact, the submission must contain charts detailing as closely as possible, by household category and size, households gaining and losing benefits; the amounts of such gains and losses; and such gains and losses as a percentage of current monthly benefits. Any effects on average benefits that occur as a result of benefit standardization should be described as a percentage of total current benefit costs for project eligible households and as a percentage of total Statewide benefit costs. The submission must also describe: (1) How the benefit methodology will be undated to reflect changes in household characteristics, the Thrifty Food Plan, standard deduction, housing expenses, SSI/AFDC program changes, etc.; and (2) how the sponsor will meet the legislative caveat that average allotments provided to each category of household not be less than average allotments would have been were the project not in operation. In addition, procedures which will be used to protect the poorest food stamp households from suffering adverse consequences due to standardization must be discussed.

(d) Project effects. Based on demonstration project results, it is anticipated that administrative costs will be reduced as a result of project operation. The Work Plan should detail expected administrative costs savings, explain how those savings were estimated, and discuss how the State plans to use such projected "savings", i.e., whether they will be actual FSP savings or be directed into other program activites. Demonstration results also lead to the belief that the project will have a significant impact on the quality control error rate. The quality control impact analysis can be completed by examining current sources of error in relation to the sources of error which will be eliminated or reduced through the proposed benefit standardization methodology.

(e) Signatures. The Work Plan must be signed by the representative of the State government with authority to commit the State or political subdivision to project operation. This will generally be the same person who signs the State Plan of Operations.

*Program Changes—§ 273.23(e)*

The project will simplify current operational procedures in three ways. First, in lieu of completing a separate food stamp application, project operators will use the appropriate categorical aid application in determining food stamp eligibility. Because households must indicate their desire to receive food stamps and must meet the FSP's income and non-financial eligibility criteria if they are not categorically eligible, such applications may need to be modified or an addendum developed to gather such additional information. For example, if a sponsoring agency chooses to include mixed households in its project eligible universe, information on those additional household members would have to be collected if it is not available on the categorical aid application.

The second simplification pertains to financial eligibility. The legislation provides that all project eligible households—whether pure, mixed or multiple benefit—will be considered categorically food stamp resource eligible based on household members' eligibility for categorical aid. In determining a household food stamp income eligibility, gross income can be determined using gross income as defined and calculated for the appropriate categorical aid program plus the value of any monetary categorical benefits received, if any. For AFDC, the definition of gross income is found in 45 CFR 233.20(a)(3)(xiii). Although the SSI program does not define or calculate gross income, for food stamp purposes, SSI gross income would be the total of an individual's or couple's earned and unearned income (20 CFR 416.1102 and 416.1103). SSI deemed income (20 CFR 416.1160–416.1169) would not be included and SSI income exclusions (20 CFR 416.1112 and 416.1124) would not be applied. For Medicaid, the definition of gross income is, as appropriate: (1) gross income as defined for AFDC; (2) gross income as defined for SSI; or (3) a more restrictive definition of gross income for aged, blind and disabled in States which have elected such under their Medicaid Plan. Households will have to have their income eligibility evaluated using the gross and net income tests prescribed in subsection 5(c) of the Food Stamp Act. Net household income may be determined using either individual deduction amounts (if deduction information is collected) or standardized deduction information. The State or political subdivision's choice of benefit methodologies will control this decision.

The third simplification is in procedures for calculating household benefits.

*Benefit Determination Methodologies—§ 273.23(f)*

The current process for determining household benefits, i.e., gathering information on household circumstances, calculating benefits, reporting changes, and revising benefit levels, has been cited as the cause of both administrative expense and high error rates. This project provides operators with the opportunity to reduce such costs and errors through design of a benefit methodology tailored to meet specific State or political subdivision characteristics.

FNS will not prescribe the type of benefit methodology which operators must use. In fact, the four demonstration project sponsors used significantly different approaches to determining household benefits. One site used standardized benefit tables, one site streamlined the benefit calculation process, and two sites substituted AFDC for FSP definitions but maintained other benefit calculation features. These approaches are discussed in detail in *The Final Report on the Evaluation of the Simplified Application Project,* Mathematica Policy Research, September 1986, which was distributed to all State Welfare Commissioners. (A copy is on file with Ms. Warner at the address noted above and is available for review during normal business hours). It is recommended that all potential project operators read this report carefully to gain a thorough understanding of the approaches and the outcomes at the demonstration sites. FNS recognizes that still other approaches may satisfy project requirements and encourages potential operators to be innovative in their thinking. The proposed guidelines discussed below would serve as basic parameters in developing benefit methodologies. Initial methodologies and subsequent revisions will be subject to FNS approval.

Design considerations. In designing benefit methodologies, States and political subdivisions will be faced with a certain degree of "creative tension" which stems from competing goals. Achieving the goal of simplification through standardization means that less information on individual household circumstances is collected. Using averages or other standardized measures instead of actual household circumstances lead away from an explicit program goal of recognizing certain household expenditures which reduce the amount of income available to purchase food. During the demonstration, Illinois was allowed to protect households from the negative effects of standardization by using the maximum excess shelter deduction in the benefit formula. This resulted in approximately a six percent increase in program benefit costs, an expense which would not be acceptable either for the indefinite period of time or the large number of sites represented by this project. Thus, the goals for developing standardized benefit methodologies become: (1) Reducing administrative costs; (2) directing greater benefits to households having greater than average benefits under current rules; and (3) maintaining program costs at or near current levels.

Under these proposed regulations, benefits provided to project eligible households will be based on household size and either: (1) The State standard of need or (2) gross income as determined for the appropriate categorical aid program. (If Medicaid households receiving no categorical benefits are included, their benefits would have to be based on gross income since no "maximum aid payment" exists.) These proposed regulations interpret the term "State standard of need" contained in the legislation to include "maximum aid payment", since most States do not pay the full need standard. Thus, gross income can be standardized at either the maximum state aid payment or the calculated gross income amount plus the value of any monetary categorical aid payments, if any. These amounts should, by and large, be nearly equivalent because of the standard dollar-for-dollar benefit reduction formula generally used in computing categorical benefits. Some exceptions, such as for households receiving the AFDC "$30+⅓" earned income disregard, will occur and can be accounted for in various ways. The Final Report sets forth the solutions used in Illinois and Oklahoma. Potential project operators choosing to include mixed households in the project eligible population should be particularly cognizant of the need to develop special procedures because of the potential variations in income levels of the non-categorical household member(s). The use of standardized benefits or standardized gross income amounts for such mixed households does not seem practical, but commenters are welcome to offer suggestions in this area.

Subcategories. The proposed regulations provide that operating agencies develop separate benefit methodologies for each type of project eligible household, i.e., pure AFDC, pure SSI, pure Medicaid, multiple benefit

households, and mixed households, although such methodologies may be similar. Within each project eligible category, FNS believes it is necessary to develop distinct subcategories or procedures to accommodate significant differences in household circumstances such as the presence of an elderly or disabled member or the presence of earners, particularly those with "$30+⅓" earned income.

Adjusting benefits over time. The authorizing legislation requires the Secretary to ensure that average allotments provided to project eligible households be no less than such averages would have been were the project not in operation. To fulfill this requirements, operators must develop a mechanism for updating benefits over time to reflect changes in factors such as actual shelter and utility expenses. Updates could be based on actual data collected for a sample of households, the Consumer Price Index for such items, or the percentage change in the cost of such items for households not in the project eligible universe.

Operators also will be required to revise their standardized benefits from time to time to accommodate changes which occur in the FSP such as Thrifty Food Plan updates, changes in deduction amounts, and changes in other programs' rules or benefit amounts which would have an impact on the benefit formula.

Protection of poorest households. While not expressly stated in the legislation, the Conference Report indicates that the Secretary is to ensure that to the extent a redistribution of benefits occurs, it is not done at the expense of the poorest food stamp households. (H.R. Rep. No. 99-447, 99th Cong. 1st Sess., 540 (1985).) Congress clearly intended that households with incomes below the average and/or benefits above the average be protected in the standardization process. The Interim Report identified these households as households having categorical aid benefits recouped, and high shelter cost households. (Commenters are invited to identify other such households.) To comply with this provision, potential operators must indicate how they plan to offer benefit protection to these households. For recoupment households, one way to achieve this could be to develop a recoupment gross income amount which would be equal to the maximum aid payable less a standardized recoupment amount or percentage. Since for most recoupment cases, 90 percent of the maximum aid payment must remain available to the households, a standardized recoupment gross income amount could be fairly easily developed. This amount could then form the basis for a separate recoupment household benefit table or could stand as a gross income proxy in a streamlined benefit formula. In consonance with other provisions of the regulations, recoupment households should only be protected if recoupment is not due to the households intentional failure to comply with other programs' rules.

Compensating for variations in households' excess shelter deductions is more problematic due to the potential range of such amounts. FNS would not be willing to approve a plan similar to what was used in Illinois which gave all households the maximum excess shelter deduction amount. Using a standardized amount which was close to the mid-point of the range would also not be acceptable due to the large amount of coupon losses which would be suffered by households claiming the maximum shelter deduction. Potential alternatives which have been discussed include identifying households with no shelter deduction, establishing shelter deduction ranges, identifying households receiving housing assistance, or maintaining shelter deduction calculations. Commenters are encouraged to offer other potential solutions to this problem.

*Quality Control—§ 273.23(j)*

Because procedures developed for this project represent a significant departure from procedures normally followed in calculating household eligibility and benefits, States will need to develop quality control review procedures which correspond to their project requirements. These procedures will be reviewed and approved by FNS.

As discussed earlier, demonstration results lead us to believe that error rates will be substantially reduced as a result of collecting less detailed household information and standardizing income and benefits. Since error reduction is a programmatic goal, we will allow project operators to use their actual project error rate in determining their overall quality control error rate.

*Evaluation—§ 273.23(l)*

The legislation requires that the project be evaluated to determine its effects on recipient households, administrative costs, and error rates. It is not FNS intention to conduct an evaluation of the same scope as that conducted for the demonstration project. Current plans are to compare projected data contained in the operating agencies' Workplans with actual data, reported by the project operator, on administrative costs, error rates, benefit issuances and participation. Potential operators should indicate their willingness to provide additional information should the need arise.

*Reporting—§ 273.23(m)*

The proposed regulation require States to submit an annual report on the operation of the project to FNS. The report will detail projected and actual impacts of the project on administrative costs, error rates, and participants including benefit impacts and participation levels. The same information will be projected for the upcoming project year. A narrative section will explain differences between past projections, actual figures and future projections. The report will be due 120 days following the end of each fiscal year.

*Monitoring § 273.23(n)*

Responsibility for project monitoring will vary based on the project operator. The State agency will be responsible for monitoring in those instances where the project operator is a political subdivision. FNS' Regional Offices will be responsible for monitoring projects operated by State agencies. All projects will be monitored by an onsite review which will be conducted within six months of project implementation. Subsequent reviews will be in accordance with the established Management Evaluation review schedule.

**List of Subjects in 7 CFR Part 273**

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant Programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Therefore, Part 273 is proposed to be amended as follows:

1. The authority citation for Part 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. Section 273.23 is added to read as follows:

**§ 273.23 Simplified Application and Standardized Benefit Project.**

(a) *General.* This subpart establishes rules under which the Simplified Application and Standardized Benefit Project shall operate. This alternative procedure is authorized by subsection 8(e) of the Food Stamp Act of 1977, as amended. States and political subdivisions, chosen as project

operators, will designate households containing members receiving AFDC, SSI or Medicaid benefits as project eligible. Once such households indicate their desire to receive food stamp benefits, they will have their food stamp eligibility determined using a simplified application procedure. Food stamp eligibility will be determined using information contained in their AFDC, SSI or Medicaid application. They will be considered categorically food stamp resource eligible based on their eligibility for these other programs. They will be required to meet food stamp income eligibility standards, but income definitions appropriate to the AFDC, SSI or Medicaid programs will be used instead of food stamp income definitions. In addition, such households will be required to meet and/or fulfill all pertinent food stamp nonfinancial eligibility requirements. Households defined as categorically eligible in § 273.2(j) and (k) of these regulations will be considered categorically eligible to participate in this project if they are designated as project eligible by the operating agency. To further simplify program administration, benefits provided to such households can be standardized by category of assistance and household size.

(b) *Program administration.* (1) Use of these simplified application and standardized benefit procedures is limited to five States and five political subdivisions.

(2) States and political subdivisions wishing to operate a Simplified Application and Standardized Benefit Project shall submit to FNS a Work Plan in accordance with the requirements of this section. For the purpose of this section, a political subdivision is a project area as defined in § 271.2 of these regulations.

(3) FNS shall evaluate Work Plans to ensure their technical quality. For those Plans passing this initial evaluation, they shall be rated to determine their conformance with project requirements and their net Federal costs. These two criteria shall be given equal weight in the evaluation process.

(4) Political subdivisions are required to submit their Work Plans to FNS through their respective State agencies for review and signature.

(5) A State agency selected by FNS to operate a Simplified Application and Standardized Benefit Project shall incorporate the the Work Plan in to its State Plan of Operations. When a political subdivision is chosen to operate a Simplified Application and Standardized Benefit Project, the responsible State agency shall append that political subdivision's project Work Plan to its own State Plan of Operations.

(c) *Contents of the work plan.* The Work Plan submitted by each applicant shall contain the following information:

(1) A description of the households to be included in the project eligible universe, their total number and their proportion of the Statewide or project area caseload;

(2) An implementation plan which includes project tasks and a timetable for their accomplishment;

(3) A description of current operational procedures and of the operational and quality control review procedures which will be used during the project;

(4) A description of how the current categorical aid application(s) will be revised to satisfy the program requirements set forth in this section;

(5) A description of the proposed benefit methodology, including a detailed explanation of the proposed household categories and subcategories; the impact of the project on the applicant's total program cost; the relative distribution of gains and losses among project participants and the impact on individual household benefits. The latter shall be illustrated by charts describing actual amounts of potential benefit reductions, and potential benefit reductions as a percentage of current benefits. Information on how the benefit methology will be updated to reflect program changes and changes in household characteristics over time shall also be included;

(6) A description of the project's potential impact on administrative costs. Project time savings in eligibility and benefit determinations and other appropriate administrative functions such as processing of changes should form the bases of such cost estimates;

(7) Estimated error rate reductions resulting from the use of simplified application and standardized procedures. This calculation may be simulated by focusing on the type of error which will be eliminated or reduced by the use of these procedures; and

(8) A statement signed by the State official with authority to commit the State or political subdivisions to the project's operation.

(d) *Project eligible households.* Each operating agency shall decide which of the following categories of households will be eligible to participate in the project.

(1) Households all of whose members receive AFDC benefits under Part A of title IV of the Social Security Act.

(2) Households all of whose members receive SSI benefits under title XVI of the Social Security Act.

(3) Households all of whose members receive Medicaid benefits under title XIX of the Social Security Act.

(4) Households each of whose members receive one or more of the following: AFDC, SSI, or Medicaid benefits (multiple-benefit households).

(5) Households only some of whose members receive AFDC, SSI and/or Medicaid benefits (mixed households).

(e) *Determining Food Stamp Program eligibility.* For the Simplified Application and Standardized Benefit Project, project eligible households shall have their food stamp eligibility determined using the following criteria.

(1) The application requirement prescribed in subsection 5(a) is modified to the extent that certain households, at the operating agency's option, which contain members receiving AFDC, SSI or Medicaid benefits, will be designated project eligible and will not have to make separate application for food stamp benefits. Once such households indicate a desire to receive food stamps, their eligibility will be determined on the basis of information contained in their application for AFDC, SSI, or Medicaid benefits. Such application may need to be modified to accommodate any additional information required by the operating agency.

(2) The income definition and resource requirements prescribed under subsection 5(d) through (g) of the Act are inapplicable to project eligible households. Project eligible households which have met the resource requirements of other programs shall be deemed to have satisfied the food stamp resource requirements. The definition of gross income prescribed by the appropriate categorical aid program shall be used to determine food stamp income eligibility and benefit levels.

(3) Households are required to meet the gross and net income standards established in subsection 5(c) of the Act and in § 273.9(a). Net income shall be determined by subtracting from gross income actual or standardized deduction amounts for each household. Such deductions would include the current standard deduction for all households; an excess shelter/dependent care deduction for households not containing a qualified elderly or disabled member; a dependent care deduction, an uncapped shelter deduction and a medical deduction for households containing a qualified elderly or disabled member; and a standardized or actual earned income deduction for households

containing members with earned income. If standardized deduction amounts are used, they may be initially determined using recent historical data on deductions claimed by such households.

(4) All appropriate non-financial food stamp eligibility criteria shall be applicable to project eligible households.

(f) *Benefit levels.* (1) In establishing benefits for project eligible households, either (i) the appropriate State standard of need (maximum aid payment) or (ii) gross income as determined for the appropriate categorical aid program plus the value of any monetary categorical benefits received, if any, may be used as the gross income amount.

(2) Separate benefit calculation methodologies shall be developed to consider household characteristics such as source of categorical aid, household size, and the presence or absence of either earned income or an elderly or disabled household member.

(3) The methodology to be used in developing benefit levels shall be determined by the operating agency but shall be subject to FNS approval. Consideration shall be given to the standard and average deductions normally provided to such categories of households. If allotments are standardized, the average allotmemt for each category and subcategory, by household size, shall be no less than the average allotment would have been were the project not in operation.

(4) Benefit methodologies shall be constructed to ensure that benefits received by households having higher than average allotments under normal program rules are not significantly reduced as a result of standardization.

(5) With FNS approval, operating agencies may develop an alternate methodology for standardizing allotments/deductions for specific sizes and categories of households where such size and category is so small as to make the use of average deductions and/or allotments impractical.

(6) FNS may require operating agencies to revise their standardized allotments during the course of the project to reflect changes in items such as household characteristics, the Thrifty Food Plan, the benefit reduction rate, or benefit levels in AFDC or SSI.

(g) *Household notification.* All certified project eligible households residing in the selected project sites shall be provided with a notice, prior to project commencement, informing them of the revised procedures and their requirements. If household allotments are to be standardized, the notice will also provide specific information on the value of the newly computed benefit and the formula used to calculate the benefit. This notice shall meet the relevant requirements of a notice of adverse action as set forth in § 273.13(a)(2).

(h) *Application processing procedures.* (1) The operating agency shall develop a mechanism which will allow project eligible households to indicate their desire to receive food stamps. Such households shall be notified in writing, at the time such indication is made, that information contained in their AFDC, SSI, or Medicaid application will be used in making their food stamp eligibility determination.

(2) The operating agency may use simplified application and standardized benefit procedures only for those households containing at least one member eligible to receive either AFDC, SSI, or Medicaid benefits. Households jointly applying for food stamps and AFDC, SSI, or Medicaid benefits must have all eligibility determinations made within the 30-day processing period if simplified procedures are to be used. If a households eligibility for AFDC, SSI, or Medicaid cannot be established within the 30-day period, normal food stamp application, certification and benefit determination procedures shall be used and benefits shall be issued within 30 days if the household is eligible. Households which are jointly applying for AFDC, SSI, or Medicaid, and which qualify for expedited service, shall be certified for food stamps using procedures prescribed at § 273.2(i). However, if the State agency can process the application of an expedited service household for categorical assistance within the expedited period prescribed at § 273.2(i), it may include such a household in the Simplified Application and Standardized Benefit Project.

(i) *Regulatory requirements.* (1) All sections of current Food Stamp Program regulations, except where inconsistent with any rules concerning the Simplified Application and Standardized Benefit Project or where expressly waived by this subsection, shall remain effective.

(2) Certification periods for mixed households. At the option of the operating agency, mixed households may be assigned certification periods of up to one year. Such households, if circumstances warrant, may be required to attend a face-to-face interview on a schedule which would conform to certification periods normally assigned such households as specified in § 273.10(f). At the time of the interview, the household shall be required to complete a modified application and provide additional information in accordance with § 273.2(f). If the household fails to comply with the interim review requirement or if information obtained indicates a revision in household eligibility or benefits, action will be taken in accordance with § 273.13, Notice of Adverse Action.

(j) *Quality control.* (1) Project eligible households selected for quality control review shall be reviewed by the State agency using special procedures, based on project requirements, which have been developed by the State agency and approved by FNS.

(2) The error rate(s) determined using the special quality control review procedure will be included when determining the States overall error rate.

(k) *Funding.* Operating agencies shall be reimbursed for project costs at the normal matching rates prescribed in section 16 of the Food Stamp Act.

(l) *Project evaluation.* The project shall be evaluated to determine its effect on recipient households, administrative costs, and error rates. Information contained in the State or political subdivisions' Work Plan and the reports submitted in accordance with paragraph (m) of this section will provide the basis for the evaluation.

(m) *Reporting requirements.* Operating agencies shall be required to annually prepare and submit to FNS a report on project operations. The report shall contain the following information: (1) Predicted project impacts on error rates, administrative costs and participants for the report year; (2) actual impact of the project on error rates, administrative costs and participants for the report year; (3) projected project impact on error rates, administrative costs and participants for the upcoming fiscal year; and (4) an explanation of any differences between these amounts. The report will be due to FNS 120 days following the end of the fiscal year.

(n) *State agency monitoring.* Monitoring will be undertaken to ensure compliance with these regulations and the Work Plan submitted to and approved by FNS. Responsibility for project monitoring will be dependent on the agency chosen to be the project operator. If the project operator is a subdivision within the State, the State will be responsible for monitoring. If the project operator is the State agency, then the FNS Regional Office will assume the monitoring responsibility as part of their State Level Operations Review requirements. At a minimum, onsite reviews of the Simplified Application and Standardized Benefit

Project shall be conducted once within six months of the project's implementation and then in accordance with the Management Evaluation review schedule for the project area.

(o) *Termination.* FNS reserves the right to terminate project operations for any reason and at any time on 60 days written notice to the administering State or political subdivision. In such an event, operating agencies will be given sufficient time to return to normal operations in an orderly fashion.

Dated: April 16, 1987.

**S. Anna Kondratas,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 87-8992 Filed 4-22-87; 8:45 am]

BILLING CODE 3410-30-M

---

**Agricultural Marketing Service**

**7 CFR Part 925**

## Grapes Grown in a Designated Area of Southeastern California; Proposed Amendment to Handling Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would add a 5 kilogram container, for export shipments only, to the container and pack regulations (§ 925.304(b)) under Marketing Order 925. This change would help to improve exports by making available for general use a container which currently can be used only on an experimental basis. The proposal was recommended by the California Desert Grape Administrative Committee, which works with the Department in administering the Federal marketing order for California desert grapes.

**DATES:** Comments due May 4, 1987.

**ADDRESSES:** Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085-S, U.S. Department of Agriculture, Washington, DC 20250-1400. Two copies of all written material should be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250-1400, telephone (202) 475-3914.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Grapes grown in the production area are marketed in the major market areas of the United States. Shipments of California desert grapes totaled 8,189,994 lugs (22 pound equivalent) in 1986. This compared to 7,491,364 lugs in 1985 and the three year (1983-85) average of 6,899,377 lugs. Since 1982, bearing acreage of California desert grapes has increased moderately. Bearing acreage was reported at 18,073 acres in 1986, 2,079 acres more than the 15,994 acres reported in 1985. Total grape pack-out figures from the production area as defined in 7 CFR 925.5 for export are unavailable.

There are approximately 22 handlers of California desert grapes subject to regulation under the marketing order handling regulation. There are approximately 88 growers of desert grapes in the production area.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of table grapes may be classified as small entities.

The Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this action on small entities. The regulatory action in this instance is a proposed rule which would add a 5 kilogram container to the list of containers presently permitted under the handling regulation (§ 925.304(b)) for export shipments of desert grapes. It is the Department's view that the increased flexibility provided by the proposed regulation would be advantageous to growers and handlers.

Marketing Order No. 925 regulates the handling of grapes grown in a designated area in southeastern California. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The California Desert Grape Administrative Committee, established under the order, is responsible for its local administration.

At a public meeting on January 28, 1987, the committee recommended adding a new container to be used for export shipments only. The new container would contain 5 kilograms (approximately 11 pounds) of grapes. The industry has been using the container on an experimental basis, primarily to Europe, in the past and has found general trade acceptance. Permitting handlers to use the 5 kilogram container for export shipments only, thus eliminating the need to file for experimental container exemptions, a procedure used in the past for making export shipments in 5 kilogram containers, would encourage the domestic industry to increase export shipments abroad. This action is expected to have a positive effect on export shipments which would be beneficial to both domestic producers and handlers.

Since this action would add a new container to the handling regulation (7 CFR 925.304(b)), no action is necessary for table grape imports under section 608e-1 of the Act. A change in the import regulation (7 CFR 944.503) is applicable when there is a change in the grade, size, quality, and maturity of a domestically produced commodity. Therefore, since container and pack regulations are not included in the requirements of section 8e, no change is necessary to the applicable import regulations.

Although the seasonal regulations would be effective at certain times each season indefinitely, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the California desert grape crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate committee recommendations and information submitted by the committee, and other available information and determine whether changes in the regulations for desert grapes would tend

to effectuate the declared policy of the Act.

A 10-day comment period is allowed to receive written comments either supporting or opposing this proposal. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter. It is hereby found and determined that a comment period of less than 30 days is appropriate. The California desert grape regulation becomes effective April 20, and any regulatory amendment should become effective as close to that date as possible.

**List of Subjects in 7 CFR Part 925**

Marketing agreements and orders, Grapes, California.

For the reasons set forth in the preamble, Part 925 is proposed to be amended as follows:

## PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 925.304 is hereby proposed to be amended by redesignating paragraph (b)(1)(vi) as paragraph (vii) and adding a new (b)(1)(vi) to read as follows:

**§ 925.304 California desert grape regulation 6.**

* * * * *

(b)(1) * * *

(vi) Containers with a net weight of 5 kilograms (approximately 11 pounds) shall be for export only.

* * * * *

Dated: April 17, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–9211 Filed 4–22–87; 8:45 am]

BILLING CODE 3410-02-M

## FEDERAL RESERVE SYSTEM

**12 CFR 220**

**[Docket No. R–0600]**

### Credit by Brokers and Dealers (Regulation T); Mortgage Related Securities

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing for public comment an amendment to Regulation T that will revise the definition of "OTC margin bond." The amended definition will include any "mortgage related security," a term defined in the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA) and now found at section 3(a)(41) of the Securities Exchange Act of 1934.

**DATE:** Comments should be received on or before May 28, 1987.

**ADDRESS:** Comments, which should refer to Docket No. R–0600, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551, or delivered at the C Street Entrance between 8:45 a.m. and 5:15 p.m. weekdays to Room B–2223. Comments may be inspected in Room B–1122 between 8:45 a.m.. and 5:15 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Laura Homer, Securities Credit Officer, Division of Banking Supervision and Regulation, (202) 452–2781; or Carolyn Davis, Economist, Division of Research and Statistics, (202) 452–3633. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452–3544.

**SUPPLEMENTARY INFORMATION:** In October of 1984 the SMMEA amended the securities acts and the acts governing depository institutions to provide preferential treatment for securities meeting a new legal definition, "mortgage-related securities." The amendments were designed to facilitate a liquid market in mortgage securities issued by non-governmental entities that would be competitive with the existing market in securities issued by United States government agencies such as GNMA and FNMA. The ultimate goal was to facilitate private sector participation in the secondary market for mortgages.

A vast number of "mortgage related securities" are presently eligible for "good faith" loan value in a margin account because they come within the existing definition of an "OTC margin bond." However, an increasing number are privately placed and, therefore, do not meet the requirements in the existing definition that (1) OTC margin bonds be registered with the SEC, and (2) their issuers file current reports with the SEC. The SMMEA grants preferential treatment in a broad range of areas to any "mortgage related security" whether it is publicly offered or privately placed. This proposed amendment will permit similar margin treatment for securities sold either way.

**Regulatory Flexibility Act**

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

**Paperwork Reduction Act**

No additional reporting requirements or modification to existing reporting requirements are proposed.

**List of Subjects in 12 CFR Part 220**

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin Requirements, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 7 and 23 of the Securities Exchange Act of 1934, as amended, (15 U.S.C. 78g and w), the Board proposes to amend 12 CFR Part 220 as follows:

1. The authority citation for Part 220 continues to read as follows:

**Authority:** 15 U.S.C. 78g and 78w.

2. Section 220.2(r) is amended by removing the period and adding "or;" at the end of paragraph (r)(2)(iii) and adding a new paragraph (r)(3) as set forth below. The introductory text of paragraph (r)(3) is republished.

**§ 220.2 Definitions.**

* * * * *

(r) "OTC margin bond" means: * * *

(3) A "mortgage related security" as defined in section 3(a)(41) of the act.

By order of the Board of Governors of the Federal Reserve System, April 15, 1987.

**William W. Wiles,**

*Secretary of the Board*

[FR Doc. 87–8954 Filed 4–22–87; 8:45 am]

BILLING CODE 6210-01-M

**12 CFR Part 261**

**[Docket No. R–0601]**

### Rules Regarding Availability of Information

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board of Governors of the Federal Reserve System ("Board") proposes to amend its Rules Regarding Availability of Information. The proposed changes to that regulation include: (1) A description of the Board's procedures in processing requests under the Freedom of Information Act ("FOIA"); (2) further delegation of authority to the Board's General

Counsel to act on requests for information by law enforcement agencies and others; (3) additional provisions regarding the availability of information to federal and state financial institutions' supervisory authorities; (4) disclosure by financial institutions of examination or inspection reports to appropriate agents of such institutions; (5) notice of FOIA requests to submitters of confidential commercial or financial information, and procedures for requesting confidential treatment of such information and for addressing the proposed disclosure of information that a submitter believes should not be disclosed; and (6) technical amendments.

On March 25, 1987, the Board approved publication for comment of the proposed changes to its fee schedules pertaining to requests for Board documents pursuant to the Freedom of Information Reform Act of 1986, Pub. L. 99–570. 52 FR 10233 (March 31, 1987). Those proposed changes will be addressed pursuant to that other rulemaking and are repeated in the present notice primarily for the convenience of the public. See § 261.10.

This action is being taken as part of the Board's Regulatory Planning and Review Program to simplify and clarify all its regulations. The proposal incorporates certain new procedures that will facilitate the release of nonexempt information while protecting the rights of submitters of exempt information.

**DATE:** Comments should be received by June 22, 1987.

**ADDRESS:** Interested parties are invited to submit written comments to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or to deliver such comments to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.). Written comments should refer to Docket No. R–0601. Comments received may be inspected in Room B–1122 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information. (12 CFR 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452–3920); Elaine M. Boutilier, Senior Attorney, Legal Division (202/452–2418); Kenneth M. Kinoshita, Attorney, Legal Division (202/452–3721); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The purpose of this proposed revision of the Board's Rules Regarding Availability of Information is to set forth more clearly the procedures for requesting access to documents that are records of the Board, either under the FOIA or the Federal Reserve Act. The revision also changes certain procedures for obtaining access to documents. These provisions and changes are described in more detail below.

**A. Subpart A—General Provisions**

Subpart A describes the authority, purpose and scope of the regulation, and gives new expanded definitions for the terms used in the regulation. New definitions of "records of the Board" and "search" are designed to clarify these terms in accordance with law and to facilitate the orderly processing of requests. Definitions of "Board's official files", "report of examination", "report of inspection" and "search" have been added. Subpart A also provides for alternative authority when the official named in the regulation is not available to take action.

**B. Subpart B—Published Information and Records Available to Public; Procedures for Requests**

Section 261.5 lists and explains the various types of information published by the Board. This information is readily available to the public, either from a public library or through the Board's Publications Services Section.

Section 261.6 describes the types of information that are available to the public upon request. Requests for such documents are generally made pursuant to the FOIA, under the procedures set forth in § 261.9. In addition, certain data files produced by the Board may be obtained through the National Technical Information Service ("NTIS"). As of January 1987, data files available from NTIS included: Bank Credit (1979–1984), Bank Holding Company Annual Tape (Y–6), Bank Holding Company Quarterly Tape (Y–9), Call and Income Report, Capacity Utilization, Consumer Installment Credit, Electric Power Used by Industries, Flow of Funds, Industrial Production Tape, Money Stock Tape (1959–1984), Reserves Tape (1959–1984), Selected Interest Rates H–15 Tape, Survey of Consumer Credit (1977), Survey of Consumer Finance and High Income Supplement (1983) and Survey of Currency and Transaction Accounts (1984).

Section 261.7 provides that some types of information may not be released until after a period of time determined by the Board to be necessary to avoid certain consequences. For example, deferred publication or deferred availability of information may be necessary where information relates to the negotiation of procurement or other contracts for the Federal Reserve System, or relates to the determination of monetary or credit policies, including but not limited to discount rates, reserve requirements, and margin requirements. Immediate, rather than deferred access to such information could, for example, impair the Board's ability to negotiate contracts in a manner most advantageous to the Board, or could lead to speculation in the money markets which could impair the Board's ability to implement its monetary or credit policies.

Section 261.8 lists the types of information that are exempt from disclosure. These exemptions generally follow the exemptions provided in the FOIA, 5 U.S.C. 552(b). The primary distinction between these exemptions and those included in the FOIA is that the FOIA exemption for matters related to geological and geophysical information and data concerning wells (5 U.S.C. 552(b)(9)) is omitted, and a provision regarding information covered by a court order prohibiting disclosure is added. Section 261.8(a)(4) reflects a recent change in the language of exemption 7 in the FOIA, 5 U.S.C. 552(b)(7). As is the case with requests made pursuant to FOIA, the Board will release any reasonably segregable portion of a document after deleting information exempt from disclosure.

Section 261.9 describes the procedures for making a request for documents, the processing of such request, administrative appellate review of the denial of a request, and the provisions for extensions of time for responding to the request.

A request for documents must be for identifiable records; that is, it must contain a description that identifies a circumscribable body of documents in such a way that the Board's staff can identify, search for, aggregate, collect, and produce such documents without unduly burdening or disrupting any of the Board's functions.

A request should be submitted in writing and should be clearly marked "Freedom of Information Act Request" to ensure that it is immediately delivered to the FOIA office at the Board. Failure to so designate a request may result in delays in the response. It is also necessary that a request identify whether the requested information is

BEST COPY AVAILABLE

intended for commercial use, and whether the requester is an educational institution, a noncommercial scientific institution, or a media representative. This identification information is necessary to determine the fees to be charged under § 261.10.

When responding to a request, the Board may advise the requester that it can neither confirm nor deny the existence of the requested records. For example, the Board may decline to confirm or deny the existence of particular supervisory actions regarding identifiable institutions.

The revised regulation, at § 261.9(c)(2), provides that the Board may select the form of the copies of records released in response to a request; *e.g.*, copies may be on paper, microform or in computer readable format.

Section 261.9(d) sets forth the procedures for appealing a denial of a request for records under the FOIA. An appeal must be filed in writing within 10 working days of the date of the denial, and the Board (or a designated Board member) will make a determination on the appeal within 20 days of receipt of the appeal by the Secretary. The section also adds new procedures regarding untimely appeals and new provisions regarding the mootness of certain appeals.

In unusual circumstances, the Board may extend the time limits for response to either an initial request or an appeal. The time extension is set in 5 U.S.C. 552(a)(6) as 10 working days. These 10 days may be used either for the initial or appeallate reviews, or both, but the total extension for either or both may not exceed 10 working days. "Unusual circumstances" means: (i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or (iii) the need for consultation with others at the Board or with another agency having substantial interest in the determination of the request.

If the Board fails to meet the time deadlines, including any extension, it will notify the requester of the delay and the reason. Such notice does not affect the requester's legal rights of judicial review under the FOIA. The Board will continue to process the request as quickly as possible and will send out the determination in the usual manner.

To faciliate the processing of requests for information, provisions have been added regarding the contents of requests, the treatment of defective requests, and oral requests, § 261.9(a), the priority of responses to requests and the referral of requests to other agencies, § 261.9(b), and the consequences of failure to comply with applicable time limits, § 261.9(e).

Section 261.10 provides for the schedule of fees and the procedures for requesting a waiver of the fees. This section has been previously published for comment and is expected to go into final effect in late April 1987. Prior to publication of final rules pursuant to this notice, it will be designated § 261.8 of the Board's current Rules Regarding Availability of Information. It is proposed herein that the section will be renumbered as § 261.10 in this proposed revision of the Rules. The fees are required to reflect the Board's direct costs of search, duplication and review. These fees are set forth in Appendix A. Under the Freedom of Information Reform Act, requesters are classified into four different categories for fee assessment purposes: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

Commercial use requesters—A commercial use request is defined as a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade or profit as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA. When the Board receives a request for documents appearing to be for commercial use, fees will be assessed for the total search time, review time, and all duplication of the documents. Requesters should note that the Board may assess fees for the search for and review of documents even if no documents are ultimately released. If the request for documents primarily serves the commercial interest of the requester, the Board may, but is not required to, consider a request for waiver or reduction of fees based on an assertion that disclosure would be in the public interest. The procedures for requesting a waiver of fees are set forth in § 261.10(h).

Educational and noncommercial scientific institution requesters—An "educational institution" is defined as an accredited institution of higher learning engaged in scholarly research. A "noncommercial scientific institution" is defined as an independent non-profit institution whose purpose is to conduct scientific research. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for this reduction in fees, the requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are in furtherance of scholarly or scientific research. To be eligible for free search time, the requester must reasonably describe the records sought.

Representatives of the news media—This term is defined as any representative of established news media outlets, i.e., any organization such as a television or radio station, or a newspaper or magazine of general circulation, or a person working for an organization which regularly publishes information for dissemination to the general public whether electronically or in print. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for free search time, the requester must reasonably describe the records sought.

All other requesters—The Board will assess fees for search and duplication to all requesters who do not fit in the above categories, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge.

To prevent abuse of the provision granting 100 pages of duplication and two hours of search time free of charge, this rule includes the section of the proposed OMB guidelines permitting aggregation of requests that are reasonably believed to have been broken down to evade fees.

Section 261.10(g) provides that the Board may require advance payment of fees if the total fees are estimated to exceed $250, or where a requester has previously failed to make timely payment of fees due. This subpart also includes the section of the proposed OMB guidelines permitting interest to be charged on fees over 30 days past due at the rate prescribed in 31 U.S.C. 3717 for an outstanding debt on a U.S. Government claim. This rate is set annually by the Secretary of the Treasury equal to the average 12-month investment rate on Treasury tax and loan accounts.

**C. Subpart C—Confidential Information Made Available to Supervised Institutions, Bank Supervisory Agencies, Law Enforcement Agencies, and Others**

This Subpart sets forth the circumstances and conditions under

which confidential information may be made available to federal and state agencies and to others. The procedures in this Subpart address the Board's general authority over its records under the Federal Reserve Act, but these procedures are without prejudice to the right of any person to invoke the FOIA procedures set out in Subpart B.

Section 261.11 generally provides that reports of examination and inspection and confidential supervisory information may be disclosed to federal and state financial institutions supervisory agencies, such as the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the various state banking departments and commissions.

Section 261.11(b) provides that the Board may determine that reports of examination or inspection may be disclosed by designated members of the staff on a routine basis for purposes determined by the Board. For example, disclosures by the Director of the Divisions of Banking Supervision and Regulation have been authorized to be made of transfer agent reports of examination pursuant to section 17(c)(3) of the Securities and Exchange Act (12 CFR 265.2(c) (25)), of information acquired pursuant to Parts 207, 220, 221, and 224 of Title 12, Code of Federal Regulations (12 CFR 265.2(c)(20)), and of certain information regarding possible violations of law pursuant to section 3004(b) of the Employee Retirement Income Security Act (12 CFR 265.2(c)(31)).

Section 261.11(c) authorizes the Director of the Board's Division of Banking Supervision and Regulation to provide copies of the Board's reports of examination and inspection to the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board. The addition of the Federal Home Loan Bank Board has been made as a consequence of the greater frequency of cross-industry acquisitions and the resulting need for exchange of information among supervisory agencies.

Section 261.11(d)(1) authorizes the Director of the Board's Division of Banking Supervision and Regulation and the Federal Reserve Banks to provide reports of examination and other appropriate information concerning state member banks and bank holding companies to state financial institutions supervisory authorities having general supervisory authority over such state member banks and bank holding companies.

Section 261.11(d)(2) authorizes the Director of the Board's Division of Banking Supervision and Regulation or the Federal Reserve Banks to provide reports of examination and reports of inspection of banks, companies, or their affiliates or subsidiaries to state financial institutions supervisory authorities which do not have general supervisory authority over such banks, companies, or their affiliates or subsidiaries under certain circumstances. Under the Board's current regulation, such a release may be made only upon the Board's approval. The new regulation would permit such release where the reports and other information concern banks, companies, or their subsidiaries or affiliates which are not subject to the general supervisory authority of the requesting state agency, provided that the examined institutions have applied to acquire or have acquired financial institutions which are subject to the general supervisory authority of the requesting state agency. The amendment would facilitate review by state financial institutions supervisory authorities of applications by out-of-state financial organizations to acquire financial institutions subject to the general supervision of the requesting state agency, and also facilitate the continual supervision of such financial institutions by state financial institutions supervisory authorities. The amendment confirms procedures adopted last year by the Board and the Federal Financial Institutions Examination Council.

Section 261.11(f) sets forth the conditions under which another bank supervisory authority may inspect a Confidential Report of Condition of a foreign banking organization.

Section 261.12 sets forth the procedures for making confidential documents or information of the Board available to law enforcement agencies for use where necessary in the performance of official duties. This section expands the authority of the General Counsel, under delegated authority, to provide confidential information to law enforcement agencies. The current rule, § 261.6(b)(1), only permits the General Counsel to release confidential information to agencies of the United States for use where necessary in the performance of their official duties, and prohibits disclosure of the information by that agency to any other person.

The proposed rule would give the General Counsel delegated authority to release, upon request, confidential Board information, including but not limited to reports of examination and inspection, to federal and state law enforcement agencies and properly accredited foreign law enforcement agencies under certain circumstances. The law enforcement agency must show that the information is needed in connection with a formal investigation or other official duties of that agency, and must give satisfactory assurances of confidentiality.

This change is proposed to increase the speed and efficiency of the Board's response to legitimate law enforcement agency requests, by defining the standards and procedures that govern such requests, and to include other than federal agencies in the class of agencies that are eligible to request information. The Board has had some experience with requests from state law enforcement agencies and deems it appropriate to delegate the authority to respond to these requests to the General Counsel. In determining whether to release the documents to the law enforcement agency, the General Counsel will consider the law enforcement purpose of the request for documents and their availability elsewhere (such as from the institution at issue in the investigation). The General Counsel will require a commitment not to disclose the information to any other entity without the prior written permission of the Board or its General Counsel, and may also impose whatever additional conditions deemed necessary to protect the confidentiality of the information or to insure compliance with applicable laws or regulations. In the case of federal and state grand juries, criminal trial and administrative subpoenas, the General Counsel will review the subpoenas and may approve release of information pursuant to the subpoenas with appropriate limitations to protect the confidentiality of the information released.

Section 261.13 provides that the General Counsel may act on requests for access to confidential information that relate to private civil litigation, and also addresses the release of confidential supervisory information by an examined institution to appropriate agents of that institution.

A person seeking confidential information of the Board (including, but not limited to, reports of examination or inspection) for use in private civil litigation must exhaust all administrative remedies for access to the information prior to obtaining a subpoena for the documents. This section sets forth the administrative procedure for requesting access to such information in such circumstances. Accordingly, the person should request access to confidential information from

BEST COPY AVAILABLE

the General Counsel at least 45 days prior to the time access is desired. The Board has delegated to the General Counsel the authority to act on such requests. As a general matter, however, the Board believes that litigants should address their discovery requests primarily to records of the examined institution rather than to confidential records of the Board. Accordingly, § 261.13(b)(2) requires the General Counsel to find compelling circumstances before approving any such requests.

It is the Board's long-standing policy that reports of examination and materials derived therefrom are confidential and privileged and should not be discovered except in the most compelling circumstances. Reports of examination are used by the Board as an aid in carrying out its important responsibility to maintain the safety and soundness of the banking system by detecting and correcting unsafe practices and violations of law. The confidentiality of such reports is crucial to the effectiveness of the examination process. To the extent that bank officers become reluctant to discuss their institutions' affairs with the Federal Reserve's examiners, the ability of the Federal Reserve to detect violations of law and other supervisory problems and to correct such problems in a timely manner would be impaired. Similarly, it is important that the Board's examiners be absolutely candid in their reports to the Board. Nothing is more likely to chill such candor than knowledge that persons foreign to the examination process may gain access to these reports.

As a result, the Board believes that litigants desiring access to confidential information concerning the affairs of a bank or bank holding company should focus on discovery of the institution's own records rather than seeking discovery of the Board's reports of examination. On numerous occasions, Congress and the courts have affirmed the Board's view that reports of examination are confidential and privileged. *See, e.g., United States* v. *Provident National Bank*, 41 F.R.D. 209 (E.D. Pa. 1966); *Gregory* v. *FDIC*, 631 F.2d 896 (D.C. Cir. 1980).

Under § 261.13(d)(2) any financial institution possessing a report of examination or inspection provided to it by its Federal Reserve Bank subsequent to an examination may disclose the report to its parent bank holding company without prior permission of the Board if the parent agrees in writing to preserve the confidentiality of the report.

Under § 261.13(d)(3) an examined financial institution that has lawfully obtained a report of its examination or inspection may disclose, under certain conditions, such reports or portions thereof to appropriate agents of the institution. The conditions under which this information may be provided are that (1) prior to such disclosure the financial institution shall consult with the appropriate Federal Reserve Bank regarding the qualification of the agent under this section; (2) the information is necessary to the performance of specifically identified responsibilities of the agent; (3) the documents are reviewed on the premises of the examined institution; (4) prior to review, the agent agrees in writing to preserve the confidentiality of the reports and any information contained in the reports; and (5) the agent agrees in writing not to disclose any confidential Board information, including for purposes of any trial, without first obtaining approval of the Board's General Counsel.

It should be noted that reports of examination and inspection are not substitutes for audit reports prepared by independent certified public accountants, and the Board's examiners do not generally follow audit procedures in preparing the reports. Accordingly, persons are cautioned not to rely on these reports in lieu of a full and reasonable self-inspection or audit of the financial institution's own records.

Section 261.14 gives the procedures to be followed when a person having confidential Board documents is served with a subpoena, order or other judicial or administrative process requiring his personal attendance as witness or production of the documents. The only amendment to this provision is that it is expanded to include administrative subpoenas and orders as well as judicial subpoenas and orders, and the change from Secretary to General Counsel as the person to be notified of such service of process.

**D. Subpart D—Requests for Confidential Treatment**

Subpart D is a new section in the Rules Regarding Availability of Information. It provides procedures for a person submitting information or documents to the Board ("submitter") to request confidential treatment for all or part of those documents.

Under § 261.16 a submitter desiring confidential treatment for documents or information being submitted must request confidentiality at the time they are submitted. This request for confidential treatment must give a legal basis, with supporting facts and arguments, for providing confidentiality. The submitter must also separate material for which confidentiality is being requested from other material and clearly mark it "Confidential."

The Board will consider any requests for confidentiality at such time as a request for access to those documents are made. The Board (or Reserve Bank or its staff) may also act on the request for confidentiality prior to any request for access. It is current practice for Reserve Banks to review applications under the Bank Holding Company at the time they are received to separate those parts that will be accorded confidential treatment from the publicly available portion of the application.

Section 261.17 sets forth special procedures for handling requests for confidentiality under subsection (b)(4) of FOIA (5 U.S.C. 552(b)(4)), for material believed to contain "trade secrets and commercial or financial information obtained from a person privileged and confidential." Under this section, when a request is filed for information for which the submitter has requested (b)(4) protection, the Board may notify the submitter of the request for access, except in the situation specified in § 261.17(d). At the same time the Board will notify the requester that the request is subject to the provisions of this section. The submitter will have up to ten working days in which to file written objections to the disclosure of the requested information. Any such objections filed will be considered by the Secretary when making the determination regarding disclosure of the information. The Secretary's determination will be communicated to both the requester and submitter on the date the determination is made. If the determination is to release the information, and the submitter had filed objections to such disclosure, the actual release of the documents will be delayed for up to ten additional working days after the date of such determination. Should the submitter of such information sue to restrain disclosure, or a requester whose request has been denied should sue to compel disclosure, the Secretary will promptly notify the other party of the lawsuit.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and

practice and does not have a particular effect on small entities.

**List of Subjects in 12 CFR Part 261**

Freedom of Information Act, Federal Reserve System.

For the reasons set out in this notice, and pursuant to the Board's authority under section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*) and under section 5 of the Bank Holding Company (12 U.S.C. 1844) to exercise general supervision of and to examine state member banks and bank holding companies, and section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) to delegate functions to members and employees of the Board and to the Reserve Banks, the Board proposes to revise its Rules Regarding Availability of Information, 12 CFR Part 261, as follows:

## PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

**Subpart A—General Provisions**

Sec.
261.1 Authority, purpose, and scope.
261.2 Definitions.
261.3 Custodian of records; certification; service; alternative authority.

**Subpart B—Published Information and Records Available to Public; Procedures for Requests**

261.5 Published information.
261.6 Records available to public upon request.
261.7 Deferred availability of certain information.
261.8 Exemptions from disclosure.
261.9 Procedures for making requests for identifiable records; processing of requests; appellate review of denial of request; time extensions.
261.10 Fee schedules; waiver of fees.

**Subpart C—Confidential Information Made Available to Supervised Institutions, Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances**

261.11 Confidential information made available to supervised institutions and financial institutions supervisory agencies.
261.12 Confidential information made available to law enforcement agencies and other nonfinancial institutions supervisory agencies.
261.13 Other disclosure of confidential information.
261.14 Subpoenas, orders compelling production, and other process.

**Subpart D—Requests for Confidential Treatment**

261.15 Scope of subpart.
261.16 Submission and form of request for confidential treatment; action on request.
261.17 Confidential commercial or financial information.

**Authority:** 5 U.S.C. 552, 12 U.S.C. 248(k), 321, and 1844.

### Subpart A—General Provisions

**§ 261.1 Authority, purpose, and scope.**

(a) *Authority.* This Part is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to 12 U.S.C. 248(i) and (k) and 5 U.S.C. 552.

(b) *Purpose.* This Part sets forth the kinds of information made available to the public and the rules of procedure for obtaining documents and records as well as the rules of procedure with respect to confidential information.

(c) *Scope.* (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B implements the Freedom of Information Act (5 U.S.C. 552) and explains:

(i) The kinds of information the Board regularly publishes;

(ii) The types of records made available to the public upon request;

(iii) The kinds of information exempt from disclosure or subject to deferred availability; and

(iv) The procedures for obtaining information and for processing information requests.

(3) Subpart C sets forth:

(i) The kinds of confidential information made available to supervised institutions, supervisory agencies, law enforcement agencies, and others in certain circumstances;

(ii) The procedures for disclosure;

(iii) The procedures for processing law enforcement requests; and

(iv) The procedures with respect to subpoenas, orders compelling production, and other process.

(4) Subpart D contains the procedures relating to requests for confidential treatment of documents and information.

**§ 261.2 Definitions.**

For purposes of this regulation:

(a) "Board's official files" means the Board's central records.

(b) "Confidential supervisory information" means cease and desist orders, suspension or removal orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, the Bank Holding Company Act of 1956, as amended, or the Federal Reserve Act of 1913, as amended, and reports of examination and inspection, and confidential operating and condition reports and any information derived from, related to, or contained therein. "Confidential supervisory information" may consist of documents prepared by, on behalf of, or for the use of the Board, a Reserve Bank, a Federal or state financial institutions supervisory agency, or a bank or bank holding company.

(c) "Information of the Board" means all information coming into the possession of the Board, any Board member, any Federal Reserve Bank, or any officer, employee, or agent of the Board or of any Federal Reserve Bank, in the performance of functions for or on behalf of the Board, including functions delegated by the Board pursuant to Part 265 of this Chapter.

(d)(1) "Records of the Board" includes applications, rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other written material, as well as magnetic tapes, computer printouts of information obtained through use of existing computer programs, maps, photographs, and other materials in nonwritten or machine readable form that contains information of the Board and that:

(i) Constitute part of the Board's official files; or

(ii) Are maintained for administrative reasons in the regular course of business in official files in any division or office of the Board or any Federal Reserve Bank in connection with the transaction of any official business.

(2) "Records of the Board" does not include:

(i) Handwritten notes; personal files of Board members and employees; tangible exhibits, formulas, designs, or other items of valuable intellectual property; extra copies of documents and library and museum materials kept solely for reference or exhibition purposes; unaltered publications otherwise available to the public in Board publications, libraries, or established distribution systems;

(ii) Documents, including lists, and other material not in existence or in the Board's possession or control on the date a request for records is received;

(iii) Documents no longer in the possession of the Board which have been disposed of in accordance with law;

(iv) Copies of transcripts provided to the Board under any reporting service contract and that may be obtained directly from the contractor;

(v) Documents of other agencies made available to the Board on a confidential basis by such agencies;

(vi) Documents that are not the property of the Board and which have been made available to the Board on a temporary or otherwise limited basis with its consent.

(e) "Report of examination" means the report prepared by the Board concerning

its examination of a state member bank of the Federal Reserve System, and includes reports of inspection of bank holding companies, U.S. branch or agency of a foreign bank, and other institutions examined by the Federal Reserve System. Such reports of examination may be prepared either solely by the Board or jointly by the Board and an appropriate state bank supervisory agency. "Reports of examination" may include reports of examination of other financial institutions prepared and provided to the Federal Reserve System by other federal and state financial institution supervisory agencies.

(f) "Report of inspection" means the report prepared by the Board concerning its inspection of a bank holding company and its bank and nonbank subsidiaries.

(g)(1) "Search" means a reasonable search of the Board's official files and any other files containing Board records as seem reasonable likely in the particular circumstances to contain documents of the kind requested. Searches may be done manually or by computer using existing programming. For purposes of computing fees under § 261.10 of this regulation, search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from "review" of material to determine whether the material is exempt from disclosure.

(2) "Search" does not mean or include:

(i) Research;

(ii) Creation of any information or data retrieval program or system;

(iii) Extensive modification of an existing program or system;

(iv) Creation of any document, or any other activity that involves creative processes rather than simply retrieval of existing documents.

**§ 261.3 Custodian records; certification; service; alternative authority.**

(a) *Custodian of records.* The Secretary of the Board is the official custodian of all records of the Board, including all records that are in the possession or control of the Board, any Federal Reserve Bank, or any employee thereof.

(b) *Certification of record.* The Secretary of the Board may certify the authenticity of any record of the Board, or of any copy of such record, for any purpose, and for or before any duly constituted federal or state court, tribunal, or agency.

(c) *Service of subpoenas or other process.* Subpoenas or other judicial or administrative process demanding access to records of the Board shall be addressed to and served upon the Secretary of the Board at the Board's offices in Washington, DC 20551.

(d) *Alternative authority.* (1) *Secretary of the Board.* Any action or determination required or permitted by this regulation to be done by the Secretary of the Board may be done by an Associate Secretary or other responsible employee of the Board who has been duly designated for this purpose by the Secretary.

(2) *General Counsel.* Any action or determination required or permitted by this regulation to be done by the General Counsel may, in the General Counsel's absence, be done by deputy or associate general counsel or other attorney of the Board's Legal Division who has been duly designated for this purpose by the General Counsel.

(3) *Director of Banking Supervision and Regulation.* Any action or determination required or permitted by this regulation to be done by the Director of the Division of Banking Supervision and Regulation may, in the Director's absence, be done by the Deputy Director or other official of the Division who has been duly designated for this purpose by the Director.

## Subpart B—Published Information and Records Available To Public; Procedures for Requests

**§ 261.5 Published information.**

(a) **Federal Register.** The Board publishes in the **Federal Register** for the guidance of the public:

(1) Descriptions of the Board's central and field organization;

(2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of procedures;

(3) Rules of procedure, descriptions of forms available and the place at which they may be obtained, and instructions on the scope and contents of all papers, reports, and examinations;

(4) Substantive rules of general applicability, statements of general policy, and interpretations of general applicability;

(5) Every amendment, revision, or repeal of the foregoing;

(6) General notices of proposed rulemaking;

(7) Notices of applications received under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) and the Change in Bank Control Act (12 U.S.C. 1817);

(8) Notices of formal public hearings ordered by the Board;

(9) Notices identifying the Board's systems of records, pursuant to 5 U.S.C. 552a;

(10) Notices of all Board meetings, pursuant to 5 U.S.C. 552b; and

(11) Notices of agency data collection forms being reviewed under the Paperwork Reduction Act (5 U.S.C. 3501 et seq.).

(b) *Board's reports to Congress*—(1) *Annual report under Federal Reserve Act.* The Board's annual report to Congress pursuant to the Federal Reserve Act (12 U.S.C. 247), which is made public upon its submission to Congress, contains a full account of the Board's operations during the year, an economic review of the year, and legislative recommendations to Congress. The report includes:

(i) A complete record of the policy actions taken by the Board and the Federal Open Market Committee, showing the votes taken and the underlying reasons (12 U.S.C. 247a);

(ii) Material pertaining to administering Board functions under the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and 1844(d));

(iii) Material pertaining to bank mergers approved by the Board under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(9)); and

(iv) Reports required by section 114 of the Truth in Lending Act (15 U.S.C. 1613); section 602 of the Change in Bank Control Act (12 U.S.C. 1817(j)(14)); section 121 of the Securities and Exchange Act (15 U.S.C. 78w(b)); section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1691f); section 18 of the Federal Trade Commission Improvement Act (12 U.S.C. 57a(f)(5)); section 918 of the Electronic Funds Transfer Act (15 U.S.C. 1693p); section 805 of the Community Reinvestment Act (12 U.S.C. 2904); the Securities Act Amendments of 1975 (15 U.S.C. 78w); and section 3(h) of the International Banking Act of 1978, Pub. L. 95–369.

(2) *Reports under other Acts.* The Board also reports to Congress annually, or at more frequent intervals, under certain Acts of Congress, including but not limited to the Freedom of Information Act (5 U.S.C. 552(d)); the Government in the Sunshine Act (5 U.S.C. 552b(i)); and the Full Employment and Balanced Growth Act of 1978 (12 U.S.C. 225a), concerning the administration of its functions under each of these acts.

(c) *Federal Reserve Bulletin*—(1) *Contents.* In the *Federal Reserve Bulletin*, which is issued monthly, the Board publishes:

(i) Economic and statistical information;

(ii) Articles on subjects of economic interest or relating to Board activities;

(iii) Regulations;

(iv) Statements of general policy;

(v) Interpretations of laws and regulations of general interest to the public;

(vi) Notices of Board action on certain types of applications; and

(vii) Board orders and accompanying statements on certain types of adjudications.

(2) *Advanced release of information.* Some material published in the *Bulletin* is released in advance of publication, including certain regulations, interpretations, orders and opinions, and the Board's index of industrial production and other statistical series.

(d) *Other published information*—(1) *Statements of financial condition.* As required by section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), the Board issues weekly a statement showing the condition of each Federal Reserve Bank and a consolidated statement of the condition of all Federal Reserve Banks.

(2) *Index of applications.* The Board also issues weekly an index of the applications received and the actions taken on such applications, as well as other matters issued, adopted, or promulgated by the Board.

(3) *Statement of changes in bank structure.* In addition, the Board issues weekly a statement showing changes in the structure of the banking industry resulting from mergers and the establishment of branches.

(4) *Press releases.* The Board frequently issues statements to the press and public regarding monetary and credit actions, regulatory actions, actions taken on certain types of applications, and other matters. Current press releases may be obtained from the Board's Publications Services Section.

(5) *Computer tapes.* The Board periodically prepares data of various kinds on computer tapes, which are available to the public upon request pursuant to a current schedule of changes.

(6) *Regulatory Service.* The Board published *The Federal Reserve Regulatory Service*, which is a multivolume looseleaf service containing statutes, regulations, interpretations, rulings, staff opinions, and procedural rules under which the Board operates. Parts of the Service are also published as separate looseleaf handbooks relating to Consumer and Community Affairs, Monetary Policy and Reserve Requirements, and Securities Credit Transactions. The Service and each handbook contain subject and citation indexes, are updated monthly, and may be subscribed to on a yearly basis.

(7) *Lists of Board publications.* The Board's Publications Services Section maintains a list of Board publications that are available to the public. In addition, a partial list of important publications is published in the *Federal Reserve Bulletin.*

(e) *Indexes to Board actions.* (1) The Board's Freedom of Information Office maintains an index to Board actions which provides identifying information about any matters issued, adopted, and promulgated by the Board since July 4, 1967. The index is updated weekly and is available to the public on microform. Copies of the index may be obtained upon request to the Secretary of the Board subject to the current schedule of changes, as described in § 261.10 of this regulation.

(2) In addition, the Board publishes a weekly index, as described in paragraph (d)(2) of this section, which provides identifying information on a current basis about matters issued, adopted, and promulgated by the Board. The weekly index is available from the Publications Services Section on a subscription or a single issue basis pursuant to a current schedule of charges. Back issues of this index are available from the Secretary of the Board subject to the schedule of charges, described in § 261.10 of this regulation.

(f) *Obtaining Board publications.* All publications issued by the Board may be obtained from the Publications Services Section of the Federal Reserve Board, 20th Street and Constitution Ave., NW., Washington, DC 20551 (pedestrian entrance is on C Street, NW.), including:

(1) Current and available back issues of the Board's Annual Report to Congress (copies of the Board's Annual Report to Congress are also normally available for examination at each Federal Reserve Bank);

(2) Single, current and available back issues of the *Federal Reserve Bulletin* which may be obtained at the prescribed rates (any individual or group may subscribe annually to the *Bulletin* at the prescribed rate).

**§ 261.6 Records available to public upon request.**

(a) *Types of records made available.* Subject to the provisions of this regulation, the following records shall be made available for inspection and copying upon request, unless they were publish promptly and made available for sale or without charge:

(1) Orders made in the adjudication of cases and final opinions, including concurring and dissenting opinions, and orders and opinions issued pursuant to authority delegated by the Board;

(2) Interpretations and statements of policy adopted by the Board that are not published in the **Federal Register**;

(3) Records of the final votes of Board members;

(4) Administrative staff manuals and instructions to staff that affect the public; and

(5) Other records subject to disclosure pursuant to 5 U.S.C. 552.

(b) *Exceptions and limitations*—(1) *Confidentiality.* The Board may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy or to protect privileged or confidential commercial or financial information. The Board shall state in writing the reason for the deletion.

(2) *Deferred availability.* Availability of information in any record may be postponed, as provided in § 261.7 of this regulation.

(3) *Exempt records; discretionary release.* Some records are exempt from disclosure under 5 U.S.C. 552(b), as described in § 261.8 of this regulation. However, except where disclosure is expressly prohibited by an applicable statute, regulations, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the Secretary of the Board, the General Counsel of the Board, the Director of the Division of Banking Supervision and Regulation, or the appropriate Federal Reserve Bank, acting pursuant to this part or Part 265 of this Title, determines that such disclosure would be in the public interest. In no event shall the release of information that has been requested for commercial solicitation purposes be considered to be in the public interest unless such release is specifically authorized by the persons named in the records to be released.

(4) *Nonexempt information.* Although the Board may deny access to portions of a record, it will release reasonably segregable nonexempt portions.

(5) *Requests for applications and reports.* The Board preliminarily identifies public portions of most applications and reports filed in connection with its supervision of financial institutions. The public portions contain information that may be released without further review. The Board will consider each request for these applications and reports to be a request for the public portions only, unless the requester specifically seeks access to the entire document.

(6) *Disposal of records.* Nothing in this regulation precludes the Board from

disposing of records eligible for disposal in the normal course of business and in accordance with applicable law.

(c) *How to obtain access to records.* Records of the Board subject to this section are available for inspection and copying, in response to requests for identifiable records pursuant to § 261.9 of this regulation, from 9:00 a.m. to 5:00 p.m. weekdays, at the Office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 (the pedestrian entrance is on C Street, NW.). Indexes of Board actions and copies of selected Board records are available in the Freedom of Information Office for immediate inspection without a request or other prior arrangements.

(2) The Board may determine that certain classes of publicly available filings shall be made available for inspection and copying only at the Federal Reserve Bank where those records are filed.

(3) The publicly available portions of Reports of Condition and Income of individual banks, as well as certain other data files produced by the Board, are distributed by the National Technical Information Service. Requests for these public reports should be addressed to: Sales Office, National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650.

**§ 261.7 Deferred availability of certain information.**

(a) *Information subject to deferred availability.* Certain types of information may not be published in the **Federal Register** or made available for inspection and copying until after a period of time the Board determines to be reasonably necessary to avoid the effects described in paragraph (b) of this section.

(b) *Reasons for deferred availability.* Information may be subject to deferred availability of deferred publication because earlier disclosure would:

(1) Interfere with accomplishing the objectives of the Board in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(4) Result in unnecessary or unwarranted disturbances in the securities markets;

(5) Interfere with the orderly execution of the objectives or policies of other Government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interests of the United States, the Board, any Federal Reserve Bank, or any department or agency of the United States.

**§ 261.8 Exemptions from disclosure.**

(a) *Types of information or records that are exempt from disclosure.* The following records and information of the Board are exempt from disclosure under this regulation:

(1) *National defense.* Any information or record that is:

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive order; or

(2) *Examination, inspection, operating, or condition reports, and confidential; supervisory information.*

(i) Any matter that is contained in or related to examination, inspection, operating, or condition reports or confidential supervisory information prepared by, on behalf of, or for the use of the Board, any Federal Reserve Bank, or any federal or state financial institution supervisory agency that deems such documents or information confidential.

(ii) The Board may, however, determine that certain kinds of operating or condition reports may, for reasons of policy, be routinely disclosed to the public upon request. In case, no special authorization shall be required for disclosure of the reports by members of the Board's staff; and there shall be no limitation on the use of the reports by members of the public receiving them.

(3) *Trade secrets; commerical or financial information.*

(i) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(ii) The Board may, however, make any information furnished in confidence in connection with an application for Board approval of a transaction available to the public in accordance with § 261.6 of this regulation, and without prior notice and to the extent it deems necessary, may comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains.

(4) *Records or information compiled or law enforcement purposes.* Any records or information complied for law enforcement purposes, to the extent permitted under 5 U.S.C. 552b, including information relating to proceedings for:

(i) Issuing cease-and-desist orders, suspension or removal orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, the Bank Holding Company Act of 1956, as amended, or the Federal Reserve Act of 1913, as amended;

(ii) Terminating membership of an institution in the Federal Reserve System under section 9 of the Federal Reserve Act (12 U.S.C. 327);

(iii) Suspending a depository institution from use of the credit facilities of the Federal Reserve System under section 4 of the Federal Reserve Act (12 U.S.C. 301); or

(iv) Granting or revoking any approval, permission, or authority, except to the extent provided in this Part and Part 262 of this chapter concerning bank holding company and bank merger applications.

(5) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board, within the meaning of 5 U.S.C. 552(b)(2).

(6) *Personnel and medical files.* Any information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) *Inter- or intra-agency memorandums of letters.* Any matter contained in inter- or intra-agency memorandums or letters that would not be routinely available by law to a party (other than an agency) in litigation with an agency, including but not limited to:

(i) Memorandums;

(ii) Reports;

(iii) Other documents prepared by the staffs of the Board or Federal Reserve Banks; and

(iv) Records of deliberations of the Board and of discussions at meetings of the Board, any Board committee, or Board staff, that are not subject to 5 U.S.C. 552b.

(8) *Court order prohibitions.* Any document or information that is covered by an order of a court of competent jurisdiction that prohibits its disclosure.

(9) *Statutory Exemption.* Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(b) *Segregation of nonexempt information.* (1) The Board shall provide any reasonably segregable portion of a recording to any person requesting such

record after deleting those portions that are exempt under this section. In determining whether exempt information is reasonably segregable, the Board shall consider all relevant factors, including but not limited to:

(i) The amount and placement of nonexempt information in relation to the structure and size of the document; and

(ii) The intelligibility and usefulness of the nonexempt information that is segregated balanced against the administrative burden and cost of segregation.

(2) Subject to these considerations, reasonably segregable nonexempt portions of a document are those nonexempt portions:

(i) Whose meaning is not distorted by deletion;

(ii) That are sufficiently detailed to be intelligible and useful to the requester; and

(iii) From which a skillful and knowledgeable person could not reconstruct any exempt information.

(3) Information stored on computer tape that can be segregated only by creating a new retrieval program is not considered reasonably segregable.

(c) *Prohibition against disclosure.* Except as provided in this regulation, no officer, employee, or agent of the Board or any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board or Reserve Bank officers, employees, or agents properly entitled to such information for the performance of official duties), whether by giving out or furnishing the information or a copy of it or by allowing any person to inspect or copy it, or otherwise.

(d) *Foreign banking organization confidential report of operations.* It is the Board's policy that the confidentiality of a foreign banking organization's Confidential Report of Operations (Form F.R. 2068) should be maintained at all times. Except as provided in § 261.11(e) of this regulation, information submitted to the Board as part of any Confidential Report of Operations is not available for public inspection by any person other than an officer, employee, or agent of the Board or a Federal Reserve Bank properly entitled to such information in the performance of such person's official duties. Any employee who violates this section by releasing such a Report to any unauthorized person may be subject to disciplinary action under 12 CFR 264.735–5 (Rules of Employee Responsibilities and Conduct).

**§ 261.9 Procedures for making requests for identifiable records; processing of requests; appellate review of denial of request; time extensions.**

(a) *Procedures for making request for records.* (1) *Contents of request.* A request for identifiable records shall reasonably describe the records to which access is sought in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or disrupting any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board, and the envelope clearly marked "Freedom of Information Act Request." The request shall contain the following information:

(i) The name and address of the person filing the request, and the telephone number at which the requester can be reached during normal business hours;

(ii) The name of any pending litigation to which the request relates, the court, and its location;

(iii) Whether the requested information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative; and

(iv) A statement agreeing to pay the applicable fees; or a statement identifying any fee limitation desired; or a request for a waiver or reduction of fees that satisfies § 261.10 of this regulation.

(2) *Defective requests.* (i) The Board need not accept or process a request that is not a request for identifiable records or that:

(A) Can be complied with only by designing an information retrieval system; or

(B) Does not otherwise comply with the requirements of paragraph (a) of this section.

(ii) The Board may return a defective request, specifying the dificiency. The requester may submit a corrected request which shall be treated as a new request.

(3) *Oral requests.* The Board may honor an oral request for records, but if the requester is dissatisfied with the Board's response and wishes to seek review, the requester must submit a written request, which shall be treated as an initial request.

(4) *Advance payment of fees.* Whenever the Board requires advance payment of any fee pursuant to § 261.10 of this regulation, the requester shall promptly remit the required advance payment to the Board as a condition to further processing of the request.

(b) *Procedures for responding to requests*—(1) *Time limits.* In response to any request that satisfies paragraph (a) of this section, the Board shall, if necessary, cause an appropriate search to be conducted of records of the Board in existence on the date of receipt of the request, and shall detemine within ten working days of receipt of the request whether to comply with the request, unless the running of such time is tolled for payment for fees pursuant to § 261.10 of this regulation, or such period is extended, pursuant to paragraph (e) of this section or Subpart D of this regulation. The date of receipt for a request that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank will be the date the Office of the Secretary actually receives it.

(2) *Response to request.* The Board shall, within the time period specified in paragraph (b)(1) of this section, notify the requester of:

(i) The Board's determination of the request;

(ii) The reasons for the determination;

(iii) The right of the requester to appeal to the Board any denial or partial denial, as specified in paragraph (d) of this section; and

(iv) In the case of a denial of a request, the name and title or position of the person responsible for the denial.

(3) *Refusal to acknowledge records.* If a request covers records or types of records whose existence is confidential, such as records of enforcement actions against identifiable financial institutions, the Board may advise the requester that it can neither confirm nor deny the existence of the requested records and notify the requester of the legal basis for that determination.

(4) *Priority of responses.* The Secretary will assign responsible staff to particular requests and will normally process requests in the order they are received. However, in the Secretary's discretion, or upon a court order in a matter to which the Board is a party, a particular request may be processed out of turn.

(5) *Referrals.* To the extent a request covers documents that were created by, obtained from, or classified by another agency, the Board may refer the request to that agency for a response and will inform the requester promptly of the referral.

(c) *Procedures for copying and review of records; number of copies; method of duplication*—(1) *Request for copies.* When a requester asks that documents be copied, copies shall be made at the fee established, as provided in § 261.10 of this regulation. Copies shall be sent to

the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office in Washington, DC., or makes other arrangements acceptable to the Board.

(2) *Number of copies; method of duplication.* The Board need not provide more than one copy of any record to any requester, and the Board may select the form of the copy provided, such as paper, microform, or other medium.

(3) *Request to review documents.* Requesters may review documents at the Board's Freedom of Information Office under staff supervision. Requesters may not disassemble or alter any record or file being inspected.

(d) *Appeal of denial of request for records*—(1) *Request for appellate review; time limits.* Any person denied access to Board records requested in accordance with this section may file with the Board a written request for appellate review of the denial by the Board or Board member(s) designated to hear such appeal. Such request shall be filed within ten working days of the date on which the denial was issued, or, where a request for documents has been partially approved but access to the documents has not been given, within ten working days from the date such documents are transmitted to the requester. The request shall prominently display the word "Appeal" on the first page. An initial request for records may not be combined in the same letter with an appeal.

(2) *Untimely appeals.* The Board may consider an untimely appeal if:

(i) It is accompanied by a written request for leave to file an untimely appeal; and

(ii) The Board or designated Board member(s) determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.

(3) *Decision on appeal; time limits.* The Board or designated Board member(s) shall made a determination with respect to any appeal within 20 working days of actual receipt of the appeal by the Secretary and shall immediately notify the appealing party of the determination and the right to seek judicial review if the determination upholds, in whole or in part, the denial of the request for records. Such determination is not subject to review under § 265.3 of this chapter which provides for review of actions taken under delegated authority.

(4) *Mootness of appeal.* (i) The Board, a Board member, or a staff person designated by the Chairman may declare an appeal wholly or partially moot and instruct the Secretary of the Board to reconsider the previous denial or to release the requested documents, where a determination is made that intervening circumstances or additional facts not known at the time of denial have or may have eliminated any need or justification for withholding the requested documents.

(ii) The Secretary of the Board may reconsider a denial being appealed if such intervening circumstances or additional facts come to the attention of the Secretary while an appeal is pending.

(e) *Time extensions in unusual circumstances; failure to comply with time limits.*—(1) *Time extensions.* In unusual circumstances, as defined in 5 U.S.C. 552(a)(6), the time limits specified in paragraph (b)(1) and paragraph (d)(3) of this section may be extended for a period of time not to exceed the time set forth in 5 U.S.C. 552(b)(6) by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. The extension of time may be divided between the initial and appellate reviews but the total extensions relating to any request and resulting appeal may not exceed the period of time set forth in 5 U.S.C. 552(b)(6).

(2) *Failure to comply with time limits.* If the Board fails to comply with the applicable time limits and extensions specified in this section, the Board or other responsible employee shall, where practicable, give notice to the requester, stating the reasons for the delay and the date by which the Board expects to dispatch its determination. Without prejudice to the legal remedies provided the requester in 5 U.S.C. 552, the Board shall continue processing the request as quickly as possible and shall dispatch its determination when reached in the same manner as if it had been reached within the applicable time limits.

**§ 261.10 Fee schedules; waiver of fees.**

(a) *Fee schedules.* Records of the Board available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See Appendix A for Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the direct costs of search, duplication, and review, and may be adjusted from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the direct costs of search, duplication, or review.

(1) "Direct costs" mean those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under section 261.9 of this regulation. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Duplication" refers to the process of making a copy of a document necessary to respond to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or profit as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act.

(3) In determining whether a requester properly belongs in this category, the Secretary shall look first to the use to which a requester will put the documents requested. Where a requester does not explain its purpose, or where its explanation is insufficient, the Secretary may draw reasonable inferences from the requester's identity and charge fees accordingly. For example, the Secretary may presume that a document request written on corporate letterhead stationery that merely recites a list of the documents wanted is for a commercial use.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for

commercial use and the requester is a representative of the news media, or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) "Educational institution" refers to an accredited institution of higher learning engaged in scholarly research.

(3) "Noncommercial scientific institution" refers to an independent nonprofit institution whose purpose is to conduct scientific research.

(4) "Representative of the news media" refers to any representative of established news media outlets, i.e., any organization such as a television or radio station, or a newspaper or magazine of general circulation, or person working for such organization which regularly publishes information for dissemination to the general public whether electronically or in print. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such request accordingly.

(g) *Payment procedures*— (1) *Fee payment.* The Secretary may assume that a person requesting records pursuant to § 261.9 of this regulation will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay fees in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under § 261.9(b) of this regulation, the running of the time period will begin only after the Secretary receives the required payment.

(3) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(h) *Waiver or reduction of fees*— (1) *Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Board and is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Board;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(2) *Contents of request for waiver.* The Secretary or his or her designee will normally deny a request for a waiver of fees that does not include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the speciailized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(4) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act) are $50 or less; but the Secretary may waive fees in excess of that amount.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if no responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduced fees.

**Appendix A to § 261.10—Freedom of Information Fee Schedule**

Duplication

| | |
|---|---|
| Photocopy, per standard page | $.08 |
| Paper copies of microfiche, per frame | $.07 |
| Duplicate microfiche, per microfiche | $.10 |

Search and Review

| | |
|---|---|
| Clerical (Grades FR4–FR7), hourly rate | $8.50 |
| Technical (Grades FR8–FR11), hourly rate | $12.80 |
| Management/professional, hourly rate | $25.90 |

Computer Search and Production

For each request the Secretary will separately determine the actual direct cost of providing the service, including computer search time, tape or printout production, and operator salary.

Special Services

The Secretary of the Board may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information, packaging and mailing records, and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate per-page fees reflecting the cost of operating and maintenance of those machines.

Fee Waivers

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media, the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests no fees will be assessed for review time, for the first

100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Board will waive in full fees that total less than $4.

The Secretary of the Board or his or her designee will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Board and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, former employees, and applicants for employment who request records for use in prosecuting a grievance or complaint of discrimination against the Board.

## Subpart C—Confidential Information Made Available to Supervised Institutions, Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances

### § 261.11 Confidential information made available to supervised institutions and financial institutions supervisory agencies.

(a) *Routine disclosure of reports of examination and inspection and confidential supervisory information to supervised institutions.* A copy of each report of examination or inspection or confidential supervisory information concerning a supervised bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other institution examined by the Federal Reserve System may be made available by the Board or the appropriate Federal Reserve Bank to the supervised institution. This report of examination or inspection or confidential supervisory information is provided for the use of the directors, executive officers, and employees of the examined financial institution in connection with the performance of their duties.

(b) *Other routine disclosures.* From time to time, the Board may determine that reports of examination or inspection or confidential supervisory information may be disclosed by designated members of the staff on a routine basis for purposes determined by the Board.

(c) *Disclosure upon request to federal financial institutions supervisory agencies.* The Director of the Board's Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank, upon request, may make available to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board and their regional offices and representatives, reports of examination and inspection, confidential supervisory information, and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company, U.S. branch or agency of a foreign bank, or other examined financial institution.

(d) *Disclosure upon request to state financial institutions supervisory agencies.* Upon request, the Director of the Board's Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank may make available reports of examination and inspection, confidential supervisory information, and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company, U.S. branch or agency of a foreign bank, or other examined institution ("supervised institution"), to:

(1) A state financial institution supervisory agency having direct supervisory authority over such supervised institution; or

(2) A state financial institution supervisory agency not having direct supervisory authority over such supervised institution if the requesting agency has entered into an information sharing agreement with the appropriate Federal Reserve Bank and the information to be provided concerns a supervised institution that has acquired or has applied to acquire a financial institution subject to that agency's direct supervisory authority.

(e) *Other disclosure prohibited.* All reports and information made available under this section remain the property of the Board, and except as otherwise provided in this regulation, no person, agency, or authority to whom the information is make available, or any officer, director, or employee thereof, may disclose such information except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual or corporation.

(f) *Foreign Bank Confidential Report of Operations.* (1) Notwithstanding any other provision of this Regulation, any Confidential Report of Operations (Form F.R. 2068) of a foreign banking organization may, upon written request to and approval by the Director of the Division of Banking Supervision and Regulation (or the Director's delegee), and with the concurrence of the General Counsel (or delegee), be made available for inspection to another bank supervisory authority having general supervision of any United States branch, agency, subsidiary, bank, or commercial lending company of the foreign banking organization, only for use where necessary in the performance of official duties.

(2) These reports shall be made available for inspection by authorized persons only on Federal Reserve premises under the same procedures applicable to personnel of the Federal Reserve System.

(3) Any report made available under this paragraph remains the property of the Board. No person, agency, or authority who obtains access to such report, or any officer, director, or employee thereof, may publish, publicize, or otherwise disclose any information contained in the report to any person.

(g) *Conditions and limitations.* The Board may impose such conditions or limitations on disclosure under this section that it determines are necessary to effect the purposes of this Regulation, to insure compliance with applicable laws or regulations, or to protect the confidentiality of the Board's information.

### § 261.12 Confidential information made available to law enforcement agencies and other nonfinancial institutions supervisory agencies.

(a) *Disclosure upon request.* Upon written request, the Board may make available to appropriate law enforcement agencies and to other nonfinancial institutions supervisory agencies for use where necessary in the performance of official duties, reports of examination and inspection, confidential supervisory information, and other confidential documents and information of the Board concerning banks, bank holding companies and their subsidiaries, U.S. branches and agencies of foreign banks, and other examined institutions.

(b) *Eligibility.* Federal, state, and local law enforcement agencies and other nonfinancial institutions supervisory agencies may file written requests with the Board for access to confidential documents and information under this section of the regulation. Properly accredited foreign law enforcement agencies and other foreign government agencies may also file written requests with the Board.

(c) *Contents of request.* To obtain access to confidential documents or information under this section of the regulation, the head of the law enforcement agency or nonfinancial institution supervisory agency (or their designees) shall address a letter request to the Board's General Counsel, specifying:

(1) The particular information, kinds of information, and where possible, the particular documents to which access is sought;

(2) The reasons why such information cannot be obtained from the examined institution in question rather than from the Board;

(3) A statement of the law enforcement purpose or other purpose for which the information shall be used;

(4) Whether the requested disclosure is permitted or restricted in any way by applicable law or regulation;

(5) A commitment that the information requested shall not be disclosed to any person outside the agency without the written permission of the Board or its General Counsel; and

(6) If the document or information requested includes customer account information subject to the Right to Financial Privacy Act, as amended (12 U.S.C. 3401), a statement that such customer account information need not be provided, or a statement as to why the Act does not apply to the request, or a certification that the requesting agency has complied with the requirements of the Act.

(d) *Action on request.* (1) The General Counsel shall review each request and may approve the request upon determining that:

(i) The request complies with this section;

(ii) The information is needed in connection with a formal investigation or other official duties of the requesting agency;

(iii) Satisfactory assurances of confidentiality have been given; and

(iv) No law prohibits the requested disclosure.

(2) The General Counsel may impose any conditions or limitations on disclosure that the General Counsel determines to be necessary to effect the purposes of this Part or to insure compliance with applicable laws or regulations.

(e) *Routine disclosures.* From time to time the Board may determine that reports of examination or inspection may be disclosed by designated members of the staff on a routine basis for purposes determined by the Board.

(f) *Federal and state grand jury, criminal trial, and government administrative subpoenas.* The Board's General Counsel shall review and may approve the disclosure of confidential information pursuant to federal and state grand jury, criminal trial, and government administrative subpoenas. The General Counsel may impose such conditions or limitations on disclosure under this section that it determines are necessary to effect the purposes of this Part, to insure compliance with applicable laws or regulations, or to protect the confidentiality of the Board's information.

(g) *Requests for testimony or interviews.* Government agencies seeking to obtain testimony or interviews from current and former Federal Reserve System staff concerning any confidential information of the Board shall use the procedures set out in paragraph (c) of this section.

(h) *Other disclosure prohibited.* All reports and information made available under this section remain the property of the Board, and except as otherwise provided in this regulation, no person, agency, or authority to whom the information is made available, or any officer, director, or employee thereof, may disclose any such information except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual or corporation.

**§ 261.13 Other disclosure of confidential information.**

(a) *Policy statement.* It is the Board's long-standing policy regarding its reports of examination and inspection and confidential supervisory information that such information is confidential and privileged and should not be disclosed except in the most compelling circumstances. Any party desiring information concerning the affairs of a bank or bank holding company should seek that information from the bank or bank holding company rather than seek disclosure of the Board's reports of examination and inspection and confidential supervisory information.

(b) *Requests related to private litigants.* (1) *Exhaustion of administrative remedies.* Any person (except agencies identified in §§ 261.11 and 261.12 of this regulation) desiring access to confidential information of the Board for use in litigation before a court, board, commission, or agency must file a written request with the General Counsel of the Board at least 45 calendar days before access is desired.

(2) *Action on request.* The General Counsel may approve a request made under this section provided that he or she determines that the requester has made a showing of compelling circumstances that require disclosure to the requester of confidential information, and if the General Counsel determines that such disclosure is consistent with the regulatory responsibilities and policies of the Board. The General Counsel may, in granting approval of a request made under this section, impose such conditions or limitations on use of any information disclosed as he or she feels is necessary to protect the confidentiality of the Board's information.

(c) *Requests for testimony.* Any person desiring to obtain the testimony of present or former Board or Reserve Bank employees on matters involving confidential information of the Board, whether by deposition or otherwise, shall use the procedures set out in paragraph (b) of this section.

(d) *Disclosure of reports of examination and inspection and confidential supervisory information by financial institutions to affiliated persons*—(1) *Limitation on disclosure.* Financial institutions lawfully in possession of reports of examination or inspection or confidential supervisory information pursuant to § 261.11 of this regulation are prohibited from disclosing such reports or information to any person except as permitted by this paragraph.

(2) *Parent companies.* Any financial institution lawfully in possession of reports of examination or inspection or confidential supervisory information pursuant to § 261.11 of this regulation may disclose such reports or information, or portions of them, to its parent bank holding company without consulting the Board provided that the parent company agrees in writing with the financial institution to preserve the confidentiality of such reports and information pursuant to this regulation.

(3) *Agents.* Any financial institution lawfully in possession of reports of examination or inspection or confidential supervisory information pursuant to § 261.11 of this regulation may disclose such reports or information to appropriate agents of the financial institution, subject to the following conditions:

(i) Prior to any disclosure of such reports or information, the financial institution shall consult with the appropriate Reserve Bank regarding the qualification of the agent to receive information under this paragraph;

(ii) The reports or information to be made available is material and necessary to the performance of specifically identified responsibilities of the agent;

(iii) The reports and information are not removed from the premises of the financial institution and are reviewed only on its premises;

(iv) Prior to review, the agent agrees in writing with the financial institution to preserve the confidentiality of the reports and information; and

(v) The agent agrees in writing with the financial institution not to disclose any confidential Board information obtained under this section in connection with any trial of any civil, criminal, or administrative action without first seeking the prior approval of the Board's General Counsel pursuant to the procedures set forth in paragraph (b) of this section.

(e) *Other disclosures prohibited.* All reports and information made available under this section remain the property of the Board, and except as otherwise provided in this regulation, no person, partnership, company, or other entity to whom the information is made available, or any officer, director, partner, employee, or other associate thereof, may disclose any such information.

**§ 261.14 Subpoenas, orders compelling production, and other process.**

(a) *Advice by person served.* Any person (including any officer, employee, or agent of the Board or any Federal Reserve Bank) who has documents or information of the Board that may not be disclosed and who is served with a subpoena, order, or other judicial or administrative process requiring his or her personal attendance as a witness or the production of documents or information in any proceeding, shall:

(1) Promptly inform the Board's General Counsel of the service and all relevant facts, including the documents and information requested, and any facts of assistance to the Board in determining whether the material requested should be made available; and

(2) At the appropriate time inform the court or tribunal that issued the process and the attorney for the party at whose instance the process was issued of the substance of these rules.

(b) *Appearance by person served.* Unless the Board has authorized disclosure of the information requested, any person who has Board information that may not be disclosed, and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this regulation. If the court or other body orders the disclosure of the information or the giving of testimony, the person having the information shall continue to decline to disclose the information and shall promptly report the facts to the Board for such action as the Board may deem appropriate.

## Subpart D—Requests for Confidential Treatment

**§ 261.15 Scope of subpart.**

(a) *Data collection forms.* This subpart does not apply to data collected by the Board on forms that are approved pursuant to the Paperwork Reduction Act and are deemed confidential by the Board. Any such form deemed confidential by the Board shall contain language so indicating on the face of the form or in its instructions. Such information may, however, be disclosed in aggregate form in such a manner that individual company data is not disclosed or derivable.

(b) *Duty to submit information.* This subpart does not modify in any manner the obligation of any person or company to submit, pursuant to any law or regulation, any document, information, form, or other filing to the Board or any Federal Reserve Bank.

(c) *Public comments.* (1) Any comments submitted by a member of the public applications and regulatory proposals being considered by the Board are public unless the Board or the Secretary determines that confidential treatment is warranted.

(2) A request for confidential treatment of such comments shall be submitted in a separate letter or memorandum accompanying the comments and on which the words, "Request for Confidential Treatment" are prominently displayed. Notwithstanding any other provision of this regulation, the Board need not inform any person submitting such comments of a decision not to afford confidential treatment to the comments.

**§ 261.16 Submission and form of request for confidential treatment; action on request.**

(a) *Submission of request.* Any submitter of documents or information to the Board who desires that they be afforded confidential treatment shall file a request for confidential treatment with the Board (or in the case of documents filed with a Federal Reserve Bank, with that Reserve Bank), at the time they are submitted.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts and arguments supporting the request and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment.

(c) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated "confidential" in the submission and clearly separated from information for which confidential treatment is not requested.

(d) *Action on request.* (1) Request for confidential treatment of any documents will be considered in connection with any request for access to the documents. At their discretion, appropriate Board or staff members (including Reserve Bank staff) may act on the request for confidentiality prior to any request for access to the documents.

(2) Any request for confidentiality pursuant to 5 U.S.C. 552(b)(4) will be handled in accordance with § 261.17 of this subpart.

(3) Nothing in this section limits the Secretary's authority to make determinations regarding requests for access to records under § 261.9.

(e) *Special procedures.* The Board may establish special procedures for particular documents, filings, or types of information by express provisions in this regulation or by instructions on particular forms that are approved by the Board. These special procedures shall take precedence over the procedures set out in this subpart.

**§ 261.17 Confidential commercial or financial information.**

(a) *Notice to submitter.* Whenever a request for access to Board records submitted pursuant to section 261.6 of this regulation covers, in whole or in part, any document or information for which confidential treatment has been requested pursuant to 5 U.S.C. 552(b)(4) ("trade secrets and commercial or financial information obtained from a person and privileged or confidential"), or when it otherwise appears to the Secretary that the document requested contains information that may be deemed confidential under 5 U.S.C. 552(b)(4), the Secretary may notify the submitter of the document of the request for access. This notice shall: (1) Where possible, be given within five working days of the receipt of the request for access; (2) describe the request; and (3) give the submitter a reasonable opportunity, not to exceed ten working days, to submit written objections to the granting of the request. The notice to the submitter, if given orally, shall be

promptly confirmed in writing by the Secretary.

(b) *Notice to requester.* At the same time the Secretary gives notice to the submitter, the Secretary shall also give notice to the requester that the request is subject to the provisions of this section and that notice of the request is being given to the submitter.

(c) *Determination by Secretary.* The Secretary's determination whether or not to disclose any document for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary determines to disclose the document or information and the submitter has objected to such disclosure under paragraph (a) of this section, the Secretary shall delay actual release of the document or information for ten working days following the date of the determination.

(d) *Exceptions to notice to submitter.* Notwithstanding any other provision in this section, no notice to any submitter is required: (1) If the Secretary determines, prior to giving such notice, that the request for access should be denied; (2) if the information requested lawfully has been published or otherwise made available to the public; (3) if disclosure of the information is required by law (other than 5 U.S.C. 552); or (4) if the submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) is deemed to be insubstantial or has already been denied by the Secretary.

(e) *Notice of lawsuit.* (1) The Secretary shall promptly notify any submitter of information or documents covered by this section of the filing of any suit against the Board pursuant to 5 U.S.C. 552 to compel disclosure of such documents or information.

(2) The Secretary shall promptly notify the requester of any suit filed against the Board pursuant to 5 U.S.C. 552 to enjoin the disclosure of any documents requested by the requester.

(f) *Exception for Board rulings.* Nothing in this section shall apply in connection with any determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in § 261.8 of this regulation.

By order of the Board of Governors, April 16, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87–8955 Filed 4–22–87 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 101

### Proposed Customs Regulations Amendment Relating to the Customs Service Field Organization, Port Huron, MI

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed rule, solicitation of comments.

**SUMMARY:** This document proposes to amend the Customs Regulations to change the Customs field organization by extending the geographic limits of the port of entry of Port Huron, Michigan. Currently, Customs officers assigned to the port provide service at many locations which are outside the existing port limits. This proposed expansion will better serve the public by including several locations routinely requiring Customs service within the official port limits.

**DATE:** Comments must be received on or before June 22, 1987.

**ADDRESS:** Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Richard Coleman, Office of Inspection and Control, (202–566–9425).

**SUPPLEMENTARY INFORMATION:**

#### Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographic limits of the port of entry of Port Huron, Michigan, located in the Detroit, Michigan, Customs District in the North Central Region.

By T.D. 53576, dated September 10, 1954, the limits of the Customs port of entry of Port Huron, Michigan, comprising the territory within the corporate limits of the city, were extended to include the territory embracing the municipality of Marysville, and the Townships of Port Huron, Fort Gratiot, Kimball and St. Clair, all in the State of Michigan. There have been no changes in the port limits since that date and Port Huron is so listed as a port of entry in § 101.3(b)), Customs Regulations (19 CFR 101.3(b)).

It has now been proposed to extend the existing port limits to encompass the cities of St. Clair, Marine City and Algonac, Michigan. Algonac and Marine City are currently designated as Customs stations in § 101.4(c), Customs Regulations (19 CFR 101.4(c)).

The purpose of the proposed extension is to permit normal rotation of inspectors to St. Clair, Marine City and Algonac as they are now assigned to other areas within the existing port limits. If the proposed extension is adopted, importers within the expanded port limits would no longer be billed mileage charges. However, the amount is minimal and the expansion would result in no additional workload and would require no additional personnel. The proposed expanded port limits are as follows:

All of the territory encompassing the cities of Port Huron, Marysville, St. Clair, Marine City, and Algonac and the Townships of Port Huron, Fort Gratiot, Kimball and St. Clair, all in the State of Michigan.

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in § 101.3(b) Customs Regulations, will be amended accordingly.

#### Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

#### Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR Parts 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

#### List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization and functions (Government agencies).

**Executive Order 12291 and Regulatory Flexibility Act**

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Similarly, this document is not subject to the regulatory analysis and other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

**Drafting Information**

The principal author of this document was Bruce J. Friedman, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

Approved: April 2, 1987.

**Francis A. Keating, II,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87-9121 Filed 4-22-87; 8:45 am]

BILLING CODE 4820-02-M

## PENSION BENEFIT GUARANTY CORPORATION

**29 CFR Part 2603**

**Examination and Copying of Pension Benefit Guaranty Corporation Records**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This is a proposed amendment to the Pension Benefit Guaranty Corporation's regulation implementing the Freedom of Information Act. The amendment would modify the law enforcement provisions and the fee and fee waiver provisions of the regulation in conformance with the Freedom of Information Reform Act of 1986 and guidelines issued by the Office of Management and Budget. This action is necessary to comply with the statutory requirements and those guidelines. The effect of this amendment is to conform the law enforcement and fee waiver provisions to the law, to establish fee schedules in accordance with the standards established by OMB guidelines, and to notify the public of those provisions.

**DATES:** Comments must be received on or before May 26, 1987.

**ADDRESSES:** Comments should be addressed to the Director, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, Suite 7300, 2020 K Street, NW., Washington, DC 20006. Written comments will be available for public inspection in Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation (PBGC) is a Federal Government corporation established by Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1982), to administer the pension plan insurance program that also was established by that Act. The Freedom of Information Act (FOIA), 5 U.S.C. 552, provides, among other things, for public access to information from records of Government corporations such as the PBGC. On June 3, 1975, the PBGC promulgated its regulation entitled Examination and Copying of Pension Benefit Guaranty Corporation Records, 29 CFR Part 2603, establishing the basic policies and procedures that it uses to process requests for information under the Freedom of Information Act.

The Freedom of Information Reform Act of 1986 (Reform Act), Pub. L. 99-570, modified FOIA's fee and fee waiver provisions and also expanded its law enforcement protections. The new law enforcement provisions were effective on the date of enactment of the Reform Act, October 27, 1986, and the fee provisions are effective April 25, 1987. The Reform Act directed that each agency subject to FOIA promulgate regulations, pursuant to notice and public comment, specifying fee schedules and establishing procedures and guidelines for reduction or waiver of fees. The Reform Act also directed the Office of Management and Budget to promulgate guidelines providing for a uniform schedule of FOIA fees for all such agencies.

On January 16, 1987, OMB published a notice and request for public comment on its Proposed Fee Schedule and Administrative Guidelines. On March 27, 1987, OMB published its Fee Schedule and Guidelines in final form, incorporating changes considered appropriate as a result of comments received from the public. Because of the April 25, 1987, effective date of the fee provisions in the Reform Act, and because of the statutory requirement that such provisions be published for notice and comment, the PBGC is publishing two documents in the Federal Register concurrently: An Interim Rule that is effective on April 25, 1987, and this Proposed rule requesting public comments on the fee provisions. A final rule incorporating the amendments in this proposed rule will be published after public comments are received and considered.

The primary changes that would be made by this proposed rule, relating to the Reform Act's fee and fee waiver provisions and its law enforcement provisions, are discussed below. Certain other changes are conforming or nonsubstantive in character.

**Law Enforcement**

Section 2603.21 of the current regulation provides for restrictions on public access to records compiled for law enforcement purposes if certain harms would result. The Reform Act expanded this statutory exemption from disclosure to include any pending investigations or confidential sources of information if disclosure could reasonably be expected to result in certain of the harms currently proscribed. The proposed amendment to § 2603.21, closely follows the revised statutory language and its legislative history.

**Fee Schedule**

Under the Reform Act and OMB guidelines, agencies may continue to recover the direct cost of providing FOIA services, but certain services must be provided free of charge to certain categories of requesters, and agencies now may recover costs of "review" from commercial use requesters.

In its guidelines, OMB has defined "direct costs" and delineated the methods to be used to establish direct costs. The guidelines provide, *inter alia*, that salary costs shall include an employee's basic rate of pay plus an amount to cover certain fringe benefits (16 percent of that basic salary rate), permit establishment of an average

salary rate for a homogeneous class of employees, delimit the scope of the "review" for which charges may be imposed, and suggest ways of allocating costs of computer searches to determine direct costs. These provisions are found in proposed §§ 2603.51(a) and 2603.53.

With respect to the different categories of users, the Reform Act and the guidelines provide (1) that commercial use requesters may be charged for all search, review, and duplication costs, and may be charged even if the records sought are not found or their disclosure is denied after review; (2) that only duplication fees may be charged if the requester is an educational or noncommercial scientific institution or a representative of the news media, and that the first 100 pages of duplication must be furnished to such requesters free of charge; and (3) that all other requesters may be charged for search and duplication only, and that the first 100 pages of duplication and the first two hours of search time must be furnished free of charge (but charges may be made for additional search time even if the records sought are not found). The guidelines provide, further, in connection with the fee exemptions granted for the first 100 pages of duplication and/or the first two hours of search time, that an agency may protect itself against multiple requests filed in order to avoid charges. These provisions are found in proposed §§ 2603.32(c) and 2603.51 (b) and (c).

The fee schedule of the PBGC is set forth in § 2603.52 of the current regulation, to which would be added a new paragraph (a)(4) to include charges for review time. It should be noted that, on August 18, 1986, after notice and comment, the PBGC published a revised fee schedule (51 FR 29497). The PBGC has reexamined that fee schedule in light of the OMB guidelines and these proposed rules, and finds that it continues to reflect the "direct costs" to the PBGC within the meaning of the guidelines and these proposed amendments.

Certain special charges are permitted under the guidelines and, of these, only special transmittal fees or special handling services will be provided by the PBGC. This does not represent a change from § 2603.54(c) of the current regulation, but these provisions are removed from that section (which relates to payment of fees), are clarified, and are included herein as proposed § 2603.52(c).

In a change from prior law, the Reform Act permits an agency to require advance payment of part or all of the estimated fees only if they are likely to exceed $250 or the requester has previously failed to pay fees in a timely fashion. This change, as amplified by the guidelines, is reflected in proposed §§ 2603.36 and 2603.54(b).

Agencies may charge interest on unpaid charges in accordance with the guidelines. This provision is found in proposed § 2603.54(c).

### Fee Waiver or Reduction

Finally, the Reform Act provides new rules for the waiver or reduction of charges. The proposed rules in § 2603.55(a), reflect the statutory provisions.

### Comments

Comments on the fee schedule and fee waiver provisions in this proposed rule should be submitted to the PBGC, as set forth above, on or before May 26, 1987. Since the law enforcement provisions in this proposed rule merely reflect the statutory provisions, comments thereon would be inappropriate.

### E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 of February 17, 1981 (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers, individual industries or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export-markets.

Any increase in fees due to inclusion of review time for commercial use requesters is likely to be offset by the decrease in fees due to the limits on search and duplication time that may be charged to other requesters. Accordingly, the PBGC certifies pursuant to section 605 of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. In light of this certification, compliance with sections 603 and 604 is waived.

### List of Subjects in 29 CFR Part 2603

Freedom of information.

In consideration of the foregoing, the Pension Benefit Guaranty Corporation proposes to amend Part 2603 of Subchapter A of Chapter XXVI, Title 29, Code of Federal Regulations, as follows:

## PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

1. The authority for Part 2603 is revised to read as follows:

**Authority:** 5 U.S.C. 552, as amended by secs. 1801–1804, Pub. L. 99–570, 100 Stat. 3207–3248; 29 U.S.C. 1302(b)(3).

**§ 2603.1 [Amended]**

2. Section 2603.1 is amended by adding the phrase ", review," between "search" and "and" in the last sentence.

**§ 2603.2 [Amended]**

3. Section 2603.2 is amended by removing from paragraph (c) the phrase "Office of the Executive Director of the" and inserting, in its place, "Communications and Public Affairs Department,".

**§ 2603.8 [Amended]**

4. Section 2603.8 is amended by removing from paragraph (a) the reference to "2604.23" and inserting, in its place, "2603.23".

5. Section 2603.21 is amended by removing from the section heading the phrase "Investigatory records" and inserting, in its place, "Records or information"; by removing from the heading of paragraph (d) the word "Records" and inserting, in its place, "Records or information"; by changing all references to "investigatory records" or "investigative records" throughout paragraph (d) to read "records and information"; and by revising paragraphs (a) and (c) to read as follows:

**§ 2603.21 Records or information compiled for law enforcement purposes.**

(a) *Restrictions on public access authorized.* Pursuant to the provisions of exemption (7) set forth in 5 U.S.C. 552(b), as amended by Pub. L. 99–570, 100 Stat. 3207–3248, effective October 27, 1986, the disclosure from Corporation records of matters that are "records or information compiled for law enforcement purposes" and to which access by the public would be detrimental to such purposes or to rights of privacy as specified in the statute, may be refused. Access to such records may be refused for any one or more of several specific reasons. Thus, exemption (7) protects from the public access requirements of the Freedom of Information Act records or information compiled for law enforcement purposes whenever their disclosure to any person requesting them—

(1) Could reasonably be expected to interfere with enforcement proceedings; and/or

(2) Would deprive a person of a right to a fair trial or an impartial adjudication; and/or

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; and/or

(4) Could reasonably be expected to disclose (i) the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and (ii) in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; and/or

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; and/or

(6) Could reasonably be expected to endanger the life or physical safety of any individual. Whenever a request is made which involves access to records described in paragraph (a)(1) of this section, and (i) the investigation or proceeding involves a possible violation of criminal law and (ii) there is reason to believe that the subject of the investigation or proceeding is not aware of its pendancy and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Corporation may treat the records as not subject to the requirements of 5 U.S.C. 552 and this Part during only such time as that circumstance continues. Moreover, where one or more of the consequences in paragraphs (a)(1) through (a)(6) of this section would ensue from the disclosure of particular records to any person requesting access to records or information compiled for law enforcement purposes, no determination to grant access to such records may be made by the disclosure officer under the disclosure policy set forth in §§ 2603.8 and 2603.16 in the ordinary case because in such circumstances it would not ordinarily be possible to determine that disclosure would serve the public interest and would not impede any of the functions of the Corporation.

* * * * *

(c) *"Records or information" compiled for law enforcement purposes.* The protection afforded records or information compiled for law enforcement purposes under the exemption set forth in paragraph (a) of this section extends, according to the legislative history of Pub. L. 99–570, to any Federal law enforcement information relating to pending investigations or confidential sources if disclosure of such information could reasonably be expected to cause the harms identified in paragraph (a) of this section.

* * * * * *

6. Section 2603.32 is amended by removing from paragraph (a) the phrase "Office of the Executive Director," and inserting, in its place, "Communications and Public Affairs Department,"; and by revising paragraph (c) to read as follows:

**§ 2603.32 Submittal of requests for access to records.**

* * * * * *

(c) To avoid delay in receipt of a sufficiently complete request at the Corporation, each such request should identify the category of the requester, as defined in § 2603.51(b); reasonably describe the records sought, as provided in § 2603.33; and state specifically that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable, or will be acceptable up to an amount not exceeding a named figure.

7. Section 2603.36 is revised to read as follows:

**§ 2603.36 Receipt by agency of request.**

(a) The disclosure officer shall, upon receipt of a request for access to records, have the date and time of such receipt immediately inscribed thereon. Except as provided in paragraphs (b) through (d) of this section, the request shall be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall begin on the next business day following such date.

(b) A request for access to records shall be deemed received only if such request is sufficiently complete, as set forth in §§ 2603.33 through 2603.35.

(c) To protect requesters from an unexpected accrual of liability greater than they may wish to assume for access to requested records, when the Corporation anticipates that search, review, and/or duplication charges under Subpart B of this part may be substantial, the requester will be given prompt notification of the Corporation's estimate of the costs and no receipt of a complete request will be deemed to have occurred unless or until the requester has perfected the request by assurance of payment. Such assurance may be in the form of a statement that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable or will be acceptable up to an amount not exceeding a named figure. To avoid delay in receipt of a sufficiently complete request, the requester may include such statement in the request.

(d) Where it is known or estimated that a request for access to records will require charges for search, review, and/or duplication services in excess of $250, or where the requester has previously failed to pay a fee charged in a timely fashion, such request shall not be deemed received until the Corporation has received fee payments or assurance of payment, as required under the provisions of § 2603.54(b).

8. The heading of Subpart B of Part 2603 is revised to read as follows:

**Subpart B—Fees for Services and Waiver Policy**

9. Section 2603.51 is revised to read as follows:

**§ 2603.51 Charges for services.**

(a) *Generally.* Pursuant to the provisions of the Freedom of Information Act, as amended, the payment of standard charges as set forth in the fee schedule in § 2603.52 will, except as otherwise provided in this subpart, be required according to the category of the requester to cover the direct costs of searching for, reviewing, and/or duplicating records requested under the Act from the Corporation. No fee will be charged if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) "Direct costs" means those expenditures which the Corporation actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under the Act and these regulations. Direct costs include, for example, the salary of the employee performing work (*i.e.,* the basic rate of pay plus benefits) or an established average pay for a homogeneous class of personnel (*e.g.,* all administrative/clerical or all professional/executive), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" means all time spent looking for material that is responsive to a request under the Act and these regulations, including page-by-page or line-by-line identification of materials within a document, if required, and may be done manually or by computer using

existing programming. "Search" should be distinguished from "review" which is defined in paragraph (a)(3) of this section.

(3) "Review" means the process of examining documents located in response to a request under the Act and these regulations to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) "Duplication" means the process of making a copy of a document necessary to respond to a request under the Act and these regulations, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(b) *Categories of requesters.* Requesters who seek access to records under the Act and these regulations are divided into four categories: commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The Corporation will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* When records are requested for commercial use, the Corporation will assess charges, as set forth in §§ 2603.52 through 2603.55, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under the provisions of 5 U.S.C. 552(b) and these regulations.

(i) "Commercial use" request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) In determining whether a request properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. Moreover, where the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Corporation will require the requester to provide clarification before assigning the request to this category.

(2) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution, the Corporation will assess charges, as set forth in §§ 2603.52 through 2603.55, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(ii) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* When records are requested by representatives of the news media, the Corporation will assess charges, as set forth in §§ 2603.52 through 2603.55, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(ii) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraphs (b)(1) through (b)(3), of this section, the Corporation will assess charges, as set forth in §§ 2603.52 through 2603.55, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of search time and there will be no charge for search time in the event of requests under the Privacy Act of 1974 for records about themselves from subjects of records filed in the Corporation's systems of records. Search fees, where applicable, may be charged even if the record searched for is not found.

(c) *Aggregation of requests.* If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation will aggregate any such requests and charge accordingly. In no case will the Corporation aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which searching, review, and duplication facilities or services may be made available to the requester without charge or at a reduced charge are set forth in § 2603.55.

10. Section 2603.52, is amended by revising the section heading, the heading and the introductory sentence in paragraph (a), paragraph (a)(1), and the heading and the introductory sentence in paragraph (b); renumbering paragraph (c) as paragraph (b)(5); removing the phrase "as computed pursuant to the fee schedule in paragraph (b) of this section" from new paragraph (b)(5); and adding new paragraph (c) to read as follows:

**§ 2603.52 Fee Schedule.**

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search and review time.* (i) Ordinary search and review by

custodial or clerical personnel, $1.75 for each one-quarter hour or fraction thereof of employee worktime required to locate or obtain the records to be searched and to make the necessary review; and (ii) search or review requiring services of professional or supervisory personnel to locate or review requested records, $4.00 for each one-quarter hour or fraction thereof of professional or supervisory personnel worktime.

* * * * *

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

* * * * *

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

11. Section 2603.53 is amended by revising paragraph (a) to read as follows:

**§ 2603.53 Computerized records.**

(a) Charges for information that is available in whole or in part in computerized form will be made available at the actual direct cost to the Corporation, including the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to the request, personnel salaries apportionable to the search, and tape or printout production or an established agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches. Charges will be computed at the rates prescribed in § 2603.52 (a) and (b).

* * * * *

12. Section 2603.54 is amended by removing from paragraph (a) the reference to "§§ 2603.52–2603.53" and inserting, in its place, "§§ 2603.51 through 2603.53"; and by revising paragraphs (b) and (c) to read as follows:

**§ 2603.54 Payment of fees.**

* * * * *

(b) *Advance payment or assurance of payment.* Advance payment or assurance of payment may be required under the following rules.

(1) Where the Corporation estimates or determines that charges allowable under the rules in this subpart are likely to exceed $250, the Corporation may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this regulation, the Corporation will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to the Act and this regulation, the Corporation may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the Corporation may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

When advance payment or assurance of payment is required by the Corporation under this paragraph, the request shall not be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall not begin until the Corporation has received the required fee payments or assurance of payment.

(c) *Late payment interest charges.* The Corporation may assess late payment interest charges on any amounts unpaid by the 31st day following the day following issuance of a bill to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

13. Section 2603.55 is revised to read as follows:

**§ 2603.55 Waiver or reduction of charges.**

(a) The disclosure officer may waive or reduce fees otherwise applicable under §§ 2603.51 through 2603.53 when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under §§ 2603.51 through 2603.53 when the requester has demonstrated his inability to pay such fees.

Issued in Washington, DC, this 14th day of April, 1986.

**Royal S. Dellinger,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87–9123 Filed 4–22–87; 8:45 am]

BILLING CODE 7708-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[PP 4E3112/P415; FRL–3191–4]**

## Pesticide Tolerance for 4-Amino-6-(1,1-Dimethylethyl)-3-(Methylthio)-1,2,4-Triazin-5(4H)-One

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for the combined residues of the herbicide (4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4*H*)-one) (referred to in the preamble as metribuzin) and its triazinone metabolites in or on the raw agricultural commodity carrots. The proposed regulation, to establish a maximum permissible level for residues of the herbicide in or on carrots was requested in a petition by the Interregional Research Project No. 4 (IR–4).

**DATE:** Comments, identified by the document control number [PP 4E3112/P415], should be received on or before May 26, 1987.

**ADDRESS:** By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway Arlington, VA 22202, (703–557–1806).

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3112 to EPA on behalf of Dr. Robert H. Kupelian, National Director IR–4 Project and the Agricultural Experiment Stations of Delaware, Illinois, Michigan, New Jersey, Texas, Washington and the U.S. Department of Agriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide metribuzin and its triazinone metabolites in or on the raw agricultural commodity carrots at 0.3 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) of 2.5 milligrams (mg)/kilogram (kg) of body weight per day (equivalent to 100 ppm).

2. A 2-year rat feeling/oncogenicity study with a systemic NOEL of 100 ppm (5.0 mg/kg/day) and no observed oncogenicity potential at all levels tested (25, 35, 100 and 300 ppm).

3. A 2-year mouse oncogenicity study with a systemic NOEL of 800 ppm (120 mg/kg/day), with no observed oncogneicity potential at all levels tested (0, 200, 800 3,200 ppm).

4. A rabbit teratology study with NOEL's for maternal and fetal toxicity at 15 mg/kg/day (495 ppm), and no teratogenic potential at 135 mg/kg/day (highest dose tested).

5. Two mutagenicity studies with no significant increase in unscheduled DNA synthesis (UDS) and no gene mutation in mammalian cells *in vitro* under conditions of the tests.

Data currently lacking include a rat teratology study and a rat reproduction study.

The acceptable daily intake (ADI), based on the 2-year dog feeding study with a NOEL of 2.5 mg/kg/day and using a 100-fold safety factor, is calculated to be 0.025 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.34858 mg/day; the current action will increase the TMRC by 0.00216 mg/day (0).63 percent). Published tolerances utilize 23.24 percent of the ADI; the current action will utilize an additional 0.15 percent.

The nature of the residures is adequately understood and an adequate analytical method, gas chromatography, in Pesticide Analytical Manual (PAM), Volume II, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, and the fact that currently established tolerances for meat and milk are adequate to cover any residues resulting from use as animal feed, the Agency concludes that the proposed tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as a mended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3112/P415]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 13, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.332 is amended by adding, and alphabetically inserting the raw agricultural commodity carrots to read as follows:

**§ 180.332 4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one; tolerances for residues.**

* * * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | |
| Carrots | 0.3 |
| * * * * * | |

[FR Doc. 87–9153 Filed 4–22–87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Part 160

**[CGD 84–069a]**

### Lifesaving Equipment; Immersion Suits

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule; supplemental notice.

**SUMMARY:** The Coast Guard proposes two revisions to the Final Rule containing specifications for approval of immersion suits which appeared in the **Federal Register** of January 12, 1987 (52 FR 1185). The effective date of that final rule is suspended indefinitely by a notice appearing elsewhere in this issue of the **Federal Register.** The changes proposed involve the test procedures for donning at low temperature and for body strength. The changes are needed to conform the regulations to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74), as amended.

**DATES:** Comments on this proposal must be received on or before June 8, 1987.

**ADDRESSES:** Comments should be submitted to Commandant (G–CMC/21) [CGD 84–069a], U.S. Coast Guard, Washington, DC 20593. If an acknowledgement is desired, a stamped, self-addressed postcard should be enclosed. The comments, draft evaluation, and materials referenced in this notice will be available for examination and copying between 8:00 a.m. and 3:00 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

**FOR FURTHER INFORMATION CONTACT:** LCDR William M. Riley, Survival Systems Branch, Office of Marine Safety, Security, and Environmental Protection, (202) 267–1444.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice as CGD 84–069a, and give reasons for their comments. The sections of the rule addressed by this supplemental notice may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on these proposed rules. No public hearing is planned, but one may be held if requested by anyone raising a genuine issue, and if it is determined to aid in the rulemaking process.

## Drafting Information

The principal author of this proposed rule is LCDR William M. Riley, project manager, assisted by LT Sandra R. Sylvester, Office of the Chief Counsel.

## Discussion of the Proposed Regulations

On June 17, 1983, the International Maritime Organization (IMO) adopted the Second Set of Amendments to SOLAS 74. These amendments, which entered into force on July 1, 1986, require "immersion suits" to be carried on board certain vessels on an international voyage. Exposure suits approved under 46 CFR 160.071 are already required to be carried on U.S. vessels, and substantially meet the requirements for immersion suits. However, the specification for immersion suits contained in Regulation 33 of Chapter III of SOLAS 74 includes a number of requirements which differed from those contained in § 160.071. To bring the U.S. regulations into line with the treaty with respect to nomenclature, test subjects, donning over clothing, donning at low temperature, storage temperature, flame and oil exposure, body strength, impact resistance, water ingress, hand dexterity after immersion in cold water, freeboard, and righting, a Notice of Proposed Rulemaking was published on February 4, 1986 (51 FR 4401), and invited comments for 90 days ending May 5, 1986. A final rule was published on January 12, 1987 (52 FR 1185), with an effective date of April 13, 1987. However, the effective date of the final rule is postponed indefinitely by a separate notice which appears elsewhere in this issue of the **Federal Register,** because two additional changes to the specification for immersion suits are needed in light of recent interpretations of the International Convention for Safety of Life at Sea (SOLAS 74/83) which came to our attention after the comment period closed. Changes in the low temperature donning test and the body strength test should not impose an undue burden on any manufacturer, but are substantive in nature and therefore require public notice and opportunity to comment.

### *Donning at Low Temperature*

Correspondence and telephone conversations between the Coast Guard's Office of Marine Safety, Security, and Environmental Protection and their counterparts in other maritime nations following the comment period and drafting of the final rule brought to light that other nations are not accepting the alternative test method of removing an immersion suit from the cold chamber and immediately donning it in a relatively warm room. The method of having the test subject enter the cold chamber and don the suit more accurately simulates the conditions under which the suit might have to be donned during an emergency. This portion of the test can be conducted in any commercial cold-storage facility without increasing the overall cost of the temperature cycling test.

### *Body Strength Test*

After publication of the final rule, a reader pointed out that the Recommendation on Testing of Life-Saving Appliances, IMO Resolution A–521, calls for the body strength test to be conducted for a period of 30 minutes rather than 5 minutes. This change is not expected to impose an additional burden on manufacturers since a suit which will support the test weight for 5 minutes is unlikely to fail if the weight is left hanging undisturbed for an additional 25 minutes.

## Economic Analysis and Certification

This proposed rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft evaluation has been prepared for the final rule. Costs of supplemental testing already estimated in the final rule published on January 12, 1987 are sufficient to cover the different test method proposed herein. Since the effect of the proposed rulemaking is expected to be minimal, no further evaluation is necessary.

The expected benefit of this rule will be compliance of U.S. Coast Guard approved immersion suits with the requirements of the International Convention for Safety of Life at Sea, 1974, as amended. This Supplemental Notice of proposed Rulemaking contains no new costs to manufacturers or the government. Based upon the estimated cost involved, the Coast Guard certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

## Paperwork Reduction Act

This supplemental notice of proposed rule making contains no information collection requirements.

## List of Subjects in 46 CFR Part 160

Marine safety.

In consideration of the foregoing, it is proposed to further amend 46 CFR Part 160 as published in 52 FR 1185 as follows:

1. In § 160.171–17, paragraphs (f)(4) and (1)(2) are revised to read as follows:

**§ 160.171–17 Approval testing for adult size immersion suit.**

* * * * *

(f) *Storage temperature.* * * *

(4) The specimens removed from the cold chamber that same day and left exposed under ordinary room conditions

until the next day. At the conclusion of the final cycle of cold storage, two test subjects who successfully completed the donning test in paragraph (c)(2) of this section enter the cold chamber, unpack and don the immersion suits. Neither of the suits must show damage such as shrinking, cracking, swelling, dissolution or change of mechanical qualities.

* * * * *

(l) *Body strength.* * * *

* * * * *

(2) *Test procedure.* The suit is cut at the waist and wrists, or holes are cut into it as necessary to accommodate the test apparatus. The suit is immersed in water for at least two minutes. The suit is then removed from the water and immediately arranged on the test apparatus, using each closure as it would be used by a person wearing the suit. The 135 kg (300 lb.) load is applied for 30 minutes. No part of the suit may tear or break during this test. The suit must not be damaged in any way that would allow water to enter or that would affect the performance of the suit.

* * * * *

Dated: March 16, 1987.

**W.J. Ecker,**

*Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87-9182 Filed 4-22-87; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Ch. I**

**[CC Docket No. 87-75; FCC 87-106]**

### Provision of Aeronautical Services via the INMARSAT System

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission seeks comments on how aeronautical services via the International Maritime Satellite Organization (INMARSAT) should be provided in the United States. Under the FCC's proposal, U.S. carriers would be allowed to obtain space segment capacity through a consortium comprised of all U.S. carriers, including Comsat, interested in providing aeronautical services via INMARSAT.

**DATE:** Comments due May 21, 1987; replies by June 10, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20544.

**FOR FURTHER INFORMATION CONTACT:** Loretta J. Garcia, 632-7265.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket No. 87-75, FCC 87-106, adopted March 26, 1987, released March 30, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Notice of Proposed Rulemaking**

In this Notice of Proposed Rulemaking we are seeking comments on how aeronautical services via the International Maritime Satellite Organization (INMARSAT) should be provided in the United States. Under the Commission's proposal, U.S. carriers would be allowed to obtain space segment capacity through a consortium comprised of all U.S. carriers, including Comsat, wishing to provide aeronautical services via INMARSAT. The consortium would perform four basic functions: (1) Collecting from U.S. carriers and contributing to INMARSAT the U.S. share of INMARSAT capital requirements for provision of aeronautical services; (2) submitting to INMARSAT, on behalf of the carriers, applications for utilization of space segment and for earth stations; (3) assuring that U.S. carriers pay to INMARSAT the space segment utilization charges incurred from using INMARSAT; and (4) formulating positions, on behalf of the consortium, on INMARSAT matters relating to aeronautical services. The consortium would not provide the services. Carriers would provide service by accessing the INMARSAT space segment and then distributing aeronautical communications to their customers through their own earth stations and connecting facilities.

The Commission proposes to have the consortium designated as signatory to INMARSAT for aeronautical services. Under the dual signatory model, the U.S. voting responsibility would be determined by relative usage of the system between U.S. aeronautical and maritime interests. The Commission recognizes that the dual signatory approach would require changes in the INMARSAT Convention and Operating Agreement which now provide that each administration select only one signatory and operating entity. It would also require congressional action to designate the consortium as signatory for aeronautical services. The Commission also recognizes that the public interest would not be served if the U.S. does not participate in INMARSAT's aeronautical services during the period required to complete the second amendment process.

Consequently, the Commission proposes an interim arrangement in which Comsat, in its current capacity as U.S. signatory, would act as agent before INMARSAT for the consortium. Comsat's functions would include: Signing the newly-amended Operating Agreement; collecting the capital requirements from the consortium (including its own portion) and passing these to INMARSAT; collecting the space segment utilization charges from the members and transferring them to INMARSAT; applying for access to the space segment and operating the earth stations; and participating in the Council on behalf of the consortium under the U.S. government's instructional process.

Comments are invited on all aspects of the proposal or on alternative proposals consistent with the Commission's international policies, the Maritime Satellite Act and the INMARSAT Convention and Operating Agreement.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-9167 Filed 4-22-87; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 2**

**[General Docket 87-14]**

### Amendment of Part 2 of the Commission's Rules Regarding the Allocation of the 216-225 MHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action extends the time for filing comments and reply comments to the *Notice of Proposed Rulemaking (Notice)* in this proceeding concerning the allocation of the 216-225 MHz band. This action is in response to Motions for Extension of Time filed by LAOAD Radio and Microwave Communications Consultants, the Association of Maximum Service Telecasters, the American Radio Relay League, Inc. and several amateurs licensees. They requested more time so that technical data could be gathered and so that interested parties may be made aware of the *Notice*.

**DATES:** Comments are now due May 21, 1987; reply comments are now due June 19, 1987.

BEST COPY AVAILABLE

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Fred Thomas, telephone (202) 632–8112.

**SUPPLEMENTARY INFORMATION:** The Proposed Rule was published on February 27, 1987, 52 FR 6024.

Federal Communications Commission.

**Bruce A. Franca,**

*Acting Chief Engineer.*

[FR Doc. 87–9166 Filed 4–22–87; 8:45 am]

BILLING CODE 6712–01–M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Parts 1135 and 1145

**[Ex Parte Nos. 394 (Sub-No. 3) and 290 (Sub-No. 2)]**

### Rail Carriers; Cost Ratios for Recyclables; Compliance Procedures

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to an advance notice of rulemaking in Ex Parte No. 394 (Sub-No. 3), *Cost Ratio For Recyclables—Compliance Procedures*, 51 FR 21780 (June 14, 1986), and comment, the Commission proposes rules that would establish annual compliance procedures for recyclables rates subject to the rate cap in 49. U.S.C. 10731(e). The Commission proposes to adopt in part the Nonferrous Recyclable Joint Proposal of 16 railroad systems and the National Association of Recycling Industries, Inc., and asks for comment on several issues raised by the Joint Proposal. The Commission proposes to amend the rules adopted in Ex Parte No. 290 (Sub-No. 2), Cost Recovery Procedures (49 CFR Part 1135), to prohibit cost recovery increases on rates that the Commission, in future Ex Parte No. 394 annual compliance proceedings, finds equal to or in excess of the rate cap established for recyclable commodities.

**DATES:** Interested parties must notify the Commission, in writing, of their intent to participate by May 8, 1987. A service list will be issued by May 26, 1987. Comments from interested parties are due June 8, 1987, and reply comments are due July 22, 1987. All comments and reply comments must be served on all parties on the service list.

**ADDRESS:** An original and fifteen copies of comments should be sent to: Noreta R. McGree, Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a Copy of the full decision, write to Office of the Secretary, Rm. 2215, Interstate Commerce Commission Bldg., Washington, DC 20423, or call (202) 275–7428.

**List of Subjects**

*49 CFR Part 1135*

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

*49 CFR Part 1145*

Railroads, Reporting and recordkeeping requirements.

Decided: April 14 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

We propose to amend Chapter X of Title 49 of the Code of Federal Regulations as follows:

1. A new Part 1145 would be added to read as follows:

## PART 1145—RAIL TRANSPORTATION OF RECYCLABLES: ANNUAL REVENUE/VARIABLE COST LEVEL PROCEDURES AND COMPLIANCE

Sec.

1145.1 Definitions.
1145.2 Purpose.
1145.3 Railroad and shipper submissions of revenue/variable cost ratios.
1145.4 Annual Commission order and exception to prohibition against increases.
1145.5 Shipper complaints that actual rate exceeds the cap.
1145.6 Shipper complaints against increases in above-the-cap rates.
1145.7 General prohibition against increases in above-the-cap rates.
1145.8 Application of railroad cost recovery procedures.

**Authority:** 49 U.S.C. 10321, 10731, 10707a; 5 U.S.C. 553.

### § 1145.1 Definitions.

(a) "Recyclables": For the purpose of these rules, the term "recyclables" means "recyclable material" as defined at 49 U.S.C. 10731(a)(1), other than recyclable or recycled iron or steel.

(b) "Costs determined pursuant to 49 U.S.C. 10705a(m)" means the same thing as "unadjusted costs," or costs calculated pursuant to the procedures developed in Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge and Cancellation*, as amended, with two exceptions. For purposes of these rules, parties are to use actual shipment weight as shown in the waybill file (rather than tariff minimum weight), and route miles as calculated in the Princeton Railroad Network model and entered in the waybill file (rather than short line miles increased for circuity).

(c) "Statutory cap level" means the level of railroad revenue-to-variable cost referred to in 49 U.S.C. 10731(e).

### § 1145.2 Purpose.

The purpose of these rules is to establish procedures by which the Interstate Commerce Commission annually will (a) announce the revenue-to-variable cost ratio required by 49 U.S.C. 10731(e) to apply for the ensuing calendar year; (b) monitor and take necessary action to ensure continued compliance by the railroads with 49 U.S.C. 10731(e); and (c) prohibit further rate increases, including those under 49 U.S.C. 10707a(a)-(d), on recyclables having revenue/variable cost ratios in excess of the statutory cap level until such rates fall to below the cap level or the statutory cap level increases by Commission order.

### § 1145.3 Railroad and shipper submissions of revenue/variable cost ratios.

(a) *Initial railroad submission.* By September 15 of each year, railroads shall file, jointly or separately, certified average revenue/variable cost ratios as described in the following paragraph (b) for all single line, joint, and combination rates applicable to each recyclable commodity as defined above. Such ratios will be computed on the basis of the railroads' revenues for each commodity and the railroads' costs for that particular transportation determined pursuant to 49 U.S.C. 10705a(m). The Commission's most recently published one percent waybill study will be an acceptable source for computing the average revenue/variable cost ratios determined under this paragraph subject to correction for overstatement of revenues due to 49 U.S.C. 10713 contracts at the option of participating railroads.

(b) *Regional and national aggregate revenue/variable cost ratios required.* The computations described in the prior paragraph will be made so that for each commodity there will be computed a separate average revenue/variable cost ratio for six regional and one national group as follows:

(1) Intra-East,
(2) Intra-South,
(3) Intra-West
(4) Between East and South,

(5) Between East and West,
(6) Between South and West, and
(7) Nationally.

The Commission order under the following § 1145.4 for each commodity will be based upon the revenue/variable cost ratios computed for the six regional groups wherever the care sample used in computing the ratio comprised ten or more cars. Wherever the car sample used in computing the revenue/variable cost ratio comprised nine or fewer cars, the national revenue/variable cost ratio for that commodity will be used for that regional group instead of the regional ratio.

(c) *Initial railroad submission available to shippers.* By September 15 of each year, the railroads shall make available to shippers, at a convenient time and a place provided by the railroads, the certified average revenue/variable cost ratios described in paragraph (b) of this section, including the underlying workpapers. The certified average revenue/variable cost ratios submitted by the railroads and the underlying workpapers shall also be made available to shippers during business hours in the Interstate Commerce Commission Building, Public Dockets Room.

(d) *Shippers to present to appropriate railroad(s) disagreement with certified average revenue variable cost ratios.* If a shipper disagrees with the certified average variable cost rations submitted by the railroad(s) pursuant to paragraph (a) of this section, it shall present its disagreement to the railroads in writing within 7 days of the railroads' filing, or by September 22 of each year, whichever is earliest.

(e) *Railroad and shippers to negotiate changes in submitted certified average revenue variable cost ratios and jointly submit any revised ratios.* Upon receipt of a shipper's written disagreement with any certified average revenue/variable cost ratio submitted by the railroad pursuant to paragraph(a) of this section, the railroad shall negotiate in good faith with the shipper to resolve the disagreement. The railroad and shipper shall jointly submit to the Commission by October 15 any agreed adjustments to the railroad(s)' initial submission pursuant to paragraph (a) of this section. If a resolution cannot be reached, the shipper may file a formal complaint with the Commission stating the basis of its disagreement, and the Commission will address the matter in a separate proceeding conducted under the regulations in 49 CFR Part 1111.

(f) *Alternate railroad filing in lieu of filing under paragraph (a).* Any individual railroad or railroad system may satisfy the requirements of paragraph (a) of this section by submitting by September 15 the revenue/variable cost ratio produced by single-line or combination rates for movements of recyclable commodities over its lines only. A submission under this paragraph shall be made available to shippers pursuant to paragraph (c) of this section and the provisions of paragraphs (d) and (e) also of this section shall also apply.

**§ 1145.4 Annual Commission order and exception to prohibition against increases.**

(a) In an order to be issued annually by December 15, the Commission shall state the statutory cap level required by 49 U.S.C. 10731(e), to apply for the ensuing calendar year. The order shall also state, by commodity, the rates that the Commission finds exceed the simultaneously announced statutory cap level. If for any reason the Commission experiences an untimely delay in issuing the annual order, the prior annual order shall remain in effect until the issuance of a new order.

(b) For any rates that the Commission finds exceed the statutory cap level, further rate increases, including those under 49 U.S.C. 10707a(a)–(d), shall be prohibited until the Commission finds that the rates have fallen to below the statutory cap level or the Commission finds the statutory cap level to be increased above the revenue/variable cost ratio produced by those rates.

(c) As an exception to paragraph (b) of this section, railroads may publish tariff supplements increasing one or more individual rates applicable to recyclable commodities having ratios which on an individual basis are below the statutory cap level, but which on a regional average basis have been found to have ratios above the statutory cap level. Such supplements will be filed on statutory notice. Concurrently with such filing, the railroad(s) proposing the increase(s) will file a sworn statement, supported by unadjusted or adjusted cost evidence, to demonstrate that the proposed increased rate(s) will not exceed the statutory cap level. Shippers subject to tariff publications under this paragraph will in all instances retain their full right to protest such tariff publications pursuant to 49 U.S.C. 10707 and the Commission's rules of practice.

**§ 1145.5 Shipper complaints that actual rate exceeds the cap.**

(a) An individual shipper may file a formal complaint pursuant to 49 CFR Part 1111 that the rate it actually pays for an individual movement of a recyclable commodity exceeds the statutory cap level. The shipper shall include in its complaint a sworn statement, supported by cost evidence which may be either adjusted or unadjusted, and evidence of actual revenues paid to railroads for such shipments.

(b) The railroads may respond to the complaint by filing sworn statements, supported by cost evidence which may be either adjusted or unadjusted, and evidence of revenues actually collected for such shipments.

(c) Such complaints will be handled under the Commission's general rules of practice, including its rules governing evidence and discovery.

(d) If, upon complaint, the Commission finds that a rate exceeds the statutory cap level, it shall prohibit further increases in the rate, including increases under 49 U.S.C. 10707a(a)–(d), until the railroads involved demonstrate and the Commission finds that the rate has fallen to below the statutory cap level, or the Commission has increased the statutory cap level above the rate's revenue/variable cost level.

**§ 1145.6 Shipper complaints against increases in above-the-cap rates.**

(a) An individual shipper may file a formal complaint pursuant to 49 CFR Part 1111 against an increase to a recyclable rate. In such a complaint, an individual shipper may seek reductions and reparations by establishing that a rate for an individual movement was increased at a time when it already exceeded the applicable statutory cap level.

(b) The amount of such reductions or reparations will be limited solely to the amount of the impermissible increases. The prior sentence will not in any way restrict the relief that may be granted by the Commission, subject to judicial review, in the so-called automobile shredder residue cases.

(c) A complaint filed under paragraph (a) of this section will be handled under the Commission's general rules of practice, including its rules governing evidence and discovery.

**§ 1145.7 General prohibition against increases in above-the-cap rates.**

Future increases in recyclable rates which have been held, either individually or in the aggregate, in a final Commission decision to be in excess of the statutory cap level or which the railroads have shown to be above that cap in a pending Commission proceeding will be prohibited until the railroads establish, and the Commission finds, that the rates have fallen to below the statutory cap level. The only

exception to this section is for increase taken pursuant to § 1145.4(c).

**§ 1145.8 Application of railroad cost recovery procedures.**

Nothing in these rules is to be construed so as to preclude the application to recyclable commodities of any valid changes by the Commission in rules and procedures adopted in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* which apply to all commodities.

## PART 1135—RAILROAD COST RECOVERY PROCEDURES

2. The authority citation for 49 CFR Part 1135 would continue to read as follows:

**Authority:** 49 U.S.C. 10321 and 10707a; 5 U.S.C. 553.

3. A new paragraph (h) would be added to § 1135.1 to read as follows:

**§ 1135.1 Quarterly adjustment of rates.**

* * * * *

(h) A Commission order pursuant to paragraph (a) that provides a quarterly adjustment of rates that is a positive number may not be applied to any rates that, in an annual order setting the ratio of revenue to variable costs pursuant to 49 U.S.C. 10731(e), the Commission finds equal or exceed the established ratio on a regional aggregate or an individual basis.

[FR Doc. 87–9148 Filed 4–22–87; 8:45 am]
BILLING CODE 7035-01-M

---

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Parts 32 and 33

### Addition of Five National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird, Upland Game, and Big Game Hunting, and One to the List for Sport Fishing

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to add five national wildlife refuges (NWRs) to the lists of open areas for migratory game bird, upland game, and/or big game hunting, and one NWR to the list for sport fishing. The Service has determined that such uses would be compatible with and, in some cases, enhance the major purposes for which each refuge was established. The Service has further determined that this action will be in accordance with the provisions of all applicable laws, would be consistent with the principles of sound wildlife management, and would otherwise be in the public interest by providing additional recreational opportunities.

**DATE:** Comments must be received on or before May 26, 1987.

**ADDRESSES:** Address comments to: Assistant Director-Refuges and Wildlife, U.S. Fish and Wildlife Service, Room 3248, 18th and C Streets, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Nancy Marx, Division of Refuges, U.S. Fish and Wildlife Service, 18th and C Streets NW., Room 2343, Washington, DC 20240; Telephone (202) 343–3922.

**SUPPLEMENTARY INFORMATION:** National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purpose(s) for which each refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open five refuges to hunting and one to sport fishing. Some of the proposed hunting and fishing programs require refuge-specific hunting or fishing regulations. These regulations will be included in a separate rulemaking document on refuge-specific hunting and fishing regulations. Also included in this document are two administrative corrections. McFaddin NWR in Texas was opened to migratory game bird hunting by a final rule (45 FR 58554), but as an oversight was never added to the list of open areas in 50 CFR Part 32. And, due to a name conflict with the neighboring Sea Rim State Park, the name of Sea Rim NWR in Texas was renamed to Texas Point NWR by an action of the Service in 1981. Therefore, Sea Rim NWR will be deleted and McFaddin and Texas Point NWRs will be added to the list of refuges open to migratory bird game hunting in § 32.11.

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding the opening of the refuges cited below to migratory game bird, upland game or big game hunting, and/or sport fishing. Accordingly, interested persons may submit written comments concerning this proposal to the Assistant Director-Refuges and Wildlife (address above) by the end of the comment period. All relevant comments will be considered by the Department prior to issuance of a final rule.

### Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460K) govern the administration and public use of national wildlife refuges. Specifically section 4(d)(1)(A) of the NWRSSA authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary.

The Refuge Recreation Act gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of these permitted forms of recreation.

In accordance with the NWRSAA and the Refuge Recreation Act, the Secretary has determined that the proposed openings for hunting and fishing would be compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer these programs. The hunting and fishing programs will be within State and Federal (migratory game bird) regulatory frameworks. A discussion of the compatibility of the hunting and fishing programs with the purpose(s) for which each refuge was established and the availability of funding for each program follows:

Atchafalaya NWR was established in 1984 by Pub. L. 98–548 to "(1) provide for conservation and management of all fish and wildlife within the refuge, (2) fulfill the international treaty obligations of the U.S. with respect to fish and wildlife and (3) provide opportunities for

scientific research, environmental education, and fish and wildlife, oriented recreation, including hunting." It is proposed to open the refuge to migratory game bird (geese, ducks, coots, snipe, woodcock), upland game (squirrel, rabbit, raccoon, opossum) and big game (deer, turkey) hunting. Except for an area designated as a sanctuary for waterfowl, the rest of the refuge will be open to hunting. Present numbers of migratory and resident game species are large enough to support hunting, with deer currently exceeding the carrying capacity of the refuge. Under a cooperative agreement with the State of Louisiana, the management and enforcement of the hunts will be the responsibility of the Louisiana Department of Wildlife and Fisheries (LDWF). A section 7 evaluation under the Endangered Species Act concludes that the proposed program, with currently planned management, enforcement and regulations, "will not affect" the refuge population of American alligators listed as endangered species. Opening the refuge to hunting would fulfill its recreational purpose, would be compatible with the other purposes for which the refuge was established and would be in compliance with the NWRSAA. Since LDWF will be administering and funding the hunting program, adequate funds are available for opening Atchafalaya NWR to migratory game bird, upland game and big game hunting within the requirements of the Refuge Recreation Act.

Barnegat NWR was established in 1967 by authority of the Migratory Bird Conservation Act to provide resting, feeding and wintering areas for migratory waterfowl, especially black ducks and Atlantic brants. In 1984 the refuge was combined with the Brigantine NWR and renamed Edwin B. Forsythe NWR. Barnegat is now managed as a Division of the Edwin B. Forsythe NWR. It is proposed to open Barnegat to sport fishing, an activity historically utilized by local residents since the mid 1700's. High public demand has initiated this process for opening Barnegat to sport fishing. Heaviest usage by anglers occurs during the summer months, a time when large concentrations of waterfowl will not be found on the area. Destruction of habitat for wintering waterfowl will be minimized by restricting anglers to boat usage and foot access at a limited number of boardwalks. Foot access sites will be fewer in number than is presently found, thus resulting in an overall increase in habitat preservation. To avoid disturbance of nesting colonial waterbirds, no public use will be permitted on any Service controlled bay islands. A section 7 evaluation concludes that the proposed sport fishing program "will not affect" the peregrine falcons nesting area, as a large buffer zone around the nesting towers is closed to all public entry and use. Therefore, opening the Barnegat Division to sport fishing would be compatible with the purpose for which it was established and would be in compliance with the NWRSAA. The estimated annual cost to administer the program would be approximately $5,000. Within the annual refuge budget of approximately $150,000, the necessary funds are available to administer this program. Therefore, opening the Barnegat Division to sport fishing would be in compliance with the Refuge Recreation Act.

Kirtland's Warbler Wildlife Management Area (WMA) was established in 1981 by authority of the Endangered Species Act to preserve, restore and enhance the endangered Kirtland's warbler. Under a cooperative agreement with the State of Michigan, actual land management of the WMA is carried out by the State's Department of Natural Resources (MDNR). It is proposed to open Kirtland's Warbler WMA to migratory game bird, upland game and big game hunting. Enforcement and regulation of the hunting program will be the responsibility of the State of Michigan. The areas actually occupied by nesting Kirtland's warblers will be closed, posted and patrolled against all public entry between May 1 and August 15. Since most hunting will take place when the warblers are not present and, historically, hunting in the area has not disturbed or altered the habitat, a section 7 evaluation concludes that the proposed hunting program "will not affect" the continued existence of the endangered Kirtland's warbler. Opening Kirtland's Warbler WMA to hunting would therefore be compatible with the purpose for which the area was established, and would be in compliance with the NWRSAA. Since all funding for the proposed hunting program would be provided by the MDNR, adequate funds are available for opening Kirtland's Warbler WMA to migratory game bird, upland game and big game hunting within the requirements of the Refuge Recreation Act.

Optima NWR was established in 1975 by authority of the Fish and Wildlife Act of 1956 to provide migration and wintering habitat for Canada geese and mallards. In 1982 Optima became a satellite refuge of Washita NWR, which now administers and manages Optima NWR. It is proposed to open Optima NWR to big game (deer, turkey) hunting. To provide habitat for migrating waterfowl, future plans for the refuge include raising Optima Lake to levels high enough to inundate the refuge. However, presently most of the refuge is dry and the lack of water has prevented any extensive waterfowl use of the refuge. So long as this situation continues, opening the refuge to big game hunting would not appreciably impact waterfowl populations. The hunting program will be reevaluated when Optima Lake water levels are raised sufficiently to flood the refuge. To prevent damage to existing habitat during the proposed hunt, motor vehicles and open fires will not be allowed on the refuge. There is presently only a minimal use of the refuge by the endangered bald eagle. Should there be greater use in the future due to inundation of the refuge, the hunting program will be reevaluated. A section 7 evaluation concludes that, at the present time, the proposed hunting program "will not affect" the continued existence of the bald eagle. Big game hunting will not currently interfere with or detract from the purpose for which the refuge was established and therefore would be in compliance with the NWRSAA. The annual cost to administer the hunting program would be approximately $5,000. Within the annual Washita Refuge Complex budget of approximately $316,500, the necessary funds are available for administration of the proposed hunting program. Therefore, opening Optima NWR to big game hunting would be in compliance with the Refuge Recreation Act.

Parker River NWR was established in 1942 by authority of the Migratory Bird Conservation Act of protect and preserve migratory waterfowl, especially black ducks and Canada geese. It is proposed to open the refuge to big game (deer) hunting. The deer population on the refuge is well beyond the carrying capacity of the refuge and severely degrading the habitat through overbrowsing. The proposed hunt will have only minor impacts on waterfowl use as the hunt will be limited to the upland portion of the refuge, the hunt will be highly regulated and all hunters will be required to attend an orientation session on the refuge and hunting program. Peregrine falcons and bald eagles pass over the refuge during spring and fall migration. Piping plovers nest on the refuge beaches during spring and summer. No conflict is expected with the seasonal use of the refuge by these species as the hunt will take place

during the first week of December. A section 7 evaluation concludes that the proposed hunting program "will not affect" the listed species or their critical habitat.

Therefore, opening the refuge to the proposed, highly regulated big game hunting program is compatible with the purpose of the refuge and would be in compliance with the NWRSAA. The annual cost of the hunting program is estimated at $5,550. Within the annual refuge budget of approximately $450,700, the necessary funds are available to administer the proposed hunting program. Therefore, opening Parker River NWR to big game hunting would be in compliance with the Refuge Recreation Act.

Squaw Creek NWR was established in 1935 by Executive Order 7156 as a refuge and breeding ground for migratory birds. It is proposed to open the refuge to big game (deer) hunting. Burgeoning deer populations are exceeding the carrying capacity of the refuge and competing directly with waterfowl for grain and winter wheat browse. If deer damage to refuge crops exceeds the refuge share of those crops under terms of permitted farming, it could lead to termination of some or all of the cooperative farming agreements the refuge depends upon to raise crops as food waterfowl. Hunting would take place in January when most, if not all, waterfowl and bald eagles have left the refuge. Furthermore, the proposed hunting area excludes the southern portion of the refuge normally used by the eagles. A section 7 evaluation concludes that the proposed hunting program "will not affect" the continued existence of the bald eagle or its habitat. Opening Squaw Creek NWR to big game hunting is therefore supportive of and compatible with the purpose for which the refuge was established and would be in compliance with the NWRSAA. The estimated annual cost of the hunting program would be approximately $2,500. Within an annual refuge budget of approximately $157,000, the necessary funds are available to administer the hunting program. Therefore, opening Squaw Creek NWR to big game hunting would be in compliance with the Refuge Recreation Act.

### Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the proposed opening of these refuges to hunting and fishing will generate approximately 22,810 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, and the 1986 Economic Report of the President (Consumer Price Index), total annual receipts generated from purchases of food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $691,425, or substantially less than $100 million. In addition, since these estimated receipts will be spread over six states, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule would have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The proposed openings would provide recreational opportunities and generate economic benefits that would not otherwise exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal government of law enforcement, posting, etc., needed to implement activities under this rule would be considerably less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

### Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments have been prepared for these proposed openings. Section 7 evaluations have been prepared pursuant to the Endangered Species Act. These documents are available or public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, or by mail, addressing the Director at the above address.

Nancy A. Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

### List of Subjects

*50 CFR Part 32*

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

*50 CFR Part 33*

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, it is proposed to amend Parts 32 and 33 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

## PART 32—[AMENDED]

1. The authority citation for Part 32 would be revised to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.11 would be amended by removing Sea Rim NWR, TX and adding Atchafalaya NWR, LA, Kirtland's Warbler Wildlife Management Area, MI, and McFaddin and Texas Point NWRs, TX alphabetically by State as follows:

**§ 32.11 List of open areas; migratory game birds.**

* * * * *

Louisiana

Atchafalaya National Wildlife Refuge

* * * * *

Michigan

* * * * *

Kirtland's Warbler Wildlife Management Area

* * * * *

Texas

* * * * *

McFaddin National Wildlife Refuge

* * * * *

Texas Point National Wildlife Refuge

3. Section 32.21 would be amended by adding Atchafalaya NWR, LA and Kirtland's Warbler Wildlife Management Area, MI alphabetically by State as follows:

**§ 32.21 List of open areas; upland game.**

* * * * *

Louisiana

Atchafalaya National Wildlife Refuge

* * * * *

Michigan

* * * * *

Kirtland's Warbler Wildlife Management Area

* * * * *

4. Section 32.31 would be amended by adding Atchafalay NWR, LA, Parker River NWR, MA, Kirtland's Warbler Wildlife Management Area, MI, Squaw Creek NWR, MO, and Optima NWR, OK alphabetically by State as follows:

**§ 32.31 List of open areas; big game.**

* * * * *

Louisiana

Atchafalaya National Wildlife Refuge

* * * * *

Massachusetts

* * * * *

Parker River National Wildlife Refuge

Michigan

* * * * *

Kirtland's Warbler Wildlife Management Area

* * * * *

Missouri

* * * * *

Squaw Creek National Wildlife Refuge

* * * * *

Oklahoma

Optima National Wildlife Refuge

* * * * *

## PART 33—[AMENDED]

1. The authority citation for Part 33 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

2. Section 33.4 would be amended by adding Edwin B. Forsythe NWR (Barnegat Division), NJ alphabetically as follows:

**§ 33.4 List of open areas; sport fishing.**

* * * * *

New Jersey

* * * * *

Edwin B. Forsythe National Wildlife Refuge (Barnegat Division)

* * * * *

Dated: March 20, 1987.

**Susan Recce,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87-9151 Filed 4-22-87; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 52, No. 78
Thursday, April 23, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

### Bainbridge Township Critical Area Treatment Measure, Illinois; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental statement is not being prepared for the Bainbridge Township Critical Area Treatment Measure, Schuyler County, Illinois.

**FOR FURTHER INFORMATION CONTACT:** John J. Eckes, State Conservationist, Soil Convervation Service, 3012 North Randolph Street, Champaign, Illinois 61820, Telephone (217) 398–5267.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, John J. Eckes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a deeply eroding gully in a wildlife area next to a township road, severely eroded terrace channel and road ditch. The planned works of improvement include: Critical area planting, terraces, tile outlets, and rock fill to stabilize an eroding gully.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Ageny and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John J. Eckes.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

**Keith M. Donelson,**

*Assistant State Conservationist.*

April 17, 1987.

[FR Doc. 87–9105 Filed 4–22–87; 8:45 am]

BILLING CODE 3410–16–M

### Harding Park Critical Area Treatment RC&D Measure; Ohio; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, Department of Agriculture.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Harding Park Critical Area Treatment RC&D Measure, Trumbull County, Ohio.

**FOR FURTHER INFORMATION CONTACT:** Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469–6962.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment of a small dam that has failed and resulted in the formation of a gully and loss of the park's water area. Planned works of improvement include the installation of a structure to stabilize the gully and the dam. Also planned is the construction of waterway and levee to divert the watershed runoff to the proposed structure, and away from the pond area.

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

**Harry W. Oneth,**

*State Conservationist.*

April 16, 1987.

[FR Doc. 87–9103 Filed 4–22–87; 8:45 am]

BILLING CODE 3410–16–M

### Power Dam Road Critical Area Treatment RC and D Measure, Ohio; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, Department of Agriculture.

**ACTION:** Notice of finding of nonsignificant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the power Dam Road Critical Area

Treatment RC&D Measure, Defiance County, Ohio.

**FOR FURTHER INFORMATION CONTACT:** Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment of a ravine approximately 2,225 feet long that is severely eroding and threatening a major sanitary sewer line and water line. Planned works of improvement include the installation of a waterway and subsurface drain to safely dispose of the water runoff.

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contracting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Harry W. Oneth,

*State Conservationist*

April 16, 1987.

[FR Doc. 87–9102 Filed 4–22–87; 8:45 am]

BILLING CODE 3410–16–M

---

## Lower Caney Bayou Watershed, AR; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service; U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Caney Bayou Watershed, Chicot County, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Gene Sullivan, State Conservationist, Soil Conservation Service, 5423 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone: (501) 378–5445.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Gene Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection which provides accelerated technical and financial assistance for installing land treatment measures to control erosion. Land treatment measures include the no-tillage method of crop production and terraces with undeground outlets.

The Notice of Finding of No Significant Impact (FONSI) has been fowarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gene Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: April 16, 1987.

Ronnie D. Murphy,

*Acting State Conservationist.*

[FR Doc. 87–9104 Filed 4–22–87; 8:45 am]

BILLING CODE 3410–16–M

---

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 350]

### Resolution and Order Approving the Application of the Washington Dulles Foreign-Trade Zone, Inc. for a Foreign-Trade Zone at the Washington Dulles International Airport, Virginia

Proceedings of the Foreign-Trade Zones Board, Washington, DC:

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Washington Dulles Foreign-Trade Zone, Inc., a Virginia non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on February 5, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at the Washington Dulles International Airport in Loudoun and Fairfax Counties, Virginia, within the Washington, DC Customs port of entry, the Board, finding that the rquirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant to Establish, Operate, and Maintain a Foreign-Trade Zone at the Washington Dulles International Airport, Virginia**

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 USC 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Washington Dulles Foreign-Trade Zone, Inc. (the Grantee), a Virginia non-profit corporation, has made application (filed February 5, 1986, Docket No. 4–86, 51 FR 5571) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at the Washington Dulles International Airport located in Fairfax and Loudoun Counties, Virginia, within the Washington, DC Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 137 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operations, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board had caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 17th day of April 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Malcolm Baldrige,**

*Chairman and Executive Officer.*

Attest:

**John J. Da Ponte, Jr.**

*Executive Secretary*

[FR Doc. 87–9245 Filed 4–22–87; 8:45 am]

BILLING CODE 3510–DS–M

## International Trade Administration

[A–779–602]

**Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Certain Fresh Cut Flowers From Kenya**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** As a result of the United States International Trade Commission's recent negative injury determination on imports of miniature carnations from Kenya and the United States Court of International Trade's decision in *Badger-Powhatan* v. *United States*, Slip Op. 86–38 (April 2, 1986) the Department of Commerce (the Department) reexamined its final margin calculations in this investigation and excluded miniature (spray) carnations from the scope of the order. The Department further determines that the Commission's negative determination on miniature carnations does affect the final margin calculations for the other flowers subject to investigation.

**EFFECTIVE DATE:** April 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** James Riggs or Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4929 or (202) 377–5288.

**SUPPLEMENTARY INFORMATION:** On March 25, 1987, we published a final determination of sales at less than fair value for a class or kind of cut flowers from Kenya consisting of miniature (spray) carnations, as currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, as currently provided for in item 192.21 of the TSUS (52 FR 9518). We found that the overall weighted average dumping margin on all sales compared was 1.58 percent.

On April 9, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the United States International Trade Commission (ITC) notified the Department that imports of standard carnations are materially injuring a United States industry. The ITC also notified the Department that imports of miniature (spray) carnations are not materially injuring a United States industry. We are excluding those products for which the ITC made a negative determination form the scope of our order. Furthermore, under *Badger-Powhatan*, we are required, where the information is available, to recalculate the weighted-average dumping margin for the remaining products—the products for which the ITC made an affirmative determination—by excluding the portion of the margin attributable to the products for which the ITC made a negative injury determination.

**Suspension of Liquidation**

In accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of standard carnations. These antidumping duties will be assessed on all unliquidated entries of the product entered, or withdrawn from warehouse, for consumption on or after November 3, 1986, the date on which the Department published its "Preliminary

Determination" notice in the Federal Register (51 FR 39850).

On and after the date of publication of this notice, United States Customs officers must require, at the same time the importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted averaged antidumping duty margins as noted below.

| Manufacturers/sellers/exporters | [illegible] average margin percentage |
|---|---|
| Sulmac Co. Ltd | 2.34 |
| All Others | 2.34 |

In accordance with section 735(c)(2)(A) of the Act, we are directing the United States Customs Service to terminate the suspension of liquidation of all entries of miniature (spray) carnations from Kenya that were entered, or withdrawn from warehouse, for consumption, on or after November 3, 1986. Accordingly, all bonds should be cancelled and estimated duties deposited on miniature (spray) carnations should be refunded.

This determination constitutes an antidumping duty order with respect to certain fresh cut flowers from Kenya, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

April 17, 1987.

[FR Doc. 87-9218 Filed 4-22-87; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-201-601]

## Antidumping Duty Order; Certain Fresh Cut Flowers from Mexico

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** In its investigation, the United States Department of Commerce determined that certain fresh cut flowers from Mexico were being sold at less than fair value within the meaning of the antidumping law.

In a separate investigation, the United States International Trade Commission (the ITC) determined that certain fresh cut flowers from Mexico are materially injuring a United States industry.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of certain fresh cut flowers from Mexico made on or after November 3, 1986, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties, except those from Floremor. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

**EFFECTIVE DATE:** April 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** William Kane or Charles Wilson, Office of Investigations International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1766 or (202) 377-5288.

**SUPPLEMENTARY INFORMATION:** The products under investigation are standard carnations, standard chrysanthemums and pompon chrysanthemums currently provided for in item 191.21 of the *Tariff Schedules of the United States (TSUS).*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on November 3, 1986, the Department published its preliminary determination that there was reason to believe or suspect that certain fresh cut flowers from Mexico were being sold at less than fair value (51 FR 39896). On March 3, 1987, the Department published its final determination that these imports were being sold at less than fair value (52 FR 6361).

On April 9, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports marterially injure a United states industry.

### Suspension of Liquidation

In accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain fresh cut flowers from Mexico except those from Floremor. Floremor was not included in this order because we found no dumping margins for that company. These antidumpting duties will be assessed on all unliquidated entires of this merchandise, except those of Floremor, entered, or withdrawn from warehouse, for consumption on or after November 3, 1986, the date on which the Department published its "Preliminary determination" notice in the Federal Register (51 FR 39896).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

| Manufacturers/Producers/Exporters | Weighted-average margins |
|---|---|
| Florex | 4.60 |
| Visaflor | [illegible] |
| Tzitzic Tarela | 4.01 |
| Rancho Daisy | [illegible] |
| Rancho Alisstos | [illegible] |
| Rancho Mision el Descanso | [illegible] |
| Rancho Las Dos Palmas | [illegible] |
| Las Flors de Mexico | [illegible] |
| All others | [illegible] |

This determination constitutes an antidumping order with respect to certain fresh cut flowers from Mexico, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48)

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

April 16, 1987.

[FR Doc. 87-92719 Filed 4-22-87 8:45 am]

[illegible]

---

[C-333-601]

## Amendment to the Final Countervailing Duty Determination and Final Countervailing Duty Order; Certain Fresh Cut Flowers From Peru

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** As a result of the U.S. International Trade Commission's recent negative injury determination on miniature carnations and gypsophila and the United States Court of International Trade's decision in *Badger-Powhatan* v. *United States,* Slip Op. 86–38 (April 2, 1986), the Department of Commerce (the Department) is amending its final determination in this investigation and is directing the U.S. Customs Service to assess countervailing duties on imports of pompon chrysanthemums from all producers and exporters as reflected hereafter.

**EFFECTIVE DATE:** April 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gary Taverman, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 377–0161 (Taverman) or 377–2786 (Moreland).

**SUPPLEMENTARY INFORMATION:** The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and pompon chrysanthemums and gypsophila currently provided for in item 192.21 of the TSUS.

In accordance with section 703 of the Tariff Act of 1930, as amended (the Act) (19 USC 1671b), on October 27, 1986, the Department published its preliminary determination that there was reason to believe or suspect that producers or exporters of certain fresh cut flowers from Peru receive benefits which constitute bounties or grants within the meaning of the countervailing duty law (51 FR 37948). In accordance with section 705 of the Act (19 USC 1671d), on March 5, 1987, the Department published its final determination that these imports are being subsidized (52 FR 6837). We found that the estimated net bounty or grant equalled 15.56 percent *ad valorem.*

On April 9, 1987, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department of its determination that imports of pompon chrysanthemums from Peru are materially injuring a U.S. industry. The ITC also notified the Department of its determination that imports of miniature carnations and gypsophila are not materially injuring a United States industry. We are excluding those products from the scope of our order. Furthermore, under *Badger-Powhatan,* we are required, where the information is available, to recalculate the countervailing duty rate for the remaining product—the product for which the ITC made affirmative determination—by excluding the portion of the net bounty or grant attributable to the products for which the ITC made negative injury determinations. Accordingly we find the estimated net bounty or grant for the product remaining in the scope of this investigation to be 17.53 percent *ad valorem.*

**Suspension of Liquidation**

In accordance with section 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department is directing U.S. Customs officers to assess, upon further advice by the administering authority pursuant to sections 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the estimated net bounty or grant on all entries of pompon chrysanthemums from Peru. These countervailing duties will be assessed on all unliquidated entries of pompon chrysanthemums from Peru which were entered, or withdrawn from warehouse, for consumption, on or after October 27, 1986, the date on which the Department published its preliminary affirmative determination in the **Federal Register** (51 FR 37948), prior to or on February 24, 1987, and all entries and withdrawals of pompon chrysanthemums made on or after the date of publication of this order in the **Federal Register.** Entries of pompon chrysanthemums from Peru made between February 25, 1987, and the day prior to the date of publication of this order on the **Federal Register,** are not liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 17.53 percent *ad valorem* on all entries of pompon chrysanthemums from Peru.

As a result of the decision by the ITC that imports of miniature carnations and gypsophila from Peru are not materially injuring, threatening material injury, to or materially retarding the establishment of, a U.S. industry, the Department is directing U.S. Customs officers to refund all estimated countervailing duties deposited on entries of miniature carnations and gypsophila from Peru and to release the appropriate bonds or other security.

This determination constitutes a countervailing duty order with respect to pompon chrysanthemums from Peru pursuant to section 706 of the Act (19 U.S.C. 1671e(a)(1)) and § 355.36 of the Commerce Regulations (19 CFR 335.36). We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355, which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

**Notice of Review**

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an adminstrative review of this order. For further information regarding this review, contact Mr. Richard Moreland at (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and 355.36 of the Commerce Regulations (19 U.S.C. 355.36).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

April 17, 1987.

[FR Doc. 87–9220 Filed 4–22–87; 8:45 am]

BILLING CODE 3510–DS–M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Amendment to an Export Trade Certificate of Review, Application #84–A0021.

**SUMMARY:** The Department of Commerce has issued an amendment to the export trade certificate of review of Apparatex International Trading Company. This notice summarizes the amendment which has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Exporting Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to

publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Amendment**

The Export Trade Certificate of Review issued on October 26, 1984 to Apparatex International Trading Company (Apparatex) is amended to reflect the fact that The William Carter Company and Mr. Anthony J. Cascardi are no longer members of Apparatex within the meaning of § 325.2(1) of the Regulations. The stock shares of these former "members" have been redeemed by the Stanwood Corporation which continues as the sole "member" of Apparatex.

In accordance with section 304(a)(2) of the Act, this amendment is effective from January 23, 1987, the date on which the application for the amendment was deemed submitted.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 17, 1987.

**George Muller,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-9120 Filed 4-22-87; 8:45 am]

BILING CODE 3510-DR-Y

## Export Trade Certificate of Review

**AGENCY:** Department of Commerce, ITA.

**ACTION:** Notice of application for amendment to export trade certificate of review.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the certificate should be amended.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 83-3A023."

Applicant: United Export Trading Association, Inc., IH-35 at International Blvd., Laredo, TX 78041
Application #: 83-3A023
Date Deemed Submitted: April 8, 1987
Members (in addition to applicant):
- International Bonded Warehouses, Inc.
- Ayoub's Exports, Inc.
- Hidalgo Custom Bonded Warehouse, Inc. d/b/a Brady's
- Universal Bonded Stores, Inc.
- Capin's Duty Free Warehouse
- States Import-Export, Inc.
- Hugo's International Liquors d/b/a Hugo's, Pan American
- King Mart Export, Inc.
- UETA of Texas, Inc.
- UETA of Arizona, Inc.
- UETA of California, Inc.

**Summary of the Application**

United Export Trading Association, Inc. ("UETA Inc.") represents a reorganization of United Export Trading Association ("UETA"), which was issued an Export Trade Certificate of Review on February 21, 1984 (Application #83-00023) and an amended certificate on May 29, 1985 (Application #83-00023, Amendment #1). UETA Inc. is a corporation operating land port duty free shops under U.S. customs bonds and regulations on the U.S. side of the U.S.-Mexico border. Products in Export Trade on its certificate are tax-free and duty-free alcoholic beverages, tobacco, and tobacco products that are handled in bond exclusively for export to persons exiting the U.S. across the U.S.-Mexico land border. Members of its certificate currently are: International Bonded Warehouses, Inc.; Ayoub Exports, Inc.; Hidalgo Custom Bonded Warehouse, Inc. d/b/a/ Brady's; Universal Bonded Stores, Inc.; Capin's Duty Free Warehouse; States Import-Export, Inc.; Hugo's International Liquors; Ronnie Guerra's International Traders, Inc.; and King Mart Export, Inc. (hereinafter referrd to as "association members").

In its application of April 2, 1987, UETA Inc. seeks to amend its certificate by making changes which would reflect its reorganization from an association to a corporation. The Export Trade Activities and Methods of Operation for which certification is requested are generally the same activities for which certification previously was granted to UETA. UETA Inc. will be providing generally the same services and undertaking the same transactions for its Members as UETA provided and undertook for its association member firms. Accordingly, UETA, Inc. seeks to amend its certificate with the following specific changes:

1. Amend the membership portion of its certificate to reflect that:

(a) Ronnie Guerra's International Traders, Inc. is no longer a member of UETA Inc. and will no longer be protected by the certificate;

(b) UETA of Texas, Inc., UETA of Arizona, Inc., and UETA of California, Inc. are added as members;

(c) Hugo's International Liquors will be listed as doing business as Hugo's, Pan American;

(d) Ayoub Exports, Inc. will be listed as Ayoub's Exports, Inc.

2. Amend the Export Trade Activities and Methods of Operation to delete provisions relating to association members and membership conditions. UETA, Inc. seeks certification to:

(a) Enter into exclusive agreements with suppliers to purchase products for its Members and its duty free stores;

(b) Resell products exclusively for export through its Members;

(c) Establish and implement policy covering all matters (including price, quantity, allocation of territories and customers, inventory, profit/loss, the number of outlets to be established in

any geographic location, etc.) relating to the purchase, handling and sale of products for export through its Members;

(d) Prescribe conditions for sale and issuance of stock of UETA Inc.;

(e) Collect information from, and to discuss and communicate information with, UETA Inc. and its Members regarding competitive conditions or other facts relevant to the sale of the products in the export markets. Such competitive conditions include: Supply/demand in the export markets; price for the export markets; costs relating to the export markets; marketing activities of companies in the export markets; and inventories for the export markets.

Dated: April 20, 1987.

**George Muller,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-9193 Filed 4-22-87; 8:45 am]

BILLING CODE 3510-DR-M

---

## Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

**SUMMARY:** The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act.

Time and Place: May 12, 1987 at 9:30 a.m., the Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue NW., Washington, DC.

Agenda: General Session

1. Opening remarks by the Chairman.
2. Introduction of public attendees.
3. Introduction of invited guests.
4. Presentation by IBM Information Systems Products Group.
5. Discussion on laser printers by OTPA.
6. Discussion of the further liberalization of G-COM.
7. Discussion by OTPA on GFW.
8. Discussion of proposal to waive limitation imposed by AEN 9 under ECCN 1565A for G-COM eligibility.
9. Response to CPTAC chairman's letter dated 12/12/86 to DAS Freedenberg on public rule making.
10. Response to the Committee's proposal for liberalizing interpretation of technical data under section 379.

Executive Session:

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

**SUPPLEMENTARY INFORMATION:** A Notice of Determination to close meetings or portions of meetings of the committee to the public on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes call Ruth D. Fitts, 202-377-2583.

Dated: April 17, 1987.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology and Policy.*

[FR Doc. 87-9215 Filed 4-22-87; 8:45 am]

BILLING CODE 3510-DT-M

---

## Short-Supply Reviews on Certain Steel Strip; Request for Comments

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its reviews of requests for short supply under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain cold-rolled steel strip used to manufacture piano hinges and certain bonderized cold-rolled steel strip for use in manufacturing needle roller bearing shells.

**DATE:** Comments must be submitted on or before May 4, 1987.

**ADDRESS:** Send all comments to Nicolas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product."

We have received short-supply requests for the following products:

1. Certain cold-rolled strip which range from 35.0 mm to 58.5 mm in width, 0.70 mm to 1.15 mm in thickness, conforms to DIN specification 1624, and is either nickel-plated, brass-plated and lacquered, or copper- and bronze-plated and lacquered. It will be used in the manufacture of piano hinges.

2. Two grades (MRST 443 and C15M) of special steel strip, bonderized on one side only, for use in deep-drawing needle roller bearing shells or housing. Steel strip to specification MRST 443 ranges from 22.0 mm to 202.0 mm in width, 0.5 mm to 1.2 mm in thickness, and conforms to DIN specification 1624. Steel strip to specification C15M ranges from 40.5 mm to 179.0 mm in width, 0.77 mm to 1.20 mm in thickness, and conforms to DIN specification 1544.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than May 4, 1987. Comments should focus on economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-9222 Filed 4-22-87; 8:45 am]

BILLING CODE 3510-DS-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

April 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 24, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

On May 28, 1986 a notice was published in the **Federal Register** (51 FR 19249) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 337, 338, 634, 635 and 647, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1986 and extends through May 31, 1987.

A further notice was published in the **Federal Register** (52 FR 11306) on April 8, 1987 which established import restraint limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products including Categories 638/639/838 and 636/836, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Category 638/639/838, on December 1, 1986; and, in the case of Category 636/836, on January 1, 1987; and extend through May 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, and at the request of the Government of Sri Lanka, special swing is being granted to the restraint limits previously established for man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 638/639/838 and 636/836.

The limits for Categories 337, 338, 635 and 647 are being reduced to account for the amount of swing being applied to Category 638/639/838. The limit for Category 634 is being reduced to account for the amount of swing being applied to Category 636/836.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for the foregoing categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 19, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 20, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on May 22, 1986 and April 2, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Categories 337, 338, 634, 635 and 647, on June 1, 1986; in the case of Category 638/639/838, on December 1, 1986; and, in the case of Category 636/836, on January 1, 1987; and extend through May 31, 1987.

Effective on April 24, 1987, the directives of May 22, 1986 and April 2, 1987 are hereby amended to include the following adjusted limits to the previously established restraint limits for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, as provided under the terms of the bilateral agreement of May 10, 1983: [1]

| Category | Adjusted Limit [1] |
|---|---|
| 337 | 57,158 dozen. |
| 338 | 200,516 dozen. |
| 634 | 108,243 dozen. |
| 635 | 154,035 dozen. |
| 636/836 | 99,900 dozen. |
| 638/639/838 | 650,000 dozen. |
| 647 | 280,288 dozen. |

[1] The limits have not been adjusted to account for any imports exported after May 30, 1986, in the case of Categories 337, 338, 634, 635 and 647; after November 30, 1986, in the case of Category 638/639/838; and after December 31, 1986, in the case of Category 636/836.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–9217 Filed 4–22–87; 8:45 am]

BILLING CODE 3510–DR–M

### Announcing a Change in the Official Authorized to Issue Export Visas and Exempt Certifications for Textile and Apparel Products From the Republic of Korea

April 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the Bilateral Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, has issued the directive published below to the Commissioner of Customs to be effective on May 1, 1987. For further information contact Eve Anderson, International Trade Specialist (202) 377–4212.

**Background**

CITA directives dated May 19, 1972, as amended, and November 4, 1982, as amended, (37 FR 10605 and 47 FR 50940), established export visa and exempt certification requirements for certain cotton, wool and man-made fiber, silk blend and other vegetable fiber textiles and textile products from Korea. The

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable limit; and (3) administrative arrangements and adjustments may be made to resolve minor problems arising in the implementation of the agreement.

notice stated taht only one official is authorized by the Korean Government to issue export visas and exempt certifications. The Korean Government has recently notified the United States Government that, effective on May 1, 1987 for merchandise exported on and after that date, the authorized issuing official has been changed to Lee Won Ho, who will sign as W.H. Lee. Facsimilies of the stamps and the signature of W.H. Lee are published as enclosures to the letter to the Commissioner of Customs.

The purpose of this notice is to advise the public of this change. Merchandise exported from the Republic of Korea before May 1, 1987 with visas or exempt certifications issued by Kim Yung Chul (Y.C. Kim) will not be denied entry; however, the signature of Kim Yung Chul (Y.C. Kim) will not be accepted for any goods exported from the Republic of Korea on and after May 1, 1987.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 20, 1987.

April 20, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel the directives of May 19, 1972, as amended, and November 4, 1982, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, which established export visa and exempt certification requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in the Republic of Korea.

Effective on May 1, 1987, the directives of May 19, 1972 and November 4, 1982 are hereby further amended to authorize Lee Won Ho (W. H. Lee) to issue export visas and exempt certifications for cotton, wool and man-made fiber, silk blend and other vegetable fiber textiles and textile products exported from the Republic of Korea beginning on May 1, 1987, replacing Kim Yung Chul (Y. C. Kim).

Merchandise exported from the Republic of Korea before May 1, 1987 with visas or exempt certifications issued by Kim Yung Chul (Y. C. Kim) will not be denied; however, the signature of Y.C. Kim will not be accepted for goods exported from the Republic of Korea on and after May 1, 1987.

Facsimilies of the stamps and signature of Mr. Kim are enclosed with this letter.

The actions taken with respect to the Government of the Republic of Korea and imports of cotton, wool, man-made fiber, silk blend and other vegetables fiber textiles and textile products from Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

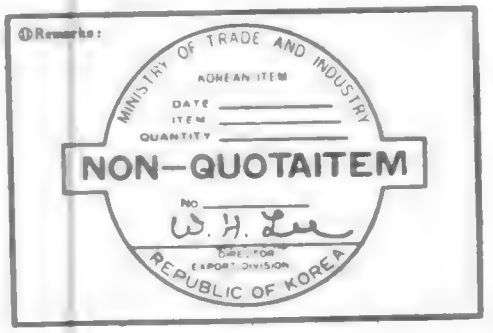

[FR Doc. 87-4216 Filed 4-22-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Wednesday, 20 May 1987.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Harold Summer, AGED Secretariat, 201 Varrick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

April 20, 1987.

[FR Doc. 87-9210 Filed 4-22-87; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 12 May 1987.

Time of Meeting: 0800-1630 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for discussions on reorganization and its effect on the acquisition process and analytical support to the acquisition process. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-9111 Filed 4-22-87; 8:45 am]

BILLING CODE 3710-08-M

## Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Flood Control Improvements of Tony's and Marine Creeks, Fort Worth, TX

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a draft Environmental Impact Statement (DEIS).

**SUMMARY:**

*1. Description of Proposed Action*

The study is intended to identify feasible alternatives to eliminate flood problems along Tony's and Marine Creeks within the Historic Fort Worth Stockyards.

*2. Alternatives for the Proposed Action*

A variety of structural and nonstructural alternatives are presently being explored. Alternatives under consideration include:

a. Modification of existing channels and/or bridges.

b. Diversion of floodflows away from the area of interest through either channels, covered conduits, or tunnels.

c. Upstream detention structures.

d. Floodproofing of structures.

e. No action.

*3. Public Involvement*

Coordination with Federal and State agencies, local government, and interested individuals will be maintained throughout the study. No public meetings are currently scheduled.

*4. Significant Issues*

The potential impacts of a project on the cultural resources within the Fort Worth Stockyards Area, particularly near Exchange Avenue, will be discussed at length in the DEIS. In the study, environmental impacts pertaining to water and air quality, socio-economics, fish and wildlife resources, and recreation will also be assessed.

*5. Public Availability of the DEIS*

The DEIS is presently scheduled to be available to the public in the first quarter FY 88.

Additional information concerning the proposed project may be requested from: Mr. Bob Shelton, SWFPL–R, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, Texas 76102–0300.

A.J. Genetti, Jr.,

*Colonel, CE, District Engineer.*

[FR Doc. 87–9098 Filed 4–22–87; 8:45 am]

BILLING CODE 3710-25-M

## San Francisco District; Intent To Prepare a Draft Supplemental Environmental Impact Statement for Oakland Inner Harbor Deep-Draft Navigation Improvements, Alameda County, CA

### 1. Summary

The proposed action is the modification of approximately 4.4 miles of the Oakland Inner Harbor Channel in Alameda County. The channel has been constructed and modified over a long period of time beginning in 1874. It services the Port of Oakland which is located on the east side of San Francisco Bay about eight miles inside the Golden Gate. The Port of Oakland is a complete transportation/distribution center and is the largest container port on San Francisco Bay.

The Port of Oakland consists of an Outer Harbor, a Middle Harbor and an Inner Harbor. The entrance channel to all three is known as the bar Channel. The Oakland Inner Harbor is 8.5 miles long. It includes an Entrance Reach, an Inner Harbor Reach, the Brooklyn Basin Reach, Park Street Reach, and a Tidal Canal that connects with San Leandro Bay at project mile 8.5.

The Entrance Reach begins at project mile 0.45 and is 800′ wide trapering to 600′ wide at the Seventh Street Marine Terminal. The Inner Harbor Reach is 500′ to 600′ wide. The Brooklyn Basin Reach follows the contour of the north side of Government Island. It varies in width from 300′ to 500′. There is a 500′ × 1200′ turning basin at the east end of Government Island, the Park Street Reach extends eastward from the turning basin. The Park Street reach is 275′ feet wide and connects with the Tidal Channel which is also 275′ wide. channel depths in the Inner Harbor are maintained at −35′ MLLW. In the Brooklyn Basin, depths are −25 feet MLLW; in the Tidal Channel, depths are −18 feet WLLW.

The Oakland Harbor Channels are no longer adequate to efficiently and cost-effectively accommodate modern deep-draft vessels. The deep-draft navigation improvement projects for the Oakland Inner and Outer Harbors were authorized for construction under the Water Resources and Development Act of 1986 (Pub. L. 99–662). The projects have been studied separately, but may be combined in the final General Design and Construction Phase. A separate SEIS was to be prepared for each of these projects; however, it is now anticipated that the environmental issues raised by the change in desposal alternatives will be addressed in one combined SEIS for both the Inner and Outer Harbor projects. The Notice of Intent to prepare an SEIS for the Oakland Outer Harbor deep-draft navigation improvements was published in the Federal Register on January 13, 1987.

The Corps of Engineers and the Port of Oakland plan to improve approximately 4 miles of the Inner Harbor. Plans include widening the Entrance Channel to 1175′; and at project mile 3.0, widening the Channel to 900′; constructing a 1200′ diameter turning basin at project mile 3.7; and deepening the channel to −42 feet MLLW beginning at the entrance, and terminating at project mile 4.5. Dredged material would be disposed at an ocean disposal site located outside the Golden Gate. Environmental impacts of the proposed contruction were assessed in 1984, and reported in the *Final Feasibility Study and Environmental Impact Statement, Oakland Inner Harbor Deep-Draft Navigation Improvements.* The FEIS was filed with the Environmental Protection Agency on April 17, 1986.

Changes in the project requiring preparation of a Supplemental EIS include:

*a. Disposal of Dredged Material*

The FEIS anticipated that 4.4 million cubic yards of sediment would be disposed at the in-Bay site situated adjacent to Alcatraz Island (SF–11); however, the Alcatraz site has been accumulating more sediment than can be dispersed, and disposal of dredged material at an ocean disposal site is now under consideration. The former 100-fathom ocean disposal site has not been available since its inclusion in 1981 in the Gulf of the Farallones National Marine Sanctuary. The Corps, in conjunction with the Environmental Protection Agency, is in the process of identifying and selecting a new ocean disposal site. Final designation by EPA is scheduled for February 1988; however, under section 103 of the Marine Protection Resarch and Sanctuaries Act the Corps may select and use a site for a specific project. The determination of the appropriate disposal alternative will be described the Supplemental EIS.

*b. Dredging Equipment*

Use of an ocean disposal site assumes a change in the type of dredging equipment required. Due to the requirement for slurried disposal at the Alcatraz site, it was assumed in the FEIS that the channel would be dredged by hydraulic dredge and that barges would be used to transport dredged sediment to the in-Bay site. Without the necessity of slurried disposal, it is more

likely that a clambshell dredge would be used, and consolidated dredge sediment would be transported to the ocean in barges.

**2. Annual Maintenance**

Current dredging requirements are 200,000 cys. annually. Dredging of the improved channel would add an additional 70,000 cubic yards of dredged material to the maintenance dredging. Total annual dredging would be 270,000 cys.

**3. Alternatives**

Several alternative plans (including "No Action") were evaluated in the Final Feasibility Report and Environmental Statement for the Oakland Inner Harbor navigation improvements. The evnironmental impacts of the channel deepening are the same as those for the original project. Changes in conditions at the Alcatraz disposal site have resulted in the need to reconsider disposal site alternatives including use of an ocean disposal site.

**4. Scoping**

Federal, State and local agencies, and interested private organizations and individuals are invited to submit written comments on the proposed action within 30 days of the date of this notice to Rod Chisholm, Chief, Environmental Branch, San Francisco District Corps of Engineers, 211 Main Street, San Francisco, California 94105 (ATTN: Patricia Duff, SPNPE–R).

**5. Important Issues**

a. The following environmental issues have been identified and addressed in the Final Environmental Impact Statement:

(1) Water quality,
(2) Benthos,
(3) Energy,
(4) Hydrography,
(5) Commercial shipping,
(6) Navigation safety,
(7) Business and industrial activity, and
(8) Endangered and threatened species.

b. Impacts identified as being relevant to the project modifications which will be addressed in the SEIS include:

(1) Water Quality-at the dredge site and disposal site,
(2) Chemical impacts,
(3) Transport of sediments,
(4) Impacts on marine life, and
(5) Impacts on underground aquifers.

6. The Draft SEIS is scheduled for agency review on July 15, 1987; the final SEIS is scheduled for completion October 30, 1987.

7. Questions about the proposed Action and SEIS can be directed to Patricia Duff at (415) 974–0441 or FTS 454–0441.

Dated: April 14, 1987.

**Kenneth H. Clow,**

*Major, Corps of Engineers.*

[FR Doc. 87–9107 Filed 4–22–87; 8:45 am]

BILLING CODE 3710-FS-M

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.003Q]**

### Notice Inviting Applications for New Awards Under the Bilingual Education; State Educational Agency Program for Fiscal Year 1987

*Purpose:* Provides financial assistance to State educational agencies (SEAs) to collect, aggregate, analyze, and report data and information on each State's population of limited English proficient persons, and the educational services provided or available to those persons. The program further provides assistance for activities designed to improve the effectiveness of programs for limited English proficient persons in their States.

*Deadline for Transmittal of Applications:* May 26, 1987.

*Deadline for Intergovernmental Review Comments:*

*Applications Available:* April 24, 1987.

*Available Funds:* It is expected that approximately $5,000,000 will be available for this program for Fiscal Year 1987.

*Project Period:* 12 Months.

*Applicable Regulations:* (a) the regulations in 34 CFR Parts 500 and 548, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79 (except for § 75.217(a)(3) and (c)–(e)—relating to review of applications).

*For Applications or Information Contact:* Luis A. Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245–2922.

*Program Authority:* 20 U.S.C. 3242.

Dated: April 20, 1987.

**Carol Pendas Whitten,**

*Director, Office of Bilingual and Minority Language Affairs.*

[FR Doc. 87–9226 Filed 4–22–87; 8:45 am]

BILLING CODE 4000–01–M

## Office of Educational Research and Improvement

### Advisory Council on Education Statistics; Meeting

**AGENCY:** Advisory Council on Education Statistics (ACES), Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATE:** May 18–19, 1987.

**ADDRESS:** 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

**FOR FURTHER INFORMATION CONTACT:** Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208 Telephone: (202) 357–6831.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the Center for Education Statistics (CES) in the Office of Educational Research and Improvement and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:

- Elementary-Secondary Education Data Redesign Project—Linkages between data systems
- Schools and Staffing Survey—Status report of Pre-test.
- Report on CES Publications.
- CES Standards Ceremony. Address by Ingram Olkin, Stanford University, CES/ASA Fellow (May 18, 1987, 1:30—4:00 P.M., Quality Inn, 415 New Jersey Avenue NW., Washington, DC)

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208.

Dated: April 16, 1987.

**Chester E. Finn, Jr.,**

*Assistant Secretary and Counselor to the Secretary, Office of Educational Research and Improvement.*

[FR Doc. 87-9096 Filed 4-22-87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

### Vanderbilt Energy Corp.; Proposed Consent Order

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of Proposed Consent Order and Opportunity for Comments.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order for $500,000.00 with Vanderbilt Energy Corporation, and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

Comments by: May 26, 1987.

**ADDRESS:** Send comments to Vanderbilt Energy Corporation, Comments, Office of the Solicitor, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Michael Wood, Office of the Solicitor (RG-43), Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office at (202) 586-2880.

**SUPPLEMENTARY INFORMATION:** On March 26, 1987, the ERA executed a proposed Consent Order with Vanderbilt Energy Corporation. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000.00 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed.

#### I. Background

During the period September 1, 1976 through December 31, 1980, Vanderbilt Energy Corporation (Vanderbilt) was the operator of several properties located in Martin and Camp Counties, Texas. As a result of this activity, Vanderbilt was a "producer" of crude oil, as defined in 10 CFR 212.31 and was therefore subject to the provisions of the Mandatory Petroleum Price Regulations located in 10 CFR Part 212, Subpart D, which governed the first sale of domestic crude oil prior to decontrol on January 28, 1981.

The ERA conducted an audit of the books and records of Vanderbilt for the period September 1, 1976 to December 31, 1980, and on June 28, 1982 issued a Proposed Remedial Order (PRO) to Vanderbilt. The PRO alleged that Vanderbilt caused overcharges in the amount of $509,404.05 during the audit period attributable to sales from the properties. The PRO ordered Vanderbilt to refund the overcharge amount, plus interest, to DOE for proper distribution. Vanderbilt filed a Notice of Objection to the PRO on June 28, 1982. Vanderbilt's Statement of Objections (S/O) to the PRO was filed on November 19, 1982. In its S/O, Vanderbilt objected to the ERA's methodology in determining stripper well qualification and raised several additional defenses which it claimed reduced its liability for overcharges.

Throughout the Remedial Order Proceeding, Vanderbilt has claimed that it classified its properties as stripper well properties consistent with the crude oil provisions of the Mandatory Petroleum Price Regulations. In taking this position, Vanderbilt contends that it has met the factual criteria necessary to qualify for the stripper well exemption. Based on the firm's arguments and the entire record in this proceeding, and in light of the expense to the government associated with any additional litigation, ERA believes that a payment of $500,000.00 is a satisfactory compromise of the issues raised in this audit.

#### II. The Consent Order

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE against Vanderbilt arising from DOE's audit of Vanderbilt compliance with the federal petroleum price and allocation regulations during the period September 1, 1976 through December 31, 1980. Although Vanderbilt contends that in all respects it correctly construed and complied with applicable regulations, Vanderbilt has entered into this proposed Consent Order to avoid possible further expense and disruption of its business. DOE believes the proposed Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by the audit.

#### III. Refunds

Under the terms of the proposed Consent Order, Vanderbilt shall pay to DOE the sum of $500,000.00 within thirty days of the effective date of the Consent Order. The refund amounts will be deposited in a suitable account for appropriate distribution by DOE.

#### IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 P.M., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, DC on this 15th day of April 1987.

**Marshall Staunton,**

*Acting Solicitor, Office of the Solicitor, Economic Regulatory Administration.*

[FR Doc. 87-9139 Filed 4-22-87; 8:45 am]

BILLING CODE [illegible]

## Federal Energy Regulatory Commission

[Docket Nos. CP87-108-001 et al.]

### Columbia Gas Transmission Corporation et al.; Natural Gas Certificate Filings

April 15, 1987.

Take notice that the following filings have been made with the Commission:

#### 1. Columbia Gas Transmission Corporation

[Docket No. CP87-108-001]

Take notice that on March 30, 1987, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an amendment to its application in Docket No. CP87-108-000, pursuant to section 7(c) of the Natural Gas Act for certificate authorizing service for two new wholesale customers, Delmarva Power and Light Company (Delmarva) and South Jersey Gas Company (South Jersey), and the construction and operation of certain natural gas facilities, all as more fully set forth in the amendment which is on file with the

Commission and open to public inspection.

Applicant's application in this proceeding requested authorization *inter-alia:*

Project 1(a) The construction and operation of approximately 23.7 miles of 20-inch pipeline located in Chester and Delaware Counties, Pennsylvania and New Castle County, Delaware;

Project 1(b) The construction and operation of approximately 1.2 miles of 16-inch pipeline crossing the Delaware River from New Castle County, Delaware, to Gloucester County, New Jersey; and

Project 1(c) The construction and operation of approximately 8.0 miles of 16-inch pipeline located in Gloucester County, New Jersey.

Applicant's proposed amemdment would revise Projects 1(a), 1(b), and 1(c) to reflect certain minor modifications to the proposed pipeline routing and pipe specifications. It is stated that revisions were made to accommodate property owner, environmental considerations, and a minor modification to the design of the Delaware River crossing. Applicant's revised projects are as follows:

Project 1(a) The construction and operation of approximately 23.8 miles of 20-inch pipeline located in the Chester and Delaware Counties, Pennsylvania and New Castle County, Delaware;

Project 1(b) The construction and operation of approximately 1.5 miles of 20-inch pipeline crossing the Delaware River from New Castle County, Delaware, to Gloucester County, New Jersey; and

Project 1(c) The construction and operation of approximately 1.1 miles of 20-inch pipeline and 7.4 miles of 16-inch pipeline located in Gloucester County, New Jersey.

The amendments proposed by Applicant to its application in this proceeding are being made to (i) reflect certain minor modifications to the proposed pipeline route, (ii) change the alignment and the size of the pipeline of the proposed Delaware River crossing from 16-inch, and to 20-inch, and (iii) change the size of a portion of the proposed pipeline on the New Jersey side of the Delaware River to accommodate the piping configuration of the river crossing.

Applicant now estimates that the total cost of the facilities, including the modifications proposed in this amendment would increase by approximately $1,031,900, thereby increasing the estimated cost of the facilities proposed in this proceeding to $27,000,000.

*Comment date:* May 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

**2. Natural Gas Pipeline Company of America**

[Docket No. CP87-273-000]

Take notice that on March 31, 1987, Natural Gas Piepline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-273-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon Natural's storage service for certain customers which it provides under Rate Schedule LS-2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that contractually its LS-2 storage service terminates on April 1, 1987. Natural further states that it has contacted the participating customers and has received responses from fifteen customers who have contracts for 23,334 Mcf of natural gas per day (Mcfd) of the 124,000 Mcfd originally authorized who desire to terminate the storage service on April 1, 1987. Natural further states that those customers are Interstate Power Company; Iowa-Illinois Gas and Electric Company; Iowa Electric Light and Power Company; Iowa Southern Utilities Company; Kaskaskia Gas Company; City of Nashville, Illinois; North Central Public Service Co.; Peoples Natural Gas; City Perryville, Missouri; City of Spearville, Kansas; City of Sullivan, Illinois; United Cities Gas Company; City of Grand Tower, Illinois; Midwest Gas Company; and City of Pinckneyville, Illinois. Northern proposes to abandon LS-2 storage for such customers in accordance with the LS-2 Rate Schedule, or as agreed to between the parties. Natural indicates that it does not propose to abandon any facilities originally constructed to implement the service.

*Comment date:* May 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

**3. Northern Border Pipeline Company**

[Docket No. CP83-263-004]

Take notice that on March 27, 1987, Northern Border Pipeline Company (Applicant), 2223 Dodge Street, Omaha Nebraska 68102, filed in Docket No. CP83-263-004 an amendment to the limited-term certificate of public convenience and necessity issued by the Commission on July 25, 1986, in Docket No. CP83-263-000 and 001, pursuant to section 7(c) of the Natural Gas Act authorizing a one year extension of the certificate and an increase in the volume of natural gas transported on an interruptible basis in interstate commerce, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that it is currently transporting synthetic natural gas volumes produced at the Great Plains coal gasification plant for the Great Plains Shippers (ANR Pipeline Company, Natural Gas Pipeline Company of America, Tennessee Gas Pipeline Company, and Transcontinental Gas Pipe Line Corporation) pursuant to the limited-term certificate issued by the Commission on July 25, 1986, and the temporary certificate issued by the Commission on March 20, 1987.

Applicant proposes to extend the term of the certificate by one year through July 27, 1988, to increase the volume of gas transported to 160,000 Mcf of synthetic natural gas per day or, in the alternative, excess receipts above 137,000 Mcf of synthetic natural gas per day to accommodate the operations of the Great Plains plant. Applicant states that it was informed on January 22, 1987, that the maximum production rate of the Great Plains coal gasification plant would be revised upward to 157,000 Mcf of synthetic natural gas per day from the original design production level of 137,500 Mcf of synthetic natural gas per day.

*Comment date:* May 6, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**4. Northern Border Pipeline Company**

[Docket No. CP87-268-000]

Take notice that on March 27, 1987, Northern Border Pipeline Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-268-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas volumes in interstate commerce on an interruptible basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport quantities of gas on an interruptible basis for various shippers as follows:

| Shipper | Mcf per day |
|---|---|
| American Central Gas Marketing Corporation | 31,000 |
| American Energy Inc | 200,000 |
| American Hunter Exploration Ltd | 129,000 |

| Shipper | Mcf per day |
|---|---|
| Amoco Energy Trading Corporation | 50,000 |
| Bethlehem Steel Corporation | 120,000 |
| Bonus Energy, Inc | 25,000 |
| Bountiful Corporation | 20,000 |
| Brymore Gas Marketing, Inc | 100,000 |
| CU Energy Marketing, Inc | 250,000 |
| Chevron U.S.A. Inc | 35,000 |
| Chieftain Development Co. Ltd./Chieftain International, Inc | 33,000 |
| Colony Natural Gas Corporation | 100,000 |
| Consumers Power Company | 200,000 |
| Direct Energy Marketing Inc | 200,000 |
| Dome Petroleum Corp | 150,000 |
| Dyco Gas Marketing | 148,000 |
| Enron Gas Marketing, Inc | 400,000 |
| Enron Gas Marketing, Inc. as agent for Purchasers | 400,000 |
| Enron Gas Processing Company (to Welcome) | 25,000 |
| Enron Gas Processiong Company (to Ventura) | 25,000 |
| Entrade Corporation | 98,000 |
| Hadson Gas Systems, Inc | 105,000 |
| Koch Hydrocarbon Company | 200,000 |
| Mobil Oil Corporation | 50,000 |
| NATGAS U.S. inc | 1,150,000 |
| Natural Gas Clearinghouse Inc | 200,000 |
| Natural Gas Clearinghouse as Representative of Southwest Gas Company | 175,000 |
| Norfolk Gas Marketing Inc | 100,000 |
| Northridge Petroleum Marketing U.S. Inc | 327,000 |
| Ocelot Gas Marketing (U.S.) Inc | 100,000 |
| PeopleService, Inc | 298,000 |
| Peoples Natural Gas Company, Division of Utilicorp United Inc | 625,000 |
| ProGas Limited | 150,000 |
| Salmon Resources Ltd | 500,000 |
| Spot Market Corporation | 100,000 |
| Suncor Inc | 50,000 |
| Thermal Exploration, Inc | 100,000 |
| United States Gypsum Company | 15,000 |
| Vector Energy Inc | 200,000 |
| Western Gas Marketing USA Ltd | 40,000 |
| Western Gas Marketing USA Ltd | 300,000 |
| Western Gas Marketing USA Ltd | 900,000 |
| Western Gas Processors, Ltd | 98,000 |
| Williston Basin Interstate Pipeline Company, acting as agent for Frontier Gas Storage | 48,000 |
| Williston Basin Interstate Pipeline Company, acting as agent for its Producer/Suppliers who qualify under the S-2/T-3 Program | 48,000 |
| Yankee Resources, Inc | 530,000 |

Applicant states that the proposed transportation would be on behalf of end users, local distribution companies, intrastate pipelines or interstate pipelines and in accordance with the terms and conditions of the limited-term interruptible transportation agreement between Applicant and each of the Shippers. Applicant proposes to charge a rate of 3.3 cents per 100 dekatherm miles of volumes transported. Applicant states that all revenues received from the proposed transportation service would be credited to its cost of service.

*Comment date:* May 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

**5. Northwest Pipeline Corporation**

[Docket No. CP87-259-000]

Take notice that on March 23, 1987, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-259-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of Mountain Fuel Resources, Inc. (Resources), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 65,000 MMBtu's of natural gas per day, on an interruptible basis, for the account of Resources for an initial term of fifteen years and year to year thereafter, pursuant to a gas transportation agreement (Transportation Agreement) dated March 18, 1987, which provides for transportation under Rate Schedule T-2 of Northwest's FERC Gas Tariff, Volume No. 1-A.

It is stated that Resources owns or controls natural gas supplies which it would cause to be delivered to Northwest at existing receipt points on Northwest's transmission system located at Red Wash in Uintah County, Utah, and Clay Basin in Daggett County, Utah, and Crossover 16 in Sweetwater County, Wyoming.

Northwest proposes to transport Resources' gas through its transmission system and redeliver thermally equivalent volumes, less transmission fuel, to Resources at existing points of interconnection with resources located at Red Wash in Uintah County, Utah, Clay Basin in Daggett County, Utah, and South Lake in Rich County, Utah, and Crossover 16 in Sweetwater County, Wyoming.

It is asserted that the proposed transportation service would provide Resources additional flexibility to move its gas supplies between components of its pipeline system in order to more effectively and efficiently serve its customers and to facilitate the seasonal withdrawals and injection of gas supplies at its Clay Basin storage facility.

Northwest proposes to charge Resources for all volumes of gas transported and delivered under the Transportation Agreement at the interruptible off-system transportation rate as set forth in Northwest's Rate Schedule T-2, FERC Gas Tariff, Volume No. 1-A. Northwest's currently effective Rate Schedule T-2 rate is 6.77 cents per MMBtu of natural gas for each 100 mile billing unit, plus a GRI charge of 1.50 cents per MMBtu of natural gas as a fuel reimbursement charge. The subject transportation would involve one billing mileage unit for gas received at each of the receipt points and delivered to each of the delivery points except for gas received at Red Wash and delivered to South Lake which would be two billing mileage units.

*Comment date:* May 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

**6. Southern Natural Gas Company; South Georgia Natural Gas Company**

[Docket No. CP87-269-000]

Take notice that on March 27, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, filed in Docket No. CP87-269-000 an application pursuant to Section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment, authorizing the transportation of natural gas for the city of Tifton, Georgia (Tifton), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to transport on an interruptible basis up to 3,000 MMBtu of gas per day for Tifton, for a term expiring on October 31, 1988. Tifton is purchasing the gas from SNG Trading, Inc. (SNG Trading) and Panhandle Trading Company (Panhandle Trading).

Specifically, South Georgia, as agent, would cause gas to be delivered to Southern at various delivery points on its pipeline system, it is asserted. Southern, it is explained, would redeliver to South Georgia at South Georgia's Meter Station in Lee County, Alabama, an equivalent quantity of gas less 3.25 percent of such amount which would be accounted for as compressor fuel and company-use gas including system unaccounted for gas losses; less shrinkage, fuel or loss from processing; and for loss or vented gas.

BEST COPY AVAILABLE

It is stated that South Georgia would redeliver to Tifton at the Tifton Meter Station in Tift County, Georgia, an equivalent quantity of gas less 0.5 percent of such amount which would be accounted for as compressor fuel and company-use gas including system unaccounted-for gas losses; less loss or vented gas.

Southern proposes to charge South Georgia each month for the transportation service Southern provides for Tifton the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia do not exceed the daily contract demand of South Georgia, the transportation rate shall be 39.9 cent per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia exceed the daily contract demand of South Georgia, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

In addition, Southern would collect from South Georgia the GRI surcharge, it is explained.

It is also noted that South Georgia would charge Tifton each month for the transportation service the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by South Georgia on any day to Tifton under any and all transportation agreements with South Georgia, when added to the volumes of gas delivered under South Georgia's Rate Schedule G–2 on such day to Tifton do not exceed the Maximum Daily Quantity of Tifton, the transportation rate shall be 12.08 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by South Georgia on any day to Tifton under any and all transportation agreements with South Georgia, when added to the volumes of gas delivered under South Georgia's Rate Schedule G–2 on such day to Tifton exceed the Maximum Daily Quantity of Tifton, the transportation rate for the excess volumes shall be 49.88 cents per MMBtu.

In addition, Tifton would reimburse South Georgia for all transportation and fuel charges and other costs, including the GRI surcharge that South Georgia pays Southern, it is explained.

Southern states that the proposed transportation arrangement would enable Tifton to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition Southern states that it would obtain take-or-pay credit on the gas Tifton may obtain from its suppliers.

*Comment date:* May 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

**7. Southern Natural Gas Company**

[Docket No. CP87–271–000]

Take notice that on March 27, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–271–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas on behalf of the Town of Gordo Water, Gas and Sewer Board (Gordo); the Graysville Municipal Gas System (Graysville); the Utilities Board of the city of Livingston (Livingston); the Pickens County Natural Gas District (Pickens); the Water Works, Gas and Sewer Board of the city Piedmont (Piedmont); and the city of York Utility System (York), collectively referred to as "Municipalities". Southern proposes to transport on an interruptible basis up to 750 MMBtu of natural gas per day to Gordo; up to 7,100 MMBtu to Graysville; up to 4,000 MMBtu to Livingston; up to 1,000 MMBtu to Pickens; up to 1,500 MMBtu to Piedmont; and up to 960 MMBtu to York. Southern proposes to render the transportations for limited terms expiring on October 31, 1988.

Southern states that each Municipality has arranged to acquire natural gas supplies from SNG Trading Inc. (SNG Trading). It is stated tha the transportation agreements provide that the Municipalities would cause gas to be delivered to Southern at various existing points on Southern's pipeline system. It is further stated that Southern would redeliver to Gordo in Pickens County, Alabama; to Graysville in Jefferson County, Alabama; to Livingston in Sumter County, Alabama; to Pickens in Pickens County, Alabama; to Piedmont in Calhoun County, Alabama; and to York in Sumter County, Alabama. Southern would redeliver equivalent quantities less 3.25 percent for compressor fuel and company-use gas; less any and all shrinkage, fuel or loss resulting from or consumed in processing the gas; and less Municipalities' pro-rata sharse of any gas delivered for their respective accounts which is lost or vented for any reason, it is explained.

Southern would charge 64.9 cents per MMBtu of natural gas redelivered, it is stated. It is further stated that Southern would charge the Municipalities the GRI surcharge of 1.52 cents per Mcf.

*Comment date:* May 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

**8. Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.**

[Docket No. CP87–276–000]

Take notice that on April 3, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87–276–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon its metering facility No. 1–1645, located at Mile Post 214–2+2.49 in Carroll County, Ohio, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to its budget-type certificate authorization at Docket No. CP80–83, the metering facility was constructed to effectuate a system gas supply service with Belden & Blake Corporation (Belden & Blake). Tennessee further states that it no longer purchases gas from Belden & Blake and has been advised that Belden & Blake has not filed for abandonment relative to this service at the present time.

Tennessee also states that affected facilities are no longer required as gas supply facilities and that it desires to modify its facilities to effectuate a Section 311 Order 436 transportation service for Tenngasco Corporation (Tenngasco) as agent for Belden & Blake on behalf of East Ohio Gas Company.

Tennessee indicates the estimated cost of modifying this facility is $10,000 which would be reimbursed to Tennessee by Tenngasco.

*Comment date:* May 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

**9. Texas Gas Transmission Corporation**

[Docket No. CP87–287–000]

Take notice that on March 27, 1987, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87–287–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and

necessity authorizing the transportation of natural gas on an interruptible basis for Citizens Gas & Coke Utility (CG&C) acting as agent for seventy-five end users, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to a maximum of 50 billion Btu's of natural gas per day for CG&C under the terms of a December 12, 1985, gas transportation agreement. Applicant states that it would receive gas at seventy-four existing receipt points. Applicant would then transport and redeliver such volumes at three exist-existing delivery points it is stated. Two of the delivery points, it is stated, were constructed to facilitate transporation pursuant to Section 311 of the Natural Gas Policy Act of 1978, and are therefore nonjurisdictional. Applicant requests authorization to utilize these two delivery points, described as the Lewisville and Worthington No. 2 stations, in the proposed service.

Applicant states that it would charge the appropriate rate for service under its T Rate Schedule. Applicant would also collect the applicable GRI funding unit for all transportation services performed.

The term of the proposed service, it is stated, would commence on the date of initial deliveries after certification and continue until 30 days after Applicant accepts a blanket certificate issued pursuant to its Docket No. CP86–251–000.

Applicant states that the proposed transportation service is currently being provided under the authority of its interim Section 311 waiver issued December 8, 1986. It is stated that authorization under the waiver expries May 1, 1987.

*Comment date:* May 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

**10. United Gas Pipe Line Company**

[Docket No. CP87–275–000]

Take notice that on April 1, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–275–000 an application pursuant to Section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing United to transport natural gas for Monsanto Company (Monsanto), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United indicates that Monsanto would cause delivery of up to 30,000 Mcf of natural gas per day to United at three existing interconnections with United's pipeline located in St. Mary and Terrebonne Parishes, Louisiana; and in Mobile County, Alabama. United proposes to transport and redeliver the gas to Monsanto's Pensacola plant at an existing point of interconnection between the facilities of United and Monsanto, located in Escambia County, Florida.

United requests that the proposed transportation be authorized for a term ending January 1, 1991.

United proposes to initially charge Monsanto a rate consistent with its otherwise applicable interruptible Type II Mileage Based Rates, inclusive of fuel and company-used gas and the GRI surcharge.

*Comment date:* May 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs:**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–9143 Filed 4–22–87; 8:45 am]

BILLING CODE 6717–0–M

---

**[Docket No. EL85–19–116; Project Nos. 4636, 4715, 4939, 5763, 6763, and 9710]**

## Black River Basin, NY; Request for Comments on the Cumulative Environmental Impacts of Proposed Hydropower Development

April 16, 1987.

The Federal Energy Regulatory Commission (Commission) is requesting comments regarding cumulative environmental impacts [1] that may occur as a result of multiple hydropower developments proposed for the Black River Basin, located in Lewis, Jefferson, Hamilton, Herkimer, and Oneida Counties, New York.

**Information Requested**

Interested persons and agencies are invited to identify those target resources that may be at risk, to describe the distribution of these resources, and to include substantive evidence documenting the interaction between the target resources and the proposed hydropower projects described in this notice.[2] Substantive evidence should include, but should not be limited to, the results of studies, natural resource management policies, and reports from state and local resource agencies.

The staff will evaluate those target resources included in this notice, and any additional target resources identified by interested persons and agencies.

**Pending License Applications**

As of April 9, 1987, the following license applications for hydropower projects were pending before the Commission:

| Project No. | Project name | Type of application |
|---|---|---|
| [illegible] | Long Falls | Exemption |
| 4715–003 | [illegible] Mills | [illegible] license |
| [illegible] | Brownville | Major license |

[1] Cumulative impact is the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or nonfederal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 FR § 1508.7).

[2] A target resource is an important resource that could be adversely affected by two or more proposed hydropower projects.

| Project No. | Project name | Type of application |
|---|---|---|
| 5763-001 | North Branch | Major license. |
| 9763-000 | Woods Falls | Major license. |
| 9710-000 | Croghan Island | Major license. |

A map of the Black River Basin shows the locations of these pending and existing projects, and is included in this notice (figure 1).[1]

**Descriptions of Projects**

Long Falls Project: The project would consist of: (1) An existing diversion structure having an 850-foot-long and 3-foot-high concrete section and a 550-foot-long and 12-foot-high timber section; (2) an existing small reservoir along the left (west) bank having negligible storage capacity at normal water surface elevation 709.0 msl, (3) an existing gated intake structure having trashracks; (4) a 130-foot-long, 33-foot-wide flume; (5) a powerhouse; (6) a 1,200-foot-long tailrace and (7) appurtenant facilities.

The proposed project would redevelop the existing facilities and would: (1) Repair the diversion structure; (2) install three refurbished generating units having a total rated capacity of 3,330 kW at a head of 28 feet and a flow of 1,610 cfs; (3) deepen the tailrace; and (4) construct a 2.4/23-kV substation.

Felts Mills Project: The project would consist of the following: (A) The Upper Dam development would consist of: (1) A 20-foot-high, 381-foot-long concrete gravity dam; (2) an existing reservoir with a water surface area of 50 acres, a gross storage capacity of 690 acre-feet, and a water surface elevation of 608.90 feet USGS; (3) a new 500-foot-long earth power canal; (4) a new powerhouse containing two generating units with a total installed generating capacity of 7,120 kW; (5) a new 85-foot-wide, 100-foot-long earth tailrace; (6) a new transmission line, 400 feet long; and (7) appurtenant facilities.

(B) The Middle Dam, located 1.4 miles downstream from the Upper Dam development, would consist of: (1) A 20-foot-high, 879-foot-long concrete gravity dam to be partially demolished; and (2) a reservoir with a water surface area of 46 acres, a gross storage capacity of 350 acre-feet, and a water surface elevation of 590.50 feet USGS.

(C) The Lower Dam development, located 1.1 miles downstream from the Middle Dam, would consist of: (1) A 20-foot-high, 2,460-foot-long concrete gravity and earth embankment dam; (2) a reservoir with a water surface area of 17 acres, a gross storage capacity of 300 acre-feet, and a water surface elevation of 578.20 feet USGS; (3) a new concrete intake gate; (4) a new powerhouse containing two generating units with a total installed generating capacity of 9,440 kW; (5) a new 75-foot-wide, 600-foot-long earth tailrace; (6) a new transmission line, 2,400 feet long; and (7) appurtenant facilities.

The entire project would have a total installed generating capacity of 16,560 kW.

Brownville Project: The project would consist of: (1) A new 62-foot-high, 250-foot-long concrete gravity dam having a spillway crest elevation of 282 feet surmounted by 2-foot-high flashboards with fish passage facilities at the north abutment; (2) a recreated reservoir with a surface area of 19 acres and a gross storage capacity of 500 acre-feet; (3) a forebay; (4) a headwork structure at the dam's left abutment; (5) a new powerhouse containing two generating units having a total rated capacity of 9,000-kW; (6) a 700-foot-long tailrace; (7) a 200-foot-long, 4,160-volt underground transmission line; and (8) appurtenant facilities.

North Branch Project: The proposed project would consist of: (1) An existing 24-foot-high, 90-foot-long concrete dam owned by Niagara Mohawk Power Corporation (NMPC) with a crest elevation of 463 msl; (2) an existing reservoir with a surface area of 9-acres, and a storage capacity of 75-acre-feet; (3) a proposed powerhouse at the right abutment of the dam containing a generating unit with a rated capacity of 8, 230 kW; (4) a proposed 35-foot-high, 50-foot-wide and 1,600-foot-long tailrace; and (5) a proposed 1-mile-long transmission line.

Woods Falls Project: The proposed project would consist of: (1) A new 13-foot-high, 355-foot-long concrete gravity dam; (2) a new reservoir with a normal water surface area of 35 acres, negligible storage capacity, and a water surface elevation of 372 feet USGS; with (3) 4-foot-high flashboards; (4) three new stoplog bays; (5) three new sluice gates; (6) a new excavated intake channel; (7) a new concrete powerhouse containing two generating units with a capacity of 2,700 kW each for a total installed capacity of 5,400 kW; (8) a new excavated tailrace; (9) 4.16-KV generator leads; (10) a 4.16-kV/23-kV, 6 MVA transformer; (11) a 650-foot-long, 23-kV transmission line; and (12) appurtenant facilities.

Croghan Island Project: The project would consist of: (1) an existing concrete gravity dam consisting of: (a) An 11.5-foot-high, 120-foot-long segment; and (b) a 9.5-foot-high, 130-foot-long segment both with a crest elevation of 817.7 feet msl; (2) a reservoir with a surface area of 60 acres, a storage capacity of 535 acre-feet, and a normal water surface elevation of 818.7 feet msl with; (3) 1-foot-high new wood flashboards; (4) an existing intake structure; (5) a new reinforced concrete powerhouse containing two generating units with a capacity of 225 kW each for a total installed capacity of 450 kW; (6) a new transmission line, 75-feet-long; and (7) appurtenant facilities.

**Preliminary Review of Target Resources**

The staff has examined the six applications for hydropower development and has studied comments from federal and state natural resource agencies and the public concerning the potential for cumulative impacts from the proposed projects. The staff's preliminary analysis has identified whitewater boating as the target resource in the Black River Basin.

Whitewater Boating: An important whitewater boating region within the Black River Basin is located on the lower mainstem Black River between the towns of Dexter and Watertown (figure 1). This stretch of the river supports both non-commercial boating (kayaking and canoeing) and commercial rafting along a 4- to 5-mile segment for the entire recreation season, May through October. The Black River is one of only five rivers in the thirteen-state northeastern region that provides an extended boating season, and the only such river in New York State. This segment of whitewater offers a degree of varying difficulty from Class I through Class V.

The stretch of the Black River directly upstream from the proposed Brownville Project (FERC No. 4939) does not appear to support any commercial whitewater boating activity. In particular, by letter dated March 10, 1987, the Department of the Army states that it will not allow the construction or maintenance of any facilities that would permit or allow the launching of any type of boat or canoe on the Black River upstream of the Upper Dam of the Felts Mills Hydroelectric Project (FERC No. 4715). The Department of the Army states that this condition is necessary for the protection and use of Fort Drum, because 51.13 acres of land for the proposed Felts Mills Project would lie within the Fort Drum Military Reservation.

Two additional important whitewater boating areas are located on the Moose River, the principal headwater tributary of the Black River (figure 1). The lower section beginning east of the

[1] The map is not being printed in the **Federal Register** but copies are available from the Commission's Division of Public Reference.

Adirondack Park boundary at Fowlersville Falls and continuing 3.6 miles downstream to the Moose River Project (FERC No. 4349) is utilized primarily for whitewater kayaking.

The upper section beginning at the town of McKeever and ending above Fowlersville Falls provides a difficult run on the freeflowing river during the spring for kayakers, canoeists, and rafters. During the latter part of June to October, the upper section of the river exhibits reduced flows that are inadequate for any type of whitewater boating activity.

**Assessment of Cumulative Impacts**

In addition to the information available on the six proposed projects in the Black River Basin, the staff will review any data provided by interested persons and agencies addressing how the six pending projects may have cumulative impacts on whitewater boating or other target resources of the region not yet identified by the staff.

Comments should be filed by the close of business June 1, 1987, and be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Docket No. EL85–19–116 on all comments.

For further specific information please contact Patricia Aspland, River Basin Coordinator, at (202) 376–9623.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–9135 Filed 4–22–87; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP87–41–001]**

## Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 20, 1987.

Take notice that on April 13, 1987 Alabama-Tennessee natural Gas Company (Alabama-Tennessee) tendered for filing the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet No. 4, Superseding Original Sheet No. 4.
First Revised Sheet No. 10, Superseding Original Sheet No. 10.
First Revised Sheet No. 12, Superseding Original Sheet No. 12.
First Revised Sheet No. 16, Superseding Original Sheet No. 16.
First Revised Sheet No. 101, Superseding Original Sheet No. 101.

The purpose of the instant filing is to adjust the rates filed on February 27, 1987 to comply with Ordering Paragraph (B) of the Commission's Order of March 27, 1987 in this proceeding. The proposed effective dates of this rate change is September 1, 1987, the conclusion of the suspension period in this case.

Alabama-Tennessee states that copies of this filing have been served upon its customers and the State Commissions of Alabama, Mississippi, and Tennessee, and to all parties in the captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intevene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214, 385.211). All such motions or protests should be filed on or before April 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87–9206 Filed 4–22–87; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. TA87–08–20–002]**

## Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 20, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 15, 1987 tendered for filing Substitute Nineteenth Revised Sheet No. 203 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin states that such tariff sheet is being filed to reflect in its Rate Schedule F–2 changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), as reflected in Consolidated's March 30, 1987 compliance filing, proposed to be effective March 1, 1987.

Algonquin requests that the Commission accept Substitute Nineteenth Revised Sheet No. 203 to be effective March 1, 1987, to coincide with the proposed effective date of Consolidated's rate change.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87–9207 Filed 4–22–87; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. CI87–1–001 et al.]**

## American Royalty Producing Co.; Application

April 17, 1987.

Take notice that on February 24, 1987, American Royalty Producing Company (ARPCO), of P.O. Box 2250, Denver, Colorado 80201, filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.23, *et seq.*, of the Commission's Regulations, requesting certificate authorization, as successor in interest to its corporate affiliates Petro-Lewis Corporation (PLC) and Partnership Properties Co. (PPC), to continue sales of natural gas to El Paso Natural Gas Company (El Paso) and requesting the redesignation of Petro-Lewis Corporation (Operator), *et al.*'s rate schedules in the name of American Royalty Producing Company, all as more fully shown on the attached Exhibit "A" and in the application, which is on file with the Commission and open to public inspection.

By Assignment, Bill of Sale and Conveyance dated and effective as of January 1, 1985, ARPCO acquired the record title to and working interest of its affiliates PLC and PPC in sales made to El Paso from wells in the San Juan Field, Rio Arriba and San Juan Counties, New Mexico.

Any person desiring to be heard or make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it

in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

EXHIBIT "A"

| PLC (OEA) certificate docket No. | PLC (OEA) FERC gas rate [illegible] No. |
|---|---|
| CI87-1-000 | 6 |
| CI87-2-000 | 7 |
| CI87-3-000 | [illegible] |
| CI87-4-000 | [illegible] |
| CI87-5-000 | 10 |
| CI87-6-000 | 11 |
| CI87-7-000 | 12 |
| CI87-8-000 | 13 |
| CI87-9-000 | 14 |
| CI87-10-000 | 15 |
| CI87-11-000 | 16 |
| CI87-12-000 | 17 |
| CI87-13-000 | 18 |
| CI87-14-000 | [illegible] |
| CI87-15-000 | [illegible] |
| CI87-16-000 | 21 |
| CI87-17-000 | [illegible] |
| CI87-18-000 | [illegible] |
| CI87-19-000 | 24 |
| CI87-20-000 | 25 |
| CI87-21-000 | [illegible] |
| CI87-22-000 | 27 |
| CI87-23-000 | [illegible] |
| CI87-24-000 | [illegible] |
| CI87-25-000 | [illegible] |
| CI87-26-000 | 31 |
| CI87-27-000 | [illegible] |

[FR Doc. 87-9126 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CI87-261-000]**

## American Royalty Producing Co.; Application

April 17, 1987.

Take notice that on February 2, 1987, American Royalty Producing Company (ARPCO), of P.O. Box 2250, Denver, Colorado 80201, filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.23, *et seq.*, of the Commission's Regulations, as successor in interest to its corporate affiliate Partnership Properties Co. (PPCo), requesting that it be granted certificate authorization to continue certain sales of natural gas heretofore made by PPCo as a small producer to El Paso Natural Gas Company (El Paso) from acreage in the San Juan Basin Area of Rio Arriba, San Juan and Lea Counties, New Mexico, all as more fully shown on Exhibit "A" and in the application, which is on file with the Commission and open to public inspection.

By Assignment, Bill of Sale and Conveyance executed on April 22, 1986, record title to the properties was conveyed by PPCo to ARPCO, effective as of January 1, 1985.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

EXHIBIT A

| Contract [illegible] | Location |
|---|---|
| 9-27-49 | Lea Co., NM. |
| 9-19-52 | Rio Arriba Co., NM. |
| 9-22-54 | Rio Arriba Co., NM. |
| 5-14-56 | Rio Arriba Co., NM. |
| 9-4-57 | Rio Arriba Co., NM. |
| 3-15-65 | Rio Arriba Co., NM. |
| 5-18-65 | Rio Arriba Co., NM. |
| 6-19-75 | Rio Arriba Co., NM. |

[FR Doc. 87-9127 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CI87-274-000 et al.]**

## Anadarko Petroleum Corp.; Application

April 20, 1987.

Take notice that on February 4, 1987, Anadarko Petroleum Corporation (Applicant), of P. O. Box 1330, Houston, Texas 77251-1330, filed an application pursuant to 18 CFR 154.92(d) and 154.94 and 157.23 *et seq.*, for a Certificate of Public Convenience and Necessity to continue sales of natural gas previously authorized to be sold by the successors in interest to Union National Bank of Wichita, Executor of the Estate of Walter F. Kuhn, deceased (the Kuhn heirs), to Northern Natural Gas Company, under a Small Producer Certificate of Public Convenience and Necessity issued in Docket No. CS71-158, all as more fully shown on the attached Exhibit "A" and in the application, which is on file with the Commission and open to public inspection.

The rights and interest of the Kuhn heirs were assigned to Applicant effective October 1, 1985, January 1 and June 1, 1986.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

EXHIBIT "A"

| Docket No. | Cont. [illegible] | [illegible] Sched. No. | Contract [illegible] | Field | [illegible] |
|---|---|---|---|---|---|
| CI87-274-000 | 1 | | 02-21-45 | Hugoton | Northern Natural Gas Co |
| CI87-275-000 | 2 | | [illegible] | Hugoton | Northern Natural Gas Co |
| CI87-276-000 | 3 | | [illegible] | Hugoton | Northern Natural Gas Co |
| CI87-277-000 | 4 | | 01-12-48 | Hugoton | Northern Natural Gas Co |
| CI87-278-000 | 5 | | [illegible] | Hugoton | Northern Natural Gas Co |
| CI87-279-000 | 6 | | 01-20-53 | Hugoton | Northern Natural Gas Co |
| CI87-280-000 | 7 | | 04-24-47 | Hugoton | Northern Natural Gas Co |
| CI87-281-000 | 8 | | [illegible] | Hugoton | Northern Natural Gas Co |
| CI87-282-000 | 9 | | 07-25-44 | Hugoton | Northern Natural Gas Co |
| CI87-283-000 | 10 | | [illegible] | Hugoton | Northern Natural Gas Co |

EXHIBIT "A"—Continued

| Docket No. | Cont. No. | Rate Sched. No. | Contract Date | From | Purchaser |
|---|---|---|---|---|---|
| CI87-284-000 | 11 | | 10-17-44 | Hugoton/ Panoma Council Grove. | Northern Natural Gas Co |
| CI87-285-000 | 12 | | 05-19-44 | Hugoton | Northern Natural Gas Co |
| CI87-286-000 | 13 | | 09-05-46 | Hugoton | Northern Natural Gas Co |

[FR Doc. 87-9199 Filed 4-22-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP87-13-000]

## ANR Pipeline Company v. Helmerich & Payne, Inc.; Complaint

Issued April 17, 1987.

Take notice that on December 12, 1986, ANR Pipeline Company (ANR) filed with the Commission, pursuant to Rule 206 of the Commission's rules of practice and procedure,[1] a complaint against Helmerich & Payne, Inc., alleging that Helmerich & Payne are charging or attempting to collect rates in excess of the applicable maximum lawful price set forth in Title I of the Natural Gas Policy Act of 1978 (NGPA).

ANR states that it purchases natural gas from Helmerich & Payne under several natural gas purchase contracts and that certain volumes of natural gas produced and sold under these contracts are subject to the maximum lawful price established by section 102 of the NGPA. According to ANR, its gas purchase contracts with Helmerich & Payne contain take-or-pay clauses which obligate ANR to take a daily contract quantity throughout an accounting year. At the end of each year an accounting is made of the daily contract quantities for the year, and if this exceeds the total quantity of gas actually taken by ANR plus the total quantity of gas paid for but not taken, ANR must make a take-or-pay payment. ANR has an opportunity under the contracts to make up the gas which it has paid for but not taken; however, the make-up must occur within five years of the year prepayments were made or the right is forfeited.

ANR states that for reasons beyond its control, including changes in federal and state regulations that have caused a drastic decline in the price of competitive fuels and a vast oversupply of natural gas, it cannot purchase the quantities of gas specified in the contract and will likely be unable to do so for the foreseeable future. ANR has informed Helmerich & Payne that these unforseen events constitute *force majeure* pursuant to the contract, thereby reducing or suspending the parties' obligations thereunder. ANR states that Helmerich & Payne have nevertheless demanded payments and have brought suit in an Oklahoma state court to recover the take-or-pay deficiencies for the calendar year 1984.

ANR contends that it has already paid the applicable maximum lawful price for all gas actually received from Helmerich & Payne for the year 1984, and that in light of its inability to recoup the take-or-pay payments demanded by Helmerich & Payne, making further payments would result in Helmerich & Payne receiving amounts in excess of the applicable maximum lawful price for gas received. ANR requests the Commission to assert jurisdiction in the matter and to issue an order finding that Helmerich & Payne's demand for take-or-pay prepayments constitutes a demand for payments in excess of the maximum lawful price established under Title I of the NGPA. In the alternative, ANR requests the Commission to determine that the provisions in the contracts which require ANR to pay unrecoupable take-or-pay charges are unjust and unreasonable pursuant to sections 4 and 5 of the Natural Gas Act.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, such motions or protests should be filed on or before May 18, 1987. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9128 Filed 4-22-87; 8:45 am]
BILLING CODE 6717-01-M

[1] 18 CFR 385.206 (1986).

[Docket No. GP87-20-000]

## ANR Pipeline Company v. Plains Resource, Inc.; Petition To Reopen and Vacate Final Well Category Determination and Complaint of Unauthorized Abandonment

April 17, 1987.

Take notice that on January 7, 1987, ANR Pipeline Company (ANR) filed with the Commission, pursuant to Rule 297 of the Commission's rules of practice and procedure,[1] a petition to reopen and vacate final well category determination under section 103 of the Natural Gas Policy Act of 1978 (NGPA) for the Huffman 2-20 well, located in Section 20, Township 21 North, Range 17 West, Woodward County, Oklahoma. Concurrently ANR filed, pursuant to Rule 206 of the Commission's rules of practice and procedure,[2] a complaint against Plains Resources, Inc. (Plains), alleging abandonment of production and sales to ANR from the Huffman 1-20 well without authorization from the Commission under section 7(b) of the Natural Gas Act (NGA).

ANR states that in August 1984, the oil and gas leasehold interest in section 20, a single drilling and spacing unit for the Chester Lime formation, was assigned to Plains. At that time there was only one well, the Huffman 1-20 well, on section 20. ANR states that on August 29, 1984, Plains filed an increased density application for section 20 with the Oklahoma Corporation Commission (OCC), seeking to drill wells in addition to the existing Huffman 1-20 well. On October 25, 1984, Plains applied to the OCC requesting emergency authorization for the drilling of one of the increased density wells. ANR asserts that by an order issued December 10, 1984, the OCC permitted Plains to drill a well, but not test or produce it until a final decision was reached on the increased density application. The emergency order, according to ANR, permitted the drilling of only one well, but Plains proceeded to drill two wells on section 20, the Huffman 3-20 and the Huffman 2-20 wells.

On July 18, 1985, the OCC approved the increased density application for the Huffman 3-20 well but denied the request with respect to the Huffman 2-20 well. ANR asserts that Plains then filed an application with the OCC to recomplete the Huffman 2-20 well. That application was granted on July 25, 1985. Plains also filed for and received

[1] 18 CFR 385.207 (1986).
[2] 18 CFR 385.206 (1986).

authority from the OCC to temporarily abandon production from the Huffman 1–20 well. Accroding to ANR prior to abandoning the Huffman 1–20 well, Plains filed an application with the OCC seeking a determination that the Huffman 2–20 well was a "new onshore production well" as defined by section 103 of the NGPA. The Huffman 1–20 well was then permanently plugged and abandoned and, on February 3, 1986, the OCC granted the Plains' application for section 103 status for the Huffman 2–20 well. The section 103 determination because final forty-five days after the Commission received notice of Oklahoma's action.

ANR's complaint asserts that Plains omitted a statement of material fact in its application to the OCC, and that this omission resulted in the erroneous classification of the Huffman 2–20 well as a section 103 well. The omitted fact, according to ANR, is that production from the Huffman 2–20 well was authorized only because Plains had plugged and abandoned the Huffman 1–20, an otherwise economically viable well. As a result, ANR submits that Plains has succeed in substitutint a new well for an older well that was capable of draining the formation, and was thus able to obtain authorization for the higher section 103 price for production from the new well where the section 106(a) price should be applicable. ANR requests the Commission to reopen and vacate the final well category determination for the Huffman 2–20 well and find that Plains violated section 7(b) of the NGA by plugging and abandoning the Huffman 1–20 well without authorization from the Commission.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington DC. 20426, on or before May 18, 1987. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–9136 Filed 4–22–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–7823–000 et al.]

## ARCO Oil and Gas Company, Division of Atlantic Richfield Company; Application

April 20, 1987.

Take notice that on February 26, 1987, ARCO Oil and Gas Company, Division of Atlantic Richfield Company (ARCO), of 1601 Bryan, Room 22–100, Dallas, Texas 75201, filed an application under the Natural Gas Act for redesignation of Hondo Oil and Gas Company certificates and rate schedules, all as more fully shown on the attached Exhibit "A" and in the application, which is on file with the Commission and open to public inspection.

Hondo Oil and Gas Company, was dissolved on December 31, 1986. The remaining assets of Hondo were passed by operation of law to its sole stockholder, Atlantic Richfield Company. The newly designated certificates and rate schedules will be administered by ARCO Oil and Gas Company, Division of Atlantic Richfield Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

Exhibit "A"

| Rate schedule No. | Docket No. |
|---|---|
| 1 | G–7823 |
| 2 | G–7823 |
| 4 | CI 65–749 |
| 5 | CI 70–611 |
| 6 | CI 74–190 |
| 7 | CI 76–73 |
| 8 | CI 76–332 |
| 9 | CI 78–613 |
| 10 | CI 78–616 |
| 11 | CI 80–240 |

[FR Doc. 87–9200 Filed 4–22–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP87–29–000]

## Aubrey C. Black v. Trunkline Gas Co.; Complaint

April 17, 1987.

On February 13, 1987, Aubrey C. Black (Black) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Black requests the Production-Related Costs Board (Board) to find that Trunkline Gas Company (Trunkline) is in violation of 18 CFR 271.1104 by refusing to reimburse Black for $68,247.14 in production-related costs incurred between August 1980 through February 1983.

Black states that by invoice dated January 20, 1987, Trunkline was billed $68,247.14 in production-related costs due under a contract dated June 21, 1979, covering sales from the Lloyd No. 1 and Carlisle No. 1 wells in Jim Wells County, Texas. Trunkline responded to the invoice by stating that it believed that Order No. 94–A established a deadline of December 31, 1984 for a seller to claim retroactive production-related costs and that a seller forfeited such costs by not submitting all information to the purchaser by December 31 , 1984.

Black asserts that the issue in this complaint is whether 18 CFR 271.1104 bars Black from collecting retroactive production-related costs because it did not submit an invoice to Trunkline until after 1984. Black believes that the Commission did not intend for its regulations to operate in the manner asserted by Trunkline, but was merely one recovery method.

Black requests the Board to issue an order immediately finding Trunkline in violation of 18 CFR 271.1104 for failure to pay Black $68,247.14 in production-related costs.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Trunkline must file an answer to Black's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Trunkline shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register.**

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9129 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. GP87-28-000]**

## DeNovo Oil & Gas, Inc. v. Mid Louisiana Gas Company, Division of Tenngasco Corporation; Complaint

April 17, 1987.

On February 5, 1987, DeNovo Oil & Gas, Inc. (DeNovo) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. DeNovo requests the Production-Related Costs Board (Board) to find that Mid Louisiana Gas Company, Division of Tenngasco Corporation (Mid Louisiana) is in violation of 18 CFR 271.1104 by refusing to reimburse Denovo for $151,770.73 in production-related costs incurred between July 1980 through December 1984.

DeNovo states that by invoices dated March 20, 1986 and April 9, 1986, it billed Mid Louisiana $17,085.41 and $134,685.32 in production-related costs incurred between July 1980 through December 1984 under two contracts dated March 26, 1982 and September 5, 1979. The sales are located in the Baton Rough and Jennings Fields, East Baton Rouge and Acadia Parishes, Louisiana. Mid Louisiana responded to the invoices by stating that DeNovo had waived its rights to retroactive collection of production-related costs because the invoices were submitted after 1984.

DeNovo asserts that the issue in this complaint is whether 18 CFR 271.1104 bars DeNovo from collecting retroactive production-related costs because it did not submit the invoices to Mid Louisiana until 1986. DeNovo believes that the Commission did not intend for its regulations to operate in the manner asserted by Mid Louisiana, but was merely one recovery method.

DeNovo requests the Board to issue an order finding Mid Louisiana in violation of 18 CFR 271.1104 for failure to pay DeNovo $151,770.73 in production-related costs.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Mid Louisiana must file an answer to DeNovo's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Mid Louisiana shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Any person desiring to be heard or to protest said filing should file a protests or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9130 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CI87-388-000**

## Kaiser-Francis Oil Co.; Application for Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

April 17, 1987.

Take notice that on March 23, as supplemented April 7, 1987, Kaiser-Francis Oil Company (Kaiser-Francis), P.O. Box 21468, Tulsa, Oklahoma 74121-1468, has filed an application under section 7(b) of the Natural Gas Act and § 2.77 of the Commission rules. Kaiser-Francis requests that the Commission issued an order granting Kaiser-Francis (1) authority to abandon sales to El Paso Natural Gas Company (El Paso) of certain gas which is subject to NGA jurisdiction from the Gomez and Worsham-Bayer Fields, Pecos and Reeves Counties, Texas, and (2) blanket pregranted authorization for a limited term of three (3) years for any future sales of such gas under its small producer certificate issued in Docket No. CS73-605.

Kaiser-Francis states in support of its application that it is subject to substantially reduced takes without payment. The deliverability involved is approximately 20 MCFD and the gas is minimum rate gas. The contract was terminated effective September 28, 1986, by El Paso by letter dated September 30, 1986.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9132 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-31-000]

**Premier Resources, Ltd. v. Northern Natural Gas Co.; Complaint**

April 17, 1987.

On February 24, 1987, Premier Resources, Ltd. (Premier) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Premier requests the Production-Related Costs Board (Board) to find that Northern Natural Gas Company (Northern) is in violation of 18 CFR 271.1104 by refusing to reimburse Premier for $19,300.26 in production-related costs incurred between July 25, 1980 to December 1, 1985.

Premier states that by invoice dated March 20, 1986, Northern was billed $19,300.26 in production-related costs due under a contract dated March 27, 1973, covering sales from the Seeger #1 well in Harper County, Oklahoma. Northern responded to the invoice by stating that Order No. 94-A specifies that gas delivered must be commingled with other gas delivered and therefore Northern feels there is no obligation to pay a delivery allowance for this facility. Premier believes that production from the Seeger #1 well meets the commingling rule and requests payment of $19,300.026.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Northern must file an answer to Premier's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Northern shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9131 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI75-19-005 et al.]

**Samedan Oil Co.; Application**

April 20, 1987.

Take notice that on February 20, 1987, Samedan Oil Company (Samedan), filed an application pursuant to §§ 154.92, 157.23 and 157.24 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 154.92, 157.23, 157.24 for authorization to continue certain sales of natural gas as the successor in interest to certificate and rate schedule authority previously held by Texas Eastern Exploration Company (Texas Eastern Exploration) and for the redesignation of rate schedules previously held by Texas Eastern Exploration Company as Samedan Oil Company's rate schedules, all as more fully shown in Exhibit "A" attached and in the application, which is on file with the Commission and open to public inspection.

Samedan recently acquired certain offshore producing properties from Texas Eastern Exploration. Texas Eastern Exploration has informed Samedan that it is seeking abandonment authorization with respect to the identified sales on Exhibit "A" to be effective December 1, 1986. Accordingly, Samedan requests that its succession to Texas Eastern Exploration's certificate and rate schedule authority be made effective retroactive to December 1, 1986, or, alternatively, whatever effective date is assigned to Texas Eastern Exploration's abandonment authority.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

EXHIBIT "A"

| [illegible] | Docket No. | R.S. No. | [illegible] | Contract date |
|---|---|---|---|---|
| Vermilion 147 | CI75-19 | [illegible] | Texas Eastern Transmission Corporation | 8/24/73 |
| Vermilion 201 | CI75-19 | 7 | do | [illegible] |
| East Cameron 222 | CI75-19 | [illegible] | do | 8/24/73 |
| Eugene Island 349 | CI75-678 | 12 | do | 4/22/75 |
| West Cameron 593 | CI77-586 | 123 | do | 5/31/77 |
| West Cameron 594 | CI77-706 | 14 | do | 6/30/77 |
| Vermilion 60 | CI78-104 | [illegible] | do | 8/8/77 |
| West Cameron 606 | CI78-397 | 17 | do | 7/13/77 |
| West Cameron 620 | CI78-397 | [illegible] | do | 7/12/77 |
| High Island A-480 | CI78-1117 | 19 | do | 8/10/78 |
| West Cameron 540 | CI79-493 | [illegible] | do | 1/31/79 |
| West Cameron 619 | CI80-103 | 21 | Transcontinental Gas Pipeline Corporation | [illegible] |
| East Cameron 359 | CI80-31 | [illegible] | Texas Eastern Transmission Corporation | [illegible] |
| West Cameron 595 | CI81-258 | [illegible] | Columbia Gas Transmission Corporation | 6/20/79 |
| East Cameron 359 | [illegible] | 25 | Trunkline Gas Company | 6/15/77 |
| Do | CI81-383 | [illegible] | Tennessee Gas Pipeline Company | 1/27/81 |
| Do | CI81-384 | [illegible] | Panhandle Eastern Pipeline Company | 6/15/77 |
| High Island A-568 | [illegible] | 28 | Texas Eastern Transmission Corporation | 6/1/81 |

[FR Doc. 87-9201 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI62-1253-004 et al.]

## Sampson Resources Co.; Application

April 20, 1987.

Take notice that on March 2, 1987, Sampson Resources Company (Applicant), of Sampson Plaza, Two West Second Street, Tulsa, Oklahoma 74103, filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.23, *et seq.*, of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act as an Independent Producer, as defined in § 154.91(a) of said Regulations, for certificates of public convenience and necessity authorizing Applicant to continue to render service previously authorized by the Commission under the certificates of public convenience and necessity heretofore issued to Tenneco Oil Company and for the redesignation of Tenneco Oil Company's Rate Schedules as those of Samson Resources Company, all as more fully shown on the attached Exhibit "A" and in the application, which is on file with the Commission and open to public inspection.

By Assignment and Bill of Sale dated August 25, 1986, Tenneco Oil Company assigned all of its right, title and interest in certain properties to Applicant effective September 1, 1986.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

EXHIBIT "A"

| Docket No | Tenneco [illegible] Company FERC [illegible] no | Purchaser |
|---|---|---|
| CI62-1253 | 12 | Arkla Resources Co |
| CI79-361 | [illegible] | Arkla Resources Co. |
| CI75-589 | 302 | Arkla Resources Co. |

[FR Doc. 87-9202 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-433-000]

## Texaco Gas Marketing Inc.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonment

April 20, 1987.

Take notice that on April 7, 1987, Texaco Gas Marketing Inc. (Applicant), P.O. Box 52332, Houston, Texas 77052, filed an application under section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity. The certificate would authorize Applicant, during a term ending April 30, 1990, to sell for resale in interstate commerce, without supply or market restrictions, any gas subject to the Commission's Natural Gas Act jurisdiction, with pre-granted abandonment of any such sale.

Applicant states that its application is not an application for limited-term abandonment of any existing sales service.

Applicant states that it is in the business of purchasing and reselling gas, and that it produces no gas and owns no facilities for the transportation or distribution of gas. Applicant believes that most of the gas it would purchase for resale under the blanket certificate would be (1) gas covered by Commission limited-term abandonment orders and released from existing contracts by mutual agreement between pipeline purchasers and their producer-suppliers, and (2) previously uncommitted gas from the Outer Continental Shelf which a producer may have authority to sell to Applicant under a limited-term blanket sales certificate.

Applicant further states that it has not entered into any contracts in anticipation of the Commission granting the application. Applicant states that it cannot identify the specific markets to be served, because most of its customers are spot purchasers who make purchase decisions mainly on the basis of current prices.

Applicant requests that the Commission waive Part 154 of its regulations as to the establishment and maintenance of rate schedules. Applicant also requests permission to automatically collect the appropriate monthly adjustments under the Commission's wellhead ceiling price regulations without the filing of blanket affidavits pursuant to § 154.94(h) of the Commission's regulations. In addition, Applicant requests that, to the extent it qualifies for collection for any applicable allowance under section 110 of the Natural Gas Policy Act of 1978 and Subpart K, Part 271 of the Commission's regulations, it be permitted to collect such allowance without the filing of affidavits pursuant to § 154.94(k) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9208 Filed 4-22-87; 9:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-475-000]

## Texaco Inc. and Texaco Producing Inc. Application for Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonment

(April 20, 1987)

Take Notice that on April 9, 1987, Texaco Inc. and Texaco Producing Inc. (Applicants), P.O. Box 52332, Houston, Texas 77052, filed an appliclation under section 7 of the Natural Gas Act of a limited-term certificate of public convenience and necessity. The certificate woul authorize Applicants,

for a period of three years, to sell for resale in interstate commerce, without supply or market restrictions, natural gas subject to the Commission's jurisdiction produced by Applicants and their joint interest owners from old leases on the Outer Continental Shelf (OCS), with pregranted permanent abandonment of the sales. Such authority would include gas sales from wells to be completed on old OCS leases and any wells to be completed on old OCS leases during the time of the blanket sales certificate authority.

Applicants state that the traditional method of selling OCS natural gas supplies subject to the Commission's jurisdiction to one purchaser for a stated number of years does not provide access to the market place for isolated, small volume wells which on their own do not command a market. Deliverability ranges from .356 MMcf per day to 10 MMcf per day for the ten (10) wells currently completed in the OCS. The markets available for this gas are short-term markets, generally not in excess of thirty (30) days. The short-term market is not compatible with the filing requirements and time delays applicable to the traditional application for certificate of public convenience and necessity and abandonment authorization.

Applicant further states that it has not entered into any contracts in anticipation of the Commission granting the application. Applicant states that the nature of the blanket authority does not permit advance notification of each purchaser, and markets cannot be specifically determined in advance.

Applicant requests that the Commission waive Part 154 of its regulations as to the establishment and maintenance of rate schedules. Applicant also requests permission to automatically collect the appropriate monthly adjustments under the Commission's wellhead ceiling price regulations without the filing of blanket affidavits pursuant to § 154.94(h) of the Commission's regualtions. In addition, Applicant requests that, to the extent it qualifies for collection for any applicable allowances under § 110 of the Natural Gas Policy Act of 1978 and Subpart K, Part 271 of the Commission's regualtions, it be permitted to collect such allowance without the filing of affidavits pursuant ot § 154.94(k) of the Commission's regulations, it be permitted to collect such allowance without the filing of affidavits pursuant to § 154.94(k) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1978, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-9209 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. CI87-476-000]

## TXG Gas Marketing Co.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Limited-Term Abandonment and Pregranted Abandonment and for Expedited Consideration

April 17, 1987.

Take notice that on April 9, 1987, TXG Gas Marketing Company (TXG), pursuant to section 4 and 7 of the Natural Gas Act, and Part 157 and § 2.77 of the regulations of the Federal Energy Regulatory Commission (Commission) filed for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by TXG and the producer/suppliers from which TXG purchases natural gas, and (2) authorizing blanket partial abandonment and pregranted abandonment of such sales, for the period ending March 31, 1988, all as more fully set forth in the application which is on file with the Commission and open for public inspection. TXG states that the authority requested in its application is consistent with the Commission's holding in *Entrade Corporation, et al.*, Docket Nos. CI87-87-000, *et al.*, order issued March 31, 1987.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-9124 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

---

[Docket No. RP87-45-001]

## Transcontinental Gas Pipe Line Corp.; Tariff Filing

April 20, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on April 15, 1987 tendered for filing in accordance with Ordering Paragraph (B)(3) of the Commission's order issued March 31, 1987 in Docket No. RP87-45-000, Substitute Original Sheet Nos. 250-E and 250-F to Transco's FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date is April 1, 1987.

Transco states the purpose of this revised filing is to clarify Transco's flexible PGA provisions by stating that the calculation of the interim adjustment will be consistent with the calculation of Transco's semiannual PGA, as set forth in section 22.5 of the General Terms and Conditions and to limit flexible PGA adjustment increases to the ceiling level approved in the last fully supported PGA.

Transco further states that copies of the filing have been mailed to each of its customers and State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-9205 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CP87-200-000]**

**United Gas Pipe Line Co., Application**

April 10, 1987.

Take notice that on February 10, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-200-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service and facilities utilized in the sale of natural gas to five industrial customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By this application, United specifically requests Commission permission to abandon sales and facilities to the following:

| Customer name | Contract termination date |
|---|---|
| Castnet and Twine Company | 01/01/85 |
| Champion International Corporation | 01/01/87 |
| Helvetia Sugar Cooperative, Inc. | 01/01/87 |
| Texas Gulf Sulphur Company | 12/01/77 |
| Valentine Sugars, Inc. | 09/04/86 |

United states that such customers have not accepted deliveries of gas from United in over four years and that such service should be abandoned. United further states that facilities serving these customers are not in use and no future use is foreseen, therefore they should also be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 1, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for United to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9203 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CI87-429-000]**

**Vesta Energy Co.; Application**

April 20, 1987.

Take notice that on April 6, 1987, Vesta Energy Company (Vesta), 2414 Fourth National Bank Building, 15 West Sixth Street, Tulsa, Oklahoma 74119, filed in this proceeding an application pursuant to section 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Commission's regulations. The application requests a certificate of public convenience and necessity authorizing a special sale program called Vesta Energy Trading (VET). The certificate would (1) authorize the sale of natural gas for resale in interstate commerce, (2) permit limited-term, partial abandonment of certain natural gas sales and (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate all as more fully set forth in the application on file with the Commission and open for public inspection.

Applicant proposes to purchase and resell on a spot basis natural gas qualifying for the sections 102, 103, 104, 106 and 107 or 108 rates under the NGPA. Applicant or the participating producer will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made of a case-by-case basis.

Applicant states that the approval of the VET Program will further the Commission's objectives by (1) encouraging the recapture of lost natural gas markets and the development of new gas markets and reserves; (2) preventing the loss of existing gas markets; (3) prompting gas-against-gas competition to the benefit of all gas consumers; and (4) assuring that gas sold under the VET Program is equally accessible to all pipelines and potential customers.

Applicant requests that the Commission authorize the VET Program for a term ending one year from the date of authorization.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before May 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to paticipate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless othewise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9204 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CI87-380-000]**

**Walter Oil & Gas Corp.; Application for Limited-Term Abandonment With Limited-Term Pregranted Abandonment**

April 16, 1987.

Take notice that on March 17, 1987, as supplemented on April 1, 1987, Walter Oil & Gas Corporation (Walter) filed, pursuant to section 7 of the Natural Gas Act (NGA), and § 2.77 and Parts 154 and 157 of the regulations an application for an order granting to Walter limited-term abandonment with pregranted

abandonment applicable to all volumes producible by Walter, but which are completely or substantially shut-in. Walter requests expedited processing of the application pursuant to 18 CFR § 2.77.

Walter states that the application will permit it to sell on the spot market gas subject to the Commission's NGA jurisdiction for a term not to exceed three years. Further, Walter states that it will enter into negotiations with the current purchaser in order to effect a mutually agreeable release of the subject volumes. In addition, Walter states that the application does not request sales authority because the released volumes will be sold pursuant to Walter's small producer certificate in Docket No. CS85–58–000.

Walter states that the requested authority is required by the public convenience and necessity because it: (1) Will allow completely or substantially shut-in lower-priced gas to become available for sale to able and willing purchasers; (2) will allow current pipeline purchasers to release unmarketable gas for a limited term under mutually agreeable conditions; and (3) will enable Walter to maintain and increase cash flow so that greater volumes would become available to the consuming public at competitive prices.

Walter submits that the limited-term authority requested herein, if granted, will enable Walter to sell for resale in interstate commerce, on a self-implementing basis, completely or substantially shut-in volumes of natural gas subject to the Commission's Natural Gas Act jurisidction, *i.e.*, gas subject to the provisions of NGPA sections 104, 106, 109 and 102(d).

In support of its application Walter provides the following list of properties, current purchasers, and jurisdictional sales volumes which may become subject to an order issued in this proceeding if the purchasers agree to release the volumes to Walter on mutually agreeable terms:

(1) Vermilion Block 62, Offshore Louisiana: purchaser=Transcontinental Gas Pipeline Co. (6,000 MMBtu/d);

(2) West Cameron Blocks 265 & 266, Offshore Louisiana: purchaser=Peoples Service Gas, Inc. (6,000 MMBtu/d); and

(3) Vermilion Block 164, Offshore Louisiana: purchaser=Texas Eastern Transmission Co. (1,000 MMBtu/d).

Walter states that the gas from West Cameron Blocks 265 and 266 currently are subject to an LTA order granted in *ANR Pipeline Company, et al.* 38 FERC ¶61,046 (1987). Walter also states that volumes from Vermilion Block 164 in excess of the amount Texas Eastern Transmission Company purchases from Walter are subject to a pending LTA-type application by Walter in Docket No. CI87–346–000.

Walter requests that since it is a small producer the Commission waive any and all reporting requirements as set forth in *Pennzoil* 34 FERC ¶61,318 (1985), and Walter also requests a waiver of any and all otherwise applicable orders, rules, regulations, and reporting requirements now effective or hereinafter promulgated by the Commission to the extent such orders, rules, regulations, or reporting requirements are or may be inconsistent with the authority sought herein.

The circumstances presented in the application meet the criteria for consideration on a expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM87–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–8134 Filed 4–22–87; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CI87–373–000]**

## WTG Exploration, Inc.; Application for Abandonment

April 17, 1987.

Take notice that on March 13, 1987, WTG Exploration, Inc. (Applicant), 3100 North "A", Building E, Suite 202, Midland, Texas 79705, filed an application pursuant to Section 2.77 of the Commission's rules to abandon sales made to Northern Natural Gas Company, Division of Enron Corp. (Northern) from the Ozona (Canyon) Field, Crockett County, Texas, made pursuant to two contracts dated September 11, 1964, and covered under Applicant's small producer certificate in Docket No. CS83–65–000.

Applicant states that gas delivered from five wells into the Ozona Gas Processing Plant gathering system operated by SPG Exploration Corporation, and that processing is performed under the terms of separate processing agreements which run concurrently with the term of the two basic residue gas purchase contracts. The term of the residue gas purchase contracts is for twenty years from September 11, 1964, and thereafter so long as gas-well gas can be produced in commercial quantities. Applicant states that it purchased the majority working interest in the subject leases effective January 1, 1986, from Texas American Oil Corporation, *et al.* The five wells have a deliverability of 650 MCFPD. Applicant states that in 1986, the wells produced 36,080 MCF, or approximately 15 percent of deliverability. Applicant states that for several months the wells physically allowed production for less than one day during the month. Applicant further states that the low residue price coupled with the gathering, treating, and compression charges specified in the processing agreements does not allow for gas to be produced commercially, and that the plant operating system is considered high pressure. Applicant states that lease compression is not economically feasible due to the failure of Northern to take gas on a consistent basis from the plant outlet. Applicant states that calculations indicate significant reserves (estimated 2.5 BCF) could be produced with the aid of compression, and to justify compression, a continuous market is required. Applicant states that this would also improve the commercial status of the leases. Applicant further states that a release for the two residue gas contracts has been sent to Northern and that discussions have also been held on ways to improve lease economics. Northern cannot commit to increased takes for these leases, according to Applicant, due to ratability rules established by the Texas Railroad Commission; abandonment has been discussed with Northern as a method to provide the flexibility in marketing to make the leases commercial.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1987, file with the Federal Energy

Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-9133 Filed 4-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI62-1251-006 et al.]

## Sun Exploration & Production Co., et al.; Notice of Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

(April 15, 1987).

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 1, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Price per 1,000ft [2] | Pressure base |
|---|---|---|---|---|
| CI62-1251-006, D, Apr. 2, 1987 | Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880. | Arkansas Louisiana Gas Co., Kinta Field, Haskell County, Oklahoma. | (1) | |
| CI75-429-001, D, Apr. 2, 1987 | ....do.... | ....do.... | (2) | |
| CI62-1251-007, D, Apr. 2, 1987 | ....do.... | Arkansas Louisiana Gas Company, Red Oak Field, Pittsburg County, Oklahoma. | (3) | |
| CI66-470-010, D, Apr. 2, 1987 | ....do.... | ....do.... | (3) | |
| CI72-626-000, D, Apr. 30, 1987 | ....do.... | Northern Natural Gas Company, Division of Enron Corp., South Eunice San Andres Field, Lea County, New Mexico. | (4) | |
| CI78-691-001, D, Apr. 2, 1987 | Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001. | ANR Pipeline Company, Seiling NE Field, Major County, Oklahoma. | (5) | |
| CI87-271-001, D, Apr. 2, 1987 | ....do.... | Colorado Interstate Gas Company, Panoma Field, Haskell County, Kansas. | (6) | |
| CI66-639-000, D, Apr. 2, 1987 | ....do.... | Northwest Central Pipeline Corporation, Waynoka, N.E. Field, Woods County, Oklahoma. | (7) | |
| CI64-1062-000, D, Apr. 2, 1987 | ....do.... | ....do.... | (8) | |
| CI87-418-000 (CI75-286), B, Mar. 31, 1987. | Phillips Petroleum Company, 990-G Plaza Office Bldg., Bartlesville, Okla. 74004. | Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Vermilion Block 39, Rollover Field, Vermilion Parish, Louisiana. | (9) | |
| CI87-419-000, B, Mar. 26, 1987 | Coquina Oil Corporation, P.O. Drawer 2960, Midland, Texas 79702. | El Paso Natural Gas Company, Avalon Field, Eddy County, New Mexico | (10) | |
| CI87-400-000, B, Mar. 27, 1987 | Tejas Production Company, 6023 Verdome, Houston, Texas 77092 | Texas Eastern Gas Pipeline Company, Call Field, Newton County, Texas. | (11) | |
| CI61-1066-002, C, Mar. 27, 1987 | Orlando-SOI Partnership, P.O. Box 4480, Houston, Texas 77210. | Transcontinental Gas Pipe Line Corp., Eugene Island Block 128, Offshore Louisiana. | (12) | |
| CI87-398-000, B, Mar. 27, 1987 | Falcon Seaboard Inc., LTV Center, Suite 1400, 2001 Ross Avenue, Dallas, Texas 75201-2916. | Transwestern Pipeline Company, Purdum Unit, Lipscomb County, Texas. | (13) | |
| CI77-797-004, Mar. 30, 1987 | Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309. | Mountain Fuel Resources, Inc., Whitney Field, Uintah County, Wyoming. | (14) | |
| CI87-402-000 (G-16760), B, Mar. 30, 1987. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221. | United Gas Pipe Line Company, Normanna and South Tuleta, Wilcox Field, Bee County, Texas. | (15) | |
| CI87-417-000, B, Mar. 31, 1987 | Scarth Oil & Gas Co., 901 South Polk, Amarillo, Texas 79101. | Panhandle Eastern Pipe Line Company, Skaggs #1 Well, Sec. 7-1N-18ECM, Texas County, Oklahoma. | (16) | |
| G-12972-002, D, Mar. 23, 1987 | Sun Exploration & Production Co | Michigan Wisconsin Pipeline Company, Laverne Field, Harper County, Oklahoma. | (17) | |
| CI87-390-000, B, Mar. 24, 1987 | Harmon Operating Company, Republic Bank Tower, 325 North St. Paul Suite 3900, Dallas, Texas 75201-3902. | Transwestern Pipeline Company, Javelina Basin, Lea County, New Mexico. | (18) | |
| G-4452-002, D, Mar. 26, 1987 | Amoco Production Company, P.O. Box 3092, Houston, Texas 77253 | Mississippi River Transmission Co., Woodland Field, Harrison County, Texas. | (19) | |
| CI87-393-000, F, Mar. 26, 1987 | Cabot Petroleum Corporation, 550 Westlake Park Blvd. Suite 900, Houston, Texas 77079. | Tennessee Gas Pipeline Company, Engleman leases, San Salvador Field, Hidalgo County, Texas. | (20) | |
| G11630-001, D, Apr. 2, 1987 Apr. 2, 1987. | Marathon Oil Company, P.O. Box 3128, Houston, Texas 77253. | Natural Gas Pipeline Company of America, Rooke, Plymouth and Portilla Fields, San Patricio and Refugio Counties, Texas. | (21) | |
| G-2602-002, D, Apr. 2, 1987 | ....do.... | ....do.... | (21) | |
| CI87-388-000 (CI77-563), D, Feb. 27, 1987. | Shell Western E & P Inc., P.O. Box 464, Houston, Texas 77210. | Western Gas Interstate Company, Antelope Ridge Field, Lea County, New Mexico. | (22) | |

| Docket No. and date filed | Applicant | Purchaser and location | Price per 1,000ft [3] | Pressure base |
|---|---|---|---|---|
| CI87-420-000 (G15582)(CI78-916)(CI79-413)(CI79-654)(CI80-14)(CI80-15)(CI82-318-000), B, Apr. 2, 1987. | Amerada Hess Corporation, P.O. Box 2040, Tulsa, Oklahoma 74102. | United Gas Pipe Line Company, Various gas producing fields, both Onshore and Offshore, Louisiana. | [22] | |
| G-3894-027 D, Apr. 6, 1987 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. 2819, Dallas, Texas 79101. | Mid Louisiana Gas Company, Vixen Field, Caldwell Parish, Louisiana. | [23] | |
| G-12352-000, D, Apr. 6, 1987 | ....do | Texas Gas Transmission Corporation, West Lisbon Field, Claiborne Parish, Louisiana. | [24] | |
| CI61-1284-001, D, Apr. 6, 1987 | ....do | Arkansas Louisiana Gas Company, Vixen Field, Caldwell Parish, Louisiana. | [24] | |
| CI87-421-000 (CI71-357), B, Apr. 2, 1987. | Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001. | Arkla Resources Company, Bonanza Field, Sebastian County, Arkansas. | [25] | |
| CI87-422-000 (CI68-1201), B, Apr. 2, 1987. | ....do | Arkla Resources Company, Ringwood Field, Major County, Oklahoma. | [21] | |
| CI87-423-000 (CI69-344), B, Apr. 2, 1987. | ....do | Northwest Central Pipeline Corporation, Waynoka, N.E. Field, Woods County, Oklahoma. | [26] | |
| CI87-424-000 (CI63-159), B, Apr. 2, 1987. | ....do | Northern Natural Gas Company, Division of Enron Corporation, McKinney Field, Clark County, Kansas. | [27] | |
| CI87-425-000 (G-10803), B, Apr. 2, 1987. | ....do | Colorado Interstate Gas Company, Adams Ranch Field, Meade County, Kansas. | [20] | |
| CI87-426-000 (CI75-521), B, Apr. 2, 1987. | ....do | Northwest Central Pipeline Corporation, Kanak Field, Reward County, Kansas. | [21] | |
| CI87-427-000 (CI69-864), B, Apr. 2, 1987. | ....do | ANR Pipeline Company, N.W. Avard Field, Woods County, Oklahoma. | [28] | |
| CI87-428-000 (CI75-590), B, Apr. 2, 1987. | ....do | ANR Pipeline Company, Putnam Field, Dewey County, Oklahoma. | [28] | |
| CI87-430-000 (CS68-107), B, Apr. 7, 1987. | Harmon Operating Company, Republic Bank Tower, 325 North St. Paul, Suite 3900. | Natural Gas Pipe Line Company of America, Indian Basin, Eddy County, New Mexico. | [24] | |
| CI87-436-000 (CI79-388), B, Apr. 6, 1987. | Multistate Oil Properties, P.O. Box 2511, Houston, Texas 77001. | Northwest Central Pipeline Corporation, Groendycke Field, Barber County, Kansas. | [26] | |
| CI87-437-000 (CI79-366), B, Apr. 6, 1987. | ....do | ANR Pipeline Company, North Woodward Field, Woodward County, Oklahoma. | [27] | |
| CI87-438-000 (CI79-387), B, Apr. 6, 1987. | ....do | Panhandle Eastern Pipe Line Co., N.W. Avard Field, Woods County, Oklahoma. | [28] | |
| CI87-439-000 (CI79-391), B, Apr. 6, 1987. | ....do | Northern Natural Gas Company, Division of Enron Corporation, Gooch Field, Stevens County, Kansas. | [29] | |

[1] Sun sold its interest in Property No. 882040, Slater Unit, No. 693584, Slater A-1 (ORRI), and No. 814622, Burge Unit to Samson Resources Company.
[2] Sun sold its interest in Property No. 875479, Robbers Cave #1 to Samson Resources Company.
[3] Sun sold its interest in Property No. 818822, Ernest L. Cook to Kaiser Francis Oil Co.
[4] Sun sold its interest in Property No. 762364, Lou Wortham to Anadarko Production Company.
[5] By Assignment of certain dedicated leases to Prentice, Napier & Green, Inc., Tenneco no longer has an interest in the acreage dedicated from its contract dated 4-19-78.
[6] Certain dedicated leases have been plugged and abandoned.
[7] By Assignment of certain dedicated leases to Harold E. Burke, Tenneco no longer has an interest in the acreage dedicated from its contract dated 12-31-65.
[8] By Assignment of certain dedicated leases to Harold E. Burke, Tenneco no longer has an interest in the acreage dedicated from its contract dated 9-1-77.
[9] Phillips Petroleum Company has assigned all its interest to Union Exploration Partners, Ltd. This change in ownership occurred by assignment effective 2-1-87, executed on 2-23-87.
[10] Depletion of economically accessible reserves.
[11] All wells in Call field were plugged by February 1954. There has been no production from the field since that time. Tejas Production would like to market any future gas production from these lands and cannot do so under the current agreement.
[12] By Letter Agreement dated 3-10-87, Applicant and Transco agreed to the sale and purchase of gas from OCS-0442 Well No. JC-17 located on said Block 128.
[13] Purdum Unit well was plugged and abandoned in December, 1975.
[14] Applicant is filing under Agreement dated 12-8-86, which adds new delivery points.
[15] ARCO no longer holds an interest in the acreage and all acreage covered under Rate Schedule No. 510 sold to Petrus Oil Company effective 5-1-86.
[16] Uneconomical.
[17] Expiration of Leases.
[18] All wells on property have been plugges and abandoned. No further development anticipated.
[19] The Huffman Gas Unit and the Slater Gas Unit have been abandoned for several years and have no future potential in the intervals dedicated under the subject contract.
[20] Coastal Energy Trust transferred, assigned and convey unto Cabot Petroleum Corporation the Oil, Gas and Mineral Leases effective 4-1-84.
[21] Acreage assigned to George L. McLeod, Inc:
[22] Amerada Hess Corporation requests authorization to abandon sales of gas from several contracts form interests in various gas purchasing fields, both onshore and offshore, Louisiana, and offshore Texas, to United Gas Pipe Line Company. In addition, Amerada Hess requests a blanket certification of public convenience and necessity, with pre-granted abandonment for the sale for resale in interstate commerce of the gas authorized to be abandoned.
In support of the application Amerada Hess states that the gas is NGPA section 104 Biennium, 104-Post 1974, and 102(d) gas. Since 1983, United has reduced its takes to levels far below annual minimum contractual requirements. The gas was released and the contracts were cancelled by a settlement agreement between the parties effective February 17, 1987. Amerada Hess intends to sell its gas to other purchasers. Such sales will permit previously shut-in gas to be sold and will reduce United's take-or-pay obligations, deliverability surplus, and will lower United's gas acquisition costs.
Amerada Hess requests waiver of the requirement that it file rate schedules, changes in rate schedules, or affidavits to conform to Parts 154 and 271 of Commission's Regulations.
[23] By Assignment effective 1-1-87 ARCO assigned its interest in certain acreage to Samson Resources Company.
[24] By Assignment effective 12-1-86 ARCO assigned its interest in certain acreage to C.L. Morris, Inc.
[25] By Assignment effective 1-1-87 ARCO assigned its interest in certain acreage to Samson Resources Company.
[26] By Assignment of certain dedicated leases to Kaiser-France Oil Company, Tenneco no longer has an interest in the acreage dedicated from its contract dated 10-5-70.
[27] Depleted, all wells plugged and abandoned.
[28] By Assignment of certain dedicated leases to Harold E. Burke, Tenneco no longer has an interest in the acreage dedicated to its contract dated 2-1-66.
[29] By Assignment of certain dedicated leases to Bereseo Properties, Inc., Tenneco no longer has an interest in the acreage dedicated from its contract dated 7-5-62.
[30] By Assignment of certain dedicated leases to Bereseo Properties Inc., Tenneco no longer has an interest in the acreage dedicated from its contract dated 6-1-77.
[31] By Assignment of certain dedicated leases to Bereseo Properties, Inc., Tenneco no longer has an interest in the acreage dedicated from its contract dated 2-13-75.
[32] By Assignment of certain dedicated leases to Harold E. Burke, Tenneco no longer has an interest in the acreage dedicated form its contact dated 2-28-69.
[33] By Assignment of certain dedicated leases to Prentice, Napier & Green, Inc., Tenneco no longer has an interest in the acreage dedicated from its contract dated 3-4-75.
[34] Depleted reserves, all wells plugges and abandoned.
[35] By Assignment effective 12-1-86, Applicant assigned all interests to Citation 1987 Investment Limited Partnership.
[36] By Assignment of certain dedicated leases to Graves Drilling Company, Multistate no longer has an interest in the acreage dedicated from its contract dated 3-10-67.
[37] By Assignment of certain dedicated leases to Harold E. Burke, Multistate no longer has an interest in the acreage dedicated from its contract dated 1-7-75.
[38] By Assignment of certain dedicated leases to Harold E. Burke, Multistate no longer has an interest in the acreage dedicated from its contract dated 7-10-78.
[39] By Assignment of certain dedicated leases to Bereseo Properties Inc., Multistate no longer has an interest in the acreage dedicated from its contract dated 12-27-65.
Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 87-8873 Filed 4-22-87; 8:45 am]

BILLING Code 6717-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 16, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timonthy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB No.: 3060–0236
Title: Section 74.703, Interference
Action: Extension
Respondents: Licensees of low power TV or TV translator stations
Frequency of Response: On occasion
Estimated Annual Burden; 50 Responses; 50 Hours
Needs and Uses: Section 74.703 requires licensees of low power TV or TV translator stations causing interference to other stations to submit a report to the FCC detailing the nature of interference, source of interfering signals, and remedial steps taken to eliminate the interference. This report is to be submitted after operation of the station has resumed. The data is used by FCC staff to determine that the licensee has eliminated all interference caused by operation of their station to other stations.

William J. Tricarico,
*Secretary.*

[FR Doc. 87–9168 Filed 4–22–87; 8:45 am]
BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Thaddeus Bishop et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant | City/state | File No. | MM Docket No. |
|---|---|---|---|
| A. Thaddeus Bishop | Monroe, GA | BPCT–861216KF | 87–82 |
| B. Anne C. Roney and James H. Roney, A General Partnership. | do | BPCT–861216KL | |
| C. New Georgia Broadcasting, Ltd. | do | BPCT–861216KL | |
| D. Walton Television Partners, Inc. | do | BPCT–861216SL | |
| E. Monroe Television, Inc. | do | BPCT–861216SL | |
| F. Vernice Boozer | do | BPCT–861216TL | |
| G. Overview Communications, Ltd. | do | BPCT–861216SL | |
| H. Walton World Communications | do | BPCT–861216IH | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| 1. Site Availability | F,G. |
| 2. Air Hazard | A,B,D,E,F,G,H. |
| 3. Comparative | A,B,C,D,E,F,G,H. |
| 4. Ultimate | A,B,C,D,E,F,G,H. |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of and complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street N.W., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Steward,
*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 87–9170 Filed 4–22–87; 8:45 am]
BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Thaddeus Bishop et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant | City/state | File No. | MM Docket No. |
|---|---|---|---|
| A. Thaddeus Bishop | Kansas City, MO | BPCT–861017KE | 87–81 |
| B. Channel 32 Broadcasting Company | do | BPCT–861215KS | |
| C. Mark L. Wodlinger | do | BPCT–861215KU | |
| D. Mid-Continent Communications, Inc | do | BPCT–8612162K | |
| E. Jay Hawk Broadcasting | do | BPCT–8612163K | |
| F. CMTV, Ltd | do | BPCT–8612164K | |
| G. Victory Media, Inc | do | BPCT–861216K1 | |
| H. Kansas City Skywave, Inc. | do | BPCT–861216K2 | |
| I. MBG Broadcasting Company | do | BPCT–861216K3 | |
| J. T.V. 32, Inc | do | BPCT–861216K4 | |
| K. Channel 32, Inc | do | BPCT–861216K5 | |
| L. Hart and Davis Broadcasting, Inc. | do | BPCT–861216K6 | |
| M. Holt Limited Partnership | do | BPCT–861216K7 | |
| N. Kansas City Television, Ltd | do | BPCT–861216K8 | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| 1. City Coverage—TV | D,K. |
| 2. Air Hazard | A,B,C,D,E,F,G,H,I,J,K,L,M,N. |
| 3. Minimum Separations | A,E |
| 4. Comparative | A,B,C,D,E,F,G,H,I,J,K,L,M,N. |
| 5. Ultimate | A,B,C,D,E,F,G,H,I,J,K,L,M,N. |

3. If there is any non-standardized issue(s) in this proceeding, the full text

of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

| Applicant | City/state | File No. | MM docket No. |
|---|---|---|---|
| A. Vera L. Dunn D | Kingsman, KS | BPH–850708MI | 87–100 |
| B. Michael Scott Morris, et al., d/b/a, King Communications. | do | BPH–850710MI | |
| C. Ronald G. Bliss, d/b/a, Bliss Communications | do | BPH–850710NJ | |
| D. Charles E. Franklin, d/b/a, Franklin Broadcasting. | do | BPH–850712N7 | |
| E. Shara Whitney, d/b/a Small Market Minority Radio. | [illegible] | BPH–850712NB | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| 1. Air Hazard | B,C. |
| 2. Comparative | All. |
| 3. Ultimate | All. |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Wahington DC. The complete test may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc. 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Divison, Mass Media Bureau.*

[FR Doc. 87–9172 Filed 4–22–87; 8:45 am]

[illegible]

**Stephen F. Sewell,**

*Assistant Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 87–9171 Filed 4–22–87; 8:45 am]

[illegible]

## Applications for Consolidated Hearing; Vera L. Dunn et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/state | File No. | MM docket No. |
|---|---|---|---|
| A. Vera L. Dunn D | Kingsman, KS | BPH–850708MI | 87–100 |
| B. Michael Scott Morris, et al., d/b/a, King Communications. | do | BPH–850710MI | |
| C. Ronald G. Bliss, d/b/a, Bliss Communications | do | BPH–850710NJ | |
| D. Charles E. Franklin, d/b/a, Franklin Broadcasting. | do | BPH–850712N7 | |
| E. Shara Whitney, d/b/a Small Market Minority Radio. | [illegible] | BPH–850712NB | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| 1. Air Hazard | B,C. |
| 2. Comparative | All. |
| 3. Ultimate | All. |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Wahington DC. The complete test may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc. 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Divison, Mass Media Bureau.*

[FR Doc. 87–9172 Filed 4–22–87; 8:45 am]

[illegible]

## Applications for Consolidated Hearing; Ronald W. King, et al.

1. The commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City, and State | File No. | MM Docket No. |
|---|---|---|
| A. Ronald W. King, Moundsville, WV. | BPH–851114MA | 87–101 |
| B. Hank Grewe Broadcasting Inc., Moundsville, WV. | BPH–851115MB | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–9173 Filed 4–22–87; 8:45 am]

[illegible]

## Applications for Consolidated Hearing; Lookingglass Prairie Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

| Applicant, City, and State | File No. | MM Docket No. |
|---|---|---|
| A. Lookingglass Prairie Limited Partnership, Hightenc. [illegible] | BP–850118AA | 87–99 |
| B. James C. Magee, Wentzville, Missouri. | BP–850826AE | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Environmental Impact, B
2. Air Hazard, B
3. 307(b)—Modification, All applicants
4. Contingent Comparative, All applicants
5. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commisison's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW.,

Washington, DC 20037. (Telephone (202) 857–3800.)

**Larry D. Eads,**

*Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–9174 Filed 4–22–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Charles J. Saltzman et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/state | File No | MM Docket No |
|---|---|---|---|
| A. Charles J. Saltzman | Marseilles, Ill | [illegible] | 87–102 |
| B. Thomas H. Moffit, Sr. | do | BPH–851113MD | |
| C. Livingston County Broadcasters, Inc | do | BPH–851115MA | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| 1. Comparative | A,B,C |
| 2. Ultimate | A,B,C |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–9175 Filed 4–22–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Top of the Hill Broadcasters, A California Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/state | File No | MM Docket No |
|---|---|---|---|
| A. "Top of the Hill" Broadcasters, A California Limited Partnership | George, California | BPH–860203OR | 87–84 |
| B. Broadcasting, By George, A Limited Partnership | do | BPH–860203OX | |
| C. Crown Broadcasting Service | do | BPH–860203OY | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| 1. Comparative | A,B,C |
| 2. Ultimate | A,B,C |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–9176 Filed 4–22–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Word of Life Ministries, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant | City/state | File No. | MM docket No. |
|---|---|---|---|
| A. Word of Life Ministries, Inc | Shreveport, Louisiana | BPCT-861029KY | 87-87 |
| B. Wesley Godfrey | do | BPCT-861216IB | |
| C. Shreveport Community Televi- | do | BPCT-861216IC | |
| D. Rockne Broadcasting, Ltd | do | BPCT-861216ID | |
| E. Media Communications, Inc | do | BPCT-861216IE | |
| F. G&D Communications, Inc | do | BPCT-8612169L | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| Multiple Ownership | B |
| Short-Spacing | E |
| Air Hazard | A, C, F |
| Comparative | A, B, C, D, E, F |
| Ultimate | A, B, C, D, E, F |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

**Stephen F. Sewell,**

*Assistant Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 87-9177 Filed 4-22-87; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; William Zawila et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/state | File No. | MM docket No. |
|---|---|---|---|
| A. William Zawila | Coalinga, California | BPH-850709MT | 87-85 |
| B. Harris Farms, Inc., d/b/a Harris Ranch Restaurant | do | BPH-850711MD | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue heading | Applicant(s) |
|---|---|
| 1. Comparative | A,B |
| 2. Ultimate | A,B |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87-9178 Filed 4-22-87; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Inquiry Into Laws, Regulations and Policies of Taiwan, the Republic of Korea, and the People's Republic of China Affecting Shipping in the United States/Far East Trades

April 20, 1987.

The Federal Maritime Commission is directed and authorized by section 19(1)(b) of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C app. 876(1)(b), to act to adjust or meet conditions unfavorable to shipping in the foreign trade which arise out of or result from the enactments and policies promulgated by the Governments of our trading partners. In a number of countries and areas of the world, commercial shipping entities appear to be subjected to a variety of laws, decrees, regulations and policies which unfairly restrict or impede the operations of the ocean common carriers, including U.S.-flag carriers, which serve the United States foreign trades, and the U.S. importers and exporters who depend upon their services. These restrictions or impediments may frequently result from enactment and administrative interpretations and actions dealing with subjects as diverse as business taxation, regulation of inland roads and traffic, and regulation of the services and facilities ancillary to the provision of international shipping services. The Commission is determined that restrictive practices of these governments, which unfairly burden shipping operations in the U.S. trades based upon registration or ownership in countries other than their own, not escape Commission scrutiny merely because their operational effects occur outside the United States.

An intergovernmental Maritime Agreement between the United States and the People's Republic of China (PRC) expired in 1983. Talks between the concerned Ministries and Departments of each Government have occurred before and since the expiration of that Agreement. In spite of U.S. diplomatic efforts in these talks, it appears that no appreciable gains in access of U.S.-flag carriers to cargo or progress on issues relating to the operating rights of these carriers in the PRC have been made. To the contrary, U.S. carriers appear to have lost ground in their attempts to gain fair and equal access to this trade.

In the U.S. trade with Taiwan, restrictions on the operations of non-Taiwan nationals and companies in Taiwan have prevented non-Taiwan ocean carriers from engaging in a broad spectrum of activities in the provision of intermodal maritime service. We note, however, that the most recent talks held in Washington, DC on April 6 and 7, appear to have yielded encouraging results on some of these issues.

The Commission also notes, with disappointment, the lack of progress resulting from recent trade negotiations and discussions between representatives of the U.S. Government and the Government of the Republic of Korea with respect to these types of impediments.

In each of these countries, the Commission is particularly concerned by indications that U.S.-flag, and possibly other ocean carriers, are prevented by numerous laws, decrees, and regulations promulgated by the respective governing authorities of these countries, as well as policies or interpretations by administrative authorities, from enjoying full operating rights or establishing, owning or operating ancillary maritime activities in the manner they believe to be most efficient for their international shipping operations in the respective trades between the United States and the People's Republic of China, Taiwan, and Korean ("the Trades"). These restrictions appear to be without parallel for these countries' national flag carriers' operations in the United States.

In order to assess the degree to which such laws, decrees, regulations and administrative interpretrations may exist and their effects on liner operations in the Trades, prior to initiating any evaluation of whether such enactments result in conditions unfavorable to shipping within the meaning of section 19, the Commission requires certain information. To this end, pursuant to section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714, the Commission has directed the ocean common carriers currently operating in the Trade to submit information and documents concerning the effects of various laws and regulations promulgated by the governing authorities of these countries, as well as the policies and interpretations of their administrative entities, on the operations of the carriers in the Trade.

In addition, the Commission will at the same time seek information from the U.S. Departments of State and Transportation concerning recent discussions held between various officials of those Departments and officials of the Republic of Korea's Ministries, including the Ministries of Finance and Transportation, and the People's Republic of China, and discussions between representatives of the American Institute in Taiwan and the Taiwan Coordination Council for North American Affairs.

By this Notice, the Commission invites all other interested parties to file information, views and comments with respect to ocean shipping services used in the importation or exportation of goods to or from Taiwan, the Republic of Korea, or the People's Republic of China as a result of the restrictions imposed upon the Trades by the governing authorities in those countries. The Commission also welcomes in these comments any suggestions for actions the Commission might usefully undertake to ameliorate these problems. Any interested party may submit such information, views or comments on or before June 5, 1987, by addressing them to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 in an original and 15 copies.

It is expected that information received from all of these sources will allow for as complete an assessment of the situation in the Trades as possible, enabling the Commission to determine whether the trades between the United States and Taiwan, the Republic of Korea and the People's Republic of China are being subjected to conditions unfavorable to shipping which arise out of or result from laws, decrees, regulations or policies of the respective governing authorities of Taiwan, the Republic of Korea, and the People's Republic of China and, therefore whether actions under section 19 are warranted or required.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-9092 Filed 4-22-87; 8:45 am]

BILLING CODE 6730-01-M

---

## Approval or Disapproval of Special Permission Applications and Acceptance or Rejection of Tariff Filings; Redelegation of Authority

Section 9 of Commission Order 1 (Revised), effective November 12, 1981, delegates specific authority to the Director, Bureau of Domestic Regulation. Section 6.03 of Commission Order 1 provides that such authority may be redelegated to subordinate personnel under the direction of the Director, Bureau of Domestic Regulation.

Section 9.01 of Commission Order 1 delegates the following authority to the Director, Bureau of Domestic Regulation:

9.01 Authority, except as provided in subsection 9.02 of this Order with respect to a controlled carrier subject to the Ocean Shipping Act of 1978 (Pub. L. 95-483), to approve or disapprove Special Permission Applications submitted by domestic offshore carriers or carriers in the foreign commerce of the United States, or conferences of such carriers, for relief from statutory and/or Commission tariff requirements.

Furthermore, section 9.05 of Commission Order 1 delegates the following authority to the Director, Bureau of Domestic Regulation:

9.05 Authority to accept or reject tariff filings of common carriers in the foreign and domestic offshore commerce of the United States or conferences of such carriers for failure to meet the requirements of the statutes or the Commission, for lack of completeness and clarity of the rules and regulations governing the tariffs, or noncompliance with special permission or other orders of the Commission.

By Order published in the **Federal Register** on May 24, 1985 (50 FR 21507) the authority contained in sections 9.01 and 9.05 of Commission Order 1 was delegated respectively to the Chief, Office of Foreign Tariffs and the Chiefs of Divisions I and II within the Office of Foreign Tariffs. The authority so delegated to the Chief, Office of Foreign Tariffs and the Chiefs of Divisions I and II within the Office of Foreign Tariffs is hereby rescinded. This authority is redelegated to the Chief, Office of Carrier Tariff and Service Contract Operations and the Chief, Tariff Control Center as follows:

Pursuant to the provisions of section 6.03 of Commission Order 1, and subject to the limitations contained in sections 6.02, 6.04 and 6.05 of that Order, I hereby delegate the authority contained in sections 9.01 of Commission Order 1 to the Chief, Office of Carrier Tariff and Service Contract Operations, Bureau of Domestic Regulation. I also hereby delegate the authority contained in section 9.05 of Commission Order 1 to the Chief, Office of Carrier Tariff and Service Contract Operations, Bureau of Domestic Regulation, and to the Chief, Tariff Control Center, Bureau of Domestic Regulation.

This delegation of authority is effective immediately.

**Robert G. Drew,**

*Director, Bureau of Domestic Regulation.*

April 17, 1987.

[FR Doc. 87-9093 Filed 4-22-87; 8:45 am]

BILLING CODE 6730-01-M

---

## FEDERAL RESERVE SYSTEM

### Amsterdam Rotterdam Bank N.V.; Acquisition of Company Engaged in Nonbanking Activities

The company listed in this notice has filed an application under 225.23(a)(1)) of the Board's Regulation Y (12 CFR § 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

BEST COPY AVAILABLE

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 1987.

**A. Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary) Washington, DC 20551):

1. *Amsterdam-Rotterdam Bank N.V.*, Amsterdam, The Netherlands; to engage through its proposed subsidiary, Amsterdam Pacific Corporation, San Francisco, California, in the activities of (1) providing feasibility studies to evaluate the financial attractiveness of particular projects for corporations; (2) providing valuation services, and (3) providing portfolio investment advisory services. This application may be inspected at the Federal Reserve Bank of New York. The activities of providing feasibility studies for corporations and providing valuation services have been approved by Board Order as permissible for bank holding companies. *Security Pacific Corporation*, 71 Federal Reserve Bulletin 118 (1985). Providing portfolio investment advisory services is a permissible activity under the Board's Regulation Y. (12 CFR 225.25(b)(4)(iii)).

Board of Governors of the Federal Reserve System, April 17, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-9115 Filed 4-22-87; 8:45 am]

BILLING CODE 6210-01-M

**Change in Bank Control; Lenard C. Briscoe, et al.; Acquisition of Shares of Banks or Bank Holding Companies**

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 8, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lenard C. Briscoe* and Melba Briscoe, Kingfisher, Oklahoma; to acquire 4.45 percent of the voting shares of Kingfisher Bancorp, Inc., Kingfisher, Oklahoma, and thereby indirectly acquire Kingfisher Bank & Trust Company, Kingfisher, Oklahoma.

Board of Governors of the Federal Reserve System, April 17, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-9116 Filed 4-22-87; 8:45 am]

BILLING CODE 6210-01-M

---

**Keycorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The Companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 14, 1987.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Keycorp*, Albany, New York; to acquire 100 percent of the voting shares of First Northwest Bancorporation, Seattle, Washington, and thereby indirectly acquire Northwest Bank, Seattle, Washington, and Cascade Security Bank, Enumclaw, Washington. Comments on this application must be received by May 8, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern National Corporation*, Lumberton, North Carolina; to acquire 99.97 percent of the voting shares of Liberty National Bank, Charleston, South Carolina.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens Corporation*, Columbia, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Columbia, Mississippi.

2. *Magnolia State Capital Corporation*, Magee, Mississippi; to acquire 80 percent of the voting shares of State Bank and Trust Company, Collins, Mississippi.

3. *Peoples Bancshares, Inc.*, Clanton, Alabama; to become a bank holding company by acquiring 71.65 percent of the voting shares of The Peoples Savings Bank, Clanton, Alabama. Comments on this application must be received by May 13, 1987.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lemont Bancorp, Inc.*, Lemont, Illinois; to become a bank holding company by acquiring 51 percent of the voting shares of The Lemont National Bank, Lemont, Illinois. Comments on this application must be received by May 11, 1987.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President)

925 Grand Avenue, Kansas City, Missouri 64198:

1. *TCB Investments, Inc.*, Kansas City, Missouri, (formerly Kansas City Bancshares, Inc.) to acquire 84.2 percent of the voting shares or Tri-County Bancshares, Inc., El Dorado Springs, Missouri, and thereby indirectly acquire Tri-County State Bank of El Dorado Springs, El Dorado Springs, Missouri; Lowry City Bank, Lowry City, Missouri; and Osceola Bank, Osceola, Missouri.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *CCB Financial Corporation*, Sandy, Oregon; to become a bank holding company by acquiring 80 percent of the voting shares of Clackamas County Bank, Sandy, Oregon.

Board of Governors of the Federal Reserve System, April 17, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-9117 Filed 4-22-87; 8:45 am]

BILLING CODE 6210-01-M

## Federal Open Market Committee; Domestic Policy Directive of February 10-11, 1987

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on February 10-11, 1987.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests on balance that economic activity continues to grow at a moderate pace. Total nonfarm payroll employment grew sharply in January in part reflecting unusual seasonal developments. The civilian unemployment rate remained at 6.7 percent in January. Industrial production increased considerably in December and over the fourth quarter as a whole. Total retail sales rose substantially in December, largely reflecting a year-end surge in automobile sales, but were little changed on balance in the fourth quarter. Housing starts also strengthened in December after trending lower since late spring. Business capital spending generally appears to have remained sluggish. Available data for the U.S. merchandise trade deficit in the fourth quarter suggest a slight increase from the third quarter; however, after allowing for price changes, net exports of goods and services improved somewhat during the quarter. In late 1986 consumer and producer prices generally were continuing to rise at moderate rates, although prices of crude oil and some other industrial commodities firmed. Labor cost increases were more restrained in 1986 than in other recent years.

Growth of M2 and M3 picked up substantially in December before slowing a little in January. For 1986 as a whole, expansion of these two aggregates was near the upper end of their respective ranges established by the Committee for the year. Growth of M1 slowed in January from an exceptionally rapid pace in late 1986. Expansion in total domestic nonfinancial debt remained appreciably above the Committee's monitoring range for 1986. Although short-term interest rates generally firmed around year-end, on balance interest rates have shown small mixed changes since the December 15-16 meeting of the Committee; rates on Treasury securities, including bonds, have risen a little over the period while rates on most private obligations have declined slightly. In foreign exchange markets the trade-weighted value of the dollar against the other G-10 currencies has declined substantially on balance since the December meeting.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee established growth ranges of 5½ to 8½ percent for both M2 and M3, measured from the fourth quarter of 1986 to the fourth quarter of 1987. The associated range for growth in total domestic nonfinancial debt was set at 8 to 11 percent for 1987.

With respect to M1, the Committee recognzied that, based on experience, the behavior of that aggregate must be judged in the light of other evidence relating to economic activity and prices; fluctuations in M1 have become much more sensitive in recent years to changes in interest rates, among other factors. During 1987, the Committee anticipates that growth in M1 should slow. However, in the light of its sensitivity to a variety of influences, the Committee decided not to establish a precise target for its growth over the year as a whole at this time. Instead, the appropriateness of changes in M1 during the course of the year will be evaluated in the light of the behavior of its velocity, developments in the economy and financial markets, and the nature of emerging price pressures.

In that connection, the Committee believes that, particularly in the light of the extraordinary expansion of this aggregate in recent years, much slower monetary growth would be appropriate in the context of continuing economic expansion accompanied by signs of intensifying price pressures, perhaps related to significant weakness of the dollar in exchange markets, and relatively strong growth in the broad monetary aggregates. Conversely, continuing sizable increases in M1 could be accommodated in circumstances characterized by sluggish business activity, maintenance of progress toward underlying price stability, and progress toward international equilibrium. As this implies, the Committee in reaching operational decisions during the year, might target appropriate growth in M1 from time to time in the light of circumstances then prevailing, including the rate of growth of the broader aggregates.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. This action is expected to be consistent with growth in M2 and M3 over the period from January through March at annual rates of about 6 to 7 percent. Growth in M1 is expected to slow sustantially from the high rate of earlier months. Somewhat greater reserve restraint would, or slightly lesser reserve restraint might, be acceptable depending on the behavior of the aggregates, taking into account the strength of the business expansion, developments in foreign exchange markets, progress against inflation, and conditions in domestic and international credit markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, April 16, 1987.

**Normand Bernard,**

*Assistant Secretary, Federal Open Market Committee.*

[FR Doc. 87-9113 Filed 4-22-87; 8:45 am]

BILLING CODE 6210-01-M

[1] Copies of the Record of policy actions of the Committee for the meeting of February 10-11, 1987, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

## The Bank of New York Co., Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to engage *de novo* through its subsidiaries, Capital Trust Company, Albany, New York, and Eastern Trust Company, Albany, New York, in performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature) pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 17, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-9114 Filed 4-22-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Cooperative Agreement for United States Conference of Mayors Sponsored AIDS Information Exchange and Support of Community-Based AIDS Education Programs; Availability of Funds for FY 1987

**Introduction**

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1987 to continue a cooperative agreement with the United States Conference of Mayors (USCM) for the purpose of maintaining a program of AIDS information exchange between mayors and other local government officials and for the support of community-based AIDS education programs. This is not a formal request for applications. Assistance will be provided only to the Conference of Mayors for the continued support of this project. No other applications are solicited or will be accepted.

**Authority**

This cooperative agreement is authorized under section 301(a) of the Public Health Services Act (42 U.S.C. 241(a)) as amended. The catalog of Federal Domestic Assistance Number is 13.283.

**Background**

Since April 1984, the USCM has conducted a program to ensure that relevant and current information concerning local roles, policies, and activities in response to AIDS is rapidly disseminated to its constituent members. Through a variety of methods, including newsletters and handbooks, the USCM has provided AIDS-related information to physicians, social service agencies, educational institutions, and other community and local health officials.

The USCM provides representation for city and local officials, including social services, education, and other community officals and organizations, in approximately 860 cities with populations of more than 30,000, and through its affiliate, the U.S. Conference of Local Health Officials, provides representation for approximately 2,000 additional officials. The USCM as created specifically to represent this wide variety of local organizations and community officials to the Federal government and other national organizations and is unique in its role as a liaison between these officials. It has served as a policy development and capacity building organization in inter-governmental affairs for more than 50 years and has, as one of its major objectives, the sharing of information between local governments. No other organization has the unique role and established rapport with this wide variety of local representation to effectively carry out the activities entailed in this cooperative argreement.

**Availability of Funds**

Approximately $300,000 will be available in Fiscal Year 1987 to fund this cooperative agreement. It is expected that the cooperative agreement will begin on or about May 1, 1987, and, depending upon the availability of funds, will be funded in 12-month budget periods withing a 3-year project period.

Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

**Information**

Information may be obtained from Nancy Bridger, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Diseases Control, 255 E. Paces Ferry Road NE., Room 321, Atlanta, GA 30305, telephone (404) 262-6575, or from Gary R. West, Project Officer, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, telephone (404) 329-2550 or FTS 236-2550.

Dated: April 17, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87-9145 Filed 4-22-87; 8:45 am]

BILLING CODE 4160-18-M

### Cooperative Agreement To Enhance the Preparation of Public Health and Primary Care Physicians in the Areas of Disease Prevention and Health Promotion; Availability of Funds for FY 1987

The Centers for Disease Control announces the availability of funds in Fiscal Year 1987 for a cooperative agreement with the Association of Teachers of Preventive Medicine to improve the development and preparation of public health and primary care physicians in the areas of diease prevention and health promotion and to enhance their contribution to public health practice. The Catalog of Federal Domestic Assistance number is 13.283.

**Program Objectives**

Long-term objectives of the agreement are:

1. To assist the Association of Teachers of Preventive Medicine in providing leadership and direction to its membership in the areas of disease prevention and health promotion. For example, ATPM will:

- Further communications in this area among members, including publication of current scientific information in *Perspectives on Prevention*, and
- Pursue projects to assess and improve disease prevention/health promotion teaching and/or practice among its members.

2. To provide a mechanism for CDC to exchange current prevention technology with medical schools and their departments of preventive medicine. For example, ATPM will pursue projects designed to establish field experience opportunities in State and local health agencies.

**Authority**

This Program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

**Eligibility Requirements**

Assistance will be provided only to the Association of Teachers of Preventive Medicine for this project.

**Justification**

The Association of Teachers of Preventive Medicine is a professional organization of individuals and institutions that teach or have a professional interest in preventive medicine and community health. Its membership of approximately 700 includes teachers, researchers, practitioners, administrators, and students from schools of medicine and public health, as well as from health agencies. The diversity of its membership, and particularly its outreach beyond the traditional public health structure, places ATPM in a unique position to assist those groups to become productively involved in the national disease prevention/health promotion effort. ATPM is the only organization that has a comprehensive data base related to teaching and other activities of all medical school departments of preventive medicine. In addition, ATPM has developed an inventory of essential skills and knowledge that all undergraduate medical students should have in the areas of disease prevention and health promotion. ATPM, therefore, is in a unique position to assess current disease prevention/health promotion instruction for medical students and to influence the development of more relevant information when necessary.

**Availability of Funds**

It is expected that up to $200,000 will be available during Fiscal Year 1987 to support this project. It is anticipated that the cooperative agreement will be funded initially for a 12-month budget period. Continuation awards within the 5-year project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate is subject to change.

**Reviews**

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Information**

Information on this program may be obtained from Luther DeWeese, Grants Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30333, Telephone (404) 262-6575.

Technical information may be obtained from: Charles F. Bacon, Cooperative Agreements Coordinator, Training and Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 329-1931.

Dated: April 17, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87-9144 Filed 4-22-87; 8:45 am]

BILLING CODE 4160-18-M

---

## Health Care Financing Administration

### Privacy Act of 1974; Revision of Notice of System of Records

**AGENCY:** Health Care Financing Administration, HHS.

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Health Care Financing Administration (HCFA) proposes to revise a notice describing records maintained by the Office of Prepaid Health Care (formerly maintained by the Bureau of Program Operations). All changes being published are editorial in nature, and reflect organizational changes and other administrative revisions which have occured since the publication of the material in the **Federal Register** on November 7, 1985 (50 FR 46352). In addition, we are incorporating the changes that were approved and published in the **Federal Register** on September 18, 1986 (51 FR 33134). These include a new contractor routine use and the revised routine use for litigation prescribed by the Office of Management and Budget.

Please note that when this system was published in 1985, the preamble explained that Health Maintenance Organizations (HMO) could have access to the records through a *contractor* but only on a case by case basis, and only when the HMO has a claim for Medicare reimbursement signed by the beneficiary. When the routine use was added to the system, the word "contractor" was inadvertently omitted from the language. It has been restored below.

In addition, when HCFA updated all of its systems of records in September 1986, and added a new contractor routine use to all systems, it inadvertently replaced an existing contractor routine use. However, the one that was deleted was specifically to provide a contractor with a magnetic tape copy of the Group Health Plan file each month in order to build an on-line data base file. It included provisions for the contractor not to publish or otherwise disclose data in a form in which beneficiaries could be identifed except to plans, providers, suppliers, carriers and intermediaries as authorized by HCFA. Therefore, we are adding this routine use (previously approved) back to the system as routine use No. 6.

Since these changes do not involve any new or intended use of the information in the system of reocrds, the notice shall be effective April 23, 1987. The revised notice, published in its entirety below, is titled "Group Health Plan System," HHS/HCFA/OPHC, System No. 09-70-0506.

Dated: April 16, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

09-70-0506

**SYSTEM NAME:**

Group Health Plan System HHS, HCFA, *OPHC.*

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Health Care Financing Administration, Office of Systems Operations, OS, SSA, 6401 Security Boulevard, Baltimore, Maryland 21235.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Recipients of Part A (Hospital Insurance) and Part B (supplementary medical) Medicare services *enrolled in a group health plan.*

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains information about a beneficiary's health insurance entitlement and supplementary medical benefits usage.

Contact System Manager for location of Contractor(s).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 1833(a)(1)(A), 1866 and 1876 of Title XVIII of the Social Security Act (42 U.S.C. 1395(a)(1)(A), 1395cc, and 1395mm).

**PURPOSE(S):**

To maintain a master file of Group Health Plan members for accounting control; to expedite the exchange of data with the Group Health Plans; and to control the posting of pro-rata

amounts to the Part B deductible of currently enrolled Group Health Plan members.

Group Health Plan include the following: Health Maintenance Organizations (HMO), Competitive Medical Plans (CMP), and Health Care Prepayment Plans (HCPP).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made: (1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. (2) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) Any HHS employee in his or her official capacity; or (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case; HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(3) To an individual or organizations for a research evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose; for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destory the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of a willingness to abide by the provisions.

(4) To providers and suppliers of services directly or dealing through contractors, fiscal intermediaries or carriers for administration of Title XVIII. Providers and suppliers:

a. Will have access only through a CRT terminal.

b. Will have access to only one record at a time.

c. Must enter both beneficiary name and Health Insurance Claim Number to access a record.

d. Must have a claim for services for the beneficiary.

e. Must enter a password in order to get access to the file.

5. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

6. To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. The contractor must agree:

a. Not to publish or otherwise disclose data in a form in which beneficiaries could be identified (except to plans. providers, supliers, carriers, and intermediaries as authorized by HCFA), and,

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tape and microfilm.

**RETRIEVABILITY:**

The system is indexed by health insurance claim number.

**SAFEGUARDS:**

Only authorized personnel have direct access to information in the Group Health Plan systems. In addition, Groups Health Plan personnel are advised that information is confidential.

Offices containing records are locked when not in use. Computer terminals are in secured areas. All buildings are locked at night.

Employees who maintain records in this system are instructed to grant access only to authorized users. Data stored in computers are accessed through the use of passwords/ keywords/numbers known only to the authorized personnel. These passwords are changed as needed. Contractor(s) who maintain records in this system are instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer and contract officer oversee compliance with these requirements.

The particular safeguards implemented are developed in accordance with Part 6, "ADP Systems Security," of the HHS ADP Systems Manual and the National Bureau of Standards Federal Information Process Standards.

**RETENTION AND DISPOSAL:**

Health insurance materials used to support the accuracy of the charge per service billed by the plan are retained for 3 years, then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Health Care Financing Administration, Director, Office of

Prepaid Health Care, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

Inquires and requests for system records should be addressed to the system manager named above and directed to the attention of the Office of Financial Management. The individuals should furnish his or her health insurance claim number as shown on social security records.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).))

CONTESTING RECORD PROCEDURES:

Contact the offical at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained from the group health plans (which obtained the data from the individual concerned, and the Health Insurance Master record.)

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-9095 Filed 4-22-87; 8:45 am]

BILLING CODE 4120-03-M

## DEPARTMENT OF THE INTERIOR

### Office of Small and Disadvantaged Business Utilization (OSDBU); Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department's clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

*Title:* Minority Business Enterprise Utilization Report No. 1084-0020.

*Abstract:* Minority Business Enterprise Utilization Report will be collected from approximately 207 recipients of DOI grants and cooperative agreements. DOI uses the data to comply with statutory requirements, to develop plans/goals for this program, and to monitor performance to ensure that recipients award a "far share" of subcontracts to minority business enterprises.

*Department Form Number:* DI-1925.

*Frequency:* Quarterly reporting will be required.

*Description of Respondents:* State/local governments and businesses receiving Federal grants and cooperative agreements.

*Annual Responses:* 12,828.

*Annual Burden Hours:* 2.

*Department Clearance Officer:* John Strylowski, 202-343-6191.

**Charlotte Brooks Spann,**

*Director, Office of Small and Disadvantaged Business Utilization.*

[FR Doc. 87-9108 Filed 4-22-87; 8:45 am]

BILLING CODE 4310-RE-M

## Bureau of Land Management

[ID-020-07-4410-08]

### Designation of Areas of Critical Environmental Concern; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to designate areas of critical environmental concern.

**SUMMARY:** Notice is hereby given in accordance with 43 CFR § 1610.2(c) that the Burley District is proposing to amend the Cassia Resource Management Plan, the Malad Management Frame Work Plan and the Twin Falls Management Frame Work Plan to allow designation of described public lands as Resource Natural Areas (RNA)/Areas of Critical Environmental Concern (ACEC).

RNA/ACEC Proposal No. 1, Jim Sage

Parts of sections 14, 15, 10, and 11, T.15S., R.25E., Boise Meridian, Idaho, 620 acres (public land).

The general location of this land is 12 miles south of Elba, Idaho, and 7 miles east of Almo, Idaho.

RNA/ACEC Proposal No. 2, Goose Creek Mesa

Part of section 17, T.16S., R.21E., Boise Meridian, Idaho.

The general location of this land is 14 miles south of Oakley, Idaho, and 15 miles southwest of City of Rocks, Idaho, 110 acres (public land).

RNA/ACEC Proposal No. 3, City of Rocks

Part of sections 19 and 30, T.15S., R.24E., Boise Meridian, Idaho.

The general location of the area is 4 miles west of Almo, Idaho, and 14 miles southeast of Oakley, Idaho, 240 acres (public lands).

RNA/ACEC Proposal No. 4, Big Juniper

T.6S., R.27E., section 36, E½, Boise Meridian, Idaho.

The general location of the area is within the Wapi Lava Flow approximately 15 miles northeast of Minidoka, Idaho, 320 acres (public land).

RNA/ACEC Proposal No. 5, Sand Kipuka

Parts of sections 11 and 14, T.8S., R.27E., Boise Meridian, Idaho.

The general location of the area is 12 miles northeast of Minidoka, Idaho, within the Wapi Lava Flow, 320 acres (public land).

RNA/ACEC Proposal No. 6, Salyer Spring

Parts of sections 14 and 15, T.14S., R.31E., Boise Meridian, Idaho.

The general location of the area is about 10 miles northwest of Holbrook, Idaho on the east slope of the Sublett Range, 190 acres (public land).

ACEC Proposal No. 7, Granite Pass

Parts of sections 30, 31, 32, and 33, T.16S., R.22E., Boise Meridian, Idaho.

The general location of the area is 16 miles south of Oakley, Idaho, and 11 miles southwest of City of Rocks, Idaho, 258 acres (public land).

ACEC Proposal No. 8, Oregon-California Trail Junction

Parts of sections 10, 11, 12, 17, and 18, T.10S., R.27E., and parts of Sections 13 and 14, T.10S., R.26E., Boise Meridian, Idaho.

The general location of the area is 20 miles east of Burley, Idaho, and 22 miles west of American Falls, Idaho, 646 acres (public land).

ACEC Proposal No. 9, Playas

Parts of sections 31 and 32, T.14S., R.15E., Boise Meridian, Idaho.

The general location is 30 miles south of Buhl, Idaho, and 8 miles southwest of Rogerson, Idaho, 60 acres (public land).

ACEC Proposal No. 10, VanKoman Homestead and Old Juniper Townsite

Parts of section 6, T.16S., R.30E., and parts of Section 4, T.15S., R.30E., Boise Meridian, Idaho.

The general area is 6 miles south of Juniper, Idaho, and 15 miles northwest of Stone, Idaho, 5 acres (public land).

ACEC Proposal No. 11, Baker Cave

Parts of section 9, T.8S., R.27E., Boise Meridian, Idaho.

The general location is 10 miles east of Minidoka, Idaho within the Wapi Lava Flow, 40 acres (public land).

A land use plan amendment and environmental assessment document will be prepared for the subject lands. The documents will be reviewed by BLM interdisciplinary resource specialists. Public participation will involve the publication of this notice in the Federal Register and local newspapers. The adjoining land owners, grazing permittees, County Commissioners, the Burley District Grazing Advisory Board, the Burley District Advisory Council, and the Idaho Fish and Game Department will be asked for comments. As public controversy is anticipated to be low for the proposed action, no public meetings, hearings, or conferences are planned.

The issue that is anticipated for RNA/ACEC proposals 1 through 6 is whether it is in the public interest to designate 1800 acres of public land as RNA/ACECs for the protection and study of relicit vegetation sites.

The issue that is anticipated for ACEC proposals 7, 8, 10 and 11 is whether it is in the public interest to designate 940 acres of land as ACECs for the protection of cultural resources.

The issue that is anticipated for the ACEC proposal No. 9 is whether it is in the public interest to designate 60 acres of public land as an ACEC for the protection of candidate rare and endangered plant species.

The existing land use plan and maps are available for review at the Burley District Office, Burley, Idaho.

The public may obtain additional information about these RNA/ACEC proposals by contacting Bureau of Land Management, Attn: Terry Costello, Route 3, Box 1, Burley, ID 83318, (208) 678–5514 or Bureau of Land Management, Attn: John Christensen, 138 S. Main, Malad City, ID 83252, (208) 766–4766.

Dated: April 17, 1987.

**John S. Davis,**

*District Manager.*

[FR Doc. 87–9183 Filed 4–22–87; 8:45 am]

BILLING CODE 4310–DQ–M

## Phoenix District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the Phoenix District Advisory Council.

**DATE:** May 20–21, 8 a.m.

**ADDRESS:** 2475 Beverly Avenue, Kingman, Arizona, BLM Conference room.

**SUMMARY:** The Phoenix District Advisory Council of the Bureau of Land Management meets May 20 and 21. The first day will be devoted to a field trip to the Bureau's Kingman Resource Area in Mohave County. The Council will depart depart from the Phoenix District office, 2015 W. Deer Valley Road, Phoenix, at 8 a.m. on May 20. Members of the public may accompany the Council, but must provide their own transportation, lodging and meals. A formal meeting will be held on the second day at the BLM Kingman office.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

Land Exchanges
Wilderness Environmental Impact Statements
Wild Horse and Burro Program
Recreation Management Program
BLM Management Updates
Business from the Floor
Public Comments and Statements
Future Meetings and Agenda Topics

**SUPPLEMENTARY INFORMATION:** This is a public meeting and the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters are welcomed.

**Henri R. Bisson,**

*District Manager.*

[FR Doc. 87–9184 Filed 4–22–87; 8:45 am]

BILLING CODE 4310–32–M

[WY–040–07–4133–15]

## Rock Springs District Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the Rock Springs District Advisory Council.

**DATE:** The meeting will be held May 27, 1987, at 9 a.m.

**ADDRESS:** Pinedale Resource Area Office, Bureau of Land Management, Pinedale, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

**SUPPLEMENTARY INFORMATION:** The meeting will begin at 9 a.m., Wednesday, May 27, in the Pinedale Resource Area Office Conference Room. If the public turnout is too large for the facilities available at the Resource Area office, the meeting will be moved to the Sublette County Library in Pinedale.

Agenda:

Draft Pinedale Resource Management Plan
Update on District Programs
Public Comment Period
Arrangements for the Next Meeting

**Donald H. Sweep,**

*District Manager.*

April 13, 1987.

[FR Doc. 87–9185 Filed 4–22–87; 8:45 am]

BILLING CODE 4310–22–M

[ES–030–07–4212–11; ES–00157–008]

## Realty Action; Recreation and Public Purposes Classification—Land Classification for Recreation and Public Purposes, Michigan

**SUMMARY:** The following described parcels have been classified as suitable for disposal to the State of Michigan by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (43 U.S.C. 869):

Michigan Meridian, Michigan

1. ES–36835

T.44N., R.31W.,
Sec. 23, Lots 8 and 11, Iron County, Total of 111.40 acres;
T.26N., R.6W.,
Sec. 36, S½ SE ¼, Kalkaska County, total of 80.00 acres;
T.21N., R.1W.,
Sec. 4, Lots 1, 2, 3, and 4, Roscommon County, total of 169.01 acres;
T.24N., R.1W.,
Sec. 12, SW¼ NE¼, Roscommon County, total of 40.00 acres;
T.47N., R.13W.,
Sec. 18, Lot 3, Schoolcraft County, total of 35.74 acres;
T.32N., R.4E.,
Sec. 29, Lot 6; Sec. 32, Lot 10; Montmorency County, total of 0.30 acres.

2. ES–36836
T.41N., R.7E.,
Sec. 18, Tract 40, Chippewa County, total of 0.01 acres;
T.41N., R.7E.,
Sec. 28, Tract 39, Chippewa County, total of 0.75 acres;
T.41N., R.1E.,
Sec. 3, Tract 37, Mackinac County, total of 1.10 acres;
T.41N., R.2E.,
Sec. 1, Tract 37, Mackinac County, total of 0.01 acres;
T.42N., R.1W.,
Sec. 28, Tract 40, Mackinac County, total of 0.02 acres.

3. ES–36837
All are Chippewa County.
T.44N., R.2E.,
Sec. 28, Tract 37, total of 0.30 acres;
T.44N., R.2E.,
Sec. 31, Tract 38, total of 0.08 acres;
T.45N., R.2E.,
Sec. 12, Tracts 37 and 38, total of 0.40 acres;
T.47N., R.2E.,
Sec. 33, Tract 37, total of 1.36 acres;
T.41N., R.3E.,
Sec. 7, Tract 37, total of 0.27 acres;
T.41N., R.3E.,
Sec. 9, Tract 38, total of 0.72 acres;
T.41N., R.3E.,
Sec. 10, Tract 39, total of 0.04 acres.

4. ES–36838
All are Chippewa County.
T.43N., R.3E.,
Sec. 21, Tract 37, total of 1.45 acres;
T.44N., R.3E.,
Sec. 17, Tract 37, total of 0.06 acres;
T.44N., R.3E.,
Sec. 31, Tract 38, total of 0.01 acres;
T.42N., R.4E.,
Sec. 14, Tract 37, total of 0.87 acres;
T.42N., R.4E.,
Sec. 16, Lot 3, total of 0.01 acres.

5. ES–36839
All are Chippewa County.
T.42N., R.3E.,
Secs. 25 and 36, Tracts 37 and 38, total of 0.88 acres;
T.41N., R.5E.,
Sec. 15, Tract 41, total of 0.04 acres;
T.41N., R.5E.,
Sec. 15, Tract 42, total of 0.01 acres;
T.41N., R.7E.,
Sec. 17, Tract 37, total of 0.42 acres;
T.41N., R.7E.,
Sec. 21, Tract 38, total of 1.10 acres.

6. ES–36840
All are Chippewa County.
T.41N., R.4E.,
Sec. 1, Tract 42, total of 0.12 acres;
T.41N., R.4E.,
Sec. 8, Tract 37, total of 2.04 acres;
T.41N., R.4E.,
Sec. 8, Tract 38, total of 0.61 acres;
T.41N., R.4E.,
Sec. 9, Tract 40, total of 0.41 acres;
T.41N., R.4E.,
Sec. 9, Tract 41, total of 1.62 acres;
T.41N., R.5E.,
Sec. 7, Tract 37, total of 0.12 acres;

7. ES–36841
All are Chippewa County.
T.43N., R.5E.,
Sec. 25, Tract 39, total of 1.23 acres;
T.43N., R.5E.,
Sec. 29, Tract 37, total of 0.62 acres;
T.43N., R.5E.,
Sec. 34, Tracts 40 and 41, total of 0.36 acres;
T.43N., R.5E.,
Sec. 36, Tract 38, total of 0.17 acres;
T.41N., R.6E.,
Sec. 20, Tract 38, total of 2.50 acres;
T.41N., R.6E.,
Sec. 24, Tract 37, total of 0.08 acres;

8. ES–36842
All are Chippewa County.
T.41N., R.5E.,
Sec. 14, Tract 40, total of 1.55 acres;
T.41N., R.5E.,
Sec. 14, Tract 39, total of 0.28 acres;
T.42N., R.5E.,
Sec. 14, Tract 40, total of 0.53 acres;
T.42N., R.5E.,
Sec. 27, Tract 37, total of 1.66 acres;
T.42N., R.5E.,
Sec. 28, Tract 39, total of 0.99 acres;
T.42N., R.5E.,
Sec. 14, Tract 38, total of 0.61 acres;

9. ES–36843
T.4S., R.6W.,
Sec. 3, Lots 1 and 2, Calhoun County, total of 2.83 acres;
T.4S., R.2E.,
Sec. 36, Lot 7, Jackson County, total of 1.55 acres.

The purpose of the conveyance is preservation for wildlife management or public recreation.

Any patent issued under this notice shall be subject to the provisions in 43 CFR § 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

Classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen(18) months from the date of this Notice, or upon publication of a notice of termination.

*Comments:* For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, or by calling Duane Marti at (414) 291–4429.

**Leon R. Kabat,**

*Acting District Manager.*

[FR Doc. 87–9187 Filed 4–22–87; 8:45 am]

BILLING CODE [illegible]

[OR–050–4212–11:GP 7–171; OR–40119]

## Realty Action; Recreation and Public Purposes Classification and Lease of Public Lands in Klamath County, OR

**AGENCY:** Bureau of Land Management, Interior.

The following described lands have been examined and found to be suitable for lease under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 Et. seq.).

T. 23 S., R. 10 E., W.M. Klamath County, Oregon
Section 3: SE¼SE¼ that portion lying north of Beal Rd, and extending 1,044 feet west of the section line.

The described lands comprise about 20 acres and are being offered by lease to the LaPine Rodeo Association, a non-profit corporation, to allow development enthusiasts.

This Decision/Notice is based on the following:

(1) The land is unappropriated, and found to be valuable for public purposes.

(2) The land is not of national dignificance and not essential to any Bureau of Land Management program.

(3) The proposed use conforms with BLM and local land use planning.

(4) The proposed action will not have significant or controversial environmental effects.

(5) The proposal has broad support from the local community. It would increase recreational opportunities, and could enhance tourism for the area.

The classification and granting of a lease will not be adverse to any known public or private interests. The lease will be subject to the following terms and conditions:

(1) The lease term would be ten years subject to renewal upon request by the applicant. Any changes to the Plan of Development requires prior approval by the Prineville District Manager, BLM.

(2) All development is considered temporary. A proposal to establish permanent structures on the site would require prior approval by the Prineville District Manager, BLM.

Classification of the lands for lease to the LaPine Rodeo Association, under the provisions of the above cited authority segregates them from all appropriations, including locations under the mining laws, except as to applications under the Mineral Leasing Laws.

Detailed information concerning this application, including the field reports and environmental assessments, are available for review at the Prineville

District Office, Box 550, Prineville, OR 97754.

Petition for classification OR–40119 is approved as to the land described above.

On or before June 1, 1987, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 550, Prineville, OR 97754. Objections will be reviewed by the State Director who may sustain, vacate or modify the realty action. In the absence of any objections, this realty action will become the Final Determination of this Department.

Dated: April 16, 1987.

**Donald L. Smith,**

*Acting District Manager.*

[FR Doc. 87–9188 Filed 4–22–87; 8:45 am]

BILLING CODE 4310–33–M

---

[CO–942–06–4520–12]

## Colorado; Filing of Plats for Survey

April 14, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., April 14, 1987.

The plat representing the dependent resurvey of a portion of the south, west, and north boundaries and a portion of the subdivisional lines, and the survey of the subdivision of certain section, T. 39 N., R. 11 E., New Mexico Principal Meridian, Colorado, Group No. 791, was accepted April 1, 1987.

This survey was executed to meet certain administrative needs of this Bureau.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines and portions of the subdivision of sections 27 and 28, T. 2 N., R. 2 W., Ute Meridian, Colorado, Group No. 808, was accepted April 3, 1987.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

**Duane E. Olsen,**

*Acting Chief, Cadastral Surveyor for Colorado.*

[FR Doc. 87–9189 Filed 4–22–87; 8:45 am]

BILLING CODE 4310–JB–M

---

[MT–920–07–4520–11]

## Filing of Plat of Survey; Montana

**AGENCY:** Bureau of Land Management, Montana State Office.

**ACTION:** Notice of filing of plat of survey.

**SUMMARY:** Plats of survey of the lands described below accepted March 30, 1987, were officially filed in the Montana State Office effective 10 a.m. on April 7, 1987.

**Black Hills Meridian, South Dakota**

**T. 3 S., R. 4 E.**

The supplemental plat of section 18, Township 3 South, Range 5 East, Black Hills Meridian, South Dakota, showing amended lottings created by cancellation of Dickover placer, Mineral Survey No. 867, Wilson placer, Mineral Survey No. 870 and Towner placer, Mineral Survey No. 871; the segregation of Willow Creek, Lone Mountain No. 1, and Bob Cousins No. 1 lodes, Mineral Survey No. 1353, and Victory lode, Mineral Survey No. 2138; and the segregation of Homestead Entry Surveys Nos. 60, 199, 339, 340, 345, and 475; is based upon the Mineral Survey and Homestead Entry Survey records, the plats approved May 23, 1899, and November 2, 1909, for Township 3 South, Range 5 East, and the plat accepted January 12, 1972, for Township 3 South, Range 4 East, Black Hills Meridian, South Dakota, was accepted March 30, 1987. The area described is in Custer County.

**Black Hills Meridian, South Dakota**

**T. 3 S., R. 4 E.**

The supplemental plat of section 19, Township 3 South, Range 5 East, Black Hills Meridian, South Dakota, showing amended lottings created by cancellation of Mallon placer, Mineral Survey No. 644, Lyndale placer, Mineral Survey No. 868 and Towner placer, Mineral Survey No. 871; the segregation of Mineral Survey Nos. 1353, 2039, and 2138; and the segregation of Homestead Entry Surveys Nos. 60, 199, 339, 421, and 422; is based upon the Mineral Survey and Homestead Entry Survey records, the plats approved May 23, 1899, and November 2, 1909, for Township 3 South, Range 5 East, and the plat accepted January 12, 1972, for Township 3 South, Range 4 East, Black Hills Meridian, South Dakota, was accepted March 30, 1987. The area described is in Custer County.

These plats were prepared at the request of the U.S. Forest Service, Black Hills National Forest, to facilitate a land exchange.

**EFFECTIVE DATE:** April 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: April 15, 1987.

**Ernest L. Kemmis,**

*Acting State Director.*

[FR. Doc. 87–9190 Filed 4–22–87; 8:45 am]

BILLING CODE 4310–DN–M

---

[AZ–943–07–4920–10–7133; A–9973]

## Legal Description of Barry M. Goldwater Air Force Range Withdrawal; AZ

April 17, 1987.

**ACTION:** Notice.

**SUMMARY:** This notice provides official publication of the legal descriptions of the Barry M. Goldwater Air Force Range withdrawal in Arizona as required by section 2(a) of Pub. L. 99–606 enacted November 6, 1986.

**EFFECTIVE DATE:** November 6, 1986.

**FOR FURTHER INFORMATION CONTACT:** Marsha Luke, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241–5534..

**SUPPLEMENTARY INFORMATION:** The legal description of the withdrawal for Barry M. Goldwater Air Force Range effected by Pub. L. 99–606 is as follows:

**Gila and Salt River Meridian, Arizona**

T. 7 S., R. 1 W.,
Secs. 13 to 36, inclusive.
Tps. 8 and 9 S., R. 1 W.
T. 7 S., R. 2 W.,
Secs. 13 to 36, inclusive.
Tps. 8 and 9 S., R. 2 W.
T. 7 S., R. 3 W.,
Secs. 13 to 36, inclusive.
Tps. 8 and 9 S., R. 3 W.
T. 10 S., R. 3 W., unsurveyed,
Secs. 4 to 9, inclusive,
Secs. 16 to 21, inclusive,
Secs. 28 to 33, inclusive.
T. 7 S., R. 4 W.,
Secs. 13 to 36, inclusive.
Tps. 8, 9, and 10 S., R. 4 W.
T. 6 S., R. 5 W.,
Sec. 18;
Sec. 18, E½, S½NW¼, SW¼;
Secs. 15, 16, and 17, inclusive;
Sec. 18, lots 3, 4, E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 19 to 36, inclusive.
Tps 7 to 10 S., R. 5 W.
T. 6 s., R. 6 W.,
Sec. 13, E½SE¼, SW¼SE¼, SE¼SW¼
Sec. 22, E½SE¼, SW¼SE¼, S½SW¼
Sec. 23, S½, E½NE¼, SW¼NE¼, SE¼NW¼;
Secs. 24, to 27, inclusive;
Secs. 34, to 36, inclusive.

T. 7 S., R. 6 W.,
Secs. 1 to 3, inclusive,
Secs. 10 to 36, inclusive.
Tps. 8, 9 and 10 S., R. 6 W.
T. 11 S., R. 6 W.,
Sec. 3, lot 4, SW¼NW¼, W½SW¼;
Secs. 4 to 9, inclusive;
Sec. 10, W½NW¼, SW¼;
Secs. 13 to 21, inclusive;
Sec. 22, W½;
Sec. 24, W½W½;
Sec. 25, W½NW¼;
Sec. 26, S½;
Secs. 27, NW¼, S½;
Secs. 28 to 30, inclusive.
T. 7 S., R. 7 W.,
Secs. 13 to 36, inclusive.
Tps. 8 to 10 S., R. 7 W.
Tps. 11 and 12 S., R. 7 W., unsurveyed.
T. 14 S., R. 7 W.,
Secs. 6, 7, and 18.
T. 6 S., R. 8 W., partially surveyed,
Sec. 26, SW¼, SW¼NW¼, S½NW¼N W¼;
Secs. 27 to 31, all that portion lying south of the railroad right-of-way, as more particularly identified and described on the official records of the Bureau of Land Management, Arizona State Office.
Secs. 32, 33, and 34;
Sec. 35, W½, W½SE¼.
T. 7 S., R. 8 W.,
Sec. 2, lots, 2, 3, and 4, S½NW¼, SW¼NE¼, and S½;
Secs. 3 to 11, inclusive;
Sec. 12, S½SW¼NW¼ and W½SW¼;
Secs. 13 to 36, inclusive.
Tps. 8 and 9 S., R. 8 W., unsurveyed.
T. 10 S., R. 8 W.,
Tps 11 and 12 S., R. 8 W., unsurveyed.
T. 13 S., R. 8 W., unsurveyed,
Secs. 2 to 11, inclusive;
Secs. 14 to 36, inclusive.
T. 14 S., R. 8 W., unsurveyed,
Secs. 1 to 21, inclusive.
Secs. 28 to 33, inclusive.
T. 15 S., R. 8 W., unsurveyed,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
T. 16 S., R. 8 W., unsurveyed,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
T. 17 S., R. 8 W., unsurveyed,
Secs. 4, 5, 6, 8, and 9.
T8 S., R. 9 W.,
Secs. 33, 34, and 35, all that portion lying south of the railroad right-of-way, as more particularly identified and described on the official records of the Bureau of Land Management, Arizona State Office.
T. 7 S., R. 9 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 36, inclusive.
Tps. 8 to 17 S., R. 9 W., unsurveyed.
Tps. 8 and 9 S., R. 10 W.
Tps. 10 to 16 S., R. 10 W., unsurveyed.
Tps. 8 to 10 S., R. 11 W.
Tps. 11 to 16 S., R. 11 W., unsurveyed.
Tps. 8 to 9 S., Rs. 11½ and 12 W.
T. 10 S., R. 12 W.
Tps. 11 to 15 S., R. 12 W., unsurveyed.
T. 8 S., R. 13 W., all that portion lying south of the railroad right-of-way, as more particularly identified and described on the official records of the Bureau of Land Management, Arizona State Office.
T. 9 and 10 S., R. 13 W.
Tps. 11 to 15 S., R. 13 W., unsurveyed.
T. 8 S., R. 14 W., all those portions lying south of the railroad right-of-way, as more particularly identified and described in the official records of the Bureau of Land Management, Arizona State Office.
T. 9 and 10 S., R. 14 W.
Tps. 11 to 15 S., R. 14 W., unsurveyed.
T. 8 S., R. 15 W.,
Secs. 33 to 36, inclusive.
T. 9 and 10 S., R. 15 W.
T. 10 S., R. 15 W.
Tps. 11 to 14 S., R. 15 W., unsurveyed.
T. 9 S., R. 16 W.,
Secs. 1 and 2;
Secs. 7 to 36, inclusive.
T. 10 S., R. 16 W.
Tps. 11 to 14 S., R. 16 W., unsurveyed.
T. 9 S., R. 17 W., partially surveyed,
Secs. 12 to 16, inclusive;
Sec. 17, S½;
Secs. 19 to 36, inclusive.
T. 10 S., R. 17 W.
Tps. 11 to 14 S., R. 17 W., unsurveyed.
T. 9 S., R. 18 W.,
Sec. 21, SE¼;
Sec. 22, S½;
Secs. 23 to 36, inclusive.
T. 10 S., R. 18 W.
Tps. 11 to 13 S., R. 18 W., unsurveyed.
T. 9 S., R. 19 W.,
Secs. 25 to 36, inclusive.
Tps. 10 to 13 S., R. 19 W., unsurveyed.
T. 9 S., R. 20 W.,
Secs. 25 to 36, inclusive.
Tps. 10 to 12 S., R. 20 W., unsurveyed.
T. 9 S., R. 21 W.,
Secs. 25 to 36, inclusive.
Tps. 10 S. to 12 S., R. 21 W.
T. 9 S., R. 22 W.,
Secs. 25 to 28, inclusive;
Sec. 29, E½, E½NW¼, SW¼;
Secs. 32 to 36, inclusive.
T. 10 S., R. 22 W.,
Secs. 1 to 5, inclusive;
Sec. 6, E½;
Secs. 7 to 36, inclusive.
Tps. 11 and 12 S., R. 22 W.

The area described above aggregates 2,868,100 acres, more or less, of public and private land in Maricopa, Pima and Yuma Counties, Arizona.

A copy of the legal description and map are available for public inspection in the following offices:

Director (322), Bureau of Land Management, Room 3643 Interior Building, 18th and C Streets NW., Washington, DC 20240
State Director, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011
Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85023
Bureau of Land Management, Yuma District Office, 3150 Winsor Ave., Yuma, Arizona 85364
Commander, U.S. Army Engineer District, Los Angeles, P.O. Box 2711, Los Angeles, CA 90053–2325
Chief, Arizona Real Estate Office, U.S. Army Engineer District, Los Angeles, 3636 North Central Avenue, Suite 770, Phoenix, Arizona 85012–1936
Commander, Luke Air Force Base—Barry M. Goldwater Air Force Range, Luke Air Force Base, AZ 85309
Commander, Marine Corps Air Station, Yuma, Arizona 85369–5000
Director, U.S. Fish and Wildlife Service, Room 3256, Interior Building, 18th and C Streets NW., Washington, DC 20240
Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

John T. Mezes,
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-9191 Filed 4-22-87; 8:45 am]

BILLING CODE 4310-32-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 395–7313.

*Title:* Permanent Regulatory Program—Small Operator, Assistance Program 30 CFR Part 795

*Abstract:* This information collection requirement is needed to provide assistance to qualified Small Mine Operators under section 507(c) of Pub. L. 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability

and expertise of laboratories to perform the required work.
*Bureau Form Number:* FS–6
*Frequency:* On occasion
*Description of Respondents:* Small Coal Mining Operators
*Annual Responses:* 412
*Annual Burden Hours:* 27,184
*Bureau Clearance Officer:* Darlene Grose Boyd 343–5447

Dated: November 14, 1986.

**Donald L. Hinderliter,**

*Acting Assistant Director, Budget and Administration.*

[FR Doc. 87–9107 Filed 4–22–87; 8:45 am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

### Bicycle Tires and Tubes From Taiwan; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731–TA–166 (Final), Bicycle Tires and Tubes from Taiwan.

**SUMMARY:** The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. 731–TA–166 (Final), regarding bicycle tires and tubes from Taiwan. The purpose of the proposed 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the established of an industry in the United States would be materially retarded, by reason of imports of bicycle tires and tubes from Taiwan if the antidumping order regarding such merchandise were to be modified or revoked. Bicycle tires and tubes are provided for in items 772.48 and 772.57, respectively, of the Tariff Schedules of the United States.

**FOR FURTHER INFORMATION CONTACT:** Vera Libeau (202–523–0368), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

**SUPPLEMENTARY INFORMATION:** On May 30, 1984, the Commission determined pursuant to section 735(b)(1) of the Act (19 U.S.C. 1673), that an industry in the United States was materially injured by reason of imports of bicycle tires and tubes from Taiwan which the Department of Commerce had determined to be sold or likely to be sold at less than fair value (LTFV). Accordingly, the Department of Commerce ordered that dumping duties be imposed on such imports (49 FR 24157, June 12, 1984).

On April 2, 1987, the Commission received a request, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731–TA–166. This request is filed by counsel on behalf of the Taiwan producers of bicycle tires and tubes.

**Written Comments Requested**

Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: Carlisle Tire & Rubber Co., the sole U.S. producer of bicycle tires and tubes at the time of the antidumping investigation, has terminated its production of such merchandise effective February 27, 1987; has informed Taiwan producers that it does not plan to resume production in the United States; and is presently importing bicycle tires and tubes from Taiwan. Consequently, no U.S. industry remains to be materially injured by imports of the subject merchandise.

**Written Submissions**

In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202–523–0161.

Issued: April 20, 1987.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 87–9119 Filed 4–22–87; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 30861(A) (Sub-No. 1)]**

### City of Austin, TX; Acquisition Exemption

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts the City of Austin, TX, from the requirements of 49 U.S.C. Subtitle IV in its acquisition of 162 miles of railroad from Southern Pacific Transportation Company.

**DATES:** This exemption will be effective on May 26, 1987. Petitions to stay must be filed by May 4, 1987, and petitions for reconsideration must be filed by May 13, 1987.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 30861(A) (Sub-No. 1) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Richard H. Streeter, Wheeler & Wheeler, 1729 H Street, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

Decided: April 16, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman

Lamboley dissented with a separate expression.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-9147 Filed 4-22-87; 8:45 am]

BILLING CODE 7035-01-M

---

[Docket No. AB-3 (Sub-No. 87X)]

**Missouri Pacific Railroad Co.; Abandonment Exemption for Rail Lines in Fort Bend and Brazoria Counties, TX**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 7.5 mile-line of railroad between milepost 22.5 near Hawdon, TX and milepost 30.0 near Rosharon, TX in Fort Bend and Brazoria Counties, TX. Railway Labor Executives' Association seeks imposition of labor protective conditions.

Applicant intends to consummate the proposed abandonment of and discontinuance of service over the line on or about May 20, 1987.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on [30 days from service of this decision] (unless stayed pending reconsideration). Petitions to stay must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 16, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-9326 Filed 4-22-87; 8:45 am]

BILLING CODE 7035-01-M

---

## DEPARTMENT OF JUSTICE

### Antitrust Division

**United States v. Hughes Tool Co. & Baker International Corp.; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), that a complaint, proposed final judgment, stipulation, and competitive impact statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Hughes Tool Company and Baker International Corporation.*

The complaint of the United States in this case alleges that the merger of Hughes Tool Company ("Hughes") and Baker International Corporation ("Baker") may substantially lessen competition in the United States in the sale of tricone rock bits and in the sale of electric submersible oilwell pumps, in violation of section 7 of the Clayton Act (15 U.S.C. 18). Tricone rock bits are devices used in drilling wells for the exploration for or the production of crude oil or natural gas. Electric submersible oilwell pumps are multi-stage centrifugal pumps that are inserted into oilwells and used to pump oil to the surface. In 1986, total sales of tricone rock bits in the United States were approximately $200 million. Hughes accounted for approximately 28 percent of those sales and Baker accounted for approximately 17 percent. In 1986, total sales of electric submersible oilwell pumps in the United States were approximately $110 million. Hughes accounted for approximately 28 percent of those sales and Baker accounted for approximately 6 percent.

The proposed Final Judgment would require Baker to divest the tricone rock bit operations of its Reed Tool Company subsidiary and the electric submersible oilwell pump operations of its Baker Lift Systems division by October 1, 1987. If the tricone rock bit operations of Reed Tool Company have not been divested within the time allowed, a trustee will be appointed to divest all of Reed Tool Company. If the electric submersible oilwell pump operations of Baker Lift Systems have not been divested within the time allowed, a trustee will be appointed to divest all of Baker Lift Systems.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to James R. Weiss, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, Room 9403 Judiciary Center Building, 555 Fourth Street NW., Washington, DC 20001 (202/724-6350).

Dated: April 13, 1987.

Joseph H. Widmar,

*Director of Operations, Antitrust Divisions.*

**U.S. District Court for the District of Columbia**

[Contains Redacted Version on Asset Sale Agreement Attached to Proposed Final Judgment]

*United States of America, Plaintiff,* v. *Hughes Tool Company and Baker International Corporation, Defendants.*

Civil Action No. 87-0932.

Filed: April 3, 1987.

*Stipulation*

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment and the Hold Separate Stipulation Of The Parties And Order Thereon pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

(3) In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

Respectfully submitted,

Charles F. Rule,

*Acting Assistant Attorney General.*

Roger B. Andewelt,

Judy Whalley,

James R. Weiss,

Constance K. Robinson,

*Attorneys, U.S. Department of Justice, Antitrust Division.*

Donald A. Kaplan,

Patricia G. Chick,

Donna N. Kooperstein,

Philip J. Thompson,

*Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, Room 9822, 555 Fourth Street, NW., Washington, DC 20001,(202) 724–6464.*

For Defendant Hughes Tool Company:

Andrews & Kurth,

By: John W. Ebert,

*A Member of The Firm, 4200 Texas Commerce Tower, Houston, Texas, (713) 220–4200.*

For Defendant Baker International Corporation:

Arnold & Porter

By: Michael N. Sohn,

*A Member of The Firm, 1200 New Hampshire Avenue, NW., Washington, DC 20036, (202) 872–6700.*

Stipulation Approved for Filing.

Done this ____ day of April, 1987.

---

United States District Judge.

**United States District Court District of Columbia**

United States of America, plaintiff, v. Hughes Tool Company and Baker International Corporation, defendants, Civil Action No. 87–0932.

Filed: April 3, 1987.

*Final Judgment*

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on April 3, 1987, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "Baker" means the defendant Baker International Corporation, including each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Hughes" means the defendant Hughes Tool Company, including each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

C. "Reed Tool Company" means Reed Tool Company (Delaware), an entity of Baker organized and existing under the laws of the State of Delaware, and Reed Tool Company, an entity of Baker organized and existing under the laws of the State of Texas, which, directly or indirectly, research, produce, market, and/or service, domestically and internationally, tricone rock bits and other products and services. Reed Tool Company includes all real property, material, equipment, supplies, patents, copyrights, copyright registrations and applications, trademarks, trademark registrations and applications, trade names or commercial names, computer software programs, and all other tangible and intangible assets, rights, and other benefits presently owned, licensed, possessed, or used by Reed Tool Company in the development, manufacture, financing, or marketing of any product that Reed Tool Company has in the past manufactured or sold, currently manufactures or sells, or is considering manufacturing or selling, including, but not limited to, tricone rock bits, natural and artificial diamond bits, coring products and services, and stabilizers (such specified products and services hereinafter sometimes being referred to as "Reed Products"). Reed Tool Company shall also include the domestic and international manufacturing facilities, regional offices, and stock points of Reed Tool Company, and the assets of the following entities used in the development, manufacture, financing, or marketing of Reed Products: Reed Tool Company International; Baker International Canada Ltd.; Baker's minority interest in A.C.C.S.A. de C.V.; Baker International (Nederland) B.V., as successor to Reed Tool Company (Nederland) B.V.; Baker International Ltd.; and Reed Tool Company International Limited. Reed Tool Company shall also include any patents, copyrights, copyright registrations and applications, trademarks, trademark registrations and applications, trade names or commercial names, computer software programs, and all other intangible assets, rights, and other benefits presently owned, licensed, possessed, or used by Kobe Argentina, S.A. or Baker Eastern S.A. pursuant to any agreement, understanding, or license from Baker (including Reed Tool Company), that relate to any Reed Products, but shall not include any other interest of Baker in either or both of them. Notwithstanding the foregoing, Reed Tool Company shall not include any interest in the building or land used for the Baker Technology Center, located at Northwest Crossing, but shall include such equipment there located as is maintained on the books of Reed Tool Company or predominantly used in the business of Reed Tool Company; provided that defendants shall bear any expense of relocating any such equipment to the premises of Reed Tool Company.

D. "Tricone rock bit operations of Reed Tool Company" means Reed Tool Company, except those tangible and intangible assets, rights, and other benefits of Reed Tool Company described in Section II(C) of this Final Judgment that are neither necessary for, nor predominantly used in, the development, manufacture, financing, or marketing of tricone rock bits in the United States, and includes: (1) All real property, tangible and intangible assets, rights, and other benefits of Reed Tool Company associated with the manufacture of tricone rock bits in the Republic of Singapore; and (2) any patents, copyrights, copyright registrations and applications,

trademarks, trademark registrations and applications, trade names or commercial names, computer software programs, and all other intangible assets, rights, and other benefits presently owned, licensed, possessed, or used by Kobe Argentina, S.A. or Baker Eastern S.A. pursuant to any agreement, understanding, or license from Baker (including Reed Tool Company), that relate to tricone rock bits.

E. "Baker Lift Systems" means the division of Baker Oil Tools, Inc., a subsidiary of Baker organized and existing under the laws of the State of California, which division, directly or indirectly, researches, produces, markets, and/or services, domestically and internationally, electric submersible oilwell pumps and other products and services. Baker Lift Systems includes all real property, material, equipment, supplies, patents, copyrights, copyright registrations and applications, trademarks, trademark registrations and applications, trade names or commercial names, computer software programs, and all other tangible and intangible assets, rights, and other benefits presently owned, licensed, possessed, or used by Baker Lift Systems in the development, manufacture, financing, or marketing of any product that Baker Lift Systems has in the past manufactured or sold, currently manufactures or sells, or is considering manufacturing or selling, including, but not limited to, electric submersible oilwell pumps, single stage high pressure surface pumps, and rod pump controllers (such specified products hereinafter sometimes being referred to as "Baker Lift Products"). Baker Lift Systems shall also include the domestic and international manufacturing facilities, regional offices, and stock points of Baker Lift Systems and Baker Lift Systems International Inc. Baker Lift Systems shall also include any patents, copyrights, copyright registrations and applications, trademarks, trademark registrations and applications, trade names or commercial names, computer software programs, and all other intangible assets, rights, and other benefits presently owned, licensed, possessed, or used by Kobe Argentina, S.A. or Baker Eastern S.A. pursuant to any agreement, understanding, or license from Baker (including Baker Lift Systems), that relate to Baker Lift Products, but shall not include any other interest of Baker in either or both of them. Except as provided in Section IX(B) of this Final Judgment with respect to any purchaser of Baker Lift Systems, Baker Lift Systems shall not include any rights to the names "Baker", "Baker Lift", or any derivatives thereof.

F. "ESP operations of Baker Lift Systems" means Baker Lift Systems, except those tangible and intangible assets, rights, and other benefits of Baker Lift Systems described in Section II(E) of this Final Judgment that are neither necessary for, nor predominantly used in, the development, manufacture, financing, or marketing of electric submersible oilwell pumps in the United States and includes any patents, copyrights, copyright registrations and applications, trademarks, trademark registrations and applications, trade names or commercial names, computer software programs, and all other intangible assets, rights and other benefits presently owned, licensed, possessed, or used by Kobe Argentina, S.A. or Baker Eastern S.A. pursuant to any agreement, understanding, or license from Baker (including Baker Lift Systems), that relate to electric submersible oilwell pumps.

G. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

III

A. The provisions of this Final Judgment shall apply to defendants, their successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV

A. Defendants are hereby ordered and directed to divest to a purchaser prior to October 1, 1987 all of their direct and indirect ownership in and control over the tricone rock bit operations of Reed Tool Company and the ESP operations of Baker Lift Systems; provided, however, that: (1) Nothing herein shall be construed as requiring any divestiture pursuant to this Final Judgment to be accomplished by means of a sale of stock or securities; and (2) defendants' obligation under this Section to divest the tricone rock bit operations of Reed Tool Company shall be satisfied if (a) defendants enter the Definitive Agreement with Camco, Incorporated ("Camco") dated March 30, 1987 attached to this Final Judgment, (b) plaintiff in its sole discretion does not object to divestiture in accordance with said Definitive Agreement, and (c) said divestiture otherwise complies with and is carried out in conformance with all other provisions of this Final Judgment.

B. If defendants have not divested all of their ownership interest in the tricone rock bit operations of Reed Tool Company and the ESP operations of Baker Lift Systems prior to October 1, 1987, plaintiff may, in its sole discretion, extend this time period for an additional period of time not to exceed three months, if defendants request such an extension and demonstrate to plaintiff's satisfaction that they are then engaged in negotiations that are likely to result in the required divestiture but that the divestiture cannot be completed prior to October 1, 1987. Such extension of time may apply to either divestiture required by this Final Judgment or to both, and shall be effected by plaintiff's filing notice thereof with the Court.

C. Defendants agree to take all reasonable steps to accomplish quickly said divestitures. In carrying out their obligation to divest the tricone rock bit operations of Reed Tool Company, defendants may divest these operations alone, or may divest along with these operations any other assets of Reed Tool Company or of Baker or Hughes. In carrying out their obligation to divest the ESP operations of Baker Lift Systems, defendants may divest these operations alone, or may divest along with these operations any other assets of Baker Lift Systems or of Baker or Hughes.

D. In accomplishing the divestitures ordered by this Final Judgment, the defendants promptly shall make known in the United States and in other major countries, by usual and customary means, the availability of the tricone rock bit operations of Reed Tool Company or of Reed Tool Company, and of the ESP operations of Baker Lift Systems or of Baker Lift Systems, for sale as ongoing businesses. The defendants shall notify any person making an inquiry regarding the possible purchase of these operations that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. The defendants shall also furnish to all bona fide prospective purchasers of the tricone rock bit operations of Reed Tool Company or Reed Tool Company, or the ESP operations of Baker Lift Systems or Baker Lift Systems, who so request,

subject to customary confidentiality assurances, all pertinent information regarding Reed Tool Company and/or Baker Lift Systems, respectively. Defendants shall provide such information to the plaintiff no later than the time they furnish such information to any other person. Defendants shall permit prospective purchasers of the tricone rock bit operations of Reed Tool Company or Reed Tool Company, or the ESP operations of Baker Lift Systems or Baker Lift Systems, to have access to personnel at Reed Tool Company and/or Baker Lift Systems, respectively, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the tricone rock bit operations of Reed Tool Company, the ESP operations of Baker Lift Systems, Reed Tool Company, or Baker Lift Systems, respectively. Nothing contained herein shall be construed to require defendants to permit any prospective purchaser to have access to any documents or information relevant to the tricone rock bit operations or the electric submersible oilwell pump operations of Hughes.

E. Unless plaintiff otherwise consents, divestiture of the tricone rock bit operations of Reed Tool Company shall be accomplished in such a way as to satisfy plaintiff that, as of the time of divestiture, these operations can and will be operated by the purchaser as a viable, ongoing business engaged in the manufacture and sale of tricone rock bits. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the manufacture and sale of tricone rock bits, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of tricone rock bits.

F. Unless plaintiff otherwise consents, divestiture of the ESP operations of Baker Lift Systems shall be accomplished in such a way as to satisfy plaintiff that, as of the time of divestiture, these operations can and will be operated by the purchaser as a viable, ongoing business engaged in the manufacture and sale of electric submersible oilwell pumps. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the manufacture and sale of electric submersible oilwell pumps, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of electric submersible oilwell pumps.

G. Except to the extent otherwise approved by plaintiff, any assets divested pursuant to this Final Judgment shall be divested free and clear of (1) all mortgages, encumbrances and liens to Baker or Hughes, and (2) any contractual commitments or obligations (such as patent or technology license agreements or supply contracts) to Baker or Hughes existing as of the date of divestiture, unless the purchaser of the divested operations voluntarily assumes the future performance of any such existing contracts.

H. If defendants have not divested their ownership interest in the tricone rock bit operations of Reed Tool Company and the ESP operations of Baker Lift Systems by July 1, 1987, defendants shall notify plaintiff of that fact. If defendants still have not divested all of their ownership interest in the tricone rock bit operations of Reed Tool Company and the ESP operations of Baker Lift Systems within ten (10) days thereafter, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture(s). Defendants shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture(s). If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

V

A. The appointment of the trustee named by the Court shall become effective upon the first filing by plaintiff of a notice pursuant to either Section V(B) or V(C) of this Final Judgment.

B. In the event defendants have not divested the tricone rock bit operations of Reed Tool Company prior to expiration of the time period specified in Section IV(A) or IV(B) of this Final Judgment, as applicable, plaintiff may file a notice to that effect with the Court and, upon the filing of said notice, the trustee then shall take steps to effect divestiture of Reed Tool Company; provided, however, that plaintiff shall not file such a notice if, prior to expiration of the applicable time period, defendants have notified plaintiff pursuant to Section VI of this Final Judgment of a proposed divestiture of the tricone rock bit operations of Reed Tool Company and plaintiff has not filed a written notice that it objects to said proposed divestiture.

C. In the event defendants have not divested the ESP operations of Baker Lift Systems prior to expiration of the time period specified in Section IV(A) or IV(B) of this Final Judgment, as applicable, plaintiff may file a notice to that effect with the Court and, upon the filing of said notice, the trustee then shall take steps to effect divestiture of Baker Lift Systems; provided, however, that plaintiff shall not file such a notice if, prior to expiration of the applicable time period, defendants have notified plaintiff pursuant to Section VI of this Final Judgment of a proposed divestiture of the ESP operations of Baker Lift Systems and plaintiff has not filed a written notice that it objects to said proposed divestiture.

D. After the trustee's appointment has become effective, only the trustee shall have the right to sell any business as to which it has been designated to effect divestiture. The trustee shall dispose of such business or businesses to a purchaser acceptable to plaintiff at the best price and terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with Section VI of this Final Judgment.

E. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the

divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of its appointment. The trustee shall account for all monies derived from a sale of Reed Tool Company or Baker Lift Systems or both and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

F. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s) and shall use their best efforts to assist the trustee in accomplishing the required divestiture(s). The trustee shall have full and complete access to the personnel, books, records, and facilities of the business(es) the trustee is designated to divest, and defendants shall develop such financial or other information relevant to the assets or business(es) to be divested as the trustee may request.

G. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment; Provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in either Reed Tool Company or Baker Lift Systems, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

H. Within six months after its appointment has become effective, if the trustee has not accomplished the divestiture(s) required by Section V of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why any required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI

At least thirty (30) days prior to the scheduled closing date of any proposed divestiture pursuant to Section IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the tricone rock bit operations of Reed Tool Company or Reed Tool Company, or the ESP operations of Baker Lift Systems or Baker Lift Systems, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendants and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under the proviso in Section V(D). Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V(D), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestitures have been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in either the tricone rock bit operations of Reed Tool Company or the ESP operations of Baker Lift Systems, or Reed Tool Company or Baker Lift Systems, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

VIII

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment without plaintiff's prior consent.

IX

A. Upon completion of any divestiture of either the tricone rock bit operations of Reed Tool Company or Reed Tool Company pursuant to this Final Judgment, defendants may no longer use the name, "Reed", in connection with the manufacture, provision, or sale of any product or service; provided that: (1) Defendants may enter into a licensing agreement to use said name for a period of eighteen (18) months from the date of filing of this Final Judgment in connection with the manufacture and sale of mining equipment by Reed Mining Tools, Inc., a subsidiary of Baker, and in connection with the manufacture and sale of tool joints by Baker Tubular Services, Inc., a subsidiary of Baker; (2) defendants may enter into a licensing agreement to use said name for a period of twelve (12) months from the date of filing of this Final Judgment in connection with the manufacture and sale outside the United States of Reed Products by Kobe Argentina, S.A. or Baker Eastern S.A.; (3) if divestiture is accomplished under Section IV of this Final Judgment by a sale that does not include all assets of Reed Tool Company located outside of the United States, defendants may enter into a licensing agreement to use said name for a period of twelve (12) months

from the date of filing of this Final Judgment in connection with the manufacture and sale of Reed Products outside of the United States; and (4) if divestiture is accomplished under Section IV of this Final Judgment but defendants retain any business(es) of Reed Tool Company inside the United States, defendants may enter into a licensing agreement to use said name for a period of six (6) months in connection with such retained business(es).

B. Notwithstanding any divestiture of either the ESP operations of Baker Lift Systems or Baker Lift Systems pursuant to this Final Judgment, defendants shall retain whatever rights they may have to use the name, "Baker Lift"; provided that: (1) For a period of eighteen (18) months following the date of divestiture, the defendants shall grant a purchaser of the ESP operations of Baker Lift Systems an exclusive license to use said name in connection with the manufacture, sale, and servicing of electric submersible oilwell pumps in the United States; (2) for a period of eighteen (18) months following the date of divestiture, the defendants shall grant a purchaser of Baker Lift Systems an exclusive license to use said name in connection with the manufacture, sale, or servicing of any product or service currently manufactured, sold, or provided by Baker Lift Systems; and (3) for a period of ten (10) years following the date of entry of this Final Judgment defendants shall not, under said name, sell or service electric submersible oilwell pumps in the United States.

X

The Hold Separate Stipulation of the Parties and Order Thereon filed with the Court herewith is incorporated herein.

XI

In the absence of prior consent by the purchaser of the divested assets, defendants are hereby enjoined and restrained until six (6) months following the date of divestiture from offering any employment to any person who is currently an executive officer of Reed Tool Company.

XII

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XII shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XV

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

**United States District Court for the District of Columbia**

*United States of America, Plaintiff, v. Hughes Tool Company and Baker International Corporation, Defendants.* Civil No. 87-0932.

Filed: April 3, 1987.

*Competitive Impact Statement*

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On April 3, 1987, the United States filed a civil antitrust Complaint under section 15 of the Clayton Act, 15 U.S.C. 25, alleging that the proposed merger of Hughes Tool Company ("Hughes") and Baker International Corporation ("Baker") would constitute a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the effect of the merger may be substantially to lessen competition in the manufacture for sale in the United States of tricone rock bits, which Hughes manufactures and sells through its Hughes Tool Division and which Baker manufactures and sells through its wholly-owned subsidiary, Reed Tool Company. The Complaint also alleges that the effect of the merger may be substantially to lessen competition in the manufacture for sale in the United States of electric submersible oilwell pumps, which Hughes manufactures and sells through its Centrilift-Hughes Division and which Baker manufactures and sells through Baker Lift Systems, a division of its wholly-owned subsidiary Baker Oil Tools, Inc. The Complaint seeks, among other relief, an injunction preventing defendants from, in any manner, combining their tricone rock bit or electric submersible oilwell pump businesses.

On April 3, 1987 the United States and defendants filed a stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, as explained more fully below, defendant Baker would be required to sell, within six (6) months, its tricone rock bit and electric submersible oilwell pump businesses. If it did not do so, a trustee appointed by the Court would be empowered to sell Baker's Reed Tool Company subsidiary and its Baker Lift Systems division. The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of the proposed Final Judgment.

II

Events Giving Rise to the Alleged Violations

Hughes and Baker are both large, diversified oil field services companies, providing a variety of the tools and services needed by companies engaged in exploring for and exploiting oil and gas reserves. Hughes' net sales of all products were approximately $750 million in 1986. Baker's net sales of all products in 1986 were approximately $1.5 billion. Both Hughes and Baker manufacture and sell, among other things, tricone rock bits and electric submersible oilwell pumps.

On October 22, 1986, Hughes and Baker entered into an agreement and plan of reorganization which provided for the consolidation of the two companies through a series of stock transactions. As a result of the proposed transactions, Hughes and Baker will both become wholly-owned subsidiaries of a newly formed company to be called "Baker Hughes." All outstanding shares of Hughes and Baker common stock will be converted into Baker Hughes common stock. The combination would, in effect, merge all of the businesses of Hughes and Baker, including their tricone rock bit businesses and their electric submersible oilwell pump businesses. The tricone rock bit and electric submersible oilwell pump markets are described in greater detail below.

A. *Tricone Rock Bits.* Tricone rock bits are used in drilling virtually all oil and gas wells in the United States. A tricone rock bit consists, in part, of three cone-shaped cutting devices mounted in such a way that they intermesh and rotate together as the bit drills through the geological formations. Tricone rock bits come in many different sizes and configurations, ranging from 4 to 26 inches. The cutting elements on the cones are either steel teeth that are machined as part of the cone, or tungsten carbide inserts that are pressed into holes machined in the cone surface. The cones are mounted on bearings that may be of either the journal or roller type and may be either sealed or unsealed. Tricone rock bits are attached to the end of a "drill string," which consists of thirty or forty-foot sections of heavy-walled pipe assembled end-to-end leading to the drilling rig at the surface.

In the course of drilling an oil or gas well, many different types of geological formations of varying hardness and composition may be encountered. Tricone rock bit manufacturers seek to develop different bits, *i.e.*, bits with different cutting elements and bearings, to achieve the greatest possible efficiency for drilling each of the different possible geological formations. The major manufacturers of tricone rock bits each offer more than 200 different types and sizes of tricone rock bits.

Oil companies and drilling contractors seek to achieve the lowest "cost-per-foot" when drilling a well. Of the costs used to determine cost-per-foot, the purchase price of the tricone rock bit is a relatively small one. Because securing access to a rig and various other services necessary in the course of drilling a well far exceed the cost of the rock bit itself and because replacing the rock bit can take anywhere from several hours to a full day, tricone rock bit purchasers seek to replace tricone rock bits as infrequently as possible. Accordingly, purchasers select a tricone rock bit based on its durability and reliability, as well as its efficiency in drilling in a particular formation.

There is no reasonable substitute to which a significant number of customers would turn in response to a small but significant and nontransitory price increase in tricone rock bits. The Complaint alleges that the manufacture of tricone rock bits for sale in the United States constitutes a line of commerce and a relevant market (hereinafter "U.S. tricone rock bit market") for antitrust purposes.

Entry into the U.S. tricone rock bit market is difficult and time consuming. To enter the U.S. tricone rock bit market and gain a significant market share, among other things, a firm must establish a reputation for the efficiency, durability and reliability of its product under actual drilling conditions in a wide variety of different geographic and geological conditions. A firm must also establish and maintain a significant research and development capability, an expert technical service capability, and a sales and service force deployed at locations convenient to drilling sites.

Hughes and Baker are direct competitors in the U.S. tricone rock bit market and are the first and third largest firms in that market. The four largest manufacturers of tricone rock bits account for about 94 percent of total sales in that market. The market is highly concentrated and would become substantially more concentrated as a result of the proposed merger of Hughes and Baker. Based on 1986 sales data, Hughes and Baker have, respectively, about 28 percent and 17 percent of the U.S. tricone rock bit market. The combination of the two firms would create a dominant firm with a market share of 45 percent and would increase the Herfindahl-Hirschmann Index ("HHI"),[1] a measure of market concentration, by about 950 to about 3300.

Based upon the foregoing and other facts, the Complaint alleges that the effect of the merger may be substantially to lessen competition in U.S. tricone rock bit market in violation of section 7 of the Clayton Act.

B. *Electric Submersible Oilwell Pumps.* Very few oil wells produce enough oil under sufficient pressure to cause the oil to flow to the earth's surface without the aid of some form of man-made pumping device ("artificial lift systems"). Electric submersible oilwell pumps ("ESPs") are one form of artificial lift system used to lift well fluid to the surface. An ESP consists of a multi-stage centrifugal pump connected to an electric motor and encased in a cylindrical steel-alloy casing. ESPs are manufactured in varying sizes according to the depth of the well and volume of fluid for which they are intended. The electric motors are manufactured

[1] The Herfindahl-Hirschman Index is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20 and 20 percent, the HHI is 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

separately from the pumps themselves so that different combinations of pump sizes and motor sizes can be assembled, depending on the particular characteristics and requirements of the well in which the ESP is to be used. Electric motors range from those with a few horsepower to those with 800 horsepower or more. The pumps vary in size according to the barrels per day of fluid they can lift, up to about 20,000 barrels per day or more. Because ESPs may be subjected to severe heat, pressure, and corrosive conditions which typically occur in oil wells, they are precision-crafted to high tolerances and manufactured of special high-grade metal alloys.

Other types of artificial lift systems include rod-and-beam pumps, hydraulic pumps, and gas lift. In choosing among the various artificial lift systems, customers seek to lift well fluid to the surface in the most economically efficient manner possible. The decision as to which artificial lift system will be used is typically dictated by well conditions and performance requirements. These include such factors as depth of the well, fluid volume and properties, geographic location, surface space limitations, and available sources of power. ESPs are the artificial lift systems used for lifting large volumes of well fluid under certain surface and well conditions.

There is no reasonable substitute to which a significant number of customers would turn in response to a small but significant, nontransitory price increase for ESPs. The complaint alleges that the manufacture of ESPs for sale in the United States constitutes a line of commerce and a relevant market (hereinafter "U.S. ESP market") for antitrust purposes.

To enter the U.S. ESP market and gain a significant market share, among other things, a firm must establish a reputation for the efficiency, durability and reliability of its product. A new entrant must acquire a high degree of technological skill and knowledge, design a line of ESPs, and establish production facilities with precision tooling capabilities and high quality assurance programs. A firm must also establish and maintain a significant research and development capability, an expert technical service and consultation capability, a sales and service force deployed at strategic locations capable of providing prompt maintenance and repair service, and a large inventory of ESP component parts.

Hughes and Baker are direct competitors in the U.S. ESP market and are the second and fourth largest firms in that market. The four largest manufacturers of ESPs account for about 97 percent of total sales in that market. The market is highly concentrated and would become substantially more concentrated as a result of the proposed merger between Hughes and Baker. Based on 1986 sales data, Hughes and Baker have, respectively, about 28 percent and 6 percent of the U.S. ESP market. The combination of the two firms would create a firm with a market share of 34 percent and would increase the HHI by about 300 to about 3350.

Based upon the foregoing and other facts, the Complaint alleges that the effect of the proposed merger may be substantially to lessen competition in the U.S. ESP market in violation of section 7 of the Clayton Act.

## III

## Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the merger in the U.S. tricone rock bit and U.S. ESP markets by establishing new, independent and economically viable competitors in those markets. The proposed Final Judgment requires defendants, within six months of its filing, to divest the tricone rock bit operations of Reed Tool Company with one limited exception described below, and the electric submersible oilwell pump (ESP) operations of Baker Lift Systems. If defendants cannot accomplish these divestitures within the above period, the proposed Final Judgment provides that, upon application by plaintiff, the Court will appoint a trustee to effect divestiture. The trustee will divest all of the product lines and assets of Reed Tool Company and Baker Lift Systems.

As defined in the proposed Final Judgment, the "tricone rock bit operations of Reed Tool Company" means those tangible and intangible assets, rights and other benefits of Reed Tool Company that are necessary for, or predominantly used in, the development, manufacture, financing, or marketing of tricone rock bits in the United States, including all of Reed Tool Company's interest in its facility located in the Republic of Singapore used to produce tricone rock bits. As defined in the proposed Final Judgment, "Reed Tool Company" means all of defendants' interest in and control over Reed Tool Company, a subsidiary of defendant Baker that produces and sells, domestically and internationally, natural and artificial diamond bits, coring products and services, and stabilizers, in addition to tricone rock bits. Reed Tool Company includes all of the tangible and intangible assets, rights and other benefits of Reed Tool Company and its parent, defendant Baker, that are used in developing, manufacturing, financing and marketing, domestically and internationally, any of the products produced and sold by Reed Tool Company. The Final Judgment provides, however, that, subject to review and approval by plaintiff in its sole discretion, defendants may be deemed to have satisfied their obligation to divest the tricone rock bit operations of Reed Tool Company if they divest certain assets pursuant to a definitive agreement with Camco, Incorporated attached to the proposed Final Judgment. These assets include most of the assets of Reed Tool Company, but include only an eighteen month lease on the Reed Tool Company Singapore facility with an option to purchase.

As defined in the proposed Final Judgment, the "ESP operations of Baker Lift Systems" means those tangible and intangible assets, rights and other benefits necessary for, or predominantly used in, the development, manufacture, financing or marketing of electric submersible oilwell pumps in the United States by Baker Lift Systems. As defined in the proposed Final Judgment, "Baker Lift Systems" means all of defendants interest in and control over Baker Lift Systems, an entity of Baker that produces and sells, domestically and internationally, single stage high pressure surface pumps, and rod pump controllers in addition to ESPs. Baker Lift Systems includes all of the tangible and intangible assets, rights and other benefits of Baker Lift Systems and its parent, defendant Baker, which are used in developing, manufacturing, financing and marketing, domestically and internationally, any of the products produced and sold by Baker Lift Systems.

Defendants are allowed six months following the filing of the proposed Final Judgment to accomplish divestiture of the tricone rock bit operations of Reed Tool Company and the ESP operations of Baker Lift Systems to companies that will operate them as independent, viable competitors. If defendants have not accomplished the required divestitures within that period, plaintiff at its discretion may extend this time period an additional three months, if defendants demonstrate to plaintiff's satisfaction that they are then engaged in negotiations that are likely to result in the required divestitures.

The proposed Final Judgment provides that the tricone rock bit operations of Reed Tool Company and the ESP

operations of Baker Lift Systems must be divested in such a way as to satisfy plaintiff that these operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant markets. Similarly, if the divestitures are accomplished by the trustee, Reed Tool Company and Baker Lift Systems must be divested in such a way as to satisfy plaintiff that these businesses can and will be operated as viable, independent competitors by the purchaser or purchasers. Defendants must take all reasonable steps necessary to accomplish the divestitures and shall cooperate with bona fide prospective purchasers and, if one is appointed, the trustee.

If a trustee is appointed, the proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After its appointment becomes effective, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture. Within six months after the trustee's appointment becomes effective, if the trustee has not accomplished the divestitures required by the proposed Final Judgment, the trustee and the parties shall make recommendations to the Court, and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment provides that, upon completion of the divestitures, defendants may enter into a licensing agreement to continue to use the name "Reed" for a period of eighteen months in connection with the manufacture and sale of mining equipment by Reed Mining Tools, Inc. and tool joints by Baker Tubular Services, Inc. Also, defendants may enter into a licensing agreement to use the name "Reed" for a period of twelve months following divestiture, in connection with the manufacture and sale outside the United States of Reed Tool Company products by Kobe Argentina, S.A., a subsidiary of Baker that sells tricone rock bits, which is not being divested. If divestiture is accomplished by the sale of less than all of Reed Tool Company, the proposed Final Judgment provides that defendants may enter into a licensing agreement to use the name "Reed" for a period of twelve months in connection with the manufacture and sale of Reed Tool Company Products outside the United States and for a period of six months in connection with the retained businesses of Reed Tool Company inside the United States. Other than as described above, defendants may no longer use the name "Reed".

The proposed Final Judgment provides that, notwithstanding the divestiture of the ESP operations of Baker Lift Systems or Baker Lift Systems, defendants shall retain whatever rights they have to use the name "Baker Lift." For a period of eighteen months following the date of divestiture, however, the defendants shall grant a purchaser of the ESP operations of Baker Lift Systems an exclusive license to use the name "Baker Lift" in connection with the manufacture, sale and servicing of the products produced and sold by the business divested. The proposed Final Judgment also provides that for a period of ten years following the date of entry of the Final Judgment, defendants shall not, under the name "Baker Lift," sell or service electric submersible oilwell pumps in the United States.

By the terms of a Hold Separate Stipulation of the Parties and Order Thereon, incorporated by reference into the proposed Final Judgment, defendants must take certain steps to ensure that, until the required divestitures have been accomplished, Reed Tool Company and Baker Lift Systems will be held separate and apart from defendants' other assets and businesses. Defendants must, until the required divestitures are accomplished, preserve and maintain Reed Tool Company and Baker Lift Systems as saleable and economically viable ongoing businesses.

## IV

## Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

## V

## Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalities Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: James R. Weiss, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, Room 9403, Judiciary Center Building, 555 4th Street NW., Washington, DC 20001.

## VI

## Alternatives to the Proposed Final Judgment

The proposed final judgment not only relates to the tricone rock bit assets of Reed Tool Company that are located in the United States, but also to its facilities in Singapore. The Singapore plant is highly efficient and produces at a comparatively low cost tricone rock bits for sale in the United States. The United States concluded that inclusion of the Singapore plant in the divestiture of tricone rock bit assets likely was crucial to assuring that the divestiture produced a viable and effective competitor in the U.S. tricone rock bit market. As a result, the proposed final judgment obligates defendants, with one possible exception, to divest the Singapore plant. The sole exception relates to the possible sale of the tricone rock bit assets to Camco, Incorporated ("Camco").

The United States considered, as an alternative to the proposed final judgment, eliminating this one possible

BEST COPY AVAILABLE

exception, but decided against it. Prior to entry of the final judgment, Baker had entered into negotiations with Camco concerning Camco's possible purchase or the tricone rock bit assets of Reed Tool Company from Baker. Camco was offered a package of assets that included the Singapore plant. Camco was not certain, however, that it needed the Singapore plant, in part because it has other efficient foreign facilities. Consequently, Camco requested a lease for the Singapore plant with an option to purchase it, rather than on an immediate acquisition, in order to have additional time to determine if it needed the facility. Ultimately, Baker signed a definitive agreement (attached to the proposed final judgment) to sell Camco the tricone rock bit assets of the Reed Tool Company, which included an eighteen (18) month lease on the Singapore plant, property and equipment with an option to purchase the Singapore plant at a fixed price for a twelve month period. During the last six (6) months of the lease, defendants would be able to offer the plant to alternate purchasers, subject to Camco's right of first refusal. Even if Camco does not ultimately purchase the Singapore plant, under its agreement with Baker, Camco will retain all of the tools, dies and drawings related to tricone rock bits manufactured in that plant.

The United States concluded that it was reasonably possible that a divestiture to Camco under the definitive agreement would produce a viable competitor. The lease of the Singapore plant to Camco for a significant period of time would provide Camco an opportunity to evaluate its particular need for the Singapore facility. Moreover, because negotiations between Baker and Camco were essentially complete, the proposed divestiture to Camco would have the benefit of quickly putting the assets in the hands of a new, independent competitor. In this context, the United States decided to include an exception that at least potentially would permit divestiture to Camco. Significantly, however, the exception does not automatically authorize the divestiture to Camco. Instead, the United States retains the absolute right to disapprove a sale to Camco. The United States will conduct an investigation and will approve the sale only if it concludes that Camco would be a viable competitor. In the event that the sale to Camco is not approved, defendants must proceed with divestiture to another entity and must include in the divested assets all interests in the Singapore plant.

Another alternative to the proposed final judgment that the United States considered related to the provision authorizing defendants to divest the alternative package of assets within six months. The United States considered permitting the defendants only three months to divest the tricone rock bit operations of Reed Tool Company and the ESP operations of Baker Lift Systems. If those divestitures were not accomplished within three months, defendants would have been obligated to divest Reed Tool Company and Baker Lift Systems within the succeeding three months. Ultimately, the United States concluded that allowing defendants the full six months to divest either package of assets would not in any way compromise the ultimate aim of creating a new viable competitor.

In formulating relief the United States also considered proposal made by Smith International, Inc. ("Smith"), one of defendants' principal competitors in the U.S. tricone rock bit market. Smith proposed that the United States require defendants to delay their merger pending resolution of defendant Hughes' claim as a judgment creditor in the Chapter 11 reorganization proceeding in which Smith is currently involved, or, at the very minimum, until the relief proposed in the proposed Final Judgment is approved by the Court. Smith contended that Hughes had engaged in a series of anticompetitive actions during the reorganization proceeding [2] and that the relief it proposed was necessary to preserve Smith as a significant competitor in the tricone rock bit industry.

The United States rejected Smith's proposals because it concluded that there was not a sufficient nexus between the relief sought by Smith and the anticompetitive effects that formed the basis of our challenge to the merger. The allegations of the Complaint are based solely on the likely competitive effects of the proposed merger between Baker and Hughes. The United States concluded that it was appropriate to seek only that relief which is necessary to address the competitive problems upon which the complaint is based. Because the relief in the proposed Final Judgment will restore the *status quo ante* in the U.S. tricone rock bit industry by creating a new, independent and economically viable competitor in that market, the United States determined that, with respect to the subject matter of the action pending before the Court, no further relief is required.[3]

Litigation is, of course, always an alternative to a consent decree in a section 7 case. The United States is satisfied, however, that the proposed Final Judgment provides substantially all the relief requested by the United States in its complaint and that the United States could have no better relief had it litigated the case in a full trial on the merits.

VII

Determinative Documents

The United States considered determinative in formulating this proposed Final Judgment the proposed agreement between Baker and Camco summarized above and attached to the proposed Final Judgment. There are no other determinative materials or documents.

Dated: April 8, 1987.

Respectfully submitted,

Donald A. Kaplan,
Patricia G. Chick,
Donna N. Kooperstein,
Philip J. Thompson,
*Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, Room 9822, 555 Fourth Street, NW., Washington, DC 20001, (202) 724-6464.*

**U.S. District Court for the District of Columbia**

*United States of America*, Plaintiff, v. *Hughes Tool Company and Baker International Corporation.*, Defendants.

Civil Action No. 87-0932.

Filed: April 3, 1987.

*Hold Separate Stipulation of the Parties and Order Thereon*

It is stipulated and agreed by and between the undersigned parties:

1. As used in this Stipulation and Order:

(a) "Baker" means defendant Baker International Corporation, as defined in the proposed Final Judgment filed

[2] Prior to the proposed merger, Defendant Hughes obtained a judgment against Smith for $205 million for Smith's alleged infringement of Hughes O-Ring seal patent used in tricone rock bits. As a result of Hughes judgment against it, Smith entered Chapter 11 reorganization proceedings, in which Hughes participates as an unsecured judgment creditor. Smith maintained that the conduct of Hughes in the Chapter 11 proceeding and other various practices were designed to liquidate Smith or otherwise eliminate it as a competitor in the tricone rock bit market. These included baseless or overly litigious conduct toward Smith within the context of the reorganization proceeding and predatory discounting targeted at Smith in the tricone rock bit market.

[3] To the extent that Hughes' alleged conduct would constitute a separate violation of the antitrust laws, the proposed Final Judgment prevents neither Smith nor, if appropriate, the United States from instituting further legal proceedings.

herewith ("Final Judgment"). After Baker merges with Hughes, "Baker" includes Hughes, but does not include Baker's subsidiary, Reed Tool Company, or the Baker Lift Systems division of Baker's subsidiary, Baker Oil Tools, Inc.

(b) "Hughes" means defendant Hughes Tool Company, as defined in the Final Judgment.

(c) "Reed Tool Company" means Reed Tool Company, as defined in the Final Judgment.

(d) "Baker Lift Systems" means Baker Lift Systems, as defined in the Final Judgment.

(e) "Reed Tool Company Review Board" means the Review Board established pursuant to Paragraph 3 of this Stipulation and Order.

(f) "Baker Lift Systems Review Board" means the Review Board established pursuant to Paragraph 8 of this Stipulation and Order.

2. Until the divestiture required by the Final Judgment has been accomplished, Baker and Hughes shall:

(a) Take all steps necessary to assure that Reed Tool Company will be maintained as a separate and independent, economically viable ongoing business with its assets (including proprietary technology, management, operations, and books and records) separate, distinct, and apart from those of Baker;

(b) Take all steps necessary to assure that no proprietary business or financial information specific to Reed Tool Company is transferred, or otherwise becomes available, to Baker or Hughes, or is used by Baker or Hughes to compete with the business to be divested, except that:

(i) Information concerning the financial condition and performance of Reed Tool Company may be disclosed to the Reed Tool Company Review Board but only as is necessary to enable that Board to fulfill its responsibilities;

(ii) Information concerning the financial condition and performance of Reed Tool Company that is reasonably necessary for Baker and Hughes to comply with the provisions of the Final Judgment may be disclosed only to the Reed Tool Company Review Board, Baker's chief financial officer and its treasurer, Baker's legal department and outside counsel, and any bank, broker or investment banker retained to assist in the divestiture required by the Final Judgment; and

(iii) Baker's outside counsel and/or independent accounting firm may receive such information as is necessary to comply with federal, state, provincial or local environmental, securities, tax or other regulatory laws, and to settle intercompany accounts;

provided that any information provided under any of clauses (i) through (iii) above shall not be further disclosed within Baker or Hughes without the prior permission of plaintiff; and provided further, with respect to any information provided under clause (iii), that, after obtaining prior approval of the plaintiff, the outside counsel and/or accounting firm may communicate with Baker or Hughes concerning any identified problem, possible remedial action, or reporting requirements under environmental, securities, tax or other regulatory laws;

(c) Take no action that would jeopardize the sale or operation of Reed Tool Company or otherwise adversely affect its capability to compete effectively in the sale of its products;

(d) Take no action, directly or indirectly, which would cause any change or alteration to be made in the Reed Tool Company operations, other than as may be necessary to comply with any other provision of this Stipulation and Order or of the Final Judgment;

(e) Provide and maintain sufficient working capital to maintain Reed Tool Company as a viable ongoing business, including, but not limited to, the establishment of a line of credit for the exclusive use of Reed Tool Company, irrevocable until such time as those operations are divested, subject to the following terms and conditions:

(i) Upon the filing of this Stipulation and Order, defendants shall establish the line of credit in an amount not less than eight million dollars ($8,000,000);

(ii) At the end of the day on which this Stipulation and Order is filed, the cash accounts maintained by Baker with respect to Reed Tool Company shall reflect a zero balance;

(iii) If, at any time after October 1, 1987, the remaining credit available under the line of credit is less than eight million dollars ($8,000,000), defendants shall then augment the line of credit, dollar for dollar, such that the credit available is maintained at eight million dollars ($8,000,000); provided that Baker's obligation to so augment the line of credit shall not exceed a total of two million dollars ($2,000,000);

(iv) The line of credit shall be treated by Reed Tool Company as a revolving loan account and any amounts outstanding thereunder from time to time shall immediately be reduced by application of any cash or cash equivalents held by Reed Tool Company (including, but not limited to, funds in banks or savings and loan institutions, money market accounts, or invested in any marketable securities of any kind);

(f) Provide for all necessary capital improvements for Reed Tool Company, including, but not limited to, those set forth in the Schedule A, attached hereto. Capital expenditures in excess of seventy-five thousand dollars ($75,000) per item, other than those provided for in said Schedule, shall require the prior written approval of the Baker representative on the Reed Tool Company Review Board; provided that such approval shall not be unreasonably delayed or refused. In seeking said approval, Reed Tool Company shall communicate to the Baker representative on the Reed Tool Company Review Board such information as may be necessary to justify the proposed expenditure. Capital improvements may be funded by Reed Tool Company, if the Reed Tool Company Review Board determines that Reed Tool Company has sufficient operating cash flow to do so prudently;

(g) Take no action that would interfere with Reed Tool Company regarding the scope of Reed Tool Company's development, manufacturing, financing or marketing of any product, or regarding current employment, salary, or benefit agreements for any management, engineering or other technical personnel of Reed Tool Company;

(h) Maintain normal repair and maintenance schedules and preserve the facilities of Reed Tool Company at the levels contemplated in the Reed Tool Company October 87 Short Term Plan (prepared October 1986), which was approved and in effect for Reed Tool Company at the time Baker and Hughes entered into their agreement and plan of reorganization;

(i) Refrain from causing or permitting any commingling of the assets (including, subject to Paragraph 2(e), any transfers of cash) of Reed Tool Company, other than assets relating to pension plans, with those of Baker or Hughes or those of any other Baker entity or Hughes entity; provided that:

(i) There may be withdrawn from Reed Tool Company any cash or cash equivalents (or items readily convertible to cash or cash equivalents) flowing from the termination of the pension plan formerly maintained for the employees of Reed Tool Company;

(ii) Nothing in this Stipulation and Order shall prevent employees of Reed Tool Company from continuing to participate in medical and life insurance, thrift, and stock purchase and option plans maintained by Baker; and

(iii) Nothing in this Stipulation and Order shall prevent Reed Tool Company from continuing to participate in the

insurance policies, programs, and plans maintained by Baker;

3. During the period that the provisions of this Stipulation and Order relating to Reed Tool Company shall apply, there shall be maintained for Reed Tool Company a Reed Tool Company Review Board, consisting of one representative designated by the management of Reed Tool Company, one representative of Baker (who may not be any person with line authority or responsibility for Baker's or Hughes' tricone rock bit operations), and a third person, not affiliated in any manner with Baker, Hughes, or Reed Tool Company, who shall be designated by the two other members and approved by plaintiff, and who shall act as Chairperson of the Reed Tool Company Review Board. The Chairperson, but not the other members, shall receive reasonable compensation for services performed on the Reed Tool Company Review Board, plus expenses. The Reed Tool Company Review Board shall:

(a) Review and approve the operating and financial plans and results of Reed Tool Company;

(b) Review and approve in advance, on a quarterly basis, based on the short term plans prepared by the management of Reed Tool Company, expenditures to be funded by the line of credit required to be established by Paragraph 2(e); provided, however, that the representative of the management of Reed Tool Company on the Reed Tool Company Review Board shall have the power to convene the Reed Tool Company Review Board, upon 72 hours notice, given to or at the business offices of the other members, to review and approve any proposed expenditures to be funded by the line of credit that are necessary to satisfy the purposes of this Stipulation and Order and are in excess of those most recently authorized;

(c) Maintain minutes of each meeting that reflect all matters considered by and include all materials presented to the Reed Tool Company Review Board and which state the reasons for each action taken and the vote thereon;

(d) Promptly forward a copy of said minutes to plaintiff;

(e) Act by majority vote; and

(f) Be authorized to meet in person or by telephone.

4. In addition to authority to draw against the line of credit for planned and approved cash shortfalls under Paragraph 3(b) of this Stipulation and Order, the management of Reed Tool Company has the authority, without prior approval of the Reed Tool Company Review Board, to draw against the line of credit to fund routine and ordinary expenditures of Reed Tool Company up to three million dollars ($3,000,000), and have such amount outstanding at any time, subject to Paragraph 2(e)(iv);

5. Baker and Hughes shall indemnify and hold harmless the members of the Reed Tool Company Review Board from any and all claims and liabilities incurred by them by virtue of their acts and omissions in their capacities as members of the Reed Tool Company Review Board, except for claims or liabilities based on gross negligence, bad faith, or willful misconduct. Baker and Hughes shall reimburse Reed Tool Company for all reasonable expenses incurred by the Reed Tool Company Review Board, including the compensation and expenses of the Chairperson.

6. The provisions of this Stipulation and Order relating to Reed Tool Company shall apply until the divestiture required by the Final Judgment has been accomplished.

7. Until the divestiture required by the Final Judgment has been accomplished, Baker and Hughes shall:

(a) Take all steps necessary to assure that Baker Lift Systems will be maintained as a separate and independent, economically viable ongoing business with its assets (including proprietary technology, management, operations, and books and records) separate, distinct, and apart from those of Baker;

(b) Take all steps necessary to assure that no proprietary business or financial information specific to Baker Lift Systems is transferred, or otherwise becomes available, to Baker or Hughes, or is used by Baker or Hughes to compete with the business to be divested, except that:

(i) Information concerning the financial condition and performance of Baker Lift Systems may be disclosed to the Baker Lift Systems Review Board as is necessary to enable that Board to fulfill its responsibilities;

(ii) Information concerning the financial condition and performance of Baker Lift Systems that is reasonably necessary for Baker and Hughes to comply with the provisions of the Final Judgment may be disclosed only to the Baker Lift Systems Review Board, Baker's chief financial officer and its treasurer, Baker's legal department and outside counsel, and any bank, broker or investment banker retained to assist in the divestiture required by the Final Judgment; and

(iii) Baker's outside counsel and/or independent accounting firm may receive such information as is necessary to comply with federal, state, provincial or local environmental, securities, tax or other regulatory laws, and to settle intercompany accounts;

provided that any information provided under any of clauses (i) through (iii) above shall not be further disclosed within Baker or Hughes without the prior permission of plaintiff; and provided further, with respect to any information provided under clause (iii), that, after obtaining prior approval of the plaintiff, the outside counsel and/or accounting firm may communicate with Baker or Hughes concerning any identified problem, possible remedial action, or reporting requirements under environmental, securities, tax or other regulatory laws;

(c) Take no action that would jeopardize the sale or operation of Baker Lift Systems or otherwise adversely affect its capability to compete effectively in the sale of its products;

(d) Take no action, directly or indirectly, which would cause any change or alteration to be made in the Baker Lift Systems operations, other than as may be necessary to comply with any other provision of this Stipulation and Order or of the Final Judgment;

(e) Provide and maintain sufficient working capital to maintain Baker Lift Systems as a viable ongoing business, including, but not limited to, the establishment, within seven (7) calendar days of the filing of this Stipulation and Order, of a line of credit for the exclusive use of Baker Lift Systems, irrevocable until such time as those operations are divested, subject to the following terms and conditions:

(i) The line of credit shall be established in an amount not less than two million dollars ($2,000,000);

(ii) At the end of the day prior to the day on which the line of credit becomes effective, the cash accounts maintained by Baker with respect to Baker Lift Systems shall reflect a zero balance;

(iii) The line of credit shall be treated by Baker Lift Systems as a revolving loan account and any amounts outstanding thereunder from time to time shall immediately be reduced by application of any cash or cash equivalents held by Baker Lift Systems (including, but not limited to, funds in banks or savings and loan institutions, money market accounts, or invested in any marketable securities of any kind);

(f) Provide for all necessary capital improvements, including, but not limited to, those set forth in Schedule B attached hereto. Capital expenditures in excess of fifty thousand dollars ($50,000) per item, other than those provided for in said Schedule, shall require the prior written approval of the Baker

representative on the Baker Lift Systems Review Board; provided that such approval shall not be unreasonably delayed or refused. In seeking said approval, Baker Lift Systems shall communicate to the Baker representative on the Baker Lift Systems Review Board such information as may be necessary to justify the proposed expenditure. Capital improvements may be funded by Baker Lift Systems, if the Baker Lift Systems Review Board determines that Baker Lift Systems has sufficient operating cash flow to do so prudently;

(g) Take no action that would interfere with Baker Lift Systems regarding the scope of Baker Lift Systems' development, manufacturing, financing or marketing of any product, or regarding current employment, salary, or benefit agreements for any management, engineering or other technical personnel of Baker Lift Systems;

(h) Maintain normal repair and maintenance schedules and preserve the facilities of Baker Lift Systems at the levels contemplated in the Baker Lift Systems Fiscal Year 1987 Short Term Plan (prepared October 1986), which was approved and in effect for Baker Lift Systems at the time Baker and Hughes entered into their agreement and plan of reorganization;

(i) Refrain from causing or permitting any commingling of the assets (including, subject to Paragraph 7(e), any transfers of cash) of Baker Lift Systems, other than assets relating to pension plans, with those of Baker or Hughes or those of any other Baker entity or Hughes entity; Provided that:

(i) Nothing in this Stipulation and Order shall prevent employees of Baker Lift Systems from continuing to participate in medical and life insurance, thrift, and stock purchase and option plans maintained by Baker; and

(ii) Nothing in this Stipulation and Order shall prevent Baker Lift Systems from continuing to participate in the insurance policies, programs, and plans maintained by Baker;

8. During the period that the provisions of this Stipulation and Order relating to Baker Lift Systems shall apply, commencing no later than seven (7) calendar days following the filing of this Stipulation and Order, there shall be maintained for Baker Lift Systems a Baker Lift Systems Review Board, consisting of one representative designated by the management of Baker Lift Systems, one representative of Baker (who may not be any person with line authority or responsibility for Baker's or Hughes' electric submersible oilwell pump operations), and a third person, not affiliated in any manner with Baker, Hughes, or Baker Lift Systems who shall be designated by the two other members and approved by plaintiff, and who shall act as Chairperson of the Baker Lift Systems Review Board. The Chairperson, but not the other members, shall receive reasonable compensation for services performed on the Baker Lift Systems Review Board, plus expenses. The Baker Lift Systems Review Board shall:

(a) Review and approve the operating and financial plans and results of Baker Lift Systems;

(b) Review and approve in advance on a quarterly basis, based on the short term plans prepared by the management of Baker Lift Systems, expenditures to be funded by the line of credit required to be established by Paragraph 7(e); provided, however, that the representative of the management of Baker Lift Systems on the Baker Lift Systems Review Board shall have the power to convene the Baker Lift Systems Review Board, upon 72 hours notice, given to or at the business offices of the other members, to review and approve any proposed expenditures to be funded by the line of credit that are necessary to satisfy the purposes of this Stipulation and Order and are in excess of those most recently authorized;

(c) Maintain minutes of each meeting that reflect all matters considered by and include all materials presented to the Baker Lift Systems Review Board and which state the reasons for each action taken and the vote thereon;

(d) Promptly forward a copy of said minutes to plaintiff;

(e) Act by majority vote; and

(f) Be authorized to meet in person or by telephone.

9. In addition to authority to draw against the line of credit for planned and approved cash shortfalls under Paragraph 8(b) of this Stipulation and Order, the management of Baker Lift Systems has the authority, without prior approval of the Baker Lift Systems Review Board, to draw against the line of credit to fund routine and ordinary expenditures of Baker Lift Systems up to seven hundred fifty thousand dollars ($750,000), and have such amount outstanding at any time, subject to Paragraph 7(e)(iii);

10. Baker and Hughes shall indemnify and hold harmless the members of the Baker Lift Systems Review Board from any and all claims and liabilities incurred by them by virtue of their acts and omissions in their capacities as members of the Baker Lift Systems Review Board, except for claims or liabilities based on gross negligence, bad faith, or willful misconduct. Baker and Hughes shall reimburse Baker Lift Systems for all reasonable expenses incurred by the Baker Lift Systems Review Board, including the compensation and expenses of the Chairperson.

11. The provisions of this Stipulation and Order relating to Baker Lift Systems shall apply until the divestiture required by the Final Judgment has been accomplished.

12. Nothing herein shall suggest that any portion of ths Stipulation and Order is or has been created for the benefit of any third party and nothing herein shall be construed to create any rights in any third party.

For Plaintiff:

Donald A. Kaplan,

*Attorney, U.S. Department of Justice, Room 9822, 555 Fourth Street, NW., Washington, DC 20001, (202) 724–6464.*

For Defendant Hughes Tool Company:

Andrews & Kurth,

By: John W. Ebert,

*A Member of The Firm, 4200 Texas Commerce Tower, Houston, Texas, (713) 220–4200.*

For Defendant Baker International Corporation:

Arnold & Porter,

By: Michael N. Sohn,

*A Member of The Firm, 1200 New Hampshire Avenue, NW., Washington, DC 20036, (202) 872–6700.*

It Is So Ordered:

Dated: April —, 1987

United States District Judge

SCHEDULE A.—REED TOOL COMPANY

[Capital Expenditures Plan, Based on the January Short Term Plan For the Twelve Months Ending December 31, 1987 ($000's)]

| | Total 12/31/87 |
|---|---|
| *New Expenditures:* | |
| Hydraulic Jars—(Reed-Dowdco) | $63 |
| Core Barrels | [illegible] |
| Totals—New Expenditures | [illegible] |
| *Carryovers Without Revisions:* | |
| Induction Furnace | 75 |
| Power System Fix—Baker Tech | 13 |
| Totals—Carryovers Without Revisions | [illegible] |
| Totals—All Expenditures | $161 |

SCHEDULE B.—BAKER LIFT SYSTEMS

[illegible] Expenditures Plan and New Lease Commitments, Based on the January Short Term Plan For the Twelve Months Ending December 31, 1987 ($000's)]

| Capital Expenditures | Total 12/31/87 |
|---|---|
| *Land & Buildings:* | |
| Engineering | $3 |
| Total Land & Buildings | 3 |
| *Machinery & Equipment:* | |
| Mfg. (OKC) | [illegible] |
| Engineering | 40 |
| Marketing (Domestic) | 48 |
| Marketing (Roto-Jet) | 55 |
| Rod Pump Controller | 18 |

SCHEDULE B.—BAKER LIFT SYSTEMS—Continued

[Capital Expenditures Plan and New Lease Commitments, Based on the January Short Term Plan For the Twelve Months Ending December 31, 1987 ($000's)]

| Capital Expenditures | Total 12/31/87 |
|---|---|
| F & A | [redacted] |
| Total Machinery | 215 |
| Total Capital | $218 |
| *Leasing Commitments:* | |
| F & A | $12 |

[FR Doc. 87-9021 Filed 4-22-87; 8:45 am]

BILLING CODE 4410-1-M

## Bureau of Prisons

### Discipline Hearing Officer; Pilot Project

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Notice of intent.

**SUMMARY:** This notice is published for the purpose of announcing that the Bureau of Prisons intends to add the Metropolitan Correctional Center, New York, to its list of institutions authorized to participate in the Discipline Hearing Officer (DHO) Pilot Project.

**DATE:** April 23, 1987.

**ADDRESS:** Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons published in the **Federal Register** December 5, 1986 (at 51 FR 44010 et seq.) a notice announcing the implementation of a pilot project involving its inmate discipline policy, presently codified in 28 CFR Part 541, Subpart B. The pilot project is intended to test the feasibility of having a one-person, independent discipline hearing officer within a prison facility. In that **Federal Register** publication, specific federal institutions were authorized to replace existing Institution Discipline Committees (IDCs) with single-person Discipline Hearing Officers (DHOs). The project consists of two models, a combined DHO/Executive Assistant to the Warden, and a DHO "circuit rider" (covering both the Federal Correctional Institutions in Otisville, New York, and Danbury, Connecticut).

Based on the Bureau's initial assessment of the DHO "circuit rider" model, it has been determined that the Metropolitan Correctional Center, New York, may also be covered by the person who is covering Otisville and Danbury. Accordingly, this notice of intent authorizes the DHO circuit rider to conduct discipline hearings at the Metropolitan Correctional Center, New York, as well as at the Federal Correctional Institutions at Otisville, New York and Danbury, Connecticut. Provisions cited in the initial notice of pilot project, published in the **Federal Register** on December 5, 1986, which provision identified modifications to the existing inmate discipline policy (28 CFR Part 541), will also apply at the Metropolitan Correctional Center, New York.

Dated: April 17, 1987

**Norman A. Carlson,**

*Director, Bureau of Prisons.*

[FR Doc. 87-9158 Filed 4-22-87; 8:45 am]

BILLING CODE 4410-05-M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Registration; Knoll Pharmaceuticals

By Notice dated February 27, 1987, and published in the **Federal Register** on March 9, 1987; (52 FR 7231), Knoll Pharmaceuticals 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Dihydromorphine (9145) | I |
| Hydromorphone (9150) | II |

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 17, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-9198 Filed 4-22-87; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration; Marion Laboratories

By Notice dated February 27, 1987, and published in the **Federal Register** on March 9, 1987 (52 FR 7231), Analytical Systems, Division of Marion Laboratories, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Phencyclidine (7471) | II |
| 1-piperidinocyclohexanecarbonitrile (PCC) (8603) | II |
| Benzoylecgonine (9180) | II |

No objections and only one, non-specific, comment have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § .301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 17, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-9197 Filed 4-22-87; 8:45 am]

BILLING CODE 4410-09-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 030-18618]

### Chem-Nuclear Systems, Inc., Midwest Facility Channahon, IL; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering authorizing the start of supercompaction operations at the Chem-Nuclear Systems, Inc., (CNSI) Midwest Facility, Channahon, Illinois. Since 1982, CNSI has been authorized by its license (No. 39-23004-03) to receive and decontaminate shipping casks and equipment at its Midwest Facility. On June 20, 1986, CNSI applied for an amendment to this license to perform low-level radioactive waste (LLW) brokerage operations: to receive, to temporarily store, and to supercompact LLW packaged in drums from various licensed users of radioactive byproduct material, incidental to transfer to a licensed disposal facility.

On December 9, 1986, License Number 39-23004-03 was amended to authorize receipt and storage waste brokerage operations with the provision that use of

the supercompactor would not be authorized until the final descriptions and drawings were submitted to and approved by the Commission, and the completed facilities inspected. No environmental assessment was prepared for this licensing action because receipt and storage brokerage operations meet the criteria covered by a categorical exclusion pursuant to 10 CFR 51.22(c)(14)(xii). However, the staff is providing this environmental assessment for use of the supercompactor in accordance with the provisions of 10 CFR 51.21.

**Environmental Assessment**

*Identification of Proposed Action:* CNSI has proposed to operate a Gesellschaft für Nuklear-Service, mbh Model Fakir II Supercompactor at its Midwest Facility for the purpose of reducing the volume of LLW generated by nuclear power utilities and other users of radioactive materials. The facility would process LLW supplied, under terms of negotiated contracts, by waste generators principally in the Midwest region of the United States, although it would be available to others as well.

CNSI is licensed to possess up to 15 curies of LLW. The waste to be processed through the supercompactor is categorized as dry low specific activity (LSA) waste as defined in 49 CFR Part 173, Class A waste as defined in 10 CFR Part 61, and packaged in 52- or 55-gallon drums (strong tight containers) meeting the Department of Transportation regulations. The waste could be received and stored onsite for up to 180 days. The facility throughout is expected to be approximately 150,000 cubic feet per year of compactible LLW. The volume-reduced LLW, in the form of compressed drums, would be repackaged in drums and shipped by truck to a disposal site.

Because an amendment authorizing the use of the supercompactor is such an integral part of the overall waste brokerage services provided by CNSI at its Midwest Facility, the impacts associated with the receipt and storage of LLW [normally excluded from the requirement to perform an environmental assessment under 10 CFR 51.22(c)(14)(xii] are also considered in this assessment.

*The Need for the Proposed Action:* With the lack of new LLW disposal sites and an increasing volume of waste being generated by nuclear power utilities and industrial/institutional users of radioactive material, the need for waste volume minimization and reduction has become apparent. CNSI recognized the need for volume reduction as a commercial venture and proposed to provide LLW brokerage services that include volume reduction by supercompaction to nuclear utilities and other radioactive material users. Supercompacting the LLW will extend the operational lifetime of the existing commercial LLW disposal sites and will help to reduce the number of waste shipments to waste disposal sites.

*Environmental Impact of the Proposed Action:* The CNSI Midwest Facility is located on Frontage Road approximately 0.3 miles north of the intersection of Interstate 55 and U.S. Route 6, approximately one mile from the village of Channahon, Illinois. The metal and concrete facility (except for adjacent offices) is in a small industrial area. A restaurant, doughnut shop, gasoline station, and trailer court are about 0.2–0.3 miles south of the facility. There are single family homes 0.1–0.5 miles north. On the opposite side (east) of Interstate 55, there is a motel, restaurant, and a development of single family homes. The remaining area surrounding the site is open field.

Construction for the supercompactor is limited to internal modifications of the existing building, principally to enclose the supercompactor in a cell under negative pressure. Construction and operation of the supercompaction facility would be consistent with local industrial land use patterns, and therefore, no signficant additional disruption of plant and animal life in the area is expected.

The nearby industrial facilities already generate a considerable amount of truck traffic. An additional one to three trucks per day is not expected to be noticeable among existing truck traffic on Frontage Road.

The environmental impacts from potential radiological releases from supercompactor operations were assessed for all reactor wastes, all industrial/institutional wastes, and an equal mix of both. Calculation of offsite radiological doses and air concentrations were based on the following considerations. The radiological characteristics of the waste to be processed were those used in the NRC staff's "Environmental Assessment of Babcock & Wilcox Volume Reduction Services Facility, Parks Township, Pennsylvania, (Docket 70–364), March 1986," (B&W VRSF EA). The annual volume of waste throughput was based on 10 drums processed per hour and extended operations of 12 hours per day, 6 days per week, and 50 weeks per year (approximately 76 percent greater than expected operations). Process effluents were assessed based on 0.01 percent of a drum's activity released to the stack exhaust system, 99.9 percent particulate removal efficiency [decontamination factor (DF)=1000] for the HEPA filter in the exhaust system and no removal of tritium carbon-14, and iodine by the exhaust filter system (DF=1). Atmospheric dispersion evaluations were based on meteorological data in the "Consolidated Final Safety Analysis Report, Morris Operations, Morris, Illinois, (Docket 72–1)" (approximately 6 miles WSW). Resultant offsite concentrations of radioactive material are expected to be less than one percent of the maximum permissible concentrations (MPC) listed in Appendix B, 10 CFR Part 20. Based on doses calculated for the B&W VRSF EA (a facility with similar compaction operations but greater throughput), offsite radiological doses due to airborne effluents from the CNSI supercompactor operations are not expected to exceed one millirem (mrem) per year. This dose is a small fraction of the dose limit (500 mrem/yr) for unrestricted areas specified in 10 CFR 20.105(a) of the Commission's regulations, and it is also a small fraction of the limits for release of radionuclides specified by the Environmental Protection Agency in its regulation, 10 CFR Part 61, Subpart I (25 mrem/yr for whole body, 75 mrem/yr for body organs).

There will be no liquid effluents because only dry LLW will be compacted. Additionally, there are no water lines into the supercompactor and waste handling area of the facility, nor are there any drain lines to provide a source of water to the environment. The licensee has also installed drip pans under the supercompactor and lined the LLW handling areas with stainless steel and drip rails. Any incidental liquids that may drip from compacted drums will be collected and solidified for disposal. Therefore, there will be no impacts to groundwater or surface water from operation of the supercompactor.

Radiation doses to workers were assessed. In operating the supercompactor, CNSI would have to comply with the provisions of 10 CFR Part 20, "Standards for Protection Against Radiation," which provides limits for radiation exposures to workers. Based on these limits and a four-man operation at the Midwest Facility, the maximum occupational exposure allowable would be 20 man-rem per year. CNSI also would have to comply with its own administrative controls which limit the exposure a worker can receive without additional approvals to 300 mrem per month (3.6

rem per year) or 14.4 man-rem per year for the facility.

The staff independently estimated the exposures expected for compactor operations. Operator functions considered in the estimates include unloading a truck, feeding the supercompactor, removing and repackaging the compacted drums, loading a truck, and operating and cleaning the compactor. The estimated occupational dose for extended operations would be about 42 man-rem per year. This number contains great conservatism in the total exposure expected; a more realistic but still conservative estimate would be about 21 man-rem per year for extended operations. For expected operations, occupational exposures would be about 12 to 17 man-rem per year. For the four workers this would average 3 to 4 rems per year each. While this value complies with the standard set forth in 10 CFR 20.101 (5 rems per year, 1.25 rems per quarter), it is higher than the staff believes is desirable as a design goal and is not consistent with common industry practice of designing an operation to achieve annual whole body radiation exposures in the range of 10 to 25 percent of the applicable limits.

Subsequently, CNSI supplied exposure data based on operation of the Fakir supercompactor at the nuclear research center in Julich, West Germany. Occupational doses for four persons averaged 0.01 mrem per person per drum. For CNSI's Midwest Facility with a similar size staff, this would correspond to occupational doses of about 14.4 to 18 man-rem per year for extended operations. For expected operations the occupational doses would be lower, about 8 to 10 man-rem per year. Individual doses would average about 2 to 2.5 rem per year per person; a dose more consistent with desirable industry practices.

For the purposes of envionmental analysis, the impact from a postulated accidental fire in stored waste was assessed. This accident was assessed because it has the greatest potential for release and would bound a spectrum of potential accidents that could occur. A fire starting in the compactor cell would be put out by an automatic dry chemical fire extinguishing system that also shuts down the exhaust stack ventilation system, thus containing most of the radioactivity in the compactor cell.

Should a fire involve drums of waste outside the compactor cell, releases to the air and groundwater pathways could be expected. For this postulated accident, estimated at involving 80 drums containing about 1.5 curies, (i.e., approximately a trailer load of incoming waste) and therefore, only a fraction (10 percent of the license limit) of the radionuclide inventory would be involved in the fire. The maximum plausible inventory that was assumed to be released as a result of the fire was 1.5 percent to the atmosphere (except all the tritium, carbon-14, and iodine-125), and 10 percent of the remaining inventory to the ground via water used to fight the fire. Because the exact composition of the inventory is impossible to predict, two cases were assessed: an entire inventory of all reactor waste and an entire inventory of industrial/institutional waste.

The dose from an accidental fire to the maximally exposed individual via the atmospheric pathway is estimated to be about 180 mrem. The dose to the maximally exposed individual via the groundwater pathway (nearest groundwater well) is expected to be less than 10 mrem per year. There are no directly relevant numerical criteria for accident evaluation; however, the doses calculated are fractional portions of the annual occupational limits prescribed in 10 CFR Part 20. Also, these estimated doses do not exceed the U.S. Environmental Protection Agency's (EPA) Protective Action Guides (PAG) of one rem whole body dose and five rem thyroid dose. While the dose estimates would not necessitate offsite protective actions, should such an accident occur, the fire would be fought with foam to limit dispersal, and the licensee would be expected to take appropriate onsite corrective actions that would reduce the likelihood of groundwater contamination.

The environmental impact of radioactive shipments in all modes of transportation in the United States, under the regulations in effect as of June 30, 1975, have been documented in the "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," NUREG–0170. The impacts of LLW transportation through the area surrounding the Midwest Facility were assessed for shipments of incoming waste and outgoing product. The assessment was based on extended processing operations which would require about three truck shipments per day. All shipments, whether incoming or outgoing, will enter and leave the site on the half-mile stretch of Frontage Road that connects the site with Interstate 55 and U.S. Route 6.

The potential for radiological exposure to transport workers and to members of the general public in the United States due to routine transportation was assessed in NUREG–0170. The expected values of the annual radiological impact from such potential exposures were estimated to be about 1.2 latent cancer fatalities per year and 1.7 genetic effects over the next 30 years from transportation at 1975 levels. The dose to a maximally exposed individual near the Midwest Facility was assessed by assuming that this individual was located at a distance of 10 meters from Frontage Road on which all shipments passed at a speed of about 15 miles per hour. No credit was taken for shielding by structures. The dose rates from waste shipments would be in accordance with 10 CFR 71.47(c), not exceeding 10 mrem per hour at two meters from the surface of the vehicle. Under these conditions the maximum individual dose due to transportation would be about 0.8 mrem per year. For expected operations only about seven shipments per week would be required, thus, reducing the dose from transportation to about 0.3 mrem per year. On the basis that the maximum individual dose due to transportation was so low, less than one mrem per year, the staff deems the exposure to the general population to be an insignificant contribution to that previously determined in NUREG–0170. The potential for radiological exposure to transport workers and to members of the general public due to transportation accidents was also assessed in NUREG–0170. The expected values of the annual radiological impact from such potential exposures were estimated to be about one latent cancer fatality and one genetic effect for 200 years of shipping at 1975 rates. Based on the estimated annual shipments for extended supercompaction operation (shipments that would have occurred without this facility), the environmental impact of transportation of LLW to and from the Midwest Facility is a small fraction of that attributed to radioactive shipments at 1975 rates. Therefore, the fractional impact of United States radiological material transportation attributable to the supercompactor operation is so small as to be insignificant.

In summary, the environmental effects of normal supercompactor operations and associated waste brokerage activities are expected to be very small. For all radionuclides, the maximum unrestricted area concentrations are calculated to be well below the maximum permissible concentrations specified in 10 CFR 20.106 and 10 CFR Part 20, Appendix B. The estimated dose to a maximally exposed person in an unrestricted area is not expected to be greater than one mrem per year. The maximally exposed person from normal transportation activities would receive a dose less than one mrem per year. The

dose received by the maximally exposed person as a result of potentail accidents would be about 180 mrem, a fraction of the dose that would warrant protective actions.

Based on the above assessment the following are NRC findings.

1. Construction and operation of the supercompaction facility in a small industrial area would be consistent with local land use patterns.

2. Construction and operation of the supercompaction facility would not cause significant disruption of the plant and animal life in the area.

3. The operation of the supercompactor would be consistent with NRC's policy statement (46 PR 51101) to reduce the amount of waste requiring disposal as much as possible.

4. Radiation doses to the public are expected to be negligible.

*Alternatives to the Proposed Action:* Because the Commission has concluded there are no measurable environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to take no action or deny the use of the compactor. In such a case, there would be little incentive for merely temporarily storing LLW awaiting shipment to a disposal site. By taking no action, the benefit of extending the operational lifetime of existing disposal sites would be lost. Also, the savings in the number of shipments to disposal sites would be lost.

*Alternative Use of Resources:* The only irreversible commitment of resources determined in this assessment was that resulting from the use of fuels to transport the waste. This commitment of resources has, in NUREG–0170, been found to be negligibly small. The incremental amount used to transport LLW to the Midwest Facility is expected to be offset by the savings realized by reducing the number of shipments to the disposal sites. Savings in land resources can be realized from extended operational lifetimes of disposal sites caused by disposing of volume-reduced low-level waste.

*Agencies and Persons Contacted:* The NRC contacted the Illinois State Geological Survey and the Illinois State Water Survey in connection with the preparation of this environmental assessment.

**Finding of no Significant Impact**

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for license amendment dated June 20, 1986, and other related correspondence. These documents (in Docket Number 030–18618) are available upon request at the Commission's Region III Public Document Room, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. Documents cited in the Environmental Assessment are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Silver Springs, Maryland, this 16th day of April, 1987.

For the Nuclear Regulatory Commission.

**Vandy L. Miller,**

*Chief Medical, Academic and Commercial Use Safety Branch, Division of Fuel Cycle, Medical, Academic and Commercial Use Safety.*

[FR Doc. 87–9232 Filed 4–22–87; 8:45 am]

BILLING CODE 7590–01–M

---

**[Docket No. 30–20866, Licensee No. 49–21496–01, EA No. 87–41]**

## A–1 Inspection, Inc.; Order Temporarily Suspending License (Effective Immediately) and Order To Show Cause

I

A–1 Inspection, Inc., (licensee) 225 Lincoln, Evanston, Wyoming 82930 is the holder of a Byproduct Material License issued by the Nuclear Regulatory Commission (NRC/Commission ) on August 26, 1986 pursuant to 10 CFR Part 30. The license is due to expire on May 31, 1989. The license authorizes the licensee to possess and use licensed materials (iridium-192 sources of up to 100 curies per source) in industrial radiography and replacement of sources in accordance with the conditions specified therein.

II

On December 4, 1984, an unannounced radiation safety inspection of licensed activities performed by an NRC Region IV inspector revealed that the license had not conducted its activities in full compliance with NRC requirements.

As a result of that inspection a Notice of Violation (NOV) was issued to the licensee on February 28, 1985. Among the violations identified in the NOV was the performance of radiography by an unauthorized individual, who, in so doing, received a whole body exposure in excess of that permitted by regulatory requirements. In its response, the licensee admitted that it had allowed an individual not specifically named on the license to act as a radiographer, explaining that the violation occurred because there was not enough time during his employment to add this individual to its license. The licensee stated that in the future, it would not employ anyone until approved by the NRC and added to its license. By letter dated March 21, 1985, the licensee responded to the NOV. On March 26, 1985, the licensee paid the proposed civil penalty of $500.

Subsequent to the above-described enforcement action, it was alleged to NRC that the licensee had again employed unauthorized personnel to conduct radiography operations at the Exxon LaBarge plant near Shute Creek, Wyoming. On February 27, 1986, an NRC Region IV inspector asked Mr. G. W. Wyrick, President of the licensee, if he presently had or ever had in the past employed individuals to conduct radiography at the Shute Creek job-site. Mr. Wyrick responded "no" to the questions. Later in a written statement given to an NRC Investigator on March 19, 1987, Mr. Wyrick admitted that he had employed an individual as an assistant radiographer and had allowed that individual ato independently conduct radiography operations (i.e., function as a radiographer) on November 18–19, 1985.

Notwithstanding that the individual was not listed on the license, the licensee apparently made no attempt to assure itself (1) that the individual was previously qualified to do radiography, (2) that the individual was familiar with the device he used in conducting radiography in November, 1985, or (3) that the individual understood the operating and emergency procedure of the licensee. This individual was not listed on the NRC license as a radiographer or assistant radiographer. Mr. Wyrick admitted that he had hired the subject assistant radiographer without amending his NRC license because the time delay involved in amending the license would have prevented the licensee from obtaining the job.

III

The previous violation for the unauthorized radiography was intended to emphasize the need to comply with Commission requirements. Nevertheless, the licensee again permitted an unauthorized individual to conduct radiography in violation of condition 12 of its license and did so for the same reason as given in the previous violation, i.e., that was in the economic

interest of the licensee to violate the requirement. This violation is significant because the performance of radiography without assurance that the individual is qualified including understanding of operating and emergency procedures could result in significant overexposures to himself or the public. Furthermore, the licensee, when questioned by the NRC, attempted to deceive the NRC regarding whether it had utilized the radiographer at the Shute Creek site.

The licensee's actions in disregarding requirements demonstrate that it is either unable or unwilling to comply with Commission requirements. Therefore, I lack the requisite reasonable assurance that the licensee will comply with Commission requirements in the future. Since contained conduct of licensed activities could pose a threat to the health and safety of the public, I have determined that the public health, safety and interest require that License No. 49–21496–01 be suspended, effective immediately, as described below.

I have further determined that pursuant to 10 CFR 2.201(c) and 2.202(f), no prior notice is required and that the suspension should be immediately effective pending further Order.

IV

Accordingly, in view of the foregoing and pursuant to sections 81, 161b., 161i., 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, it is hereby ordered, effective immediately that:

A. Activities authorized under License No. 49–21496–01 to receive and use byproduct material are suspended.

B. The licensee shall place all byproduct material in its possession in locked storage or shall transfer such material to a person authorized to receive the material within five days and shall notify the NRC, Region IV office upon compliance.

C. The licensee shall show cause in accordance with Section V of this Order why license No. 49–21496–01 should not be revoked.

D. The Regional Administrator, Region IV, may relax or rescind any of the above provisions upon demonstration by the licensee of good cause.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause by filing a written answer under oath or affirmation within twenty days after the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the provisions specified in Section IV above. Upon the licensee's consent to the provisions set forth in Section IV of this Order, or upon failure of the licensee to file an answer within the specified time, the provisions specified in Section IV above shall be final without further Order.

VI

Pursuant to 10 CFR 2.202(b), the licensee may, in its answer filed under Section V, request a hearing. Any other person adversely affected by this Order may request a hearing within twenty days of its issuance. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this Order or a request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland this 10th day of April, 1987.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Director, Office of Inspection and Enforcement.*

[FR Doc. 87–9233 Filed 4–22–87; 8:45 am]

BILLING CODE 7590–01–M

---

**[Docket No. 50–414, License No. NPF–52, EA 86–147]**

## Duke Power Co.; Order Imposing Civil Monetary Penalty

I

Duke Power Company (DPC/licensee) (Catawba Nuclear Station, Unit 2) is the holder of Operating License No. NPF–52 (license) issued by the Nuclear Regulatory Commission (NRC/Commission) on February 24, 1986. The license authorizes the licensee to operate the Catawba Nuclear Station, Unit 2, in accordance with the conditions specified therein.

II

An NRC inspection was conducted June 28—July 2, 1986, as followup to the Catawba Unit 2 depressurization event, which occurred on June 27, 1986, during a Loss of Control Room Test. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated November 12, 1986. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of civil penalty proposed for the violations. The licensee responded to the Notice by letter dated December 12, 1986.

III

After consideration of the licensee's response and the statements of fact, explanations, and arguments for reduction of the severity level and remission or mitigation of the proposed civil penalty contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order, that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty as amended in the Appendix to this Order should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of the General

Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to the Regional Administrator, Region II, 101 Marietta St. NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section 11 above as amended in the Appendix to this Order, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 11th day of April 1987.

For the Nuclear Regulatory Commission

**James M. Taylor,**

*Deputy Executive Director for Regional Operations.*

**Appendix—Evaluations and Conclusions**

In a letter dated December 12, 1986, Duke Power company (DPC) responded to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) issued by the NRC on November 12, 1986. DPC denied some of the violations set forth in the Notice, requested reduction of the severity level, and requested remission of the proposed civil penalty. Provided below are (1) a restatment of the violations, (2) a summary of the licensee's response regarding the violations and classification of the violations as a Severity Level III and arguments for mitigation of the proposed civil penalty, (3) NRC's evaluation of the licensee's response regarding each area, and (4) the NRC's conclusion.

*Restatement of Violation A*

A. 10 CFR Part 50, Appendix B, Criterion III, Design Control, requires that measures be established to assure that applicable regulator requirements and the design basis are correctly translated into specifications, drawings, procedures, and instructions.

Contrary to the above, as of June 27, 1986, the licensee's program for design control did not assure that Design Change Authorization (DCA) CN–2–M–1527, which changed the design basis for the mode of control for the steam generator power operated relief valves (S/G PORVs), was correctly translated into specifications, drawings, procedures, and instructions. Specifically:

1. DCA CN–2–M–1527 was not properly reviewed by plant personnel as required by Station Directive 3.0.3, Management of Shutdown Requests for the effects on Operating Procedure OP/2/A/6100/04, Shutdown Outside the Control Room from Hot Standby to Cold Shutdown. As a result, Enclosure 4.5 of Procedure OP/2/A/6100/04 was not modified and incorrectly specified the setpoint of the S/G PORVs. Instead of remaining closed, the S/G PORVs opened to approximately 75 percent of full open.

2. DCA CN–2–M–1527 was not properly reviewed by design personnel as required by Design Engineering Procedure EDP 3.17, Control Room Changes—Handling, in that there was no evaluation done for human factors considerations. The DCA was implemented and changed the control mode of the S/G PORVs without any visible change to the S/G PORV controllers or labeling at the Auxiliary Feedwater Pump Turbine Control Panel.

*Summary of Licensee Response to Violation A*

In its December 12, 1986 response to the Notice, DPC admits the violation as stated, but denies that the deficiencies related to the modification of the steam generator power operated relief valves constituted programmatic deficiencies. DPC beleives instead that the violation reflects an isolated failure in the design review of an atypical modification and the subsequent failure to recognize the impact on station procedures. Additionally, DPC does not believe that examples A.1 and A.2 accurately reflect events related to the modification.

*NRC Evaluation of Licensee Response*

Even if this violation reflects an isolated failure in design review and the subsequent failure to recognize the impact on station procedures, the violation involved a significant failure in DPC's design control program. This violation indicates that DPC had not exercised adequate control to ensure that a design change, Design Change Authorization CN–2–M–1527, which changed the design basis of a system, was reviewed for its effect on established operating procedures and was correctly translated into the appropriate procedure. This situation was further aggravated by human engineering deficiencies introduced by the modifications. As a consequence, the DPC plant staff assigned to perform the test did not understand the function and interaction of controls on the shutdown panels. This lack of understanding led to a pretest setup of the panels that ensured that the power operated relief valves would open on transfer and that attempts to shut them would be futile. For these reasons, the NRC staff believes that the violations do reflect circumstances associated with DCA CN–2–M–1527.

*Restatement of Violation B.1*

B. 10 CFR Part 50, Appendix B, Criterion V, Instructions, Procedures, and Drawings, requires that activities affecting quality shall be prescribed by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures, or drawings.

Contrary to the above, as of June 27, 1986, certain procedures affecting quality were inadequate or not properly implemented and contributed to the depressurization event of June 27, 1986. Specifically:

1. Operating Procedure OP/1/A/6100/04, Shutdown Outside the Control Room from Hot Standby to Cold Shutdown, was inadequate in that Enclosure 4.5 to the procedure specified initial settings for valves 2NV–309 and 2NV–294 which resulted in these valves going to incorrect positions when control was transferred to the remote shutdown panels (Auxiliary Shutdown Panels A and B and the Auxiliary Feedwater Pump Turbine Control Panel).

*Summary of Licensee's Response to Violation B.1*

DPC denies Violation B.1 and asserts that the settings for valves 2NV–309 were established based on the predicted flow requirements and the controller test data. The Catawba Nuclear Station FSAR Summary of Test Program Objectives (Section 14.2.1) states in part that the general objectives of the Initial Test Program at Catawba Nuclear are to provide assurance that operating and emergency procedures are appropriate to the extent practicable. DPC asserts that the Test Procedure TP/2/A/2650/03 was being conducted to meet this objective for the use of Operating Procedure OP/1/A/6100/04 and that the initial positions of valves 2NV–309 and 2NV–294 had been specified on the basis of the best available information. DPC believes that deficiencies identified as a result of this testing are not significant contributors to the transient

and are not in themselves violations unless some other regulatory requirement had been violated.

*NRC Evaluation of Licensee's Response*

The NRC staff maintains its position that Operaitng Procedure OP/1/A/6100/04 was inadequate in that it specified improper initial settings such that upon transfer of control from the control room to the Auxiliary Shutdown Panels, the charging flow and seal injection flow control valves went to positions which were not intended. This was caused by a temporary change to the procedure which had been made to ensure that valve 2NV–309 would be in the closed position, but actually resulted in the valve going to the fully open position. Also, valve 2NV–294 was supposed to be set for 32 gpm. This procedure did not acknowledge that the valve controller is reverse-acting and that there are no units on the 2ASP–A controller scale. Valve 2NV–294 was therefore set for 32 percent closed which happened to correspond to about 40 gpm flow rate.

Additionally, several Catawba personnel were questioned on the operation of seal water injection flow control valve 2NV–309. This valve is capable of being controlled from either 2ASP–A or 2ASP–B. The controlling signal is the highest signal from either controller. Not all personnel questioned were aware of this fact, nor were any aware that the valve is reverse-acting and the controller on Unit 2 was labeled backwards. Indeed, the balance of plant (BOP) operator on 2ASP–A, during the event, thought that 2NV–309 was initally closed. When he saw no response on charging flow after attempting to "open" the valve, he reset it to its original position and disregarded it, believing it to be malfunctioning.

The settings on 2NV–309 and 2NV–294 resuted in a degree of operator confusion during the initial phase of the test. The parameters that behaved unexpectedly were letdown flow (flashing), seal injection, and pressurizer level. Although the failure of 2NV–148 was the apparent direct cause of the letdown flashing, the incorrect labeling of 2NV–294 was also a contributor. Even before the steam generator power operated relief valves opened, the shutdown panel crew was otherwise concerned and occupied with the unanticipated behavior of the above three parameters. Had the power operated relief valves not opened, the NRC staff believes it is unlikely that the misoperation of these valves would have been discovered because this was not discovered during pervious similar testing on Units 1 and 2. Therefore, the NRC staff believes that the deficiencies caused an unnecessary burden on the operators and the objectives of the initial test program were not met in that the deficiences went previously undetected.

*Restatement of Violation B.2*

B. 10 CFR Part 50, Appendix B, Criterion V, Instructions, Procedures, and Drawings, requires that activities affecting quality shall be prescribed by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures, or drawings.

Contrary to the above, as of June 27, 1986, certain procedures affecting quality were inadequate or not properly implemented and contributed to the depressurization event of June 27, 1986. Specially:

2. Test Procedure TP/2/A/2650/03, Loss of Control Room Functional Test, was inadequate in that the procedure lacked specific criteria for termination of the test if the plant was determined to be in an uncontrolled or uncontrollable condition with control transferred to the remote shutdown panels.

*Summary of Licensee's Response to Violation B.2*

The licensee denies that this example is a violation of regulatory requirements because there are no specific requirements for termination criteria in test procedures. DPC also asserts that the essentially identical Unit 1 Loss of Control Room Test procedure was reviewed and approved by the NRC with no mention of termination criteria. Step 6.10 of the test procedure states, "if any situation arises that cannot be adequately controlled from the auxiliary shutdown panels, transfer back to the Control Room." In DPC's opinion, this action was adequate and appropriate. Additionally, DPC states that an attempt to cover every possible contingency would add unnecessary volume without any assurance of covering all occurrence and that instead reliance is appropriately placed on the training and judgment of the licensed operators who are conducting the test.

*NRC Evaluation of Licensee's Response*

The NRC staff agrees with the DPC statement that it is not practical for a procedure to cover every possible contingency and there is necessarily some reliance on the operators' training and judgment while conducting a test. However, as described in Inspection Report 50–413/86–28 and 50–414/86–27, all personnel involved in the test were interviewed by the NRC and there was insufficient guidance given to establish under what conditions or situations the test should be terminated if a successful test was not achieved. While it can be argued that the procedural statement in Step 6.10 was necessarily general in nature, the lack of detail in this step was not compensated for in the training given to the test personnel. During the event while the parameters of pressurizer level and Reactor Coolant System pressure went below the lowest range of the shutdown panel instruments, the operators tried to control the transient from the Auxiliary Shutdown Panels without indication of significant reactor coolant system parameters and without knowing whether they were correcting or contributing to the problem. In addition, most of the operators in the main control room were unaware of the limitation of the reactors coolant system pressure instrument of the Auxiliary Shutdown Panels and therefore, were unable to recognize the situation faced by the operators outside the main control room. DPC failed to properly implement the procedure in not transferring control back to the control room as required because test personnel were not adequately prepared to recognize situations which could not be controlled from the Auxiliary Shutdown Panels. Therefore, Violation B.2 is modified to read as follows:

10 CFR Part 50, Appendix B, Criterion V, Instructions, Procedures, and Drawings, requires that activities affecting quality shall be prescribed by documented instructions, procedures, or drawings, of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures, or drawings.

Contrary to the above, as of June 27, 1986, certain procedures affecting quality were inadequate or not properly implemented and contributed to the depressurization event of June 27, 1986. Specifically:

2. Test Procedure TP/2/A/2650/03, Loss of Control Room Functional Test, was not properly implemented in that control was not transferred back to the control room when a situation arose that could not be adequately controlled from the auxiliary shutdown panels.

The violation, as rewritten, focuses on the licensee's failure to implement the procedure to assure that personnel adequately understood the steps of the procedure and would be able to promptly transfer control back to the control room should the situation warrant it, as opposed to the inadequacy of the procedure to provide test termination criteria. The NRC staff

has concluded that this violation, as rewritten, occurred.

*Restatement of Violation B.3*

B. 10 CFR Part 50, Appendix B, Criterion V, Instructions, Procedures, and Drawings, requires that activities affecting quality shall be prescribed by documented instructions, procedures, or drawings, of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures, or drawings.

Contrary to the above, as of June 27, 1986, certain procedures affecting quality were inadequate or not properly implemented and contributed to the depressurization event of June 27, 1986. Specifically:

3. Operations Management Procedure OMP 1–6, Control Panel Information, Changes, dated May 10, 1982, was not followed by plant operations personnel in the labeling of valves 2NV–294 and 2NV–309 at the remote shutdown panels. OMP 1–6 states that changes to the control panel will conform to human factor guidelines and conventions. However, the labels placed on the controllers for valves 2NV–294 and 2NV–309 were reversed and indicated opposite of the intended and anticipated meaning.

*Summary of Licensee's Response to Violation B.3*

DPC admits that the labels placed on the controllers for valves 2NV–294 and 2NV–309 were reversed and indicated the opposite of the intended and anticipated meanings. However, DPC denies that the mislabeling was a result of a failure to follow Procedure OMP 1–6. The licensee asserts that the mislabeling of the subject valves occurred due to the lack of a formal mechanism for labeling the valves. As a result of the Control Room Design Review, the station had been requested to add "O" and "C" tags to the appropriate controller, and it was left up to the station to determine the correct placement of the tags. The licensee contends that the labels should have been placed in accordance with a formal change, either a Nuclear Station Modification or a work request. The licensee asserts that OMP 1–6 was not intended for implementing labels such as the "O" and "C" tags, but rather provides a mechanism for review and approval of *amplifying* information to be provided on control board components. DPC also does not consider the effect of the valve mislabeling to be significant to the transient.

*NRC Evaluation of Licensee Response*

Procedure OMP 1–6, Control Panel Information Changes, is the procedure which defines method by which information may be added, changed, and or deleted on control panels under Operations Group responsibility, either as a permanent or temporary change. OMP 1–6 states, "any informational change shall conform to human factor guidelines used in the design of the station and agree with set-points, limits, and precautions established in approved operating procedures." Labeling valve controllers is considered to be an informational change. The NRC staff maintains its position that the licensee failed to implement OMP 1–6 to ensure that valves 2NV–294 and 2NV–309 were properly labeled on the shutdown panels and that this contributed to the event. The staff considers the effect of the valve mislabeling to be significant to the transient because of the distraction caused by the unanticipated changes in system parameters, as given in our evaluation of Violation B.1. Even if OMP 1–6 was not intented to be used for these types of labels and a formal change mechanism was required, as DPC asserts, a violation of 10 CFR Part 50, Appendix B did occur in that procedures were not followed in the labeling of these valves.

*Summary of Request for Reduction of Severity Level*

The licensee believes that the categorization of the even as a Severity Level III problem is inappropriate because no risk to the public health and safety was present, thus there was not "cause for significant concern." DPC presented the following three reasons to support this assertion:

1. DPC was conducting a pre-planned startup test when the event occurred. In DPC's view, it is the nature of testing to detect errors and identify any deficiencies in the design, construction, or operating procedures before the unit going into routine service. Therefore, the licensee asserts that matters detected and corrected in a normal pre-planned startup test made should not be viewed as significant concerns, and to penalize DPC for detecting errors is inconsistent with the concept of testing.

2. DPC asserts that because the pre-planned startup test was under way, control room personnel were alert to the fact that anomalies might exist in design, construction, or operating procedures; were aware of plant conditions at all times throughout the test; were in a position to take action; and did in fact take appropriate corrective actions in a timely manner. DPC further asserts that while the NRC staff highlighted the significance of 6 minutes elapsing from the time the steam generator power operated relief valves opened until operator action was taken to transfer control to the control room, control room operators and supervision were fully aware of plant conditions throughout the 6 minute period. Consistent with NRC guidance, control room personnel were determined to give the operators at the auxiliary panels an opportunity to ascertain the problem and to take corrective action. When it became apparent that the operators at the auxiliary panels could not correct the situation and well before any situation would jeopardize the public health and safety, the control room personnel took corrective actions. The Shift Technical Advisor (STA) and Operator at the Controls (OATC) confirmed that the reactor vessel remained full and the reactor coolant pumps continued to operate without indications of problems. The status of the vessel's water level and reactor coolant pump's operation are prime indicators for potential thermal-hydraulic and nuclear effects. Since these parameters were under control at all times, it does not appear that the absence of adverse effects was "fortuitous."

DPC asserts that no Technical Specification Limiting Conditions for Operation were violated.

*NRC Evaluation*

The NRC staff agrees that tests are conducted to detect errors; that as a result of testing, errors can be corrected; and that it is better to find an error during a test than during plant operation. However, the function of testing is not a substitute for good engineering and human factors review. Testing is intended to confirm that tasks were performed correctly in the first place. While the NRC staff recognizes that this test did in fact indicate that existing plant hardware and procedures were incapable of assuring that the reactor could be maintained in a stable condition when it was shut down from outside the control room, there were opportunities during the design, installation, and testing of the steam generator power operated relief valve controllers to identify the types of problems which occurred during the Loss of Control Room Test. The categorization of the violations as a Severity Level III problem was to focus attention on the root cause of the violations, namely the lack of adequate design review, inadequate procedures, and the failure to follow procedures. The

NRC staff considers this, coupled with the fact that the deficiencies involved functions which were important to plant safety, to be cause for significant concern.

Neither the limitations of the remote shutdown panels nor consideration of safety system parameters were taken into account in guidance provided to the plant operators for termination of the Loss of Control Room Test. When significant reactor coolant parameters of pressurizer level and pressure went below the range of the instruments on the Auxiliary Shutdown Panels and plant operators at the Auxiliary Shutdown Panels no longer had indication of these parameters, they should have known or had guidance to terminate the test immediately and switch control back to the control room. Instead the operators continued to try to control the transient from the Auxiliary Shutdown panels without indication of reactor coolant system inventory and, therefore, without knowing whether they were correcting or contributing to the problem. Therefore, the 6 minute period from the time the steam generator power operated relief valves opened until operator action was taken to transfer control back to the control room is considered to be significant.

Although the transient did not result in a violation of Technical Specification cooldown rate or shutdown margin, the NRC maintains its position that it is fortuitous that there were no adverse thermal-hydraulic or nuclear effects on the plant because of this design control failure. If the transfer of control had occurred a short period of time after the actual 6 minute transfer, the NRC believes that much more serious conditions would have resulted.

*Summary of Request for Mitigation of Civil Penalty*

DPC contends that even if a Severity Level III categorization were appropriate for this case, there are sufficient mitigation factors to completely eliminate any associated civil penalty. In support of this position DPC presented the following arguments:

1. Licensee Comment

In the licensee's view, a 50 percent reduction in the proposed civil penalty is warranted based on prompt identification and reporting of the event. Because the test was witnessed by NRC/Region II personnel, DPC contends that the NRC was immediately made aware of the event and that notification of the NRC Operations Center was promptly made.

NRC Evaluation

The purpose of this factor is to encourage licensees to identify and report information to the NRC. In this case, due to the nature of the event and the NRC presence during the actual test, the NRC was aware of the situation which arose at the same time as DPC. Therefore, mitigation of the proposed civil penalty for prompt identification and reporting of the event is not warranted.

2. Licensee Comment

DPC asserts that the November 12, 1986, Notice of Violation and Proposed Imposition of Civil Penalty acknowledges the prompt and extensive corrective actions taken by the licensee; therefore, DPC believes a 50 percent reduction of the proposed civil penalty is warranted.

NRC Evaluation

The November 12, 1986, transmittal letter did acknowledge that prompt and extensive corrective actions were taken, but it also referred to the occurrence of previous testing deficiencies. Any mitigation that might have resulted from the licensee's prompt and extensive corrective actions was offset by past performance considerations. The NRC staff maintains its original position on this matter.

3. Licensee Comment

In the November 12, 1986, transmittal letter, the NRC stated that deficiencies in Catawba's past performance were justification for not mitigating the proposed civil penalty and cited a Catawba Unit 2 cold hydrostatic test that resulted in the overpressurization of the residual heat removal system piping and the volume control tank. DPC contends that these events were of minimal safety significance as reflected by a Severity Level IV citation. DPC also contends that the root cause of both cold hydrostatic overpressurization events was personnel error and that the root cause of the Loss of Control Room Test transient was design deficiency and defective procedures caused by inadequate communications between plant and design personnel. DPC believes that the two occurrences did not have similar root causes and that the previous overpressurization events are unrelated to this event. Therefore, in DPC's view, this is not a justifiable basis for not mitigating the proposed civil penalty and 100 percent mitigation of the civil penalty based on this factor is warranted.

NRC Evaluation

The NRC staff contends that the two occurrences did have the same root cause in the management control of testing activities and demonstrated a lack of effective communications and inadequate procedures to perform the testing. Therefore, the testing deficiencies in Catawba's past performance were adequate justification for not mitigating the proposed civil penalty.

4. Licensee Comment

DPC contends that the factors of prior notice and multiple occurrences are not appropriate in this case.

NRC Evaluation

The NRC staff agrees that these factors should not be applied in this case.

*Additional Comments*

The licensee requested that additional comments on the November 12, 1986, transmittal letter be considered.

1. Licensee Comment

DPC states that Violation A involved the Design Change Authorization (DCA) program under which the modification to the steam generator power operated relief valves was done was a pre-operational program. This program was replaced by the Nuclear Station Modification (NSM) program which provides for greater involvement of station personnel in the modification process and would tend to preclude the type of problem that occurred. Therefore, the emphasis on design changes that is intended by imposition of a civil penalty is lost on a design change program that is no longer in use.

NRC Evaluation

The NRC staff considers DPC's NSM program which provides for greater involvement of station personnel in the modification process, to be a potential improvement, and recognizes that the deficiencies occurred under the DCA program which is no longer in effect. However, this does not preclude the fact that significant design deficiencies which resulted in a severe plant transient remained undetected under the DCA program. The NRC staff expects that similar deficiencies would not recur in the NSM program.

2. Licensee Comment

DPC contends that the identified deficiencies in the procedures used for the Loss of Control Room Test were either insignificant to the transient and are criticisms that go beyond the design

basis of the plant or are beyond the scope of the test.

a. Licensee Comment. DPC does not consider the improper settings of charging flow and seal injection flow control valves to be significant contributors to the transient.

NRC Evaluation. The NRC staff believes that the deficiencies caused an unnecessary burden on the operators and that the operating procedure was inadequate. This is also discussed in the NRC response to Violation B.1.

b. Licensee Comment. DPC contends that there are no specific requirements for termination criteria in test procedures. DPC also asserts that the essentially identical Unit 1 Loss of Control Room Test procedure was reviewed and approved by the NRC with no mention of termination criteria. In DPC's opinion, the procedural caution in Step 6.10 was adequate and appropriate.

Additionally, DPC states that an attempt to cover every possible contingency would add unnecessary volume without any assurance of covering all occurrences and that, instead, reliance is appropriately placed on the training and judgment of the licensed operators who are conducting the test.

NRC Evaluation. This is discussed in the NRC response to Violation B.2.

c. Licensee Comment. DPC contends that the design of Catawba's auxiliary shutdown panels was reviewed and approved by the NRC and as noted in the SER, no accident is assumed to have occurred. Therefore, inclusion of procedures for actuation of safety injection systems in the test procedure was beyond the design basis of the plant.

NRC Evaluation. The inability to initiate safety injection from the remote shutdown panels was not cited as part of Violation B.2. It was intended to be an example of a limitation of the remote shutdown panels that was not taken into account in procedural guidance provided to the plant operators for termination of the Loss of Control Room Test.

d. Licensee Comment. DPC asserts that the limitation of narrow range pressurizer pressure (1700 to 2500 psig) had been previously recognized as Human Engineering Design (HED) No. C-1-0102 and is documented in DPC's Response to Supplement 1 to NUREG-0737. This HED was scheduled for correction during the first refueling outage in accordance with Licensee Condition 7. The test procedure was adequate for its intended purpose since the Reactor Coolant System temperature was to be reduced by 50° F in accordance with FSAR Table 14.2.12-2. At that temperature, the pressurizer level and pressure would have been on-scale.

NRC Evaluation. This is discussed in the NRC response to Violation B.2.

e. Licensee Comment. DPC contends that the mislabeling of the valve controllers is not considered to be a significant contributor to the transient.

NRC Evaluation. The is discussed in the NRC response to Violation B.3.

**Conclusion**

The NRC staff concludes that the violations as amended herein with respect to Violation B.2 occurred and that these violations are significant because they demonstrate the need for more attention to test procedures, procedure implementation, and design changes and their effects on plant procedures. The difficulties encountered during the Loss of Control Room Test indicate that at the time of the test, existing plant hardware and procedures were incapable of assuring that the reactor could be maintained in a stable condition when it was shutdown from outside the control room. While the NRC staff recognizes that this test was intended to demonstrate this capability, there were opportunities during the design, installation, and testing of the steam generator power operated relief valve controllers to identify the types of problems which occurred during the Loss of Control Test.

Therefore, after careful consideration of your response, the NRC concludes that the violations are appropriately classified as a Severity Level III problem and that sufficient basis does not exist for the reduction of the severity level or mitigation the proposed civil penalty. Accordingly, the civil penalty in the amount of Fifty Thousand Dollars ($50,000) civil penalty should be imposed.

[FR Doc. 87-9234 Filed 4-22-87; 8:45 am]
BILLING CODE 7590-01-M

---

[Docket No. 50-461]

## Illinois Power Co., et al.; Issuance of Facility Operating License

In the matter of Illinois Power Co., Soyland Power Coop., Inc., and Western Illinois Power Coop., Inc. and Clinton Nuclear Power Station, Unit No. 1.

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-62 to the licensees which authorizes operation of the Clinton Nuclear Power Station, Unit No. 1 (the facility), at reactor core power levels not in excess of 2894 megawatts thermal (100 percent rated power) in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan.

On September 29, 1986 the Commission issued Facility Operating License No. NPF-55 to the licensees which authorized operation of Clinton Nuclear Power Station, Unit No. 1, to five percent power (144.7 megawatts thermal).

License No. NPF-62 supersedes NPF-55.

The Clinton Nuclear Power Station, Unit No. 1 is a boiling water nuclear reactor in Harp Township, DeWitt County, approximately six miles east of the city of Clinton in east-central Illinois. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on September 29, 1980 (45 FR 64387). The power level authorized by this license and conditions contained herein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of exemptions included in this license will have no significant impact on the environment. These determinations were published in the Federal Register on February 18, 1986 (51 FR 5816), July 11, 1986 (51 FR 25274) and December 23, 1986 (51 FR 45872).

For further details with respect to this action, see (1) Facility Operating License No. NPF-62, with Technical Specifications (NUREG-1235) and the Enviromental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated March 9, 1982; (3) the Commission's Safety Evaluation Report, dated February 1982 (NUREG-0853), and Supplements 1 through 8; (4) the Final Safety Analysis Report and Amendments thereto; (5) the

Environmental Report and supplements thereto; and (6) the Final Environmental Statement dated May 1982 (NUREG–0854).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and in the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of Facility Operating License NPF–62 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V. Copies of the Safety Evaluation Report and Supplements 1 through 8 (NUREG–0853) and the Final Environmental Statement (NUREG–0854) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or may be ordered by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. All orders should clearly identify the NRC publication number and the requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland this 17th day of April 1987.

For the Nuclear Regulatory Commission.

**Daniel R. Muller.**

*Director, Project Directorate III–2, Division of Reactor Projects III/IV/V*

[FR Doc. 87–9235 Filed 4–22–87; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, May 6, 1987
Wednesday, May 13, 1987
Wednesday, May 20, 1987
Wednesday, May 27, 1987

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to device strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9()B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 632–9710.

**Thomas E. Anfinson,**

*Chairman, Federal Prevailing Rate Advisory Committee.*

April 17, 1987.

[FR Doc. 87–9236 Filed 4–22–87; 8:45 am]

BILLING CODE 6325–01–M

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on May 14 and 15, 1987 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on May 14, recess and reconvene at 8:00 a.m. on May 15, 1987. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The May 14 session and a portion of the May 15 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of a meeting will also be closed to the public, pursuant to 5 U.S.C. 552b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Barbara J. Diering, at (202) 456–7740, prior to 3:00 p.m. on May 13, 1987. Mrs. Diering is also available to provide specific

information regarding time, place and agenda for the open session.

**Jonathan F. Thompson,**

*Executive Assistant, Office of Science and Technology Policy.*

April 16, 1987.

[FR Doc. 87-9230 Filed 4-22-87; 8:45 am]

BILLING CODE 3170-01-M

## DEPARTMENT OF STATE

### Office of the Secretary

### Establishment of Assessment Review Panel for United States Missions in the Soviet Union; Notice of Partially Closed and Closed Meetings

At the President's request, the Secretary of State has established an Assessment Review Panel for United States Missions in the Soviet Union. The Panel is being established to investigate recent breaches of security in the operations of the United States Missions in the Soviet Union and to report to the President and to the Secretary of State such findings and recommendations as it deems appropriate. The Panel will consist of four members: Former Secretary of Defense, Melvin R. Laird; former Director of the CIA, Richard M. Helms; former Chairman of the Joint Chiefs of Staff, General John W. Vessey; and former Ambassador to Brazil, Diego C. Asencio. The Panel is established subject to procedures prescribed in the Federal Advisory Committee Act.

The Panel will offer advice to the President and the Secretary of State on how to improve the security and efficiency of any program or operation relevant to the appropriate security management of United States Missions in the Soviet Union. Such counsel would not otherwise be available to the President and the Department of State through existing channels of policy-making. The operation of the Assessment Review Panel will serve the public interest in helping the President and the Secretary of State avoid recurrences of security breaches such as those recently experienced at the United States Missions in the Soviet Union.

Pursuant to the provisions of Pub. L. 92-463, notice is hereby given that the first meeting of the Assessment Review Panel will be held on May 6, 1987 at 10:00 a.m. in the Dean Acheson Auditorium of the Department of State, 2201 C Street NW., Washington, DC 20520. The session will be open to the public and the public may participate in the discussions subject to the instructions of the Chairman. Entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Therefore, prior to the meeting, persons who plan to attend should so advise Mr. Lawrence Taylor, telephone (202) 647-0022. All attendees are asked to use the 23rd Street entrance.

Upon conclusion of the open meeting, the Panel will meet in closed session. Notice is also hereby given that the Panel will meet thereafter in closed session at 9:00 a.m. on the following dates: May 7, 12, 14, 19, 26, 27 and 28, and June 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 26, 29, and 30.

Subjects to be discussed at these meetings include whether the security systems and security procedures were adequate at the United States Missions in the Soviet Union and whether established security procedures were properly implemented; whether intelligence and information were available that could have forewarned of security problems; and such other facts and circumstances which may be relevant to the appropriate security management of United States Missions in the Soviet Union. At the closed sessions, documents classified in accordance with Executive Order 12356 of April 12, 1982 will be circulated and discussed and matters will be considered that required to be withheld from disclosure in order to protect the personal privacy of certain individuals and the public interest. Accordingly, a determination has been made to close these sessions pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, s.10(d) and 5 U.S.C. 552b(c)(1), (c)(2), (c)(6), and (c)(9).

Requests for further information should be directed to Mr. Lawrence Taylor, (202) 647-0022.

**Sheldon J. Krys,**

*Executive Secretary, Assessment Review Panel for United States Missions in the Soviet Union.*

April 20, 1987.

[FR Doc. 87-9264 Filed 4-22-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1070]

### Advisory Committee on Oceans and International Environmental and Scientific Affairs; Partially Closed Meeting

The Department of State's Advisory Committee on the Oceans and International Environmental and Scientific Affairs will meet at 2:00 p.m. Tuesday, May 5, 1987 in Room 1406 of the Department of State at 2201 C Street NW., Washington, DC.

At this meeting, officers responsible for space policy and international space cooperation will discuss key issues and problems in that field and seek comments and advice. This session, which will last until 4:00 p.m., will be open to the public. Members of the general public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairperson. In that regard, entrance to the Department of State building is controlled, and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Science and Technology Support by contacting Robert Day or Douglas Dearborn, telephone (202) 647-4069. All attendees must use the C Street entrance to the building.

Officers of the Bureau of Oceans and International Environmental and Scientific Affairs, along with the Department of State's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will meet at 8:45 a.m. on Wednesday, May 6, in a session which will not be open to the public. This session will include discussion of classified material under 5 U.S.C. 522b (c)(1) and U.S.C 522b (c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the American position in future negotiations. The purposes of these discussions will be to elicit views and discuss issues concerning U.S. space policy and to review ongoing negotiations. This portion of the meeting will include classified briefings and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on this meeting should be directed to Thomas Wajda or Robert Day of the Office of Science and Technology Support of the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs. They may be reached by telephone on (202) 647-4069.

**John D. Negroponte,**

*Chairman, Advisory Committee on Oceans and International Environmental and Scientific Affairs.*

April 15, 1987.

[FR Doc. 87-9110 Filed 4-22-87; 8:45 am]

BILLING CODE 4710-08-M

## DEPARTMENT OF TRANSPORTATION

[Order 87-4-43; Docket 44208]

### Application of Amerijet International, Inc. for Certificate Authority Under Subpart Q; Order To Show Cause

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause (order 87-4-43), docket 44208.

**SUMMARY:** The Department is directing all interested persons to show cause why it should not issue an order granting Amerijet International, Inc., a certificate to engage in foreign charter air transportation of persons, property and mail.

**DATES:** Persons wishing to file objections should do so no later than May 5, 1987.

**ADDRESSES:** Responses should be filed in Docket 44208 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Barbara P. Dunnigan, Special Authorities Division, Office of Aviation Operations, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366-2342.

Dated: April 17, 1987.

**Matthew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 87-9214 Filed 4-22-87; 8:45 am]

BILLING CODE 4910-62-M

## Federal Highway Administration

### Environmental Impact Statement; City of Raleigh and Wake County, NC

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project within the City of Raleigh and Wake County, North Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy C. Shelton, District Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 856-4330.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed Northern Wake Expressway (Raleigh Outer Loop) in Raleigh and Wake County. The proposed action would be the construction of a multilane divided, controlled access highway on new location from a point just west of NC 55 around the western and northern portions of Raleigh to a point just south of US 64E. This proposed facility is a portion of a planned complete outer belt facility which ultimately will provide for circumferential travel and will relieve existing traffic congestion along the northern section of the Raleigh Beltline. The proposed action is a part of the 1984 Raleigh-Cary-Garner and 1981 Wake County Thoroughfare Plans.

Alternatives under consideration include: (1) The "no-build", (2) improving existing facilities, and (3) a controlled access highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting and meetings with local officials and neighborhood groups will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: April 15, 1987.

**Roy C. Shelton,**

*District Engineer.*

[FR Doc. 87-9097 Filed 4-22-87; 8:45 am]

BILLING CODE 4910-22-M

## National Highway Traffic Safety Administration

### National Conference on Coordination of Emergency Medical Services Information Resource Management

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of conference.

**SUMMARY:** This notice announces that NHTSA, in consultation with other Federal agencies and the American Medical Association Commission on Emergency Medical Services, intends to convene a national conference of emergency medical services (EMS) information resource managers. The purpose of the conference will be to develop consensus guidelines for private sector coordination of the dissemination of EMS information. The objective of such coordination is to promote better public awareness of and access to EMS information and to improve the utilization of national EMS information resources for upgrading and broadening the observance of national EMS voluntary standards being developed by ASTM Committee F-30.

**DATES:** January, 1988. Conference location and schedule will be announced.

**FOR FURTHER INFORMATION CONTACT:** NHTSA Project Manager; Mr. Charles J. Glass; NHTSA (NTS-42); 400 7th St., SW.; Washington, DC 20590; Phone (202) 366-4297.

**SUPPLEMENTARY INFORMATION:** The January 1987 edition of the Journal of Emergency Medical Services (JEMS) identified numerous associations and organizations which serve as national EMS information resources, including ten government organizations such as NHTSA.

NHTSA is soliciting conference planning information from the already identified EMS information resources. The intent of this notice is to invite other such organizations to inquire about and participate in the planned conference.

Organizations interested in the conference should notify the NHTSA project officer by letter or telephone.

Issued on: April 20, 1987.

**George L. Reagle,**

*Associate Administrator, Traffic Safety Programs.*

[FR Doc. 87-9227 Filed 4-22-87; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[Dept. Circ.—Public Debt Series—No. 10-87]

### Treasury Notes of April 30, 1989, Series X-1989

Washington, April 16, 1987.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders of approximately $10,000,000,000 of United States securities, designated Treasury Notes of April 30, 1989, Series X–1989 (CUSIP No. 912827 UU 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks of their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated April 30, 1987, and will accrue interest from that date, payable on a semiannual basis on October 31, 1987, and each subsequent 6 months on April 30 and October 31 through the date that the principal becomes payable. They will mature April 30, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, April 22, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 21, 1987, and received no later than Thursday, April 30, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment of the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalant to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when

the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Thursday, April 30, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, April 28, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, April 30, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-9245 Filed 4-21-87; 9:43 am]

BILLING CODE 4810-40-M

---

## Internal Revenue Service

**[Delegation Order No. 137 (Rev. 2)]**

### Delegation of Authority: District Directors et al.

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Delegation of Authority.

**SUMMARY:** Delegation Order No. 137 is revised to reflect the responsibilities for administering section 7611 of the Internal Revenue Code of 1954, Restrictions on Church Tax Inquiries and Examinations, which was added by section 1033 of the Deficit Reduction Act of 1984 and superseded restrictions in former section 7605(c) of the Code.

**EFFECTIVE DATE:** April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Miller, OP:E:O:E, Internal Revenue Service, 1111 Constitution Ave., NW., Room 2219, Washington, DC 20224, Telephone No. (202) 566-3310, (Not a toll free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** Wednesday, November 8, 1978.

**Frances T. H. Hallihan,**

*Chief, Employee Plans and Exempt Organizations, Examination Branch.*

**Order No. 137 (REV. 2)**

Effective date: 4-13-87

**Authority To Perform Functions Relating to Church Tax Inquiries and Examinations**

1. Pursuant to the authority vested in the Commissioner of Internal Revenue under Treasury Delegation Order No. 150-10 and 26 CFR 301. 7611-1, District Directors are authorized to hold conferences described in IRC 7611 (b)(3)(A)(iii) and to execute agreements under IRC 7611 (c)(2)(c) to suspend the periods for completing church tax inquiries or examinations. The authority to perform these functions may be redelegated no lower than Group manager level.

2. To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

3. This Order supersedes Delegation Order No. 137 (Rev. 1) effective November 10, 1976

Approved:
Dated: April 13, 1987.

**James I. Owens,**

*Deputy Commissioner.*

[FR Doc. 87-9157 Filed 4-22-87; 8:45 am]

BILLING CODE 4830-01-M

---

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 17, 1987.

By direction of the Administrator.

David A. Cox,

*Associate Deputy Administrator for Management.*

Extension

1. Department of Veterans Benefits.
2. Electrical Systems Inspection Report (Manufactured Home).
3. VA Form 26–8731b.
4. This form is completed by inspectors to record findings for electrical systems of used manufactured homes proposed as security for guaranteed loans in order to determine acceptability of units for VA financing.
5. On occasion.
6. Individuals or households; Businesses or other for-profits; and Small businesses or organizations.
7. 1,000 responses.
8. 2,000 hours.
9. Not applicable.

[FR Doc. 87–9118 Filed 4–22–87; 8:45 am]

BILLING CODE 8320-01-M

BEST COPY AVAILABLE

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 78
Thursday, April 23, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, April 14, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum re: Investment Management Report (dated December 31, 1986).

At that same meeting, the Board also: (1) Accepted the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accepted the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type of transaction is submitted, made funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) First State Bank of Forest City, Forest City, Missouri, which was expected to be closed by the Commissioner of Finance for the State of Missouri on Thursday, April 16, 1987; (b) First Commercial Bank of Texas, National Association, Houston, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 16, 1987, and (c) First State Bank of Saginaw, Saginaw, Texas, which was expected to be closed by the Banking Commissioner for the State of Texas on Thursday, April 16, 1987.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 20, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87-9278 Filed 4-21-87; 2:12 pm]

BILLING CODE 6714-01-M

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, April 28, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * * *

**DATE AND TIME:** Thursday, April 30, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility for Candidates to Receive Presidential Matching Funds.
Draft Advisory Opinion 1987-9—Charles Day on behalf of Stop the Arms Race Political Action Committee.
Routine Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

**Mary W. Dove,**

*Administrative Assistant.*

[FR Doc. 87-9309 Filed 4-21-87; 3:21 pm]

BILLING CODE 6715-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [52 FR 13171, April 21, 1987).

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Friday, April 17, 1987.

**CHANGE IN THE MEETING.** Revised.

The following open meeting scheduled for Tuesday, April 21, 1987, at 2:00 p.m. has been revised to read as follows:

1. Consideration of whether to review the no-action position taken by the Division of Corporation Finance with respect to the exclusion of a shareholder proposal submitted by the California Public Employees' Retirement System from the proxy material for the 1987 annual meeting of Union Camp Corporation. For further information, please contact Cecilia D. Blye at (202) 272-2573.

2. Consideration of whether to review the no-action position taken by the Division of Corporation Finance with respect to the exclusion of a shareholder proposal submitted by the California Public Employees' Retirement System from the proxy material for the 1987 annual meeting of Aluminum Company of America.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

**Jonathan G. Katz,**

*Secretary.*

April 21, 1987.

[FR Doc. 87-9336 Filed 4-21-87; 4:03 pm]

BILLING CODE 8010-01-M

# Corrections

Federal Register

Vol. 52, No. 78

Thursday, April 23, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 2090

[Circular No. 2593; AA-320-87-4220]

### Special Laws and Rules; Restatement of Procedures for the Segregation and Opening of Public Lands

*Correction*

In rule document 87-8342 beginning on page 12171 in the issue of Wednesday, April 15, 1987, make the following correction:

**§ 2091.3-1 [Corrected]**

On page 12176, in the third column, in § 2091.3-1, in the last line of paragraph (b), "§ 2203.1(b)" should read "§ 2202.1(b)".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Office of the Secretary

### 29 CFR Part 20

### Debt Collection Act of 1982; Salary Offset

*Correction*

In rule document 87-2295 beginning on page 3772 in the issue of Thursday, February 5, 1987, make the following correction:

**§ 20.81 [Corrected]**

On page 3775, in § 20.81(c), in the first column, in the ninth line, insert "debt" before "and".

BILLING CODE 1505-01-D

L
2
S S
8
P
3
87
M I

federal register

Thursday
April 23, 1987

Part II

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**Real Estate Settlement Procedures Act; Special Information Booklet and Revised HUD-1 Settlement Statement; Notice**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

[Docket No. N-87-1672; FR-1942]

## Real Estate Settlement Procedures Act; Special Information Booklet and Revised HUD-1 Settlement Statement

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of a revised special information booklet and HUD-1 Settlement Statement as required by the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601-17) and prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner.

**FOR FURTHER INFORMATION CONTACT:** Alan J. Kappeler, Office of Insured Single Family Housing, (202) 755-3046, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On June 10, 1976 the Department issued the current special information booklet (41 FR 23620). The special information booklet provided a description and explanation of the nature and purpose of each cost incident to a real estate settlement, the HUD-1 settlement statement, escrow accounts used in connection with loans secured by residential real estate, providers of real estate settlement services, and unfair practices and unreasonable or unnecessary charges. RESPA requires the special information booklet to be provided to each borrower at the time of application for a mortgage loan qualifying under RESPA.

Since 1976, RESPA has been amended (Section 461 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181) and several parts of the special information booklet have become outdated. Pursuant to 24 CFR 3500.6(b), the Assistant Secretary for Housing—Federal Housing Commissioner has revised the special information booklet by addressing amendments made to RESPA and updating informational references and the booklet's discussion of the HUD-1 Settlement Statement.

Pursuant to 12 U.S.C. 2603, the Secretary of HUD has revised the HUD-1 Settlement Statement in an attempt to meet the needs and requests for private industry users of the form. RESPA requires that the HUD-1 Settlement Statement be used by the person conducting the settlement of any federally related mortgage loan, unless the transaction is exempt under 24 CFR 3500.8(d). The HUD-1 Settlement Statement shows all charges to be paid by the borrower and the seller in connection with the settlement. The instructions for printing and duplicating the form, as well as the permissible changes, are set forth in 24 CFR 3500.9. Changes or additions to the HUD-1 Form to allow for its use in conjunction with Treasury Regulations 26 CFR 1.60545-3T(m) (seller's statements at real estate closings) will be published by separate notice.

The Department will make a copy of the special information booklet and HUD-1 Settlement Statement available to any firm planning to publish the booklet, the form, or both for distribution to lenders. Firms interested in securing a copy should send their requests to the Director, Office of Insured Single Family Housing, Attention: Special Information Booklet/RESPA or HUD-1 Settlement Statement, Room 9278, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The booklet will also be available through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Department does not have a sufficient supply of the booklet and form to provide copies to lenders, settlement agents, attorneys and title companies. Lenders may use the booklet and form as soon as it becomes available through normal sources. Previous editions may be used until supplies are exhausted or until July 1, 1987, whichever is earlier.

The Department is hereby publishing the revised special information booklet and HUD-1 Settlement Statement to provide appropriate notice of its contents. The text of the special information booklet and HUD-1 Settlement Statement for the Real Estate Settlement Procedures Act follows:

**Authority:** Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601-2616).

Dated: March 9, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

**Settlement Costs—a HUD Guide**

*U.S. Department of Housing and Urban Development, December 1986*

**Table of Contents**

**Introduction**

*Part I*

What Happens and When
Shopping for Services
Role of the Broker
Negotiating a Sales Contract
Selecting an Attorney
Selecting a Lender
Selecting a Settlement Agent
Securing Title Services

*Home Buyer's Rights*

Special Information Booklet
Good Faith Estimate
Lender Designation of Settlement Service Providers
Disclosure of Settlement Costs One Day Before Closing and Delivery
Escrow Closing
Truth-in-Lending
Protection Against Unfair Practices
Kickbacks
Title Companies
Fair Credit Reporting
Equal Credit Opportunity
The Right to File Complaints

*Home Buyer's Obligations*

(Repayment of Loan and Maintenance of Home)

*Part II*

Specific Settlement Services
HUD-1 Settlement Statement
Settlement Costs Worksheet
Comparing Lender Costs
Calculating the Borrower's Transaction
Reserve Accounts
Adjustments between Buyer and Seller

*Appendix*

**Settlement Costs**

*Introduction*

For many people, buying a home is the single most significant financial step of a lifetime. The Real Estate Settlement Procedures Act of 1974 (RESPA), a Federal statute, helps to protect you at this step.

Settlement is the formal process by which ownership of real property passes from seller to buyer. It is the end of the home buying process, the time when title to the property is transferred from the seller to the buyer.

RESPA covers most residential mortgage loans used to finance the purchase of one- to four-family properties, such as a house, a condominium or cooperative apartment unit, a lot with a manufactured home, or a lot on which you will build a house or

place a manufactured home immediately following settlement. RESPA does not apply to loans to refinance the home.

RESPA is not designed to set the prices of settlement services. Instead, it provides you with information to take the mystery out of the settlement process, so that you can shop for settlement services and make informed decisions.

This information booklet was prepared as provided in RESPA by the Assistant Secretary for Housing—Federal Housing Commissioner of the U.S. Department of Housing and Urban Development.

Part One of this booklet describes the settlement process and nature of charges and suggests questions you might ask of lenders, attorneys and others to clarify what services they will provide you for the charges quoted. It also contains information on your rights and remedies available under RESPA, and alerts you to unfair or illegal practices.

Part Two of this booklet is an item-by-item explanation of settlement services and costs, with sample forms and worksheets that will help you in making cost comparisons. Remember that terminology varies by locality so that terminology used here may not exactly match that used in your area. For example, settlement is sometimes called closing, and settlement charges are frequently referred to as closing costs.

**Part I**

*What Happens and When*

Suppose you have just found a home you would like to buy. In a typical situation, when you reach an agreement with the seller on the price, you then sign a sales contract. The terms of the sales contract relating to settlement costs can be negotiated to your benefit, as the booklet explains below.

Next you will probably seek a mortgage loan to finance the purchase. (A mortgage is known as a deed of trust or security deed in some areas.) This booklet suggests questions you should raise as you shop for a lender.

When you file your application for a loan, the lender is required by RESPA to provide a Good Faith Estimate of the costs of settlement services and a copy of this booklet. The lender has three business days, after written loan application, to deliver or mail these materials to you.

Between loan application time and settlement, you usually have a chance to shop for settlement services, to ensure that you will obtain good value for your money.

Finally, one business day before settlement, if you so request, the person conducting the settlement must allow you an opportunity to see a HUD–1 Settlement Statement that shows whatever figures are available at that time for settlement charges you will be required to pay. At settlement, the completed HUD–1 Settlement Statement will be given to you.

**Note.**—In some parts of the country where there is no actual settlement meeting, or in cases where neither you nor your authorized agent attends the closing meeting, the person conducting settlement has the obligation to deliver the HUD–1 Settlement Statement to you as soon as practicable after settlement.

There is no standard settlement process followed in all localities; therefore, what you experience, involving many of the same services, will probably vary from the description in this booklet.

*Shopping for Services*

At the time of settlement, you are committed to complete the purchase of the property and may have made a partial payment, sometimes called earnest money, to the seller or his agent. Services may have been performed for which you are obligated to pay. Unless a seller fails to perform a legally binding promise or has acted in a fraudulent fashion, you are normally obligated to complete your part of the contract and pay settlement costs. Thus the time to decide the terms of sale, raise questions, and establish fair fees is not at time of settlement, but earlier, when you negotiate with the seller and providers of settlement services. By the time of settlement, any changes in settlement costs and purchase terms may be difficult to negotiate.

You can also negotiate with the seller of the home about who pays various settlement fees and other charges. There are generally no fixed rules about which party pays which fees, although in many cases this is largely controlled by local custom.

Among the many factors that determine the amount you will pay for settlement costs are the location of your new home, the type of sales contract you negotiate, the arrangements made with the real estate broker, the lender you select, and your decisions in selecting the various firms that provide required settlement services. If the chosen home is located in a "special flood hazard area", identified as such by the Federal Emergency Management Agency (FEMA) on a flood insurance map, the lender may require you to purchase flood insurance pursuant to Federal law (See Part II, line 903). Information on flood insurance availability, limits of coverage and copies of maps can be obtained through the National Flood Insurance Program (NFIP) by calling this toll-free number 800–638–6620 (in Maryland—800–492–6605) or by writing to NFIP, P.O. Box 619, Lanham, Maryland 20706.

*Role of the Broker*

Although real estate brokers provide helpful advice on many aspects of home buying, *they serve the interests of the seller, not you, the buyer.* The broker's basic objective is to obtain a signed contract of sale which properly expresses the agreement of the parties, and to complete the sale. However, as State licensing laws require that the broker be fair in his dealings with all parties to the transaction, you should feel free to point this out to the broker if you feel you are being treated unfairly. If you have any questions concerning the conduct of an agent or broker, you should contact your State Real Estate Commission or licensing department.

A broker may recommend that you deal with a particular lender, title company, attorney, or other provider of settlement services. Ask brokers why they recommend a particular company or firm in preference to others. Advise them that while you welcome their suggestions (and, indeed, they probably have good contacts), you reserve the right to pick your own providers of services.

*Negotiating a Sales Contract*

If you have obtained this booklet before you have signed a sales contract with the seller of the property, here are some important points to consider regarding that contract.

The sales agreement you and the seller sign can expressly state which settlement costs you will pay and which will be paid by the seller although some may be negotiable up to time of settlement. Buyers can and do negotiate with sellers as to which party is to pay for specific settlement costs. The success of such negotiations depends upon factors such as how eager the seller is to sell and you are to buy, the quality of the home itself, how long the home has been on the market, whether other potential buyers are interested, and how willing you are to negotiate for lower costs. It the contract is silent on these costs, they are still open to negotiation.

The is no standard sales contract which you are required to sign. You are entitled to make any modifications or additions in any standard form contract to which the seller will agree. You

should consider including the following clauses:

—The seller provides title, free and clear of all liens and encumbrances except those which you specifically agree to in the contract or approve when the results of the title search are reported to you. You may negotiate as to who will pay for the title search service to determine whether the title is "clear".

—A refund of your deposit (earnest money) shall be made by the seller or escrow agent with cancellation of the sale if you are unable to secure from a lending institution a first mortgage or deed-of-trust loan with an amount, interest rate, and length of term, as set forth in the contract, within a stated time period, or if the Seller is unable to satisfy any other condition of the Sales Contract.

—A certificate shall be provided at time of settlement, stating that the home is free from termites or termite damage.

—A certificate or other assurance shall be provided by the Seller at the time of settlement, stating that the plumbing, heating, electrical systems and appliances are in working order, and that the home is structurally sound. Negotiate who pays for any necessary inspections. There is no uniform custom in most areas. Most buyers prefer to pay for these inspections because they want to know that the inspector is conducting the service for them, not for the seller. (In many areas, you can also purchase a warranty to back up the inspection, if you wish).

—An agreement on how taxes, water and sewer charges, condominium fees, premiums on existing transferable insurance policies, utility bills, interest on mortgages, and rent (if there are tenants) and to be divided between buyer and seller as of the date of the settlement.

Before you sign the sales contract, make sure that it correctly expresses your agreement with the seller on such important details as the sales price of the home, method of payment, the time set for your taking possession, what fixtures, appliances, and personal property are to be sold with the home, and the other items described above.

The above list is not complete, but does illustrate the importance of the sales agreement and its terms. Before you sign a sales contract you may want to ask an attorney to review the proposed agreement and determine if it protects your interests, for once signed, the contract is binding on you and the seller. If you do not know of an attorney you may wish to consult the local bar association referral service or neighborhood legal service office.

*Selecting an Attorney*

If you seek the aid of an attorney, first ask what services will be performed for what fee. If the fee seems to high, shop for another lawyer. Does the attorney have substantial experience in real estate? The U.S. Supreme Court has said that it is illegal for bar associations to fix minimum fee schedules for attorneys, so do not be bashful about discussing and shopping for legal fees you can afford. Your attorney will understand.

Questions you may wish to ask the attorney include: What is the charge for reading documents and giving advice concerning them? For being present at settlement? Will the attorney represent any other party in the transaction in addition to you? In some areas attorneys act as closing agents handling the mechanical aspects of the settlement. A lawyer who does this may not fully represent your interests since, as closing agent, he would be representing the seller and other interests as well.

*Selecting a Lender*

Your choice of lender will influence not only your settlement costs, but also the monthly cost of your mortgage loan.

Lending institutions may require certain settlement services, such as a new survey or title insurance and they may charge you for other settlement-related services, such as the appraisal or credit report. You may find, in shopping for a lender, that other institutions may not have such requirements. Part Two of this booklet provides a description of the various kinds of services that may be required and fees that may be charged to you. You will also find a worksheep in Part Two, which you can use to compare requirements and cost estimates from different lenders.

Many lending institutions deal regularly with certain title companies, attorneys, appraisers, surveyors, and others in whom they have confidence. They may want to arrange for settlement services to be provided through these parties. This booklet discusses your rights in such a situation under the section below on Home Buyer's Rights. If you choose a lending institution which allows you a choice of settlement services providers, you should shop and compare among the providers in your area, to find the best service for the best price. Where the lender designates the use of particular firms, check with other firms to see if the lender's stated charges are competitive.

Questions you may want to ask the lender should include these:

—Are you required to carry life or disability insurance? Must you obtain it from a particular company? (You may prefer no insurance or may wish to obtain it at a better premium rate elsewhere.) Is private mortgage insurance required? (This is insurance sometimes required by lenders on low down payment loans to protect the lender from excess risk.)

—Is there a late payment charge? How much? How late may your payment be before the charge is imposed? You should be aware that late payments may harm your credit rating.

—If you wish to pay off the loan in advance of maturity (for example, if you move and sell the house), must you pay a prepayment penalty? How much? If so, for how long a period will it apply?

—Will the lender permit assumption?

—Will the lender release you from personal liability if your loan is assumed by someone else when you sell your home?

—If you sell the home and the buyer assumes your loan, will the lender have the right to charge an assumption fee, raise the rate of interest, or require payment in full of the mortgage?

—If you have a financial emergency, will the terms of the loan include a future advances clause, permitting you to borrow additional money on the mortgage after you have paid off part of the original loan?

—Will you be required to pay monies into a special reserve (escrow or impound) account to cover taxes, hazard insurance or other charges? If so, how large a deposit will be required at the settlement? The amount of reserve deposits required is limited under RESPA. Some State laws require that these accounts bear interest for the benefit of the borrower (buyer). If reserve requirements can be waived, you will be responsible for paying the particular charges for taxes or insurance directly to the tax collector or insurance company. Further information is in "Reserve Accounts" in Part Two of this booklet.

—What are the terms and requirements of a private conventional loan versus a loan insured through the Federal Housing Administration or Farmers Home Administration or guaranteed by the Veterans Administration? The FHA, VA and FmHA loans involve Federal ceilings on permissible charges for some settlement services, which may be of interest to you. Ask lenders about these programs. Another source of information about

the federally insured or guaranteed programs is from the agencies that administer these programs. The Appendix of this booklet lists some of these agencies.

—Can you take over the prior loan, in a transaction called "assumption"? Assumptions can reduce settlement costs if the original lender agrees to transfer the mortgage to a new purchaser. An assumption can also save money over the life of the loan if the assumed loan (covering the seller's existing mortgage) carries a lower interest rate than those currently being offered. However, in times of housing market inflation, a higher downpayment might be required than if you had obtained a new loan. You may want to ask the seller whether he would be willing to "take back" a second mortgage to finance part of the difference between the assumed loan and the sales price.

Once you have selected a lender, you will probably visit its office and complete a loan application. The application will ask for information such as your place of employment, assets, liabilities, and other similar information which the lender will rely upon in judging whether you are an acceptable credit risk. Many defaults occur because homebuyers provide, either on their own or with the assistance of others, incomplete or false information when applying for their mortgage loan. False application data can lead to loss of your home, an adverse credit rating, and, in the case of a Government guaranteed or insured loan, criminal prosecution by the Government. It is important, therefore, that you *DO NOT:*

—Overstate your income;
—Fail to list all debts and amounts you owe;
—Make up or inflate assets;
—Borrow the down payment funds without disclosing the loan;
—Provide false letters-of-credit or gift letters;
—Make undisclosed financial arrangements on the side;
—Accept down payment funds from a real estate agent or broker;
—Represent that you will occupy the property when, in fact, it is being purchased as an investment; or
—Sign any application document that you know to be false.

—If you are applying for a mortgage loan that will be insured or guaranteed by the Federal Government, you should be aware that there are severe penalties for fraud, intentional misrepresentation or conspiracy to influence the issuance of mortgage insurance or guarantee by the Federal Government. Providing false information on the loan application can subject you to a possible prison term and/or a fine of up to $10,000. If you are aware of any fraud in a Federal Government program, you should report it to the Office of Inspector General for that particular agency.

*Selecting a Settlement Agent*

Settlement practices vary from locality to locality, and even within the same county or city. In various areas settlements are conducted by lending institutions, title insurance companies, escrow companies, real estate brokers, and attorneys for the buyer or seller. By investigating and comparing practices and rates, you may find that the first suggested settlement agent may not be the least expensive. You might save money by taking the initiative in arranging for settlement and selecting the firm and location which meets your needs.

*Securing Title Services*

A title search may take the form of an abstract, a compilation of pertinent legal documents which provides a condensed history of the property ownership and related matters. In many areas title searches are performed by extracting information from the public record without assembling abstracts. In either situation, an expert examination is necessary to determine the status of title and this is normally made by attorneys or title company employees. In areas where both title insurance companies and attorneys perform these and other settlement services, compare fees for services (such as title certification, document preparation, notary fee, closing fee, etc.), provided by each to determine the better source for these services.

In many jurisdictions a few days or weeks prior to settlement the title insurance company will issue a binder (sometimes called a Commitment to Insure) or preliminary report, a summary of findings based on the search or abstract. It is usually sent to the lender for use until the title insurance policy is issued after the settlement. The binder lists all the defects in and liens against the title identified by the search. You should arrange to have a copy sent to you (or to an attorney who represents you) so that you can raise an objection if there are matters affecting the title which you did not agree to accept when you signed the contract of sale.

Title insurance is often required to protect the lender against loss if a flaw in title is not found by the title search made when the home is purchased. You may also get an owner's title policy to protect yourself. In some States, attorneys provide bar-related title insurance as part of their services in examining title and providing a title opinion. In these States the attorney's fee may include the title insurance premium, although the total title-related charges in the transaction should be taken into account in determining whether you will realize any savings.

A title insurance policy issued only to the lender *does not protect you.* Similarly, the policy issued to a prior owner, such as the person from whom you are buying the home, does not protect you. If you want to protect yourself from loss because of a mistake made by the title searcher, or because of a legal defect of a type which does not appear on the public records, you will need an owner's policy. Such a mistake rarely occurs but, when it does, it can be financially devastating to the uninsured. If you buy an owner's policy it is usually much less expensive if purchased simultaneously with a lenders policy.

To reduce title insurance costs, be sure to compare rates among various title insurance companies, and ask what services and limitations on coverage are provided by each policy so that you can decide whether a higher rate is consistent with your needs.

Depending upon practice in your jurisdiction, there may be no need for a full historical title search each time title to a home is transferred. If you are buying a new home or a home which has changed hands within the last several years, call the title company that issued the previous title insurance policy and ask about a "reissue rate", which would be a lower charge than for a new policy. If the title insurance policy of the previous owner is available, take it to the title insurer or lawyer whom you have selected to do your search.

To mark the boundaries of the property as set out in the title, lenders may require a survey. You may be able to avoid the cost of a repetitive complete survey of the property if you can locate the surveyor, who previously surveyed the project, and request an update. However, the requirements of investors who buy loans originated by your lender may limit the lender's discretion to negotiate this point. Check with the lender or title company on this.

**Home Buyer's Rights**

*Special Information Booklet*

When you submit or the lender prepares your written application for a loan, the lender is legally required, under RESPA to give you a copy of this booklet. If the lender does not give it to you in person on the day of your loan

application, it must deliver it to you or put it in the mail to you no later than three business days after your application is filed.

*Good Faith Estimate*

When you file your application for a loan, the lender must also, under the terms of RESPA, provide you with a Good Faith Estimate of settlement services charges you will likely incur. If the lender does not give it to you in person on the day of your loan application, it has three business days in which to put it in the mail or deliver it to you.

See Part Two of this booklet for a full item-by-item discussion of settlement services. On the form entitled "Settlement Statement", you will find section L, which lists possible settlement services and charges you will encounter.

The lender is required to give you a Good Faith Estimate, based upon the lender's experience in the locality in which the property is located, for each settlement charge in section L of the HUD–1 Settlement Statement that the lender anticipates you will pay, except for paid-in-advance hazard insurance premium (line 903) and other reserves deposited with the lender (all section 1000 items). The Estimate may be stated as either a dollar amount or range for each charge. Where the lender designated the use of a particular firm, the lender must make its Good Faith Estimate based upon the lender's knowledge of the amounts charged by the firm. The form used for this Good Faith Estimate must be concise and clear, and the estimates must bear a reasonable relationship to the costs you will likely incur. If the lender provides to you a Good Faith Estimate in the form of ranges, ask the lender what the total settlement costs will most likely be. While the lender is not obligated to provide this information under RESPA, it is important for you to know as you evaluate the different mortgage packages being offered you.

Lenders are not required to give a Good Faith Estimate for reserves deposited with them or for the prepaid hazard insurance premium because these charges require information not normally known to the lender at time of loan application. It is important for you to make these calculations because they can represent a sizeable cash payment you may have to make at settlement. Calculation of the reserve items is presented later in this booklet under "Reserve Accounts". Ask the lender what its policies are in terms of reserve accounts, for what items the lender requires reserves and for what period of time. You may want to ask the lender to run through a hypothetical calculation for you based upon the date you will most likely close on the home. Other assumptions may be necessary, for example, the assessed value of the property for determining property taxes. The lender can probably be more specific on hazard insurance premiums, particularly for those coverages which a lender requires.

Once you have obtained these estimates from the lender be aware that they are only estimates. The final costs may not be the same. Estimates are subject to changing market conditions, and fees may change. Changes in the date of settlement may result in changes in escrow and proration requirements. In certain cases, it may not be possible for the lender to anticipate exactly the pricing policies of settlement firms. Moreover, your own careful choice of settlement firms might result in higher costs. Remember that the lender's estimate is not a guarantee. Further, RESPA does not give a specific remedy to HUD to remedy material deviations from the Good Faith Estimate.

*Lender Designation of Settlement Service Providers*

Some lending institutions follow the practice of designating specific settlement service providers to be used for legal services, title examination services, title insurance, or the conduct of settlement.

Where this occurs the Good Faith Estimate must clearly state that use of the particular provider is required and that the Estimate is based on charges of the particular provider, give the name, address and telephone number of each designated provider, and describe the nature of any relationship between each provider and the lender.

While designated firms often provide the service needed, a conflict of interest may exist. Take, for example, the situation where the provider must choose between your interests and those of the lender. Where legal services are involved, it is wise to employ your own attorney to ensure that your interests are properly protected. It is wise for you to contact other firms to determine whether their costs are competitive and their services are comparable.

A lender may not require use of a provider if the lender and provider are part of a "controlled business arrangement", which is discussed further under "Protection Against Unfair Practices".

*Disclosure of Settlement Costs One Day Before Closing and Delivery*

One business day before settlement, you have the right to inspect the settlement form, called the HUD–1 Settlement Statement, on which are itemized the services provided to you and fees charged to you. This form (developed by the U.S. Department of Housing and Urban Development) is filled out by the settlement agent who will conduct the settlement. Be sure you have the name, address, and telephone number of the settlement agent if you wish to inspect this form or if you have any questions.

The settlement agent may not have all costs available the day before closing, but is obligated to show you, upon request, what is available.

The HUD–1 Settlement Statement must be delivered or mailed to you (while another statement goes to the seller) at or before settlement. If, however, you waive your right to delivery of the completed statement at settlement, it will then be mailed at the earliest practicable date.

In parts of the country where the settlement agent does not require a meeting, or in cases where you or your agent do not attend the settlement, the statement will be mailed or delivered as soon as practicable after settlement and no advance inspection is required.

The HUD–1 Settlement Statement is not used in situations where: (1) There are no settlement charges to the buyer (because the seller has assumed all settlement-related expenses); or (2) the total amount the borrower is required to pay for all charges imposed at settlement is determined by a fixed amount and the borrower is informed of this fixed amount at the time of loan application. In the latter case, the lender is required to provide the borrower, within three business days of application, an itemized list of services rendered.

*Escrow Closing*

Settlement practices differ from State to State. In some parts of the country, settlement may be conducted by an escrow agent, which may be a lender, real estate agent, title company representative, attorney, or an escrow company. After entering into a contract of sale, the parties sign an escrow agreement which requires them to deposit specified documents and funds with the agent. Unlike other types of closing, in a so-called escrow closing the parties do not meet around a table to sign and exchange documents. The agent may request a title report and policy; draft a deed or other documents; obtain rent statements; pay off existing loans; adjust taxes, rents, and insurance between the buyer and seller, compute interest on loans; and acquire hazard

insurance. All this may be authorized in the escrow agreement. If all the papers and monies are deposited with the agent within the agreed time, the escrow is "closed".

The escrow agent then records the appropriate documents and gives each party the documents and money each is entitled to receive, including the completed HUD–1 Settlement Statement. If one party has failed to fulfill its agreement, the escrow is not closed and legal complications may follow.

*Truth-in-Lending*

The lender is required, usually within three days of receiving your application, to give you or place in the mail to you a Truth-in-Lending statement that will disclose the "annual percentage rate" (APR). The APR reflects the cost of your mortgage loan as a yearly rate. This rate may be higher than the rate stated in your mortgage or deed of trust note because the APR includes, in addition to interest, loan discount or points (as defined below in Item 802 of the Section of this Booklet which discusses each specific settlement service), fees, and other credit costs. The Truth-in-Lending statement also discloses other useful information, such as the finance charge, schedule of payments, late payment charges, and whether or not additional charges will be assessed if you pay off the balance of your loan before it is due (prepayment penalty).

Some of the information that the lender is required to disclose may not be certain at the time the lender is required to give you the Truth-in-Lending statement. If so, the lender will indicate that the uncertain disclosures are estimates. Should the actual APR differ by more than a small amount from the lender's estimate, the lender must give you a corrected Truth-in-Lending statement no later than at settlement. However, if the estimated APR proves to be correct, the lender need not give you a new Truth-in-Lending statement, even if other disclosures have changed. For this reason, you may want to ask the lender shortly before settlement if all the Truth-in-Lending disclosures are still accurate. For more detailed information regarding Truth-in-Lending, contact the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551.

*Protection Against Unfair Practices*

A principal finding of Congress in the Real Estate Settlement Procedures Act of 1974 is that consumers need protection from ". . . unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country." The potential problems discussed below may not be applicable to most loan settlements, and the discussion is not intended to deter you from buying a home. Most professionals in the settlement business will give you good service. Nevertheless, you may save yourself money and worry by keeping the following considerations in mind:

Kickbacks

Kickbacks and referrals of business for gain are often tied together. The law prohibits anyone from giving or taking a fee, kickback, or anything of value under an agreement that business will be referred to a specific person or organization. It is also illegal to charge or accept a fee or part of a fee where no service has actually been performed. This requirement does not prevent title companies, attorneys, or others actually performing a service in connection with the mortgage loan or settlement transaction, from receiving compensation for their work. It also does not prohibit payments pursuant to cooperative brokerage, such as a multiple listing service, and referral arrangements or arrangements between real estate agents and brokers.

The prohibition is aimed primarily at eliminating the kind of arrangement in which one party agrees to return part of its fee in order to obtain business from the referring party. The danger is that some settlement fees can be inflated to cover payments to this additional party, resulting in a higher total cost to you. There are criminal penalties of both fine and imprisonment for any violation of these provisions of law and the Government may also seek injunctions against violators. There are also provisions for you to recover three times the amount of the charge for any settlement service, through a private lawsuit. In any successful action to enforce your right, the court may award you court costs together with a fee for your attorney.

In 1983, RESPA was amended to address "controlled business arrangements" which are arrangements in which the party referring a homebuyer to a particular provider of settlement services has a relationship with that provider which involves an ownership or franchise arrangement. Payments made by parties to a controlled business arrangement, such as dividends, may have the same effect as referral fees. Congress recognized a special status for such payments, however, and the law provides that such payments will not be illegal kickbacks or referral fees if the controlled business arrangement is disclosed, a written estimate of charges of the provider given and the borrower is not required to use that particular provider.

Title Companies

Under the law, the seller may not require, as a condition of sale, that title insurance be purchased by the buyer from any particular title company. A violation of this will make the seller liable to you in an amount equal to three times all charges made for the title insurance.

Fair Credit Reporting

There are credit reporting agencies around the Nation which are in the business of compiling credit reports on citizens, covering data such as how you pay your bills, if you have been sued, arrested, filed for bankruptcy, etc. In addition, this file may include your neighbors' and friends' views of your character, general reputation, or manner of living. This latter information is referred to as an "investigative consumer report".

The Fair Credit Reporting Act does not give you the right to inspect or physically handle your actual report at the credit reporting agency, nor to receive an exact copy of the report. But you are entitled to a summary of the report, showing the nature, substance, and sources of the information it contains.

If the terms of your financing have been adversely affected by a credit report, you have the right to inspect the summary of that report free of charge or for a small fee. The accuracy of the report can also be challenged, and corrections required to be made. For more detailed information on your credit report rights, contact the Federal Trade Commission (FTC) in Washington, D.C. or the nearest FTC regional office. The FTC Buyer's Guide No. 7: Fair Credit Reporting Act is a good summary of this Act.

Equal Credit Opportunity

The Equal Credit Opportunity Act prohibits lenders from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. If you feel you have been discriminated against by any lender, you may have a private right of legal action against that lender and you may wish to consult an attorney; or you

may wish to consult the Federal agency that administers compliance with this law. Inquire of the lender regarding the identity of that agency. You may also contact your regional Board of Governors of the Federal Reserve System about your rights under this Act.

*The Right to File Complaints*

As with any consumer problems, the place to start if you have a complaint is back at the source of the problem (the lender, settlement agent, broker, etc.). If that initial effort brings no satisfaction and you think you have suffered damages through violations of the Real Estate Settlement Procedures Act of 1974, as amended, you may be entitled to bring a civil action in the U.S. District Court or in any other court of competent jurisdiction for the District in which the property is located, or where the violation is alleged to have occurred. This is a matter best determined by your lawyer. Any suit you file under RESPA must be brought within one year from the date of the occurrence of the alleged violation. You may have legal remedies under other State or Federal laws in addition to RESPA.

RESPA provides for specific legal sanctions only under the provisions which prohibit kickbacks and unearned fees, and which prohibit the seller from requiring the buyer to use a particular title insurer. If you feel you should recover damages for violations of any provision of RESPA, you should consult your lawyer.

Most settlement service providers are supervised by some governmental agency at the local, State and/or Federal level. Others are subject to the control of self-policing associations. If you feel a provider of settlement services has violated RESPA, you can address your complaint to the agency or association which has supervisory responsibility over the provider. For the names of such agencies or associations, you will have to check with local and State Governments or consumer agencies operating in your area. You are also encouraged to forward a copy of complaints regarding RESPA violations to the HUD Office of Housing, which has the primary responsibility for administering the RESPA program. Your complaints can lay the foundation for future legislative or administrative actions.

Send copies of complaints, and inquiries, to: U.S. Department of Housing and Urban Development, Director, Office of Insured Single Family Housing, Attention: RESPA, 451 Seventh Street, SW., Washington, DC 20410.

**The Home Buyer's Obligations (Repayment of Loan and Maintenance of Home)**

At settlement you will sign papers legally obligating you to pay the mortgage loan financing the purchase of your home. You must pay according to the terms of the loan—interest rate, amount and due date of each monthly payment, repayment period—specified in the documents signed by you. You will probably sign at settlement a note or bond which is your promise to repay the loan for the unpaid balance of the purchase price. You will also sign a mortgage or deed of trust which pledges your home as security for repayment of the loan.

Failure to make monthly mortgage payments on time may lead to a late payment charge, if provided for in the documents. If you default on the loan by missing payments altogether and do not make them up within a period of time usually set by State law, the documents also specify certain actions which the lender may take to recover the amount owed. Ultimately, after required notice to you, a default could lead to foreclosure and sale of the home which secures your loan.

You should also be careful to maintain your home in a proper state of repair, both for your own satisfaction and comfort as the occupant and because the home is security for your loan. The mortgage or deed of trust may in fact specifically obligate you to keep the property in good repair and not allow deterioration.

In the event you do get into financial difficulty, you may wish to contact your local HUD office for a copy of two publications, *Avoiding Mortgage Default* (HUD–426 (PA) (7)) and *Equity Skimming* (Mortgage Letter 85–21). The publication on equity skimming warns homeowners about various methods which unscrupulous investors have used to take advantage of homeowners under the pretense of offering to help them out of their financial difficulty.

Read the documents carefully at or before settlement, and be aware of your obligations as a homeowner.

**Part II**

This part of the booklet provides an item-by-item discussion of possible settlement services that may be required and for which you may be charged. It also provides a sample of the HUD–1 Settlement Statement form, and worksheets which you may find handy for comparing costs from different service providers.

Sections A through I of the HUD–1 Settlement Statement contain information concerning the loan and parties to the settlement. Sections J and K contain a summary of all funds transferred between the borrower, seller, lender, and providers of settlement services. The bottom line in the left-hand column shows the net cash to be paid by the borrower, while the bottom line in the right-hand column shows the cash due the seller.

Section L is a list of settlement charges that may be required and for which you may be charged. Blank lines are provided for any additional settlement charges.

You would add up the cost entered on the lines of Section L, and carry them forward to Sections J and K, in order to arrive at the net cash figures on the bottom lines of the left and right columns.

*Use of This Form.*

1. *Settlement services comparisons.* As you shop for settlement services, you can use the Settlement Costs Worksheet as a guide, noting on it the different services required by different lenders and the different fees quoted by different service providers.

2. *Disclosure of actual settlement costs.* A copy of this form, or one with similar terminology, sequence and numbering of line items, must be filled out by the person conducting the settlement meeting. Your right to inspect the form one business day before settlement was discussed earlier in this booklet. The form will be completely filled in at the settlement meeting.

BILLING CODE 4210-27-M

-34 A-

# A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

| B. Type of Loan | | | |
|---|---|---|---|
| 1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins. | 6. File Number | 7. Loan Number | 8. Mortgage Insurance Case Number |

C. **Note:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

| D. Name and Address of Borrower | E. Name and Address of Seller | F. Name and Address of Lender |
|---|---|---|
| | | |

| G. Property Location | H. Settlement Agent | |
|---|---|---|
| | Place of Settlement | I. Settlement Date |
| | | |

| J. Summary of Borrower's Transaction | | K. Summary of Seller's Transaction | |
|---|---|---|---|
| **100. Gross Amount Due From Borrower** | | **400. Gross Amount Due To Seller** | |
| 101. Contract sales price | | 401. Contract sales price | |
| 102. Personal property | | 402. Personal property | |
| 103. Settlement charges to borrower (line 1400) | | 403. | |
| 104. | | 404. | |
| 105. | | 405. | |
| **Adjustments for items paid by seller in advance** | | **Adjustments for items paid by seller in advance** | |
| 106. City/town taxes to | | 406. City/town taxes to | |
| 107. County taxes to | | 407. County taxes to | |
| 108. Assessments to | | 408. Assessments to | |
| 109. | | 409. | |
| 110. | | 410. | |
| 111. | | 411. | |
| 112. | | 412. | |
| **120. Gross Amount Due From Borrower** | | **420. Gross Amount Due To Seller** | |
| **200. Amounts Paid By Or In Behalf Of Borrower** | | **500. Reductions In Amount Due To Seller** | |
| 201. Deposit or earnest money | | 501. Excess deposit (see instructions) | |
| 202. Principal amount of new loan(s) | | 502. Settlement charges to seller (line 1400) | |
| 203. Existing loan(s) taken subject to | | 503. Existing loan(s) taken subject to | |
| 204 | | 504. Payoff of first mortgage loan | |
| 205. | | 505. Payoff of second mortgage loan | |
| 206 | | 506. | |
| 207 | | 507. | |
| 208 | | 508. | |
| 209. | | 509. | |
| **Adjustments for items unpaid by seller** | | **Adjustments for items unpaid by seller** | |
| 210. City/town taxes to | | 510. City/town taxes to | |
| 211. County taxes to | | 511. County taxes to | |
| 212. Assessments to | | 512. Assessments to | |
| 213. | | 513. | |
| 214. | | 514. | |
| 215. | | 515. | |
| 216. | | 516. | |
| 217. | | 517. | |
| 218. | | 518. | |
| 219. | | 519. | |
| **220. Total Paid By/For Borrower** | | **520. Total Reduction Amount Due Seller** | |
| **300. Cash At Settlement From/To Borrower** | | **600. Cash At Settlement To/From Seller** | |
| 301. Gross Amount due from borrower (line 120) | | 601. Gross amount due to seller (line 420) | |
| 302. Less amounts paid by/for borrower (line 220) | ( ) | 602. Less reductions in amt. due seller (line 520) | ( ) |
| 303. Cash ☐ From ☐ To Borrower | | 603. Cash ☐ To ☐ From Seller | |

Previous Edition Is Obsolete

HUD 1
RESPA, HB 4305.2

-34 B-

| L. Settlement Charges | | | | Paid From Borrower's Funds at Settlement | Paid From Seller's Funds at Settlement |
|---|---|---|---|---|---|
| 700. Total Sales/Broker's Commission based on price $ | | @ | % = | | |
| Division of Commission (line 700) as follows: | | | | | |
| 701. $ | to | | | | |
| 702. $ | to | | | | |
| 703. Commission paid at Settlement | | | | | |
| 704 | | | | | |
| 800. Items Payable in Connection With Loan | | | | | |
| 801. Loan Origination Fee | % | | | | |
| 802. Loan Discount | % | | | | |
| 803. Appraisal Fee | to | | | | |
| 804. Credit Report | to | | | | |
| 805. Lender's Inspection Fee | | | | | |
| 806. Mortgage Insurance Application Fee to | | | | | |
| 807. Assumption Fee | | | | | |
| 808. | | | | | |
| 809. | | | | | |
| 810. | | | | | |
| 811. | | | | | |
| 900. Items Required By Lender To Be Paid In Advance | | | | | |
| 901. Interest from | to | @$ | /day | | |
| 902. Mortgage Insurance Premium for | | | months to | | |
| 903. Hazard Insurance Premium for | | | years to | | |
| 904 | | | years to | | |
| 905 | | | | | |
| 1000. Reserves Deposited With Lender | | | | | |
| 1001. Hazard Insurance | | months@$ | per month | | |
| 1002. Mortgage Insurance | | months@$ | per month | | |
| 1003. City property taxes | | months@$ | per month | | |
| 1004. County property taxes | | months@$ | per month | | |
| 1005. Annual assessments | | months@$ | per month | | |
| 1006. | | months@$ | per month | | |
| 1007. | | months@$ | per month | | |
| 1008 | | months@$ | per month | | |
| 1100. Title Charges | | | | | |
| 1101. Settlement or closing fee | to | | | | |
| 1102. Abstract or title search | to | | | | |
| 1103. Title examination | to | | | | |
| 1104. Title insurance binder | to | | | | |
| 1105. Document preparation | to | | | | |
| 1106. Notary fees | to | | | | |
| 1107. Attorney's fees | to | | | | |
| (includes above items numbers: | | | ) | | |
| 1108. Title insurance | to | | | | |
| (includes above items numbers: | | | ) | | |
| 1109. Lender's coverage | $ | | | | |
| 1110. Owner's coverage | $ | | | | |
| 1111. | | | | | |
| 1112. | | | | | |
| 1113. | | | | | |
| 1200. Government Recording and Transfer Charges | | | | | |
| 1201. Recording fees: Deed $ | ; Mortgage $ | | ; Releases $ | | |
| 1202. City/county tax/stamps: Deed $ | | ; Mortgage $ | | | |
| 1203. State tax/stamps: Deed $ | | ; Mortgage $ | | | |
| 1204. | | | | | |
| 1205 | | | | | |
| 1300. Additional Settlement Charges | | | | | |
| 1301. Survey | to | | | | |
| 1302. Pest inspection | to | | | | |
| 1303. | | | | | |
| 1304. | | | | | |
| 1305. | | | | | |
| 1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K) | | | | | |

-34 C-

| SETTLEMENT COSTS WORK SHEET *(Use this worksheet to compare the charges of various lenders and providers of settlement services.* | *PROVIDER* | *PROVIDER* | *PROVIDER* |
|---|---|---|---|
| *800. ITEMS PAYABLE IN CONNECTION WITH LOAN:* | | | |
| 801. Loan Origination Fee % | | | |
| 802. Loan Discount % | | | |
| 803. Appraisal Fee to | | | |
| 804. Credit Report to | | | |
| 805. Lender's Inspection Fee | | | |
| 806. Mortgage Insurance Application Fee to | | | |
| 807. Assumption Fee | | | |
| 808. | | | |
| 809. | | | |
| 810. | | | |
| 811. | | | |
| *900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE:* | | | |
| 901. Interest from to @ $ per day | | | |
| 902. Mortgage Insurance Premium for months to | | | |
| 903. Hazard Insurance Premium for years to | | | |
| 904. years to | | | |
| 905. | | | |
| *1000. RESERVES DEPOSITED WITH LENDER:* | | | |
| 1001. Hazard Insurance months @ $ per month | | | |
| 1002. Mortgage Insurance months @ $ per month | | | |
| 1003. City property taxes months @ $ per month | | | |
| 1004. County property taxes months @ $ per month | | | |
| 1005. Annual assessments months @ $ per month | | | |
| 1006. months @ $ per month | | | |
| 1007. months @ $ per month | | | |
| 1008. months @ $ per month | | | |
| *1100. TITLE CHARGES:* | | | |
| 1101. Settlement or closing fee to | | | |
| 1102. Abstract or title search to | | | |
| 1103. Title examination to | | | |
| 1104. Title insurance binder to | | | |
| 1105. Document preparation to | | | |
| 1106. Notary fees to | | | |
| 1107. Attorney's fees to | | | |
| *(includes above items numbers;)* | | | |
| 1108. Title insurance to | | | |
| *(includes above items numbers;)* | | | |
| 1109. Lender's coverage $ | | | |
| 1110. Owner's coverage $ | | | |
| 1111. | | | |
| 1112. | | | |
| 1113. | | | |
| *1200. GOVERNMENT RECORDING AND TRANSFER CHARGES:* | | | |
| 1201. Recording fees: Deed $ ; Mortgage $ ; Releases $ | | | |
| 1202. City/county tax/stamps: Deed $ ; Mortgage $ | | | |
| 1203. State tax/stamps: Deed $ ; Mortgage $ | | | |
| 1204. | | | |
| 1205. | | | |
| *1300. ADDITIONAL SETTLEMENT CHARGES:* | | | |
| 1301. Survey to | | | |
| 1302. Pest inspection to | | | |
| 1303. | | | |
| 1304. | | | |
| 1305. | | | |
| *1400. TOTAL SETTLEMENT CHARGES.....* | | | |

BILLING CODE 4210-27-C

**Specific Settlement Services**

The following defines and discusses each specific settlement service. The numbers correspond to the items listed in Section L of the HUD–1 Settlement Statement form.

*700. Sales/broker's commission.* This is the total dollar amount of sales commission, usually paid by the seller. Fees are usually a percentage of the selling price of the home, and are intended to compensate brokers or sales agents for their services. Custom and/or the negotiated agreement between the seller and the broker determine the amount of the commission.

*701–702. Division of commission.* If several brokers or sales agents work together to sell the home, the commission may be split among them. If they are paid from funds collected for settlement, this is shown on lines 701–702.

*703. Commission paid at settlement.* Sometimes the broker will retain the deposit against the sales price (earnest money) to apply towards the commission. In this case, line 703 will show only the remainder of the commission which will be paid at settlement.

*800. Items payable in connection with loan.* These are the fees which lenders charge to process, approve and make the mortgage loan.

*801. Loan origination.* This fee covers the lender's administrative costs in processing the loan. Often expressed as a percentage of the loan, the fee will vary among lenders and from locality to locality. Generally the buyer pays the fee unless another arrangement has been made with the seller and written into the sales contract.

*802. Loan discount.* Often called "points", a loan discount is a one-time charge used to adjust the yield on the loan to what market conditions demand. It is used to offset constraints placed on the yield by State or Federal regulations. Each "point" is equal to one percent of the mortgage amount. For example, if a lender charges four points on a $60,000 loan this amounts to a charge of $2,400.

*803. Appraisal fee.* This charge, which may vary significantly from transaction to transaction, pays for a statement of property value for the lender, made by an independent appraiser or by a member of the lender's staff. The lender needs to know if the value of the property is sufficient to secure the loan if you fail to repay the loan according to the provision of your mortgage contract, and the lender must foreclose and take title to the house. The appraiser inspects the house and the neighborhood, and considers sales prices of comparable houses and other factors in determining the value. The appraisal report may contain photos and other information of value to you. It will provide the factual data upon which the appraiser based the appraised value. The appraisal does not, however, give rights to the purchaser nor necessarily detect or discuss defects in the property or title to the property. While most reasonable lenders will furnish you a copy of the appraisal upon request, they are not required to do so unless state law covers this situation. Therefore, it is important that you reach an understanding with your lender if you wish to see the appraisal, preferably at the time of payment of the appraisal fee.

The appraisal fee may be paid by either the buyer or the seller, as agreed in the sale contract. In some cases this fee is included in the Mortgage Insurance Application Fee. See line 806.

*804. Credit report fee.* This fee covers the cost of the credit report, which shows how you have handled other credit transactions. The lender uses this report in conjunction with information you submitted with the application regarding your income, outstanding bills, and employment, to determine whether you are an acceptable credit risk and to help determine how much money to lend you.

Where you encounter credit reporting problems you have protections under the Fair Credit laws as summarized under "Home Buyer's Rights" in this booklet.

*805. Lender's inspection fee.* This charge covers inspections, often of newly constructed housing, made by personnel of the lending institution or an outside inspector. (Pest or other inspections made by companies other than the lender are discussed in connection with line 1302.)

*806. Mortgage insurance application fee.* This fee covers processing the application for private mortgage insurance which may be required on certain loans. It may cover both the appraisal and application fee.

*807. Assumption fee.* This fee is charged for processing papers for cases in which the buyer takes over the payments on the prior loan of the seller.

*900. Items required by lender to be paid in advance.* You may be required to prepay certain items, such as accrued interest, mortgage insurance premium and hazard insurance premium, at the time of settlement.

*901. Interest.* Lenders usually require that borrowers pay at settlement the interest that accrues on the mortgage from the date of settlement to the beginning of the period covered by the first monthly payment. For example, suppose your settlement takes place on April 16, and your first regular monthly payment will be due on June 1, to cover interest charges for the month of May. On the settlement date, the lender will collect interest for the period from April 16 to May 1. If you borrowed $60,000 at 12 percent interest, the interest item would be $303.30. This amount and the per diem charges will be entered on line 901.

*902. Mortgage insurance premium.* Mortgage insurance protects the lender from loss due to payment default by the borrower. The lender may require you to pay your first premium or a lump sum premium covering the life of the loan in advance, on the day of settlement. The premium may cover a specific number of months, a year in advance or the total amount. With this insurance protection, the lender is willing to make a larger loan, thus reducing your downpayment requirements. This type of insurance should not be confused with mortgage life, credit life, or disability insurance designed to pay off a mortgage in the event of physical disability or death of the borrower.

*903. Hazard insurance premium.* This premium prepayment is for insurance protection for you and the lender against loss due to fire, windstorm, and natural hazards. This coverage may be included in a Homeowners Policy which insures against additional risks which may include personal liability and theft. Lenders often require payment of the first year's premium at settlement.

A hazard insurance or homeowner's policy may not protect you against loss caused by flooding. If your mortgage is Federally insured and your property is within a special flood hazard area identified by FEMA, you may be required by Federal law to carry flood insurance on your home. Such insurance may be purchased in participating communities under the National Flood Insurance Act.

*1000. Reserves deposited with lenders.* Reserves (sometimes called "escrow" or "impound" accounts) are funds held in an account by the lender to assure future payment for such recurring items as real estate taxes and hazard insurance.

You will probably have to pay an initial amount for each of these items to start the reserve account at the time of settlement. A portion of your regular monthly payments will be added to the reserve account. RESPA places limitations on the amount of reserve funds which may be required by the lender. Read "Reserve Accounts" in this booklet for reserve calculation

procedures. Do not hesitate to ask the lender to explain any variance between your own calculations and the figure presented to you.

*1001. Hazard insurance.* The lender determines the amount of money that must be placed in the reserve in order to pay the next insurance premium when due.

*1002. Mortgage insurance.* The lender may require that part of the total annual premium be placed in the reserve account at settlement. The portion to be placed in reserve may be negotiable.

*1003–1004. City/county property taxes.* The lender may require a regular monthly payment to the reserve account for property taxes.

*1005. Annual assessments.* This reserve item covers assessments that may be imposed by subdivisions or municipalities for special improvements (such as sidewalks, sewers or paving) or fees (such as homeowners association fees).

*1100. Title charges.* Title charges may cover a variety of services performed by title companies and others and include fees directly related to the transfer of title (title examination, title search, document preparation) and fees for title insurance, legal charges, which include fees for lender's, seller's or buyer's attorney or the attorney preparing title work and fees for settlement agents and notaries. The specific charges discussed in connection with lines 1101 through 1109 are those most frequently incurred at settlement. Due to the great diversity in practice from area to area, your particular settlement may not include all of these items or may include others not listed. Ask your settlement agent to explain how these fees relate to services performed on your behalf. An extended discussion is presented in "Securing Title Services" earlier in this booklet.

*1101. Settlement or closing fee.* This fee is paid to the settlement agent. Responsibility for payment of this fee should be negotiated between the seller and buyer, at the time the sales contract is signed.

*1102–1104. Abstract or title search, title examination, title insurance binder.* These charges cover the costs of the search and examination of records of previous ownership, transfers, etc., to determine whether the seller can convey clear title to the property, and to disclose any matters on record that could adversely affect the buyer or the lender. Examples of title problems are unpaid mortgages, judgment or tax liens, conveyances of mineral rights, leases, and power line easements or road right-of-ways that could limit use and enjoyment of the real estate. In some areas, a title insurance binder is called a commitment to insure.

*1105. Document preparation.* There may be a separate document fee that covers preparation of final legal papers, such as a mortgage, deed of trust, note, or deed. You should check with the settlement agent to see that these services, if charged for, are not also covered under some other service fee.

*1106. Notary fee.* This fee is charged for the cost of having a licensed person affix his or her name and seal to various documents authenticating the execution of these documents by the parties.

*1107. Attorney's fees.* You may be required to pay for legal services provided to the lender in connection with the settlement, such as examination of the title binder or sales contract. Occasionally this fee can be shared with the seller, if so stipulated in the sales contract. If a lawyer's involvement is required by the lender, the fee will appear on this part of the form. The buyer and seller may each retain an attorney to check the various documents and to represent them at all stages of the transaction including settlement. Where this service is not required and is paid for outside of closing, the person conducting settlement is not obligated to record the fee on the settlement form.

*1108. Title insurance.* The total cost of owner's and lender's title insurance is shown here. The borrower may pay all, a part or none of this cost depending on the terms of the sales contract or local custom.

*1109. Lender's title insurance.* A one-time premium may be charged at settlement for a lender's title policy which protects the lender against loss due to problems or defects in connection with the title. The insurance is usually written for the amount of the mortgage loan and covers losses due to defects or problems not identified by title search and examination. The borrower may pay all, a part or none of this cost depending on the terms of the sales contract or local custom.

*1110. Owner's title insurance.* This charge is for owner's title insurance protection and protects you against losses due to title defects. In some areas it is customary for the seller to provide the buyer with an owner's policy and for the seller to pay for this policy. In other areas, if the buyer desires an owner's policy he or she must pay for it.

*1200. Government recording and transfer charges.* These fees may be paid either by borrower or seller, depending upon your contract when you buy the home or accept the loan commitment. The borrower usually pays the fees for legally recording the new deed and mortgage (line 1201). These fees, collected when property changes hands or when a mortgage loan is made, may be quite large and are set by State and/or local governments. City, county and/or State tax stamps may have to be purchased as well (lines 1202 and 1203).

*1300. Additional settlement charges.* The lender or the title insurance company may require that a surveyor conduct a property survey to determine the exact location of the home and the lot line, as well as easements and rights of way. This is a protection to the buyer as well. Usually the buyer pays the surveyor's fees, but sometimes this may be handled by the seller (line 1301).

*1302. Pest and other inspections.* This fee is to cover inspections for termite or other pest infestation of the home. This may be important if the sales contract included a promise by the seller to transfer the property free from pests or pest-caused damage. Be sure that the inspection shows that the property complies with the sales contract before you complete the settlement. If it does not you may wish to require a bond or other financial assurance that the work will be completed. This fee can be paid either by the borrower or seller depending upon the terms of the sales contract. Lenders vary in their requirements as to such an inspection.

Fees for other inspections, such as for structural soundness, are entered on line 1303.

*1400. Total settlement charges.* All the fees in the borrower's column entitled "Paid from Borrower's Funds at Settlement" are totaled here and transferred to line 103 of Section J, "Settlement charges to borrower" in the SUMMARY OF BORROWER'S TRANSACTION on page 1 of the HUD–1 Settlement Statement. All the settlement fees paid by the seller are transferred to line 502 of Section K, SUMMARY OF SELLER'S TRANSACTION on page 1 of the HUD–1 Settlement Statement.

*Comparing Lender Costs*

If a lender is willing to reduce its fees for such items as loan origination, discount points and other one-time settlement charges, it may gain it back if it charges a higher mortgage interest rate.

Here is one rule of thumb which you can use to calculate the combined effect on the interest rate on a fixed-rate loan and the one-time settlement charges (paid by you) such as "points". While not perfectly accurate, it is usually close enough for meaningful comparisons between lenders. The rule is, that one-time settlement charges equaling one

percent of the loan amount increase the interest charge by one-eighth (⅛) of one percent. The ⅛ factor corresponds to a pay back period of approximately 15 years. If you intend instead to hold the property for only five years and pay off the loan at that time, the factor increases to ¼.

Here is an example of the rule. Consider only those charges that differ between lenders. Suppose you wish to borrow $60,000. Lender A will make a fixed rate loan at 12.5 percent interest, but charges a two percent origination fee, a $150.00 application fee, and requires that you use a lawyer, for title work, selected by the lender at a fee of $300.

Lender B will make a fixed rate at 13 percent interest, but has no additional requirements or charges. As part of that thirteen percent interest, though, Lender B will not charge an application fee and will absorb the lawyer's fee. What are the actual charges for each case?

Begin by relating all of Lender A's one-time charges to percentages of the $60,000 loan amount.

2 percent origination fee = 2 percent of loan amount.

$150 application fee = 0.25 percent of loan amount.

$300 lawyer's fee = 0.5 percent of loan amount.

Total—2.75 percent of loan amount.

Since each 1 percent of the loan amount in charges is the equivalent of ⅛ percent increase in interest, the effective interest rate from Lender A is the quoted or "contract" interest rate, 12.5 percent plus .34 percent (2.75 times ⅛), or a total of 12.84 percent interest. Since Lender B has offered a thirteen percent interest rate, Lender A has made a more attractive offer. Of course, it is more attractive only if you have sufficient cash to pay Lender A's one-time charges and still cover your downpayment, moving expenses, and other settlement costs. This is simply a method to compare diverse costs on an equal basis. In the above illustration, Lender A does not receive the $300 lawyer's fee.

The calculation is sensitive to your assumption about the period of time you plan to own the home before paying off the mortgage. As indicated above, the factor increases to ¼ if you expect to pay off the mortgage in five years. Applying this new factor to the above illustration, the effective interest rate for Lender A would be 12.5 percent plus .69 (2.75 x ¼) for a total of 13.19 percent interest. Lender A's offer is no longer more attractive than Lender B's which was 13 percent.

In doing these calculations you should also be careful as to which one-time fees you place into the calculation. For example, if Lender B in the above illustration did not include in this charge a legal fee but told you that you had to secure legal services in order to obtain the loan from him, you would have to add to Lender B's interest rate the legal fee that you had to incur.

You can use this method to compare the effective interest rates of any number of lenders if you are shopping for a fixed rate loan. If the lenders have provided Truth-in-Lending disclosures, these are an even better comparative tool. You should question lenders carefully to make sure you have learned of all the charges they intend to make. The good faith estimate you receive when you make a loan application is a good checklist for this information, but it is not precise. Thus, you should ask the lender how the charges and fees are computed.

*Calculating the Borrower's Transactions A Sample Worksheet*

This page is a sample worksheet for a family purchasing a $100,000 house and getting a new $80,000 loan. Line 103 assumes that their total settlement charges are $4,000. (This figure is the sum of all the individual settlement charges, which will be listed in detail in Section L. of their HUD-1 Settlement Statement.) The $4,000 figure is merely illustrative. The amount may be higher in some areas and for some types of transactions, and lower for others.

BILLING CODE 4210-27-M

-48 A-

| J. SUMMARY OF BORROWER'S TRANSACTION | |
|---|---|
| *100. GROSS AMOUNT DUE FROM BORROWER:* | |
| 101. Contract sales price | 100,000.00 |
| 102. Personal property | |
| 103. Settlement charges to borrower *(line 1400)* | 4,000.00 |
| 104. | |
| 105. | |
| *Adjustments for items paid by seller in advance* | |
| 106. City/town taxes to | |
| 107. County taxes to | |
| 108. Assessments 6/30 to 7/31 (owners assn) | 40.00 |
| 109. Fuel Oil 25 gal. $1.00/gal. | 25.00 |
| 110. | |
| 111. | |
| 112. | |
| *120. GROSS AMOUNT DUE FROM BORROWER* | 104,065.00 |
| *200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:* | |
| 201. Deposit or earnest money | 2,000.00 |
| 202. Principal amount of new loan(s) | 80,000.00 |
| 203. Existing loan(s) taken subject to | |
| 204. | |
| 205. | |
| 206. | |
| 207. | |
| 208. | |
| 209. | |
| *Adjustments for items unpaid by seller* | |
| 210. City/town taxes to | |
| 211. County taxes 1/1 to 6/30 $1,200/year | 600.00 |
| 212. Assessments 1/1 to 6/30 $200/yr. | 100.00 |
| 213. | |
| 214. | |
| 215. | |
| 216. | |
| 217. | |
| 218. | |
| 219. | |
| *220. TOTAL PAID BY/FOR BORROWER* | 82,700.00 |
| *300. CASH AT SETTLEMENT FROM/TO BORROWER* | |
| 301. Gross amount due from borrower *(line 120)* | 104,065.00 |
| 302. Less amounts paid by/for borrower *(line 220)* | (82,700.00) |
| *303. CASH ( ☒ FROM) ( ☐ TO) BORROWER* | 21,365.00 |

BILLING CODE 4210-27-C

*Your Financial Worksheet*

Once you have decided which providers you wish to use for your settlement services and have selected the lender who will make your loan, you can calculate the total estimated cash you will need to complete the purchase. The form below, which is a part of the HUD–1 Settlement Statement, can be used as a worksheet for this purpose.

BILLING CODE 4210-27-M

-49 A-

| J. SUMMARY OF BORROWER'S TRANSACTION | |
|---|---|
| *100. GROSS AMOUNT DUE FROM BORROWER:* | |
| 101. Contract sales price | |
| 102. Personal property | |
| 103. Settlement charges to borrower *(line 1400)* | |
| 104. | |
| 105. | |
| *Adjustments for items paid by seller in advance* | |
| 106. City/town taxes to | |
| 107. County taxes to | |
| 108. Assessments to | |
| 109. | |
| 110. | |
| 111. | |
| 112. | |
| *120. GROSS AMOUNT DUE FROM BORROWER* | |
| *200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:* | |
| 201. Deposit or earnest money | |
| 202. Principal amount of new loan(s) | |
| 203. Existing loan(s) taken subject to | |
| 204. | |
| 205. | |
| 206. | |
| 207. | |
| 208. | |
| 209. | |
| *Adjustments for items unpaid by seller* | |
| 210. City/town taxes to | |
| 211. County taxes to | |
| 212. Assessments to | |
| 213. | |
| 214. | |
| 215. | |
| 216. | |
| 217. | |
| 218. | |
| 219. | |
| *220. TOTAL PAID BY/FOR BORROWER* | |
| *300. CASH AT SETTLEMENT FROM/TO BORROWER* | |
| 301. Gross amount due from borrower *(line 120)* | |
| 302. Less amounts paid by/for borrower *(line 220)* | ( ) |
| *303. CASH ( ☐ FROM) ( ☐ TO) BORROWER* | |

BILLING CODE 4210-27-C

BEST COPY AVAILABLE

*100. Gross amount due from borrower.* Page 1 of the HUD–1 Settlement Statement summarizes all actual costs and adjustments for the borrower and seller, including total settlement fees and charges found on line 1400 of section L.

*101. Contract sales price.* This is the price of the home agreed to in the sales contract between the buyer and seller.

*102. Personal property.* If, at the time the sales contract was made, you and the seller agreed that some items were to be transferred with the home, the price of those items is entered here. If it was agreed to include these items in the price of the home, their cost will be part of the sales price recorded on line 101. Personal property could include items such as carpets, drapes, stove, refrigerator, etc.

*103. Settlement charges to borrower.* The total charges for the borrower detailed in section L and totaled on line 1400, are recorded here. This figure includes all of the items payable in connection with the loan, items required by the lender to be paid in advance, reserves deposited with the lender, title charges, government recording and transfer charges, and any additional related charges.

*104–105. Additional costs.* This space is for listing any additional amounts owed the seller, such as reserve funds if the buyer is assuming the seller's loan. This may not be applicable to your settlement.

*106–112. Adjustments.* These include taxes, front footage charges, insurance, rent, fuel and other items that the seller has previously paid for covering a period which runs beyond the settlement date. The costs are usually divided on a proportional basis with the seller being reimbursed for charges accruing after the date of transfer of title.

*120. Gross amount due.* This is the total of lines 101 through 112.

*200. Amounts paid by or on behalf of borrower.* (See lines 201–220.)

*201. Deposit or earnest money.* This is the amount which you paid against the sales price when the sales contract was signed. It is credited to the purchase.

*202. Principal amount of new loan.* This is the amount of the new mortgage which you will repay to the lender in the future.

*203. Existing loan(s).* If you are taking over the seller's mortgage(s) instead of obtaining a new loan, the amount still owed on those prior loans will be shown here.

*210–219. Adjustments.* This includes taxes or assessments which become due after settlement, but which the seller pays because they cover a period of time prior to settlement. See "Reserve Accounts" for a further discussion of these matters.

*220. Total amounts paid by/for borrower.* This is the sum of lines 201 through 219.

*300. Cash at settlement from/to borrower.* Remaining are the summary lines which are 301–303 for the borrower (and 601–603 for the seller). Subtracting line 302 (gross amount paid by or for the borrower) from line 301 (gross amount due from the borrower) results in the net cash the borrower must pay at settlement.

*Reserve Accounts*

In most instances, a monthly mortgage payment is made up of a payment on the principal amount of the mortgage debt which reduces the balance due on the loan, an interest payment which is the charge for use of the borrowed funds, and a reserve payment (also known as an escrow or impound payment) which represents approximately one-twelfth of the estimated annual insurance premiums, property taxes, assessments and other recurring charges.

When settlement occurs you may need to make an initial deposit into the reserve account; otherwise, your regular monthly deposits to it will not accumulate enough to pay the taxes, insurance or other charges when they fall due. Under RESPA, the maximum amount that the lender can require borrowers or prospective borrowers to deposit into a reserve account at settlement is a total gross amount not to exceed the sum of: (a) An amount that would have been sufficient to pay taxes, insurance premiums, or other charges which would have been paid under normal lending practices, and ending on the due date of the first full monthly mortgage installment payment; plus (b) an additional amount not in excess of one-sixth (2 months) of the estimated total amount of taxes, insurances premiums and other charges to be paid on the dates indicated above during any twelve-month period to follow.

An illustration will help clarify this calculation. Assume the following set of facts on a loan, and that taxes are paid at the end of the period against which taxes are assessed.

*Example:*

Settlement date—April 30, 1987
Due date of first mortgage loan repayment—June 1, 1987
Taxes due yearly—$720.00
Monthly tax accrual—$60.00
Due date for taxes—December 1st for the calendar year

The reserve amount for category (a) is $360.00. This represents the amount of taxes accruing between December 1, 1986 (the last tax due date) and May 30, 1987 ($60.00 x 6 months). Reserve amounts chargeable under category (b) could be up to two months advance payment times $60.00 or a total of $120.00. Therefore, total reserve deposits for taxes at settlement would be a maximum of $480.00. Changing the due date for taxes and/or the first mortgage payment results in a different reserve amount for the same illustration.

The same procedure is used to determine the maximum amounts that can be collected by the lender for insurance premiums or other charges. You need to know the charges and due dates in order to compute the amounts.

Once you begin your monthly mortgage payments, you cannot be required to pay more than one-twelfth of the annual taxes and other charges each month, unless a larger payment is necessary to make up for a deficit in your account or to maintain the cushion of the one-sixth of annual charges mentioned in (b) above. A deficit may be caused, for example, if your taxes or insurance premiums are raised.

Your should note that the above monthly mortgage payments reserve limitations apply to all RESPA covered mortgage loans whether they were originated before or after the implementation of RESPA.

*Adjustments Between Borrower and Seller*

The previous section dealt with setting up and maintaining your reserve account with the lender. At settlement it is also usually necessary to make an adjustment between borrower and seller for property taxes and other charges. This is an entirely separate matter from the initial deposit which the borrower makes into the new reserve account.

The adjustments between borrower and seller are shown in Sections J and K of the HUD–1 Settlement Statement. In the example given in the foregoing section, the taxes, which are payable annually, had not yet been paid when the settlement occurs on April 30. The borrower will have to pay a whole year's taxes on the following December 1. However, the seller lived in the house for the first four months of the year. Thus, one-third of the year 's taxes are to be paid by the seller. Accordingly, lines 211 and 511 on the HUD–1 Settlement Statement would read as follows:

*County taxes*

1/1/87 to 4/30/87—$240.00

The borrower would be given credit for this amount in the settlement and the seller would have to pay this amount or count it as a deduction from sums payable to the seller.

In some areas taxes are paid at the beginning of the taxable year. If, in our example, the taxes were paid by the seller on January 1, 1987 for the following tax year ending December 31, 1987 the borrower will have to compensate the seller for the taxes paid by the seller for those months that the borrower will be in possession of the property (April 30-December 31). This adjustment will be shown on lines 107 and 407 of the HUD–1 Settlement Statement. With settlement occurring on April 30, those lines will read as follows:

*County taxes*

4/30/87 to 12/31/87—$480.00

This amount would be credited to the seller in the settlement.

Similar adjustments are made for insurance (if the policy is being kept in effect), special assessments, fuel and other utilities, although the billing periods for these may not always be on an annual basis. Be sure you work out these prorations with the seller prior to settlement. It is wise for you to notify utility companies of the change in ownership and ask for a special reading on the day of settlement, with the bill for presettlement charges to be mailed to the seller at his or her new address. This will eliminate much confusion that can result if you are billed for utilities which cover the time when the seller owned the unit.

**Appendix**

Consumer Information and Literature on Home Purchasing and other Related Topics

*U.S. Department of Housing and Urban Development*

For consumer information regarding: FHA-insured home mortgage loans on one-to-four family dwellings;
Contact: Office of Insured Single Family Housing, 451 Seventh Street, SW., Washington, DC 20410

For consumer information regarding: Manufactured home financing through HUD
Contact: Office of Manufactured Housing and Regulatory Functions, 451 Seventh Street, SW., Washington, DC 20410

*U.S. Veterans Administration*

Pointers for the Veterans Homeowner (VA–26–5)
Questions and Answers on Guaranteed Loans for Veterans (VA–26–4)
To the Home-Buying Veteran (VA–26–6)
Contact: Your Nearest VA Regional Office

*U.S. Department of Agriculture*

Home Ownership Loans (No. 977)
Contact: Your FmHA County Office

*General Services Administration*

Consumer Information: A Catalog of Selected Federal Publications
Contact: Consumer Information Center, Pueblo, Colorado 81009 (303–948–3334)

[FR Doc. 87–8939 Filed 4–22–87; 8:45 am]
BILLING CODE 4210–27–M

L
2
S
8
P
3
87
M I

federal register

Thursday
April 23, 1987

Part III

# Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Coke Oven Emissions From Wet-Coal Charged By-Product Coke Oven Batteries; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3097-5]

## National Emission Standards for Hazardous Air Pollutants; Coke Oven Emissions From Wet-Coal Charged By-Product Coke Oven Batteries

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** The proposed standards would limit coke oven emissions from all new and existing wet-coal charged by-product coke oven batteries in the iron and steel industry. The proposed standards would implement section 112 of the Clean Air Act (CAA) and are based on the Administrator's listing of coke oven emissions, September 18, 1984 (49 FR 36560). New Test Method 109, "Determination of Visible Emissions from Coke Oven Batteries," also is proposed.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standard for wet-coal charged by-product coke oven batteries or the listing of coke oven emissions under section 112.

**DATES:** Comments must be received on or before July 7, 1987.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by May 14, 1987, a public hearing will be held on June 8, 1987 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at 919–541–5578 to verify that a hearing will occur.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact EPA by May 14, 1987.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–79–15, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

*Public Hearing.* If anyone contacts EPA requesting a public hearing, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park (RTP), North Carolina. Persons wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919–541–5578. Persons interested in attending the hearing should call Ms. Ann Eleanor to verify that a hearing will occur.

*Background Information Document.* The health risk assessment document for coke oven emissions and the background information document (BID) for the proposed standard may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number 919–541–2777. Please refer to "Carcinogen Assessment of Coke Oven Emissions" (EPA–600/6–82–003F) and "Coke Oven Emissions from Wet-Coal Charged By-Product Coke Oven Batteries—Background Information Document for Proposed Standards" (EPA–450/3–85–028a).

*Docket.* Docket No. A–79–15, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed standard, contact Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919–541–5568. For information regarding the background information document, contact Mr. James U. Crowder, Industrial Studies Branch, telephone number 919–541–5596, at the same address. For information concerning the listing of coke oven emissions, contact Mr. Bob Kellam Pollutant Assessment Branch, Strategies and Air Standards Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919–541–5646.

**SUPPLEMENTARY INFORMATION:** The Introduction section presents a summary of the Agency's policy and approach toward regulating hazardous air pollutants under section 112 of the Clean Air Act. Next, the preamble reviews the basis of EPA's decision to list coke oven emissions as a hazardous air pollutant under section 112. It then describes the methods and uncertainties involved in estimating coke oven emission levels and effects. Against that background, the preamble summarizes each step in the Agency's standard-setting analysis and the conclusions reached.

### I. Introduction

Section 112 of the Clean Air Act defines a "hazardous air pollutant" as one which the Administrator judges "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness." Section 112 of the Act requires EPA to establish emission standards for hazardous air pollutants that protect public health with an "ample margin of safety." The EPA has interpreted that language to require standards that protect against significant or unreasonable public health risks. As the Supreme Court held in ruling on workplace safety regulations, " 'safe' is not the equivalent of 'risk-free'. . . [A] workplace can hardly be considered 'unsafe' unless it threatens the workers with a significant risk of harm." *Industrial Union Dept., AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607, 642 (1980). Thus, section 112 is construed to require limits that do not necessarily eliminate all public health risks but minimize those risks without causing unreasonable social or economic impacts.

The merit of the Agency's interpretation is well demonstrated in the context of regulating carcinogens such as coke oven emissions.[1] At present, EPA has taken the position, shared by other Federal regulatory agencies, that there is no threshold level below which a carcinogen poses no risk to public health. Consequently, controlling a carcinogen so that it poses absolutely no health risk would require a standard permitting no emissions; yet implementation of such a standard could, and often would, prove beyond the technological or financial capacity of the affected industry. The EPA believes that Congress intended that section 112 standards protect human health, but not at all costs; instead, Congress sought standards that minimized the risk to public health posed by a pollutant without causing unreasonable economic and societal consequences. Both the legislative history of the Clean Air Act

[1] Coke oven emissins contain several knowncarcinogens such as benzo(a)pyrene, arsenic, and benzene. Occupational exposure studies of coke oven workers hav shown statistiically signifiant excess mortality from cancers of the respiratory track (lung, trachea, or bronchus), kikdney, and prostrate, and all cancer sites combined. The Administrator has judged that coke oven emissions present a significant risk of cancer and that it is appropriate topropose emission standards for these emissions. Further information regarding the listing of coke oven emissions appears in the FEDERAL REGISTER notice published on September 18, 1984 (49 FR 36560).

and the courts support such a common sense approach to setting standards for hazardous pollutants. *See Industrial Union Department, AFL-CIO, supra*; *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (D.C. Cir. 1976), *cert. den.* 426 U.S. 941 (1976); H.R. Rep. No. 95–294, 95th Congress, 1st Sess. 43–51, 127.

The EPA developed the section 112 coke oven emission standards using risk assessment and risk management techniques. The Agency evaluated the health risks posed by candidate source categories, taking into account future or ongoing emissions reductions from other regulatory actions (e.g., State Implementation Plans [SIP] and Occupational Safety and Health Administration [OSHA] standards. Next, EPA determined the availability of further reductions, identified a range of possible reductions, and estimated the risk reductions and economic costs of each of those options. Finally, the Administrator selected the proposed option from among the several options, considering such factors as weight of evidence of carcinogenicity, availability of control technology, impact on existing regulations, the residual risks remaining after the application of a control option, the costs of further control and the broader societal and environmental impact of regulation. The factors considered in selecting an option each involve uncertainty, and the Agency is particularly interested in receiving comments from individuals or groups directly affected by this action. The Agency also is seeking public comment, including any available data, on the options presented in this notice, as well as any other regulatory option. The final decision will be based on a careful evaluation of the record, including the comments of those most directly affected.

## II. Selection of Pollution for Listing

Coke oven emissions evolve during the destructive distillation of coal to produce coke in by-product coke oven batteries. The toxic constituents of these coke oven emissions include both gases and respirable particulate matter with a varying chemical composition. Historically, the greatest attention has been focused on the toxic effects of the benzene soluble organic (BSO) portion of particulate matter emitted from coke ovens, because this fraction contains polycyclic organic matter (POM), which includes compounds that are known animal carcinogens. In addition, beryllium, benzene, and arsenic are known human carcinogens emitted from coke ovens, and there is concern over the potential health risks caused by long-term exposure to trace metals (e.g., cadmium, chromium, lead, and nickel) and gases (e.g., hydrogen sulfide, carbon monoxide, nitric oxide and sulfur dioxide) contained in the coke oven emissions.

The EPA listed coke oven emissions as a hazardous air pollutant under section 112(b)(1)(A) of the Act on September 18, 1984 (49 FR 36560). The listing is supported by occupational exposure studies of coke oven workers that show statistically significant excess mortality from cancers of the respiratory tract, kidney, and prostate, and all cancer sites combined. A dose-response relationship for respiratory cancer [2] was established in terms of both the length of employment and intensity of exposure according to the work area at the top or the side of the coke oven. Coke oven emissions extracts have been shown to be carcinogenic in a number of animal bioassays. Using criteria established by the International Agency for Research on Cancer (IARC), there is sufficient evidence for carcinogenicity in humans and experimental animals to classify coke oven emissons in IARC Category 1, meaning that this mixture is carcinogenic to humans. As indicated in the listing notice, it is likely that the carcinogenicity of coke oven emissions involves a promotion as well as an initiation component.

The numerical constant that defines the exposure-risk relationship used by EPA in its analysis of carcinogens is called the unit risk estimate. The unit risk estimate for an air pollutant, which is established by the EPA Carcinogen Assessment Group, is defined as the lifetime cancer risk occurring in a hypothetical population in which all individuals are exposed throughout their lifetimes (about 70 years) to an average concentration of 1 $\mu g/m^3$ of the agent in the air that they breathe. The unit risk estimate established for coke oven emissions is $6.2 \times 10^{-4}$. As discussed in more detail in the listing notice, this estimate is based on the 95 percent upper bound of the multi-stage model and is a plausible upper-limit estimate of the true unit risk (i.e., it is not likely that the true unit risk would be much greater than this estimate and could be considerably lower).

Based on the entire set of health studies, the Administrator concluded that coke oven emissions present a significant risk of cancer to the public. In addition, coke oven emissions in the presence of an air inversion also may be related to episodes of asthma, bronchitis, and other acute respiratory conditions in both children and adults.

Further information regarding the health effects of coke oven emissions appears in the listing notice and in the EPA document, "Carcinogen Assessment of Coke Oven Emissions" (EPA–600/6–82–003F). The EPA requests comments on the listing of coke oven emissions under section 112 of the Clean Air Act.

## III. Estimation Methods and Uncertainties

As explained earlier, on listing coke oven emissions as a hazardous air pollutant under section 112, EPA is required to propose standards for those emissions that protect public health with an ample margin of safety. The Agency sets standards using a risk assessment and risk management approach that takes into account the uncertainties associated with estimating the risk. The EPA has employed several conservative assumptions in estimating risk, such as the unit risk factor (which is an upper-bound estimate), 70-year lifetime exposure for estimating individual risk, and battery emissions (all batteries operating continuously at 90 percent capacity). However, considerable uncertainty is involved in other assumptions and methods used in the final estimates of exposure, health risk, and control costs. This section of the preamble describes the methods and uncertainties involved in estimating the risks posed by coke oven emissions and the costs required to reduce them, so that the basis and limitations of EPA's estimates can be fully understood.

### *A. Estimating Coke Oven Emission Levels*

Exact estimates of mass emissions are difficult to obtain because of the fugitive and variable nature of the emissions. Coke oven emissions may escape from many different pieces of coke oven equipment through leaks that can change in size and location over time. Moreover, coke oven emissions contain tar, which can condense on collection and measurement equipment. As a result, visible emission measurements have evolved as the only reasonable and practical way to assess emission levels for enforcement purposes.

Visible emission measurements are not precise; however, it is clear from both observation and engineering theory that a reduction in visible emissions results in a reduction in mass emissions. For each emission point, the available mass emission data at a particular level

[2] No dose-response relationship could be estimated for the other types of cancer possibly linked to coke oven emissions. Therefore, no risk estimates for cancers other than respiratory cancer could be developed.

of visible emissions were used to establish a range of mass emission estimates for different levels of visible emissions. This range represents the highest estimate and the lowest estimate of mass emissions for given visible emission levels with roughly a factor of 10 difference between the minimum and maximum. Values for the dispersion modeling and health effects are based on the midpoint value of this range.

There are also limitations and uncertainties in the methodologies available for estimating emissions from a specific site. Emission estimates are subject to dispute primarily because of the natural variability in number and size of leaks. The emission rates cannot be quantified with the same precision and accuracy possible for a typical stationary point source. Therefore, the approach that EPA has taken in the analysis of impacts has been to generate a range of values designed to bound the true emission rates.

Although coke oven emissions are composed of numerous chemical constituents, including several known and suspected carcinogens, emission levels are expressed only in terms of the BSO contained in the emissions. The BSO concentration is used instead of some other chemical fraction such as POM or benzo(a)pyrene (BaP) because the occupational health studies upon which EPA based its cancer assessment used BSO as an indicator of coke oven emission levels. (See the EPA document, "Carcinogen Assessment of Coke Oven Emissions," EPA–600/6–82–003F.)

*B. Estimating Health Effects*

The public's exposure to coke oven emissions is calculated from a data base comprising 43 plants with a total of 134 wet-coal charged coke oven batteries operating at performance levels corresponding to existing regulations (the baseline). Thirty-six of these plants were operating in 1985. The total of 134 batteries includes 93 operating, 14 on hot-idle standby, and 27 that have been cooled down. Depending on market conditions, the plants and batteries currently shut down may never be restarted. For the purpose of estimating exposure levels and resulting health effects, however, all batteries in the 43 plants were assumed to be operating.

A 1987 update of the status of coke plants showed that 33 of the 43 coke plants in the data base were producing coke. The EPA recognizes that the number of wet-coal charged batteries and plants producing coke may continue to vary over time as market conditions change (e.g., some batteries and plants may close permanently as a result of economic conditions). Therefore, prior to EPA's final decision on the level of the NESHAP, EPA will perform another update of the number of batteries and plants that are potential sources of coke oven emissions, and will perform a risk assessment based on that revised data base.

Dispersion modeling was performed for each of the 43 plants based on the Human Exposure Model (HEM) with simplifying assumptions on source configuration, terrain, and buoyancy and with plant-specific data for battery emissions, meteorology data from the nearest airport with such data, and population distribution. The battery was treated as a point source, flat terrain was used for all plants, and the effect of thermal buoyancy around the hot battery was neglected.

The simplifying assumptions of the HEM were tested in a sensitivity analysis employing more rigorous dispersion modeling that treated the battery as an area source, considered the complex terrain around an actual plant (U.S. Steel at Clairton, Pennsylvania), and included the effect of buoyancy. This sensitivity analysis showed no significant (order-of-magnitude) differences from the HEM results. Results of the site-specific modeling also were compared to measurements of ambient benzo(a)pyrene concentrations around the Clairton Works and showed that at 700 m the ratio of observed concentrations to predicted concentrations was 0.9, at 2 km the ratio of observed concentrations to predicted concentration was 0.65, and at 7 km the model underpredicted concentrations by a factor of 8.6. Ambient BSO data from Wayne County, Michigan, and Lorain, Ohio, also were compared with HEM results predicted for coke plants at these locations. Although background levels of BSO (e.g., produced by the incomplete combustion of organic materials) were relatively high, the increase in BSO concentrations apparently attributable to the coke plants was well within the range of increase predicted by the HEM. Ambient measurements of BSO in Wayne County (Detroit, Michigan), 1 to 5 km downwind from coke oven batteries, showed concentrations ranging from 1.5 to 4.0 $\mu g/m^3$ above background. The HEM predicted BSO concentrations for the same location and distance ranging from 0.01 to 1.7 $\mu g/m^3$. Ambient measurements 1.5 to 3 km from a coke plant in Lorain, Ohio, showed an increase in BSO concentration of 3.9 $\mu g/m^3$, while the HEM predicted an increase of 0.14 to 1.5 $\mu g/m^3$ at 2 km.

The dispersion modeling results were used in the HEM with the unit risk factor for respiratory cancer and population distributions to estimate health impacts. Occupational exposure studies of coke oven workers have shown statistically significant excess mortality from cancers of the lung, kidney, and prostate, and all cancer sites combined. However, because dose-response data are inadequate for cancer sites other than the lung, trachea, and bronchus, coke oven emission risk estimates are based only on the respiratory cancer unit risk factor. The limited data on non-respiratory cancer in coke oven workers indicate that the incidence of these other cancers is considerably lower than the incidence of respiratory cancer. It is therefore reasonable for EPA to rely on the unit risk estimate for respiratory cancer to indicate the relative magnitude of the cancer risk posed by coke over emissions.

The unit risk factor is an upper bound estimate; i.e., the respiratory cancer risk is not likely to be higher than $6.2 \times 10^{-4}$ but could be much lower. The assessment of the risk associated with coke oven emissions is consistent with the approach recommended in the Agency's proposed "Guidelines for Health Risk Assessment of Chemical Mixtures" (50 FR 1169–1176). The unit risk factor is based on a no-threshold linearized extrapolation of respiratory cancer risk associated with a predominantly nonwhite male cohort of workers exposed to BSO concentrations much higher than community levels. Inevitably, some uncertainty is involved in applying estimates of risk obtained from occupational studies to the general population because the wider diversity of population segments in the general population may be reflected in a wider range of susceptibilities to the carcinogenic effect of coke over emissions. In addition, ambient levels of coke over emissions are lower than occupational levels, although the Agency has taken the position that any level of exposure to a carcinogen involves some amount of risk.

As a result of the uncertainties discussed above, the estimated health risks could be either overestimated or underestimated. However, as mentioned previously, several of the parameters involved in estimating health risks are conservative. The uncertainty in the risl estimates is large because each of several input parameters is imprecise and the health risk analysis compounds this imprecision. Major sources of imprecision are the emission estimates (roughly a factor of 2 to 3), lack of site-specific meteorological and terrain data (a factor of 2 to 3), and the unit risk

factor (risk probably is not higher but could be much lower, even zero).

*C. Estimating Control Costs*

Control costs are a function of a specific battery's current condition and the technology and work practices already implemented. The later section, Selection of Emission Points for Regulation, explains the rationale for controlling emissions from the charging operation, door leaks, offtake leaks, and topside ports. Because emissions from topside ports usually originate from leaking lids that cover the ports, industry terminology describes the emission point as a "lid leak". This emission point hereafter is described as "leaking lids" to avoid confusion with industry terminology. Control costs are associated with equipment modifications or repairs to improve sealing, additional labor for sealing leaks and monitoring emission levels, and emission control training programs for workers. The current cost analysis is based on recent technology and cost data for four plants that have incurred different costs and that have achieved different performance levels. The four plants that were chosen generally represent the types of plants found in the industry and include both furnace and foundry coke producers. These also comprise plants that have implemented somewhat different approaches to emission control with varying success. When cost data were compared with the plants' improved performance over the years, mathematical relationships between cost and incremental control improvement were developed for charging, doors, lids, and offtakes. These cost functions represent average incremental costs for control increments at a "typical" battery, and, along with information on current control status, were used to estimate incremental costs of achieving better control at the other coke plants in the industry. For door leaks, both average and worst case cost estimates were used.

Major limitations or uncertainties in the cost approach are with determining controls (and their costs) implemented for a specific battery and with determining additional controls (and their costs) to improve emission control incrementally. Another difficulty is that cost data supplied by the plants invariably contain some costs attributable to routine battery maintenance and to prolonging the battery's life. The uncertainty in cost is reflected in a range of cost estimates that is probably accurate to within a factor of roughly 2 to 3. Reducing this uncertainty would require a detailed onsite engineering analysis of each battery in the industry. A battery-by-battery costing approach was not chosen because extensive time and money would be required for marginally improved accuracy. Even with a battery-specific analysis, estimates and assumptions would be required and a significant degree of uncertainty would remain. The cost estimates are derived from the actual costs incurred at operating plants and probably represent typical or average costs. The costs at a given battery may be much higher or lower depending on the battery's current condition and performance level.

## IV. Selection of Source Category for Regulation

*A. Wet-Coal Charged By-Product Coke Oven Batteries*

Wet-coal charged by-product coke oven batteries constitute the major source category of coke oven emissions. A by-product coke oven battery is a facility that contains one or more slot-type ovens connected in series by common walls with an integral heating system including any slot-type ovens structurally joined to the series of ovens as an addition or increase in capacity. Wet-coal charged batteries are, as the term indicates, charged by wet coal as opposed to preheated ("dry") coal.

The baseline comprises 43 coke by-product plants that contain 134 wet-coal charged batteries. In late 1984, a total of 93 batteries were operating at 36 plants. These plants are located predominantly in urban, industrial areas where ready access to coke markets and steelmaking facilities is present, but where population exposure is also high. It is estimated that at least 40 million people in 14 States reside within 50 kilometers of wet-coal charged by-product coke oven batteries.

At the current level of control, wet-coal by-product coke oven batteries emit an estimated 720 Mg/yr of BSO. The EPA estimates that the nationwide incidence of respiratory cancer caused by exposure to this level of coke oven emissions is approximately 6.9 deaths per year. At 24 of the 43 plants, the respiratory cancer incidence resulting from current levels of coke oven emissions is estimated to be greater than 0.1 deaths per year.

Another measure generally used to describe the health risks associated with a hazardous air pollutant is the maximum lifetime risk (MLR). The MLR is the estimated probability that persons near a plant who are exposed for a lifetime (assumed to be 70 years) to the maximum annual average ambient BSO concentrations from wet-coal charged battery coke oven emissions will contract respiratory cancer as a result of exposure to these emissions. The MLR is based on conservative assumptions such as a 70–year exposure, an upper-bound unit risk factor, and an emission estimate based on all operable batteries operating continuous at 90 percent capacity. For 38 of the 43 plants, the MLR is more than 1 chance in 1,000 ($1 \times 10^{-3}$), while the highest MLR is 3.4 chances in 100 ($3.4 \times 10^{-2}$). Estimates of populations with increased lifetime risks of contracting respiratory cancer due to exposure to present levels of coke oven emissions from wet-coal charged batteries were also calculated for risk levels ranging from 1 in 100 ($1 \times 10^{-2}$) to 1 in 1,000,000 ($1 \times 10^{-7}$) and are listed in Table 1, which appears later in this preamble.

Based on the exposure and risk estimates described above, with consideration given to the uncertainties associated with those estimates, the Administrator determined that emissions from wet-coal charged by-product coke oven batteries create a significant risk of cancer, and thus that this source category is an appropriate subject of regulation under Section 112.

*B. Dry-Coal Charged and Nonrecovery Batteries*

Coke is also produced at dry-coal charged batteries and at nonrecovery batteries. Approximately 11 batteries use a dry-coal charging system and 2 batteries use a nonrecovery process. The new construction of a third nonrecovery battery is planned.

The dry-coal and nonrecovery processes differ from the wet-coal process, and consequently the sources, composition, and extent of their BSO emissions are expected to differ from those of wet-coal batteries. The EPA's decision to list coke oven emissions as a hazardous air pollutant was based on studies of the extent and effects of wet-coal charged battery oven emissions. Given the potential difference in emissions from wet-coal, dry-coal and nonrecovery ovens, the Agency is not certain that its basis for listing coke oven emissions under section 112 is applicable to either dry-coal or nonrecovery ovens emissions, or whether regulation may be warranted.

In the dry-coal process, a significant portion of the volatile organics is driven out of the coal in the preheater prior to coking, so that the coal probably differs in composition from that used in the wet-coal coking process; if the coal content is different, the emissions composition probably also differs. In addition, the emissions performance of dry-coal charged oven doors is

potentially different than wet-coal charged oven doors. The dry-coal process involves a shorter coking time than the wet-coal process (12 hours versus 18 hours). Doors tend to leak more during the early phase of the coking cycle; therefore, because a larger proportion of ovens on dry-coal charged batteries will tend to be at a point earlier in the coking cycle compared to wet-coal charged batteries, at any given time dry-coal batteries would tend to have more leaking doors than wet-coal charged batteries. Because of the expected differences in the composition of emissions and door leak control performance between dry-coal and wet-coal charged coke oven batteries, the proposed standards do not apply to dry-coal charged batteries.

Nonrecovery ovens operate under negative pressure and are designed to capture and incinerate completely the gases produced by coking. Thus, theoretically, they should not produce emissions of concern. Consequently, EPA has decided not to propose emission standards for nonrecovery batteries at this time. The Agency requests comments and information on the issue of not proposing emission standards for either dry-coal charged batteries or nonrecovery batteries at this time.

## V. Selection of Emission Points for Regulation

For each by-product coke oven's production cycle, emissions can escape during the charging operation when the hot oven is filled with coal, during the coking period when the coal is heated in the absence of air for 16 hours or more, or during the final pushing operation when the incandescent coke is pushed out of the oven by a ram. Charging emissions escape from the topside ports and charging system of an oven when the coal is charged to the oven. Emissions from the coking operation escape from leaks around the doors at the ends of each oven, from the offtake system that ducts the off-gases to the collecting main(s), and from the topside or charging ports that are covered with lids during the coking period but which may be sealed incompletely.

Nationwide BSO emissions from wet-coal charging systems, totaling approximately 23 Mg/yr, account for approximately 3 percent of nationwide BSO emissions from by-product coke oven batteries at the baseline level. The BSO emissions from coke oven doors are fugitive and can occur at any point on the door perimeter where a gap exists. Leaks from coke oven doors account for about 82 percent, or 590 Mg/yr, of nationwide BSO emissions from the by-product coke oven batteries at the baseline control level.

Fugitive emissions from topside battery leaks may occur from lids, offtake systems, and the collecting main. Because the offtake system is composed of numerous closely associated potential emission points, the combined system (standpipes and caps, goosenecks, stationary jumper pipes, and connection flanges) is considered as a single emission point. Emissions from lids and offtake systems account for about 15 percent, or 108 Mg/yr, of total BSO emissions from batteries at the baseline level. Data available currently are insufficient to estimate a mass emission factor and associated nationwide emissions from collecting mains.

The charging operation and leaks from doors, lids, offtake systems, and collecting mains are the largest sources of BSO emissions from wet-coal charged coke oven batteries. Because of the magnitude of emissions from these emission points, they have been selected for consideration as the emission points for control by the proposed regulation.

Emissions from pushing operations also are associated with the operation of wet-coal charged batteries. However, studies have indicated that pushing emissions, which are released when the carbonized coal is pushed out of the battery, differ in composition from coke oven emissions, which are formed during the coking cycle. Although particulate matter emission levels from pushing are high, the BSO fraction and its organic compounds (e.g., benzo(a)pyrene) originally contained in the coke oven emissions have been reduced significantly because the majority of organics in the emissions already have been forwarded to the by-product facility for recovery. For these reasons, the pushing operation was not selected for regulation under the proposed standard.

## VI. Options for Regulation

### *A. Format*

Section 112(e) allows EPA to set design, equipment, work practice, or operational standards for hazardous air pollutants, "if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard[.]" Section 112(e) is applicable in "any situation in which the Administrator determines that (A) a hazardous pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutants. . . or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations." The difficulty of measuring coke oven emissions makes it an appropriate candidate for a standard set under section 112(e).

Pollutant emissions generally are characterized by the concentration and flow rate of the pollutant stream. Emission limits that allow the mass rate of emissions to be correlated with material throughput or other production parameters can then be established. However, the highly variable emission rates characteristic of the coking process do not allow the development of a strong correlation between the mass of emissions and production parameters.

In addition, the concentration of pollutants from coke oven batteries varies with time, and the concentration of BSO may vary from battery to battery because of operating conditions and the coal type or blending practices. Even if the leaks were well characterized in terms of the size and length of the gap, there would be potential difficulties in assessing the flow rate of the pollutant. In addition, measurement of the concentration of BSO above the coke battery is difficult because the concentrations are transient and depend upon the time into the coking cycle. The monitored concentration would be a function of the location of the sampler, the existing wind conditions, and any other emissions that may interfere.

The collection and mass measurement of fugitive coke oven emissions is complicated further by the fact that the gases emitted from the oven condense in ducts used to collect emissions and on metal surfaces present in the collection system used for the sampling device. For example, tars may condense on the hot oven jambs. This condensation can lead to erroneous results when the gases are processed through ducts before they reach the sampling device.

Because of the technological difficulty of collecting and measuring emissions from coke oven batteries, EPA concluded that a mass emission limitation for coke ovens was technologically and economically impracticable. Instead, the Agency found limits based on visible emissions to be the only feasible means of measuring coke oven emissions. These limits are expressed in terms of the maximum allowable seconds of visible emissions per charge for the charging system and the maximum allowable percent of doors, lids, and offtake systems from which visible emissions may occur at any one time.

Correlating visible emissions to mass emission rates is difficult because of the fugitive nature of the visible emissions

and the possibility of multiple leaks from each emission point. However, if the time of visible emissions from a specific emission point is reduced, engineering judgment dictates that the total emissions from that point would also be reduced.

Compliance with visible emissions would be determined visually by an observer following the procedures specified in Method 109, described in detail later in this preamble. The EPA has found that this test method yields repeatable results, thus making visible emission limits enforceable.

The EPA has already employed visible emission limits in the context of coke oven batteries. Under other Clean Air Act authority, several States and EPA have previously imposed visible emission limits on charging operations, doors, lids, and offtake systems of coke oven batteries. A Section 112 standard expressed in terms of visible emissions limits thus would be consistent with the format of present controls.

The EPA did not establish a visible emission limit for collecting main leaks because of the infrequent and sporadic nature of those leaks. The rate of leakage and number of leaks depend upon many factors, such as the size and number of openings, the condition of the collecting main, and the frequency and magnitude of pressure excursions or other process and operating upsets. However, once a leak from the collecting main is detected, the leak can be repaired with relative ease and certainty. For these reasons, EPA selected a work practice standard format for this emission source.

In summary, mass sampling of these emission sources is economically impracticable and technologically infeasible. For these reasons, the visible emission parameters of seconds per charge and percent leaking doors, lids, and offtakes (PLD, PLL, and PLO, respectively) were selected as the formats for the proposed standards, while a work practice standard was selected for the collecting main.

*B. Limits*

To determine the appropriate regulatory response to the public health risk posed by coke oven emissions, EPA developed and studied a series of increasingly stringent control options. The Agency based the options on various combinations of performance levels specified by existing regulations, which span the range of performance levels that are estimated to be achievable by new or existing coke oven batteries.

1. Control Technology

The control of fugitive coke oven emissions involves the coordinated combination of equipment modifications, work practices, emission monitoring, and corrective actions. Emission control at coke plants has improved significantly over the past 10 to 15 years as the industry has developed and implemented new control equipment, improved operating procedures and worker training, and more diligently supervised the emission control program. The improved controls were implemented in response to regulations promulgated by OSHA, State agencies, and technology-forcing consent decrees negotiated on a plant-by-plant basis by EPA and the States.

Most of the technology developed by industry has been made publicly available by specific companies through publication in the open literature, presentations at symposia, or direct release of reports to other members of the industry. The most prominent example of technology development is the research and development program conducted by the Nation's largest coke and steel producer, USX Corporation, for the Nation's largest coke plant (Clairton Works). The company has published the results of its optimization of charging emission control, and, to fulfill a provision in a consent decree, has provided other members of the industry with the details of their extensive research program to improve the sealing of coke oven doors. USX also provided information on technology for improved sealing of offtakes. Similar efforts were conducted at CF&I's coke plant and resulted in control techniques and performance levels comparable to the techniques implemented and control levels achieved at the Clairton Works. A more detailed discussion of the equipment and work practices available for emission control is presented in the Background Information Document (EPA–450/3–85–028a).

a. *Wet-Coal Charging.* The basic control technique for charging emissions includes equipment changes and specific work practices and operating procedures that are collectively termed "stage charging." Stage charging is a systematic procedure for introducing pulverized coal into a coke oven so that an open passage at the top of the oven is maintained constantly for the exit of gases to the collecting main. This procedure allows gases and other matter that evolve during charging to be contained effectively within the oven while they are being drawn into the collecting main by steam aspiration and then exhausted through the regular gas handling equipment to the by-product recovery plant. Containment and removal of pollutant-laden gases occur with minimal losses to the atmosphere.

Because control is not accomplished by purchasing an off-the-shelf control device, battery top workers and the operating procedures they follow perform an important role in emission control. Detailed observation of charging practices revealed that occasional lapses in work practices at the best-controlled batteries resulted in higher emission levels. Thus, to improve and maintain the performance of the battery top workers, a detailed, written procedure, an effective training program, and coordination of the battery top workers' activities are needed.

b. *Door Leaks.* The major emission control technique for coke oven doors is based on the use of metal-to-metal seals that are termed self-sealing. Self-sealing doors invariably have some small clearance between the sealing edge and the jamb; when those gaps are small, they are plugged by condensation of the tar in the escaping gas. Metal seals are most effective when they are new, properly adjusted, and used on relatively clean, straight jambs. Effective sealing can be inhibited by several factors such as distortion and damge to jambs, doors, sealing strips, and adjusting hardware. Most of the components of the oven's door assembly are tightly constrained; consequently, when the assembly is heated, gross distortions are prevented. Thermal cycling under these constrained conditions causes thermal warping and damage to the metal components. Inspection, maintenance, repair or replacement, blueprinting (maintaining the seals to meet the original specifications), and better materials of construction are the elements necessary to overcome these causes of door leaks. The basic door leak control program also includes cleaning and adjustment. Cleaning removes encrustations that can cause gaps between the sealing edge and jamb. Proper door placement and adjustment of the seal in place are also important aspects of effective door leak control.

The control techniques for batteries that use hand-luting (approximately 5 percent of the total number of batteries) instead of metal seals to seal doors also include routine cleaning and inspection, door placement, and repair or replacement of damaged parts. Hand-luting is the manual application of a mud-like mixture around the edge of a door to seal gaps. The luting material may fall off or be jarred loose after the

coal is charged; therefore, reluting is often necessary.

c. *Topside Leaks.* The control of topside emissions from leaking lids and offtakes is primarily a labor-intensive effort. Lids generally are sealed by manually applying a luting mixture that fills gaps where emissions can escape, dries in place, and seals the gaps. Similarly, parts of the offtake systems, such as the standpipe caps, also are sealed with the luting material. The luting material may crack or be jarred loose after drying; consequently, inspecting for leaks and reluting when necessary also are important parts of the control technology. Leaks rarely occur in the collecting main and can usually be stopped by prompt attention to patching or welding the source of the leak. Improved emission control of lid and standpipe cap leaks includes adequate manpower for inspection, luting, and reluting, as necessary. In addition, the luting mixture must be readily available, not prone to excessive cracking when dried, and have the proper viscosity. The proper viscosity or consistency is especially important for application to surfaces that are not flat.

The slip-joint seal on the offtake system has been a troublesome emission point for some batteries. The control techniques for leaks at the slip joint have included repair or replacement of the slip joint, packing with luting material, or installation of improved slip-joint seals. USX investigated problems with slip-joint seals on one block of batteries at the Clairton Works and installed a new seal material to improve control and decrease leaks.

2. Performance Levels

Current performance levels required by existing regulations vary across the country and often differ for different batteries at the same plant. Existing regulations (the baseline) for wet-coal charging range from 11 to 32 seconds of emissions per charge. Existing regulations for the other emission points range from 4 to 16 percent leaking doors (PLD), 1 to 5 pecent leaking lids (PLL), and 4 to 10 percent leaking offtakes (PLO).

The EPA has issued guidelines based on reasonably available control technology (RACT) to provide guidance in establishing emission limits in consent decrees and State regulations. While RACT guidance levels can vary somewhat, they generally are defined as an arithmetic average of 25 seconds per charge (excluding 1 observation in 20), 10 to 12 PLD, 10 PLO, and 5 PLL. Most batteries currently are subject to regulations that are at least as stringent as the RACT guidance and a few are subject to regulations slightly less stringent. Several new or reconstructed batteries are currently regulated by lowest achievable emission rate (LAER) limits that are more stringent than RACT. These batteries are new or reconstructed, are located in nonattainment areas for total suspended particulate matter (TSP), and must be controlled to levels of 11 seconds per charge, 5 PLD, 4 PLO, and 1 PLL.

Based on its examination of the control methods described above, EPA also identified the performance levels determined to be the most stringent levels that all batteries can achieve over time by applying the most effective control technology available. The approach EPA has used to identify these performance levels involves examination of well-defined control technology, documentation of the performance of the technology, the general applicability of the technology, and the achievability of performance levels. The control performance of the different methods has been documented thoroughly by USX and CF&I in terms of technology and achievable levels of control. Extensive visible emission measurements at the Clairton Works and CF&I provided a large data base with which to determine achievable control levels statistically. The data base included a wide variety of battery types judged to be generally representative of existing batteries. Using a log normal distribution for charging and a Poisson distribution for the other emission points, the upper 95 percent confidence level was determined for each emission point based on the visible emission data base. The performance level for charging emissions associated with the 95 percent confidence level is a log average of 16 seconds of visible emissions per charge for 10 observations and no more than 1 charge with visible emissions exceeding 45 seconds in duration. The performance levels for doors, lids, and offtakes are 10 PLD, 3 PLL, and 6 PLO, respectively, based on an average of three traverses.

3. Identified Options

From its assessment of control methods and current performance levels, EPA identified options reflecting the available increments of emissions reduction. Of those options, EPA narrowed its focus to the three most stringent. The Administrator rejected options that are less stringent than these three because the less stringent options seemed unwarranted in view of the strong evidence of carcinogenicity of coke oven emissions, the potency of coke oven emissions, and because additional reductions in cancer risk could be obtained from these three more stringent options.

The three most stringent options have the following elements in common:

- They would apply to all new and existing by-product coke oven batteries served by a wet-coal charging system.
- Visible emissions from the wet-coal charging system would be limited to a specified number of seconds per charge, based on the logarithmic (log) average of 10 valid and consecutive charges. No more than one charge within the set of 10 consecutive charges could exceed 45 seconds. Compliance with the 45-second ceiling limit would be achieved when the second highest observation in the set of 10 charges is less than or equal to 45 seconds. (An equation is provided in the proposed regulations for use in calculating the log average of visible emissions observations for each battery.)
- Leaking coke oven doors would be limited to a specified percent of all the doors on operating ovens on each by-product coke oven battery. Doors controlled by cokeside sheds also would be subject to the same limit. The definition of "coke oven door" would include the entire area on the vertical face of a coke oven between the bench and the top of the battery between two adjacent buckstays.
- The percent of leaking topside ports would be limited to a specified percent of all the topside ports on each by-product coke oven battery.
- Visible emissions from leaking offtake systems would be limited to no more than a specified percent of the offtake systems on each battery. Each offtake system would include the standpipes, standpipe caps, goosenecks, stationary jumper pipes, and connection flanges for each assembly system.
- Compliance with the emission limits for doors, lids, and offtake systems would be determined by the arithmetic average of three visible emissions inspections conducted at least 1 hour apart.
- Any leaks that occur in the collecting main would have to be sealed temporarily as soon as possible, but no later than 4 hours after detection. Repair of the leak must be completed within 24 hours of detection. (Comments are requested on the time limits for leak sealing and repair.)
- Charging coal to the ovens would be prohibited any time the coke oven is vented through by-pass or bleeder stacks to the atmosphere.

The three options differ in the percentage limits they place on various pieces of leaking equipment and in the

time limit they place on charging operation emissions. Accordingly, they also differ in their estimated emissions, health impacts, and costs.

*a. Option 1:* Leaking oven doors limited to 10 percent of doors (10 PLD) on operating ovens, leaking lids limited to 3 percent (3 PLL), leaking offtakes limited to 10 percent (10 PLO), and 25 seconds per charge.

Option 1 would reduce estimated total coke oven emissions from the 720 Mg/yr currently being released to 450 Mg/yr. However, more stringent controls are now applicable to some coke oven batteries; if those controls are relaxed in the future, Option 1 would permit those batteries to relax the level of control they are now achieving. Since the level of control now being achieved varies from plant to plant and even battery to battery, the extent to which Option 1 would permit emission increases would also vary.

In the area of health effects, Option 1 would reduce respiratory cancer incidence from 6.9 deaths per year to 4.3 deaths per year and the highest MLR from $3.4 \times 10^{-2}$ to $1.6 \times 10^{-2}$ provided otherwise applicable controls are not relaxed.

Options 1's control levels represent the levels all batteries could achieve using the most effective available technology to control door and lid leaks and more readily available technology to control offtake leaks and charging operations. The estimated cost to industry of implementing Option 1 is $7.0 million per year. The EPA's economic impact analysis shows no significant effects on production costs, coke imports, plant closures, or capital availability from incurring the estimated cost of this option on a nationwide basis.

*b. Option 2:* 10 PLD, 3 PLL, 6 PLO, and 16 seconds per charge.

Option 2 would reduce estimated coke oven emission levels to 420 Mg/yr. Although still more stringent controls apply to a small portion of existing batteries, if those controls are relaxed, Option 2 would permit less emission increases than would Option 1.

Implementation of Option 2 would reduce the estimated incidence of respiratory cancer to 4.0 deaths per year, the highest MLR to about $1.4 \times 10^{-2}$, and would reduce the number of individuals at risks greater than or equal to $1 \times 10^{-4}$ by 270,000 compared to baseline, if other controls are not relaxed. The incremental incidence reduction achieved by Option 2 would be 0.3 deaths per year with a reduction of MLR of $0.2 \times 10^{-2}$.

Option 2's control levels represents the most stringent levels that all batteries could achieve over time by applying the most effective control technology available, short of partially or completely rebuilding coke oven equipment.

The estimated cost to industry of meeting option 2's standards is $19.3 million per year. As in the case of Option 1, EPA's economic impact analysis indicates that no significant effects on production costs, coke imports, plant closures or capital availability would occur as a result of costs that would be incurred nationwide to comply with Option 2. Implementation of Option 2 would be expected to increase the price of furnace and foundry coke by about $0.25/Mg (0.2 percent) and $1.34/Mg (0.8 percent), respectively. Domestic furnace and foundry coke production would decline by about 0.3 and 2.8 percent, respectively. Coke imports, in turn, would increase by a maximum of 0.5 percent.

The EPA's analysis does suggest that Option 2 would add one more battery to the group of 14 batteries that are currently operating at marginal costs greater than the price of coke. Whether that battery would actually close, however, cannot be predicted with certainty. Although uneconomic batteries theoretically are candidates for closure, 14 have continued to operate. On the other hand, many marginal batteries have been removed from service in recent years because of decreased coke demand, increased operating costs, competition from imported coke, and other factors.

*c. Option 3:* 5 PLD, 1 PLL, 4 PLO, and 11 seconds per charge.

Option 3 would reduce estimated coke oven emission levels to 100 Mg/yr. It incorporates controls as stringent as any now applicable to new or existing coke ovens; consequently, implementation of Option 3 would prevent any further increase in emission levels if currently applicable standards are relaxed.

Option 3 would also reduce the estimated incidence of cancer caused by coke oven emissions to 0.9 deaths per year, and the MLR to $3.0 \times 10^{-3}$.

Of the 134 existing batteries, 14 already achieve the emission levels that Option 3 would require. The remaining batteries would have to be partially or completely rebuilt to meet Option 3's requirements. For existing batteries in general, emission control becomes more difficult as the battery ages because of shifting brick, distortion or damage to metal components, and other damage caused by thermal cycling or routine operation. Conventional emission control techniques that would enable existing batteries to achieve Option 3's limits have not been demonstrated. Consequently, the only approach that could allow all existing batteries to meet the more stringent limits is to rebuild partially or completely.

The cost of completely rebuilding a battery ranges from $25 to $40 million, and the cost of a partial rebuild can be anywhere from $3 to $15 million, depending on what needs to be rebuilt. Batteries typically are rebuilt for reasons other than to improve emission control. Several batteries currently operating have been scheduled to be rebuilt in the next few years and many others may be scheduled for rebuilding in the years ahead. Should a significant number of batteries need rebuilding as a prerequisite to achieving Option 3 performance levels, the industry could face unplanned capital expenditures ranging as high as $500 million or even much higher. In addition, each rebuild forced by Option 3 would cause the loss of the remaining useful life of the battery had it continued to operate under a less stringent standard.

Option 3 could also result in widespread closure of batteries and plants. As noted above, 14 batteries are already operating at a deficit and would almost certainly close in the face of the high capital costs of partial or complete rebuilding. Many other batteries are only marginally economic now; the added costs of rebuilding could threaten their continued operation, as well. Of course, widespread closures would have severe economic and social consequences for affected workers and communities.

## VII. Selected Option and Rationale

The EPA is proposing Option 2, to limit coke oven emissions to 10 PLD, 3 PLL, 6 PLO, and 16 seconds per charge. The Agency concluded that these limits amply protect public health from unreasonable risk of increased mortality or serious illness potentially caused by coke oven emissions.

The EPA's conclusion rests on several considerations. As described above, current levels of coke oven emissions pose a significant risk to the 40 million people exposed. Studies of coke oven

workers demonstrate the carcinogenic effect of exposure to high levels of coke oven emissions. However, the health effects of low exposure levels such as those found outside the workplace are uncertain. This uncertainty stems not only from the unavailability of adequate data on effects at low levels but from the near impossibility of precisely measuring coke oven emissions. The EPA estimates that the levels of coke oven emissions to which the public is currently exposed cause an average of 6.9 deaths from respiratory cancer per year and that the highest risk to the most exposed individual is $3.4 \times 10^{-2}$.

Beyond the issue of what health risk coke oven emissions pose is the issue of whether that health risk is unreasonable. To eliminate all risks posed by carcinogenic emissions, for example, would entail eliminating all such emissions, a requirement that few industries could survive. Instead, EPA believes that the appropriate inquiry is to what extent the risk posed by a pollutant should be minimized so that the residual risk is reasonable for society to accept. In this context, the economic and social costs of reducing risk to different degrees becomes relevant.

The EPA's analysis indicates that the controls required by Options 1 and 2 are technologically and financially feasible for industry to implement. Option 1, which would reduce estimated respiratory cancer incidence from 6.9 to 4.3 deaths/year, would entail the use of available control technology and would cost industry about $7 million/year. Option 2, which would further reduce the respiratory cancer incidence to 4.0 deaths/year and the MLR from $3.4 \times 10^{-2}$ to $1.4 \times 10^{-2}$, would require the greatest reduction achievable by all existing batteries using the best adequately demonstrated control techniques available and would cost industry approximately $19.3 million/year.

However, both Option 1 and Option 2 require the same level of control for leaking doors and lids—the sources responsible for most of the emissions and population risks associated with coke ovens. The incremental incidence reduction achieved by Option 2 would be 0.3 deaths per year. Option 2, while imposing costs of $12 million per year beyond Option 1, would result in no more than one battery becoming unprofitable. Table 1 shows population risk estimates at risk levels ranging from greater than $1 \times 10^{-2}$ to $\times 10^{-7}$ for the baseline and the proposed standard.

TABLE 1.—POPULATION RISK ESTIMATES FOR PROPOSED STANDARD [a]

| Lifetime risk level | Number of people with lifetime risk level (for combined emission points: wet-coal charging, door leaks, and topside leaks) [b] | |
|---|---|---|
| | Baseline | Proposed standard |
| Greater than $10^{-2}$.... | 510 | <200 |
| Greater than $10^{-3}$.... | 23,000 | 10,000 |
| Greater than $10^{-4}$.... | 540,000 | 270,000 |
| Greater than $10^{-5}$.... | 7,800,000 | 4,400,000 |
| Greater than $10^{-6}$.... | 52,000,000 | 33,000,000 |
| Greater than $10^{-7}$.... | 88,000,000 | 84,000,000 |

[a] Risks were calculated on a plant-by-plant basis and summed. Thus, persons exposed to emissions from more than one coke plant were counted for each plant's impact. Therefore, the total number of people actually exposed may be overestimated, while the risk levels may be underestimated because the additive risk impact of several plants could not be analyzed.

[b] Population estimates given for each risk level are based on midrange emission estimates. Population estimates are cumulative.

Option 3, on the other hand, could potentially shut down much of the domestic coke-making capacity. The performance levels of the proposed standard are the most stringent performance levels that all batteries can achieve consistently using demonstrated control technology. While new batteries subject to LAER standards (and a number of other batteries) are able to perform better over time than the levels of the proposed standard, the achievability of performance levels more stringent than the proposed standards by all batteries has not been demonstrated. Because there is no method for estimating the potential for conventional control technology to improve emissions performance of coke oven batteries to levels more stringent than the proposed standard, the number of batteries able to achieve the LAER-based performance levels using conventional control technology is unknown. However, data indicate that the percentage of non-LAER batteries able to achieve LAER-based performance levels would be small. An alternative to merely applying conventional control techniques is to rebuild batteries partially or completely to improve their structural and operational integrity and thus improve their ability to improve emissions performance. Again, the number of batteries requiring rebuilding to enable them to meet the LAER-based standard, the extent of rebuilding required for each battery, and the cost of rebuilding each battery are unknown. Because only 14 batteries currently are subject to LAER-based performance standards, approximately 120 batteries potentially could require partial or complete rebuilding as a prerequisite to achieving the levels of Option 3. With rebuilding costs crudely estimated to range from $3 million to $40 million per battery total costs for this option could range between $360 million and $5 billion. Many plants, only marginally profitable now, would likely find such costs prohibitive. Implementation of Option 3 thus risks closure of many plants and the resultant severe economic and social dislocation, as well as increased reliance on imported coke.

Also relevant to assessing the extent to which risk should be minimized is the degree of protection from coke oven emissions that is currently in place. As pointed out earlier, some plants already meet stringent coke oven emission standards required under other Clean Air Act authorities. Those authorities may lapse in the future, leaving the standard set under section 112 the only applicable limit.

In other NESHAP rulemakings, EPA has taken the position in some cases that the existence of standards under other authorities may obviate the need to establish redundant standards under section 112. In this instance, while some coke oven batteries are subject to control levels equivalent to or more stringent than the standards proposed under Option 2, other batteries are not. As a result, EPA believes that standards under section 112 are necessary to establish a baseline level of control for all batteries, as well as to limit the potential for relaxation of existing control levels. Due to the poor economic conditions of the iron and steel industry, and the potential for revisions of particulate matter emission limits under either the existing standard or a revised standard, EPA believes that, in the absence of a NESHAP, there could be some relaxation from existing control levels. Establishment of a NESHAP would preclude or limit such opportunities. The EPA requests comment on the likelihood that sources or States will seek such relaxations.

The EPA has selected Option 2 as minimizing public health risks from coke oven emissions consistent with the additional considerations discussed in this notice. Compared to Option 1, Option 2 would be more protective of public health, while imposing higher

costs for control. In addition, EPA believes it would limit the extent to which batteries now subject to stringent standards could ease up on controls should those standards be relaxed. At the same time, it would not impose the industry-threatening costs of the third option. The Agency does not believe that the incremental risk reduction afforded by Option 3 warrants the potential costs: extensive plant closures and the attendant loss of jobs and increased dependence on foreign coke. Because of the industry-threatening costs and associated social and economic impacts of Option 3, EPA judges that those controls would be disproportionate to the incremental health benefits associated with them. This judgment is well within the range of discretion afforded by section 112 in determining the appropriate regulatory response to an apparent non-threshold pollutant such as coke oven emissions. Accordingly, EPA proposes Option 2 as protecting public health with an ample margin of safety.

Because the proposed standards may require additional workers on some coke oven batteries, EPA considered the potential health impact of the proposed standards on steelworkers to ensure that additional control requirements would not have an adverse affect. The EPA analysis of the potential effect of the proposed standards on steelworker health showed that controlling coke oven emissions could reduce health impacts among steelworkers as well as in the general population. Nationwide steelworker baseline coke oven emission exposure levels were estimated by assuming that coke oven battery workers are exposed to the OSHA workplace exposure standard of 150 ug/m$^3$ and that employees in integrated iron and steel mills are exposed to coke oven emission concentrations predicted by the HEM (docket item No. II–B–71). The proposed standards are estimated to reduce steelworker respiratory cancer incidence from the baseline level of 3.7 to 2.2 deaths per year. Although this estimate is at least as uncertain as the cancer incidence estimates for the general population, it is a reasonable indicator of the potential effect of these controls.

### VIII. Monitoring Requirements

The primary objective of monitoring is to provide the operator with operating data necessary for effective emissions control. In selecting monitoring requirements applicable to by-product coke oven batteries, the Administrator considered requiring the installation and operation of (1) a monitoring device to record the sequence and duration of charging periods for each topside port on each battery and (2) a continuous monitor to record the flow rate of the steam supply line to the battery. However, these alternatives were rejected for several reasons. First, use of these monitors would not significantly aid in determining compliance with visible emission limitations. Furthermore, monitoring devices for this type of fugitive emissions do not exist.

Information submitted by industry sources indicates that the employment of "smoke readers" (visible emission observers) would be more reasonable than monitoring devices. Most plants currently have visible emission observers. For a few plants, an estimated cost of $48,000 per year may be incurred to add or increase the monitoring of visible emissions; however, this cost has been included in the estimated cost to meet the proposed standard. Also, this cost may be reduced substantially if one observer is used for two or more batteries. Many by-product coke plants have already instituted this practice to achieve compliance with SIP and consent decrees. Because the proposed emission limits are stated in terms of visible emissions, the visible emissions observations recorded by the observers provide information needed by the operator to control leaks and provide enforcement personnel with a means by which the operation and maintenance of the facility could be monitored. Therefore, this alternative to monitoring devices or continuous monitoring systems was selected by the Administrator.

The proposed regulation would require the observer to monitor visible emission observations from each emission point on the battery using the procedures described in the proposed Method 109. The proposed regulation would require the observer to monitor visible emissions from the wet-coal charging system for each battery for five consecutive valid charges per day. To determine consecutive charges, all charges would be counted except those charges that occurred when the observer's view was obscured by emissions generated by other operations. The observer would also be required to conduct at least one complete visible emission inspection (run) of all coke oven doors, lids, and offtake systems on each battery per day. The inspections would have to be conducted 7 days per week (or for every day of operation). The data recorded by the observer would provide the basis for the initial sources report, quarterly reports of excess emissions, and monitoring records.

### IX. Test Method

A new Method 109, "Determination of Visible Emissions from Coke Oven By-Product Batteries," has been developed. The proposed method would establish a procedure for determining the duration of visible emissions that occur during the wet-coal charging process. It also would establish procedures for determining topside leaks and for counting coke oven door leaks. The proposed method also would establish procedures for measuring visible emissions from the coke oven doors located under cokeside sheds.

Visible emissions may occur from the wet-coal charging system, the two main coke oven doors on each end of the oven, the small chuck door on the pusher side of the oven, the three to five topside ports, the collecting main, and the one or two offtake systems that connect the oven to the collecting main. The proposed method would require an observer to record the length of time that visible emissions occur from the charging of an oven. These emissions may be continuous or intermittent, but only the time during which visible emissions are sighted is totaled.

The procedures described in the method would require the observer to walk the topside center line of the battery and count the number of lids and offtake systems from which any visible emissions are observed. To count leaks in the collecting main the observer is required to walk along the topside edge closest to the main, or along the catwalk above the main. The method would require the observer to count coke oven doors on operating ovens as the observer traverses the battery at ground level as close to the battery as safety and visibility conditions permit. All leaks (except steam) from operating ovens are counted, regardless of size or duration. These emissions are generally in the form of yellow-brown smoke. Although some of the luting produces a white, condensed water plume as it dries, this is not counted as a leak. The percent leaking is then calculated by dividing the number of leaking doors, lids, or offtakes by the total number of each observed on the battery.

### X. Reporting and Recordkeeping Requirements

The owners and operators subject to the proposed standard would also be subject to the requirements specified by the General Provisions of 40 CFR Part 61. The General Provisions require affected sources to notify EPA of

construction, modifications, and startups so that the Agency can keep abreast of sources subject to the national emission standard. The General Provisions also require the submission of an initial source report that includes sufficient information for EPA to determine that each source has initially achieved compliance with the standard. In addition, the proposed standard requires that this report also include the results of an emission test and supporting calculations used to demonstrate compliance for each battery.

The proposed standard also would require the submission of quarterly reports summarizing the monitoring data. If no excess emissions have occurred, the report would include the following data for each quarterly period: (1) Each 2-day log average of visible emissions from the wet-coal charging system and the second highest observation in each set of 10 charges; and (2) the percent of leaking coke oven doors, lids, and offtake systems, as averaged daily for three consecutive runs (i.e., one run daily for 3 consecutive days). If the emission standards were exceeded during the quarter, the owner or operator would report the following additional information: (1) The period when the exceedances occurred, the emission point where the exceedances occurred, the equipment causing the exceedances, and a description of the nature or cause of the exceedances; (2) the seconds of visible emissions for each charge observed or the PLD, PLL, or PLO observed during each run; and (3) the work practices or procedures that were taken to remedy the exceedances and the procedures that would be taken to prevent their recurrence from that emission point. The additional information would be required only if the emission standards were exceeded during a quarterly reporting period. These reports would serve to alert the EPA that the emissions control equipment and operating procedures used to comply with the standards may not be implemented or maintained.

The proposed standard also would require the maintenance of records of all visible emissions observations and all supporting calculations. These monitoring records must be maintained at the source for at least 2 years. These records would provide EPA or other enforcement personnel with sufficient information to determine whether the emission control equipment, work practices, and operating procedures used to comply with the standard are being implemented and maintained properly.

Three alternatives of increasing stringency were considered by EPA in selecting the proposed reporting and recordkeeping requirements. The first alternative would require only the reports specified by the General Provisions and the maintenance of monitoring records at the plant site for 2 years. The second alternative considered would require quarterly reports of monitoring results, together with supporting calculations, if any excess emissions occurred during the quarter (in addition to the reports required by the General Provisions and the maintenance of monitoring records). The third alternative would require the monthly reporting of all monitoring results and all supporting calculations, in addition to the reports required by the General Provisions, and the maintenance of monitoring records at the plant site.

At by-product coke plants, compliance generally is assessed by enforcement personnel through periodic onsite inspections and the review of plant records. However, spot inspections and plant records alone will not reveal whether the proposed equipment and work practices are implemented continuously. Reports of occurrences of excess emissions and information regarding the specific work practices or procedures being implemented for the applicable battery at the time of the excess emissions, are necessary for enforcement personnel to assess fully the compliance status of the affected source. A pattern of reports indicating excess emissions would serve to alert enforcement personnel of a possible operating problem requiring an onsite inspection.

Because the first alternative would not provide sufficient information to assess the compliance status of the batteries following the initial compliance test and the third alternative would create a resource burden for the industry, the second alternative was selected as the basis of the proposed reporting and recordkeeping requirements. This approach would provide EPA with sufficient information to keep abreast of batteries that become subject to the standard, to determine the initial compliance status of each battery, and to assess subsequent compliance or possible operating problems at the battery site.

## XI. Environmental Impact

Because compliance with the proposed coke oven emission regulations would be achieved through the containment of emissions in the oven rather than through the collection and removal of emissions by a pollution control device, the current level of water effluent discharges, solid waste, energy use, and noise would be unchanged. The reduction in nationwide BSO emissions that would result from implementation of the proposed regulation would be achieved with no adverse effects on the environment.

## XII. Paperwork Reduction Act

The information collection provisions associated with this proposed rule (40 CFR 61.06, 61.07, 61.09, 61.10, 61.12, 61.84, and 61.85) have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA", as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

An analysis of the burden associated with the proposed reporting and recordkeeping requirements has been made. During the first 3 years of this regulation, the average annual burden of the reporting and recordkeeping requirements for the 43 plants would be about 86 person-years. This estimated labor-hour burden includes the use of an observer to monitor and record visible emissions data on a daily basis. This burden already is incurred at a majority of existing plants as a result of State regulations and consent decree requirements. At these plants, visible emission observations are made and recorded routinely. To avoid duplication of effort, owners or operators of batteries subject to similar or more stringent monitoring and recordkeeping requirements may submit this information to EPA. For these reasons, not all of the estimated labor-hour burden is attributed directly to the proposed standard. Because visible emissions monitoring is such a critical part of coke oven emission control technology, the cost of a visible emissions observer also is included in the estimated total annualized cost for the proposed standard.

## XIII. Regulatory Flexibility Act (RFA)

The RFA (5 U.S.C. 601 et seq.) requires EPA to consider the potential impacts of proposed regulations on small "entities." If a preliminary analysis indicates that a proposed regulation would have a significant adverse ecoomic impact on a substantial number (i.e., 20 percent or more] of small entities, then a regulatory

flexibility analysis must be prepared. For this industry, the Small Business Administration defines a small entity as a firm that employs less than 1,000 workers. Six firms, out of a total of 23 existing firms, that would be considered small entities under this definition were identified.

Present RFA guidelines indicate that an economic impact should be considered significantly adverse if it meets one of the following criteria: (1) Annual compliance costs increase production costs by more than 5 percent; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; and (4) regulatory requirements are likely to result in closures of small entities. One firm that may be impacted significantly under the second criterion has been identified. Because only one plant (less than the 20 percent guideline for "substantial number") may be impacted significantly, a full regulatory flexibility analysis is not required. The preliminary regulatory flexibility analysis is described further in Chapter 9 of the BID.

## XIV. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard for wet-coal charged by-product coke oven batteries, in accordance with sections 112(b)(1)(B) and 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket Number A–79–15.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

## XV. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can participate effectively in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials [section 307(d)(7)(A)]).

## XVI. Miscellaneous

As prescribed by section 112 of the Clean Air Act, as amended, establishment of national emission standards for coke oven emissions from wet-coal charged by-product coke oven batteries was preceded by the Administrator's listing of coke oven emissions (49 FR 36560, September 18, 1984).

This regulation will be reviewed 5 years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceablity, improvements in emission control technology and health data, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA subset policy for reporting requirements in regulations.

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, numerous meetings were held with industry representatives and trade associations during development of the proposed standards. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test method.

Comments are specifically invited on three aspects of the proposed standards: (1) Whether a more or less stringent level of control should be selected as the basis of the standards, considering the technological uncertainties and economic conseqences (including the cost estimates, extent of rebuilding, and overall economic impact described for the LAER-based control option); (2) the selection of wet-coal charged coke oven batteries as the source category for regulation; and (3) the reasonableness of the proposed time limits allowed for the temporary sealing and permanent repair of collecting main leaks. Any comments submitted to the Administrator on these issues should contain specific information and data pertinent to an evaluation of the magnitude and severity of their impacts and suggested alternatives courses of action that could avoid these impacts.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it would result in none of the adverse economic impacts set forth in Section 1 of the Executive Order as grounds for finding a regulation to be major. The industry-wide annualized costs in the fifth year after the standards would go into effect would be $19.3 million, less than the $100 million established as the first criterion for a major regulation in the Order. The estimated price increases for furnace and foundry coke (0.2 percent and 0.8 percent, respectively) would not be considered "major increases in costs or prices" specified as the second criterion in the Order. The economic analysis of the proposed standards' effect on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion of the Order).

This regulation was submitted to OMB for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments will be included in Docket Number A–79–15. This docket is available for public inspection at EPA's Central Docket Section, which is listed in the Addresses section of this preamble.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because the number of small entities affected is not substantial.

**List of Subjects in 40 CFR Part 61**

Asbestos, Benzene, Beryllium, Blast furnaces and steel mills, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Radionuclides, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

Dated: April 17, 1987.

**Lee M. Thomas,**

*Administrator.*

It is proposed that Part 61 of Chapter I, Title 40 of the Code of Federal Regulations be amended by adding a new Subpart G and a new Method 109 to Appendix B, as follows:

1. The authority citation for Part 61 continues to read as follows:

**Authority:** Secs. 101, 112, 114, 116, 301 of the Clean Air Act as amended 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. The Table of Contents is amended by adding Subpart G to read as follows:

**Subpart G—National Emission Standards for Coke Oven Emissions from By-Product Coke Oven Charging, Door Leaks, and Topside Leaks on Wet-Coal Charged Batteries**

Sec.
61.80 Applicability.
61.81 Definitions.
61.82 Emission and work practice standards.
61.83 Compliance provisions.
61.84 Emission test and procedures.
61.85 Emission monitoring.
61.86 Recordkeeping and reporting requirements.

3. Part 61 is amended by adding Subpart G to read as follows:

## Subpart G—National Emission Standards for Coke Oven Emissions from By-Product Coke Oven Charging, Door Leaks, and Topside Leaks on Wet-Coal Charged Batteries

### § 61.80 Applicability.

(a) The provisions of this subpart are applicable to each new or existing by-product coke oven battery using a wet-coal charging system.

### § 61.81 Definitions.

Terms used in this subpart are defined in the Act, in Subpart A of this part, or in this section as follows:

"Bench" means the platform structure in front of the oven doors that supports the door machines and hot coke guide.

"Bypass/bleeder stack" means a stack or duct used to relieve excess pressure from the collecting main during emergency conditions.

"By-product coke oven battery" means a facility consisting of a group of slot-type ovens connected in series by common walls served by an integral heating system, including any oven or group of ovens that may be heated by a separate heating system structurally joined to the series of ovens as an addition or increase in capacity and operated or designated as part of the original series of ovens, where coal undergoes destructive distillation to produce coke and where volatile components of the coal are recovered.

"Charge" or "charging period" means the period of time that commences when coal begins to flow into an oven through a topside port and ends when the last oven lid is replaced.

"Coke oven door" means each end enclosure on the pusher side and the coking side of an oven. The chuck, or leveler-bar, door is considered part of the pusher side door. A coke oven door includes the entire area on the vertical face of a coke oven between the bench and the top of the battery between two adjacent buck stays.

"Coke side" means the side of a battery from which the coke is discharged from ovens at the end of the coking cycle.

"Collecting main" means any apparatus that is connected to one or more offtake systems and that provides a passage for conveying gases from the by-product coke oven battery to a duct connecting the collecting main with the by-product recovery system.

"Collecting main repair" means any measure to stop a collecting main leak on a long-term basis. A repair measure in general is intended to restore the integrity of the collecting main by returning the main to a state approximating its design specifications or its condition before the leak occurred. A repair measure may include, but is not limited to, replacing collecting main pipes or welding the source of the leak.

"Consecutive charges" means charges observed successively, excluding any charge during which the observer's view of the charging system or topside ports is obscured by emissions from other operations.

"Damper-off" means to close off the gas passage between the gooseneck and the coke oven battery collecting main.

"Decarbonization period" means the period of time for combusting oven carbon that commences when the oven lids are removed or standpipe caps of an oven are opened, and ends with the initiation of the next charging period for that oven.

"Log average" means logarithmic average as calculated in § 61.84(a)(1).

"Offtake system" means any individual oven apparatus that provides a passage for gases from an oven to a coke oven battery collecting main. The offtake system includes the standpipe and standpipe caps, goosenecks, stationary jumper pipes, and standpipe and gooseneck connections.

"Operating oven" means any oven not out of operation for rebuild or maintenance work extensive enough to require the oven to be skipped in the charging sequence.

"Oven" means any slot-type chamber in which coal undergoes destructive distillation to produce coke.

"Preheated coal" means coal charged at a temperature equal to or greater than 147° C (297° F).

"Push side" means the side of the battery from which the coke is pushed from ovens at the end of the coking cycle.

"Run" means the observation of visible emissions from topside ports, offtake systems, or coke oven doors in accordance with the procedures set forth in Method 109 of 40 CFR Part 61, Appendix B.

"Standpipe cap" means an apparatus used to cover the opening in the gooseneck of an offtake system.

"Temporary seal" means any measure, including, but not limited to, application of luting or packing material, to stop a collecting main leak until the leak is repaired.

"Topside port" means any opening in the topside of an oven through which coal is charged into the oven.

"Wet coal" means coal that is charged at a temperature less than 147° C (297° F).

"Wet-coal charging system" means an apparatus used to charge coal to a coke oven (e.g., a larry car).

### § 61.82 Emission and work practice standards.

(a) No owner or operator shall discharge to the atmosphere from any wet-coal charged by-product coke oven battery visible emissions that exceed the following limits:

(1) Visible emissions from the charging system of more than:

(i) 16 seconds per charge, computed as the log average of the duration of visible emissions during 10 charges as determined pursuant to § 61.84(a)(1) or § 61.84(b)(1); and

(ii) 45 seconds per charge for the duration of visible emissions during more than one of the 10 charges as determined pursuant to § 61.84(a)(1) or § 61.84(b)(1).

(2) Visible emissions from more than 10 percent of the observed coke oven doors on operating coke ovens as determined pursuant to § 61.84(a)(2) or § 61.84(b)(2).

(3) Visible emissions from more than 3 percent of the topside ports on the operating coke ovens as determined pursuant to § 61.84(a)(2) or § 61.84(b)(2).

(4) Visible emissions from more than 6 percent of the offtake systems on the operating coke ovens as determined pursuant to § 61.84(a)(2) or § 61.84(b)(2).

(b) The owner or operator shall temporarily seal any leak in the collecting main as soon as possible after detection, but no later than 4 hours after detection of the leak. The owner or operator shall perform a collecting main repair within 24 hours of the first detection of the leak.

(c) No owner or operator shall charge an oven at any time when venting coke oven gas through bypass or bleeder stacks to the atmosphere.

### § 61.83 Compliance provisions.

(a) The owner or operator shall conduct an emission test under § 61.13

and at any other time prescribed by the Administrator in accordance with the procedures in § 61.84.

(b) The owner or operator shall perform the self-monitoring required under § 61.85.

(c) The owner or operator shall:

(1) Provide to the Administrator upon request a record of collecting main leaks and repairs as recorded under § 61.85(b).

(2) Provide to the Administrator upon request a record of venting of coke oven gas through bypass or bleeder stacks and whether charging occurred during the venting period as recorded under § 61.85(c).

**§ 61.84 Emission test and procedures.**

(a) Compliance with the emission standards under § 61.82(a) pursuant to a test conducted under § 61.83(a), or pursuant to a test conducted by the Administrator is determined as follows:

(1) For the standards under § 61.82(a)(1), an observer shall observe and record the duration of visible emissions per charging period for 10 consecutive charges in accordance with Method 109. If the observer is unable to observe and record a full set of 10 consecutive charges on one day, then the observer must complete the set of 10 observations on the next calendar day. Compute the log average of the duration of visible emissions from the set of 10 charges by the following equation.

$$\text{log average} = e^{y-1}$$

where:

$$e = 2.72$$

$$y = \frac{\ln (X_1 + 1) + \ln (X_2 + 1) + \ldots \ln (X_{10} + 1)}{10}$$

ln = natural logarithm

$X_i$ = seconds of visible emissions during the ith charge.

(2) For the standards under § 61.82(a)(2), (a)(3), (a)(4), an observer shall observe and record visible emissions occurring at doors (including doors controlled by a cokeside shed), topside ports, and offtake systems in accordance with Method 109. To determine the percent leaking doors, topside ports, and offtake systems, the arithmetic average of three runs shall be used. Each of the three runs shall be conducted on the same calendar day in accordance with Method 109 with no less than 1 hour between each run. Up to three ovens that are dampered-off from the collecting main for decarbonization shall be excluded from the count in determining visible emissions from topside ports and offtake systems. If more than three ovens are dampered-off, only the three most recently dampered-off shall be excluded.

(b) Compliance with the emission standards under § 61.82(a) pursuant to monitoring data generated under § 61.85 is determined based on the following:

(1) For charging, the duration of the second longest visible emission observation for the 10 charges recorded under § 61.85(a)(1) and the log average of the duration of visible emissions observed for the 10 charges.

(2) For doors, topside ports, and offtakes, the 3-day rolling arithmetic averages recorded under § 61.85(a)(2).

(c) Compliance with the work practice standards under § 61.82(b) shall be determined based on an inspection conducted by the Administrator pursuant to section 7 of Method 109 or based on the information provided to the Administrator pursuant to § 61.83(c).

**§ 61.85 Emission monitoring.**

(a) Using the procedures in Method 109, the owner or operator shall monitor visible emissions every day of operation as follows:

(1) For the charging system during charges, the owner or operator shall observe and record daily the duration of visible emissions for five consecutive charges. Every 2 days of operation, the owner or operator shall compute the log average of the duration of visible emissions for 10 observations using the 5 observations of that day and the 5 observations the previous day and using the equation in § 61.84(a)(1). The owner or operator shall record the duration of visible emissions for the second highest observation of the 2-day set of 10 observations.

(2) For coke oven doors, topside ports, and offtake systems, the owner or operator shall conduct one run for each by-product coke oven battery and record the percent leaking coke oven doors, topside ports, and offtake systems. Following each daily run, the owner or operator shall compute and record the 3-day rolling arithmetic averages of percent leaking doors, topside ports, and offtake systems for the three most recent daily runs.

(b) Using the procedures in Method 109, the owner or operator shall inspect collecting mains for visible emissions at least once each day of operation and shall record the time and date the leak is first observed, the time and date the leak is temporarily sealed, and the time and date the collecting main is repaired.

(c) The owner or operator shall observe and record the time and date of any venting of coke oven gas through the bypass or bleeder stacks, and shall note whether charging occurred during the venting period.

**§ 61.86 Recordkeeping and reporting requirements.**

(a) For the initial emission test required under § 61.83(a), the owner or operator shall report the following for each by-product coke oven battery.

(1) For each set of 10 charges, the duration of visible emissions observed from the charging system and topside ports for each charge, the second longest duration of visible emissions among the 10 observations, and the log average of the duration of visible emissions.

(2) The percent leaking coke oven doors, topside ports, and offtake systems observed during each of three runs and the averages for the three runs; and

(3) A list of the equipment and work practices used to comply with the emission limits and work practice standards specified in § 61.82.

(b) The owner or operator shall maintain records of all visible emission observations and supporting calculations for each by-product coke oven battery at the source for a minimum of 2 years.

(c) For each by-product coke oven battery, the owner or operator shall report quarterly a summary of the

monitoring data required by § 61.85. The quarterly report shall include the following:

(1) Each discrete 2-day log average of the seconds of visible emissions from the charging system and the second longest duration of visible emissions observed in each 2-day set of 10 charges; and

(2) The 3-day averages of percent leaking coke over doors, topside ports, and offtake systems computed daily under § 61.85(a)(2).

(d) For each exceedance of an emission standard under § 61.82(a) as determined by an emission test under § 61.84(a) or monitoring data recorded under § 61.85(a), the owner or operator shall include the following information in the report required under paragraph (c) of this section:

(1) The emission standard exceeded and the dates the emission standard was exceeded.

(2) The nature and cause of the exceedance.

(3) The equipment and work practices used to control emissions from the emission point(s) exceeding the emission standard or the steps taken to comply with the emission standard and the steps taken to prevent exceedance of the emission standard again.

(4) The duration of visible emissions for each charge observed during the period when the emission limits under § 61.82(a)(1) are exceeded.

(5) The percent leaking doors observed when the emission standard under § 61.82(a)(2) is exceeded.

(6) The percent leaking topside ports observed when the emission standard under § 61.82(a)(3) is exceeded.

(7) The percent leaking offtake systems observed when the emission standard under § 61.82(a)(4) is exceeded.

(8) The information recorded under § 61.85(b) when the standard under § 61.82(b) is violated.

(e) For each exceedance of the work practice standards under § 61.82 (b) and (c), the owner or operator shall include the following information in the report required under paragraph (c) of this section:

(1) The information recorded under § 61.85(b) when the standard under § 61.82(b) is violated.

(2) The information recorded under § 61.85(c) when the standard under § 61.82(c) is violated.

4. Appendix B is amended by adding Method 109 to read as follows:

**Appendix B—Test Methods**

* * * * *

**Method 109—Determination of Visible Emissions from Coke Oven Batteries**

*1. Applicability and Principle*

1.1 Applicability. This method applies to the determination of visible emissions (VE) from the following coke oven battery sources: charging systems during charging; bypass stacks; doors on operating coke ovens; topside ports and offtake systems; and collecting mains. This method applies to wet-coal charging with larry car systems, and not to preheated coal charging systems.

1.2 Principle. The VE from coke oven battery sources are visually determined by a trained observer. This method does not require that opacity of emissions be determined or that magnitude be differentiated. The VE can be large or as small as a wisp from a smoking cigarette.

*2. Training*

Since this method requires only the determination of whether VE occur and does not require the determination of opacity levels, observer certification according to Method 9 is not required. However, the observer shall have read the materials concerning the effects of background contrast, ambient lighting, observer position relative to lighting, wind, and the presence of uncombined water (condensing water vapor) on VE found in Citations 1 and 2 in the Bibliography or shall have attended the lecture portion of the Method 9 certification course.

Furthermore, before conducting any VE observations, an observer shall become familiar with coke oven battery operations and with this test method by observing for a minimum of 4 hours the operation of a coke oven battery and applying the test method under the supervision of someone familiar with the operation of the battery and application of this method.

Because coke oven batteries have hazardous environments, the observer shall have read the precautions required by the Occupational Safety and Health Administration (OSHA) regulations pertaining to exposure of coke oven workers (see Citation 3 in the Bibliography). In general, the regulation requires that special fire-retardant clothing and respirators be worn in certain restricted areas of the coke oven battery and prohibits certain activities, such as chewing gum, smoking, and eating, in these areas.

*3. Procedure for Determining VE from Charging System During Charging*

3.1 Number of Charges. See the applicable subpart, § 61.84(a)(1) or § 61.85(a)(1), for the number of oven charges to be observed.

3.2 Stopwatch. Use an accumulative type stopwatch with a sweep second hand and unit divisions of at least 0.5 second.

3.3 Observations. Before beginning the inspection, record all the information requested at the top of the charging system inspection sheet (Figure 109–1). For each charge, record the number of the oven being charged and the approximate beginning time of the charge.

BILLING CODE 6560-50-M

Company: _____ Observer: _____

Place, State: _____ Date: _____

Company representative(s): _____

Battery no.: _____ Sky condition: _____

| Charge no. | Oven no. | Clock time | Visible emissions, seconds | Comments |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Figure 109-1. Charging system inspection.

BILLING CODE 6560-50-C

BEST COPY AVAILABLE

Stand in an area or move to positions on the topside of the coke oven battery with an unobstructed view of the charging system, especially the larry car hoppers, drop sleeves, and slide gates. Distances of 10 to 15 ovens away, close to the centerline of the topside or in line with the port being charged are recommended.

During charging, observe all of the potential sources of VE from the entire charging system, and determine the total time VE are observed as follows: Upon observing any VE, start the accumulative stopwatch. Stop the watch when the VE ceases, and restart the watch when the VE reappears. Continue this procedure for the entire charging period. When VE occur simultaneously from several points during the charge (e.g., from around all drop sleeves at the same time), consider the sources as one. Time overlapping VE as one continuous VE. Record the accumulated time to the nearest 0.5 second under "Visible emissions, seconds" on Figure 109–1.

If fugitive VE from other sources at the coke oven battery site (e.g., condensing water vapor from the coke oven wharf or door leaks) prevent a clear view of the charging system during a charge, make the following notation under "Comments" on Figure 109–1: "No reading, visual interference." Consider the observation for the charge void, and observe another charge to fulfill the requirements of Section 3.1.

Do not time the following VE:

3.3.1 The VE from smoldering coal caught in any hopper gate "coal box."

Note.—The VE from smoldering coal are generally white or gray and are continuously emitted from the hopper shrouds at or near the slide gates. These VE generally have a plume of less than 1 meter in length. Charging VE are generally yellow/brown or black.

3.3.2 The VE from burning or smoldering coal spilled on top of the oven or topside port lid.

3.3.3 The VE from the standpipe caps.

3.3.4 The VE from the coke oven doors.

3.3.5 The VE of condensing water vapors.

3.3.6 The VE that drift from the top of a larry car hopper if the emissions had already been timed as VE from the drop sleeve.

Note.—When the slide gate on a larry car hopper closes after the coal has been added to the oven, the seal may not be airtight. On occasions, a puff of smoke observed at the drop sleeves is forced past the slide gate up into the larry hopper and may drift from the top; time these VE at only the drop sleeves. If the larry car hopper does not have a slide gate or the slide gate is left open or partially closed, VE may quickly pass through the larry car hopper without being observed at the drop sleeves and will appear as a strong surge of smoke; time these as charging-system VE.

*4. Procedure for Determining Bypass or Bleeder VE*

If any VE from bypass or bleeder stacks occur during charging, make the following notation under "Comments" on Figure 109–1: "Bypass VE during charging."

*5. Procedure for Determining VE from Coke Oven Doors*

5.1 See the applicable subpart, § 61.84(a)(2) or § 61.85(a)(2), for the appropriate number of runs.

5.2 Stopwatch. Use an accumulative type stopwatch as described in paragraph 3.2 to measure actual traverse time.

5.3 Battery Traverse. A single test run consists of two traverses, one for the coke side and one for the push side. To conduct a battery traverse, walk the length of the battery from one pinion wall to the other at a steady, normal walking pace, pausing only to make appropriate entries on the door area inspection sheet (Figure 109–2).

The walking pace should be at an average rate of 3 to 4 seconds per oven, but no more than an average of 6 seconds per oven, excluding time spent waiting for the hot car, pusher machine, or door machine to move from a position blocking the view of a series of doors. Both traverses of a test run shall be completed within a period of 45 minutes.

Walk along the side of the battery as close to the battery as safety and visibility conditions permit. Generally, this location is outside of the pusher machine and quench car tracks.

When batteries have sheds for pushing emission control, walk on the bench. Be aware of special safety considerations pertinent to walking on the bench, and follow the instructions of company personnel on the required equipment and operations procedures. If possible, conduct the bench traverse whenever the bench is clear of the door car and hot coke guide.

If it is impossible or deemed unsafe to observe the door VE from the bench, the observer may conduct the inspection from outside the shed if the shed allows such observations, or from inside the shed at ground level.

Note.—When a piece of equipment, or fugitive emissions from other sources at the coke battery (e.g., condensing water vapor from the coke oven wharf) prevent a clear view of one or more of the door areas during the traverse, proceed as follows:

(a) Wait for the equipment to move or the fugitive emissions to dissipate before completing the traverse; or

(b) Continue the traverse and, after the equipment has moved or the fugitive emissions have dissipated, return to inspect the affected ovens immediately after completing the traverse or immediately after completing the test run; or

(c) Exclude from the inspection the ovens blocked from view by the coke oven equipment or the ovens obscured by interference from fugitive emissions. Use this option only if the first two options are not feasible and to keep within the 45-minute limit. Record the oven numbers, circle them, and write "Not observed, blocked view" or "Not observed, visual interference" under "Comments" on Figure 109–2.

BILLING CODE [illegible]

Company: _____ Observer: _____

Place, State: _____ Date: _____

Company representative(s): _____

Battery no.: _____ Total no. of: Ovens: _____ Inoperable ovens: _____

Indicate sun position, wind direction and speed, and location of traverse: _____

Sky condition: _____

Run no.: _____

CS

PS

| Time traverse started/ completed | PS/CS | Oven no. | Visible emissions | | | Comments |
|---|---|---|---|---|---|---|
| | | | Oven door | Chuck door | Other | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total traverse time _____ | | | | | | |

Figure 109-2. Door area inspection.

BILLING CODE 6560-50-C

5.3 Observations. Record all the information requested at the top of the door area inspection sheet (Figure 109–2) before beginning the run. Record the time when traverses on each side begin and end, including times for reinspection of door areas previously blocked from view by machinery or obscured by fugitive VE. Record which side is being inspected, i.e., coke side or push side. If the inspection is delayed because of battery operations or fugitive emissions, record the period of time delay.

Begin the test run by traversing either the coke side or the push side of the battery. After completing one side, traverse the other side. During the traverse, look around the entire perimeter of each oven door area. If VE are seen at the oven door, chuck door, or other sources (e.g., buck stay or jamb), record the oven number, and check the sources of the VE in the appropriate boxes on Figure 109–2.

After completing the run, determine whether the average 6-second/oven and 45-minute criteria have been exceeded. If so, conduct another run.

Do not record the following sources as door area VE.

5.3.1 Sources of condensing water vapor.

5.3.2 Oven door areas with doors removed. Record the oven number, circle it, and write "Not observed, door removed" under "Comments."

5.3.3 Oven door areas where maintenance work is being conducted. Record the oven number, circle it, and write "Not observed, maintenance" under "Comments."

5.4 Calculations. Determine the total number of doors for which observations were made on the coke oven battery [2x (total number of ovens—number of inoperable ovens)—number of doors not observed]. For each test run (one run includes both the coke side and the push side traverses), sum the number of ovens with door area VE (i.e., count the number of entries under "Oven number," excluding those not observed).

Note.—Multiple VE from the same door area (e.g., VE from both the chuck door and the push side door) are counted as only one emitting door, not as multiple emitting doors.

When traverses are conducted from the bench under coke side sheds, adjust the numnber of doors with VE to a level that is equivalent to a yard observation traverse as follows: Multiply the number of ovens in the battery with VE by 0.07, and substract this result from the number of doors with VE from the bench observation traverse. Then combine the number of "yard equivalent" doors with VE with the number of doors with VE observed during the yard traverse on the push side to determine the total number of doors with VE for the battery.

Divide this sum by the total number of doors of operating ovens observed on the battery, and multiply by 100. Round off this percentage to the nearest tenth of 1 percent, and record this percentage as the percent leaking coke oven doors for the run.

*6. Procedure for Determining VE from Topside Ports and Offtake Systems*

6.1 Number of Runs. See the applicable subpart, § 61.84(a)(2) or § 61.85(a)(2), for the number of runs to be conducted. Simultaneous runs or separate runs for the topside ports and offtake systems may be conducted.

6.2 Stopwatch. Use an accumulative stopwatch as described in paragraph 3.2 to measure actual traverse time.

6.3 Battery Traverse. To conduct a "battery traverse," walk the length of the battery from one pinion wall to the other at a steady, normal walking pace, pausing only to make appropriate entries on the topside inspection sheet (Figure 109–3).

[BILLING CODE 6560-50-M]

Company: _____ Observer: _____

Place, State: _____ Date: _____

Company representative(s): _____

Battery no.: _____ Total no. of: Ovens: _____ Inoperable ovens: _____

Indicate sun position, wind direction and speed, and location of traverse: _____

Sky condition: _____

Run no.: _____

PS

| Time traverse started/ completed | PS/CS | Oven no. | Visible emissions | | | Comments |
|---|---|---|---|---|---|---|
| | | | Topside ports | Offtake systems | Collecting main | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total traverse time _____ | | | | | | |

Figure 109-3. Topside inspection.

BILLING CODE 6560-50-C

**Note.**—The walking pace should be at an average rate of 3 to 4 seconds per oven to complete a single traverse, but shall be no more than an average of 6 seconds per oven, excluding time spent waiting for the larry car or other piece of equipment to move from the battery.

6.4 Observations. Record all the information requested at the top of Figure 109–3 before beginning the traverse. Record the time when traverses begin and end. If the larry car obstructs the view during a traverse or if fugitive emissions from other sources at the coke battery (e.g., steam from the coke wharf, VE from between the brickwork and the oven lid casing, or VE from cracks in the oven brickwork) interfere, follow the guidelines given under the **Note** in Section 5.2. Record the times of delays, or, if excluded, record the oven number, circle it, and write "Not observed" and the reason (i.e., visual interference, blocked view) and the number of affected units under "Comments."

After completing the traverse, determine whether the average 6-second per oven criterion has been exceeded. If so, conduct another traverse.

6.3.1 Topside Ports. To perform a test run, conduct a single traverse as close as possible to the centerline of the battery topside. Upon noting VE from the topside port(s) of an oven, pause and record the oven number and number of topside ports with VE from that oven; then resume the traverse. If any oven is dampered-off from the collecting main for decarbonization, note this under "Comments" for that particular oven.

**Note.**—Count the number of topside ports, not the number of points, exhibiting VE, i.e., if a topside port has several points of VE, count this as one port exhibiting VE.

Do not exclude VE from between the brickwork and oven lid casing or VE from cracks in the oven brickwork as topside port VE. In addition, do not count the following topside ports with VE:

6.3.1.1 Topside ports open during a charging period. Record the oven number circle it, and write "Not observed" and the reason (i.e., ports open for charging) under "Comments."

6.3.1.2 Topside ports having maintenance work done. Record the oven number, circle it, and write "Not observed, maintenance" and the number of ports not observed under "Comments."

6.3.1.3 Topside ports with condensing water vapor (steam) only, e.g., ports emitting steam from wet-sealing material. These ports are counted as observed, but not having VE.

6.3.2 Offtake Systems. To perform a test run, traverse the battery topside as close to the battery centerline as possible. Look ahead two to four ovens to get a clear view of the entire offtake system for each oven. Visible emissions from the following points are considered to be offtake system VE: (a) the flange between the gooseneck and collecting main ("saddle"), (b) the junction point of the standpipe and oven ("standpipe base"), (c) the other parts of the standpipe, and (d) the junction points with ovens and flanges of stationary jumper pipes.

Do not stray from the traverse line in order to get a "closer look" at any part of the offtake system, unless it is to distinguish leaks from interferences from other sources or to avoid obstacles.

If the centerline does not provide a clear view of the entire offtake system for each oven (e.g., when standpipes are longer than 15 feet), conduct the traverse farther from (rather than closer to) to offtake systems.

If a double collecting main battery has extremely tall offtakes, conduct two traverses for one run—one close to the coke side edge to observe the pusher side offtake system and one close to the pusher side edge of topside to observe the coke side offtake systems.

Upon noting a leak from an offtake system during a traverse, pause, and record the oven number, the number of offtake systems with VE (1 or 2 depending on whether the battery has a single or double collecting main); then resume the traverse. If the oven is dampered-off from the collecting main for decarbonization and is observed to have VE, note this under "Comments" for that particular oven.

If any parts of an offtake system have VE, count it as one emitting offtake system. If a statutory jumper pipe connecting two ovens is leaking at one juncture, count this as part of the offtake system for that oven; therefore, if the jumper pipe is leaking at two junctures, it will be counted twice—once for each offtake system.

Do not count the following sources with VE:

6.3.2.1 Standpipe caps open for a decarbonization period or standpipes of an oven being charged. Record the oven number, and write "Not observed" and the reason (i.e., decarb or charging) under "Comments."

6.3.2.2 Parts where maintenance work is in progress.

6.3.2.3 Parts emitting condensing water vapor (steam) only, e.g., parts emitting steam from wet-sealing material.

6.4 Calculations. In determining the percent leaking topside ports and percent leaking offtake systems, a certain number of ovens that have been dampered-off from the collecting main for decarbonization may be excluded if specified by an applicable subpart of the regulation, e.g., § 61.84(a)(2) allows the three most recently dampered-off ovens to be excluded. If this is the case, consult the operations schedule and delete the last three dampered-off ovens on the data sheet, and do not include these ovens in determining the totals for ovens with VE or for total observed units.

6.4.1 Topside Ports. Determine the total number of ports observed [(number of ports per oven) × (total number of ovens − number of inoperable ovens) − number of ports not observed]. For each topside port run, sum the number of topside ports with VE. Divide this sum by the total number of topside ports observed on the battery, and multiply by 100. Round off this percentage to the nearest tenth of 1 percent, and record this percentage as the percent leaking topside ports for the run.

6.4.2 Offtake Systems. Determine the total number of offtake systems observed [(number of offtake systems per oven) × (total number of ovens − number of inoperable ovens) − number of offtake systems not observed]. For each offtake system test run, sum the number of offtake systems with VE. Divide this sum by the total number of offtake systems observed on the battery, and multiply by 100. Round off this percentage to the nearest tenth of 1 percent, and record this percentage as the percent leaking offtake systems for the run.

*7. Procedure for Determining VE from Collecting Mains*

To perform a test run, traverse both the collecting main catwalk and the battery topside along the side closest to the collecting main. If the battery has a double main, conduct two sets of traverses for each run, i.e., one set for each main.

Upon noting VE from any portion of a collecting main, pause, and record the number of the oven closest to the source of VE, and record the time under "Collecting main" on Figure 109–3; then resume the traverse. After four hours, check the source of leak, and record "Leaking" or "Not leaking" and the time under "Comments."

*8. Bibliography*

1. Missan, R., and A. Stein. Guidelines for Evaluation of Visible Emissions Certification, Field Procedures, Legal Aspects, and Background Material. EPA Publication No. EPA–340/1–75–007. April 1975.

2. Wohlschlegel, P., and D. E. Wagoner. Guideline for Development of a Quality Assurance Program: Volume IX—Visual Determination of Opacity Emission from Stationary Sources. EPA Publication No. EPA–650/4–005i. November 1975.

3. **Federal Register.** Vol. 41, No. 206, part III. Friday, October 22, 1976. OSHA Regulation No. 1910.1029, Paragraph G.

[FR Doc. 87–9152 Filed 4–22–87; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Thursday
April 23, 1987

Part IV

# Department of Education

34 CFR Parts 764, 765, and 766
Drug-Free Schools and Communities Program; Educational Research and Grants; Proposed Rulemaking and Notices

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 764, 765, and 766**

## Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program—General Provisions; Training and Demonstration Grants to Institutions of Higher Education; and Federal Activities Grants Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary issues a Notice of Proposed Rulemaking for the implementation of the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program—General Provisions; Training and Demonstration Grants to Institutions of Higher Education; and Federal Activities Grants Program. This program supports education, prevention, personnel training, and curriculum demonstration activities consistent with the purpose of the Drug-Free Schools and Communities Act of 1986.

**DATE:** Comments must be received on or before May 26, 1987.

**ADDRESS:** All comments concerning these proposed regulations should be addressed to Thomas E. Enderlein, Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue SW., Room 1011, Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Thomas Enderlein. Telephone: (202) 732–3595.

**SUPPLEMENTARY INFORMATION:** On October 27, 1986, the President signed into law the Anti-Drug Abuse Act of 1986. Subtitle B of Title IV of this Act, the Drug-Free Schools and Communities Act of 1986 (Act), provides for strong Federal leadership in establishing effective drug and alcohol abuse education and prevention programs. Section 4131 authorizes grants to institutions of higher education for personnel training and curriculum demonstration grants, and section 4132 authorizes Federal activities, some of which will be carried out through grants consistent with the purposes of the Drug-Free Schools and Communities Act of 1986. These proposed regulations are divided into three parts; 34 CFR Parts 764, 765, and 766. Part 764 contains the general provisions applicable to both Parts 765 and 766. Regulations for training and curriculum demonstration grants to institutions of higher education are found in Part 765, while Part 766 contains the regulations for the Federal Activities Grants Program. These regulations do not implement section 4131(d) of the Act which authorizes grants for drug abuse education and prevention programs for students enrolled in institutions of higher education. The Secretary is implementing section 4131(d) of the Act separately.

### Summary of Major Provisions

(1) *Types of awards.* Section 764.2 is proposed to distinguish between the two types of awards the Secretary may make under these regulations, i.e., grants and cooperative agreements. Proposed § 764.2 also establishes the same review and evaluation procedures for applications for cooperative agreements as the procedures used to evaluate applications for grants.

(2) *Establishing priorities.* Sections 765.4 and 766.4 of the proposed regulations would permit the Secretary to establish and announce funding priorities in one or more notices published in the Federal Register each year.

Under the proposed regulations, the Secretary may select funding priorities by taking unmet national needs into consideration within the scope of the Act.

In addition, the Secretary proposes to specify further priority for cooperative programs among local agencies and organizations, and programs that involve parents and school personnel in the activities designed to prevent drug and alcohol abuse.

(3) *Unsolicited Applications.* Section 764.20 is proposed to establish the process by which the Secretary may accept and consider for funding unsolicited applications for projects that do not meet an annual priority, but do meet the purposes of the Act.

(4) *Special Considerations.* Proposed § 764.21 describes special circumstances that the Secretary may use in selecting applications for funding. The Secretary may select applications, other than the most highly rated applications, if doing so would improve the geographic distribution or diversity of activities or projects funded under a particular competition or under this program.

(5) *Conditions.* Sections 765.30 and 766.30 are proposed to ensure that a project will emphasize and provide for the maintenance of an orderly, secure, and drug and alcohol free school environment that is conducive to learning, and emphasize the authority of teachers and school administrators to detect and discipline students using or selling drugs and/or alcohol.

### Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the critieria for major regulations established in the order.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This is a relatively small program that awards a limited number of grants each year. These proposed regulations would not impose excessively burdensome or unnecessary requirements. Rather, these proposed regulations would impose only minimal requirements to ensure the proper expenditure of program funds.

### Paperwork Reduction Act of 1980

Sections 765.20, 765.21, 766.20, and 766.21 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period, in Room 1011, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall reqirements of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any

regulatory burdens found in these proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Parts 764, 765, and 766**

Colleges and universities, Drug abuse, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.184, Drug-Free Schools and Communities Program)

Dated: March 26, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding new Parts 764, 765, and 766 to read as follows:

## PART 764—DRUG-FREE SCHOOLS AND COMMUNITIES PROGRAM—TRAINING AND DEMONSTRATION GRANTS TO INSTITUTIONS OF HIGHER EDUCATION, AND FEDERAL ACTIVITIES GRANTS PROGRAM—GENERAL PROVISIONS

**Subpart A—General**

Sec.

764.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants To Institutions of Higher Education, and Federal Activities Grants Program?
764.2 What types of awards does the Secretary make under this program?
764.3 What regulations apply to this program?
764.4 What definitions apply to this program?

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

764.20 How does the Secretary evaluate unsolicited applications?
764.21 How does the Secretary ensure distribution and diversity of projects?
764.22 May the Secretary restrict the use of funds for equipment under this program?

**Subpart D—What Conditions Must Be Met by a Grantee?**

764.30 What must project materials state regarding illicit drug use?

**Authority:** 20 U.S.C. 4641 and 4642, unless otherwise noted.

**Subpart A—General**

**§ 764.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program?**

This program provides assistance for drug and alcohol abuse education and prevention projects as described in 34 CFR Parts 765 and 766.

(Authority: 20 U.S.C. 4641, 4642)

**§ 764.2 What types of awards does the Secretary make under this program?**

(a) The Secretary may award grants and cooperative agreements under this program, depending upon the intended nature of the relationship between the recipient and the Department.

(b) The Secretary evaluates applications for cooperative agreements using the same procedures and criteria as those used to evaluate applications for grants.

(Authority: 20 U.S.C. 4641, 4642)

**§ 764.3 What regulations apply to this program?**

(a) Except as provided in paragraph (b), the following regulations apply to the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program?

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in Parts 764, 765, and 766.

(b) The regulations referred to in paragraph (a) of this section do not apply to contracts awarded under this program or to projects carried out directly by the Secretary.

(Authority: 20 U.S.C. 4641, 4642)

**§ 764.4 What definitions apply to this program?**

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in these regulations are defined in section 4141 of the Drug-Free Schools and Communities Act:

Drug abuse education and prevention
Consortium (except as used in Part 765)
Illicit drug use
Institution of higher education
State

(b) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal Year
Grant
Local educational agency
Private
Project
Public
Secretary
State educational agency

(c) *Other definitions.* The following definitions also apply:

"Act" means the Drug-Free Schools and Communities Act of 1986.

"Limited enrollment", as used in Part 765, means an enrollment of no more than 500 full- and part-time students.

"Consortium", as used in Part 765, means a group of private or public institutions of higher education.

"Regional Center" means a regional drug abuse education and prevention center authorized by section 4135 of the Act.

(Authority: 20 U.S.C. 4641, 4642, 4661)

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

**§ 764.20 How does the Secretary evaluate unsolicited applications?**

(a) The Secretary may fund an application that was not solicited under an application notice (referred to in this section as an unsolicited application) if—

(1) The application furthers the purposes and objectives of the program;

(2) The applicant meets all requirements for funding under the program;

(3) The application rates high enough to deserve selection based on the selection criteria and any other statutory or regulatory requirements that apply to the program; and

(4) Selection of the application will not have an adverse impact on the amount of funds available under this program.

(b) The Secretary may refuse to consider an unsolicited application that meets a priority established for that fiscal year.

(c) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(d) In evaluating an unsolicited application, the Secretary assigns the reserved 15 points under § 765.20(b) and § 766.20(b) to the selection criteria at § 765.21(f) and § 766.21(f) (Contribution to improving the quality of drug and alcohol abuse education and prevention activities) so that the maximum number of possible points for this criteria is 40.

(Authority: 20 U.S.C. 4641, 4642)

**§ 764.21 How does the Secretary ensure distribution and diversity of projects?**

(a) The Secretary may select applications other than those most highly rated for funding if doing so would improve—

(1) The geographic distribution of projects funded;

(2) The diversity of activities or projects funded; or

(3) Under Part 765, equitable participation of private and public institutions of higher education, including community and junior colleges.

(Authority: 20 U.S.C. 4641, 4642)

**§ 764.22 May the Secretary restrict the use of funds for equipment under this program?**

The Secretary may restrict the amount of funds made available through a grant or cooperative agreement under this program that may be used to purchase equipment.

(Authority: 20 U.S.C. 4641, 4642)

**Subpart D—What Conditions Must Be Met by a Grantee?**

**§ 764.30 What must project materials state regarding illicit drug use?**

Any materials produced or distributed with funds made available under the Act must reflect the message that illicit drug use is wrong and harmful.

(Authority: 20 U.S.C. 4664)

## PART 765—DRUG FREE SCHOOLS AND COMMUNITIES PROGRAM—TRAINING AND DEMONSTRATION GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

**Subpart A—General**

Sec.

765.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education?
765.2 What parties are eligible for a grant under this program?
765.3 What types of projects does the Secretary assist under this program?
765.4 How does the Secretary establish priorities for this program?
765.5 What regulations apply to this program?
765.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

765.20 How does the Secretary evaluate an application?
765.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met By a Grantee?

765.30 What must a project emphasize?

Authority: 20 U.S.C. 4641, unless otherwise noted.

**Subpart A—General**

**§ 765.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants To Institutions of Higher Education?**

The Drug-Free Schools and Communities Program—Training and Demonstration Grants To Institutions of Higher Education (IHEs) supports grants to IHEs for personnel training and for curriculum demonstrations in drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 4641)

**§ 765.2 What parties are eligible for a grant under this program?**

The Secretary may award grants under this program to IHEs and consortia of IHEs only.

(Authority: 20 U.S.C. 4641)

**§ 765.3 What types of projects does the Secretary assist under this program?**

The Secretary may fund projects that—

(a) Provide preservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(b) Provide inservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(c) Provide summer institutes and workshops to instruct teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(d) Carry out research and demonstration programs for teacher training and retraining in drug abuse education and prevention;

(e) Provide training for law enforcement officials, judicial officials, community leaders, parents, and government officials in drug abuse education and prevention; or

(f) Demonstrate model programs, coordinated with local elementary and secondary schools, for the development and implementation of quality drug abuse education curricula.

(Authority: 20 U.S.C. 4641)

**§ 765.4 How does the Secretary establish priorities for this program?**

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 765.3. The Secretary may limit any priority to a particular education level, type of substance abuse, or any combination.

(c) In additon to selecting priorities under paragraph (b) of this section, the Secretary may give priority to projects that—

(1) Implement cooperative programs with local law-enforcement agencies, the courts, and other community resources;

(2) Involve parents, teachers, and school administrators in preventing drug and alcohol use by students, through activities such as educating those parents, teachers, and school administrators about the causes, symptoms, and effects of drug use; or

(3) Are proposed by IHEs with limited enrollments.

(d) In making awards for the types of projects described in § 765.3 (a), (b), and (c), the Secretary may give priority to applications which provide for coordinated and collaborative efforts between SEAs, LEAs, and the Regional Centers.

(e) In making awards for the type of projects described in § 765.3(f), the Secretary gives priority to joint projects involving faculty of IHEs and teachers in elementary and secondary schools and community representatives in the practical application of the findings of educational research and evaluation, and the integration of research into drug abuse education and prevention programs.

(Authority: 20 U.S.C. 4641)

**§ 765.5 What regulations apply to this program?**

The following regulations apply to the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education:

(a) The regulations in 34 CFR Part 764.

(b) The regulations in 34 CFR Part 765.

(Authority: 20 U.S.C. 4641)

**§ 765.6 What definitions apply to this program?**

The definitions in 34 CFR 764.4 apply to this part.

(Authority: 20 U.S.C. 4661)

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

**§ 765.20 How does the Secretary evaluate an application?**

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 765.21.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the criteria in § 765.21.

(Authority: 20 U.S.C. 4641)

**§ 765.21 What selection criteria does the Secretary use?**

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) For an applicant proposing training, the extent to which the applicant demonstrates familiarity with available training materials; and

(6) For an applicant proposing curriculum development, the completeness of the plan to review and analyze extant materials and information related to drug and alcohol abuse education and prevention in order to avoid duplication, and the extent to which the materials to be developed will be tested and revised as needed.

(b) *Quality of key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (b)(1) of this section, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(c) *Budget and cost effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable; and

(3) Enhance the potential for disseminating information and replicating the project.

Cross-reference. See 34 CFR 75.790 Evaluation by the grantee.

(e) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project or similar activities when Federal assistance ends.

(f) *Contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to improving the quality of drug and alcohol abuse education and prevention activities. The Secretary considers—

(1) The means by which the applicant identified the needs to be addressed by the project, and the extent to which the applicant involved school officials, parents, law-enforcement officials, and other community leaders where appropriate in identifying these needs;

(2) The extent to which the project's objectives incorporate research findings to improve the quality of drug and alcohol abuse education and prevention programs;

(3) The extent to which those objectives form the basis of the proposed activities and the extent to which those activities are designed to demonstrate successful techniques for improving the quality of drug and alcohol abuse education and prevention programs;

(4) The extent and magnitude of the benefits likely to be gained by the applicant or by the recipients of services from meeting the project's objectives;

(5) The means by which the project meets the priorities established under § 765.4; and

(6) The means by which the project will result in a model or other information, including evidence of effectiveness, that could be used by others to solve drug and alcohol abuse problems.

(7) The extent of the applicant's plans for disseminating this model or information to others.

(Authority: 20 U.S.C. 4641)

**Subpart D—What Conditions Must Be Met by a Grantee?**

**§ 765.30 What must a project emphasize?**

A project must emphasize and provide for the maintenance of an orderly, secure, and drug and alcohol free school environment that is conducive to learning, including emphasis on the authority of teachers and school administrators to detect and discipline students who are using or selling drugs and/or alcohol.

(Authority: 20 U.S.C. 4641)

## PART 766—DRUG-FREE SCHOOLS AND COMMUNITIES PROGRAM—FEDERAL ACTIVITIES GRANTS PROGRAM

**Subpart A—General**

Sec.

766.1 What is the Drug-Free Schools and Communities Program—Federal Activities Grants Program?
766.2 What parties are eligible for a grant under this program?
766.3 What types of projects does the Secretary assist under this program?
766.4 How does the Secretary establish priorities for this program?
766.5 What regulations apply to this program?
766.6 What definitions apply to this program?

**Subpart B—[Reserved]**

**Subpart C—How Does the Secretary Make an Award?**

766.20 How does the Secretary evaluate an application?
766.21 What selection criteria does the Secretary use?

**Subpart D—What Conditions Must Be Met by a Grantee?**

766.30 What must a project emphasize and include?

**Authority:** 20 U.S.C. 4642, unless otherwise noted.

## Subpart A—General

### § 766.1 What is the Drug-Free Schools and Communities Program—Federal Activities Grants Program?

The Drug-Free Schools and Communities Program—Federal Activities Grants Program supports model development, dissemination, technical assistance, and curriculum development activities for drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 4642)

### § 766.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), and other nonprofit agencies, organizations, and institutions

(Authority: 20 U.S.C. 4642)

### § 766.3 What types of projects does the Secretary assist under this program?

The Secretary may fund projects that—

(a) Facilitate the use of appropriate means for communicating to students the dangers of drug use and alcohol abuse, including research on and development of effective communication programs, and demonstration of programs which effectively communicate the dangers of drug use and alcohol abuse to students;

(b) Develop curriculum materials for drug abuse education and prevention programs in elementary and secondary schools;

(c) Disseminate curriculum materials for drug abuse education and prevention programs in elementary and secondary schools; or

(d) Provide technical assistance to SEA's, LEA's, and intermediate education agencies in the selection and implementation of drug abuse education and prevention curricula, approaches, and programs that address most effectively the needs of the elementary and secondary schools served by these agencies.

(Authority: 20 U.S.C. 4642)

### § 766.4 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into account unmet national needs for drug abuse education and prevention programs.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 766.3. The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination of these levels or types.

(c) In addition to selecting priorities under paragraph (b) of this section, the Secretary may give priority to projects that—

(1) Implement cooperative programs with local law enforcement officials, judicial officials, community leaders, and government officials; and

(2) Involve parents and school personnel in preventing drug and alcohol abuse by students, through activities such as educating parents and school personnel about substance abuse and how it may be prevented, detected, and treated.

(Authority: 20 U.S.C. 4642)

### § 765.5 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Program—Federal Activities Grants Program:

(a) The regulations in CFR Part 764.

(b) The regulations in CFR Part 766.

(Authority: 20 U.S.C. 4642)

### § 766.6 What definitions apply to this program?

The definitions in 34 CFR 764.4 apply to this program.

(Authority: 20 U.S.C. 4661)

## Subpart B—[Reserved]

## Subpart C—How Does the Secretary Make an Award?

### § 766.20 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 766.21.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the selection criteria in § 766.21.

(Authority: 20 U.S.C. 4642)

### § 766.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (b)(1) of this section, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(c) *Budget and cost effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable; and

(3) Enhance the potential for disseminating information and replicating the project.

Cross-reference. See 34 CFR 75.790 Evaluation by the grantee.

(e) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project or similar activities when Federal assistance ends.

(f) *Contribution to improving the quality of drug and alcohol abuse*

*education and prevention activities.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to improving the quality of drug and alcohol abuse education and prevention activities. The Secretary considers—

(1) The means by which the applicant identified the needs to be addressed by the project, and the extent to which the applicant involved school officials, parents, law-enforcement officials, and other community leaders where applicable in identifying these needs;

(2) The extent to which the project's objectives apply to these particular circumstances and needs, and incorporate research findings to improve the quality of drug and alcohol abuse education and prevention programs;

(3) The extent to which the project's objectives form the basis of the proposed activities and the extent to which those activities are designed to demonstrate successful techniques for improving the quality of drug and alcohol abuse education and prevention programs;

(4) The extent and magnitude of the benefits likely to be gained by the applicant or by the recipients of service from meeting the project's objectives;

(5) The means by which the project meets the priorities established under § 766.4; and

(6) The means by which the project results in a model or other information, including evidence of effectiveness, that could be used by others to solve drug and alcohol abuse problems.

(7) The extent of the applicant's plans for disseminating this model or information to others.

(Authority: 20 U.S.C. 4642)

## Subpart D—What Conditions Must Be Met By a Grantee?

### § 766.30 What must a project emphasize and include?

(a) A project must emphasize—

(1) The maintenance of an orderly, secure, and drug-free school environment that is conducive to learning, including emphasis on the authority of teachers and school administrators to detect and discipline students using or selling drugs or alcohol or both; and

(2) A firm policy aimed at eliminating the sale or use of drugs and alcohol on school premises, enforcing disciplinary procedures and practices, and teaching students that drug use is both wrong and harmful.

(b) A project must include—

(1) An initial assessment of the current drug and alcohol problem in the school or schools on which the project is to focus, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students; and

(2) Procedures for monitoring throughout the project the drug and alcohol problem in that school or schools, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students.

(Authority: 20 U.S.C. 4642)

[FR Doc. 87-9223 Filed 4-22-87; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF EDUCATION

[CFDA No. 84.184B]

### Notice Inviting Applications for New Awards Under the Drug-Free Schools and Communities Program—Federal Activities Grants Program for Fiscal Year 1987

*Purpose:* To provide assistance to State educational agencies (SEAs) local educational agencies (LEAs), institutions of higher education (IHEs) and other nonprofit agencies, organizations, and institutions to support drug and alcohol abuse education and prevention activities.

*Deadline for Transmittal of Applications:* June 24, 1987.

*Applications Available:* May 8, 1987.

*Available Funds:* $5,000,000.

*Estimated Range of Awards:* $25,000–$200,000.

*Estimated Average Size of Awards:* $100,000.

*Estimated Number of Awards:* 30–50.

*Project Period:* 12–18 Months.

*Applicable Regulations:* (a) Regulations governing the Drug-Free Schools and Communities Program—Federal Activities Grants Program as proposed to be codified in 34 CFR Parts 764 and 766. (Applications are being accepted based on the notice of proposed rulemaking for the Drug-Free Schools and Communities Program—Federal Activities Grants Program which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications) and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

*Priorities*

In accordance with 34 CFR 75.105(c)(3), the Secretary has chosen as absolute priorities the following types of projects described under § 766.3 (b) and (c):

(1) Projects that develop curriculum materials for drug abuse education and prevention programs in elementary and secondary schools. (§ 766.3(b)); or

(2) Projects that disseminate local curriculum materials for drug abuse education and prevention programs in elementary and secondary schools. (§ 766.3(c))

In addition, from the list of priorities at § 766.4(c) (1) and (2), the Secretary has chosen as absolute priorities projects that—

(1) Implement cooperative programs with local law-enforcement officials, judicial officials, community leaders, and government officials (§ 766.4(c)(1)); and

(2) Involve parents and school personnel in preventing drug and alcohol abuse by students through activities such as educating parents and school personnel about substance abuse and how it may be prevented, detected, and treated. (§ 766.4(c)(2))

Only applications that propose one or both of the types of projects described above and that meet the priorities chosen from § 766.4(c) will be considered under this competition.

*Invitational Priority*

Within these absolute priorities, the Secretary is particularly interested in applications proposing projects to develop and disseminate model curricula. A model curriculum could pertain to a program of drug abuse education and prevention in its initial stages, already under development, or already in place in the schools and in need of further development. Applications addressing this invitational priority will not, however, be given any advantage over proposals for other approaches under the absolute priorities.

*Selection Criteria*

The program regulations at § 766.20 authorize the Secretary to distribute an additional 15 points among the criteria described in § 766.21 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

*Plan of operation.* (§ 766.21(a)) Five (5) additional points will be added for a possible total of 25 points for this criterion.

*Budget and cost effectiveness.* (§ 766.21(c)) Five (5) additional points will be added for a possible total of 10 points for this criterion.

*Contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (§ 766.21(f)) Five (5) additional points will be added for a possible total of 30 points for this criterion.

*For Applications or Information Contact:* Thomas E. Enderlein, Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue SW., Room 1011, Washington, DC 20202. Telephone: (202) 732–3566.

Program Authority: 20 U.S.C. 4642.

Dated: March 26, 1987.

William J. Bennett,

*Secretary of Education.*

[FR Doc. 87–9224 Filed 4–22–87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.184A]

### Notice Inviting Applications for New Awards Under the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education for Fiscal Year 1987

*Purpose:* To provide assistance to institutions of higher education (IHEs) for projects that provide preservice or inservice personnel training or curriculum demonstration in drug and alcohol abuse education and prevention for use in elementary and secondary schools.

*Deadline for Transmittal of Applications:* July 1, 1987.

*Applications Available:* May 8, 1987.

*Available Funding:* $7,780,000.

*Estimated Range of Awards:* $75,000–$250,000.

*Estimated Average Size of Awards:* $125,000.

*Estimated Number of Awards:* 50–60.

*Project Period:* 12–24 months.

*Applicable Regulations:* (a) Regulations governing the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education as proposed to be codified in 34 CFR Parts 764 and 765. (Applications are being accepted based on the notice of proposed rulemaking for the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications) and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

*Priorities*

In accordance with 34 CFR 75.105(c)(5), the Secretary chooses as absolute priorities the following types of projects under § 765.3 (a), (b), and (f):

*Training projects*

(1) Projects that provide preservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools. (§ 765.3(a))

(2) Projects that provide inservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools. (§ 765.3(b))

In accordance with § 765.4(d), the Secretary gives absolute priority to applications for projects under § 765.3 (a) and (b) which provide for coordinated and collaborative efforts between SEAs, LEAs, and Regional Centers.

*Model demonstration projects*

(3) Projects that demonstrate model programs, with local elementary and secondary schools, for the development and implementations of quality drug abuse education curricula. (§ 765.3(f))

In accordance with § 765.4(e), the Secretary gives absolute priority to applications which provide for joint projects involving faculty of IHEs and teachers in elementary and secondary schools and community representatives in the practical application of the findings of educational research and evaluation, and the integration of research into drug abuse education and prevention programs.

Only applications proposing one or more types of projects chosen from § 765.3 and meeting the priorities from § 765.4 will be considered under this competition.

*Selection Criteria:* The program regulations at § 765.20 authorize the Secretary to distribute an additional 15 points among the criteria described in § 765.21 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

*Plan of operation.* (§ 765.21(a)) Five (5) additional points will be added for a possible total of 25 points for this criterion;

*Budget and cost effectiveness.* (§ 765.21(c)) Five (5) additional points will be added for a possible total of 10 points for this criterion; and

*Contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (§ 765.21(f)) Five (5) additional points will be added for a possible total of 30 points for this criterion.

*For Applications or Information Contact:* Thomas E. Enderlein, Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Ave. SW., Room 1011, Washington, DC 20202. Telephone: (202) 732–3566.

Program Authority: 20 U.S.C. 4641.

Dated: March 26, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–9225 Filed 4–22–87; 8:45 am]

BILLING CODE 4000-01-M

L
2
S
8
P
3
87
M I

federal register

Thursday
April 23, 1987

Part V

# The President

Proclamation 5632
Proclamation 5633
Proclamation 5634
Executive Order 12593

Federal Register
Vol. 52, No. 78
Thursday, April 23, 1987

# Presidential Documents

Title 3—

## The President

**Proclamation 5632 of April 19, 1987**

## National Minority Cancer Awareness Week, 1987

**By the President of the United States of America**

**A Proclamation**

The month of April, a season of renewal and hope, is a most appropriate time in which to discuss good news about cancer prevention and treatment. Major advances in our understanding of this disease provide encouragement both to patients and to medical and scientific professionals. More Americans are surviving cancer longer than ever before—more than half of those diagnosed as having cancer live 5 years or longer—and they are able to lead more active lives than before.

This is good news indeed, but the fight continues. An area of special concern is that high cancer rates continue to exist among members of some minority groups. We must keep on circulating information throughout society, supporting research into reasons for these rates, and making sure that we as individuals and families take the initiative to become informed and to act on everything learned from years of discovery and progress.

Cancer strikes minority groups in many ways. Cancer incidence and mortality are higher for blacks than for whites, while survival rates are lower and diagnosis during the early, localized, most treatable stages of cancer is less frequent. Black men are particularly vulnerable, but black women have high rates of lung and cervical cancer. The incidence of lung, stomach, prostate, and esophageal cancer is higher for blacks than for others. Cancer rates for Hawaiian males and females top those of other Americans. Some forms of cancer, particularly of the stomach, are higher in Hispanics than in other ethnic groups.

The Federal government is supporting research into causes of these situations. Health planners are proposing new prevention programs. The National Cancer Institute (NCI) is training minority professionals to work in cancer prevention and stepping up its efforts to inform and educate members of minority groups about cancer.

We have learned a great deal about causes of cancer. A change of diet to include more fiber and less fat will help reduce the estimated 35 percent of cancer deaths that are related to what we eat. This is because diets low in fiber and high in fats appear to increase the risk of cancers of the colon, prostate, breast, and uterine lining. Other changes can also reduce the risk of cancer. Examples of two areas are cigarette smoking, which causes an estimated 85 percent of all lung cancer, and high alcohol intake, which increases the risk of esophageal cancer.

The more we educate ourselves and others, and the more we continue to support all fronts of the battle against cancer, the more headway we will make for members of minority groups and for all Americans.

The Congress, by House Joint Resolution 119, has designated the week of April 19 through April 25, 1987, as "National Minority Cancer Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of April 19 through April 25, 1987, as National Minority Cancer Awareness Week. I call upon public officials at all levels; members of the medical and health professions; business, religious, and civic groups and leaders; and the communications media to join this special effort to help minority Americans take advantage of new knowledge to conquer cancer. I especially urge each American, young and old, to take a new look at this disease and help reduce the toll it takes on us all.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-9378
Filed 4-22-87; 11:23 am]
Billing code 3195-01-M

# Presidential Documents

**Proclamation 5633 of April 21, 1987**

## Cancer Control Month, 1987

**By the President of the United States of America**

**A Proclamation**

In the 50 years since President Franklin D. Roosevelt signed the National Cancer Institute Act, on August 5, 1937, our Nation has taken giant steps toward the conquest of cancer. Unparalleled growth in our understanding of the biology of cancer has changed what we can do to detect, diagnose, and treat this disease, and has made cancer prevention an attainable goal. These achievements should be a source of immense pride to scientists and to the American public, and should help us rededicate ourselves to the control of this disease.

It is sobering to realize that strong, scientific evidence links many forms of cancer to the way we live, especially the foods we eat and the use of tobacco. We know, for example, that smoking causes 30 percent of all cancer deaths. Just as important, though, we know that quitting smoking, even after many years, can reduce the risk of cancer. For two years now, we have seen a decreasing incidence of lung cancer among white males, and it looks as if the rate for white females is moving in the same direction. This encouraging downward trend reflects gradual changes in smoking patterns over the past two decades. Unfortunately, however, black Americans are still experiencing high rates of smoking-related cancers. More needs to be done to educate groups with high incidence of cancer about the dangers of smoking. We also must do everything we can to urge our young people not to start smoking.

The estimate that 35 percent of the cancer deaths in this country are related to diet means that dietary changes can make a big difference. Fortunately, the changes we need to make are simple—cutting fat consumption down from our current average of nearly 40 percent of total calories to 30 percent or less, and doubling our daily consumption of fiber from fruits, vegetables, and whole-grain products.

Scientists have known for many years that the chances of recovering from cancer are best when the disease is found and treated at an early stage. Everyone should learn the warning signs of cancer and have symptoms checked by a physician without delay. Moreover, some types of cancer can be detected even before they cause symptoms. All adults should ask their doctors about special tests and examinations that can detect early cancer. As examples, women should ask about the value of regular mammography and Pap smears to detect breast and cervical cancers.

Because 24 percent of all cancers affect people under the age of 55, we are encouraged by the declining cancer death rate among Americans in that age group. Another noteworthy trend is the decrease in the death rates from colon cancer, a disease that mainly affects older people.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 150) requesting the President to issue an annual proclamation declaring April to be Cancer Control Month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of April 1987 as Cancer Control Month. I invite the Governors of the fifty States and the Commonwealth of Puerto Rico, and the appropriate officials of all other areas under the United States flag, to issue similar proclamations. I also ask the health care professionals, communications industry, food industry, community groups, women's organizations, and all other interested persons and groups to unite during this month to reaffirm publicly our Nation's continuing commitment to control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-9378
Filed 4-22-87; 11:28 am]
Billing code 3195-01 M

BEST COPY AVAILABLE

# Presidential Documents

**Proclamation 5634 of April 21, 1987**

## Law Day, U.S.A., 1987

**By the President of the United States of America**

**A Proclamation**

For 30 years, as the United States has celebrated the first of May as Law Day, U.S.A., Americans have taken time to reflect on our legal heritage and the greatness it has brought to our Nation. This year, Law Day is of special significance because its theme, "We the People," highlights one of the most important observances of our time—the Bicentennial of the Constitution, our charter of liberty and justice under law.

Abraham Lincoln characterized our government as being "of the people, by the people, and for the people." The same can be said of the Constitution. It is the framework of our Republic, enshrining liberty for all alike. Two centuries ago, this immortal document was drafted by Americans who had fought a Revolution for the freedom they cherished and who shaped their dreams of freedom into a blueprint for a free Nation—for a free people whose God-given liberties would never again be subject to the arbitrary dominance of any one individual.

The Preamble of our Constitution begins, "We the People of the United States, . . . do ordain and establish this Constitution for the United States of America." Here is the genius, the hope, and the promise of America forever and for all mankind: "We the People." In our Constitution, we the people tell government what it may do and what it may not; the people are sovereign, not the state. Thanks to our Constitution, the rule of law in the United States means the rule of the people. This is the difference between our Constitution and so many others; this is freedom.

Law Day, U.S.A., is a time to give thanks for our legacy of liberty under law and for the Constitution that preserves this priceless heritage—and to recall our sacred trust as Americans to protect our Constitution and our country as others have done for us.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, May 1, 1987, as Law Day, U.S.A. I urge the people of the United States to use this occasion to reflect on our Constitution and its protection of the rights and liberties of "We the People." I call upon the legal profession, schools, public bodies, libraries, courts, the communications media, business, the clergy, civic, service, and fraternal organizations, and all interested individuals and organizations to join in efforts to focus attention on the need for the rule of law. I also call upon all public officials to display the flag of the United States on all government buildings on Law Day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-9379
Filed 4-22-87; 11:27 am]
Billing code 3195-01-M

# Presidential Documents

## Executive Order 12593 of April 21, 1987

## President's Committee on the Arts and the Humanities

By the authority vested in me as President by the Constitution and laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 1), it is hereby ordered as follows:

**Section 1.** In order to provide for additional members of an advisory committee that assists in efforts to increase private sector support for the arts and the humanities, Section 1(a) of Executive Order No. 12367 is hereby amended by deleting the phrase "not more than twenty persons" and inserting in lieu thereof the phrase "such number of additional persons."

**Sec. 2.** Section 4(b) of Executive Order No. 12367 is hereby amended to read in full: "The Committee shall terminate on September 30, 1989, unless sooner extended."

Ronald Reagan

THE WHITE HOUSE,
*April 21, 1987.*

[FR Doc. 87-9383
Filed 4-22-87; 11:30 am]
Billing code 3195-01-M

# Reader Aids

Federal Register

Vol. 52, No. 78

Thursday, April 23, 1987

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-5240 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, APRIL

10357–10556.....1
10557–10724.....2
10725–10874.....3
10875–11018.....6
11019–11184.....7
11185–11452.....8
11453–11610.....9
11611–11806.....10
11807–11980.....13
11981–12128.....14
12129–12362.....15
12363–12510.....16
12511–12896.....17
12897–13068.....20
13069–13214.....21
13215–13424.....22
13425–13624.....23

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**1 CFR**

**Proposed Rules:**
Ch. III.....13448

**3 CFR**

**Proclamations:**
5624.....11019
5625.....11453
5626.....11611
5627.....11613
5628.....11809
5629.....12127
5630.....12129
5631.....13412
5632.....13613
5633.....13629
5634.....13622

**Executive Orders:**
12367 (Amended by EO 12593).....13624
12513 (*See* Notice of April 21, 1987).....13425
12591.....13414
12592.....13417
12593.....13624

**Administrative Orders:**
Memorandums:
April 17, 1987.....13419

**Presidential Determinations:**
No. 87-12 of March 17, 1987.....11807

**Notices:**
April 21, 1987.....13425

**5 CFR**

213.....11185
294.....13215
591.....12131
841.....12131
870.....12133
1201.....10875

**Proposed Rules:**
353.....11657
2411.....11995

**7 CFR**

210.....11186
271.....11811, 13220
272.....11021, 11811
273.....11021, 11811
274.....11811
278.....11811, 13220
301.....10357, 12363
354.....10364, 12897
713.....10725
717.....10725
724.....10725
725.....10725
726.....10725
770.....10725
907.....10728, 11615, 12511
910.....10729, 11615, 12511
917.....12512
925.....11616
927.....11616
932.....12134
946.....13069
948.....12513
981.....13427
989.....12515
1040.....11455
1097.....10729
1137.....10730
1434.....11617–11619
1468.....10731
1472.....10731
1475.....10725
1922.....11981
1944.....11981
1951.....11456, 11981
1200.....12898
1205.....12898
1207.....12898
1250.....12898

**Proposed Rules:**
1d.....13246
220.....12419
246.....12527
273.....13450
330.....12917
400.....10764
418.....11078
419.....11078
420.....11078
421.....11078
424.....11078
427.....11078
432.....11078
448.....11078
713.....13248
908.....12535
910.....12536
925.....13457
945.....10893
979.....12185
994.....10984, 12185
1011.....12186
1040.....12537
1046.....11475
1106.....12538
1210.....13086
1942.....12539
1955.....10577
1965.....10577

**8 CFR**

212.....11620
214.....13223
248.....11621
341.....13229

**Proposed Rules:**
245.....11659

**9 CFR**

78.....10554
92.....11022
94.....11622
102.....11024
114.....11024
151.....13070
166.....13230
318.....12517

**Proposed Rules:**

54.....12189
92.....10765
94.....12917
307.....12422
308.....12422
317.....10766, 11828
319.....10766, 11828
381.....11828

**10 CFR**

0.....11026
73.....12364

**Proposed Rules:**

2.....11475, 12192
30.....12921
40.....12921
50.....10771
70.....12921
430.....12342

**11 CFR**

100.....11187
102.....11187
103.....11187
104.....11187
110.....11187

**12 CFR**

202.....10732
203.....10365
205.....10734
226.....10875
500.....10557
564.....10557
611.....12135
614.....12143
624.....13428
701.....12365
708.....12370
741.....12365

**Proposed Rules:**

220.....13458
261.....13458
325.....11476, 11660
337.....11492
522.....12425
612.....11080
705.....12427

**13 CFR**

311.....11626

**14 CFR**

21.....11627
23.....11627
39.....10558, 10735, 10736, 11630–11639, 11985, 11986, 12517–12519, 13231–13233
71.....10559, 11028, 11032–11034, 11815, 12899, 13173
73.....10559, 10560, 11033, 11034
95.....10737
97.....12519
1215.....10880
1260.....12378, 13375

**Proposed Rules:**

29.....11997
39.....10581, 11081, 11663, 11664, 11997, 11998, 12544, 12545, 13249, 13251
71.....10582, 11082, 11828, 12286, 12935
75.....12000, 12286

**15 CFR**

370.....11640
371.....10741
376.....11640
399.....11457, 11640

**Proposed Rules:**

7.....11498
280.....11498
368.....10771

**16 CFR**

13.....12379, 12900

**Proposed Rules:**

13.....12430, 12546

**17 CFR**

200.....12147
203.....12147
241.....11458
270.....11187

**Proposed Rules:**

210.....11665
239.....11665
240.....11083, 11089, 11665
279.....11665

**18 CFR**

4.....13234
16.....11035
271.....10741
381.....10366

**Proposed Rules:**

4.....10696
11.....10696
375.....10696
1301.....10772

**19 CFR**

24.....10561, 10970
133.....10668
146.....10970
148.....12149
172.....12149
177.....11216

**Proposed Rules:**

101.....13473
111.....10774
127.....12000

**20 CFR**

10.....10486
200.....11010
209.....11010
210.....11010
216.....11010
217.....11010
230.....11010
234.....11010
260.....11010
266.....11010
320.....11010
322.....11010
325.....11010
330.....11010
335.....11010
341.....11010
345.....11010
655.....11460
656.....11217

**Proposed Rules:**

200.....10384
404.....13014
416.....13014
615.....10774

**21 CFR**

5.....10881
81.....10882
172.....10882
175.....10883, 12380
177.....11641
184.....10884
193.....10561, 10562
201.....12152
341.....12521
510.....10668, 11040, 11041, 11988, 12153
520.....10668, 11041, 11988
522.....10668, 11816
524.....10668, 10886
529.....10668
558.....11040, 11041, 11642, 11988, 12153, 12521
561.....10562, 12153
573.....10887
1306.....13430
1308.....11042, 12285

**Proposed Rules:**

133.....12556
182.....13086
184.....13086
186.....13086
310.....13107
312.....12431
357.....12114
561.....12193
1301.....11091

**22 CFR**

2a.....12154
212.....11817
224.....13071

**Proposed Rules:**

41.....12001
171.....12936

**23 CFR**

**Proposed Rules:**

650.....11092
655.....11502

**24 CFR**

15.....12159
201.....11643
203.....11643
234.....11643
511.....11466
3283.....11644

**Proposed Rules:**

200.....11686
511.....11598
905.....10668
968.....10668

**25 CFR**

120.....11467

**Proposed Rules:**

40.....11503

**26 CFR**

1.....10368, 10741, 10742, 12161
5f.....10368
35a.....13430
54.....10563
602.....10368, 10563, 10742, 12161, 13430

**Proposed Rules:**

1.....10774, 12194
54.....10583
602.....10583, 10774

**27 CFR**

9.....13079

**Proposed Rules:**

9.....11689

**28 CFR**

0.....11043
545.....10528

**Proposed Rules:**

549.....10531

**29 CFR**

20.....13563
33.....11600
2603.....13437
2644.....10368
2676.....12163

**Proposed Rules:**

1601.....11503
1625.....10584
1910.....10586, 12116, 12559
1915.....12559
1917.....12559
1918.....12559
1919.....12559
1926.....12120, 12288, 12559
1928.....12559
2603.....13474

**30 CFR**

250.....13235
914.....10369, 10373
946.....11044

**Proposed Rules:**

700.....11829
723.....11287
724.....11287
733.....10898
845.....11287
846.....11287
910.....11287
912.....11287
921.....11287
922.....11287
933.....11287
934.....12002
935.....11692
937.....11287
938.....12195, 13109
939.....11287
941.....11287
942.....11287
946.....13252
947.....11287

**31 CFR**

1.....11989
103.....11436, 12641

**Proposed Rules:**

1.....12003

**32 CFR**

154.....11219
701.....11051
706.....10374, 10748, 10749, 13237

1630.....12641
Proposed Rules:
1662.....11830

33 CFR

3.....13082
60.....11506
62.....11506
66.....11506
100.....11506
110.....11512, 11645
117.....11646
165.....12380
Proposed Rules:
100.....10593, 10594, 10905, 10906, 11693, 13011
117.....11695, 12431

34 CFR

628.....11256
639.....12508
Proposed Rules:
206.....11448
230.....13212
650.....12360
764.....13608
765.....13608
766.....13608

36 CFR

1.....10670
2.....10670
4.....10670
7.....10670
34.....10670
228.....10564
Proposed Rules:
1.....12037
2.....12037
9.....10866

37 CFR

Proposed Rules:
307.....11096

38 CFR

1.....10888
17.....11259, 13440
21.....13238
36.....12381
Proposed Rules:
17.....10907
21.....13110

39 CFR

10.....10375, 13442
111.....10749
224.....12900
233.....12900
273.....12900
962.....12900
3001.....13443
Proposed Rules:
111.....12432, 12559
265.....12434
447.....12196, 13011

40 CFR

52.....10751, 11259, 11647, 12164, 12522, 12523, 12908
60.....10852, 11420
110.....10712
180.....10375, 10376, 10565, 10567, 11260, 11261, 12165-12167, 12525, 13173, 13239
261.....11819
266.....11819
271.....10568, 11263
300.....13378
355.....13378
721.....11822
761.....10688
799.....10377, 10752
Proposed Rules:
61.....13586
52.....10596, 11287, 11288, 11696, 12940
85.....12561, 12563
123.....12039
141.....10972, 12876
142.....10972
143.....10972
180.....11292, 11293, 12198, 13478
261.....11513
264.....12566
265.....12566
280.....12662, 12786, 13375
281.....12853
300.....11513
700.....12940
721.....12285

41 CFR

101-20.....11263
101-28.....11275
101-41.....12168
201-32.....10379, 13173

42 CFR

7.....11072
400.....11647
482.....11647
1001.....11649
1003.....11649
Proposed Rules:
405.....11517

43 CFR

426.....11938
2090.....12171, 13084, 13563
Proposed Rules:
11.....12886

44 CFR

64.....10753, 12178
Proposed Rules:
5.....10385
6.....10385
67.....11702

45 CFR

Ch. II.....11073
Ch. III.....11073
Ch. IV.....11073
Ch. X.....11073
2201.....10870
Proposed Rules:
503.....11712, 12040

46 CFR

160.....13445
401.....11468
Proposed Rules:
Chapter I.....12439
154.....10598
160.....13479
276.....12199
382.....11518
502.....10912, 12208, 12212
503.....12212
586.....11832

47 CFR

0.....12382
1.....11652, 13240
2.....10568
15.....13241
22.....10571
25.....12911
67.....13445
73.....10381, 10382, 10568, 10757, 11471-11473, 11653, 11825, 12180, 12181, 12912, 13241-13243, 13445, 13446
74.....10568, 11474
78.....10568
97.....13243
Proposed Rules:
Ch. I.....13481
1.....11519
2.....13481
21.....11519, 11838
25.....12944
73.....11519-11521, 11837, 11840-11842, 12214-12216, 12285, 12945, 13253
74.....11519
90.....10389
94.....11519, 11838

48 CFR

7.....11074
203.....12383
205.....12386
215.....11276, 13447
216.....12387
217.....11076, 12387
225.....12389
227.....12390
243.....12387
245.....12389
252.....11076, 11276, 12383, 12386, 12389, 12390, 13447
522.....12182
542.....11825
552.....12182
5315.....12414
Proposed Rules:
225.....12440
509.....10913

49 CFR

Ch. IX.....12916
107.....13034
171.....13034
172.....13034
173.....13034
174.....13034
176.....13034
177.....13034
178.....13034
179.....13034
219.....10575
604.....11916
1002.....13244
1003.....11277
1043.....11277
1052.....11991
1084.....11277
1207.....10382
1244.....12415
1249.....10382
Proposed Rules:
Ch. X.....11295
571.....10775
701.....13066
1135.....13482
1145.....13482
1312.....10913
1320.....11295

50 CFR

17.....10890, 11162, 11277
301.....10759
611.....10761
642.....10762
652.....10763
663.....11473
672.....10761, 11991, 12183, 12916
675.....10761, 11992, 13375
685.....12641
Proposed Rules:
17.....13254
32.....13484
33.....13484
222.....12040
227.....12040
640.....10780, 13257
642.....11713
651.....10781
652.....12575

## LIST OF PUBLIC LAWS

**Last List April 13, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 18/Pub. L. 100-22**

To authorize and request the President to issue a proclamation designating June 1 through June 7, 1987 as "National Fishing Week." (Apr. 10, 1987; 101 Stat. 267; 1 page) Price: $1.00

**S.J. Res. 64/Pub. L. 100-23**

To designate May 1987, as "Older Americans Month." (Apr. 10, 1987; 101 Stat. 268; 1 page) Price: $1.00

**S.J. Res. 74/Pub. L. 100-24**

To designate the month of May, 1987 as "National Cancer Institute Month." (Apr. 10, 1987; 101 Stat. 269; 2 pages) Price: $1.00

**H.J. Res. 200/Pub. L. 100-25**

To designate April 10, 1987, as "Education Day U.S.A." (Apr. 17, 1987; 101 Stat. 271; 2 pages) Price: $1.00

202 ..... 10732
203 ..... 10365
205 ..... 10734
226 ..... 10875
500 ..... 10557
564 ..... 10557
611 ..... 12135
614 ..... 12143
624 ..... 13428
701 ..... 12365
708 ..... 12370
741 ..... 12365

**Proposed Rules:**

220 ..... 13458
261 ..... 13458
325 ..... 11476, 11660
337 ..... 11492
522 ..... 12425
612 ..... 11080
705 ..... 12427

**13 CFR**

311 ..... 11626

**14 CFR**

21 ..... 11627
23 ..... 11627
39 ..... 10558, 10735, 10736, 11630–11639, 11985, 11986, 12517–12519, 13231–13233
71 ..... 10559, 11028, 11032–11034, 11815, 12899, 13173
73 ..... 10559, 10560, 11033, 11034
95 ..... 10737
97 ..... 12519
1215 ..... 10880
1260 ..... 12378, 13375
381 ..... 10366

**Proposed Rules:**

4 ..... 10898
11 ..... 10898
375 ..... 10898
1301 ..... 10772

**19 CFR**

24 ..... 10561, 10970
133 ..... 10668
146 ..... 10970
148 ..... 12149
172 ..... 12149
177 ..... 11216

**Proposed Rules:**

101 ..... 13473
111 ..... 10774
127 ..... 12000

**20 CFR**

10 ..... 10486
200 ..... 11010
209 ..... 11010
210 ..... 11010
216 ..... 11010
217 ..... 11010
230 ..... 11010
234 ..... 11010
260 ..... 11010
266 ..... 11010
320 ..... 11010
322 ..... 11010
325 ..... 11010
330 ..... 11010
335 ..... 11010
341 ..... 11010
345 ..... 11010
1301 ..... 11091

**22 CFR**

2a ..... 12154
212 ..... 11817
224 ..... 13071

**Proposed Rules:**

41 ..... 12001
171 ..... 12936

**23 CFR**

**Proposed Rules:**

650 ..... 11092
655 ..... 11502

**24 CFR**

15 ..... 12159
201 ..... 11643
203 ..... 11643
234 ..... 11643
511 ..... 11466
3283 ..... 11644

**Proposed Rules:**

200 ..... 11686
511 ..... 11598
905 ..... 10668
968 ..... 10668

**25 CFR**

120 ..... 11467

**Proposed Rules:**

40 ..... 11503

**26 CFR**

1 ..... 10368, 10741, 10742, 12161

**30 CFR**

250 ..... 13235
914 ..... 10369, 10373
946 ..... 11044

**Proposed Rules:**

700 ..... 11829
723 ..... 11287
724 ..... 11287
733 ..... 10898
845 ..... 11287
846 ..... 11287
910 ..... 11287
912 ..... 11287
921 ..... 11287
922 ..... 11287
933 ..... 11287
934 ..... 12002
935 ..... 11692
937 ..... 11287
938 ..... 12195, 13109
939 ..... 11287
941 ..... 11287
942 ..... 11287
946 ..... 13252
947 ..... 11287

**31 CFR**

1 ..... 11989
103 ..... 11436, 12641

**Proposed Rules:**

1 ..... 12003

**32 CFR**

154 ..... 11219
701 ..... 11051
706 ..... 10374, 10748, 10749, 13237

10888

**37 CFR**

**Proposed Rules:**
307 ..... 11096

**38 CFR**

1 ..... 10888
17 ..... 11259, 13440
21 ..... 13238
36 ..... 12381

**Proposed Rules:**
17 ..... 10907
21 ..... 13110

**39 CFR**

10 ..... 10375, 13442
111 ..... 10749
224 ..... 12900
233 ..... 12900
273 ..... 12900
962 ..... 12900
3001 ..... 13443

**Proposed Rules:**
111 ..... 12432, 12559
265 ..... 12434
447 ..... 12196, 13011

**40 CFR**

52 ..... 10751, 11259, 11647, 12164, 12522, 12523, 12908
60 ..... 10852, 11420
110 ..... 10712
180 ..... 10375, 10376, 10565, 10567, 11260, 11261, 12165-12167, 12525, 13173, 13239
1001 ..... 11649
1003 ..... 11649

**Proposed Rules:**
405 ..... 11517

**43 CFR**

426 ..... 11938
2090 ..... 12171, 13084, 13563

**Proposed Rules:**
11 ..... 12886

**44 CFR**

64 ..... 10753, 12178

**Proposed Rules:**
5 ..... 10385
6 ..... 10385
67 ..... 11702

**45 CFR**

Ch. II ..... 11073
Ch. III ..... 11073
Ch. IV ..... 11073
Ch. X ..... 11073
2201 ..... 10870

**Proposed Rules:**
503 ..... 11712, 12040

**46 CFR**

160 ..... 13445
401 ..... 11468

**Proposed Rules:**
Chapter I ..... 12439
154 ..... 10598
160 ..... 13479
276 ..... 12199
217 ..... 11076, 12387
225 ..... 12389
227 ..... 12390
243 ..... 12387
245 ..... 12389
252 ..... 11076, 11276, 12383, 12386, 12389, 12390, 13447
522 ..... 12182
542 ..... 11825
552 ..... 12182
5315 ..... 12414

**Proposed Rules:**
225 ..... 12440
509 ..... 10913

**49 CFR**

Ch. IX ..... 12916
107 ..... 13034
171 ..... 13034
172 ..... 13034
173 ..... 13034
174 ..... 13034
176 ..... 13034
177 ..... 13034
178 ..... 13034
179 ..... 13034
219 ..... 10575
604 ..... 11916
1002 ..... 13244
1003 ..... 11277
1043 ..... 11277
1052 ..... 11991
1084 ..... 11277
1207 ..... 10382
1244 ..... 12415
1249 ..... 10382

**Proposed Rules:**
Ch. X ..... 11295


published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 18/Pub. L. 100-22**

To authorize and request the President to issue a proclamation designating June 1 through June 7, 1987 as "National Fishing Week." (Apr. 10, 1987; 101 Stat. 267; 1 page) Price: $1.00

**S.J. Res. 64/Pub. L. 100-23**

To designate May 1987, as "Older Americans Month." (Apr. 10, 1987; 101 Stat. 268; 1 page) Price: $1.00

**S.J. Res. 74/Pub. L. 100-24**

To designate the month of May, 1987 as "National Cancer Institute Month." (Apr. 10, 1987; 101 Stat. 269; 2 pages) Price: $1.00

**H.J. Res. 200/Pub. L. 100-25**

To designate April 10, 1987, as "Education Day U.S.A." (Apr. 17, 1987; 101 Stat. 271; 2 pages) Price: $1.00

L
2
S S
8
P
3
87
M I

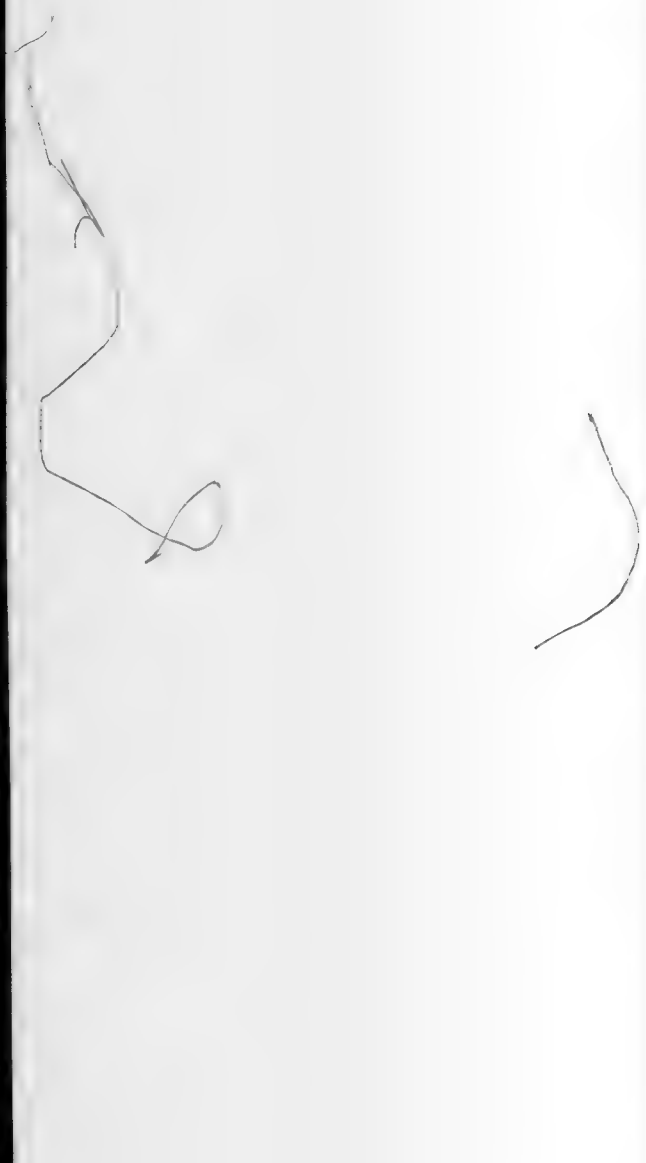

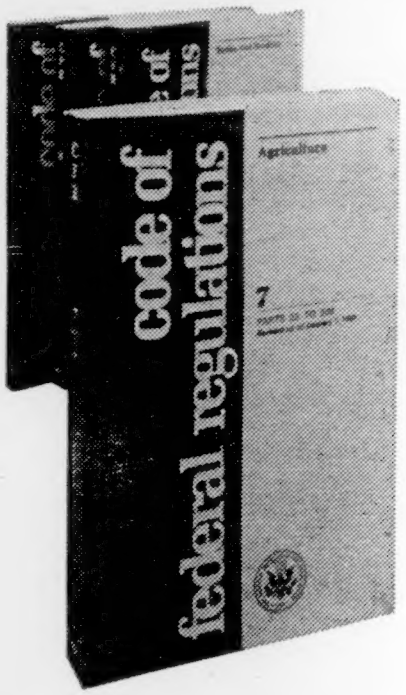


*Just Released*

# Code of Federal Regulations

**Revised as of January 1, 1987**

| Quantity | Volume | Price | Amount |
|---|---|---|---|
| _____ | Title 3—The President (1986 Compilation and Parts 100 and 101) (Stock No. 869-001-00002-3) | $11.00 | $_____ |
| _____ | Title 5—Administrative Personnel Parts 1-1199 (Stock No. 869-001-00004-0) | 25.00 | _____ |
| _____ | Part 1200-End (Stock No. 869-001-00005-8) | 9.50 | _____ |
| | | **Total Order** | $_____ |

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

*Please do not detach*

## Order Form

**Mail to:** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

**Charge to my Deposit Account No.**

☐☐☐☐☐☐☐–☐

Order No._____

VISA® MasterCard

**Credit Card Orders Only**

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

**PLEASE PRINT OR TYPE**

**For Office Use Only.**

| | Quantity | Charges |
|---|---|---|
| Enclosed | | |
| To be mailed | | |
| Subscriptions | | |
| Postage | | |
| Foreign handling | | |
| MMOB | | |
| OPNR | | |
| UPNS | | |
| Discount | | |
| Refund | | |